START

Title: FEDERAL REGISTER.

Volume: 60 Issues: 143-156
PAGES: 38227-42024

Date: JULY 26 - AUGUST 14, 1995

UMI Number: 2575.00

Note: REEL NO: 2 OF 10

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7–26–95
Vol. 60 No. 143

Wednesday
July 26, 1995

federal register

United States
Government
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7-26-95
Vol. 60 No. 143
Pages 38227–38474

federal register

Wednesday
July 26, 1995

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Presidential Documents

Title 3—

The President

Proclamation 6811 of July 21, 1995

Parents' Day, 1995

By the President of the United States of America

A Proclamation

Parenthood is among the most difficult and most rewarding responsibilities in life. Balancing countless demands, parents must be firm yet loving, protective yet liberating. They are the nurturers of our dreams and the soothers of our fears. They instill in their children, by word and example, the importance of family and community involvement, the value of education and hard work.

Parenting is a serious responsibility. All parents have an obligation to provide for the children they bring into the world. Parents must teach and sustain, helping to empower each new generation to meet the challenges and opportunities of life with confidence.

Today, across our country, parents give their time and energy to ensure a better future for their children. Teaching the lessons of honesty and caring in a way that no school or government can, America's parents pass on the spirit, values, and traditions that have made our Nation strong for more than two centuries. Whether stepparents or foster parents, biological or adoptive, parents provide the security, stability, and love that enable children to grow up healthy, happy, and strong.

Parents' Day is a welcome opportunity to celebrate the special and powerful bond between parent and child. On this occasion, let us remember and pay respect to those who give us the daily support and loving guidance that lead us to become responsible and contributing citizens.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with Public Law 103–362, do hereby proclaim Sunday, July 23, 1995, as "Parents' Day." I invite the States, communities, and the people of the United States to observe this day with appropriate ceremonies and activities expressing gratitude and abiding affection for parents.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of July, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–18506
Filed 7–24–95; 2:49 pm]
Billing code 3195–01–P

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Consolidated Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AD64 and AD65

1995 Marketing Quotas and Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Maryland (Type 32), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42–44 and 53–55), Cigar-Filler (Type 41), Cigar-Filler (Type 46), and Cigar Binder (Types 51–52) Tobaccos

AGENCIES: Consolidated Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify the national marketing quotas and price support levels for the 1995 crops for several kinds of tobacco announced by press release on March 1, 1995.

In accordance with the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), the Secretary determined the 1995 marketing quotas to be as follows: Fire-cured (type 21), 1.95 million pounds; fire-cured (types 22–23), 39.8 million pounds; Maryland (type 32), 6.45 million pounds; dark air-cured (types 35–36), 9.6 million pounds; Virginia sun-cured (type 37), 130,000 pounds; cigar-filler (type 41), 1.35 million pounds; cigar-filler and binder (types 42–44 and 53–55), 9.0 million pounds; cigar-filler (type 46), zero pounds; and cigar binder (types 51–52), 675,000 pounds.

This rule is necessary to adjust the production levels of certain tobacco to more fully reflect supply and demand conditions as provided by statute.

In accordance with the Agricultural Act of 1949 as amended (the 1949 Act), the Secretary determined the 1995 levels of support to be as follows (in cents per pound): Fire-cured (type 21), 143.0; fire-cured (types 22–23), 151.8; dark air-cured (types 35–36), 130.4; Virginia sun-cured (type 37), 127.6; cigar-filler and binder (types 42–44 and 53–55), 110.1; and cigar-filler (type 46), 90.1. Price support for Maryland (type 32), cigar-filler (type 41), and cigar binder (types 51–52) were not announced because producers of each of these kinds of tobacco had disapproved marketing quotas for many years and were not expected to approve quotas in separate referenda to be held March 27–30, 1995.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture (USDA), room 3736, South Building, PO Box 2415, Washington, DC 20013–2415, 202–720–5346.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of this rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CFSA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

The amendments to 7 CFR parts 723 and 1464 set forth in this final rule do not contain information collections that require clearance through the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

Statutory Background

This final rule is issued pursuant to the provisions of the 1938 Act and the 1949 Act.

On March 1, 1995, the Secretary determined and announced the national marketing quotas and price support levels for the 1995 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler and binder (types 42–44 and 53–55), and cigar-filler (type 46) tobaccos. In addition the Secretary announced marketing quotas for Maryland (type 32), cigar-filler (type 41) and cigar-binder (types 51–52). A number of related determinations were made at the same time which this final rule affirms. On the same date, the Secretary also announced that referenda would be conducted by mail with respect to Maryland (type 32), Virginia sun-cured (type 37), cigar-filler (type 41), and cigar-binder (types 51–52) tobaccos.

During March 27–30, 1995, eligible producers of Maryland (type 32), Virginia sun-cured (type 37), cigar-filler (type 41), and cigar binder (types 51–52) tobacco voted in separate referenda to determine whether such producers disapprove marketing quotas for the 1995, 1996, and 1997 marketing years (MYs) for these tobaccos. Of the producers voting, 9.9 percent favored marketing quotas for Maryland tobacco; 93.6 percent favored marketing quotas for Virginia sun-cured tobacco; 11.5 percent favored marketing quotas for cigar-filler (type 41); and 12.2 percent favored marketing quotas for cigar binder (types 51–52). Accordingly, among these tobaccos, quotas and price supports for only Virginia sun-cured tobacco are in effect for the 1995 MY. For the other three kinds, neither marketing quotas nor price supports will be in effect for the next 3 MYs.

In accordance with section 312(a) of the 1938 Act, the Secretary of Agriculture was required to proclaim not later than March 1 of any MY with respect to any kind of tobacco, other than burley and flue-cured tobacco, a

national marketing quota for any such kind of tobacco for each of the next 3 MYs if such MY is the last year of 3 consecutive years for which marketing quotas previously proclaimed will be in effect; or because marketing quotas previously proclaimed were last disapproved by producers in a referendum held 3 years previously. With respect to Virginia sun-cured (type 37) tobacco, the 1994 MY is the last year of 3 such consecutive years; for Maryland (type 32), cigar-filler (type 41), and cigar binder (types 51–52) 1995 represents the beginning of another 3-year cycle. Accordingly, subject to producer approved marketing quotas for Maryland (type 32), Virginia sun-cured (type 37), cigar-filler (type 41) and cigar binder (types 51–52) tobaccos have been proclaimed for each of the 3 MYs beginning October 1, 1995; October 1, 1996; and October 1, 1997. As indicated, however, type 37 producers approved the quotas.

Because of producer approval of quotas sections 312 and 313 of the 1938 Act require that the Secretary also announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), Maryland (type 32), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler (type 41), cigar-filler and binder (types 42–44 and 53–55), cigar-filler (type 46), and cigar binder (types 51–52) tobaccos for the MY beginning October 1, 1994, and for these tobaccos, the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (1) new farms and (2) making corrections and adjusting inequities in old farm allotments.

Under the 1949 Act, price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1995 crop of the nine kinds of tobacco which are the subject of this rule, the respective maximum level of support for six of those kinds is determined in accordance with section 106 of the 1949 Act. For the other three kinds of tobacco, price support was not calculated because producers of these kinds of tobacco had disapproved marketing quotas in previous referenda and were not expected to approve quotas in separate referenda to be held March 27–30, 1995.

The announcement of the price support levels for the 1995 crops of these six kinds of tobacco are made insofar as practicable before the beginning of the planting season.

Marketing Quotas

Section 312(b) of the 1938 Act provides, in part, that the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed such that a supply of such tobacco equal to its reserve supply level is made available during the MY.

Section 313(g) of the 1938 Act provides that the Secretary may convert the national marketing quota into a national acreage allotment for apportionment to individual farms.

Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments allow, it has been determined that a larger quota is necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Section 301(b)(14)(B) of the 1938 Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to ensure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. "Normal supply" is defined in section 301(b)(10)(B) of the 1938 Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover.

Normal year's domestic consumption is defined in section 301(b)(11)(B) of the 1938 Act as the average quantity produced and consumed in the United States during the 10 MYs immediately preceding the MY in which such consumption is determined, adjusted for current trends in such consumption. Normal year's exports is defined in section 301(b)(12) of the 1938 Act as the average quantity produced in and exported from the United States during the 10 MYs immediately preceding the MY in which such exports are determined, adjusted for current trends in such exports.

In accordance with section 313(g) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that the national reserve, noted herein, for the 1995 crop of each of these kinds of tobacco is adequate for these purposes.

On January 25, 1995, a proposed rule was published (60 FR 4871) in which interested persons were requested to comment with respect to setting quotas for the tobacco kinds addressed in the notice.

Discussion of Comments

Thirty-two written responses were received during the comment period which ended February 3, 1995. Some respondents discussed more than one kind of tobacco. A summary of these comments by kind of tobacco follows:

(1) *Fire-cured (type 21) tobacco.* Nine comments were received. Eight comments recommended that quotas be decreased by 15 percent. The other recommended that the marketing quotas be decreased by 10 percent from the 1994 MY.

(2) *Fire-cured (types 22–23) tobacco.* Six comments were received. Five recommended a 7-percent decrease from the 1994 marketing quota, while the sixth recommended no change in quota.

(3) *Dark air-cured (types 35–36) tobacco.* Seven comments were received. Six recommended a 15-percent decrease, and a seventh recommended a 10-percent decrease in the quota.

(4) *Virginia sun-cured (type 37) tobacco.* Eight comments were received, all recommended a 5-percent decrease in quota.

(5) *Cigar-filler and binder (types 42–44 and 53–55) tobacco.* Two comments were received, both recommending no change in quota.

(6) *Maryland (type 32), cigar filler (type 41), cigar filler (type 46) and cigar binder (type 51–52) tobaccos.* No comments were received.

Marketing quotas and the corresponding acreage allotments for Maryland (type 32), cigar filler (type 41), and cigar binder (types 51–52) tobaccos were proclaimed on March 1, 1995, but were each disapproved by producers in subsequent referenda. Accordingly, the following marketing quotas appear as a matter of record only: Maryland (type 32), 6.45 million pounds; cigar filler (type 41), 1.35 million pounds; and cigar binder (type 51–52), 675,000 pounds.

For the six kinds of tobacco for which marketing quotas have been approved the following determinations have been made, based on a review of these comments and the latest available statistics of the Federal Government which appear to be the most reliable data available.

(1) Fire-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States, which is estimated to have been consumed in the United States during the 10 MYs preceding the 1994 MY, was approximately 1.1 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1994 MY was 2.7 million pounds (farm sales weight basis). Both domestic use and exports have trended sharply downward. Thus, a normal year's domestic consumption has been determined to be 0.7 million pounds, and a normal year's exports have been determined to be 1.65 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 4.83 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1994, of 3.3 million pounds. The 1994 crop is estimated to be 2.4 million pounds. Therefore, total supply for the 1994 MY is 5.7 million pounds. During the 1994 MY, it is estimated that disappearance will total approximately 2.5 million pounds. Deducting this disappearance from total supply results in a 1995 MY beginning stock estimate of 3.2 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1995, is 1.63 million pounds. This represents the quantity that may be marketed which will make available during the 1995 MY a supply equal to the reserve supply level. Less than 85 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1995 national marketing quota of 1.95 million pounds is necessary to make available production of 1.63 million pounds. Thus, the national marketing quota for the 1995 MY is 1.95 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1995 national marketing quota of 1.95 million pounds by the 1990–94, 5-year national average yield of 1,482 pounds per acre results in a 1995 national acreage allotment of 1,315.79 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 0.85 is determined by dividing the national acreage allotment for the 1995 MY, less a national reserve of 5.7 acres, by the total of the 1995 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(2) Fire-Cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States, which is estimated to have been consumed in the United States during the 10 years preceding the 1994 MY, was approximately 17.8 million pounds. The average annual quantity produced in the United States and exported during the 10 MYs preceding the 1994 MY was 16.4 million pounds (farm sales weight basis). Both domestic use and exports have trended upward recently. Thus, normal year's domestic consumption has been determined to be 25.0 million pounds, and a normal year's exports have been determined to be 20.7 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 108.1 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1994, of 69.6 million pounds. The 1994 crop is estimated to be 41.9 million pounds. Therefore, total supply for the 1994 MY is 111.5 million pounds. During the 1994 MY, it is estimated that disappearance will total approximately 35.0 million pounds. Deducting this disappearance from total supply results in a 1995 MY beginning stock estimate of 76.5 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1995, is 31.6 million pounds. This represents the quantity that may be marketed which will make available during the 1995 MY a supply equal to the reserve supply level. About 95 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1995 national marketing quota of 33.2 million pounds is necessary to make available production of 31.6 million pounds.

In accordance with section 312(b) of the 1938 Act, it has been further determined that the 1995 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. Thus, the national marketing quota for the 1995 MY is 39.8 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1995 national marketing quota of 39.8 million pounds by the 1990–94, 5-year average yield of 2,412 pounds per acre results in a 1995 national acreage allotment of 16,500.83 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 0.93 is determined by dividing the national acreage allotment for the 1995 MY, less a national reserve of 26 acres, by the total of the 1995 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(3) Dark Air-Cured (Types 35–36) Tobacco

The yearly average quantity of dark air-cured (types 35–36) tobacco produced in the United States, which is estimated to have been consumed in the United States during the 10 MYs preceding the 1994 MY, was approximately 10.3 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1994 MY was 1.9 million pounds (farm sales weight basis). Domestic use has been erratic while exports have trended downward. Thus, a normal year's domestic consumption has been determined to be 10.5 million pounds, and a normal year's exports have been determined to be 1.5 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 33.0 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1994, of 24.7 million pounds. The 1994 crop is estimated to be 10.8 million pounds. Therefore, total supply for the 1994 MY is 35.5 million pounds. During the 1994 MY, it is estimated that disappearance will total approximately 10.0 million pounds. Deducting this disappearance from total supply results in a 1995 MY beginning stock estimate of 25.5 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1995, is 7.5 million pounds. This represents the quantity that may be marketed which will make available during the 1995 MY a supply equal to the reserve supply level. More than 90 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a national marketing quota of 8.0 million pounds is necessary to make

available production of 7.5 million pounds.

In accordance with section 312(b) of the 1938 Act, it has been further determined that the 1995 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1995 MY of 9.6 million pounds. In accordance with section 313(g) of the 1938 Act, dividing the 1995 national marketing quota of 9.6 million pounds by the 1990–94, 5-year average yield of 2,248 pounds per acre results in a 1995 national acreage allotment of 4,270.46 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 0.85 is determined by dividing the national acreage allotment for the 1995 MY, less a national reserve of 13.0 acres, by the total of the 1995 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(4) Virginia Sun-Cured (Type 37) Tobacco

The yearly average quantity of Virginia sun-cured (type 37) tobacco produced in the United States, which is estimated to have been consumed in the United States during the 10 MYs preceding the 1994 MY, was approximately 190,000 pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1994 MY was approximately 120,000 pounds (farm sales weight basis). Both domestic use and exports have shown a sharp downward trend. Thus, a normal year's domestic consumption has been determined to be 60,000 pounds, and a normal year's exports have been determined to be 17,000 pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 203,000 pounds.

Manufacturers and dealers reported stocks held on October 1, 1994, of 110,000 pounds. The 1994 crop is estimated to be 110,000 pounds. Therefore, total supply for the 1994 MY is 220,000 pounds. During the 1994 MY, it is estimated that disappearance will total approximately 130,000 pounds. Deducting this disappearance from total supply results in a 1995 MY beginning stock estimate of 90,000 pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1994, is 113,000 pounds. This represents the quantity that may be marketed which will make available during the 1995 MY a supply equal to the reserve supply level. Over 80 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1995 national marketing quota of 130,000 pounds is necessary to make available production of 113,000 pounds. Thus, the national marketing quota for the 1995 MY is 130,000 pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1995 national marketing quota of 130,000 pounds by the 1990–94, 5-year average yield of 1,303 pounds per acre results in a 1995 national acreage allotment of 99.77 acres.

Pursuant to the provisions of section 313(g) of the 1938 Act, a national acreage factor of 0.95 is determined by dividing the national acreage allotment for the 1995 MY, less a national reserve of 0.34 acre, by the total of the 1995 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(5) Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 and 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 MYs preceding the 1994 MY, was approximately 16.2 million pounds. The average annual quantity produced in the United States and exported from the United States during the 10 MYs preceding the 1994 MY was less than 100,000 pounds (farm sales weight). Domestic use has trended downward and exports are very small. Thus, a normal year's domestic consumption has been determined to be 10.2 million pounds, and a normal year's exports has been determined to be 100,000 pounds. Application of the formula prescribed by section 301(b)(14)(B) of the 1938 Act results in a reserve supply level of 29.7 million pounds.

Manufacturers and dealers reported stocks held on October 1, 1994, of 27.9 million pounds. The 1994 crop is estimated to be 5.8 million pounds. Therefore, total supply for the 1994 MY is 33.7 million pounds. During the 1994 MY, it is estimated that disappearance will total about 9.0 million pounds. Deducting this disappearance from total supply results in a 1995 MY beginning stock estimate of 24.7 million pounds.

The difference between the reserve supply level and the estimated carryover on October 1, 1995, is 5.0 million pounds. This represents the quantity that may be marketed which will make available during the 1995 MY a supply equal to the reserve supply level. Slightly less than 70 percent of the announced national marketing quota is expected to be produced.

Accordingly, it has been determined that a 1995 national marketing quota of 7.5 million pounds is necessary to make available production of 5.0 million pounds. In accordance with section 312(b) of the 1938 Act, it has been further determined that the 1995 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a 1995 national marketing quota of 9.0 million pounds.

In accordance with section 313(g) of the 1938 Act, dividing the 1995 national marketing quota of 9.0 million pounds by the 1990–94, 5-year average yield of 1,855 pounds per acre results in a 1995 national acreage allotment of 4,851.75 acres.

Pursuant to the provisions of section 313(g), of the 1938 Act, a national factor of 1.0 is determined by dividing the national acreage allotment for the 1995 MY, less a national reserve of 3.75 acres, by the total of the 1995 preliminary farm acreage allotments (previous year's allotments). The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the 1938 Act for apportioning the national acreage allotment, less the national reserve, to old farms.

(6) Cigar-Filler (Type 46) Tobacco

There is no demand for cigar-filler (type 46) tobacco. Accordingly, the reserve supply level is zero. The estimated carryover at the start of MY 1995 is 0.1 million pounds.

Because the estimated carryover exceeds the reserve supply level, the quantity of tobacco that may be marketed during MY 1995 and the 1995 acreage allotment are both zero.

(7) Referendum Results for Maryland (Type 32), Virginia Sun-Cured (Type 37), Cigar-Filler (Type 41) and Cigar Binder (Types 51–52) Tobaccos

Marketing quotas shall not be in effect for the 1995 MY for Maryland (type 32), cigar filler (type 41), and cigar binder (types 51–52) tobaccos. However, marketing quotas shall be in effect for Virginia sun-cured (type 37) tobacco. In referenda held March 27–30, 1995, only 9.9 percent of producers of Maryland (type 32) tobacco, 11.5 percent of producers of cigar filler (type 41) tobacco, and 12.2 percent of producers of cigar binder (types 51–52) tobacco voted in favor of marketing quotas.

However, 93.6 percent of Virginia sun-cured producers voted in favor of marketing quotas.

The following is a summary of the results of the four separate referenda:

Kind of tobacco	Total votes	Yes votes	No votes	Percent yes votes
Maryland (type 32)	567	56	511	9.9
Virginia sun-cured (type 37)	47	44	3	93.6
Cigar-filler (type 41)	87	10	77	11.5
Cigar-binder (types 51–52)	41	5	36	12.2

Price Support

Section 106(f)(6)(A) of the 1949 Act provides that the level of support for the 1995 crop of a kind of tobacco (other than flue-cured and burley) shall be the level in cents per pound at which the 1994 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1995 crop, as determined under section 106(b) of the 1949 Act, is greater or less than (ii) the support level for the 1994 crop, as determined under section 106(d) of the 1949 Act if the support level under clause (i) is greater than the support level under clause (ii).

Accordingly, the support level for the 1995 crop of such kind of tobacco will be the 1994 level, adjusted by the difference (plus or minus) between the 1994 "basic support level" and the 1995 "basic support level."

Section 106(b) of the 1949 Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers, including wage rates, interest, and taxes (referred to as the "parity index") for the 3 previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year.

In addition, section 106(f)(6)(B) of the 1949 Act provides that to the extent requested by the board of directors of an association, through which price support is made available to producers (producer association), the Secretary may reduce the support level determined under section 106(f)(6)(A) of the 1949 Act for the respective kind of tobacco to more accurately reflect the market value and improve the marketability of such tobacco. Accordingly, the price support level for a kind of tobacco set forth in this rule could be reduced if such a request is made.

Determinations

The following levels of price support for the 1994 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A) of the 1949 Act, are as follows:

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	140.7
KY-TN fire-cured (types 22–23)	148.3
Dark air-cured (types 35–36)	127.3
Virginia sun-cured (type 37)	124.5
Cigar-filler and binder (types 42–44 and 53–55)	108.4
Cigar-filler (type 46)	84.4

For the 1995 crop year:

(1) Average parity indexes for calendar year periods 1991–1993 and 1992–1994 are as follows:

Year	Index	Year	Index
1991	1,316	1992	1,329
1992	1,329	1993	1,355
1993	1,355	1994	1,394
Average	1,333	Average	1,359

(2) Average parity index, calendar year 1959=298.

(3) 1994 ratio of 1,333 to 298=4.47; 1995 ratio of 1,359 to 298=4.56.

(4) Ratios times 1959 support levels and 1995 increase in basic support levels are as follows:

Kind and type	1959 support level (¢/lb.)	Basic support level [1]		Increase from 1994 to 1995	
		1994 (¢/lb.)	1995 (¢/lb.)	100% (¢/lb.)	65% (¢/lb.)
VA 21	38.8	173.4	176.9	3.5	2.3
KY-TN 22–23	38.8	173.4	176.9	3.5	2.3
KY-TN 35–36	34.5	154.2	157.3	3.1	2.0
VA 37	34.5	154.2	157.3	3.1	2.0
Cigar-filler and binder 42–44, 54–55	28.6	127.8	130.4	2.6	1.7
Cigar-filler 46	29.7	132.8	135.4	2.6	1.7

[1] 1994 ratio is 4.47, 1995 ratio is 4.56.

Section 106(d) of the 1949 Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota

tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall consider the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity, and stalk position of such tobacco.

For MY 1995, the flue-cured support level was increased by 65 percent of the formula increase to within about 7 percent of 1994's average market price. For the kinds of tobacco subject of this rule, MY 1994 prices were further above the support level, and overall loan receipts remained low. Only Virginia Fire-Cured (type 21) and Virginia sun-cured (type 37) had loan placements that were significant relative to production for MY 1994. Although all loan stocks of cigar filler and binder (types 42–44 and 53–55) have just recently been sold, loan associations accept the lower price support levels to remain competitive with imports and tobaccos not under support. Therefore, for fire-cured tobacco (type 21), Virginia sun-cured tobacco (type 37), and cigar-filler and binder tobacco (types 42–44 and 53–55), the MY 95 support levels consist of the 1994 support levels increased by 65 percent of the difference between the 1995 "basic support level" and the 1994 "basic support level." The supply-use ratios for Kentucky-Tennessee fire-cured (types 22–23) and dark air-cured (types 35–36) suggest adequate supplies. Accordingly, for these tobaccos, the MY 1995 support level consists of the MY 1994 level of support increased by the difference between the MY 1995 "basic support level" and the MY 1994 "basic support level." Also, chewing tobacco, smoking tobacco, and snuff manufacturing formulas limit the substitutability of one of these kinds of tobacco for another. Cigarettes, the principal outlet for flue-cured and burley tobaccos, do not require any of these six kinds of tobacco in their blends.

Accordingly, the following determinations were announced by the Secretary of Agriculture on March 1, 1995, in accordance with section 106(f)(6)(A) of the 1949 Act are established for MY 1995 for fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler and binder (types 42–44 and 53–55), and cigar-filler (type 46) tobaccos.

Kind and type	Support level (cents per pound)
Virginia fire-cured (type 21)	143.0
Kentucky-Tennessee fire-cured (types 22–23)	151.8
Dark air-cured (types 35–36)	130.4
Virginia sun-cured (type 37)	126.5
Cigar-filler and binder (types 42–44 and 53–55)	110.1
Cigar-filler (type 46)	086.1

List of Subjects in 7 CFR Part 723

Acreage allotments, marketing quotas, penalties, reporting and recordkeeping requirements, Tobacco.

Accordingly, 7 CFR parts 723 and 1464 are amended to read as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1, and 1445–2.

2. Section 723.113 is amended by adding paragraph (c) to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 1.95 million pounds.

3. Section 723.114 is amended by adding paragraph (c) to read as follows:

§ 723.114 Fire-cured (types 22–23) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 39.8 million pounds.

4. Section 723.115 is amended by adding paragraph (c) to read as follows:

§ 723.115 Dark air-cured (types 35–36) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 9.6 million pounds.

5. Section 723.116 is amended by adding paragraph (c) to read as follows:

§ 723.116 Sun-cured (type 37) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 130,000 pounds.

6. Section 724.117 is amended by adding paragraph (c) to read as follows:

§ 723.117 Cigar-filler and cigar binder (types 42–44; 53–55) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 9.0 million pounds.

7. Section 723.118 is amended by adding paragraph (c) to read as follows:

§ 723.118 Cigar filler (type 46) tobacco.

* * * * *

(c) The 1995-crop national marketing quota is 0.0 million pounds.

PART 1464—TOBACCO

8. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, and 1445–1; 15 U.S.C. 714b and 714c.

9. Section 1464.13 is amended by adding paragraph (c) to read as follows:

§ 1464.13 Fire-cured (type 21) tobacco.

* * * * *

(c) The 1995-crop national price support level is 143.0 cents per pound.

10. Section 1464.14 is amended by adding paragraph (c) to read as follows:

§ 1464.14 Fire-cured (types 22–23) tobacco.

* * * * *

(c) The 1995-crop national price support level is 151.8 cents per pound.

11. Section 1464.15 is amended by adding paragraph (c) to read as follows:

§ 1464.15 Dark air-cured (types 35–36) tobacco.

* * * * *

(c) The 1995-crop national price support level is 130.4 cents per pound.

12. Section 1464.16 is amended by adding paragraph (c) to read as follows:

§ 1464.16 Virginia sun-cured (type 37) tobacco.

* * * * *

(c) The 1995-crop national price support is 126.5 cents per pound.

13. Section 1464.17 is amended by paragraph (c) to read as follows:

§ 1464.17 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

* * * * *

(c) The 1995-crop national price support level is 110.1 cents per pound.

14. Section 1464.18 is amended by paragraph (c) to read as follows:

§ 1464.18 Cigar-filler (type 46) tobacco.

* * * * *

(c) The 1995-crop national price support level is 86.1 cents per pound.

Signed at Washington, DC, on July 20, 1995.

Bruce R. Weber,

Acting Administrator, Consolidated Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–18308 Filed 7–25–95; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 70, and 72

RIN 3150–AE95

Clarification of Decommissioning Funding Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations applicable to decommissioning funding assurance and the expiration and termination of licenses for nonreactor licensees. These amendments clarify requirements that financial assurance must be in place during licensed operations and updated when the licensee decides to cease operations and begin decommissioning. These regulations require that licensees who have been in timely renewal since the promulgation of the earlier decommissioning funding rule or who have ceased operation without having adequate decommissioning funding arrangements in place must provide the NRC with certification of adequate financial assurance for decommissioning by the effective date of this rule.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6230, E-mail MLT1@NRC.GOV.

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I. Background

In 1983, the Commission amended 10 CFR parts 30, 40, and 70 to add requirements addressing "Expiration and Termination of Licenses" (10 CFR 30.36, 40.42, and 70.38 (48 FR 32324; July 15,1983)). Similar provisions were added to 10 CFR part 72 (10 CFR 72.54 (53 FR 24018; June 27, 1988)). These requirements set out the procedures to be followed by a licensee who decides to decommission a facility and seek termination of the applicable license. If a part 30, 40, 70, or 72 licensee has more than a modest amount of radioactive contamination to remediate, the licensee is required to submit a decommissioning plan that sets out the methods and measures for decontamination of the property and equipment.

In the final rule published June 27, 1988, the Commission addressed "Financial Assurance and Recordkeeping for Decommissioning" (10 CFR 30.35, 40.36, 70.25 and 72.30 (53 FR 24018; June 27,1988)). The rule established a graded structure for financial assurance that is based on the assumption that the kinds and quantities of radioactive materials authorized in the license provide a reasonably good correlation to the amount of contamination that has to be remediated. Before the license is issued or renewed, the applicant shall provide financial assurance in one or more of the forms required by the rule (prepayment, surety, insurance or other guarantee, or external sinking fund with a backup surety).

The June 27, 1988, rule also required that certain licensees, upon their decision to cease operations, must submit decommissioning plans that include an updated detailed cost estimate for decommissioning, a comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for the completion of decommissioning.

II. Summary of Requirements and Discussion of Comments

At the time the decommissioning funding rules were promulgated, it was not anticipated that a licensee would move to decommissioning without having complied with the financial assurance requirements. Since that time a number of licensees who were in timely renewal when the June 27, 1988, rule became effective have decided to terminate their activities and begin decommissioning. Other licensees who only provided certification for the minimum amounts of financial assurance have also decided to terminate activities and begin decommissioning. In both situations, insufficient funding was in place when the licensee ceased operations and began decommissioning. These amendments require that financial assurances must be in place and updated when the licensee decides to cease operations and begin decommissioning to assure that adequate funding is available in the event the licensee is no longer financially viable.

Six comment letters were received on the proposed rule. This section presents a summary of the requirements in the proposed rule and a discussion of the significant issues raised by public comment and how they were resolved. The bases and origins of the requirements are also explained. The proposed rule was discussed during the October 25–27, 1993 Agreement States meeting in Tempe, Arizona. No additional comments were received from the Agreement States during the public comment period. In addition, the draft final rule was sent out to the Agreement States for comment regarding the division of compatibility assigned on April 14, 1995. The comment period ended May 15, 1995. Five comment letters were received. These comment letters are addressed in section III, Agreement State Compatibility, of the **Federal Register** Notice. Copies of the public comments received on the proposed rule are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20037.

1. Submission of an Executed Original Copy of the Financial Instrument

As proposed, §§ 30.35(b)(2), 40.36(b)(2), 70.25(b)(2) would require each licensee to submit an executed original copy of the financial instrument obtained to satisfy the requirements of §§ 30.35(f), 40.36(e), or 70.25(f) respectively. Sections 30.35(c) (2 and 3), 40.36(c) (2 and 3), and 70.25(c) (2 and 3) would require that the licensee submit a decommissioning funding plan as described in paragraph (e) of these sections. Sections 30.35(e), 40.36(d), and 70.25(e) would require the decommissioning funding plan to include a cost estimate and a signed original of the financial instrument obtained to satisfy the requirements of §§ 30.35(f), 40.36(e), or 70.25(f) respectively.

Comments: One commenter stated that the requirement means that every time a licensee restructures the finances that support the decommissioning funding requirement, it would have to file a report with the NRC. Another commenter stated that the requirement to submit an executed original of the financial instrument obtained to satisfy the decommissioning funding requirement is overly burdensome and can easily lead to confusion and excess paper work. In addition, this commenter stated that some licensees may have multiple funding sources with different renewal dates and that every time a

licensee restructures financially, it will have to submit new documentation that the funding for decommissioning is provided. Both commenters suggested that the licensee should be able to provide a single certification to the NRC stating the funding is available to cover the decommissioning costs.

Response: Submittal of this information will only be necessary in the event the old instruments would no longer be valid. The language of the final rule has been changed to state that licensees will be required to submit a signed original rather than an executed original copy of the financial instrument to make it clear that the signed original is sufficient provided that it contains the appropriate signatures.

2. Decommissioning Funding Plan

As proposed, §§ 30.35(c)(4), 40.36(c)(4), and 70.25(c)(4) would require licensees who have submitted a renewal application before June 27, 1990, to submit a decommissioning funding plan.

Comments: One commenter believes this is a retroactive requirement and that licensees who have applied for renewal should not be required to have funding in place.

Response: Although this requirement was not included in the June 27, 1988, decommissioning rule the Commission anticipated that few licensees would not have funding in place within the normal license renewal frequency of 5 years. A small number of licensees who were in timely renewal when the rule became effective still have not provided assurance that they have adequately addressed the issue of decommissioning funding. The licensees who have not provided a decommissioning funding plan may have only submitted a certification based on the table amounts listed in the June 27, 1988, rule which may underestimate the actual cost to decommission their facility. This requirement will ensure that these licensees will have adequate funding in place through submittal of a decommissioning funding plan. The requirement does not apply retroactively to make some prior conduct improper. Rather, it provides that at a future date November 24, 1995 licensees currently in a "timely renewal" status must provide financial assurance in accordance with these regulations.

3. Expiration and Termination of Licenses—90-Day Time Period

As proposed, §§ 30.36(b)(2), 40.42(b)(2), 70.38(b)(2) and 72.54(b)(2) would require licensees, on providing a notice of termination of activities and request to terminate the license, to maintain in effect all decommissioning financial assurances and to increase or decrease the amount of the financial assurance, as appropriate, within 90 days of the above notice, to cover the detailed cost estimate for decommissioning submitted with the proposed decommissioning plan.

With the publication of the final rule, "Timeliness in Decommissioning of Materials Facilities," on July 15, 1994; 59 FR 36026, these sections were revised to require licensees to submit a proposed decommissioning plan within 12 months of the time that they notify the Commission that they have not conducted licensed activities for 24 months or to commence decommissioning if they are not required to submit a decommissioning plan. These requirements are now located in §§ 30.35(e), 40.42(e), 70.38(e) and 72.54(e) in this final rule.

Comments: Four commenters stated that they did not understand the 90-day time period to obtain financial assurance as discussed in the proposed rule. One asked why a 90-day time period was chosen as opposed to 180 days. Another indicated that the time period presumes that the licensee's proposed decommissioning plan will be approved by the NRC without modification.

Response: The final rule was modified to permit some additional time for licensees who have already submitted a decommissioning plan to update their financial assurance to meet the detailed cost estimate included in the proposed decommissioning plan. The final rule will require licensees to increase, or allow them to decrease, the amount of financial assurance to correspond to the detailed cost estimate submitted with the decommissioning plan. The NRC lengthened the time period for obtaining financial assurance from 90 days to 120 days, but did not adopt the comment to lengthen the time period to 180 days. Because this requirement only addresses licensees who have already submitted a decommissioning plan with an updated cost estimate, a period of 120 days to acquire the funding seems to be a reasonable amount of time and lowers the risk that any change in the licensee's financial status could jeopardize their ability to provide for adequate funding. For the aforementioned reason, the Commission did not adopt the comment to permit time for NRC approval of the decommissioning plan. It should be noted that a provision is included that would permit a reduction in the amount of financial assurance following decommissioning plan approval.

4. Frequency for Applying for Reduction in Funds

As proposed, §§ 30.36(b)(2)(ii), 40.42(b)(2)(ii), 70.38(b)(2)(ii), and 72.54(b)(2)(ii) would allow licensees to apply for a reduction in decommissioning funds with a reduction in radioactive contamination levels as decommissioning proceeds. The proposed rule would have established a semiannual frequency for these reductions.

Comments: One commenter stated that permitting access to the funds only on a semiannual basis seemed unnecessarily restrictive. Another commenter stated that this aspect of the rule appears to require that funds be accessed prior to the performance of previously approved decommissioning tasks for which the funds were intended to be used, and that licensees be allowed to access the funds as they are needed.

Response: In response to comments, the NRC has revised the final rule to remove restrictions in frequency for these requests. Currently, a set amount of money is required in advance that must be available through the end of decommissioning and could result in an unnecessary burden on the licensee. This modification permits a reduction in these funds provided the radioactive contamination has been reduced at the site. Because licensees must obtain approval from the Commission to reduce funds, there will be adequate assurance that the licensee has sufficient funds available to cover the cost to complete decommissioning of the facility. These requirements are now located in §§ 30.35(e)(2), 40.42(e)(2), 70.38(e)(2) and 72.54(e)(2) in this final rule.

5. Small Entities

Comment: One commenter and the State of New York asked that small entities be exempt from decommissioning financial assurance.

Response: The majority of small entities are already excepted from the decommissioning funding requirements because they possess limited quantities of radioactive materials. These amendments would not impact the remainder of small entities that have already complied with the applicable funding requirements.

III. Agreement State Compatibility

The draft final rule was sent out to the Agreement States on April 14, 1995 for comment. Five comment letters were received. The State of Tennessee suggested that each individual State be allowed to establish its own methodology. The State of New York suggested that the rule give the States the latitude to accomplish the rule's intent by other means such as licensing actions. The State of Washington suggested that the rule should be made Division 3 compatibility because the rule is addressing financing, not health and safety; the rule overlooks other mechanisms for protecting the public, such as whatever means necessary to effect decommissioning; and the specific changes are applicable to NRC licensees and not Washington licensees. The States of Nebraska and Maryland suggested that the rule remain Division 2 compatibility.

The NRC has reviewed the definitions of divisions of Agreement State compatibility and has considered the comments from the States and has determined that the rule should be a matter of Division 2 compatibility between the Federal and State because these requirements are the minimum requirements necessary to ensure adequate protection of the public health and safety. Under this level of compatibility, the Agreement States would be expected to adopt decommissioning funding assurance requirements that are as stringent as NRC's, but would be permitted flexibility to apply more stringent requirements if deemed appropriate by the State.

IV. Implementation

This rule will become effective 120 days after publication in the **Federal Register**. Thus, licensees who do not currently have sufficient financial assurance for decommissioning, but who currently have submitted decommissioning plans or are in timely renewal, have 120 days to revise and submit to NRC their financial arrangements for funding decommissioning.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment was prepared for this rule.

VI. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0009, -0017, -0020, and -0132.

The public reporting burden for this collection of information is estimated to average 6 hours per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestion for reducing the burden, to the Information Records and Management Branch (T–6–F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0017, 3150–0020, 3150–0009, and 3150–0132), Office of Management and Budget, Washington, DC 20503.

VII. Regulatory Analysis

The Commission has prepared this regulation to clarify its decommissioning funding requirements for persons licensed under Parts 30, 40, 70, and 72. Although it does alter existing requirements, the regulatory analyses developed in support of prior decommissioning regulations remain valid and appropriate for this rulemaking because these analyses assumed that all licensees would submit a certification of financial assurance to the NRC of a rule prescribed amount, or licensee estimated and NRC approved amount, necessary to provide adequate funds to decommission the licensed facility and that licensees would have complied with the decommissioning funding requirements prior to ceasing operations and commencing decommissioning. These prior analyses, developed for the rules on expiration and termination of licenses and financial assurances for decommissioning, remain available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. This discussion constitutes the regulatory analysis for this rule.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC carefully considered the effect on small entities in developing the final rule on decommissioning funding and scaled the requirements to reduce the impact on small entities to the extent possible while adequately protecting health and safety. Because this action imposes no new financial burden, it is not expected to have an impact on licensees not already considered in the regulatory flexibility analysis for the decommissioning funding rule as published in the **Federal Register** on June 27, 1988 (53 FR 24018).

Accordingly, the Commission certifies that this rule will not have any additional significant economic impact upon a substantial number of small entities.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required for this rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials - transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, and Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30, 40, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 30.35 is amended by revising paragraphs (b)(2), (c)(2), (c)(3), and (e) and by adding a new paragraph (c)(4) to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (d) of this section using one of the methods described in paragraph (f) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section must be submitted to NRC before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described, in paragraph (e) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with § 30.37 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section. This assurance must be submitted when this rule becomes effective November 24, 1995.

* * * * *

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

3. Section 30.36 is amended by redesignating paragraphs (e) through (j) as (f) through (k) and adding a new paragraph (e) to read as follows:

§ 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 30.35 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective November 24, 1995.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Commission.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e2, 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2087 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. Section 40.36 is amended by revising paragraphs (b)(2), (c)(2), (c)(3), and (d) and by adding a new paragraph (c)(4) to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of $150,000 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described in paragraph (d) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan, as described in paragraph (d) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with § 40.43 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section. This assurance must be submitted when this rule becomes effective November 24, 1995.

(d) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

* * * * *

6. Section 40.42 is amended by redesignating paragraphs (e) through (k) as (f) through (l) and adding a new paragraph (e) to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 40.36 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective November 24, 1995.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Commission.

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PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); Secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841), 5842, 5845, 5846).

Sections 70.1(c) and 70.20(b) also issued under secs. 135, 141 Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 86 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 106, 68 Stat. 939, as amended (42 U.S.C. 2138).

8. Section 70.25 is amended by revising paragraphs (b)(2), (c)(2), (c)(3), and (e) and by adding a new paragraph (c)(4) to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (d) of this section using one of the methods described in paragraph (f) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section must be submitted to NRC before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan, described in paragraph (e) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with § 70.33 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section. This assurance must be submitted when this rule becomes effective November 24, 1995.

* * * * *

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan must also contain a

certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

9. Section 70.38 is amended by redesignating paragraph (e) through (j) as (f) through (k) and adding a new paragraph (e) to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 30.35 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective November 24, 1995.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Commission.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

10. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274 Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853) (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134 Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

11. Section 72.54 is amended by redesignating paragraph (e) through (l) as (f) through (m) and adding a new paragraph (e) to read as follows:

§ 72.54 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 72.30 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(5) of this section.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective November 24, 1995.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Commission.

* * * * *

Dated at Rockville, MD., this 20th day of July, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–18315 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 931

[Docket No. 950616158–5158–01]

RIN 0648–AI04

Coastal Energy Impact Program

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final Rule; removal.

SUMMARY: This final rule removes regulations implementing the Coastal Energy Impact Program (CEIP), which was established in 1976 under then-section 308 of the Coastal Zone Management Act (CZMA) to provide coastal states and units of general purpose local governments (local governments) in such states with Federal financial assistance to meet certain needs that result from specified energy development activities. In the 1990 amendments to the CZMA the CEIP was terminated and, therefore, the implementing regulations are, for the most part, obsolete. Further, for those particular coastal states and local governments with outstanding CEIP loans, NOAA will continue to apply relevant provisions to such CEIP loan holders by providing actual and timely notice of their continued applicability. Therefore, the regulations need no longer be retained in the Code of Federal Regulations (CFR).

EFFECTIVE DATE: July 26, 1995.

FOR FURTHER INFORMATION CONTACT: James Lawless, Deputy Director, Office of Ocean and Coastal Resource Management, at (301) 713–3155.

SUPPLEMENTARY INFORMATION: In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations—with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. This final rule represents one of the first steps in NOAA's response to this new directive.

Coastal Energy Impact Program

The CEIP was established in 1976 under then-section 308 of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456a, to provide coastal states and local governments in such states with Federal financial assistance to meet certain needs that result from specified energy development activities. In the 1990 amendments to the CZMA (Pub. L. 101–508), section 308 was amended by: (1) Terminating any future CEIP loans, although obligations of any coastal state or local government to repay loans made prior to the 1990 amendments remain in effect; and (2) establishing the Coastal Zone Management Fund as, *inter alia*, the repository for such CEIP loan repayments. As the CEIP has been terminated, the administrative regulations, Part 931, for this program are, for the most part, obsolete and need not be retained in the CFR. For the particular coastal states and local governments that have outstanding CEIP loans and therefore must repay the loans to the Coastal Zone Management Fund, NOAA will continue to apply the applicable provisions of Part 931. However, although such provisions shall continue to apply, it is not necessary to retain them in the CFR because, in part, such provisions have particular applicability to only those coastal states and local governments with outstanding CEIP loans. Accordingly, NOAA will provide copies of the relevant provisions of Part 931, with instructions that they continue to apply, directly to those particular coastal states and local governments that have outstanding CEIP loans. Therefore, the particular coastal states and local governments with outstanding CEIP loans will have, in addition to the constructive notice provided by this final rule, actual and timely notice of the continued application of the repayment provisions of Part 931, and such coastal states and local governments shall continue to comply with all the terms and conditions of such provisions of part 931. See 5 U.S.C. 552(a). Accordingly, NOAA is removing part 931, the CEIP regulations, from Title 15 of the CFR.

NOAA has determined that because this rule is a matter relating to loans, grants, benefits or contracts, it is not subject to the Administrative Procedure Act (APA) requirements of prior notice, opportunity for comment, or delayed effective date (5 U.S.C. 553). Accordingly, this rule is being made effective immediately upon publication.

Executive Order 12866

For purposes of Executive Order 12866, this final rule is determined to be not significant.

Regulatory Flexibility Act

Notice and comment for this rule are not required by the APA or any other law. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

This regulation contains no information collection requirements which are subject to review and approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3500 *et seq.*).

Authority: Coastal Zone Management Act of 1972, is amended, 16 U.S.C. 1451 *et seq.*

List of Subjects in 15 CFR Part 931

Coastal zone, Grant programs—natural resources, Natural resources, and Reporting and recordkeeping requirements.

Dated: June 28, 1995.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth in the preamble and under the authority of 16 U.S.C. 1451 et seq., Chapter IX of Title 15 of the Code of Federal Regulations is amended as follows:

PART 931—[REMOVED]

1. Part 931 is removed.

[FR Doc. 95–17745 Filed 7–25–95; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 70

[OJP No. 1004; AG Order No. 1980–95]

RIN 1121–AA18

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

January 23, 1995.

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: On November 29, 1993, the Office of Management and Budget (OMB) published a revision of OMB Circular A–110. The Circular is applicable to awards made by Federal agencies and subawards made by States to nongovernmental entities. This rule implements the OMB Circular A–110.

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer, Director, Financial Management Division, Office of the Comptroller, Office of Justice Programs at 202–307–3186.

EFFECTIVE DATE: July 26, 1995.

SUPPLEMENTARY INFORMATION: This final rule amends 28 CFR by setting forth a new part 70 to enact the changes established by revised OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Institutions," published by OMB on November 29, 1993 (58 FR 62992).

In November 1990, OMB established an interagency task force to revise Circular A–110. The task force developed a proposed revision of the Circular, which OMB published with a request for comments on August 27, 1992 (57 FR 39018). After considering the over 200 comments from a wide variety of Federal and non-Federal respondents, OMB published the final revised Circular in the **Federal Register** on November 29, 1993 (58 FR 62992).

OMB Circular A–110 sets forth government-wide standards governing Federal agency administration of grants and other agreements with institutions of higher education, hospitals and other non-profit organizations. Federal agencies must apply the provisions of the Circular in making awards to the covered entities; all primary recipients (including governments) of Federal awards must also apply the Circular's provisions to any subawards they make to such entities. Those provisions that affect Federal agencies were effective on December 29, 1993 (58 FR 62992–93). With respect to the Circular's application to recipients of Federal agency awards, OMB's notice directed each agency to promulgate its own rules adopting the provisions of the Circular (58 FR 62992–93).

Agency specific rules must follow the provisions of the Circular unless OMB has granted the agency an exception for classes of recipients of awards from a particular requirement of the Circular (58 FR 62992, 62995). The terms of the Circular, however, permit Federal awarding agencies to make exceptions on an award-by-award basis without prior OMB approval and to apply less restrictive requirements in the case of small awards. Where a conflict exists between a provision of the Circular and

a statute, the statute governs (58 FR 62992–93, 62995).

With respect to our implementation of the Circular, in general, we have faithfully followed its provisions. However, in several instances we have either elaborated on a provision or modified it to make it pertain more clearly to the Department of Justice's (the Department) environment. Directives made strictly to the Federal agencies and not to grantees have been deleted.

A notice of proposed rulemaking is not necessary for this regulation because OMB obtained public comments in the development of the Circular, and the Circular was written in a regulatory format. Furthermore, OMB requires that Federal agencies implement the Circular within six months of its publication.

Impact Analysis

1. Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, 1(b), Principles of Regulation. This rule is not a significant regulatory action under Executive Order 12866, 3(f), Regulatory Planning and Review, and accordingly, this rule has not been reviewed by OMB.

2. Regulatory Flexibility Act

This rule has been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) The Attorney General has determined that compliance with the rule would not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis is not required.

3. Paperwork Reduction Act

The information collection requirements contained in this rule are cleared by OMB as Standard Forms.

Catalog of Federal Domestic Assistance

This rule affects all of the grant programs administered by the Department.

List of Subjects in 28 CFR Part 70

Accounting; Administrative practice and procedures; Grant programs—health; Grant programs—social programs; Grants administration; and Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 28, Chapter I of the Code of Federal Regulations is amended by adding the new part 70 as set forth below.

PART 70—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS (INCLUDING SUBAWARDS) WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS

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70.22 Payment.
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70.25 Revision of budget and program plans.
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70.50 Purpose of reports and records.
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70.60 Purpose of termination and enforcement.
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Subpart D—After-the-Award Requirements

70.70 Purpose.
70.71 Closeout procedures.
70.72 Subsequent adjustments and continuing responsibilities.
70.73 Collection of amounts due.

Appendix A to Part 70—Contract Provisions

Authority: 5 U.S.C. 301; the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042, 4351–4353.

Subpart A—General

§ 70.1 Purpose and applicability.

This part establishes uniform administrative requirements for the Department grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. It also establishes rules governing how State, local and Indian tribal governments shall administer subawards to nongovernmental entities.

§ 70.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Department to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which the Department determines that all applicable administrative actions and all required work of the award have been completed by the recipient and the Department.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means the portion of project or program costs not borne by the Federal Government.

(j) *The Department* refers to the United States Department of Justice awarding agencies, which include the Office of Justice Programs (OJP), Community Relation Service (CRS), United States Marshals Service (USMS), National Institute of Corrections (NIC), Office of Special Counsel (OSC), and the Civil Rights Division (CRD).

(k) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which the Department sponsorship ends.

(l) *Disallowed costs* means those charges to an award that the Department determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(m) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(n) *Excess property* means property under the control of the Department that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(o) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Department has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Independent Research and Development costs* means research and development conducted by an organization which is not sponsored by Federal or non-Federal awards, contracts, or other agreements.

(t) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(u) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(v) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(w) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(x) *Prior approval* means written approval by an authorized official evidencing prior consent.

(y) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 70.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, interest on loans made with award funds, and income from asset forfeitures accounted for from the time of seizure. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in the Department regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(z) *Project costs* means all allowable costs, as set forth in the applicable Federal costs principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(aa) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(bb) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(cc) *Real property* means land, including land improvements, structures and appurtenances thereto,

but excludes movable machinery and equipment.

(dd) *Recipient* means an organization receiving financial assistance directly from the Department to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Department. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designed as Federally-funded research and development centers.

(ee) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. *Research* is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ff) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(gg) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in § 70.2(e).

(hh) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Department.

(ii) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(jj) *Suspension* means an action by the Department that temporarily withdraws the Department sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Department. Suspension of an award is a separate action from suspension under the Department regulations implementing Exec. Order No. 12549 and 12689, "Debarment and Suspension."

(kk) *Termination* means the cancellation of the Department sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(ll) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(mm) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(nn) *Unobligated balance* means the portion of the funds authorized by the Department that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(oo) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(pp) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 70.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 70.4.

§ 70.4 Deviations.

OMB, after consultation with the Department's Division of Financial Management and Grants Administration may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. The Department shall apply more restrictive requirements to a class of recipients when approved by OMB. The Department may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Department.

§ 70.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, all of the Department's recipients, including State and local governments, shall apply the provisions of this part to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 28 CFR part 66 (3/11/88).

Subpart B—Pre-Award Requirements

§ 70.10 Purpose.

Sections 70.11 through 70.17 prescribe forms and instructions and other pre-award matters to be used in applying for the Department's awards.

§ 70.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Department shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* The Department shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 70.12 Forms for applying for Federal assistance.

(a) The Department shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Department as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series and instructions prescribed by the Department.

(c) For the Department's programs covered by Exec. Order No. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the "Catalog of Federal Domestic Assistance." The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

§ 70.13 Debarment and suspension.

Recipients shall comply with the nonprocurement debarment and suspension common rule implementing Exec. Order No. 12549 and 12689, "Debarment and Suspension." This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 70.14 Special award conditions.

If an applicant or recipient: Has a history of poor performance, Is not financially stable, Has a management system that does not meet the standards prescribed in this part, Has not conformed to the terms and conditions of a previous award, or Is not otherwise responsible, the Department will impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: The nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions will be promptly removed once the conditions that prompted them have been corrected.

§ 70.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of Federally-funded activities. The Department will follow the provisions of Exec. Order No. 12770, "Metric Usage in Federal Government Programs."

§ 70.16 Resource Conservation and Recovery Act (RCRA) (Pub. L. No. 94–580 codified at 42 U.S.C. 6962).

Under the Act, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 70.17 Certifications and representations.

Unless prohibited by statute or codified regulation, the Department will allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations must be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 70.20 Purpose of financial and program management.

Sections 70.21 through 70.28 prescribe standards for financial management systems, methods for making payments and rules for: Satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 70.21 Standards for financial management systems.

(a) Recipients must relate financial data to performance data and development unit cost information whenever practical.

(b) Recipients' financial management systems must provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each Federally-sponsored project or program in accordance with the reporting requirements set forth in § 70.52. When the Department requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient will not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for Federally-sponsored activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients must adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents must be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) The Department, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Department will require adequate fidelity bond coverage when the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 70.22 Payment.

(a) Payment methods must minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities must be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients may be paid in advance, provided they maintain or demonstrate the willingness to maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 70.21. Cash advances to a recipient organization will be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances must be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances will be consolidated to cover anticipated cash needs for all awards made by the Department to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients may be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment must be submitted on SF–270, "Request for Advance or Reimbursement."

(e) Reimbursement is the method that will be used when the requirements in paragraph (b) of this section cannot be met. The Department may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Department will make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients will be authorized to submit requests for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Department has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Department may provide cash on a working capital advance basis. Under this procedure, the Department will advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Department will reimburse the recipient for its actual cash disbursements. The working capital advance method of payment will not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients must disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, the Department will not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h) (1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or the Department's reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, "Managing Federal Credit Programs." Under such conditions, DOS may, upon reasonable notice, inform the recipient that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, the Department will not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of the Department funds must be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients are encouraged to use women-owned and minority-owned banks (a bank which is owned at least fifty percent by women or minority group members).

(k) Recipients must maintain advances of the Department's funds in interest bearing accounts, unless paragraphs (k) (1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts must be remitted annually to Department of Health and Human Services, (HHS), Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals must comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Department, it waives its right to recover the interest under CMIA. In keeping with Electronic Funds Transfer rules, (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIRE Deposit System. Recipients which do not have this capability should use a check.

(m) Recipients must use the SF–270, Request for Advance or Reimbursement or other standard form for all nonconstruction programs when electronic funds transfer is not used.

§ 70.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, will be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other Federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget.

(7) Conform to other provisions of this Part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Department.

(c) Values for recipient contributions of services and property must be established in accordance with the applicable cost principles. If the Department authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraph (c) (1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Department may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services must be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skills for which the employee would normally be paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share must be reasonable and must not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g) (1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Department has approved the charges.

(h) The value of donated property must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land must be documented.

§ 70.24 Program income.

(a) The standards set forth in this section requiring recipient organizations to account for program income related to projects financed in whole or in part with Department funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in

accordance with the Department regulations or the terms and conditions of the award, must be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the Department and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the Department authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2), of this section, program income in excess of any limits stipulated must be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Department does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3), of this section applies automatically to all projects or programs.

(e) Unless the Department's regulations or the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property must be handled in accordance with the requirements of the Property Standards (See §§ 70.30 through 70.37).

(h) Unless the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

(i) Recipients must account for seized assets from the date of seizure until forfeiture and liquidation of funds occur.

§ 70.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon the Department's requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients must request in writing prior approval from the Department for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, approval is required by the Department.

(6) The inclusion, unless waived by the Department, of costs that require prior approval in accordance with OMB Circular A–21, "Cost Principles for Institutions of Higher Education," OMB Circular A–122, "Cost Principles for Non-Profit Organizations," or 45 CFR Part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) The Department restricts the transfer of funds among direct cost categories or programs, functions and activities, without prior written approval for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed ten percent of the total budget as last approved by the Department. The Department will not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(e) All other changes to nonconstruction budgets, except for the changes described in paragraph (h) of this section, do not require prior approval.

(f) For construction awards, recipients must request prior written approval promptly from the Department for budget revisions whenever paragraph (e) (1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Department funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 70.27.

(g) When the Department makes an award that provides support for both construction and nonconstruction work, the Department will require the recipient to request prior approval from the Department before making any fund or budget transfers between the two types of work supported.

(h) For both construction and nonconstruction awards, the Department will require recipients to notify the Department in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the award, whichever is greater. This notification will not be required if an application for additional funding is submitted for a continuation award.

(i) When requesting approval for budget revisions, recipients must use the budget forms that were used in the application unless the Department indicates a letter of request suffices.

(j) Within thirty of the request for budget revisions, the Department will review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of thirty calendar days, the Department will inform the recipient in writing of the date when the recipient may expect the decision.

§ 70.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations are subject to the audit requirements contained in OMB Circular A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

(b) State and local governments are subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and the Department's regulations implementing OMB Circular A–128, "Audits of State and Local Governments."

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 and commercial organizations must follow the audit thresholds in OMB Circular A–133 in determining whether to conduct an audit in accordance with Government Auditing Standards.

§ 70.27 Allowable costs.

(a) For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs must be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or Federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

(b) OMB Circular A–122 does not cover the treatment of bid and proposal costs or independent research and development costs. The following rules apply to these costs for non-profit organizations subject to the Circular.

(1) *Bid and proposal costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for Federal and non-Federal awards, contracts, and agreements, including the development of scientific, costs, and other data needed to support the bids, proposals, and applications. Bid and proposal costs of the current accounting period are all allowable as indirect costs. Bid and proposal costs of past accounting periods are unallowable in the current period. However, if the recipient's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs covered by paragraph (b)(2) of this section, or preaward costs covered by Attachment B, Paragraph 33 of OMB Circular A–122.

(2) *Independent Research and Development costs.* Independent research and development shall must be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

§ 70.28 Period of availability of funds.

Where a funding period is specified, a recipient must charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Department.

Property Standards

§ 70.30 Purpose of property standards.

Sections 70.31 through 70.37 sets forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. The Department will require recipients to observe these standards under awards and will not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 70.31 through 70.37.

§ 70.31 Insurance coverage.

Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 70.32 Real property.

(a) Title to real property will vest in the recipient subject to the condition that the recipient use the real property for the authorized purpose of the project as long as it is needed and will not encumber the property without approval of the Department.

(b) The recipient must obtain written approval by the Department for the use of real property in other Federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects will be limited to those under Federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Department.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient must request disposition instructions from the Department. The Department will observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Department and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures must be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 70.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to Federally-owned property remains vested in the Federal Government. Recipients may be required by the terms and conditions of the award, to submit annually an inventory listing of Federally-owned property in their custody to the Department. Upon completion of the award or when the property is no longer needed, the recipient must report the property to the Department for further Federal agency utilization.

(2) If the Department has no further need for the property, it will be declared excess and reported to the General Services Administration, unless the Department has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15

U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with Exec. Order No. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by the Department.

(b) *Exempt property.* The Department will vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government when such property is "exempt property."

§ 70.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds will vest in the recipient, subject to conditions of this section.

(b) The recipient must not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient must use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and must not encumber the property without approval of the Department. When no longer needed for the original project or program, the recipient must use the equipment in connection with its other Federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Department which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient must make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use must be given to other projects or programs sponsored by the Department. Second preference must be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government may be permissible if authorized in writing by the Department. User charges must be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the written approval of the Department.

(f) The recipient's property management standards for equipment acquired with Federal funds and Federally-owned equipment must include all of the following:

(1) Equipment records must be maintained accurately and must include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Department for its share.

(2) Equipment owned by the Federal Government must be identified to indicate Federal ownership.

(3) A physical inventory of equipment must be taken and the results reconciled with the equipment records annually. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment must be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient must promptly notify the Department.

(5) Adequate maintenance procedures must be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures must be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the Department or its successor. The amount of compensation must be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient must request disposition instructions from the Department. The Department will determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment must be reported to the General Services Administration by the Department to determine whether a requirement for the equipment exists in other Federal agencies. The Department will issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures will govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient may sell the equipment and reimburse the Department an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient may be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient may be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient may be reimbursed by the Department for such costs incurred in its disposition.

(4) The Department reserves the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer will be subject to the following standards.

(i) The equipment must be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Department will issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory must list all equipment acquired with grant funds and Federally-owned equipment. If the Department fails to issue disposition instructions within the 120 calendar day period, the recipient may apply the standards of this section, as appropriate.

(iii) When the Department exercises its right to take title, the equipment is subject to the provisions for Federally-owned equipment.

§ 70.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property vests in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federally-sponsored project or program, the recipient may retain the supplies for use on non-Federal sponsored activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computer in the same manner as for equipment.

(b) The recipient must not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 70.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Department reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The Department, unless expressly waived by the Department, has the right to paragraphs (c) (1) and (2) of this section.

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient must use that property for the originally-authorized purpose, and the recipient must not encumber the property without approval of the Department. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions of § 70.34(g).

§ 70.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds must be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Recipients are required to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 70.40 Purpose of procurement standards.

Sections 70.41 through 70.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards will be imposed by the Department upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 70.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 70.42 Codes of conduct.

The recipient must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 70.43 Competition.

All procurement transactions must be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient must be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals must be excluded from competing for such procurements. Awards must be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient,

price, quality and other factors considered.

Solicitations must clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 70.44 Procurement procedures.

(a) All recipients must establish written procurement procedures. These procedures must provide for, at a minimum, that paragraphs (a) (1), (2), and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description must not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts must be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards must take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) must be determined by the recipient and must be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting must not be used.

(d) Contracts must be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration must be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Exec. Order No. 12549 and 12689, "Debarment and Suspension."

(e) Recipients must, on request, make available for the Department, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Department's regulation.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 70.45 Cost and price analysis.

Some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 70.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold must include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 70.47 Contract administration.

A system for contract administration must be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients must evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 70.48 Contract provisions.

The recipient must include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions must also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold must contain suitable provisions for termination by the recipient, including the manner by which termination must be effected and the basis for settlement. In addition, such contracts must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements must provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Department may accept the bonding policy and requirements of the recipient, provided the Department has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements are to be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder must, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds must be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients must include a provision to the effect that the recipient, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors must contain the procurement provisions of Appendix A to this part as applicable.

Reports and Records

§ 70.50 Purpose of reports and records.

Sections 70.51 through 70.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements:

§ 70.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients must monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 70.26.

(b) Performance reports must be submitted based on each calendar quarter. Reports are due thirty days after the reporting period, unless stated differently in the terms and conditions of the award. The final performance reports are due ninety calendar days after the expiration or termination of the award.

(c) Performance reports must contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(d) Recipients are required to submit the original and two copies of performance reports.

(e) Recipients must immediately notify DOS, in writing, of developments that have a significant impact on the award-supported activities. Also, written notification must be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification must include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(f) The Department will make site visits, as needed.

(g) The Department will comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 70.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Recipients are required to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs.

(ii) Reports must be on an accrual basis. Recipients are not required to convert their accounting system, but must develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Department requires the SF–269, SF–269A, or turnaround document to be submitted no later than forty days after the calendar quarter. The final report is due ninety days from the end date of the award.

(b) When the Department needs additional information or more frequent reports, the following will be observed.

(1) When additional information is needed to comply with legislative requirements, the Department will issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When the Department determines that a recipient's accounting system does not meet the standards in § 70.21, additional pertinent information to further monitor awards will be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Department, in obtaining this information, will comply with report clearance requirements of 5 CFR part 1320.

(3) The Department will accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(4) The Department will provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 70.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. The Department will not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award must be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Department. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the three year period, the records must be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition.

(3) When records are transferred to or maintained by DOS, the three year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 70.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Department.

(d) The Department will request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the Department will make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Department, its Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but must last as long as records are retained.

(f) Unless required by statute, the Department will not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Department can demonstrate that such records must be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Department.

(g) Indirect cost rate proposals, cost allocation plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Department or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the three year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Department or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the three year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 70.60 Purpose of termination and enforcement.

Sections 70.61 and 70.62 set forth uniform suspension, termination and enforcement procedures.

§ 70.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (2) or (3) of this section apply.

(1) By the Department, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Department with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Department written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Department determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 70.71(a), including those for property management as applicable, must be considered in the termination of the award, and provision must be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 70.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Department will, in addition to imposing any of the special conditions outlined in § 70.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Department.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the Department will provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Exec. Order No. 12549 and 12689 and DOS implementing regulations (see § 70.13).

Subpart D—After-the-Award Requirements

§ 70.70 Purpose.

Sections 70.71 through 70.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 70.71 Closeout procedures.

(a) Recipients must submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Department may approve extensions when requested in writing by the recipient.

(b) Unless the Department authorizes an extension, a recipient must liquidate all obligations incurred under the award not later than ninety calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Department will make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient must promptly refund any balances of unobligated cash that the Department has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Department will make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 70.31 through 70.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Department retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 70.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Department to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 70.26.

(4) Property management requirements in §§ 70.31 through 70.37.

(5) Records retention as required in § 70.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Department and the recipient, provided the responsibilities of the recipient referred to in § 70.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 70.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Department may reduce the debt by paragraph (a)(1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Department may charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

Appendix A to Part 70—Contract Provisions

All contracts, awarded by a recipient including small purchases, must contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts must contain a provision requiring compliance with Exec. Order No. 11246, "Equal Employment Opportunity," as amended by Exec. Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of $2000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient must report all suspected or reported violations to the Department.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors must be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract must be conditioned upon the acceptance of the wage determination. The recipient must report all suspected or reported violations to the Department.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers must include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or

agreements for the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subawards of amounts in excess of $100,000 must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations must be reported to the DOS and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Exec. Order No. 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Exec. Order No. 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Exec. Order No. 12549. Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principal employees.

Dated: July 18, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–18157 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AG14

Loan Guaranty: Implementation of Public Laws 102–547, 103–66, 103–78, 103–325, 103–353, and 103–446

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) loan guaranty regulations to implement certain provisions of various public laws. VA is amending its regulations to provide for loans to Reservists and members of the National Guard, loans with negotiated interest rates, adjustable rate mortgages, restoration of entitlement in certain cases, energy efficient mortgages, and flood zone determination fees. VA is also amending its regulations in the areas of manufactured housing certifications, certain interest rate reduction refinancing loans, and conveyance of properties notwithstanding overbids. In addition, the regulations are amended to reflect a reduced funding fee for interest rate reduction refinancing loans and an increase in the maximum guaranty amount. These changes increase the types of loans available to veterans and the categories of veterans eligible for VA home loans.

EFFECTIVE DATE: This final rule is effective on August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: On February 24, 1994, VA published in the **Federal Register** (59 FR 8881) proposed regulatory amendments implementing Public Laws 102–547, 103–66, and 103–78. The proposed amendments were published to change: [1] 38 CFR 36.4312, to add a funding fee structure for loans to members of the Selected Reserves; [2] §§ 36.4212 and 36.4311, to allow VA guaranteed loans to bear interest at rates agreed upon by the veteran and the lender; [3] §§ 36.4212(b) and 36.4311(b), to provide that discount points cannot be financed, except for interest rate reduction refinancing loans; [4] §§ 36.4212 and 36.4311, to provide for VA guaranteed loans with adjustable interest rates; [5] §§ 36.4302 and 36.4336, to provide for energy efficient mortgages; [6] §§ 36.4232, 36.4254, and 36.4312, to reduce the funding fee for interest rate reduction refinancing loans to 0.50 percent of the total loan amount; [7] § 36.4312, to increase the funding fee on most guaranteed loans and for the second and subsequent use of the loan guaranty benefit, except for interest rate reduction refinancing loans; and [8] §§ 36.4223 and 36.4302, to revise the guaranty percentage for certain interest rate reduction refinancing loans. Please refer to the February 24, 1994, **Federal Register** for a complete discussion of the proposed amendments. This document adopts the regulatory amendments as originally proposed, except for a technical change discussed below, revisions of authority citations, amendments reflecting statutory changes made by Public Laws 103–325, 103–353, and 103–446, and non-substantive changes.

VA received three comments on the proposed amendments. Two commenters noted that the veteran is permitted to finance discount points on interest rate reduction refinancing loans, and suggested that the veteran be allowed to finance discount points on purchase loans as well. This suggestion cannot be adopted because the financing of discount points on purchase loans is prohibited by statute; see 38 U.S.C. 3703(c).

A third commenter supported the amendments which allow VA to guarantee a loan above the reasonable value of the property for the purpose of adding energy efficient improvements to the home. This commenter recommended that language be added to the regulations requiring "that financed energy improvements meet efficiency standards that exceed, by some pre-determined level, those otherwise applicable in the jurisdiction."

We do not believe it would be appropriate to require specific standards for energy efficient improvements. Local variations in climate, energy sources and energy efficiency requirements would make it difficult to implement and monitor the use of such standards. Furthermore, standards for energy efficient improvements could be perceived by program participants as unnecessarily complicating the lending process and have an adverse impact on this area of VA's home loan program.

This commenter also suggested that prior to the closing of a VA guaranteed loan the purchaser be required to obtain an energy audit which would provide an estimate of home energy consumption and information about potential cost-effective improvements to reduce that consumption. VA is opposed to a mandatory energy audit. At this time, it is uncertain whether reliable energy audits can be obtained by home purchasers in all parts of the country for an affordable cost. Furthermore, the requirement could be perceived by program participants as unnecessarily complicating the lending process and increasing the cost of homeownership. However, the Certificate of Reasonable Value (VA Form 26–1843) or the lender's Notice of Value is issued for each property to be purchased with a VA guaranteed loan. These notices do recommend that the veteran purchaser obtain such an audit.

A technical change is being made to 38 CFR 36.4212(f)(2) and 36.4311(d)(2) by adding a new sentence to each. The proposed regulations failed to specify what would be the effective date of the new interest rate on an adjustable rate mortgage. The additional sentence provides that when the rate is adjusted, the new rate will become effective the first day of the month following the adjustment date; the corresponding change in the monthly payment of principal and interest will occur one month later, because interest is collected in arrears. These changes reflect standard practice in the industry.

This final rule also contains new provisions to incorporate changes made by Public Laws 103–325, 103–353 and 103–446.

First, 38 CFR 36.4203(a) and 36.4302 are amended to reflect the change by Public Law 103–446 to 38 U.S.C. 3702 to permit a veteran's home or manufactured home loan entitlement to be restored, on a one-time basis, if the veteran has repaid the prior VA loan in full, but has not disposed of the property securing that loan. After one such restoration, any future restoration of that entitlement will require the veteran to have disposed of all property previously financed with a VA loan using that entitlement.

The manufactured home warranty requirements of § 36.4231(b) are amended to reflect the provisions of Public Law 103–446 abolishing the requirement for VA inspections of the manufacturing process and onsite inspections of manufactured homes sold to veterans. Also, as required by Public Law 103–446, the provisions of § 36.4231(b) are amended to provide that any manufactured home properly displaying a certificate of conformity with all applicable Federal manufactured home construction and safety standards is eligible for VA financing.

Public Law 103–353 increased the maximum guaranty amount on loans greater than $144,000 from $46,000 to $50,750. This final rule accordingly amends 38 CFR 36.4302(a) and (d) to incorporate the increased guaranty amount for VA loans over $144,000.

38 CFR 36.4306a(a) is amended to incorporate the changes made by Public Law 103–446 with regard to energy efficient improvement costs to be included in interest rate reduction refinancing loans (IRRRLs). Under the provisions of the new law, IRRRLs may now include additional funds for energy efficient improvements.

This final rule also adds new provisions at the end of §§ 36.4212(a) and 36.4311(a). Public Law 103–446 amended 38 U.S.C. 3710(a) to provide that, for an adjustable rate mortgage being refinanced under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) by a fixed rate mortgage, the interest rate on the new loan may be higher than the current rate on the adjustable rate loan. The new language merely reflects the statutory change.

This document amends 38 CFR 36.4320(a)(1)(ii)(B) to conform with new statutory language regarding the conveyance of property. Public Law 103–446 amended 38 U.S.C. 3732(c)(7) to provide that VA may now accept conveyance of property securing a guaranteed loan from the loan holder notwithstanding the holder's overbid at the liquidation sale. This was previously allowed only where State law requirements resulted in an overbid. This change extends to all overbids, including those caused by lender or attorney error.

Finally, the National Flood Insurance Reform Act of 1994, title V of Public Law 103–325, permits lenders to charge borrowers a reasonable fee for certain costs of determining whether the home or manufactured home is located in an area having special flood hazards. 38 CFR 36.4232, 36.4254, and 36.4312 are amended accordingly.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule essentially restates statutory provisions and reflects statutory requirements. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: July 17, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR Part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4201 through 36.4287 is revised to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, unless otherwise noted.

2. Section 36.4203 is amended by revising the remainder of paragraphs (a)(2) and (a)(3 and adding new paragraph (a)(4) to read as follows:

§ 36.4203 Eligibility of the veteran for the manufactured home loan benefit under 38 U.S.C. 3712.

(a) * * *

(2)(i) The loan has been repaid in full or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on said loan, such loss has been paid in full; or

(ii) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally, and the veteran-transferee otherwise meets the requirements of 38 U.S.C. chapter 37.

(3) In a case in which the veteran still owns a property purchased with a VA-guaranteed loan, the Secretary may, one time only, restore entitlement if:

(i) The loan has been repaid in full, or, if the Secretary has suffered a loss on the loan, the loss has been paid in full; or

(ii) The Secretary has been released from liability as to the loan and, if the Secretary has suffered a loss on the loan, the loss has been paid in full.

(4) The Secretary may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraphs (a)(1) and (a)(2)(i) of this section.

(Authority: 38 U.S.C. 3702, 3712)

3. Section 36.4212 is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37, the Secretary may elect to require that such loans either bear interest at a rate that is agreed upon by the veteran and the lender, or bear interest at a rate not in

excess of a rate established by the Secretary. The Secretary may, from time to time, change that election by publishing a notice in the **Federal Register**. Provided, however, that the interest rate of a loan for the purpose of an interest rate reduction under 38 U.S.C. 3712(a)(1)(F) must be less than the interest rate of the VA loan being refinanced. This paragraph (a) does not apply in the case of an adjustable rate mortgage being refinanced with a fixed rate loan.

(Authority: 38 U.S.C. 3703, 3712)

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3712(a)(1)(F).

(Authority: 38 U.S.C. 3703, 3712)

(c) The rate of interest in instruments securing the indebtedness for all loans may be expressed in terms of add-on or discount.

(Authority: 38 U.S.C. 3710, 3712)

(d) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default; *Provided*, that a late charge not in excess of an amount equal to 4 percent of any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(Authority: 38 U.S.C. 3712)

(e) Adjustable rate mortgage loans which comply with the requirements of this paragraph are eligible for guaranty.

(1) *Interest rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 week) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at "constant maturity" are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H.15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur not sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. The rate must be reflective of adjustable rate lending. Annual adjustments in the interest rate shall be set at a certain spread or margin over the interest rate index prescribed in paragraph (e)(1) of this section. Except for the initial rate, this margin shall remain constant over the life of the loan. Annual adjustments to the contract interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8⅛ percent.

(5) *Pre-loan disclosure.* The lender shall explain fully and in writing to the borrower, no later than on the date upon which the lender provides the prospective borrower with a loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and included in the loan submission to VA. Such lender disclosure must include the following items:

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment; and

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707, 3712)

4. Section 36.4223 is amended by revising paragraph (a)(4) to read as follows:

§ 36.4223 Interest rate reduction refinancing loan.

(a) * * *

(4) The dollar amount of the guaranty of the 38 U.S.C. 3712(a)(1)(F) loan may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the loan; and

(Authority: 38 U.S.C. 3703, 3712)

* * * * *

5. Section 36.4231 is amended by revising paragraph (b) to read as follows:

§ 36.4231 Warranty requirements.

* * * * *

(b) Any manufactured housing unit properly displaying a certification of conformity to all applicable Federal manufactured home construction and safety standards pursuant to 42 U.S.C. 5415 shall be acceptable as security for a VA guaranteed loan.

(Authority: 38 U.S.C. 3712)

* * * * *

6. In § 36.4232, paragraph (a)(2) is amended by removing the period at the end thereof and by adding in its place a semi-colon; paragraphs (a)(5) and (a)(6) are amended by removing ", and" and by adding to each paragraph at the end thereof a semi-colon; and paragraph (a)(7) is amended by removing the period at the end thereof and adding in its place "; and". Section 36.4232 is also amended by adding a new paragraph (a)(8) and by revising paragraph (e)(1), to read as follows:

§ 36.4232 Allowable fees and charges; manufactured home unit.

(a) * * *

(8) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination.

(Authority: 38 U.S.C. 3712; 42 U.S.C. 4001 note, 4012a)

* * * * *

(e)(1) Subject to the limitations set out in paragraph (e)(4) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total amount must be paid in a manner prescribed by the Secretary before a manufactured home unit loan will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3712(a)(1)(F). All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender shall disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729(a))

* * * * *

7. Section 36.4254 is amended by redesignating paragraph (a)(7) as paragraph (a)(8); and is further amended by adding a new paragraph (a)(7), by adding an authority citation following paragraph (a)(8), and by revising paragraph (d)(1), to read as follows:

§ 36.4254 Fees and charges.

(a) * * *

(7) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination, and

(8) * * *

(Authority: 38 U.S.C. 3712; 42 U.S.C. 4001 note, 4012a)

* * * * *

(d)(1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total loan amount must be paid to the Secretary before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed) will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3712(a)(1)(F). All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729(a))

* * * * *

8. The authority citation for part 36, §§ 36.4300 through 36.4375 is revised to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 101, 501, 3701–3704, 3710, 3712–3714, 3720, 3279, 3732, unless otherwise noted.

9. In § 36.4302, paragraphs (c), (d), (e), (f), (g), (h), (i) and (j) are redesignated as paragraphs (d), (e), (f), (g), (h), (i), (j) and (l), respectively; and § 36.4302 is further amended by revising paragraph (a)(4), by revising paragraph (b), by adding a new paragraph (c), by revising the newly redesignated paragraph (e), by revising newly redesignated paragraphs (j)(2), (j)(3), and (j)(4), and by adding a new paragraph (k), to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) * * *

(4) The lesser of $50,750 or 25 percent of the original principal loan amount where the loan amount exceeds $144,000 and the loan is for the purchase or construction of a home or the purchase of a condominium unit.

(b) With respect to an interest rate reduction refinancing loan guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11), the dollar amount of guaranty may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the refinancing loan amount.

(Authority: 38 U.S.C. 3703, 3710)

(c) With respect to a loan for an energy efficient mortgage guaranteed under 38 U.S.C. 3710(d), the amount of the guaranty shall be in the same proportion as would have been provided if the energy efficient improvements were not added to the loan amount, and there shall be no additional charge to the veteran's entitlement as a result of the increased guaranty amount.

(Authority: 38 U.S.C. 3703, 3710)

* * * * *

(e) Subject to the provisions of § 36.4303(g), the following formulas shall govern the computation of the amount of the guaranty or insurance entitlement which remains available to an eligible veteran after prior use of entitlement:

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $36,000. The sum remaining is the amount of available entitlement for use, except that:

(i) Entitlement may be increased by up to $14,750 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed $20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $36,000. The sum remaining is the amount of available entitlement for use, except that:

(i) Entitlement may be increased by up to $14,750 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed $20,000.

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 3712, the amount of entitlement used for that loan is subtracted from $36,000. The sum remaining is the amount of available entitlement for home loans and the sum remaining may be increased by up to $14,750 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium. To determine the amount of entitlement available for manufactured home loans processed under 38 U.S.C. 3712, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 3712.

(Authority: 38 U.S.C. 3703, 3712)

* * * * *

(j) * * *

(2)(i) The loan has been repaid in full or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on said loan, such loss has been paid in full; or

(ii) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally; or

(3) The loan has been repaid in full, and the loan for which the veteran seeks to use entitlement is secured by the same property which secured the fully repaid loan; or

(4) In a case in which the veteran still owns the property purchased with a VA-guaranteed loan, the Secretary may, one time only, restore entitlement used on that loan if:

(i) the loan has been repaid in full or, if the Secretary has suffered a loss on the loan, the loss has been paid in full; or

(ii) the Secretary has been released from liability as to the loan, and, if the Secretary has suffered a loss on the loan, the loss has been paid in full.

(k) The Secretary may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraphs (j)(1) and (j)(2)(i) of this section.

(Authority: 38 U.S.C. 3702(b), 3710)

* * * * *

10. In § 36.4306a, the introductory text of paragraph (a) and paragraph (a)(3) are revised, to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), a veteran may refinance an existing VA guaranteed, insured, or direct loan to reduce the interest rate payable on the existing loan provided the following requirements are met:

* * * * *

(3) The amount of the refinancing loan may not exceed:

(i) An amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a discount not to exceed a dollar amount determined in accordance with § 36.4312(d)(7)(i); or

(ii) In the case of a loan to refinance an existing VA guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, an amount equal to the sum of the amount referred to with respect to the loan under paragraph (a)(3)(i) of this section and the amount authorized by § 36.4336(a)(4);

(Authority: 38 U.S.C. 3710(a))

* * * * *

11. Section 36.4311 is revised to read as follows:

§ 36.4311 Interest rates.

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37, the Secretary may elect to require that such loans either bear interest at a rate that is agreed upon by the veteran and the lender, or bear interest at a rate not in excess of a rate established by the Secretary. The Secretary may, from time to time, change that election by publishing a notice in the **Federal Register**. However, the interest rate of a loan for the purpose of an interest rate reduction under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) must be less than the interest rate of the VA loan being refinanced. This paragraph does not apply in the case of an adjustable rate mortgage being refinanced under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) with a fixed rate loan.

(Authority: 38 U.S.C. 3703, 3710)

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11). For loans bearing an interest rate agreed upon by the veteran and the lender, the provisions of § 36.4312(d)(6) and (d)(7) do not apply.

(Authority: 38 U.S.C. 3703, 3710)

(c) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: *Provided*, that a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(Authority: 38 U.S.C. 3710)

(d) Adjustable rate mortgage loans which comply with the requirements of this paragraph (d) are eligible for guaranty.

(1) *Interest rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 weeks) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at "constant maturity" are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H. 15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) *Frequency of interest rate changes.* Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) *Initial rate and magnitude of changes.* The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. The rate must be reflective of adjustable rate lending. Annual adjustments in the interest rate shall be set at a certain spread or margin over the interest rate index prescribed in paragraph (d)(1) of this section. Except for the initial rate, this margin shall remain constant over the life of the loan. Annual adjustments to the contract interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8⅛ percent.

(5) *Pre-loan disclosure.* The lender shall explain fully and in writing to the borrower, no later than on the date upon which the lender provides the prospective borrower with a loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and included in the loan submission to VA. Such lender disclosure must include the following items:

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment; and

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707, 3710)

12. Section 36.4312 is amended by redesignating paragraph (d)(1)(viii) as paragraph (d)(1)(ix), and by removing from paragraph (e)(3) "in paragraphs (e)(4) and (e)(5)" and replacing it with "in paragraph (e)(4)". Section 36.4312 is further amended by adding a new paragraph (d)(1)(viii), by revising the authority citation following paragraph (d)(7)(iv), by adding introductory text to paragraph (e), and by revising paragraph (e)(1), to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(d) * * *

(1) * * *

(viii) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination.

* * * * *

(7) * * *

(iv) * * *

(Authority: 38 U.S.C. 3703, 3710; 42 U.S.C. 4001 note, 4012a)

* * * * *

(e) Subject to the limitations set out in paragraph (e)(4) of this section, a fee must be paid to the Secretary.

(1) The fee on loans to veterans shall be as follows:

(i) On all interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), the fee shall be 0.50 percent of the total loan amount.

(ii) On all refinancing loans other than those described in paragraph (e)(1)(i) of this section, the funding fee shall be 2.75 percent of the loan amount for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), and 2 percent of the loan amount for loans to all other veterans; provided, however, that if the veteran is using entitlement for a second or subsequent time, the fee shall be 3 percent of the loan amount.

(iii) Except for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2 percent of the total loan amount for all loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which the veteran makes a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 1.50 percent of the total loan amount. On purchase or construction loans on which the veteran makes a down payment of 10 percent or more, the amount of the funding fee shall be 1.25 percent of the total loan amount.

(iv) On loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2.75 percent of the total loan amount on loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which veterans whose entitlement is based on service in the Selected Reserve make a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 2.25 percent of the total loan amount. On purchase or construction loans on which such veterans make a down payment of 10 percent or more, the amount of the funding fee shall be 2 percent of the total loan amount.

(v) All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729)

* * * * *

13. Section 36.4320 is amended by revising paragraph (a)(1)(ii)(B) to read as follows:

§ 36.4320 Sale of security.

(a) * * *

(1) * * *

(ii) * * *

(B) The holder acquires the property, or the rights to the property, at the liquidation sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale. The holder may elect to convey the property to the Secretary under the terms of paragraph (a)(1)(ii)(A) of this section, unless a bid in excess of the specified amount was made pursuant to paragraph (a)(3) of this section.

(Authority: 38 U.S.C. 3732(c))

* * * * *

14. Section 36.4336 is amended by revising paragraph (a)(2)(i) and by adding a new paragraph (a)(4), to read as follows:

§ 36.4336 Eligibility of loans; reasonable value requirements.

(a) * * *

* * * * *

(2)(i) Except as to refinancing loans pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), (a)(11), or (b)(7) and energy efficient mortgages pursuant to 38 U.S.C. 3710(d), the loan (including any scheduled deferred interest added to principal) does not exceed the reasonable value of the property or projected reasonable value of a new home which is security for a graduated payment mortgage loan, as appropriate, as determined by the Secretary, and

* * * * *

(4) A loan guaranteed under 38 U.S.C. 3710(d) which includes the cost of energy efficiefft improvements may exceed the reasonable value of the property. The cost of the energy efficient improvements that may be financed may not exceed $3,000; provided, however, that up to $6,000 in energy efficient improvements may be financed if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficient improvements.

(Authority: 38 U.S.C. 3710)

* * * * *

[FR Doc. 95-18182 Filed 7-25-95; 8:45 am]
BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300386A; FRL-4966-4]

RIN 2070-AB78

Polymethylene Polyphenylisocyanate, Polymer with Ethylene Diamine, Diethylene Triamine and Sebacoyl Chloride, Cross-Linked; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d) to replace and delete the existing exemption from the requirement of a tolerance for residues of cross-linked nylon-type encapsulating polymer under 40 CFR 180.1028. Elf Atochem North America, Inc., requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 26, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300386A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300386A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8811; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 24, 1995 (60 FR 27469), EPA issued a proposed rule that gave notice that Elf Atochem North America, Inc., 2000 Market St., Philadelphia, PA 10103-3222, had submitted pesticide petition (PP) 5E4447 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by replacing the existing exemption from the requirement of a tolerance for residues of cross-linked nylon-type encapsulating polymer listed under 40 CFR 180.1028 with an exemption from the requirement of a tolerance for residues of polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceouse earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [OPP-300386A] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [OPP-300386A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredient	Limits	Uses
Polymethylene polyphenylisocyanate, polymer with ethylene diamine, diethylene triamine and sebacoyl chloride, cross-linked; minimum number average molecular weight 100,000.	.....	Encapsulating agent

[FR Doc. 95–18365 Filed 7–25–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 185 and 186

[FAP 9H5587/R2144; FRL–4960–8]

RIN 2070–AB78

Tralomethrin; Food and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited food and feed additive regulations for residues of the synthetic pyrethroid tralomethrin in or on the processed commodity tomato puree and animal feed tomato pomace, wet and dry. AgrEvo USA Co. (formerly Hoechst Roussel Agri-Vet Co.) requested these regulations pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) that would establish the maximum permissible levels for residues of the pesticide in or on the processed food commodity and animal feed.

EFFECTIVE DATE: This regulation becomes effective July 26, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 9H5587/R2144], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St. SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [FAP 9H5587/R2144]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 259, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1995 (60 FR 24815), EPA issued a proposed rule that gave notice that Hoechst-Roussel Agri-Vet Co. had submitted to EPA pursuant to section 409 of the FFDCA, 21 U.S.C. 348, food/feed additive petition (FAP) 9H5587 proposing to amend 40 CFR 185.5450 and 40 CFR part 186 by establishing time-limited food/feed additive regulations to permit residues of the insecticide tralomethrin, (S)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(RS)-1,2,2,-tetrabromoethyl]-cyclopropanecarboxylate, and its metabolites in or on the processed commodity tomato puree at 1.00 part per million (ppm) and the animal feed tomato pomace, wet and dry, at 1.50 ppm and 4.00 ppm, respectively.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited food and feed additive regulations will protect the public health. Therefore, the time-limited food and feed additive regulations are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [FAP 9H5587/R2144] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [FAP 9H5587/R2144], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 185 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 6, 1995.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 185 and 186 are amended as as follows:

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By revising § 185.5450, to read as follows:

§ 185.5450 Tralomethrin.

(a) A time-limited food additive regulation is established for the combined residues of the insecticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinly)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodities when present as a result of application of the insecticide to the growing crops:

Commodity	Parts per million	Expiration date
Cottonseed oil	0.20	Nov. 15, 1997.

(b) A time-limited food additive regulation is established permitting residues of the pesticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinly)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodity resulting from application of the insecticide to tomatoes in accordance with an experimental program (34147-EUP-2). The conditions set forth in this section shall be met.

Commodity	Parts per million	Expiration date
Tomato puree	1.00	June 1, 1997

(1) Residues in the food not in excess of the established tolerance resulting from the use described in paragraph (b) of this section remaining after expiration of the experimental program will not be considered to be actionable if the insecticide is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(2) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.5450, to read as follows:

§ 186.5450 Tralomethrin.

(a) A time-limited feed additive regulation is established permitting residues of tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinly)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following feed resulting from application of the insecticide to tomatoes in accordance with an experimental program (34147-EUP-2). The conditions set forth in this section shall be met.

Feed	Parts per million	Expiration date
Tomato pomace, wet.	1.50	June 1, 1997
Tomato pomace, dry.	4.00	June 1, 1997

(b) Residues in the feed not in excess of the established tolerance resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental program will not be considered to be actionable if the insecticide is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(c) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 95–18002 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–60–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 424

[BPD–709–FC]

RIN 0938–AF01

Medicare Program; Allowing Certifications and Recertification by Nurse Practitioners and Clinical Nurse Specialists for Certain Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period authorizes nurse practitioners and clinical nurse specialists, working in collaboration with a physician, to certify and recertify that extended care services are needed or continue to be needed. In addition, it sets forth the qualification requirements that a nurse practitioner or clinical nurse specialist must meet in order to sign certification or recertification statements. This final rule is necessary to implement section 6028 of the Omnibus Budget Reconciliation Act of 1989.

DATES: Effective Date: These regulations are effective on August 25, 1995.

Comment Date: Comments regarding the qualification requirements will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 25, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–709–FC, P.O. Box 7517, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–709–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Jim Kenton, (410) 966–4607.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1814(a) of the Social Security Act (the Act) requires specific certifications in order for Medicare payments to be made for certain services. Before the enactment of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239), section 1814(a)(2) of the Act required that, in the case of post-hospital extended care services, a physician certify that the services are or were required to be given because the individual needs or needed, on a daily basis, skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in a skilled nursing facility (SNF) on an inpatient basis.

The physician certification requirements were included in the law to ensure that patients require a level of care that is covered by the Medicare program and because the physician is a key figure in determining utilization of health services.

OBRA '89 was enacted on December 19, 1989. Section 6028 of OBRA '89 amended section 1814(a)(2) of the Act to allow, in the case of extended care services, a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility, but is working in collaboration with a physician, to certify and recertify that extended care services are needed or continue to be needed. This provision took effect upon enactment.

Current regulations located at 42 CFR part 424, concerning conditions for Medicare payments, specify that a physician must certify and recertify the need for services. Regulations located at § 424.20 provide Medicare Part A coverage for post-hospital SNF care furnished by a SNF or a swing-bed hospital only if a physician certifies and recertifies the need for those services. Section 424.20(a)(2) contains certification requirements for certain swing-bed hospital patients under which a physician must certify that transfer to a SNF is not medically appropriate. Also, § 424.20(e) provides that certification and recertification statements may be signed by the physician responsible for the case or, with his or her authorization, by a physician on the SNF staff or a physician who is available in case of an emergency and has knowledge of the case.

II. Provisions of the Proposed Rule

On June 28, 1991, we published a proposed rule (56 FR 29609) that would authorize nurse practitioners and clinical nurse specialists working in collaboration with a physician to certify and recertify that extended care services are needed or continue to be needed. In the preamble to that proposed rule, we described our policies concerning requirements for certification and recertification of need for extended care services, and proposed the following changes to the regulations:

- We proposed to revise §§ 424.1(b)(1) and 424.5(a)(4), concerning the general provisions of part 424, by deleting the statement that only a physician can certify and recertify the need for extended care services.
- We proposed to revise § 424.10(a), which specifies that certifications and recertifications must be made only by a physician, to permit a nurse practitioner or clinical nurse specialist to certify and recertify the need for services.
- We proposed to revise § 424.11(b), which specifies procedures for obtaining certifications and recertifications, to remove the requirement that only a physician can certify and recertify the need for services.
- We proposed to add a new § 424.11(e)(4) to specify that a nurse practitioner or clinical nurse specialist could certify and recertify that extended care services are needed or continue to be needed.
- We proposed to revise § 424.20(e), which pertains to the requirements for post-hospital SNF care, by adding a new provision to specify that the signer of the certification and recertification may be a nurse practitioner or clinical nurse specialist, provided that neither has a direct or indirect employment relationship with the facility, but is working in collaboration with a physician. In this section we also proposed that "collaboration" means a process whereby a nurse practitioner or clinical nurse specialist works with a doctor of medicine or osteopathy to deliver health care services. We further proposed that the services must be delivered within the scope of the practitioner's professional expertise as defined and as licensed by the State, with medical direction and appropriate supervision as provided for in guidelines jointly developed by the practitioner and the physician or other mechanisms defined by Federal regulations and the law of the State in which the services are performed.

III. Analysis of and Response to Public Comments

In response to the June 28, 1991 proposed rule, we received 16 timely items of correspondence. The comments, submitted by or on behalf of long term care facilities, hospitals, providers of rehabilitative services, and nursing associations, and our responses, are presented below.

A. The Conditions and Scope of Practice Under Which a Nurse Practitioner or Clinical Nurse Specialist May Certify or Recertify the Need for Extended Care Services

Section 6028 of OBRA '89 amended section 1814(a)(2) of the Act to allow, in the case of extended care services, a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility, but is working in collaboration with a physician, to certify and recertify that extended care services are needed or continue to be needed.

1. Comments and Responses

Comment: One commenter stated that before residents are certified or recertified for post-hospital SNF care for rehabilitation services only, the nurse practitioner or clinical nurse specialist should be required to consult with a rehabilitation professional in one or more of the relevant disciplines of physical therapy, occupational therapy, and speech-language pathology. The commenter believes that this should be made a requirement because assessment of the rehabilitative needs of the residents requires the input of professionals with specialized clinical training.

Response: Current law does not provide for the requirement of such a consultation. However, this type of consultation may result from the collaborative arrangements currently in place between the nurse practitioner or clinical nurse specialist and the physician. Collaborative arrangements provide for discussion of patient diagnosis and concerns related to case management to ensure the best care possible for the patient. The nurse practitioner or clinical nurse specialist, while working under clearly defined guidelines developed with the physician, may determine in certain instances that consultation with a rehabilitation professional is necessary.

In addition, under the SNF requirements for participation at § 483.20(b)(5), each resident must receive a comprehensive assessment upon admission and a review of that assessment at least once every 3 months. The assessment must be conducted by a nurse and involve other practitioners as needed. A nurse practitioner or clinical nurse specialist who is performing a certification or recertification will have access to the assessment and will thus have the benefit of any assessment done by rehabilitation specialists.

Also, under the SNF requirements for participation at § 483.20(d), the SNF must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet the resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The care plan must be prepared by an interdisciplinary team that includes the attending physician, a registered nurse, and "other appropriate staff in disciplines as determined by the resident's needs." Accordingly, for a resident certified for SNF care for rehabilitation services, we expect that the interdisciplinary team that prepares a care plan would include a rehabilitation professional.

Comment: Three commenters stated that allowing nurse practitioners and clinical nurse specialists to certify and recertify that extended care services are needed or continue to be needed is an extremely narrow function when it is delegated only to those who work directly with attending physicians. The commenters believe that this provision should be expanded to include facility-employed nurse practitioners and clinical nurse specialists.

Response: Facility-employed nurse practitioners and clinical nurse specialists are prohibited by section 1814(a)(2) of the Act from providing certification and recertification services for a facility; therefore, we cannot adopt the commenter's suggestion. However, the requirements for certification and recertification authorizations are not limited to those individuals who work directly with attending physicians. The nurse practitioner or clinical nurse specialist is free to engage in independent practice (if allowed by State law) so long as he or she works in collaboration with a physician. This process allows each professional to retain responsibility for his or her respective services and engage in those services independently.

Comment: One commenter expressed concern that the prohibition that the nurse practitioner or clinical nurse specialist cannot work for the facility will have adverse effects on small rural hospitals. The commenter noted that, in rural areas, skilled nursing facilities are

often faced with dual problems. First, facilities in rural areas have a difficult time recruiting physicians. Since not many physicians live near the facility, it is difficult to find a physician who will make the long-distance visits to certify (or supervise) the care of residents in SNFs. Second, a nurse practitioner or clinical nurse specialist who lives close enough to the SNF is likely to already be employed by the SNF, since that is likely the only employment that would be available in that area. Thus, not only are nurse practitioners and clinical nurse specialists a less costly alternative for the facility to employ, but they generally must be an employee if the facility wishes to retain their services. The commenter suggested that a waiver be considered to allow nurse practitioners and clinical nurse specialists who are employed by rural facilities to certify and recertify the need or continued need for extended care services.

Response: The statute does not authorize us to grant a waiver to allow nurse practitioners and clinical nurse specialists who are employed by rural facilities to perform certification and recertification. However, those who are authorized by section 1861(s)(2)(K)(iii) of the Act to engage in independent practice, and are working in collaboration with a physician, can provide the service of certifying and recertifying extended care services in a high quality, cost-effective manner. Similarly, nurse practitioners and clinical nurse specialists who work directly for a physician who is not an employee of the facility can also provide this service. These types of arrangements will reduce the need for visits to the nursing facility by a physician solely for the purpose of meeting the signature requirements, and thus free physicians to deliver medical care that only they can furnish. We believe that such arrangements can provide some relief to those rural areas where it is often difficult to recruit and retain physicians.

Comment: One commenter noted that many smaller facilities would have to pay an outside nurse to certify and recertify patients, which would result in a direct or indirect employment relationship with the facility.

Response: When nurse practitioners or clinical nurse specialists are employees of qualified legal entities, under the common law test of section 210(j) of the Act (more fully set forth in 20 CFR 404.1005, 404.1007, and 404.1009, which set forth definitions of employers and employees for purposes of social security benefits), they are considered for the purposes of this provision to have a direct or indirect employment relationship. Qualified legal entities may include the facility or someone working on the medical staff of the facility. These provisions set forth a number of factors that indicate whether a nurse practitioner or clinical nurse specialist has a direct or indirect employment relationship including, but not limited to the following:

- The facility or someone on its medical staff has the authority to hire or fire the nurse;
- The facility or someone on its medical staff furnishes the equipment and the place to work, sets the hours, and pays the nurse by the hour, week or month;
- The facility or someone on its medical staff restricts the nurse's ability to work for someone else or provides training and requires the nurse to follow instructions.

However, even though a facility may make direct payment to an independent practice nurse practitioner or clinical nurse specialist for the certification and recertification of extended care services, that individual is not considered to have a direct or indirect relationship with the facility as long as he or she does not perform other duties for the facility or someone on its staff, or is not under the control of the facility or someone on its staff.

Comment: One commenter stated that nurse practitioners and clinical nurse specialists should be given a wider scope of practice by the Federal Government in a manner similar to that in which States have used their services, that is, permit them to replace physician visits in the nursing home and have prescriptive authority within the nursing home.

Response: We understand the commenter's concerns, but note that the sole purpose of this rule is to implement section 1814(a)(2) of the Act, as amended by section 6028 of OBRA '89, which is relatively narrow in focus. Therefore, we do not have present legal authority to increase the scope of practice of nurse practitioners or clinical nurse specialists. However, it also should be noted that, in recent years, the Congress has continued to expand Medicare coverage of services furnished by nurse practitioners and clinical nurse specialists, which helps improve beneficiary access to medical services. For example, section 4155(a)(3) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) amended section 1861(s)(2)(K) of the Act to authorize Medicare coverage for certain services performed by a nurse practitioner or a clinical nurse specialist working in a rural area. Those services were previously covered only if performed by a physician. In addition, § 483.40 permits a physician to delegate certain tasks, including some physician visits, to nurse practitioners or clinical nurse specialists (as well as to physician assistants) with certain limitations, providing they are within the scope of State law. In these cases, however, the expansion in coverage was the direct result of a change in law, not an administrative decision.

Comment: Another commenter believes that HCFA should extend the signature authority to certification and recertification of specific types of health services within the extended care setting. This could include the plan of treatment requirements for outpatient physical therapy and speech language pathology, and the certification and recertification of the comprehensive outpatient rehabilitation facility benefit.

Response: Again, section 1814(a)(2) of the Act, as amended by section 6028 of OBRA '89, applies only to the certification and recertification of extended care services, which is the only subject of this final rule. The certification and recertification signature requirements for the various outpatient services mentioned in the above comment are addressed in other sections of the law and regulations.

2. Weight Given to Physician's Opinions

Subsequent to the June 28, 1991 proposed rule concerning certifications by nurse practitioners and clinical nurse specialists, we published a HCFA Ruling (No. 93–1, May 1993) that clarified HCFA's position regarding the weight to be given to a treating physician's opinion in determining Medicare coverage of inpatient hospital and SNF care. Although this ruling focused on certifications by physicians, it has significant implications for certifications by nurse practitioners and clinical nurse specialists. Therefore, although no commenter explicitly raised this issue, we believe it is appropriate to make an additional clarification regarding the scope of authority of a nurse practitioner and clinical nurse specialist. Specifically, we wish to clarify that although completion of the required certification or recertification is a prerequisite for Medicare SNF coverage, it does not absolutely ensure coverage. In order to qualify for coverage, the care must also meet Medicare's overall requirement of being reasonable and necessary for diagnosing or treating the beneficiary's condition (section 1862(a)(1) of the Act). This aspect of the certification and recertification requirement is discussed in detail in HCFA Ruling No. 93–1. As

the ruling indicates, the treating physician's certification or recertification of the need for care is to be given great weight in determining SNF coverage, but coverage decisions are not made solely based on this certification: "* * *if the attending physician's certification of the medical need for services is consistent with other records submitted in support of the claim for payment, the claim is paid. However, if the medical evidence is inconsistent with the physician's certification, the medical review entity considers the attending physician's certification only on a par with the other pertinent medical evidence" (HCFAR 93–1–8).

Thus, although an attending physician's certification or recertification that care is needed is to be given great weight in determining SNF coverage, we do not consider a certification or recertification irrefutable in the face of medical evidence to the contrary. We do not believe that a certification or recertification should be considered more binding when completed by a nurse practitioner or clinical nurse specialist than it would have been if completed by the attending physician. Therefore, it is possible for a nurse practitioner or clinical nurse specialist's certification of the need for care to be superseded by medical evidence to the contrary, which can include the opinion of the attending physician. We do not anticipate that such a certification or recertification would be completed in direct contradiction to the attending physician's opinion. For example, if the attending physician disagrees with a nurse practitioner's or clinical nurse specialist's certification of the need for care, the medical review entity can deny coverage, provided that the attending physician's opinion is consistent with the medical evidence in the file.

B. The Definition of "Collaboration"

In the proposed rule of June 28, 1991, we defined "collaboration" as a process whereby a nurse practitioner or clinical nurse specialist works with a doctor of medicine or osteopathy to deliver health care services. The services are delivered within the scope of the practitioner's professional expertise with medical direction and appropriate supervision as provided for in guidelines jointly developed by the practitioner and the physician, or other mechanisms defined by Federal regulations and the law of the State in which the services are performed.

Comment: One commenter maintained that HCFA's proposed definition of "collaboration," which provides that appropriate supervision should be provided, implies that a physician should be physically present. The commenter believes this implication is overreaching and does not reflect the professional practice of these practitioners. The commenter contends that physicians are not physically present in the facility at the same time the services are performed.

Response: We do not believe that our proposed definition is overreaching. The requirement that collaboration entail medical direction and supervision does not imply that the physician be physically present in the facility or even that the physician be consulted on each patient. Our definition is meant to apply to the overall relationship between the physician and the nurse practitioner or clinical nurse specialist. Thus, we envision that collaboration would involve some systematic formal planning, assessment, and a practice arrangement that reflects and demonstrates evidence of consultation, recognition of statutory limits, clinical authority, and accountability for patient care, according to some mutual agreement that allows each professional to function independently.

C. The Limitation on Authorization To Sign Certification and Recertification Statements

In the June 28, 1991, proposed rule, we proposed to revise § 424.11(e) to specify that nurse practitioners and clinical nurse specialists be authorized to sign certifications and recertifications for extended care services. We defined these entities as individuals, licensed by the State, who meet the requirements in § 424.20(e).

Comment: One commenter suggested that regulations should provide that the physician assistant, as well as the nurse practitioner and clinical nurse specialist, be allowed to certify and recertify residents for Medicare benefits.

Response: Under current law, physician assistants are not allowed to perform these certifications and recertifications. Section 6028 of OBRA '89 extended the signature authorization for certification and recertification to nurse practitioners and clinical nurse specialists only.

Comment: One commenter indicated that the criteria in the proposed rule that require State licensure for the nurse practitioner and clinical nurse specialist to meet the signature authorization requirements place restraints on many of the nurse practitioners and clinical nurse specialists who are not formally recognized through their State practice acts (that is, formal licensure requirements), but who are not prevented from practicing in those same States. The commenter believes that the lack of a formal licensure program should not prevent this provision from being implemented in a State.

Response: We agree that the proposed qualifications requiring State licensure are unduly restrictive on those nurse practitioners and clinical nurse specialists who are in States that currently authorize them to practice under State law, even though no formal licensure exits. Therefore, we are revising proposed § 424.11(e) to eliminate the requirement for State licensure. Instead, we are setting forth the necessary qualifications that nurse practitioners and clinical nurse specialists must meet for purposes of this provision. As detailed below, these qualification requirements will ensure that the signature authority is extended to nurse practitioners and clinical nurse specialists who are currently authorized under State law to perform such services, even if no formal licensure exists.

Nurse practitioners and clinical nurse specialists are primary health care providers. As a primary health care provider, the nurse practitioner and/or clinical nurse specialist manages care under a framework that includes assessment of health status, diagnosis, development of a treatment plan, implementation of that plan, follow up, and patient education. The autonomous nature of advanced practice nursing requires accountability for outcomes in health care.

In the early years, many of the nurse practitioner and clinical nurse specialist programs were hospital based certificate programs that provided basic education and clinical requirements that were very similar to the requirements that Medicare established in regulations for rural health clinics in § 491.2. In the late 1970's, post-basic advanced practice programs began to evolve in response to societal and health care needs and are rapidly being phased out in favor of master's programs. Most of the educational preparation now required is defined by guidelines established by the profession to assure appropriate knowledge and clinical competency necessary for the delivery of primary health care.

A formal, graduate educational program provides the nurse practitioner and clinical nurse specialist the theoretical knowledge and clinical skills appropriate for their scope of practice that includes clinical, technical and ethical learning experiences for delivery of care and role development in advanced nursing practice. Formal graduate education also enables nurse

practitioners and clinical nurse specialists to achieve and maintain national certification and recognition. Currently, for the nurse practitioner, 47 States require at least national certification or a master's degree and/or completion of an advanced practice program. For the clinical nurse specialist, 29 States specify a graduate degree and/or national certification. For the remaining States, advanced practice nursing is not recognized, the authority to practice is covered under a broad Nurse Practice Act, or, in still others, the scope of practice is based on the registered nurse's own determination of education, experience and amount of physician supervision necessary to conduct practice safely.

The completion of a formal, graduate education program ensures that the nurse practitioner and clinical nurse specialist acquire and maintain the theoretical knowledge and clinical skills appropriate for the certification and recertification of extended care services. Therefore, in this final rule we are requiring master's preparation for entry level nurse practitioners and clinical nurse specialists who certify and recertify SNF residents. We believe that this requirement is consistent with the training requirement currently associated with advanced practice nursing specialties.

We also intend to allow nurse practitioners and clinical nurse specialists who are currently practicing under previously set standards, which may be less restrictive (for example, not requiring a master's degree in nursing), to certify and recertify SNF services. Consequently, we are providing that an individual may certify and recertify SNF residents if the individual: is a registered professional nurse currently licensed to practice nursing in the State where he or she practices; is authorized to perform the services of a nurse practitioner or clinical nurse specialist; and has received, within 36 months from the effective date of this final rule, a certificate of completion from a formal advanced practice program that prepares registered nurses to perform an expanded role in the delivery of primary care.

Accordingly, we are revising § 424.11(e)(5) to specify that, in order to qualify as a nurse practitioner, an individual must:

(1) Be a registered professional nurse who is currently licensed to practice nursing in the State where he or she practices; be legally authorized to perform the services of a nurse practitioner in accordance with State law; and have a master's degree in nursing;

(2) Be certified as a nurse practitioner by a duly recognized professional association that has, at a minimum, eligibility requirements that meet the standards in § 424.11(e)(5)(i) (that is, in item (1) immediately above); or

(3) Meet the requirements for a nurse practitioner set forth in § 424.11(e)(5)(i), except for the master's degree requirement, and have received before August 25, 1998 a certificate of completion from a formal advanced practice program that prepares registered nurses to perform an expanded role in the delivery of primary care.

We have chosen a 36-month period for two reasons. First, we note that most advanced nursing programs are from one to two years in length, and we want to be sure that students currently or soon to be enrolled in existing non-master's programs would be able to complete their training and be eligible for Medicare participation without the need to change programs. Secondly, we want to provide the institutions operating the programs with enough time to react to these regulations. Our research to date leads us to believe that non-master's advanced programs are steadily being converted to master's degree programs and we therefore believe that this requirement may well affect the timing of institutional decisions for conversion, rather than the nature of those decisions. We welcome comments on this particular issue.

In addition, under revised § 424.11(e)(6), in order to qualify as a clinical nurse specialist the individual must:

(1) Be a registered professional nurse who is currently licensed to practice nursing in the State where he or she practices; be legally authorized to perform the services of a clinical nurse specialist in accordance with State law; and have a master's degree in a defined clinical area of nursing;

(2) Be certified as a clinical nurse specialist by a duly recognized professional association that has, at a minimum, eligibility requirements that meet the standards in § 424.11(e)(6)(i) (that is, item (1)); or

(3) Meet the requirements for a clinical nurse specialist set forth in § 424.11(e)(6)(i), except for the master's degree requirement, and have received before August 25, 1998, a certificate of completion from a formal advanced practice program that prepares registered nurses to perform an expanded role in the delivery of primary care.

As noted above, we are adding the above provisions as a result of a public comment on our June 28, 1991 proposed rule. However, since it would have been difficult for readers to anticipate the changes that are necessary in this final rule, we are accepting public comments on the qualification requirements set forth in new § 424.11(e)(5) and (6).

D. Timing of the Recertification

Neither OBRA '89 nor the June 28, 1991 proposed rule addressed the timing of the recertification statements. However, current regulations in § 424.20(d) specify that the first recertification is required no later than the 14th day of post-hospital SNF care, and subsequent recertifications are required at least every 30 days after the first recertification.

Comment: One commenter suggested that HCFA change the requirement of recertification for medical and health services, from every 30 days to monthly.

Response: The timing requirements for certification and recertification were not addressed in the proposed rule and thus are not the subject of this regulation. We note, however, that the requirements are stated in regulations (§ 424.20(d)) in terms of days because they must relate to an admission, which may occur any time during a month. We do not believe that it would be appropriate to restate these requirements in terms of months. Such a change could result in extending the period between recertifications to 60 days if a recertification took place on the 1st day of one month and on the last day of the next month.

IV. Provisions of the Final Rule With Comment Period

For the most part, the final rule adopts the provisions of the proposed rule. Those provisions of the final rule that differ from the proposed rule follow.

In the proposed rule, we added a new § 424.11(e)(4) to extend to nurse practitioners and clinical nurse specialists the authority to sign statements that would certify and recertify that extended care services are needed or continue to be needed. We proposed that nurse practitioners and clinical nurse specialists must be licensed by the State in order to be authorized to sign these statements. As a result of public comment, in this final rule we are revising § 424.11(e)(4) of the proposed rule to delete the licensure requirement. Instead, as discussed above in section III.C. of this preamble, we are adding paragraphs (e)(5) and (e)(6) to § 424.11(e) to set forth specific qualification requirements for nurse practitioners and clinical nurse specialists, respectively, for purposes of the certification provisions. We are accepting public comments on these provisions.

V. Impact Statement

Unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) . For purposes of the RFA, physicians are considered to be small entities. We also consider nurses who work on a consulting basis or who are self-employed to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As discussed in preceding sections of this preamble, this final rule implements section 6028 of OBRA '89 concerning the expansion of the certification and recertification authority for extended services to nurse practitioners and certified nurse specialists. In view of the specificity of the statutory provisions, we considered no alternatives beyond those raised by commenters. Any economic effects of this rule stem directly from the OBRA '89 provisions. However, we believe that economic effects of this rule are minimal. We do anticipate that the implementation of the provision to allow nurse practitioners and clinical nurse specialists to certify and recertify that extended care services are needed will be beneficial to physicians since this will free physicians to perform other procedures that require their professional expertise.

In the proposed rule (56 FR 29611), we stated that the proposed changes to the regulations would not produce any effects that would have a significant effect on the economy or on a substantial number of small entities. We received no comments on this assertion. The only change that we are making in this final rule is to clarify that these provisions will apply to nurse practitioners and clinical nurse specialists when they are authorized under State law to perform services even if no formal licensure exists. This change will have no significant economic effect.

We have determined, and the Secretary certifies, that this final rule will not have a significant effect on the operations of a substantial number of small entities or on small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VI. Collection of Information Requirements

Section 424.20 of the regulations contains information collection requirements. The information collection requirements concern the signatures for certification and recertification statements for extended care services. The respondents who will be responsible are physicians, nurse practitioners or clinical nurse specialists working in collaboration with a physician. Public reporting burden for this collection of information is estimated to be 1 hour per response.

The requirements contained in § 424.20 were approved by OMB on May 3, 1991, in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB approval number is 0938–0454, and the expiration date is March 31, 1998.

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on FR documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive about the qualification requirements for nurse practitioners or clinical nurse specialists by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR chapter IV, part 424, is amended as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 is revised to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870(e) and (f), 1871, 1872 and 1883(d) of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg(e) and (f), 1395hh, 1395ii and 1395tt(d)).

2. In § 424.1, the introductory text of paragraph (b) is republished and paragraph (b)(1) is revised to read as follows:

§ 424.1 Basis and scope.

* * * * *

(b) *Scope.* This part sets forth certain specific conditions and limitations applicable to Medicare payments and cites other conditions and limitations set forth elsewhere in this chapter. This subpart A provides a general overview. Other subparts deal specifically with—

(1) The requirement that the need for services be certified and that a physician establish a plan of treatment (subpart B);

* * * * *

3. In § 424.5, the introductory text of paragraph (a) is republished and paragraph (a)(4) is revised to read as follows:

§ 424.5 Basic conditions.

(a) As a basis for Medicare payment, the following conditions must be met:

* * * * *

(4) *Certification of need for services.* When required, the provider must obtain certification and recertification of the need for the services in accordance with subpart B of this part.

* * * * *

4. The heading for subpart B is revised to read:

Subpart B—Certification and Plan of Treatment Requirements

5. Section 424.10 is revised to read as follows:

§ 424.10 Purpose and scope.

(a) *Purpose.* The physician has a major role in determining utilization of health services furnished by providers. The physician decides upon admissions, orders tests, drugs, and treatments, and determines the length of stay. Accordingly, sections 1814(a)(2) and 1835(a)(2) of the Act establish as a condition for Medicare payment that a physician certify the necessity of the services and, in some instances, recertify the continued need for those services.

Section 1814(a)(2) of the Act also permits nurse practitioners or clinical nurse specialists to certify and recertify the need for post-hospital extended care services.

(b) *Scope.* This subpart sets forth the timing, content, and signature requirements for certification and recertification with respect to certain Medicare services furnished by providers.

6. In § 424.11, paragraph (b) is revised, the introductory text of paragraph (e) is revised, and new paragraphs (e)(4), (e)(5), and (e)(6) are added to read as follows:

§ 424.11 General procedures.

* * * * *

(b) *Obtaining the certification and recertification statements.* No specific procedures or forms are required for certification and recertification statements. The provider may adopt any method that permits verification. The certification and recertification statements may be entered on forms, notes, or records that the appropriate individual signs, or on a special separate form. Except as provided in paragraph (d) of this section for delayed certifications, there must be a separate signed statement for each certification or recertification.

* * * * *

(e) *Limitation on authorization to sign statements.* A certification or recertification statement may be signed only by one of the following:

* * * * *

(4) A nurse practitioner or clinical nurse specialist, as defined in paragraph (e)(5) or (e)(6) of this section, in the circumstances specified in § 424.20(e).

(5) For purposes of this section, to qualify as a nurse practitioner, an individual must—

(i) Be a registered professional nurse who is currently licensed to practice nursing in the State where he or she practices; be authorized to perform the services of a nurse practitioner in accordance with State law; and have a master's degree in nursing;

(ii) Be certified as a nurse practitioner by a professional association recognized by HCFA that has, at a minimum, eligibility requirements that meet the standards in paragraph (e)(5)(i) of this section; or

(iii) Meet the requirements for a nurse practitioner set forth in paragraph (e)(5)(i) of this section, except for the master's degree requirement, and have received before August 25, 1998 a certificate of completion from a formal advanced practice program that prepares registered nurses to perform an expanded role in the delivery of primary care.

(6) For purposes of this section, to qualify as a clinical nurse specialist, an individual must—

(i) Be a registered professional nurse who is currently licensed to practice nursing in the State where he or she practices; be authorized to perform the services of a clinical nurse specialist in accordance with State law; and have a master's degree in a defined clinical area of nursing;

(ii) Be certified as a clinical nurse specialist by a professional association recognized by HCFA that has at a minimum, eligibility requirements that meet the standards in paragraph (e)(6)(i) of this section; or

(iii) Meet the requirements for a clinical nurse specialist set forth in paragraph (e)(6)(i) of this section, except for the master's degree requirement, and have received before August 25, 1998 a certificate of completion from a formal advanced practice program that prepares registered nurses to perform an expanded role in the delivery of primary care.

7. In § 424.20, the introductory text and paragraph (e) are revised to read as follows:

§ 424.20 Requirements for posthospital SNF care.

Medicare Part A pays for posthospital SNF care furnished by a SNF, or a hospital or RPCH with a swing-bed approval, only if the certification and recertification for services are consistent with the content of paragraph (a) or (c) of this section, as appropriate.

* * * * *

(e) *Signature.* Certification and recertification statements may be signed by—

(1) The physician responsible for the case or, with his or her authorization, by a physician on the SNF staff or a physician who is available in case of an emergency and has knowledge of the case; or

(2) A nurse practitioner or clinical nurse specialist, neither of whom has a direct or indirect employment relationship with the facility but who is working in collaboration with a physician. For purposes of this section, *collaboration* means a process whereby a nurse practitioner or clinical nurse specialist works with a doctor of medicine or osteopathy to deliver health care services. The services are delivered within the scope of the nurse's professional expertise, with medical direction and appropriate supervision as provided for in guidelines jointly developed by the nurse and the physician or other mechanisms defined by Federal regulations and the law of the State in which the services are performed.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 4, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: February 18, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–18282 Filed 7–25–95; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7621]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance in now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary MAP (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

The final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Iowa: Hancock County, unincorporated areas	190873	June 16, 1995	September 6, 1977.
South Carolina: Lamar, town of, Darlington County	450063	.....do	July 18, 1975.
Montana: Mineral County, unincorporated areas	300159	June 19, 1995	December 14, 1982.
Vermont: Sharon, town of, Windsor County	500300	.....do	February 4, 1977.
Nebraska: Duncan, village of, Platte County	310272	June 22, 1995	February 18, 1977.
Tennessee: Cumberland County, unincorporated areas.	470373	.....do	September 2, 1977.
Nebraska: Greeley, village of, Greeley County	310373	June 26, 1995	July 11, 1975.
New Eligibles—Regular Program			
Colorado: South Fork, town of, Rio Grande County[1]	080318	June 5, 1995	
Montana: Hardin, city of, Big Horn County	300115	.....do	
Oklahoma: Caddo County, unincorporated areas	400479	June 12, 1995	September 27, 1991.
Texas: Palisades, village of, Randall County[2]	481666	.....do	
North Carolina: Green County, unincorporated areas	370378	.....do	January 6, 1983.
California: Apple Valley, town of, San Bernardino County[3].	060752	June 16, 1995	
Ohio: Somerville, village of, Butler County	390046	June 21, 1995	February 18, 1981.
Reinstatements			
Pennsylvania: St. Clair, borough of, Schuylkill County	420789	November 24, 1972, Emerg.; March 15, 1977, Reg.; June 2, 1995, Susp.; June 9, 1995, Rein.	June 2, 1995.
Indiana: Springport, town of, Henry County	180347	February 23, 1976, Emerg.; September 4, 1987, Reg.; September 4, 1987, Susp.; June 22, 1995, Rein.	September 4, 1987.
West Virginia: Mercer County, unincorporated areas	540124	December 23, 1975, Emerg.; February 1, 1983, Reg., June 16, 1995, Susp.; June 27, 1995, Rein.	May 2, 1995.
Regular Program Conversions			
Region II			
New York: Southampton, village of, Suffolk County	365343	June 2, 1995, suspension withdrawn	June 2, 1992.
Region III			
Pennsylvania: Port Carbon, borough of, Schulykill County.	420783	.....do	June 2, 1995.

State/location	Community No.	Effective date of eligibility	Current effective map date
Region IV			
Alabama: Tuscaloosa, city of, Tuscaloosa County	010203	do	Do.
Region V			
Wisconsin: Oshkosh, city of, Winnebago County	550511	do	Do.
Region VI			
Louisiana: Leesville, city of, Vernon Parish	220229	do	Do.
Oklahoma:			
Pawnee, city of, Pawnee County	400163	do	Do.
McClain County, unincorporated areas	400538	do	Do.
Region VIII			
Colorado:			
Nederland, town of, Boulder County	080255	do	Do.
La Plata County, unincorporated areas	080097	do	Do.
Utah: Joseph, town of, Sevier County	490127	do	Do.
Region IX			
Hawaii: Hawaii County, unincorporated areas	155166	do	Do.
Region X			
Washington: Cowlitz County, unincorporated areas	530032	do	Do.
Region III			
Delaware:			
Bethany Beach, town of, Sussex County	105083	June 16, 1995, suspension withdrawn	June 16, 1995.
Bethel, town of, Sussex County	100055	do	Do.
Blades, town of, Sussex County	100031	do	Do.
Dagsboro, town of, Sussex County	100033	do	Do.
Dewey Beach, town of, Sussex County	100056	do	Do.
Fenwick Island, town of, Sussex County	105084	do	Do.
Greenwood, town of, Sussex County	100039	do	Do.
Laurel, town of, Sussex County	100040	do	Do.
Lewes, city of, Sussex County	100041	do	Do.
Milford, town of, Sussex County	100042	do	Do.
Millsboro, town of, Sussex County	100043	do	Do.
Millville, town of, Sussex County	100044	do	Do.
Milton, town of, Sussex County	100045	do	Do.
Ocean View, town of, Sussex County	100046	do	Do.
Rehoboth Beach, town of, Sussex County	105085	do	Do.
Slaughter Beach, town of, Sussex County	100050	do	Do.
South Bethany, town of, Sussex County	100051	do	Do.
Sussex County, unincorporated areas	100029	do	Do.
Pennsylvania: Upper Chichester, township of, Delaware County.	420439	do	Do.
Region IV			
Florida:			
Gulf Breeze, city of, Santa Rosa County	120275	do	Do.
Monroe County, unincorporated areas	125129	do	Do.
Region V			
Indiana: Bloomington, city of, Monroe County	180169	do	Do.
Region VI			
Oklahoma:			
Midwest City, city of, Oklahoma County	400405	do	Do.
Newcastle, city of, McClain County	400103	do	Do.
Region VII			
Iowa:			
Ames, city of, Storey County	190254	do	Do.
Mason City, city of, Cerro Gordo County	190060	do	Do.
Jackson County, unincorporated areas	190879	do	Do.
Kansas: Pittsburgh, city of, Crawford County	200072	do	Do.
Region X			
Washington: Thurston County, unincorporated areas	530188	do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.; Rein.—Reinstatement.

[1] The Town of South Fork has adopted Rio Grande County's Flood Insurance Study and Flood Insurance Rate Map (FIRM) dated May 19, 1987 for floodplain management and flood insurance purposes. Rio Grande County's Community Identification number is 080153; Panel 0007B.

[2] The Village of Palisades has adopted Randall County's Flood Insurance Study and Flood Insurance Rate Map dated September 30, 1982 for floodplain management and flood insurance purposes. Randall County's Community Identification number is 480532; Panels 110 and 300.

[3] The Town of Apple Valley has adopted San Bernadino County's Flood Insurance Study and Flood Insurance Rate Map (FIRM) dated September 28, 1990 and any revisions, for floodplain management and flood insurance purposes. The County's Community Identification number is 060270; Panels 5850B, 5175B, 5200B, and 5875B.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: July 20, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–18388 Filed 7–25–95; 8:45 am]

BILLING CODE 6718–21–M

44 CFR Part 65

[Docket No. FEMA–7144]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Phoenix	May 18, 1995, May 25, 1995, Arizona Republic.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003.	April 19, 1995.	040051
California: Santa Barbara.	Unincorporated areas.	May 18, 1995, May 25, 1995, Santa Barbara News-Press.	The Honorable Timothy J. Staffel, Chairperson, Santa Barbara County, Board of Supervisors, 401 East Cypress Avenue, Lompoc, California 93436.	April 13, 1995.	060331
California: Santa Barbara.	Unincorporated area	May 17, 1995, May 24, 1995, Santa Barbara News-Press.	The Honorable Tim Stoffel, Chairperson, Santa Barbara County, Board of Supervisors, 195 East Apanamu Street, Fourth Floor, Santa Barbara, California 93101.	April 21, 1995.	060331

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Santa Barbara.	City of Santa Maria .	May 17, 1995, May 24, 1995, Santa Maria Times.	The Honorable Roger G. Bunch, Mayor, City of Santa Maria, 110 East Cook Street, Santa Maria, California 93454.	April 21, 1995.	060336
Nevada: Clark	Unincorporated areas.	May 10, 1995, May 17, 1995, Las Vegas Review Journal.	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County, Board of Commissioners, 225 Bridger Avenue, Las Vegas, Nevada 89155.	April 19, 1995.	320003
New Mexico: Bernalillo	City of Albuquerque	May 24, 1995, May 31, 1995, Albuquerque Journal.	The Honorable Martin Chevez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	May 4, 1995	350002
Oklahoma: Comanche .	City of Lawton	May 24, 1995, May 31, 1995, Lawton Constitution.	The Honorable John T. Marley, Mayor, City of Lawton, 103 Southwest Fourth Street, Lawton, Oklahoma 73501.	April 26, 1995.	400049
Texas: Collin	City of Allen	May 24, 1995, May 31, 1995, McKinney Courier Gazette.	The Honorable Joe Farmer, Mayor, City of Allen, One Butler Circle, Allen, Texas 75002–2773.	April 26, 1995.	480131
Texas: Bexar	Unincorporated areas.	May 9, 1995, May 16, 1995, San Antonio Express News.	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205.	April 11, 1995.	480035
Texas: Tarrant	City of Colleyville	May 3, 1995, May 10, 1995, Fort Worth Star Telegram.	The Honorable Cheryl Seigel, Mayor, City of Colleyville, P.O. Box 185, Colleyville, Texas 76034.	March 30, 1995.	480590
Texas: Tarrant	City of Grapevine	May 3, 1995, May 10, 1995, Forth Worth Star Telegram.	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, Texas 76501.	March 30, 1995.	480598

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 11, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–18387 Filed 7–25–95; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 95–59, FCC 95–306]

Fees for Products and Services in Connection With Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order which establishes a schedule of fees that participants in the competitive bidding process will be assessed for certain on-line computer services, bidding software, and bidder information packages. In establishing the fees, the Report and Order implements the Independent Offices Appropriations Act. The Commission's action in assessing the fees is to recoup the Federal Government's costs for providing such services and products.

EFFECTIVE DATE: July 26, 1995.

FOR FURTHER INFORMATION CONTACT: Bert Weintraub, Wireless Telecommunications Bureau, Tel. No. (202) 418–1316.

SUPPLEMENTARY INFORMATION: This is the complete text of the Report and Order which was adopted on July 21, 1995, and released on July 21, 1995.

I. Introduction

1. In this Report and Order, we amend Part 1 of the Commission's Rules to establish a schedule of fees that participants in the competitive bidding process will be assessed for certain on-line computer services, bidding software, and for bidder information packages. We conclude that assessment of these charges is reasonable and necessary to recoup the Commission's costs for providing such services and products. Specifically, we will assess the following fees to bidders and other interested parties:

- $2.30 per minute for access via a 900 number telephone service to the Commission's Wise Area Network (FCC WAN) system that will enable users to bid electronically from remote locations and access licensing databases.
- $175.00 for remote bidding software package.
- No charge for the first bidder information package requested, and a $16.00 fee for each additional package that is subsequently requested by the same party.

II. Background

2. The Omnibus Budget Reconciliation Act of 1993, Public Law No. 103–66, Title VI, section 6002(b), 107 Stat. 312, authorized the Commission to award licenses by competitive bidding where mutually exclusive applications for initial licensing are received for subscriber-based services for compensation. Under this authority, the Commission, to date, has conducted three auctions for Personal Communications Service (PCS) licenses.[1] In previous Commission auctions, remote electronic bidding was provided by Business Information network (BIN). Bidders electing to bid electronically from remote locations (*i.e.*, not at the FCC auctions site) paid

[1] The three PCS auction conducted thus far are: (1) The Nationwide Narrowband PCS auction, held from July 25 through July 29, 1994; (2) the Regional PCS Narrowband auction held October 26 through November 8, 1994; and (3) the broadband PCS A and B block auction, held December 5, 1994, through March 13, 1995. All three of these auctions were conducted as simultaneous multiple round auctions. In a simultaneous multiple round auction, auction participants submit bids on specific licenses in each round of the auction. The auction closes when there are no new bids during a bidding round on any of the offered licenses. See Second Report and Order, PP Docket No. 93–253, 9 FCC Rcd 2348 (1994), 59 FR 22,980 (1994).

BIN a fee for the remote bidding software and an on-line computer access charge. The fee covered BIN's costs to develop and provide remote bidding access.

3. Due to the experience gained from these three auctions, the Commission has developed its own remote electronic access system that utilizes Wide Area Network or WAN technology. This system (FCC Wan) would allow bidders and other interested parties to file applications electronically, bid electronically, access auction round results, and query FCC licensing databases from their personal computers from remote locations The Commission has also developed a number of proprietary software applications to support the remote electronic access system. Bidders and other interested parties would utilize a 900 number telephone service to access the FCC Wan system. The Commission has incurred significant costs in developing this remote electronic access system. Such costs include: infrastructure design and implementation; software development and testing; and other administrative/personnel costs.

4. On May 16, 1995, we adopted a Notice of Proposed Rulemaking (Notice)[2] seeking comment on a proposed schedule of fees to be assessed in future auctions for access to certain on-line computer services, and for obtaining proprietary bidding software as well as multiple bidder information packages. In order to recoup our costs, we proposed to charge a fee to bidders and other interested parties for access to the FCC WAN system and for obtaining the proprietary bidding software needed to make use of the system's electronic bidding functions. We also proposed recouping some of the printing and production costs associated with providing bidder information packages to prospective auction participants. Specifically, we indicated that parties would continue to receive one complimentary bidder information package, but suggested charging a fee for additional packages that are requested.

5. We also observed that under government regulations any funds received from the sale of materials, software, or services must go directly to the U.S. Treasury. See 31 U.S.C. 3302(b); 69 Comp. 260, 262(1990). We noted that the Independent Offices Appropriation Act of 1952, as amended (IOAA), 31 U.S.C. 9701, permits the government to impose fees and charges for services and things of value. The IOAA authorizes agencies to prescribe regulations establishing charges for products and services provided by an agency. The charges must be fair and must be based on the costs to the government, the value of the service or product to the recipient, the public policy or interest served, and other relevant facts. See 31 U.S.C. 9701(b). In addition, we indicated that the Office of Management and Budget (OMB) has issued policy guidelines on use of fees in Circular A–25 (OMB Circular),[3] which was recently revised. We noted that the revised OMB Circular, encourages the assessment of fees for government-provided products and services, and provides that agencies must establish fees based on either a "full-cost" or "market price" analysis.

6. More specifically, we proposed in the Notice to calculate our fees on the basis of "market price"[4] rather than utilizing a "full cost" pricing analysis.[5] In particular, we proposed to utilize prevailing price methodology to determine the fees for the FCC WAN system use, the proprietary bidding software, and the additional bidder information packages. We proposed the following fees: (1) $4.00 per minute for access via a 900 number to the FCC WAN system; (2) $200.00 for each remote bidding software package; and (3) $16.00 for each additional bidder information package (including postage) requested beyond the one complimentary copy that is made available. We sought comments on these charges, and on comparable market prices for similar products and services that are offered to the public.

7. BellSouth Corporation (BellSouth), Rural Telecommunications Coalition (RTC) and AirTouch Paging (AirTouch) filed formal comments and National Paging & Personal Communications Association (NPPCA) and Kennedy-Wilson International (KWI) filed informal comments by letter in response to the Notice.

III. Discussion

8. BellSouth questions whether the Commission can assess fees for its auction-related services under IOAA, when Section 309(j)(8)(B) of the Communications Act already authorizes the Commission to recover the cost of conducting auctions from auction revenues. We conclude that assessing fees for use of the Commission's FCC WAN system as described above is fully consistent with our competitive bidding obligations under the Communications Act and with other laws and regulations that govern fees. See 47 U.S.C. 309(j)(8)(B); 31 U.S.C. 9701(a). Assessing a fee to bidders using certain on-line computer services and bidding software is a reasonable and efficient means of recovering the costs associated with developing, maintaining, enhancing, and upgrading this important system and its companion software. Indeed, our proposal supports a congressional goal set forth in the IOAA, which is that "each service or thing of value provided by an agency * * * to a person * * * be self-sustaining to the extent possible." See 31 U.S.C. 9701(a). Moreover, contrary to BellSouth's suggestion, nothing in Section 309(j)(8)(B) prohibits the Commission from imposing fees on auction participants under the IOAA.

A. On-Line Computer Access Charges

9. *Comments.* BellSouth, RTC, and AirTouch oppose the Commission's proposal to establish on-line access charges by comparing the FCC WAN system with the costs associated with access to Westlaw and Lexis-Nexis services, claiming the comparison is invalid. RTC contends that the fee for 900 service should be based upon "full cost" and not "market price." In addition, BellSouth and NPPCA assert that there is no alternative to remote electronic bidding procedures. Additionally, NPPCA claims there is already a fee to file applications electronically.

10. *Decision.* After considering the record, we will charge $2.30 per minute for access to the FCC WAN system for purposes of bidding electronically, reviewing other applications (e.g., FCC Form 175 or FCC Form 600 applications), and obtaining available licensing database information. We emphasize, however, that we will not charge a user a fee for accessing this system for the purpose of filing a short- or long-form application electronically. There will be a clear delineation between services for which on-line access fees will be charged and services for which no on-line access fees will be charged. Users who download from the FCC's electronic bulletin board or from the Internet software specific to a service for which we intend to charge on-line access fees will receive clear notification that execution of this software will result in on-line access fees. In addition, when a caller executes software specific to a service for which

[2] WT Docket No. 95–59, 10 FCC Rcd 7066 (1995), 60 FR 26,860 (1995).

[3] See *FPC* v. *New England Power Co.*, 415 U.S. 345, 349–51 (1974) (citing the OMB Circular).

[4] "Market price" means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service. See OMB Circular at 58 Fed. Reg. 38,145.

[5] "Full cost" includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. See OMB Circular at 58 FR 38,145.

we intend to charge on-line access fees, there will be a grace period, free of charge to the caller. During the grace period, the caller will be advised of the associated pricing, basic program content, sponsor information, and provided the option to disconnect without being charged. Charges to the caller will not begin until the grace period has ended. Instructions on downloading and executing software specific to a particular service will be made available by Public Notice prior to the availability of that service.

11. In arriving at this $2.30 fee, we considered that the FCC WAN system will provide services that are similar to both the electronic bidding capabilities previously offered by BIN and to database services provided by Westlaw or Lexis-Nexis. For previous auctions, the cost for on-line electronic bidding through BIN was $23.00 per hour, which equals $.38 per minute (rounded). The average cost associated with access to on-line database services such as Westlaw or Lexis-Nexis is $4.23 per minute.

12. While our new remote electronic bidding system is similar to BIN, which charged $23.00 per hour, FCC WAN system access to the Commission's licensing databases is more like the services provided by Westlaw or Lexis-Nexis. Both Westlaw and Lexis-Nexis provide on-line database access for research purposes to legal and other research professionals. We have therefore averaged the costs of these two types of services to arrive at a fee of $2.30 per minute for on-line access to the FCC WAN system. BellSouth and AirTouch argue that the Commission should use other information service providers such as CompuServe, Prodigy, Internet and America On-line as comparisons in determining a price per minute for access to the FCC WAN system. According to the commenters, these particular services range in price from $10.00 to $30.00 per month for limited access and $3.00 to $10.00 per hour for special services. These providers market their products and services to the general public, however, and their fees obviously reflect the high volume of users that are serviced by them. By comparison, the Commission's auction and licensing databases are of interest to a relatively small number of potential users. Westlaw or Lexis-Nexis, however, do service a small number of users with information that is akin to the licensing database information we plan to offer. Consequently, their pricing provides a more relevant comparison for establishing our fees here.

13. We note that OMB guidelines provide that the price of the government-provided service must be adjusted to reflect the "level of service and quality of the good or service" when compared to a similar commercial service. OMB Circular at 58 FR 38145. In this regard, we believe it is reasonable to charge a higher per-minute fee for our remote bidding system than was charged by BIN because of the enhanced bidding functionality of the FCC WAN system. Specifically, electronic bidding via the FCC WAN system is expected to be faster and more efficient[6] than BIN. Bidders will have the option of uploading bids from a file that they have created off-line, which will reduce the time required to submit and verify bid submissions. Also, bidders will be able to develop round results files based on their individual needs. In addition to remote bidding and round results, the system also will provide for access to the Commission's licensing databases (*i.e.*, to locate and review other applications). Moreover, the FCC WAN system permits applications to be filed electronically (*e.g.*, the FCC Form 175 and the FCC Form 600).

14. In addition, we reject RTC's argument that charging for 900 number service should be based on "full cost" instead of "market price." First, OMB has given us the discretion to choose either methodology. Second, based on our examination of the two methodologies, we conclude that application of a "market price" approach is more practical and efficient for our purposes here. In this regard, we note that the Commission will incur costs of approximately $700,000 for one year of service for the expanded telephone cabling required to implement the Commission's on-line bidding system.[7] This figure alone, however, does not reflect all of the cost components to be included within OMB's definition of "full cost." Attempting to apportion "full cost" to individual auctions, which will each vary in duration, number of bidders and number of licenses, is administratively unworkable. Thus, we conclude that the "full cost" methodology is inappropriate in this context. This analysis answers BellSouth's concerns that we have not provided any estimate of Commission costs. We reiterate that market price remains the only viable methodology in establishing a fee for 900 service. Likewise, AirTouch's assertion that a $.15 to $.20 per minute charge for 900 service. Likewise, AirTouch's assertion that a $.15 to $.20 per minute charge for 900 service would recoup the Commission's costs is an attempt at the "full cost" recovery methodology, which we have declined to use.

15. Finally, we are not persuaded by BellSouth's or NPPCA's argument that there is no alternative to remote electronic bidding procedures and therefore no fee should be charged for this service. We note that bidders may continue to place bids through a 800 telephone number service free of charge.[8] In addition, contrary to NPPCA's belief, we have not established a fee for electronic filing of the FCC Form 175. In order to encourage auction participants to file their short-form applications electronically, as noted above, we do not plan to charge for this particular use.

B. Auction Bidding Software

16. *Comments.* BellSouth, RTC, and AirTouch generally argue that there are a number of comparable software packages on the market that are substantially cheaper than the $200.00 fee proposed by the Commission for fee proposed by the Commission for its bidding software package. They provided names of various computer companies, computer programs and protocols, as well as various dollar amounts in support of their arguments.

17. *Decision.* After reviewing the comments and alternative prices suggested, we have decided to assess a fee of $175.00 for the remote bidding software package made available to each user on the FCC WAN system. We will not, however, charge for software that is necessary for users to file applications electronically on the FCC WAN system. Also, we will not charge for software that is needed for users to access the Commission's licensing databases (although as discussed *supra*, FCC WAN users will be charged $2.30 per minute for actually accessing the Commission's licensing database). We base our $175.00 price on the BIN bidding software which was made available to bidders in previous Commission auctions for a $200.00 charge. We will reduce this fee by $25.00, however, because our system does not include a communications component that was provided as part of the BIN software package. Specifically, the $25.00 reduction represents the cost of certain technical protocols that are necessary for remote electronic bidders and other interested parties to access the Commission's remote electronic system.[9]

18. AirTouch argues that computer software programs such as Procomm, Telix, Crosstalk and SLIP PPP are appropriate comparisons to the FCC remote bidding software and should be used in determining the market price of our bidding software. For two reasons, we do not believe these software packages are "price comparable" to the bidding software we plan to offer. First, the programs cited by AirTouch are produced for large numbers of users whereas our software is targeted to a small group of users. Second, these programs are more limited in scope and function than the FCC's software. Specifically, the cited programs are communications and technical protocols only whereas the FCC's software package is a more sophisticated logic-based program that will enable users to submit and withdraw bids electronically.

C. Bidder's Information Package

19. *Comments.* None of the commenting parties challenge the methodology used to calculate the $16.00 cost for each additional bidder information package. AirTouch nevertheless opposes a charge for additional bidder information packages, and claims it will be difficult to enforce the policy. KWI, on the other hand, states the Commission should charge $50.00 to $100.00 for bidder information packages to ensure they are distributed to persons with a serious interest in the auction process.

20. *Decision.* We conclude that it is both fair and reasonable to provide one complimentary bidder information package to each person or entity, and to charge $16.00 for each additional package (including postage) requested by the same person or entity. The $16.00 charge is based on the average direct costs incurred by the Commission to duplicate, bind and mail such packages.

21. We observe that nothing prevents a recipient of a complimentary bidder information package from making additional copies at his or her own expense. We are unpersuaded that charging for additional bidder information packages violates the public interest or will be unduly burdensome to enforce, as AirTouch suggests. We also reject KWI's suggestion that we charge $50.00 to $100.00 for bidder information packages since we think such charges would not be consistent with OMB guidelines.

D. Payment of Fees Methodology

22. *Comments.* None of the commenting parties object to the proposed inclusion of the FCC WAN on-line access charges on the user's long distance telephone bill. Moreover, none of the commenters express any opposition to having the fees for the bidding software and the bidder information packages collected by credit card or cashier checks. KWI suggests expanding the payment method to include personal and corporate checks.

23. *Decision.* Charges for on-line access to the FCC WAN system will be included in the form of 900 number service charges on each user's long distance telephone bill. Each user will pay its long distance telephone company directly for these charges. As for bidding software and additional bidder information packages, we will permit payment by credit card and cashier's check. Further, we agree that personal or corporate checks should be permitted and will permit payment in this manner as long as such checks sufficiently identify the payor. All checks should be made payable to the "Federal Communications Commission" or "FCC." The Commission contracts with an auctioneer for each auction, and it is the auction contractor that will be responsible for administering payments of the bidding software and additional bidder information packages. Bidders may obtain the FCC's bidding software and bidder information packages from the FCC's auction contractor. Specific instructions for purchasing the software and bidder information packages will be made available by Public Notice prior to the start of each auction.

IV. Procedural Matters

24. Pursuant to the Regulatory Flexibility Act (Pub. L. 96–354, Stat. 1165, 5 U.S.C. 601, *et seq.* (1981), the Commission attached an Initial Regulatory Flexibility Analysis (IRFA) as Appendix A to the Notice in WT Docket No. 95–69. Written comments on the IRFA were requested. The Commission's Final Regulatory Flexibility Analysis is as follows:

A. Need and Purpose of the Action. This rulemaking proceeding is taken to implement the Commission's establishment and collection of fees for the Commission's proprietary remote software packages, on-line communications service charges, and bidder's information packages in connection with auctionable services. The rules specifically set forth the amounts that are to be paid in connection with bidding for auctionable services. The objective of this proceeding is to collect the necessary amounts through the fees being adopted, with the funds going to the U.S. Treasury.

B. Issues Raised in Response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered and Rejected. All significant alternatives have been addressed in this Report and Order.

D. Description, Potential Impact, and Number of Small Entities Involved. Because the Commission will provide proprietary remote software packages, on-line communications services, and bidder's information packages directly, the fees assessed and collected will recover the Government's costs. While the number of small entities impacted by these fees is unknown, any such impact is likely to be insubstantial. Moreover, the Commission has provided alternative remote access options free of charge.

25. For further information on the assessment and collection of the charges established by the rules adopted herein, contact Bert Weintraub, Wireless Telecommunications Bureau, Auctions Division, at (202) 418–1316.

V. Ordering Clause

26. Accordingly, *it is ordered* That pursuant to the authority of Sections 4(i) and (j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 303(r), and 309(j), as well as the Independent Offices Appropriation Act of 1952, as amended, 31 U.S.C. 9701, Part 1 of the Commission's Rules, 47 C.F.R. Part 1, is amended to assess and collect fees in connection with auctionable services as set forth below, effective upon publication in the **Federal Register.** Pursuant to 5 U.S.C.

[6] Our FCC WAN system is demonstrably faster than the BIN system used in previous auctions, according to our test results. For example, using BIN, the average amount of on-line time for the Regional Narrowband auction was 16 minutes, 37 seconds per bidding round whereas the average amount of time using the new system in a mock Regional Narrowband auction was 12 minutes, 26 seconds per bidding round (*i.e.*, using a comparison of 30 licenses).

[7] The Notice pointed out that the General Services Administration ("GSA") was in the process of making arrangements to add 900 service to the Federal Telecommunications System ("FTS") 2000 contract, which is the government-wide telephone system. The Notice should have additionally mentioned that point-to-point telephone cabling upgrades were also added to the FTS contract. Since release of the Notice, installation of the expanded telephone cabling has been ordered but addition of the 900 service is pending and will not be added until this Report and Order has been adopted and released.

[8] As in previous auctions, bidders still will have the option of placing their bids from remote locations via an 800 telephone number service at no charge. Round results information also will be available to bidders over the Internet and on a FCC electronic bulletin board at no charge.

[9] Such technical protocols are available "off the shelf" and can be purchased for approximately $25.00. Examples of these protocols are Trumpet, NetManage Chameleon and Wollongong Pathway Access.

553(d)(3), we conclude that "good cause" exists to have the rule amendments set forth in this Report and Order take effect immediately upon publication in the **Federal Register.** The Commission's next auction is presently scheduled to commence on August 29, 1995, and short-form applications for that auction are due on July 28, 1995.[10] In order to provide for a smooth transition to the new computer system and software discussed in this Report and Order, it is necessary to institute our fee schedule prior to the start of this upcoming auction.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Sections 1.1161 and 1.1162 are added to Subpart G to read as follows:

§ 1.1161 Authority to prescribe and collect fees for competitive bidding-related services and products.

Authority to prescribe, impose, and collect fees for expenses incurred by the government is governed by the Independent Offices Appropriation Act of 1952, as amended , 31 U.S.C. 9701, which authorizes agencies to prescribe regulations that establish charges for the provision of government services and products. Under this authority, the Federal Communications Commission may prescribe and collect fees for competitive bidding-related services and products as specified in § 1.1182.

§ 1.1162 Schedule of fees for products and services provided by the Commission in connection with competitive bidding procedures.

Product or service	Fee amount	Payment procedure
On-line remote access 900 Number Telephone Service).	2.30 per minute	Charges included on customer's long distance telephone bill.
Remote Bidding Software	$175.00 per package	Payment to auction contractor by credit card or check. (Public Notice will specify exact payment procedures.)
Bidder Information Package	First package free; $16.00 per additional package (including postage) to same person or entity.	Payment to auction contractor by credit card or check. (Public Notice will specify exact payment procedures.)

[FR Doc. 95–18451 Filed 7–25–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–52; RM–8604]

Radio Broadcasting Services; Roann, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270A to Roann, Indiana, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Roann Broadcasting. *See* 60 FR 22022, May 4, 1995. Roann is located within 320 kilometers (199 miles) of the United States-Canadian border and therefore, concurrence of the Canadian government in this proposal was obtained. Coordinates used for Channel 270A at Roann are 40–55–18 and 85–55–30. With this action, the proceeding is terminated.

DATES: Effective September 5, 1995. The window period for filing applications will open on September 5, 1995, and close on October 6, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 270A at Roann should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–52, adopted July 13, 1995, and released July 20, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Roann, Channel 270A.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18280 Filed 7–25–95; 8:45 am]

BILLING CODE 6712–01–F

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 34)]

Rail General Exemption Authority—Exemption of Hydraulic Cement

AGENCY: Interstate Commerce Commission.

ACTION: Final rule with request for comments.

[10] See Public Notice, DA 95–1420, released June 23, 1995.

SUMMARY: The Commission is exempting from regulation the transportation by rail of hydraulic cement (STCC No. 32–4). Except for those shipments from the South Dakota State Cement Plant Commission (herein "Dacotah") cement plant in Rapid City, SD, as to which further comment is sought, this commodity is added to the list of exempt commodities, as set forth below. This exemption does not embrace exemptions from regulation of car hire and car service.

DATES: This final rule is effective on August 25, 1995. Comments are due on August 25, 1995. Replies to comments are due on September 14, 1995.

ADDRESSES: Comments referring to Ex Parte No. 346 (Sub-No. 34) to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW, Washington, DC 20423

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

On October 21, 1993, at 58 FR 54317, we requested comments on a proposal by the Association of American Railroads (AAR) to exempt from regulation the railroad transportation of hydraulic cement. The comments have been received and analyzed. We are approving AAR's proposal except for those shipments of hydraulic cement from the Dacotah cement plant at Rapid City, SD.

The Commission seeks comments on (1) whether the Dacotah Cement facility at Rapid City, SD is rail captive and (2) the extent to which the Commission's decision in *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Transportation Company and Chicago and North Western Railway Company*, Finance Docket No. 32133 (ICC served Mar. 7, 1995) has an impact on the Commission's consideration on this matter. Comments shall be due August 25, 1995. Replies to the comments are due September 14, 1995.

We reaffirm our initial finding that the exemption will not significantly affect either the quality of the human environment or the conservation of energy resources. We also reaffirm our initial finding that the exemption will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1039.

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: July 14, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, the table in paragraph (a) is amended by adding the following new entry in the correct numerical order to STCC tariff 6001–V to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
*	*	*
32–4	6001–V, eff.1–1–94.	Hydraulic cement, except shipments from the Dacotah Cement plant at Rapid City, SD.
*	*	*

* * * * *

[FR Doc. 95–18403 Filed 7–25–95; 8:45 am]

BILLING CODE 7035–01–P

Proposed Rules

Federal Register
Vol. 60, No. 143
Wednesday, July 26, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AD83

Revision of Specific Exemptions Under the Privacy Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations implementing the Privacy Act of 1974, as amended (Privacy Act), to reflect the addition of exemptions in subsections (j)(2) and (k)(5) to an existing system of records and to update the list of exemptions that apply to specific NRC systems of records.

DATES: Submit comments by September 5, 1995. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays. Examine comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Privacy Act Program Manager, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7170.

SUPPLEMENTARY INFORMATION: The proposed amendments to 10 CFR Part 9 would add exemptions authorized by subsections (j)(2) and (k)(5) of the Privacy Act to those that are currently in place for NRC–18, Office of the Inspector General (OIG) Investigative Records—NRC, under subsections (k)(1), (k)(2), and (k)(6). Under subsection (j)(2), the head of an agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act if the system of records is maintained by an agency or component thereof that performs as one of its principal functions any activity pertaining to the enforcement of criminal laws and that consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

NRC–18 contains information of the type described above and is maintained by the Office of the Inspector General (OIG), a component of NRC which performs as one of its principal functions investigations into violations of criminal law in connection with NRC's programs and operations in accordance with the Inspector General Act of 1978, as amended. Therefore, pursuant to subsection (j)(2), NRC proposes to exempt information maintained in this system of records from all provisions of the Privacy Act except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), (e)(11), and (i).

The disclosure of information contained in NRC–18, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of these investigations could enable suspects to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants and witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel, and their families. The imposition of certain restrictions on the way investigative information is collected, verified, or retained would significantly impede the effectiveness of OIG investigatory activities and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity. The exemption is needed to maintain the integrity and confidentiality of criminal investigations, to protect individuals from harm, and for the following specific reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at the individual's request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and that they are subjects of the investigation. The release of this information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform outside parties of correction of and notation of disputes about information in a system in accordance with subsection (d) of the Privacy Act. Because this system of records is being exempted from subsection (d) concerning access to records, this section is inapplicable to the extent that the system of records will be exempted from subsection (d) of the Privacy Act.

(3) 5 U.S.C. 552a (d) and (f) require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in these

records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Permitting the access normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate with investigators; lead to suppression, alteration, fabrication, or destruction of evidence; endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claims growing out of the investigation.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in agency records only "relevant and necessary" information about an individual. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation.

In addition, during the course of an investigation, the investigator may obtain information that relates primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, OIG investigators should retain this information because it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual, when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The general rule that information be collected "to the greatest extent practicable" from the target individual is not appropriate in investigations. OIG investigators should be authorized to use their professional judgment as to the appropriate sources and timing of an investigation. It is often necessary to conduct an investigation so the target does not suspect that he or she is being investigated. The requirement to obtain the information from the targeted individual may put the suspect on notice of the investigation and thwart the investigation by enabling the suspect to destroy evidence and take other action that would impede the investigation. This requirement may also prevent an OIG investigator from gathering information and evidence before interviewing an investigative target in order to maximize the value of the interview by confronting the target with the evidence or information. In certain circumstances, the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. It is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

In addition, the statutory term "to the greatest extent practicable" is a subjective standard. It is impossible to define the term adequately so that individual OIG investigators can consistently apply it to the many fact patterns present in OIG investigations.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information on a form that can be retained by the person of the authority under which the information is sought and whether disclosure is mandatory or voluntary, of the principal purposes for which the information is intended to be used, of the routine uses that may be made of the information, and of the effects on the person, if any, of not providing all or some part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, investigators, and their families, by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual at his or her request, if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Because this system of records is being exempted from subsections (d) and (f) of the Privacy Act concerning access to records and agency rules, respectively, these requirements are inapplicable to the extent that the system of records will be exempted from these requirements. However, OIG has published some information concerning its notification, access, and contest procedures. Under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his or her records in the system.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information, to protect privacy and physical safety of witnesses and informants, and to avoid the disclosure of investigative techniques and procedures. OIG will continue to publish such a notice in broad generic terms as is its current practice.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual. Much the same rationale is applicable to this proposed exemption as that set out previously in item (4) (duty to maintain in agency records only "relevant and necessary" information about an individual). Although the OIG makes every effort to maintain records that are accurate, relevant, timely, and complete, it is not always possible in an investigation to determine with certainty that all of the information collected is accurate, relevant, timely, and complete. During a thorough investigation, a trained investigator would be expected to collect allegations, conflicting information, and information that may not be based upon the personal knowledge of the provider. When OIG decides to refer the matter to a prosecutive agency, for example, that information would be in the system of records and it may not be possible until further investigation is conducted, or indeed in many cases until after a trial (if at all), to determine the accuracy, relevance, and completeness of some information. This requirement would inhibit the ability of trained investigators to exercise professional judgment in conducting a thorough investigation. Moreover, fairness to affected individuals is ensured by the due process they are accorded in any trial or other proceeding resulting from the OIG investigation.

(10) 5 U.S.C. 552a(g) provides for civil remedies if any agency fails to comply with the requirements concerning

access to records under subsections (d)(1) and (3) of the Privacy Act, maintenance of records under subsection (e)(5) of the Privacy Act, and any other provision of the Privacy Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Allowing civil lawsuits for alleged Privacy Act violations by OIG investigators would compromise OIG investigations by subjecting the sensitive and confidential information in the OIG system of records to the possibility of inappropriate disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques, to the detriment of the particular criminal investigation as well as other investigations conducted by OIG.

The pendency of such a suit would have a chilling effect on investigations, given the possibility of discovery of the contents of the investigative case file. A Privacy Act lawsuit could become a strategic weapon used to impede OIG investigations. Because the system would be exempt from many of the Privacy Act's requirements, it is unnecessary and contradictory to provide for civil remedies from violations of those specific provisions.

Under subsection (k)(5) of the Privacy Act, the head of an agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act if the system of records contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. However, these records would be exempt only to the extent that the disclosure of this material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

NRC–18 contains information of the type described above. Therefore, in accordance with subsection (k)(5), NRC proposes to exempt information maintained in this system of records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act to honor promises of confidentiality should the data subject request access to or amendment of the records, or access to the accounting of disclosure of the records for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to grant access to the accounting of disclosures including the date, nature, and purpose of each disclosure, and the identity of the recipient. The release of this information to the record subject could alert them to the existence of the investigation or prosecutive interest by NRC or other agencies. This could seriously compromise case preparation by prematurely revealing the existence and nature of the investigation; compromise or interfere with witnesses, or make witnesses reluctant to cooperate; and could lead to suppression, alteration, or destruction of evidence.

(2) 5 U.S.C. 552a(d) and (f) require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request. Providing individuals with access to records of an investigation, the right to contest the contents of those records, and the opportunity to force changes to be made to the information in the records would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claims growing out of the investigation or proceeding.

(3) 5 U.S.C. 552a(e)(1) requires agencies to maintain only "relevant and necessary" information about an individual in agency records. This provision is inappropriate for investigations because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(4) Because this system of records is being exempted from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information under subsections (d) and (f) of the Privacy Act, the **Federal Register** notice requirements of 5 U.S.C. 552a(e)(4) (G) and (H) are inapplicable.

(5) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish notice of the categories of sources of records in the system of records. To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. However, the OIG will continue to publish such a notice in broad generic terms as is its current practice.

In addition, 10 CFR 9.95 is being amended to update the list of exemptions that apply to specific systems of records. The list, as amended, will include NRC–23, Office of Investigations Indices, Files, and Associated Records—NRC, and NRC–35, Drug Testing Program Records—NRC, for which corresponding Part 9 amendments were not previously prepared when each new system was established. NRC–40 has been deleted from this list because a review of the system revealed that the subsections (k)(5) and (k)(6) exemptions of the Privacy Act were no longer needed. This amendment will eliminate any confusion regarding the specific exemption(s) applicable to each system of records.

Environmental Impact—Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0043.

Regulatory Analysis

This proposed rule would add exemption (j)(2) of the Privacy Act to the NRC regulations that describe the exempt systems of records. This is an administrative regulatory action that would make NRC's regulations consistent with the regulations applicable to the majority of the statutorily appointed Inspectors General. The proposed rule would also clearly link each system of records to the specific exemption(s) of the Privacy Act under which the system is exempt. As such, the proposed rule would not have an economic impact on any class of licensee or the NRC. By more clearly indicating the exemptions under which a system is exempt and by conforming NRC's regulations to those of the majority of statutorily appointed Inspectors General, the proposed rule may provide some benefit to those who may be required to use these regulations.

The alternative to the proposed rule would be to refrain from adopting the identified exemptions. As discussed in this notice, however, failure to adopt the proposed rule could have detrimental effects on the OIG's investigative program and its ability to obtain and protect information.

This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendments to 10 CFR part 9 are procedural in nature and will aid an NRC office to perform its criminal law enforcement functions. In addition, the amendments will eliminate any confusion regarding specific exemptions available to each affected Privacy Act system of records notice.

Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this proposed rule and, therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552, 552a, and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570.

Subpart B also issued under 5 U.S.C. 552a.

Subpart C also issued under 5 U.S.C. 552b.

2. In § 9.52, paragraph (b)(4) is revised to read as follows:

§ 9.52 Types of requests.

* * * * *

(b) *Requests for accounting of disclosures.* * * * (4) Disclosures expressly exempted by NRC regulations from the requirements of 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a (j)(2) and (k).

3. In § 9.61, current paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

§ 9.61 Procedures for processing requests for records exempt in whole or in part.

* * * * *

(b) *General exemptions.* Generally, 5 U.S.C. 552a(j)(2) allows the exemption of any system of records within the NRC from any part of section 552a except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) of the act if the system of records is maintained by an NRC component that performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crimes, or to apprehend criminals, and consists of—

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole, and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

* * * * *

4. In § 9.80, paragraphs (a) (6), (10), and (11) are revised and a new paragraph (a)(12) is added to read as follows:

§ 9.80 Disclosure of record to persons other than the individual to whom it pertains.

(a) * * *

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or to the Archivist of the United States or designee for evaluation to determine whether the record has such value;

* * * * *

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

5. Section 9.95 is revised to read as follows:

§ 9.95 Specific exemptions.

The following records contained in the designated NRC Systems of Records (NRC–5, NRC–9, NRC–11, NRC–18, NRC–22, NRC–23, NRC–28, NRC–29, NRC–31, NRC–33, NRC–35, NRC–37, and NRC–39) are exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) in accordance with 5 U.S.C. 552a(k). In addition, the records contained in NRC–18 are exempt from the provisions of 5 U.S.C. 552a and the regulations in this part, under 5 U.S.C. 552a(j)(2), except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). Each of these systems of records is subject to the provisions of § 9.61:

(a) Contracts Records Files, NRC–5 (Exemptions (k)(1) and (k)(5));

(b) Equal Employment Opportunity Discrimination Complaint Files, NRC–9 (Exemption (k)(5));

(c) General Personnel Records (Official Personnel Folder and Related Records), NRC–11 (Exemptions (k)(5) and (k)(6));

(d) Office of the Inspector General (OIG) Investigative Records, NRC–18 (Exemptions (j)(2), (k)(1), (k)(2), (k)(5), and (k)(6));

(e) Personnel Performance Appraisals, NRC–22 (Exemptions (k)(1) and (k)(5));

(f) Office of Investigations Indices, Files, and Associated Records, NRC–23 (Exemptions (k)(1), (k)(2), and (k)(6));

(g) Recruiting, Examining, and Placement Records, NRC–28 (Exemption (k)(5));

(h) Nuclear Documents System (NUDOCS), NRC–29 (Exemption (k)(1));

(i) Correspondence and Records, Office of the Secretary, NRC–31 (Exemption (k)(1));

(j) Special Inquiry File, NRC–33 (Exemptions (k)(1), (k)(2), and (k)(5));

(k) Drug Testing Program Records, NRC–35 (Exemption (k)(5));

(l) Information Security Files and Associated Records, NRC–37 (Exemptions (k)(1) and (k)(5)); and

(m) Personnel Security Files and Associated Records, NRC–39 (Exemptions (k)(1), (k)(2), and (k)(5)).

Dated at Rockville, Md., this 18th day of July, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–18319 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

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10 CFR Part 72

[Docket No. PRM–72–1]

Maryland Safe Energy Coalition; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–72–1) from Richard Ochs submitted on behalf of the Maryland Safe Energy Coalition. The petitioner requested several amendments to the regulations governing the independent storage of spent fuel in dry casks.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6195.

SUPPLEMENTARY INFORMATION:

The Petition

On June 23, 1993, Mr. Richard Ochs, on behalf of the Maryland Safe Energy Coalition, filed a petition for rulemaking with the NRC.

The petition relates to generic requirements for the licensing of independent storage of spent fuel in dry casks found in the Commission's regulations contained in 10 CFR Part 72. In particular, Subpart B provides information required to be submitted in a license application, Subpart C provides requirements for the issuance and conditions of a license, Subpart D provides the requirements for the records that must be kept by a licensee, and Subpart E provides requirements for evaluation of the storage facility site.

The petitioner requested that the NRC amend 10 CFR Part 72 to read as follows:

1. In § 72.22(e)(2), "Contents of application: General and financial information," add "Specify the planned life of the ISFSI."

2. In § 72.22(e)(3), "Contents of application: General and financial information," change "after the removal of spent fuel and/or high-level radioactive waste" to "if the spent fuel and/or the high-level radioactive waste is removed."

3. In § 72.42, "Duration of license; renewal," add a new paragraph (d) to read "No license will be issued before 90 days after the final safety evaluation report (SER) is published."

4. In § 72.44(c)(3), "License conditions," add paragraph (v) to read "dry storage casks must be monitored continuously for radioactivity at the exit cooling vents."

5. In § 72.46(d), "Public hearings," add "The time prescribed for a notice of opportunity for a hearing or petition for leave to intervene will extend from the notice of proposed action through 90 days after the final SER is published."

6. In § 72.72(a), "Material balance, inventory, and records requirements for stored materials," after the first sentence add "The records must include the history and condition of all spent fuel assemblies including a description of any defective fuel, such as fuel that is cracked, swollen, blistered, pinholed, or offgassing."

7. In § 72.104(a) "Criteria for radioactive materials in effluents and direct radiation from ISFSI or MSR," in place of "real" put "maximally exposed"; after "individual" add "or fetus"; change "25 mrem" to "5 mrem"; change "75 mrem" to "15 mrem"; and change "25 mrem" to "5 mrem". The sentence would then read, "* * * dose equivalent to any maximally exposed individual or fetus who is located beyond the controlled area must not exceed 5 mrem to the whole body, 15 mrem to the thyroid and 5 mrem to any other organ * * *"

This petition for rulemaking stems from earlier actions regarding the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI). On December 21, 1992, the petitioner filed a petition requesting that the NRC institute a proceeding pursuant to § 2.206 with regard to the Calvert Cliffs ISFSI. In acknowledging the receipt of the December 21, 1992, petition, the Director, Office of Nuclear Material Safety and Safeguards, indicated that to the extent it addressed generic issues related to dry cask storage, the appropriate course of action would be to file a petition for rulemaking. The Director's decision dated August 16, 1993, denied the § 2.206 petition, Baltimore Gas and Electric Company (Calvert Cliffs Independent Spent Fuel Storage Installation), DD–9–14 (August 16, 1993); 58 FR 4863 (August 25, 1993). This rulemaking petition filed on June 23, 1993, addresses many of the generic issues that were raised in the December 21, 1992, § 2.206 petition.

Basis for Request

As a basis for the requested action, the petitioner stated that, as an environmental consumer organization, the Maryland Safe Energy Coalition is interested in the minimization and safe storage of nuclear waste including spent fuel at nuclear power plant sites in general.

The petitioner indicated that it is particularly concerned about spent fuel storage at the Calvert Cliffs Nuclear Power Plant, which is operated by Baltimore Gas and Electric Company (BG&E). The petitioner stated that even though the spent fuel at Calvert Cliffs is stored under a specific Part 72 license, many of the generic requirements proposed by the petitioner would be the same or similar to the specific requirements applicable to independent spent fuel storage at Calvert Cliffs.

Public Comments on the Petition

A notice of filing of petition for rulemaking was published in the **Federal Register** on September 8, 1993 (58 FR 47222). Interested persons were requested to submit written comments or suggestions concerning the petition by November 22, 1993. The NRC received five comment letters from the industry and industrial associations, four from individuals, one from an environmental group, and two from governmental agencies. The commenters were evenly split, six supporting all or parts of the petition and six rejecting the petition. The supporters' comments generally supported the additional 90 days to review the Safety Evaluation Report (SER), the need for records because of the uncertainty of knowing how long the spent fuel will be stored, the need for continuously monitoring radiation leaving storage cask vents, and lower radiation limits. The commenters objecting to the petition were more specific, often citing the Director's decision under § 2.206, *Baltimore Gas & Electric Co.* (Calvert Cliffs Independent Spent Fuel Storage Installation), DD–93–14, August 16, 1993. Concerning extending the opportunity for hearing or petition to 90 days after the final SER is issued, the objecting commenters cited the NRC hearing and petition processes as providing ample opportunity for public participation. In refuting the lower radiation limits, the objectors cited studies and reports by respected organizations and other regulations

including EPA's 40 CFR Part 190 and the recently revised 10 CFR Part 20. Additional information was also received from the petitioner. The petition and the comments received in response to the notice of filing are available for inspection in the NRC Public Document Room identified above.

Reasons for Denial

The NRC has considered the petitioner's requested amendments, the public comments received, and other related information. The following discussion addresses each of the seven parts of the petitioner's requested amendments quoted above and the NRC's response.

Part 1: The petitioner requests that § 72.22(e)(2) be revised by adding "Specify the planned life of the ISFSI."

In the existing § 72.22(e), there is already the requirement for the applicant to specify the period of time for which the license is requested. The petitioner's request is therefore unnecessary and redundant because the applicant is already required to specify the planned life of the ISFSI, that is, the period of time for which the license is requested.

Part 2: The petitioner requests that wording of § 72.22(e)(3) be changed from "after the removal of spent fuel and/or high-level radioactive waste" to "if the spent fuel and/or the high-level radioactive waste is removed."

DOE is required by the Nuclear Waste Policy Act of 1982 to accept spent fuel for ultimate disposal. Moreover, the Commission made a generic determination in its Waste Confidence Decisions (September 18, 1990; 55 FR 38474 and August 31, 1984; 49 FR 34694) that there is reasonable assurance that safe disposal is technically feasible and will be available within the first quarter of the 21st century. The NRC therefore does not believe it is either necessary or appropriate to revise the existing wording of the regulation as requested by the petitioner.

Part 3 and Part 5: The petitioner requests a new paragraph (d) be added to § 72.42 to read "No license will be issued before 90 days after the final safety evaluation report (SER) is published." The petitioner believes that significant new issues will be contained in the final SER. The petitioner also requests that the following be added to § 72.46(d): "The time prescribed for a notice of opportunity for a hearing or petition for leave to intervene will extend from the notice of proposed action through 90 days after the final SER is published." The petitioner states that if a notice of opportunity for a hearing or intervention is limited to a short period after the license application, interested parties may be prevented from obtaining a hearing based on the second or final SER. Information in the latter safety reports may impact on the advisability of issuing a license. The public should have the right and opportunity to comment on the final Safety Analysis Report (SAR) and SER before a license is issued.

An applicant for a site-specific dry cask storage license is required by § 72.24 to submit a detailed safety analysis report (SAR) with the application for license to the NRC. The applicant's SAR contains the detailed basis for requesting a license and, more particularly, for demonstrating compliance with NRC licensing standards. Following receipt of an application, the NRC publishes a notice of docketing an application for an ISFSI in the **Federal Register** as required by § 72.16(e). This notice, which may be combined with a notice of opportunity for a hearing, will typically indicate where a copy of the detailed SAR may be examined. An individual is allowed 30 days from the notice of proposed action to request that NRC grant a hearing in accordance with § 2.105 and § 2.1107. The 30-day period is provided so that the individual can review the license application and SAR and determine whether to request a hearing or intervention. The SAR will provide ample information for the individual to make the determination. At the same time, the NRC technical staff will commence its review of the SAR and other relevant documents and preparation of an SER. These documents and the license are placed in the NRC Public Document Room and the Local Public Document Room near the licensee site where they are also available for review. Should the SER contain a new issue (as opposed to new evidence on an issue apparent from the SAR) pertinent to the requested license, an interested party could seek late intervention or submit a late-filed contention as allowed by § 2.714. Finally, a party can petition the NRC to modify a license if new information comes to light after the license is issued. Thus, an individual has ample opportunity to participate in the ISFSI licensing process and to review and raise issues concerning the SER. Adding another 90-day delay in issuing the license would not significantly improve the process for licensing the safe operation of an ISFSI.

Part 4: The petitioner requests a new paragraph (v) be added to § 72.44(c)(3) to read "dry storage casks must be monitored continuously for radioactivity at the exit cooling vents." The petitioner states that the exit vents are the most likely location of radioactive venting, and it is therefore logical that monitors would be required at these locations.

NRC regulations already require that the license (or Certificate of Compliance in the case of an NRC approved cask) include surveillance and monitoring requirements to determine when corrective actions need be taken to maintain safe storage conditions. See, e.g., 10 CFR 72.122(h)(4). In addition, radiation monitoring and environmental monitoring programs are also already required (e.g., 10 CFR 72.126), and these programs can be expected to detect any radiation leak in excess of NRC limits from an NRC-approved cask. Furthermore, the NRC-approved cask designs which use cooling vents and air flow between the fuel canister and the concrete biological shield for cooling also are designed to require double seal closure welds on the canister. These welds are inspected and the canister leak tested after being loaded. There is no known long-term degradation mechanisms which would cause the weld to fail within the design life of the canister. Therefore, the regulation proposed by the petitioner is not needed.

Part 5: The response to this part has been combined with the response to Part 3 and is addressed above.

Part 6: The petitioner requests that the following be added after the first sentence in § 72.72(a): "The records must include the history and condition of all spent fuel assemblies including a description of any defective fuel, such as fuel that is cracked, swollen, blistered, pinholed, or offgassing." The petitioner states that defective fuel can cause problems for safe storage; therefore, the history and condition of all spent fuel should be documented.

NRC regulations already require that the license (or Certificate of Compliance in the case of an NRC-approved cask) must include specifications for the conditions of fuel assemblies to be loaded into storage casks. See, e.g., 10 CFR 72.44(c). These regulations also require that licensees must demonstrate in procedures and records that the fuel load meets the cask design criteria. In addition, licensees must conduct loading operations in accordance with written procedures which must be specific enough to demonstrate that only fuel assemblies that meet the cask design criteria can be loaded. Licensees are required to maintain records, including the condition of the fuel, of

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all fuel assemblies in storage casks or in the pool. See, e.g., 10 CFR Part 50 Appendix B, XVII, "Quality Assurance Records," and 10 CFR 72.174, "Quality Assurance Records." Therefore, additional records as proposed by the petitioner are not necessary.

Part 7: The petitioner requests the following revisions to § 72.104(a): in place of "real" put "maximally exposed"; after "individual" add "or fetus"; change "25 mrem" to "5 mrem"; change "75 mrem" to "15 mrem"; and change "25 mrem" to "5 mrem." The sentence will then read, "* * * dose equivalent to any maximally exposed individual or fetus who is located beyond the controlled area must not exceed 5 mrem to the whole body, 15 mrem to the thyroid and 5 mrem to any other organ * * *"

The change of the word "real" to "maximally exposed" in § 72.104(a) is not needed. In the regulation, the word "real" in the phrase "The annual dose equivalent to any real individual who is located beyond the controlled area * * *" refers to an individual who lives closest to the boundary of the controlled area. This individual is, in general, the maximally exposed individual because other individuals are further away from the controlled area. If the petitioner's suggested words "maximally exposed" were adopted, it could mean that an imaginary individual would be continually present at the boundary of the controlled area. The NRC regulates radiation doses on the basis of real people in proximity to the boundary of the controlled area.

Section 72.104(a) establishes the bases for the amount of radioactive materials permitted in ISFSI effluents and direct radiation from an ISFSI. It imposes limits on the annual dose equivalent that is received by an individual who is located beyond the controlled area. The petitioner referred to a 1990 study by Alice Stewart that allegedly supports the conclusion that the standards incorporated in § 72.104(a) are too high for a developing fetus, women, and children. The petitioner cited additional references during the comment period.

Section 72.104(a) does not incorporate exposure limits that are unique to ISFSI operation. Rather, the exposure limits used in Part 72 are based on the Environmental Protection Agency's (EPA) Environmental Radiation Standards for fuel cycle facilities specified in 40 CFR Part 190. 45 FR 74693 (November 11, 1980). Moreover, the EPA, commenting on the proposed 10 CFR Part 72, stated: "Our only comment of substance concerns your requirement that such independent storage facilities provide radiation protection consistent with the Agency's public health protection standards for the Uranium Fuel Cycle (40 CFR 190). We generally support your use of these requirements."

The § 72.104(a) exposure limits are also consistent with the recent revision of 10 CFR Part 20—Standards for Protection Against Radiation which became effective on January 1, 1994. This revision was comprehensive in scope and reflects state-of-the-art data on radiation protection. This revision was based on recommendations and studies of expert groups through 1990, including the International Commission on Radiological Protection, the National Council on Radiation Protection and Measurements, the United Nations Scientific Committee on the Effects of Atomic Radiation, and the National Academy of Science's Committee on the Biological Effects of Ionizing Radiation (BEIR). Among other things, these studies analyzed the data on radiation exposure to a developing fetus. In sum, the NRC's radiation protection standards are based on a body of recent, authoritative, and substantial data. The petition fails to provide an adequate basis for its requested revisions to § 72.104(a).

It should also be noted that both 10 CFR Parts 20 and 72 have requirements to keep radiation exposures as low as reasonably achievable (ALARA). Experience to date with ISFSI operations has demonstrated that due to the conservative ISFSI designs and the application of ALARA requirements, the radiation levels associated with ISFSI operations are in fact well below regulatory limits.

For the foregoing reasons, the petition is denied.

Dated at Rockville, Maryland, this 11th day of July, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–18318 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Chapter III

Water Quality Regulations; Proposed Amendments to Comprehensive Plan, Water Code of the Delaware River Basin, Administrative Manual—Part III Water Quality Regulations; Public Hearings

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold public hearings to receive comments on proposed amendments to its Comprehensive Plan, Water Code and Water Quality Regulations concerning water quality criteria for toxic pollutants and policies and procedures to establish wasteload allocations and effluent limitations for point source discharges to Zones 2 through 5 (Trenton, New Jersey to the Delaware Bay) of the tidal Delaware River.

DATES: The public hearings are scheduled as follows: October 5, 1995 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

October 11, 1995 beginning at 1:30 p.m. and continuing until 5:00 p.m. and resuming at 6:30 p.m. and continuing until 9:00 p.m., as long as there are people present wishing to testify.

October 13, 1995 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

The deadline for inclusion of written comments in the hearing record will be announced at the hearings.

ADDRESSES: The October 5, 1995 hearing will be held in the Second Floor Auditorium of the Carvel State Building, 820 North French Street, Wilmington, Delaware.

The October 11, 1995 hearing will be held in the Franklin Room of the Holiday Inn at 4th and Arch Streets, Philadelphia, Pennsylvania.

The October 13, 1995 hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. Telephone (609) 883–9500 ext. 203.

SUPPLEMENTARY INFORMATION:

Background and Rationale

The 1987 amendments to the Federal Clean Water Act required states to adopt water quality criteria for all toxic pollutants for which the U.S. Environmental Protection Agency has issued criteria guidance. This requirement resulted in a total of five separate sets of criteria which apply to the tidal portions of the Delaware River from the head of the tide at Trenton, New Jersey to Delaware Bay. In response, the Commission established the Delaware Estuary Toxics Management Program in 1989, an interstate, cooperative effort, to develop uniform policies and procedures to control the release of substances toxic to humans and aquatic life in point source discharges to the tidal Delaware River.

The principal outputs of the program are:

1. Uniform water quality criteria for toxic pollutants for the mainstem river and tributaries to these waters up to the head of the tide to protect aquatic life, and human health through ingestion of water and fish, and

2. Uniform policies and procedures to establish wasteload allocations and effluent limitations for toxic pollutants for NPDES permits for point sources discharging to these waters.

In 1992, the Commission held briefings on recommended water quality criteria for toxic pollutants to solicit input from the public and regulated community. In 1994, briefings were held on recommended policies and procedures for establishing wasteload allocations and effluent limitations for point source discharges.

The proposed changes to the Commission's regulations were developed with scientific, academic and policy input from the Commission's Water Quality Advisory Committee. Participants in Committee deliberations included representatives from the environmental departments of Delaware, New Jersey, New York, Pennsylvania; U.S. Environmental Protection Agency Regions II and III; and public members from the University of Rhode Island and the Academy of Natural Sciences. Members of the general public also attended various Committee meetings. Comments received from the public briefings and the inputs received through the Advisory Committee deliberations have led to the revisions now being proposed.

Specifically, water quality criteria for selected toxic pollutants are proposed for incorporation in the Comprehensive Plan and Article 3 of the Water Code and Water Quality Regulations as stream quality objectives. Revisions are also proposed for Article 4 of the Water Quality Regulations describing the policies and procedures to be used to establish wasteload allocations for those discharges containing pollutants which impact the designated uses of the river.

Adoption of these revisions will provide a mechanism for identifying toxic pollutants which may impair aquatic life and human health, and developing uniform and equitable wasteload allocations for these pollutants for all NPDES discharges to the tidal Delaware River. The permitting authorities of the states will utilize the allocations developed by the Commission to establish effluent limitations for NPDES permittees in their jurisdictions.

The Commission has prepared Basis and Background Documents entitled "Water Quality Criteria For Toxic Pollutants For the Delaware River Estuary" and "Implementation Policies and Procedures: Phase I TMDLs For Toxic Pollutants in the Delaware River Estuary". These Documents describe the proposed amendments and their rationale in considerable depth and may be obtained by contacting Christopher M. Roberts at the Commission at (609) 883–9500 ext. 205.

Copies of the full text of the proposed amendments may be obtained by contacting Ms. Weisman at the address provided in **FOR FURTHER INFORMATION CONTACT.** Persons wishing to testify are requested to notify the Secretary in advance. Written comments on the proposed amendments should also be submitted to the Secretary.

Delaware River Basin Compact, 75 Stat. 688.

Dated: July 17, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–18301 Filed 7–25–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–000 and RM94–7–001]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities; Notice of Fixed Charge Rate Methodology

Issued July 14, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking and supplemental notice of proposed rulemaking; notice of fixed charge rate methodology.

SUMMARY: The Federal Energy Regulatory Commission's notice of proposed rulemaking in this proceeding in footnote 403 (60 FR 17662 at 17720, April 7, 1995) referred to the representative transmission fixed charge rate of 17.5 percent. This notice demonstrates the derivation of that rate.

DATES: Comments on the proposed rule are due on or before August 7, 1995; reply comments are due on or before October 4, 1995.

FOR FURTHER INFORMATION CONTACT:

David D. Withnell (Legal Information), Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol St., N.E., Washington, D.C. 20426, Telephone: (202) 208–2063

Patricia M. Alexander (Technical Information), Office of Electric Power Regulation, 825 North Capitol Street, N.E., Washington, D.C. 20426, Telephone: (202) 208–0750

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., NE, Washington, DC 20426.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, at 941 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Docket No. RM95–8–000: Derivation of 17.5% Fixed Charge Rate

The following narrative describes the fixed charge rate referenced in footnote 403 in the Stage One implementation section of the NOPR and explains the basis for the Commission's proposed uniform fixed charge rate of 17.5%.

A fixed charge rate is the ratio of a utility's annual fixed costs [depreciation, return (overall and on equity) on investment, taxes, and operating and administrative expenses] to its investment (plant-in-service). To determine the annual fixed costs of providing transmission service, the fixed charge rate is multiplied by the

original cost of transmission investment. This number is then divided by the capability of the transmission system to compute an annual rate for transmission service stated in $/kW. Charges for shorter periods can be derived from this figure, *e.g.*, a monthly rate would be computed by dividing the annual rate by 12.

Annual fixed costs can be calculated using either a levelized or nonlevelized fixed charge rate. With a levelized fixed charge rate, the capital recovery component of the rate does not vary from year to year. Instead, the rate is designed using essentially the same method used to develop fixed-rate home mortgage payments, *i.e.*, the monthly payment does not vary. Most of the monthly payment reflects interest (return on investment in the context of utility rates) in the early years, and most of the monthly payment reflects principal repayment (depreciation in the context of utility rates) in the later years. In contrast, nonlevelized rates decline over time. In the early years of a facility's life, nonlevelized rates will be higher than levelized rates and, in the later years of the facility's service life, nonlevelized rates will be lower than levelized rates. However, under either approach, the utility recovers, on a net present value basis, the same total revenues. See *Maine Public Service Company*, 71 FERC ¶ 61,249 (1995).

As explained in the NOPR, the levelized fixed charge method used by many utilities and the Commission is available on the Commission's Bulletin Board in spreadsheet format. This method is the basis for both of the Stage One options proposed in the NOPR. One option uses the levelized fixed charge method to compute a company-specific transmission cost using company-specific Form No. 1 data.

The other option uses a uniform 17.5% fixed charge rate for all companies. The 17.5% rate is based upon an average of the results of suspension analyses [1] over the last two years using the levelized fixed charge method to evaluate public utility filings involving either transmission service or the transmission component of a power sale.[2] For those filings, the Commission's preliminary fixed charge rate analyses ranged from 13.3% to 29.8% and the arithmetic average was 17%. The arithmetic average of the common equity returns reflected in those fixed charge rates was about 10%.

For purposes of Stage One implementation, the Commission proposed setting the fixed charge rate at 17.5% to reflect the fact that current equity returns (and related income taxes) are somewhat higher than the preliminary equity returns used in the surveyed analyses.

Lois D. Cashell,

Secretary.

APPENDIX—TRANSMISSION FIXED CHARGE RATES

Company	Docket No.	Transmission fixed charge rate (%)
Arizona Public Service Co	ER94-1681-000	17.18
Atlantic City Electric Co	ER93-927-000	21.75
Boston Edison Co	ER95-108-000	17.64
Black Hills Power & Light Co	ER94-1542-000	15.65
Carolina Power & Light Co	ER95-10-000	14.04
Central Illinois Public Service Co	ER94-1611-000	14.64
Central Maine Power Co	ER94-1153-000	17.88
Commonwealth Edison Co	ER95-5-000	16.13
Consolidated Edison Co. of New York	ER94-1668-000	22.05
Dayton Power & Light Co	ER94-1469-000	17.78
Delmarva Power & Light Co	ER94-1501-000	16.52
Duke Power Co	ER94-1429-000	16.77
Edison Sault Electric Co	ER94-1502-000	20.63
Energy Operating Co.'s	ER94-1440-000	15.91
Fitchburg Gas & Electric Light Co	ER94-1203-000	13.34
Florida Power Corp	ER95-100-000	15.46
Green Mountain Power Corp	ER95-84-000	20.11
Idaho Power Co	ER94-1231-000	14.94
Interstate Power Co	ER94-1346-000	14.82
Kentucky Utilities Co	ER94-1678-000	15.45
Louisville Gas & Electric Co	ER94-1480-000	14.75
Madison Gas & Electric Co	ER94-1147-000	14.25
Maine Public Service Co	ER94-1481-000	21.81
Midwest Power Systems	ER94-1278-000	15.29
Minnesota Power & Light Co	ER94-1556-000	17.61
Mississippi Power & Light Co	ER94-1306-000	16.43
Missouri Public Service Co	ER94-1692-000	17.34
Montana Power Co	ER94-1189-000	17.96
New England Power Co	ER94-1338-000	18.37
Niagara Mohawk Power Corp	ER94-1641-000	20.96
Northern States Power Co.'s (Wisc./Minn.)	ER94-1622-000	19.95
New York State Electric & Gas Corp	ER95-108-000	17.65
Ohio Power Co	ER94-1555-000	19.02
Oklahoma Gas & Electric Co	ER94-1266-000	15.06
Orange & Rockland Utilities Inc	ER94-1262-000	29.53
Otter Tail Power Co	ER94-1147-000	17.90
PacifiCorp	ER94-1233-000	13.54

[1] If the Commission's preliminary review of a rate filing indicates that it may not be just and reasonable, the Commission can suspend the rate for up to five months and set it for hearing. The preliminary analysis used to determine the need for a hearing and the appropriate length of any suspension period is called a suspension analysis.

[2] The Appendix contains a list of those filings.

APPENDIX—TRANSMISSION FIXED CHARGE RATES—Continued

Company	Docket No.	Transmission fixed charge rate (%)
Pacific Gas & Electric Co	ER94-1430-000	17.75
Pennsylvania Electric Co	ER94-1436-000	18.53
Pennsylvania Power & Light Co	ER94-1398-000	16.62
Potomac Electric Power Co	ER94-900-000	16.20
Portland General Electric Co	ER93-462-000	16.10
Public Service Co. of Oklahoma	ER94-949-000	15.06
Public Service Co. of Colorado	ER95-88-000	15.08
Public Service Electric & Gas Co	ER93-667-000	18.21
Puget Sound Power & Light Co	ER94-528-000	16.39
Rochester Gas & Electric Corp	ER94-1279-000	20.13
Sierra Pacific Power Co	ER94-1195-000	12.20
Southern California Edison Co	ER94-1608-000	17.48
South Carolina Electric & Gas Co	ER95-104-000	16.04
Southwestern Public Service Co	ER94-1152-000	14.07
Texas-New Mexico Power Co	ER94-1326-000	14.11
Tucson Electric Power Co	ER94-1424-000	13.50
Washington Water Power Co	ER94-183-000	13.50
Western Resources, Inc	ER94-1010-000	15.24
West Texas Utilities Co	ER95-245-000	16.78
Wisconsin Electric Power Co	ER94-1626-000	16.15
Wisconsin Power & Light Co	ER94-1204-000	16.73

[FR Doc. 95-18330 Filed 7-25-95; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-18-95]

RIN 1545-AT33

Lease Term; Exchanges of Tax-Exempt Use Property; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the lease term of tax-exempt use property.

DATES: The public hearing originally scheduled for August 2, 1995, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 168 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** for Friday, April 21, 1995, (60 FR 19868), announced that a public hearing on the proposed regulations would be held on Wednesday, August 2, 1995, beginning at 10:00 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C.

The public hearing scheduled for Wednesday, August 2, 1995 is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95-18312 Filed 7-25-95; 8:45 am]
BILLING CODE 4830-01-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-95-017]

Special Local Regulation; Detroit Grand Prix, Detroit River, Fleming Channel and Scott Middle Ground, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation for portions of the Fleming Channel and Scott Middle Ground in the Detroit River, MI during the Detroit Grand Prix. This event is held annually on the second weekend of June. This regulation will establish a "NO-STOPPING ZONE" in the Fleming Channel, and a "CAUTION AREA" in Scott Middle Ground. The Detroit Grand Prix is an automobile race which will take place on the western end of Belle Isle. This event draws an estimated 2000 spectator craft which could pose hazards to navigation in the area. This regulation is needed to provide for the safety of life, limb, and property on navigable waters during the event.

DATES: Comments must be received on or before September 25, 1995.

ADDRESSES: Comments should be mailed to Commander (oan), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060. The comments will be available for inspection and copying at the Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East 9th Street, Cleveland, Ohio. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address. Annual notice of the exact dates and times of the effective period of the regulation will be published in local notices to mariners. To be placed on the mailing list for such notices, write to Commander (oan), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio, 44199-2060.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, 1240 East Ninth Street, Cleveland, Ohio 44199-2060, (216) 522-3990.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD09 95–017] and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information. The drafters of these regulations are Lieutenant Junior Grade Byron D. Willeford, Ninth Coast Guard District, project officer, Aids to Navigation and Waterways Management Branch and Lieutenant Charles D. Dahill, Ninth Coast Guard District, project attorney, Legal Office.

Discussion of Proposed Regulations

The Coast Guard proposes to establish a special local regulation on specified waters of the Detroit River, MI during the Detroit Grand Prix. The Detroit Grand Prix is an automobile race which will be conducted on the western end of Belle Isle, MI. This event draws an estimated 2000 spectator craft which will dramatically increase boating traffic in the general vicinity. This regulation will require that all vessels operating in the Fleming Channel around Belle Isle not loiter or anchor, unless expressly authorized by the Coast Guard Patrol Commander; and that all vessels operating in the Scott Middle Ground around Belle Isle will be operated at a "SLOW/NO-WAKE" speed, which means that all vessels transiting the area will be operated at bare steerage, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area. This regulation is necessary to ensure the protection of life, limb and property during this event. Exact times and dates will be published in the Coast Guard Ninth District Local Notice to Mariners.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is conducting an environmental analysis for this event pursuant to section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at (59 FR 38654; July 29, 1994).

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. New § 100.903 is added to read as follows:

§ 100.903 Detroit Grand Prix, Detroit River, Fleming Channel and Scott Middle Ground, MI.

(a) *No-stopping zone.* (1) *Location.* That portion of the Fleming Channel, Detroit River, bounded by the south Belle Isle shoreline on the north and the International Boundary on the south; bounded on the east by the International Boundary and the eastern most end of Belle Isle, and bounded on the west by the International Boundary and the western most end of Belle Isle.

(2) *Regulation.* Vessels will not loiter or anchor in the regulated area in paragraph (a)(1) of this section; unless expressly authorized by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Belle Isle, MI).

(b) *Caution area.* (1) *Location.* That portion of the Scott Middle Ground, Detroit River, bounded on the north by the mainland shoreline, and on the south by the north Belle Isle shoreline; bounded on the east by a north-south line from the mainland shoreline and the Belle Isle shoreline intersecting the Waterworks Intake Crib Light, and bounded on the west by a north-south line from the mainland shoreline and the western most end of Belle Isle intersecting North Channel Buoy 2.

(2) *Regulation.* The regulated area in paragraph (b)(1) of this section is designated as a "CAUTION AREA". All commercial and recreational vessel traffic transiting the area will be operated at bare steerageway, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area.

(c) *Patrol Commander.* (1) The Coast Guard will patrol the regulated areas under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander."

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated areas. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(4) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective date:* This Section will become effective from 7:30 a.m. until 6:30 p.m. annually, on Friday, Saturday and Sunday of the second weekend of June, unless otherwise specified in the Coast Guard Local Notice to Mariners.

Dated: July 12, 1995.

G. F. Woolever,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95–18251 Filed 7–25–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 43–1–6868; FRL–5264–6]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from rubber sports ball manufacturing and metal casting operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before August 25, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012;

Maricopa County Department of Environmental Services, 2406 South 24th Street, Suite E–204, Phoenix, AZ 85034–6822.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1191.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the Arizona SIP include: Maricopa County Environmental Services Department's (MCESD's) Rule 334, "Rubber Sports Ball Manufacturing," and Rule 341, "Metal Casting." These rules were submitted by the Arizona Department of Environmental Quality to EPA on August 16, 1994 (Rule 341) and December 19, 1994 (Rule 334).

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Maricopa County Area. 43 FR 8964; 40 CFR 81.303. On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area of Maricopa County to the Maricopa Association of Governments (MAG) Urban Planning Area. 44 FR 16391, 40 CFR 81.303. On February 24, 1984, EPA notified the Governor of Arizona, pursuant to section 110(a)(2)(H) of the pre-amended ACT, that MCESD's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call, 49 FR 18827, May 3, 1984). On May 26, 1988, EPA again notified the Governor of Arizona that MCESD's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, 53 FR 34500, September 7, 1988). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(b)(2)(C) of the CAA, Congress statutorily required nonattainment areas to submit RACT rules for all major stationary sources of VOCs by November 15, 1992 (the RACT catch-up requirement).

The MAG Urban Planning Area is classified as moderate;[1] therefore, this area was subject to the RACT catch-up requirement and the November 15, 1992 deadline.[2]

The State of Arizona submitted many revised RACT rules for incorporation into its SIP on August 16, 1994, and December 19, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for MCESD's Rule 334, "Rubber Sports Ball Manufacturing," and Rule 341, "Metal Casting." The MCESD adopted Rule 334 on September 20, 1994, and Rule 341 on August 5, 1994. These submitted rules were found to be complete on August 16, 1994 (Rule 341) and January 19, 1995 (Rule 334) pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[3] and are being proposed for approval into the SIP.

Rules 334 and 341 control VOC emissions from rubber sports ball manufacturing and metal casting operations by restricting the VOC content of materials used in these operations or by requiring emission control systems. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of the MCESD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(b)(2)(C) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy

[1] The MAG Urban Planning Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 8, 1991).

[2] Arizona did not make the required SIP submittal by November 15, 1992. On January 15, 1993, the EPA made a finding of nonsubmittal pursuant to section 179(a)(1), which started an 18-month sanction clock. The rules being acted upon in this NPRM were submitted in response to the EPA finding of failure to submit.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

guidance documents.[4] Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "catch-up" their RACT rules. See section 182(b)(2). For some categories, such as rubber sports ball manufacturing and metal casting, EPA did not publish a CTG. In such cases, the state and local agencies may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. Therefore, the MCESD must determine the VOC control measures that are reasonable and available for the affected sources. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 4. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MCESD's Rule 334, "Rubber Sports Ball Manufacturing," is a new rule that limits the VOCs from the manufacture of rubber sport balls. Compliance with the rule is obtained through one of two methods: (1) The use of adhesives with a VOC content of 288 grams per liter (2.4 lbs/gal), less water and exempt compounds, or (2) the use of an emission control system with an overall efficiency (capture and control) of at least 81%. Records are explicitly required for all operations, including any that are exempt from the emission standards of the rule due to low usage. All records must be maintained for at least 3 years. Good engineering practices are required for operations, including the proper storage and disposal of VOC materials. The test methods referenced are all EPA approved, and there are no provisions for alternative methods. The rule required final compliance by May 31, 1995. Rule 334 is expected to achieve VOC reductions of at least 856 tpy. A more detailed discussion of the source controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD) for Rule 334, dated March 27, 1995.

MCESD's Rule 341, "Metal Casting," is a new rule that limits the emissions of VOCs from metal investment-casting operations. In metal investment-casting, a solvent such as ethanol is used to bind the grains of sand together until the silicate components are kiln-fired at 1800°F and fused into a permanent mold. Compliance with the rule is obtained through one of three methods: (1) The use of an emission control system with an overall efficiency (capture and control) of at least 81%, (2) the use of binder materials with a VOC content of 420 grams VOC per liter (3.5 lbs/gal), less water and exempt compounds, or (3) the use of binder materials such that their daily-weighted average does not exceed a VOC content of 420 grams VOC per liter (3.5 lbs/gal), less water and exempt compounds. Records are explicitly required for all operations, including any that are exempt from the emission standards of the rule due to low usage. All records must be maintained for at least 3 years. Good engineering practices are required for operations, including the proper storage and disposal of VOC materials. The test methods referenced are all EPA approved, and there are no provisions for alternative methods. The rule required final compliance by September 1, 1994. Rule 341 is expected to achieve VOC reductions of at least 271 tpy. A more detailed discussion of the source controlled, the controls required, and the justification for why these controls represent RACT can be found in the TSD for Rule 341, dated March 27, 1995.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MCESD's Rule 334, "Rubber Sports Ball Manufacturing," and Rule 341, "Metal Casting," are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTG's).

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 182(b)(2)(C) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action would impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this proposed or action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 10, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–18371 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 180

[PP 3F2792/P622; FRL–4966–2]

RIN 2070–AC18

Pesticide Tolerance for Pendimethalin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for the combined residues of the herbicide pendimethalin (*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine) and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol in or on the raw agricultural commodities pea pods, shelled peas, pea vines, and peas plus pods each at 0.1 part per million (ppm). The American Cyanamid Co. requested this proposed regulation to establish a maximum permissible level for residues of the herbicide in a petition submitted under the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: Comments, identified by the document control number [PP 3F2792/P622], must be received on or before August 25, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 3F2792/P622]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of January 1, 1983 (48 FR 1350), which announced that American Cyanamid Co. had submitted pesticide petition (PP) 3F2792 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR 180.361 by establishing a tolerance for the combined residues of the herbicide pendimethalin, in or on the raw agricultural commodities pea pods, shelled peas, pea vines, and peas plus pods each at 0.1 part per million (ppm). There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The petitioner subsequently amended the petition and proposed to establish a tolerance for the combined residues of pendimethalin and its metabolite in or on the raw agricultural commodities of the legume vegetables (succulent or dried) group at 0.1 ppm and in or on the foliage of legume vegetables group at 0.1 ppm. The petition was later revised to propose tolerances for the combined residues of pendimethalin and its metabolite in or on peas (except field peas) pursuant to 40 CFR 180.1(h).

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. Results of acute oral, dermal and inhalation studies, primary eye irritation studies, and primary dermal irritation and sensitization studies placing technical-grade pendimethalin in Toxicity Category III.

2. A subchronic feeding study with rats fed dosages of 0, 10, 50, or 500 milligrams/kilogram/day (mg/kg/day) with no-observable-effect level (NOEL) of 50 mg/kg/day based on decreased hematocrit and hemoglobin levels in males, decreased body weight gain and food consumption, and hypertrophy of the liver accompanied by increased liver weights at 500 mg/kg/day.

3. A chronic feeding study in dogs fed dosages of 0, 12.5, 50, or 200 mg/kg/day with a NOEL of 12.5 mg/kg/day based on an increase in serum alkaline phosphatase and increased liver weights and hepatic lesions at 50 mg/kg/day.

4. A chronic feeding/carcinogenicity study in rats fed dosages of 0, 5, 25, or 50 mg/kg/day with a statistically significant increased trend and pairwise comparison between the high-dosed group and the control for thyroid follicular cell adenomas in male and female rats. The systemic NOEL is 5 mg/kg/day based on pigmentation of thyroid follicular cells in males and females.

5. A carcinogenicity study in male mice fed dosages of 0, 12.3, 62.3, or 622.1 mg/kg/day or female mice fed dosages of 0, 15.6, 783, or 806.9 mg/kg/day with no carcinogenic effects observed under the conditions of the study up to 622.1 mg/kg/day (highest dose tested [HDT]) in male mice or up to 806.9 mg/kg/day (HDT) in female mice.

6. A developmental toxicity study with rats fed dosages of 0, 125, 250, or 500 mg/kg/day with a developmental NOEL greater than 500 mg/kg/day (HDT) and a maternal NOEL greater than 500 mg/kg/day (HDT).

7. A developmental toxicity study with rabbits fed dosages of 0, 15, 30, or 60 mg/kg/day with a maternal and developmental NOEL greater than 60 mg/kg/day (HDT).

8. A two-generation reproduction study with rats fed dosages of 0, 34, 172, or 346 mg/kg/day (males) and 0, 43, 216, or 436 mg/kg/day (females) with a reproductive NOEL of 43 mg/kg/day based on a decrease in pup weight at 216 mg/kg/day. The parental NOEL is 34 mg/kg/day based on decreased body weight and food consumption at 172 mg/kg/day.

9. Mutagenicity data included assays with Salmonella typhimurium (positive in strains TA 1538 and TA 98 with metabolic activation); an *in vitro* cytogenetics-CHO assay (negative up to 25 ug/plate without metabolic activation and 100 ug/mL with activation); and an unscheduled DNA synthesis (negative between 30 and 3,000 ug/well). A micronucleus assay in mice was negative at 625 and 1,250 mg/kg.

The Health Effects Division Carcinogenicity Peer Review Committee (PRC) evaluated the toxicology data for carcinogenic potential. The PRC classified pendimethalin as a Group C-possible human carcinogen and recommended that for quantification of human risk, the Reference Dose (RfD) approach should be used. This decision was based on statistically significant increased trend and pairwise comparison between the high-dose group and controls for thyroid follicular cell adenomas in male and female rats. This study was conducted using adequate doses for the determination of carcinogenic activity. Pendimethalin induces gene mutations, but not aberrations or DNA damage/repair, based on acceptable studies. Structurally related compounds showed evidence of tumorigenic activity.

Based on the NOEL of 12.5 mg/kg/day (2-year dog-feeding study) and an uncertainty factor of 300, the RfD (reference dose) for pendimethalin is calculated to be 0.04 mg/kg/body weigh/day (bwt). The theoretical maximum residue contribution (TMRC) is 3.11 X 10^{-4} mg/kg bwt/day for existing tolerances for the overall U.S. population. The current action will increase the TMRC by 1.8 X 10^{-5} mg/kg bwt/day or 0.04 percent of the RfD. This tolerance and previously established tolerances utilize 0.8 percent of the RfD. The subgroup most highly exposed, children ages 1 through 6, has a TMRC from published and proposed uses of 7.2 X 10^{-4} mg/kg bwt/day or 1.8 percent of the RfD, assuming that residue levels are at the established tolerances and 100 percent of the crop is treated.

There are no desirable data lacking and no pending regulations against the continuing registration of this chemical. The chronic dietary risk from this chemical appears to be minimal, particularly since none of the U.S. population subgroups has an exposure greater than 2 percent of the RfD.

The nature of the residues in plants and animals is adequately understood, and adequate analytical methodology (GLC using a 63Ni electron capture detector) is available for enforcement and has been published in the Pesticide Analytical Method (PAM), Method I. There is no expectation that secondary residues will occur in meat, milk, poultry, or eggs from this use.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. The pesticide is considered useful for the purpose for which it is intended. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3F2792/P622]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 3F2792/P622] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 10, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.361, paragraph (a) is amended in the table therein by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Peas (except field peas)	0.1
* * * * *	
* * * * *	

[FR Doc. 95–18001 Filed 7–25–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5283–5]

Notice of Intent To Delete Stewco, Incorporated Superfund Site Waskom, Harrison County, Texas; National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Stewco, Incorporated Superfund Site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Stewco, Incorporated Superfund site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Texas (Texas Natural Resource Conservation Commission) have determined that all appropriate actions under CERCLA have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State have determined that response activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning this site may be submitted on or before August 25, 1995.

ADDRESSES: Comments may be mailed to: Mr. Donn Walters, Community Relations Coordinator, U.S. EPA, Region 6 (6H–MC), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6483 or 1–800–533–3508.

Comprehensive information on this site is available through the EPA Region 6 public docket, which is located at EPA's Region 6 library office and is available for viewing from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The office address is: U. S. EPA, Region 6, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6424 or 665–6427.

Background information from the Regional public docket is available for viewing at the Stewco, Incorporated Superfund site information repositories located at:

Environmental Protection Agency, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202
Texas Natural Resource Conservation Commission, 12118 North IH–35, Building D, Room 190, Austin, Texas 78753, (512) 239–2920
Waskom City Hall, 304 Texas Avenue, Waskom, Texas 75692, (903) 687–2694

FOR FURTHER INFORMATION CONTACT: Mr. Donald H. Williams, Chief, Oklahoma/Texas Remedial Section (6H–SR), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–2197.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. History and Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Stewco, Incorporated Superfund site, Waskom, Harrison County, Texas, from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments concerning this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1), sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(1) Responsible parties or other persons have implemented all appropriate response actions required; or

(2) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(3) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e)(1) has been met, EPA may formally begin deletion procedures. The following procedures were used for the intended deletion of this site:

(1) EPA Region 6 has recommended deletion and has prepared the relevant documents.

(2) The State of Texas has concurred with the deletion decision.

(3) Concurrent with this National Notice of Intent to Delete, a notice will be published in local newspapers and shall be distributed to appropriate federal, state, and local officials, and other interested parties. This local notice also announces a thirty (30) day public comment period on the deletion package.

(4) The Region has made all relevant documents available in the Regional Office and local site and State of Texas information repositories.

These procedures have been completed for the Stewco, Incorporated site. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day public comment period and the availability of the Notice of Intent to Delete. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are included in the information repository and deletion docket.

Upon completion of the 30-day public comment period, the EPA Regional Office will evaluate these comments before the final decision to delete. If necessary, the Region will prepare a Responsiveness Summary, to address those concerns raised by the comments received during the public comment period. The Responsiveness Summary will be made available to the public at the information repositories. Members of the public are welcome to contact the EPA Regional Office to obtain a copy of the Responsiveness Summary, when available. If EPA still determines that deletion from the NPL is appropriate after receiving public comments, a final notice of deletion will be published in the **Federal Register**. However, it is not until a notice of deletion is published in the **Federal Register** that the site would be actually deleted.

IV. History and Basis for Intended Site Deletion

The following summary provides the Agency's rationale for deleting the Stewco, Incorporated (Stewco) Superfund site from the NPL.

The Stewco Superfund site is located in Waskom, Harrison County, Texas, near the Texas/Louisiana State line. The site consists of ponds at two locations approximately one mile apart. Location #1 is a one-half acre plot located on Texas Highway 9, approximately one-half mile south of Interstate Highway 20. Location #2 is on the eastbound access road of Interstate 20, one mile west of Highway 9. Petroleum storage facilities are located directly north of the Stewco site. Land use south of the site is residential. Land east of the site is undeveloped at the present time.

The Stewco site was operated as a truck-tank washing facility from 1972 to 1983. Wastewater was generated from high pressure washing and steam cleaning tank trucks used to haul glue, gasoline, diesel and jet fuel, and creosote. Wastewater and tank residues were disposed of in two ponds at Location #1. Excess wastewater was trucked to a pond at Location #2 for disposal.

In August 1976, Corbett Transport, Inc., the predecessor to Stewco, obtained state permits for the disposal of wastewater from the truck washing operation. Field inspections conducted by the Texas Natural Resource Conservation Commission (TNRCC), formerly the Texas Department of Water Resources, indicated numerous violations of the Stewco permit requirements. These violations included unauthorized surface water discharges at Location #1, ground water contamination, and inadequate operation of the wastewater neutralization facility. After the site was abandoned in 1983, the ponds at Location #1 filled with rain water, eventually overtopping the dike around the ponds. This created a serious threat of the dikes collapsing, which would result in a substantial release of hazardous substances to surrounding businesses and one residence.

As a result of this threat, the EPA Region 6 Emergency Response Branch conducted a removal action in April 1984. A detailed account of this action is available in the EPA On-Scene Coordinator's "After Action Report" (May 1985).

Soil and ground water analytical data collected prior to and during the 1984 removal action was used to propose the site for inclusion on the NPL in June 1984. Although Location #1 had undergone an immediate removal action, the ranking was performed as if the removal never occurred. Inclusion of the site on the NPL was based on the potential for site contaminants to migrate to the Wilcox aquifer, the drinking water supply for the city of Waskom. Several private wells were also located within a one-half mile radius of the site. At the time of the ranking, constituents of concern were polynuclear aromatic hydrocarbons, phthalates, DDT, and aromatic solvents.

Field investigations conducted by EPA from 1983 through 1988 showed organic contamination in soil, ground water, surface water, and pond sediments onsite. In 1988, EPA conducted a remedial investigation (RI) to determine the extent and magnitude of any risks posed by contaminants at the site and concluded that several contaminants detected during the RI are not attributable to the Stewco site. Benzene and xylene, found in soils in 1988, were not found in soil samples taken in 1983 and 1984 on the Stewco property at Location #1. However, these compounds were documented in reports of soil samples taken from petrochemical facilities directly north of Stewco. Background concentrations of polynuclear aromatic hydrocarbons (PAH's) detected were higher than concentrations in soil samples taken onsite.

The highest concentrations of benzene and 1,2-dichloroethane in the ground water were found in wells placed perpendicular to the gradient across the site. Benzene was also documented in monitoring wells located east and southeast of Stewco, areas unaffected by the Stewco operation. Any release of contaminants of concern from the Stewco site would be detected in monitoring wells located immediately downgradient of Location #1. Because contamination was not detected in these wells, EPA does not believe that the Stewco site is the source of contamination of the shallow ground water at Location #1. No contaminants of concern were detected in any of the residential wells sampled during the RI, indicating that area water supplies have not been impacted by the Stewco site.

At Location #2, benzene and xylene were detected in a shallow monitoring well upgradient of the pond. Xylene was also detected in a shallow monitoring well installed perpendicular to the ground water gradient. However, these chemicals were not found in either the shallow or the deep monitoring wells installed downgradient of Location #2. EPA would expect to detect contamination in downgradient wells if the pond was a source of contamination.

The 1988 remedial investigation and risk assessment were designed to assess the completeness of the 1984 removal action. Sampling undertaken during the RI indicated that the average excess cancer risk for a resident onsite at Location #1 was reduced to 2 in 1,000,000 by the removal action. The non-cancer risk (Hazard Index) was reduced to less than 1.0. Non-carcinogenic health effects are not expected at sites with a Hazard Index less than 1.0. These risk levels are consistent with EPA's remedial goal of 1 in 10,000 to 1 in 1,000,000 excess lifetime cancer incidents and a Hazard Index of 1.0 or less. Based on this reduction in risk at Location #1, EPA determined that no further remedial activities were necessary to address soil contamination at Location #1.

The excess lifetime cancer risk associated with the maximum concentration of benzene found in the ground water at Location #2 was calculated to be 2 in 100,000 in the 1988 RI. This calculation was made assuming that the ground water was developed as a drinking water supply. Because this risk is well within the target risk range for Superfund remedial actions of 1 in 10,000 to 1 in 1,000,000, EPA determined that no remedial action is necessary to address ground water contamination at Location #2.

EPA activities to address the contamination at the Stewco site during the 1984 removal action consisted of removing the source of the contamination from the site. Approximately 400,000 gallons of liquid wastes were pumped from Location #1, treated by activated carbon adsorption, and discharged to a storm water runoff drain adjacent to the site. In addition, approximately 5,500 cubic yards of sludges were excavated from these lagoons, stabilized, and shipped offsite for disposal in a hazardous waste landfill permitted under the Resource Conservation and Recovery Act (RCRA). Finally, the lagoon area was backfilled with clean soil, covered with a 10-mil thick synthetic liner and one foot of compacted clay, graded, and re-seeded with grass.

No removal activities were considered necessary at Location #2 since contaminant concentrations did not pose a risk and no evidence of dike failure or pond liquids spilling over the dike was found.

The Agency for Toxic Substances and Disease Registry was consulted and supports these conclusions.

Data generated during the 1988 RI indicated that the removal action conducted in 1984 adequately addressed any actual or potential threats posed by the Stewco site. A comment period for public input on the proposed No Further Action decision for Stewco began on July 25, 1988, and closed on August 23, 1988. EPA met with the Mayor of Waskom, Texas, and editors of the local newspaper to discuss the plan on August 4, 1988. On September 16, 1988, a Record of Decision, selecting the final remedy for the Stewco site, was signed by the Region 6 Regional Administrator. Specifically, the selected remedy included:

1. Closure of existing monitoring wells, if not needed for future offsite investigations;

2. Further investigation of the nearby petroleum storage facilities (Mobil and Texaco) to assess any contribution to existing ground water contamination;

3. Deletion of the site from the NPL if EPA determines that offsite sources, and not the Stewco site, are contributing to ground water contamination.

While investigations conducted in 1986 at petroleum storage facilities adjacent to Stewco detected benzene contamination offsite, EPA requested, as part of the 1988 Record of Decision, that TNRCC conduct an investigation of these facilities under RCRA. The purpose of this investigation, conducted by the Mobil Oil Corporation in compliance with guidelines set by TNRCC, was to confirm that ground water contamination in the area was, in fact, not attributable to Stewco. Data submitted in a report written by Applied Earth Sciences for Mobil (December 10, 1990), indicate that a hydrocarbon plume is migrating from a storage facility north of Mobil, across a portion of the Mobil property and the Stewco property. Benzene concentrations were reported in monitoring wells north of the Mobil property ranging from 9,700 ug/l to 27,000 ug/l and from 180 ug/l to 300 ug/l south of the property. EPA believes that this report demonstrates sufficiently that ground water contamination found during the Stewco RI is not attributable to the Stewco site.

No operation and maintenance activities are required at the Stewco site. The five-year review requirements of Section 121 (c) of the Superfund Amendments and Reauthorization Act of 1986 are not applicable, since contaminants attributable to Stewco are at concentrations that allow for unlimited use and unrestricted access.

EPA's removal action addressed volatile (benzene, toluene, and xylene) and semi-volatile (polynuclear aromatic hydrocarbons) contamination found at the Stewco site. Soil and ground water sampling conducted during the 1984 removal action and the 1988 remedial investigation confirm that contaminants attributable to Stewco do not remain onsite in concentrations that would pose an excess risk beyond EPA's target risk range, as set in the NCP. Therefore, EPA's removal action and No Further Action Record of Decision are protective of human health and the environment. The State of Texas has concurred with the Record of Decision.

The documentation supporting the Record of Decision and this deletion notice is included in the Administrative Record and files for the Stewco site. A bibliography of documents supporting this deletion notice is attached.

EPA, with concurrence of the State of Texas, has determined that all appropriate Fund-financed responses under CERCLA at the Stewco Superfund site have been completed, and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Texas have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

Dated: June 29, 1995.

Myron O. Knudson,

Acting Regional Administrator.

[FR Doc. 95–18256 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7145]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT:

Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Grande Terrace (City), San Bernardino County.	Santa Ana River	At Atchison, Topeka, and Santa Fe Railroad Bridge.	None	*913
			Approximately 200 feet upstream of Atchison, Topeka, and Santa Fe Railroad Bridge.	None	*920
			Approximately 50 feet upstream of Southern Pacific Railroad Bridge.	None	*922
		Maps are available at City Hall, City of Grande Terrace, 22795 Barton Road, Grande Terrace, California.			
		Send comments to The Honorable Byron Matteson, Mayor, City of Grande Terrace, 22795 Barton Road, Grande Terrace, California 92313.			
California	Loma Linda (City), San Bernardino County.	San Timoteo Creek	Approximately 400 feet upstream of California Street.	None	*1,210
			Approximately 1,222 feet upstream of California Street.	None	*1,222
		Maps are available at City Hall, City of Loma Linda, 25541 Barton Road, Loma Linda, California.			
		Send comments to The Honorable Robert Christman, Mayor, City of Loma Linda, City Hall, 25541 Barton Road, Loma Linda, California 92354.			
California	San Bernardino (City), San Bernardino County.	San Timoteo Wash A	At Hunts Lane	None	*994
			At Waterman Avenue	None	*1,018
			At divergence from San Timoteo Creek (approximately at Artesia Street).	None	*1,038
		Warn Creek	Approximately 700 feet upstream of Sterling Avenue.	None	*1,110
			Approximately 1,000 feet upstream of Sterling Avenue.	None	*1,112

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Maps are available at City Hall, City of City of San Bernardino, 300 North D Street, San Bernardino, California.			
		Send comments to The Honorable Tom Minor, Mayor, City of San Bernardino, City Hall, 300 North D Street, San Bernardino, California 92418.			
California	San Bernardino County, (Unincorporated Areas).	Little Sand Creek	Just upstream of North Sterling Avenue	None	*1,272
			20 feet upstream of East Lynwood Avenue.	None	*1,292
		Reche Canyon Channel	Approximately 2,100 feet upstream of Barton Road.	*1,084	*1,078
			At Pepper Tree Lane	*1,155	*1,156
			50 feet downstream of Fern Street	*1,223	*1,210
			140 feet upstream of Mobile Home Road	*1,253	*1,246
			300 feet upstream of Mobile Home Road	*1,258	#3
			Approximately 325 feet upstream of Tidewell Driveway.	*1,297	#3
			Approximately 500 feet upstream of Tidewell Driveway.	*1,310	*1,304
			At San Bernardino County Boundary	*1,330	*1,330
		Santa Ana River	Approximately 600 feet downstream of La Cadena Drive.	None	*903
			At Atchison, Topeka, and Santa Fe Railroad Bridge.	None	*913
		Twentynine Palms Channel.	Approximately 400 feet downstream of Bullion Mountain Road.	None	*1,725
			Approximately 200 feet upstream of Bullion Mountain Road.	None	*1,728
		Alluvial Fan Flooding:			
		Basin 1	300 feet southeast of intersection of Base Line Road and Encelia Avenue.	None	#1
		Basin 2 (Smoke Tree Wash).	100 feet south of Base Line Road along Smoke Tree Wash.	None	#1
		Basin 3	1,400 feet south of intersection of Foothill Drive and Springs Road.	None	#1
		Basin 5 (Joshua Mountain Wash).	100 feet southwest of intersection of Base Line Road and Adobe Road.	None	#1
		Basins 6 and 7	1,500 feet south of intersection of Rocky Road and Desert Knoll Avenue.	None	#1
		Basins 8 through 11	2,000 feet south and 200 feet west of the intersection of Rocky Road and Utah Trail.	None	#1
		Maps are available for inspection at San Bernardino County Department of Public Works, 385 North Arrowhead Avenue, San Bernardino, California.			
		Send comments to The Honorable James Hlawek, San Bernardino County Administrative Officer, County Government Center, 385 North Arrowhead Avenue, Fifth Floor, San Bernardino, California 92415–0110.			
California	Victorville (City), San Bernardino County.	Mojave River	200 feet downstream of Unnamed Wash	*2,639	*2,640
		Maps are available for inspection at City Hall, City of Victorville, 14343 Civic Drive, Victorville, California			
		Send comments to The Honorable Terry Caldwell, Mayor, City of Victorville, P.O. Box 5001, Victorville, California 92393–5001.			
Oregon	Gresham (City), Multnomah County.	Kelly Creek	At upstream end of culvert at Kane Road	None	*303
			Approximately 1,296 feet above downstream end of culvert at Kane Road.	None	*319
			At downstream end of culvert at Division Street.	None	*335
		Maps are available for inspection at the City of Gresham, 1333 Northwest Eastman Parkway, Gresham, Oregon.			
		Send comments to The Honorable Gussie McRobert, Mayor, City of Gresham, 1333 Northwest Eastman Parkway, Gresham, Oregon 97030.			
Texas	Baytown (City), Chambers and Harris Counties.	Cedar Bayou	At the power plant across Cedar Bayou from Cedar Bayou Junior High School.	*14	*12
			At Milam Bend	*17	*15

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At Southern Pacific Railroad Bridge south of Eldon.	*23	*20
			Just south of Interstate Highway 10	*25	*22
		Horsepen Bayou	At confluence with Cedar Bayou	*19	*17
			Approximately 500 feet east of State Highway 146.	*19	*17

Maps are available for inspection at City Hall, City of Baytown, 2401 Market Street, Baytown, Texas.

Send comments to The Honorable Pete Alfaro, Mayor, City of Baytown, City Hall, 2401 Market Street, Baytown, Texas 77522.

Texas	Bexar County (Unicorporated Areas).	Cibolo Creek	Approximately 400 feet upstream of confluence of Martinez Creek.	None	*525
			Approximately 900 feet downstream of Weir Road.	*646	*646
			Approximately 200 feet upstream of Missouri and Pacific Railroad.	*788	*786
			Approximately 21,000 feet upstream of Missouri and Pacific Railroad.	*839	*640
			Approximately 6,000 feet downstream of confluence of Clear Springs Fork.	*877	*880
			Approximately 14,800 feet downstream of FM 1863 (downstream crossing).	*929	*930
			Just downstream of FM 1863 (upstream crossing).	*961	*965
			Just upstream of Smithson Valley Road	*1,013	*1,017
			Just downstream of U.S. Route 281 (northbound lanes).	*1,061	*1,061
			Just downstream of Blanco Road	None	*1,130
			Approximately 300 feet downstream of Ralph Fair Road.	*1,247	*1,254
		Balcones Creek	Approximately 200 feet upstream of confluence with Cibolo Creek.	*1,270	*1,274
			Approximately 3,200 feet upstream of confluence with Cibolo Creek.	*1,278	*1,278
		West Salitrillo Creek	Just upstream of FM 1516	*646	*647
			Just upstream of Martinez Creek Dam No. 4.	None	*740
			Approximately 150 feet downstream of Miller Road.	None	*801
		East Salitrillo Creek	At confluence of East Branch of Salitrillo Creek.	*673	*670
			Just upstream of Southern Pacific Railroad.	*691	*695
			Approximately 2,525 feet upstream of confluence of East Fork of Salitrillo Creek.	*733	*736
		East Branch of Salitrillo Creek.	Approximately 650 feet upstream of confluence with East Salitrillo Creek.	None	*672

Maps are available for inspection at the Bexar County Public Works Department, Vista Verde Building, Suite 420, 233 North Pecos Street, San Antonio, Texas.

Send comments to The Honorable Cyndi Krier, Bexas County Judge, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205.

Texas	Converse (City), Bexar County.	Drain No. 10	At confluence with West Salitrillo Creek	None	*795
			Just downstream of Miller Road	None	*797
		West Salitrillo Creek	Approximately 150 feet upstream of FM 1516.	*647	*649
			Approximately 500 feet downstream of Southern Pacific Railroad.	*692	*700
			Just upstream of Kitty Hawk Road	None	*771
			Approximately 450 feet downstream of Miller Road.	None	*797
		East Salitrillo Creek	Approximately 1,500 feet upstream of confluence with Salitrillo Creek.	*628	*629
			Approximately 250 feet upstream of Schaefer Road.	*650	*651
			Approximately 100 feet upstream of FM 78.	*682	*683

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 350 feet downstream of Martinez Creek Dam No. 5.	*758	*761
		East Branch of Salitrillo Creek.	Approximately 800 feet upstream of confluence with East Salitrillo Creek.	None	*673
			Approximately 100 feet downstream of FM 78.	None	*714

Maps are available for inspection at City Hall, City of Converse, 403 South Setuins Avenue, Converse, Texas.

Send comments to The Honorable Rick Maas, Mayor, City of Converse, City Hall, 403 South Setuins Avenue, Converse, Texas 78109.

Texas	Fair Oaks Ranch (City), Bexar County.	Cibolo Creek	Approximately 700 feet upstream of Ralph Fair Road.	*1,252	*1,256
			Approximately 200 feet upstream of confluence of Balcones Creek.	*1,270	*1,274
			Approximately 9,800 feet upstream of confluence of Balcones Creek.	*1,294	*1,302
		Balcones Creek	Approximately 200 feet upstream of confluence with Cibolo Creek.	*1,270	*1,274
			Approximately 3,200 feet upstream of confluence with Cibolo Creek.	*1,278	*1,278

Maps are available for inspection at City Hall, City of Fair Oaks Ranch, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas.

Send comments to The Honorable E. L. Gaubatz, Mayor, City of Fair Oaks Ranch, City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas 78006.

Texas	Live Oak (City), Bexar County.	Drain No. 1	At confluence with East Salitrillo Creek	*835	*835
			Approximately 50 feet upstream of Cherrywood Lane.	*842	*841
		Drain No. 2	At confluence with East Salitrillo Creek	*825	*829
			Approximately 280 feet upstream of Greycliff Drive.	None	*848
		Drain No. 3	Just upstream of confluence with East Salitrillo Creek.	*814	*813
			Approximately 100 feet upstream of Wilderness Trail.	*855	*851
			Approximately 750 feet upstream of Toepperweim Road.	None	*878
		Drain No. 4	Approximately 120 feet upstream of confluence with East Salitrillo Creek.	*810	*808
			Approximately 350 feet upstream of Village Oak Drive.	None	*848
		Drain No. 5	Approximately 40 feet upstream of confluence with Drain No. 4.	*815	*815
			Approximately 1,080 feet upstream of Enchanted Oaks Drive.	None	*834
		Drain No. 6	At confluence with East Salitrillo Creek	*800	*797
			Approximately 1,250 feet upstream of Lone Shadow Trail.	*872	*868
		Drain No. 7	Approximately 1,200 feet upstream of Martinez Creek Dam No. 5.	*792	*702
			Approximately 1,000 feet upstream of Lone Shadow Trail.	*847	*839
		Drain No. 8	At confluence with Drain No. 7	*792	*792
			Approximately 1,030 feet upstream of confluence with Drain No. 7.	*817	*809
		Drain No. 9	Just downstream of Miller Road	None	*797
			Approximatley 2,270 feet upstream of Mill Road.	None	*865
		Drain No. 10	Approximately 100 feet upstream of Miller Road.	None	*801
			Approximately 50 feet upstream of Forest Bluff.	None	*848
			Approximately 850 feet upstream of Forest Bluff.	None	*875
		Drain No. 12	At confluence with West Salitrillo Creek	None	*838
			Approximately 200 feet upstream of Avery Road.	None	*896

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Unnamed Tributary of Cibolo Creek.	Approximately 330 feet downstream of Breached Dam.	None	*825
			Approximately 1,560 feet upstream of Breached Dam.	None	*845
		West Salitrillo Creek	Just upstream of Miller Road	None	*806
			Approximately 200 feet upstream of Avery Road.	None	*889
		East Salitrillo Creek	Just upstream of Martinez Creek Dam No. 5.	*792	*792
			Approximatley 100 feet downstream of Village Oak Drive.	*820	*819
			Approximately 200 feet upstream of State Highway 218.	*855	*857
			Approximately 4,100 feet upstream of State Highway 218.	None	*919

Maps are available for inspection at City Hall, City of Live Oak, 8001 Shin Oak Drive, Live Oak, Texas.

Send comments to The Honorable Ray Hildebrand, Mayor, City of Live Oak, City Hall, 8001 Shin Oak Drive, Live Oak, Texas 78233.

Texas	San Antonio (City), Bexar County.	Leon Creek Overflow	At confluence with Leon Creek	*888	*888
			Approximately 3,600 feet downstream of Babcock Road.	*905	*905
			Just upstream of Babcock Road	*920	*921
			Approximately 3,750 feet downstream of West Hausman Road.	*935	*935
			Just downstream of West Hausman Road	*955	*953
		Cibolo Creek	Approximately 300 feet upstream of Missouri, Kansas, and Texas Railroad.	*769	*771
			Approximately 200 feet downstream of Missouri and Pacific Railroad.	*786	*781
		Salitrillo Creek	Just upstream of Martinez Creek Dam No. 6–A.	None	*629
		East Salitrillo Creek	At confluence with Salitrillo Creek	None	*629
		West Salitrillo Creek	Approximately 3,500 feet upstream of confluence with Salitrillo Creek.	None	*634
			Approximately 1,300 feet upstream of FM 78.	*664	*665
			Just downstream of Southern Pacific Railroad.	*695	*701

Maps are available for inspection at City Hall, City of San Antonio, 100 Military Plaza, San Antonio, Texas.

Send comments to The Honorable Nelson Wolff, Mayor, City of San Antonio, City Hall, 100 Military Plaza, San Antonio, Texas 78205.

Texas	Selma (City), Bexar County.	Cibolo Creek	Just downstream of confluence of Selma Creek.	*738	*738
			Approximately 100 feet downstream of Lookout Road.	*758	*760

Maps are available for inspection at City Hall, City of Selma, 9375 Corporate Drive, Selma, Texas.

Send comments to The Honorable Kenneth Sleenor, Mayor, City of Selma, City Hall, 9375 Corporate Drive, Selma, Texas 78154

Texas	Terrell (City), Kaufman County.	Kings Creek	Approximately 150 feet downstream of State Highway 34 (south crossing).	None	*439
			Approximately 500 feet upstream of State Highway 34 (south crossing).	*442	*443
			At Interstate Highway 20 eastbound lanes	*449	*445
			At Airport Road	*453	*451
			At College Mound Road	*459	*458
			At East College Street	*471	*468
			Just upstream of abandoned railroad	*477	*478

Maps are available for inspection at 201 East Nash, Terrell, Texas.

Send comments to The Honorable Don Lindsey, Mayor, City of Terrell, P.O. Box 310, Terrell, Texas 75160.

Texas	Universal City (City), Bexar County.	Cibolo Creek	Just upstream of Aviation Boulevard	*714	*7715
			Approximately 150 feet downstream of Selma Road.	*736	*735

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		East Salitrillo Creek	Approximately 2,675 feet upstream of confluence of East Fork Salitrillo Creek.	*734	*737
			Approximately 350 feet downstream of Martinez Creek Dam No. 5.	*758	*761
			Just upstream of Martinez Creek Dam No. 5.	*792	*792
		East Branch of Salitrillo Creek.	Just upstream of Southern Pacific Railroad.	*715	*725
			Approximately 950 feet upstream of Southern Pacific Railroad.	*725	*725
		East Fork of East Branch of Salitrillo Creek.	Just upstream of confluence of East Branch of Salitrillo Creek.	*715	*725
			At FM 1604	*725	*725

Maps are available for inspection at City Hall, City of Universal City, 2150 Universal City Boulevard, Universal City, Texas.

Send comments to The Honorable Carmeilme Squires, Mayor, City of Universal City, City Hall, 2150 Universal City Boulevard, Universal City, Texas 78148.

Utah	Farmington (City), Davis County.	Farmington Creek	Just upstream of the Denver and Rio Grande Western Railroad.	None	*4,231
			Just upstream of the northbound Interstate Highway 15 Bridge.	None	*4,255
			Just upstream of the 300 North Bridge	None	*4,277
			Just upstream of the 600 North Bridge	None	*4,316
			Approximately 750 feet upstream of the 600 North Bridge.	None	*4,365
		Steed Creek	Approximately 450 feet downstream of the 620 South Bridge, at the Interstate Highway 15 Frontage Road.	*4,252	*4,252
			Approximately 150 feet upstream of the 620 South Bridge.	None	*4,254
			Just upstream of the 75 West Bridge	None	*4,280
			Just upstream of the 200 East Bridge	None	*4,360
			Approximately 975 feet upstream of the 200 East Bridge.	None	*4,425

Maps are available for inspection at Farmington City Hall, 130 North Main, Farmington, Utah.

Send comments to The Honorable Gregory S. Bell, Mayor, City of Farmington, P.O. Box 160, Farmington, Utah 84025–0160.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 11, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–18389 Filed 7–25–95; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC19

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Alaska Breeding Population of the Steller's Eider; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: The Fish and Wildlife Service on June 30, 1995 (60 FR 34225) published a document that reopened the comment period on the Alaska breeding population of the Steller's eider (*Polysticta stelleri*). The new comment period was in error. This document corrects the comment period to end October 1, 1995.

DATES: The comment period is reopened and closes on October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jon Nickles (907) 786–3605.

Dated: July 19, 1995.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Sesvice.

[FR Doc. 95–18283 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 60, No. 143
Wednesday, July 26, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Impact Statement, King George Timber Harvest on the Wrangell Ranger District, Stikine Area of the Tongass National Forest, Petersburg

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Stikine Area of the USDA Forest Service proposes to harvest timber on approximately 1300 acres in the King George project area on North Etolin Island using a variety of harvest methods that would leave various densities of trees within harvested areas. A variety of yarding systems would be used including helicopter, cable, skyline, and shovel systems. approximately ten miles of road would be constructed in the Honeymoon and King George drainages. A log transfer site with a ramp for both large and small scale operators would be constructed north of Honeymoon Creek.

The purpose and need for this project is to make available for harvest approximately 15 to 25 million board feet (MMBF) of timber to (1) implement direction in the Tongass Land Management Plan, (2) contribute to providing a sustained volume of wood to meet local and national demand, and (3) provide local and regional employment opportunities. A comparison of the existing and desired condition suggests that approximately 900 to 1300 acres would be treated with a variety of silvicultural methods. Silvicultural methods will be designed to maintain stand structure and ecological functions over time while still producing timber. These methods will leave low, medium, and high densities of trees within the stands following harvest. Harvesting between 900 to 1300 acres of forest using these methods could make available approximately 15 to 25 MMBF of timer. A variety of resources and values will be maintained through the application of ecosystem management principles in the design of the project.

A range of alternatives will respond to environmental issues such as scenery and recreation values, economics, subsistence hunting and gathering, freshwater and estuary systems, and habitat conservation. The no-action alternative will not harvest timber in the area. The action alternatives will harvest approximately 15 to 25 million board feet of timber and construct alternate road systems.

The decision to be made is (1) if, where, how, and how much timber harvest will occur in the King George area, (2) how much and where road construction will occur to facilitate harvest, and (3) what mitigation measures and monitoring will be implemented.

EFFECTIVE DATE: Public coping began in June 1993. The Draft Environmental Impact Statement should be available for public review by August, 1995. The Final Environmental Impact Statement is scheduled to be completed by November, 1995.

FOR FURTHER INFORMATION CONTACT: Questions, written comments and suggestions concerning the analysis should be sent to Margaret Y. Mitchell, Team Leader, P,O. Box 51, Wrangell, AK, 99929, phone (907) 874–2323, fax (907) 874–2095.

SUPPLEMENTARY INFORMATION: The following permits or approvals will be necessary to implement the proposed action:

1. U.S. Army Corp of Engineers approval to dredge of fill materials into coastal waters under Section 404 of the Clean Water Act.
2. Environmental Protection Agency National Pollution Discharge Elimination System Review under Section 402 of the Clean Water Act.
3. State of Alaska, Department of Natural Resources tideland permit and lease or easement.
4. State of Alaska, Department of Environmental Conservation Solid Waste Disposal Permit and Certificate of Compliance with Alaska Water Quality Standards under Section 401 of the Clean Water Act.
5. State of Alaska Coastal Zone Consistency.
6. State of Alaska, State Historic Preservation Officer compliance with Section 106 of the National Historic Preservation Act.

Public Comment

Federal, State, and local agencies; potential contractors; and other individuals or organizations who may be interested in, or affected by, the decision are invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Determination of potential cooperating agencies and assignment of responsibility.
4. Examination of various alternatives.

The Forest Supervisor will hold public meetings during the planning process. Meetings have not been scheduled at this time.

Interested publics are invited to comment. The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency Notice of Availability appears in the **Federal Register**.

The Forest Service believes, at this stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power* v. *NRDC, 435 U.S. 519, 533 [1978]).* Also, environmental objections that could have been raised at the Draft EIS stage may be waived if not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final envirnonment impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the satement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environment Policy Act in 40 CFR 1503.3 while addressing these points.

The responsible official for the decision is Abigail R. Kimbell, Forest Supervisor of the Stikine Area, Tongass National Forest, Alaska Region, Petersburg, Alaska.

Dated: July 12, 1995.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 95–18300 Filed 7–25–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070695C]

Shrimp Fishery of the South Atlantic Region; Intent to Prepare a Supplemental Environmental Impact Statement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); request for comments.

SUMMARY: NMFS announces the intent of the South Atlantic Fishery Management Council (Council) to prepare an SEIS for proposed Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) to address the issue of bycatch in the shrimp trawl fishery. The SEIS will examine the environmental effects of shrimp trawling on the human environment, as well as other fisheries and protected species (endangered or threatened). The FMP was prepared by the Council and approved and implemented by NMFS under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

DATES: Written comments on the scope of the SEIS must be submitted by August 25, 1995.

ADDRESSES: Comments and requests for copies of the SEIS should be sent to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699 (FAX: 803–769–4520).

FOR FURTHER INFORMATION CONTACT: Sharon Coste, Public Information Officer, 803–571–4366.

SUPPLEMENTARY INFORMATION: The Council held scoping meetings on bycatch in the shrimp fishery to determine the scope of significant issues to be addressed in the SEIS and associated Amendment 2. The scoping meetings were held in conjunction with the following Council meetings: February 7, 1995, in St. Augustine, FL, April 11, 1995, in Savannah, GA, and June 20, 1995, in Palm Beach Gardens, FL. Additional scoping meetings were held on May 22, 1995, in Wilmington, NC, and May 23, 1995, in Charleston, SC. Minutes of the scoping meetings are available from the Council office.

The Council prepared the FMP in 1992 and NMFS approved and implemented it in 1993. At the time the Shrimp FMP was implemented, the Council was concerned about bycatch in the shrimp trawl fishery, and intended to begin developing management measures that would reduce bycatch through an FMP amendment.

The Council's goal of bycatch reduction was delayed by the 1990 amendments to the Magnuson Act, which prohibited the Gulf and South Atlantic Councils from implementing regulations for bycatch reduction in the southeast shrimp fisheries. These amendments also mandated that NMFS conduct a 3-year research program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of the South Atlantic and Gulf of Mexico Fishery Management Councils. The results of this research program have been summarized recently in a NMFS report to Congress entitled "A Report to Congress—Cooperative Research Program Addressing Finfish Bycatch in the Gulf of Mexico and South Atlantic Shrimp Fisheries—April 1995."

The Council is considering these research results as an important basis for any specific management action. Recent advances in gear development through cooperative efforts between Federal and state governments and the shrimp industry have produced Bycatch Reduction Devices (BRDs) that successfully exclude fish from shrimp trawls with a minimum of shrimp loss. Both the Council and the South Atlantic States have requested that NMFS proceed as rapidly as possible to obtain the research information needed to identify and assess options for requiring the use of BRDs under the FMP and under coastal fishery management plans (CFMPs) developed by the Atlantic States Marine Fisheries Commission (Commission), pursuant to provisions of the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Atlantic Coastal Act).

The Council still is concerned about the impacts of shrimp bycatch on the Spanish and king mackerel resources. In addition, under the current amendment to the CFMP for Weakfish, prepared by the Commission under the Atlantic Coastal Act, all South Atlantic states must implement measures to reduce the bycatch of weakfish in the shrimp trawl fisheries by 50 percent for the 1996 fishing season. Bycatch reduction plans must be submitted to the Commission's Weakfish Technical Committee by October 1, 1995.

As a result of the scoping process, the Council has determined that the following principal issues need to be addressed in the SEIS for Amendment 2: Reducing the bycatch of non-target finfish and invertebrates in the shrimp trawl fishery, and coordinating the development of State and Federal measures for reducing bycatch to enhance enforceability.

The Council is considering the following management measures for this amendment: Developing specific bycatch reduction measures for all penaeid shrimp fisheries in the South Atlantic exclusive economic zone (EEZ), including possibly requiring the use of NMFS-approved BRDs in all penaeid shrimp trawls in the South Atlantic EEZ, and reducing the bycatch component of weakfish and Spanish mackerel fishing mortality by 50 percent. The Council may consider seasonal and areal restrictions to reduce bycatch. Also, regarding the bycatch issue, the SEIS would evaluate the effects of taking no management action. The Council is also considering adding brown and pink shrimp to the management unit.

The Council intends to approve draft Amendment 2 to the FMP and the draft SEIS for public hearings at its August 1995 meeting. These documents are expected to be released for public comment in early September. The draft SEIS would be filed with the Environmental Protection Agency for a

45-day public comment period in September 1995.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 20, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–18310 Filed 7–25–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 050195E]

Small Takes of Marine Mammals Incidental to Specified Activities; Lockheed Launch Vehicles at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization to take small numbers of harbor seals by harassment incidental to launches of Lockheed's launch vehicles (LLVs) at Space Launch Complex 6 (SLC–6), Vandenberg Air Force Base, CA (VAFB) has been issued.

EFFECTIVE DATE: This authorization is effective from July 18, 1995 until July 18, 1996.

ADDRESSES: The application and authorization are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd. Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Marine Mammal Division, Office of Protected Resources at 301–713–2055, or Craig Wingert, Southwest Regional Office at 301–980–4021.

SUPPLEMENTARY INFORMATION:

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 30, 1994, the President signed Public Law 103–238, the Marine Mammal Protection Act Amendments of 1994. One part of this law added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can receive an authorization, without regulations, to incidentally take small numbers of marine mammals by harassment. New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days after the comment period, NMFS must either issue, or deny issuance, of the authorization.

On March 13, 1995, NMFS received an application from Lockheed requesting an authorization for the harassment of small numbers of harbor seals (*Phoca vitulina*) incidental to LLV launches at SLC–6, VAFB. These launches would place commercial payloads into low earth orbit using its family of vehicles (LLV–1, LLV–2 and LLV–3). Because of the requirements for circumpolar trajectories of the LLV and its payloads, the use of SLC–6 is the only feasible alternative within the United States. Lockheed intends to launch approximately two LLVs during the period of this proposed 1-year authorization (Air Force, 1995)[1]. The noise associated with the launch itself and the resultant sonic boom have the potential to cause a startle response to harbor seals that haul out on the coastline south and southwest of VAFB and possibly on the northern Channel Islands. Launch noise would be expected to occur over the coastal habitats in the vicinity of SLC–6 while low-level sonic booms potentially could be heard on the Channel Islands, specifically San Miguel Island (SMI) and Santa Rosa Island.

A notice of receipt of the application and the proposed authorization was published on May 10, 1995 (60 FR 24840) and a 30-day public comment period was provided on the application and proposed authorization. During the comment period, one comment was received. The Marine Mammal Commission recommended that NMFS (1) determine whether additional marine mammals should be included in the authorization; (2) justify the conclusion that no harbor seals, including pups, would be killed or seriously injured during launches; and (3) demonstrate that only small numbers of harbor seals or other marine mammals would be taken. These recommendations are discussed in detail below. Other than information necessary to respond to the comments, additional background information on the activity and request can be found in the above-mentioned notice and needs not be repeated here.

1. Determine whether additional marine mammals should be included in the authorization. While there are approximately 29 species of cetaceans and 6 species of pinnipeds that have the potential to be under the flight path of the LLV and thereby subject to hearing either launch or sonic boom noise, only harbor seals are expected to haul out along the coast at VAFB and be subject to taking by harassment. Launch noises, which are predicted to be about 93 dBA (118 dB) at the principal haulout at Rocky Point, are expected to be almost unnoticeable offshore. In order to be detectable by a marine mammal, noise needs to be greater than ambient within the same frequency band as the animal's hearing range. With launch noises attenuating to approximately 85 dBA within 2.5 km offshore, and ambient noise level expected to range between 56 and 96 dBA (Lockheed, 1995), there is no scientific evidence that any marine mammals, other than harbor seals onshore at the time of launch, would be subject to harassment by launch noises, although the potential does exist that other marine mammal species may hear the launch noise.

Sonic booms resulting from launches of the LLV vary with the type of vehicle, vehicle trajectory and the specific ground location. Sonic booms are not expected to intersect with the ocean surface until the vehicle changes its launch trajectory. This location will vary depending upon the LLV type, but will be well offshore. For example, the sonic boom from LLV–3 (the largest of the LLV rockets) is not expected to intersect any portion of the northern Channel Islands, but instead will focus approximately 37 miles from the launch site, in open water southwest of the Channel Islands.

The maximum magnitude of sonic booms from launches of the LLV–1 (6.3 lb/ft^2 (psf)/130.7.6 dB), LLV–2 (3.5 psf/125.6 dB) and the LLV–3 (3.5 psf/125.6 dB), as predicted by Lockheed, will be less than those measured for other launch vehicles, such as the Titan IV and the Space Shuttle (10 psf), for which small take authorizations for harassment have been issued previously (see 56 FR 41628, August 22, 1991 and 51 FR 11737, April 7, 1986). Also, while it is predicted that launches of the LLV–1 and LLV–2 will produce sonic booms over portions of the Channel Islands, the maximum overall sound pressure levels over the islands are not expected to exceed 80 dBA and in most cases will not exceed 70 dBA (Air Force, 1995). These sonic boom levels are likely to be indistinguishable from background noises caused by wind and surf (Air Force, 1995). Furthermore, as the expected noise level is well below the threshold response criteria of 101.8 dBA identified during previous research on harbor seal behavior resulting from sonic booms (Stewart et al., 1993), and as harbor seals have shown themselves to be more sensitive to noise than other species of seals and sea lions (Bowles and Stewart, 1980) and, therefore, more likely to flee to the water than other pinniped species, there is no evidence that either harbor seals or other pinniped species on the Channel Islands would be impacted by sonic booms from LLVs. However, to ensure that this assumption is valid, NMFS will require acoustic monitoring of the first launch of each type of LLV that takes place at the same time that pinnipeds are hauled out on SMI to determine sound pressure levels. If noise levels exceed the predicted levels, and/or there are indications that pinnipeds responded to the sonic booms, Lockheed will be requested to seek a modification to its authorization to include pinnipeds on the Channel Islands.

Cetaceans and pinnipeds in the water should also be unaffected by the sonic booms, although, depending upon location and ambient noise levels, they may be able to hear the sonic boom. First, sound entering a water surface at an angle greater than 13 degrees from the vertical has been shown to be largely deflected at the surface with very little sound entering the water (Chappell, 1980; Richardson et al., 1991), although rough seas may provide some surfaces at the proper angle for penetration (Richardson et al., 1991). As this area is relatively small, the chance that a marine mammal would be within it and thereby capable of hearing the sonic boom is low. Also, Chappell (1980) believes that a sonic boom would need to have a peak overpressure in the range of 138 to 169 dB to cause a temporary hearing threshold shift (TTS) in marine mammals, lasting at most a few minutes. Therefore, with the likelihood that a marine mammal will be directly under the line of flight of the LLV being remote, and with the LLVs having overpressures below the threshold for potentially causing TTS in marine mammals, NMFS believes that sonic booms are not likely to result in the harassment of cetacean or pinniped populations in offshore southern California.

2. Justify the conclusion that no harbor seals, including pups, would be killed or seriously injured during launches. NMFS is not aware of any Titan IV launchings by the U.S. Air Force during the harbor seal pupping season (February through end of May (post-weaning)); direct observations to conclude whether harbor seal pups would be incidentally killed or seriously injured during launches or not is therefore not available. However, several studies on other pinniped species support this assumption. First, Stewart (1981, 1982) exposed breeding California sea lions and northern elephant seals on San Nicolas Island to loud implosive noises created by a carbide pest control cannon. Sound pressure levels varied from 125.7 to 146.9 dB. While behavioral responses of each species varied by sex, age, and season, Stewart found that habitat use, population growth, and pup survival of both species appeared unaffected by periodic exposure to the noise. In addition, while monitoring the August 2, 1993, Titan IV launch, Stewart et al. (1993) reported that the rocket explosion created a sonic boom-like pressure wave that caused approximately 45 percent of the California sea lions (approximately 23,400, including 14 to 15 thousand 1-month old pups, were hauled-out on SMI during the launch) and 2 percent of the northern fur seals to enter the surf zone. Although approximately 15 percent of the sea lion pups were temporarily abandoned when their mothers fled into the surf, no injuries or mortalities were observed. After forming rafts offshore, most animals returned to shore within 2 hours of the disturbance (Stewart et al., 1993). However, to ensure that no harbor seals (or other pinnipeds) are killed or seriously injured by launchings of LLVs, monitoring of the impact of LLV launches on the harbor seal haulouts at Rocky Point or in the absence of harbor seals at that location, at another South VAFB location, and on the northern part of SMI during the 1-year period of authorization will be required.

3. Demonstrate that only small numbers of harbor seals or other marine mammals would be taken. Based upon the information discussed above, NMFS believes that only those harbor seals hauled out along the coast of VAFB at the time of either of the two planned launches could potentially be taken by harassment. As the population at this haulout numbers fewer than 500 animals at the peak haulout time of the year (Lockheed, 1995), and as only a portion of the population is expected to react to launch noises, NMFS considers that this authorization will result in the taking by harassment of only a small number of harbor seals and have a negligible impact on the species.

Therefore, since NMFS is assured that the taking will not result in more than the harassment (as defined by the MMPA Amendments of 1994) of a small number of harbor seals, would have only a negligible impact on the species, and would result in the least practicable impact on the stock, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued.

Dated: July 19, 1995.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–18311 Filed 7–25–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071995A]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a public meeting to review and approve a public hearing document and a Draft Supplemental Impact Statement (DSEIS) for Amendment #7 to the Council's multispecies fishery management plan.

DATES: The meeting will be held on August 2, 1995, at 9:00 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, Route 1, (1 Newbury Street), Peabody, MA 01960; telephone: (508) 535–4600.

Council address: New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council; telephone: (617) 231–0422.

SUPPLEMENTARY INFORMATION: The public hearing document will describe the alternatives currently under active consideration by the Council for eliminating overfishing and rebuilding

[1] A list of references used in this document can be obtained by writing to the address provided above (see **ADDRESSES**).

stocks of cod, haddock and yellowtail flounder. It will also indicate the likely impacts of the various alternatives if they were approved and implemented by Amendment #7. The DSEIS will evaluate the environmental impacts of the proposed alternatives in greater detail.

Following approval by the Council, the public hearing document and the DSEIS will be put into final form and distributed for comment by the public at a series of hearings, after which the Council will select an alternative and prepare the plan amendment and the Final Supplemental Environmental Impact Statement.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**), at least 5 days prior to the meeting date.

Dated: July 20, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–18386 Filed 7–25–95; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council meeting will be held on Wednesday, August 9, 1995 from 9:00 a.m. until 4:30 p.m.

ADDRESSES: The NII Advisory Council meeting will take place in the University of Washington, School of Public Policy, Perrington Hall, The Commons, Room 308, Seattle, Washington 98195.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Lyle (or Ms. Tiffani Burke, alternate), Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

AUTHORITY: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

AGENDA:

1. *Welcome Opening (Delano Lewis, Ed McCracken)*
2. *Universal Access and Service Implementation—discussion*
3. *Security Paper Responses—discussion*
4. *Review Document Outlines*
5. *Public Comment*
6. *Health Care Principles—discussion*
7. *KickStart Review*
8. *Responses to Intellectual Property White Paper*

PUBLIC PARTICIPATION: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Tiffani Burke at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–18327 Filed 7–25–95; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command Rules and Accessorial Services Governing the Movement of Department of Defense Freight Traffic by Motor or Railroad Carriers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Extension of request for carrier industry comments.

SUMMARY: This notice extends the deadline to August 29, 1995 for carriers to submit suggestions to Headquarters, MTMC, Attn: MTOP–T–SR, for needed changes to MTMC Freight Traffic Rules Publication (MFTRP) No. 1A for transport of military freight by motor carriers and to MFTRP No. 10 railroads. Formerly the deadline for carriers to submit comments was July 27, 1995, as published on June 21, 1995 (**Federal Register**, Vol. 60, No. 119, page number 32305).

FOR FURTHER INFORMATION CONTACT: Mr. Julian Jolkovsky, Military Traffic Management Command, ATTN: MTOP–T–SR, 5611 Columbia Pike, Falls Church, VA 22041–5050; or telephone (703) 681–3440.

SUPPLEMENTARY INFORMATION: After the deadline to receive carrier comments, MTMC will prepare an initial draft of the updated MFTRP No. 1A and MFTRP No. 10 and furnish copies to carriers approved under the MTMC Carrier Qualification Program.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–18313 Filed 7–25–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Chief of Naval Operations Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet 11 August 1995 from 1330-1500. The meeting will be held at the Pentagon, room 4E630. This session will be closed to the public.

The purpose of this meeting is to brief the Chief of Naval Operations on strategies for an uncertain future to include information warfare, reserve structure and mobilization, and the changing strategic environment. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302-0268, Phone: (703) 681-6205.

Dated: July 11, 1995

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–18351 Filed 7–25–95; 8:45 am]

BILLING CODE 3810–FF–F

Secretary of the Navy's Advisory Subcommittee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Secretary of the Navy's Advisory Subcommittee on Naval History, a Subcommittee of the Department of Defense Historical Advisory Committee, will meet from 0800-1600 on September 21 and 0800-1600 on September 22, 1995 in Building 1 of the Naval Historical Center, Washington Navy Yard, Washington, DC. The meeting will be open to the public.

The purpose of the meeting is to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History on 10 and 11 March 1994, and to make comments and recommendations on these activities to the Secretary of the Navy.

For further information concerning this meeting, write to the Director of Naval History, 901 M Street SE, Bldg. 57 WNY, Washington, DC, 20374-5060, or call Dr. William S. Dudley at (202) 433-2210.

Dated: July 11, 1995

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–18352 Filed 7–25–95; 8:45 am]

BILLING CODE 3810–FF–F

Notice of Availability of Inventions for Licensing

The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

For further information contact: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code OOCC), Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: July 10, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

Patent 5,293,261: DEVICE FOR LOW ELECTRIC-FIELD INDUCED SWITCHING OF LANGMUIR-BLODGETT FERROELECTRIC LIQUID CRYSTAL POLYMER FILMS; filed 31 December 1992; patented 8 March 1994.

Patent 5,299,171: TORPEDO DECOY SIGNAL GENERATOR; filed 20 July 1970; patented 29 March 1994.

Patent 5,342,737; HIGH ASPECT RATIO METAL MICROSTRUCTURES AND METHOD FOR PREPARING THE SAME; filed 27 April 1992; patented 30 August 1994.

Patent 5,353,260: NOISE SIGNAL PROCESSOR; filed 13 May 1982; patented 4 October 1994.

Patent 5,374,567: OPERATIONAL AMPLIFIER USING BIPOLAR JUNCTION TRANSISTORS IN SILICON-ON-SAPPHIRE; filed 20 May 1993; patented 20 December 1994.

Patent 5,377,613: SUBMERSIBLE BOAT; filed 29 June 1993; patented 3 January 1995.

Patent 5,378,413: PROCESS FOR PREPARING MICROCAPSULES HAVING GELATIN WALLS CROSSLINKED WITH QUINONE; filed 21 January 1993; patented 3 January 1995.

Patent 5,378,962: METHOD AND APPARATUS FOR A HIGH RESOLUTION, FLAT PANEL CATHODOLUMINESCENT DISPLAY DEVICE; filed 29 May 1992; patented 3 January 1995.

Patent 5,379,034: APPARATUS AND METHOD OF RADIO COMMUNICATION FROM A SUBMERGED UNDERWATER VEHICLE; filed 15 June 1993; patented 3 January 1995.

Patent 5,379,043: REPLY-FREQUENCY INTERFERENCE/JAMMING DETECTOR; filed 26 September 1975; patented 3 January 1995.

Patent 5,379,109: METHOD AND APPARATUS FOR NON-DESTRUCTIVELY MEASURING LOCAL RESISTIVITY OF SEMICONDUCTORS; filed 17 June 1992; patented 3 January 1995.

Patent 5,379,270: ACOUSTIC-OPTIC SOUND VELOCITY PROFILER; filed 25 March 1994; patented 3 January 1995.

Patent 5,379,346: CASCADED SYNCHRONIZED CHAOTIC SYSTEMS; filed 30 September 1993; patented 3 January 1995.

Patent 5,379,711: RETROFITTABLE MONOLITHIC BOX BEAM COMPOSITE HULL SYSTEM; filed 30 September 1992; patented 10 January 1995.

Patent 5,379,955: INFEED HOPPER WITH PIVOTABLE THROAT FOR SHREDDER OR GRANULATOR; filed 24 September 1993; patented 10 January 1995.

Patent 5,380,298: MEDICAL DEVICE WITH INFECTION PREVENTING FEATURE; filed 7 April 1993; patented 10 January 1995.

Patent 5,380,382: METHOD OF INSTALLING A METALLIC THREADED INSERT IN A COMPOSITE/RUBBER PANEL; filed 22 February 1994; patented 10 January 1995.

Patent 5,381,381: FAR FIELD ACOUSTIC RADIATION REDUCTION; filed 30 September 1993; patented 10 January 1995.

Patent 5,381,384: VERTICAL VELOCITY AMBIGUITY RESOLUTION METHOD; filed 9 May 1988; patented 10 January 1995.

Patent 5,381,428: TUNABLE YTTERBIUM-DOPED SOLID STATE LASER; filed 30 July 1993; patented 10 January 1995.

Patent 5,381,433: 1.94 μM LASER APPARATUS, SYSTEM AND METHOD USING A THULIUM-DOPED YTTRIUM-LITHIUM-FLUORIDE LASER CRYSTAL PUMPED WITH A DIODE LASER; filed 28 January 1993; patented 10 January 1995.

Patent 5,381,755: METHOD OF SYNTHESIZING HIGH QUALITY, DOPED DIAMOND AND DIAMONDS AND DEVICES OBTAINED

THEREFROM; filed 20 August 1992; patented 17 January 1995.
Patent 5,382,185: THIN-FILM EDGE EMITTER DEVICE AND METHOD OF MANUFACTURING THEREFOR; filed 31 March 1993; patented 17 January 1995.
Patent 5,382,957: SYSTEM AND METHOD; filed 19 December 1989; patented 17 January 1995.
Patent 5,383,366: ULTRASONIC TWO PROBE SYSTEM FOR LOCATING AND SIZING; filed 26 October 1992; patented 24 January 1995.
Patent 5,383,567: PROTECTIVE DEVICE FOR CONTAINER; filed 24 September 1993; patented 24 January 1995.
Patent 5,384,751: ATTACHMENT DEVICE FOR TETHERED TRANSDUCER; filed 30 June 1994; patented 24 January 1995.
Patent 5,385,109: DISPENSER FOR DEPLOYING ELONGATED FLEXIBLE ARTICLES; filed 5 April 1993; patented 31 January 1995.
Patent 5,385,618: NON-MAGNETIC ALLOW; filed 19 November 1993; patented 31 January 1995.
Patent 5,385,633: METHOD FOR LASER-ASSISTED SILICON ETCHING USING HALOCARBON AMBIENTS; filed 29 March 1990; patented 31 January 1995.
Patent 5,387,095: APPARATUS FOR INJECTION MOLDING HIGH-VISCOSITY MATERIALS; filed 7 April 1993; patented 7 February 1995.
Patent 5,387,864: CHANNEL EQUALIZED DC SQUID FLUX-LOCKED LOOP; filed 26 July 1993; patented 7 February 1995.
Patent 5,388,021: VOLTAGE SURGE SUPPRESSION POWER CIRCUITS; filed 18 September 1992; patented 7 February 1995.
Patent 5,388,112: DIODE PUMPED CONTINUOUSLY TUNABLE, 2.3 MICRON CW LASER; filed 29 April 1994; patented 7 February 1995.
Patent 5,389,411: COMPOSITE STRUCTURE FORMING A WEAR SURFACE; filed 24 September 1993; patented 14 February 1995.
Patent 5,389,441: PHTHALONITRILE PREPOLYMER AS HIGH TEMPERATURE SIZING MATERIAL FOR COMPOSITE FIBERS; filed 28 June 1993; patented 14 February 1995.
Patent 5,389,746: SUBMARINE HULL STRUCTURES PROVIDING ACOUSTICALLY ISOLATED HULL OPENINGS; filed 30 June 1994; patented 14 February 1995.
Patent 5,390,154: COHERENT INTEGRATOR; filed 14 July 1983; patented 14 February 1995.
Patent 5,390,203: METHOD OF LOCKING LASER WAVELENGTH TO AN ATOMIC TRANSITION; filed 13 June 1994; patented 14 February 1995.
Patent 5,390,548: ELECTRODE ARRAY ELECTROMAGNETIC VELOCIMETER; filed 18 March 1993; patented 21 February 1995.
Patent 5,390,581: MARKER BEACON CASE; filed 23 March 1994; patented 21 February 1995.
Patent 5,390,619: WATER EXPANDED COMPRESSED SPONGE CABLE FAIRING; filed 25 August 1993; patented 21 February 1995.
Patent 5,391,914: DIAMOND MULTILAYER MULTICHIP MODULE SUBSTRATE; filed 16 March 1994; patented 21 February 1995.
Patent 5,392,256: MAGNETO-ACOUSTIC SIGNAL CONDITIONER; filed 4 October 1993; patented 21 February 1995.
Patent 5,392,258: UNDERWATER ACOUSTIC INTENSITY PROBE; filed 12 October 1993; patented 21 February 1995.
Patent 5,392,370: MULTI-CHANNEL FIBER OPTIC ROTATABLE INTERCONNECTION SYSTEM; filed 21 April 1994; patented 21 February 1995.
Patent 5,392,881: DEVICE FOR DAMPENING VIBRATORY MOTION; filed 6 October 1993; patented 28 February 1995.
Patent 5,393,016: ENERGY ABSORPTION DEVICE FOR SHOCK LOADING; filed 30 June 1993; patented 28 February 1995.
Patent 5,394,151: APPARATUS AND METHOD FOR PRODUCING THREE-DIMENSIONAL IMAGES; filed 30 September 1993; patented 28 February 1995.
Patent 5,394,378: HYDROPHONE TRANSDUCTION MECHANISM; filed 21 June 1993; patented 28 February 1995.
Patent 5,394,493: FIBER-OPTIC BUNDLE AND COLLIMATOR ASSEMBLY; filed 8 August 1994; patented 28 February 1995.
Patent 5,395,568: FEEDBACK-CONTROLLED OXYGEN REGULATION SYSTEM FOR BENTHIC FLUX CHAMBERS AND METHOD FOR MAINTAINING A CONSTANT VOLUME OF OXYGEN THEREFOR; filed 3 December 1993; patented 7 March 1995.
Patent 5,396,166: FIBER-OPTIC INTERFEROMETRIC ELECTRIC FIELD AND VOLTAGE SENSOR UTILIZING AN ELECTROSTRICTIVE TRANSDUCER; filed 28 August 1992; patented 7 March 1995.
Patent 5,396,811: FLUID DYNAMOMETER HAVING FLUID CHARACTERISTIC POWER ABSORPTION ADJUSTMENT CAPABILITY; filed 29 March 1993; patented 14 March 1995.
Patent 5,396,830: ORTHOGONAL LINE DEPLOYMENT DEVICE; filed 17 June 1994; patented 14 March 1995.
Patent 5,396,855: UNDERWATER VEHICLE TAILCONE ASSEMBLY; filed 30 June 1994; patented 14 March 1995.
Patent 5,396,859: SYSTEM FOR EFFECTING UNDERWATER COUPLING OF OPTICAL FIBER CABLES CHARACTERIZED BY A NOVEL V-PROBE CABLE CAPTURE MECHANISM; filed 13 September 1993; patented 14 March 1995.
Patent 5,397,447: ELECTRIFIED MICROHETEROGENEOUS CATALYSIS; filed 24 November 1993; patented 14 March 1995.
Patent 5,397,953: STATOR FOR DISC TYPE ELECTRIC MOTOR; filed 17 November 1993; patented 14 March 1995.
Patent 5,398,214: PRESSURE RESPONSIVE CLASP; filed 2 March 1981; patented 14 March 1995.
Patent 5,398,239: CROSSPOINT ANALOG DATA SELECTOR; filed 8 December 1993; patented 14 March 1995.
Patent 5,398,587: GAS-PROPELLED LINE DEPLOYMENT SYSTEM; filed 23 March 1994; patented 21 March 1995.
Patent 5,398,636: SYSTEM FOR EFFECTING UNDERWATER COUPLING OF OPTICAL FIBER CABLES CHARACTERIZED BY A NOVEL LATERAL ARM CABLE CAPTURE MECHANISM; filed 13 September 1993; patented 21 March 1995.
Patent 5,399,388: METHOD OF FORMING THIN FILMS ON SUBSTRATES AT LOW TEMPERATURES; filed 28 February 1994; patented 21 March 1995.
Patent 5,399,444: ENCAPSULATED DRY ELECTROLYTE COMPOSITION FOR TIME RELEASE INTO A SOLUTE; filed 30 September 1993; patented 21 March 1995.
Patent 5,400,296: ACOUSTIC ATTENUATION AND VIBRATION DAMPING MATERIALS; filed 25 January 1994; patented 21 March 1995.
Patent 5,4,00,422; TECHNIQUE TO PREPARE HIGH-REFLECTANCE OPTICAL FIBER BRAGG GRATINGS WITH SINGLE EXPOSURE IN-LINE ON FIBER DRAW TOWER; filed 21 January 1993; patented 21 March 1995.
Patent 5,400,429: METHOD FOR MAKING FIBER-OPTIC BUNDLE COLLIMATOR ASSEMBLY; filed 8 August 1994; patented 21 March 1995.

Patent 5,402,131: DETECTION OF RADAR TARGETS USING HIGHER-ORDER STATISTICS; filed 28 September 1993; patented 28 March 1995.
Patent 5,402,317: METHOD AND MEANS FOR ISOLATING EQUIPMENT FROM SHOCK LOADS; filed 29 December 1993; patented 28 March 1995.
Patent 5,402,335: TWO-STEP METHOD CONSTRUCTING LARGE-AREA FACILITIES AND SMALL-AREA INTRAFACILITIES EQUIPMENTS OPTIMIZED BY USER POPULATION DENSITY; filed 24 September 1992; patented 28 March 1995.
Patent 5,402,393: NON-INVASIVE ACOUSTIC VELOCIMETRIC APPARATUS AND METHOD; filed 14 March 1994; patented 28 March 1995.

[FR Doc. 95–18350 Filed 7–25–95; 8:45 am]
BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 25, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 20, 1995.

Gloria Parker,
Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Expedited.
Title: Higher Education Collaboration Between the United States and the Program Community (A Special Focus Competition of the Fund for the Improvement of Postsecondary Education)
Frequency: Annually.
Affected Public: Not for profit institutions.
Reporting Burden:
Responses: 300.
Burden Hours: 6000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The Higher Education Collaboration Between the United States and the European Community is an experimental program that will support new types of cooperation and exchange between institutions of higher education in the U.S. and counterparts in the member states of the European Community through awarding of grants.

Additional Information: Clearance for this information collection is requested by August 14, 1995. An expedited review is requested to allow enough time to make grant awards for this year.

[FR Doc. 95–18305 Filed 7–25–95; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by August 18, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping

burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: July 20, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Expedited.
Title: Application for the Training Program for Federal TRIO Programs.
Frequency: Biennially.
Affected Public: Not for profit institutions.
Reporting Burden:
Responses: 60.
Burden Hours: 2,040.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The Training Program will provide training to staff and leadership personnel employed or preparing for employment in projects designed to identify individuals from disadvantaged backgrounds, prepare them for a program of postsecondary education and provide special services for such students pursuing programs in postsecondary education. The Department will use the information to make grant awards,

Additional Information: Clearance for this information collection is requested by August 18, 1995. An expedited review is requested to meet the schedule for Fiscal Year 1996 funding. To obtain a copy of this application for your review and comment, please call (202) 708–4804.

[FR Doc. 95–18306 Filed 7–25–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by July 31, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. to 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: July 20, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Expedited.
Title: Notice Inviting Applications for Participation in the Quality Assurance Program.
Frequency: One Time.
Affected Public: Business or other for-profit; and Not for profit institutions.
Reporting Burden:
Responses: 400.
Burden Hours: 400.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: A Notice Inviting Applications for Participation in the Quality Assurance (QA) Program will be published in the **Federal Register** for institutions to freely apply. In a letter of application to the Department, Financial Aid Administrators will be requested to describe their commitment to quality assurance and error reduction in processing and awarding student aid dollars. The information being collected will determine that an institution has basic procedures in place to control for and correct weaknesses in its financial aid operations, and the institution's intent and capacity to support and conduct program activities.

Additional Information: Clearance for this information collection is requested by July 31, 1995. An expedited review is requested to allow enough time to recruit institutions to participate in the Quality Assurance Program by late summer/early fall of 1995. Institution will need this time to determine whether to apply.

[FR Doc. 95–18307 Filed 7–25–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 25, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 21, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Vocation Rehabilitation Program/Cost Report.
Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 94.
Burden Hours: 395.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State vocational rehabilitation agencies provide data from the Department on the Annual Vocational Rehabilitation Program/Cost Report. The Department uses this information to management and administer the Basic Support Program and Title VI.

[FR Doc. 95–18394 Filed 7–25–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Information Collection Extensions

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) has submitted five information collection packages to the Office of Management and Budget (OMB) for renewal under the Paperwork Reduction Act of 1980.

The packages cover management and procurement collections of information from management and operating contractors of DOE's Government-owned/ contractor-operated facilities and offsite contractors. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations.

DATES AND ADDRESSES: Comments regarding the information collection packages should be submitted to the OMB Desk Officer at the following address no later than August 25, 1995. DOE Desk Officer, Office of Management and Budget (OIRA), Room 3001, New Executive Office Building, Washington, DC 20503, (202) 395–3084. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed in this notice.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Mary Ann Wallace, Records Management Team (HR–424), Department of Energy, Washington, DC 20585, (301) 903–4353.

SUPPLEMENTARY INFORMATION: Each package listing contains the following information: (1) Title of the information collection package; (2) current OMB control number; (3) type of respondents; (4) estimated number of responses; (5) estimated total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

Package Title: Information Management
Current OMB No.: 1910–0100
Type of Respondents: DOE management and operating contractors and offsite contractors.
Estimated Number of Responses: 25,389
Estimated Total Burden Hours: 176,027
Purpose: This information is required by the Department to ensure that information management requirements and resources are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 29 information and/or recordkeeping requirements.

Package Title: Industrial Relations
Current OMB No.: 1910–0600
Type of Respondents: DOE management and operating contractors and offsite contractors.
Estimated Number of Responses: 1,452
Estimated Total Burden Hours: 30,149
Purpose: This information is required by the Department to ensure that industrial relations resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 27 information and/or recordkeeping requirements.

Package Title: Legal
Current OMB No.: 1910–0800
Type of Respondents: DOE management and operating contractors, and offsite contractors.
Estimated Number of Responses: 3,109
Estimated Total Burden Hours: 23,469
Purpose: This information is required by the Department to ensure that legal resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 8 information and/or recordkeeping requirements.

Package Title: Public Affairs
Current OMB No.: 1910–1500
Type of Respondents: DOE management and operating contractors and offsite contractors.
Estimated Number of Responses: 241
Estimated Total Burden Hours: 3,694
Purpose: This information is required by the Department to ensure that public affairs resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 8 information and/or recordkeeping requirements.

Package Title: Procurement
Current OMB No.: 1910–4100
Type of Respondents: DOE management and operating contractors, and offsite contractors.
Estimated Number of Responses: 6,131
Estimated Total Burden Hours: 1,248,436
Purpose: This information is required by the Department to ensure that procurement resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 30 information and/or recordkeeping requirements.

Issued in Washington, DC, on July 13, 1995.

Gerald F. Chappell,

Director, Program Management Group, Office of Information Management.

[FR Doc. 95–18392 Filed 7–25–95; 8:45 am]

BILLING CODE 6455–01–P

Office of Fossil Energy

[FE Docket No. 95–50–NG]

Texas-Ohio Gas, Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Texas-Ohio Gas, Inc. authorization to import and export up to a combined total of 100 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first import or export.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 11, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–18238 Filed 7–25–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–319–001]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 20, 1995.

Take notice that on July 17, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 92
Third Revised Sheet No. 93
First Revised Sheet No. 93A

The proposed effective date of the above tariff sheets is June 1, 1995. Iroquois states that this filing is made in compliance with the Commission's June 30, 1995 Order in the above-referenced docket requiring Iroquois to revise Section 28.5(a) of the General Terms and Conditions of its Tariff to clarify the exceptions to the notice, bidding, and allocation requirements of its capacity release provisions. In addition, Iroquois states that it has modified Section 28.2 of the General Terms and Conditions to add a new defined term required by the modifications to Section 28.5(a). Iroquois states that copies of this filing were served upon all jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18293 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–390–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 20, 1995.

Take notice that on July 17, 1995, Koch Gateway Pipeline Company (KGPC) tendered for to become part of its FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 3603

KGPC states that the above referenced tariff sheets reflect KGPC's compliance with the Commission's Final Rule (Order No. 577–A) issued May 31, 1995 at Docket No. RM95–5–001. KGPC states that these tariff sheets reflect modifications to KGPC's capacity release provisions to reflect the Commission's revision of Section 284.243(h) of its Regulations.

KGPC, pursuant to Section 154.51 of the Commission's Regulations, respectfully requests waiver of the notice roquirement of Section 154.22 of said Regulations to permit the tendered tariff sheets to become effective July 17, 1995 as submitted.

KGPC also states that the revised tariff sheets are being served upon all its customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before July 27, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18294 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–389–000]

Mobile Bay Pipeline Company' Notice of Proposed Changes in FERC Gas Tariff

July 20, 1995.

Take notice that on July 17, 1995, Mobile Bay Pipeline Company (MBPC) tendered for to become part of its FERC Gas Tariff Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of July 17, 1995:

First Revised Sheet No. 83
First Revised Sheet No. 238
First Revised Sheet No. 239

MBPC states that the above referenced tariff sheets reflect MBPC's compliance with the Commission's Final Rule (Orders No. 577 and 577–A) issued March 29, 1995 at Docket No. RM95–5–000 and May 31, 1995 at Docket No. RM95–5–001, respectively. MBPC states that these tariff sheets reflect modifications to MBPC's capacity release provisions to reflect the Commission's revision of Section 284.243(h) of its Regulations.

MBPC, pursuant to Section 154.51 of the Commission's Regulations, respectfully requests waiver of the notice requirement of Section 154.22 of said Regulations to permit the tendered tariff sheets to become effective July 17, 1995 as submitted.

MBPC also states that the revised tariff sheets are being served upon all its customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before July 27, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18295 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–53–003]

NorAm Gas Transmission Company; Notice of Filing

July 20, 1995.

Take notice that on July 18, 1995, NorAm Gas Transmission Company (NGT) moved to place into effect the rates and tariff sheets in NGT's November 23, 1994 filing in this proceeding.

NGT states that its motion rate filing complies with the Commission's December 23, 1994 suspension order, and June 28, 1995 order terminating the referenced docket. NGT's motion rate filing would be come effective on August 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before July 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18296 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–145–003]

Pacific Gas Transmission Company; Notice of Filing of Operational Report Regarding Hub Service

July 20, 1995.

Take notice that on May 15, 1995, Pacific Gas Transmission Company (PGT) filed an operational report of hub service activities in Docket No. RP94–145–003. The filing was made to comply with the Federal Energy Regulatory Commission's (Commission) Order of August 3, 1994.

PGT states that the Operational report provides a detailed operational accounting of all changes to PGT's line pack for the 12 month period ending March 31, 1995. Including all additions and deletions, a breakdown for each month of the approximate ownership of the line pack between PGT and others, and sets forth the percentage of ownership for each. In addition, the report provides a valuation of the line pack in PGT's system for each month, broken down between gas owned by PGT and gas owned by others.

PGT states that copies of PGT's filing have been served upon all parties to this proceeding as well as PGT's jurisdictional customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before July 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18297 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–55–002]

Paiute Pipeline Company; Notice of Compliance Filing

July 20, 1995.

Take notice that on July 18, 1995, Paiute Pipeline Company (Paiute) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets:

Substitute First Revised Sheet No. 63
Substitute Original Sheet No. 65A

Paiute indicates that the purpose of its filing is to comply with the Commission's order issued June 1, 1995 in Docket Nos. RP95–55–001 and RP95–269–000, by which the Commission approved an offer of settlement filed by Paiute. Paiute requests that the proposed tariff sheets be permitted to become effective June 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before July 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18298 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–383–001]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 20, 1995.

Take notice that on July 18, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 7, 1995:

Second Revised Sheet No. 222
Second Revised Sheet No. 235
Second Revised Sheet No. 241

Panhandle states that the purpose of this filing is to fully conform the General Terms and Conditions to the changes proposed by Panhandle in its July 7, 1995 filing. These sheets were inadvertently omitted from the July 7, 1995 filing. In that filing, Section 6.1 is being revised to delete the references to Section 6.12, which was deleted from the General Terms and Conditions. Section 6.7, Section 7.2(b)(iii) and Section 8.7 of the General Terms and Conditions should also be revised to make similar conforming changes regarding requests for transportation and storage service.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 27, 1995. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18299 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1593–002, et al.]

National Power Exchange Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 18, 1995.

Take notice that the following filings have been made with the Commission:

1. National Power Exchange Corporation

[Docket No. ER94–1593–002]

Take notice that on June 5, 1995, National Power Exchange Corporation tendered for filing certain information as required by the Commission's letter order dated October 7, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

2. Midamerican Energy Company

[Docket No. ER95–188–001]

Take notice that on June 30, 1995 and July 11, 1995, Midamerican Energy Company tendered for filing revised tariff sheets in the above-referenced docket.

Comment date: July 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Industrial Gas & Electric Services Company

[Docket No. ER95–257–002]

Take notice that on June 26, 1995, Industrial Gas & Electric Services Company tendered for filing certain information as required by the Commission's letter order dated February 1, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

4. Kaztex Energy Services, Inc.

[Docket No. ER95–295–003]

Take notice that on July 11, 1995, Kaztex Energy Services, Inc. tendered for filing certain information as required by the Commission's letter order dated February 24, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

5. Toledo Edison Company

[Docket No. ER95–496–000]

Take notice that on July 3, 1995, the Toledo Edison Company (Toledo), amended its filing in the above-referenced docket to modify the method by which Toledo will determine the cost of emission allowances in the coordinated sales of agreements between Toledo and Ohio Power Company, American Municipal Power-Ohio, the parties to the Operating Agreement with the Michigan Companies (namely, Consumers Power Company and Detroit Edison Company), Ohio Valley Electric Corporation, and the parties to the CAPCO Basic Operating Agreement (namely, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Cleveland Electric Illuminating Company).

A copy of the filing was served upon the parties affected by the amendment and the Ohio Public Utilities Commission.

Comment date: August 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1283–000]

Take notice that on June 28, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 127, a facilities agreement with the New York Power Authority (NYPA). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of July 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: August 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Electric and Gas Company

[Docket No. ER95–1286–000]

Take notice that on June 29, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide transmission service to Jersey Central Power and Light (Purchaser). The Rate Schedule provides for a monthly transmission, energy losses and administrative charge for delivery by PSE&G of the Sussex Rural Electric Cooperative Association's and the Boroughs of Butler, Lavallette, Madison, Pemberton and Seaside Heights' (recipient Entities) share of the state hydroelectricity from the New York/New Jersey boarder to Purchaser. PSE&G requests that the filing be permitted to become effective on July 1, 1995.

Comment date: August 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Electric and Gas Company

[Docket No. ER95–1287–000]

Take notice that on June 29, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide transmission and subtransmission service to the Borough of Milltown (Purchaser). The Rate Schedule provides for a monthly transmission, subtransmission, energy losses and administrative charge for delivery by PSE&G of the Purchase's share of the State of New Jersey's allocation of New york Power Authority neighboring state hydroelectricity from the New York/New Jersey boarder to Purchaser. PSE&G requests that the filing be permitted to become effective on July 1, 1995.

Comment date: July 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Hinson Power Company

[Docket No. ER95–1314–000]

Take notice that on June 30, 1995, Hinson Power Company (Hinson) tendered for filing FERC Electric Service Rate Schedule No. 1, together with a petition for waivers and blanket approvals of various Commission Regulations necessary for such Rate Schedule to become effective 60 days after June 30, 1995.

Hinson states that it intends to engage in electric power and energy transactions as a marketer, and that it proposes to make sales under rates, terms and conditions to be mutually agreed to with the purchasing party. Hinson further states that it is not in the business of generating, transmitting, or distributing electric power.

Comment date: July 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18328 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–135–001, et al.]

Allegheny Power Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 19, 1995.

Take notice that the following filings have been made with the Commission:

1. Allegheny Power Service Corporation on behalf of Monongahela Power Company The Potomac Edison Company and West Penn Power Company (the APS Companies)

[Docket No. ER95–135–001]

Take notice that on June 30, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company ("the APS Companies") filed amendments to comply with a Commission Order on filing rates for emission allowances. Allegheny Power Service Corporation requests waiver of notice requirements and asks the Commission to honor the proposed January 1, 1995 effective date specified in Docket No. ER95–135–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Kentucky Utilities Company

[Docket No. ER95–529–000]

Take notice that on July 11, 1995, Kentucky Utilities Company (KU), tendered for filing an amendment to its filing in the above-referenced docket regarding the inclusion of the cost of emission allowances associated with coordination sets.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection Association

[Docket Nos. ER95–564–000 ER95–565–000 ER95–566–000 ER95–567–000 and ER95–568–000]

Take notice that on June 27, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to PJM Interconnection Agreement, amended versions of Exhibit A in each of the subject dockets to explain the treatment of the costs of emission allowances in energy sales.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER95–576–001]

Take notice that Wisconsin Public Service Corporation (WPSC), of Green Bay, Wisconsin on June 30, 1995, tendered for filing revisions to its SO_2 emission allowance procedures in compliance with the Commission's June 2, 1995 order accepting WPSC's February 8, 1995 emissions allowance filing. WPSC asks that its emission allowance rate become effective on July 1, 1995 rather than January 1, 1995 as specified in the Commission's June 2, 1995 order.

WPSC states that the filing has been served on the affected parties and posted as required by the Commission's Regulations.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Company

[Docket No. ER95–836–001]

Take notice that on June 30, 1995, Maine Public Service Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER95–902–000]

Take notice that on July 14, 1995, Northern Indiana Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Orange and Rockland Utilities, Inc.

[Docket No. ER95–1026–000]

Take notice that on July 6, 1995, Orange and Rockland Utilities, Inc. (O&R) tendered for filing an Amendment to its agreement with Enron Power Marketing, Inc. (EPMI) to provide for the purchase or sale by either party of energy and capacity and whereby the sale by O&R is subject to cost based ceiling rates. The ceiling rate for O&R energy is 100 percent of O&R's Incremental Cost (SIC) plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by O&R is $14.79 per megawatt hour.

O&R states that a copy of this filing has been served by mail upon EPMI.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER95–1027–000]

Take notice that on July 3, 1995, Orange and Rockland Utilities, Inc. (O&R) tendered for filing an Amendment to its agreement with Long Island Lighting Company (LILCO) to provide for the sale by O&R of energy and capacity subject to cost based ceiling rates. The ceiling rate for energy is 100 percent of the Seller's Incremental Cost (SIC) plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power recourse). The ceiling rate for capacity sold by O&R is $14.79 per megawatt hour.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER95–1053–000]

Take notice that on July 3, 1995, Duquesne Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas & Electric Corporation

[Docket No. ER95–1093–000]

Take notice that on July 17, 1995, Central Hudson Gas & Electric Corporation tendered for filing a letter requesting to withdraw its Notice of Cancellation regarding Rate Schedule 71.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket Nos. ER95–1098–000]

Take notice that Portland General Electric Company, on July 5, 1995, tendered for filing an amendment to its May 25, 1995 filing in the above-referenced docket.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of Colorado

[Docket No. ER95–1207–000]

Take notice that on July 7, 1995, Public Service Company of Colorado tendered for filing an amendment in the above-referenced docket.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER95–1276–000]

Take notice that on June 27, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing the First Amendment to the Transmission Service Agreement (Amendment) between Entergy Services and NorAm Energy Services (NorAm). Entergy Services states that the Amendment modifies the transmission arrangements under which the Entergy Operating Companies' will provide NorAm non-firm transmission service under Entergy Services Transmission Service Tariff.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–1285–000]

Take notice that on June 29, 1995, GPU Service Corporation (GPU) tendered for filing on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company tendered for an amendment to the GPU Power Pooling Agreement dated July 21, 1969, as amended, which is on file with the Commission as Jersey Central Power & Light Rate Schedule No. 31, Metropolitan Edison Company Rate Schedule No. 40 and Pennsylvania Electric Company Rate Schedule No. 62.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Power, Inc.

[Docket No. ER95–1330–000]

Take notice that on July 3, 1995, Entergy Power, Inc. (EPI), tendered for filing a Purchase and Sale Agreement with Catex Vitol Electric, L.L.C.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the Commission notice requirements in § 35.11 of the Commission's Regulations.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company

[Docket No. ER95–1332–000]

Take notice that on July 3, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and Enron Power Marketing, Inc. (EPMI). The Transmission Service Agreement allows EPMI to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume 1, Rate Schedule T–1.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on EPMI, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER95–1333–000]

Take notice that on July 3, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and LG&E Power Marketing Inc. (LPM). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on LPM, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Stalwart Power Company

[Docket No. ER95–1334–000]

Take notice that on July 3, 1995, Stalwart Power Company (Stalwart) tendered for filing pursuant to Rule 205, 18 CFR 385.205 an application for a blanket certificate, disclaimer of jurisdiction, and various other authorizations and waivers from the Commission, including approval of its FERC Electric Rate Schedule No. 1 to be effective August 31, 1995.

Stalwart proposes to engage in the wholesale electric power market as both a broker and a marketer buying and selling electric power. Specifically, Stalwart proposes to purchase electric energy and transmission capacity from public utilities and other power producers, and resell such energy and capacity to others. Stalwart anticipates that such transactions will vary in duration and quality of service relative to interruptibility. In addition, the price it proposes to charge for its services shall be negotiated, market-based rates. Stalwart does not own or operate electric power generation, transmission, or distribution facilities.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Power, Inc.

[Docket No. ER95–1335–000]

Take notice that on July 3, 1995, Entergy Power, Inc. (EPI), tendered for filing an Interchange Agreement with Sam Rayburn G&T Electric Cooperative, Inc.

EPI requests an effective date for the Interchange Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the notice requirements specified in § 35.11 of the Commission's Regulations.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Power, Inc.

[Docket No. ER95–1336–000]

Take notice that on July 5, 1995, Entergy Power, Inc. (EPI), tendered for filing an Interchange Agreement with East Texas Electric Cooperative, Inc.

EPI requests an effective date for the Interchange Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the notice requirements specified in § 35.11 of the Commission's Regulations.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Power & Light Company

[Docket No. ER95–1337–000]

Take notice that on July 5, 1995, Wisconsin Power & Light Company (WP&L), tendered for filing an amended Wholesale Power Agreement dated June 26, 1995, between Adams-Columbia Electric Cooperative and WP&L. WP&L states that this amended Wholesale Power Agreement revises the previous agreement between the two parties dated August 24, 1988, and designated Rate Schedule Number 144 by the Commission.

The parties have amended the Wholesale Power Agreement to add an additional delivery point. Service under this amended Wholesale Power Agreement will be in accordance with standard WP&L Rate Schedule W–2.

WP&L requests an effective date of July 14, 1995 which is concurrent with the expected service date. WP&L states that copies of the amended Wholesale Power Agreement and the filing have been provided to Adams-Columbia Electric Cooperative and the Public Service Commission of Wisconsin.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Pacific Gas and Electric Company

[Docket No. ER95–1338–000]

Take notice that on July 5, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing the First Amendment to the September 22, 1993 Power and Transmission Services Agreement between PG&E and Lassen Municipal Utility District (Lassen), a Revised Appendix A to that Agreement, and a February 3, 1995 Letter Agreement between PG&E and Lassen. The three submittals proposed changes in energy, power and transmission rates for services PG&E provides Lassen to be effective July 1, 1994.

Copies of this filing have been served upon Lassen and the California Public Utilities Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Portland General Electric Company

[Docket No. ER95–1340–000]

Take notice that on July 6, 1995, Portland General Electric Company (PGE), tendered for filing a Revision No. 2 to Exhibit D of the General Transfer Agreement between Bonneville Power Administration (BPA) and PGE (FERC Electric Service Tariff Volume No. 72).

The BPA and PGE mutually agree to revise Exhibit D to the General Transfer Agreement to reflect PGE as the full service supplier to Canby Utility Board (Docket No. ER95–1128–000).

Copies of the filing have been served on the parties included in the filing letter.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993, (Docket No. PL93–2–002), PGE respectfully requests that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow Revision No. 2 to Exhibit D of the GTA to become effective as of August 1, 1995.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Pacific Gas and Electric Company

[Docket No. ER95–1341–000]

Take notice that on July 6, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing a rate schedule change to Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

The rate schedule change establishes recorded-cost based rates for true-up of capacity sales and energy sales from Energy Account No. 2 made during 1993, at rates based on estimated costs. Pursuant to Contract No. 14–06–200–2948A, and to the PG&E—Western Letter Agreement dated February 7, 1992, sales are made initially at rates based on estimated costs and then are rebilled at rates based on recorded costs after the necessary data becomes available. With interest, the rebilling will result in a refund to Western of over $2.1 million.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Virginia Electric and Power Company

[Docket No. ER95–1342–000]

Take notice that on July 7, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Public Service Electric and Gas Company and Virginia Power, dated July 1, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 17, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Engelhard Power Marketing, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Black Hills Corporation

[Docket No. ER95–1343–000]

Take notice that on July 7, 1995, Black Hills Corporation (Black Hills), which operates its electric utility business under the name of Black Hills Power and Light Company, tendered for filing the Second Restated Electric Power and Energy Supply and Transmission Agreement, dated as of February 28, 1995 (Amended Agreement), between Black Hills and the City of Gillette, Wyoming (Gillette), in replacement of and to supersede the Restated Electric Power and Energy Supply and Transmission Agreement, dated December 21, 1987, between Black Hills and Gillette filed with the Commission and designated Black Hills Power and Light Company, Rate Schedule FERC No. 34 and Supplement No. 1 thereto. As a further supplement to the above Rate Schedule, Black Hills also tenders for filing the Restated and Amended Coal Supply Agreement for Neil Simpson Unit No. 2, dated February 12, 1993 as an amended to Black Hills' Rate Schedule FERC No. 33 (as now designated).

The New Agreement reduces the quantity of capacity and energy to be sold Gillette and provides for an increase in the capacity charge and other minor changes.

Black Hills requests and provides waiver of the Commission's Notice requirements to permit this rate schedule to become effective September 1, 1995.

Copies of this filing were served upon the parties to the Amended Agreement, the South Dakota Public Utilities Commission, the Wyoming Public Service Commission and the Montana Public Service Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. CINergy Services, Inc.

[Docket No. ER95–1344–000]

Take notice that on July 7, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated June 1, 1995, between CIN, CG&E, PSI and Torco Energy Marketing, Inc. (TORCO).

The Interchange Agreement provides for the following service between CIN and TORCO.

1. Exhibit A—Power Sales by TORCO
2. Exhibit B—Power Sales by CIN

CIN and TORCO have requested an effective date of August 1, 1995.

Copies of the filing were served on Torco Energy Marketing, Inc., the Illinois Commerce Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. CINergy Services, Inc.

[Docket No. ER95–1345–000]

Take notice that on July 7, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated June 1, 1995, between CIN, CG&E, PSI and Tennessee Power Company (TPCO).

The Interchanges Agreement provides for the following service between CIN and TPCO.

1. Exhibit A—Power Sales by TPCO
2. Exhibit B—Power Sales by CIN

CIN and TPCO have requested an effective date of August 1, 1995.

Copies of the filing were served on Tennessee Power Company, the Tennessee Public Service Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18329 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–P

Notice of Application Filed With the Commission

July 20, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 2586–018.

c. *Date filed:* July 3, 1995.

d. *Applicant:* Alabama Electric Cooperative, Inc.

e. *Name of Project:* Gantt Project.

f. *Location:* The project is located on the Conecuh River in Crenshaw and Covington Counties, Alabama.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Tisdale, Alabama Electric Cooperative, Inc., P.O. Box 550, Andalusia, AL 36420, Phone: (334) 222–2571.

i. *FERC Contact:* Jon E. Cofrancesco, (202) 219–0079.

j. *Comment Date:* August 18, 1995.

k. *Description of Amendment:* Alabama Electric Cooperative, Inc. (licensee), proposes to drawdown the project's Point A reservoir 6–10 feet for 90 days to allow the installation of a concrete basin for a cooling tower associated with the McWilliams Steam Plant 150 yards downstream from the Gantt Dam and the installation of a boat ramp adjacent to the Gantt Dam.

. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18291 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11419–001 Oregon]

Abert Rim Hydroelectric Associates; Notice of Surrender of Preliminary Permit

July 20, 1995.

Take notice that Abert Rim Hydroelectric Associates, Permittee for the Abert Rim Project No. 11419, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11419 was issued October 5, 1993, and would have expired September 30, 1996. The project would have been located on Lake Abert and Rabbit Creek, in Lake County, Oregon.

The Permittee filed the request on July 12, 1995, and the preliminary permit for Project No. 11419 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc: 95–18292 Filed 7–25–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the procedures for disbursement of $29,376,255.50 (plus accrued interest) in alleged or adjudicated crude oil overcharges obtained by the DOE from Western Asphalt Service, Inc. (Case No. LEF–0047), Gray Trucking Company (Case No. LEF–0120), William Valentine & Sons, Inc. (Case No. LEF–0123), Dorchester Master Limited Partnership (Case No. VEF–0005), Howell Corporation (Case No. VEF–0006), Placid Oil Company (Case No. VEF–0008), Eton Trading Corporation (Case No. VEF–0009) and Rodgers Hydrocarbon Corporation (Case No. VEF–0010). The OHA has determined that the funds obtained from these firms, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute a total of $29,376,255.50, plus accrued interest, remitted to the DOE by Western Asphalt Service, Inc., Gray Trucking Company, William Valentine & Sons, Inc., Dorchester Master Limited Partnership, Howell Corporation, Placid Oil Company, Eton Trading Corporation and Rodgers Hydrocarbon Corporation. The DOE is currently holding these funds in interest bearing escrow accounts pending distribution.

The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury.

Because the June 30, 1995, deadline for the crude oil refund applications has passed, no new applications from purchasers of refined petroleum products will be accepted for the 20 percent of these funds allocated to individual claimants. Instead, that share of the funds will be added to the general crude oil overcharge pool used for direct restitution.

Date: July 17, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 17, 1995.

Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

Names of Firms: Western Asphalt Service, Inc. *et al.*

Dates of Filing: July 17, 1992 *et al.*

Case Numbers: LEF–0047 *et al.*

The Office of General Counsel, Regulatory Litigation ("OGC") (formerly the Economic Regulatory Administration (ERA), Office of Enforcement Litigation), filed Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute funds which the eight firms listed in the Appendix to this Decision and Order remitted to the DOE pursuant to court-approved settlements between the parties and the DOE, DOE consent orders or remedial orders.

In accordance with procedural regulations codified at 10 C.F.R. Part 205, Subpart V (Subpart V), the OGC requested in its Petitions that the OHA establish special refund procedures to remedy the effects of the regulatory violations which were resolved by these proceedings. This Decision and Order sets forth the OHA's final plan to distribute these funds.

I. Background

As indicated by the following summaries of the relevant enforcement proceedings, all of the funds that are subject to this Decision were obtained by the DOE as a result of alleged or adjudicated crude oil overcharges.

A. Western Asphalt Service, Inc. (Western)

During the period of Federal petroleum price controls, Western was engaged in crude oil refining and reselling.[1] The firm was therefore subject to regulations governing the pricing of crude oil set forth at 10 CFR parts 205, 210, 211, and 212 of the Mandatory Petroleum Price and Allocation Regulations. As a result of an ERA audit of its operations, a Proposed Remedial Order (PRO) was issued to Western on April 4, 1984 pursuant to 10 CFR part 205, Subpart O (ERA Docket No. 940X00182). The PRO alleged violations of the pricing and certification rules that applied to crude oil resellers. Essentially, the firm was charged with selling price-controlled crude oil at unlawfully high prices in violation of the provisions of 10 CFR part 212, Subpart L and 10 CFR § 212.131. In another enforcement proceeding, on May 7, 1981, a Notice of Probable Violation (NOPV) was issued to Western which alleged that the firm unlawfully received Small Refiner Bias Entitlements (ERA Docket No. N00S90197) in April and May 1977. These alleged violations of DOE crude oil regulations by Western were settled by a Consent Order between the firm and DOE on May 30, 1984. The PRO was therefore withdrawn and the NOPV was rescinded. Western agreed to remit $300,000, plus interest, to the DOE for deposit in an interest-bearing escrow account. Western has complied with this obligation, remitting a total of $390,059.12 to the DOE. In return, the DOE has released Western from any liability regarding its failure to comply with the Federal petroleum price and allocation regulations during the period August 19, 1973 through January 27, 1981, with the sole exception of any potential violations of the Entitlements Program after September 30, 1980.

B. Gray Trucking Company (Gray)

Gray was also a crude oil reseller during the period of price controls. On March 29, 1982, Gray and the DOE entered into a Consent Order whereby Grey would remit $31,500, plus interest, to the DOE for deposit in an interest-bearing escrow account. The DOE agreed not to pursue its claim that, during the period March 1977 through January 1980, Gray overcharged its customers by charging unlawfully high prices for crude oil in violation of 10 CFR part 212, subparts F and L. Despite its agreement with the terms of the Consent Order, Gray failed to comply fully with its financial obligations to the DOE, and remitted only $4,738.86 to the DOE. On October 15, 1985, the U.S. District Court for the Northern District of Texas, Amarillo Division, granted the DOE an Amended Judgment against Gray for an additional $34,625. However, the Amended Judgment has not resulted in any additional payments to DOE by Gray. ERA has petitioned that the $4,738.86, plus accrued interest, obtained from Gray be distributed by OHA in accordance with the Subpart V regulations.

C. William Valentine & Sons, Inc. (Valentine)

Valentine was engaged in crude oil reclamation during the period May 1979 through December 1980.[2] Through an unincorporated subsidiary, Big Muddy Oil Processors Inc. (Big Muddy), Valentine obtained waste crude oil from oil spills, pipeline ruptures, waste oil pits and oil tank bottoms. After numerous separation and filtering processes, the waste oil was mixed with various blending agents (naphthas, natural gasoline, natural gas by-products, etc.) and the resulting product was sold as pipeline-quality crude oil. Big Muddy, and by extension Valentine, was therefore a reseller of crude oil, subject to the provisions

[1] Western Asphalt Service, Inc., W.F. Moore and Son, Inc., and Gibson Oil and Refining Company were all controlled by Wilfred Paige van Loben Sels during the price control period. Textual references to "Western" in this Decision include all parties to the Western Consent Order.

[2] William Valentine and Sons, Inc., Valentine Construction, Inc., Dale L. Valentine, Verna Valentine, and James L. Marchant are collectively referred to as "Valentine" in the text. All are parties to the Settlement Agreement which resolved DOE claims against them.

of 10 CFR part 212, subpart L, which governed the resales of crude oil.

An ERA audit uncovered evidence that Valentine sold crude oil at unlawfully high prices during the period May 1979 through December 1980. On December 2, 1987, OHA issued a Remedial Order (RO) to Valentine directing the firm to refund $1,454,876 in overcharges, plus interest. See William Valentine and Sons, Inc., 16 DOE ¶ 83,025 (1987). Valentine appealed OHA's determination to the Federal Energy Regulatory Commission (FERC). On March 23, 1989, FERC rejected Valentine's Appeal of the RO and upheld OHA's findings. See William Valentine and Sons, Inc., 46 FERC ¶ 61,252 (1989). Valentine appealed that decision and, on January 24, 1990, the U.S. District Court for the District of Wyoming ruled that Valentine's challenge to the RO and to FERC's ruling was without merit. At the same time, the Court also approved a Settlement Agreement in which Valentine agreed to remit to DOE no less than $108,739 plus interest. In return, DOE agreed to deem Valentine in full compliance with the price control program and to release all administrative and civil claims against the firm. Valentine has paid $126,402.66 into an interest-bearing DOE escrow account in compliance with the Settlement Agreement.

D. Dorchester Master Limited Partnership (DMLP)

During the period of petroleum price controls, the firms which now comprise DMLP[3] were engaged in crude oil refining and reselling. The firms were therefore subject to regulations governing the pricing and allocation of crude oil set forth at 10 C.F.R. Parts 211 and 212. In an audit which covered the period from November 1, 1974 through August 1979 the ERA identified instances in which it believed that Dorchester's refinery subsidiary and reseller division engaged in the improper switching of crude oil certifications in violation of 10 C.F.R. 211.67 (the Crude Oil Entitlements Program) and 212.131(b). As a result of the ERA audit, a PRO was issued to Dorchester on March 19, 1982 (Case No. 6A0X00278). The OHA affirmed the findings of the PRO and issued an RO to Dorchester on March 11, 1985. *Dorchester Gas Corp.*, 12 DOE ¶ 83,034 (1985), appeal docketed, No. R085–12–000 (FERC April 22, 1985). As a result of another ERA audit, on March 9, 1983, a PRO was issued to Doram and Damson, the other firms now comprising DMLP, alleging that during the period March 1980 through December 1980, they received illegal revenue by reselling crude oil at prices in excess of those permitted by applicable crude oil reseller price regulations. An RO was issued to those two firms on March 12, 1987. *Doram Energy, Inc.*, 15 DOE ¶ 83,024 (1987), *modified*, 16 DOE ¶ 83,006 (1987), appeal docketed, No. R087–16–000 (FERC April 6, 1987).

On April 4, 1988, a Consent Order was executed between DMLP and the DOE which resolved a number of outstanding issues involving DMLP. Under the terms of the settlement, DMLP would pay the DOE a maximum of $65 million but no less than $11 million, plus installment interest, by July 1, 1997. The Consent Order states that the DOE has made no formal findings of violation by DMLP and that DMLP does not admit it has committed any regulatory violations. As of March 31, 1995, DMLP had paid the DOE the sum of $11,193,729.72,[4] and it is current in its payments to DOE. Although we anticipate that additional revenues will be collected from DMLP, no good reason exists to forestall implementing procedures for distributing the current balance of the fund.

E. Howell Corporation (Howell)

During the price control period, Howell was a crude oil producer, refiner, and reseller. Howell was therefore subject to the Federal petroleum price and allocation regulations. In 1981, the ERA audited Howell's compliance with the crude oil Entitlements Program during the period January 1, 1978 through January 27, 1981. As a result of that audit, on June 24, 1988, a PRO was issued to the firm, alleging violations of the crude oil price and allocation regulations.[5] On February 23, 1989, the DOE and Howell executed a Consent Order resolving the issues addressed in the PRO. Pursuant to the Consent Order, Howell agreed to pay the DOE $19,375,000 plus interest, with installment payments over seven years. As of June 30, 1995, Howell had paid the DOE $15,288,097.66, and it is current in its payments to the DOE. Although we anticipate that additional revenues will be collected from Howell, no good reason exists to forestall implementing procedures for distributing the current balance of the fund.

F. Placid Oil Company (Placid)

Placid was a producer of crude oil during the period of price controls. On March 30, 1981, the ERA issued a PRO in which it alleged that during the period from September 1973 through May 1977, Placid overcharged its customers in sales of crude oil from several properties it operated. In addition, the PRO also alleged that Placid improperly calculated the average daily production for a number of properties and as a result erroneously certified crude oil production from these properties as exempt from price controls pursuant to the stripper well exemption. On February 11, 1985, the OHA issued an RO to Placid, affirming the ERA allegations concerning Placid's overcharges. *Placid Oil Co.*, 12 DOE ¶ 83,030, *modified*, 13 DOE ¶ 83,007 (1985). Placid appealed the RO to the FERC. On February 26, 1987, the FERC reversed and vacated the RO (*Placid Oil Co.*, 38 FERC ¶ 61,199); however, on July 23, 1987, the FERC reversed itself in part, vacating portions of its previous Order (*Placid Oil Co.*, 40 FERC ¶ 61,112). On March 18, 1988, the FERC issued an Order affirming the RO but modifying the violation amount. *Placid Oil Co.*, 42 FERC ¶ 61,326 (1988). Subsequently, in a bankruptcy proceeding involving Placid, the U.S. Bankruptcy Court for the Northern District of Texas approved the DOE's claim of $1,196,728.09 against Placid. Placid has fulfilled its financial obligation to the DOE, with payments, including installment interest, totalling $1,272,963.81.

G. Eton Trading Corporation (Eton)

Eton and its affiliate, Eton Enterprises, Inc., were resellers of crude oil during the period June 1980 through December 1980, and were subject to the crude oil reseller regulations set forth at 10 CFR. Part 212, Subpart L. As the result of an ERA audit of Eton's operations, on January 14, 1986, the ERA issued a PRO to the firm alleging that it had engaged in layered crude oil transactions in violation of 10 CFR § 212.186. The PRO stated that those layered transactions resulted in overcharges amounting to $9,182,412.70. On March 17, 1986, Eton filed a Notice of Objection with this Office but waived its right to contest the determinations made in the PRO by failing to file a Statement of Objections in a timely manner. Accordingly, on December 5, 1986, the OHA issued the PRO as a final Remedial Order. *Eton Trading Corp.*, 15 DOE ¶ 83,011 (1986). In July 1986, Eton Trading Corporation and Eton Enterprises filed for bankruptcy. The DOE filed identical claims in the bankruptcy proceedings of the two firms. A distribution has been made in the Eton Trading bankruptcy proceeding, in which the DOE received $1,049,073.67. Although the possibility exists that additional revenues will be distributed to the DOE in the Eton Enterprise bankruptcy proceeding which has not yet been closed, no reason exists to delay in implementing distribution of the current balance of the fund.

H. Rodgers Hydrocarbon Corporation

Rodgers Hydrocarbon Corporation and Ray V. Rodgers, Jr. (referred to collectively as Rodgers) were crude oil resellers during the period of September 1977 through January 1980. On March 29, 1985, the ERA issued a PRO to Rodgers alleging that during that period, Rodgers failed to properly certify crude oil as required by 10 CFR. 212.131(b). In addition, the ERA alleged that Rodgers failed to submit reports and maintain books and records in accordance with 10 CFR 212.187 (a) and (b).[6] Rodgers filed a Statement of Objections to the PRO on August 26, 1985. After considering Rodgers' objections, certain provisions of the PRO were modified, and the PRO was issued as a final RO on July 20, 1989. *Rodgers Hydrocarbon Corp.*, 19 DOE ¶ 83,004 (1989). On December 4, 1989, Rodgers and the DOE executed a Consent Order resolving the issues addressed by the RO. Pursuant to the Consent Order, Rodgers agreed to pay the DOE $50,000, plus interest, in two equal payments. Rodgers paid to the DOE the sum of $51,190 and has fulfilled its financial obligation to the DOE.

[3] DMLP, a limited partnership formed in 1964, is the successor to Dorchester Gas Corporation (Dorchester) and includes Damson Oil Corporation (Damson), the general partner of DMLP, and Doram Energy, Inc. (Doram), a subsidiary of Damson. Therefore, DMLP will be used to refer collectively to Dorchester, Damson, and Doram, and their subsidiaries and affiliates. We will refer to the individual firms in some instances, since the audits originated with those firms during the period of price controls.

[4] Of that amount $5,198.52 came from Damson pursuant to its own bankruptcy proceeding.

[5] The PRO alleged violations of 10 C.F.R. 211.66(b) and (h), 205.202, and 210.62(c), resulting from significant understatement of receipts of price-controlled crude oil. Specifically, ERA alleged that during the period April 1978 through December 1979, the Joint Venture consisting of Howell and Quintana Refinery Co. failed to correctly report the tier certifications associated with substantial volumes of its crude oil receipts at its Corpus Christi, Texas, refinery; and Howell Hydrocarbons engaged in similar conduct during the period April 1978 through November 1980 at its San Antonio, Texas, refinery. In addition, the ERA alleged that during the period April 1978 through December 1979, Howell Industries, an affiliate, improperly charged prices for crude oil in excess of its actual purchase prices, in violation of 10 C.F.R. 212.186, 210.62(c) and 205.202.

[6] Crude oil resellers were required to file certain information on ERA–69 "Crude Oil Reseller's Self-Reporting Forms."

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 et seq.; *see also Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. The Proposed Decisions and Orders

On July 1, 1994, and June 12, 1995, OHA issued Proposed Decisions and Orders (PDOs) setting forth the OHA's tentative plan to distribute these funds. See 59 FR 35329 (July 11, 1994) (the Western PDO) and 60 FR 32004 (June 19, 1995) (the DMLP PDO), respectively. OHA tentatively concluded that the funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, (MSRP), *see* 51 FR 27899 (August 4, 1986). Pursuant to the MSRP, OHA proposed to reserve 20 percent of those funds for direct refunds to applicants who claim that they were injured by the crude oil violations. We stated that the remaining 80 percent of the funds would be distributed to the states and federal government for indirect restitution.

We provided a period of 30 days from the date of the PDOs' publication in the **Federal Register** in which the public could submit comments regarding the tentative refund procedures. More than 30 days have elapsed, and the OHA has received no comments concerning the proposed procedures.

IV. The Refund Procedures

A. Crude Oil Refund Policy

We adopt the tentative determination of the PDOs to distribute the funds obtained from the eight firms in accordance with the MSRP, which was issued as a result of the Settlement Agreement approved by the court in *The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 106 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) Document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. See *City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987).

B. Refund Claims

The amount of money subject to this Decision is $29,376,255.50, plus accrued interest, which, as of May 31, 1995, totalled $6,312,426.32. In accordance with the MSRP, we shall initially reserve 20 percent of those funds ($5,875,251.10 plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges. We shall base refunds on a volumetric amount which has been calculated in accordance with the methodology described in the April 10 Notice. That volumetric refund amount is currently $0.0016 per gallon. See 57 FR 15562 (March 24, 1995).

In the Western PDO, we indicated that the filing deadline for refund applications in the crude oil refund proceeding was June 30, 1994. This was subsequently changed to June 30, 1995. See Filing Deadline Notice, 60 FR 19914 (April 20, 1995); see also DMLP PDO, 60 FR 32004, 32007 (June 19, 1995). Because the June 30, 1995, deadline for crude oil refund applications has passed, no new applications from purchasers of refined petroleum products will be accepted for these funds. Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.[7]

C. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the crude oil violation amounts subject to this Decision, or $23,501,004.40 plus accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $11,750,502.20 plus interest, into an interest bearing subaccount for the states, and one-half or $11,750,502.20, plus interest, into an interest bearing subaccount for the federal government.

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer the consent order funds shown in the Appendix to this Decision and Order, plus all accrued interest from the escrow accounts of the firms listed in the Appendix pursuant to Paragraphs (2), (3), and (4) of this Decision.

(2) The Director of Special Accounts and Payroll shall transfer $11,750,502.20 plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE0003W.

(3) The Director of Special Acccounts and Payroll shall transfer $11,750,502.20, plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer $5,875,251.10 plus any accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE0010Z.

(5) This is a final Order of the Department of Energy.

Dated: July 17, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[7] A crude oil refund applicant is only required to submit one application for its share of all available crude oil overcharge funds. See, e.g., *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 at 88,176 (1988).

APPENDIX

Case No.	Firm	ERA order numbers	Principal amount
LEF–0047	Western Asphalt Service, Inc.	940X00182Z	$390,059.12
LEF–0120	Gray Trucking Company	6A0X00305Z	4,738.86
LEF–0123	William Valentine & Sons, Inc.	N00X00683Z	125,402.66
VEF–0005	Dorchester Master Limited Partnership	6A0X00278W	11,193,729.72
VEF–0006	Howell Corporation	550X00367W	15,268,097.66
VEF–0008	Placid Oil Company	6D0C00048W	1,272,963.81
VEF–0009	Eton Trading Corporation	6C0X00301W	1,049,073.67
VEF–0010	Rodgers Hydrocarbon Corporation	6A0X00328W	51,190.00
Total			29,376,255.50

[FR Doc. 95–18390 Filed 7–25–95; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5261–5]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another reference method for the measurement of ambient concentrations of nitrogen dioxide. The new reference method is an automated method (analyzer) which utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50. The new designated method is identified as follows:

RFNA–0795–104, "Environment S. A. Model AC 31 M Chemiluminescent Nitrogen Oxide Analyzer," operated with a full scale range of 0–500 ppb, at any temperature in the range of 15°C to 35°C, with 5-micron PTFE sample particulate filter, with the following software settings: Automatic response time ON, Minimum response time set to 60 seconds (RT+2), and with or without any of the following options:

Internal Permeation Oven
Connection for Silica Gel Dryer
RS232–422 interface
EV34 valve
Internal Printer

Note: In addition to the standard U.S. electrical power voltage and frequency (115 Vac, 60 Hz), this analyzer is approved for use, with proper factory configuration, on 50 Hertz line frequency and any of the following voltage ranges: 98–126 Vac (115 nominal) and 195–246 Vac (230 volts nominal).

This method is available from Environmental S.A., 111, Bd Robespierre, 78300 Poissy, France or from Environment U.S.A., 570 Higuera Street, Suite 25, San Luis Obispo, California 93401. A notice of receipt of application for this method appeared in the **Federal Register,** Volume 60, January 31, 1995, page 5919.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by States and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designation status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzers has been canceled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, National Exposure Research Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Air Measurements Research Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Dated: July 12, 1995.

Joseph Alexander,

Assistant Administrator for Research and Development.

[FR Doc. 95–18369 Filed 7–25–95; 8:45 am]
BILLING CODE 6560–50–M

[FRL–5264–3]

Notice of Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Federal Facilities Environmental Restoration Dialogue Committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to improving the Federal facilities environmental restoration process.

DATES: The meeting will be held on August 1, 1995, from 8 a.m. until 5 p.m. and on August 2, 1995, from 8 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at the Grand Hyatt Hotel, 1000 H Street, SW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the meeting or on the Federal Facilities Environmental Restoration Dialogue Committee should contact Sven-Erik Kaiser, Federal Facilities Restoration and Reuse Office (5101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 260–5138.

Dated: July 17, 1995.

Sven-Erik Kaiser,

Designated Federal Official.

[FR Doc. 95–18370 Filed 7–25–95; 8:45 am]
BILLING CODE 6560–50–P

[FRL–5264–4]

Vermont: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination to Fully Approve the Adequacy of the State of Vermont's Municipal Solid Waste Permitting Program, Public Hearing and Public Comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste, will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibilities provided by 40 CFR Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that, regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The State of Vermont has applied for a determination of adequacy under section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C). EPA Region I has reviewed Vermont's MSWLF permit program adequacy application and has made a tentative determination that all portions of Vermont's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. (In statutes and rules of the State of Vermont "certification" is substituted for the term, "permitting program." References herein to the State Permitting Program pertain to the Vermont Certification Program.) Vermont's application for program adequacy determination is available for public review and comment at the places listed in the **ADDRESSES** section below during regular office hours.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF permit program, EPA Region I has tentatively scheduled a public hearing on this determination. If a sufficient number of persons express interest in participating in a hearing by writing to the EPA Region I Solid Waste Program or calling the contact given below within 30 days of the date of publication of this notice, EPA Region I will hold a hearing, in Montpelier, Vermont, on the date given below in the "DATES" section. EPA Region I will notify all persons who submit comments on this notice if it appears that there is sufficient public interest to warrant a hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **CONTACTS** section below.

DATES: All comments on Vermont's application for a determination of adequacy must be received by the close of business on August 25, 1995. If there is sufficient interest, a public hearing

will be held on October 12, 1995 at 10:00 a.m., at the Pavilion Office Building, Fourth Floor Conference Room, 109 State Street, Montpelier, Vermont. The State will participate in the public hearing, if held by EPA Region I on this subject.

ADDRESSES: Copies of Vermont's application for adequacy determination are available at the following addresses for inspection and copying: during the hours of 8:00 a.m. to 4:00 p.m., Vermont Agency of Natural Resources, Solid Waste Management Division, 103 South Main Street, The Laundry Building, Waterbury, VT 06571–0407, Attn: Ms. Stacey Gosselin, telephone (802) 241–3444; during the hours of 8:00 a.m. to 5:00 p.m., U.S. EPA Region I, 90 Canal Street, Boston, MA 02203, Attn: Fred Friedman, telephone (617) 573–9687. Written comments should be sent to Mr. John F. Hackler, Chief, Solid Waste and Geographic Information Section, mail code HER-CAN6, EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203–2211.

FOR FURTHER INFORMATION CONTACT: EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203–2211, Attn: Mr. Charles Franks, mail code HER-CAN6, telephone (617) 573–9678.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits or other forms of prior approval and conditions (for example, license to operate) to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement, as required in section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Vermont

On August 23, 1993, EPA Region I received Vermont's draft final MSWLF Permit Program application for adequacy determination. Region I reviewed the final application, submitted comments to Vermont, and requested additional information about state program implementation. Vermont addressed EPA's comments, provided the requested additional information, and submitted a revised final application for adequacy determination on April 27, 1995. Region I has reviewed Vermont's revised application and has tentatively determined that all portions of Vermont's MSWLF program meet all the requirements necessary to qualify for full program approval and ensure compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until August 25, 1995. Copies of Vermont's application are available for inspection and copying at the location indicated in the **ADDRESSES** section of this notice.

The State of Vermont's *Solid Waste Rules* are performance based and allow for adaptability in specifications while maintaining protection of human health and the environment. The Vermont Municipal Solid Waste Landfill Permitting Program generally reflects, but in some instances is different from, the Federal Criteria. In those instances where the program is different it is equivalent to the Federal Criteria and no less stringent. The differences are found primarily in the parts pertaining to groundwater and corrective action.

The Vermont permitting process relies heavily on site characterization and groundwater protection strategy. Vermont has a groundwater classification scheme which has not been fully implemented; each proposed application, however, must identify the groundwater classification of the proposed site and meet the siting restriction and criteria for those conditions. In addition to the siting restrictions, the approach taken by Vermont as their permitting program relates to groundwater monitoring and corrective action has a pro-active involvement by the Department of Environmental Conservation. The Vermont approach goes directly from detection of a release into corrective action, with the appropriate solution(s) determined by the Department of Environmental Conservation based upon the information reported by the owner/operator. The Vermont approach typically does not implement assessment monitoring as a distinct step in evaluating a release from a municipal solid waste landfill. Assessment monitoring is generally included as a function of corrective action.

To ensure full compliance with the Federal Criteria, Vermont has modified its current MSWLF permitting requirements by the adoption of Procedures. The Procedures have incorporated those requirements from the Federal Criteria not found in the State's existing MSWLF permitting program and are applicable to all existing MSWLFs and to all MSWLF permit applications. Vermont will implement its MSWLF permit program through enforceable permit conditions. These new requirements occur in the following areas:

1. The adoption of the following definitions as required by the revised Federal Criteria, 40 CFR 258.2: active life, active portion, composite liner, earthen daily cover, existing MSWLF unit, final cover system for lined landfills, final cover system for unlined landfills, lateral expansion, municipal solid waste landfill unit, new MSWLF unit, 100-year flood, and washout.

2. Compliance with the new location restrictions of 40 CFR 258.10, 258.14, and 258.15, which pertain to airport safety, seismic impact zones, and unstable areas.

3. Compliance with the new operating criteria of 40 CFR 258.20, 258.23, 258.26, 258.28, and 258.29 which pertain to procedures for excluding the receipt of hazardous waste, explosive gases control, run-on/run-off control systems, liquids restrictions, and recordkeeping requirements.

4. Compliance with the design criteria of 40 CFR 258.40.

5. Compliance with the requirements of 40 CFR 258.50, 258.51, 258.53, 258.54, and 258.55 which pertain to groundwater monitoring and the requirements of 40 CFR 258.56, 258.57, and 258.58 which pertain to corrective action.

6. Compliance with the closure and post-closure criteria of 40 CFR 258.60 and 258.61.

7. Compliance with the financial assurance criteria of 40 CFR 258.73, which pertain to financial assurance for corrective action.

Vermont's Department of Environmental Conservation requires all existing MSWLFs to have either an existing permit or a temporary permit, both of which require compliance with the Federal Criteria in 40 CFR part 258 pursuant to state laws and regulations, found at Title 10 of the Vermont Statutes Annotated (V.S.A.) Chapters 159, 201 and 211, and 4 V.S.A. Chapter 27. The State of Vermont is not asserting jurisdiction over Indian land recognized by the United States government for the purpose of this notice. Tribes recognized by the United States government are also required to comply with the terms and conditions found at 40 CFR part 258.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Vermont's program. EPA will make a final decision on approval of the State of Vermont's program and will give notice of the final determination in the **Federal Register**. The notice shall include a summary of the reasons for the final determination and a response to all significant comments.

Section 4005(a) of RCRA, 42 U.S.C. 6945(a), provides that citizens may use the citizen suit provisions of section 7002 of RCRA, 42 U.S.C. 6972, to enforce the Federal Criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See, 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6945.

Dated: July 17, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–18375 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30000/10I; FRL–4944–4]

Lindane: Decision Not To Initiate a Special Review on Kidney Effects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA (the Agency) announces its decision not to initiate a Special Review for pesticide products containing lindane based on worker health concerns arising from studies showing irreversible renal effects in the rat. EPA has determined that these effects occur only in the kidneys of the male rat and are not relevant for human risk assessment. The Agency is currently developing a strategy to examine the role organochlorine chemicals, such as lindane, may play as endocrine disrupters. Should the Agency determine that this or other effects cause unacceptable risk, it will take appropriate regulatory action.

FOR FURTHER INFORMATION CONTACT: By mail, David H. Chen, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Special Review Branch, Rm. WF32C6, Crystal Station #1, 2800 Crystal Drive, Arlington, VA., telephone Number: 703–308–8017, internet e-mail address: chen.david@epamail.epa.gov

SUPPLEMENTARY INFORMATION: On March 18, 1994, EPA announced its proposed decision (and solicitation for public comment) not to initiate a Special Review of lindane for male rat kidney effects described in the September 18, 1985 preliminary notification to lindane registrants and applicants. The Agency has reviewed the available data in light of the Agency's 1991 alpha$_{2u}$-globulin (α_{2u}-g) regulatory policy and the public comments received in response to the March, 1994 announcement. This notice provides the Agency's final decision, its response to comments, and the rationale for its final decision.

I. Introduction

Background information on pesticide registration and the Special Review process can be found in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.), and appropriate sections under 40 CFR part 154, published on November 27, 1985 (50 FR 49015). For a more comprehensive summary of the legal and regulatory background pertaining to lindane, refer to the Agency's proposed decision not to initiate a Special Review on rat kidney effects, published on March 18, 1994 (59 FR 12916). Below is a summary of the text of that document.

A. Background

Lindane (*gamma-hexachlorocyclohexane*) is a broad spectrum organochlorine insecticide/acaricide registered for control of insects and other invertebrates on a wide variety of sites. This pesticide is currently registered for use on field and vegetable crops (including seed treatments) and non-food crops (ornamental and tobacco), greenhouse food crops (vegetables), forestry (including Christmas trees), domestic outdoor and indoor (pets and household uses), commercial indoor (food/feed storage areas and containers), animal premises, wood or wooden structures, and human skin/clothing (military use only).

B. Regulatory History

Between 1977 and 1983, EPA conducted a Special Review that was based on the carcinogenicity, fetotoxicity/teratogenicity, and reproductive effects of lindane, and its potential to cause blood dyscrasia, as well as acute toxicity to aquatic wildlife. In the Agency's final determination (PD-4) published in 1983, the Agency canceled the indoor uses of smoke fumigation devices (by May, 1986) and the use of dips on dogs to control pests other than mites. Subsequently, the dog dip use was permitted for commercial use (kennel, farm, and sport dog uses only), provided that additional label

precautions were added to reduce applicator exposure. All other uses were allowed to continue with various restrictions. Those restrictions varied according to the degree of hazard associated with the use, but typical requirements included protective clothing, label statements describing necessary precautions, and restrictions of some products to certified pesticide applicators.

Following the conclusion of the Special Review in 1983, the Agency received a new 90–day subchronic rat feeding study which showed histopathological kidney and liver changes. Based on the effects observed in this study, on September 18, 1985, EPA notified registrants and applicants for registrations for lindane that the Agency was considering initiating a new Special Review base on concerns for workers exposed to lindane as a result of its forestry and uninhabited building uses.

The subchronic feeding study showed that lindane causes histopathological lesions, primarily in the kidney of male rats, and also in the liver of male and female rats. The kidney lesions were not completely reversed after a 6–week recovery period on a lindane-free diet. These renal changes included tubular degeneration, hyaline droplets, tubular casts, tubular distention, interstitial nephritis, and basophilic tubules. No adverse effects on kidney structure in female rats were noted. The liver effects (hepatocellular hypertrophy) were not regarded as a specific response to lindane because they are related to increased detoxification processes, and are considered a typical response and defensive mechanism to the presence of foreign substances.

Subsequent to the initial demonstration of lindane induced rat kidney lesions, the Agency required and received a number of additional toxicological studies aimed at elucidating the observed kidney effects. In summary, only male rats demonstrated the lindane induced kidney effects; while mice, rabbits and female rats did not. In the rat chronic feeding/carcinogenicity study, male Wistar rats demonstrated the characteristic α_{2u}-g kidney histopathological sequence of kidney lesions associated with increased "accumulation of hyaline droplets containing α_{2u}-g", "necrosis of tubule epithelium" leading to tubular degeneration, and subsequent formation of granular casts, without any evidence of lindane induced kidney tumors. (Refer to "Alpha$_{2u}$-Globulin: Association with Chemically Induced Renal Toxicity and Neoplasia in the Male Rat", Risk Assessment Forum Monograph (EPA/625/391/019F, September 1991, page 2). The Monograph is available through the U.S. Government Printing Office: 1992-648-003/41809. A chemical analysis of the kidney for evidence of increased levels of α_{2u}-g revealed clear and pronounced compound dose-related increases in this protein. Furthermore, the exacerbation of hyaline droplets was due to the apparent binding of the α_{2u}-g to lindane as an adduct, which accumulates in the kidney proximal tubules and cannot be excreted (refer to Monograph, page 92). Lindane is one of a group of α_{2u}-g chemical inducers tested that has been shown to produce "the sequence of lesions characteristic of the α_{2u}-g syndrome" in the absence of renal tubule tumors in the male Wistar rat (refer to Monograph, page 89).

In the above Monograph, the Agency outlined its regulatory policy for human risk assessment for chemical agents that affect the male rat kidney through the α_{2u}-g mechanism (refer to Monograph, page 89). This policy states "If a compound induces alpha 2u-globulin accumulation in hyaline droplets, the associated nephropathy in male rats is not an appropriate endpoint to determine noncancer (systemic) effects potentially occurring in humans. Likewise, quantitative estimates of noncancer risk (e.g., reference doses and margin of exposure determinations) are based on other endpoints." In the case of lindane, the Agency has reviewed the weight-of-evidence in light of the 1991 α_{2u}-g policy, and has concluded that the observed renal effects were the result of the α_{2u}-g mechanism. The potential for lindane to induce kidney lesions in male rats is not currently regarded as being relevant to human health risk assessment. Therefore, the renal effects observed do not provide a basis for a Special Review of lindane.

II. Comments Received on the Proposed Notice Not to Initiate a Special Review on Kidney Effects

In its March, 1994 proposal not to initiate a Special Review, the Agency provided a 60–day comment period, which ended on May 17, 1994. EPA received five sets of comments, most of which were responses from public interest groups.

Comment. All of the commenters urged the Agency not to abandon the Special Review of lindane because there are additional health concerns beyond kidney effects that are currently not under consideration in the review by EPA.

Agency Response. In 1983, EPA concluded a major Special Review effort of lindane based on carcinogenicity, fetotoxicity/teratogenicity, reproductive effects, and acute effects on aquatic organisms. This effort resulted in the cancellation of indoor uses of smoke fumigation devices and greatly limited the use of pet dips on dogs. In addition, there were uses that were allowed to continue only if certain imposed restrictions were implemented. The restrictions were based on the degree of associated hazards, and included changes in warning labels, the wearing of protective clothing, and restrictions to limit uses to certified pest control operators. Today's action only deals with the concerns originally raised in the 1985 preliminary notification to registrants and applicants of lindane, that is, kidney effects to workers exposed to lindane in forestry and uninhabited building uses. The Agency has concluded that the unique kidney effects induced via the α_{2u}-g mechanism in the rat have no direct biological relevance for human risk assessment. Consequently, there is no basis for initiating a Special Review of lindane due to the kidney effects at this time. However, the Agency recognizes that organochlorine pesticides, such as lindane, can cause endocrine disruption that may be associated with risk concerns. The Agency is currently developing a strategy to look at organochlorine pesticides as a group to examine their role as endocrine disrupters. Although the Agency is not initiating a Special Review on lindane for kidney effects, the findings from a comprehensive examination of the group of chemicals could lead to further regulatory action on lindane.

Comment. Several commenters pointed to concerns for breast cancer, neurotoxic, endocrine-disruption and other health effects from the continued use of lindane products. The commenters urged that EPA take more aggressive actions to further reduce risk.

Agency Response. The issues raised by the commenters were not Special Review triggers in the 1985 preliminary notification letter to registrants of lindane. Also, the identification of a possible toxic response or health concern to a given chemical does not always indicate that Special Review criteria have been exceeded. The recently completed rat carcinogenicity study did not demonstrate an association between lindane exposure and carcinogenicity. Presently, the Agency does not have a mouse carcinogenicity study that meets current acceptance criteria and a new study has been requested. However, the literature reports suggesting an apparent relationship between lindane and breast cancer in humans require further evaluation. Investigation is underway at the National Cancer Institute to determine whether the association found in these studies can be confirmed. The possible endocrine effects reported in the literature to date have not been evident in those studies conducted in rats reviewed by the Agency, nor has immunotoxicity been indicated to be a critical endpoint for lindane toxicity. The Agency is considering additional data requirements for reregistration, including a neurotoxicity study, and the need for requiring special studies to assess both immunotoxicity and endocrine effects. The Agency is currently developing a strategy for examining the role of organochlorine chemicals as endocrine disrupters. Such an effort could result in the Agency pursuing further regulatory action against lindane. Today's action only deals with the kidney effects and does not preclude the Agency from taking future regulatory action against this chemical based on the risk concerns raised above.

Comment. Several commenters suggested EPA ban further use of lindane because the severity of the pesticide's environmental and health concerns have already caused regulators in more than a dozen countries to ban or severely restrict the use of this chemical.

Agency Response. EPA updates and reviews its scientific database on a routine basis for new evidence on chemicals which may identify risk concerns. Any regulatory action must meet the scrutiny of sound science and be consistent with the statutes and regulations governing pesticide registration and use. The Agency will exercise its authority to ban or restrict the use of pesticides when such action is necessary to protect against unreasonable adverse effects.

III. Reregistration Activities

EPA is considering what additional toxicological data are necessary to support continued registration, which include carcinogenicity and developmental neurotoxicity studies. Upon receipt and review of any of these studies, the Agency could initiate a Special Review or take other appropriate regulatory action if risk concerns are raised.

IV. Conclusion

Today's notice announces the Agency's final decision that the lindane induced kidney effects observed in male rats are not relevant for human risk assessment, nor do these effects meet the risk criteria for initiation of a Special Review. Because EPA no longer believes there is a renal-related hazard posed to humans, the Agency will not initiate a Special Review for this effect. The Agency is developing a strategy to look at the role of organochlorine pesticides, such as lindane, may play as endocrine disrupters to better understand the risks from this group of chemicals. This action does not preclude the Agency from taking action on this chemical in the future as new information on this or any other risk concern becomes known.

Dated: July 19, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–18368 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30390; FRL–4966–1]

Monterey Laboratories; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by August 25, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30390] and the file symbol (63608–R) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30390]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8097; e-mail: bacchus.shanaz@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Monterey Laboratories, 777 Maher Court, P.O. Box 189, Watsonville, CA 95077–0189, to register the pesticide product Vertigo Mushroom Fungicide (EPA File Symbol 63608–R), containing the active ingredient cinnamaldehyde at 50 percent, which involves a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. This product is for general use to include in its presently registered use, the control of larvae of soil dwelling beetles on or in turfgrass, landscape ornamentals, soil, transporation facilities, and interior plantscapes. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–

30390] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 12, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–18000 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30371A; FRL–4964–1]

Ciba-Geigy Corp; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Ciba-Geigy Corporation, to conditionally register the pesticide products Peak, Exceed, and Prosulfuron Technical containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 18, 1994 (59 FR 42593), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC, 27419, had submitted applications to conditionally register the pesticide products Exceed WG (now known as Peak) and Prosulfuron Technical (EPA File Symbols 100–TAG and 100–TAE), containing the active ingredient prosulfuron 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea at 57 and 96 percent respectively, an active ingredient not included in any previously registered products.

EPA subsequently received an application from Ciba-Geigy to register the product Exceed (EPA File Symbol 100–TTU), containing the active ingredient prosulfuron 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea at 32.3 percent, an active ingredient not included in any previously registered products and primisulfuron-methyl 3-[4,6-bis(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxycarbonylphenylsulfonyl) urea also at 32.3 percent, an active ingredient that was registered in 1990, for use in other products. However, since the notice of receipt of application was not published in **Federal Register**, as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice for this product only. Comments and data may also be submitted electronically by sending electronic mail; e-mail to: opp-docket@epamail.epa.gov. More detailed information is found in all documents requesting comments as of May 1995.

The applications were approved on May 3, 1995, for one technical and two end-use products listed below:

1. Prosulfuron Technical for formulation into herbicides for the use on corn (EPA Registration Number 100–762).

2. Peak Herbicide (formerly Exceed WG) for weed control in field corn (grown for grain, silage, or seed), popcorn, and sweet corn (EPA Registration Number 100–763).

3. Exceed for weed control in field corn (grown for grain, silage, or seed), and popcorn (EPA Registration Number 100–774).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of prosulfuron and primisulfuron-methyl, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of prosulfuron and primisulfuron-methyl during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). If the conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e). Ciba-Geigy must make sure that all required studies are submitted under the terms of these conditional registrations.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on prosulfuron and primisulfuron-methyl.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–18253 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34076A; FRL–4969–2]

Reregistration Eligibility Decision Documents for Ethephon, et al.; Availability for Comment Correction; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice correction.

SUMMARY: In this notice EPA is correcting a Notice of Availability of Reregistration Eligibility Decision (RED) for active ingredients of Ethephon, Linuron and Metolachlor which published in the **Federal Register** on May 24, 1995 and is reopening the comment period.

DATE: The comment period for this RED is reopened and comments are due by August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Technical questions on the decisions in this RED and on this correction should be directed to the appropriate chemical review managers listed below:

List	Chemical Name	Case No.	Chemical Review Manager	Telephone No.
List A	Ethephon	Case 0382	Judy Loranger	(703) 308–8056
List A	Linuron	Case 0047	Karen Jones	(703) 308–8047
List A	Metolachlor	Case 0001	Jane Mitchell	(703) 308–8061

Correction

In FR Doc. 95–12566 published in the **Federal Register** of Wednesday, May 24, 1995, beginning on page 27505, in the 2nd column, fourth line from the top, the sentence "EPA has determined that all currently registered products subject to reregistration containing these active ingredients are eligible for reregistration.", is corrected to read as follows: "EPA has determined that all currently registered products subject to reregistration containing Metolachlor are eligible for reregistration except those with uses for potatoes, soybeans, and peanuts. An eligibility decision for these uses cannot be made at this time because under current policies, section 409 tolerances under the Federal Food, Drug & Cosmetic Act (FFDCA) are needed because Metolachlor concentrates in some of the processed fractions of these crops and such tolerances may be barred by the Delaney Clause. EPA has determined that all currently registered products subject to reregistration containing Linuron are eligible for reregistration except for the use of Linuron on cotton, potato, non-cropland (rights-of-way), and sweet corn until additional generic data are submitted. The Agency is unable to make a reregistration eligibility decision on the use of Linuron on potatoes because under current policies tolerances under section 409 of the (FFDCA) are needed for this use, but such a tolerance may be barred by the Delaney clause in section 409."

There are no changes regarding Ethephon.

Dated: July 20, 1995.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 95–18366 Filed 7–25–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–626; FRL–4958–2]

Pesticide Tolerance Petitions; Filings, Amendments, and a Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings, amendments, and a withdrawal of pesticide petitions (PP) and food/feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be

accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-628]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/telephone number/e-mail	Address
George LaRocca (PM-13)	Rm. 204, CM #2, 703-305-6100; e-mail: larocca.george@epamail.epa.gov.	1921 Jefferson Davis Hwy., Arlington, VA.
Dennis Edwards, Jr. (PM-19)	Rm. 207, CM #2, 703-305-6386; e-mail: edwards.dennis@epamail.epa.gov.	Do.
Joanne Miller (PM-23)	Rm. 237, CM #2, 703-305-6224; e-mail: miller.joanne@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/ feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities. EPA is also withdrawing a petition.

Initial Filings

1. *PP 5F4508.* Merck & Co., Inc., Agricultural Research and Development, Hillsborough Rd., Three Bridges, NJ 08487, has submitted to EPA pesticide petition (PP) 5F4508 that proposes amending 40 CFR 180.449 to establish tolerances for the insecticide avermectin B_1 and its delta-8,9-isomer in or on potatoes at .002 part per million (ppm). (PM-13)

2. *PP 5F4522.* Bayer Corp. (formerly Miles, Inc.) 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, has submitted to EPA pesticide petition (PP) 5F4522 that proposes amending 40 CFR 180.472 by establishing a regulation permitting residues of the the insecticide imidacloprid, 1-[chloro-3-pyridinyl)methyl-N-nitro-2-imidazolidinimine, in or on leafy green vegetables (including amaranth; arrugula; chervil; chrysanthemum, edible-leaved; chrysanthemum, garland; corn salad; cress, garden; cress, upland; dandelion; dock; endive; orach; parsley; purslane, garden; purslane, winter; radicchio (red chicory); spinach; spinach, New Zealand; and spinach, vine). (PM-19)

Amended Filings

3. *FAP 4H5700.* EPA gave notice in the **Federal Register** of November 2, 1994 (59 FR 54907), that Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, had submitted the petition to amend 40 CFR part 186 to establish a feed additive regulation for the insecticide imidacloprid, 1-[(chloro-3-pyridinyl)methyl-N-nitro-2-imidazolidinimine, and its metabolites (calculated as imidacloprid), in or on the processed commodity beets, sugar, molasses at 0.2 part per million (ppm). Gustafson, Inc., has submitted to EPA an amendment to the petition that now calls for establishing a feed additive regulation for the processed commodity beets, sugar, molasses at 0.5 ppm. (PM-19)

4. *PP 8F3607.* In the **Federal Register** of May 25, 1988 (53 FR 18897), EPA issues a notice that Hoechst Celanese Corp., Route 202-206 North, Sommerville, NJ 08876, proposed amending 40 CFR part 180 by establishing a regulation to permit the residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)-butanoate (expressed as 2-amino-4-(hydroxymethylphosphinyl butanoic acid) and 3-methylphosphinicopropionic acid (expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid) in or on soybean seed at 0.05 ppm; apples at 0.05 ppm; grapes at 0.05 ppm; field corn grain, forage, fodder, and silage at 0.05 ppm; nuts at 0.05 ppm; and almond hulls at 0.50 ppm. An amendment to the PP 8F3607 has been submitted to EPA by AgrEvo USA Co., Little Falls One, 2711 Centerville Rd., Wilmington, DE 19808, proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of the herbicide butanoic acid, 2-amino-4-(hydroxymethylphosphinyl), monoammonium salt and its metabolite 3-methylphosphinico-propionic acid, in or on the tree nut group at 0.10 ppm, almond hulls at 0.50 ppm, cattle fat at 0.05 ppm, cattle meat at 0.05 ppm, cattle meat byproducts (mbyp) at 0.10 ppm, eggs at 0.05 ppm, goat fat at 0.05 ppm, goat meat at 0.05 ppm, goat mbyp at 0.10 ppm, horse fat at 0.05 ppm, horse meat at 0.05 ppm, horse mbyp at 0.10 ppm, milk at 0.02 ppm, poultry fat at 0.05 ppm, poultry meat at 0.05 ppm, poultry mbyp at 0.10 ppm, sheep fat at 0.05, sheep meat at 0.05, and sheep mbyp at 0.10 ppm.

Withdrawn Petition

5. *PP 2F4110.* Hoechst-Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500 Somerville, NJ 08876-1258, has requested that the petition be withdrawn without prejudice to future filing. Notice of filing of the petition appeared in the **Federal Register** of June 10, 1992 (57 FR 24646), and proposed establishment of a regulation to permit residues of the insecticide amitraz in or on the liver, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep. The notice of filing is hereby withdrawn without prejudice to a future filing of the notice. (PM 19)

A record has been established for this notice document under docket number [PF-628] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping.

Authority: 7 U.S.C. 136a.

Dated: July 10, 1995.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–18367; Filed 7–25–95; 8:45 am]
BILLING CODE 6560–50–F

[OPP–180975; FRL–4963–9]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 12 States listed below. Two crisis exemptions were initiated by the Washington Department of Agriculture. These exemptions, issued during the month of April 1995, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8417; e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Delaware Department of Agriculture for the use of clomazone on cucumbers to control broadleaf weeds and grasses; April 10, 1995, to August 20, 1995. (David Deegan)

2. Delaware Department of Agriculture for the use of clomazone on watermelons to control weeds; April 19, 1995, to June 30, 1995. (David Deegan)

3. Idaho Department of Agriculture for the use of avermectin on hops to control two-spotted spider mites; April 19, 1995, to September 20, 1995. (Margarita Collantes)

4. Maryland Department of Agriculture for the use of clomazone on watermelons to control weeds; April 19, 1995, to June 30, 1995. (David Deegan)

5. Maryland Department of Agriculture for the use of clomazone on cucumbers to control broadleaf weeds and grasses; April 10, 1995, to August 20, 1995. (David Deegan)

6. Michigan Department of Agriculture for the use of oxytetracycline on apples to control fire blight; April 18, 1995, to July 1, 1995. (Margarita Collantes)

7. New Jersey Department of Environmental Protection and Energy for the use of chlorothalonil on blueberries to control anthracnose; April 12, 1995, to December 31, 1995. (David Deegan)

8. New York Department of Environmental Conservation for the use of chlorothalonil on blueberries to control anthracnose; April 12, 1995, to July 31, 1995. (David Deegan)

9. Oregon Department of Agriculture for the use of propiconazole on mint to control peppermint rust; April 3, 1995, to June 1, 1995. (Margarita Collantes)

10. Oregon Department of Agriculture for the use of oxytetracycline on apples to control fire blight; April 18, 1995, to May 7, 1995. (Margarita Collantes)

11. Oregon Department of Agriculture for the use of bifenthrin on raspberries to control weevils; April 20, 1995, to August 15, 1995. (David Deegan)

12. Oregon Department of Agriculture for the use of bifenthrin on strawberries to control weevils; April 19, 1995, to August 31, 1995. (David Deegan)

13. Oregon Department of Agriculture for the use of avermectin on hops to control two-spotted spider mites; April 19, 1995, to September 20, 1995. (Margarita Collantes)

14. Pennsylvania Department of Agriculture for the use of chlorothalonil on mushrooms to control *verticillium* fungicola; April 27, 1995, to April 26, 1996. (David Deegan)

15. Texas Department of Agriculture for the use of esfenvalerate on greens (kale, kohlrabi, and mustard greens) to control cabbage loopers; April 21, 1995, to November 30, 1995. (Libby Pemberton)

16. Virginia Department of Agriculture and Consumer Services for the use of clomazone on watermelons to control weeds; April 19, 1995, to June 30, 1995. (David Deegan)

17. Virginia Department of Agriculture and Consumer Services for the use of clomazone on cucumbers to control broadleaf weeds and grasses; April 1, 1995, to August 20, 1995. (David Deegan)

18. Washington Department of Agriculture for the use of bifenthrin on strawberries to control weevils; April 19, 1995, to September 30, 1995. (David Deegan)

19. Washington Department of Agriculture for the use of avermectin on hops to control two-spotted spider mites; April 19, 1995, to September 20, 1995. (Margarita Collantes)

20. Washington Department of Agriculture for the use of oxytetracycline on apples to control fire blight; April 18, 1995, to August 1, 1995. Washington had initiated a crisis exemption for this use. (Margarita Collantes)

21. Washington Department of Agriculture for the use of clomazone on cucumbers to control broadleaf weeds and grasses; April 10, 1995, to June 30, 1995. (David Deegan)

22. Wisconsin Department of Agriculture, Trade, and Consumer Services for the use of clomazone on cabbage to control velvetleaf; April 15, 1995, to August 31, 1995. (David Deegan)

Crisis exemptions were initiated by the:

1. Washington Department of Agriculture on April 27, 1995, for the use of sethoxydim on mint to control grasses. This program is expected to last until November 1, 1995. (Libby Pemberton)

2. Washington Department of Agriculture on April 7, 1995, for the use of oxytetracycline on apples to control fire blight. This program will end on August 1, 1995. (Margarita Collantes)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: July 5, 1995.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–17999 Filed 7–25–95; 8:45 am]
BILLING CODE 6560–50–F

[OPP–180976; FRL 4967–2]

Lactofen; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture Consumer Services (hereafter referred to as the "Applicant") for use of the pesticide, lactofen (Cobra Herbicide), to control nightshade *Solanum spp.* and parthenium *Parthenium spp.* on up to 10,000 acres of row middle tomatoes and 5,000 acres of row middle green peppers in Florida. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 10, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180976," should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180976]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain (CBI) must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; Internet address: collantes.Margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the herbicide, lactofen, available as Cobra from Valent USA Corporation, to control nightshade and parthenium on up to 10,000 acres of row middle tomatoes and 5,000 acres of row middle green peppers in Florida. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the use of registered alternatives, Paraquat and Diquat herbicides, has led to the development of different biotypes of nightshade in Florida. Researchers have shown that nightshade has developed a tolerance to postemergence applications of both Diquat and Paraquat. There are no preemergence herbicides labeled in tomatoes or green peppers which control nightshade. Enquik, provides some postemergence burndown of nightshade, however, control is incomplete and regrowth can occur quite rapidly. In addition, Enquik is highly corrosive and requires special application equipment, resulting in limited use potential.

Loss of yields can be due to allelopathic affect from nightshade, direct competition for water and nutrients from both weed species, and interference in crop harvest from both weed species. Finally and most importantly, nightshade is an excellent host of the poinsettia strain of silverleaf whitefly. Silverleaf whitefly causes irregular ripening and is a vector for gemini virus in tomatoes. Institute of Food and Agriculture Scientists (IFAS) have shown that gemini virus can reduce tomato yields up to 60 percent. They believe that the use of Cobra herbicide will control nightshade and parthenium which should result in tomato and green pepper estimated net and gross revenues falling within the previous 5 year averages.

Under the proposed exemption, a maximum of two applications per crop would be made at [0.3 to 0.5 lbs of active ingredient (a.i.)] (19 to 32 fl. ozs. per acre) as a preemergence and/or postemergence application. Not to apply within 30 days of harvest. Reentry to treated acres without protective clothing is not allowed until spray has dried.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the Federal Register and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24(a)(6)]. Exemptions for the use of Lactofen on tomatoes and green peppers have been requested and granted for the past 3 years, and an application for registration of this use has not been submitted to the Agency.

A record has been established for this notice under docket number "[OPP–180976]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Florida Department of Agriculture and Consumer Services.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: July 13, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–18254 Filed 7–25–95; 8:45 am]
BILLING CODE 6560–50–F

[OPP–50608; FRL–4965–3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275–EUP–80. Issuance. Abbott Laboratories, 1401 Sheridan Road, North Chicago, Il 60064–4000. This experimental use permit allows the use of 270 pounds of the plant growth regulator (S)-trans-2-amino-4-(2-aminoethoxy)-3-butenoic acid hydrochloride on 2,450 acres of apples to evaluate its ability to maintain fruit firmness and its effectiveness as a stop drop agent. The program is authorized only in the States of California, Maine, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, Virginia, and Washington. The experimental use permit is effective from May 10, 1995 to June 1, 1996. A temporary tolerance for residues of the active ingredient in or on apples has been established. (James Stone, Acting PM 22, Rm. 229, CM #2, 703–305–7391, e-mail: stone.james@epamail.epa.gov)

241–EUP–120. Renewal. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. This experimental use permit allows the use of 720 pounds (360 pounds each year) of the chemical hybridizing agent potassium 3,4-dichloro-5-isothiazolecarboxylate on 400 acres (200 acres each year) of cotton to evaluate chemical hybridizing. The program is authorized only in the State of Arizona. The experimental use permit is effective from March 3, 1995 to April 12, 1997. (James Stone, Acting PM 22, Rm. 229, CM #2, 703–305–7391, e-mail: stone.james@epamail.epa.gov)

241–EUP–123. Renewal. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. This experimental use permit allows the use of 560 pounds (280 pounds each year) of the plant growth regulator 1-(3-chlorophthalimido)-cyclohexanecarboxamide on 2,000 acres (1,000 acres each year) on various ornamental crops to evaluate the increase of stem production and quality. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. The experimental use permit is effective from May 31, 1995 to May 31, 1997. (James Stone, Acting PM 22, Rm. 229, CM #2, 703–305–7391, e-mail: stone.james@epamail.epa.gov)

241–EUP–129. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. This experimental use permit allows the use of 4,508 pounds (2,254 pounds each year) of the herbicide isopropylamine salt of imazapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-pyridinecarboxylic acid) on 6,000 acres (3,000 acres each year) of nonfood aquatic areas. The program is authorized only in the States of Alabama, Florida, Louisiana, Mississippi, and Texas. The experimental use permit is effective from March 13, 1995 to March 13, 1997. (Robert Taylor, PM 25, Rm. 241, CM #2, 703–305–6800, e-mail: taylor.robert@epamail.epa.gov)

68173–EUP–1. Issuance. Kaken Pharmaceutical Co., c/o Ltd., Stewart Pesticide Registration Association, 2001 Jefferson Davis Highway, Suite 603, Arlington, VA 22202. This experimental use permit allows the use of 30.2 pounds of the fungicide polyoxin D zinc salt on 28 acres of turf to evaluate the control of various turf diseases. The program is authorized only in the States of Georgia, Kansas, Missouri, North Carolina, New Jersey, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from May 11, 1995 to November 1, 1995. (James Stone, Acting PM 22, Rm. 229, CM #2, 703–305–7391, e-mail: stone.james@epamail.epa.gov)

400–EUP–68. Renewal. Uniroyal Chemical Company, Inc., 74 Amity Rd., Bethany, CT 06524–3402. This experimental use permit allows the use of 120 pounds of the growth retardant potassium salt of 1,2-dihydro-3,6-pyridazinedione on 80 acres of rice to evaluate the suppression of red rice seed production in white rice. The program is authorized only in the State of Louisiana. The experimental use permit is effective from June 12, 1995 to August 31, 1995. (James Stone, Acting PM 22, Rm. 229, CM #2, 703–305–7391, e-mail: stone.james@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: July 10, 1995.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–18121 Filed 7–25–95; 8:45 am]
BILLING CODE 6560–50–F

[PF–630; FRL–4965–4]

Cinnamaldehyde; Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA has received from the IR-4 (Interregional Research Project No. 4) a petition to establish an exemption from the requirement of a tolerance for the fungicide cinnamaldehyde in or on all raw agricultural commodities.

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ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-630]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, CS #1, 2805 Jefferson Davis Hwy., Arlington, VA, (703)-308-8097; e-mail: bacchus.shanaz@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from the IR-4, New Jersey Agricultural Experiment Station, P.O. Box 231, New Brunswick, NJ 08903-0231, a notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 0E3858 to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the fungicide cinnamaldehyde (also known as cinnâmic aldehyde) in or on all raw agricultural commodities.

A record has been established for this rulemaking under docket number [PF-630] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a and 348.

Dated: July 12, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–18483 Filed 7–25–95; 8:45 am]

BILLING CODE 6560-50-F

[OPP–50807; FRL–4965–2]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

4581–EUP–43. Issuance. Elf Atochem North America, Inc., 2000 Market St., 21st Floor, Philadelphia, PA 19103. This experimental use permit allows the use of 128 pounds of the herbicide mono(N,N-dimethylalkylamine) salt of endothall on 50 acres of cotton to evaluate the enhancement of cotton boll opening. The program is authorized only in the States of Alabama, Arkansas, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from June 14, 1995 to June 14, 1996. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov)

100–EUP–98. Amended. Ciba-Geigy Corporation. P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 16.066 pounds of the herbicide methyl [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1H,3H-[1,3,4]thiadiazolo [3,4-a]pyridazin-1-ylidene)amino]-phenyl]thio]acetate on 1,200 acres of corn and soybeans (200 acres of corn in 1995, 400 acres of corn in 1996 and 200 acres of soybeans in 1995 and 400 acres of soybeans in 1996) to evaluate the control of various weeds. The program is authorized only in the States of Arkansas, Delaware, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Michigan, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. This experimental use permit is effective from March 27, 1995 to December 31, 1996. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov)

279–EUP–132. Issuance. FMC Corporation, Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 260 pounds of the herbicide ethyl 2-chloro-3-[2-chloro-4-fluoro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]phenyl]propanoate on 4,000 acres of corn, sorghum, soybeans, and wheat to evaluate the control of grasses, sedges, and broadleaf weeds. The program is authorized in the States of Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, West Virginia, and Wyoming. The experimental use permit is effective from February 9, 1995 to February 9, 1996. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: July 13, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–18484 Filed 7–25–95; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 95–59]

Preemption of Local Zoning Regulations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 15, 1995, the Commission issued a Notice of Proposed Rulemaking proposing to revise our rules regarding the preemption of local zoning regulations of satellite earth stations. The NPRM announced that the Commission would entertain petitions for declaratory relief under the current venison of the rule, on an interim basis. This notice announces the procedures under which such petition may be filed.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara, International Bureau, Satellite and Radiocommunication Division, Satellite Policy Branch, (202) 739–0730.

SUPPLEMENTARY INFORMATION: On May 15, 1995, the Commission issued a Notice of Proposed Rulemaking (NPRM) proposing to revise our rule regarding preemption of local zoning regulations of satellite earth stations. IB Docket No. 95–59, 60 FR 28077 (May 30, 1995). Included in this NPRM was an announcement that the Commission would entertain petitions for declaratory relief under the current version of the rule, on an interim basis, until completion of the rulemaking. Petitions for such relief must show that they have exhausted local administrative remedies.

In addition to demonstrating exhaustion of administrative remedies, petitioners must show that a copy of the petition, a copy of this Public Notice (Report No. SPB–16), and a copy of the Commission's May 15 NPRM have been served on the appropriate local officials concurrent with its filing at the Commission. For administrative purposes, a number will be assigned to each petition filed and should be used whenever possible in corresponding with the Commission on the given petition. The numbers will be designated as File No. ###SAT–DR–YY, where ### IS THE next sequential number in the Satellite Policy Branch Database and the YY is the fiscal year in which the petition is filed (*e.g.*, 120–SAT–DR–95). Informational Public Notices will be issued when petitions are filed.

Oppositions to preemption petitions must be filed within 15 days after the petition is filed and replies must be filed within 10 days after the time for filing oppositions has expired. Additional pleadings may be filed only if specifically requested or authorized by the Commission. All pleadings should be addressed to the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, Attention: Satellite Policy Branch, International Bureau.

Copies of the petitions and related pleadings will be available for public inspection in the International Reference Center, 2000 M Street NW., Ground Floor, Washington, DC 20554, during its normal operating hours. Copies are available for purchase from ITS, Inc. 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18317 Filed 7–25–95; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 2085]

Petition for Reconsideration of Actions in Rulemaking Proceedings

July 21, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed by August 10, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Preparation for International Telecommunication Union World Radiocommunication Conferences. (IC Docket No. 94–31)

Number of Petitions Filed: 2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18281 Filed 7–25–95; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

BACKGROUND:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instruments will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before August 21, 1995.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD) Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. Report title: Report of Commercial Paper Outstanding Placed by Brokers and Dealers (FR 2957a); Report of Commercial Paper Outstanding Placed Directly by Issuers (FR 2957b); Daily Report of Offering Rates on Commercial Paper (FR 2957d)
Agency form numbers: FR 2957a, b, and d
OMB Docket number: 7100-0002
Frequency: Daily, weekly, and monthly
Reporters: Brokers and dealers and direct issuers of commercial paper
Annual reporting hours: 1,858
Estimated average hours per response: 0.20 to 0.75
Number of respondents: 68
Small businesses are not affected.

General description of report: This information collection is voluntary and is authorized by law [12 U.S.C. §225(a), 263, 353, and 461]. The FR 2957a and b are confidential [5 U.S.C. §552(b)(4)].

Abstract: These reports provide information on the amounts outstanding of and selected offering rates on commercial paper, which the Federal Reserve uses to gauge the aggregate flow of funds and to determine the composition of short-term financing components in credit markets.

2. Report title: International Applications and Prior Notifications under Subparts A and C of Regulation K
Agency form number: FR K-1
OMB Docket number: 7100-0107
Frequency: On occasion
Reporters: State member and national banks, Edge and corporations, and bank holding companies
Annual reporting hours: 440
Estimated average hours per response: Varies from 10 to 20 hours
Number of respondents: 38
Small businesses are not affected.

General description of report: This information collection is required (sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 601-604(a) and 611-631), and the Bank Holding Company Act (12 U.S.C. 1843(c)(13), 1843(c)(14), and 1844(c))). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Abstract: The FR K-1 is a compilation of all the applications and prior notification requirements in Regulation K that govern the formation of Edge and Agreement corporations and the international and foreign activities of U.S. banking organizations.

The proposed revisions include the addition of one item, expansion of an existing item, and clarifications to the reporting instructions. The Federal Reserve proposes adding a new item that will require foreign banking organizations that are seeking to either establish or acquire control of an existing Edge corporation to furnish information relating to the supervision and regulation of the foreign banking organization by its home country supervisor, as well as information to allow the Federal Reserve to determine whether the foreign banking organization will be able to provide whatever information is deemed necessary to determine and enforce compliance with U.S. law. This is the same type of information that a foreign banking institution must provide (pursuant to the Foreign Bank Supervision Enhancement Act of 1991) in order to acquire ownership or control of a subsidiary bank or commercial lending company or to establish a branch or agency in the United States. The Federal Reserve proposes that Attachment H require applicants seeking to engage in any activity that the Federal Reserve has not previously determined to be of a banking or financial nature to discuss the extent to which such activity is usual in connection with the transaction of banking or other financial operations in the country in which the activity is to be conducted, supported by examples. The proposed revision to item 2.f. would enable the Federal Reserve to determine whether a proposed new activity is usual in connection with the transaction of the business of banking or other financial operations abroad, as the Federal Reserve is required to do under section 211.5(d)(20) of Regulation K.

3. Report title: Bank Holding Company Report of Investments and Activities
Agency form number: FR Y-6A
OMB Docket number: 7100-0124
Frequency: Event generated
Reporters: Bank Holding Companies
Annual reporting hours: 11,000
Estimated average hours per response: 1.0
Number of respondents: 1,746
Small businesses are not affected.

General description of report: This information collection is mandatory [(12 U.S.C. 1844(b) and (c))] and is not routinely given confidential treatment. However, confidential treatment for the report information can be requested, in whole or part, in accordance with the instructions to the form.

Abstract: The Bank Holding Company Report of Changes in Investments and Activities is an event-generated report filed by top-tier bank holding companies to report changes in regulated investments and activities made pursuant to the Bank Holding Company Act and Regulation Y. The report collects information relating to acquisitions, divestitures, changes in activities, and legal authority. The response rate for the FR Y-6A varies depending on the reportable activity engaged in by each bank holding company.

The Federal Reserve proposes the following revisions to the FR Y-6A:

(1) Modify the reporting threshold to collect data from those bank holding companies that control 25 percent or more of any class of non-voting equity of a bank or bank holding company. The current FR Y-6A reporting threshold applies where the bank holding company controls in excess of 25 percent of any class of non-voting equity.

(2) Eliminate the requirement to report investments in Edge and agreement corporations. This information will be proposed to be reported on the Report of Changes in Foreign Investments (FR 2064; OMB No. 7100-0109).

(3) Reformat the Investments Schedule to show one investment transaction and one activities transaction on each report page.

(4) Make certain clarifications to the reporting instructions.

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. Report title: Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks
Agency form number: FR 2225
Market number: 7100-0216
Frequency: Annual
Reporters: U.S. branches and agencies of foreign banks
Annual reporting hours: 240
Estimated average hours per response: 1.0
Number of respondents: 240
Small businesses are not affected.

General description of report: This information collection is voluntary (sections 11(i), 16, and 19(f) of the Federal Reserve Act). The FR 2225 is a public report subject to the right of individual reporters to request confidential treatment on an ad hoc basis for particular items.

Abstract: This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve's Payments System Risk policy. The report provides the Federal Reserve with the foreign bank's worldwide capital figure which, in connection with a net debit cap multiple, is used to calculate the bank's daylight overdraft limit.

Under the Federal Reserve's Payments System Risk policy, all institutions that maintain a Federal Reserve account are assigned or may establish a net debit cap that represents a maximum limit on daylight overdrafts incurred in that account on a single day or on average during a two-week maintenance period. The net debit cap is a multiple applied to the risk-based capital for a U.S.-chartered institution and to the consolidated U.S. capital equivalency for a U.S. branch or agency of a foreign bank.

The FR 2225 report was designed to minimize the reporting burden for foreign banks by relying as much as possible on publicly available data regarding capital and by requiring most foreign banks to submit their capital and asset figures only once each year, within three months following the end of the bank's fiscal year. A bank may voluntarily submit the report more frequently to have their overdraft limit based on current data. However, the overdraft limit generally would be smaller for any bank that does not provide the requested information because the limit would be based on the imputed capital of the bank's U.S. branches and agencies.

2. Report title: Report of Net Debit Cap
Agency form number: FR 2226
OMB Docket number: 7100-0217
Frequency: Annually
Reporters: Depository institutions, Edge and agreement corporations, and U.S. branches and agencies of foreign banks
Annual reporting hours: 2,250
Estimated average hours per response: 1.0
Number of respondents: 2,250
Small businesses are not affected.

General description of report: This information collection is required (sections 11, 16, and 19 of the Federal Reserve Act) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve is concerned about the risks associated with critical payment systems. The Federal Reserve Banks are directly exposed to the risk of loss if a depository institution uses Federal Reserve intraday credit to settle Fedwire funds or book-entry securities transfer payments and is unable to repay the extension of credit. The Federal Reserve has adopted a payment system risk reduction policy that relies in part on the efforts of individual institutions to identify, control, and reduce their exposure. The Report of Net Debit Cap comprises one or more resolutions filed by an institution's board of directors.

Under the Federal Reserve's Payments System Risk policy, all institutions that maintain a Federal Reserve account are assigned or may establish a net debit cap that represents a maximum limit on daylight overdrafts incurred in that account on a single day or on average during a two-week maintenance period. The net debit cap is a multiple applied to the risk-based capital for a U.S.-chartered institution and to the U.S. capital equivalency for a U.S. branch or agency of a foreign bank.

3. Report title: Applications for the Issuance and Cancellation of Federal Reserve Stock—National Bank, Nonmember Bank, Member Bank
Agency form number: FR 2030, 2030a, 2056, 2086a, 2086b, and 2087
OMB Docket number: 7100-0042
Frequency: On occasion
Reporters: National, State Member and Nonmember Banks
Annual reporting hours: 942 (FR 2030: 43; FR 2030a: 29; FR 2056: 797; FR 2086a: 26; FR 2086b: 24; FR 2087: 23).
Estimated average hours per response: 0.5 (for each form)
Number of respondents: 1,881 (FR 2030: 86; FR 2030a: 57; FR 2056: 1,594; FR 2086a: 52; FR 2086b: 47; FR 2087: 45).
Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. §§35, 222, 282, 287, 288, and 321 and 12 C.F.R. §§209.1, 209.3, 209.5(b), 209.6, 209.7, and 209.8] and is not given confidential treatment.

Abstract: These Federal Reserve Bank stock application forms are required to be submitted to the Federal Reserve System by any national bank, state member bank, or state nonmember bank wanting to purchase stock in the Federal Reserve System, increase or decrease its Federal Reserve Bank stock holdings, or cancel such stock.

National banks, chartered by the Comptroller of the Currency, are required to become members of the Federal Reserve System. State-chartered commercial banks may elect to become members if they meet the requirements established by the Board of Governors of the Federal Reserve System. When a bank receives approval for membership in the Federal Reserve System, the bank agrees to certain conditions of

membership which are contained in an approval letter sent to the bank by the Federal Reserve Bank in the District where the bank is located. In addition to the conditions of membership, the bank also is advised by the Reserve Bank that it must subscribe to the capital stock of the Federal Reserve Bank of its District in an amount equal to 6 percent of the bank's paid-up capital and surplus, including reserve for dividends payable in common stock, pursuant to Section 5 of the Federal Reserve Act and Regulation I. However, the bank is required to make payment for only 50 percent of the subscription, which is recorded as paid-in capital on the Reserve Bank's balance sheet. The remaining 50 percent is subject to call by the Board of Governors of the Federal Reserve System. On June 30, 1994, there were 4,160 Federal Reserve member banks, and their consolidated paid-in capital at the twelve Federal Reserve Banks was $3.5 billion.

The applications are necessary in order to obtain account data on the bank's capital and surplus and to document its request to increase or decrease its holdings of Federal Reserve Bank stock. Another purpose of the applications is to verify that a request has been duly authorized and to prevent unauthorized requests for issuance or cancellation of Federal Reserve Bank stock. The applications are used exclusively by the applying banks and the Federal Reserve Banks. The information collected on the applications is not available from any other source.

4. *Report title*: Notification of Foreign Branch Status
Agency form number: FR 2058
OMB Docket number: 7100-0069
Frequency: On occasion
Reporters: State member banks, Edge and agreement corporations, and bank holding companies
Annual reporting hours: 20
Estimated average hours per response: 0.25
Number of respondents: 80
Small businesses are not affected.
General description of report: This information collection is required (12 U.S.C. §§321, 601, 602, 615, and 1844(c)). The notifications are not considered confidential.
Abstract: Member banks, bank holding companies, and Edge and agreement corporations are required to notify the Federal Reserve System of the opening, closing, or relocation of an approved foreign branch. The notice requests information on the location and extent of service provided by the branch, and is filed within thirty days of the change in status. The Federal Reserve needs the information to fulfill its statutory obligation to supervise foreign branches of U.S. banking organizations. Minor clarifying changes will be made to the form and instructions.

Regulation K, "International Banking Operations," sets forth the conditions under which a foreign branch may be established. For their initial establishment of foreign branches, organizations must request prior Board approval as directed in Attachment A of the FR K-1, "International Applications and Prior Notifications Under Subparts A and C of Regulation K" (OMB No. 7100-0107). For subsequent branch establishments into additional foreign countries, organizations must give the Federal Reserve System forty-five days prior written notice using Attachment B of FR K-1. Organizations use the FR 2058 notification to notify the Federal Reserve when any of these branches has been opened, closed, or relocated.

The proposed changes in the FR 2058 instructions will clarify the scope of the brafich status changes that require notification to the Federal Reserve. Information on changes in status of additional branches within the same country in which such a subsidiary is incorporated is not required. The FR 2058 instructions will be clarified to limit the filing requirement to the organization's initial entrant into each foreign country. Also, the instructions will be clarified to reflect that a notice should be filed for foreign branches of subsidiaries acquired or divested by the institution. The FR 2058 notification form also will be better formatted to elicit the effective date of the branch status change and whether the branch is a shell or a full service branch.

Board of Governors of the Federal Reserve System, July 20, 1995
William W. Wiles,
Secretary of the Board
[FR Doc. 95–18314 Filed 7–25–95; 8:45AM]
BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070395 AND 071495

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
American Stores Company, Rx America, L.L.C., Rx America L.L.C	95–1868	07/03/95
Ciba-Geigy Limited, Rx America, L.L.C., Rx America, L.L.C	95–1869	07/03/95
Modine Manufacturing Company, Enscor Inc., The Equion Corporation	95–1881	07/03/95
Oracle Corporation, Information Resources Inc., Information Resources Inc	95–1948	07/03/95
Lawrence Flinn, Jr., SSDS, Inc., SSDS, Inc	95–1979	07/03/95
University Hospitals Health System, Inc., The Geauga Hospital Association, Inc., The Geauga Hospital Association, Inc	95–2004	07/03/95
Equus II Incorporated, Allwaste, Inc., ARI Glass Newco, Inc	95–2012	07/03/95
The Limited, Inc., Partrick W. Galyan, Galyan's Trading Company, Inc	95–1958	07/05/95
Aurora Health Care, Inc., Catholic Health Corporation, Trinity Memorial Hospital of Cudahy, Inc	95–1899	07/06/95
Quincy Newspapers, Inc., ML Media Partners, L.P., WREX-TV	95–1928	07/06/95
ML-Lee Acquisition Fund, L.P., General Nutrition Companies, Inc., General Nutrition Companies, Inc	95–1965	07/06/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 070395 AND 071495

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
General Signal Corporation, MagneTek, Inc., MagneTek Electric, Inc	95–2005	07/06/95
Northwestern Public Service Company, Sherman C. Vogel, Synergy Group Incorporated	95–2006	07/06/95
Time Warner Inc., John Hancock Mutual Life Insurance Company, Daniels Communications Partners Limited Partnership	95–2015	07/06/95
Cedar Fair, L.P., Hunt Midwest Enterprises, Inc., Hunt Midwest Entertainment, Inc	95–2021	07/06/95
Parametric Technology Corporation, Rasna Corporation, Rasna Corporation	95–1926	07/10/95
SSM Health Care, DeanCare Partnership, The Dean Health Plan, Inc	95–1986	07/10/95
Cincinnati Milacron Inc., Talbot Holdings Ltd., Talbot Holdings Ltd	95–1494	07/11/95
Tenneco Inc., The Dow Chemical Company, Dow Hydrocarbons and Resources Inc	95–1951	07/11/95
James W. F. Brooks, MC Bottlers, L.P., Mid-Continent Bottlers, Inc	95–1973	07/11/95
Saratoga Partners III, L.P., Saratoga Partners III, L.P., U.S.I. Holdings Corporation	95–2023	07/11/95
Occidental Petroleum Corporation, BankAmerica Corporation, BA Leasing & Capital Corp. & Seafirst Leasing Corp	95–2025	07/11/95
General American Life Insurance Company, ITT Corporation ITT Lyndon Life Ins. Co./ITT Lyndon Property Ins. Co	95–2026	07/11/95
PhyCor, Inc., Arnett Clinic, Inc., Arnett Health Systems, Inc. and Arnett Optical, Inc	95–2029	07/11/95
The Upjohn Company, Elf Aquitaine (a French company), Sanofi	95–2031	07/11/95
Koninklijke Ahold nv, Stanley P. Kaufelt, Mayfair SuperMarkets, Inc	95–2034	07/11/95
Omnicom Group Inc., Chiat/Day Holdings, Inc., Chiat/Day Inc. Advertising International	95–2041	07/11/95
United States Filter Corporation, Continental H2O Services, Inc., Continental H2O Services, Inc	95–2043	07/11/95
Golden Eagle Industries, Inc., National Gypsum Company, National Gypsum Company	95–2044	07/11/95
Ronald O. Perelman, Power Control Technologies, Inc., Power Control Technologies, Inc	95–2046	07/11/95
Pyxis Corporation, Allied Pharmacy Management, Inc., Allied Pharmacy Management, Inc	95–2047	07/11/95
Corange Limited, GeneMedicine, Inc., GeneMedicine, Inc	95–2048	07/11/95
Omnicom Group Inc., Ross Roy Communications, Inc., Ross Roy Communications, Inc	95–2049	07/11/95
The Deaconess Associations, Inc., Robert I. Cláusen, DCL Associates, L.P	95–2052	07/11/95
The Deaconess Associations, Inc., James J. Lloyd, DCL Associates, L.P. d/b/a Cleveland Health Care Center	95–2054	07/11/95
Palmetto MobileNet, L.P., BellSouth Corporation, South Carolina RSA No. 4 Cellular General Partnership	95–2055	07/11/95
Evening Post Publishing Company, ML Media Partners, L.P., ML Media Partners, L.P	95–2057	07/11/95
Sumner M. Redstone, Phyllis Kaminer, Instructional Systems, Inc	95–2061	07/11/95
Vendex International N.V., Barnes & Noble, Inc., Barnes & Noble, Inc	95–2065	07/11/95
H Group Holding, Inc., TRST Denver, Inc., Hyatt Regency Tech Center Hotel	95–2088	07/11/95
Cyprus Amax Minerals Company, Imax Gold Inc., Amax Gold Inc	95–2093	07/11/95
The Allen Group Inc., Handy & Harman, GO/DAN Industries	95–2020	07/11/95
Northwestern Healthcare Network, Ingalls Health System, Ingalls Health System	95–2033	07/12/95
Motorola, Inc., Alan H. Goldfield, CellStar Corporation	95–2062	07/12/95
General Electric Company, Dr. Rolf Gerling, Frankona Ruckversicherungs-Aktien-Gesellschaft	95–2068	07/12/95
General Electric Company Aachener Und Munchener Beteiligungs-AG, Laurensberg Beteiligungs—AG	95–2069	07/12/95
Pierre Peladeau, U S West, Inc., Directory Printing Company	95–2071	07/12/95
Olsten Corporation, IMI Systems, Inc., IMI Systems, Inc	95–2074	07/12/95
Raytheon Company, United Dominion Industries Limited, Litwin Corporation, Litwin Engineers & Constructors	95–2083	07/12/95
The Allen Group Inc., The Allen Group Inc., GO/DAN Industries	95–2084	07/12/95
TCA Cable TV, Inc., Time Warner Inc., Time Warner Entertainment Company, L.P.	95–2050	07/13/95
Pall Corporation, Bayer AG, Bayer Corporation	95–2082	07/13/95
Southern New England Telecommunications Corporation, Southern New England Telecommunications Corporation, Berkshire Cellular Limited Partnership	95–2086	07/13/95
Rheinisch-Westfalisches Elektrizitatswerk AG, KW Control Systems, Inc., KW Control Systems, Inc	95–1768	07/14/95
Sisters of the Humility of Mary, Warren General Health System, Warren General Health System	95–1991	07/14/95
Siebe plc, Joseph Rea, Form Rite Corp	95–2037	07/14/95
Siebe plc, Juliann Good, Form Rite Corp	95–2038	07/14/95
Richfood Holdings, Inc., Super Rite Corporation, Super Rite Corporation	95–2060	07/14/95
Tom E. Turner, Robert D. Farmer, Farmco, Inc. and Farmco-San Antonio, Inc	95–2067	07/14/95
Enron Corp., GKH Investments, L.P., Hanover Compressor Company	95–2089	07/14/95
MDS Health Group Limited, Panlabs International, Inc., Panlabs International, Inc	95–2091	07/14/95
Hughes Supply, Inc., John V. Moore, Moore Electric Supply, Inc	95–2099	07/14/95
U.S. Office Products Company, Clifton B. Phillips, Mills Morris Arrow, Inc	95–2102	07/14/95
Clifton B. Phillips, U.S. Office Products Company, U.S. Office Products Company	95–2103	07/14/95
Belden & Blake Corporation, Quaker State Corporation, QSE&P, Inc	95–2106	07/14/95
GKH Investments, L.P., Mr. Robert G. Irvin, Arcus, Inc	95–2108	07/14/95
Samuel Gary, Kerr-McGee Corporation, Kerr-McGee Refining Corporation	95–2117	07/14/95
Host Marriott Corporation, California Federal Bank, FSB, Point Clear Bay Hotel Limited Partnership	95–2124	07/14/95
Harbour Group Investments III, L.P., TRAK International, Inc., TRAK International, Inc	95–2125	07/14/95
Anna C. Ball, Geo. J. Ball, Inc., Ball Seed Company	95–2126	07/14/95

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–18332 Filed 7–25–95; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO–131–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—First Quarter 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during January, February, and March of 1995 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe. We are also providing the content of revisions to the Medicare Coverage Issues Manual published between January 1 and March 31, 1995. On August 21, 1989, we published the content of the Manual (54 FR 34555) and indicated that we will publish quarterly any updates. Adding to this listing the complete text of the changes to the Medicare Coverage Issues Manual allows us to fulfill this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT: Margaret Cotton, (410) 786–5255 (For Medicare instruction information). Pat Prete, (410) 966–3246 (For Medicaid instruction information). After July 21, 1995, (410) 786–3246. Nancy Ranels, (410) 966–8928 (For all other information). After August 4, 1995, (410) 786–8928.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) Providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published from January 1 through March 31, 1995.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as-needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We will not reprint the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

III. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices June 9, 1988 (53 FR 21730), September 22, 1988 (53 FR 36891), December 16, 1988 (53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the **Federal Register** that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989 constitute a complete manual as of March 31, 1995. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV sets forth the revisions to the Medicare Coverage Issues Manual that were published during the quarter covered by this notice. For the revisions, we give a brief synopsis of the revisions as they appear on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revisions by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised section, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

Addendum V lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the title of the regulation, the parts of the Code of Federal Regulations (CFR) which have changed (if applicable), the agency file code number, the ending date of the comment period (if applicable), and the effective date (if applicable).

IV. How to Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address indicated above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

HCFA's laws, regulations, and manuals are now available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is contained on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1993. The remaining portions of CD–ROM are updated on a monthly basis.

The CD–ROM disk does not contain Appendix M (Interpretative Guidelines for Hospices). Copies of this appendix may be reviewed at a Federal Depository Library (FDL).

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

V. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 3—Claims Process (HCFA–Pub. 14–3) transmittal entitled "Medical Review," use the Superintendent of Documents No. HE 22.8/7 and the HCFA transmittal number 1508.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Issuances Staff, Bureau of Program Operations, Health Care Financing Administration, S1–03–08, 7500 Security Blvd., Baltimore, MD 21244–1850, Telephone (410) 786–5255.

Questions concerning Medicaid items in Addenda III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, (before July 21, 1995) Room 233 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–3246 or (after July 21, 1995) C4–25–02, 7500 Security Boulevard,

Baltimore, MD 21244–1850, Telephone (410) 786–3246.

Questions concerning all other information may be addressed to Nancy Ranels, Office of Regulations, Bureau of Policy Development, Health Care Financing Administration, (before August 4, 1995) Room 132 East High Rise 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–8928 or (after August 4, 1995) C5–14–22, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–6928.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: July 19, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum I

This addendum lists the publication dates of the most recent quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual. For a complete listing of the quarterly updates to the Coverage Issues Manual published between March 20, 1990 through November 14, 1994, please refer to the January 3, 1995 update (60 FR 134).

January 3, 1995 (60 FR 132)
April 6, 1995 (60 FR 17538)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[January Through March 1995]

Trans. No.		Manual/Subject/Publication Number
		Medicare **Intermediary Manual—Part 2** **Audits, Reimbursement** **Program Administration (HCFA–Pub. 13–2)** **(Superintendent of Documents No. HE 22.8/6–1)**
402	•	Maximum Payment For Rural Health Clinics Maximum Payment For Federally Qualified Health Centers
403	•	Contractor Performance Evaluation Fiscal Intermediary Performance Criteria—General The RHHI Performance Evaluation RHHI Performance Criteria—General
404	•	Beneficiary Services Provider Services
		Medicare **Intermediary Manual—Part 3** **Claims Process (HCFA–Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1642	•	HCPCS for Hospital Outpatient Radiology Services and Other Diagnostic Procedures Ambulatory Surgical Center Pricer Program
1643	•	Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices and Surgical Dressings
1644	•	Frequency of Billing Requirement That Bills Be Submitted In-Sequence for a Continuous Inpatient Stay Need to Reprocess Inpatient Claims In-Sequence
1645	•	PRO Reporting on Medical Review
1646	•	All-Inclusive Rate Providers Billing for Parenteral and Enteral Nutrition Special Billing Instructions for Pneumococcal Pneumonia
1647	•	On-Site CMRs Review Options
		Medicare **Carriers Manual—Part 2** **Program Administration (HCFA–Pub. 14–2)** **(Superintendent of Documents No. HE 22.8/7–3)**
130	•	The FY 1995 Contractor Performance Evaluation
131	•	Beneficiary Services Provider Services
		Medicare **Carriers Manual—Part 3** **Claims Process (HCFA–Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1508	•	Medical Review Local MR Policy The Carrier Advisory Committee

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January Through March 1995]

Trans. No.		Manual/Subject/Publication Number
		Data Analysis to Identify Aberrancies Aberrancies Taking Corrective Actions on Identified Aberrancies Conducting Evaluation of Effectiveness of Correction Action Standard Postpayment Data Reports Categories of MR Screens Provider Audit List CMR Corrective Actions Assessing an Overpayment or Potential Overpayment When the CMR was Based on a Limited Sample/Subsample Determination Consent Settlement Documents
1509	•	Participating Physician/Supplier Report Completion of Items on Participating Physician/Supplier Report Checking Reports
1510	•	Recovery From the Physician/Supplier—Overpayment Demand Letters Initial Demand Letter to Physicians/Suppliers Follow-up Demand Letter to Physicians/Suppliers Overpayment Report Optional Overpayment Customizing Paragraphs Sample Letter—Check Included For Correct Amount Sample Letter—Check Included But Wrong Amount
1511	•	Personal Computer EMC Software
1512	•	HCFA Common Procedure Coding System Use and maintenance of CPT–4 in HCPCS Local Codes at Regular Carriers Use and Acceptance of HCPCS Codes and Modifiers HCPCS Update Payment Concerns While Updating Codes Payment, Utilization Review and Coverage Information on HCFA Tape File Deleted HCPCS Codes/Modifiers Claims Review and Adjudication Procedures HCPCS Release
		Program Memorandum **Intermediaries (HCFA–Pub. 60A)** **(Superintendent of Document No. HE 22.8/7)**
A–95–1	•	Hospital Outpatient Procedures: 1995 Update to the List of Radiology Procedures and Other Diagnostic Services Subject to Payment Limitation and Update to the List of HCPCS Codes to Be Grossed-Up
A–95–2	•	Submission of Form HCFA–2552–92 (Hospital and Hospital Health Care Complex Cost Report)
A–95–3	•	Ambulatory Surgical Center—PRICER 9.1
		Program Memorandum **Carriers (HCFA–Pub. 60B)** **(Superintendent of Documents No. HE 22.8/6–5)**
B–95–1	•	Implementation of 1995 Physician Fee Schedule Payment Policy Changes
		Program Memorandum **Intermediaries/Carriers (HCFA–Pub. 60AB)** **(Superintendent of Documents No. HE 22.8/6–5)**
AB–95–1	•	Establishment of Standard Rates for Transmitting Claims Information Between Medicare Contractors and Complementary Insurers
AB–95–2	•	New Interest Rate Payable on Clean Claims Note Paid Timely
AB–95–3	•	Implementation of "Physician Ownership and Referral" (Section 1877 of the Social Security Act, as amended by Section 13562 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93))
AB–95–4	•	EDI Enrollment Form
AB–95–5	•	Temporary HCPCS Codes for Dexamethasone Acetate
		Program Memorandum **Medicaid State Agencies (HCFA–Pub. 17)** **(Superintendent of Documents No. HE 22.8/6–5**
95–1	•	Title XIX, Social Security Act, Transfers of Assets and Treatment of Trusts

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
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Trans. No.		Manual/Subject/Publication Number
		Program Memorandum Insurance Commissioners (HCFA–Pub. 80) (Superintendent of Documents No. HE 22.8/6–5)
95–1	•	Medigap Bulletin Series (Number Four)
		State Operations Manual Provider Certification (HCFA–Pub. 7) (Superintendent of Documents No. HE 22.8/12)
266	•	Survey Procedures for Swing-Bed Hospitals Model Letter—Swing Bed Applicants Nurse Aide Training/Nurse Aide Training and Competency Evaluation Program Line-Item Justification for Direct and Indirect Costs Preparation of the State Survey Agency Certification Workload Report—HCFA–434 Distribution of Approved Funds Disbursement of Approved Funds General Goods, Facilities, Services From Other Staff Agencies or From Local Agencies Personnel Services State Agency Accounts Determination of Necessary Staff Communications and Supplies Equipment Training of State Agency Personnel Long Term Care Facility Workload (SNF/NF) Preparation of the State Agency Budget List of Positions—HCFA–1465A Preparation of the State Agency Schedule for Equipment Purchases—HCFA–1466 Preparation of State Survey Agency Budget Request (Non-LTC)–HCFA–435 Preparation of State Survey Agency Budget Request—Long-Term Care, HCFA–435 Submittal of Budget Request Notification of Approval Need For Additional Title XVIII and Title XIX Funds Financial Reporting Limit on Expenditures Periodic Analysis of Accounts Cash Balances and Expenditure Authority Unliquidated Obligations State Survey Agency Quarterly Expenditure Report, HCFA–435 and State Survey Agency Certification Workload Report HCFA–434—Submittal and Due Date Preparation of State Survey Agency Non-TLC Quarterly Expenditure Report, HCFA–435 Preparation of State Survey Agency Long-Term Care Quarterly Expenditure Report, HCFA–435 State Survey Agency/Certification Workload Report
267	•	Community Mental Health Centers—Citations and Description Certification Process Model Letter to CMHCs CMHC Crucial Data Extract Public Health Service Act Requirements Health Insurance Benefit Agreement Conditions to Be Assessed Prior to Scheduling An RHC Survey
268	•	Essential Access Community Hospital/Rural Primary Care Hospital—Citations and Description Medicare Designation as an EACH Medicare participation by an RPCH RPCH Anti-Dumping Requirements Advance Directives Requirements for RPCHs Model Letter: Transmitting Materials to Rural Primary Care Hospitals Model Letter: Notification to Rural Primary Care Hospital Regarding Scheduling a Survey Survey Tasks and Interpretive Guidelines for Rural Primary Care Hospitals
269	•	Survey Protocol Appendix P, Part I—Survey Procedures for Long-Term Care Facilities Appendix P, Part II—Guidance to Surveyors—Long-Term Care Facilities List of Documents in Certification Packet
		Medicare Christian Science Sanatorium Hospital Manual Supplement (HCFA–Pub. 32) (Superintendent of Documents No. HE 22.8/2–2)
34	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
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Trans. No.		Manual/Subject/Publication Number
		Regional Office Manual Standards and Certification (HCFA–Pub. 23–4) (Superintendent of Documents No. HE 22.8/8–3)
57	•	Assignment of Provider and Supplier Identification Numbers Essential Access Community Hospital/Rural Primary Care Hospital (EACH/RPCH) Program—Citations and Description Procedures for EACH Approval by the Regional Office (RO) Procedures for RPCH Approval by the RO Procedures for Processing RPCH Swing-Bed Applications Processing Complaints Against EACHs and RPCHs Processing Denials and Terminations for EACHs and RPCHs EACH Approval Letter RPCH Approval Letter EACH Denial Letter RPCH Denial Letter
		Medicare Hospital Manual (HCFA–Pub. 10) (Superintendent of Documents No. HE 22.8/2)
675	•	HCPCS for Hospital Outpatient Radiology Services and Other Diagnostic Procedures
676	•	Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices and Surgical Dressings
677	•	Oral Cancer Drugs Requirement That Bills Be Submitted In-Sequence for a Continuous Inpatient Stay
678	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Medicare Home Health Agency Manual (HCFA–Pub. 11) (Superintendent of Documents No. HE 22.8/5)
274	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Medicare Skilled Nursing Facility Manual (HCFA–Pub. 12) (Superintendent of Documents No. HE 22.8/3)
334	•	Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices and Surgical Dressings
335	•	Requirement That Bills Be Submitted In-Sequence For a Continuous Inpatient Stay
336	•	Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Medicare Rural Health Clinic and Federally Qualified Health Centers Manual (HCFA–Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
18	•	Rural Health Clinics Federally Qualified Health Centers
19	•	Billing of Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines by Rural Health Clinics and Federally Qualified Health Centers
		Medicare Hospice Manual (HCFA–Pub. 21) (Superintendent of Documents No. HE 22.8/18)
45	•	Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Medicare Provider Reimbursement Manual Part 1 (HCFA–Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
380	•	Board Action on Request for Hearing
381	•	Ancillary Services in SNFs
382	•	Principles Land (Non-Depreciable) Historical Cost Purchase of Facility as Ongoing Operation Fair Market Value Donated Assets Net Book Value Acquisitions Sale and Leaseback Agreements—Rental Charges

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[January Through March 1995]

Trans. No.		Manual/Subject/Publication Number
		Lease Purchase Agreements—Rental Charges Assets Partially or Fully Depreciated on Provider's Books When Provider Enters Program Transfer of Governmental Facilities Assets Donated to Provider Useful Life of Depreciable Assets
		Medicare Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (HCFA–Pub. 15–11AF) (Superintendent of Documents No. HE 22.8/4)
1	•	Home Health Agency Cost Report, Form HCFA–1728–94
2	•	Rounding Standards for Fractional Computations Method of Payment Worksheet S—Independent Renal Dialysis Facility Cost Report Certification Worksheet A—Reclassification and Adjustments of Trial Balance of Expenses Worksheet A–2—Adjustments to Expenses Worksheet B, Cost Allocation—General Service Costs and Worksheet B–1—Cost Allocation—Statistical Basis
		Medicare Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (General) (HCFA–Pub. 15–11A) (Superintendent of Documents No. HE 22.8/4)
17	•	Submission of Cost Reports
		Medicare Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA–Pub. 9) (Superintendent of Documents No. HE 22.8/9)
120	•	Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices and Surgical Dressing
121	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
122	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Peer Review Organization Manual (HFCA–Pub. 19) (Superintendent of Documents No. HE 22.8/15)
44	•	Introduction HCFA-Provided Data PRO-Selected Data Confidentiality of PRO Data
45	•	Training
46	•	Objectives of the Internal Quality Control Program IQC Program Requirements IQC Control Process Analysis and Reporting Requirements
47	•	Introduction Uses for PDC Conducting PDC Concerns Identified During PDC Confidentiality Reports to HCFA Required HCFA Notification/Approval Office of Management and Budget Clearance Related Activities Through PRO/Carrier Intermediary/ESRD Network Cooperation Timeline for PDC Process
48	•	Statutory Basis Grounds for Termination Recommendation to Initiate Termination Notice of Intent to Terminate Contract Termination Panel Termination Decision

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[January Through March 1995]

Trans. No.		Manual/Subject/Publication Number
		Medicare Coverage Issues Manual (HCFA–Pub. 6) (Superintendent of Documents No. 22. 8/14)
74	•	Bladder Stimulators (Pacemakers)
		State Medicaid Manual Part 3—Eligibility (HCFA–Pub. 45–8) (Superintendent of Documents No. HE 22.8/10)
65	•	Persons with Drug Addition or Alcoholism
		State Medicaid Manual Part 6—Payment for Services (HCFA–Pub. 45–6) (Superintendent of Documents No. HE 22.8/10)
27	•	Physician Services to Children Under 21 Physican Services to Pregnant Women
		End Stage Renal Disease Network Organizations Manual (HCFA–Pub. 81) (Superintendent of Documents No. HE 22.9/4)
2	•	Introduction Board of Directors Network Staff Network Council Patient Involvement Medical Review Board Other Committees Meetings Goals Internal Quality Control System Continuous Quality Improvement Medicare Benefits for ESRD Patients Hospital Insurance for Persons Needing Kidney Transplant or Dialysis When ESRD Coverage Begins When ESRD Coverage Ends Supplemental Medical Insurance Organizational Conflicts of Interest Among Governing Body of ESRD Network Organizations, Facilities, and Patients Conflict of Interest—Private Arrangements Prohibited Organizational Conflicts of Interest Permitted Activities
		Medicare Renal Dialysis Facility Manual (HCFA–Pub. 29) (Superintendent of Document No. HE 22.8/13)
71	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines
		Medicare/Medicaid Sanction/Reinstatement Report
95–1	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated
95–2	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated
95–3	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated

Addendum IV—Medicare Coverage Issues Manual

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

Transmittal No. 74; sections 65–10.1–65–11 Bladder Stimulators (Pacemakers) CHANGED IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: For services performed on or after 03–01–95.

Section 65–10.1, Bladder Stimulators (Pacemakers).—This section is revised to reflect that pelvic floor stimulators, whether inserted into the vaginal canal or rectum or implanted in the pelvic area, used as a treatment for urinary incontinence either as a bladder pacer or a retraining mechanism are not covered for the reason that the safety

and effectiveness of these devices are unproven.

65–11 BLADDER STIMULATORS (PACEMAKERS)—NOT COVERED

Pelvic floor stimulators, whether inserted into the vaginal canal or rectum or implanted in the pelvic area, used as a treatment for urinary incontinence either as a bladder pacer or a retraining mechanism are not covered for the reason that the safety and effectiveness of these devices are unproven.

ADDENDUM V.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR vol. 60 page	CFR part	File code	Regulation title	End of comment period	Effective date
01/03/95	46–54	410,414	BPD–789–CN	Medicare Program; Refinements to Geographic Adjustment Factor Values, Revisions to Payment Policies, Adjustments to the Relative Value Units (RVUs) Under the Physician Fee Schedule for Calendar Year 1995, and the 5–Year Refinement of RVUs.		01/01/95
01/03/95	130–132		HSQ–224–N	CLIA Program: Approval of the Joint Commission on Accreditation of Healthcare Organizations As An Accrediting Organization.		01/03/95
01/03/95	132–141		BPQ–129–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Third Quarter 1994.		01/03/95
1/09/95	2325–2330	400, 405, 410, 484, 485, 486, 498,.	BPD–798–FC	Medicare Program; Providers and Suppliers of Specialized Services: Technical Amendments.	03/10/95	02/08/95
01/13/95	3250–3253		MB–089–N	Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1995.		01/13/95
01/17/95	3405–3410		BPD–778–FN	Medicare Program; Special Payment Limits for Home Blood Glucose Monitors.		02/16/95
01/23/95	4418–4423		ORD–070–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: November and December 1994.		01/23/95
01/26/95	5185–5204		BPD–776–FNC	Medicare Program; Additions To and Deletions From the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers.	03/27/95	02/27/95
02/02/95	6537–6547		BPD–812–NC	Medicare Program; Criteria for Medicare Coverage of Lung Transplants.	04/03/95	02/02/95
02/08/95	7514	482	BPD–826–N	Medicare Program; Hospice Wage Index		02/08/95
02/09/95	7774–7780		HSQ–223–N	CLIA Program: Approval of the College of American Pathologists.		02/09/95
02/14/95	8389–8406		BPD–793–NC	Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit.	04/17/95	07/01/94
02/16/95	8951–8955	410	BPD–424–F	Medicare Program; Medicare Coverage of Prescription Drugs Used in Immunosuppressive Therapy.		01/01/95
02/24/95	10395–10396		OPL–004–N	Medicare Program; Meeting of the Practicing Physicians Advisory Council.		02/24/95
03/02/95	11632–11633	485, 486	BPD–798–CN	Medicare Program; Providers and Suppliers of Specialized Services-Technical Amendments; Corrections.		02/08/95
03/13/95	13441		BPD–833–N	Medicare Program; Hospice Wage Index		03/13/95
03/16/95	14223–14224	410	BPD–724–F	Medicare Program; Medicare Coverage of Screening Mammography; Correction.		10/01/94
03/30/95	16481–16486		ORD–073–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: January 1995.		

*GN—General Notice; PN—Proposed Notice; FN—Final Notice; P—Notice of Proposed Rulemaking (NPRM); F—Final Rule: FC—Final Rule with Comment Period; CN—Correction Notice; SN—Suspension Notice; WN—Withdrawal Notice; NR—Notice of HCFA Ruling

[FR Doc. 95–18333 Filed 7–25–95; 8:45 am]

BILLING CODE 4120–01–P

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

John J. Tomasula, Mount Sinai Medical Center: On June 29, 1995, ORI found that John J. Tomasula, formerly of the Mount Sinai Medical Center in New York, committed scientific misconduct by falsifying research involving guanabenz treatment of spinal cord injured cats reported in a Public Health Service (PHS) grant application. Additionally, ORI found that Mr. Tomasula had falsified his credentials on three PHS grant applications in which he claimed to have a Ph.D. degree from Northwestern University when, in fact, he had obtained a mail-order degree from Northwestern College of Allied Sciences in Oklahoma, an unaccredited, now-defunct "institution."

Mr. Tomasula has entered into a Voluntary Exclusion Agreement with ORI in which he has accepted ORI's finding and has agreed to exclude himself voluntarily, for the three (3) year period beginning June 29, 1995, from:

(1) applying for or receiving any Federal grant or contract funds; and,

(2) serving in any advisory capacity to the PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–18347 Filed 7–25–95; 8:45 am]

BILLING CODE 4110–60–P

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Jose R. Sotolongo, Jr., M.D., Mount Sinai Medical Center: On July 3, 1995, ORI found that Jose R. Sotolongo, Jr., M.D., formerly of Mount Sinai Medical Center in New York, committed scientific misconduct by falsifying research involving guanabenz treatment of spinal cord injured cats presented in a Public Health Service (PHS) grant application.

Dr. Sotolongo has entered into a Voluntary Exclusion Agreement with ORI in which he has accepted ORI's finding and has agreed to exclude himself voluntarily, for the three (3) year period beginning July 3, 1995, from:

(1) Applying for or receiving any Federal grant or contract funds; and,

(2) Serving in any advisory capacity to the PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

The above voluntary exclusion, however, shall not apply to Dr. Sotolongo's future training or practice of clinical medicine as a licensed practitioner unless that practice involves research or research training.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–18348 Filed 7–25–95; 8:45 am]

BILLING CODE 4110–60–P

National Institutes of Health

Division of Research Grants; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: July 27, 1995.

Time: 9:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Keith Murray, Scientific Review Admin., 6701 Rockledge Drive, Room 5194, Bethesda, MD 20892, (301) 435–1256.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18284 Filed 7–25–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Action Related to Emergency Research Activity

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service is announcing an action related to the applicability of the Title 45 CFR Part 46 (protection of human subjects) requirement for obtaining and documenting informed consent for a specific research activity. The purpose of this action is to invoke 45 CFR 46.101(i) related to an NIH funded research project: "National Acute Brain Injury Study: Hypothermia." This important and necessary research needs to be carried out in human subjects who require emergency therapy and for whom, because of the subjects' medical condition and the unavailability of legally authorized representatives of the subjects, no legally effective informed consent can be obtained.

FOR FURTHER INFORMATION CONTACT: F. William Dommel, Jr., J.D., Senior Policy Advisor, Office for Protection from Research Risks, 6100 Executive Boulevard, Suite 3B01J, National Institutes of Health, MSC 7507, Rockville, MD 20892–7507. Telephone (301) 496—7005 ext. 203 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Waiver

Pursuant to Section 46.101(i) of Title 45 of the Code of Federal Regulations, the Secretary of Health and Human Services, has waived the general requirements for informed consent at 45 CFR 46.116 and 46.117 for the specific research activity known as the "National Acute Brain Injury Study: Hypothermia" and funded by the National Institutes of Health (NIH) grant number R01 NS 32786 under the following strictly limited circumstances:

In the course of the conduct of the research funded under NIH grant number R01 NS 32786, human research subjects may be included without seeking informed consent as otherwise required by 45 CFR 46.116 and 46.117 if the proposed research involves the study of activities which would be carried out on persons who are in need of emergency treatment and the IRB(s) responsible for the review, approval, and continuing review of the research approve(s) that research without requiring that legally effective informed consent be obtained and the IRB(s) find(s), document(s), and report(s) to the Office for Protection from Research Risks (OPRR), NIH, that the research is approved in the absence of a requirement for obtaining informed consent for the following reasons:

(i) The opportunity for the subjects to participate in the research is in the health interest of the subjects;

(ii) The waiver of consent will not adversely affect the rights and welfare of the subjects;

(iii) Additional appropriate protections of the rights and welfare of the subjects will be

provided, including , but not limited to, consultation (which may include consultation carried out by the IRB itself) with representatives of the communities from which the subjects will be drawn;

(iv) The research could not practicably be carried out without the waiver; and

(v) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

Background

The NIH, through its National Institute of Neurological Disorders and Stroke, has funded a research project entitled, "National Acute Brain Injury Study: Hypothermia," which is a study of the treatment with hypothermia of severe head injury. This important and necessary research needs to be carried out in human subjects who, because of their injuries, are not conscious and cannot, therefore, consent to their participation. In some instances, but not always, consent from a legally authorized representative can be sought and obtained. Nevertheless, the unavailability of such representatives in many cases is impeding the progress of the research to such an extent, that the NIH determined that the research cannot go forward in the context of the current Department of Health and Human Services (HHS) regulations for the protection of human subjects (45 CFR Part 46) unless certain informed consent requirements of those regulations are waived by the Secretary, HHS in accord with the waiver provisions provided at 45 CFR 46.101(i). A request for consideration of such a waiver was received from the Institutional Review Board, University of Texas Health Science Center, Houston, on July 12, 1995.

Current HHS regulations permit IRBs acting in accord with an Assurance of Compliance with 45 CFR Part 46, to waive the requirement for obtaining informed consent under the following stringently applied conditions found at 45 CFR 46.116(d).

The IRB must find and document that:

- The research involves no more than minimal risk to the subjects;
- The waiver * * * will not adversely affect the rights and welfare of the subjects;
- The research could not practicably be carried out without the waiver * * *; and,
- Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

However, the waiver of informed consent requirements now being authorized under § 46.101(i) could not previously have been approved by an IRB, acting independently of the § 46.101(i) waiver, because the risk involved in this emergency treatment activity is greater than minimal and therefore the "minimal risk" requirement for the exercise of an IRB waiver of informed consent could not be met.

NIH notes that testimonies to this effect, in regard to similar research activities, were delivered to (i) the Subcommittee on Regulation, Business Opportunities, and Technology, Committee on Small Business, U.S. House of Representatives (Washington, DC, May 23, 1994); (ii) the Coalition Conference of Acute Resuscitation Researchers (Washington, DC, October 25, 1994); (iii) the meeting of Applied Research Ethics National Association (Boston, MA, October 30, 1994); (iv) the meeting of Public Responsibility in Medicine & Research (Boston, MA, November 1, 1994); and (v) the Food and Drug Administration/National Institutes of Health Public Forum on Informed Consent in Clinical Research Conducted in Emergency Circumstances (Rockville, MD, January 9–10, 1995).

Therefore, the issue for decision by the Secretary was whether this particular research activity, involving greater than minimal risk to the subjects, should be permitted to go forward in the absence of legally effective informed consent. The decision is that under certain strictly limited circumstances such permission is appropriate.

Periodic Review

A periodic review of the implementation by IRBs of this waiver will be conducted by OPRR to determine its adequacy in meeting its intended need or if adjustments to the waiver might be necessary and appropriate.

Dated: July 19, 1995.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 95–18334 Filed 7–25–95; 8:45 am]

BILLING CODE 4140–01–M

Office of Refugee Resettlement

Refugee Resettlement Program; Availability of Formula Allocation Funding for FY 1995 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of availability of formula allocation funding for FY 1995 targeted assistance grants to States for services to refugees[1] in local areas of high need.

SUMMARY: This notice announces the availability of funds and award procedures for FY 1995 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources. The formula has been updated to take into account FY 1994 arrivals.

A notice of proposed allocation of targeted assistance funds was published for public comment in the **Federal Register** on April 17, 1995 (60 FR 19270).

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

APPLICATION DEADLINE: The deadline for applications from States for grants under this notice is on August 25, 1995.

Applications from States for grants under this notice must be received on time. An application will be considered to be received on time under either of the following two circumstances: The application is postmarked indicating it was sent via the U.S. Postal Service or by private commercial carrier not later than the closing date specified in the final notice or the application is hand-delivered on or before the closing date to the Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447. Hand-delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up to 4:30 p.m. of the closing date.

To be considered complete, an application package must include a signed original and two copies of Standard Form 424, 424A, and 424B, dated April 1988. (We will provide copies of these materials to all targeted assistance States.) The application package should be addressed to the Division of Refugee Self-Sufficiency, Office of Refugee Resettlement, ACF, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 93.584.

FOR FURTHER INFORMATION ON APPLICATION PROCEDURES, STATES SHOULD CONTACT: RON MUNIA AT (202) 401–4559 IN ORR.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $49,397,000 in FY 1995 funds for the targeted assistance program (TAP) as part of the FY 1995 appropriation for the Department of Health and Human Services (Pub. L. 103–333).

The House Appropriations Committee Report reads as follows with respect to targeted assistance funds (H.R. Rept. No. 103–553, p. 93):

> This program provides grants to States for counties which are impacted by high concentrations of refugees and high dependency rates. The Committee intends that $19,000,000 of the total recommended for targeted assistance be provided to continue the current program of support to communities affected as a result of the massive influx of Cuban and Haitian entrants. The Committee also intends that 10 percent of the total appropriated for targeted assistance be used for grants to localities most heavily impacted by the influx of refugees such as Laotian Hmong, Cambodians, and Soviet Pentecostals, including secondary migrants who entered the United States after October 1, 1979. The Committee expects these grants to be awarded to communities not presently receiving targeted assistance because of previous concentration requirements and other factors in the grant formulas, as well as those who do currently receive targeted assistance grants.

The Senate Appropriations Committee Report (S. Rept. No. 103–318, p. 154) is consistent with the above-quoted House Report.

The Conference Report on Appropriations (H. Rept. No. 103–733, p. 24) clarifies Congress' intent on the use of the $19 million for communities affected by Cuban and Haitian entrants as follows:

> The conferees are agreed that $19,000,000 of the $49,397,000 appropriated for targeted assistance is to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased.

The Director of the Office of Refugee Resettlement (ORR) will use the $49,397,000 appropriated for FY 1995 targeted assistance as follows:

- $25,457,300 will be allocated under the updated formula, as set forth in this notice.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals.
- $4,939,700 (10% of the total) will be awarded as second-year continuation grants in a two-year project period under a discretionary grant announcement that was issued in FY 1994.

In addition, the Office of Refugee Resettlement has available an additional $6,000,000 in FY 1995 funds to augment the targeted assistance 10% program through the Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 103–306). These funds will be awarded under a separate discretionary grant announcement which will be issued setting forth application requirements and evaluation criteria.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513).

III. Client and Service Priorities

Targeted assistance funding should be used to assist refugee families to achieve economic independence. To this end, ORR expects States and counties to ensure that a coherent plan of services is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. Each service plan should address a family's needs for both employment-related services and other needed social services. In local jurisdictions that have both targeted assistance and refugee social services programs, one plan of services may be developed for a family that incorporates both targeted assistance and refugee social services.

Services funded under the targeted assistance allocations are required to focus primarily on those refugees who, either because of their protracted use of public assistance or difficulty in securing employment, continue to need services beyond the initial years of resettlement. The targeted assistance program, however, is not intended to be limited to cash assistance recipients. TAP-funded services may also be provided to other refugees in need of services, regardless of whether the refugees are receiving cash assistance.

However, effective October 1, 1995, under new provisions in § 400.314 in the final rule published in the **Federal Register** on June 26, 1995, (60 FR 33584), States will be required to provide targeted assistance services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b)

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[1] In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status," eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section II of this notice on "Authorization.") The term "refugee", used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the targeted assistance program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival, or until they obtain permanent resident alien status, whichever comes first.

unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence. Effective October 1, 1995, States will also be required, in accordance with § 400.315, to limit the provision of targeted assistance services, with the exception of referral and interpreter services, to refugees who have been in the U.S. for 60 months or less.

In addition to the statutory requirement that TAP funds be used "primarily for the purpose of facilitating refugee employment" (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B)(i) of the INA). Therefore targeted assistance funds must be used primarily for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. Examples of these activities are: job development; job placement; job-related and vocational English; short-term job training specifically related to opportunities in the local economy; on-the-job training; business and employer incentives (such as on-site employee orientation, vocational English training, or bilingual supervisor assistance); and business technical assistance. General or remedial educational activities—such as adult basic education (ABE) or preparation for a high school equivalency or general education diploma (GED)—may be provided within the context of an individual employability plan for a refugee which is intended to result in job placement in less than one year. ORR encourages the continued provision of services after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds cannot be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year. If TAP funds are used for the provision of English language training, such training should be provided concurrently, rather than sequentially, with employment or with other employment-related services, to the maximum extent possible.

A portion of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State.

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director of ORR expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit. States and counties are expected to make every effort to assure availability of day care services in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the targeted assistance program. Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for day care services. For an employed refugee, TAP-funded day care must be limited to one year after the refugee becomes employed. States and counties, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

Targeted assistance services should be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. To the maximum extent possible, particularly during a refugee's initial years of resettlement, targeted assistance services should be provided through a refugee-specific service system rather than through a system in which refugees are only one of many client groups being served.

ORR strongly encourages States and counties when contracting for targeted assistance services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. States may use a portion of their targeted assistance funds, either through contracts or through the use of State/county staff, to provide technical assistance and organizational training to strengthen the capability of MAAs to provide employment services, particularly in States where MAA capability is weak or undeveloped. If a State chooses to use State employees to provide technical assistance to MAAs, this would be an administrative cost which must be included within the State administrative cost limit of 5% for the targeted assistance program.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

Finally, in order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR strongly encourages States and counties to promote and give special consideration to the provision of services through coalitions of refugee service organizations, such as coalitions of MAAs, voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section IX, below.

IV. Discussion of Comment Received

Nine letters of comment were received in response to the notice of proposed availability of FY 1995 funds for targeted assistance. The comments are summarized below and are followed in each case by the Department's response.

Comment: Five commenters opposed allowing States with more than one eligible county to determine county allocations differently from those specified in the targeted assistance notice. Four of those commenters complained that their State's reallocation plan shifted resources from counties with new arrivals to counties with long-term assistance users.

Response: We believe that States with more than one eligible county should be given the flexibility to determine county allocations differently from those specified in the notice, based on more complete and accurate data that a State may have on county population numbers and welfare dependency rates than what is available at the Federal level.

Effective October 1, 1995, under the new rule, States with more than one eligible targeted assistance county will be allowed to allocate funds differently from the formula in the targeted assistance notice only on the basis of its population of refugees who arrived in the U.S. during the most recent 5-year period. States will be allowed to use welfare data as a factor in its allocation formula, but only in combination with arrival data, not as the only factor.

Comment: Two commenters questioned the 3 percent threshold for the Cuban/Haitian special allocation. One commenter objected to the exclusion of secondary migrants in the entrant population count. The other commenter recommended that the threshold be lowered to 1 percent to provide awards to more counties.

Response: As we have noted in previous years, we are not able to include secondary migrants in the population count for targeted assistance because secondary migration data are not available at the county level.

In order to be consistent with the Conference Report on Appropriations, we have established a 3 percent threshold for allocations under the Cuban/Haitian special allocation in order to target the communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. A lowering of the threshold would disperse the available funds across more communities, which would significantly reduce the grants to the communities which have the greatest need.

Comment: One commenter objected to ORR's intention not to consider data for the purpose of determining the eligibility of new counties for participation in TAP in FY 1995.

Response: In FY 1996 we intend to re-examine the targeted assistance program to determine what policies need to be updated or revised. At that time, the eligibility of all counties will be reviewed against the new qualifying criteria. We do not believe that it makes sense to admit new counties to the program in FY 1995 when these counties may become ineligible in FY 1996. We believe that funds are best used for already established counties rather than for the start up costs for new counties that may only receive funding for one year.

Comment: One commenter recommended that the 10% discretionary program be eliminated because the program allows non-impacted counties to receive grants which, in turn, reduces the grants to the impacted counties.

Response: The communities which receive grants under the TAP 10% discretionary program are impacted communities, even though they may not receive grants under the targeted assistance formula program. The TAP 10% program reflects Congressional intent as expressed in the House Appropriations Committee Report which states: "The Committee expects these [TAP 10%] grants to be awarded to communities not presently receiving targeted assistance because of previous concentration requirements * * * as well as those who do currently receive targeted assistance grants."

Comment: One commenter recommended that TAP funds be allocated to counties within 5 months after being appropriated by Congress. The commenter felt that releasing the funds later keeps counties from accessing funds when they are needed and gives Congress and OMB the impression that the counties do not really need the resources.

Response: We hope to issue targeted assistance awards earlier in the fiscal year than has been the case to date.

Comment: Two commenters recommended that the allowances for State and county administrative costs, 5 and 10 percent respectively, be re-examined. The commenters felt that the counties' allowance should be increased. One commenter recommended that counties be allowed as much as 15 to 20 percent in administrative costs since the counties are responsible for directly administering the targeted assistance grants. The other commenter recommended a sliding-scale for State allowances, with a higher percentage for smaller States and a lower percentage for larger States.

Response: Regarding State administrative allowances, section 412(c)(2)(B)(ii) of the INA allows up to 5% of the TAP allocation to be retained by the State.

As we indicated earlier, in FY 1996 we intend to re-examine the targeted assistance program to determine what policies need to be updated or revised. This will provide an appropriate time to re-examine the issue of allowable administrative cost levels.

Comment: One commenter requested that the application procedures for the Cuban/Haitian special allocation be made available as soon as possible if the procedures will be different from previous years.

Response: The application procedures for the Cuban/Haitian special allocation will be provided to participating States shortly.

Comment: One commenter requested that counties receiving awards for the first time under the Cuban/Haitian special allocation be awarded grants from October 1995 through September 1996 to give the State sufficient planning time.

Response: Awards will be made before the end of FY 1995. Counties may obligate targeted assistance funds for up to one year after the end of the Federal fiscal year in which the Department awarded the grant. Therefore, grants awarded this year may be obligated through September 30, 1996. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant.

V. Eligible Grantees

The following requirements, which have previously applied to TAP, will continue to apply with respect to FY 1995 awards:

Eligible grantees are those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1995 targeted assistance awards. The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State. However, if a State chooses to determine

county allocations differently from those set forth in this notice, the FY 1995 allocations proposed by the State must be included in the State's application.

Applications submitted in response to this notice are not subject to review by State and areawide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

VI. Qualification and Allocation Formulas

A. Qualifying New Counties

ORR is not considering new counties for participation in TAP in FY 1995. The reason is that in FY 1996 we intend to modify the qualifying criteria and allocations formula for targeted assistance. At that time, the eligibility of all counties for participation in TAP will be reviewed against the new qualifying criteria. We do not believe it makes sense to invite new counties to submit evidence of eligibility in FY 1995 when these counties may become ineligible in FY 1996 under the new qualifying criteria.

B. Allocation Formula

The FY 1995 TAP formula allocations are based on the same formula as in FY 1994, updated to reflect arrivals through September 30, 1994.

Under this formula, one portion of the allocation is based on refugee and Cuban/Haitian entrant arrivals during FY 1980–1982; funds for this portion of the formula are allocated on the same proportionate basis among participating counties as in FY 1994. The second portion of the allocation is based on refugee and entrant placements in these counties during calendar year (CY) 1983–September 30, 1994.

For the participating counties, the $25,457,300 which is allocated by formula is apportioned as follows:

a. $7,891,763 or 31%, is allocated on the basis of the formula which has been used for all previous targeted assistance allocations ("old formula") and which is based on initial placements during FY 1980–1982 and other factors as described under "Formula Used to Date" in the FY 1989 TAP notice published in the **Federal Register** on July 3, 1989 (54 F.R. 27944).

b. $17,565,537 or 69%, is allocated on the basis of arrivals during CY 1983–September 30, 1994 ("new formula").

The above percentages are based on the proportion of initial placements in these counties during the two periods: 338,247 refugee arrivals, or 31% of the total number of placements, during the old-formula period; and 768,750 or 69%, during the new-formula period.

The old-formula allocation of $7,891,763 follows the same distribution among counties as in the past.

The new-formula allocation of $17,565,537 is based on the number of initial placements in each county during CY 1983–September 30, 1994. Welfare dependency rates were not used as a factor in this portion of the formula.

C. Allocation Formula for Communities Affected by Recent Cuban/Haitian Arrivals

Allocations for recent Cuban and Haitian refugee and entrant arrivals are based on arrival numbers during the 3-year period beginning October 1, 1991 through September 30, 1994. Allocations are limited to targeted assistance counties with 3 percent or more of the total 3-year Cuban and Haitian arrival population (35,863 arrivals) in the 42 targeted assistance counties. We have established a 3 percent threshold for allocations in order to target the most impacted communities.

VII. Allocations

Table 1 lists the participating counties, the number of placements in each county during CY 1983–September 30, 1994, the amount of each county's allocation which is based on the old formula, the amount of each county's allocation which is based on the new formula, and the county's total allocation.

Although Table 1 shows an amount for each county, the Director has decided, in the case of a State which contains more than one qualified county, to continue to permit the State to determine (in accordance with the requirements set forth in this notice) the appropriate allocation of the State's targeted assistance award among the qualified counties in the State. If a State chooses to make allocations which are different from the notice, the State, as in the FY 1994 TAP, would be responsible for determining an appropriate and equitable basis for allocating the funds among the qualified counties in the State and for including in its application a description of this allocation basis, the data to be used, and the allocation proposed for each county.

Table 2 lists the participating counties, the number of Cuban and Haitian refugee and entrant arrivals in each county during FY 1992–FY 1994, each county's percentage of the aggregate total Cuban/Haitian arrivals in the 42 targeted assistance counties, and the allocation amount for each county that has an arrival threshold of 3 percent or above.

Table 3 provides State totals for targeted assistance allocations.

Table 4 indicates the areas that each participating county represents.

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TABLE 1.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1995

County	State	Arrivals Jan. 1983–Sept. 1994 (A)	Portion of FY 1995 allocation under old formula (B)	Portion of FY 1995 allocation under new formula (C)	Total FY 1995 allocation[1] (D)
Alameda	CA	15,342	$196,075	$350,380	$546,455
Contra Costa	CA	4,291	56,063	97,998	154,061
Fresno	CA	14,168	108,273	323,569	431,842
Los Angeles	CA	96,344	990,155	2,200,303	3,190,458
Merced	CA	4,419	132,156	100,921	233,077
Orange	CA	45,039	440,587	1,028,600	1,469,187
Sacramento	CA	17,687	167,821	403,935	571,756
San Diego	CA	25,368	328,383	579,354	907,737
San Francisco	CA	25,198	254,838	575,471	830,309
San Joaquin	CA	9,352	169,342	213,581	382,923
Santa Clara	CA	34,488	327,990	787,636	1,115,626
Stanislaus	CA	3,433	30,639	78,403	109,042
Tulare	CA	5,345	0	122,069	122,069

TABLE 1.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1995—Continued

County	State	Arrivals Jan. 1983–Sept. 1994 (A)	Portion of FY 1995 allocation under old formula (B)	Portion of FY 1995 allocation under new formula (C)	Total FY 1995 allocation[1] (D)
Denver	CO	9,865	86,147	225,297	291,444
Broward	FL	3,568	109,568	81,486	191,054
Dade	FL	55,816	1,911,490	1,274,725	3,186,215
Hillsboro	FL	3,498	34,433	79,842	114,275
Palm Beach	FL	3,595	45,517	82,103	127,620
Honolulu	HI	3,417	72,838	78,037	150,875
Cook/Kane	IL	36,430	342,151	831,988	1,174,139
Sedgwick	KS	4,038	61,534	92,220	173,754
Orleans	LA	3,899	55,699	89,045	144,744
Montgomery/Prince Georges	MD	8,851	67,761	202,139	269,900
Middlesex	MA	6,355	53,529	145,135	198,664
Suffolk	MA	16,114	122,853	368,011	490,864
Hennepin	MN	10,446	86,311	238,566	324,877
Ramsey	MN	10,263	121,357	234,386	355,743
Jackson	MO	4,319	31,685	98,637	130,322
Essex	NJ	5,925	18,336	135,315	153,651
Hudson	NJ	2,941	122,698	67,167	189,865
Union	NJ	1,812	24,631	41,382	66,013
New York	NY	135,631	273,761	3,097,538	3,371,299
Multnomah	OR	17,076	185,998	389,981	575,979
Philadelphia	PA	18,643	127,317	425,769	553,086
Providence	RI	4,850	90,936	110,764	201,700
Dallas/Tarrant	TX	26,002	0	593,833	593,833
Harris	TX	21,917	149,237	500,540	649,777
Salt Lake	UT	7,210	45,368	164,662	210,030
Arlington	VA	3,183	78,619	72,693	151,312
Fairfax	VA	9,006	94,800	205,679	300,479
King/Snohomish	WA	29,275	226,469	668,605	895,074
Pierce	WA	4,719	45,398	107,772	156,170
Total		769,137	7,891,763	17,565,537	25,457,300

[1] Based on arrivals through September 30, 1994.

TABLE 2.—TARGETED ASSISTANCE ALLOCATIONS FOR COMMUNITIES AFFECTED BY RECENT CUBAN AND HAITIAN ARRIVALS: FY 1995

County	State	FY 92–94 total Cuban & Haitian refugee & entrant arrivals	% of total arrivals	Amount to be allocated: $19,000,000 Final Allocation: 3% arrival threshold
Alameda	CA	5	0.02	
Contra Costa	CA	1	0.00	
Fresno	CA	3	0.01	
Los Angeles	CA	660	1.80	
Merced	CA	0	0.00	
Orange	CA	24	0.07	
Sacramento	CA	13	0.04	
San Diego	CA	199	0.54	
San Francisco	CA	274	0.75	
San Joaquin	CA	2	0.01	
Santa Clara	CA	4	0.01	
Stanislaus	CA	0	0.00	
Tulare	CA	0	0.00	
Denver	CO	58	0.16	
Broward	FL	2,000	5.46	$1,237,866
Dade	FL	24,932	68.10	15,431,234
Hillsboro	FL	832	2.27	
Palm Beach	FL	2,621	7.16	1,622,223
Honolulu	HI	0	0.00	
Cook/Kane	IL	250	0.68	
Sedgwick	KS	6	0.02	
Orleans	LA	94	0.26	
Montgom./Pr. G.	MD	59	0.16	
Middlesex	MA	82	0.22	

TABLE 2.—TARGETED ASSISTANCE ALLOCATIONS FOR COMMUNITIES AFFECTED BY RECENT CUBAN AND HAITIAN ARRIVALS: FY 1995—Continued

County	State	FY 92–94 total Cuban & Haitian refugee & entrant arrivals	% of total arrivals	Amount to be allocated: $19,000,000 Final Allocation: 3% arrival threshold
Suffolk	MA	392	1.07	
Hennepin	MN	51	0.14	
Ramsey	MN	0	0.00	
Jackson	MO	310	0.85	
Essex	NJ	371	1.01	
Hudson	NJ	1,079	2.95	
Union	NJ	121	0.33	
New York	NY	1,145	3.13	708,678
Multnomah	OR	139	0.38	
Philadelphia	PA	154	0.42	
Providence	RI	11	0.03	
Dallas/Tarrant	TX	349	0.95	
Harris	TX	137	0.37	
Salt Lake	UT	0	0.00	
Arlington	VA	12	0.03	
Fairfax	VA	3	0.01	
King/Snohomish	WA	219	0.60	
Pierce	WA	0	0.00	
Total		36,613	100.00	19,000,000

TABLE 3.—TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1995

State	FY 1995 allocation[1]
California	$10,064,542
Colorado	291,444
Florida	[2]21,910,486
Hawaii	150,875
Illinois	1,174,139
Kansas	173,754
Louisiana	144,744
Maryland	289,900
Massachusetts	689,528
Minnesota	680,620
Missouri	130,322
New Jersey	409,529
New York	[2]4,079,977
Oregon	575,979
Pennsylvania	553,086
Rhode Island	201,700
Texas	1,243,610
Utah	210,030
Virginia	451,791
Washington	1,051,244
Total	44,457,300

[1] Based on arrivals through September 30, 1994.
[2] The allocations for Federal and New York include $18,291,322 and $708,678 respectively for communities affected by Cuban and Haitian entrants and refugees. This is referred to in the Conference Report on the appropriations: "to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased."

TABLE 4.—TARGETED ASSISTANCE AREAS

State	Targeted assistance area[1]	Definition
CA	ALAMEDA	
CA	CONTRA COSTA	
CA	FRESNO	
CA	LOS ANGELES	
CA	MERCED	
CA	ORANGE	
CA	SACRAMENTO	SAN DIEGO
CA		
CA	SAN FRANCISCO	MARIN, SAN FRANCISCO, & SAN MATEO COUNTIES.
CA	SAN JOAQUIN	
CA	SANTA CLARA	
CA	STANISLAUS	
CA	TULARE	
CO	DENVER	ADAMS, ARAPHOE, BOULDER, DENVER & JEFFERSON COUNTIES.
FL	BROWARD	
FL	DADE	
FL	HILLSBOROUGH	
FL	PALM BEACH	
HI	HONOLULU	
IL	COOK/KANE	
KS	SEDGWICK	
LA	ORLEANS	JEFFERSON & ORLEANS PARISHES.
MD	MONTGOMERY/PRINCE GEORGES	
MA	MIDDLESEX	
MA	SUFFOLK	
MN	HENNEPIN	
MN	RAMSEY	
MO	JACKSON	JACKSON COUNTY, MO. & WYANDOTTE COUNTY KS.
NJ	ESSEX	
NJ	HUDSON	
NJ	UNION	
NY	NEW YORK	BRONX, KINGS, NEW YORK, QUEENS, & RICHMOND COUNTIES.
OR	MULTNOMAH	CLACKAMAS, MULTNOMAH, & WASHINGTON COUNTIES, OR. & CLARK COUNTY, WA.
PA	PHILADELPHIA	
RI	PROVIDENCE	
TX	DALLAS/TARRANT	
TX	HARRIS	
UT	SALT LAKE	DAVID, SALT LAKE & UTAH COUNTIES.
VA	ARLINGTON	
VA	FAIRFAX	FAIRFAX COUNTY & THE INDEPENDENT CITIES OF ALEXANDRIA, FAIRFAX AND FALLS CHURCH.
WA	KINGS/SNOHOMISH	
WA	PIERCE	

[1] Consists of a named county/counties unless otherwise defined.

BILLING CODE 4184-01-M

VIII. Application and Implementation Process

Under the FY 1995 targeted assistance program, States may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

TAP funds will be awarded through a more streamlined grant process similar to that used for the ORR social services formula grant program. An application and assurances are still required of the States eligible to receive TAP funding. FY 1995 funds must be obligated by the State agency no later than one year after the end of the Federal fiscal year in which the Department awarded the grant. There will be no carryover of unobligated funds into the FY 1996 grant award. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant. A State's final financial report on targeted assistance expenditures must be received no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. If final reports are not received on time, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of a State's last filed report.

Although additional funding to Florida and New York for communities affected by Cuban and Haitian entrants and refugees whose arrivals in recent years have increased is part of the appropriation amount for targeted assistance, the scope of activities for these additional funds will be administratively determined. Applications for these funds are therefore not subject to provisions contained in this notice but to other requirements which will be conveyed separately. Similarly, the requirements regarding the 10% portion of the targeted assistance appropriation as well as the supplemental funds to the 10% portion of the targeted assistance appropriation that will be awarded separately have been addressed in the grant announcements for those funds.

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IX. Application Requirements

The State application requirements for grants for the FY 1995 targeted assistance formula allocation are as follows:

States that are currently operating under approved management plans for their FY 1994 targeted assistance program and wish to continue to do so for their FY 1995 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application for FY 1995 funding shall provide:

A. Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR, will continue to be in full force and effect for the FY 1995 targeted assistance program, subject to any additional assurances or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be identified in the application and are subject to ORR review and approval. Any proposed changes must address and reference all appropriate portions of the FY 1994 application content requirements to ensure complete incorporation in the State's management plan.

B. Assurance that effective October 1, 1995, targeted assistance funds will be used in accordance with the new ORR regulations published in the **Federal Register** on June 28, 1995.

C. Assurance that targeted assistance funds will be used primarily for the provision of services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. States must indicate what percentage of FY 1995 targeted assistance formula allocation funds that are used for services will be allocated for employment services.

D. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project.

States administering the program locally: States that have administered the program locally or provide direct service to the refugee population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each component including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, projected outcomes, and cost per placement. In addition, the program component summary must describe any ancillary services or subcomponents such as day care, transportation, or language training.

States with two or more counties receiving targeted assistance funds: As in FY 1994, a State with two or more local areas which qualify for the program may choose to determine respective county allocations. If the State chooses to determine county allocations differently from those set forth in Table 1 of this notice, the State must provide a description of the State's proposed allocation plan and the basis for the proposed allocations. The application must contain a description of the allocation approach, data used in its determination, the calculated allocation amount for each county, and the rationale for the proposed allocations. States are encouraged to revise allocation formulas to assure appropriate funding among eligible counties for the duration of the grant such that targeted assistance activities within the State conclude simultaneously. Where the State chooses not to determine county allocation amounts, the State must provide the allocations which are specified in this notice.

X. Reporting Requirements

States will be required to submit quarterly reports on the outcomes of the targeted assistance program, using the same form which States use for reporting on refugee social services formula grants. This is Schedule A and Schedule C of the ORR–6 Quarterly Performance Report form. ORR is no longer using the ORR–12 form which was originally used to report on the outcomes of the targeted assistance program. ORR is consolidating its reporting requirements. The new reporting form will consolidate social services and targeted assistance performance reporting in one format in order to simplify and coordinate reporting. The new form will be available when reporting on FY 1995 grants begins, which would be at the end of the first quarter of FY 1996.

Dated: July 19, 1995.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 95–18335 Filed 7–25–95; 8:45 am]

BILLING CODE 4184–01–P

Substance Abuse and Mental Health Services Administration Proposed Data Collection

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice.

SUMMARY: SAMHSA is publishing this notice to solicit public comment on a proposed data collection: Evaluation of High Risk Substance Abuse Prevention Initiatives. Written comments are requested within 60 days of the publication of this notice.

AUTHORITY/JUSTIFICATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that Federal agencies provide a 60-day notice in the **Federal Register** concerning each proposed collection of information.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request copies of data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of High Risk Substance Abuse Prevention Initiatives—New—The Center for Substance Abuse Prevention (CSAP), SAMHSA will conduct a cross-site evaluation of approximately 50 demonstration projects targeting high risk youth to: (1) Assess the effectiveness of the Demonstration Program in preventing and/or reducing substance abuse among at-risk youth and intervention strategies in reducing selected risk factors or enhancing protective factors; and (2) document the process of service delivery and program implementation. Data will be collected from both program participants and comparison group youth at four points in time over a 4-year period. The annual burden estimates are as follows:

	Number of respondents	Number of responses per respondent	Average burden/response
Demonstration Project Staff	245	.75	1.1 hours.
Youth	11,000	1.0	1.0 hour.

Dated: July 20, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–18324 Filed 7–25–95; 8:45 am]

BILLING CODE 4162–20–P

Food and Drug Administration

Muscle Monitoring Devices; Decision Not to Rely on Dental Products Panel Recommendations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it does not intend to rely on recommendations arising out of the October 13 and 14, 1994, meeting of the Dental Products Panel of the Medical Devices Advisory Committee concerning the classification of muscle monitoring devices. It is FDA's view that the October 1994 meeting was flawed and should not be the basis for decisions made about the use of these devices. FDA plans to fully and comprehensively consider the classification of muscle monitoring devices at a future meeting of the Dental Products Panel of the Medical Devices Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 19, 1994 (59 FR 47880 at 47881), FDA announced that a meeting of the Dental Products Panel of the Medical Devices Advisory Committee would be held on October 13 and 14, 1994, to consider the classification of muscle monitoring devices. Because of substantive and procedural issues in connection with the October 1994 meeting, including the scope of products included and concerns that all interested parties may not have received adequate notice of the devices to be discussed at the meeting, FDA does not intend to rely on the Panel's discussion or recommendations for the use or classification of these devices. In addition, it is FDA's view that the October 1994 meeting should not be the basis for decisions about the use of these devices. FDA plans a full and comprehensive consideration of muscle monitoring devices at a future meeting of the Dental Products Panel.

The Dental Products Panel of the Medical Devices Advisory Committee meeting tentatively scheduled for August 8, 9, and 10, 1995, which was announced in the **Federal Register** on March 9, 1995 (60 FR 12960 at 12962), will not include discussion of muscle monitoring devices. FDA will announce future meetings of the Dental Products Panel of the Medical Devices Advisory Committee in the **Federal Register** at least 15 days in advance of the upcoming meetings.

Dated: July 21, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18450 Filed 7–24–95; 11:46 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket Nos. FR–3622–N–07 and FR–3878–N–03]

Announcement of Funding Awards Fair Housing Initiatives Program FY 1994

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of FY 1994 funding awards made under the Fair Housing Initiatives Program (FHIP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

FOR FURTHER INFORMATION CONTACT: Maxine Cunningham, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–3216. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR Part 125.

The FHIP has four funding categories: The Administrative Enforcement Initiative, the Education and Outreach Initiative, the Private Enforcement Initiative, and the Fair Housing Organizations Initiative.

In the FY 1995 FHIP Notice of Funding Availability (NOFA) published in the **Federal Register** on April 11, 1995 (60 FR 18444), the Department announced the availability of up to $1,457,446 for funding of FY 1994 awards. This Notice announces the

award of these FY 1995 funds to eight recipients who had applied under the FY 1994 FHIP NOFA (59 FR 25532) to continue their FY 1993-funded projects. Because at the time the FY 1994 awards were made, these recipients were still administering their FY 1993 activities and would not be able to use FY 1994 funds for some time, the Department determined to award the FY 1994 funds to qualifying applicants who could sooner begin the implementation of their projects. The qualifying FY 1993 continuation projects under the FY 1994 NOFA were held over to be awarded out of FY 1995 funds in the amounts here announced.

The Department reviewed, evaluated and scored the applications received based on the criteria in the FY 1994 FHIP NOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows below.

Dated: July 12, 1995.

Elizabeth K. Julian,

Acting Deputy Assistant Secretary for Policy and Initiatives, Fair Housing and Equal Opportunity.

FY94 FAIR HOUSING INITIATIVES PROGRAM AWARDS MADE WITH FY 95 FUNDS

Applicant name and address	Contact name and phone number	Region	Single or multi-year funding	Amount requested
Education and Outreach Initiative—National Program Component				
Fair Housing Council, 835 West Jefferson Street, Louisville, Kentucky 40201.	Galen Martin, Executive Director, (502) 583–3247.	4	S	$130,251
Fair Housing Organization Initiative—Continuing Development Component				
Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association, 294 Washington Street, Boston, Massachusetts 02103.	Ozell Hudson, Jr., Executive Director, (617) 482–1145.	1	S	194,415
Fair Housing Partnership of Greater Pittsburgh, Inc., Bishop Boyle Center, 120 E. Ninth Avenue, Homestead, Pennsylvania 15120.	Donna C. Chernoff, Executive Director, (412) 462–5405.	3	S	137,859
Fair Housing Council, 835 West Jefferson Street, Room 108, Louisville, Kentucky 40201.	Galen Martin, Executive Director, (502) 583–3247.	4	S	164,836
Chicago Lawyers' Committee for Civil Rights Under Law, 185 North Wabash Avenue, Suite 2110, Chicago, Illinois 60601.	Roslyn C. Lieb, Executive Director, (312) 630–9744.	5	S	176,310
Private Enforcement Initiative—One Year Component				
Connecticut Housing Coalition, Inc., 30 Jordan Lane Wethersfield, Connecticut 06109.	Jeffrey Freiser, Executive Director, (203) 563–2943.	1	S	353,326
The Legal Aid Society, 15 Park Row-22nd Floor, New York, New York 10038.	Archibald R. Murray, Executive Director, (212) 577–3313.	2	S	105,445
Tenants' Action Group, 21 South 12th Street, 12th Floor, Philadelphia, Pennsylvania 19107.	Elizabeth G. Hersh, Executive Director, (215) 525–0700.	3	S	195,000

[FR Doc. 95–18300 Filed 7–25–95; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

[NV–930–1430–01; N–46965]

Notice of Realty Action; Lease of Public Land for Recreation and Public Purposes; Storey County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Classifying Public land.

SUMMARY: Approximately 16.256 acres have been examined and identified as suitable to be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*), within the following described public land:

T. 17 N., R. 21 E., Mount Diablo Meridian, Nevada

Section 28—Lot 7 excluding portions within Mineral Patents and portions within R&PP Classification N–53123; and
Section 29—Lot 9 excluding portions within Mineral Patents.

Upon satisfactory completion of a cultural resources inventory and clearance, a five-year lease with option to renew will be offered to Storey County School District. A high school has already been constructed on a portion of the site, and the remaining land would be used for baseball, track, and football fields plus additional vehicle parking in conjunction with the school.

The land is not required for federal purposes. Classification and issuance of a lease is consistent with Bureau planning for this area and would be in the public interest.

The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will be made subject to any and all rights that holders thereof may have pursuant to the laws of the United States and the State of Nevada, unless such claims are relinquished prior to issuance of a lease.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this notice in the **Federal Register**, the subject land will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws but not the Recreation and Public Purposes Act, the mineral leasing laws, or the mineral material sales laws. The segregative effect will terminate as specified in an opening order published in the **Federal Register**.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the BLM District Manager, 1535 Hot Springs Road, Carson City, Nevada 89706. Any adverse comments will be reviewed by the Nevada State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: July 17, 1995.

John Matthiessen,

Area Manager, Walker Resource Area.

[FR Doc. 95–18302 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–HC–M

Bureau of Land Management

[AZ–055–05–1210–04: AZA–25497]

Arizona: Eagletail Mountains Wilderness; Implementation of Recreational Management Provisions in the Eagletail Mountains Wilderness Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Restriction of portions of the Eagletail Mountains Wilderness to day use only.

SUMMARY: The Bureau of Land Management (BLM) Yuma District has initiated implementation of the wilderness management provisions of the Eagletail Mountains Wilderness Management Plan which restricts certain recreational activities in an area located within unsurveyed Township 1 North, Range 11 West, sec 9., to day use only, in order to protect wilderness and cultural values. Activities specifically prohibited in this area are overnight camping, and the use of campfires. The restricted area includes a one-quarter (¼) of a mile wide corridor encompassing the canyon, canyon walls, and bench area above the canyon, from the point commonly known as Indian Springs or Willow Springs for a distance of three-quarters of a mile through the canyon in a southerly direction, and all areas within one-quarter (¼) of a mile of Indian or Willow Springs outside the canyon corridor, as depicted on maps located at the Yuma District Office and at the Courthouse Rock trailhead. The restricted area includes 300 acres more or less. The restriction is in effect until further notice.

EFFECTIVE DATE: This action will take effect August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Ken Howell, Wilderness Specialist, Yuma Resource Area, 3150 Winsor Avenue Yuma, Arizona, 85365, telephone (520) 726–6300.

SUPPLEMENTARY INFORMATION: This action is authorized by Title 43, Code of Federal Regulations, Subpart 8560, Section 1–1 and is being taken to protect wilderness and cultural values. The action was called for in the Eagletail Mountains Wilderness Management Plan which was available for a 45-day public review and comment period that ended on November 3, 1994.

Public notice of this action will be posted at the Yuma District Office, and at entry points to the Eagletail Mountains Wilderness. Violations of this order as provided for by Title 43, Code of Federal Regulations, Subpart 8560, Section 5, are punishable by a fine not to exceed $1000.00 or imprisonment not to exceed 12 months or both.

Dated: July 18, 1995.

Clinton R. Oke,

Acting Associate District Manager.

[FR Doc. 95–18303 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–32–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Pete Trottier, Fairbanks, AK, PRT–804722

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by A.G. Spaeth, Doornboom, Bedford, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Colton W. Brinkoeter, Beeville, TX, PRT–804905

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Mrs. Pat Cawood, Gannahoek, Cradock, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: K. Payne Hughes, Duluth, GA, PRT–804902

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Andrew Austin, Splitzkop, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Circus Tihany, Sarasota, FL, PRT–768272

The applicant requests a permit to re-export and re-import captive-born tiger (*Panthera tigris*) and leopard (*Panthera pardus*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: The Institute of Wildlife and Environmental Toxicology, Pendleton, SC, PRT–804440

The applicant requests a permit to import 25 non-viable eggs from wild Morelet's crocodile (*Crocodylus moreletii*) from Sapote Lagoon, Belize for the purpose of enhancement of the survival of the species through scientific research.

Applicant: Duke University Primate Center, Durham, NC, PRT–804437

The applicant request a permit to import 0.2 live captive-born Crowned lemur (*Eulemur coronatus*) from Parc Tsimbazaza in Antananarivo, Madagascar for the purpose of enhancement of the survival of the species through propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington,

Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 21, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–18385 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Draft Climbing Management Plan and Environmental Assessment for City of Rocks National Reserve, Idaho

ACTION: Notice of availability of Draft Climbing Management Plan and Environmental Assessment.

SUMMARY: This Notice announces the availability of a draft Climbing Management Plan and Environmental Assessment (EA) for City of Rocks National Reserve, Idaho.

DATES: Written comments on the Plan/EA should be received no later than Friday, 15 September 1995.

ADDRESSES: Copies of the Plan/EA are available on request from the Superintendent, City of Rocks National Reserve, P.O. Box 169, Almo, Idaho 83312; telephone (208) 824–5519. Written comments should be sent to the above address.

SUPPLEMENTARY INFORMATION: Rock climbing is one of the most popular recreation activities at City of Rocks National Reserve. While recognizing the legitimacy of this activity at the Reserve, the National Park Service prepared the Climbing Management Plan to help ensure that such use will not impair the Reserve's natural and cultural resources. The plan/EA describes four alternatives and analyzes their associated environmental impacts: (1) No Action; (2) Permit System; (3) Regulatory Approach; and (4) Proposed Action, which combines elements from the other alternatives. Because the Twin Sisters formation is such a prominent and significant feature of the Reserve, the plan/EA gives special attention to managing climbing on that resource.

Dated: July 14, 1995.

Rory D. Westberg,

Superintendent, Columbia Cascades System Support Office, National Park Service.

[FR Doc. 95–18278 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–70–M

Petroglyph National Monument; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Petroglyph National Monument Advisory Commission will be held at 2 p.m., Monday, August 21, 1995, at the Technical-Vocational Institute, Board Room 100, Smith Brasher Hall, 717 University Boulevard SE, Albuquerque, New Mexico.

The matters to be discussed at this meeting include:

—Superintendent's Report
—Update on General Management Plan
—Public Comment
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the Commission meeting with the Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contact Stephen Whitesell, Superintendent, Petroglyph National Monument, 123 4th Street SW, Room 101, Albuquerque, New Mexico 87102, telephone 505/766–8375.

Minutes of the Commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

The Petroglyph National Monument Advisory Commission will take a guided tour of the monument from 8:15 a.m. to noon on Monday, August 21, 1995 at the Las Imagines Visitor Center, 4735 Unser Boulevard NW, Albuquerque, New Mexico.

The Petroglyph National Advisory Commission was established pursuant to Public Law 101–313, establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

Dated: July 18,1995.

Vickie E. White,

Superintendent, Petroglyph National Monument.

[FR Doc. 95–18279 Filed 7–25–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–705 (Final)]

Furfuryl Alcohol From Thailand

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (the Act),[2] that an industry in the United States is materially injured by reason of imports from Thailand of furfuryl alcohol,[3] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[4]

Background

The Commission instituted this investigation effective May 5, 1995, following an affirmative final determination by the Department of Commerce that imports of furfuryl alcohol from Thailand were being sold at LTFV within the meaning of section 735(b)(3) of the Act.[5] Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 24, 1995.[6] A hearing was scheduled to be held in Washington, DC, on June 13, 1995. However, based on a request from the only party filing a notice of appearance in this investigation, the hearing was cancelled on June 9, 1995.[7] Notice of cancellation of the hearing

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] 19 U.S.C. § 1673d(b).

[3] Furfuryl alcohol ($C_4H_3OCH_2OH$), also called furyl carbinol, is a primary alcohol that is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. It is classifiable under subheading 2932.13.00 of the *Harmonized Tariff Schedule of the United States* (HTS). The chemical has an assigned Chemical Abstracts Service registry number of CAS 98–00–0.

[4] The petition in this investigation was filed prior to the effective date of the Uruguay Round Agreements Act ("URAA"). This investigation, thus, remains subject to the substantive and procedural rules of the pre-existing law. See Public Law 103–465, approved Dec. 8, 1994, 108 Stat. 4809, at section 291.

[5] 19 U.S.C. 1673d(b)(3).

[6] 60 FR 27554.

[7] The Commission held a hearing in the companion investigations, Invs. Nos. 731–TA–703 and 704 (Final): Furfuryl Alcohol From China and South Africa, on May 3, 1995.

was published in the **Federal Register** of June 15, 1995.[8]

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 18, 1995. The views of the Commission are contained in USITC Publication 2909 (July 1995), entitled "Furfuryl Alcohol From Thailand: Investigation No. 731–TA–705 (Final)."

Issued: July 21, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–18376 Filed 7–25–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 753–TA–1 through 31]

Countervailing Duty Orders

Determinations

Pursuant to section 753(b)(4) of the Tariff Act of 1930 (19 U.S.C. 1675b(b)(4)) (the Act), the Commission hereby determines that industries in the United States are not likely to be materially injured by reason of imports of the subject merchandise if the countervailing duty orders listed in the attachment were to be revoked.

Background

Section 753(a) of the Act provides that, in the case of a countervailing duty order issued under section 303 of the Act with respect to which the requirement of an affirmative determination of material injury under section 303(a)(2) was not applicable at the time the order was issued, interested parties may request the Commission to initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked. Further, section 753(a)(3) requires that such requests must be filed with the Commission within 6 months of the date on which the country from which the subject merchandise originates became a signatory to the Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement), as referred to in section 101(d)(12) of the Uruguay Round Agreements Act.

On May 26, 1995, the Department of Commerce (Commerce) published in the **Federal Register** notice of opportunity to request injury investigation(s) under section 753 of the Act (60 F.R. 27963, May 26, 1995). In that notice, Commerce stated that, for those countries becoming signatories to the Subsidies Agreement on January 1, 1995, requests for injury investigations must be filed with the Commission no later than June 30, 1995.

The Commission did not receive requests for investigation under section 753(a) with regard to the orders listed in the attachment. Section 753(b)(4) of the Act provides that, if a request for an injury investigation is not made within 6 months of the time the country of origin of the subject merchandise became a signatory to the Subsidies Agreement, the Commission shall notify the administering authority that it has made a negative determination with regard to the question of the likelihood of material injury by reason of imports of the subject merchandise if the order is revoked. Accordingly, pursuant to section 753(b)(4) of the Act, the Commission hereby notifies Commerce of its negative injury determinations with regard to imports subject to those orders.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810.

Authority

These determinations are being made under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 17, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

Attachment

Inv. No.	Country	Product
753–TA–1	Argentina	Apparel.
753–TA–2	Argentina	Carbon steel cold-rolled flat products.
753–TA–3	Argentina	Leather wearing apparel.
753–TA–4	Argentina	Line pipe.
753–TA–5	Argentina	Nonrubber footwear.
753–TA–6	Argentina	Standard pipe.
753–TA–7	Argentina	Textile mill products.
753–TA–8	Argentina	Heavy-walled rectangular tubing.
753–TA–9	Argentina	Light-walled rectangular tubing.
753–TA–10	Malaysia	Carbon steel wire rod.
753–TA–11	Mexico	Ceramic tile.
753–TA–12	Mexico	Leather wearing apparel.
753–TA–13	Mexico	Textile mill products.
753–TA–14	New Zealand	Brazing copper rod & wire.
753–TA–15	New Zealand	Steel wire.
753–TA–16	New Zealand	Steel wire nails.
753–TA–17	New Zealand	Carbon steel wire rod.
753–TA–18	Peru	Cotton sheeting and sateen.
753–TA–19	Peru	Cotton yarn.
753–TA–20	Peru	Rebar.
753–TA–21	Peru	Textile mill products.
753–TA–22	South Africa	Ferrochrome.
753–TA–23	Sri Lanka	Textile mill products.
753–TA–24	Thailand	Apparel.
753–TA–25	Thailand	Butt-weld pipe fittings.
753–TA–26	Thailand	Malleable iron pipe fittings.
753–TA–27	Thailand	Pipe and tube.
753–TA–28	Thailand	Rice.
753–TA–29	Thailand	Steel wire nails.
753–TA–30	Venezuela	Circular welded nonalloy steel pipe.
753–TA–31	Venezuela	Ferrosilicon.

[FR Doc. 95–18377 Filed 7–25–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 470X)]

CSX Transportation, Inc.—Abandonment Exemption—In Seminole and Orange Counties, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by CSX Transportation, Inc., of a portion of its Jacksonville Division, Aloma Subdivision, between milepost AU–778.3 at Wagner and milepost AU–785.5 at Oviedo, and between milepost ST–830.6 at Oviedo and milepost ST–822.05 at Aloma, a total distance of 15.75 miles in Seminole and Orange Counties, FL, subject to standard labor protective conditions and an environmental condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 25, 1995. Formal expressions of intent

[8] 60 FR 31494.

to file an OFA under 49 CFR 1152.27(c)(2)[1] must be filed by August 7, 1995, petitions to stay must be filed by August 10, 1995, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by August 15, 1995, and petitions to reopen must be filed by August 21, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 470X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423, and (2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: July 11, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–18404 Filed 7–25–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James Simon Tashjian, M.D.

Revocation of Registration

On December 12, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James Simon Tashjian, M.D., at 3657 Grand Avenue, Oakland, California proposing to revoke his DEA Certificate of Registration, AT8440668, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Tashjian's lack of authorization to handle controlled substances in the State of California.

[1] See *Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

The DEA received the return receipt which indicated that the Order to Show Cause was accepted on December 19, 1994. More than thirty days have elapsed since the Order to Show Cause was served and the DEA has received no response from Dr. Tashjian. The Deputy Administrator finds that Dr. Tashjian has waived his opportunity for a hearing and hereby issues his final order in this matter. 21 CFR 1301.54 and 1301.57.

The Deputy Administrator finds that on November 25, 1991, the Pennsylvania Board of Medicine entered into a Consent Agreement and Order with Dr. Tashjian which provided for the voluntary surrender of his license to practice medicine. The Consent Agreement and Order also provided that Dr. Tashjian was precluded from ever applying for reactivation, renewal or reinstatement of his medical license in the Commonwealth of Pennsylvania.

On August 31, 1992, the California Medical Board filed an Accusation against Dr. Tashjian. The Accusation was based on the disciplinary action taken by the Pennsylvania Board of Medicine. On August 12, 1993, the California Medical Board issued a Default Decision and Order revoking Dr. Tashjian's medicial license, thereby terminating his authority to prescribe, dispense, administer or otherwise handle controlled substances in that state.

The DEA does not have the stuatory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 801(21), 21 U.S.C. 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See, *Lawson A. Akpulonu, M.D.*, 60 FR 33434 (1995); *Robert C. Davis, M.D.*, 59 FR 66049 (1994); *Elliott F. Monroe, M.D.*, 57 FR 23246 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Avner Kauffman, M.D.*, 50 FR 34208 (1985).

The Deputy Administrator finds that Dr. Tashjian is not currently licensed to practice medicine or authorized to handle controlled substances in the State of California. Therefore, his DEA registration must be revoked.

Accordingly, the Deputy administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AT8440668, previously issued to James Simon Tashjian, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective August 25, 1995.

Dated: July 19, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–18378 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–09–M

Office of Juvenile Justice and Delinquency Prevention

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

July 7, 1995.

AGENCY: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 1:00 p.m. on Wednesday, August 9, 1995, and ending at 4:00 p.m. on August 9, 1995. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at the United States Department of Justice, located at 10th and Constitution Avenue, N.W., Conference Room 5111, Washington, D.C. 20530. The Coordinating Council, established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. The public is advised that it must enter the building via the Constitution Avenue Visitors' Center. For security reasons, members of the public who are attending the meeting must contact the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by close of business August 2, 1995. The point of contact at OJJDP is Lutricia Key who can be reached at (202) 307–5911. The public is further advised that a pictured identification is required to enter the building.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–18354 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–18–P

Information Collections Under Review

The Office of Management and Budget (OMB) has sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7304 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97–359 Amerasian.

(2) Form I–363. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. The Form I–363 is used to determine whether an affidavit of financial support and intent to petition for legal custody, Form I–363 requires enforcement.

(4) 50 annual respondents at .50 per response.

(5) 25 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated; July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18364 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Immigration User Fee.

(2) Form=None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Business or other for-profit. Others: None. The information requirements have been developed to facilitate compliance with Section 286 of the Immigration and Nationality Act [8 U.S.C. 1356]. The information requirements further seek to ensure sound and prudent budgeting, financial management and collection and debt management activities of the Immigration User Fee Account. The information will also assist Immigration and Naturalization Service auditing activities to ensure substantial compliance with the law. Given the structure and nature of collection activities established by statute for the Immigration User Fee, the information requirements are necessary for the Federal Government to oversee collection activities and to manage the Immigration User Fee Account itself. Section 286 of the Act authorizes the Attorney General to "charge and collect $5 per individual for the immigration inspection of each passenger arriving at a port of entry in the United States, or for the preinspection of a passenger in a place outside the United States prior to such arrival, aboard a commercial aircraft or a commercial vessel." Exceptions are enumerated in section 286(e) of the Act.

(4) 2,550 annual respondents at .25 per response.

(5) 2,138 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18363 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Request for Hearing on a Decision in Naturalization Processing Under Section 336 of the Act.

(2) Form N–336. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. Form I–9 provides a method for applicants whose applications for naturalization are denied, to request a new hearing by an Immigration Officer of the same or higher rank as the denying officer, within 30 days of the original decision.

(4) 5,000 annual respondents at 2.75 hours per response.

(5) 13,750 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18382 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Employment Eligibility Verification.

(2) Form I–9. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. Form I–9 is used by the Immigration and Naturalization Service to facilitate compliance with Section 101 of the Immigration Reform and Control Act of 1986. Making employment of unauthorized aliens unlawful.

(4) 90,000,000 annual respondents at 10 minutes per response.

(5) 16,600,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comments on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18361 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 580, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Notice of Appeal.

(2) Form I–694. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. Form I–694 is used by the Immigration and Naturalization Service in considering appeals of denials of temporary and permanent resident status by legalization applicants and special agricultural workers.

(4) 20,000 annual respondents at .50 per response.

(5) 10,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18360 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Biographical Information.

(2) Form G–325. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. Form G–325 is used by the Immigration and Naturalization Service when it is necessary to check other agency records (FBI, CIA, etc.) on applications or petitions submitted by applicants for benefits under the Immigration and Naturalization Act. Also, the form is required from applicants for adjustment to permanent resident status and specific applicants for naturalization.

(4) 1,144,994 annual respondents at .25 (15 minutes) per response.

(5) 286,249 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18359 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimates or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application by Refugee for Waiver of Grounds of Excludability.

(2) Form I–602. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. Form I–602 will be used by the Immigration and Naturalization Service to determine approved refugee applicants eligibility for waivers. The burden is upon the applicant to show that the waiver should be granted based upon: a. Humanitarian purposes, b. Family unity, or c. public interest.

(4) 2,500 annual respondents at .25 (15 minutes) per response.

(5) 625 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18358 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–01–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of the information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20503.

Extension of a Currently Approved Collection

(1) Immigrant Petition for Alien Workers.

(2) Form I–140. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: Business or other for-profit. The information furnished on Form I–140 will be used by the Immigration and Naturalization Service to determine if the applicant is eligible to receive the requested immigration Benefit. This form will be used to provide petitioning procedures for employment-based immigrants under sections 203(b) (1) through (5) of the Immigration and Nationality Act.

(4) 186,000 annual respondents at (1.0) per response.

(5) 186,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18357 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collection Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Canadian Border Boat Landing Permit.

(2) Form I–68. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None Section 235 of the Immigration and Nationalization Act (8 U.S.C. 1225) provides for the inspection of persons entering the United States. 8 CFR 235.1(e) allows certain persons who enter the United States from Canada by small pleasure craft to be inspected only once during the navigational season, rather than each time they enter. Crafts of less than 5 net tons, without merchandise, may, after being inspected by an immigration officer apply on Form I–68, for the privilege of entering the United States for the duration of the navigation season without further inspection.

(4) 68,000 annual respondents at .166 (10 minutes) per response.

(5) 11,288 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 21, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–18356 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–10–M

[Program Announcement CRS–95–02]

Shelter Care and Child Welfare Services to Alien Unaccompanied Minors; Availability of Funding for Cooperative Agreements

AGENCY: Community Relations Service (CRS), DOJ.

ACTION: Notice of availability of Funding for Cooperative Agreements to support a program which provides shelter care and other related child welfare services to alien minors detained in the custody of the United States Department of Justice, Immigration and Naturalization Service (INS).

SUMMARY: This announcement governs the award of Cooperative Agreements to public or private non-profit organizations or agencies, and, under certain conditions, to for-profit organizations or agencies, to provide shelter care and related child welfare services to alien minors detained in the custody of the United States Department of Justice, Immigration and Naturalization Service. The programs providing such services shall hereafter be referred to as the Alien Unaccompanied Minors Shelter Care Programs (AUMSCPs).

AUMSCPs have the specific goal of providing shelter care and other related child welfare services to male and female alien minors under 18 years of age who are referred to the CRS by the INS. These child welfare services will afford alien minors a structured, safe and productive environment which meets or exceeds respective State guidelines and standards for similar services designed to serve minors in AUMSCP care and custody.

Applications submitted pursuant to this announcement must plan for the delivery of services to a population of alien minors (8–10 beds in the San Francisco, California area; 24 beds in the Los Angeles, California area; and 24 beds in the San Diego, California area).

DATES: *Closing Date.* 5:00 p.m. Eastern Daylight Time; September 11, 1995.

APPLICATION REQUESTS AND CONTACT PERSON: Eligible applicants may request Proposal Application Packages from the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Attention: Orin McCrae, Grants Officer.

Proposal Application Packages may also be obtained by contacting CRS at (301) 492–5995, or FAX (301) 492–5984.

SUPPLEMENTARY INFORMATION:

Purpose and Scope

The purpose of the AUMSCPs is to provide temporary shelter care and other related services to alien minors in INS custody. Shelter care services will be provided for the interim period beginning when the minor is transferred into the AUMSCP and ending when a final disposition of the child's status is implemented. Final disposition may result in either the bond, release, or removal of the minor from the United States.

These minors, although released to the physical custody of the CRS Recipient, shall remain in the legal custody of the INS.

The population level of alien minors is expected to fluctuate as arrivals and case dispositions occur. Program content must, therefore, reflect differential planning of services to children in various stages of personal adjustment and administrative processing. Although the population of minors is projected to consist primarily of adolescents, the Recipient is expected to be able to serve some minors who are 12 years of age or younger.

The CRS Recipients are expected to facilitate the provision of assistance and services for each alien minor including, but not limited to: Physical care and maintenance, access to routine and emergency medical care, comprehensive needs assessment, education, recreation, individual and group counseling, access to religious services and other social services.

Other services that are necessary and appropriate for these minors may be provided if CRS determines in advance that the service is reasonable and necessary for a particular minor.

The Recipients are expected to develop and implement an appropriate individualized service plan for the care and maintenance of each minor in accordance with his/her needs as determined in an intake assessment. In addition, the Recipients are required to implement and administer a case management system which tracks and monitors clients' progress on a regular basis to ensure that each minor receives the full range of program services in an integrated and comprehensive manner.

Shelter care services shall be provided in accordance with applicable State child welfare statutes and generally accepted child welfare standards, practices, principles, and procedures. Services must be delivered in an open type of setting without a need for extraordinary security measures.

However, the Recipients are required to design programs and strategies to discourage runaways and prevent the unauthorized absence of minors in care.

Service delivery is expected to be accomplished in a manner which is sensitive to the culture, native language, and needs of these children.

Application Review

Applications submitted by the closing date and meeting the requirements of this Notice will be competitively reviewed, evaluated, rated, and numerically ranked by an independent panel of experts on the basis of weighted criteria listed in this Notice. All final funding decisions are at the discretion of the Associate Director, Office of Immigration and Refugee Affairs, Community Relations Service. The awards made are subject to the availability of funds and the concurrence of the Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service.

Authorization

Authority for the provision of shelter care and related child welfare services to alien minors detained in the custody of the Immigration and Naturalization Service is contained in a Memorandum of Agreement and Cost Reimbursable Agreement, dated October 1, 1994, between the Immigration and Naturalization Service and the Community Relations Service.

Legislative authority for CRS Cuban/ Haitian Entrant child welfare activities is contained in Title V, Section 501(c), of Public Law 96–422 (The Refugee Education Assistance Act of 1980).

Available Funds

Funds will be available on a Fiscal Year basis to support the number of shelters needed to provide 56–58 beds. The number of shelters to be funded will depend on the design of the programs proposed.

The awards made will not exceed a 36 month program performance period. Funding will be for 12 month budget periods. Continuation of funding is dependent upon successful completion of prior year objectives, the level of need as defined by the Federal Government, and the availability of future fiscal year funding.

The number of beds listed above do not bind CRS to any specific number of Cooperative Agreements or to any specific level of funding.

Award Instrument

The awards issued by CRS to support AUMSCP services will be in the form of Cooperative Agreements, as defined in the Federal Grant and Cooperative

Agreement Act of 1977, P.L. 95–224. The administration of the Cooperative Agreement awards will require the substantial programmatic involvement of the Federal Government.

CRS will negotiate Cooperative Agreements with the applicants approved by the Associate Director for Immigration and Refugee Affairs, CRS. Prior to these negotiations, the CRS will visit the proposed program locations to conduct a management review and to evaluate the applicants' financial and programmatic capability.

Eligible Applicants

Non-profit organizations incorporated under State law which have demonstrated child welfare, social service or related experience and are appropriately licensed or can expeditiously meet applicable State licensing requirements for the provision of shelter care, foster care, group care, and related services to dependent children are eligible to apply.

For-profit organizations incorporated under State law which have demonstrated child welfare, social service or related experience, and are appropriately licensed or can expeditiously meet State licensing requirements for the provision of shelter care, foster care, group care, and other related services to dependent children, and which can clearly demonstrate that only actual costs and not profit, fees, or other elements above cost have been budgeted, are also eligible to apply.

Client Population

It is anticipated that the client population will consist primarily of males, 13–17 years of age. Females generally comprise 15% of the total population of alien minors. These minors are primarily nationals of El Salvador, Nicaragua, Guatemala, Honduras, and the People's Republic of China; however, the Recipients should expect to provide services to children from other countries. The Recipients should also be prepared to provide emergency shelter care to a limited number of children 12 years of age and younger.

Clients would generally be considered to be dependent children without significant behavioral or psychological problems. Many children, however, have inconsistent or sporadic educational histories, and some children may be illiterate in their own language.

Definition of Alien Minor

An alien minor is defined as a male or female foreign national under 18 years of age who is detained in the custody of the Immigration and Naturalization Service and is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act.

Designated Program Area

The shelters should be within a fifty mile radius of the INS District Office—San Diego, California; the INS District Office—Los Angeles, California; and the INS District Office—San Francisco, California.

Geographical Location

The geographical location of the applicants is not restricted to its selected area of service; however, the applicants must be able to substantiate that its network of local affiliates or its subcontractor(s) or subrecipient(s) will be able to deliver the required services effectively and appropriately and that local service provider organizations are licensed under applicable State law to provide emergency shelter care and related services to dependent children.

Technical Assistance Conference

The CRS will hold a public meeting regarding this solicitation. Further information regarding the time, date and location will be included in the Proposal Application Package.

Application Contents

Applicants are required to set forth in detail a proposal that meets the program requirements described in this Notice and as supplemented by the "Alien Unaccompanied Minors Shelter Care Program—Program Guidelines and Requirements" (available with the application package). Applicants are required to set forth in detail the following:

A. Program Abstract. The Program Abstract is intended to be a brief summary of the proposal.

B. Organization/Agency Background. Applicants must include a detailed discussion of:

1. The applicant's professional history, philosophy, and goals;

2. Its particular demonstrated experience with respect to: provision of services to unaccompanied alien minors; the administration of residential shelters for minors; or, the administration of similar type of shelters; and

3. The applicant's history of service delivery and institutional presence in the proposed city where the shelter will be located.

If the applicant is a national-level organization which proposes to deliver services through a local-level affiliate, the proposed affiliate must be identified. Within the context of the topics outlined above, the application must address the local-level affiliate's qualifications and provide a rationale for its particular selection as their service provider and for the use of such a subcontractual arrangement.

C. Program Design: The applicants must set forth in detail information concerning the following:

1. Target Population

A comprehensive overview of the applicant agency, agency qualifications and history, including philosophy, goals and history of experience with respect to the provision of child welfare or related services to minors under 18 years of age.

2. Management Plan

a. A plan for overall fiscal and program management and accountability.

b. A description of the organizational structure and lines of authority.

c. A comprehensive program staffing plan and information regarding staff qualifications.

d. A comprehensive plan for coordination of activities between the various program components and coordination with other community and governmental agencies.

e. Staff supervisory model.

f. Provisions for staff training.

g. Proposed staff schedule(s).

h. A description of the role(s) and responsibility(ies) of the proposed consultants and the rationale for their use.

3. Individual Client Service Plans

Applicants shall describe in detail:

a. The methodology regarding the development of individual client service plans;

b. The process to ensure that service plans will be periodically reviewed and updated; and

c. The staff who will have responsibility for the development and updating of the plans.

4. Case Management

Describe in detail the case management system for tracking and monitoring client progress on a regular basis to ensure that each minor receives the full range of program services in an integrated and comprehensive manner. Identify the staff positions responsible for coordinating the implementation and maintenance of the case management system.

5. Structure and Accountability

Applicants must fully describe:

a. The plan for developing and maintaining internal structure, control and accountability through programmatic means.

b. Utilization of daily logs, statistical reports, etc.

c. Other security measures.

D. Characteristics of Program Site

Residential/Office Facility. Applicants are required to set forth in detail comprehensive information regarding:

1. A physical description of the proposed facility including the proposed allocation of shelter and office space; and

2. Documentation that the facility meets all relevant zoning, licensing, fire, safety and health codes required to operate a residentially based social service program. Copies of relevant documents must be submitted at the time of application.

If a properly zoned, licensed, or inspected facility is not available at the time of application, the applicant must submit a report on the progress made in obtaining the appropriate documentation, as noted above. This report must consist of a description of the required documents, copies of correspondence to relevant local officials or offices from which they will be obtained, and the means and time-lines for obtaining the documentation.

E. Community Support

Applicants must identify those measures the agency will take or has taken, to assure and maintain community receptivity and support and/or reduce community opposition to the program.

F. Client Services

Applicants are required to describe, in a detailed and comprehensive manner, the following services and the methodology for service delivery:

1. Physical Care and Maintenance;
2. Routine and Emergency Medical/Dental Care;
3. Orientation;
4. Individual Counseling;
5. Group Counseling;
6. Acculturation/Adaptation;
7. Education;
8. Recreational, Social and Work Activities;
9. Visitation Procedures;
10. Access to Legal Services; and,
11. Family Reunification Services.

G. Client Records

Applicants must provide descriptive information regarding the development, maintenance and content of individual client case records, including a description of all material/information which will be maintained in these records.

H. Program Records

Applicants are required to set forth comprehensive information regarding the types of program records to be maintained by the program (daily activity logs, records of staff meetings, cash disbursement systems, daily and weekly status of population reports, etc.).

I. Program Evaluation

Applicants must set forth a plan for program evaluation including identification of evaluation criteria.

J. Budget and Budget Narrative

Applicants are required to submit a comprehensive line item budget.

The following budget structure should be used to provide appropriate costs breakdown:

a. Personnel;
b. Fringe Benefits;
c. Travel Costs;
d. Equipment, including computer hardware and software;
e. Supplies;
f. Contractual Obligations;
g. Rearrangement and Alteration Costs (if applicable);
h. Direct Client Costs;
i. Other; and
j. Indirect Costs.

A narrative explanation for each line item, included in each object class, must accompany the proposed budget.

K. Supportive Addenda Material

Applicants are required to submit the following supporting material as an addendum to the program proposal:

1. Administrative Requirements

a. Agency Administration and Organization

(1) Agency organizational *chart* describing the agency as a whole and the organizational relationship of the proposed program to other agency programs;

(2) Comprehensive organizational *chart* of the proposed program;

(3) Copies of Article of Incorporation;

(4) Proof of IRS status as a non-profit organization, if applicable;

(5) List of Officers and Board Members, if applicable;

(6) List of professional affiliations and certifications, and;

(7) Copy(ies) of applicable State child welfare license(s).

b. Organizational Standards/Polices and Policies Regarding Clients.

(1) Personnel Handbook and Standards of Conduct;

(2) Statement regarding professional and agency liability;

(3) Copy of Disciplinary Procedures;

(4) Copy of Agency policy regarding the confidentiality of client information and records;

(5) Discussion of the method to be used to inform clients of program rules, regulations and policies, including the confidentiality of client information;

(6) Copy of Grievance Policy and Procedures, and;

(7) Fire and earthquake evacuation procedures, as applicable.

c. Staff

(1) Job/Position Description and resumes (if individuals have been identified for certain positions) for all personnel to be hired for the program including documented evidence of the availability of bi-lingual and culturally sensitive personnel, and;

(2) Resumes and qualifications of program consultants.

d. Community Support of the Program

(1) Letters of program support from local political representatives, social service agencies, etc. Letters should reflect writers' awareness of program's intent, potential Federal funding source and location of the program. Letters should also contain a recommendation or comment regarding the proposed program;

(2) A listing of service providers to whom clients will be referred, including name, address and description of service(s) to be provided, and;

(3) A listing of voluntary and/or donated resources, including letters of intent from the agency or entity providing the resources, if applicable.

e. Implementation Plan

A plan for program implementation including time-lines regarding significant milestones.

2. Finance

a. A copy of the most recent agency/organization audit.

b. A description of the agency/organization Financial Management System.

c. A listing of other Federal, State, local or foundation grants, cooperative agreements or contracts, etc., being administered by the applicant. This material should include information regarding the funding source(s); grant, cooperative agreements or contract number; level of financial support; purpose of award; grant, cooperative agreement or contract performance period; and name, address and telephone number of grant, cooperative agreement and/or contract officer (Federal, State or local).

d. Subrecipients and/or Subcontractors.

(1) Identify all proposed services which are to be awarded to subrecipients/subcontractors;

(2) Provide relevant background material regarding the proposed subrecipient(s)/subcontractor(s), and;

(3) Provide letters from the proposed subrecipient(s)/subcontractor(s) indicating their commitment and the specific services to be provided.

e. Budget.

(1) Itemized budget.

(2) A narrative explaining the budget.

Screening Criteria

CRS will screen all applications submitted pursuant to this Notice to determine whether an application is sufficiently complete to warrant consideration and review by the CRS Review Panel. An application may be rejected if:

1. The application is from an ineligible applicant;

2. The application is received after the closing date;

3. The application omits:

a. Documented written evidence of community support for the program;

b. A comprehensive line-item budget with appropriate descriptive narrative, or;

c. A copy of the latest financial audit of the applicant.

Criteria for Evaluating Applications

Applications will be reviewed, evaluated, and ranked numerically according to the following weighted criteria:

1. The degree to which the entire proposed plan for developing, implementing and administering a shelter care program is clear, succinct, integrated, efficient, cost effective and likely to achieve program objectives. (15 POINTS)

2. The quality of the applicant's program management and staffing plans as demonstrated by:

a. The adequacy of the plan for program management and the plan for coordination between the components of the program.

b. The adequacy of the plan for coordination with community and governmental agencies.

c. The adequacy of the qualifications of the applicant organization, and the extent to which this organization has a demonstrated record as a provider of child welfare or other social services.

d. The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.

e. The extent to which subrecipient(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program management and accountability.

f. The adequacy of the plans for staff supervision and intra-program communication.

g. The adequacy of the staffing plans in terms of the relationship between the proposed functions and responsibilities of the staff in the program, and the education and relevant experience required for the position.

h. Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, direction and progress of the program. (20 POINTS)

3. Program Services—The applicant's response to the required program services, including a description of program resources which demonstrates:

a. The capacity of the program to offer comprehensive, integrated and differential services which meet the needs of the clients.

b. Utilization of resources in a manner which enhances program control, structure and accountability.

c. Provision of service in a manner which promotes and fosters cultural identification and mutual support.

d. Sensitivity to the issues of culture, race, ethnicity and native language. (20 POINTS)

4. The degree to which the applicant provides effective strategies of programmatic control, predictability and accountability as evidenced by the structure and continuity inherent in the program design. (15 POINTS)

5. The adequacy of the plans for:

a. developing and updating individual client service plans; and,

b. the proposed system of case management. (10 POINTS)

6. The reasonableness of the proposed budget and budget narrative, in relation to proposed program activities. (10 POINTS)

7. The plan for program evaluation, including the methodology and criteria for evaluation of the program. (5 POINTS)

8. The degree to which the application has provided written documented evidence of community support and acceptance of the program. (5 POINTS)

Application Submission

Applicants must submit a signed original and two copies of the Proposal and supporting documentation to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Attention: Orin McCrae, Grants Officer by 5 p.m. (Eastern Time) of the closing date.

Applications Delivered by Mail

An applicant must show proof of mailing consistency of the following:

1. A legible dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

If an application is sent through the U.S. Postal Service, CRS does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local Post Office. Applicants are encouraged to use registered or at least First Class mail. Each late applicant will be notified that the application will not be considered.

Applications postmarked on or before 5 p.m. (Eastern Daylight Time), September 11, 1995, shall be considered as timely applications.

Applications Delivered by Hand

An application that is hand delivered must be taken to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

The Grants Management Office will accept hand delivered applications between 9 a.m. and 5 p.m., Eastern Daylight Time, daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 5 p.m., Eastern Daylight Time, on the closing date. Applications hand delivered on or before the closing date shall be considered as timely applications.

Public Program Orientation Meeting for Prospective Applicants

CRS will hold a public program orientation meeting for prospective applicants in regard to this Notice. Information regarding the time, date and location of the meeting(s) will be included in the proposal application package.

Proposal Review

Proposals will be reviewed, evaluated, and ranked numerically by an independent review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Associate Director for Immigration and Refugee Affairs, CRS. Awards will be subject to the availability of funds.

Processing Time

CRS expected that all eligible submissions will be reviewed and rated within 45 days of the closing date.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

Any costs incurred by an applicant prior to an award being made are incurred solely at the applicant's own risk, and will not be reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Justice to cover pre-award costs.

No Obligation for Future Funding

If an application is selected for funding, the Department of Justice has no obligation to provide any additional future funding beyond the first budget period. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Justice.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received; or, (3) other arrangements satisfactory to the Department of Justice are made.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Primary Applicant Certification

All primary applicants must submit a completed OJP Form–4061–6, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying":

A. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

B. Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

C. Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000;

D. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower-Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower-tier covered transactions at any tier under the award to submit, if applicable, a completed OJP Form 4061–6, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower-Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." OJP Form 4061–6 is intended for the use of Recipients and should not be transmitted to the Department of Justice. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Justice in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds, and for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Disclosure of Federal Participation

Recipients and subrecipients receiving Federal funds must adhere to the requirements of Section 136 of the Department of Defense Appropriation Act (Steven's Amendment of October 1, 1988). The Stevens' Amendment requires grantees and subgrantees to state clearly in writing, during time of application submission: 1) the percentage of the total cost of the program or project which will be financed with Federal money; and 2) the dollar amount of Federal funds for the project or program. All grantees and subgrantees shall make this statement when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

Federal Policies and Procedures

Recipients and subrecipients are subject to all applicable Federal laws and Federal, Department of Justice, and CRS policies, regulations, and procedures applicable to Federal financial assistance awards.

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, Intergovernmental Review of Federal Programs, all States have the option of designing procedures for review and comment on applications for Federally assisted programs from State and local applicants.

Each applicant is required to notify each State in which it is proposing activities under this announcement and to comply with the State's established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC).

State Requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 30 days after the date of publication, addressed to: Kenneth Leutbecker, Associate Director, Immigration and Refugee Affairs, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

(Catalog of Federal Domestic Assistance Number: 16.201)

Dated: July 20, 1995.

Jeffery Weiss,

Acting Director, Community Relations Service.

[FR Doc. 95–18380 Filed 7–25–95; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Preservation

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA)

Advisory Committee on Preservation. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB has approved the inclusion of the Advisory Committee on Preservation in NARA's ceiling of discretionary advisory committees. The Committee Management Secretariat, General Services Administration, has also concurred with the renewal of the Advisory Committee on Preservation in correspondence dated June 29, 1995.

The Archivist of the United States has determined that the renewal of the Advisory Committee is in the public interest due to the expertise and valuable advice the Committee members provide on technical preservation issues affecting Federal records of all types of media. NARA uses the Committee's recommendations in NARA's implementation of strategies for preserving the permanently valuable records of the Federal Government.

Dated: July 14, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–18304 Filed 7–25–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 125th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on August 4, 1995 from 8:30 a.m. to 7:00 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting will be open to the public. Topics for discussion will include a Legislative Update, updates from the deputy chairmen and the chairman of the President's Committee on the Arts and the Humanities, a discussion of the FY 97 Budget, a discussion on Blind Judging, reports from the Council Millenium and Council Design Committees, and guidelines and/or program reviews for the Music, Arts in Education, and Theater Programs.

If, in the course of application discussion review, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682/5532, TTY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682/5570.

Dated: July 21, 1995.

Yvonne M. Sabine,

Director, Council and Panel Operations.

[FR Doc. 95–18344 Filed 7–25–95; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication Generic Letter 89–10, Supplement 7, Valve Mispositioning in Pressurized-Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue Generic Letter 89–10, Supplement 7 to notify addressees that the NRC is removing the recommendation that MOV mispositioning be considered by pressurized-water reactor licensees in responding to GL 89–10, as was done for boiling-water reactor licensees in Supplement 4. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter supplement presented under the Supplementary Information heading. This proposed generic letter supplement and supporting documentation were discussed in meeting number 276 of the Committee to Review Generic Requirements (CRGR) on July 11, 1995. The relevant information that was sent to the CRGR to support their review of the proposed generic letter is available in the NRC Public Document Room under accession number 9507170370. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter supplement. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter supplement be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires August 25, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David C. Fischer, (301) 415–2728.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 89–10, Supplement 7: Consideration of Valve Mispositioning in Pressurized-Water Reactors

Addressees

All holders of operating licenses (except those licenses that have been amended to a possession only status) or construction permits for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to notify addressees about a revised NRC position regarding consideration of valve mispositioning within the scope of Generic Letter (GL) 89–10 for pressurized-water reactors (PWRs). Although this generic letter forwards a new staff position, no specific action or written response is required.

Background

In GL 89–10 (June 28, 1989), "Safety-Related Motor-Operated Valve Testing and Surveillance," the staff recommended, among other things, that any motor-operated valve (MOV) in a safety-related system that is not blocked

from inadvertent operation from either the control room, the motor control center, or the valve itself be considered capable of being mispositioned (referred to as position-changeable MOVs) and be included in licensee MOV programs. When determining the maximum differential pressure or flow for position-changeable MOVs, the licensees were asked to consider "the fact that the MOV must be able to recover from mispositioning * * *" Supplement 1 to GL 89–10 limited the prevention of inadvertent MOV operation within the context of the generic letter to the potential for MOV mispositioning from the control room.

The Boiling Water Reactor Owners Group (BWROG) submitted a backfit appeal on the recommendations for position-changeable valves. The staff, with the assistance of Brookhaven National Laboratory (BNL), reviewed and evaluated the issues concerning the mispositioning of valves from the control room and determined that the recommendations in GL 89–10 should be changed for BWRs. The BNL study, which used probabilistic risk assessment (PRA) techniques, and the NRC staff evaluation and conclusions were transmitted in a letter from the NRC to the BWROG dated February 12, 1992. The conclusions were communicated to industry and the public at large via Supplement 4 to GL 89–10, also dated February 12, 1992. Supplement 4 indicated that the NRC would perform a similar review for PWRs and stated that GL 89–10 might be revised, if warranted, to clarify the NRC position regarding consideration of MOV mispositioning within the scope of GL 89–10 for PWRs.

Description of Circumstances

By letter dated July 21, 1992, the Westinghouse Owners Group (WOG) asked the NRC staff to notify PWR licensees that the provisions of GL 89–10 for valve mispositioning are not applicable to PWRs, based on arguments similar to those made by the BWROG.

Discussion

Under contract to the NRC staff, BNL performed a study similar to the one performed for BWRs of the safety significance of inadvertent operation of MOVs in safety-related piping systems of three PWRs. Consistent with Supplement 1 to GL 89–10, the scope of the study was limited to MOVs in safety-related systems that could be mispositioned from the control room. However, because the available PRA models do not include active mispositioning of MOVs or the physical phenomena that could inhibit repositioning, BNL's study of available plant models was limited in its ability to address this issue. Given this limited scope, BNL concluded that the risk insights from the mispositioning of unlocked MOVs were similar for both PWRs and BWRs. Although PWRs tend to have a higher core damage frequency (CDF) than BWRs, which would suggest that the net increase in CDF from mispositioning of MOVs would be higher for PWRs than for BWRs, PWRs typically have a lower conditional containment failure probability, which would tend to balance the overall risk to the public.

The NRC is removing the recommendation that MOV mispositioning be considered by PWR licensees in responding to GL 89–10, as was done for BWR licensees in Supplement 4, in light of the following:

- Corrective actions have been taken by licensees subsequent to the Davis-Besse event (i.e., detailed control room design reviews, independent valve position verification programs, and operator training improvements).
- Corrective actions are being applied to many of the most important valves under the other provisions of GL 89–10.
- Other operational events are absent (other than Davis-Besse) in which mispositioning MOVs from the control room actually set up conditions that prevented repositioning.
- The results of the BNL study for PWRs.

Implementation of this relaxation by licensees is voluntary.

Staff Position

The staff no longer considers the recommendations for inadvertent operation of MOVs from the control room to be within the scope of GL 89–10 for PWRs. However, the staff believes that consideration of valve mispositioning benefits safety.

Modifying the provisions in GL 89–10 for valve mispositioning does not affect the GL 89–10 recommendations for licensees to review safety analyses, emergency procedures, and other plant documentation to determine the design-basis[1] fluid conditions under which all MOVs in safety-related piping systems may be called upon to function. This position also does not supersede the NRC generic recommendations or regulations on valve mispositioning that pertain to such other issues as interfacing-systems loss-of-coolant accidents (ISLOCAs) or fire protection (10 CFR Part 50, Appendix R).

Backfit Discussion

This letter represents a relaxation of recommendations set forth in GL 89–10 and prior supplements. Implementation of this relaxation is voluntary and this generic letter supplement requests neither actions nor information from licensees. Therefore, this generic letter supplement is not considered a backfit and the staff has not performed a backfit analysis.

Dated at Rockville, Maryland, this 19th day of July 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18320 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

[1] Design-basis conditions are those conditions during both normal operation and abnormal events that are within the design basis of the plant.

Privacy Act of 1974; Revisions to System of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed revision of an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Nuclear Regulatory Commission (NRC) is issuing public notice of our intent to modify the system of records maintained by the Office of the Inspector General (OIG), NRC–18, currently titled "Office of the Inspector General Index File and Associated Records—NRC." The proposed modifications will rename the system "Office of the Inspector General (OIG) Investigative Records—NRC," permit disclosures to consumer reporting agencies, and add two other Privacy Act exemptions. The routine uses for the system are being revised and other technical and editorial revisions to the system notice are being made to make it more accurate.

EFFECTIVE DATE: The revised system of records will become effective without further notice on September 5, 1995, unless comments received on or before that date cause a contrary decision. If, based on NRC's review of comments received, changes are made, NRC will publish a new final notice. NRC will not withhold records under the (j)(2) or (k)(5) exemptions until adoption of the final rule amending 10 CFR 9.95 to add these exemptions to this system of records.

ADDRESSES: Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, Attention: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays. Copies of comments may be examined at the NRC Public Document Room at 2120 L Street, NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Freedom of Information/ Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7170.

SUPPLEMENTARY INFORMATION: NRC is republishing System of Records NRC–18, currently titled "Office of the Inspector General Index File and Associated Records—NRC," to rename the system; revise all current routine uses to more clearly describe the disclosures for OIG's investigative system of records; add new routine use g. permitting disclosures to other agencies, including the Department of Justice, to obtain advice on OIG matters; add new routine use h. permitting disclosures to the National Archives and Records Administration and the General Services Administration for records management inspections; authorize disclosures to consumer reporting agencies under 5 U.S.C. 552a(b)(12); add the (j)(2) and (k)(5) exemptions; and update other information in the previously published notice of this system of records.

NRC is renaming NRC–18 "Office of the Inspector General (OIG) Investigative Records—NRC" to cover only investigative records of the OIG. Audit records that were previously included in this system have been deleted from NRC–18 because they are not retrieved by personal identifier.

Other information in the system is being updated to reflect changes in the way information is retrieved and safeguarded, and to more accurately describe the categories of individuals covered and the categories of records being maintained.

The NRC is exempting NRC–18 from certain provisions of the Privacy Act under 5 U.S.C. 552a(j)(2) to the extent that the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for criminal law enforcement purposes. The OIG is an agency component that performs as one of its principal functions activities pertaining to the enforcement of criminal laws.

NRC–18 is also being exempted from certain provisions of the Privacy Act under 5 U.S.C. 552a(k)(5) to the extent that the system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

In a separate notice published in the proposed rule section of today's issue of the **Federal Register**, the NRC is giving public notice of a proposed rule to amend 10 CFR 9.95 to exempt this system of records from certain provisions of 5 U.S.C. 552a under subsections (j)(2) and (k)(5).

A report on the proposed revisions to this system of records, required by 5 U.S.C. 552a(r), as implemented by Office of Management and Budget (OMB) Circular No. A–130, has been sent to the Chairman, Committee on Government Reform and Oversight, U.S. House of Representatives; the Chairman, Committee on Governmental Affairs, U.S. Senate; and OMB.

Accordingly, the NRC proposes to amend NRC–18 as follows:

NRC–18

SYSTEM NAME:

Office of the Inspector General (OIG) Investigative Records—NRC.

SYSTEM LOCATION:

Office of the Inspector General, NRC, 11545 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities referred to in complaints or actual investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system comprises four parts: (1) An automated Text Management System containing reports of investigations and inspections closed since 1989 and brief descriptions of investigative cases open and pending in the OIG since 1989 that have not yet resulted, but will result, in investigative or inspection reports; (2) paper files of all OIG and predecessor Office of Inspector and Auditor (OIA) reports, correspondence, cases, matters, memoranda, materials, legal papers, evidence, exhibits, data, and work papers pertaining to all closed and pending investigations and inspections; (3) paper index card files of OIG and OIA cases closed from 1970 through 1989; and (4) an automated Allegations Tracking System that includes allegations referred to the OIG since 1985, whether or not the allegation progressed to an investigation or inspection, and dates that the investigation or inspection, if any, was opened and closed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. App. 3; 42 U.S.C. 2035(c), 2201(c), and 5841(f) (1988).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, OIG may disclose information contained in a record in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To any Federal, State, local, tribal, or foreign agency, or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity when records from this system of records, either by themselves or in combination with any other information, indicate a violation or potential violation of law, whether administrative, civil, criminal, or regulatory in nature.

b. To public or private sources to the extent necessary to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry.

c. To a Federal, State, local, tribal, or foreign agency, or a public authority or professional organization if necessary to obtain information relevant to a decision by NRC or the requesting organization concerning the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit, or other personnel action related to the record subject.

d. To a court, adjudicative body before which NRC is authorized to appear, Federal agency, individual or entity designated by NRC or otherwise empowered to resolve disputes, counsel or other representative, or witness or potential witness when it is relevant and necessary to the litigation if any of the parties listed below is involved in the litigation or has an interest in the litigation:

1. NRC, or any component of NRC;

2. Any employee of NRC where the NRC or the Department of Justice has agreed to represent the employee; or

3. The United States, where NRC determines that the litigation is likely to affect the NRC or any of its components.

e. To a private firm or other entity with which OIG or NRC contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an investigation, audit, inspection, inquiry, or other activity related to this system of records. The contractor, private firm, or entity needing access to the records to perform the activity shall be required to maintain Privacy Act safeguards with respect to information. A contractor, private firm, or entity operating a system of records under 5 U.S.C. 552a(m) shall be required to comply with the Privacy Act.

f. To another agency to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

g. To a member of Congress or to a congressional staff member in response to his or her inquiry made at the written request of the subject individual.

h. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12):

Disclosure of information to a consumer reporting agency is not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually on index cards, in files, and in various ADP storage media.

RETRIEVABILITY:

Information is retrieved from the Text Management System alphabetically by the name of an individual, by case number, or by subject matter. Information in the paper files backing up the Text Management System and older cases closed by 1989 is retrieved by subject matter and/or case number, not by individual identifier. Information is retrieved from index card files for cases closed before 1989 by the name or numerical identifier of the individual or entity under investigation or by subject matter. Information in the Allegations Tracking System is retrieved by allegation number, case number, or name.

SAFEGUARDS:

The automated Text Management System is accessible only on one terminal in the OIG, is password protected, and is accessible only to OIG investigative personnel. Paper files backing up the Text Management System and older case reports and work papers are maintained in approved security containers and locked filing cabinets in a locked room; associated indices, records, diskettes, tapes, etc., are stored in locked metal filing cabinets, safes, storage rooms, or similar secure facilities. Index card files for older cases (1970–1989) are under visual control during working hours and are available only to authorized investigative personnel who have a need to know and whose duties require access to the information. The Allegations Tracking System is double-password-protected and is available to a limited number of OIG investigative employees on only one terminal in a locked room.

RETENTION AND DISPOSAL:

a. *Investigative Case Files.*

1. Files containing information or allegations that are of an investigative nature but do not relate to a specific investigation—Destroy when 5 years old.

2. All other investigative files, except those that are unusually significant—Place in inactive file when case is closed. Cut off inactive file at end of fiscal year. Destroy 10 years after a cutoff.

3. Significant cases (those that result in national media attention, congressional investigation, or substantive changes in agency policy or procedures)—To be determined by the National Archives and Records Administration on a case-by-case basis.

b. *Index/Indices.* Destroy or delete with the related records or sooner if no longer needed.

c. *Text Management System.* Delete after 10 years or when no longer needed, whichever is later.

d. *Allegation Tracking System.* Destroy when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

RECORDS ACCESS PROCEDURES:

Same as "Notification procedure." Information classified pursuant to Executive Order 12356 will not be disclosed. Information received in confidence will be maintained pursuant to the Commission's Policy Statement on Confidentiality; Management Directive 8.8, "Management of Allegations" (formerly NRC Manual Chapter 0517); and other procedures concerning confidentiality as determined by the Inspector General and will not be disclosed to the extent that disclosure would reveal a confidential source.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from sources including, but not limited to, the individual record subject; NRC officials and employees; employees of Federal, State, local, and foreign agencies; and other persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), the Commission has exempted this system of records from subsections (c)(3) and (4), (d)(1)–(4), (e)(1)–(3), (5), and (8), and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(6), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 10 CFR 9.95 of the NRC regulations.

Dated at Rockville, MD, this 18th day of July, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–18321 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-924]

Application and Opportunity for Hearing: Charles E. Smith Residential Realty, Inc.

July 20, 1995.

Notice is Hereby Given that Charles E. Smith Residential Realty, Inc. ("Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Commission Act of 1934, as amended (the "Exchange Act") for an order exempting applicant from the provisions of Section 16 of the Exchange Act with respect to its ownership of and transactions in units of limited partnership interest of Charles E. Smith Residential Realty L. P.

For a detailed statement of the information presented, all persons are referred to said application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is Further Given that any interested person not later than August 9, 1995 may submit to the Commission in writing its views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such a request, and the issues of fact and law raised by the application which it desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after said date, an order granting application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-18286 Filed 7-25-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 21219; 812-9632]

Pioneer Winthrop Real Estate Investment Fund, et al.; Notice of Application

July 19, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Pioneer Winthrop Real Estate Investment Fund ("Pioneer Winthrop Fund"); Pioneer Variable Contracts Trust ("Variable Trust") on behalf of its Real Estate Growth Portfolio series (together with Pioneer Winthrop Fund, the "Funds"); and Pioneering Management Corporation ("PMC").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(a).

SUMMARY OF APPLICATION: Apollo Real Estate Advisors, L.P. ("Apollo") has agreed to acquire W.L. Realty, L.P. ("Realty LP"), including the investment advisory business of its indirect subsidiary Winthrop Advisors Limited Partnership ("WALP"), from The Nomura Securities Co. ("Nomura") and certain principals of Realty L.P. The reorganization will result in the assignment, and thus the termination, of existing investment advisory contracts of the applicant investment companies. Applicants seek an order to permit the implementation, without shareholder approval, of interim investment advisory contracts during a period of up to 120 days following July 3, 1995. The order also will permit the applicant investment adviser to receive from the applicant investment companies fees earned under the interim investment advisory contracts following approval by the investment companies' shareholders.

FILING DATES: The application was filed on June 20, 1995 and amended on July 19, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 14, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth St. NW., Washington, DC 20549. Applicants, 60 State St., Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds, each a Delaware business trust, are registered open-end management investment companies. Pioneer Winthrop Fund continuously offers its shares for sale to the general investing public. Real Estate Growth Portfolio continually offers its shares for sale primarily to insurance company segregated accounts that fund variable annuity and life insurance contracts.

2. The Funds each have entered into an investment advisory agreement with Pioneer Winthrop Associates ("PWA"), a general partnership and registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"), under which PWA provides advisory and management services to the Funds (the "Advisory Agreements"). Also, the Funds each have entered into subadvisory agreements with PMC and WALP, (the "Subadvisory Agreements," and together with the Advisory Agreements, the "Prior Agreements"), each a registered investment adviser under the Advisers Act.

3. PMC currently serves as investment adviser to each of the mutual funds, other than the Funds, in the Pioneer complex of mutual funds. PMC is a wholly-owned subsidiary of The Pioneer Group, Inc. ("PGI"). WALP is a wholly-owned subsidiary of Winthrop Financial Associates ("WFA"). PGI and WFA each own 50% of the partnership interests of PWA.

4. WFA's indirect parent company, Realty LP, is a majority owned subsidiary of Nomura, an international brokerage and financial services firm. The remaining minority interests in Realty LP are owned by Arthur J. Halleran and Stephen G. Kasnet, (collectively, the "Management Investors"), principals of WFA. The Management Investors serve as trustees and officers of Pioneer Winthrop Fund and officers of Variable Trust.

5. On May 11, 1995, Apollo and Nomura announced that they had entered into negotiations pursuant to which Apollo intended to acquire from Nomura its controlling interest, and from the Management Investors their remaining minority interest, in Realty LP (the "Reorganization"). On July 17, 1995, the Reorganization was consummated. PMC agreed to provide the investment advisory services now provided to the Funds by PWA and WALP.

6. PMC has entered into an employment agreement with the key employees of WALP, pursuant to which such employee has agreed to provide to PMC real estate securities advice equivalent to that which he currently provides to the Funds through WALP. In addition, PMC is in the process of entering into a consulting agreement with Winthrop Commercial Partnership ("WCP"), a subsidiary of WFA, under which WCP will continue to provide information regarding real estate properties and markets that it currently provides to the Funds through WALP. WCP will provide this information to PMC under the consulting agreement at cost, which will be borne by PMC.

7. Immediately upon being notified of the agreements in principal, the respective Boards of Trustees of the Funds (the "Boards") held special meetings on June 6, 1995 to discuss the Reorganization. During those meetings, the Boards, including a majority of the Board members who are not "interested persons," as that term is defined in the Act (the "Independent Trustees"), of the respective Funds, with the advice and assistance of counsel to the Independent Trustees, made a full evaluation of the interim investment advisory agreements between the Funds and PMC (the "Interim Agreements"). In accordance with section 15(c) of the Act, the Boards voted to approve the Interim Agreements. The Boards concluded that payment of the advisory and subadvisory fees during the Interim Period would be appropriate and fair because there will be no diminution in the scope and quality of services provided to the Funds, the fees to be paid are unchanged from the fees paid under the Prior Agreements,the fees would be maintained in an interest-bearing escrow account until payment is approved or disapproved by shareholders, and the nonpayment of fees would be inequitable to PMC in view of the substantial services to be provided by PMC to the Funds, and the expenses incurred by PMC. The Boards of each Fund also voted to recommend that shareholders of each Fund approve the Interim Agreements, as well as the new advisory agreements with PMC.

8. Applicants seek an exemption from section 15(a) of the Act to permit the implementation, without shareholder approval, of the Interim Agreements. On June 20, 1995, the date of the filing of the original application, applicant anticipated that the Reorganization would be consummated on July 3, 1995. Accordingly, the exemption would cover the period commencing on July 3, 1995 and continuing through the date the Interim Agreements are approved or disapproved by shareholders of the respective Funds, which period shall be no longer than 120 days (the "Interim Period").

Applicants' Legal Conclusions

1. Section 15(a) prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the voting securities of such investment company. Section 15(a) further requires that such written contract provide for its automatic termination in the event of an assignment. Section 2(a)(4) defines "assignment" to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Section 2(a)(9) defines "control" as the power to exercise a controlling influence over the management or policies of a company. Beneficial ownership of more than 25% of the voting securities of a company is presumed under section 2(a)(9) to constitute control.

3. Upon consummation of the Reorganization, Apollo will acquire all of Realty LP's outstanding voting securities and thus an indirect, controlling interest in each of WFA and WALP, including WFA's 50% general partnership interest in PWA. Thus, the Reorganization will result in an "assignment," within the meaning of section 2(a)(4), of the Advisory Agreements and WALP Subadvisory Agreements. Therefore, each such agreement will terminate by its terms.[1]

4. Rule 15a-4 provides, among other things, that if an advisory contract is terminated by assignment, the investment adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company, and if the investment adviser or a controlling person of the investment adviser does not directly or indirectly receive money or other benefit in connection with the assignment. Because Nomura and the Management Investors will receive a benefit in connection with the assignment of the contracts, applicants may not rely on rule 15a-4.

5. Applicants assert that because the Funds did not have sufficient advance notice of the Reorganization, it was not possible for the Funds to obtain shareholder approval of the new advisory agreements in accordance with section 15(a) prior to the closing of the Reorganization. Applicants believe that the requested relief will enable the Funds to receive the same scope and quality of advisory services after the Reorganization as they received prior to the Reorganization, and that the engagement of PMC as the Funds' sole investment adviser is in the best interests of the Funds and their shareholders.

6. Applicants believe that the requested relief will allow the Funds to continue to operate on an orderly basis until the shareholders have the opportunity to consider new investment advisory agreements. The 120 day Interim Period will facilitate the orderly and reasonable consideration of the new agreements.

7. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree as conditions to the requested exemptive relief that:

1. The Interim Agreements will have the same terms and conditions as the Advisory Agreements, except in each case for the names and identities of the parties, the dates of execution and termination, and the inclusion of escrow arrangements.

2. Fees earned by PMC during the Interim Period in accordance with the Interim Agreements will be maintained in an interest-bearing escrow account, and amounts in such account (including interests earned on such paid fees) will be paid to PMC only upon approval of the Funds' respective shareholders or, in the absence of such approval, to the respective Funds.

[1] The PMC Subadvisory Agreements terminate by their terms upon the termination of the Advisory Agreements.

3. The Funds will hold meetings of shareholders to vote on approval of the Interim Agreements and new investment advisory agreements, on or before the 120th day following July 3, 1995.

4. PMC will bear the cost of preparing and filing this application and the costs relating to the solicitation of the approvals of the Funds' shareholders of the Interim Agreements necessitated by the Reorganization.

5. PMC will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the respective Boards, including a majority of the Independent Directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services under the Interim Agreements, PMC will apprise and consult the Boards of the affected Funds to assure that such Boards, including a majority of the Independent Directors, are satisfied that the services provided by PMC will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18287 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35990; File No. SR-NASD–95–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Mediation of Disputes

July 19, 1995.

On June 6, 1995,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2], and Rule 19b–4 thereunder.[3] The proposed rule change amends the Code of Arbitration Procedure ("Code")[4] by adding a new Part IV to set forth rules to govern the administration of mediation proceedings ("Mediation Rules") and by amending Sections 37, 43 and 44 of the Code[5] to add fee and other provisions relating to the administration of mediation proceedings.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35830, June 9, 1995) and by publication in the **Federal Register** (60 FR 31522, June 15, 1995). No comment letters were received. This order approves the proposed rule change.

More than 5,500 arbitration cases were filed with the NASD in calendar year 1994, which represents 82 percent of all securities arbitrations filed in all arbitration for a combined (including the American Arbitration Association) and 86 percent of all arbitrations filed with self-regulatory organizations. The volume of arbitration cases has been growing dramatically since the U.S. Supreme Court recognized the enforceability of predispute arbitration agreements with respect to claims arising under the Act[6] and under the Securities Act of 1933.[7]

As the volume of arbitrations has increased, cases have grown more complex and time-consuming such that some of the advantages of arbitration as a low cost and swift alternative to litigation are disappearing. This has led to interest in other forms of alternative dispute resolution that may be less expensive than adversarial proceedings in arbitration or in court. A goal of mediation is to explore and come to a settlement of an outstanding dispute without resort to adversarial adjudication.

Amendments to Existing Rules

Record of Sessions. Section 37 of the Code has been amended by adding a new paragraph (b) to prohibit keeping a verbatim record of any mediation session conducted pursuant to the proposed rules. The NASD believes that a verbatim record is not consistent with the methods of mediation: a free-flowing and confidential exchange of views, opinions, proposals and admissions.

Fees. Sections 43 and 44 of the Code have been amended to include fees for NASD mediation sessions. The administrative fees of the NASD set forth in new Subsection 43(i) and 44(j) for administering a mediation will be charged only when there is no Association arbitration pending. When there is no arbitration pending, the NASD will charge each party $150 under new Subsection 43(i) to administer the mediation of a public customer matter and will charge each party $250 under new Subsection 44(j) to administer the mediation of an industry matter.

The fees will be assessed for each matter submitted to mediation. Pursuant to new Section 51, discussed below, a matter is deemed submitted to mediation when the Director of Mediation[8] has received an executed mediation Submission Agreement from all parties.[9]

In addition, new Subsections 43(j) and 44(k) obligate the parties to pay all of the mediator's charges, including travel and other expenses. The Submission Agreement will set forth the mediator's charges and these charges will be apportioned equally among the parties unless they agree otherwise. The NASD will estimate initially the mediator's charges based on the anticipated length of the session or sessions. The parties will be required to deposit their proportional share of such estimated charges with the NASD prior to the first mediation session.

The NASD's standard mediator charges will be $150 per hour, although the parties may agree to pay different charges for a particular mediator. The NASD intends to make its best efforts to make mediators available at the specified hourly rate; however, some qualified mediators may decline to serve unless compensated at a higher rate.

Finally, the mediator's hourly fee for joint sessions (except for the first session) and separate sessions will be assessed for each half hour or portion thereof. In addition, the mediator's hourly rate for separate meetings will be apportioned equally among all parties without regard to the actual amount of time each party has spent with the mediator because all parties should benefit equally from the mediator's efforts in meeting with each party even if the mediator spends more time with one than the other.

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[1] The NASD amended the proposed rule change subsequent to its original filing on May 19, 1995. Amendment No. 1 was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC (June 2, 1995).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] NASD Manual, Code of Arbitration Procedure, (CCH) ¶¶3701 *et seq.*

[5] NASD Manual, Code of Arbitration Procedure, Part III, Secs. 37, 43 and 44, (CCH) ¶¶3737, 3743, 3744.

[6] *Shearson/American Express, Inc.* v. *McMahon*, 482 U.S. 220 (1987).

[7] *Rodriguez de Quijas* v. *Shearson/American Express, Inc.* 490 U.S. 477 (1989).

[8] New Section 50 provides for the appointment of a Director of Mediation ("Director") to administer mediations. See infra text accompanying n. 10.

[9] The NASD is developing a standard form mediation Submission Agreement. A copy of the Submission Agreement will be provided to all parties.

Mediation Rules

General Scope and Authority. New Section 50 establishes the scope and authority of the Mediation Rules. This Section provides that the Mediation Rules will apply to mediations administered by the Association and calls for the designation of a Director to administer mediations. Section 50 also specifies that the Director will consult the National Arbitration Committee ("Committee") on administering the NASD mediation program. The Committee, as necessary, may make recommendations concerning the administration of the mediation program to the Director and recommend amendments to the rules to the NASD Board. Finally, Section 50 states that neither any mediator nor the NASD shall have any authority to compel a party to submit to mediation or to settle a matter. This last provision is intended to clarify the voluntary nature of mediation.[10]

Submission of Eligible Matters. New Section 51 provides that any matter, or part of a matter (such as procedural issues), eligible for arbitration under the Code may be mediated. The Director has the sole authority to determine the eligibility of any particular matter for mediation. New Section 51 also provides that a matter will be deemed submitted when the Director has received an executed mediation Submission Agreement from each party. The submission of a matter will trigger the obligation to pay applicable fees and will trigger the NASD's activities in finding a mediator and making arrangements for facilities for the mediation.

As noted above, the NASD has stated that it intends to solicit participation in mediation by approaching parties to arbitration cases to advise them about mediation, explain the program and its merits and explore whether mediation might meet the needs of the parties. Parties may volunteer to mediate a matter even if the Director has not solicited indications of interest in mediation. If a party expresses interest in mediating a matter, the Director will seek commitments to participate from other parties. If commitments are obtained from all parties, either orally or in writing, the Director will forward a mediation Submission Agreement to the parties for execution.

Stay or Delay of Arbitration Pending Mediation. New Section 52 provides that any arbitration pending at the time of a mediation will not be stayed or delayed unless the parties agree. This provision is intended to prevent gamesmanship through the use of mediation as a delaying tactic.

Mediator Selection. New Section 53 provides for the appointment of mediators and permits parties to select a mediator from a list supplied by the Director, or to obtain, on their own, a non-NASD mediator. If the parties do not act to select a mediator, the Director will assign a mediator. The parties also will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator. Section 53 also requires mediators to comply with the same background disclosure requirements as arbitrators.[11]

Finally, new Subsection 53(c) prohibits a mediator from serving as an arbitrator or from representing any party to a mediation in any subsequent arbitration proceeding relating to the subject matter of the mediation. A mediator functions as a third party neutral who assists parties in exploring the strengths and weaknesses of their case. Mediation can function effectively only if parties can fully trust the mediator to provide impartial guidance and not to divulge confidential information disclosed. Parties are unlikely to trust a mediator if that mediator is permitted to serve as an arbitrator or represent a party to a mediation in a subsequent adversarial proceeding relating to the subject matter of the mediation. With respect to judicial proceedings, state law, attorney codes of ethics, and mediator codes of conduct[12] should provide sufficient protection for parties in judicial forums.

Liability Limitation. New Section 54 provides for the limitation of liability of mediators, the Association, and its employees, for any act or omission in connection with a mediation administered by the NASD under the rules.

Ground Rules. New Subsection 55(a) states that Section 55 sets forth standard Ground Rules governing mediations and permits the parties to amend any of the Ground Rules at any time. The Subsection also provides that the Ground Rules are intended to be standards of conduct for the parties and for the mediation. Parties will be able to tailor the ground rules governing their mediation to meet their needs.

New Subsection 55(b) states that mediation is voluntary and that parties may withdraw from a mediation at any time prior to the execution of a settlement agreement by giving written notice of withdrawal to the mediator, the other parties, and the Director. This provision is intended to clarify that, while the goal of mediation is to explore and settle outstanding disputes, if possible, the proposed rules are process oriented, not result oriented. Mediation is wholly voluntary and any party may withdraw from a mediation at any time and for any reason, or for no reason at all.

New Subsection 55(c) establishes that the mediator's role is to act as a neutral and impartial facilitator, without authority to impose decisions or a settlement on the parties.

New Subsection 55(d) requires that the parties and their representatives meet jointly with the mediator, in person or by conference call as determined by the mediator or by mutual agreement of the parties. The mediator will facilitate through joint sessions, caucuses and/or other means, discussions between the parties on the subject matter of the mediation.

New Subsection 55(d) also provides that the mediator will determine the procedure for the mediation. Under this subsection, parties would agree to cooperate with the mediator in conducting the mediation expeditiously, to make reasonable efforts to be available for mediation sessions, and to be represented at all sessions either in person or by a representative with authority to settle the matter. This subsection is intended to avoid common obstacles to expeditious, effective mediation and it sets forth rules that are intended to prevent gamesmanship and discourage dilatory conduct.

New Subsection 55(e) permits the mediator to meet with and communicate separately with each party, provided the mediator notifies the other parties. This is intended to permit the mediator to pursue a candid discussion with all parties of the issues and priorities in the dispute and the strengths and weaknesses of their positions. However, Subsection 55(g), discussed below, bars the mediator from disclosing one party's

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[10] The NASD has stated that it intends to solicit participation in mediation by approaching parties to arbitration cases to advise them about mediation, explain the program and its merits and explore whether mediation might meet the needs of the parties. These efforts are intended to increase the number of matters submitted to mediation and reduce the number of matters submitted to arbitration.

[11] See NASD Manual, Code of Arbitration Procedure, Part III, Sec. 23, (CCH) ¶ 3723.

[12] The American Bar Association ("ABA") is considering draft mediator standards of conduct. Draft Standard III states in pertinent part that "[w]ithout the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process."

confidential information to another party without authorization.

New Subsection 55(f) sets forth the goal of mediation—to explore and come to a good faith settlement of an outstanding dispute without resort to adversarial adjudication. This Subsection also permits parties to negotiate directly outside the mediation process.

New Subsection 55(g) provides that mediation is intended to be private and confidential. This Subsection obligates the parties and the mediator not to disclose or otherwise communicate anything disclosed during the mediation in any other proceeding, unless authorized by all other parties to the mediation. The Subsection permits disclosure if compelled by law, which provides for situations when a party is subpoenaed or when there are regulatory requirements, such as the disclosures required in Form U–4 or under Article IV, Section 5 of the Rules of Fair Practice.[13] This Subsection also provides expressly that the fact that a mediation occurred is not confidential.

New Subsection 55(g) also makes clear that the confidentiality provisions will not operate to shield from disclosure documentary or other information that the Association or any other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities. Accordingly, the fact that documentary or other information had been disclosed during the course of a mediation would not render it confidential or shield it from disclosure to the NASD or an opposing party in civil litigation where it otherwise would be available to these parties.

In addition, the Subsection bars the mediator from disclosing one party's confidential information to another party without authorization, which memorializes a standard practice of mediators.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[14] because the rule change will protect investors and the public interest by providing a voluntary alternative to adversarial adjudication of disputes that may result in lower-cost, quicker resolution of disputes. The proposed rule change approved today provides a forum for a non-binding discussion by all interested parties, and a form of dispute resolution that can be more effective than direct negotiations and that increases the likelihood of early settlement of a dispute at cost savings.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–NASD–95–25 be, and hereby is, approved, effective August 1, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18285 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[13] NASD Manual, Rules of Fair Practice, Art. IV, Sec. 5 (CCH) ¶ 2205.

[14] 15 U.S.C. 78o–3.

[(Release No. 34–36000; File No. SR–CHX–95–16)]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading Floor Dress Code

July 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 6, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and amended such proposed rule change on July 12, 1995,[2] as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add interpretation and policy .03 to Rule 3 of Article XII of the Exchange's rules relating to the Exchange's dress code.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article XII, Rule 3, interpretation and policy .01, provides that violations of the Exchange's dress code are Class B violations of the exchange's decorum rules.[3] The CHX dress code, which has been in existence for many years, is not codified in the Exchange's rules. The purpose of the proposed rule change is to incorporate the existing CHX dress code into the Exchange's rules as a formal interpretation and policy.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[4] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is consistent with Section 6(b)(6) of the Act[5] in that it will assist the Exchange in appropriately disciplining its members and persons associated with its members for violations of the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 corrected a citation in the original filing to one of the Exchange's rules and referenced Section 6(b)(6) of the Act as a statutory basis for the proposed rule change. See letter from David T. Rusoff, Esq., Foley & Lardner, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC (July 11, 1995).

[3] Chicago Stock Ex. Guide (CCH) ¶1613 (Sept. 1994). A member whose violative conduct is classified as a Class B offense may be fined summarily an amount not to exceed $100.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C.78f(b)(6).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[8] 17 CFR 200.30–3(a)(12).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Chicago Stock Exchange. All submissions should refer to File No. SR–CHX–95–16 and should be submitted by August 16, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18339 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35999; File No. SR–Phlx–95–41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Reducing the Value of the Semiconductor Index

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on June 5, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to reduce the value of its Semiconductor Index ("Index") option ("SOX") to one-half its present value.[1] The Index is a price-weighted industry index designed by the Exchange, composed of 16 highly capitalized and widely held stocks representing the semiconductor industry. The other contract specifications for the SOX remain unchanged.

The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange began trading the SOX in September , 1994.[2] The Index value was created with a value of 200 on its base date of December 1, 1993, which rose to 237 in July, 1994, shortly before the time it began trading on the Phlx. Currently, the index value is 427 (on May 31, 1995). Thus, the value has doubled over the course of less than two years. Consequently, the premium for SOX options has also risen.

As a result, the Exchange proposes to conduct a "two-for-one split" of the Index, such that the value would be reduced by one-half. The number of SOX contracts will be doubled, such that for each SOX contract currently held, the holder would receive two contracts at the reduced value, with a strike price one-half of the original strike price. For instance, the holder of a 290 SOX call will receive two 145 SOX calls. In addition to the strike price being reduced by one-half, the position and exercise limits applicable to the SOX will be doubled, from 7,500 contracts to 15,000 contracts until the last expiration then trading.[3] This procedure is similar to the one employed respecting equity options where the underlying security is subject to a two-for-one stock split. The trading symbol will remain as SOX.

In conjunction with the split, the Exchange will list strike prices surrounding the new, lower index value, pursuant to Phlx Rule 1101A. The Exchange will announce the effective date by way of an Exchange memorandum to the membership, also serving as notice of the strike price and position limit changes.

The purpose of the proposal is to attract additional liquidity to the product in those series that public customers are most interested in trading. For example, a near-term, at-the-money call option series currently trades at approximately $1,200 per contract. The Exchange believes that certain investors and traders may currently be impeded from trading at such levels. With the Index split, that same option series (once adjusted), with all else remaining equal, could trade at approximately $600 per contract. The Exchange believes that this reduced premium value should encourage additional investor interest.

The Exchange believes that SOX options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the underlying semiconductor stocks. By reducing the value of the Index, such investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, as well as

[1] The Exchange will accomplish this reduction in value by doubling the divisor used in calculating the Index. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx, and James T. McHale, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, on July 12, 1995.

[2] Securities Exchange Act Release No. 34546 (August 16, 1994), 59 FR 43881 (August 25, 1994).

[3] According to the Exchange, this will be in March, 1996. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx, and James T. McHale, Attorney, MOS, Division, Commission, on July 19, 1995.

to protect investors and the public interest, by establishing a lower index value, which should, in turn, facilitate trading in SOX options. The Exchange believes that reducing the value of the Index does not raise manipulation concerns and would not cause adverse market impact, because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the index split.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act in order to implement the change for the July expiration.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[4] Specifically, the Commission believes that reducing the value of the Index will serve to promote the public interest and help to remove impediments to a free and open securities market, by providing a broader range of investors with a means of hedging exposure to market risk associated with securities representing the semiconductor industry. Further, the Commission notes that reducing the value of SOX contracts should help attract additional investors, thus creating a more active and liquid trading market. The Commission also notes that the Phlx proposes to provide market participants with adequate prior notice of the Index level change in order to avoid investor confusion. Moreover, the Commission believes that the Phlx's position and exercise limits and strike price adjustments are appropriate and consistent with the Act. In this regard, the Commission notes that the position and exercise limits and strike price adjustments are identical to the approach used to adjust outstanding options on stocks that have undergone a two-for-one stock split.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register** to allow the Phlx to reduce the value of the Index without further delay. The Commission notes that the Index has increased in value dramatically over the last two years, which has caused a resulting increase in the SOX contract premium. The high contract premium could adversely affect liquidity in the SOX. The Commission believes that because the only change to be made to the actual Index is the adjustment in its value, it is appropriate to allow the Phlx to quickly address its SOX liquidity concerns, and accordingly finds that it is consistent with Section 19(b)(2) of the Act[5] to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–41 and should be submitted by August 16, 1995.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Phlx–95–41), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18340 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[Release No. 34–36002; File No. SR–MSTC–95–08]

Self-Regulatory Organizations; the Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Procedures for the Destruction of Expired Rights and Warrants

July 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] ("Act"), notice is hereby given that on May 24, 1995, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by MSTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes to add a new section 3 to Rule 1 of Article VI of its rules to establish procedures for the orderly destruction of certain expired rights and warrants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add a new section 3 to Article 1, Rule 1 of MSTC's rules to establish procedures for the orderly destruction of certain expired rights and warrants. MSTC proposes this rule change in order to reduce the burden and cost of maintaining expired warrants and rights in its vault.

MSTC will adhere to the following procedures relating to expired rights and warrants. First, MSTC shall contact the transfer agent or the issuer of the securities after their expiration date to verify that the respective warrants or rights have expired. Second, MSTC will obtain written confirmation from the transfer agent or the issuer that the certificates representing such warrants or rights have expired. If there is no transfer agent, MSTC personnel shall exercise all reasonable due diligence to confirm that the respective certificates have expired. Third, MSTC will notify participants of the following: (1) That according to the judgment of the transfer agent or in the event that a transfer agent does not exist of other appropriate parties, the securities certificates are expired; (2) that MSTC will delete such securities positions from participants' accounts on or after the thirtieth day following the date of the notice; and (3) that MSTC shall appropriately mark the securities certificates and destroy them. At MSTC's discretion, it may retain copies of the certificates on microfilm or on other media.

MSTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the proposal will assure the safeguarding of securities or funds in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MSTC will notify the Commission of any written comments received by MSTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on May 24, 1995, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[3] of the Act and Rule 19b–4(e)(6)[4] thereunder. In particular, the Commission believes the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–95–08 and should be submitted by August 16, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18337 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by MSTC.

[3] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[4] 17 CFR 240.19b–4(e)(6) (1994).

[5] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36001; File No. SR–NYSE–95–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Amendments to Rules 600 (Arbitration), 619 (General Provision Governing Subpoenas, Production of Documents, etc.), 629 (Schedule of Fees), and 637 (Failure to Honor Award)

July 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 26, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Rule 600(d)(iii) clarifies that all class actions, including claims involving members, allied members, member organizations, and associated persons are ineligible for submission to arbitration. The proposed amendment to Rule 619(c) provides that parties may provide a list of documents they intend to present at the hearings in lieu of exchanging copies of documents that have already been produced. The proposed amendment to Rule 619(c) further requires that the list identifying witnesses include the address and business affiliation of the witnesses listed. In addition, Rule 619(c) would now require prehearing exchanges to occur twenty days in advance of the hearing, instead of ten days in advance as is presently required. The proposed amendment to Rule 629(e) provides that the filing fee for an industry party shall be $500 when the dispute does not specify a money claim. The proposed amendment to Rule 637 provides that the failure of a member, allied member, registered representative, or member organization to honor an arbitration award, including those issued at another self-regulatory organization or by the American Arbitration Association, shall subject the member, allied member, registered representative, or member organization to disciplinary proceedings

[1] 15 U.S.C. 78s(b)(1).

at the Exchange or to the imposition of a fine by way of a summary proceeding.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule changes are based primarily on proposals developed by the Securities Industry Conference on Arbitration. The purpose of the proposed change to Rule 600(d)(iii) is to make it clear that under this rule all class action claims involving members, allied members, member organizations, and associated persons are ineligible for submission to the Exchange's arbitration facility. The proposed amendment to Rule 619(c) allows parties to provide a list of documents that have been produced previously to the other side. This would provide for more efficient prehearing exchanges by not requiring the parties to again exchange those documents that have been produced previously. This proposal also provides that the list identifying witnesses include the address and business affiliation of the witnesses listed. This would allow the parties to receive advance notice as to the background of witnesses and the location of nonparty witnesses. In addition, the proposed amendment to Rule 619(c) requires prehearing exchanges to occur twenty days in advance of the hearing, instead of ten days as is presently required. This part of the proposal would serve to avoid surprise and provide the parties with time to organize and present their cases in an efficient manner. The proposed amendment to Rule 629(e) provides that the filing fee for an industry party shall be $500 when the dispute does not specify a money claim. This would unify the filing fee for all industry claims at $500. The proposed amendment to Rule 637 provides that the failure of a member, allied member, registered representative, or member organization to honor an arbitration award, including those issued at another self-regulatory organization or by the American Arbitration Association, shall subject the member, allied member, registered representative, or member organization to disciplinary proceedings at the Exchange or to the imposition of a fine by way of a summary proceeding. This would establish the enforceability of arbitration awards issued by other self-regulatory organizations and by the American Arbitration Association.

2. Statutory Basis

The proposed rule changes are consistent with Section 6(b)[2] of the Act in general and furthers the objectives of Section 6(b)(5)[3] in particular in that they are designed to promote just and equitable principles of trade by ensuring that members, member organizations, and the public have an impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule changes will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR–NYSE–95–25 and should be submitted by August 16, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18338 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2783; Amdt 2]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective July 13, 1995, to include the following counties in the State of Missouri as a disaster area due to damages caused by severe storms, hail, tornadoes, and flooding beginning on May 13, 1995 and continuing through June 23, 1995: Barton, Cass, Dallas, Nodaway, Saline, St. Francis, Stone, and Sullivan.

In addition, applicants for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Christian, Greene, Iron, Madison, Mercer, Taney, and Webster Counties in Missouri; Boone County in Arkansas; and Taylor County in Iowa.

Any counties contiguous to the above-named primary countries and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 11, 1995, and for loans for economic injury the deadline is March 12, 1996.

The economic injury numbers are 853400 for Missouri, 853900 for Iowa, and 855400 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 20, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–18341 Filed 7–25–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2775 Amendment #2]

Louisiana; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective July 14, 1995, to extend the deadline for filing applications for physical damages as a result of this disaster. The new deadline is August 10, 1995.

The termination date for filing applications for loans for economic injury remains February 12, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 20, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–18342 Filed 7–25–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2798]

West Virginia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 12, 1995, and an amendment thereto on July 18, I find that Mercer, Mineral, and Nicholas Counties in the State of West Virginia constitute a disaster area due to damages caused by severe storms, heavy rain and flash flooding beginning on June 23, 1995 and continuing through June 28, 1995. Applications for loans for physical damages may be filed until the close of business on September 11, 1995, and for loans for economic injury until the close of business on April 12, 1996, at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Braxton, Clay, Fayette, Grant, Greenbrier, Hardy, McDowell, Monroe, Raleigh, Summers, Webster, and Wyoming Counties in West Virginia, and Tazewell County in Virginia.

Any counties contiguous to the above-named counties and not listed herein have been previously declared in a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 279806. For economic injury the numbers are 857100 for West Virginia and 856100 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 20, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–18343 Filed 7–25–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended July 14, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–312.

Date filed: July 11, 1995.

Parties: Members of the International Air Transport Association.

Subject: COMP Reso/C 0626 dated March 7, 1995, Standard Revalidating Resolutions 002, Correction—COMP Reso/C 0636 dated April 13, 1995.

Proposed Effective Date: October 1, 1995.

Docket Number: OST–95–313.

Date filed: July 11, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 746, Introduce Osaka-Guangzhou fares, r-1—0431, r-4—063ii, r-7—087k, r-2—053i, r-5—076t, r-8—092f, r-3—063i, r-6—085hh, r-9—092v.

Proposed Effective Date: August 1, 1995.

Docket Number: OST–95–319.

Date filed: July 13, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 745, Japan-Korea fares r-1 to r-9.

Proposed Effective Date: July 25, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–18267 Filed 7–25–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on August 9, 1995, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexander, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Louis C. Cusimano, Assistant Executive Director for General Aviation Operations, Flight Standards Service (AFS–800), 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–8452; FAX: (202) 267–5094.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations issues. This meeting will be held on August 9, 1995, at 9:30 a.m., at the Helicopter Association International, 1635 Prince Street, Alexandria, VA. The agenda for this meeting will include status reports from the part 103 (Ultralight Vehicles) Working Group and the VHS Navigation and Communications Working Group. In

addition, the IFR Fuel Requirements/ Destination and Alternate Weather Minimums Working Group will present a revised concept briefing at the meeting, and the ARAC members will vote whether or not the working group should include the revised concept when it drafts its recommendation. Members of the public may contact Cindy Herman, ARM–108, Federal Aviation Administration, 800 Independence Avenue, S.W. Washington, DC 20591, (202) 267–7627, fax (202) 267–5075 to obtain a copy of the briefing prior to the meeting.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on July 19, 1995.

Roger M. Baker, Jr.,

Acting Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–18384 Filed 7–25–95; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–922]

OMI Patriot Transport, Inc., et al.; Application for Modification of Operating-Differential Subsidy Agreements

By application of April 27, 1995, pursuant to Title VI of the Merchant Marine Act, 1936, as amended, and Article II–25 of Operating-Differential Subsidy Agreements (ODSAs) No. MA/MSB–167 (a), (b), (c) and (d), OMI Patriot Transport, Inc., OMI Courier Transport, Inc., and OMI Rover Transport, Inc. requested approval for modification of Article I–3(a) of the ODSAs to incorporate the OMI COLUMBIA in the ODSAs and approval to include the OMI COLUMBIA in an Operating-Differential Subsidy (ODS) sharing system among the vessels named in the ODSAs. The vessels currently named in the ODSAs, under an ODS sharing arrangement are the COURIER, PATRIOT, RANGER, ROVER, OMI MISSOURI, and OMI SACRAMENTO.

The OMI COLUMBIA, which is owned by OMI Challenger Transport, Inc., is a 138,698 DWT U.S.-flag crude oil tanker that began operating in 1983 on a time charter basis in the Alaska North Slope crude oil trade, following its reconstruction and documentation under U.S.-flag pursuant to the Wrecked Vessel Act (46 app. U.S.C. 14). The applicants note that for the last two years, however, the OMI COLUMBIA has been operating in the spot market and has been in laid up status for most of that time.

The applicants believe that a subsidy sharing arrangement for the OMI COLUMBIA would result in critically needed operating flexibility for the vessel. The OMI COLUMBIA is a highly efficient, diesel powered vessel that could compete effectively in the foreign trade with subsidy. The applicants point out that the entry of the OMI COLUMBIA into the foreign trade would enhance the presence of the U.S.-flag fleet in a trade where the U.S.-flag presence is far too small. Furthermore, the expansion of U.S.-flag service in the foreign commerce is the primary goal of the ODS program and one that would be furthered by permitting the OMI COLUMBIA to be incorporated into the subsidy sharing agreement enjoyed by other OMI-owned vessels.

At a time when the U.S. merchant marine is fighting to remain strong and competitive, the applicants aver that every permitted use of available subsidy should be allowed. In the applicant's view, no statutory restriction limits subsidy to tank vessels under 100,000 DWT; the restriction is a matter of informal policy only. The applicants maintain that circumstances have changed markedly, providing a substantial basis for modification of the deadweight limitation policy.

The applicants' position is that the modification needed is modest. The deadweight tonnage of the OMI COLUMBIA is not significantly higher than the informal limitation. In addition, the total amount of subsidy to be paid is not increased by this contract modification. Consequently, the subsidy is simply used to maintain another U.S.-flag vessel in active service in the U.S. merchant marine.

Granting the OMI COLUMBIA subsidy sharing rights, the applicants conclude, will enable the OMI COLUMBIA to enhance U.S.-flag service in the foreign trade and will help maintain a trained base of U.S. seafarers.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on Aug. 2, 1995. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Subsidy Board.
Dated: July 21, 1995.

Joel C. Richard,

Secretary.

[FR Doc. 95–18379 Filed 7–25–95; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 95–57; Notice 1]

General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, has determined that some of its vehicles fail to comply with the requirements of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps Reflective Devices, and Associated Equipment," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301-"Motor Vehicle Safety" on the basis that the noncompliance in inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In FMVSS No. 108, Paragraph S5.5.10(d) requires that "all other lamps [not mentioned in Paragraphs S5.510(a–c) which includes all stop lamps such as enter high-mounted stop lamps (CHMSLs)] shall be wired to be steady-burning."

During the 1995 model year, GM manufactured a total of 96,607 GMC and Chevrolet Suburban, GMC Yukon, and Chevrolet Tahoe vehicles that have CHMSLs that were inadvertently wired in a manner which permits the CHMSLs to momentarily flash under certain conditions while the driver is in the process of activating or deactivating the hazard flashers. As a result, they do not meet the requirement stated in Paragraph S5.5.10(d) that they be "wired to be steady-burning." While GM designed the subject vehicles to meet this requirement, it subsequently discovered a transient contact condition inside the multi-function (brake lamp, CHMSL, turn signal, and hazard flasher) switch which occasionally causes the CHMSL to flash while the driver is in the process of turning the hazard flasher switch "on" or "off." The error was corrected in production in March 1995 by adding a brake lamp relay to the I/P harness to provide isolation from the multi-function switch transient.

GM supports its application for inconsequential noncompliance with the following:

The CHMSL preforms properly at all times when the service brakes are applied. The transient condition will not occur if the service brakes are applied when the driver activates or deactivates the hazard flasher switch. Therefore, the CHMSL will not flash when it is required to be steady-burning. The CHMSL will not flash if the ignition switch is in the "off" position. Thus, the condition will not occur if the hazard flashers are turned "off" or "on" when the ignition is off and the vehicle is parked at the side of the road, for example.

If the CHMSL flashes at all, it will illuminate a maximum of three times during the transient condition, with each pulse lasting 0.5 [millisecond (ms)] to 4.0 ms. The entire unintended event, in its worst case, lasts no more than 125.8 ms. This extremely short duration is likely to go entirely unnoticed by following drivers in many instances. In the event that it is noticed, it is not likely to be confused with anything other than the hazard flashers. Since the flashers will be activated while the unintended condition occurs, but the brake lamps will not be, this will not present a safety risk.

The CHMSL otherwise meets all of the requirements of FMVSS 108.

In a 1989 interpretation, NHTSA discussed the difference between the requirements that stop lamps be steady-burning and hazard warning lights flash. NHTSA explained:

Standard No. 108 requires stop lamps to be steady-burning, and hazard warning signal lamps to flash (generally through the turn signal lamps). The primary reason for the distinction is that the stop lamps are intended to be operated while the vehicle is in motion, while hazard warning lamps are intended to indicate that the vehicle is stopped. Each lamp is intended to convey a single, easily recognizable signal. If a lamp which is ordinarily steady burning begins to flash, the agency is concerned that the signal will prove confusing to motorists, thereby diluting the effectiveness.

August 8, 1989 letter from S.P. Wood, Acting Chief Counsel, NHTSA, to L.P. Egley

While this condition technically causes a lamp which is ordinarily steady burning to begin to flash, it will not likely "prove confusing to motorists, thereby diluting its effectiveness," because it will not occur if the service brakes are applied. Even if the condition were mistaken for a brake signal (which is doubtful since CHMSLs do not flash with brake lamp activation), the following driver would not likely react to it. According to recent research studies conducted by GM, as well as field data, it takes a following driver at least 0.5 seconds to react to a signal and apply the service brakes once [a] preceding vehicle's brake lamps are activated. Given the extremely short duration of the transient CHMSL condition, the misinterpreted signal would be gone long before the following driver could respond.

Hazard flashers are not frequently used. Thus, the exposure of following drivers to the noncompliant condition would be very limited. This is particularly true because of the transient nature of the condition, its short duration, and the fact that it will not occur at all if the service brakes are applied or the vehicle's ignition is off.

GM is not aware of any accidents, injuries, owner complaints, or field reports related to this condition.

Interested persons are invited to submit written data, views, and arguments on the application of GM described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 25, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 21, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–18383 Filed 7–25–95; 8:45 am]

BILLING CODE 4910–59–P–M

DEPARTMENT OF THE TREASURY

Customs Service

Privacy Act of 1974: Altered System of Records

AGENCY: Customs Service, Treasury.

ACTION: Notice of altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the United States Customs Service gives notice of an altered Privacy Act system of records, Internal Security Records System—Treasury/Customs .127. The title, as amended, will be Internal Affairs Record System—Treasury/Customs .127.

DATES: Comments must be received no later than August 25, 1995. The altered system of records will be effective September 5, 1995, unless comments are received which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments will be made available at the Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Peterson, Chief, Disclosure Law Branch, Office of Regulations and Rulings, (202) 482–6970.

SUPPLEMENTARY INFORMATION: This report is to give notice of an altered U.S. Customs Service system of records entitled "Internal Security Records System—Treasury/Customs .127" which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

The Customs Service is amending its present system of records covering personnel and administrative records for the following reasons:

1. To more fully describe, by the addition of photographic images, the records about the individual in the system,

2. To show additional categories of individuals covered by the system.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities

for Maintaining Records About Individuals, dated July 15, 1994.

The proposed altered system of records, Treasury/Customs .127 Internal Affairs Records System is published in its entirety below.

Dated: July 18, 1995.

Alex Rodrigues,

Deputy Assistant Secretary Administration.

Treasury/Customs .127

SYSTEM NAME:

INTERNAL AFFAIRS RECORDS SYSTEM—TREASURY/CUSTOMS.

SYSTEM LOCATION:

Security Programs Division, Office of Internal Affairs, 1301 Constitution Avenue NW., Washington, DC 20229–0004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and past employees; contractor applicants/employees; and applicants for positions that require an investigation; and others that are principals or non-principals in an investigation or integrity issue.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background investigations, integrity investigations, and photographic images.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Treasury Department Order Number 165, revised, as amended.

PURPOSE(S):

To maintain all records on applicants, employees, contractors, and contractor applicants relating to investigations conducted by Internal Affairs, and to support personnel and administrative programs of the Customs Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Investigative records are maintained in computers, as well as in file folders, in metal security cabinets secured by government approved three-position combination locks, and in a mobile filing system within a secured area that is alarmed with motion detectors.

RETRIEVABILITY:

These records are indexed by name and/or numerical identifier in a manual filing system and/or computerized system.

SAFEGUARDS:

In addition to being stored in secured metal containers with government approved combination locks, mobile filing system, etc., the containers are located in a locked, alarmed room, the keys of which are controlled and issued to the custodians of the files. The security specialists and administrative personnel who maintain the files are selected for their experience and afforded access only after having been cleared by a full-field background investigation and granted appropriate security clearances for critical sensitive positions. Those departmental officials who may occasionally be granted access consistent with their positions to employ and concur in the granting of security clearances have also been investigated prior to filling critical-sensitive positions.

RETENTION AND DISPOSAL:

The file records are maintained as long as the subject of the investigation is employed by the U.S. Customs Service and then for 1 year after the subject terminates employment. The files are then transferred to the Federal Records Center for retention. After transfer, records are retained by the Federal Records Center for the following period of time and then destroyed: Background Investigations—15 years; Conduct and Special Inquiry Investigations—25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Programs Division, Office of Internal Affairs, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229–0004.

NOTIFICATION PROCEDURE:

See Customs Appendix A (57 FR 14007, April 17, 1992).

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Sources of information are: Employers; educational institutions; police; government agencies; credit bureaus; references; neighborhood checks; confidential sources; medical sources; personal interviews; photographic images, military, financial, citizenship, birth and tax records; and the applicant's, employee's or contractor's personal history and application forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4), (G), (H) and (I), (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5).

[FR Doc. 95–18346 Filed 5–25–95; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

July 18, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0020.
Form Number: IRS Form 709.
Type of Review: Extension.
Title: United States Gift (and Generation-Skipping Transfer) Tax Return.
Description: Form 709 is used by individuals to report transfers subject to the gift and generation-skipping transfer taxes and to compute these taxes. IRS uses the information to enforce these taxes and to compute the estate tax.
Respondents: Individuals and households.
Estimated Number of Respondents/Recordkeepers: 110,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 40 minutes
Learning about the law or the form: 59 minutes
Preparing the form: 1 hour, 43 minutes
Copying, assembling, and sending the form to the IRS: 1 hour, 3 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 484,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–18288 Filed 7–25–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 19, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0575.

Form Number: IRS Form 5330.
Type of Review: Extension.
Title: Return of Excise Taxes Related to Employee Benefit Plans.
Description: Internal Revenue Code (IRS) sections 4971, 4972, 4973(a), 4975, 4976, 4977, 4978, 4978A, 4978B, 4979, 4979A, and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes.
Respondents: Business or other for-profit, individuals or households.
Estimated Number of Respondents/Recordkeepers: 8,403.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping 16 hours, 59 minutes
Learning about the law or the form 7 hours, 56 minutes
Preparing the form 8 hours, 34 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 281,416 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–18289 Filed 7–25–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 19, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0181.
Form Number: IRS Form 4768.
Type of Review: Extension.
Title: Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.
Description: Form 4768 is used by estates to request an extension of time to file an estate (and GST) tax return and/or to pay the estate (and GST) taxes and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.
Respondents: Individuals or households, business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 18,500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 13 min.
Learning about the law or the form: 16 min.
Preparing the form: 22 min.
Copying, assembling, and sending the form to the IRS: 20 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 22,015 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–18290 Filed 7–25–95; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "A Great Heritage: Renaissance and Baroque Drawings from Chatsworth" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of

[1] A copy of this list may be obtained by contacting Mrs. Carol B. Epstein, Assistant General Counsel, at 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001.

Art from on or about October 8, 1995, through December 31, 1995; the Pierpont Morgan Library, New York, N.Y., from on or about January 18, 1996 through April 21, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: July 20, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–18393 Filed 7–25–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 143

Wednesday, July 26, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATION COMMISSION

FCC To Hold Open Commission Meeting Friday, July 28, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, July 28, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No, Bureau, Subject

1—Wireless Telecommunications—Title: Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89–552); Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services (GN Docket No. 93–252) and Implementation of Section 309 (j) of the Communications Act—Competitive Bidding 220–222 MHz (PP Docket No. 93–253). Summary: The Commission will consider action concerning establishment of a new framework for the operations and licensing of the services in the 220–222 MHz band.

2—Mass Media and General Counsel—Title: Fox Television Stations, Inc., for Renewal of License of Station WNYW-TV, New York, New York (File No. BRCT–940201KZ). Summary: The Commission will consider further issues related to the application of Fox Television Stations, Inc.

3—Mass Media—Title: Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules (MM Docket No. 94–123). Summary: The Commission will consider modification of the Prime Time Access Rule (PTAR).

4—Mass Media—Title: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider action concerning several issues in its Advanced Television Proceeding.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated July 21, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc 95–18505 Filed 7–24–95; 3:11 pm]

BILLING CODE 6712–01–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 31, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18464 Filed 7–24–95; 1:42 pm]

BILLING CODE 6210–01–P

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federal register

Wednesday
July 26, 1995

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 400, 405, et al.

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1996; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 410, 411, 412, 413, 414, 415, 417, and 489

[BPD–827–P]

RIN 0938–AG96

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule discusses several policy changes affecting payment for physician services including:

- Medicare payment for physician services in teaching settings.
- Changes in calculating the default Medicare volume performance standard beginning in fiscal year 1996.
- Our efforts to implement the statutory requirement in the Social Security Act Amendments of 1994 to develop a resource-based system for practice expenses.

The rule would redesignate current regulations on teaching hospitals, on the services of physicians to providers, on the services of physicians in providers, and on the services of interns and residents. This redesignation would consolidate related rules affecting a specific audience in a separate part and, thereby, make them easier to use.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 25, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–827–P, P.O. Box 7519, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Before August 4, 1995

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

After August 6, 1995

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–827–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elizabeth Holland, (410) 966–1309 (after September 1, 1995, (410) 786–1309) (for all issues except those related to physician services in teaching settings). William Morse, (410) 966–4520 (after September 1, 1995, (410) 786–4520) (for issues related to physician services in teaching settings).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this preamble, we are providing the following table of contents. Some of the issues discussed in this preamble affect the payment policies but do not require changes to the regulations in the Code of Federal Regulations (CFR).

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K. Use of Category-Specific Volume and Intensity (VI) Growth Allowances in Calculating the Default Medicare Volume Performance Standard (MVPS)
L. Two Anesthesia Providers Involved in One Procedure
M. Rural Hospital Impact Statement

In addition, because of the many organizations and terms to which we refer by acronym in this final rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

AMA American Medical Association
ASC Ambulatory surgical center
CF Conversion factor
CFR Code of Federal Regulations
COBRA Consolidated Omnibus Budget Reconciliation Act
CPEP Clinical Practice Expert Panel
CPT [Physicians'] Current Procedural Terminology [4th Edition, 1994, copyrighted by the American Medical Association]
CRNA Certified Registered Nurse Anesthetist
CY Calendar year
DEFRA Deficit Reduction Act
EKG Electrocardiogram
ESRD End-stage renal disease
FQHC Federally Qualified Health Centers
FTE Full-Time Equivalent
FY Fiscal year
GAF Geographic adjustment factor
GPCI Geographic practice cost index
GPVS Group-Specific Volume Performance Standards
HCFA Health Care Financing Administration
HCPAC Health Care Professional Advisory Council
HCPCS HCFA Common Procedure Coding System
HHA Home health agency
HHS [Department of] Health and Human Services
I.L. Intermediary Letter
IPL Independent Physiological Laboratory
MAC Maryland Access to Care
ME Malpractice Expense
MVPS Medicare volume performance standards
NCI National Cancer Institute
OBRA Omnibus Budget Reconciliation Act
OMB Office of Management and Budget
ORA Omnibus Reconciliation Act
OTP Occupational Therapists in Independent Practice
PE Practice Expense
PMP Primary Medical Provider
PPS Prospective Payment System
PTIP Physical Therapists in Independent Practice
RCE Reasonable compensation equivalency
RFA Regulatory Flexibility Act
RFP Request for Proposal
RHC Rural Health Clinics
RUC [AMA Specialty Society] Relative [Value] Update Committee
RVU Relative Value Unit
SNF Skilled Nursing Facility
TEFRA Tax Equity and Fiscal Responsibility Act
TEG Technical Expert Group
VI Volume and Intensity

I. Background

A. Legislative History

The Medicare program was established in 1965 by the addition of title XVIII to the Social Security Act (the Act). Since January 1, 1992, Medicare pays for physician services under section 1848 of the Act, "Payment for Physicians' Services." This section contains three major elements: (1) A fee schedule for the payment of physician services; (2) a Medicare volume performance standard (MVPS) for the rates of increase in Medicare expenditures for physician services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense (PE), and malpractice expense (ME).

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs because of changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If this tolerance is exceeded, we must make adjustments to preserve budget neutrality.

B. Published Changes to the Fee Schedule

We published a final rule on November 25, 1991, (56 FR 59502) to implement section 1848 of the Act by establishing a fee schedule for physician services furnished on or after January 1, 1992. In the November 1991 final rule (56 FR 59511), we stated our intention to update RVUs for new and revised codes in the American Medical Association's (AMA's) Physicians' Current Procedural Terminology (CPT) through an "interim RVU" process every year. The updates to the RVUs and fee schedule policies follow:

- November 25, 1992, as a final notice with comment period on new and revised RVUs only (57 FR 55914).
- December 2, 1993, as a final rule with comment period (58 FR 63626) to revise the refinement process used to establish physician work RVUs and to revise payment policies for specific physician services and supplies. (We solicited comments on new and revised RVUs only.)
- December 8, 1994, as a final rule with comment period (59 FR 63410) to revise the geographic adjustment factor (GAF) values, fee schedule payment areas, and payment policies for specific physician services. The final rule also discussed the process for periodic review and adjustment of RVUs not less frequently than every 5 years as required by section 1848(c)(2)(B)(i) of the Act.

This proposed rule would affect the regulations set forth at 42 CFR part 400, which consists of an introduction to, and definitions for, the Medicare and Medicaid programs; part 405, which encompasses regulations on Federal health insurance for the aged and disabled; part 410, which consists of regulations on supplementary medical insurance benefits; part 414, which covers regulations on payment for Part B medical and other health services; and new part 415, which contains regulations on services of physicians in providers, supervising physicians in teaching settings, and residents in certain settings. We are making technical and conforming amendments to parts 411, 412, 413, 417, and 489.

II. Specific Proposals for Calendar Year (CY) 1996

A. Budget-Neutrality Adjustments for Relative Value Units (RVUs)

We make annual adjustments to RVUs for the physician fee schedule to reflect changes in CPT codes and changes in estimated physician work. As stated earlier, the statute requires that these revisions may not change physician expenditures by more than $20 million compared to estimated expenditures that would have occurred if the RVU adjustments had not been made. To maintain this statutorily-mandated budget neutrality, we make an adjustment across all RVUs in the physician fee schedule.

We have received a number of suggestions (including those from the American Medical Association (AMA), private payers, and State Medicaid programs that base payments on the Medicare RVUs) that we apply these adjustments to the conversion factors (CFs) rather than across all RVUs. This would reduce the number of billing system changes required by the annual revisions to the physician fee schedule.

We agree with the commenters that it would be administratively simpler to apply the adjustments to the CFs rather than the RVUs. We propose that these budget-neutrality adjustments be applied to the physician fee schedule CFs. The impact on payment amounts would be minimal (slight differences could be caused by rounding). This alternative approach would be administratively simpler for Medicare and other payers that base payments on the Medicare RVUs, including many State Medicaid programs. In addition, this change would provide for consistent RVUs from year to year, thus making it easier to analyze payment and policy changes. For example, CPT code 99215 had 1.53 work RVUs in 1994. Because of the 1.1 percent budget-neutrality adjustment in 1995, this code has 1.51 work RVUs this year. If the proposed policy had been in effect in 1995, the work RVUs for CPT code 99215 would have remained at 1.53, but all 1995 CFs would have been reduced 1.1 percent.

Therefore, in § 414.28 ("Conversion factors"), we propose to revise paragraph (b) ("Subsequent CFs") to state that beginning January 1, 1996, the

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CF for each CY may be further adjusted to maintain budget neutrality.

B. Bundled Services

1. Hydration Therapy and Chemotherapy

Hydration therapy intravenous (IV) infusion is billed under CPT codes 90780 (up to 1 hour) and 90781 (each additional hour, up to 8 hours). The saline solution used in hydration therapy IV infusion is billed and paid separately under the appropriate HCFA Common Procedure Coding System (HCPCS) "J" code. Chemotherapy IV infusion is billed under CPT codes 96410 (up to 1 hour), 96412 (each additional hour, up to 8 hours), and 96414 (more than 8 hours). The chemotherapy drug is billed and paid separately under the appropriate HCPCS "J" code.

Hydration therapy IV infusion may be administered at the same time as chemotherapy. In some cases, the saline solution is mixed with the chemotherapy drug. We believe that paying for hydration therapy IV infusion and chemotherapy IV infusion administered at the same time represents duplicate payment. Therefore, we propose not paying separately for CPT codes 90780 and 90781 when billed on the same day as CPT codes 96410, 96412, and 96414. We would continue to pay separately for the saline solution and the chemotherapy drug. This proposal reflects a policy change that is not explicitly addressed in our regulations.

2. Evaluation of Psychiatric Records and Reports and Family Counseling Services

At present, we allow separate payment for the following codes:

- CPT code 90825 (Psychiatric evaluation of hospital records, other psychiatric reports, psychometric and/or projective tests, and other accumulated data for medical diagnostic purposes).
- CPT code 90887 (Interpretation or explanation of results of psychiatric, other medical examinations and procedures, or other accumulated data to family or other responsible persons, or advising them how to assist the patient).

We believe that these activities are generally performed as part of the prework and postwork of other physician services. For example, the work involved in a psychiatric evaluation of records and tests as described by CPT code 90825 is a fundamental element of the prework and postwork of other psychiatric services, such as individual psychotherapy (CPT codes 90842 through 90844). The interpretation or explanation of the results of medical examinations or procedures as described by CPT code 90887 is also an integral part of the prework and postwork of other physician services. Counseling of the family is part of the postwork of evaluation and management services.

When these types of activities are performed in conjunction with evaluation and management services or with surgical services, payment for them is included in the prework and postwork components of the visit or procedure. The psychiatric evaluation of hospital records and the interpretation or explanation of psychiatric examinations are not significantly different from other types of medical evaluations of records or interpretation of other examinations. With the exception of family counseling services, the RVUs for psychiatric services (CPT codes 90801 and 90835 through 90857) already include the prework and postwork activities described by CPT codes 90825 and 90887. Thus, continuing to allow separate payment for these procedures, in addition to payment for other psychiatric services, results in duplicate payments and is inconsistent with our policy for other services. (We also note that the times associated with the individual medical psychotherapy CPT codes 90842 through 90844 are face-to-face times. While payment for the review and preparation of records is included in the fee schedule payment for these codes, the time spent in those activities should not be counted for purposes of determining and reporting the level of the individual psychotherapy code.)

With respect to family counseling services, Medicare has a longstanding policy of covering these services if they are needed to assess the capability of the family in, and to assist family members in, managing the patient. The service must relate primarily to the management of the beneficiary's problems and not to the treatment of problems of the family member. Counseling principally concerned with the effects of the beneficiary's condition on the family member is not considered part of the physician's personal service to the beneficiary; thus, it is not covered under Medicare. While we have always considered counseling activities to be included in the evaluation and management services, such as office and hospital visits that are described by CPT codes 99201 through 99353, we have not had the same policy for the psychotherapy codes. We believe it is appropriate to bundle covered family counseling procedures into the other psychiatric codes so that our policy is consistent with our policy on services furnished by other physician specialties.

Therefore, we propose to change the status indicator for CPT codes 90825 and 90887 to "B" to show that payment for these codes is bundled into the payment for another service, and separate payment would not be allowed. We would implement this change in a budget-neutral manner by redistributing the RVUs for CPT codes 90825 and 90887 across the following psychiatric codes: 90801, 90820, 90835, 90842 through 90847, and 90853 through 90857. This proposal reflects a policy change that is not explicitly addressed in our regulations.

3. Fitting of Spectacles

The fitting, repair, and adjustment of prosthetic devices (including spectacles) are covered under section 1861(s)(8) of the Act. Services under section 1861(s)(8) are not included in the definition of physician services as defined in section 1848(j)(3) of the Act and should not be payable under the physician fee schedule. Nevertheless, we inadvertently established payment amounts for the fitting of spectacles and low vision systems under the physician fee schedule. Payment for the fitting of spectacles is included in the payment for the spectacles in the same way that payment for other prosthetic fitting services is included in the payment for the prosthetic device.

Therefore, we propose to cease paying separately for the fitting of spectacles and low vision systems to end this duplicate payment for the fitting service. We propose to assign a "B" status indicator for the following CPT codes to indicate that the services are covered under Medicare, but payment for them is bundled into the payment for the spectacles:

CPT code	Description
92352	Fitting of spectacle prosthesis for aphakia; monofocal.
92353	Fitting of spectacle prosthesis for aphakia; multifocal.
92354	Fitting of spectacle mounted low vision aid; single element system.
92355	Fitting of spectacle mounted low vision aid; telescopic or other compound lens system.
92358	Prosthesis service for aphakia, temporary (disposable or loan, including materials).
92371	Repair and refitting spectacles; spectacle prostheses for aphakia.

This proposed change clarifies both the coverage and payment policies. The coverage policy is clarified in that the fitting service is clearly covered as part of the prosthesis. The payment policy is clarified in that the payment for the spectacles includes the fitting services. This proposal reflects a policy change that is not explicitly addressed in our regulations.

C. X-Rays and Electrocardiograms (EKGs) Taken in the Emergency Room

This issue concerns our policy regarding the interpretation of x-rays or electrocardiograms (EKGs) by a hospital emergency room physician and a second interpretation by a hospital's radiologist or cardiologist. The emergency room physician may be an emergency medicine specialist, a physician covering the emergency room, or the patient's personal physician.

Our current national policy, issued in 1981 in section 2020G of the Medicare Carriers Manual, states that when a hospital radiologist interprets an x-ray that has already been interpreted by another physician, the service of the radiologist almost always constitutes a physician service and should be paid by the Medicare carrier. The instruction also states that any interpretation performed by the physician in the emergency room is paid through his or her emergency room visit fee. (This manual section also applies this policy to the interpretation of EKGs by cardiologists.)

Some Medicare carriers are paying separately for the interpretations of both the emergency room physician and the radiologist or cardiologist.

In our deliberations about the nature of the appropriate Medicare policy on payments for these interpretations, we have taken into account the following factors:

- The statement in the existing manual instruction about the inclusion of the x-ray interpretation in the emergency room visit is inconsistent with the AMA's CPT coding system that we use to describe and process claims for physician services. In discussing the guidelines for the evaluation and management service codes, the CPT states on page 2 of the 1995 Edition:

> The actual performance of diagnostic tests/studies for which specific CPT codes are available is not included in the levels of E/M (evaluation and management) services. Physician performance of diagnostic tests/studies for which specific CPT codes are available should be reported separately, in addition to the appropriate E/M code.

We note that the AMA has not distinguished between the evaluation and management codes applicable to the emergency room and other evaluation and management codes in this regard.

- Somewhat differently, the questionnaire used by the Harvard School of Public Health (in a cooperative agreement with us) to develop work RVUs for the physician fee schedule specifically indicates that the interpretation of x-rays is included in the emergency room codes (but not in the other evaluation and management codes). However, we do not believe that the use of the term "interpretation" in this context indicates that the emergency room physician has furnished an in-depth interpretation with a report analogous to an interpretation and a report performed by a radiologist. We believe it is common practice for an emergency room physician to "review" x-rays and use the information gained in diagnosing and treating the patient, but that this review, without a report for inclusion in the patient's medical record maintained by the hospital, does not meet the requirement for payment of a professional component radiologic service.
- Section 13514 of the Omnibus Reconciliation Act of 1993, Public Law 103–66, enacted on August 10, 1993, requires us to make separate payment for EKG interpretations and to exclude the RVUs for EKG interpretations from the RVUs for visits and consultations.
- In a July 1993 report entitled, "Medicare's Reimbursement for Interpretations of Hospital Emergency Room X-rays," the Office of Inspector General (OIG) recommended that we pay for a reinterpretation of x-rays only if the attending physician specifically requests a second physician's interpretation to furnish appropriate medical care before the patient is discharged. The report stated that any other reinterpretation of the attending physician's original interpretation should be treated and paid as part of the hospital's quality assurance program. (We note that the costs of quality control activities as discussed above are taken into account in determining payments made to the hospital by the hospital's Medicare fiscal intermediary.) The net effect of the OIG's proposal would be that, in many cases, Medicare carriers would not pay separately for the interpretation of x-rays by either the radiologist or the emergency room physician since the OIG operated on the assumption (as set forth in the Medicare Carriers Manual) that the emergency room physician is paid for the interpretation through the emergency room visit charge.
- The CPT coding system differs in its treatment of EKGs and x-rays. For EKGs, there is a separate code for the taking of an EKG tracing (CPT code 93005) and for the interpreting *and* reporting of the procedure (CPT code 93010). For x-rays, the code represents all aspects of the procedure, and a CPT modifier – 26 is used when only the professional component is billed. On page 230 of the 1995 Edition, the CPT states: "A written report, signed by the interpreting physician, should be considered an integral part of a radiologic procedure or interpretation."
- Under § 405.550(b)(2) (proposed to be redesignated as § 415.100(b)(2)), the Medicare carrier pays for services of physicians to patients of hospitals only if the services contribute directly to the diagnosis and treatment of an individual patient.
- There is no legal basis for a Medicare carrier to deny payment to any physician for the interpretation of a reasonable and necessary diagnostic test if payment for the interpretation is not made in some other way.

We believe that, in any situation in which the interpretation of the radiologist or cardiologist is furnished contemporaneously with the diagnosis and treatment of the patient, the Medicare carrier should pay for the interpretation made by the radiologist or cardiologist and deny any claim submitted by an emergency room physician for the x-ray interpretation. However, in the case of emergency room services, the specialist often does not perform the interpretation and prepare the report until a significant period of time (days in some situations) after the patient has been diagnosed, treated, and discharged. We believe that there are situations in which an emergency room physician performs the interpretation and report required by the patient and that a later interpretation furnished by the cardiologist or radiologist is essentially a quality control activity, the costs of which may be taken into account by Medicare fiscal intermediaries in their payments to hospitals. Nevertheless, if the hospital elects to have the cardiologist or radiologist perform and receive payment for the interpretation in every emergency room case, the hospital should ensure that other physicians who practice on its premises do not also bill for the same interpretation.

We believe that when a physician bills for the interpretation of an EKG or the professional component of an x-ray furnished to a beneficiary in an emergency room, the physician is indicating that he or she has prepared a written report of the findings for inclusion in the patient's medical record maintained by the hospital. We note that this also means the physician is

assuming legal responsibility for the interpretation and report.

We believe that, in most situations, the Medicare carrier should receive only one claim for an interpretation of each procedure. However, when multiple claims are received for the interpretation and report or professional component of an x-ray or an EKG, the carrier should pay for the service that directly contributed to the diagnosis and treatment of the beneficiary.

We will provide further guidance to the Medicare carriers through operating instructions. However, in practice, the carrier would almost always pay the first claim received (since the carrier would not know if a second bill will arrive). If a second bill is received, the Medicare carrier would suspend the claim to determine whether to pay the claim.

Listed below are the elements of our proposed policy. If the policy is adopted, we will incorporate the policy in a new Medicare Carriers Manual instruction.

• The carrier should generally pay separately for only one interpretation of an EKG or x-ray procedure furnished to an emergency room patient. However, there should be provision for an additional interpretation under unusual circumstances such as a questionable finding for which the physician performing the initial interpretation believes another physician's expertise is needed.

• The professional component of a diagnostic procedure furnished to a beneficiary in a hospital includes an interpretation and written report for inclusion in the beneficiary's medical record maintained by the hospital. We propose to place this requirement in the radiology section of the regulations on services of physicians in providers at § 405.554(a). (Under the recodification proposed in this regulation, this section would become 415.120(a).)

• We would distinguish between an "interpretation and report" of an x-ray or an EKG procedure and a "review" of the procedure. An interpretation and report of the procedure is separately payable by the carrier. A review of the findings of these procedures, without a written report, does not meet the conditions for separate payment of the service since the review is already included in the emergency room visit payment.

• In the case of multiple bills for the same interpretation and report, we would instruct the carriers to adopt the following procedures:

+ End the policy of considering physician specialty to be the prime consideration in deciding which interpretation and report to pay regardless of when the service is performed.

+ Pay for the interpretation and report that directly contributed to the diagnosis and treatment of the individual patient.

+ Pay for the interpretation billed by the cardiologist or radiologist if the interpretation of the procedure is performed contemporaneously with the diagnosis and treatment of the beneficiary. (This interpretation may be a verbal report conveyed to the treating physician that will be written in a report at a later time.)

• We propose to minimize the carrier's need to make decisions about which claim to pay when multiple claims for the interpretation and report of the same procedure are received by—

+ Encouraging hospitals to exercise their authority over the medical staff to ensure that only one claim per interpretation is submitted;

+ Advising hospitals that if they allow a physician to perform and bill for a medically necessary service (the interpretation and report) in an emergency room and permit another physician to perform and bill for the same service, the Medicare carrier will not pay two claims;

+ Advising hospitals that the Medicare carrier may determine that the hospital's "official interpretation" is for quality control and liability purposes only and is a service to the hospital rather than to an individual beneficiary; and

+ Advising hospitals that Medicare fiscal intermediaries consider costs incurred for quality control activities in determining payments to hospitals.

• When the Medicare carrier receives only one claim for an interpretation and the procedure is reasonable and necessary, the carrier will pay the claim. When the claim is from a cardiologist or radiologist, we will not require the Medicare carrier to make a determination of whether the service is a quality control service. We will presume that the one service billed was a service to the individual beneficiary.

D. Extension of Site-of-Service Payment Differential to Services in Ambulatory Surgical Centers (ASCs)

Services that are performed more than 50 percent of the time in office settings are subject to a site-of-service payment differential if they are performed in hospital outpatient departments and inpatient settings. For these procedures, the PE RVUs are reduced by 50 percent. We base the PE RVUs on charge data from the office setting. We assume that office charge data accurately reflect physician PEs in the office setting. Therefore, for office-based services, the PE RVUs reflect office practice costs. The payment differential reflects the fact that PEs are lower for services performed in hospital settings using hospital equipment, personnel, and space. We developed the site-of-service payment differential under the authority of section 1848(c)(4) of the Act, which permits the Secretary to establish ancillary policies necessary to implement the physician fee schedule. Services furnished in ASCs were originally exempt from the site-of-service payment differential because ASC-approved procedures were performed less than 50 percent of the time in a physician's office, that is, the ASC list and site-of-service payment differential were mutually exclusive.

However, now a procedure furnished more than 50 percent of the time in a physician's office may be an ASC-approved procedure, for example, when the ASC setting is more appropriate in cases when a patient needs anesthesia. Therefore, we propose extending the site-of-service payment differential to office-based services if those services are performed in an ASC.

We see no reason for exempting these procedures from the site-of-service payment differential because payments for overhead and other expenses included in the PE RVUs duplicate the expenses paid in the ASC facility payment rate, that is, the physician does not bear these expenses himself as he would in his own office. Therefore, in § 414.32 ("Determining payments for certain physician services furnished in facility settings"), we propose to remove from paragraph (d) ("Services excluded from the reduction") the subordinate paragraph (d)(2), which would have the effect of applying the site-of-service payment differential to ASC services.

The following procedure codes currently on the ASC list are furnished more than 50 percent of the time in a physician's office. Therefore, we propose adding them to the list of services subject to the site-of-service payment differential.

PROCEDURE CODES TO BE ADDED TO THE SITE-OF-SERVICE DIFFERENTIAL LIST

HCPCS	Description
11042	Cleansing of skin/tissue.
11404	Removal of skin lesion.
11424	Removal of skin lesion.
11444	Removal of skin lesion.
11446	Removal of skin lesion.
11604	Removal of skin lesion.
11624	Removal of skin lesion.

PROCEDURE CODES TO BE ADDED TO THE SITE-OF-SERVICE DIFFERENTIAL LIST—Continued

HCPCS	Description
11644	Removal of skin lesion.
12021	Closure of split wound.
13100	Repair of wound or lesion.
13101	Repair of wound or lesion.
13120	Repair of wound or lesion.
13121	Repair of wound or lesion.
13131	Repair of wound or lesion.
13132	Repair of wound or lesion.
13150	Repair of wound or lesion.
13151	Repair of wound or lesion.
13152	Repair of wound or lesion.
14000	Skin tissue rearrangement.
14020	Skin tissue rearrangement.
14040	Skin tissue rearrangement.
14041	Skin tissue rearrangement.
14060	Skin tissue rearrangement.
14061	Skin tissue rearrangement.
15740	Island pedicle flap graft.
19100	Biopsy of breast.
20670	Removal of support implant.
21025	Excision of bone, lower jaw.
21026	Excision of facial bone(s).
21040	Removal of jaw bone lesion.
21041	Removal of jaw bone lesion.
21206	Augmentation of facial bones.
21210	Face bone graft.
21215	Lower jaw bone graft.
21248	Reconstruction of jaw.
21249	Reconstruction of jaw.
21440	Repair dental ridge fracture.
21485	Reset dislocated jaw.
21550	Biopsy of neck/chest.
21920	Biopsy soft tissue of back.
23065	Biopsy shoulder tissues.
23330	Remove shoulder foreign body.
23620	Treat humerus fracture.
23931	Drainage of arm bursa.
24065	Biopsy arm/elbow soft tissue.
24362	Reconstruct elbow joint.
25065	Biopsy forearm soft tissues.
25624	Treat wrist bone fracture.
25635	Treat wrist bone fracture.
26070	Explore/treat hand joint.
26432	Repair finger tendon.
26605	Treat metacarpal fracture.
26645	Treat thumb fracture.
27086	Remove hip foreign body.
27323	Biopsy thigh soft tissues.
27520	Treat kneecap fracture.
27604	Drain lower leg bursa.
27613	Biopsy lower leg soft tissue.
27760	Treatment of ankle fracture.
27780	Treatment of fibula fracture.
27786	Treatment of ankle fracture.
27788	Treatment of ankle fracture.
28003	Treatment of foot infection.
28030	Removal of foot nerve.
28043	Excision of foot lesion.
28092	Removal of toe lesions.
28222	Release of foot tendons.
28261	Revision of foot tendon.
28313	Repair deformity of toe.
28400	Treatment of heel fracture.
28635	Treat toe dislocation.
28665	Treat toe dislocation.
29850	Knee arthroscopy/surgery.
30124	Removal of nose lesion.
30560	Release of nasal adhesions.
30580	Repair upper jaw fistula.

PROCEDURE CODES TO BE ADDED TO THE SITE-OF-SERVICE DIFFERENTIAL LIST—Continued

HCPCS	Description
30801	Cauterization inner nose.
31233	Nasal/sinus endoscopy, dx.
31235	Nasal/sinus endoscopy, dx.
31237	Nasal/sinus endoscopy, surg.
31238	Nasal/sinus endoscopy, surg.
31525	Diagnostic laryngoscopy.
31570	Laryngoscopy with injection.
33011	Repeat drainage of heart sac.
38300	Drainage lymph node lesion.
38505	Needle biopsy, lymph node(s).
40510	Partial excision of lip.
40801	Drainage of mouth lesion.
40814	Excise/repair mouth lesion.
40816	Excision of mouth lesion.
40819	Excise lip or cheek fold.
40820	Treatment of mouth lesion.
41000	Drainage of mouth lesion.
41006	Drainage of mouth lesion.
41105	Biopsy of tongue.
41110	Excision of tongue lesion.
41112	Excision of tongue lesion.
41113	Excision of tongue lesion.
41800	Drainage of gum lesion.
41805	Removal foreign body, gum.
41806	Removal foreign body, jaw-bone.
41827	Excision of gum lesion.
42000	Drainage mouth roof lesion.
42104	Excision lesion, mouth roof.
42106	Excision lesion, mouth roof.
42107	Excision lesion, mouth roof.
42160	Treatment mouth roof lesion.
42300	Drainage of salivary gland.
42310	Drainage of salivary gland.
42335	Removal of salivary stone.
42340	Removal of salivary stone.
42405	Biopsy of salivary gland.
42408	Excision of salivary cyst.
42700	Drainage of tonsil abscess.
45305	Proctosigmoidoscopy; biopsy.
45308	Proctosigmoidoscopy.
45309	Proctosigmoidoscopy.
46050	Incision of anal abscess.
46220	Removal of anal tab.
46610	Anoscopy; remove lesion.
46611	Anoscopy.
51710	Change of bladder tube.
51725	Simple cystometrogram.
51726	Complex cystometrogram.
51772	Urethra pressure profile.
51785	Anal/urinary muscle study.
52000	Cystoscopy.
52010	Cystoscopy & duct catheter.
52281	Cystoscopy and treatment.
52285	Cystoscopy and treatment.
53420	Reconstruct urethra, stage 1.
54065	Destruction, penis lesion(s).
55700	Biopsy of prostate.
56405	I & D of vulva/perineum.
56605	Biopsy of vulva/perineum.
57180	Treat vaginal bleeding.
57800	Dilation of cervical canal.
60000	Drain thyroid/tongue cyst.
61070	Brain canal shunt procedure.
63600	Remove spinal cord lesion.
64420	Injection for nerve block.
65270	Repair of eye wound.
65805	Drainage of eye.
66030	Injection treatment of eye.
66762	Revision of iris.

PROCEDURE CODES TO BE ADDED TO THE SITE-OF-SERVICE DIFFERENTIAL LIST—Continued

HCPCS	Description
67031	Laser surgery, eye strands.
67101	Repair, detached retina.
67105	Repair, detached retina.
67141	Treatment of retina.
67208	Treatment of retinal lesion.
67921	Repair eyelid defect.
69424	Remove ventilating tube.

E. Services of Teaching Physicians

1. General Background

The focus of this proposal is Medicare payment for those services furnished under graduate medical education (GME) programs that are not payable through the mechanisms established for direct GME costs by section 1886(h) of the Act. Section 1886(h) addresses Medicare payments to hospitals and hospital-based providers for the costs of approved GME programs in medicine, osteopathy, dentistry, and podiatry. These costs include residents' salaries and fringe benefits, physician compensation costs for GME program activities that are not payable on a fee schedule basis, and other GME program costs.

Medicare intermediary expenditures under section 1886(h) of the Act for fiscal year (FY) 1996 are estimated to be approximately $1.9 billion. In addition, under section 1886(d)(5)(B) of the Act, Medicare makes additional payments to teaching hospitals under the prospective payment system (PPS) for the higher indirect operating costs hospitals incur by having GME programs. (These are costs other than direct GME costs.) Medicare indirect GME payments for FY 1996 are estimated to be approximately $4.9 billion. Medicare also supports GME programs in teaching hospitals through billings for the services of attending physicians who involve residents in the care of their patients. The amount of Medicare expenditures for these services is not known since attending physicians are not required to distinguish between services they personally furnish and those they furnish as attending physicians in claims submitted to the part B carriers.

This proposal addresses services of teaching physicians that are payable on a fee schedule basis, services of residents in settings that are not payable under section 1886(h), and services of moonlighting residents. In addition, the proposed rule addresses, but does not substantially change, existing rules on related issues on Medicare payments for the services of residents in approved

GME programs furnished in certain freestanding skilled nursing facilities (SNFs) and home health agencies (HHAs), and services of residents who are not in approved GME programs. We refer to the section 1886(h) mechanisms to distinguish between that payment methodology and other payment mechanisms.

Title XVIII of the Act provides separate coverage and payment bases for provider services and physician services. Under Medicare, provider services, such as inpatient hospital services and SNF services, are covered under Hospital Insurance (Part A) and are paid from the Part A Trust Fund. Outpatient hospital services are covered under Supplementary Medical Insurance (Part B) and are paid from the Part B Trust Fund. Provider services are paid on a prospective payment, reasonable cost, or other payment mechanism through Medicare contractors called "fiscal intermediaries." Physician services and other "medical and other health services," as defined in section 1861(s) of the Act are generally paid under Part B through Medicare contractors called "carriers." To administer the Medicare program, we must distinguish clearly between provider services and physician services to determine the appropriate payment methodology and the appropriate Trust Fund that is liable for payment.

In part 405 ("Federal Health Insurance for the Aged and Disabled"), subpart D ("Principles of Reimbursement for Services by Hospital-Based Physicians"), regulations beginning with § 405.480 set forth the basic principles regarding payment for services of physicians who practice in providers. Additional principles applicable to payment for physician services in teaching hospitals appear in subpart E ("Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians") in §§ 405.520 and 405.521. Principles applicable to services of interns and residents appear in §§ 405.522 through 405.525. Sections 405.465 and 405.466 address the payment methodology for teaching hospitals that elect reasonable cost payments for physician services. (See sections 1832(a)(2)(B)(i)(II) and 1861(b)(7) of the Act.) Since the publication of these regulations, the Congress has enacted a series of legislative changes that affect payments for these services, and we propose to revise the regulations to conform to these statutory changes and to clarify current policy.

Section 948 of the Omnibus Reconciliation Act of 1980 (ORA '80) (Pub. L. 96–499), enacted on December 5, 1980, as amended by section 2307 of the Deficit Reduction Act of 1984 (DEFRA '84) (Pub. L. 98–369), enacted on July 18, 1984, addressed payments for physician services in teaching settings. (See section 1842(b)(7) of the Act.) Another pertinent legislative change, section 108 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA '82) (Pub. L. 97–248), enacted on September 3, 1982, added a new section 1887 to the Act. That legislation dealt explicitly with distinguishing between the professional services physicians furnish to individual patients in a provider and services physicians furnish to the provider itself. While section 1887 of the Act does not specifically address teaching physicians or GME issues, it is consistent with Medicare policy on classifying the activities in which physicians in teaching hospitals are engaged.

We published a final rule with comment period in the **Federal Register** on March 2, 1983 (48 FR 8902), which implemented the provisions of section 1887 of the Act. That final rule revised the regulations that govern Medicare payment for services of physicians who practice in providers such as hospitals, SNFs, and comprehensive outpatient rehabilitation facilities. As a part of that final rule, we revised §§ 405.480 through 405.482, removed §§ 405.483 through 405.488, and added new §§ 405.550 through 405.557. Those regulations—

- Set forth basic criteria for distinguishing those physician services furnished in providers that are payable by Part B carriers as physician services to individual patients from those services that are payable by fiscal intermediaries as physician services to the provider itself;
- Set limits on the amounts payable on a reasonable cost basis to providers for physician services to the provider; and
- Established more specific criteria for determining the basis and amount of payment for physician services in the specialties of anesthesiology, radiology, and pathology.

In the preamble to the March 1983 final rule (48 FR 8906), we stated that because of problems related to applying portions of the revised regulations to teaching hospitals and to implement sections 1842(b)(6) and 1861(b)(7) of the Act for physician payment (as amended by section 948 of ORA '80), we planned to publish, in a separate document, proposed regulations that would establish special rules governing payment for services of physicians in teaching hospitals. These rules would have superseded §§ 405.520 and 405.521 if they became effective. Subsequently, however, the Congress passed DEFRA '84, which further amended section 1842(b)(6) of the Act and redesignated it as section 1842(b)(7).

Another statutory change that affected payments to teaching hospitals was section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA '85) (Pub. L. 99–272), enacted on April 7, 1986, as amended by section 9314 of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86) (Pub. L. 99–509), enacted on October 21, 1986, which added a new section 1886(h) to the Act. Section 1886(h) of the Act revised the method of calculating Medicare payment for the direct costs of approved GME activities such as residents' salaries and fringe benefits, from reasonable cost payment to payments based on hospital-specific per-resident amounts multiplied by the number of full-time equivalent (FTE) residents working in the hospital during a hospital's cost reporting period.

A major change in the Medicare payment rules for physician services in general was enacted as part of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239), enacted on December 19, 1989, which added section 1848 to the Act. Section 1848 replaced the reasonable charge payment mechanism with a fee schedule for physician services. The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508), enacted on November 5, 1990, contained several modifications and clarifications to the OBRA '89 provisions that established the physician fee schedule.

2. Payment for Physician Services Furnished in Teaching Settings

a. Current Practices. Of the nearly 7,000 hospitals that participate in Medicare, approximately 1,200 have GME programs that are approved for residency training by the appropriate accrediting organization. (We are using the term "residents" in this preamble to include residents, interns, and fellows who are in formally organized and approved GME programs.)

For hospital cost reporting periods beginning on or after July 1, 1985, the costs of residents' compensation (representing payment for the residents' services), certain physician compensation costs related to GME programs, and other GME program costs are payable based on hospital-specific per-resident amounts as described in

§ 413.86, in accordance with section 1886(h) of the Act. Physician compensation costs for administrative and supervisory services unrelated to the GME program or other approved educational activities are payable as operating costs through diagnosis-related group payments under PPS for inpatient services and on a reasonable cost basis for inpatient services in hospitals excluded from PPS and for outpatient services.

In the case of those few teaching hospitals that elect reasonable cost payments for physician direct medical and surgical services under section 1861(b)(7) of the Act instead of billing for services to Medicare beneficiaries on a fee-for-service basis, the election and payment mechanisms described in current §§ 405.465 and 405.466 would be set forth in this proposed rule in new § 415.160 and in redesignated §§ 415.162 and 415.164.

Practices vary widely among and within teaching hospitals with respect to the degree of physician involvement in the care of patients. In some cases, teaching physicians personally direct residents in furnishing patient care services. In others, residents assume a greater degree of responsibility for the care patients receive, and the teaching physicians exercise only general control over the residents' activities.

b. Statutory and Other Developments Pertaining to Teaching Physician Services. (1) Original Medicare Law and Regulations. As originally enacted, title XVIII of the Act excluded the services of physicians, interns, and residents from the definition of "inpatient hospital services," except for the services of interns and residents in approved training programs. The services of residents in an approved program of a hospital with which an SNF has a transfer agreement are included in the definition of "extended care services" and in the definition of "home health services" in the case of an HHA that is affiliated with or under common control of a hospital having the program. These provisions established the costs of approved GME programs for provider services payable by intermediaries on a reasonable cost basis. The Act did not include special rules for payment of physician services in teaching hospitals.

Under §§ 405.520 and 405.521 for teaching physician services, and §§ 405.522 through 405.525 for residents' services, a physician in a teaching setting is considered the attending physician for a Medicare patient, and thereby qualifies for Part B payment, only if he or she furnishes "personal and identifiable direction" to the interns and residents who provide the actual services to the patient. Before January 1, 1992, Part B physician services were paid under the reasonable charge payment system. As of January 1, 1992, these physician services are paid under the physician fee schedule set forth in part 414 (56 FR 59502).

Although § 405.521(b) lists examples that illustrate the types of responsibilities attending physicians typically carry out, the list is not exhaustive. In individual cases, it may be difficult to determine, by referring to § 405.521, whether a physician in a teaching setting is the "attending physician" for a Medicare patient. It may be necessary for the carrier to review hospital charts to see if the attending physician requirements were met; however, the involvement of the teaching physician in individual services is often unclear from a review of the charts.

It became apparent, shortly after §§ 405.520 and 405.521 were issued, that some Medicare carriers were paying charges for physician services in some teaching hospitals, even though interns and residents were primarily responsible for the care of the patients. The physicians who were billing for these services were often assuming only limited responsibility for the medical management of the patients' treatment. It also became clear that some physicians were submitting charges for services furnished to Medicare patients even though non-Medicare patients were not billed for similar services, and patients generally were not obligated to pay for these physician services.

In April 1969, these problems led to the issuance of Intermediary Letter (I.L.) 372, which sets forth specific conditions that physicians in teaching settings must meet to be considered attending physicians and, thus, qualify to charge the carrier for services in which they involve residents. It also specifies how carriers must determine the reasonable charges for these services. Although I.L. 372, which is still in effect, has provided guidance to Medicare carriers and intermediaries on payment for these services, it has not been applied uniformly by all Medicare carriers.

(2) 1972 Amendments. On October 30, 1972, the Congress amended the Act to provide rules on payment for physician services (as distinguished from the services of interns and residents) furnished in teaching hospitals. Section 227 of the Social Security Amendments of 1972 (Pub. L. 92–603) amended section 1861(b) of the Act to require that Medicare treat these services as hospital services and pay for them on a reasonable cost basis, except under certain specific circumstances. Section 227 also made certain incentives available to hospitals that elected to be paid for physician services on a reasonable cost basis.

In subsequent legislation (section 15 of Pub. L. 93–233, enacted on December 31, 1973, and section 7 of the End-Stage Renal Disease Program Amendments of 1978 (Pub. L. 95–292), enacted on June 13, 1978), the Congress deferred implementation of all provisions of section 227 of the 1972 amendments except for the incentives to elect reasonable cost payment for physician direct medical and surgical services. The cost reimbursement provisions were implemented through § 405.465, as published in a final rule on August 8, 1975 (40 FR 33440). The statutory provisions for which the Congress deferred implementation were eventually replaced by new provisions passed by the Congress in ORA '80. ORA '80 reaffirmed, but did not otherwise affect, the provisions of section 227 of the 1972 amendments authorizing cost reimbursement incentives.

(3) ORA '80. Section 948 of ORA '80 made several important changes in the sections of the Medicare statute that address payment for physician services in teaching hospitals. Specifically, section 948—

- Repealed the provisions of the 1972 Amendments that required Medicare to pay for these services (with certain exceptions) on a reasonable cost basis;
- Amended section 1861(b) of the Act to allow hospitals with approved teaching programs to elect to be paid on a reasonable cost basis for physician direct medical and surgical services furnished to their Medicare patients and for the supervision of interns and residents in the care of individual patients if all physicians in the hospital agree not to bill charges for their services furnished to Medicare patients; and
- Added section 1842(b)(6) of the Act (now section 1842(b)(7)) to specify the conditions that must be met to permit payment under Part B for physician services in teaching hospitals that do not elect cost reimbursement, and to provide special payment rules for determining the customary charges applicable in this situation.

In the Conference Report accompanying ORA '80 (H.R. Rep. No. 1479, 96th Cong., 2d Sess. 145 (1980)), the Conference Committee stated that its intention was to permit payment for physician services in a teaching hospital on a reasonable charge basis only if the physician is the patient's "attending physician." The conferees also endorsed

the attending physician criteria in I.L. 372.

The Conference Report further states that "[t]he conferees intend (without precluding reasonable changes in the future) that in determining the amount payable on a charge basis under Medicare Part B for services of physicians in teaching hospitals, the policies contained in I.L. 372 should be generally followed where these are not inconsistent with the provisions of the conference agreement." *Ibid. p. 146.*

(4) DEFRA '84. Subsequently, section 2307(a) of DEFRA '84 further amended section 1842(b)(7) of the Act concerning conditions for payment for physician services furnished in teaching hospitals that do not elect cost reimbursement. Section 2307(a) was later amended by sections 3(b) (5) and (6) of the DEFRA Technical Amendments (Pub. L. 98–617), enacted on November 8, 1984. As revised, section 1842(b)(7) of the Act (which was redesignated from section 1842(b)(6) of the Act by section 2306 of DEFRA '84) provides that—

- The customary charge of a physician qualifying as a teaching physician is set no lower than 85 percent of the prevailing charge paid for similar services in the same locality; and
- If all the teaching physicians in a teaching hospital agree to accept assignment for all the services they furnish to Medicare patients in that hospital, the customary charge is set at 90 percent of the prevailing charge paid for similar services in the same locality.

(5) 1989 Proposed Rule. On February 7, 1989, we published a proposed rule that would have implemented the teaching physician payment provisions of both ORA '80 and DEFRA '84 (54 FR 5946). In that document, we proposed the following changes relating to teaching physicians:

- Revise the regulations governing the conditions under which Medicare payment is made for the services of physicians in teaching settings and implement a special methodology for determining customary charges for the services of teaching physicians.
- Revise the regulations governing Medicare payment to providers for compensation paid to physicians who furnish services that are of general benefit to patients in the provider.

That proposed rule was never published in final because legislation enacted in 1989 and 1990 that mandated the implementation of the Medicare physician fee schedule had the effect of replacing the payment methodology of the proposed rule.

3. Payments for Supervising Physicians in Teaching Settings and for Residents in Certain Settings

We propose to revise the regulations because of the substantial changes that have taken place in the way Medicare payments for physician services are determined (that is, the replacement of the reasonable charge system with the physician fee schedule); the length of time since the publication of the February 1989 proposed rule; and our decision to propose to replace the attending physician criteria of that proposed rule.

We propose to change the attending physician criteria from those of I.L. 372 to make the criteria more flexible in terms of the individual teaching physician who may serve as the responsible physician for a particular service while ensuring that a physician is present during at least some portion of each service payable by the carrier. We also propose rules based on other Medicare policies that have been in effect for years but have never been explicitly addressed in the regulations.

a. Distinction Between Teaching Hospital and Teaching Setting. We propose to distinguish between "teaching hospital" and "teaching setting," because the former is more directly related to intermediary payments, and the latter (although defined in terms of intermediary payments) is more directly related to carrier payments. We propose to define "teaching hospital" as a hospital engaged in an approved GME residency program in medicine, osteopathy, dentistry, or podiatry. We propose to define "teaching setting" as a provider or freestanding setting in which Medicare payment for the services of residents is made under the direct GME payment provisions of § 413.86 (hospitals, hospital-based providers, and settings, including nonprovider settings, meeting the requirements for residents in § 413.86(f)(1)(iii)), or on a reasonable cost basis under the provisions of § 409.26 or § 409.40(f) for residents' services furnished in freestanding SNFs or HHAs, respectively.

b. Statutory Requirements for Payment in Teaching Hospitals Not Electing Reasonable Costs for Physician Services to Individual Patients. Section 1842(b)(7) of the Act is generally premised on the use of customary charges, that is, the reasonable charge system, as the basis for Medicare payments for the services of physicians in teaching hospitals. Section 1848 of the Act, however, established the physician fee schedule as the payment methodology for physician services furnished beginning January 1, 1992 without any exception for physician services furnished in teaching settings. Therefore, we based the policies in this proposed rule on principles established in legislation on payment for physician services generally under the physician fee schedule, on payment for physician services furnished in providers, and on payment to hospitals for GME programs. With regard to payment to hospitals for GME programs, this proposal addresses activities associated with GME programs that are not payable through fiscal intermediary payment mechanisms.

c. Intermediary Letter (I.L.) 372 Attending Physician Criteria. The I.L. 372 attending physician criteria and related policy were developed by Medicare in 1969 as a means of documenting the involvement of teaching physicians in patient care services furnished in teaching hospitals and have been controversial ever since. It was recognized then and now that residents must furnish patient care services to develop their skills as physicians or other types of practitioners. The "attending physician" policy was developed as a mechanism to make Part B fee schedule payments for services in which residents were involved. The main requirement of the policy was that there would be a single attending physician who personally examined the beneficiary within a reasonable time after admission, confirmed the diagnosis and course of treatment, and was continuously involved in the care of the beneficiary throughout the stay. The attending physician policy as set forth in I.L. 372 and related issuances specifically stated that the attending physician had to be present when a major surgical procedure or a complex or dangerous medical procedure was performed, but was vague, perhaps necessarily, on the matter of the presence of the physician during other occasions of inpatient service. There was less ambiguity with regard to hospital outpatients. Part A I.L. No. 70–7/Part B I.L. No. 70–2 (issued in January 1970), a question-and-answer I.L. on I.L. 372, indicated that the supervising physician must either personally perform the service or function as the attending physician and be present while a service is being furnished (question 14).

Medicare carriers were directed to periodically review the hospital charts for verification of the establishment of attending physician relationships and their involvement in individual services. If the chart did not substantiate a sufficient level of involvement in the care furnished, the teaching physician role was seen as supervisory in nature, rather than as an attending physician, even though the teaching physician may have had legal responsibility for the care furnished to the patient. Consequently, the fiscal intermediary for the hospital would pay Medicare's share of the salary costs of the teaching physician attributable to the supervision of residents, but the Medicare carrier would not make payment for the physician services on the basis of reasonable charges.

We believe, after years of working experience with the I.L. 372 attending physician policy, that we should replace it. The amount of postpayment review necessary to verify the establishment and continuity of the attending physician relationship from patient charts has become impractical given reductions in contractor budgets and is inconsistent with more recent congressional action. While the Congress endorsed the attending physician policy in the Conference Report accompanying ORA '80, the I.L. 372 policy may be viewed as not entirely consistent with the payment mechanism enacted in OBRA '86 under section 1886(h) of the Act for payment of direct GME costs in teaching hospitals. For example, I.L. 372 indicates that, if a physician is not an attending physician but supervises a resident who furnishes a service, the costs of the physician services are payable by the intermediary. Under section 1886(h) of the Act, if a service is determined not to be an attending physician service billable under Part B, the service cannot become a provider service for purposes of additional payments made under Part A since the GME payments are prospectively determined amounts that cannot be adjusted based on the individual circumstances of the delivery of individual services. Further, allocation agreements between physicians and hospitals identifying the various activities in which the physicians are involved for purposes of determining the appropriate payment amounts have no effect on GME payments in an individual hospital cost reporting period. The costs that were allocated during the GME base period are carried forward regardless of changes in the physician activities.

Moreover, the I.L. 372 policy left it to individual carriers to determine coverage of the services based on customary practices in the area or on the competence of individual residents. For example, a sentence in I.L. 372.A. reads as follows:

> If the supervising physician was present at surgery, and the surgery was performed by a resident acting under his close supervision and instruction, he would not be the attending surgeon unless it were customary in the community for such services to be performed in a similar fashion to private patients who pay for services rendered by a private physician.

While this policy might have been appropriate 30 years ago in the early days of Medicare, we now believe it is inappropriate to base the determination of whether a carrier will pay several thousand dollars or zero dollars for a surgical procedure on this standard, which could result in a wide disparity of policy from area to area regarding when payment is made.

Another problem with the I.L. 372 policy is reliance on a single physician to be the attending physician for the beneficiary throughout the inpatient stay. The only exception permitting an attending physician relationship for only a portion of a stay was if the portion was a distinct segment of the patient's course of treatment, such as the postoperative period. Another example from I.L. 372 reads as follows:

> A group of physicians share the teaching and supervision of the house staff on a rotating basis. Each physician sees patients every third day as he makes rounds. No physician can be held to be one of these patients' attending physician for any portion of the hospital care although consultations and other services they personally perform for the patient might be covered.

We now believe that this emphasis on a single teaching physician serving as the attending physician through the stay is no longer necessary, and that we should provide teaching hospitals and GME programs with flexibility in the determination of the responsible teaching physician in an individual case. We no longer believe the I.L. 372 requirement that a single physician be recognized by the beneficiary as his or her personal physician through a period of hospitalization reflects current realities. Further, the existing attending physician regulation may operate at cross-purposes with managed care arrangements that often employ treatment teams.

The I.L. 372 requirements for continuity of care may be difficult for carriers to verify from reviews of medical records, may be interpreted in different ways by different carriers, and may be counterproductive and burdensome in the delivery of services to the patient. We believe the proposed policy would address potential sources of misunderstanding and abuse that have been longstanding Medicare program concerns. For example, I.L. 372 requires the attending physician to personally examine the patient, review the history and record of test results, etc. From discussions with carrier medical directors, it is our understanding that some carriers consider the requirements to be met if the responsible physician first sees the patient 1 or 2 days after admission. In these situations, the carrier might pay for an admission history and physical performed by a resident on Saturday while the responsible physician does not actually see and examine the patient until Monday. Other carriers would maintain that, to pay for the admission history and physical as an attending physician, the teaching physician would have to see the patient on the day the service was performed.

We now believe that the most important consideration should be the presence of the teaching physician during the key portion of the service or procedure being furnished by the resident, and that requiring both an attending physician relationship *and* the presence of that same physician during every billable service is not warranted. Thus, under our proposal, carriers would no longer pay for services such as admission evaluation and management services unless a teaching physician was present during the key portion of the service.

d. Carrier Payment for Services of Teaching Physicians—General. We propose to eliminate the I.L. 372 attending physician criteria from the determination of whether payment should be made for the services of physicians in teaching settings. We recognize that the term "attending physician" is used in academic medicine to denote the responsible physician, and we believe that hospitals and GME programs should be free to designate any physician to be the attending physician of the patients in the teaching setting. We propose to require the following conditions for services of teaching physicians (physicians who involve residents in the care of their patients) in both inpatient and outpatient settings to be payable under the physician fee schedule:

- A teaching physician (a physician other than a resident or fellow in an approved program) must be present for a key portion of the time during the performance of the service for which payment is sought.
- In the case of surgery or a dangerous or complex procedure, the teaching physician must be present during all critical portions of the procedure and must be immediately available to furnish services during the entire service or procedure. We would specify that the teaching physician presence requirement is not met when

the presence of a teaching physician is required in two places for concurrent major surgeries. The operative notes must indicate when the teaching physician presence in individual procedures began and ended. In the case of minor procedures, such as an endoscopy in which a body area, rather than a representation, is viewed, we would not make payment if the teaching physician was not present during the viewing. A discussion of the findings with a resident would not be sufficient. The situation is contrasted with a diagnostic procedure, such as an x-ray, in which the physician would not be expected to be present during the performance of a test and could bill for an interpretation by reviewing the film with the resident (or by performing an independent interpretation).

• In the case of services such as evaluation and management services (for example, visits and consultations), for which there are several levels of service available for reporting purposes, the appropriate payment level must reflect the extent and complexity of the service if the service had been fully furnished by the teaching physician. In other words, if the medical decisionmaking in an individual service is highly complex to an inexperienced resident, but straightforward to the teaching physician, payment is made at the lower payment level reflecting the involvement of the teaching physician in the service. We intend to promote flexibility and leave the decision to the teaching physician as to whether the teaching physician should perform hands-on care, in addition to the care furnished by the resident in the presence of the teaching physician. However, in the case of both hospital inpatient and outpatient evaluation and management services, the teaching physician must be present during the key portion of the visit.

• The presence of the physician during the service or procedure must be documented in the medical records.

The proposal eliminates the I.L. 372 requirement that the attending physician personally examine the patient and leaves the decision to the teaching physician as to whether he or she should perform an examination in addition to the resident's examination based on medical and risk management considerations rather than Medicare payment rules. For example, a beneficiary may be admitted to the hospital on a Saturday and be examined by a resident in the presence of a teaching physician on duty at the time. On Monday, another teaching physician might be designated to be the attending physician in the case. Under the proposal to eliminate the I.L. 372 attending physician criteria, the services of both teaching physicians in this example would be payable (as long as distinct services are furnished).

Under our proposal, we are clarifying that services of teaching physicians that involve the supervision of residents in the care of individual patients are payable under the physician fee schedule only if the teaching physician is present during the key portion of the service. If a teaching physician is engaged in such activities as discussions of the patient's treatment with a resident but is not present during any portion of the session with the patient, we believe that the supervisory service furnished is a teaching service as distinguished from a physician service to an individual patient.

We believe that this clarification is consistent with existing policy. Part A I.L. No. 70–7/Part B I.L. No. 70–2, issued in January 1970 and still in effect, contains a series of questions and answers about the attending physician policy set forth in I.L. No. 372. Question 14 of that issuance addresses services furnished in emergency rooms and outpatient departments and states the following:

> Q. Intermediary letter No. 372 states, "An emergency room supervising physician may not customarily be considered to be the attending physician of patients cared for by the house staff, etc." Is this also true in the hospital's outpatient department?
>
> A. Yes, because an attending physician relationship is not normally established with anyone other than the treating physician in an outpatient department. If the Part B bills are submitted for services performed by a physician in either the emergency room or in any part of the outpatient department, the hospital records should clearly indicate either that: The supervising physician *personally* performed the service; or he functioned as the patient's attending physician and was present at the furnishing of the service for which payment is claimed.

At the same time we are concerned about the integrity of the Medicare payment process, we recognize that application of this policy to the reimbursement of teaching physicians in family practice residency programs raises special concerns about the viability of these programs. Family practice residency programs are different from other programs because training occurs primarily in an outpatient setting, known as a family practice center. In these centers, residents are assigned a panel of patients for whom they will provide care throughout their 3 years of training. While teaching physicians supervise this care and, indeed, are present during the actual furnishing of services in some circumstances (most notably with first year residents and for more complex patient cases) a general requirement that teaching physicians be physically present during all visits to the family practice center would undermine the development of this physician/patient relationship. This requirement also would be incompatible with the way family practice centers are organized and staffed and could require the hiring of additional teaching physicians when the faculty are already in short supply.

We are willing to develop a special rule for paying teaching family physicians that takes into account the unique nature of these training programs while clarifying the appropriate level of involvement of the teaching physician in patient care in family practice centers. We invite comments on the structure and content of such a rule, or a legislative proposal, along with any supportive data. We also invite comments on whether and how such a rule might be applied to other primary care training programs.

e. Special Treatment—Psychiatric Services. During the period in which we were developing the February 1989 proposed rule, we met with representatives of psychiatric GME programs who indicated that it was inappropriate for a physician other than the treating resident to be viewed by psychiatric patients as their physician. In psychiatric programs, the teaching physician may observe a resident's treatment of patients only through one-way mirrors or video equipment. We have accepted this position and propose that, with respect to psychiatric services (including evaluation and management services) furnished under an approved psychiatric GME program, the teaching physician would be considered to be "present" during each visit for which payment is sought as long as the teaching physician observes the visit through visual devices and meets with the patient after the visit.

f. Physician Services Furnished to Renal Dialysis Patients in Teaching Hospitals. Effective for services furnished on or after August 1, 1983, Medicare pays for physician services to end-stage renal disease (ESRD) patients on the basis of the physician monthly capitation payment method described in § 414.314. This payment method generally applies to renal-related physician services furnished to outpatient maintenance dialysis patients, regardless of where the services are furnished (that is, in an independent ESRD facility, a hospital-based ESRD facility, or in the patient's home). Physician services furnished to ESRD patients on or after August 7, 1990 may also be paid on the basis of the initial method as described in § 414.313. We would continue application of these physician payment methods to teaching hospitals with ESRD facilities. We would not impose any special medical record documentation requirements solely because the ESRD facility is based in a teaching hospital.

Physician fee schedule payments for covered physician services furnished to inpatients in a hospital by a physician who elects not to continue to receive payment on a monthly capitation basis through the period of the inpatient stay, or who is paid based on the initial method, would be determined according to the rules described in proposed § 415.170. Physicians would have to either personally furnish the services, or furnish the services as a teaching physician as described in proposed § 415.172.

g. Special Criteria for Anesthesia Services and Interpretation of Diagnostic Tests. Special criteria for anesthesia services involving residents appear in § 414.46(c)(2)(iii). In the case of diagnostic radiology and other diagnostic tests, we make payment for the interpretation if the physician either personally performs the interpretation or reviews the resident's interpretation.

h. Services of Residents. We propose to incorporate into the regulations longstanding Medicare coverage and payment policy regarding the circumstances under which the services of residents are payable as physician services. These policies are currently in operating instructions and other issuances.

Generally, the services of residents in approved GME programs furnished in hospitals and hospital-based providers are payable through the direct GME payment methodology in § 413.86. For hospital cost reporting periods beginning on or after July 1, 1985, a teaching hospital is entitled to include residents working in the hospital and hospital-based providers in the FTE count used to compute direct GME payments. These payments are based on per-resident amounts reflecting GME costs incurred during a base period and updated by the Consumer Price Index. Further, effective July 1, 1987, under the conditions set forth in § 413.86(f)(1)(iii), a teaching hospital may elect to enter into a written agreement with another entity for the purpose of including the time spent by residents in furnishing patient care services in a setting outside the hospital in the hospital's FTE count of residents for GME purposes. The agreement must specify that the hospital compensate the resident for the services in the nonhospital setting. When an agreement is in effect, the teaching setting guidelines of proposed §§ 415.170 through 415.184 would apply to services in which physicians involve residents in the nonhospital setting. The services of residents in these settings are payable as hospital services rather than physician services. Proposed § 415.200 would replace the current § 405.522.

The current § 405.523 addresses payment for the services of residents who are not in approved programs. The section is applicable to the services of a physician employed by a hospital who is authorized to practice only in a hospital setting and to residents in an unapproved program. We propose to replace this rule with proposed § 415.202. The proposed rule incorporates the policy currently in section 404.1.B of the Provider Reimbursement Manual (HCFA Pub. 15–1) which provides that only the costs of the residents' services are allowable as Part B costs, and that other costs, such as teaching costs, of an unapproved program are not allowable.

The current § 405.524 ("Interns' and residents' services outside the hospital") provides for reasonable cost payments for the services of residents in freestanding SNFs and HHAs. We propose to rename this section to clarify that its scope is limited to these types of providers and to include it with only minor changes into a new § 415.204.

We propose to establish a new § 415.206 to address payment issues relating to the services of residents in nonprovider settings, such as freestanding clinics that are not part of a hospital. Paragraph (a) addresses situations when a teaching hospital and another entity have entered into a written agreement under which the time the residents spend in patient care activities in these nonhospital settings is included in the hospital's FTE count used to compute direct GME payments. If an agreement is in force, the carrier would make payments for teaching physician and other physician services under the rules in §§ 415.170 through 415.190.

If a nonprovider entity, such as a freestanding family practice or multispecialty clinic, does not enter into this type of agreement for residency training with a teaching hospital, the payment mechanism in proposed § 415.206(b) would apply in the case of services furnished by certain residents. We modified the policy on Part B billings for services furnished by licensed residents in the late 1970's in an action designed to enhance the ability of primary care residency programs to finance their training activities outside the teaching hospital setting. We revised the Medicare Carriers Manual (HCFA Pub. 14–3) to cover residents' services furnished in a setting that is not part of a hospital as physician services if the resident was fully licensed to practice by the State in which the service was performed. This policy applies whether or not the residents are functioning within the scope of their approved GME program. Under these circumstances, the resident is functioning in the capacity of a physician, and the teaching physician guidelines do not apply.

Additionally, the services of residents practicing in freestanding Federally qualified health centers (FQHCs) and rural health clinics (RHCs) who meet the requirements of proposed § 415.206(b) would be eligible for payment under the FQHC payment methodology. (We would make payments for residents' services in a hospital-based entity under the provisions of § 413.86 for direct GME payments.) We propose to allow freestanding FQHCs and RHCs to include the costs of a service performed by a resident meeting those requirements as an allowable cost on the entity's cost report. We propose to amend § 405.2468(b)(1), which sets forth allowable costs for FQHC and RHC services, to recognize these costs. Further, a resident is considered to be a physician as defined in revised § 405.2401(b) for the purpose of determining payments to the FQHC or RHC. Consistent with the FQHC and RHC payment method, payments for FQHC and RHC services furnished by residents in FQHCs and RHCs would be paid under § 405.2462 rather than under the physician fee schedule. In other words, services of the resident would be treated in exactly the same manner as services of other physicians who are not residents in the FQHC or RHC. We believe that recognizing the costs of these residents in FQHC and RHC settings would create more uniformity in the way these costs are treated by the Medicare program.

We propose to establish a new § 415.208 to address carrier payments for the services of "moonlighting" residents. Paragraph (a) defines these services as referring to services that licensed residents perform that are outside the scope of an approved GME program. Paragraph (b) reflects the policy set forth in section 2020.8.C. of the Medicare Carriers Manual under which carriers may pay under the physician fee schedule for the services of moonlighting residents in the outpatient department or emergency

department of a hospital in which they have their training program if there is a contract between the resident and the hospital indicating that the following criteria are met:

- The services are identifiable physician services and meet the criteria in § 415.100(b) (currently § 405.550(b)).
- The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry in the State in which the services are performed.
- The services can be separately identified from those services that are required as part of the approved GME program.

Paragraph (c) indicates that the moonlighting services of a resident furnished outside the scope of an approved GME program in a hospital or other setting that does not participate in the GME program are payable as physician services under the physician fee schedule.

i. Redesignation of Regulations on Teaching Hospitals, Teaching Physicians, and Physicians Who Practice in Providers. As a part of this rulemaking process, we would redesignate the regulations currently set forth in §§ 405.465 and 405.466, 405.480 through 405.482, 405.522 through 405.524, 405.550, 405.551, 405.554, 405.556, and 405.580 into a new part 415, along with the new regulations proposed in this rule. This redesignation is part of our continuing effort to improve the overall organization of title 42 of the CFR and, in this case, specifically, the organization of the regulations on teaching hospitals, teaching physicians, and physicians who practice in providers.

Except as indicated below, we are making only technical changes to conform cross-references, and no substantive changes are included. We would remove §§ 405.520 and 405.521 because the applicable rules for payment of services are obsolete. We would also remove the chart for payment to interns and residents in § 405.525 as obsolete. In addition, we would remove § 405.552 because the applicable payment rules for anesthesia services are set forth in § 414.46.

We intend this redesignation to make these regulations easier to use. Following is a distribution table that indicates where each section of the original material would be moved or why it would no longer be needed, and the new section numbers that would result from the redesignation:

DISTRIBUTION TABLE

Old section	New section
405.465	415.162.
405.466	415.164.
405.480	415.55.
405.481	415.60.
405.482	415.70.
405.520	Removed.
405.521	Removed.
405.522	415.200.
405.523	415.202.
405.524	415.204.
405.525	Removed.
405.550	415.100.
405.551	415.105.
405.552	Removed.
405.554	415.120.
405.556	415.130.
405.580	415.190.

Following is a derivation table that shows the origin of each section of the new material:

DERIVATION TABLE

New section	Old section
415.1	
415.50	
415.55	405.480
415.60	405.481
415.70	405.482
415.100	405.550
415.105	405.551
415.120	405.554
415.130	405.556
415.150	
415.152	
415.160	
415.162	405.465
415.164	405.466
415.170	
415.172	
415.176	
415.178	
415.180	
415.184	
415.190	405.580
415.200	405.522
415.202	405.523
415.204	405.524
415.206	
415.208	

F. Unspecified Physical and Occupational Therapy Services (HCPCS Codes M0005 Through M0008 and H5300)

We propose to eliminate HCPCS codes M0005 through M0008 and H5300 and redistribute the RVUs to the codes in the physical medicine section of the CPT (CPT codes 97010 through 97799). This proposal represents a single way of reporting and paying for a service for which there are now two ways to report and would be a payment policy change. We propose no change to what services may be covered, only to how covered services would be billed and paid.

We propose this change because HCPCS codes M0005 through M0008 and H5300 fail to accurately describe the services furnished. Therefore, we are unable to establish resource-based work RVUs for them as the statute requires. Moreover, because the codes do not accurately describe the services being furnished, they preclude effective review to determine that the services being paid are covered by Medicare.

We believe that the CPT codes and the remaining HCPCS codes provide a sufficient means for physicians, physical therapists in independent practice (PTIPs), and occupational therapists in independent practice (OTIPs) to bill and be paid for the covered services they furnish. In 1995, the AMA revised the codes in the Physical Medicine and Rehabilitation section of the CPT to better reflect the provision of physical and occupational therapy services. The American Physical Therapy Association and the American Occupational Therapy Association are members of the Health Care Professional Advisory Committee (HCPAC) of the AMA's Relative Value Update Committee (RUC) and participated in the creation of new codes for 1995 and in the RUC's recommendations to us for the assignment of work RVUs for these codes.

As a result of these coding changes, we established interim resource-based work RVUs for the services described by the new CPT codes. We will consider public comments received on the interim RVUs and establish final RVUs for these new codes for 1996. The CPT and RUC processes of the AMA provide for the opportunity to include all codes necessary to bill physical and occupational therapy services listed in the CPT, should further changes to the CPT be necessary.

In addition to the new CPT codes for physical medicine services, HCPCS codes Q0103, Q0104, Q0109, and Q0110 describe the evaluation and management work of PTIPs and OTIPs when they establish a plan of care and periodically review that plan. While physicians may bill the CPT evaluation and management codes, PTIPs and OTIPs may not bill these codes because, unlike physicians, the evaluation and management services PTIPs and OTIPs furnish do not include consideration of chemotherapeutic or surgical alternatives to physical or occupational therapy. We understand that the HCPAC will be considering creation of codes to describe the evaluation and management services furnished by PTIPs and OTIPs for 1997, at which time we expect to eliminate the Q codes that currently serve this purpose.

We believe that each unit of service currently billed under the codes we propose to delete will be billed under a CPT or HCPCS code and that the total amount of Medicare payment for physical medicine services will not change significantly as a result of the elimination of these codes. This proposal reflects a policy change that is not explicitly addressed in our regulations.

G. Transportation in Connection With Furnishing Diagnostic Tests

We have received a number of inquiries about the conditions under which carriers should pay for the transportation of diagnostic equipment used to furnish procedures payable under the physician fee schedule. Medicare carriers have been told for years that, in the absence of specific instructions from us, it was within their discretion to determine when payment for the transportation of diagnostic equipment should be made. We are proposing to enunciate a national policy now. Under our proposal, Medicare carriers would apply the general physician fee schedule policy on additional payments for travel expenses to transportation services except as indicated below.

Section 1861(s)(3) of the Act establishes the coverage of diagnostic x-rays furnished in a place of residence used as the patient's home if the performance of the tests meets health and safety conditions established by the Secretary. This provision is the basis for payment of x-ray services furnished by approved portable suppliers to beneficiaries in their homes and in nursing facilities.

Although the Congress did not explicitly so state, we determined that, because there were increased costs in transporting the x-ray equipment to the beneficiary, the Congress intended that we pay an additional amount for the transportation expenses. Therefore, we established HCPCS codes R0070 and R0075 (for single-patient and multiple-patient trips, respectively) to pay approved portable x-ray suppliers a transportation "component" when they furnish the services listed in section 2070.4.C of the Medicare Carriers Manual.

We later added the taking of an EKG tracing to the list of services approved suppliers of portable x-ray services may furnish (section 2070.4.F. of the Medicare Carriers Manual) and established HCPCS code R0076 to pay for the transportation of EKG equipment. Many Medicare carriers have limited the use of HCPCS code R0076 to approved portable x-ray suppliers, but some Medicare carriers permit other types of entities, such as independent physiological laboratories (IPLs), to use the code.

Further, section 2070.1.G of the Medicare Carriers Manual provides for the coverage of an EKG tracing by an independent laboratory—

- In a home if the beneficiary is a "homebound patient"; or
- In an institution used as a place of residence if the patient is confined to the facility and the facility does not have on-duty personnel qualified to perform the service.
- The Act does not make specific provision for furnishing diagnostic procedures payable under the physician fee schedule, other than portable x-rays, to beneficiaries in their residences. We have received inquiries from our regional offices regarding payment for the transportation of diagnostic equipment that have generally involved the equipment used to furnish ultrasound and cardiography procedures. We have also received complaints from suppliers of these types of services about variations in individual Medicare carrier policies on transportation payments. We have little information about the amounts of payments; however, in the case of portable x-ray services (which would not be affected by this proposal), the transportation payment is often several times higher than the payment for the procedure furnished.

As discussed in the preamble to our November 1991 final rule (56 FR 59605), the physician fee schedule policy includes travel in the PE of a medical practice; therefore, travel is compensated through the PE component of the RVUs for a service. The preamble of the November 1991 final rule further states that CPT code 99081 may be used to bill for unusual travel in unusual cases and that carriers would handle these billings on a "by report" basis. Section 15026 of the Medicare Carriers Manual adds the stipulation that CPT code 99082 is payable only when the travel is "very unusual."

The scope of this proposal is limited to transportation expenses associated with diagnostic tests that are payable under the physician fee schedule. It would apply both to payments made in connection with the transportation of diagnostic equipment to the beneficiary and to the transportation of equipment to a site, such as a physician's office, for use in furnishing tests to beneficiaries. We are not proposing to place this policy in regulations, but we would change the applicable sections of the Medicare Carriers Manual.

Under our proposal, Medicare carriers would continue to pay for the transportation of x-ray and EKG equipment in some cases. The following exceptions to the general rule on payment for travel are based on our interpretation of statutory requirements in the case of x-rays and specific longstanding policy in the case of EKGs.

- Medicare carriers would continue to make transportation payments under HCPCS codes R0070 and R0075 in connection with portable x-ray procedures if approved suppliers furnish the services described in section 2070.4.C. of the Medicare Carriers Manual:
  - + Skeletal films involving arms and legs, pelvis, vertebral column, and skull.
  - + Chest films that do not involve the use of contrast media (except routine screening procedures and tests in connection with routine physical examinations).
  - + Abdominal films that do not involve the use of contrast media.
- Medicare carriers would make transportation payments under HCPCS code R0076 in connection with standard EKG procedures if the approved portable x-ray supplier furnishes the service described by CPT code 93005 (or CPT 93000, if the interpretation is billed with the tracing).
- Medicare carriers would make transportation payments under HCPCS R0076 in connection with standard EKG procedures (CPT code 93005) furnished by an IPL when—
  - + The IPL meets applicable State and local licensure laws;
  - + The EKG is ordered by a referring physician; and
  - + The carrier determines the service to be reasonable and necessary. (See section 2070.5. of the Medicare Carriers Manual.)
- We would delete the reference to EKGs in the existing section 2070.1.G. of the Medicare Carriers Manual and place the policy in a revised section 2070.5 of the Medicare Carriers Manual. However, we would remove the requirement that the beneficiary be confined to his or her home or to an institution for the EKG tracing to be covered since this requirement does not apply to EKG tracings taken by portable x-ray suppliers.
- For all other types of diagnostic tests payable under the physician fee schedule, Medicare carriers would pay for the transportation of equipment only on a "by report" basis under CPT code 99082 if a physician submits documentation to justify the "very unusual" travel as set forth in section

15026 of the Medicare Carriers Manual. An example of such a circumstance could be when a beneficiary in a nursing facility is in immediate need of a diagnostic test and there is a problem, such as extreme obesity, with transporting the individual to a facility.

H. Maxillofacial Prosthetic Services

At present, payment amounts for the maxillofacial prosthetic services (CPT codes 21079 through 21087 and HCPCS codes G0020 and G0021) are determined by individual Medicare carriers. We propose to eliminate the carrier-priced status and establish RVUs for these codes effective for services performed on or after January 1, 1996. We propose to determine fee schedule payment amounts based on the RVUs shown in the table below.

PROPOSED RELATIVE VALUE UNITS FOR MAXILLOFACIAL PROSTHESIS SERVICES

CPT code	Description	Proposed work RVUs	Proposed PE RVUs	Proposed ME RVUs
21079	Impression and custom preparation; interim obturator prosthesis	20.88	27.93	2.25
21080	Impression and custom preparation; definitive obturator prosthesis	23.46	31.36	2.52
21081	Impression and custom preparation; mandibular resection prosthesis	21.38	28.59	2.30
21082	Impression and custom preparation; palatal augmentation prosthesis	19.50	26.08	2.10
21083	Impression and custom preparation; palatal lift prosthesis	18.04	24.13	1.94
21084	Impression and custom preparation; speech aid prosthesis	21.04	28.14	2.28
21085	Impression and custom preparation; oral surgical splint	8.41	11.25	0.90
21086	Impression and custom preparation; auricular prosthesis	23.29	31.15	2.51
21087	Impression and custom preparation; nasal prosthesis	23.29	31.15	2.51
G0020	Impression and custom preparation; surgical obturator prosthesis	12.54	16.77	1.35
G0021	Impression and custom preparation; orbital prosthesis	31.54	42.18	3.39

The work RVUs that we propose were developed by the American Academy of Maxillofacial Prosthetics. We believe they appropriately represent the work involved in these procedures. Because the CPT codes were new in 1991 and the Level 2 HCPCS codes are new in 1995, we have little or no charge data on which to base PE and ME RVUs in accordance with section 1848(c)(2)(C) of the Act. Therefore, we have imputed the PE and ME RVUs from the work RVUs based on the practice cost shares provided by the American Association of Oral and Maxillofacial Surgeons. Those shares are 54.7 percent for PE and 4.4 percent for ME.

We would establish a 90-day global period for these services with the exception of CPT code 21085 and HCPCS code G0020, which we believe require only a 10-day global period. (Under a global period, a single fee is billed and paid for all necessary services normally furnished by the surgeon before, during, and after the procedure within the time period assigned to the service.)

CPT codes 21079 through 21087 and HCPCS codes G0020 and G0021 should be used only if the physician actually designs and prepares the prosthesis. If the physician has designed and prepared the prosthesis and bills a CPT code in the range of 21079 through 21087 and HCPCS codes G0020 and G0021, we will not pay the physician separately for the prosthesis. We consider the cost of the materials used in preparing the prosthesis to be included in the PE portion of the codes.

HCPCS codes L8610 through L8618 identify prostheses that are prepared by an outside laboratory. Payment for HCPCS codes L8610 through L8618 is not made under the physician fee schedule. Payment is made on an individual consideration basis.

CPT codes 21079 through 21087 and HCPCS codes G0020 and G0021 are on the list of codes subject to the site-of-service payment differential since they are predominantly office-based services.

While we welcome any written public comments, we have found from past experience that the most useful comments have followed a particular pattern. They include the CPT code, a clinical description of the service, and a discussion of the work of that service.

Physician work has two components: time and intensity. The clinical analogy for many services can be strengthened by dividing the service into the following three time segments:

- Preservice work—Work performed before the actual procedure such as review of records, solicitation of informed consent, and preparation of equipment. Time spent by the physician dressing, scrubbing, and waiting for the patient should be identified. Preservice work also includes the time spent scrubbing, positioning, or otherwise preparing the patient. For surgical procedures with global periods, commenters should include estimates of the number, time, and type of visits from the day before surgery until the time the patient enters the operating room. The visit when the physician decides to operate and the visits preceding it should not be included in the estimate of preservice work since these services are not included in the Medicare definition of global period.
- Intraservice work—The actual performance of the procedure. For evaluation and management services, this would be described as "face-to-face" time in the office setting and "unit/floor" time in the inpatient setting. For surgical procedures, the customary term would be "skin-to-skin" time or its equivalent for those procedures not beginning with incisions.
- Postservice work—Analysis of data collected from the encounter, preparation of a report, and communication of the results. For procedures with global periods, commenters should identify the time spent by the physician with the patient after the procedure on the same day and whether the patient typically goes home, to an ordinary hospital bed, or goes to the intensive care unit. Commenters should describe the number, time, and type of physician visits from the day after the procedure until the end of the global period.

They should also distinguish inpatient from outpatient visits.

We encourage commenters, in making these estimations, to provide detailed clinical information such as data derived from operating logs, operative reports, and medical charts concerning the length of service, the amount of work performed before and after the service, and the length of stay in the hospital. The usefulness of these data is greatly increased if the data are presented with comparable data for reference services and evidence that justifies that the data presented are nationally representative of the average work involved in furnishing the service. We often receive data that are not helpful to us because the data are not representative of national practices. In addition, some commenters have presented a lengthy and elaborate description of the work in the service, but omitted, or provided an incomplete description of, the comparability of the work in the service to the work in a reference procedure or procedures identified.

Intensity of the work in the service is best compared by breaking the intensity into the following elements:

- Mental effort and judgment—Commenters should compare the service in question with a reference service as to the amount of clinical data that needs to be considered, the depth of knowledge required, the range of possible decisions, the number of factors considered in making a decision, and the degree of complexity of the interaction of these factors.
- Technical skill and physical effort—One useful measure of skill is the point in training when a resident is expected to be able to perform the procedure. Physical effort can be compared by dividing services into tasks and making the direct comparison of tasks. In making the comparison, it is necessary to show that the differences in physician effort are not reflected accurately by differences in the time involved; if they are, considerations of physician effort amount to double counting of physician work in the service.
- Psychological stress—Two kinds of psychological stress are usually associated with physician work. The first is the pressure involved when the outcome is heavily dependent upon skill and judgment and a mistake has serious consequences. The second is related to unpleasant conditions connected with the work that are not affected by skill or judgment. These circumstances would include situations with high rates of mortality or morbidity regardless of the physician's skill or judgment, difficult patients or families, or physician physical discomfort. Of the two forms of stress, only the former is fully accepted as an aspect of work; many consider the latter to be a highly variable function of physician personality.

Intensity often varies significantly in the course of furnishing a service. Sometimes commenters "anchor" the value of the service to a point of maximum intensity during the service as the basis for comparing services. It is unlikely that the maximum intensity is an accurate reflection of the average intensity of a service; a lengthy procedure that is simple except for a few moments of extreme intensity is probably less work than one of equal length during which a fairly high level of intensity is maintained throughout.

This proposal reflects a policy change that is not explicitly addressed in our regulations.

I. Coverage of Mammography Services

In the December 31, 1990 interim final rule (55 FR 53510) and the September 30, 1994 final rule (59 FR 49808), we based our present definitions of "diagnostic" and "screening" mammography and related provisions on advice from the Food and Drug Administration (FDA), the National Cancer Institute (NCI), our own medical consultants, and other components of HHS.

These definitions are important because of the impact they can have on how frequently mammograms are covered under the Medicare program. The Medicare law and current regulations limit the frequency of coverage for "screening" mammography services according to the patient's age and for women over age 39 but under age 50 based on whether she is considered at high risk of developing breast cancer. On the other hand, coverage of "diagnostic" mammography is not restricted by specific statutory frequency limitations but depends on whether the examination has been (1) ordered by the patient's physician, and (2) is determined by the local Medicare contractor to be medically necessary for the patient.

In response to inquiries from beneficiaries, practicing physicians, and others in the medical community, we have reexamined our definitions of "diagnostic" and "screening" mammography in § 410.34 (Mammography services: Conditions for and limitations on coverage"). In addition, we have consulted further with FDA, NCI, and a Medicare Carrier Medical Director workgroup regarding the appropriateness of the definitions. We have also reexamined the current definitions in view of our previous Medicare policy on diagnostic mammograms as described in section 50–21 of the Coverage Issues Manual (HCFA Pub. 6) that permits coverage for diagnostic mammograms for patients with a personal history of breast cancer and certain other patients, even though they are not symptomatic (that is, they do not have any signs or symptoms of a medical problem with their breasts).

Based on our reexamination of this issue, we propose to revise the definitions of "diagnostic" and "screening" mammography in § 410.34 to make them consistent with previous Medicare coverage policy regarding "diagnostic" mammography, and with the way these terms are used in general clinical practice in the United States.

Some clinicians and mammography experts consider patients with a personal history of breast disease, such as breast cancer and chronic fibrocystic disease, to be candidates for diagnostic mammography for a period following treatment of the disease and then candidates for screening mammography thereafter. However, most clinicians and mammography experts in the United States consider patients with a personal history of breast disease to be candidates for diagnostic mammography for the rest of their lives, following the onset of their disease and its treatment.

In view of the above information, we propose to expand the definition of "diagnostic" mammography to include patients with a personal history of breast disease; however, we propose to leave the definition of "screening" mammography unchanged so that patients with a personal history of breast cancer can be considered candidates for the "screening" examination, if the patients and their physicians decide that this is appropriate.

We propose that the present definition of "diagnostic" mammography in paragraph (a)(1) of § 410.34 be expanded to include also, as a candidate for this service, a patient who does not have signs or symptoms of breast disease but who has a personal history of biopsy-proven breast disease.

The present regulations include as candidates for "screening" mammography all asymptomatic women regardless of whether they have had a personal history of biopsy-proven breast disease. We propose to leave unchanged the substance of the present definition of "screening" mammography in paragraph (a)(2) of § 410.34 but clarify it to read as follows: "Screening mammography means a radiological procedure furnished to a woman without signs or symptoms of breast disease, for the purpose of early detection of breast cancer, and includes a physician's interpretation of the results of the procedure." This might include an asymptomatic woman (that is, a woman without signs or symptoms of breast disease) with a history of biopsy-proven breast disease who might otherwise qualify for a diagnostic mammography as defined in the current § 410.34(a)(1). The woman and her physician would determine which examination to request (that is, either a diagnostic or a screening mammography). Although a history of biopsy-proven breast disease would ordinarily require recurrent diagnostic examinations, in some cases, when the

breast disease is no longer present, screening mammography might be appropriate.

We also propose that certain minor and technical changes be made in the limitations on coverage of screening mammography services to make them consistent with the proposed revisions to the definitions in "diagnostic" and "screening" mammography in § 410.34(a)(1) and (a)(2), respectively, and to simplify the language in § 410.34(d)(1) regarding the postmastectomy patient.

J. Use of Category-Specific Volume and Intensity (VI) Growth Allowances in Calculating the Default Medicare Volume Performance Standard (MVPS)

Currently, the default formula uses an estimate of the average annual percentage growth in the VI of physician services that is the same for all categories of physician services. Although historically the data available to us allowed an accurate estimate of the overall growth in the VI of physician services, they did not allow us to estimate the VI growth for each individual category of service with the degree of accuracy required for the MVPS calculation. More recent data now allow us to do this. We propose to calculate the MVPS for FY 1996 and all future years based on estimates of the average VI growth specific to each category. This would be consistent with our use of category-specific estimates of the MVPS factors for the weighted-average increase in physician fees and the percentage change in expenditures resulting from changes in law or regulations. The effect this proposal would have on a future MVPS for a category depends on the difference between the VI growth for that category and for physician services overall. To illustrate, the following table compares the estimated FY 1996 VI allowance for each category based on the overall average and the category-specific average:

	Overall average VI (percent)	Category-specific VI (percent)
Surgical Services	4.4	2.3
Primary Care Services	4.4	5.3
Nonsurgical Services	4.4	5.1
All Physician Services	4.4	4.4

As can be seen from the table, the FY 1996 MVPS VI allowance for primary care is higher using the category-specific VI factor than using the single VI factor. This is because the average VI growth for primary care services has been higher than the average VI growth for all physician services. Although for FY 1996 this change in methodology would result in a higher primary care MVPS, this does not necessarily mean it would have a similar result in future years. The impact on any individual category is dependent on the future relationship between the average VI growth for that category and for physician services overall. If future growth in the VI of primary care services is lower than overall physician growth, this change would result in a lower MVPS for primary care services. Similar reasoning applies to the surgical and other nonsurgical categories. This proposal reflects a policy change that is not explicitly addressed in our regulations.

Although we are proposing this regulatory change now to address immediate problems in the fee schedule, it is our intention to move toward the development of a legislative proposal to implement a single MVPS and CF for all Medicare physician fee schedule services. Because of past differential updates, the surgical CF is currently 8 percent and 14 percent higher than the CFs for primary care and other nonsurgical services, respectively. We are concerned that this situation clearly undermines the original intent of the Medicare physician fee schedule.

III. Issue for Change in Calendar Year (CY) 1998—Two Anesthesia Providers Involved in One Procedure

The certified registered nurse anesthetist (CRNA) fee schedule regulations provide that if an anesthesiologist and a CRNA are both involved in a single procedure, we deem the service to be personally performed by the anesthesiologist and allow payment only for the physician service.

Approximately equal percentages of CRNAs are employed by physicians and hospitals. When the physician employs the CRNA, payment for both the CRNA's and the physician's service go into the same practice revenue pool that is used to pay both providers. Our policy described above does not create any problems for this type of arrangement, since the practice views itself as being paid for the service. However, if the hospital employs the CRNA and the physician is involved with this CRNA in a single procedure, then only the physician is paid. The hospital is not paid under the Medicare program for the CRNA service.

Although we have not received many complaints from hospitals about this policy, the CRNAs have stated that our policy causes hospitals to lower CRNA salaries. While the CRNAs have not been able to produce information on the extent of this practice, they believe that this type of arrangement is not unusual.

The CRNAs also have expressed concern that the CRNA is the person furnishing the service to the patient. The anesthesiologist is present in the room usually because the hospital has an operating policy that the CRNA service always be supervised or directed.

Currently our medical direction rules apply only to concurrent procedures (that is, two, three or four) directed by a physician. We have not applied these rules to a single procedure. The application of the medical direction payment policy to a single procedure would have resulted in increased program payment, approximately 30 percent greater than the current policy. Thus, part of our concern for not extending the medical direction payment policy to a single procedure has been the additional cost to the Medicare program.

Section 13516 of OBRA '93 established a new payment methodology for both the physician's medical direction service and the medically directed CRNA service. For 1994, the allowance for each of these services is equal to 60 percent of the allowance that would be recognized for the procedure personally performed by the physician alone. These percentages are reduced each year so that in 1998, the allowance for each service is equal to 50 percent of the allowance that would be recognized for the procedure personally performed by the physician alone. The objective is that in 1998, the allowance for anesthesia care in a given area will be the same whether the care is furnished by the physician alone, a nonmedically directed CRNA, or the anesthesia care team.

As a result of the revised payment methodology for the anesthesia care team, we propose to apply the medical direction payment policy to the single procedure involving both the physician and the CRNA. Thus, in § 414.46 we propose to revise paragraphs (c) and (d) to state that in this situation the allowance for the medical direction 50 service of the physician and the medically directed service of the CRNA or the anesthesiologist assistant is based on the specified percentage of the allowance in § 416.40(d)(2). In addition, we propose that in 1998 and later years, this allowance is equal to 50 percent of the allowance for personally performed procedures.

We propose to implement this policy on January 1, 1998. At that time, the change in policy will be done in a budget-neutral manner. If we were to implement this policy earlier, the policy would cause program payments to increase relative to the current policy.

IV. Issues for Discussion

A. Resource-Based Practice Expense (PE) Relative Value Units (RVUs)

With the exception of anesthesia services, physician services and other diagnostic services paid under the physician fee schedule have PE and ME RVUs. Payments for PE RVUs account for approximately 42 percent of physician fee schedule payments.

The PE RVUs are derived from historical allowed charge data. The common criticism is that the PE RVUs are not truly resource-based because they are not based on resource costs.

Section 121 of the Social Security Act Amendments of 1994 (Pub. L. 103–432), enacted on October 31, 1994, requires the Secretary to develop a methodology for a resource-based system for determining PE RVUs for each physician service. In developing the methodology, the Secretary must consider the staff, equipment, and supplies used in the provision of medical and surgical services in various settings. The Secretary must report to the Congress on the methodology by June 30, 1996. The new payment methodology is effective for services furnished in 1998. There is no transition provision for these services.

To implement this statutory provision, we published a Request for Proposal (RFP) in the Commerce Daily in November 1994. Offerors were required to respond by January 17, 1995.

The objective of the RFP is to develop a uniform database that can be used to support a number of analytical methods (for example, microcosting or economic cost functions) to estimate PE per service. The contractor will provide us with both direct and indirect PE estimates for all services paid under the physician fee schedule. Further, we expect that these estimates will vary based on the site where the service is furnished. For example, the PE for a physician service furnished in the hospital outpatient department will differ from the PE for the same service furnished in the physician's office. The physician does not ordinarily incur the costs of clinical labor, medical supplies, or equipment associated with services in the hospital outpatient department.

The contractor will be responsible for identifying candidates for a technical expert group (TEG) who will assist with the development of data collection instruments to obtain PEs (both direct and indirect) and resource profiles. Resource profiles will be used to measure the quantities of inputs, such as clinical labor, equipment, and supplies used in producing specific services. The group of experts can be researchers and others who have published articles in this area or are members of the medical community, including clinical personnel, nonclinical personnel, and practice managers.

The TEG can have as many as 20 participants. We will make the final selection of participants in the TEG. The TEG will assume an active role in the process. It will be responsible for monitoring the entire project up to the point of delivery of data for analysis.

The contractor, with our assistance, will select clinical practice expert panels (CPEPs). The contractor will address the following issues in selecting the CPEPs:

- The choice and grouping of participating specialties.
- The mix of physicians, other clinicians, and practice managers.
- The number of panels.
- The grouping of codes and specialties in panels.
- The overlap of panels.
- Techniques for resolving disagreements across panels.

The actual number of panels and the size of the panels will be determined by the contractor and us. We expect that there will be fewer than 15 panels and the size of a panel will vary but will not exceed 12 persons.

The primary tasks of the CPEPs will be twofold. The first task will be to classify services and procedures into clinical and practice cost coherent groups. The common groups will be based on the direct cost of the procedure. The second task will be to select a reference procedure for each common grouping of codes. The CPEPs will complete a detailed resource profile for each reference procedure for the different practice sites. These profiles will consider only items that are direct-costed.

After the resource profiles are completed, the contractor will assign input prices to the resource inputs. This will produce a direct cost estimate for each reference procedure. In addition, the contractor will extrapolate the direct cost estimates for the reference procedure to other codes included in the same group, based on the relationship that the CPEP has established between the reference code and the other codes in the same group.

In addition to the procedure-specific profiles, the following kinds of data will be collected:

- Cost information from physician practices categorized by direct and indirect costs.
- Profiles of services from physician practices by place of service.
- Input price (including wage) information.

The first two kinds of information will be collected primarily by mail or by telephone survey from approximately 3,000 respondents. The contractor will gather the input price information from standard representative national data sources. Also, the contractor will be responsible for designing, organizing, and assembling the results into a documented database for access and use by multiple researchers.

The contractor will be responsible for generating PE estimates (both direct and indirect) for all CPT codes including radiology and anesthesia codes as well as the technical component and diagnostic testing codes that are paid under the physician fee schedule.

There are a number of methods by which the contractor could derive indirect cost estimates per code. Approaches include economic cost functions or accounting-based methods, whereby indirect costs are allocated based on factors, such as direct expense, physician work, or time. Regardless of which option is proposed, direct and indirect PE cost estimates will be presented for each code.

We awarded the contract to Abt Associates on March 31, 1995. The principal investigator is Monica Noether, Ph.D. In addition to Abt, the project team consists of the following:

- Consulting services furnished by Mark Pauly, Ph.D., and Gerald Wedig, Ph.D., economists at the University of Pennsylvania; and William Katz, D.B.A., a health care management consultant.
- The subcontractors are EnterMedica Resources, a management consulting firm that has conducted microcosting studies of physician practices in a variety of settings; and the Center for Research in Ambulatory Health Care Administration, the research arm of the Medical Group Management Association.
- The clinical consultants are Drs. Sankey Williams and Jose Escarce, practicing primary care physicians and health service researchers at the University of Pennsylvania.

The RFP includes the schedule for the completion of certain key activities. For example, the data collection and delivery must be completed by March 1996, and the report on analysis must be finished by September 1996. We expect to publish the proposed rule in the **Federal Register** in March 1997 and the final rule in November 1997. We will

implement the resource-based PE RVUs beginning January 1, 1996.

This discussion of our efforts to implement the requirement in the statute to develop a resource-based relative value scale for PEs is not a formal proposal. We are notifying the physician community and others about our progress to date and are providing other helpful information about the effort.

B. Primary Care Case Management and Other Managed Care Approaches

We are considering approaches to increasing managed care options under Medicare. One approach could be to apply primary care case management methods currently used by private payers and Medicaid programs to the Medicare fee-for-service system. There are many interpretations of primary care case management. The CPT defines case management as "a process in which a physician is responsible for direct care of a patient, and for coordinating and controlling access to or initiating and/or supervising other health care services needed by the patient." The State of Maryland operates a primary care case management system known as Maryland Access to Care (MAC). Under the MAC program, Medicaid recipients are linked to a primary medical provider (PMP). Each PMP acts as a "gatekeeper" to the health care system, furnishing primary care and preventive services and making referrals to specialty care when necessary. Permutations of the gatekeeper approach are being used in many managed care arrangements. Under the physician fee schedule, we could construct fee arrangements with primary care physicians that would promote greater use of case management. We also are considering whether to undertake demonstrations of primary care case management that involve beneficiary enrollment or election and different approaches for a primary care option. We welcome comments on a possible framework for a Medicare primary care case management option either under current regulations or through a demonstration project.

We are already exploring case management options through several Medicare demonstration and developmental efforts that are underway. One demonstration is a voluntary program of Medicare case management for targeted high-cost illnesses such as congestive heart failure and cancer. The case management services consist of regular telephone calls to provide education and monitor treatment, assistance in arranging support services, caregiver support, and occasional in-person visits. These services are furnished by teams of nurses and social workers who coordinate their efforts with the beneficiary's physician. This demonstration tests whether the case management service will reduce the cost and aggravation incurred when patients with specific conditions are unnecessarily rehospitalized or must revisit a physician.

Other projects involve a new method for paying physicians that provides incentives for effective management of care to beneficiaries. Physician groups will be paid either on a capitated basis or incentive through payment for specified bundles of services associated with the treatment of chronic conditions and acute episodes of care.

The intent of these new payment arrangements is to transfer financial risk to the physician groups, thereby finding efficient ways to provide care and increasing incentives to the physician groups to contain costs. Five payment models will be evaluated that range from a model of full capitation that transfers the financial risk to the physician group furnishing all Medicare-covered services to models that reduce the amount of risk transferred to the group and limit the requirement for an enrolled population.

These approaches represent a sample of available options. We are not prepared to make a specific proposal now. Rather, our intent at this time is to solicit information, recommendations, and suggestions from the public on how we might apply primary care case management to the Medicare fee-for-service system. We are particularly interested in the following:

- Which physicians, providers, or other health care professionals should be designated as case managers?
- Which types of patients would benefit from case management?
- What evidence is there that case management is valuable to patients other than those with chronic illness or acute episodes?
- Should Medicare pay for case management services and how should they be paid?

V. Collection of Information Requirements

Sections 415.60(f)(1) (concerning determination and payment of allowable physician compensation costs), 415.60(g) (concerning recordkeeping requirements for allocation of physician compensation costs), and 415.70(e) (concerning limits on compensation for services of physicians in providers) of this document contain information collection requirements. The information collection requirements in § 415.60(f)(1) concern the amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not paid under either Part A or Part B of Medicare; and assurance that the compensation is reasonable in terms of the time devoted to these services. The information collection requirements in § 415.60(g) concern time records used to allocate physician compensation, information on which the physician compensation allocation is based, and retention of this information for a 4-year period after the end of each cost reporting period to which the allocation applies. The information collection requirements in § 415.70(e) concern an exception to the limits on compensation for services of physicians in providers if the provider can demonstrate to the intermediary that it is unable to recruit or maintain an adequate number of physicians at a compensation level within these limits. Respondents who will provide the information include providers, intermediaries, and physicians.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Regulatory Impact Analysis

A. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are considered to be small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities. Nevertheless, we are preparing a regulatory flexibility analysis because the provisions of this rule are expected to have varying effects on the distribution of Medicare physician payments and services. We anticipate that virtually all of the approximately 500,000 physicians who furnish covered services to Medicare beneficiaries would be affected by one or more provisions of this rule. In addition, physicians who are paid by private insurers for non-Medicare services would be affected to the extent that they are paid by private insurers that choose to use the proposed RVUs. However, with few exceptions, we expect that the impact would be limited.

If these proposals result in increases in Medicare payment amounts, beneficiary liability would also increase because the coinsurance amounts would increase. In addition, if nonparticipating physicians do not accept assignment, the amount that they may bill above the fee schedule amount would also increase because the limiting charge for the service would increase. If a proposal results in a decrease in Medicare payment amounts or the bundling of payment for one service into payment for another, beneficiary liability would decrease.

Section 1848(c)(2)(B) of the Act requires that adjustments in a year may not cause the amount of expenditures for the year to differ by more than $20 million from the amount of expenditures that would have been made if these adjustments had not been made. If this threshold is exceeded, we usually make adjustments to the RVUs in order to preserve budget neutrality. The proposals discussed in sections B through K below would have no impact on total Medicare expenditures because the effects of these changes would be neutralized in the establishment of RVUs for 1996.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

B. Budget-Neutrality Adjustments for Relative Value Units

Under this proposal, budget neutrality adjustments would be applied to the fee schedule CFs instead of procedure RVUs. This alternative approach would be administratively simpler for Medicare and other payers that base their payments on the Medicare RVUs, including many Medicaid programs and would facilitate policy and data analyses of RVUs. Any changes to procedure payment amounts or total payment would be due to rounding and would be minimal.

We do not expect any objection to this proposal because we are responding to requests by the AMA, private payers, and Medicaid programs that base payment on Medicare RVUs.

C. Bundled Services

1. Hydration Therapy and Chemotherapy

Presently, we allow separate payment for hydration therapy IV infusion (CPT codes 90780 and 90781) when it is performed on the same day as chemotherapy IV infusion (CPT codes 96410, 96412, and 96414). The Medicare charge data show that in 1994, CPT codes 90780 and 90781 (hydration therapy IV infusion) were billed in addition to chemotherapy IV infusion only 9.3 percent and 4 percent of the time, respectively, and accounted for $8.5 million in Medicare expenditures.

We believe that paying for hydration therapy IV infusion and chemotherapy IV infusion administered on the same day represents duplicate payment. Therefore we propose not paying separately for CPT codes 90780 and 90781 when billed on the same day as CPT codes 96410, 96412, and 96414. We propose implementing this proposal in a budget neutral manner by redistributing the payment for hydration therapy IV infusion performed on the same day as chemotherapy IV infusion across all RVUs.

2. Evaluation of Psychiatric Records and Reports and Family Counseling Services

We propose to bundle payment for CPT codes 90825 and 90887 into the payment for other psychiatric codes. Thus, separate payment would no longer be made for either CPT code 90825 or CPT code 90887. The annual expenditures for CPT code 90825 under our current policy are approximately $2.3 million. The current policy allowing separate payment for CPT code 90887 results in annual expenditures of approximately $2.5 million. We would implement this change in policy by redistributing the payment for CPT codes 90825 and 90887 equally into the following psychiatric procedure codes: 90801, 90820, 90835, 90842 through 90847, and 90853 through 90857. We estimate that this change would increase the RVUs for the latter codes by approximately 0.7 percent.

3. Fitting of Spectacles

We propose to cease making separate payment under the physician fee schedule for fitting of spectacles and low vision systems, CPT codes 92352 through 92358 and 92371, beginning January 1, 1996. We would redistribute the payment currently made for these codes across all physician services, which is what would have occurred had we not included these fees when the fee schedule was created. Payment for these services is already included in the payment for the prosthetic device.

Because the total payment for spectacle fitting services is relatively low (approximately $3 million in CY 1993) compared to the total payment for all physician services, we believe the impact on RVUs for all physician services would be negligible.

Virtually all of the providers who have been billing for the fitting as a professional service have been optometrists. Under this proposal, they would no longer be able to bill separately for this service. The effect on individual optometrists would depend upon the amount of their income derived from billing for fitting services.

D. X-Rays and Electrocardiograms (EKGs) Taken in the Emergency Room

Under current policy, issued in 1981, the interpretation of an x-ray or EKG furnished to an emergency room patient by a radiologist or cardiologist, respectively, "almost always" constitutes a covered Part B service payable by the carrier, regardless of whether the test results have been previously used in the diagnosis and treatment of the patient by a physician in the emergency room and regardless of when the specialist furnishes the interpretation. A study completed by the OIG of DHHS, dated July 1993, recommended that we change this policy to indicate that the second interpretation is generally a quality control service to be taken into account by intermediaries in determining hospital reasonable costs. Further, we understand that some carriers are currently paying both the emergency room physician and the radiologist or cardiologist for the interpretation of the same x-ray or EKG.

We propose to pay for only one interpretation of an x-ray or EKG furnished to an ER patient except under unusual circumstances. In situations in which both the ER physician and the radiologist or cardiologist bill for the interpretation, the carriers would be instructed to pay for the interpretation used in the diagnosis and treatment of the patient. The second interpretation would be considered a quality control service. Under this proposal, the incidence of carriers' paying twice for an interpretation would be reduced, but we have no estimate of the number of duplicate payments that would be eliminated. We believe the specialists would be affected primarily. If hospitals want to ensure that their specialists are paid for these interpretations, they could make arrangements to preclude

the ER physician from billing for the same service.

E. Extension of Site-of-Service Payment Differential to Services in Ambulatory Surgical Centers (ASCs)

We propose to extend the site-of-service payment differential to office-based services if those services are furnished in an ASC, effective for services furnished beginning January 1, 1996. We propose adding 152 codes to the list. Were it not for budget-neutrality adjustments, we estimate that these additions would result in a $25.7 million reduction in Medicare payments.

F. Services of Teaching Physicians

This proposed change would remove the single attending physician criteria for hospital patients and allow and promote supervision of the care by physician group practices. We believe allowing for more than one teaching physician per beneficiary inpatient stay would result in negligible additional cost, but the lack of any data prevents us from quantifying the effects of this change. In addition, this proposed rule would incorporate long-standing Medicare coverage and payment policy regarding the circumstances under which the services of residents are payable as physician services.

We propose to require the physical presence of a teaching physician during the key portion of the service. Details regarding the physical presence of a teaching physician during different types of services and procedures are discussed in section II. F. of this preamble. Although we lack specific data, we believe that the provisions of this part of the proposed rule would have little budgetary effect.

G. Unspecified Physical and Occupational Therapy Services (HCPCS Codes M0005 through M0008 and H5300)

We propose to eliminate HCPCS codes M0005 through M0008 and H5300 and redistribute the RVUs to codes in the physical medicine and rehabilitation section of the CPT (codes 97010 through 97039). The codes we propose to delete are general codes that do not describe adequately the service being provided. Their use precludes effective review necessary to ensure that the services being paid are covered by Medicare. In 1995, the AMA revised the CPT codes in the Physical Medicine and Rehabilitation section of the CPT to better reflect the provision of physical and occupational therapy services.

We believe that each unit of service currently billed under the codes we propose to delete would be billed under a CPT or HCPCS code and that the total amount of Medicare payment for physical medicine services would not change significantly as a result of the elimination of these codes. Therefore, we are assuming that there would not be any additional costs or savings as a result of this proposed change in billing. Since the original codes were not descriptive, we would have no way of comparing payments. However, we believe we would eliminate any manipulation of payment and improve the data we collect by requiring these practitioners to use the more specific codes when billing for services.

H. Transportation in Connection With Furnishing Diagnostic Tests

Except for portable x-ray and EKG equipment, this proposed rule would no longer authorize payments for the transportation of diagnostic equipment to the patient or to a site, such as a physician office, for use in furnishing tests to Medicare beneficiaries. The transportation expense is "bundled" into the payment for the procedure. Individual carrier policies on making transportation payments vary. This proposed rule would establish a national Medicare policy on payments for the transportation of diagnostic test equipment. The little data we have indicate that the transportation payment is often several times higher than the payment we make for the specific procedure furnished.

I. Maxillofacial Prosthetic Services

We propose to establish national RVUs for these services and to discontinue pricing by individual carriers. We estimate that total estimated expenditures for CPT codes 21079 through 21087 and codes G0020 and G0021 based on the proposed RVUs will be approximately $2.4 million in CY 1996. The 1994 Medicare expenditures for the codes under the carrier pricing methodology were approximately $1.5 million which, if updated for 1995 would be approximately $1.6 million. Thus, we estimate an increase of approximately $800,000 for these codes. However, total expenditures for physician services would not increase as a result of this proposal because we would implement this change in a budget neutral manner in accordance with section 1848(c)(2)(B)(II) of the Act.

These services are furnished most frequently by oral surgeons (dentists only) and by maxillofacial surgeons. Because the total expenditures for these services are estimated to increase slightly, we expect that in general the physicians who perform and bill for these procedures will realize an increase in payment. However, in some areas, the payment amounts based on national RVUs may be lower than those calculated by the local carrier.

J. Coverage of Mammography Services

We propose to expand the definition of "diagnostic" mammography to include as candidates for this service asymptomatic men or women who have had a personal history of biopsy-proven breast disease. At present, the definition includes as candidates for mammography services only persons showing signs or symptoms of breast disease. We do not believe this change will result in a significant increase in the total number of mammography services because information from carriers indicates that most asymptomatic patients with a personal history of breast disease are already receiving diagnostic mammography services.

K. Use of Category-Specific Volume and Intensity (VI) Growth Allowances in Calculating the Default Medicare Volume Performance Standard (MVPS)

The use of category-specific VI in the MVPS default formula would be budget neutral overall, although it would have redistributional effects on the surgical, primary care, and nonsurgical categories.

L. Two Anesthesia Providers Involved in One Procedure

We propose to apply the medical direction payment policy to the single procedure involving both the physician and the CRNA. We do not propose to implement this policy until January 1, 1998 at which time the proposal will be budget neutral. In 1998, the allowance for the medically-directed CRNA service and the medical-direction service of the anesthesiologist will be equivalent to 50 percent of the allowance recognized for the service personally performed by the anesthesiologist alone. Thus, payment for both services will be no different than what would be allowed for the anesthesia service personally performed by the anesthesiologist.

Although this proposal is budget neutral, total payments to anesthesiologists will decrease slightly and payments to the CRNAs' employers will increase slightly. We cannot quantify the amount of the losses to the anesthesiologists or the gains to the CRNAs' employers. However, anesthesiologists can lessen their losses by actually personally performing as many of these cases as possible and receiving the same allowance they would have in the absence of this proposal.

M. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would have little direct effect on payments to rural hospitals since this rule would change only payments made to physicians and certain other practitioners under Part B of the Medicare program and would make no change in payments to hospitals under Part A. We do not believe the changes would have a major, indirect effect on rural hospitals.

Therefore, we are not preparing an analysis for section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

A. Part 400 is amended as set forth below:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. In § 400.202, the introductory text is republished and the definition of GME is added in alphabetical order to read as follows:

§ 400.202 Definitions specific to Medicare.

As used in connection with the Medicare program, unless the context indicates otherwise—

* * * * *

GME stands for graduate medical education.

* * * * *

B. Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—[Removed and Reserved]

1. Subpart D, consisting of §§ 405.465 through 405.482, is removed and reserved.

2. Subpart E is amended as set forth below:

a. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(a) (b), and (c), 1842(b), (h), and (i), 1848, 1861(b), (s), (v), (aa), and (jj), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(a), (b), and (c), 1395u(b), (h), and (i), 1395w–4, 1395x(b), (s), (v), (aa), and (jj), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

b. The heading for subpart E is revised to read as follows:

Subpart E—Criteria for Determining Reasonable Charges

c. Subpart E is amended by removing §§ 405.520 through 405.525.

Subpart F—[Removed and Reserved]

3. Subpart F, consisting of §§ 405.550 through 405.580, is removed and reserved.

4. Subpart X is amended as set forth below:

Subpart X—Rural Health Clinic and Federally Qualified Health Center Services

a. The authority citation for subpart X continues to read as follows:

Authority: Secs. 1102, 1833, 1861(aa), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l, 1395x(aa), and 1395hh).

b. In § 405.2401, paragraph (b), the introductory text is republished, and the definition for *physician* is revised to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

(b) *Definitions.* As used in this subpart, unless the context indicates otherwise:

* * * * *

Physician means the following:

(1) A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the function is performed.

(2) Within limitations as to the specific services furnished, a doctor of dentistry or dental or oral surgery, a doctor of optometry, a doctor of podiatry or surgical chiropody or a chiropractor. (See section 1861(r) of the Act for specific limitations.)

(3) A resident (including residents as defined in § 415.152 of this chapter who meet the requirements in § 415.206(b) of this chapter for payment under the physician fee schedule).

* * * * *

C. Part 410 is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise indicated.

2. Section 410.34 is amended by republishing the introductory text to paragraph (a) and revising paragraphs (a)(1), (a)(2), and (d) to read as follows:

§ 410.34 Mammography services: Conditions for and limitations on coverage.

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Diagnostic mammography* means a radiologic procedure furnished to a man or woman with signs or symptoms of breast disease, or a personal history of biopsy-proven breast disease, and includes a physician's interpretation of the results of the procedure.

(2) *Screening mammography* means a radiologic procedure furnished to a woman without signs or symptoms of breast disease, for the purpose of early detection of breast cancer, and includes a physician's interpretation of the results of the procedure.

* * * * *

(d) *Limitations on coverage of screening mammography services.* The following limitations apply to coverage of screening mammography services as described in paragraph (a)(2) of this section:

(1) The service must be, at a minimum a two-view exposure (that is, a cranio-caudal and a medial lateral oblique view) of each breast.

(2) Payment may not be made for screening mammography performed on a woman under age 35.

(3) Payment may be made for only 1 screening mammography performed on a woman over age 34, but under age 40.

(4) For a woman over age 39, but under age 50, the following limitations apply:

(i) Payment may be made for a screening mammography performed after at least 11 months have passed following the month in which the last screening mammography was performed if the woman has—

(A) A personal history of breast cancer;

(B) A personal history of biopsy-proven benign breast disease;

(C) A mother, sister, or daughter who has had breast cancer; or

(D) Not given birth before age 30.

(ii) If the woman does not meet the conditions described in paragraph (d)(4)(i) of this section, payment may be made for a screening mammography performed after at least 23 months have passed following the month in which the last screening mammography was performed.

(5) For a woman over age 49, but under age 65, payment may be made for a screening mammography performed after at least 11 months have passed following the month in which the last screening mammography was performed.

(6) For a woman over age 64, payment may be made for a screening mammography performed after at least 23 months have passed following the month in which the last screening mammography was performed.

D. Part 414 is amended as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 414.28, the introductory text is republished, and paragraph (b) is revised to read as follows:

§ 414.28 Conversion factors.

HCFA establishes CFs in accordance with section 1848(d) of the Act.

* * * * *

(b) *Subsequent CFs.* Beginning January 1, 1993, the CF for each year is equal to the CF for the previous year, adjusted in accordance with § 414.30. Beginning January 1, 1996, the CF for each CY may be further adjusted so that adjustments to the fee schedule in accordance with section 1848(c)(2)(B)(ii) of the Act do not cause total expenditures under the fee schedule to differ by more than $20 million from the amount that would have been spent if these adjustments had not been made.

§ 414.32 [Amended]

3. In § 414.32, paragraph (d)(2) is removed, and paragraph (d)(3) is redesignated as paragraph (d)(2).

§ 414.46 [Amended]

4. In § 414.46, the following changes are made:

a. The word "procedure" in paragraphs (c)(2) introductory text, (c)(2)(i), (d)(1) introductory text, and (g) is removed, and the word "service" is added in its place. The word "procedures" in paragraphs (a)(1), (c)(1), (d)(1)(i), (d)(1)(ii), (d)(1)(iii), (d)(1)(iv), (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), (d)(2)(v), the heading of paragraph (e), and paragraphs (e) and (g) is removed, and the word "services" is added in its place.

b. Paragraphs (c)(2)(ii) and (c)(2)(iii) are redesignated as paragraphs (c)(2)(iii) and (c)(2)(ii), respectively.

c. Newly redesignated paragraph (c)(2)(ii) and paragraph (c)(3) are revised, a new paragraph (c)(4) is added, and the introductory text to paragraph (d) and paragraph (d)(2) are revised to read as follows:

§ 414.46 Additional rules for payment of anesthesia services.

* * * * *

(c) *Physician personally performs the anesthesia service.*

* * * * *

(2) * * *

(ii) For services furnished before January 1, 1998, the physician is continuously involved in a single case involving a certified registered nurse anesthetist (CRNA), anesthesiologist assistant (AA), or student nurse anesthetist.

* * * * *

(3) For services furnished before January 1, 1998, no payment is made under the CRNA fee schedule for the services of a CRNA or AA involved in a service described in paragraph (c)(2) of this section unless HCFA determines that it was medically necessary for both the physician and the CRNA or AA to be involved in the same case.

(4) For services furnished on or after January 1, 1998, if a physician is continuously involved in a single service involving a CRNA or AA, the payment allowance for the service of the CRNA or the AA is determined on the basis of the payment methodology in paragraph (d)(2) of this section.

(d) *Physician medically directs concurrent anesthesia services.* HCFA uses one of the following payment methodologies to determine the fee schedule amount for concurrent medically directed anesthesia services furnished by a physician during a specified CY.

* * * * *

(2) *Beginning CY 1994.* Payment is based on a specified percentage of the payment allowance recognized for the anesthesia service personally performed by a physician alone. For services furnished on or after January 1, 1998, if a physician is continuously involved in a single service involving a CRNA, AA, or a student nurse anesthetist, the payment rules for medical direction in this paragraph apply. The following percentages apply for the years specified:

* * * * *

5. In § 414.60, paragraph (b) is revised, and paragraph (c) is added to read as follows:

§ 414.60 Payment for the services of certified registered nurse anesthetists.

* * * * *

(b) *Beginning CY 1994.* The allowance for an anesthesia service furnished by a medically directed CRNA beginning CY 1994 is based on a fixed percentage, as specified in § 414.46(d)(2), of the allowance recognized for the anesthesia service personally performed by the physician alone. The CF for an anesthesia service furnished by a nonmedically directed CRNA beginning CY 1994 cannot exceed the CF for a service personally performed by an anesthesiologist.

(c) *Individuals or entities that can receive payment.* The allowance for an anesthesia service furnished by a CRNA or an AA can be made to the CRNA furnishing the service, or to a hospital, rural primary care hospital, physician, group practice, or ambulatory surgical center with which the CRNA furnishing the service has an employment or contractual relationship that provides for payment to be made for the service to the entity. Payment for the service of a CRNA may be made only on an assignment-related basis, and any assignment agreed to by a CRNA is binding on any other person presenting a claim or request for payment for the service.

§§ 414.450–414.453 [Removed]

6. Subpart H, consisting of §§ 414.450 through 414.453, is removed.

E. A new part 415 is added to read as follows:

PART 415—SERVICES OF PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

Subpart A—General Provisions

Sec.
415.1 Basis and scope.

Subpart B—Fiscal Intermediary Payments to Providers for Physician Services

Sec.
415.50 Scope.
415.55 General payment rules.
415.60 Allocation of physician compensation costs.
415.70 Limits on compensation for physician services in providers.

Subpart C—Part B Carrier Payments for Physician Services to Beneficiaries in Providers

Sec.
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Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

§ 415.1 Basis and scope.

(a) *Basis.* This part is based on the provisions of the following sections of the Act: Section 1848 establishes a fee schedule for payment for physician services. Section 1861(q) specifies what is included in the term "physician services" covered under Medicare. Section 1862(a)(14) sets forth the exclusion of nonphysician services furnished to hospital patients under Part B of Medicare. Section 1886(d)(5)(B) provides for a payment adjustment under the prospective payment system for the operating costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983, to account for the indirect costs of medical education. Section 1886(h) establishes the methodology for Medicare payment of the cost of direct GME activities.

(b) *Scope.* This part sets forth rules for fiscal intermediary payments to providers for physician services, Part B carrier payments for physician services to beneficiaries in providers, physician services in teaching settings, and services of residents.

Subpart B—Fiscal Intermediary Payments to Providers for Physician Services

§ 415.50 Scope.

This subpart sets forth rules for payment by fiscal intermediaries to providers for services furnished by physicians. Payment for covered services is made either under the prospective payment system (PPS) to PPS-participating providers in accordance with part 412 of this chapter or under the reasonable cost method to non-PPS participating providers in accordance with part 413 of this chapter.

§ 415.55 General payment rules.

(a) *Allowable costs.* Except as specified otherwise in §§ 413.102 of this chapter (concerning compensation of owners), 415.60 (concerning allocation of physician compensation costs), and 415.162 (concerning payment for physician services furnished to beneficiaries in teaching hospitals), costs a provider incurs for services of physicians are allowable only if the following conditions are met:

(1) The services do not meet the conditions in § 415.100(b) regarding fee schedule payment for services of physicians to a beneficiary in a provider.

(2) The services include a surgeon's supervision of services of a qualified anesthetist, but do not include physician availability services, except for reasonable availability services furnished for emergency rooms and the services of standby surgical team physicians.

(3) The provider has incurred a cost for salary or other compensation it furnished the physician for the services.

(4) The costs incurred by the provider for the services meet the requirements in § 413.9 of this chapter regarding costs related to patient care.

(5) The costs do not include supervision of interns and residents unless the provider elects reasonable cost payment as specified in § 415.160, or any other costs incurred in connection with an approved GME program that are payable under § 413.86 of this chapter.

(b) *Allocation of allowable costs.* The provider must follow the rules in § 415.60 regarding allocation of physician compensation costs to determine its costs of services.

(c) *Limits on allowable costs.* The intermediary must apply the limits on compensation set forth in § 415.70 to determine its payments to a provider for the costs of services.

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§ 415.60 Allocation of physician compensation costs.

(a) *Definition.* For purposes of this subpart, *physician compensation costs* means monetary payments, fringe benefits, deferred compensation, and any other items of value (excluding office space or billing and collection services) that a provider or other organization furnishes a physician in return for the physician services. Other organizations are entities related to the provider within the meaning of § 413.17 of this chapter or entities that furnish services for the provider under arrangements within the meaning of the Act.

(b) *General rule.* Except as provided in paragraph (d) of this section, each provider that incurs physician compensation costs must allocate those costs, in proportion to the percentage of total time that is spent in furnishing each category of services, among—

(1) Physician services to the provider (as described in § 415.50);

(2) Physician services to beneficiaries (as described in § 415.100); and

(3) Activities of the physician, such as funded research, that are not paid under either Part A or Part B of Medicare.

(c) *Allowable physician compensation costs.* Only costs allocated to paid physician services to the provider (as described in § 415.50) are allowable costs to the provider under this subpart.

(d) *Allocation of all compensation to services to the provider.* The total physician compensation received by a physician is allocated among all services furnished by the physician to the provider, unless—

(1) The provider certifies that the compensation is attributable solely to the physician services furnished to the provider; and

(2) The physician bills all patients for the physician services he or she furnishes to those patients and personally receives the payment from the billings. If returned directly or indirectly to the provider or an organization related to the provider within the meaning of § 413.17 of this chapter, these payments are not compensation for physician services furnished to the provider.

(e) *Assumed allocation of all compensation to beneficiary services.* If the provider and physician agree to accept the assumed allocation of all the physician services to direct services to beneficiaries as described under § 415.100(b), HCFA does not require a written allocation agreement between the physician and the provider.

(f) *Determination and payment of allowable physician compensation costs.* (1) Except as provided under paragraph (e) of this section, the intermediary pays the provider for these costs only if—

(i) The provider submits to the intermediary a written allocation agreement between the provider and the physician that specifies the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to beneficiaries, and services that are not paid under either Part A or Part B of Medicare; and

(ii) The compensation is reasonable in terms of the time devoted to these services.

(2) In the absence of a written allocation agreement, the intermediary assumes, for purposes of determining reasonable costs of the provider, that 100 percent of the physician compensation cost is allocated to services to beneficiaries as specified in paragraph (b)(2) of this section.

(g) *Recordkeeping requirements.* Except for services furnished in accordance with the assumed allocation under paragraph (e) of this section, each provider that claims payment for services of physicians under this subpart must meet all of the following requirements:

(1) Maintain the time records or other information it used to allocate physician compensation in a form that permits the information to be validated by the intermediary or the carrier.

(2) Report the information on which the physician compensation allocation is based to the intermediary or the carrier on an annual basis and promptly notify the intermediary or carrier of any revisions to the compensation allocation.

(3) Retain each physician compensation allocation, and the information on which it is based, for at least 4 years after the end of each cost reporting period to which the allocation applies.

§ 415.70 Limits on compensation for physician services in providers.

(a) *Principle and scope.* (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, HCFA establishes reasonable compensation equivalency (RCE) limits on the amount of compensation paid to physicians by providers. These limits are applied to a provider's costs incurred in compensating physicians for services to the provider, as described in § 415.50(a).

(2) Limits established under this section do not apply to costs of physician compensation attributable to furnishing inpatient hospital services that are paid for under the prospective payment system implemented under part 412 of this chapter or to costs of physician compensation attributable to approved GME programs that are payable under § 413.86 of this chapter.

(3) Compensation that a physician receives for activities that may not be paid for under either Part A or Part B of Medicare is not considered in applying these limits.

(b) *Methodology for establishing limits.* HCFA establishes a methodology for determining annual RCE limits and considers average physician incomes by specialty and type of location to the extent possible using the best available data.

(c) *Application of limits.* If the level of compensation exceeds the limits established under paragraph (b) of this section, Medicare payment is based on the level established by the limits.

(d) *Adjustment of the limits.* The intermediary may adjust limits established under paragraph (b) of this section to account for costs incurred by the physician or the provider related to malpractice insurance, professional memberships, and continuing medical education.

(1) For the costs of membership in professional societies and continuing medical education, the intermediary may adjust the limit by the lesser of—

(i) The actual cost incurred by the provider or the physician for these activities; or

(ii) Five percent of the appropriate limit.

(2) For the cost of malpractice expenses incurred by either the provider or the physician, the intermediary may adjust the RCE limit by the cost of the malpractice insurance expense related to the physician service furnished to beneficiaries in providers.

(e) *Exception to limits.* An intermediary may grant a provider an exception to the limits established under paragraph (b) of this section only if the provider can demonstrate to the intermediary that it is unable to recruit or maintain an adequate number of physicians at a compensation level within these limits.

(f) *Notification of changes in methodologies and payment limits.* (1) Before the start of a cost reporting period to which limits established under this section will be applied, HCFA publishes a notice in the **Federal Register** that sets forth the amount of the limits and explains how it calculated the limits.

(2) If HCFA proposes to revise the methodology for establishing payment limits under this section, HCFA publishes a notice, with opportunity for public comment, in the **Federal Register**. The notice explains the proposed basis and methodology for setting limits, specifies the limits that would result, and states the date of implementation of the limits.

(3) If HCFA updates limits by applying the most recent economic index data without revising the limit methodology, HCFA publishes the revised limits in a notice in the **Federal Register** without prior publication of a proposal or public comment period.

Subpart C—Part B Carrier Payments for Physician Services to Beneficiaries in Providers

§ 415.100 Conditions for fee schedule payment for physician services to beneficiaries in providers: General provisions.

(a) *Scope.* This section implements section 1887(a)(1) of the Act by providing general conditions that must be met in order for services furnished by physicians to beneficiaries in providers to be paid for on the basis of the physician fee schedule under part 414 of this chapter. Section 415.105 sets forth general requirements for determining the amounts of payment for services that meet the conditions of this section. Sections 415.120 through 415.130 set forth additional conditions for payment for physician services in the specialties of radiology and pathology (laboratory services).

(b) *Conditions for payment for physician services to beneficiaries in providers.* The carrier pays for services of physicians furnished to beneficiaries in providers on a fee schedule basis if the following requirements are met:

(1) The services are personally furnished for an individual beneficiary by a physician.

(2) The services contribute directly to the diagnosis or treatment of an individual beneficiary.

(3) The services ordinarily require performance by a physician.

(4) In the case of radiology or laboratory services, the additional requirements in § 415.120 or § 415.130, respectively, are met.

(c) *Services of physicians to providers.* If a physician furnishes services in a provider that do not meet the requirements in paragraph (b) of this section, but are related to beneficiary care by the provider, the intermediary pays for those services, if otherwise covered, under the rules for payment of physician services to providers in §§ 415.50 and 415.60 on the basis of reasonable cost or PPS, as appropriate.

(d) *Effect of billing charges for physician services to a provider.* (1) For services furnished by a physician that may be paid under the reasonable cost rules in § 415.50 or § 415.60, or would be paid under those rules except for the PPS rules in part 412 of this chapter, and under the payment rules for GME established by § 413.86 of this chapter, neither the provider nor the physician may seek payment from the carrier, beneficiary, or another insurer.

(2) The carrier does not pay on a fee schedule basis for services furnished by a physician to an individual beneficiary that do not meet the applicable conditions in §§ 415.120 (concerning conditions for payment for radiology services) and 415.130 (concerning conditions for payment for physician pathology services).

(3) If the physician, the provider, or another entity bills the carrier or the beneficiary or another insurer for physician services furnished to the provider, as described in § 415.50(a), HCFA considers the provider to whom the services are furnished to have violated its provider participation agreement, and may terminate that agreement. See part 489 of this chapter for rules governing provider agreements.

(e) *Effect of physician assumption of operating costs.* If a physician or other entity enters into an agreement (such as a lease or concession) with a provider, and the physician (or entity) assumes some or all of the operating costs of the provider department in which the physician furnishes physician services, the following rules apply:

(1) If the conditions set forth in paragraph (b) of this section are met, the carrier pays for the physician services under the physician fee schedule in part 414 of this chapter.

(2) To the extent the provider incurs a cost payable on a reasonable cost basis under part 413 of this chapter, the intermediary pays the provider on a reasonable cost basis for the costs associated with producing these services, including overhead, supplies, equipment costs, and services furnished by nonphysician personnel.

(3) The physician (or other entity) is treated as being related to the provider within the meaning of § 413.17 of this chapter (concerning cost to related organizations).

(4) The physician (or other entity) must make its books and records available to the provider and the intermediary as necessary to verify the nature and extent of the costs of the services furnished by the physician (or other entity).

§ 415.105 Payment for physician services to beneficiaries in providers.

(a) *General rule.* The carrier determines amounts of payment for physician services to beneficiaries in providers in accordance with the general rules governing the physician fee schedule payment in part 414 of this chapter, except as provided in paragraph (b) of this section.

(b) *Application in certain settings.*—(1) *Teaching hospitals.* In determining whether fee schedule payment should be made for physician services to individual beneficiaries in a teaching hospital, the carrier applies the rules in subpart D of this part (concerning physician services in teaching settings), in addition to those in this section.

(2) *Hospital-based ESRD facilities.* The carrier applies §§ 414.310 through 414.314 of this chapter, which set forth determination of reasonable charges under the ESRD program, to determine the amount of payment for physician services furnished to individual beneficiaries in a hospital-based ESRD facility approved under part 405 subpart U.

§ 415.120 Conditions for payment: Radiology services.

(a) *Services to beneficiaries.* The carrier pays for radiology services furnished by a physician to a beneficiary on a fee schedule basis only if the services meet the conditions for fee schedule payment in § 415.100(b) and are identifiable, direct, and discrete diagnostic or therapeutic services furnished to an individual beneficiary, such as interpretation of x-ray plates, angiograms, myelograms, pyelograms, or ultrasound procedures. The carrier pays for interpretations only if there is a written report prepared for inclusion in the patient's medical record maintained by the hospital.

(b) *Services to providers.* The carrier does not pay on a fee schedule basis for physician services to the provider (for example, administrative or supervisory services) or for provider services needed to produce the x-ray films or other items that are interpreted by the radiologist. However, the intermediary pays the provider for these services in accordance with § 415.50 for provider costs; § 415.100(e)(2) for costs incurred by a physician, such as under a lease or concession agreement; or part 412 of this chapter for payment under PPS.

§ 415.130 Conditions for payment: Physician pathology services.

(a) *Physician pathology services.* The carrier pays for pathology services furnished by a physician to an individual beneficiary on a fee schedule basis only if the services meet the conditions for payment in § 415.100(b) and are one of the following services:

(1) Surgical pathology services.

(2) Specific cytopathology, hematology, and blood banking services that have been identified to require performance by a physician and are listed in program operating instructions.

(3) Clinical consultation services that meet the requirements in paragraph (b) of this section.

(4) Clinical laboratory interpretative services that meet the requirements of paragraphs (b)(1), (b)(3), and (b)(4) of this section and that are specifically listed in program operating instructions.

(b) *Clinical consultation services.* For purposes of this section, clinical consultation services must meet the following requirements:

(1) Be requested by the beneficiary's attending physician.

(2) Relate to a test result that lies outside the clinically significant normal or expected range in view of the condition of the beneficiary.

(3) Result in a written narrative report included in the beneficiary's medical record.

(4) Require the exercise of medical judgment by the consultant physician.

(c) *Physician pathology services furnished by an independent laboratory.* Laboratory services, including the technical component of a service, furnished to a hospital inpatient or outpatient by an independent laboratory are paid on a fee schedule basis under this subpart only if they are physician pathology services as described in paragraph (a) of this section.

Subpart D—Physician Services in Teaching Settings

§ 415.150 Scope.

This subpart sets forth the rules governing payment for the services of physicians in teaching settings and the criteria for determining whether the payments are made as one of the following:

(a) Services to the hospital under the reasonable cost election in §§ 415.160 through 415.164.

(b) Provider services through the direct GME payment mechanism in § 413.86 of this chapter.

(c) Physician services to beneficiaries under the physician fee schedule as set forth in part 414 of this chapter.

§ 415.152 Definitions.

As used in this subpart—

Approved graduate medical education (GME) program means a residency program approved by the Accreditation Council for Graduate Medical Education of the American Medical Association, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or by the Council on Podiatric Medicine Education of the American Podiatric Medical Association.

Direct medical and surgical services means services to individual beneficiaries that are either personally furnished by a physician or furnished by a resident under the supervision of a physician in a teaching hospital making the cost election described in §§ 415.160 through 415.162.

Nonprovider setting means a setting other than a hospital, SNF, HHA, or CORF in which residents furnish services. These include, but are not limited to, family practice or multispecialty clinics and physician offices.

Resident means one of the following:

(1) An individual who participates in an approved GME program, including programs in osteopathy, dentistry, and podiatry.

(2) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, for example, individuals with temporary or restricted licenses, or unlicensed graduates of foreign medical schools. For purposes of this subpart, the term *resident* is synonymous with the terms *intern* and *fellow.*

Teaching hospital means a hospital engaged in an approved GME residency program in medicine, osteopathy, dentistry, or podiatry.

Teaching physician means a physician (other than another resident) who involves residents in the care of his or her patients.

Teaching setting means any provider, hospital-based provider, or nonprovider settings in which Medicare payment for the services of residents is made under the direct GME payment provisions of § 413.86, or on a reasonable-cost basis under the provisions of § 409.26 or § 409.40(f) for resident services furnished in SNFs or HHAs, respectively.

§ 415.160 Election of reasonable cost payment for direct medical and surgical services of physicians in teaching hospitals: General provisions.

(a) *Scope.* A teaching hospital may elect to receive payment on a reasonable cost basis for the direct medical and surgical services of its physicians in lieu of fee schedule payments that might otherwise be made for these services.

(b) *Conditions.* A teaching hospital may elect to receive these payments only if—

(1) The hospital notifies its intermediary in writing of the election and meets the conditions of either paragraph (b)(2) or paragraph (b)(3) of this section;

(2) All physicians who furnish services to Medicare beneficiaries in the hospital agree not to bill charges for these services; or

(3) All physicians who furnish services to Medicare beneficiaries in the hospital are employees of the hospital and, as a condition of employment, are precluded from billing for these services.

(c) *Effect of election.* If a teaching hospital elects to receive reasonable cost payment for physician direct medical and surgical services furnished to beneficiaries—

(1) Those services and the supervision of interns and residents in the care of individual beneficiaries are covered as hospital services, and

(2) The intermediary pays the hospital for those services on a reasonable cost basis under the rules in § 415.162. (Payment for other physician compensation costs related to approved GME programs is made as described in § 413.86 of this chapter.)

(d) *Election declined.* If the teaching hospital does not make this election, payment is made—

(1) For physician services furnished to beneficiaries on a fee schedule basis as described in part 414 subject to the rules in this subpart, and

(2) For the supervision of interns and residents as described in § 413.86.

§ 415.162 Determining payment for physician services furnished to beneficiaries in teaching hospitals.

(a) *General.* Payments for direct medical and surgical services of physicians furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries is made by Medicare on the basis of reasonable cost if the hospital exercises the election as provided for in § 415.160. If this election is made, the following occurs:

(1) Physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries are paid on a reasonable-cost basis, as provided for in paragraph (b) of this section.

(2) Payment for certain medical school costs may be made as provided for in paragraph (c) of this section.

(3) Payments for services donated by volunteer physicians to beneficiaries are made to a fund designated by the organized medical staff of the teaching hospital or medical school as provided for in paragraph (d) of this section.

(b) *Reasonable cost of physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries in a teaching hospital.* Physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries in a teaching hospital are payable as provider services on a reasonable-cost basis. For purposes of this paragraph, *reasonable cost* is defined as the direct salary paid to these physicians, plus applicable fringe benefits. The costs must be allocated to the services as provided by paragraph (j) of this section and apportioned to program beneficiaries as provided by paragraph (g) of this section. Other allowable costs incurred by the provider related to the services described in this paragraph are payable subject to the requirements applicable to all other provider services.

(c) *Reasonable costs incurred by a teaching hospital for the services furnished by a medical school or related organization in a hospital.* An amount is payable to the hospital by HCFA under the Medicare program provided that the costs would be payable if incurred directly by the hospital rather than under the arrangement. The amount must not be in excess of the reasonable costs (as defined in paragraphs (c)(1) and (c)(2) of this section) incurred by a teaching hospital for services furnished by a medical school or organization as described in § 413.17 of this chapter for certain costs to the medical school (or a related organization) in furnishing services in the hospital.

(1) *Reasonable costs of physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries in a teaching hospital by physicians on the faculty of a medical school or organization related to the medical school.* (i) If the medical school (or organization related to the medical school) and the hospital are related by common ownership or control as described in § 413.17 of this chapter, the cost of these services are allowable costs to the hospital under the provisions of § 413.17 of this chapter and the reimbursable costs to the hospital are determined under the provisions of this section in the same manner as the costs incurred for physicians on the hospital staff and without regard to payments made to the medical school by the hospital.

(ii) If the medical school and the hospital are not related organizations under the provisions of § 413.17 of this chapter and the hospital makes payment to the medical school for the costs of those services furnished to all patients, payment is made by Medicare to the hospital for the reasonable cost incurred by the hospital for its payments to the medical school for services furnished to beneficiaries. Costs incurred under an arrangement must be allocated to the full range of services furnished to the hospital by the medical school physicians on the same basis as provided for under paragraph (j) of this section, and costs allocated to direct medical and surgical services furnished to hospital patients must be apportioned to beneficiaries as provided for under paragraph (g) of this section. If the medical school and the hospital are not related organizations under the provisions of § 413.17 of this chapter and the hospital makes payment to the medical school only for the costs of those services furnished to beneficiaries, costs of the medical school not to exceed 105 percent of the sum of physician direct salaries, applicable fringe benefits, employer's portion of FICA taxes, Federal and State unemployment taxes, and workmen's compensation paid by the medical school or an organization related to the medical school may be recognized as allowable costs of the medical school. These allowable medical school costs must be allocated to the full range of services furnished by the physicians of the medical school or organization related as provided by paragraph (j) of this section. Costs allocated to direct medical and surgical services furnished to hospital patients must be apportioned to beneficiaries as provided by paragraph (g) of this section.

(2) *Reasonable costs of other than physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries in a teaching hospital by medical school faculty (or organization related to the medical school).* These costs are determined in accordance with paragraph (c)(1) of this section except that—

(i) If the hospital makes payment to the medical school for other than physician services furnished to beneficiaries and supervision of interns and residents in the care of beneficiaries, these payments are subject to the required cost-finding and apportionment methods applicable to the cost of other hospital services (except for direct medical and surgical services furnished to beneficiaries); or

(ii) If the hospital makes payment to the medical school only for these services furnished to beneficiaries, the cost of these services is not subject to cost-finding and apportionment as otherwise provided by this subpart, and the reasonable cost paid by Medicare must be determined on the basis of the health insurance ratio(s) used in the apportionment of all other provider costs (excluding physician direct medical and surgical services furnished to beneficiaries) applied to the allowable medical school costs incurred by the medical school for the services furnished to all patients of the hospital.

(d) *"Salary equivalent" payments for physician direct medical and surgical services furnished to beneficiaries in a teaching hospital by physicians on the voluntary staff of the hospital (or medical school or organization under arrangement with the hospital).* (1) HCFA makes payments under the Medicare program to a fund as defined in § 415.164 for direct medical and surgical services furnished on a regularly scheduled basis by physicians on the unpaid voluntary medical staff of the hospital (or medical school under arrangement with the hospital) to beneficiaries.

These payments represent compensation for contributed medical staff time which, if not contributed, would have to be obtained through employed staff on a payable basis. Payments for volunteer services are determined by applying to the regularly scheduled contributed time an hourly rate not to exceed the equivalent of the average direct salary (exclusive of fringe benefits) paid to all full-time, salaried physicians (other than interns and residents) on the hospital staff or, if the number of full-time salaried physicians is minimal in absolute terms or in relation to the number of physicians on the voluntary staff, to physicians at like institutions in the area. This "salary equivalent" is a single hourly rate covering all physicians regardless of specialty and is applied to the actual regularly scheduled time contributed by the physicians in furnishing direct medical and surgical services to beneficiaries including supervision of interns and residents in that care. A physician who receives any compensation from the hospital or a medical school related to the hospital by common ownership or control (within the meaning of § 413.17 of this chapter) for direct medical and surgical services furnished to any patient in the hospital is not considered an unpaid voluntary physician for purposes of this paragraph. If, however, a physician receives compensation from the hospital or related medical school or organization only for services that are other than direct medical and surgical services, a salary equivalent payment for his or her regularly scheduled direct medical and surgical services to beneficiaries in the hospital may be imputed. However, the sum of the imputed value for volunteer services and his or her actual compensation from the hospital and the related medical school (or organization) may not exceed

the amount that would have been imputed if all of the physician's hospital and medical school services (compensated and volunteer) had been volunteer services, or paid at the rate of $30,000 per year, whichever is less.

(2) The following examples illustrate how the allowable imputed value for volunteer services is determined. In each example, it has been assumed that the average salary equivalent hourly rate is equal to the hourly rate for the individual physician's compensated services.

Example No. 1. Dr. Jones received $3,000 a year from Hospital X for services other than direct medical services to all patients, for example, utilization review and administrative services. Dr. Jones also voluntarily furnished direct medical services to beneficiaries. The imputed value of the volunteer services amounted to $10,000 for the cost reporting period. The full imputed value of Dr. Jones' volunteer direct medical services would be allowed since the total amount of the imputed value ($10,000) and the compensated services ($3,000) does not exceed $30,000.

Example No. 2. Dr. Smith received $25,000 from Hospital X for services as a department head in a teaching hospital. Dr. Smith also voluntarily furnished direct medical services to beneficiaries. The imputed value of the volunteer services amounted to $10,000. Only $5,000 of the imputed value of volunteer services would be allowed since the total amount of the imputed value ($10,000) and the compensated services ($25,000) exceeds the $30,000 maximum amount allowable for all of Dr. Smith's services. Computation:

Maximum amount allowable for all services performed by Dr. Smith for purposes of this computation	$30,000
Less compensation received from Hospital X for other than direct medical services to individual patients	$25,000
Allowable amount of imputed value for the volunteer services furnished by Dr. Smith	$5,000

Example No. 3. Dr. Brown is not compensated by Hospital X for any services furnished in the hospital. Dr. Brown voluntarily furnished direct surgical services to beneficiaries for a period of 6 months, and the imputed value of these services amounted to $20,000. The allowable amount of the imputed value for volunteer services furnished by Dr. Brown would be limited to $15,000 ($30,000×$^{6}/_{12}$).

(3) The amount of the imputed value for volunteer services applicable to beneficiaries and payable to a fund is determined in accordance with the aggregate per diem method described in paragraph (g) of this section.

(4) Medicare payments to a fund must be used by the fund solely for improvement of care of hospital patients or for educational or charitable purposes (which may include but are not limited to medical and other scientific research). No personal financial gain, either direct or indirect, from benefits of the fund may inure to any of the hospital staff physicians, medical school faculty, or physicians for whom Medicare imputes costs for purposes of payment into the fund. Expenses met from contributions made to the hospital from a fund are not included as a reimbursable cost when expended by the hospital, and depreciation expense is not allowed with respect to equipment or facilities donated to the hospital by a fund or purchased by the hospital from monies in a fund.

(e) *Requirements for payment for physician direct medical and surgical services (including supervision of interns and residents) to beneficiaries furnished in a teaching hospital*—(1) *Physicians on the hospital staff.* The requirements under which the costs of physician direct medical and surgical services (including supervision of interns and residents) to beneficiaries are the same as those applicable to the cost of all other covered provider services except that the costs of these services are separately determined as provided by this section and are not subject to cost-finding as described in § 413.24 of this chapter.

(2) *Physicians on the medical school faculty.* Payment is made to a hospital for the costs of services of physicians on the medical school faculty, provided that if the medical school is not related to the hospital (within the meaning of § 413.17 of this chapter, concerning cost to related organizations), the hospital does not make payment to the medical school for services furnished to all patients and the following requirements are met: If the hospital makes payment to the medical school for services furnished to all patients, these requirements do not apply. (See paragraph (c)(1)(ii) of this section.)

(i) There is a written agreement between the hospital and the medical school or organization, specifying the types and extent of services to be furnished by the medical school and specifying that the hospital must pay to the medical school an amount at least equal to the reasonable cost (as defined in paragraph (c) of this section) of furnishing the services to beneficiaries.

(ii) The costs are paid to the medical school by the hospital no later than the date on which the cost report covering the period in which the services were furnished is due to HCFA.

(iii) Payment for the services furnished under an arrangement would have been made to the hospital had the services been furnished directly by the hospital.

(3) *Physicians on the voluntary staff of the hospital (or medical school under arrangement with the hospital).* If the conditions for payment to a fund outlined in § 415.164 are met, payments are made on a "salary equivalent" basis (as defined in paragraph (d) of this section) to a fund.

(f) *Requirements for payment for medical school faculty services other than physician direct medical and surgical services furnished in a teaching hospital.* If the requirements for payment for physician direct medical and surgical services furnished to beneficiaries in a teaching hospital described in paragraph (e) of this section are met, payment is made to a hospital for the costs of medical school faculty services other than physician direct medical and surgical services furnished in a teaching hospital.

(g) *Aggregate per diem methods of apportionment for physician direct medical and surgical services (including supervision of interns and residents) to beneficiaries furnished in a teaching hospital*—(1) *Aggregate per diem method of apportionment for the costs of physician direct medical and surgical services (including supervision of interns and residents) to beneficiaries.* The cost of physician direct medical and surgical services furnished in a teaching hospital to beneficiaries is determined on the basis of an average cost per diem as defined in paragraph (h)(1) of this section for physician direct medical and surgical services to all patients (see §§ 415.172 through 415.184) for each of the following categories of physicians:

(i) Physicians on the hospital staff.

(ii) Physicians on the medical school faculty.

(2) *Aggregate per diem method of apportionment for the imputed value of physician volunteer direct medical and surgical services.* The imputed value of physician direct medical and surgical services furnished beneficiaries in a teaching hospital is determined on the basis of an average per diem, as defined in paragraph (h)(1) of this section, for physician direct medical and surgical services to all patients except that the average per diem is derived from the imputed value of the physician volunteer direct medical and surgical services furnished to all patients.

(h) *Definitions.* (1) *Average cost per diem for physician direct medical and surgical services (including supervision of interns and residents) furnished in a teaching hospital to patients in each category of physician services described in paragraph (g)(1) of this section* means the amount computed by dividing total reasonable costs of these services in each category by the sum of—

(i) Inpatient days (as defined in paragraph (h)(2) of this section); and

(ii) Outpatient visit days (as defined in paragraph (h)(3) of this section).

(2) *Inpatient days* are determined by counting the day of admission as 3.5 days and each day after a patient's day of admission, except the day of discharge, as 1 day.

(3) *Outpatient visit days* are determined by counting only one visit day for each calendar day that a patient visits the outpatient department.

(i) *Application.* (1) The following illustrates how apportionment based on the aggregate per diem method for costs of physician direct medical and surgical services furnished in a teaching hospital to patients is determined.

Teaching Hospital Y

Statistical and financial data:

Total inpatient days as defined in paragraph (h)(2) of this section and outpatient visit days as defined in paragraph (h)(3) of this section	75,000
Total inpatient Part A days	20,000
Total inpatient Part B days where Part A coverage is not available	1,000
Total inpatient Part B visit days	5,000
Total cost of direct medical and surgical services furnished to all patients by physicians on the hospital staff as determined in accordance with paragraph (i) of this section	$1,500,000
Total cost of direct medical and surgical services furnished to all patients by physicians on the medical school faculty as determined in accordance with paragraph (i) of this section	$1,650,000

Computation of cost applicable to program for physicians on the hospital staff:

Average cost per diem for direct medical and surgical services to patients by physicians on the hospital staff: $1,500,000 ÷ 75,000 = $20 per diem.

Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part A: $20 per diem × 20,000	$400,000
Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part B: $20 per diem × 1,000	$20,000
Cost of physician direct medical and surgical services furnished to outpatient beneficiaries covered under Part B: $20 per diem × 5,000	$100,000

Computation of cost applicable to program for physicians on the medical school faculty:

Average cost per diem for direct medical and surgical services to patients by physicians on the medical school faculty: $1,650,000 ÷ 75,000 = $22 per diem.

Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part A: $22 per diem × 20,000	$440,000
Cost of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part B: $20 per diem × 1,000	$22,000
Cost of physician direct medical and surgical services furnished to outpatient beneficiaries covered under Part B: $22 per diem × 5,000	$110,000

(2) The following illustrates how the imputed value of physician volunteer direct medical and surgical services furnished in a teaching hospital to beneficiaries is determined.

Example: The physicians on the medical staff of Teaching Hospital Y donated a total of 5,000 hours in furnishing direct medical and surgical services to patients of the hospital during a cost reporting period and did not receive any compensation from either the hospital or the medical school. Also, the imputed value for any physician volunteer services did not exceed the rate of $30,000 per year per physician.

Statistical and financial data:

Total salaries paid to the full-time salaried physicians by the hospital (excluding interns and residents)	$800,000
Total physicians who were paid for an average of 40 hours per week or 2,080 (52 weeks × 40 hours per week) hours per year	20
Average hourly rate equivalent: $800,000 ÷ 41,600 (2,080 × 20)	$19.23

Computation of total imputed value of physician volunteer services applicable to all patients:

(Total donated hours × average hourly rate equivalent): 5,000 × $19.23	$96,150
Total inpatient days (as defined in paragraph (h)(2) of this section) and outpatient visit days (as defined in paragraph (h)(3) of this section)	75,000
Total inpatient Part A days	20,000
Total inpatient Part B days if Part A coverage is not available	1,000
Total outpatient Part B visit days	5,000

Computation of imputed value of physician volunteer direct medical and surgical services furnished to Medicare beneficiaries:

Average per diem for physician direct medical and surgical services to all patients: $96,150 ÷ 75,000 = $1.28 per diem.

Imputed value of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part A: $1.28 per diem × 20,000	25,600
Imputed value of physician direct medical and surgical services furnished to inpatient beneficiaries covered under Part B: $1.28 per diem × 1,000	1,280
Imputed value of physician direct medical and surgical services furnished to outpatient beneficiaries covered under Part B: $1.28 per diem × 5,000	$6,400
Total	$33,280

(j) *Allocation of compensation paid to physicians in a teaching hospital.* In determining reasonable cost under this section, the compensation paid by a teaching hospital, or a medical school or related organization under arrangement with the hospital, to physicians in a teaching hospital must be allocated to the full range of services implicit in the physician compensation arrangements. (However, see paragraph (d) of this section for the computation of the "salary equivalent" payments for volunteer services furnished to patients.) This allocation must be made and must be capable of substantiation on the basis of the proportion of each physician's time spent in furnishing each type of service to the hospital or medical school.

§ 415.164 Payment to a fund.

(a) *General rules.* Payment for certain voluntary services by physicians in teaching hospitals (as these services are described in § 415.160) is made on a salary equivalent basis (as described in § 415.162(d)) subject to the conditions and limitations contained in parts 405 and 413 of this chapter and this part 415, to a single fund (as defined in paragraph (b) of this section) designated by the organized medical staff of the hospital (or, if the services are furnished in the hospital by the faculty of a medical school, to a fund as may be designated by the faculty), if the following conditions are met:

(1) The hospital (or medical school furnishing the services under arrangement with the hospital) incurs no actual cost in furnishing the services.

(2) The hospital has an agreement with HCFA under part 489 of this chapter.

(3) The intermediary, or HCFA as appropriate, has received written assurances that—

(i) The payment is used solely for the improvement of care of hospital patients or for educational or charitable purposes; and

(ii) Neither the individuals who are furnished the services nor any other persons are charged for the services (and if charged, provision is made for the return of any monies incorrectly collected).

(b) *Definition of a fund.* For purposes of paragraph (a) of this section, a *fund* is an organization that meets either of the following requirements:

(1) The organization has and retains exemption, as a governmental entity or under section 501(c)(3) of the Internal Revenue Code (nonprofit educational, charitable, and similar organizations), from Federal taxation.

(2) The organization is an organization of physicians who, under the terms of their employment by an entity that meets the requirements of paragraph (b)(1) of this section, are required to turn over to that entity all income that the physician organization derives from the physician services.

(c) *Status of a fund.* A fund approved for payment under paragraph (a) of this section has all the rights and responsibilities of a provider under Medicare except that it does not enter into an agreement with HCFA under part 489 of this chapter.

§ 415.170 Conditions for payment on a fee schedule basis for physician services in a teaching setting.

Services meeting the conditions for payment in § 415.100(b) furnished in teaching settings are payable under the physician fee schedule if—

(a) The services are personally furnished by a physician who is not a resident; or

(b) The services are furnished by a resident in the presence of a teaching physician except as provided in § 415.172 (concerning physician fee schedule payment for services of teaching physicians), § 415.176 (concerning renal dialysis services), or § 415.184 (concerning psychiatric services), as applicable.

§ 415.172 Physician fee schedule payment for services of teaching physicians.

(a) *General rule.* When residents participate in a service furnished in a teaching setting, physician fee schedule payment is made only when a teaching physician is present during the key portion of any service or procedure for which payment is sought. In the case of surgery or a dangerous or complex procedure, the teaching physician must be present during all critical portions of the procedure and immediately available to furnish services during the entire service or procedure. In the case of evaluation and management services (that is, visits and consultations), the teaching physician must be present during the portion of the service that determines the level of service billed, that is, type of decisionmaking, type of history, and examination, etc.

(b) *Documentation.* In the case of every service billed, the hospital chart must document the presence of the teaching physician at the time of the service. The presence of the teaching physician may be demonstrated by the notes made by a physician, resident, or nurse.

(c) *Payment level.* In the case of services such as evaluation and management for which there are several levels of service codes available for reporting purposes, the appropriate payment level must reflect the extent and complexity of the service when fully furnished by the teaching physician.

§ 415.176 Renal dialysis services.

In the case of renal dialysis services, physicians who are not paid under the physician monthly capitation payment method (as described in § 414.314 of this chapter) must meet the requirements of §§ 415.170 and 415.172 (concerning physician fee schedule payment for services of teaching physicians).

§ 415.178 Anesthesia services.

(a) *General rule.* An unreduced physician fee schedule payment may be made if an anesthesiologist is not involved in directing concurrent services with more than one resident or with a resident and a nonphysician anesthetist (see § 414.46(c)(1)(iii) for additional rules for payment of anesthesia services).

(b) *Documentation.* Documentation must indicate the physician's presence or participation in the administration of the anesthesia and a preoperative and postoperative visit by the physician.

§ 415.180 Teaching setting requirements for the interpretation of diagnostic radiology and other diagnostic tests.

(a) *General rule.* Physician fee schedule payment is made for the interpretation of diagnostic radiology and other diagnostic tests if the interpretation is performed or reviewed by a physician other than a resident.

(b) *Documentation.* Documentation must indicate that the physician personally performed the interpretation or reviewed the resident's interpretation with the resident.

§ 415.184 Psychiatric services.

To qualify for physician fee schedule payment for psychiatric services furnished under an approved GME program, the physician must meet the requirements of §§ 415.170 and 415.172, including documentation, except that the requirement for the presence of the teaching physician during the service in which a resident is involved may be met by observation of the service through a one-way mirror, video tape, or similar device.

§ 415.190 Conditions of payment: Assistants at surgery in teaching hospitals.

(a) *Basis, purpose, and scope.* This section describes the conditions under which Medicare pays on a fee schedule basis for the services of an assistant at surgery in a teaching hospital. This section is based on section 1842(b)(7)(D)(i) of the Act and applies only to hospitals with an approved GME residency program. Except as specified in paragraph (c) of this section, fee schedule payment is not available for assistants at surgery in hospitals with—

(1) A training program relating to the medical specialty required for the surgical procedure; and

(2) A resident in a training program relating to the specialty required for the surgery available to serve as an assistant at surgery.

(b) *Definition. Assistant at surgery* means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(c) *Conditions for payment for assistants at surgery.*

Payment on a fee schedule basis is made for the services of an assistant at surgery in a teaching hospital only if the services meet one of the following conditions:

(1) Are required as a result of exceptional medical circumstances.

(2) Are complex medical procedures performed by a team of physicians, each performing a discrete, unique function integral to the performance of a complex medical procedure that requires the special skills of more than one physician.

(3) Constitute concurrent medical care relating to a medical condition that requires the presence of, and active care by, a physician of another specialty during surgery.

(4) Are medically required and are furnished by a physician who is primarily engaged in the field of surgery, and the primary surgeon does not use interns and residents in the surgical procedures that the surgeon performs (including preoperative and postoperative care).

(5) Are not related to a surgical procedure for which HCFA determines that assistants are used less than 5 percent of the time.

Subpart E—Services of Residents

§ 415.200 Services of residents in approved GME programs.

(a) *General rules.* Services of residents in approved GME programs furnished in hospitals are specifically excluded from being paid as "physician services" defined in § 414.2 of this chapter and are payable as hospital services. This exclusion applies whether or not the resident is licensed to practice under the laws of the State in which he or she performs the services. The payment methodology for services of residents in hospitals and hospital-based providers is set forth in § 413.86 of this chapter.

(b) *Definitions.* See § 415.152 for definitions of terms used in this subpart E.

§ 415.202 Services of residents not in approved GME programs.

(a) *General rules.* Payment is made to a hospital for the services of a resident who is not in an approved GME program on a Part B reasonable cost basis regardless of whether the services are furnished to hospital inpatients or outpatients. For purposes of this section, these services are deemed to include services of a physician employed by a hospital who is authorized to practice only in a hospital setting.

(b) *Payment.* Payment is made under Part B for a resident's services by reducing the reasonable costs of furnishing the services by the beneficiary deductible and paying 80 percent of the remaining amount. No payment is made for other costs of unapproved programs, such as administrative costs related to teaching activities of physicians.

§ 415.204 Services of residents in SNFs and HHAs.

(a) *Medicare Part A payment.* Payment is made under Medicare Part A for interns' and residents' services furnished in the following settings that meet the specified requirements:

(1) *SNF.* Payment to a participating SNF may include the cost of services of an intern or resident who is in an approved GME program in a hospital with which the SNF has a transfer agreement that provides, in part, for the transfer of patients and the interchange of medical records.

(2) *HHA.* A participating HHA may receive payment for the cost of the services of an intern or resident who is under an approved GME program of a hospital with which the HHA is affiliated or under common control if these services are furnished as part of the posthospital home health visits for a Medicare beneficiary. (Nevertheless, see § 413.86 of this chapter for the costs of approved GME programs in hospital-based providers.)

(b) *Medicare Part B payment.* Medical services of a resident of a hospital that are furnished by a SNF or HHA are paid under Medicare Part B if payment is not provided under Medicare Part A. Payment is made under Part B for a resident's services by reducing the reasonable costs of furnishing the services by the beneficiary deductible and paying 80 percent of the remaining amount.

§ 415.206 Services of residents in nonprovider settings.

Patient care activities of residents in approved GME programs that are furnished in nonprovider settings are payable in one of the following two ways:

(a) *Direct GME payments.* If the conditions in § 413.86(f)(1)(iii) regarding patient care activities and training of residents are met, the time residents spend in nonprovider settings such as clinics, nursing facilities, and physician offices in connection with approved GME programs is included in determining the number of full-time equivalency residents in the calculation of a teaching hospital's resident count. The teaching physician rules on carrier payments in §§ 415.170 through 415.184 apply in these teaching settings.

(b) *Physician fee schedule.* (1) Services furnished by a resident in a nonprovider setting are covered as physician services and payable under the physician fee schedule if the following requirements are met:

(i) The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry in the State in which the service is performed.

(ii) The time spent in patient care activities in the nonprovider setting is not included in a teaching hospital's full-time equivalency resident count for the purpose of direct GME payments.

(2) Payment may be made regardless of whether a resident is functioning within the scope of his or her GME program in the nonprovider setting.

(3) If fee schedule payment is made for the resident's services in a nonprovider setting, payment must not be made for the services of a teaching physician.

(4) The carrier must apply the physician fee schedule payment rules set forth in subpart A of part 414 of this chapter to payments for services furnished by a resident in a nonprovider setting.

§ 415.208 Services of moonlighting residents.

(a) *Definition.* For purposes of this section, the term *services of moonlighting residents* refers to services that licensed residents perform that are outside the scope of an approved GME program.

(b) *Services in GME program hospitals.* (1) The services of residents to inpatients of hospitals in which the residents have their approved GME program are not covered as physician services and are payable under § 413.86 regarding direct GME payments.

(2) Services of residents that are not related to their approved GME programs and are performed in an outpatient department or emergency department of a hospital in which they have their training program are covered as physician services and payable under the physician fee schedule if all of the following criteria are met:

(i) The services are identifiable physician services and meet the conditions for payment of physician services to beneficiaries in providers in § 415.100(b).

(ii) The resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry by the State in which the services are performed.

(iii) The services performed can be separately identified from those services that are required as part of the approved GME program.

(3) If the criteria specified in paragraph (b)(2) of this section are met, the services of the moonlighting resident are considered to have been furnished by the individual in his or her capacity as a physician, rather than in the capacity of a resident. The carrier must review the contracts and agreements for these services to ensure compliance with the criteria specified in paragraph (b)(2) of this section.

(4) No payment is made for services of a "teaching physician" associated with moonlighting services, and the time spent furnishing these services is not included in the teaching hospital's full-time equivalency count for the indirect GME payment (§ 412.105 of this chapter) and for the direct GME payment (§ 413.86 of this chapter).

(c) *Other settings.* Moonlighting services of a licensed resident in an approved GME program furnished outside the scope of that program in a hospital or other setting that does not participate in the approved GME program are payable under the physician fee schedule as set forth in § 415.206(b)(1).

F. Technical Amendments

§ 400.310 [Amended]

1. In § 400.310, the following changes are made:

a. The entries for §§ 405.481 and 405.552 are removed.

b. In § 400.310, the table is amended by adding the following entries:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control numbers
. . . . .	.
415.60	0938–0301
415.70	0938–0301
. . . . .	.

§ 405.501 [Amended]

2. In § 405.501, the following changes are made:

a. Paragraphs (c) and (d) are removed, and paragraphs (e) and (f) are redesignated as paragraphs (c) and (d), respectively.

b. In newly redesignated paragraph (c), the phrase "§§ 405.480 through 405.482 and §§ 405.550 through 405.557" is removed, and the phrase "§§ 415.55 through 415.70 and §§ 415.100 through 415.130 of this chapter" is added in its place.

§ 405.502 [Amended]

3. In § 405.502(a)(10), the phrase "§ 405.580(c) (2) or (3)" is removed, and the phrase "§ 415.190 (c)(2) or (c)(3) of this chapter" is added in its place.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

4. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1834, 1842(l), 1861, 1862, 1866, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(l), 1385x, 1395y, 1395cc, 1395hh, 1395nn, and 1395pp).

§ 411.15 [Amended]

5. In § 411.15(m)(2)(i), the phrase "§ 405.550(b) of this chapter" is removed, and the phrase "§ 415.100(b) of this chapter" is added in its place.

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

6. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1820, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395i–4, 1395hh, and 1395ww).

§ 412.50 [Amended]

7. In § 412.50, the following changes are made:

a. In paragraph (a), the phrase "§ 405.550(b) of this chapter" is removed, and the phrase "§ 415.100(b) of this chapter" is added in its place.

b. In paragraph (b), the phrase "§ 405.550(b) of this chapter" is removed, and the phrase "§ 415.100(b) of this chapter" is added in its place.

§ 412.71 [Amended]

8. In § 412.71(c)(1)(i), the phrase "§ 405.550(b) of this chapter" is removed, and the phrase "§ 415.100(b) of this chapter" is added in its place.

§ 412.105 [Amended]

9. In § 412.105(g)(1)(i)(A), the phrase "§ 405.522(a) of this chapter" is removed, and the phrase "§ 415.200(a) of this chapter" is added in its place.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

10. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.5 [Amended]

11. In § 413.5(c)(9), the phrase "(as described in § 405.465 of this chapter) where elected as provided for in § 405.521 of this chapter" is removed, and the phrase "(as described in § 415.162 of this chapter if elected as provided for in § 415.160 of this chapter)" is added in its place.

§ 413.13 [Amended]

12. In § 413.13(g)(1)(i), the phrase "§§ 405.480 through 405.482 of this chapter" is removed, and the phrase "§§ 415.55 through 415.70 of this chapter" is added in its place.

§ 413.80 [Amended]

13. In § 413.80(h), the phrase ", as described in § 414.450 of this chapter," is removed.

§ 413.86 [Amended]

14. In § 413.86, the following changes are made:

a. In paragraph (b), in the definition of "Approved medical residency program" in paragraph (1), the phrase "§ 405.522(a) of this chapter" is removed, and the phrase "§ 415.200(a) of this chapter" is added in its place.

b. In paragraph (g)(1)(ii), the phrase "§ 405.522(a) of this chapter" is removed, and the phrase "§ 415.200(a) of this chapter" is added in its place.

§ 413.174 [Amended]

15. In § 413.174(b)(4)(iv), the phrase "§ 405.465 through 405.482 of this chapter" is removed, and the phrase "§§ 415.55 through 415.70, § 415.162, and § 415.164 of this chapter" is added in its place.

§ 414.2 [Amended]

16. In § 414.2, in the definition for "Physicians' services," in paragraph (2), the phrase "physicians' services" is removed, and the phrase "physician services" is added in its place.

§ 414.58 [Amended]

17. In § 414.58, the following changes are made:

a. In paragraph (a), the phrase "§§ 405.550 through 405.580 of this chapter" is removed, and the phrase "§§ 415.100 through 415.130, and § 415.190 of this chapter" is added in its place.

b. In paragraph (b), the phrase "§ 405.465 of this chapter if the hospital exercises the election described in § 405.521(c)(2) of this chapter" is removed, and the phrase "§ 415.162 of this chapter if the hospital exercises the election described in § 415.160 of this chapter" is added in its place.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

18. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

§ 417.554 [Amended]

19. In § 417.554, the phrase "§ 405.480, part 412 of this chapter, and §§ 413.55 and 413.24 of this chapter" is removed, and the phrase "part 412, §§ 413.24 and 413.55, and § 415.55 of this chapter" is added in its place.

PART 489—PROVIDER AND SUPPLIER AGREEMENTS

20. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, and 1395hh).

§ 489.20 [Amended]

21. In § 489.20(d)(1), the phrase "§ 405.550(b) of this chapter" is removed, and the phrase § 415.100(b) of this chapter" is added in its place.

§ 489.21 [Amended]

22. In § 489.21(f), the phrase "§ 405.550(b) of this chapter" is removed, and the phrase "§ 415.100(b) of this chapter" is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 5, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: July 6, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–18144 Filed 7–20–95; 9:37 am]

BILLING CODE 4120–01–P

VOL
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1995

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federal register

Wednesday
July 26, 1995

Part III

Office of Management and Budget

Economic Classification Policy Committee: Standard Industrial Classification Replacement—The North American Industry Classification System Proposed Industry Classification Structure; Notice

OFFICE OF MANAGEMENT AND BUDGET

Economic Classification Policy Committee: Standard Industrial Classification Replacement—The North American Industry Classification System Proposed Industry Classification Structure

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Proposed NAICS industry classification structure for Petroleum and Coal Products Manufacturing, Chemicals Manufacturing, and Rubber and Plastics Products Manufacturing; Broadcasting and Telecommunications; and Foodservices and Drinking Places and Accommodations.

SUMMARY: Under Title 44 U.S.C. 3504, the Office of Management and Budget (OMB) is seeking public comment on a series of notices documenting the development of the new North American Industry Classification System (NAICS), the industry classification system being proposed to replace the current Standard Industrial Classification (SIC) system.

This notice, the third related to preparation of NAICS and the first in a series seeking comment on proposed industry revisions, presents the proposed NAICS structures for petroleum and coal products manufacturing, chemical manufacturing, and rubber and plastics manufacturing; broadcasting and telecommunications; and foodservices and drinking places and accommodations.

OMB is seeking comments on the usefulness and advisability of the proposed new NAICS subsectors submitted by the Economic Classification Policy Committee (ECPC), an interagency committee established by OMB.

Subsequent **Federal Register** notices will seek comment on other industry sector and subsector proposals. OMB is publishing the proposed new industry structure as soon as the drafting is completed, to provide as much information as quickly as possible and to ensure extensive public participation in the process. A final **Federal Register** notice, to be published in the fall of 1995, will include the entire NAICS structure for public comment.

NAICS is being developed in cooperation with Statistics Canada and Mexico's Instituto Nacional de Estadística, Geografía e Informatica (INEGI). The new NAICS system provides common industry definitions for Canada, Mexico, and the United States to facilitate economic analyses that cover the economies of the three North American countries. The three country collaboration on an industry classification system for North America was announced for public comment in the **Federal Register**, July 26, 1994, pp. 38092–38096.

The July 26, 1994, **Federal Register** notice includes the concepts for the new system, as developed by Statistics Canada, Mexico's INEGI, and the ECPC. It also includes a copy of the joint statement of the three countries' statistical agencies regarding the development of NAICS. That agreement includes the following principles:

(1) NAICS will be erected on a production-oriented, or supply-based, conceptual framework. This means that producing units that use identical or similar production processes will be grouped together in NAICS.

(2) The system will give special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general, and (c) industries engaged in the production of advanced technologies.

(3) Time series continuity will be maintained to the extent possible. However, changes in the economy and proposals from data users must be considered. In addition, adjustments will be required for sectors where the United States, Canada, and Mexico presently have incompatible industry classification definitions in order to produce a common industry system for all three North American countries.

(4) The system will strive for compatibility with the 2-digit level of the International Standard Industrial Classification of All Economic Activities (ISIC, Rev. 3) of the United Nations.

ECPC Report No. 3—Summary of Public Responses to the Proposed New North American Industry Classification Industry System provides a summary of public comments received in response to the July 26, 1994, **Federal Register** notice.

DATES: To ensure consideration and response to all comments on the proposals set forth in this notice, comments must be in writing and should be submitted as soon as possible, but no later than September 18, 1995. The proposed industry system would become effective in the U.S. on January 1, 1997.

ADDRESSES: Correspondence about the industry proposals of the NAICS structure announced in this **Federal Register** notice should be sent to: Carole A. Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, telephone number: (301) 457–2668, FAX number: (301) 457–1343.

Copies of all ECPC issues papers and ECPC reports are available by contacting Jack E. Triplett, Chairman, Economic Classification Policy Committee, Bureau of Economic Analysis (BE–42), U.S. Department of Commerce, Washington, DC 20230, telephone number: (202) 606–9615, FAX number: (202) 606–5311.

ELECTRONIC AVAILABILITY AND COMMENTS: This document is available on the Internet from the Census Bureau via WWW browser, ftp, and email.

To obtain this document via WWW browser, connect to "http://www.census.gov" then select "Economy," then select "Economy-Wide Programs," then select "NAICS Documents."

To obtain this document via ftp, login to ftp.census.gov as anonymous, and retrieve the file "prop01.txt" from the "/pub/epcd/naics" directory. (That directory also contains previous NAICS **Federal Register** Notices and related documents.)

To obtain this document via Internet email, send a message to majordomo@census.gov with the body text as follows: "get gatekeeper prop01.txt". The document will be delivered as a message attachment.

Comments may be sent via Internet email to the Census Bureau at naics@census.gov (do not include any capital letters in the address). Comments received at this address by the date specified above will be included as part of the official record.

FOR FURTHER INFORMATION CONTACT: Carole A. Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, telephone number: (301) 457–2668, FAX number: (301) 457–1343.

SUPPLEMENTARY INFORMATION:

Structure of Notice:

There are three parts to this notice. PART 1 includes the proposals for petroleum and coal products manufacturing, chemicals manufacturing, and rubber and plastics products manufacturing; PART 2 includes broadcasting and telecommunications; and PART 3, includes foodservices and drinking places and accommodations.

Each of the three parts of the notice is organized into two sections. The first section includes a copy of the proposed agreement signed by the ECPC, Statistics Canada, and INEGI; the structure of NAICS; and an explanation of the structure. For a number of reasons, NAICS industries do not always provide as much industry detail as has been present in the U.S. SIC. This will allow each country to add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. The second section of the notice includes the U.S. detailed industries within NAICS and two comparison tables showing the differences between the 1987 SIC and the 1997 NAICS with United States detail.

NAICS is organized in a hierarchical structure much like the existing SIC. The first digit of a NAICS code designates the sector. The code also designates 2-digit subsectors, 3-digit industry groups, and 4-digit industries. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. The proposed United States NAICS system, for example, would include 5-digit industries. These represent important industries in the U.S. that cannot be recognized in the statistical systems of either Canada or Mexico because of size restrictions, confidentiality, or other reasons.

The NAICS numbering system is still under development; therefore the hierarchical structure is displayed in this document with X's representing the following:

X	Industry Sector (not highlighted in structure).
XX	Industry Subsector.
XXX	Industry Group.
XXXX	Industry.
XXXXX	U.S. National Industry.

The terms "Industry Sector" and "Industry Subsector" are changes from the terms "Division" and "Major Group" used in the 1987 SIC manual.

Time Series Summary

The standard approach to preserving time series continuity after classification revisions is to create linkages where the series break. This is accomplished by producing the data series using both the old and new classifications for a given period of transition. With the dual classifications of data, the full impact of the revision can be assessed. Data producers then may measure the reallocation of the data at aggregate industry levels and develop a concordance between the new and old series for that given point in time. The concordance creates a crosswalk between the old and new classification systems. This link between the 1987 U.S. SIC and NAICS (with U.S. national detail) will be developed by the statistical agencies in the U.S.

Outreach Activities

OMB and the Economic Classification Policy Committee (ECPC) are seeking comments on the proposed NAICS structure for the industries described in this notice.

In carrying out its mandate to ensure maximum public participation in the process of constructing NAICS, the ECPC has already discussed many of these industry proposals with industry and user groups and will continue to do so. In addition, the ECPC is replying on a flow basis as soon as the work is completed for industry subsectors to organizations that responded to previous **Federal Register** notices. Thus, this **Federal Register** notice supplements other ECPC public outreach activities in the development of NAICS.

Part I—Proposed New Industry Structure for Petroleum and Coal Products Manufacturing, Chemicals Manufacturing, and Rubber and Plastics Products Manufacturing

Section A—NAICS Structure

North American Industry Classification System

(NAICS)

Agreement Number 1

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Petroleum and Coal Products Manufacturing

Chemicals Manufacturing

Rubber and Plastics Products Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and discussions held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on May 18 and 19 in Ottawa, Canada.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten.	5/19/95
Mexico	/S/ Enrique Ordaz.	5/19/95
United States	/S/ Jack E. Triplett.	5/19/95

ATTACHMENT 1.—NAICS STRUCTURE

XX	Petroleum and Coal Products Manufacturing
XXX	Petroleum and Coal Products Manufacturing.
XXXX	Petroleum Refineries.
XXXX	Asphalt Paving and Roofing and Saturated Materials Manufacturing.
XXXX	Other Petroleum and Coal Products Manufacturing.
XX	Chemicals Manufacturing
XXX	Basic Chemicals Manufacturing.
XXXX	Petrochemicals Manufacturing.
XXXX	Industrial Gases Manufacturing.
XXXX	Dyes and Pigments Manufacturing.
XXXX	Other Inorganic Chemicals Manufacturing.
XXXX	Other Organic Chemicals Manufacturing.
XXX	Resins, Synthetic Rubber, Artificial and Synthetic Fibers and Filament Manufacturing.
XXXX	Resins and Synthetic Rubber Manufacturing.
XXXX	Artificial and Synthetic Fibers and Filament Manufacturing.
XXX	Pesticides, Fertilizers, and Other Agricultural Chemicals Manufacturing.
XXXX	Fertilizers Manufacturing.
XXXX	Pesticides and Other Agricultural Chemicals Manufacturing.
XXX	Pharmaceuticals and Medicine Manufacturing.
XXX	Pharmaceuticals and Medicine Manufacturing.
XXX	Paints, Coatings, Adhesives, and Sealants Manufacturing.
XXXX	Paints and Coatings Manufacturing.
XXXX	Adhesives and Sealants Manufacturing.

ATTACHMENT 1.—NAICS STRUCTURE—Continued

XXX	Soaps, Cleaning Compounds, and Toilet Preparations Manufacturing.
XXXX	Soaps and Cleaning Compounds Manufacturing.
XXXX	Toilet Preparations Manufacturing.
XXX	Miscellaneous Chemical Products Manufacturing.
XXXX	Printing Ink Manufacturing.
XXXX	Explosives Manufacturing.
XXXX	Other Miscellaneous Chemical Products Manufacturing.
XX	Rubber and Plastics Products Manufacturing.
XXX	Rubber Products Manufacturing.
XXXX	Tires and Tubes Manufacturing.
XXXX	Rubber and Plastics Hose and Belting Manufacturing.
XXXX	Other Rubber Products Manufacturing.
XXX	Plastics Products Manufacturing.
XXXX	Unsupported Plastics Films, Sheets and Bags Manufacturing.
XXXX	Unsupported Profile Shapes, Plastics Pipes, and Fittings Manufacturing.
XXXX	Laminated Plastics Plates, Sheets, and Shapes Manufacturing.
XXXX	Polystyrene Foam Products Manufacturing.
XXXX	Urethane Foam Products Manufacturing.
XXXX	Plastics Bottles Manufacturing.
XXXX	Other Plastics Products Manufacturing.

Attachment 2—North American Industry Classification System

Draft Classification for:
Petroleum and Coal Products Manufacturing
Chemicals Manufacturing
Rubber and Plastics Products Manufacturing

Representatives of the statistical agencies of Canada, Mexico and the United States have agreed to a draft industry classification for these industries.

The draft classification provides for three industry subsectors, Petroleum and Coal Products Manufacturing; Chemicals Manufacturing; and Rubber and Plastics Products Manufacturing. These are further subdivided into ten industry groups and thirty industries. These industry subsectors will be part of the Manufacturing sector(s) of the NAICS classification.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System. It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry level of the structure. All countries agree on the detailed definitions of the industries.

The classification improves comparability with other countries. With the exception of the "miscellaneous" industries, all industries are compatible with the 2-digit level of the current International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations. This means that each NAICS industry is the same as, or part of, a single ISIC 2-digit Division. Therefore, data tabulated using NAICS can be readily re-tabulated according to ISIC. This comparability extends to higher levels of the NAICS. For example, there is little difference between the NAICS Chemical Industries, and ISIC 24, Manufacture of Chemicals and Chemical Products.

Objectives of the NAICS project other than comparability are not so relevant in the classification of these subsectors as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. These manufacturing industry subsectors are relatively mature, generally produce goods, and have always employed relatively advanced technology. Therefore the emphasis in developing this area has been on the production concept and comparability.

The industries have high specialization ratios, and they are economically significant. The detail and structure of the classification are balanced in size. This enhances the classification's suitability for sampling, data-publishing and other aspects of survey operations. Finally, disruptions to time series at the NAICS industry level have been kept to a minimum. Most of the changes at the detail to existing classifications are marginal. The major changes are well-identified and can be taken into account in linking time series.

Limitations of the Classification

On the other hand, there are some analytical requirements that cannot be met by the proposed industry classification. In particular, there is a demand for data on the production of all articles of plastic. This cannot be accommodated by the proposed industry classification due to the ubiquity of plastics in manufactured products. Many industrial activities that incorporate plastics in combination with other materials are classified elsewhere in manufacturing.

Similarly, a breakdown of plastics industries that follows market lines cannot be produced. This arises from the fact that, in general, plastics fabricators can and do switch production from one type of product to another as market conditions change. In some cases a market or demand category does correspond to a distinct production process, in which case an industry can be defined that supports the needs of both supply-oriented and demand-oriented analyses. An example of this is the NAICS Plastics Bottles Manufacturing industry. However, in general, this is not possible because of the way businesses have organized their production facilities.

Users requiring data for demand analysis can instead make use of statistics based on commodity classifications. Each country publishes such data. Efforts are underway to harmonize the commodity classifications to allow comparability of these statistics.

Constraints on the NAICS Classification

A few factors constrained the structure and detail of the classification in the area under consideration.

An issue related to the coding structure is the ability to publish and the economic significance of the items defined in the classification. In the chemicals industry, most activities that were identified in one country exist in the others. However, often an activity is not economically significant to the same degree in all countries. Further, data for some significant activities cannot be published for a particular country for reasons of confidentiality, such as the matches manufacturing industry in Canada. Finally, the way activities are combined in establishments differs to some extent in the different countries. A structure could have been developed that specified such activities in NAICS, but the resulting statistical tables for any given country would have numerous insignificant or suppressed entries. It was preferable to adopt an operating rule that the NAICS industries for this

area must be economically significant and publishable. It is anticipated that each country will publish additional categories that comprise sub-divisions of NAICS industries, to present data for activities that are significant nationally.

Other constraints did involve the nature of the industries to be classified. In the case of chemicals, it was essential for NAICS to include Petrochemicals Manufacturing as an industry, due to the significance of this activity in Mexico. This is a major change for the United States and Canada. It involves some extra work for these countries in implementing the classification, since the direct assignment of industry codes from commodity output information (a common technique for most manufacturing industries) cannot be used without modification. Nevertheless, the importance of the activity, and the fact that it is based on a well-defined production process, resulted in its inclusion in NAICS.

A General Outline

The Petroleum and Coal Products Manufacturing subsector is based on the transformation of crude petroleum and coal into usable products. The dominant process is petroleum refining, which involves the separation of crude petroleum into component products through such techniques as cracking and distillation.

The Chemicals Manufacturing subsector is based on the transformation of organic and inorganic raw materials by a chemical process, and the formulation of products. This subsector distinguishes the production of basic chemicals, which comprises the first industry group, from the production of intermediate and end products produced by further processing of basic chemicals, which make up the remaining industry groups.

Concerning Basic Chemicals Manufacturing industries, data users will note that a general distinction has not been made between organic and inorganic basic chemicals. The production of organic and inorganic industrial gases is a single activity. In Mexico, the production of organic and inorganic dyes and pigments commonly takes place in the same establishments.

The industry subsector Rubber and Plastics Products Manufacturing includes establishments that make goods by processing raw rubber and plastics materials. To the extent possible, this subsector is restricted to industrial activities whose core technology is the production of products made of just one material, rubber or plastic. Many manufacturing activities use rubber or plastic as one of several inputs, to the extent that the core technology relates to the type of product produced. An example of this is the manufacture of footwear. Typically, more than one material is used to produce shoes, so technologies that allow disparate materials to be formed and combined are of central importance in describing the footwear manufacturing activity. Such activities, for example footwear and furniture manufacture, are generally classified elsewhere than in the industry subsectors organized around the core technologies of rubber and plastic.

The main exception to this principle is Tires and Tubes Manufacturing. The production of tires is included in Rubber Products Manufacturing to minimize the disruption of time series and for comparability with ISIC, rather than because it particularly fits the general production process of the major group subsector. Tires are normally made from several materials.

A distinction is made between rubber and plastics products at the industry group level. It is not a rigid distinction, as can be seen from the definition of Rubber and Plastics Hose and Belting Manufacturing. As materials technology improves, plastics are increasingly being used as a substitute for rubber. Eventually, the distinction may disappear as a basis for defining establishments, and be limited to the commodity classification.

The Plastics Products Manufacturing industry subsector consists generally of activities involving the processing of plastics materials in forms such as pellets into intermediate or final products, using such processes as extrusion and injection moulding. Within most of these industries, the production process is such that a wide variety of products can be produced.

Some Changes to the National Classifications

This section highlights some of the significant changes to existing national classifications.

In Petroleum and Coal Products Manufacturing, the main change to an existing classification is the inclusion of activities currently in CSIC[1] 2721, Asphalt Roofing Industry, in NAICS Asphalt Paving and Roofing and Saturated Materials Manufacturing. It is included here because the defining feature of the production process (the saturation of paper with asphalt) is the manipulation of asphalt.

The production of alumina from bauxite is currently classified in USIC 2819, Industrial Inorganic Chemicals, NEC. The production of alumina does involve the use of a chemical process, but it is analogous to the chemical activities involved in the processing of other ores in smelting and refining industries. It will therefore be treated as an activity in the primary metals, rather than in NAICS Other Inorganic Chemicals Manufacturing.

The production of artificial and synthetic fibers is treated as a textile activity in CSIC. While the outputs are a basic raw material for textile production, the fiber production itself is an activity with chemical characteristics. It is basically a polymerization process, similar to the production of synthetic resins. It is therefore included in the NAICS Chemicals Manufacturing subsector (Artificial and Synthetic Fibers and Filament Manufacturing).

The manufacture of photographic chemicals and sensitized paper is classified in CSIC 3912, Other Instruments and Related Products Industry and in USIC 3861, Photographic Equipment and Supplies. NAICS classifies the production of these goods in Miscellaneous Chemical Products Manufacturing, since their production process is a chemical products process, not an equipment manufacturing process.

The new classification eliminates the 2-digit distinction between rubber products and plastics products that was found in CSIC (groups 15 and 16). NAICS combines CSIC group 15, rubber products, and group 16, plastics products, into one subsector, Rubber and Plastics Products Manufacturing.

NAICS Tires and Tubes Manufacturing includes an activity—the retreading and recapping of tires—which in CSIC and USIC is classified as non-manufacturing. The tire retreading and recapping activity is included in manufacturing because it involves more than just a repair. This activity is an example of "re-building", which occurs when a manufactured article is returned to usability using processes similar to those used in the original manufacturing operation. Re-building activities will be included in manufacturing in NAICS.

NAICS Rubber and Plastics Products Manufacturing excludes the manufacture of footwear, furniture and toys of rubber and plastic. This is a significant change to CMAP, which includes these activities in CMAP 3550, Rubber Industry and 3560, Manufacture of Plastics Products.

[1] CSIC refers to the Standard Industrial Classification of Canada, 1980 Revision. USIC refers to the Standard Industrial Classification of the United States, 1987 Revision. CMAP refers to the Classification of Activities and Products of Mexico.

NAICS Unsupported Plastics Films, Sheet and Bags Manufacturing includes the manufacture of plastic laminates for packaging and plastic bags, which are classified respectively in USIC 2671, Packaging Paper and Plastics Film, Coated and Laminated and 2673, Plastics, Foil and Coated Paper Bags.

NAICS Other Plastics Products Manufacturing includes the manufacture of most of the plastics motor vehicle parts, such as interior and exterior trim of plastics, which are classified in CSIC 3256, Plastics Parts and Accessories for Motor Vehicles.

Section B—Annex: United States National Industry Detail

As explained in the *Structure* presentation of this notice, for a number of reasons 4-digit industries in the three NAICS industry subsectors presented in *Part 1, Section A—Attachment 1*, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the three NAICS industry subsectors covered in Part I of this notice. In the following tables, proposed 5-digit detail is indicated in *italics*. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 USIC code	1987 USIC description
XX	Petroleum and Coal Products Manufacturing			
XXX	Petroleum and Coal Products Manufacturing			
XXXX	Petroleum Refineries	E	2911	Petroleum Refining.
XXXX	Asphalt Paving and Roofing and Saturated Materials Manufacturing			
XXXXX	Asphalt Paving Mixtures and Blocks Manufacturing	E	2951	Asphalt Paving Mixtures and Blocks.
XXXXX	Asphalt Felts and Coatings Manufacturing	E	2952	Asphalt Felts and Coatings.
XXXX	Other Petroleum and Coal Products Manufacturing			
XXXXX	Lubricating Oils and Greases Manufacturing	E	2992	Lubricating Oils and Greases.
XXXXX	All Other Petroleum and Coal Products Manufacturing	R	2999	Petroleum and Coal Products, NEC.
			*3312	Blast Furnaces and Steel Mills (Coke Ovens).
XX	Chemicals Manufacturing			
XXX	Basic Chemicals Manufacturing			
XXXX	Petrochemicals Manufacturing	N	*2865	Cyclic Crudes and Intermediates (Aromatics).
			*2869	Industrial Organic Chemicals, NEC (Aliphatics).
XXXX	Industrial Gases Manufacturing	R	2813	Industrial Gases.
			*2869	Industrial Organic Chemicals, NEC (Fluorocarbon Gases).
XXXX	Dyes and Pigments Manufacturing			
XXXXX	Inorganic Dyes and Pigments Manufacturing	N	*2816	Inorganic Pigments (Except Bone and Lamp Black).
			*2819	Industrial Inorganic Chemicals, NEC (Inorganic Dyes).
XXXXX	Organic Dyes and Pigments Manufacturing	N	*2865	Cyclic Crudes and Intermediates (Organic Dyes and Pigments).
XXXX	Other Inorganic Chemicals Manufacturing			
XXXXX	Alkalies and Chlorine Manufacturing	E	2812	Alkalies and Chlorine.
XXXXX	Carbon Black Manufacturing	R	*2816	Inorganic pigments (Bone and Lamp Black).
			2895	Carbon Black.
XXXXX	All Other Inorganic Chemicals Manufacturing	R	*2819	Industrial Inorganic Chemicals, NEC (Except Activated Carbon and Charcoal, Alumina, and Inorganic Industrial Dyes).
			*2869	Industrial Organic Chemicals, NEC (Carbon Bisulfide).
XXXX	Other Organic Chemicals Manufacturing			
XXXXX	Gum and Wood Chemicals Manufacturing	E	2861	Gum and Wood Chemicals.
XXXXX	Cyclic Crudes and Intermediates Manufacturing	R	*2865	Cyclic Crudes and Intermediates (Except Aromatics, Organic Dyes, and Pigments).

TABLE 1—Continued

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 USIC code	1987 USIC description
XXXXX	All Other Organic Chemicals Manufacturing	R	*2869	Industrial Organic Chemicals, NEC (Except Aliphatics, Carbon Bisulfide, Ethyl Alcohol, Fatty Acid Esters, and Fluorocarbon Gases).
XXX	Resins, Synthetic Rubber, Artificial and Synthetic Fibers and Filament Manufacturing			
XXXX	Resins and Synthetic Rubber Manufacturing			
XXXXX	Plastics Materials and Resins Manufacturing	E	2821	Plastics Materials and Resins.
XXXXX	Synthetic Rubber Manufacturing	E	2822	Synthetic Rubber.
XXXX	Artificial and Synthetic Fibers and Filament Manufacturing			
XXXXX	Cellulosic Manmade Fibers Manufacturing	E	2823	Cellulosic Manmade fibers.
XXXXX	Noncellulosic Organic Fibers Manufacturing	E	2824	Noncellulosic Organic Fibers.
XXX	Pesticides, Fertilizers and Other Agricultural Chemicals Manufacturing			
XXXX	Fertilizers Manufacturing			
XXXXX	Nitrogenous Fertilizers Manufacturing	E	2873	Nitrogenous Fertilizers.
XXXXX	Phosphatic Fertilizers Manufacturing	E	2874	Phosphatic Fertilizers.
XXXXX	Fertilizers, Mixing Only Manufacturing	E	2875	Fertilizers, Mixing Only.
XXXX	Pesticides and Other Agricultural Chemicals Manufacturing	E	2879	Agricultural Chemicals, NEC.
XXX	Pharmaceuticals and Medicine Manufacturing			
XXXX	Pharmaceuticals and Medicine Manufacturing			
XXXXX	Medicinals and Botanicals Manufacturing	E	2833	Medicinals and Botanicals.
XXXXX	Pharmaceutical Preparations Manufacturing	R	2834	Pharmaceutical Preparations.
			*2835	Diagnostic Substances (Except In-Vitro Diagnostic).
XXXXX	In-Vitro Diagnostic Substances Manufacturing	N	*2835	Diagnostic Substances (In-Vitro Diagnostic Substances).
XXXXX	Biological Products, Except Diagnostic Manufacturing	E	2836	Biological Products.
XXX	Paint, Coatings, Adhesives, and Sealants Manufacturing			
XXXX	Paints and Coatings Manufacturing	R	2851	Paints and Coatings.
			*2899	Chemical Preparations, NEC (Frit).
XXXX	Adhesives and Sealants Manufacturing	E	2891	Adhesives and Sealants.
XXX	Soaps, Cleaning Compounds and Toilet Preparations Manufacturing			
XXXX	Soaps and Cleaning Compounds Manufacturing			
XXXXX	Soaps and Other Detergents Manufacturing	R	2841	Soaps and Other Detergents.
			*2844	Toilet Preparations (Toothpaste).
XXXXX	Polishes and Other Sanitation Goods Manufacturing	E	2842	Polishes and Other Sanitation Goods.
XXXXX	Surface Active Agents Manufacturing	E	2843	Surface Active Agents.
XXXX	Toilet Preparations Manufacturing	R	*2844	Toilet Preparations (Except Toothpaste).
XXX	Miscellaneous Chemical Products Manufacturing			
XXXX	Printing Ink Manufacturing	R	2893	Printing Inks.
			*2899	Chemical Preparations, NEC (Writing and Stamping Inks).
			*3952	Lead Pencils and Art Goods (Drawing Inks and India Ink).
XXXX	Explosives Manufacturing	E	2892	Explosives.
XXXX	Other Miscellaneous Chemical Products Manufacturing			
XXXXX	Custom Compounding Purchased Resins Manufacturing	E	3087	Custom Compounding Purchased Resins.
XXXXX	Photographic Films, Papers, Plates and Chemicals Manufacturing.	N	*3861	Photographic Equipment and Supplies (Photographic Films, Paper and Chemicals).
XXXXX	All Other Miscellaneous Chemical Products Manufacturing	R	*2819	Chemical Preparations, NEC (Activated Carbon and Charcoal).
			*2869	Industrial Organic Chemicals, NEC (Fatty Acid Esters).
			*2899	Chemical Preparations, NEC (Except Frit and Writing and Stamp Ink).
			*3999	Manufacturing Industries, NEC (Matches).
XX	Rubber and Plastics Products Manufacturing			
XXX	Rubber Products Manufacturing			
XXXX	Tires and Tubes Manufacturing			

TABLE 1—Continued

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 USIC code	1987 USIC description
XXXXX	Tires and Inner Tubes Manufacturing	E	3011	Tires and Inner Tubes.
XXXXX	Tire Rebuilding and Repair	E	7534	Tire Rebuilding and Repair.
XXXX	Rubber and Plastics Hose and Belting Manufacturing	E	3052	Rubber and Plastics Hose and Belting.
XXXX	Other Rubber Products Manufacturing			
XXXXX	Mechanical Rubber Products Manufacturing	E	3061	Mechanical Rubber Products.
XXXXX	All Other Rubber Products Manufacturing	R	*3053	Gaskets, Packings and Sealing Devices (Rubber Gaskets, Packings and Sealing Devices.
			*3069	Fabricated Rubber Products, NEC (Except Rubberized Fabric and Rubber Resilient Floor Covering).
XXX	Plastics Products Manufacturing			
XXXX	Unsupported Plastics Films, Sheets and Bags Manufacturing			
XXXXX	Unsupported Plastics Bags Manufacturing	N	*2673	Bags: Plastics, Laminated, and Coated (Plastics Bags).
XXXXX	Unsupported Plastics Packaging Films and Sheets Manufacturing.	N	*2671	Paper Coated and Laminated, NEC (Plastics Packaging Film and Sheet).
XXXXX	Unsupported Plastics Films and Sheets, Except Packaging Manufacturing.	E	3081	Unsupported Plastics Film and Sheets, Except Packaging.
			*3073	Laminated Plastics Plate, Sheet, and Profile Shapes (Acrylic Sheets).
XXXX	Unsupported Profile Shapes, Plastics Pipes, and Fittings Manufacturing			
XXXXX	Unsupported Plastics Profile Shapes Manufacturing	R	3082	Unsupported Plastics Profile Shapes.
			*3089	Plastics Product, NEC (Plastics Sausage Casings).
XXXXX	Plastics Pipes and Pipe Fittings Manufacturing	R	3084	Plastics Pipes.
			*3089	Plastics Products, NEC (Plastics Pipe Fittings).
XXXX	Laminated Plastics Plates, Sheets, and Shapes Manufacturing	E	*3083	Laminated Plastics Plate, Sheet and Shapes (Except Acrylic Sheets).
XXXX	Polystyrene Foam Products Manufacturing	N	*3086	Plastics Foam Products (Polystyrene Foam Products).
XXXX	Urethane Foam Products Manufacturing	N	*3086	Plastics Foam Products (Urethane Foam Products).
XXXX	Plastics Bottles Manufacturing	E	3085	Plastics Bottles.
XXXX	Other Plastics Products Manufacturing			
XXXXX	Plastics Plumbing Fixtures Manufacturing	E	3088	Plastics Plumbing Fixtures.
XXXXX	Resilient Floor Coverings Manufacturing	R	*3069	Fabricated Rubber Products, NEC (Rubber Resilient Floor Coverings).
			3996	Hard Surface Floor Coverings, NEC.
XXXXX	All Other Plastics Products Manufacturing	R	*3053	Gaskets, Packing and Sealing Devices (Plastics Gaskets, Packing Sealing Devices).
			*3089	Plastics Products, NEC (Except Plastics Pipe Fittings and Plastics Sausage Casings).

TABLE 2

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
2812	Alkalies and Chlorine	Alkalies and Chlorine Manufacturing.
2813	Industrial Gases	Industrial Gases Manufacturing (pt).
2816	Inorganic Pigments.	
	Inorganic Pigments, Except Bone and Lamp Black.	Inorganic Dyes and Pigments Manufacturing (pt).
	Bone and Lamp Black	Carbon Black Manufacturing (pt).
2819@	Industrial Inorganic Chemicals, NEC	
	Activated Carbon and Charcoal	Other Miscellaneous Chemical Preparations Manufacturing (pt).
	Alumina	Primary Aluminum Manufacturing (pt).
	Inorganic Dyes	Inorganic Dyes and Pigments Manufacturing (pt).
	Other	Other Miscellaneous Inorganic Chemicals Manufacturing (pt).
2821	Plastics Materials and Resins	Plastics Materials and Resins Manufacturing.
2822	Synthetic Rubber	Synthetic Rubber Manufacturing.
2823	Cellulosic Manmade Fibers	Cellulosic Manmade Fibers Manufacturing.
2824	Noncellulosic Organic Fibers	Noncellulosic Organic Fibers Manufacturing.
2833	Medicinals and Botanical	Medicinals and Botanicals Manufacturing.
2834	Pharmaceutical Preparations	Pharmaceutical Preparations Manufacturing (pt).
2835@	Diagnostic Substances	
	Diagnostic Substances, Except In-Vitro Diagnostic.	Pharmaceutical Preparations Manufacturing (pt).
	In-Vitro Diagnostic Substances	In-Vitro Diagnostic Substances Manufacturing.
2836	Biological Products, Except Diagnostic.	Biological Products, Except Diagnostic Manufacturing.
2841	Soaps and Other Detergents	Soaps and Other Detergents Manufacturing (pt).
2842	Polishes and Other Sanitation Goods.	Polishes and Other Sanitation Goods Manufacturing.
2843	Surface Active Agents	Surface Active Agents Manufacturing.
2844	Toilet Preparations	
	Toilet Preparations, Except Toothpaste.	Toilet Preparations Manufacturing.
	Toothpaste	Soap and Other Detergents Manufacturing (pt).
2851	Paints and Allied Products	Paints and Coatings Manufacturing (pt).
2861	Gum and Wood Chemicals	Gum and Wood Chemicals Manufacturing.
2865@	Cyclic Crudes and Intermediates	
	Aromatics	Petrochemicals Manufacturing (pt).
	Organic Dyes and Pigments	Organic Dyes and Pigments Manufacturing (pt).
	Other	Cyclic Crudes and Intermediates Manufacturing.
2869@	Industrial Organic Chemicals, NEC	
	Aliphatics	Petrochemicals Manufacturing (pt).
	Carbon Bisulfide	All Other Inorganic Chemicals Manufacturing (pt).
	Ethyl Alcohol	Distilled and Blended Liquors Manufacturing (pt).
	Fatty Acid Esters	Other Miscellaneous Chemicals Preparations Manufacturing (pt).
	Fluorocarbon Gases	Industrial Gases Manufacturing (pt).
	Other	Other Miscellaneous Organic Chemicals Manufacturing.
2873	Nitrogenous Fertilizers	Nitrogenous Fertilizers Manufacturing.
2874	Phosphatic Fertilizers	Phosphatic Fertilizers Manufacturing.
2875	Fertilizers, Mixing Only	Fertilizers, Mixing Only Manufacturing.
2879	Agricultural Chemicals, NEC	Pesticides and Other Agricultural Chemicals Manufacturing.
2891	Adhesives and Sealants	Adhesives and Sealants Manufacturing.
2892	Explosives	Explosives Manufacturing.
2893	Printing Inks	Printing Ink Manufacturing (pt).
2895	Carbon Black	Carbon Black Manufacturing (pt).
2899	Chemical Preparations, NEC	
	Frit	Paints and Coatings Manufacturing (pt).
	Writing and Drawing Inks	Printing Ink Manufacturing (pt).
	Other	Other Miscellaneous Chemical Preparations Manufacturing (pt).
2911	Petroleum Refining	Petroleum Refineries.
2951	Asphalt Paving Mixtures and Blocks	Asphalt Paving Mixtures and Blocks Manufacturing.
2952	Asphalt Felts and Coatings	Asphalt Felts and Coatings Manufacturing.
2992	Lubricating Oils and Greases	Lubricating Oils and Greases Manufacturing.
2999	Petroleum and Coal Products, NEC	All Other Petroleum and Coal Products Manufacturing (pt).
3011	Tires and Inner Tubes	Tires and Inner Tubes Manufacturing.
3021	Rubber and Plastics Footwear	Rubber and Plastics Footwear Manufacturing.
3052	Rubber and Plastics Hose and Belting.	Rubber and Plastics Hose and Belting Manufacturing.
3053@	Gaskets, Packings, and Sealing Devices	
	Cork Gaskets, Packing, and Sealing Devices.	Other Miscellaneous Wood Products Manufacturing (pt).
	Metal Gaskets, Packing, and Sealing Devices.	Other Miscellaneous Fabricated Metal Products Manufacturing (pt).
	Plastics Gaskets, Packing, and Sealing Devices.	All Other Plastics Products Manufacturing (pt).
	Rubber Gaskets, Packing, and Sealing Devices.	All Other Rubber Products Manufacturing (pt).

TABLE 2—Continued

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
3061	Mechanical Rubber Products	Mechanical Rubber Products Manufacturing.
3069	Fabricated Rubber Products, NEC	
	Rubberized Fabric	Coated Fabrics Including Rubberized Mills (pt).
	Rubber Resilient Floor Covering	Resilient Floor Covering Manufacturing (pt).
	Other	All Other Rubber Products Manufacturing (pt).
3081	Unsupported Plastics Film and Sheets, Except Packaging.	Unsupported Plastics Films and Sheets, Except Packaging Manufacturing (pt).
3082	Unsupported Plastics Profile Shapes	Unsupported Plastics Profile Shapes Manufacturing (pt).
3083	Laminated Plastics Plate, Sheet	
	Acrylic Sheets	Unsupported Plastics Films and Sheets, Except Packaging Manufacturing (pt).
	Other	Laminated Plastics Plates, Sheets, and Shapes Manufacturing.
3084@	Plastics Pipes	Plastics Pipes and Pipe Fittings Manufacturing (pt).
3085	Plastics Bottles	Plastics Bottles Manufacturing.
3086	Plastics Foam Products	
	Urethane Foam Products	Urethane Foam Products Manufacturing.
	Polystyrene Foam Products	Polystyrene Foam Products Manufacturing.
3087	Custom Compounding of Purchased Resins.	Custom Compounding of Purchased Resins Manufacturing.
3088	Plastics Plumbing Fixtures	Plastics Plumbing Fixtures Manufacturing.
3089	Plastics Products, NEC	
	Pipe Fittings	Plastics Pipes and Pipe Fittings Manufacturing (pt).
	Plastics Sausage Casings	Unsupported Plastics Profile Shapes Manufacturing (pt).
	Other	All Other Plastics Products Manufacturing (pt).

Description of Changes to the U.S. System

1. Petroleum and Coal Products Manufacturing—There was one change from the 1987 industry structure for this sector.

Coke ovens, not operated with a blast furnace transferred from 1987 Industry Code 3312, Blast Furnaces and Steel Mills to the 1997 Other Petroleum and Coal Products, NEC.

The number of 1997 petroleum and coal products industries remains unchanged at five from 1987. For time series linkage, all five 1987 industries are comparable within three percent of the 1997 industries.

2. Chemicals Manufacturing—There were five new industries added to the 1997 industry structure for this industry subsector. New industries were created for:

Petrochemicals Manufacturing from parts of 1987 Industry Code 2865, Cyclic Crudes and Intermediates and 1987 Industry Code 2869, Industrial Organic Chemicals, NEC.

Organic Dyes and Pigments Manufacturing from part of old Industry Code 2865, Cyclic Crudes and Intermediates.

In-Vitro Diagnostic Substances Manufacturing from part of old Industry Code 2835, Diagnostic Substances.

Photographic Films, Papers, Plates, and Chemicals Manufacturing from part of 1987 Industry Code 3861, Photographic Equipment and Supplies.

Custom Compounding Purchased Resins Manufacturing transferred from the 1987 Major Group Code 30, Rubber and Miscellaneous Plastics Products.

Two activities transferred out of 1987 Major Group 28, Chemicals and Allied Products.

Alumina transferred from 1987 Industry Code 2819, Industrial Inorganic Chemicals, NEC into Primary Aluminum Manufacturing.

Ethyl Alcohol transferred from 1987 Industry Code 2869, Industrial Organic Chemicals into Distilled and Blended Liquors Manufacturing.

Two activities transferred into the 1997 Chemicals Manufacturing.

Drawing ink and India ink transferred from old Industry Code 3952, Lead Pencils and Art Goods into Printing Ink Manufacturing.

Matches transferred from old Industry Code 3999, Manufacturing Industries, NEC into All Other Miscellaneous Chemical Preparations.

Also, there were several activities that transferred within the chemical industry. The number of chemical industries increased from 29 in 1987 to 34 in 1997. For time series linkage, 25 of the 29 1987 industries are comparable within three percent of the 1997 industries.

3. Rubber and Plastics Products Manufacturing—There were six new industries added to the 1997 industry structure for this industry subsector.

Tire Rebuilding and Repair transferred from the 1987 Services Major Group Code 75, Auto Repair, Services, and Parking.

Unsupported Plastics Packaging Films and Sheets Manufacturing from part of 1987 Industry Code 2671, Paper Coated and Laminated, NEC.

Unsupported Plastics Bags from part of 1987 Industry Code 2673, Bags: Plastics, Laminated, and Coated.

Polystyrene Foam Products from part of 1987 Industry Code 3086, Plastics Foam Products.

Urethane Foam Products from part of 1987 Industry Code 3086, Plastics Foam Products.

Resilient Floor Coverings from parts of 1987 Industry Code 3069, Fabricated Rubber Products, NEC and 1987 Industry Code 3996, Hard Surface Floor Coverings, NEC.

Three industries were removed from this industry group.

Rubber and Plastics Footwear transferred into the 1997 NAICS Industry Subsector, Leather and Allied Products Manufacturing.

Gaskets, Packings, and Sealing Devices were deleted and the products were split into various residual industries by material.

Custom Compounding Purchased Resins transferred into the 1997 NAICS Industry subsector, Chemicals Manufacturing.

One activity transferred out of the 1987 Major Group, Rubber and Plastics Products.

Rubberized Fabric transferred from the 1987 Industry Code 3069, Fabricated Rubber Products, NEC to 1997 NAICS Industry, Coated Fabric Mills including Rubberized Fabric Mills.

Also, there were several activities that transferred within the rubber and plastics products industries. The number of rubber and plastics products industries increased from 15 in 1987 to 17 in 1997. For time series linkage, 13 of the 15 1987 industries are comparable within three percent of the 1997 industries.

Part II—Proposed New Industry Structure for Broadcasting and Telecommunications

Section A—NAICS Structure and Narrative

North American Industry Classificattion System

(NAICS)

Agreement Number 2

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Broadcasting and Telecommunications

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and discussions held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on May 18 and 19 in Ottawa, Canada.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten.	5/19/95
Mexico	/S/ Enrique Ordaz.	5/19/95
United States	/S/ Jack E. Triplett.	5/19/95

ATTACHMENT 1.—NAICS STRUCTURE

XX	Broadcasting and Telecommunications
XXX	Radio and Television Broadcasting.
XXXX	Radio Broadcasting.
XXXX	Television Broadcasting.
XXX	Cable Networks and Program Distribution.
XXXX	Cable Networks.
XXXX	Cable and Program Distribution.
XXX	Telecommunications.
XXXX	Wired Telecommunications Carriers.
XXXX	Wireless Telecommunications Carriers, Except Satellite.
XXXX	Telecommunications Resellers.
XXXX	Satellite Telecommunications.
XXXX	Other Telecommunications.

Attachment 2—North American Industry Classification System

Draft Classification for:

Broadcasting and Telecommunications

Representatives of the statistical agencies of Canada, Mexico and the United States have agreed to a draft industry classification for the Broadcasting and Telecommunications subsector. The draft establishes three industry groups and nine industries. It has not yet been determined in which industry sector in NAICS the Broadcasting and Telecommunications industry subsector will be included.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System. It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the NAICS industry level of the NAICS structure with the exception of satellite telecommunications, which will be published only in the United States. All countries agree on the detailed definitions of the classes.

The classification improves comparability with other countries. With the exception of radio dispatch services and radio and television relay systems, all industries are compatible with the 2-digit level of the current International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations. Radio dispatch services and radio and television relay systems activities are not significant.

Other objectives of the NAICS project have also been met. In an effort to identify high technology and new and emerging industries, new industries for cable networks, and satellite telecommunications have been identified. A relatively new economic development has been identified by creating an industry for telecommunications resellers.

In addition to the above objectives of the NAICS project, the classification meets the objectives of an industry classification. The classifications are homogeneous and account for most of the activities that define them. In addition, they are economically significant. Finally, disruptions to time series at the NAICS industry level have been kept to a minimum. The major changes in country detail are well-defined and can be taken into account in linking time series.

Limitations of the Classification

There are some limitations to the draft Broadcasting and Telecommunications hierarchy. First, the proposed structure attempts to describe the subsector as it currently exists. It is therefore rooted in today's technology and regulatory environment and it reflects the current profile of service providers. However, many are anticipating fundamental changes in this sector. For instance, the distinction between the Wired Telecommunication Carriers industry

and the Cable and Program Distribution industry may not be viable in the future if both industries are engaged in the carriage of voice (basic telephone service), data, and video (including television programs). Similarly, the systems that are now used to distribute television programs may well be used in the future to distribute other types of products such as games and software or be used for other purposes such as interactive home shopping or banking. In such an environment, the provision of menus, interactive controls, and billing services could become an integral part of the bundle of services provided by carriers.

Secondly, it may be argued that for some purposes a number of industries that are important users of telecommunications, as outlined in the proposal, should be included in this subsector. These include telephone answering services and other message services that may include the use of paging and voice mail, phone booth operations, and on-line information services. These industries have not been included in this subsector as they are users of telecommunications services, not providers of the telecommunications services as defined in the proposal. They will be classified elsewhere in NAICS.

These few examples illustrate the difficulty of building a classification for an evolving sector that will stand the test of time.

Constraints on the NAICS Classification

A number of industries that can appropriately be defined in terms of production distinctions could not be published in all countries because of considerations of size and confidentiality.

A General Outline

The Broadcasting and Telecommunications subsector has been defined to include establishments providing point-to-point communications and the services related to that activity. The industry groups (Radio and Television Broadcasting, Cable Networks and Program Distribution, and Telecommunications) are based on differences in the methods of communication and in the nature of services provided.

The Radio and Television Broadcasting industry group operates broadcasting studios and facilities for over the air or satellite delivery of radio and television programs of entertainment, news, talk, and the like. These establishments are often engaged in the production and purchase of programs and generate revenues from the sale of air time to advertisers, and from donations, subsidies, and/or the sale of programs. The distinction between radio and television broadcasting involves the use of equipment dealing in audio versus audio/video signal.

The Cable Networks and Program Distribution industry group includes two types of establishments. Cable networks operate studios and facilities for the broadcasting of programs that are typically narrowcast in nature (limited format such as news, sports, education, and youth-oriented programming). The services of these establishments are typically sold on a subscription or fee basis and the delivery of the programs to customers is handled by other establishments that operate cable systems, direct-to-home satellite systems, or other similar systems. These distribution systems establishments are classified to the Cable and Program Distribution industry.

The Telecommunications industry group is primarily engaged in operating, maintaining, and/or providing access to facilities for the transmission of voice, data, text, sound, and full motion picture video between network termination points. A transmission facility may be based on a single technology or a combination of technologies.

Wired Telecommunications Carriers operate and maintain switching and transmission facilities (usually land lines and microwave) to provide one-to-one communications via landlines (including microwave) or a combination of landline and satellite communications.

Wireless Telecommunications Carriers, Except Satellite operate and maintain switching and transmission facilities to provide one-to-one communications via airwaves. The United States classification further distinguishes wireless carriers on the basis of technology by separating paging services and other wireless services such as cellular and personal communications services.

Telecommunications Resellers provide services similar to those of telecommunications carriers but do not operate and maintain a network. They principally purchase the services of carriers for resale to customers.

The Satellite Telecommunications industry principally provides point-to-point communications services to other establishments in the telecommunications and broadcasting industries by forwarding communications signals via a system of satellites. The Other Telecommunications industry includes establishments that specialize in the provision of other types of services such as satellite tracking, radar station operations, and overseas telecommunications (except for satellite telecommunications).

Some Changes to the National Classifications

This section highlights some of the significant changes to the existing national industry classification systems.

The only change to USIC 4832 Radio Broadcasting Stations is to add detail to separate the radio networks from the radio stations. It was felt that the programming function of the network was a significant production difference. There is a significant change for Mexico in that the draft proposes the elimination of the designation of private versus public.

The change in the Television Broadcasting industry for the U.S. is restricted to a title change to clarify the proper classification for television networks. The issue of private versus public television is a change for Mexico.

Cable Networks is similar to Radio Broadcasting, in that the programming function is being used to identify these establishments as a separate industry. This would be a new classification for all three countries.

Cable and Program Distribution establishments are separated from the cable networks based on the absence of the programming function. This would be a new industry for all three countries.

The Wired Telecommunications Carriers industry group has been changed to include the activities of USIC 4822 Telegraph and Other Message Communications. Detail was also added for carriers and resellers. USIC 4822 has been a declining industry and has assumed more and more of the characteristics of the wired telecommunications industry. This change also improved comparability with both Mexico and Canada.

Recent changes in the telephone industry have paved the way for new businesses. The most prevalent are the telecommunications resellers. A reseller purchases communications services from the telecommunications carrier and resells the services to its customers. The reseller does not operate the communications network but instead may operate only the switching system to connect customers to the carriers' network. Telecommunication Carriers and Telecommunications Resellers are new industries for all three countries. It is a new economic development and, as such, is being identified as a new and emerging industry.

Changes in the Wireless Telecommunications Carriers, Except Satellite industry involve moving radio dispatch from USIC 4899 and adding detail to reflect different technologies and updating the terminology. The production function of radio dispatch is similar to that of wireless telecommunications. This change also increased comparability with Canada and Mexico. Paging was found to have a distinct production function. Canada could not support this activity as a NAICS industry so it was added as a 5-digit U.S. industry. Wireless Telecommunications Carriers, Except Satellite will be a new industry for all three countries.

Satellite Telecommunications is a new industry in all three countries. It is a new technology that is now being identified as a new and emerging industry.

Other Telecommunications is a new industry for all three countries.

Section B—Annex: United States National Industry Detail

As explained in the *Structure* presentation of this notice, the three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for this NAICS industry subsector. In the following tables, proposed 5-digit detail is indicated in italics. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 USIC code	1987 USIC description
XX	Broadcasting and Telecommunications			
XXX	Radio and Television Broadcasting			
XXXX	Radio Broadcasting			
XXXXX	Radio Networks	N	*4832	Radio Broadcasting Stations.
XXXXX	Radio Stations	N	*4832	Radio Broadcasting Stations.
XXXX	Television Broadcasting	E	4833	Television Broadcasting Stations.
XXX	Cable Networks and Program Distribution			
XXXX	Cable Networks	N	*4841	Cable and Other Pay Television Services.
XXXX	Cable and Program Distribution	N	*4841	Cable and Other Pay Television Services.
XXX	Telecommunications			
XXXX	Wired Telecommunications Carriers	N	*4813	Telephone Communications, Except Radiotelephone (Carriers).
			4822	Telegraph and Other Message Communications.
XXXX	Wireless Telecommunications Carriers, Except Satellite	N		
XXXXX	Paging	N	*4812	Radiotelephone Communications (Paging Carriers).
XXXXX	Cellular and Other Wireless Telecommunications	N	*4812	Radiotelephone Communications (Cellular Carriers).
			*4899	Communication Services, NEC (Radio Dispatch).
XXXX	Telecommunications Resellers	N	*4812	Radiotelephone Communications (Paging and Cellular Resellers).
			*4813	Telephone Communications, Except Radiotelephone (Resellers).
XXXX	Satellite Telecommunications	N	*4899	Communication Services, NEC (Satellite).
XXXX	Other Telecommunications	N	*4899	Communication Services, NEC.

TABLE 2

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
4812@	Radiotelephone Communications	Wireless Telecommunications (pt). Telecommunications Resellers (pt).
4813@	Telephone Communications, Except Radiotelephone.	Wired Telecommunications Carriers (pt.). Telecommunications Resellers (pt.).
4822@	Telegraph and Other Message Communications.	Wired Telecommunications Carriers (pt.).
4832	Radio Broadcasting Stations	Radio Networks. Radio Stations.
4833	Television Broadcasting Stations	Television Broadcasting.

TABLE 2—Continued

The abbreviation "pt" means "part of". ● means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
4841	Cable and Other Pay Television Services.	Cable Networks. Cable and Program Distribution.
4899	Communications Service, NEC	Wireless Telecommunications Carriers (pt). Satellite Telecommunications. Other Telecommunications.

Description of Changes to the U.S. System

The Broadcasting and Telecommunications subsector has been completely restructured for 1997 to reflect the changing technology of the subsector. New industries are the following:

Radio Networks from part of 1987 Industry Code 4832, Radio Broadcasting Stations.

Radio Stations from part of 1987 Industry Code 4832, Radio Broadcasting Stations.

Cable Networks from part of 1987 Industry Code 4841, Cable and Other Pay Television Services.

Cable and Program Distribution from part of 1987 Industry Code 4841, Cable and Other Pay Television Services.

Wired Telecommunications Carriers from part of 1987 Industry Code 4813, Telephone Communications, except Radiotelephone and Industry Code 4822, Telegraph and Other Message Communications.

Paging from part of 1987 Industry Code 4812, Radiotelephone Communications.

Cellular and Other Wireless Telecommunications from parts of 1987 Industry Codes 4812, Radiotelephone Communications and Industry Code 4899, Communications Services, Not Elsewhere Classified.

Telecommunications Resellers from part of 1987 Industry Code 4812, Radiotelephone Communications and part of Industry Code 4813, Telephone Communications, Except Radiotelephone.

Satellite Telecommunications from part of 1987 Industry Code 4899, Communications Services, Not Elsewhere Classified.

Other Telecommunications from part of 1987 Industry Code 4899, Communications Services, Not Elsewhere Classified.

The number of industries in this industry subsector increased from 7 in 1987 to 11 in 1997. For time series linkage, 4 of the 7 1987 industries are comparable within three percent of the 1997 industries. For the other 3 industries, changes involve splitting a part of 1987 SIC 4-digit industries to obtain more industry detail, in response to new economic and technological developments in this subsector; the new more detailed industries can readily be reaggregated for analytical purposes where time series comparability is important.

Part III—Proposed New Industry Structure for Food Services and Drinking Places and Accommodations

Section A—NAICS Structure and Narrative

North American Industry Classification System

(NAICS)

Agreement Number 3

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Foodservices and Drinking Places Accommodations

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and discussions held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on May 18 and 19 in Ottawa, Canada.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten.	5/19/95
Mexico	/S/ Enrique Ordaz.	5/19/95
United States	/S/ Jack E. Triplett.	5/19/95

ATTACHMENT 1.—NAICS STRUCTURE

XX	Foodservices and Drinking Places.
XXX	Full-Service Restaurants.
XXXX	Full-Service Restaurants.
XXX	Limited-Service Eating Places.
XXXX	Limited-Service Restaurants and Cafeterias.
XXXX	Refreshment Places.
XXX	Special Foodservices.
XXXX	Foodservice Contractors.
XXXX	Caterers.
XXXX	Mobile Caterers.
XXX	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages).
XXXX	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages).
XX	Accommodations.
XXX	Traveler Accommodations.
XXXX	Hotels and Motels, except Casinos.
XXXX	Casino Hotels.

ATTACHMENT 1.—NAICS STRUCTURE—Continued

XXXX	Other Traveler Accommodations.
XXX	Recreational and Other Accommodations.
XXXX	Recreational Vehicle Parks and Camps.
XXXX	Rooming and Boarding Houses.

Attachment 2—North American Industry Classification System

Draft Classification for:

Foodservices and Drinking Places Accommodations

Representatives of the statistical agencies of Canada, Mexico and the United States have agreed to a draft industry classification for Foodservices and Drinking Places and Accommodations. These are further subdivided into six industry groups and ten industries.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System. It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the NAICS 4-digit industry level of the NAICS structure with the exception of Casino Hotels, which will be published only in the United States. All countries agree on the detailed definitions of the industries.

The classification improves comparability with other countries. The grouping of the Accommodations Subsector with the Foodservices and Drinking Places Subsector achieves comparability with the International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations at the 2-digit level, with the exception of doughnut shops which are included in the Foodservices and Drinking Places Subsector in NAICS and in the Manufacturing Division in ISIC. This means that the NAICS classification is the same as, or part of, a single ISIC 2-digit Division.

Other objectives of the NAICS project have also been met. New industries for different types of restaurants have been designated. These classifications reflect changes in the industry that have occurred in the past but have never been identified in the classification system.

In addition to the above objectives of the NAICS project, the classification meets the objectives of an industry classification. The industries are homogeneous and they are economically significant. Finally, disruptions to time series at the NAICS industry level have been kept to a minimum. In the United States, the major changes to existing classifications at the country level establish additional detail in the industry group, which can readily be linked to construct time series.

Foodservices and Drinking Places

Limitations of the Classification

There are some limitations to the draft foodservices and drinking places hierarchy. A number of related industries that provide foodservices as a secondary activity are not included. These are such activities as dinner theaters, dinner cruises, and fraternal organizations that provide foodservices to their members. These activities are not included in this industry subsector but will be classified in other service related industry subsectors based on their primary activity.

Constraints on the NAICS Classification

A number of industries that can appropriately be defined in terms of production distinctions could not be published in all countries because of considerations of size and confidentiality. In addition, the way activities are combined in establishments differs to some extent in the different countries. It is anticipated that each country will publish additional categories that comprise sub-divisions of NAICS industries, to present data for activities that are nationally significant.

A General Outline

The foodservices and drinking places grouping of industries is defined to include establishments that are primarily engaged in preparing meals, snacks, and beverages to customer order for immediate consumption, primarily on the premises. Within the subsector Food Services and Drinking Places, the industry groups (Full-Service Restaurants; Limited-Service Eating Places; Special Foodservices; and Bars, Taverns, and Other Drinking Places) reflect the level of service provided. The NAICS industries are described below.

Full-Service Restaurants provide a complete menu of full meals and full waiter/waitress service.

Limited-Service Eating Places provide a limited menu, limited waiter/waitress service, or both. This group is separated into limited-service restaurants and cafeterias. Limited-Service includes fast food and take out, plus cafeterias which are distinguished based on the cafeteria-style serving equipment. Refreshment places include doughnut shops, pretzel shops, cookie shops, coffee shops, and other such locations that primarily prepare and provide a single-item menu of food and drink for immediate consumption. Establishments that primarily resell food and drink prepared elsewhere, and that do not provide an eating place, are classified in retail trade.

Special Foodservices provide foodservices under special conditions. The group distinguishes Foodservice Contractors, Caterers, and Mobile Caterers. Foodservice Contractors operate under a long term contract to provide foodservices primarily in institutional, office, or industrial locations. Caterers provide event-based foodservice for both households (weddings, etc.) and industrial accounts (trade shows, etc.). Mobile Caterers are distinguished based on the use of a specialized vehicle and mobile service. Food carts that prepare foods rather than merely selling food prepared elsewhere are classified in this industry.

Bars, Taverns, and Other Drinking Places (Alcoholic Beverages) are distinguished based on the use of special equipment, training and skills in the preparation and serving of alcoholic beverages.

Some Changes to National Classification

This section highlights some of the significant changes to existing national industry classifications. For foodservices, all countries have had separate industries based on food versus alcoholic beverages; however, this draft proposes new detail for the U.S. and a redefinition of many of the industries for both Canada and Mexico.

For Canada, this draft regroups the activities included in CSIC 9211, 9212,

and 9213. Full-Service includes some of the operations that are currently in CSIC 9211 and 9212. The remaining establishments in these industries, namely those providing limited service are combined with the establishments in CSIC 9213 to form the Limited-Service Eating Places industry of NAICS. New detail for foodservices contractors, caterers, and mobile caterers has been established from within CSIC 9214.

For Mexico, parts of CMAP 931011 (all but cafeterias, dining cars, and vending machines), 931013, and 931015 are combined in the full-service classification. CMAP 931012 (except industrial cafeterias), 931014, and 931015 make up the new Limited-Service Eating Place industry group.

For the United States, USIC 5812 is split into separate detail for full-service, limited-service, and special services restaurants with additional U.S. detail for special services including foodservice contractors, caterers, and mobile caterers, a total of six new industries.

Accommodations

Limitations and Constraints of the NAICS Classification

There are some limitations to the draft accommodations structure. Accommodation establishments, especially hotels and motels, provide many services other than lodging. For example, many establishments have restaurants. Others have recreational facilities. Small establishments with very limited lodging facilities may offer no amenities at all. Hotels and motels are accordingly not homogeneous with respect to the services they provide. Moreover, this is by far the largest industry in the subsector. Nevertheless, no acceptable way was found to clearly demarcate the hotel and motel industry into more detailed industries that would be collectible in all three countries, and would apply to the operations of the industry in all three countries. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a NAICS industry level in order to ensure full comparability among the three countries.

A General Outline

The accommodations area is defined to include establishments that are primarily engaged in providing short-term accommodations. The industry groups and industries within accommodations have been grouped based on the various levels of services and facilities provided. The NAICS industries are described below.

Hotels and Motels primarily provide traditional types of lodging services to travelers. In addition to lodging, a range of other services may be provided.

Casino Hotels include both lodging and gaming casinos as an integrated facility. Both the lodging and gaming services are generally major operations and a separate industry has been created to classify these establishments. Casino Hotels are classified in this industry regardless of whether separate data are available for the gambling and hotel activities of these establishments. This industry is becoming large in the United States, though it does not currently exist in Canada and Mexico.

Other Traveler Accommodations include bed and breakfast establishments, hostels, and other establishments that provide lodging to travelers but provide few of the types of ancillary services that hotels and motels commonly provide.

Recreational Vehicle Parks and Camps provide special types of accommodations for travelers, vacationers, and others. The facilities are often outdoors (such as campsites) and are recreational in nature.

Rooming and Boarding Houses include establishments renting rooms, with or without board, for indefinite periods. This industry primarily includes establishments known as rooming houses and student residences.

Changes to the National Classifications

This section highlights some changes to each country's current industry classification of accommodations. The most significant are:

For the United States, the distinction between membership and non-membership organizations that provide lodging has been deleted from the classification. Such activities will be classified based upon the type of accommodations being provided. The current industry for hotels and motels (SIC 7011) has been divided into four NAICS industries. Also, separate industries for recreational vehicle parks and sporting camps have been combined.

For Canada, the proposal regroups four existing industries (CSIC's 9111, 9112, 9113, 9114) into two NAICS industries within the Traveler Accommodations industry group. In addition, three existing industries have been combined into a recreational vehicle parks and camp industry.

For Mexico, the proposal regroups three existing industries (CMAP's 932001, 932002, 932012) into two NAICS industries within the industry group for traveler accommodations.

Section B—Annex: United States National Industry Detail

As explained in the *Structure* presentation of this notice, the three country agreement on NAICS envisions that each country may choose to develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the two NAICS industry subsectors covered in Part III of this notice. In the following tables, proposed 5-digit detail is indicated in italics. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status Code	1987 USIC Code	1987 USIC description
XX	Foodservices and Drinking Places			
XXX	Full-Service Restaurants			
XXXX	Full-Service Restaurants	N	*5812	Eating Places.
XXX	Limited-Service Eating Places			
XXXX	Limited-Service Restaurants and Cafeterias			
XXXXX	*Limited-Service Restaurants*	N	*5812	Eating Places(Limited-Service Restaurants).

TABLE 1—Continued

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status Code	1987 USIC Code	1987 USIC description
XXXXX	*Cafeterias*	N	*5812	Eating Places (Cafeterias).
XXXX	Refreshment Places	N	*5812	Eating Places (Refreshment Places).
			*5461	Retail Bakeries (Snacks).
XXX	Special Foodservices			
XXXX	Foodservice Contractors	N	*5812	Eating Places (Food Service Contractors).
XXXX	Caterers	N	*5812	Eating Places (Caterers).
XXXX	Mobile Caterers	N	*5963	Direct Selling Establishments (Mobile Caterers).
XXX	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages).			
XXXX	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages)	E	5813	Drinking Places (Alcoholic Beverages).
XX	Accommodations			
XXX	Traveler Accommodations			
XXXX	Hotels and Motels, except Casino Hotels	R	*7011	Hotels and Motels (Hotels and Motels, Except Casino Hotels).
XXXX			*7041	Organization Hotels and Lodging Houses, on Membership Basis (Except Hotels).
XXXX	Casino Hotels	N	*7011	Hotels and Motels (Casino Hotels).
XXXX	Other Traveler Accommodations			
XXXXX	*Bed and Breakfast Inns*	N	*7011	Hotels and Motels (Bed and Breakfast Inns)
XXXXX	*All Other Traveler Accommodations*	N	*7011	Hotels and Motels (Except Hotels, Motels and Bed and Breakfast Inns).
XXX	Recreation and Other Accommodations		*7041	Organization Hotels and Lodging Houses, on Membership Basis (Except Hotels)
XXXX	Recreational Vehicle Parks and Camps.			
XXXXX	*Sporting and Recreation Camps*	E	7032	Sporting and Recreational Camps.
XXXXX	*Recreational Vehicle Parks and Campgrounds*E	E	7033	Recreational Vehicle Parks and Campgrounds
XXXX	Rooming and Boarding Houses	R	7021	Rooming and Boarding Houses.
			*7041	Organization Hotels and Lodging Houses, on Membership Basis (Rooming and Boarding Houses).

TABLE 2

The abbreviation "pt" means "part of". @ means a time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

1987 USIC code	1987 USIC description	1997 U.S. description
5812@	Eating Places	Full-Service Restaurants. Limited-Service Restaurants. Cafeterias. Refreshment Places (pt). Foodservice Contractors. Caterers.
5813	Drinking Places	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages).
7011	Hotels and Motels	Hotels and Motels, except Casino Hotels (pt). Casino Hotels. Bed and Breakfast Inns. All Other Traveler Accommodations, NEC.
7021	Rooming and Boarding Houses	Rooming and Boarding Houses (pt).
7032	Sporting and Recreational Camps	Sporting and Recreation Camps.
7033	Recreational Vehicle Parks and Campsites.	Recreational Vehicle Parks and Campgrounds.
7041@	Organization Hotels and Lodging Houses, on Membership Basis.	Hotels and Motels, except Casino Hotels (pt.). Rooming and Boarding Houses (pt).

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Description of Changes to the U.S. System

1. Foodservices and Drinking Places—Seven new industries are added to the 1997 industry structure for this industry subsector. New industries are the following:

Full-Service Restaurants from part of 1987 Industry Code 5812, Eating Places.

Limited-Service Restaurants from part of 1987 Industry Code 5812, Eating Places.

Cafeterias from part of 1987 Industry Code 5812, Eating Places.

Refreshment Places from parts of 1987 Industry Code 5812, Eating Places and Industry Code 5461, Retail Bakeries.

Foodservice Contractors from part of 1987 Industry Code 5812, Eating Places.

Caterers from part of 1987 Industry Code 5812, Eating Places.

Mobile Caterers transferred from part of 1987 Industry Code 5963, Direct Selling Establishments.

The number of Foodserving and Drinking Places increased from 2 in 1987 to 8 in 1997. For time series linkage, 1 of the 1987 industries is comparable within three percent of the 1997 industries. Industry 5812 was split into 6 new industries.

2. Accommodations—Three new industries are added to the 1997 industry structure for this industry subsector. New industries are the following:

Casino Hotels from part of 1987 Industry Code 7011, Hotels and Motels.

Bed and Breakfast Inns from part of 1987 Industry Code 7011, Hotels and Motels.

Other Traveler Accommodations, NEC from part of 1987 Industry Code 7011, Hotels and Motels.

One industry was deleted from this industry subsector.

Organization Hotels and Lodging Houses, on Membership Basis was deleted and the accommodations were split between Hotels and Motels, except Casino Hotels and Rooming and Boarding Houses.

The number of 1997 Accommodations Industries increased from 5 in 1987 to 7 in 1997. For time series linkage, 4 of the 5 1987 industries are comparable within three percent of the 1997 industries.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs

[FR Doc. 95–18258 Filed 7–25–95; 8:45 am]

BILLING CODE 3110–01–P

federal register

Wednesday
July 26, 1995

Part IV

Securities and Exchange Commission

17 CFR Part 230 et al.

Money Market Fund Prospectuses and Quarterly Reporting; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, and 274

[Release Nos. 33–7196; IC–21216; S7–21–95]

RIN 3235–AG55

Money Market Fund Prospectuses

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules, forms, and staff Guides.

SUMMARY: The Commission is proposing amendments to the registration forms for money market funds. The amendments would tailor the prospectus disclosure requirements to the unique characteristics of money market funds. These changes are intended to allow money market funds to prepare prospectuses that are shorter, simpler, more informative, and more readily understandable to investors.

DATES: Comments on the proposed rule and form amendments and on the proposed staff Guides must be received on or before September 27, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–21–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Martha H. Platt, Senior Attorney, or Robert E. Plaze, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation; for accounting questions, contact James F. Volk, Assistant Chief Accountant, (202) 942–0637, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("the Commission") today is proposing for comment amendments to Form N–1A [17 CFR 239.15A and 274.11A] and Form N–3 [17 CFR 239.17a and 274.11b], the registration forms used by open-end management investment companies ("mutual funds") and separate accounts organized as management investment companies ("separate accounts") to comply with the registration statement requirements of the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("1940 Act") and to register their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("1933 Act"). The proposed amendments would shorten and simplify money market fund prospectuses. The Commission is proposing additional amendments to Form N–1A that would: (1) modify the manner in which the yield of a tax exempt money market fund is calculated; (2) change the calculation of total return for partial years in the financial highlights table; (3) remove the requirement that funds file a schedule of performance quotation computations; and (4) amend the instructions regarding the fee table. Conforming amendments are being proposed to rule 482 under the 1933 Act [17 CFR 230.482] and Form N–2 [17 CFR 239.14 and 274.11a–1], the registration form for closed-end management investment companies. The Commission also is publishing related changes to staff Guides to Forms N–1A and N–3.

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Executive Summary

The Commission is proposing to amend the prospectus disclosure requirements of Form N–1A to permit and encourage money market funds ("money funds") to provide shorter prospectuses that are more relevant to the needs of typical money fund investors. The Commission believes that the proposed rule and form amendments will significantly shorten and simplify money fund prospectuses and provide valuable information to investors in more useable formats. The most significant of the proposed changes are summarized below.

First, the multi-line financial highlights table would be replaced with a bar graph showing a fund's total returns for each of the last ten years. The bar graph is intended to provide investors with information regarding fund performance in a simple, graphic format that is easy to understand.

Second, a money fund's description of its portfolio and investment techniques would be greatly abbreviated. Money fund prospectuses often contain detailed, technical descriptions of instruments and investment techniques that are unlikely to assist an investor in understanding a money fund's essential characteristics. The Commission is concerned that these complicated descriptions add substantial length and complexity to money fund prospectuses, which may discourage investors from reading important information in the prospectuses. The Commission proposes to address this concern by permitting all money funds to describe themselves in their prospectuses with very basic, general statements about their investment objectives and portfolio composition.

The narrative disclosure that money funds would remove from their prospectuses in response to the proposals described above would be relocated to the Statement of Additional Information ("SAI"), which is available to investors upon request and without charge.

I. Background and Summary of Proposed Amendments

Money funds are open-end management investment companies that invest in short-term debt instruments or instruments that have similar characteristics. Money funds currently hold over $692 billion in assets [1] in approximately 25 million shareholder accounts.[2] Through these funds, individual investors are able to participate in the money markets.

Like other mutual funds, money funds offer investors a diversified and professionally managed portfolio of securities. Many investors select money funds as part of their investment plans because these funds have characteristics that allow them to be used as a cash management tool. These characteristics include relative safety of principal, a high degree of liquidity, a wide range of shareholder services (including check-writing), and maintenance of a stable net asset value, usually of $1.00. Money funds are not protected by federal deposit insurance, and there is no guarantee that a money fund will always be able to maintain a stable net asset value.[3] Nevertheless, money funds' success at maintaining a stable $1.00 share price has encouraged investors to view these funds as alternatives to bank deposit and checking accounts.[4]

Form N–1A is the registration form that mutual funds, including money funds, use to satisfy the registration statement requirements of the 1940 Act and to register their shares under the 1933 Act. Form N–1A permits mutual funds to provide investors with a simplified prospectus covering matters of fundamental importance about the funds. Upon request, detailed information is available in an SAI. When the Commission proposed Form N–1A in the early 1980s, money funds were relatively new, tax exempt money funds had just been introduced, and money funds invested in only a few types of relatively simple instruments.[5] Accordingly, few provisions of the form reflect the unique characteristics of money funds or specify the level of disclosure appropriate for describing the many different types of instruments that now comprise money fund portfolios. As a result, although money funds are acknowledged as being the most stable and conservative mutual funds, their prospectus disclosure is often more detailed and technical than that of other mutual funds.

While detailed disclosure about investment policies and portfolio securities may be material to investors choosing among other types of funds, it may not be material to a money fund investor. Money fund investment policies and the composition of money fund portfolios are subject to much more detailed regulation under the 1940 Act and, as a result, are very similar.[6] While the differences among taxable money funds, tax exempt money funds, and money funds that invest only in U.S. government securities may be material to money fund investors, small differences in types of portfolio holdings that differentiate money funds within each of these groups may not be particularly important to investors, who typically select money funds on the basis of convenience, shareholder services, or yield.

Based upon these considerations, the Commission is proposing to revise the prospectus disclosure requirements for money funds to account for the unique characteristics of money funds and the regulatory structure to which they are subject. The revisions would result in shorter and more comprehensible prospectuses that are more relevant to the needs of typical money fund investors.[7]

II. Discussion of the Proposed Amendments

A. Proposed Revisions Pertaining to Money Fund Prospectuses

1. Replacement of Financial Highlights Table

The financial highlights table currently required by Item 3(a) of Form N–1A [8] provides summary financial information about a fund, including the fund's total return for each of the previous ten fiscal years.[9] Although the table provides useful information for investors in stock and bond funds generally, some of the table's items are generally not relevant to money fund investors because money funds rarely experience changes in per share net asset value or realize capital gains.

The Commission proposes to replace the financial highlights table in money fund prospectuses with a bar graph showing the fund's total return for each of its last ten fiscal years.[10] Because most of a money fund's return consists of dividends, the bar graph would primarily reflect the fund's annual yield. Money funds occasionally recognize capital gains as a result of the disposition of a portfolio security, which would be reflected in the bar graph as part of the fund's total return. If a fund makes capital gains distributions during the period, a footnote to the graph would state the amount of the distribution per share and indicate that the amount of the distribution is indicated in the bar graph by a shaded or otherwise distinctively marked area of the bar for each year for which such a distribution was made.[11] The bar graph would be accompanied by statements that: (1) Past performance is not predictive of future performance; (2) performance is primarily affected by short-term interest rates and fund expenses; and (3) more detailed information regarding performance is contained in the financial statements in the SAI.

The bar graph is intended to provide investors with a depiction of historical

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[1] Money Fund Report (July 7, 1995). $574 billion is invested in taxable funds and $118 billion is invested in tax exempt funds. *Id.*

[2] Investment Company Institute Mutual Fund Fact Book 99 (35th ed. 1995). See Investment Company Act Rel. No. 17589 (July 17, 1990) [55 FR 30239 (July 25, 1990)] at nn. 3–7 and 15–18, and accompanying text, for a summary of the development of money funds.

[3] Item 1(e)(vi) of Form N–1A requires a money fund to disclose this fact on the cover of its prospectus.

[4] An exception to this historical success occurred in September 1994 when the US Government Money Market Fund, a series of Community Bankers Mutual Fund, Inc. that had invested in certain adjustable rate notes, announced that it would liquidate and distribute less than $1.00 per share to its shareholders. See, *e.g.*, Olaf de Senerpont Domis and Karen Talley, "Collapse of Money Fund Seen Heightening Derivatives Scrutiny," American Banker, Sept. 29, 1994 at 1, 3; Leslie Wayne, "For Money Market Investors, New Cautions," N.Y. Times, Sept. 29, 1994 at D1, D8.

[5] In the 1980s, these funds generally restricted their investments to short-term U.S. government securities, bank instruments, and commercial paper. See, *e.g.*, In the Matter of Intercapital Liquid Asset Fund, Inc., *et al.*, Investment Company Act Rel. No. 10201 (Apr. 12, 1978) [43 FR 16830 (Apr. 20, 1978)] (notice of applications for exemption from section 2(a)(41) of 1940 Act and rules promulgated thereunder and order for hearing on ten related applications). By contrast, money funds today invest in a vast array of instruments, many of which have complex structures. The types of instruments available are constantly expanding in response to demand from money funds. See *infra*, Section II.A.2 of this Release. This trend is especially marked in the case of tax exempt money funds, where the demand for securities that are eligible for money fund investment has resulted in the investment banking community developing many types of new instruments. See Investment Company Act Rel. No. 19959 (Dec. 15, 1993) [58 FR 66585 (Dec. 28, 1993)] ("Release 19959") (proposing further amendments to tighten the risk-limiting conditions of rule 2a–7, 17 CFR 270.2a–7) at nn. 24–25 and accompanying text. All references to rule 2a–7 or any paragraph of the rule will be to 17 CFR 270.2a–7.

[6] Rule 2a–7 [17 CFR 270.2a–7] allows money funds to use the amortized cost method of valuation and the penny-rounding method of share pricing to assist in maintaining a stable share price. In addition, any investment company that holds itself out as a money fund may only invest in U.S. dollar-denominated instruments and must meet the risk-limiting conditions of rule 2a–7 regarding portfolio quality, maturity, and diversification. Paragraphs (b), (c)(2), (c)(3) and (c)(4) of rule 2a–7. These conditions limit a fund's exposure to credit, interest rate, and currency risk. All references to rule 2a–7 or any paragraph of the rule will be to 17 CFR 270.2a–7.

[7] In addition, shorter prospectuses would result in reduced printing and mailing costs. Those costs usually are borne by the fund and, indirectly, by fund shareholders.

[8] Most of the form amendments are being proposed for both Form N–1A and Form N–3. For ease of reference, citations to proposed and current form items and instructions refer to Form N–1A unless the context otherwise requires.

[9] The financial highlights table contains the following fourteen items: beginning net asset value; net investment income; net gains (losses); total income from investment operations; dividends from net investment income; distributions from capital gains; returns of capital; total distributions; ending net asset value; total return; total net assets; ratio of expenses to average net assets; ratio of net income to average net assets; and portfolio turnover rate. The table is required to contain information for the fund's last ten fiscal years. Item 23 of Form N–1A requires that the financial highlights information for each of the previous five fiscal years be provided in fund annual reports to shareholders.

[10] Proposed Item 3(b). The financial statements for the fund's previous fiscal year would continue to be required in the SAI. See Item 23 of Form N–1A. While other mutual funds currently are required to provide a performance graph and discussion of performance in their prospectuses or annual reports, money funds are exempt from those requirements of Form N–1A. See Investment Company Act Rel. No. 19382 (Apr. 6, 1993), [58 FR 19050 (Apr. 12, 1993)] ("Release 19382").

[11] Proposed Item 3(b) of Form N–1A.

fund returns in a format that is simple and understandable. The Commission is particularly concerned that investors with long-term financial goals, such as those using mutual funds to fund a retirement plan, understand that money funds provide them with substantially less of an opportunity for long-term growth than other types of mutual funds.

Comment is requested whether funds should be required to compare their performance during each of the ten years with that of an index, and, if so, what type of index should be required for the comparison. Such a comparison would permit investors to compare how the fund performed relative to alternative investments or industry averages. For example, should money funds be required to compare their total returns to changes in the Consumer Price Index, or to a securities index? In order to foster comparability among funds, should the Commission prescribe the scale of the vertical and horizontal axes of the graph and other formatting specifications?

The Commission requests comment whether money fund investors are likely to use historical performance information when selecting a money fund. Alternatively, or supplementally, should the Commission require a short-term depiction of fund yield, such as a line graph comparing the fund's yield during the last twelve months with that of an index of short-term or money funds securities. Would investors find a line graph showing recent yields useful in money fund annual and semi-annual reports to shareholders, documents that focus on the more recent financial history of the fund? Should such a graph be substituted for the current financial highlights tables in those reports?

2. Descriptions of Investment Policies and Techniques

Item 4(a) of Form N–1A requires a fund to describe how it proposes to achieve its investment objectives. The Commission is proposing to amend this item to reduce substantially the amount of detailed, technical information regarding investment policies, techniques, and instruments now found in money fund prospectuses. In addition, this item would be reorganized to clarify its requirements.

Item 4(a)(ii) of Form N–1A currently requires "a short description of the types of securities" in which a fund invests, as well as any "special investment practices or techniques" used by the fund in connection with those securities and "significant investment policies or techniques (such as risk arbitrage, repurchase agreements, forward delivery contracts, investing for control or management)" that the fund uses or intends to use in the foreseeable future.[12] The responses to paragraphs (a) and (b) of Item 4 have become the longest and most complex section of many money fund prospectuses.[13] The responses often include detailed descriptions of numerous types of instruments, including U.S. Treasury bills and notes, government agency securities, short-term tranches of collateralized mortgage obligations and other types of asset-backed securities, certificates of deposit, bankers' acceptances, floating and variable rate securities, commercial paper, and repurchase and reverse repurchase agreements. The list is even longer for tax exempt money fund prospectuses, which may contain descriptions of variable rate demand notes; put bonds; general obligation bonds; bond, revenue, and tax anticipation notes; industrial development bonds; lease obligations; tax exempt commercial paper; and "synthetic" instruments, such as tender option bonds and custodial receipts. Descriptions of particular securities are often accompanied by lengthy descriptions of investment techniques, such as purchasing securities on a "when-issued" basis and acquisition of stand-by commitments.[14]

The following is a typical description of a portfolio security for a tax exempt money fund currently provided in response to Item 4(a):

> The Fund may purchase participation interests in municipal securities that have fixed, floating or variable rates of interest. These participation interests will be purchased from financial institutions that sell undivided interests in the securities that underlie the instrument. The Fund will only purchase such an interest if: (i) the underlying securities mature in twelve months or less or the instrument includes a right to demand payment (a "demand feature"), usually exercisable within no more than seven days; (ii) the security meets certain quality standards set forth by the Fund and federal regulation; and (iii) the security is accompanied by an opinion of counsel or is the subject of a ruling from the Internal Revenue Service stating that the interest earned is exempt from federal income tax.

Another tax exempt money fund describes the investment technique of purchasing municipal bonds on a "when-issued" basis, also in response to Item 4(a), as follows:

> The Fund may purchase Municipal Obligations on a "when-issued" basis—the purchase of securities which are paid for and delivered beyond the normal settlement date. The Fund will generally not pay for such securities or start earning interest on them until they are received. Securities purchased on a when-issued basis are recorded as an asset and subject to changes in value based upon changes in the general level of interest rates. The Fund expects that its commitments to purchase when-issued securities will not exceed 25% of total assets, absent unusual market conditions, and that it will not commit to purchase when-issued securities beyond 45 days. The Fund does not intend to purchase when-issued securities for speculative purposes but only to further its investment objective.

To be eligible for money fund investment under rule 2a–7, the instruments described above all must be high quality and, although they may have different mechanisms for determining interest rates or maturity, all are designed to have the stability of principal and yield of short-term debt instruments. The riskiness of any particular investment technique is further limited by rule 2a–7's maturity and currency denomination conditions,[15] as well as the requirement that the board of directors adopt procedures designed to maintain a stable share price or net asset value.[16]

Because of the limitations on securities in which a money fund is permitted to invest, the particular types of securities in which a fund invests are unlikely to be an important factor for most investors when selecting a money fund.[17] Moreover, detailed, technical descriptions of instruments and investment techniques are unlikely to contribute to investor understanding of a money fund's essential characteristics. Finally, these complicated descriptions often add substantial length to money fund prospectuses, contributing to investors' perceptions that prospectuses are too complicated and discouraging them from reading the important information that is in the prospectuses.

To address these concerns, the Commission is proposing to add an instruction to Item 4 stating that it is sufficient for a money fund to describe the characteristics of the fund and its portfolio in very general and basic terms (*e.g.*, that it seeks to maintain a stable net asset value of $1.00 by investing in a portfolio of high-quality, short-term debt obligations issued by corporations, banks and other financial institutions), and that a listing or description of the particular instruments that the fund may purchase is not necessary.[18] If the fund limits investment to a group of securities or a type of issuer (*e.g.*, to U.S. government securities), the fund would also be required to identify any other group of securities or type of issuer in which it has reserved the right to invest more than five percent of assets, unless the fund has not invested more than five percent of its assets in those securities within the past year and has no current intention of doing so in the foreseeable future.[19] For example, if the "XYZ U.S. Government Money Market Fund" reserves the right to invest twenty percent of its assets in corporate obligations and has invested in such securities within the past year, the fund would state that in its prospectus.

The proposed instruction is intended to encourage funds to avoid lengthy descriptions of the areas currently covered by Item 4(a) that have resulted in technical, multi-page descriptions of types of securities and investment policies and techniques. Instead, the detailed descriptions of instruments and techniques would be placed in the SAI, where they would be available upon request to interested investors, including those who restrict their investments in mutual funds to funds that invest only in particular types of instruments.[20] The proposed instruction makes clear that the Commission is not proposing to eliminate from money fund prospectuses discussion of those material investment policies that distinguish one group of money funds from another.[21] For example, a fund would be expected to state, as appropriate, that it proposes to achieve its investment objective by investing only in Government securities, securities exempt from the income taxes of a particular state, or securities exempt from federal income taxation. The proposed instruction also makes explicit that a money fund is not required to describe the detailed investment policies that it has adopted in order to comply with rule 2a–7.[22]

The proposed changes should not be interpreted to suggest that the Commission believes that investment in a money fund is riskless. No substantive changes are being proposed to existing Item 4(c) (Item 4(b), as proposed to be amended), which requires a money fund to discuss "briefly the principal risk factors associated with investment" in the fund, including risk factors peculiar to the fund and those of the same fund type generally. Money funds would continue to respond to this sub-item and to Item 1(a) of Form N–1A, which requires a money fund to disclose on the cover page of its prospectus that an investment in the fund is neither insured nor guaranteed by the U.S. government and that there can be no assurance that the fund will be able to maintain a stable net asset value.[23] A money fund that is sold by or through a bank, or whose name is the same as, or similar to, the name of a bank that advises or sells the fund's shares, would also continue to be required to prominently disclose on the cover page of its prospectus that shares in the fund are not deposits or obligations of, or guaranteed or endorsed by, the bank, and that the shares are not federally insured.[24]

3. Inclusion of Description of Advertised Performance Data in SAI

Item 3(c) currently requires a brief explanation in the prospectus of how the fund calculates performance data that it advertises.[25] Because money fund yields are calculated in a uniform manner prescribed by the Commission, an investor is unlikely to use these descriptions when evaluating advertisements by the fund. The Commission therefore proposes to permit a money fund to place its response to this item in the SAI if the response is incorporated by reference into the prospectus.[26] The Commission requests comment on whether this option should be made available to other mutual funds.[27]

4. Summary Description of Securities Valuation

Item 7(b) of Form N–1A requires funds to describe, among other things, the way in which the public offering price of fund shares is determined and the timing of the determination. The methodologies money funds use to calculate their net asset values are prescribed by the 1940 Act and Commission rules and are designed so that the value of each share represents the pro rata value of the assets of the fund, typically at a stabilized share

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[12] Item 4(b)(ii) (proposed instruction 3(ii) to Item 4(a)) permits a fund simply to identify a practice if five percent or less of the fund's net assets are placed "at risk" by the practice. Money funds generally are not able to take advantage of this opportunity to simplify their disclosure because they require the flexibility to employ, above the five percent "at risk" level, many or all of the investment practices they describe.

[13] Some money funds, however, already limit those descriptions to general, basic statements about the securities in which they invest.

[14] Descriptions of particular types of securities (Item 4(a)(ii)(B)(1)) and various investment techniques (Item 4(a)(ii)(B)(1) and (D)) used by a fund often appear together in the same section of money market fund prospectuses.

[15] Rule 2a–7 limits the amount of currency risk to which money funds can be exposed by restricting their investments to U.S. dollar-denominated instruments. Paragraph (c)(3) of rule 2a–7. The rule limits the interest rate and credit risks to which money funds can be exposed by requiring that they maintain a dollar-weighted average portfolio maturity of no more than ninety days and generally invest in individual securities that have remaining maturities of no more than 397 days. Paragraph (c)(2) of rule 2a–7.

[16] See paragraph (c) of rule 2a–7.

[17] The Commission has considered whether disclosure of each type of security may provide investors with information they can use to avoid investment in money market funds investing in securities whose characteristics may threaten the fund's stable net asset value. In 1994 a number of fund advisers took steps to maintain the share values of money funds that had invested in adjustable rate securities that had interest rate adjustment formulas that did not result in the value of the security returning to par on the interest rate reset date as required by rule 2a–7; the adviser of one fund holding these instruments was not in a position to take steps to maintain the fund's share price. See supra, note 4. Under the current requirements of Form N–1A, these funds disclosed that they invest in adjustable rate instruments, but generally did not describe the terms of the interest rate adjustment formula of each instrument. Thus, even under the current rules, investors are not able to ascertain whether to avoid funds investing in inappropriate securities. Because the interest rate adjustment formulas are complicated, if the Commission were to require disclosure of the formulas, money market fund prospectuses would be considerably longer and more complex, even though most investors could not be expected to draw any conclusions as to the appropriateness of a particular adjustable rate security.

[18] Proposed Instruction 1 to Item 4(a).

[19] Proposed Instruction 1(b) to Item 4(a).

[20] Proposed Instruction 3 to Item 13. Requiring more detailed disclosure in the SAI also enables Commission staff to review whether the fund's stated policies and techniques comply with regulatory requirements.

[21] Proposed Instruction 1(b) to Item 4(a).

[22] The Commission also proposes to reorganize the current structure of sub-item 4(a). Several paragraphs would be redesignated as instructions to reflect their modifying the more general requirements of Item 4.

[23] In addition, other amendments that were proposed to Form N–1A in 1993 would require a money fund to disclose the fund's reliance on credit and liquidity enhancements from third parties when more than forty percent of the fund's portfolio consists of securities subject to such features and, for single state tax exempt money market funds, the risks associated with reduced issuer diversification and greater geographic concentration. See Release 19959, *supra* note 5 at nn. 196–197.

[24] See Letter to Registrants from Barbara J. Green, Deputy Director, Division of Investment Management (May 13, 1993).

[25] This disclosure provides a basis for inclusion of performance information in advertisements. Rule 482 advertisements may only include information the "substance of which" is included in the fund's statutory prospectus. For performance quotations, this requirement is met if the methodology for calculating performance is set forth in the prospectus. See Dechert, Price & Rhoads (pub. avail. Nov. 12, 1979). The Division has recommended eliminating the "substance of which" requirement (see Protecting Investors: A Half Century of Investment Company Regulation 349, Division of Investment Management, United States Securities and Exchange Commission (May 1992)), and legislation has been introduced that would eliminate the requirement (see H.R. 1495, 104th Cong., 1st Sess. § 3 (1995)).

[26] Proposed Instruction to Item 3(d). Because information incorporated by reference from the SAI is deemed to be included in the prospectus, the legal requirement that the substance of the information in an advertisement be contained in the statutory prospectus would be met. If adopted, the response to this item would be the only response to a prospectus item that could be incorporated by reference from the SAI.

[27] The Division is considering deleting the guide regarding explanations of performance data from Form N–1A (Guide 32).

value of $1.00.[28] The descriptions of these methodologies, which tend to be complicated, may be less important to money fund investors than the fact that the share price represents a pro rata share of the fund's net assets. Therefore, the Commission is proposing to permit money funds simply to state in the prospectus that the share price represents a pro rata share of the net assets of the fund, and to describe in the SAI the pricing method employed by the fund.[29]

In the case of a money fund that seeks to maintain a stable net asset value, the timing of the determination of the share price each day may not be material to an investor who will ordinarily receive the same price per share regardless of the time a payment is made or a redemption tendered.[30] Therefore, the Commission is proposing to relieve money funds that seek to maintain a stable net asset value from the requirement to disclose in the prospectus the timing of the determination of the offering price. This information would continue to appear in the SAI.[31]

B. Other Amendments

1. Calculation of Tax Exempt Money Fund Yield

Tax exempt funds typically advertise a "tax free" yield. Under staff guides, a money fund that holds itself out as distributing income that is exempt from income taxation may invest up to twenty percent of its net assets in taxable securities or invest its assets so as much as twenty percent of its income is taxable.[32] In addition, most tax exempt money funds reserve the authority to temporarily invest any or all of the fund's assets in taxable securities if no suitable tax-exempt securities are available. Because taxable instruments generally have higher yields than tax exempt instruments, a prospective investor may be unaware that a tax exempt fund's relatively higher yield may be the result of the inclusion of some taxable securities in its portfolio. Therefore, the Commission is proposing to revise the money fund yield formula set forth in Item 22(a) of Form N–1A to require a tax exempt fund to reduce any taxable income by a percentage equal to the highest marginal income tax rate in effect at the time the yield is quoted.[33] The tax-adjusted yield would represent a more accurate tax-free yield.[34]

2. Total Return Calculation

The Commission is proposing a technical amendment to the instructions regarding calculation of the total return in the financial highlights table that would apply to all management investment companies using Forms N–1A and N–2.[35] Instruction 11(e) to Item 3 of Form N–1A currently requires a fund to annualize total return for partial year periods. The Commission is concerned that annualization of performance based on a short period may result in a distorted performance figure that may mislead investors.[36] The Commission proposes to amend the instruction in Form N–1A and add an instruction to Form N–2 to require that performance for a period of less than twelve months be stated without annualization.

3. Amendments to Fee Table

The Commission is proposing several technical amendments to Item 2 of Form N–1A, which requires a fund to provide in its prospectus a table summarizing the transaction and operating expenses associated with an investment in the fund. In addition, the fee table provides examples of what expenses a shareholder would pay if shares were redeemed at the end of several time periods.

Instruction 13(a) to Item 2(a) of Form N–1A instructs funds that have expense reimbursement or fee waiver arrangements that reduce fund operating expenses to reflect these arrangements in their fee table if the reimbursement or waiver "will continue." The Commission is proposing to amend the instruction to clarify that the phrase "will continue" applies regardless of whether a guarantee that the arrangement will continue is in place. A fund is required to update its prospectus by means of a prospectus supplement or "sticker" to reflect a material change in the reimbursement or waiver arrangement.[37] As a result, fund shareholders will be informed of decreases in amounts reimbursed or fees waived that would have a material affect on fund expenses.

Two amendments are being proposed to conform Form N–1A to Forms N–3 and N–4. The instructions to the example in the table would be amended to permit a new fund to adjust the data in the example to reflect the completion of amortization of expenses associated with organizing the fund [38] and to prescribe a method for allocating account fees charged to shareholders in an investment company complex or a series company.[39]

Funds are currently required to provide a brief explanation of the table immediately after the table. The proposed amended instruction would permit funds to provide the explanation "contiguous to" the table, giving funds additional discretion to determine how the table's purposes can be made clear to investors.[40]

4. Exhibit 16 to Form N–1A

Funds are currently required by Item 24 of Form N–1A to include as an exhibit to their financial statements a schedule showing how the fund computes performance quotations. The Commission is proposing to remove this requirement. Funds' calculations of their performance data instead will be reviewed during fund examinations.

[28] The methodologies include amortized cost (acquisition cost as adjusted for amortization of premium or accretion of discount), market value (marking to market daily), and fair value (good faith estimate by the board of directors) and combinations of these methods.

[29] See Item 19, Instruction 1 (valuation procedure). Money market funds would continue to state in the prospectus when the fund will not process requests to purchase or sell shares. See Guide 23 to Form N–1A (interpreting Item 7 regarding days on which fund will not price shares).

[30] Perhaps more important to a money market fund investor is the relationship of the timing of a share purchase to the accrual of dividends on the investment (for example, whether dividends on shares begin to accrue on the day the fund receives the investment, or on the next business day). This information would continue to be required in the prospectus in response to Item 6(f) (Capital Stock and Other Securities). Funds also would be required to disclose the date on which dividends cease accruing as the result of a redemption. Proposed Instruction to Item 8(a) (Redemption and Repurchase).

[31] See Item 19, Instruction 3 (timing of calculation of net asset value). A money market fund that does not maintain a stable net asset value would continue to describe the timing of its share price calculation in the prospectus.

[32] See Guide 1 to Form N–1A.

[33] If a fund represents itself as being free from state and/or local income taxation as well as federal income taxation, the fund would also be required to reduce the yield of those securities that are not exempt from state and/or local income taxation by the highest marginal state and/or local income tax rates for individuals.

[34] The Commission is also proposing technical amendments to rule 482 and Form N–1A to clarify that money market funds may advertise tax equivalent and tax equivalent effective yields and how those yields should be calculated.

[35] If the proposed amendments to Item 3 are adopted, money market funds would be exempt from the Financial Highlights table requirement.

[36] Notwithstanding the current instruction, the Commission urges funds not to annualize the total return for a partial year.

[37] The Commission acknowledges that a material change requiring a stickering of a fund's prospectus would ordinarily not occur where a fee waiver or reimbursement is increased, thereby reducing fund expenses.

[38] Instruction 14(a) to Form N–1A.

[39] Proposed Instruction 14(i) to Item 2(a) of Form N–1A.

[40] See General Instruction 1 to Item 2, as proposed to be amended.

C. Request for Comments Regarding Prospectus Simplification Generally

The Commission is currently reviewing the prospectus disclosure requirements for all management investment companies to determine what changes might improve further the quality of prospectus disclosure, particularly in light of regulatory developments and changes in the investment company industry.[41] The Commission would consider proposing further amendments to Form N–1A to simplify and generally improve the quality of prospectus disclosure to investors in other types of mutual funds. The Commission requests comments and suggestions about ways in which the Form may be amended to further shorten and simplify prospectus disclosure for other mutual funds. Specifically, the Commission seeks comment on: (i) whether some information currently required to be presented in narrative form could be presented more effectively in a graphic, pictorial, or tabular format; and (ii) whether the appropriate allocation of required disclosure between the prospectus and the SAI should be clarified.

The Commission also requests comment on the utility to investors of money fund portfolio schedules, which are provided in semi-annual reports to shareholders.[42] Do these schedules provide useful information for investors? Should other information be provided instead or in a different format from that currently required?

III. Amendments to Staff Guides

Form N–1A is accompanied by a series of staff guides designed, among other things, to clarify the disclosure requirements in the form. The Appendix to this release contains draft revisions to the current guides.

The Division of Investment Management (the "Division") intends to revise Guides 3, 4, 8 and 22 to Form N–1A to reflect the amendments proposed today. Guide 3 (Investment Objectives and Policies) would be revised to urge money funds to be concise in describing the manner in which they propose to achieve their investment objectives and would state that a general description of the types of instruments in which the fund may invest and the issuers of those instruments generally should be sufficient; that listing or describing each type of instrument in which the fund may invest is not required; and that detailed descriptions of rule 2a–7's requirements and the various nationally recognized statistical rating organizations ("NRSROs") and the ratings they assign should be omitted. The Division staff intends to revise Guide 4 (Types of Securities) to state that money funds are not required to list or describe the particular instruments in which the fund may invest. Guide 8 (Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements and Standby Commitment Agreements) would be revised to state that money funds should discuss the use of certain trading practices in the SAI in response to Item 13 rather than in the prospectus. Finally, Guide 22 (Government Securities) would be amended to shift some of the disclosure money funds place in their prospectuses about U.S. Government securities to the SAI.

The Division also intends to revise Guides 4 and 5 to clarify certain other matters applicable to money funds. Guide 4 (Types of Securities) would be revised to clarify the Commission's policy that money funds may not invest more than ten percent of their assets in illiquid securities.[43] Guide 5 (Portfolio Turnover) would be amended to indicate that money funds need not discuss the effects of portfolio turnover, as an investment technique, in the prospectus. Money funds would still be required to discuss the effects of portfolio turnover in the SAI.[44]

The Division requests comment on the proposed changes to the guides and the deletion of the guides regarding performance data,[45] as well as any suggestions for amendment of existing guides that would result in improved disclosure by money funds and other types of mutual funds.

IV. Transition Period

If adopted, the proposed amendments would become effective sixty days after publication in the Federal Register. Funds would be required to conform their prospectuses and SAIs to the amendments in their next post-effective amendment filed after the conclusion of the sixty day period that updates financial statements pursuant to the requirements of section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)]. New funds would be required to implement the new requirements in registration statements filed after the conclusion of the sixty day period.

V. General Request for Comments

All interested persons who wish to submit written comments on the proposed form, rule, and Guide amendments discussed in this release, to suggest other amendments to Forms N–1A and N–3, or to comment on related matters that might have a significant impact upon the proposals discussed in this release, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed text to amend the Form or related rules or staff guides.

VI. Cost/Benefit of Proposal

The changes to Forms N–1A and N–3 and related rules proposed today are intended to shorten and simplify the prospectuses provided to investors and potential investors in money funds and to improve the quality of prospectus disclosure by these funds. The proposed revisions should benefit investors by providing them with a shorter, clearer and, therefore, more useful document and better enable investors to make an informed investment decision. Because the proposed revisions would shorten the prospectuses provided by most money funds, the revisions should reduce the burdens of preparing and the cost of mailing the prospectus for funds. That information which is transferred from the prospectus to the SAI will lengthen the SAIs of some funds; however, the number of investors typically requesting the SAI is much lower than the number of investors to whom the prospectus will be provided. The Commission is interested in any public comment concerning the cost savings or cost burdens to money funds of all sizes affected by these proposals.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in

[41] The Commission recently issued a concept release regarding mutual fund risk disclosure and requested comment regarding a broad range of issues related to this topic. See Investment Company Act Rel. No. 20974 (Mar. 29, 1995) [60 FR 17172 (Apr. 4, 1995)].

[42] Rule 30d–1 [17 CFR 270.30d–1] requires that shareholder reports contain the financial statements specified in the appropriate investment company registration statement form. Instructions for preparing financial statements are contained in the registration statement forms, which refer to the requirements of Regulation S–X. See, *e.g.*, instructions to Item 23 of Form N–1A.

[43] See Investment Company Act Rel. No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)]. See also Investment Company Institute (pub. avail. Dec. 9, 1992). The limit on illiquid holdings by other types of mutual funds is fifteen percent of net assets. See Investment Company Act Rel. No. 18612 (Mar. 12, 1992). See also Merrill Lynch Money Markets, Inc. (pub. avail. Jan. 14, 1994) (subject to certain conditions, limit on illiquid securities does not apply to commercial paper issued in reliance on Section 4(2) of the 1933 Act).

[44] In the 1993 amendments to Form N–1A, money funds were explicitly exempted from the requirement to state their portfolio turnover rates in the Financial Highlights table. See Release 19382, *supra* note 10 at n.3.

[45] See *supra* note 31.

accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the proposed amendments are intended to simplify money fund prospectus disclosure. Pertinent information contained in the preceding section of this release ("Cost/Benefit of Proposal") is also reflected in the Analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Martha H. Platt, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 239, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 79*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.482 is amended by removing the word "or" at the end of paragraph (d)(1); removing the period and adding "; or" at the end of paragraph (d)(2); and adding paragraph (d)(3) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(d) * * *

(3) In the case of a money market fund holding itself out as distributing income exempt from regular federal income tax, in addition to the quotation of yields described in paragraphs (d)(1) and (d)(2) of this section:

(i) A quotation of current yield described in paragraph (d)(1) of this section and a corresponding quotation of tax equivalent yield based on the method of computation prescribed in Form N–1A, relating to the same base period and of equal prominence; or

(ii) A quotation of current yield and effective yield and corresponding quotations of tax equivalent current yield and tax equivalent effective yield based on methods of computation prescribed in Form N–1A, relating to the same base period and of equal prominence.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: Form N–2 does not and the amendments will not appear in the Code of Federal Regulations.

5. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by removing "and" at the end of paragraph (b), removing the period at the end of paragraph (c), adding "; and" at the end of paragraph (c), and adding instruction 13.d. to Item 4.1, to read as follows:

Form N–2

* * * * * *

Item 4. Financial Highlights

1. *General* * * *

Instructions

General Instructions

* * * * *

Total Investment Return

13. * * *

d. for a period of less than a full fiscal year, state the total investment return for the period and disclose in a note to the table that the figure is not annualized.

* * * * *

Note: Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

6. General Instruction A of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding a second paragraph (unnumbered) to read as follows:

Form N–1A

* * * * *

General Instructions

A. Rule as to Use of Form N–1A

* * * * *

Several Items of Form N–1A contain specific provisions or instructions for money market fund Registrants. *See* General Instruction E and Items 1, 3, 4, 7, and 8 of Part A, Items 13, 22 and 23 of Part B, and Item 32 of Part C. In addition, money market fund registrants need not respond to Items 5(c) and 5A.

* * * * *

7. General Instruction E of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by removing the second sentence of the second paragraph (unnumbered) and adding two sentences to the end of that paragraph, to read as follows:

Form N–1A

* * * * *

General Instructions

* * * * *

E. Incorporation by Reference

* * * * *

* * * In general, a Registrant may incorporate by reference, in answer to any item in a registration statement filed on Form N–1A not required to be included in a prospectus, any information contained elsewhere in the registration statement or any information contained in other statements, applications or reports filed with the Commission, except that a money market fund Registrant's response to Item 3(d) may be incorporated into the prospectus by reference from the Statement. A money market fund Registrant that elects to incorporate its response to Item 3(d) from the Statement of Additional Information is not required as a result of that incorporation to physically deliver the Statement with the prospectus if the Statement is available as described in the first paragraph of this instruction.

* * * * *

8. Item 1, Part A of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding an instruction immediately following paragraph (a)(iii), to read as follows:

Form N–1A

* * * * *

Part A

Information Required in a Prospectus

Item 1. Cover Page

(a) * * *

(iii) * * *

Instruction

A money market fund Registrant incorporating by reference from the Statement of Additional Information only its response to Item 3(d) must include within the prospectus a statement that information has been incorporated into the prospectus by reference from the Statement of Additional Information, but may omit the statement from its cover page.

9. Item 2, General Instruction 1 of Form N–1A (referenced in §§ 239.15A and 274.11A) is revised by removing "Immediately after" and adding in its place "Contiguous to".

10. Item 2, Part A of Form N–1A (referenced in §§ 239.15A and 274.11A is amended by adding paragraph (c) instruction 13 to read as follows:

Form N–1A

* * * * *

Part A

Information Required in a Prospectus

Item 2. Synopsis

(a)(i) * * *

Instructions

General Instructions * * *

Annual Fund Operating Expenses

* * *

13. (a) * * *

(c) The registrant should reflect any expense reimbursement or fee waiver arrangement that reduced any fund operating expense that is expected to continue, regardless of whether the reimbursement or waiver arrangement has been guaranteed.

11. Item 2, Part A of Form N–1A (referenced in §§ 239.15A and 274.11A is amended by adding ", except that an appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made" before the semi-colon at the end of instruction 14(a).

12. Item 2, Part A of Form N–1A (referenced in §§ 239.15A and 274.11A is amended by adding paragraph (*i*) to instruction 14 to read as follows:

Form N–1A

* * * * *

Part A

Information Required in a Prospectus

Item 2. Synopsis

(a)(i) * * *

Instructions

General Instructions * * *

Example

14. * * *

(i) Reflect any administrative fee collected by dividing the total amount of the fee collected during the year by all funds or series whose shareholders are subject to the administrative fee by the total average net assets of all the funds or series. Add the resulting percentage to "Annual Fund Operating Expenses" and assume that it remains the same in each of the one, three, five, and ten-year periods. New Registrants should estimate administrative fees collected.

13. Item 3 of Form N–1A (§§ 239.15A and 274.11A) is amended by revising the introductory text of paragraph (a) and revising instruction 11(e) to paragraph (a), redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), and adding paragraph (b) and an instruction to newly designated paragraph (d) to read as follows:

Form N–1A

* * * * *

Item 3. Condensed Financial Information

(a) For a Registrant other than a money market fund, furnish the following information for the Registrant, or for the Registrant and its subsidiaries, consolidated as prescribed in Rule 6–03 [17 CFR 210.6–03] of Regulation S–X.

* * * * *

Instructions

General Instructions

* * * * *

Total Return

11. * * *

(e) for a period of less than a full fiscal year, state the total return for the period and disclose in a note to the table that the figure is not annualized.

* * * * *

(b) For a money market fund Registrant, provide a bar graph showing the annual total returns of the fund for each of the last ten fiscal years, or the life of the fund if less than ten years. The graph should also show the return for each year in numerical form. Accompany the graph with a statement or statements that: (1) Past performance is not predictive of future performance; (2) money market fund performance is primarily affected by short-term interest rates and fund expenses (and provide a cross-reference to the Registrant's tabular responses to Item 2(a), unless the bar graph and tabular responses to Item 2(a) appear on the same page of the prospectus); and (3) financial statements providing more detailed information regarding the fund's performance are contained in the Statement of Additional Information.

Instructions

General

Briefly explain the nature of the information contained in the bar graph and that the information is derived from the financial statements in the Statement of Additional Information. The auditor's report as to the financial statements need not be included in the prospectus. Note that the auditor's report as to the fund's financial data reflected in the bar graph is included elsewhere in the registration statement, specify its location, and state that it can be obtained by shareholders.

Bar Graph Presentation

1. *Partial Years/New Registrants.* Do not reflect partial fiscal years in the bar graph. The first year shown in the graph will be the first full fiscal year for which: (i) the Registrant's registration statement was effective (or, in the case of a series, the Registrant offered shares of the series); or (ii) the Registrant (or series) invested its assets in accordance with its investment objectives.

2. *Total Return.* Calculate total return as prescribed in Instruction 11 to Item 3(a) of this form.

3. *Distribution of Capital Gains.* If the fund made capital gains distributions during the period, state in a footnote to the graph what the amount of the distribution per share was and state that such distribution is reflected in the bar graph by means of a shaded or otherwise distinctively marked area within the bar for each year in which capital gains distributions were made.

4. *Format.* Measure return on the vertical axis of the bar graph and measure time in yearly increments on the horizontal axis.

5. *Series Companies.* Treat each series as a separate Registrant for purposes of this item.

* * * * *

(d) * * *

Instruction

A money market fund Registrant may incorporate its response to this sub-item from the Statement of Additional Information. *See* General Instruction E.

* * * * *

14. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by revising Item 4 to read as follows:

Form N–1A

* * * * *

Item 4. General Description of Registrant

(a) Concisely discuss the organization and operation or proposed operation of the Registrant. Include the following:

(i) basic identifying information, including:

(A) the date and form of organization of the Registrant and the name of the state or other sovereign power under the laws of which it is organized; and

(B) the classification and subclassification of the Registrant pursuant to Sections 4 and 5 of the 1940 Act [15 U.S.C. 80a–4, 80a–5];

(ii) a concise description of the investment objectives and policies of the Registrant, including, if those objectives may be changed without a vote of the holders of the majority of the voting securities, a brief statement to that effect; and

(iii) a concise discussion of how the Registrant proposes to achieve such objectives, including:

(A) a short description of the types of securities in which the Registrant invests or will invest principally and, if applicable, any special investment practices or techniques that will be employed in connection with investing in such securities;

(B) if the Registrant proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries;

(C) identification of any other policies of the Registrant that may not be changed without the vote of the majority of the outstanding voting securities, including those policies which the Registrant deems to be fundamental within the meaning of Section 8(b) of the 1940 Act; and

(D) a concise description of those significant investment policies or techniques (such as risk arbitrage, repurchase agreements, forward delivery contracts, investing for control or management) that are not described pursuant to subparagraphs (a)(iii) (A)–(C) above that the Registrant employs or has the current intention of employing in the foreseeable future.

Instructions

1. In responding to paragraph (a)(iii) of this item (other than paragraph (a)(iii)(B), regarding concentration), it is sufficient for a money market fund Registrant to: (a) describe the characteristics of the Registrant in general terms (*e.g.*, that it seeks to maintain a stable net asset value of $1.00 by investing in a portfolio of high quality short-term debt obligations issued by corporations, banks, and other financial institutions, etc.) without listing or describing the particular instruments in which the fund may invest or explaining detailed investment policies designed to comply with rule 2a–7 of the 1940 Act; and (b) if the fund limits investment to a group of securities or a type of issuer (*e.g.*, to U.S. government securities, or securities the distributions from which are exempt from federal income taxes), identify: (i) the group of securities or type of issuer and (ii) any other group of securities or type of issuer in which the fund reserves the right to invest more than 5% of its assets and state the maximum percentage of the fund's assets that may be so invested, unless the Registrant has not invested more than 5% of its assets in those securities within the past year and has no current intention of doing so in the foreseeable future.

2. "Concentration," for purposes of paragraph (a)(iii)(2), is deemed to be 25% or more of the value of the Registrant's total assets invested or proposed to be invested in a particular industry or group of industries. A fund's policy on concentration should not be inconsistent with the Registrant's name.

3. Discussion of types of investments that will not constitute the Registrant's principal portfolio emphasis, and of related policies or practices, should generally receive less emphasis in the prospectus, and under the circumstances set forth below may be omitted or limited to information necessary to identify the type of investment, policy, or practice. Specifically, and notwithstanding paragraph (a) above:

(i) If the effect of a policy is to prohibit a particular practice, or, if the policy permits a particular practice but the Registrant has not employed that practice within the past year and has no current intention of doing so in the foreseeable future, do not include disclosure as to that policy; and

(ii) If such a policy has the effect of limiting a particular practice in such a way that no more than 5% of the Registrant's net assets are at risk, or, if the Registrant has not followed that practice within the last year in such a manner that more than 5% of the Registrant's net assets were at risk, and does not have a current intention of following such practice in the foreseeable future in such a manner that more than 5% of the Registrant's net assets will be at risk, disclosure of information in the prospectus about such practice should be limited to that which is necessary to identify the practice.

(b) Discuss briefly the principal risk factors associated with investment in the Registrant, including factors peculiar to the Registrant as well as those generally attendant to investment in an investment company with investment policies and objectives similar to the Registrant's.

* * * * *

15. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding an instruction following paragraph (b) of Item 7 to read as follows:

Form N–1A

* * * * *

Item 7. Purchase of Securities Being Offered

* * * * *

(b) * * *

Instruction

In responding to sub-item (b)(i), a money market fund Registrant need only state that the public offering price per share represents a proportionate interest in the net assets of the fund. In responding to sub-item (b)(ii), a money market fund Registrant that seeks to maintain a stabilized net asset value need not state the time of day at which net asset value is calculated.

* * * * *

16. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding an instruction following paragraph (a) of Item 8 to read as follows:

Form N–1A

* * * * *

Item 8. Redemption or Repurchase

(a) * * *

Instruction

In responding to paragraph (a), a money market fund Registrant need not discuss the timing of share pricing but should state how the timing of a redemption request will affect the accrual or payment of dividends.

* * * * *

17. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding an instruction 3 following paragraph (b) of Item 13 to read as follows:

Form N–1A

* * * * *

Item 13. Investment Objectives and Policies

* * * * *

(b) * * *

Instructions

* * * * *

3. In responding to this item, a money market fund Registrant should include descriptions of:

(i) The types of instruments which it purchases or intends to purchase;

(ii) The types of issuers that issue the instruments in which it intends to invest;

(iii) Significant investment policies or techniques (*e.g.*, forward delivery contracts, repurchase agreements, and standby commitments) that the Registrant employs or has the current intention of employing in the foreseeable future; and

(iv) The quality, maturity, and diversity restrictions which pertain to money market fund investments, to the extent such descriptions are not included in the prospectus in response to Instruction 1 to Item 4.

* * * * *

18. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by revising the introductory text of paragraph (a), redesignating paragraphs (a)(iii) and (a)(iv) as paragraphs (a)(v) and (a)(vi); adding paragraphs (a)(iii), (a)(iv), and (a)(vii); revising Instruction 4 to paragraph (a); adding Instruction 5 to paragraph (a); and revising the introductory text of paragraph (b)(iii) of Item 22 to read as follows:

Form N–1A

* * * * *

Item 22. Calculation of Performance Data

(a) *Money Market Funds.* If a money market fund Registrant advertises a yield quotation, an effective yield quotation, a tax equivalent yield quotation, or a tax equivalent effective yield quotation, furnish:

* * * * *

(iii) A tax equivalent current yield quotation computed by dividing that portion of the yield of the Registrant (as computed pursuant to Item 22(a)(i)) which is tax-exempt by one minus a stated income tax rate and adding the product to that portion, if any, of the yield of the Registrant that is not tax-exempt;

(iv) A tax equivalent effective yield quotation computed by dividing that portion of the effective yield of the Registrant (as computed pursuant to Item 22(a)(ii)) which is tax-exempt by one minus a stated income tax rate and adding the product to that portion, if any, of the yield of the Registrant that is not tax-exempt;

* * * * *

(vii) The income tax rate used in the computation.

Instructions

* * * * *

4. If the Registrant does not advertise any of the four types of yield, it need not disclose or discuss the computation of that yield.

5. If the Registrant holds itself out as distributing income that is exempt from federal and/or state and/or local income taxation, in calculating yield and effective yield (but not tax equivalent yield or tax equivalent effective yield), the Registrant must reduce the yield quoted by the effect of any income taxes on the shareholder receiving dividends, employing the maximum rate for individual income taxation. For example, if the Registrant holds itself out as distributing income exempt from federal taxation and the income taxes of State A, but invests in some securities of State B, it must reduce its yield by the effect of state income taxes that must be paid by the residents of State A on that portion of the income attributable to the securities of State B.

(b) *Other Registrants.*

* * * * *

(iii) *Tax Equivalent Yield.* If the Registrant advertises a tax equivalent yield, furnish,

* * * * *

19. Form N–1A (referenced in §§ 239.15A and 274.11A), paragraph (b) of Item 24, is amended by removing paragraph (16) and redesignating paragraphs (17) and (18) as paragraphs (16) and (17).

20. Guide 3 to Form N–1A is revised to read as follows:

Guide 3. Investment Objective and Policies

In the response to Item 4, the registrant's investment objective and policies (including the types of securities in which it will invest) should be clearly and concisely stated in the prospectus so that they may be readily understood by the investor. Because the circumstances of each registrant will vary, it is not possible to define precisely what level of investment would make a particular type of investment one in which the registrant invests "principally," as that term is used in Item 4. As a general matter, however, the level of disclosure as to a particular type of investment should be consistent with the prominence of that type of investment in the registrant's portfolio. The prospectus should emphasize the main types of investments the registrant proposes to make and the principal risks inherent in such investments. Accordingly, discussions of types of investments that will not constitute the registrant's principal portfolio emphasis should be as brief as possible and, in many cases, may be limited to identifying the particular type of investments. (As discussed below, the instructions delineate certain circumstances in which disclosure may be so limited.) Similar treatment should be accorded to other types of practices, such as borrowing money. In order to achieve the objective of clear and concise disclosure, registrants should avoid extensive legal and technical detail and need not discuss every possible contingency, such as remote risks.[3]

Money market fund registrants in particular are urged to be concise in describing the manner in which they propose to achieve their investment objectives (item 4(a)(iii)). A general description of the types of instruments in which the registrant may invest (*i.e.*, short-term, high quality instruments) and the types of issuers that issue the securities in which the registrant may invest (*e.g.*, corporations, banks, etc.) should generally be sufficient. As stated in Instruction 1 to Item 4, listing or describing each type of instrument in which the registrant may invest is not required; however, the registrant should identify those groups of securities or types of issuers in which it has reserved the right to invest more than 5% of its assets, unless it has not invested more than 5% of its assets in those securities or issuers within the past year and has no current intention of doing so in the foreseeable future. Registrants should omit detailed descriptions of rule 2a–7's requirements and the various NRSROs and the ratings they assign to securities in which the fund may or does invest. More detailed responses regarding investment policies and techniques should be provided in the Statement of Additional Information in response to Item 13.

Pursuant to Instruction 3(i) to Item 4(a), the registrant should omit from the prospectus disclosure about so-called negative investment policies, that is, policies that prohibit a particular type of investment or practice. Item 4(a) may have particular applicability to those types of activities for which section 8(b) of the 1940 Act specifically requires that there be information in the registration statement. Although Item 4(a) generally does not attempt to define what or how much disclosure should be made about particular practices, Instruction 3(ii) calls for minimal disclosure of policies registrant will not follow to a significant extent. Specifically, if not more than 5 percent of the registrant's net assets will be at risk, the prospectus should merely identify the policy or practice. For example, if a registrant planned to

[3] See individual subject headings of these Guidelines concerning disclosure for specific investment techniques or policies.

invest no more than 5 percent of its net assets in speculative growth stocks, it would be sufficient to state that policy in the prospectus without elaboration.

The response to Item 13 should include a fuller discussion in the Statement of Additional Information of those investment policies of the registrant with respect to which an abbreviated or no narrative description is included in the prospectus. Fuller descriptions of the registrant's principal types of investment may also be appropriate, depending on the circumstances. If the registrant has not used a policy in the past, the registrant should disclose that fact, as well as its intention with respect to that policy in the coming year in the Statement of Additional Information in responding to Item 13.

21. Guide 4 to Form N–1A is amended by adding a footnote at the end of the first sentence to read as follows:

Guide 4. Types of Securities

* * * * *

[4] As set forth in instruction 1 to Item 4, money market fund Registrants are not required to list or describe the particular instruments in which the fund may invest.

* * * * *

22. Guide 4 to Form N–1A is amended by adding a sentence and a footnote in the last paragraph (unnumbered) after the phrase "fifteen percent of its net assets." to read as follows:

Guide 4. Types of Securities

* * * * *

* * * A money market fund is limited to investing less than ten percent of its assets in illiquid securities.[5] * * *

* * * * *

23. Guide 5 to Form N–1A is amended by adding a footnote at the end of the first sentence to read as follows, and sequentially renumbering all subsequent footnotes in the guides to Form N–1A:

Guide 5. Portfolio Turnover

* * * * *

[6] Money market funds are not required to discuss the effects of portfolio turnover in their prospectuses.

* * * * *

24. Guide 8 to Form N–1A is amended by adding a sentence to the second paragraph (unnumbered) following the third sentence to read as follows:

[5] *See* Investment Company Act Rel. No. 13380 (July 11, 1983), 48 FR 32555 (July 18, 1983). *See also* Investment Company Institute (pub. avail. Dec. 9, 1992).

Guide 8. Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements and Standby Commitment Agreements

* * * * *

* * * Money market funds should discuss their use of these trading practices in the Statement of Additional Information in response to Item 13 (*see* Instruction 1 to Item 4(a)(iii) and Instruction 3 to Item 13). * * *

25. Guide 22 to Form N–1A is amended to read as follows:

Guide 22. Government Securities

If the registrant is investing in United States Government securities, the prospectus should reflect under what conditions, and to what extent the registrant intends to invest its assets in United States Government securities.

If a registrant other than a money market fund is investing to a significant extent in United States Government securities on a routine basis, the prospectus should include the following information: (i) The types of Government securities in which the fund will invest; (ii) examples of Government agencies and instrumentalities in whose securities the fund will invest; and (iii) whether the securities of such agency or instrumentality are: (a) Supported by full faith and credit of the United States, (b) supported by the ability to borrow from the Treasury, (c) supported only by the credit of the agency or instrumentality, or (d) supported by the United States in some other way. If the registrant is a money market fund, the disclosure described in (i)–(iii) above should be placed in the Statement of Additional Information.

If the registrant is a money market fund holding itself out as investing in United States Government securities, and the registrant does not invest all of its assets in securities backed by the full faith and credit of the United States Government, the fund should not suggest in its prospectus or sales material that there is no credit risk associated with the fund's investments.

26. Guide 28 to Form N–1A is amended by removing the following phrase in the first sentence of the tenth paragraph (unnumbered): "with portfolio securities that mature in one year or less".

27. General Instruction A of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding a paragraph between the first and second (unnumbered) paragraphs to read as follows:

Form N–3

* * * * *

General Instructions

A. Rule as to Use of Form N–3

* * * * *

Several Items of Form N–3 contain specific provisions or instructions for money market accounts. *See* General Instruction G and Items 1, 4, 5, 11, 12, of Part A, Items 19 and 27 of Part B, and Item 37 of Part C.

* * * * *

Note: Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

28. General Instruction G of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by removing the period and adding a comma at the end of the second paragraph (unnumbered) and adding the following to read as follows:

Form N–3

* * * * *

General Instructions

* * * * *

G. Incorporation by Reference

* * * * *

* * *, except that a Registrant's response to Item 4(d) may be incorporated into the prospectus by reference from the Statement of Additional Information. A money market account electing to incorporate its response to Item 4(d) from the Statement of Additional Information will not be required as a result of that incorporation to physically deliver the Statement with the prospectus if the Statement is available as described in the first paragraph of this instruction.

* * * * *

29. Item 1 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding an instruction at the end of paragraph (a)(vi) to read as follows:

Form N–3

* * * * *

Item 1. Cover Page

(a) * * *
(vi) * * *

Instruction

A money market account incorporating by reference from the Statement of Additional Information only its response to Item 4(c) must include within the prospectus a statement that information has been incorporated into the prospectus by reference from the Statement of Additional Information, but may omit the statement from its cover page.

* * * * *

30. Item 3 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by

revising General Instruction 1 by removing "Immediately after" and substituting in its place "Contiguous to".

31. Item 3 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding paragraph (c) to instruction 18 to read as follows:

Form N–3

* * * * *

Item 3. Synopsis

(a) * * *
Annual Expenses * * *
18. (a) * * *
(b) * * *
(c) The registrant should reflect any expense reimbursement or fee waiver arrangement that reduced any operating expense that is expected to continue, regardless of whether the reimbursement or waiver arrangement has been guaranteed.

32. Item 4 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by revising the introductory text of paragraph (a), redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), adding paragraph (b), and adding an instruction to newly designated paragraph (d) to read as follows:

Form N–3

* * * * *

Item 4. Condensed Financial Information

(a) For all registrants other than money market accounts, furnish the following information for each class of accumulation units of the Registrant, or for such classes of the Registrant and its subsidiaries consolidated as prescribed in Rule 6–03 of Regulation S–X [17 CFR 210.6–03].

* * * * *

(b) For each money market account, provide a bar graph showing the annual total returns of the account for each of the last ten fiscal years, or the life of the account if less than ten years. The graph should also show the return for each year in numerical form. Accompany the graph with a statement or statements that: (1) Past performance is not predictive of future performance; (2) money market account performance is primarily affected by short-term interest rates and expenses (and provide a cross-reference to the Registrant's tabular responses to Item 3(a), unless the bar graph and tabular responses to Item 3(a) appear on the same page of the prospectus); and (3) financial statements providing more detailed information regarding the account's performance are contained in the Statement of Additional Information.

Instructions

General

Briefly explain the nature of the information contained in the bar graph and that the information is derived from the financial statements in the Statement of Additional Information. The auditor's report as to the financial statements need not be included in the prospectus. Note that the auditor's report as to the fund's financial data reflected in the bar graph is included elsewhere in the registration statement, specify its location, and state that it can be obtained by shareholders.

Bar Graph Presentation

1. *Partial Years/New Registrants.* Do not reflect partial fiscal years in the bar graph. The first year shown in the graph will be the first full fiscal year for which: (i) The Registrant's registration statement was effective (or, in the case of a series, the Registrant offered shares of the account); or (ii) the Registrant (or account) invested its assets in accordance with its investment objectives.

2. *Total Return.* Calculate total return as prescribed in Instruction 11 to Item 3(a) of Form N–1A.

3. *Distribution of Capital Gains.* If the account made capital gains distributions during the period, state in a footnote to the graph what the amount of the distribution per share was and state that such distribution is reflected in the bar graph by means of a shaded or otherwise distinctively marked area within the bar for each year in which capital gains distributions were made.

4. *Format.* Measure return on the vertical axis of the bar graph and measure time in yearly increments on the horizontal axis.

5. *Series Companies.* Treat each sub-account as a separate Registrant for purposes of this item.

* * * * *

(d) * * *

Instruction

A money market account may incorporate its response to this item from the Statement of Additional Information. See General Instruction G.

* * * * *

33. Item 5 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by revising paragraph (c)(ii), removing paragraph (d), and redesignating paragraph (e) as paragraph (d) to read as follows:

Form N–3

* * * * *

Item 5. General Description of Registrant and Insurance Company

* * * * *

(c) * * *

(ii) how the Registrant proposes to achieve its objectives, including:

(A) a short description of the types of securities in which the Registrant invests or will invest principally and, if applicable, any special investment practices or techniques that will be employed in connection with investing in such securities;

(B) if the Registrant proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries;

(C) the identity of other policies of the Registrant that may be changed only with the approval of a majority of votes, including those policies which the Registrant deems to be fundamental within the meaning of Section 8(b) of the 1940 Act; and

(D) those significant investment policies or techniques (such as risk arbitrage, repurchase agreements, forward delivery contracts, investing for control or management) that are not described pursuant to subparagraphs (A), (B) or (C) above that Registrant employs or intends to employ in the foreseeable future.

Instructions

1. In responding to paragraph (c)(ii) of this item (other than paragraph (c)(ii)(B), regarding concentration), it is sufficient for a money market account to:

(a) Describe the characteristics of the account in general terms (*e.g.*, that it seeks to maintain a stable net asset value of $1.00 by investing in a portfolio of high quality short-term debt obligations, issued by corporations, banks, and other financial institutions, etc.) without listing or describing the particular instruments in which the account may invest or explaining detailed investment policies designed to comply with rule 2a–7 of the 1940 Act; and

(b) If the account limits investment to a group of securities or a type of issuer (*e.g.*, to U.S. government securities), identify: (i) the group of securities or type of issuer and (ii) any other group of securities of type of issuer in which the fund reserves the right to invest more than 5% of its assets and state the maximum percentage of the fund's assets that may be so invested, unless the account has not invested more than 5% of its assets in those securities within the past year and has no current intention of doing so in the foreseeable future.

2. "Concentration", for purposes of paragraph (c)(ii)(B), is deemed to be 25% or more of the value of Registrant's total assets invested or proposed to be invested in a particular industry or group of industries. Registrant's policy on concentration should not be inconsistent with Registrant's name.

3. Discussion of types of investments that will not constitute Registrant's principal portfolio emphasis, and of related policies or practices, should generally receive less emphasis in the prospectus, and under the circumstances set forth below may be omitted or limited to information necessary to identify the type of investment, policy, or practice. Specifically, and notwithstanding paragraph (c) above:

(a) If the effect of a policy is to prohibit a particular practice, or, if the policy permits a particular practice but the Registrant has not employed that practice within the past year and has no current intention of doing so in the foreseeable future, do not include disclosure as to that policy; and

(b) If such a policy has the effect of limiting a particular practice in such a way that no more than 5% of Registrant's net assets are at risk, or, if Registrant has not followed that practice within the last year in such a manner that more than 5% of Registrant's net assets were at risk, and does not have a current intention of following such practice in the foreseeable future in such a manner that more than 5% of Registrant's net assets will be at risk, disclosure of information in the prospectus about such practice should be limited to that which is necessary to identify the practice.

* * * * *

34. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding an instruction following Item 11(c) to read as follows:

Form N–3

* * * * *

Item 11. Purchases and Contract Value

* * * * *

(c) * * *

Instruction

In responding to sub-item 11(c), a money market account need only state that the accumulation unit value represents a proportionate interest in the net assets of the account.

* * * * *

35. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding an instruction following Item 11(d) to read as follows:

Form N–3

* * * * *

Item 11. Purchases and Contract Value

* * * * *

(d) * * *

Instruction

In responding to sub-item 11(d), a money market account that seeks to maintain a stabilized accumulation unit value need not state the time of day at which the calculation is made. * * *

36. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by adding an instruction following Item 12(a) to read as follows:

Form N–3

* * * * *

Item 12. Redemptions

(a) * * *

Instruction

In responding to paragraph (a), a money market account Registrant need not discuss the timing of unit value pricing but should state how the timing of a redemption request will affect the accrual of dividends.

* * * * *

37. Form N–3 (referenced in CFR §§ 239.17a and 274.11b) is amended by adding instruction 3 following Item 19(b) to read as follows:

Form N–3

* * * * *

Item 19. Investment Objectives and Policies

* * * * *

(b) * * *

Instructions:

* * * * *

3. In responding to this item, money market accounts should include descriptions of:

(a) The types of instruments which it purchases or intends to purchase;

(b) The types of issuers that issue the instruments in which it intends to invest;

(c) Significant investment policies or techniques (*e.g.*, forward delivery contracts, repurchase agreements, and standby commitments) that the Registrant employs or has the current intention of employing in the foreseeable future; and

(d) The quality, maturity, and diversity restrictions which pertain to money market account investments, to the extent such descriptions have not been included in the prospectus in response to Instruction 1 to Item 5(c).

* * * * *

38. Form N–3 (referenced in §§ 239.17a and 274.11b), paragraph (b) of Item 28, is amended by removing paragraph (16) and redesignating paragraph (17) as paragraph (16).

39. Guide 3 to Form N–3 is amended by removing the word "basic" in the first paragraph and substituting in its place "principal".

40. Guide 3 to Form N–3 is amended by adding a paragraph (unnumbered) after the first (unnumbered) paragraph to read as follows:

Guide 3. Investment Objectives and Policies

* * * * *

In particular, Registrants with money market accounts are urged to be concise in describing the manner in which such accounts propose to achieve their investment objectives (item 5(c)). A general description of the types of instruments in which a money market account may invest (*i.e.*, short-term, high quality instruments) and the types of issuers that issue the securities in which it may invest (*e.g.*, corporations, banks, etc.) should generally be sufficient. As stated in Instruction 1 to Item 5, listing or describing each type of instrument in which the money market account may invest is not required; however, the registrant should identify those groups of securities or types of issuers in which the account has reserved the right to invest more than 5% of its assets, unless it has not invested more than 5% of its assets in those securities or issuers within the past year and has no current intention of doing so in the foreseeable future. Registrants should omit detailed descriptions of rule 2a–7's requirements and the various NRSROs and the ratings they assign. More detailed responses regarding investment policies and techniques should be provided in the SAI in response to Item 13.

* * * * *

41. Guide 4 to Form N–3 is amended by adding a footnote at the end of the first sentence to read as follows:

Guide 4. Types of Securities

* * * * *

[3] As set forth in instruction 1 to Item 5, money market funds are not required to list or describe the particular instruments in which the fund may invest.

* * * * *

42. Guide 4 to Form N–3 is amended by adding a final paragraph to read as follows:

Guide 4. Types of Securities

* * * * *

If an account holds a material percentage of its assets in securities or other assets for which there is no established market, there may be a question concerning the ability of the account to make payment within seven days of the date its shares are tendered for redemption. The usual limit on aggregate holdings of illiquid assets by separate accounts is 15 percent of net assets. A money market account is limited to investing less than ten percent of its assets in illiquid securities.[5] An illiquid asset is any asset which may not be sold or disposed of in the ordinary course of business within seven days at approximately the value at which the mutual fund has valued the instrument.[6]

* * * * *

43. Guide 5 to Form N–3 is amended by adding a footnote at the end of the first sentence to read as follows:

Guide 5. Portfolio Turnover

* * * * *

[7] Money market accounts are not required to discuss the effects of portfolio turnover in their prospectuses.

44. Guide 8 to Form N–3 is amended by adding a sentence in the second paragraph (unnumbered) following "and standby commitment agreements.*, to read as follows, and renumbering sequentially all subsequent footnotes in the guides to Form N–3:

Guide 8. Senior Securities, Reverse Repurchase Agreements, and Standby Commitment Agreements

* * * * *

* * * Money market accounts should discuss their use of these trading practices in the Statement of Additional Information in response to Item 19 (see Instruction 1 to Item 5(c)(ii) and Instruction 3 to Item 19(b)). * * *

45. Guide 21 to Form N–3 is amended to read as follows:

Guide 21. Government Securities

If the registrant is investing in United States Government securities, the prospectus should explain when and to what extent the registrant intends to do so.

If a registrant other than a money market account is investing significantly in United States Government securities on a routine basis, the prospectus should include the following information: (1) The types of Government securities in which the separate account will invest; (2) examples of Government agencies and instrumentalities in whose securities the separate account will invest; and (3) whether the securities of such agency or instrumentality are (a) supported by the full faith and credit of the United States, (b) supported by the ability to borrow from the Treasury, (c) supported only by the credit of the agency or instrumentality, or (d) supported by the United States in some other way. If the registrant is a money market account, the disclosure described in (1) through (3) above should be placed in the Statement of Additional Information.

If the registrant is a money market account holding itself out as investing in United States Government securities, and the registrant does not invest all of its assets in securities backed by the full faith and credit of the United States Government, the account should not suggest in its prospectus or in its sales material that there is no credit risk associated with the account's investments.

46. Guide 27 to Form N–3 is amended by removing the phrase in the first sentence of the tenth paragraph (unnumbered): "with portfolio securities that mature in one year or less".

* * * * *

Dated: July 19, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18243 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Investment Company Act Rel. No. 13380 (July 11, 1983), 48 FR 32555 (July 18, 1983). *See also* Investment Company Institute (pub. avail. Dec. 9, 1992).

[6] *See* Investment Company Act Release No. 14983 (Mar. 12, 1986) [51 FR 9773 (Mar. 20, 1986)].

17 CFR Parts 232, 240, 249 and 270

[Release Nos. 34–35991; IC–21217; S7–22–95]

RIN 3235–AG56

Money Market Fund Quarterly Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and rule amendment.

SUMMARY: The Commission is proposing a new rule under the Investment Company Act of 1940 that would require money market funds to file quarterly reports with the Commission identifying, describing, and providing valuation information for each security in their portfolios. The reports would be filed electronically through the Commission's EDGAR system. This information would enhance the Commission's ability to monitor money market fund compliance with the federal securities laws, particularly rule 2a–7 under the 1940 Act, the rule that permits money market funds to use special share pricing and portfolio valuation methods.

DATES: Comments on the proposed rule and rule and form amendments must be received on or before September 27, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comment letters should refer to File No. S7–22–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Martha H. Platt, Senior Attorney, (202) 942–0725, or Joseph E. Price, Deputy Office Chief, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment:

(1) Rule 30b3–1 under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("1940 Act") that would require money market funds to file with the Commission quarterly reports regarding their portfolio holdings; and

(2) Technical amendments to Regulation S–T [17 CFR 232.301], the caCommission's general rules for electronic filings, and rule 12b–25 [17 CFR 240.12b–25] and Form 12b–25 [17 CFR 249.322] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*], to accommodate notification of late filings of the quarterly reports.

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Executive Summary

The Commission is proposing a new rule under the 1940 Act that would require money market funds ("money funds") to file with the Commission quarterly reports regarding their portfolio holdings (the "Money Market Fund Portfolio Schedule" or "Schedule"). The Schedule would be

filed electronically through the Commission's EDGAR system.

Rule 30b3–1 would require a money fund to report electronically, for each security in its portfolio: (i) The name of the security and its issuer and any guarantor of the security; (ii) the security's credit quality; (iii) whether it is illiquid; (iv) its value; (v) the percentage of the portfolio represented by the security and the percentage of the portfolio invested in securities issued by the issuer; (vi) its maturity date; and, in the case of an adjustable rate instrument, (vii) the formula used for adjusting its interest rate. A money fund would also be required to report its yield, average weighted maturity, total assets, percentage of net assets invested in illiquid securities, certain transactions between the fund and affiliated persons, and any difference between the stabilized share price of the fund (which is usually $1.00) and the per share net asset value of the fund based on the market value of its portfolio as of the end of the period. The information contained in the proposed reports would enhance the Commission's ability to monitor money fund compliance with the federal securities laws, target its limited on-site examination resources, and respond in the event of a significant market event affecting money funds and their shareholders.

I. Background

Money funds are permitted to use methods of asset valuation and share pricing that depart from the daily pricing requirements of the 1940 Act [1] and hold themselves out as offering high levels of liquidity and safety of principal.[2] As a result, money funds are subject to substantially greater Commission regulation and monitoring of their investment activities than other types of investment companies.

Money funds are subject to rule 2a–7 under the 1940 Act, which limits their investments to high quality, short-term, U.S. dollar-denominated debt instruments.[3] Under rule 2a–7, a money fund is permitted to use the amortized cost method for valuing its portfolio securities and the penny-rounding method of pricing its shares, which facilitate the maintenance of a stable share price.[4] As a condition of using these methods, rule 2a–7 requires, among other things, that a money fund's board of directors take certain steps to make sure that the fund's use of these pricing methods does not result in its shares being unfairly priced.[5] These steps include periodically determining the extent of deviation, if any, between the fund's current net asset value per share calculated using available market quotations, and the fund's amortized cost per share, and considering what action, if any, should be taken if the deviation is greater than one-half of one percent.[6] A board of directors of a fund using the penny-rounding method is required to assure that the net asset value per share, after rounding, does not deviate from the share price established for the fund.[7]

Pursuant to authority provided in the 1940 Act, the Commission periodically inspects money funds to determine compliance with the federal securities laws, including rule 2a–7. The Commission annually inspected each money fund between 1991 and 1993 in response to a series of events that threatened some money funds' ability to maintain a stable net asset value.[8] The Commission believes that, while not preventing money funds from being affected by subsequent market events, the frequency of inspections during this period contributed substantially to the level of compliance and safety of money funds.

More recently, the Commission has found it necessary to allocate its inspection resources among a wider range of investment companies. To allow the Commission to provide greater oversight of money funds than its on-site examination resources would otherwise permit, the Commission is proposing to require money funds to file quarterly reports detailing their portfolio holdings, yield, dollar-weighted average maturity, illiquid holdings, transactions with affiliated persons, and securities valuation practices with the Commission. These reports should improve the efficiency and effectiveness of the Commission's money fund examination program in several respects. First, because the reports would elicit much of the same information regarding portfolio securities that would be obtained during an on-site examination, the Commission will be able to use the reports to review compliance with many of rule 2a–7's requirements without making on-site visits. Second, the reports will enable the Commission to target funds with investment practices or portfolio holdings that suggest the need for on-site examination. Third, information in the reports will permit Commission examiners to conduct a significant portion of each on-site money market fund examination at Commission offices, reducing Commission examination costs and the disruption to funds and their advisers. Fourth, information in the reports will enable the Commission to respond when a significant market event occurs that could affect money funds and their shareholders.[9] The availability of a list of portfolio securities for each money fund will permit the Commission to identify those funds that are holding distressed securities to determine whether they are appropriately pricing their securities [10] and taking other steps that may be required under rule 2a–7.[11] Finally, because the reports would be publicly available, they would permit public scrutiny of money fund investment practices through the financial press and private information services.[12] The Commission believes that this disclosure may have a salutary effect on money fund investment practices, reducing the possibility that a money fund will engage in practices that pose risks to its ability to maintain a stable net asset value.

II. Discussion

To address the concerns discussed above, the Commission is proposing new rule 30b3–1 under the 1940 Act that would require every open-end management investment company holding itself out as a money fund [13] to file a Money Market Fund Portfolio Schedule with the Commission not more than thirty days following the last day of each calendar quarter.[14] The Schedule, which is described in paragraph (d) of proposed rule 30b3–1, would be filed electronically with the Commission through the EDGAR system, pursuant to a new appendix to the EDGAR Filer Manual, and would be made publicly available.[15]

A. Money Market Fund Portfolio Schedule

The Schedule would require fund portfolio information on a security-by-security basis in the following areas:

- Identifying information: the CUSIP number assigned to the security,[16] the name of the issuer, the name of the issue (Items 12 (a)–(c)), the names of any providers of puts, demand features, bond insurance, or other guarantees for the security (Item 12 (d)),[17] and whether the security is pre-refunded (Item 12(g) or a repurchase agreement (Item 12(i));
- *Maturity information:* The security's final maturity date and maturity date currently used for purposes of determining compliance with rule 2a–7's maturity limitations (Items 12 (j) and (k));[18]
- Interest rate information: The rate of interest the security was paying on the last day of the reporting period (Item 12(p)); whether the security is subject to any special interest rate features, such as a future change in rate structure from variable to fixed (Item 12(s)),[19] or an interest rate cap (Item 12(t));[20] and, for an adjustable rate security, the interest rate reset formula and the frequency of the interest rate reset (*e.g.*, weekly, monthly, or quarterly) (Items 12(q) and (r));
- *Credit quality information:* Whether the security is treated as "unrated" and/or "second tier" for purposes of rule 2a–7 (Items 12 (e) and (f));[21]
- *Liquidity:* Whether the security is illiquid (Item 12(h));[22]
- *Valuation information:* For all funds, the market value of the security, based on quotations obtained not more than ten business days prior to the end of the quarter (Item 12(l)); and, for funds using the amortized cost method, the amortized cost of the security and any deviation between the amortized cost and market values (Item 12(m)); and
- *Diversification information:* The percentage of the fund's "total assets" represented by the position, and the percentage of the fund's "total assets" represented by all securities issued by the issuer of this security (Items 12 (n) and (o)).

The Schedule would also require a fund to categorize itself by fund type (Item 3) [23] and to provide other

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[1] Section 2(a)(41) of the 1940 Act [15 U.S.C. 80a–2(a)(41)] and rules 2a–4 and 22c–1 under the 1940 Act [17 CFR 270.2a–4, 270.22c–1] require funds to calculate net asset value per share by valuing portfolio securities for which market quotations are readily available at market value, and other securities and assets at fair value as determined in good faith by the board of directors. Money funds that seek to maintain a stable share price generally use either the amortized cost method of valuation or the penny-rounding method of share pricing. Under the amortized cost method, portfolio securities are valued by reference to their acquisition cost as adjusted for amortization of premium or accretion of discount. Paragraph (a)(1) of rule 2a–7 [17 CFR 270.2a–7(a)(1)]. Share price is determined under the penny-rounding method by valuing securities at market value, fair value, or amortized cost and rounding the per share net asset value to the nearest cent. Paragraph (a)(11) of rule 2a–7. All references to rule 2a–7 or any paragraph of the rule will be to 17 CFR 270.2a–7.

[2] Because of these characteristics, investors often use money funds as a substitute for demand deposits, even though money funds are not protected by federal deposit insurance, and there is no guarantee that the funds will be able to maintain stable share prices.

[3] Money funds are subject to portfolio quality, maturity, and diversification requirements under paragraphs (b), (c)(2), (c)(3), and (c)(4) of rule 2a–7. These conditions limit a fund's exposure to credit, interest rate, and currency risk. For a discussion of the effect of rule 2a–7 on the types of investments made by money market funds, see Investment Company Act Rel. No. 21216 (July 19, 1995) at n.6 and § II.A.2., a companion release being issued today in which the Commission proposes to shorten and simplify money fund prospectuses to reflect their unique characteristics and in light of the regulatory limitations on those funds.

[4] Paragraphs (a) (1) and (11) of rule 2a–7.

[5] If a fund's shares are sold or redeemed based on a net asset value that either understates or overstates the amount for which portfolio instruments could have been sold, the interests of either existing shareholders or new investors will be diluted. See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Sen. Comm. on Banking and Currency, 76th Cong., 3d Sess. 136–136, 288 (1940).

[6] Paragraphs (c)(6)(ii) (A) and (B) of rule 2a–7.

[7] Paragraph (c)(7) of rule 2a–7.

[8] In 1989 and 1990, commercial paper issued by Mortgage and Realty Trust, Integrated Resources, Inc., and MNC Financial Corporation defaulted or was downgraded, resulting in significant declines in the securities' market prices, and threatening the stable net asset values of the money market funds holding them. In 1991, New Jersey insurance regulators seized Mutual Benefit Life Insurance Company ("MBLI"), a provider of demand features and other credit enhancements to securities owned by several money market funds. When MBLI could not honor its put obligations, the value of MBLI-backed securities declined substantially. Shareholders of funds that held these securities were not adversely affected because each fund's investment adviser voluntarily purchased the paper from the funds at amortized cost or principal amount, otherwise agreed to indemnify the fund, or obtained a replacement guarantor in order to prevent shareholder losses. See Investment Company Act Rel. No. 19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] [hereinafter "Release 19959"] (proposing further amendments to tighten the risk-limiting conditions of rule 2a–7) at nn.12 and 28 and accompanying text.

[9] *Supra* note 8. In addition, in 1994 a number of money market funds that had invested in adjustable rate securities experienced losses when these securities' interest rates failed to follow short-term market rates. See Wayne, "For Money Market Investors, New Cautions," N.Y. Times, Sept. 29, 1994 at D1, D8. In one case, a money market fund holding these adjustable rate securities was forced to liquidate and redeem its shareholders at a price of less than $1.00. See de Senerpont Domis and Talley, "Collapse of Money Fund Seen Heightening Derivatives Scrutiny," American Banker, Sept. 29, 1994 at 1, 3. Most recently, a major municipal issuer—Orange County—filed for bankruptcy. To maintain their funds' net asset values, several money market funds' advisers took steps to prevent the net asset value of their funds from falling below $1.00. See "Orange County, Mired in Investment Mess, Files for Bankruptcy," Wall St. J., p.A1 (Dec. 7, 1994).

[10] See paragraphs (c)(6)(ii) (B) and (C) of rule 2a–7 (if the market value per share for a fund using amortized cost method deviates more than one-half of one percent from the fund's share price, the board of directors must promptly consider what action, if any, should be taken and, to the extent the deviation has dilutive or unfair results, take appropriate action to eliminate or reduce deviation, including changing the share price). Similarly, because the penny-rounding method permits rounding to the nearest one percent, if the share price of a fund using the penny-rounding method deviates by more than one-half of one percent, the share price for the fund could not be maintained. See paragraphs (a)(11) and (c)(7) of rule 2a–7.

[11] See, e.g., paragraph (c)(5)(i)(A) of rule 2a–7 (requirement to reassess promptly whether downgraded security continues to present minimal credit risks); paragraph (c)(5)(ii) of rule 2a–7 (fund must dispose of security that has become ineligible or has been determined no longer to present minimal credit risks as soon as practicable unless the board of directors finds that disposal of the portfolio security would not be in the best interests of the fund).

[12] While the reports will be available to individual investors, the Commission anticipates that, more typically, interested investors will learn about information contained in the reports in the specialized financial press that reports on money funds and other types of investment companies.

[13] Paragraph (b) of rule 2a–7 enumerates the types of activities that constitute "holding out" and that require compliance with rule 2a–7.

[14] Rule 12b-25 under the Securities Exchange Act of 1934 [17 CFR 240.12b–25], the general rule regarding notification to the Commission of the inability to file timely, and Form 12b–25 [17 CFR 249.322], the form for notification of late filing, would be amended to include reports pursuant to proposed rule 30b3–1 that are filed late. A money market fund filing notification of its inability to file timely would be required to file its Schedule within five days of the due date in accordance with paragraph (b)(2)(ii) of rule 12b–25.

[15] The Commission has adopted a series of rules to mandate and accommodate electronic filing through EDGAR. See Securities Act Rel. No. 6977 (Feb. 23, 1993) [58 FR 14628 (Mar. 18, 1993)] (adopting rules applying to electronic submissions generally); Investment Company Act Rel. No. 19284 (Feb. 23, 1993) [58 FR 14848 (Mar. 18, 1993)] (adopting rules specific to electronic filings by investment companies).

[16] A CUSIP number is an identification number assigned to many United States Government, municipal, and corporate securities issues through a system administered by Standard & Poor's Corporation under the authority of the American Bankers Association Committee on Uniform Security Identification Procedure ("CUSIP").

[17] The terms "put" and "demand feature" would be defined by reference to paragraphs (a)(4) and (a)(12) of rule 2a–7.

[18] Money funds are required to maintain a dollar-weighted average portfolio maturity of not more than ninety days, and generally may not purchase any instrument with a remaining maturity of more than 397 days. See paragraph (c)(2) of rule 2a–7. A money fund may treat certain adjustable rate securities as having maturities equal to the period remaining until the securities' next interest rate readjustment date. See paragraph (d) of rule 2a–7.

[19] Such features would be required to be disclosed whether or not the triggering conditions have occurred.

[20] While the staff has interpreted rule 2a–7 as not permitting money market funds to use the maturity shortening provisions of the rule when determining the maturity of capped floaters that do not have demand features, this position has not been applied if the cap is set to comply with state usury laws and is in excess of twenty percent. See Investment Company Institute (pub. avail. June 16, 1993). For a discussion regarding determining the maturity of capped floaters under rule 2a–7, see Release 19959, *supra* note 8 at n.161.

[21] See paragraphs (a) (14) and (20) of rule 2a–7. The particular ratings assigned to a security would not be required in the report.

[22] A money market fund may hold up to ten percent of its net assets in illiquid securities. See Investment Company Institute (pub. avail. Dec. 9, 1992). The staff intends to revise Guide 4 to Form N–1A, as discussed in the companion release being proposed today, *supra* note 3 at § III, to clarify the Commission's policy that money market funds may not invest more than ten percent of their assets in illiquid securities.

[23] The fund would describe itself as primarily distributing income that is taxable or tax-exempt and, if tax-exempt, whether the fund is a Single State Fund (as defined in paragraph (a)(22) of rule 2a–7, as proposed to be amended; see Release 19959, supra note 8). The fund would also indicate whether it sells shares to retail investors or only to institutions.

information regarding the portfolio as a whole:

- For funds using the amortized cost method, the per share net asset value based on the market value of the portfolio; for funds using the penny-rounding method, the per share net asset value prior to rounding; for funds using both methods, both figures (Item 6);
- The fund's seven-day yield (Item 7);[24]
- The dollar-weighted average maturity (Item 8);[25]
- Total assets (Item 9);[26]
- The percentage of net assets invested in illiquid assets (Item 10); and
- Certain transactions between the fund and affiliated parties that occurred during the quarter that are intended to stabilize the fund's per share net asset value, including any sale of a portfolio security for a price greater than its current market value (Item 11).[27]

The Commission will consider including a requirement that information regarding the fund's compliance with the put diversification requirements of rule 2a–7 be provided in the Schedule. The Commission requests comment whether holdings of Treasury bills and repurchase agreements with the same counterparty that are collateralized fully, as well as other types of securities that commenters may suggest, should be grouped and not reported individually.[28] The Commission also requests comment on whether, instead of requiring that money funds indicate whether a security is illiquid, the rule should require funds to indicate whether the value of the security is being determined in good faith by the fund's board of directors.

B. Reporting Period

The proposed report would contain information as of the end of each calendar quarter, rather than fund fiscal quarters, so that the Commission may compare fund portfolio data and aggregate certain of the information to obtain industry-wide data. The Commission requests comment whether the reporting burden would be significantly reduced if reporting was required as of the end of the fund's fiscal quarter.

C. Appendix J to the EDGAR Filer Manual

All money funds would be required to file their Schedules through the EDGAR system.[29] Detailed instructions regarding the manner in which responses to the information items of rule 30b3–1 would be provided would be set forth in a new Appendix J to the EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission.[30] Appendix J provides instructions regarding important technical topics, such as how the information required by an item in the Schedule should be "tagged," how to describe certain types of securities, what types of errors in the reports will result in the suspension or rejection of a filing, and sections of rule 2a–7 to which the fund should refer when responding to particular items.[31] The Commission expects that if the proposals are adopted, funds will use an automated process to construct their Schedules from their existing computer systems, so that Schedules can be prepared and transmitted without extensive additional data entry. Appendix J is designed to facilitate this process. Comment is requested on ways to further facilitate preparation of Schedules in this manner. Comment is also requested whether funds would be substantially assisted if the quarterly report could be transmitted not only in ASCII format, but in a format generated by widely-used or easily translated commercial software. The Commission is also considering alternative methods for receiving the data through EDGAR, including tag-less submissions.

III. Cost/Benefit Analysis

The rule and rule amendments proposed today are intended to provide information to the Commission and to the public that can be used to improve the money fund inspection capability of the Commission, money fund compliance with the federal securities laws, and investor protection. The proposals would enable the Commission to better target its on-site examinations of money funds and to respond in the event of market events that affect money funds and their shareholders.

The information required in the Schedule for each security is (or should be) maintained by money funds to ensure compliance with rule 2a–7 under the 1940 Act. The Commission has designed the Schedule and the EDGAR filing instructions in Appendix J to facilitate direct transfer of information from fund computer systems. As a result, the Commission anticipates that the majority of the costs experienced by funds will result from initial efforts to revise data capture systems. In addition, because the Schedules would need to be prepared and delivered electronically only, there would be no burdens associated with printing and mailing. Finally, quarterly reporting should result in fewer on-site money fund inspections and related costs for funds that appear to be in compliance with the federal securities laws, based on information provided in the quarterly reports.

While adoption of the proposed rule and form would impose some additional costs on money funds, the Commission has attempted to strike a balance between the Commission's need for additional information from money funds about their portfolio securities and the costs of funds providing that information. The Commission requests comment regarding these costs and benefits, and reasonable alternatives for achieving the benefits of the proposed rule.

IV. Transition Period

If proposed rule 30b3–1 is adopted, the Commission would conduct a series of test filings to test both the filing

[24] The yield quoted would be based on the seven days ending on the last day of the reporting period and would be calculated in accordance with Item 22(a)(i) of Form N–1A.

[25] See *supra*, note 18.

[26] "Total Assets" is defined in paragraph (a)(16) of rule 2a–7 as meaning, for a money fund using the amortized cost method, the total amortized cost of its assets and, for any other fund, the total market-based value of its assets.

[27] Examples of these transactions include the sale of portfolio securities to an affiliated person of the fund, a contribution to the fund's net assets by an affiliated person, or the purchase of a credit enhancement for a portfolio security by an affiliate on the fund's behalf. Certain of these types of transactions are prohibited by section 17(a)(2) of the 1940 Act. The staff has taken the position regarding some of these transactions, based on the particular facts and circumstances involved, that an enforcement action would not be recommended to the Commission so long as certain conditions were met. The Commission proposed rule 17a–9 under the 1940 Act in 1993 to exempt these transactions from section 17(a) if certain conditions were met. See Release 19959, *supra* note 8, at § IV.

Related party transactions are required to be identified in fund financial statements. See 17 CFR 210.4–08(k); Statement of Financial Accounting Standards No. 57 (Related Party Disclosures), Financial Accounting Standards Board (Mar. 1982). See also Letters to Chief Financial Officers from Lawrence A. Friend, Chief Accountant, Division of Investment Management (Nov. 1, 1994 and Feb. 3, 1995).

[28] The term "Collateralized Fully" would be defined by reference to paragraph (a)(4) of rule 2a–7, as proposed to be amended in Release 19959, *supra* note 8 at § II.D.3.

[29] The final phase-in of investment companies to the EDGAR system is scheduled for November 1995. As proposed, the Schedule would only be filed electronically, and rule 30b3–1(c)(4) would waive the filing requirement for the period of any temporary hardship or continuing hardship exemption under Regulation S–T [17 CFR 232.201 and .202].

[30] The September 1994 edition of the EDGAR Filer Manual (Release 4.10) has been incorporated into the Code of Federal Regulations by reference. See 17 CFR 232.301. The amendments to the manual being proposed in this release would also be incorporated by reference into the Code of Federal Regulations following their adoption.

[31] A "tag" is used to identify information required in an EDGAR filing. 17 CFR 232.11(u).

process and to enable funds to develop the capability to transfer the information required in the Schedules from existing computer files. The Commission asks that funds that wish to participate in the test filing process so indicate in their comment letters.[32] The Commission anticipates that temporary rules would be adopted during this period. The Commission will consider comments for purposes of adopting both temporary and permanent rules. For other filers, the Commission plans to make the proposed amendments effective sixty days following the completion of the test filing period. All money funds would be required to file Money Market Fund Portfolio Schedules under rule 30b3–1 beginning with the first complete calendar quarter following conclusion of the sixty day period.

V. General Request for Comments

All interested persons who wish to submit written comments on the proposed rule and form discussed in this release, or to comment on related matters that might have a significant effect upon the proposals discussed in this release, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed text.

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the proposed amendments are intended to elicit from money funds information that would improve the Commission's ability to monitor the funds' compliance with the federal securities laws. Pertinent information reflected in the Cost Benefit Analysis section of this Release is also reflected in the analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Martha H. Platt, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VII. Statutory Authority

The Commission is proposing rule 30b3–1 pursuant to sections 13 [15 U.S.C. 78m], 15(d) [15 U.S.C. 78o(d)] and 23(a) [15 U.S.C. 78w(a)] of the Securities Exchange Act of 1934 and sections 8 [15 U.S.C. 80a–8], 30 [15 U.S.C. 80a–29], 31 [15 U.S.C. 80a–30], 38 [15 U.S.C. 80a–37], and 45 [15 U.S.C. 80a–44] of the 1940 Act. The authority citations for the proposals precede the text of the rule and appendix.

Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 232, 240 and 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 232—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.101 is amended by removing the word "and" at the end of paragraph (a)(1)(iv), removing the period at the end of paragraph (a)(1)(v) and in its place adding "; and" and adding paragraph (a)(1)(vi) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *
(1) * * *
(vi) Quarterly reports filed by money market funds pursuant to rule 30b3–1 (§ 270.30b3–1 of this chapter).

* * * * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.12b–25 [Amended]

4. By amending § 240.12b–25 by revising the section heading to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, 10–Q, 10–QSB or report filed pursuant to rule 30b3–1.

5. By amending § 240.12b–25, paragraph (a), by adding the following phrase after the first "thereunder":

", or all or any required portion of a quarterly report filed by a money market fund pursuant to rule 30b3–1 under the Investment Company Act of 1940 [17 CFR 270.30b3–1];"

6. By amending § 240.12b–25, paragraph (b)(2)(ii), by adding the following phrase after "10–QSB,":

"or report filed pursuant to rule 30b3–1 under the Investment Company Act of 1940 (17 CFR 270.30b3–1),".

* * * * * * *

7. By amending § 240.12b–25, paragraph (g), by removing the period at the end of the paragraph and adding in its place "or, for a quarterly report filed by a money market fund, comply with Rule 30b3–1(c)(3) under the Investment Company Act (17 CFR 270.30b3–1(c)(3))."

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * * * *

§ 249.322 [Amended]

9. By amending § 249.322, paragraph (a), by adding the following phrase after "section 13 or 15(d) of the Act":

"or quarterly report filed by a money market fund pursuant to rule 30b3–1 under the Investment Company Act of 1940,".

* * * * * * *

Note: Form 12b–25 does not and the amendments will not appear in the Code of Federal Regulations.

10. Form 12b–25 (referenced in § 249.322) is amended by adding the following after "[ ] Form N–SAR" to read: "[ ] Money Market Fund Rule 30b3–1 Filing".

11. Form 12b–25 (referenced in § 249.322) is amended by adding the following after "Form 10–Q" in paragraph (b) of Part II, to read: "or filing made by a money market fund pursuant to rule 30b3–1".

12. Form 12b–25 (referenced in § 249.322) is amended by adding the following after "Form 10–Q," in Part III: "or filing made by a money market fund pursuant to rule 30b3–1".

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

13. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

14. By adding § 270.30b3–1 to read as follows:

[32] Information submitted in test filings by volunteering funds during the test period would be treated by the Commission as non-public.

§ 270.30b3–1 Quarterly report for money market funds.

(a) *General.* Every open-end management investment company registered under the 1940 Act that holds itself out as a money market fund ("money market fund") shall file a Money Market Fund Portfolio Schedule ("Schedule") containing the information set forth in paragraph (d) of this section with the Commission not more than thirty days after the last day of each calendar quarter.

(b) *Format and filing of schedule.* The Schedule shall be filed through the EDGAR system and prepared in the format prescribed in Appendix J to the EDGAR Filer Manual. Money market funds also shall refer to Regulation S-T [17 CFR 232.10 through 232.903] regarding the general rules for electronic filings on the EDGAR system.

(c) *Special rules.* (1) *Master/feeder arrangements.* A money market fund that is a "feeder fund," as that term is defined in General Instruction I to Form N–1A [17 CFR 239.15A and 274.11A], is not required to file a Schedule.

(2) *Series funds.* Each series of a series fund shall be considered to be a separate investment company for purposes of this section.

(3)(i) *Temporary hardship exemptions.* If a money market fund experiences unanticipated technical difficulties preventing the timely preparation and submission of its Schedule, the money market fund shall submit a written statement to the Commission no later than one business day after the date on which the Schedule was to be filed stating that the fund requires a temporary hardship exemption. A money market fund that has taken advantage of a temporary hardship exemption with regard to the filing of the Schedule shall electronically file its Schedule within six days of filing its written notification to the Commission. (ii) *Continuing hardship exemptions.* A money market fund may apply in writing for a continuing hardship exemption in accordance with paragraphs (a), (b), and (d) of § 232.202 of this chapter.

(d) *Contents of money market fund portfolio schedule.* The Schedule shall set forth the information specified in this paragraph that is applicable to the money market fund. Where the context requires, capitalized terms are used as defined in § 270.2a–7.

Item 1.
Item 1(a) Name of registrant.
Item 1(b) CIK number of registrant.
Item 1(c) Investment Company Act File Number of registrant.
Item 2.
Item 2(a) Name of money market fund.
Item 2(b) Name of person that should be contacted regarding the information contained in this report.
Item 2(c) Telephone number of person named in response to Item 2(b).
Item 2(d) Securities Act File Number for money market fund.
Item 2(e) If the Schedule pertains to a separate series of a series company, or to a sub-account of an insurance company separate account, assign a number to the series that the series will be identified by in all future filings. If a number has previously been assigned to the series in a report on Form N-SAR, use that number.
Item 3. Indicate whether the fund is a Tax Exempt Fund and, if so, whether it is a Single State Fund and the state in which the securities in which it invests are exempt from taxation. For a taxable fund, indicate whether the fund invests only in Government Securities and repurchase agreements, or in other securities as well.
Item 4. Indicate whether the fund sells shares to institutional investors only.
Item 5. State the last day of the quarter for which this information is filed.
Item 6. If the fund uses the Penny-Rounding Method of pricing, state the per share net asset value of the fund before rounding. If the fund uses the Amortized Cost Method of valuation, state the per share net asset value of the fund based on the available market quotations obtained most recently by the fund but not more than ten business days prior to the end of the quarter (or an appropriate substitute that reflects current market conditions) for the securities in the portfolio. If the fund uses both methods, provide both figures.
Item 7. State the fund's yield for the seven days ended on the last day of the quarter for which this Schedule is filed, computed in accordance with Item 22(a)(i) of Form N–1A, 17 CFR 239.15A and 274.11A.
Item 8. State the dollar-weighted average portfolio maturity calculated for purposes of determining compliance with paragraph (c)(2) of § 270.2a–7 on the last day of the quarter.
Item 9. State the Total Assets of the fund on the last day of the quarter.
Item 10. State the percentage of net assets of the fund invested in illiquid assets on the last day of the quarter.
Item 11. State whether, at any time during the quarter, an affiliated person of the fund, or any affiliated person of such person:
(a) purchased a security from the fund at a price in excess of the security's market value;
(b) obtained or provided liquidity or credit support for a security in the fund's portfolio; or
(c) contributed cash or other assets to the fund to offset a realized or unrealized loss on an investment made by the fund.
Item 12. Provide the following information for each security owned by the fund as of the last day of the quarter for which this information is filed, where applicable:
Item 12(a) CUSIP number.
Item 12(b) Name of issuer of security.
Item 12(c) Name of issue.
Item 12(d) (1)–(4) Names of issuers of Puts, Demand Features, bond insurance, and other guarantees.
Item 12(e) Whether the security is an Unrated Security.
Item 12(f) Whether the security is a Second Tier Security.
Item 12(g) Whether the security is a Refunded Security.
Item 12(h) Whether the security is an illiquid security.
Item 12(i) Whether the security is a repurchase agreement that is Collateralized Fully.
Item 12(j) Stated maturity date.
Item 12(k) Maturity date for purposes of § 270.2a-7.
Item 12(l) Market value, based on the quotations obtained most recently by the fund but not more than ten business days prior to the end of the quarter.
Item 12(m) In the case of a fund using the Amortized Cost Method of valuation:
Item 12(m)(i) the amortized cost of the security; and
Item 12(m)(ii) the ratio of Item 12(l) to Item 12(m)(i).
Item 12(n) The percentage of the fund's Total Assets represented by this security.
Item 12(o) The percentage of the fund's Total Assets comprised by all securities currently held by the fund that have been issued by this issuer.
Item 12(p) Rate of interest the security was paying on the last day of the period for which this information is being filed.
Item 12(q) For a Floating Rate Instrument or a Variable Rate Instrument, the formula for determining the interest rate the security will pay.
Item 12(r) For a Floating Rate Instrument or a Variable Rate Instrument, the frequency with which the security's interest rate will be reset.
Item 12(s) Indicate whether the security's characterization as fixed rate, Floating Rate, or Variable Rate is subject to change as the result of one or more triggering events. Briefly describe the triggering events in the form of a formula.
Item 12(t) Indicate whether the security is subject to an interest rate cap. Describe the cap in the form of a formula.

Dated: July 19, 1995.

By the Commission.

Margaret H. MacFarland,

Deputy Secretary.

[FR Doc. 95–18244 Filed 7–25–95; 8:45 am]

BILLING CODE 8010–01–P

federal register

Wednesday
July 26, 1995

Part V

Federal Trade Commission

16 CFR Part 419

Games of Chance in the Food Retailing and Gasoline Industries, Proposed Amendment of Trade Regulation Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 419

Games of Chance in the Food Retailing and Gasoline Industries, Proposed Amendment of Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Reopening of the rulemaking record and request for comment from the public.

SUMMARY: The Presiding Officer has directed that the rulemaking record in the above-captioned proceeding be reopened. Interested persons and members of the public are invited to submit written comment on any issue of fact, law, or policy which may have some bearing on the proposed amendments.

DATES: Written comments will be received until September 25, 1995.

ADDRESSES: Written comments should be sent to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Henry B. Cabell (Presiding Officer), 202–326–3642, or John M. Mendenhall (Assistant Regional Director, Cleveland Regional Office), 216–522–4210.

SUPPLEMENTARY INFORMATION: On July 7, 1988, the Commission announced the commencement of a proceeding to consider proposed amendments to the Games of Chance in the Food Retailing and Gasoline Industries Trade Regulation Rule, 16 CFR part 419, and published in the **Federal Register** (53 FR 25503) its Notice of Proposed Rulemaking and invited written comment on the proposals. In response to the notice, written submissions were received and the record was closed on September 6, 1988. A public hearing was not held because none of the interested persons expressed a desire for one. By motion dated July 13, 1995, the Commission staff requested the Presiding Officer to reopen the rulemaking record for additional comment in order to permit the receipt of timely and current information preparatory to its completion of the final staff report containing its recommendations to the Commission. Because of the length of time this proceeding has been pending, the Presiding Officer granted the motion.

In the Notice of Proposed Rulemaking the Commission sent out 24 questions which it urged interested persons to consider in their respective comments. See 53 FR 25503 at 25505–06. In the main these questions inquired as to the effect of the proposed amendments. Although not required, those questions may be used as a framework for comments submitted in response to this notice. In addition both the staff and the Presiding Officer request specific comments on Question 23, which asks if there is a continuing need for the Rule, and Question 24, which asks if any other modifications of the Rule are appropriate.

Copies of the Notice of Proposed Rulemaking issued on July 7, 1988, may be obtained from the Public Reference Room (Room 130), Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC 20580. Telephone 202–326–2222.

The Commission has not yet reviewed the rulemaking record in this proceeding nor has it determined the nature or extent of any action it may take with respect to the Rule. Any decision by the Commission in this matter will be based solely upon the contents of the rulemaking record, including the material submitted in response to this notice.

List of Subjects in 16 CFR Part 419

Advertising, Foods, Gambling, Gasoline, Trade practices.

Henry B. Cabell,

Presiding Officer.

[FR Doc. 95–18331 Filed 7–25–95; 8:45 am]

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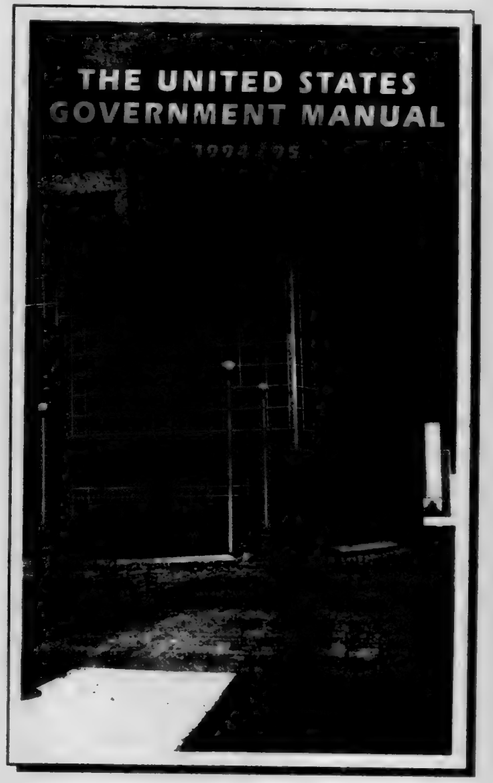
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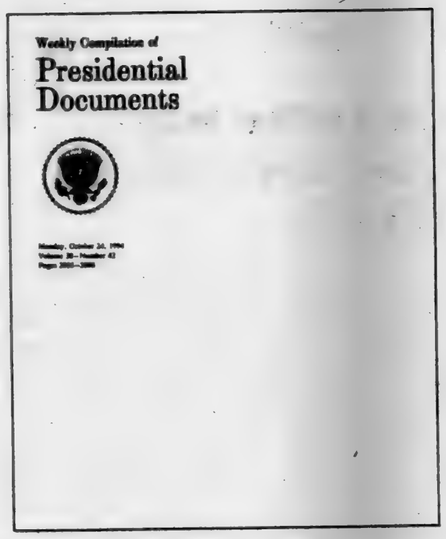
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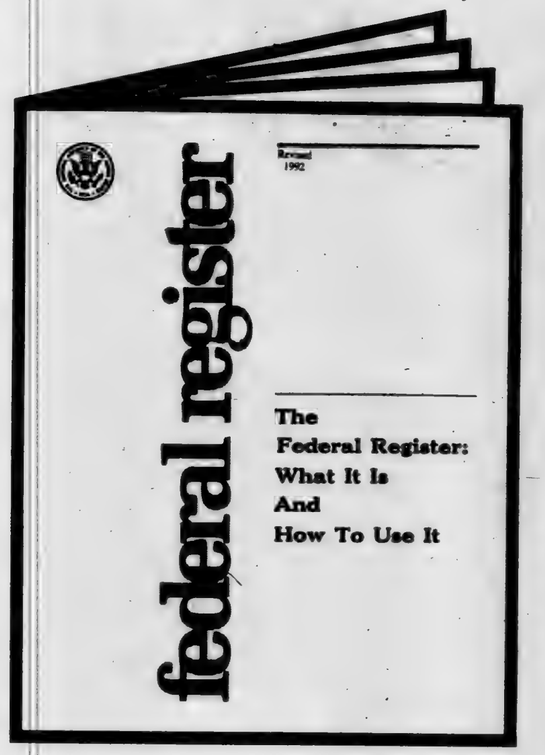
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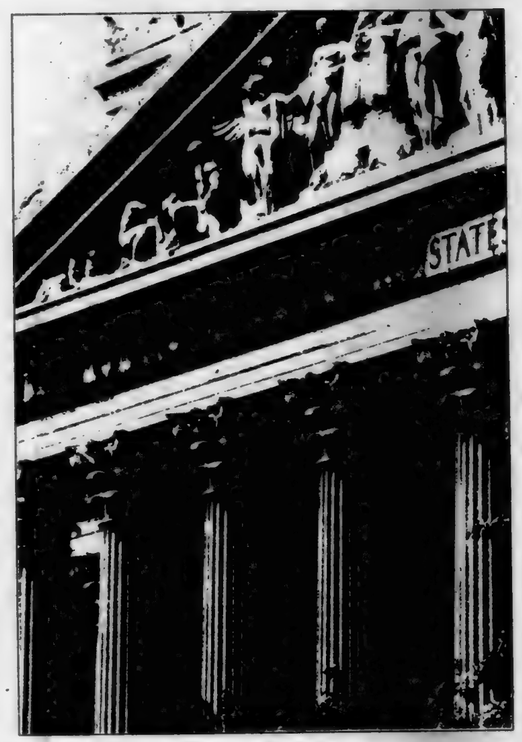
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV95–947–1FIR]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Oregon-California Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect Oregon-California potatoes are subject to assessments. Funds to administer the Oregon-California potato order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period, which began July 1, 1995, and ends June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 550 producers of Oregon-California potatoes under this marketing order, and approximately 40 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Oregon-California Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on March 15, 1995, and unanimously recommended a budget of $46,200, $1,100 more than last season. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Annual report, $1,500 ($1,400), audit, $1,000 ($800), inspection fees, $2,500 ($2,000), and miscellaneous, $600 ($300). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.006 per hundredweight, the same as last season. This rate, when applied to anticipated shipments of 7,920,000 hundredweight, will yield $47,520 in assessment income, which will be adequate to cover budgeted expenses.

Funds in the reserve on June 30, 1995, estimated at $27,000, were within the maximum permitted by the order of one fiscal period's expenses.

An interim final rule was published in the **Federal Register** on June 6, 1995 (60 FR 29750). That interim final rule added § 947.246 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 6, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on July 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 60 FR 29750, is adopted as a final rule without change.

Dated: July 21, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–18478 Filed 7–26–95; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AD99

1995 Specifications for Cotton Bale Packaging Materials

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations with respect to the price support loan programs for upland and extra long staple cotton which are conducted by the Commodity Credit Corporation (CCC) in accordance with the Agricultural Act of 1949 (the 1949 Act), as amended. The amendments made by this final rule will eliminate obsolete provisions and more appropriately reflect loan eligibility quality requirements for the 1995 and subsequent year crops.

EFFECTIVE DATES: July 27, 1995. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Price Support Division, Consolidated Farm Service Agency, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7988.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The amendments to 7 CFR Part 1427 set forth in this final rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35. Existing information collections were approved by OMB, and assigned OMB control Numbers 0560–0087 and 0560–0129.

Background

Each year the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council in cooperation with the American Textile Manufactures Institute, approves specifications for cotton bale packaging to be used as industry guidelines. Accordingly, this final rule amends § 1427.5(b)(2)(iii) to change the referenced year from 1994 to 1995 for the Specifications for Cotton Bale Packaging Materials published by the JCIBPC.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.5 is amended by revising paragraphs (b)(2)(iii) introductory text and (b)(2)(iii)(A) to read as follows:

§ 1427.5 General eligibility requirements.

* * * * *

(b) * * *

(2) * * *

(iii) Be packaged in materials which meet specifications adopted by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging materials in the June 1995 Specifications for Cotton Bale Packaging Materials. Heads of bales must be completely covered.

(A) Copies of the June 1995 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, room 3623, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

Signed in Washington, DC on July 20, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–18481 Filed 7–26–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–253–AD; Amendment 39–9317; AD 95–04–07 R1]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, and –30 Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment clarifies information in an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, that currently requires inspections to determine the condition of the lockwires on the forward engine mount bolts and correction of any discrepancies found. That amendment also provides for termination of the inspections for some airplanes by installing retainers on the bolts. The actions specified in that AD are intended to prevent broken lockwires, which could result in loosening of the engine mount bolts, and subsequent separation of the engine from the airplane. This amendment clarifies the procedures for accomplishing the optional terminating action on engines 1, 2, and 3. This amendment is prompted by communications received from affected operators indicating that those procedures were unclear.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of March 17, 1995 (60 FR 11617, March 2, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On February 16, 1995, the FAA issued AD 95–04–07, amendment 39–9159 (60 FR 11617, March 2, 1995), which is applicable to certain McDonnell Douglas Model DC–10–10, –15, and –30 airplanes, and KC–10A (military) airplanes. That AD requires visual inspections to determine the condition of the lockwires on the forward engine mount bolts on engines 1, 2, and 3, and correction of discrepancies found. That AD also requires that operators report the results of the visual inspections to the FAA. Additionally, that AD provides for the termination of the visual inspections by installing retainers on the engine mount bolts on Model DC–10–30 airplanes and KC–10A airplanes in accordance with Revision 6 of McDonnell Douglas DC–10 Service Bulletin 71–133, dated June 30, 1992. That action was prompted by reports indicating that the lockwires on the forward engine mount bolts were stretched or broken. The actions required by that AD are intended to prevent broken lockwires, which could result in loosening of the engine mount bolts, and subsequent separation of the engine from the airplane.

Since the issuance of that AD, the FAA has received communication from affected operators indicating that the procedures for accomplishing the optional terminating action on engines 1, 2, and 3 are unclear. These operators have indicated that the service information contained in McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992 (which is referenced in the AD as the appropriate source of service information) does not describe procedures to accomplish the optional terminating action for engine 2. These operators have requested that the FAA clarify AD 95–04–07 to indicate exactly how to accomplish the optional terminating action for engine 2.

In considering this request, and upon further review of the procedures contained in that service bulletin, the FAA concurs that clarification is necessary.

It was the FAA's intent to include all engines in the provision for the optional terminating action. As such, the intent of paragraph (c) was to allow termination of the inspection for any engine on which retainers on the engine mount bolts had been installed. The FAA finds that although Figure 6 of the service bulletin does not describe procedures for installing retainers on the forward engine mount bolts on engine 2, the method for installing the retainers on engine 2 does not differ from the method for installing the retainers on engines 1 and 3, which is described in Figure 6 of the service bulletin. Therefore, the FAA has determined that paragraph (c) must be revised to reference Figure 6 of McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992, as the appropriate source of service information to accomplish the optional terminating action on engine 2, as well as engines 1 and 3.

Action is taken herein to clarify AD 95-04-07 and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date of the rule remains March 17, 1995.

Since this action only clarifies the procedures for accomplishing an optional action contained in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-9159 (60 FR 11617, March 2, 1995), and by adding a new airworthiness directive (AD), amendment 39-9317, to read as follows:

95-04-07 R1 McDonnell Douglas: Amendment 39-9317. Docket 94-NM-253-AD. Revises AD 95-04-07, Amendment 39-9159.

Applicability: Model DC-10-30 airplanes on which bolt retainers have not been installed on the engine mount in accordance with McDonnell Douglas DC-10 Service Bulletin 71-133, Revision 6, dated June 30, 1992; Model DC-10-10 and -15 airplanes; and KC-10A (military) airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent broken lockwires, which could result in loosening of the engine mount bolts and subsequent separation of the engine from the airplane, accomplish the following:

(a) Within 120 days after the effective date of this AD, unless accomplished previously within the last 750 flight hours prior to the effective date of this AD, perform a visual inspection to detect broken lockwires on the forward engine mount bolts on engines 1, 2, and 3, in accordance with McDonnell Douglas Alert Service Bulletin DC10-71A159, Revision 1, dated January 31, 1995.

(1) If no lockwire is found broken, repeat the inspection thereafter at intervals not to exceed 750 flight hours.

(2) If any lockwire is found broken, prior to further flight, check the torque of the bolt, install a new lockwire, and install a torque stripe on the bolt, in accordance with the alert service bulletin. Thereafter at intervals not to exceed 750 flight hours, perform a visual inspection to detect misalignment of the torque stripes, and repeat the inspection to detect broken lockwires, in accordance with the alert service bulletin.

(b) Submit a report of findings of broken lockwires and/or misaligned torque stripes found during the inspections required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; or fax to (310) 627-5210, at the times specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable. The report must include the manufacturer's fuselage number of the airplane, number of cycles on the airplane, torque value of the bolt, and condition of the lockwire (i.e., broken or intact). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(1) For airplanes on which the inspections are accomplished after the effective date of this AD: Submit reports within 30 days after finding any discrepancy.

(2) For airplanes on which the inspections have been accomplished prior to the effective date of this AD: Submit the initial report within 30 days after the effective date of this AD, and subsequent reports within 30 days after finding any discrepancy.

(c) For Model DC-10-30 airplanes and KC-10A (military) airplanes only: Installation of retainers on the engine mount bolts of engines 1, 2, or 3 in accordance with the procedures depicted in Figure 6 of Revision 6 of McDonnell Douglas DC-10 Service Bulletin 71-133, dated June 30, 1992, constitutes terminating action for the requirements of this AD for that engine.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10-71A159, Revision 1, dated January 31, 1995. The installation shall be done in accordance with McDonnell Douglas DC-10 Service Bulletin 71-133, Revision 6, dated June 30, 1992. The incorporation by reference of these documents was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of March 17, 1995 (60 FR 11617, March 2, 1995). Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment is effective on March 17, 1995.

Issued in Renton, Washington, on July 18, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-18087 Filed 7-26-95; 8:45 am]

BILLING CODE 4910-13-U

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Freedom of Information Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act (FOIA) regulations to reflect organizational and administrative changes within TVA.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (CST 13B), Chattanooga, TN 37402-2801, telephone number: (615) 751-2523.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to internal agency organization and administration. Since this rule is nonsubstantive, it is being made effective immediately, July 27, 1995.

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII, part 1301 of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 16 U.S.C. 831-831dd, 5 U.S.C. 552.

2. Section 1301.1 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1301.1 Records.

* * * * *

(b) *Requests.* Requests to inspect and copy TVA records shall be directed to the Tennessee Valley Authority, TVA FOIA Officer, Records and Information Management (RIM), 1101 Market Street, Chattanooga, TN 37402-2801. A request shall:

* * * * *

3. Section 1301.1 is amended by revising the text of paragraph (c)(1)(i) to read as follows:

§ 1301.1 Records.

* * * * *

(c) *Processing of requests*—(1) *Initial determination.* (i) Within 10 days (excluding Saturdays, Sundays, and legal public holidays) after a request is received by TVA, and subject to paragraph (c)(3) of this section, TVA shall make an initial determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person making the request. Initial determinations shall be made by the TVA FOIA Officer or the TVA FOIA Officer's designee. If the initial determination is not to comply with the request, the notice to the person making the request shall include a statement of the reasons for the denial of the request; a notice of the right of the person making the request to appeal the denial to the TVA FOIA Appeal Official designated in paragraph (c)(2)(iii) of this section, and the time limits therefor; and the name and job title of the person responsible for the initial determination.

* * * * *

4. Section 1301.1 is amended by revising the text of paragraph (c)(2)(i) to read as follows:

§ 1301.1 Records.

* * * * *

(c) *Processing of requests*—* * *

(2) *Appeal.* (i) If the initial determination is to deny the request, the person making the request may appeal such action to the TVA FOIA Appeal Official. Such an appeal must be taken within 30 days after the person's receipt of the initial determination and is taken by delivering a written notice of appeal to the TVA FOIA Appeal Official designated in paragraph (c)(2)(iii) of this section. Such notice shall include a statement that it is an appeal from a denial of a request under the Freedom of Information Act and shall indicate:

(A) The date on which the denial was issued; and

(B) The date on which the denial was received by the person making the request.

* * * * *

5. Section 1301.1 is amended by revising the text of paragraph (c)(2)(ii) to read as follows:

§ 1301.1 Records.

* * * * *

(c) * * *

(2) * * *

(ii) Within 20 days (excluding Saturdays, Sundays, and legal public holidays) after an appeal is received, and subject to paragraph (c)(3) of this section, TVA shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in paragraph (a) of this section, except that without the written permission of the person involved, TVA will not waive the exemptions contained in paragraphs (a) (4), (6) and (7) of this section. Determinations of appeals under this section shall be made by the TVA FOIA Appeal Official or the FOIA Appeal Official's designee. If the determination on the appeal is to deny the request for records, TVA shall notify the person making the request of such determination, including the reason for the denial; a notice of the person's right to judicial review of the denial; and the name and job title of the TVA official responsible for the determination of the appeal.

* * * * *

6. Section 1301.1 is amended by adding a new paragraph (c)(2)(iii) to read as follows:

§ 1301.1 Records.

* * * * *

(c) * * *

(2) * * *

(iii) TVA has designated its Senior Manager, Administrative Services, TVA, 400 Summit Hill Drive, Knoxville, TN 37902-1499 as the TVA FOIA Appeal Official and appeals should be directed accordingly.

* * * * *

7. Section 1301.1 is amended by revising the text of paragraph (c)(3)(ii) to read as follows:

§ 1301.1 Records.

* * * * *

(c) * * *

(3) * * *

(ii) The 20-day time limit provided in paragraph (c)(2) of this section may be extended by TVA for unusual circumstances as set forth in this paragraph upon written notice to the person appealing a denial of a request for records. The notice shall specify the reasons for the extension and the date on which a determination of the appeal is expected to be dispatched. The aggregate length of an extension under this paragraph when combined with any extension provided under paragraph (c)(3)(i) of this section shall not exceed 10 working days. A decision to make an extension under this paragraph shall be made by the TVA FOIA Appeal Official or the FOIA Appeal Official's designee.

* * * * *

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 95-18430 Filed 7-26-95; 8:45 am]

BILLING CODE 8120-08-W

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 202, 500, 501, and 510

Animal Drugs, Feeds, and Related Products; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to reflect a change in several cross-references to the Federal Food, Drug, and Cosmetic Act (the act). These changes resulted from enactment

of the Nutritional Labeling and Education Act of 1993 (NLEA). By making these changes to the animal drug regulations those who rely on these regulations will be better able to understand and adhere to the requirements of the regulations.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

EFFECTIVE DATE: July 27, 1995.

SUPPLEMENTARY INFORMATION: As a result of enactment of the NLEA, certain cross-references to the act in 21 CFR Chapter I are incorrect. Under section 3 of the NLEA, entitled "Technical Amendments to the Federal Food, Drug, and Cosmetic Act," paragraph (r) provides for several amendments to section 512 of the act (21 U.S.C. 360b). The amendments changed the cites for two definitions under section 201 of the act (21 U.S.C. 321), specifically the cites for "new animal drug" and "animal feeds" were changed from "201(w)" to "201(v)" and from "201(x)" to "201(w)," respectively. This document amends §§ 202.1, 500.26, 501.4, and 510.413 (21 CFR 202.1, 500.26, 501.4, and 510.413) of the animal drug regulations to conform to those changes.

Publication of this document constitutes final action on these changes. Under the Administrative Procedure Act (5 U.S.C. 553(b)), FDA finds for good cause that due notice and public procedure is unnecessary. This document only corrects various technical errors introduced by enactment of the NLEA. By making these changes to the animal drug regulations, those who rely on these regulations, including regulated industry, will be better able to understand and adhere to the requirements of the regulations. Therefore, FDA concludes that good cause exists for proceeding directly to a final rule.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 202

Advertising, Prescription drugs.

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyls (PCB's).

21 CFR Part 501

Animal foods, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 202, 500, 501, and 510 are amended as follows:

PART 202—PRESCRIPTION DRUG ADVERTISING

1. The authority citation for 21 CFR part 202 continues to read as follows:

Authority: Secs. 201, 301, 502, 505, 507, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 352, 355, 357, 360b, 371).

§ 202.1 [Amended]

2. Section 202.1 *Prescription-drug advertisements* is amended in paragraph (e)(4)(i)(*b*)(*3*) by removing "201(w)" and adding in its place "201(v)".

PART 500—GENERAL

3. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: Secs. 201, 301, 402, 403, 409, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371).

§ 500.26 [Amended]

4. Section 500.26 *Timed-release dosage form drugs* is amended in paragraph (a) by removing "201(w)" and adding in its place "201(v)".

§ 500.27 [Amended]

5. Section 500.27 *Methylene blue-containing drugs for use in animals* is amended in paragraph (a)(3) by removing "201(w)" and adding in its place "201(v)".

PART 501—ANIMAL FOOD LABELING

6. The authority citation for 21 CFR part 501 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

§ 501.4 [Amended]

7. Section 501.4 *Animal food; designation of ingredients* is amended in paragraph (b)(13) by removing "201(x)" and adding in its place "201(w)".

PART 510—NEW ANIMAL DRUGS

8. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.413 [Amended]

9. Section 510.413 *Chloroform used as an ingredient (active or inactive) in animal drug products* is amended in paragraph (b) by removing "201(w)" and adding in its place "201(v)".

Dated: July 18, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18447 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 866

[Docket No. 91N–0063]

Immunology and Microbiology Devices; Revocation of the Exemption From Premarket Notification; Blood Culturing System Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the microbial growth monitor classification regulation by revoking the exemption from the premarket notification requirements for automated blood culturing system devices used in testing blood and other normally sterile body fluids for bacteria, fungi, and other microorganisms. Revocation of the exemption is necessary because of the importance of these devices in providing rapid diagnosis of potentially life-threatening conditions. Devices using traditional manual methods employing turbidity measurements or direct counts, included under this classification regulation, will continue to be exempt from the requirement of premarket notification.

DATES: The final rule is effective October 25, 1995. A premarket notification submission is required for any automated blood culturing system intended to be introduced or delivered for introduction into commerce on or after October 25, 1995, under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), and the procedures in subpart E of 21 CFR part

807. A manufacturer or an initial distributor of an imported blood culturing device that has already begun commercial distribution under the existing exemption from premarket notification is required to submit a premarket notification on or before October 25, 1995 and must have a premarket notification cleared by FDA by April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, Ext. 157.

SUPPLEMENTARY INFORMATION:

I. Background

Blood culturing system devices are diagnostic devices used in clinical settings to detect the presence or growth of bacteria, fungi, or other microorganisms from blood samples or from samples of other body fluids that are normally sterile. The process involves testing for these microorganisms by inoculating the patient's sample directly into broth media or by inoculating a processed sample concentrate onto agar media. Microbial growth is monitored either by traditional manual methods (visual inspection, microscopic evaluation, and/or subculturing) or by instrument-assisted (automated) monitoring of microbial metabolic activities, such as the detection of increased presence of carbon dioxide or changes in fluorescence, bioluminescence, or ATPase activities.

In the **Federal Register** of November 9, 1982 (47 FR 50814 at 50826), FDA classified blood culturing system devices into class I (21 CFR 866.2560). In the **Federal Register** of June 12, 1989 (54 FR 25042 at 25046), FDA published a final rule exempting microbial growth monitors, subject to certain limitations, from the requirement of premarket notification. In the **Federal Register** of April 26, 1991 (56 FR 19333), FDA proposed to revoke this exemption for blood culturing system devices because of safety and effectiveness considerations. FDA determined, on reconsideration, that blood culturing system devices do not meet the criteria for exemption identified in the regulation published in the **Federal Register** of June 12, 1989.

Although current efforts have been directed toward streamlining the regulation of in vitro diagnostic devices, FDA's revocation of the blood culturing system devices exemption is necessary because it is based on significant safety and effectiveness considerations.

Subsequent to June 12, 1989, through the medical/scientific literature, FDA became aware of a significant number of problems related to these devices. These problems include: (1) Failure of media to support growth of certain organisms; (2) false negative and false positive results; and (3) cross contamination of cultures. Also, in the early 1990's, the use of instrument assisted microbial growth monitors, originally intended for blood culturing, started to be commonly used to detect, recover, and provide a complete panel of susceptibility results for *Mycobacterium tuberculosis*.

Since these devices are relied upon for rapid diagnosis of bacterial or fungal infection, and are commonly used to detect, recover, and determine susceptibility of *Mycobacterium tuberculosis*, the reported failure of these devices raises significant questions of safety and effectiveness. Bacterial or fungal infections of the bloodstream may be life-threatening. Tuberculosis is a disease of serious health consequences for the patient and its potential for quick dissemination is a very significant public health concern. Malfunction of these devices, therefore, could result in misdiagnosis and mistreatment, thus endangering patients, health care professionals, and the public at large.

Because of safety and effectiveness concerns presented by the device, FDA believes it is necessary to revoke the exemption from the premarket notification procedures to enable FDA to monitor the introduction into commerce, by manufacturers and importers, of automated blood culturing system devices, and to determine whether the devices are as safe and effective as legally marketed devices. Devices using traditional manual methods employing visual turbidity measurement or direct counts are not affected by this final regulation.

FDA provided interested persons 60 days to submit written comments on the proposal. FDA received two comments. A summary of these comments and FDA's responses follows:

1. One comment requested clarification of the continued exemption for traditional culture media used with manual blood culture methods. The comment suggested that the amended section contain language that makes it clear that traditional manual blood culture bottles in which microbial growth is detected by visual reading and conventional subculturing techniques are not affected by the revocation of the exemption.

FDA agrees with this suggestion. Conventional media dispensed in blood culture bottles (20 to 100 milliliter volume) with limited entry seals that are used only with conventional manual blood culture procedures (visual observation for signs of microbial growth and routine subcultures and/or microscopic screening for presence of bacteria and fungi) are not dependent on instrument-based monitoring for detection of signs of microbial growth. However, media bottles used with the automated system are an integral part of the system; therefore, any new or modified media to be used with an automated blood culturing system are also subject to the revocation.

2. A second comment objected to the continued exemption for blood culture systems not using automated instrumentation.

FDA disagrees with the comment. Current traditional manual blood culturing methods use media formulations and techniques that have been in use for many years. The types of media used are often commercialized for blood culturing by manual procedures developed and controlled by individual laboratories. In contrast, devices or systems that specify incubation and observation procedures based on a combination of different media or for use with a monitoring component (other than visual inspection for evidence of microbial growth and routine subculture to solid media and microscopic examination) are not exempt from premarket notification.

Closed systems that exclude routine microscopic examination and subcultures would also be considered a microbial growth monitor and would be subject to the revocation. Similarly, any media bottle designed to be used with a microbial growth monitor (blood culture instrument or detection mechanism other than direct observation/subculture/microscopic inspection) for detection of microorganisms from patient specimens would be considered a component of the microbial growth monitor and also subject to the revocation.

II. References

The following information has been placed on display in the Dockets management Branch (HFA–350), Food and Drug Administration, rm. 1–24, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Aronson, M. D., and D. H. Bor, "Blood Cultures," *Annals of Internal Medicine*, 106:246–253, 1987.

2. Thorpe, T. C., et al., "BacT/Alert: An Automated Calorimetric Microbial Detection System," *Journal of Clinical Microbiology*, 28:1608–1612, 1990.

3. Wallis, C., and J. L. Melnick, "Rapid, Calorimetric Method for the Detection of Microorganisms in Blood Culture," *Journal of Clinical Microbiology*, 21:505–508, 1985.

4. Washington, II, J. A., and D. M. Ilstrue, "Blood Cultures: Issues and Controversies," *Reviews of Infectious Diseases*, 8:792–802, 1986.

5. Welch, W. D., et al., "Variability in CO_2, O_2, and pH levels in Blood Culture Bottles from Five Different Manufacturers," *Journal of Clinical Microbiology*, 20:881–883, 1984.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule revokes an exemption and places manufacturers of these devices on a level with manufacturers of other devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required on small entities.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 866.2560 is amended by revising paragraph (b) to read as follows:

§ 866.2560 Microbial growth monitor.

* * * * *

(b) *Classification.* Class I. With the exception of automated blood culturing system devices that are used in testing for bacteria, fungi, and other microorganisms in blood and other normally sterile body fluids, this device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: July 18, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18446 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 902, 926, 934, and 950

Alaska, Montana, North Dakota, and Wyoming Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Alaska, Montana, North Dakota, and Wyoming. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Alaska, Montana, North Dakota, and Wyoming and consideration of public comments, OSM has decided that initial enforcement in Alaska and North Dakota will be accomplished through the State program amendment process; in Montana through State enforcement and, if necessary, direct Federal enforcement; and in Wyoming through State enforcement and the State program amendment process.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures.

Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 (60 FR 16722) to implement the performance standards of sections 720(a)(1) and (2) of SMCRA. 30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM Enforcement Decisions

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, **Federal Register** (60 FR 17459) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the state since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are into enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations here OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied residential dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and implement the definitions at 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Alaska

Alaska program activity, requirements, and enforcement. By letter to Alaska dated December 15, 1994, OSM requested information from Alaska that would help OSM decide which approach to take in Alaska to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Alaska program provisions (Administrative Record No. AK–F–01). By letter dated January 27, 1995, Alaska responded to OSM's request (Administrative Record No. AK–F–02).

Alaska stated that no underground coal mines were operating in Alaska after October 24, 1992.

Alaska stated that its program does not contain or authorize enforcement of the structural damage repair and water supply replacement requirements of section 720(a) of SMCRA. To be no less stringent than SMCRA, Alaska indicated that it would have to amend section 27.21.220 of the Alaska Surface Coal Mining Control and Reclamation Act to add subsection (c) to require prompt repair or compensation for material damage resulting subsidence, and prompt replacement of water supplies affected by underground coal mining operations. It indicated that it realistically believed that this statutory change could be made in the spring of 1996.

Alaska concluded that it did not believe that it has the statutory authority to investigate complaints of structural damage or water loss caused by underground coal mining operations after October 24, 1992.

On May 18, 1995, OSM confirmed with Alaska that no underground mines were active after October 24, 1992 (Administrative Record No. AK–F–07). However, there is an underground coal mine exploration site that would likely be permitted within 6 months. Alaska has indicated that it would address the requirements of section 720(a) of SMCRA in its permitting process for this mine. Due to the remote location of this operation, it is highly unlikely that material damage to noncommercial buildings and to occupied residential dwellings and related structures and that damage to drinking, domestic, and residential water supplies would occur.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17495) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Alaska (Administrative Record No. AK–F–04). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received comments from one party in response to its notice.

The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA (Administrative Record No. AK–F–08). The party also commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) and also responds to these comments below in the "Comments" subsection of following Montana section D. These concerns about direct Federal enforcement are moot issues for Alaska because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Alaska, the Casper Field Office on May 18, 1995, consulted with Alaska in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. AK–F–07). Because there has been no underground mining activity since October 24, 1992; there is little likelihood for subsidence damage to noncommercial buildings and to occupied residential dwellings and related structures, or adverse effects to drinking, domestic, and residential water supplies by a proposed underground coal mining operation; and Alaska has indicated it would address the requirements of section 720(a) of SMRCA in the permit for the proposed mine, the Field Office and Alaska agreed that it is unlikely that any enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Alaska revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides the initial enforcement of the underground coal mine subsidence control and water replacement requirements in Alaska is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process.

If circumstances within Alaska change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in Montana

Montana Program Activity, Requirements, and Enforcement

By letter to Montana dated December 15, 1994, OSM requested information from Montana that would help OSM decide which approach to take in Montana to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Montana program provisions (Administrative Record No. MT–13–01). By letter dated March 6, 1995, Montana responded to OSM's request (Administrative Record No. MT–13–02).

Montana stated that one underground coal mine was active in Montana after October 24, 1992. Montana stated that its program does not fully authorize enforcement of the structural repair and water replacement requirements of section 720(a) of SMCRA and the implementing Federal regulations.

Specifically, Montana indicated that (1) Administrative Rules of Montana 26.4.911(5), which address compensation for structural damage resulting from subsidence, are not clearly authorized by the subsidence prevention provisions of section 82–4–231(10)(f) of the Montana Strip and Underground Mine Reclamation Act (MSUMRA); (2) section 82–4–253(2) of MSUMRA excepts water derived from "a subterranean stream having a permanent, distinct, and known channel" from the requirement for underground coal miners to promptly replace drinking, domestic, or residential water supplies affected underground coal mining, and (3) the procedural requirements of section 82–4–253(2) of MSUMRA would not, in Montana's opinion, result in "prompt" replacement of water supplies adversely affected by underground coal mining.

Montana has stated that statutory changes to address these issues will need to be sought in the next legislative session in January 1997, and subsequent rule changes would follow adoption of statute changes. OSM has determined that Montana has not received or investigated any citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992.

On May 3, 1995, Montana indicated its preferred enforcement alternative for the State (Administrative Record No. MT–13–05). Because it would enforce its currently approved program to the fullest extent and introduce in the 1997 legislative session program amendments to address the issues in its March 6, 1995, letter, Montana recommended that OSM only initiate direct Federal enforcement in the interim period (between October 24, 1992, and the effective date of Montana's revision of its program to be no less stringent than SMCRA and no less effective than the Federal regulations) when enforcement is needed and the Montana program falls short of the Federal standards.

OSM has determined that only the one underground coal mine has operated after October 24, 1992, and that Montana has not received any complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of this underground mine's operations conducted after October 24, 1992.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17495) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Montana (Administrative Record No. MT–13–04).

The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received from the party that commented on the Alaska program the same comments for the Montana program (Administrative Record No. MT–13–12).

The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protective standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

Regional Director's Decision

Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Montana, the Casper Field Office on April 25, 1995, consulted with Montana in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. MT–13–05).

Only one Montana mine has operated after October 24, 1992, and is subject to the provisions of section 720(a) of SMCRA and the implementing Federal regulations. Neither Montana nor OSM have received any complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of this underground mine's operations conducted after October 24, 1992. The 1997 projection for promulgating counterpart State statutory provisions is consistent with the State legislature schedule for meeting in regular session every other year. Montana would not promulgate rules to implement these statutory provisions until after the legislature's action.

OSM agrees with Montana that the State should be the primary enforcer of its program provisions for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. It also agrees that if, during the interim period prior to Montana revising its program, Montana needs to, but is unable to, fully implement counterparts to the requirements of section 720(a) of SMCRA or the implementing regulations, OSM should initiate direct Federal enforcement.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Montana will occur through State enforcement and, if necessary, direct Federal enforcement of sections 720(a) (1) and (2) of SMCRA and 30 CFR 817.121 and 817.41(j).

If circumstances within Montana change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

E. Enforcement in North Dakota

North Dakota Program Activity, Requirements, and Enforcement

By letter to North Dakota dated December 15, 1994, OSM requested information from North Dakota that would help OSM decide which approach to take in North Dakota to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart North Dakota program provisions (Administrative Record No. ND–W–01). By letter dated December 21, 1994, North Dakota responded to OSM's request (Administrative Record No. ND–W–02). North Dakota indicated that its regulatory program does not include provisions for underground coal mining and that no underground coal mines have operated in North Dakota after October 24, 1992.

On April 11, 1995, OSM confirmed with North Dakota that no underground coal mines have operated in North Dakota after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. ND–W–07). Prior to the issuance of any permit allowing underground mining, North Dakota is aware that it would have to revise its program to incorporate underground mining provisions no less stringent than SMCRA and no less effective than the Federal regulations. Such provisions would include counterpart provisions to section 720(a) of SMCRA and the implementing Federal regulations.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17495) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in North Dakota (Administrative Record No. ND–W–08). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Alaska program, and OSM's responses to it, also apply to the North Dakota program (Administrative Record No. ND–W–09).

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Regional Director's Decision

Prior to the Regional Director making this decision on which enforcement alternative should be implemented in North Dakota, the Casper Field Office on May 30, 1995, consulted with North Dakota in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. ND–W–07).

The North Dakota program does not currently allow underground coal mining. Prior to issuing a permit allowing underground mining, North Dakota would have to, through the State program amendment process, revise its program to incorporate underground mining provisions no less stringent than SMCRA and no less effective than the Federal regulations. These State provisions would include counterparts to section 720(a) of SMCRA and its implementing Federal regulations. Any underground mining permit that North Dakota would issue under the underground mining provisions it promulgated would have to address State counterparts to section 720(a) of SMCRA and its implementing Federal regulations. No underground mining activities could commence prior to the issuance of a permit.

On this basis and the disposition of the comment received, the Regional Director decides that no State or Federal enforcement of underground coal mine subsidence control and water replacement provisions would be needed in the interim period between October 24, 1992, and the date of issuance of any North Dakota underground mining permit.

If circumstances within North Dakota change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

F. Enforcement in Wyoming

Wyoming Program Activity, Requirements, and Enforcement

By letter of Wyoming dated December 15, 1994, OSM requested information from Wyoming that would help OSM decide which approach to take in Wyoming to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Wyoming program provisions (Administrative Record No. WY–29–01). By letter dated January 19, 1995, Wyoming responded to OSM's request (Administrative Record No. WY–29–02).

Wyoming stated that three underground coal mines were active in Wyoming after October 24, 1992. Wyoming indicated that existing State program provisions at Wyoming Statutes 35–11–102 (policy and purpose); 35–11–406 (permit applications); 35–11–416 (surface owner protection); and 35–11–428 (in situ mining permit applications); and Wyoming Coal Rules and Regulations at chapter VI, section 2 (general environmental performance standards); chapter VII, sections 1 through 4 (underground mining permit applications, environmental protection performance standards, public notice, and surface owner protection); and chapter XVIII, section 3 (in situ mining permit applications) are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations.

Wyoming explained that it will enforce these State program provisions in accordance with the enforcement provisions that were in effect October 24, 1992. Wyoming has investigated one citizen complaint alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. This complaint concerned subsidence damage to a reclaimed reservoir. This is a unique situation in that the alleged damage occurred within the permit area of an adjacent surface coal mine. The two mine operators have mutually agreed upon corrective measures and have not requested the State of Wyoming to intervene.

On May 11, 1995, OSM corresponded with Wyoming and reiterated the available alternative enforcement decisions in the State (Administrative Record No. WY–29–09).

On July 13, 1995, Wyoming sent to OSM a letter in which it stated that it preferred the State enforcement alternative (Administrative Record No. WY–29–12). Wyoming also stated that it interpreted its program and the Federal water replacement requirements (at section 720(a)(2) of SMCRA and 30 CFR 817.41(j)) to apply only to valid water rights as determined by the Wyoming State Engineer. That is, Wyoming would not require an underground mine operator to replace a drinking, domestic, or residential water supply that was being used illegally in contradiction of water rights as determined by the State Engineer.

OSM has determined that three underground coal mines have operated after October 24, 1992. For these mines, Wyoming has received the one complaint alleging subsidence-related damage to a water reservoir.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17495) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Wyoming (Administrative Record No. WY–29–04). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received comments from three parties in response to its notice.

The comments discussed above for the Alaska program, and OSM's responses to it, also apply to the Wyoming program (Administrative Record No. WY–29–11).

A party supported the selection of the State enforcement alternative (Administrative Record No. WY–29–07). The Regional Director acknowledges this comment and took it into consideration before making the enforcement decision set forth below.

A party commented that several of Wyoming's statutory provisions are less stringent than the Federal counterparts at section 720(a) of SMCRA and less effective than the implementing Federal regulations at 30 CFR 817.121(c) and 817.41(j) (Administrative Record No. WY–29–08). Because of this, the party stated that OSM is required to provide direct Federal enforcement as set forth in item (3) of section B. of the April 6, 1995, **Federal Register** notice soliciting comment on the enforcement alternative that should be implemented in the State.

In the near future, OSM intends to send a letter to Wyoming in accordance with 30 CFR 732.17(d) notifying Wyoming of revisions that need to be made to its program. OSM does not agree with the commenter's conclusion that OSM is required to institute Federal enforcement in the interim period because Wyoming's program is less stringent than SMCRA and less effective than the implementing Federal regulations. As set forth in item (1) of section B. of the April 6, 1995, **Federal Register** notice, OSM could decide not to directly enforce the Federal SMCRA and regulation provisions in the interim period in Wyoming if it found that the number and extent underground mines that have operated since October 24, 1992, is low, the number of complaints concerning section 720 of SMCRA is low, the State's investigation of subsidence-related or water supply loss and contamination complaints has been thorough and complete so as to assure prompt remedial action, or the State's promulgation of counterparts to 30 CFR 817.41(j) and 817.121(c)(2) is imminent. Also, OSM could decide not to directly enforce the Federal SMCRA and regulation provisions if some other similar extenuating circumstances exist. Even though OSM does not agree with this comment supporting direct Federal enforcement, the Regional Director acknowledges it and took it into consideration before making the enforcement decision set forth below.

Regional Director's Decision

Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Wyoming, the Casper Field Office on May 11 and July 13, 1995, consulted with Wyoming in accordance with 30 CFR 843.25(a)(4) (Administrative Record Nos. WY–29–09 and WY–29–12).

Three Wyoming mines have operated after October 24, 1992, and are subject to the provisions of section 720(a) of SMCRA and the implementing Federal regulations. For one of these mines, Wyoming investigated a complaint relating to potential subsidence damage to a water reservoir.

The Regional Director acknowledges Wyoming's determination that its program would not require an underground mine operator to replace a drinking, domestic, or residential water supply that was being used illegally in contradiction of water rights as determined by the State Engineer. OSM believes this position is not inconsistent with section 720(a) of SMCRA regarding water supply replacement and section 717 of SMCRA regarding water rights. However, before OSM finally determines that Wyoming's program on this complicated issue is no less stringent than SMCRA, OSM will further review Wyoming's water right statutes, rules, policies, and procedures.

OSM agrees with Wyoming that the State should be the enforcer of its program provisions for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. Based upon the number and location of the underground mines, the potential is low for material damage to noncommercial buildings, occupied residential dwellings, and related structures and for damage to drinking, domestic, or residential water supplies. Given these circumstances, it is unlikely that any enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Wyoming revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Wyoming will occur through State enforcement and the State program amendment process.

If circumstances within Wyoming change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–18439 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Parts 904,918, 936, and 943

Arkansas, Louisiana, Oklahoma, and Texas Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Arkansas, Louisiana, Oklahoma, and Texas. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Arkansas, Louisiana, Oklahoma, and Texas and consideration of public comments, OSM has decided that initial enforcement is not reasonably likely to be required and that implementation in these States will be accomplished through the State program amendment process.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT:

Tim L. Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 (60 FR 16722) to implement the performance standards of sections 720(a)(1) and (2) of SMCRA.

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after

consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, **Federal Register** (60 FR 17498) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and implement the definitions at 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Arkansas

Arkansas Program Activity, Requirements, and Enforcement

By letter to Arkansas dated December 15, 1994, OSM requested information from Arkansas that would help OSM decide which approach to take in Arkansas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Arkansas program provisions (Administrative Record No. AR–542). By letter dated January 30, 1995, Arkansas respond to OSM's request (Administrative Record No. AR–543).

Arkansas stated that one underground coal mine was active in Arkansas after October 24, 1992. Arkansas indicated that its existing State law and its regulations at Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) Sections 779.17, 780.21(e), 783.17, 784.14, 784.20(c), 816.54, and 816.124–U(b) and (c) are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Arkansas did not indicate when the existing State counterpart provisions went into effect. However, Arkansas did indicate that it had not received any citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992.

On May 31, 1995, OSM confirmed with Arkansas that one underground coal mine was active after October 24, 1992, and that no citizen complaints alleging subsidence-caused material damage or water supply loss or contamination as a result of this operation had been received by Arkansas (Administrative Record No. AR–553). Arkansas stated its intention to actively pursue and promulgate regulations conforming to the Federal regulations once it receives a 30 CFR Part 732 notification from OSM.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Arkansas (Administrative Record No. AR–552). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received comments from one party in response to its notice (Administrative Record No. AR–554). These comments apply not only to the Arkansas program but also to the Louisiana, Oklahoma, and Texas programs (Administrative Record Nos. LA–356, OK–971, and TX–592) that are addressed below.

The party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues for these States because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Arkansas, the Tulsa Field Office on May 31, 1995, consulted with Arkansas in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. AR–553). Based upon the location of the existing and projected underground mining, the potential is low for material damage to noncommercial buildings, occupied residential dwellings, and related structures and for damage to drinking, domestic, or residential water supplies. Given thee circumstances, the Tulsa Field Office and Arkansas agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Arkansas revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Arkansas is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Arkansas of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Arkansas change significantly, the Regional Director may repasses this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in Louisiana

Louisiana Program Activity, Requirements, and Enforcement

By letter of Louisiana dated January 23, 1995, OSM requested information from Louisiana that would help OSM decide which approach to take in Louisiana to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Louisiana program provisions (Administrative Record No. LA–352). By letter dated February 7, 1995, Louisiana responded to OSM's request (Administrative Record No. LA–353). Louisiana indicated that its regulatory program does not include provisions for underground coal mining and that no underground coal mines have operated in Louisiana after October 24, 1992.

On May 30, 1995, OSM confirmed with Louisiana that no underground coal mines have operated in Louisiana after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. LA–355). Prior to the issuance of any permit allowing underground mining, Louisiana is aware that it would have to revise its program to incorporate underground mining provisions no less stringent than SMCRA and no less effective than the Federal regulations. Such provisions would include counterpart provisions to section 720(a) of SMCRA and the implementing Federal regulations.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Louisiana (Administrative Record No. LA–354). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Arkansas program, and OSM's responses to them, also apply to the Louisiana program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Louisiana, the Tulsa Field Office on May 30, 1995, consulted with Louisiana in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. LA–355).

The Louisiana program does not currently allow underground coal mining. Prior to issuing a permit allowing underground mining, Louisiana would have to, through the State program amendment process, revise its program to incorporate underground mining provisions no less stringent than SMCRA and no less effective than the Federal regulations. These State provisions would include counterparts to section 720(a) of SMCRA and its implementing Federal regulations. Any underground mining permit that Louisiana would issue under the underground mining provisions it promulgated would have to address State counterparts to section 720(a) of SMCRA and its implementing Federal regulations. No underground mining activities could commence prior to the issuance of a permit.

On this basis and the disposition of the comments received, the Regional Director decides that no State or Federal enforcement of underground coal mine subsidence control and water replacement provisions would be needed in the interim period between October 24, 1992, and the date of issuance of any Louisiana underground mining permit.

If circumstances within Louisiana change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

E. Enforcement in Oklahoma

Oklahoma Program Activity, Requirements, and Enforcement

By letter to Oklahoma dated January 23, 1995, OSM requested information from Oklahoma that would help OSM decide which approach to take in Oklahoma to implement the requirements of section 720(a) of SMCRA, the implementing Federal

regulations, and/or counterpart Oklahoma program provisions (Administrative Record No. OK–965). By letter dated February 8, 1995, Oklahoma responded to OSM's request (Administrative Record No. OK–966).

Oklahoma stated that one underground coal mine was active after October 24, 1992, and one underground mine was constructing surface facilities as of February 8, 1995.

Oklahoma indicated that the State regulation at OAC 460:20–45–47(c) (previously codified as section 817.121(c)) addresses repair or compensation of subsidence-related material damage to structures and replacement of water supplies contaminated or diminished due to subsidence. However, Oklahoma indicated that this regulation "is not as clearly written" as the new Federal regulations and that it includes "vague statements * * * regarding structures, facilities, and any drinking, domestic or residential water supplies" that will be clarified once the regulation is revised in accordance with the new Federal regulations.

Oklahoma did not indicate when the State counterpart provisions went into effect. However, Oklahoma stated that it had investigated one citizen complaint alleging subsidence-related damage for underground mining operations conducted after October 24, 1992, and it issued a violation notice as a result of the complaint. OSM has determined that the citizen complaint did not involve structural damage or water supply loss or contamination.

On May 23, 1995, OSM confirmed with Oklahoma that one underground coal mine was active after October 24, 1992 (Administrative Record No. OK–970). This mine is no longer producing coal, and the underground mine workings are not extensive. The other permitted underground mine was continuing development work and had not produced coal by underground mining methods. Oklahoma stated its intention to actively pursue and promulgate regulations conforming to the Federal regulations once it receives a 30 CFR Part 732 notification from OSM (Administrative Record No. OK–969). It stated that it believed this process would take approximately 12 months to implement.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Oklahoma (Administrative Record No. OK–968). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Arkansas program, and OSM's responses to them, also apply to the Oklahoma program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Oklahoma, the Tulsa Field Office on May 23, 1995, consulted with Oklahoma in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. OK–970). Based upon the location of the existing and projected underground mining, the potential is low for material damage to noncommercial buildings, occupied residential dwellings, and related structures and for damage to drinking, domestic, or residential water supplies. Given these circumstances, the Tulsa Field Office and Oklahoma agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Oklahoma revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Oklahoma is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Oklahoma of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Oklahoma change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

F. Enforcement in Texas

Texas Program Activity, Requirements, and Enforcement

By letter to Texas dated January 23, 1995, OSM requested information from Texas that would help OSM decide which approach to take in Texas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Texas program provisions (Administrative Record No. TX–587). By letter dated January 26, 1995, Texas responded to OSM's request (Administrative Record No. TX–588).

Texas stated that no underground coal mines were operating in Texas after October 24, 1992.

Texas stated that the Texas Surface Coal Mining and Reclamation Act currently has no counterpart to section 720 of SMCRA, and its regulations at section 817.564, regarding repair and compensation for damages occurring to buildings and other structures, and at section 817.521, regarding replacement of water supplies, have no direct counterparts to OSM's proposed regulations at 30 CFR 817.121(c) and 817.41(k).

On May 30, 1995, OSM confirmed with Texas that no underground coal mines have operated in Texas after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. TX–591). Texas stated its intention to actively pursue and promulgate regulations conforming to the Federal regulations once it receives a 30 CFR Part 732 notification from OSM.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Texas (Administrative Record No. TX–590). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Arkansas program, and OSM's responses to them, also apply to the Texas program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Texas, the Tulsa Field Office on May 30, 1995, consulted with Texas in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. TX–591). Because there has been no underground mining activity since October 24, 1992, and there is no underground mining activity proposed in the State, the Tulsa Field Office and Texas agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Texas revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Texas is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Texas of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Texas change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–18440 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Parts 906, 931, and 944

Colorado, New Mexico, and Utah Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Colorado, New Mexico, and Utah. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Colorado, New Mexico, and Utah and consideration of public comments, OSM has decided that initial enforcement will be accomplished in Colorado through State enforcement, in New Mexico through the State program amendment process, and in Utah through State enforcement and, if necessary, direct Federal enforcement of Federal provisions protecting water supplies.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Acting Director, Albuquerque Field Office, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 (60 FR 16722) to implement the performance standards of sections 720(a)(1) and (2) of SMCRA.

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, **Federal Register** (60 FR 17501) announcing the public comment period and opportunity for public hearing and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of

the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definition at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and implement the definitions at 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Colorado

Colorado Program Activity, Requirements, and Enforcement

By letter to Colorado dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Colorado to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Colorado program provisions (Administrative Record No. CO–652). By letter dated February 24, 1995, Colorado responded to OSM's request (Administrative Record No. CO–661).

Colorado stated that, of the 25 underground coal mines that had permits as of October 24, 1992, 11 actually mined coal after that date.

Colorado indicated that prior to June 1, 1992, Colorado had in place surface owner protection performance standards at 2 Code of Colorado Regulations 407–2, rules 4.20.3(1) and 4.20.3(2) that encompassed the requirements of section 720(a)(1) of SMCRA. Rule 4.20.3(2), which contained requirements regarding an operator's obligation to repair or compensate for material damage or reduction in value or reasonably foreseeable use caused by subsidence to surface structures, features, or values, expired on June 1, 1992, under Colorado's "Sunset Law." The rule expired because Colorado's Office of Legislative Legal Services found during November 1991 it was not supported by statute. Colorado subsequently developed language for a bill to amend the Colorado Surface Coal Mining and Reclamation Act (the Colorado Act) and introduced the bill during the 1995 legislative session. The intent of the bill was to amend Colorado Revised Statute (C.R.S.) 34–33–121(2)(a) to provide specific statutory support for Rule 4.20.3(2).

Colorado explained that, although the specific language of Rule 4.20.3(2) expired during June 1992, the Division of Minerals and Geology has continued since that time to interpret its rules to require that mine operators are responsible for repairing or compensating surface owners for subsidence-caused material damage to structures. Colorado based its authority for doing so on the general provisions of Rule 4.20.3(1) and the subsidence control plan mitigation requirements of Rule 2.05.6(6)(iv).

Colorado indicated that there may be a conflict between the provisions of section 720(a)(2) of SMCRA, which requires prompt replacement of drinking, domestic, or residential water supplies adversely impacted by underground mining operations, and Colorado water law. Consequently, Colorado has requested an opinion from the Colorado Assistant Attorney General in this regard. Existing Colorado Rule 4.05.15 requires operators to "* * * replace the water supply of any owner of a *vested* water right which is proximately injured as a result of the mining activities in a manner consistent with applicable *State* law" (emphasis added).

For underground mining operations conducted after October 24, 1992, Colorado has received one complaint alleging subsidence-related structural damage and two complaints alleging water supply loss or contamination. Colorado investigated all three complaints. Colorado determined the complaint alleging subsidence-caused structural damage to be without basis. One of the complaints alleging water supply loss or contamination was withdrawn, and the second was under investigation by Colorado.

On May 4 and 31, 1995, OSM confirmed with Colorado that 11 of its 25 underground coal mines produced coal after October 24, 1992 (Administrative Record No. CO–668). At that time, OSM also discussed with Colorado the status of the State's revision of its program to include counterparts to SMCRA and the implementing Federal regulations.

Effective July 1, 1995, the Colorado legislature amended the Colorado Surface Coal Mining Reclamation Act, C.R.S. 34–33–101, *et seq.*, (Administrative Record No. CO–664) to serve as a statutory basis for a subsidence material damage rule to replace Rule 4.20.3(2), which, as discussed above, expired under Colorado's Sunset Law. On May 24, 1995, the Colorado Mined Land Reclamation Board commenced rulemaking to replace this rule. Upon the completion of these actions, Colorado believes that it will have fully implemented counterparts to the subsidence material damage provisions of the Federal regulations at 30 CFR 817.121(c)(2).

Colorado stated that C.R.S. 34–33–111(1)(m) and Rule 2.05.6(3), which address protection of the hydrologic balance, give it the necessary authority to require replacement of drinking, domestic, or residential water supplies in a manner no less effective than 30 CFR 817.41(j) (Administrative Record No. CO–664). However, Colorado has not yet received an opinion from the Colorado Assistant Attorney General as to whether related Rule 4.05.15 limits the replacement of water supplies to those with "vested water rights."

Colorado received no additional complaints. The investigation of the water supply complaint is ongoing. With respect to the structural damage complaint that Colorado initially determined was without basis, Colorado and OSM are reviewing information supplied by the complainant with the intent of resolving the complainant's concerns.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17501) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Colorado (Administrative Record No. CO–662). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold a public hearing. OSM received comments from two parties in response to its notice.

One party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA (Administrative Record No. CO–666). The party also commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) and also responds to these comments below in the "Comments" subsection of following Utah section E. These concerns about direct Federal enforcement are moot issues for Colorado because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Another party commented on the national Federal regulations (Administrative Record No. CO–665) after OSM published them as a final rule on March 31, 1995 (60 FR 16722). These comments are not germane to OSM's April 6, 1995, **Federal Register** request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Colorado.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Colorado, the Albuquerque Field Office on May 4 and 31, 1995, consulted with Colorado in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. CO–668). Because the number of mines in Colorado that are subject to section 720(a) of SMCRA is low, Colorado has made significant progress in promulgating the necessary statutory and rule provisions, and Colorado has shown a commitment to investigating citizen complaints regarding subsidence and water supply impacts, the Field Office and Colorado agreed that Colorado should be the primary enforcer of its State program provisions for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. Only, if a situation arises in which Colorado's enforcement role as primary enforcer does not appear to fully meet the requirements of section 720(a) of SMCRA, would OSM through Federal oversight issue ten-day notices.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Colorado will occur through State enforcement.

If circumstances within Colorado change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in New Mexico

New Mexico Program Activity, Requirements, and Enforcement

By letter to New Mexico dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in New Mexico to implement the requirements of section 720(a) of SMCRA, to implementing Federal regulations, and/or the counterpart New Mexico program provisions (Administrative Record No. NM–725). By letter dated December 22, 1994, New Mexico responded to OSM's request (Administrative Record No. NM–726).

New Mexico stated that two underground coal mines were active in New Mexico after October 24, 1992. New Mexico stated that it intended to revise its subsidence information and control plan provisions at Coal Surface Mining Commission (CSMC) Rule 80–1–20–124 to be no less stringent than section 720 of SMCRA.

New Mexico did not indicate whether it had authority within its program to investigate citizen complaints of structural damage or water supply loss or contamination caused by underground mining operations conducted after October 24, 1992. New Mexico had not received any citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. New Mexico indicated that both of the underground mines that operated after October 24, 1992, are located several miles from structures subject to the Federal requirements for subsidence-related material damage.

On May 13, 1995, New Mexico proposed an amendment to OSM for its permit application requirements at CSMC Rule 80–1–9–39 (Administrative Record No. NM–739). Specifically, New Mexico proposed to revise its subsidence information and control plan requirements at this rule with the intent of making it consistent with section 720 of SMCRA. OSM is currently reviewing the effectiveness of this proposed rule.

On May 3 and June 5, 1995, OSM confirmed with New Mexico that tow underground coal mines were active after October 24, 1992 (Administrative Record No. NM–746). New Mexico stated that it had received no subsidence material damage or water supply complaints for these operations, and that neither operation has noncommercial buildings or occupied dwellings and related structures, or developed water sources, within the

projected subsidence angles of draw. New Mexico indicated that, if it were necessary to apply the provisions of 30 CFR 817.41(j) and 817.12(c)(2) before it had revised its program to be no less effective than these Federal regulations, it would pursue enforcement utilizing general provisions contained in the State regulations.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17501) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in New Mexico (Administrative Record No. NM–737). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received from one of the parties that commented on the Colorado program the same comments regarding total or partial direct interim Federal enforcement and ten-day notice procedures (Administrative Record No. NM–749). OSM does not agree with the commenter's assertions. It addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) and also responds to these comments below in the "Comments" subsection of following Utah section E. These concerns about direct Federal enforcement are moot issues for New Mexico because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in New Mexico, the Albuquerque Field Office on May 3 and June 5, 1995, consulted with New Mexico in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. NM–746). Because there has been little underground mining activity since October 24, 1992; there is little likelihood for subsidence damage to noncommercial buildings and to occupied dwellings and related structures, or adverse effects to drinking, domestic, and residential water supplies by underground coal mining; and New Mexico has already proposed to OSM revisions to part of its regulatory program, the Field Office and New Mexico agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which New Mexico entirely revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in New Mexico is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. On June 22, 1995, OSM notified New Mexico of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations (Administrative Record No. NM–747).

If circumstances within New Mexico change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

E. Enforcement in Utah

Utah Program Activity, Requirements, and Enforcement

By letter to Utah dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Utah to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Utah program provisions (Administrative Record No. UT–1001). By letter dated January 20, 1995, Utah responded to OSM's request (Administrative Record No. UT–1015).

Utah stated that the number of underground coal mines in operation after October 24, 1992, may be found in the past and current grant applications filed annually with OSM. From review of these grant applications, OSM determined that there are approximately 21 underground mines that operated after October 24, 1992.

As submitted to OSM on April 14, 1994, and subsequently revised on December 14, 1995 (Administrative Record Nos. UT–917 and UT–997), Utah proposed subsidence material damage provisions at Utah Code Annotated (UCA) 40–10–18(4) that were intended to be counterparts to the provisions of section 720(a)(1) of SMCRA. OSM has not yet published, in accordance with 30 CFR Part 732.17, a final rule **Federal Register** notice detailing its decision on the proposed provisions.

In its January 20, 1995, letter, Utah indicated that it intends to promulgate by March 1996 water replacement statutory provisions that are counterparts to the provisions of section 720(a)(2) of SMCRA.

Utah did not state whether it has authority to investigate citizen complaints of structural damage or water loss caused by underground mining operations conducted after October 24, 1992. Utah indicated that it did receive, investigate, and resolve one citizen complaint after October 24, 1992, but is also indicated that the complaint was judged not to be one that the Energy Policy Act of 1992 revisions to section 720 of SMCRA could remedy.

On May 1 and 31, and June 5, 1995, OSM discussed with Utah its regulatory program as it relates to section 720 of SMCRA (Administrative Record No. UT–1058).

After further review, OSM has determined that 16 underground mines conducted mining operations after October 24, 1992. Utah has not received for these operations any complaints relating to subsidence damage to noncommercial buildings and to occupied dwellings and related structures, or adverse effects to drinking domestic, and residential water supplies.

Utah stated that it still intends to introduce a water replacement counterpart section 720(a)(2) of SMCRA to its legislature during the 1996 session and that it intends to undertake rulemaking by the summer of 1996. Utah stated that, although there is potential for conflicts with State water law regarding replacement of "junior" water allocation, it is committed to developing water replacement regulations that meet both the requirements of section 720(a)(2) of SMCRA and 30 CFR 817.41(j) and water rights doctrine. Notwithstanding these future program revisions, Utah indicated that it has the authority under existing enactments and rules to adequately address water replacement issues as they arise. It stated that it is committed to the investigation and resolution of citizens' concerns regarding water sources.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17501) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Utah (Administrative Record No. UT–1039). The comment period closed on May 8, 1995. In response to a request, OSM held a public hearing on May 1, 1995, in Salt Lake City, Utah. OSM entered into the administrative record a verbatim transcript of the hearing testimony

(Administrative Record No. UT–1050). Following are summaries of all substantive comments that OSM received, and OSM's responses to them.

Two commenters indicated that there are 13 active underground mines in Utah (Administrative Record Nos. UT–1045, 1049, and 1050). By OSM's count, there are 16 mines that operated after October 24, 1992, and that are subject to the provisions of the Energy Policy Act.

One party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA (Administrative Record No. UT–1060). Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protective standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule OSM has carved out a limited exception to the general proposition to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

Two commenters recommended that Utah take over the immediate enforcement of Energy Policy Act provisions and 30 CFR 817.41(j) and 817.121(c)(2) because (1) There is a relatively low number of active underground coal mines in Utah, (2) there have been a relatively low number of citizen complaints dealing with subsidence material damage or water supply damage. (3) Utah has promptly taken remedial action of all citizen complaints received, (4) Utah is Keenly aware of State water law, (5) Utah has qualified personnel to enforce the requirements of the Energy Policy Act (Administrative Record Nos. 1045, 1049, and 1050). OSM acknowledges these recommendations and took them into consideration in making a decision on enforcement in Utah.

One commenter stated that the water supply protections afforded by March 31, 1995, Federal regulations are currently in place under the Utah Water Code and that, without further amendment of Utah law, enforcement of these regulations may be accomplished through a memorandum of understanding (MOU) between the Utah Division of Oil, Gas and Mining (Division) and the Utah State Engineer (Engineer, Administrative Record No.UT–1046). Another commenter submitted a suggested MOU addressing water replacement that could be entered into the Division and the Engineer (Administrative Record No. UT–1050). In response to a commenter's perception that a regulatory gap exists between what the Division is willing to enforce and what the Utah State Engineer is willing to enforce (Administrative Record No. UT–1050), the Division endorsed the concept of an MOU with the Engineer as a means to bring together in a complete regulatory framework the Division's determinations on mining's impact on water and the Engineer's determinations of adjudications on water rights. OSM's response to these comments and submission is that, although this is one approach that Utah may decide to pursue, this MOU is not in place and as such is not a consideration in the Regional Director's decision on whether to institute direct Federal enforcement in Utah. If Utah decides to modify its approved regulatory program through such an MOU, it would have to submit it as a State program amendment for OSM approval in accordance with 30 CFR 732.17.

The Utah Division of Oil, Gas and Mining stated that direct Federal enforcement in the State would amount to institution of a separate Federal program to address only subsidence damage and water replacement issues (Administrative Record No. UT–1050). In its opinion, this would be an inefficient and wasteful use of scarce budgetary resources because (1) It has adequate authority to implement the subsidence damage and water replacement provisions required by the Energy Policy Act and the implementing regulations, (2) there exists significant legal and administrative impediments to creation of a successful separate federal program, and (3) it can have new regulatory provisions in place, if necessary, by March 1996. In making the decision that is set forth below, OSM has given thoughtful consideration to Utah's concerns. OSM does not consider that any direct Federal enforcement in Utah would be inefficient and wasteful because OSM also has a responsibility under section 720(a) of SMCRA to ensure that the protective provisions to remedy subsidence material damage and adversely affected water supplies are promptly applied.

The Division indicated its intent to actively seek the input of the Utah Division of Water Rights when it develops water supply regulations so that these regulations are consistent with existing water rights doctrine. The Division and several other commenters made statements about what State water law and the Utah State Engineer require or do not require with respect to water rights and allocations. Some of these comments related directly or indirectly to the implementation of section 720(a) and 30 CFR 817.41(j). OSM responds to these comments by reiterating its position on water rights that was included in the preamble to the March 31, 1995, Federal regulations.

Section 717(a) requires deference to State water law on questions of water allocation

and use. OSM interprets section 720 and the implementing rules as not requiring the replacement of water supplies to the extent underground mining activities consume or legitimately use the water supply under a senior water right determined under applicable State law. *See In re Permanent Surface Mining Regulation Litigation II, Round III, 620 F. Supp. 1519, 1525 (D.C.D.C. 1985).* However, OSM believes that section 717(a) concerns rights under State water law to consumption or use of water, and was not intended to address destruction or damage of the *source* of water, or contamination of water supply. Thus, OSM anticipates that underground mining activities which cause destruction or damage of a water supply source, or contamination of a water supply, would be subject to the replacement requirements of section 720 even if the permittee possessed senior water rights.

(60 FR 16722, 16733).

Two commenters indicated that, in a proceeding before the Board on Oil, Gas and Mining concerning alleged diminution and contamination by a Utah mining operation of a water source, the Division was unwilling to enforce the water replacement requirements of section 720(a) of SMCRA (Administrative Record Nos. UT–1047, 1048, and 1050). These commenters, and one other person (Administrative Record No. UT–1050), stated that the Division had not fully enforced the water protection provisions of the Utah program. One of the commenters recommended a number of changes in the implementation of the Utah program and indicated that, until these changes were made, OSM should conduct oversight Utah's implementation of the ground-water protection provisions of the Utah program and, if necessary, directly enforce water resources protection provisions in Utah. The other commenter recommended, at a minimum, joint Division and OSM enforcement of the Energy Policy Act requirements, or direct Federal enforcement. OSM acknowledges these comments and took them into consideration in making the decision set forth below.

One commenter stated that, to the best of his knowledge, Utah does not conduct any monitoring of the hydrological consequences of a mine after it has been permitted to determine whether the mine is affecting the hydrologic balance as predicted in the permit (Administrative Record No. UT–1050). In response to this statement, the Division indicated that, during the operation of a mine, it does reevaluate the hydrologic impact conclusions made at the permitting stage in light of monitoring data collected during the mine's operation (Administrative Record No. UT–1050).

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Utah, the Albuquerque Field Office, on May 1 and 31, and June 5, 1995, consulted with Utah in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. UT–1058).

The majority of Utah mines have operated after October 24, 1992, and are subject to the provisions of section 720(a) of SMCRA and the implementing Federal regulations. Although Utah has implemented its regulatory program provisions concerning hydrologic information and hydrologic balance and is committed to the investigation and resolution of citizens' concerns regarding water sources, there are, as is documented in the written record of the public hearing, current concerns and potential for additional complaints regarding the loss, contamination, or diminution of water sources that serve large populations in the coal producing counties in Utah. The mid-1996 projection for promulgating statutory and regulatory State program provisions for water replacement is in keeping with usual timeframes for enactment of legislation and revision of regulations.

The Field Office and Utah agreed that Utah should be the primary enforcer of its State program provisions for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. However, the Field Office found that it is unclear that the water supply protections of section 720(a)(2) of SMCRA and 30 CFR 817.41(j) can be implemented by Utah in all cases. Therefore, the Field Office concluded that, if a situation arises in which Utah's enforcement role as primary enforcer does not appear to fully meet the water replacement requirements of section 720(a)(2) of SMCRA, OSM must take direct Federal enforcement.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Utah will occur through State enforcement and, if necessary, direct Federal enforcement of the water replacement requirements of section 720(a)(2) of SMCRA and 30 CFR 817.41(j).

If circumstances within Utah change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–18441 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Parts 915, 916, and 925

Iowa, Kansas, and Missouri Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Iowa, Kansas, and Missouri. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Iowa, Kansas, and Missouri and consideration of public comments, OSM has decided that initial enforcement is not reasonably likely to be required and that implementation in these States will be accomplished through the State program amendment process.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Acting Director, Kansas City Field Office, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 (60 FR 16722) to implement the performance standards of sections 720(a) (1) and (2) of SMCRA.

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, **Federal Register** (60 FR 17504) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation or regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on he basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and implement the definitions at 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Iowa

Iowa Program Activity, Requirements, and Enforcement

By letter to Iowa dated December 14, 1994, OSM requested information from Iowa that would help OSM decide which approach to take in Iowa to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Iowa program requirements (Administrative Record No. IA–413). Iowa did not respond to this request.

OSM determined that Iowa has not revised its statute to incorporate counterparts to the requirements of section 720 of SMCRA.

On May 9, 1995, OSM confirmed with Iowa that no underground coal mines have operated in Iowa after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. IA–418). At that time, OSM also discussed whether the State has counterparts to the implementing Federal regulations.

Iowa has not revised its regulations to incorporate counterparts to the Federal regulations implementing the SMCRA provisions. OSM's review of Iowa's regulations indicates that (1) at Iowa Administrative Code (IAC) 27–40.64(207), Iowa incorporated 30 CFR 817.41 as it existed on July 1, 1992, and (2) at IAC 27–40.64(6), Iowa incorporated 30 CFR 817.121(c)(2) as it existed on July 1, 1992, except the phrase "To the extent required under applicable provisions of State law."

Iowa has not proposed a schedule to OSM for when it will revise its program to be no less stringent than SMCRA and no less effective than the Federal regulations.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17504) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Iowa (Administrative Record No. IA–415). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received comments from one party in response to its notice (Administrative Record No. IA–419). These comments apply not only to the Iowa program but also to the Kansas and Missouri programs that are addressed below (Administrative Record Nos. KS–598 and MO–632).

The party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues for these States because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Iowa, the Kansas City Field Office on May 9, 1995, consulted with Iowa in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. IA–418). Because there has been no underground mining activity since October 24, 1992, and there is no underground mining activity proposed in the State, the Field Office and Iowa agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Iowa revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Iowa is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Iowa of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Iowa change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in Kansas

Kansas Program Activity, Requirements, and Enforcement

By letter to Kansas dated December 14, 1994, OSM requested information from Kansas that would help OSM decide which approach to take in Kansas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Kansas program requirements (Administrative Record No. KS–594). By letter dated February 3, 1995, Kansas responded to OSM's request (Administrative Record No. KS–595).

Kansas stated that no underground coal mines were operating in Kansas after October 24, 1992, and that there is no underground mining activity proposed in the State.

OSM has determined that Kansas has not revised its statute to incorporate counterparts to the requirements of section 720(a) of SMCRA. Although not specifically stated, Kansas' letter implies that the provisions can be implemented in the State program through the promulgation of regulations.

Kansas indicated that at Kansas Administrative Regulations (KAR) 47–9–1(d)(40), it adopted 30 CFR 817.121 as it existed on July 1, 1990, and was in the process of promulgating regulations adopting 30 CFR 817.121 as it was written on July 1, 1992. Kansas stated that this revised regulation will authorize the repair of structural damage caused by subsidence in accordance with section 720(a)(1) of SMCRA as it existed on December 31, 1993.

Kansas further indicated that it has the authority to investigate complaints concerning water loss through the material damage criteria of KAR 47–9–1(d)(40), which adopts by reference 30 CFR 817.121(a), and through its hydrologic balance regulations at KAR 47–9–1(d)(7), which adopts by reference 30 CFR 817.41. It further stated that any drinking, domestic, or residential water supply, or other beneficial use as defined by the Kansas Water Appropriations Act, which is impaired by diversion or is otherwise impaired, would have to be replaced according to Kansas Statutes Annotated (KSA) 82a–706b. Lastly, Kansas stated that any waters of the state whose quality is adversely impacted will have to be cleaned up at the owner's expense as provided for in KSA 65–171 *et seq.*

Kansas concluded that the above-discussed regulations and statutes adequately encompass the requirements of section 720(a) of SMCRA.

Kansas made these statements about the effectiveness of its regulations on February 3, 1995, prior to the publication of the Federal regulations on March 31, 1995. On May 5, 1995, after Kansas had an opportunity to review the new Federal regulations, OSM discussed with Kansas the Federal requirements and whether Kansas still believed that its regulations contained the necessary counterparts to the Federal regulations (Administrative Record No. KS–597). At that time, it concluded that it did not.

Kansas indicated that it is under a moratorium for promulgating new regulations under its State rulemaking process, but that it will propose new regulations that are counterparts to the Federal regulations at the first opportunity to do so. Such new regulations could not be expected to be promulgated until 1997 or 1998.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17504) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Kansas (Administrative Record No. KS–596). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Iowa program, and OSM's responses to them, also apply to the Kansas program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Kansas, the Kansas City Field Office on May 5, 1995, consulted with Kansas in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. KS–597). Because there has been no underground mining activity since October 24, 1992, and there is no underground mining activity proposed in the State, the Field Office and Kansas agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Kansas revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Kansas is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Kansas of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Kansas change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

E. Enforcement in Missouri

Missouri Program Activity, Requirements, and Enforcement

By letter to Missouri dated December 14, 1994, OSM requested information from Missouri that would help OSM decide which approach to take in Missouri to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Missouri program provisions (Administrative Record No. MO–619). By letter dated February 16, 1995, Missouri responded to OSM's request (Administrative Record No. MO–620).

Missouri stated that the subsidence plan permitting requirements at 10 Missouri Code of State Regulations (CSR) 40–6.120(11) and the performance standards for subsidence control at 10 CSR 40–3.280 generally correspond to the requirements of section 720(a)(1) of SMCRA. In these regulations, Missouri requires the permit applicant to submit a plan detailing steps to prevent subsidence damage or mitigate effects of that damage to "structures or renewable resource lands." Missouri interprets "structures" to broadly mean any building, whether commercial or noncommercial and whether occupied or unoccupied, and it defines "renewable resource lands" as "aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silviculture production for food and fiber, and grazing lands."

Missouri also stated that the underground mining permit requirements for alternate water supply at 10 CSR 40–6.110(8) and protection of hydrologic balance requirements at 10 CSR 40–6.120(5)(B)3., together with the performance requirements for water rights replacement at 10 CSR 40–3.200(14), generally correspond to section 720(a)(2) of SMCRA.

Missouri indicated that all of the above-discussed regulations have effective dates preceding October 24, 1992, and appear to provide Missouri authority to enforce the provisions of section 720 of SMCRA.

On May 10, 1995, OSM confirmed with Missouri that no underground coal mines have operated in Missouri after October 24, 1992, and there is no underground mining activity proposed in the State (Administrative Record No. MO–631).

Missouri indicated that it would propose regulation revisions that are intended to be no less effective than the Federal regulations in the next amendment that it submits to OSM.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17504) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Missouri (Administrative Record No. MO–628). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Iowa program, and OSM's response to them, also apply to the Missouri program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Missouri, the Kansas City Field Office on May 10, 1995, consulted with Missouri in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. MO–631). Because there has been no underground mining activity since October 24, 1992, and there is no underground mining activity proposed in the State, the Field Office and Missouri agree that it is unlikely that any Federal or State enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Missouri revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Missouri is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Missouri of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Missouri change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–18442 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Ohio. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Ohio and consideration of public comments, OSM has decided that initial enforcement in Ohio will be accomplished through State enforcement.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Beverly C. Brock, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Eastland Professional Plaza, 4480 Refugee Road, 2nd Floor, Columbus, Ohio 43232, Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related to thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM Enforcement Decisions

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, **Federal Register** (60 FR 17741) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2)(existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Ohio

Ohio Program Activity, Requirements, and Enforcement

By letter to Ohio dated December 15, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Ohio (Administrative Record No. OH–2073). By letter dated January 18, 1995, Ohio responded to this request (Administrative Record No. OH–2085).

Ohio provided a list of permitted underground coal mining operations. There are eighteen active underground coal mines in Ohio. The term "active underground coal mines" includes coal mines that are currently producing coal. The term also includes coal mines that are not currently producing coal but are being inspected by Ohio at the same rate as those mines that are producing coal. Thus, the number of mines actually producing coal varies and is usually much lower than eighteen. (Administrative Record Number OH–2090). Ohio indicated that existing program provisions at Ohio Revised Code sections 1513.162 and the Ohio Administrative Code sections 1501:13–1–02(S), 1501:13–9–04(P), and 1501:13–12–03 (C), (D), (E), (F), (H), and (I) are the State's authority for enforcement of water replacement and subsidence related structural damage. Ohio explained that it has enforced these State program provisions requiring replacement of water supplies impacted by underground mining operations since 1977 and enforced State program provisions requiring repair or compensation for subsidence related structural damage since 1988. Ohio has distributed Division Policy Procedures addressing subsidence related water replacement at PPD Underground 93–2, subsidence related damages to structures at PPD Underground 90–2 and 90–3.

By letter dated February 1, 1995 (Administrative Record Number OH–2090), Ohio provided information concerning complaints related to underground mining operations in Ohio. Ohio has investigated 26 citizen complaints alleging water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Ohio has made a determination on six of the complaints that water loss was not mining related and on six of the complaints that water loss was mining related. Fourteen complaints are still being investigated. Twelve of the 14 are related to water supplies associated with one underground coal mining operation and are not subsidence related. Ohio also stated that there is only one pending complaint related to structure damage from subsidence.

On June 2, 1995, OSM met with the Ohio Division of Reclamation to discuss the enforcement scheme to be followed in Ohio. Ohio stated that counterparts to 30 CFR 817.41(j) and 817.121(c)(2) are fully provided for in the Ohio program and that the appropriate enforcement scheme for Ohio is State enforcement of the approved Ohio program (Administrative Record Number OH–2131).

Comments. On April 7, 1995, OSM published in the **Federal Register** (60 FR 17741) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Ohio. The comment period closed on May 8, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. OSM received comments from one party in response to its notice (Administrative Record Number OH–2141).

The party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues in Ohio because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Director's Decision. Based on the information discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Ohio will be accomplished by State enforcement of the Ohio program. The Director has made this decision after soliciting public comment (one comment was received) and providing opportunity for public hearing (no requests for a hearing were received), and considering information provided by Ohio by letters dated January 18, 1995, and February 1, 1995, and in discussions held with Ohio on June 2, 1995. The Director would like

to clarify the meaning of subsection (E) of OAC 1501:13–12–03. This subsection states that any agreement between the operator and the structure owner takes precedence over 1501:13–12–03. This section appears to conflict with the requirements of section 720(a)(1) of SMCRA, which requires repair or compensation of damaged structures without regard to private agreements (see 60 FR 16722, 16735; March 31, 1995). When OSM approved this subsection in 1991, OSM asked for clarification from Ohio about this subsection. Ohio clarified this subsection to mean that the agreement must at a minimum require repair or compensation for subsidence damage of a protected structure and that anything less than this would be considered no agreement between the parties (56 FR 52469, 52470–71; October 21, 1991). Therefore, this subsection is in accordance with section 720(a)(1) of SMCRA. The Director has concluded that Ohio law at ORC 1513.162 and rules at OAC 1501:13–1–02(S); 1501:13–9–04(P); and 1501:13–12–03 (C); (D); (E) as clarified in 56 FR 52469 (October 21, 1991); (F); (H); and (I) authorize enforcement of provisions of the Energy Policy Act of 1992 in Ohio from October 24, 1992.

If circumstances within Ohio change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 20, 1995.

David G. Simpson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–18438 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5264–8]

Ohio: Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Ohio submitted an application seeking final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976, as amended (RCRA). The application included a program description, a statement by the Ohio Attorney General, a memorandum of agreement, and the revisions to Ohio's Administrative Code. The Environmental Protection Agency (EPA) has reviewed Ohio's application and has reached a decision, subject to public review and comment, that these hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Ohio to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (hereinafter HSWA).

EFFECTIVE DATE: Final authorization for Ohio shall be effective on September 25, 1995 unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on Ohio's final authorization must be received by 4:30 p.m. central time on August 26, 1995. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a document containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

ADDRESSES: Copies of Ohio's final Authorization Revision Application are available for inspection and copying from 9 a.m. to 4 p.m., at the following addresses: Ms. Kit Arthur, Ohio Environmental Protection Agency, 1800 WaterMark Drive, Columbus, Ohio 43266, Phone 614/644–2956; Mr. Timothy O'Malley, U.S. EPA Region 5, Office of RCRA, 77 W. Jackson, Seventh Floor, Chicago, Illinois 60604, Phone 312/886–6085. Written comments should be sent to Mr. Timothy O'Malley, U.S. EPA Region 5, Office of RCRA, 77 W. Jackson (HRM–7J), Chicago, Illinois, 60604, Phone 312/886–6085.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy O'Malley, Ohio Regulatory Specialist, U.S. EPA Region 5, HRM–7J, 77 West Jackson Blvd., Chicago, Illinois, 60604, (312) 886–6085.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. § 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In accordance with 40 CFR 271.21, revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 124, 260–266, 268, and 270.

B. Ohio

Ohio initially received final authorization for its program effective June 30, 1989 (54 FR 27170). Subsequently, Ohio received authorization for revisions to its program, which became effective on June 7, 1991 (56 FR 14203) and August 19, 1991 (56 FR 28008). On June 21, 1994, Ohio submitted a program revision application for additional program approvals. Today, Ohio is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Ohio's application, and has made an immediate final decision that Ohio's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Ohio. The public may submit written comments on EPA's immediate final decision up until August 26, 1995. Copies of Ohio's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Ohio's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

On September 25, 1995, Ohio will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	Analogous state authority
*Reportable Quantity Adjustment Methyl Bromide Production Wastes, October 6, 1989, (54 FR 41402).	Ohio Administrative Code (OAC) 3745–51–32; Appendix II to 3745–51–20; and Appendix to 3745–51–30; effective February 11, 1992.
*Reportable Quantity Adjustment, December 11, 1989, (54 FR 50968).	OAC 3745–51–31; Appendix to 3745–51–11; Appendix to 3745–51–30; effective February 11, 1992.
*Listing of 1,1-Dimethylhydrazine Production Wastes, May 2, 1990, (55 FR 18496).	OAC 3745–51–32, Appendix II to 3745–51–20; Appendix to 3745–51–30; effective February 11, 1992.
*Land Disposal Restrictions for Third Third Scheduled Wastes, June 1, 1990, (55 FR 22520).	OAC 3745–51–20(B); 3745–51–21(B); 3745–51–22(B); 3745–51–23(B); Appendix to 3745–51–30; 3745–51–31; 3745–51–33(C); 3745–52–11(C); 3745–52–34(A)(4); 3745–54–13(A)(2) Comment; 3745–56–29; 3745–56–56; 3745–56–81; 3745–57–12(A) and (B); 3745–65–13(A)(2) Comment; 3745–67–29; 3745–67–56; 3745–67–81; 3745–68–12(A) and (B); 3745–59–01(C),(C)(3),(C)(3)(a), and (C)(3)(b); 3745–59–02(A)(1),(A)(2),(A)(3),(A)(3)(a)–(h),(A)(4),(A)(5),(A)(6),(A)(7),(A)(7)(a)–(c); 3745–59–03(A) and (B); 3745–59–09; 3745–59–35; 3745–59–40(A) and (C); 3745–59–41; 3745–59–42; 3745–59–43; 3745–65–01(E); effective February 11, 1992. OAC Rule 3745–51–24 (B); effective March 31, 1992. OAC Rule 3745–59–07; 3745–59–07 (A)(1)(b),(A)(2)(a)(ii),(A)(3)(b), (A)(7)–(9), (B)(4)(b),(B)(5)(a),(B)(5)(C), (B)(7),(C); effective September 7, 1992.
*Identification and Listing of Hazardous Waste; Technical Correction, July 19, 1988, (53 FR 27162).	OAC 3745–51–05(E) and (F)(2); effective February 11, 1992.
Mining Waste Exclusion I, September 1, 1989, (54 FR 36592).	OAC 3745–51–03(A)(2)(a) and (A)(2)(c); OAC 3745–51–04(B)(7),(B)(7)(a), (B)(7)(a)(i)–(xxiv),(B)(7)(b), (B)(7)(b)(i)–(xx); effective February 11, 1992.
Mining Waste Exclusion II, January 23, 1990, (55 FR 2322).	OAC 3745–50–10(A)(20); 3745–51–04(B)(7), (B)(7)(a)(i)–(xxiv), (B)(7)(b), (B)(7)(b)(i)–(xx); effective February 11, 1992. OAC 3745–52–23(E); effective March 31, 1992.
Testing and Monitoring Activities, September 29, 1989, (54 FR 40260).	OAC 3745–50–11(A)(4); and Appendix II to 3745–51–20; effective February 11, 1992.
Testing and Monitoring Activities; Technical Correction, March 9, 1990, (55 FR 8948).	OAC 3745–50–11(A)(5); Appendix II to 3745–51–20; effective February 11, 1992.
*Toxicity Characteristic Revisions, March 29, 1990, (55 FR 11798) and June 29, 1990, (55 FR 26986).	OAC 3745–51–06; 3745–67–21(D)(1); 3745–67–73 (A); 3745–51–04(B)(6)(a), (B)(9),(B)(10); 3745–51–30(C); 3745–57–03(E)(1); effective February 11, 1992. OAC 3745–51–24(A) and (B); Appendix to 3745–51–24; effective March 31, 1992. OAC 3745–59–07; effective September 7, 1992.
*Exception Reporting for Small Quantity Generators of Hazardous Waste, September 23, 1987, (52 FR 35894).	OAC 3745–52–42(A)(1),(A)(2), and (B); 3745–52–44; effective February 11, 1992.
*Corrective Action for Injection Wells, December 1, 1987, (52 FR 45788).	OAC 3745–50–46(B); effective February 11, 1992.
Delay of Closure Period for Hazardous Waste Management Facilities, August 14, 1989, (54 FR 33376).	OAC 3745–54–13(A)(1), (A)(3)(a), and (B)(1); 3745–55–12(D)(2)(a) and (D)(2)(b); 3745–55–13(A),(A)(1)(b)(i),(B),(B)(1)(b)(i),(C),(C)(1), (C)(2),(D),(D)(1),(D)(1)(a)–(e),(D)(2),(D)(3),(D)(4),(E),(E)(1),(E)(1)(a)–(b), (E)(2)–(4), (E)(4)(a)–(c),(E)(5),(E)(6),(E)(7), (E)(7)(a)–(d); 3745–55–42(A)(3) and (A)(4); 3745–65–13(A)(1),(A)(3)(a) and (B)(1); 3745–66–12(D)(2)(a) and (D)(2)(b); 3745–66–13(A),(A)(1)(b)(i),(B),(B)(1)(b)(i),(C),(C)(1),(C)(2),(D),(D)(1),(D)(1)(a)–(e), (D)(2),(D)(3),(D)(4),(E),(E)(1),(E)(1)(a)–(b),(E)(2),(E)(3),(E)(4),(E)(4)(a)–(c),(E)(5), (E)(6),(E)(7),(E)(7)(a)–(d); 3745–66–42(A)(3) and (A)(4); effective February 11, 1992.
*HSWA Codification Rule 2—Permit Conditions to Protect Human Health and the Environment, December 1, 1987, (52 FR 45788).	OAC 3745–50–40(L); effective March 31, 1992.
*Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, September 6, 1989, (55 FR 36967) and June 13, 1990, (55 FR 23935).	OAC 3745–58–30(B); 3745–59–01(C),(E),(E)(1), (E)(2), and (E)(3); 3745–59–32(F); 3745–59–33(A),(F) and (G); 3745–59–50(D), effective February 11, 1992. OAC 3745–59–07(A)(3) and (B)(7); effective September 7, 1992.
*Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment, January 31, 1991, (56 FR 3864).	OAC 3745–51–03(D)(1); 3745–51–20(B); 3745–52–10 Comment 2; 3745–52–11(C); 3745–52–34(D)(4); 3745–59–02(A)(5),(A)(7)(a),(A)(7)(b),(A)(3), (A)(3)(a)–(h); 3745–59–09(A) and (D)(1)(b); 3745–59–33 (B); 3745–59–35(A),(C),(D), and (E); 3745–59–40(A); Appendix to 3745–59–40; 3745–59–41(A); 3745–59–42(A),(A)(2) and (A)(3); Appendices I and II to 3745–59–42; 3745–59–43 (A),(C),(C)(1),(C)(2) and (C)(3); 3745–51–31(A); effective February 11, 1992. OAC 3745–59–07(A),(A)(1)(b),(A)(2)(a)(ii), (A)(3)(b),(A)(6) and (A)(7),(A)(8),(A)(9), (A)(10) and (B)(4)(b); effective September 7, 1992.

* Indicates HSWA requirement.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization, and which were issued by EPA prior to the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on June 30, 1989, June 7, 1991, and August 19, 1991, the effective dates of Ohio's final authorization for the RCRA base program, and for subsequent program revisions.

Ohio is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Ohio's program revision meets all of the statutory and regulatory requirements established by RCRA described in its revised program application, subject to the limitations of the HSWA. Accordingly, EPA grants

Ohio final authorization to operate its hazardous waste program as revised. Ohio currently has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program and its amendments. Ohio also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Codification in Part 272

EPA incorporates by reference authorized State programs in Part 272 of 40 CFR to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of the Ohio program will be completed at a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Ohio's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: July 17, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95-18373 Filed 7-26-95; 8:45 am]

BILLING CODE 6560-50-P

48 CFR Parts 1501, 1503, 1504, 1505, 1506, 1509, 1512, 1513, 1514, 1515, 1516, 1519, 1520, 1522, 1524, 1525, 1530, 1531, 1532, 1533, 1536, 1545, 1546

[FRL-5264-7]

Acquisition Regulation; Removal of Obsolete and Unnecessary Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is removing sections of the EPA Acquisition Regulation (EPAAR) which are obsolete, confusing, or involve delegations or procedures internal to the Agency not required for inclusion in the EPAAR.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 260-9032, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Mail Code 3802F).

SUPPLEMENTARY INFORMATION:

A. Background

The President directed each agency to report by June 1, 1995, all Agency regulations which can be deleted because they are obsolete, confusing, or unenforceable. This effort is aimed at making all our regulations cleaner, cheaper, and smarter. This final rule eliminates numerous sections which are outdated or unnecessary. Additionally, this rule eliminates certain delegations and designations of authority covered elsewhere in internal Agency guidance.

In addition, EPA also plans to delete internal Agency procedures for incorporation into internal Agency guidance documents at a later date. These procedures are contained in the following sections:

EPAAR section	Title
1501.602-3	Ratifications.
1504.804-5	Detailed procedures for closing out contract files.
1506.371	Conduct of market surveys.
1509.170-1	Scope of subpart.
1509.170-2	Applicability.
1509.170-3	Purpose.
1509.170-4	Procedures.
1509-406	Procedures.
1509.407-3	Procedures.
1513.570	Oral purchase orders.
1517.201	Exercise of options.
1533.212	Contracting Officer's duties upon appeal.
1536.201	Evaluation of contractor performance.
1536.602-2	Establishment of evaluation boards.
1537.200	Scope of subpart.
1537.205	Management controls.
1542.700	Scope of subpart.
1542.705	Final indirect cost rates.
1542.705-1	Contracting Officer's determination procedure.

B. Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866; therefore, no review is required at the Office of Information and Regulatory Affairs, within OMB.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

This rule does not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq.

E. Unfunded Mandates

This final rule does not impose unfunded mandates on state and local entities or others. It will make the internal Agency procurement process more efficient.

List of Subjects in 48 CFR Parts 1501, 1503, 1504, 1505, 1506, 1509, 1512, 1513, 1514, 1515, 1516, 1519, 1520, 1522, 1524, 1525, 1530, 1531, 1532, 1533, 1536, 1545, and 1546

Government procurement.

For the reasons set out in the preamble, Chapter 15 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Parts 1501, 1503, 1504, 1505, 1506, 1509, 1512, 1513, 1514, 1515, 1516, 1519, 1520, 1522, 1524, 1525, 1530, 1531, 1532, 1533, 1536, 1545, and 1546 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1501.101 is revised to read as follows:

1501.101 Purpose.

This subpart establishes Chapter 15, the Environmental Protection Agency Acquisition Regulation (EPAAR), within Title 48, the Federal Acquisition Regulations System.

3. In Section 1501.602-3, paragraph (c)(2) is revised to read as follows:

1501.602-3 Ratification of unauthorized commitments.

* * * * *

(c)(1) * * *

(2) For ratification actions which arise in regional offices or laboratory sites, the Chief of the Contracting Office to whom the activity functionally reports is the ratifying official.

* * * * *

4. Section 1503.602 is revised to read as follows:

1503.602 Exceptions.

The Assistant Administrator for Administration and Resources Management may authorize an exception, in writing, to the policy in FAR 3.601 and 1503.601 for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, or EPA regulations at 40 CFR part 3. The Assistant Administrator shall consult with the Designated Agency Ethics Official before authorizing any exceptions.

5. Section 1505.202 is revised to read as follows:

1505.202 Exceptions.

The Contracting Officer need not submit the notice required by FAR 5.201 when the Contracting Officer determines in writing that the contract is for the services of experts for use in preparing or prosecuting a civil or criminal action under the Superfund Amendments and Reauthorization Act of 1986.

6. Section 1515.608 is amended by removing paragraphs (b)(2) and (c)(2); by redesignating paragraph (b)(3) as (b)(2) and by revising paragraph (b) introductory text, by revising newly designated (b)(2) introductory text; and by redesignating paragraph (c)(1) as (c) introductory text and redesignating paragraphs (c)(1)(i), (ii) and (iii) as (c)(1), (2) and (3), respectively; and the title to paragraph (c) introductory text to read as follows:

1515.608 Proposal evaluation.

(a) * * *

(b) *Technical evaluation panel report of initial offers.* The TEP shall deliver their report to the Contracting Officer upon completion of the evaluation of initial offers.

(1) * * *

(2) The TEP report shall also include:

* * *

(c) *Technical evaluation panel report following the competitive range determination.* * * *

* * * * *

7. Section 1532.102 is revised to read as follows:

1532.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under EPA contracts or subcontracts for construction and alteration or repair of buildings, structures, or other real property.

8. The following sections are removed:

EPAAR section	Title
1501.303	Codification and public participation.
1501.304	Agency control and compliance procedures.
1501.404	Class deviations.
1503.101-3	Agency regulations.
1503.103-2	Evaluating the certification.
1503.203	Reporting suspected violations of the gratuities clause.
1503.301	General.
1503.408-1	Responsibilities.
1503.409	Misrepresentations or violations of the covenant against contingent fees.
1503.502	Subcontractor kickbacks.
1503.603	Responsibilities of the Contracting Officer.
1505.270	Use of synopses to perform market surveys.
1505.401	General.
1505.502	Authority.
1506.202	Establishing or maintaining alternative sources.
1506.301	Policy.
1506.302	Circumstances Permitting other than full and open competition.
1506.302-1	Only one responsible source and no other supplies or services will satisfy agency requirements.
1506.303	Justifications.
1506.370	Limited competition.
1506.372	Class justification.
1509.105-2	Determinations and documentation.
1509.105-3	Disclosures of preaward information.
1509.506	Procedures.
1509.508	Examples.
1514.205-1	Establishment of lists.
1514.404-1	Cancellation of invitations after opening.
1514.406-3	Other mistakes disclosed before award.
1514.406-4	Mistakes after award.
1515.403	Solicitation mailing lists.
1515.610-70	Limited discussions versus full negotiations.
1515.804-3	Exemptions from or waiver of submission of certified cost or pricing data.
1515.1003	Debriefings.
1519.602-1	Referral.
1520.102	Labor surplus area goals.
1520.303	Review of subcontracting program.
1522.103-4	Approvals.
1522.608-3	Protests against eligibility.
1522.608-4	Award upon final determination.
1522.608-6	Postaward.
1522.1003	Applicability.
1522.1306	Complaint procedures.
1522.1403	Waivers.
1522.1406	Complaint procedures.
1524.202	Policy.
1525.102	Policy.
1530.304	Waiver.
1531.101	Objectives.
1532.402	General.
1532.407	Interest.
1532.409-2	Recommendation for disapproval.
1532.412	Contract clause.
1533.209	Suspected fraudulent claims.
1533.211	Contracting Officer's decision.
1536.203	Government estimate of construction costs.
1536.602-4	Selection authority.
1536.602-5	Short Selection processes for contracts not to exceed $10,000.
1536.604	Performance evaluation.
1536.605	Government estimate of architect-engineer work.
1545.403	Rental—Use and Charges clause.

Dated: July 10, 1995.

Acting Director, Office of Acquisition Management.

Jeanette L. Brown,

[FR Doc. 95-18372 Filed 7-26-95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 950426116-5184-02; I.D. 040495D]

RIN 0648-AG14

Atlantic Tuna Fisheries; Quotas and Permit Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the regulations governing the

Atlantic tuna fisheries to: Set Atlantic bluefin tuna (ABT) fishing category quotas for the 1995 fishing year; control fishing effort in the ABT General category; extend vessel and dealer permitting and reporting requirements to additional Atlantic tunas fisheries; adjust angler bag limits; and make amendments to clarify the regulations, facilitate enforcement and improve management efficiency.

These regulatory amendments address scientific monitoring and allocation issues in the ABT fisheries and simplify rules applicable to recreational fishing for tunas. The permitting and reporting provisions enhance data collection and enforcement of catch restrictions in the Atlantic tuna fisheries and enable the United States to collect fishery information needed by the International Commission for the Conservation of Atlantic Tunas (ICCAT) to produce stock assessments. These actions are necessary to begin implementation of the 1993 recommendation of ICCAT regarding fishing effort on yellowfin tuna, and to implement the 1994 recommendation of ICCAT regarding fishing quotas for ABT, as required by the Atlantic Tunas Convention Act (ATCA).

EFFECTIVE DATE: July 28, 1995.

ADDRESSES: Copies of the Final Environmental Impact Statement (FEIS) and final Regulatory Impact Review/ Regulatory Flexibility Analysis (RIR/ RFA), are available from Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Richard B. Stone and to the Office of Management and Budget (OMB), (0648–0040; 0648–0168; 0648–0202; 0648–0239; 0648–0247), Attention: NOAA Desk Officer, Washington, DC 20503.

Permit applications and reporting forms are available from NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799; or from NMFS, Southeast Regional Office, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

FOR FURTHER INFORMATION CONTACT: Christopher W. Rogers, 301–713–2347; or Kevin B. Foster, 508–281–9260.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 implementing the recommendations of ICCAT and issued under the authority of ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to issue such regulations as may be necessary to carry out the recommendations of ICCAT. The regulatory authority of the Secretary with respect to ICCAT recommendations has been delegated to the Assistant Administrator for Fisheries, NOAA (AA). The AA has determined that provisions of this final rule are necessary to implement the recommendations of ICCAT.

Purpose of Current Action

Background information about the need for revisions to Atlantic tuna fishery regulations was provided in the notice of proposed rulemaking (60 FR 25665, May 12, 1995) and is not repeated here.

Management Measures

These regulatory changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the domestic tuna fisheries:

1. Quota Allocations

Initial ABT quotas by category for the 1995 fishing year are established as follows: General category—438 mt; Harpoon Boat category—47 mt; Purse Seine category—250 mt; Angling category—324 mt; Incidental category—125 mt; Inseason Reserve—145 mt. The quota for the Angling category is further subdivided as follows: Southern area school bluefin—70 mt; northern area school bluefin—80 mt; large school/ small medium bluefin—170 mt; and large medium/giant bluefin (may not be sold)—4 mt. The quota for the Incidental category is further subdivided as follows: Southern area longline—100 mt; northern area longline—23 mt; and other gear—2 mt.

2. General Category Effort Controls

Monthly subquotas and effort controls are established for the ABT General category for the 1995 fishing year. The initial 438 mt quota for the General category is subdivided as follows: June/ July—88 mt; August—175 mt; September—131 mt; and October—44 mt. The AA may designate a portion of the October quota for a particular geographical area.

This rule establishes regulatory authority for the AA to control effort in the General category fishery by designating "no-fishing" days. Prior to the start of each fishing season, scheduled "no-fishing" days will be published in the **Federal Register** for a comment period of 30 days. For calendar year 1995, this notice and comment procedure is waived because such effort controls were discussed at public hearings on the proposed rule. Notice is hereby given that, for 1995, scheduled days on which no large medium or giant ABT may be retained by persons on board vessels permitted in the General category are: July 30, and 31; August 2, 6, 7, 10, 11, 12, 16, 20, 21, 23, 27, 28, and 30; and September 5, 6, 10, 11, 13, 17, 18, 20, 24, 25, and 27. A designated "no-fishing" day may be waived if the AA determines that such effort control is impeding attainment of the monthly quota. If applicable, a notice of such waiver will be filed with the Office of the Federal Register a minimum of 5 days in advance of the scheduled "no-fishing" day.

3. Permits and Reporting

Permits and reporting are required for all of the Atlantic tuna fisheries. Vessels taking any Atlantic tuna for recreational or commercial purposes and fish dealers purchasing any Atlantic tuna must be issued appropriate permits by the Director, Northeast Region, NMFS (Regional Director). Dealer permits for the Atlantic tuna fisheries must be obtained by November 15, 1995. Vessel permits for the Atlantic tuna fisheries must be obtained by November 15, 1995 for commercial vessels including charter and headboat vessels, and by January 1, 1996 for private recreational vessels. Atlantic tunas landed by vessels permitted in the Angling category must not be sold.

Only one category of Atlantic tunas permit may be issued for a vessel. Persons on board General category vessels may fish for non-commercial size class ABT or other species of Atlantic tunas, except when the catch limit for commercial size class ABT has been retained or possessed. Current vessel and dealer permittees in the ABT fishery may fish for, sell, or purchase other species of Atlantic tunas without need of an additional permit. Current vessel and dealer permittees in the Atlantic shark, and Atlantic swordfish fisheries may fish for, sell, or purchase all species of Atlantic tunas, except ABT, without need of an additional permit. Handgear fishermen who are operating solely in the exclusive economic zone (EEZ) surrounding Puerto Rico and the U.S. Virgin Islands and dealers of tuna taken by handgear from those waters are also exempt from permit requirements for the Atlantic tuna fisheries.

Permanent consolidation of permits and ABT allocations is authorized for owners of vessels permitted in the ABT Purse Seine category, however, vessel operators transferring permits may not fish with purse seines in any directed Atlantic tuna fishery.

4. Catch Limits

ABT recreational catch limits applicable to persons on board vessels permitted in the Angling category are two fish per angler per trip from among the school/large school size classes plus one fish per vessel in the small medium size class. In addition, one fish per year per vessel is authorized in the large medium or giant class, provided it is reported and is not sold.

Persons on board vessels permitted in the General category or permitted in the Charter/Headboat category may fish under the catch limits for Atlantic tunas applicable to the Angling category. Captains and mates on board vessels permitted in the Charter/Headboat category may be counted as anglers for the purposes of recreational catch limits.

Regardless of permit category, all fishing for any species must cease and the vessel must return to port to offload once a large medium or giant ABT is retained or possessed under regulations pertaining to the Angling category or General category fishery, as applicable.

5. Size Limits

The minimum size for yellowfin and bigeye tuna is 22 inches (56 cm) total fork length according to the curved measurement method.

6. Other Amendments

Other amendments to the regulations at 50 CFR part 285 are made to restrict close approaches by purse seine vessels to other vessels actively fishing, allow for a 10 percent per season and 15 percent per trip incidental catch of large medium ABT by purse seine operators, codify the allowance for purse seine vessel operators to transfer ABT at sea, restrict issuance of letters of authorization to the Director, redefine authorized gear for the Atlantic tuna fisheries and clarify gear use by permit category, define commercial and recreational fishing, redefine the curved measurement method, authorize use of certain catch-and-release tags issued by organizations other than NMFS, clarify the regulations pertaining to sale of small ABT and possession by dealers, and expand the applicability of subpart C regulations to all Atlantic tunas other than bluefin. These changes will not affect the conduct of the tuna fisheries except to facilitate enforcement, reduce discarding, and reduce gear conflict. Without such changes, the fisheries cannot be monitored or enforced with maximum effectiveness.

Comments and Responses

1. Quota Allocations

Comment: Many fishery participants stated the need, based on increased participation rates and the usefulness of scientific data obtained, to increase the allocation to the Angling and General categories by reducing the allocation to the Purse Seine category. Others commented that the underharvest from the 1994 Angling category fishery should be used to cover the 1994 overharvest in the General category rather than reduce the initial quota for the General category in 1995.

Response: NMFS agrees that participation in the General and Angling categories has increased in recent years and has resulted in early closures for these categories. Because of the reliance on the large fish and small fish catch-per-unit-effort (CPUE) indices for stock assessment, the General and Angling category fisheries should be kept open as long as possible to achieve high survey sampling rates over the widest possible geographic area. Also, NMFS, in response to recommendations from the National Research Council, has increased scientific sampling, working with outside organizations, for genetic studies, microconstituent analysis, sexual maturity determination, tagging studies, and age and growth studies. For these reasons, NMFS has reallocated 51 mt from the Purse Seine category (the only category which has not been subject to increased participation and premature closure) to the Reserve category. A total reserve of 145 mt will allow NMFS to transfer tonnage into other categories as needed to keep fisheries open to maximize scientific data collection. The criteria for such inseason transfers are stipulated in the regulations and are not changed by this rule.

Comment: The General Category Tuna Association (GCTA) petitioned NMFS to amend rules, regulations, and guidelines for allocation of U.S. quota, and to reallocate the quota among user groups. More specifically, GCTA requested that NMFS address areas of: (1) Reallocation, (2) Control of bycatch and discards, and (3) Modification of methodology used in computing costs and benefits related to the directed bluefin tuna fishery.

Response: See response to previous comment. In addition, NMFS agrees that there could be additional reduction in bycatch, and NMFS is supporting research in this area. NMFS will continue to monitor advances in this research to see if additional regulatory action is necessary. The FEIS considers the effect of various management options in terms of net economic benefits, as required under E.O. 12866. However, the FEIS also examines, to the extent that data are available, the economic impact of the management alternatives, including expenditures and employment.

Comment: Many people commented that allocation of quota to the Purse Seine fishery, which, they assert, does not provide useful catch and effort information for scientific monitoring purposes, does not support the overall ICCAT objective of a scientific monitoring quota for ABT.

Response: NMFS agrees that fishery data are essential to monitor the status of the bluefin tuna resource. Information from commercial fisheries that can be used for scientific monitoring (i.e., input to stock assessments) includes landings data, size frequency information, and CPUE data. Rod-and-reel fishermen also tag numerous bluefin each year and purse seiners have been used as platforms for large-scale tagging experiments in the past. All bluefin tuna gear categories provide catch and size frequency information. All commercial landings are censused and measured. However, because purse seine landings cover only a narrow size range and geographic area, they do not provide information about the stock as a whole. In addition, CPUE data from purse seiners cannot be used in stock assessments, since they do not appear to correlate well with stock abundance. Standardized CPUE data are also lacking for the harpoon category and northeastern U.S. coastal longline fisheries. The categories that do provide usable catch per unit effort information are the Angling and General category fisheries and the Gulf of Mexico Incidental Longline fishery. It would also be possible to develop a CPUE series for the northeastern U.S. Incidental Longline fishery using existing methodology, but it would take several years before it could be used in the stock assessment. The feasibility of developing a new series based on aerial survey information from the purse seine and harpoon fisheries is currently being investigated. Thus, NMFS places considerable emphasis on the development of existing and new indices that can be used to monitor stock abundance. Although the need for scientific monitoring is paramount, NMFS' quota allocation decisions also take account of stock rebuilding goals, targeted size categories, historical participation and dependence, number of participants, other socio-economic effects, and other relevant factors.

Comment: Some people expressed concern about the biological, economic, and scientific effects of reallocation

from the Purse Seine category to other categories.

Response: Compared to the current allocation, reallocating 51 mt from the Purse Seine category to other categories will have only a small negative effect on stock rebuilding (the spawning stock will grow slightly less (1 percent less) by the year 2010), and a small positive economic effect (a cumulative increase of $5 million over 16 years, or 2 percent in net national economic benefits). In addition, the use of quota to extend the season for rod-and-reel fisheries increases overall sampling success, leading to increases in the accuracy and precision of CPUE indices.

Comment: There was opposition to the proposed allocation of 350 mt of yellowfin tuna to purse seine vessels permitted for ABT without further analysis of environmental and economic impacts.

Response: NMFS agrees that further analysis and comment on yellowfin tuna allocations is needed, and NMFS is not implementing a purse seine quota at this time.

2. General Category Effort Controls

Comment: Most commenters were in basic agreement on the need to extend the General category fishing season but no clearly preferable option emerged on how to do this. Comments were divided on whether the quota should be partitioned on a monthly or bimonthly basis.

Response: Although there was a geographical split on comments for monthly or bimonthly quotas, NMFS agrees that the first 2 weeks of August are, from the standpoint of price and the U.S. share of the Japanese market, important for the General category-caught ABT. Part of the argument for bimonthly quotas (August/September) was to protect this critical market period. NMFS believes that allocating 40 percent of the General category quota to August and providing a larger reserve, which could be used in August, will reduce the possibility of closure during that period.

Comment: Many fishery participants wanted to reduce the rate of catch in the General category fishery and commented that the proposed 2 days of no fishing each week were insufficient to slow catch rates enough to extend the fishing season. In addition, many commented that the 3-day market closure in Tokyo, Japan, in August should also be considered for time off in the General category fishery.

Response: NMFS concurs that 2 days off per week may be insufficient to slow the catch rates to desired levels. Therefore, NMFS has included Mondays and the 3-day Japanese holiday in August as part of the effort control calendar. Since the AA retains the authority to waive "no-fishing" days under this rule, NMFS has some flexibility to ensure that the desired catch rate is achieved. In future years, a schedule of designated "no-fishing" days will be published in the **Federal Register**.

Comment: Many fishery participants did not want fishing restricted on weekends, citing adverse impact on local economies, particularly shoreside service industries. These participants suggested that all days off be scheduled for weekdays.

Response: NMFS concurs that high participation rates in the General category fishery generate important economic impacts. However, Sundays have been high production days and NMFS is concerned that the effort control program would be ineffective if only weekdays are included in the effort control program. Also, NMFS agrees with some commenters that the burden of "no-fishing" days should be "shared" between part-time and full-time fishery participants. In addition, early closures in the General category eliminate all weekend days, possibly with greater adverse economic impacts. The allowance at this time for General category vessels to participate in the ABT recreational fishery should mitigate some of the adverse impacts of "no-fishing" days.

Comment: Many fishery participants in the Mid-Atlantic area were concerned that the monthly quota for October, in and of itself, would not assure a late-season fishery in the New York Bight area.

Response: Under this final rule, the AA may designate a portion of the October quota for a particular geographic area.

Comment: Some General category participants were concerned that the proposed 7-day notice for waiver of "no-fishing" days would unduly restrict the use of waivers to enable a monthly quota to be reached. They suggested 3-days notice would be adequate.

Response: Under this final rule, the required notification period is reduced to 5 days. NMFS is concerned that 3 days would be insufficient to adequately notify all fishery participants.

3. Permits and Reporting

Comment: Many fishery participants were concerned about the proposed separation of Angling and General category permits. While many anglers maintain General category permits for the limited occasions when giant ABT are available to them, their main fishing activity is for school tuna. There were also concerns that General category vessels could not participate in recreational tournaments when the General category fishery is closed or subject to effort controls.

Response: Since the majority of General category permit holders primarily participate in the recreational fishery, NMFS has decided not to eliminate these vessels from the school tuna fishery. Instead, operators of General category vessels may target and land ABT in the smaller size categories. However, persons on board General category vessels must cease fishing and the vessel must return to port immediately upon retaining or possessing the daily catch limit of large medium or giant ABT.

Comment: NMFS received a petition and other letters from harpoon fishermen, requesting a moratorium on issuance of new Harpoon Boat permits. However, during the comment period on the proposed moratorium, many current and past participants in the Harpoon Boat category fishery expressed concerned about the agency's proposed criteria for limiting entry into that category. Additionally, many fishermen were concerned that NMFS was not addressing limited entry for all ABT categories simultaneously.

Response: While NMFS believes that limited entry programs could have beneficial impacts on the operation and management of the ABT fisheries, NMFS agrees that more discussion is needed to address industry concerns on limited entry, to help develop specific criteria for participation, and to ensure that any adverse effects of incremental changes are minimized. NMFS will hold workshops on limited entry for the tuna fisheries in 1995, but will not limit entry into the Harpoon Boat category this year. To avoid speculative entry or fishing effort in this category, NMFS advises Harpoon category permit holders that catch history in the 1995 season may not be considered in any future limited access program.

Comment: Purse seine operators requested that NMFS amend the proposed hailing and inspection requirements to minimize delays.

Response: NMFS has adjusted the requirements so that only one inspection of the gear and vessel is required prior to the start of the fishing season. In addition, inspection is automatically waived if not undertaken within 48 hours of notifying NMFS.

Comment: Purse seine operators requested that NMFS allow permanent consolidation of permits and ABT allocations and provide for individual vessel quotas which could be freely transferrable to permit holders in all fishing categories.

Response: This rule authorizes permanent consolidation of permits and ABT allocations for owners of vessels permitted in the ABT Purse Seine category, however, vessel operators transferring permits may not fish with purse seine nets in any directed fishery for Atlantic tunas. NMFS believes that freely transferrable quotas could be useful in resolving allocation issues between participants in all categories. However, time is needed to develop monitoring procedures and adequate controls for such a system.

Comment: Artisanal fishermen and local fish dealers operating in Puerto Rico and the U.S. Virgin Islands requested exemptions from the permitting and reporting requirements, because they would duplicate local reporting systems.

Response: NMFS agrees to initially exempt such fishermen and dealers from permitting and reporting while the adequacy of existing information collection programs is investigated.

4. Angling Catch Limits

Comment: Many people commented that simplification of ABT catch limits was needed but that the potential to take two small medium tuna per angler was excessive. It was suggested that the limit for small medium ABT remain at one fish per vessel.

Response: NMFS agrees and has adjusted the catch limits to allow two ABT per angler from either the school or large school size classes plus one small medium ABT per vessel.

Comment: Some charter vessel operators opposed the prohibition on captains and mates from counting as anglers for the purposes of catch limits. They commented that removing this measure would not result in significant catch towards the annual quotas but does impact the success of individual trips.

Response: NMFS remains concerned that increased catch rates, particularly for school bluefin, could result in early closures. Nevertheless, those parties most directly affected by closures are in the best position to moderate catch levels. The rule allows captains/mates to be counted as anglers for the purposes of catch limits.

Comment: While many individuals commented that the proposed yellowfin tuna 10-fish catch limit was too high (relative to actual catch rates), they oppose the limit until NMFS provides further analysis. It is believed that a 10 fish limit amounts to a quota on the recreational fishery while no commercial category, except purse seine, was proposed for yellowfin quota management.

Response: NMFS agrees that further analysis on the impact of recreational catch limits is needed. For this reason, NMFS did not include a yellowfin tuna catch limit in this rule. NMFS seeks further comment on appropriate catch limits for the recreational tuna fishery.

5. Size Limits

Comment: NMFS should set a higher yellowfin size limit because the ICCAT limit does not coincide with age of first spawning; fish should have the opportunity to spawn at least once.

Response: NMFS agrees that increasing the minimum size could be beneficial; however, more information is needed on the potential impact for both recreational and commercial sectors, especially the effect on discard rates and an analysis of release mortality. Because U.S. landings are low relative to total Atlantic landings and the major spawning area is outside of the U.S. EEZ, a higher U.S. size limit is not likely to have measurable effect on yield per recruit. NMFS must, therefore, assess benefits in terms of post-release return of larger fish to U.S. fishing areas.

Comment: Many anglers catch both yellowfin and bluefin. Small sized tunas are difficult to differentiate and the length-weight relationship is approximately the same for young fish of both species. Though 22 inches (56 cm) corresponds to the ICCAT minimum, NMFS should reduce confusion by having a consistent yellowfin, bigeye, and bluefin tuna size minimum of 27 inches (69 cm).

Response: NMFS agrees that a uniform size limit would simplify regulations. However, further analysis is needed before establishing 27 inches (69 cm) curved measure as the minimum for yellowfin and bigeye tuna. Since the 22 inch (56 cm) minimum corresponds closely with the current ICCAT recommendation, NMFS is establishing this as the minimum size for the current time.

6. Technical Amendments

Comment: Many anglers use tags issued by the Billfish Foundation for tag and release fishing. ABT regulations should reflect this.

Response: NMFS is concerned that all anglers register with the NMFS tagging program to assist in data collection and provide a means to contact ABT fishery participants. An allowance is made to certify use of tags issued by other programs, provided anglers are registered with NMFS in the tagging program.

Comment: As proposed, the prohibition on close approaches by purse seine vessels is not truly reciprocal, since approaching the cork line signifies the "act of fishing." There is a need for similar reciprocal language, or purse seiners could be precluded from ever setting the net if other vessels move into an area where a purse seiner is operating.

Response: The regulatory text has been changed to include similar reciprocal language.

Comment: As proposed, the seasonal allowance for purse seine incidental catch of large medium ABT is not enforceable until a vessel's entire annual catch has been landed.

Response: NMFS has amended the incidental catch allowance to restrict the take of large medium ABT to 15 percent per trip and 10 percent per season.

Comment: NMFS has allowed at-sea transfer of ABT between purse seine vessels but the regulations prohibit at-sea transfers for all vessels except permitted buy-boats.

Response: Since 1986, NMFS has allowed transfers between purse seine vessels to reduce discarding when vessels have netted more fish than the remaining vessel allocation would allow. Codified text has been amended to reflect this policy.

Comment: Bandit gear, as defined, is not synonymous with downrigger. This could lead to confusion about use of downriggers by Angling category boats.

Response: The definition of downrigger is clarified and downriggers are authorized for use with rod-and-reel gear under the rules for the Angling, General and Charter/Headboat categories.

Comment: The existing prohibition on the sale of small bluefin does not address dealer trade in Pacific bluefin or imported Atlantic bluefin.

Response: NMFS has clarified the regulations by inserting a new section of regulatory text to specify that small bluefin tuna in the possession of dealers must be accompanied by documentation of origin.

Comment: The existing subpart C regulations apply only to yellowfin and bigeye tuna. NMFS must clarify whether permitting and reporting requirements apply to all species of Atlantic tuna.

Response: NMFS has clarified the regulations by amending subpart C to apply to all Atlantic tunas other than bluefin.

Changes From the Proposed Rule

Based on consideration of comments received, and further analysis of

available data, the following changes were made to the proposed rule:

1. Quota Allocations

Initial ABT quotas by category for the 1995 fishing year were changed by transferring 51 mt from the Purse Seine category to the Reserve category for scientific research and to enhance data collection in the handgear categories. In addition, 4 mt were transferred from the Incidental category to the Angling category to account for catch of large medium and giant ABT in the consolidation of recreational permits.

2. General Category Effort Controls

Monthly subquotas were modified by increasing the percentage allocated to August to 40 percent and reducing the percentage allocated to September to 30 percent. This should reduce the possibility of closure during a critical market period for U.S. product. A portion of the October sub-quota may be set aside for a specific geographic area. In addition, the scheduled days off were increased to 3 per week, generally including Sundays, Mondays, and Wednesdays, but modified to coincide with certain market closures in Japan. The regulatory text has been modified to provide notification and opportunity for comment on the annual schedule of "no-fishing" days. Also, the required advance notice of waiver of days off has been reduced to 5 days from the proposed 7 days.

3. Permits and Reporting

The moratorium on the Harpoon Boat category has been eliminated, pending further analysis and comment. Vessels for which General category permits have been issued may fish for non-commercial size ABT and other species of Atlantic tunas, except when the catch limit for commercial size class ABT has been retained. Handgear fishermen and dealers operating solely in the EEZ surrounding Puerto Rico and the U.S. Virgin Islands are exempt from Atlantic tuna permit requirements. Hailing and inspection requirements for purse seine vessel operators have been revised to minimize delay. Permanent consolidation of permits and ABT allocations is authorized for owners of vessels permitted in the ABT Purse Seine category; however, vessel operators transferring permits may not fish with purse seines in any of the Atlantic tuna fisheries.

4. Catch Limits

ABT catch limits applicable to persons on board vessels permitted in the Angling category are two fish per angler per trip from either the school/large school size classes plus one fish per vessel in the small medium size class. In addition, a total quota of 4 mt is set for the one fish per year per vessel authorized in the large medium or giant class. Captains and mates on board charter/headboat vessels may be counted as anglers for the purposes of catch limits. Operators of charter/headboat vessels are subject to the rules applicable to General category vessels once a large medium or giant ABT is retained or possessed.

5. Size Limits

This rule incorporates the proposed minimum size for yellowfin and bigeye tuna of 22 inches (56 cm) total fork length according to the curved measurement method. Further analysis on alternative minimum sizes will be conducted and comment is requested.

6. Other Amendments

Changes were made to the proposed amendments to restrict close approaches by purse seine vessels to other vessels actively fishing, to codify the allowance for purse seine vessels to transfer ABT at sea, to set the purse seine tolerance for large medium ABT to 15 percent per trip and 10 percent per season, to add definitions for commercial and recreational fishing, to clarify the definition and authorized use of downriggers, to authorize use of certain catch-and-release tags issued by organizations other than NMFS. In addition, a new § 285.34 has been added to clarify the prohibition on dealers possessing and selling bluefin tuna smaller than the large medium size class. Finally, subpart C of part 285 has been revised to make regulations applicable to all Atlantic tunas other than bluefin tuna.

Classification

This final rule is published under the authority of ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that this rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic tuna fisheries.

NMFS prepared an FEIS for this rule that examined the environmental consequences of four national quota levels in combination with five domestic allocation alternatives and three access control alternatives. The selected quota level is expected to allow the bluefin tuna resource to rebuild, while enabling a viable commercial industry and recreational fishery to exist. The selected allocation alternative is expected to result in little biological or economic impact overall, but should improve the quality of data used for scientific monitoring. NMFS does not intend to implement access controls in 1995, pending further analysis. No significant impact on the human environment would result from implementing effort controls in the General category or amending the tuna permitting and reporting requirements. The FEIS has been filed with the U.S. Environmental Protection Agency and has been distributed. Parties not on the initial distribution list may obtain a copy from Richard B. Stone (see **ADDRESSES**).

NMFS prepared an RFA as part of the RIR, which describes the impact this rule has on small entities. The RIR/RFA indicates that General category permit holders (81 percent of commercial vessels landing at least one bluefin in 1994) would face a reduction of gross revenues of approximately 18 percent due to the reduction in overall quota relative to 1994. However, effort controls could result in increased prices, offsetting the revenue decline associated with decreased quota. In addition, inseason transfers from the Reserve category to the General category could increase the total catch in that category. This final rule is also estimated to reduce gross revenues to vessel owners in the Purse Seine category by about 18 percent due to the transfer of 51 mt to the Reserve category. Copies of the RIR/RFA are available from NMFS (see **ADDRESSES**).

This rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains new and revised collection-of-information requirements subject to review under the Paperwork Reduction Act. It modifies requirements that were approved by OMB under control numbers 0648–0202 and 0648–0239 and restates requirements that were approved by OMB under control numbers 0648–0040, 0648–0168 and 0648–0247.

The public reporting burden for completing an application for a Federal fishing permit for vessel owners is estimated at 0.50 hours (30 minutes) per response for initial applications and 0.25 hours (15 minutes) per response for renewals. The public reporting burden for completing an application for a Federal permit for tuna dealers is estimated at 0.08 hours (5 minutes) per response. The public reporting burden for these dealers for collection of information on dealer reports is estimated at 0.08 hours (5 minutes) per response for the phone-in daily dealer reports, at 0.05 hours (2.5 minutes) per response for the written daily dealer reports, at 0.55 hours (33 minutes) per response for the biweekly dealer reports.

The public reporting burden for completing an ICCAT Bluefin Tuna Statistical Document is estimated at 0.33 hours (20 minutes). The public reporting burden for completing a vessel log by vessel owners is estimated at 0.10 hours (6 minutes) per day and 0.10 hours (6 minutes) per notification of fish transfer. The public reporting burden for registering with the NMFS Cooperative Tagging Center is estimated at 0.03 hours (2 minutes).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 21, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.1, paragraph (c) is revised to read as follows:

§ 285.1 Purpose and scope.

* * * * *

(c) This part does not apply to any person or vessel authorized by the Commission, or in writing by the Director, or any state upon written authorization by the Director, to engage in fishing for research purposes.

* * * * *

3. In § 285.2, the definitions of "Center Director" and "Party boat" are removed, definitions of "Bandit gear", "Commercial fishing", "Downrigger", "Fixed gear", "Headboat", "Length overall", "Operator", "Recreational fishing", "Rod and reel", and "Trap" are added in alphabetical order, and the definitions of "Charter boat", "Curved fork length" and "Regional Director", "Straight fork length" are revised to read as follows:

§ 285.2 Definitions.

* * * * *

Bandit gear means vertical hook-and-line gear with rods attached to a vessel, with no more than two hooks per line and with line retrieved by manual, electric, or hydraulic reels.

* * * * *

Charter boat means a vessel less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year.

* * * * *

Commercial fishing means fishing for purposes including sale or barter of any or all of the fish harvested.

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Curved fork length means a measurement of the length of Atlantic tuna taken in a line tracing the contour of the body along the middle of the lateral surface from the tip of the upper jaw to the fork of the tail.

* * * * *

Downrigger means a rod attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling, and that has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line.

* * * * *

Fixed gear means stationary, anchored non-trawl gear.

* * * * *

Headboat (partyboat) means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire.

* * * * *

Length overall means the length listed on the vessel's U.S. Coast Guard Certificate of Documentation or Certificate of Number, or if not documented, on the vessel's state registration certificate.

* * * * *

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

* * * * *

Recreational fishing means fishing for purposes not including sale or barter of any or all of the fish harvested.

Regional Director means

(1) For the purposes of Atlantic tuna vessel and dealer permits and Atlantic bluefin tuna dealer reports, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799; and for purposes of reporting for Atlantic tunas other than bluefin, the Regional Director, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432.

(2) For the purposes of Pacific bluefin dealer permits and reporting, the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

* * * * *

Rod and reel means vertical hook-and-line gear with a hand-held (includes rod holder) fishing rod and with a manually operated reel attached.

* * * * *

Straight fork length means a measurement of the length of Atlantic tuna taken in a straight line along the middle of the lateral surface from a line perpendicular to the tip of the upper jaw to a line perpendicular to the fork of the tail.

* * * * *

Trap means a pound net, weir or staked gill net that is maintained and operated at a fixed location.

* * * * *

4. In § 285.3, paragraphs (j) and (k) are revised, and paragraphs (q), (r) and (s) are added to read as follows:

§ 285.3 Prohibitions.

* * * * *

(j) For any person on board a vessel subject to the jurisdiction of the United States to fish for or catch any Atlantic tuna with gear that is not authorized under § 285.21(b) or § 285.51, or to retain or land Atlantic tunas taken with unauthorized gear.

(k) For any person to possess any Atlantic tuna on board a vessel subject to the jurisdiction of the United States that has gear on board that is not authorized under § 285.21(b) or § 285.51, unless authorized under § 285.7.

* * * * *

(q) Purchase, receive, or transfer for commercial purposes any Atlantic tunas landed by owners or operators of vessels not permitted to do so under this part, or purchase, receive, or transfer for commercial purposes any Atlantic tunas without a valid dealer permit issued under this part.

(r) Sell, offer for sale, or transfer for commercial purposes any Atlantic tunas landed by owners or operators of a vessel not permitted to do so under this part or to any person or vessel without a valid dealer permit issued under this part.

(s) Dispose of fish or parts thereof or other matter in any manner, after any communication or signal from an

authorized officer, or after the approach of an authorized officer.

5. Section 285.9 is removed.

6. In § 285.20, paragraphs (a)(1)(i) and (b)(3) are revised to read as follows:

§ 285.20 Fishing seasons.

(a) * * *

(1) * * *

(i) For anglers fishing for Atlantic bluefin tuna under the quota specified in § 285.22(d);

* * * * *

(b) * * *

(3) A vessel permitted in the Purse Seine category may fish under the bluefin tuna quota specified in § 285.22(c), or in fisheries for Atlantic yellowfin or skipjack tuna or other fisheries where bluefin tuna might be taken as bycatch, only until the allocation of bluefin tuna assigned or transferred under § 285.25(d) to that vessel is reached. Upon reaching its individual vessel allocation of Atlantic bluefin tuna, directed purse seine fisheries for Atlantic tunas are closed to such vessel and the vessel will be deemed to have been given notice to that effect.

* * * * *

7. In § 285.21, paragraphs (a), (b), the heading and first sentence in paragraph (c), and paragraphs (h), (i), and (m) are revised to read as follows:

§ 285.21 Vessel permits.

(a) *Permit requirements.* A vessel that fishes for, takes, retains or possesses Atlantic bluefin tuna must have on board a valid permit issued to the vessel owner under this section.

(b) *Categories of permits.* (1) Upon submission of a complete and valid application pursuant to paragraph (c) of this section, the Regional Director will issue to the owner of each qualifying vessel a permit for one of the following permit categories: General, Charter/Headboat, Angling, Harpoon Boat, Purse Seine, or Incidental Catch. A permit will not be issued for more than one category.

(2) Persons may fish for, retain or possess Atlantic bluefin tuna only under the quota, catch limits, and size classes applicable to the permit category of the carrying vessel, except that anglers on board General and Charter/Headboat category vessels may fish for and retain school, large school and small medium bluefin tuna, subject to the limits applicable to the Angling category only until such time that a large medium or giant bluefin tuna is caught, retained or possessed on board the vessel.

(3) School, large school and small medium bluefin tuna landed by anglers on board General and Charter/Headboat category vessels are counted against the Angling category quota. When the General category fishery is open, large medium and giant bluefin tuna landed by anglers on board General and Charter/Headboat category vessels are counted against the General category quota. When the General category fishery is closed, or at any time in the Gulf of Mexico, large medium and giant bluefin tuna landed by anglers on board Angling and Charter/Headboat category vessels pursuant to § 285.24(d)(2) may not be sold and are counted against the Angling category quota.

(4) Persons fishing for Atlantic bluefin tuna must not possess on board or use any gear inappropriate to the category for which the carrying vessel is permitted:

(i) General—rod and reel (including downriggers), handline, harpoon, bandit gear;

(ii) Charter/Headboat—rod and reel (including downriggers), handline;

(iii) Angling—rod and reel (including downriggers), handline;

(iv) Harpoon Boat—harpoon;

(v) Purse Seine—purse seine nets;

(vi) Incidental Catch—purse seine nets, fixed gear, traps, longlines.

(5) When fishing for, or possessing, Atlantic bluefin tuna, operators of vessels permitted for the Charter/Headboat category must have on board a current copy of the operator's merchant marine license or the operator's uninspected passenger vessel license.

(6) Vessels permitted for any category other than the Angling category are eligible to conduct commercial fishing for Atlantic bluefin tuna.

(c) *Application procedure.* Permits issued under this section must be renewed upon expiration. * * *

* * * * *

(h) *Transfer.* A permit issued under this section, except in the case of a purse seine permit as allowed under paragraph (m) of this section, is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(i) *Display.* A permit issued under this section must be carried on board the vessel at all times. The permit must be displayed for inspection upon request of any authorized officer or any employee of NMFS designated by the Regional Director for such purpose. Upon sale of any large medium or giant Atlantic bluefin tuna, the vessel permit must be presented for inspection to the permitted dealer completing the landing card.

* * * * *

(m) *Closed categories.* The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22(c) only to current owners of those purse seine vessels, or their replacements, that were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to the owner of any vessel that was replaced or consolidated with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

8. In § 285.22, paragraphs (a), (b), (d), (e), the heading and first sentence of paragraph (f) introductory text, and paragraph (h) are revised to read as follows:

§ 285.22 Quotas.

* * * * *

(a) *General.* (1) The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 438 mt, of which 88 mt are available in the period beginning June 1 and ending July 31; 175 mt are available in the period beginning August 1 and ending August 31; 131 mt are available in the period beginning September 1 and ending September 30; and 44 mt are available beginning October 1.

(2) On the basis of the statistics referenced at § 285.20(b)(1), the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal the available quota in any period, and will publish a notification in the **Federal Register** stating that fishing for, retaining, possessing, or landing Atlantic bluefin tuna under the quota for that period is prohibited from a specified time on that date until the opening of the subsequent quota period, whereupon a quota equal to the initial quota for that period as adjusted for estimated overharvest or underharvest prior to that period will become available.

(3) If the Assistant Administrator determines (based on dealer reports, availability of large medium or giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information) that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation of the October quota for such

area. The amount of any geographic allocation shall not exceed 20 mt. The Assistant Administrator will publish notification of any geographic set-aside allocation and its basis in the **Federal Register**. The daily catch limit for the identified area will be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

(b) *Harpoon Boat.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 47 mt.

* * * * *

(d) *Angling.* The total annual amount of Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by anglers is 324 mt. No more than 4 mt of this quota may be large medium or giant Atlantic bluefin tuna and no more that 150 mt of this quota may be school Atlantic bluefin tuna. The quota for school Atlantic bluefin tuna is further subdivided as follows:

(1) 70 mt of school Atlantic bluefin tuna may be caught, retained, possessed, or landed south of 38°47′ N. lat.; and

(2) 80 mt of school Atlantic bluefin tuna may be caught, retained, possessed, or landed north of 38°47′ N. lat.

(e) *Incidental.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 125 mt. This quota is further subdivided as follows:

(1) For longline vessels, 123 mt, no more than 100 mt of which may be caught, retained, possessed, or landed in the area south of 34°00′ N. lat.

(2) For vessels fishing under § 285.23 (a) and (b), 2 mt may be caught, retained, possessed, or landed in the regulatory area.

(f) *Inseason adjustment amount.* The total amount of Atlantic bluefin tuna that will be held in reserve for inseason adjustments is 145 mt. * * *

* * * * *

(h) If the Assistant Administrator determines, based on landing statistics and other available information, that an annual quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator will subtract the overharvest from, or add the underharvest to, that quota category for the following year; provided that the total of the adjusted quotas and the reserve is consistent with a recommendation of the Commission regarding country quotas. The Assistant Administrator will publish any amounts to be subtracted or added and the basis for the quota reductions or increases in the **Federal Register**.

* * * * *

9. In § 285.23, paragraphs (a) and (b) are revised, paragraph (d) is removed, and paragraph (e) is redesignated as paragraph (d) and revised to read as follows:

§ 285.23 Incidental catch.

(a) *Herring, mackerel, and menhaden purse seine gear and fixed gear other than longlines or traps.* Subject to the quotas in § 285.22, large medium and giant Atlantic bluefin tuna may be retained during any fishing trip, on board a vessel for which an Incidental Catch permit has been issued under § 285.21 that is fishing with herring, mackerel, and menhaden purse seine gear or fixed gear other than longlines or traps principally for species of fish other than tuna, provided that the total amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish on board the vessel at the end of each fishing trip.

(b) *Traps.* Subject to the quotas in § 285.22, large medium and giant Atlantic bluefin tuna may be retained during any fishing trip on board a vessel for which an Incidental Catch permit under § 285.21 has been issued that catches Atlantic bluefin tuna incidentally while fishing with traps, provided that the total amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish landed by the owner of the vessel within the preceding 30-day period.

* * * * *

(d) *Purse Seine.* When fishing for Atlantic yellowfin or skipjack tuna, vessels for which an Atlantic bluefin tuna Purse Seine category permit has been issued are allowed a 1 percent per trip (by weight) incidental take of bluefin less than the large medium size class. Any landings of these incidental catches may not be sold and will be counted against the Purse Seine category quota allocation for bluefin tuna.

10. In § 285.24, paragraphs (a), (c), (d), and (e) are revised to read as follows:

§ 285.24 Catch limits.

(a) *General category.* (1) From the start of each fishing year, except on designated "no-fishing" days, only one large medium or giant Atlantic bluefin tuna may be caught and landed per day from a vessel for which a General category permit has been issued under § 285.21. On designated "no-fishing" days, persons on board such vessels may not possess, retain or land any large medium or giant Atlantic bluefin tuna. The Assistant Administrator will publish in the **Federal Register** a schedule of designated "no-fishing" days.

(2) The Assistant Administrator may increase or reduce the catch limit over a range from zero ("no-fishing" days) to a maximum of three large medium or giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable daily catch limit made under this paragraph. Other than fishery closures pursuant to attainment of quotas in any period, such notice of catch limit adjustment shall be published at least 5 calendar days prior to the change becoming effective.

(3) Large medium and giant Atlantic bluefin tuna may be possessed or retained on board a vessel for which a General category permit has been issued if the amount does not exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day.

(4) Anglers on board vessels permitted in the General category may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for the Angling category in effect on that day. However, on allowable fishing days, once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained, fishing by persons on board the vessel must cease and the vessel must proceed to port.

* * * * *

(c) *Purse Seine category.* Large medium bluefin tuna may be caught from a vessel for which a Purse Seine category permit has been issued provided that the total amount of large medium bluefin landed per trip does not exceed 15 percent by weight of the total amount of giant Atlantic bluefin tuna landed on that trip, and the total annual amount of large medium bluefin landed does not exceed 10 percent by weight of the total amount of giant Atlantic bluefin tuna allocated to that vessel for that fishing season.

(d) *Angling category.* (1) Each angler on board a vessel permitted in the Angling category may catch and retain each day no more than two Atlantic

bluefin tuna which may be from the school or large school size class. In addition to the per angler limits, one small medium size class bluefin tuna may be retained each day, per angling category vessel. Anglers may not retain young school Atlantic bluefin tuna.

(2) In addition to the daily catch limit for school, large school and small medium bluefin tuna, a vessel for which an Angling category permit has been issued may catch and retain annually one large medium or giant Atlantic bluefin tuna, to be counted against the Angling category quota specified in § 285.22. The owner or operator of the vessel must report to the nearest NMFS enforcement office within 24 hours of landing any large medium or giant bluefin, and must make the tuna available for inspection and attachment of a tag. No such large medium or giant Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose except for taxidermic purposes. A list of local NMFS enforcement offices may be obtained from the Regional Director.

(3) The Assistant Administrator may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable daily catch limit made under this paragraph. Other than fishery closures pursuant to attainment of quotas in any period, such notice shall be published at least 5 calendar days prior to a change in daily catch limit becoming effective.

(4) Anglers on board vessels for which an Angling category permit has been issued may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for the Angling category in effect on that day.

(e) *Charter/Headboat category.* (1) Anglers on board vessels for which a Charter/Headboat category permit has been issued are subject to the daily catch limits for school, large school, and small medium Atlantic bluefin tuna applicable to the Angling category.

(2) When the General category fishery is closed, or at any time when operating in the Gulf of Mexico, operators of Charter/Headboat vessels are subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (d) of this section.

(3) When the General category fishery is open, except when operating in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued are subject to the daily catch limit in effect for the General category for large medium or giant Atlantic bluefin tuna as specified in paragraph (a) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained, fishing by persons on board the vessel must cease and the vessel must proceed to port. Large medium or giant bluefin tuna landed by Charter/Headboat vessels may be sold and are counted against the quota for the General category.

(4) Anglers on board vessels for which a Charter/Headboat category permit has been issued may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day. Vessels for which a Charter/Headboat category permit has been issued may possess large medium and giant Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day.

11. In § 285.25, paragraph (d) is revised and paragraph (e) is added to read as follows:

§ 285.25 Purse seine vessel requirements.

* * * * *

(d) *Vessel allocations.* (1) Owners or operators of vessels for which a Purse seine permit has been issued under § 285.21(b) must apply for an allocation of Atlantic bluefin tuna from the quotas specified in § 285.22. The owner or operator must apply for this allocation in writing to the Regional Director by April 15 and must specify the particular size class or classes of Atlantic bluefin tuna for which the vessel will fish. The owner or operator must supply documentation of the vessel's stockholders, owners, partners, or association structure.

(2) The Regional Director will review applications for allocations of Atlantic bluefin tuna on or about May 1, and will make equal allocations of the available size classes of Atlantic bluefin tuna among vessel owners so requesting. Such allocations are freely transferrable among purse seine vessel permit holders. Any purse seine vessel permit holder intending to fish for more than one allocation in any fishing season must provide written notice of such intent to the Regional Director 15 days before commencing fishing in that season. Purse seine vessel permit holders who transfer their annual allocation to another purse seine vessel permit holder must not fish their permitted vessel in any fishery in which Atlantic bluefin tuna might be caught.

(3) Purse seine vessel owners may apply to the Regional Director to permanently consolidate vessel permits issued under § 285.21(b). Upon approval of consolidation by the Regional Director, the Atlantic tuna permit(s) of the transferring vessel(s) will be cancelled, and the holder of the consolidated permit is authorized to apply for allocations of Atlantic bluefin tuna commensurate with the number of consolidated permits. Purse seine vessel owners who cancel their permit by means of consolidation must not fish their vessel in any fishery in which Atlantic bluefin tuna might be caught.

(e) *Transfer at sea.* Purse seine vessel owners or operators may transfer large medium and giant Atlantic bluefin tuna at sea from the net of the catching vessel to another permitted purse seine vessel provided the amount transferred does not cause the receiving vessel to exceed its annual vessel allocation as modified by authorized transfers. Such at-sea transfers are authorized only between purse seine vessels permitted under § 285.21 and not to buy boats permitted under § 285.28.

12. Section 285.26 is amended by removing the phrase "tip of the snout" in the second sentence, and adding in its place the phrase "tip of the upper jaw".

13. Section 285.27 is revised to read as follows:

§ 285.27 Tag and release program.

(a) Notwithstanding other provisions of this part, an angler may fish for Atlantic bluefin tuna under a tag and release program, provided the angler tags all Atlantic bluefin tuna so caught with tags issued under this section, and releases and returns such fish to the sea immediately after tagging and with a minimum of injury. To participate in this program, an angler must obtain tags, reporting cards, and detailed instructions for their use from the Cooperative Tagging Center, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149–1099 or by calling (800)437–3936.

(b) Tags obtained from sources other than NMFS may be used to fish for Atlantic bluefin tuna provided the angler has registered each year with the Cooperative Tagging Center and the NMFS program manager has approved the use of tags from that source. Anglers using an alternative source of tags wishing to tag bluefin tuna can call (800) 437–3936 or write NMFS at the address given above.

(c) Anglers registering for the Atlantic bluefin tagging program are required to provide their name, address, phone number, and, if applicable, identify the alternate source of tags.

(d) If NMFS-issued or NMFS-approved tags are not on board a vessel, all anglers on board that vessel are deemed to be ineligible to fish under this section.

14. In § 285.29, paragraphs (a) and (d) are revised to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must report via electronic facsimile (fax) or an Interactive Voice Response System (IVRS) as instructed by the Regional Director within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. Said report via fax or the IVRS must include the tag number affixed to the fish by the dealer, the date landed, the round and/or dressed weight (indicating which weight(s) measured), the total or pectoral fin curved fork length (indicating which length(s) measured), and the permit category of the landing vessel. In addition, dealers must submit to the Regional Director a daily report on a reporting card provided by NMFS. Said card must be postmarked and mailed at the dealer's expense within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each vessel permit holder or vessel operator must sign each reporting card immediately upon transfer of the fish to verify the name of the vessel that landed the fish and the vessel permit number, and each card must indicate the tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round and/or dressed weight (indicating which weight(s) measured), the total and/or pectoral fin curved fork length (indicating which length(s) measured), gear used, and area where the fish was caught. The dealer purchasing or receiving the Atlantic bluefin tuna must inspect the vessel permit and verify that the required vessel name and vessel permit information is correctly recorded on the reporting card.

* * * * *

(d) Must retain at his/her place of business a copy of each landing card (including proof of fax or IVRS transmission) and a copy of each bi-weekly report for a period of 2 years from the date on which each was required to be submitted to the Regional Director.

* * * * *

15. In § 285.31, paragraphs (a)(3), (a)(4), (a)(8), (a)(13), (a)(15), (a)(30), (a)(31), (a)(34) and (a)(37) are revised and paragraph (a)(38) is added to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(3) Fish for, catch, possess or retain Atlantic bluefin tuna in excess of the quotas specified in § 285.22 except that fish may be caught and released under the provisions of § 285.27.

(4) Fish for, catch, or possess or retain Atlantic bluefin tuna in excess of the catch limits specified in § 285.24, or to possess or retain large medium or giant ABT on designated "no-fishing" days, except that fish may be caught and released under the provisions of § 285.27.

* * * * *

(8) For any vessel other than a vessel holding a purse seine permit issued under § 285.21(b), to approach to within 100 yd (91.5 meters) of the cork line of any purse seine net used by any vessel fishing for Atlantic bluefin tuna, or for any such purse seine vessel to approach to within 100 yd (91.5 meters) of any vessel, other than a purse seine vessel, actively fishing for Atlantic bluefin tuna;

* * * * *

(13) Purchase, receive, or transfer any Atlantic bluefin tuna at sea from a person or vessel engaged in fishing for such tuna without a valid dealer permit for buy-boat operations issued under § 285.28 unless between permitted purse seine vessels as authorized under § 285.25(e);

* * * * *

(15) Sell, offer for sale, or transfer to any person for a commercial purpose any large medium or giant Atlantic bluefin tuna caught with rod and reel gear under § 285.24(d)(2) or § 285.24(e)(2);

* * * * *

(30) Fish for, catch, possess, or retain Atlantic bluefin tuna from the Gulf of Mexico except as specified under §§ 285.23(c) or 285.24(e)(2), or if taken incidental to recreational fishing for other species and retained in accordance with § 285.24(d)(2);

(31) Fish for, catch, possess or retain Atlantic bluefin tuna with a gear type or in a manner other than specified in §§ 285.21, 285.22, 285.23, 285.24 and 285.25, or other than authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7;

* * * * *

(34) Sell, offer for sale, purchase, receive for a commercial purpose, trade, or barter, or if a seafood dealer or processor, retain or possess, any Atlantic bluefin tuna other than a large medium or giant, except with documentation as specified in § 285.34;

* * * * *

(37) Fish for, catch, possess or retain any Atlantic bluefin tuna less than the large medium size class from a vessel other than one issued a permit for the Angling, General or Charter/Headboat categories under § 285.21, or a Purse Seine category permit operating under § 285.23(d);

(38) Fail to cease fishing and return to port once the catch limit for large medium and giant bluefin is retained or possessed on board vessels permitted in the General and Charter/Headboat categories.

16. In § 285.32, paragraphs (a) and (b) are revised to read as follows:

§ 285.32 Civil penalties.

(a) Any person who violates § 285.31(a)(1) through (a)(21) inclusive, or (a)(25) through (a)(31) inclusive, or (a)(33) and (a)(34) or (a)(36) through (a)(38) inclusive, will be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for a subsequent violation.

(b) Any person who violates § 285.31(a)(22) through (24) inclusive, or (a)(32), or (a)(35) will be assessed a civil penalty of not more than $1,000, and a civil penalty of not more than $5,000 for a subsequent violation.

* * * * *

17. Section 285.34 is added to read as follows:

§ 285.34 Restrictions on sale.

(a) Any Atlantic bluefin tuna less than the large medium size class may not be, or attempted to be, purchased, bartered, traded, sold, or offered for sale, or retained or possessed by a dealer or seafood processor in any state unless it is lawfully imported and is accompanied by the Commission's Bluefin Tuna Statistical Document.

(b) Except for a bluefin tuna landed in a Pacific state and remaining in the state of landing, a bluefin tuna that is possessed by a dealer or seafood processor is deemed to be a bluefin tuna harvested from the Atlantic Ocean by a United States vessel unless it is accompanied by the Commission's Bluefin Tuna Statistical Document.

18. Subpart C is revised to read as follows:

Subpart C—Atlantic Tunas Other Than Bluefin Tuna

285.50 Species subject to regulation.
285.51 Authorized fishing gear.
285.52 Size limits.
285.53 Vessel permits.
285.54 Commercial Vessel recordkeeping and reporting.
285.55 Dealer permits.
285.56 Dealer recordkeeping and reporting.
285.57 Purse Seine vessel requirements.
285.58 Incidental catch.
285.59 Prohibitions.

Subpart C—Atlantic Tunas Other Than Bluefin Tuna

§ 285.50 Species subject to regulation.

Regulations contained in this subpart pertain to yellowfin tuna, bigeye tuna, albacore tuna, skipjack tuna and Atlantic bonito.

§ 285.51 Authorized fishing gear.

Fishing for, catching, retention or possession of Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito in the regulatory area by persons on board fishing vessels subject to the jurisdiction of the United States is authorized only for handline, rod and reel (including downriggers), harpoon, purse seine, longline, drift gillnet and bandit gear unless the gear is authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7.

§ 285.52 Size limits.

(a) Fishing for, catching, retention or possession of Atlantic yellowfin and bigeye tunas in the regulatory area by persons on board fishing vessels subject to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna measuring 22 inches (56 cm) or more in total curved fork length.

(b) Total curved fork length is the sole criterion for determining the size class of whole (head on) Atlantic yellowfin and bigeye tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body along the middle of the lateral surface from the tip of the upper jaw to the fork of the tail.

§ 285.53 Vessel permits.

(a) *Permit requirements.* The operator of each vessel that fishes for, or takes, Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must have on board a valid permit issued under this section.

(b) *Commercial vessel permits.* Effective November 15, 1995, as a prerequisite to selling Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito and to be eligible for exemption from applicable bag limits, if any, specified in this subpart, an owner or operator of a vessel that fishes for or takes Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must be issued by the Regional Director a vessel permit in the commercial category appropriate for the gear type or method of fishing.

(c) *Charter/Headboat vessel permits.* Effective November 15, 1995, owners or operators of charter vessels and headboats must be issued by the Regional Director a charter/headboat vessel permit to lawfully fish for, catch, retain or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito. Anglers on board charter vessels and headboats must adhere to applicable catch limits for the recreational fisheries.

(d) *Recreational vessel permits.* Effective January 1, 1996, owners or operators of private recreational vessels are required to obtain vessel permits in order to fish for, catch, retain or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito. Anglers on board private recreational vessels must adhere to applicable daily catch limits. Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito taken on board private recreational vessels may not be sold.

(e) *Purse seine.* Directed purse seine fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito is restricted to owners of those purse seine vessels that have current Atlantic bluefin tuna purse seine permits under § 285.21(b) and that have reported, or replaced vessels that have reported, Atlantic yellowfin, skipjack, albacore or bigeye tuna landings to NMFS over the period 1989 through 1993. The owner or operator of such purse seine vessel must apply for authorization to fish for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito in writing to the Regional Director by April 15. The owner must supply documentation of the vessel's stockholders, owners, partners, or association structure and records of landings to verify that the vessel meets the qualifying criteria. The Regional Director will review these applications for authorization on or about May 1 and issue authorizations as appropriate.

(f) *Exemptions.* In lieu of a permit issued under this section, persons on board a vessel for which a valid permit for the Atlantic bluefin tuna fishery has been issued under § 285.21 of this part are eligible to fish for and take Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito using the authorized gear and subject to the commercial fishing restrictions applicable to the category of permit issued for the vessel. In lieu of a permit issued under this section, owners or operators of vessels for which valid permits for the Atlantic shark fishery (50 CFR part 678) or the Atlantic swordfish fishery (50 CFR part 630) have been issued are eligible to fish for and take Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito using the authorized gear and subject to the commercial fishing restrictions applicable to the permit issued to the vessel. Owners or operators of vessels fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands with only handgear on board are exempt from the permit requirements of this section.

§ 285.54 Commercial vessel recordkeeping and reporting.

(a) The master or other person in charge of a fishing vessel that engages in commercial fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito or any person as may be authorized in writing to serve as the agent of such master or person, must:

(1) Keep an accurate log of all operations conducted from the vessel, entering therein for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of tuna on board by species. The record and bridge log shall be sufficient to comply with this paragraph, provided however, that the items of information specified herein are fully and accurately entered in such log; and,

(2) Furnish on a form obtainable from the Regional Director, following the sale or delivery of a catch of tuna made by such vessel, a report, certified to be correct as to facts within the knowledge of the reporting individual, giving the name and official number of the fishing vessel, the dates of beginning and ending of the fishing voyage, the port of departure, and a listing separately by species of the round weight quantities (pounds or short tons) of tuna sold or delivered. At the option of the vessel master or other person in charge, a copy of the fish ticket, weighout slip, settlement sheet, or similar record issued by the dealer or his agent may, however, be used for reporting purposes in lieu of the form obtainable from the Regional Director, if such alternate record is similarly certified and contains all items of information required by this paragraph. Such sale and delivery reports must be delivered or post marked and mailed to the Regional Director within 72 hours after weighout has been completed.

(b) The master or other person in charge of a fishing vessel, subject to the jurisdiction of the United States, except vessels proceeding directly to Puerto Rico or to any other U.S. port for unloading, must report to the Regional Director not less than 48 hours prior to entering the regulatory area via the Panama Canal. In addition, the master or other person in charge of a vessel, subject to the jurisdiction of the United States except a vessel without fish on board, must notify the Regional Director not less than 48 hours prior to leaving the regulatory area via the Panama Canal. Each report must include the name of the reporting vessel, the tonnage by species on board, and whether the fish were caught in Pacific or Atlantic waters.

(c) All such fishing vessels entering or leaving the regulatory area via the Panama Canal are subject to inspection. Official seals will be affixed to wells containing fish taken within or outside the regulatory area, as appropriate and the same will be noted on the vessel log. The official seals may be removed only by a designated agent of NMFS upon arrival at point of sale or delivery.

(d) The master or other person in charge of a fishing vessel subject to the jurisdiction of the United States, must notify the Regional Director not less than 48 hours prior to any transfer of Atlantic tuna taken in the regulatory area to another vessel for the purpose of transshipment. Such reports must include the date and place of unloading, name and destination of the oncarrying vessel, and the tonnage by species of tuna transferred.

(e) The failure to file the reports or to follow the procedures required by this section, the tampering with or the removal of an official seal, or the alteration of a fishing vessel's log by any person or fishing vessel subject to the jurisdiction of the United States is a prohibited act within the meaning of § 285.3.

(f) Any person authorized to carry out enforcement activities under the Act or these regulations has power, without warrant or other process, to inspect, at any reasonable time, catch on board the vessel, log books, catch reports, statistical records, or other reports as required by the regulations in this part to be made, kept or furnished.

(g) Owners and operators of vessels fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands with only handgear on board are exempt from the reporting requirements of this section.

§ 285.55 Dealer permits.

(a) *General.* Effective November 15, 1995, a dealer purchasing or attempting to purchase, receiving, possessing, importing or exporting Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must have a valid permit required under this section.

(b) *Application.* Applications for a dealer permit must be in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon which the applicant desires the permit to be effective. The application must contain the following information: Company name; principal place of business; owner or owners' names; applicant's name (if different from owner or owners) and mailing address and telephone number; and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section remains valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit which is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit will report the change in writing to the Regional Director.

(l) *Exemptions.* Dealers issued valid permits for the Atlantic bluefin tuna fishery under § 285.28 of this part, dealers issued valid permits for the Atlantic shark fishery (50 CFR part 678) or the Atlantic swordfish fishery (50 CFR part 630), and dealers located in Puerto Rico and the Virgin Islands who purchase, sell, or re-sell only Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito taken shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands by handgear are exempt from the permit requirements of this section.

§ 285.56 Dealer recordkeeping and reporting.

(a) A dealer who has been issued a dealer permit pursuant to § 285.55 must submit reports to the Fisheries Science Center Director as specified in paragraph (b) of this section. A report form is available from the Science and Research Director. The following information must be included in each report:

(1) Name, address, and permit number of the dealer.

(2) Names and official numbers of fishing vessels from which Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito were received.

(3) Dates of receipt of Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito.

(4) Listed by each port and county where Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito were offloaded from fishing vessels:

(i) Total weight (pounds) for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito by market category, if applicable, and for other

species received with the tuna, including, but not limited to, shark, swordfish, dolphin, and wahoo; and

(ii) Price per pound or total value paid by market category for tuna and other species, to the extent that such price information is known at the time of reporting.

(b) A report of tuna and other applicable species received by a dealer on the first through the 15th days of each month must be submitted to the Science and Research Director postmarked not later than the 20th day of that month. A report of tuna and other applicable species received by the dealer on the 16th through the last day of each month must be submitted to the Science and Research Director postmarked not later than the 5th day of the following month. If no tuna was received during the reporting period, a report so stating must be submitted postmarked as specified for that respective reporting period.

(c) The reporting requirement of paragraph (a) of this section may be satisfied by providing a copy of each appropriate weigh-out sheet and/or sales record, provided such weigh-out sheet and/or sales record, by itself or combined with the form available from the Science and Research Director, includes all of the required information.

(d) In lieu of providing a required report to the Science and Research Director by mail, as specified in paragraph (a) of this section, a dealer may provide a report to a state or Federal fishery port agent designated by the Science and Research Director. Reports so provided must be delivered to such port agent not later than the prescribed postmark date for submitting each such report.

(e) *Additional data and inspection.* Additional data may be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. Dealers are required to make tuna available for inspection by the Science and Research Director or an authorized officer and must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito;

(f) *Recordkeeping.* Dealers must retain at their place of business a copy of each bi-weekly report for a period of 2 years from the date on which each was required to be submitted to the Regional Director.

(g) *Exemptions.* Dealers located in Puerto Rico and the Virgin Islands who purchase, sell, or re-sell only Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito taken shoreward of the outer boundary of the EEZ around Puerto Rico and the Virgin Islands by handgear are exempt from the reporting and recordkeeping requirements of this section.

§ 285.57 Purse Seine vessel requirements.

(a) *Mesh size.* Any owner or operator of a purse seine vessel conducting a directed fishery for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must use a purse seine net with a mesh size as specified under § 285.25(a).

(b) *Inspection.* The owner or operator of a purse seine vessel conducting a directed fishery for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of any regulated species. The owner or operator must request such inspection at least 48 hours before commencement of the first fishing trip of the season. In addition, at least 48 hours before commencement of offloading any Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito after a fishing trip, the owner or operator must request an inspection of vessel and catch by calling 508–563–5721 or 508–281–9261. The inability to provide for an inspection within 48 hours of notification shall constitute a waiver of this requirement. The owner or operator of a purse seine vessel must have the vessel's catch information recorded on the appropriate forms at the time of offloading and prior to transporting said tuna from the area of offloading.

§ 285.58 Incidental catch.

Persons or fishing vessels subject to the jurisdiction of the United States must release, in a manner to promote survival, any yellowfin tuna or bigeye tuna less than the minimum size specified in § 285.52 taken incidental to authorized fishing in the regulatory area.

§ 285.59 Prohibitions.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States to do any of the following:

(1) Fish for, catch, possess, retain or land Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito without a valid permit required under § 285.53 and carried on board the vessel;

(2) Fish for, catch, land, retain or possess, Atlantic yellowfin or bigeye tuna below the minimum size specified in § 285.52;

(3) Fail to release immediately with a minimum of injury any Atlantic yellowfin or bigeye tuna that will not be retained;

(4) Fish for or catch Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito in a directed fishery with purse seine nets if without any remaining bluefin tuna allocation made under § 285.25(d);

(5) For any vessel other than a vessel holding a purse seine permit issued under § 285.53(d), to approach to within 100 yds (91.5 meters) of the cork line of any purse seine net used by any vessel fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito, or for any such purse seine vessel to approach to within 100 yds (91.5 meters) of any vessel, other than a purse seine vessel, actively fishing for Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito;

(6) Begin fishing or offloading from any purse seine vessel to which a permit has been issued under § 285.21 any Atlantic tuna without first requesting an inspection of the vessel in accordance with § 285.57(b);

(7) Fail to report the catching of any Atlantic tuna to which a plastic tag has been affixed under a tag and release program conducted by NMFS or any other scientific organization;

(8) Falsify or fail to make, keep, maintain, or submit any reports, or other record required by this subpart;

(9) Refuse to allow an authorized officer to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Atlantic tuna required by this subpart;

(10) Make any false statement, oral or written, to an authorized officer concerning the catching, harvesting, landing, purchase, sale, or transfer of any Atlantic tuna;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part;

(12) Refuse to permit access of NMFS personnel to inspect any records relating to, or area of custody of, Atlantic yellowfin, bigeye, albacore, and skipjack tunas and Atlantic bonito;

(b) It is unlawful for any person subject to the jurisdiction of the United States to violate any other provision of this subpart, the Act, or any other rules implemented under the Act.

[FR Doc. 95–18419 Filed 7–21–95; 4:36 pm]
BILLING CODE 3510–22–F

50 CFR Part 663

[Docket No. 941265–4365; I.D. 071995B]

Pacific Coast Groundfish Fishery; End of Whiting Regular Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions.

SUMMARY: NMFS announces the end of the regular season for the Pacific whiting (whiting) fishery off Washington, Oregon, and California and the reimposition of a 10,000–lb (4,536–kg) trip limit coastwide. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan that governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. This action is intended to keep landings close to the 1995 harvest guideline for whiting, while allowing small quantities to be landed by fresh fish and bait fisheries and as bycatch in other fisheries.

EFFECTIVE DATE: Effective from 0001 hours (local time), July 24, 1995, until the effective date of the 1996 annual specifications and management measures, which will be published in the **Federal Register**.

ADDRESSES: Comments on this action should be sent to Mr. William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Ms. Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these actions has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson 206–526–6140; or Rodney R. McInnis 310–980–4040.

SUPPLEMENTARY INFORMATION: At its October 1994 meeting, the Pacific Fishery Management Council (Council) recommended that a 10,000–lb (4,536–kg) trip limit apply to landings of whiting after the end of the regular season (when the harvest guideline is reached) (60 FR 2339, January 9, 1995). At-sea processing of whiting was prohibited on May 4, 1995 (60 FR 24572, May 9, 1995) when 107,000 metric tons (mt) (60 percent of the 178,400 mt harvest guideline) was projected to have been taken (102,624 mt for at-sea processing and 3,932 mt for shore-based processing). The remaining 71,844 mt of the harvest guideline was reserved for delivery to shore-based processors.

Based on the best available information on current and projected rates of landings, the Regional Director has determined that approximately 168,346 mt of whiting has been caught through July 16, 1995, and that at a rate of about 1,200 mt delivered shoreside per day, the 178,400 mt harvest guideline would be reached on July 24, 1995. Therefore, the regular season ends and the 10,000–lb (4,536–kg) trip limit for whiting resumes at 0001 hours (local time), July 24, 1995. Because at-sea processing of whiting is prohibited, this trip limit applies only to vessels delivering shoreside. The trip limit is intended to accommodate small bait and fresh fish markets and the bycatch of whiting in other fisheries.

NMFS Action

NMFS announces the following change to the 1995 fishery specifications and management measures for whiting published at paragraph IV.F.(1)(b) (60 FR 2343, January 9, 1995) as follows:

(b) No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed, per vessel per fishing trip.

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the office of the Regional Director (see **ADDRESSES**) during business hours. This action was recommended by the Council at its October 1994 meeting, and was announced in the annual specifications and management measures on January 9, 1995 (60 FR 2331). There was an opportunity for public comment at the August and October 1994 Council meetings. Supporting documents (catch projections) were available for public inspection prior to, and at, the June 1995 Council meeting. Because of the need for immediate action, and because the public had an opportunity to comment on the action at Council meetings, NMFS has determined that good cause exists for this action to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. This action is taken under the authority of 50 CFR 663.23(b)(3) and (c)(1)(i)(I), and is exempt from review under E.O. 12866.

Dated: July 21, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–18432 Filed 7–24–95; 11:55 am]
BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 072095B]

Groundfish of the Gulf of Alaska; "Other Rockfish" in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting the retention of "other rockfish" in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of "other rockfish" in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the "other rockfish" total allowable catch (TAC) in the Central Regulatory Area of the GOA has been reached.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), July 21, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii), the TAC for "other rockfish" in the Central Regulatory Area was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 370 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for "other rockfish" in the Central Regulatory Area of the GOA has been reached. Therefore,

NMFS is requiring that further catches of "other rockfish" in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 672.20(e).

Classification

This action is taken under § 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–18420 Filed 7–21–95 4:36pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 144
Thursday, July 27, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Parts 615, 618, and 620

RIN 3052–AB48

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Disclosure to Shareholders; Capital Adequacy

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the FCA Board (Board), proposes amendments to FCA capital regulations for Farm Credit System (Farm Credit or System) institutions to add unallocated surplus and total surplus standards for banks and associations; add a collateral ratio for banks; add procedures for the establishment of individual institution capital standards and for the issuance of capital directives; remove outdated provisions; and make other technical, clarifying, and conforming changes. The regulation would require that each institution maintain at least a minimum level of unallocated surplus and total surplus capital, and that banks maintain at least a minimum collateral ratio. In addition, the regulations would specify procedures for setting higher individual capital standards when warranted by higher risk and issuing capital directives.

DATES: Written comments must be received on or before October 25, 1995.

ADDRESSES: Comments should be submitted in writing to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Surplus and Collateral Requirements

System banks and associations should hold sufficient capital to operate in a safe and sound manner, provide a foundation for future viability, and provide a reasonable level of protection to shareholders who must purchase equity in a System institution as a condition of receiving a loan. The FCA proposes to require System banks and associations to maintain the following capital standards in addition to the existing risk-adjusted permanent capital standards:

- A ratio of at least 7 percent of total surplus to risk-weighted assets; and
- A ratio of at least 3.5 percent of unallocated surplus to risk-weighted assets.

For purposes of the total surplus computation, institutions would be permitted to treat the following as surplus: stock held by non-borrowers, allocated stock, and stock held by borrowers that was not purchased as a condition of receiving a loan, provided that all of such stock can only be retired pursuant to a discretionary revolvement plan of at least 5 years or a similar retirement plan. Perpetual stock held by non-borrowers could also be included in the unallocated surplus computations. For the purposes of the total surplus computation, the double counting of association investments in their affiliated banks would be eliminated according to the permanent capital allotment agreements. However, the unallocated surplus measurement for an association would be net of the association's investment in the bank.

In addition, banks would also be required to maintain a collateral ratio of at least 104 percent of eligible assets (as defined by § 615.5050 of existing FCA regulations) to liabilities, net of any bank equities that are being counted as permanent capital of associations.

The existing permanent capital requirements would continue unchanged. An institution that falls below its permanent capital ratio is statutorily prohibited from further retirement of borrower stock, but noncompliance with the proposed surplus and collateral standards would not result in the same prohibition. However, as proposed by these regulations, noncompliance with the surplus or collateral ratios would prohibit the board of directors of an institution from delegating the decision to retire stock to management.

Institutions that do not satisfy the proposed surplus and collateral standards would be required to develop and implement a plan approved by the FCA for building surplus to attain the standards within a reasonable time. An association that does not meet the unallocated surplus standard would have the option, as part of its capital plan, of entering into a risk-sharing agreement with its affiliated bank. Under such a risk-sharing agreement, the bank would share association losses up to an amount not to exceed the amount of bank equities counted as association permanent capital. Institutions meeting the goals of plans approved by the FCA would be considered to be in compliance with their applicable surplus and collateral ratios.

II. Background

Since 1986, the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 *et seq.*, has required the FCA to "cause institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such System institutions and by using such other methods as the [FCA] deems appropriate." Section 4.3(a) of the Act. Provisions of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100–233, added a requirement that the FCA promulgate regulations establishing minimum standards of "permanent capital" as defined in the statute. These standards were required to be based on financial statements prepared in accordance with generally accepted accounting principles (GAAP) and to take into consideration relative risk factors as determined by the FCA.

Most of the FCA's existing capital regulations were adopted in 1988, in order to implement the permanent capital provisions of the 1987 Act. Those regulations: (1) Established a minimum permanent capital standard for both banks and associations of 7

percent of risk-weighted assets, after elimination of intra-System reciprocal investments; and (2) prohibited the double counting of capital invested by associations in their affiliated banks. Such capital was to be counted as permanent capital by only one institution, and the regulation specified that eventually only the bank could count it. In October 1992, the statutory definition of "permanent capital" was amended by Congress to permit banks and associations to specify by mutual agreement the amount of allocated equities that would be considered bank or association equity for the purpose of calculating the permanent capital ratio. In July 1994, the FCA amended the regulations to implement the statutory change.

The 1992 statutory change was a response to concerns raised by the System that the 1988 regulatory provisions would have resulted in additional tax liabilities for Farm Credit associations. The associations' investments in their respective banks resulted over a period of many years and largely consisted of allocated equities—that is, earnings that tax-exempt banks distributed to their owner associations in the form of stock or allocated surplus rather than cash. When earnings were distributed in the form of equities, taxes did not have to be paid by the associations.

III. Purposes of Capital

The capital structure of a System institution, at a minimum, needs to fulfill three broad purposes:

A. To provide a cushion that will allow an institution to remain financially viable during periods of adversity, thereby protecting the System institutions, investors, and taxpayers;

B. To provide a source of funds to help stabilize earnings and finance growth; and

C. To denote and protect the ownership, investment, and rights of shareholders.

There are several categories of capital in the System that, in combination, achieve one or more of these fundamental purposes of capital. These categories are: borrower stock; participation certificates; preferred stock; allocated equities; and unallocated surplus. Borrower stock is common shareholder equity purchased as a condition of obtaining a loan with a System institution.[1] Participation certificates are similar to borrower stock and arise from authorized lending relationships with entities and individuals ineligible to own borrower stock.[2] Preferred stock may be sold to individuals separate from the lending relationship and provides preferential treatment, such as the payment of fixed dividends or preference over common shareholders upon liquidation. Allocated equities, including allocated surplus and allocated borrower stock, result from a patronage allocation of an institution's earnings to its active members. Finally, unallocated surplus is the unallocated retained earnings of an institution.

IV. FCA Review and Concerns

The FCA has been engaged in a comprehensive review of its capital regulations to determine whether they create appropriate incentives for the accumulation of adequate amounts of various components of capital, in light of risks undertaken by the System. The FCA has also reviewed the principles of the 1988 international framework for capital standards, known as the Basle Accord, and capital regulations imposed by Federal banking agencies on commercial banks and thrifts, as well as a publication evaluating the adequacy of those regulations by staff of the Federal Deposit Insurance Corporation (FDIC), for information that may be relevant to determining the adequacy of System capital. As a result of this review, the FCA has concluded that the proposed minimum surplus and net collateral ratios would generate an additional level of protection for both borrower/shareholders and investors in the System's debt instruments.

A. Regulatory Requirements Need To Ensure Sufficient Capital

The FCA believes that a mixture of capital components is necessary to achieve a sound capital structure, and that each institution should have a minimum amount of secure capital that is not at risk at another System institution. As a result, the FCA has the following concerns.

1. Long-term Stability for Associations Requires a More Stable Capital Base Than Just Borrower Stock and Should Provide Some Cushion for Borrower Investments

Under existing regulations, it is possible for an institution to rely solely on borrower stock to meet its minimum capital standards, by establishing a stock purchase requirement of 7 percent or more of the loan amount. An institution may then be in compliance but have little or no surplus to cushion the investment of a shareholder. While the shareholder's investment is at risk and provides some protection to the institution, the Agency believes that it is imprudent to make such investments vulnerable to even modest levels of adversity, given the cooperative structure of the System.

For most corporations, common equity capital is generally a permanent source of funds. Once the equity shares are issued, the company permanently retains the proceeds. The stock may trade among investors, but an individual shareholder may not demand that the company retire the stock. Unlike corporate equity capital, System borrower stock may be, and often is, retired upon repayment of a borrower's loan at the board's discretion. If pending losses threaten the value of an association's stock, borrower/shareholders can obtain financing elsewhere, pay down their loan and request retirement of their stock. As a practical matter, in a situation in which the institution still meets its permanent capital requirements, the degree to which borrower stock acts as a buffer for absorbing loss depends on the extent to which the association refrains from retiring stock.

For an association to use this authority in a way that makes borrower stock a meaningful buffer, the association has to recognize potential losses in a timely manner and be willing to withhold proceeds from stock retirement requests. However, such actions can signal problems to existing and potential borrowers at the association. Thus, an association might continue to make retirements until the evidence of serious adverse financial conditions is abundantly clear. By then, the stock of many members may have been retired, and remaining members would bear the loss. Therefore, despite the fact that borrower stock is an at-risk investment like any common equity stock, it is less able to absorb losses than common equity capital. By contrast, a minimum surplus requirement would provide a more permanent source of capital that is capable of absorbing losses and of providing protection to the investments of borrower/shareholders.

Another concern is that an institution can grow in an unbounded manner if each new loan is fully capitalized by borrower stock. Similarly, the institution's capital base can fluctuate significantly when borrowers repay or prepay loans and their stock is retired.

[1] Institutions are authorized to issue common stock to non-borrowers, but no such stock has been issued.

[2] For the remainder of the preamble, further references to borrower stock will include participation certificates, as applicable. Participation certificates are considered to be similar to borrower stock from a financial perspective, even though voting rights differ.

In addition, the most frequent source of an association's financial stress is borrower adversity, whether it is the result of widespread adverse financial conditions (as it was in the mid-1980s), or the result of troubled conditions in a region or industry in which an association has a concentration of loans. As occurred in the mid-1980s, when an institution is unable to retire borrower stock because of financial stress, the institution's business and its borrower/shareholders are adversely affected.

2. "Local" Unallocated Retained Earnings (URE) Are Important to Institutions During Periods of Economic Adversity

Over a number of years, most associations in the System accumulated URE, in part, through non-cash earnings distributions from their affiliated banks. Since these non-cash distributions have seldom been retired, some portion of these distributions has resulted in an increase to URE on the associations' balance sheets and yet has continued to be reported as allocated equities on the bank's financial statements. Certain associations have little or no URE that is not also included in the bank's GAAP capital. This group of associations is particularly vulnerable to financial adversity at their affiliated banks because most of their capital other than borrower stock is at risk in both the bank and the association. When a bank sustains losses, all of the bank's capital is available to absorb losses, regardless of whether it is being counted as permanent capital at the association. It follows that such capital will not be available to absorb association losses, which can create a domino effect in troubled times, since adversity in one institution can cause adversity in many or all institutions in the district.

The FCA conducted a study of production credit associations (PCAs) that became financially stressed during the 1980s. The sample used represented a comparable set of financially stressed and healthy institutions. Although the number of institutions and quarters of historical financial data were limited, the FCA was able to make inferences regarding capital levels and long-term viability. The healthy associations, which had unallocated surplus net of their investments in their affiliated banks, were better able to withstand adversity and stay financially viable without assistance. However, associations with no or low surplus, after deducting the investment in the bank, generally could not independently withstand an adverse economic environment without assistance or other action to address their financial deterioration.[3]

A URE cushion that does not include the association's interdependent investment in its affiliated bank provides optimum protection for borrower/shareholders. Losses at the affiliated bank stemming from adversity in other associations or from risks borne by the bank (funding, investment, operational, etc.) could impair the investment in the bank and deplete association capital. Consequently, an association with a large URE and a high permanent capital ratio may not be adequately insulated from adversity if it relies heavily on capital that is invested in its affiliated bank. Strong local URE allows the association to remain viable even if the investment in the bank becomes impaired. The likelihood of the bank and associations sustaining losses simultaneously greatly amplifies the need for a local URE standard.

3. A Sufficient Level of Eligible Collateral Is Needed To Protect Investors in the System's Debt Instruments

The basis for funding banks within the System is the maintenance of sufficient eligible collateral. Performing agricultural loans make up the bulk of eligible collateral,[4] followed by marketable securities and cash. Nonperforming loans and acquired property also provide eligible collateral, after deducting for losses. During the 1980s, the collateral positions of the Farm Credit banks were a critical measure of survival. As an example, the collateral of one bank was exhausted, and the bank lost its ability to independently obtain funding from the marketplace before its capital was depleted.[5]

Farm Credit banks have long used a collateral ratio as a principal indicator of financial strength. Both the Market Access Agreement and the Contractual Interbank Performance Agreement (CIPA)[6] use a collateral ratio as a critical measure of bank financial viability and survivability. A bank failure within the System would have grave consequences not only for that bank and its affiliated associations, but also for the other System banks because of joint and several liability and the market perception of the System as a single entity seeking funding.

The FCA believes that a bank could be shut out of the securities markets if its collateral ratio (as defined in § 615.5050 of the regulations) dropped below 100 percent. Thus, a margin of safety above this level is reasonable, in order to protect investors and allow sufficient time for corrective action to be implemented prior to a funding crisis at an individual bank, and thus district, level. Also, the FCA believes that the net collateral position of a bank, net of its equities counted by associations as part of their permanent capital, affords better protection for both investors and shareholders.

Both the statute and the FCA's capital regulations require a permanent capital calculation that eliminates the double counting of capital shared by System institutions through the allotment agreements. Similarly, the FCA believes a collateral ratio adjusted for the allotment agreements is another appropriate measure of financial safety. This would help ensure that the bank has sufficient capital, net of any capital counted as association permanent capital, to protect investors and shareholders. Specifically, it prevents a bank from placing such equities at risk for investor protection at the same time that associations are placing them at risk for credit and other purposes.

B. Basle Accord and Capital Regulations of Other Regulators

As a part of its review, the FCA has re-examined the 1988 Basle Accord agreed to by the Committee on Banking Regulations and Supervisory Practices, which meets under the auspices of the Bank for International Settlements in Basle, Switzerland. In the existing capital regulations, the FCA incorporated the Basle Accord principles of weighting assets, including off-balance-sheet items, according to categories of risk. However, the FCA did not incorporate in the regulations the two-tiered approach of the Basle Accord, which requires that each institution have at least a minimum amount of "core capital" (primarily stable equity capital), which must constitute at least 50 percent of the required capital of the institution. Rather, the FCA treated all types of capital meeting the statutory definition of permanent capital as if they were of

[3] In fact, the stressed PCAs in the study generally had no "local" URE. The median value was actually below zero. These PCAs were subsequently merged or provided financial assistance.

[4] Such loans consist of loans made directly by the bank or, in the case of a bank's wholesale lending activities, the loans made by the direct lender associations which are pledged as security for the associations' direct loans from the bank (up to the amount of the direct loan).

[5] The bank was able to maintain access to the funding markets only after certain other System banks agreed to pledge excess collateral to the troubled bank.

[6] These are self-monitoring agreements among the Federal Farm Credit Banks Funding Corporation (Funding Corporation) and System banks that specify levels of bank financial performance, as well as the consequences of a bank's falling below such levels.

equal value to the institution to absorb losses.

The Federal regulatory agencies for commercial banks and thrifts in this country—the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System—have all adopted capital regulations that are consistent with the Basle Accord framework. In each agency's two-tiered capital system, core or Tier 1 capital is mainly composed of common stock, surplus, noncumulative perpetual preferred stock, and minority interests in consolidated subsidiaries. Supplementary or Tier 2 capital is composed of a portion of the allowance for loan losses and all other kinds of capital and capital-like instruments, up to an amount equal to the amount of Tier 1 capital. The minimum capital requirement is 8 percent. Commercial banks and thrifts also have a minimum leverage requirement, calculated as the ratio of Tier 1 capital to total (*i.e.*, not risk-adjusted) assets, to protect against risks other than credit risk.

Common shareholders' equity in commercial banks and thrifts is the most stable, permanent form of capital because it is fully paid and is rarely retired. By contrast, nearly all of the common equity capital of System associations is borrower stock, which lacks the characteristic of permanence because it is retired in the ordinary course of business of the associations.

The FCA also reviewed an FDIC staff study published in 1993 that compared the risk-based standards for commercial banks to the primary and secondary capital constraints they had replaced.[7] The previous standards differed from the current 8-percent standard in two important ways: the assets were not risk weighted, and all of the allowance for losses (ALL) was included in capital. The study concluded that the risk-based standard was a better predictor of the potential failure of a bank than the previous standards for two reasons: (1) The exclusion of ALL from Tier 1 and its only limited inclusion in Tier 2 improved the quality of the capital measure; and (2) the risk-based measure was more sensitive to credit risk.[8] But the study also concluded that using both the risk-based standard and the new Tier 1 capital-to-total-assets leverage ratio together was a better predictor of failure than either one separately, because in many cases the leverage ratio, which addressed risks other than credit risk, provided a more stringent test of capital adequacy.

C. Farm Credit System Observations

In May 1993, the System's Presidents Planning Committee appointed a capital adequacy work group (System group) with the charge of reviewing the FCA's capital adequacy regulations and making recommendations for improvements. As a result of this effort, in November 1993 the System group provided the FCA with a report of its findings and suggestions. The System group refined this report with a supplemental document submitted to the FCA in April 1994. The System group informed the FCA that the group had consulted with all the banks and a number of associations in developing its final report.

The final report recognized concerns with existing regulatory requirements similar to those identified by the FCA. The System report supported a requirement to build unallocated surplus and allocated surplus to buffer borrower stock from potential losses and to insulate an institution's capital position from the potentially volatile nature of borrower stock. The report noted the important role borrower stock plays in obtaining new loans and retaining quality business, given the cooperative structure of the System. The report also acknowledged the need to protect investors in System securities.

The System group recommended that the FCA establish regulatory standards requiring all institutions to build unallocated surplus and total surplus (*i.e.*, allocated equities and unallocated surplus) by annually retaining a portion of earnings. The System group's proposed goals of 3.5-percent unallocated surplus and 7-percent total surplus were proposed to be achieved by retaining at least 10 percent of net earnings after taxes in unallocated surplus and at least 50 percent of net earnings in unallocated and allocated equities. These objectives were based on the regulatory permanent capital framework and used risk-adjusted assets as the ratios' denominators.

The System group's report also recognized the need to protect investors in System securities. The System recommended that each bank begin reporting to the Funding Corporation its collateral position net of bank equities being counted at associations for permanent capital purposes. The System group stated that its recommendation "effectively prevents the bank from placing such equities at risk for investor protection at the same time that associations are putting them at risk for credit and other purposes pursuant to an allotment agreement," and further that "[i]t gives tangible recognition to the spirit and intent of the . . . 1992 legislation."

Similarities and differences between the FCA's proposed regulation and the System group's suggestions are discussed below in section C of part V.

V. FCA Conclusions and Proposals for Surplus and Collateral Ratios

The FCA makes the following proposals:

A. Surplus and Collateral Requirements

Each Farm Credit institution[9] should have some minimum amount of capital in the form of unallocated surplus, allocated equities or stock not required to be purchased as a condition of obtaining a loan, in order to protect against losses. Part of the surplus should be unallocated surplus that provides a cushion for borrower stock and allocated equities and that does not also support risks in another System institution. The FCA believes that this unallocated surplus would better enable an institution to withstand its own losses and also insulate both the institution and its borrowers from adversities suffered by related System institutions.

1. Unallocated Surplus Requirement

The FCA proposes that institutions have unallocated surplus of at least 3.5 percent of risk-weighted assets. For this purpose, unallocated surplus would include common stock and noncumulative perpetual preferred stock held by non-borrowers, provided that the institution adheres to a policy of not retiring such stock. For associations, the net investment in its affiliated bank—that is, the total investment less reciprocal investments, pass-through stock, and investments related to loan participations—would be subtracted from the unallocated surplus. For both banks and associations, the risk-weighted asset base would be calculated as it is for the institution's permanent capital requirement, except that an association's assets would be reduced by the net investment in the bank. The unallocated surplus ratio would be calculated as follows:

$$\frac{\text{(URE)} + \text{(qualifying stock)} - \text{(net investment)}}{\text{(Risk-adjusted assets)} - \text{Risk-adjusted net investment)}}$$

If this proposed regulation is enacted, the existing requirement in § 615.5330 for banks for cooperatives to add a percentage of earnings to unallocated surplus annually would be replaced by the new requirement.

The FCA believes this minimum unallocated surplus requirement is needed to provide a source of permanent at-risk capital that does not depend on the financial condition of the bank and that protects against the suspension of stock retirements when problems emerge.

2. Total Surplus Requirement

The FCA proposes a requirement that each institution hold total surplus (adjusted according to the permanent capital allotment agreement, or according to the allotment regulation if there is no agreement) equal to 7 percent of risk-weighted assets. The total surplus would consist of the capital treated as unallocated surplus for the purposes of the unallocated surplus ratio (prior to any deductions for investments in the banks), as well as certain allocated equities and other stock. Allocated equities would consist of allocated surplus and allocated stock subject to a discretionary revolvement plan of 5 years or more, or not projected to be retired under the institution's capital adequacy plan. Other stock included in total surplus would be stock other than stock that has been purchased as a requirement of obtaining a loan and would be either perpetual stock or, if term stock, have an original maturity of at least 5 years; furthermore, the institution must adhere to a policy of not retiring the perpetual stock and of not retiring the term stock prior to its maturity. The amount of such term stock that is eligible to be included in total surplus would be reduced by 20 percent in each of the last 5 years of the life of the instrument.[10] The risk-weighted asset base would be the base as calculated for the institution's permanent capital ratio. The total surplus ratio would be calculated as follows:

$$\frac{\text{(URE)} + \text{(qualifying allocated equities)} + \text{(qualifying stock)}}{\text{Risk-adjusted assets}}$$

3. Net Collateral Requirement

The FCA proposes that all System banks should also maintain a net collateral ratio of at least 104 percent of eligible assets (which are defined by § 615.5050), exclusive of any amounts counted as association permanent capital, divided by total liabilities. This measure would differ from the measure of eligible collateral that is required by section 4.3(c) of the Act in that it would eliminate any double-leveraged capital by "netting out" the capital counted as association permanent capital pursuant to the allotment agreements.[11] A 104-percent minimum net collateral ratio affords an added measure of protection should market forces cause a decline in the underlying value of collateral.

This ratio would also provide the overall protection against other risks that a leverage (*i.e.*, total assets) ratio is intended to address and that ratios based on risk-adjusted assets do not fully provide for. For example, it would provide important information on a bank's ability to withstand losses associated with management and operational risks. Management and operational risks are not readily measurable, but they are often serious sources of risk in a financial institution.

B. Compliance

1. Capital Plans

Institutions that are below any applicable minimum surplus or collateral standards on the effective date of the regulations, or that fall below the minimum standards after the effective date, would be required to develop and submit a capital plan acceptable to the FCA for achieving the minimum standards.[12] The plan would include an explanation of how the institution will build surplus, realistic projections and goals for increasing the pertinent ratios, and a reasonable timeframe for achieving the minimum capital standards. An association that proposes a long timeframe for achieving its minimum unallocated surplus standard would generally be expected to have a Risk-Sharing Agreement, as described below, as part of its capital plan; however, determination of the appropriateness of having a Risk-Sharing Agreement would be made on a case-by-case basis. An institution that is meeting the goals of its approved plan would be deemed by the FCA to be in compliance with the surplus and collateral standards.

2. Risk-Sharing Agreements

a. *Noncompliance on the Effective Date.* Associations that are below their unallocated surplus standard on the effective date of the surplus requirements would have the option of including a Risk-Sharing Agreement with their affiliated bank as a part of their capital plan. Under such a Risk-Sharing Agreement, the affiliated bank could agree to share specified association losses. The maximum amount of such specified losses may not be greater than the amount of the association's investment in the bank counted as association permanent capital during the term of the Risk-Sharing Agreement. While the agreement is in effect, the bank would have to defer sharing in losses when it is below its own minimum capital standards, or when doing so would cause it to fall below them.

An association would be able to count in its unallocated surplus the amount its bank agrees to cover in the event of loss.

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[7] John P. O'Keefe, "Risk-Based Capital Standards for Commercial Banks: Improved Capital-Adequacy Standards?" published in the *FDIC Banking Review*, Spring-Summer 1993.

[8] ALL is already excluded from the permanent capital measure for System institutions; so the FDIC staff finding is not directly relevant with respect to the inclusion of ALL. However, the finding is important because it shows the necessity of assuring at least a minimum amount of the highest quality of capital.

[9] "Institution" includes each System bank, System association, and the Farm Credit Leasing Services Corporation. It does not include other System entities, such as other service corporations. The surplus ratios for the Leasing Corporation are calculated the same way as the surplus ratios for banks. However, the Leasing Corporation would not have to maintain a net collateral standard.

[10] Thus, for example, in the first year after its issuance, term stock with a 5-year maturity would count in surplus in an amount equal to 80 percent of its value; in the fifth year, none of the stock would be counted in surplus.

[11] This net collateral position would not replace the collateral requirement of section 4.3(c) of the Act and, indeed, could not do so without a statutory amendment. The FCA is not considering proposing such a statutory change.

[12] Such a plan would supplement or amend the capital adequacy plan required by § 615.5200 of the regulations.

Any association losses actually absorbed by the bank (which would probably be reflected by a reduction of the amount of the association's direct loan) would then have to be allocated back to the association by the bank, which would result in a reduction of the association's investment in the bank.

The FCA notes that an association with a Risk-Sharing Agreement must continue to build unallocated surplus net of the investment in the bank during the time period of its capital plan, so that the association will have achieved at least the minimum standard when the Agreement terminates.

The risk-sharing arrangement would have two potential benefits for the associations. First, an association would be able to report a higher unallocated surplus ratio without directly generating the earnings itself or causing a taxable event. Second, in the event that the association does sustain losses, the sharing of the losses by the bank would mitigate the effect of the losses on the association's loanable funds position. "Loanable funds position" refers to the association's levels of interest-earning assets and interest-bearing liabilities. A positive loanable funds position means that interest-earning assets exceed interest-bearing liabilities.

There is also a benefit for the bank and the other associations in the district. That is, the allocation of losses by the bank back to the association would mean that the bank's unallocated surplus would not be reduced by the association's losses shared in by the bank, and the interest rates on direct loans to the other associations should not be affected.[13] Without a loss-allocation requirement, the Risk-Sharing Agreement would require a bank to come to the assistance of an association without ultimately holding the association accountable for that assistance.

b. Subsequent Noncompliance

An association that falls below the unallocated surplus standard subsequent to the effective date of the regulations could propose a Risk-Sharing Agreement with its affiliated bank as part of its capital plan, but the FCA would approve it only under appropriate circumstances. Factors the FCA would consider would include: (1) The causes of the decline in the association's surplus ratio; (2) the present and projected financial health of the affiliated bank and other associations in the district; (3) the bank's continued ability to meet its own capital ratios under risk sharing; and (4) the likelihood that the association will sustain significant losses in the near term.

An example of a circumstance in which risk sharing may be appropriate would be a temporary decrease in an association's unallocated surplus ratio due to a significant and immediate growth in assets. There may also be times when an association is experiencing losses, but the affiliated bank is very well capitalized and the other associations in the district are healthy. In this situation, the prospects are very high that a bank would be able to share an association's losses when needed, without causing undue stress on the bank or other associations in the district. Therefore, a Risk-Sharing Agreement may be appropriate.

3. Other Considerations

In the development of these proposed regulations, the FCA considered making the Risk-Sharing Agreement a permanent means of association compliance with the unallocated surplus standard. If the Agreement were a permanent method of compliance, an association with an Agreement would not be required to build unallocated surplus to at least 3.5 percent net of its investment in the bank. Arguments in favor of doing so are that this approach would better reflect the value to the association of an important intra-System asset and that it would not limit the discretion of an association and its affiliated bank to accumulate earnings at the bank in order to minimize taxes. However, permitting a Risk-Sharing Agreement to, in effect, substitute for unallocated surplus net of the investment in the bank would fail to address an important safety and soundness concern—that is, the concern that institutions have a minimum amount of capital in excess of borrower-owned equities that is not at risk in other Farm Credit institutions. It is only by having unallocated surplus net of its investment in the bank that an association will be insulated from problems that may be suffered by the bank (due, in most cases, to problems at other associations).

As stated above, a Risk-Sharing Agreement would not permit the bank to share association losses if the bank is not meeting all of its capital requirements, including the surplus and collateral requirements.[14] Consequently, in a time of widespread financial stress for Farm Credit institutions, associations with Risk-Sharing Agreements would not be sufficiently insulated from the problems of other Farm Credit institutions, because the bank may be unable to perform under the Risk-Sharing Agreement.[15]

The FCA has, therefore, provided in the proposed regulations that Risk-Sharing Agreements may be used only temporarily as a means of complying with the unallocated surplus requirement and that associations must eventually meet the minimum standard on their own. However, the FCA specifically invites comments and suggestions on the use of the Risk-Sharing Agreements to meet the unallocated surplus requirements on a permanent basis, as well as any alternative methods of ensuring that associations have sufficient surplus that is not at risk in other Farm Credit institutions.

4. Terms and Conditions of the Risk-Sharing Agreement

The term "Risk-Sharing Agreement" has been chosen to distinguish the arrangement from the loss-sharing agreements previously entered into by some Farm Credit institutions. Unlike the previous loss-sharing agreements, which obligated one institution to use funds that it had earned to absorb losses at another institution that otherwise had no claim on the funds, the Risk-Sharing Agreement covers only funds earned (albeit allocated from the bank) by an association and accumulated at the bank to absorb losses at that association.

The basic terms and conditions of a Risk-Sharing Agreement would limit the amount of exposure to the bank. Restrictions on such an arrangement, which are intended to protect both parties, would be as follows:

[13] Most wholesale banks in the System currently do not require equalization of associations' investments in the bank; instead the banks compensate their affiliated associations based on the relative size of the association's investment in the bank. The risk-sharing arrangement would work under these circumstances. If the district's associations are required to equalize their relative investments in the bank on a regular basis, risk sharing might not be a viable option.

[14] The FCA recognizes that sharing association losses under the Agreement would not reduce the permanent capital or total surplus ratios of the bank and would only temporarily reduce the unallocated surplus and collateral ratios, until losses are allocated back to the association. However, the risk sharing would result in a reduction of total bank capital, which could eventually expose System investors to greater risk.

[15] The FCA notes that there were complaints from certain System managers during the late 1980s, and even as recently as 1994, about bank assistance to weaker associations. During the 1980s, certain financially strong direct lender associations in some districts expressed reservations about their district bank's provision of assistance to other, weaker associations in the district. The managers of the stronger associations complained that the weaker associations were being given assistance without any requirements to repay, and that the funds were coming from the unallocated surplus of the bank, which, in the view of some, should be used to keep the cost of all direct loans to associations at the lowest level possible.

a. The maximum dollar amount of losses the bank could participate in would be specified by the Agreement and could not be greater than the amount allocated to the association by the bank that is counted as permanent capital of the association. Such amount would be counted in the 3.5-percent unallocated surplus capital of the association.

b. The bank's participation in association losses must begin on or before the point when losses of the association exceed the association's current year's earnings.

c. The percentage of bank participation in a loss could not be less than 25 percent and would automatically increase to 100 percent when the association's unallocated surplus, net of the investment in the bank, is exhausted. In other words, the bank would share losses up to the maximum amount specified in the Agreement before other association capital is charged.

d. The amount committed to risk sharing by a bank could not be reduced, except by payment to the association, until the association's unallocated surplus ratio net of its investment in the bank is in excess of 3.5 percent. The association and the bank may, of course, agree that the bank will share losses of the association even when the association's unallocated surplus ratio exceeds the minimum requirement without counting the amount covered by the Risk-Sharing Agreement.

e. A bank would be prohibited from sharing any association losses under the Agreement when the bank's permanent capital ratio, surplus ratios, or net collateral ratio is below any of the minimum standards, or if sharing in the losses would cause it to fall below any of the standards.

f. A bank would be required to allocate any losses shared pursuant to the Risk-Sharing Agreement back to the association where the loss was incurred. The allocation of losses back to the association, which may be implemented under general cooperative practices in the System, is essential to hold the association fully accountable for losses incurred.[16]

[16] The allocation of losses back to the association could be a book entry only, without the actual physical movement of assets. At the association level, capital would decrease because the investment in the bank would decrease. The allocation of losses by the bank would decrease the bank's allocated surplus and restore its unallocated surplus to the level prior to the losses taken under the Risk-Sharing Agreement.

C. Comparison of FCA Proposed Regulations and System Group's Proposal

The FCA's proposed regulations are broadly similar to the System group's suggested approach for establishing unallocated and total surplus standards. However, the FCA's proposed regulations differ with respect to achieving the standards, because the FCA believes that the System's proposal to require that a percentage of earnings be retained annually until the standards are met would not ensure that an institution experiencing growth, making cash distributions, or allocating equities would ever achieve the minimum surplus standards. The FCA proposes instead to require institutions not meeting the standards to submit a capital plan to achieve such standards. The FCA believes that achieving the standards over time is a complex planning issue with many considerations that are best addressed in a comprehensive capital plan. An institution that does not submit, or does not meet the goals of, an acceptable capital plan would not be in compliance with the capital requirements.

The FCA's proposed regulations also differ from the System group's proposal in how the unallocated surplus standard is calculated. The FCA is proposing that URE be reduced by an association's net investment in its bank. This approach would ensure that an association has a level of unallocated surplus to provide for financial strength that is independent of its bank affiliation. The FCA notes that, because the proposed surplus standards are separate requirements apart from the permanent capital standard, the failure to meet the minimum surplus standards would not alone trigger the statutory prohibition on the retirement of borrower stock.

The net collateral ratio for banks is proposed by the FCA to be calculated as recommended by the System group. However, the FCA is proposing that an enforceable minimum regulatory standard be set in lieu of the requirement to report the net collateral position to the Funding Corporation. The FCA concluded that a minimum net collateral standard is key to ensuring the building of capital at the bank to protect investors in System securities and to ensure an early warning mechanism for market access to funding, which is a critical safety and soundness issue.

VI. Retirement of Borrower Stock

As long as an institution's[17] unallocated and total surplus ratios meet or exceed applicable minimum standards, and the permanent capital position is at least 9 percent, the retirement of borrower stock may be delegated by its board of directors to management within certain parameters.

This provision clarifies what kind of delegations may be made by the board to management, consistent with the statutory mandate that stock is retirable only at the board's discretion. If an institution is meeting or exceeding its minimum surplus standards and, if applicable, collateral standard, the board may delegate the decision to retire borrower stock to management provided that the institution's permanent capital will remain at 9 percent or greater after the retirement. Management may make such retirements only in accordance with the institution's retirement policy and must report the aggregate amount of the retirements and their impact on the institution's capital position to the board every quarter. If an institution's surplus and collateral standards are less than the minimum requirements, or if its permanent capital would be less than 9 percent after the retirement, the institution's board of directors must specifically consider and approve each retirement of borrower stock prior to actual cash retirement or payout of the stock.

This proposed regulation is similar to a suggestion made by the System group. The System group recommended that stock retirements be delegable to management when an institution's permanent capital ratio is greater than 8 percent after the retirement, *or* when the institution had reached the surplus requirements (or, if not, had been applying the required proportion of earnings to surplus). The proposed regulation would set a higher permanent capital standard for delegations and would require the institution also to be in compliance with the surplus and collateral standards.

VII. Individual Institution Capital Ratios and Capital Directives

The FCA proposes regulations providing procedures to implement its statutory authorities: (1) To establish individual capital ratios for a single institution, and (2) to issue a capital directive to an institution that is below its minimum capital requirements (including individual institution standards, if any), or to the board of directors of an institution to prohibit the board from reducing the capital of the institution. These authorities would apply with respect to the proposed

[17] While this provision of the regulation addresses all institutions it is recognized that the delegation restriction would have a limited impact on most banks.

surplus and collateral ratios as well as to the permanent capital ratio. They provide another regulatory tool to the FCA to take appropriate action when an institution's capital is insufficient. The authorities differ from a cease and desist order in that a full hearing (as mandated by section 5.25 of the Act) is not required; therefore, the FCA may respond more quickly in order to minimize further deterioration of an institution's capital position.

These powers were granted to the FCA in 1986, at the same time the Agency was directed to set capital standards for System institutions. The FCA was authorized to "establish such minimum level of capital for a System institution as the [FCA], in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the System institution." Section 4.3(a) of the Act. The FCA was further authorized to issue a capital directive to any System institution failing to maintain capital at or above the required level, including any individual minimum standard. Such a capital directive may, among other things, require the System to submit and adhere to a plan acceptable to the FCA describing how the institution will achieve its minimum capital requirements. Section 4.3(b)(2) and (3) of the Act.

The 1987 Act, which added permanent capital provisions to the Act, prohibited System institutions from reducing the permanent capital of an institution through the payment of patronage refunds or dividends, or the retirement of stock, if the permanent capital of the institution failed, or would fail, to meet the minimum capital adequacy standards established under section 4.3(a) of the Act, including the permanent capital standards. In addition, the FCA was authorized, pursuant to section 4.3A(e), to issue a capital directive to the board of directors of an institution to comply with such prohibitions if the board has failed to do so.

The issuance of a capital directive would be at the discretion of the FCA. Section 5.31 of the Act, as amended by the 1987 Act, provides that a capital directive "shall be treated as an effective and outstanding order enforceable in the appropriate United States district court in the same manner and to the same extent as a final cease and desist order issued under section 5.25." In addition, civil money penalties may be imposed for violation of a capital directive pursuant to section 5.32. A capital directive could be issued in lieu of, in conjunction with, or in addition to other enforcement actions available to the FCA. Furthermore, the FCA could take any available enforcement action in lieu of issuing a capital directive.

These proposed regulations contain procedures for the establishment by the FCA of a permanent capital ratio, surplus ratios and, if applicable, a collateral ratio for an individual institution, as well as for the issuance of capital directives. The regulations are similar to the regulations of the OCC and the FDIC, which have nearly identical authority to the FCA's with respect to individual capital ratios and capital directives. *See* 12 U.S.C. 3907.

For the establishment of individual institution capital ratios, the procedures provide for notice to the institution setting forth the proposed individual capital ratio or ratios, the reasons the FCA has determined that such ratio or ratios are appropriate for the institution, and a statement that the institution has 30 days within which to comment in writing on the proposal. The 30-day time period may be shortened or lengthened in the discretion of the FCA, with proper notice of its action to the institution. The institution has the opportunity to agree to or object to the FCA's proposals and to state the reasons therefor, to propose modifications to the proposal, and to provide documentation or other relevant information, including information about any mitigating circumstances.

For the issuance of capital directives, the procedures are similar—notification to the institution of the proposed capital directive, a 30-day period for the institution to respond, an evaluation of the institution's response, and a determination to issue the capital directive as proposed, to modify it, or not to issue the capital directive at all.

VIII. Other Proposed Changes

A. Exclusion of Impact of FASB 115

The FCA has concluded that unrealized gains and losses should not be reflected in the permanent capital, surplus, or collateral ratios. The FCA is considering the implementation of interest rate risk requirements that would ensure that System institutions have sufficient capital to cover the level of risk taken for interest rates. The current requirements of the Financial Accounting Standards Board's (FASB) Statement No. 115 would include unrealized gains or losses based largely on the shifts in interest rates. Such a requirement may duplicate the efforts of an interest rate risk standard. The FCA notes that the other Federal bank regulators have now eliminated the unrealized gains and losses requirements of FASB Statement No. 115 from their capital standards.

B. Technical and Conforming Changes

The following amendments are being proposed to add new terms to the capital regulations, to remove obsolete terms and provisions, and to make conforming changes in other parts of the regulations:

Section 615.5201 is proposed to be amended to include the terms "Federal land credit association" and "agricultural credit bank" in the definition of "institution." Changes would also be made to § 615.5220(d) and (e) to include such terms.

Section 615.5216, which granted forbearance to institutions that were below the minimum permanent capital standards when those standards became effective in 1988, is proposed to be deleted from the regulations because all institutions are now in excess of the minimum standard. References to the interim standards would also be deleted in §§ 615.5205, 615.5220(f), 615.5240(a), 615.5250(a)(4)(ii) and (iii), 615.5250(c)(3), and 615.5270(b).

Section 615.5230(b)(1) is proposed to be amended to eliminate the reference to preferred stock issued to the Financial Assistance Corporation. All such stock has been retired.

Section 615.5250(c), which pertains to the mandatory exchange of eligible borrower stock, is proposed to be deleted because all mandatory exchanges have been completed. A related provision in § 615.5260(a) would also be deleted.

Section 615.5260(d), which requires FCA approval of eligible borrower stock retirements other than in the ordinary course of business, is proposed to be deleted. The FCA has determined that it no longer has significant safety and soundness concerns regarding such retirements, because there is only a small amount of eligible borrower stock outstanding, and the FCA has not received an approval request since 1990.

IX. Regulatory Impact and FCA Regulatory Philosophy

These proposed regulations are consistent with the FCA Board's Policy Statement on Regulatory Philosophy and achieve the Board's objective of creating an environment that promotes the confidence of borrower/shareholders, investors and the public in the System's financial strength, and future viability. *See* 60 FR 26034, May 16, 1995.

The objective of the revisions to the capital regulations is to establish standards that encourage the building of a sound capital structure in System institutions. The FCA expects the building of a sound capital structure at each institution to improve the likelihood of an institution's survival during periods of economic stress and thereby improve the safety and soundness of the System as a whole. Additionally, the regulations reflect the importance of capital structure to business viability for System institutions. The FCA believes that regulations implementing these goals must provide a meaningful measurement of capital adequacy and be appropriate for all System institutions.

These proposed regulations will affect all System banks, associations, and the Leasing Corporation because all such institutions will be required to adhere to the standards. However, less than 10 percent of the institutions would be below the standards, if the standards were in effect today, and those institutions will be required to build capital. As of the quarter ending March 31, 1995, 90 percent of the direct lender associations would have met the proposed surplus requirements had the requirements been in place on that date. All of the Federal land bank associations would have met the proposed surplus standards. Of the direct lender associations that would not have been in compliance, two associations would not have met either the total surplus or unallocated surplus ratios, nine additional associations would not have met the unallocated surplus ratio, and four additional associations would not have met the total surplus requirements. However, in most of those associations both types of surplus have been increasing steadily during the past 5 years, and the FCA estimates that most, if not all, of the associations would achieve the minimum standards in 7 years or less if these trends continue.

As of the quarter ending March 31, 1995, all eight banks would have been above the 7-percent total surplus standard.[18] In addition, five of the eight banks would have been above the proposed unallocated surplus ratio and the net collateral ratio. Of those that would not have met the proposed requirements, two banks would have been below the minimum unallocated surplus standard and one bank would have been below the net collateral standard. All banks have been building allocated and unallocated surplus over the past several years, although in some cases the ratios have not increased because assets have also grown.

[18] The FCB of Columbia and the FCB of Baltimore, which merged on April 1, 1995, to form AgFirst, FCB, are treated here as a single bank.

The FCA has determined that the proposed regulations would not have a significant effect upon the general economy. In addition, the proposed regulations pertain only to System institutions and, therefore, would not present a conflict with the rules and regulations of other financial regulatory agencies. Due to the nature of the regulations, it is not anticipated that the regulations will have any material impact upon governmental entitlements, grants, user fees, or loan programs.

List of Subjects

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For reasons stated in the preamble, parts 615, 618, and 620 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100-233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

§ 615.5201 [Amended]

2. Section 615.5201 is amended by adding the words "Federal land credit association," after the words "Federal land bank association,"; and by removing the words "National Bank for Cooperatives," and adding in their place, the words "agricultural credit bank," in paragraph (g).

3. Section 615.5205 is revised to read as follows:

§ 615.5205 Minimum permanent capital standards.

Each Farm Credit System institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted assets.

4. Section 615.5210 is amended by removing paragraphs (f)(2)(i)(D) and (f)(2)(v)(D); redesignating paragraph (f)(2)(v)(E) as new paragraph (f)(2)(v)(D); adding a new paragraph (e)(2)(ii)(G)(*10*); and revising paragraphs (e)(2)(ii)(G)(*7*) and (f)(2)(i)(C) to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(G) * * *

(*7*) Each institution shall deduct from its total capital an amount equal to any goodwill.

* * * * *

(*10*) The permanent capital of an institution shall exclude any impact from unrealized holding gains or losses for available-for-sale securities.

(f) * * *

(2) * * *

(i) * * *

(C) Goodwill.

* * * * *

§ 615.5216 [Removed and reserved]

5. Section 615.5216 is removed and reserved.

Subpart I—Issuance of Equities

§ 615.5220 [Amended]

6. Section 615.5220 is amended by removing paragraph (f), redesignating paragraphs (g), (h), and (i) as paragraphs (f), (g), and (h), respectively; removing the words "may be more than, but" each place they appear in paragraphs (d) and (e); by adding the words ", agricultural credit banks (with respect to loans other than to cooperatives)," after the words "For Farm Credit Banks" in paragraph (d); by adding the words "and agricultural credit banks (with respect to loans to cooperatives)" after the words "For banks for cooperatives" in paragraph (e); and by removing the words "(including interim standards)" in newly designated paragraph (f).

§ 615.5230 [Amended]

7. Section 615.5230 is amended by removing the words "preferred stock to be issued to the Farm Credit System Financial Assistance Corporation and" in paragraph (b)(1).

8. Section 615.5240 is amended by removing paragraph (b); redesignating the introductory paragraph and

paragraph (a) introductory text as paragraphs (a) and (b) introductory text, respectively; adding a new paragraph (c); and revising newly designated paragraph (a) to read as follows:

§ 615.5240 Permanent capital requirements.

(a) The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards established under subpart H of this part and the total capital requirements established by the board of directors of the institution.

* * * * *

(c) An institution's board of directors may delegate to management the decision whether to retire borrower stock, provided that:

(1) The institution's permanent capital ratio will be in excess of 9 percent after any such retirements;

(2) The institution meets and maintains all applicable minimum surplus and collateral standards;

(3) Any such retirements are in accordance with the institution's capital plan; and

(4) The aggregate amount of stock purchases, retirements, and the net effect of such activities are reported to the board of directors on a quarterly basis.

§ 615.5250 [Amended]

9. Section 615.5250 is amended by removing paragraph (c); redesignating paragraphs (d) and (e) as paragraphs (c) and (d) respectively; by removing the words "(including interim standards)" in paragraphs (a)(4)(ii) and newly designated (c)(3); and by removing the words ", including interim standards" in paragraph (a)(4)(iii).

Subpart J—Retirement of Equities

§ 615.5260 [Amended]

10. Section 615.5260 is amended by removing "; or" at the end of paragraph (a)(2)(ii) and inserting a period in its place and by removing paragraphs (a)(2)(iii) and (d).

§ 615.5270 [Amended]

11. Section 615.5270 is amended by removing the words "(including interim standards)" in paragraph (b).

12. Subpart K is revised to read as follows:

Subpart K—Surplus and Collateral Requirements

Sec.

615.5301 Definitions.
615.5330 Minimum surplus ratios.
615.5335 Bank net collateral ratio requirements.
615.5336 Compliance.

Subpart K—Surplus and Collateral Requirements

§ 615.5301 Definitions.

For the purposes of this subpart, the following definitions shall apply:

(a) The terms *institution, permanent capital, risk-adjusted asset base,* and *total capital* shall have the meanings set forth in § 615.5201.

(b) *Net collateral ratio* means a bank's collateral position as defined by § 615.5050, less an amount equal to that portion of the allocated investments of affiliated associations that is not counted as permanent capital of the bank, divided by the bank's total liabilities.

(c) *Net investment in the bank* means the total investment by an association in its affiliated bank, less reciprocal investments and investments resulting from a loan originating/service agency relationship, including participations.

(d) *Risk-Sharing Agreement means* a binding contract between a bank and its affiliated association, under which a bank agrees to share losses that the affiliated association may incur and which specifies at least the following:

(1) The maximum dollar amount of association losses to be shared by the bank shall be specified and shall not be greater than the amount of the association's allocated investment in the bank that is counted as association permanent capital.

(2) The participation in losses shall begin on or before the point when losses of the association exceed its current year's earnings, net of non-cash allocated earnings allocated to the association from the affiliated bank.

(3) The percentage of bank participation in a loss shall be not less than 25 percent and shall automatically increase to 100 percent when the association's unallocated surplus less the net investment in the bank is zero.

(4) The dollar amount committed to risk sharing by the bank under the agreement shall not be reduced except by payment to the association, unless the association has an unallocated surplus ratio in excess of 3.5 percent, net of the net investment in the bank.

(5) At any time a bank's permanent capital ratio, surplus ratios, or net collateral ratio is less than the minimum applicable standards or would fall below upon payment, the bank shall defer its payments under the agreement until such time as the payments do not result in the bank's failure to meet its minimum standards.

(6) The bank shall allocate any and all losses shared under the agreement back to the association where the loss was incurred.

(e)(1) *Total surplus* means:

(i) Unallocated retained earnings;

(ii) Allocated equities, including allocated surplus and stock which, if subject to revolvement, have a revolvement of not less than 5 years and are eligible to be included in permanent capital pursuant to § 615.5201(j)(4)(iv); and

(iii) Stock that is not purchased as a condition of obtaining a loan, provided that it is either perpetual stock or term stock with an original maturity of at least 5 years, and provided that the institution has and adheres to a policy of not retiring such perpetual stock and of not retiring such term stock prior to its stated maturity. The amount of term stock that is eligible to be included in total surplus shall be reduced by 20 percent in each of the last 5 years of the life of the instrument.

(2)The surplus of an institution shall exclude any impact from unrealized holding gains or losses for available-for-sale securities.

(f) *Unallocated surplus* means unallocated retained earnings and any common or non-cumulative perpetual preferred stock held by non-borrowers, provided that the institution has and adheres to a policy of not retiring the stock. Any impact from unrealized holding gains or losses for available-for-sale securities shall be excluded from unallocated surplus.

§ 615.5330 Minimum surplus ratios.

(a) *Total surplus.* Each institution shall achieve and maintain a ratio of at least 7 percent of total surplus to risk-adjusted assets.

(b) *Unallocated surplus.* (1) Each institution shall achieve and maintain a ratio of unallocated surplus to risk-adjusted assets of at least 3.5 percent.

(2) Each association shall compute its unallocated surplus ratio by deducting an amount equal to the net investment in its affiliated Farm Credit bank from which it has received allocated equities from both its unallocated surplus and its risk-adjusted asset base, except that the amount specified as the maximum amount of losses to be shared by the bank in a Risk-Sharing Agreement that is in effect shall not be deducted from the unallocated surplus or risk-adjusted asset base.

(c) An institution's total and unallocated surplus ratios shall be computed as of the end of each month.

§ 615.5335 Bank net collateral ratio requirements.

(a) Each bank shall achieve and maintain a net collateral ratio of at least 104 percent of net collateral to total liabilities.

(b) A bank's net collateral ratio shall be computed as of the end of each month.

§ 615.5336 Compliance.

(a) *Association compliance requirements.* (1) Each association that fails to satisfy either or both of its minimum surplus ratios shall submit a plan for achieving and maintaining the standards, with appropriate annual progress toward meeting the goal, to the Farm Credit Administration within 60 days of the month-end in which the failure occurred. If the capital plan is not approved by the Farm Credit Administration, the association shall submit a revised capital plan within the time specified by the Farm Credit Administration.

(2) An association whose unallocated surplus ratio is less than the minimum requirement on [the effective date of the final rule] shall have the option to include a Risk-Sharing Agreement with its affiliated bank in the capital plan, provided that the capital plan also incorporates provisions for achieving and maintaining the unallocated surplus standard exclusive of the Risk-Sharing Agreement.

(3) An association whose unallocated surplus ratio is less than the minimum requirement subsequent to [the effective date of the final rule] may include a Risk-Sharing Agreement in its capital plan only if the Farm Credit Administration approves such inclusion.

(b) *Bank compliance requirements.* A bank that fails to meet its minimum applicable unallocated or total surplus standard or net collateral standard shall submit a plan for achieving and maintaining the standards to the Farm Credit Administration within 60 days of the month-end when the failure occurred for meeting the standard. If such plan is not acceptable to the Farm Credit Administration, the bank shall submit a revised capital plan within the time specified by the Farm Credit Administration.

(c) *Compliance with the use of a capital plan.* An institution that is adhering to a capital plan that has been submitted to the Farm Credit Administration under this subpart and that has been approved by the Agency shall be deemed to be in compliance with the requirements of this subpart.

13. Subparts L and M are added to read as follows:

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

Sec.

615.5350 General—Applicability.
615.5351 Standards for determination of appropriate individual institution minimum capital ratios.
615.5352 Procedures.
615.5353 Relation to other actions.
615.5354 Enforcement.

Subpart M—Issuance of a Capital Directive

615.5355 Purpose and scope.
615.5356 Notice of intent to issue a capital directive.
615.5357 Response to notice.
615.5358 Decision.
615.5359 Issuance of a capital directive.
615.5360 Reconsideration based on change in circumstances.
615.5361 Relation to other administrative actions.

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

§ 615.5350 General—Applicability.

(a) The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios that would otherwise be applicable to an institution under §§ 615.5205, 615.5330, and 615.5335. The Farm Credit Administration is authorized to establish such minimum capital requirements for an institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the institution. Proceedings under this subpart also may be initiated to require an institution having capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 to continue to maintain those higher ratios.

(b) The Farm Credit Administration may require higher minimum capital ratios for an individual institution in view of its circumstances. For example, higher capital ratios may be appropriate for:

(1) An institution receiving special supervisory attention;

(2) An institution that has, or is expected to have, losses resulting in capital inadequacy;

(3) An institution with significant exposure due to operational risk; interest rate risk; the risks from concentrations of credit; certain risks arising from other products, services, or related activities; or management's overall inability to monitor and control financial risks presented by concentrations of credit and related services activities;

(4) An institution exposed to a high volume of, or particularly severe, problem loans;

(5) An institution that is growing rapidly; or

(6) An institution that may be adversely affected by the activities or condition of System institutions with which it has significant business relationships or in which it has significant investments.

§ 615.5351 Standards for determination of appropriate individual institution minimum capital ratios.

The appropriate minimum capital ratios for an individual institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in Agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Farm Credit Administration's determination that higher minimum capital ratios are appropriate or necessary for the institution;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated institutions;

(d) The institution's capital, risk asset and other ratios compared to the ratios of its peers or industry norms; and

(e) The views of the institution's directors and senior management.

§ 615.5352 Procedures.

(a) *Notice.* When the Farm Credit Administration determines that minimum capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 are necessary or appropriate for a particular institution, the Farm Credit Administration will notify the institution in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the institution.

(b) *Response.* (1) The institution may respond to any or all of the items in the notice. The response should include any matters which the institution would have the Farm Credit Administration consider in deciding whether individual minimum capital ratios should be established for the institution, what those capital ratios should be, and, if applicable, when they should be

achieved. The response must be in writing and delivered to the designated Farm Credit Administration official within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the time period with the consent of the institution or when, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution is informed promptly of the new time period.

(2) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the institution's response period, the Farm Credit Administration will decide, based on a review of the institution's response and other information concerning the institution, whether individual minimum capital ratios should be established for the institution and, if so, the ratios and the date the requirements will become effective. The institution will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the institution.

(d) *Submission of plan.* The decision may require the institution to develop and submit to the Farm Credit Administration, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the institution by the date required.

(e) *Reconsideration based on change in circumstances.* If, after the Farm Credit Administration's decision in paragraph (c) of this section, there is a change in the circumstances affecting the institution's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the institution or the Farm Credit Administration may propose a change in the minimum capital ratios for the institution, the date when the minimums must be achieved, or the institution's plan (if applicable). The Farm Credit Administration may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Farm Credit Administration's original decision and any plan required under that decision shall continue in full force and effect.

§ 615.5353 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for an institution may be established or revised through a written agreement or cease and desist proceedings under part C of title V of the Act, or as a condition for approval of an application.

§ 615.5354 Enforcement.

An institution that does not have or maintain the minimum capital ratios applicable to it, whether required in subparts H and K of this part, in a decision pursuant to this subpart, in a written agreement or temporary or final order under part C of title V of the Act, or in a condition for approval of an application, or an institution that has failed to submit or comply with an acceptable plan to attain those ratios, will be subject to such administrative action or sanctions as the Farm Credit Administration considers appropriate. These sanctions may include the issuance of a capital directive pursuant to subpart M of this part or other enforcement action, assessment of civil money penalties, and/or the denial or condition of applications.

Subpart M—Issuance of a Capital Directive

§ 615.5355 Purpose and scope.

(a)(1) This subpart is applicable to proceedings by the Farm Credit Administration to issue a capital directive under sections 4.3(b) and 4.3A(e) of the Act. A capital directive is an order issued to an institution that does not have or maintain capital at or greater than the minimum ratios set forth in §§ 615.5205, 615.5330, and 615.5335; or established for the institution under subpart L, by a written agreement under part C of title V of the Act, or as a condition for approval of an application. A capital directive may order the institution to:

(i) Achieve the minimum capital ratios applicable to it by a specified date;

(ii) Adhere to a previously submitted plan to achieve the applicable capital ratios;

(iii) Submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and time schedule by which the institution shall achieve the applicable capital ratios;

(iv) Take other action, such as reduction of assets or the rate of growth of assets, restrictions on the payment of dividends or patronage, or restrictions on the retirement of stock, to achieve the applicable capital ratios; or

(v) A combination of any of these or similar actions.

(2) A capital directive may also be issued to the board of directors of an institution, requiring such board to comply with the requirements of section 4.3A(d) of the Act prohibiting the reduction of permanent capital.

(b) A capital directive issued under this subpart, including a plan submitted under a capital directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in section 5.25 of the Act. Violation of a capital directive may result in assessment of civil money penalties in accordance with section 5.32 of the Act.

§ 615.5356 Notice of intent to issue a capital directive.

The Farm Credit Administration will notify an institution in writing of its intention to issue a capital directive. The notice will state:

(a) The reasons for issuance of the capital directive;

(b) The proposed contents of the capital directive, including the proposed date for achieving the minimum capital requirement; and

(c) Any other relevant information concerning the decision to issue a capital directive.

§ 615.5357 Response to notice.

(a) An institution may respond to the notice by stating why a capital directive should not be issued and/or by proposing alternative contents for the capital directive or seeking other appropriate relief. The response shall include any information, mitigating circumstances, documentation, or other relevant evidence that supports its position. The response may include a plan for achieving the minimum capital ratios applicable to the institution. The response must be in writing and delivered to the Farm Credit Administration within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the 30-day time period:

(1) When, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution shall be informed promptly of the new time period;

(2) With the consent of the institution; or

(3) When the institution already has advised the Farm Credit Administration that it cannot or will not achieve its applicable minimum capital ratios.

(b) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed capital directive.

§ 615.5358 Decision.

After the closing date of the institution's response period, or receipt of the institution's response, if earlier, the Farm Credit Administration may seek additional information or clarification of the response. Thereafter, the Farm Credit Administration will determine whether or not to issue a capital directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

§ 615.5359 Issuance of a capital directive.

(a) A capital directive will be served by delivery to the institution. It will include or be accompanied by a statement of reasons for its issuance.

(b) A capital directive is effective immediately upon its receipt by the institution, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Farm Credit Administration.

§ 615.5360 Reconsideration based on change in circumstances.

Upon a change in circumstances, an institution may request the Farm Credit Administration to reconsider the terms of its capital directive or may propose changes in the plan to achieve the institution's applicable minimum capital ratios. The Farm Credit Administration also may take such action on its own motion. The Farm Credit Administration may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the capital directive and plan shall continue in full force and effect.

§ 615.5361 Relation to other administrative actions.

A capital directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of applications. The Farm Credit Administration also may, in its discretion, take any action authorized by law, in lieu of a capital directive, in response to an institution's failure to achieve or maintain the applicable minimum capital ratios.

PART 618—GENERAL PROVISIONS

14. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17, of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart J—Internal Controls

§ 618.8440 [Amended]

15. Section 618.8440 is amended by removing the reference "§ 615.5200(b)" and adding in its place, the references "§§ 615.5200(b), 615.5330 (c) or (d), and 615.5335(b)" in paragraph (b)(6).

PART 620—DISCLOSURE TO SHAREHOLDERS

16. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

17. Section 620.5 is amended by revising paragraphs (d)(1)(ix) and (g)(4)(ii) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(d) * * *

(1) * * *

(ix) The statutory and regulatory restriction regarding retirement of stock and distribution of earnings pursuant to § 615.5215, and any requirements to add capital under a plan approved by the Farm Credit Administration pursuant to §§ 615.5330, 615.5335, 615.5351, or 615.5357.

* * * * *

(g) * * *

(4) * * *

(ii) Describe any material trends or changes in the mix and cost of debt and capital resources. The discussion shall consider changes in protected borrower capital, permanent capital, surplus requirements and collateral position; debt, risk-sharing agreements, and any off-balance-sheet financing arrangements.

* * * * *

Dated: July 20, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–18323 Filed 7–26–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 211

Amendments of Regulations to Establish Liability for Royalty Due on Federal and Indian Leases, and to Establish Responsibility to Pay and Report Royalty and Other Payments

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on a Notice of Proposed Rule, which was published in the **Federal Register** on June 9, 1995. The proposed rule would establish and clarify which persons may be held liable for unpaid or underpaid royalties, compensatory royalties, or other payments on Federal and Indian mineral leases. In response to requests for additional time, MMS will extend the comment period from August 8, 1995, to September 8, 1995.

DATES: Comments must be received by 4 p.m. mountain time on September 8, 1995.

ADDRESSES: Written comments should be sent to the Minerals Management Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 3101, Denver, Colorado 80225–0165, Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231–3432 or (FTS) 231–3432.

Dated: July 21, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–18471 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–MR–P

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–016–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma regulatory program (hereinafter referred

to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a revision to the Oklahoma rules pertaining to procedures for assessment conference. The proposed amendment is intended to revise the Oklahoma program to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., c.d.t. August 28, 1995. If requested, a public hearing on the proposed amendment will be held on August 21, 1995. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on August 11, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Tim Dieringer, Acting Director, Tulsa Field Office at the first address listed below

Copies of the Oklahoma program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Tim Dieringer, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Tim Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.10, 936.15, 936.16, and 936.30.

II. Discussion of the Proposed Amendment

By letter dated July 5, 1995, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. OK–972). Oklahoma submitted the proposed amendment at its own initiative. The provisions of the Oklahoma rules that Oklahoma proposes to amend are at Oklahoma Administrative Code (OAC) 460:20–61–10 concerning procedures for assessment conference.

Specifically, Oklahoma proposes to revise OAC 460:20–61–10(a)(1) by adding the word "original" in the second sentence. The effect of this proposed wording change is that assessment conferences would be held within 60 days from the date of issuance of the proposed assessment or the end of the *original* abatement period, whichever is later.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on August 11, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 20, 1995.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–18437 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 37–3–7097; FRL–5264–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Butte County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District, and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from the manufacture and application of cutback and emulsified asphalt materials.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATE: Comments must be received on or before August 28, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Butte County Air Pollution Control District, 9287 Midway, Suite 1A, Durham, CA 95938.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Victorville, CA 92392.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1188.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: Butte County Air Pollution Control District (BCAPCD) Rule 241, Cutback and Emulsified Asphalt; Mojave Desert Air Quality Management District (MDAQMD) Rule 1103, Cutback and Emulsified Asphalt; Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 425, Use of Cutback Asphalt; Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 329, Cutback and Emulsified Asphalt Paving Materials; and Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.28, Cutback and Emulsified Asphalts. These rules were submitted by the California Air Resources Board to EPA on May 13, 1993; December 22, 1994; November 18, 1993; June 19, 1992; and November 30, 1994 respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Chico Area, the Southeast Desert Modified AQMA Area, the Monterey Bay Area, the Santa Barbara-Santa Maria-Lompoc Area, and the Sacramento Metro Area [1]. 43 FR 8964; 40 CFR 81.305. Because these areas (with the exception of the Chico Area) were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. [40 CFR 52.222] On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the

[1] The BCAPCD lies within the Chico Area. Portions of MDAQMD lie within Southeast Desert Modified AQMA Area. YSAQMD lies within the Sacramento Metro Area.

date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[2] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Southeast Desert Modified AQMA Area is classified as severe-17. Monterey Bay Area and Santa Barbara-Santa Maria-Lompoc Area are classified as moderate. Sacramento Metro Area is classified as severe.[3] Therefore, all these areas (with the exception of the Chico Area, which is classified as transitional) were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The Chico Area is subject to Section 185A and Section 172(c)(1) instead of Section 182(a)(2)(A). Section 185A specifically exempts transitional areas from Subpart 2 (of Title I, Part D), including any RACT fix-up obligations, until December 31, 1991. Section 172(c)(1) requires transitional areas to correct any RACT deficiencies regarding enforceability (see General Preamble, 57 FR 13525).

The State of California submitted many revised RACT rules for incorporation into its SIP on May 13, 1993; December 22, 1994; November 18, 1993; June 19, 1992; and November 30, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for BCAPCD Rule 241, Cutback and Emulsified Asphalt; MDAQMD Rule 1103, Cutback and Emulsified Asphalt; MBUAPCD Rule 425, Use of Cutback Asphalt; SBCAPCD Rule 329, Cutback and Emulsified Asphalt Paving Materials; and YSAQMD Rule 2.28, Cutback and Emulsified Asphalts. The BCAPCD adopted Rule 241 on January 12, 1993; the MDAQMD adopted Rule 1103 on December 21, 1994; the MBUAPCD adopted Rule 425 on August 25, 1993; the SBCAPD adopted rule 329 on February 25, 1992; and the YSAQMD adopted Rule 2.28 on May 25, 1994. These submitted rules were found to be complete on July 19, 1993; December 27, 1993; January 3, 1995; August 27, 1992; and January 30, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[4] and are being proposed for approval into the SIP.

The submitted rules control VOC emissions from the manufacture, sale, mixing, storage, use, and application of cutback and emulsified asphalt materials. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to all of these rules is entitled, "Control of Volatile Organic Compounds from Use of Cutback Asphalt," EPA–450/2–77–037. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BCAPCD Rule 241, Cutback and Emulsified Asphalt; and MDAQMD Rule 1103, Cutback and Emulsified Asphalt are new rules that were adopted to limit VOC emissions from the use of cutback and emulsified asphalts.

MBUAPCD Rule 425, Use of Cutback Asphalt includes the following significant changes from the current SIP:

- Prohibition of manufacture and sale
- Maximum allowable distillate content for slow cure cutback asphalt of 0.5 percent
- Maximum allowable petroleum solvent content for emulsified asphalt of 3 percent
- ASTM Test Method D244–88 for emulsified asphalt
- Recordkeeping requirements

SBCAPCD Rule 329, Cutback and Emulsified Asphalt Paving Materials includes the following significant changes from the current SIP:

- Modified definitions of "Asphalt" and "Cutback asphalt"
- Sections for applicability, prohibitions, recordkeeping, and test methods
- Maximum allowable reactive organic compound content for cutback asphalts of 0.5 percent
- No penetrating prime coat, cold-weather application, or asphalt plant distance exemptions
- ASTM Test Method D244 for emulsified asphalt

YSAQMD Rule 2.28, Cutback and Emulsified Asphalts includes the following significant changes from the current SIP:

- No penetrating prime coat exemption
- Maximum allowable solvent content for emulsified asphalts of 3 percent
- Prohibitions of manufacture and sale and of specification
- Detailed recordkeeping and test methods provisions

(A detailed summary of rule highlights and changes is provided in the TSD's dated June 9, 1995.)

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BCAPCD Rule 241, Cutback and Emulsified Asphalt; MDAQMD Rule 1103, Cutback and Emulsified Asphalt; MBUAPCD Rule 425, Use of Cutback Asphalt; SBCAPCD Rule 329, Cutback and Emulsified Asphalt Paving Materials; and YSAQMD Rule 2.28, Cutback and Emulsified Asphalts are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being proposed for approval by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 17, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–18490 Filed 7–26–95; 8:45 am]

BILLING CODE 6560–50–P

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[3] Chico Area, Southeast Desert Modified AQMA Area, Monterey Bay Area, and Santa Barbara-Santa Maria-Lompoc Area retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). Sacramento Metro Area was reclassified from serious to severe effective on June 1, 1995. See 60 FR 20237 (April 25, 1995).

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

40 CFR Part 271

[FRL–5285–4]

State of Wyoming; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Wyoming for final authorization, public hearing and public comment period.

SUMMARY: Wyoming has applied for final authorization of its hazardous waste regulatory program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Wyoming's application and has made the tentative decision that Wyoming's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Wyoming's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the application.

DATES: A public hearing is scheduled for August 29, 1995, at 7:00 p.m., at the Laramie County Library, Pioneer Room, 2800 Central Avenue, Cheyenne, Wyoming, at 7:00 p.m. Wyoming will participate in the public hearing held by EPA on this subject. All comments on the Wyoming's final authorization application must be received by the close of business on August 28, 1995.

ADDRESSES: Copies of Wyoming's final authorization application are available during business hours at the following addresses for inspection and copying: U.S. EPA Region VIII, Library, Suite 144, 999 18th Street, Denver, Colorado 80202–2466 and at the Department of Environmental Quality, Herschler Building, 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002. Written comments should be sent to Marcella DeVargas, Mail code: 8HWM–WM, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Marcella DeVargas, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, Phone 1–800–227–8917 or 303–293–1670.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA). Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926(c)). Interim authorization is currently available only for requirements imposed pursuant to HSWA.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for the interim or final State

authorization processes appear at 40 CFR Part 271.

B. Wyoming

On September 19, 1994, Wyoming submitted a draft application to EPA for review. This application consisted of Wyoming's proposed hazardous waste rules. EPA submitted comments to the State on January 31, 1995. Comments on the draft application have been addressed by the State. On July 17, 1995, Wyoming submitted its official application for review for final authorization to EPA. Prior to submission, Wyoming solicited public comments and held a public hearing on the draft application.

EPA has reviewed Wyoming's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Wyoming to operate its program subject to the authority retained by EPA under HSWA.

In accordance with Section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on August 29, 1995, at the Laramie Public Library, Pioneer Room, 2800 Central Avenue, Cheyenne, Wyoming at 7:00 p.m. The public may also submit written comments on EPA's tentative determination until August 28, 1995. Copies of Wyoming's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA will consider all public comments on its tentative determination received at the hearing or during the public comment period. Issues raised by those comments may be the basis for a decision to deny final authorization to Wyoming. EPA expects to make a final decision on whether or not to approve Wyoming's program by October 25, 1995 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

C. Effect of HSWA on Wyoming's Authorization

Prior to the Hazardous and Solid Waste Amendments of 1984, a State with final authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements, however, did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt law equivalent or more stringent than newly promulgated HSWA-related federal provisions to retain final authorization, such federally promulgated HSWA-related provisions apply in authorized States in the interim.

As a result of HSWA, there will be a dual State/Federal regulatory program in Wyoming if final RCRA authorization is granted. To the extent the State program as authorized is unaffected by changes to the federal program promulgated pursuant to HSWA, the State program will operate in lieu of the Federal program. To the extent federal HSWA-related requirements go into effect after authorization of the State program, EPA will administer and enforce these portions of HSWA in Wyoming until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of HSWA under a Cooperative Agreement.

Today's tentative determination only includes authorization of Wyoming's program for certain HSWA requirements. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, generators of hazardous waste, and those who manage (transport, treat, store and/or dispose) hazardous waste regulated under the State program, must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

D. Indian Country

Today's proposal to authorize the Wyoming hazardous waste regulatory program does not extend to "Indian Country," as defined in 18 U.S.C. § 1151, including the Wind River Reservation.

Should Wyoming decide in the future to apply for authorization of its hazardous waste program on "Indian Country", the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a state (or tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian Law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval.

EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Should the State of Wyoming choose to submit analysis with regard to jurisdiction of the State over all or part of Indian Country in the State, it may do so without prejudice.

Any future EPA evaluation of whether to approve the Wyoming program for "Indian Country," to include Indian reservation lands, would be governed by EPA's judgment as to whether the State has demonstrated adequate authority to justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 **Federal Register** 64876, December 12, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 8 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Wyoming's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 19, 1995.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 95–18489 Filed 7–26–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–119, RM–8657]

Radio Broadcasting Services; Dafter, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dafter Community Broadcasters proposing the allotment of Channel 293A to Dafter, Michigan, as that community's first local service. The coordinates for Channel 293A are 46–21–36 and 84–25–36.

DATES: Comments must be filed on or before September 11, 1995, and reply comments on or before September 26, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Southmayd & Miller, 1220 Nineteenth Street, NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–119, adopted July 13, 1995, and released July 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18405 Filed 7–26–95; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 60, No. 144
Thursday, July 27, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 21, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

New

- Animal Plant Health Inspection Service

Importation of Animal & Poultry, Animal/Poultry Products, Certain Animal Embryos, and Zoological Animals—Addendum 2
VS Form 17–129
Business or other for-profit; 400 responses; 68 hours
Dr. Roger Perkins (301) 734–8170

Extension

- Consolidated Farm Service Agency

Application for payment amounts due persons who have died, disappeared or who have been declared incompetent—7 CFR 707
ASCS–325
Individuals or households; 3,000 responses; 1,500 hours Jane Salem (202) 720–7635
National Agricultural Statistics Service
Mink Survey
Farms; 500 responses; 83 hours
Larry Gambrell (202) 720–5778

- National Agricultural Statistics Service

Livestock Surveys
Farms; Business or other-for-profit; 117,736 responses; 21,526 hours
Larry Gambrell (202) 720–5778

Donald E. Hulcher,
Deputy Department Clearance Officer.
[FR Doc. 95–18421 Filed 7–26–95; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 95–051–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in the Marrs-Valencia meeting room of the Embassy Suites Hotel, 1800 South Second Street, McAllen, TX 78503, (210) 686–3000. Sessions will be held from 8 a.m. to 5 p.m. on August 15–17, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Williams, Chief Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1231, (301) 734–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

Tentative topics for discussion at the upcoming meeting include: The status of avian influenza (AI) in Mexico; the status of AI surveillance activity in the United States; the status of H5 and H7 AI vaccine for production; Foot-and-Mouth Disease Vaccine Bank update; the status of vesicular stomatitis in the United States; update on emergency preparedness; workshop on global trade; the status of bovine spongiform encephalopathy surveillance; the status of hog cholera in Mexico; update of activities at the Plum Island Animal Disease Center; world disease status; and surveillance of emerging diseases.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to Dr. John Williams at the address listed under **FOR FURTHER INFORMATION CONTACT.** Written comments may also be filed at the time of the meeting. Please refer to Docket No. 95–051–1 when submitting your comments.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 20th day of July 1995.

Terry Medley,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 95–18479 Filed 7–26–95; 8:45 am]
BILLING CODE 3410–34–P

Natural Resources Conservation Service

Deep Creek Watershed, Yadkin, North Carolina

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, US Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Deep Creek Watershed, Yadkin County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Richard A. Gallo, State Conservationist, Natural Resources Conservation Service, 4405 Bland Road, Suite 205, Raleigh, NC, 27609, telephone (919) 790–2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard A. Gallo, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are flood control and municipal and industrial water supply. The planned works of improvement include one multiple purpose reservoir.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Richard A. Gallo.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive order 12372, which requires intergovernmental consultation with State and local officials.)

Richard A. Gallo,
State Conservationist.
[FR Doc. 95–18485 Filed 7–26–95; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)–14–95]

Foreign-Trade Zone 122—Corpus Christi, TX, Subzone 122J, Valero Refining Company (Crude Oil Refinery); Request for Modification of Restrictions

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, pursuant to § 400.32(b)(1) of the Board's regulations, for modification of the restrictions in FTZ Board Order 414 authorizing Subzone 122J at the crude oil refinery of Valero Refining Company (Valero) in Corpus Christi, Texas. The request was formally filed on July 18, 1995.

The Board Order in question was issued subject to certain standard restrictions, including one that required the election of privileged foreign status on incoming foreign merchandise. The zone grantee has requested that the latter restriction be modified so that Valero would have the option available under the FTZ Act to choose non-privileged foreign (NPF) status on foreign refinery inputs used to produce certain petrochemical feedstocks and by-products, including the following: benzene, toluene, xylenes, other hydrocarbon mixtures, distillates/residual fuel oils, kerosene, naphthas, liquified petroleum gas, ethane, methane, propane, butane, ethylene, propylene, butylene, butadiene, petroleum coke, asphalt, sulfur, sulfuric acid, cumene and pseudocumene.

The request cites the FTZ Board's recent decision in the Amoco, Texas City, Texas case (Board Order 731, 60 FR 13118, 3/10/95) which authorized subzone status with the NPF option noted above. In the Amoco case, the Board concluded that the restriction that precluded this NPF option was not needed under current oil refinery industry circumstances.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 28, 1995.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 19, 1995.

Dennis Puccinelli,
Acting Executive Secretary.
[FR Doc. 95–18395 Filed 7–26–95; 8:45 am]
BILLING CODE 3510–DS–P

[Docket A(32b1)–13–95]

Foreign-Trade Zone 84—Houston, TX, Subzone 84F, Phibro Refining, Inc. (Crude Oil Refinery); Request for Modification of Restrictions

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, pursuant to § 400.32(b)(1) of the Board's regulations, for modification of the restrictions in FTZ Board Order 552 authorizing Subzone 84F at the crude oil refinery of Phibro Refining, Inc. (Phibro), in Houston, Texas. The request was formally filed on July 18, 1995.

The Board Order in question was issued subject to certain standard restrictions, including one that required the election of privileged foreign status on incoming foreign merchandise. The zone grantee has requested that the latter restriction be modified so that Phibro would have the option available under the FTZ Act to choose non-privileged foreign (NPF) status on foreign refinery inputs used to produce certain petrochemical feedstocks and by-products, including the following: benzene, toluene, xylenes, other hydrocarbon mixtures, distillates/residual fuel oils, kerosene, naphthas, liquified petroleum gas, ethane, methane, propane, butane, ethylene, propylene, butylene, butadiene, petroleum coke, asphalt, sulfur, sulfuric acid, cumene and pseudocumene.

The request cites the FTZ Board's recent decision in the Amoco, Texas City, Texas case (Board Order 731, 60 FR 13118, 3/10/95) which authorized subzone status with the NPF option noted above. In the Amoco case, the Board concluded that the restriction that precluded this NPF option was not needed under current oil refinery industry circumstances.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 28, 1995.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 19,1995.

Dennis Puccinelli,
Acting Executive Secretary.
[FR Doc. 95–18396 Filed 7–26–95; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration

[A-428-602]

Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On January 6, 1995, the Department of Commerce (the Department) published the preliminary results of its 1990–1993 administrative reviews of brass sheet and strip from Germany. The reviews cover exports of this merchandise to the United States by one manufacturer/exporter, Wieland-Werke AG (Wieland), during the periods March 1, 1990 through February 28, 1991, March 1, 1991 through February 29, 1992, and March 1, 1992 through February 28, 1993. The reviews indicate the existence of dumping margins for the 1990–91 and 1991–92 periods, and *de minimis* margins for the 1992–93 period.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted Wieland's margins for these final results.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1995, the Department published in the **Federal Register** (60 FR 2076) the preliminary results of its 1990–91, 1991–92, and 1992–93 administrative reviews of the antidumping duty order on brass sheet and strip from Germany (52 FR 6997, March 6, 1987).

Applicable Statute and Regulations

The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Reviews

Imports covered by these reviews are sales or entries of brass sheet and strip, other than leaded and tinned brass sheet and strip, from Germany. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. These reviews do not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review periods are:

March 1, 1990 through February 28, 1991 (fourth review);
March 1, 1991 through February 29, 1992 (fifth review);
March 1, 1992 through February 28, 1993 (sixth review).

The reviews cover one manufacturer/exporter, Wieland.

Analysis of Comments Received

We received case and rebuttal briefs from Wieland and from the petitioners, Hussey Copper, Ltd., The Miller Company, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America. Unless otherwise noted, the comments below pertain to all three reviews.

Model-Matching Methodology

Comment 1: Wieland disputes the Department's use of specific alloy grades in matching U.S. to home market sales. Wieland would have the Department use only two classes of alloys, above or below 75 percent copper content, instead of using exact alloy grades. The respondent states that the exact-alloy comparison method which we used in the preliminary results is a change from the method used in the prior review.

The respondent further alleges that the Department used the exact-alloy method in order to conform the model-matching criteria with other orders, and that in so doing the Department ignored record evidence demonstrating that Wieland's U.S. sales cannot be "appropriately matched" to home market sales of identical alloys. Wieland claims that "using alloy groups * * * provides the most practical means of achieving reasonable comparisons".

Wieland claims that our approach is contrary to Department practice in other cases involving brass sheet and strip, because the Department failed, in these reviews, to determine the appropriate matching criteria on the basis of the specific nature of Wieland's sales. The respondent alleges that by relying on specific alloy grades rather than using Wieland's two alloy groups, the Department "fails to take account of the nature of Wieland's sales". Wieland does not make clear how our approach neglects to take account of the nature of its sales, but implies that its sales are made more often on the basis of whether products are above or below 75 percent in copper content than on the basis of exact alloys.

The respondent also asserts that, since certain other model-matching criteria, namely gauge and width, are grouped by classes, alloys should also be grouped.

The petitioners note in rebuttal that there is no industry standard to distinguish alloys for high copper content (i.e., greater than 75 percent), that customers specify exact alloys in placing their orders, that in all other antidumping proceedings involving brass sheet and strip the Department has always made exact-alloy matches, and that Wieland's alloy groupings disregard the Department's conclusion in an earlier review that it should abandon the grouping methodology and instead make matches on an exact-alloy basis. The petitioners further assert that Wieland failed to establish that its home market sales, when matched to U.S. sales on the basis of exact alloys, ought not to be taken as representative of home market prices.

Department's Position: We disagree with the respondent. We did not employ the alloy-specific approach merely to conform to approaches used in reviews of other brass sheet and strip orders, but in order to follow section 771(16)(B) of the Act, which requires us to compare U.S. sales to home market merchandise which is identical or, when not identical, is "like that (U.S.) merchandise in component material or materials and in the purposes for which used," prior to resorting, if necessary, to less similar merchandise as described in 771(16)(C)(i)–(iii).

Wieland does not identify which U.S. sales, if any, are not "appropriately" matched to home market merchandise by our method, or otherwise explain how its less specific standard would be more appropriate. Nor does Wieland explain how its grouped alloy approach would be "the most practical means of achieving reasonable comparisons", other than by arguing that it would make the number of home market sales used in sales comparisons "sufficient".

Regarding Wieland's claim that matching by alloy groups would more appropriately reflect the nature of Wieland's sales, nothing in the record supports this claim. On the contrary, according to Wieland, its customers generally specify exact alloys in their orders. While its customers may sometimes choose the lowest-cost combination of metals within a narrow range, no information on the record suggests that Wieland's customers use the standard of 75 percent copper content in ordering merchandise.

In arguing that grouping alloys would be appropriate because grouping is used for gauge and width ranges, Wieland glosses over the distinction between the gauge and width measures on the one hand, and alloy grades on the other. Gauge and width are both infinitely variable and therefore must be divided into tiers to permit any comparisons. Alloy grades, by contrast, are discretely defined proportions of metals. Matching by specific alloys provides more precision than merely differentiating between merchandise which contains above or below 75 percent copper.

The respondent's grouped-alloy approach would assign all home market merchandise to one of two groupings, would compare each U.S. sale to home market merchandise containing up to seven different alloys, and would not necessarily result in comparisons of U.S. sales to home market merchandise made of only the identical alloy, or of only the single most similar alloy. The respondent's suggested groupings could result in understated or overstated dumping margins, due to the mix of home market models which would form the basis of foreign market value (FMV). Matching by specific alloys, on the other hand, ensures that we use the most similar merchandise possible to establish FMV in our dumping calculations. Therefore, the Department has continued to use the alloy-specific matching method.

Comment 2: The respondent complains that the Department's change in model-matching methodology reduces the dumping analysis to "little more than a game of chance" since, according to Wieland, the margin depends far more on the chance occurrence that a home market customer will place an order for an alloy identical to one sold in the United States than on Wieland's general pricing policies for its U.S. and home market sales. Where a single home market sale serves as the basis for comparison, Wieland argues, the results of the U.S./home market price comparison will depend completely on the date on which that home market sale was made, or, more particularly, on the metal pricing date for the metal component of the home market sale. Thus, Wieland argues, differences between U.S. and home market prices are caused by volatility in the market prices for copper, zinc, and tin, rather than by Wieland's brass sheet and strip pricing strategies. Wieland suggests that as an alternative the Department should use alloy groups for model-matching purposes. Wieland points out that differences in alloy costs could then be adjusted for with a sale-specific metal adjustment.

Department's Position: We disagree with the respondent. Wieland's "game of chance" complaint is not supported by the facts of the case or the methodology we used. This complaint hinges on Wieland's implicit suggestion that individual home market sales, or pairs of sales, somehow may not conform to its pricing policies. Wieland offers no evidence on the record that any home market sale prices should be excluded as unrepresentative. Wieland has not argued or demonstrated that some of its home market sales are outside the ordinary course of trade or are, for some other reason, inappropriate as the basis of FMV.

While Wieland has alleged that there is a danger that price differences for identical merchandise comparisons might result from changes in commodity prices of components, it has not demonstrated that such price fluctuations should affect the model-match methodology.

In the statutory definition of such or similar merchandise (section 771(16) of the Act) there is a clear preference for matching U.S. sales to home market merchandise which is manufactured by the same producer, composed of the same materials, and approximately equal in value, before resorting to comparisons to less similar merchandise. Our approach reflects this preference; the respondent's approach would ignore it. We are not permitted to ignore contemporaneous sales of identical merchandise. Wieland's suggested approach simply does not conform to the requirements of the antidumping law and regulations.

The risk of price differences caused by changes in the prices of commodities used as components is not unique to this proceeding but is inherent in price comparisons in many industries. That risk has not heretofore served as justification for omitting comparisons of U.S. sales to contemporaneous home market sales of identical or most similar merchandise. Yet the respondent's approach would make comparisons to identical or most similar merchandise impossible, by defining models so broadly that all comparisons would potentially include similar merchandise as well as identical merchandise (and would thus be subject to adjustments for differences in alloy values under 19 CFR 353.57(b)). But this grouped-alloy approach would not be warranted by the regulations cited above or by the facts of this review; using exact alloy comparisons, we were able to match a substantial portion of U.S. sales to home market merchandise of identical alloys, and all the remaining U.S. sales with home market merchandise containing one of the three most similar alloys.

Comment 3: Wieland states that the Court of International Trade (CIT), addressing the model-matching issue in remanding the final results in the first administrative review, did not require the Department to abandon the use of two alloy groups, but merely asked the Department to articulate the reasons why it did not use the exact-alloy method. *See Hussey Copper Ltd.*, v. *United States*, 834 F. Supp. 413 (CIT 1993).

Department's Position: As explained in our response to Comment 2 above, the Department has concluded that the exact-alloy matching methodology more closely follows the statute, which requires us to make comparisons of identical merchandise, when this is possible, before making comparisons with similar merchandise.

Comment 4: The petitioners request that the Department alter the hierarchy of traits used in matching U.S. sales to home market sales. In particular, the petitioners ask the Department to place alloy in the third position, instead of the fifth position. According to the petitioners, alloy was placed in the third position in certain other brass sheet and strip cases, and alloy specifications are more important to customers than gauge and width differences.

Department's Position: The petitioners argue that the model-match methodology used in this review is a departure from the methodology used in reviews of brass sheet and strip from other countries. In fact, although there are many similarities in the methodologies used in the various brass sheet and strip cases, they are not identical. Because the facts of each case are distinct from those of other cases, different hierarchies are applied to the criteria to define home market sales of the most similar merchandise.

In these reviews, the Department used five criteria to define models in order to

compare sales: form, coating, gauge, width, and alloy. For those U.S. sales for which we did not find sales of identical home market merchandise, we determined that the most similar home market merchandise for comparison purposes was merchandise which was identical in form, coating, gauge, and width, and similar in alloy content. Therefore, we used specific programming instructions to search for contemporaneous home market sales of merchandise which was identical except for alloy. Thus, the only criterion for which we considered differences was alloy, no matter what the order of the criteria as listed in the program. Consequently, we do not agree with the petitioners' suggestion that we change the ordering of the criteria in a search for similar merchandise.

Concerning the question of whether alloy is more important to customers than gauge and width specification, as the petitioners allege, we note that Wieland states in its February 23, 1995 Rebuttal Brief (p.3) that "generally customers must have very precise gauges and widths to serve their particular purpose and to use with their particular equipment, and no gauge or width substitutes would be acceptable". Notwithstanding the petitioners' allegation, there is nothing in the record of this review to confirm or support the petitioners' suggestion that customers have less flexibility in alloy than in gauge and width specifications, which typically have narrow tolerances reflecting the customers' machining or assembly requirements. Thus, the petitioners' assertion that alloy is more important than gauge and width to the respondent's customers is without foundation in the record of this review.

Therefore, we have determined for these final results to use the model-matching methodology used for the preliminary results.

Differences in Average Order Size

Comment 5: Defending its claim for adjustments in price to reflect the different average order sizes of its U.S. sales, Wieland contests our preliminary finding that it has not demonstrated a relationship between order size and price. In support of the claimed adjustment, Wieland cites the price lists in its questionnaire responses, the Department's verification report in the 1991–1992 administrative review, section 773(a)(4)(A) of the Act, and the regulations (19 CFR 353.55).

In rebuttal, the petitioners point to the Department's disallowance in the first review, as upheld by the CIT, concerning the same cost adjustment claim for different order sizes. The petitioners also note Wieland's failure to show that it met the regulatory requirement for such an adjustment, *i.e.*, that Wieland must show that it "granted quantity discounts of at least the same magnitude on 20 percent or more of sales of such or similar merchandise * * *" (19 CFR 353.55(b)(1)).

Department's Position: We disagree with the respondent. The regulations do not allow for adjustments to price based merely on claimed differences in per-pound costs according to order size. The adjustments allowed are only for differences in price or discounts for different quantities produced. The regulations (19 CFR 353.55(b)(2)) provide for adjustments if "the producer demonstrates * * * that the discounts reflect savings specifically attributable to the production of the different quantities." In its questionnaire response Wieland complied in part, by showing the savings, in the form of differences in per-kilogram costs for processing different order quantities. But Wieland did not place on the record any evidence of quantity discounts actually given, or information showing that prices were affected by different production quantities. Indeed, Wieland's questionnaire response states unequivocally: "Wieland does not provide price-based quantity discounts".

The price list Wieland cites in this regard is not an adequate basis for this claim since it is a matter of record that the respondent's prices are negotiated ad hoc and do not necessarily follow the price list. The 1991–1992 verification report, in which we noted variations in prices for varying quantities in one particular contract, is not dispositive; our inspection of a contract in a verification does not signal our acceptance of a claimed adjustment to price. Wieland has the burden, in each review, of showing how its actual prices varied according to quantity, as required by 19 CFR 353.55.

Value-Added Tax

Comment 6: While conceding that the practice is consistent with current Department policy on value-added tax (VAT), Wieland contests the Department's application of a 14-percent VAT adjustment to both U.S. and home market sales in this review, and requests that the Department instead add the actual home market VAT amount to U.S. price. Wieland alleges that the use of the VAT rate on sales in both markets introduces a multiplier effect. Wieland urges the Department to instead adopt its alternative solution, at least until this issue can be resolved more definitively by the U.S. Court of Appeals for the Federal Circuit (CAFC), once an appeal is heard in the case of *Federal Mogul Corporation* v. *United States*, 834 F. Supp. 1391 (Fed. Cir. 1993).

Department's Position: We disagree with Wieland. We adjusted U.S. Price (USP) and FMV for VAT in accordance with our practice, pursuant to the decision of the CIT in *Federal-Mogul Corporation and the Torrington Company* v. *United States*, 813 F. Supp. 856 (October 7, 1993) (*Federal-Mogul*) and as outlined in *Silicomanganese From Venezuela; Preliminary Determination of Sales at Less than Fair Value*, 59 FR 31204, June 17, 1994, where we address the multiplier effect issue in detail.

Commission Offset

Comment 7: The petitioners argue that the Department should offset home market commissions for purchase price (PP) sales.

Department's Position: We agree and have made an offset to FMV for PP sales based on U.S. indirect selling expenses, limited to the amount of commissions that were deducted from home market price.

Interest Rates Used in Credit Expenses

Comment 8: In the 1990–1991 review period, neither Wieland nor its U.S. affiliate borrowed funds in the United States. To calculate the imputed credit expense on its ESP sales in that period, Wieland used a U.S. bank deposit interest rate. The petitioners argue that the Department should correct for Wieland's use of deposit interest rates, and replace them with home market borrowing rates. The petitioners cite the Department's position in *Final Determination of Sales at less than Fair Value: Coated Groundwood Paper from Belgium* 56 FR 56359 (November 11, 1991) (*Groundwood Paper*), that a respondent must show that it had actual borrowings in the United States before the Department imputes credit expenses based upon U.S. rates.

To calculate the imputed credit expense on its PP sales in the 1990–1991 period, Wieland originally used its home market borrowing rates. However, in its February 13, 1995 rebuttal brief, Wieland asks the Department to "correct this mistake" and to replace the home market rates which it used for PP sales with the U.S. deposit rate which it used for ESP sales, because Department policy now requires that a U.S. interest rate be used to calculate imputed credit expense on U.S. sales.

For the 1991–1992 and 1992–1993 review periods, Wieland did have borrowings in the United States, and used Wieland-America's average short-term borrowing rate during the review period as the basis for calculating imputed credit expenses for both PP and ESP sales. For both of these reviews, the petitioners argue that Wieland-Werke's home market borrowing rate should be used as the basis for all U.S. credit expenses. The petitioners argue that Wieland-Werke extended the credit and incurred the expense to finance the receivables. The petitioners also note that in the 1992–1993 period of review, Wieland discontinued invoicing its customers through Wieland-America and instead billed its unrelated U.S. customers directly.

The respondent argues that the Department correctly measured the cost of financing sales made in dollars by applying a dollar interest rate, citing Department policy in the *Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980, 6998 (1995) (Comment 21) (*Roses*). Wieland also notes that in the *Final Determination of Sales at Less than Fair Value: Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan* (59 FR 38432 (July 28, 1994) (*Class 150 Stainless Steel Pipe*)), the Department stated that it "is required to use the lowest rate at which the respondent has borrowed or to which the respondent has access."

Department's Position: We disagree with the petitioners and concur with the respondent that it is reasonable to use dollar-denominated borrowing rates in these reviews. The respondent is correct in arguing that the interest rate used for credit expenses should match the currency in which the sales are denominated, as stated in *Roses*.

On the question of whether the parent's or the U.S. subsidiary's dollar-denominated borrowing rate should be applied, where a company had access, directly or through its U.S. affiliate, to two different dollar-denominated rates, the lower of the two rates is presumed to have been used. See, for example, *Class 150 Stainless Steel Pipe*, where the Department calculated imputed credit for PP sales using the lower of two U.S. interest rates available to the respondent. See also *Notice of Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France*, 58 FR 37125 (1993) (Comment 30), in which the Department states that it does not concern itself with determining which of the corporate entities related to the respondent actually incurs the cost of financing.

In this case, during the 1990–1991 POR neither the German parent nor the U.S. subsidiary had borrowings in U.S. dollars, and in the 1991–1992 and 1992–1993 PORs, we are aware of only the U.S. subsidiary having U.S. borrowings. Therefore, for the 1991–1992 and 1992–1993 administrative reviews, we have used the U.S. subsidiary's interest rate for borrowings in U.S. dollars.

Concerning Wieland's calculation of U.S. credit expenses in the 1990–1991 review period and Wieland's request that we use deposit rates rather than borrowing rates, (1) as noted above in *Class 150 Stainless Steel Pipe*, we use actual borrowing rates or, if no borrowing occurred, borrowing rates to which the firm had access, either directly or through its U.S. affiliate; (2) it is our practice to use lending rates, as opposed to investment return or deposit rates, in calculating credit expenses (see *Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Stainless Steel Angle From Japan* 60 FR 16608, March 31, 1995 (Comment 7)).

As for the petitioner's reference to the Department's position in *Groundwood Paper*, our decision in *Groundwood Paper* has been superseded by more recent proceedings (see *Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37122, July 8, 1993). As stated later in *Roses*, in cases where there are no borrowings in the currency of the sales made, as in Wieland's 1990–1991 review period, the Department may use external information about the cost of borrowing in a particular currency. Since Wieland did not supply the U.S. borrowing rates to which it had access during the 1990–1991 review period, we have used the U.S. prime rate to calculate Wieland's imputed U.S. credit expenses for this period.

Use of Alloy CDA250

Comment 9: The petitioners state that in the fifth review (1991–1992) the Department should include home market sales with alloy grade CDA250 in its dumping analysis, in order to ensure that each U.S. sale is compared to the home market sales with the closest alloy composition for product matches in which an identical alloy match is not available.

Department's Position: We agree with the petitioners and have included these sales in our analysis for these final results.

Clerical and Programming Errors

Comment 10: Wieland states, and the petitioners agree, that the Department's computer program fails to reflect all possible matches between U.S. and home market sales.

Department's Position: We concur and have amended the programs by adding programming which ensures that all U.S. sales are correctly matched to home market sales.

Comment 11: The respondent points out that adjustments for different alloys were not converted to pounds.

Department's Position: We agree with the respondent and have converted the adjustments for different alloys to pounds.

Comment 12: The petitioners state that the Department failed to deduct commissions or direct and indirect selling expenses in its VAT tax adjustment when it calculated the net U.S. price for ESP sales.

Department's Position: We agree in part with the petitioners. Since in the preliminary results we did not adjust U.S. commissions and indirect expenses for VAT, we have done so in these final results.

Clerical Errors Alleged in the Fourth Review Only

Comment 13: The petitioners state that the Department failed to adjust FMV for the differences in metal costs whenever U.S. sales were matched to a home market sale of merchandise with a different alloy. Petitioners state that the Department should increase both the adjustment for different alloys and the adjustment for other differences in merchandise to account for the VAT.

Department's Position: In the preliminary results, when matches were based on merchandise made of different alloys, we did adjust FMV for differences in alloys. However, we inadvertently failed to increase the adjustments for differences in merchandise and differences in alloys by the VAT rate. We have corrected this oversight for these final results.

Comment 14: The petitioners state that the Department compared VAT-inclusive U.S. prices to constructed values (CV) which had not been increased by the VAT rate.

Department's Position: We agree with the petitioners; we do not add VAT to CV, but in the preliminary results we inadvertently compared VAT-inclusive U.S. prices to CV. We have corrected the computer programming language by removing VAT from the U.S. prices which would be compared to CV. However, since CV was not used in these final results, this point is moot.

Comment 15: The petitioners state that in its test for sales below cost in the home market, the Department neglected to subtract after-sale rebates and freight charges. The petitioners further state that in calculating total cost, the Department neglected to include home market packing expenses.

Department's Position: We disagree with the petitioners. After-sale rebates, home market packing expenses, and freight are included in reported costs, and are therefore also included in price for the purpose of the cost test.

Comment 16: The petitioners state that the Department failed to add U.S. packing expenses to CV.

Department's Position: We disagree with the petitioners; U.S. packing expenses were included in CV for the preliminary results. However, since CV was not used in these final results, this point is moot. Clerical Errors Alleged in the Fifth and Sixth Reviews

Comment 17: The petitioners state the Department double-counted after-sale rebates by including them in both direct and indirect selling expenses.

Department's Position: We agree with the petitioners, and have amended the final results to remove after-sale rebates from home market indirect selling expenses.

Comment 18: The petitioners state that in the 1992–1993 review, the Department failed to include inventory carrying costs in the calculation of U.S. indirect selling expenses.

Department's Position: We agree and have added inventory carrying costs to indirect selling expenses for ESP sales.

Comment 19: Petitioner states that the Department should increase both the adjustment for different alloys and the adjustment for other differences in merchandise to account for the VAT.

Department's Position: We inadvertently failed to increase the adjustments for differences in merchandise and differences in alloys by the VAT rate. We have corrected this oversight for these final results.

Final Results of Reviews

As a result of our analysis of the comments received, we determine that the following margins exist for Wieland:

Manufacturer/exporter	Period	Percent margin
Wieland-Werke AG	3/1/90–2/28/91	2.04
	3/1/91–2/28/92	2.36
	3/1/92–2/28/93	0.46

Individual differences between the USP and FMV may vary from the above percentages. The Department shall instruct the Customs Service to liquidate all appropriate entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The cash deposit rate for Wieland will be zero, since the rate published in the final results of review for the 1993–1994 period is *de minimis*;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 8.87%, the "all others" rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 11, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–18397 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–821, A–588–837]

Initiation of Antidumping Duty Investigations: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Bill Crow or James Maeder, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0116 and 482–3330, respectively.

Initiation of Investigations

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

The Petitions

On June 30, 1995, we received petitions filed in proper form by Rockwell Graphic Systems, Inc. and its parent company, Rockwell International Corporation (the petitioner). Supplements to the petitions were received on July 17 and 19, 1995. In accordance with section 732(b) of the Act, the petitioner alleges that large newspaper printing presses from Germany and Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file these petitions because it is an interested party, as defined under section 771(9)(C) of the Act. The petitioner also states that it has filed the petitions on behalf of the U.S. industry producing the product that is subject to this investigation.

Determination of Industry Support for the Petitioner

Section 732(c)(4)(A) of the Act requires the Department to determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if (1) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product; and (2) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. For purposes of our analyses, we accept the definition of the domestic like product as defined in the petitions.

A review of the production data provided in the petitions indicates that the petitioner accounts for more than 25 percent of the total production of the domestic like product and for more than 50 percent of that produced by companies expressing support for, or opposition to, the petitions. The Department received no expressions of opposition to the petitions by domestic producers of the domestic like product. However, on July 17, 1995, Mitsubishi Heavy Industries, Ltd. (MHI) submitted on the Japanese record a challenge to the petitioner's claim that the petition was filed on behalf of the domestic industry with respect to newspaper press components, alleging that petitioner lacks standing because it does not produce all components (*e.g.*, folders), subcomponents and parts (*e.g.*, reel stands, paper guides, screws, etc.) of the subject merchandise. Also, on July 18, 1995, MAN Roland, Inc. (MAN Roland) submitted in connection with the German petition a challenge to the petitioner's claim that the petition was filed on behalf of the domestic industry with respect to newspaper press components.

The petitioner filed a response to both challenges on July 19, 1995. In addition, in an ex-parte meeting with Department officials, the petitioner clarified certain elements of the scope language submitted in the original petitions. With respect to the arguments concerning parts manufacturing, we have found MHI's and MAN Roland's challenges to be unsubstantiated. Rockwell is a producer of all five of the named newspaper press components designated as within the scope of these investigations as it attested to in its July 19 affidavit.

With respect to the argument that the petitioner does not produce subcomponents and parts, we note that the subject merchandise defined in the scope section of this notice clarifies that the domestic like product identified in the petition is limited to large newspaper printing press systems, press additions, and the five named major press system components. The subcomponents and parts identified by MHI are not included in the definition of the domestic like product accepted by the Department. As such, there is no issue with respect to domestic producers of printing press subcomponents or parts.

MAN Roland also argued that the petitioner does not manufacture presses using flexographic printing technology and, therefore, has not presented evidence of sufficient industry support. Based on the petitioner's attestation, MAN Roland is incorrect. The petitioner has produced and sold, and remains capable of producing and selling, large newspaper printing presses using flexographic printing technology, as discussed in its July 19 and 20, 1995, submissions.

Therefore, the Department determines that both the German and the Japanese petitions are filed on behalf of the domestic producers of large newspaper printing presses, and the five named components designated in the petitions.

Scope of Investigations

The products covered by these investigations are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to complete systems, the scope of these investigations includes the five press system components. They are:

(1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color, or a printing-unit cylinder;

(2) A reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) A folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) A computerized control system, which is any computer equipment and/or software *designed specifically* to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of disassembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. This scope does not cover spare or replacement parts. Further, these investigations cover all current and future printing technologies capable of printing newspapers, including, but not limited to lithographic (offset or direct), flexographic, and letterpress systems.

The products covered by these investigations are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.91.00, 8524.21.00, 8524.90.00, and 8537.10.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Export Price and Normal Value

Germany

The petitioner based gross export price on detailed pricing information on a sale to a customer in the United States obtained by the bidding process for newspaper press sales. The petitioner

deducted from a delivered price a certain proprietary allowance, installation costs, training expenses, and movement charges, including foreign inland freight, foreign port and loading charges, ocean freight, marine insurance, U.S. wharfage expenses, U.S. port and loading costs, U.S. duty, and U.S. inland freight expenses.

According to the petitioner, the German home market is viable. However, contending that large newspaper printing presses sold in Germany differ substantially from those sold in the United States, the petitioner was unable to provide information for sales of identical or similar large newspaper printing presses sold in both markets. Accordingly, the petitioner based normal value on constructed value (CV).

CV includes the cost of manufacturing (COM), selling, general and administrative expenses (SGA), interest expense, U.S. packing and profit. For COM, the petitioner estimated overhead production factors and material requirements based on its own bid proposal cost of production model for the U.S. sale used in its allegation. The petitioner valued labor and overhead (excluding depreciation) using publicly available data for Germany. Where German market specific costs were unavailable, the petitioner relied on its own experience. Major component parts were valued using price quotes received from a German supplier where available. Because petitioner was unable to obtain German prices for the remaining material parts, it relied on its own experience as a reasonable surrogate. Therefore, the petitioner used Rockwell Graphic Systems' actual price paid to a U.S. supplier to value all the remaining material parts.

As part of COM, the petitioner included an amount for depreciation expense computed from MAN Roland's 1994 financial statements. As noted above, however, the petitioner based the materials costs on supplier price quotes which would reasonably recover the suppliers' costs, including costs relating to manufacturing depreciation. Since MAN Roland produces its own component parts, a significant amount of the depreciation expense reflected in its financial statements relates to machinery and equipment used to manufacture these component parts. Therefore, we believe the COM in the petition double counts depreciation expense for component parts. We could not identify the amount of depreciation expense directly related to manufacturing the component parts. In order to avoid overstating costs, we excluded all reported depreciation expense from the CV calculation.

Although petitioner had obtained a copy of MAN Roland's 1994 financial statements, it was unable to use the information presented to compute SGA expense for CV due to the format of the company's income statement. Moreover, the petitioner was unable to obtain from other sources the German market SGA data for the printing machinery and equipment industry, and documented its unsuccessful attempts to collect this information. As an alternative source for SGA expense, the petitioner calculated an SGA rate specific to large newspaper printing presses based on its own experience. The Department normally relies on home market specific information where reasonably available. In this instance, however, having made a reasonable effort to collect this data, the petitioner was unable to do so. We therefore have relied on the petitioner's own SGA information for CV.

The petitioner calculated interest expense based on MAN Roland's 1994 unconsolidated financial statements rather than using the 1994 MAN consolidated financial statements. The Department normally computes interest expense on a consolidated basis. MAN's 1994 consolidated financial statements indicate that short-term interest income exceeded interest expense. Therefore, we included no interest expense in CV. For U.S. packing, the petitioner calculated MAN Roland's cost based on its own experience.

The petitioner contends that MAN Roland's lack of profit, as reported in its audited financial statements, does not constitute a reasonable profit under the statute. Thus, the petitioner calculated profit based on the financial results for six other MAN companies which manufactured marine engines, automotive parts, space systems, and heavy industrial equipment. Section 773(e)(2) of the Act provides that CV include a reasonable amount for profit earned by the exporter or producer of the merchandise under investigation. The Department therefore recalculated CV using a profit figure of zero based on the results shown in MAN Roland's 1994 financial statements.

Based on the Department's modifications to the petitioner's methodology, the estimated dumping margin is 46.40 percent.

Japan

The petitioner based gross export price on detailed pricing information on two sales to customers in the United States obtained by the bidding process for newspaper press sales. The petitioner deducted from delivered prices installations costs, training expenses and movement charges including foreign inland freight, foreign port and loading charges, ocean freight, marine insurance, U.S. duty, U.S. wharfage charges, U.S. port and unloading fees and U.S. inland freight. For one sale, the petitioner deducted the cost of a certain proprietary allowance; from the second sale, the petitioner deducted the expenses incurred for advance press and support services.

According to the petitioner, the Japanese home market is viable. However, contending that large newspaper printing presses sold in Japan differ substantially from those sold in the United States, the petitioner was unable to provide information for sales of identical or similar large newspaper printing presses sold in both markets. Accordingly, the petitioner based normal value on CV.

CV includes the COM, SGA, interest expense, U.S. packing, and profit. For COM, the petitioner estimated material requirements and overhead costs for the two reported Japanese sales based on its own bid proposal cost of production model and adjusted for known differences between costs incurred in producing the large newspaper printing presses in the United States and the production costs incurred for the merchandise in Japan.

For one sale, the petitioner used SGA expenses from its own U.S. Graphic Systems division expense because the CV was based primarily on U.S. production costs. For the other sale, the petitioner used the SGA expenses incurred by its Japanese subsidiary because the CV was based primarily on the subsidiary's costs. The Department prefers to calculate SGA using home market and industry specific information where reasonably available. Therefore, we used the SGA expenses from petitioner's Japanese subsidiary for both Japanese sales because this represented costs specific to the newspaper press industry in Japan.

The petitioner calculated interest expense and profit for both Japanese sales based on Mitsubishi Heavy Industries' 1993 and 1994 consolidated financial statements, respectively. Packing costs were based on its own U.S. Graphic Systems division's experience.

Based on the Department's modifications to the petitioner's methodology, the estimated dumping margins range from 78.22 to 179.55 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of large newspaper printing presses are being, or are likely to be, sold at less than fair value. If it becomes necessary at a later date to consider these petitions as a source of facts available under section 776 of the Act, we may review further the calculations.

Initiation of Investigations

We have examined the petitions on large newspaper printing presses from Germany and Japan and have found that they meet the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, pursuant to section 732(c)(2) of the Act, we are initiating antidumping duty investigations to determine whether imports of large newspaper printing presses from Germany and Japan are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by December 7, 1995.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, copies of the public versions of the petitions have been provided to the representatives of the governments of Germany and Japan. We will attempt to provide copies of the public versions of the petitions to all the exporters named in the petitions.

International Trade Commission (ITC) Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by August 14, 1995, whether there is a reasonable indication that imports of large newspaper printing presses from Germany and Japan are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination in either investigation will result in that investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: July 20, 1995.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–18399 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–032]

Large Power Transformers From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on large power transformers from Japan. The review covers exports of one manufacturer of this merchandise to the United States. The review period is June 1, 1993, through May 31, 1994. The review indicates that no shipments of the subject merchandise took place during the review period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Andrea Chu, Kris Campbell, or Michael R. Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1994, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (59 FR 29411) of the antidumping finding on large power transformers from Japan. In accordance with 19 CFR 353.22(a), the petitioner requested that the Department conduct an administrative review. We initiated the review on July 15, 1994 (59 FR 36160), covering the period June 1, 1993, through May 31, 1994. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of large power transformers; that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers.

Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly.

This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of transformers, Fuji Electric Co., Ltd. (Fuji). The review period is June 1, 1993, through May 31, 1994.

Preliminary Results of Review

Fuji reported that it made no shipments to the U.S. during the period of review. The Department confirmed with the U.S. Customs Service that no subject merchandise exported by Fuji was entered into the United States during the period of review. Therefore, we preliminarily determine that there were no shipments subject to this review and that Fuji's cash deposit rate will continue to be 5.90 percent, which is the rate established in the final results of the last relevant review period in which Fuji made shipments.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) For the reviewed company and previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters is 10.63 percent (see **Federal Register** on August 23, 1993 (59 FR 44498)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held approximately 44 days after the publication of this notice. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 19, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–18400 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–DS–P

Evaluation of State Coastal Management Programs and National Estuarine Research Reserve

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Wisconsin and Florida Coastal Management Programs and the Wells (Maine) National Estuarine Research Reserve Program.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal management. Evaluation of Coastal Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national coastal management objectives, adhered to its Coastal Program or Reserve Management Plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Wells National Estuarine Research Reserve in Maine site visit will be from September 11–15, 1995. A public meeting will be held on Tuesday, September 12, 1995, at 7 p.m., at the Wells Reserve Visitor Center, 342 Laudholm Road, Wells, Maine, 04090.

The Wisconsin Coastal Management Program evaluation site visit will be from September 11–15, 1995. Public meetings will be held on Tuesday, September 12, 1995, at 7 p.m., at the Neville Museum, 210 Museum Place, Green Bay, WI, 54301.

The Florida Coastal Management Program evaluation site visit will be from September 18–22, 1995. A public meeting will be held on Thursday, September 21, 1995, from 6 to 8 p.m, at the Naval Beach Hotel, 851 Gulf Shores Blvd., North, Naples, Florida.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOA/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

Dated: July 19, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone.

[FR Doc. 95–18488 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

July 21, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for 5 percent allowance for traditional folklore products, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17325, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 21, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on July 28, 1995, you are directed to amend the directive dated March 30, 1995 to adjust the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I:	
219	5,867,479 square meters.
313	13,555,344 square meters.
314	47,250,253 square meters.
317/617/326.	20,560,336 square meters of which not more than 3,083,244 square meters shall be in Category 326.
331/631	1,545,003 dozen pairs.
334/335	184,373 dozen.
336/636	535,173 dozen.
338/339	1,204,271 dozen.
340/640	1,274,789 dozen.
341	801,497 dozen.
342/642	306,544 dozen.
345	289,589 dozen.
347/348	1,567,173 dozen.
350/650	102,870 dozen.
351/651	452,074 dozen.
445/446	40,045 dozen.
448	15,232 dozen.
604–A [2]	457,538 kilograms.
618	2,369,516 square meters.
625/625/627/628/629.	19,881,056 square meters.
634/635	245,236 dozen.
638/639	1,294,594 dozen.
641	1,834,440 dozen.
644	313,765 numbers.
647/648	2,723,165 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–18401 Filed 7–26–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Applicable Form: Department of Defense Request for Personnel Security Investigation; DD Form 1879

Type of Request: Expedited Processing—Approval Date Requested: 30 days following publication in the **Federal Register**

Number of Respondents: 150,000

Responses Per Respondent: 1

Annual Responses: 150,000

Average Burden Per Response: 15 minutes

Annual Burden Hours: 37,500

Needs and Uses: The DD Form 1879, "Department of Defense Request for Personnel Security Investigation," is used to request Single Scope Background Investigations (SSBIs), Expanded National Agency checks (ENACs), SSBI Periodic Reinvestigations (PRs), or Special Investigative Inquiries (SIIs). It will accompany the revised Standard Form 85P, "Questionnaire for Public Trust Position," or Standard Form 86, "Questionnaire for National Security Position," which will be used by the Defense Investigative Service for the purpose of conducting SSBIs, ENACs, PRs, and SIIs. These provide the basis for determination of a person's eligibility for access to classified information, appointment to a sensitive position, assignment to duties that require a personnel security or trustworthiness determination, continuing eligibility for retention of a security clearance, or assignment to other sensitive duties.

Affected Public: Individuals or households, Businesses or other for-profit; Federal Government

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 24, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18469 Filed 7–26–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–595–000]

Texas Eastern Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Brazos River Crossing Project, Request for Comments on Environmental Issues, and Notice of Site Visit

July 21, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Brazos River Crossing Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Texas Eastern Transmission Corporation (Texas Eastern) wants to abandon about 1.8 miles of its mainline No. 11, and replace it with about 1.6 miles of 24-inch-diameter pipeline, including a new crossing of the Brazos River by directional drill, in Austin and Waller Counties, Texas. Texas Eastern's

[1] Texas Eastern Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

existing mainline No. 11 Brazos River crossing has been exposed by erosion.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 16.8 acres of land. An 85-foot-wide right-of-way would be used during construction on the land portion of the project, as well as additional extra work spaces. Following construction, the permanent right-of-way would be 50 feet wide. Extra work spaces and right-of-way beyond the 50-foot-wide permanent right-of-way would revert to their original land uses. Vegetation would be restored in all disturbed areas.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Public safety;
- Land use;
- Cultural resources;
- Air quality and noise;
- Polychlorinated biphenyls.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Eastern. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The project would cross cropland and rangeland. An undetermined amount of prime farmland soils would be temporarily affected. The project would also cross an existing pecan orchard, ranch, corrals, and the construction right-of-way is within 23 feet of a residence.
- Several landowners have stated that an alternative route which uses existing right-of-way would be preferable to the proposed route.
- The project would affect about 5.8 acres of herbaceous wetlands, and about 1.0 acre of forested wetland.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please following the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426;
- Reference Docket No. CP95–595–000;
- Send a *copy* of your letter to: Mr. Jeff Gerber, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before August 21, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Gerber at the above address.

Site Visit

On August 9, 1995, the FERC staff, accompanied by representatives of Texas Eastern, will inspect the proposed location of the facilities. All interested parties may attend. Those planning to attend must provide their own transporation. For further information, call Mr. Jeff Gerber, EA Project Manager, (202) 208–1121.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding is August 4, 1995. Parties seeking to file late interventions must show good cause, as required by Section 385.124(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Jeff Gerber, EA Project Manager, at (202) 208–1121.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–18413 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Docket No. RP95–387–000]

Hanley and Bird, Inc. v. CNG Transmission Corporation; Notice of Complaint

July 21, 1995.

Take notice that on July 14, 1995, Hanley and Bird, Inc. (Hanley), pursuant to Section 5 of the Natural Gas Act (NGA), 717d, and Section 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, filed a complaint seeking resumption of certain end-user interruptible transportation and capacity release service, and relief from allegedly unlawful, unduly discriminatory and anticompetitive practices by CNG Transmission Corporation (CNG) in violation of NGA Sections 5 and 7, the antitrust laws, Commission policy, and the nomination procedures of CNG's FERC GAS Tariff.

Hanley complains that CNG has unlawfully tied entitlement to a small customer, one-part, volumetric (FT(SC)) rate to the requirement that Hanley must first ship 10,000 Dth of gas per day (Hanley's contractual reservation level) before CNG will allow unaffiliated and independent shippers behind Hanley's city-gate to nominate and ship interruptible transportation (IT) or released capacity gas in their own names to Hanley's delivery points on CNG.

Hanley also complains that CNG delayed implementation of Hanley's timely request for FT(SC) rates for the month of June 1995, until July 1, 1995, because notice was not received until after CNG confirmed nominations for June 1995 services.

Hanley requests that the Commission (1) direct CNG to provide IT and capacity release service to the end-users behind Hanley's city-gate, (2) enforce Hanley's election of FT(SC) rates for the month of June 1995 as timely received, or, alternatively, as a cognizable intra-month revision to Hanley's prior nomination for that month, and (3) exercise its authority under NGA Section 16 to cure all damages to Hanley and the end-users caused by CNG's unlawful practices.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before August 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before August 21, 1995.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–18418 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–175–000]

Mojave Pipeline Co.; Notice of Informal Settlement Conference

July 21, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on August 3, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC for the purpose of exploring the possible settlement of the referenced docket.

Any party, as defined by 18 CFR 385.102(c) or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene any receive intervenor status pursuant to the Commission's Regulation (18 CFR 385.214).

For additional information, contact Kathleen M. Dias at (202) 208–0524 or J. Carmen Gastilo at (202) 208–2182.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–18417 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–618–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

July 21, 1995.

Take notice that on July 14, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–618–000 a request pursuant to §§ 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216 and 157.211) for authorization to abandon certain facilities in Arkansas, and to construct and operate certain facilities in Arkansas, under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to abandon one 1-inch tap and 1-inch U-shape meter station located on NGT's Line B in Faulkner County, Arkansas, and to replace it with one 2-inch tap and 3-inch L-Shape meter station to be located on Line B, Faulkner County, Arkansas. No service will be abandoned. These facilities are necessary to accommodate a request from Arkla for increased volumes to its Nucor and Conway City Plant. The tap to be abandoned and the tap to be constructed are located in Section 23, Township 5 North, Range 14 West, Faulkner County, Arkansas. The estimated volumes to be delivered through these facilities are approximately 1,489,200 MMBtu annually and 4,080 MMBTu a day. The estimated cost of construction is $43,925 and Arkla will reimburse NGT $31,487.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–18414 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–343–000]

NorAm Gas Transmission Co.; Notice of Informal Settlement Conference

July 21, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, August 8, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, contact Donald Williams at (202) 208–0743 or Irene Szopo at (202) 208–1602.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–18416 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–623–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

July 21, 1995.

Take notice that on July 17, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP95–623–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade facilities at an existing delivery point in Columbia County, Wisconsin, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to upgrade the Portage Town Border Station #1 in order to accommodate increased deliveries Wisconsin Power & Light Company (WP&L) under Northern's currently effective throughout service agreements. It is stated that WP&L has requested the upgrade of the delivery point to accommodate growth of gas requirements in the area. It is asserted that Northern would use the upgraded delivery point for the delivery of up to 9,613 MMBtu equivalent of natural gas on a peak day and 1,956,013 MMBtu equivalent on an annual basis. It is further asserted that Northern is presently using the delivery point for the delivery of up to 6,113 MMBtu equivalent on a peak day and 678,513 MMBtu equivalent on an annual basis. It is explained that the proposed increase would be 3,500 MMBtu equivalent on a peak day and 1,277,500 on an annual basis. It is stated that the volumes to be delivered would not exceed the total volumes presently delivered to WP&L. The construction cost is estimated at $166,898. It is stated that WP&L will reimburse Northern in the amount of $154,159. Northern states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that its tariff does not prohibit the proposed upgrade of a delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–18415 Filed 7–26–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC Clarification of Manual and Electronic Filing Process for the Broadband PCS "C Block" Auction; Improved Software and Instructions Provided—Electronic Signatures Are Acceptable

July 14, 1995.

Information for All Filers

By Public Notice, released June 13, 1995, the Commission announced it was suspending the June 15, 1995 filing deadline for the FCC Form 175 applications for the broadband personal communications services (PCS) C Block auction and would return any applications filed prior to the announcement of a new filing deadline. The Commission established a new, July 28, 1995 filing deadline by Public Notice on June 23, 1995. By this Public Notice, the Commission clarifies that it will continue to accept any short form applications that are filed up to the July 28 filing deadline. We remind bidders, however, that we have a pending rule making proceeding that proposes changes to the competitive bidding rules for the C Block auction. See Further Notice of Proposed Rule Making, FCC 95–263, 60 FR 34,201 (June 30, 1995). Bidders may want to wait until that proceeding is resolved before submitting their FCC Form 175 applications.

Electronic Filing Instructions

The FCC urges applicants for the upcoming broadband Personal Communications Services (PCS) "C block" auction to file their FCC Form 175 applications electronically and emphasizes that the electronic transmission of a name in place of a handwritten signature is permitted.

In an Order released April 21, 1995 (April 21 Order), electronic filing of applications was announced. *See Order*, DA 95–805. The April 21 Order stated that "handwritten signatures will continue to be required on all applications unless and until specific procedures are established for electronic filing of such applications. Such procedures will be implemented by future Public Notices in the **Federal Register**, modified application forms, and other published procedures." *Id.* at ¶ 3.

The specific procedures for electronically filing applications for the C Block were set forth previously in the Bidder Information Package for the FCC Entrepreneurs' Block auction on Block C, which was released to the public in May 1995. The Commission, however, is republishing these procedures, as updated, in an attachment to this Public Notice, which will be printed in the **Federal Register** in its entirety. *See* Attachment A. By so doing, the agency is responding to concerns that electronic signatures may not be officially recognized according to the terms of the April 21 Order. The Commission will accept the electronic transmission of a name as a valid signature on all electronically filed FCC Form 175 applications as specified in Attachment A to the Public Notice.

Also, in an effort to make it easier for applicants to file electronically, the Commission has improved its software to facilitate the electronic filing process. Today, in re-releasing electronic filing procedures, the Commission offers new and improved instructions on how to down-load the software and on electronic filing generally. The new software will be available starting Saturday, July 15, 1995. Anyone interested in filing electronically must down-load the new software package since the old one will no longer be recognized by the Commission's computer system. Any information previously submitted to the electronic filing system has been purged. Therefore, on July 15, 1995, electronic filing will be available to the public. Electronically filed applications may be modified by the applicant up until the filing deadline, 5:30 p.m. E.D.T. on Friday, July 28, 1995, when the information submitted by the applicant will be considered a formally filed application. All applicants are encouraged to file electronically. Applicants are also encouraged to watch for Public Notices which will keep them apprised of any important dates or rule changes involving the C Block PCS auction.

FCC Auction Hotline: (202) 418–1400
Wireless Telecommunications Bureau: News Media Contact—Stacey Reuben Mesa (202) 418–0654; General Information—Anne Linton (202) 418–0660

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Attachment A—Electronic Filing Information and Instructions

In order to be eligible to bid in the FCC action, applicants must submit an FCC Form 175 application to the Commission. The Commission recently implemented a remote access system to allow applicants to submit their FCC Form application electronically. Auction applicants will have the opportunity to file their applications either electronically or manually (via hard copy). Electronic filing will enable the appplicant to: (1) Receive interactive feedback while completing the application, and (2) receive immediate acknowledgment that the FCC Form 175 has been submitted for filing.

A new version of the Remote FCC Form 175 application software will be available for downloading beginning Saturday, July 15, 1995. The old version of the Remote FCC Form 175 application software will not work. That is, all application software downloaded prior to Saturday, July 15, 1995 will not run properly. The FCC encourages applicants to file electronically. The remote access system for initial filing of the FCC Form 175 applications will generally be available 24 hours per day.

The old version of the Remote FCC Form 175 application software will not work. You must download the new version of the Remote FCC Form 175 application software to file electronically. If you had previously downloaded and installed the FCC Form 175 application, then you should delete the existing FCC Form 175 directory (usually installed as c:/auction) and all files within it. However, if you do not delete the directory before installation, then during installation the setup program will prompt you to update any existing files. You MUST update all the existing files. New instructions for downloading the application as well as revised instruction for filing electronically are attached.

All FCC Form 175 applications submitted to the FCC previously have been DELETED from the system.

The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections.

Applicants who file FCC Form 175 application electronically will NOT be required to transmit an original or electronic signature. However, by submitting the form electronically the certifying official has made representation that they are an authorized representative of the applicant for the license(s) selected, and that they have read the instructions and the certifications and all matters and things stated in the application and attachments including exhibits, are true and correct.

Late applications (*i.e.*, any applications filed after 5:30 p.m. E.D.T. on Friday, July 28, 1995) or unconfirmed submissions of electronic data will not be accepted.

The following provides a general description of the electronic filing software.

Note: All ownership documentation (for electronic filing) must be formatted as ASCII Text (.TXT) file(s), so be prepared and have the file(s) ready prior to accessing the remote FCC Form 175.

The remote FCC Form 175 submission software will prompt the applicant for an FCC Account Number. The FCC Account number that is required to log in to the software is the same as what is required in Item 7 of the FCC Form 175 application. This number will be used to identify and track applications. Applicants must create this number using their Taxpayer Identification Number (TIN) with a prefix of "0", i.e., 0123456789. If, and only if, an applicant does not have a Taxpayer Identification Number, the applicant may use its ten digit area code and telephone number (i.e., 5552345678).

In addition, the applicant will be required to enter a self-assigned password. This password must be entered in both the password and the verify password fields. Be careful when entering the passwords since the data entry is case sensitive. The applicant will need to remember the exact spelling of the password and keep it secure. In the event that an applicant loses its password to the remote electronic filing system, the applicant most notify the FCC Technical Support Hotline at (202) 414–1260 and will be required to obtain a replacement code in person at the auction site located at 2 Massachusetts Avenue, NE in Washington, D.C. Only the certifying official or one of the authorized bidders will be able to obtain a replacement password and two forms of identification will be required (at least one of which must be a photo identification). To ensure the security of the filed applications, replacement passwords will not be provided over the telephone.

Further, if an applicant exits the FCC Form 175 without ever submitting the application, the password associated with the FCC Account Number and any data entered will NOT be saved.

The FCC Form 175 submission software contains seven main screens. The first screen is the "Profile" screen which is used to capture the general FCC Form 175 information. The second screen is the "Licenses" screen which is used to select the licenses for which the applicant wishes to apply. The third screen provides the "Required Certifications" prior to submitting their application. The fourth and fifth screens are used to submit the required "Ownership" information. Applicants must provide their ownership documentation in an ASCII Text (.TXT) file format. The sixth screen allows the applicant to enter a free-form waiver request. The last screen provides the instructions for filing the FCC Form 175.

If the applicant exits the remote access system prior to submitting their FCC Form 175, the information that they entered during the session will not be saved.

The electronic filing method will capture all of the information required on the FCC Form 175 and will electronically submit the application to the FCC when the Form 175 has been properly completed and the applicant presses the submit button. The system will provide interactive error messages to help ensure the application contains the required information. Applicants that file their FCC Form 175 applications electronically through the FCC remote access system will be able to print their completed application.

The Commission will prohibit submission of FCC Form 175 applications after the deadline and encourages applicants to file their applications early in order to ensure that their applications are submitted and confirmed.

After the FCC Form 175 has been successfully submitted, the option to generate and complete the FCC Form 159 (FCC Remittance Advice Form) will be offered. The FCC Form 159 screen allows the applicant to prepare and print its FCC Form 159 which must accompany its upfront payment to participate in the auction. Certain information will automatically appear on the screen based on the information entered on the applicant's FCC Form 175 application (i.e., the name and

address of the applicant, the payment type code, the FCC Code 1 (auction number), etc.). The FCC Form 159 should be completed, submitted and printed. The printed copy must accompany an applicant's upfront payment if the applicant is paying by cashier's check or must be faxed to Mellon Bank at (412) 236–5702 if the applicant wishes to submit its upfront payment by wire transfer.

After the initial submission period deadline, the Commission will issue a Public Notice which will identify accepted, incomplete and rejected applications and the markets in which each applicant has applied. All applications are still subject to FCC approval. Applicants who submit their FCC Form 175 electronically will need to check the Public Notices to verify acceptance of their application.

During the resubmission period, applicants can make minor corrections to their FCC Form 175 application electronically. Applicants will not be permitted to modify their license selection(s), change their certifying official, or change control of the applicant. If the FCC Form 175 is initially submitted electronically, then any modifications to the form must also be submitted electronically. Further, minor modifications to FCC Form 175 applications, intended to correct applications initially determined to be incomplete, must be submitted prior to the deadline for resubmissions stated in the Public Notice that identifies the accepted, incomplete and rejected applications.

Once the Public Notice is released which identifies the accepted, incomplete, and rejected applications, remote access system users will be allowed to review other applicants' FCC Form 175 applications online.

The FCC Form 175 review software may be used to review and print other applicants' FCC Form 175s. It also provides the ability to download other applicants' FCC Form 175s once the FCC Form 175 resubmission period has started.

The remote access system for initial filing of the FCC Form 175 applications will generally be available 24 hours per day. Once the Public Notice that identifies the accepted, incomplete and rejected applications has been released by the Commission, the remote access system will generally be available on a 24 hour basis for resubmission of FCC Form 175 applications to make minor corrections and for the public to access other FCC Form 175 filings. During certain FCC required timeframes the system may not be available due to internal maintenance and process requirements or other unforeseen technical difficulties. A message will be provided when access is denied.

Those applicants who wish to file their FCC Form 175 electronically or review other FCC Form 175 applications online will need to carefully review the Bidder's Information Package and all subsequent Public Notices. For technical assistance in downloading, extracting or installing the FCC application software contact the FCC Technical Support Hotline at (202) 414–1260.

After the deadline for resubmitting corrected applications, the Commission will release another Public Notice announcing all applications that have been accepted for filing.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant will have to submit an upfront payment. In a pending rulemaking proceeding, the Commission is considering charging fees for software and on-line computer services associated with bidding and viewing other applications. 900 Number Fee Schedule Notice of Proposed Rulemaking, WTB Docket No. 95–69, 10 FCC Rcd 7066 (1995).

The following provides information about electronic filing and remote access. It is divided into three functional and technical parts:

Part 1: Hardware and Software Requirements and Instructions for Installing Electronic Filing Software
Part 2: Instructions for using the remote FCC Form 175 Submission Program
Part 3: Instructions for using the remote FCC Form 175 Review Program.

Part 1—Hardware and Software Requirements and Instructions for Installing Electronic Filing Software

About Your Software

The FCC Form 175, bid submission and round results viewer all require ppp software that is Winsock v1.1 compliant to access the FCC system. Configuration parameters for Trumpet v2.0b, NetManage Chameleon v4.1 and Wollongong Pathway Access for Windows v3.2 software are included in the appendix.

Recommended Hardware and Software Requirements to Access the FCC Auction System

You will need at minimum the following hardware:

- CPU: Intel® 80386 or above (80486 or faster recommended).
- RAM: 8MB RAM (more recommended if you have multiple applications open).
- Hard Disk: 10MB available disk space.
- 1.44MB Floppy Drive (to install the FCC Form 175).
- Three blank MS-DOS® formatted 1.44MB floppy disks.
- Modem: v.32bis 14.4bps Hayes© compatible modem.
- Monitor: VGA or above.
- Mouse or other pointing device.
- Microsoft® Windows™ 3.1 or above, or Microsoft® Windows for WorkGroups™ v3.11 or above.
- PPP asynchronous communications package Winsock v1.1 compliant.

The FCC Form 175 has not been tested on a Macintosh or OS/2 environment. Therefore the FCC will not provide assistance to those who cannot run Microsoft Windows 3.1 or above, or Windows for Workgroups v3.11 or above in an enhanced mode. This includes any other emulated Windows environments.

If your Windows is in a networked environment, you should check with your local network administrator for any potential conflicts with the ppp software package you will use to connect to the FCC network. This usually includes any TCP/IP installed network protocol.

Phone Numbers

The FCC Auction Network phone number for your ppp communications package is 202–408–7835. Technical support for installing or using the FCC Form 175 application can be reached at 202–414–1260. The FCC Auction BBS number is 202–682–5851. The general FCC Auction Hotline number is 202–418–1400.

Various Programs on the Internet

The following is a list of various programs that can be found on the Internet. These files can be downloaded via ftp (be sure to download in binary mode).

Trumpet v2.0b can be found at oak.oakland.edu in the following directory /simtel/win3/winsock as twsk20b.zip. The newest version, Trumpet v2.1c, can be found at ftp.trumpet.com.au in the directory /winsock as twsk21c.zip. You will need PKWare's v2.04g pkunzip.exe to uncompress these files.

PKWare v2.04g can be found at oak.oakland.edu in the following directory /simtel/msdos/zip as pkz204g.exe. This is a self-extracting file. Type pkz204g.exe to extract the file pkunzip.exe.

Please be aware of any licensing issues for these shareware products. The information is included in the respective package.

Installing Your PPP Software

Before you can use the FCC Form 175, you will need to install the ppp software. The ppp software should include documentation sufficient to install their product. Please see the appendix for various ppp software hints and configuration parameters.

Where to Get Form 175

On the Internet, you can connect via anonymous ftp at fcc.gov. Login using the account name anonymous and use your Internet e-mail address as the password. The file F175V2.EXE can be found in the following dir: /pub/Auctions/PCS/Broadband/BTA. Set to binary before you download the file.

If you wish to use the FCC Auctions BBS, dial 202–682–5851 (set your modem to 8 databits, no parity and 1 stop). To download the FCC Form 175 application, you will need a communications program that can handle at least xmodem protocol and preferably zmodem protocol.

Detailed Internet Instruction

To access the FCC ftp server, you will need to have access to the Internet and ftp client software. The following are instructions for the command line version of ftp. Graphical ftp interfaces may differ; please check with your local computer specialist. Connect to the FCC ftp server, usually by typing ftp fcc.gov.

- At the user name prompt, type anonymous and press [Enter].
- At the password prompt, type your Internet e-mail address and press [Enter].
- Type binary so you can download binary files and press [Enter].
- Change your current directory to the BTA directory by typing: cd/pub/Auctions/PCS/Broadband/BTA and press [Enter].
- Type get F175V2.EXE and press [Enter].
- To exit, type bye and press [Enter].

Detailed BBS Instructions

To access the FCC Auctions BBS, you will need a PC with a modem and a communications package that can handle at least xmodem protocol. Use the communications package to dial in to 202–682–5851. Use the settings of 8 data bits, no parity and 1 stop bit (8,n,1).

New users follow steps 1–6, otherwise go to step 7:

1. Type New and press [Enter]. If the word ANSI is blinking, type Y for Yes. If the word ANSI is not blinking, type N for No.
2. Type in your first and last name and press [Enter]. This will be your login name.
3. Type in your Telephone number and press [Enter].
4. Type in your Fax number and press [Enter].
5. Type in what you want your password to be and press [Enter].
6. Retype the password for verification and press [Enter].

After the account is generated:

7. Type B for Broadband Auction and press [Enter].
8. Type B for BTA Auction and press [Enter].
9. Type P to download program files.
10. Move the cursor to the file F175V2.EXE, type [Control-D] (hold the Ctrl key down and press the D key) for Download and press [Enter].
11. Type the letter representing the transfer protocol you want to use and press [Enter]. How the file is downloaded and where it gets downloaded depends on the package being used.
12. When the file has finished downloading, press [Enter].

Repeat steps 9 through 12 to download another file or press X and [Enter] to exit the screen.

To Exit:

Type X to exit and press [Enter] and continue to press [Enter] until asked if you want to exit the BBS. Answer Y for Yes when asked to verify that you want to exit.

Creating Installation Disks From Downloaded Files

After you download the file F175V2.EXE, create the FCC Form 175 installation disks. You will need to have three (3) blank MS–DOS® formatted 3.5" 1.44MB disks. To create the installation disks, type at the MS–DOS prompt: F175V2/!

The F175V2 program will first decompress several files and then run a batch file to create the installation disks. Please follow the instructions on the screen.

Installing FCC Form 175 Disks

If you had previously downloaded and installed the FCC Form 175 application then you should delete the existing FCC Form 175 directory (usually installed as c:\auction) and all files within it. However, if you do not delete the directory before installation, then during installation the setup program will prompt you to update any existing files. You MUST update all the existing files.

After you create the installation disks, restart Windows and run SETUP.EXE from installation Disk 1 of 3 and follow the instructions on the screen. Before running the installed FCC Form 175, be sure you have started and successfully connected using your ppp software.

Running FCC Form 175

After the FCC Form 175 installation completes, you will have a new Program Manager group called FCC Auction with two icons: Remote FCC Form 175 Submit and Remote FCC Form 175 Review. You must start the ppp software and be connected before you start either the Remote FCC Form 175 Review or Remote FCC Form 175 Submit. To start up either the Remote FCC Form 175 Submit or the Remote FCC 175 Review, you double click the respective icon. When you are finished with either FCC Form 175 program, be sure to disconnect from the FCC Network via your ppp software.

Appendix—Installing Trumpet v2.ob or Higher

If you already have some kind of TCP/IP networking package installed, the Trumpet Winsock program may not run. Contact your LAN administrator for assistance. Trumpet versions 2.0b and 2.1c have successfully been tested to work with the FCC network.

Copy the files winsock.dll, tcpman.exe, hosts, services, login.cmd, bye.cmd, setup.cmd, sendreg.exe, and protocol to a suitable directory.

e.g., c/trumpet

The essential files are:

winsock.dll the core of the Trumpet TCP/IP driver
tepman.exe controlling program for the Winsock
sendreg.exe registration program
hosts list of host names
services list of Internet services
protocol list of Internet protocols
login.cmd Trumpet script file to connect to the FCC Network
bye.cmd Trumpet script file to disconnect from the FCC Network
setup.cmd Trumpet setup file to connect to the FCC Network

Modify the path line in your autoexec.bat to contain a reference to that directory.

e.g., path c:/trumpet;c:/dos;c:/windows

Make sure it is active by rebooting your computer. Now you are ready to start windows.

From windows, start up tcpman by selecting File | Run from the file manager, then type tcpman. If this fails, the path is probably not set up correctly. Please fix it before proceeding. Later, you can set up tcpman as an icon so it can be started directly.

Assuming you are a first time user, a setup screen will appear giving you a number of options to fill in. You will need to fill in the following details to enable the TCP package to function. If you are unclear on any of them, try to

seek some help from qualified Internet support staff—it will save you a lot of time.

First click on Internal PPP. Some of the parameters will be grayed and others ungrayed.

Name server

• Enter name server IP address 165.135.22.249 for DNS searches.

Domain suffix

• Enter doman suffix fcc.gov

MTU

• Maximum Transmission Unit, set to 1500. Related to TCP MSS usually TCP MSS + 40 (Numeric)

TCP RWIN

• TCP Receive Window, set to 4096. It is recommended that this value be roughly 3 to 4 times the value of TCP MSS (Numeric).

TCP MSS

• Maximum Segment Size, set to 1460.

SLIP port

• your modem port number 1=com1, 2=com2 etc., (numeric).

Baud rate

• The speed you wish to run at (numeric), set to the maximum modem DTE speed or 57600. Up to 115200 is supported although speeds greater than 19200 require suitable hardware.

Hardware

• Handshake Should be checked.

The rest of the details should be grayed out and you need not try to fill them in. When you are done, click on [OK].

Under the Dialler | 1. setup.cmd:

• Set the telephone number to: 202–408–7835. You may need to add a dialing prefix.
• Leave the login username blank (i.e., no username)
• Leave the login password blank (i.e., no password)

Under the file | PPP Options

• Do not enable PAP.

If you decide to use the login script login.cmd, you will need to use a text editor and modify the following lines by using the pound symbol (#) at the beginning of the line. The line number is the approximate location:

Lines 71 and 72
input 30 $userprompt
output $username/13
Lines 76 and 77
input 30 $passprompt
output $password/13
Line 81
input 30 $prompt
Line 86
output $pppcmd/13
Line 88
input 30/n

If all goes well, the Trumpet Winsock will be initialized. You are now ready to start using the Winsock.

Remember, before you use the FCC Form 175, you will need to be connected. To connect, select Dialler | Login on the menu bar. After finishing the FCC Form 175, you should disconnect from the FCC network by selecting Dialler | Bye.

Detailed Configuration Information Using NetManage Chameleon v4.1

Install the software as instructed by the NetManage installation routine. Activate the Custom—Connect Here icon in the Program Manager Internet Chameleon group. Setup Chameleon's parameters with the following:

Under the Custom menu Interface | Add:

• Set the Name to FCC.
• Set the Type to PPP.

Under the Custom menu Setup | Port:

• Set the Baud Rate to the maximum DTE speed of your modem, usually 57600 bps for 14.4 kbps modems.
• Set the Data Bits to 8.
• Set the Stop Bits to 1.
• Set the Parity to none.
• Set the Flow Control to Hardware.
• Set the Connector to match your modem comm port.

Under the Custom menu Setup | Modem:

• Select the modem that most closely matches your modem. Hayes© is the most common choice.

Under the Custom menu Setup | Dial:

• Type in the dial edit box: 202–408–7835. You may need to add a dialing prefix.

Under the Custom menu Setup | Login:

• Leave User Name blank.
• Leave User Password blank.

Under the Services | Domain Servers:

• Set the IP address to the number 165.135.22.249

Remember, before you use the FCC Form 175, you will need to be connected. To connect, click on Connect on the menu bar. After finishing the FCC Form 175, you should disconnect from the FCC network by clicking on Disconnect.

Configuration Information For Using Wollongong Pathway for Windows v3.2

Install the Pathway Runtime for Windows v4.0 software using the Wollongong installation routine. During setup, you will be required to provide the following parameters: (you may enter anything for information not listed):

• Set the Adapter to SLIP/CSLIP/PPP connection.
• Set the Domain Name to fcc.gov.
• Set the IP Address to 0.0.0.0.
• Set the Subnet Mask to 255.255.0.0.
• Set the DNS Server to the number 165.135.22.249.

After the installation, start Dialer found in the Pathway Access Program Manger group. Enter a new profile (File | New) and supply the following relevant information:

• Set the Telephone Number to: 202–408–7835. You may need to add a dialing prefix.
• Set the Port to match your modem comm port
• Set the Baud Rate to the maximum DTE speed of your modem
• Check Driver Parameters' Flow Control
• Under Protocol, select PPP
• In the script text box, have only the following command:

SEND:

When you are finished, click on [Save] and provide a filename for your new profile.

Before you use the FCC Form 175 programs, you must be connected. To connect, click on Dial on the tool bar. After you are connected, Dial will gray out and Disconnect will be made available. After finishing the FCC Form 175 programs, you should disconnect from the FCC Network by clicking on Disconnect.

General Setup for Unsupported or Unlisted PPP Software

It is possible to use ppp software that we have not tested. The following information should provide enough information to make your software work. However, if your software cannot confirm/establish the following parameters, you will need to get one of the tested ppp software. The FCC will not provide support for any untested software product.

1. Set the ppp software to ppp mode (do not set for slip).
2. Set the domain name server to 165.135.22.249.
3. Set the domain suffix to fcc.gov.
4. Set the phone number to: 202–408–7835. You may need to add a dialing prefix.
5. Be sure to set the Baud Rate to the maximum DTE modem speed. This is usually 57600 bps for 14.4 kbps modems.
6. Set the modem parameters to 8 data bits, no parity and 1 stop (if needed, set flow control to hardware).

Note: Spry's Internet-in-a-Box failed our testing procedures.

Part 2—Instructions For Using The Remote FCC Form 175 Submission

The Remote FCC Form 175 Submission program must first be installed. You MUST start the ppp software and be connected to the FCC Remote Electronic Auction System before you start the FCC Form 175 program. If you have not successfully connected to the System, you will receive an error message after the Account Verification Login Screen stating that you were unable to connect to the server.

Once you have successfully connected, double-click on the Remote FCC Form 175 Submission icon to load the application.

Use the TAB key or the mouse to redirect the cursor so the data may be entered. The data entry for this application is case sensitive, therefore be careful to type using either lower case and/or upper case exactly as you want.

In the lower right corner of the FCC Form 175 program is an icon with a question mark representing the Help facility. Click on the Help facility for definitions and additional instructions on how to use the FCC Form 175.

Please Note: If you exit the FCC Form 175 without ever submitting the application, then the information that was entered and the password associated with that FCC Account Number will NOT be saved.

After you have finished using the Remote FCC Form 175 Submission program, you should disconnect from the FCC System.

The first screen to appear will be the Welcome Screen.

Welcome Screen

Select the appropriate auction number (in this case auction '5') by using the mouse to advance to the arrow just below the word Auction.

Click on Ok to continue the submission process. The next screen to appear will be the Account Verification Login Screen.

To exit the remote FCC Form 175 application, click on the Exit button and enter either a 'Y' or click on 'Yes' in response to the message box that asks 'Are you sure you want to exit the application?'.

Account Verification Login Screen

Please Note: The data entry for this application is case sensitive, therefore be careful to type using either lower case and/or upper case exactly as you want.

Enter your ten digit FCC Account Number. This is your Taxpayer Identification Number (TIN) with a prefix of '0' or your ten digit telephone number (if you do not have a TIN).

Use the TAB key or the mouse to advance to the password. On the initial entry of this screen, you will be defining your confidential password. The password must be a minimum of five characters and a maximum of ten characters. It must be entered in BOTH the password and the verify password fields. Please be careful when typing the passwords since the data entry is case sensitive. You will need to remember the exact spelling of your password and keep it secure.

Click on Ok to continue the FCC Form 175 submission process. The next screen to appear will be the Profile Screen.

Click on the Cancel button to exit the Account Verification Login Screen.

Entering Data on the Profile Screen

Please Note: After entering the Profile information, you will need to click on each tab at the top of the screen to navigate through the entire FCC Form 175.

Click on the Instructions tab (at the top of the screen) to review the instructions for filing the FCC Form 175.

The Profile Screen is used to capture the general FCC Form 175 information. The FCC Form 175 will be displayed with your FCC Account Number and the auction number prefilled. The filing phase appears in the lower left corner of the screen in red.

Enter the applicant name.

Enter the applicant address, city, state, and zip code.

Click on the applicable applicant classification box. Click on the box again to reset the box.

If you are eligible to bid on entrepreneurial block licenses, then click on the appropriate entrepreneurial block box(es). Click on the box again to reset the box.

Click on all applicable designated entity boxes. Click on the box again to reset the box.

Enter the person(s) authorized to submit and withdraw a bid. Enter the name in First Name, Middle Initial, Last Name order.

Click on the Required Certifications tab (at the top of the screen) to review the certification requirements. This screen provides the certification requirements for filing the FCC Form 175. Applicants should read the 'Certifications' listed on the FCC Form 175 carefully before submitting the application. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, and ineligibility to participate in future auctions, and/or criminal prosecution.

Click on the Profile tab (at the top of the screen) to return to the FCC Form 175 profile information and reposition the cursor to the box labeled 'Name of Person Certifying'.

Enter the person certifying the application. Enter the name in First Name, Middle Initial, Last Name order.

Enter the title of the person certifying the application.

Enter the contact person. Enter the name in First Name, Middle Initial, Last Name order.

Enter the contact person's telephone number and fax number.

Click on the Licenses tab (at the top of the screen) to select the licenses for which you wish to apply.

Entering Data on the Licenses Screen

Please Note: This information will not be available for update after the initial FCC Form 175 filing period has ended.

The Licenses Screen is used to capture the licenses for which you wish to apply.

The licenses that are offered in the specified auction will be displayed in the 'Available Licenses' box.

If you wish to apply for all markets, then click on the box next to the words 'Markets All'. Click again on the box to reset.

If you wish to apply for all frequency block(s), then click on the box next to the words 'Freq Blks All'. Click again on the box to reset.

If you wish to apply for selected licenses, then click on the markets that you want. Click on the available frequency block(s) that you want.

Click on the 'Copy>>' button to move the license(s) you selected into the 'Selected Licenses' box.

If you wish to delete a license that is in the 'Selected licenses' box, then click on the selected license(s) and then click on the '<<Remove' button to move the license back into the 'Available Licenses' box.

Click on the Ownership Documentation tab (at the top of the

screen) to enter the required free-form ownership information.

Entering Data on the Ownership Documentation Screen

The Ownership Documentation Screen is used to upload and/or view the required free-form ownership information.

Click on the exhibit you wish to upload. You may upload only one exhibit at a time, however, you may upload and view all exhibits if you wish to do so. Click on the 'Upload' button to upload a file containing the ownership information. The file format must be ASCII Text (.TXT).

Click on the exhibit you wish to view. Click on the 'View' button to review the ownership file that was uploaded. If a message box appears asking whether you wish to convert the file to a Write format, you may select either Convert, No Conversion, or Cancel.

Click on the Ownership Worksheet tab (at the top of the screen) to enter the formatted ownership information.

Entering Data on the Ownership Worksheet Screen

The Ownership Worksheet Screen is used to enter the formatted ownership information. Two separate worksheets are displayed, one for Direct Ownership and one for Indirect Ownership.

A separate row for each direct interest holder that has at least a 5% equity ownership in the applicant must be entered on the Direct Ownership Worksheet. A separate row for each indirect interest holder should be entered on the Indirect Ownership Worksheet. Use the Add and Delete buttons to add or delete rows to/from the appropriate worksheet.

Enter the Taxpayer Identification Number (TIN) (or the Social Security Number (SSN), if an individual) of each interest holder.

Enter the familial relationship. It should reflect whether the direct holder is related to any other direct interest holder by blood or marriage (e.g., brother, mother, spouse, etc.).

Enter the appropriate selection for alien ('Y' for yes or 'N' for no).

Enter the appropriate selection for each interest holder's principal business.

Click on all applicable qualifying entity boxes (M=Minority Owned, S=Small Business, W=Woman Owned, and R=Rural Telephone). Click again on the box to reset the box.

Enter the appropriate selection for control group which reflects whether the interest holder is a member of the applicants' control group ('Y' for yes or 'N' for no).

Enter the interest holder's voting interest percentage of the applicant.

Enter the percentage equity held in the applicant.

Please Note: The Direct Ownership Worksheet has the following requirements; The equity held percentage must be 5% or greater. The sum of the equity held percentage may not exceed 100%

The system will calculate the difference of 100% and the sum of all equity held percentages and prefill the difference in the 'Other' category.

Click on the Waiver tab (at the top of the screen) or enter a free-form waiver request.

Entering Data on the Waiver Screen

The Waiver Screen is used to enter a free-form waiver request.

Click on the free-form text area and enter the waiver request information as you wish. Use the arrows on the right to scroll up and down through the text.

Click on the Submit button to submit the FCC Form 175. If any error messages appear, make appropriate corrections and click on Submit until no further error messages appear.

Bid Method Screen

The Bid Method screen captures the desired method(s) you wish to use for the bid submission/withdrawal process. The methods may include telephonic and remote.

The Bid Method screen will appear as your FCC Form 175 is being submitted.

You will receive a message stating your application was successfully submitted. The system will then ask if you want to generate the FCC Form 159.

Entering Data on the FCC Form 159 Screen

The FCC Form 159 screen is used to capture the information that needs to accompany the upfront payment. A copy of this screen needs to be either mailed with a cashier's check or faxed when paying by wire transfer.

This option will only be available after the FCC Form 175 has been initially submitted.

If you have used an FCC Account Number other than the one prefilled on the screen previously with the FCC, enter it in the box that is labeled 'Did you have a number prior to this? Enter it.'.

Enter the total amount paid (in dollars and cents).

Enter the payor name.

Enter the payor address, city, state, and zip code.

Enter the payor daytime telephone number.

Enter the payor country code when the country code is not U.S.A.

Click on the Ok button to save the FCC Form 159 information. Once the FCC Form 159 information has been saved the following instructions will appear.

Making Auction Payments by Cashier's Check

Each cashier's check and corresponding FCC Remittance Advice, FCC Form 159, must be in an individual envelope and specifically addressed to: Mellon Bank, Attention: Auction Payment, P.O. Box 358850, Pittsburgh, PA 15251–5850.

If delivering an auction payment in person or by courier, the check and FCC Remittance Advice, FCC Form 159, must be delivered to: Mellon Bank, Attention: Wholesale Lockbox Shift Supervisor, 27th Floor (153–2713), 3 Mellon Bank Center, 525 William Penn Way, Pittsburgh, PA 15259–0001.

Note: Please indicate on the inside of the envelope 'Lockbox No. 358850'.

Making Auction Payments by Wire Transfer

If making an auction payment by wire transfer, you must fax a completed FCC Remittance Advice, FCC Form 159, to Mellon Bank at (412) 236–5702 at least one hour prior to placing the order for the wire transfer (but on the same business day).

Click on the Print button to print the FCC Form 159. The Cancel button on the FCC Form 159 screen will return you to the FCC Form 175 screen.

Click on the Print button to print the FCC Form 175.

Click on the Backup Data button (in the upper right corner) to save the FCC Form 175 information to a text file(s).

The FCC Form 159 button will be enabled once the FCC Form 175 has been initially submitted. Once enabled, click on the FCC Form 159 button to enter the remittance advice information. This form must accompany the upfront payment.

Click on the Cancel button to exit the FCC Form 175 screen.

After you have finished using the Remote FCC Form 175 Submission program, you should disconnect from the FCC.

Part 3—Instructions For Using The Remote FCC Form 175 Review

The Remote FCC Form 175 Review program must first be installed. You must start the ppp software and be connected before you start the FCC Form 175 program. If you have not successfully connected, you will receive an error message stating that you were unable to connect to the server.

Once you have successfully connected, click on the Remote FCC Form 175 Review icon to load the application.

Use the TAB Key or the Mouse to Redirect the Cursor

In the lower right corner of the FCC Form 175 program is an icon with a question mark representing the Help facility. Refer to the Help facility for definitions and additional instructions on how to use the FCC Form 175 program.

After you have finished using the Remote FCC Form 175 Review program, you should disconnect from the FCC.

The first screen to appear will be the Welcome Screen.

Welcome Screen

Select the appropriate auction number (in this case auction '5') by using the mouse to advance to the arrow just below the word Auction.

Click on OK to continue the review process. The next screen to appear will be the Available Applicants Screen.

To exit the remote FCC 175 application, click on the Exit button and enter either a 'Y' or click on 'Yes' in response to the message box that asks 'Are you sure you want to exit the application?'.

Available Applicants Screen

Please Note: The ability to review other applicants FCC Form 175(s) will not be available during the initial FCC Form 175 filing period. After the initial filing phase, all FCC Form 175(s) will be available for review.

Please Note: The applications may be subject to certain minor amendments during the resubmission period.

The available applicants screen will display all applicants (in FCC Account Number order) that submitted FCC Form 175 for the specified auction. If more than one page of applicants exist, then use the arrows at the corner of the table to scroll up and down through the list of applicants.

The date last changed column reflects the date and time of the last modification to the FCC Form 175.

The status of the FCC Form 175 will appear in the status column. The following values may be displayed during the resubmission period: A=Accepted, I=Incomplete, R=Rejected, U=Unknown. After the Upfront Payments have been applied, then the following values will be displayed: N=Non-Qualified, Q=Qualified.

The Upfront Payment received for an applicant will appear in the upfront payment column after the upfront payments have been processed.

To review the applicants' FCC Form 175, select the applicant by clicking on the specific applicant line.

Click on Ok. The next screen to appear will be the profile Screen.

To print a copy of the FCC Form 175 for that applicant, press the Print button on any of the screens (i.e., Profile, Licenses, Required Certifications, Ownership Documentation, Ownership Worksheet, Waiver, Instructions).

The ability to download either selected records or all records may be limited to specified timeframes established by the FCC.

If you wish to download only specific records then click on the box labeled "Select records for download", click on each applicant line you desire, and then click on the Download button. If you wish to reset this option, then click again on the "Select records for download" box.

If you wish to download all records, then click on the box labeled "Download all records" and then click on the Download button. If you wish to reset this option, click again on the "Download all records box".

Click on the Cancel button to exit the Available Applicants screen.

Profile Screen

Please Note: After reviewing the Profile information, you will need to click on each tab at the top of the screen to navigate through the entire FCC Form 175.

The Profile Screen will display the general FCC Form 175 information. The filing phase appears in the lower left corner of the screen.

Click on the licenses tab (at the top of the screen) to review the licenses that were selected.

Licenses Screen

The Licenses Screen provides a listing of the licenses that were selected.

If the FCC Form 175 contained invalid market or frequency block information, then "Invalid License Data was selected" will appear below the "Selected Licenses" box.

Click on the Required Certifications tab (at the top of the screen) to review the certification requirements.

Required Certifications Screen

This screen provides the certification requirements for filing the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction.

Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, and ineligibility to participate in future auctions, and/or criminal prosecution.

Click on the Ownership Documentation tab (at the top of the screen) to review the free-form ownership information.

Ownership Documentation Screen

The Ownership Documentation Screen provides the ownership information for review.

Click on the exhibit you wish to view. You may view only one exhibit at a time, however, you may view all exhibits if you wish to do so. Click on the "View" button to review the free-from ownership information.

Click on the Ownership Worksheet tab to review the formatted ownership information.

Ownership Worksheet Screen

The Ownership Worksheet Screen provides the formatted ownership information for review.

Click on the Waiver tab (at the top of the screen) to review the free-form waiver request.

Waiver Screen

The Waiver Screen provides the free-form waiver request for review.

Click on the Instructions tab (at the top of the screen) to review the instructions for filing the FCC Form 175.

Instructions Screen

This screen provides the instructions for filing the FCC Form 175.

Click on the Print button to print the FCC Form 175.

Click on the Cancel button to exit the FCC Form 175 screen.

[FR Doc. 95–18454 Filed 7–26–95; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Aquaocean Transport, Inc.

10555 Northwest Freeway, Ste. 236
Houston, TX 77027
Officers:
R. W. van Tuyll, President
Laura True, Vice President
Overseas Trading & Shipping Co., Inc.
2719 Pittman Drive
Silver Spring, MD 20910
Officers:
Richard P. Stevens, Chairman
Osman Habour, Director
Wilson International, Inc.
250 Cooper Ave., Ste. 102
Buffalo, NY 14150
Officers:
Michael Dahm, President
Robert Clendenning, Vice President
Miami (USA) International Freight Forwarders, Inc.
2046 NW 180th Ave.,
Pembroke Pines, FL 33029
Officer:
Juliet K. E. Wong, President
Marian Shipping Limited
Pier D Berth D52
Long Beach, CA 90802
Officers:
Thomas A. Solomon, President
Daniel J. D'Agrosa, Vice President

Dated: July 24, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–18502 Filed 7–26–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BayBanks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 21, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. BayBanks, Inc., Boston, Massachusetts; to acquire an additional 95.5 percent, for a total of 100 percent, of the voting shares of Cornerstone Financial Corporation, Derry, New Hampshire, and thereby indirectly acquire Cornerstone Bank, Derry, New Hampshire.

2. Westfield Mutual Savings Bank Holding Company, Westfield, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Westfield Savings Bank, Westfield, Massachusetts, which upon the reorganization, will continue to participate in the Massachusetts Savings Bank Life Insurance program.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Piedmont Bancorp, Inc., Hillsborough, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Hillsborough Savings Bank, Inc., S.S.B., Hillsborough, North Carolina.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Thomasville Bancshares, Inc., Thomasville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Thomasville National Bank, Thomasville, Georgia, in organization.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Banque Nationale de Paris, Paris, France, to form a subsidiary, BancWest Corporation, San Francisco, California, which will become a bank holding company by acquiring 100 percent of the voting shares of Bank of the West, San Francisco, California, an existing subsidiary of Banque Nationale de Paris.

2. Draper Bancorp, Draper, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Draper Bank and Trust, Draper, Utah.

Board of Governors of the Federal Reserve System, July 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18461 Filed 7–26–95; 8:45 am]

BILLING CODE 6210–01–F

Northern Trust Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Northern Trust Corporation, Chicago, Illinois; to acquire RCB International, Inc., Stamford, Connecticut, and thereby engage in performing functions and activities that may be performed by a trust company, including fiduciary, agency and custodial activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y; and serving as an advisor for a mortgage or real estate investment trust, providing portfolio investment advice to any person, and providing financial advice to state and local governments and foreign governments, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18462 Filed 7–26–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation and Wells Fargo & Company, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota, through its wholly-owned subsidiary, Norwest Ventures, Inc., Des Moines Iowa, and Wells Fargo & Company, San Francisco, California, through its wholly-owned subsidiary, Wells Fargo Ventures, Inc., San Francisco California, propose to form a joint venture, Towne Square Mortgage, San Diego, California (which will be owned 85 percent by Norwest and 15 percent by Wells Fargo), and engage *de novo* in the residential mortgage lending business, including activities such as prequalification, mortgage loan origination and processing and closing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope for these activities is the State of California, primarily at locations of Wells Fargo's subsidiary bank, Wells Fargo Bank, N.A. Comments on this application also may be submitted to the Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105.

2. Dacotah Banks, Inc., Aberdeen, South Dakota; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope for this activity is South Dakota.

B. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Barclays Bank PLC, London, England, and Barclays PLC, London, England; to engage *de novo* through their subsidiary, Barclays De Zoete Wedd Securities, Inc., New York, New York, in providing securities brokerage services, related securities credit activities, and securities brokerage services in combination with investment advisory services, pursuant to § 225.25(b)(15)(i) and (ii) of the Board's Regulation Y; and providing investment or financial advice, pursuant to § 225.25(b)(4)(i) through (vi) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Crystal Valley Financial Corporation, Middlebury, Indiana; to engage through its subsidiary, Crystal Valley Financial Corporation, Middlebury, Indiana, in retaining its investment in a community development corporation (a qualified low-income housing project as defined in section 42(c)(2) of the Internal Revenue Code), through its investment in a limited liability company; and investing in an additional community development corporation (a qualified low-income housing project as defined in section 42(c)(2) of the Internal Revenue Code), through an investment in a limited liability company, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

2. Horizon Bancorp, Michigan City, Indiana; to engage *de novo* through its subsidiary, The Loan Store, Inc., Michigan City, Indiana, in acting as agent or broker for insurance directly related to extension of credit, under § 225.25(b)(8)(ii) of the Board's Regulation Y.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Stuart Family Partnership, The Catherine Stuart Schmoker Family Partnership, The James Stuart, Jr. Family Partnership, The Scott Stuart Family Partnership and First Commerce Bancshares, all of Lincoln, Nebraska; to engage *de novo* through First Commerce Bancshares, Inc., Lincoln, Nebraska, in the business of making loans pursuant, to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18463 Filed 7–26–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Performance Review Boards for Small Client Agencies Serviced by the General Services Administration, Names of Members

Sec. 4314(c) (1) through (5) of Title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the office of Personnel Management, one or more Performance Review Boards. The board shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive. The Performance Review Board also shall make recommendations as to whether the career executive should be recertified, conditionally recertified, or not recertified.

As provided under Section 601 of the Economy Act of 1932, amended 31 U.S.C. 1525, the General Service Administration through its Agency

Liaison Division, provides various personnel management services to a number of diverse Presidential commissions, committees, boards and other agencies through reimbursable administrative support agreements. This notice is proceeded on behalf of the client agencies, and it supersedes all other notices in the **Federal Register** on this subject.

Because of their small size, a Performance Review Board register has been established in which SES members from the client agencies participate. The Board is composed of SES members from various agencies. From this register of names, the head of each client agency will appoint executives to a specific board to serve a particular client agency.

The members whose names appear on the Performance Review Board standing roster to sere client agencies are:

Administrative Conference of the U.S.
Gary J. Edles, General Counsel
Jeffrey S. Lubbers, Research Director

Barry M. Goldwater Scholarship and Excellence in Education Foundation
Gerald J. Smith, Executive Secretary

Board of International Broadcasting
Richard McBride, Executive Director
John A. Lindburg, General Counsel
Patricia H. Schlueter, Director of Financial and Congressional Affairs
Bria T. Conniff, Inspector General

Committee for Purchase From People Who Are Blind or Severely Disabled
Beverly L. Milkman, Executive Director

Defense Nuclear Facilities Safety Board
Kenneth M. Pusateri, General Manager
Joseph R. Neubeiser, Deputy General Manager
Robert M. Anderson, General Counsel
Richard A. Azzaro, Deputy General Counsel for Policy and Litigation
George W. Cunningham, General Engineer
Joyce P. Davis, Chief, Health Physics Branch
Wallace R. Kornack, Assistant Director for Engineering
Steven L. Krahn, Assistant Director for Weapon Programs
Lester A. Ettlinger, Assistant Director for Standards

Harry S Truman Scholarship Foundation
Louis H. Blair, Executive Secretary

Japan-United States Friendship Commission
Eric J. Gangloff, Executive Director

Office of Navajo and Hopi Indian Relocation
Christopher J. Bavasi, Executive Director
Michael J. McAlister, Deputy Executive Director

Artic Research Commission
Garrett W. Brass, Executive Director

National Mediation Board
Ronald M. Etters, General Counsel

Dated: July 18, 1995.
Calvin R. Snowden,
Director.
[FR Doc. 95–18486 Filed 7–26–95; 8:45 am]
BILLING CODE 4820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Recommendations for Civilian Communities Near Chemical Weapons Depots: Guidelines for Medical Preparedness; Correction

A notice was published in the **Federal Register** on June 27, 1995 (60 FR 33308), entitled, "CDC Recommendations for Civilian Communities Near Chemical Weapons Depots: Guidelines for Medical Preparedness." This notice is corrected as follows:

On page 33309, first column, line 6 of the second paragraph, change "falls" to "fall"; and in the second column, line 9, under the heading: 1. Personal Protective Equipment (PPE), change "have" to "has" and in line 11, change "portable" to "powered." On page 33311, second column, line 8, under the heading: 5. Personal Protective Equipment (PPE), change "have" to "has."

Dated: July 21, 1995.
Joseph R. Carter,
Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).
[FR Doc. 95–18433 Filed 7–26–95; 8:45 am]
BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Subcommittee Meeting of the National Task Force on AIDS Drug Development on Drug Development Issues

Date, time, and place. September 13 and 14, 1995, 8:30 a.m., Gaithersburg Hilton Hotel, Grand Ballroom, 629 Perry Pkwy., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Hilton Hotel. Attendees requiring overnight accommodations may contact the hotel at 301–977–8900 and reference the task force. Interested persons are encouraged to register early because space is limited.

Type of meeting and contact person. Open subcommittee discussion, September 13, 1995, 8:30 a.m. to 11:45 a.m.; open public hearing, 11:45 a.m. to 12:15 p.m., unless public participation does not last that long; open subcommittee discussion, 12:15 p.m. to 4:45 p.m.; open subcommittee discussion, September 14, 1995, 8:30 a.m. to 11:45 a.m.; open public hearing, 11:45 a.m. to 12:15 p.m., unless public participation does not last that long; Nancy L. Stanisic, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Task Force on AIDS Drug Development, code 12602.

General functions of the task force. The task force shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers.

Open subcommittee discussion. The subcommittee will review, discuss, and clarify issues concerning the

investigational new drug applications and submissions to the National Institutes of Health's Recombinant DNA Advisory Committee as it relates to gene therapy. Representatives from FDA's Center for Biologics Evaluation and Research and the National Institutes of Health's Office of Recombinant DNA Activities will make presentations and answer questions concerning the application process.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before September 6, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 19, 1995.
Linda A. Suydam,
Interim Deputy Commissioner for Operations.
[FR Doc. 95–18503 Filed 7–26–95; 8:45 am]
BILLING CODE 4160–01–F

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of, and External Quality Assurance for, the Community Nursing Organization (CNO) Demonstration," HHS/HCFA/ORD No. 360–94–30500, 30501. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on July 21, 1995. To ensure that all parties have adequate time in which to comment, the new system of records, including routine uses, will become effective 40 days from the publication of this notice or from the date the report was submitted to OMB and the Congress, whichever is later, unless HCFA receives comments which require alterations to this notice.

ADDRESSES: The public should address comments to Richard DeMeo, HCFA Privacy Act Officer, Office of the Associate Administrator for External Affairs, HCFA, Room C2–01–11, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Melissa McNiff, Project Officer for the evaluation of the Community Nursing Organization Demonstration and the External Quality Assurance Program, Office of Research and Demonstrations, HCFA, Room C3–21–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Telephone 410–786–8494.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records, collecting data under the authority of section 4079 of Pub. L. 100–203, the Omnibus Budget Reconciliation Act of 1987. The purpose of this system is to provide data necessary to test the operational feasibility of the CNO and examine whether the combination of capitated payment and nurse-case management will promote timely and appropriate use of community nursing and ambulatory care services and reduce the use of costly acute care services. It will further determine the effect of membership in a CNO on a typical beneficiary's use of health services covered under the CNO package and on services such as physician and inpatient hospital care

which are covered by Medicare but which are not part of the CNO plan. This system of records will also provide data necessary to monitor the quality of home health care and selected ambulatory care services furnished by providers participating in the CNO Demonstration.

The external QA contractor will establish a system of records that includes information on the individual patients receiving Medicare coverage for this purpose. The system of records will contain information concerning a patient's name, Health Insurance Claim Number, demographic characteristics, medical diagnoses and conditions, plans of treatment, receipt of services, health and functional status, and utilization of home health services and certain ambulatory care services. HCFA and the QA contractor will collect only that information necessary to perform the system's function. The database will contain a record for each client enrolled in each CNO. Depending on the size of the CNO enrollment, information will be collected on approximately 7,500 Medicare enrollees.

In order to fulfill the objectives and complete the tasks of this contract, the contractor must have individually identifiable records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, it will not have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for a "routine use"—that is, disclosures which are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for the purpose of administering the Community Nursing Organization demonstration for which we are responsible. The disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: July 12, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

09–70–0065

SYSTEM NAME:

Evaluation of, and External Quality Assurance for, the Community Nursing Organization Demonstration.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system will be maintained by the evaluation/quality assurance contractor selected by HCFA. Contact the System Manager for the location of the contractor. The system, or portions of the system, may also be maintained at the HCFA Data Center located at 7131 Rutherford Road, Baltimore, MD 21244.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries who receive home health care and certain ambulatory care services from one of the four CNO project sites (Carle Clinic, Mahomet, IL; Carondelet Health Care, Tucson, AZ; Living at Home/Block Nurse Program, St. Paul, MN; Visiting Nurse Service of New York, New York, NY) chosen to participate in the demonstration.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain information concerning a patient's name, Health Insurance Claim Number, demographic characteristics (e.g., sex, age), medical diagnoses and conditions, receipt of service, health and functional status, and utilization of home health services and certain ambulatory care services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4079(c)(6) of the Omnibus Reconciliation Act of 1987 (Pub. L. 100–203).

PURPOSE(S)

To provide data necessary to test the feasibility of a capitated nurse-case managed service delivery model and the effect it has on patient care. The system will also provide data necessary to assess and monitor the quality of home health care and selected ambulatory care services rendered by providers participating in the Community Nursing Organization Demonstration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To the CNOs that provided the home health and selected ambulatory care services in order to verify service utilization rates, elicit feedback on evaluation findings, and investigate potential quality problems and notify the CNOs of any confirmed quality problems that are found.

2. To a Congressional office, from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

3. To the Bureau of Census for use in processing research and statistical data directly related to the administration of programs under the Social Security Act.

4. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components; is party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is a reasonable probability that the objective for the use would be accomplished.

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

6. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media.

RETRIEVABILITY:

Records are retrieved by beneficiary name and health insurance claim number.

SAFEGUARDS:

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information. For computerized records, safeguards established in accordance with Departmental standards and National Institute of Standards and Technology guidelines (e.g., security codes) will be used, limiting access to authorized personnel. System securities are established in accordance with DHHS Information Resources Manual, Circular #10, Automated Information Systems Security Program; and HCFA Automated Information Systems (AIS) Guide, Systems Security Policies.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic media with identifiers will be retained in secure storage areas. These records will be retained for 1 year after the termination of the monitoring contract. Records are maintained with identifiers as long as needed for program research analysis.

SYSTEM MANAGERS AND ADDRESS:

Director, Office of Research and Demonstrations, HCFA, Room C3–25–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the system manager at the address indicated above. The requestor must specify the name, address, and health insurance number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. These access procedures are in accordance with Department Regulation (45 CFR 5b.5(a)(2).

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and reasonably identify the record and specify the information to be contested. State the corrective action being sought and the reasons for the correction with supporting justification. These procedures are in accordance with Department Regulation (45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

Sources of information contained in this records system are expected to include: Data collected from the Medicare claims files; Medicare Statistical Systems; CNO plans of care and related patient records; supplemental patient intake forms prepared by the CNOs; and results of quality assessments conducted by the contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 95–18487 Filed 7–26–95; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3849–N–03]

Office of the Assistant Secretary for Public and Indian Housing; Fund Availability (NOFA) for Fiscal Year 1995 for Rental Voucher Program and Rental Certificate Program; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA) for Fiscal Year (FY) 1994 for the Rental Voucher Program and Rental Certificate Program; Correction.

SUMMARY: The Department is publishing a correction to the Notice of Fund Availability (NOFA) published in the **Federal Register** on March 3, 1995 (60 FR 12036), for the Rental Voucher Program and Rental Certificate Program. The fair share allocation areas for the States of Maine, New Hampshire, and Vermont were erroneously combined into one Metropolitan allocation area and one Non-Metropolitan allocation area. Instead, using the principle that each allocation area is supposed to be the smallest possible area, the NOFA should have identified two allocation areas (Metropolitan and Non-Metropolitan) for each State.

DATES AND ADDRESSES: Applications have already been received for these revised allocation areas, in accordance with the original NOFA. Housing agencies do not need to submit any additional application materials.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Room 4220, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department discovered that when the original NOFA for the Rental Voucher Program and Rental Certificate Program was published, the allocation areas for the New Hampshire State Office had not been based on the principle of using the smallest possible area, which was used for determining the allocation areas for the other offices. Instead, the States of Maine, New Hampshire, and Vermont had been combined into one area. The total amount of funding for the program operation in those States remains the same, but this correction document

divides that single allocation area (subdivided by metropolitan area and non-metropolitan area) into three allocation areas (similarly subdivided).

The applications for funding have been received from housing agencies in these States. No additional submissions are needed. However, the Department wanted to clarify that the rating and ranking procedure used to select applications for funding will be based on these corrected allocation areas.

Accordingly, FR Doc. 95–5184, the NOFA for the Rental Voucher Program and Rental Certificate Program, published in the **Federal Register** on March 3, 1995 (60 FR 12036), is corrected as follows:

1. On page 12063, the allocation areas for the New Hampshire State Office is deleted and the following is inserted to read:

New Hampshire State office; metropolitan allocation areas	Dollars	Units	Component parts of allocation area
Metropolitan Vermont	$1,048,193	27	CHITTENDEN county towns of: Burlington, Charlotte, Colchester, Essex, Hinesburg, Jericho, Milton, Richmond, St. George, Shelburne, South Burlington, Williston, Winooski. FRANKLIN county towns of: Georgia. GRAND ISLE county towns of: Grand Isle, South Hero.
Metropolitan New Hampshire.	2,366,870	50	ROCKINGHAM county towns of: Atkinson, Brentwood, Danville, Derry, East Kingston, Hampstead, Kingston, Newton, Plaistow, Salem, Sandown, Seabrook, Windham. HILLSBOROUGH county towns of: Bedford, Goffstown, Manchester. MERRIMACK county towns of: Allenstown, Hooksett. ROCKINGHAM county towns of: Auburn, Candia. HILLSBOROUGH county towns of: Pelham, Amherst, Brookline, Hollis, Hudson, Litchfield, Merrimack, Milford, Mount Vernon, Nashua, Wilton. ROCKINGHAM county towns of: Exeter, Greenland, Hampton, New Castle, Newfields, Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham. STRAFFORD county towns of: Barrington, Dover, Durham, Farmington, Lee, Madbury, Milton, Rochester, Rollinsford, Somersworth.
Metropolitan Maine	2,381,477	61	PENOBSCOT county towns of: Bangor, Brewer, Eddington, Glenburn, Hampden, Hermon, Holden, Kenduskeag, Old Town, Orono, Orrington, Penobscot Indian I, Veazie. WALDO county towns of: Winterport. ANDROSCOGGIN county towns of: Auburn, Greene, Lewiston, Lisbon, Mechanic Falls, Poland, Sabattus. CUMBERLAND county towns of: Cape Elizabeth, Cumberland, Falmouth, Freeport, Gorham, Gray, North Yarmouth, Portland, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, Yarmouth. YORK county towns of: Berwick, Eliot, Kittery, North Berwick, South Berwich, Wells, York.
Nonmetropolitan Vermont	1,375,659	43	ADDISON. BENNINGTON. CALENDONIA. CHITTENDEN county towns of: Bolton, Buels, Huntington, Underhill, Westford. ESSEX. FRANKLIN county towns of: Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield, Fletcher, Franklin, Highgate, Montgomery, Richford, St. Albans, Sheldon, Swanton. GRAND ISLE county towns of: Alburg, Isle La Motte, North Hero. LAMOILLE. ORANGE. ORLEANS. RUTLAND. WASHINGTON. WINDHAM. WINDSOR.
Nonmetropolitan New Hampshire.	1,200,992	37	BELNAP. CARROLL. CHESHIRE. COOS. GRAFTON. HILLSBOROUGH county towns of: Antrim, Bennington, Deering, Francestown, Greenfield, Greenville, Hancock, Hillsborough, Lyndeborough, Mason, New Boston, New Ipswich, Peterborough, Sharon, Temple, Weare, Windsor. MERRIMACK county towns of: Andover, Boscawen, Bow, Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker, Hill, Hopkinton, Loudon, Newbury, New London, Northfield, Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster, Wilmot. ROCKINGHAM county towns of: Chester, Deerfield, Epping, Fremond, Hampton Falls, Kensington, Northwood, Nottingham, Raymond, South Hampton. STRAFFORD county towns of: Middleton, New Durham, Strafford, Sullivan.
Nonmetropolitan Maine ...	2,296,453	71	ANDROSCOGGIN county towns of: Durham, Leeds, Livermore, Livermore Falls, Minot, Turner, Wales. AROOSTOCK. CUMBERLAND county towns of: Baldwin, Bridgton, Brunswick, Casco, Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago. FRANKLIN. HANCOCK. KENNEBEC. KNOX. LINCOLN. OXFORD. PENOBSCOT county towns of: Alton, Argyle, Bradford, Bradley, Burlington, Carmel Carroll, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew, East Millinocket, Edinburg, Enfield, Exeter, Garland, Grand Falls, Greenbush, Greenfield, Howland, Hudson, Kingman, Lagrange, Lakeville, Lee, Levant, Lincoln, Lowell, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Mount Chase, Newburgh, Newport, North Penobscot, Passadumkeag, Patten, Plymouth, Prentiss, Seboeis, Springfield, Stacyville, Stetson, Summit, Twombly, Webster, Whitney, Winn, Woodville. PISCATAQUIS. SAGADAHOC. SOMERSET. WALDO county towns of: Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom, Isleboro, Jackson, Knox, Liberty, Lincolnville, Monroe, Montville, Morrill, Northport, Palermo, Prospect, Searsmont, Searsport, Stockton Springs, Swanville, Thorndike, Troy, Unity, Waldo. WASHINGTON. YORK county towns of: Acton, Alfred, Arundel, Biddeford, Cornish, Dayton, Kennebunk, Kennebunkport, Lebanon, Limerick, Limington, Lyman, Newfield, Parsonfield, Saco, Sanford, Shapleigh, Waterboro.

Dated: July 21, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–18411 Filed 7–26–95; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–00–P and F–19155–18]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 178 acres. The lands involved are in the vicinity of Nenana, Alaska, within T. 3 S., R. 7 W., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 28, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Sherwood,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–18425 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–JA–P

[AZ–026–05–1430–01; AZA–7489]

Arizona: Termination of Classification and Opening of Lands to Entry in Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice will open 15 acres to location and entry under the public land laws and the general mining laws.

EFFECTIVE DATE: August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Angela Mogel, Realty Specialist, Phoenix District Office, U.S. Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027; telephone (602) 780–8090.

SUPPLEMENTARY INFORMATION: The lands were classified and segregated on August 6, 1973 under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The classification is no longer needed for the following described lands:

Gila and Salt River Meridian, Arizona

T. 1 S., R. 3 W.,
Sec. 20, NE¼NE¼SW¼,
S½,SE¼SE¼NW¼.
Containing 15 acres.

At 9:00 a.m. on August 28, 1995, the classification on the lands described above will be terminated and the land will be open to location and entry under the United States public land laws and the mining laws.

Dated: July 17, 1995.

G.L. Cheniae,

District Manager Phoenix District Office.

[FR Doc. 95–18426 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–32–P

[UT–046–3120–00]

Modification of Notice of Intent To Prepare Environmental Impact Statement (EIS) for Proposed Plan Amendment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Modification of notice of intent to prepare an EIS for the proposed plan amendment for the Virgin River management framework plan (MFP).

SUMMARY: This notice is to advise the public that, as a result of public and internal scoping, the preliminary scope of the referenced Proposed Amendment/EIS has been modified.

DATES: Comment opportunities on the modification of the scope of the Proposed Amendment/EIS as well as the preliminary issues identified in the original Notice of Intent, published June 5, 1995, will commence with publication of this notice. Comments must be submitted within 30 days of the date of publication.

FOR FURTHER INFORMATION CONTACT: Jim Crisp, Area Manager, Dixie Resource Area, 345 E. Riverside Drive, St. George, Utah 84790, 801–673–4654 or Verlin Smith, Area Manager, Kanab Resource Area, 318 North First East, Kanab, Utah 84741, 801–644–2672.

SUPPLEMENTARY INFORMATION: Based on concern regarding the number of complex and diverse actions associated with the Proposed Plan Amendment/EIS, and public concern over the planning criteria presented in the above referenced Notice of Intent, it has been decided that it would be more effective to separate those actions that are unrelated to the proposed land tenure adjustments by one of the project proponents. Therefore, the scope of the Proposed Plan Amendment/EIS will only address the alternatives to, and the environmental impacts of specific land tenure adjustments as proposed by the Washington County Water Conservancy District (WCWCD). These proposed land tenure adjustments would be accomplished through the exchange process as follows: 1) The WCWCD has offered BLM two parcels of non-Federal land adjacent to Zion National Park (N.P.) in exchange for Federal lands. One parcel north of Zion N.P. would facilitate the protection of downstream resources including special status fish species. Further review of this site has shown that it is governed by the Zion MFP which applies to the Kanab Resource Area. This proposed amendment would therefore consider the impacts of amending the Zion MFP to allow this specific land exchange. The other parcel has the potential to facilitate resolution of inholding conflicts in Zion N.P.; 2) In exchange for these two parcels, the WCWCD has identified three parcels of Federal land that they would like to acquire through exchange for the following purposes: construct the proposed Sand Hollow Reservoir to accommodate storage of excess water flow and consolidate ownership of lands beneath Quail Creek Reservoir and an associated reservoir pipeline. Preliminary planning issues to be addressed in this Proposed Plan Amendment/EIS associated with these land tenure adjustments remain the same as stated in the **Federal Register** Notice Vol. 60. No. 107, Monday, June 5, 1995. The present land use plan for the Dixie Resource Area is the Virgin River MFP approved in 1981. This land use plan is being revised and updated through preparation of a newer and more comprehensive Dixie Resource Management Plan (RMP) but the completion date is uncertain at this time. The plan amendment now being initiated will amend either the Virgin River MFP or the Dixie RMP whichever

is the current document at the time this amendment is completed.

Mat Millenbach,

State Director.

[FR Doc. 95–18496 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–065–05–0–03–5]

Notice of Intent To Amend Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Proposed Plan Amendment to the Virgin River Management Framework Plan (MFP).

SUMMARY: This notice is to advise the public that the Bureau of Land Management proposes to amend the Virgin River MFP to allow for land tenure adjustments not previously identified in the MFP.

DATES: The comment period for issues and criteria associated with the proposed plan amendment will commence with publication of this notice. Comments are due within 30 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Jim Crisp, Area Manager, Dixie Resource Area, 345 E. Riverside Drive, St. George, Utah 84770, 801–674–4654.

SUPPLEMENTARY INFORMATION: The purpose of the Proposed Plan Amendment is to add additional land exchange criteria under which lands could be disposed of, or acquired through the exchange process, if certain goals or objectives are met. Specifically, the land exchange criteria to be addressed are as follows: (1) Land tenure adjustments would be considered where such adjustments are in the public interest and accommodate the needs of local and State people, including needs for the economy, and community growth and expansion and are in accordance with other land exchange goals and objectives; (2) The land tenure adjustment results in a net gain of important and manageable resource values on public land such as crucial wildlife habitat, significant cultural sites, high quality riparian areas, live water, Threatened & Endangered species habitat, or areas key to the maintenance of productive ecosystems; (3) The land tenure adjustment ensures the accessibility of public lands in areas where access is needed and cannot otherwise be obtained; (4) The land tenure adjustment is essential to allow effective management of public lands in areas where consolidation of ownership is necessary to meet resource management objectives; (5) The land tenure adjustment results in acquisition of lands which serve a national priority as identified in national policy directives. Issues to be addressed in this proposed amendment/Environmental Assessment (EA) include the impacts of disposal or acquisition of lands to the local communities, social and economic values and impacts on natural resources. This amendment will also examine the impacts to the existing land use plan. The present land use plan for the majority of the Dixie Resource Area is the Virgin River MFP approved in 1981. This land use plan is being revised and updated through preparation of a newer and more comprehensive Dixie Resource Management Plan but the completion date is still uncertain at this time. The planning amendment now being initiated will amend either the Virgin River MFP or the Dixie RAMP, whichever is the current document at the time.

Mat Millenbach,

State Director.

[FR Doc. 95–18495 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–DQ–P

[MT–930–1430–01; MTM 82585]

Conveyance of Public Lands in Beaverhead County, Montana, and Order Providing for Opening of Public Land in Beaverhead County, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order informs the public and interested state and local governmental officials of the conveyance of 1,192.72 acres of public lands out of Federal ownership and will open 320.00 acres of surface estate reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. The land that was acquired in the exchange provides access to other public land with wildlife habitat, excellent big-game hunting opportunities, timber resources, wetlands, recreation use area, and is adjacent to a wilderness study area. The exchange also allows for increased management efficiency of public land in the area. No minerals were exchanged by either party. The public interest was well served through completion of this exchange.

EFFECTIVE DATE: September 17, 1995.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2829.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of land made pursuant to Section 206 of FLPMA, the following described lands were transferred to Jack G. Thomas Limited Partnership:

Principal Meridian, Montana

T. 13 S., R. 5 W.,
Sec. 19, lots 1–4, inclusive, and E½ and E½W½;
Sec. 20, SW¼, NW¼SE¼ and S½SE¼;
Sec. 29, N½N½ and SE¼NW¼; and
Sec. 30, N½NE¼.

Total acreage conveyed: 1,192.72 acres.

2. In exchange for the above lands, the United States acquired the following described lands from Jack G. Thomas Limited Partnership:

T. 11 S., R. 11 W.,
Sec. 10, NW¼NW¼, S½NW¼, SW¼, and SW¼SE¼.

Total acreage acquired: 320.00 acres.

3. The value of the Federal public land was appraised at $86,000.00 and the private land was appraised at $143,800.00. An Equalization Payment from the Land and Water Conservation Fund was made in the amount $55,800.00.

4. At 9 a.m. on September 17, 1995, the lands described in paragraph 2 above that were conveyed to the United States will be opened only to the operation of the public land laws generally, subject to valid existing rights and requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 17, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: July 18, 1995.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 95–18493 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–DN–P

[ID–054–1430–01; IDI–28519]

Notice of Realty Action, Sale of Public Land in Lincoln County, Idaho

AGENCY: Bureau of Land Management; Interior.

ACTION: Sale of Public Land in Lincoln County.

SUMMARY: The following described public land has been examined and, through the public-supported land use planning process, has been determined to be suitable for disposal by direct sale pursuant to section 203 of the *Federal Land Policy and Management Act* of 1976 at no less than the appraised fair market value of $8000.00. The land will not be offered for sale until at least 60 days after the publication date of this notice in the **Federal Register**.

T. 7 S., R. 19 E., Boise Meridian;
Section 2: Lots 3, SE¼NE¼;
Section 3: SW¼SW¼.

The area described contains 99.510 acres in Lincoln County.

When patented, the land will be subject to the following reservations:

1. A reservation to the United States for rights-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).

DATES: Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the *Federal Land Policy and Management Act*. The segregative effect of the Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** or termination of the segregation 270 days from the date of publication, whichever occurs first.

ADDRESSES: Shoshone District Office, Monument Resource Area, P.O. Box 2–B, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Fred Pence at the address shown above or telephone (208) 736–2350.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to Jeff Weber and Phil Hawkes of Star Gate Ranch, 950 E. 570 S, Dietrich, Idaho 83324, based on historical use.

It has been determined that the subject parcel contains no known mineral values; therefore, the mineral interest will be conveyed simultaneously. A separate nonrefundable filing fee of $50.00 will be required from the purchaser for conveyance of the mineral interests.

There will be no reduction in grazing allotment preference as a result of this land going into private ownership.

For a period of 45 days from the date of this publication, interested parties may submit comments to the Field Manager, Burley District Office, 15 East 200 South, Burley, Idaho 83318. Any adverse comments will be reviewed by the Field Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: July 21, 1995.

Mary C. Gaylord,

Field Manager.

[FR Doc. 95–18492 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–GG–M

[OR 51998, OR 52165, OR 52166; OR–080–05–1430–01; G5–176]

Realty Action; Proposed Modified Competitive Sale; Oregon

July 19, 1995.

The following described public lands have been examined and determined to be suitable for transfer out of Federal ownership by modified competitive sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon

T. 7 S., R. 3 W.,
Sec. 18, Lot 3 (OR 51998)
Sec. 18, Lot 4 (OR 52165)
Sec. 18, Lot 5 (OR 52166)

The above-described parcels aggregate 0.99 acre in Polk county.

The parcels will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcels have not yet been determined. Anyone interested in knowing the values may request this information from the address shown below.

The above-described lands are hereby segregated from appropriation under the public lands laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcels' relatively small size, their best use is to merge them with the adjoining ownerships. Use of the modified competitive sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Salem District Resource Management Plan and the public interest will be served by offering these parcels for sale.

Modified Bidding Procedures

Modified bidding procedures are being used pursuant to 43 CFR 2711.3–2. Bidders must be United States citizens and 18 years of age or older.

The parcel identified as OR 51998 is being offered only to Ervin Simmons Estate et al. (fee owners of Tax Lot 200, Map 7 3 18), Polk County (fee owner of Tax Lot 100, Map 7 3 18B), Richard O. Cox and Carol M. Cox (fee owners of Tax Lot 200, Map 7 3 18B), S. Annette Whisenhant (fee owner of Tax Lot 3601, map 7 3 18BD), Raymond Dale Johnson and Nancy K. Johnson (fee owners of Tax Lot 3607, Map 7 3 18BD), Larry W. Killingsworth and Mary J. Killingsworth (fee owners of Tax Lot 3700, Map 7 3 18BD), and Richard Schwarz and Michelle Schwarz (fee owners of Tax Lot 4100 Map 7 3 18BD).

The parcel identified as OR 52165 is being offered only to Ervin Simmons Estate et al. (fee owners of Tax Lot 200, 800, and 1100, Map 7 3 18), Richard Schwarz and Michelle Schwarz (fee owners of Tax Lot 4100, Map 7 3 18BD), Raymond R. Kreuger and Phyllis A. Krueger (fee owners of Tax Lot 4301, Map 7 3 18BD), Evelyn R. Ables Trust et al. (fee owners of Tax Lot 4300, Map 7 3 18BD), Malcom J. Elstad and Norma Y. Elstad (fee owners of Tax Lot 4400, map 7 3 18BD), and Clara Taylor and Dennis Magnello (fee owners of Tax Lot 702, Map 7 3 18).

The parcel identified as OR 52166 is being offered only to Ervin Simmons Estate et al. (fee owners of Tax Lot 800 and 1100, Map 7 3 18) and Ella E. Lippert (fee owner of Tax Lot 1500, Map 7 3 18D).

Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE, Salem Oregon 97306, prior to 11:00 a.m. on Wednesday, September 20, 1995. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to USDI—Bureau of Land Management for not less than the appraised value of the parcel to be sold, and shall be enclosed in a sealed envelop clearly marked in the lower left hand corner, "Bid for Public Land Sale OR 51998" or "Bid for Public Land Sale OR 52165" or "Bid for Public Land Sale OR 51266", as appropriate.

The written sealed bids will be opened and an apparent high bid will be declared at the sale. The apparent high bidder and any other designated bidder will be notified. In case of a tie of bids submitted by designated bidders, the

interested bidders would be given an opportunity to submit an additional sealed bid within 30 days of notification of eligibility.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The mineral interests being offered for conveyance have no known mineral value. A bid submitted will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. All qualified bidders must include with their bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

2. The patents will subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945; and

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Marys Peak Area Manager, Salem District Office, address above. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Robert D. Saunders, Jr.,

Acting Marys Peak Area Manager.

[FR Doc. 95–18494 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–33–M

[OR–942–00–1420–00: G5–175]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian,

Oregon

T. 35 S., R. 3 W., accepted June 12, 1995
T. 37 S., R. 3 W., accepted June 26, 1995
T. 33 S., R. 4 W., accepted June 22, 1995
T. 18 S., R. 6 W., accepted June 16, 1995
T. 15 S., R. 7 W., accepted June 2, 1995
T. 38 S., R. 7 W., accepted June 13, 1995

Washington

T. 7 N., R. 13 E., accepted June 19, 1995
T. 28 N., R. 15 W., accepted June 23, 1995

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue.) P.O. Box 2965, Portland, Oregon 97208.

Dated: July 19, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–18491 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0006), Washington, DC 20503, telephone 202–395–7340.

Title: Ferrous Metals Surveys.

OMB approval number: 1032–0006.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on ferrous and related metals. This information is published in the monthly and annual issues of Mineral Industry Survey series, Mineral Commodity Summaries, and other Bureau publications for use by private organizations and other Government agencies.

Bureau form number: 6–1056–A ET AL (14 Forms).

Frequency: Monthly Annual.

Description of respondents: Producers and Consumers of Ferrous Metals.

Annual responses: 3,600.

Annual burden hours: 1,931.

Bureau clearance officer: Alice J. Floyd, 202–501–9569.

Dated: June 30, 1995.

Michael McKinley,

Chief, Division of Statistics and Information Services.

[FR Doc. 95–18428 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–53–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0004), Washington, D.C. 20503, telephone 202–395–7340.

Title: Consolidated Consumers' Report.

OMB approval number: 1032–0084.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on ferrous and related metals. This information is published in the monthly and annual issues of Mineral Industry Surveys series, Mineral Commodity Summaries, and other Bureau publications for use by private organizations and other Government agencies.

Bureau form number: 6–1109–MA.

Frequency: Monthly and Annual.

Description of respondents: Operations that consume ferrous metals.

Estimated completion time: 45 minutes.

Annual responses: 3,656.

Annual burden hours: 2,742.

Bureau clearance officer: Alice J. Floyd, 202–501–9569.

Dated: June 9, 1995.

K.W. Mlynarski,

Acting Chief, Division of Statistics and Information Services.

[FR Doc. 95–18427 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–53–M

National Park Service

General Management Plan/Final Environmental Impact Statement Grand Canyon National Park Coconino and Mohave Counties, Arizona; Availability

Introduction: Pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the Department of the Interior, National Park Service (NPS), has prepared a Final Environmental Impact Statement (FEIS) and General Management Plan (GMP) that describe and analyze a proposed action and four alternatives for the future management, use, and development of Grand Canyon National Park.

Public Review Comments: Two hundred and forty comment letters were received on the draft environmental impact statement (DEIS) during a 60-day period ending May 11, 1995. In addition, four public meetings were held during March 25–29, 1995 in various locations in Arizona and Utah. Approximately 1,400 copies of the DEIS/GMP were distributed during the public review period. The FEIS/GMP incorporates modifications and clarifications in response to some of these public comments. The same proposed action and same four alternatives were evaluated in both the DEIS/GMP and the FEIS/GMP.

Proposed and Alternative Actions: The GMP proposed for adoption provides specific management objectives and visions for the entire park, as well as general regional-ecosystem management objectives and visions. The proposed action, the no-action alternative, and three other alternatives, and their environmental consequences, were identified and analyzed as follows:

Proposed Action: The "proposed action" (Alternative 2) emphasizes regional cooperation for information distribution, regional resource preservation, and a quality visitor experience. A major shift away from the use of private automobiles would occur. Alternate modes of transportation would be emphasized throughout the region and within the park, with staging areas linked to regional private transit services in outlying communities and a public transit system within the park. Private vehicles would be removed from the heaviest use areas in the park, creating pedestrian-only areas. The number of private vehicles allowed into the park at any one time would be limited in certain areas. The adaptive use of historic structures and other structures would be maximized. To minimize resource impacts, construction of new park facilities would be almost entirely within disturbed areas. The visitor experience would be defined by the unique qualities of each individual area, and the number of visitors allowed into some areas of the park would be determined by a carrying capacity analysis. With respect to environmental consequences, the proposed action would stabilize the growth of infrastructure within the park, enhance natural and cultural resource preservation, improve significantly the visitor experience, create better living and working conditions for park employees, and benefit local economies.

Under the Plan proposed for adoption, the regional context of Grand Canyon National Park would be emphasized, and proposals for resource preservation and visitor use would take into account environmental effects on both the park and the region. Cooperative planning efforts outside the park would emphasize disseminating information, preserving regional and park resources, and providing a quality visitor experience. The NPS would work jointly with adjacent entities to provide for many park needs outside park boundaries. The most appropriate locations for facilities would be considered in a regional context, taking into consideration principles of sustainable design and the need to preserve resources while providing for a quality visitor experience.

The number of visitors in certain areas would be limited during peak visitation periods based on desired visitor experience and identified resource protection needs, according to the monitoring program called for in the plan. The process for determining use limits would be the same throughout the developed areas of the park. However, visitor levels in specific areas could vary considerably, and use may be limited sooner in some areas than others. South Rim day visitation would be unlimited during the life of this plan if all the proposed alternate transportation services are fully funded and operational in an appropriate time frame. If this does not occur, as a contingency measure day use reservations would be established for the South Rim during peak visitation periods (similar to Alternative 1). North Rim Day visitation would be limited by 2005 or 2010, depending on effectiveness of management actions. Day use at Tuweep could be limited at peak times. In areas where reservations became necessary, visitors would be able to reserve permits in advance, which would be subject to verifying at park entrances. Overnight accommodations would be expanded on the South and North Rims primarily by adaptively reusing existing structures.

To preserve resources and enhance visitor experience, most of the park's developed areas would be accessible only by public transit, hiking, or biking. Private vehicles (tour buses, cars, and RVs) would only be allowed in specific areas. The public transit, pedestrian, and bikeway system would be significantly expanded. The monitoring program called for would measure resource impacts, facility use, visitor satisfaction, and visitor attendance levels in each park developed area. The permit system would be adjusted as needed. To further provide a quality visitor experience, interpretive programs would focus on significant resources of Grand Canyon, as well as regional conservation issues.

Alternatives Considered: The four other alternatives analyzed include: continuing existing programs and conditions (the no-action alternative), a minimum requirements alternative (alternative 1), reduced park development (alternative 3), and increased park development (alternative 4). They are as follows:

Under the "No-Action" alternative (continuing existing programs and conditions), planning would be focused within the park, primarily to solve existing problems. Issues related to planning and land management practices in areas immediately outside the park would be handled individually as the need arose, without an overall area vision or cooperative regional planning effort to guide the direction. Cooperative planning to distribute regional information to visitors would be limited. Visitation would continue in all park developed areas, with nearly every South Rim visitor facility

continuing to be overcapacity during peak use periods. No major facilities would be built, and no major park functions would be relocated. Any required facility changes would be done in or adjacent to existing disturbed areas. The number of overnight accommodations, campsites, and all other visitor services would remain the same in each developed area. Minor adjustments in management would be made to help reduce resource damage and to provide a safer visitor experience.

Under the "Minimum Requirements" alternative (Alternative 1), planning would be focused within the park (similar to the No-Action alternative). Issues related to planning and land management in areas adjacent to the park would be individually handled as the need arose, without overall area vision or an integrated regional planning effort to give direction. Unlimited day visitation would continue in all park developed areas until visitor congestion, resource damage, and public safety warranted restricting peak visitation access. This would be accomplished by implementing reservation systems based on capacity of existing parking and eating facilities on the South and North Rims. Regional information programs would explain the park's reservation systems to visitors. Overnight accommodations would not be affected. Visitor use at Tuweep and on corridor trails would not be limited under this alternative. Existing land use patterns would be retained—no major facilities would be built, no major park functions would be relocated, and most park facilities would remain where they are now (some minor facilities would be added). Any required facility changes would be accomplished in or adjacent to existing disturbed areas.

Under the "Reduced Park Development" alternative (Alternative 3), planning for the park would be done in a regional context to minimize negative impacts resulting from park uses being placed in areas outside the park. Communications would be expanded (as with Alternative 2). Wherever possible, facilities placed outside the park would be clustered in disturbed areas and linked to existing systems. Preserving the park's natural and cultural resources would be emphasized; many disturbed areas would be rehabilitated. Alternate modes of transportation would be emphasized regionally as well as in major park high use areas (as with Alternative 2). Park resources would be preserved by placing all new facilities and relocating many existing functions outside the park. Cooperative regional planning would ensure that NPS functions occurring outside park boundaries featured sustainable planning and design. The NPS would expand its regional information services (as with Alternative 2). On the South Rim all day visitor vehicles would be removed, and a major public transit system would be provided. No new lands within the park would be disturbed, and historic uses of existing structures would be retained wherever possible. Overnight accommodations would be reduced on the South Rim but increased on the North Rim by adaptively reusing historic structures.

Under the "Increased Park Development" alternative (Alternative 4), planning outside the park would emphasize regional information (as with Alternative 2). Cooperative planning with outside entities would focus on disseminating information, providing trip planning assistance, and distributing visitor use. Actions to improve visitor convenience would place major visitor services inside the park wherever reasonable, and visitors would be distributed throughout the park's developed areas. No day use limits would be established unless the visitor experience was significantly degraded. The type of vehicular use allowed in some areas would be restricted, and high use areas would be accessible only by transit vehicles or hiking or biking (as with Alternative 2). Other developed areas would be accessible by private vehicles. Overnight accommodations would be increased in all developed areas on the North and South Rims by adaptively reusing existing structures and constructing some new facilities (either in or adjacent to disturbed areas).

SUMMARY: Based upon the analysis in the DEIS, and taking into account all comments obtained from public meetings and received in writing from reviewers, Alternative 2 (as described in the DEIS and modified somewhat in the subject FEIS) is identified as the general management plan proposed to be adopted to guide future management of Grand Canyon National Park. The no action period on this FEIS will expire 30 days after Notice of its availabiity is published by the Environmental Protection Agency in the **Federal Register**.

SUPPLEMENTARY INFORMATION: A limited number of copies of the FEIS/GMP are available upon request from: Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023 (520)638–7945; or the Planning Team Leader, Grand Canyon General Management Plan, National Park Service, TWE-Denver Service Center, P.O. Box 25287, Denver, CO 80225–0287 (303)969–2267.

As noted in the **Federal Register** Notice published March 13, 1995, the official responsible for a decision on the action proposed is the Regional Director, Western Regional Office, National Park Service. Subsequently, the officials responsible for implementing the approved plan are the Field Director, Intermountain Field Office, National Park Service and the Superintendent, Grand Canyon National Park.

Dated: July 12, 1995.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 95–18410 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–70–P

Richmond National Battlefield Park Draft General Management Plan/ Environmental Impact Statement/Land Resource Protection Study

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to Council on Environmental Quality Regulations and National Park Service Policy, the National Park Service (NPS) announces the release of the Draft General Management Plan (Draft GMP/EIS/LRPS) for Richmond National Battlefield Park, Virginia.

DATES: The Draft GMP/EIS/LRPS will be on public review until September 30, 1995. All review comments must be postmarked no later than October 2, 1995. Open house public meetings will be held.

6:00–10:00 pm Wednesday, August 9, 1995—Laurel Hill United Methodist Church, Fellowship Hall, 1991 New Market Rd., Richmond, VA 23231

5:00–9:00 pm Thursday, August 10, 1995—Beulah Presbyterian Church, 7252 Beulah Church Rd., Mechanicsville, VA 23111

12:30–4:30 pm Friday, August 11, 1995—Chesterfield County Historical Society, "Old Courthouse" at the Administration Complex, 10011 Iron Bridge Rd., Chesterfield, VA 23832

9:00 am–1:00 pm Saturday, August 12, 1995—St. John's Church Parish Hall, 2401 E. Broad St., Richmond, VA 23223

SUPPLEMENTARY INFORMATION: The Draft GMP/EIS/LRPS presents four alternatives for future management and use of Richmond National Battlefield Park.

FOR FURTHER INFORMATION CONTACT: Superintendent, Richmond National Battlefield Park, 3215 Broad Street, Richmond, Virginia 23223, (804) 226–1981.

For copies of the Draft GMP/EIS/LRPS, please contact the Superintendent at the above address.

Dated: July 17, 1995.

Marie Rust,

Field Director, Northeast Field Area.

[FR Doc. 95–18501 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: review of the plan of action; discussion of problem definition, goals and objectives, and a mission statement; and discussion of other program components. The meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council will meet from 10:00 am to 4:00 pm on Wednesday, August 16, 1995.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Capital Plaza Holiday Inn, 300 J Street, Sacramento, CA 95814.

CONTACT PERSON FOR MORE INFORMATION: Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta Estuary. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta Estuary are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta Estuary related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort will be carried out under the policy direction of CALFED. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta Estuary has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC will also provide a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: July 21, 1995.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 95–18500 Filed 7–26–95; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–3 (Sub-No. 122X)]

Missouri Pacific Railroad Company—Abandonment Exemption—in Saline County, KS (Trigo Industrial Lead)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Missouri Pacific Railroad Company of a 0.40-mile portion of the Trigo Industrial Lead extending from the end of the line at milepost 491.2 to milepost 491.6 near Salina, in Saline County, KS, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 26, 1995. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 7, 1995; petitions to stay must be filed by August 11, 1995; requests for a public use condition must be filed by August 16, 1995; and petitions to reopen must be filed by August 21, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–3 (Sub-No. 122X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Joseph A. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: July 12, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary

[FR Doc. 95–18460 Filed 7–26–95; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7 and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Terry Shaner, et al.*, Civil Action No. *85–1372*, was lodged on July 10, 1995, with the United States District Court for the Eastern District of Pennsylvania. A motion to file an amended complaint was filed simultaneously with the lodging of the Consent Decree.

The proposed consent decree requires the current Site owners/operators (Terry Shaner, Sr., Susan Shaner, and Terry Shaner, Jr.): (1) To enter into a Consent Judgment for payment of $50,000 with interest (over time) based on EPA's assessment of their inability to pay their fair share of response costs; (2) to convey a conservation easement to

General Battery Corporation (the fourth signatory to the Decree and a major generator of waste disposed of at the Site) providing access to the Site, the Shaners' cooperation during the cleanup, permanent use restrictions on the Site and preservation of a portion of the Site as a permanent wilderness area; and (3) to waive any claims for Takings under the Fifth Amendment of the United States Constitution and claims for statutory relocation benefits. By signing the Decree, General Battery Corporation ("GBC") has agreed: (1) To reimburse the Hazardous Substances Superfund in the amount of $3,000,000, (2) to pay $24,000 in past natural resource costs to the federal natural resources trustees (the National Oceanographic and Atmospheric Administration ("NOAA") and the Department of Interior ("DOI")); (3) to pay certain of EPA's future response costs; (4) to pay up to $10,000 of DOI's future costs; (5) to perform those activities required by the Record of Decision ("ROD") for Operable Unit Two of the final Site remedy (excavating lead contaminated soil above 1000 parts per million, transport of the contaminated soil to GBC's off-Site innovative thermal treatment facility, and treatment of the deep and shallow groundwater) and complete those activities required by the ROD for Operable Unit One of the final Site remedy (constructing a fence around the property); and (6) to perform extensive work to protect natural resources at the Site as required by DOI and NOAA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Terry Shaner, et al.*, DOJ Ref. *# 90–11–3–76.*

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania, 19106–4476; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy of the body of the proposed decree, please refer to the referenced case and enclose a check in the amount of $41.25 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library. If copies of the proposed consent decree attachments are requested, enclose $167.25 (an additional $126.00 is required for the attachments).

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–18429 Filed 7–26–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[DEA #134P]

Controlled Substances: Proposed Aggregate Production Quotas for 1996

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed aggregate production quotas for 1996.

SUMMARY: This notice proposes initial 1996 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATES: Comments or objections should be received on or before August 28, 1995.

ADDRESSES: Send comments or objections to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations.

The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1996 aggregate production quotas, the Deputy Administrator considered the following factors: (1) Total actual 1994 and estimated 1995 and 1996 net disposals of each substance by all manufacturers; (2) estimates of 1995 year-end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; and (3) projected demand as indicated by procurement quota applications filed pursuant to § 1303.12 of title 21 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 1996, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 1995 year-end inventory and actual 1995 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to § 0.104 of title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes that the aggregate production quotas for 1996 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Proposed 1996 quotas
Schedule I:	
Acetylmethadol	7
Alphacetylmethadol	7
Aminorex	7
Cathinone	9
Difenoxin	14,000
Dihydromorphine	7
2,5-Dimethoxyamphetamine	10,650,000
Dimethylamphetamine	7
Ethylamine Analog of Phencyclidine	5
N-Ethylamphetamine	7
Lysergic acid diethylamide	58
Mescaline	7
Methaqualone	17
Methcathinone	9
4-Methoxyamphetamine	17
4-Methylaminorex	2
3,4-Methylenedioxyamphetamine	17
3,4-Methylenedioxy-N-ethylamphetamine	27
3,4-Methylenedioxymethamphetamine	42
3-Methylfentanyl	14

Basic class	Proposed 1996 quotas
Normethadone	7
Normorphine	7
Psilocybin	2
Psilocyn	2
Tetrahydrocannibinols	55,100
Schedule II:	
Alfentanil	8,500
Amobarbital	15
Amphetamine	1,300,100
Cocaine	550,040
Codeine (for sale)	58,395,000
Codeine (for conversion)	16,632,000
Desoxyephedrine, 1,000,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 44 kg for methamphetamine.	1,044,000
Dextropropoxyphene	118,066,000
Dihydrocodeine	60,000
Diphenoxylate	1,063,000
Ecgonine (for conversion)	650,100
Ethylmorphine	12
Fentanyl	120,100
Hydrocodone (for sale)	8,880,000
Hydrocodone (for conversion)	2,800,000
Hydromorphone	448,000
Isomethadone	12
Levo-alpha-acetylmethadol	200,000
Levorphanol	14,300
Meperidine	10,822,000
Methadone	4,551,000
Methadone (for conversion)	364,000
Methadone Intermediate (for conversion)	5,534,000
Methamphetamine (for conversion)	723,000
Methylphenidate	10,291,000
Morphine (for sale)	12,450,000
Morphine (for conversion)	76,735,000
Noroxymorphone (for sale)	2,000
Noroxymorphone (for conversion)	2,406,000
Opium	1,226,000
Oxycodone (for sale)	5,571,000
Oxycodone (for conversion)	37,300
Oxymorphone	11,200
Pentobarbital	15,100,000
Phencyclidine	40
Phenylacetone (for conversion)	5,280,000
1-Phenylcyclohexylamine	10
1-Piperidinocyclohexanecarbonitrile	12
Secobarbital	400,000
Sufentanil	1,000
Thebaine	9,217,000

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of title 21 of the Code of Federal Regulations be established at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: July 19, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–18407 Filed 7–26–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated May 30, 1995, and published in the **Federal Register** on June 8, 1995 (60 FR 30318), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 19, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–18408 Filed 7–26–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated May 30, 1995, and published in the Federal Register on June 8, 1995, (60 FR 30319), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 19, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–18409 Filed 7–26–95; 8:45 am]

BILLING CODE 4410–09–M

Office of Juvenile Justice and Delinquency Prevention

Continuation of Funding of Children's Advocacy Centers

AGENCY: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of continuation grants.

SUMMARY: The purpose of this notice is to announce the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) intent to develop local children's advocacy centers through continuation funding to regional children's advocacy centers and the National Network of Children's Advocacy Centers.

FOR FURTHER INFORMATION CONTACT: Robin V. Delany-Shabazz, program manager, Training and Technical Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, Northwest, Room 710, Washington, DC., 20531; (202) 307–9963.

SUPPLEMENTARY INFORMATION:

Children's Advocacy Centers

With respect to the funding of Children's Advocacy Centers, pursuant to the Victims of Child Abuse Act, 42 U.S.C. 130001b - 130002, OJJDP has established a five-year project period for the Regional Children's Advocacy Center programs, effective February 21, 1995.

Given availability of funds and adequate performance, awards will be without further competition for the duration of the project period to the four grantees currently managing the Regional Children's Advocacy Centers (RCAC). They are as follows: Children's Advocacy Center, Inc. (Northeast RCAC); National Children's Advocacy Center, Inc. (Southern RCAC); LaRabida Children's Hospital and Research Center (Midwest RCAC); and Pueblo Child Advocacy Center (Western RCAC).

Funding to local Children's Advocacy Centers will continue to be administered by the National Network of Children's Advocacy Centers. The National Network will competitively subgrant funds to local Children's Advocacy Centers. A continuation grant will be awarded without competition for the purposes of grants administration to, the National Network, contingent upon availability of funds and grantee performance. Interested applicants for local Children's Advocacy Center funds can contact the National Network on 202/639–0597.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–18459 Filed 7–26–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Reporting and Recordkeeping Requirements for Supply and Service Contractors; OMB Number 1215–0072; Agency Reporting/Recordkeeping Requirements To Be Reviewed by the Office of Management and Budget (OMB); Correction

AGENCY: Employment Standards Administration.

ACTION: Correction.

SUMMARY: In notice document 95–17997 beginning on page 37675 in the issue of Friday, July 21, 1995, make the following correction:

On page 37676; in the first column, the description cited 38 USC 2012. This should be changed to read 38 USC 4212.

Dated: July 24, 1995.

Margaret J. Sherrill,

Chief Branch of Management, Review and Analysis, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 95–18465 Filed 7–26–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–31, 024]

Legends Manufacturing, Inc., A/K/A Linden Dress, Throop, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 14, 1995, applicable to all workers of Legends Manufacturing, Incorporated, Throop, Pennsylvania. The notice was published in the **Federal Register** on June 27, 1995 (60 FR 33235).

New information received from the State Agency show that some of the workers at Legends Manufacturing, Incorporated had their unemployment insurance (UI) taxes paid to Linden Dress.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Legends Manufacturing, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,024 is hereby issued as follows:

"All workers of Legends Manufacturing, Incorporated, a/k/a Linden Dress, Throop, Pennsylvania who became totally or partially separated from employment on or after April 20, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC., this 17th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–18466 Filed 7–26–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00422]

General Electric Co., Rome, Georgia; Notice of Revised Determination on Reopening

On July 5, 1995, the Department, at the request of the petitioners, reopened its investigation for workers producing medium transformers at the subject facility. The initial investigation resulted in a negative determination. The notice was published in the **Federal Register** on May 25, 1995 (60 FR 27794).

The Department had issued a negative determination in the subject case because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. Imports of medium transformers from Mexico or Canada did not contribute importantly to worker separations at the General Electric Company, Rome, Georgia facility, and there was no shift in production to Mexico or Canada.

The petitioners had alleged a shift in production by the subject firm to Mexico. An intent to outsource some production had been announced, but a final decision had not yet been made. New findings on reopening show that on June 12, 1995, General Electric Company ratified an agreement to shift some production of transformers to Mexico.

Other findings show that sales, production and employment decreased during the relevant time periods of the investigation.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with medium transformers produced by the subject firm contributed importantly to the decline in production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of General Electric Company, Rome, Georgia who became totally or partially separated from employment on or after March 30, 1994 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 13th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on these organizations' attestations and they are on file with DOL.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR parts 655, Subpart D, and 29 CFR part 504, (January 6, 1994). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing and those which have been rejected.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staff. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities chief executive officer also are listed to aid public inquiries. In addition, attestations and explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under the attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, D.C., this 21st day of June 1995.

John M. Robinson,

Deputy Assistant Secretary, Employment and Training Administration.

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS

[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA REGION 1 04/03/95 TO 04/09/95		
Peggy Urton Cave,Greenery Rehabilitation Center, 177 Whitewood Road, Waterbury, CT 06708, 203–757–9491 ..... ETA CONTROL NUMBER—1/218622 ACTION—ACCEPTED	CT	04/06/95
Sherwin Z. Goodblatt, Westwood Pembroke Health System, 333 Bolivar St., Canton, MA 02021, 821–6200 ..... ETA CONTROL NUMBER—1/218593 ACTION—ACCEPTED	MA	04/07/95
Morris Wiesel, Cedar Oaks Care Center, 1311 Durham Avenue, South Plainfield, NJ 07080, 908–287–9555 ..... ETA CONTROL NUMBER—1/218189 ACTION—ACCEPTED	NJ	04/06/95
Harvey Adelsberg, Daughters of Miriam, Ctr. for Aged, 155 Hazel St., Clifton, NJ 07015, 201–772–3700 ..... ETA CONTROL NUMBER—1/218586 ACTION—ACCEPTED	NJ	04/07/95
Adolfo Dela Cuesta, Health Aire Co., Inc., 711 Route 3 East, Clifton, NJ 07014, 201–777–1233	NJ	04/06/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—1/218532 ACTION—ACCEPTED		
Carol Godwin, Action Int'l Healthcare Services, 116 Chambers Street, 2nd Fl., New York, NY 10007, 212–571–3900	NY	04/07/95
ETA CONTROL NUMBER—1/218535 ACTION—ACCEPTED		
Jeanne Lee, Frances Schervier Home & Hospital, 2975 Independence Ave., Bronx, NY 10463, 718–548–1700	NY	04/07/95
ETA CONTROL NUMBER—1/218534 ACTION—ACCEPTED		
Harry Dorviller, Harry's Nurses Registry, Inc., 169–22 Hillside Avenue, Jamaica, NY 11432, 718–739–0045	NY	04/06/95
ETA CONTROL NUMBER—1/218192 ACTION—ACCEPTED		
Elizabeth Madden, Health Care Registry, Inc., 192 Lexington Avenue, 7th Fl., New York, NY 10016, 212–532–9250	NY	04/06/95
ETA CONTROL NUMBER—1/218477 ACTION—ACCEPTED		
Judith Dicker, Hillside Manor Nursing Center, 182–15 Hillside Avenue, Jamaica Estates, NY 11432, 718–291–8200	NY	04/07/95
ETA CONTROL NUMBER—1/218536 ACTION—ACCEPTED		
Victor Orriola, Hollis Park Manor Nursing Home, 191–06 Hillside Ave., Hollis, NY 11423, 718–479–1010	NY	04/06/95
ETA CONTROL NUMBER—1/218207 ACTION—ACCEPTED		
Hershel Weber, N & W Nursing Registry, Inc., 481 Bedford Ave., Brooklyn, NY 11211, 718–387–7702	NY	04/06/95
ETA CONTROL NUMBER—1/218206 ACTION—ACCEPTED		
Percy Allen, II, State U/N.Y. Health Science Center, 450 Clarkson Avenue, Brooklyn, NY 11203, 718–270–1000	NY	04/06/95
ETA CONTROL NUMBER—1/218478 ACTION—ACCEPTED		
ETA REGION 1 04/10/95 TO 04/16/95		
John G. Magliaro, Columbus Hospital, 495 North 13th St., Newark, NJ 07107, 201–268–1495	NJ	04/12/95
ETA CONTROL NUMBER—1/218726 ACTION—ACCEPTED		
Marie D. Moore, Dellridge Care Center, 532 Farview Avenue, Paramus, NJ 07652, 201–261–1589	NJ	04/13/95
ETA CONTROL NUMBER—1/218776 ACTION—ACCEPTED		
Leonora Pilao-Dwyer, King David Care Ctr./Atlantic City, 166 S. South Caroline Avenue, Atlantic City, NJ 08401, 609–344–2181.	NJ	04/13/95
ETA CONTROL NUMBER—1/218775 ACTION—ACCEPTED		
Francine Ehrlich, Waterview Nursing Center, 536 Ridge Road, Cedar Grove, NJ 07009, 201–239–9300	NJ	04/13/95
ETA CONTROL NUMBER—1/218774 ACTION—ACCEPTED		
John J. Koellner, Bayside Dialysis Center, Inc., 201–10 Northern Boulevard, Bayside, NY 11361, 718–423–6638	NY	04/12/95
ETA CONTROL NUMBER—1/218695 ACTION—ACCEPTED		
Domingo Jimenez, Domingo Jimenez, M.D., 11 Springtree Boulevard, Apalachian, NY 13732, 607–625–4021	NY	04/12/95
ETA CONTROL NUMBER—1/218709 ACTION—ACCEPTED		
Abraham N. Klein, Fairview Nursing Care Center, Inc., 69–70 Grand Central Parkway, Forest Hills, NY 11375, 718–263–4600.	NY	04/12/95
ETA CONTROL NUMBER—1/218703 ACTION—ACCEPTED		
Joshua Teitelbaum, Queens Nassau Nursing Home, Inc., 520 Beach 19th Street, Apt. 1–A, Far Rockway, NY 11691, 718–471–7400.	NY	04/12/95
ETA CONTROL NUMBER—1/218697 ACTION—ACCEPTED		
Natalie George McDowell, Virgin Islands Dept. of Health, St. Thomas Hospital Estate Thomas, #48, St. Thomas, VI 00802, 809–774–0117.	VI	04/12/95
ETA CONTROL NUMBER—1/218693 ACTION—ACCEPTED		
ETA REGION 1 04/17/95 TO 04/23/95		
Maria L. Bondoc, Somerset Manor (Shady Rest Home), 1135 Hamilton Street, Somerset, NJ 08873, 908–247–1460	NJ	04/17/95
ETA CONTROL NUMBER—1/218800 ACTION—ACCEPTED		
Joan Madden, Health Care Placement Services, Inc., 192 Lexington Avenue, New York, NY 10016, 212–532–9520	NY	04/17/95
ETA CONTROL NUMBER—1/218798 ACTION—ACCEPTED		
Richard N. Yezzo, St Clare's Hospital & Health Ctr., 415 West 51st Street, New York, NY 10019, 212–586–1500	NY	04/17/95
ETA CONTROL NUMBER—1/218799 ACTION—ACCEPTED		
ETA REGION 10 04/03/95 TO 04/09/95		
Eden Salceda, Apache Junction Health Center, 2012 West Southern Avenue, Apache Junction, AZ 85220, 602–983–0700.	AZ	04/06/95
ETA CONTROL NUMBER—10/206676 ACTION—ACCEPTED		
Barbara Garner, North Valley, 1645 The Esplanade, Chico, CA 95926 714–544–4443	CA	04/06/95
ETA CONTROL NUMBER—10/207010 ACTION—ACCEPTED		
Lita Tsai, Orthopaedic Hospital, 2400 South Flower Street, Los Angeles, CA 90007, 213–742–1114	CA	04/06/95
ETA CONTROL NUMBER—10/206878 ACTION—ACCEPTED		
John W Wisor, Visiting Nurse Association of L.A., 520 South La Fayette Park Place, Suite 500, Los Angeles, CA 90057, 213–386–7200.	CA	04/06/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—10/206677 ACTION—ACCEPTED		
ETA REGION 10 04/10/95 TO 04/16/95		
Robert R. Schwartz, Emerald Terrace Convalescent Hosp., 1154 S. Alvarado Street, Lost Angeles, CA 90006, 213–385–1715.	CA	04/14/95
ETA CONTROL NUMBER—10/207119 ACTION—ACCEPTED		
ETA REGION 10 04/24/95 TO 04/30/95		
Thomas Ramsberger, Health Exchange, Inc., 5251 North Sixteenth Street, Suite B100, Phoenix, AZ 85016, 602–265–9606.	AZ	04/24/95
ETA CONTROL NUMBER—10/207023 ACTION—ACCEPTED		
ETA REGION 5 04/03/95 TO 04/09/95		
Lorraine Suissa, Briar Place, Ltd., 6800 Joliet Road, Indian Head Park, IL 60525, 708–246–8500	IL	04/07/95
ETA CONTROL NUMBER—5/239644 ACTION—ACCEPTED		
Lisa R. Hilliard, Courtyard Terrace, 2313 N. Rockton Avenue, Rockford, IL 61103, 815–964–2200	IL	04/07/95
ETA CONTROL NUMBER—5/239594 ACTION—ACCEPTED		
Judy Pitzele, Glenview Terrace Nursing Center, ATTN: Mark Hollander, 1511 Greenwood Road, Glenview, IL 60025, 708–729–9090.	IL	04/07/95
ETA CONTROL NUMBER—5/239632 ACTION—ACCEPTED		
Michael Elkes, Lakeview Nursing and Geriatric Ctr., 735 W. Diversey Parkway, Chicago, IL 60614, 312–348–4055	IL	04/07/95
ETA CONTROL NUMBER—5/239641 ACTION—ACCEPTED		
Lucia S. Davis, R.N., Lia Home Health, Inc., 9730 S. Western, Suite 230, Evergreen Park, IL 60642, 708–229–0360	IL	04/07/95
ETA CONTROL NUMBER—5/239593 ACTION—ACCEPTED		
David Stern, Sovereign Nursing Home, 6159 N. Kenmore Ave., Chicago, IL 60660, 312–761–9050	IL	04/07/95
ETA CONTROL NUMBER—5/239642 ACTION—ACCEPTED		
Michael Gillman, Westshire Care Centre, 5825 W. Cermak Road, Cicero, IL 60650, 708–656–9120	IL	04/07/95
ETA CONTROL NUMBER—5/239587 ACTION—ACCEPTED		
Pamela M. Orr, William L. Dawson Nursing Center, 3500 S. Giles, Chicago, IL 69653, 312–326–2000	IL	04/07/95
ETA CONTROL NUMBER—5/239627 ACTION—ACCEPTED		
Jana Floyd or Liz Woods, Morton County Hospital, 445 Hilltop, P.O. Box 937, Elkhart, KS 67950, 316–697–2141	KS	04/07/95
ETA CONTROL NUMBER—5/239592 ACTION—ACCEPTED		
Emelin Joy Tan, Concerned Home Care, Inc., 2233–A South Lakeshore Drive, P.O. Box 142, Harbor Beach, MI 48441, 517–479–6169.	MI	04/07/95
ETA CONTROL NUMBER—5/239643 ACTION—ACCEPTED		
David Koepplinger, Health Enterprises of Michigan Inc., d/b/a Clara Barton Terrace, 1801 East Atherton, Flint, MI 48507, 313–742–5850.	MI	04/07/95
ETA CONTROL NUMBER—5/239591 ACTION—ACCEPTED		
Deborah Howard, Hillside Lutheran Manor, 1430 Alamo, Kalamazoo, MI 49006, 616–349–2661	MI	04/07/95
ETA CONTROL NUMBER—5/239588 ACTION—ACCEPTED		
Bonnie Sabuda, Luther Haven, 464 East Grand Blvd., Detroit, MI 48207–3692, 313–579–2255	MI	04/07/95
ETA CONTROL NUMBER—5/239589 ACTION—ACCEPTED		
Cheryl G. Keenoy, Pines Healthcare Center, 707 Armstrong, Lansing, MI 48911, 517–393–5680	MI	04/07/95
ETA CONTROL NUMBER—5/239586 ACTION—ACCEPTED		
ETA REGION 5 04/24/95 TO 04/30/95		
Jeffrey Webster, Atrium Health Care Center, 1425 W. Estes, Chicago, IL 60626, 312–973–4780	IL	4/24/95
ETA CONTROL NUMBER—5/240653 ACTION—ACCEPTED		
Morris Esformes, Community Care Nursing Home, 4314 South Wabash, Chicago, IL 60653, 312–538–8300	IL	4/24/95
ETA CONTROL NUMBER—5/240662 ACTION—ACCEPTED		
Morris Esformes, EMI Enterprises, Inc., 3737 West Arthur, Lincolnwood, IL 60645, 708–674–1946	IL	4/24/95
ETA CONTROL NUMBER—5/240664 ACTION—ACCEPTED		
Behr Burton, Hampton Plaza Health Care Centre, 8555 Maynard Road, Niles, IL 60714, 708–967–7000	IL	4/24/95
ETA CONTROL NUMBER—5/240640 ACTION—ACCEPTED		
Sally Skemp, Holy Cross Hospital, 2701 West 68th Street, Chicago, IL 60629, 312–471–8000	IL	4/24/95
ETA CONTROL NUMBER—5/240649 ACTION—ACCEPTED		
Max Redmond, Hoosier Care Inc., DBA Swann Special Care Center, 109 Kenwood Road, Champaign, IL 61821, 217–356–5164.	IL	4/24/95
ETA CONTROL NUMBER—5/240633 ACTION—ACCEPTED		
Maila Parga, Norwegian American Hospital, 1044 N. Francisco Avenue, Chicago, IL 60622, 312–292–8200	IL	4/24/95
ETA CONTROL NUMBER—5/240643 ACTION—ACCEPTED		
Jess Cole, Parkside Gardens N.H., dba Sunset House, LLC, 5701 W. 79th Street, Burbank, IL 60459, 708–636–3850.	IL	4/24/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—5/240656 ACTION—ACCEPTED		
Jackie Goken, Shabbona HealthCare Center, 409 W. Comanche St., Shabbona, IL 60550, 815–824–2194	IL	4/24/95
ETA CONTROL NUMBER—5/240639 ACTION—ACCEPTED		
Lawrence Carlson, St. Paul's House & Health Care Ctr., 3831 N. Mozart St., Chicago, IL 60618, 312–478–4222	IL	4/24/95
ETA CONTROL NUMBER—5/240655 ACTION—ACCEPTED		
Henrietta McElhone, Home Health Support Systems, Inc., 29777 Telegraph, Suite 1560, Southfield, MI 48034, 810–350–0778.	MI	4/24/95
ETA CONTROL NUMBER—5/240658 ACTION—ACCEPTED		
Steven P. Haggerty, Autumn Care of Madison, One Autumn Court, P.O. Drawer 420, Madison, VA 22727, 703–948–3054.	VA	4/24/95
ETA CONTROL NUMBER—5/240659 ACTION—ACCEPTED		
Steven P. Haggerty, Autumn Care of Portsmouth, 3610 Winchester Drive, P.O. Box 7277, Portsmouth, VA 23707, 804–397–0725.	VA	4/24/95
ETA CONTROL NUMBER—5/240661 ACTION—ACCEPTED		
Stephanie Zaman, Marshall Manor, Inc., 8645 John Marshall Highway, P.O. Box 749, Marshall, VA 22115, 703–364–1200.	VA	4/24/95
ETA CONTROL NUMBER—5/240607 ACTION—ACCEPTED		
Jane Clemente Elliott, Bel Air Health Care Center, 9350 West Fond du Lac Avenue, Milwaukee, WI 53225, 414–438–4360.	WI	4/24/95
ETA CONTROL NUMBER—5/240645 ACTION—ACCEPTED		
ETA REGION 6 04/03/95 TO 04/09/95		
Ms. Nancy F. Taylor, Cabarrus Nursing Center, Inc., 430 Brookwood Avenue, P.O. Box 748, Concord, NC 28026–0748, 704–788–4115.	NC	4/05/95
ETA CONTROL NUMBER—5/226715 ACTION—ACCEPTED		
Ms. Donna Gunter, East Texas Medical Center-Rusk, P.O. Box 317, Rusk TX 75785, 903–683–2273	TX	4/05/95
ETA CONTROL NUMBER—6/226260 ACTION—ACCEPTED		
ETA REGION 6 04/10/95 TO 04/16/95		
Ms. Frances Eddings, Integrated Health Services, 850 N.W. 9th Street, Alabaster, AL 35007, 205–663–3859	AL	04/13/95
ETA CONTROL NUMBER—6/226718 ACTION—ACCEPTED		
Ms. Precila Buffalo, Devon Gables Health Care Center, 6150 E. Grant Road, Tucson, AZ 85712, 602–296–6181	AZ	04/10/95
ETA CONTROL NUMBER—6/226536 ACTION—ACCEPTED		
Ms. Marge Evans, Broward Children's Center, 200 S. E. 19th Avenue, Pompano Beach, FL 33060, 305–943–7638	FL	04/13/95
ETA CONTROL NUMBER—6/226639 ACTION—ACCEPTED		
Mr. Richard Zacher, Crystal Palms, 1710 4th Avenue N., Lakeworth, FL 33460, 407–547–0950	FL	04/13/95
ETA CONTROL NUMBER—6/226637 ACTION—ACCEPTED		
Dr. E. A. Ordonez, Dr. E. A. Ordonez M.D., P.A., 1024 B Edgewood Avenue West, Jacksonville, FL 32206, 904–764–5638.	FL	04/13/95
ETA CONTROL NUMBER—6/226635 ACTION—ACCEPTED		
Mr. Richard Bradley, G. Pierce Wood Memorial Hospital, 5847 S. E. Hwy 31, Arcadia, FL 33821, 813–494–3323	FL	04/13/95
ETA CONTROL NUMBER—6/226805 ACTION—ACCEPTED		
Ms. Freda Ebert, Halifax Convalescent Center, 820 North Clyde Morris Boulevard, Dayton Beach, FL 32117, 904–274–4575.	FL	04/13/95
ETA CONTROL NUMBER—6/226636 ACTION—ACCEPTED		
Mr. Jack Norman, Venice Hospital, 540 The Rialto, Venice, FL 34285, 813–483–7888	FL	04/13/95
ETA CONTROL NUMBER—6/226716 ACTION—ACCEPTED		
Mr. Frank A. Riddick, Jr. Alton Ochsner Medical Foundation, 1516 Jefferson Highway, New Orleans, LA 70121, 504–842–3604.	LA	04/13/95
ETA CONTROL NUMBER—6/226806 ACTION—ACCEPTED		
Ms. Florida Fuentecilla, Health & Professionals Network, Inc., 2 Canal Street, Suite 902, New Orleans, LA 70130, 504–527–0074.	LA	04/13/95
ETA CONTROL NUMBER—6/226807 ACTION—ACCEPTED		
Ms. Barbara Friday, Laurel Wood Center, 5000 Highway 39 North, Meridian, MS 39303, 601–483–6211	MS	04/10/95
ETA CONTROL NUMBER—6/226535 ACTION—ACCEPTED		
Mr. Joe Dan Edwards, Methodist Hospital of Middle MS, 1 Bowling Green Road, Lexington, MS 39095, 601–834–1321.	MS	04/13/95
ETA CONTROL NUMBER—6/226717 ACTION—ACCEPTED		
Sherwin D. Welch, Cheraw Healthcare, Inc., 114 Chesterfield Highway, P.O. Box 967, Cheraw, SC 29520, 803–537–5253.	SC	04/13/95
ETA CONTROL NUMBER—6/226633 ACTION—ACCEPTED		
Mr. Louis Milite, Life Care Center of Columbia, 2514 Faraway Drive, Columbia, SC 29206, 803–790–1999	SC	04/10/95
ETA CONTROL NUMBER—6/226429 ACTION—ACCEPTED		
Mr. James L. Dozier, Jr., Self Memorial Hospital, 1325 Spring Street, Greenwood, SC 29646, 803–227–4166	SC	04/10/95
ETA CONTROL NUMBER—6/226561 ACTION—ACCEPTED		
Mr. William R. Leake, Community Health Care, Inc., 1819 Holston River Road, Knoxville, TN 37914, 615–546–1799	TN	04/10/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/226534 ACTION—ACCEPTED		
Ms. Betty S. Leake, Your Home Visiting Nurse Serv., Inc., 5703A Broadway, Knoxville, TN 37918, 615–688–1159	TN	04/10/95
ETA CONTROL NUMBER—6/226537 ACTION—ACCEPTED		
Ms. Connie Klostermann, Colonial Belle Nursing Home, 108 North Baron, P.O. Box 59, Bellville, TX 77418, 409–865–3689.	TX	04/13/95
ETA CONTROL NUMBER—6/226714 ACTION—ACCEPTED		
Mr. Stephen B. Hill, Tri-City Community Hospital, 1604 Hwy. 97E, P.O. Box 189, Jourdanton, TX 78026, 210–769–3515.	TX	04/13/95
ETA CONTROL NUMBER—6/226808 ACTION—ACCEPTED		
ETA REGION 6 04/17/95 TO 04/23/95		
Mr. James Sturgeon, Moosehaven Nursing Center, 1701 Park Avenue, Orange Park, FL 32073, 904–278–1225	FL	04/20/95
ETA CONTROL NUMBER—6/226926 ACTION—ACCEPTED		
Mr. Wayne Campbell, Palm Beach Regional Hospital, 2829 10th Avenue North, Lake Worth, FL 33461, 407–967–7800.	FL	04/20/95
ETA CONTROL NUMBER—6/226977 ACTION—ACCEPTED		
Ms. Elizabeth Camarena, West Gables Rehab Hosp/HCC, 2525 S. W. 75th Avenue, Miami, FL 33135, 305–262–1822.	FL	04/20/95
ETA CONTROL NUMBER—6/227015 ACTION—ACCEPTED		
Mr. Robert Hill, Britthaven, Inc., 1211 Hwy 258 N, P.O. Box 6150, Kinston, NC 28502–6159, 919–523–9094	NC	04/20/95
ETA CONTROL NUMBER—6/227120 ACTION—ACCEPTED		
Ms. Marie Buoniconti, Century Care of Laurinburg, Route 3, Box 95, 8900 Hasty Road, Laurinburg, NC 28352, 910–276–8400.	NC	04/20/95
ETA CONTROL NUMBER—6/226855 ACTION—ACCEPTED		
Ms. Polly Pine, Cibola General Hospital Corp., 1212 Bonita, Grants, NM 87020, 505–287–4446	NM	04/20/95
ETA CONTROL NUMBER—6/226964 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Hacienda de Salud—Bloomfield, 400 West Blanco, Bloomfield, NM 87413, 505–632–1823	NM	04/20/95
ETA CONTROL NUMBER—6/227018 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Hacienda de Salud—Silver City, 3514 Leslie Road, Silver City, NM 88061, 505–388–3127	NM	04/20/95
ETA CONTROL NUMBER—6/227019 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Hacienda de Salud—Espanola, 720 Hacienda Street, Espanola, NM 87532, 505–753–6769	NM	04/20/95
ETA CONTROL NUMBER—6/227017 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Sunshine Haven, West Railway Avenue, Lordsburg, NM 88045, 505–542–3539	NM	04/20/95
ETA CONTROL NUMBER—6/227020 ACTION—ACCEPTED		
Mr. Erik Stumpff, Texoma Manor, Inc., HC 71, Box 83, Kingston, OK 73439, 405–564–2351	OK	04/20/95
ETA CONTROL NUMBER—6/227014 ACTION—ACCEPTED		
Mr. Robert Collette, AMI Brownsville Medical Center, 1040 West Jefferson St., Brownsville, TX 78520, 210–544–1428.	TX	04/20/95
ETA CONTROL NUMBER—6/226927 ACTION—ACCEPTED		
Mr. Andrew E. Anderson, Jr., Bee County Regional Medical Center, 1500 E. Houston Highway, Beeville, TX 78102, 512–358–5431.	TX	04/20/95
ETA CONTROL NUMBER—6/226925 ACTION—ACCEPTED		
Bobby Pawelik, Canterbury Villa of Carrizo Spring, 8th & Clark Streets, Carrizo Springs, TX 78834, 512–876–5011	TX	04/20/95
ETA CONTROL NUMBER—6/226854 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Doctor's Healthcare Center, 9009 White Rock Trail, Dallas, TX 75238, 214–348–8100	TX	04/20/95
ETA CONTROL NUMBER—6/227016 ACTION—ACCEPTED		
Mr. Bryan James, Hondo Skilled Nursing/Rehab Center, 3002 Avenue Q, Hondo, TX 78861, 210–426–3057	TX	04/20/95
ETA CONTROL NUMBER—6/226976 ACTION—ACCEPTED		
Ms. Edna Bingham, Oakridge Center, 615 North Ware Road, McAllen, TX 78501, 210–664–8900	TX	04/20/95
ETA CONTROL NUMBER—6/226853 ACTION—ACCEPTED		
Mr. John E. Smithhisler, Sun Belt Regional Medical Center, 13111 East Freeway, Houston, TX 77015, 713–455–6911.	TX	04/20/95
ETA CONTROL NUMBER—6/226928 ACTION—ACCEPTED		
ETA REGION 6 04/24/95 TO 04/30/95		
Vicky Worley, Integrated Health Services, 39 Hanover Cr., Birmingham, AL 35205, 205–933–1828	AL	04/27/95
ETA CONTROL NUMBER—6/227191 ACTION—ACCEPTED		
Mr. Fred D. Hirt, Mount Sinai Medical Center, 4300 Alton Road, Miami Beach, FL 33140, 305–674–2396	FL	04/27/95
ETA CONTROL NUMBER—6/226852 ACTION—ACCEPTED		
Mr. Don S. Steigman, North Ridge Medical Center, 5757 North Dixie Highway, Fort Lauderdale, FL 33334, 305–776–6000.	FL	04/27/95
ETA CONTROL NUMBER—6/227244 ACTION—ACCEPTED		
Mr. Steve Pickett, University Healthcare Systems, L C, Tulane University, 1415 Tulane Avenue, New Orleans, LA 70112, 504–588–5566.	LA	04/27/95
ETA CONTROL NUMBER—6/227234 ACTION—ACCEPTED		
Mr. Donald J. Fisher, The King's Daughters Hospital, 300 S. Washington Ave., P.O. Box 1857, Greenville, MS 38701, 601–378–2020.	MS	04/27/95

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[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/227083 ACTION—ACCEPTED		
Mr. Steven Haggerty, Autum Care of Marion, 610 Airport Road, P.O. Box 339, Marion, NC 28752, 704–652–6701	NC	04/27/95
ETA CONTROL NUMBER—6/227237 ACTION—ACCEPTED		
Mr. Steven Haggerty, Autum Care of Raeford, 1206 North Fulton Street, P.O. Box 10, Raeford, NC 28376, 910–875–4280.	NC	04/27/95
ETA CONTROL NUMBER—6/227236 ACTION—ACCEPTED		
Mr. Steven Haggerty, Autum Care of Salisbury, 1505 Bringle Ferry Road, P.O. Box 1789, Salisbury, NC 28145, 704–637–5885.	NC	04/27/95
ETA CONTROL NUMBER—6/227235 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 7010 Lee Hwy., Ste. 712, Chattanooga, TN 37421–1775, 615–892–1247.	TN	04/27/95
ETA CONTROL NUMBER—6/227240 ACTION—ACCEPTED		
Mr. Edward Hernandez, Bio-Medical Applications of McAlle, 1117 East Dallas, McAllen, TX 78501, 210–682–1259 ...	TX	04/27/95
ETA CONTROL NUMBER—6/227203 ACTION—ACCEPTED		
Ms. Elma Gomez, Canterbury Villa of Kingsville, 316 General Cavazos Blvd., Kingsville, TX 78363, 512–592–9366 ..	TX	04/27/95
ETA CONTROL NUMBER—6/227243 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 3910 Kirby Drive, Ste. 201, Houston, TX 77098, 713–528–7118	TX	04/27/95
ETA CONTROL NUMBER—6/227239 ACTION—ACCEPTED		
Ms. Margie B. Mills, First American Home Care, 7610 N. Stemmons Hwy., Ste. 140, Dallas, TX 75247–4216, 214–630–1093.	TX	04/27/95
ETA CONTROL NUMBER—6/227238 ACTION—ACCEPTED		
Mr. James Kerr, Sunny Brook Health Care Center, 3050 Sunnybrook, Corpus Christi, TX 78415, 512–853–9981	TX	04/27/95
ETA CONTROL NUMBER—6/227233 ACTION—ACCEPTED		
Mr. John Wilson, Trinity Lutheran Home, 1000 E. Main, Round Rock, TX 78664, 512–255–2521	TX	04/27/95
ETA CONTROL NUMBER—6/227204 ACTION—ACCEPTED		
Jeffrey N. Rico, ULTRACARE Health Services, 1299 Main St., Ste A, Eagle Pass, TX 78852, 210–757–1823	TX	04/27/95
ETA CONTROL NUMBER—6/227194 ACTION—ACCEPTED		
ETA REGION 1 05/01/95 TO 05/07/95		
William L. Lane, Holy Family Hospital & Medical Ctr., V.P., Human Resources, 70 East Street, Methuen, MA 01844, 508–687–0151.	MA	05/05/95
ETA CONTROL NUMBER—1/219036 ACTION—ACCEPTED		
Martin Eugene Rivers, Lemuel Shattuck Hospital, 170 Morton Street, Jamaica Plane, MA 02130, 617–552–8110	MA	05/05/95
ETA CONTROL NUMBER—1/218927 ACTION—ACCEPTED		
Dwight D. Sowerby, Westwood Healthcare Center, Inc., 298 Main Street, Keene, NH 03431, 603–352–7311	NH	05/05/95
ETA CONTROL NUMBER—1/218932 ACTION—ACCEPTED		
Barbara Van Alstyne, ACGS Care Giving Services, Inc., 622 Georges Road, North Brunswick, NJ 08902, 908–246–0600.	NJ	05/05/95
ETA CONTROL NUMBER—1/218940 ACTION—ACCEPTED		
Harold Herskowitz, Freehold Rehab. & Nursing Center, 3419 US Highway 9, Freehold, NJ 07728, 908–780–0660	NJ	05/05/95
ETA CONTROL NUMBER—1/218930 ACTION—ACCEPTED		
Irwin Lam, Bialystoker Nursing Home, 288 East Broadway, New York, NY 10002, 212–475–7755	NY	05/05/95
ETA CONTROL NUMBER—1/218939 ACTION—ACCEPTED		
William Pollock, Cedar Hedge Nursing Home, 260 Lake Street, Rouses Point, NY 12979, 518–297–5190	NY	05/05/95
ETA CONTROL NUMBER—1/218937 ACTION—ACCEPTED		
William Pascocello, Florence Nightingale Nursing Home, 1760 Third Avenue, New York, NY 10029, 212–410–8700 .	NY	05/05/95
ETA CONTROL NUMBER—1/218931 ACTION—ACCEPTED		
Belen Sering, Global Employment & Management Inc., Blair House, Suite 2–H, 143–40 Roosevelt Ave., Flushing, NY 11354, 718–984–7510.	NY	05/05/95
ETA CONTROL NUMBER—1/219150 ACTION—ACCEPTED		
Sr. Helen Murphy, New York Foundling Hospital (The), 590 Avenue of the Americas, New York, NY 10011, 212–633–9300.	NY	05/05/95
ETA CONTROL NUMBER—1/219020 ACTION—ACCEPTED		
Evelyn McLaughlin, St. Thomas Hospital, 48 Sugar Estates Charlotte Amalies, St. Thomas, VI 00802, 809–776–8311.	VI	05/05/95
ETA CONTROL NUMBER—1/219018 ACTION—ACCEPTED		
ETA REGION 10 05/01/95 TO 05/07/95		
Sylvia Hadlock, NovaCare Meridian Point Rehab Hosp., 11250 North 92nd Street, Scottsdale, AZ 85260, 602–451–2702.	AZ	05/05/95
ETA CONTROL NUMBER—10/207231 ACTION—ACCEPTED		
Scott Van Brunt, Professional Nursing Services, 2001 Camelback Street #350, Phoenix, AZ 85015, 602–242–2300 ..	AZ	05/05/95
ETA CONTROL NUMBER—10/207028 ACTION—ACCEPTED		
Iheanyi Nathan, Good Shepherd Home Health Agency, 101 North Brand Boulevard, Suite 1230, Glendale, CA 91203, 818–548–2511.	CA	05/05/95
ETA CONTROL NUMBER—10/206900 ACTION—ACCEPTED		
Adelaida Q. Gerbery, International Medical Relocators, 808 Plaza Taxco, San Diego, CA 92114, 619–472–6605	CA	05/05/95

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ETA CONTROL NUMBER—10/206955 ACTION—ACCEPTED		
Esq. lourdes Santos Tancinco, Nurse Providers, 345 Gellert Boulevard, Suite F, Daly City, CA 94015, 415–397–0808.	CA	05/03/95
ETA CONTROL NUMBER—10/207230 ACTION—ACCEPTED		
Ronald T. Tablante, Ronald T. Tablante, M.D., Unit 1–C & 1–D, GMI Building, 176 Sereno Avenue, Tamuning, GQ 96911, 671–646–6310.	GQ	05/05/95
ETA CONTROL NUMBER—10/206834 ACTION—ACCEPTED		
Susan M Hashimoto, St. Francis Medical Center, 2230 Liliha Street, Honolulu, HI 96817, 808–547–6290	HI	05/03/95
ETA CONTROL NUMBER—10/206902 ACTION—ACCEPTED		
ETA REGION 10 05/08/95 TO 05/14/95		
Tim J. Badgley, Thunderbird Health Care Center, 8825 South Seventh Street, Phoenix, AZ 85040, 602–243–6121 ...	AZ	05/12/95
ETA CONTROL NUMBER—10/206956 ACTION—ACCEPTED		
Orlando Clarizio, Sr., Arcadia Convalescent Hospital, 1601 South Baldwin Avenue, Arcadia, CA 91007–0000, 818–445–2170.	CA	05/12/95
ETA CONTROL NUMBER—10/206959 ACTION—ACCEPTED		
Barbara Garner, Brittany Healthcare Center, 3900 Garfield Avenue, Carmichael, CA 95608, 714–544–4443	CA	05/12/95
ETA CONTROL NUMBER—10/207007 ACTION—ACCEPTED		
Amelia A. Smith, Buena Ventura Care Center, 1016 South Record Street, Los Angeles, CA 90023, 213–268–0106 ..	CA	05/12/95
ETA CONTROL NUMBER—10/207021 ACTION—ACCEPTED		
Claire H. Eichinger, Courtyard Health Care Center, 1850 East Eighth Street, Davis, CA 95610, 916–756–1800	CA	05/12/95
ETA CONTROL NUMBER—10/207118 ACTION—ACCEPTED		
Joan Barlow, Hilltop Manor Convalescent Hospital, 12225 Shale Ridge Lane, Auburn, CA 95602, 916–624–6230	CA	05/12/95
ETA CONTROL NUMBER—10/207027 ACTION—ACCEPTED		
Toni B. Ong, Ridgewood Care Center, 809 Fremont Avenue, Los Altos, CA 94024, 415–941–5255	CA	05/12/95
ETA CONTROL NUMBER—10/207106 ACTION—ACCEPTED		
Alan Renaldo, Telescience International, Inc., 759 Sugarpine Street, Oceanside, CA 92054–1657, 619–721–7573	CA	05/12/95
ETA CONTROL NUMBER—10/207006 ACTION—ACCEPTED		
Joan Barlow, Westgate Gardens, 4525 West Tulare Avenue, Visalia, CA 93277, 916–624–6230	CA	05/12/95
ETA CONTROL NUMBER—10/207026 ACTION—ACCEPTED		
Cynthia Flores, Winchester Convalescent Hospital, 1250 South Winchester Boulevard, San Jose, CA 95128, 408–241–3844.	CA	05/12/95
ETA CONTROL NUMBER—10/207029 ACTION—ACCEPTED		
Joann Iverson, Woodruff Convalescent Hospital, 17836 Woodruff Avenue, Bellflower, CA 90706, 310–925–6457	CA	05/08/95
ETA CONTROL NUMBER—10/206909 ACTION—ACCEPTED		
Helen B. Ripple, Guam Memorial Hospital Authority, 850 Governor Carlos Camacho Road, Tamuning, GQ 96911, 671–646–6711.	GQ	05/08/95
ETA CONTROL NUMBER—10/206901 ACTION—ACCEPTED		
ETA REGION 10 05/15/95 TO 05/21/95		
Madeline D. Jariel, Rosecrans Care Center, 1140 West Rosecrans Avenue, Gardena, CA 90247, 310–323–3194	CA	05/19/95
ETA CONTROL NUMBER—10/207022 ACTION—ACCEPTED		
Babylyn Swiatlowski, St. Luke's Subacute Care Hospital, 1652 Mono Avenue, San Leandro, CA 94578, 510–785–8870.	CA	05/19/95
ETA CONTROL NUMBER—10/207024 ACTION—ACCEPTED		
Santi Lim, Villa Magnolia Retirement Hotel, 10537 Magnolia Boulevard, North Hollywood, CA 91601, 818–769–6400	CA	05/19/95
ETA CONTROL NUMBER—10/207032 ACTION—ACCEPTED		
ETA REGION 10 05/22/95 TO 05/28/95		
Janet Corey, Phoenix Memorial Hospital, 1201 South Seventh Avenue, Phoenix, AZ 85007, 602–238–3286	AZ	05/26/95
ETA CONTROL NUMBER—10/207162 ACTION—ACCEPTED		
Jenny Buckles, Brotman Medical Center, 3828 Delmas Terrace, Culver City, CA 90231, 310–202–4701	CA	05/23/95
ETA CONTROL NUMBER—10/207239 ACTION—ACCEPTED		
Fe Catama, Care Net Pomona Rehab Center, 2351 Town Avenue, Pomona, CA 91768, 909–628–1245	CA	05/22/95
ETA CONTROL NUMBER—10/207232 ACTION—ACCEPTED		
Fe Catama, Colonial Convalescent Center, 980 West Seventh Street, San Jacinto, CA 92585, 909–654–9347	CA	05/22/95
ETA CONTROL NUMBER—10/207233 ACTION—ACCEPTED		
Fe Catama, Palm Terrace Convalescent Center, 11162 Palm Terrace Lane, Riverside, CA 92505, 909–687–7330	CA	05/22/95
ETA CONTROL NUMBER—10/207235 ACTION—ACCEPTED		
Karen Merrill, Sebastopol Convalescent Hospital, 477 Petaluma Avenue, Sebastopol, CA 95472, 707–823–7855	CA	05/25/95
ETA CONTROL NUMBER—10/207286 ACTION—ACCEPTED		
Solomon Goldner, Sheltering Pine Convalescent Hosp., 33 Mateo Avenue, Millbrae, CA 94030, 818–986–1550	CA	05/23/95
ETA CONTROL NUMBER—10/207238 ACTION—ACCEPTED		
Fe Catama, Tustin Manor, 1051 Bryan Avenue, Tustin, CA 92680, 714–832–6780	CA	05/22/95

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ETA CONTROL NUMBER—10/207234 ACTION—ACCEPTED		
William A. Mathies, Valley Care and Guidance Center, 9919 South Elm, Fresno, CA 93706, 209–834–5351	CA	05/26/95
ETA CONTROL NUMBER—10/207400 ACTION—ACCEPTED		
Billie Anne Schoppman, Vencor Hospital Orange County, 200 Hospital Circle, Westminster, CA 92683, 310–642–0325.	CA	05/25/95
ETA CONTROL NUMBER—10/207168 ACTION—ACCEPTED		
Robert O. Kent, Oneida County Hospital, 150 North 200 West, Malad City, ID 83252, 208–766–2231	ID	05/25/95
ETA CONTROL NUMBER—10/207197 ACTION—ACCEPTED		
ETA REGION 10 05/29/95 TO 06/04/95		
John Hoopes, Cobra Valley Community Hospital, #1 Hospital Drive, P.O. Box 3261, Claypool, AZ 85532, 520–425–3261.	AZ	05/30/95
ETA CONTROL NUMBER—10/207390 ACTION—ACCEPTED		
Leah Babula, Bellflower Home Health, Inc., 10929 South Street, #214B, Cerritos, CA 90701, 310–924–2444	CA	05/30/95
ETA CONTROL NUMBER—10/207403 ACTION—ACCEPTED		
Stanley Otake, Bellflower Medical Center, 9542 East Artesia Boulevard, Bellefiower, CA 90706, 310–925–8355	CA	05/30/95
ETA CONTROL NUMBER—10/207295 ACTION—ACCEPTED		
Helen George, Beverly Hospital, 309 W. Beverly Blvd., Montebello, CA 90640, 213–889–2417	CA	05/31/95
ETA CONTROL NUMBER—10/207290 ACTION—ACCEPTED		
Ruth Jackson, Brasswell Colonial Care, 1618 Laurel, Redlands, CA 92373, 909–792–6050	CA	05/31/95
ETA CONTROL NUMBER—10/207242 ACTION—ACCEPTED		
Remy Broas, Broas Love's Rest Home, 258 Date Street, Chula Vista, CA 91911, 619–262–7701	CA	05/31/95
ETA CONTROL NUMBER—10/207293 ACTION—ACCEPTED		
Blanca Hafkamp, Newhall Community Hospital, 24237 North San Fernando Road, Newhall, CA 91321, 805–259–6300.	CA	05/31/95
ETA CONTROL NUMBER—10/207392 ACTION—ACCEPTED		
Pompeia Lurenana, Orange Coast Villa, Inc., 2619 Orange Avenue, Costa Mesa, CA 92627, 714–646–6716	CA	05/31/95
ETA CONTROL NUMBER—10/207296 ACTION—ACCEPTED		
Jean Lacombe, Restful Homes Assisted & Alzheimer, 1266 Pleiades Drive, Vista, CA 92084, 619–598–9697	CA	05/31/95
ETA CONTROL NUMBER—10/207396 ACTION—ACCEPTED		
Joan Barlow, Sierra Health Care Management, Inc., 715 Pole Line Road, Davis, CA 95616, 916–624–6230	CA	05/30/95
ETA CONTROL NUMBER—10/207297 ACTION—ACCEPTED		
Margaret Keaveney, St. Francis Medical Center, 3630 East Imperial Highway, Lynwood, CA 90262, 310–603–6930	CA	05/30/95
ETA CONTROL NUMBER—10/207391 ACTION—ACCEPTED		
Amy C Handscom, The Hillhaven Corp., 600 Sunrise Avenue, Roseville, CA 95661–4174, 617–861–5408	CA	05/31/95
ETA CONTROL NUMBER—10/207288 ACTION—ACCEPTED		
ETA REGION 5 05/01/95 TO 05/07/95		
June Valentine, Layton Home for Aged Persons, 300 East Eighth Street, Wilmington, DE 19801, 302–656–6413	DE	05/03/95
ETA CONTROL NUMBER—5/241092 ACTION—ACCEPTED		
Cynthia Halgard, Arbour Health Care Center, 1512 W. Fargo, Chicago, IL 60626, 312–465–7751	IL	05/04/95
ETA CONTROL NUMBER—5/241248 ACTION—ACCEPTED		
Corrine Lerman, Ballashire Hall, dba Canterbury Care Center, 1000 East Brighton Lane, Crystal Lake, IL 60012, 815–477–6400.	IL	05/04/95
ETA CONTROL NUMBER—5/241221 ACTION—ACCEPTED		
Marvin Mermelstein, Emerald Park Healthcare Center, 9125 South Pulaski, Evergreen Park, IL 60642, 708–425–3400.	IL	05/04/95
ETA CONTROL NUMBER—5/241254 ACTION—ACCEPTED		
Pam Seefurth, Goldman Home for the Aged, 6601 W. Touhy Ave., Niles, IL 60714, 708–647–9875	IL	05/04/95
ETA CONTROL NUMBER—5/241143 ACTION—ACCEPTED		
Joselito Fernandez, Liberty Hill Healthcare Center, 28 W. 141 Liberty Road, Winfield, IL 60190, 708–688–2928	IL	05/04/95
ETA CONTROL NUMBER—5/241236 ACTION—ACCEPTED		
Joselito Fernandez, Monte Cassino Healthcare Center, 101 E. Via Ghiglieri, Toluca, IL 61369, 815–452–2367	IL	05/03/95
ETA CONTROL NUMBER—5/241112 ACTION—ACCEPTED		
Joselito Fernandez, Morton Health Care, LTD., dba Morton Healthcare Centre, 190 E. Queenwood Road, Morton, IL 61550, 309–674–4732.	IL	05/04/95
ETA CONTROL NUMBER—5/241238 ACTION—ACCEPTED		
Seymour Oliven, Northwest Home for the Aged, 6300 N. California, Chicago, IL 60659, 312–973–1900	IL	05/04/95
ETA CONTROL NUMBER—5/241239 ACTION—ACCEPTED		
Linda A. Jackson, Oregon Health Care Center, 811 South 10th St., Oregon, IL 61061, 815–732–7994	IL	05/04/95
ETA CONTROL NUMBER—5/241142 ACTION—ACCEPTED		
Sherry Mauer, Park Ridge Care Center Ltd., 665 Busse Hwy., Park Ridge, IL 60068, 708–825–5517	IL	05/04/95
ETA CONTROL NUMBER—5/241230 ACTION—ACCEPTED		
Ludivina A. Pamintuan, Pro Health Care Services, Inc., 2104 Des Plaines Avenue, Des Plaines, IL 60175, 708–824–7162.	IL	05/04/95
ETA CONTROL NUMBER—5/241227 ACTION—ACCEPTED		
Jewell S. Thompson, Roseland Community Hospital, 45 West 111th Street, Chicago, IL 60628, 312–995–3000	IL	05/04/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
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CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—5/241257 ACTION—ACCEPTED		
Martin J. Bukacek, St. Joseph Home of Chicago, Inc., 2650 N. Ridgeway Avenue, Chicago, IL 60647, 312–235–8600.	IL	05/04/95
ETA CONTROL NUMBER—5/241229 ACTION—ACCEPTED		
Shirley Holt, Westmont Convalescent Center, 6501 S. Cass Ave., Westmont, IL 60559, 708–960–2026	IL	05/04/95
ETA CONTROL NUMBER—5/241261 ACTION—ACCEPTED		
Shirley Holt, Westmont Convalescent Center, 6401 S. Cass Ave., Westmont, IL 60559, 708–960–2026	IL	05/04/95
ETA CONTROL NUMBER—5/241201 ACTION—ACCEPTED		
Brian Levinson, Wood Glen Nursing & Rehabilitation, 201 West North Avenue, West Chicago, IL 60185, 708–876–8100.	IL	05/04/95
ETA CONTROL NUMBER—5/241255 ACTION—ACCEPTED		
Gary G. Waitt, Forest Haven Nursing Home, 315 Ingleside Avenue, Catonsville, MD 21228, 410–747–7425	MD	05/04/95
ETA CONTROL NUMBER—5/241223 ACTION—ACCEPTED		
Deborah Howard, Hillside Lutheran Manor, 1430 Alamo Avenue, Kalmazoo, MI 49006, 616–349–2661	MI	05/04/95
ETA CONTROL NUMBER—5/241202 ACTION—ACCEPTED		
Lloyd Kitchens, Hillside Terrace Retirement Center, 1939 Jackson Avenue, Ann Arbor, MI 48103, 313–761–4452	MI	05/04/95
ETA CONTROL NUMBER—5/241245 ACTION—ACCEPTED		
Sidne J. Mulder, St. John's Home of Milwaukee, 1840 N. Prospect Avenue, Milwaukee, WI 53202, 414–272–2022	WI	05/04/95
ETA CONTROL NUMBER—5/241243 ACTION—ACCEPTED		
ETA REGION 5 05/15/95 TO 05/21/95		
Nancy Robinson, Cherry Creek Nursing Center, 14699 E. Hampden Avenue, Aurora, CO 80014–3996, 303–693–0111.	CO	05/19/95
ETA CONTROL NUMBER—5/242181 ACTION—ACCEPTED		
Howard L. Wengrow or Sharon Hinkle, All American Nursing Home, 5448 N. Broadway, Chicago, IL 60640, 312–334–2224.	IL	05/19/95
ETA CONTROL NUMBER—5/242165 ACTION—ACCEPTED		
Leo Feigenbaum or Barry Gans, Fairhaven of Chicago Ridge, Inc., 10602 Southwest Highway, Chicago Ridge, IL 60415, 708–448–1540.	IL	05/19/95
ETA CONTROL NUMBER—5/242176 ACTION—ACCEPTED		
Howard L. Wengrow, Hickory Nursing Pavilion, Inc., 9248 S. Roberts Road, Hickory Hills, IL 60457, 708–598–4040	IL	05/19/95
ETA CONTROL NUMBER—5/242166 ACTION—ACCEPTED		
Araceli M. Henson, Hilltop Convalescent Center, 910 W. Polk, Charleston, IL 61920, 217–345–7066	IL	05/19/95
ETA CONTROL NUMBER—5/242180 ACTION—ACCEPTED		
Barbara M. Harris, Progressive Intn'l. Nursing Care, 2600 West Peterson Avenue, Ste 203, Chicago, IL 60659, 312–378–1170.	IL	05/19/95
ETA CONTROL NUMBER—5/242169 ACTION—ACCEPTED		
Ronald Campbell, Saint Bernard Hospital, 64th & Dan Ryan Expressway, Chicago, IL 60621, 312–962–4100	IL	05/19/95
ETA CONTROL NUMBER—5/242161 ACTION—ACCEPTED		
Gerry Woods, River Park Health Care, 1432 N. Waco, Wichita, KS 67203, 316–262–8481	KS	05/19/95
ETA CONTROL NUMBER—5/242167 ACTION—ACCEPTED		
W. Jean Sherman, Arnold Home Inc., 18520 W. Seven Mile Road, Detroit, MI 48219, 313–531–4001	MI	05/19/95
ETA CONTROL NUMBER—5/242175 ACTION—ACCEPTED		
Judy Bradford, Madonna Nursing Care Center, 15311 Schaefer, Detroit, MI 48227, 313–835–4775	MI	05/19/95
ETA CONTROL NUMBER—5/242163 ACTION—ACCEPTED		
Ralph Cozzens or Dan Hutson, Community Care of Amer. at Laramie, 503 South 18th Street, Laramie, WY 82070, 307–742–3728.	WY	05/19/95
ETA CONTROL NUMBER—5/242170 ACTION—ACCEPTED		
Lucy Frahm, Community Care of America, 307 Holly Street, Saratoga, WY 82331, 307–326–8212	WY	05/19/95
ETA CONTROL NUMBER—5/242177 ACTION—ACCEPTED		
ETA REGION 5 05/22/95 TO 05/28/95		
Andre Williams, Washington Cardiology Center, 110 Irving St. NW, Suite 4B1, Washington, DC 20010, 202–877–3198.	DC	05/26/95
ETA CONTROL NUMBER—5/242709 ACTION—ACCEPTED		
Alliance Home Healthcare, Inc., 6457 S. Pulaski Rd., 2nd Floor, Chicago, IL 60629, 312–585–8100	IL	05/25/95
ETA CONTROL NUMBER—5/242621 ACTION—ACCEPTED		
Diane E. Kramer, Aurora Manor Nursing Center, 1601 N. Farnsworth, Aurora, IL 60505, 708–898–1180	IL	05/26/95
ETA CONTROL NUMBER—5/242694 ACTION—ACCEPTED		
Jessica Fritz, Caseyville Nursing & Rehab Center, 601 West Lincoln, Caseyville, IL 62232, 618–345–3072	IL	05/26/95
ETA CONTROL NUMBER—5/242707 ACTION—ACCEPTED		
Jacob Bakst, Countryside Healthcare Center, Inc., 1635 East 154th Street, Dolton, IL 60419, 708–841–9550	IL	05/26/95
ETA CONTROL NUMBER—5/242681 ACTION—ACCEPTED		
Katherine Johnson, Dogwood Health Care Center, 902 E. Arnold, P.O. Box 147, Sandwich, IL 60548, 815–786–8409.	IL	05/23/95
ETA CONTROL NUMBER—5/242391 ACTION—ACCEPTED		
Leo Feigenbaum, Edgewater Care & Rehab. Center, 5838 North Sheridan Road, Chicago, IL 60660, 312–769–2230	IL	05/26/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—5/242676 ACTION—ACCEPTED		
Jacob Bakst, Fairfield of Joliet, Inc., dba Glenwood 222 North Hammes, Joliet, IL 60435, 815–725–0443	IL	05/25/95
ETA CONTROL NUMBER—5/242682 ACTION—ACCEPTED		
Leo Feigenbaum, Fairmount of Oak Park, Inc., 625 North Harlem, Oak Park, IL 60302, 708–848–5966	IL	05/26/95
ETA CONTROL NUMBER—5/242675 ACTION—ACCEPTED		
Jakob Bakst, Hillcrest Healthcare Center, Inc., 777 Draper Avenue, Joliet, IL 60432, 815–727–4794	IL	05/26/95
ETA CONTROL NUMBER—5/242679 ACTION—ACCEPTED		
Jakob Bakst, Imperial of Hazel Crest, Inc., 3300 West 175th Street, Hazel Crest, IL, 708–335–2400	IL	05/26/95
ETA CONTROL NUMBER—5/242678 ACTION—ACCEPTED		
Chester A. Plodzien, Lee Manor Health Care Residence, 1301 Lee Street, Des Plaines, IL 60018, 708–635–4000	IL	05/26/95
ETA CONTROL NUMBER—5/242686 ACTION—ACCEPTED		
Donna Carlson, Magnolia Wood Health Care Center, 900 North Market Street, Watseka, IL 60970, 815–432–5261	IL	05/25/95
ETA CONTROL NUMBER—5/242623 ACTION—ACCEPTED		
Geraldine Wagner, McAllister Nursing Home, Inc., 18300 S. Lavergne Avenue, P.O. Box 367, Tinley Park, IL 60477, 708–798–2272.	IL	05/26/95
ETA CONTROL NUMBER—5/242683 ACTION—ACCEPTED		
Erlando V. Gallermo, Midwest Nursing Services, Inc., 1831 N. Natoma Avenue, Chicago, IL 60635, 312–237–5021	IL	05/26/95
ETA CONTROL NUMBER—5/242685 ACTION—ACCEPTED		
Edith A. Brady, River Bluffs Rehabilitation & Nrsg, 3354 Jerome Lane, Cahokia, IL 62206, 618–397–4000	IL	05/25/95
ETA CONTROL NUMBER—5/242601 ACTION—ACCEPTED		
Aglae Velasco, Rush Surgicenter Ltd. Partnership, 1725 W. Harrison, Suite 556, Chicago, IL 60612, 312–563–2269	IL	05/26/95
ETA CONTROL NUMBER—5/242688 ACTION—ACCEPTED		
Grace Swanson, USA HealthPro, Inc., 5174 Cypress Court, Lisle, IL 60532, 708–964–1758	IL	05/23/95
ETA CONTROL NUMBER—5/242385 ACTION—ACCEPTED		
Mary Schroder, R.N., Clark County Health Department, Medical Arts Building, 207 Sparks Avenue, Suite 307, Jeffersonville, IN 47130, 812–282–9818.	IN	05/25/95
ETA CONTROL NUMBER—5/242625 ACTION—ACCEPTED		
Kimberly A. Schmaltz, Shady Nook Nursing Home, Inc., 36 Valley Drive, Lawrenceburg, IN 47025, 812–537–0930	IN	05/25/95
ETA CONTROL NUMBER—5/242624 ACTION—ACCEPTED		
Virginia Scifres, Washington County Memorial Hosp., 911 N. Shelby Street, Salem, IN 47167, 812–883–5881	IN	05/25/95
ETA CONTROL NUMBER—5/242613 ACTION—ACCEPTED		
Peggy Urton Cave, Indian Meadows Nursing Center, 6505 West 103rd Street, Overland Park, KS 66212, 913–649–5110.	KS	05/25/95
ETA CONTROL NUMBER—5/242609 ACTION—ACCEPTED		
Steve Wilkinson, St. Catherine Hospital, 410 East Walnut, Garden City, KS 67846, 316–272–2222	KS	05/23/95
ETA CONTROL NUMBER—5/242400 ACTION—ACCEPTED		
Henrietta McElhone, At Home Care, Inc., 29777 Telegraph, Suite 1580, Southfield, MI 48034, 810–350–0202	MI	05/25/95
ETA CONTROL NUMBER—5/242615 ACTION—ACCEPTED		
Peggy Urton Cave, Birchwood Care Center, 15140 16th Avenue, Marne, MI 49435, 616–677–1215	MI	05/24/95
ETA CONTROL NUMBER—5/242585 ACTION—ACCEPTED		
Robert Malott, Eaton Manor Nursing Center, 511 East Shephard, Charlotte, MI 48813, 517–543–4750	MI	05/26/95
ETA CONTROL NUMBER—5/242717 ACTION—ACCEPTED		
Peggy Urton Cave, Greenery—Clarkston, 4800 Clintonville Road, Clarkston, MI 48346, 810–674–0903	MI	05/24/95
ETA CONTROL NUMBER—5/242581 ACTION—ACCEPTED		
Peggy Urton Cave, Greenery—Farmington, 34225 Grand River Avenue, Farmington, MI 49335, 810–477–7373	MI	05/24/95
ETA CONTROL NUMBER—5/242583 ACTION—ACCEPTED		
Peggy Urton Cave, Greenery—Howell, 3003 West Grand River Avenue, Howell, MI 48843, 517–546–4210	MI	05/24/95
ETA CONTROL NUMBER—5/242586 ACTION—ACCEPTED		
Doris Papandrea, Health Care Personnel Alternatives, 27099 James St., Warren, MI 48092, 810–558–6680	MI	05/25/95
ETA CONTROL NUMBER—5/242620 ACTION—ACCEPTED		
Arylne E. Michael, Home Pro Care, Inc., 28091 Dequindre Road, Suite 307, Madison Heights, MI 48071, 810–547–5258.	MI	05/25/95
ETA CONTROL NUMBER—5/242619 ACTION—ACCEPTED		
Jean Newman, Hurley Medical Center, One Hurley Plaza, Flint, MI 48503, 810–257–9140	MI	05/26/95
ETA CONTROL NUMBER—5/242690 ACTION—ACCEPTED		
Lawana S. Parks, L & L Associates, dba Hilton Convalescent Home, 3161 Hilton Road, Ferndale, MI 48220, 810–547–6227.	MI	05/25/95
ETA CONTROL NUMBER—5/242602 ACTION—ACCEPTED		
Peggy Urton Cave, Lynwood Manor, 730 Kimole Lane, Adrian, MI 49221, 517–263–6771	MI	05/24/95
ETA CONTROL NUMBER—5/242588 ACTION—ACCEPTED		
Sheldon Green, Nightingale West, Inc., 8365 Newburgh Road, Westland, MI 48185, 313–416–2000	MI	05/23/95
ETA CONTROL NUMBER—5/242389 ACTION—ACCEPTED		
Catherine T. Bertolini, Saratoga Hospital, dba Father Murray Nursing, 8444 Engleman, Center Line, MI 48015, 810–755–2400.	MI	05/23/95
ETA CONTROL NUMBER—5/242420 ACTION—ACCEPTED		
Peggy Urton Cave, Silverbrook Manor, 911 South Third Street, Niles, MI 49120, 616–684–4320	MI	05/24/95
ETA CONTROL NUMBER—5/242591 ACTION—ACCEPTED		
Lori DeBoer, St. Mary's Nursing Home, 22901 E. Nine Mile, St. Clair Shores, MI 48080, 810–772–4300	MI	05/25/95
ETA CONTROL NUMBER—5/242608 ACTION—ACCEPTED		
Peggy Urton Cave, Willowbrook Manor, 4436 Beecher Road, Flint, MI 48532, 313–733–0290	MI	05/24/95

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CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—5/242595 ACTION—ACCEPTED		
Teresa Reinhart, Cloverlodge Care Center, P.O. Box B 301 N. 13th St., St. Edward, NE 68660, 402–678–2294	NE	05/25/95
ETA CONTROL NUMBER—5/242604 ACTION—ACCEPTED		
Peggy Urton Cave, Autumnwood of Sylvania, 4111 Holland-Sylvania Road, Toledo, OH 43623, 419–882–2087	OH	05/25/95
ETA CONTROL NUMBER—5/242626 ACTION—ACCEPTED		
Wendi Wells, Rocky Mountain Health Care, Bntifl, 350 S. 400 E., Bountiful, UT 84010, 801–298–2291	UT	05/25/95
ETA CONTROL NUMBER—5/242610 ACTION—ACCEPTED		
Betty G. Solomonson, Mount Vernon Nursing Center, 8111 Tle Well Drive, Alexandria, VA 22306–3297, 703–360–4000.	VA	05/25/95
ETA CONTROL NUMBER—5/242622 ACTION—ACCEPTED		
ETA REGION 5 05/29/95 TO 06/04/95		
Lois Peters, Peters Pediatric Nursing Team, Inc., 6856 Eastern Avenue, Suite 210, Washington, DC 20012, 202–291–0062.	DC	06/01/95
ETA CONTROL NUMBER—5/243061 ACTION—ACCEPTED		
Harvey Singer, Buckingham Pavilion, Inc., 2625 W. Touhy Avenue, Chicago, IL 60645, 312–973–5333	IL	06/01/95
ETA CONTROL NUMBER—5/243055 ACTION—ACCEPTED		
Marta Coquillette, Clayton Residential Home, Inc., 2026 N. Clark St., Chicago, IL 60614, 312–549–1840	IL	06/01/95
ETA CONTROL NUMBER—5/243046 ACTION—ACCEPTED		
Gregory A. Olson, Highland Hospital, Inc., 1625 South State Street, Belvidere, IL 61008, 815–547–5441	IL	06/01/95
ETA CONTROL NUMBER—5/243043 ACTION—ACCEPTED		
Dana C. Whitson, Lake Shore Nursing Centre, 7200 N. Sherican Road, Chicago, IL 60626, 312–973–7200	IL	05/31/95
ETA CONTROL NUMBER—5/243000 ACTION—ACCEPTED		
Pat Sheridan, Sharon Health Care Oaks, 3111 W. Richwood Blvd., Peoria, IL 61604, 309–685–8800	IL	05/31/95
ETA CONTROL NUMBER—5/243002 ACTION—ACCEPTED		
Susan Ledesma, Skokie Meadows Nursing Centers, Inc., 9815 N. Knox Avenue, Skokie, IL 60076, 708–679–1157	IL	05/01/95
ETA CONTROL NUMBER—5/243053 ACTION—ACCEPTED		
Leticia Laxa or Lucy Morales, South Shore Surgi-Center ENTS, Inc., 6300 S. Crandon, Chicago, IL 60617, 312–721–6000.	IL	05/31/95
ETA CONTROL NUMBER—5/243004 ACTION—ACCEPTED		
Paul Breininger, Valley View Health Care Center, 333 West Mishawaka Road, Elkhart, IN 46517, 219–293–1550	IN	05/31/95
ETA CONTROL NUMBER—5/243015 ACTION—ACCEPTED		
Michael Kaplan, Liberty Nursing Center, 1200 West College, Liberty, MO 64068, 816–781–3020	MO	05/31/95
ETA CONTROL NUMBER—5/243012 ACTION—ACCEPTED		
Eileen De Cesare, Professional Healthcare Resources, 101 S. Whiting Street, Suite 307, Alexandria, VA 22304, 703–370–7474.	VA	06/01/95
ETA CONTROL NUMBER—5/243050 ACTION—ACCEPTED		
ETA REGION 6 05/01/95 TO 05/07/95		
Mr. Dennis Norton, Arbor at Tampa, 2811 Campus Hill Dr., Tampa, FL 33612, 813–972–9700	FL	05/02/95
ETA CONTROL NUMBER—6/227308 ACTION—ACCEPTED		
Mr. Joseph A. Boshart, CCHP, Inc., 1515 S. Federal Highway, Suite 210, Boca Raton, FL 33432, 800–347–2264	FL	05/02/95
ETA CONTROL NUMBER—6/227317 ACTION—ACCEPTED		
E. Cooper Shamblen, Clinical Pharmacology Associates, 2060 N.W., 22nd Ave., Miami, FL 33142, 305–634–0777	FL	05/04/95
ETA CONTROL NUMBER—6/227342 ACTION—ACCEPTED		
Lois G. Collins, Lake Worth Health Center, 3599 S. Congress Ave., Lake Worth, FL 33461, 407–965–8876	FL	05/04/95
ETA CONTROL NUMBER—6/227456 ACTION—ACCEPTED		
Gloria Ceballos, Volusia Medical Center, 1055 Saxon Blvd., Orange City, FL 32763, 904–851–5090	FL	05/04/95
ETA CONTROL NUMBER—6/227353 ACTION—ACCEPTED		
Ms. Dorothy N. Key, Greene Point Health Care, 1321 Washington Highway, P.O. Box 312, Union Point, GA 30669, 706–486–2167.	GA	05/04/95
ETA CONTROL NUMBER—6/227343/ ACTION—ACCEPTED		
William Repzynski, Lynn Haven Nursing Home, Rt 1, Box 185, Hwy 11, Gray, GA 31032, 912–986–3196	GA	05/04/95
ETA CONTROL NUMBER—6/227349 ACTION—ACCEPTED		
Kenneth A. Goings, Starcrest of McDonough, 198 Hampton, P.O. Box 796, McDonough, GA 30253, 404–957–9051	GA	05/04/95
ETA CONTROL NUMBER—6/227348 ACTION—ACCEPTED		
Mr. Tom Ford, Brian Center Health & Retirement, 3000 Holston Lane, Raleigh, NC 27610, 919–231–6045	NC	05/02/95
ETA CONTROL NUMBER—6/227314 ACTION—ACCEPTED		
Ms. Paula Phillips, Charlotte Health Care Center, 1735 Toddville Road, Charlotte, NC 28214, 704–394–4001	NC	05/02/95
ETA CONTROL NUMBER—6/227316 ACTION—ACCEPTED		
Mr. Andy Mannich, Granville Medical Center, 1010 College Street, Oxford, NC 27565, 919–690–3238	NC	05/04/95
ETA CONTROL NUMBER—6/227408 ACTION—ACCEPTED		
Ms. Peggy R. Moore, Meadowbrook Manor, 5935 Mt. Sinah Road, Durham, NC 27705–9603, 919–489–2361	NC	05/04/95
ETA CONTROL NUMBER—6/227346 ACTION—ACCEPTED		
Mr. Douglas Kramer, Onslow Memorial Hospital, 317 Western Blvd., Jacksonville, NC 28541, 910–577–2392	NC	05/02/95

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CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/227319 ACTION—ACCEPTED		
Ms. Demetria S. Montalvo, Manhattan Health Services, Inc., 250 West 57th Street Suite 1500, New York, NY 10019, 212–684–1821.	NY	05/04/95
ETA CONTROL NUMBER—6/227351 ACTION—ACCEPTED		
Ms. Elizabeth Scott, Trident Neurosciences Cntr. Inc., 9181 Medcom Street, N. Charleston, SC 29406, 803–820–7777.	SC	05/02/95
ETA CONTROL NUMBER—6/227306 ACTION—ACCEPTED		
Ms. Linda Karling, The Windsor House, 3425 Knight Drive, Whites Creek, TN 37189, 615–876–2754	TN	05/04/95
ETA CONTROL NUMBER—6/227402 ACTION—ACCEPTED		
Lucile Kiemsteadt, Azalea Manor Nursing Home, 207 N Meyer, Sealy, TX 77474, 409–885–2937	TX	05/04/95
ETA CONTROL NUMBER—6/227403 ACTION—ACCEPTED		
Neal M. Elliott, Horizon Specialty Hospital, 2301 N. Oregon, El Paso, TX 79902, 505–881–4961	TX	05/04/95
ETA CONTROL NUMBER—6/227455 ACTION—ACCEPTED		
Linda Colvin, Juliette Fowler Homes, Inc., 100 S. Fulton, Dallas, TX 75214, 214–827–0813	TX	05/02/95
ETA CONTROL NUMBER—6/227311 ACTION—ACCEPTED		
Bradly R. Anderson, Normandy Terrace Northeast, 8607 Village Dr., San Antonio, TX 78217, 210–656–6733	TX	05/02/95
ETA CONTROL NUMBER—6/227313 ACTION—ACCEPTED		
Billie Saunders, Oakland Manor Nursing Center, 1400 N. Main St., Giddings, TX 78942, 409–542–1755	TX	05/02/95
ETA CONTROL NUMBER—6/227312 ACTION—ACCEPTED		
Ms. Pam Lyle, Westridge Nursing Cntr., 1241 Westridge, Lancaster, TX 75146, 214–227–5110	TX	05/02/95
ETA CONTROL NUMBER—6/227310 ACTION—ACCEPTED		
ETA REGION 6 05/08/95 TO 05/14/95		
Mr. Richard White, Reliance H/C of Pickens, Inc., 512 Second Avenue, NW, P.O. Box 400, Reform, AL 35481, 205–375–6379.	AL	05/10/95
ETA CONTROL NUMBER—6/227646 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Tuskegee, Inc., 502 Gauthier Street, P.O. Box 599, Tuskegee, AL 36083–2633, 205–727–1945.	AL	05/10/95
ETA CONTROL NUMBER—6/227645 ACTION—ACCEPTED		
Scott Clark, Central Park Village, 9309 S. Orange Blossom Trail, Orlando, FL 32837 407–859–7990	FL	05/10/95
ETA CONTROL NUMBER—6/227699 ACTION—ACCEPTED		
Scott Clark, IHS of Central Fla. at Orlando, 1800 Mercy Drive, Orlando, FL 32808, 407–299–5404	FL	05/10/95
ETA CONTROL NUMBER—6/227700 ACTION—ACCEPTED		
Scott Clark, IHS of Winter Park, 2970 Scarlett Rd, Winter Park, FL 32792, 407–671–3030	FL	05/10/95
ETA CONTROL NUMBER—6/227702 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Starke, Inc., 808 South Coley Road, Starke, FL 32091 904–964–6220	FL	05/10/95
ETA CONTROL NUMBER—6/227648 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Thonotosassa, Inc., 12006 McIntosh Road, Thonotosassa, FL 33592 813–986–4848.	FL	05/10/95
ETA CONTROL NUMBER—6/227641 ACTION—ACCEPTED		
Mr. Bob Via, Bulloch Memorial Hospital, 500 East Grady Street, Statesboro, GA 30458, 912–764–6671	GA	05/10/95
ETA CONTROL NUMBER—6/227695 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Augusta, Inc., 2021 Scott Road, Augusta, GA 30906, 706–793–1057	GA	05/10/95
ETA CONTROL NUMBER—6/227643 ACTION—ACCEPTED		
D. Gray Angell, Jr., Meadowbrook Manor—Rockingham, 804 Long Dr., P.O. Box 1237, Rockingham, NC 28379, 910–997–4493.	NC	05/10/95
ETA CONTROL NUMBER—6/227679 ACTION—ACCEPTED		
Susan Goad, Ardmore Care Center, 1111 Thirteenth N.W., Ardmore, OK 74301, 405–223–4803	OK	05/09/95
ETA CONTROL NUMBER—6/227507 ACTION—ACCEPTED		
Susan Goad, Atoca Care Center, 323 West Sixth St., Atoca, OK 74525, 914–337–0703	OK	05/09/95
ETA CONTROL NUMBER—6/228258 ACTION—ACCEPTED		
Susan Goad, Cedar Creek Nursing Home, 600 24th Ave., Norman, OK 73069, 405–321–1111	OK	05/09/95
ETA CONTROL NUMBER—6/227510 ACTION—ACCEPTED		
Susan Goad, Grand Place, 501 East Grand Sayre, OK 73662, 405–928–3374	OK	05/09/95
ETA CONTROL NUMBER—6/227511 ACTION—ACCEPTED		
Susan Goad, Hillcrest Nursing Home, 2120 N. Broadway, Moore, OK 73160 405–794–4429	OK	05/09/95
ETA CONTROL NUMBER—6/227513 ACTION—ACCEPTED		
Susan Goad, Park Terrace Convalescent Home, 5115 East 51st St., Tulsa, OK 74135, 918–627–5961	OK	05/09/95
ETA CONTROL NUMBER—6/227512 ACTION—ACCEPTED		
Charles W. Elliott, Jr., Beaufort Memorial Hospital, 955 Ribaut Rd., Beaufort, SC 29902, 803–522–5200	SC	05/10/95
ETA CONTROL NUMBER—6/227703 ACTION—ACCEPTED		
Mr. Richard White, Continuum Care Corporation, 1200 Spruce Lane, Elizabethton, TN 37643, 625–543–3202	TN	05/10/95
ETA CONTROL NUMBER—6/227650 ACTION—ACCEPTED		
Mr. Richard White, Continuum Care Corporation, 919 Medical Park Drive, Mountain City, TN 37683, 615–727–7800	TN	05/10/95
ETA CONTROL NUMBER—6/227651 ACTION—ACCEPTED		
Mr. Richard White, Reliance H/C of Eastland, Inc., 701 Porter Road, P.O. Box 68049, Nashville, TN 37206, 615–226–3264.	TN	05/10/95
ETA CONTROL NUMBER—6/227640 ACTION—ACCEPTED		
Ken Holland, Richland Place, Inc., 500 Elmington Ave., Nashville, TN 37205, 615–269–4200	TN	05–10–95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/227675 ACTION—ACCEPTED		
Mr. David Collins, Abilene Regional Medical Center, 6250 Highway 83/84 at Antilley Rd., Abilene, TX 79606, 915–691–2430.	TX	05–10–95
ETA CONTROL NUMBER—6/227661 ACTION—ACCEPTED		
Charles Buchert, Beaumont Regional Med. Cntr., 3080 College, Beaumont, TX 77701, 409–339–7113	TX	05–10–95
ETA CONTROL NUMBER—6/227653 ACTION—ACCEPTED		
Neal M. Elliott, Castle Hills Manor, 8020 Blanco Road, San Antonio, TX 78216, 210–344–4553	TX	05–10–95
ETA CONTROL NUMBER—6/227691 ACTION—ACCEPTED		
Mr. Randall H. Rolfe, Columbia Healthcare Systems, 1900 North Oregon St., Suite 610, El Paso, TX 79902, 915–577–9824.	TX	05–19–95
ETA CONTROL NUMBER—6/227482 ACTION—ACCEPTED		
Neal M. Elliott, Golden Plains Care Center, 15 Hospital Drive, Canyon, TX 79015, 806–655–2161	TX	05–10–95
ETA CONTROL NUMBER—6/227690 ACTION—ACCEPTED		
Neal M. Elliott, Heritage Place of Grand Prairie, 820 Small, Grand Prairie, TX 75050, 214–262–1351	TN	05–10–95
ETA CONTROL NUMBER—6/227687 ACTION—ACCEPTED		
Armand P. Capadocia, Hobby Physical Therapy, 8951 Ruthby, Ste. 2, Houston, TX 77061, 713–644–0222	TN	05–09–95
ETA CONTROL NUMBER—6/227607 ACTION—ACCEPTED		
Neal M. Elliott, Longmeadow Care Center, 120 Meadowview Drive, Justin, TX 76247, 817–648–2731	TX	05–10–95
ETA CONTROL NUMBER—6/227689 ACTION—ACCEPTED		
Neal M. Elliott, North Shores Health Center, 12350 Wood Bayou Drive, Houston, TX 77013, 713–453–0446	TX	05–10–95
ETA CONTROL NUMBER—6/227688 ACTION—ACCEPTED		
Juan R. Arnell, Red Oak Cardiovascular Cntr. P.A., 17200 Red Oak Dr., Ste. 107, Houston, TX 77090, 713–893–8640.	TX	05–09–95
ETA CONTROL NUMBER—6/227605 ACTION—ACCEPTED		
Neal M. Elliott, Seven Oaks Care Center, 901 Seven Oaks Blvd., Bonham, TX 75418, 903–583–2191	TX	05–10–95
ETA CONTROL NUMBER—6/227692 ACTION—ACCEPTED		
Ms. Sharlyn Threadgill, Southwood Care Center, 3759 Valley View Road, Austin, TX 78704, 512–443–3436	TX	05–09–95
ETA CONTROL NUMBER—6/227479 ACTION—ACCEPTED		
Peter C. Kern, The Decatur Convalescent Center, 605 W. Mulberry Ave., Decatur, TX 76234, 817–627–5444	TX	05–10–95
ETA CONTROL NUMBER—6/227671 ACTION—ACCEPTED		
Danny Morten, Tri-City Health Centre, 7525 Scyene Rd., Dallas, TX 75227, 214–381–7171	TX	05–10–95
ETA CONTROL NUMBER—6/227673 ACTION—ACCEPTED		
Neal M. Elliott, Valley Grande Manor, 901 Wild Rose Ln., Brownsville, TX 78520, 210–546–4568	TX	05–10–95
ETA CONTROL NUMBER—6/227694 ACTION—ACCEPTED		
ETA REGION 6 05/15/95 TO 05/21/95		
Mr. Bryan Casey, Bay Pointe Nursing Pavillion, 4201 31st St. S., St. Petersburg, FL 33712–4051, 813–867–1104	FL	05–18–95
ETA CONTROL NUMBER—6/227831 ACTION—ACCEPTED		
Larry Flannagan, Boca Raton Rehab. Cntr., 755 Meadows Rd., Boca Raton, FL 33486, 407–391–5200	FL	05–18–95
ETA CONTROL NUMBER—6/227921 ACTION—ACCEPTED		
Deborah Markey, Hillhaven Healthcare Cntr, 950 Mellonville Ave., Sanford, FL 32771–2299, 407–322–8566	FL	05–18–95
ETA CONTROL NUMBER—6/227923 ACTION—ACCEPTED		
Edgar L. Belcher, Walton Medical Center, 330 Alcova St., Monroe, GA 30655, 404–267–8461	GA	05–18–95
ETA CONTROL NUMBER—6/227836 ACTION—ACCEPTED		
Robert Hill, Britthaven of Raleight, 3609 Bond St., Raleigh, NC 27604, 919–231–8113	NC	05–18–95
ETA CONTROL NUMBER—6/227823 ACTION—ACCEPTED		
David Antle, Miner's Colfax Medical Center, 200 Hospital Drive, Raton, NM 87740, 505–445–3661	NM	05–18–95
ETA CONTROL NUMBER—6/227826 ACTION—ACCEPTED		
ETA REGION 6 05/29/95 TO 06/04/95		
Mr. Ben White, Southwestern Medical Center, 5602 Southwest Lee Blvd., Lawton, OK 73505, 405–531–4700	OK	05/18/95
ETA CONTROL NUMBER—6/227825 ACTION—ACCEPTED		
Ms. Lolita O. Cuevas, Texas Medical Services, 11767 Katy Frwy, Ste 780, Houston, TX 77079, 713–558–6609	TX	05/18/95
ETA CONTROL NUMBER—6/227919 ACTION—ACCEPTED		
Mr. David Butler, Valley Regional Medical Center, #1 Ted Hunt Blvd., Brownsville, TX 78521, 210–831–5974	TX	05/18/95
ETA CONTROL NUMBER—6/227827 ACTION—ACCEPTED		
Michael Mastej, Victoria Regional Med. Cntr., 101 Medical Drive, Victoria, TX 77904, 512–573–6100	TX	05/18/95
ETA CONTROL NUMBER—6/227924 ACTION—ACCEPTED		
ETA REGION 6 05/22/95 TO 05/28/95		
Mr. Gerald Labourene, Heartland Health Care & Rehab Ctr., 7225 Boca Del Mar Drive, Boca Raton, FL 33433, 407–362–9644.	FL	05/25/95
ETA CONTROL NUMBER—6/228021 ACTION—ACCEPTED		
Mr. Jeff Bradley, Hillhaven Convalescent Center, 5640 Rand Blvd., Sarasota, FL 34238, 813–922–8009	FL	05/26/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/228024 ACTION—ACCEPTED		
Ms. Donna Kelsey, Hillhaven Rehabilitation and HC, 616 Wade Avenue, Raleigh, NC 27605, 919–828–6251	NC	05/25/95
ETA CONTROL NUMBER—6/228022 ACTION—ACCEPTED		
Dionicio Rivera, Resthaven Nursing Home, 2729 Porter Ave., El Paso, TX 79930, 915–566–3757	TX	05/26/95
ETA CONTROL NUMBER—6/228026 ACTION—ACCEPTED		
Eduardo Duarte, Retama Manor West, 1200 Lane, Laredo, TX 78040, 210–722–0031	TX	05/26/95
ETA CONTROL NUMBER—6/228030 ACTION—ACCEPTED		
Mr. Larry F. Parsons, Wilbarger General Hospital, 920 Hillcrest Drive, Vernon, TX 76384, 817–552–9351	TX	05/26/95
ETA CONTROL NUMBER—6/228023 ACTION—ACCEPTED		
ETA REGION 6 05/29/95 TO 06/04/95		
Neal M. Elliott, Elms Haven Care Center, 12080 Bellaire Way, Thornton, CO 80241–3600, 303–450–2700	CO	06/01/95
ETA CONTROL NUMBER—6/228196 ACTION—ACCEPTED		
Mr. Neal M. Elliott, Sable Care Center, 656 Dillon Way, Aurora, CO 80011, 303–344–0636	CO	06/01/95
ETA CONTROL NUMBER—6/228288 ACTION—ACCEPTED		
Michael Dada, Advanced Nursing Care Svcs. Inc., 6120 Mirimar Pkwy., Miramar, FL 33023, 305–981–1147	FL	05/31/95
ETA CONTROL NUMBER—6/228180 ACTION—ACCEPTED		
Ira Clark, Jackson Memorial Hospital, 1611 NW 12th Ave., Miami, FL 33136, 305–585–7142	FL	05/30/95
ETA CONTROL NUMBER—6/228107 ACTION—ACCEPTED		
Kevin D. Mort, Manhattan Convalescent Cntr., 4610 S. Manhattan Ave., Tampa, FL 33611, 813–839–5311	FL	05/31/95
ETA CONTROL NUMBER—6/228189 ACTION—ACCEPTED		
Ms. Carolina Calderin, Pan American Hospital, 5959 NW 7th Street, Miami, FL 33126, 305–264–1000	FL	06/01/95
ETA CONTROL NUMBER—6/228347 ACTION—ACCEPTED		
David Bussone, Plantation General Hospital, 401 N.W. 42nd Ave., Plantation, FL 33317, 305–797–6450	FL	06/01/95
ETA CONTROL NUMBER—6/228554 ACTION—ACCEPTED		
Larry Potter, St. Cloud Healthcare Center, 1301 Kansas Avenue, St. Cloud, FL 34769, 407–892–5121	FL	06/01/95
ETA CONTROL NUMBER—6/228256 ACTION—ACCEPTED		
Ms. Donita Tannenbaum, Suwannee Health Care Center, 1620 Helvenston Street, Live Oak, FL 32060, 904–362–7860.	FL	06/01/95
ETA CONTROL NUMBER—6/228255 ACTION—ACCEPTED		
Jack Lord, General Health Homecase & Staffing, 6160 Perkins Rd., Ste. 130, Baton Rouge, LA 70808, 504–766–8008.	LA	05/31/95
ETA CONTROL NUMBER—6/228181 ACTION—ACCEPTED		
Richard E. Waller, Quitman Cnty Hosp. & Nursing Home, 340 Getwell Dr., Marks, MS 38646, 601–326–8031	MS	05/31/95
ETA CONTROL NUMBER—6/228186 ACTION—ACCEPTED		
Robert Hill, Britthaven of Piedmont, 33426 Old Salisbury Rd., P.O. Box 1250, Albemarle, NC 28002, 704–983–1195	NC	06/01/95
ETA CONTROL NUMBER—6/228257 ACTION—ACCEPTED		
Bruce Busby, Hillhaven Rehab. & Healthcare Cntr., 1602 E. Franklin St., Chapel Hill, NC 27514, 919–967–1418	NC	06/01/95
ETA CONTROL NUMBER—6/228194 ACTION—ACCEPTED		
Hugh D. Moon, Smoky Mountain Center, P.O. Box 280, Dillsboro, NC 28725, 704–586–5501	NC	06/01/95
ETA CONTROL NUMBER—6/228366 ACTION—ACCEPTED		
Vicente B. Denuna, V.B. Denuna, P.A., 28 N. Logan St., Marion, NC 28752, 704–652–5797	NC	06/01/95
ETA CONTROL NUMBER—6/228367 ACTION—ACCEPTED		
Sam Jewell, Callaway Nursing Home, 1300 W. Lindsay, Sulphur, OK 73086, 405–622–2416	OK	05/30/95
ETA CONTROL NUMBER—6/228074 ACTION—ACCEPTED		
Sam Jewell, Cordell Manor, 1420 N. Crider Rd., Cordell, OK 73632, 405–832–5341	OK	05/30/95
ETA CONTROL NUMBER—6/228072 ACTION—ACCEPTED		
Mr. Melvin Stepp, Meadow Haven, 261 S. Herlong Avenue, Rock Hill, SC 29732, 803–366–7133	SC	05/30/95
ETA CONTROL NUMBER—6/228075 ACTION—ACCEPTED		
Benny Judah, Amherst Manor, 700 Main St., Amherst, TX 79312, 806–246–3642	TX	05/30/95
ETA CONTROL NUMBER—6/228073 ACTION—ACCEPTED		
Velma Cowell, Canterbury Villa of Navasota, 1405 East Washington, Navasota, TX 77868, 409–825–6463	TX	05/30/95
ETA CONTROL NUMBER—6/228187 ACTION—ACCEPTED		
Velma Cowell, Columbus Care Cntr., 103 Sweet Brair Lane, Columbus, TX 78934, 409–732–5716	TX	05/31/95
ETA CONTROL NUMBER—6/228184 ACTION—ACCEPTED		
Mr. H. Douglas Garner, Coronado Hospital, One Medical Plaza, Pampa, TX 79065, 806–665–3721	TX	06/01/95
ETA CONTROL NUMBER—6/228244 ACTION—ACCEPTED		
Guy Bowles, Heartland at San Antonio, One Heartland Drive, San Antonio, TX 78247, 210–653–1219	TX	06/01/95
ETA CONTROL NUMBER—6/228193 ACTION—ACCEPTED		
Tracy Dean, Sharyland Med. Support Serv., Inc., P.O. Box 3480, McAllen, TX 78501, 210–618–5566	TX	06/01/95
ETA CONTROL NUMBER—6/228242 ACTION—ACCEPTED		
Woody Kern, Silver Pines Convalescent Cntr., Route 1, Box 1X, Bastrop, TX 78602, 512–321–6220	TX	06/01/95
ETA CONTROL NUMBER—6/228192 ACTION—ACCEPTED		
Nancy Schneider, The Renaissance Care Center, Rt. 4, Box 7, Gainesville, TX 76240, 817–665–5221	TX	06/01/95
ETA CONTROL NUMBER—6/228492 ACTION—ACCEPTED		
Wayne Ogburn, Titus County Memorial Hospital, 2001 N. Jefferson, Mt. Pleasant, TX 75455, 903–577–6179	TX	05/31/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility Name/Address	State	Action date
ETA CONTROL NUMBER—6/228185 ACTION—ACCEPTED		
Patrick Pfeiffer, Wesleyan Nursing Home, 2001 Scenic Dr., Georgetown, TX 78626, 512–863–9511	TX	06/01/95
ETA CONTROL NUMBER—6/228178 ACTION—ACCEPTED		
Charles Veldekens, Yale Clinic & Hospital, Inc., 510 W. Tidwell, Ste. 100, Houston, TX 77091, 713–691–1111	TX	05/31/95
ETA CONTROL NUMBER—6/228183 ACTION—ACCEPTED		

[FR Doc. 95–18468 Filed 7–26–95; 8:45 am]
BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Georgia Power Company, Oglethorpe Power Corporation, Edwin I. Hatch Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NPF–5 issued to Georgia Power Company, et al. (GPC or the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment, provided by the licensee, addresses potential environmental issues related to GPC's application to amend Plant Hatch, Units 1 and 2, Operating Licenses. The proposed amendments would increase the licensed core thermal power from 2436 MWt to 2558 MWt, which represents an increase of 5 percent over the current licensed power level. This request is in accordance with the generic boiling water reactor (BWR) power uprate program established by the General Electric Company (GE) and approved by the NRC staff in a letter from W.T. Russell, NRC, to P.W. Marriott, GE, dated September 30, 1991. Implementation of the proposed power uprate at Plant Hatch will result in an increase of steam flow to approximately 106 percent of the current value, but will not require changes to the basic fuel design. Core reload design and fuel parameters will be modified as power uprate is implemented to support the current 18-month reload cycle. The higher power level will be achieved by expanding the power/flow map and slightly increasing reactor vessel dome pressure. The maximum core flow limit will not be increased over the pre-uprate value. Implementation of this proposed power uprate will require minor modifications, such as resetting of the safety relief setpoints, as well as calibrating plant instrumentation to reflect the uprated power. Plant operating, emergency, and other procedure changes will be made where necessary to support uprated operation.

The proposed action involves NRC issuance of license amendments to uprate the authorized power level by changing the Operating Licenses, including Appendix A (Technical Specifications). Appendix B of the Operating License (Environmental Technical Specifications) does not require revision as a result of power uprate.

The Need for the Proposed Action

The proposed action would authorize GPC to increase the potential electrical output of Plant Hatch by approximately 40 megawatts per unit and thus would provide additional electrical power to service GPC's grid.

Environmental Impacts of the Proposed Action

The "Final Environmental Statement" (FES) related to operation of Plant Hatch Units 1 and 2 (Reference 6) evaluates the nonradiological impact of operation at a maximum design reactor power level of 2537 MWt per unit. By letter dated January 13, 1995 (Reference 1), GPC submitted the proposed amendment to implement power uprate for Hatch Units 1 and 2 which is the subject of this environmental assessment. Enclosure 2 of that submittal provided information on the noradiological environmental aspects of the amendment request. Enclosure 4 was the Plant Hatch power uprate licensing report (GE report NEDC–32405P) which provided information on the radiological environmental impact of power uprate.

The proposed amendments allowing power uprate operation will not have a significant impact on the environment and the change does not constitute an unreviewed environmental question. The nonradiological and radiological effects of the proposed action on the environment are described below.

Nonradiological Environmental Assessment

Power uprate will not change the method of generating electricity nor the method of handling any influents from the environment or effluents to the environment. Therefore, no new or different types of environmental impacts are expected.

The detailed evaluation presented below and in Reference 1 concludes that nonradiological parameters affected by power uprate will remain within the bounding conditions cited in the FES, which concludes that no significant environmental impact will result from operation of Plant Hatch. This conclusion remains valid for power uprate.

The FES evaluated the nonradiological impact at a maximum design reactor power level of 2537 MWt per unit (approximately 104 percent of the current licensed power level). The parameters evaluated in the Environmental Report and the subsequent FES (References 4 through 6) were re-evaluated at 2558 MWt to determine whether the proposed change is significant relative to adverse environmental impact. Table E2–1 of Reference 1 provided a comparison of environmental-related operation parameters at rated and uprated power. Both units at Plant Hatch utilize a closed-loop circulating year system and forced air cooling towers for dissipating heat from the main turbine condenser. Other equipment is cooled by the plant service water (PSW) and residual heat removal (RHR) service water systems. The cooling towers and service water systems are operated in accordance with the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit No. GA 0004120, which expires October 31, 1997. No notification changes or other action relative to the NPDES Permit are required.

The withdrawal of cooling water from the Altamaha River is expected to increase slightly, primarily due to the increase in the evaporation rate from the cooling towers. Emergency system flows are expected to remain generally unchanged. Although increased heat loads are expected for nonsafety-related loads, such as the main generator stator coolers, hydrogen coolers, and exciter coolers, heat loads will remain within the existing design heat loads of the service water systems.

The circulating water system design flow rate is the primary basis for determining makeup water for the Plant Hatch cooling towers. Other factors affecting tower makeup are tower performance and meteorological conditions. Based on the review of cooling tower performance parameters associated with power uprate, the design flow rate of the cooling towers will not change. Makeup requirements may increase slightly due to increased heat load on the towers and the associated increase in evaporation. As discussed in Enclosure 2 of Reference 1, the increase in makeup (withdrawal rate is expected to be approximately 5 percent or 500 gpm. This projected increase associated with the uprate is not significant and is enveloped by the river water withdrawal rates discussed in the FES and the rates approved under the current Georgia Surface Water Withdrawal Permit for Plant Hatch. Intake canal velocity will not be significantly affected. No measurable effects on fish impingement or plankton entrainment are expected.

Changes in cooling tower blowdown rate and cooling tower chemistry as a result of the uprate are not significant. Any changes in blowdown rate and cooling tower cycles of concentration resulting from uprated power operation are enveloped by the existing design criteria discussed in FES.

Cooling tower drift does not increase as a result of the uprate since the circulating water flow rate does not change. Cooling tower blowdown temperature associated with power uprate operation increase slightly (<1 °F), thereby producing a slight increase in river discharge temperature. A review of the increase in the river discharge temperature relative to the conclusions of the FES and thermal studies required to support licensing of the plant indicates the slight temperature increase is not significant.

The thermal plume characteristics are not expected to change significantly as a result of power uprate. Circulating water and service water flow rates remain unchanged. The discharge temperature to the cooling towers should increase by no more than 1 °F due to operation at power uprate conditions. The corresponding change in discharge temperature at the river will not significantly impact the size or characteristics of the thermal plume. Thermal plume studies conducted during original licensing and the FES conclusions relative to thermal impacts remain valid for the uprated condition.

No significant change in discharge flow rate, velocity, or chemical composition will occur due to the proposed power uprate. Power uprate does not impact the discharge characteristics upon which the NPDES Permit is based. No notification, changes, or other actions relative to the NPDES Permit are required.

No change in the groundwater withdrawal required to supply the Hatch treatment plant or fire protection system will result from the proposed uprate.

The evaluation also considered the flow rate required by the liquid radwaste system (e.g., floor and equipment drains) due to the proposed uprate. No significant change in liquid radwaste quantities or activity levels which would increase the required radwaste dilution flow are expected. Therefore, the impact on the environment from these systems as a result of operation at the uprate power levels is not significant.

Plant operation at uprated power conditions will not affect current noise levels. Major plant equipment is housed within structures located on the plant site and is not a major contributor to surrounding noise levels. Equipment, such as the main turbines/generators and the cooling towers, will continue to operate at the current speed and noise level. The generator step-up transformers will operate at an increased KVA level; however, the overall noise level will not increase significantly.

Thus, the proposed uprate will not result in any significant environmental impact and is not an unreviewed environmental question. In addition, no actions relative to the Environmental Technical Specifications (ETS), NPDES permit or other environmental documents are required.

Radiological Environmental Assessment

Georgia Power Company evaluated the impact of the proposed power uprate amendment and concluded that the applicable regulatory acceptance criteria relative to radiological environmental impacts will continue to be satisfied for the uprated power conditions. Existing Technical Specifications limits on radiological effluents will be maintained. In conducting this evaluation, GPC considered the effect of the higher power level on liquid radioactive wastes, gaseous radioactive wastes, and radiation levels both in the plant and offsite during both normal operation and post-accident.

Enclosure 4 of Reference 1 provides the power uprate safety analyses report for Plant Hatch, as well as an assessment of the radiological effects of power uprate operation during both normal and postulated accident conditions. Sections 8.1 and 8.2 discuss the potential effect of power uprate on the liquid and gaseous radwaste systems. Sections 8.3, 8.4, and 8.5 discuss the potential effect of power uprate on radiation sources within the plant and radiation levels during normal and post-accident conditions. Section 4.4 discusses the standby gas treatment system (SGTS). Section 9.2 presents the results of the calculated whole body and thyroid doses at the exclusion area boundary and the low population zone that might result from the postulated design basis radiological accidents. All offsite doses remain below established regulatory limits for power uprate operation.

The floor drain collector subsystem and the waste collector subsystem both receive inputs from a variety of sources (e.g., leakage from component cooling water system, reactor coolant system, condensate and feedwater system, turbine, and plant cooling water system). However, leakages from these systems are not expected to increase significantly since the operating pressures of these systems are either being maintained constant or are being increased only slightly due to the proposed power uprate.

The largest source of liquid radioactive waste is from the backwash of the condensate demineralizers. These demineralizers remove activated corrosion products which are expected to increase proportionally to the proposed power uprate. However, the total volume of processed waste is not expected to increase significantly, since the only appreciable increase in processed waste will be due to the slightly more frequent cleaning of these demineralizers. Based on a review of plant effluent reports and the slight increase expected due to the proposed power uprate, GPC has concluded that the slight increase in the processing of liquid radioactive wastes will not have a significant increase in environment impact and that requirements of 10 CFR part 20 and 10 CFR part 50, Appendix I, will continue to be met.

Gaseous radioactive effluents are produced during both normal operation and abnormal operation occurrences. These effluents are collected, controlled, processed, stored, and disposed of by the gaseous radioactive waste management systems which include the various building ventilation systems, the off gas system, and the SGTS. The concentration of radioactive gaseous effluents released through the building ventilation systems during normal operation is not expected to increase significantly due to the proposed power uprate since the amount of fission products released into the reactor coolant (and subsequently into the building atmosphere) depends on the number and nature of fuel rod defects and is not dependent on reactor power level. The concentration of activation products contained in the reactor coolant is expected to remain unchanged, since the linear increase in the production of these activation products will be offset by the linear increase in steaming rate. Therefore, based on its review of the various building ventilation systems, GPC has concluded that there will not be a significant adverse effect on airborne radioactive effluents as a result of the proposed power uprate.

Radiolysis of the reactor coolant causes the formation of hydrogen and oxygen, the quantities of which increase linearly with core power. These additional quantities of hydrogen and oxygen would increase the flow to the recombiners by 5 percent during uprated power conditions. However, the operational increases in hydrogen and oxygen remain within the design capacity of the system.

The SGTS is designed to minimize offsite and control room radiation dose rates during venting and purging of both the primary and secondary containment atmospheres under accident or abnormal conditions. This is accomplished by maintaining the secondary containment at a slightly negative pressure with respect to the outside atmosphere and discharging the secondary containment atmosphere through high-efficiency particulate air (HEPA) filters and charcoal absorbers. The SGTS charcoal absorbers are designed for a charcoal loading capacity of 2.5 mgl/gC for the 30-day loss-of-coolant accident (LOCA) scenario. The proposed power uprate will increase the post-LOCA iodine loading by 5 percent; however, the charcoal loading will remain within the 2.5 mgl/gC design limit. Therefore, there will be no significant increase in environmental impact.

Georgia Power Company evaluated the effects of the power uprate on in-plant radiation levels for Plant Hatch during both normal operation and post-accident. GPC's conclusions are that radiation levels during both normal operation and post-accident may increase slightly (approximately proportional to the increase in power level). The slight increases in in-plant radiation levels expected due to the proposed power uprate should not affect radiation zoning or shielding requirements. Individual worker occupational exposures will be maintained within acceptable limits by the existing as low as reasonably achievable (ALARA) program which GPC uses to control access to radiation areas. Therefore, the slightly increased in-plant radiation levels will not have a significant environmental impact.

The offsite doses associated with normal operation are not significantly affected by operation at the proposed uprated power level and are expected to remain well within the limits of 10 CFR part 20 and 10 CFR part 50, Appendix I. Existing Technical Specifications limits will not be changed due to uprate. Therefore, offsite doses due to power uprate conditions will not result in a significant environmental impact.

Georgia Power Company performed does evaluations for design basis accidents at or above 102% of the uprated power level and reported these results in Reference 1. The offsite doses remain below regulatory limits and the increase due to power uprate is 5% or less.

The NRC staff agrees with GPC's assessment of the radiological effects of the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts of plant operation, but would restrict operation of Plant Hatch to the currently licensed power level. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Plant Hatch.

Agencies and Persons Consulted

In accordance with its stated policy, on July 20, 1995, the staff consulted with the Georgia State official, James L. Setser of the Environmental Protection Division, Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 13, 1995, as supplemented by letters dated April 5 and June 20, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

References

1. Georgia Power Company HL–4724, J. T. Beckham, Jr., to NRC, "Power Uprate Operation," dated January 13, 1995.

2. Georgia Power Company HL–4812, J. T. Beckham, Jr., to NRC, "Response to Request for Additional Information—Power Uprate Submittal," dated April 5, 1995.

3. **Federal Register** Vol. 60, No. 41, "Niagara Mohawk Corporation; Environmental Assessment and Finding of No Significant Impact," dated March 2, 1995.

4. Georgia Power Company "Final Environmental Statement for Edwin I. Hatch Nuclear Plant Units 1 and 2," October 1972.

5. Georgia Power Company Edwin I. Hatch Nuclear Plant—Unit 2 Environmental Report, Operating License Stage, June 1975.

6. Georgia Power Company "NUREG–0417," Final Environmental Statement Related to Operation of Edwin I. Hatch Nuclear Plant Unit No. 2, March 1978.

Dated at Rockville, Maryland, this 21st day of July 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18444 Filed 7–26–95; 8:45 am]

BILLING CODE 7590–01–M

Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration; Correction to Biweekly Notice

On June 21, 1995, the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration. On page 32374, Column 1, the third paragraph should read as follows:

The second proposed change which is applicable to all MODES of operation, allows 48 hours to restore diesel generator fuel oil inventory to the seven-day level as long as the inventory does not fall below the six-day level. The probability of a LOOP during this period is low. The 6-day fuel oil supply is calculated with adequate margin similar to the calculation of 7-day fuel oil inventory. In spite of the potential that there may be slightly less fuel available in inventory at the time of an event, actions would have been initiated to obtain replenishment within this brief period. Based on this and the low probability of an event during this brief period, it is considered that this change request does not involve a significant reduction in a margin of safety.

Dated at Rockville, Maryland, this 20th day of July 1995.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18445 Filed 7–26–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Energy Operations, Inc.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 81 to Facility Operating License No. NPF–47 issued to Entergy Operations, Inc. (the licensee), which revised the Technical Specifications for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana. The amendment is effective as of the date of issuance.

The amendment modified the technical specifications by replacing the existing technical specifications in their entirety with a new set of technical specifications based on NUREG–1434, "Improving BWR–6 Technical Specifications," dated September 1992. This amendment was based on the licensee's submittal of November 30, 1993, as supplemented by letters dated January 18, June 6, June 30, and July 14, 1995.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 21, 1994 (59 FR 19030). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (60 FR 29867, dated June 6, 1995).

For further details with respect to the action see (1) The application for amendment dated November 30, 1993, and supplemented by letters dated January 18, June 6, June 30, and July 14, 1995, (2) Amendment No. 81 to License No. NPF–47, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland, this 20th day of July 1995.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Director, Project Directorate IV–I, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18443 Filed 7–26–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800.

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549

Extension

Rule 15a–4—File No. 270–7
Rule 15b6–1 and Form BDW—File No. 270–17
Rule 15Bc3–1 and Form MSDW—File No. 270–93
Rule 17a–1—File No. 270–244
Rule 17a–2—File No. 270–189
Rule 17a–3—File No. 270–26
Rule 17a–7—File No. 270–147
Rule 17f–1(g)—File No. 270–30
Rule 17Ad–6—File No. 270–151
Rule 17Ad–7—File No. 270–152

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following rules under the Securities Exchange Act of 1934:

Rule 15a–4 permits a natural person member of a securities exchange who terminates its association with a registered broker-dealer to continue to do business on the exchange while the Commission reviews his application for registration as a broker-dealer, if the exchange files a statement indicating that there does not appear to be any ground for disapproving the application. The total annual burden is 400 hours, based on approximately 50 submissions, each requiring 8 hours to complete.

Rule 15b6–1 provides that a notice of withdrawal from registration as a broker-dealer is to be filed on Form BDW. Approximately 850 respondents file 1 response per year, with each response requiring approximately half an hour, resulting in a total average annual burden of 425 hours.

Rule 15Bc3–1 and Form MSDW provide that a notice of withdrawal from registration as a bank municipal securities dealer is to be filed on Form MSDW. Approximately 20 respondents file 1 response each per year, with each response requiring approximately half an hour, resulting in a total average annual burden of 10 hours.

Rule 17a–1 requires that all national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board keep on file for a period of five years, two years in an accessible place, all documents which it makes or receives respecting its self-regulatory activities, and that such documents be made available for examination by the Commission. The average number of hours necessary for compliance with the requirements of Rule 17a–1 is 50 hours per year. There are 25 entities required to comply with the rule: 8 national securities exchanges, 1 national securities association, 15 registered clearing agencies, and the Municipal Securities Rulemaking Board. The total number of hours required for all respondents to comply with the rule is thus 1,250 hours annually.

Rule 17a–2 requires the manager of an underwriting syndicate to retain, in a separate file, certain information relating to stabilizing purchases of a security being distributed. The rule enables the Commission to monitor compliance with Rule 10b–6 and 10b–7. Approximately 500 recordkeepers will spend 1 hour per year complying with the rule, for a total average annual burden of 500 hours.

Rule 17a–3 requires that certain records be made by exchange members, brokers, and dealers. There are approximately 6,000 exchange members, brokers, and dealers subject to the rule. Each spends an average of 1 hour per day, or 249 hours per year, complying with the rule. Therefore, the total average annual burden is 6,000 × 249 hours, or 1,494,000 hours.

Rule 17a–7 requires foreign broker-dealers registered with the Commission to retain copies of their books and records in the United States or file an undertaking agreeing to make them available upon request. It is estimated that the three foreign broker-dealers registered with the Commission will spend an average of one hour per year complying with the rule, for an annual average total burden of three hours per year.

Rule 17f–1(g) requires reporting institutions to retain all documents that are necessary for purposes of monitoring compliance with the registration, reporting, and inquiry requirements of the rule. It is estimated that there are 24,518 respondents and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is thus 13,484.9 hours.

Rule 17Ad–6 is needed to (1) assure that registered transfer agents are maintaining minimum records to monitor and control adequately their performance; and (2) to permit the appropriate regulatory agencies ("ARAs") to examine those transfer agents for compliance with the Commission's rules. It is estimated that approximately 480 hours per year are used to make and keep current these records. The total burden on the estimated 1576 respondents is thus 756,480 hours per year.

Rule 17Ad–7 requires entities to retain information to (1) assure that registered transfer agents are maintaining records to monitor and control adequately their performance and (2) to permit ARAs to examine those transfer agents for compliance with the Commission's rules. It is estimated that approximately 2.2 hours per week are used to retain these records, or 114 hours per year. The total burden on the estimated 1576 respondents is thus 179,664 hours per year.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and the Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 7, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18476 Filed 7–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21223; 811–6209]

Institutional Short Duration Government Portfolio; Application for Deregistration

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Institutional Short Duration Government Portfolio.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on April 18, 1995, and amended on July 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 520 Madison Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a trust under New York law. On November 5, 1990, applicant registered under section 8(a) of the Act on Form N–8A, and filed a registration statement on Form N–1A under section 8(b) of the Act. Applicant did not register its securities under the Securities Act of 1933 and did not make any public offerings of its securities. While in operation, applicant issued beneficial interests only to other investment companies. Applicant formerly was named the Short Duration Government Portfolio.

2. On August 2, 1993, 99.99% of applicant's total interests was held by Hyperion Institutional Short Duration Government Fund ("Hyperion"). A $100 interest in applicant was held by applicant's investment adviser, Hyperion Capital Management, Inc. (the "Adviser"), as organizational seed money. Hyperion is a series of Hyperion Government Mortgage Trust, a diversified, open-end registered investment company organized as a Massachusetts business trust. Hyperion invested in applicant through a two-tier, master-feeder fund structure.

3. On August 3, 1993, Hyperion redeemed for cash its interest in applicant at net asset value. At a meeting held on October 5, 1993, applicant's board of trustees determined that it would terminate applicant and deregister under the Act. The trustees based their decision on the fact that Hyperion withdrew its interest in

applicant and there was no desire to market applicant further. No securityholder authorization was obtained in connection with applicant's liquidation because no securityholder vote was required by law.

4. Legal, accounting, deregistration, termination, and other expenses incurred in connection with applicant's liquidation were paid by the Adviser. The Adviser's $100 interest in applicant was used to pay expenses relating to the winding up of applicant's affairs. In addition, on August 2, 1993, the Adviser paid in full applicant's unamortized organizational expenses of $10,415.

5. At the time of the application, applicant had no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18475 Filed 7–26–95; 8:45 am]

BILLING CODE 8015–01–M

[Rel. No. IC–21222; 812–7895]

Applications, Hearings, Determinations, etc.: Morgan Stanley & Co., Inc. et al.

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Morgan Stanley & Co. Incorporated ("Morgan Stanley"), Technology Equity and Income Trust (the "Trust"), and any future closed-end investment company underwritten by Morgan Stanley (together with the Trust, the "Trusts") that invests in Listed Securities (as defined below), is structured in a manner identical in all material respects to the Trust, and is authorized to write call options on its portfolio of securities.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) granting an exemption from section 17(a)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit Morgan Stanley, the principal underwriter for the Trusts, and other principal underwriters of the Trusts, to purchase call options on securities held by the Trusts.

FILING DATES: The application was filed on March 30, 1992, and amend on June 30, 1992, September 28, 1992, February 9, 1993, August 23, 1994, and March 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Technology Equity and Income Trust, c/o The Bank of New York, 101 Barclay Street, 21st Floor West, New York, New York 10286; Morgan Stanley & Co. Incorporated, 1251 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trusts will be registered, non-diversified, closed-end management investment companies. The Trusts will hold a portfolio of securities subject to call options and stripped U.S. Treasury securities ("Treasury Securities"). The portfolio securities must be registered under section 12 of the Securities Exchange Act of 1934, and listed on the New York Stock Exchange, the American Stock Exchange (other than Emerging Company Marketplace securities ("ECM Securities")), or traded on the NASDAQ-National Market System (provided the NASDAQ-NMS securities satisfy the listing requirements of the New York Stock Exchange or the American Stock Exchange (other than the listing requirements applicable to ECM Securities)) (Collectively, the "Listed Securities"). Interests in the Trusts will be called STEP Units. The Trusts' objectives will be to provide current quarterly cash distributions from the proceeds of the Treasury Securities and regular cash dividends on the Listed Securities, and the potential for capital appreciation up to a disclosed maximum on the Listed Securities. The final composition of a Trust's portfolio will be determined at the close of trading on the way prior to the commencement of the offering of STEP Units (the "Determination Date"). The Trusts will acquire their portfolios in the manner described below.

2. Each Trust will invest in Listed Securities using the gross proceeds received from the sale of its STEP Units to the underwriters. The trustees of each Trust (the "Trustees"), with the advice of an investment adviser (the "Investment Adviser"), will select the specific Listed Securities for the respective Trust at least one business day prior to the Determination Date. At the opening of the market on the Determination Date, the Trustees will enter market buy orders to purchase the Listed Securities with unaffiliated brokers or dealers selected by the Trustees with the advice of the Trust's Investment Adviser.

3. Immediately after the purchase of the Listed Securities, the Trusts will sell a single call option on each issue of Listed Securities (each option is referred to as a "Contract"). Each Trust will invest the net proceeds from the sale of the Contracts in Treasury Securities which will mature on a quarterly basis over the life of the Trust. Unitholders will receive quarterly distributions which consist of the proceeds received from the Treasury Securities as they mature and regular cash dividends on the Listed Securities. The expenses of a Trust, including any underwriting commissions on the sale of STEP Units, will be deducted from the proceeds from the sale of its Contracts.

4. Each Contract will grant the Contract holder the right to purchase the Listed Securities underlying the Contract at a fixed price (the "Exercise Price") on a fixed date (the "Expiration Date"). The Exercise Price for each Contract will range between 30% and 50% in excess of the current market price of the Listed Securities on the Determination Date. The Expiration Date will be no more than 3½ years after issuance.

5. The Contracts also will provide that the Exercise Price for each Listed Security be reduced dollar-for-dollar by the per share amount of (a) any Extraordinary Cash Dividend [1] and (b) any non-cash dividend or non-cash distribution on a Listed Security that is taxable to security holders under federal income tax laws valued as of the record date for the dividend or distribution. If on or prior to the Expiration Date the Exercise Price for a Listed Security has been reduced to zero or below, the Contract holder shall be deemed to have exercised its purchase rights under the Contract on that date. The Trust will deliver to the Contract holder the Listed Security and any Extraordinary Cash Dividend or non-cash dividend that caused the Exercise Price to fall below zero.

[1] An "Extraordinary Cash Dividend" will be defined, with respect to any Listed Security, as a dividend which exceeds the immediately preceding non-Extraordinary Cash Dividend on the Listed Security by an amount equal to at least 10% of the closing sale price of the Listed Security on the business day preceding the ex-dividend date for the current dividend.

6. If on or prior to the Expiration Date, (a) a merger or consolidation of a Listed Security's issuer is consummated and the issuer is not the surviving party, or (b) a successful tender or exchange offer is made for at least a majority interest in the issuer of a Listed Security, the Contract holder for that Listed Security will have the right for five business days, beginning on the date of consummation of the merger or consolidation or the date the Security is accepted for payment under the tender or exchange offer, to accelerate its purchase rights under the Contract. After this period, the rights of the Contract holder will expire.

7. The Contracts will be sold to major broker/dealers and/or financial institutions (which may include Morgan Stanley or other principal underwriters of the Trusts) through a bidding procedure described in detail Conditions 1 and 2 below. Because all the terms of the Contracts will be set (*i.e.*, Expiration Date, Exercise Price (as a percentage of the then-current price of the underlying Listed Security), termination provisions, adjustments for extraordinary events, etc.), bidding on a Contract will consist solely of the submission of a bid price expressed as a percentage of the then-current price of the underlying security. Each bidder will be permitted to bid for all of the Contracts on an aggregate basis and/or submit a separate bid on each. Subject to certain conditions described below, the Trustees will sell the Contracts in the manner best calculated to maximize the net proceeds to the Trust.

8. The administration and operation of the Trusts will be overseen by three Trustees, none of whom are interested persons as defined in section 2(a)(19) of the Act. A bank having the qualifications described in section 26(a) of the Act will perform the daily administration of the Trusts (the "Administrator"). In addition, the Administrator will act as the Trusts' custodian, paying agent, registrar, and transfer agent. The Administrator will not be a principal underwriter or affiliated person of the Trusts, or an affiliated person of a principal underwriter or affiliated person.

9. The Investment Adviser for each Trust will be unaffiliated with Morgan Stanley and any other principal underwriter of the Trust; will be an established entity, registered as an investment adviser under the Investment Advisers Act of 1940 and will have significant assets under its management. The Investment Adviser will advise the Trustees in connection with the composition and acquisition of the initial portfolio of the Trusts, and thereafter, the Trustees may consult with the Investment Adviser concerning the disposal of the Listed Securities in the instances described below where the Trustees have the discretion to dispose of them.

10. The Trusts will terminate on or shortly after the Expiration Date. Each Trust's prospectus will specify that the Trust intends to hold each Listed Security and any distributions thereon until the Expiration Date. However, each Trust will be required to distribute cash or dispose of any securities it receives and distribute the proceeds to unitholders if (a) an issuer of a Listed Security pays a non-cash dividend or makes a non-cash distribution that is taxable to its security holders under federal income tax laws, (b) an issuer of a Listed Security is acquired, whether in a cash merger or a merger involving the distribution of securities, or is a party to a consolidation where it is not the surviving party, (c) there is a tender or exchange offer for at least a majority interest in an issuer of a Listed Security; however, if the offer is unsuccessful, the Trust will withdraw the Listed Securities it has previously tendered, and if only a portion of the Trust's shares are purchased, the Trust will be required to sell the balance of its shares in the market, or (d) an issuer of a Listed Security declares a cash dividend or makes a cash distribution. In addition, any time security holders may elect cash consideration, the Trust will be required to elect to receive cash and distribute it to unitholders. Each Trust will retain any securities or property obtained in a stock split, reverse stock split, or tax-free non-cash dividend or distribution declared or made by any issuer of a Listed Security. Any retained securities or property will, together with the related Listed Security, be subject to purchase by the holder of the Contract related to that Listed Security.

11. The Trustees may dispose of a Listed Security and distribute the proceeds to unitholders if (a) the Listed Security's market price falls to less than 50% of its market price on the Determination Date, or (b) the issuer of the Listed Security becomes bankrupt, insolvent, or defaults on amounts due on its outstanding securities. In these instances, the Contract holders will have agreed to negotiate in good faith with the Trustees the early termination of the Contracts. Except under the above circumstances, the Contract holders will not have an opportunity to seek to negotiate an early termination of the Contracts.

Applicants' Legal Analysis

1. Applicants request an order under sections 6(c) and 17(b) exempting them from section 17(a)(2) of the Act to permit Morgan Stanley and other principal underwriters of the Trusts to purchase the Contracts. Section 17(a)(2) of the Act, in part, prohibits an affiliated person of or a principal underwriter for a registered investment company, acting as principal, from purchasing any security or other property from the registered company (except securities of which the seller is the issuer). Since the sale of an option may be viewed as a sale of the underlying security, section 17(a)(2) prohibits the Trusts' principal underwriters from purchasing the Contracts. Section 17(b) of the Act provides, however, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The market for the Contracts is the over-the-counter options market. Morgan Stanley believes that it is one of only a small number of firms that are

active and frequent participants within the U.S. over-the-counter market segment that would include the Contracts. Applicants believe that to preclude Morgan Stanley and other principal underwriters of a Trust from bidding for the Contracts may prevent a Trust from receiving the best price because it would exclude the bid of entities who might pay a price somewhat higher than the market price since they had the most to gain from the successful marketing of the Trust, and because there would be a perceived lack of competition if independent bidders are aware that major participants in the over-the-counter options market are excluded from bidding. Applicants assert that the competitive bidding process has a direct affect on the quarterly distributions to unitholders since the amount of Treasury Securities purchased will depend upon the amount of the proceeds received from the sale of the Contracts. Accordingly, applicants submit that providing the Trusts with access to all major dealers is in the best interests of the Trusts, its holders, and is consistent with the general purposes of the Act.

3. Applicants believe that Morgan Stanley's dual role as underwriter and bidder for the Contracts would not give it an advantage in structuring the Contracts or assessing their value. The participants in the over-the-counter options market are various sophisticated, established, well-capitalized financial institutions including major investment banking firms, money center banks, insurance companies, and their affiliates. These sophisticated institutions employ almost identical valuation models and technology to price options. Prospective bidders will have a copy of a Trust's prospectus and draft of the Contract at least two business days prior to the day the final bids are due. Although the Contracts will not be typical over-the-counter options, they are not of such a customized nature to make it unlikely for other broker/dealers or financial institutions to submit bids. The Contract's form will be similar to other types of call options used in privately negotiated transactions. Since all of the Contracts' terms have been set, other than price, the bidding procedure has been made as simple as possible. Accordingly, the notice period and information provided in the bidding process are sufficient to ensure competitive, bona fide bids.

4. Applicants assert that the bidding procedures to be followed by Morgan Stanley or any other principal underwriter in purchasing the Contracts, as set forth in Applicants' Conditions below, will be consistent with the standards of sections 17(b) and 6(c). These procedures ensure that the Trusts receive the best price and execution on the sale of the Contracts and ensure against any overreaching on the part of any party concerned.

5. Lastly, each prospectus will fully disclose that the Contracts will be offered by competitive bid and that Morgan Stanley, and to the extent applicable, any other underwriter, will be among the bidders.

Applicants' Conditions

Applicants agree to the following as conditions to the requested order:

1. The Trustees will select prospective bidders on the basis of such factors as having the necessary capital to purchase Contracts, having the ability to appropriately price the Contracts and being a major participant in the over-the-counter options market. The Contracts will be offered by competitive bid to not less than four major broker-dealers and/or financial institutions who are in the business of making bids on over-the-counter options, at least three of whom are not affiliated persons or principal underwriters of a Trust or affiliated persons or a principal underwriter or affiliated person. At least two business days prior to the date and time that final bids are due, the Trustees will contact prospective bidders, indicate when bidding for the Contracts will commence and invite them to bid. The Trustees will supply prospective bidders with a draft invitation to bid summarizing the terms of the Contract, a copy of the Trust's prospectus and a draft of the Contract. On the business day before final binding bids are due, the Trustees will send a formal notice to prospective bidders. The notice will indicate where and at what time final binding bids are due. No bidder, including Morgan Stanley, will have access to any bids until after the Contracts are awarded. Subject to condition 2 below, the Trustees will sell the Contracts in the manner best calculated to maximize net proceeds to the Trust (*e.g.*, on an aggregate or individual basis).

2. No sale of Contracts by a Trust will be made to Morgan Stanley or another principal underwriter unless (a) if Morgan Stanley or another principal underwriter submits separate bids on individual Contracts, the Trustees receive and document for each Contract bid for by Morgan Stanley or the other principal underwriter at least two bona fide bids from major broker dealers and/or financial institutions who are not affiliated persons or principal underwriters of the Trust or affiliated persons of a principal underwriter or affiliated person, and (b) if Morgan Stanley or another principal underwriter submits bids for all of the Contracts on an aggregate basis, the Trustees receive and document for all Contracts in the aggregate at least two bona fid bids from major broker dealers and/or financial institutions who are not affiliated persons or principal underwriters of the Trust or affiliated persons of a principal underwriter or affiliated person, and the Trustees determine that either the bid price on an individual Contract or the aggregate bid price, as the case may be, offered by Morgan Stanley or any other underwriter will maximize net proceeds to the Trust. In the event of a tie, the bidders would be permitted to submit one last bid. If there were still a tie following submission of the last bid, the Contracts in question would not be sold to Morgan Stanley or any other principal underwriter.

3. The Administrator, under the supervision of the Trustees, will maintain sufficient records to verify compliance with the conditions of the order. Such records will include the following: (a) The basis upon which the Trustees selected prospective bidders; (b) all bidders contacted; (c) all bidders to whom a bidding form was sent; (d) all bids received; (e) the bidder who was awarded the Contracts; (f) the winning bid prices; and (g) whether the bidders were principal underwriters of the Trust, affiliated persons of the Trust, or affiliated persons of a principal underwriters or affiliated person. All records will be maintained and preserved in the same manner as records required under Rule 31a–1(b)(1) of the Act.

4. Morgan Stanley's legal department, and the legal departments of any parties relying on this order, will prepare guidelines for personnel to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the order and that the parties generally maintain arm's length relationships.

5. The underwriting allocations will be determined at least one business day prior to the day the Trustees invite financial institutions to bid and will not in any way be based on participation in the bidding process.

6. Morgan Stanley, or any party relying on this order, will not have any involvement with respect to the Trustees' selection of prospective bidders or the bids accepted by the Trustees and will not attempt to influence or control in any way the sale of the Contracts to principal underwriters aside from placing its own bid for the Contracts.

7. The Trustees of each Trust, including a majority of noninterested Trustees, have or will have approved the Trust's participation in transactions conducted pursuant to the exemption and have or will have determined that such participation by the Trust is in the best interests of the Trust and its unitholders. The minutes of the meeting of the Board of Trustees at which this approval was or will be given reflect or will reflect in detail the reasons for the Trustee's determination.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18473 Filed 7–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21224; 811–7606]

MYA Tombstone Fund, Inc.; Notice of Application for Deregistration

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MYA Tombstone Fund, Inc. (formerly MuniYield Arizona Fund, Inc.).

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on June 1, 1995 and amended on July 14, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, (202) 942–0565, or C. David Messman, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public References Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company organized as a Maryland corporation. On June 15, 1993, applicant registered under section 8(a) of the Act. On this same date, applicant filed a registration statement under section 8(b) of the Act and the Securities Act of 1933, whereby it registered 2,472,000 shares of its common stock. One July 23, 1993, applicant filed a pre-effective amendment to its registration statement registering an additional 58,000 shares of common stock. The registration statement was declared effective on July 23, 1993, and applicant commenced its initial public offering on that date.

2. On and after August 5, 1993, applicant filed a registration statement and pre-effective amendments thereto (the "AMPS Registration Statement") whereby it registered 347 shares of its auction market preferred stock ("AMPS") with a liquidation preference of $50,000 per share and an aggregate liquidation preference of $17,350,000.[1] The AMPS Registration Statement, as amended, was declared effective on August 25, 1993, and applicant commenced its initial public offering on that date.

3. On June 17, 1994, applicant's Board of Directors approved a plan of reorganization whereby MuniYield Arizona Fund II, Inc. ("Arizona II") would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of Arizona II common stock and shares of Arizona II Auction Market Preferred Stock, Series B ("Arizona II AMPS"). Applicant's Board of Directors determined that the reorganization could benefit applicant's shareholders by achieving lower expenses per share of common stock, greater efficiency and flexibility in portfolio management, and a more liquid trading market.

4. In accordance with rule 17a-8 of the Act, applicant's Board of Directors determined that the sale of applicant's assets to Arizona II was in the best interest of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[2]

5. On October 6, 1994, Arizona II filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on January 4, 1995. On or about January 24, 1995, proxy materials were distributed to each of applicant's shareholders of record as of December 14, 1994. At a special meeting held on March 10, 1995, shareholders of applicant approved the reorganization, in accordance with Maryland law.

6. As of the close of business on March 24, 1995, applicant had outstanding 2,519,982 shares of common stock and 694 shares of AMPS. On that date, the net asset value of applicant's common stock was $12.72 per share and applicant's aggregate net asset value attributable to the common stock was $32,044,460. Also on that date, the liquidation preference per share of AMPS was $25,000, and the aggregate liquidation preference of the AMPS was $17,350,000.

7. Pursuant to the reorganization, on March 27, 1995, applicant transferred securities and cash valued at $49,394,460 to Arizona II and received in exchange 2,562,282 shares of Arizona II common stock and 694 shares of Arizona II AMPS. Each holder of applicant's common stock received the number of shares of Arizona II common stock received by applicant with a net asset value equal to the net asset value of applicant's common stock owned by such shareholder. Each holder of applicant's AMPS received the number of shares of Arizona II AMPS received by applicant with an aggregate liquidation preference equal to the aggregate liquidation preference of applicant's AMPS owned by such shareholder.

[1] The AMPS are shares of preferred stock sold principally at auction that entitle the holders thereof to receive dividends at a rate that may vary for successive dividend periods. On December 1, 1994, a 2-for-1 stock split of the AMPS was effected thereby increasing to 694 the number of shares of AMPS outstanding. Pursuant to the terms of the stock split, each of the 694 shares of AMPS has a liquidation preference of $25,000. The aggregate liquidation preference of the AMPS was unchanged by the stock split.

[2] Applicant and Arizona II may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

8. Applicant and Arizona II incurred approximately $219,139 in expenses in connection with the reorganization. These expenses included filing, legal, and audit fees, printing expenses, and portfolio transfer taxes (if any). All expenses of the applicant incurred in connection with the reorganization were borne by Arizona II. In addition, expenses incurred in connection with the deregistration, dissolution, and liquidation of applicant will be borne by Arizona II.

9. At the time of filing the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding up of its affairs.

10. On March 23, 1995, applicant filed Articles of Transfer with the Department of Assessments and Taxation of the State of Maryland. Applicant intends to file Articles of Dissolution with such office as soon as practical following its deregistration.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18474 Filed 7–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36002; File No. SR–Philadep–95–01]

Self-Regulatory Organizations; The Philadelphia Depository Trust Company; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change Relating to the Modification of Procedures To Implement Rule 17Ad–16

July 20, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 17, 1995, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by Philadep. Philadep filed amendments to the proposed rule change on March 7, 1995, and on April 11, 1995.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval to the proposed rule change through February 6, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep proposes to modify its procedures to implement the requirements of Commission Rule 17Ad–16.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 1, 1994, the Commission adopted Rule 17Ad–16[4] which requires a registered transfer agent to provide written notice to the "appropriate qualified registered securities depository."[5] when terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address.[6] The rule also requires the appropriate qualified registered securities depository that receives such a notice from a transfer agent to deliver within twenty-four hours a copy of such notice to all "qualified registered securities depositories" and each qualified registered securities depository that receives such a notice to notify its participants of such transfer agent change within twenty-four hours.

To foster a timely and efficient means of disseminating such notices, Philadep has requested that the Commission designate DTC as the appropriate qualified registered securities depository to receive such transfer agent notices on behalf of Philadep.[7] Philadep and DTC have agreed that such transfer agent notices will be forwarded by DTC to Philadep using facsimile transmissions on a daily basis. To assure complete and accurate records of such transmissions, Philadep upon receipt of the notice by DTC will verify a common control number used for record-keeping purposes. Philadep will forward notice of such transfer agent changes to its participants by hand delivery, facsimile transmission, electronic means, or as Philadep and its participants may mutually agree.

Philadep's computer system currently is not able to process information, including notices of transfer agent changes, concerning issues which are not eligible for deposit at Philadep. Therefore, in order to comply with Rule 17Ad–16 during the temporary approval period, Philadep participants which are members only of Philadep and not of any other securities depository[8] will be contacted by Philadep in order that they may elect to either accept or to waive receiving such transfer agent notices.[9] As Philadep performs its daily updating of its security masterfile to reflect transfer agent changes for issues that are depository eligible at Philadep, it will make transfer agent information for issues that are not depository eligible at Philadep available to participants that have elected to receive transfer agent notices from Philadep.

In accordance with the record retention requirements of Rule 17Ad–16(d)(3), Philadep will maintain the notices sent to it by DTC for a period of not less than two years with the first six months in an easily accessible place on Philadep's premises.

B. Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes Philadep's proposed rule change is consistent with the requirements of the Act, especially section 17A of the Act,[10] and the rules and regulations thereunder. Among other things, section 17A(b)(3)(A) requires that a clearing agency be organized and have the capacity to comply with the provisions of the Act and the rules and regulations thereunder. In its letter amendment dated April 11, 1995, Philadep requested that the Commission grant temporary approval of the proposed rule change. Between the February 6, 1995, implementation of Rule 17Ad–16 and August 6, 1995, Philadep will review the automation requirements and what system changes it must make in order for Philadep to fully comply with Rule 17Ad–16 with respect to transfer agent notices regarding issues which are not depository eligible at Philadep. After its review, Philadep will report to the Commission the results of its review and how it plans to fully comply with Rule 17Ad–16 on a permanent basis. Therefore, because the proposed rule change will allow Philadep to comply within the limits of its computer system with Commission Rules 17Ad–16, the Commission believes that the proposal is consistent with Philadep's obligation under section 17A.

Philadep also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. Because accelerated approval will permit Philadep to implement procedures enabling it to comply to the extent its computer system permits with requirements of Rule 17Ad–16 as soon as possible, the Commission finds good cause for approving the proposed rule change on an accelerated basis.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the File No. SR–Philadep–95–01 and should be submitted by August 17, 1995.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act that the proposed rule change (File No. SR–Philadep–95–01) is hereby approved on a temporary basis through February 6, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18423 Filed 7–26–95; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letters from Sharon S. Metzker, Staff Counsel, Philadep, to Ester Saverson, Special Counsel, Division of Market Regulation, Commission (March 7, 1995, and April 11, 1995).

[3] The Commission has modified the texts of the statement submitted by Philadep.

[4] 17 CFR 240.17Ad–16. Rule 17Ad–16 took effect on February 6, 1995.

[5] Rule 17Ad–16 defines "appropriate qualified registered securities depository" to mean the qualified registered securities depository that the Commission so designates by order or in the absence of such designation the qualified securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date. Rule 17Ad–16 defines "qualified registered securities depository" to mean a clearing agency registered under Section 17A of the Act that performs clearing agency functions and that has rules and procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives pursuant to Rule 17Ad–16. Philadep, The Depository Trust Company ("DTC"), and the Midwest Securities Trust Company ("MSTC") and the three qualified registered securities depositories.

[6] Securities Exchange Act Release No. 35039 (December 1, 1994), 59 FR 63456 (December 8, 1994) (order adopting Rule 17Ad–16).

[7] Securities Exchange Act Release No. 35378 (February 15, 1995), 60 FR 9875.

[8] A majority of Philadep participants are also members of DTC and/or MSTC and will receive notices of transfer agent changes from DTC and/or MSTC. Approximately twenty of Philadep's participants are members only of Philadep. Letter from Sharon Metzker, Esq., Philadep, to Ester Saverson, Special Counsel, Division of Market Regulation, Commission (March 7, 1995).

[9] Philadep has informed the Commission that all of its participants that are not members of any other securities depository have been contacted in writing and have made their election of whether to receive or to waive receipt of notices of transfer agent changes. Letter from Sharon Metzker, Staff Counsel, Philadep, to Ester Saverson, Special Counsel, Division of Market Regulation, Commission (April 11, 1995).

[10] 15 U.S.C. 78q–1 (1988).

[11] Telephone conversation between Don Vinnedge, Manager of the Trust Activity Program, Board of Governors of the Federal Reserve System, and Ester Saverson, Special Counsel, and Michele Bianco, Staff Attorney, Division, Commission (July 20, 1995). The Federal Reserve concurred with the Division's decision to accelerate approval.

[12] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: La Crosse County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed north-south transportation facility in the City of La Crosse, La Crosse County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene M. Hoelker, Construction and Materials Engineer, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin, 53705: Telephone: (608) 264–5944. You may also contact Ms. Carol Cutshall, Director, Office of Environmental Analysis, Wisconsin Department of Transportation, P.O. Box 7916, Madison, Wisconsin, 53707–7916: Telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare a combined Major Investment Study (MIS)/ Environmental Impact Statement (EIS) on a proposal to provide additional north-south transportation capacity in the La Crosse River Valley area between interstate 90 and South Avenue near 7th Street, a distance of about 6 miles. The proposal is being considered to address future transportation demand, to finalize the transportation component of the La Crosse River Valley Land Use Plan being prepared by the City of La Crosse, and to preserve land for a future transportation corridor. Alternatives under consideration include: (1) No build, (2) Transportation System Management (TSM) measures to improve traffic operations on existing highways, (3) expanding capacity and mass transit on existing highways, and (4) a new north-south highway link with mass transit and bicycle enhancements.

A strategic advisory committee comprised of Federal, State, and local agencies, environmental, business, and neighborhood representatives, has been established to provide input during data gathering, development and refinement of alternatives. A series of public meetings will be held in the project corridor to solicit comments from citizens and interest groups who have previously expressed, or are known to have interest in the proposal. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The MIS/Draft EIS will be available for public and agency review and comment prior to the public hearing. Agencies having an interest in, or jurisdiction regarding the proposed action will be contacted through interagency coordination meetings and mailings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the MIS/EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued July 21, 1995.

Eugene M. Hoelker,

Construction & Materials Engineer.

[FR Doc. 95–18497 Filed 7–26–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Mobile County, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Mobile County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117–2018, Telephone (334) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alabama Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to construct a multi-lane roadway from the intersection of Schillinger Road and Lott Road to U.S. Highway 45 in Mobile, Alabama. The length of the proposed roadway is approximately 8.5 kilometers (5.3 miles). The purpose of the proposed project is to provide a connecting link for north Mobile to Interstate Highway 65, U.S. Highway 90, and Interstate Highway 10. Alternatives under construction include: (1) Alternate route location, (2) taking no action, and (3) postponing the action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to the private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public involvement meeting and a public hearing will be held in the city of Mobile. Public Notice will be given of the time and place of the meeting and hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 95–18498 Filed 7–26–95; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Logan and Payne Counties, Oklahoma

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed highway project in Logan and Payne Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Mike Herron, Planning Team Leader, Federal Highway Administration, 715 South Metropolitan Avenue, Suite 700, Oklahoma City, Oklahoma 73108, telephone (405) 945–6011.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Oklahoma Department of Transportation will prepare an EIS for a proposal to improve SH–33 from the I–35/SH–33 interchange east approximately 60 kilometers (38 miles) to the western urban boundary of the City of Cushing, Logan and Payne Counties. Improvements to this segment of SH–33 are considered necessary to provide for projected traffic demand, enhance safety, and replace structurally deficient bridge structures.

The EIS will consider several alternatives, including: taking no action, reconstruction on existing alignment and construction on new alignment. The build alternatives will consider purchasing enough right-of-way to ultimately construct a four-lane facility but with an initial two-lane reconstruction or construction as recommended in the Statewide Intermodal Transportation Plan.

The EIS process will solicit input from all appropriate federal, state, and local agencies. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: July 17, 1995.

Mike Herron,

Planning Team Leader, Oklahoma City, Oklahoma.

[FR Doc. 95–18431 Filed 7–26–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Poly 1,4 butyleneterephthalate); Filing of Petition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, of a petition requesting that poly 1,4 butyleneterephthalate be added to the list of taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by September 25, 1995. Any modification of the list of taxable substances based upon this petition would be effective April 1, 1991.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on April 30, 1990. The petitioner is GE Plastics, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 3907.91.00
CAS number: 26062–94–2

Poly 1,4 butyleneterephthalate is derived from the taxable chemicals acetylene, methane, and xylene and is a solid produced predominantly by the melt polycondensation process.

The stoichiometric material consumption formula for this substance is: 176 C_2H_2 (acetylene)+702 CH_4 (methane)+175 C_8H_{10} (xylene)+352 H_2 (hydrogen)+701 O_2 (oxygen)+350 H_2O (water)+0.08 $Ti(OC_3H_7)_4$ (tetra iso-propyl titanate) ----> $HO(CH_2)_4O(C_6H_4O_2)_{175}(C_4H8O_2)_{175}$ (poly 1,4 butyleneterephthalate)+0.08 Ti (titanium)+0.32 C_3H_8O (isopropanol)+350 CH_3OH (methanol)+700 H_2O (water)+702 H_2 (hydrogen).

According to the petition, taxable chemicals constitute 53.8 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.92 per ton. This is based upon a conversion factor for acetylene of 0.1186, a conversion factor for methane of 0.2920, and a conversion factor for xylene of 0.4816.

Comments and Requests for a Public Hearing

Before a determination is made, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–18402 Filed 7–26–95; 8:45 am]

BILLING CODE 4830–01–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

NAFTA Dispute Settlement Proceeding Concerning Canadian Tariffs on Certain U.S. Agricultural Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the Free Trade Commission of the North American Free Trade Agreement (NAFTA), at the request of the United States, has established an arbitral panel to examine Canadian tariffs on several U.S. agricultural products, specifically poultry, eggs, and barley, products made from them and U.S. dairy products. USTR invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 16, 1995, in order to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Attn: Canadian Tariffs Dispute, Room 223, USTR, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, Office of the General Counsel, USTR, 600 17th Street, NW, Washington, DC 20508, (202) 395–7305.

SUPPLEMENTARY INFORMATION: As part of the Agreement Establishing the World Trade Organization, the Government of Canada committed to convert to "tariff-rate quotas" (TRQs) the quotas and other non-tariff barriers that it maintained on imports of certain agricultural goods. These tariff-rate quotas result in significant increases in the duty rates Canada applies to these agricultural goods. Canada is, or will be, applying these higher tariffs to imports of several U.S. agricultural products, specifically poultry, eggs, and barley, on products made from them, and on U.S. dairy products.

The United States has asked for the establishment of an arbitral panel under the NAFTA to review whether Canada may apply these higher tariff rates consistent with Canada's NAFTA obligations. NAFTA Article 302 requires Canada to apply tariff rates that are lower than those that Canada is applying or will apply through the application of tariff-rate quotas to these goods.

Members of the panel are currently being selected, and the panel is expected to meet as necessary in Ottawa, Canada to examine the dispute. The panel is expected to issue its final report detailing its findings and recommendations within five months after the last panelist is selected.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute.

The provisions of 15 CFR 2006.13 (a) and (c) (providing that comments received will be open to public inspection) and 2006.15 will apply to comments received. Comments must be in English and provided in fifteen copies. Pursuant to 15 CFR 2006.15, confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page.

USTR will maintain a public file on this dispute settlement proceeding, which will include a list of comments received, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington DC. An appointment to review the docket (Docket NAFTA/D–1, "Canada—Agricultural Tariffs"), may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public by appointment only from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Jennifer Hillman,

General Counsel.

[FR Doc. 95–18477 Filed 7–26–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 144
Thursday, July 27, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

RURAL TELEPHONE BANK, USDA

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, August 10, 1995.

PLACE: Room 5066, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving privatization planning; Class C stock dividend rate for fiscal year 1995; proposed amendments to the bylaws regarding Bank Board election procedures; and update on the RUS telecommunications loan program.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 10 a.m., Friday, August 11, 1995.

PLACE: Williamsburg Room, Administration Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Swearing in new Board member.
3. Approval of Minutes of the May 9, 1995, Board meeting.
4. Report on loans approved in the third quarter of FY 1995.
5. Review third quarter financial statements for FY 1995.
6. Report of ad hoc committee on privatization of the RTB.
7. Consideration of resolution to adopt bylaw amendments modifying the Board's election procedures.
8. Consideration of resolution to set annual Class C stock dividend rate.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720-0530.

Dated: July 24, 1995.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 95-18594 Filed 7-25-95; 12:26 pm]

BILLING CODE 3410-15-P

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 1, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g., § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, August 2, 1995 at 10: a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Regulations:

Draft Final Rules and Accompanying Explanation and Justification on Amendments to the Communications Disclaimer Requirements (11 CFR 110.11).

DATE AND TIME: Thursday, August 3, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Bush/Quayle—'92 Statement of Reasons (Primary and General) (LRA #425).

Fulani for President Notice of Initial Repayment Determination (LRA #451).

Advisory Opinion 1995-25: David A. Norcross, General Counsel, Republican National Committee.

Regulations:

Draft Final Rules and Accompanying Explanation and Justification on Amendments to the Communications Disclaimer Requirements (11 CFR 110.11).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95-18639 Filed 7-25-95; 3:19 pm]

BILLING CODE 6715-01-M

federal register

Thursday
July 27, 1995

Part II

Department of Education

34 CFR Part 371

Vocational Rehabilitation Service Projects for American Indians With Disabilities; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 371

RIN 1820–AB32

Vocational Rehabilitation Service Projects for American Indians With Disabilities

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Vocational Rehabilitation Service Projects for American Indians with Disabilities program authorized under Title I, Part D, section 130 of the Rehabilitation Act of 1973, as amended (Act). Proposed changes are needed to implement section 130(b)(3) of the Act to provide greater funding continuity for tribal projects that are performing effectively by extending the normal 36-month project period for up to 24 additional months. Proposed changes are also needed to conform the purpose and outcome of the program, consistent with section 100(a)(2) of the Act as revised by the 1992 Amendments, from placement in suitable employment to placement in gainful employment consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The Secretary also invites public comment on whether other changes to existing program regulations are needed in order to clarify program requirements, reduce grantee burden, and increase program effectiveness and flexibility.

DATES: Comments must be received on or before September 11, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fredric K. Schroeder, Commissioner, Rehabilitation Services Administration, U.S. Department of Education, 600 Independence Avenue, SW., Room 3028, Mary E. Switzer Building, Washington, DC 20202–2531. Comments may also be sent through the internet to "American___Indians@ed.gov".

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Barbara M. Sweeney, U.S. Department of Education, 600 Independence Avenue, SW., Room 3225 Mary E. Switzer Building, Washington, DC 20202–2575. Telephone: (202) 205–9544. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations would, in part, implement section 130(b)(3) of the Act, which authorizes the Secretary to prescribe regulations that would extend the project period for certain tribal projects beyond the maximum 36 months specified in the Act. The Secretary proposes to grant, on a case-by-case basis, extensions of up to 24 months to tribal projects that meet the requirements to be established in a new § 371.5. In order to receive an extension of its project period, a tribal grantee must submit a written request for extension that contains an assurance of compliance with all program requirements and that provides satisfactory evidence that there is a continuing need for the project and that the project has been effective in meeting the rehabilitation needs of the American Indians it has served, including achieving employment outcomes that are consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

In addition, the Secretary is particularly interested in whether other changes are needed in existing program regulations in order to clarify requirements, reduce grantee burden, and increase program flexibility and effectiveness. For example, § 371.21 of the current regulations requires Indian tribes to provide evidence in their applications for grant assistance that they will comply, in carrying out their tribal projects, with certain State Vocational Rehabilitation (VR) Services Program requirements. These requirements include developing individualized written rehabilitation programs for each individual receiving services, providing an opportunity for dissatisfied service recipients to file grievances under procedures that are comparable to the fair hearing procedures required of State VR agencies, establishing minimum standards for providers of services comparable to those used by State VR agencies, and making an effort to provide a broad scope of VR services in a manner and at a level of quality comparable to the services provided by State VR agencies. Do these application requirements need to be clarified or revised in light of the changes made to the State VR Services Program by the 1992 Amendments to the Act (for example, by requiring individual choice in the selection of VR services, goals, and providers) or because these requirements may be burdensome or unfeasible for a tribal VR project, especially a developing one? In what ways should tribal projects be comparable to VR programs administered by State VR agencies, other than providing comparable rehabilitation services to the extent feasible as required by section 130(b)(1)(B) of the Act? Should Federal regulations establish additional comparability requirements or should tribal applicants be given the flexibility in their funding proposals to describe how their projects would or would not be comparable and the reasons therefor?

The Secretary also is interested in whether revisions are needed to the selection criteria for this program in § 371.30 in order to better evaluate applications for funding.

The program supports the National Education Goal that every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12866

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 371.5 What is the length of the project period under this program?) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (Room 5121, FB–10B), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only Indian tribes and consortia of Indian tribes located on Federal or State reservations, the regulations would not have an impact on small entities. Indian tribes and consortia of Indian tribes are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 371.5 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

The governing bodies of Indian tribes and consortia of these governing bodies located on Federal and State reservations are eligible to apply for grants under these regulations. The Department needs and will use the information to give extensions of grants in which the original project period is ending. Annual public reporting burden for this collection of information is estimated to average 10 hours per response for around an average of 10 respondents each year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Laura Oliven.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3214 Switzer Building, 330 C Street, S.W., Washington D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 371

Education, Grant programs—education, Vocational rehabilitation.

Dated: July 19, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number: 84.250 Vocational Rehabilitation Service Projects for American Indians with Disabilities)

The Secretary proposes to amend part 371 of title 34 of the Code of Federal Regulations as follows:

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

1. The authority citation for part 371 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

2. Section 371.1 is revised to read as follows:

§ 371.1 What is the Vocational Rehabilitation Services Program for American Indians with Disabilities?

This program is designed to provide vocational rehabilitation services to American Indians with disabilities who reside on Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Secs. 100(a)(2) and 130(a) of the Act; 29 U.S.C. 720(a)(2) and 750(a))

3. A new § 371.5 is added to subpart A to read as follows:

§ 371.5 What is the length of the project period under this program?

(a) The Secretary approves a project period of up to three years.

(b) The Secretary may extend a grant for up to two additional years if the grantee includes in its extension request—

(1) An assurance that the project is in compliance with all applicable program requirements; and

(2) Satisfactory evidence that—

(i) The project has made substantial and measurable progress in meeting the needs of American Indians with disabilities on the reservation or reservations it serves;

(ii) American Indians with disabilities who have received project services have achieved employment outcomes consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice; and

(iii) There is a continuing need for the project.

(Authority: Section 130(b)(3) of the Act; 29 U.S.C. 750(b)(3))

[FR Doc. 95–18422 Filed 7–26–95; 8:45 am]

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federal register

Thursday
July 27, 1995

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 5 et al.
Civil Money Penalties: Biologics, Drugs, and Medical Devices; Rule

Statement of Organization, Functions, and Delegations of Authority; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 10, 17, and 20

[Docket No. 91N–0447]

RIN 0905–AD59

Civil Money Penalties: Biologics, Drugs, and Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final regulations to establish hearing procedures for use when FDA proposes the imposition of administrative civil money penalties. This rule implements the civil money penalty provisions of several statutes: the National Childhood Vaccine Injury Act of 1986 (NCVIA), the Prescription Drug Marketing Act of 1988 (PDMA), the Safe Medical Devices Act of 1990 (SMDA), the Generic Drug Enforcement Act of 1992 (GDEA), and the Mammography Quality Standards Act of 1992 (MQSA).

EFFECTIVE DATE: August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 26, 1993 (58 FR 30680), FDA issued a notice of proposed rulemaking (NPRM) to establish procedures for hearings concerning the administrative imposition of civil money penalties by the agency. The NPRM noted that Congress had in recent years given FDA authority to impose civil money penalties in the NCVIA, the PDMA, the SMDA, and the GDEA. FDA requested that comments be filed by July 26, 1993.

Subsequently, a trade association requested an extension of time to file comments, and, in the **Federal Register** of July 27, 1993 (58 FR 40103), the agency extended the deadline for comments to August 25, 1993. In the July 27, 1993, **Federal Register**, FDA corrected an inadvertent error in the proposed rule and added a reference to civil money penalties authority provided for in the MQSA. The MQSA was added to the list of statutes covered by proposed part 17 insofar as the MQSA provided for the administrative imposition of civil money penalties.

Also, as an interim measure pending adoption of proposed part 17, FDA issued a regulation in the **Federal Register** of September 22, 1993 (58 FR 49190), under which it could temporarily conduct civil money penalties hearings pursuant to part 12 (21 CFR part 12). FDA is now revoking procedural regulations that it issued as a temporary measure pending adoption of part 17. This revocation will be effective when these part 17 regulations become effective. Specifically, § 5.99 (21 CFR 5.99) (as published at 58 FR 34212, June 24, 1993) and § 10.50(c)(21) (21 CFR 10.50(c)(21)) (as published at 58 FR 49190) were issued to allow FDA to use part 12 for civil money penalties proceedings on an interim basis. Because this delegation is no longer needed and because retention of these provisions in the Code of Federal Regulations would be confusing, FDA is revoking §§ 5.99 and 10.50(c)(21) when the new part 17 becomes effective.

As to any pending civil money penalty administrative actions that were subject to Notices of Opportunity for Hearing under part 12, when these part 17 regulations become effective, FDA will send letters to the respondents explaining that the agency intends to reinitiate the actions by the complaint and answer process of part 17. None of the pending actions has yet reached the point in the process of publication of a Notice of Hearing under 21 CFR 12.35. Since part 17 was specifically drafted to govern administrative hearings on civil money penalty assessments, its use for pending actions will not prejudice the respondents and will assure consistency in the adjudication of these matters. If, for any reason, there is a stay of the effectiveness of these part 17 regulations, the agency will proceed with the pending civil money penalty administrative actions under current 21 CFR 5.99, 10.50(c)(21), and part 12.

II. Summary of and Response to Comments

In response to FDA's NPRM, the agency received 12 public comments. Most came from device manufacturers or their representatives and device manufacturer trade associations. In addition, one consumer group and the Administrative Conference of the United States commented. What follows is a summary of and response to each comment. Most of those commenting made more than one comment. Except for those comments that are not germane to a particular proposed section of part 17, the comments are considered in connection with the proposed sections to which they are related. In addition to the changes discussed below, a number of editorial changes to the text of the final rule have been made to improve the clarity of the regulation.

A. General Comments on the Preamble

In responding to comments and formulating a final rule, FDA has balanced competing concerns: Namely, the interests of potential defendants in securing as many procedural safeguards as practicable, and the interests of the public in an efficient process that effectively implements the statutes. FDA is very conscious of the need to provide due process for companies and individuals from whom the Government is seeking civil money penalties, and the comments were carefully evaluated against this standard. At the same time, for the civil money penalty remedy to become an effective enforcement tool under the statute, the administrative process must be able to proceed with predictability and efficiency. The industry, as a whole, benefits from an efficient administrative civil penalties process in that such a system will help to maintain consistency in enforcement and thereby protect the majority of companies who stay in compliance against unfair competition from the small minority of firms that do not.

Accordingly, in developing this final rule, FDA has sought to establish an efficient, predictable system that processes cases in a fair and responsible manner, while affording defendants adequate procedural safeguards. As benchmarks, the agency has examined other existing civil money penalty processes, particularly as administered by the Environmental Protection Agency (EPA) and by the Inspector General of the Department of Health and Human Services (HHS). (See HHS regulation on Medicare Exclusions and Civil Money Penalties, 42 CFR part 1005; EPA Civil Penalties and Permit Revocation Regulation, 40 CFR part 22; Program Fraud Civil Remedies Regulation for HHS, 45 CFR part 79; and Program Fraud Civil Remedies Regulation for EPA, 40 CFR part 27).

These regulations provide a variety of procedural rights. FDA has selected from among these various provisions to create a fair hearing process. In response to comments, FDA has made over 25 changes in the final rule (see concluding section of this preamble), in addition to numerous clarifications throughout the preamble. For example, procedural safeguards under part 17 include motions for summary decisions, interlocutory appeal from rulings of the presiding officer, settlement conferences, allowing the parties to determine an appropriate settlement, and providing additional time before the

hearing for the exchange of exhibits, witness lists, and written testimony. All of the EPA and HHS regulations provide for appeal of a presiding officer's initial decision to an appeals board. EPA has an Environmental Appeals Board, while HHS has the Departmental Appeals Board (DAB). FDA has determined (see paragraph 101 below) that it would be an appropriate use of agency resources, as well as an efficient and effective means for handling appeals, to have the DAB serve as the reviewing authority for appeals of decisions by presiding officers on civil penalty actions.

The DAB is generally recognized as a fair and effective adjudicative forum. The DAB is an independent body within HHS with expertise in adjudication of civil money penalties. Accordingly, FDA will use that board, at least initially, for the adjudication of all appeals, including review of default judgments, interlocutory appeals, and appeals from initial decisions under this part. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule in which the Commissioner of Food and Drugs delegates to the DAB the authority for the adjudication of appeals.

While a number of comments to the proposed rule sought procedures virtually identical to procedural rights available in civil litigation in Federal district courts, another comment urged that FDA use a more efficient complaint and answer procedure to streamline the process. These part 17 regulations provide a level of procedural safeguards consistent with that provided in other existing civil money penalties regulations. FDA believes that these procedures afford a respondent an impartial forum for the adjudication of any contested civil money penalty assessments.

1. Two comments questioned the use of administrative civil money penalties in connection with the PDMA and the NCVIA. Those commenting argued that, without specific congressional authority, FDA may not administratively impose civil money penalties, but must seek them through court proceedings. Additionally, another comment argued that FDA may not bind any future statutory grant of civil money penalties authority to part 17 hearing procedures.

FDA disagrees with the position that civil money penalties in connection with the PDMA and the NCVIA may not be imposed administratively, for the reasons stated in the preamble to the NPRM (58 FR 30680 through 30681). FDA acknowledges that the issue has not been directly addressed by the courts, but it agrees with the comment of the Administrative Conference of the United States that "any challenge to FDA's authority to impose penalties administratively under such statutes (as the NCVIA) should be unsuccessful, *cf.*, *United States* v. *International Harvester*, 387 F. Supp. 1338 (D.D.C. 1974)."

As to implementation of any future civil money penalty statutory provision, FDA has reconsidered the desirability of determining in advance the use of part 17 procedures. Although the use of part 17 procedures to implement future civil money penalty legislation may be entirely appropriate, the agency prefers to preserve the flexibility to determine the procedures that will apply to specific statutory language once enacted. Section 17.1 has been modified to reflect this change.

2. One comment raised the concern that FDA has thus far not been delegated authority to impose civil money penalties by the Secretary of Health and Human Services (the Secretary). The comment's premise is incorrect. The Secretary has delegated to the Commissioner of Food and Drugs (the Commissioner) all authority given the Secretary under the Federal Food, Drug, and Cosmetic Act (the act). (See § 5.10(a)(1).) (See also section 903 of the act (21 U.S.C. 393).) In addition, the Secretary has delegated to the Commissioner authority to perform all functions vested in the Secretary by Congress under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262) concerning biologic recall orders. (See 5 CFR 5.10(a)(5).) The Secretary has granted the Commissioner authority to impose civil money penalties under the NCVIA. (See § 5.10(a)(35).) Also the Secretary delegated to the Commissioner authority granted the Secretary under the MQSA, which includes authority to impose civil money penalties. (See 21 CFR 5.10(a)(36).)

3. One comment requested FDA to correct its misquoting in the NPRM regarding the language of section 17(f) of the SMDA (21 U.S.C. 333(g)) by using "and" when the statute provided "or".

The preamble to the NPRM stated (58 FR 30680 at 30681) that "civil money penalties are not authorized against persons who violate section 519(a) of the act (21 U.S.C. 360i(a)) * * * or section 520(f) of the act (21 U.S.C. 360j(f)) * * * unless the violation constitutes a significant *and* knowing departure from such requirements or a risk to the public health." [emphasis added.] In the July 27, 1993, **Federal Register** (58 FR 40103 through 40104), FDA corrected its inadvertent misquote. Section 17(f) of the SMDA (21 U.S.C. 333(g)(1)(B)) states that civil money penalties shall not apply to any person who violates the requirements of section 519(a) or 520(f) "* * * unless such violation constitutes (I) a significant *or* knowing departure from such requirements, or (II) a risk to public health * * *." [emphasis added]

Conversely, another comment argued that FDA had been inadvertently correct and that the legislative history shows that Congress had actually intended that the violations in question constitute significant *and* knowing departures in order to be punishable by civil money penalties. FDA rejects this argument because Congress' intent is clear from the language of the statute. The legislative history contained in the Conference Report on the SMDA also supports FDA's interpretation (H. Conf. Rept. 959, 101st Cong., 2d Sess. 29 (1990)).

4. Another comment stated that FDA should make clear that civil money penalties are in addition to other remedies available under law, not in lieu of them. FDA agrees that the agency has the authority to use civil money penalties in addition to other judicial and administrative remedies, if appropriate.

5. One comment asserted that violations of medical device reporting, current good manufacturing practice (CGMP), and tracking regulations should be enforced through civil money penalties. FDA agrees that these violations, as well as others, are suitable candidates for civil money penalty actions where authorized by the SMDA. FDA does not intend to rule out the use of civil money penalties in any situation provided for by law. Nor does FDA believe that civil money penalties need be the only remedy it may use to enforce these violations.

6. A comment urged the use of civil money penalties in lieu of warning letters for serious violations of law. FDA advises that its normal practice is to give prior notice by a warning letter or other means before taking more significant enforcement action. However, in the case of very serious violations or other special circumstances, the agency can and will continue to initiate judicial enforcement actions, as may be appropriate with or without the customary prior notice. Civil money penalties were not intended to take the place of warning letters; rather, civil money penalties were intended to assist the agency in safeguarding the regulatory system.

On April 21, 1995, President Clinton directed agencies to use discretion to modify penalties for small businesses. FDA's traditional approach, by which the agency usually provides written

warning to encourage voluntary correction of violations before undertaking the imposition of regulatory sanctions, is in keeping with the President's directive. Also, as discussed in paragraph 25, in addition to establishing the respondent's liability, FDA must prove the appropriateness of the penalty under the applicable statute in administrative civil money penalty actions.

7. One comment requested that the agency set forth specific examples of what will constitute substantial compliance with device tracking regulations such as assigning a percentage of trackable devices that would constitute "substantial compliance." Until FDA has gathered more information on how and to what extent industry has complied with the device tracking regulations, it would be premature for the agency to present such specific, defining examples. FDA declines to do this at this time.

8. Yet another comment proposed that all civil money penalty proposals be cleared through the Department of Health and Human Services prior to implementation. Because the Commissioner of Food and Drugs has been delegated authority to impose civil money penalties as noted in comment 2 of section II.A. of this document, the agency declines to adopt the comment's suggestion. However, as previously noted in the preamble and in paragraph 101 below, FDA has selected the DAB, at least initially, as the reviewing authority for appeals of civil penalty matters. Thus, the DAB's decision will constitute final agency action on contested FDA civil money penalties matters.

9. Several comments noted the absence of any prohibition against ex parte communications with the presiding officer. FDA agrees that restrictions on communications with the presiding officer concerning matters involved in part 17 hearings would be appropriate. Therefore, the agency has added § 17.20 to provide restrictions on ex parte communications.

10. Another comment requested that FDA specifically state that its part 17 regulation does not provide for a private right of action. FDA advises that only Congress can create a private right of action. FDA's regulations are not intended to create such a right.

11. One comment requested that FDA make explicit the authority of the parties and of the presiding officer to use alternative dispute resolution (ADR) in resolving a dispute under part 17. FDA agrees that settlement discussions should be encouraged. Therefore, the presiding officer has been given authority to require the parties to attend settlement conferences, which could include a conference held before an impartial third party, including the presiding officer, another administrative law judge, or a professional mediator. This change is reflected in revised § 17.19, and the agency believes it is a sufficient authorization for the use of ADR procedures.

12. The same comment suggested that FDA clarify whether an appeal to the Commissioner after an initial decision is required before a respondent may seek judicial review. The comment noted that in *Darby* v. *Cisneros*, 113 S.Ct. 2539 (1993), the Supreme Court determined that agency regulations that permit, but do not require, an aggrieved party to seek administrative review of a presiding officer's decision, allow parties to forego the option of administrative review and proceed directly to court. The comment stated a preference for requiring that a party seek administrative review of a presiding officer's decision before going to court, asserting that to be a sensible allocation of responsibilities between courts and agencies. FDA agrees and accepts the suggestion that FDA recast the regulation to ensure that a respondent must request administrative review, which is now made to the DAB, before seeking judicial review. Section 17.51(c) has been revised accordingly.

13. One comment criticized the proposal on grounds that the new part 17 will limit respondents' ability to reasonably contest the agency's allegations, but did not provide specifics to support the assertion. Absent any specific concerns raised by the comment, FDA can only reiterate that the agency believes these procedures reasonably accord due process and offer respondents a fair opportunity to contest the Center's allegations before an impartial presiding officer.

14. One comment took issue with that portion of the preamble of the NPRM which establishes FDA headquarters in Rockville, MD, as the "venue of choice for hearing procedures." The author of the comment urged that hearings take place in the FDA district office in whose jurisdiction the violations are alleged to have occurred. The author further argued that the burden of proof for change of venue from the districts where the alleged violations occurred should rest with the Center rather than the respondent. FDA believes this comment would be more persuasive if the presiding officer were an FDA official from the pertinent district office. However, since the administrative law judge's principal office is in Rockville, MD, and other types of administrative hearings are held there (e.g., hearings under part 12 of FDA's procedural regulations), Rockville, MD, is the most logical and appropriate venue in most cases. FDA notes that the presiding officer has ample discretion to change the venue of the hearing when the Rockville location would present a significant hardship to the respondent.

15. Another comment recommended that FDA establish an internal procedure such as an intra-agency council of senior compliance officials and representatives from the Office of the Chief Counsel to assure the fair exercise of prosecutorial discretion in choosing which civil penalty cases to bring and how large a penalty to seek.

FDA agrees that it is important to exercise enforcement discretion in a fair and reasonable manner. Due to the newness of the civil penalties authority and the lack of FDA precedents in this area, the Office of Regulatory Affairs, Office of Enforcement, will establish coordinating procedures to help assure consistent policies in exercising civil money penalties authority agencywide. This will augment FDA's existing multilevel process that reviews all compliance actions proposed by the field and Centers, including civil money penalties, and which includes review by the Office of the Chief Counsel. If FDA determines that additional review procedures are appropriate after further experience assessing civil money penalties, it can establish those as a matter of internal agency procedure and not regulation.

B. Comments on Specific Sections

Section 17.3—Definitions

16. One comment noted that proposed § 17.3 defined several terms including "defective," "knowing departure," "significant departure," and "minor violations," used in the SMDA, but that the defined terms were not used elsewhere in the proposed rule and, therefore, were unnecessary. The comment urged that it should be made clear that the purpose of the definitions section is to define certain terms used in the SMDA, not terms used in 21 CFR part 17.

FDA agrees that the final rule should clarify that these defined terms apply to specific acts giving rise to civil money penalties, and has revised § 17.3 to reflect these changes. The agency has also modified the definition of "person" or "respondent" in § 17.3(b) to provide additional examples of potential respondents. Finally, FDA has included by reference in § 17.3 definitions from the act, Title 21, Code of Federal Regulations, and the PHS Act as they may be used in part 17 proceedings.

17. Another comment took issue with FDA's interpretation of the phrase "significant departure" as that term is used at 21 U.S.C. 333(g)(1)(B)(i), which applies to certain recordkeeping and reporting requirements for devices (21 U.S.C. 360i(a)) and to CGMP requirements for devices (21 U.S.C. 360j(f)). Proposed § 17.3(c), which is now § 17.3(a)(1), defined significant departure as a "departure from requirements which is neither isolated nor inconsequential." The comment contended that this definition is likely to be met more often than not in the case of CGMP violations. The comment further argued that this result was contrary to the intent of Congress.

FDA notes that the comment cited no statutory language or legislative history regarding the definition of "significant departure," although a review of the conference report (H.R. Conf. Rep. No. 959, 101st Cong., 2d Sess. 29 (1990)) indicates that Congress did not limit a "significant departure" as the comment advocated. FDA believes, however, that the proposed definition could be improved to state that a significant departure includes a single major incident or a series of incidents that collectively are consequential. Section 17.3 has been amended to reflect this interpretation and to clarify that "significant departure" is being defined for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(i).

The agency emphasizes that it will not seek assessments of civil money penalties for trivial violations. FDA cannot list all violations that it regards as "inconsequential," and believes that it can and will make reasonable judgments about the importance of violations.

18. One comment requested that the definition of "knowing departure" be revised. The author would have "knowing" limited to actual knowledge. FDA's proposed definition stated that "knowing departure means actual knowledge of departure from requirements, or acting in deliberate ignorance of such departure, or acting in reckless disregard of such departure." FDA disagrees with the comment. Part 17 defines "knowing" consistently with the definitions of "knowingly" or "knew" in the act as amended by the GDEA in 1992 (now 21 U.S.C. 321(bb)). Nothing in the SMDA or its legislative history suggests that the definition of "knowing" in 21 U.S.C. 333(g)(1)(B)(i) was intended to be more restrictive than the definitions of "knowingly" or "knew" that were added to the act by the GDEA in 1992. FDA has revised the definition of "knowing" to clarify that it is being defined for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(i).

19. Another comment maintained that the specific acts giving rise to civil money penalties are defined much too broadly. For example the author of the comment maintained that "minor violations" is too broadly defined. In proposed § 17.3, the term "minor violations" was defined as "violations which are isolated and inconsequential."

The term "minor violations," as used in 21 U.S.C. 333(g)(1)(B)(ii), prohibits the assessment of civil money penalties for minor violations against a person who demonstrates substantial compliance with the requirements of 21 U.S.C. 360i(e) and (f), which relate to device tracking and correction reports. FDA believes that the term "minor violations" was used by Congress to prohibit the assessment of civil penalties when a departure from requirements does not rise to a level of single major incident or a series of incidents that are collectively consequential. FDA has revised the final rule (§ 17.3(a)(3)) accordingly and has clarified that "minor violations" is being defined for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(ii). FDA notes that this definition of "minor violation" is the converse of that adopted for significant departure as used in 21 U.S.C. 333(g)(1)(B).

20. FDA received several comments on the definition of "defective." As proposed, § 17.3(a)(4) defined defective to include "any defect in performance, manufacture, construction, components, materials, specifications, design, installation, maintenance, service, or any defect in mechanical, physical and chemical properties in a device." The comments expressed concern about possible broad implications of the proposed definition. In the final rule, FDA has generally retained the proposed definition but clarified that it is included in the defined terms solely for the purpose of interpreting 21 U.S.C. 333(g)(1)(B)(iii), which pertains to the very narrow area of devices that may be prepared, packed or held under insanitary conditions.

One comment argued that the inclusion of "performance" in the definition of "defective" is overly broad because it includes potential user error in the operation of the device. The comment suggested "performance" should be eliminated from the definition.

The intent of 21 U.S.C. 333(g)(1)(B)(iii) was to exempt, from potential assessment of civil penalties, those violations that may result from preparing, packing, or holding devices under insanitary conditions but that do not involve "defective" devices.

FDA agrees that performance failures based solely on user error unrelated to the conditions stated in 21 U.S.C. 351(a)(2)(A) or unrelated to problems with the device itself would not be considered a "defect in performance" of the device. The agency has revised the definition to make it clearer that "defect in performance" refers to "defect in performance of a device," not to defect in performance of a user.

21. The same comment also recommended that the definition of "defective" in § 17.3 be amended to add the following statement: "Defective service and maintenance are included within the scope of this definition only to the extent that such defects are the result of negligence."

FDA does not believe that a different standard should be applied to service and maintenance than to other activities covered by the definition, such as manufacture and construction. Therefore, the agency is not adopting the suggested amendment to the definition. FDA notes that it does not envision minor deviations from established maintenance or service schedules as being the basis for a civil money penalty action. FDA has clarified the definition of "defective" to substitute "or" for "and" in the phrase "any defect in the mechanical, physical, or chemical properties of a device," since a defect in any one of these properties would cause the device to be "defective."

22. Another comment requested that the definition of "defective" for purposes of civil money penalty actions incorporate the concept that a device is defective only if the device could reasonably be expected to pose a risk of some harm or not to function as intended because of the defect.

FDA disagrees. FDA will not seek civil money penalties because of trivial defects. However, defects are deviations that can affect the quality or performance characteristics of a device. To require a showing that the deviation is expected to cause harm or malfunction would shift the standard to allow more deviations and to provide less public health protection. The civil money penalty remedy is intended to promote the public health and the adopted definition of "defective" for purposes of 21 U.S.C. 333(g)(1)(B)(iii) supports this goal.

Section 17.5—Complaint

23. A comment remarked that § 17.5 does not contain any safeguards to ensure that FDA will only bring actions

in those instances where it believes in good faith after properly conducting an investigation that violations have occurred sufficient to warrant civil money penalties. The comment did not identify what those safeguards should be. Although FDA declines to change § 17.5, as the answer to comment 15 makes clear, FDA's review process for assessing civil money penalties should ensure that the agency will bring such actions only under the circumstances stated in the comment.

24. One comment argued that a complaint should specify "all facts" on which FDA is relying. FDA believes that the requirement regarding the contents of the complaint filed under part 17, as proposed, is consistent with other civil processes. For example, a complaint filed under Rule 8(a) of the "Federal Rules of Civil Procedure," requires only "* * * (2) a short and plain statement of the claim showing that the pleader is entitled to relief * * *." The requirements for a complaint are also consistent with the previously cited EPA and HHS Program Fraud Civil Remedies regulations.

FDA intends to file complaints that provide a reasonable description in sufficient detail for a respondent to have a fair understanding of the bases for the action. Moreover, the regulations requiring production of documents (§ 17.23) and exchanges of witness statements and exhibits (§ 17.25) provide for detailed presentations of factual information.

25. The same comment argued that the complaint should justify the amount of civil penalties being sought in accordance with factors identified in § 17.34. Again, FDA believes that a complaint filed under part 17 satisfies the requirements of notice pleading.

FDA recognizes that under the Administrative Procedure Act (APA) (5 U.S.C. 556(d)), as interpreted by the Supreme Court in *Director, OWCP* v. *Greenwich Collieries*, 114 S. Ct. 2251, 2257 (1994), the agency has the burden of proof on the respondent's liability and on the appropriateness of the penalty in light of the factors specified in the statute to be taken into account in determining the penalty. However, the proof that is required by the APA and specified in § 17.33(b) is to be presented by the Center at the time of the hearing, not, as the comment suggests, in the complaint. In order to clarify that the burden of proof referenced in the APA requires the Center to prove the respondent's liability and the appropriateness of the penalty under the applicable statute, § 17.33(b) has been revised to state that "in order to prevail, the Center must prove respondent's liability and the appropriateness of the penalty under the applicable statute by a preponderance of the evidence."

26. This same comment called for "the intervention of [an] impartial, non-investigating party regarding whether an administrative complaint is sustainable." FDA believes that part 17 already provides for such an "impartial non-investigating party" in the form of a presiding officer, who is an administrative law judge qualified under 5 U.S.C. 3105.

27. Another comment objected that the regulation does not provide for a separation of investigatory and adjudicatory functions and stated that civil money penalty proceedings should be among those hearings to which separation of functions applies. FDA has added § 17.20 to provide restrictions on ex parte communications with the presiding officer. Since the DAB will be adjudicating appeals in civil money penalties proceedings, there is no need to adopt separation-of-functions rules in these proceedings.

28. Yet another comment complained that § 17.5(a) fails to identify anyone in FDA management who must approve the decision to impose a civil money penalty. Further, the author of the comment stated a belief that an initial determination of whether or not civil money penalties should be imposed should be made prior to the service of a complaint.

FDA advises that such an initial determination is in fact made. As described in paragraph 15, FDA has an established review procedure for enforcement cases, and that process will have added coordination for civil money penalties cases due to the newness of the authority and the lack of FDA precedents. However, since this is an institutional decision, it is not appropriate to designate a single individual as the agency's decisionmaker.

29. Yet another comment argued that notice pleading such as that provided for in § 17.5(b)(1) is inappropriate in light of the limited discovery provided for under these regulations. The comment called for either a more detailed notice in the complaint or greater discovery.

As discussed in paragraphs 24 and 61, FDA believes expanded discovery and pleading are not necessary. FDA intends to file complaints that provide a reasonable description in sufficient detail for respondents to have a fair understanding of the bases for the action.

30. One comment requested that FDA first put a respondent on notice via a warning letter before it files a claim for civil money penalties. FDA advises that as with FDA's judicial enforcement remedies, it will normally give prior notice by a warning letter or other means, although there may be exceptional circumstances where no prior warning would be given.

Section 17.7—Service of Complaint

31. One comment stated that an affidavit as proof of service should suffice only when service is made by personal delivery. FDA agrees that an affidavit is most appropriate when service is made by personal delivery, and has amended § 17.7(b)(1) to refer to "personal delivery."

32. A comment expressed concerns about the costs to be incurred by both the Center and the respondent as a result of these administrative procedures. FDA was mindful of the costs of litigation when it proposed part 17, and has sought to draft these procedures to minimize costs to all concerned. For example, providing for written direct testimony rather than oral direct testimony will significantly reduce the time and costs associated with hearings before the presiding officer.

Section 17.9—Answer

33. One comment argued that § 17.9 should provide for amendments to an answer after submission. FDA advises that it intends that complaints and answers may be amended on motion of the parties throughout the proceeding to conform to proof as justice may require. The "Federal Rules of Civil Procedure" follow this method for amendment of pleadings, allowing the motions to be ruled on by the district judge. Similarly, the presiding officer has been given this authority, which is so provided in the final rule (§ 17.9(d)).

34. A comment argued that 30 days is not sufficient to file an answer and that 60 days should be allowed for this purpose. FDA advises that if 30 days is not sufficient, a respondent may apply for more time upon a showing of good cause. (See § 17.9(c).)

35. One comment observed that § 17.9(c) provides for a request for an extension of time within which to file an answer, which request is to be ruled on by the presiding officer, who at that stage will not have been appointed. Under proposed § 17.12, the presiding officer is appointed only after the respondent has answered. The comment requested that the final rule change the procedure.

FDA agrees and is changing the rules to eliminate § 17.12, which is unnecessarily repetitious, to include the definition of "presiding officer" in § 17.3, and to add a provision to § 17.5(d) for the assignment of the presiding officer upon the filing of the complaint.

36. Another comment objected that the proposed rules allow for the default of a respondent who fails to answer a complaint because extraordinary circumstances prevented it from responding within a particular timeframe.

FDA believes the regulation, as proposed, adequately addresses this point. Section 17.9(c) provides for an extension of time within which to file an answer when the respondent can show good cause. Additionally, a respondent may file a motion to reopen a default judgment on the grounds that extraordinary circumstances prevented the respondent from filing an answer. This should provide the relief that the comment requested.

Section 17.11—Default Upon Failure to File An Answer

37. A comment argued that § 17.11 should apply an "excusable neglect" standard, not an "extraordinary circumstances" test, for determining when relief from default for failure to answer should be granted. FDA prefers the "extraordinary circumstances" test, which, although somewhat harder to meet, is justified by the need to encourage respondents to respond in a timely fashion. Additionally, both EPA's and HHS's Program Fraud Civil Remedies regulations use an "extraordinary circumstances" test for determining whether to set aside a default judgment.

38. Another comment recommended that the language set forth in § 17.11(a) be modified to contain a requirement for the Commissioner to stay the initial decision of default upon a showing of extraordinary circumstances. FDA has changed § 17.11 regarding the issuance of a decision based upon default to allow the presiding officer to issue the initial decision rather than the Commissioner. The determination of whether to set aside a default judgment is an administrative matter that is better suited for initial review by the presiding officer, and which would be subject to appeal to the DAB.

39. The same comment stated that it is imperative that the term "extraordinary circumstances" be fully defined. FDA disagrees. To attempt to define and thus limit the circumstances which will be deemed "extraordinary" would be futile. FDA could not possibly anticipate all "extraordinary circumstances." Indeed, such an attempt would probably not be in the interest of respondents as a group, since it would necessarily limit the kinds of circumstances that could be considered "extraordinary" and, therefore, in which a default decision could be set aside.

40. Yet another comment requested that no time limit be imposed on the remedy set forth in proposed § 17.11(c) concerning late filing of an answer. FDA disagrees. It is difficult to conceive of "extraordinary circumstances" that would justify extending the period for filing an answer or motion before the initial decision becomes final and binding. The regulation sets forth a reasonable procedure for the presiding officer to set aside a default judgment upon the showing of extraordinary circumstances by the respondent.

41. A comment requested that, in order for a default judgment to be entered for failure to answer a complaint, the Center should be required to prove that the complaint was received by the respondent. FDA agrees and has amended § 17.11 accordingly.

42. A comment advocated a provision authorizing a party to move to disqualify a presiding officer in order to assure a fair and impartial hearing. The agency advises that such a motion, carefully documented and based upon good cause, may be filed without a provision in these rules specifically authorizing it. The APA (5 U.S.C. 556(b)) authorizes disqualification of a presiding officer based on the filing in good faith of a timely and sufficient affidavit.

Section 17.13—Notice of Hearing

43. One comment argued that § 17.13 should contain clear standards, with reasonable timeframes, for setting the date, time, and place of the hearing or prehearing conference. Further, the comment suggested that the rules should clarify that the presiding officer sets all hearing dates.

FDA believes that it is currently clear that the presiding officer sets all hearing dates. However, FDA disagrees that the rules should set timeframes for a hearing or prehearing conference. Scheduling depends on many variables, including the schedule of the presiding officer, the length of the hearing, the number of witnesses, etc. The presiding officer needs flexibility to schedule prehearing conferences, testimony, and briefing within the limits set forth in the regulation. Accordingly, additional specific time limitations are not being added to the regulations.

44. One comment requested that § 17.13 explicitly provide that either the notice of hearing or the complaint state specifically and in detail each violation alleged and the factual basis for it. The complaint is required to state the allegations of liability against the respondent, including the statutory basis for liability, to identify the violations that are the basis for the alleged liability, and to state the reasons that the respondent is responsible for the violations. In addition, the notice of hearing requires a statement as to the nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held, as well as a description of the procedures for the conduct of the hearing.

FDA declines to make the requested change. The agency believes that the regulations, including § 17.5(b), require that a complaint provide a respondent with a reasonable description in sufficient detail for a respondent to have a fair understanding of the bases for the action and the issues for the hearing. FDA has clarified in § 17.13 that the notice of hearing is to be served on the respondent after the answer has been filed.

45. Another comment expressed the view that proposed § 17.13(f), which is now § 17.13(e), allows ex parte communications between the Center and the presiding officer without participation or comment by the respondent. The comment requested that ex parte communications not be permitted.

As noted in comment 9 above, § 17.20 has been added to restrict ex parte communications under part 17. However, FDA believes that ex parte contacts are necessary with respect to scheduling of the hearing or prehearing conference, and are contemplated for such administrative purposes. Ex parte scheduling contacts are common at agencies throughout the Federal Government and are not improper under § 17.20. All scheduling decisions made before the notice of hearing is served are subject to change on motion of the respondent, in any event.

Section 17.15—Parties to the Hearing

46. One comment argued that § 17.15 should specify that parties may settle issues prior to the hearing without admitting liability. FDA advises that there is no need to specifically state that the parties can stipulate that a settlement does not carry with it an admission of liability.

The regulation provides that the parties may agree to a settlement of all or a part of the matter. It would be inappropriate to limit by regulation the issues that may or may not be covered in a settlement agreement. The final rule allows for wide latitude in settlement agreements.

47. Another comment requested that FDA specifically state that respondent's counsel may be present and participate at the hearing. FDA agrees, and has amended the regulation to add § 17.15(c) accordingly.

48. A comment recommended that the final rule state whether a settlement pursuant to § 17.15(b) is to be incorporated in the initial decision or is instead to be an independent agreement between the parties. The comment went on to state that, if the settlement is to be incorporated in an independent agreement, the complaint should be dismissed.

FDA advises that a settlement agreement is to be an independent agreement. However, FDA believes that it is not necessary to require the dismissal of the complaint upon the filing of a settlement agreement, as the case will be considered resolved and closed by the filing of the settlement agreement, and the agreement will so provide.

Section 17.17—Summary Decisions

49. A comment objected to the inclusion of a summary decision procedure in proposed part 17. FDA affirms the desirability of summary decision procedures in this context. In many situations, the facts will be undisputed and the only question to be decided is one of law. In such cases, time and money can be saved through a summary decision procedure.

50. The author of the same comment urged that, if summary decision procedures are retained, time to respond to a motion for summary decision should be 30 days, not 10. FDA agrees that 10 days is a short time in which to respond. Therefore, FDA is extending from 10 to 30 days the period in which to respond to a motion for summary decision.

51. Another comment argued that summary judgment for the Center should never be granted without the filing of an affidavit prior to the motion being filed. The comment asserts that failure to require an initial affidavit prior to a motion for summary decision denies the respondent the opportunity to verify the facts set forth in the complainant's pleadings.

The language in § 17.17 setting forth the use of affidavits in filing for a motion for summary decision is virtually identical to the language in Rule 56 of the "Federal Rules of Civil Procedure." Respondent may oppose the motion for summary decision with specific facts or opposing affidavits. The presiding officer may only grant the motion if the pleadings, affidavits, and other material in the record show that there is no genuine issue as to any material fact. Additionally, the presiding officer may direct further evidentiary proceedings on facts still at issue. Accordingly, FDA believes the rule provides adequate safeguards for the due process rights of the respondent.

52. Another comment asked the following: (1) Whether or not a proceeding will be stayed pending an interlocutory appeal granting partial summary decision, and (2) whether judicial review of such a decision is a prerequisite to interlocutory relief.

The decision to stay a proceeding pending appeal is within the discretion of the presiding officer, who will make such a decision based on the facts before him or her at the time. Similarly, FDA believes that in some circumstances it would not be necessary or appropriate to have an interlocutory appeal of a presiding officer's partial summary judgment decision on civil money penalties. A decision by a district court granting partial summary judgment is usually not reviewable by the court of appeals on an interlocutory basis. (See, e.g., *King* v. *California Co.*, 224 F.2d 193 (5th Cir.), *cert. denied*, 352 U.S. 1007 (1955); *Marino* v. *Nevitt*, 311 F.2d 406 (3rd Cir. 1963); *Acha* v. *Blame*, 570 F.2d 57 (2nd Cir. 1978).)

53. Another comment suggested that respondents should be given an opportunity to conduct discovery before FDA may bring a motion for summary decision. FDA advises that the presiding officer has the discretion to deny the motion, grant the motion, or order a continuance to permit affidavits or additional evidence to be obtained under § 17.23(a).

54. Another comment argued that a party should have the option of taking an interlocutory appeal on a partial summary decision order or appealing the issue after a final disposition of the entire matter. FDA believes that a party should be permitted to request interlocutory appeal and has amended § 17.17 and added § 17.18 accordingly.

Economy of effort dictates that partial summary decisions not be appealed routinely to the entity designated by the Commissioner to decide appeals (currently the DAB) on an interlocutory basis, but FDA has agreed to provide the option to permit interlocutory appeal within the discretion of the presiding officer and the entity hearing the appeal. In general, appeal of all issues after a final disposition of the entire matter would reduce unnecessary review time for resolution of civil money penalty cases.

55. One comment expressed a concern about language in the preamble of the proposed rule to the effect that the SMDA permits FDA to bypass the administrative hearing procedure and pursue the imposition of civil money penalties in Federal court. FDA has reconsidered the language stated in the NPRM.

The statute authorizes assessment of civil money penalties in an administrative procedure under the SMDA (21 U.S.C. 333(g)(2)), and this is the most efficient manner of imposing civil money penalties. Judicial review would only occur in the United States Court of Appeals as initiated by the respondent (21 U.S.C. 333(g)(3)).

Section 17.19—Authority of the Presiding Officer

56. A comment objected that § 17.19 does not set forth criteria upon which the presiding officer is to base the assignment of a hearing date. This hearing date, according to the comment, should be within at least 30 days of the giving of written notice in all hearings.

FDA does not believe it is necessary to set forth such criteria. The presiding officer will set dates based upon factors such as his or her own schedule, the length of the hearing, and the number of witnesses. FDA hopes that hearings will be completed expeditiously, but a 30-day period from notice until actual hearing may not be enough time in complex hearings.

57. A comment complained that proposed § 17.19(b)(14), which is now paragraph (b)(15), does not define "related or similar proceedings." FDA chose not to define this phrase because of the difficulty of anticipating all proceedings that might be "related or similar." The comment provides no help in defining the phrase, and the agency does not believe that a definition is necessary.

58. A comment argued that FDA should not have the power to subpoena documents because this would impermissibly broaden FDA's enforcement powers. FDA disagrees. Congress has specifically provided that FDA may subpoena documents under certain circumstances in civil money penalty proceedings. (See 21 U.S.C. 333(g)(2)(A) and 21 U.S.C. 335(b)(1)(A)). This statutory authority is similar to that granted to, and exercised by, other Federal entities, such as the EPA and the HHS Inspector General, and the agency expects to use this authority to the extent provided by law. (See paragraph 60 below.)

59. Yet another comment complained that proposed § 17.19(b)(16), which is now paragraph (b)(17), which permits the presiding officer to "waive, suspend, or modify any rule," gives too much discretion to the presiding officer. The comment urged that this language be deleted. FDA disagrees. Under 21 CFR 12.70(m), the presiding officer in formal FDA evidentiary hearings has had this authority for many years, and there have been few, if any, allegations that this authority has been abused.

60. One comment opposed the authorization in § 17.19(b)(5) for issuance of subpoenas by the presiding officer in proceedings under section 303(g)(2)(A) of the act (21 U.S.C. 333(g)(2)(A)). The author of the comment stated that this section of the SMDA authorizes only an investigative subpoena, not a hearing subpoena.

FDA disagrees with the comment's interpretation of the SMDA, which, in pertinent part, reads as follows: "In the course of any investigation, the Secretary may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to matters under investigation." FDA interprets this to allow the agency to issue subpoenas related to a civil money penalty proceeding at any time, including during the adjudication of the penalty. The legislative history indicates that the agency was given authority to subpoena records and witnesses relevant to the civil penalty proceeding. In addition, the statutory phrase "attendance and testimony of witnesses and the production of evidence" reflects an intention that the testimony and documents be useable at the hearing itself.

Section 17.23—Discovery

61. A comment stated that FDA should authorize depositions, written interrogatories, and requests for admissions. The comment argued that, while brevity and economy are worthwhile goals, respondents need fuller discovery. The comment asserts that discovery depositions are necessary tools in the formation of a response to a civil money penalties complaint. Specifically, the comment objects to the presentation of hearing testimony orally without the opportunity to depose witnesses before the hearing.

FDA disagrees, and does not believe that additional forms of discovery are necessary for due process to be accorded to respondents. EPA and HHS adjudicative procedures provide these discovery mechanisms under their regulations enacted pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3801, *et. seq.*). However, 31 U.S.C. 3803(g)(3)(B)(ii) requires that discovery be authorized to the extent allowed by the presiding officer. The program statutes that these part 17 provisions implement do not require that discovery be provided and FDA is not required to provide for discovery under the APA, which governs these procedures. (See *Pacific Gas and Electric Co.* v. *F.E.R.C.*, 746 F.2d 1383, 1387 (9th Cir. 1984); *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).)

FDA has discretion to determine the extent of discovery to which a party is entitled in an administrative hearing. In order to allow the parties to present a witness' testimony in the event that a witness would be unavailable for the hearing, FDA has added § 17.23(e) to provide for depositions in limited circumstances. Specifically, the presiding officer may order depositions upon a showing that the information sought is not available by alternative methods and there is a substantial reason to believe that relevant and probative evidence may not otherwise be preserved for presentation by a witness at the hearing.

In order to provide advance notice of each witness' testimony prior to cross-examination at the hearing, FDA has changed § 17.37(b) to require that direct testimony of witnesses be submitted in written form. Section 17.25(a) requires that parties exchange written testimony at least 30 days before the hearing. This should eliminate any concern that a party may be unfairly surprised by a witness' testimony presented at a hearing. Section 17.19(b)(10) has also been changed to authorize the presiding officer to recall a witness for additional testimony upon a showing of good cause. The failure of a party to provide written direct testimony of a witness before a hearing will result in exclusion of the witness' testimony.

The prehearing production of documents and exchange of exhibits by both parties, coupled with the right to cross-examine witnesses at the hearing and recall witnesses upon a showing of good cause, obviates the need for routine depositions, written interrogatories, and requests for admission. Recent changes to the "Federal Rules of Civil Procedure" have significantly reduced the number of depositions available to parties in Federal court litigation because of their expensive and time consuming nature (Fed. R. Civ. Proc. 30(a)(2)). FDA believes that its provision for written direct testimony is more cost effective for all concerned. Additionally, to ensure timely exchange of documents between the parties, § 17.23(e) has been changed to require that requests for production of documents be answered 30 days after the request, and that the request be made no later than 60 days before the hearing, unless otherwise ordered by the presiding officer.

62. Another comment argued that § 17.23 should specifically authorize the presiding officer to grant protective orders for trade secrets and confidential commercial information.

FDA agrees and has added a new paragraph to § 17.19(b)(18) to the final rule authorizing the presiding officer to issue protective orders for the protection of trade secrets and confidential commercial information. In order to reflect this change and to eliminate any confusion that resulted from the proposed rule, FDA has revised §§ 17.28, 17.33, and 17.41 to more clearly state the disclosure rules related to part 17 hearings. Additionally, in § 17.23(d)(3) FDA has added that the burden of showing that a protective order is necessary is on the party seeking the order.

63. A comment argued that § 17.23 should specifically exempt "privileged" information from access by FDA, even under a protective order. The comment expressed concern that the subsection authorizing the presiding officer to grant a protective order does not address trade secrets and confidential commercial information.

The agency believes that it would not be appropriate for FDA to be denied access to such information. FDA typically has broad access to confidential documents through its regulatory activities and carefully safeguards the confidentiality of those documents. As discussed in comment 62, the presiding officer is authorized to issue a protective order that will prevent public disclosure of such information.

Section 17.25—Exchange of Witness Lists, Witness Statements, and Exhibits

64. A comment took issue with the harshness of the "extraordinary circumstances" test for relief for failure to exchange witness lists, statements, and exhibits. The author argued that this relief should be granted only when a party did not substantially comply or noncompliance was in bad faith.

FDA disagrees with the comment's interpretation of proposed § 17.25(b)(2). However, the agency has clarified that § 17.25 (b)(2) and (b)(3) refer to the timely exchange of witness lists under § 17.25(a). The exclusion of other evidence not exchanged in accordance with § 17.25(a) is within the discretion of the presiding officer as noted in § 17.25(b)(1). The agency believes that it is fair and appropriate to grant relief from sanctions for failure to follow the requirements for the timely exchange of witness lists only if there are "extraordinary circumstances."

To provide additional time for the parties to prepare for the hearing, FDA has changed the deadline for the exchange of witness lists, exhibits, and prior written statements of witnesses from 15 days to 30 days before the hearing. Section 17.25(c) has also been changed to add that objections to authenticity of documents, exchanged pursuant to § 17.25(a), must be made no later than 5 days before the hearing, or the documents will be deemed authentic.

Section 17.27—Hearing Subpoenas

65. A comment argued that the authority of the presiding officer under § 17.27 to subpoena witnesses broadens FDA's power and is not authorized under the PDMA and the NCVIA. FDA agrees that because neither the PDMA nor the NCVIA grants FDA subpoena powers, § 17.27 should not be made applicable to hearings under these statutes.

FDA is altering § 17.27 to clarify that subpoenas may only be issued by the presiding officer to the extent authorized by law. In order to ensure that a party can prove that a witness has been served with a subpoena, FDA has deleted the provision on service of subpoenas by first-class mail. Revised § 17.27(e) provides that subpoenas shall be served in the manner prescribed for service of a complaint in § 17.7.

Section 17.30—Computation of Time

66. Another comment contended that the "less than 7 days" time period stated in proposed § 17.30(b) should be changed to be "less than 11 days" if the summary decision response time in § 17.17 remains at 10 days. The comment explained that Rule 6(a) of the "Federal Rules of Civil Procedure" uses the "less than 11 days" rule specifically to avoid routine requests for extension of the 10-day time for responding to most motions, a period that may include only 5 business days. FDA is changing the summary decision response time to 30 days (see paragraph 50), which should obviate the need for routine requests for extension of the time for responding to motions for summary decision.

Section 17.33—The Hearing and Burden of Proof

67. A comment urged that the presiding officer be required to exclude from the public portion of a hearing all evidence involving what he or she has determined to be trade secrets or confidential commercial information. FDA believes that this is unnecessary.

The agency has revised § 17.33(d) to clarify the scope of information that may be presented in a closed hearing. Under § 17.33 the presiding officer will apply existing laws and regulations to protect trade secrets and confidential commercial information from public disclosure.

68. Yet another comment urged that the Center be required to prove its case by "clear and convincing evidence" in light of what the comment refers to as the extremely broad definitions of punishable acts in § 17.3, rather than by a "preponderance of evidence" as provided for in the proposal.

FDA believes that the definitions in § 17.3 as revised provide adequate explanation of the defined terms. The acts for which civil money penalties may be assessed, however, are delineated in the various statutory schemes for civil penalties to which part 17 applies. The "preponderance of evidence" test is common in many civil proceedings, and is the appropriate standard of proof to be applied by the presiding officer under 5 U.S.C. 556(d). (See *Sea Island Broadcasting of S.C.* v. *Federal Communications Commission*, 627 F.2d 240 (D.C.Cir.), *reh. den., cert. denied*, 449 U.S. 834 (1980).) FDA rejects the comment.

Section 17.34—Determining the Amount of Penalties and Assessments

69. Two comments urged that FDA include "degree of culpability" as a factor in determining the amount of a civil money penalty under § 17.34. The degree of culpability is listed as a factor to be considered in 21 U.S.C. 333(g)(2)(B). Because the statutory civil money penalty provisions implemented by this regulation differ, FDA has referenced the statutory scheme under which the penalty is assessed for purposes of determining the amount of penalty, rather than listing factors in § 17.34. Accordingly, FDA rejects the comment.

70. Another comment argued that FDA should factor in the degree to which a respondent has cooperated with FDA. FDA believes that the presiding officer could properly consider the extent of cooperation under the authority provided in § 17.34(c).

Section 17.35—Sanctions

71. Another comment argued that the sanctions section (§ 17.35) is unclear, unnecessarily harsh, and goes beyond the authority delegated to FDA. The comment urged FDA to describe the types of misconduct to which the section applies and to limit sanctions. Such sanction provisions are not novel. For example, they are included in regulations used by EPA and HHS to implement statutory civil money penalty provisions and are designed to enable the presiding officer to manage proceedings effectively. FDA cannot anticipate all types of misbehavior and misconduct that could give rise to sanctions. Further, FDA cannot anticipate what sanctions may be appropriate for particular conduct in a particular situation. The presiding officer must have discretion in this area, and § 17.35 is consistent with the discretion that may be delegated to the presiding officer under the APA (5 U.S.C. 556(c)). FDA therefore declines to accept the comment.

72. A comment argued that FDA needs to provide a means of appeal of an order of the presiding officer imposing sanctions. FDA agrees. Sanctions should be subject to requests for interlocutory appeal. Section 17.18 has been added to allow for interlocutory appeal of matters certified by the presiding officer to need immediate review. However, the rule does not contain a provision for the automatic stay of proceedings before the presiding officer pending appeal.

73. A comment argued that the sanctions listed in § 17.35 are too harsh and that financial penalties might be more appropriate than the loss of the right to defend against or prosecute a civil money penalty claim.

FDA disagrees. The sanctions imposed in § 17.35 are similar to sanctions available under Rule 37 of the "Federal Rules of Civil Procedure," as well as under the Program Fraud Civil Remedies regulations of EPA and HHS, and are a justifiable means of compelling the parties to adhere to the orders and rulings of the presiding officer. As in a proceeding before a judge in Federal court, a party's recalcitrance in disobeying a presiding officer's order in an administrative hearing should not be tolerated. The wide range of sanctions listed in § 17.35 provide flexibility for the presiding officer who might be presented with a party's failure to comply with an order through refusal or neglect.

74. In connection with appellate rights, one comment urged that the parties be afforded the right of judicial review of sanctions imposed during a part 17 hearing.

FDA advises that it has no authority to provide for an appeal to the courts before the agency's final decision is issued. Under § 17.51, the final decision constitutes final agency action which is subject to judicial review. The entire record that forms the basis of the final decision would be available to the reviewing Court of Appeals.

75. Another comment disagreed with proposed § 17.35(g), which provides that the presiding officer may order a party to pay expenses. This remedy, the author argued, is unenforceable and outside the authority of the Government to provide.

FDA does not agree that it lacks the authority or that such an order of the presiding officer is unenforceable. However, because of the wide range of other sanctions available to the presiding officer for regulating the conduct of the hearing, FDA has made the change requested by the comment and eliminated § 17.35(g) as proposed.

Section 17.37—Witnesses

76. One comment took issue with what was viewed as a requirement that a cross-examining party pay a witness' travel expenses in a situation where direct testimony was submitted in writing. This was not FDA's intention in drafting § 17.37. FDA advises that it intends that a party submitting a witness' testimony in writing is responsible for paying the travel and other expenses of that witness on cross-examination at the hearing. FDA has added § 17.37(g) to clarify its intention.

77. A comment objected to § 17.37 because it could be interpreted to permit rebuttal witnesses and evidence to be submitted without any provision for discovery or identification, as provided for in connection with a party's presentation of its case in chief. FDA advises that, because rebuttal testimony and other rebuttal evidence are limited in scope and in quantity, requirements for notice and discovery are not necessary. Thus, FDA is not specifically providing for discovery or notice of a rebuttal witness' appearance. However, § 17.39(g) allows the presiding officer to permit the parties to introduce rebuttal witnesses and evidence. Implicit in this authority is the authority to set the terms of rebuttal testimony, as justice may require.

78. Yet another comment argued that § 17.37(e) is unduly broad in permitting cross-examination of witnesses on matters other than those within the scope of his or her direct examination. The comment recommended that the rules for cross-examination be predicated upon the "Federal Rules of Evidence."

FDA disagrees. In the interest of truth seeking in general and in the interest of procedural economy, FDA prefers § 17.37(e) as proposed. This provision is similar to what EPA and HHS provide in their Program Fraud Civil Remedies of regulations, which give the presiding officer discretion to allow cross-examination of witnesses beyond the scope of their direct examination, rather than limiting cross-examination to only those matters within the scope of direct examination. Otherwise, the opposing party would have to request that a subpoena be issued to a witness by the presiding officer, making the witness its own in a manner that unnecessarily wastes time.

Section 17.39—Evidence

79. One comment objected to § 17.39 to the extent that it renders privileged information nondiscoverable. Section 17.39 is similar to Rule 45 of the "Federal Rules of Civil Procedure," which allows privileged information to be withheld by a person responding to a subpoena. FDA rejects the comment.

80. Another comment objected to language in § 17.39(b), which allows the presiding officer discretion to apply the "Federal Rules of Evidence." According to the comment, the presiding officer is given authority to invoke the "Federal Rules of Evidence" in an arbitrary and capricious fashion, which, the comment alleges, abridges the due process rights of both parties. The comment does not, however, provide any details to support its assertion.

FDA disagrees with the comment. To the contrary, under § 17.39(b) the presiding officer is allowed to apply the "Federal Rules of Evidence" *when appropriate* which is similar to what EPA and HHS provide in their Program Fraud Civil Remedies regulations. Section 17.39(f) has been changed to substitute the relevant language of Rule 408 of the "Federal Rules of Evidence" in place of the reference to Rule 408 in the proposed rule.

Section 17.41—The Administrative Record

81. A comment suggested that § 17.41 should include an explicit exemption to the "open record" provision, not subject to the discretion of the presiding officer, if the officer has determined that a portion of the record contains trade secrets or confidential commercial information.

FDA believes this to be a good suggestion, and has so provided. Trade secrets, confidential commercial information, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under 21 CFR part 20 are to be protected from disclosure by order of the presiding officer. Additionally, FDA is amending 21 CFR 20.86, concerning disclosure of information in administrative proceedings, to include part 17.

82. Another comment was concerned that the proposal does not contain a provision authorizing the correction of the hearing transcript and recommended that a provision similar to that contained in 21 CFR 12.98(d) be included in § 17.41. FDA has made the requested change in § 17.41(a).

Section 17.43—Posthearing Briefs

83. A comment objected to the requirement that briefs be filed simultaneously and be limited to 30 pages. According to the comment, these restrictions may prejudice respondents, however, the comment does not state how respondents may be prejudiced.

Under § 17.43, a party may file a longer brief if the presiding officer has found that the issues in the proceeding are so complex or the administrative record is so voluminous as to justify longer briefs. In the absence of a showing that simultaneous briefs will prejudice a party unfairly, FDA sees no reason to change this requirement. Additionally, parties may file proposed findings of fact and conclusions of law. FDA has added to § 17.43 that proposed findings of fact and conclusions of law are also limited to 30 pages unless the presiding officer orders otherwise.

84. Another comment requested that § 17.43 be clarified to state whether the 30-page limitation includes exhibits and attachments. FDA advises that the 30-page limitation does not include exhibits and attachments unless some material is made part of an exhibit or attachment to avoid the 30-page limitation when the material should reasonably have been included in the main portion of the brief itself.

Section 17.45—Initial Decision

85. One comment complained that requiring the presiding officer to decide the case within 90 days will inherently increase the risk of an incorrect result, thereby allegedly denying due process. FDA disagrees. Ninety days should be an ample amount of time for a presiding officer to decide most part 17 hearings. If the presiding officer needs more time, he or she may request that the entity deciding the appeal set a new deadline under § 17.45(c). As stated in the preamble, the DAB will be deciding, at least initially, appeals to the Commissioner for presiding officer decisions under this part, including a presiding officer's request for extending deadlines.

86. Another comment urged FDA to include timeframes for extensions of deadlines for rendering an initial decision. This would assure a speedier process, according to the comment. FDA disagrees. It is difficult if not impossible to set forth in a regulation the criteria for extending timeframes in issuing

hearing decisions. FDA believes that attempting to do so would be unworkable.

87. Yet another comment urged that the initial decision be required to include a discussion of the reasons for the findings and conclusions upon which the decision is based. However, § 17.45 already requires that the initial decision shall contain findings of fact, conclusions of law, and the amount of any penalties imposed. Section 17.45(b) further elaborates on this requirement. In FDA's view, the regulation as proposed does not permit a "conclusory" initial decision as the comment seems to presuppose. FDA declines to make the requested change.

88. One comment requested that § 17.45 provide that the initial decision be automatically stayed pending disposition of an appeal or motion for reconsideration. FDA disagrees. The agency does not believe that such a provision is necessary since no civil money penalty can be imposed until there has been final agency action. The initial decision would not become final agency action until any appeal has been acted on, the appeal time has expired, or the respondent has stated an intention not to seek an appeal.

89. Another comment recommended that the word "may" (in § 17.45(c)), as it applies to the Commissioner's authority to set a new timeframe for issuing the initial decision, be changed to "shall." This, the comment alleges, would preclude indefinite delay in the issuance of an initial decision. FDA declines to adopt this comment. As indicated under comment 86, FDA believes it would be unworkable to specify all the criteria for determining when timeframes for issuing initial decisions may be extended. FDA reaffirms its intention that all such decisions be made promptly.

Section 17.47—Appeals

90. A comment suggested that § 17.47 should be modified to explicitly provide for an automatic stay of a decision pending an appeal or motion for reconsideration. As stated in a prior response (see paragraph 88 above), such an automatic stay is not necessary.

91. A comment requested that FDA make clear that the Commissioner's decision, which has been delegated to the DAB, not to consider an appeal or the affirmation of the presiding officer's decision on appeal constitutes final agency action subject to judicial review. FDA agrees with the comment and affirms that such events do constitute final agency action. However, the agency sees no reason to amend any regulation to accomplish this. This statement in the preamble should suffice.

92. A comment urged that oral argument of an appeal to the entity designated by the Commissioner to decide appeals (currently the DAB) be allowed. FDA disagrees. Oral argument would not provide the DAB with any additional information that could not be included in the briefs allowed to be filed by the parties under § 17.47. The time required to conduct oral argument does not justify any advantage that might be gained from it.

93. A comment urged that FDA allow 60 days for submission of an appellate brief, especially considering the complexity of likely issues. The comment cites the part 12 practice of allowing 60 days for an appellate brief. FDA disagrees with the comment. The agency believes that issues raised in part 17 hearings will generally be less complex and the volume of testimony smaller than is the case concerning part 12 hearings. Thus, 30 days should be sufficient. If not, § 17.47 provides for extensions upon a showing of good cause.

94. A comment alleged that proposed § 17.47(f), which has been redesignated as § 17.47(g), favors appellees (which it alleges will usually be the Center) by allowing the appellee to make any argument based on the record in support of the initial decision or decision granting summary decision. This, the comment alleges, is unfair because the appellant does not have as much leeway.

FDA disagrees. The appellant has the discretion to determine the specific exceptions to the initial decision that are to be urged on appeal. Section 17.47(c) has been changed to clarify that in the notice of appeal the appellant must identify and support specific exceptions with citations to the record and explain the basis for the exceptions. Since the appellant may urge whatever exceptions it finds appropriate, FDA sees no prejudice in allowing the appellee to make arguments on matters contained in the record. If the entity deciding the appeal (currently the DAB) reverses on issues that the presiding officer considered pivotal, it may still affirm on other grounds if the appellee has raised such other grounds below. There should be no prejudice to either side as both sides have the record before them and can brief on appeal all issues raised in it. As explained in paragraph 95 below, FDA is amending § 17.47(h) to allow the DAB to request additional briefing when an issue has not been adequately briefed by the appellant.

95. Similar objection was raised to § 17.47(g), relating to the appellee's right to make any argument based on the record. The comment stated that if the purpose of this provision is to allow the appellee to anticipate sua sponte decisions by the Commissioner favorable to the appellant, the regulation would be better if recast as allowing the Commissioner to request both parties to address issues not raised by the appellant but determined to be important by the Commissioner.

As previously discussed, the Commissioner has initially designated the DAB to conduct appeals of civil money penalty proceedings under this part. FDA advises that the purpose of the provision in § 17.47(g) is to allow the DAB or other entity deciding the appeal to affirm a decision based on issues raised before the presiding officer but that did not serve as a basis for the presiding officer's decision. This will allow the entity deciding the appeal to overrule the presiding officer on an issue considered pivotal by the presiding officer, but nevertheless to decide the matter in favor of the appellee on other issues based on evidence adduced at the hearing. However, FDA agrees with the comment that the entity deciding the appeal may wish to decide an issue that is not fully briefed by both parties. Therefore, FDA is amending § 17.47(h) to allow that entity discretion to request additional briefing if it: (a) Proposes to affirm an initial decision based on arguments not fully briefed by appellant, and (b) believes that additional briefing is necessary.

96. One comment took issue with the review standard of "substantial evidence on the whole record" in § 17.47. The comment argued that the standard of substantial evidence on the whole record is applicable for appellate court review of agency action, but should not be applied by an agency head when the agency does not preside at the evidentiary hearing under the APA, 5 U.S.C. 557(b). The comment went on to state that the burden of proof by a preponderance of the evidence rests upon the complainant under 5 U.S.C. 556(d).

FDA agrees that the appropriate burden of proof before the presiding officer is a preponderance of the evidence, as explained in paragraph 68 above. However, the agency may limit review of the initial decision by the presiding officer if the powers of review have been limited by rule. See 5 U.S.C. 557(b).

FDA has provided that an administrative law judge serve as the fact finder in its civil money penalty actions. As the fact finder, the presiding officer is required to make his or her findings based on the preponderance of the evidence standard.

When an appeal is made to the DAB under part 17, the DAB, if it decides to review the initial decision, will review disputed issues of fact based on the standard of whether the initial decision is supported by substantial evidence on the whole record. Additionally, the final regulation in § 17.47 has set the standard of review on a disputed issue of law to be whether the initial decision is erroneous. These standards of review are similar to the HHS regulation on appeals of Medicare exclusions, 42 CFR part 1005. The purpose of limiting the scope of the DAB's review of appeals from the presiding officer is to allow the presiding officer to serve as the fact finder and to limit the DAB's reviewing powers to be similar to that of an appellate court. The APA permits the standards of review set forth in § 17.47 for the DAB's review of initial and summary decisions by the presiding officer.

97. Another comment suggested that only the respondent should be permitted to appeal an adverse initial decision. The comment supports its argument by noting that FDA's proposed procedures did not follow the EPA model, which precludes appeals by any party other than the defendant. However, as the comment points out, the EPA provision tracks the statute, 31 U.S.C. 3803(i)(2)(A)(i), with procedures that are statutorily imposed on EPA.

In enacting the civil money penalty provisions in the statutes to which this regulation applies, Congress did not choose to prescribe, other than in a general manner, the administrative procedures to be followed in FDA's assessment of civil money penalties. FDA therefore does not believe the Center should be precluded from requesting the DAB to review an initial decision with which the Center disagrees.

The comment questioned the fairness of allowing the Center to appeal an initial decision in favor of the respondent. Because FDA has revised the appeals provisions in the final rule to designate the DAB, at least initially, to make the decision for the Commissioner, the independent review by the DAB should eliminate speculation of possible bias of the reviewing authority. FDA notes that in civil cases where the United States is a party plaintiff, district court decisions that are adverse to the plaintiff may be subject to appeal by the plaintiff. For example, the act (21 U.S.C. 360pp(a)) provides that Federal district courts shall have jurisdiction over civil penalties arising from prohibited acts (21 U.S.C. 360oo) pertaining to the regulation of electronic products. If the United States disagrees with a district court judgment as to the amount or lack of penalty, the Federal Rules of Appellate Procedure (Rule 4) authorize an appeal. Under part 17, the Center's right to appeal an initial decision to the DAB is consistent with appellate review authorized for civil cases in Federal district courts.

In cases that are appealed to the DAB, the DAB will normally issue a decision within 60 days. In circumstances where that is not practicable, the DAB will notify the parties of the anticipated time period for ruling on the appeal. Accordingly, § 17.47(j) has been changed to add "if practicable" to the 60-day timeframe for the DAB's decision.

98. A comment requested that the time to file an appeal be set at 60 days and that the time to submit a brief be set by the presiding officer. FDA disagrees. The only reason given by the author of the comment for this extension of time is that the issues involved are likely to be more factually and legally complex than those in the typical civil penalty adjudications by other agencies. Further, the comment suggested that a change in the deadlines would avoid routine requests for extension of time.

The agency believes that it is far from clear that the issues involved in part 17 hearings will be more factually and legally complex than those in "typical civil penalty adjudication." However, in order to alleviate the concerns expressed by the comment, FDA changed § 17.47(b)(2) to provide that the 30-day time limit to file the notice of appeal may be extended by the Commissioner or the entity designated by the Commissioner to hear appeals (currently the DAB), within his or her discretion, upon request of the appealing party for good cause shown. In order to ensure that a party has adequate time to respond to the brief filed in support of the appeal, § 17.47(d) has also been changed to allow the entity deciding appeals, within his or her discretion, to extend the time limit for the filing of a brief in opposition to the appeal upon request of the party and a showing of good cause.

99. Another comment recommended that § 17.47(d) not prohibit an appellant's reply brief. The comment stated that, on a practical level, motions for leave to reply will regularly be filed typically accompanied by a brief. Further, the comment argues that, based on past practice, such briefs will be routinely read and considered in any case. FDA agrees and is amending § 17.47 to allow for a short (no more than 10 pages) reply brief.

100. One comment requested that FDA explain more clearly what FDA means in proposed § 17.47(i), which is § 17.47(j) in the final rule, for the Commissioner to "decline to review the case." Indeed, FDA agrees, as the comment presupposes, a decision to decline to review the case has the same legal effect as a decision to affirm the initial decision summarily without further comment. Such a summary decision may be issued without findings of fact or conclusions of law.

In § 17.47(j), FDA has added that a decision by the DAB to decline to review the case shall be the final decision, rendering the initial decision final and binding on the parties 30 days after the declination. For clarification of the possible actions by the entity designated by the Commissioner to decide the appeal, currently the DAB, FDA has changed § 17.47(j) in the final rule to authorize the entity to reverse the initial decision or decision granting summary decision. The proposed § 17.47(i) only provided that the Commissioner could reverse the penalty, but did not explicitly state that the initial decision could be reversed.

101. Another comment opposed any form of summary affirmance of a decision appealed by the Center. The author of the comment alleged that a respondent is entitled to an explanation, however concise, of the reasons why the Commissioner agrees with the presiding officer. According to the comment, the right to omit such an explanation invites cursory review and inappropriately relieves the Commissioner of the burden of responsibility that accompanies the authority to penalize a manufacturer.

FDA rejects the comment and, in so doing, notes that summary affirmances are routinely used by the courts of appeals. Additionally, the EPA and HHS regulations on program fraud that were previously cited provide for similar affirmance of an initial decision by the presiding officer, as does the HHS regulation on Medicare exclusions and civil penalties. FDA continues to believe that a summary disposition is appropriate in various circumstances, such as where issues are not complex and where the evidence heavily favors the appellee.

Underlying the comment may be the concern that the Commissioner might be biased in favor of the Center, when deciding an appeal and using summary affirmances to do so. In order to provide the parties with an independent review of civil penalty appeals, eliminate speculation of possible bias by the reviewing authority, and to allow for

more efficient and effective use of the Commissioner's resources, FDA has elected to designate the DAB to decide appeals under this part, at least initially.

The DAB serves as the reviewing authority for HHS administrative hearings in the previously cited regulations, as does the Environmental Appeals Board for EPA. These Boards have the training and resources to review appeals of civil penalty actions, whereas the Commissioner would be required to set up a separate process for handling civil penalty appeals. The DAB is the logical choice, at least initially, to review appeals of decisions rendered by the presiding officer in part 17 matters, while efficiently and effectively using agency resources.

FDA will use the DAB to decide appeals under part 17 for at least a 4-year period. After 4 years, FDA will evaluate the DAB's role and the Commissioner will determine whether to maintain or alter the delegation to the DAB.

Section 17.49—Delegated Functions

102. A comment suggested that § 17.49 should contain criteria for selecting and delegating authority to an individual under that section. Because FDA is initially providing that the DAB be designated as the entity to decide any appeals under this part, § 17.49 has been eliminated.

103. A comment alleged that § 17.49 allows the Commissioner to assign an agency party with an interest in the litigation to make the final decision on appeal, as long as the individual was not assigned to advise the Center. As noted in paragraph 101, appeals will initially be handled by the DAB. Therefore, any concern about an agency party's influence on the final decision should be eliminated.

104. A comment argued that all civil money penalty assessments should be finally decided by the Commissioner without delegation to another FDA official. As noted in the preceding paragraphs, FDA has provided, at least initially, for appeals to the DAB for a variety of reasons. Therefore, FDA rejects the comments.

Section 17.51—Judicial Review

105. A comment urged that FDA should not be allowed to seek judicial review of an adverse decision. Only a respondent should be allowed to do so, according to the comment. FDA agrees. Section 17.51 should not be interpreted to provide for the Center to seek judicial review. Once a final decision is rendered denying civil money penalties, this becomes the decision of the agency from which there is no judicial appeal by FDA or any of its Centers. Section 17.51 is being amended to clarify this issue.

III. Summary of Changes

1. In § 17.1, concerning the scope of the regulation, the reference to future statutory civil money penalty authority has been deleted. (See comment paragraph 1.)

2. In § 17.3(a), (b), (d), (e), and (f), references to definitions in the applicable statutes and regulations have been added. In § 17.3(a) the definition of "significant departure" has been changed to either a single major incident, or a series of incidents that are collectively consequential (paragraph 17). In section 17.3(a) the definition of "minor violations" has been changed to "departures from requirements that do not rise to a level of a single major incident or a series of incidents that are collectively consequential" (paragraph 19). Section 17.3(a)(4) has been revised to clarify that "* * * defect in performance * * *" refers to "* * * defect in performance, * * * or service of a device," (paragraph 20). In § 17.3(b) scientific or academic establishment or governmental agency or organizational unit has been added to the definition of "person or respondent" (paragraph 16). In § 17.3(c) the definition of "presiding officer" has been added (paragraph 35). In § 17.3(g) the definition of Departmental Appeals Board has been added (paragraph 101).

3. Section 17.5(c) has been revised to provide for the right of the Center to amend its complaint (paragraph 33). Section 17.5(d) has been revised to provide that the presiding officer is assigned to the case upon filing of the complaint (paragraph 35).

4. Section 17.9(a) is revised to add that the respondents may answer without requesting a hearing. Section 17.9(b) is revised to add that allegations not denied are deemed to be admitted, and that all defenses must be stated in the answer (paragraph 33). Section 17.9(d) was added to provide that respondents may amend their answers (paragraph 33).

5. Section 17.11(a) is revised to add a requirement for proof of service and the authority of the presiding officer to enter default judgments and hold hearings on motions to reopen default judgments (paragraph 38). In § 17.11(a) the reference to the Commissioner has been deleted (paragraph 38).

6. Section 17.12 has been eliminated because the presiding officer is now appointed when the complaint is filed (paragraph 35).

7. Section 17.13 was changed to clarify that the notice of hearing is to be served on a respondent after an answer has been filed (paragraph 44).

8. Section 17.15(b) was revised to add a provision that settlement agreements are to be filed in the docket and do not require ratification by the presiding officer (paragraph 48). Section 17.15(c) was added to clarify that parties may be represented by counsel at the hearing (paragraph 47).

9. In § 17.17(a) the response time to motions for summary judgment has been extended from 10 days to 30 days (paragraph 50). Section 17.17(b) was changed to clarify that summary decision shall be granted when there is no genuine issue as to any material fact (paragraph 51). Section 17.17(e) now limits the ability of a party to obtain interlocutory review of a partial summary decision and refers to the DAB as, currently, the reviewing authority (paragraph 52).

10. New § 17.18 was added to provide for interlocutory appeal from a ruling of the presiding officer (paragraph 54).

11. Section 17.19(b)(3) was changed to authorize the presiding officer to require parties to attend conferences for settlement (paragraph 11). A new § 17.19(b)(10) was added to authorize the presiding officer to allow a witness to be recalled for additional testimony (paragraph 61). Proposed § 17.19(b)(10) through (b)(17) have been renumbered. For consistency of language, in § 17.19(b)(13) (proposed § 17.19(b)(12)) summary "judgment" now reads summary "decision" when there is no "genuine" issue of material fact. A new § 17.19(b)(18) has been added to authorize the presiding officer to issue protective orders (paragraph 62).

12. New § 17.20, has been added to provide restrictions on ex parte communications (paragraph 9).

13. Section 17.21(c)(8) now includes discussion of "scheduling dates for completion of discovery" as an authorized use of a prehearing conference (paragraph 61). Section 17.21(d) has been changed to require the presiding officer to issue an order after a prehearing conference (paragraph 61).

14. In § 17.23(a) a requirement has been added that requests for "production, inspection, and copying" of documents be made no later than 60 days before the date of the hearing, unless otherwise ordered by the presiding officer.

The party served with the request must respond no later than 30 days after the request has been made (paragraph 61). In § 17.23(c) a reference to new § 17.23(e) has been added. A new § 17.23(d)(3) now places the burden of showing that a protective order is necessary on the party seeking the order

(paragraph 62). Proposed § 17.23(d)(3) has been renumbered (d)(4). Section 17.23(e) has been added to provide for oral depositions under limited circumstances (paragraph 61).

15. Section 17.25(a) has been revised to change the deadline for the exchange of witness lists, prior written statements, and exhibits from 15 days to 30 days before the hearing (paragraph 64). For clarification, § 17.25(b)(2) and (b)(3) have been changed to specifically clarify that the paragraphs concern the admission of testimony by any witness whose name does not appear on the witness lists exchanged under § 17.25(a). Section 17.25(c) now imposes a deadline of "5 days" prior to the hearing for objection to authenticity of documents (paragraph 64).

16. Section 17.27(a) now explicitly limits the issuance of subpoenas to when such issuance is "authorized by law" (paragraph 65). For ease of proving service, § 17.27(e) has been changed to delete the provision on service of subpoenas by first class mail (paragraph 65).

17. Section 17.28(b) was revised to clarify that a protective order may be issued to protect information that would be withheld from public disclosure under the agency's public information regulations in 21 CFR part 20 (paragraph 63).

18. For clarification, § 17.31(b) was changed to provide that an opposing party must be served with a copy of a document no later than when the document is filed in the docket. Section 17.32(a) now requires that the presiding officer also be served with a copy of documents filed with the Dockets Management Branch.

19. For clarification, in § 17.33(b) and (c) "is to" was replaced with "must".

Section 17.33(b) has been clarified to add that the Center has the burden of proof to establish that the proposed penalty is appropriate under the applicable statute (paragraph 25). Section 17.33(d) was revised to include a reference to information that would be withheld from public disclosure under 21 CFR part 20.

20. Section 17.34 has been changed to refer to the statute under which the penalty is assessed for purposes of determining the amount of the penalty. The DAB has been referenced as the entity currently designated by the Commissioner to decide appeals under this part in § 17.34(a) and (c) (paragraph 101).

21. Proposed § 17.35(g), which authorized the presiding officer to order the payment of costs as a sanction, has been deleted (paragraph 75). New § 17.35(g) now provides for interlocutory appeal to the entity designated by the Commissioner to decide appeals (currently the DAB) of sanctions imposed by the presiding officer (paragraph 72).

22. Section 17.37(b) now requires, rather than permits, that direct testimony of witnesses be submitted by written declaration under penalty of perjury. The proposed provision in § 17.37(b) on "sufficient time for other parties to subpoena witness" has been deleted in light of the addition of new § 17.37(g) (paragraph 76). For clarity, § 17.37(f)(2) was modified to explain more clearly that an officer or employee of a party who is "designated to be the party's sole representative for purposes of the hearing" may not be excluded from hearing the testimony of other witnesses. Section 17.37(f)(3) has also been revised to make clear that each party may also have an individual, such as an expert witness, present at the hearing who would not be excluded from hearing other witnesses' testimony. New § 17.37(g) was added to clarify that a cross-examining party need not subpoena the witness, and to require that a sponsoring party produce a witness at its own expense (paragraph 76).

23. In § 17.39(f), a modified version of the language of Rule 408 of the "Federal Rules of Evidence" has been substituted for the proposed reference to Rule 408 (paragraph 80). For clarification, in § 17.39(g) a reference to the discretion of the presiding officer was added.

24. In § 17.41(a) a provision has been added to allow for corrections for transcription errors (paragraph 82). Section 17.41(b) has been changed to reference the DAB as the entity currently designated by the Commissioner to decide appeals under this part. Section 17.41(c) has been revised to clarify that upon motion of any party the presiding officer shall protect from disclosure documents that would be withheld from public disclosure under the agency's public information regulations at 21 CFR part 20 (paragraph 81).

25. Section 17.43 has been revised to add a page limit provision for filing of proposed findings of fact and conclusions of law (paragraph 83).

26. Section 17.45(c) has been changed to reference "the Commissioner or the entity deciding the appeal."

27. Section 17.47 has been changed to authorize appeals to the DAB instead of to the Commissioner (paragraph 101). Section 17.47(b)(2) now provides that the Commissioner or other entity designated by the Commissioner to hear appeals (currently the DAB) has discretion to extend the 30-day time limit to file an appeal upon request of a party and a showing of good cause.

Section 17.47(c) has been revised to add a page limitation for briefs in support of appeals and a requirement that exceptions listed in the notice of appeal be explicitly supported by citations to the record (paragraph 94). The prohibition on the filing of an appellant's reply brief in proposed § 17.47(d) has been deleted. Section 17.47(d) has been changed to allow the Commissioner or the entity designated by the Commissioner to hear appeals, currently the DAB, to extend the 30-day time limit for the filing of a brief opposing the appeal upon request of the party and a showing of good cause. New § 17.47(e) has been added to provide the right of an appellant to file a reply brief within 10 days of being served with the appellee's brief (paragraph 99). Section 17.47(h) has been renumbered as § 17.47(k) and has been revised to add that the standard of review on a disputed issue of law is whether the initial decision is erroneous (paragraph 101). Proposed § 17.47(e) through (i) have been renumbered. New § 17.47(h) has been added to authorize the entity deciding the appeal (currently the DAB) to request additional briefing by the parties (paragraph 95). Section 17.47(j) has added "if practicable" to the 60-day deadline for the decision on appeal. For consistency of language, "summary judgment" was changed to "summary decision" in § 17.47(j), which was proposed § 17.47(i). In § 17.47(j) explicit language authorizing the entity deciding the appeal (currently the DAB) to reverse the initial decision or decision granting summary decision has been added (paragraph 100). Section 17.47(j) now clarifies that a decision by the entity deciding the appeal (currently the DAB) to decline to review the case shall be the final action of the agency and the initial decision shall be final and binding on the parties 30 days after the declination.

28. Section 17.48 has been changed to reference the DAB as the entity currently designated by the Commissioner to decide appeals under this part.

29. Section 17.49 has been deleted.

30. Section 17.51(a) now states that only a respondent may petition for judicial review or file a petition for stay of a decision by the Commissioner (paragraph 105). New § 17.51(c) makes explicit that exhaustion of an appeal to the entity deciding the appeal (currently the DAB) is a jurisdictional prerequisite to judicial review (paragraph 12).

31. Section 17.54 has been revised to state amounts assessed under part 17 are to be delivered to the Director of FDA's

Division of Financial Management and then deposited in the U.S. Treasury.

32. In addition, the following revisions have been made to other regulations:

a. Section 5.99, regarding issuance of notices and orders relating to civil money penalties, has been deleted (see the Background section of this document).

b. Section 10.50(c)(21), regarding opportunities for a hearing under 21 CFR part 12, has been deleted (paragraph 9).

c. Section 20.86, regarding disclosure of data and information in administrative proceedings, has been revised to include part 17 (paragraph 81).

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The final rule specifies the procedures to be followed by persons who have the right to a hearing on the administrative imposition of civil money penalties by the agency. As such, the rule does not impose any burden on regulated industry. Because the procedures themselves are protections and do not impose significant costs beyond what the underlying statute imposes, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 17

Administrative practice and procedure, Animal drugs, Biologics, Civil money penalties hearings, Drugs, Generic drugs, Prescription drugs samples, Medical devices.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, Title 21, Chapter 1 of the Code of Federal Regulations is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

§ 5.99 [Removed]

2. Section 5.99 *Issuance of notices and orders relating to the administrative imposition of civil money penalties under various statutes* is removed.

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

3. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–721; 28 U.S.C. 2112.

§ 10.50 [Amended]

4. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended by removing paragraph (c)(21).

5. New part 17 is added to read as follows:

PART 17—CIVIL MONEY PENALTIES HEARINGS

Sec.

17.1 Scope.
17.3 Definitions.
17.5 Complaint.
17.7 Service of complaint.
17.9 Answer.
17.11 Default upon failure to file an answer.
17.13 Notice of hearing.
17.15 Parties to the hearing.
17.17 Summary decisions.
17.18 Interlocutory appeal from ruling of presiding officer.
17.19 Authority of the presiding officer.
17.20 Ex parte contacts.
17.21 Prehearing conferences.
17.23 Discovery.
17.25 Exchange of witness lists, witness statements, and exhibits.
17.27 Hearing subpoenas.
17.28 Protective order.
17.29 Fees.
17.30 Computation of time.
17.31 Form, filing, and service of papers.
17.32 Motions.
17.33 The hearing and burden of proof.
17.34 Determining the amount of penalties and assessments.
17.35 Sanctions.
17.37 Witnesses.
17.39 Evidence.
17.41 The administrative record.
17.43 Posthearing briefs.
17.45 Initial decision.
17.47 Appeals.
17.48 Harmless error.
17.51 Judicial review.
17.54 Deposit in the Treasury of the United States.

Authority: Secs. 301, 303, 307, 501, 502, 505, 510, 513, 516, 519, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 333, 337, 351, 352, 355, 360, 360c, 360f, 360i, 360j, 371); sec. 351, 354, 2128 of the Public Health Service Act (42 U.S.C. 262, 263b, 300aa-28); 5 U.S.C. 554, 555, 556, 557.

§ 17.1 Scope.

This part sets forth practices and procedures for hearings concerning the administrative imposition of civil money penalties by FDA. Listed below are the statutory provisions that as of August 28, 1995, authorize civil money penalties that are governed by these procedures.

(a) Section 303 (b)(2) through (b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) authorizing civil money penalties for certain violations of the act that relate to prescription drug marketing practices.

(b) Section 303(g) of the act authorizing civil money penalties for certain violations of the act that relate to medical devices.

(c) Section 307 of the act authorizing civil money penalties for certain actions in connection with an abbreviated new drug application or certain actions in connection with a person or individual debarred under section 306 of the act.

(d) Section 351(d)(2)(B) of the Public Health Service Act (the PHS Act) authorizing civil money penalties for violations of biologic recall orders.

(e) Section 354(h)(2) of the PHS Act, as amended by the Mammography Quality Standards Act of 1992, authorizing civil money penalties for failure to obtain a certificate, failure to comply with established standards, among other things.

(f) Section 2128 of the PHS Act authorizing civil money penalties for intentionally destroying, altering, falsifying, or concealing any record or report required to be prepared, maintained, or submitted by vaccine manufacturers pursuant to that section of the PHS Act.

§ 17.3 Definitions.

The following definitions are applicable in this part:

(a) For specific acts giving rise to civil money penalty actions brought under 21 U.S.C. 333(g)(1):

(1) *Significant departure*, for the purpose of interpreting 21 U.S.C. 333(g)(1)(B)(i), means a departure from requirements that is either a single major incident or a series of incidents that collectively are consequential.

(2) *Knowing departure*, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(i), means a departure from a requirement taken: (a) With actual knowledge that the action is such a departure, or (b) in deliberate ignorance of a requirement, or (c) in reckless disregard of a requirement.

(3) *Minor violations*, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(ii), means departures from requirements that do not rise to a level of a single major incident or a series of incidents that are collectively consequential.

(4) *Defective*, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(iii), includes any defect in performance, manufacture, construction, components, materials, specifications, design, installation, maintenance, or service of a device, or any defect in mechanical, physical, or chemical properties of a device.

(b) *Person* or *respondent* includes an individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit thereof, or other legal entity, or as may be defined in the act or regulation pertinent to the civil penalty action being brought.

(c) *Presiding officer* means an administrative law judge qualified under 5 U.S.C. 3105.

(d) Any term that is defined in the act has the same definition for civil money penalty actions that may be brought under that act.

(e) Any term that is defined in Title 21 of the Code of Federal Regulations has the same definition for civil money penalty actions that may arise from the application of the regulation(s).

(f) Any term that is defined in the PHS Act has the same definition for civil money penalty actions that may be brought under that act.

(g) *Departmental Appeals Board (DAB)* means the Departmental Appeals Board of the Department of Health and Human Services.

§ 17.5 Complaint.

(a) The Center with principal jurisdiction over the matter involved shall begin all administrative civil money penalty actions by serving on the respondent(s) a complaint signed by the Office of the Chief Counsel attorney for the Center and by filing a copy of the complaint with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

(b) The complaint shall state:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the identification of violations that are the basis for the alleged liability, and the reasons that the respondent is responsible for the violations;

(2) The amount of penalties and assessments that the Center is seeking;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the respondent's right to request a hearing by filing an answer and to retain counsel to represent the respondent; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the proposed amount of penalties and assessments, as provided in § 17.11.

(c) The Center may, on motion, subsequently amend its complaint to conform with the evidence adduced during the administrative process, as justice may require.

(d) The presiding officer will be assigned to the case upon the filing of the complaint under this part.

§ 17.7 Service of complaint.

(a) Service of a complaint may be made by:

(1) Certified or registered mail or similar mail delivery service with a return receipt record reflecting receipt; or

(2) Delivery in person to:

(i) An individual respondent; or

(ii) An officer or managing or general agent in the case of a corporation or unincorporated business.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit or declaration under penalty of perjury of the individual serving the complaint by personal delivery;

(2) A United States Postal Service or similar mail delivery service return receipt record reflecting receipt; or

(3) Written acknowledgment of receipt by the respondent or by the respondent's counsel or authorized representative or agent.

§ 17.9 Answer.

(a) The respondent may request a hearing by filing an answer with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, within 30 days of service of the complaint. Unless stated otherwise, an answer shall be deemed to be a request for hearing.

(b) In the answer, the respondent:

(1) Shall admit or deny each of the allegations of liability made in the complaint; allegations not specifically denied in an answer are deemed admitted;

(2) Shall state all defenses on which the respondent intends to rely;

(3) Shall state all reasons why the respondent contends that the penalties and assessments should be less than the requested amount; and

(4) Shall state the name, address, and telephone number of the respondent's counsel, if any.

(c) If the respondent is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the respondent shall, before the expiration of 30 days from service of the complaint, file a request for an extension of time within which to file an answer that meets the requirements of paragraph (b) of this

section. The presiding officer may, for good cause shown, grant the respondent up to 30 additional days within which, to file an answer that meets the requirements of paragraph (b) of this section.

(d) The respondent may, on motion, amend its answer to conform with the evidence as justice may require.

§ 17.11 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 17.9 and if service has been effected as provided in § 17.7, the presiding officer shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under the relevant statute, the presiding officer shall issue an initial decision within 30 days of the time the answer was due, imposing:

(1) The maximum amount of penalties provided for by law for the violations alleged; or

(2) The amount asked for in the complaint, whichever amount is smaller.

(b) Except as otherwise provided in this section, by failing to file a timely answer, the respondent waives any right to a hearing and to contest the amount of the penalties and assessments imposed under paragraph (a) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(c) If, before such a decision becomes final, the respondent files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the respondent from filing an answer, the initial decision shall be stayed pending a decision on the motion.

(d) If, on such motion, the respondent can demonstrate extraordinary circumstances excusing the failure to file an answer in a timely manner, the presiding officer may withdraw the decision under paragraph (a) of this section, if such a decision has been issued, and shall grant the respondent an opportunity to answer the complaint as provided in § 17.9(a).

(e) If the presiding officer decides that the respondent's failure to file an answer in a timely manner is not excused, he or she shall affirm the decision under paragraph (a) of this section, and the decision shall become final and binding upon the parties 30 days after the presiding officer issues the decision on the respondent's motion filed under paragraph (c) of this section.

§ 17.13 Notice of hearing.

After an answer has been filed, the Center shall serve a notice of hearing on the respondent. Such notice shall include:

(a) The date, time, and place of a prehearing conference, if any, or the date, time, and place of the hearing if there is not to be a prehearing conference;

(b) The nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held;

(c) A description of the procedures for the conduct of the hearing;

(d) The names, addresses, and telephone numbers of the representatives of the government and of the respondent, if any; and

(e) Such other matters as the Center or the presiding officer deems appropriate.

§ 17.15 Parties to the hearing.

(a) The parties to the hearing shall be the respondent and the Center(s) with jurisdiction over the matter at issue. No other person may participate.

(b) The parties may at any time prior to a final decision by the entity deciding any appeal agree to a settlement of all or a part of the matter. The settlement agreement shall be filed in the docket and shall constitute complete or partial resolution of the administrative case as so designated by the settlement agreement. The settlement document shall be effective upon filing in the docket and need not be ratified by the presiding officer or the Commissioner of Food and Drugs.

(c) The parties may be represented by counsel, who may be present at the hearing.

§ 17.17 Summary decisions.

(a) At any time after the filing of a complaint, a party may move, with or without supporting affidavits (which, for purposes of this part, shall include declarations under penalty of perjury), for a summary decision on any issue in the hearing. The other party may, within 30 days after service of the motion, which may be extended for an additional 10 days for good cause, serve opposing affidavits or countermove for summary decision.

The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer shall grant the motion if the pleadings, affidavits, and other material filed in the record, or matters officially noticed, show that there is no genuine issue as to any material fact and that the party is entitled to summary decision as a matter of law.

(c) Affidavits shall set forth only such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated. When a motion for summary decision is made and supported as provided in this regulation, a party opposing the motion may not rest on mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must set forth specific facts showing that there is a genuine issue of material fact for the hearing.

(d) If, on motion under this section, a summary decision is not rendered on all issues or for all the relief asked, and if additional facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings on facts still at issue. The facts specified not to be at issue shall be deemed established.

(e) Except as provided in § 17.18, a party may not obtain interlocutory review by the entity deciding the appeal (currently the DAB) of a partial summary decision of the presiding officer. A review of final summary decisions on all issues may be had through the procedure set forth in § 17.47.

§ 17.18 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section, rulings of the presiding officer may not be appealed before consideration on appeal of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the entity deciding the appeal (currently the DAB) if the presiding officer certifies on the record or in writing that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any participant, or substantial harm to the public interest.

(c) When an interlocutory appeal is made, a participant may file a brief on the appeal only if specifically authorized by the presiding officer or the entity deciding the appeal (currently the DAB), and if such authorization is granted, only within the period allowed by the presiding officer or the entity deciding the appeal. If a participant is authorized to file a brief, any other participant may file a brief in opposition, within the period allowed by the entity deciding the appeal (currently the DAB). The deadline for filing an interlocutory appeal is subject to the discretion of the presiding officer.

§ 17.19 Authority of the presiding officer.

(a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The presiding officer has the authority to:

(1) Set and change the date, time, and place of the hearing on reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable time;

(3) Require parties to attend conferences for settlement, to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery consistent with § 17.23;

(8) Regulate the course of the hearing and the conduct of the parties;

(9) Examine witnesses;

(10) Upon motion of a party for good cause shown, the presiding officer may allow a witness to be recalled for additional testimony;

(11) Receive, rule on, exclude, or limit evidence;

(12) Upon motion of a party or on the presiding officer's own motion, take official notice of facts;

(13) Upon motion of a party, decide cases, in whole or in part, by summary decision when there is no genuine issue of material fact;

(14) Conduct any conference, argument, or hearing on motions in person or by telephone;

(15) Consolidate related or similar proceedings or sever unrelated matters;

(16) Limit the length of pleadings;

(17) Waive, suspend, or modify any rule in this part if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(18) Issue protective orders pursuant to § 17.28; and

(19) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

§ 17.20 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 17.21 Prehearing conferences.

(a) The presiding officer may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The presiding officer may use a prehearing conference to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of the other party) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery and scheduling dates for completion of discovery;

(9) The date, time, and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The presiding officer shall issue an order containing all matters agreed upon by the parties or ordered by the presiding officer at a prehearing conference.

§ 17.23 Discovery.

(a) No later than 60 days prior to the hearing, unless otherwise ordered by the presiding officer, a party may make a request to another party for production, inspection, and copying of documents that are relevant to the issues before the presiding officer. Documents must be provided no later than 30 days after the request has been made.

(b) For the purpose of this part, the term "documents" includes information, reports, answers, records, accounts, papers and other data and documentary evidence. Nothing contained in this section may be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system must be produced in a form readily accessible to the requesting party.

(c) Requests for documents, requests for admissions, written interrogatories, depositions, and any forms of discovery, other than those permitted under paragraphs (a) and (e) of this section, are not authorized.

(d)(1) Within 10 days of service of a request for production of documents, a party may file a motion for a protective order.

(2) The presiding officer may grant a motion for a protective order, in whole or in part, if he or she finds that the discovery sought:

(i) Is unduly costly or burdensome,

(ii) Will unduly delay the proceeding, or

(iii) Seeks privileged information.

(3) The burden of showing that a protective order is necessary shall be on the party seeking the order.

(4) The burden of showing that documents should be produced is on the party seeking their production.

(e) The presiding officer shall order depositions upon oral questions only upon a showing that:

(1) The information sought cannot be obtained by alternative methods, and

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

§ 17.25 Exchange of witness lists, witness statements, and exhibits.

(a) At least 30 days before the hearing, or by such other time as is specified by the presiding officer, the parties shall exchange witness lists, copies of prior written statements of proposed witnesses, and copies of proposed hearing exhibits, including written testimony.

(b)(1) If a party objects to the proposed admission of evidence not exchanged in accordance with paragraph (a) of this section, the presiding officer will exclude such evidence if he or she determines that the failure to comply with paragraph (a) of this section should result in its exclusion.

(2) Unless the presiding officer finds that extraordinary circumstances justified the failure to make a timely exchange of witness lists under paragraph (a) of this section, he or she must exclude from the party's hearing evidence the testimony of any witness whose name does not appear on the witness list.

(3) If the presiding officer finds that extraordinary circumstances existed, the presiding officer must then determine whether the admission of the testimony of any witness whose name does not appear on the witness lists exchanged under paragraph (a) of this section would cause substantial prejudice to the objecting party. If the presiding officer

finds that there is not substantial prejudice, the evidence may be admitted. If the presiding officer finds that there is substantial prejudice, the presiding officer may exclude the evidence, or at his or her discretion, may postpone the hearing for such time as is necessary for the objecting party to prepare and respond to the evidence.

(c) Unless a party objects within 5 days prior to the hearing, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

§ 17.27 Hearing subpoenas.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may, when authorized by law, request that the presiding officer issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 20 days before the date fixed for the hearing unless otherwise allowed by the presiding officer, upon a showing by the party of good cause. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed for service of a complaint in § 17.7.

(f) If a party or the individual to whom the subpoena is directed believes a subpoena to be unreasonable, oppressive, excessive in scope, or unduly burdensome, or if it wishes to raise any other objection or privilege recognized by law, the party or individual may file a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service. Such a filing will state the basis for the motion to quash. The presiding officer may quash or modify the subpoena or order it implemented, as justice may require.

§ 17.28 Protective order.

(a) A party or a prospective witness may file a motion for a protective order with respect to discovery sought by a party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) When issuing a protective order, the presiding officer may make any order which justice requires to protect a party or person from oppression or undue burden or expense, or to protect trade secrets or confidential commercial information, as defined in § 20.61 of this chapter, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under 21 CFR part 20. Such orders may include, but are not limited to, one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery provided for by this part other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That the contents of discovery or evidence be sealed;

(6) That the information not be disclosed to the public or be disclosed only in a designated way; or

(7) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

§ 17.29 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in a United States District Court. A check for witness fees and mileage shall accompany the subpoena when served.

§ 17.30 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act or event, and includes the last day of the period, unless either such day is a Saturday, Sunday, or Federal holiday, in which event the time includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation.

(c) When a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

§ 17.31 Form, filing, and service of papers.

(a) *Form.* (1) Documents filed with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, shall include an original and two copies.

(2) The first page of every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the Office of the Chief Counsel, and designation of the pleading or paper (e.g., "motion to quash subpoena").

(3) Every pleading shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the pleading was filed, or his or her counsel.

(4) Pleadings or papers are considered filed when they are received by the Dockets Management Branch.

(b) *Service.* A party filing a document with the Dockets Management Branch under this part shall, no later than the time of filing, serve a copy of such document on every other party. Service upon any party of any document, other than service of a complaint, shall be made by delivering a copy personally or by placing a copy of the document in the United States mail or express delivery service, postage prepaid and addressed, to the party's last known address. When a party is represented by counsel, service shall be made on such counsel in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the time and manner of service, shall be proof of service.

§ 17.32 Motions.

(a) Any application to the presiding officer for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, delivered to the presiding officer, and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The presiding officer may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the presiding officer, any party may file a response to such motion.

(d) The presiding officer may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

§ 17.33 The hearing and burden of proof.

(a) The presiding officer shall conduct a hearing on the record to determine whether the respondent is liable for a civil money penalty and, if so, the appropriate amount of any such civil money penalty considering any aggravating or mitigating factors.

(b) In order to prevail, the Center must prove respondent's liability and the appropriateness of the penalty under the applicable statute by a preponderance of the evidence.

(c) The respondent must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the presiding officer, who may order closure only to protect trade secrets or confidential commercial information, as defined in § 20.61 of this chapter, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under part 20 of this chapter.

§ 17.34 Determining the amount of penalties and assessments.

(a) When determining an appropriate amount of civil money penalties and assessments, the presiding officer and the Commissioner of Food and Drugs or entity designated by the Commissioner to decide the appeal (currently the DAB) shall evaluate any circumstances that mitigate or aggravate the violation and shall articulate in their opinions the reasons that support the penalties and assessments imposed.

(b) The presiding officer and the entity deciding the appeal shall refer to the factors identified in the statute under which the penalty is assessed for purposes of determining the amount of penalty.

(c) Nothing in this section shall be construed to limit the presiding officer or the entity deciding the appeal from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 17.35 Sanctions.

(a) The presiding officer may sanction a person, including any party or counsel for:

(1) Failing to comply with an order, subpoena, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including, but not limited to, those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with a discovery order, including discovery and subpoena provisions of this part, the presiding officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(3) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) The presiding officer may exclude from participation in the hearing any legal counsel, party, or witness who refuses to obey an order of the presiding officer. In the case of repeated refusal, the presiding officer may grant judgment to the opposing party.

(e) If a party fails to prosecute or defend an action under this part after service of a notice of hearing, the presiding officer may dismiss the action or may issue an initial decision imposing penalties and assessments.

(f) The presiding officer may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion or in compliance with the rules of this part.

(g) Sanctions imposed under this section may be the subject of an interlocutory appeal as allowed in § 17.18(b), provided that no such appeal will stay or delay a proceeding.

§ 17.37 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) Direct testimony shall be admitted in the form of a written declaration submitted under penalty of perjury. Any such written declaration must be provided to all other parties along with the last known address of the witness. Any prior written statements of witnesses proposed to testify at the hearing shall be exchanged as provided in § 17.25(a).

(c) The presiding officer shall exercise reasonable control over the manner and order of questioning witnesses and presenting evidence so as to:

(1) Make the examination and presentation effective for the ascertainment of the truth;

(2) Avoid undue consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The presiding officer shall permit the parties to conduct such cross-examination as may be required for a full disclosure of the facts.

(e) At the discretion of the presiding officer, a witness may be cross-examined on relevant matters without regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, a witness may be cross-examined on relevant matters with regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the presiding officer may order witnesses excluded so that they cannot hear the testimony of the other witnesses. This rule does not authorize exclusion of:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated to be the party's sole representative for purposes of the hearing; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by a party engaged in assisting counsel for the party.

(g) If a witness' testimony is submitted in writing prior to cross-examination, the cross-examining party need not subpoena the witness or pay for his or her travel to the hearing. The sponsoring party is responsible for producing the witness at its own expense, and failure to do so shall result in the striking of the witness' testimony.

§ 17.39 Evidence.

(a) The presiding officer shall determine the admissibility of evidence.

(b) Except as provided in this part, the presiding officer shall not be bound by the "Federal Rules of Evidence." However, the presiding officer may apply the "Federal Rules of Evidence" when appropriate, e.g., to exclude unreliable evidence.

(c) The presiding officer shall exclude evidence that is not relevant or material.

(d) Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue

delay or needless presentation of cumulative evidence.

(e) Relevant evidence may be excluded if it is privileged under Federal law.

(f) Evidence of furnishing or offering or promising to furnish, or accepting or offering or promising to accept, a valuable consideration in settling or attempting to settle a civil money penalty assessment which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the civil money penalty or its amount. Evidence of conduct or statements made in settlement negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of settlement negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness or opposing a contention of undue delay.

(g) The presiding officer may in his or her discretion permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the presiding officer pursuant to § 17.28.

§ 17.41 The administrative record.

(a) The hearing will be recorded and transcribed. Witnesses, participants, and counsel have 30 days from the time the transcript becomes available to propose corrections in the transcript of oral testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections. Transcripts may be obtained following the hearing from the Dockets Management Branch at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing and all papers and requests filed in the proceeding constitute the administrative record for the decision by the presiding officer and the entity designated by the Commissioner of Food and Drugs to decide the appeal, currently the DAB.

(c) The administrative record may be inspected and copied (upon payment of a reasonable fee) by anyone unless otherwise ordered by the presiding officer, who shall upon motion of any party order otherwise when necessary to protect trade secrets or confidential commercial information, as defined in § 20.61 of this chapter, information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or other information that would be withheld from public disclosure under part 20.

§ 17.43 Posthearing briefs.

Any party may file a posthearing brief. The presiding officer shall fix the time for filing such briefs (which shall be filed simultaneously), which shall not exceed 60 days from the date the parties received the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file responsive briefs. No brief may exceed 30 pages (exclusive of proposed findings and conclusions) unless the presiding officer has previously found that the issues in the proceeding are so complex, or the administrative record is so voluminous, as to justify longer briefs, in which case the presiding officer may set a longer page limit. Proposed findings of fact and conclusions of law shall not exceed 30 pages unless the presiding officer has previously found that the issues in the proceeding are so complex, or the administrative record is so voluminous, as to justify longer proposed findings and conclusions, in which case the presiding officer may set a longer page limit.

§ 17.45 Initial decision.

(a) The presiding officer shall issue an initial decision based only on the administrative record. The decision shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the allegations in the complaint are true, and, if so, whether respondent's actions identified in the complaint violated the law;

(2) Whether any affirmative defenses are meritorious; and

(3) If the respondent is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors that he or she finds in the case.

(c) The presiding officer shall serve the initial decision or the decision granting summary decision on all parties within 90 days after the time for submission of posthearing briefs and responsive briefs (if permitted) has expired. If the presiding officer believes that he or she cannot meet the 90-day deadline, he or she shall notify the Commissioner of Food and Drugs or other entity designated by the Commissioner to decide the appeal of the reason(s) therefor, and the Commissioner or that entity may then set a new deadline.

(d) Unless the initial decision or the decision granting summary decision of the presiding officer is timely appealed, the initial decision or the decision granting summary decision shall constitute the final decision of FDA and shall be final and binding on the parties 30 days after it is issued by the presiding officer.

§ 17.47 Appeals.

(a) Either the Center or any respondent may appeal an initial decision, including a decision not to withdraw a default judgment, or a decision granting summary decision to the Commissioner of Food and Drugs or other entity the Commissioner designates to decide the appeal. The Commissioner has currently designated the Departmental Appeals Board (DAB) to decide appeals under this part. Parties may appeal to the DAB by filing a notice of appeal with the DAB, rm. 637–D, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201, and the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, in accordance with this section.

(b) (1) A notice of appeal may be filed at any time within 30 days after the presiding officer issues an initial decision or decision granting summary decision.

(2) The Commissioner or the entity designated by the Commissioner to hear appeals may, within his or her discretion, extend the initial 30-day period for an additional period of time if the Center or any respondent files a request for an extension within the initial 30-day period and shows good cause.

(c) A notice of appeal shall be accompanied by a written brief of no greater length than that allowed for the posthearing brief. The notice must identify specific exceptions to the initial decision, must support each exception with citations to the record, and must explain the basis for each exception.

(d) The opposing party may file a brief of no greater length than that allowed for the posthearing brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief, unless such time period is extended by the Commissioner or the entity designated by the Commissioner to hear appeals on request of the opposing party for good cause shown. Any brief in opposition to exceptions shall be filed with the Dockets Management Branch and the DAB (addresses above).

(e) The appellant may file a reply brief not more than 10 pages in length within 10 days of being served with appellee's brief.

(f) There is no right to appear personally before the Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB).

(g) The entity deciding the appeal will consider only those issues raised before the presiding officer, except that the appellee may make any argument based on the record in support of the initial decision or decision granting summary decision.

(h) If on appeal the entity deciding the appeal considers issues not adequately briefed by the parties, the entity may ask for additional briefing. However, no such additional briefs will be considered unless so requested.

(i) If any party demonstrates to the satisfaction of the entity deciding the appeal (currently the DAB) that additional evidence not presented at the hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at the hearing, the entity deciding the appeal may remand the matter to the presiding officer for consideration of the additional evidence.

(j) The Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB) will issue a decision on the appeal within 60 days, if practicable, of the due date for submission of the appellee's brief. In the decision, the entity deciding the appeal may decline to review the case, affirm the initial decision or decision granting summary decision (with or without an opinion), or reverse the initial decision or decision granting summary decision, or increase, reduce, reverse, or remand any civil money penalty determined by the presiding officer in the initial decision. If the entity deciding the appeal declines to review the case, the initial decision or the decision granting summary decision shall constitute the final decision of FDA and shall be final and binding on the parties 30 days after the declination by the entity deciding the appeal.

(k) The standard of review on a disputed issue of fact is whether the initial decision is supported by substantial evidence on the whole record. The standard of review on a disputed issue of law is whether the initial decision is erroneous.

§ 17.48 Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the presiding officer or by any of the parties is grounds for vacating, modifying, or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the presiding officer or the Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB) to be inconsistent with substantial justice. The presiding officer and the entity deciding the appeal at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

§ 17.51 Judicial review.

(a) The final decision of the Commissioner of Food and Drugs or other entity deciding the appeal (currently the DAB) constitutes final agency action from which a respondent may petition for judicial review under the statutes governing the matter involved. Although the filing of a petition for judicial review does not stay a decision under this part, a respondent may file a petition for stay of such decision under § 10.35 of this chapter.

(b) The Chief Counsel of FDA has been designated by the Secretary of Health and Human Services as the officer on whom copies of petitions for judicial review are to be served. This officer is responsible for filing the record on which the final decision is based. The record of the proceeding is certified by the entity deciding the appeal (currently the DAB).

(c) Exhaustion of an appeal to the entity deciding the appeal (currently the DAB) is a jurisdictional prerequisite to judicial review.

§ 17.54 Deposit in the Treasury of the United States.

All amounts assessed pursuant to this part shall be delivered to the Director, Division of Financial Management (HFA–100), Food and Drug Administration, rm. 11–61, 5600 Fishers Lane, Rockville, MD 20857, and shall be deposited as miscellaneous receipts in the Treasury of the United States.

PART 20—PUBLIC INFORMATION

7. The authority citation for part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

§ 20.86 [Amended]

8. Section 20.86 is amended by revising the first sentence to read as follows:

§ 20.86 Disclosure in administrative or court proceedings.

Data and information otherwise exempt from public disclosure may be revealed in Food and Drug Administration administrative proceedings pursuant to parts 10, 12, 13, 14, 15, 17, and 19 of this chapter or court proceedings, where data or information are relevant. * * *

Dated: July 12, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18325 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

Notice is hereby given that I have delegated to the Chair and Members of the Departmental Appeals Board authority to review administrative civil money penalty decisions pursuant to part 17 (21 CFR part 17). This authority was delegated to me by the Secretary of Health and Human Services under: The Federal Food, Drug, and Cosmetic Act, 21 CFR 5.10(a)(1); section 351 of the Public Health Service Act (42 U.S.C. section 262) concerning biologic recall orders, 21 CFR 5.10(a)(5); the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. section 300aa-28) concerning authority to impose administrative civil money penalties, 21 CFR 5.10(a)(35); and the Mammography Quality Standards Act of 1992 (42 U.S.C. section 263b(h)(2)), 21 CFR 5.10(a)(36). This authority concerns making final determinations with respect to the imposition of administrative civil monetary penalties on review of, or by declining to review, initial decisions and decisions granting summary decisions of Administrative Law Judges, as set forth in 21 CFR part 17.

This delegation becomes effective August 28, 1995.

Dated: July 20, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–18326 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–F

federal register

Thursday
July 27, 1995

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310 and 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use, Combination Bronchodilator Drug Products Containing Theophylline and Proposed Amendment of Monograph for OTC Bronchodilator Drug Products; Final Rule and Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 76N–052G]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Combination Bronchodilator Drug Products Containing Theophylline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that cough-cold combination drug products containing theophylline are not generally recognized as safe and effective and are misbranded for over-the-counter (OTC) use. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC cough-cold combination drug products containing theophylline that have come to the agency's attention. Also, this final rule lists in a regulation all OTC bronchodilator ingredients that have been found to be not generally recognized as safe and effective and are misbranded. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: January 29, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. The Panel recommended that theophylline as a single ingredient be Category I (generally recognized as safe and effective) (41 FR 38312 at 38373 and 38374). The Panel also recommended that combinations containing an oral sympathomimetic bronchodilator (e.g., ephedrine hydrochloride) and an oral bronchodilator (theophylline) be Category I (41 FR 38312 at 38326). Interested persons were invited to submit comments by December 8, 1976. Reply comments in response to comments filed in the initial comment period could be submitted by January 7, 1977.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

In the **Federal Register** of December 10, 1976 (41 FR 54032 at 54033), the agency announced that it did not agree with the Panel's recommendation that theophylline be classified in Category I and be made available for OTC use as a single ingredient because additional information, not available during the Panel's deliberations, indicated that the Panel's recommended therapeutic dose for theophylline may be toxic to some individuals. The new information suggested that the safe and effective use of theophylline requires careful dosage titration based on theophylline serum concentrations. The agency reaffirmed its decision to restrict single-ingredient theophylline preparations to prescription use only in the tentative final monograph for OTC bronchodilator drug products (47 FR 47520 at 47521, October 26, 1982). In the final monograph for OTC bronchodilator drug products (51 FR 35326 at 35331, October 2, 1986), the agency stated that it would address theophylline combinations in the tentative final monograph for OTC cough-cold combination drug products, in a future issue of the **Federal Register**.

In the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30544 to 30546, August 12, 1988), combination drug products containing theophylline and ephedrine were reclassified from Category I to Category II (not generally recognized as safe and/or effective). Additionally, the agency classified in Category II any OTC combination drug product that contains theophylline. Interested persons were invited to submit written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs (the Commissioner) and on the agency's economic impact determination for the proposal by December 12, 1988. New data could have been submitted by August 14, 1989, and comments on the new data by October 12, 1989.

In response to the OTC cough-cold combination drug products tentative final monograph, two manufacturers submitted comments and data on theophylline combination drug products, and two physicians submitted a case study related to a theophylline-ephedrine-phenobarbital combination product. Another comment reported injuries it considered to be caused by theophylline toxicity. Although that comment was submitted after the administrative record had closed, the agency considered it important and has addressed it in this final rule. Copies of the comments are on public display in the Dockets Management Branch (address above).

In this final rule, the agency is declaring OTC cough-cold combination drug products containing theophylline to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In this final rule, the agency is amending part 310 (21 CFR part 310) (nonmonograph conditions) by adding to § 310.545(a)(6) new paragraph (iv) to include any cough-cold combination drug products containing theophylline.

In the advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products (41 FR 38312), the agency stated that the conditions for products excluded from the monograph (Category II) should be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph in the **Federal Register**, regardless of whether further testing is undertaken to justify their future use. The agency also stated that conditions included in the monograph (Category I) should be effective 30 days after the date of publication of the final monograph in the **Federal Register**. In the tentative final monograph for OTC cough-cold combination drug products, the agency extended this 30-day period to 12 months in order to provide a reasonable

period of time for relabeling and reformulation of products covered by the monograph (53 FR 30522 at 30523).

In the case of OTC combination bronchodilator drug products containing theophylline, the agency has determined that no combination is generally recognized as safe and effective for this use. Accordingly, the agency is not establishing any monograph conditions for these combination drug products. Thus, there is no need for a 12-month period for relabeling and reformulation of these products. As stated in the advance notice of proposed rulemaking, these conditions should be eliminated from OTC drug products effective 6 months after the date of publication of this final rule. Therefore, on or after January 29, 1996, no OTC cough-cold combination drug products containing theophylline may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application. Any such OTC drug product in interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

In the final rule for OTC bronchodilator drug products (51 FR 35326 at 35338), the agency listed a number of nonmonograph bronchodilator ingredients. At that time, § 310.545 had not been established. Thus, none of these nonmonograph bronchodilator ingredients are listed in that regulation.

Accordingly, at this time, the agency is also listing in § 310.545(a)(6)(iv) all of the nonmonograph bronchodilator active ingredients discussed in that final rule. The effective date of nonmonograph status for these ingredients, which did not apply to combinations containing theophylline, was October 2, 1987. The date of nonmonograph status of combinations containing theophylline will be January 29, 1996.

II. The Agency's Conclusions on the Comments

1. One comment requested that the agency ban theophylline in OTC drug products. The comment mentioned the growing body of medical literature highly critical of theophylline's safety record. The comment contended that theophylline can be a dangerous drug and its use should be tailored (by a physician) to the individual patient. The comment mentioned 26 incidents of theophylline-caused injuries, most of which involved young asthma patients who sustained brain damage from seizures or died as a result of using theophylline. The comment emphasized the need for greater understanding of the use of theophylline, especially when used by children or anyone suffering from fever or a viral infection, such as the flu.

Another comment reported a case involving a 6-year-old child who had been admitted to the hospital with a diagnosis of complex febrile seizures (Ref. 1). Because such febrile seizures often do not reoccur, the child was not placed on anticonvulsant medication, but was observed over time. Several months later, when the child was readmitted with gastroenteritis presumably of viral etiology, the physician discovered that the child had been taking an OTC drug product containing 130 milligrams (mg) theophylline, 24 mg ephedrine, and 8 mg phenobarbital twice daily for asthma prophylaxis. The comment indicated that the presence of phenobarbital in this product could have affected the patient's clinical course and/or recognition of reoccurring seizures. The comment urged the agency to remove this type of combination product from the OTC marketplace.

The agency agrees with the comments that theophylline-containing combination drug products should no longer be available OTC. In the OTC cough-cold combination tentative final monograph (53 FR 30522 at 30544 to 30546), the agency stated its awareness of the increase in adverse effects associated with the use of theophylline and ephedrine combination drug products. Moreover, the agency concluded that whether theophylline is administered as a single ingredient or in combination with other drugs, it is essential that a physician titrate theophylline dosage based on individual patient measurements of theophylline serum levels. Thus, the agency classified any OTC combination drug product containing theophylline as Category II (not generally recognized as safe and/or effective) and reaffirmed its position that theophylline should be administered under professional supervision.

More recent data also support the conclusion that theophylline is not safe for OTC use. These include:

(1) Twenty-six incidents of theophylline-caused injury between 1980 and 1991 (involving mostly young asthma patients), including 6 deaths (likely causally related), 15 cases of brain damage (not otherwise defined), 4 seizures and/or coma, and 1 rapid heartbeat (Ref. 2); (2) FDA adverse reaction reports for the years 1969 to March, 1994 (Ref. 3); and (3) the American Association of Poison Control Centers National Data Collection System (Refs. 4 through 7).

The agency's adverse reaction reporting system (Ref. 3) includes 116 adverse reactions associated with theophylline-containing combination drug products. Twenty-two of these reactions were serious: 4 resulted in death; 15 resulted in hospitalization; and 3 were disabling. These reports include both prescription and OTC use of theophylline combination drug products. Adverse reaction reports involving single ingredient theophylline drug products include 2,175 cases. Of these, 782 were serious, 111 resulted in death, 5 others were considered life-threatening, 4 required medical intervention to prevent impairment, 698 resulted in hospitalization, and 27 were disabling (Ref. 3).

The annual reports of the American Association of Poison Control Centers for the years 1990 to 1993 (Refs. 4 through 7) concerning theophylline exposures state the following: (1) In 1990, there were 6,527 theophylline exposures resulting in 36 deaths, 93 major (severe) outcomes, 622 moderate outcomes, and 2,039 minor outcomes; (2) in 1991, there were 6,744 theophylline exposures resulting in 38 deaths, 138 major outcomes, 619 moderate outcomes, and 2,101 minor outcomes; (3) in 1992, there were 5,735 theophylline exposures resulting in 35 deaths, 113 major outcomes, 596 moderate outcomes, and 1,343 minor outcomes; and (4) in 1993, there were 4,473 theophylline exposures resulting in 27 deaths, 120 major outcomes, 782 moderate outcomes, and 1,026 minor outcomes. The agency notes that these reports do not differentiate theophylline exposure as resulting from prescription or OTC drug products; nor do the reports differentiate exposure as resulting from drug products containing theophylline as a single ingredient or in combination with another active ingredient.

Tsiu et al. (Ref. 8) reported 1,570 published cases of theophylline-induced toxicities from 1973 through 1988, which included 198 seizures, 525 cardiovascular complications, and 63 deaths. The study indicates that many patients suffered serious and frequently fatal side effects, despite receiving "standard" prescription doses of theophylline. This type of reporting emphasizes the narrow therapeutic index of theophylline and the need to determine individual dose titration levels.

Sessler (Ref. 9) examined the clinical and pharmacokinetic characteristics of

5,557 theophylline-related toxicity reports from two hospitals over a 2-year period. Ten percent of the reported cases had serum theophylline concentrations above the therapeutic range, while 2 percent of these cases reported serum theophylline concentrations greater than 30 micrograms per milliliter (µg/mL). Of the 116 cases having serum theophylline concentrations greater than 30 µg/mL, 12 percent were due to acute overdose and 88 percent due to chronic overmedication. Sessler stated that cases of theophylline-induced toxicity are relatively common in hospital emergency departments, result primarily from patient and physician dosing errors, and cause a broad range of toxic manifestations of varying severity. Sessler indicated that the most common single cause of toxicity is inappropriate drug administration by the patient, i.e., additional doses administered for the relief of bronchospasm and/or dyspnea (difficulty in breathing).

In a recent prospective study (Ref. 10), Shannon evaluated major theophylline toxicity of 249 subjects with acute theophylline intoxication: 119 subjects with acute intoxication who were not receiving theophylline therapy, 92 subjects with chronic intoxication due to overmedication, and 38 subjects who ere acutely intoxicated while on theophylline therapy. The study pointed out that chronic overmedication is responsible for the high rate of morbidity and mortality in elderly subjects with theophylline intoxication. Shannon concluded that the data support the admonition that theophylline should be used cautiously, if at all, in elderly patients, and that close patient monitoring is necessary.

The data discussed above demonstrate an incidence of theophylline-related, life-threatening events and deaths, and a narrow therapeutic window for the safe use of theophylline. Accordingly, the agency concludes that theophylline should be administered under professional supervision and not be available OTC. Therefore, all OTC cough-cold combination drug products containing theophylline are considered nonmonograph.

References

(1) Comment No. C211, Docket No. 76N–052G, Dockets Management Branch.

(2) Letter from M. Maher, Association of Trial Lawyers of America, to J. S. Benson, FDA, dated October 25, 1990, in OTC Vol. 04THFM, Docket No. 76N–052G, Dockets Management Branch.

(3) Department of Health and Human Services, Food and Drug Administration, "Spontaneous Reporting System, Line Listing of Adverse Reports: Theophylline Adverse Drug Event Profile," January 1969 to March 1994, in OTC Vol. 04THFM, Docket No. 76N–052G, Dockets Management Branch.

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2. Two comments disagreed with the agency's Category II classification of any OTC cough-cold combination drug product containing theophylline (53 FR 30544 at 30546). One comment stated that OTC combination bronchodilator drug products containing theophylline and ephedrine provide the same benefit to asthmatics as either single active ingredient when used for temporary relief of symptoms associated with episodic asthma. The comment asserted that low dose theophylline and ephedrine combinations have an extensive marketing history and a record of safe and effective use. The comment submitted two clinical studies (Refs. 1 and 2) in support of the therapeutic benefit of both theophylline and ephedrine and the additive effect(s) when both ingredients are taken in combination in fixed dosage. The comment contended that the two clinical studies confirm the following: (1) Low dose theophylline in combination products is therapeutically effective; (2) addition of low dose theophylline enhances the effectiveness of ephedrine; and (3) significant clinical benefit is achieved from using the combination product. The comment concluded that these studies provide substantial evidence to adequately support a final determination by the agency that low dose theophylline in combination with ephedrine is generally recognized as safe and effective as an OTC combination bronchodilator drug product.

The second comment stated that adequate and well-controlled clinical studies and 50 years of successful OTC use in the management of reversible bronchospastic disorder have demonstrated the safety and effectiveness of its OTC combination bronchodilator drug product containing 130 mg theophylline, 24 mg ephedrine, and 8 mg phenobarbital. In support of the additive effects and benefits from combining theophylline with ephedrine, the comment submitted data, literature reviews, and affidavits from several health care providers (Refs. 3 through 50). The comment stated that the data presented show that the combination drug product containing theophylline and ephedrine is a rational drug combination by virtue of the synergistic effects of the two bronchodilators, and that the reduction in the dosage of each component reduces the risk of toxicity from either ingredient. The comment added that such combination drug products provide mild to moderate chronic and stable asthmatic individuals with safe and effective medication that is convenient and cost-effective.

The agency has reviewed the submitted data and information, considered other pertinent information, and determined that the existing data do not support the safety and effectiveness of OTC combination drug products containing theophylline and ephedrine. The agency notes that on July 20 and 21, 1981, the FDA Pulmonary-Allergy Drugs Advisory Committee (the Committee) met and concluded that there was insufficient evidence to demonstrate the additive effect for combination drug products containing theophylline and ephedrine (Ref. 51). The Committee met again on November 4, 1982, and stated that it did not favor the continued OTC or prescription marketing of theophylline and ephedrine fixed combination drug products (Ref. 52). In the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30545 to 30546), the agency agreed with the Committee that: (1) Insufficient evidence exists to support the use of theophylline and ephedrine in combination; (2) ephedrine adds little benefit to the theophylline and ephedrine combination when theophylline is given in a dosage titrated for the individual patient; (3) individual dosage titration for theophylline is needed; and (4) an increase in adverse effects has been associated with the use of theophylline and ephedrine combination drug products.

The additional data submitted by the comments do not change the agency's position. One unpublished study (WM–339) (Ref. 1) addressed the therapeutic benefit of a combination containing 130 mg theophylline and 24 mg ephedrine. This randomized, double-blind, placebo-controlled, four-way crossover study compared the bronchodilator effects of single doses of theophylline, ephedrine, theophylline with ephedrine, and placebo in 30 subjects with reversible bronchospasm. According to the comment, the study demonstrates that ephedrine is an effective single ingredient bronchodilator and that combination drug treatment with theophylline plus ephedrine is significantly more effective than treatment with either single ingredient in providing relief from reversible airway obstruction attributable to bronchial asthma.

The agency finds that study WM–339 (Ref. 1) does not provide substantial evidence that both ingredients in the combination drug product make a contribution to the claimed effects. According to the authors, effectiveness of the two single ingredient products (130 mg theophylline and 24 mg ephedrine), the combination product (both theophylline and ephedrine), and placebo (inert tablet) was compared using the following endpoints: (1) Results of spirometric measurements of forced expiratory volume in 1 second (FEV_1) and the peak expiratory flow rate, (2) subjective evaluations of test subjects, and (3) incidence of therapeutic failure. The authors concluded that the combination therapy was superior to both placebo and to the single ingredients for spirometric measurements at several time points and for subjective patient global responses. Although significantly fewer failure rates were reported for the combination treatment group than for the placebo group, there was no significant difference in treatment failures between either individual ingredient and the combination product.

Flaws in the design and analysis of this study preclude substantiation of the authors' conclusions. First, the agency does not consider a single-dose, crossover study sufficient to establish effectiveness of both components of this fixed combination that would be used for multiple doses in a dynamic illness. Treatment-by-sequence effects, possible carryover effects, and dynamic changes in the subject's baseline disease over time could not be assessed because individual subject information was not provided.

Second, the agency considers inappropriate the method utilized to specify and analyze all effectiveness data recorded for treatment failures. Treatment failures were defined by inability to record at least one FEV_1 measurement with a minimum 15 percent improvement during the first 2 hours, and dropouts after the first 2 hours of observation. The planned analysis specified proper handling of treatment failure dropouts. However, 88 percent (15 of 17) of the subjects with at least a single treatment failure at the 2-hour observation point were allowed to finish the same 6-hour study period and were included in the evaluation of effectiveness. Some of these subjects may have received the allowed 2-hour rescue medication generating "improved" data for observation points between 2 and 6 hours, which cannot be attributed to the assigned study drug.

Finally, beta-agonist aerosol rescue medication was allowed by the study protocol at the single 2-hour observation point. This caused effectiveness results to be compromised by inclusion of further data in the analysis of effectiveness whether or not use of the rescue medication was considered a treatment failure.

The agency discussed the Sims et al. study (Ref. 2), submitted by one comment, in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30544). During two phases in that study, several combination products, including one containing 130 mg theophylline and 25 mg ephedrine, were compared to single doses of theophylline and ephedrine in 10 adults with mild but continuously symptomatic asthma and in 10 nonsmoking healthy adults. Reported results were that: (1) A single dose of 130 mg theophylline combined with 25 mg ephedrine produced a bronchodilator effect in subjects with mild to moderate asthma; (2) the theophylline and ephedrine combination caused more side effects (i.e., tremor, nervousness, nausea) than either ingredient alone; and (3) one theopylline and ephedrine combination was more effective than either drug alone, but there was no improvement in bronchodilator effectiveness for another combination despite higher theophylline blood levels achieved after 2 weeks of multiple dosing with a combination product containing theophylline, ephedrine, and phenobarbital. To explain the observed lack of improved lung function after multiple dosing with higher theophylline blood levels, the authors suggested the development of tolerance to theophylline, ephedrine, or both. The agency considers this two-phase study insufficient to support the claim that the combination of theophylline and ephedrine is more effective than either single active ingredient alone for the treatment of mild, continuously symptomatic asthma. The agency concludes that this study does not provide sufficient data to support the use of OTC combination drug products containing theophylline and ephedrine.

The agency has also reviewed the other studies (Refs. 3 through 50) and determined that the data do not substantiate the safe and effective use of OTC combination drug products containing theophylline. References 3 through 6 were previously addressed in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30544). Reference 7 reported superior effects of a combination of two drugs (theophylline and ephedrine) over single ingredient products (theophylline or ephedrine) in ameliorating exercise-induced bronchospasm. However, a three ingredient combination drug product (theophylline, ephedrine, and hydroxyzine hydrochloride) was used in these studies. Further, the side effects (drowsiness, tremors, nausea, insomnia, and palpitations) made the theophylline-ephedrine combination product unacceptable to almost one-half of the subjects in the study.

References 8 and 9 suggested that combinations are more effective than their individual components in controlling induced bronchospasm and modifying both early asthmatic response and late asthmatic response. However, two other reports (Refs. 49 and 50) indicated that oral theophylline has no effect on airway hyperresponsiveness even at dose levels greater than the fixed dose (780 mg per day) currently available OTC.

Reference 10 noted that in some studies additive effects of the combination drug product containing theophylline are recorded and in other studies they are not. Reference 11 was a double-blind, placebo-controlled, randomized cross-over study of a combination of three ingredients (theophylline, ephedrine, and hydroxyzine), another combination of three ingredients (theophylline, ephedrine, and phenobarbital), and a single ingredient product containing ephedrine. The authors reported that both combinations were more effective than ephedrine alone, but the study did not include a single ingredient product containing theophylline. Therefore, the study was unable to evaluate the contribution of ephedrine.

References 12 and 13 indicated that the prescription drugs metaproterenol

(Ref. 12) and terbutaline (Ref. 13) produced additive effects when given with theophylline. However, these data concerning additive effects of prescription drugs are irrelevant to OTC use of ephedrine. Reference 14 involved a comparison of a three ingredient combination drug product containing 130 mg theophylline, 24 mg ephedrine, and 8 mg phenobarbital to a single ingredient product containing 300 mg theophylline, given four times a day. The investigators recorded similar pulmonary function responses for the two products. However, it is difficult to assess these results because the two products contained different amounts of theophylline. The appropriate study to establish effectiveness would have been to compare the combination product to a single ingredient product containing the same amount of theophylline.

None of the other reports (Refs. 15 through 46) contains information to demonstrate safety and effectiveness. References 15 through 26 provided general information only. References 27 through 31 do not contain any clinical trials, and references 32 through 48 involved the comment's sustained action formulation. Some of these studies employed either a placebo control (Ref. 33) or a beta-agonist control other than ephedrine (Refs. 35 through 38). Two other studies (Refs. 32 and 34) compare the safety and effectiveness of a theophylline-containing sustained action dosage form and a theophylline-containing immediate release dosage form. References 39 through 48 lack study controls and are some of the early 1976 trials in Europe that dealt with a variety of disease entities.

The affidavits contained statements from several health care providers that the combination therapy of 130 mg theophylline and 24 mg ephedrine in fixed doses provides safe and effective therapy for the treatment of mild asthma. However, none of the affidavits included any new scientific data to support the safety and effectiveness of any OTC combination drug product containing theophylline and ephedrine.

The agency concludes that the submitted data do not support any combination bronchodilator drug products containing theophylline as safe and effective for OTC use, particularly with regard to effectiveness at steady state. Substantial evidence has not been provided to demonstrate that each ingredient in the combination of theophylline and ephedrine makes a contribution to the claimed effects as noted in § 330.10(a)(4)(iv) (21 CFR 300.10(a)(4)(iv)). Accordingly, in this final rule, combination bronchodilator drug products containing theophylline are not generally recognized as safe and effective and are considered misbranded for OTC use.

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(51) Minutes of the FDA Pulmonary-Allergy Advisory Committee Meeting, July 20 and 21, 1981, in OTC Vol. 04GTFM, Docket No. 76N–052G, Dockets Management Branch.

(52) Minutes of the FDA Pulmonary-Allergy Advisory Committee Meeting, November 4, 1982, in OTC Vol. 04GTFM, Docket No. 76N–052G, Dockets Management Branch.

III. Analysis of Impacts

An analysis of the cost and benefits of this regulation, conducted under Executive Order 12291, was discussed in the tentative final monograph of August 12, 1988 (53 FR 30522). No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (53 FR 30522 at 30560), and the substance of that analysis has not changed. Executive Order 12291 has been superseded by Executive Order 12866.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency concludes that there is no basis for the continued marketing of any OTC combination cough-cold drug products containing theophylline with claims or directions for use as a bronchodilator and/or antiasthmatic drug product. In the interim, manufacturers may be able to reformulate to single ingredient ephedrine drug products. However, elsewhere in this issue of the **Federal Register**, the agency is proposing to remove the ingredients ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride from the bronchodilator final monograph and to require premarket approval for any OTC drug product containing these ingredients. If that proposal is finalized, manufacturers will not be able to market any OTC bronchodilator drug products containing theophylline or ephedrine without obtaining an approved application.

Early finalization of the nonmonograph status of OTC cough-cold combination drug products containing theophylline will benefit consumers by early removal from the marketplace of drug products for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Bronchodilator drug products containing epinephrine will continue to be available for consumers to use on an OTC basis to treat bronchial asthma. Based on the information above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

At the time that the final monograph for OTC bronchodilator drug products was published in the **Federal Register** of October 2, 1986 (51 FR 35326), the agency had not established § 310.545, which lists certain active ingredients that are not generally recognized as safe and effective for certain OTC drug uses. Therefore, bronchodilator ingredients that were found to be nonmonograph in 1986 are not currently included in § 310.545. In this final rule, the agency is listing in new § 310.545(a)(6)(iv) all nonmonograph bronchodilator ingredients. New § 310.545(a)(6)(iv)(A) includes the following ingredients: Aminophylline, belladonna alkaloids, euphorbia pilulifera, metaproterenol sulfate, methoxyphenamine hydrochloride, pseudoephedrine hydrochloride, pseudoephedrine sulfate, and theophylline preparations (theophylline, anhydrous; theophylline calcium salicylate; theophylline sodium glycinate). New § 310.545(a)(6)(iv)(B) includes any combination drug product containing theophylline (e.g., theophylline and ephedrine, or theophylline and ephedrine and phenobarbital). The agency is also amending § 310.545(d) to add new paragraphs (d)(19) and (d)(20) to list the effective dates for the ingredients in new § 310.545(a)(6)(iv)(A) and (a)(6)(iv)(B), respectively.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraphs (a)(6)(iv), (d)(19), and (d)(20) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(iv) *Bronchodilator drug products*—

(A) *Approved as of October 2, 1987.*

Aminophylline
Belladonna alkaloids
Euphorbia pilulifera
Metaproterenol sulfate
Methoxyphenamine hydrochloride
Pseudoephedrine hydrochloride
Pseudoephedrine sulfate
Theophylline, anhydrous
Theophylline calcium salicylate
Theophylline sodium glycinate

(B) Approved as of January 29, 1996. Any combination drug product containing theophylline (e.g., theophylline and ephedrine, or theophylline and ephedrine and phenobarbital).

* * * * *

(d) * * *

(19) October 2, 1987, for products subject to paragraph (a)(6)(iv)(A) of this section.

(20) January 29, 1996, for products subject to paragraph (a)(6)(iv)(B) of this section.

* * * * *

Dated: July 5, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–18449 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 341

[Docket No. 95N–0205]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Monograph for OTC Bronchodilator Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) bronchodilator drug products to remove the ingredients ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride and to classify these ingredients as not generally recognized as safe and effective for OTC use. This action is being taken in response to a request from the U.S. Department of Justice, Drug Enforcement Administration (DEA) to restrict OTC availability of ephedrine because of its illicit use as the primary precursor utilized in the synthesis of the controlled substances methamphetamine and methcathinone. This action is also based on new information that shows that the misuse and abuse of OTC ephedrine drug products has the potential for causing harm and on comments made by FDA's Pulmonary-Allergy Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee on November 14, 1994. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments or objections by August 28, 1995; written comments on the agency's economic impact determination by August 28, 1995. FDA is proposing that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments or objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The Panel recommended that ephedrine preparations be Category I (generally recognized as safe and effective) for OTC bronchodilator use (41 FR 38312 at 38370 and 38371, September 9, 1976). The agency concurred with the Panel in the bronchodilator tentative final monograph (47 FR 47520 at 47527, October 26, 1982) and included ephedrine preparations in the final monograph for OTC bronchodilator drug products (51 FR 35326 at 35339, October 2, 1986).

II. Recent Developments

Since publication of the final monograph for OTC bronchodilator drug products, the agency's views about OTC ephedrine-containing bronchodilator drug products have changed for several reasons: (1) A large-scale diversion of OTC ephedrine-containing drug products to illicit use in the manufacture of the controlled substances methamphetamine and methcathinone, (2) new information that ephedrine may be unsafe for OTC use and has the potential for causing harm as a result of misuse and abuse, due to widespread and easy availability as an OTC drug, and (3) the consensus of FDA's Pulmonary-Allergy Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee (the Committee) on November 14, 1994, that the use of oral ephedrine drug products as an OTC bronchodilator to relieve the symptoms of asthma can no longer be justified when the drug's potential for illicit use and misuse is considered.

III. Illicit Use of OTC Ephedrine Drug Products

FDA has received correspondence and inquiries from consumers, U.S. Senators, DEA, and others (Ref. 1) concerning the need for additional controls on the distribution of OTC ephedrine-containing drug products. The "Domestic Chemical Diversion Control Act of 1993, Pub. L. 103–200" was signed into law on December 17, 1993, to control the diversion of certain chemicals (e.g., ephedrine) used in the illicit production of controlled substances such as methcathinone and methamphetamine. The law became effective on April 16, 1994, and removed the exemption from the definition of a "regulated transaction" that had existed for single entity ephedrine drug products legally marketed under the Federal Food, Drug, and Cosmetic Act (the act). Thus, drugs that were previously marketed lawfully under the act are no longer exempt from chemical precursor controls. The new law was intended to close this loophole and help eliminate the availability of ephedrine as a raw material source in the clandestine synthesis of methamphetamine and methcathinone.

In the **Federal Register** of October 11, 1994 (59 FR 51365), DEA issued a final rule eliminating the threshold for ephedrine and subjecting all transactions involving bulk ephedrine and single entity ephedrine drug products to the applicable provisions of the Controlled Substances Act (21 U.S.C. 801). The final rule eliminated the threshold (an amount of a listed chemical that determines if a transaction such as receipt or sale of the chemical is a regulated transaction under part 1310 (21 CFR part 1310)) for single entity ephedrine drug products. The final rule established that all transactions involving ephedrine, regardless of size, are subject to recordkeeping and reporting requirements set forth in part 1310 and the notification provisions of part 1310 (21 CFR part 1313). However, the final rule did not apply to combination drug products containing ephedrine.

At the Committee meeting on November 14, 1994, the Committees discussed OTC bronchodilator drug products. DEA had submitted a comment (Ref. 2) to the Committee expressing its concern that, although the recent legislation and proposed regulations (59 FR 12562, March 17, 1994) (now final regulations (59 FR 51365)) adequately address the ability to control single ingredient ephedrine products, DEA is aware that laboratories may turn to combination drug products containing ephedrine and guaifenesin that would be exempt from the final rule.

The comment stated that the illicit use of OTC ephedrine drug products is contributing to a serious public health problem that is an extremely critical

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issue requiring further action at the Federal level. The comment added that the OTC marketing status and broad distribution of these products is hindering efforts to prevent this illicit use of ephedrine and urged the Committees to restrict the OTC availability of this ingredient.

The agency has also received comments from county, State, and Federal Government organizations; pharmacists' associations; and consumers who object to the continued marketing of OTC ephedrine drug products because some manufacturers are promoting these products for misuse as stimulant, weight control, and muscle enhancement products (Ref. 3). The comments contended that this promotion has resulted in extensive and extremely dangerous misuse and abuse of such products, particularly in teenaged children.

IV. Misuse and Abuse of OTC Ephedrine Drug Products

The agency has received a number of reports (Ref. 4) of young people abusing OTC ephedrine drug products. In one case, nine junior high school students took three to eight ephedrine 25 milligram (mg) tablets for added energy and experienced rapid heart beats. One female who took eight tablets had 200 heart beats per minute 2 hours after taking the tablets. The student was able to purchase the ephedrine tablets from a product display at a local convenience store without being questioned about the reason for its use. Another report (Ref. 5) indicated that three 15-year-old girls had consumed 24 to 33 tablets of ephedrine-containing OTC drugs for "kicks."

The agency is aware of numerous other reports involving young people who have overdosed by using OTC ephedrine products promoted as a stimulant or for weight control, or by using such products for recreational purposes in high doses and on a regular basis. One report (Ref. 5) involved a 17-year-old male who died after ingesting a toxic or lethal amount of ephedrine. The youth apparently took the ephedrine to increase alertness, strength, and physical stamina. In another case (Ref. 4), a 21-year-old female developed respiratory problems (trouble breathing) after taking three to four 25 mg ephedrine tablets, purchased OTC, every other hour (and then every hour) over an 8-hour period and consuming alcoholic beverages. Hospitalization resulted from this recreational use of ephedrine.

In another case (Ref. 4), a 22-year-old female took OTC ephedrine tablets because her friends had told her they would act as "uppers." The woman's job required her to work long hours, and she felt she needed a chemical pick-up to get through the day. She presented to a hospital emergency room with headache, nausea, anxiety, and blood pressure of 170/110 millimeters mercury. She was treated, with no permanent adverse effects.

FDA's Spontaneous Reporting System also contains a number of reports of ephedrine misuse and abuse (Ref. 4), some of which have resulted in death due to an overdose of ephedrine. In one case, a 52-year-old male took 10 to 15 ephedrine tablets (believed to be 50 mg) over the previous 24 hours. In another case, a 24-year-old male who died of an overdose had a blood level of ephedrine over 30 times the usual therapeutic range. In another overdose case, the reporting pharmacist commented that "ephedrine is becoming a drug for abuse—would recommend to withdraw OTC status." In another case, the reporting hospital pharmacist noted that the ephedrine overdose (in a 19-year-old female) was the second incident observed this year for these ephedrine/caffeine products sold at convenience markets and "not FDA regulated."

Interested consumers and state regulatory officials (e.g., health departments, boards of pharmacy) have expressed concern about OTC ephedrine drug products being sold under brand names that reflect a use other than as a bronchodilator (e.g., use as a stimulant or for weight control); about products being readily available at convenience stores, truck stops, gas stations, and mini-marts with little, or no, restriction on their sale; and about products being purchased and used by children and adolescents, on an ever increasing basis, with a continuing increase in the number of reported adverse events.

One director of an addictions program informed FDA (Ref. 6) that his locality (in Indiana) is experiencing a surge of adverse responses or reactions to the use of OTC ephedrine being abused for its stimulant effect. He reported that a number of people abusing ephedrine have demonstrated stimulant dependence characterized by compulsion, obsession, or preoccupation, and that ephedrine abuse has induced or worsened mental disorders such as depressive anxiety and different thought disorders. He stated that people are obtaining the drug OTC as ephedrine (not in combination with other drugs) under different brand names, some of which are advertised as an "energizer." He mentioned that the age group abusing ephedrine ranges from teenagers to people who are in their 40's.

A nurse reported her daughter's adverse experience with an OTC ephedrine product (Ref. 4) and mentioned that within the last year the child's pediatrician had treated several adolescents who had overdosed on ephedrine. The nurse added that many emergency room physicians are seeing behavior similar to schizophrenia occurring in young adults as a result of ephedrine obtained OTC. The nurse questioned why this drug was readily purchasable by unsuspecting teenagers.

The agency concludes that these reports show that OTC ephedrine drug products are marketed in ways that are misleading, that promote misuse and abuse, and that can be dangerous. The agency believes that these reports represent only a small percentage of the actual number of adverse events that have occurred and that ephedrine misuse and abuse are a widespread problem in the United States.

According to one source (Ref. 7), at least 14 states have placed additional controls and restrictions on ephedrine to address the abuse problem. These controls include, in at least five states (Florida, Idaho, New Mexico, Oregon, and Washington), switching the products to prescription only status. In Michigan, possession of more than 4 grams of ephedrine requires a prescription. Six states (Arizona, Missouri, Nevada, Ohio, Oklahoma, and Wisconsin) have scheduled ephedrine as a controlled substance. The agency is aware that Kentucky, Massachusetts, and Virginia have introduced bills to tighten ephedrine controls and that other states are also considering similar actions.

The agency concludes that the misuse and abuse of OTC ephedrine drug products have the potential for causing harm as shown by the many reports submitted to the agency. FDA has determined that action is needed to eliminate this misuse/abuse potential. FDA's proposed action, when finalized, will eliminate the need for future action by individual states.

V. Advisory Committee Comments

At a meeting of FDA's Pulmonary-Allergy Drugs Advisory Committee and Nonprescription Drugs Advisory Committee (the Committee) held on November 14, 1994, the Committee members heard presentations from private citizens and state officials concerning the misuse and abuse of OTC ephedrine drug products (Ref. 8). The Committee members expressed concern about the reports of abuse and illicit diversion of ephedrine. One Committee member mentioned that removal of ephedrine from the OTC marketplace by FDA or DEA regulatory action would cause no harm and, indeed, would do some amount of good. Although the Committee did not hear from manufacturers of OTC ephedrine drug products and was not asked the specific question whether these products should be removed from the OTC market, there was a consensus that the benefit of OTC ephedrine does not justify its continued use as an OTC bronchodilator active ingredient when the potential for illicit use and misuse is considered (Ref. 9).

FDA received comments from manufacturers in response to the notice for the Committee meeting (59 FR 34847, July 7, 1994). Two manufacturers opposed the marketing of any OTC bronchodilator drug product (Ref. 10). One manufacturer submitted a "Profile of Asthma Sufferers and Users of Nonprescription Epinephrine (Mist) and Ephedrine Combination (Tablets)" in support of its position these drug products remain available OTC (Ref. 11). Another manufacturer supported the continued marketing of legitimate OTC ephedrine-containing bronchodilator drug products (Ref. 12). This manufacturer briefly discussed the abuse potential for single ingredient ephedrine-containing products, particularly those that are deliberately labeled to imply nonmonographed usage. The manufacturer stated that the extent of any abuse is unclear and potentially exaggerated by a small number of highly publicized abuse instances. The comment noted that a number of states have enacted legislation to discourage abuse, in response to this situation. The comment mentioned that most states have generally made provisions to ensure continued OTC availability of legitimate combination asthma products, such as its product containing ephedrine sulfate and guaifenesin, an expectorant.

The agency has considered the manufacturers' views in developing this proposal. As discussed above, the agency believes that the misuse/abuse problem is widespread and much broader than one manufacturer suggested. Continued OTC availability of combination products containing ephedrine and guaifenesin would not alleviate this problem. Large quantities of guaifenesin are generally safe, and the combination product would not stop people from taking large amounts for the effects of the ephedrine. Further, DEA has informed FDA that it is aware that ephedrine can readily be isolated from such combinations for illicit manufacture (Ref. 13). Accordingly, FDA concludes that the best resolution for this misuse/abuse problem is for ephedrine, singly or in combination products, not to be available OTC.

VI. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Correspondence in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

(2) Comment No. C8, Docket No. 94N–0232, Dockets Management Branch.

(3) Comments No. C5, C6, C10, C11, C12, C17, C19, C20, APE8, APE10, APE13, and LET142, Docket No. 94N–0232, Dockets Management Branch.

(4) Adverse reaction reports in OTC Vol. 04BPEA, Docket No. 95N-0205, Dockets Management Branch.

(5) Comment No. C10, Docket No. 94N–0232, Dockets Management Branch.

(6) Letter from B. B. Rohrer, The Addictions Program, to FDA, dated June 24, 1993, in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

(7) National Association of Boards of Pharmacy Foundation, Inc. Newsletter, October 1994, pp. 2–3, in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

(8) Transcript of a Joint Meeting of the Pulmonary-Allergy Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee, November 14, 1994, pp. 56–84, in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

(9) Transcript of a Joint Meeting of the Pulmonary-Allergy Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee, November 14, 1994, pp. 235, 236, 258, 259, 264, 265, 270, 271, and 272, in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

(10) Comments No. C8, APE1, and C11, Docket No. 94N–0232, Dockets Management Branch.

(11) Comment No. LET144, Docket No. 94N–0232, Dockets Management Branch.

(12) Comment No. C18, Docket No. 94N–0232, Dockets Management Branch.

(13) Memorandum of a telephone conversation between D. Snyder, DEA, and G. Rachanow, FDA, dated April 20, 1994, in OTC Vol. 04BPEA, Docket No. 95N–0205, Dockets Management Branch.

VII. Summary of the Agency's Proposed Change

The agency is proposing that ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride should no longer be included in the final monograph for OTC bronchodilator drug products based on their extensive use in illicit drug manufacture and their potential for causing harm as a result of misuse and abuse due to their widespread and easy availability as an OTC drug. This proposed amendment removes the ingredients ephedrine, ephedrine hydrochloride, ephedrine sulfate, and racephedrine hydrochloride from the final monograph for OTC bronchodilator drug products (21 CFR part 341). It does not affect the monograph status of epinephrine-containing drug products when used in a hand-held rubber bulb nebulizer. Such products will remain in the final monograph for OTC bronchodilator drug products.

This proposal would remove all oral systemically acting bronchodilator drug products from the OTC market. Thus, the agency is proposing to amend § 341.16 of the final monograph for OTC bronchodilator drug products to remove §§ 341.16(a), (b), (c), and (f) for ephedrine ingredients and to redesignate § 341.16(d), (e), and (g) as § 341.16(a), (b), and (c), respectively. Also, the agency is proposing to amend § 341.76(c) to remove paragraph (5), to revise the heading for paragraph (6), and to redesignate paragraphs (6)(i), (6)(ii), and (6)(iii) as paragraphs (5)(i), (5)(ii), and (5)(iii), respectively. In addition, the agency is proposing to amend § 341.76(d) to remove paragraph (1), to redesignate paragraph (2) as paragraph (1), to revise the heading in new paragraph (1), and to reserve paragraph (2). The agency is also proposing to amend § 341.90 by removing paragraph (a) that pertains to ephedrine and redesignating paragraphs (b) through (q) as paragraphs (a) through (p), respectively. Furthermore, the agency is proposing to amend the list of ingredients that are not generally recognized as safe and effective for specified uses in § 310.545 (21 CFR 310.545) by adding new paragraphs (a)(6)(iv)(D) and (d)(27) for ephedrine preparations.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory

options that would minimize any significant impact of a rule on small entities. This rule would eventually stop the marketing of OTC bronchodilator drug products containing ephedrine, ephedrine hydrochloride, ephedrine sulfate, or racephedrine hydrochloride. The agency has determined that legitimate drug manufacturers have little or no interest in single ingredient OTC ephedrine drug products. However, some manufacturers may have an interest in combination drug products containing ephedrine.

The agency acknowledges that this proposed rule, if finalized, would have an impact on consumers who legitimately use OTC bronchodilator drug products containing ephedrine to relieve their bronchial asthma. They will no longer be able to purchase these products without a doctor's prescription. However, all OTC bronchodilator drug products must bear a label warning that states "Do not use this product unless a diagnosis of asthma has been made by a doctor." Therefore, it is presumed that legitimate users of these products have seen a doctor and are under a doctor's occasional care for the treatment of their asthma. These consumers will be able to obtain an ephedrine drug product upon a doctor's prescription if the doctor determines that ephedrine is the drug that should be used to treat the condition. These consumers will also be able to purchase OTC epinephrine for inhalation to treat their bronchial asthma without a doctor's prescription. At its November 14, 1994, meeting, the Committee recommended that epinephrine for inhalation remain available OTC for self-treatment of asthma under certain conditions. The agency has weighed the consequences of this proposed rule as it might adversely impact some legitimate users of these OTC ephedrine drug products. However, these consumers will have access to another drug without a prescription and could continue to obtain ephedrine products on a doctor's prescription. The agency has determined that as a result of the widespread misuse and abuse of OTC ephedrine drug products, especially by many young people and people up to in their 40's, that it is in the best interest of all consumers (especially parents) to remove from the OTC market ingredients that are used extensively in the manufacture of illicit drugs and that have widespread misuse and abuse with the potential to cause harm. Further, the agency is not aware of a widespread marketing of legitimate OTC bronchodilator drug products containing ephedrine, although several manufacturers could be adversely affected by this proposed rule. Accordingly, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC bronchodilator drug products that contain ephedrine, ephedrine hydrochloride, ephedrine sulfate, or racephedrine hydrochloride. Comments regarding the impact of this rulemaking on these drug products should be accompanied by appropriate documentation. A period of 30 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for development and submission of comments on this subject. Because of the existing serious public health problem identified by DEA and a number of states, and the many reports of misuse and abuse of OTC ephedrine drug products that FDA has received, the Commissioner has determined that there is good cause for a shortened comment period. FDA will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

IX. Environmental Impact

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before August 28, 1995, submit to the Dockets Management Branch (address above) written comments or objections regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before August 28, 1995. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310 and 341 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraphs (a)(6)(iv)(D) and (d)(27) and by revising paragraph (d) introductory text to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(iv) *Bronchodilator drug products.*

* * *

(D) Approved as of August 28, 1995.

Ephedrine
Ephedrine hydrochloride
Ephedrine sulfate
Racephedrine hydrochloride

* * * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(27) of this section.

* * * * * *

(27) August 28, 1995, for products subject to paragraph (a)(6)(iv)(D) of this section.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 341.16 [Amended]

4. Section 341.16 Bronchodilator active ingredients is amended by removing paragraphs (a), (b), (c), and (f) and by redesignating paragraphs (d), (e), and (g) as paragraphs (a), (b), and (c), respectively.

5. Section 341.76 is amended by removing paragraph (c)(5); redesignating paragraph (c)(6) as paragraph (c)(5); and revising the heading for newly redesignated paragraph (c)(5); by removing paragraph (d)(1); by redesignating paragraph (d)(2) as paragraph (d)(1); by reserving paragraph (d)(2); and by revising the heading in newly redesignated paragraph (d)(1) to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

* * * * * *

(c) * * *

(5) For products containing epinephrine, epinephrine bitartrate, or racepinephrine hydrochloride identified in § 341.16(a), (b), and (c). * * *

* * * * * *

(d) * * *

(1) For products containing epinephrine, epinephrine bitartrate, or racepinephrine hydrochloride identified in § 341.16(a), (b), and (c). * * *

(2) [Reserved]

* * * * * *

§ 341.90 [Amended]

7. Section 341.90 *Professional labeling* is amended by removing paragraph (a) and redesignating paragraphs (b) through (q) as paragraphs (a) through (p), respectively.

Dated: July 5, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–18448 Filed 7–26–95; 8:45 am]

BILLING CODE 4160–01–F

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federal register

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July 27, 1995

Part V

Department of Defense

Corps of Engineers, Department of the Army

Issuance of Nationwide Permit for Single-Family Housing; Notice

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Issuance of Nationwide Permit for Single-Family Housing

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: As a part of our effort to improve the regulatory program, the Army Corps of Engineers is hereby issuing a new nationwide general permit (NWP) under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act for single-family residential housing activities. As announced by the President on July 12, 1995, the NWP will provide for effective protection of the aquatic environment while substantially reducing regulatory burdens on landowners.

In August 1993, the Clinton Administration announced a comprehensive package of improvements to the Federal wetlands program that identified measures to enhance the fairness, flexibility, and effectiveness of the wetlands program. A major focus of the Administration's Wetlands Plan is intended to address the concerns of landowners by streamlining the Section 10 and Section 404 permitting programs, where possible, while maintaining needed environmental protection.

EFFECTIVE DATE: September 25, 1995.

ADDRESS: Information can be obtained by writing to: The Chief of Engineers, U.S. Army Corps of Engineers, ATTN: CECW–OR, Washington, C 20314–1000.

FOR FURTHER INFORMATION, CONTACT: Ms. Kelly Enright or Mr. Sam Collinson at (202) 761–0199.

SUPPLEMENTARY INFORMATION: On August 24, 1993, the White House Office on Environmental Policy announced the President's Wetlands Plan (Plan). The 40-point Plan set forth a comprehensive package of improvements to the Federal wetlands protection programs. A major goal of the Plan is to ensure that programs are fair, flexible, and effective. To achieve this goal, the Corps regulatory program must continue to provide effective protection of wetlands while conveying to the public a clear understanding of regulatory requirements. In its implementation, the regulatory program must be administratively efficient, flexible yet predictable, and avoid unnecessary impacts to private property and the regulated public.

We are issuing this new NWP to support the objectives in the President's Wetlands Plan. The new NWP will authorize activities in wetlands related to the construction or expansion of a single-family home. This would allow, for example, a couple to build a retirement home on wetlands property they own without applying for an individual Section 404 permit. The NWP includes limits and conditions to minimize impacts on the aquatic environment.

There is a perception by many in the country that the regulatory process has become too burdensome on small landowners simply desiring to build a home. This NWP has been developed to reduce the regulatory burden on small landowners proposing to build or expand a single-family home while simultaneously maintaining environmental safeguards. This NWP seeks to strike this balance by allowing a landowner to build or expand a home with minimal regulatory oversight while protecting the aquatic resource through specific limitations. The new NWP will allow the Corps to focus better its resources on areas that have the potential for greater environmental impacts. Furthermore, as the Corps realizes workload savings resulting from this NWP, service to other sectors of the regulated public (e.g., large developments), should be improved.

On March 23, 1995, the Corps published its proposed single-family housing NWP in the **Federal Register**. We received approximately 450 comments responding to the proposed NWP. In response to these comments, we made a few revisions to the NWP as discussed below. Issuance of this NWP should result in continued protection of the aquatic environment, reduced regulatory burden on the small landowner and an overall decrease in workload. Any workload savings will be devoted to more efficient individual permit evaluations and increased enforcement and compliance activities.

This nationwide permit for single-family housing activities issued today becomes effective on September 25, 1995. During this 60-day period, the States must make their final determination on issuance of State Section 401 water quality certification or, where appropriate, whether they agree with our CZM consistency determination. The NWP will remain in effect for 5 years from the effective date unless sooner revoked, modified, or reissued.

Discussion of Public Comments and Changes

We requested comments on the following specific issues:

1. Maximum Acreage

This topic received a large number of comments; specifically, commenters suggested increasing, decreasing, or retaining the proposed acreage figure. Several commenters supported the 0.5 acre limit. They stated that such an acreage figure was appropriate, reasonable and sufficient for a single-family residence with attendant features.

Several commenters were in favor of an increased acreage threshold. Some stated that the acreage figure should be increased to 10 acres to remain consistent with that of the NWP 26. One commenter suggested a 5-acre limit to correspond with the Department of the Interior's proposal to lessen Endangered Species Act restrictions on individuals owning 5 acres or less. The majority of those who encouraged a higher acreage amount, recommended a 1-acre threshold. One of these commenters equated this figure to the 1-acre threshold of the NWP 26 below which the Corps does not require notification. One commenter expressed concern over the proportionality of impacts versus the overall size of the parcel of land to be impacted. This commenter recommended increasing the maximum acreage threshold so that a more proportional impact to wetlands could be allowed. For example, if a landowner owns a 10-acre parcel, he should be authorized to fill 5 acres of wetlands and one who owns a 1-acre parcel should be allowed to fill 0.5 acre of wetlands. The commenter did not offer a specific ratio or threshold. Another commenter recommended that wetlands of lower value should have a higher acreage threshold while higher quality wetlands should be allowed more minor impacts. Again, this commenter did not offer specific thresholds.

The majority of the comments on the acreage limit were in favor of a lesser acreage. Many commenters maintained that the acreage proposed was excessive and a lesser acreage would encourage prospective permittees to avoid and minimize impacts. Several commenters compared the acreage threshold to that allowed in their respective states for single-family housing activities. Those states had a lower acreage threshold. Many commenters suggested that the NWP should only apply to individuals who had some usable uplands on their property. By using some uplands the property owner would need less fill in wetlands to have a homesite, and therefore a lower acreage limit could be established. These commenters indicated that the NWP should not apply to those who own only wetlands

since they would need to fill more to achieve their project purpose. One commenter stated that there should be a distinction made between residential expansion and completely new construction. That commenter suggested that an individual developing a new lot should be afforded a greater authorization than one expanding a developed lot, but that both acreages should be less than 0.5 acre.

A few commenters questioned the logic used in the selection of the 0.5 acre threshold. Several commenters suggested that the NWP should apply only to lots of a certain size but greater than 0.5 acre (e.g., the NWP should apply only to parcels that are greater than 5 acres).

Review of statistical data from the U.S. Department of Commerce and the U.S. Department of Housing and Urban Development reveals that approximately 90% of residential landowners in the United States own parcels that are 0.5 acre in size or less. This includes all residential land; wetlands comprise a very small subset of these lands. From this data we conclude that construction on 0.5 acre of land is consistent with what the public believes to be adequate for single-family housing activities. Furthermore, this data demonstrates that this 0.5 acre threshold would satisfy the vast majority of the public's need for a homesite. Additionally, approximately 60% of landowners own parcels that are less than 0.25 acre in size. Adopting this lower acreage threshold may eliminate a large portion of the public who could benefit from this NWP. However, we anticipate that most landowners, regardless of the size of their property, will require impacts less than 0.25 acre for their single-family housing activities.

We believe that relating the size of the impact to the upland acreage would add unnecessary confusion to the applicability of the NWP without additional, commensurate aquatic resource protection. We are concerned with the impacts to the aquatic environment and are therefore measuring those impacts. When we review the Pre-Construction Notification (PCN), we will consider the availability of uplands at the site and cumulative impacts. Therefore, we are not establishing a limitation on the size of the parcel for which this NWP is applicable. With regard to State acreage thresholds, a Corps permit does not obviate the need for a State permit. Therefore, a permittee can only impact the lowest acreage threshold allowed by either the State or the Corps. Additionally, the Corps will encourage its district offices to adopt the State's equivalent authorization, where appropriate, and regionally condition this NWP to adhere to that threshold. The Corps is issuing the NWP with the 0.5 acre threshold for the single-family housing NWP. In an effort to simplify this permitting process, the Corps will allow no more than 0.5 acre of impact for non-tidal wetlands. There will be no automatic exclusions based on wetland value. However, the Corps will determine on a case-by-case basis, if a specific area should be exempted from this NWP based on functions or values. Upon review of the comments, statistical data, a survey of Corps district offices to determine need for the permit, and our experience and judgement concerning the potential for adverse effects on the environment associated with the various acreage limits, we concluded that the 0.5 acre threshold was appropriate. The 0.5 acre limit strikes a balance that will reduce unnecessary regulatory burdens on most residential landowners while providing for individual permit review of those single-family housing activities with the potential for more than minimal impacts on the aquatic environment. While the NWP provides for up to 0.5 acre of impacts to wetlands, we believe that compliance with the permit requirement to avoid and minimize on-site impacts will result in most homesites affecting less than 0.25 acre. The PCN will provide for Corps district offices to ensure compliance with this requirement as well as to review cumulative impacts. Finally, we will monitor this NWP and will revoke or modify the NWP, if necessary, to further reduce unacceptable impacts to the aquatic environment.

One commenter questioned how the Corps could ever justify denying proposals for impacts due to larger developments when this NWP will authorize equivalent impacts for several individual homesites in a given area.

The Corps does issue and will continue to issue individual permits for large developments. These often involve mitigation for impacts. The Corps also denies and will continue to deny permits for large developments, when appropriate. This NWP will not affect those decisions. When reviewing the PCN for a single-family housing activity, the Corps will consider cumulative impacts of the proposed homesite with other potential homesites. In some cases, the Corps Division Engineers may exercise their discretionary authority which will result, in a given area, in the requirement for individual permits and/or for mitigation for the individual homesites to address cumulative impacts. Therefore, we expect that similar considerations and requirements would be imposed for both large developments and for many individual homesites in a given area. Furthermore, this NWP does not apply to individual parcels subdivided on or after November 22, 1991, where the aggregate total of impacts exceeds 0.5 acre.

2. Pre-Construction Notification:

The comments on the Pre-Construction Notification (PCN) requirement for this NWP addressed a wide range of issues including, the need for the pre-construction notification, the criteria for when a PCN should be required, the 30-day timeframe, the need for agency coordination, and the wetland delineation requirements. The majority of the commenters supported the requirement for a PCN in some form, while a few commenters opposed a PCN entirely or in certain circumstances.

Several commenters recommended that PCNs should be required in all cases. Reasons given include: to maintain consistency, to avoid potential violations, to assist applicants in avoiding impacts on their property, to allow the Corps to ensure that the permittee has minimized to the greatest extent practicable, and to aid in evaluating cumulative impacts. Several commenters indicated the PCN should only be required in certain situations. One commenter suggested that any discharge occurring after March 6, 1995, should require a PCN but that activities occurring prior to this date should not. Some commenters suggested flexibility when the area of effect is a lesser acreage; specifically, sizes of 0.1 and 0.25 acre were referenced as dimensions warranting no notification. Another commenter suggested that the Corps require a PCN for all projects, regardless of size, for the first 3 years after implementation of this NWP; afterwards, adopt a size limit regarding PCNs, if practicable. Several commenters recommended that the notification process be eliminated completely. One commenter stated that the PCN procedure was cumbersome and undermines the intent of the general permit program. Some other reasons given include reducing the regulatory workload, reducing the required recordkeeping, reducing agency spending, avoiding delay and expense to the landowner, and serving as an incentive for landowners to reduce the area of impact. One commenter suggested that the PCN would result in subjective treatment of the regulated public. A few commenters stated that no notification would be consistent with the notification procedures governing the existing NWPs. One commenter

recommended adopting existing PCN requirements rather than a modified PCN only for this NWP, to avoid confusion by both the regulated public and the resource and regulatory agencies.

We continue to believe that the PCN process is necessary for the Corps to examine projects on a case-by-case basis to determine compliance with the single-family housing NWP and to ensure that the impacts are minimal. Furthermore, the PCN will maintain nationwide consistency and continue to provide adequate environmental protection. At this time we are requiring the PCN for all activities qualifying for this NWP. However, we will monitor the NWP use and, if appropriate, will propose, at a later date, any necessary thresholds below which the PCN would not be required. Although having two notification procedures may seem confusing, the PCN process for this NWP is simpler than the existing PCN and will result in less burdens on the applicant. We believe that the PCN process for this NWP should be different from the existing PCN for the reasons discussed below.

A few commenters addressed the 30-day timeframe. Specific concerns were that Corps personnel may not be able to adhere to this limiting factor, thus, verifying projects that would not otherwise qualify for authorization under this NWP; the 30-day timeframe will discourage case-by-case review and site visits to independently monitor impacts; and the Corps will have to verify authorization prior to State water quality and CZMA certification being issued or denied. One recommendation was that the Corps should detail how the PCN process will be undertaken to ensure that only a minimum number of projects exceed the 30-day limit. A few commenters stated that the 30-day timeframe was inadequate and should be extended; one suggested a 90-day timeframe. One commenter questioned whether the District Engineer will send notification to the permittee as to the date that notification was received. Another commenter suggested that the permittee should be able to rely on the 30-day timeframe for the Corps to raise issues and that the District Engineer should not be able to intervene after that point.

The Corps believes that the 30-day timeframe is sufficient, based on the nature of these activities and the information reqnired to be submitted by the permittee, to review and determine if an activity qualifies for this NWP. Currently, the Corps reviews approximately 40,000 general permit activities and reaches a decision in an average of 16 days. State 401 water quality certification and CZMA consistency determinations will not be affected by the 30-day timeframe. Permittees may proceed under the NWP upon verification by the Corps, if the State issues 401 certification or 401 certification conditions for the NWP. However, if the State denies 401 certification for the NWP, the Corps will verify the activity within the 30-day timeframe, subject to the permittee individually obtaining 401 certification from the State. Until then, authorization for the activity is denied without prejudice. (This also applies to CZMA consistency determinations.) Therefore, during the 30-day timeframe the Corps will only verify that authorization under the NWP will be valid if the permittee dose successfully obtain State water quality certification or waiver thereof and/or CZMA concurrence or presumed concurrence, where applicable. Some Corps districts may have some mechanism in place whereby permittees are informed that their notification has been received. However, there is no requirement that the districts send such notification. Permittees may use certified mail to document receipt of their notice by the Corps district office. The Corps expects to evaluate all activities under this NWP, on a case-by-case basis. However, we do not believe that minor activities will require on-site inspections in every situation. If, subsequent to verification, the Corps discovers that false information has been furnished, then appropriate action will be taken. Finally, if the Corps does not respond within the 30-day timeframe, then the permittee may proceed with the project.

Many commenters expressed their views concerning the proposal to not notify the Federal and State resource agencies as part of the notification procedures. Several commenters disagreed that notifying the resource agencies would result in significant increases in permit processing time. Many stated that review of the public notice was insufficient consultation and that notification with the agencies should be retained. However, the issue of greatest concern was the belief that the Corps' would be in violation of Section 404(q) of the Clean Water Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, associated Memoranda of Agreement, and the National Historic Preservation Act. Many commenters stated that the modified PCN process provided inadequate evaluation of fish and wildlife impacts, impacts to threatened and endangered species, and all potential adverse impacts in general. One commenter stated that the Corps lacks the expertise to protect fish and wildlife resources as its primary responsibility and, therefore, coordination with resource agencies should be required. One commenter recommended that coordination should be maintained if the activity is within close proximity to an "endangered species area." A few commenters suggested establishing a process by which the USFWS and a representative State agency coordinates review of activities which could potentially impact Federally threatened or endangered species. A few commenters questioned how the Corps intends to implement the NWP general conditions that prohibit jeopardizing endangered species and impacting historic resources. Also offered were recommendations that the Corps should notify agencies who issue building permits about proposed projects and the Corps should notify the NRCS of any agricultural projects. One commenter posed several questions in an effort to justify the need for notification with the resource agencies. Specifically, the commenter asked if the Corps had examined statistics on the number of homes to be built under this NWP, amount of ground disturbance, and amount of impacts to known archaeological sites. Another commenter recommended that a review for the presence of archaeological resources be conducted prior to commencement of the activity. One commenter stated that not requiring a PCN will reduce the accuracy of USFWS' records of wetland losses for its national status and trends report. One commenter stated that the NWP limits the States' involvement in reviewing proposed activities that may affect State resources. Other commenters stated that the public should have the opportunity to comment on projects in areas under developmental pressure; the public should have the opportunity to comment on all projects (e.g., rescind all NWPs); PCNs should include notification to all adjacent property owners within 500 feet of the project site; and the Corps should not only require resource agency coordination but also include a provision that allows any Federal resource agency the authority to require an individual permit.

The purpose of NWPs is to authorize activities having minimal impacts, with little or no review, in a timely manner. Based on our experience, third party involvement adds little to the review process, but decreases the efficiency of Corps staff who could be focusing their resources on areas that have the potential for greater environmental impacts. Due to reduced agency resources, resource agency comments frequently merely cite regulations or policies governing alternatives analysis and/or mitigation policy and do not provide site-specific comments. Furthermore, we believe that the interdisciplinary Corps regulatory staff is extremely knowledgeable of resource values and fully capable of evaluating impacts resulting from NWP activities. Over 70% (700) of the Corps regulatory personnel, nationwide, are natural resource scientists, many with advanced degrees. Regarding endangered species and historic properties, 33 CFR 330.4(f) and (g) outline the procedures regarding adverse impacts to threatened or endangered species or critical habitat, and impacts to historic properties. The permittee must follow these standard conditions in order to be in compliance with the NWP; failure to adhere to these conditions results in a violation of the permit on the permittee's part. It has been our experience that requiring notification to the resource agencies places an additional burden on the applicant and the regulator, with very little benefit. We do not believe that this NWP will reduce the USFWS' ability to monitor losses of the nation's wetlands. Further, other mechanisms can be implemented to assist the USFWS with the task of tracking cumulative impacts. The States may impose conditions on the NWP or review each project with regard to water quality certification and coastal zone management consistency, where applicable. The Corps disagrees that case-by-case notification with the resource agencies is necessary for these minor activities. However, it is the Corps' belief that notification to the Corps is necessary to ensure that impacts are minimal.

A few commenters stated that the Corps should outline under what circumstances a wetland jurisdictional delineation will be necessary. It was also recommended that we require a wetland delineation to ensure that the proposed project impacts comply with the acreage threshold. One commenter questioned the requirement for the permittee to identify the project's direct and indirect adverse environmental effects, likening this condition to an environmental impact statement (EIS) such as those required for large scale projects. Additional comments received regarding PCNs include: PCNs should contain evidence of avoidance and minimization on the part of the applicant; permittees should complete a standard individual permit application form for all projects; PCNs should include scaled site plans with existing and proposed development, slopes and elevation; PCNs should include a legal description of the project site and a certified statement as to whether the parcel is part of a real estate subdivision; and a copy of the PCN should be sent to the clerk or secretary of the appropriate local municipality.

For the purpose of clarification, a formal wetland delineation is a routine or comprehensive delineation as described in the Corps' 1987 wetland delineation manual. We have determined that if the entire parcel owned by the NWP applicant is 0.5 acre or less in size, no formal on-site wetland delineation will be required. Therefore, such individuals will not be required to hire a consultant to perform a detailed field investigation for the purpose of determining Federal jurisdiction. A general indication of the amount and/or location of the wetlands would be sufficient. Permittees who own parcels greater than 0.5 acre must have a formal wetland delineation prepared in accordance with the current method required by the Corps. Conditions will be incorporated stating this and allowing applicants to request that the Corps perform the delineation with the understanding that such requests may cause some delay in the permitting process. Approximately 90% of the landowners in the United States own less than 0.5 acre of land; therefore, this condition should not prove to be a burden on most applicants. We disagree that the permittee's responsibility to identify adverse environmental effects is in anyway similar to preparing an EIS.

The Corps only requires a clear and concise statement regarding the proposed project's direct and indirect adverse environmental effects; such a requirement can be undertaken by the permittee or done in consultation with Corps staff. We do not expect a study or detailed analysis of such impacts. We disagree that the aforementioned proposals should be required in all cases. These options are certainly available to each applicant and in some cases may expedite the permitting process, but will not be required. This NWP is a general permit; as such, it authorizes activities with minimal environmental effects and requires minimal effort on the part of the applicant. The Corps will require that applicants avoid and minimize impacts wherever practicable on-site.

3. Mitigation

Numerous comments were received regarding mitigation. Many of these comments concerned compensatory mitigation and include: mitigation should be in-kind and on-site except in extreme cases of hardship; permittees should mitigate for the lost acreage, functions, and values; the Corps should justify mitigation based on the wetland loss and not the applicant type (small landowner); compensatory mitigation should be required for impacts to high quality systems and for impacts resulting from construction of attendant features; and compensatory mitigation should be required for impacts exceeding 0.1 acre. Several commenters recommended mitigation ratios ranging from 1:1 to 10:1, compensatory mitigation to impacts. One commenter recommended that mitigation requirements should be established at the Corps district level based on local resource needs and should be made in consultation with other resources agencies. One commenter recommended that all remaining wetlands on a parcel in which this NWP is used should be placed into a deed restriction.

Many suggestions were made to utilize mitigation banking. Some of the justifications presented were because it has been successful in creating sizeable wetland resources, is affordable, can assist in maintaining a no net loss policy, can aid in avoiding the problems with compensatory mitigation for small impacts, and would give permittees predictability with regard to mitigation costs. Some stated that the mitigation bank should be utilized on a sub-watershed basis. Some have recommended only allowing application of the NWP in watersheds where mitigation banks have been legally established. A few suggestions were offered to have permittees make donations to a recognized wetland conservation project.

The no net loss of wetlands policy was a recurring theme in comments regarding mitigation requirements for this NWP, as well as a long-term goal of increasing the quality and quantity of wetlands.

Some commenters recommended that no mitigation be required. Some of the reasons presented include: the requirement is too burdensome on individual property owners; no significant loss of wetlands will result from this NWP, mitigation is too costly for the Corps to track; mitigation limits the landowner's ability to construct a home in the most desirable location; mitigation is too costly for the landowner; and the creation of non-tidal wetlands is difficult and results in questionable success. Many believe that compensatory mitigation should not be required if avoidance and minimization

are undertaken on-site. One commenter stated that compensatory mitigation should not be used in lieu of avoidance and minimization. One commenter offered that NWPs are supposed to apply only to actions having minimal individual and cumulative effects and the Corps' consideration of mitigation suggests that the Corps does not believe the activity covered by this NWP is minor.

If cumulative impacts become more than minimal or a wetland system proposed to be impacted through the use of this NWP is of such high quality or importance, in terms of functions, that compensation is warranted, the District Engineer will so notify the applicant, who may offer compensatory mitigation to offset the adverse environmental effects. However, a standard ratio to establish the amount of compensation required per amount of impact will not be established in this NWP. The decision regarding the quantity of mitigation that is required will be made by the District Engineer on a case-by-case basis, if mitigation is determined to be necessary. The District Engineer also has the authority to require an individual permit in which the need for mitigation would be more closely examined. The Corps Division Engineers have the authority to regionally condition the single-family housing NWP to exclude certain geographical areas, where applicable. The Corps does not believe that placing a deed restriction provision on all small landowners is necessary, warranted or follows the intent of this NWP. A permit would be necessary for activities in the remaining wetlands, and we would address any adverse effects for such a permit. Furthermore, we do not believe it is appropriate to require mitigation beyond the adverse impacts that are being caused by the permittee.

The Corps agrees that mitigation banks, wetland trusts, and other conservation projects offer a solid means for compensating for lost wetland functions and values. However, we do not believe that such compensation is warranted for every impact covered by this NWP, nor is it a practicable option for every district, since many areas do not have mitigation banks or other conservation projects established. These options will be considered and encouraged where cumulative impacts are a concern.

The Administration's policy of no net loss of wetlands is a national goal that calls for no net loss overall, not on a case-by-case basis. This policy also recognizes that the Corps Regulatory Program will support but not meet this goal in every permit case and provides for other programs to help meet the goal. Thus, compensation associated with standard and general permits is not the only means by which the nation attains the goal of no net loss of wetlands. Some other examples of means by which a no net loss of wetlands goal is achieved include State comprehensive watershed management plans, State and local programs that require compensation for residential development, and the Wetland Reserves Program.

This NWP is not a guarantee that every landowner who owns 0.5 acre of wetlands will be authorized to impact the entire parcel. One of the specific conditions of this NWP is that the permittee takes necessary actions to minimize on-site and off-site impacts of the discharge. Such evidence will be provided and evaluated in the notification procedure. Compensatory mitigation will generally not be accepted in lieu of on-site avoidance and minimization. Although the Corps agrees that compensatory mitigation is not warranted for every single-family housing activity authorized by this NWP, we do regard on-site avoidance and minimization as necessary steps in all cases to ensure that there are only minimal environmental effects.

Several commenters questioned how the Corps intends to ensure that permittees will minimize impacts. One commenter stated that the existing NWPs have proven that general permits do not include even a minimum level of review. A few commenters stated that this NWP would eliminate the requirement for landowners to avoid and minimize impacts. One commenter recommended that the District Engineer should be able to condition the NWP to require further minimization of impacts.

Many stated that the NWP should not be utilized where alternatives exist. One commenter questioned whether the Corps would require an alternatives review to determine if the permittee owns a non-wetland parcel. Another stated that it appears that the Corps considers single-family housing activities to have no alternative. One commenter stated that individual permits are now more flexible than this NWP, given the recent flexibility guidance. A few commenters suggested that the failure to require compensatory mitigation for this NWP would be contrary to the sequencing requirements outlined in the 404 (b)(1) Guidelines and the MOA between the EPA and the Corps. Another disagreed and stated that sequencing requirements do not apply to any other general permit and questioned why it should apply to this NWP.

The issue of water dependency was raised by a few commenters. These commenters specifically stated that existing regulations require a project to be water dependent to qualify for a Section 404 permit and that this NWP could remove the water dependency standard for all 404 permitting.

One commenter stated that, with regard to on-site adjustment of the home to avoid flooding of adjacent property owners, the Corps implied that a wetland can be altered as long as no harm is caused to another man-made structure. Another commenter asked if this NWP allowed the partial filling of a lake to construct a home, if one owned property adjacent to a lake.

The modified notification condition will require that the permittee notify the Corps prior to discharging fill. The District Engineer will then be responsible for determining whether the proposed activity would result in more than minimal individual or cumulative adverse environmental effects. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, he will so notify the applicant and present his options (e.g., offer mitigation to reduce impacts or apply for an individual permit). While this review is not as extensive as that for an individual permit, we have determined that it is sufficient to make the "minimal effect" determination.

In March 1995, the Corps issued a Regulatory Guidance Letter regarding individual permit flexibility for small landowners. This guidance indicated that the Corps will presume that small landowners have no practicable alternatives on property not owned by the landowner. This guidance is to be used for activities affecting up to 2 acres of non-tidal wetlands for the construction or expansion of a single-family home and attendant features, or a farm building, or for the expansion of a small business facility. In accordance with 40 CFR 230.7, consideration of alternatives is not directly applicable to general permits. Other existing NWPs require compensatory mitigation where the individual or cumulative impacts from a discharge are more than minimal. We believe that the activities covered by this NWP will have minimal impacts. However, there may be cases where the cumulative impacts within a particular watershed become more than minimal. In these instances, the District Engineers have the authority to require compensatory mitigation. Additionally, on-site avoidance and minimization will be required in all cases for the entire parcel.

Water dependency criteria under the section 404(b)(1) Guidelines establishes a rebuttable presumption that other, less environmentally damaging, practicable alternatives exist for the proposed project. It does not, however, as suggested by some commenters, allow authorization of only water dependent projects. Further, as indicated above, the alternative test does not apply to general permits. Additionally, we believe that for single-family housing activities qualifying for this NWP, other practicable alternatives normally do not exist for these homeowners. We do not agree that issuance of this NWP will affect the water dependency standard of other 404 permitting procedures.

We did not intend to imply that a wetland can be altered as long as there are no impacts to another man-made structure. Rather our intent was to give an example of when it may be necessary to relocate a fill. In addition, it is highly unlikely that an applicant will need to discharge fill into a lake to construct a single-family house and therefore, use of this NWP would normally not be authorized in such cases. One term of this NWP is that the permittee will minimize on-site and off-site impacts of the discharge. We believe that this NWP will have only minimal environmental adverse effects. However if, on an individual basis, the impacts are determined to be more than minimal, then the NWP does not apply.

4. Subdivisions

The comments indicated there was some confusion regarding the subdivision provision. There were several requests for an overall clarification of the subdivision clause. A few commenters requested that a clear definition of a subdivision be provided, not only for the purposes of understanding but to ensure that the circumstances the Corps is trying to guard against do not surface as a problem. A few commenters requested a more encompassing definition of subdivision. Other commenters advised the Corps to carefully word the conditions surrounding the subdivision date to prevent misinterpretation and misuse.

"Real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof. The definition of the term "real estate subdivision" is the same as the existing definition of that term that applies to NWP 26. However, the date of the subdivision provision is different for this NWP and NWP 26 as discussed below.

Several commenters agreed that March 6, 1995, was an appropriate date regarding the subdivision provision of the NWP. Several commenters questioned how the March 6, 1995, date was selected. A few commenters argued that the March 6, 1995, date penalizes developers who subdivided their property after October 5, 1984, since under existing regulations they were required to avoid and minimize impacts for the entire subdivision but would not under the new NWP. Some of the commenters further said that these developers may have realized greater profits if they had not followed the regulations. Many commenters recommended that the date be changed to October 4, 1984. Some of the reasons given to justify this date include remaining consistent with NWP 26, avoiding complicated regulations when we are supposedly simplifying, avoiding greater individual and cumulative impacts in subdivisions created prior to March 6, 1995, and avoiding negation of previous wetland master planning efforts. Other reasons were centered around the large number of subdivisions created since 1984, and because property owners were made aware, at that time, of the need for Section 404 permits to develop lots. One commenter stated that modifying the date to October 5, 1984, would penalize existing single lot owners who purchased lots in subdivisions in the last 10 years. Another commenter questioned how the NWP would apply in a situation where the subdivision is approved and lots are being sold but are not completely sold by March 6, 1995; the question was whether or not early lot owners would be treated differently. One commenter suggested allowing this NWP to apply to individuals who purchased property prior to October 5, 1984. One commenter recommended that this NWP should not apply in cases where property was platted prior to 1984, but is currently undeveloped and under one ownership. One commenter stated that modifying the subdivision provision to allow for the later date could create legal conflict in existing subdivisions where the developer has placed restrictive covenants on property that has been sold and developed because the property owners would seek authorization for expansion. Several commenters recommended that the date be modified to the effective date of the permit so as to maximize the number of individuals who may take advantage of the permit.

March 6, 1995, was the date that this NWP was proposed. November 22, 1991, is the date in which the current NWP program regulations, including issuance of, reissuance of and modifications to the existing NWPs were published in the **Federal Register**. It was in these regulations that the terms surrounding subdivisions for the purpose of NWP 26 were outlined and awareness of the subdivision clause was heightened. With few exceptions, we believe this date would be fair to all parties. We do not believe that the November 22, 1991, date will penalize any one group of individuals. The subdivision date issue centers on when a parcel is subdivided into smaller parcels, not when the subdivided smaller parcels are sold. Therefore, individual parcel owners will not be penalized based on when they purchased property. Furthermore, we understand that this NWP may not appear to address all possible scenarios similarly. However, we will encourage Corps districts to use consistency when reviewing any project under this new NWP and to give consideration to existing authorizations a property owner may have. Upon review and consideration of the comments, we determined that the appropriate date regarding subdivision creation should be November 22, 1991.

Any subdivisions or lots that were platted, developed, sold, or purchased in the past were done so under regulations in place at that time. This NWP does not apply to wetlands in developed subdivisions where restrictive covenants have been employed to preserve such wetlands. If the subdivision was platted on or after November 22, 1991, the aggregate total of impacts within the subdivision cannot exceed 0.5 acre. Similarly, if a parcel was subdivided prior to November 22, 1991, each lot owner may use this NWP, regardless of when he purchased the property. However, any previously permitted fill must be added to any fill proposed under this NWP such that the aggregate total impacts for the lot does not exceed 0.5 acre.

This NWP will not be modified to exempt situations such as the aforementioned where property was platted prior to 1984, but is currently undeveloped and under one ownership. We realize that under this authorization, impacts in such a scenario have the potential to become unacceptable. However, NWPs do not apply in cases where cumulative impacts are more than minimal. Furthermore, Corps Division Engineers may exercise their discretionary authority to require individual permits or mitigation for the

individual homesites to address cumulative impacts. Additionally, we do not believe that such situations are prevalent and therefore will not present a problem.

With regard to dealing with property owners who subdivided their parcel prior to November 22, 1991, and either acquired a Department of the Army permit or did not, we understand that this NWP may not appear to address the 2 scenarios similarly. However, we will encourage Corps districts to use consistency when reviewing any project under this new NWP and to give consideration to existing authorizations a property owner may have. For example, if the district has previously required a permittee to provide the total plan of development including infrastructure and lot fill, then we would expect the district to require such information of all permittees under this NWP.

One commenter stated that there is no limit on how much area could be impacted within a subdivision. Another commenter questioned to what size subdivisions the NWP would apply, specifically, a few buildable lots subdivided from a small parcel or several lots complete with infrastructure. Another commenter questioned how the Corps would address a situation where landowners create parcels one at a time over a period of time. One commenter suggested that this NWP might lead to many smaller subdivisions, thus making cumulative impact tracking more difficult. One commenter stated that the NWP should not apply to residential or commercial developments but rather to single-family developments in private family ownership. Another commenter stated that the NWP would probably be used more for large landowners seeking to build a large subdivision rather than small landowners, for which the permit was intended.

Regarding use of this NWP, there is no threshold on parcel size. The 0.5 acre limit applies to all single-family housing activities complying with this NWP. The use of Corps district databases will be utilized to assist in one-time, per lot usage and cumulative impact tracking. The size or number of subdivisions within a watershed should not affect this mechanism. It is anticipated, based on the aggregate acreage threshold, that this NWP will not be utilized for many residential developments created on or after November 22, 1991, and commercial developments are not permitted under this NWP. Furthermore, it is anticipated that landowners will choose to receive verification under NWP 26, where applicable, since the acreage threshold under the single-family housing NWP is more restrictive. The Corps believes that large landowners seeking to build a single-family residence will generally have more options with regard to where they place a homesite, thereby, negating the large landowners' need for this NWP. Nevertheless, the maximum acreage of impacts to non-tidal wetlands under this NWP is 0.5 acre regardless of whether the landowner owns a large parcel and intends to subdivide or owns a small parcel for a single residence. The term of this NWP which is applicable to subdivisions states that the discharge must be part of a single and complete project and that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of 0.5 acre for the entire subdivision.

A few commenters questioned how the Corps will track each landowner in a development, determine if the NWP has been used, track the number of times a parcel has been subdivided and when a parcel was subdivided. Another commenter questioned what requirements will be placed on permittees to provide evidence that demonstrates that the project meets this provision of the NWP.

Each Corps district has a computer database to assist with the task of tracking pertinent information. The Corps districts will continually monitor their tracking mechanisms and make adjustments, as necessary, to ensure production of the most reliable data. Additionally, the Corps must depend on facts presented by the applicant during the notification process and will verify such information, as needed, using available data. Taking all of this information together, the Corps makes the final determination on whether an activity complies with the NWP.

5. One-Time Use

Many questions surrounded the issue of one-time use. One commenter stated that this condition was too ambiguous and asked for clarification. Many commenters suggested clarifying this term of the NWP by stating that it is to be used once per individual and once per lot. A few commenters questioned whether a successive parcel owner can fill an additional 0.5 acre. One commenter stressed the importance of explaining that, within a subdivision, the landowner cannot use his or her one-time allowance if the 0.5 acre loss for the subdivision has already occurred through another landowner's or the subdivision developer's action. A few commenters raised the issue of whether a loophole exists when a developer subdivides a parcel after March 6, 1995, then sells lots to individuals who may then use this NWP. The commenter stated that the developer may legally defend that each project is single and complete. However, the cumulative impacts would be more than minimal. A few commenters inquired about how this NWP applies to property owners who own more than one lot or who move to a new lot. One commenter suggested that because farming operations may need more than one single-family housing NWP, the one-time allowance should be determined on a case-by-case basis. A few said the NWP should be allowed to be used an unlimited number of times. One commenter stated that the NWP should only be available to individuals who own a specific piece of property at the time the permit becomes effective.

Several commenters recommended eliminating this one-time use provision because of enforcement difficulties and the idea that permits should apply to projects, not individuals. Some questioned how tracking of this condition would be accomplished. One commenter raised the issue that since the permittee does not have to own the property, another individual could apply for the NWP on behalf of the property owner who has already used his one-time allowance. Several other commenters inquired about transferring one-time use to others and how this would be prevented.

This NWP was developed to address situations where land was subdivided into homesites or where individuals purchased homesites for the purpose of building a single-family home. We did not intend to limit its use to land that an individual owns on a given date. We also did not intend the NWP to be used for further subdivision of property for residential development in wetlands. By applying the NWP to aggregate impacts in subdivisions created on or after November 22, 1991, we encourage the use of individual permits for such development. Therefore, we do not believe that the NWP should be restricted by the date on which an applicant purchased a piece of property or be limited to only those individuals who own the land at the time this NWP becomes effective. In an effort to hold cumulative impacts to a minimum, we proposed the one-time usage clause. Upon further consideration and review of the comments, the Corps decided to restrict use to an individual who may use this NWP only for a single-family home for a personal residence. As an example, an individual could choose to construct a single-family homesite for a seasonal (e.g., summer) residence, or for both an East Coast and West Coast residence. Such an individual may use this NWP in each situation with the stipulations that the home is for a personal residence and all other terms and conditions are met. However, we believe that the vast majority of individuals would only need this NWP once in their lifetime. Additionally, we determined that the one-time usage provision of this NWP should apply to the lot for a single-family housing activity. Thus, successive property owners cannot fill additional 0.5 acre fragments of a lot using the NWP. The total impacts for a specific lot cannot exceed the 0.5 acre threshold whether filled by a previous owner, developer, or an individual within a subdivision created on or after November 22, 1991. Consequently, when determining if a single-family housing activity is authorized by this NWP, any fill material currently permitted for the lot must be added to any proposed fill such that the total impacts do not exceed 0.5 acre. We believe that applying this usage restriction to both individuals and the lot is necessary to ensure that the impacts will be minimal and that the NWP will be used for the type of housing for which it was developed.

We have addressed many of the enforcement issues raised by adding several requirements to the PCN. Enforcement will be accomplished by requiring that the applicant submit a statement declaring that the single-family housing activity is for a personal residence of the permittee, stating how many times this NWP has been used, and listing other property owned by the applicant in the vicinity of the proposed single-family homesite. The Corps will use district databases to monitor use of this NWP, and if this provision is abused, we will consider appropriate action to address the abuse.

6. Attendant Features

A few commenters requested a more encompassing definition of "attendant features" beyond those examples that were listed in the proposed **Federal Register** notice. One commenter stated that such an ambiguous term may prompt a prospective permittee to assert that anything is an attendant feature. Several commenters recommended including amenities such as yards, pools, tennis courts, barns, stables, in addition to housepads, driveways, and septic systems. However, the majority of the commenters disagreed with the idea of authorizing fill for non-essential amenities such as tennis courts, swimming pools, ponds, and gazebos, some stating that such accommodations were non-water dependent. Some of these commenters recommended limiting fill to foundations only, while others approved of the need for additional fill for driveways and garages. While some commenters included septic fields as an essential feature for the construction of a single-family residence, many specifically disagreed with allowing fill for septic fields. Some of the reasons given were water quality impacts, discrepancies with existing state and local regulations, and the existence of other available options for wastewater treatment.

A few commenters also singled out disallowing fill for a yard because of the adverse impacts associated with fertilizers and pesticides. One commenter suggested such attendant features be authorized on a regional basis if they are standard for a particular area. One commenter stated that if attendant features were not included in this NWP authorization, then the permittee would have to endure individual permit processing for minor, additional work.

The purpose of this NWP is to reduce the regulatory burden associated with the construction of single-family homes while maintaining environmental protection. When building single-family homes we recognize that, besides the foundation of the house itself, there are activities associated with a house that are considered necessary, customary, or normal to homesites. We believe these "attendant features" should normally be authorized with the house. We would not accomplish the purpose of this NWP if we were to authorize the house only and process an individual permit for the attendant features. Attendant features for the purpose of this NWP, include features that are reasonable, necessary appurtenances constructed in conjunction with single-family housing activities. Examples include a garage, driveway, storage shed, septic field, and yard. Examples of inappropriate attendant features not covered by this NWP include a barn, which may be covered by NWP 40, or a small business. Such features would not be directly related to a single-family home. While we believe that a yard is an appropriate attendant feature of a single-family home, we have not identified a size that would be acceptable. Corps districts will work with the applicant to ensure that acceptable, but not excessive, yards are authorized. This NWP only authorizes activities from the perspective of the Corps regulatory authorities; other Federal, state, and local permits, approvals, or authorizations may also be required. The permittee would be responsible for obtaining all necessary authorizations, including building permits, prior to placing a septic system, yard, or any other fill in wetlands. Additionally, water quality is a concern addressed by applicable state agencies as well as the Corps. It is the permittee's responsibility to obtain any necessary water quality approvals or authorizations prior to the discharge of fill. Furthermore, while properly designed, constructed, and operated septic systems can be placed on fill in many wetlands, the septic system must be approved by the appropriate state or local agency. The Corps has determined the extent of the attendant features to be applied on a nationwide basis. If an individual district concludes that a particular feature should not be authorized under this NWP, then the Division Engineer must regionally condition the NWP to exclude the feature. Furthermore, additional restrictions may be placed by states in 401 water quality certification or CZM consistency determination. On a case-by-case basis, where a particular feature is not appropriate at a specific site, the District Engineer may condition the NWP or require an individual permit.

Other concerns were raised during the comment period on the following specific issues:

7. Permit Applicability

We received a wide range of recommendations to both increase and decrease the applicability of the single-family housing NWP. Many commenters raised the issues regarding the geographic scope of waters of the United States. Several others offered suggestions to expand the category of activities to which this NWP would be applicable. Several commenters raised the issue of the definition of non-tidal waters and how it applies to this NWP. One commenter stated that with this NWP, the Corps is broadening their authority beyond that allowed under Section 404 of the Clean Water Act, specifically by regulating excavation, flooding, and draining.

With regard to decreasing the applicability of this NWP, several commenters replied by listing a variety of geographic areas from which this NWP should not apply. Different commenters suggested limiting the scope of the NWP to isolated systems only, wetlands only, and wetlands above the headwaters. Other areas suggested to be disallowed by this NWP include threatened and endangered species habitats, sensitive or important wildlife and fisheries habitats, highly developed areas, non-riverine wetlands,

riparian or lacustrine wetlands, areas on state and national scenic rivers, national park areas, national wildlife refuges, bogs, ferns, springs, forested wetlands, rivers, streams, lakes containing anadromous or native fish, and wetlands identified as high value in state or Federal land management plans or wetland inventories. With regard to increasing the applicability of this NWP, one commenter recommended expanding the authorization to include tidal as well as non-tidal wetlands. Several other commenters made no recommendation regarding the applicability of certain systems, but simply inquired as to whether marine waters, surface waters, estuaries, riparian zones, streams, ponds, non-wetland special aquatic sites and freshwater riverine systems were included.

Many commenters raised the issue of analyzing the functions and values of wetlands. Some stated that higher quality wetlands warrant a more rigorous review than do lower quality wetlands and that non-tidal systems were not necessarily less valuable than tidal systems. Several recommendations were made to develop a functions and values rating system and some suggested that such functions could be better evaluated at the local level. One commenter stated that man-made wetlands should be exempt from all environmental regulations, while another commenter made a more general statement that certain wetlands having no real value should be exempt from regulations.

The Corps of Engineers regulates the discharge of dredged or fill material under Section 404 of the Clean Water Act. The discharge of dredged material includes discharges incidental to any activity including mechanized landclearing, ditching, channelization, or other excavation. Furthermore, in evaluating permit applications and pre-construction notifications, the Corps considers the effects of flooding and draining with respect to the proposed project. However, the Corps includes excavation, flooded and drained areas in measuring the acreage of loss to ensure that the impacts of the proposed project are minimal.

Limiting this NWP to many of the aforementioned suggestions would negate the need for the permit due to existing authorizations that cover these categories. In some areas listed above, the Division and District Engineers have the authority to regionally condition the NWP to exempt these systems or require an individual permit, if warranted. Discharges of fill in tidal waters for residential development are generally not reasonable or practicable since contiguous, more suitable property is usually available. Furthermore, the individual permit process is available to those who desire to request authorization to discharge fill in tidal wetlands. We determined that applying this NWP to non-tidal waters of the United States, including non-tidal wetlands, is appropriate and assists in achieving the goal of targeting a large group of people desiring to construct a single-family homesite with minimal impacts.

At this time, the Corps has not adopted a functions and values rating system for wetlands. While it is the Corps' responsibility to regulate all Federally jurisdictional wetlands regardless of their value unless specifically exempted by section 404(f), we do take into account the relative functions of the resource when deciding how to regulate. It is anticipated that single-family residential construction is not going to occur in aquatic ecosystems of the highest value. We recognize, however, that there are circumstances where authorization in a specific area under this NWP would not be appropriate. In those cases, the Division or District Engineer may assert discretionary authority to add regional conditions or revoke the NWP authorization for activities in such areas. We believe that the Division and District Engineers are more familiar with the wetlands and other aquatic resources in their area and can best determine which of those resources should be subject to individual permit evaluations or regional conditions.

Several commenters recommended specific activities to which this NWP should apply. Some of these activities include agricultural uses, apartments, and commercial uses. One commenter suggested expanding the permit to include residential buildings for a maximum of four families. A few commenters argued that the impact to the resource is the same regardless of use; therefore, land use should not be a factor in the permit. Other categories that commenters suggested be excluded from this permit include subdivisions with lots for commercial use and significant areas conserved through an enforceable instrument.

This NWP was created for single-family housing activities. Allowing this authorization to encompass all possible land uses would dramatically increase cumulative impacts and surpass the intended scope of this NWP. Furthermore, adopting many of the aforementioned suggestions would be an unacceptably extensive change. Such a modification to this NWP would require additional public notice and opportunity for comment. The restrictive category of activities for which this NWP applies remains as proposed.

The primary activity associated with this NWP is private residential development. No commercial uses will be allowed. Any area conserved through an enforceable instrument, such as a legal conservation easement, is subject to the restrictions existing within the document. For example, if this NWP is appropriate for use on a parcel of land with the exception that development is prohibited on the parcel by other restrictions, then the NWP would not apply.

Several commenters requested clarification of the definition of non-tidal waters. One question was whether or not this NWP will apply to wetlands adjacent to tidal waters. Another question was the extent of tidal influence. One commenter interpreted the definition of non-tidal as areas above mean high water, excluding all coastal areas supporting halophytes and all freshwater wetlands subject to tidal influences. One commenter pointed out that the terms "waters of the United States" and "wetlands" were used interchangeably and questioned which was appropriate. Another commenter questioned if salinity characteristics in the water column would be used to define tidal waters. One commenter asked if areas blocked by tide gates and man-made berms would be considered tidal waters. Another commenter inquired as to whether the NWP cover activities within wetlands as defined in 40 CFR 230.3(s) and 40 CFR 230.3 (t).

The definition of tidal waters can be found in 33 CFR 328.3(f) and is defined as those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects. The limits of jurisdiction in non-tidal waters of the United States can be found in 33 CFR 328.4(c). This regulation does not mean that wetlands adjacent to tidal wetlands are also tidal wetlands, but rather that in coastal areas, Corps jurisdiction extends to the limits of these "non-tidal wetlands" that are adjacent to tidal wetlands. Consequently, this NWP is applicable to wetlands that are adjacent to tidal wetlands. Areas blocked by tide gates may modify the area behind the tide gate so as to no longer meet the definition of tidal waters. The Corps district office would make this decision on a case-by-case basis. However, in any case, such tide gates would not remove Section 10 jurisdiction.

8. Relationship of this NWP to other NWPs

Several commenters questioned the applicability of existing NWPs as they relate to the single-family housing permit. One commenter questioned the 0.1 acre threshold of the NWP 18 and how it compares to this new NWP. One commenter observed that this NWP might amend or supersede NWP 18 since NWP 18 only authorizes 0.1 acre of fill for minor discharges. Many commenters stated that NWP 26 completely covers the activity to be included in this NWP. A few commenters suggested expanding the application of either the existing NWP 26 or NWP 18 in lieu of issuing a new NWP. Many other questions were raised about the combined use of NWPs. A few commenters expressed that it is redundant to have two NWPs that authorize the same type of activity. Several commenters recommended not allowing combination of authorizations in an effort to avoid more than minimal impacts, and suggested that if there is a need for more than one NWP per project, then the project should be evaluated under an individual permit process. Several commenters recommended that projects authorized with this NWP should not be provided additional coverage under any other individual permit or NWP.

Each NWP is issued to authorize certain types of activities. However, in some cases a particular activity may qualify for more than one NWP or a combination of NWPs.

Consequently, some single-family housing activities could qualify for either NWP 18 or NWP 26. For example, NWP 18 could authorize 0.1 acre of fill in any wetland; NWP 26 could authorize up to 10 acres of fill in a wetland above the headwaters or an isolated wetland, while this NWP could authorize up to 0.5 acre of fill in a non-tidal wetland. Therefore, it is possible that a single-family home involving 0.1 acre of fill in a wetland above the headwaters could qualify for either NWP 18, NWP 26, or this NWP. Our regulations provide for multiple use of NWPs (but each one only once for a single and complete project) provided that the combined impacts are minimal. Furthermore, if an NWP authorized activity is an integral part of a larger project which requires an individual permit, then that NWP will not be valid for that portion of the larger project and an individual permit is required for the entire project, including the NWP portion. This NWP is intended to authorize single-family housing, including attendant features where the maximum impact on waters of the United States does not exceed 0.5 acre. We did not intend this NWP to authorize a portion of a single-family housing activity that was in excess of 0.5 acre. Therefore, if such a single-family housing activity, including attendant features, is being proposed that exceeds 0.5 acre, this NWP cannot be used in conjunction with other NWPs, regional general permits, or individual permits to authorize the project. We further believe this restriction may be confusing and could cause some inadvertent violations of the NWP. Therefore, to clarify this point we have added a condition to the NWP to indicate that it cannot be used with NWPs 26, 18, and 14. Furthermore, Division Engineers will add regional conditions to ensure that it is not used with any similar regional general permits.

9. Cumulative Impacts

Many commenters stated, in general terms, that the proposed NWP would result in detrimental cumulative impacts on the aquatic environment. Many other commenters were specifically concerned with the cumulative loss of wetland functions, specifically, fish and wildlife resources, endangered species, filtration, groundwater recharge and stormwater retention. Concerns over increased flooding potential were the most often stated.

A few commenters stated that limiting the aggregate loss of wetlands to 0.5 acre for the entire subdivision only in real estate subdivided after March 6, 1995, does nothing to protect wetlands in already existing subdivisions. They gave examples of existing, platted subdivisions, comprised of dozens, hundreds, and thousands of lots which could amount to substantial cumulative impacts within a given watershed.

One commenter questioned how cumulative impacts would be addressed without the full review of the individual permit process. One commenter stated that such a permit would allow for an entire, large wetland system to be destroyed since there is no limit on the number of 0.5 acre sites that may be located on it.

Because the activity associated with the use of the NWP could be located within the floodplain of a waterbody, there is potential for increased flooding and reduced flow. The modified notification process will allow the District Engineer to evaluate the proposed impacts, including potential flooding impacts, compare them to existing impacts within the wetland system or watershed, and determine if the project has more than minimal individual or cumulative effects. The District Engineer has the discretionary authority to place conditions upon a proposed activity to avoid or minimize these potential impacts. If the activity is determined to be more than minimal, the District Engineer can require mitigation or an individual permit. With regard to this and other potential cumulative wetland functions impacts, this NWP will be subject to the conditions that apply to all NWPs. The district and division offices may identify specific geographic areas, such as a subdivision, where there may be concerns over cumulative impacts to a watershed, and revoke this NWP in specific geographic areas or develop regional conditions that apply to that specific area. Many districts and divisions have already revoked NWPs or imposed such regional conditions in many geographic areas or wetland or water types.

10. Regulatory Burden

Several commenters supported this NWP because it would reduce the regulatory burden on the public by simplifying the process to obtain approval of single-family housing activities and would reduce the Corps regulatory workload. An equal number of commenters were opposed to the NWP. The principal reason for such opposition was a perception that the NWP would result in less environmental protection. Also, a few commenters believed the NWP is not necessary either because the current individual permit process is not a burden on the public, existing NWPs are adequate to cover single-family housing activities, or because the NWP is motivated only by politics. One commenter felt the NWP would encourage poor construction practices (e.g. the construction of structures on wetland fills). A few commenters indicated that, rather than this NWP, state programs would be a better mechanism to reduce burden on the public and the Corps. Programs such as State assumption, State Programmatic General Permits (SPGP), and State stewardship workshops assist landowners in utilizing their lands in an environmentally sensitive manner and reduce inconsistencies among federal, state and local regulations. Many commenters believed that we were increasing the regulatory burden on the public based on their understanding that we were proposing, for the first

time, to begin regulating single-family housing activities.

We believe this NWP will be applicable to over 95% of all single-family housing activities. Statistical data from the U.S. Department of Commerce and the U.S. Department of Housing and Urban Development reveals that approximately 90% of residential landowners in the United States own parcels that are 0.5 acre in size or less. Furthermore, most houses are less than 2000 square feet while few exceed 10,000 square feet. Therefore, we believe that virtually all single-family houses could easily fit on less than 0.25 acre. This would allow in excess of 0.25 acre for attendant features. We believe this would be sufficient for all but a few single-family homes. Currently, the Corps regulates the discharge of dredged or fill material for many single-family housing activities by the individual permit process. A number of single-family housing activities are also currently authorized by regional general permits or other NWPs, such as NWP 26. Our proposal will allow us to regulate, with this NWP, the vast majority of single-family housing activities that are not now covered by other general permits. Virtually all individual permit applications for single-family housing activities are issued. This NWP provides a quick approval process while, through the notification process, we would ensure that impacts are minimal and on-site impacts will be avoided or minimized to the extent practicable. However, some single-family housing activities would continue to be authorized by other NWPs or Regional General Permits which, in many cases, would be less burdensome. Where State mechanisms are available, and are determined to provide equivalent environmental safeguards, the Corps district and division offices will consider regional conditions or revocations of this NWP to reduce any unnecessary regulatory burden on the public. For example, our New England Division has proposed to revoke this NWP in the State of New Hampshire, because an existing State regulatory program and a Corps SPGP already adequately regulate single-family housing activities in that state. Therefore, in New Hampshire, single-family housing activities that qualify for a State permit would be authorized by the Corps SPGP. Other districts and divisions are proposing or considering similar State mechanisms to reduce unnecessary regulatory burdens. In conclusion we believe that this NWP in conjunction with other NWPs and Regional and SPGPs will provide for an expedited decision for all but the most atypical or extremely large single-family housing activities. Therefore, over 90% of single-family housing activities would now qualify for a general permit, which should reduce the average permit processing time from a little over 100 days to less than 30 days.

Several commenters stated that this NWP would be inconsistent with either state or local wetland protection programs. Several of these commenters asserted that the NWP would be more lenient than state or local wetland protection programs and would tend to weaken state and local positions regarding wetland protection. In some of those cases where NWPs have been revoked in conjunction with SPGPs, the involved states were concerned that this NWP would add complexity and confusion to the process. A few commenters stated that the NWP preempts state and local wetland protection laws and building codes. These commenters, in general, also asked that all permittees be notified of the requirements to obtain other state and local required permits and approvals. A few commenters suggested that some other agency be responsible for administering and implementing the 404 wetlands program.

In those States where NWPs have been suspended or revoked in conjunction with SPGPs, the districts have the authority to suspend or revoke this NWP as well, and we anticipate they will give serious consideration to such action. As discussed in 33 CFR 330.4 of the NWP Program Regulations, NWPs do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law; nor do they grant any property rights or exclusive privileges. We believe that this NWP does not represent a relaxing of Federal protection for wetlands, but rather strengthens our capability to deal effectively with those cases involving greater than minor impacts. The Corps currently has the responsibility for implementing and administering the Section 404 program and will continue to uphold this responsibility until otherwise directed.

One commenter stated that improved service to landowners can be addressed by hiring adequate staff. Another stated that workload savings is not a justifiable reason to relax regulation of nationally important resources.

Budgetary constraints are continually a source of concern. Therefore, other avenues must be pursued to improve service to the public and make the program more efficient. The Corps agrees that regulatory requirements protecting wetlands should not be relaxed to facilitate workload savings at the expense of needed environmental protection. The same aquatic systems will be regulated, but in an expedited manner. In an attempt to relieve the regulatory burden on small landowners, this new NWP is designed to streamline the process for such individuals desiring to build a residence, and we believe it will be successful to this extent.

11. Enforcement

Several issues regarding enforcement of distinct aspects of this NWP were raised. A few commenters expressed concern that permittees may not use the NWP for the construction of a home but for some other use and that they may exceed the allowed impact acreage. A few commenters raised the issue of enforcement regarding the flooding of adjacent property as a result of fill material authorized by this NWP. One commenter questioned how the Corps can determine adverse effects from flooding and drainage without reviewing necessary hydrologic information; how the Corps can ensure maintenance of structures without reviewing engineering analyses and design calculations; and who is responsible for infrastructure failures. One commenter specified enforcement of the notification requirement, specifically, that permittees will be tempted to fill first then notify the Corps or not notify the Corps at all. Many commenters discussed general enforcement of both the existing NWPs and the proposed NWP, claiming that the Corps fails to enforce compliance with general permits. All commenters questioned how compliance with the NWP conditions would be enforced.

Corps regulations at 33 CFR part 326 detail the Corps' enforcement procedures for all general and standard permits. Additionally, the Corps district offices have enforcement and compliance procedures in place which they implement at the district level. Furthermore, generally the Corps staff has the expertise to assess the adverse effects from flooding and drainage without reviewing detailed hydrologic information. However, this data can be obtained and examined when necessary. It is not anticipated that single-family housing activities covered under this NWP will require such detailed analysis except when considering cumulative impacts. It is not the Corps', but the permittee's, responsibility to maintain the structural integrity of his or her dwelling and attendant features. No new enforcement issues have been raised that the Corps hasn't encountered in the past. Enforcement and compliance violations such as those mentioned by the commenters will occur. When they do, we will resolve the violations in the most expeditious and equitable manner possible.

12. Public Hearing

Many commenters requested that a public hearing be held. For the most part, commenters did not specify reasons for holding a hearing. However, some commenters did present more definitive reasons, which included increasing community awareness of the proposal, discussing in greater detail the individual and cumulative effects, and allowing property owners a chance to address the proposal in an open forum. A few others stated that a change in permitting procedures of this magnitude warranted a public hearing.

A public hearing is held when there is a need to acquire new information to consider in evaluating a proposed Department of the Army permit action. Upon close scrutiny of the comments in response to this NWP, we concluded that it was unlikely that new information regarding the single-family housing NWP would be obtained through a public hearing. Therefore, a public hearing will not be held for the NWP. Public hearing requests for local and regional issues, regional conditions, and regional modifications, will be evaluated by Corps district and division offices, which will determine if a public hearing is warranted locally.

13. Need for Environmental Impact Statement

Several commenters requested that an environmental impact statement be completed. One commenter recommended that a systematic scientific study be undertaken to determine the degree of potential impacts. Other commenters stated that the NWP is inconsistent with the 404(b)(1) Guidelines.

Environmental documentation has been prepared for the NWP and includes an environmental assessment and Section 404(b)(1) Guidelines compliance review. Copies of this document are available for inspection at the office of the Chief of Engineers and at each Corps district office. The document demonstrates that this NWP complies with the requirements for issuance under general permit authority. This includes consideration that, because some projects that may be authorized by the NWP may have a potential to cause more than minimal adverse effects on the environment, the NWP has been conditioned to require notification to the District Engineer. Furthermore, there are several conditions imposed on the NWP to further minimize impacts of single-family housing activities. In this way, we have ensured that activities will not occur under the NWP which would cause more than minimal adverse effects on the environment. Furthermore, although secondary and cumulative impacts, in general, have been considered in the documentation, the notification requirement will allow for further consideration of these impacts. The Corps has made a final determination that this action does not constitute a major Federal action significantly affecting the quality of the human environment.

14. Miscellaneous

A few commenters recommended a checklist, document or booklet be established that would outline what permits are necessary, the purposes, identify the entity processing the permit, timeframes associated with processing, and a fee schedule. One commenter suggested that many landowners would not know the answers to many issues that will need to be addressed in utilizing this NWP, nor will they be inclined to hire a consultant to assist them. Concurrent with this **Federal Register** notice, Corps district offices will issue local public notices. These public notices will include regional information about the NWP and how to notify the district offices. We agree that additional information regarding this and other NWPs would be useful to landowners. We will begin developing a manual or booklet to address this. One commenter requested that the Corps quantify, by district, the "large number of permit applications" for single-family housing activities referenced in the proposal for this NWP, because the need for such a permit may not be nationwide. The Corps conducted an internal survey of Corps districts requesting information on the number of permit applications for which this NWP would apply to determine the need for such a permit. The results warranted the proposal of a single-family housing NWP. One commenter stated that no information was provided about the wetlands potentially affected by this NWP or about the general, special and regional conditions of this NWP. Another commenter questioned if the existing general conditions apply to this NWP. The type of wetlands, specifically non-tidal, were identified in the public notice. The NWP general conditions and Section 404 conditions were not rewritten but were referenced in this NWP proposal. All general conditions pertaining to the other NWPs also apply to this NWP, with the exception of notification condition which still applies but has been modified for the purpose of this NWP only. For clarity, the NWP conditions are published in this **Federal Register** notice below. Furthermore, regional conditions will be added by the Division Engineer, where appropriate, for a specific area; and special conditions will be added by the District Engineer on a case-by-case basis, where applicable. A few commenters stated that the NWP does not involve activities similar in nature, and therefore, does not qualify as a NWP. One commenter raised the issue of the Corps' failure to discuss, in the environmental assessment, that the activities are similar in nature and will cause minimal individual and cumulative adverse impacts. We believe that we have narrowly defined the scope of this NWP for activities similar in nature. The only activities authorized by this NWP are construction or expansion of a single-family homesite with attendant features. In the preliminary environmental assessment, we discussed, in detail, both the individual and cumulative impacts likely to result from this NWP. One commenter stated that the public notice made no reference to an expiration date for public comment. The expiration date of May 8, 1995, was published in the **Federal Register**; that publication was to be accompanied by a public notice from each Corps district that reiterated the date. Another commenter asserted that the permit language refers only to states and not to sovereign Tribal Nations and to Public interest but not Tribal interest. We do consider Tribal interest in addition to public interest where concerns are raised. General condition number 8 addresses Tribal rights and requires that they be considered. A few commenters declared that the nationwide would not be in compliance with Executive Orders 11988 and 11990. The NWP does not encourage the destruction of wetlands or development within the floodplain, but rather is a tool designed to reduce regulatory burdens while maintaining appropriate levels of protection. This NWP would not be in conflict with Executive Orders 11988 or 11990. A few commenters provided general recommendations related to the economics of the program. One recommended that we provide financial incentives for wetland protection; one recommended that the program be based on the applicant's resource capability, not tax status; one recommended that everyone involved in the Corps evaluation process be held

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financially liable for their actions in conjunction with each permit processed; and one commented that we need to recognize the public cost of environmental degradation. A few commenters expressed general opposition to the federal government's regulation of private lands and expressed the belief that if the government prohibits the filling, the owner should be compensated. Such issues are beyond the scope of this proposal and would require additional proposed regulations with opportunity for public comment or even legislative changes. Therefore, they are not addressed in this notice. In an effort to simplify the program, one commenter recommended applying this NWP to all activities at a lesser acreage, thereby justifying the revocation of many of the other NWPs. One commenter suggested that we rework the entire NWP program. Another commenter questioned if this NWP will be included in the forthcoming NWP review process. At this time, we are not proposing the reissuance, modification, or revocation of all other NWPs but will do so prior to their expiration date of January 21, 1997. Comments regarding this entire NWP package may be submitted at that time. However, regarding the proposal for the entire NWP package, we will propose that this NWP be reissued with all other NWPs. At this time, our intent is to simply extend the expiration date of this NWP so that it coincides with all other NWPs for administrative purposes.

Accordingly, a Nationwide Permit for single-family housing activities is issued as follows:

Dated: July 19, 1995.

Approved:

Stanley G. Genega,

Major General, Director of Civil Works.

Nationwide Permit and Conditions

A. Nationwide Permit

Single-Family Housing. Discharges of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands, for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an individual permittee provided:

a. The discharge does not cause the loss of more than ½ acre of non-tidal waters of the United States, including non-tidal wetlands;

b. The permittee notifies the District Engineer in accordance with the "Notification for single-family housing NWP" general condition;

c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on the parcel to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of ½ acre for the entire subdivision;

e. An individual may use this nationwide permit only for a single-family home for a personal residence;

f. This nationwide permit may be used only once per parcel; and,

g. This nationwide permit may not be used in conjunction with NWP 14, NWP 18, or NWP 26, for any parcel.

For the purposes of this nationwide permit, the acreage of loss of waters of the United States includes any filled area previously permitted, the proposed filled area, and any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. This nationwide permit authorizes activities only by individuals; for this purpose, the term "individual" refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this nationwide permit, a parcel of land is defined as "the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or his or her spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual and/or his or her spouse in any form of ownership." (Sections 10 & 404)

B. Nationwide Permit Conditions

General Conditions: The following general conditions must be followed in order for any authorization by a nationwide permit to be valid:

1. *Navigation.* No activity may cause more than a minimal adverse effect on navigation.

2. *Proper maintenance.* Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. *Erosion and siltation controls.* Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.

4. *Aquatic life movements.* No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

5. *Equipment.* Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance,

6. *Regional and case-by-case conditions.* The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and any case specific conditions added by the Corps.

7. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status. Information on Wild and Scenic Rivers may be obtained from the National Park Service and the U.S. Forest Service.

8. *Tribal rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. *Water quality certification.* In certain states, an individual state water quality certification must be obtained or waived (see 33 CFR 330.4(c)).

10. *Coastal zone management.* In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived. (see 33 CFR 330.4(d)).

11. *Endangered Species.* No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service. (see 33 CFR 330.4(f)).

12. *Historic properties.* No activity which may affect Historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

13. *Notification for single-family housing NWP.*

(a) The prospective permittee must notify the District Engineer with a Pre-Construction Notification (PCN) as early as possible and shall not begin the activity authorized by this NWP:

(1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified by the District or Division Engineer that an individual permit is required; or

(3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) The Pre-Construction Notification must be in writing and include the following information:

(1) Name, address and telephone number of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any past use of this NWP by the individual permittee and/or his or her spouse; any other NWP(s), regional general permit(s) or individual permit(s) used in the past or intended to be used to authorize any part of the proposed project or any related activity;

(4) A statement that the single-family housing activity is for a personal residence of the permittee;

(5) A description of the entire parcel, including its size, and a delineation of wetlands. (See paragraph (e) below.)

(6) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or his or her spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed.

(c) The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN for this NWP and must include all of the information required in (b) (1)–(6) of this General Condition.

(d) In reviewing the Pre-Construction Notification for the proposed activity, the District Engineer will determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, the District Engineer will notify the permittee and include any agreed upon special conditions and/or mitigation. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant that the project does not qualify for authorization under the NWP. Furthermore, the District Engineer will explain the procedures that are available to seek authorization, which will include the following options: apply for an individual permit, obtain authorization under any other applicable general permits, or modify the project to qualify for the NWP.

(e) *Wetlands Delineations:* For the purpose of this NWP, parcels of land measuring 0.5 acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 0.5 acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the wetland. However, there may be some delay if the Corps does the delineation, and the 30-day period (see paragraph 13(a)(3) above) will not start until the wetland delineation has been completed.

Section 404 Only Conditions: In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material and must be followed in order for authorization by the nationwide permit to be valid:

1. *Water supply intakes.* No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

2. *Shellfish production.* No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by nationwide permit 4.

3. *Suitable material.* No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

4. *Mitigation.* Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e. on-site), unless the DE has approved a compensatory mitigation plan for the specific regulated activity.

5. *Spawning areas.* Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

6. *Obstruction of high flows.* To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

7. *Adverse impacts from impoundments.* If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

8. *Waterfowl breeding areas.* Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

9. *Removal of temporary fills.* Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

[FR Doc. 95–18455 Filed 7–26–95; 8:45 am]
BILLING CODE 3710–92–P

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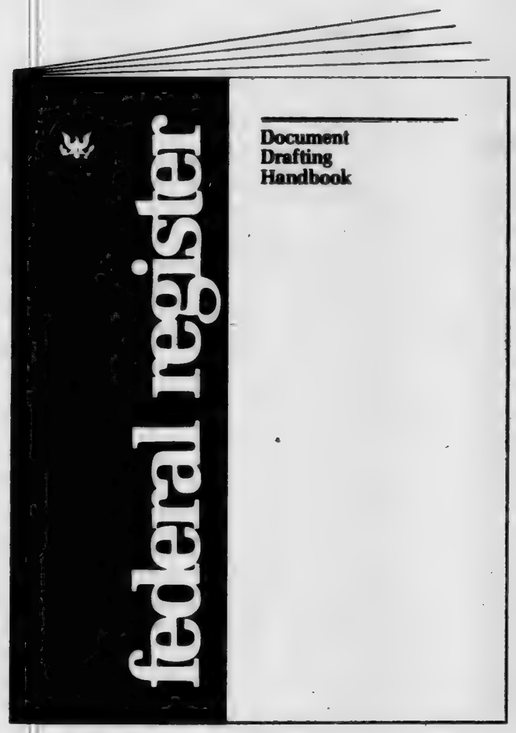
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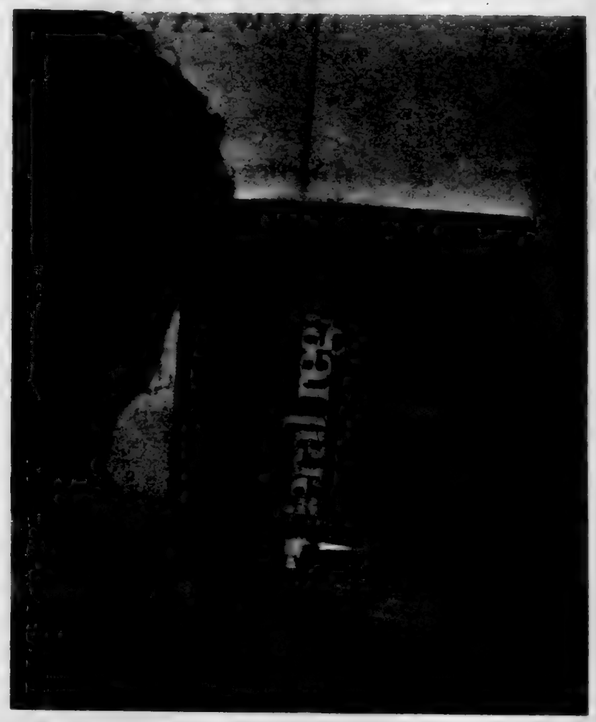
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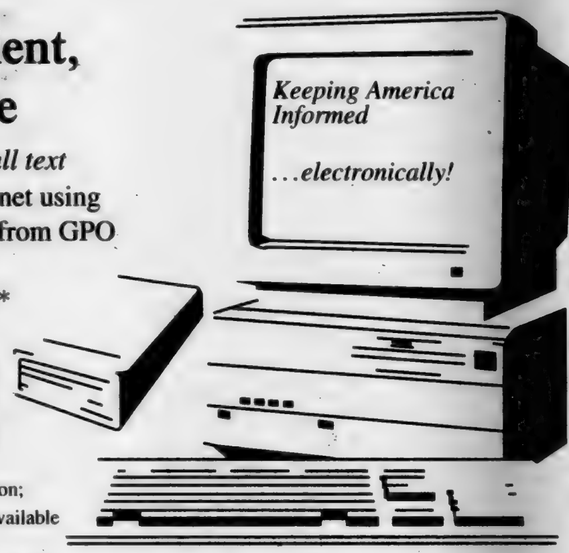
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Rules and Regulations

Federal Register
Vol. 60, No. 145
Friday, July 28, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2610

RIN 2209–AA19

Implementation of the Equal Access to Justice Act

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is adopting as final, with one correction, a previously published interim regulation establishing procedures, in accordance with the Equal Access to Justice Act and guidance from the Administrative Conference of the United States, for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Office of Government Ethics. This regulation describes the parties eligible for awards and the proceedings which are covered. The rule also explains how to apply for awards, and the procedures and standards which the Office of Government Ethics will use to make awards.

EFFECTIVE DATE: September 26, 1995.

FOR FURTHER INFORMATION CONTACT: Janet K. Roell, Office of Government Ethics, telephone 202–523–5757, FAX 202–523–6325.

SUPPLEMENTARY INFORMATION: In this rulemaking document, the Office of Government Ethics is adopting as a final regulation, with correction of one typographical error, its previously published interim regulation under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504. See 57 FR 33267–33272 (July 28, 1992), as corrected at 59 FR 34755 (July 7, 1994). The EAJA requires every agency to establish, by regulation, procedures for the submission and consideration of applications by eligible prevailing private parties for an award of fees and expenses incurred in connection with adversary adjudications before the agency. The interim OGE regulation (5 CFR part 2610), generally followed, with certain modifications, the final revised model rule issued on May 6, 1986 (51 FR 16659–16669) by the Administrative Conference of the United States pursuant to its consultative role under EAJA.

A 60-day comment period was provided in the interim regulation, and OGE received two comments. One comment addressed the appealability of the Board of Contract Appeals (BCA) decisions by the Director of the Office. The other comment addressed the fees that attorneys may be awarded when representing someone under the EAJA. The first commentator questioned whether a decision of a BCA should be reviewable by the OGE Director. He stated that all decisions of BCAs are autonomous and should remain so. After reviewing this matter, OGE does not believe any change to the EAJA regulation is needed. The Office of Government Ethics, which is a small agency, does not have a BCA and would have to request that agency's BCA hearings be held by an agency with a BCA. In this regard, OGE would coordinate with the rules and procedures established by that BCA, including the reviewability of its decisions. This Office notes that, to date, it has not had any EAJA claims filed in contract or any other matters before it.

The second comment letter addressed the issue of increasing fees for attorney representation. That commentator, citing *Jones* v. *Lujan*, 887 F.2d 1096, 1101 (D.C. Cir. 1989), suggested that OGE increase the $75 per hour maximum attorney fee rate currently allowed in its EAJA regulation to reflect the increases in the cost of living. The court in the *Jones* case awarded the prevailing private party an increased attorney litigation fee rate using a cost of living increase formula under 28 U.S.C. 2412(d)(2)(A)(ii). However, the court did not order the agency involved in that case, the Department of Interior, to change the similar fee structure as to administrative proceedings in its EAJA regulation and it did not. Upon review of the comment letter and case, and after checking several other agencies' EAJA rules (most of which likewise continue to provide for the $75 per hour maximum attorney fee rates), OGE has decided not to amend its regulation in this regard at this time. Section 2610.108 does provide a rulemaking mechanism for the maximum rate for attorney fees. Moreover, an EAJA reform bill (S. 554) was introduced earlier this year in the Senate which would, among other things, raise the maximum rate. This Office will continue to monitor its regulation, both as to the appropriateness of the fee rate and in general. Again, OGE notes that so far it has not received any EAJA applications.

Executive Order 12866

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because the number of proceedings covered by the rule will be extremely small and they will primarily affect current and former executive branch Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require the approval of the Office of Management and Budget, since the collections of information called for under this rule are expected to involve nine or fewer persons each year. Section 2610.201(f) of this rule contains a statement informing the public of this matter.

List of Subjects in 5 CFR Part 2610

Administrative practice and procedure, Claims, Conflict of interests, Equal access to justice, Government employees.

Approved: June 16, 1995.

Donald E. Campbell,

Deputy Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is adopting the interim regulation codified at 5 CFR part 2610, published at 57 FR 33267–33272 (July 28, 1992), as corrected at 59 FR 34755 (July 7, 1994), as a final regulation with the following amendment:

PART 2610—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

1. The authority citation for part 2610 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 5 U.S.C. App. (Ethics in Government Act of 1978).

2. In § 2610.106, the word "ineligible" in the third sentence of paragraph (a) is revised to read "eligible".

[FR Doc. 95–18613 Filed 7–27–95; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95–035–1]

Black Stem Rust; Addition of Rust-Resistant Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the black stem rust quarantine and regulations to add three varieties to the list of rust-resistant *Berberis* species. This change will allow for the interstate movement of these newly developed varieties without unnecessary restrictions.

DATES: This rule will be effective on September 26, 1995, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before August 28, 1995.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 95–035–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your submission refers to Docket No. 95–035–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6365.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of infected wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis, Mahoberberis,* and *Mohonia.* The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations, contained in 7 CFR 301.38 through 301.38–8 (referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia, and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia,* known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust or of contributing to the development of new races of the rust; rust-susceptible plants do pose such risks.

Section 301.38–2 of the regulations includes a listing of regulated articles and indicates species of the genera *Berberis, Mahoberberis,* and *Mahonia,* known to be rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through protected areas if accompanied by a certificate. In accordance with the procedures described below under "Effective Date," this direct final rule will add *Berberis candidula* 'Amstelveen', *Berberis thunbergii* 'Lustre green', and *Berberis thunbergii* 'Monry', to the list of rust-resistant *Berberis* species in § 301.38–2(b).

The addition of the species listed above to the list of rust-resistant *Berberis* species is based on recent testing to determine rust-resistance conducted by the Agricultural Research Service of the United States Department of Agriculture (USDA) at its Cereal Rust Laboratory in St. Paul, MN. The testing is performed in the following manner: In a greenhouse, the suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible species of *Berberis, Mahoberberis,* or *Mahonia.* Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100 percent humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80 percent relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, the test results indicate that the test plants are rust-resistant. This test must be performed 12 times, and all 12 tests must yield the same result before USDA can make a determination as to whether the test plants are rust-resistant. The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants (e.g., six plants tested twice or three plants tested four times). The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stages. Based on over 30 years of experience with this test, we believe that 12 is the reliable test sample size on which USDA can make its determination. We do not know of any plant that was subsequently discovered to be rust-susceptible after undergoing this procedure 12 times and being determined by USDA to be rust-resistant.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we received no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule will allow the interstate movement of *Berberis candidula* 'Amstelveen,' *Berberis thunbergii* 'Lustre Green,' and *Berberis thunbergii* 'Monry,' into and through States or parts of States designated as protected areas in accordance with the requirements in the regulations. Based on the information provided to us, we have determined that this rule will affect three nurseries that might propagate the new species and numerous retail sales nurseries that might purchase or resell the varieties. This rule will enable those nurseries to move the species into and through protected areas and to propagate and sell the species in States or parts of States designated as protected areas. It is unlikely that the addition of these varieties to the list of rust-resistant *Berberis* species will have any effect on prices, investment, productivity, or our international competitive position. It is possible that this rule will positively affect innovation by allowing nurseries that develop new rust-resistant *Berberis* varieties the opportunity to market those varieties in protected areas. It is also possible that this rule will have some positive effect on nurseries that are small businesses by providing an opportunity for increased sales of rust-resistant *Berberis* species in protected areas. We cannot predict the exact number of nurseries that might be affected by this rule change, nor can we predict the level of demand for these new species or the impact on nurseries producing or selling them. It is likely, however, that any economic effects will not be significant as a result of additional plant sales.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant disease and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended as follows:

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.38–2, paragraph (b) is amended by adding, in alphabetical order, the following rust-resistant *Berberis* species:

§ 301.38–2 Regulated articles.

* * * * *

(b) * * *

B. candidula 'Amstelveen'

* * * * *

B. thunbergii 'Lustre Green'

* * * * *

B. thunbergii 'Monry'

* * * * *

Done in Washington, DC, this 18th day of July 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–18573 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 95–003F]

RIN 0583–AB88

Products From Foreign Countries; Eligibility for Import into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending those paragraphs of the imported products sections of the Federal meat and poultry products inspection regulations that contain the phrase "at least equal to" by replacing that phrase with the words "equivalent to." This action will amend language in the Federal meat and poultry products inspection regulations to correctly reflect the language used in the Uruguay Round Agreements Act, which was enacted to comply with the General Agreement on Tariffs and Trade, 1994 (GATT).

Subtitle B, section 431, paragraph (k) of Title IV of the Uruguay Round Agreements Act of 1994, Pub. L. No. 103–465, 108 Stat. 4809 (1994), amends section 17(d)(1) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. § 466(d)(1)) to require that all imported poultry or poultry products intended for human consumption be subject to foreign inspection that achieves a level of sanitary protection equivalent to that achieved under United States standards. Imported poultry and poultry products must also be processed by the exporting country in facilities and under conditions that achieve that same level of sanitary protection. In addition, paragraph (k) amends section 17(d)(2) of the PPIA (21 U.S.C. § 466(d)(2)) to allow the Secretary of Agriculture to treat the meat and poultry standards of exporting countries as "equivalent to" United States standards if the exporting countries provide the Secretary with sufficient scientific evidence to demonstrate that their standards achieve the level of sanitary protection achieved under the United States standard. Subtitle B, section 431, paragraph (l),

Title IV, of the Uruguay Round Agreements Act similarly amends section 20(e)(1), subparagraphs (A) and (B) of the Federal Meat Inspection Act (21 U.S.C. 620(e)(1)(A) and (B)).

Because this codification is required by GATT, we expect no adverse public reaction resulting from this change in regulatory language. Therefore, unless notice is received within 30 days that someone wishes to submit adverse or critical comments, the action will become final 60 days after publication in the **Federal Register**. If critical comments are received, the final rulemaking notice will be withdrawn and a proposed rulemaking notice will be published. The proposed rulemaking notice will establish a comment period.

DATES: This action will become effective September 26, 1995 unless notice is received on or before August 28, 1995 that adverse or critical comments will be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 720–7164.

SUPPLEMENTARY INFORMATION:

Background

Sections 327.2 and 327.4 of the Federal meat inspection regulations and §§ 381.196 and 381.197 of the poultry products inspection regulations currently require that foreign country meat and poultry inspection systems be "at least equal to" those in the United States if foreign countries wish to export meat and poultry products to the United States. In December, 1994, however, in accordance with GATT's Uruguay Round negotiations, the President of the United States signed the Uruguay Round Agreements Act into law. Under this new law, drafted to comply with GATT, the United States can no longer require foreign countries wishing to export meat and poultry products to have meat and poultry inspection systems that are "at least equal" to those in the United States; instead, foreign inspection systems must be "equivalent to" domestic inspection systems. Therefore, FSIS is amending its regulations to require that foreign inspection systems that export meat and poultry products to the United States be "equivalent to" domestic inspection systems.

Executive Order 12866

This rule has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act and the Poultry Products Inspection Act (PPIA) from imposing any marking or packaging requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

This rule is not intended to have retroactive effect.

There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or the PPIA.

Effect on Small Entities

The Administrator has made an initial determination that this rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This direct final rule does not impose any requirements on American entities. It applies only to foreign countries that wish to export meat and poultry products to the United States.

List of Subjects

9 CFR Part 327

Food Labeling, Food Packaging, Imports, Meat Inspection

9 CFR Part 381

Food labeling, Food packaging, Imports, Poultry and poultry products.

For the reasons set out in the preamble, 9 CFR parts 327 and 381 are amended as follows:

PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§§ 327.2 and 327.4 [Amended]

2. Remove the word's "at least equal to" and add, in their place, the words "equivalent to" in the following places:

Section 327.2(a)(1), (a)(2)(i) introductory text, (a)(2)(ii) introductory text, (a)(2)(iv) introductory text, the text of the Certificate following paragraph (a)(3), (a)(4), and the text of each Certificate following 327.4 (a) and (b).

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

§ 381.196 [Amended]

2. Remove the words "at least equal to" and add, in their place, the words "equivalent to" in the following places:

Section 381.196(a)(1), (a)(2)(i) introductory text, (a)(2)(ii) introductory text, (a)(2)(iv) introductory text, the text of the Certificate following paragraph (a)(3), and (a)(4).

Done at Washington, DC, on July 18, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–18460 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–DM–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–116–AD; Amendment 39–9325; AD 95–13–04]

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95–13–04 that was sent previously to all known U.S. owners and operators of certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes by individual letters. This AD requires a revision to the Airplane Flight Manual to prohibit the use of mach trim and to add speed restrictions if the autopilot is disengaged or inoperative. This AD also requires installation of an associated placard.

This amendment is prompted by deficiencies that were discovered during a recent review of vendor documentation of the horizontal stabilizer trim control unit. The actions specified by this AD are intended to prevent such deficiencies, which could result in a nose-up trim runaway when a single component in the mach trim circuits fails.

DATES: Effective August 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–13–04, issued on June 16, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before September 26, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Canadair, Aerospace Group, P. O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On June 16, 1995, the FAA issued priority letter AD 95–13–04, applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that, during a recent Canadair review of vendor documentation of the horizontal stabilizer trim control unit (HSTCU), certain deficiencies were discovered. The reliability of the HSTCU was found to be lower than anticipated due to circuit design deficiencies. When such deficiencies exist in the HSTCU, and a single component in the mach trim circuits fails, a nose-up trim runaway could occur.

Bombardier has issued Canadair Regional Jet Temporary Revision No. TR RJ/43 to the Airplane Flight Manual (AFM). This temporary revision advises the flightcrew that the use of mach trim is prohibited and that speed restrictions must be applied if the autopilot is disengaged or inoperative. Transport Canada Aviation issued Canadian airworthiness directive CF95–08, dated June 8, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued priority letter AD 95–13–04 to require a revision to the Limitations Section of the FAA-approved AFM to prohibit the use of mach trim and to add speed restrictions if the autopilot is disengaged or inoperative. The actions are required to be accomplished in accordance with the temporary revision to the AFM previously described.

In addition, the FAA finds that in order to ensure flightcrew awareness, the installation of a placard is necessary to advise the flightcrew of the operations restrictions discussed previously.

This AD is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 16, 1995, to all known U.S. owners and operators of certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–116–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined

further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 is revised to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (formerly Canadair) 95–13–04: Amendment 39–9325. Docket 95–NM–116–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 and subsequent, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent a nose-up trim runaway, accomplish the following: (a) Within 24 hours after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD. (1) Install a placard adjacent to the primary flight display next to the airspeed limitation placard, to read:

"USE OF MACH TRIM IS PROHIBITED. IF THE AUTOPILOT IS DISENGAGED OR INOPERATIVE, RESTRICT SPEED TO 250 KIAS OR 0.7 MACH."

(2) Revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. The requirements of this paragraph may be accomplished by inserting a copy of this AD, or Canadair Regional Jet Temporary Revision No. TR RJ/43, into the AFM.

"USE OF MACH TRIM IS PROHIBITED. IF THE AUTOPILOT IS DISENGAGED OR INOPERATIVE, RESTRICT SPEED TO 250 KIAS OR 0.7 MACH."

Note 1: When the temporary revision has been incorporated in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in Canadair Regional Jet Temporary Revision No. TR RJ/43.

(3) Revise the Limitations Section of the FAA-approved AFM to include the following information. The requirements of this paragraph may be accomplished by inserting a copy of this AD into the AFM.

"Prior to the accomplishment of Bombardier Alert Service Bulletin S.B. A601R–27–054, dated June 12, 1995, when the Mach trim system is disengaged, the "MACH TRIM" caution message will be displayed on the Engine Indication and Crew Alerting System (EICAS), and the Mach trim engage/disengage switch "INOP" legend will be illuminated. The EICAS message may be scrolled out of view prior to takeoff, but the switch "INOP" light will remain illuminated."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on August 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–13–04, issued on June 16, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on July 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18585 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–ASW–15]

Revocation of Class E Airspace; Newgulf, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action revokes the Class E airspace at Newgulf Airport, Newgulf, TX. The cancellation of the Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) A, standard instrument approach procedure (SIAP) serving the Newgulf Airport, TX, has prompted this action. Additionally, the Newgulf Airport, TX, was officially closed December 31, 1993. Therefore, this Class E airspace is no longer needed. The intended effect of this action is to relinquish control over this airspace that is no longer needed for IFR operations at Newgulf, TX.

DATES: *Effective Date:* 0901 UTC, August 14, 1995.

Comment Date: Comments must be received on or before September 26, 1995.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 94–ASW–15, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves the removal of Class E airspace at Newgulf, TX, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Interested parties are invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revoke's the 700 foot Class E airspace at Newgulf, TX. The cancellation of the VOR/DME A, SIAP serving the Newgulf Airport, Newgulf, TX, has prompted this action. Additionally, the Newgulf Airport, was officially closed December 31, 1993. Class E airspace extending upward from 700 feet above ground level (AGL) is no longer needed to contain IFR operations at Newgulf, TX.

Since this action merely involves the revocation of Class E airspace as a result of the airport closure and cancellation of a SIAP, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. The Class E airspace must be removed to avoid confusion on the part of the pilots flying in the vicinity of the closed Newgulf airport, and to promote the safe and efficient handling of air traffic in the area. Therefore, I find that notice and public procedure under 5 U.S.C. 553 are unnecessary and good cause exists for making this amendment effective in less than thirty days.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points,* dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet above the surface.

* * * * *

ASW TX E5 Newgulf, TX [Revoke]

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Issued in Fort Worth, TX, on July 17, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–18592 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Final Rule: Requirements for Child-Resistant Packaging; Packages Containing 250 mg or More of Naproxen

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a rule to require child-resistant packaging for naproxen preparations containing 250 mg or more of naproxen per retail package. Naproxen is marketed as an anti-inflammatory drug. It is used to treat various forms of arthritis, mild to moderate pain, and menstrual pain. The Commission has determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting naproxen. The Commission takes this action under the authority of the Poison Prevention Packaging Act of 1970.

DATES: The rule will become effective on February 6, 1996, and applies to naproxen preparations packaged on or after that date.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400 ext. 1368.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 ("PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as "child-resistant (CR) packaging," is packaging that (1) Is designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) is not difficult for "normal adults" to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a).

2. Naproxen

Naproxen is a nonsteroidal anti-inflammatory drug ("NSAID"). This class of compounds is used to treat various forms of arthritis, mild to moderate pain, and menstrual pain. As discussed below, the Commission is aware of many reports of poisoning incidents involving naproxen in children under 5 years old.

Until recently, naproxen was a prescription drug that was required to be in child-resistant packaging by the

Commission's regulation of human oral prescription drugs, 16 CFR 1700.14(a)(10). By a letter dated January 11, 1994, the Food and Drug Administration ("FDA") granted nonprescription ("over-the-counter," or "OTC") status to the sodium salt of naproxen.

The patent for naproxen expired in 1993. The OTC naproxen product approved by the FDA is currently manufactured by the original patent holder and marketed by another company as a joint venture. In accordance with FDA's regulations, these two companies have sole marketing rights until January 11, 1997. Currently, the companies are voluntarily placing naproxen in CR packaging.

The OTC formulation of naproxen consists of naproxen sodium and is equivalent to 200 mg of naproxen and 20 mg of sodium per tablet. The recommended dose is 1 tablet every 8 to 12 hours. The maximum daily dose is 3 tablets for patients between the ages of 12 and 65 and 2 tablets for those over 65. The drug is not recommended for children under 12 years old except under the supervision of a doctor. However, naproxen is used to treat juvenile arthritis in children over 2 years.(5)[1]

Although the current marketers are voluntarily placing naproxen in child-resistant packaging, a mandatory special packaging standard for naproxen products would ensure that other companies that may market such products in the future would use CR packaging. As discussed below, an increased incidence of accidental ingestions by children under 5 involving ibuprofen (another NSAID) after it became available OTC, supports this action. A mandatory standard would also enable the Commission to ensure that the packaging used meets the performance requirements of the PPPA test protocol at 16 CFR 1700.15, 1700.20.

3. The Proposed Rule

On November 14, 1994, the Commission issued a proposed rule that would require CR packaging for OTC drugs containing the equivalent of 250 mg or more of naproxen. 59 FR 56445. As discussed below, the Commission received 4 comments in response to the proposed rule. All were in favor of issuing the rule.

The Commission also received a request to extend the comment period from Syntex Corporation ("Syntex"), one of the companies involved in the joint venture for temporary exclusive marketing rights for naproxen. Syntex stated that it needed additional time to prepare a response to the proposed rule since it had recently been acquired by Roche. The Commission granted the request for an extension of time. 60 FR 2716 (January 11, 1995). However, the Commission did not subsequently receive any comments from Syntex.

B. Toxicity of Naproxen

The Commission's Directorate for Health Sciences reviewed the toxicity of naproxen. Side effects commonly associated with naproxen and other NSAID's include dose-related gastrointestinal (GI) complications such as constipation, heartburn, abdominal pain, nausea, and diarrhea. Other adverse effects include headache, dizziness, drowsiness, pruritus (itching), and tinnitus (ringing in the ears).(5)

Naproxen may also cause liver and kidney toxicity, but these effects are infrequent with routine therapeutic use. Kidney toxicity has been documented in children following naproxen therapy. One report describes a two-year-old male with juvenile arthritis who developed acute renal failure and hyperkalemia (high blood potassium) following treatment with 20 mg/kg/day of naproxen sodium for 1 month.(5)

Acute overdosage of naproxen may result in mild, transient effects, including drowsiness, GI disturbances, and prolonged clotting times. Life-threatening effects are uncommon, but serious complications such as seizures, apnea (cessation of breathing), metabolic acidosis (reduced blood pH), and impaired kidney function have been documented. The acute lethal dose of naproxen is unknown and the severity of symptoms is not always dose-related.(5)

The Commission's Directorate for Epidemiology reviewed data from the National Electronic Injury Surveillance System ("NEISS") involving hospital emergency room treatment of children under 5 years old who ingested naproxen. NEISS is a probability sample based on hospital emergency rooms nationwide. There were nine reported cases from 1980 to 1989 and 26 reported cases from 1990 to 1994. The average annual number of estimated cases during these time periods was 50 and 260, respectively. In 1982, one case resulted in the hospitalization of a 2-year-old male. In 1994, the Commission had reports of three emergency room cases, each involving a 2-year-old child who was examined or treated and released following ingestion of naproxen.(7)

The Commission's Directorate for Health Sciences requested 1993 incident data from the American Association of Poison Control Centers ("AAPCC") related specifically to naproxen in children under 5 years old. (AAPCC data from 1985 to 1992 were unavailable because naproxen poisoning incidents were not categorized separately from other NSAID incidents unless they resulted in death.) Of the 1,413 naproxen ingestions reported for 1993, two resulted in outcomes characterized by AAPCC as "moderate," i.e., pronounced and prolonged symptoms that generally require treatment but are not life-threatening. In addition, 53 of the ingestions resulted in outcomes characterized by AAPCC as "minor," i.e., symptoms present, but mild with rapid and complete resolution. Forty-eight cases were documented as potentially toxic, but the ultimate disposition was not reported. From 1985 to 1993, there were no naproxen-related fatalities in children reported to the AAPCC.(5)

Several cases of naproxen poisoning in children were reported through the FDA's Adverse Reactions Reporting System ("ARRS") and the Worldwide Safety Surveillance and Reporting division of Syntex, the manufacturer of naproxen. These include: An 8-month-old girl who died following daily treatment for fever and an upper respiratory tract infection with 100 to 400 mg naproxen sodium for 5 days; a 2-year-old boy who recovered after developing drowsiness, ataxia (loss of voluntary muscle coordination), and a prolonged bleeding time following ingestion of naproxen (up to 2 grams), hydrogen peroxide, and eucalyptus oil; a 2-year-old girl who suffered dyspepsia (indigestion) after ingesting 625 mg of naproxen; and a 5-year-old girl who developed convulsions after she accidently ingested an unknown amount of naproxen sodium.(5)

NEISS data for ingestions of ibuprofen, another popular NSAID that began to be marketed OTC in 1984, show that there was a larger estimated number of children under 5 years old treated in hospital emergency rooms for each year from 1984–1994 after ibuprofen was granted OTC status, than for each year from 1980–1983.(7)

Most cases of naproxen poisoning described in the literature involve adults. These patients generally developed GI side effects and several experienced seizures. The incidence of side effects may differ in children and adults. Studies involving children taking naproxen showed that, compared to adults, the children's incidence of: rash and prolonged bleeding times were increased; GI and central nervous system (CNS) reactions were similar; and other reactions decreased.(5)

The relevant literature shows that naproxen and other NSAID's have adverse fetal effects when used during pregnancy. A newborn delivered 8 hours after his mother ingested an overdose of 5 grams of naproxen developed severe hyponatremia (low blood sodium) and water retention with indications of cerebral irritation and paralytic ileus. It was tentatively diagnosed that naproxen adversely affected renal function. Complications were reported in three newborns after maternal naproxen treatment to prevent premature labor. One newborn died, and the autopsy showed a brain hemorrhage, multiple gastric ulcers, extensive GI bleeding, and a cardiovascular birth defect that is a known adverse effect of NSAID's. A 7-day-old breast-fed infant boy developed symptoms associated with naproxen toxicity after his mother was treated with 1 g naproxen and 800 mg of antibiotic for 3 days.(5)

C. Level for Regulation

The Commission is issuing a rule that requires special packaging for OTC naproxen products containing the equivalent of 250 mg or more naproxen per retail package. This level is based on established guidelines for medical treatment following ingestion of NSAID's. It is also based on a known toxic dose of naproxen, reduced by a safety factor to account for biologic variability. (5 and 10)

The precise toxic level of naproxen in humans is unknown. However, guidelines established for pediatric NSAID overdose suggest medical treatment for young children who ingest five times the maximum single therapeutic dose. Therefore, the dose of naproxen requiring medical intervention would be 5 mg/kg (the maximum single therapeutic dose) times five, or 25 mg/kg. In a 10-kg child, this is equivalent to 250 mg of naproxen, or one and one-quarter OTC tablets. (5 and 10)

The same level results when calculated using a different approach. When treatment information for poisonings is unavailable, the staff typically uses a known toxic dose divided by a safety factor of 10 to determine the level for regulation. Applying this factor to the 250 mg/kg dose of naproxen that caused life-threatening acidosis in a 15-year-old girl also results in a level of 25 mg/kg, or 250 mg in a 10-kg child. (5 and 10)

The Commission emphasizes that the 250 mg level applies to the total amount of the product sold at retail in a single package, regardless of whether the contents of the package are loose or also packaged in non child-resistant envelopes or strip packages. In administering the PPPA regulations for acetaminophen, iron-containing preparations and ibuprofen, the Commission has encountered instances in which product manufacturers package one or two tablets in individual envelopes for sale to consumers seeking medication for immediate use. Because each envelope is an individual retail unit and contains less than the amount of ibuprofen or acetaminophen subject to regulation, the envelopes need not be child-resistant.

However, the Commission has also encountered instances in which repackagers have packaged multiple non child-resistant envelopes of acetaminophen, iron, or ibuprofen in outer blister packs or clamshell packages that contain a total quantity of these products in excess of the regulatory minimum, but that are also not child-resistant. We note that the regulatory minimum contained in a "single package" refers to the total contents of the retail package, not the contents of each individual envelope. To avoid future confusion on this issue, this regulation refers to the contents of the "retail package" to clarify that whether a product requires child-resistant packaging is based on the total amount of naproxen packaged for sale at retail.

D. Comments on the Proposed Rule

The Commission received four comments responding to the proposed rule. These came from the American Society of Health-System Pharmacists, the National Association of Pediatric Nurse Associates and Practitioners, and two groups of university students. All agreed that the Commission should require CR packaging for naproxen. In addition, the students argued for an effective date shorter than the 180-day period proposed by the Commission. One group of students advocated a 90-day effective date. The argument for the shorter date was that the companies with exclusive marketing rights are voluntarily using CR packaging now.

The Commission does not agree that a shorter effective date is necessary. In general, the PPPA requires at least 180 days before a regulation takes effect. 15 U.S.C. 1471n. As explained in section F below, the Commission does not believe that a shorter period is justified in this case.

E. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning children's ingestion of naproxen sodium demonstrate that this compound can cause serious illness and injury to children. Moreover, the preparations are readily available to children.(5) The Commission concludes that a regulation is needed to ensure that products subject to the regulation will be placed in CR packaging by any new manufacturers. In addition, the regulation will enable the Commission to enforce the CR packaging requirement and ensure that effective CR packaging is used.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that the degree and nature of the hazard to children from ingesting naproxen is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of these products, described above, and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required to find that the special packaging is "technically feasible, practicable, and appropriate." 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use. (9)

The current marketers of OTC naproxen use packaging that not only is child resistant, but also is easier for adult consumers to open. Therefore, the Commission concludes that CR packaging for naproxen is technically feasible, practicable, and appropriate.

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

[1] Numbers in parentheses refer to documents at the end of this notice.

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these items with respect to the various determinations made in this notice, and finds no reason to conclude that the rule is unreasonable.

F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

The Commission does not believe that a shorter effective date is necessary to protect the public interest. Naproxen is currently sold in CR packaging by the companies that have exclusive marketing rights until January 11, 1997. The Commission does not have any indication that significant quantities of naproxen will be marketed in non-CR packaging before a 180 day effective date, with the possible exception of a single size non-CR package as allowed under the PPPA. Thus, the Commission finds that a 180 day effective date is consistent with the public interest. The final rule will apply to products that are packaged on or after the effective date.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

For the proposed rule, the Commission's Directorate for Economics prepared a preliminary economic assessment of a rule to require special packaging for naproxen preparations with 250 mg or more of naproxen in a single package. Based on this assessment, the Commission concluded that such a requirement would not have a significant impact on a substantial number of small businesses or other small entities because the current marketers of naproxen are already using CR packaging and have sole marketing rights for 3 years. Furthermore, the relatively low costs of CR packages should not be an entry burden for future marketers. The Commission received no comments on its preliminary analysis and is not aware of any changes that would affect the Commission's previous conclusion. Thus, the Commission concludes that the rule to require special packaging for naproxen preparations having 250 mg or more of naproxen would not have any significant economic effect on a substantial number of small entities. (8)

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the PPPA requirements for naproxen preparations.

The Commission's regulations state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). In connection with the proposed rule, the Commission determined that CR packages for naproxen preparations would have no significant effects on the environment. The Commission is unaware of any developments to change this preliminary assessment. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required. (8)

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, 16 CFR part 1700 is amended as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 86 Stat. 1231. 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by republishing paragraph (a) introductory text and adding new paragraph (a)(25), to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(25) *Naproxen.* Naproxen preparations for human use and containing the equivalent of 250 mg or more of naproxen in a single retail package shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c).

Dated: July 24, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note. This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Vale, J.A. and Meredith, T.J., Acute poisoning due to non-steroidal anti-inflammatory drugs: clinical features and management. Medical Toxicology 1:12–31, 1986.

2. Memorandum from Terry Kissinger, Ph.D., EPHA, to Jacqueline Ferrante, Ph.D., HSPS, "Injury Data on Naproxen and Ibuprofen for the 1980–1993 Period," May 27, 1994.

3. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, "Technical Feasibility, Practicability, and Appropriateness Determination for the Proposal to Require Child-Resistant Packaging for OTC Preparations Containing Naproxen," June 7, 1994.

4. Memorandum from Marcia P. Robins, ECSS, to Jacqueline Ferrante, Ph.D., HSPS, "Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require Child-Resistant Packaging," September 28, 1994.

5. Memorandum from Sandra Inkster, Ph.D., HSHE, to Jacqueline Ferrante, Ph.D., HSPS, "Review of Naproxen Toxicity," July 17, 1994.

6. Briefing memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, "Proposed Special Packaging Standard for Naproxen," September 29, 1994.

7. Memorandum from Terry Kissinger, Ph.D., EPHA, to Jacqueline Ferrante, Ph.D., HSPS, "Update of Injury Data Involving Naproxen and Ibuprofen," May 4, 1995.

8. Memorandum from Marcia P. Robins, ECSS, to Jacqueline Ferrante, Ph.D., HSPS, "Final Regulatory Flexibility Act Analysis: Child-Resistant Packaging for OTC Packages Containing 250 mg or more of Naproxen," June 12, 1995.

9. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, "Technical Feasibility, Practicability, and Appropriateness Determination for the Final Rule to Require Child-Resistant Packaging for OTC Preparations Containing Naproxen," May 4, 1995.

10. Briefing memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, "Final Special Packaging Standard for Naproxen," June 29, 1995.

[FR Doc. 95–18504 Filed 7–27–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 901 and 924

Alabama and Mississippi Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Alabama and Mississippi. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: Promptly repair or compensate for subsidence-caused material damaged to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Alabama and Mississippi and consideration of public comments, OSM has decided that initial enforcement in Alabama will be accomplished through State and OSM enforcement and that initial enforcement is not reasonably likely to be required in Mississippi and therefore implementation in that State will be accomplished through the State program amendment process.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Field Office Director, Birmingham Field Office, OSM, 135 Gemini Circle, Suite 215, Birmingham, Alabama, 35209, Telephone: (205) 290–7287.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of section 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 10, 1995, **Federal Register** (60 FR 18044) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, than OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement:* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the

State program but are not enforceable back to October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.129a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Alabama

Alabama program activity, requirements, and enforcement. By letter to Alabama dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Alabama (Administrative Record No. A1–520). By letter dated January 12, 1995, Alabama responded to this request (Administrative Record No. AL–521).

Alabama stated that ten underground coal mines were active in Alabama after October 24, 1992. Alabama stated that the Alabama program does not fully authorize enforcement of the repair or compensation of material damage requirements of Section 720(a) of SMCRA and the implementing Federal regulations. Alabama's regulations are silent on the issue of replacement of water supplies damaged by subsidence but do contain a "to the extent required by State law" limitation on repair of material damage to structures. Alabama has not determined whether a change to the State Act is necessary to implement regulation change which would be required under the Energy Policy Act (EPACT). Further analysis would be necessary by the State legal staff before a determination can be made of the need for statutory revisions.

Alabama has assumed since the passage of EPACT that the retroactive enforcement of its provisions by Alabama would be possible until regulatory changes can be made. Alabama has in fact adopted the position that since the effective date of EPACT they have had enforcement authority of its provisions.

Since October 24, 1992, Alabama has had only one citizen complaint where alleged damage to structures from subsidence has existed. This complaint covered a church and several houses. No complaints have been received alleging damage to water supplies due to subsidence.

Representatives from OSM's Birmingham Field Office met with Alabama on May 2, 1995. Alabama confirmed it has the authority to enforce the water replacement provisions of 30 CFR 817.41(j) for underground mining activities conducted after October 24, 1992. The State will not, however, be able to fully enforce the repair or compensation of material damage resulting from subsidence provisions of 30 CFR 817.121(c)(2) because of certain limitations placed on compensation in the current State status.

Comments. On April 10, 1995, OSM published in the **Federal Register** (60 FR 18044) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Alabama. The comment period closed on April 20, 1995. The comment period was subsequently extended to May 10, 1995 (60 FR 20193, April 25, 1995). Because OSM did not receive a request for one, OSM did not hold a public hearing. OSM received one comment in response to its notice. Following is OSM's response to it.

OSM received comments from one party in response to its notice (Administrative Record Number AL–546). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedure for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but was pursue Federal enforcement without undermining State primacy under SMCRA.
>
> (60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further, the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protection standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiver of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The Following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule, OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

Director's Decision. Based on the information provided by Alabama, discussions held with Alabama on May 2, 1995, and the comment discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Alabama will be accomplished through joint State and OSM enforcement. Alabama will enforce its provisions for the replacement of water supplies affected by underground mining activities conducted after October 24, 1992. OSM will enforce those provisions of 30 CFR 817.121(c)(2) pertaining to the repair of material damage resulting from subsidence that are not covered or are limited by the State provisions of underground mining activities conducted after October 24, 1992.

If circumstances within Alabama change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in Mississippi

Mississippi program activity, requirements, and enforcement. By letter to Mississippi dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Mississippi (Administrative Record No. MS–328). Mississippi did not respond to this request in writing. On May 10, 1995, representatives from OSM's Birmingham Field Office and the State met to discuss how the provisions of the Energy Policy Act would be implemented. Mississippi has had no surface or underground coal mining operations for several decades. At present, Mississippi is in the process of completely revising its approved regulatory program. It was agreed that the program revision process addressed in the Federal regulations at 30 CFR Part 732 would be implemented.

Comments. On April 10, 1995, OSM published in the **Federal Register** (60 FR 18045) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Mississippi. The comment period closed on April 30, 1995. The comment period was subsequently extended to May 10, 1995 (60 FR 21093, April 25, 1995). Because OSM did not receive a request for one, OSM did not hold a public hearing. OSM received one comment in response to its notice. Following is OSM's response to it.

A mining association responded on May 12, 1995 (Administrative Record Number MS–331). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues in Mississippi because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Director's Decision. Based on discussions held with the State on May 10, 1995, and the comment discussed above, the Director has decided that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Mississippi is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. There have been no underground mines in Mississippi for decades. Mississippi is in the process of amending its entire regulatory program and would enforce its statutory and regulatory provisions when its program is determined to be in accordance with the revised SMCRA and consistent with the revised Federal regulations.

If circumstances within Mississippi change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–18609 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 913

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Illinois. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: Promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Illinois, OSM has decided that initial enforcement in Illinois will be accomplished through the State program amendment process for the water replacement provisions and State enforcement for the repair or compensation of material damage provisions.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Keith M. Shank, Acting Director, Springfield Field Office, OSM, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of

the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by under ground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, **Federal Register** (60 FR 17734) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the States. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Illinois

Illinois program activity, requirements, and enforcement. By letter to Illinois dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Illinois (Administration Record No. IL–1530). By letter dated February 7, 1995, Illinois responded to this request (Administrative Record No. Il–1531).

Illinois stated that 25 underground coal mines were active in Illinois after October 24, 1992. Illinois stated that the Illinois program does not fully authorize enforcement of the new water

replacement requirements of section 720(a) of SMCRA and the implementing Federal regulations. Specifically, Illinois indicated that the State program excludes water supplies, and Illinois believes no authority exists to retroactively apply a state regulation. Illinois has no formal regulation or policy on water replacement due to diminution or contamination from mine subsidence. Illinois also stated that it does not have authority to investigate citizen complaints of water loss caused by underground mining operations conducted after October 24, 1992.

Nevertheless, in the few instances where water loss was part of a citizen complaint, Illinois has investigated and worked with the citizen and company to address allegations of water loss or contamination if attributed to mine subsidence. Illinois has investigated two citizen complaints alleging subsidence-related water supply loss or contamination as result of underground mining operations conducted after October 24, 1992: (1) Complaint No. 1 alleged that a spring fed stream went dry, and the stream served the landowner by watering cattle. The mining may or may not have occurred after October 24, 1992. The spring fed stream crosses both pre- and post-October 24, 1992, mining panels. The coal company immediately provided a trough and trucked water for continued cattle watering. The coal company has since installed waterline to a cattle watering device to maintain the water supply. (2) Complaint No. 2 alleged well water developed odor and different taste as a result of mining adjacent to but not under the well. Illinois sampled the water and found no quality problems that could be attributable to mining. This landowner is also connected to a public water supply in addition to the private well.

On February 3, 1995, Illinois proposed water replacement regulations. Proposed 62 Ill. Adm. Code 1817.121(c)(3) requires the operator to:

> Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation operations permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

Once passed and a date is established, the application form will be revised appropriately. Illinois' current rulemaking package should be finalized in a year or less. In addition to proposed 62 Ill. Adm. Code 1817.121(c)(3), an inventory of all drinking, domestic and residential water supplies in place at the time of permitting will be necessary to fully implement section 720(a)(2) of SMCRA. Based on this information, Illinois may require pre- and post-mining monitoring of certain planned subsidence operations. This will be determined on a case by case basis.

By letter dated April 25, 1995, Illinois stated that the approved regulatory program administered by the Illinois Department of Mines and Minerals, Land Reclamation Division (Department) is in compliance with the subsidence-related mandates of the Energy Policy Act (Administrative Record No. IL–1533). Specifically:

Illinois' current regulations codified at 62 Ill. Adm. Code 1817.121(c)(2) require repair or compensation for subsidence-related material damage to any structure. This would include repair of or compensation for damage to water delivery systems such as wells, cisterns and water lines.

On February 3, 1995, the Department submitted a proposed regulatory program amendment to OSM that requires the replacement of drinking, domestic and residential water supplies adversely affected by underground coal mining operations. The Department's proposed amendment mirrors the Energy Policy Act's language regarding water replacement.

The Department has conducted a survey of the six coal companies that conduct planned subsidence coal mining operations in Illinois. This survey has proven that water replacement is rarely an issue in this State. First of all, underground coal mining operations are conducted in thinly populated rural areas; very few residences are ever impacted by planned subsidence operations. Secondly, of the six companies survey, two companies purchase all residences prior to mining, one company avoids residences in its high extraction retreat mining operation, and the other three companies have existing internal policies providing for water replacement should the need arise.

The Department has received only two citizen's complaints involving water replacement issues during the period from October 24, 1992, through the present. The Department thoroughly investigated each complaint and worked with the companies involved to resolve any disputes. One complaint proved to be unfounded. The other complaint was successfully resolved when a waterline was installed. The Department received excellent cooperation from the companies involved during the course of these investigations and is confident that it can effectively resolve any future water replacement issues. However, as previously indicated, the likelihood of receiving any further complaints regarding this issue is extremely remote.

In summary, the Department is effectively implementing the Energy Policy Act in Illinois. The Department's regulations currently require underground coal mine operators to repair or compensate for subsidence-related damage to structures, as mandated by the Energy Policy Act. In addition, the Department will diligently pursue finalization of the water replacement regulations currently pending with OSM in order to formally render Illinois' coal mine regulatory program no less effective than counterpart Federal regulations. Finally, the Department will continue to conduct thorough investigations of any water replacement complaints that do arise and work with coal mining companies and the public at large to resolve disputes relating to this issue.

Comments. On April 7, 1995, OSM published in the **Federal Register** (60) FR 17734) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Illinois. The comment period closed on May 8, 1995. Because OSM did not receive a request for one. OSM did not hold a public hearing. OSM did not receive any comments in response to its notice.

Director's Decision. Based on the information provided by Illinois, the Director has decided that initial enforcement of the water replacement requirements in Illinois is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. On February 3, 1995, Illinois submitted a proposed regulatory program amendment to OSM that requires the replacement of drinking, domestic, and residential water supplies adversely affected by underground coal mining operations. These revisions are intended to make the Illinois regulations consistent with the revised Federal regulations. Twenty-five underground mines produced coal in Illinois since October 24, 1992.

There have been only two citizen complaints concerning water replacement issues and Illinois has investigated them in a thorough and complete manner. Once Illinois has amended its program to be in accordance with the revised SMCRA and Federal regulations, it will enforce its State statutory and regulatory provisions. The Director has decided that initial enforcement of the underground coal mine subsidence

control requirements will be accomplished through State enforcement since Illinois has regulatory provisions in place that correspond to the Federal regulations at 30 CFR 817.121(c) and has the authority to implement them for all underground mining activities conducted after October 24, 1992.

If circumstances within Illinois change significantly, the Director may reassess this decision. Formal reassessment of this decisions would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–18610 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Indiana. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Indiana and consideration of public comments, OSM has decided that initial enforcement in Indiana will be accomplished through joint Indiana and OSM enforcement.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226–6166.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, **Federal Register** (60 FR 17736) and as reiterated below, enforcement could be accomplished through the 30 CFR part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Indiana

Indiana program activity, requirements, and enforcement. By letter to Indiana dated December 13, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Indiana (Administrative Record No. IND–1438). By letter dated February (*sic*) 20, 1995, Indiana responded to this request (Administrative Record No. IND–1429) (the letter was misdated; the correct date is January 20, 1995.)

Indiana stated that six underground coal mines were active in Indiana between October 24, 1992, and July 1, 1994. Indiana also stated that Indiana statute IC 13–4.1–9–2.5 incorporates the substantive language of section 720 of SMCRA. Indiana noted that IC 13–4.1–9–2.5's requirements are expressly limited to operations conducted after June 30, 1994. Therefore, the Indiana Division of Reclamation (DOR) may not require structural repair (or compensation) or water replacement under the authority of IC 13–4.1–9–2.5 with respect to surface coal mining operations conducted on or before June 30, 1994. However, Indiana stated that preexisting Indiana program provisions provide the DOR with sufficient authority to impose the Energy Policy Act of 1992 requirements with respect to underground mining operations conducted on or before June 30, 1994.

On June 28, 1995 (Administrative Record Number IND–1493), OSM met with Indiana to discuss enforcement of the underground coal mine subsidence control and water replacement requirements in Indiana. As detailed above in its initial response to OSM concerning enforcement, Indiana stated that Indiana law at IC 13–4.1–9–2.5 incorporates the substantive language of section 720 of SMCRA and applies to underground mining operations conducted after June 30, 1994. For underground mining operations conducted in Indiana in the interim period between October 24, 1992 (the effective date of the Energy Policy Act of 1992) and June 30, 1994 (the effective date of Indiana law counterpart to the Energy Policy Act of 1992), the State concluded that the existing Indiana program provisions provide the Indiana Division of Reclamation (IDOR) with sufficient authority to impose the requirements of the Energy Policy Act of 1992 with respect to underground mining operations conducted in Indiana during the interim period. The State concluded, however, that although it believes that the IDOR has sufficient authority to impose the requirements of the Energy Policy Act of 1992 during the interim period, joint State and OSM enforcement in Indiana should be the chosen enforcement scheme in Indiana, as it would assure protection for the citizens of Indiana during the interim period Administrative Record Number IND–1494. Under this scheme, the IDOR would enforce the requirements of the Energy Policy Act of 1992 in Indiana from June 30, 1994, and during the interim period to the extent permissible under Indiana law. OSM would enforce the requirements of the Energy Policy Act of 1992 in the interim period only if a situation arose where the State could not so enforce. Indiana does not anticipate any situations where the IDOR would not be able to enforce the provisions of the Energy Policy Act of 1992 during the interim period.

Comments. On April 7, 1995, OSM published in the **Federal Register** (60 FR 17736) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Indiana. The comment period closed on May 8, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. OSM received comments from one party in response to its notice (Administrative Record Number IND–1476).

The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further the party commented that Congress' intent was that agreements between coal mine operators and

landowners would be used to ensure that the protective standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

[The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

Director's decision. Based on the information discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Indiana will be accomplished through joint State and OSM enforcement. The Director has made this decision after soliciting public comment (one comment was received) and providing opportunity for public hearing (no requests for a hearing were received), and considering information provided by Indiana by letter dated February (*sic*) 20, 1995, and in discussions held with Indiana on June 28, 1995. The Director has concluded that Indiana law at IC 13–4.1–9–2.5 authorizes enforcement of provisions of the Energy Policy Act of 1992 in Indiana from June 30, 1994. As for enforcement during the interim period (October 24, 1992, through June 30, 1994), Indiana will enforce the provisions of the Energy Policy Act of 1992 to the extent authorized by existing Indiana law. OSM will enforce the provisions of the Energy Policy Act of 1992 during the interim period in any circumstances where the State cannot so enforce. Neither the IDOR nor OSM anticipates any cases where the IDOR would not be able to enforce the provisions of the Energy Policy Act of 1992 during the interim period.

If circumstances within Indiana change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–18611 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 917

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Kentucky. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures, and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Kentucky and consideration of public comments, OSM has decided that initial enforcement in Kentucky will be accomplished through State and OSM enforcement.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, OSM, 2675 Regency Road, Lexington, Kentucky 40503, Telephone (606) 233–2894.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a)(1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, **Federal Register** (60 FR 17739) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817/41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection, OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Kentucky

Kentucky program activity, requirements, and enforcement. By letter to Kentucky dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Kentucky (Administrative Record No. KY–1336). By letter dated January 31, 1995, Kentucky responded to this request (Administrative Record No. KY–1337).

Kentucky stated that 410 underground coal mines were active in Kentucky after October 24, 1992. Kentucky indicated that existing State program provisions at 405 Kentucky Administrative Regulations (KAR) 18:210 section 3 are adequate State counterparts to section 720(a)(1) of SMCRA and the implementing Federal regulations. Section 720(a)(1) of SMCRA requires prompt repair or compensation to the owner for subsidence-related material damage to non-commercial buildings or occupied dwellings and related structures. Kentucky explained that it will enforce this State program provision in accordance with 405 KAR 18:210 section 3.

Kentucky stated that the Kentucky program does not fully authorize enforcement of the new water replacement requirements of section 720(a)(2) of SMCRA and the implementing Federal regulations. Kentucky submitted a program amendment to OSM dated April 29, 1994, (Administrative Record No. KY–1279) which will modify language at Kentucky Revised Statutes (KRS) 350.421. KRS 350.421, as modified, will require replacement of water loss caused by underground mining operations. OSM approved the amendment on June 27, 1995 (60 FR 33110) with two exceptions. The Director required that Kentucky amend its program to provide for the "prompt" replacement of water. He deferred a decision on the enforcement of the provisions of SMCRA section 720 during the period from October 24, 1992 (the effective date of SMCRA section 720) to July 16, 1994 (the effective date of Kentucky's House Bill 338 which provides for water replacement). Kentucky has stated that the effective date of the program amendment, when approved, will be July 16, 1994. Kentucky also stated that it does not have authority to issue enforcement actions for water loss caused by underground mining operations conducted after October 24, 1992, and before July 16, 1994.

Kentucky has investigated 115 citizen complaints alleging water supply loss or contaminations as a result of underground mining operations conducted after October 14, 1992, and before July 16, 1994. Of the 115 citizens' complaints, 30 are pending resolution of currently outstanding ten-day notices; 29 have been satisfactorily resolved; and 47 will require further investigation.

By letter dated June 2, 1995, Kentucky submitted additional clarifying information (Administrative Record No. KY–1358). Kentucky stated, in part:

KRS 350.421 was revised effective July 16, 1994, to place upon underground mining

operations the same obligation to replace affected water supplies that previously applied only to surface mining operations. The Kentucky provisions apply to water supplies for domestic, agricultural, industrial or other legitimate use from an underground or surface source, and thus are at least as broadly encompassing as the Federal requirements with regard to the types of supplies that must be replaced when affected by mining operations. For underground mining, the Kentucky after July 16, 1994, the effective date of the legislation. With regard to the level of replacement, we believe the affected party must be made whole, and that depends upon the factual circumstances of each case and, to some appropriated degree, the preferences of the affected party.

We recognize that it will be necessary to amend the approved Kentucky program by amending the cabinet's administrative regulations to be consistent with and as effective as the OSM regulations revised March 31, 1995. While it is difficult to establish a rigid timetable for adoption of amended administrative regulations, we believe the following target dates may be the earliest feasible dates for these actions, considering the length of Kentucky's promulgation process and considering that we also must continue development and promulgation of amendments to our regulations for impoundments and roads.

1. By August 15, 1995, submit to the Kentucky Legislative Research commission (LRC), a Notice of Intent to promulgate administrative regulations on water supply replacement and subsidence consistent with the March 31, 1995, OSM rules.

2. By December 15, 1995, file with LRC proposed amendments to administrative regulations.

On June 14, 1995, representatives from OSM's Lexington Field Office (LFO) and Kentucky's Department for Surface Mining Reclamation and Enforcement (DSMRE) met to discuss and finalize the implementation of the Energy Policy Act in Kentucky. A written record of the issues discussed was made (Administrative Record No. KY–1359). The following decisions were made. For repair or compensation of material damage, Kentucky's program has the equivalent provisions and enforcement authority. Therefore, DSMRE would enforce the State counterparts to 30 CFR 817.121(c)(2) while OSM would conduct normal oversight using the ten-day notice process if necessary. This enforcement approach was agreed to by the participants.

For water replacement, LFO as a result of the consultation with DSMRE, is recommending State and OSM Federal enforcement of 30 CFR 817.41(j). For the period October 24, 1992, through July 15, 1994, LFO will enforce EPACT water replacement provisions at 30 CFR 817.41(j) in Kentucky. After July 16, 1994, DSMRE has established both the authority to enforce and equivalent State provisions for water replacement resulting from damage caused by underground mining.

Comments. On April 7, 1995, OSM published in the **Federal Register** (60 FR 17741) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Kentucky. The comment period closed on May 8, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received and OSM's responses to them.

A mining association responded on May 12, 1995 (Administrative Record No. KY–1356). The party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue Federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is not inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further, the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protection standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule, OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

A non-profit organization responded on May 8, 1995 (Administrative Record No. KY–1354), with several comments. Because of Kentucky's lack of statutory authority to mandate replacement of water supplies damaged by underground mining prior to July 16, 1994, the party feels OSM should initiate direct enforcement. The Director agrees. As discussed in the Director's Decision below, the Director has decided that OSM will enforce the provisions of 30 CFR 817.41(j) for the period from October 24, 1992, to July 16, 1994.

The party commented that Kentucky should be placed on an expedited schedule for submission of a State program amendment which incorporates emergency regulations for immediate implementation of the permitting requirements for water replacement and subsidence protection. The Director recognizes that Kentucky needs to amend its administrative regulations and accepts Kentucky's proposed schedule for the development and promulgation of amendments. As discussed in section I.C. above, by letter dated June 2, 1995, Kentucky proposes to amend its regulations to be consistent with the revised Federal regulations. By August 15, 1995, it plans to begin the promulgation process by submitting to its LRC a Notice of Intent to promulgate regulations on water supply replacement and subsidence.

The party also recommends that the implementation of the subsidence and water replacement rules should be an oversight topic (special study) for at least the first two years of implementation. The Director notes that OSM will continue to consider special studies of interest to its stakeholders as required by OSM's Directive REG–8 which establishes the procedures for conducting oversight. The State will be required to enforce the provisions of its approved program while OSM will conduct normal oversight using the ten-day notice process if necessary.

The party recommends that all citizen complaints relating to the water loss or subsidence provisions that are the subject of this notice be logged and tracked by OSM to assure proper implementation of the Energy Policy Act. The Director notes that the LFO has compiled a list of all water loss complaints received after October 24, 1992, and each complaint will be evaluated. Since Kentucky has equivalent provisions to the Federal subsidence regulations, the Director notes that State will enforce those provisions while OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party feels that in those cases when the State has previously investigated a complaint, the ten-day notice process should not be used prior to Federal investigation and enforcement. The Director does not agree and reiterates his response to the comment above. For all subsidence-related complaints and for those water replacement-related complaints where damage occurred after July 16, 1994, OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party's last comment concerned the permitting process. It recommends that pending submission of the State program amendment, if Kentucky does not modify the permitting process immediately through the use of existing language in the State program to require additional groundwater and subsidence information, OSM should demand that each permittee be required, prior to permit issuance, to develop groundwater and subsidence information for OSM's approval prior to permit issuance. Failing this, individual enforcement actions should be taken. The Director does not agree. Kentucky has jurisdiction over the regulation of its surface coal mining operations. Through the 30 CFR 732.17 process, the Director will notify Kentucky of required changes to its program.

Director's decision. Based on the information provided by Kentucky, discussions held with the State on June 14, 1995, and the comments discussed above, the Director has decided that the enforcement of the underground coal mine subsidence control and water replacement requirements in Kentucky will be accomplished by State and OSM enforcement—Option #4. Kentucky will enforce its provisions that correspond to the Federal regulations at 30 CFR 817.41(c)(2) pertaining to the repair or compensation of material damage resulting from subsidence. Kentucky has statutory provisions in place that correspond to the Federal regulations and has the authority to implement its provisions for all underground activities conducted after October 24, 1992. Kentucky will also enforce its provisions that correspond to the Federal regulations at 30 CFR 817.41(j) pertaining to water replacement for the period after July 16, 1994. It has statutory provisions in place that correspond to the Federal regulations and has the authority to implement its provisions for all underground mining activities conducted after July 16, 1994—the effective date of Kentucky's statutory provisions for water replacement. For those underground mining activities conducted after October 24, 1992, and before July 16, 1994, OSM will enforce the provisions of 30 CFR 817.41(j) because Kentucky does not have the statutory authority to retroactively apply water replacement requirements to water losses prior to the effective date of its statute.

If circumstances within Kentucky change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–18581 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Parts 920 and 938

Maryland and Pennsylvania Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Maryland and Pennsylvania. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: Promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures; and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Maryland and Pennsylvania and consideration of public comments, OSM has decided that initial enforcement in Maryland will be accomplished through the State enforcement and in Pennsylvania through State and OSM enforcement.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: George Rieger, Acting Director, Harrisburg Field Office, OSM, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance

standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 10, 1995, **Federal Register** (60 FR 18046) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart of 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.4(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce, in total or in part, the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Maryland

Maryland program activity, requirements, and enforcement. By letter to Maryland dated December 13, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Maryland (Administrative Record No. MD–570.0). By letter dated March 29, 1995, Maryland responded to this request (Administrative Record No. MD–570.1).

Maryland stated that four underground coal mines were active in Maryland after October 24, 1992. Maryland indicated that existing State program provisions at Maryland Natural Resources Article 7, Subtitle 5A, § 7–5A–05.1, § 7–5a–05.2 and COMAR 08.20.13.09B, 08.20.13.09C are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Maryland explained that it will enforce these State program provisions in accordance with Maryland Natural Resources Article 7 effective October 24, 1992. Maryland has investigated eight citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Maryland has made determinations that the single structural damage complaint was unrelated to subsidence and that two water supply complaints were not impacted by the mining operations. In the five other water supply complaints Maryland determined the water supplies were impacted by underground mining and the mining company satisfactorily replaced these supplies.

Comments. On April 10, 1995, OSM published in the **Federal Register** (60 FR 18046) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Maryland. The comment period closed on May 10, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received, and OSM's responses to them.

A mining association responded on May 12, 1995 (Administrative Record No. MD–571.01). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (Items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues in Maryland because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

A mine operator responded on May 8, 1995 (Administrative Record No. MD–571.03). The party commented that the water replacement and subsidence repair provisions that are the subject of this notice are already in effect in Maryland. The Director agrees.

Director's Decision. Based on the information provided by Maryland and the comments discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Maryland will be accomplished by State enforcement—option #2. Maryland has provisions at sections 7–5A–05.1 and 7–5A–05.2 of its statutes and sections 08.20.13.09 B and C of its regulations in place that correspond to all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2). Maryland also has the authority to implement its provisions for all underground mining activities conducted after October 24, 1992.

If circumstances within Maryland change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in Pennsylvania

Pennsylvania program activity, requirements, and enforcement. By letter to Pennsylvania dated December 13, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Pennsylvania (Administrative Record No. PA–835.00). By letter dated January 24, 1995, Pennsylvania responded to this request (Administrative Record No. PA–835.01).

Pennsylvania stated that 120 bituminous underground coal mines are permitted and that 60 of these are currently producing coal. In the anthracite field, there are approximately 115 permitted underground mining operations of which 50 to 75 operations are currently producing coal. Pennsylvania stated that Act 54, amending the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) became effective on August 21, 1994. This amendment to BMSLCA does address water supply replacement and subsidence damage repair or compensation, but certain provisions do not mirror the Federal Energy Policy Act of 1992 portions establishing section 720 of SMCRA.

Specifically, Pennsylvania stated in the January 24, 1995, response that BMSLCA does not include water replacement and repair of subsidence damage in the following situations.

Water Supply Replacement

- Cases where water supplies were impacted between October 24, 1992, and August 21, 1994.
- Cases where affected water supplies are located in the anthracite coalfields.
- Cases where landowners entered voluntary agreements allowing their supplies to be impacted.
- Cases where impacts occurred more than three years after completion of coal extraction.
- Cases where affected water sources are used to supply agricultural irrigation systems constructed after August 20, 1994.
- Cases where the property owner failed to report the water supply problem within two years of its occurrence.
- Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the water supply and no pre-mining quality and quantity information is available.
- Cases where a mine operator purchased the property or compensated the property owner rather than replace the supply.

Repair or Compensate for Subsidence Damage

- Cases where dwellings were constructed after April 27, 1966, and damaged prior to August 21, 1994.
- Cases where dwellings constructed after August 21, 1994, are damaged prior to the time when coverage commences under BMSLCA (dwellings which are built after August 21, 1994, and between permitting actions are not covered by repair compensation requirements until the next permit renewal).
- Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the damaged structure.
- Cases involving noncommercial buildings where the damaged buildings were not used by the public, accessible to the public, or used for certain agriculture purposes.

The Pennsylvania Department of Environmental Resources (PADER) states that it has authority to investigate complaints of structural damage and water loss caused by underground mining operations conducted after October 24, 1992. Pennsylvania, as discussed above, has authority to provide repair or compensation for subsidence related structural damage and water supply replacement for bituminous coalfield residents after August 21, 1994. Pennsylvania does not have the authority to fully implement section 720(a), in the anthracite coalfield or for bituminous coalfield for the time period October 24, 1992, through August 21, 1994. Pennsylvania will require at least one year to make the necessary statutory changes.

Pennsylvania has investigated 91 citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Pennsylvania has completed review and made a final determination on 87 with 4 pending further study.

PADER has determined that 2 complaints regarding structural damage were unrelated to underground mining and the remaining 19 were the result of subsidence due to mining conducted after October 24, 1992. PADER reports that investigations of 70 water supply complaints resulted in finding that 60 were unrelated to underground mining conducted after October 24, 1992 and 6 water supplies were determined to have been affected by mining. Four water supply complaints are currently under review with no determination as to impacts from underground mining.

By letter dated May 4, 1995 (Administrative Record No. PA–835.11), Pennsylvania expressed its intention to implement as much of the Federal regulations as possible, to the extent of its law. It agreed to investigate all subsidence-related complaints and take remedial action and will defer to OSM in those situations where the Federal rules provide greater relief for the complainant. Program changes will be made, as necessary, through the program amendment process.

Comments. On April 10, 1995, OSM published in the **Federal Register** (60 FR 18046) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Pennsylvania. The comment period closed on May 10, 1995. Because Pennsylvania did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received, and OSM's responses to them. Although 12 commenters responded, only 4 specifically addressed the implementation options as requested in the **Federal Register** Notice. The others addressed general provisions of Pennsylvania's regulatory program or Pennsylvania Act 54 implementation or wrote to endorse the position of the industry organization who responded on May 5, 1995.

A mining organization responded on May 12, 1995 (Administrative Record No. PA–835.16). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (Items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25 which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue Federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further, the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protective standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regularly programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule, OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

A second industry organization responded on May 5, 1995 (Administrative Record No. PA–835.13). The party recommended that OSM pursue enforcement through the State program amendment process. The Director does not agree for the following reasons: (a) although Pennsylvania's regulatory program provides similar protections to those afforded by 30 CFR 817.41(j) and 817.121(c)(2), it does not have comparable provisions to all of the Federal requirements and Pennsylvania will require one year or more to make the necessary changes through the amendment process, (b) the number of underground coal operations is not low, and (c) the number of complaints pertaining to section 720 of SMCRA is now low. The Director also notes that the party states that "for all practical purposes, the Pennsylvania program is already as effective as section 720 and OSM's implementing regulations." However, Pennsylvania has itself acknowledged that it Act 54 lacks water replacement and subsidence provisions contained in SMCRA and the accompanying Federal regulations (60 FR 18048). The party also contends that complaints or reports of violations do not indicate a chronic or pervasive problem requiring direct Federal enforcement or interim enforcement and concludes that the State program amendment process is the best enforcement option for Pennsylvania. The Director notes that although the State performed initial investigations of 32 water supply and structural damage complaints, the absence of additional program provisions prevented additional State action to ensure compliance with all provisions of the Federal regulations. For the reasons specified in the Director's Decision below, the Director has decided that enforcement in Pennsylvania will be best accomplished through joint OSM and State enforcement. As noted above, however, the State will investigate all subsidence related complaints and take remedial action. The State will only refer to OSM in those situations where the Federal provisions provide greater relief for the complainant.

A citizens' group responded on May 8, 1995 (Administrative Record No. PA–835.03). The party's comments were divided into two sections: (1) changes it believes are necessary to make the Pennsylvania program as effective as the Federal rules, and (2) interim enforcement. The Director notes that the comments presented in the first section pertain to alleged deficiencies in Pennsylvania Act 54. The majority of the comments in section two pertains more directly to the implementation options presented in the **Federal Register** Notice. The party states that Pennsylvania cannot qualify for options one or two. It believes OSM has a responsibility to see that all complaints in the "gap" period are investigated. The party also commented that full compensation be made to homeowners by the permittee regardless of any prior agreements between homeowners and operators. The party recommended that when OSM begins direct enforcement, it should handle all cases of water loss and subsidence damage dealing with occupied dwellings and structures. Pennsylvania should handle those provisions not addressed by the Federal regulations. The Director agrees, in part, with the comments presented above. As explained in the Director's Decision below, the Director notes that OSM will directly enforce those provisions of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) for which the State does not have comparable provisions and/or the authority to enforce. Specifically, for those underground mining activities conducted between October 24, 1992, and August 21, 1994. The State will enforce its provisions for which it has authority. Specifically, for those underground mining activities conducted after August 21, 1994.

A citizens' group responded on May 10, 1995 (Administrative Record No. PA–835.04). The party commented that a strict timeframe should be established for submission of a State program amendment which incorporates all the provisions of the Energy Policy Act. The Director recognizes that Pennsylvania may need to amend its program. As discussed above, by letter dated May 4,1 995, Pennsylvania intends to utilize the State program amendment process to make its program no less effective than the Federal regulations. The Director finds the 732 State program amendment process adequate to address potential deficiencies in the State program. The Director also notes that OSM will support the State's program by enforcing the provisions of the Energy Policy Act of 1992 for which the Pennsylvania program lacks counterparts. The party also recommends that the implementation of the subsidence and water replacement rules be an oversight (special fund) for at least the first two years of implementation. The Director notes that OSM will continue to consider special studies of interest to its stakeholders as required by OSM's Director REG–8 which establishes the procedures for conducting oversight. The State will be required to enforce the provisions of its approved program while OSM will conduct oversight using the ten-day notice process, if necessary.

The party recommends that all citizen complaints relating to water loss or subsidence that are the subject of this notice be logged and tracked by OSM to assure proper implementation of the Energy Policy Act. For those complaints previously investigated by the State, the party feels the ten-day notice procedure should not be used. The Director notes the OSM's Harrisburg Field Office has compiled a list of all complaints received after October 24, 1992, and each will be evaluated. For those complaints where damage occurred after August 21, 1994, OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party's last comment concerns the permitting process. It recommends that pending submission of a State program amendment, if Pennsylvania does not modify the permitting process immediately through the use of existing language in the State program to require additional groundwater and subsidence information, OSM should demand that each permittee be required, prior to permit issuance, to develop groundwater and subsidence information for OSM's approval prior to permit issuance. Failing this, individual enforcement actions should be taken. The Director does not agree. Pennsylvania has jurisdiction over the regulation of its surface coal mining operations. Through the 30 CFR 732.17 program amendment process, the Director will notify Pennsylvania of required changes to its program.

Director's Decision. Based on the information provided by Pennsylvania, the comments discussed above, and two informal meetings with the State, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Pennsylvania will be accomplished through joint State and OSM enforcement—option #4. Pennsylvania has statutory and regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2). The State's authority to enforce its provisions applies to operations conducted after August 21, 1994, and it would enforce its provisions for these operations. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992.

If circumstances within Pennsylvania change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–18582 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 946

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Virginia. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: Promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Virginia and consideration of public comments, OSM has decided that initial enforcement in Virginia will be accomplished through State enforcement.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Douglas E. Stone, Acting Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt placement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a)(1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.112(c)(2) required in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promotly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination of interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, **Federal Register** (60 FR 17743) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and strong underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been through and complete so as to assure prompt remedial action, then OSM will provide any to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement is statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation under without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Virginia

Virginia program activity, requirements, and enforcement. By letter to Virginia dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Virginia (Administrative Record No. VA–850). By letter dated January 13, 1995, Virginia responded to this request (Administrative Record No. VA–851).

Virginia indicated that existing State program provisions at Sections 45.1–243 and 45.1–258 of the Code of Virginia are adequate State counterparts to section 720(a) of SMCRA. Virginia explained that it will enforce these State program provisions effective October 24, 1992. Virginia also provided a copy of DMLR memorandum 6–93 concerning intermediate guidelines for implementing the Virginia law until implementing Virginia regulations are approved. Section 480–03–19.817.121(c)(2) of the Virginia Coal Surface Mining Reclamation Regulations concerning subsidence control has been used by Virginia since December 26, 1990.

OSM records show that approximately 325 underground coal mines have been classified as active in Virginia since October 24, 1992. Between October 24, 1992, and January 13, 1995, Virginia investigated 262 citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations. As of January 13, 1995, Virginia found that a violation of the Act existed on 35 of the complaints, no violation of the Act existed on 202 of the complaints, and technical reports and a final decision were pending on 25 complaints.

On May 10, 1995 (Administrative Record Number VA–856), OSM met with the Virginia Division of Mined Land Reclamation (DMLR) to discuss implementation issues relative to the Energy Policy Act of 1992. At that meeting, OSM agreed with DMLR concerning the following interpretation of the Virginia program:

- Virginia has full statutory authority at section 43.1–258. of the Code of Virginia to require the replacement of drinking, domestic or residential water supplies contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992.
- Virginia has full authority at section 480–03–19.817.121(C)(2) of the Virginia Coal Surface Mining Reclamation Regulations to require the repair or compensation for damage to non-commercial buildings and dwellings and related structures resulting from subsidence caused by underground mining activities conducted after October 24, 1992.

Comments. On April 7, 1995, OSM published in the **Federal Register** (60 FR 17743) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Virginia. The comment period closed on May 8, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received, and OSM's responses to them.

One commenter (Administrative Record Numbers VA–862) asserted that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. A second commenter adopted these comments by reference. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues for Virginia because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Another commenter stated that the Virginia program currently has adequate counterpart provisions in place and has proper authority to implement the requirements of the Energy Policy Act of 1992 in Virginia (Administrative Record Number VA–860). The party also stated that Virginia's investigations of subsidence related complaints has been designed to ensure prompt remedial action. These investigations, the commenter asserted, have been deemed fair by both the mining industry and the affected public. The commenter concluded that initial enforcement of the requirements of the Energy Policy Act of 1992 in Virginia is already being accomplished by the Virginia program.

One commenter requested "interim direct OSM enforcement" (Administrative Record Number VA–857). The commenter asserted that even though Virginia has statutory and regulatory provisions in place that are counterparts to the Energy Policy Act of 1992, Virginia provides inadequate protection for citizens residing in the coalfields. The commenter asserted that Virginia fails to attribute subsidence and water loss damages of any extent to underground coal mining operations. The commenter asserted that subsidence damages to the hydrologic regime and personal property (homes, ponds, outbuildings, etc.) are each looked at by the State as an isolated event rather than tied together to show the wide expanse of subsidence damage in Virginia. On March 10, 1995 this same commenter requested that OSM conduct a review of the Virginia program to verify similar allegations. That review is currently being conducted by OSM and it will address the commenter's allegations concerning the Virginia program.

Director's decision. Based on the information discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Virginia will be accomplished through State enforcement. The Director has made this decision after soliciting public comment and providing opportunity for public hearing (no requests for a hearing were received), and considering information provided by Virginia by letters dated January 13, 1995, and May 26, 1995, and in discussions held with Virginia on May 4, 1995. The Director has concluded that under the Code of Virginia section 41.1–258, the State has full authority to require the replacement of drinking, domestic or residential water supplies contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992. In addition, Virginia has full authority at section 480–03–19.817.121(c)(2) of the Virginia Coal Surface Mining Reclamation Regulations to require the repair or compensation for damage to non-commercial buildings and dwellings and related structures resulting from subsidence caused by underground mining activities conducted after October 24, 1992.

If circumstances within Virginia change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–18583 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 948

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in West Virginia. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: Promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with West Virginia and consideration of public comments, OSM has decided that initial enforcement in West Virginia will be accomplished through State enforcement.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301–2816, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a)(1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 11, 1995, **Federal Register** (60 FR 18381) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provision's effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to that State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial buildings," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in West Virginia

West Virginia program activity, requirements, and enforcement. By letter to West Virginia dated December 16, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in West Virginia (Administrative Record No. WV 965). By letter dated January 11, 1995, West Virginia to this request (Administrative Record No. WV 966).

The West Virginia Division of Environmental Protection (WVDEP) notified OSM that there were approximately 650 active underground coal mines operating in West Virginia at the time. West Virginia stated that it believed the existing State program provisions are adequate to fully implement the letter and intent of section 720 of SMCRA. WVDEP further explained that its continued enforcement of its State program provisions at sections 22A–3–14(b)(1) and 22A–3–24(b) of the West Virginia Code and/or West Virginia Code of State Regulations (CSR) sections 38–2–14.5(h) and 38–2–16.2 would ensure compliance with section 720 of SMCRA.

West Virginia noted that section 22A–3–24(b) of the West Virginia Code allows for a waiver of water replacement rights by current landowners. According to WVDEP, this is part of a program amendment that is under review by OSM.

West Virginia also acknowledges that since WVDEP revised its rules on June 1, 1991, it has been requiring operators to either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owners of such structures or facilities in the full amount of the dimunition in value resulting from subsidence. In addition, West Virginia issued a policy directive on March 23, 1993, which provides that permits issued before June 1, 1991, and which have a waiver to subside without liability are exempt from the new requirements. Permits issued prior to June 1, 1991, without waivers and all permits issued after that date are required to comply with the revised regulations.

OSM estimates that West Virginia has investigated approximately 190 citizen complaints between June 1, 1991, and October 24, 1992, and approximately 330 citizen complaints after October 24, 1992, that allege subsidence-caused structural damage and/or water supply loss or contamination as a result of underground mining operations. To date, West Virginia has investigated these complaints and determined that the problems: (1) Were not caused by mining; (2) were caused by mining with resultant enforcement action/or corrective measures taken; or (3) are problems under continuing investigation to determine whether caused by mining.

Upon initial review of the West Virginia program, OSM was concerned that the State did not have adequate authority to fully enforce the provisions of the Energy Policy Act of 1992. Specifically, the State's March 31, 1993, policy, which provides that permits issued prior to June 1, 1991, that have waivers to subside without liability do not have to repair or compensate owners for material damage caused by subsidence, is inconsistent with the Energy Policy Act which requires repair or compensation for subsidence damage which occurs after October 24, 1992. In addition, West Virginia Code section 22A–3–24(b) and State regulations at CSR 38–2–14.5(h) authorize the waiver of water supply replacement.

On June 30, 1995 (Administrative Record Number WV–996), West Virginia revised its subsidence policy procedures to address these concerns. The revised procedures took effect on July 10, 1995. The revised policy requires owners of permits with waivers issued prior to June 1, 1991, to repair or compensate owners of residential dwellings for subsidence related damage. The new policy is retroactive, and makes all permits, regardless of issuance date, liable for subsidence damage caused by underground mining that occurred after October 24, 1992.

The West Virginia program currently contains the requirements of 30 CFR 817.41(j), pertaining to replacement of drinking, domestic or residential water supplies. However, in those cases where the owner has waived replacement of a water supply West Virginia's program does not require the permit applicant to demonstrate that an alternate water source is available which is equivalent in quality and quantity to the premining water supply, that the affected water supply was not needed for the land use in existence at the time the supply was affected, or that the affected water supply is not essential to achievement of the approved postmining land use. These demonstrations are all required as prerequisites to waiver of water replacement pursuant to the new Federal definition of "replacement of water supply" at 30 CFR 701.5. West Virginia has stated that its new policy with regard to water replacement and subsidence repair, effective July 10, 1995, is intended to address the requirements of the Energy Policy Act of 1992 and the accompanying Federal regulations, published on March 31, 1995. 60 FR 16722. With the exception of the water replacement waiver criteria, the West Virginia program and accompanying policy document do contain the necessary counterparts to 30 CFR 817.41(j) to allow for state enforcement of that provision. Further, the Director believes that the discrepancy between the Federal regulations and West Virginia's program with regard to water replacement waivers is of insufficient magnitude to warrant direct Federal enforcement of the water replacement requirement. The Director reaches his conclusion because he believes that few or no situations are likely to arise involving underground mining and waiver of water supply replacement where the approved postmining land use is residential. Therefore, the Director finds that state enforcement is the most reasonable option for West Virginia.

Comments. On April 11, 1995, OSM published in the **Federal Register** (60 FR 18381) an opportunity for a public hearing and request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in West Virginia. The comment period closed on May 11, 1995. OSM received one request to conduct a hearing. Although the party that requested the hearing subsequently withdrew that request, a public meeting was held on May 8, 1995, at the OSM Area Office, Logan, West Virginia (Administrative Record Number WV–977). No person attended to speak or discuss recommendations with OSM. One individual attended only as an observer to the activities. A summary of the meeting was entered into the administrative record (Administrative Record Number WV–977). OSM received three comments in response to its notice. Following are summaries of all the substantive comments that OSM received, and OSM's responses to them.

One party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA (Administrative Record Number WV–994). The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues in West Virginia because the Regional Director has decided, as set forth below, not to implement an

enforcement alternative including direct Federal enforcement.

Another organization commented that West Virginia has immediate authority to implement the provisions of the Energy Policy Act of 1992 to protect water and homes from damage from underground mining (Administrative Record Number WV–978). To get prompt, strict enforcement of the provisions of the Energy Policy Act the commenter recommended that OSM log and track all water loss and subsidence complaints and independently assess the State's conclusions. The State and OMS have agreed to set up a joint team to review all the complaints relating to subsidence and water loss filed between October 24, 1992, through July 10, 1995, the date of the new State subsidence procedures discussed above. However, since West Virginia has equivalent provisions to the Federal subsidence regulations (with the subsidence procedures policy of July 10, 1995) it is the State's responsibility to enforce those provisions. OSM will conduct normal oversight of the West Virginia program for the period following July 10, 1995, using the ten-day notice process if necessary.

The commenter also made additional recommendations. The Regional Director notes, however, the subject of the comments (baseline groundwater well sampling, presubsidence survey requirements at 30 CFR 784.20, and timeframes for submitting State amendments to fully address such other requirements) are outside the scope of this notice.

A third organization commented that although West Virginia has statutory and regulatory provisions in place that correspond in some ways to the requirements of the Federal law, OSM should select joint State and OSM initial enforcement of the provisions of the Energy Policy Act of 1992 that the State has not yet fully addressed (Administrative Record Number WV–981). The commenter specifically noted that the West Virginia program currently allows the waiver of water replacement rights by current landowners, and that it is unclear whether the State means to apply the requirements of the Energy Policy Act only to "permits" issued on or after October 24, 1992, or to all portions of operations conducted after October 24, 1992. The Regional Director notes, and as discussed above, the State has implemented on July 10, 1995, new subsidence policy procedures that address the commenter's concerns. According to the new State subsidence procedures, all permits, regardless of issuance date, are liable for subsidence damage caused by underground mining that occurred after October 24, 1992. As for the waiver language at West Virginia Code section 22A–3–24(b) and the State regulations at CSR 38–2–14.5(h) concerning the waiver of water supply replacement, the Regional Director notes that the West Virginia program contains the requirements of 30 CFR 817.41(j) concerning drinking, domestic or residential water supply. The Regional Director notes that the State and OSM will jointly review all the complaints that were filed between October 24, 1992, and July 10, 1995, to ensure that the State's past enforcement actions complied with the requirements of the Energy Policy Act of 1992. If a complaint was filed that meets the criteria of the Energy Policy Act of 1992. If a complaint was filed that meets the criteria discussed above, State officials will take enforcement action to require the company to comply with the new policy.

The commenter also provided comments regarding proof of damage through presubsidence surveys and baseline monitoring and delays in program implementation. Those concerns are outside the scope of this document, but will be addressed at a later date.

Director's decision. Based on the information provided by West Virginia, discussions held with the State on July 13, 1995, and the comments discussed above, the Regional Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in West Virginia will be accomplished through State enforcement.

OSM's initial concern that the West Virginia program does not have adequate authority to enforce the provisions of the Energy Policy Act of 1992 has been addressed by the State. On July 10, 1995, West Virginia implemented new State subsidence policy procedures that require repair or compensation for subsidence damage after October 24, 1992, consistent with 30 CFR 817.121(c)(2), and the approved program requires replacement of water supplies consistent with 30 CFR 817.41(j). In addition, OSM and the State will jointly review all the complaints filed between October 24, 1992, through July 10, 1995, to ensure that the State's past actions with regard to these complaints are consistent with the Energy Policy Act of 1992.

If circumstances within West Virginia change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by notice in the **Federal Register**.

Dated: July 24, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–18584 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN131–1–6794a; TN136–1–6795a; TN137–1–6796a; FRL–5257–5]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving three state implementation plan (SIP) revisions submitted on March 17, July 8 and July 13, 1994, by the State of Tennessee, through the Tennessee Air Pollution Control Division. The revisions submitted March 17, 1994, modify the existing basic motor vehicle inspection and maintenance (I/M) program in Davidson County to meet the requirements of the EPA I/M regulations, as published on November 5, 1992. The revisions submitted on July 8 and July 13, 1994, establish and require the implementation of a basic I/M program in the four middle Tennessee counties of Rutherford, Sumner, Williamson, and Wilson. These counties, along with Davidson County, form the Nashville ozone nonattainment area. The regulations establishing the I/M program constituted the July 8, 1994, submittal while the nonregulatory components of the program were discussed in the July 13, 1994, submittal.

DATES: This final rule will be effective September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Dale Aspy at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Pollution Control Division, Tennessee Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

Bureau of Environmental Health Services, Nashville and Davidson County Metropolitan Health Department, 311 23rd Ave. N., Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Dale Aspy, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4214. Reference files TN131, TN136 and TN137.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act as amended in 1990 (the Act) requires that most ozone nonattainment areas adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs, fall under the "basic" I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with 1980 urbanized populations of 200,000 or more.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373).

The I/M regulation establishes minimum performance standards for basic I/M programs as well as requirements for the following: network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act.

The State of Tennessee contains the Nashville urbanized area which is designated as moderate nonattainment for ozone. Section 51.372(b)(2) of the federal I/M regulation (codified at 40 CFR Part 51.372(b)(2)) required affected states to submit full I/M SIP revisions that met the requirements of the Act to EPA by November 15, 1993.

On March 17, 1994, the Davidson County Health Department, through the Tennessee Air Pollution Control Division (APCD), submitted a SIP revision addressing required changes to the existing I/M program in Davidson County. The major changes made to the Davidson County I/M program were the elimination of the exemption for vehicles over 12 model years old and the addition of a three point anti-tampering program. The proposed amendments will include a visual check for catalytic converters, gasoline fuel inlet restrictors and fuel filler caps, and the requirement that all vehicles manufactured in model year 1975 or newer be tested as a condition of renewing registration.

On July 8 and July 13, 1994, the State of Tennessee, through the Tennessee APCD, submitted to EPA SIP revisions for a basic I/M program for the four counties surrounding Davidson County. The counties of Rutherford, Sumner, Williamson, and Wilson constitute the remainder of the Nashville ozone nonattainment area. An I/M program was required to be implemented in the urbanized area, which includes a portion of these counties by the I/M applicability requirements which were revised in 40 CFR Part 51.350 on November 5, 1992. The first submittal was for the purpose of adding Chapter 1200–3–29, Light Duty Motor Vehicle Inspection and Maintenance, of the Tennessee Air Regulation to the Tennessee SIP. The second submission was made to add all required nonregulatory elements of the I/M program to the SIP. The I/M regulations were approved by the Tennessee Air Pollution Board on September 8, 1993, and became state effective on June 29, 1994. Mandatory vehicle testing in the four counties of Rutherford, Sumner, Williamson, and Wilson began on December 1, 1994. EPA summarizes the requirements of the federal I/M regulations as found in 40 CFR Part 51.350–51.373 and its analysis of the state submittal below. Parties desiring additional details on the federal I/M regulation are referred to the November 5, 1992, **Federal Register** notice (57 FR 52950) or 40 CFR Part 51.350–51.373.

II. EPA's Analysis of Middle Tennessee Basic I/M Program

As discussed above, section 182(a)(2)(B) of the Act requires that states adopt and implement updated regulations for I/M programs in moderate and above ozone nonattainment areas. The following sections of this notice summarize the requirements of the federal I/M regulations and address whether the elements of the State's submittal comply with the federal rule.

Applicability—40 CFR 51.350

Section 182(b)(4) of the Act and 40 CFR 51.350(a)(4) require that any area classified as moderate ozone nonattainment and not required to implement enhanced I/M under 40 CFR 51.350(a)(1) shall implement basic I/M in the 1990 Census-defined urbanized nonattainment area. The urbanized portion of the Nashville nonattainment area contains Davidson County, and sections of Rutherford County, Sumner County, Williamson County, and Wilson County. Davidson County has operated an I/M program since 1985 and submitted on March 17, 1994, through the Tennessee APCD, the required revisions to that program. An analysis of the urbanized area utilizing the revised provisions of this section, identified the need to expand the current, Davidson County only program, to include the remainder of the nonattainment area. The program boundaries described in the Tennessee submittal meet the federal I/M requirements under section 51.350 and are approvable.

The federal I/M regulation requires that the state program shall not lapse prior to the time it is no longer needed. EPA believes that a program that does not lapse prior to the attainment deadline for each applicable area would meet this requirement. The attainment

date for the Nashville ozone nonattainment area is November 15, 1996, and the I/M regulations contained in the Tennessee submittal does not establish an I/M program implementation sunset date prior to the attainment deadline.

Basic I/M Performance Standard—40 CFR 51.352

The basic I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Tennessee submittal the most current version was MOBILE5a. Areas shall meet or exceed the performance standard for the pollutants which cause them to be subject to basic I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both NO_x and VOCs.

The Tennessee submittal for the Davidson County I/M program includes the following program design parameters:

network type—centralized, test-only
start date—1985
test frequency—annual
model year coverage—1975 and later
vehicle type coverage—light gasoline powered vehicles
emission test—idle
emission standards—1.2% CO, 220 ppm HC
emission control device—Catalytic converter, gas cap, fuel inlet restrictor
stringency (pre-1981 failure rate)—20%
waiver rate (pre-81/81 and newer)—0%/0%
compliance rate—98%
evaluation date(s)—January 1, 1997

The Tennessee submittal for the four additional counties includes the following program design parameters:

network type—centralized, test-only
start date—1995
test frequency—annual
model year coverage—1975 and later
vehicle type coverage—light gasoline powered vehicles
emission test—idle
emission standards—1.2% CO, 220 ppm HC
emission control device—Catalytic converter, gas cap, fuel inlet restrictor
stringency (pre-1981 failure rate)—20%
waiver rate (pre-81/81 and newer)—0%/0%
compliance rate—98%
evaluation date(s)—January 1, 1997

The Tennessee program design parameters meet the federal I/M regulations and are approvable.

The emission levels achieved by these programs were modeled using MOBILE5a. The modeling demonstration was performed correctly, used local characteristics and demonstrated that the program design will exceed the minimum basic I/M performance standard, expressed in gpm, for VOCs and NO_x for each milestone and for the attainment deadline. The modeling demonstration is approvable.

Network Type and Program Evaluation—40 CFR 51.353

Basic I/M programs can be operated in a centralized test-only format, in a decentralized test and repair, or in any hybrid version as long as the state can demonstrate that the selected program is effective in achieving the basic I/M performance standard. The Tennessee APCD will administer a centralized I/M program in the four counties previously identified while the Davidson County Health Department will continue to administer the centralized I/M program in that county. The enhanced program evaluation requirements of this section do not pertain to the Tennessee program as it is a basic I/M program. The network type is approvable.

Adequate Tools and Resources—40 CFR 51.354

The federal regulation requires the state to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if demonstrated that the funding can be maintained. Reliance on funding from the state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The Tennessee program is to be funded by direct reimbursement of the primary contractor from vehicle inspection fees. A portion of the vehicle inspection fee will be returned to APCD to cover the cost of program oversight and will be sufficient to cover the program related activities. This method meets the federal regulation and is approvable. The submittal demonstrates that sufficient funds, equipment and personnel have been appropriated to meet program operation requirements. The Tennessee submittal meets the adequate tools and resources requirements set forth in the federal I/M regulations.

Test Frequency and Convenience—40 CFR 51.355

The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Tennessee and Davidson County I/M regulations provide for an annual test frequency for all covered vehicles. A vehicle is assigned a registration month. The vehicle owner must present a valid, passing, emission certificate in order to renew the registration of the vehicle. The emission certificate is valid for 90 days after the test. The program contractor notifies the vehicle owner when their vehicles may be tested. The program also defines acceptable wait times in the contract. Waiting times shall not exceed a daily average of 15 minutes for more than five consecutive days. If this time is exceeded, the state can require additional lanes to be opened. The submittal meets the requirements for testing frequency and convenience.

Vehicle Coverage—40 CFR 51.356

The performance standard for basic I/M programs assumes coverage of all 1968 and later model year light duty vehicles (LDV) and light duty trucks (LDT) up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and

belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR Part 51.353(a). Vehicles which are operated on federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

The Davidson County and Tennessee I/M regulations require all 1975 and newer model year gasoline powered vehicles up to 8,500 pounds gross vehicle weight registered in Davidson, Rutherford, Sumner, Williamson, and Wilson Counties except motorcycles, and vehicles which the APCD Administrator has determined shall not be tested because of fuel or engine characteristics, to be tested annually. This includes light duty vehicles and light duty trucks up to 8,500 pounds gross vehicle weight rating. The SIP submittals contain a listing of the number of subject vehicles in each county. Quality control requirements apply equally to both the centralized testing stations and the fleet self testers. Federally owned vehicles are subject to the testing requirements. Vehicles from other areas may be tested. Owners of subject vehicles that will be outside of the test area during the assigned test period may request an extension. However, they must submit the vehicle for an emission test upon return to the area.

The State's plan for testing fleet vehicles is acceptable and meets the requirements of the federal I/M regulation.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR Part 51.357 and in the EPA document entitled "Recommended I/M Short Test Procedures For the 1990's: Six Alternatives."

The Tennessee I/M submittals include a description of the test procedure used in the Tennessee I/M program. The program contract requires an idle test procedure to be utilized. This procedure is an EPA short test procedure. A vehicle failing the initial test is preconditioned at 2500 revolutions per minute for about 25–30 seconds and retested at idle. These test procedures conform to EPA approved test procedures and are approvable. The State I/M regulation establishes hydrocarbon (HC) and carbon monoxide (CO) pass/fail exhaust standards for all test procedures for each applicable model year and vehicle type. The exhaust standards adopted by the state conform to EPA established standards and are approvable.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Davidson County and Tennessee I/M contracts require exhaust analyzers that meet the BAR90 performance specifications. These specifications require the use of computerized test systems. The specifications also include performance features and functional characteristics of the computerized test systems which meet the federal I/M regulations and are approvable.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Section 8 of the contract and section 8 of the Tennessee APCD portion of the SIP submittal discuss quality control and assurance. The Davidson County contract also discusses these items. These portions of the submittal include the quality control requirements for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements. This portion of the Tennessee submittal complies with the quality control requirements set forth in the federal I/M regulation and is approvable.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards.

The Davidson County and Tennessee regulations do not provide for waivers. These provisions meet the federal I/M regulations requirements and are approvable.

Motorist Compliance Enforcement—40 CFR 51.361

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in I/M programs. However, a basic area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

The Davidson County and Tennessee I/M regulations provide the legal authority to implement a registration denial enforcement mechanism. The County Clerk's office can not issue a registration renewal without a passing emission test. Section 9 of the Tennessee APCD SIP submittal and Appendix 1 of the Davidson County SIP submittal discuss penalties to vehicle owners not complying with the requirement. The Davidson County Health Department and APCD will conduct reviews in their respective program areas of the Clerk's office registration to insure the regulation is enforced. The SIP contains a commitment to maintain the modeled compliance rate in practice. This portion of the Tennessee submittal meets the federal requirements and is approvable.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The Davidson County and Tennessee I/M regulations provide the legal authority to implement a registration denial enforcement system. The Davidson County Health Department and Tennessee APCD will audit the County Clerk's Office to insure the regulation is enforced. This portion of the Tennessee submittal meets the federal requirements and is approvable.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The Tennessee submittal includes a quality assurance program which describes details and procedures for implementing inspector, records, and equipment audits. Performance audits of inspectors and testing equipment will be performed by Davidson County Health Department and APCD personnel in their respective jurisdictions. Section 8 of the Tennessee APCD contract addresses quality assurance requirements. Section 8 of the Tennessee APCD SIP submittal addresses quality assurance procedures as well. Appendices 1 and 7 of the Davidson County submittal discuss these items as well. In both cases, overt and covert audits and remote observation of inspection personnel performing testing are included. Overt audits may be performed by Davidson County Health Department and APCD personnel at any time, unannounced, during station operation. Covert audits are required to use a range of vehicles which have been set to fail the inspection test. The quality assurance requirements and procedures in the Tennessee I/M program meet the federal I/M regulation requirements and are approvable.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations or contractors, and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The Tennessee submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. Section 9 of the Tennessee APCD SIP submittal states that civil penalties of up to $25,000 per day can be imposed for violations. Appendix 4 of the Davidson County submittal discusses this issue in that county's program. In both programs, the program auditors also have the ability to immediately shut down any testing lane they find not to be in compliance. The testing lane will remain out of operation until the necessary corrective action has been taken and a followup audit confirms the lane is operating properly. Per contract agreements with the system contractor and the State of Tennessee, the contractor is required to comply with all applicable federal, state, and county regulations. The contractor has to post a performance bond to help insure program operations comply with all regulations. The Tennessee I/M enforcement program can suspend and/or revoke fleet inspection licenses for violations. Inspectors may be decertified. The Tennessee I/M program meets the requirements of this section and is approvable.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR Part 51.359.

Section 10 of the Tennessee SIP submittal specifies the information contained on the inspection form. Appendix 4, the contract, of the Davidson County submittal, contains the specifications for equipment and data. The contract, in section 12 of the Tennessee APCD submittal, requires the contractor to work with Davidson County and the State in the development of the test forms and the associated data fields. Data requirements are also specified in the covert and overt audit section of the Procedures and Policies section of the SIP. The type of test data collected meets the federal I/M regulation requirements and is approvable. The submittal also commits to gather and report the results of the quality control checks required under 40 CFR Part 51.359 and is approvable.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The Tennessee I/M program SIP provides for the analysis and reporting of data for the testing program, quality assurance program, quality control program and the enforcement program. The type of data to be analyzed and reported meets the federal I/M regulation requirements and is approvable. Tennessee commits to submit annual reports on these programs to EPA by July of the subsequent year. These annual reports will be submitted July 1, 1996, and each July 1 thereafter, covering the previous test year. Biennial reports will be submitted to discuss any changes in program design and procedures, and the appropriate corrective action taken.

Inspector Training and Licensing or Certification—40 CFR 51.376

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

Both the Tennessee regulations and the contract require all inspectors to receive formal training, be licensed by the Davidson County Health Department or the APCD and renew the certification every year. In order to be licensed, the inspector must attend a training course and pass an examination. Currently, policies are being drafted by the APCD to officially require a score of at least 80% to pass. The SIP meets the federal I/M regulation requirements for inspector training and certification and is approvable.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M regulation requires the SIP to include public information and consumer protection programs.

The contracts provided with both SIP submittals include a public information program which educates the public on I/M, State and federal regulations, air quality and the role of motor vehicles in the air pollution problem and other items as described in the federal rule. The consumer protection program includes provisions for a challenge mechanism, and providing assistance to motorists in obtaining warranty covered repairs. Section 11 of the Tennessee APCD SIP submittal and Appendices 10, 11, and 13 of the Davidson County submittal discusses the various components of the public information and consumer protection program that will be implemented as part of the I/M program. The public information and consumer protection programs contained in the SIP submittal meet the federal regulations and are approvable.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, and a description of the repair technician training resources available in the community.

Section 10 of the Tennessee APCD contract contains a provision identifying the State as being responsible for interfacing with the repair industry with respect to technical assistance and technician training. The repair effectiveness program described in the SIP meets the federal regulation and is approvable.

Compliance With Recall Notices—40 CFR 51.370

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test or renewing the vehicle registration.

The Nashville ozone nonattainment area is classified as moderate and therefore not subject to this provision.

On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas.

The Nashville ozone nonattainment area is classified as moderate and therefore not subject to this provision.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373

The federal regulation requires centralized basic I/M programs to be fully implemented by July 1, 1994. The Davidson County portion of the Nashville nonattainment area has been in operation since 1985. This constitutes the largest portion of the vehicles in the area. Testing began on December 1, 1994 in the four surrounding counties. Although this testing began several months late, the SIP revision is now approvable as the program has been implemented in the four additional counties as required.

On April 1, 1994, the State of Tennessee was notified by EPA of a failure to submit the I/M plan as required. This action started the sanctions clock and the Federal Implementation Plan (FIP) clocks. Letters were sent on July 18 and August 2, 1994, notifying the Tennessee APCD that the submitted middle Tennessee I/M SIP revisions had been determined to be complete. This action stopped the sanctions clock. The FIP clock will be stopped by the final approval of this SIP provision.

EPA's review of the material indicates that the State has adopted a basic I/M program in accordance with the requirements of the Act. EPA is approving the Tennessee SIP revision for revisions to the Davidson County I/M program, as submitted on March 17, 1994, and for a basic I/M program in Rutherford, Sumner, Williamson, and Wilson counties which was submitted on July 8 and July 13, 1994.

Final Action

The EPA is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse public comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comment be filed. This action will be effective September 26, 1995 unless, by August 28, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be discussed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period for this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

EPA is approving this revision to the Tennessee SIP for a basic I/M program. The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state

implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any local or tribal governments have elected to adopt the program provided for under Section 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and Recordkeeping requirements.

Dated: June 28, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220, is amended by adding paragraph (c)(126) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(126) Modifications to the existing basic I/M program in Davidson County to implement an anti-tampering check, and to require testing of vehicles from model year 1975 and newer, submitted on March 17, 1994. Addition of a basic I/M program in the remainder of the middle Tennessee ozone nonattainment area, submitted on July 8, 1994.

(i) Incorporation by reference.

(a) Metropolitan Health Department Pollution Control Division Regulation 8, approved by the Tennessee Air Pollution Control Board on March 9, 1994.

(b) Regulation 1200–3–29, effective on September 8, 1993.

(ii) Other material. None.

3. Section 52.2235 is amended by adding paragraph (b) to read as follows:

§ 52.2235 Control Strategy for Ozone.

* * * * *

(b) Nonregulatory provisions for the implementation of a basic I/M program in Rutherford, Sumner, Williamson, and Wilson Counties, submitted on July 13, 1994, were approved by EPA on September 26, 1995.

[FR Doc. 95–18511 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[KY77–1–6553a; FRL–5257–8]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted on November 12, 1993, by the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in Jefferson County, Kentucky, which will include commuter vehicles in the program.

DATES: This final rule will be effective September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Dale Aspy at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Air Pollution Control District of Jefferson County 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Dale Aspy, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4214. Reference file KY KY77–1–6553.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act as amended in 1990 (the Act) requires that most ozone nonattainment areas adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs, fall under the "basic" I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with 1980 urbanized populations of 200,000 or more.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373).

The I/M regulation establishes minimum performance standards for basic I/M programs as well as requirements for the following: network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act.

The Commonwealth of Kentucky contains the Louisville urbanized area portion of the Louisville ozone nonattainment area which is classified as moderate. The Louisville ozone nonattainment area also includes two counties in Indiana. Section 51.372(b)(2) of the federal I/M regulation (codified at 40 CFR 51.372(b)(2)) required affected states to submit full I/M SIP revisions that met the requirements of the Act to EPA by November 15, 1993. This notice addresses only the Jefferson County portion of the nonattainment area.

On November 12, 1993, the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet submitted to EPA a revised SIP for an improved basic I/M program for Jefferson County. This submittal included revisions to Regulation 8.01, Mobile Source Emissions Control; Regulation 8.02, Vehicle Emissions Testing Procedure; and 8.03, Commuter Vehicle Testing Requirements. The I/M regulations were adopted by the Department of Planning and Environmental Management, Air Pollution Control District (APCD) of Jefferson County, Kentucky on February 17, 1993, and became effective on March 1, 1993, and on September 14, 1993, for Regulation 8.03. EPA summarizes the requirements of the Federal I/M regulations as found in 40 CFR 51.350–51.373 and its analysis of the state submittal below. Parties desiring additional details on the Federal I/M regulation are referred to the November 5, 1992, **Federal Register** notice (57 FR 52950) or 40 CFR 51.350–51.373.

II. EPA's Analysis of the Louisville, Kentucky, Basic I/M Program

As discussed above, section 182(a)(2)(B) of the Act requires that states adopt and implement updated regulations for I/M programs in moderate and above ozone nonattainment areas. The following sections of this notice summarize the requirements of the Federal I/M regulations and address whether the elements of the Commonwealth's submittal comply with the Federal rule.

Applicability—40 CFR 51.350

Section 182(b)(4) of the Act and 40 CFR 51.350(a)(4) require that any area classified as moderate ozone nonattainment and not required to implement enhanced I/M under 40 CFR 51.350(a)(1) shall implement basic I/M in the 1990 Census-defined urbanized nonattainment area. The urbanized portion of the Louisville nonattainment area includes most, but not all of Jefferson County, a portion of Bullit County, Kentucky, and portions of Clark and Floyd Counties in Indiana. The population distribution of these counties is such that an equivalent or greater population is covered by an I/M program in all of Jefferson County, Kentucky, and all of Clark and Floyd Counties in Indiana. The Kentucky submittal contains the legal authority and regulations necessary for the Jefferson County APCD to establish the program boundaries and operate a basic I/M program. The I/M program for Clark and Floyd Counties will be submitted by Indiana and will be addressed in a separate notice.

The program boundaries described in the Kentucky submittal meet the Federal I/M requirements under section 51.350 and are approvable.

The Federal I/M regulation requires that state programs shall not lapse prior to the time they are no longer needed. EPA has concluded that a program that does not lapse prior to the attainment deadline for each applicable area would meet this requirement. The attainment date for the Louisville ozone nonattainment area is November 15, 1996, and the Jefferson County I/M regulations contained in the Kentucky submittal do not establish an I/M program implementation sunset date prior to the attainment deadline. EPA therefore concludes that this section is approvable.

Jefferson County's Regulation 8.03 also subjects owners or operators of vehicles who routinely or regularly commute to Jefferson County, Kentucky, for employment or self-employment to the same vehicle emissions testing program as residents of the county. The employer is responsible for providing a list of such vehicle owners subject to the provisions of this regulation. EPA has determined this section of the submittal is approvable.

Basic I/M Performance Standard—40 CFR 51.352

The basic I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device,

evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Kentucky submittal the most current version was MOBILE5a. Areas shall meet or exceed the performance standard for the pollutants which cause them to be subject to basic I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both NO_X and VOCs.

The Kentucky submittal includes the following program design parameters:

network type—centralized, test-only
start date—1984
test frequency—annual
model year coverage—1968 and later
vehicle type coverage—light and heavy duty gasoline powered vehicles
emission test—Idle
emission standards—1.2 percent CO, 220 ppm HC
emission control device—none
evaporative system checks (pressure)—1984 and later
stringency (pre-1981 failure rate)—20 percent
waiver rate (pre-81/81 and newer)—22 percent/17 percent
compliance rate—99 percent
evaluation date(s)—January 1, 1997

The Jefferson County, Kentucky, program design parameters meet the Federal I/M regulations and are approvable.

The emission levels achieved by the County were modeled using MOBILE5a. The modeling demonstration was performed correctly, used local characteristics and demonstrated that the program design will exceed the minimum basic I/M performance standard, expressed in gpm, for VOCs and NOx for each milestone and for the attainment deadline. The modeling demonstration is approvable.

Network Type and Program Evaluation—40 CFR 51.353

Basic I/M programs can be operated in a centralized test-only format, in a decentralized test and repair, or in any hybrid version as long as states can demonstrate that the selected program is effective in achieving the basic I/M performance standard. The APCD will administer a centralized I/M program in Jefferson County. The enhanced program evaluation requirements of this section do not pertain to the Jefferson County program as it is a basic I/M program. The network type is approvable.

Adequate Tools and Resources—40 CFR 51.354

The Federal regulation requires states to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if demonstrated that the funding can be maintained. Reliance on funding from a state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The Jefferson County, Kentucky, program is to be funded by direct reimbursement of the primary contractor from vehicle inspection fees. A portion of the vehicle inspection fee will be returned to APCD to cover the cost of program oversight and will be sufficient to cover the activities of the audit contractor, and the Department of Planning and Environmental Management. This method meets the Federal regulation and is approvable. The submittal demonstrates that sufficient funds, equipment and personnel have been appropriated to meet program operation requirements. The Commonwealth submittal meets the adequate tools and resources requirements set forth in the Federal I/M regulations and is approvable.

Test Frequency and Convenience—40 CFR 51.355

The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Jefferson County, Kentucky, I/M regulation provides for an annual test frequency for all covered vehicles. A vehicle is assigned a test month. Prior to the assigned test month, the program contractor notifies the vehicle owner when their vehicles may be tested. The vehicle may be tested in either the month prior to the assigned month or in the assigned month. Vehicle owners not complying with the testing requirement by the end of the assigned month are notified they are in violation and subject to criminal prosecution. Continued noncompliance results in a court appearance. A guilty verdict results in a fine and the mandatory payment of court costs. The assignment of test months within each test year will be made using a method to be determined by the program contractor, and is based on the registration month of the vehicle. The program RFP sets standards for station convenience and requires a station in each quadrant of Jefferson County. The contract calls for all lanes to be operational at peak times as defined in the Request For Proposals (RFP). The contract also calls for additional lanes to be opened as practical whenever queuing in all operating lanes at a station exceeds an average of five cars per operating lane. The submittal meets the requirements for testing frequency and convenience and is approvable.

Vehicle Coverage—40 CFR 51.356

The performance standard for basic I/M programs assumes coverage of all 1968 and later model year light duty vehicles (LDV) and light duty trucks (LDT) up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR 51.353(a). Vehicles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The Federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

The Jefferson County I/M regulation requires all vehicles up to 16,000 pounds gross vehicle weight registered in the county except diesel vehicles, two stroke motorcycles, and vehicles which the APCD Administrator has determined shall not be tested because of fuel or engine characteristics, to be tested annually. In addition to light duty vehicles and light duty trucks, motorcycles, motorhomes, and large gasoline powered vehicles are subject to testing. Vehicle owners are notified that the vehicle is required to be tested prior to registration via a computer matching mechanism. Noncomplying vehicle owners are issued a Notice of Violation. Regulation 8.03 also requires commuters into Jefferson County to have their vehicles tested. This regulation requires all employers to submit a list of employees that live outside of Jefferson County but commute to their jobs in Jefferson County. Fleet self testing is allowed only for businesses not involved in the general repair or sales of vehicles. Quality control requirements apply equally to both the centralized testing stations and the fleet self testers. Federally owned vehicles are subject to the testing requirements. Vehicles from other areas may be tested and the APCD will also accept test results from other approved testing programs. Exempted vehicles are taken into account in the performance standard demonstration.

The Commonwealth's plan for testing fleet vehicles is acceptable and meets the requirements of the Federal I/M regulation.

Owners of vehicles which are registered in the program area but are operated more than 250 miles outside of the area for extended periods, such as with students and military personnel, may apply for an extension. The vehicle owner must present a sworn affidavit with documentation that the vehicle will be based at the remote location for the time period claimed. The vehicle must be presented for testing once it is returned to Jefferson County. The Kentucky submittal meets the requirements of this section.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR Part 51.357 and in the EPA document entitled "Recommended I/M Short Test Procedures For the 1990's: Six Alternatives."

The Commonwealth's I/M submittal includes a description of the test procedure used in the Louisville I/M program. The program contract requires the procedure described in Appendix H, which contains the EPA short tests mentioned above, to be utilized. Specifically, Test 1 provides for minor modifications to EPA's "Idle Test Procedure with Loaded Preconditioning." Test 2 contains the same modifications to EPA's "Idle Test Procedure." The modification is to allow the Contractor to declare an Initial Test Mode Failure at less than the overall maximum initial test time of 55 seconds which shall result in performing the second chance as prescribed in the referenced EPA document. Regulation 8.02 added the requirement for testing the evaporative system with the EPA recommended pressure test. The evaporative system pressure test procedure is the EPA procedure described in Appendix B, Subpart 5, Part 51.

These test procedures conform to EPA approved test procedures and are approvable. The I/M regulation for Jefferson County establishes hydrocarbon (HC) and carbon monoxide (CO) pass/fail exhaust standards for all test procedures for each applicable model year and vehicle type. The exhaust standards adopted by the Commonwealth conform to EPA established standards and are approvable. The Jefferson County I/M regulation establishes evaporative pressure test standards which conform to EPA established standards and are approvable.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The Federal I/M regulation requires that state SIP submittals include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Jefferson County I/M regulation and RFP require exhaust analyzers that meet the BAR90 performance specifications. These specifications require the use of computerized test systems. The specifications also include performance features and functional characteristics of the computerized test systems which meet the Federal I/M regulations and are approvable.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Section 9 of the Jefferson County regulations, the RFP, and the contract all contain quality control requirements for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements. A special software encryption algorithm codes the "Inspection Number" field on the test form and cannot be duplicated without access to the source code. The RFP also contains the requirement for two mobile audit vans which provide overt audit capability. They are provided by the contractor, but used by APCD personnel. This portion of the Kentucky submittal complies with the quality control requirements set forth in the Federal I/M regulation and is approvable.

Waivers and Compliance via Diagnostic Inspection—40 CFR 51.360

The Federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For basic I/M programs, an expenditure of at least $75 for pre-81 vehicles and $200 for 1981 and later vehicles in repairs, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The Federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that contained in the SIP.

The Jefferson County regulation provides the necessary authority to

issue waivers, set cost limits, administer and enforce the waiver system. The submittal commits to a maximum waiver rate as established in the performance standard demonstration and commits to corrective action to reduce the waiver rate if this value is exceeded. The Jefferson County Regulation 8.01 sets a $75 cost limit for pre-81 vehicles and $200 for 1981 and newer vehicles. The regulation includes provisions which address waiver criteria and procedures, including cost limits, tampering and warranty related repairs, quality control and administration. A unique feature of the regulation is any vehicle owner requesting a waiver must submit the vehicle for review at the APCD referee test center and must show a measurable improvement in emissions. A vehicle repair form must be submitted by the owner at that time, verifying the repairs. The vehicle is diagnosed by APCD personnel that must be ASE certified Master Mechanics as well as sworn Kentucky peace officers and EPA Administrator designated representatives for tampering and fuels. These provisions meet the Federal I/M regulations requirements and are approvable.

Motorist Compliance Enforcement—40 CFR 51.361

The Federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in I/M programs. However, a basic area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice. The Jefferson County regulation provides the legal authority to implement a computer matching enforcement system. The RFP contains a detailed description of the enforcement process. The contractor is responsible for data operations. This includes a requirement to update the database every Monday. A database of tested vehicles is compared to a database of registered subject vehicles. The testing process for the vehicle owner begins when the owner is sent a reminder of the testing requirement by the contractor. Any owner failing to obtain a certificate of compliance by the end of the assigned month will be sent a notice of violation (NOV) which states that if the vehicle is brought in for testing that month no further action will be taken. A legal notice called Notice of Court Action (NOCA) will be sent by the contractor to the vehicle owner who fails to have the vehicle tested by the end of the NOV month. This notice states that, if the owner obtains a certificate of compliance by a specified cutoff date, a criminal complaint which has already been prepared in his name, will not be processed by the Jefferson County District Court. The cutoff date is established by the APCD each month. When an owner fails to obtain a certificate of compliance by the cutoff date, a sworn criminal complaint is filed in the Jefferson district court pursuant to the Kentucky Rules of Criminal Procedure. The fine for violations shall not be less than $10 and not more than $50 for the first offense and not less than $50 or more than $100 for each subsequent offense. Payment of court costs by a defendant, upon conviction, shall be mandatory and cannot be probated or suspended.

Jefferson County Regulation 8.03 contains a requirement that people living outside of the County but working in it must have their vehicles inspected. The employer is responsible for providing a list of vehicle owners subject to this requirement. An employer may be fined up to $500 per day per offense. Enforcement against vehicle owners is the same as for residents of Jefferson County. The submittal commits to maintaining the compliance rate used in the performance standard demonstration. This portion of the Kentucky submittal meets the Federal requirements and is approvable.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The Federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The Jefferson County regulation provides the legal authority to implement a computer matching enforcement system. The RFP contains a detailed description of the enforcement process. The submittal also describes the process used in auditing the computer matching enforcement mechanism. Compliance with the vehicle inspection program is audited by the Jefferson County APCD by routine checks of Kentucky vehicle registration records against I/M test records. Additionally, Jefferson County APCD enters all court records of all noncompliance cases into a computer program to verify appropriate action was taken. Cases are identified as ultimately receiving the inspection after appropriate legal action, the vehicle being removed from the owner's record because of sale or scrappage of vehicle, or no test required because the vehicle has been removed from use on the road. This portion of the Kentucky submittal meets the Federal requirements and is approvable.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The Kentucky submittal includes a quality assurance program which describes details and procedures for implementing inspector, records, and equipment audits. Performance audits of inspectors and testing equipment will be performed by the APCD personnel. Regulation 8, Sections 8 and 9 require various quality assurance and control functions be performed to insure correct program operation. These include overt and covert audits and remote observation of inspection personnel performing testing. Overt audits may be performed by APCD personnel at any time, unannounced, during station operation. Covert audits are required to use a range of vehicles which have been set to fail the inspection test. The RFP requires the contractor to develop quality assurance and control procedures as well as operations manuals. The quality assurance requirements and procedures in the Jefferson County program meet the Federal I/M regulation requirements and are approvable.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations or contractors, and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The Federal I/M regulation requires the establishment of minimum penalties for violations of

program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The Kentucky submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. The Jefferson County enforcement program is staffed by Kentucky peace officers and immediate action and prosecution is taken when needed. The Jefferson County APCD auditors can suspend licenses and operations immediately upon detection of a violation. The RFP establishes fines to the contractor for failure to perform as required. Inspectors may be decertified. The Jefferson County I/M program meets the requirements of this section and is approvable.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The Federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

Jefferson County Regulation 8.01, Section 7, specifies the information contained on the inspection form. The RFP requires the collection of data, and subsequent analysis, on each individual test conducted and describes the type of data to be collected. The type of test data collected meets the Federal I/M regulation requirements and is approvable. The submittal also commits to gather and report the results of the quality control checks required under 40 CFR 51.359 and is approvable.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the states and EPA. The Federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The Jefferson County I/M program RFP provides for the analysis and reporting of data for the testing program, quality assurance program, quality control program and the enforcement program. The type of data to be analyzed and reported meets the Federal I/M regulation requirements and is approvable. Jefferson County commits to submit all required reports to EPA. Additionally, Jefferson County APCD commits to submitting the annual reports on these programs to EPA by July of the subsequent year. These annual reports will be submitted July 1, 1996, and each July 1 thereafter, covering the previous test year. The submittal commits to the reports required under 40 CFR 51.366 and is approvable.

Inspector Training and Licensing or Certification—40 CFR 51.367

The Federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

The Jefferson County I/M regulation requires all inspectors to receive formal training, be certified by APCD and renew the certification every year. The inspector must attend a training course and pass an examination with at least a score of 80%. The SIP meets the Federal I/M regulation requirements for inspector training and certification and is approvable.

Public Information and Consumer Protection—40 CFR 51.368

The Federal I/M regulation requires the SIP to include a public information and consumer protection program. The RFP includes a public information program which educates the public on I/M, Commonwealth and Federal regulations, air quality and the role of motor vehicles in the air pollution problem and other items as described in the Federal rule. The consumer protection program includes provisions for a challenge mechanism, protection of whistle blowers and providing assistance to motorists in obtaining warranty covered repairs. The public information and consumer protection programs contained in the SIP submittal meet the Federal regulations and are approvable.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The Federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the Federal regulation and a description of the repair technician training resources available in the community.

The Jefferson County regulations contain a provision regarding vehicle repair forms. These must be completed by a professional mechanic registered with the APCD, or the vehicle owner in cases of self-repair. A mechanic registered by the APCD must pass an APCD training course in which air pollution and vehicles are discussed. The APCD also maintains a hotline staffed by ASE certified master technicians. Motorists whose vehicles fail the test are given a repair facility report card. This report card contains information regarding a facility's success in repairing vehicles and having them pass the inspection retest. The APCD provides regular feedback to each facility on their repair performance. The performance monitoring program design meets the criteria described in the Federal regulation and is approvable. The repair effectiveness program described in the SIP meets the Federal regulation and is approvable.

Compliance With Recall Notices—40 CFR 51.370

The Federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test or renewing the vehicle registration.

The Jefferson County nonattainment area is classified as moderate and therefore not subject to this provision.

On-road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the Federal regulations. The program must

include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of a on-road test shall be required to pass an out-of-cycle test.

The Jefferson County nonattainment area is classified as moderate and therefore not subject to this provision.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373

The Federal regulation requires centralized basic I/M programs to be fully implemented by January 1, 1994. The Jefferson County I/M program has been in operation since 1984. The changes required by the CAA were implemented during 1993. The SIP meets the SIP submission and implementation deadline requirements set forth in the Federal I/M regulation.

EPA's review of the material indicates that the Commonwealth has adopted a basic I/M program in accordance with the requirements of the Act. EPA is approving the Kentucky SIP revision for a basic I/M program in Jefferson County, which was submitted on November 12, 1993.

Final Action

The EPA is approving the Jefferson County I/M revision and is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse public comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comment be filed. This action will be effective September 26, 1995 unless, by August 28, 1995 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be discussed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period for this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

EPA is approving this revision to the Kentucky SIP for a basic I/M program. The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Under section 307(b)(1) of the Act, 42 U.S.C. 7807 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. sections 7410(a)(2) and 7410(k)(3).

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any local or tribal governments have elected to adopt the program provided for under Section 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and Recordkeeping requirements.

Dated: June 28, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(72) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(72) Modifications to the existing basic I/M program in Jefferson County to implement an anti-tampering check, pressure testing of the evaporative control system, and testing of commuter vehicles submitted by the Commonwealth of Kentucky on November 12, 1993.

(i) Incorporation by reference. Regulation 8.01 and 8.02, adopted on February 17, 1993, and Regulation 8.03 adopted on February 17, 1993.

(ii) Other material. None.

* * *

[FR Doc. 95–18513 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[NC–062–1–6430a; NC–068–1–6632a; NC–067–1–6633a; FRL–5254–6]

Approval and Promulgation of Implementation Plans; State: Approval of Revisions to the State of North Carolina's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the North Carolina State Implementation Plan (SIP) to allow the State and two local air pollution control agencies to issue Federally enforceable state operating permits (FESOP) and Federally enforceable local operating permits (FELOP). On May 31, 1994, the State of North Carolina through the Department of Environment, Health, and Natural Resources (DEHNR) submitted a SIP revision fulfilling the requirements necessary to issue FESOP. On June 1, 1994, the Forsyth County Department of Environmental Affairs (FCDEA) through the DEHNR submitted a SIP revision fulfilling the requirements necessary to allow Forsyth County to issue FELOP. On September 15, 1994, the Western North Carolina Regional Air Pollution Control Branch (WNCRAPCB) through the DEHNR submitted a SIP revision fulfilling the requirements necessary to allow the Western Carolina to issue FELOP. These submittals conform with the requirements necessary for a state or local agency's minor source operating permit program to become Federally enforceable. In order to extend the Federal enforceability of state and local operating permits to hazardous air pollutants (HAP), EPA is also proposing approval of the North Carolina, Forsyth County, and Western Carolina FESOP and FELOP regulations pursuant to section 112 of the Act.

DATES: This action will be effective by September 26, 1995 unless notice is received by August 28, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES:

Written comments should be addressed to Scott Miller at the EPA Regional office listed below.

Copies of the material submitted by North Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

North Carolina Department of Health, Environment, and Natural Resources, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626.

Forsyth County Environmental Affairs Department, Air Quality Section, 537 North Spruce Street, Winston-Salem, North Carolina 27101.

Western North Carolina Regional Air Pollution Control Agency, Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.The telephone number is 404/347–3555 extension 4153. Reference file numbers NC–068–1–6632; NC–067–1–6633; NC–062–1–6430.

SUPPLEMENTARY INFORMATION: On May 31, 1994, June 1, 1994, and September 15, 1994, the State of North Carolina, the FCDEA, and the WNCRAPCB, respectively, through the DEHNR submitted SIP revisions designed to allow the three agencies to issue operating permits which are Federally enforceable pursuant to EPA requirements as specified in a **Federal Register** notice, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules." (See 54 FR 22274, June 28, 1989). These voluntary SIP revisions allow EPA and citizens to enforce terms and conditions of state-issued and local-issued minor source operating permits. In addition, operating permits that are issued under a state or local agency's minor source operating permit program that is approved into the SIP may provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements mandated under section 112 of the Clean Air Act as amended in 1990 (CAA).

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to allow a state or local agency's operating permit program to become Federally enforceable and, therefore, approvable into the SIP.

The first criteria for a state or local agency's operating permit program to become Federally enforceable is that the FESOP or FELOP program must be approved into the SIP. On May 31, 1994, June 1, 1994, and September 15, 1994, the State of North Carolina, the FCDEA, and the WNCRAPCB, respectively, through the DEHNR submitted SIP revisions designed to meet the five criteria for Federal enforceability. This action will approve these regulations into the North Carolina SIP, thereby, meeting the first criteria for Federal enforceability.

The second criteria for a state's operating permit program to become Federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. North Carolina Regulation 15A NCAC 2Q.0306(b) addresses this requirement by outlining specific measures that the State may take in the event of the "failure of the owner or operator of a source permitted pursuant to this Rule to adhere to the terms and limitations of the permit." These measures include an enforcement action, permit termination, revocation, and reissuance as well as a denial of permit renewal application. Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulation 15A NCAC 2Q.0306(b) into their regulations.

The third criteria necessary for a state or local agency's operating permit program to be Federally enforceable is that the operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least

as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "Federally enforceable" (e.g. standards established under sections 111 and 112 of the Act). North Carolina Regulation 15A NCAC 2Q.0306(c) requires that all emissions limitations, controls, and other requirements imposed by a permit issued pursuant to this Rule shall be at least as stringent as any other applicable requirement as defined under Rule .0103 (effective date of July 1, 1994). The definition of applicable requirement found in 15A NCAC 2Q.0103 includes among other things requirements in the North Carolina SIP. In addition, Regulation 15A NCAC 2Q.0306(c) requires that the permit shall not waive or make less stringent any limitation or requirement contained in applicable requirement. Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulation 15A NCAC 2Q.0306(b) into their regulations. Therefore, the third criteria for Federal enforceability is met.

The fourth criteria for a state or local agency to be able to issue FESOP or FELOP is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. While a determination of what is practically enforceable will generally differ based on process type and emissions, North Carolina Regulation 15A NCAC 2Q.0306(d) requires that "Emissions limitations, controls, and requirements contained in permits issued pursuant to the Rule shall be permanent, quantifiable, and otherwise enforceable as a practical matter." Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulation 15A NCAC 2Q.0306(b) into their regulations. Therefore, the fourth criteria for Federal enforceability is met.

The fifth criteria for a state or local agency to be able to issue FESOP or FELOP is to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. North Carolina Regulation 15A NCAC 2Q.0306(a)(5) requires that any source which wishes to limit its potential to emit via a permit for PSD/NSR or title V purposes must go through an opportunity for public comment as well as public hearing. In addition, Regulation 15A NCAC 2Q.0306(a)(12) allows any owner or operator who requests that a draft permit go to public notice with an opportunity to request a public hearing to do so. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review in the North Carolina, the FCDEA and the WNCRAPCB FESOP or FELOP programs will not be Federally enforceable. North Carolina Regulation 15A NCAC 2Q.0307(d) requires that there will be at least a 30 day public and EPA comment period prior to permit issuance. North Carolina Regulation 15A NCAC 2Q.0307(g) provides that the Director will send a copy of each draft permit when it sends EPA the notice of request for public comment for that permit. Finally, Regulation 15A NCAC 2Q.0307(g) provides that the State will send a copy of each final permit after the permit is issued. Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulations 15A NCAC 2Q.0306(a)(5), 15A NCAC 2Q.0306(a)(12), 15A NCAC 2Q.0307(d), 15A NCAC 2Q.0307(g) into their regulations. Therefore, the fifth criteria for Federal enforceability is met.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of FESOP and FELOP. Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered Federally enforceable. EPA has encouraged states and local agencies to develop such FESOP and FELOP programs in conjunction with title V operating permits programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the guidance document entitled, "Limitation of Potential to Emit with Respect to Title V Applicability Thresholds," dated September 18, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, the EPA announced in a guidance document entitled, "Approaches to Creating Federally Enforceable Emissions Limits," signed by John S. Seitz, Director, OAQPS, that this mechanism could be extended to create Federally enforceable limits for emissions of HAP if the program were approved pursuant to section 112(l) of the Act.

In addition to requesting approval into the SIP, North Carolina, the FCDEA and the WNCRAPCB have also requested approval of their FESOP and FELOP programs under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).[1] However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, document does not address HAP because it was written prior to the 1990 amendments to section 112 not because it establishes requirements unique to criteria pollutants. Hence, the following five criteria are applicable to FESOP and FELOP approvals under section 112(l): (1) The program must be submitted to and approved by the EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989, criteria or the EPA's underlying regulations shall be deemed not Federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits that are intended to be Federally enforceable must be issued subject to public participation and must be provided to the EPA in proposed form on a timely basis.

In addition to meeting the criteria in the June 28, 1989, document, a FESOP or FELOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FESOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) EPA also anticipates given that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, document. EPA currently anticipates that since FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This could be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in "maximum achievable control technology" (MACT) emission standards under section 112 and for submittal of title V permit applications, it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue.

Therefore, EPA is approving the North Carolina, Forsyth County, and the Western North Carolina minor source operating permit program now to allow these agencies to begin issuing FESOP and FELOP as soon as possible.

EPA believes that the North Carolina, Forsyth County, and the Western North Carolina FESOP and FELOP programs meet the approval criteria specified in the June 28, 1989, **Federal Register** document and in section 112(l)(5) of the Act. As discussed previously in this notice, the North Carolina, Forsyth County, and Western Carolina minor source operating permit programs meet the five criteria necessary for Federal enforceability.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes that the North Carolina, Forsyth County, and Western Carolina minor source operating permit programs contain adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, document is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes that North Carolina, Forsyth County, and Western Carolina have demonstrated that each agency can provide for adequate resources to support the FESOP and FELOP program. EPA expects that since North Carolina, Forsyth County, and Western Carolina have administered a minor source operating permit program for several years resources will continue to be adequate to administer the FESOP or FELOP program. EPA will monitor the implementation of each Agency's FESOP or FELOP to ensure that adequate resources are in fact available. EPA also believes that the North Carolina, Forsyth County, and Western Carolina FESOP or FELOP provide for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in any of these programs would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the Act for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

With the addition of these provisions, the North Carolina, Forsyth County, and Western Carolina minor source operating permit program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. Therefore, EPA is approving this revision to the State of North Carolina's SIP allowing the State and local agency to issue FESOP and FELOP.

Final Action

In this action, EPA is approving the North Carolina, Western Carolina, and Forsyth County minor source operating permit program into the North Carolina SIP to allow the State and local agencies to issue FESOP and FELOP. EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 26, 1995 unless by August 28, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides.

Dated: June 23, 1995.

William A. Waldrop,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

2. Section 52.1770 is amended by adding paragraph (c)(74) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(74) The minor source operating permit programs for the State of North Carolina, Western North Carolina Regional Air Pollution Control Board, and Forsyth County Department of Environmental Affairs submitted by the North Carolina Department of Environment, Health, and Natural Resources on May 31, 1994, June 1, 1994, and September 15, 1994, as part of the North Carolina SIP.

(i) Incorporation by reference.

(A) Regulations 15A NCAC 2Q.0103, 15A NCAC 2Q.0301, 15A NCAC 2Q.0303 through 15A NCAC 2Q.0311 of the North Carolina SIP as adopted by the North Carolina Environmental Management Commission on May 12, 1994 and which became effective on July 1, 1994.

(B) Regulations 15A NCAC 2Q.0103, 15A NCAC 2Q.0301, 15A NCAC 2Q.0303 through 15A NCAC 2Q.0311 of the North Carolina SIP as adopted by reference by the Western North Carolina Regional Air Pollution Control Board (WNCRAPCB) on September 12, 1994 and which were made effective September 12, 1994.

(C) Regulations Subchapter 3Q.0103, Subchapter 3Q.0301, Subchapter 3Q.0303 through Subchapter 3Q.0311 of the Forsyth County portion of the North Carolina SIP as adopted and made effective by the Forsyth County Board of Commissioners on May 23, 1994.

(ii) Other material. None.

[FR Doc. 95–18525 Filed 7–27–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[DE25–1–6742a; FRL–5223–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—"Bulk Gasoline Marine Tank Vessel Loading Facilities"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware on August 26, 1994. This revision establishes and requires control of volatile organic compound from marine vessel transfer operations. The intended effect of this action is to approve Regulation 24, Section 43, "Bulk Gasoline Marine Tank Vessel Loading Facilities", in accordance with section 183(f). This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This action will become effective September 26, 1995 unless notice is received on or before August 28, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597–3164, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On August 26, 1994, the State of Delaware submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Regulation 24, "Control of Volatile Organic Compound (VOC) Emissions", by renumbering existing Section 43, "Other Facilities that Emit VOCs", to Section 50 and adding a new Section 43, "Bulk Gasoline Marine Tank Vessel Loading Facilities", effective August 26, 1994.

Background

Pursuant to section 183(f) of the CAA, as amended, EPA is required to promulgate federal regulations for marine vessel loading facilities by November 15, 1992. EPA has not yet promulgated final regulations governing marine vessel loading and unloading facilities. Section 183(f)(4) of the CAA provides that a state's regulations governing emissions from tank vessels, must be at least as stringent as the Federal standards. In the future, if EPA determines that Delaware's regulations are less stringent than the federal regulations, once promulgated, those federal regulations shall preempt the Delaware's regulations and EPA will require Delaware to amend its SIP so that it is at least as stringent as the federal regulations.

VOCs contribute to the production of ground level ozone and smog. This rule was adopted as part of an effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation of and action on Section 43 of Regulation 24 for the State of Delaware. Detailed descriptions of the amendments addressed in this document, and EPA's evaluation of the amendments, are contained in the technical support document (TSD) prepared for these rulemaking actions by EPA. Copies of the TSD are available from the EPA Regional office listed in the **ADDRESSES** section of this document.

State Submittal

1. Section 43(a)(1) states that the regulation applies to all loading berths at any bulk marine tank vessel loading facility that delivers gasoline into marine tank vessels (Section (43)(a)(1)).

2. Section 43(c)(1) requires each loading berth at any bulk marine tank vessel loading facility to be equipped with a vapor collection system that is designed to collect all VOC vapors displaced from marine tank vessels during loading, ballasting, or housekeeping.

3. Section 43(c)(2) requires that each vapor collection system be designed to prevent any VOC vapors collected at one loading berth from passing to another loading berth.

4. Section 43(c)(3) requires each loading berth at any bulk marine tank vessel loading facility to reduce total VOC emissions by 98 weight-percent using a combustion device, and 95 weight-percent using a vapor recovery device.

5. Section 43(c)(9) requires that the loading of gasoline marine tank vessels be restricted to the use of submerged fill.

6. Section 43(c)(6) limits loading of gasoline to marine tank vessels whose vapor collection system is connected to the vapor collection system of the bulk gasoline marine tank loading facility.

7. Section 43(c)(7) ensures that the maximum normal operating pressure of the marine tank vessel vapor collection equipment must not exceed 0.8 times the set relief pressure of the pressure-vacuum vents in the vessel compartment.

8. Section 43(c)(8) requires each loading berth that loads gasoline into marine tank vessels, be inspected for total organic compound liquid and vapor leaks during product transfer operations. Each detection of a leak must be tagged and recorded and the source of the leak repaired within 15 days. A first attempt at repair must be made no later than 5 calendar days after the leak is detected.

EPA's Evaluation

The regulations listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

As required by 40 CFR 51.102, the State of Delaware has certified that a public hearing with regard to these revisions was held in Delaware on April 13, 1994.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 26, 1995, unless, by August 28, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 26, 1995.

Final Action

EPA is approving Regulation 24, "Control of VOC Emissions", renumbering the existing Section 43, "Other Facilities that Emit VOCs", to Section 50 and adding a new Section 43, "Bulk Gasoline Marine Tank Vessel Loading Facilities", as a revision to the Delaware SIP. The State of Delaware submitted these amendments to EPA as a SIP revision on August 26, 1994.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify

that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205, of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action approving Delaware's regulation on Bulk Gasoline Marine Tank Vessel Loading Facilities, must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: April 13, 1995.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart I of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.420 is amended by adding paragraph (c)(53) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to the Delaware Regulations on the control of volatile organic compound emissions from marine vessel transfer operations submitted on August 26, 1994 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of August 26, 1994 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 24, "Control of Volatile Organic Compound Emissions", by renumbering existing Section 43, "Other Facilities that Emit Volatile Organic Compounds," to Section 50 and adding a new Section 43, "Bulk Gasoline Marine Tank Vessel Loading Facilities".

(B) Administrative changes to Section 50: renumbering existing Section 43 to Section 50, and Section 50(a)(1): renumbering 42 to 43; and the new Section 43, effective August 26, 1994.

(ii) Additional material.

(A) Remainder of August 26, 1994 State submittal pertaining to Regulation 24 referenced in paragraph (c)(53)(i) of this section.

[FR Doc. 95–18515 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TN–146–1–7039a; FRL–5228–1]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Nashville-Davidson County Construction and Operation Permit Regulations for Minor Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Nashville-Davidson County portion of the Tennessee State Implementation Plan (SIP) to allow Nashville-Davidson County to issue Federally enforceable local operating permits (FELOP). On November 16, 1994, Nashville-Davidson County through the Tennessee Department of Environment and Conservation (TDEC) submitted a SIP revision fulfilling the requirements necessary for a FELOP program to become Federally enforceable. In order to extend the Federal enforceability of the Nashville-Davidson County FELOP program to hazardous air pollutants (HAP), EPA is also approving the County's FELOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that the County may issue FELOP for HAP.

DATES: This final rule will be effective September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Gracy R. Danois, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, Tennessee Air Pollution Control Board, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

Metropolitan Government of Nashville and Davidson County, Metropolitan Health Department, Bureau of Environmental Health Services, 311 23rd Avenue North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Gracy R. Danois, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4150. Reference file TN–146–1–7039.

SUPPLEMENTARY INFORMATION: On November 16, 1994, Nashville-Davidson County through the TDEC submitted a SIP revision designed to make certain permits issued under the County's existing minor source operating permit program Federally enforceable pursuant to EPA requirements as specified in a **Federal Register** notice, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules." (see 54 FR 22274, June 28, 1989). Nashville-Davidson County will continue to issue permits which are not Federally enforceable under its existing minor source operating permit rules as it has done in the past. The SIP revision, which is the subject of this document, adds requirements to the County's current minor source operating permit program, which allows the County to issue FELOP. This voluntary SIP revision allows EPA and citizens under the CAA to enforce terms and conditions of the Nashville-Davidson County FELOP program. Operating permits that are issued under the County's FELOP program that is approved into the Nashville-Davidson County portion of the Tennessee SIP and under section 112(l) will provide Federally enforceable limits to an air pollution source's potential to emit. Limiting a source's potential to emit through Federally enforceable operating permits can affect the applicability of Federal regulations, such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and federal air toxics requirements mandated under section 112 of the CAA, to a source.

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to make a State's[1] minor source operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the Nashville-Davidson County FELOP program.

The first criteria that must be met if a state's operating permit program is to become Federally enforceable is that the permit program must be approved into the SIP. On November 16, 1994, Nashville-Davidson County submitted, through TDEC, a SIP revision designed to meet the criteria for Federal enforceability. This action will approve these regulations into the Nashville-Davidson County portion of the Tennessee SIP, thereby, meeting the first criteria for Federal enforceability.

The second criteria for a state's operating permit program to become Federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. The regulations of Nashville-Davidson County meet this criteria. The Metropolitan Code of Law (M.C.L.) Section 10.56.040.F, Paragraph 1 requires the following:

> The source must agree in writing to be bound by a permit which specifies the more restrictive limit and to be subject to detailed monitoring, reporting and recordkeeping requirements that prove the source is in compliance with the applicable permit.

Hence, the second criteria for Federal enforceability is met.

The third criteria necessary for a state's operating permit program to become Federally enforceable is that the state operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "Federally enforceable" (e.g. standards established under sections 111 and 112 of the Act). Nashville-Davidson County satisfies this criteria with the inclusion of two regulations: M.C.L. Section 10.56.040.F, Paragraph 2, which requires that "the permit limitations, controls, and other requirements imposed by permits will be as stringent as any other applicable limitations and requirements contained in the SIP enforceable under the SIP", and M.C.L. Section 10.56.040.D, which gives Nashville-Davidson County the authority to specify other permit requirements in addition to those contained in M.C.L. Section 10.56.040. Therefore, the County's regulations satisfy the third criteria for Federal enforceability.

The fourth criteria for a state's operating permit program to become Federally enforceable is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. While a determination of what is practically enforceable will generally differ based on process type and emissions, the County has incorporated the requirements of the fourth criteria described above under M.C.L. Section 10.56.040.F, Paragraph 3. Therefore, the Nashville-Davidson County FELOP program satisfies the fourth criteria for Federal enforceability.

The fifth criteria for a state's operating permit program to become Federally enforceable requires that the permitting agency provide EPA and the public with timely notice of the proposal and issuance of such permits, and provide EPA, on a timely basis, with a copy of each draft and final permit intended to be federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. Nashville-Davidson County satisfies this criteria by including M.C.L. Section 10.56.040.F, Paragraphs 4 and 5, which require the County to provide a 30 day public comment period and to provide a copy of each draft and final permit to the Administrator. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review in the Nashville-Davidson County FELOP program will not be Federally enforceable.

In addition to requesting approval into the SIP, Nashville-Davidson County has also requested approval of its FELOP program under Section 112(l) of the CAA for the purpose of creating Federally enforceable limitations on the potential to emit of HAP through the issuance of FELOP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above

[1] Various local air pollution programs operate air quality programs under their own regulations which are approved into the SIP. The reader should note that "State" operating permits programs encompass those local programs with jurisdiction over only part of a State as well as in Statewide programs.

only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (e.g., VOC's or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).[2] However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FELOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the program under section 112(l). The June 28, 1989, document does not address HAP, because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a state program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FELOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the CAA. (See 58 FR 62262, November 26, 1993.) EPA currently anticipates that these regulatory criteria, as they apply to FELOP programs, will mirror those set forth in the June 28, 1989, document. The EPA currently anticipates that since FELOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA believes it has authority under section 112(l) to approve programs to limit the potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in "maximum achievable control technology" (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. EPA is therefore approving the Nashville-Davidson County FELOP program so that the County may begin to issue FELOP as soon as possible.

EPA believes that the Nashville-Davidson County FELOP program meets the approval criteria specified in the June 28, 1989 **Federal Register** document and in section 112(l)(5) of the CAA. As discussed previously in this document, the Nashville-Davidson County FELOP program meets the five criteria necessary for Federal enforceability.

EPA believes that the Nashville-Davidson County FELOP program contains adequate authority to assure compliance with section 112(l)(5) requirements. The program meets the third criterion of the June 28, 1989, document because the program does not permit any section 112 requirement to be waived. Sources that become minor through a permit issued pursuant to this program would still be required to meet the section 112 requirements applicable to nonmajor sources.

EPA believes that Nashville-Davidson County has demonstrated that it can provide adequate resources to support the FELOP program. EPA expects that resources will continue to be adequate to administer the portion of the County's minor source operating permit program under which FELOP will be issued, since Nashville-Davidson County has administered a minor source operating permit program for several years. EPA will monitor the County's implementation of its FELOP to ensure that adequate resources are in fact available. EPA also believes that the Nashville-Davidson County FELOP program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in the Nashville-Davidson County FELOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

With the addition of these provisions, the Nashville-Davidson County FELOP program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. EPA is approving this revision to the Nashville-Davidson County portion of the Tennessee SIP thus making the County's FELOP program Federally enforceable.

Final Action

In this action, EPA is approving the Nashville-Davidson County FELOP program. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 26, 1995 unless, by August 28, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 112(l) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Intergovernmental relations, Particulate matter, Ozone, Sulfur oxides.

Dated: June 23, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(130) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(130) Revisions to minor source operating permit rules for Nashville-Davidson County submitted by the Tennessee Department of Environment and Conservation on November 16, 1994.

(i) Incorporation by reference.

(A) Metropolitan Code of Law (M.C.L.) Chapter 10.56, Section 040, Paragraph F, effective October 4, 1994.

(ii) Other material. None.

[FR Doc. 95–18518 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

[2] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below 112 major source levels.

40 CFR Part 52

[NC–065–1–6431a; FRL–5228–7]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the Mecklenburg County Portion of the North Carolina State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Mecklenburg County portion of the North Carolina State Implementation Plan (SIP) to allow the Mecklenburg County Department of Environment to issue Federally enforceable local operating permits (FELOP). On November 24, 1993, the Mecklenburg County Department of Environment through the North Carolina Department of Environment, Health, and Natural Resources (DEHNR) submitted a SIP revision fulfilling the requirements necessary to issue FELOP. The submittal conforms with the requirements necessary for a local agency's minor source operating permit program to become federally enforceable. In order to extend the Federal enforceability of local operating permits to hazardous air pollutants (HAP), EPA is also proposing approval of the Mecklenburg County minor source operating permit regulations pursuant to section 112 of the Act.

DATES: This final rule will be effective on September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Scott Miller at the EPA Regional office listed below.

Copies of the material submitted by Mecklenburg County may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

North Carolina Department of Health, Environment and Natural Resources, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental

Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is (404) 347–2864.

SUPPLEMENTARY INFORMATION: On November 24, 1993, Mecklenburg County, North Carolina through DEHNR submitted a SIP revision designed to allow Mecklenburg County to issue FELOP which conform to EPA requirements for federal enforceability as specified in a **Federal Register** notice, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules." (See 54 FR 22274, June 28, 1989). This voluntary SIP revision allows EPA and citizens under the Act to enforce terms and conditions of local-issued minor source operating permits. Operating permits that are issued under the County's minor source operating permit program that is approved into the State SIP and under section 112(l) will provide federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through federally enforceable operating permits can affect a source's applicability to federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and federal air toxics requirements.

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to make a local agency's minor source operating permit program federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for federal enforceability of the County's minor source operating permit program.

The first criteria for a local agency's minor source operating permit to become federally enforceable is that the regulations governing permit issuance are approved into the SIP. On November 24, 1993, Mecklenburg County through the DEHNR submitted a SIP revision fulfilling the requirements necessary to make Mecklenburg County's minor source operating permit program federally enforceable. This action will approve these regulations into the North Carolina SIP, thereby, meeting the first criteria for federal enforceability.

The second criteria for a state's operating permit program to become federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. Mecklenburg County Air Pollution Control Ordinance (MCAPCO) Regulation 1.5232(b) states that failure to apply for or to act in accordance with the terms, conditions, or requirements of any permit shall be cause for enforcement sanctions in MCAPCO Regulation 1.5300 and Chapter 143, Article 21B of the General Statutes of North Carolina. MCAPCO Regulation 1.5300 lists criminal and civil enforcement remedies that the County may take in the event that an air pollution source violates the terms, conditions, or requirements of the permit. Hence, the second criteria for federal enforceability is met.

The third criteria necessary for Mecklenburg County's operating permit program to be federally enforceable is that the local operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable" (e.g. standards established under sections 111 and 112 of the Act). MCAPCO Regulation 1.5232(b) mandates that approval of construction, modification, or operation of any source shall not affect the responsibility of the owner or operator to comply with applicable portions of the SIP. Therefore, the third criteria for federal enforceability is met.

The fourth criteria for a local agency's operating permit program to become federally enforceable is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. While a determination of what is practically enforceable will generally differ based on process type and emissions, the County has included several regulations designed to ensure that permit limitations are enforceable as a practical matter. MCAPCO Regulation 1.5212(d) requires that upon request an air pollution source prove to the Department that it has complied with air quality emission standards and has been in compliance with federal and state laws and regulations. MCAPCO Regulation 1.5213(b) provides that the Department will attach as a condition of any permit which is issued, a requirement that the applicant prior to construction or operation of a facility under the permit, comply with all lawfully adopted ordinances. MCAPCO Regulation 1.5214 requires that after a permit is issued a source must submit written notification to the Department before it commences operation of the newly permitted activity. Within 90 days after the source notifies the Department, the Department will inspect the source, equipment, process, or device in order to determine compliance with permit conditions and limitations. Therefore, the fourth criteria for federal enforceability is met.

The fifth criteria for a local agency's operating permit program to become federally enforceable is to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. MCAPCO Regulation 1.5213(g) requires a 30 day public notice period for every permit issued by the County. In addition, every permit issued by the County goes through a public hearing prior to permit issuance. MCAPCO Regulation 1.5213(h) requires the Department to submit the proposed permit to EPA for review during the 30 day comment period, and also provides that after final permit issuance the Department will submit a copy of the final permit to EPA. Hence, the fifth criteria for federal enforceability is met.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits (FESOP). Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered federally enforceable. The EPA has encouraged states to develop such FESOP programs in conjunction with title V operating permits programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the guidance document entitled, "Limitation of Potential to Emit with Respect to Title V Applicability Thresholds," dated September 18, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, the EPA announced in a guidance document entitled, "Approaches to Creating Federally Enforceable Emissions Limits," signed by John S. Seitz, Director, OAQPS, that this mechanism could be extended to create federally enforceable limits for emissions of HAP if the program were approved pursuant to section 112(l) of the Act.

In addition to requesting approval into the SIP, Mecklenburg County also requested on July 12, 1994, approval of its minor source operating permit program under section 112(l) of the Act for the purpose of creating federally enforceable limitations on the potential to emit of HAP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).[1]

However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FELOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, document does not address HAP because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants. Hence, the following five criteria are applicable to FELOP approvals under section 112(l): (1) The program must be submitted to and approved by the EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989, criteria or the EPA's underlying regulations shall be deemed not federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits that are intended to be federally enforceable must be issued subject to public participation and must be provided to the EPA in proposed form on a timely basis.

In addition to meeting the criteria in the June 28, 1989, document, a FELOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FELOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) EPA currently anticipates that these regulatory criteria, as they apply to FELOP programs, will mirror those set forth in the June 28, 1989, notice. EPA also anticipates that given FELOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This could be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in "maximum achievable control technology" (MACT) emission standards under section 112 and for submittal of title V permit applications, it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is approving Mecklenburg County's minor source operating permit program to allow the County to begin issuing FELOPs as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Mecklenburg County's minor source operating permit program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, document is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes Mecklenburg County has demonstrated that it can provide for adequate resources to support the minor source operating permit program. EPA expects that since Mecklenburg County has administered a minor source operating permit program for several years, resources will continue to be adequate to administer the minor source operating permit program. EPA will monitor Mecklenburg County's implementation of its FELOP to ensure that adequate resources are in fact available. EPA also believes that Mecklenburg County's minor source operating permit program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Mecklenburg County's program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a federally enforceable limit on potential to emit.

With the addition of these provisions, Mecklenburg County's minor source operating permit program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. Therefore, EPA is approving this revision to the Mecklenburg County portion of the North Carolina SIP making the County's minor source operating permit program federally enforceable which will allow the County to issue FELOP.

Final Action

In this action, EPA is approving the Mecklenburg County minor source operating permit program. EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

filed. This action will be effective on September 26, 1995 in the **Federal Register** unless, by August 28, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 26, 1995.

EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP Action

SIP approvals under 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: June 23, 1995.

William A. Waldrop,

Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(70) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(70) The minor source operating permit program for Mecklenburg County, North Carolina, submitted by the Mecklenburg County Department of Environmental Protection on November 24, 1993, and as part of the Mecklenburg County portion of the North Carolina SIP.

(i) Incorporation by reference.

MCAPCO Regulations 1.5211 through 1.5214, 1.5216, 1.5219, 1.5221, 1.5222, 1.5232, 1.5234, and 1.5306 of the Mecklenburg County portion of the North Carolina SIP adopted June 6, 1994.

(ii) Other material. None.

* * * * *

[FR Doc. 95–18527 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN22–4–6825; FRL–5265–2]

Approval and Promulgation of an Implementation Plan for Vehicle Miles Traveled; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 2, 1994, the United States Environmental Protection Agency (USEPA) proposed to approve a November 17, 1993, request for a State Implementation Plan (SIP) revision, addressing the Lake and Porter County ozone nonattainment area, submitted by the State of Indiana for the purpose of offsetting growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other emission reduction requirements, as necessary to comply with Reasonable Further Progress (RFP) milestones and attainment requirements of the Clean Air Act (Act). Public comments were solicited on the proposed SIP revision, and on USEPA's proposed rulemaking action. The public comment period ended on December 2, 1994, and one public comment letter was received. This rulemaking action approves, in final, the VMT Offset SIP revision request for Lake and Porter Counties, Indiana as requested by Indiana.

EFFECTIVE DATE: This final rulemaking becomes effective on August 28, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(d)(1)(A) of the Act, as amended in 1990 (Act), requires States containing ozone nonattainment areas classified as "severe" pursuant to section 181(a) of the Act to adopt transportation control measures (TCMs) and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498), in addition to section 182(d)(1)(A) of the Act.

The VMT Offset provision requires that States submit by November 15, 1992, specific enforceable TCMs and strategies to offset any growth in emissions from growth in VMT or number of vehicle trips sufficient to allow total area emissions to comply with the RFP and attainment requirements of the Act.

As described in the November 2, 1994, proposed rule (see 59 FR 54866, 54867), the USEPA has observed that these three elements (i.e., offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of the ozone National Ambient Air Quality Standards (NAAQS)) can be divided into three separate submissions that could be submitted on different dates.

Under this approach, the first element, the emissions offset element, was due on November 15, 1992. The USEPA believes this element is not necessarily dependent on the development of the other elements. The State could submit the emissions growth offset element independent of an analysis of that element's consistency with the periodic reduction and attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this offset requirement. As submitting this element in isolation does not implicate the timing problem of advancing deadlines for RFP and attainment demonstrations, USEPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element.

The second element, which requires the VMT Offset SIP to comply with the 15 percent RFP requirement of the Act, was due on November 15, 1993, which is the same date on which the 15 percent RFP SIP itself was due under section 182(b)(1) of the Act. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the entire 15 percent SIP was due, as this allows States to develop the comprehensive strategy to address the 15 percent reduction requirement and assure that the TCM elements required under section 182(d)(1)(A) are consistent with the remainder of the 15 percent demonstration. Indeed, USEPA believes that only upon submittal of the broader 15 percent plan can a State have had the necessary opportunity to coordinate its VMT strategy with its 15 percent plan.

The third element, which requires the VMT Offset SIP to comply with the post-1996 RFP and attainment requirements of the Act, was due on November 15, 1994, the statutory deadline for those broader submissions. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the post-1996 RFP and attainment SIPs are due for the same reasons it is reasonable to extend the deadline for the second element. First, it is arguably impossible for a State to make the showing required by Section 182(d)(1)(A) for the third element until the broader demonstrations have been developed by the State. Moreover, allowing States to develop the comprehensive strategy to address post-1996 RFP and attainment by providing a fuller opportunity to assure that the TCM elements comply with the broader RFP and attainment demonstrations, will result in a better program for reducing emissions in the long term.

On November 17, 1993, Indiana submitted to USEPA documentation to fulfill the first and second elements of the VMT-Offset SIP. A public hearing was held on December 14, 1993, and documentation on the public hearing was submitted to complete the SIP revision request. Indiana does not at this time anticipate the need for additional TCMs to meet the attainment demonstration requirement but will submit any necessary TCMs with the attainment demonstration SIP.

II. Evaluation of the State Submittal

Section 182(d)(1)(A) of the Act requires the State to offset any growth in emissions from growth in VMT. As discussed in the General Preamble, the purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. The USEPA interprets this provision to require that sufficient measures be adopted so that projected motor vehicle volatile organic compound (VOC) emissions will never be higher during the ozone season in one year than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline, and is above and beyond the separate requirements for the RFP and the attainment demonstrations. The ceiling level is defined, therefore, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of Federal measures such as new motor vehicle standards, phase II RVP controls, and reformulated gasoline, as well as the Act-mandated SIP requirements.

The State of Indiana has demonstrated in its submittal of November 17, 1993, that the predicted growth in VMT in Lake and Porter Counties, Indiana, is not expected to result in a growth in motor vehicle emissions that will negate the effects of the reductions mandated by the Act. Further, Indiana has projected motor vehicle emissions to the year 2007 and, using the most current socioeconomic data, has not predicted an upturn in motor vehicle emissions. In the event that the projected socioeconomic data and associated VMT grow more rapidly than currently predicted, Indiana is required by Section 182(c)(5) to track actual VMT starting with 1996 and every three years thereafter to demonstrate that the actual VMT is equal to or less than the projected VMT. TCMs will be required to offset VMT that is above the projected levels (section 182(c)(5)).

The VMT offset submittal from Indiana dated November 17, 1993, contains the final report "TCMs to Offset Emissions from VMT Growth in Northwestern Indiana." The report used the most current socioeconomic data and the travel network model in conjunction with the MOBILE5a to estimate mobile source emissions to the attainment year of 2007.

This report also documents the progress Indiana has made in evaluating TCMs to reduce growth in VMT and thus reduce emissions. Indiana may choose to take credit for TCM emission reductions as part of the post-1996 RFP requirement or to meet the attainment requirement. Not only has Indiana evaluated the effectiveness and predicted impact of a number of TCMs, but actual implementation of selected TCMs has been ongoing. Several examples are cited in the proposed rule.

These specific TCMs, however, are not a part of the current SIP revision request and are not a required portion of this SIP revision. Thus, Indiana is not currently taking credit for the emission reductions from these TCM measures and the State is not bound to implement or continue to implement any specific TCMs. These measures, however, illustrate Indiana's work in evaluating and implementing TCMs to meet the goals of the Act. Also, the TCMs may be used in subsequent SIP submittals as necessary to meet the post 1996 RFP requirement or the attainment requirement.

Indiana submitted a 15 percent RFP SIP for northwest Indiana to the USEPA in November 1993, but the submittal was found incomplete in a letter dated January 25, 1994. The RFP SIP lacked enforceable regulations and a public hearing. The public hearing was held on March 29, 1994.

On June 26, 1995, Indiana submitted an updated 15 percent SIP which contained all enforceable regulations. Indiana's submitted 15 percent SIP was found complete by the USEPA in a letter dated July 7, 1995. The submittal details the adopted enforceable regulations that have been submitted to support the 15 percent RFP demonstration. The SIP submission contains a menu of adopted emissions reductions measures that the State believes will achieve the 15 percent reduction requirement by November 15, 1996. Also, Indiana is moving forward with implementation of the 15 percent measures including the enhanced inspection and maintenance program. In the submission, Indiana does not rely upon TCMs in order to satisfy the 15 percent reduction requirement. Rather, the majority of the reduction would be obtained from stationary source shutdowns and the enhanced inspection and maintenance program. Indiana believes that TCMs will not be necessary to attain the 15 percent reduction requirement.

The attainment demonstration and post-1996 RFP plans, were submitted on December 5, 1994, and became complete by operation of law under 110(k)(1)(B) on June 5, 1995. Indiana is planning to use the Phase I and II approach to submission of the attainment demonstration and post-1996 RFP as described in the March 2, 1995, memorandum from Mary Nichols. The USEPA is reserving action on the third element of the VMT Offset SIP until such time as the phase I and II attainment submittals are complete.

Indiana has met the first and second elements of the VMT offset SIP requirements of section 182(d)(1)(A). Regarding the first element, Indiana has identified and evaluated TCMs to reduce VMT, and has shown that VMT growth will not result in a growth of motor vehicle emissions that will negate the effects of the reductions required under the Act and that there will not be an upturn of motor vehicle emissions. Regarding the second element, Indiana has submitted a complete 15 percent SIP that does not rely upon TCMs to make its proffered showing that the 15 percent reduction will be achieved. Consequently, USEPA does not believe it is necessary to delay taking action on this second element of the VMT SIP, and that the Agency can at this point rely upon Indiana's submitted 15 percent SIP to make a judgment that TCM's will not be necessary to satisfy the second VMT SIP element. However, if in evaluating the 15 percent SIP for approval it is determined that Indiana would in fact have to implement TCMs to meet the 15 percent RFP requirement, and a subsequent submission of a revised 15 percent SIP is required, EPA would have to reevaluate its approval of the second element of the VMT SIP.

The third requirement is for Indiana to use TCMs as necessary to attain the standard. This third requirement will be submitted with the attainment demonstration SIP and will be addressed in a future **Federal Register** notice.

III. Public Comments

On November 2, 1994, the USEPA proposed to approve the first and second elements of the Indiana VMT Offset SIP and requested public comment. The public comment period closed on December 2, 1994, and the Natural Resources Defense Council (NRDC) submitted comments on December 2, 1994. The following summarizes NRDC's comments and USEPA's response to these comments:

Comment 1: The Act requires TCMs to offset emissions resulting from all growth in VMT above 1990 levels, and USEPA is required by the Act to ensure emission reductions despite an increase in VMT. The legislative history states that "[t]he baseline for determining whether there has been a growth in emissions due to increased VMT is the level of vehicle emissions that would occur if VMT held constant in the area." See H.Rep. No. 101–490, Part I, 101st Cong., 2nd Sess. at 242, and S.Rep. No. 101–228, 101st Cong., 1st Sess. at 44.

Response: As discussed in the General Preamble, USEPA believes that section 182(d)(1)(A) of the Act requires the State to "offset any growth in emissions" from growth in VMT but not, as suggested by the comment, all emissions resulting from VMT growth (see 57 FR 13498, 13522–13523, April 16, 1992). The purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. The baseline for emissions is the 1990 level of vehicle emissions and the subsequent reductions in emission levels required to reach attainment. Thus, the anticipated benefits from the mandated measures such as the Federal motor vehicle pollution control program, lower reid vapor pressure, enhanced inspection and maintenance and all other motor vehicle emission control programs are included in the ceiling line calculation used by Indiana in the VMT Offset SIP. Table 13 in the Indiana SIP submittal demonstrates how motor vehicle emissions will decline substantially from 136.63 tons per day (tpd) in 1990 to 25.04 tpd in 2007 and will not begin to turn up. Emission reductions are expected every year through the year 2007.

The ceiling line approach does not "tolerate increases in traffic of a magnitude that would wipe out the air quality gains" as suggested by the comment. In fact, the ceiling line level decreases from year to year as the State implements various control measures and the decreasing ceiling line prevents an upturn in mobile source emissions. Dramatic increases in VMT that could wipe out the benefits of motor vehicle emission reduction measures will not be allowed and will trigger the implementation of TCMs. This prevents mere preservation of the status quo, and ensures emissions reductions despite an increase in VMT such that the rate of emissions decline is not slowed by increases in VMT or number of trips. To prevent future growth changes from adversely impacting emissions from motor vehicles, Indiana is required by section 182(c)(5) to track actual VMT starting with 1996 and every three years thereafter to demonstrate that the actual VMT is equal to or less than the projected VMT. TCMs will be required to offset VMT that is above the projected levels (section 182(c)(5)).

Under the commenter's approach to section 182(d)(1)(A), Indiana would have to offset VMT growth even while vehicle emissions are declining. Although the statutory language could be read to require offsetting any VMT growth, EPA believes that the language can also be read so that only actual emissions increases resulting from VMT growth need to be offset. The statute by its own terms requires offsetting of "any growth in emissions from growth in VMT." It is reasonable to interpret this language as requiring that VMT growth must be offset only where such growth results in emissions increases from the motor vehicle fleet in the area.

While it is true that the language of the legislative history appears to support the commenter's interpretation of the statutory language, such an interpretation would have drastic implications for Indiana if the State were forced to ignore the beneficial impacts of all vehicle tailpipe and alternative fuel controls. Although the original authors of the provision and the legislative history may in fact have intended this result, EPA does not believe that the Congress as a whole, or even the full House of Representatives, believed at the time it voted to pass the 1990 Amendments to the Act that the words of this provision would impose such severe restrictions.

Given the susceptibility of the statutory language to these two alterative interpretations, EPA believes it is the Agency's role in administering the statute to take the interpretation most reasonable in light of the practical implications of such interpretation and the purposes and intent of the statutory scheme as a whole. In the context of the intricate planning requirements Congress established in title I to bring areas towards attainment of the ozone NAAQS, and in light of the absence of any discussion of this aspect of the VMT offset provision by the Congress as a whole (either in floor debate or in the Conference Report), EPA concludes that the appropriate interpretation of section 182(d)(1)(A) requires offsetting VMT growth only when such growth would result in actual emissions increases.

Comment 2: Section 182(d)(1)(A) of the Act requires that emissions of oxides of nitrogen (NO_X) as well as VOCs resulting from VMT growth must be offset.

Response: USEPA disagrees with the commenter's interpretation that section 182(d)(1)(A) requires NO_x emissions from VMT growth to be offset. While that section provides that "any growth in emissions" from growth in VMT must be offset, USEPA believes that Congress clearly intended that the offset requirement be limited to VOC emissions. First, section 182(d)(1)(A)'s requirement that a State's VMT TCMs comply with the "periodic emissions reduction requirements" of sections 182(b) and (c) the Act indicates that the VMT offset SIP requirement is VOC-specific. Section 182(c)(2)(B), which requires reasonable further progress demonstrations for serious ozone nonattainment areas, provides that such demonstrations will result in VOC emissions reductions; thus, the only "periodic emissions reduction requirement" of section 182(c)(2)(B) is VOC-specific. In fact, it is only in section 182(c)(2)(C)—a provision not referenced in section 182(d)(1)(A)—that Congress provided States the authority to submit demonstrations providing for reductions of emissions of VOCs and NO_X in lieu of the SIP otherwise required by section 182(c)(2)(B).

Moreover, the 15 percent periodic reduction requirement of section 182(b)(1)(A)(i) applies only to VOC emissions, while only the separate "annual" reduction requirement applies to both VOC and NO_X emissions. USEPA believes that Congress did not intend the terms "periodic emissions reductions" and "annual emissions reductions" to be synonymous, and that the former does not include the latter. In section 176(c)(3)(A)(iii) of the Act, Congress required that conformity SIPs "contribute to annual emissions reductions" consistent with section 182(b)(1) (and thus achieve NO_X emissions reductions), but does not refer to the 15 percent periodic reduction requirement. Conversely, section 182(d)(1)(A) refers to the periodic emissions reduction requirements of the Act, but does not refer to annual emissions reduction requirements that require NO_X reductions. Consequently, USEPA interprets the requirement that VMT SIPs comply with periodic emissions reduction requirements of the Act to mean that only VOC emissions are subject to section 182(d)(1)(A) in severe ozone nonattainment areas.

Finally, USEPA notes that where Congress intended section 182 ozone SIP requirements to apply to NO_X as well as VOC emissions, it specifically extended applicability to NO_X. Thus, references to ozone or emissions in general in section 182 do not on their own implicate NO_X. For example, in section 182(a)(2)(C), the Act requires States to require preconstruction permits for new or modified stationary sources "with respect to ozone"; Congress clearly did not believe this reference to ozone alone was sufficient to subject NO_X emissions to the permitting requirement, since it was necessary to enact section 182(f)(1) of the Act, which specifically extends the permitting requirement to major stationary sources of NO_X. Since section 182(d)(1)(A) does not specifically identify NO_X emissions requirements in addition to the VOC emissions requirements identified in the provision, USEPA does not believe States are required to offset NO_X emissions from VMT growth in their section 182(d)(1)(A) SIPs.

IV. Final Rulemaking Action

Based on the State's submittal request and in consideration of the public comments received in response to the proposed rule, USEPA is approving the SIP revision submitted by the State of Indiana as satisfying the first two of the three VMT offset plan requirements.

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or

final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (see Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Dated: July 14, 1995.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (h) to read as follows:

§ 52.777 Control Strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(h) On November 17, 1993, Indiana submitted two of three elements required by section 182(d)(1)(A) of the Clean Air Amendments of 1990 to be incorporated as part of the vehicle miles traveled (VMT) State Implementation Plan intended to offset any growth in emissions from a growth in vehicle miles traveled. These elements are the offsetting of growth in emissions attributable to growth in VMT which was due November 15, 1992, and, any transportation control measures (TCMs) required as part of Indiana's 15 percent reasonable further progress (RFP) plan which was due November 15, 1993. Indiana satisfied the first requirement by projecting emissions from mobile sources and demonstrating that no increase in emissions would take place. Indiana satisfied the second requirement by determining that no TCMs were required as part of Indiana's 15 percent RFP plan.

[FR Doc. 95–18521 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI49–01–6738a; FRL–5254–4]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves revisions to Wisconsin's State Implementation Plan (SIP) for ozone which were submitted to the USEPA on April 17, 1990, and June 30, 1994, and supplemented on July 15, 1994. Included in these revisions is a volatile organic compound (VOC) regulation which establishes reasonably available control technology (RACT) for screen printing facilities. Additionally, the State has submitted current negative declarations for pre-1990 Control Technology Guideline (CTG) categories for which Wisconsin does not have rules as well as a list of major sources affected by the 13 CTG categories that USEPA is required to issue pursuant to sections 183(a), 183(b)(3) and 183(b)(4) of the Clean Air Act (Act). These revisions were submitted to address, in part, the requirement of section 182(b)(2)(B) of the Act that States adopt RACT regulations for sources covered by pre-1990 CTG documents, and the requirement of section 182(b)(2)(C) of the Act that States revise their SIPs to establish RACT regulations for major sources of VOCs for which the USEPA has not issued a CTG document. In the proposed rules section of this **Federal Register**, the USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, the USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule, which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This action will be effective September 26, 1995 unless an adverse comment is received by August 28, 1995. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for public review during normal business hours at the above address. (It is recommended that you telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6036.

SUPPLEMENTARY INFORMATION: Section 182(b)(2) of the Act requires States to adopt VOC RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. Section 182(b)(2)(B) requires that States adopt RACT regulations for sources covered by pre-1990 CTG documents. Section 182(b)(2)(C) requires that States submit revisions to the SIP for major sources of VOCs for which the USEPA has not issued a CTG document. The counties of Kewaunee, Manitowoc, and Sheboygan and the Milwaukee area (including Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha) are the only areas in Wisconsin designated nonattainment and classified as moderate or above. Therefore, these are the areas in Wisconsin subject to the RACT catch-up requirements of section 182(b)(2).

Negative Declarations

Wisconsin has not promulgated RACT regulations for several pre-1990 CTG categories because there are no sources located in the ozone nonattainment areas that would be affected. Therefore, to satisfy the requirement of section 182(b)(2)(B), the State is required to officially certify that there are currently no sources in the nonattainment areas that would be covered by these categories. The State submitted current negative declarations for the following categories on April 17, 1990, and June 30, 1994: (1) leaks from petroleum refinery equipment; (2) manufacture of synthesized pharmaceutical products; (3) manufacture of pneumatic rubber tires; (4) automobile and light duty truck manufacturing; (5) fire truck and emergency response vehicle manufacturing; (6) manufacture of high-density polyethylene, polypropylene, and polystyrene resins, a.k.a. polymer manufacturing; (7) leaks from synthetic organic chemical and polymer manufacturing equipment; (8) air oxidation processes at synthetic organic chemical manufacturing industries; and (9) equipment leaks from natural gas/gasoline processing plants.

List of Major Sources Subject to Post-1990 CTG Source Categories

Pursuant to sections 183(a), 183(b)(3) and 183(b)(4) of the Act, USEPA was required to develop CTG documents for 13 source categories by November 15, 1993. A list of these source categories, contained in Appendix E to the General Preamble, was published in the **Federal Register** on April 28, 1992 (57 FR 18070). The State was required to submit a list of major sources that would be subject to these post-1990 CTG documents. On June 30, 1994, Wisconsin submitted this list which included facilities in four source categories: (1) cleanup solvents; (2) offset lithography; (3) plastic parts coating; and (4) wood furniture coating.

Screen Printing

Because the USEPA has not issued a CTG for screen printing, the State of Wisconsin developed a non-CTG regulation for this category. This regulation was submitted to the USEPA on June 30, 1994, and supplemented on July 15, 1994. The Wisconsin rule applies to screen printing facilities which: 1) are located in the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington or Waukesha and have maximum theoretical emissions of VOCs from all screen printing units greater than 25 tons per year, or 2) are located in the counties of Kewaunee, Manitowoc, or Sheboygan and have maximum theoretical emissions of VOCs from all screen printing units greater than 100 tons per year. Sources are required to achieve final compliance with this regulation no later than May 31, 1995.

In its rule, Wisconsin establishes a general emission limit of 3.3 pounds of VOC per gallon of ink or coating, excluding water, as applied. This limit is applicable to all printing operations at screen printing facilities, except for those using special purpose inks and coatings or those involved in roll coating operations.

Wisconsin's rule defines special purpose inks and coatings as those inks and coatings which are conductive; used to print ink transfers (decals); or designed to resist or withstand any of the following: more than 2 years of outdoor exposure; exposure to chemicals, solvents, acids, detergent, oil products, or cosmetics; temperatures in excess of 170 F; vacuum forming; embossing; or molding. The emissions limit established in the Wisconsin rule for special purpose inks and coatings is 6.7 pounds per gallon, excluding water, as delivered to an applicator. Wisconsin's rule establishes a limit of 6.7 pounds per gallon for roll coating operations occurring at screen printing facilities.

Additionally, for screen reclamation processes, the Wisconsin rule establishes a limit of 0.24 kilograms per square meter (0.050 pounds of VOC per square foot) of screen reclaimed, calculated on a daily average basis for each day of operation.

With respect to recordkeeping requirements, the regulation requires sources to collect and record the following information: a unique name or identification number for each coating, as applied; the VOC content of each coating, as applied, in units of pounds of VOC per gallon, excluding water; the daily average VOC emission rate from screen reclamation in kilograms per square meter (pounds per square foot) of screen reclaimed; the amount of VOCs emitted during the day from screen reclamation in kilograms (pounds); and the total surface area of screen reclaimed during the day in square meters (square feet).

To determine the approvability of a VOC rule, USEPA must evaluate the rule for consistency with the requirements of section 110 and part D of the Act. In addition, USEPA has reviewed the Wisconsin rule in accordance with USEPA policy guidance documents and regulations, including "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice;" South Coast Air Quality Management District rule 1130, as approved in the **Federal Register** on September 29, 1993 (58 FR 50884); and Bay Area Management District rule 8–20 as approved in the **Federal Register** on March 22, 1995 (60 FR 15062). The USEPA has found that the rule meets the requirements applicable to ozone and is, therefore, approvable for incorporation into the State's ozone SIP. A more complete discussion of the USEPA's review of the State's regulation is contained in a technical support document dated April 7, 1995. The USEPA is approving this revision as meeting, in part, the RACT catch-up requirements of section 182(b)(2) of the Act.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a "proposed approval" of the

requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on September 26, 1995, unless USEPA receives adverse or critical comments by August 28, 1995.

If the USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date, and publish a subsequent **Federal Register** notice which withdraws this final action. All public comments received will then be addressed in a subsequent final rulemaking notice. Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on September 26, 1995.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 20, 1995.

David A. Ullrich,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(82) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(82) Revisions to the ozone State Implementation Plan (SIP) were submitted by the Wisconsin Department of Natural Resources on April 17, 1990, and June 30, 1994, and supplemented on July 15, 1994. Included in these revisions is a volatile organic compound (VOC) regulation which establishes reasonably available control technology (RACT) for screen printing facilities. Additionally, the State submitted current negative declarations for pre-1990 Control Technology Guideline (CTG) categories for which Wisconsin does not have rules as well as a list of major sources affected by the 13 CTG categories that USEPA is required to issue pursuant to sections 183(a), 183(b)(3) and 183(b)(4) of the Clean Air Act (Act).

(i) Incorporation by reference. The following sections of the Wisconsin Administrative Code are incorporated by reference.

(A) NR 422.02(11m), (21s), (41p), (41s), (41v) and (42m) as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994. NR 422.02(32) as amended and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(B) NR 422.03(4m) as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(C) NR 422.145 as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(D) NR 439.04(4)(intro.) and (5)(a) as amended and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(ii) Additional material.

(A) On April 17, 1990, and June 30, 1994, Wisconsin submitted negative declarations for the following source categories: Leaks from petroleum refinery equipment; Manufacture of synthesized pharmaceutical products; Mmanufacture of pneumatic rubber tires; Automobile and light duty truck manufacturing; Fire truck and emergency response vehicle manufacturing; Manufacture of high-density polyethylene, polypropylene, and polystyrene resins, a.k.a. polymer manufacturing; Leaks from synthetic organic chemical and polymer manufacturing equipment; Air oxidation processes at synthetic organic chemical manufacturing industries; and Equipment leaks from natural gas/gasoline processing plants. These negative declarations are approved into the Wisconsin ozone SIP.

(B) On June 30, 1994, Wisconsin submitted a list of facilities subject to the post-enactment source categories listed in Appendix E to the General Preamble. 57 FR 18070, 18077 (April 28, 1992). The list included facilities covered by the source categories cleanup solvents, offset lithography, plastic parts coating, and wood furniture coating. This list is approved into the Wisconsin ozone SIP.

[FR Doc. 95–18523 Filed 7–27–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 61

[FRL–5268–2]

Asbestos NESHAP Clarification of Intent

AGENCY: Environmental Protection Agency.

ACTION: Notice of clarification.

SUMMARY: On November 20, 1990, the **Federal Register** published the Environmental Protection Agency's (the Agency's) revision of the National Emission Standard for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M. 55 FR 48406. Since the publication of this revision, EPA has received several inquiries from municipalities regarding whether the "residential building exemption" from the asbestos NESHAP applies to the demolition or renovation of isolated residential buildings with four or fewer dwelling units ("small residential buildings") that have been declared safety hazards or public nuisances by local governments. EPA is publishing this notice to clarify that, in EPA's opinion, the demolition or renovation of an isolated small residential building by any entity is not covered by the asbestos NESHAP. This notice does not affect EPA's policy regarding demolition by fire. However, EPA also believes that the demolition or renovation of multiple (more than one) small residential buildings on the same site by the same owner or operator (or owner or operator under common control) is covered by the asbestos NESHAP.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Ripp, United States Environmental Protection Agency (2223A), 401 M Street, SW., Washington, DC 20460, telephone (202) 564–7003.

SUPPLEMENTARY INFORMATION: This clarification does not supersede, alter, or in any way replace the existing Asbestos NESHAP. This notice is intended solely as guidance and does not represent an action subject to judicial review under section 307(b) of the Clean Air Act or section 704 of the Administrative Procedure Act.

I. The Asbestos NESHAP and the "Residential Building Exemption"

On April 6, 1973, the Agency published its initial NESHAP for asbestos (38 FR 8820) after determining that asbestos was associated with asbestosis and certain cancers. The initial asbestos NESHAP covered "any institutional, commercial and industrial building (including apartment buildings having more than four dwelling units), structure, facility, installation or portion thereof * * *" 38 FR 8829 (codified at 40 CFR 61.22(d) (1973)). The NESHAP did not cover individual residential buildings containing four or fewer dwelling units. EPA based this "residential building exemption" on a National Academy of Sciences' Report which stated "[i]n general, single-family residential structures contain only small amounts of asbestos insulation." EPA stated that apartment houses with four or fewer dwelling units were considered to be equivalent to single-family residential structures. 38 FR 8821.

Since that time, EPA has revised the asbestos NESHAP on several occasions. EPA has not substantially revised the exemption for small residential buildings. However, EPA has stated that residential buildings demolished or renovated as part of larger projects, for instance, highway construction projects, were not exempt from the NESHAP. *See* Letter from John S. Seitz, Director, Stationary Source Compliance Division, U.S. EPA to Thomas S. Hadden, Supervisor, Division of Air Pollution Control, Ohio EPA, dated March 15, 1989; letter from Ann Pontius, U.S. EPA Region 5 to Thomas Hadden, dated September 28, 1988; letter from David Kee, Air Section, U.S. EPA to Richard Larson, Minneapolis Housing and Redevelopment Authority, dated May 16, 1973.

II. The 1990 Revisions to the Asbestos NESHAP

On November 20, 1990, EPA published a revision to the asbestos NESHAP. 55 FR 48406. The purpose of the revision was "to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls." *Id.* The revisions revised and added several definitions in order to clarify the requirements of the NESHAP. The preamble accompanying the revisions also contained clarifying information.

In particular, the 1990 revisions clarified the definition of "facility" to include:

> Any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units) * * *

Id. at 48415 (codified at 40 CFR 61.141). The 1990 amendments also added a definition of "installation" that stated:

> Installation means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

Id. (codified at 40 CFR 61.141). In responding to comments regarding the "residential building exemption," the preamble noted that:

> EPA does not consider residential structures that are demolished as part of a commercial or public project to be exempt from this rule. For example, the demolition of one or more houses as part of an urban renewal project, a highway construction project, or a project to develop a shopping mall, industrial facility, or other private development would be subject to the NESHAP. * * * The owner of a home that renovates his house or demolishes it to construct another house is not to be subject to the NESHAP.

Id. at 48412.[1] Further, in response to a comment asking whether a group of residential buildings at one location would be covered by the rule, the preamble stated:

> A group of residential buildings under the control of the same owner or operator is considered an installation according to the definition of "installation" and is therefore covered by the rule.

[1] EPA considers demolitions planned at the same time or as part of the same planning or scheduling period to be part of the same project. In the case of municipalities, a scheduling period is often a calendar year or fiscal year or the term of a contract.

Id.

III. Programs to Demolish or Renovate Residential Buildings

Since the publication of the 1990 revisions to the asbestos NESHAP, certain questions have arisen regarding whether demolitions or renovations of residential homes that are demolished or renovated by municipalities for reasons of public health, welfare or safety ("nuisance abatement demolitions") are covered by the asbestos NESHAP.[2] Several municipalities have stated that they believe such demolitions or renovations to be excluded from the NESHAP under the residential building exemption. Municipalities have also stated that EPA officials have been inconsistent in their determinations of this issue. In particular, officials from several municipalities in Florida have asked EPA to issue a notice clarifying EPA's interpretation of the asbestos NESHAP with regard to this issue. In addition, the House of Representatives Report accompanying H.R. 4624 (House Report 103–555, reported by the House Appropriations Committee), also noted these allegedly inconsistent interpretations and directed EPA to issue a notice of clarification that a nuisance abatement demolition or renovation does not subject an otherwise exempt structure to the asbestos NESHAP regulations. In an effort to clarify this issue for the regulated community, EPA is presenting this notice giving its interpretation of the NESHAP with regard to this issue.

IV. EPA Interpretation

EPA believes that individual small residential buildings that are demolished or renovated are not covered by the asbestos NESHAP. This is true whether the demolition or renovation is performed by agents of the owner of the property or whether the demolition or renovation is performed by agents of the municipality. EPA believes that the residential building exemption applies equally to an individual small residential building regardless of whether a municipality is an "owner or operator" for the purposes of the demolition or renovation. EPA believes that the exemption is based on the type of building being demolished or renovated and the type of demolition or renovation project that is being undertaken, not the entity performing or controlling the demolition or renovation.

However, EPA believes that the residential building exemption does not apply where multiple (more than one) small residential buildings on the same site[3] are demolished or renovated by the same owner or operator as part of the same project or where a single residential building is demolished or renovated as part of a larger project that includes demolition or renovation of non-residential buildings. The definition of facility specifically includes "any residential structure, installation or building" but excludes only "residential *buildings* having four or fewer dwelling units" [emphasis added]. *Id.* at 48415. Specifically not excluded from the definition of facility were residential *installations*. EPA believes that the fact that the residential building exemption is limited to residential *buildings*, and does not include residential *installations*, shows that the residential building exemption was not designed to exempt from the NESHAP demolitions or renovations of multiple buildings at a single site by the same owner or operator. Moreover, to the extent the regulations are ambiguous, EPA believes the language of the preamble to the 1990 regulations quoted above makes clear that the Agency interpreted the residential building exemption not to include the demolition of a group of residential buildings on the same site under the control of the same owner or operator. The preamble also notes that demolitions of residential buildings as a part of larger demolition projects (e.g. construction of a shopping mall) are not excluded from the NESHAP. EPA believes that this interpretation is consistent with the original purpose of the residential building exemption, which was to exempt demolitions or renovations involving small amounts of asbestos. EPA does not believe the residential building exemption was designed to exempt larger demolitions or renovations on a particular site, even where small residential buildings are involved.[4]

While this notice clarifies EPA's belief that certain demolitions or renovations performed by municipalities are not subject to the asbestos NESHAP, EPA encourages municipalities (and other owners and operators) to perform such demolitions or renovations in a manner that provides appropriate consideration for any potential adverse health impacts to the public. This notice applies only to the Federal asbestos NESHAP. Other Federal, State or local agency regulations may apply.

Dated: July 17, 1995.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–18620 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

[2] Demolition of such homes typically occur after a municipality orders a building condemned for public health or safety reasons (e.g. condemnation of a building that is abandoned and/or in danger of collapse). This type of demolition does not include demolitions of buildings for the purpose of building public facilities like highways or sports arenas.

[3] The term "site" is not defined in the regulations and EPA does not intend to provide any determination of the boundaries of a "site" in today's clarification. However, to provide guidance, EPA notes that a "site" should be a relatively compact area. In EPA's view, an entire municipality, or even a neighborhood in a municipality, should not be considered a single site. Where an area is made up of multiple parcels of land owned and operated by various parties, EPA believes that parcels on the same city block may be considered as a single site. (Where a site can not be easily defined as a city block, the site should be a comparably compact site. In any event, the local government should use common sense when applying this guide.) Obviously, EPA believes that if a demolition project involves the demolition of several contiguous city blocks, the entire area could be considered a site. However, EPA believes that demolition of two individual residences separated by several city blocks should not be considered a demolition on a single site. In EPA's view, the area of a site may be larger where the area is owned and operated as a unitary area by a single owner/operator (e.g. a shopping mall or amusement park).

[4] EPA notes that 40 CFR 61.19 forbids owners and operators from attempting to circumvent any NESHAPs by carrying out an operation in a piecemeal fashion to avoid coverage by a standard that applies only to operations larger than a specified size.

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40 CFR Part 81

[UT22–1–6925a; FRL–5285–5]

Designation of Area for Air Quality Planning Purposes; Utah; Designation of Ogden City PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this notice, EPA is revising the PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) National Ambient Air Quality Standards (NAAQS) designation for Ogden City, a portion of Weber County, Utah. Previously, consistent with section 107(d)(3)(A) of the Act, EPA notified the Governor of Utah that Weber County, Utah should be redesignated from unclassifiable to nonattainment for PM_{10}. The redesignation is based upon violations of the PM_{10} NAAQS which were monitored between January 1991 and January 1993.

DATES: This final rule will become effective on September 26, 1995 unless adverse comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, at the address listed below. Information supporting this action can be found at the following location: EPA Region VIII, Air Programs Branch, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202–2466.

The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1760.

SUPPLEMENTARY INFORMATION:

A. General

The EPA is authorized to initiate redesignation of areas (or portions thereof) as nonattainment for PM_{10} pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.

Following the process outlined in section 107(d)(3), on July 14, 1994, the Administrator of EPA Region VIII requested that the Governor of Utah recommend a PM_{10} nonattainment designation for Weber County based upon six exceedances of the 24-hour PM_{10} NAAQS recorded between January 1991 and January 1993, ranging from 156 to 182 μg/m3. Under section 107(d)(3)(B), the Governor of Utah was required to submit to EPA the designation he considered appropriate for Weber County within 120 days after EPA's notification. The Governor submitted a response recommending redesignation of Ogden City, Utah to nonattainment on January 9, 1995. Ogden City is within Weber County, but its boundaries are not coextensive with those of Weber County.

Section 107(d)(1)(A) sets out definitions of nonattainment, attainment, and unclassifiable. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for PM_{10}.[1] Further, section 107(d)(1)(A)(i) provides that a nonattainment area shall consist of that area violating the PM_{10} NAAQS or contributing significantly to violations in a nearby area. Generally, the PM_{10} nonattainment area boundaries are presumed to be, as appropriate, the county, township, or municipal subdivision in which the ambient particulate monitor recording the PM_{10} violations is located. EPA has presumed that this would include both the area violating the PM_{10} NAAQS and any area significantly contributing to the violations. However, a State may demonstrate that a boundary other than the county perimeter or municipal boundary may be more appropriate. Thus, in determining the appropriate boundaries for the nonattainment area, EPA has considered not only the area where the violations of the PM_{10} NAAQS are occurring, but nearby areas which significantly contribute to such violations. Based on the information provided by the Governor, including monitoring data, EPA believes that the nonattainment boundaries submitted by the Governor are appropriate at this time.

Note: The boundaries of the nonattainment area may be adjusted as a result of analyses made during the SIP development process.

B. Background for PM_{10}

On July 1, 1987, the EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM_{10}, that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. At the same time, EPA set forth the regulations for implementing the revised particulate matter standards and announced EPA's State Implementation Plan (SIP) development policy, elaborating PM_{10} control strategies necessary to assure attainment and maintenance of the PM_{10} NAAQS (see generally 52 FR 24672). The EPA adopted a PM_{10} SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM_{10} NAAQS and requiring substantial SIP adjustment were placed in Group I; (2) areas that might well have been attaining the PM_{10} NAAQS and whose existing SIPs most likely needed less adjustment were placed in Group II; and (3) areas with a strong likelihood of attaining the PM_{10} NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679–24682). At that time, Ogden City was categorized as a Group III area.

Pursuant to section 107(d)(4)(B) of the Act, areas previously identified as Group I and other areas which had monitored violations of the PM_{10} NAAQS prior to January 1, 1989, were, by operation of law upon enactment of the 1990 Amendments, designated nonattainment for PM_{10}. All other areas of the Country, such as the Ogden City area, were similarly designated unclassifiable for PM_{10} (see section 107(d)(4)(B)(iii) of the Act; 40 CFR 81.327 (1992) as amended by 57 FR 56762, 56772 (Nov. 30, 1992) (PM_{10} designations for Utah).) After EPA adopted the PM_{10} NAAQS, EPA identified and listed the Group I and Group II areas in a **Federal Register** document published on August 7, 1987, (52 FR 29383). In that document, EPA indicated that Group III areas consisted of that portion of a State not placed in Group I or II. Descriptions of the areas identified as Group I and II areas were later clarified in a **Federal Register** document dated October 31, 1990 (55 FR 45799). That notice also identified Group II areas which violated the standards prior to January 1, 1989. EPA announced all areas which were designated nonattainment by operation of law for PM_{10} upon enactment of the 1990 Amendments in a **Federal Register** document dated March 15, 1991 (56 FR 11101). In addition, EPA has published a follow-up document correcting the boundaries and designations of some of the areas in light of comments received addressing the March 1991 document (see 56 FR 37654 (August 8, 1991).) Formal codification in 40 CFR part 81 of those areas designated nonattainment for PM_{10} by operation of law upon enactment was announced in a **Federal Register** document dated November 6, 1991, (56 FR 56694). The November 6, 1991 **Federal Register** document was subsequently amended on November 30, 1992 (57 FR 56762).

II. Final Action

As noted above, pursuant to section 107(d)(3) of the Act, EPA is authorized to initiate the redesignation of areas as nonattainment for PM_{10}. Based on six exceedances of the 24-hr PM_{10} NAAQS recorded between January 1991 and January 1993, EPA notified the Governor of Utah on July 14, 1994, that the air quality designation for Weber County should be revised from unclassifiable to nonattainment for PM_{10} (see 40 CFR 50.6.). In response to EPA's July 14, 1994, letter, EPA received a letter dated January 9, 1995, from the Governor of Utah requesting that Ogden City, in a portion of Weber County,

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

Utah, be redesignated as nonattainment for PM_{10}. EPA is taking final action to redesignate Ogden City, Utah to nonattainment for PM_{10}.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to redesignate the area to nonattainment should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective September 26, 1995 unless, by August 28, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 26, 1995.

III. Significance of This Action for Ogden City, Utah

Ogden City is being redesignated as a moderate PM_{10} nonattainment area. Utah must submit an implementation plan to EPA for this area within 18 months after the effective date of this nonattainment redesignation. The plan must meet the requirements of Part D, Title I of the Act (see section 189(a)(2)(B) of the Act).

The Clean Air Act provides that the plan for the area must contain, among other things, the following requirements:

1. Either a demonstration (including air quality modeling) that the plan will provide for attainment of the PM_{10} NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable;

2. Provisions to ensure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of the redesignation;

3. A permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM_{10}; and

4. Quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 171(l), toward timely attainment.

See, *e.g.*, sections 188(c), 189(a), 189(c) and 172(c) of the Act. EPA has issued detailed guidance on the statutory requirements applicable to moderate PM_{10} nonattainment areas. (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).)

In taking final action to redesignate Ogden City as nonattainment, EPA is also establishing a date by which the State must submit the contingency measures required by section 172(c)(9) of the Act (see 57 FR 13498 at 13510–13512 and 13543–13544). Section 172(b) of the Act provides that such date shall not be later than 3 years from the date of the nonattainment redesignation. The due date established for submittal of the contingency measures is 18 months from this redesignation. This due date coincides with the due date for the rest of the moderate PM_{10} nonattainment area SIP.

VI. Other Regulatory Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not in itself, impose any regulatory requirements on sources. To the extent that the State must adopt new regulations based on the area's nonattainment status, EPA will review the effect of those actions on small entities at the time the State submits those regulations. I certify that approval of the redesignation request will not affect a substantial number of small entities.

B. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments in the aggregate, or for the private sector, in any one year. Redesignation of an area to nonattainment under section 107(d)(3) of the Clean Air Act affects the air quality planning status of an area and does not, in itself, impose any regulatory requirements on sources and, therefore, does not impose any mandates or costs on the private sector. Redesignation of an area to nonattainment, however, does trigger an obligation of the State to develop, adopt and submit to EPA certain State Implementation Plan revisions under part D of title I of the Clean Air Act. EPA has determined that the cost to the State government of developing, adopting and submitting any necessary State Implementation Plan revisions will not exceed $100 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because only the State government has to take any action as a result of today's rule.

C. Petition Language

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order 12866

The OMB has exempted this action from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 19, 1995.

Jack McGraw,

Acting Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.345 the table for Utah–PM–10 Nonattainment Areas is amended by adding an entry for Weber County to read as follows:

§ 81.345 Utah.

* * * * *

Utah–PM–10 Nonattainment Areas

Designated area	Designation date	Designation type	Classification date	Classification type
* * * * *				
Ogden Area Weber County (part) city of Ogden.	September 26, 1995	Nonattainment	September 26, 1995	Moderate.
* * * * *				

* * * * *

[FR Doc. 95–18520 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5205–4]

Protection of Stratospheric Ozone; Acceptable Substitutes for the Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This notice expands the list of acceptable substitutes for ozone depleting substances (ODSs) under the Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990, which requires EPA to evaluate substitutes for the ODSs, and regulate the use of substitutes where other alternatives exist that reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors.

On March 18, 1994, EPA promulgated its plan for administering the SNAP program, and issued decisions on the acceptability and unacceptability of a number of substitutes (59 FR 13044). In today's Notice, EPA issues decisions on the acceptability of substitutes not previously reviewed by the Agency. The intended effect of this action is to expedite movement away from ozone depleting compounds. To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media sector end-use screening assessment of risks to human health and the environment.

EFFECTIVE DATE: July 28, 1995.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street SW., Washington, D.C. 20460. Telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jeffrey Levy at (202) 233–9727 or fax (202) 233–9577, U.S. EPA, Stratospheric Protection Division, 401 M Street SW., Mail Code 6205J, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Section 612 Program
  A. Statutory Requirements
  B. Regulatory History
II. Listing of Acceptable Substitutes
  A. Refrigeration and Air Conditioning
  B. Fire Suppression and Explosion Protection
  C. Medical Sterilants
III. Substitutes Pending Review
IV. Additional Information
Appendix A: Summary of Acceptable and Pending Decisions

Section 612 Program

Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

• *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in the final rule for the SNAP program (59 FR 13044), EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

EPA published Notices listing acceptable alternatives on August 26, 1994, and January 13, 1995, and published a Notice of Proposed Rulemaking restricting the use of certain substitutes on September 26, 1994.

II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes for class I substances in the following industrial sectors: refrigeration and air conditioning, foam blowing, fire suppression and explosion protection; sterilants. These decisions represent substitutes not previously reviewed and add to the lists of acceptable substitutes under SNAP. For copies of the full list, contact the EPA Stratospheric Protection Hotline at the number listed in Section IV of this Notice.

Parts A through C below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing listing decisions in this Notice are in Appendix A. The comments contained in Appendix A provide additional information on a substitute, but like the listings themselves, are not regulatory in nature. Thus, adherence to recommendations in the comments are not mandatory for use of a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

Please refer to the final SNAP rule for detailed information pertaining to the designation of end-uses, additional requirements imposed under sections 608 and 609, and other information related to the use of alternative refrigerants.

1. Acceptable

a. Volatile Methylsiloxanes. *Octamethylcyclotetrasiloxanes and decamethylcyclopentasiloxanesare acceptable as substitutes for CFC–11, CFC–12, CFC–113, CFC–114, CFC–115 in new and retrofitted heat transfer systems.* This class of compounds was reviewed under the risk screen for solvent cleaning and was found acceptable. That end-use is generally more emissive than heat transfer uses. Thus, EPA anticipates that VMS will pose lower risk in this end-use.

b. Water. *Water is acceptable as a substitute for CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 in new and retrofitted heat transfer systems.*

c. Mineral Oil. *Mineral oil is acceptable as a substitute for CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 in new and retrofitted heat transfer systems.* Mineral oil has been used for decades as a heat transfer fluid. It is low in toxicity and poses no ozone depletion or global warming potentials. Note that local fire codes may contain requirements related to the use of mineral oil.

d. R–508. *R–508, which contains HFC–23 and R–116, is acceptable as a substitute for CFC–13, R–13B1, and R–503 in retrofitted and new industrial process refrigeration.* Both components of this blend exhibit extremely high GWPs and long lifetimes. HFC–23 has a GWP of 9,000 and a lifetime of 280 years, and R–116, perfluoroethane, has a GWP of 9,000 and a lifetime of 10,000 years. EPA believes this blend could significantly contribute to global warming if allowed to escape refrigeration systems. In addition, the long lifetimes of R–116 and HFC–23 mean any global warming or other effects would be essentially irreversible. While the current rule issued under section 608 of the CAA does not require recycling and recovery of this blend, or leak repair for systems using it, EPA strongly encourages users to anticipate future rulemakings with voluntary compliance. In particular, EPA urges users to reduce leakage and recover and recycle this blend during equipment servicing and upon the retirement of equipment. This blend is nonflammable and does not deplete ozone.

e. Ammonia Absorption. *Ammonia absorption is acceptable as an alternative technology to household refrigerators and freezers using CFC–12 as a refrigerant.* This technology has been used for years in hotels, college dormitories, and other small spaces.

B. Fire Suppression and Explosion Protection

1. Acceptable

a. Total Flooding Agents. (1) Water Mist Using Potable Water or Natural Seawater. *Water Mist Systems using Potable Water or Natural Seawater are acceptable as a Halon 1301 substitute.* At EPA's request, manufacturers of water mist systems and other industry partners convened a medical panel to address questions posed by EPA concerning the potential physiological effects of inhaling very small water droplets in fire and non-fire scenarios. Disciplines represented on the Panel included inhalation toxicology, pulmonary medicine, physiology, aerosol physics, fire toxicity, smoke dynamics, and chemistry, with members coming from the commercial, university and military sectors.

The Executive Summary (draft "Water Mist Fire Suppression Systems Health Hazard Evaluation;" HARC, US Army, NFPA; March 1995) states: "The overall conclusion of the Health Panel's review is that ... water mist systems using pure water do not present a toxicological or physiological hazard and are safe for use in occupied areas. The Panel does not believe that additional studies are necessary to reach this conclusion. The Health Panel recommends that additives be evaluated on a case-by-case basis depending on the toxic properties of the additive and the concentration at which it is used."

EPA has determined that the Panel's findings are credible and significant, and thus is adopting its conclusions as the basis to this ruling. In order to clarify the practical meaning of the panel's recommendation, EPA is defining "pure water" as either water that is potable (drinkable) or as natural seawater, that is, water coming from the sea. Thus, EPA is listing water mist systems composed of potable water and natural sea water as acceptable without restriction. However, water mist systems containing additives different than those in potable water, and water mist systems comprised of mixtures in solution, must be submitted to EPA for SNAP review on a case-by-case basis. At this time, no such submissions have been received by the agency.

(2) [Water Mist/Surfactant Blend] A. *[Water Mist/Surfactant Blend] A is acceptable as a Halon 1301 substitute in normally unoccupied areas.* Water mist systems with additives are beginning to be developed for use in applications such as the engine compartments of a variety of vehicles and in machinery spaces. Following the positive peer review of water mist particles, and considering the particular use in unoccupied areas, EPA is listing this agent as acceptable in such normally unoccupied areas. Consideration for use in occupied areas is pending a medical peer review panel.

b. Streaming Agents. (1) Water Mist Systems Using Potable Water or Natural Seawater. *Water Mist systems using potable water or natural sea water are acceptable as a Halon 1211 substitute.* See the discussion under "Total Flooding Agents," above.

C. Medical Sterilants

1. Acceptable

(a) Peroxyacetic Acid/Hydrogen Peroxide Gas Plasma Systems. *Peroxyacetic Acid/Gas Plasma Systems are acceptable as a 12/88 substitute for medical sterilization.* Peracetic acid/hydrogen peroxide solutions are in widespread use as sanitizers and disinfectants in food processing establishments and medical facilities. As they are currently manufactured, transported, and handled safely, incorporation of such solutions into medical sterilizing equipment should not pose increased risk of exposure either during value-added packaging or during use.

(b) Hydrogen Peroxide Gas Plasma Systems. *Hydrogen Peroxide Gas Plasma Systems are acceptable as a 12/88 substitute for medical sterilization.* Such systems are recognized by the Food and Drug Administration (FDA) as acceptable to proceed to market, and EPA has determined that they pose no unusual risk to human health or the environment.

III. Substitutes Pending Review

The Agency describes submissions as pending if data are incomplete or for which the 90-day review period is underway and EPA has not yet reached a final decision. For submissions that are incomplete, the Agency will contact the submitter to determine a schedule for providing the missing information if the Agency needs to extend the 90-day review period. EPA will use its authority under section 114 of the Clean Air Act to gather this information, if necessary. Any delay of the review period does not affect a manufacturer's ability to sell a product 90 days after notification of the Agency. Substitutes currently pending completion of review are listed in Appendix A.

IV. Additional Information

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Standard Time) weekdays.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This Notice can also be retrieved electronically from EPA's Technology Transfer Network (TTN), Clean Air Act Amendment Bulletin Board. If you have a 1200 or 2400 bps modem, dial (919) 541–5742. If you have a 9600 bps modem, dial (919) 541–1447. For assistance in accessing this service, call (919) 541–5384. Finally, this notice may be obtained on the World Wide Web at http://www.epa.gov/docs/Ozone/index.html.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: July 18, 1995.

Mary D. Nichols,

Assistant Administrator.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A: Summary of Acceptable and Pending Decisions

Refrigeration and Air Conditioning—Acceptable Substitutes

End-use	Substitute	Decision	Comments
CFC–11, CFC–12, CFC–113, CFC–114, CFC–115 Non-Mechanical Heat Transfer (Retrofit and New Equipment Designs/NIKs).	Volatile Methyl Siloxanes ..	Acceptable.	
	Water	Acceptable.	
	Mineral Oil	Acceptable.	
CFC–13, R–13B1, and R–503 Industrial Process Refrigeration and Very Low Temperature Refrigeration (Retrofit and New Equipment/NIKs).	R–508	Acceptable	EPA strongly recommends the containment and reclamation of this substitute.
CFC–12 Household Refrigerators and Freezers, New Equipment/NIKs.	Ammonia absorption	Acceptable.	

Refrigeration and Air Conditioning—Pending Decisions

Application	Substitute	Comments
All CFC–12 End-Uses	Blend Zeta	EPA has requested additional data.
Heat Transfer	HCFC–225.	
Motor Vehicle Air Conditioning	R–406A, HCFC Blend Delta	MVAC refrigerants will be used in accordance with use conditions, which require full notice-and-comment rulemaking.

Foam Blowing—Pending Substitutes

End-use	Substitute	Comments
HCFCs, Polyurethane and Polyisocyanurate Laminated Boardstock Foam.	HFC–134a/HFC–143a Blend.	
HCFCs, Rigid Polyurethane Appliance Foam ..	HFC–134a/HFC–143a Blend.	
HCFCs, Rigid Polyurethane Commercial Refrigeration, Spray and Sandwich Panel Foam.	HFC–134a/HFC–143a Blend.	
HCFCs, Rigid Polyurethane Slabstock and Other Foam.	HFC–134a/HFC–143a Blend.	
HCFCs, Polyolefin Foams	HFC–134a/HFC–143a Blend.	
HCFCs, Polyurethane Flexible Foams	HFC–134a/HFC–143a Blend.	
HCFCs, Polyurethane Integral Skin	HFC–134a/HFC–143a Blend.	

Fire Suppression and Explosion Protection—Acceptable Substitutes

End-use	Substitute	Decision	Comments
Halon 1211, Streaming Agents	Water Mist Systems using Potable or Natural Sea Water.	Acceptable.	
Halon 1301	Water Mist Systems using Potable or Natural Sea Water.	Acceptable.	
Total Flooding Agents	[Water Mist Surfactant Blend] A	Acceptable in Normally Unoccupied Areas.	

Fire Suppression and Explosion Protection Pending Substitutes

End-use	Substitute	Comments
Halon 1211	CF_3I	Will be proposed acceptable in nonresidential applications in a forthcoming rulemaking.
Streaming Agents	HFC–227ea	Complete SNAP submission and personal monitoring data required.
	[Water Mist/Surfactant Blend] A	Pending review by EPA
	Water Mist with Additives	Must be individually submitted to EPA and reviewed on a case-by-case basis.
Halon 1301	[HFC Blend] A	Pending receipt of further data requested by the Agency.
Total Flooding Agents	IG–55 (formerly [Inert Gas Blend] B).	Proposed Acceptable (forthcoming).
	IG–01 (formerly [Inert Gas Blend] C).	Proposed Acceptable (forthcoming).

Fire Suppression and Explosion Protection Pending Substitutes—Continued

End-use	Substitute	Comments
	[Water Mist Surfactant Blend] A	Pending peer review for use in normally occupied areas.
	Water Mist Systems with Additives	Must be individually submitted to EPA and reviewed on a case-by-case basis. No submissions have been received to date.

Solvent Cleaning—Pending Substitutes

End-use	Substitute	Comments
Metals cleaning w/ CFC–113, MCF, and HCFC–141b.	HCFC–122	Agency is still reviewing ODP. This HCFC is a new chemical and must also complete Premanufacture Notice requirements under the Toxic Substances Control Act.
	HFC–4310mee	SNAP/Premanufacture Notice review under the Toxic Substances Control Act nearly completed.
Electronics cleaning w/ CFC–113, MCF and HCFC–141b.	Perfluoropolyethers	Agency evaluating global warming concerns.
Electronics cleaning w/ HCFC–141b.	Perfluorocarbons (C5F12, C6F12, C8F14, C7F16, C8F18, C5F11NO, C8F13NO, C7F15NO, and C8F16).	Agency in process of evaluating global warming concerns.
Precision cleaning w/ CFC–113, MCF.	HCFC–122	Agency is still reviewing ODP. This HCFC is a new chemical and must also complete Premanufacture Notice requirements under the Toxic Substances Control Act.
	HFC–4310mee	SNAP and Premanufacture Notice review under the Toxic Substances Control Act is nearly completed.
	Chlorobromomethane	EPA is completing a more detailed analysis on the range of ODP for this substitute and is reviewing updated information on the toxicity of this substitute.
Precision cleaning w/ HCFC–141b	Perfluorocarbons (C5F12, C6F12, C6F14, C7F16, C8F18, C5F11NO, C6F13NO, C7F15NO, and C8F16).	Agency in proces of evaluating global warming concerns.

Sterilants—Acceptable Substitutes

End-use	Substitute	Decision	Comments
12/88 CFC–12/Ethylene Oxide	Peroxyacetic Acid/Hydrogen Peroxide Gas Plasma Systems.	Acceptable.	
Sterilants	Hydrogen Peroxide Gas Plasma Systems.	Acceptable.	

Sterilants—Pending Substitutes

End-use	Substitute	Comments
12/88 CFC–12/Ethylene Oxide	HFC–125/EtO	Awaiting FIFRA registration.
Sterilants	HFC–227ea/EtO	Awaiting FIFRA registration.

Aerosols—Pending Substitutes

End-use	Substitute	Comments
CFC–11, HCFC–22, and HCFC–142b.	SF6	Review nearly completed; extremely high GWP is major consideration. Compressed gas a viable alternative.
CFC–113, MCF, HCFC–141b as solvents.	HCFC–225	EPA evaluating feasibility of controling occupational exposures during use.
	Volatile methyl siloxanes	EPA evaluating feasibility of controling occupational exposures during use.
	Perfluoropolyethers	EPA evaluating global warming concerns.

[FR Doc. 95–18617 Filed 7–27–95; 8:45 am]
BILLING CODE 6820–80–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Parts 201, 206, 246, 253, 275, 276, 285, and 290

[Docket No. R–160]

RIN 2133–AB20

Removal of Obsolete Regulations

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final Rule.

SUMMARY: In connection with the President's Regulatory Reinvention Initiative, the Maritime Administration (MARAD) has reviewed all of its existing regulations. This review identified regulations in 46 CFR Chapter II, or portions thereof, that are being removed because they are obsolete and noncontroversial.

DATES: This final rule is effective on July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Edmund T. Sommer, Jr. Chief, Division of Regulations and Administrative Law, Telephone: 202–366–5181.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton directed the heads of Federal departments and agencies, as part of the Administration's ongoing Regulatory Reinvention Initiative, "to conduct a page-by-page review of all of your agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform." As part of the Department of Transportation's effort, MARAD has conducted a page-by-page review of all of its regulations and has identified obsolete regulations for removal, by part, subpart, section or portion of a section, as follows:

46 CFR Part 201—Rules of Practice and Procedure

Sections 201.4. Inspection of records, 201.5 Searching, copying, and certification of record fees therefore, and 201.186 Charges for documents, are being removed since they cite sections in 46 CFR Part 380 that have been removed and/or concern fees that are covered by the Department's Freedom of Information Act regulations at 49 CFR Part 7, Subpart I—Fees.

Sections 201.21 and 201.23. Persons not attorneys at law and Hearings, respectively, are being removed since they cover the practice in MARAD proceedings by practitioners, other than attorneys, who have actually never represented parties in these proceedings.

Section 201.25. Statement of interest relates to disclosures by practitioners before MARAD. The last sentence is obsolete and is being removed since it cites section 807 of the Merchant Marine Act, 1936, which has been repealed.

46 CFR Part 206—Miscellaneous Fees

This Part is being removed. The fee charged for special statistical data in Subpart A is covered by the Department's Freedom of Information Act regulations at 46 CFR Part 7, Subpart I—Fees. Subpart B—Charges for Copies of Regulations—relates to obtaining copies of orders that MARAD no longer issues. MARAD no longer processes applications covered by Subpart C, which requires a fee of $400 to process applications by owners for the sale of subsidized vessels to a private party where appraisal is made for MARAD by an independent vessel appraiser.

46 CFR Part 246—Formulas for Determining Sea Speed of Vessels

This Part is being removed since MARAD no longer uses the procedure set forth.

46 CFR Part 253—Requirements for Maintaining Boom Lifting Capacities and Other Features, and Part 275—Outfitting Material and Equipment for Construction-Differential Subsidy Vessels

These Parts apply to the construction-differential subsidy (CDS) program. These Parts are being removed since CDS is no longer funded.

46 CFR Part 276—Construction-Differential Subsidy Repayment

Section 276.3. Total repayment is being removed since the regulation was time constrained and that time has expired (June 5, 1986).

46 CFR Part 285—Determination of Profit in Contracts and Subcontracts for Construction, Reconditioning and Reconstruction of Ships

This Part is being removed since MARAD no longer uses the procedure.

46 CFR Part 290—Forms

This Part is being removed since the construction-differential subsidy and operating-differential subsidy programs to which the forms relate are not subject to new contract awards.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It is not considered to be a significant rule under the Department's Regulatory Policies and Procedures.

MARAD has determined that this rulemaking presents no substantive issue which it could reasonably expect would produce meaningful public comment since it is merely removing, pursuant to a Presidential directive, regulations or portions thereof that are obsolete, retention of which could serve no useful purpose. Accordingly, pursuant to 5 U.S.C. 553(c) and (d), Administrative Procedure Act, MARAD finds that good cause exists to publish this as a final rule, without opportunity for public comment, and to make it effective on the date of publication.

This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Parts 201, 206, 246, 253, 275, 276, 285 and 290

Part 201—Administrative practice and procedure.

Part 206—Administrative practice and procedure.

Part 246—Maritime carriers, Measurement standards, National defense.

Part 253—Maritime carriers, National defense.

Part 276—Grant programs—transportation, Maritime carriers.

Part 285—Administrative practice and procedure, Maritime carriers, Reporting requirements, Uniform system of accounts.

Part 290—Government contracts, Maritime carriers.

Accordingly, for the reasons set forth in the preamble, MARAD is taking the following action:

1. The authority for 46 CFR Part 201 is revised to read as follows:

Authority: 46 App. U.S.C. 1114(b); 49 CFR 1.66.

2. The authority for 46 CFR Part 276 is revised to read as follows:

Authority: 46 App. U.S.C. 1114(b), 1117, 1156, and 1204; 49 CFR 1.66.

TITLE 46

PARTS 201, 276—[AMENDED]

PARTS 206, 246 253, 275, 285, 290—[REMOVED]

3. In Title 46 of the Code of Federal Regulations, in part 201, remove and reserve sections 201.4, 201.5, 201.23 and 201.86, and remove the last sentence of section 201.25.

4. In part 276, remove section 276.3.

5. Under the authority of 46 app. U.S.C. 1114(b) parts 206, 246, 253, 275, 285 and 290 are removed.

By Order of the Maritime Administrator.

Dated: July 24, 1995.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 95–18555 Filed 7–27–95; 8:45 am]
BILLING CODE 4910–81–P

46 CFR Parts 345, 346, and 347

[Docket No. R–165]

RIN No. 2133–AB15

Federal Port Controllers; Clarification of the Event That Allows the Activation of the Federal Port Controller Service Agreements

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule amends the Maritime Administration's (MARAD) Federal Port Controllers regulations at 46 CFR Part 346, and provides a harmonizing amendment to the definition of "Federal Port Controller" in Part 345. These regulations now provide that, when needed during the existence of a state of war or national emergency proclaimed by the President of the United States, certain port facilities in the United States shall be controlled and used exclusively by the Federal Government, operating through the National Shipping Authority (NSA) of MARAD, pursuant to provisions of service agreements between the Director, NSA, and Federal Port Controllers appointed by MARAD. The regulations in Part 340 establish procedures for assigning priority for use by defense agencies, when appropriate, on commercial terms, of commercial shipping services, containers and chassis, port facilities and services, and for allocating commercial vessels services, containers and chassis, and port facilities and services for exclusive use by defense agencies. The amendments to Parts 345 and 346 will allow, at MARAD's discretion, the activation of standby service agreements between the United States of America and port authorities or private corporations in connection with the deployment of the Armed Forces of the United States or other requirements of the nation's defense. This is the same activation trigger as in Part 340—Priority Use and Allocation of Shipping Services, Containers and Chassis, and Port Facilities and Services for National Security and National Defense Related Operations.

DATES: This final rule is effective on August 28, 1995.

FOR FURTHER INFORMATION CONTACT: John Pisani, Director, Office of Ports and Domestic Shipping, Maritime Administration, Washington, DC. 20590. Telephone: (202) 366–4357.

SUPPLEMENTARY INFORMATION: These amendments to MARAD's regulations at 46 CFR subchapter I–B are necessary because the event that allows activation of the Federal Port Controller service agreements is not consistent with the event that activates the priority use and allocation regulations in part 340.

Under non-emergency conditions, the public ports of the United States are administered, under a wide variety of authorities, by their respective state governments. The wide variance in their responsibilities, jurisdictions, operations and managements reflects the differences of the various governing bodies. The various contingency Federal procedures administered by MARAD are intended to assert reasonable, uniform, limited Federal administration of the otherwise diverse U.S. network of public ports in an emergency which affects the national interest. The procedures are set forth under three interdependent documents:

1. Special inter-agency coordination required under emergency circumstances is established through the Memorandum of Understanding on Port Readiness. These procedures are in effect at all times.

2. Use of real port property and related services are assured through the regulations at 46 CFR part 340, addressing the priority use and allocation of port facilities, as well as shipping services and containers and chassis. These procedures can become operative in the event of the deployment of the Armed Forces of the United States or other requirements of the nation's defense.

3. Limited Federal administration of the U.S. network of public ports is achieved by the standby Federal Port Controller procedures set forth in a "Service Agreement, Federal Port Controller", in 46 CFR part 346. At present, these procedures can only be activated upon the declaration of war or national emergency.

Proposed Rule and Comments

MARAD published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on November 18, 1994 (59 FR 59742), noting that the present disparity with respect to the event that triggers the activation of contingency Federal procedures under 46 CFR parts 340 and 346, respectively, can create confusion. The present procedures set forth in 46 CFR part 340 can become operative without a Presidential declaration of emergency to eliminate potential adverse delay, while the activation of Federal Port Controller service agreements in 46 CFR part 346 requires a "declaration of war or national emergency." The NPRM noted that events during Operations DESERT SHIELD/DESERT STORM showed that the Government would not have had the authority to obtain needed priority utilization of port facilities, shipping services and containers in a timely manner with the present Part 346

requirement for a declaration of war or national emergency.

At the local port level, the official named to become the Federal Port Controller in an emergency is a key MARAD official who represents the agency in the execution of a Memorandum of Understanding on Port Readiness. If it becomes necessary to exercise the service priority or allocation authorities of 46 CFR part 340, the Federal Port Controller could act as the local Federal agent. Since, under existing regulations, it is impossible to activate service agreements with Federal Port Controllers unless an emergency has been declared, it would also be impossible to use the services of the Federal Port Controllers to assist in the allocation of priority of service requirements which may be needed during a deployment. The amendments to Part 346 will allow, but not necessitate, activation of selected contracts if a deployment is in progress, without the required declaration of an emergency.

MARAD received comments from four port authorities located in the North Atlantic and South Atlantic regions. Two of the port authorities were in full support of the rulemaking as proposed. One port authority expressed concern, that using the deployment of the Armed Forces of the United States as the triggering event for activation of the standby service agreements could impose a potential burden on the designated Federal Port Controllers, since the frequency of possible deployment appears to far exceed that of declarations of national emergencies.

While MARAD acknowledges that a purpose for harmonizing the triggering mechanism for authorizing activation of these service agreements with part 340 activations is to allow activations under broadened circumstances, such activations would occur only in response to the national needs of the United States.

Another commenter was of the view that the existing terms of the service agreement were adequate and that the change proposed by MARAD will cause confusion and misunderstanding between port terminals and participants in military operations. MARAD cannot agree with this prediction and believes that just the opposite will occur. The proposed amendments to part 346 will harmonize the timing of the activation of service agreements with MARAD's regulations at 46 CFR part 340 governing the priority use and activation of shipping services, containers and chassis, and port facilities and services. It should actually diminish confusion and misunderstandings and will provide more flexibility in responding to the need for U.S. deployment of troops when there is no formal declaration of war or national emergency.

Accordingly, MARAD is adopting, as a final rule without change, the amendments to 46 CFR parts 345 and 346 set forth in the NPRM, together with amendments to section 2(a) of part 346 to correct an obsolete reference to former Title 32A of the CFR. There are also amendments to the authority citations in 46 CFR parts 345, 346 and 347 to give recognition to the repeal of the Federal Civil Defense Act of 1950 and its reenactment in different form.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been reviewed under Executive Order 12866 (Regulatory Planning and Review). It is not considered to be an economically significant regulatory action under Section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule would not significantly affect other Federal agencies; would not materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in E.O. 12866; and has been determined to be a nonsignificant rule under the Department's Regulatory Policies and Procedures. Accordingly, it is not considered to be a significant regulatory action under E.O. 12866.

This rule did not require review by the Office of Management and Budget (OMB) under Executive Order 12866.

Federalism

MARAD has analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

MARAD has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no new reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1080 (44 U.S.C. 3501, et seq.).

List of Subjects in 46 CFR Parts 345, 346 and 347

Freight, Harbors, Maritime carriers, and National defense.

Accordingly, MARAD proposes to amend 46 CFR parts 345, 346 and 347 as follows:

PART 345—[AMENDED]

1. The authority citation for part 345 is revised to read as follows:

Authority: The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061, *et seq.*); E.O. 12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); E.O. 12919, section 201(a), June 3, 1994, 59 FR 29525; 49 CFR 1.45(5).

§1 [Amended]

2. Sec. 1(c) is amended by removing the words "in time of national emergency," and adding in their place the words "upon deployment of the Armed Forces of the United States, or other requirements of the nation's defense."

PART 346—[AMENDED]

1. The authority citation for part 346 is revised to read as follows:

Authority: The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061, et seq.); E.O.12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); E.O. 12919, section 201(a), June 3, 1994, 59 FR 29525; 49 CFR 1.45(5).

§2 [Amended]

2. Sec. 2, *Definitions*, is amended as follows:

(a) In paragraph (a) by removing the words "port facilities" when they first appear and reference to section "1(e) of 32A CFR part 1901," and adding in its place the words "port facilities and services" and the reference to section "340.2(o) of 46 CFR Part 340"; and

(b) in paragraph (b) *Federal Port Controller*, by removing the words "in time of war and national emergency" and adding in their place the words "in connection with the deployment of the Armed Forces of the United States, or other requirements of the nation's defense."

3. Sec. 3 is revised to read as follows:

§3 Standby agreements.

The Director, NSA, may negotiate the standard form of service agreement, specified in section 4, with port authorities on a standby basis, prior to the deployment of the Armed Forces of the United States, or other requirements of the nation's defense. In such cases, the contractor accepts the obligation to maintain a qualified incumbent in the position specified in Article 1 of the service agreement and to be prepared to furnish the resources specified in Articles 4 and 5. An agreement executed on a standby basis may become operational in connection with the deployment of the Armed Forces of the United States, or other requirements of the nation's defense. An agreement executed after the deployment of the Armed Forces of the United States, or other requirements of the nation's defense may be operational upon execution.

§4 [Amended]

4. Sec. 4, Service Agreements, is amended as follows: a. In Article 4(a), by removing the words "war effort or declared national emergency," and adding in their place the words "deployment of the Armed Forces of the United States, or other requirements of the nation's defense."

b. In Article 12, in paragraphs (b)(1) and (b)(2), by removing, in each paragraph, the words "period of war or national emergency," and adding in their place the words "deployment of the Armed Forces of the United States, or other requirements of the nation's defense."

PART 347—[AMENDED]

The authority citation for Part 347 is revised to read as follows:

Authority: The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061, *et seq.*); E.O. 12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); E.O. 12919, section 201(a), June 3, 1994, 59 FR 29525; 49 CFR 1.45(5).

By Order of the Maritime administrator.
Dated: July 24, 1995.

Joel C. Richard,
Secretary, Maritime Administration.

[FR Doc. 95–18554 Filed 7–27–95; 8:45 am]
BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 92–237; FCC 95–283]

Administration of the North American Numbering Plan

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: On July 13, 1995, the Commission adopted a Report and Order (Order) regarding administration of the North American Numbering Plan. This document gives notice of the Order which adopted a model for administration of telephone number resources by establishing the North American Numbering Council and requiring a neutral North American Numbering Plan Administrator. This action fosters competition and new services in the telecommunications marketplace by ensuring pro-competitive and impartial administration of crucial numbering resources.

EFFECTIVE DATE: August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Mike Specht (Senior Engineer) 202–634–1816, Scott A. Shefferman (Attorney) 202–634–1952 or Elizabeth Nightingale (Attorney) 202–634–1832, Domestic Facilities Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Report and Order in the matter of Administration of the North American Numbering Plan, (CC Docket 92–237, adopted July 13, 1995, and released July 13, 1995). The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., NW., Washington, DC, or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., NW., Suite 140, Washington, DC 20037, phone 202–857–3800.

Analysis of Proceeding

On September 26, 1991, the National Association of Regulatory Utility Commissioners petitioned the Commission to begin a broad inquiry into administration of the North American Numbering Plan (NANP). The NANP is the basic numbering scheme that permits interoperable telecommunications service within the United States, Canada, Bermuda and most of the Caribbean. Administration of the NANP is currently performed by Bell Communications Research, Inc. (Bellcore), a research company owned by the seven regional Bell Operating Companies. On October 29, 1992, the Commission released a Notice of Inquiry (NOI), summarized at 57 FR 53462 (Nov. 10, 1992), to explore several long range issues related to administration of the NANP. The NOI consisted of two phases: Phase One focused on who should administer the NANP and how the administration might be improved; and Phase Two focused on Carrier Identification Codes (CIC).

On August 19, 1993, Bellcore advised the Commission that it wished to relinquish its role as NANP Administrator. On March 30, 1994, the Commission adopted a Notice of Proposed Rulemaking (NPRM), summarized at 59 FR 24103 (May 10, 1994), tentatively concluding that: (1) The Commission should select a single NANP Administrator that is a non-government entity not closely affiliated with any particular segment of the telecommunications industry; (2) the Commission should oversee the NANP Administrator; (3) the NANP Administrator should take over Bellcore's current functions, as well as administer central office (CO) codes (the second three digits in a standard ten-digit telephone number); (4) the transition to a new NANP structure should begin as soon as the new Administrator is identified, and should extend to a date at least six months after the beginning of the use of interchangeable Numbering Plan Area codes ("NPAs" or "area codes") in January 1995; and (5) the Commission should impose fees to recover costs of regulating numbering resources. Additionally, the NPRM sought comment on whether the Commission should establish a policy board to assist regulators in developing and coordinating numbering policy under the NANP. The NPRM also sought comment on whether the Federal Advisory Committee Act would apply to such a board.

The Order adopted July 13, 1995, is guided by several principles: (1) To maintain and foster an integrated approach to number administration throughout North America; (2) to provide a structure for number administration that is impartial and pro-competitive; (3) to correct the current deficiencies of the number administration structure, while maintaining the positive aspects of the current structure; and (4) to enhance Commission control and awareness of numbering issues during the transition to a competitive telecommunications industry.

The Order states that the Commission will set broad numbering policy objectives and be the final arbiter of all disputes involving United States numbering issues. The Order also establishes a North American Numbering Council (NANC), which will have broad membership and be organized under the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. (1988), and will advise the Commission, guide the NANP Administrator, apply Commission policy to resolve issues arising in the administration of the NANP, and conduct initial dispute resolution of all issues. The NANP Administrator will process number resource applications and maintain administrative numbering databases. Details and additional activities of the NANP Administrator are to be determined by the NANC. The Commission will oversee the NANC, with participation from other NANP member countries. The NANC will select the NANP Administrator.

The Order concludes that the NANP Administrator should be a single, non-government entity that is not closely identified with any particular industry segment. The new NANP Administrator should take over the NANP administration functions currently performed by Bellcore. The functions associated with CO code administration, currently performed by the dominant local exchange carrier in each area code, will be centralized and performed by the new NANP Administrator. The Order states that the Commission can and should impose fees to recover its costs of regulating numbering resources and determines that the costs of the new NANP Administrator should be recovered by charging each communications provider a fee based on its gross revenue. Finally, the Order establishes a transition schedule to achieve the new structure for overall number administration.

The Order does not address various other issues raised in the NOI and the NPRM . These issues were considered unrelated to the structure for overall number administration.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq., the Commission's final analysis in this Order is as follows:

I. Need and Purpose of This Action

This Report and Order addresses comments filed in response to the Notice of Proposed Rulemaking (NPRM) concerning administration of the North American Numbering Plan. The decisions and policies are necessary to ensure an efficient administration of numbering resources.

After evaluating the comments and reply comments in this proceeding, and further examination of the impact of any rule changes on small entities, the Commission finds that the decisions and policies established in this proceeding will not have a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. While the decisions and policies adopted in this proceeding apply to telecommunications corporations of all sizes that are now assigned telephone numbers or that may in the future seek such assignments, the impact on small business entities served by these corporations and on small telecommunications companies will not be significant.

II. Summary of Issue Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered

The NPRM requested comments on several issues. The Commission has considered all comments and has determined that its numbering policies are best served by the policies adopted herein.

Ordering Clauses

1. Accordingly, *It is Ordered*, that pursuant to authority contained in Sections 1, 4(i), 4(j), 7, 201–205 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 201–205, and 403, that the decisions and policies adopted herein shall be effective on August 28, 1995.

List of Subjects in 47 CFR Part 1

Communications common carriers, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18453 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–291; RM–8133]

Radio Broadcasting Services; Cambridge and St. Michaels, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission denies the petition filed by CWA Broadcasting, Inc. for reconsideration of the *Report and Order* in MM Docket 92–291, 59 FR 32177, June 22, 1994. In that proceeding, CWA Broadcasting, Inc., the permittee of Station WFBR, Cambridge, Maryland, requested the reallotment of Channel 232A to St. Michaels, Maryland, and modification of the construction permit for Station WFBR to specify St. Michaels as the new community of license. The proposal was denied because it violated a policy that the Commission will not accept petitions to change the community of license before or during the first year of station operation when a permittee or licensee received in a comparative hearing a decisionally significant preference. CWA has not shown that this policy was improperly applied to its rulemaking proposal.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18559 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 92–247; RM–8098]

Radio Broadcasting Services; Christiansted, VI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Clayton Knight, allots Channel 285A at Christiansted, Virgin Islands, as its fifth local commercial FM transmission service. *See* 57 FR 55216, November 24, 1992. Channel 285A can be allotted to Christiansted in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.0 kilometers (5.0 miles) west. The coordinates for Channel 285A at Christiansted are North Latitude 17–45–00 and West Longitude 64–46–50. With this action, this proceeding is terminated.

DATES: Effective September 8, 1995. The window period for filing applications will open on September 8, 1995, and close on October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92–247, adopted July 14, 1995, and released July 25, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by adding Channel 285A at Christiansted.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18560 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 93–320; RM–8407]

Radio Broadcasting Services; Ellison Bay, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission denies the petition filed by The Eden Broadcast Group ("petitioner") for reconsideration of the *Report and Order* in MM Docket No. 93–320, 59 FR 28014, May 31, 1994. The *Report and Order* denied the allotment of Channel 223A to Ellison Bay, Wisconsin, as Ellison Bay does not qualify as a community for allotment purposes. As petitioner has provided no new information which would show community status, there is no basis to set aside our earlier action denying the allotment of an FM channel at Ellison Bay.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18562 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–122; RM–8513]

Radio Broadcasting Services; Atlantic and Glenwood, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Valley Broadcasting, Inc., reallots Channel 279C from Atlantic to Glenwood, Iowa, as its first local aural service, and modifies the license of Station KXKT to specify Glenwood as its community of license. *See* 59 FR 54545, November 1, 1994. Channel 279C can be allotted to Glenwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.6 kilometers (15.3 miles) north to accommodate petitioner's desired transmitter site. The coordinates for Channel 279C at Glenwood are 41–15–49 North Latitude and 95–46–21 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–122, adopted July 14, 1995, and released July 25, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Atlantic, Channel 279C and adding Glenwood, Channel 279C.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18564 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Chapter III and Parts 325, 350, 382, 385, 387, 390, 391, 392, 395, 396, and 397

RIN 2125–AD55

Zero Base Review of the Federal Motor Carrier Safety Regulations; Correcting Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; correcting amendments.

SUMMARY: The FHWA is making technical corrections to keep the Federal Motor Carrier Safety Regulations accurate and up to date. This rulemaking action is one part of the FHWA's Zero Base Regulatory Review.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366–5763, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The first Federal Motor Carrier Safety Regulations (FMCSRs) were promulgated in 1937, and have been amended many times since then. In September 1992, the FHWA began a

comprehensive multi-year project to develop modern, uniform safety regulations that are up to date, clear, concise, easier to understand, and more performance-oriented. This project has been named the "Zero Base Regulatory Review."

Upon the announcement of the first four public outreach sessions in the **Federal Register** (57 FR 37392) on August 18, 1992, the FHWA opened public docket No. MC–92–33 to allow interested parties who were unable to attend an outreach session the opportunity to make comments and recommendations for the improvement of the FMCSRs. The FHWA has completed an extensive review of the FMCSRs and has identified technical changes that are needed to correct errors and obsolete references. The corrections are discussed below.

Terminology Changes

In chapter III, the words "he," "his," "him," and "himself" are used where there is no intention to exclude the feminine gender. The words "he/she," "his/her," "him/her," and "himself/herself," respectively, would be more appropriate. In chapter III, the words "he," "his," "him," and "himself" are being replaced with the words "he/she," "his/her," "him/her," and "himself/herself," respectively, in all instances except in the phrases "he or she," "his or her," and "him or her." The rule in § 390.7(a)(3) that words in part 325 of subchapter A and in subchapter B imparting the masculine gender include the feminine gender is being removed.

In parts 390, 391, 392, and 395, the term "vehicle" is used where "motor vehicle" or "commercial motor vehicle" would be more precise. The term "vehicle" in all instances has been removed or replaced either with "motor vehicle" or "commercial motor vehicle," whichever is appropriate. In addition, the term "motor vehicle" is often used in these parts where "commercial motor vehicle" would be more precise. The term "motor vehicle" has been replaced with "commercial motor vehicle" wherever appropriate.

There are numerous places in chapter III of title 49, CFR, where the Office of Motor Carriers is mentioned by its former name, the Bureau of Motor Carrier Safety. The FHWA is making a nomenclature change to correct these obsolete names.

Tires (Section 325.93)

The introductory paragraph of § 325.93(b) refers to the Director of the Bureau of Motor Carrier Safety, a position that no longer exists, when it should refer to the Associate Administrator for Motor Carriers. Section 325.93(b) is being amended to correct this reference.

Definitions (Section 350.3)

The definition of *motor carrier* in § 350.3 does not include a private motor carrier of passengers. The FHWA published a final rule, "Private Motor Carriers of Passengers," on February 23, 1994, which made private motor carriers of passengers involved in interstate transportation subject to the FMCSRs (with certain exceptions) [59 FR 8748]. This rule became effective on January 1, 1995. Since private motor carriers of passengers are now subject to the FMCSRs and part 350 prescribes requirements for Federal assistance to the States for programs to adopt and enforce the FMCSRs, the definition of *motor carrier* in § 350.3 is being amended to cross-reference the definition of *motor carrier* in § 390.5 which was revised by the February 23, 1994, final rule.

Tolerance Guidelines for Adopting Compatible State Rules and Regulations (Part 350, app. C)

In part 350, appendix C, paragraph 3(e), there is an error in the reference to the 100 air-mile radius exemption. This exemption was moved from § 395.8(l) to § 395.1(e) on July 30, 1992 [57 FR 33638, at 33647]. A technical correction is being made to include the proper regulatory citation for the exemption.

Controlled Substances and Alcohol Use and Testing; Authority

Citation (Part 382)

The authority citation for Part 382 is being amended to include "49 U.S.C. 31133" which pertains to the general powers of the Secretary of Transportation.

Safety Fitness Procedures; Failure to Report (Section 385.23)

Section 385.23 incorrectly refers to itself as the source of the requirement that a motor carrier operating in interstate or foreign commerce file a Motor Carrier Identification Report. This requirement is found in § 385.21. Section 385.23 is being amended to correct this error.

Financial Responsibility Required (Section 387.31)

Section 387.31(b)(3) provides an exception allowing Mexican motor carriers to meet the minimum financial responsibility requirements by obtaining the required amount of insurance coverage for periods of 24 hours or longer from insurers that meet the requirements of § 387.35. Section 387.31(b)(3)(i) requires Mexican motor carriers so insured to have a copy of the certificate of registration, issued by the Interstate Commerce Commission, in each of its buses. Since the certificate requirement applies only to foreign motor carriers and foreign motor private carriers "of property" [49 U.S.C. 10530(b)(1), (2)], Mexican passenger carriers are not required to apply for a certificate of registration for entry into the United States. Therefore, § 387.31(b)(3)(i) is being removed.

Federal Motor Carrier Safety Regulations; General Definitions (Section 390.5)

There is an error in the definition of *employee*. Paragraph (d) of the definition reads "Any individual, other than an employee * * *." The statutory definition [formerly 49 U.S.C. App. 2503(2)(D), now recodified in slightly different language at 49 U.S.C. 31132(2)] reads "Any individual, other than an employer * * *." The regulatory language is being corrected.

The citation in the definition of *Exempt intracity zone* is out of date. The section referred to in this definition (§ 390.3(g)) was removed on March 24, 1989 [54 FR 12200] and replaced with language required by statute [49 U.S.C. 31136(f), formerly 49 U.S.C. App. 2505(h)]. That language is codified at § 391.2(d) and the definition of *Exempt intracity zone* is being corrected to refer to that section.

The definition of *Principal place of business* refers to the records required by parts 387, 390, 391, 395, and 396. The records required by part 396 must be maintained where the motor vehicle is either housed or maintained (§ 396.3(c)), not at the principal place of business. Therefore, this reference to part 396 is being removed.

The FHWA published a final rule, "Controlled Substances and Alcohol Use and Testing," on February 15, 1994, which added part 382 to the FMCSRs [59 FR 7484, at 7505]. Section 382.401(d) requires all records required by part 382 to be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized official of the FHWA. A reference to these recordkeeping requirements is being added to the definition of *Principal place of business*.

Locations of Regional Motor Carrier Safety Offices (Section 390.27)

The title of § 390.27 requires a technical correction. The Office of Motor Carrier Safety has been renamed the Office of Motor Carriers. The title of § 390.27 is being changed to read "Locations of regional offices of motor carriers" to reflect this name change.

General Exemptions (Section 391.2); Disqualification of Drivers (Section 391.15)

Section 391.2(c) contains a general exemption from the rules in part 391 for certain farm vehicle drivers. This general exemption does not apply to a farm vehicle driver of an articulated (combination) motor vehicle that has a gross weight, including load, of more than 10,000 pounds. This exception to the general exemption requires a technical correction. The jurisdiction of the FHWA depends on the gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), not the gross weight, of a motor vehicle. Section 391.2(c) is being amended to state that the rules in part 391 do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) "commercial motor vehicle." A GVWR or GCWR of 10,001 or more pounds is included in the definition of a *commercial motor vehicle* in § 390.5.

The citation for the Hazardous Materials Transportation Act in §§ 391.2(d)(4) and 391.15(d)(2)(iv) is obsolete because 49 U.S.C. app. 1801–1813 were recodified at 49 U.S.C. 5101 *et seq.* These references are being amended.

Qualifications of Drivers (Section 391.11)

Section 391.11(b)(7) requires a commercial motor vehicle driver to have a currently valid commercial motor vehicle operator's license issued only from one State or jurisdiction. It contains an exception not effective after December 31, 1989. Since this date has passed, the exception is obsolete and is being removed.

Disqualification of Drivers (Section 391.15); Physical Qualifications for Drivers (Section 391.41); Drugs and Other Substances (Section 392.4)

The footnotes to §§ 391.15(c)(2)(ii) and (iii), 391.41(b)(12), and 392.4(a)(1) mention that a list of Schedule I drugs and other substances can be obtained by writing the "Director, Office of Motor Carrier Standards" or a "Regional Office of Motor Carrier and Highway Safety of the Federal Highway Administration." The current names for these offices are the "Office of Motor Carrier Research and Standards" and "Regional Office of Motor Carriers of the Federal Highway Administration," respectively, and the footnotes are being changed accordingly.

Examinations and Tests; Subpart D Heading (Part 391)

The heading of subpart D of part 391 requires a technical correction. The FHWA published a final rule, "Removal of Obsolete and Redundant Regulations and Appendices," on November 23, 1994, which removed the requirements related to the written examination, §§ 391.35 and 391.37. Subpart D of part 391 now contains only the requirements related to the road test, §§ 391.31 and 391.33. Therefore, the heading of subpart D of part 391 is being changed to read "Tests."

Medical Examination; Certificate of Physical Examination (Section 391.43)

Section 391.43(g) contains the mandatory form for a medical examiner's certificate. Previous forms are allowed to be used until depleted, but no later than November 8, 1994, provided the medical examiner writes down all required information. Since this date has passed, this provision in § 391.43(g) is obsolete and is being removed.

Resolution of Conflicts of Medical Evaluation (Section 391.47)

The term "Director" referred to in § 391.47(c) through (f) is the Director of the Bureau of Motor Carrier Safety, a position that no longer exists. Determinations of a driver's medical qualification in cases of conflicting medical evaluations are now made by the Director, Office of Motor Carrier Research and Standards. All references to "Director" in § 391.47 have been replaced with "Director, Office of Motor Carrier Research and Standards."

Drivers of Articulated (Combination) Farm Vehicles (Section 391.67)

Section 391.67(d) exempts a farm vehicle driver who is at least 18 years old and operates an articulated commercial motor vehicle from the requirements to be medically examined and to have a medical examiner's certificate on his/her person until January 1, 1973. Since this date has passed, § 391.67(d) is obsolete and is being removed.

Private Motor Carriers of Passengers (Nonbusiness) (Section 391.68)

Section 391.68(b) exempts a private motor carrier of passengers (business) driver from the rules in part 391 relating to road tests (subpart D). This exemption is in a section which should only contain exemptions for private motor carriers of passengers (nonbusiness). It is also redundant because § 391.73 exempts private motor carriers of passengers (business) from the road test requirements. Therefore, § 391.68 is being amended by removing the paragraph (a) designation, redesignating paragraphs (a)(1) through (a)(6) to read as (a) through (f), respectively, and removing paragraph (b).

Definitions (Section 395.2)

The FHWA published a final rule, "Removal of Obsolete and Redundant Regulations and Appendices," on November 23, 1994, which removed paragraph (6) and redesignated paragraphs (7) through (9) of the definition of *On duty time* in § 395.2 as paragraphs (6) through (8), respectively [59 FR 60319, at 60323]. Paragraph (10) of the definition of *On duty time* was not appropriately redesignated as paragraph (9). The definition of *On duty time* is being amended accordingly.

Maximum Driving and On-duty Time (Section 395.3)

The title of § 395.3 requires a technical correction. Section 395.3(b) formerly stated that no driver shall be on duty in excess of 60 hours in any period of 7 consecutive days or 70 hours in any period of 8 consecutive days (except driver salespersons). The FHWA published a final rule on October 30, 1987, which amended § 395.3(b) to allow a driver to perform nondriving duties after reaching 60 hours of on duty time in 7 consecutive days or 70 hours of on duty time in 8 consecutive days, but prohibited a driver to drive a commercial motor vehicle after reaching this limit [52 FR 41718, at 41721]. The FMCSRs no longer limit how long a driver may remain on duty. The title of § 395.3 is being changed to read "Maximum Driving Time" to reflect this amendment.

The FMCSRs have always prohibited a motor carrier from permitting or requiring a driver to violate the hours of service regulations. In addition, the FMCSRs previously prohibited a driver from violating the hours of service regulations. The latter prohibition was inadvertently omitted when § 395.3 was amended on July 30, 1992 [57 FR 33638, at 33649]. The FHWA is therefore amending § 395.3(b) to make it clear that a driver is personally prohibited from driving a commercial motor vehicle after having been on duty 60 hours in any 7 consecutive days or 70 hours in any 8 consecutive days.

Driver's Record of Duty Status (Section 395.8)

The references in § 395.8(h) (2), (3), and (4) to § 395.2 (f), (b), and (a), respectively, are obsolete. Section 395.8(h) (2), (3), and (4) should refer to

§ 395.2 because lettered paragraphs for specific definitions were removed on July 30, 1992 [57 FR 33636, at 33648–33649]. These references are being amended accordingly.

The term "vehicle condition reports" is used in the graph grid illustration after § 395.8(k)(2). However, the term "driver vehicle inspection report" is the appropriate term. The former is being replaced with the latter.

Automatic On-Board Recording Devices (Section 395.15)

Section 395.15 contains various provisions related to the use of automatic on-board recording devices. The requirements of §§ 395.15(i)(4) and (i)(7) became effective on October 2, 1989. Since this date has passed, the words "No later than October 2, 1989" are unnecessary and are being removed.

Equivalent to Periodic Inspection (Section 396.23)

The first sentence of § 396.23(a) incorrectly references the requirements of § 393.17. This sentence should refer to § 396.17, and § 396.23(a) is being amended accordingly.

Application of the Rules in This Part (Section 397.1)

Section 397.1(a) refers to "paragraph (c) of this section," which does not exist. Section 397.1(c) was removed on May 19, 1988 [53 FR 18042, at 18058], but the reference to paragraph (c) in paragraph (a) was not revised. Therefore, § 397.1(a) is amended by removing the phrase "Except as provided in paragraph (c) of this section."

Special Agents (Appendix B to Subchapter B)

Paragraph 3 of appendix B to subchapter B defines the term "special agent," in part by listing the FHWA's statutory authority to regulate motor carrier safety. The list is out of date, and is therefore being amended to reflect the agency's current authority and the recent recodification of title 49, United States Code. Paragraph 3 also refers to the Director of the Bureau of Motor Carrier Safety, a position that no longer exists, when it should refer to the Associate Administrator for Motor Carriers. Paragraph 3 is being amended to correct this reference.

Rulemaking Analyses and Notices

This final rule makes only minor, technical corrections to the Federal Motor Carrier Safety Regulations. The rule deletes a provision for which there is no authority, corrects or removes inaccurate references, and replaces outdated language with terms more consistent with current statutory authority. Substantive regulatory standards are not changed in any way. Therefore, the FHWA finds good cause to adopt the rule without prior notice or opportunity for public comment [5 U.S.C. 553(b)]. The DOT's regulatory policies and procedures also authorize promulgation of the rule without prior notice because it is anticipated that such action would not result in the receipt of useful information. The FHWA is making the rule effective upon publication in the **Federal Register** because it imposes no new burdens and merely corrects or clarifies existing regulations [5 U.S.C. 553(d)].

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action makes only technical corrections to the current regulations, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, and since this rulemaking action makes only technical corrections to the current regulations, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 325, 350, 382, 385, 387, 390, 391, 392, 395, 396, and 397

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: July 19, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing and under the authority of 42 U.S.C. 4917 and 49 U.S.C. 104, 501 et seq., 521 et seq., 5101 et seq., 5113, 5901 et seq., 31101–31104, 31108, 31131 et seq., 31161, 31301 et seq., 31501 et seq.; and 49 CFR 1.48, the FHWA amends title 49, Code of Federal Regulations, Chapter III, as follows:

CHAPTER III—[AMENDED]

1. Chapter III is amended by substituting the term "he/she" for each appearance of the word "he" in the chapter except in the phrase "he or she."

2. Chapter III is amended by substituting the term "his/her" for each appearance of the word "his" in the chapter except in the phrase "his or her."

3. Chapter III is amended by substituting the term "him/her" for each appearance of the word "him" in the chapter except in the phrase "him or her."

4. Chapter III is amended by substituting the term "himself/herself" for each appearance of the word "himself" in the chapter.

§§ 325.13, 388.5, and Appendix B [Amended]

5. In the list below, for each section indicated in the left column, remove the title indicated in the middle column wherever it appears in the section, and add the title indicated in the right column:

Section	Remove	Add
325.13(d)(3)	Bureau of Motor Carrier Safety.	Office of Motor Carriers.
388.5(a)	Bureau of Motor Carrier Safety.	Office of Motor Carriers.
Appendix B to Subchapter B, paragraph 3.	Bureau of Motor Carrier Safety (BMCS).	Office of Motor Carriers.

6. Section 325.93 is amended by revising paragraph (b) to read as follows:

§ 325.93 Tires.

* * * * *

(b) Paragraph (a) of this section does not apply to a motor vehicle operated on a tire having a tread pattern of the type specified in that paragraph, if the motor carrier who operates the motor vehicle demonstrates to the satisfaction of the Associate Administrator for Motor Carriers or his/her designee that either—

(1) The tire did not have that type of tread pattern when it was originally manufactured or newly remanufactured; or

(2) The motor vehicle generates a maximum sound level reading of 90 dB(A) or less when measured at a standard test site for highway operations at a distance of 15.3 meters (50 feet) and under the following conditions:

(i) The measurement must be made at a time and place and under conditions specified by the Associate Administrator or his/her designee.

(ii) The motor vehicle must be operated on the same tires that were installed on it when the inspection specified in paragraph (a) of this section occurred.

(iii) The motor vehicle must be operated on a highway having a posted speed limit of more than 56.3 kph (35 mph).

(iv) The sound level measurement must be made while the motor vehicle is operating at the posted speed limit.

PART 350—[AMENDED]

7. The authority citation for part 350 is revised to read as follows:

Authority: 49 U.S.C. 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.48.

8. In part 350, appendix C, paragraph 3(e) is revised to read as follows:

Appendix C to Part 350—Tolerance Guidelines for Adopting Compatible State Rules and Regulations

* * * * *

3. Tolerance Guidelines for State Rules and Regulations Where the U.S. Department of Transportation Regulations do not Apply

* * * * *

(e) Regulatory exemptions based on the distance a motor carrier or driver operates from their home terminal are not deemed to be compatible. This prohibition does not apply to those exemptions already contained in the Federal Motor Carrier Safety Regulations nor to the extension of the mileage radius exemption contained in 49 CFR 395.1(e) from 100 to 150 miles.

* * * * *

9. Section 350.3 is amended by revising the definition for *Motor carrier* to read as follows:

§ 350.3 Definitions.

* * * * *

Motor carrier has the same meaning such term has in § 390.5.

* * * * *

PART 382—[AMENDED]

10. The authority citation for part 382 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 et seq., 31502; and 49 CFR 1.48.

PART 385—[AMENDED]

11. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, 31502; and 49 CFR 1.48.

§ 385.23 [Amended]

12. Section 385.23 is amended by removing the reference "§ 385.23" and replacing it with "§ 385.21."

PART 387—[AMENDED]

13. The authority citation for part 387 is revised to read as follows:

Authority: 49 U.S.C. 31138 and 31139; and 49 CFR 1.48.

§ 387.31 [Amended]

14. Section 387.31 is amended by removing paragraph (b)(3)(i) and redesignating paragraphs (b)(3) (ii) and (iii) as paragraphs (b)(3) (i) and (ii), respectively.

PART 390—[AMENDED]

15. The authority citation for Part 390 is revised to read as follows:

Authority: 49 U.S.C. 5901–5907, 31132, 31133, 31136, 31502, and 31504; and 49 CFR 1.48.

16. Section 390.5 is amended by revising paragraph (1)(iii) of the definition of *Accident*; by replacing the word "vehicle" with "motor vehicle" in two places in the definition of *Charter transportation of passengers*; by replacing the word "vehicle" with "motor vehicle" in four places in the definition of *Commercial motor vehicle* except in the phrase "gross vehicle weight rating"; by replacing the words "wheels of the vehicle" with "wheels of the motor vehicle" in the definition of *Driveaway-towaway operation*; by replacing the word "vehicles" with "motor vehicles" in paragraph (2) of the definition of *Emergency*; by replacing the word "vehicle" with "commercial motor vehicle" and replacing the reference "§ 390.3(g)" with "§ 391.2(d)" in the definition of *Exempt intracity zone*; by replacing the words "vehicle" and "motor vehicle" with "commercial motor vehicle" in four places in the definition of *Farm-to-market agricultural transportation*; by replacing the words "vehicle" and "motor vehicle" with "commercial motor vehicle" in two places in the definition of *Farm vehicle driver*; by replacing the word "vehicle" with "motor vehicle" in the definition of *Gross combination weight rating*; by replacing the words "single vehicle" with "single motor vehicle" in the definition of *Gross vehicle weight rating*; by replacing the words "transport vehicle" with "transport motor vehicle" in the definition of *Hazardous substance*; by replacing the word "vehicle" with "commercial motor vehicle" in two places in the definition of *Radar detector*; by replacing the words "towing unit" and "towing vehicle" with "towing motor vehicle" in four places in the definition of *Trailer*; by replacing the word "motor vehicle" with "commercial motor vehicle" in the definition of *Truck*; by replacing the word "motor vehicle" with "commercial motor vehicle" in the definition of *Truck tractor*. Section 390.5 is further amended by revising the definition of *Employee* and the definition of *Principal place of business* to read as follows:

§ 390.5 Definitions.

* * * * *

Accident means—

(1) * * *

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the

scene by a tow truck or other motor vehicle.

* * * * *

Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment.

* * * * *

Principal place of business means a single location designated by the motor carrier, normally its headquarters, where records required by parts 387, 390, 391, and 395 of this subchapter will be maintained and where records required by part 382 must be made available for inspection within two business days after a request has been made by an authorized representative of the Federal Highway Administration. Provisions in this subchapter are made for maintaining certain records at locations other than the principal place of business.

* * * * *

§ 390.7 [Amended]

17. Section 390.7(a) is amended by removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3).

§ 390.15 [Amended]

18. Section 390.15(b)(1)(vi) is amended by replacing the word "vehicles" with "motor vehicles."

§ 390.19 [Amended]

19. Section 390.19 is amended by replacing the words "motor vehicles" with "commercial motor vehicles."

§ 390.21 [Amended]

20. In § 390.21, amend paragraphs (b)(1), (b)(2), (b)(4), (b)(5), (c)(1), (c)(3), (d), (e)(1), (e)(2) introductory text, (e)(2)(ii), (e)(2)(iv)(B)(2), (e)(2)(iv)(C), and (e)(2)(v) by replacing the words "vehicle" and "motor vehicle" with "commercial motor vehicle."

§ 390.23 [Amended]

21. Section 390.23(a)(3)(i) is amended by replacing the word "vehicles" with "motor vehicles."

22. Section 390.23(b) is amended by replacing the words "driver or vehicle" with "driver or commercial motor vehicle."

§ 390.27 [Amended]

23. Section 390.27 is amended by revising the section heading to read "Locations of regional offices of motor carriers.".

§ 390.33 [Amended]

24. Section 390.33 is amended by revising the section heading to read "Commercial motor vehicles used for purposes other than defined." ; and by replacing the words "motor vehicle" with "commercial motor vehicle" in seven places in the text of the section.

PART 391—[AMENDED]

25. The authority citation for part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

§§ 391.1, 391.11, 391.15, 391.21, 391.25, 391.31, 391.33, 391.41, 391.43, 391.49, 391.51, 391.61, 391.63, 391.65, 391.67, 391.69, 391.71, and 391.73 [Amended]

26. In part 391, make nomenclature changes as follows:

(a) In the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
391.1(a)	Motor vehicles	Commercial motor vehicles.
391.11(a)	Motor vehicle (in four places)	Commercial motor vehicle.
391.11(b) introductory paragraph	Motor vehicle	Commercial motor vehicle.
391.11(b)(3)	Motor vehicle	Commercial motor vehicle.
391.11(b)(4)	Motor vehicle (in two places)	Commercial motor vehicle.
391.11(b)(5)	Motor vehicle	Commercial motor vehicle.
391.11(b)(6)	Motor vehicle	Commercial motor vehicle.
391.11(b)(9)	Motor vehicle	Commercial motor vehicle.
391.15(c)(2)(ii)	Motor vehicle	Commercial motor vehicle.
391.15(c)(2)(v)	Motor vehicle	Commercial motor vehicle.
391.21(a)	Motor vehicle	Commercial motor vehicle.
391.21(b)(5)	Motor vehicle	Commercial motor vehicle.
391.25	Motor vehicle	Commercial motor vehicle.
391.31(a)	Motor vehicle	Commercial motor vehicle.
391.31(b)	Vehicle	Commercial motor vehicle.
391.31(c) introductory paragraph	Motor vehicle (in two places)	Commercial motor vehicle.
391.31(c)(3)	Vehicle	Commercial motor vehicle.
391.31(c)(4)	Vehicles	Commercial motor vehicles.
391.31(c)(5)	Vehicle	Commercial motor vehicle.
391.31(c)(5)	Vehicles	Motor vehicles.
391.31(c)(6)	Vehicle	Commercial motor vehicle.
391.31(c)(7)	Vehicle	Commercial motor vehicle.
391.31(c)(8)	Vehicle	Commercial motor vehicle.
391.33(a) introductory paragraph	Motor vehicle	Commercial motor vehicle.
391.33(a)(1)	Motor vehicles	Commercial motor vehicles.
391.33(a)(1)	Motor vehicle	Commercial motor vehicle.
391.41(a)	Motor vehicle (in two places)	Commercial motor vehicle.
391.41(b) introductory paragraph	Motor vehicle	Commercial motor vehicle.
391.41(b)(2)(ii)	Motor vehicle (in two places)	Commercial motor vehicle.
391.41(b)(5)	Motor vehicle	Commercial motor vehicle.
391.41(b)(6)	Motor vehicle	Commercial motor vehicle.
391.41(b)(7)	Motor vehicle	Commercial motor vehicle.
391.41(b)(8)	Motor vehicle	Commercial motor vehicle.
391.41(b)(9)	Motor vehicle	Commercial motor vehicle.

Section	Remove	Add
391.41(b)(12)	Motor vehicle	Commercial motor vehicle.
391.43(f)	Motor vehicle	Commercial motor vehicle.
391.49(a)	Motor vehicle (in two places)	Commercial motor vehicle.
391.49(d)(3)(i)(A)	Motor vehicle	Commercial motor vehicle.
391.49(e)(4)	Motor vehicle	Commercial motor vehicle.
391.49(g)	Motor vehicle(s)	Commercial motor vehicle(s).
391.51(b)(1)	Motor vehicle	Commercial motor vehicle.
391.51(b)(5)	Motor vehicle	Commercial motor vehicle.
391.51(d)(1)	Motor vehicle	Commercial motor vehicle.
391.51(d)(3)	Motor vehicle	Commercial motor vehicle.
391.51(e)	Motor vehicle	Commercial motor vehicle.
391.51(h)(1)	Motor vehicle	Commercial motor vehicle.
391.61	Motor vehicle	Commercial motor vehicle.
391.63(a) introductory paragraph	Motor vehicle	Commercial motor vehicle.
391.63(b)	Motor vehicle (in two places)	Commercial motor vehicle.
391.65(a)(2)	Motor vehicle	Commercial motor vehicle.
391.65(a)(2)(iv)	Motor vehicle	Commercial motor vehicle.
391.65(a)(2)(vii) in the form	Vehicle	Commercial motor vehicle.
391.67 introductory paragraph	Articulated motor vehicle	Articulated commercial motor vehicle.
391.69	Motor vehicle	Commercial motor vehicle.
391.71(a) introductory paragraph	Motor vehicle	Commercial motor vehicle.
391.71(b) introductory paragraph	Vehicle	Commercial motor vehicle.
391.73	Motor vehicle	Commercial motor vehicle.

(b) In § 391.43(e) in the "Instructions for Performing and Recording Physical Examinations" under the headings *General information, Throat, Blood pressure, Abnormal masses, Tenderness, Genito-urinary, Extremities,* and *Diabetes* replace the words "motor vehicle" with the words "commercial motor vehicle" each place they appear.

27. Section 391.2 is amended by revising paragraphs (a), (b), (c) and (d)(4) to read as follows:

§ 391.2 General exemptions.

(a) *Farm custom operation.* The rules in this part do not apply to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the commercial motor vehicle is used to—

(1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(2) Transport custom-harvested crops to storage or market.

(b) *Apiarian industries.* The rules in this part do not apply to a driver who is operating a commercial motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

(c) *Certain farm vehicle drivers.* The rules in this part do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) commercial motor vehicle, as defined in § 390.5. (For limited exemptions for farm vehicle drivers of articulated commercial motor vehicles, see § 391.67.)

(d) * * *

(4) Does not operate a commercial motor vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*); and

* * * * *

28. Section 391.11 is amended by revising paragraph (b)(7) to read as follows:

§ 391.11 Qualifications of drivers.

* * * * *

(b) * * *

(7) Has a currently valid commercial motor vehicle operator's license issued only from one State or jurisdiction.

* * * * *

29. Footnote number one in §§ 391.15(c)(2)(ii) and (iii) and in § 391.41(b)(12) is revised to read "[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Research and Standards, Washington, DC 20590, or to any Regional Office of Motor Carriers of the Federal Highway Administration at the address given in § 390.27 of this subchapter."

30. Section 391.15(d)(2)(iv) is revised to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(d) * * *

(2) * * *

(iv) *Special rule for hazardous materials and passenger offenses.* A driver is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*), or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any 10-year period, the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver.

31. In § 391.27, the form in paragraph (c) is revised to read as follows:

§ 391.27 Record of violations.

* * * * *

(c) * * *

Driver's Certification

I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted or forfeited bond or collateral during the past 12 months.

Date of conviction Offense
Location Type of motor vehicle operated

If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.

(Date of certification) (Driver's signature)

(Motor carrier's name)

(Motor carrier's address)

(Reviewed by: Signature) (Title)

32. Part 391 is amended by revising the heading for subpart D to read "Tests".

33. In § 391.43, the text of paragraph (g) preceding the certificate is revised to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(g) The medical examiner's certificate shall be substantially in accordance with the following form:

* * * * *

34. In § 391.47, paragraphs (c), (d) (1) and (2), and (f) are amended by replacing the word "Director" with "Director, Office of Motor Carrier Research and Standards."

35. Section 391.49 is amended by revising paragraphs (c)(2)(v), (c)(3) introductory text, and (c)(3) (vii) and (viii) to read as follows:

§ 391.49 Waiver of certain physical defects.

* * * * *

(c) * * *

(2) * * *

(v) Number of years experience operating the type of commercial motor vehicle(s) requested in the letter of application and total years of experience operating all types of motor vehicles.

(3) Description of the commercial motor vehicle(s) the driver applicant intends to drive:

* * * * *

(vii) For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and

(viii) Description of any modification(s) made to the commercial motor vehicle for the driver applicant; attach photograph(s) where applicable.

* * * * *

§ 391.67 [Amended]

36. Section 391.67 is amended by revising the section heading to read "Farm vehicle drivers of articulated commercial motor vehicles." ; and by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

37. Section 391.68 is revised to read as follows:

§ 391.68 Private motor carrier of passengers (nonbusiness).

The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and their drivers:

(a) Section 391.11 (b)(8), (b)(10), and (b)(11), (relating to driver qualifications in general).

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers).

(c) Subpart D (relating to road tests).

(d) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person.

(e) Subpart F (relating to maintenance of files and records).

(f) Subpart H (relating to controlled substances testing).

§ 391.71 [Amended]

38. Section 391.71 is amended by revising the section heading to read "Intrastate drivers of commercial motor vehicles transporting Class 3 combustible liquids."

§ 391.85 [Amended]

39. Section 391.85 is amended in the definition of *Commercial motor vehicle* by replacing the word "vehicle" with "motor vehicle" in each of the four places it appears.

PART 392—[AMENDED]

40. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 31136 and 31502; and 49 CFR 1.48.

41. Part 392 is amended by revising the part heading to read "Driving of Commercial Motor Vehicles"; by revising the heading for subpart B to read "Driving of Commercial Motor Vehicles"; and by revising the heading for subpart C to read "Stopped Commercial Motor Vehicles".

§ 392.4 [Amended]

42. In § 392.4(a)(1), footnote number one is revised to read "[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Research and Standards, Washington, DC 20590, or to any Regional Office of Motor Carriers of the Federal Highway Administration at the address given in § 390.27 of this subchapter."

§§ 392.1, 392.2, 392.3, 392.4, 392.6, 392.7, 392.8, 392.9, 392.10, 392.11, 392.13, 392.14, 392.15, 392.16, 392.20, 392.22, 392.24, 392.33, 392.50, 392.51, 392.63, 392.64, 392.66, 392.67, and 392.68 [Amended]

43. In the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
392.1	Motor vehicles	Commercial motor vehicles.
392.2	Motor vehicle	Commercial motor vehicle.
392.3	Vehicle	Commercial motor vehicle.
392.3	Motor vehicle (in four places)	Commercial motor vehicle.
392.4(a)(4)	Motor vehicle	Commercial motor vehicle.
392.4(c)	Motor vehicle	Commercial motor vehicle.
392.6	Motor vehicle	Commercial motor vehicle.
392.6	Vehicle (in two places)	Commercial motor vehicle.
392.7	Motor vehicle	Commercial motor vehicle.
392.8	Motor vehicle	Commercial motor vehicle.
392.9(a) Introductory paragraph	Motor vehicle (in two places)	Commercial motor vehicle.
392.9(a)(1)	Vehicle's	Commercial motor vehicle's.
392.9(a)(2)	Vehicle's (in two places)	Commercial motor vehicle's.
392.9(a)(3)	Vehicle's (in two places)	Commercial motor vehicle's.
392.9(b)(1)	Vehicle	Commercial motor vehicle.
392.9(b)(2)	Vehicle's (in two places)	Commercial motor vehicle's.
392.9(b)(3)	Vehicle's (in two places)	Commercial motor vehicle's.
392.9(b)(3)(ii)	Vehicle	Commercial motor vehicle.
392.9(b)(3)(iii)	Vehicle	Commercial motor vehicle.
392.9(b)(4)	Vehicle (in two places)	Commercial motor vehicle.
392.10(a) introductory paragraph	Motor vehicle	Commercial Motor vehicle.
392.10(a) introductory paragraph	Vehicle (in three places)	Commercial motor vehicle.
392.10(a)(2)	Motor vehicle	Commercial motor vehicle.
392.10(a)(3)	Motor vehicle	Commercial motor vehicle.

Section	Remove	Add
392.10(b)(3)	Vehicle	Commercial motor vehicle.
392.11	Motor vehicle (in two places)	Commercial motor vehicle.
392.13	Motor vehicle (in two places)	Commercial motor vehicle.
392.14	Motor vehicle (in two places)	Commercial motor vehicle.
392.14	Vehicle (in two places	Commercial motor vehicle.
392.15(a)	Motor vehicle, vehicle	Commercial motor vehicle.
392.15(b)	Vehicle (in two places)	Commercial motor vehicle.
392.15(c)	Vehicle (in two places	Commercial motor vehicle.
392.15(d)	Vehicles	Commercial motor vehicles.
392.15(e)	Vehicles	Motor vehicles.
392.16	Motor vehicle	Commercial motor vehicle.
392.20	Motor vehicle, vehicle	Commercial motor vehicle.
392.22(a)	Motor vehicle	Commercial motor vehicle.
392.22(a)	Vehicle (in three places)	Commercial motor vehicle.
392.22(b)(1) introductory text	Vehicle (in two places)	Commercial motor vehicle.
392.22(b)(1)(i)	Vehicle (in two places)	Commercial motor vehicle.
392.22(b)(1)(ii)	Vehicle (in two places)	Commercial motor vehicle.
392.22(b)(1)(iii)	Vehicle (in two places)	Commercial motor vehicle.
392.22(b)(2)(i)	Vehicle (in two places)	Commercial motor vehicle.
392.22(b)(2)(ii)	Vehicle	Commercial motor vehicle.
392.22(b)(2)(iii)	Vehicle	Commercial motor vehicle.
392.22(b)(2)(iv)	Motor vehicle, vehicle	Commercial motor vehicle.
392.22(b)(2)(v)	Motor vehicle	Commercial motor vehicle.
392.22(b)(2)(v)	Vehicle (in three places)	Commercial motor vehicle.
392.22(b)(2)(vi)	Motor vehicle	Commercial motor vehicle.
392.24	Motor vehicle	Commercial motor vehicle.
392.33	Motor vehicle	Commercial motor vehicle.
392.50(a)	Motor vehicle, vehicle	Commercial motor vehicle.
392.50(b)	Vehicle	Commercial motor vehicle.
392.50(c)	Motor vehicle	Commercial motor vehicle.
392.51	Motor vehicle (in two places)	Commercial motor vehicle.
392.63	Vehicle	Motor vehicle.
392.64	Motor vehicle	Commercial motor vehicle.
392.67	Vehicle	Commercial motor vehicle.
392.68	Motor vehicle	Commercial motor vehicle.

§ 392.13 [Amended]

44. Section 392.13 is amended by revising the section heading to read "Drawbridges; slowing down of commercial motor vehicles." and by deleting the word "other" in the text of the section.

§ 392.20 [Amended]

45. Section 392.20 is amended by revising the section heading to read "Unattended commercial motor vehicles; precautions."

§ 392.22 [Amended]

46. Section 392.22 is amended by revising the section heading to read "Emergency signals; stopped commercial motor vehicles."

§ 392.25 [Amended]

47. Section 392.25 is amended by replacing the words "motor vehicle" each place they appear, except in the term "cargo tank motor vehicle," with the words "commercial motor vehicle."

48. Section 392.60 is revised to read as follows:

§ 392.60 Unauthorized persons not to be transported.

(a) Unless specifically authorized in writing to do so by the motor carrier under whose authority the commercial motor vehicle is being operated, no driver shall transport any person or permit any person to be transported on any commercial motor vehicle other than a bus. When such authorization is issued, it shall state the name of the person to be transported, the points where the transportation is to begin and end, and the date upon which such authority expires. No written authorization, however, shall be necessary for the transportation of:

(1) Employees or other persons assigned to a commercial motor vehicle by a motor carrier;

(2) Any person transported when aid is being rendered in case of an accident or other emergency;

(3) An attendant delegated to care for livestock.

(b) This section shall not apply to the operation of commercial motor vehicles controlled and operated by any farmer and used in the transportation of agricultural commodities or products thereof from his/her farm or in the transportation of supplies to his/her farm.

49. Section 392.64 is amended by revising the section heading to read "Riding within closed commercial motor vehicles without proper exits."

50. Section 392.66 is revised to read as follows:

§ 392.66 Carbon monoxide; use of commercial motor vehicle when detected.

(a) No person shall dispatch or drive any commercial motor vehicle or permit any passengers thereon, when the following conditions are known to exist, until such conditions have been remedied or repaired:

(1) Where an occupant has been affected by carbon monoxide;

(2) Where carbon monoxide has been detected in the interior of the commercial motor vehicle;

(3) When a mechanical condition of the commercial motor vehicle is discovered which would be likely to produce a hazard to the occupants by reason of carbon monoxide.

(b) [Reserved]

§ 392.67 [Amended]

51. Section 392.67 is amended by revising the section heading to read "Heater, flame-producing; on commercial motor vehicle in motion."

PART 395—[AMENDED]

52. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; and 49 CFR 1.48.

53. Section 395.1(b) is revised to read as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(b) Adverse driving conditions. (1) Except as provided in paragraph (i)(2) of this section, a driver who encounters adverse driving conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the 10-hour maximum driving time permitted by § 395.3(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours in order to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 12 hours in the aggregate following 8 consecutive hours off duty; or

(ii) After he/she has been on duty 15 hours following 8 consecutive hours off duty.

(2) *Emergency conditions.* In case of any emergency, a driver may complete his/her run without being in violation of the provisions of the regulations in this part, if such run reasonably could have been completed absent the emergency.

* * * * *

54. Section 395.1(d)(2) is amended by replacing the words "specially constructed oil well servicing vehicles" with "commercial motor vehicles which are specially constructed to service oil wells."

§ 395.2 [Amended]

55. Section 395.2 is amended by replacing the word "vehicle" with "commercial motor vehicle" in the definition of *Automatic on-board recording device;* by replacing the word "vehicle" with "commercial motor vehicle" each place it appears in paragraphs (5) and (6) of the definition of *On duty time;* and by redesignating paragraph (10) as paragraph (9) of the definition of *On duty time.*

56. In § 395.3, the section heading and paragraph (b) are revised to read as follows:

§ 395.3 Maximum driving time.

* * * * *

(b) No motor carrier shall permit or require a driver of a commercial motor vehicle to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services, for any period after—

(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

57. Section 395.8 is amended by revising paragraphs (f)(5) and (6); and paragraphs (h)(2) through (h)(4) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(f) * * *

(5) *Commercial motor vehicle identification.* The driver shall show the number assigned by the motor carrier or State and the license number of each commercial motor vehicle operated during each 24-hour period on his/her record of duty status. The driver of an articulated (combination) commercial motor vehicle shall show the number assigned by the motor carrier or the State and the license number of each motor vehicle used in each commercial motor vehicle combination operated during that 24-hour period on his/her record of duty status.

(6) *Name of motor carrier.* The name(s) of the motor carrier(s) for which work is performed shall be shown on the form containing the driver's record of duty status. When work is performed for more than one motor carrier during the same 24-hour period, the beginning and finishing time, showing a.m. or p.m., worked for each motor carrier shall be shown after each motor carrier's name. Drivers of leased commercial motor vehicles shall show the name of the motor carrier performing the transportation.

* * * * *

(h) * * *

(2) *Sleeper berth.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time off duty resting in a sleeper berth, as defined in § 395.2. (If a non-sleeper berth operation, sleeper berth need not be shown on the grid.)

(3) *Driving.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of driving time, as defined in § 395.2.

(4) *On duty not driving.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time on duty not driving specified in § 395.2.

* * * * *

§ 395.8 [Amended]

58. The paragraph *Graph Grid (Midnight to Midnight Operation)* following the executed specimen grid illustration at § 395.8(k)(2) is amended by replacing the term "vehicle condition report" with the term "driver vehicle inspection report."

§ 395.13 [Amended]

59. In the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
395.13(c)(1)(i)	Motor vehicle	Commercial motor vehicle.
395.13(c)(1)(ii)	Motor vehicle	Commercial motor vehicle.
395.13(d)(1)	Motor vehicle	Commercial motor vehicle.
395.13(d)(2)	Motor vehicle	Commercial motor vehicle.
395.13(d)(4)	Motor vehicles	Commercial motor vehicles.

60. Section 395.15 is amended by revising paragraphs (d)(2), the introductory text of paragraph (g); paragraphs (i)(2), (4), and (7); and paragraph (j)(2)(iv) to read as follows:

§ 395.15 Automatic on-board recording devices.

* * * * *

(d) * * *

(2) Motor carriers are permitted to use location codes in lieu of the requirements of paragraph (d)(1) of this section. A list of such codes showing all possible location identifiers shall be carried in the cab of the commercial motor vehicle and available at the motor carrier's principal place of business. Such lists shall be made available to an enforcement official on request.

* * * * *

(g) *On-board information.* Each commercial motor vehicle must have on-board the commercial motor vehicle an information packet containing the following items:

* * * * *

(i) * * *

(2) The automatic on-board recording device permits duty status to be updated only when the commercial motor vehicle is at rest, except when registering the time a commercial motor vehicle crosses a State boundary;

* * * * *

(4) The automatic on-board recording device warns the driver visually and/or audibly that the device has ceased to function. Devices installed and operational as of October 31, 1988, and authorized to be used in lieu of the handwritten record of duty status by the FHWA are exempted from this requirement.

* * * * *

(7) The on-board recording device/system identifies sensor failures and edited data when reproduced in printed form. Devices installed and operational as of October 31, 1988, and authorized to be used in lieu of the handwritten record of duty status by the FHWA are exempted from this requirement.

* * * * *

(j) * * *

(2) * * *

(iv) The motor carrier or driver has tampered with or otherwise abused the automatic on-board recording device on any commercial motor vehicle.

PART 396—[AMENDED]

61. The authority citation for part 396 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; 49 CFR 1.48.

62. Section 396.23 is amended by revising paragraph (a) to read as follows:

§ 396.23 Equivalent to periodic inspection.

(a) The motor carrier may meet the requirements of § 396.17 through a State or other jurisdiction's roadside inspection program. The inspection must have been performed during the preceding 12 months. In using the roadside inspection, the motor carrier would need to retain a copy of an annual inspection report showing that the inspection was performed in accordance with the minimum periodic inspection standards set forth in appendix G to this subchapter. When accepting such an inspection report, the motor carrier must ensure that the report complies with the requirements of § 396.21(a).

* * * * *

PART 397—[AMENDED]

63. The authority citation for part 397 continues to read as follows:

Authority: 49 U.S.C. 5101 et seq.; and 49 CFR 1.48.

64. Section 397.1 is amended by revising paragraph (a) to read as follows:

§ 397.1 Application of the rules in this part.

(a) The rules in this part apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title and to—

(1) Each officer or employee of the motor carrier who performs supervisory duties related to the transportation of hazardous materials; and

(2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.

* * * * *

65. In appendix B to subchapter B, paragraph 3 is revised to read as follows:

APPENDIX B TO SUBCHAPTER B—SPECIAL AGENTS

* * * * *

3. *Definition of special agent.* Federal Highway Administration (FHWA) employees charged with enforcing 42 U.S.C. 4917 and 49 U.S.C. 104, 501 et seq., 521 et seq., 5101 et seq., 5901 et seq., 31101–31104, 31108, 31131 et seq., 31161, 31301 et seq., and 31501 *et seq.*, including employees within the Office of Motor Carriers and such other persons as the Federal Highway Administrator or the Associate Administrator for Motor Carriers may specify in writing, in possession of credentials issued by the FHWA, are special agents. They are hereby authorized to inspect and copy records and to inspect and examine lands, buildings, and equipment to the manner and extent provided by law.

* * * * *

[FR Doc. 95–18382 Filed 7–27–95; 8:45 am]

BILLING CODE 4910-22-P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–06, Notice 24]

RIN 2127–AE49

Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses and Multipurpose Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule amends Federal Motor Vehicle Safety Standard No. 214, "Side Impact Protection," to extend its dynamic testing requirements to light trucks, multipurpose passenger vehicles and buses with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. (Light trucks, multipurpose passenger vehicles and buses are hereinafter referred to as LTVs.) The dynamic testing requirements currently apply to passenger cars only. This rule extends the dynamic procedures now used to test passenger cars, without modification, to LTVs. Based on current vehicle sales data, the agency estimates that the percentage of LTVs will increase significantly in the future. Small LTVs, which are potentially vulnerable in side crashes, will comprise much of the LTV fleet by the year 2000. This extension ensures these vehicles provide side impact protection for the same crash conditions under which passenger cars provide such protection. It also furthers the goal of the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA")), which directed NHTSA to initiate rulemaking on LTV side impact safety.

DATES: This rule is effective on September 1, 1998.

Petitions for reconsideration of the rule must be received by August 28, 1995.

ADDRESSES: Petitions for reconsideration should refer to the docket and number of this document and must be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards (telephone 202–366–4924), or Ms. Deirdre Fujita, Office of the Chief Counsel (202–366–2992), National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

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I. Background

This rule amends Federal Motor Vehicle Safety Standard No. 214, "Side Impact Protection," to extend its dynamic testing requirements to LTVs of 6,000 pounds or less gross vehicle weight rating (GVWR). The dynamic testing requirements currently apply to passenger cars. The effect of this amendment is to ensure that smaller LTVs provide side impact protection under the same crash conditions under which passenger cars provide such protection. Larger LTVs and many smaller LTVs will be able to comply with the requirements of this standard without any modification. A notice of proposed rulemaking (NPRM) setting forth the proposals upon which this rule is based was published June 15, 1994 (59 FR 30756).

a. Current Requirements

Standard 214 specifies two sets of requirements for the vehicles to which it applies. The first is composed of quasi-static side door strength requirements for passenger cars and LTVs with a GVWR of 10,000 pounds or less. Those requirements seek to mitigate occupant injuries in side impacts by reducing the extent to which the side door structure of a vehicle is pushed into the occupant compartment during a side impact. Under the requirements, side doors must resist crush forces that are applied against the door's outside surface in a laboratory test. The requirements have applied to passenger cars since January 1, 1973, and were extended to LTVs on September 1, 1993 by a final rule published in the **Federal Register** (58 FR 27427) on June 14, 1991.

The second set of requirements comprise the dynamic testing requirements for passenger cars. NHTSA adopted these requirements in a rule published on October 30, 1990 (55 FR 45722). Under the requirements, a passenger car must provide protection to occupants' thoracic and pelvic regions as measured by the accelerations registered on an instrumented side impact dummy (SID) in a full-scale crash test. In the test, the car (known as the "target" car) is struck in the side by a moving deformable barrier (MDB) simulating another passenger car. A phase-in for these new requirements began on September 1, 1993.

The MDB specified in the dynamic test procedure weighs, nominally, 3,000 pounds, and its contact face is 22 inches in height, 66 inches in width and 33 inches high (measured from the ground to the top edge of the barrier face). NHTSA derived the weight of the barrier from the median curb weight of passenger cars (3,181 pounds in 1989) and light trucks (3,958 pounds in 1989). This resulted in a weighted average of 3,423 pounds, which was adjusted downward to account for the then-projected lower weight of vehicles in the 1990's.

Under the test procedure, the front and rear wheels of the MDB are "crabbed" at an angle of 27 degrees. With the MDB face oriented at a right angle to the target car, the MDB moves at an angle of 27 degrees and at a speed of 33.5 mph into the side of the target car. These aspects of the procedure were selected so that the test simulates the vehicle kinematics and crash forces that a car would experience in a real world side crash in which it was traveling at 15 mph and was struck perpendicularly by a vehicle traveling at 30 mph. The agency selected the 30 mph/15 mph combination because it represents the mid-range of the speed in real-world side crashes, is the threshold speed for serious chest injury, and because countermeasures (e.g., increased padding and/or reinforced structure) designed for the 30 mph/15 mph combination are likely to be effective in reducing chest injury potential over most of the range of impact speeds encountered in real world side crashes.

b. Purpose of Today's Rule

This rulemaking addresses several NHTSA goals. This rulemaking is a first step towards establishing appropriate dynamic testing requirements for LTVs. An advance notice of proposed rulemaking (53 FR 31716) published in 1988 discussed possible side impact protection requirements for LTVs in areas where requirements had been or were under consideration for passenger cars. That notice announced that NHTSA was considering developing dynamic test procedures and performance requirements for LTVs, similar to those proposed at that time and later adopted for passenger cars.

Amending Standard 214 to address side impact protection for LTVs also furthers the goals of the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA")). In 1991, Congress directed the agency to initiate and complete rulemaking to address the possible extension of Standard 214's dynamic side impact requirements for passenger cars to MPVs and trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. In response, NHTSA initiated rulemaking by publishing another advance notice of proposed rulemaking (ANPRM) on June 5, 1992 (57 FR 24009). Section 2502 of ISTEA provides that rulemaking is considered completed when NHTSA either promulgates a final rule or decides not to promulgate a rule. Today's final rule extending Standard 214's dynamic side impact protection requirements to LTVs completes the ISTEA-directed rulemaking.

This rulemaking also marks one of the final phases of the agency's long-term endeavor to extend most of its passenger car standards to LTVs. This effort has resulted in a number of rulemaking actions over the past decade. Among the passenger car safety standards extended to LTVs were Standards 202 (requiring head restraints), 204 (limiting rearward movement of steering column in a crash), 208 (requiring dynamic testing of safety belts for LTVs, and in model year 1999, requiring air bags in 100 percent of LTVs), and 216 (requiring roof crush strength). NHTSA extended those standards to ensure that LTVs are as safe as passenger cars in their crashworthiness performance, since they are being purchased in increasing numbers and are increasingly being used as passenger-carrying vehicles.

These increases can be illustrated by registration data. Data from R.L. Polk show that LTV registrations have increased from 33 million in 1983 to 45 million in 1988, and to 57 million in 1993. From 1983 to 1993, the percentage of light trucks in the compact (now termed "small and middle") category increased from 39 percent to 63 percent.

Both Congress' ISTEA directive on LTV side impact protection and NHTSA's endeavor to extend passenger car standards to LTVs stem from the convergence of LTVs and passenger cars in terms of their design and use (with many LTVs in the compact size range used as personal transportation rather than for cargo). With LTVs carrying more and more passengers, there has been a commensurate increase in fatalities. The overall increase in LTV fatalities from 1985 to 1993 was 25 percent. In the 1985 data from NHTSA's Fatal Accident Reporting System (FARS), there were 6,763 fatalities among occupants of LTVs: 115 in small vans; 722 in large vans; 1,686 in small pickups; 3,342 in large pickups and 898 in other LTVs. By comparison, in 1993, there were 8,487 fatalities that occurred in LTVs. The fatality distribution by LTV vehicle category was: 576 in small vans; 545 in large vans; 2,519 in small pickups; 3,357 in large pickups; and 1,389 in sport utility vehicles.

c. Side Impact Safety Problem

The number of fatalities in LTV side impacts increased faster than the overall fatality rate. In 1984, LTV side impacts resulted in 1,197 fatalities; in 1991, there were approximately 1,676 fatalities in side crashes. NHTSA estimates [1] that, by the mid-1990's, side impacts will result in 1,763 fatalities for LTV occupants sitting in the front or second seat, annually. Front seat occupants will account for 1,705 of the fatalities, with occupants of the second seat accounting for 58 fatalities (less than 2 percent). Side impacts are also expected to account for about 6,000 serious but non-fatal injuries to occupants sitting in the front or second seat, annually. These injuries are of a level of 3 to 5 on the Abbreviated Injury Scale (AIS). (An AIS level is a measurement that rates the severity of any injury. For example, a minor injury is rated at the AIS 1 level. At the other extreme, a fatal injury is rated at AIS 6.)

The side impact protection requirements in Standard 214 are two-fold. The quasi-static strength requirements address intrusion-related injuries, such as in narrow object side crashes into poles or trees (fixed objects), by limiting the amount of intrusion. The standard's dynamic requirements primarily address LTV occupant fatalities and serious injuries that are likely to occur due to occupant contact against the side interior of the struck vehicle in a two-vehicle collision. (See Final Regulatory Impact Analysis for the rule adopting dynamic test requirement for passenger cars, Docket number 88–06, notice 8, DOT HS 807–641, August 1990.)

The dynamic side impact requirements address primarily chest and pelvic injury, using dummies that are instrumented with four accelerometers to measure accelerations in the dummy ribs and spine, and pelvic region. The values measured in the ribs and spine are used in determining the "Thoracic Trauma Index (TTI(d))." TTI(d) is an injury criterion that measures the risk of thoracic injury of an occupant in a side impact. The fourth accelerometer, mounted in the pelvic cavity, measures the potential risk for pelvic injury. To meet Standard 214's side impact protection requirements, the TTI(d) and pelvis measurements must be below specified maximum values.[2]

NHTSA estimates that, by the mid-1990's, about 14 percent of the 1,763 LTV fatalities (i.e., 245 fatalities per year) and roughly 14 percent of the 6,000 serious (AIS 3–5) thoracic injuries (i.e., 857 injuries per year) would be due to contacts between an occupant's chest, abdomen, back and pelvis and the struck vehicle's side interior. The agency believes that approximately 88 percent of these fatalities and injuries will occur in side impacts with LTVs, heavy vehicles, and fixed objects, rather than in side impacts with passenger cars. Looking solely at multi-vehicle side impacts between LTVs and other light vehicles, approximately 78 percent of the LTV fatal "torso" injuries are caused by other light and heavy trucks, and only 22 percent, by passenger cars (mostly large passenger cars).

II. The NPRM

Following the ISTEA-directed ANPRM initiating rulemaking on dynamic side impact protection for LTVs, NHTSA published the June 1994 NPRM which set forth the proposal upon which today—s rule is based. The NPRM proposed to extend Standard 214's dynamic side impact protection requirements to LTVs with a GVWR or 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

Under the proposal, all of the provisions in the standard that currently apply to passenger cars would have been extended to LTVs, but the test procedure would have been modified by raising the height and weight of the moving barrier used to strike the tested vehicle. The agency proposed this modification for several reasons. One was the agency's tentative conclusion that "a simple extension of Standard No. 214's dynamic side impact protection requirements to LTVs would result in few, if any, benefits." The agency noted its related concern that a simple extension "would result in significant compliance costs without concomitant benefits." Another reason was the design differences between passenger cars and LTVs, and in the size and weight of striking vehicles that caused the most extensive safety problems in side crashes. The modifications were intended to make the test "more representative of the side impact crash conditions causing fatalities and serious injuries in LTVs."

Occupants of LTVs are generally seated higher than those in passenger cars. Because of this, LTV occupants generally face a smaller risk of side impact thoracic injury, than passenger car occupants in a majority of side crashes (i.e., in crashes in which passenger cars are the striking vehicles). If a passenger car (which composes the majority of the current vehicle fleet and represents the most probable striking vehicle) strikes another passenger car in a side impact, the striking vehicle typically pushes the inside door panel of the struck vehicle at a relatively high velocity directly into the thorax of an occupant sitting next to the door. However, if a passenger car strikes an LTV in a side impact, the primary part of the side structure that is pushed inward is more likely to be below the thorax of an adjacent occupant, thereby resulting in smaller injury-producing loads to the occupant's thorax. Further, LTVs typically have higher sill and side structures than passenger cars. Those structures limit the loads transmitted by a passenger car directly to the door, thus reducing the door contact velocity to the occupant.

Because of these differences, the fatality rate for occupants of LTVs in all side impact crashes is less than half of that for passenger cars. The LTV occupant side impact fatality rate per million registered vehicles is 25.7, as compared to 53.3 for passenger cars.

Although NHTSA recognized in the NPRM that "the problem of thoracic injuries in side impacts is not so great for LTV occupants as it is for passenger car occupants," the agency tentatively concluded that side impact protection requirements should apply to LTVs in a manner that would reduce the thorax-related fatalities and serious chest injuries in vehicles struck in side impacts. Most of these casualties would occur in crashes in which a vehicle other than a passenger car is the striking vehicle. (The two types of striking vehicles that are most likely to cause severe chest injuries in side impacts are standard pickups and compact pickups. These vehicles cause 26 percent and 16 percent of all such injuries, respectively.) NHTSA tentatively concluded therefore that it would be appropriate to establish side impact protection requirements for LTVs that simulated the type of multi-vehicle crash that causes the greatest number of

[1] See "Preliminary Economic Assessment, NPRM for Light Trucks, Buses and Multipurpose Passenger Vehicle Dynamic Side Impact Protection, FMVSS No. 214" (June 1994), accompanying the June 1994 NPRM, NHTSA Docket 88–06–N23–001.

[2] For the thorax, TTI(d) must not exceed 85 g for passenger cars with four side doors, or 90 g for cars with two side doors. It is generally more difficult for manufacturers to achieve lower TTI(d) for two-door cars than four-door cars, given that the door on a two-door model is typically wider than on a four-door model. For the pelvis, peak lateral acceleration must not exceed 130 g's.

serious injuries to LTV occupants in side crashes. That is, the agency believed that the barrier simulating the striking vehicle and the simulated injury-producing event should reflect attributes of a vehicle larger than a passenger car in terms of its weight and front end profile.

NHTSA also noted in the NPRM that data indicated that many current LTVs, especially the heavier ones, already meet the criteria specified for passenger cars. NHTSA conducted two series of LTV side impact tests similar to the dynamic Standard 214 passenger car test. In the first test series, the agency tested seven LTVs using an MDB that was modified to make it more representative of side crash conditions causing fatalities and serious injuries in light trucks. The weight of the MDB was increased to 4,000 pounds, and the height of the barrier face was raised between 4 and 10 inches. In the second test series, NHTSA tested three small LTVs (1991 Toyota pickup, 1991 Suzuki Sidekick, and 1989 Dodge Ram D–50) and a fourth vehicle representative of a small van (1989 Colt Vista-2WD), using the current dynamic test procedure, including the 3,000 pound MDB specified in Standard 214 for passenger cars. (The Colt Vista was a passenger car version of a vehicle that was then marketed in a four-wheel drive version as an LTV. The agency believes that both versions of the vehicle provide similar side impact protection.) NHTSA believed the four represented "at risk" vehicles, i.e., LTVs in the fleet that are most likely to require modifications to meet the passenger car standard. The TTI(d) and pelvic g's for the four vehicles were as follows: Toyota pickup-55/53 g's; Suzuki Sidekick-54/104 g's; Dodge Ram-83/72 g's; Colt Vista-108/69 g's (driver dummy), 111/108 g's (passenger dummy). The Toyota and Suzuki both readily met the requirements. The Dodge marginally passed the thoracic requirement, but readily passed the pelvic requirement. The Colt, which is no longer sold in the United States, failed the thoracic requirement, but readily met the pelvic requirement.

a. Raising the Height and Weight of the Moving Deformable Barrier (MDB)

NHTSA proposed in the NPRM to set the height of the MDB within a range of 33 inches to 45 inches, as measured from the ground to the top edge of the barrier face. This represented an increase of up to 12 inches in MDB height as compared to the height specified for passenger car testing (33 inches).

Within the proposed 33 inch to 45 inch range, NHTSA proposed two alternative methods for specifying MDB height. Under the first method, the MDB height would be raised to match the driver H-point of the tested vehicle. This approach focused on attributes of the struck vehicle. Unlike passenger cars, for which the seating heights are very similar, the height of LTV seating positions vary considerably. The agency tentatively concluded that impacting a vehicle at the driver H-point would ensure that LTVs provide thoracic side impact protection when they are struck in the side by another LTV at a height that allows the side door interior to intrude inward at a relatively high velocity toward the chest area of adjacent occupants. Thus, the struck vehicle's side impact safety performance is evaluated at a specific height matching the front end profile of the striking vehicle that has the potential to cause serious chest injuries.

Under the second method, the MDB height would be at the same level for all LTVs, or at the same level for all LTVs within a particular sub-group, e.g., small and large pickups, vans and utility vehicles, with different levels specified for different sub-groups. This approach only focuses on attributes of the striking vehicles, taking into account only the average seating heights of a group of LTVs. Since the heights of the front ends of LTVs vary, specifying a single height that is equally representative of all LTVs would be very difficult. Moreover, specifying a single height raised possible practicability concerns, since a test procedure that specifies a single MDB height that is representative of large pickup trucks might simulate crashes in which compact LTVs could not comply since they have much lower seating heights than the front end heights of large pickup trucks.

NHTSA also proposed to increase the weight of the MDB for LTV testing. As noted above, NHTSA derived the weight of the barrier for passenger car testing from the median curb weight of passenger cars (3,181 pounds in 1989) and light trucks (3,958 pounds in 1989). This resulted in a weighted average of 3,423 pounds, which the agency adjusted downward to account for the then-projected lower weight of vehicles in the 1990's. Based on these considerations, NHTSA derived a nominal barrier weight of 3,000 pounds.

The agency proposed to specify the MDB's weight within a range of 3,000 pounds to 3,800 pounds. The lower end of the range is the current weight of the MDB specified for passenger car testing. The upper end of the range is based on the average weight of striking vehicles in LTV crashes where an LTV occupant had an AIS ≥ 3 torso injury, as observed in 1988–91 NASS data. NHTSA did not propose an MDB weight above 3,800 pounds because of concerns about practicability. In particular, the agency believed that as MDB weight is increased much above 3,600 pounds, there are increasing concerns about the feasibility of smaller LTVs meeting the dynamic test requirements with such a barrier.

Cognizant that it had proposed a wide range of possible modifications to the MDB, NHTSA sought to "facilitate more focused comments" with respect to the selection of a single height and weight for the MDB. The agency narrowed the focus by stating that it believed:

> That the combination of raising the MDB to a height in the middle portion of the proposed range, e.g., seven to nine inches above the passenger car barrier height, and increasing its weight to 3,600 pounds would be sufficient to create a dynamic event that is representative of the ones likely to cause serious chest injuries to occupants in the most vulnerable LTVs in real world crashes. 59 FR at 30762.

b. Response to the NPRM

The agency received 19 comments on the NPRM. Commenters included vehicle manufacturers (General Motors, Chrysler, Ford, Mazda, Isuzu, Mitsubishi, Toyota, Volkswagen, Nissan and Rover Group), multistage vehicle manufacturers (Starcraft, Flexsteel Industries, and Bornemann Products), and consumer and industry groups (Advocates for Highway and Auto Safety, American Automobile Manufacturers Association, Insurance Institute for Highway Safety, National Association of Independent Insurers, National Truck Equipment Association, and Recreation Vehicle Industry Association).

Of all the commenters, only Advocates for Highway and Auto Safety (Advocates) and the National Association of Independent Insurers (NAII) supported modifying the height and weight of the MDB. Advocates suggested that the MDB weigh 3,800 pounds, have a bumper, and be designed so that the distance from the top of the bumper to the ground is 33 inches and the distance from the top of the barrier face to the ground is 45 inches. Advocates said that such a barrier would represent the weight and height of a larger LTV as the striking vehicle. NAII said the MDB weight should be 3,400 pounds since "the sales weighted average curb weight of new passenger cars and LTV fleets * * * now averages approximately 3400 pounds."

The vehicle manufacturers were unanimously opposed to the NPRM, and wanted the rulemaking either terminated or limited to a straight extension of the passenger car side impact protection requirements. The American Automobile Manufacturers Association (AAMA), representing GM, Ford and Chrysler, strongly believed the rulemaking should be terminated. Toyota, Isuzu, and Mazda also believed the rulemaking should be terminated. In the alternative, these commenters, together with Volkswagen and Nissan, said that if NHTSA decided to proceed with a final rule, it should adopt no more than the passenger car test procedures and injury criteria.

The commenters opposing the NPRM raised several main objections:

1. Equity. Each raised an equity argument, contending that it is unfair for NHTSA to adopt LTV side impact protection requirements based on test conditions more severe than those used for passenger cars, when LTV occupants currently face a smaller risk of thoracic injury in side impacts as compared to passenger car occupants. AAMA said that NHTSA understated the degree to which LTVs present a smaller risk of injury when the NPRM stated that the side impact fatality rate for occupants of LTVs in side impact crashes is slightly less than half of that for occupants of passenger cars. NHTSA estimated that the LTV occupant side impact fatality rate per million registered vehicles is 25.7, as compared to 53.3 for passenger cars. AAMA stated that these rates were based on all injuries in side impacts, while only thoracic injuries—"the principal focus of this rulemaking"—should be calculated. AAMA said that NHTSA estimated in the NPRM that 245[3] of 1,763 LTV occupant fatalities, or 13.9 percent for LTVs and 37 percent for passenger cars, will be due to thorax injuries. According to AAMA,

> Applying these percentages to the aforementioned fatality rates yields side impact fatality rates due to thoracic injuries per million registered vehicles. For LTVs, this rate is approximately 3.6. For passenger cars, it is approximately 19.7. LTV occupants, therefore, presently face less than one-fifth the risk of receiving a fatal thoracic injury in a side impact compared to passenger car occupants.

[3] In its comment, AAMA later also argues that the NPRM's estimate of 245 annual fatalities is overstated. AAMA believed those fatalities include accident conditions that do not relate to the proposed test procedures, such as single vehicle accidents, medium and heavy trucks as striking vehicles, and ejections. By excluding these, AAMA estimates there are only 52 fatalities remaining. AAMA also argued that NHTSA did not take into account the 58 to 82 fatalities that would be reduced from implementing Standard 214's quasi-static test requirement for LTVs.

The vehicle manufacturers argued these data demonstrate that LTVs are already safer than passenger cars in side impacts. Thus, these commenters concluded, it would be unreasonable to adopt more severe requirements for LTVs than what is required for passenger cars. AAMA suggested that rather than promulgate a dynamic side impact requirement for LTVs, NHTSA could utilize its resources more effectively by working to increase seat belt usage and reduce impaired driving by LTV users.

Some commenters compared LTV occupant injuries in side impacts to injuries in other types of crashes and questioned whether the side impact protection of LTVs constitutes a safety problem of a magnitude severe enough to justify the proposed rulemaking. Nissan commented that NHTSA presented data at the 1991 Enhanced Safety Vehicle Conference which indicated that the portion of fatalities for occupants in LTV side impact crashes amounted to only 0.92 percent of the total LTV occupant fatalities.

2. Unrepresentative barrier. Most of the commenters opposed to the NPRM objected to what they regarded as the unrepresentativeness of the proposed dynamic side impact test procedure for LTVs. Many opposed using a barrier representing an LTV to strike vehicles being tested, on the grounds that such a test would not be representative of a typical real-world LTV side impact. According to several commenters, an LTV is more likely to be struck in the side by a passenger car than by another LTV. Nissan said that data from the National Accident Sampling System (NASS) for 1988 through 1992 indicate that in side impacts, passenger vehicles collide with the side of an LTV more than three times as often as LTVs collide with other LTVs. Volkswagen (VW) and Isuzu believed that LTVs are exposed to the same traffic environment as passenger cars, and therefore, their exposure to side impact accidents from other vehicles would be similar to that of passenger cars. VW stated, "The side impact test barrier should be representative of the accident exposure of the target vehicle and therefore a common barrier should be used for passenger cars as well as LTVs." AAMA said that NHTSA has not provided data justifying a departure from the "most likely striking vehicle" approach used in the passenger car side impact protection requirements.

The view that a dynamic side impact test for LTVs should represent a common real-world event was also shared by the Insurance Institute for Highway Safety (IIHS). This commenter supported subjecting LTVs to the same dynamic side impact test as cars. IIHS took issue with the agency's position in the NPRM that the test procedure for LTVs should be modified to better represent those crashes most likely to cause serious and fatal thorax and pelvis injuries among LTV occupants. The commenter believed NHTSA failed to indicate whether those crash conditions represent a common real-world event.

Many commenters objected that a modified LTV test procedure would not be representative of the type of crash most likely to result in serious injuries and fatalities to LTV occupants. This view is contrary to the one stated by NHTSA in the NPRM. There the agency had tentatively concluded that, in order to address the safety problem in side crashes of LTVs, the barrier used to simulate a striking vehicle should be increased in height and weight to better represent striking vehicles that are most likely to cause severe chest injuries in side impacts, i.e., standard pickups and compact pickups. (The NPRM said that accident data indicate that 78 percent of LTV side impact fatalities resulting from a "torso" injury involved a LTV or a heavier vehicle as the striking vehicle in vehicle-to-vehicle crashes.) Those commenters believed that passenger cars more often cause serious injuries and fatalities than LTVs as the striking vehicle. Nissan stated that NHTSA presented data[4] at the 1991 Enhanced Safety Vehicle Conference which indicated that "serious injuries and fatalities in cases where passenger cars strike LTV class vehicles in a side impact scenario is on the order of six times that of LTV vehicles impacting another LTV." AAMA also refers to the report mentioned in Nissan's comment. AAMA said that the report shows that 1982–1989 NASS files indicate there were "only 13 cases relevant to the test requirements proposed in the NPRM." ("Relevant" means that these cases involved side crashes to the near side, and torso injuries only.) The commenter said that in nine of those 13 cases, a passenger car was the striking vehicle. AAMA said it conducted a similar study of 1991–1992 NASS files and found nine cases relevant to the NPRM. In 5 of the 9 cases, a passenger car was the striking vehicle. AAMA stated, "If LTV occupants typically suffer serious thoracic injuries when struck in side impacts by vehicles other than passenger cars, then surely nine years of NASS data would not show that passenger cars are the most common

[4] Partyka, S.C., "Light Truck Side Impacts with Serious Occupant Injury," ESV Report No. 91–S5–O–27.

side impact striking vehicles causing serious thoracic injuries to LTV occupants." AAMA also argued that a test procedure that matches the bumper height of the MDB to the H-point of the struck vehicle is likely to result in the MDB overriding the sill and floor structure. AAMA said this would be inappropriate since NASS data contained only four side impacts with sill/frame override, which accounts for only 0.03 percent of LTV side impacts.

AAMA commented that the proposed barrier configurations represented a vehicle or group of vehicles that do not exist. AAMA said that the proposed heights and weights for the barrier are inconsistent with manufacturers' fleet data. "Ford * * * data show that the average height of Ford light truck bumpers (including vehicles up to 15,000 pounds GVWR) is only 16.6 inches from ground—only 2.1 inches higher than Ford's average passenger car bumper. The NPRM proposes to raise the MDB bumper as high as 25 inches above the ground." AAMA believed NHTSA should have attempted to correlate the "typical striking vehicle" dimensional characteristics with the average U.S. LTV fleet, as the agency did for the MDB in the passenger car side impact protection rulemaking.

3. Inadequate test program. Some commenters objected to the NPRM because they believed that the proposal was based on a NHTSA test program that was inadequate for reasons other than those relating to a modified MDB. AAMA argued that NHTSA simply extended the impact conditions (e.g., striking velocity of the barrier) developed for passenger cars to LTVs without showing that those conditions are relevant for LTV crashes. AAMA said that NHTSA based its conclusions about the side impact performance of the entire LTV fleet on a test program that did not represent the LTV fleet. "None of the vehicles tested were equipped with side door beams, which could have a significant effect on test results." Also, AAMA said the test program did not account for the complexity and variability of LTVs as a group. For example, AAMA stated, "(t)he agency did not test extended cab pickups which are structurally different than regular cab pickups, nor the right side of a van which is structurally different than the left side of a van."

AAMA raised concerns about the agency's tentative conclusions in the NPRM about the effectiveness of padding and structural modifications as countermeasures. While NHTSA has shown that three inches of padding can improve the performance of vehicles in providing side impact protection, AAMA cautioned that three inches of padding is an unrealistic countermeasure for LTVs. The commenter believed that trucks with three front seating positions and three inches of interior padding would not be possible if customer seating preferences are to be met. AAMA also stated that the high compression foam used to develop effectiveness levels may reduce the SID accelerations, but may cause an increase in real-world side impact injuries, especially for elderly occupants.

III. Agency Decision

a. Extending the Passenger Car Requirements

NHTSA has decided that it should limit its final action in this rulemaking to a straight extension of the passenger car requirements to LTVs. The agency views a straight extension to be a reasonable starting point for establishing side impact protection for LTVs. While the agency recognizes that a straight extension of the side impact protection requirements for passenger cars to LTVs would provide few benefits when estimated on the basis of historical accident data, it would prevent any future LTVs being introduced into the market that are inferior in side crash safety performance to passenger cars. A modified test procedure for LTVs is not being adopted at this time because of concerns that NHTSA has about the proposal in light of the public comments. These issues are discussed below.

As noted earlier, some commenters said that the agency's information regarding LTV side impact protection is limited because none of the LTVs tested by NHTSA were equipped with side door beams. Manufacturers are likely to equip all LTVs with side door beams to meet Standard 214's quasi-static requirements, which become effective beginning with MY 1995. These requirements address primarily single vehicle impacts, such as impacts with poles and trees.

NHTSA does not know what effect side door beams may have on the performance of LTVs in vehicle-to-vehicle side impacts, especially if the striking vehicle were high enough to override the door sill of the struck LTV. The beam and its supporting structures can change how crash forces are directed at or away from the vehicle occupant in a vehicle-to-vehicle crash. Accordingly, the agency is concerned that past accident data of LTVs without door beams may not accurately indicate the real-world side impact performance of LTVS with beams in vehicle-to-vehicle crashes.

Another concern relates to the feasibility of the countermeasures that could be used in LTVs to reduce the TTI(d), if a modified MDB were adopted. In the preliminary regulatory evaluation (PRE) for the NPRM, NHTSA stated that padding has been demonstrated to be an effective countermeasure for reducing TTI(d) and pelvic g's for LTVs. NHTSA's countermeasure tests evaluated padding material that was used to assess countermeasure effectiveness for passenger cars. Yet the PRE recognized that structural modifications to the vehicle might be needed in addition to padding, depending on the chosen compliance option (page VI-I). Since the fatalities and serious injuries that are occurring in LTVs are caused by the heavier and higher profile vehicles, if an MDB were used to represent these vehicles, the type of padding countermeasures developed for cars may not be sufficient, by themselves, for LTV crashes of such severity. It is further noted that in the second seat of vans, there typically is no door on the left side, and thus no structural side supports adjacent to that side of the second seat. There also appears to be limited side wall space for padding in that area. Further, the agency's cost estimates of countermeasures and modifications were based on extrapolation from passenger car data, which may or may not be valid.

Some commenters stated that the agency failed to show that the proposed test procedure duplicated the real world in terms of impact direction and speed. The agency analyzed the accident data that are available to determine accident conditions of LTV crashes. While the NPRM contained broad ranges for impact height and weight of the MDB, the agency concluded that the impact conditions based on the current data are within these ranges. Therefore, the agency rejects these comments.

By extending Standard 214's passenger car requirements to LTVs, NHTSA is ensuring that the subject future LTVs will provide side impact protection under the same crash conditions under which passenger cars provide such protection. Both passenger cars and LTVs are operated in the same environment and thus have the same exposure to striking vehicles. NHTSA is requiring that LTVs provide a minimum level of side impact protection when struck by the type of vehicle most likely to strike LTVs in all side impacts. NHTSA has determined that this approach, based on overall exposure rather than cause of fatality or serious injury, is appropriate, given the information currently available. This

rule will ensure that future LTVs offer a minimum level of side crash protection.

The agency recognizes there is widespread compliance by today's LTVs with the dynamic performance requirements when tested according to Standard 214 for passenger cars. In past regulatory proceedings involving issues on which there is widespread compliance, the agency has generally concluded that there is no compelling safety need for it to act since vehicle manufacturers are already providing the requisite safety performance in the absence of a Federal requirement. In those circumstances, NHTSA has frequently determined that rulemaking would impose a burden on the agency by requiring it to develop appropriate requirements, conduct a rulemaking proceeding, and use some of its enforcement budget to monitor compliance. Such rules would also impose certification and additional paperwork burdens on the manufacturers. Those burdens would be imposed without a commensurate safety benefit for the public, and would therefore represent unnecessary burdens.

On other occasions, however, the agency has proceeded with rulemaking to assure that there is no retreat from the existing level of safety. For example, NHTSA issued a final rule requiring installation of lap/shoulder belt systems in the rear seats of cars, although almost all models were already voluntarily slated to be so equipped within a few years of the rule.

NHTSA concludes it is similarly appropriate to extend Standard 214 to LTVs, to ensure that future LTVs subject to the standard provide protection under the same crash conditions as passenger cars. The dynamic side impact protection represented by the standard is important for occupant safety in the future, if LTVs under 6,000 pounds GVWR make up the bulk of the LTV fleet population, as is expected. The fleet populations of small (i.e., compact) vans (minivans) and utility vehicles are growing at an appreciable rate, and additional manufacturers are entering these segments of the market. In the absence of a federal standard, NHTSA cannot assure the public that the current level of protection will be continued in the future. Also, it appears that, in the future, the growth rate of small LTVs will be much higher than that of large LTVs. NHTSA estimates that the small LTVs may constitute 60 percent of the total LTV population in 1997 and beyond.

While large pickups and vans meet the injury criteria of this rule without any modifications, NHTSA believes some small and medium LTVs may not do so and others may only marginally meet the performance criteria. As the agency noted above, its test data show that the Dodge Ram D–50, with a GVWR of approximately 4,900 pounds (a medium size), met the thoracic requirement only marginally. Some LTVs smaller than the Dodge Ram D–50 may not be able to meet the requirements, and may need improvements to ensure that they meet the requirements in the standard.

As LTVs continue to grow in popularity and sales, NHTSA believes it is important to ensure that all such vehicles meet at least the minimum requirements specified in Standard 214. Moreover, NHTSA believes it is important to ensure that any new entrants to the LTV market will follow the lead of their competitors in meeting the dynamic side impact protection requirements. The agency therefore concludes that today's rule will ensure a minimum safety performance in all LTVs subject to the standard.

Also, the agency has had a longstanding policy to have equivalent safety standards for cars and LTVs. Earlier in this document, recent actions to implement this policy were noted. The agency sees no compelling reason to deviate from this policy in this instance, given the information currently available.

The agency notes that a number of commenters suggested that NHTSA terminate this rulemaking, as permitted by ISTEA. They argued that the safety problem in LTVs is minor and therefore a termination would be consistent with the provision in ISTEA permitting the agency to "complete" rulemaking on side impact protection for LTVs by deciding "not to promulgate a rule." As discussed above, the agency disagrees that a termination is warranted. This rule ensures that all future LTVs subject to the standard offer a minimum level of side crash protection, and that occupants of cars and LTVs are assured of protection in the same crashes.

At the same time, the agency is sensitive to the issue of unnecessary regulatory burdens. As a result and because of the relatively superior safety performance of the larger LTVs and their more limited use as passenger-carrying vehicles, NHTSA is limiting the rule to LTVs with a GVWR of 6,000 pounds or less. At the time of the NPRM, the agency had reservations about proceeding with a straight extension in the absence of benefits, especially in view of the belief that a straight extension would impose "significant compliance costs." These costs were estimated based on an extension of all LTVs up to 8,500 pounds GVWR. However, since this rule is limited to vehicles at or under 6,000 pounds GVWR, fewer vehicles will have to be tested. NHTSA estimates that compliance costs will be reduced by about 15 percent due to the GVWR limit, and that they will not be significant.

NHTSA notes that possible future upgrades of side impact protection for both passenger cars and LTVs will be an integral part of the agency's research and development project relating to side impact protection. This project will analyze the entire light vehicle side impact problem that will remain after all vehicles with a GVWR of 6,000 pounds or less meet the existing dynamic side impact requirements of Standard 214. The agency will be considering what performance requirement upgrades should be made to all these vehicles, based on problem analysis and appropriate physical vehicle parameters.

b. Related Requirements

As discussed earlier in this notice, commenters raised a number of issues relating to the NPRM's proposal to adopt a modified MDB for LTV side impact protection requirements. In addition to the issues to which the agency has responded above, issues were also raised concerning the estimated costs and benefits attributable to side impact protection requirements incorporating a modified MDB; and the effectiveness of padding as a countermeasure in tests using a modified MDB. Since the agency has decided not to adopt a modified MDB at this time, these issues are moot.

Several commenters suggested that recent NASS data indicate that the vehicle most likely to cause serious injury or death to an LTV occupant is a passenger car. Those comments were provided in opposition to a modified MDB, and are also moot.

The remaining issues raised by the commenters are discussed in the next section.

1. Vehicles Covered by This Rule

This rule applies to LTVs with a GVWR of 6,000 pounds or less. However, it does not apply to any LTVs in that weight range that are walk-in vans, motor homes, tow trucks, dump trucks, ambulances and other emergency rescue/medical vehicles (including vehicles with fire-fighting equipment), and vehicles equipped with wheelchair lifts.

The 6,000 pound GVWR limit differs from that mentioned in ISTEA. As

indicated above, ISTEA required the agency to address the possible extension of Standard No. 214's dynamic side impact requirements for passenger cars to LTVs with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. Having chosen the barrier currently specified for passenger cars, the agency believes that it is appropriate to limit the application of the rule to vehicles with a GVWR of 6,000 pounds or less. That barrier represents side crashes in which occupants of the heavier LTVs are relatively unlikely to suffer death or serious injury. Further, LTVs with GVWRs over 6,000 pounds should easily meet the dynamic requirements adopted today without any modification. NHTSA conducted several side impact tests of production LTVs. Analysis of these data show that the performance of the vehicles in producing TTI(d) values has an inverse relationship to the curb weight of the test vehicle. Vehicles with a curb weight of over 3,800 pounds produced TTI(d) values below 50 g's. Since curb weight of 4,000 pounds is approximately equivalent to a GVWR of about 6,000 pounds, NHTSA concluded that vehicles with a GVWR of more than 6,000 pounds would meet the TTI(d) performance requirement of 85 g's with a large margin of safety (i.e., at least 30 to 35 g's below the specified performance requirement). In the interest of reducing unnecessary regulatory burdens associated with certifying vehicles to the FMVSSs, NHTSA has not applied this rule to large (over 6,000 pounds GVWR) LTVs.

Vehicles manufactured in more than one stage; altered vehicles. Limiting the application of this rule to LTVs with a GVWR of 6,000 pounds or less excludes a substantial number of vehicles produced by businesses involved in manufacturing vehicles in more than one stage, and in converting, or altering, LTVs (e.g., van converters). Many of these are small businesses. Final-stage manufacturers typically install truck bodies and/or work-related equipment on chassis. Alterers modify the structure of new, completed vehicles. Under NHTSA's regulations, a final-stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards, and alterers must certify that the altered vehicle continues to comply with all applicable safety standards.

The GVWR limit of 6,000 pounds or less is the same one that is used in Standard 216, "Roof Crush Resistance" (49 CFR section 571.216). Standard 216 prescribes static roof strength requirements for LTVs to increase the resistance of the roof to crush and intrusion. The standard originally applied to passenger cars, and was extended to LTVs in a 1991 final rule. In a comment on the rule, NTEA indicated that commercial LTVs produced from incomplete chassis generally have a GVWR above 6,000 pounds. Due to the agency's need to further examine the feasibility of applying the standard to LTVs with higher GVWRs, NHTSA limited the standard to LTVs with a GVWR of 6,000 pounds or less.

NHTSA is not aware that a significant number of vehicles produced by final-stage manufacturers and alterers have GVWRs below 6,000 pounds. No commenter provided information showing the existence or estimate of the population of multistage manufacturers or alterers of vehicles in that weight class. To the extent they exist, the means that these final-stage manufacturers and alterers will use in certifying compliance with the dynamic side impact requirements of Standard 214 will not differ significantly from the means they already use to certify compliance with other requirements, such as Standard 214's quasi-static side door strength requirements and Standard 208's automatic crash protection requirements. Those means are briefly described below.

First, a final-stage manufacturer could complete the vehicle within the limits set by the incomplete vehicle manufacturer for assuring continued compliance. This is the simplest course of action that a final-stage manufacturer can take to ensure that its completed vehicle performs safely. NHTSA's certification regulations require manufacturers of incomplete vehicles (chassis) used by final-stage manufacturers to provide information regarding the limitations on the center of gravity, weight, and other attributes that must be observed by a final-stage manufacturer in completing a vehicle if that manufacturer is to avoid affecting the vehicle's compliance with applicable safety standards. When the final-stage manufacturer observes the limits set by the incomplete vehicle manufacturer, it may certify the vehicle on that basis. An alterer could modify a certified vehicle in a way that does not affect the vehicle's compliance with FMVSS 214, such as by refraining from weakening the side structure of the vehicles.

Second, a final-stage manufacturer could choose not to remain within the incomplete vehicle manufacturer's limits for a chassis, or an alterer could affect a vehicle's compliance with the FMVSSs, if the final-stage manufacturer or alterer took steps sufficient to enable it to certify, with due care, that the completed vehicle complied with applicable safety standards, including Standard 214. Final-stage manufacturers that build their own body structures are generally larger than most final-stage manufacturers, and have greater engineering and testing expertise. Also, final-stage manufacturers can band together to sponsor testing and/or engineering analysis. Similarly, an alterer could conduct or sponsor testing and/or engineering analyses showing that the vehicle, as altered, complies with Standard 214.

Issues relating to LTVs produced in more than one stage or altered were commented on by five parties involved in the multistage manufacture or conversion of LTVs. They included the National Truck Equipment Association (NTEA), the Recreation Vehicle Industry Association (RVIA), two seat suppliers to multistage manufacturers and alterers (Flexsteel Industries and Bornemann Products), and an alterer of completed LTVs (Starcraft Automotive Corporation.)

These commenters expressed reservations concerning the first approach discussed in the NPRM, i.e., that a final-stage manufacturer could stay within the limits set by the incomplete vehicle manufacturer, and that an alterer could alter the vehicle in conformity with the manufacturer's body builder's guide so as not to disturb the vehicle's compliance with Standard 214. NTEA, representing multistage manufacturers and distributors of work-related trucks, truck bodies and equipment, said that, as a result of a dynamic side impact requirement for LTVs, incomplete vehicle manufacturers might restrict final-stage manufacturers from making any modification to the side door structure of their vehicles. The commenter believed such a restriction would preclude final-stage manufacturers from widening or lengthening doors, and would thus preclude them from producing vehicles that need large doors for accessibility purposes, such as ambulances, vehicles for handicapped persons, or specialty delivery vehicles.

NHTSA has previously considered assertions that incomplete vehicle manufacturers would establish unreasonably stringent limitations on their vehicles. In the rules establishing dynamic testing requirements for manual safety belts in LTVs under Standard 208 (53 FR 50221; December 14, 1988) and extending Standard 204's steering column rearward displacement limitations to additional LTVs (54 FR 24344; June 7, 1989), NHTSA noted that it did not believe that any incomplete vehicle manufacturer would, as a practical matter, establish unreasonably stringent limitations for its incomplete vehicles. If any incomplete vehicle manufacturer were to do so, final stage manufacturers would purchase their incomplete vehicles from other manufacturers that had established more realistic limitations.

The agency's belief that market forces will prevent incomplete vehicle manufacturers from establishing unreasonably stringent limitations seems to have been correct. No manufacturer has provided NHTSA with any evidence that overly stringent limitations have been or will be imposed on incomplete vehicles subject to any of the existing crash testing requirements. Thus, NHTSA does not find persuasive NTEA's suggestion that unreasonably stringent limitations will be imposed on the completion of incomplete vehicles as a result of extending Standard 214's dynamic test requirements to LTVs.

In any event, NHTSA believes the 6,000 pound GVWR threshold for this rule excludes most, if not all, LTVs produced by final-stage manufacturers and thus alleviates many of NTEA's concerns about the impacts of this rule. Moreover, this rule addresses some of NTEA's concerns by excluding walk-in vans, motor homes, tow trucks, dump trucks, ambulances and other emergency rescue/medical vehicles (including vehicles with fire-fighting equipment), and vehicles equipped with wheelchair lifts. These categories of vehicles are excluded because many vehicles within these categories tend to have unusual side structures that are not suitable for MDB testing (for example, since some of these excluded vehicles have a body much wider than their cabs, the MDB cannot hit the driver's door without first striking the body. The rule differs from the NPRM in adding "other emergency rescue/medical vehicles" and vehicles equipped with a wheelchair lift, to the list of excluded vehicles. Emergency rescue/medical vehicles typically have unusual side structures and are thus excluded for the same reason that the other vehicles are excluded. Vehicles equipped with a wheelchair lift are excluded because such vehicles typically have features such as a lowered floor (some are lowered as much as 10 inches), raised roof, movable seat bases and/or specially designed removable seats, in addition to the lift itself, that could raise practicability problems with regard to the ability of the vehicle to meet the dynamic side impact requirements. While NHTSA believes that all individuals are entitled to an equivalent level of occupant crash protection, the agency also believes that the goal of providing equivalent crash protection should not be achieved at the expense of the goal of providing mobility to the physically challenged. This rule excludes vehicles equipped with wheelchair lifts because those vehicles have unique features which, while improving accessibility, make it difficult for the vehicle to meet these requirements. Without the exclusion, these vehicles might not be produced.

As to LTVs that have not been excluded, if a final-stage manufacturer or alterer does not stay within the incomplete vehicle manufacturer's limits or alters the vehicle in a way that could affect its conformance to side impact protection requirements, the manufacturer or alterer will have the responsibility of determining what must be done to certify that the vehicle provides the requisite safety performance. Those manufacturers already certify to the dynamic crash test requirements of Standards 208 ("Occupant Crash Protection"), 212 ("Windshield Mounting"), 219 ("Windshield Zone Intrusion") and 301 ("Fuel System Integrity"), and the quasi-static requirements of Standard 214 and 216, among others. Under the statute, each manufacturer must certify its vehicles, but the statute does not require any manufacturer to crash test or undertake any particular evaluation of its vehicles to make its certification. If crash testing its vehicles is too burdensome for a final-stage manufacturer, it could certify its vehicles using similar means to those it now uses to certify to other standards with dynamic testing requirements, including appropriate engineering analyses.

The NPRM stated that, if a final-stage manufacturer does not stay within the incomplete vehicle manufacturer's limits or if an alterer alters the vehicle in a way that could affect the LTV's conformance to side impact protection requirements, the final-stage manufacturer or alterer can band together with other manufacturers and alterers to sponsor testing and/or engineering analysis to show that a vehicle type common to all complies with the dynamic side impact requirements. This is similar to what is done to enable multistage manufacturers and alterers to certify to the dynamic testing requirements of FMVSS 208, "Occupant Crash Protection." In response, RVIA said that while most manufacturers engaged in vehicle conversions certify to the automatic crash protection requirements of Standard 208 by means of "engineering analysis," using data from seating component suppliers and incomplete vehicle manufacturers, RVIA argued that engineering analysis would not be an alternative to full scale crash testing in the case of Standard 214. RVIA stated this is because

> [a]dequate simulation of dummy accelerations resulting from side intrusion contact with interior components, padding and/or seating components cannot be performed. Full scale impact testing would therefore be required to be performed on each side of each different vehicle/seating system configuration.

Similarly, Flexsteel Industries said that

> * * * the dynamic side impact requirements of FMVSS 214 on vans and pickups could well create a larger problem to verify continued vehicle compliance than that experienced for FMVSS 208. Unlike the FMVSS 208 requirement where sled testing could be used to make comparative tests of Flexsteel seating to factory seating, the proposed side impact test is an intrusive test and both sides of new vans and pickups may have to be tested.

NHTSA does not agree that engineering analysis is not useful in assessing a vehicle's compliance with Standard 214. Manufacturers have computer simulations, component and sled tests using body shells, and analyses at their disposal to aid in assessing the capability of a vehicle to meet the requirements under Standard 214. These methods are considerably less expensive than crash testing. With respect to the opportunity to use these alternative methods for assessing compliance, Standard 214 is not any different from Standard 208. Sled tests simulating side crash tests can be performed in the same manner as in FMVSS 208. Similarly, component test data from crushing vehicle doors, seat structures, and other lateral components along with dummy body block data could be used in developing mathematical models and computer simulations to analyze safety performance of vehicle designs. This would enable RVIA, Flexsteel and other companies to determine the capability of their vehicle designs in meeting the requirements in FMVSS 214. Further, NHTSA believes that alterers should assure that they are producing vehicles that are equal to their original counterparts. Therefore, alterers must certify their vehicles to the requirements in FMVSS 214 by any available means.

Other Issues

Vehicles with work-performing equipment. NTEA suggested that NHTSA should exclude vehicles outfitted with a cargo or property carrying body, or work performing

equipment. The agency is not adopting this suggestion because the agency believes references to "cargo or property carrying body" are overly broad. For instance, they would exclude, inappropriately, pickup trucks. NHTSA further notes that most, if not all, multistage vehicles equipped with work performing equipment are excluded as a result of either the 6,000 pound weight threshold for the applicability of the rule, or the exclusion of vehicles such as dump trucks, tow trucks and emergency response/medical vehicles from the rule's coverage.

RVIA, NTEA and Starcraft Automotive urged NHTSA to exclude "second stage manufacturers" of LTVs from any dynamic side impact protection requirement. In NHTSA's view, the statute does not permit such an exclusion. While the agency must "consider whether any * * * proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed," (49 U.S.C. § 30111(b)(3), formerly section 103(f)(3) of the Vehicle Safety Act), the agency's authority to establish different standards for different classes of vehicles is not without limit. The legislative history of the Vehicle Safety Act reveals that the consequence of section 30111(b)(3) is that any differences between standards for different classes of vehicles "of course [are to] be based on the type of vehicle rather than its place of origin *or any special circumstances of its manufacturer*." S. Rept. 1301, 2 U.S. Code, Cong. & Admin. News, 2714 (1966), cited in *Chrysler Corp.* v. *Dept. of Transportation*, 472 F.2d 659, 679 (6th Cir. 1972). Under that decision, NHTSA may not exclude vehicles from Standard 214 simply because they are manufactured in two or more stages. Further, NHTSA is not authorized when establishing safety standards to differentiate between manufacturers on the basis of their size or financial resources.

Strong policy reasons underlie Congress' refusal to differentiate between vehicles on the basis of the manufacturers' "special circumstances." A motor vehicle is an inherently dangerous instrument, composed of multiple components that must function together smoothly and safely. To protect unsuspecting members of the public from exposure to unreasonable risks posed by unsafe vehicles, there is good reason to require that every vehicle of a given type to meet all "minimum performance standards" that are prescribed for vehicles of its type.

Moreover, the statute does not authorize NHTSA to grant permanent exemptions from safety standards to small manufacturers who otherwise would be covered by those standards. *See Nader* v. *Volpe*, 475 F.2d 916, 918 (D.C. Cir. 1973). While *Nader* involved a single manufacturer that sought to be permanently exempted from safety standards, its reasoning applies equally to classes of manufacturers that seek such exemptions. Although the Safety Act was amended after the *Nader* decision to permit small manufacturers to seek *temporary* exemptions from safety standards if they can demonstrate that compliance with the standard would cause them "substantial economic hardship" and that they have made a good faith effort to comply (49 U.S.C. § 30113, formerly section 123 of the Vehicle Safety Act), Congress has severely restricted the agency's authority to grant such exemptions to very narrow, limited circumstances. These commenters are in effect seeking a permanent exemption from Standard 214 that the statute does not permit.

NHTSA acknowledges that *National Truck Equipment Association* v. *NHTSA*, 919 F.2d 1148 (6th Cir. 1990), suggests that NHTSA has authority, somewhere within its enabling statute, to exclude commercial vehicles manufactured in two or more stages from coverage under a safety standard. However, even an expansive reading of that case would not justify an exclusion of all multistage vehicles from the coverage of the standard.

Compliance using engineering analysis. Bornemann Products asked NHTSA to consider issuing a rule specifying that NHTSA will determine whether an LTV complies with a dynamic side impact requirement based on means other than an actual dynamic test, such as by way of engineering analysis. As a matter of policy, NHTSA seeks in developing and implementing its safety standards to use test procedures that not only determine compliance but also are as predictive of safety performance in the real world as practicable. Since dynamic crash tests are more predictive of such performance than engineering analysis, the agency uses them where practicable in developing compliance test procedures.

While engineering analysis may be adequate for design of the average vehicle, it may not be sufficient for the agency's purposes to determine the safety performance of a vehicle, with respect to all vehicle models. For example, in a particular case, the analysis may not properly account for all of the relevant crash variables and the individual interrelationship that exists between those variables. However, NHTSA acknowledges that manufacturers may use analytical methods to establish due care, especially if the manufacturers have limited financial resources.

2. Vehicles Manufactured Without Doors

In addition to the excluded vehicles described in the preceding section, this rule also excludes vehicles that have no doors or exclusively have doors that are designed to be easily attached or removed so that the vehicle can be operated without doors. The proposed exclusion was based on practicability concerns. Advocates objected to the proposed exclusion on the basis that it allows the design and sale of vehicles with an "inherently dangerous design."

In response, the agency notes that requiring these vehicles to meet Standard 214 would necessitate changes in their design which would adversely affect the utility and original purpose for which these vehicles were introduced. Accordingly, the agency does not consider the standard reasonable, practicable and appropriate for these vehicles.

3. Impact Reference Line

This rule makes a slight change to the provision in the NPRM on specifying the impact reference line (IRL) (S6.11) for the moving deformable barrier. The IRL is located on the target test vehicle to determine where the MDB must first contact the target vehicle in the dynamic test. It determines the distance of the vertical line of first MDB contact from the center of the wheelbase of the struck vehicle, and provides the relative position of the test dummy in the front seat of the target vehicle with respect to the striking MDB at the time of impact. For a left side impact, the left forward edge (corner) of the MDB must be aligned so that, when the MDB strikes the test vehicle, a longitudinal plane tangent to the left forward edge of the MDB passes through the IRL within a tolerance of ± 2 inches. As explained in the NPRM, the specified impact reference line for passenger cars is generally 37 inches forward of the center line of the wheelbase of the struck vehicle. However, for cars with wheelbases greater than 114 inches, the impact reference line is 20 inches behind the center line of the front axle. This ensures that the impact point for cars with very long wheelbases is not so far toward the rear of the car that the front seat dummy does not experience a full impact. The agency proposed, with one exception, the same impact reference line for LTVs. To ensure that the impact line is not too far forward for LTVs with very short wheelbases, the agency proposed that for LTVs with wheelbases of 98 inches or less, the impact reference line would be 12 inches rearward of the vehicle's front axle centerline. This would ensure that the MDB would not likely bridge across the front and rear axles in short wheelbase LTVs.

The NPRM noted that GM expressed a concern that specification of impact point based on wheelbase could result in different test results for different wheelbase versions of the same model LTV. Manufacturers sometimes offer the same LTV with several different wheelbases. Basing the impact point on a vehicle's wheelbase would result in the point of first contact of the barrier, in two structurally identical LTV's, being at two different locations. The NPRM requested comments on whether the specified impact reference line should be adjusted to eliminate this possibility, such as by specifying the impact reference line based on driver H-point instead of wheelbase.

In commenting on the NPRM, GM iterated its concern that the same model vehicle would be tested under two different sets of test conditions. GM said its regular cab S/T pickup with a standard length bed has a wheelbase of 108.3 inches, while the S/T pickup with a regular cab and long bed has a wheelbase of over 114 inches. The commenter stated, "According to the proposed procedure, the MDB would strike these two versions of the same truck at locations which differ by nearly three inches." Rover said the vehicle manufacturer should be able to choose to impact all "structurally identical LTVs with different wheelbases" at the same point provided that "the point chosen was that specified in the standard for one of the range of wheelbases."

After reviewing these comments, NHTSA has decided to specify the impact reference line in the following manner. For vehicles with a wheelbase of 98 inches or less, or greater than 114 inches, the impact reference line will generally be placed at the locations proposed in the NPRM. That is, for LTVs with a wheelbase of 98 inches or less, the impact reference line is 12 inches behind the vehicle's front axle, to ensure that the MDB is not so forward as to impact the front wheel, or bridge between the front and rear axles in a very short wheelbase vehicle. (NHTSA has adopted this provision for LTVs with wheelbases of 98 inches or less, and not for passenger cars, because to the agency's knowledge, there are very few passenger cars with such short wheelbases compared to LTVs sold in this country.) Similar to the specification in the standard for locating the impact reference line for passenger cars, for LTVs with wheelbases greater than 114 inches, the impact reference line generally is 20 inches behind the vehicle's front axle center line, to ensure that the impact point for vehicles with very long wheelbases is not so far to the rear of the vehicle that the front seat dummy does not experience a full impact.

For vehicles with a wheelbase of greater than 98 inches but not greater than 114 inches, the impact reference line will generally be 37 inches forward of the center of the vehicle's wheelbase, similar to the specification for passenger cars. However, in response to GM's and Rover's comments, this rule provides manufacturers producing two or more different versions of the same model vehicle the option of determining the impact reference line based on the vehicle with the shortest wheelbase of the different versions of the model.

NHTSA has selected this optional procedure because it reduces test burdens on manufacturers producing compact and "stretch" versions of a vehicle model, without compromising safety. The procedure does not alter the relative longitudinal position between the dummy and the MDB, thus ensuring that the dummy will be loaded by the barrier in the same manner in a test. While wheelbases for different versions of the same LTV model could differ, the difference in length is generally in the rear part of the vehicle, with the front axle to the front seating reference point (SgRP) distance remaining essentially the same. That is, the "stretching" resulting in a longer wheelbase version of a vehicle is rearward of the front seat. Thus, the relative distance between the front axle and the dummy is constant in different versions of the same LTV model irrespective of their differences in the location of the center of their wheelbase. Since the SgRP is located in virtually the same position in all versions of a specific vehicle model, the different versions are likely to perform virtually identically in Standard 214's dynamic test, if the distance between the barrier impact reference line and the dummy is maintained in the different versions. That knowledge would be helpful to manufacturers in certifying different versions of a model.

The procedure bases the IRL to SgRP distance on the vehicle with the shortest wheelbase, as opposed to a longer wheelbase, because using the shortest wheelbase ensures that the engagement of the side structure with the barrier is consistent across all versions of the same model. If a vehicle with a longer wheelbase were used as the "base" vehicle, the procedure could result in the barrier hitting a tire on a vehicle with a very short wheelbase, which would interfere with the interaction of the MDB and the side structure of the vehicle tested.

Under the optional procedure, the distance between the IRL that is a certain distance forward of the center of the vehicle's wheelbase (i.e., the vehicle with the shortest wheelbase, if there are several versions of the same model) or rearward of the front axle, as the case may be, and the SgRP of the vehicle, is used to determine the impact reference line for all other versions of the same model vehicle, even those with a wheelbase over 114 inches when it is a stretch version of a specific model. The distance between the SgRP and the IRL on the vehicle with the shortest wheelbase will be the same for all other versions of the same model.

Stated differently, NHTSA will place the IRL on a test vehicle of a specific model at the same distance from the SgRP that the IRL is from the SgRP on the model with the shortest wheelbase. When several versions of the same model have wheelbases ranging from 98 inches or less to more than 98 inches, the IRL will be placed 12 inches behind the centerline of the front axle of the vehicle with the shortest wheelbase. When the shortest version of a model has a wheelbase greater than 98 inches but not greater than 114 inches, the IRL will be placed 37 inches forward of the center of the vehicle's wheelbase (i.e., the vehicle with the shortest wheelbase, if there are several versions of the same model). When the shortest version of a model has a wheelbase greater than 114 inches, the IRL will be placed 20 inches rearward of the shortest vehicle's front axle. In all cases, after the location of the IRL is determined, the longitudinal distance from this reference line to the front SgRP is also determined. For tests of all other versions of the LTV model being tested, the IRL is located such that the distance between the IRL and the SgRP will be maintained.

4. Rear Seat

The NPRM requested comments on whether an LTV side impact protection requirement should apply to the front and rear seats of LTVs (as is the case for passenger cars), or whether they should apply to the front seats only of these vehicles. The preliminary economic assessment for the NPRM estimated that, for the rear seat, the target population consisted of eight fatalities and 17 to 20 AIS 3+ injuries. Because of the projected growth in LTV

registrations, the agency has now estimated that the target population for the rear seats may increase to 20–26 fatalities and 40–55 serious injuries, in the long run. The National Association of Independent Insurers (NAII) supported applying a dynamic side impact requirement to "back doors" as a means of increasing the safety to children riding in the passenger areas of mini-vans and sport-utility vehicles. The commenter said it is surprised by the "unexpectedly low safety payoff" estimated by NHTSA. Advocates acknowledged that the agency's estimates raise the possibility that applying a dynamic requirement to rear seats could create an unnecessary cost burden for manufacturers. However, the commenter argued that NHTSA could have underestimated how many small LTVs are used as passenger carrying vehicles.

This rule applies the dynamic side impact requirements to both the front and rear seats of LTVs. The agency believes this is reasonable, since it will make the requirements for passenger cars and LTVs as similar as possible. Also, a rear seat requirement will not impose significant burdens on manufacturers, since currently all LTVs would probably meet the requirement with little or no change. Most importantly, NHTSA adopted the rear seat requirement because trends in LTV registrations and occupancy data indicate that rear seats on LTVs are likely to be occupied more in the future, compared to the past twenty years. As more and more LTVs are used for family transportation, children are increasingly transported in these seats. In fact, comparing 1981–1986 NASS data for towaway crashes to 1988–1993 data, the ratio of rear to front seating of minors in LTVs has doubled from 0.2 to 0.4, while only slightly increasing from 0.5 to 0.6 for passenger cars.

5. Upgrading Other Aspects of the Standard

NHTSA received two comments suggesting that the agency should consider upgrading aspects of Standard 214 aside from modifications to the MDB. Advocates supported modifying the MDB to increase its height and weight, but also urged NHTSA to lower allowable TTI(d) to 80 (from 85) and pelvic g to 90 (from 130).

This rule does not adopt lower limits on the TTI(d) and pelvic g performance criteria specified in Standard 214. The agency gave no suggestion in the NPRM that NHTSA would change the performance criteria, and thus there was no notice for the suggested amendments.

IIHS, while supporting extending the passenger car requirements to LTVs (this commenter was opposed to a modified MDB for LTVs), urged NHTSA to "seriously review ways to upgrade this standard for all passenger vehicles." The commenter was concerned that the rulemaking signaled that NHTSA is satisfied with the passenger car requirements of Standard 214, and that the research needed to upgrade the standard does not have a sufficient priority within the agency.

NHTSA believes it would be premature to decide to upgrade the passenger car side impact protection requirements before an evaluation is made of the effectiveness of those requirements. Further, since the standard will not be fully implemented until September 1, 1996, it is too early to reassess the efficacy of those requirements. It is common practice for the agency to conduct an evaluation study of an important rulemaking action, such as Standard 214's dynamic side impact protection requirements, when sufficient accident data become available for analysis. NHTSA believes sufficient data will be available for an effective evaluation of the passenger car dynamic side impact requirements by the year 2000. NHTSA has planned to undertake research on advance dynamic side impact protection for all light passenger vehicles, including LTVs. The agency has also research underway to determine the potential for additional injury criteria for chest and abdominal injuries in side crashes. That research, while more of a priority at this time than efforts to upgrade the passenger car side impact protection requirements, is nevertheless likely to yield important information on matters pertaining to a Standard 214 upgrade for all regulated vehicles.

6. Leadtime

This rule is effective for all vehicles on September 1, 1998. NHTSA believes that most, if not all, LTVs subject to the rule are able to meet the requirements adopted today with little or no modification. Thus, a phase-in schedule for vehicle compliance with the rule is unnecessary. On the other hand, some manufacturers of small LTVs may seek to modify their vehicles to increase the margin with which their vehicles meet the criteria of the standard, to ensure the TTI measurements that NHTSA obtains from tests of their vehicles are within the standard's limits. NHTSA has determined that a September 1, 1998 effective date gives motor vehicle manufacturers sufficient leadtime to evaluate their products and make any necessary changes to them. In addition, there may be a number of final-stage manufacturers, many of which are small businesses, that need a September 1, 1998 effective date to obtain information sufficient to allow them to certify to the requirements of the standard. Final-stage manufacturers may not be able to initiate their compliance work until the chassis manufacturers publish their guidelines for completing vehicles in compliance with the dynamic performance requirements of Standard 214 and make those available. In view of the possible impacts of this amendment on both large and small manufacturers, NHTSA concludes for good cause shown, it is in the public interest to have an effective date later than one year after promulgation of this rule.

IV. Rulemaking Analyses and Notices

a. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. This rule will ensure that future new LTV models provide at least the same level of benefits as are provided to passenger car occupants. The safety benefits accruing from this rule, as applied to current models, are likely to be small. As far as the agency knows, all current LTVs meet this final rule. However, it appears some current models would only marginally meet the standard as currently manufactured, and may therefore have to be improved to assure compliance in future testing. The costs of this rule are negligible. In the preliminary regulatory evaluation for the NPRM, NHTSA estimated total compliance costs of $1.5 million (1992 dollars), with the standard applicable to vehicles at or below 8,500 pounds GVWR (55 vehicles at $27,770 per test, excluding the cost of the test vehicles). With the final rule applicable to vehicles at or below 6,000 pounds GVWR, potentially 47 vehicles would be subject to testing, with a total cost of $1.3 million.

b. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The small businesses and organizations most likely to be affected by this rule are final-stage LTV manufacturers and alterers. Many of the vehicles produced by final-stage manufacturers are over 6,000 pounds GVWR. Because the rule applies only to vehicles at or below 6,000 pounds GVWR, this significantly reduces the applicability of the rule in terms of both the number of small businesses affected by the rule, and the number of vehicles produced by an affected manufacturer. Some van converters (which are "alterers") could be affected by the rule. While there are a significant number of van converters, there are probably only a small number that convert mini-vans or other vans at or under 6,000 pounds GVWR, that produce vehicles types that are subject to this rule and that also change the side structure of the vehicle (e.g., by putting a larger window in the side of the vehicle). The van converter that does so would need to certify that the altered vehicle complies with Standard 214. Van converters would be able to make their certification using means at their disposal, such as engineering analyses or sponsored testing, similar to the methods they now use to certify to dynamic and quasi-static test requirements in the FMVSSs that apply to their vehicles. (A detailed discussion of the means available to final-stage manufacturers and alterers in certifying to the dynamic test requirements adopted today are discussed in the section, "Vehicles covered by this rule," *supra*.) In view of the limitations on the applicability of this rule, and in view of the means available to manufacturers to certify their vehicles, this rule will not result in a significant economic impact on a substantial number of small entities.

c. Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

d. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

e. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 40 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.214 is amended by revising S1(b) and S2, adding S3(f), and revising S5.1, S6.1, S6.11 and S7, and by adding S6.11.1 and S6.11.2 to read as follows:

§ 571.214 Standard No. 214, Side impact Protection.

* * * * *

S1. * * *

(b) *Purpose.* The purpose of this standard is to reduce the risk of serious and fatal injury to occupants of passenger cars, multipurpose passenger vehicles, trucks and buses in side impact crashes by specifying vehicle crashworthiness requirements in terms of accelerations measured on anthropomorphic dummies in test crashes, by specifying strength requirements for side doors, and by other means.

S2. This standard applies to—

(a) Passenger cars;

(b) Effective September 1, 1993, sections S3(a), S3(e), S3.1 through S3.2.3, and S4 of the standard apply to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less, except for walk-in vans; and

(c) effective September 1, 1998, sections S3(f) and S5 of the standard apply to multipurpose passenger vehicles, trucks and buses with a GVWR of 6,000 pounds or less, except for walk-in vans, motor homes, tow trucks, dump trucks, ambulances and other emergency rescue/medical vehicles (including vehicles with fire-fighting equipment), vehicles equipped with wheelchair lifts, and vehicles which have no doors or exclusively have doors that are designed to be easily attached or removed so the vehicle can be operated without doors.

* * * * *

S3 * * *

(f) When tested according to the conditions of S6, each multipurpose passenger vehicle, truck and bus manufactured on or after September 1, 1998, shall meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the vehicle is struck on either side by a moving deformable barrier. A part 572, subpart F test dummy is placed in the front outboard seating position on the struck side of the vehicle, and if the vehicle is equipped with rear seats, then another part 572, subpart F test dummy is placed on the outboard seating position of the second seat on the struck side of the vehicle. However, the second seat requirements do not apply to side-facing seats or to vehicles that have second seating areas that are so small that the part 572, Subpart F dummy can not be accommodated according to the positioning procedure specified in S7.

* * * * *

S5.1 *Thorax.* The Thoracic Trauma Index (TTI(d)) shall not exceed:

(a) 85 g for a passenger car with four side doors, and for any multipurpose passenger vehicle, truck, or bus; and,

(b) 90 g for a passenger car with two side doors, when calculated in accordance with the following formula:

$TTI(d) = 1/2\ (G_R + G_{LS})$

The term "G_R" is the greater of the peak accelerations of either the upper or lower rib, expressed in g's and the term "G_{LS}" is the lower spine (T12) peak acceleration, expressed in g's. The peak acceleration values are obtained in accordance with the procedure specified in S6.13.5.

* * * * *

S6.1 *Test weight.* Each vehicle is loaded to its unloaded vehicle weight, plus 300 pounds or its rated cargo and luggage capacity (whichever is less), secured in the luggage or load-carrying area, plus the weight of the necessary anthropomorphic test dummies. Any added test equipment is located away from impact areas in secure places in the vehicle. The vehicle's fuel system is filled in accordance with the following procedure. With the test vehicle on a level surface, pump the fuel from the

vehicle's fuel tank and then operate the engine until it stops. Then, add Stoddard solvent to the test vehicle's fuel tank in an amount which is equal to not less than 92 percent and not more than 94 percent of the fuel tank's usable capacity stated by the vehicle's manufacturer. In addition, add the amount of Stoddard solvent needed to fill the entire fuel system from the fuel tank through the engine's induction system.

* * * * *

S6.11 *Impact reference line.* Place a vertical reference line at the location described below on the side of the vehicle that will be struck by the moving deformable barrier:

S6.11.1 *Passenger cars.*

(a) For vehicles with a wheelbase of 114 inches or less, 37 inches forward of the center of the vehicle's wheelbase.

(b) For vehicles with a wheelbase greater than 114 inches, 20 inches rearward of the centerline of the vehicle's front axle.

S6.11.2 *Multipurpose passenger vehicles, trucks and buses.*

(a) For vehicles with a wheelbase of 98 inches or less, 12 inches rearward of the centerline of the vehicle's front axle, except as otherwise specified in paragraph (d) of this section.

(b) For vehicles with a wheelbase of greater than 98 inches but not greater than 114 inches, 37 inches forward of the center of the vehicle's wheelbase, except as otherwise specified in paragraph (d) of this section.

(c) For vehicles with a wheelbase greater than 114 inches, 20 inches rearward of the centerline of the vehicle's front axle, except as otherwise specified in paragraph (d) of this section.

(d) At the manufacturer's option, for different wheelbase versions of the same model vehicle, the impact reference line may be located by the following:

(1) Select the shortest wheelbase vehicle of the different wheelbase versions of the same model and locate on it the impact reference line at the location described in (a), (b) or (c) of this section, as appropriate;

(2) Measure the distance between the seating reference point (SgRP) and the impact reference line;

(3) Maintain the same distance between the SgRP and the impact reference line for the version being tested as that between the SgRP and the impact reference line for the shortest wheelbase version of the model.

(e) For the compliance test, the impact reference line will be located using the procedure used by the manufacturer as the basis for its certification of compliance with the requirements of this standard. If the manufacturer did not use any of the procedures in this section, or does not specify a procedure when asked by the agency, the agency may locate the impact reference line using either procedure.

* * * * *

S7. *Positioning procedure for the Part 572 Subpart F Test Dummy.* Position a correctly configured test dummy, conforming to subpart F of part 572 of this chapter, in the front outboard seating position on the side of the test vehicle to be struck by the moving deformable barrier and, if the vehicle has a second seat, position another conforming test dummy in the second seat outboard position on the same side of the vehicle, as specified in S7.1 through S7.4. Each test dummy is restrained using all available belt systems in all seating positions where such belt restraints are provided. In addition, any folding armrest is retracted.

* * * * *

Issued on: July 20, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–18275 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 571

[Docket No. 85–07; Notice 10]

RIN 2127–AF23

Federal Motor Vehicle Safety Standards; Air Brake Systems Control Line Pressure Balance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: In response to a petition for rulemaking submitted by Sealco Air Controls, this document amends the control line pressure differential requirements in Standard No. 121, *Air Brake Systems*, for converter dollies and trailers designed to tow other air braked vehicles. The agency has concluded that the amendments will improve the braking compatibility of such vehicles by allowing the use of a relay valve known as a spool-type low opening valve.

DATES: *Effective date.* The amendments in this document become effective August 28, 1995.

Petitions for reconsideration. Any petitions for reconsideration of this rule must be received by NHTSA no later than August 28, 1995.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket No. 85–07; Notice 10 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 121, *Air Brake Systems*, establishes performance and equipment requirements for braking systems on vehicles equipped with air brakes, including requirements for pneumatic timing. NHTSA recently amended the control signal pressure differential requirements of Standard No. 121, with respect to converter dollies and towing trailers. (57 FR 37902; August 21, 1992) The amendment specifically requires that, for trailers and converter dollies manufactured after August 23, 1993, the pressure differential between the control line input coupling and a 50 cubic inch test reservoir connected to the rear control line output coupling shall not exceed 1 psi at all input pressures between 5 psi and 20 psi and 2 psi at all input pressures greater than 20 psi. Input pressures below 20 psi represent routine braking applications, while input pressures between 20 psi and 40 psi represent moderate to heavy braking applications, and input pressures above 40 psi represent severe braking applications.[1]

The August 1992 amendment was intended to ensure that the control signal "passes" through a towing trailer or dolly without being altered along the way. Since the control signal passes through unaltered, each vehicle in a combination unit receives the same brake control signal. This serves to increase the braking compatibility of combination vehicles, since each vehicle in a combination has comparable braking performance. By specifying the maximum permissible differential between the input and output control line pressures, this requirement addresses problems of heat buildup and brake fade during long, gradual downhill runs at relatively low pressure brake applications, caused by relatively large brake pressure differentials between the trailers and converter dollies in multiple trailer combinations.

[1] In today's final rule, NHTSA has decided to modify the limit above 40 psi to allow a 5 percent differential (which at higher pressures exceeds the current limit of 2 psi) based on, among other things, the Society of Automotive Engineer's (SAE's) Recommended Practice SAE J1505, *Brake Force Distribution Test Code Commercial Vehicles.*

II. Sealco Petition

On June 10, 1993, Sealco Air Controls (Sealco), a valve manufacturer, submitted to NHTSA a rulemaking petition to amend Standard No. 121 with respect to the control line pressure differential requirements in S5.3.5. Specifically, Sealco requested that NHTSA amend these requirements to eliminate the need to modify the original design of its low opening valves (LOVs) that resulted from the August 1992 amendment. Sealco stated that these modifications degraded the ability of its LOVs to maintain minimal air pressure differentials between the input and output of these valves. These valves are used as control line relay valves and service line relay valves in trailers and converter dollies. The petitioner stated that unlike other relay valves that use a common poppet,[2] the low opening valves have a balanced spool technology[3] that allows the valve to initially open at a relatively low pressure of 1.5 psi. The pressure at which a valve initially opens is referred to as the crack pressure. According to Sealco, the spool technology enables the output pressure delivered by the valve to closely follow (i.e., track) the input control air pressure. As a result, it claimed that hysteresis[4] is not so prevalent with low operating valves as with high crack pressures. This amendment will not significantly affect small businesses, small organizations, and small governmental units that purchase vehicles since this amendment will have no significant cost impact on vehicles.

Hysteresis in a valve may cause the output line pressure of the valve not to track properly the input control line pressure, which may cause the application pressure of the brakes in the trailer to be significantly different than the control line pressure signal. In such situations, the valve's hysteresis may not allow the same pressure to be applied to the trailer brakes as is signalled by the driver's application of the brake control. In the case of increasing brake line pressure, this will cause less braking in the trailer than in the tractor, causing the trailer to "push" the tractor. Similarly, when the driver decreases the brake application, the hysteresis in the valve may not allow the brake application in the trailer to decrease to the same degree, resulting in the trailer brakes still being applied to a greater degree than those in the tractor. This causes the kingpin to jerk on the inside of the fifth wheel. Under high speed congested traffic conditions in which the driver may go through several brake applications and releases in rapid succession, the jerking and pushing of the trailer or trailers could be difficult to control. In multiple trailer combinations, this same phenomenon can be a problem between successive trailers as well as between tractors and trailers.

Sealco stated that the use of low operating valves would further NHTSA's goal of ensuring balanced braking in combination vehicles. However, the petitioner claimed that while its valve meets the amendment's application requirements, it does not meet the provision requiring release at high pressure ranges, given the valve's mechanics. To comply with the amendment, Sealco has drilled a hole in the valves' piston, thereby allowing pressure to bleed to the supply side. This action prevents the valves from cracking open when tested according to S5.3.5. Sealco believes that this modification to allow compliance with the amendment has reduced the valves' effectiveness.

[2] A poppet valve has a valve seat like a typical water faucet valve. The air flow is increased as the sealing lip is raised higher off the valve seat by varying the air pressure in the control line. The valve allows increased or decreased air flow from the supply line side of the system.

[3] A spool type valve has a cylinder which slides back and forth inside of a machined hole called a bore. As the spool slides past a port or opening on the side of the bore, the exposed side port then allows the air to flow past the valve spool.

[4] The phenomenon exhibited by a system in which the reaction of the system to changes is dependent upon its past reactions to change. With respect to braking, when the control line input pressure is increased, the relay valve's output (apply pressure) is usually a few psi lower than the control line output pressure, and is usually more than one or two psi above the descending control line pressure. Complications may arise when a subsequent brake application is made before the brakes have fully released after a prior application.

III. Notice of Proposed Rulemaking

On July 13, 1994, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 121 to permit the use of low opening valves. (59 FR 35672) Specifically, the agency proposed to amend S5.3.5 to address input pressures over 40 psi. Under the proposal, the pressure differential would not be permitted to exceed 2 psi at any input pressure between 20 psi and 40 psi and would not be permitted to exceed 5 percent at any pressure over 40 psi. In other words, the pressure differential requirements would remain the same as the current requirements, except for applications resulting in pressures over 40 psi.

In the NPRM, NHTSA explained that the current requirement may unnecessarily extend the 2 psi limit into the higher pressure ranges where it is not necessary for safety. The requirement is intended to prevent brake fade during relatively low brake applications below 20 psi. The 2 psi limit is relatively more stringent for hard brake applications, i.e., those exceeding 40 psi. The agency requested comments about whether the modification to pressure levels over 40 psi might be detrimental to safety or otherwise inappropriate.

IV. Comments on the NPRM

NHTSA received two comments on the July 1994 proposal to amend the control line pressure requirements. Mr. Robert Crail, a brake engineer, stated that "The adoption of the proposed amendment will not have any adverse effect on safety." He agreed with the agency that the greater problem area with pressure differentials is at the lower end of the pressure range and not the upper range, which is being broadened slightly. Advocates for Highway and Auto Safety (Advocates) criticized the proposal for several reasons. Advocates was primarily concerned that there was no real world braking data to support the amendment, which it believed would degrade heavy vehicle braking.

V. Agency Decision

After reviewing the comments and other available information, NHTSA has decided to amend Standard No. 121, with respect to the control line pressure requirements for converter dollies and trailers designed to tow other air braked vehicles. Specifically, the agency has decided to amend S5.3.4 to allow pressure differentials of up to 5 percent at pressures over 40 psi. The current 2 psi allowance is 5 percent of 40 psi, and the agency believes that allowing the same percentage above 40 psi is adequate. Based on its review of the available information, the agency has concluded that the amendment facilitates the use of an alternative technology, without being detrimental to safety. As it explained in the NPRM, NHTSA based the proposed requirement on the Society of Automotive Engineer's (SAE's) Recommended Practice J1505, *Brake Force Distribution Test Code Commercial Vehicles.* In addition, the agency also contacted all the major valve manufacturers about the pressure differential requirements. Based on its review, NHTSA believes that the 2 psi differential in the current requirement is

unnecessarily stringent for towing trailers and dollies in hard brake applications over 40 psi. Therefore, the agency has decided to adopt the petitioner's request to permit pressure differentials of up to 5 percent during hard brake applications.

Advocates criticized several aspects of the proposal to amend the pressure differential requirements. Specifically, that organization expressed concern that the amendment (1) was not supported by real world testing data, (2) would adversely affect safety, (3) was inappropriate for certain braking techniques, and (4) would allow spool valves, which it viewed as inferior. As explained below, NHTSA has concluded that Advocates' concerns are without merit.

Advocates contended that there is no real world safety data to support the proposed amendment. It stated that it is "opposed to safety-related regulatory changes which rely only on *a priori* calculations for gauging probable safety consequences." It therefore requested the agency to specify real world braking demonstrations to establish that spool type valves will not degrade safety.

NHTSA disagrees with Advocates' contention that there are no real world data to support the amendments to the control line pressure differential requirements. In fact, the agency has two reports containing a substantial amount of test data regarding real world braking.[5] These reports cover a substantial amount of real world braking demonstrations, including actual control line pressures under a full range of conditions used in a wide range of braking applications. Supporting data also indicate that the cut off point of 40 psi exceeds the braking conditions addressed by this rulemaking. All the test data in the antilock report are real world fleet test data and the down-hill test data in the Braking Strategy study are also real world and based on dozens of test runs. These reports illustrate that the cut-off point of 40 psi is reasonable. They further illustrate that a higher pressure is not necessary since approximately 99 percent of heavy braking occurs below that pressure.

Advocates claimed that the proposed amendments to the control line pressure requirements would have a deleterious effect on safety under severe braking conditions. That organization, however, did not state what it considers to be severe braking conditions.

NHTSA believes that Advocates' concern that the amendment would adversely affect safety is without merit, since, as mentioned above, approximately 99 percent of braking occurs at 40 psi or less. At 75 psi, which represents a panic stop on dry pavement that would most likely lock all the wheels unless the vehicle were fully loaded, the Sealco valves showed only a 1.5 psi tracking variation[6] in either the ascending or descending brake line pressures.

With regard to the safety of tracking error variation, the agency prefers a tracking error of zero as an ideal. However, that would be unrealistic for a valve manufacturer to achieve. Because of manufacturing variations in the valves along with hysteresis, 2 psi is a reasonable pressure limit at the low end.

Advocates commented that the agency mischaracterized braking practices. It stated that while snubbing (i.e., intermittently exerting force on the brake pedal) brakes at relatively low pressures is the preferred braking technique, drivers often "ride" (i.e., exert a constant force on the brake pedal) the brakes at higher pressures in long downhill descents.

NHTSA believes that Advocates' statement is not accurate, since all the agency's research data show that "riding" the brakes produces pressures that are approximately 50 percent lower than "snubbing" pressures. The agency further notes that Advocates' concern about snubbing or riding the brakes is not relevant since the air pressure requirements are being amended for pressures higher than those used in snubbing or riding the brakes. The air system pressure in either of the two braking methods is less than the 40 psi cut-off point established by this amendment. Worst-case conditions produced by snubbing in mountain grade descents average about 27 psi with peaks to 32 psi. Riding the brakes results in air pressure that seldom exceeds 10 psi, even on mountain descents.[7]

Advocates expressed concern that low pressure spool type valves could adversely affect safety compared to poppet valves. However, NHTSA notes that each type of valve is used in specific applications to its own best advantage. The agency is aware of no application in which either type should be restricted by performance requirements in Standard No. 121. There are no data available on the performance of air brake spool valves vs poppet type air brake valves, because the former type of values have not posed a problem.

Effective date. Each order amending a safety standard is required to take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. NHTSA has determined that there is "good cause" not to provide the 180 day lead-in period given that this amendment will not impose any mandatory requirements on manufacturers. The public interest in being able to use an alternative technology will also be served by not delaying the introduction of the requirement. Based on the above, the agency has further determined that there is good cause to have an effective date 30 days after publication in the **Federal Register**.

VI. Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule has no mandatory effects and therefore imposes no costs. Further, it does not make possible cost savings. Instead, the rulemaking simply permits the use of spool valve technology.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically do not qualify as small entities. For these reasons, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

5. Civil Justice Reform

This rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 121, *Air Brake Systems*, part 571 of Title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.121, S5.3.5 introductory text and S5.3.5(a) are revised to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.3.5 Control signal pressure differential—converter dollies and trailers designed to tow another vehicle equipped with air brakes.

(a) For a trailer designed to tow another vehicle equipped with air brakes, the pressure differential between the control line input coupling and a 50-cubic-inch test reservoir attached to the control line output coupling shall not exceed the values specified in S5.3.5(a)(1), (2), and (3) under the conditions specified in S5.3.5(b)(1) through (4):

(1) 1 psi at all input pressures equal to or greater than 5 psi, but not greater than 20 psi; and

(2) 2 psi at all input pressures equal to or greater than 20 psi but not greater than 40 psi; and

(3) not more than a 5-percent differential at any input pressure equal to or greater than 40 psi.

* * * * *

Issued on: July 20, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–18381 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 072195A]

Groundfish of the Gulf of Alaska; Pollock in the Eastern Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of pollock in the Eastern Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of pollock in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the pollock total allowable catch (TAC) in the Eastern Regulatory Area of the GOA has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 24, 1995, until 12 midnight A.l.t, December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas W. Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii), the TAC for pollock in the Eastern Regulatory Area of the GOA was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995), as 3,360 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for pollock in the Eastern Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of pollock in the Eastern Regulatory Area of the GOA be treated as prohibited species in accordance with § 672.20(e).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 24, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–18567 Filed 7–25–95; 2:15 pm]

BILLING CODE 3510–22–F

[5] See, (1) "An In-Service Evaluation of the Performance, Reliability, Maintainability and Durability of Antilock Braking Systems (ABSs) for Semitrailers", DOT HS 808050; October 1993, and (2) "The Influence of Strategy on Brake Temperatures in Mountain Descents" DTFH61–89–C–00106; March 1992.

[6] Tracking variation is a measure of how well matched the air pressure is between the (control) line side of the air brake system and the actual (service) air pressure being sent to the brake chambers. For example, if the driver's foot is placed on the brake pedal such that a 20 psi signal is sent to the valve that releases the air from the air reservoir on the trailer and the control valve releases 20 psi to the brakes, there is "zero" tracking error. If the air pressure at the brake chambers is between 19 to 21 psi, the tracking error would be within the 1 psi requirement of the standard.

[7] A report titled "The Influence of Strategy on Brake Temperatures in Mountain Descents" DTFH61–89–C–00106; March 1992, contains extensive data by both VRTC and The University of Michigan which relate to the air brake pressure required in "snubbing" and "riding" of the brakes.

Proposed Rules

Federal Register
Vol. 60, No. 145
Friday, July 28, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Consolidated Farm Service Agency

7 CFR Part 737

RIN 0560–AD92

Tobacco Warehouses

AGENCY: Consolidated Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Consolidated Farm Service Agency (CFSA) is proposing to amend its regulations pertaining to licensed tobacco warehouses under the United States Warehouse Act (USWA). The proposed rule would define warehouse to exclude places which have contracted with a cooperative marketing association (association) to make Commodity Credit Corporation (CCC) price support advances to producers on behalf of the association and to which producers will deliver their tobacco for display and auction (hereinafter auction warehouses). Accordingly, the proposed rule removes such places from the jurisdiction of the USWA Tobacco Warehouse Regulations as provided for under 7 CFR part 737. The proposed rule also makes changes with respect to package arrangement and some clerical corrections.

DATES: Comments must be received by August 28, 1995 to be assured of consideration.

ADDRESSES: Comments must be submitted to Acting Director, Warehouse and Inventory Division (WID), CFSA, P.O. Box 2415, Washington, DC 20013–2415, FAX 202–690–0014.

All submissions will be available for public inspection in room 5962, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen, Licensing Authority Branch, WID, CFSA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7433 or FAX 202–690–3123.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

The amendments set forth in this proposed rule do not generate any new or revised information collection or recordkeeping requirements on the public.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule, because it has been determined that this rule will not have a significant effect on a substantial number of small businesses. Licensing under the USWA is strictly voluntary on the warehouse operator's part.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The purpose of this proposed rule is to remove tobacco auction warehouses from coverage under the USWA and the regulations issued thereunder (7 CFR part 737). The USWA, as amended (7 U.S.C. 241 et seq.), provides that the Secretary of Agriculture may issue a license for the conduct of public warehouses that store agricultural commodities.

The USWA is implemented, as it pertains to tobacco warehouses, by regulations at 7 CFR part 737 and is administered by CFSA. Approximately, 1,500 entities hold licenses for storing eight different agricultural commodities. Presently, there are six tobacco auction warehouses licensed under the USWA.

In the tobacco industry, there are generally two types of tobacco warehouses: (1) Long term storage warehouses and (2) tobacco auction warehouses. The first type usually stores processed tobacco or raw tobacco that has been chopped, placed in containers, and otherwise prepared for long term storage. The second type receives raw tobacco from producers and retains it for a limited period of time, generally less than 30 days, until the tobacco is sold in an auction or transferred to a tobacco association for placement under the CCC price support program. Unlike a warehouse whose primary purpose is to store processed tobacco for a long period of time, the primary purpose of an auction warehouse is to market producer-owned tobacco. Presently, there are approximately 400 tobacco auction warehouses.

The primary objectives of the USWA are to protect those who store commodities in public warehouses; assure the integrity of warehouse receipts as documents of title to be used as collateral; and set, regulate, and maintain superior standards for said warehouse operators. Because the auctioning of tobacco is a merchandising function, a function which is not regulated by the USWA, the USWA and its regulations, thereunder, were not intended to cover tobacco auction warehouses. This proposed rule, however, does not affect the U.S. Department of Agriculture's (USDA) other regulatory activity as it applies to tobacco auction warehouses.

The primary functions of tobacco auction warehouses are currently regulated by several USDA agencies. For example, tobacco auction warehouses approved by the Agricultural Marketing Service (AMS) and CFSA may sell producer-owned tobacco. AMS strictly regulates the manner in which the tobacco must be stored, handled, presented for sale, and graded for sale. See, 7 CFR part 29. Further, the AMS regulations include detailed recordkeeping requirements. Further, AMS has representatives, on-site, during all sales of tobacco.

In addition the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, strictly regulate the sale of tobacco. CCC and CFSA regulate auction warehouses through the Tobacco Marketing Quota and Price Support Programs they administer. These regulations are codified at 7 CFR parts 723 and 1464. Under these regulations, CCC and CFSA require that warehousemen retain detailed records of all tobacco handled by them. The tobacco and the transactions associated with it must be tracked and recorded from the time the tobacco is brought into the warehouse by producers, to the time it leaves the warehouse.

The type and level of regulation by AMS, CCC, and CFSA are unique to auction warehouses. Producers who believe they have not been treated fairly by the warehouseman may seek relief directly from the on-site representatives of the various government agencies. If such allegations are confirmed, under the provisions of 7 CFR parts 723 and 1464, CCC or CFSA has the right to take appropriate actions against the tobacco auction warehouse to protect the interests of producers. Accordingly, because tobacco auction warehouses are (1) more involved with merchandising (which is a non-USWA function) as opposed to the long term storage of tobacco and (2) sufficiently regulated by other USDA regulations, CFSA proposes to eliminate the application of the USWA and its regulations to tobacco auction warehouses. This action further reduces the amount of federal regulation.

List of Subjects in 7 CFR Part 737

Administrative practice and procedure, Agricultural Commodities, Tobacco, Surety Bonds, Warehouses.

Accordingly, the provisions of 7 CFR part 737 are amended as follows:

PART 737—TOBACCO WAREHOUSES

1. The authority citation for part 737 is revised to read as follows:

Authority: 7 U.S.C. 268.

2. Section 737.2 is amended by revising the introductory text and paragraphs (f), (i), and (j) to read as follows:

§ 737.2 Terms defined.

For the purposes of this part, unless otherwise provided, the following terms shall mean:

* * * * *

(f) *Service.* The Consolidated Farm Service Agency of the U.S. Department of Agriculture.

* * * * *

(i) *Warehouse.* Any suitable building, structure, or other protected enclosure in which tobacco is, or may be, stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which tobacco is, or may be, stored and for which a license has been issued under the act except for any place, including any suitable building, structure, or other protected enclosure to which tobacco is delivered by the producers thereof, or their agents for the purposes of obtaining CCC price support advances and for the display and auction of tobacco.

(j) *Warehouseman.* Any person lawfully engaged in the business of storing tobacco and holding a warehouse license.

* * * * *

3. Section 737.4 is amended by adding the following sentence at the end of the paragraph:

§ 737.4 Grounds for not issuing license.

* * * Further, a license shall not be issued to any place to which tobacco is delivered by the producers thereof, or their agents, for the purposes of obtaining CCC price support advances and for the display and auction of tobacco.

4. In § 737.34 paragraph (a) is revised and paragraph (b) is amended by adding a period after the word "section" and removing the remainder of the paragraph.

§ 737.34 Package arrangement.

(a) Each warehouseman shall arrange the packages of warehoused tobacco so that the identification number thereon as required by § 737.33 is visible, readily accessible, and shall arrange all packages so as to permit an accurate check thereof, unless waived in writing by the Administrator.

* * * * *

§ 737.50 [Amended]

5. Section 737.50 is amended by removing "order of Agricultural Marketing Service, USDA", and by adding "Service."

Signed at Washington, DC, on July 24, 1995.

Bruce R. Weber,

Acting Administrator, Consolidated Farm Service Agency.

[FR Doc. 95–18552 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 1137

[DA–95–21]

Milk in the Eastern Colorado Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend certain performance standards of the Eastern Colorado Federal milk order. The suspension was requested by Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs. The suspension was requested to prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the order.

DATES: Comments are due no later than August 17, 1995.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Act, the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered:

1. For the months of September 1, 1995, through February 29, 1996: In § 1137.7(b), the second sentence is amended by suspending the words "plant which has qualified as a" and "of March through August"; and

2. For the months of September 1, 1995, through August 31, 1996: In § 1137.12(a)(1), the first sentence is amended by suspending the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 20th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 20 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed rule would suspend certain portions of the pool plant and producer definitions of the Eastern Colorado order. The proposed suspension would make it easier for handlers to qualify milk for pooling under the order.

The proposed suspension was requested by Mid-America Dairyman, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers on the Eastern Colorado order for several years. Mid-Am has requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers who have been historically associated with the Eastern Colorado order.

Mid-Am requests, for the months of September 1995 through February 1996, the removal of the restriction on the months when automatic pool plant status applies for supply plants. Mid-Am also proposes that, for the months of September 1995 through August 1996, the touch-base requirement not apply and the diversion allowance for cooperatives be raised.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. Mid-Am states that the marketing conditions that justified the prior suspensions continue to exist.

Mid-Am asserts that they have made a commitment to meet the fluid milk requirements of distributing plants if the suspension request is granted. Without the suspension, Mid-Am contends that it will be necessary to ship milk from distant farms to Denver-area bottling plants to qualify milk for pooling. The distant milk will displace locally-produced milk that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas.

In addition, Mid-Am maintains that ample supplies of locally-produced milk that can be delivered directly to distributing plants will be available to meet the market's fluid needs without requiring shipments from supply plants. Mid-Am also claims that neither the elimination of the touch-base requirement for producers nor the increase in the amount of milk that can be diverted to nonpool plants by a cooperative should jeopardize the needs of the market's fluid processors.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the time periods stated.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: July 24, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–18593 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 95–N–07]

Amendment of Affordable Housing Program Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Board) is soliciting comments on a proposal to amend its regulation governing the operation of the Affordable Housing Program (AHP or Program). The proposed rule would add a new provision authorizing a Federal Home Loan Bank (Bank) to set aside a limited portion of its available AHP subsidies to assist first-time homebuyers pursuant to a program meeting specific requirements set forth in the proposed rule. In addition, the proposed rule would permit a Bank to establish a first-time homebuyer program with requirements different from those specifically set forth, subject to prior approval of the Board.

DATES: Comments on this proposed rule must be received in writing on or before August 28, 1995.

ADDRESSES: Comments should be mailed to: Federal Housing Finance Board, Executive Secretariat, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Sharon B. Like, Attorney-Advisor, Office of General Counsel, (202) 408–2930, or Diane E. Dorius, Deputy Director, Office of Housing Finance, (202) 408–2576, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System (Bank System) engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1). The Board is required to promulgate regulations governing the Program. *See* 12 U.S.C. 1430(j)(9); 12 CFR part 960.

Under the Board's AHP regulation, each Bank must make a specified annual contribution to fund its Program. *See* 12 CFR 960.10. During each calendar year, each Bank accepts applications for funds from its members during two of four quarterly funding periods, or "rounds." *See* 12 CFR 960.4. Applications are reviewed and recommended, and AHP funds are awarded to applicants through a competitive scoring process set forth in the AHP regulation. *See* 12 CFR 960.5. AHP funds are awarded to the applicants whose applications score the highest among all the applications received by the Bank in that funding round. *See id.*

II. Analysis of the Proposed Rule

The Board believes that promoting homeownership for first-time homebuyers is a significant part of the mission of the Bank System. In furtherance of that goal, the Board and the Banks recently joined a partnership agreement to promote the President's National Homeownership Strategy to expand homeownership to millions of households by the year 2000. The Board believes that permitting the Banks to direct a portion of their AHP contribution to assist low- and moderate-income, first-time homebuyers is consistent with its commitment to the National Homeownership Strategy.

The proposed rule would amend the AHP regulation to authorize a Bank to set aside up to the greater of $1 million or 10 percent of its annual required AHP contribution to fund a Matched Savings First-Time Homebuyers' Initiative (Initiative), through which the Bank would assist low- and moderate-income, first-time homebuyers to purchase homes.

Members may be pre-approved by their Bank for participation in an Initiative if they: have established a savings account program offering dedicated savings accounts to eligible households; have established a first-time homebuyer policy that defines the qualifications for being a "first-time" homebuyer and that includes financial or other incentives for such homebuyers; and have established or sponsor a homebuyer counseling program. Eligible households must have incomes at or below 80 percent of area median income. Participating households must make regular deposits in dedicated savings accounts maintained with the members according to an agreed upon schedule of savings for a minimum of 10 months, and must complete the required homebuyer counseling program. Each dollar of a household's savings will be matched by the member with up to three dollars of Bank AHP funds. Each Bank may determine the appropriate ratio of AHP funds-to-savings of a participating household (with a maximum of three-to-one), which ratio shall apply to all households participating in the Bank's initiative. The total amount of AHP funds received by a household may not exceed $5,000. The household is expected to use the funds within one year of its acceptance into the Initiative to pay for downpayment and closing costs in connection with its first-time purchase of a one-to-four family, owner-occupied property (including a condominium or cooperative housing unit) to be used as its primary residence.

A home purchased by a participating household with funds received under an Initiative must be subject to a deed restriction, "soft" second mortgage or other legally enforceable mechanism, pursuant to the requirements set forth in the proposed rule, that would enable the Bank to recapture from the member or directly from the seller a *pro rata* portion of those funds if the home is sold by the initial household to a household that is not low- or moderate-income, within 5 years (or longer, at the discretion of the Bank) from the date of purchase by the participating household. The proposed rule would allow for Bank waiver of the recapture requirement if its imposition would cause undue hardship on the seller.

Since the requirements governing the eligibility of households and the uses of set-aside funds under the Initiative are to be uniformly applied, funding of such Initiatives will not be subject to the competitive scoring process applicable to regular AHP applications under the regulation. Instead, a Bank would make set-aside funds available to an Initiative on a rolling, first come, first-served basis. In addition, the proposed rule would allow a Bank to make available up to $1 million of additional AHP funds from the next year's Initiative set-aside if demand for funds under the Initiative exceeds the amount set aside in the current year.

In order to allow the Banks to implement an Initiative as soon as possible, the Board's proposal would allow a Bank to establish an Initiative meeting the specific requirements set forth in the proposed rule without obtaining prior Board approval. However, the Board recognizes that the Banks may develop strategies for implementing first-time homebuyer programs that differ from the model in the proposed rule, but which may be equally, or more, effective. The Board believes that the Banks should have flexibility for innovation and the ability to respond to local conditions in providing assistance for first-time homebuyers. Therefore, proposed § 960.5(g)(2) would permit Banks to establish first-time homebuyer programs that are different from that described in the proposed rule, with prior Board approval.

While public comment is being requested on all aspects of the proposed rule, the Board is requesting specific comment on several issues of note.

First, the Bank Act requires that owner-occupied housing financed under the AHP must be "long-term." *See* 12 U.S.C. 1430(j)(1). Commenters should be aware that the Board specifically has requested comment on the appropriate "long-term" period applicable generally to owner-occupied housing financed under the AHP in a previously published proposal. *See* 59 FR 1323 (Jan. 10, 1994). In the preamble to that proposal, the Board discussed alternative proposals to set the "long-term" requirement at 5 years or 30 years. The Board here has proposed 5 years as the minimum "long-term" requirement that would be applicable solely to homes purchased with funds provided under an Initiative, but that would not apply to AHP projects receiving funding through the regular AHP competitive scoring process set forth in §§ 960.4 and 960.5 of the AHP regulation. *See* 12 CFR 960.4, 960.5. In making this proposal, it is not the Board's intention to preclude continuing dialogue on the issue of "long-term" retention in this or any other context, but rather is to encourage a full discussion. Therefore, the Board specifically requests comment on the appropriate length of the "long term" requirement for homes purchased through an Initiative.

Second, the proposal would allow a Bank to commit, in any year, a portion of its future AHP contributions if

demand for Initiative funds in that year exceeded that year's set-aside. The commitment in the current year of future AHP contributions currently is not permitted under the AHP regulation. The Board specifically requests comment on this aspect of the proposed rule as well.

Third, the Board specifically solicits comment on whether other, non-conforming set-aside programs proposed by a Bank under proposed § 960.5(g)(2) should be limited to programs that assist first-time homebuyers, or whether it would be practicable to broaden the language of the proposal to allow for assistance to be provided to other categories of activities related to homeownership that promote the National Homeownership Strategy, such as improving and rehabilitating existing homes and encouraging homeownership strategies that revitalize distressed communities.

Finally, the Board specifically, requests comment on whether the funding limit of the greater of $1 million or 10 percent of a Bank's annual required AHP contribution: (a) is appropriate generally; and (b) should apply to other, non-conforming set-aside programs under proposed § 960.5(g)(2), or whether the funding limits for such other programs should be left to the discretion of the Board.

III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects for 12 CFR Part 960

Banks, Banking, Credit, Federal home loan banks, Housing.

Accordingly, part 960, chapter IX, title 12, subchapter E, Code of Federal Regulations, is hereby proposed to be amended as follows:

SUBCHAPTER E—AFFORDABLE HOUSING

PART 960—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 960 is revised to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1430(j).

2. Section 960.4 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 960.4 Applications for funding.

(a) Except as provided in § 960.5(g), the Program is based on District-wide competitions administered by the Board. * * *

* * * * *

3. Section 960.5 is amended by adding a new paragraph (g) and by revising paragraph (a)(1) to read as follows:

§ 960.5 Project scoring and funding.

(a) *General.* (1) Each Bank will evaluate all applications received pursuant to § 960.4(a) from its members that satisfy the use provisions identified in § 960.3(b).

* * * * *

(g) *Set-Aside programs.*—(1) *Programs exempt from prior board approval.* Without the prior approval of the Board, a Bank may set aside annually up to the greater of $1 million or 10 percent of its annual required Affordable Housing Program contribution to implement a matched savings first-time homebuyers' initiative that meets all of the following requirements:

(i) *Announcement of available bank funds.* The Bank shall notify its members of the amount of annual funds available under the initiative;

(ii) *Pre-approval of member participants.* The Bank shall approve a member's participation in the initiative if the member has:

(A) Established a savings account program offering dedicated savings accounts to eligible households;

(B) Established a first-time homebuyer policy that defines the qualifications for being a "first-time homebuyer" and that includes financial or other incentives for such first-time homebuyers;

(C) Established a homebuyer counseling program based on those offered by or in conjunction with a not-for-profit housing agency or other recognized counseling organization;

(D) Committed that the Bank or member participant will be entitled to recapture of the equivalent amount of the matching funds, as provided in paragraph (g)(1)(ix) of this section;

(iii) *Approval of initial enrollment of households.* The Bank shall approve the initial enrollment, through the approved member participant, of a household as a potential beneficiary in the initiative, if the household:

(A) Is low- or moderate-income, as defined in § 960.1(g);

(B) Has opened a dedicated savings account with the member participant and established a schedule of savings into the account;

(C) Meets the requirements of the member participant's first-time homebuyer policy;

(D) Has enrolled in a homebuyer counseling program established by the member participant that is based on those offered by or in conjunction with a not-for-profit housing agency or other recognized counseling organization;

(E) Has agreed to obtain mortgage financing from the member participant for the purchase of a home;

(iv) *Bank program acceptance six months after initial enrollment and reservation of bank matching funds.* The Bank shall accept a household into its initiative, shall reserve, in the name of the household, matching funds as targeted in the household's schedule of savings for a period of one year, and shall notify the member participant and household of such acceptance, if, six months after the initial enrollment date of the household, the member participant certifies to the Bank that the household is progressing satisfactorily by participating in the homebuyer counseling program and systematically depositing funds to its dedicated savings account according to its agreed schedule of savings;

(v) *Verification of household progress.* The Bank shall require the member participant to verify, every six months from a household's acceptance date into the initiative, the household's progress in completing the homebuyer counseling program and making deposits to its dedicated savings account according to its agreed schedule of savings;

(vi) *Approval of matching funds drawdown.* The Bank shall approve a request from a member participant for matching funds, in an amount equal to, in the Bank's discretion, up to three times the amount of a household's savings in its dedicated savings account, up to a maximum of $5,000 per household, and shall credit such funds to the member participant's account, if the member participant certifies to the Bank that:

(A) The household made deposits to its dedicated savings account according to its agreed schedule of savings for a minimum of ten months;

(B) Closing on the sale of a home to the household has occurred within one year of the household's acceptance date into the initiative, or a later period if the Bank determines that reasonable circumstances justified extending such time period for the use of the funds;

(C) The household has completed the required homebuyer counseling program;

(D) The household has received the financial or other incentives committed by the member participant pursuant to its first-time homebuyer policy;

(E) A deed restriction, "soft" second mortgage or other legally enforceable mechanism exists on the household's home that entitles the Bank or member participant to recapture of the equivalent amount of the matching funds, as provided in paragraph (g)(1)(ix) of this section;

(vii) *Eligible uses of funds.* Households receiving funds under an initiative may use such funds only for the payment of downpayment or closing costs in connection with the household's purchase of a one-to-four family, owner-occupied residential property (including a condominium or cooperative housing unit) to be used as its primary residence;

(viii) *Availability of funds.* (A) The Bank shall make its initiative funds available on a rolling, first come, first-served basis;

(B) The Bank may reserve the option, if needed because demand for its funds in a given year exceeds the amount of set-aside funds available for that year, to:

(*i*) Make available up to an additional $1 million from the next year's set-aside of funds under such initiative; or

(*ii*) Establish a waiting list or other process by which households would be approved by the Bank to receive funds under the initiative;

(ix) *Long-term requirement—Recapture of funds upon resale.* The Bank shall require that a home purchased using funds under an initiative be subject to a deed restriction, "soft" second mortgage or other legally enforceable mechanism that requires that, if the home is sold prior to the end of a period of not less than 5 years from the date of purchase by the initial household, to a household that is not low- or moderate-income:

(I) The Bank or its designee be given notice of the sale; and

(II) The seller be required to repay a pro rata share, except for de minimis amounts determined by the Bank, of the funds provided under the initiative, reduced for every year the seller owned the home, to be repaid from any net gain from the sale of the home after deduction for sales expenses, and to be returned to the Bank to be made available for other Affordable Housing Program projects, except that the Bank in its discretion may waive such repayment requirement if its imposition would cause undue hardship on the seller, as defined by the Bank;

(x) Each Bank may establish its own procedures for further implementation of the requirements of this paragraph (g)(1).

(2) *Other programs.* A Bank may set aside a portion of its annual required Affordable Housing Program contribution to implement a first-time homebuyer program that does not meet the requirements of § 960.5(g)(1), provided the program otherwise satisfies the requirements of 12 U.S.C. 1430(j), and receives the prior approval of the Board.

Dated: July 13, 1995.

By the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 95–18424 Filed 7–27–95; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 95–ANE–42; Notice No. SC–95–04–NE]

Special Conditions: Allison Engine Company Model 250–C40 Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Allison Engine Company Model 250–C40 turboshaft engine. This engine will have novel or unique engine ratings that are not defined by the applicable airworthiness regulations. This notice proposes the safety standards for those novel or unique ratings that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

DATES: Comments must be submitted on or before August 28, 1995.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 95–ANE–42, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. 95–ANE–42. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (617) 238–7115; Fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under **ADDRESSES.** All communications received on or before the closing date for comments, specified under **DATES,** will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed special conditions. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–ANE–42" The postcard will be dated stamped and returned to the commenter.

Background

On May 11, 1993, the Allison Engine Company (AE) applied for an amendment to type certificate E1GL to include a new model 250–C40 turboshaft engine. On March 30, 1995, the Allison Engine Company applied for 30-second one engine inoperative (OEI) and 2-minute OEI ratings for the engine. The AE Model 250–C40 turboshaft engine will be rated at 30-Second OEI, 2-Minute OEI, 30-Minute OEI, Continuous OEI, Takeoff, and Maximum Continuous ratings.

The applicable airworthiness requirements do not contain 30-Second OEI and 2-Minute OEI rating definitions, and do not contain adequate or appropriate safety standards for the type certification of these new and unusual engine ratings.

Type Certification Basis

Under the provisions of section 21.17(a) of the FAR, Allison Engine Company must show that the AE Model

250–C40 turboshaft engine meets the requirements of the applicable regulations in effect on the date of the application. The applicable regulations for this engine is FAR part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–4.

The Administrator finds that the applicable airworthiness regulations in 33, as amended, do not contain adequate or appropriate safety standards for the AE Model 250–C40 turboshaft engine because of the new and unique engine ratings. Therefore, the Administrator proposes special conditions under the provisions of section 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with section 11.49 of the FAR after public notice and opportunity for comment, as required by sections 11.28 and 11.29(b), and become part of the type certification basis in accordance with section 21.17(a)(2).

Conclusion

This action affects only certain novel or unusual design features on one model engine. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions is as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Allison Engine Company (AE) Model 250–C40 turboshaft engine:

§ 33.7 Engine ratings and operating limitations.

In addition to the requirements of section 33.7, the following ratings are defined as:

(a) Rated 30-Second One-Engine-Inoperative (OEI) Power: The approved brake horsepower developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation after the failure of one engine in multi-engine rotorcraft, limited to three periods of use, no greater than 30 seconds each, at rotor shaft rotation speed and gas temperature established for this rating by part 33 or this special condition.

(b) Rated 2-Minute OEI Power: The approved brake horsepower, developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation, after failure of one engine in multi-engine rotorcraft, limited to three periods of use, of up to two minutes each, at rotor shaft rotation speed and gas temperature established for this rating by part 33 or this special condition.

§ 33.4 Instructions for continued airworthiness.

In addition to the requirements of section 33.4, the mandatory inspection and maintenance actions required following the use of the 30-Second or 2-Minute OEI rating, must be included in the airworthiness limitations section of the appropriate engine manuals.

§ 33.27 Turbine, compressor, fan, and turbo-supercharger rotors.

In addition to the requirements of section 33.27, the following additional test requirements must be considered under 33.27(c)(2). For 30-Second and 2-Minute OEI conditions, test for a period of 5 minutes—

(a) At 100 percent of the highest speed that would result from failure of the most critical component of each turbine and compressor or system in a representative installation of the engine when operating at 30-Second and 2-Minute OEI rating conditions.

(b) The test speed must take into account minimum material properties, maximum operating temperature, and the most adverse dimensional tolerances.

(c) Following the test, rotor growth and distress beyond dimensional limits for an overspeed condition is permitted for 30-Second and 2-Minute OEI rating only, provided the structural integrity of the rotor is maintained, as shown by a procedure acceptable to the Administrator.

§ 33.29 Instrument connection.

In addition to the requirements of section 33.29, the engine must provide for a means:

(a) To indicate when the engine is at either 30-Second or 2-Minute OEI-rated power level; and

(b) To determine the elapsed time of operation at 2-Minute OEI and 30-Second OEI rated power levels.

§ 33.67 Fuel system.

In addition to the requirements of section 33.67, the engine must provide for a means for automatic availability and automatic control of the 30-second OEI power; and engine test runs must be performed to demonstrate automatic switching to a 30-Second OEI rating condition.

§ 33.83 Vibration test.

In addition to the requirements of section 33.83, the following additional test requirements must be considered under 33.83(a):

For 30-Second and 2-Minute OEI rating conditions, the vibration survey shall cover the ranges of power, and both the physical and corrected rotational speeds for each rotor system, corresponding to operations throughout the range of ambient conditions in the declared flight envelope, from the minimum rotor speed up to 103 percent of the maximum rotor speed permitted for 2-Minute OEI rating, and up to 100 percent of the maximum rotor speed permitted for 30-Second OEI rating speed. If there is any indication of a stress peak arising at high physical or corrected rotational speeds, the surveys shall be extended in order to quantify the phenomenon and to ensure compliance with the requirements of section 33.63.

§ 33.85 Calibration tests.

In addition to the requirements of section 33.85, tests performed at the 30-Second and 2-Minute OEI ratings, during the applicable endurance test prescribed in section 33.87, may be used to show compliance with the requirements of section 33.85.

§ 33.87 Endurance test.

In addition to the requirements of section 33.87, an engine test must be conducted four times, using the following test sequence, for a total of not less than 120 minutes:

(a) Takeoff Power—three minutes at rated takeoff power.

(b) 30-Second OEI power—thirty seconds at rated 30-Second OEI power.

(c) 2-Minute OEI power—two minutes at rated 2-Minute OEI power.

(d) 30-Minute OEI, Continuous OEI, or Maximum Continuous power—five minutes at rated 30-Minute OEI power, or rated Continuous OEI power, or rated Maximum Continuous power, whichever is greatest, except that during the first test sequence this period shall be 65 minutes.

(e) 50 percent takeoff power—one minute at 50 percent takeoff power.

(f) 30-second OEI power—thirty seconds at rated 30-Second OEI power.

(g) 2-minute OEI power—two minutes at rated 2-Minute OEI power.

(h) Idle power—one minute at Idle power.

§ 33.88 Engine overtemperature test.

In addition to the requirements of section 33.88, the following must be performed:

(a) For engines that do not provide a means for temperature limiting; conduct a test for a period of five minutes at the maximum permissible power-on RPM, with the gas temperature at least 75 degrees Fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(b) For engines that provide a means for temperature limiting; conduct a test for a period of four minutes at the maximum permissible power-on RPM, with the gas temperature at least 35 degrees Fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(c) A separate test engine may be used for each test.

(d) Following the test, rotor assembly growth and distress beyond serviceable limits for an overtemperature condition is permitted, provided the structural integrity of the rotor assembly is maintained, as shown by a procedure that is acceptable to the Administrator.

§ 33.93 Teardown inspection.

In addition to the requirements of section 33.93, this special condition requires that the engine be completely disassembled after completing the additional testing of section 33.87. The engine may exhibit deterioration in excess of that permitted in section 33.93(b), and may include some engine parts and components that may be unsuitable for further use. It must be shown by procedures approved by the Administrator that the structural integrity of the engine, including mounts, cases, bearing supports, shafts and rotors, is maintained.

Issued in Burlington, Massachusetts, on July 20, 1995.

Robert E. Guyotte,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–18591 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to definitions; the applicability of Colorado's rules; permit application requirements for legal, financial, and related information; permit application requirements for operation and reclamation plans; requirements for special categories of mining; public participation and approval of permit applications; performance standards for revegetation; and performance standards for subsidence control. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t. August 28, 1995. If requested, a public hearing on the proposed amendment will be held on August 22, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on August 14, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Western Regional Coordinating Center.

James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3300, Denver, Colorado 80202

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567.

FOR FURTHER INFORMATION CONTACT:

James F. Fulton, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.11, 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated July 12, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO–670) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the proposed amendment at its own initiative and in response to a February 7, 1990, letter (administrative record No. CO–484) that OSM sent to Colorado in accordance with 30 CFR 732.17(c). The provisions of 2 Code of Colorado Regulations 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board for Coal Mining, that Colorado proposes to revise are: Rule 1.04, definitions; Rule 1.05, applicability of Colorado's rules; Rule 2.03, permit application requirements for legal, financial, and related information; Rule 2.05, permit application requirements for operation and reclamation plans; Rule 2.06, requirements for special categories of mining; Rule 2.07, public participation and approval of permit applications; Rule 4.15, performance standards for revegetation; and Rule 4.20, performance standards for subsidence control.

Specifically, Colorado proposes to revise:

Rule 1.04(21), the definition of "coal," to indicate that the referenced publication of the American Society of Testing and Materials is incorporated as it existed on the date of promulgation of these revisions;

Rule 1.04(80), the definition of "operator," to replace the term "refuse pile" with "mine waste disposal facility;"

Rule 1.04(92), the definition of "person," to be consistent with the definition of "person" in the Colorado Surface Coal Mining Reclamation Act;

Rule 1.05.1(b), to remove an exemption from the Colorado program for operations which affect 2 acres or less;

Rule 2.03.3(4), to indicate that the referenced edition of "Standard Methods for the Examination of Water and Wastewater" is incorporated as it existed on the date of promulgation of these revisions;

Rule 2.03.7(1), permit application information concerning the relationship of a proposed permit area to areas designated as unsuitable for mining, to reference 30 CFR 769, which concerns the petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations, rather than 30 CFR 765, which does not exist;

Rule. 2.05.3(3)(c)(iv), concerning a description of measures to be taken to protect the inlet end of a ditch relief culvert, to reference Rule 4.03.1(4)(e)(vi)(C) for approval of haul road culverts;

Rule 2.05.3(8)(c), permit application information concerning the design of coal processing waste dams and embankments, to reference the performance standards at Rule 4.11.5, which are specific to dams and embankments constructed of or impounding coal mine waste, rather than the general performance standards applicable to coal mine waste at Rule 4.11;

Rule 2.05.6(2)(a)(iii)(A), to correct the citation of Colorado's statute for protection of Nongame, Endangered and Threatened Species Conservation Act;

Rule 2.06.6(2)(a)(i), to indicate that the referenced U.S.D.A. National Soils Handbook is incorporated as it existed on the date of promulgation of these revisions;

Rule 2.06.8(5)(c) (i) through (iii), to specify methods for evaluating whether a mining operation will damage the water system of an alluvial valley floor;

Rule 2.07.2, to refer to Rule 2.07 rather than Rule 2.07.2 in the title line for the statement of objectives;

Rule 4.15.1(2)(d), to correct the reference to requirements for fish and wildlife at Rule 4.18(5)(i) rather than Rule 4.18(4)(i); and

Rule 4.20.3(2) (a) through (c), to specify the performance standards for mitigation of structures or facilities that may be damaged as a result of subsidence due to underground mining operations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Western Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on August 14, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*),

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–18550 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN131–1–6794b; TN136–1–6795b; TN137–1–6796b; FRL–5257–6]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve three state implementation plan (SIP) revisions submitted on March 17, July 8 and July 13, 1994, by the State of Tennessee, through the Tennessee Air Pollution Control Division. These revisions modify an existing basic vehicle inspection and maintenance (I/M) program in Davidson County as well as establishing and implementing a similar program in the four middle Tennessee counties of Rutherford, Sumner, Williamson, and Wilson. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 28, 1995.

ADDRESSES: Written comments on this action should be addressed to: Dale Aspy at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Air Pollution Control Division, Tennessee Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

Bureau of Environmental Health Services, Nashville and Davidson County Metropolitan Health Department, 311 23rd Street, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Dale Aspy, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4214. Reference files TN131, TN136 and TN137.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 28, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–18512 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[KY77–1–6553b; FRL–5257–8]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted on November 12, 1993, by the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in Jefferson County, Kentucky, which will include commuter vehicles in the program. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 28, 1995.

ADDRESSES: Written comments on this action should be addressed to: Dale Aspy at the EPA regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Dale Aspy, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4214. Reference file KY77–1–6553.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 28, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–18514 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[DE25–1–6742b; FRL–5223–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware: "Bulk Gasoline Marine Tank Vessel Loading Facilities"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware on August 26, 1994 for the purpose of establishing and requiring the control of volatile organic compound (VOC) emissions from marine vessel transfer operations. The revision pertains to Regulation 24, "Control of VOC Emissions", by renumbering existing Section 43, "Other Facilities that Emit VOCs", to Section 50, and adding a new Section 43, "Bulk Gasoline Marine Tank Vessel Loading Facilities". In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be submitted in writing by August 28, 1995.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 597–3164, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title, "Bulk Gasoline Marine Tank Vessel Loading Facilities", which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 13, 1995.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 95–18516 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TN–146–1–7039b; FRL–5226–2]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Nashville-Davidson County Construction and Operation Permit Regulations for Minor Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Nashville-Davidson County portion of the Tennessee State Implementation Plan (SIP) submitted by the Tennessee Department of Environment and Conservation (TDEC) on behalf of Nashville-Davidson County, for the purpose of establishing a Federally enforceable local operating permit (FELOP) program. In order to extend the Federal enforceability of the Nashville-Davidson County FELOP to hazardous air pollutants (HAP), EPA is also proposing approval of the County's FELOP regulations pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA). In the Final Rules Section of this **Federal Register**, EPA is approving the revision to the Nashville-Davidson County portion of the Tennessee SIP as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this notice should do so at this time.

DATES: To be considered, comments must be received by August 28, 1995.

ADDRESSES: Written comments should be addressed to: Gracy R. Danois, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by Nashville-Davidson County may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, Tennessee Air Pollution Control Board, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

Metropolitan Government of Nashville and Davidson County, Metropolitan Health Department, Bureau of Environmental Health Services, 311 23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Gracy R. Danois, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4150. Reference file TN–146–1–7039.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 23, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–18517 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[NC–082–1–6430b; NC–067–1–6633b; NC–068–1–6832b; FRL–5254–7]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to State of North Carolina's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of North Carolina, the Western North Carolina Air Pollution Control District, and the Forsyth County Department of Environmental Affairs for the purpose of allowing the State and two local agencies the ability to issue Federally enforceable state operating permit programs (FESOP) and Federally enforceable local operating permits (FELOP). In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 28, 1995.

ADDRESSES: Written comments should be addressed to Scott Miller of the EPA Regional office listed below.

Copies of the material submitted by the State of North Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext. 4153.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 23, 1995.

William A. Waldrop,

Acting Regional Administrator.

[FR Doc. 95–18524 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[NC–065–1–6431b; FRL–5226–8]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions Mecklenburg County Portion of the State of North Carolina's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Mecklenburg County Department of Environmental Protection through the North Carolina Department of Health, Environment, and Natural Resources (DEHNR) for the purpose of establishing a federally enforceable minor source operating permit program. In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 28, 1995.

ADDRESSES: Written comments should be addressed to Scott Miller of the EPA Regional office listed below.

Copies of the material submitted by the State of North Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–2864.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 23, 1995.

William A. Waldrop,

Acting Regional Administrator.

[FR Doc. 95–18526 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[NV 11–1–7118; FRL–5265–3]

Clean Air Act Approval and Promulgation of New Source Review Implementation Plan for Clark County, NV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve with a contingency, and disapprove in

the alternative, a requested State Implementation Plan (SIP) revision submitted by the State of Nevada on behalf of Clark County for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or Act) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP. This submittal also satisfies the requirements for a Prevention of Significant Deterioration (PSD) program. This proposed approval is contingent upon Clark County correcting existing deficiencies in its NSR and PSD submittal before EPA promulgates a final rulemaking on this submittal. Should Clark County fail to correct all deficiencies in this submittal, then this document will serve as a proposed disapproval of the submittal.

DATES: Comments on this proposed action must be received in writing by August 28, 1995.

ADDRESSES: To submit comments or receive further information, please contact: Jennifer Fox, Environmental Engineer, New Source Section, Air & Toxics Division (A–5–1), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: (1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; (2) State of Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, Capitol Complex, 333 W. Nye Lane, Carson City, Nevada 89710; (3) Clark County Health District, 625 Shadow Lane, Las Vegas, NV 89127.

FOR FURTHER INFORMATION CONTACT: Jennifer Fox at (415) 744–1257.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA is currently developing a proposed rule to implement the changes under the 1990 Amendments in the new source review provisions in Parts C and D of Title I of the Act. EPA expects to propose this rule sometime during 1995. Upon promulgation of those regulations, EPA will review those NSR SIP submittals on which it has taken final action to determine whether additional SIP revisions are necessary.

Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1]

The Clark County Health District held a public hearing on April 22, 1993 to entertain public comment on the new source review rules. On July 29, 1993, the rules were adopted by the District and submitted to the State. On November 30, 1993 the rules were submitted to EPA as a proposed revision to the Nevada SIP.

The SIP revision was not reviewed by EPA within six months to determine completeness, and was therefore deemed complete by default. The submittal has since been reviewed and found to be complete but lacking certain requirements that would make it fully approvable. Clark County has, however, expressed an interest in revising their SIP to make the required changes and has submitted draft versions of the rule which address the deficiencies described below. Therefore, contingent on the submittal of a fully approvable SIP, EPA proposes to approve the Clark County Health District's nonattainment NSR and attainment PSD SIP submittal. If the District fails to address the deficiencies before EPA's final action on this submittal (which we expect will be within 6 months), then EPA's final action will be a disapproval.

Summary of Rule Contents

The Air Pollution Control Division of the Clark County Health District submitted to EPA for adoption into the applicable NSR SIP Rules 0 (Definitions), 12 (Preconstruction Review for New or Modified Stationary Sources), and 58 (Emission Reduction Credits). Rules 0, 12, and 58 are intended to replace existing NSR SIP Rules 1 (Definitions) and 15 (Source Registration).

[1] Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

These submitted rules constitute the District's new source permitting regulations. Rule 0 consists of definitions of all terms relating to new sources and modifications to existing sources of air pollution, and their regulation. Rule 12 contains new and modified source permitting requirements, including applicability, major source definitions, offsets, increment analysis, and Lowest Achievable Emission Rate/Best Available Control Technology. Rule 58 establishes procedures for the creation, banking, and use of emission reduction credits. This last rule has indirect bearing on new source review, as these credits can be obtained by new sources and used as offsets.

In Clark County, the Las Vegas Valley, Boulder City, and El Dorado Valley are currently designated as Serious nonattainment for PM–10 and Moderate nonattainment (>12.7 ppm) for CO. All other areas within the District are designated as attainment or unclassifiable with respect to the NAAQS. District nonattainment rules must therefore apply to all major new or modified stationary sources proposing to emit CO or PM–10 in the areas noted above. The nonattainment provisions must also apply to any source which would contribute to a violation of the NAAQS. The PSD provisions submitted by the District apply to certain new sources or modifications proposing to emit attainment pollutants in specified amounts.

The Clean Air Act requirements are found at sections 172 and 173 for nonattainment NSR permitting and at section 165 for PSD permitting. With certain exceptions, described below, Clark County's submittal satisfies these requirements. For a detailed description of how the submitted rule meets the applicable requirements, please refer to EPA's technical support document.

Rule Deficiencies That Must Be Corrected

Rule 0

Modification: The definition of "modification" in the submitted rule differs from the federal definition. The CFR defines a modification as a change resulting in a "net emissions increase." A net emissions increase is based on an increase in actual emissions for a physical or operational change, or an increase in potential emissions in the case of sources which have not yet constructed.

The submitted rule, however, defines a "modification" as an increase in a source's "potential to emit." As a result the rule fails to require review for modifications which involve a "major" increase in actual emissions, but no increase in potential to emit. To correct this deficiency, calculations in the District rule must be based on increases in actual emissions (and for sources which have not begun normal operations, actual emissions shall equal the potential to emit). Because the district has correctly defined "potential to emit" and "actual emissions," this change can be made by incorporating the federal definition of "net emissions increase" into the District rule definition of "modification."

Regulated Air Pollutant: The definition of "regulated air pollutant" in the submitted rule contains a list of emissions which are "regulated by sections containing Emission limits and by Section 12." The list of "Chemical Substances Requiring BACT and Public Notification" in Section 12.2.7, however, contains substances which are not included in the definition of "regulated air pollutant." This oversight should be corrected for rule consistency.

Volatile Organic Compound: The definition of "volatile organic compound" in the submitted rule contains a list of substances exempt from regulation as VOCs which is inconsistent with the exemption list in 40 CFR 51.100(s). This discrepancy should be corrected to avoid granting VOC emission reduction credits, as well as requiring VOC offsets, for exempt compounds. The definition in the CFR should be adopted verbatim into this section.

Rule 12

Public Notice: The submitted rule does not specify that public comments regarding an air quality permit application will be considered, except in the event of a public hearing. A thirty-day public comment period should be required for each permit application, as specified by 40 CFR 51.166(q). All public comment, oral and written, received within the specified time, should be considered in making the final decision on the approvability of the permit application.

Variance to Rule Requirements: The submitted rule outlines the procedure by which the Board of Health may grant a variance to subsection 12.2.10.6 (which requires impact analysis for NO_x sources of 100 tpy or greater). The District has explained that this variance is intended to refer to the lowered major source applicability threshold of 50 tpy for NO_x sources in the Las Vegas Valley. If so, this must be clarified in the rule, so that no variance may be granted to a source required by federal standards to undergo new source review.

Fugitive Emissions: The submitted rule contains a definition of potential to emit which includes fugitive emissions only for sources of PM–10 in the nonattainment area. Fugitives must also be included in the major source applicability determination, defined by a source's potential to emit, for all other regulated pollutants, if the source belongs to one of the source categories listed in 40 CFR 51.165(a)(1)(iv)(C).

Additional Impact Analysis for Attainment Pollutants: In many cases, the submitted rule correctly requires major sources to perform an additional impact analysis, as required in 40 CFR 51.166(i) and 51.166(o). However, the rule fails to require the analysis for VOC, lead and CO in sections 12.2.5, 12.2.8, and 12.2.13, respectively. In addition, the rule fails to require the analysis for major modifications. The rule must be amended to require the additional impact analysis for pollutant subject to regulation under the Act which will be emitted by the new source or modifications.

Alternative Siting Analysis: The submitted rule lacks a requirement that an alternative siting analysis be performed by all permit applicants for sources located within a nonattainment area. This analysis, required by CAA 173(a)(5), would demonstrate that the benefits of a proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Class I Area Visibility Protection: The submitted rule lacks the visibility protection requirements of section 169A of the CAA and described in 40 CFR 51.307. These provisions require review of major sources and modifications that may have an impact on visibility in any mandatory Class I Federal Area. This may have been overlooked, because there are currently no Class I areas in Clark County. Nonetheless, this requirement should be included in the event that such an area be designated in the future, or that a source may impact a Class I area outside of Clark County.

PSD Ambient Air Increments: The submitted rule lacks provisions which set the maximum allowable increases in PM–10, SO_2, and NO_2 to those increments listed in 40 CFR 51.166(c), for designated attainment or unclassifiable areas. The increments must be listed in the rule.

Offsets: The submitted rule states that, when required, offsets must be obtained by a source either prior to, or within thirty days of, the issuance of the Operating Permit, depending on the pollutant. Section 173 of the CAA, however, requires that offsets be federally enforceable prior to the issuance of an Authority to Construct Permit, and in effect by the time operation commences. This requirement must be changed in order to make the rule approvable.

Additional Requirements: The submitted rule contains no provisions which require new source review for a source or modification which becomes major due to a relaxation in a federally-enforceable limit. As described in 40 CFR 51.165(a)(5)(ii), such sources and modifications are subject to major new source review "as though construction had not yet commenced." The submitted rule must add this requirement.

Hazardous Air Pollutants: The list of hazardous air pollutants in the submitted rule must be expanded to include those pollutants listed in 40 CFR 51.166(b)(23)(i), which are not also regulated by Section 112(b)(1) of the Act. These pollutants and their significance levels must be listed.

Rule 58

RACT Adjustment: The submitted rule lacks provisions requiring that existing and future emission reduction credits (ERCs) are surplus to Reasonably Available Control Technology (RACT) requirements at time of use. EPA interprets section 172(c)(1) of the Act to require a RACT level of reductions on ERCs as well as on all applicable sources. This ensures that all ERCs will be surplus at their time of use, since any banked credits that predate a RACT requirement will not be able to be counted as a credit toward meeting that requirement.

Prior Shutdowns: The submitted rule does not disallow "prior shutdown" credits as required in 40 CFR 51.165(a)(1)(xxv). As defined by this CFR section, prior shutdown credits are generated by facilities which apply for credit after the facility has already ceased to operate. The provision limiting shutdown credits applies either when the District attainment plan has been disapproved, or when this plan is not yet due, but a due date during the creation of this plan is missed. In this case, sources which seek ERCs due to a shutdown must do so at the time operation of the source ceases.

Property Rights: The submitted rule refers to procedures which allow banking of ERCs "in a legally protected manner." This language suggests that banked ERCs could be protected under property rights laws, or that their adjustment or rescission could be legally contested by the owner of the ERCs. EPA cannot approve such language, and encourages the District to

add language explicitly stating that banking does not guarantee ERCs under any property rights laws.

Mobile and Area Sources: The submitted rule allows reductions generated by mobile and area sources to be credited as ERCs which may be used as offsets. The rule fails, however, to provide for the federal enforceability of these credits. In addition, the submitted rule lacks language detailing how these emissions are to be quantified. Both the federal *Emissions Trading Policy Statement* (ETPS, 51 FR 43814, 4 December 1986) and the *Economic Incentive Program Rules* (EIP, 58 FR 11110, 23 February 1993) contain provisions concerning this issue. Unless language is added which describes how mobile and area source reductions are to be quantified and made federally-enforceable, EPA requires that all references to area and mobile source reductions be removed.

Proposed Action

EPA is proposing to approve, with disapproval in the alternative, the plan revisions submitted by Clark County on November 30, 1993. Full approval as a final action on these rules is contingent upon the District making the required changes listed above.

If the specified changes are not made before EPA's final action on this submittal, then EPA's final action will be a disapproval. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of the Act (see 57 FR 13566–67). As provided under section 179(a) of the Act, Clark County would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose sanctions. If the District does not correct its SIP deficiencies within 18 months, then section 179(a)(4) requires the immediate application of sanctions. According to 179(b), sanctions can take the form of a loss of highway funds or a two to one emissions offset ratio. Once the Administrator applies one of the section 179(b) sanctions, the State will then have an additional six months to correct any deficiencies. Section 179(a)(4) requires that both highway and offsets sanctions must be applied if any deficiencies are still not corrected after the additional six month period.

EPA is requesting comments on all aspects of the requested SIP revision and EPA's proposed rulemaking action. Comments received by date indicated above will be considered in the development of EPA's final rule.

Administrative Review

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIP's on such grounds. Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 17, 1995.

Felicia Marcus,

Acting Regional Administrator.

[FR Doc. 95–18618 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Part 52

[WI–49–01–6738b; FRL–5254–5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve revisions to Wisconsin's State Implementation Plan (SIP) for ozone which were submitted to the USEPA on April 17, 1990, and June 30, 1994, and supplemented on July 15, 1994. Included in these revisions is a volatile organic compound (VOC) regulation which establishes reasonably available control technology (RACT) for screen printing facilities. Additionally, the State has submitted current negative declarations for pre-1990 Control Technology Guideline (CTG) categories for which Wisconsin does not have rules as well as a list of major sources affected by the 13 CTG categories that USEPA is required to issue pursuant to sections 183(a), 183(b)(3) and 183(b)(4) of the Clean Air Act (Act). These revisions were submitted to address, in part, the requirement of section 182(b)(2)(B) of the Act that States adopt RACT regulations for sources covered by pre-1990 CTG documents, and the requirement of section 182(b)(2)(C) of the Act that States revise their SIPs to establish RACT regulations for major sources of VOCs for which the USEPA has not issued a CTG document. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, thedirect final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before August 28, 1995.

ADDRESSES: Written comments should be mailed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (At–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for public review during normal business hours at the above address. (It is recommended that you telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 20, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–18522 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Part 81

[UT22–1–6925b; FRL–5265–6]

Designation of Area for Air Quality Planning Purposes; Utah; Designation of Ogden City PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document, EPA is proposing to revise the PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) National Ambient Air Quality Standards (NAAQS) designation for a portion of Weber County, Utah. Previously, consistent with section 107(d)(3)(A) of the Act, EPA notified the Governor of Utah that Weber County, Utah should be redesignated from unclassifiable to nonattainment for PM_{10}. The redesignation is based upon violations of the PM_{10} NAAQS which were monitored between January 1991 and January 1993.

In the final rules section of this **Federal Register**, EPA is revising the designation of a portion of Weber County, Utah as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by August 28, 1995.

ADDRESSES: All written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, at the address listed below. Information supporting this action can be found at the following location: EPA Region VIII, Air Programs Branch, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202–2466. The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1760.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the Rules Section of the **Federal Register**.

Dated: July 19, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–18519 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 185

[OPP–300394; FRL–4969–9]

RIN 2070–AC18

Trifluralin; Revocation of Food Additive Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke tolerances for residues of the herbicide trifluralin in or on peppermint oil and spearmint oil, and to withdraw a prior final rule revoking those tolerances. EPA is taking this action because peppermint oil and spearmint oil are not ready-to-eat commodities, and residues of trifluralin are not likely to concentrate in ready-to-eat forms of peppermint and spearmint oil. Therefore, food additive tolerances are not required. In addition, after the tolerances are revoked pursuant to this action, the basis for the prior revocation will be eliminated.

DATES: Written comments, identified by the document control number [OPP–300394], must be received on or before August 28, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300394]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Jean M. Frane, Policy and Special Projects Staff (7501C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Crystal Mall #2, Rm. 1113, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-5944; e-mail: frane.jean@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is proposing two separate actions in this document. First, EPA proposes to revoke the food additive regulations (FARs) for residues of the herbicide trifluralin in or on peppermint oil and spearmint oil (40 CFR 185.5900). Second, EPA proposes to withdraw its Order dated July 14, 1993 (58 FR 37862) to the extent that it revoked the food additive regulations for trifluralin in or on peppermint oil and spearmint oil.

A. Statutory Background

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as "tolerances." Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. EPA was authorized to establish pesticide tolerances under Reorganization Plan No. 3 of 1970. 5 U.S.C. App. at 1343 (1988). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA). EPA can establish a tolerance in response to a petition (FFDCA 408(d)(1), 409(b)(1)), or on its own initiative (FFDCA 408(e), 409(d)).

The FFDCA has separate provisions for tolerances for pesticide residues on raw agricultural commodities (RACs) and tolerances on processed food. For pesticide residues in or on RACs, EPA establishes tolerances, or exemptions from tolerances when appropriate, under section 408 of the act. 21 U.S.C. 346a. EPA regulates pesticide residues in processed foods under section 409, which pertains to "food additives." 21 U.S.C. 348. Maximum residue regulations established under section 409 are commonly referred to as food additive regulations (hereinafter referred to as "FARs"). Section 409 FARs are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, a pesticide residue in processed food generally will not render the food adulterated if the residue results from application of the pesticide to a RAC and the residue in the processed food when ready to eat is below the RAC tolerance. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to the processed food forms. Thus, a section 409 food additive regulation is only necessary to prevent foods from being deemed adulterated when the concentration of the pesticide residue in a processed food when ready to eat is greater than the tolerance prescribed for the RAC, or if the processed food itself is treated or comes in contact with a pesticide.

B. Regulatory Background

On July 14, 1993, EPA issued a final order, subject to objections and requests for a hearing, revoking the trifluralin FARs for peppermint oil and spearmint oil (58 FR 37862, hereinafter referred to as "1993 Order"). This Order was issued in response to the decision by the U.S. Court of Appeals, Ninth Circuit, in the case of *Les v. Reilly*, 968 F.2d 985 (9th Cir. 1992), cert. denied, 113 S.Ct. 1361 (1993). DowElanco, the manufacturer of trifluralin, filed objections to the revised Order, as well as requests for a hearing on and a stay of, the revocation Order. On June 30, 1994, EPA issued a final order denying DowElanco's objections and requests for a hearing and a stay of the revocation (59 FR 33684, hereinafter referred to as "1994 Order"). On July 14, 1994, DowElanco filed an action in the U.S. Court of Appeals, D.C. Circuit for review of EPA's 1993 Order, and moved for summary reversal or, in the alternative, an emergency stay of the revocation. *E.I. DuPont DeNemours and Co., et al. v. EPA*, Civ. Action No. 94-1504 (D.C. Cir.). On August 24, 1994, the Court denied DowElanco's motion for summary reversal, but issued an emergency stay of the revocation. In the **Federal Register** of September 12, 1994 (59 FR 46768), EPA reinstated the FARs for trifluralin (as well as for the other pesticides involved in the litigation), and they are currently in effect.

On September 11, 1992, the National Food Processors Association (NFPA) and other organizations filed a petition with EPA challenging, among other things, EPA's interpretation of the phrase "ready to eat" in the Delaney Clause. (Petition to the Environmental Protection Agency, Office of Pesticide Programs, Concerning EPA's Pesticide Concentration Policy (1992)) (hereinafter cited as "NFPA petition"). The petition requested that EPA apply the term "ready to eat" in the flow-through provision according to what NFPA asserts is its plain meaning. EPA sought public comment on the petition (**Federal Register** of Feb. 5, 1993 (58 FR 7470)). In the **Federal Register** of June 14, 1995 (60 FR 31300), EPA issued a partial response to the NFPA petition, addressing the "ready to eat" policy. In that response, EPA agreed that the term "ready to eat" food has a common-sense meaning of food which is consumed without further preparation and stated its intention to apply that interpretation in future actions.

II. Revocation of the Food Additive Regulations for Trifluralin in Peppermint Oil and Spearmint Oil

EPA has reviewed the trifluralin FARs for peppermint oil and spearmint oil. EPA has determined that no section 409 tolerance is necessary for mint oils because they are not "ready to eat" processed foods, and because ready to eat foods containing mint oils are unlikely to have trifluralin residues greater than the RAC tolerances for peppermint hay and spearmint hay.

As noted above, under FFDCA section 402(a)(2), processed foods containing pesticide residues are not deemed adulterated if the level of pesticide residues in the processed food "when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity." EPA believes that the common-sense meaning of the term "ready to eat" food is food ready for consumption without further preparation. Mint oils are not consumed "as is" but are used as a flavoring in other foods. As such, peppermint oil and spearmint oil are not "ready to eat."

Mint oils are used as flavoring agents in foods such as beverages, ice cream, candy and chewing gum. The maximum amounts used are listed in a February 1965 article in *Food Technology* ("Recent Progress in the Consideration of Flavoring Ingredients Under the Food Additives Amendment, III. GRAS Substances," Richard L. Hall and Bernard L. Oser). The highest concentrations of peppermint oil and spearmint oil in foods are in chewing gum at 8,300 ppm and 6,200 ppm, respectively. These equate to dilution factors of 120 and 160, respectively. Using these dilution factors and the mint oil tolerances of 2 ppm or the maximum levels observed from a 1 x rate (i.e., about 1.2 ppm), maximum residues of trifluralin in the ready-to-eat food will be on the order of 0.010 to 0.02 ppm. These are lower than the RAC tolerances of 0.05 ppm. Thus, no section 409 tolerances are needed for peppermint oil and spearmint oil, and EPA proposes to revoke the existing food additive regulations.

III. Withdrawal of the July 14, 1993 Order With Respect to Trifluralin

EPA proposes to withdraw those aspects of EPA's July 1993 Order and EPA's June 1994 Order revoking the trifluralin peppermint and spearmint oil FARs on grounds that trifluralin "induces cancer" within the meaning of the Delaney clause. As EPA states in this proposal, the trifluralin peppermint and spearmint oil FARs are no longer necessary. Ideally, EPA would prefer to have reached the conclusions announced in this proposal with respect to trifluralin residues in mint oils sooner. However, EPA has only recently been able to complete and release its revised policy interpreting the phrase "ready to eat," a reinterpretation that provides alternative grounds for revoking the trifluralin mint FARs. EPA had an obligation in 1993 to respond promptly to the Ninth Circuit's order in *Les v. Reilly*. Moreover, EPA did not believe it would be appropriate to delay its response to the *Les* Court's order until it had vetted the many issues raised in NFPA's petition, a petition that was filed many years after the petition that was the subject of *Les*.

Given that other, less controversial grounds for revoking these FARs have recently become available, EPA is taking this opportunity to revoke the FARs on these grounds. EPA believes that there is no need to continue to litigate the legality of its 1993 and 1994 Orders relating to trifluralin where there are less controversial grounds available to achieve the revocation of the mint FARs. Therefore, EPA will inform the Court in *DuPont v. EPA* that it is proposing these revocations.

If EPA receives no adverse comments on its notice proposing the revocation of the trifluralin mint FARs on alternative grounds, EPA will issue a final order revoking the FARs. EPA will also request that the D.C. Circuit Court remand the 1993 and 1994 Orders with respect to trifluralin so that EPA may likewise issue a final order withdrawing the trifluralin-related aspects of those Orders.

IV. Procedural Matters

A. Comments

Interested persons may comment on the following: EPA's determination that peppermint oil and spearmint oil are not ready to eat commodities; and EPA's proposal to withdraw the 1993 Order with respect to revocation of the trifluralin FARs.

If EPA receives no adverse comments on the revocation of the FARs for trifluralin in mint oils, it will issue a final order, effective upon publication, subject to objections and requests for a hearing. If a party does not submit comments on this proposal, EPA believes that it would be appropriate to deny objections or a request for a hearing from that party.

Written comments must bear a notation indicating the document control number, [OPP-300394]. All written comments filed in response to this notice will be available for public inspection in Rm. 1132 at the address given above from 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300394] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

V. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under the order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, and the environment, public health or safety, of State, local, or tribal governments or communities"; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this proposed rule is not a "significant" action under E.O. 12866. EPA is taking this action because it has determined that the food additive regulation for trifluralin is not needed. Therefore, the Agency expects that no economic impact will result.

B. Regulatory Flexibility Act

The proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980, and, as stated above, EPA expects that it will not have any economic impacts, including impacts on small entities.

C. Paperwork Reduction Act

This proposal does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 185

Environmental protection, Administrative practice and procedures, Agricultural commodities, Food additives, Pesticides and pests, Records and recordkeeping.

Dated: July 24, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 185 be amended as follows:

PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.5900 [Removed]

2. By removing § 185.5900 *Trifluralin.*

[FR Doc. 95–18621 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Part 51–5

Mandatory Source Requirement

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the Committee's mandatory source requirement regulation to permit sales of Javits-Wagner-O'Day (JWOD) products to the Government through commercial distributors as well as the Committee's traditional sources of supply.

DATES: Comments must be submitted on or before September 26, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461

FOR FURTHER INFORMATION CONTACT: G. John Heyer, (703) 603–7740. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: Entities of the Government desiring to buy commodities and services which are on the Committee's Procurement List are required by law (41 U.S.C. 48) to buy them from a qualified nonprofit agency designated by the Committee at the fair market price established by the Committee, in accordance with the Committee's rules and regulations. The Committee has traditionally interpreted this statutory mandate as requiring a direct buying relationship between a Government entity and a nonprofit agency. The Committee's mandatory source requirement regulation, 41 CFR 51–5.2, is based on this interpretation.

In light of ongoing changes in Federal procurement, the Committee has reexamined its traditional interpretation of its statute and has concluded that the regulatory authority it has been granted allows it to prescribe by regulation that its products may be procured through commercial distributors. As Government distributors such as the General Services Administration and the Defense Logistics Agency have long been providing these products to Government agencies, the Committee does not believe that this new interpretation is a departure from the statutory scheme which Congress established for the Committee to create jobs for people who are blind or have other severe disabilities by requiring Government agencies to purchase commodities and services from nonprofit agencies which employ these people.

The current version of the mandatory source requirement regulation mentions the Department of Veterans Affairs (VA) as one of the Government central supply agencies which distribute commodities produced by the JWOD Program. Because VA has closed its depot system, a specific reference to VA does not appear in the proposed regulation. The proposed regulation retains the requirement that persons providing commodities to Government agencies by contract are required to order them from the same Committee-authorized sources the Government agencies would use if they bought the commodities directly.

Regulatory Flexibility Act

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this proposed rule because it contains no information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the proposed rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects in 41 CFR Part 51–5

Government procurement, Handicapped.

For the reasons set out in the preamble, Part 51–5 of Title 41, Chapter 51 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51–5—CONTRACTING REQUIREMENTS

1. The authority citation for Part 51–5 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

2. Section 51–5.2 is amended by revising paragraphs (b) and (c), removing paragraphs (d) and (e), and redesignating paragraph (f) as paragraph (d), to read as follows:

§ 51–5.2 Mandatory source requirement.

* * * * *

(b) Purchases of commodities on the Procurement List by entities of the Government shall be made from sources authorized by the Committee. These sources may include nonprofit agencies, central nonprofit agencies, Government central supply agencies such as the Defense Logistics Agency and the General Services Administration, and certain commercial distributors. Identification of the authorized sources for a particular commodity may be obtained from the central nonprofit agencies at the addresses noted in § 51–6.2 of this chapter.

(c) Contracting activities shall require other persons providing commodities which are on the Procurement List to entities of the Government by contract to order these commodities from the sources authorized by the Committee.

* * * * *

Dated: July 25, 1995.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–18577 Filed 7–27–95; 8:45 am]

BILLING CODE 6820–33–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–245; RM–8026]

Radio Broadcasting Services; Frederiksted, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission dismisses the petition for rule making filed by Jose J. Arzuaga, proposing the allotment of Channel 298A at Frederiksted, Virgin Islands, as its second local FM transmission service. *See* 57 FR 54543 November 19, 1992. The petitioner has abandoned its interest in a Class A allotment at Frederiksted, and there are no other timely expressions of interest for the channel. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92–245, adopted July 14, 1995, and released July 25, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18563 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–123, RM–8669]

Radio Broadcasting Services; Winona, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by OARA, Inc. proposing the allotment of Channel 274A to Winona, Texas, as the community's first local aural transmission service. Channel 274A can be allotted to Winona in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 274A at Winona are 32–29–22 and 95–10–01.

DATES: Comments must be filed on or before September 15, 1995, and reply comments on or before October 2, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ann Bavender, Fletcher, Heald & Hildreth, 1300 N. 17th Street, 11th Floor, Rosslyn, Virginia 22209 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–123, adopted July 18, 1995, and released July 25, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18565 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–121, RM–8660]

Radio Broadcasting Services; Dearing, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by William Bruce Wachter, proposing the allotment of Channel 251A to Dearing, Kansas, as the community's first local aural transmission service. Channel 251A can be allotted to Dearing in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 251A at Dearing are 37–03–31 and 95–42–47.

DATES: Comments must be filed on or before September 15, 1995, and reply comments on or before October 2, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland 21705–0113 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–121, adopted July 18, 1995, and released July 25, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18561 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 630 and 678

[Docket No. 950713178–5178–01; I.D. 052695D]

RIN 0648–AI10

Options for Establishing an Interim Permit Moratorium and Eligibility Criteria for the Atlantic Swordfish and Shark Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance Notice of Proposed Rulemaking (ANPR); request for comments.

SUMMARY: NMFS is considering a temporary moratorium on the issuance of permits for the Atlantic swordfish

and shark fisheries. NMFS announces the availability of a Concept Paper entitled "Towards Rationalization of Fisheries for Highly Migratory Species" and two Supplemental Papers outlining options for a permit moratorium in the Atlantic Swordfish and Atlantic shark fisheries, respectively. The options discussed are not all-inclusive; suggestions for alternative approaches are encouraged.

DATES: Written comments on this ANPR must be received on or before August 28, 1995.

ADDRESSES: Requests for copies of the Concept Paper, the Atlantic Swordfish Supplement, and the Atlantic Shark Supplement should be addressed to Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), National Marine Fisheries Service, 1315 East/West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Pamela Mace, 301-713-2347.

SUPPLEMENTARY INFORMATION:

Historically, the Atlantic swordfish and shark fisheries have operated under open access. On August 30, 1991, a notice of control date for entry into the Atlantic swordfish fishery was published in the **Federal Register** (56 FR 42982). On February 22, 1994, a notice of control date for entry into the Atlantic shark fishery was published in the **Federal Register** (59 FR 8457). These notices announced that anyone entering the fishery after the control date may not be assured of future access to the fishery, if some form of limited access were implemented later. The purpose of the notices was to promote awareness of potential eligibility criteria for access to the fishery and to discourage speculative entry into the fishery. It was noted that the Secretary of Commerce could subsequently choose a different control date or choose not to use a control date. Regardless, the control date was not effective in discouraging speculative entry into the fishery. The number of swordfish vessels permitted has since increased significantly, from about 750 vessels in 1991 to 1,044 vessels in 1993 and 1,134 in 1994. Similarly, the number of shark permits increased from 1,706 in 1993 to 2,026 in 1994.

Several factors may have contributed to the increases since the published control dates. The recent trend toward limited or controlled access in many fisheries has probably prompted many fishermen to attempt to establish a "history" (by obtaining a permit) in as many fisheries as possible, either for speculative purposes or to maintain flexibility to participate in alternative fisheries. Another consequence of implementing limited access is that the excess fleet capacity from limited access fisheries tends to spill over into the remaining open access fisheries. Also, in the NMFS Southeast Region, which has permitting responsibility for Atlantic swordfish and shark, permit application procedures changed in 1992. Prior to 1992, separate applications were required for each fishery; in 1992, a combined application listing all Southeast-permitted fisheries was implemented. This made it far easier for fishermen to apply for multiple permits, particularly since there was little additional cost involved. Finally, new permit requirements for other fisheries in recent years (e.g., snapper-grouper) exposed many fishermen to the combined application form for the first time, increasing the probability that multiple permits, including swordfish and sharks, would be requested.

Regardless of the causes, it is evident that there is an excessive number of permitted vessels in both the swordfish and shark fisheries, because the numbers of permitted vessels in the fisheries have consistently been far greater than the number of vessels actively participating in the fisheries and reporting landings of swordfish or sharks.

Swordfish

The Fishery Management Plan for Atlantic Swordfish was implemented on September 18, 1985, and included a requirement for vessel permits beginning January 1, 1986. However, to date, there have been no eligibility requirements for obtaining a swordfish permit (e.g., earned income requirement). During 1986–91, the number of vessels permitted in the fishery fluctuated between approximately 500 and 750 vessels. Subsequently, the number of permits has increased to 1,134 by 1994.

To comply with the 1990 recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding Atlantic swordfish, NMFS implemented management measures including quotas and a minimum size limit on June 12, 1991 (56 FR 26934). The total allowable catch (TAC) was initially set at 6.9 million lb dressed weight (3,129.8 mt) and was subsequently increased to 7.56 million lb dressed weight (3,429.2 mt) on August 4, 1992 (57 FR 34264).

Although the TAC has not been reached since 1991, this situation could reverse dramatically in 1995 (there are already projections indicating that, at the present catch rate, the 1995 quota will be taken by mid-October). Beginning in 1989–90, some of the most productive vessels in the Atlantic fishery began shifting operations to the Pacific; however, recently some have returned to the Atlantic. Most of these vessels have maintained their "participation" in the Atlantic fleet by continuing to obtain a swordfish permit each year. If additional vessels return, landings would reach TAC levels even earlier, compounding problems associated with derby fisheries, such as the race for the fish and early closures of the fishery.

Perhaps more important, the large and increasing number of inactive, permitted vessels represents substantial potential for increases in fishing effort and overcapitalization. If appreciable numbers of these vessels become active in the fishery, for example due to declining opportunities in other fisheries, the TAC could be caught much sooner, resulting in much shortened fishing seasons for all and significant economic impact on those in the fishery.

Finally, all of these factors relating to excessive harvesting capacity are compounded by the need for additional future reductions in TAC to achieve stock rebuilding. The most recent stock assessment (1994) was more pessimistic than the previous (1992) assessment. The analyses indicate that the stock biomass continues to decline and that substantial reductions in quota are necessary in the immediate future to rebuild the stock to levels that can support the maximum sustainable yield. Based on the assessment results, ICCAT has recommended further reductions in allowable harvest levels.

The 1994 ICCAT recommendation for North Atlantic swordfish included a recommended 1995 U.S. quota of 6.56 million lb dressed weight (3,976 mt) and a 1996 quota of 5.79 million lb dressed weight (3,500 mt). These levels represent reductions of about 13 percent and 23 percent, respectively, from the current TAC. Such reductions contribute to the "race for the quota" and underscore the importance of addressing controlled access to the fishery.

Sharks

Historically, the Atlantic shark fishery has operated under open access. The Fishery Management Plan for Sharks of the Atlantic Ocean (shark FMP) was implemented on April 28, 1993, and included a requirement for vessel permits. There are also eligibility requirements for obtaining a shark permit (e.g., an earned income requirement). Many of the issues in the shark fisheries are similar to the issues mentioned above for the swordfish fisheries. During 1993–1995, the number of vessels permitted in the fishery has fluctuated between approximately 1,700 and 2,100 vessels. There are far more permitted vessels in the fishery than are necessary or probably desirable to harvest the available TAC. In April 1993, quotas were established to rebuild the stock. The entire 1993 TAC was harvested by approximately 250 vessels yet there were 1,706 vessels permitted in the fishery in 1993.

All of the factors relating to excessive harvesting capacity in the shark fisheries could be compounded by the potential need for additional reductions in TAC to achieve stock rebuilding. The most recent shark evaluation workshop (1994) and status update (1995) have been more pessimistic than earlier analyses summarized in the shark FMP. The analyses indicate that the biomass of large coastal sharks has declined substantially and does not appear to be recovering. Reductions in quota may be necessary in the immediate future to rebuild the stock to levels that can support the maximum sustainable yield. Based on the assessment results and comments from the Shark Operations Team, NMFS is considering further reductions in allowable harvest levels. Such reductions would compound factors contributing to the "race for the quota" and underscore the importance of addressing controlled access to the fishery.

Request for Comments

NMFS announces the availability of a Concept Paper entitled "Towards Rationalization of Fisheries for Highly Migratory Species" and two Supplemental Papers outlining options for a permit moratorium in the Atlantic swordfish and Atlantic shark fisheries, respectively. NMFS is particularly interested in receiving comments about eligibility criteria for participation in the fisheries for the duration of each permit moratorium, and the conditions under which the moratorium will operate. The options discussed are not all-inclusive; suggestions for alternative approaches are encouraged. After consideration of the comments, NMFS will decide whether to develop a moratorium for either or both fisheries, and will propose alternative features for each moratorium if adopted. Any moratorium would be implemented through rulemaking (a proposed rule and a final rule).

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: July 19, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–18208 Filed 7–27–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 145
Friday, July 28, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–95–304]

Advisory Committee for Fresh Products Shipping Point Inspection Program

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS) announces three forthcoming meetings of the Advisory Committee for the Fresh Products Shipping Point Inspection Program.

DATES: August 10, 1995, at 9:00 a.m. through August 11, 1995. August 30, 1995, at 9:00 a.m. through August 31, 1995. September 14, 1995, at 9:00 a.m. through September 15, 1995.

ADDRESSES: U.S. Department of Agriculture, South Building, 14th and Independence Avenue, S.W., Agricultural Marketing Service Conference Room 3501, Washington, D.C. 20250. Telephone: (202) 690–0262.

FOR FURTHER INFORMATION CONTACT: Eric Forman, Deputy Director, U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division, P.O. Box 96456, Room 2085 South Building, Washington, D.C. 20090–6456. Telephone: (202) 690–0262.

SUPPLEMENTARY INFORMATION: The Advisory Committee for the Fresh Products Shipping Point Inspection Program includes five representatives from State cooperators and fifteen representatives from the fruit and vegetable industry. The purpose of the meetings are to review the Fresh Products Branch Shipping Point Inspection Program and confer with Department officials regarding its administration, operations, and funding. The exchange of views and information between industry, State representatives, and the Department should result in improved understanding of the cooperative agreements and their effective and efficient administration.

The meetings are open to the interested public, but space is limited. Persons wishing to attend should notify the Vice-Chairman at least one day in advance. Any member of the public may file a written statement with the Committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: July 24, 1995.

Lon Hatamiya,
Administrator.

[FR Doc. 95–18623 Filed 7–27–95; 8:45 am]
BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

[Docket No. 95–056–1]

Addition of Two Genetically Engineered Tomato Lines to Determination of Nonregulated Status for Calgene, Inc.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service is announcing that it has added two genetically engineered tomato lines to those subject to its October 19, 1992, interpretive ruling that certain FLAVR SAVR™ lines need no longer be regulated. The effect of this action is that two additional delayed-softening tomato lines, which have been modified by the incorporation of genetic material described by Calgene, Inc., in its initial request for an interpretive ruling, will no longer be subject to regulation under 7 CFR part 340.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–8761.

SUPPLEMENTARY INFORMATION: On October 19, 1992, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (57 FR 47608–47616, Docket No. 92–087–2) a notice announcing the issuance of an interpretive ruling that previously field tested lines of the Calgene, Inc., FLAVR SAVR™ tomato do not present a plant pest risk and are not regulated articles under the regulations contained in 7 CFR part 340. That action was in response to a petition submitted by Calgene seeking a determination from APHIS that its FLAVR SAVR™ tomato no longer be deemed a regulated article, based on an absence of plant pest risk. The effect of that action was that previously field tested lines of the FLAVR SAVR™ tomato and their progeny would no longer be regulated under the regulations in 7 CFR part 340.

FLAVR SAVR™ tomatoes were defined by Calgene in its initial petition to include any tomatoes transformed with one of seven identified plasmid vectors that all carry an antisense copy of the tomato polygalacturonase gene and a bacterial neomycin phosphotransferase gene with associated regulatory sequences. Calgene's initial request to APHIS in 1992 was for a determination pertaining to all FLAVR SAVR™ transformants produced in tomato using any one of the seven plasmid vectors. Calgene indicated in its petition that data provided to APHIS were representative of the data gathered for all lines tested up to that time. The initial determination announced by APHIS on October 19, 1992, only applied to those lines that had already been field tested. However, APHIS indicated that new lines were likely to exhibit properties similar to those of lines already field tested under permit. The determination also allowed for cross-breeding of the identified FLAVR SAVR™ tomato lines with any other lines or cultivars of tomato without a permit. Since the publication of the October 19, 1992, determination, a total of 30 FLAVR SAVR™ tomato lines have been added to the original determination; those additions were announced in notices published in the **Federal Register** on October 3, 1994 (59 FR 50220, Docket No. 94–096–1); November 18, 1994 (59 FR 59746, Docket No. 94–125–1); and March 23, 1995 (60 FR 15284, Docket No. 95–015–1).

The FLAVR SAVR™ tomato lines that are the subject of this notice, designated 519a 4109a–4645 and 540a 4109a–1823, were constructed using the plasmid pCGN4109, which contains the promoter/terminator from either pCGN1557 or pCGN1578. These latter two vectors were among the seven included in Calgene's initial petition to APHIS. FLAVR SAVR™ tomato lines constructed using these vectors were not included in our October 19, 1992, determination because they had not yet been field tested. These lines have since been field tested in accordance with APHIS' regulations in 7 CFR part 340, and data provided to APHIS indicate that the new transformants, produced in a manner identical to the earlier transformant lines, behave similarly to those earlier FLAVR SAVR™ tomato lines to which the original determination applied. Reports from field trials and other data indicate that the new tomato lines grow normally, exhibit the expected morphological, reproductive, and physiological properties, and do not have unexpected pest or disease susceptibility or symptoms. Therefore, the APHIS determination of October 19, 1992, of nonregulated status of previously tested FLAVR SAVR™ tomato lines applies as well to the new transformed lines.

Done in Washington, DC, this 18th day of July 1995.

Terry L. Medley,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–18572 Filed 7–27–95; 8:45 am]
BILLING CODE 3410–34–P

Forest Service

Salmon River Corridor Management Project, Sawtooth National Recreation Area, Sawtooth National Forest, Custer County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to disclose the effects of proposed management direction for use and facilities on the upper main Salmon River corridor, located in Custer County, Idaho.

The project area involves approximately thirty miles of the upper main Salmon River. The project area starts south of the community of Stanley, Idaho, at the Sawtooth Fish Hatchery and continues to the eastern boundary of the Sawtooth National Recreation Area (SNRA). The north and south boundaries of the project area generally parallel the river, approximately ¼ mile from the water's edge. A few exceptions to this width occur in the canyon in areas of flatter topography, where the project area widens to the toe of the slope.

DATES: The agency expects to file the DEIS with the Environmental Protection Agency and make it available for public comment in October 1995. The agency expects to file the final EIS in December, 1995.

FOR FURTHER INFORMATION CONTACT: For additional information contact Salli Rinella, project coordinator at the Sawtooth National Recreation Area, Star Route, Ketchum, ID 83340, (208) 727–5000.

SUPPLEMENTARY INFORMATION:

Background

The Salmon River corridor, with its outstanding natural features is eligible as a "recreation river" within the National Wild and Scenic River System. Currently there is no capacity identified for recreation use. Although this narrow corridor contains less than two percent of the SNRA's total land base, it currently receives almost 15 percent of the entire recreation use for the area. It is expected that demand for recreation opportunity will continue to increase. There is a need to identify and manage for a recreation capacity that is compatible with the natural resources in the area.

There are currently eight developed campground facilities within the project area, with capacity of 131 camping units. Some of the developed facilities are outdated and in need of repair. Most of the existing campground spurs and turn-around areas were not designed for today's larger vehicles. Many sites and most of the existing toilets within the project area are not designed to provide a barrier-free opportunity as required by the Americans with Disabilities Act. Some of the developed sites lie within riparian areas. The use that is occurring within the areas and some of the facilities themselves are causing resource impacts.

Disperse camping is allowed anywhere on the SNRA except in developed campgrounds or in areas signed "No Camping Allowed". Many of the dispersed campsites are impacting riparian areas and streambank stability. Vehicular movement for dispersed camping also is causing loss of vegetation and possible soil compaction.

In the past, Idaho Fish and Game has fed wintering elk in emergency situations within the corridor. Elk wander onto the highway creating safety hazards to motorists. Additional safety problems occur as visitors traveling along the highway slow down or stop along the highway to view the wildlife. Large concentrations of elk have also caused vegetation loss and soil compaction at the emergency feed sites.

Past Biological Opinions from consultation with National Marine Fisheries Service (NMFS) indicates that river-oriented activities may effect the threatened Snake River spring/summer chinook salmon. Activities may also be limiting the habitats of threatened, endangered or sensitive fish, wildlife and plant species.

On August 22, 1972 Congress passed Public Law 92–400 establishing the SNRA. The intent of establishing the SNRA was to protect the areas primary values of natural beauty, fish and wildlife resources, pastoral and historical values, and recreation attributes.

There is a need to identify a river capacity level to ensure the area's primary values are protected and a need to update existing facilities to reduce impacts and accommodate today's user needs. There is also a need to address elk feeding in the corridor to reduce impacts and address safety.

Proposed Action

The Sawtooth National Forest proposes to develop FLRMP standards and guidelines identifying limits of acceptable change that will determine when carrying capacity for recreation activities on the upper main Salmon River have been met, and to prohibit surfing on this section of the river.

The Forest also proposes to issue six five-year special use outfitter-guide floatboating permits, one five-year year-round special use fishing permit, four five-year special use walk and wade fishing permits, and to allow the Idaho Department of Fish and Game to continue to feed wintering elk in emergency situations on National Forest System lands at two locations within this project area. The Forest proposes to rehabilitate existing facilities at Salmon River, Riverside, Upper O'Brien, Holman Creek, and Mormon Bend Campgrounds; Snyder Spring Picnic Area; Yankee Fork floatboat launch site; and Buckhorn Bridge Picnic Site. Areas of impact at developed recreation sites will also be revegetated or otherwise protected or improved. The Forest further proposes: to remove thirteen camp sites and portions of the road at Basin Creek Campground, four sites at Holman Creek Campground, and one unit at Morman Creek Campground and to reclaim associated riparian and floodplain areas; to expand Sunny Gulch Campground to accomdate those developed sites lost at Basin Creek, Holman Creek Campgrounds; to manage undeveloped camping and river access by a combination of vehicle restrictions, permanent or temporary closures, and allowing undeveloped camping at areas

designated with signs and permanent fire grills; to provide improved river access facilities at Basin Creek and Four Aces; to improve/define/develop pullouts along Highway 75 to make them safer and provide educational and interpretation information at some of them; and to utilize seasonal closures at Lower Holman and Riverside Campgrounds, Buckhorn Bridge Picnic Site, and other areas along the river to reduce impacts to spawning salmon and/or their habitat.

Decision To Be Made

Based on the analysis in the EIS, two levels of decision must be made by the Forest Supervisor. The Forest Supervisor must decide what additional standards and guidelines, if any, must be incorporated into the Sawtooth National Forest Land and Resource Management Plan (FLRMP) to ensure recreation uses within the Salmon River Corridor are managed in such as fashion to allow for protection of the primary values of the SNRA, as established by PL92–400. This "programmatic" level of decision may result in an amendment to the FLRMP. The Forest Supervisor also must make "site specific" decisions as the the level of use that will be allowed to occur on the upper main Salmon River and what modifications if any are needed to both developed and dispersed recreation sites to ensure protection of the primary values of the SNRA, as established by PL 92–400.

Issues Identified to Date

Past scoping and public participation for some of these projects have helped identify preliminary issues for this project.

1. Recreation use may be causing impacts to sensitive, threatened, and endangered fish, wildlife and plants, and their associated habitat.
2. Recreation use may be causing the loss of vegetation and soil compaction.
3. Modifying current use and facilities may impact visitors recreation experience.
4. Modifying current use and facilities may impact the economy of local communities and businesses.
5. Use within the corridor may impact heritage resources.
6. Concentrations of elk during emergency winter feeding may be impacting resources and causing safety problems on Highway 75.
7. Condition of current facilities may be impacting visitors experiences.

Possible Alternatives

Alternative A—No Action. This alternative maintains the current location and management of developed and dispersed recreation sites. No special use permits would be issued for walk and wade, fishing, and floatboating. No river carrying capacity would be developed. Surfing would continue to occur and winter emergency elk feeding by Idaho Department of Fish and Game would continue to be reviewed on an as needed basis.

Alternative B—In this alternative, undeveloped camping and river access would be managed by a combination of vehicle restrictions, permanent or temporary closures, and allowing undeveloped camping at areas designated with signs and permanent fire grills. Numbers of sites available for undeveloped camping would generally remain the same. Eighteen sites would be removed from developed campgrounds and would be "replaced" by 18 new sites at Sunny Gulch Campground. Camping and day-use facilities in need of upgrading would be replaced. Number of river floatboat access sites would be reduced, but facilities at remaining river access sites would be improved. Seasonal closures would be utilized at Lower O'Brien and Riverside Campgrounds. All of Lower O'Brien and the lower portion of Riverside would be closed from August 1 to June 15. Pullouts occurring along Highway 75 that provide parking space for day use (fishing, sightseeing, picnicking, etc.) would be managed as much as practicable by utilizing barriers and/or designated trails to the river. Signs would be utilized when necessary to educate and/or notify visitors of any restrictions, such as seasonal access closures to protect spawning salmon and redds, or other resource needs. The portion of the upper Salmon River from the Fish Hatchery to the SNRA boundary would be closed to surfing. The six special use outfitter guide floatboating permits, the one special use year-round fishing permit, and four special use walk and wade permits would be issued for five years. Mitigation measures similar to what is currently being used would be included to minimize impacts to spawning salmon and their redds. A river floatboat carrying capacity would be determined. This capacity would allow for use and the enjoyment of the river that is compatible with the resources. Two areas would be approved for use by Idaho Fish and Game for emergency winter elk feeding.

Alternative C—In this alternative, undeveloped camping and river access would be managed by a combination of vehicle restrictions, permanent or temporary closures, and allowing undeveloped camping at areas designated with signs and permanent fire grills. Numbers of sites available for undeveloped camping would be reduced. Eighteen sites would be removed from developed campgrounds and would not be "replaced". Camping and day-use facilities in need of upgrading would be replaced. Number of river floatboat access sites would be reduced, but facilities at remaining river access sites would be improved. Seasonal closures would be utilized at Lower O'Brien and Riverside Campgrounds. All of Lower O'Brien and the lower portion of Riverside would be closed from August 1 to June 15. Pullouts occurring along Highway 75 that provide parking space for day use (fishing, sightseeing, picnicking, etc.) would be managed as much as practicable by utilizing barriers and/or designated trails to the river. Signs would be utilized when necessary to educate and/or notify visitors of any restrictions, such as seasonal access closures to protect spawning salmon and redds, or other resource needs. The portion of the upper Salmon River from the Fish Hatchery to the SNRA boundary would be closed to surfing. The six special use outfitter guide floatboating permits, the one special use year-round fishing permit, and four special use walk and wade permits would be issued for five years. Mitigation measures more restrictive than what are currently required would be included to minimize impacts to spawning salmon and their redds. A river floatboat carrying capacity would be determined. This capacity would generally be less than in Alternative B, but would allow for use and enjoyment of the river that is compatible with the resources. Two areas would be approved for use by Idaho Fish and Game for emergency winter elk feeding.

Scoping Process

This Notice of Intent formally initiates the scoping process for the draft environmental impact statement (DEIS). The Forest Service invites comments and suggestions on the scope of the analysis to be included in the DEIS. In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision. Public comments on the proposal are welcome and should be submitted in writing to Paul Ries, Area Ranger, Sawtooth National Recreation Area, Star Route, Ketchum, ID 83340. Comments will be most useful to the analysis team if they are received by August 31, 1995. The Forest Service intends to hold public meetings on the proposal but the meetings have not been scheduled at this time.

There are no known permits or licenses required to implement the proposed actions. Several agencies and organizations will be invited to participate as cooperating agencies.

As previously stated, the Forest Service expects to publish the DEIS by mid-October 1995. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alters an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsion Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Please note that comments you make on the DEIS will be regarded as public information.

Thomas L. Tidwell, Acting Forest Supervisor, Sawtooth National Forest, is the responsible official.

Dated: July 24, 1995.

Thomas L. Tidwell,

Acting Forest Supervisor.

[FR Doc. 95–18553 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Flower Garden Banks National Marine Sanctuary Symbol

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: SRD is announcing the adoption of a symbol for the Flower Garden Banks National Marine Sanctuary, of the National Marine Sanctuary Program. Announcement in the **Federal Register** is required by the National Marine Sanctuaries Program Amendments Act of 1992 (Act). The symbol is one element of a pilot project under the Act to enhance funding for designation and management of national marine sanctuaries. In accordance with the Act, SRD is publishing, in the **Federal Register**, the symbol shown in the attachment to this document. This symbol shall be the official symbol for the Flower Garden Banks National Marine Sanctuary, one of the sites included in the National Marine Sanctuary Program. This notice also announces the opportunity for interested persons to become official sponsors of the Flower Garden Banks National Marine Sanctuary.

DATES: The Office of Ocean and Coastal Resource Management will begin using the new symbol immediately.

ADDRESSES: Information on becoming an official sponsor may be obtained from:

Justin Kenney, National Oceanic and Atmospheric Administration, Sanctuaries and Reserves Division, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910

or

Dr. Stephen Gittings, Manager, Flower Garden Banks National Marine Sanctuary, 1716 Briarcrest Drive, Suite 702, Bryan, Texas 77802.

FOR FURTHER INFORMATION CONTACT: Justin Kenney at (301) 713–3145 ext. 153, or Dr. Stephen Gittings at (409) 847–9296.

SUPPLEMENTARY INFORMATION: Under Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, also known as the National Marine Sanctuaries Act, the United States Congress authorizes the designation of discrete areas of the marine environment as National Marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management. The National Marine Sanctuary Program was established pursuant to the National Marine Sanctuaries Act, and is administered by the Sanctuaries and Reserves Division of the National Oceanic and Atmospheric Administration.

The mission of the National Marine Sanctuary Program is to identify, designate and manage areas of marine environment of special national significance due to their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The Program currently has 14 designated sites: Olympic Coast, Cordell Bank, Gulf of the Farallones, Monterey Bay, Channel Islands, Hawaiian Islands Humpback Whale, Fagatele Bay, Florida Keys, Flower Garden Banks, Looe Key, Key Largo, Gray's Reef, the Monitor, and Stellwagen Bank National Marine Sanctuaries.

In 1992, with the passage of the National Marine Sanctuaries Program Amendments Act (Act), Title II of Pub. L. 102–587, Congress directed the National Marine Sanctuary Program to enhance funding for the designation and management of national marine sanctuaries through the creation, adoption and marketing of a symbol for the national program or for individual National Marine Sanctuaries. The National Marine Sanctuary Program symbol has been adopted and published in the **Federal Register** (Vol. 60, No. 59, March 28, 1995). This notice displays the symbol adopted for the Flower Garden Banks National Marine Sanctuary; this symbol was developed by Mr. Joel Hickerson from College Station, Texas.

The Act also directs the Sanctuary Program to solicit and designate official sponsors for the Program or the individual National Marine Sanctuaries. These sponsors shall be authorized to manufacture, reproduce, or use the symbol. The Sanctuary Program is authorized to sell rights to the symbols for such use and retain the funds to enhance and manage National Marine Sanctuaries. The symbol is the property of the United States and it is unlawful for any person, except a designated

sponsor, to manufacture, reproduce or use the symbol. Persons interested in becoming an official sponsor of the National Marine Sanctuary Program or of an individual sanctuary should contact Justin Kenney.

W. Stanley Wilson,

Assistant Administrator, Department of Administrative Orders.

BILLING CODE 3510-08-M

[FR Doc. 95-18612 Filed 7-27-95; 8:45 am]
BILLING CODE 3810-08-C

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 28, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: On June 2 and 9, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 28781 and 30523) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Folder, Medical, Outpatient
7530-00-NIB-0193

Attachment: Flower Garden Banks National Marine Sanctuary Symbol



(Requirements for the VA Medical Center, Richmond, Virginia)

Services

Administrative Services for the following Washington, DC locations:
Department of the Treasury, Technical Assistance Office, 1730 K Street, NW
Department of the Treasury, Main Treasury, 1500 Pennsylvania Avenue, NW
Saudi-Arabian Joint Commission Office, 1401 New York Avenue, NW
Grounds Maintenance, Fleet and Industrial Supply Center, Administrative Areas, Oahu, Hawaii
Janitorial/Custodial, U.S. Army Reserve Center, Montgomery County Airport, 100 South Parkway, Conroe, Texas
Janitorial/Custodial, Drug Enforcement Agency, Camp Upshur International Training Center, Quantico, Virginia
Medical Transcription, Department of Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, Florida.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–18575 Filed 7–27–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 28, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Tape, Sound Recording
5835–00–168–9528
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania

Folder, File
7530–00–990–8884
(Requirements for the Palmetto, GA depot only)
NPA: Georgia Industries for the Blind, Atlanta, Georgia at its facility in Bainbridge, Georgia

Services

Administrative Services
St. Paul U.S. Army Engineer District
St. Paul, Minnesota
NPA: Tasks Unlimited, Inc., Minneapolis, Minnesota

Administrative Services
Federal Aviation Administration
Renton, Washington
NPA: Northwest Center for the Retarded, Seattle, Washington

Data Entry/Data Base Management
General Services Administration
Paints and Chemicals Commodity Center
Auburn, Washington
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Food Service Attendant
U.S. Coast Guard Air Station
Clearwater, Florida
NPA: The Pinellas Association for Retarded Children, St. Petersburg, Florida

Grounds Maintenance
Hickam Air Force Base, Hawaii
NPA: Makaala, Inc., Honolulu, Hawaii

Mailroom Operation
U.S. Army Reserve Command
Atlanta, Georgia
NPA: WORKTEC, Jonesboro, Georgia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–18576 Filed 7–27–95; 8:45 am]

BILLING CODE 6820–33–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection Request Submitted to the Office of Management and Budget for Review

AGENCY: The Corporation for National and Community Service (CNS).

ACTION: Information collection request submitted to the Office of Management and Budget (OMB) for review.

SUMMARY: This notice provides information about an information proposal by CNS, currently under review by OMB. The proposal includes survey and data collection forms to be used for the national evaluation of the Learn and Serve K–12 program. Forms included in the proposal include surveys of program participants and comparison group members, teachers, host agency representatives, and volunteers.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect data collection at the start of the school year. OMB and CNS will consider comments on the proposed collection of information and record keeping requirements received on or before August 7, 1995. Copies of the proposed forms and supporting documents may be obtained by contacting CNS.

ADDRESSES: Send comment to both:

Chuck Helfer Study Director, CNS, 1201 New York Avenue NW., Washington, DC 20525
Daniel Chenock, Desk Officer, OMB, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Chuck Helfer, (202) 606–5000, extension 248.

SUPPLEMENTARY INFORMATION: Office of the Corporation for National and Community Service.

Issuing Proposal: Office of Evaluation.

Title of Forms: Learn and Serve K–12 Participant and Comparison Group Baseline Surveys, participant and Comparison Group Post-Program Surveys, Participant and Comparison Group Follow-Up Surveys; Learn and Serve K–12 Participant Rosters; Learn and Serve K–12 Parental Consent Forms; Learn and Serve K–12 School-Wide Student Survey; Learn and Serve K–12 Faculty Survey; Learn and Serve K–12 Host Agency Survey; and Learn and Serve K–12 Volunteer Information Form.

Need and Use: The National and Community Service Trust Act of 1993 (Pub. L. 103–82) requires the Corporation for National Service to evaluate its programs on a regular basis. This information is required for program management, planning, and required record keeping.

Type of Request: Submission of a new collection.

Respondents Obligation to Reply: Voluntary.

Frequency of Collection: Twice a year for 18 months.

Estimated Number of Annual Responses: 8840.

Average Burden Hours per Response: 31 hours.

Estimated Annual Reporting or Disclosure Burden: 2736 hours.

Regulatory Authority: Public Law 103–82.

Dated: July 24, 1995.

Lance Potter,

Director, Office of Evaluation.

[FR Doc. 95–18597 Filed 7–27–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Amendment to published notice of National Assessment Governing Board meeting.

SUMMARY: Notice is hereby given of an amendment to the notice of a meeting of the National Assessment Governing Board scheduled for August 3–5, 1995 published on July 17, 1995, FR60, page 36406. The agenda for the Achievement Levels Committee meeting will include an update on plans for the evaluation of the achievement levels project. This update will be presented in open session from 6 p.m. to 6:30 p.m. Therefore, the Achievement Levels Committee will meet, August 3, 1995, in partially closed session; 4–6 p.m. (closed), 6–6:30 p.m. (open).

Dated: July 25, 1995.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 95–18549 Filed 7–27–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–232–002, et al.]

Kimball Power Company, et al., Electric Rate and Corporate Regulation Filings

July 21, 1995.

Take notice that the following filings have been made with the Commission:

1. Kimball Power Company

[Docket No. ER95–232–002]

Take notice that on July 17, 1995, Kimball Power Company tendered for filing certain information as required by the Commission's letter order dated February 1, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

2. Puget Sound Power & Light Company

[Docket No. ER95–824–000]

Take notice that on July 18, 1995, Puget Sound Power & Light Company tendered for filing an amendment to its filing in this docket of the Agreement Providing for Termination of Agreement for Assignment and for Exchange of Power between Puget and Public Utility District No. 1 of Grays Harbor County, Washington (the District). A copy of the amendment was served upon the District.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Alabama Power Company

[Docket No. ER95–912–000]

Take notice that on June 13, 1995, Alabama Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Power Clearinghouse Inc.

[Docket No. ER95–914–001]

Take notice that on July 17, 1995, Power Clearinghouse Inc. tendered for filing certain information as required by the Commission's letter order dated May 11, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

5. Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company

[Docket No. ER95–1076–000]

Take notice that on July 14, 1995, Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU) tendered for filing minor amendments to their earlier filing of certain non-rate revisions to their respective Coordination Sales Tariffs (CTS–1 Tariffs).

PSO, SWEPCO and WTU continue to seek an effective date of May 22, 1995. Copies of this filing were served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the customers for whom PSO, SWEPCO and WTU, respectively, have filed service agreements under the CTS–1 Tariffs.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER95–1092–000]

Take notice that on June 19, 1995, Commonwealth Edison Company (ComEd) amended the filing made earlier in this proceeding to submit Service Agreements, establishing Wisconsin Public Power Inc. System (WPPI), AES Power, Inc. (AES), Rainbow Energy Marketing Corporation (Rainbow), and Stand Energy Corporation (Stand), as customers under the terms of ComEd's Transmission Service Tariff FTS–1 (FTS–1 Tariff). The Commission has previously designated the FTS–1 Tariff as FERC Electric Tariff, Original Volume No. 4.

ComEd requests an effective date of July 7, 1995, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon WPPI, AES, Rainbow, Stand, and the Illinois Commerce Commission.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Electric and Gas Company

[Docket No. ER95–1288–000]

Take notice that on June 29, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide transmission service to Atlantic City Electric Company (PURCHASER). The Rate Schedule provides for a monthly transmission, energy losses and administrative charge for delivery by PSE&G of the City of Vineland's share of the State of New Jersey's allocation of New York Power Authority neighboring state hydroelectricity from the New York/New Jersey border to Purchaser. PSE&G requests that the filing be permitted to become effective on July 1, 1995.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Electric and Gas Company

[Docket No. ER95–1289–000]

Take notice that on June 29, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide transmission and subtransmission service to the Borough of Park Ridge (PURCHASER). The Rate Schedule provides for a monthly transmission, energy losses and administrative charge for delivery by PSE&G of the Purchaser's share of the State of New Jersey's allocation of New York Power Authority neighboring state hydroelectricity from the New York/New Jersey border to Purchaser. PSE&G requests that the filing be permitted to become effective on July 1, 1995.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Electric and Gas Company

[Docket No. ER95–1290–000]

Take notice that on June 29, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide transmission and subtransmission service to the Borough of South River (PURCHASER). The Rate Schedule provides for a monthly transmission, subtransmission, energy losses and administrative charge for delivery by PSE&G of the Purchaser's share of the State of New Jersey's allocation of New York Power Authority neighboring state hydroelectricity from the New York/New Jersey border to Purchaser. PSE&G requests that the filing be permitted to become effective on July 1, 1995.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Wallkill Generating Company, L.P.

[Docket No. ER95–1316–000]

Take notice that on June 30, 1995, Wallkill Generating Company, L.P. tendered for filing a Notice of Cancellation of Wallkill's FERC No. 1 Rate Schedule.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Washington Water Power Company

[Docket No. ER95–1355–000]

Take notice that on July 10, 1995, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 2, nonfirm transmission, with Rainbow Energy Marketing Corporation along with a Certificate of Concurrence with respect to loss returns. WWP requests waiver of the prior notice requirement and requests an effective date of August 1, 1995.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Washington Water Power Company

[Docket No. ER95–1356–000]

Take notice that on July 10, 1995, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Koch Power Services, Inc., along with a Certificate of Concurrence with respect to exchanges. WWP requests waiver of the prior notice requirement and requests an effective date of August 1, 1995.

WWP is also submitting two signed service agreements which had previously been accepted by FERC as unsigned service agreements. They are Equitable Power Services Company and Rainbow Energy Marketing Corp. Certificates of Concurrence with respect to exchanges are also included.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Amoco Power Marketing Corporation

[Docket No. ER95–1359–000]

Take notice that on July 11, 1995, Amoco Power Marketing Corporation, tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, and § 35.12 of the Commission's Regulations under the Federal Power Act, 18 CFR 35.12, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its FERC Electric Rate Schedule No. 1 to be effective on September 5, 1995.

Amoco Power Marketing Corporation intends to engage in electric power and energy transactions as a marketer and broker. In Amoco Power Marketing Corporation's marketing transactions, Amoco Power Marketing Corporation proposes to charge rates mutually agreed upon by the parties. Amoco Power Marketing Corporation is not in the business of producing or transmitting electric power. Amoco Power Marketing Corporation does not currently have or contemplate acquiring title to any electric power transmission facilities or any electricity service area franchises.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER95–1360–000]

Take notice that on July 11, 1995, New England Power Company filed a Service Agreement with Central Hudson Gas & Electric for sales under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Union Electric Company

[Docket No. ER95–1361–000]

Take notice that on July 11, 1995, Union Electric Company (UE), tendered for filing a Transmission Service Agreement dated July 12, 1995 between Louis Dreyfus Electric Power Inc. (Dreyfus) and UE. UE asserts that the purpose of the Agreements is to set out specific rates, terms, and conditions for transmission service transactions from UE to Dreyfus.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1363–000]

Take notice that on July 11, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing an Agreement dated June 30, 1995, between NSP and the City of Shakopee (City). NSP's firm power service to City under a Firm Power Service Resale Agreement will terminate July 17, 1995. For the period between July 18, 1995, and the finalization of the new Distribution Facilities Agreement, an Agreement continuing the current wholesale distribution substation rate of $0.47/Kw-month on an interim basis has been executed. This Agreement shall remain in effect until December 31, 1995.

NSP requests the Agreement be accepted for filing effective July 18, 1995, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Power and Light Company

[Docket No. ER95–1364–000]

Take notice that on July 11, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated June 1, 1995, establishing Cenergy, Inc. as a customer under the terms of WP&L's Transmission Tariff T–2.

WP&L requests an effective date of June 1, 1995 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1365–000]

Take notice that on July 11, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with Heartland Energy Services, Inc. (HES) to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. All energy and capacity sold by HES will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon HES.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Montana Power Company

[Docket No. ER95–1366–000]

Take notice that on July 12, 1995, Montana Power Company (Montana), tendered for filing a revised Appendix 1 as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96–501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

A copy of the filing has been served upon BPA.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER95–1367–000]

Take notice that on July 12, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed an Amendment, dated as of June 12, 1995, to the Interchange Contract, (Interchange Contract), dated as of December 18, 1991, between Duke Power Company and Southern Companies which amends the Interchange Contract by reflecting the termination of the Tallulah Falls Interconnection.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–1368–000]

Take notice that on July 12, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and New York State Electric & Gas Corporation (NYSEG), dated July 6, 1995. This Service Agreement specifies that NYSEG has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and NYSEG to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 6, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. New York State Electric & Gas Corporation

[Docket No. ER95–1369–000]

Take notice that on July 12, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing Supplement No. 13 to its Agreement with the New York Power Authority (NYPA), designated NYSEG Rate Schedule FERC No. 112. The proposed changes would affect revenues by $0 based on the twelve-month period ending June 30, 1996.

This rate filing, Supplement No. 13 to NYSEG Rate Schedule FERC No. 112, is made pursuant to Article No. 2 of the September 28, 1993 Facilities Agreement. The annual charges associated with other taxes, operating expenses, maintenance expenses, working capital, and associated revenue taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1994.

NYSEG requests an effective date of July 1, 1995, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the New York Power Authority and on

the Public Service Commission of the State of New York.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. CRSS Power Marketing, Inc.

[Docket No. ER94–142–006]

Take notice that on July 14, 1995, CRSS Power Marketing, Inc. tendered for filing certain information as required by the Commission's letter order dated December 30, 1993. Copies of the informational filing are on file with the Commission and are available for public inspection.

24. Eastern Edison Company

[Docket No. ER95–1160–000]

Take notice that on July 10, 1995, Eastern Edison Company filed a supplement to its June 5, 1995 filing providing information requested by the rate filing staff.

Comment date: August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. EDC Power Marketing, Inc.

[Docket No. ER94–1538–003]

Take notice that on July 14, 1995, EDC Power Marketing, Inc. tendered for filing certain information as required by the Commission's letter order dated September 14, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18587 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–282–001, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

July 20, 1995.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER95–282–001]

Take notice that on July 10, 1995 PECO Energy Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Duquesne Light Company

[Docket No. ER95–531–000]

Take notice that on July 10, 1995, Duquesne Light Company tendered under the Commission's Rules of Practice and Procedure copies of revised Appendix 90CAAA to Rate Schedule FPC Nos. 8; 9 and 24. Appendix 90CAAA was tendered to ensure compliance with the Commission's policy Statement and Interim Rule issued December 15, 1994 at Docket No. PL95–1–000, regarding ratemaking treatment of the cost of emission allowances in coordination sales.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Empresa Electrica Corani S.A.

[Docket No. EG95–59–000]

On July 13, 1995, Empresa Electrica Corani S.A. ("Corani"), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Corani, a Bolivian corporation, will be owned in part by Inversiones Dominion Bolivia S.A., Inc., a Bolivian holding company, which will be a wholly-owned subsidiary of subsidiaries of Dominion Resources, Inc., a Virginia corporation.

Corani states that it will own and operate a 72 MW hydroelectric generating station consisting of four 18 MW turbogenerators and a 54 MW hydroelectric generating station consisting of four 13.5 MW turbogenerators and related structures (the "Facilities"). The Facilities are located along the Corani Reservoir in the Province of Chapare, Bolivia. Corani requests a determination that it will be an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: August 11, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. MG Electric Power, Inc.

[Docket No. ER93–839–001]

Take notice that on July 17, 1995, MG Electric Power, Inc. tendered for filing certain information as required by the Commission's letter order dated October 19, 1993. Copies of the informational filing are on file with the Commission and are available for public inspection.

5. R.J. Dahnke & Associates

[Docket No. ER94–1352–003]

Take notice that on July 6, 1995, R.J. Dahnke & Associates tendered for filing certain information as required by the Commission's letter order dated August 13, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

6. Central Maine Power Company

[Docket No. ER94–1669–000]

Take notice that on June 29, 1995, Central Maine Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Tex Par Energy, Inc.

[Docket No. ER95–62–002]

Take notice that on July 10, 1995, Tex Par Energy, Inc. tendered for filing certain information as required by the Commission's letter order dated December 27, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

8. Midwest Power Systems, Inc.

[Docket No. ER95–486–001]

Take notice that on July 7, 1995 Midwest Power Systems, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Ohio Edison Company

[Docket No. ER95–549–000]

Take notice that on July 11, 1995 Ohio Edison Company tendered for filing a revised amendment to the Power Purchase and Sale Agreement with CNG Power Services Corporation. The purpose of this filing is to comply with the Commission's Order Directing Revisions and Accepting For Filing Rates For Emission Allowances, As Modified issued June 2, 1995 in Docket No. ER95–135–000, et al.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER95–559–001]

Take notice that Wisconsin Electric Company (Wisconsin Electric or the Company) on July 3, 1995, tendered for filing revisions to its coordination rate schedules between itself and a number of present and prospective wholesale energy purchasers. This filing supports Wisconsin Electric's use of the 1500 allowance block index and contains the revised rate sheets that include the items as specified in the Order Directing Revisions and Accepting For Filing Rates For Emission Allowances, As Modified dated June 2, 1995.

Wisconsin Electric respectfully requests an effective date of January 1, 1995.

Copies of the filing have been served on all of the affected wholesale purchasers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation on behalf of Monongahela Power Company The Potomac Edison Company and West Penn Power Company (the APS Companies)

[Docket No. ER95–570–000]

Take notice that on June 30, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company ("the APS Companies") filed a request for withdrawal of a deferral on action related to Supplement No. 1 in the above-referenced docket. The APS Companies have submitted a filing to revise their initial emission allowance filing to comply with the Commission order, and the Commission has accepted the subject tariff for filing; therefore, the deferral of action is no longer necessary. Allegheny Power Service Corporation requests waiver of notice requirements and asks the Commission to honor the proposed effective date agreed to by the parties.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Montaup Electric Company

[Docket No. ER95–1346–000]

Take notice that on July 7, 1995, Montaup Electric Company filed a Notice of Cancellation of a service agreement between Montaup and Commonwealth Electric, Montaup Rate Schedule No. 104.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

[Docket No. ER95–1347–000]

Take notice that on July 7, 1995, Arizona Public Service Company (APS), tendered for filing revised Exhibits applicable under the San Carlos Indian Irrigation Project (SCIIP) Wholesale Power Supply Agreement, APS–FERC Rate Schedule No. 201 and the Colorado River Indian Irrigation Project (CRIIP) Wholesale Power Supply Agreement, APS–FPC Rate Schedule No. 65.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER95–1348–000]

Take notice that on July 7, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Public Service Electric & Gas Company under the NU System Companies System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Public Service Electric & Gas Company.

NUSCO requests that the Service Agreement become effective on July 24, 1995.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power & Light Company

[Docket No. ER95–1349–000]

Take notice that on July 7, 1995, Florida Power & Light Company (FPL), tendered for filing the Notices of Contract Demand for Power Year 1998 for the following customers under Rate Schedule PR of FPL's Wholesale Electric Tariff: City of Starke, City of Jacksonville Beach; City of Green Cove Springs, and the City of Clewiston.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Public Service Company

[Docket No. ER95–1350–000]

Take notice that on July 7, 1995, Central Illinois Public Service Company (CIPS), submitted for filing revised Appendices A (Service Agreements) to the Interconnection Agreement between CIPS, Illinois Power Company (IP) and Union Electric Company (UE). The appendices provide for relocated meters and a new point of interconnection at Ina.

CIPS requests an effective date for each of the appendices of January 1, 1995, and accordingly seeks waiver of the Commission's notice requirement. CIPS served copies of the filing on IP, UE, the Illinois Commerce Commission and the Public Service Commission of Missouri.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER95–1351–000]

Take notice that on July 7, 1995, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entities:

Engelhard Power Marketing, Inc.
National Electric Associates Limited Partnership
Coastal Electric Services Company

A copy of this filing has been served on the above listed entities and the Arizona Corporation Commission.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Indiana Michigan Power Company

[Docket No. ER95–1352–000]

Take notice that on July 10, 1995, Indiana Michigan Power Company (I&M), tendered for filing with the Commission Facility Request No. 6 to the existing Agreement, dated December 11, 1989 (1989 Agreement), between I&M and Wabash Valley Power Association, Inc. (WVPA). Facility Request No. 6 was negotiated in response to WVPA's request that I&M provide an additional delivery point at 138 Kv for a new station to be operated by Noble County REMC (Co-op Name) and known as Simmer Lake Station. The Commission has previously designated the 1989 Agreement as I&M's Rate Schedule FERC No. 81.

As requested by, and for the sole benefit of WVPA, I&M proposes an effective date of September 15, 1995, for Facilities Request No. 6. A copy of this

filing was served upon WVPA, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Midwest Power Systems, Inc.

[Docket No. ER95–1353–000]

Take notice that on July 10, 1995, Midwest Power Systems Inc. (Midwest), tendered for filing Amendment No. 3 to the Interconnection and Interchange Agreement (Agreement) between Nebraska Public Power District (NPPD) and Midwest.

The purpose of Amendment No. 3 is to establish an effective date of January 1 for the biennial rate of the facilities charge contained in the Agreement.

MPSI respectfully requests an effective date of 60 days after the original filing date of Amendment No. 3.

MPSI states that copies of this filing were served on NPPD and the Iowa Utilities Board.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Northeast Utilities Service Company

[Docket No. ER95–1354–000]

Take notice that on July 10, 1995, Northeast Utilities Service Company (NUSCO), on behalf of the Northeast Utilities System Companies, filed a Service Agreement for firm transmission service to City of Holyoke, Massachusetts Gas and Electric Department (HG&E) under NUSCO's Tariff No. 1. The Service Agreement provides for delivery of HG&E's allocation of New York Power Authority hydropower from July 1, 1995 through October 31, 2003.

NUSCO requests an effective date of July 1, 1995.

NUSCO states that copies of its submission have been mailed or delivered to HG&E.

Comment date: August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Carolina Energy, Limited Partnership

[Docket No. QF95–291–000]

On July 14, 1995, Carolina Energy, Limited Partnership (applicant), c/o VEDCO Energy Corp., 11757 Kay Freeway, Ste. 1420, Houston, Texas 77079, submitted for filing an application for certification of a facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the Small Power Production Facility will be located in Wilson County, North Carolina and will consist of a fluid bed combustor-boiler system and a condensing steam turbine generator. The primary energy source will be biomass in the form of refuse derived fuel. The maximum net electric power production capacity will be 7.3 MW. The facility is expected to begin commercial operation in the second quarter of 1997.

Comment date: August 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18545 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–P

Notice of Application for Approval of Plan To Purchase Homes Within Project Boundary and Compensate Residents Pursuant to Article 410

July 24, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Approval of Plan to Purchase Homes Within Project Boundary and Compensate Residents Pursuant to Article 410.

b. *Project No:* 10455–008.

c. *Date Filed:* April 6, 1995.

d. *Applicant:* JDJ Energy Company, Inc.

e. *Name of Project:* River Mountain Project.

f. *Location:* Arkansas River, Logan County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Stewart Noland, P.E., Consulting Engineer, 5210 Sherwood Road, Little Rock, AR 72207, (501) 661–9228.

i. *FERC Contact:* Heather Campbell, (202) 219–3097.

j. *Comment Date:* September 5, 1995.

k. *Description of Project:* JDJ Energy Company, Inc. filed its property acquisition plan; required by article 410, which includes procedures for: purchasing ten residences located within the project boundary; providing compensation to residents who are affected by project construction activities; and, mitigating project related impacts to local residents.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18541 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST95–2622–000 et al.]

Panhandle Eastern Pipe Line Co. Notice of Self-Implementing Transactions

July 24, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to section 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to section 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under section 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under section 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to section 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to section 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–2622	PANHANDLE EASTERN PIPE LINE CO.	PEPCO ENERGY CO.	06–01–95	G–S	29,973	N	F	05–08–95	03–31–15
ST95–2623	LONE STAR PIPELINE CO.	TRANSWESTERN PIPELINE CO., ET AL.	06–01–95	C	20,000	N	I	05–01–95	INDEF.
ST95–2624	LONE STAR PIPELINE CO.	EL PASO NATURAL GAS CO., ET AL.	06–01–95	C	30,000	N	I	05–01–95	INDEF.
ST95–2625	LONE STAR PIPELINE CO.	TRANSWESTERN PIPELINE CO., ET AL.	06–01–95	C	35,000	N	I	05–01–95	INDEF.
ST95–2626	FLORIDA GAS TRANSMISSION CO.	DESTEC ENERGY, INC.	06–01–95	G–S	12,600	N	F	05–04–95	02–28–15
ST95–2627	FLORIDA GAS TRANSMISSION CO.	MUNICIPAL AUTHORITY OF FLORIDA.	06–01–95	G–S	3,781	N	F	05–04–95	INDEF.
ST95–2628	MISSISSIPPI RIVER TRANS. CORP.	NATIONAL STEEL CORP.	06–01–95	G–S	1,000	N	F	04–01–95	INDEF.
ST95–2629	DELHI GAS PIPELINE CORP.	TRANSCONTINENTAL G/P/L CORP., ET AL.	06–01–95	C	20,000	N	I	05–01–95	INDEF.
ST95–2630	WILLIAMS NATURAL GAS CO.	BOYD ROSENE & ASSOCIATES, INC.	06–01–95	G–S	5,000	N	I	04–19–95	09–30–98
ST95–2631	TRAILBLAZER PIPELINE CO.	MIDCON GAS SERVICES CORP.	06–01–95	G–S	27,475	N	F	04–01–95	09–30–95
ST95–2632	TRUNKLINE GAS CO.	HOWARD ENERGY CO., INC.	06–05–95	G–S	103,500	N	I	05–27–95	INDEF.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95-2633	EL PASO NATURAL GAS CO.	CONTINENTAL NATURAL GAS, INC.	06-05-95	G-S	30,900	N	I	05-06-95	INDEF.
ST95-2634	EL PASO NATURAL GAS CO.	OXY USA INC	06-05-95	G-S	15,000	N	I	05-06-95	INDEF.
ST95-2635	TEJAS GAS PIPELINE CO.	TRUNKLINE GAS CO.	06-05-95	C	65,000	N	I	04-18-95	INDEF.
ST95-2636	TEJAS GAS PIPELINE CO.	TRUNKLINE GAS CO.	06-05-95	C	N/A	Y	I	05-01-95	INDEF
ST95-2637	TEJAS GAS PIPELINE CO.	TENNESSEE GAS PIPELINE CO.	06-05-95	C	N/A	Y	I	01-01-95	INDEF.
ST95-2638	TRANSTEXAS GAS CORP.	FLORIDA GAS TRANSMISSION CO., ET AL.	06-05-95	C	20,000	N	I	04-29-95	INDEF.
ST95-2639	WILLIAMS NATURAL GAS CO.	TENASKA MARKETING VENTURES.	06-06-95	G-S	100,000	N	I	05-23-95	INDEF.
ST95-2640	EL PASO NATURAL GAS CO.	UNION OIL CO. OF CALIFORNIA.	06-07-95	G-S	30,900	N	I	05-09-95	INDEF.
ST95-2641	NORTHERN NATURAL GAS CO.	WESTERN GAS RESOURCES, INC.	06-07-95	G-S	10,000	N	F	04-01-95	04-30-95
ST95-2642	NORTHERN NATURAL GAS CO.	EASTERN ENERGY MARKETING, INC.	06-07-95	G-S	15,000	N	I	05-01-95	INDEF.
ST95-2643	NORTHERN NATURAL GAS CO.	POCO PETROLEUMS LTD.	06-07-95	G-S	5,020	N	F	05-01-95	05-31-95
ST95-2644	NORTHERN NATURAL GAS CO.	CIBOLA CORP	06-07-95	G-S	8,582	N	F	05-01-95	05-31-95
ST95-2645	NORTHERN NATURAL GAS CO.	CITY OF VIRGINIA ..	06-07-95	B/G-S	1,000	N	F	05-01-95	05-31-95
ST95-2646	NORTHERN NATURAL GAS CO.	AQUILA ENERGY MARKETING CORP.	06-07-95	G-S	5,158	N	F	05-01-95	05-31-95
ST95-2647	NORTHERN NATURAL GAS CO.	WESTERN NATURAL GAS CO.	06-07-95	G-S	1,500	N	I	05-01-95	INDEF.
ST95-2648	NORTHERN NATURAL GAS CO.	APPALACHIAN GAS SALES, INC.	06-07-95	G-S	100,000	N	I	04-04-95	INDEF.
ST95-2649	NORTHERN NATURAL GAS CO.	CNG ENERGY SERVICES CORP.	06-07-95	G-S	50,000	N	I	04-01-95	INDEF.
ST95-2650	TEXAS EASTERN TRANSMISSION CORP.	EASTEX HYDROCARBONS, INC.	06-07-95	G-S	1,200	N	F	04-01-95	INDEF.
ST95-2651	TRAILBLAZER PIPELINE CO.	MINNEGASCO, A DIVISION OF ARKLA.	06-07-95	G-S	353,000	N	I	01-06-95	INDEF.
ST95-2652	TRAILBLAZER PIPELINE CO.	AMOCO ENERGY TRADING CORP.	06-07-95	G-S	500	N	F	04-01-95	03-31-96
ST95-2653	NATIONAL FUEL GAS SUPPLY CORP.	CAPARO STEEL CO	06-07-95	G-S	5,000	N	I	05-01-95	05-01-96
ST95-2654	TRANSOK, INC	ANR PIPELINE CO., ET AL.	06-08-95	C	10,000	N	I	06-02-95	INDEF.
ST95-2655	TRANSOK, INC	ANR PIPELINE CO., ET AL.	06-08-95	C	1,000	N	I	06-01-95	INDEF.
ST95-2656	TRANSOK, INC	ANR PIPELINE CO., ET AL.	06-08-95	C	4,000	N	I	05-20-95	INDEF.
ST95-2657	TRANSOK, INC	ANR PIPELINE CO., ET AL.	06-08-95	C	4,000	N	I	05-20-95	INDEF.
ST95-2658	TRANSOK, INC	ANR PIPELINE CO., ET AL.	06-08-95	C	10,000	N	I	06-02-95	INDEF.
ST95-2659	NORTHWEST PIPELINE CORP.	CONOCO, INC	06-08-95	G-S	15,000	N	F	06-03-95	06-15-95
ST95-2660	NORTHERN NATURAL GAS CO.	AQUILA ENERGY MARKETING CORP.	06-08-95	G-S	10,000	N	F	04-01-95	10-31-95
ST95-2661	NORTHERN NATURAL GAS CO.	CIBOLA CORP	06-08-95	G-S	5,000	N	F	04-01-95	10-31-95
ST95-2662	NORTHERN NATURAL GAS CO.	TENASKA MARKETING VENTURES.	06-08-95	G-S	20,000	N	F	04-01-95	03-29-96
ST95-2663	NORTHERN NATURAL GAS CO.	WESTERN GAS RESOURCES, INC.	06-08-95	G-S	10,000	N	F	05-17-95	08-31-95
ST95-2664	NORTHERN NATURAL GAS CO.	SEAGULL MARKETING SERVICES, INC.	06-08-95	G-S	9,600	N	F	04-01-95	11-29-95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95-2665	NORTHERN NATURAL GAS CO.	ASSOCIATED GAS SERVICES, INC.	06-08-95	G-S	20,000	N	F	04-01-95	10-31-95
ST95-2666	NORTHERN NATURAL GAS CO.	COASTAL GAS MARKETING CO.	06-08-95	G-S	10,000	N	F	04-01-95	10-31-95
ST95-2667	NORTHERN NATURAL GAS CO.	CIBOLA CORP	06-08-95	G-S	10,050	N	F	04-01-95	10-31-95
ST95-2668	NORTHERN NATURAL GAS CO.	WESTCOAST GAS SERVICES (U.S.A.) INC.	06-08-95	G-S	10,000	N	F	04-01-95	08-31-95
ST95-2669	NORTHERN NATURAL GAS CO.	CONAGRA ENERGY SERVICES CO.	06-08-95	G-S	900	N	F	04-01-95	04-30-95
ST95-2670	NORTHERN NATURAL GAS CO.	TEXPAR ENERGY INC.	06-08-95	G-S	350	N	F	04-01-95	07-31-95
ST95-2671	NORTHERN NATURAL GAS CO.	CIBOLA CORP	06-08-95	G-S	5,025	N	F	04-01-95	04-30-95
ST95-2672	TRANSWESTERN PIPELINE CO.	NATIONAL GAS & ELECTRIC L.P.	06-08-95	G-S	2,000	N	F	05-01-95	05-31-95
ST95-2673	TRANSWESTERN PIPELINE CO.	RICHARDSON PRODUCTS CO.	06-08-95	G-S	80,000	N	I	05-01-95	05-31-95
ST95-2674	TRANSWESTERN PIPELINE CO.	TRISTAR GAS MARKETING CO.	06-08-95	G-S	4,000	N	F	02-01-95	02-28-95
ST95-2675	TRANSWESTERN PIPELINE CO.	TECO GAS MARKETING CO.	06-08-95	G-S	15,000	N	F	05-01-95	05-31-95
ST95-2676	TRANSWESTERN PIPELINE CO.	NGC TRANSPORTATION INC.	06-08-95	G-S	40,000	N	F	05-01-95	05-31-95
ST95-2677	TRANSWESTERN PIPELINE CO.	AMOCO ENERGY TRADING CO.	06-08-95	G-S	12,000	N	F	05-01-95	05-31-95
ST95-2678	TRANSWESTERN PIPELINE CO.	PHILLIPS GAS MARKETING CO.	06-08-95	G-S	10,000	N	F	05-01-95	05-31-95
ST95-2679	TRANSWESTERN PIPELINE CO.	TRISTAR GAS MARKETING CO.	06-08-95	G-S	30,000	N	F	05-01-95	05-31-95
ST95-2680	TRANSWESTERN PIPELINE CO.	WESTERN GAS RESOURCES.	06-08-95	G-S	10,000	N	F	05-01-95	05-31-95
ST95-2681	TRANSWESTERN PIPELINE CO.	ENRON CAPITAL & TRADE RESOURCES CO.	06-08-95	G-S	1,000	Y	F	05-01-95	05-07-95
ST95-2682	TRANSWESTERN PIPELINE CO.	SAN DIEGO GAS & ELECTRIC CO.	06-08-95	B	10,000	N	F	05-01-95	05-31-95
ST95-2683	TRANSWESTERN PIPELINE CO.	SAN DIEGO GAS & ELECTRIC CO.	06-08-95	B	3,000	N	F	05-01-95	09-30-95
ST95-2684	TRANSWESTERN PIPELINE CO.	COASTAL GAS MARKETING CO.	06-08-95	G-S	20,000	N	F	05-01-95	05-31-95
ST95-2685	TRANSWESTERN PIPELINE CO.	U.S. GAS TRANSPORTATION.	06-08-95	G-S	50,000	N	I	03-31-95	03-31-97
ST95-2686	TRANSWESTERN PIPELINE CO.	HIGHLANDS GAS CORP.	06-08-95	G-S	50,000	N	I	02-01-95	04-30-95
ST95-2687	TRANSWESTERN PIPELINE CO.	GAS CO. OF NEW MEXICO.	06-08-95	B	80,000	N	I	02-01-95	02-28-95
ST95-2688	TRANSWESTERN PIPELINE CO.	WESTERN GAS RESOURCES.	06-08-95	G-S	20,000	N	I	02-01-95	10-10-95
ST95-2689	TRANSWESTERN PIPELINE CO.	MERIDIAN OIL TRADING INC.	06-08-95	G-S	300,000	N	I	03-03-95	12-31-00
ST95-2690	TRUNKLINE GAS CO.	TEXACO NATURAL GAS, INC.	06-08-95	G-S	50,000	N	F	06-01-95	INDEF.
ST95-2691	SOUTHERN NATURAL GAS CO.	CITY OF SCOTTSBORO.	06-09-95	G-S	1,558	N	F	05-10-95	10-31-03
ST95-2692	NORAM GAS TRANSMISSION CO.	COLEMAN CO	06-12-95	G-S	300	N	F	05-01-95	INDEF.
ST95-2693	MOJAVE PIPELINE CO.	SAN DIEGO GAS & ELECTRIC CO.	06-13-95	G-S	10,000	N	I	05-17-95	10-31-95
ST95-2694	QUESTAR PIPELINE CO.	VESGAS CO	06-13-95	G-S	880	N	F	06-01-95	09-30-95
ST95-2695	FLORIDA GAS TRANSMISSION CO.	CNB/OLYMPIC GAS SERVICES.	06-13-95	G-S	50,000	N	I	05-13-95	INDEF.
ST95-2696	PANHANDLE EASTERN PIPE LINE CO.	US GYPSUM	06-13-95	G-S	5,000	N	F	06-01-95	10-31-95
ST95-2697	PANHANDLE EASTERN PIPE LINE CO.	AIG TRADING CORP.	06-13-95	G-S	5,000	N	F	06-01-95	10-31-95

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ST95–2698	PANHANDLE EASTERN PIPE LINE CO.	CONTINENTAL ENERGY MARKETING, INC.	06–13–95	G–S	10,000	N	I	06–01–95	03–31–97
ST95–2699	PANHANDLE EASTERN PIPE LINE CO.	ANADARKO PETROLEUM CORP.	06–13–95	G–S	35,000	N	F	06–01–95	06–30–95
ST95–2700	PANHANDLE EASTERN PIPE LINE CO.	WESTCOAST GAS SERVICES (U.S.A.).	06–13–95	G–S	10,000	N	F	06–01–95	06–30–95
ST95–2701	PANHANDLE EASTERN PIPE LINE CO.	KCS ENERGY MARKETING, INC.	06–13–95	G–S	50,000	N	I	06–01–95	03–31–97
ST95–2702	PANHANDLE EASTERN PIPE LINE CO.	COASTAL GAS MARKETING CO.	06–13–95	G–S	7,332	N	F	06–01–95	06–30–95
ST95–2703	PANHANDLE EASTERN PIPE LINE CO.	COWEST ENERGY .	06–13–95	G–S	7,790	N	F	06–01–95	06–30–95
ST95–2704	PANHANDLE EASTERN PIPE LINE CO.	AQUILA ENERGY MARKETING CORP.	06–13–95	G–S	5,083	N	F	06–01–95	06–30–95
ST95–2705	WILLIAMS NATURAL GAS CO.	ASSOCIATED NATURAL GAS, INC.	06–13–95	G–S	50,000	N	I	04–28–95	09–30–98
ST95–2706	NORTHERN NATURAL GAS CO.	KAZTEX ENERGY MANAGEMENT, INC.	06–14–95	G–S	3,000	N	F	04–01–95	10–31–95
ST95–2707	NORTHERN NATURAL GAS CO.	CIBOLA CORP	06–14–95	G–S	10,000	N	I	04–01–95	INDEF.
ST95–2708	NORTHERN NATURAL GAS CO.	OASIS PIPELINE CO	06–14–95	B	3,000	Y	F	04–01–95	04–30–95
ST95–2709	NORTHERN NATURAL GAS CO.	ENRON CAPITAL & TRADE RESOURCES CO.	06–14–95	G–S	6,000	Y	F	04–01–95	06–30–95
ST95–2710	NORTHERN NATURAL GAS CO.	NORAM HUB SERVICES, INC.	06–14–95	G–S	40,000	N	F	04–01–95	03–30–96
ST95–2711	NORTHERN NATURAL GAS CO.	KCS ENERGY MARKETING, INC.	06–14–95	G–S	10,000	N	F	04–01–95	09–30–95
ST95–2712	NORTHERN NATURAL GAS CO.	WATERTOWN MUNICIPAL UTILITIES DEPT.	06–14–95	B/G–S	2,000	N	F	04–01–95	04–30–95
ST95–2713	NORTHERN NATURAL GAS CO.	AMERADA HESS CORP.	06–14–95	G–S	30,000	N	F	04–01–95	10–31–95
ST95–2714	COLUMBIA GAS TRANSMISSION CORP.	TRANSPORT GAS CORP.	06–14–95	G–S	100,000	N	I	06–01–95	INDEF.
ST95–2715	COLUMBIA GAS TRANSMISSION CORP.	ENERGY DEVELOPMENT CORP.	06–14–95	G–S	50,000	N	I	06–01–95	INDEF.
ST95–2716	COLUMBIA GAS TRANSMISSION CORP.	GAS TRANSPORT, INC.	06–14–95	G–S	1,000	N	I	06–01–95	INDEF.
ST95–2717	COLUMBIA GAS TRANSMISSION CORP.	ENERGY DEVELOPMENT CORP.	06–14–95	G–S	50,000	N	I	06–01–95	INDEF.
ST95–2718	COLUMBIA GAS TRANSMISSION CORP.	BELDEN & BLAKE CORP.	06–14–95	G–S	1,000	N	I	06–01–95	INDEF.
ST95–2719	COLUMBIA GAS TRANSMISSION CORP.	ENERGY SOURCE, INC.	06–14–95	G–S	40,000	N	I	06–01–95	INDEF.
ST95–2720	COLUMBIA GAS TRANSMISSION CORP.	CENERGY, INC	06–14–95	G–S	10,000	N	F	06–01–95	10–31–95
ST95–2721	COLUMBIA GAS TRANSMISSION CORP.	COLUMBIA ENERGY SERVICES CORP.	06–14–95	G–S	14,400	N	F	06–01–95	10–31–95
ST95–2722	COLUMBIA GAS TRANSMISSION CORP.	EASTERN MARKETING CORP.	06–14–95	G–S	50	N	F	06–01–95	INDEF.
ST95–2723	COLUMBIA GAS TRANSMISSION CORP.	NGC TRANSPORTATION, INC.	06–14–95	G–S	10,000	N	F	06–01–95	10–31–95

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ST95–2724	SEA ROBIN PIPELINE CO.	CAIRN ENERGY USA INC.	06–14–95	G–S	30,000	Y	I	06–01–95	INDEF.
ST95–2725	SEA ROBIN PIPELINE CO.	CHEVRON U.S.A. INC.	06–14–95	G–S	600,000	Y	I	05–25–95	INDEF.
ST95–2726	SOUTHERN NATURAL GAS CO.	CITY OF MEIGS	06–14–95	G–S	50	N	F	06–01–95	10–31–96
ST95–2727	SOUTHERN NATURAL GAS CO.	CITY OF DOERUN ..	06–14–95	G–S	75	N	F	06–01–95	10–31–96
ST95–2728	SOUTHERN NATURAL GAS CO.	CITY OF LUMPKIN ..	06–14–95	G–S	50	N	F	06–01–95	10–31–96
ST95–2729	SOUTHERN NATURAL GAS CO.	CITY OF GRANTVILLE.	06–14–95	G–S	100	N	F	06–01–95	10–31–96
ST95–2730	SOUTHERN NATURAL GAS CO.	CITY OF EATONTON.	06–14–95	G–S	750	N	F	06–01–95	10–31–96
ST95–2731	SOUTHERN NATURAL GAS CO.	CITY OF DONALSONVILLE.	06–14–95	G–S	91	N	F	06–01–95	10–31–96
ST95–2732	SOUTHERN NATURAL GAS CO.	CITY OF EDISON	06–14–95	G–S	91	N	F	06–01–95	10–31–96
ST95–2733	SOUTHERN NATURAL GAS CO.	CITY OF HOGANSVILLE.	06–14–95	G–S	450	N	F	06–01–95	12–31–05
ST95–2734	SOUTHERN NATURAL GAS CO.	NGC TRANSPORTATION INC.	06–14–95	G–S	30,000	N	I	06–01–95	06–30–95
ST95–2735	SOUTHERN NATURAL GAS CO.	CITY OF NASHVILLE.	06–14–95	G–S	181	N	F	06–01–95	10–04–97
ST95–2736	SOUTHERN NATURAL GAS CO.	TOWN OF TRION	06–14–95	G–S	1,375	N	F	06–01–95	12–31–05
ST95–2737	SOUTHERN NATURAL GAS CO.	GGR ENERGY CO ..	06–14–95	G–S	10,000	N	I	06–04–95	05–31–96
ST95–2738	SOUTHERN NATURAL GAS CO.	CITY OF CLAXTON .	06–14–95	G–S	265	N	F	06–01–95	10–31–96
ST95–2739	SOUTHERN NATURAL GAS CO.	CITY OF ADAIRSVILLE.	06–14–95	G–S	409	N	F	06–01–95	12–31–05
ST95–2740	SOUTHERN NATURAL GAS CO.	CITY OF MONTICELLO.	06–14–95	G–S	520	N	F	06–01–95	12–31–05
ST95–2741	SOUTHERN NATURAL GAS CO.	TOWN OF TRION	06–14–95	G–S	256	N	F	06–03–95	10–31–95
ST95–2742	SOUTHERN NATURAL GAS CO.	CITY OF UNADILLA	06–14–95	G–S	170	N	F	06–01–95	10–31–96
ST95–2743	SOUTHERN NATURAL GAS CO.	TEXACO GAS MARKETING.	06–14–95	G–S	20,000	N	I	06–01–95	06–30–95
ST95–2744	SOUTHERN NATURAL GAS CO.	CITY OF SPARTA ...	06–14–95	G–S	295	N	F	06–01–95	12–31–05
ST95–2745	SOUTHERN NATURAL GAS CO.	CITY OF QUINCY	06–14–95	G–S	525	N	F	06–01–95	10–31–96
ST95–2746	SOUTHERN NATURAL GAS CO.	CITY OF WAYNESBORO.	06–14–95	G–S	550	N	F	06–01–95	12–31–05
ST95–2747	SOUTHERN NATURAL GAS CO.	CITY OF CLAXTON .	06–14–95	G–S	645	N	F	05–27–95	10–31–96
ST95–2748	SOUTHERN NATURAL GAS CO.	CITY OF OCILLA	06–14–95	G–S	75	N	F	06–01–95	10–31–96
ST95–2749	SOUTHERN NATURAL GAS CO.	CITY OF MILLEN	06–14–95	G–S	225	N	F	06–01–95	12–31–05
ST95–2750	SOUTHERN NATURAL GAS CO.	CITY OF CLAXTON .	06–14–95	G–S	515	N	F	06–01–95	10–31–96
ST95–2751	SOUTHERN NATURAL GAS CO.	CITY OF QUINCY	06–14–95	G–S	1,507	N	F	06–01–95	10–31–96
ST95–2752	SOUTHERN NATURAL GAS CO.	CITY OF WAYNESBORO.	06–14–95	G–S	1,226	N	F	06–01–95	10–31–95
ST95–2753	SOUTHERN NATURAL GAS CO.	CITY OF TRION	06–14–95	G–S	760	N	F	06–01–95	10–31–95
ST95–2754	SOUTHERN NATURAL GAS CO.	CITY OF LAWRENCEVILLE.	06–14–95	G–S	4,000	N	F	06–01–95	04–30–07
ST95–2755	SOUTHERN NATURAL GAS CO.	DEKALB-CHEROKEE COUNTIES GAS DIST.	06–14–95	G–S	3,613	N	F	06–02–95	10–31–99
ST95–2756	SOUTHERN NATURAL GAS CO.	NATIONAL GAS & ELECTRIC L.P.	06–14–95	G–S	50,000	N	I	06–03–95	05–31–96
ST95–2757	SOUTHERN NATURAL GAS CO.	CITY OF WEST POINT.	06–14–95	G–S	1,277	N	F	06–01–95	10–31–96
ST95–2758	SOUTHERN NATURAL GAS CO.	DEKALB-CHEROKEE COUNTIES GAS DIST.	06–14–95	G–S	2,044	N	F	06–01–95	10–31–99

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ST95-2759	SOUTHERN NATURAL GAS CO.	CITY OF COCHRAN	06-14-95	G-S	741	N	F	06-01-95	12-31-05
ST95-2760	SOUTHERN NATURAL GAS CO.	CITY OF WEST POINT.	06-14-95	G-S	500	N	F	06-01-95	10-31-96
ST95-2761	SOUTHERN NATURAL GAS CO.	CITY OF CAIRO	06-14-95	G-S	495	N	F	06-01-95	10-31-96
ST95-2762	SOUTHERN NATURAL GAS CO.	CITY OF COLQUITT	06-14-95	G-S	67	N	F	06-01-95	10-31-95
ST95-2763	SOUTHERN NATURAL GAS CO.	CITY OF WOODLAND.	06-14-95	G-S	20	N	F	06-01-95	10-31-96
ST95-2764	MIDWESTERN GAS TRANSMISSION CO.	MOBIL NATURAL GAS, INC..	06-15-95	G-S	2,000	N	F	06-01-95	INDEF.
ST95-2765	MISSISSIPPI RIVER TRANS. CORP.	UNION PACIFIC CORP.	06-15-95	G-S	2	N	F	05-16-95	INDEF.
ST95-2766	MISSISSIPPI RIVER TRANS. CORP.	BIG RIVER ZINC CORP.	06-15-95	G-S	80	N	F	05-16-95	INDEF.
ST95-2767	MISSISSIPPI RIVER TRANS. CORP.	RHEOX, INC	06-15-95	G-S	56	N	F	05-16-95	INDEF.
ST95-2768	MISSISSIPPI RIVER TRANS. CORP.	CITY OF RED BUD .	06-15-95	G-S	258	N	F	05-16-95	INDEF.
ST95-2769	MISSISSIPPI RIVER TRANS. CORP.	UNION GAS CO	06-15-95	G-S	10	N	F	05-16-95	INDEF.
ST95-2770	MISSISSIPPI RIVER TRANS. CORP.	UNITED CITIES GAS CO.	06-15-95	G-S	133	N	F	05-16-95	INDEF.
ST95-2771	MISSISSIPPI RIVER TRANS. CORP.	CITY OF AUGUSTA	06-15-95	G-S	230	N	F	05-16-95	INDEF.
ST95-2772	MISSISSIPPI RIVER TRANS. CORP.	HARCROS PIGMENTS, INC.	06-15-95	G-S	165	N	F	05-16-95	INDEF.
ST95-2773	MISSISSIPPI RIVER TRANS. CORP.	LA ROCHE INDUSTRIES, INC.	06-15-95	G-S	120	N	F	05-16-95	INDEF.
ST95-2774	MISSISSIPPI RIVER TRANS. CORP.	STERLING STEEL FOUNDRY.	06-15-95	G-S	9	N	F	05-16-95	INDEF.
ST95-2775	MISSISSIPPI RIVER TRANS. CORP.	CITY OF DES ARC ..	06-15-95	G-S	129	N	F	05-16-95	INDEF.
ST95-2776	MISSISSIPPI RIVER TRANS. CORP.	VILLAGE OF DUPO .	06-15-95	G-S	264	N	F	05-16-95	INDEF.
ST95-2777	MISSISSIPPI RIVER TRANS. CORP.	CITY OF POTOSI	06-15-95	G-S	516	N	F	05-16-95	INDEF.
ST95-2778	MISSISSIPPI RIVER TRANS. CORP.	LACLEDE STEEL CO..	06-15-95	G-S	2,000	N	F	05-16-95	INDEF.
ST95-2779	MISSISSIPPI RIVER TRANS. CORP.	CITY OF WATERLOO.	06-15-95	G-S	504	N	F	05-16-95	INDEF.
ST95-2780	MISSISSIPPI RIVER TRANS. CORP.	GENERAL CHEMICAL CORP.	06-15-95	G-S	58	N	F	05-16-95	INDEF.
ST95-2781	MISSISSIPPI RIVER TRANS. CORP.	SPECTRULITE CONSORTIUM, INC.	06-15-95	G-S	314	N	F	05-16-95	INDEF.
ST95-2782	MISSISSIPPI RIVER TRANS. CORP.	AMERICAN STEEL FOUNDRIES.	06-15-95	G-S	174	N	F	05-16-95	INDEF.
ST95-2783	MISSISSIPPI RIVER TRANS. CORP.	CITY OF BISMARCK	06-15-95	G-S	159	N	F	06-16-95	INDEF.
ST95-2784	MISSISSIPPI RIVER TRANS. CORP.	CERRO COPPER PRODUCTS CO.	06-15-95	G-S	363	N	F	05-16-95	INDEF.
ST95-2785	MISSISSIPPI RIVER TRANS. CORP.	ASSOCIATED NATURAL GAS CO.	06-15-95	G-S	532	N	F	05-16-95	INDEF.
ST95-2786	MISSISSIPPI RIVER TRANS. CORP.	ARNOLD MUFFLER CO.	06-15-95	G-S	2	N	F	05-16-95	INDEF.
ST95-2787	MISSISSIPPI RIVER TRANS. CORP.	CITY OF HAZEN	06-15-95	G-S	160	N	F	05-16-95	INDEF.
ST95-2788	MISSISSIPPI RIVER TRANS. CORP.	MISSISSIPPI LIME CO	06-15-95	G-S	605	N	F	05-16-95	INDEF.
ST95-2789	MISSISSIPPI RIVER TRANS. CORP.	CITY OF CHESTER .	06-15-95	G-S	586	N	F	05-16-95	INDEF.
ST95-2790	MISSISSIPPI RIVER TRANS. CORP.	NATURAL GAS IMPROVEMENT DISTRICT.	06-15-95	G-S	115	N	F	05-16-95	INDEF.
ST95-2791	MISSISSIPPI RIVER TRANS. CORP.	NESCO STEEL BARREL CO.	06-15-95	G-S	17	N	F	05-16-95	INDEF.
ST95-2792	MISSISSIPPI RIVER TRANS. CORP.	NATIONAL STEEL CORP.	06-15-95	G-S	4,223	N	F	05-16-95	INDEF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95-2793	MISSISSIPPI RIVER TRANS. CORP.	JEFFERSON SMURFIT CORP.	06-15-95	G-S	13	N	F	05-16-95	INDEF.
ST95-2794	MISSISSIPPI RIVER TRANS. CORP.	DOE RUN CO	06-15-95	G-S	235	N	F	05-16-95	INDEF.
ST95-2795	ANR PIPELINE CO ..	HUNT OIL CO	06-16-95	G-S	N/A	N	F	05-01-95	INDEF.
ST95-2796	ANR PIPELINE CO ..	INDECK-CORINTH LTD PARTNERSHIP.	06-16-95	G-S	N/A	N	I	05-13-95	INDEF.
ST95-2797	ANR PIPELINE CO ..	AMERICAN CENTRAL GAS CO.	06-16-95	G-S	164	N	F	05-01-95	INDEF.
ST95-2798	ANR PIPELINE CO ..	CMS NOMECO OIL & GAS CO.	06-16-95	G-S	N/A	N	I	05-02-95	INDEF.
ST95-2799	ANR PIPELINE CO ..	UNION PACIFIC FUELS INC.	06-16-95	G-S	N/A	N	I	05-09-95	INDEF.
ST95-2800	ANR PIPELINE CO ..	WICKFORD ENERGY MKTG.	06-16-95	G-S	N/A	N	F	05-01-95	INDEF.
ST95-2801	TENNESSEE GAS PIPELINE CO.	CONNECTICUT NATURAL GAS CORP.	06-19-95	G-S	13,884	N	F	06-01-95	INDEF.
ST95-2802	TENNESSEE GAS PIPELINE CO.	ORYX GAS MARKETING LIMITED PART.	06-19-95	G-S	4	N	F	06-01-95	INDEF.
ST95-2803	TENNESSEE GAS PIPELINE CO.	TECO GAS MARKETING CO.	06-19-95	G-S	70,000	N	I	06-01-95	INDEF.
ST95-2804	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-19-95	G-S	30,000	A	I	05-19-95	04-30-97
ST95-2805	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-19-95	G-S	30,000	A	I	05-19-95	04-30-97
ST95-2806	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-19-95	G-S	30,000	A	I	05-19-95	04-30-97
ST95-2807	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-19-95	G-S	30,000	A	I	05-19-95	04-30-97
ST95-2808	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-19-95	G-S	30,000	A	I	05-19-95	04-30-97
ST95-2809	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-19-95	G-S	30,000	A	I	05-19-95	04-30-97
ST95-2810	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-19-95	G-S	30,000	A	I	05-19-95	04-30-97
ST95-2811	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-19-95	G-S	30,000	A	I	05-19-95	04-30-97
ST95-2812	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-19-95	G-S	30,000	A	I	05-19-95	04-30-97
ST95-2813	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-19-95	G-S	30,000	A	I	05-19-95	04-30-97
ST95-2814	WILLISTON BASIN INT. P/L CO.	WBI GAS SERVICES CO.	06-19-95	G-S	200,000	A	I	05-19-95	05-14-97
ST95-2815	TENNESSEE GAS PIPELINE CO.	TECO GAS MARKETING CO.	06-20-95	G-S	4	N	F	05-01-95	INDEF.
ST95-2816	KERN RIVER GAS TRANSMISSION CO.	NEVADA POWER CO.	06-21-95	G-S	20,000	N	F	06-01-95	8-31-95
ST95-2817	NATIONAL FUEL GAS SUPPLY CORP.	NATIONAL FUEL RESOURCES, INC.	06-21-95	B	35,000	A	I	06-01-94	05-31-14
ST95-2818	NATIONAL FUEL GAS SUPPLY CORP.	NORTH AMERICAN ENERGY, INC.	06-21-95	G-S	10,000	N	I	11-30-94	7-11-04
ST95-2819	NATIONAL FUEL GAS SUPPLY CORP.	ELLISBURG-LEIDY NORTHEAST HUB CO.	06-21-95	G-S	100,000	A	I	05-01-95	05-01-05
ST95-2820	NATIONAL FUEL GAS SUPPLY CORP.	ELLISBURG-LEIDY NORTHEAST HUB CO.	06-21-95	G-S	100,000	A	I	05-01-95	05-01-05
ST95-2821	CNG TRANSMISSION CORP.	TRW VALVE DIVISION.	06-21-95	G-S	3,000	N	I	06-15-95	7-31-95
ST95-2822	SABINE PIPE LINE CO.	PINNACLE ENERGY CO.	06-22-95	G-S	30,000	N	I	06-01-95	INDEF.
ST95-2823	K N INTERSTATE GAS TRANS. CO.	LOUISIANA LAND AND EXPLORATION CO.	06-22-95	G-S	15,000	N	I	06-01-95	INDEF.

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ST95-2824	VALERO TRANSMISSION, L.P.	KOCH GATEWAY PIPELINE CO.	06-23-95	C	10,000	N	I	06-01-95	INDEF.
ST95-2825	VALERO TRANSMISSION, L.P.	EL PASO NATURAL GAS CO, ET AL.	06-23-95	C	10,000	N	I	06-01-95	INDEF.
ST95-2826	TEXAS EASTERN TRANSMISSION CORP.	UNITED CITIES GAS CO.	06-23-95	G-S	3,500	N	F	06-01-95	INDEF.
ST95-2827	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-23-95	G-S	30,000	A	I	05-25-95	04-30-97
ST95-2828	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-23-95	G-S	30,000	A	I	05-25-95	04-30-97
ST95-2829	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-23-95	G-S	30,000	A	I	05-25-95	04-30-97
ST95-2830	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-23-95	G-S	30,000	A	I	05-25-95	04-30-97
ST95-2831	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-23-95	G-S	30,000	A	I	05-25-95	04-30-97
ST95-2832	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-23-95	G-S	30,000	A	I	05-25-95	04-30-97
ST95-2833	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-23-95	G-S	30,000	A	I	05-25-95	04-30-97
ST95-2834	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-23-95	G-S	30,000	A	I	05-25-95	04-30-97
ST95-2835	TRANSWESTERN PIPELINE CO..	MOBIL NATURAL GAS, INC.	06-26-95	G-S	3,800	N	F	06-01-95	06-30-95
ST95-2836	TRANSWESTERN PIPELINE CO.	TRISTAR GAS MARKETING CO.	06-26-95	B	10,000	N	F	06-01-95	8-31-95
ST95-2837	TRANSWESTERN PIPELINE CO.	PENNUNION ENERGY SERVICES, L.L.C.	06-26-95	G-S	10,000	N	F	06-01-95	06-30-95
ST95-2838	TRANSWESTERN PIPELINE CO.	NGC TRANSPORTATION, INC.	06-26-95	G-S	35,000	N	F	06-01-95	06-30-95
ST95-2839	TRANSWESTERN PIPELINE CO.	PHILLIPS GAS MARKETING CO.	06-26-95	G-S	10,000	N	F	06-01-95	06-30-95
ST95-2840	TRANSWESTERN PIPELINE CO.	ASSOCIATED GAS SERVICES, INC.	06-26-95	G-S	9,300	N	F	06-01-95	06-30-95
ST95-2841	TRANSWESTERN PIPELINE CO.	NATIONAL GAS & ELECTRIC L.P.	06-26-95	G-S	5,000	N	F	06-01-95	06-30-95
ST95-2842	TRANSWESTERN PIPELINE CO.	VASTAR GAS MARKETING, INC.	06-26-95	B	10,000	N	F	06-01-95	06-30-95
ST95-2843	TRANSWESTERN PIPELINE CO.	VASTAR GAS MARKETING, INC.	06-26-95	B	30,000	N	F	06-01-95	06-30-95
ST95-2844	TRANSWESTERN PIPELINE CO.	NGC TRANSPORTATION INC.	06-26-95	G-S	10,000	N	F	06-01-95	06-30-95
ST95-2845	TRANSWESTERN PIPELINE CO.	AMOCO ENERGY TRADING CORP.	06-26-95	G-S	12,000	N	F	06-01-95	06-30-95
ST95-2846	TRANSWESTERN PIPELINE CO.	AQUILA ENERGY MARKETING CORP.	06-26-95	G-S	10,000	N	F	06-01-95	06-30-95
ST95-2847	TRANSWESTERN PIPELINE CO.	TRISTAR GAS MARKETING CO.	06-26-95	B	10,000	N	F	06-01-95	06-30-95
ST95-2848	TRANSWESTERN PIPELINE CO.	TRISTAR GAS MARKETING CO.	06-26-95	B	10,000	N	F	06-01-95	06-30-95
ST95-2849	NORAM GAS TRANSMISSION CO.	AES/SHADY POINT, INC.	06-26-95	G-S	300	N	I	09-01-93	INDEF.
ST95-2850	CONSUMERS POWER CO.	MICHIGAN GAS STORAGE CO, ET AL.	06-26-95	G-HT	12,000	Y	I	06-16-95	INDEF.
ST95-2851	MICHIGAN GAS STORAGE CO.	CONSUMERS POWER CO.	06-26-95	B	12,000	Y	I	06-16-95	INDEF.
ST95-2852	VALERO TRANSMISSION, L.P.	NATURAL GAS PIPELINE CO OF AMERICA.	06-27-95	C	20,000	N	I	06-01-95	06-01-96
ST95-2853	EL PASO NATURAL GAS CO.	RICHARDSON PRODUCTS II, LTD.	06-27-95	G-S	50,000	N	I	05-01-95	INDEF.
ST95-2854	COLORADO INTERSTATE GAS CO.	RAMPART GAS SERVICES, INC.	06-27-95	G-S	2,295	N	F	06-01-95	07-03-95
ST95-2855	EL PASO NATURAL GAS CO.	FINA NATURAL GAS CO.	06-27-95	G-S	77,250	N	I	05-01-95	INDEF.

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ST95-2856	ALGONQUIN GAS TRANSMISSION CO.	BOSTON EDISON CO.	06-27-95	B	100	N	F	06-01-95	06-30-95
ST95-2857	TENNESSEE GAS PIPELINE CO.	CENTRAL HUDSON GAS & ELECTRIC CORP.	06-27-95	G-S	4,659	N	F	06-01-95	INDEF.
ST95-2858	TENNESSEE GAS PIPELINE CO.	RENAISSANCE ENERGY (U.S.) INC.	06-27-95	G-S	40,000	N	I	06-02-95	INDEF.
ST95-2859	TENNESSEE GAS PIPELINE CO.	TRANSCO GAS MARKETING CO.	06-27-95	G-S	4	N	F	06-01-95	INDEF.
ST95-2860	MIDWESTERN GAS TRANSMISSION CO.	SOUTHERN INDIANA GAS & ELECTRIC.	06-27-95	G-S	3,980	N	F	06-01-95	INDEF.
ST95-2861	KERN RIVER GAS TRANSMISSION CO.	IGI RESOURCES, INC.	06-27-95	G-S	10,000	N	I	06-11-95	INDEF.
ST95-2862	ACADIAN GAS PIPELINE SYSTEM.	NATURAL GAS P/L OF AMERICA, ET AL.	06-28-95	C	20,000	N	I	04-01-95	03-30-96
ST95-2863	NORTHERN NATURAL GAS CO.	HUTCHINSON UTILITIES COMMISSION.	06-28-95	G-S	540,000	N	I	06-05-95	INDEF.
ST95-2864	NORTHERN NATURAL GAS CO.	CIBOLA CORP	06-28-95	G-S	20,060	N	F	04-22-95	04-30-95
ST95-2865	NORTHERN NATURAL GAS CO.	ARMOUR SWIFT-ECKRICH, INC.	06-28-95	G-S	195	N	F	06-01-95	10-31-97
ST95-2866	NORTHERN NATURAL GAS CO.	HIGHLANDS GATHERING & PROCESSING CO.	06-28-95	G-S	50,000	N	I	06-01-95	INDEF.
ST95-2867	NORTHERN NATURAL GAS CO.	COKINOS NATURAL GAS CO.	06-28-95	G-S	20,000	N	I	06-01-95	INDEF.
ST95-2868	NORTHERN NATURAL GAS CO.	NATIONAL GAS & ELECTRIC L.P.	06-28-95	G-S	4,700	N	F	06-01-95	07-31-95
ST95-2869	SABINE PIPE LINE CO.	CONOCO, INC	06-29-95	G-S	100,000	N	I	02-01-95	INDEF.
ST95-2870	TENNESSEE GAS PIPELINE CO.	VALLEY GAS CO	06-29-95	G-S	5,180	N	F	06-01-95	INDEF.
ST95-2871	TENNESSEE GAS PIPELINE CO.	TORCH GAS, LC	06-29-95	G-S	4	N	F	06-01-95	INDEF.
ST95-2872	TENNESSEE GAS PIPELINE CO.	JOSEPH ENERGY INC.	06-29-95	G-S	4	N	F	06-01-95	INDEF.
ST95-2873	TENNESSEE GAS PIPELINE CO.	ESSEX COUNTY GAS CO.	06-29-95	G-S	4,069	N	F	06-01-95	INDEF.
ST95-2874	PANHANDLE EASTERN PIPE LINE CO.	ANADARKO TRADING CO.	06-29-95	G-S	242,000	N	F	06-01-95	11-30-95
ST95-2875	TRANSWESTERN PIPELINE CO.	NGC TRANSPORTATION INC.	06-29-95	G-S	5,000	N	F	06-10-95	06-12-95
ST95-2876	TRANSWESTERN PIPELINE CO.	NGC TRANSPORTATION INC.	06-29-95	G-S	5,000	N	F	06-13-95	06-17-95
ST95-2877	TRANSWESTERN PIPELINE CO.	NGC TRANSPORTATION INC.	06-29-95	G-S	5,000	N	F	06-09-95	06-09-95
ST95-2878	TRANSWESTERN PIPELINE CO.	RICHARDSON PRODUCTS CO.	06-29-95	G-S	5,000	N	F	06-07-95	06-30-95
ST95-2879	TRANSWESTERN PIPELINE CO.	TECO GAS MARKETING INC.	06-29-95	G-S	10,000	N	F	06-01-95	08-31-95
ST95-2880	TRANSWESTERN PIPELINE CO.	MERIDIAN OIL TRADING INC.	06-29-95	G-S	5,000	N	F	06-01-95	02-29-00
ST95-2881	TRANSWESTERN PIPELINE CO.	RICHARDSON PRODUCTS CO.	06-29-95	G-S	35,700	N	F	06-01-95	05-31-01
ST95-2882	TRANSWESTERN PIPELINE CO.	COASTAL GAS MARKETING CO.	06-29-95	G-S	10,000	N	F	06-01-95	10-31-95
ST95-2883	TRANSWESTERN PIPELINE CO.	COASTAL GAS MARKETING CO.	06-29-95	G-S	10,000	N	F	06-01-95	07-31-95
ST95-2884	COLORADO INTERSTATE GAS CO.	WESTERN GAS RESOURCES, INC.	06-29-95	G-S	20,000	N	F	06-01-95	05-31-96
ST95-2885	COLORADO INTERSTATE GAS CO.	UTILICORP ENERGY SERVICES.	06-29-95	G-S	600	N	I	06-01-95	INDEF.
ST95-2886	MIDCON TEXAS PIPELINE CORP..	KOCH GATEWAY PIPELINE CO.	06-30-95	C	100,000	N	I	06-01-95	INDEF.
ST95-2887	SOUTHERN NATURAL GAS CO.	CITY OF EDISON	06-30-95	G-S	116	N	F	06-03-95	10-31-96

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ST95-2888	CARNEGIE INTERSTATE PIPELINE CO.	CHAMPION AGATE CO., INC.	06-30-95	G-S	200	Y	I	02-01-95	INDEF.
ST95-2889	NATURAL GAS P/L CO. OF AMERICA.	ENERGY SOURCE, INC.	06-30-95	G-S	100,000	N	I	06-01-95	INDEF.
ST95-2890	NATURAL GAS P/L CO. OF AMERICA.	DELHI GAS PIPELINE CORP.	06-30-95	G-S	10,000	N	I	06-07-95	INDEF.
ST95-2891	NATURAL GAS P/L CO. OF AMERICA.	COAST ENERGY GROUP, INC.	06-30-95	G-S	8,064	N	F	06-01-95	06-30-95
ST95-2892	NATURAL GAS P/L CO. OF AMERICA.	AMERICAN HUNTER ENERGY.	06-30-95	G-S	1,000	N	F	06-03-95	11-30-00
ST95-2893	GREAT LAKES GAS TRANS. L.P.	WESTCOAST GAS SERVICES (USA), INC.	06-30-95	G-S	50,000	N	F	06-01-95	07-31-95
ST95-2894	GREAT LAKES GAS TRANS. L.P.	KIMBALL/TRIPPE ENERGY ASSOCIATES.	06-30-95	G-S	5,000	N	F	06-01-95	12-31-95
ST95-2895	MIDWESTERN GAS TRANSMISSION CO.	ILLINOIS POWER CO.	06-30-95	G-S	40,000	N	I	06-09-95	INDEF.
ST95-2896	TENNESSEE GAS PIPELINE CO.	YANKEE GAS SERVICES CO.	06-30-95	G-S	10,250	N	F	06-01-95	INDEF.
ST95-2897	TENNESSEE GAS PIPELINE CO.	BERKSHIRE GAS CO.	06-30-95	G-S	3,728	N	F	06-01-95	INDEF.
ST95-2898	WILLISTON BASIN INT. P/L CO.	INTERENERGY RESOURCES CORP.	06-30-95	G-S	164,500	A	I	06-01-95	05-31-97
ST95-2899	WILLISTON BASIN INT. P/L CO.	CENEX, INC	06-30-95	G-S	10,000	A	I	06-01-95	05-31-97
ST95-2900	WILLISTON BASIN INT. P/L CO.	KOCH GAS SERVICES CO.	06-30-95	G-S	40,000	A	I	06-01-95	05-31-97
ST95-2901	FLORIDA GAS TRANSMISSION CO.	TEXACO GAS MARKETING, INC.	06-30-95	G-S	75,000	N	I	06-03-95	INDEF.
ST95-2902	FLORIDA GAS TRANSMISSION CO.	NGC TRANSPORTATION, INC.	06-30-95	G-S	30,000	N	F	06-02-95	06-30-95
ST95-2903	FLORIDA GAS TRANSMISSION CO.	NFH MANAGEMENT CORP.	06-30-95	G-S	161	N	F	06-03-95	02-28-15
ST95-2904	FLORIDA GAS TRANSMISSION CO.	PENNUNION ENERGY SERVICES, L.L.C.	06-30-95	G-S	25,000	N	I	06-01-95	INDEF.
ST95-2905	FLORIDA GAS TRANSMISSION CO.	UNION OIL CO. OF CALIFORNIA.	06-30-95	G-S	60,000	N	I	06-01-95	INDEF.
ST95-2906	FLORIDA GAS TRANSMISSION CO.	MARATHON OIL CO	06-30-95	G-S	20,000	N	I	06-03-95	INDEF.
ST95-2907	IROQUOIS GAS TRANSMISSION SYSTEM.	STAMPGAS U.S. INC.	06-30-95	G-S	100,000	N	I	06-01-95	INDEF.
ST95-2908	IROQUOIS GAS TRANSMISSION SYSTEM.	KOCH GAS SERVICES CO.	06-30-95	G-S	30,000	N	I	06-20-95	INDEF.
ST95-2909	IROQUOIS GAS TRANSMISSION SYSTEM.	MOBIL NATURAL GAS INC.	06-30-95	G-S	50,000	N	I	06-01-95	INDEF.
ST95-2910	SOUTHERN NATURAL GAS CO.	CITY OF CAIRO	06-30-95	G-S	618	N	F	06-02-95	10-31-96
ST95-2911	SOUTHERN NATURAL GAS CO.	CITY OF ADAIRSVILLE.	06-30-95	G-S	126	N	F	06-01-95	10-31-95
ST95-2912	SOUTHERN NATURAL GAS CO.	CITY OF GRANTVILLE.	06-30-95	G-S	284	N	F	06-03-95	10-31-96
ST95-2913	SOUTHERN NATURAL GAS CO.	CITY OF MONTICELLO.	06-30-95	G-S	255	N	F	06-01-95	10-31-95
ST95-2914	SOUTHERN NATURAL GAS CO.	CITY OF CAIRO	06-30-95	G-S	55	N	F	06-02-95	10-31-96
ST95-2915	SOUTHERN NATURAL GAS CO.	CITY OF MONTICELLO.	06-30-95	G-S	655	N	F	06-03-95	10-31-95
ST95-2916	SOUTHERN NATURAL GAS CO.	CITY OF EATONTON.	06-30-95	G-S	1,936	N	F	06-01-95	10-31-96

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ST95-2917	SOUTHERN NATURAL GAS CO.	CITY OF MEIGS	06-30-95	G-S	116	N	F	06-01-95	10-31-96
ST95-2918	SOUTHERN NATURAL GAS CO.	CITY OF BLAKELY ..	06-30-95	G-S	195	N	F	06-04-95	12-31-05
ST95-2919	SOUTHERN NATURAL GAS CO.	CITY OF VIENNA	06-30-95	G-S	179	N	F	06-01-95	12-31-05
ST95-2920	SOUTHERN NATURAL GAS CO.	CITY OF NASHVILLE.	06-30-95	G-S	114	N	F	06-01-95	10-31-95
ST95-2921	SOUTHERN NATURAL GAS CO.	CITY OF CAMILLA ..	06-30-95	G-S	158	N	F	06-01-95	12-31-05
ST95-2922	SOUTHERN NATURAL GAS CO.	CITY OF DOERUN ..	06-30-95	G-S	160	N	F	06-01-95	10-31-96
ST95-2923	SOUTHERN NATURAL GAS CO.	CITY OF DONALSONVILLE.	06-30-95	G-S	34	N	F	06-01-95	10-31-96
ST95-2924	SOUTHERN NATURAL GAS CO.	CITY OF SPARTA ...	06-30-95	G-S	525	N	F	06-01-95	10-31-95
ST95-2925	SOUTHERN NATURAL GAS CO.	CITY OF OCILLA	06-30-95	G-S	275	N	F	06-01-95	10-31-96
ST95-2926	SOUTHERN NATURAL GAS CO.	CITY OF UNADILLA	06-30-95	G-S	321	N	F	06-02-95	10-31-96
ST95-2927	SOUTHERN NATURAL GAS CO.	CITY OF MILLEN	06-30-95	G-S	766	N	F	06-08-95	10-31-95
ST95-2928	SOUTHERN NATURAL GAS CO.	CITY OF HOGANSVILLE.	06-30-95	G-S	1,022	N	F	06-20-95	10-31-95
ST95-2929	SOUTHERN NATURAL GAS CO.	CITY OF COCHRAN	06-30-95	G-S	1,251	N	F	06-20-95	10-31-95
ST95-2930	SOUTHERN NATURAL GAS CO.	CITY OF LUMPKIN ..	06-30-95	G-S	202	N	F	06-01-95	10-31-96
ST95-2931	SOUTHERN NATURAL GAS CO.	CITY OF WOODLAND.	06-30-95	G-S	102	N	F	06-01-95	10-31-96
ST95-2932	SOUTHERN NATURAL GAS CO.	CITY OF COLQUITT	06-30-95	G-S	114	N	F	06-02-95	10-31-95
ST95-2933	SOUTHERN NATURAL GAS CO.	CITY OF EDISON	06-30-95	G-S	44	N	F	06-02-95	10-31-96
ST95-2934	SOUTHERN NATURAL GAS CO.	CITY OF DONALSONVILLE.	06-30-95	G-S	126	N	F	06-01-95	10-31-96

[1] NOTICE OF TRANSACTIONS DOES NOT CONSTITUTE A DETERMINATION THAT FILINGS COMPLY WITH COMMISSION REGULATIONS IN ACCORDANCE WITH ORDER NO. 436 (FINAL RULE AND NOTICE REQUESTING SUPPLEMENTAL COMMENTS, 50 FR 42372, 10/10/85).

[2] ESTIMATED MAXIMUM DAILY VOLUMES INCLUDES VOLUMES REPORTED BY THE FILING COMPANY IN MMBTU, MCF AND DT.

[3] AFFILIATION OF REPORTING COMPANY TO ENTITIES INVOLVED IN THE TRANSACTION. A "Y" INDICATES AFFILIATION, AN "A" INDICATES MARKETING AFFILIATION, AND A "N" INDICATES NO AFFILIATION.

[FR Doc. 95-18547 Filed 7-27-95; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. CP95-615-000, et al.]

Mississippi River Transmission Corporation, et al.; Natural Gas Certificate Filings

July 20, 1995.

Take notice that the following filings have been made with the Commission:

1. Mississippi River Transmission Corporation

[Docket No. CP95-615-000]

Take notice that on July 13, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP95-615-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install a sales tap to provide natural gas transportation service to the American Refining Group (ARG), under MRT's blanket certificate issued in Docket No. CP82-489-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT proposes to install approximately 2,300 feet of 2-inch pipe, a measuring and regulating station, and related facilities and equipment. The proposed sales tap will interconnect with MRT's Alton Loop East in Section 10, Township 4 North, Range 9 West, Madison County, Illinois and requires the purchase of right-of-way. ARG requested this delivery for its fuel oil refining plant in Madison County. MRT states that it will deliver an estimated 400 MMBtu of natural gas on a peak day and an estimated 80,000 MMBtu on an annual basis at the proposed sales tap.

MRT is authorized to transport gas for ARG pursuant to its blanket transportation certificate issued in Docket No. CP89-1121-000. MRT states that the proposed facilities will cost $81,000 and MRT Energy Marketing Company, the marketing company which has contracted to provide service to ARG, will reimburse MRT for the cost.

MRT states that this additional sales tap is not prohibited in its existing FERC Gas Tariff, that there is sufficient capacity to accomplish the proposed deliveries without detriment or disadvantage to other customers, and it is not expected to affect MRT's system-wide peak day deliveries.

Comment date: September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Granite State Gas Transmission, Inc.

[Docket No. CP95–616–000]

Take notice that on July 14, 1995, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed in Docket No. CP95–616–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a new delivery point in Old Orchard, Maine, for deliveries to its affiliate distributor, Northern Utilities, Inc. (Northern Utilities). Granite State makes such request, under its blanket certificate issued in Docket No. CP82–515–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Granite State indicates that it will install a new delivery point on its existing transmission line, within its existing right-of-way at Cascade Road, Old Orchard, Maine. It has been averred that this proposal will provide service to several new customers, who have an estimated annual consumption of 29,898 Mcf. It is stated that the new delivery point is estimated to cost $30,755, which Granite State will be reimbursed for by Northern Utilities.

It is further stated that the total volumes which Granite State is authorized to deliver to Northern Utilities, after approval of this request will not exceed Northern Utilities existing entitlements. It is also stated that the construction of the new delivery point is not prohibited by Granite State's existing tariff pursuant to which firm transportation deliveries are made to Northern Utilities, and that deliveries through the new delivery point will be made without detriment or disadvantage to Granite State's other customers.

Comment date: September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP95–619–000]

Take notice that on July 14, 1995, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–619–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate a new delivery point and appurtenant facilities to accommodate natural gas deliveries to the City of Senatobia, Mississippi (Senatobia), a local distributor of natural gas under the blanket certificate issued in Docket No. CP83–84–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline asserts that the proposed delivery point is located in Tate County, Mississippi. Trunkline claims that Senatobia will utilize an existing meter site located approximately 2,400 feet from Trunkline's right-of-way and construct a 4-inch pipeline on existing right-of-way from the meter site to the edge of Trunkline's right-of-way. Trunkline proposes to re-tap an existing 2-inch tap valve #82A–101 on its 26-inch Line No. 100–1 and install approximately 200 feet of 2-inch pipeline on its existing right-of-way to connect with Senatobia's line. Trunkline states that it will own, operate and maintain the hot tap and the line up to the Senatobia pipeline. Additionally, Trunkline proposes to install, own and operate the electronic gas measurement system (EGM) including communications at the meter site.

Trunkline states that the proposed delivery point will permit Trunkline to accommodate natural gas deliveries of 10 Mmcf per day of natural gas to Senatobia. Trunkline estimates that the cost of re-tapping the hot tap, EGM, and appurtenant facilities will be approximately $55,000.

Comment date: September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. East Tennessee Natural Gas Company

[Docket No. CP95–621–000]

Take notice that on July 17, 1995, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–621–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon its Newport Lateral and the Newport Loop by sale to Jefferson-Cocke County Utility District (Jefferson-Cocke) under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to abandon its Newport Lateral (12.102 miles of 6-inch pipeline) and the Newport Loop (0.685 miles of 6-inch pipeline) by sale to Jefferson-Cocke. East Tennessee states that Jefferson-Cocke is the only customer served by the facilities proposed to be abandoned. These facilities are located in Jefferson and Cocke Counties, Tennessee, downstream of East Tennessee's White Pine meter station extending from M.P. 3303B–101+0.01 and ending at M.P. 3303B–104+0.00. The Newport Loop, which parallels the Newport Lateral, is located at the French Broad River crossing. East Tennessee lists the cost of the facilities proposed to be abandoned as $310,074.

Comment date: September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP95–625–000]

Take notice that on July 18, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–625–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to remove and abandon existing facilities and to construct and operate upgraded metering facilities at the Kettle Falls Meter Station located in Spokane County, Washington under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that the proposed upgraded meter station will have a design capacity of approximately 30,250 Dth per day at a delivery pressure of 360 psig and that the proposed facilities will be used to provide firm deliveries of up to 30,000 Dth per day to The Washington Water Power Company (Water Power) under existing transportation agreements.

Northwest also states that the total costs for removing and abandoning the existing facilities and constructing the upgraded meter station are estimated to be $438,500, approximately $83,753 of which will be reimbursed by Water Power.

Comment date: September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

6. K N Interstate Gas Transmission Company

[Docket No. CP95–626–000]

Take notice that on July 19, 1995, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP95–626–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for approval to install and operate six new delivery taps for its affiliate, K N Energy, Inc., (K N), a local distribution company, for ultimate sale to various retail customers, under K N Interstate's blanket certificate issued in Docket No. CP83–140–000 and CP83–140–001, and Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N Interstate proposes four new delivery taps to be located in Frontier, Lincoln, and Valley Counties, Nebraska. K N Interstate states that the proposed taps will deliver 2, 137, 137, and 30 Mcf on a peak day, respectively, and 144, 8,208, 8,208, and 990 Mcf annually, respectively. K N estimates that these taps will cost $400, $2500, $2500, and $1,150, respectively, to construct.

K N Interstate also proposes two new delivery taps to be located in Logan County, Colorado and Converse County, Wyoming, respectively. K N Interstate states that these proposed taps will deliver 3 and 5 Mcf on a peak day, respectively, and 202 and 288 Mcf annually, respectively. K N Interstate further estimates that these taps will both cost $400 to construct.

K N Interstate indicates that the proposed facilities will not have an adverse impact on its existing customers. K N Interstate advises that the volumes of gas which will be delivered at the proposed taps will be within the current maximum daily transportation quantity set forth in K N Interstate's transportation service agreement with K N. K N Interstate further advises that the addition of the delivery taps is not prohibited by its existing tariff.

Comment date: September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18546 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER93–465–017]

Florida Power & Light Co.; Notice of Filing

July 24, 1995.

Take notice that on June 23, 1995, Florida Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18539 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–15–000]

Manchester Pipeline Corp.; Notice of Petition for Rate Approval

July 24, 1995.

Take notice that on July 12, 1995, Manchester Pipeline Corporation (Manchester) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable, market-based rates for firm and interruptible storage services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). The rates for the individual storage services will be negotiated between Manchester and various shippers. Manchester does not propose to have established any maximum or minimum rate for any generic service. Manchester does, however, intend to retain 2.80% of the injection/withdrawal volumes as an allowance for compressor fuel and losses for storage of natural gas.

Manchester's petition states that it is an intrastate natural gas pipeline company within the meaning of section 2(16) of the NGPA in the State of Oklahoma. Manchester owns storage facilities in the State of Oklahoma, which are the subject of this petition. The storage facilities consist of 17 Bcf of working storage capacity with injection rates of up to 100 MMcf per day and withdrawal rates of up to 250 MMcf per day. Facilities also include approximately 13 miles of pipeline interconnecting the storage facilities with Oklahoma Natural Gas Company and Williams Natural Gas Company, nine injection/withdrawal wells, and three compressor units. Manchester is a new entrant in the storage market and has not previously offered Section 311 services. Manchester proposes to charge market-based rates subject to refund effective upon the filing of this petition.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the market-based negotiated rates for firm and interruptible storage services will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before August 8, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18542 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1035–000]

Nevada Power Co.; Notice of Filing

July 24, 1995.

Take notice that on June 20, 1995, Nevada Power Company tendered for filing an amendment to its May 10, 1995 filing in the above-referenced Docket. The Docket provides for the sale of firm capacity and energy to the Colorado

River Commission (CRC). The amendment requires the CRC to pay an energy charge that is at least equal to Nevada Power's system incremental cost of energy.

Copies of this filing were served on CRC and the Nevada Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18540 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–391–000]

Ozark Gas Transmission System; Notice of Petition for Waiver

July 24, 1995.

Take notice that on July 18, 1995, Ozark Gas Transmission System (Ozark) filed a request for waiver of the requirement in Order No. 563 to provide electronic file downloading of capacity release data according to Electronic Data Interchange (ELI) standards.

Ozark states that the exit fee stipulations between Ozark and its only two firm shippers have been approved. Ozark states that, as a result, seventy days after the Effective Date of the stipulations, it will have no firm shippers and there can be no releases of firm capacity on Ozark. Ozark further states that there will be no releases of firm capacity on Ozark. Ozark further states that there will be no benefits to shippers by requiring Ozark to implement EDI and any costs associated with the EDI standards on Ozark will necessarily outweigh the benefits.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Emergency Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18543 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2643–001]

PacifiCorp; Notice of Availability of Navigability Report for the Deschutes River, Request for Comments, and Notice of Pending Jurisdictional Inquiry

July 24, 1995.

PacifiCorp has filed an application for a subsequent license to continue operating its Bend Hydroelectric Project No. 2643. The project is located on the Deschutes River in the City of Bend, Deschutes County, Oregon. As part of its review of PacifiCorp's relicense application, the Commission staff is investigating the jurisdictional status of the project and has prepared a navigability report for the Deschutes River. The navigability report concludes that the Deschutes River is not navigable in the vicinity of the Bend Project. If the Commission accepts the staff's conclusions regarding navigability, the likely outcome will be a Commission determination that the project is not required to be licensed pursuant to Section 23(b)(1) of the Federal Power Act (FPA). Because this determination may affect the resolution of matters at issue in the relicensing proceeding, all parties and interested persons are being given notice of the pending jurisdictional inquiry and an opportunity to comment on the navigability report. Comments may be filed no later than September 29, 1995.

Jurisdiction

The Commission recently explained its licensing jurisdiction as follows: [1]

Under the FPA, the Commission has two types of licensing jurisdiction: permissive and mandatory. Permissive licensing is authorized rather than required, and is governed by Section 4(e) of the FPA. Mandatory licensing is governed by Section 23(b)(1) of the FPA, which prohibits the unlicensed construction and operation of certain hydroelectric projects. Thus, it is possible for a voluntary applicant to obtain a license under Section 4(e) of the FPA for a project that would not require a license under Section 23(b)(1).

Under Section 23(b)(1) of the FPA, a license is required for a hydroelectric project if it: (1) is located on "navigable waters of the United States"; (2) occupies lands or reservations of the United States; (3) uses the surplus water or water power from a government dam; or (4) is located on a non-navigable Commerce Clause stream, affects the interests of interstate or foreign commerce, and has undergone construction or major modification after August 26, 1935.[2] If those conditions are not met, Section 4(e) of the FPA would permit licensing of a hydroelectric project in response to a voluntary application if the project is located on a Commerce Clause water.

The Commission staff has determined that the Bend Hydroelectric Project would not be located on federal lands or make use of a government dam. Therefore, whether licensing is required depends on whether conditions (1) or (4) above are met.

Regarding (4) above, the Commission staff has concluded that the Bend Hydroelectric Project is located on a non-navigable Commerce Clause stream within the meaning of Section 23(b)(1) of the FPA.[3] Because the Bend Project generates power for the interstate electric grid, the project affects the interests of interstate commerce within the meaning of Section 23(b)(1).[4] However, the project was constructed in 1913, and the Commission staff has found no evidence of any significant construction or major modification of the project after 1935.

Navigability

In these circumstances, whether licensing is required depends on whether the Bend Hydroelectric Project is located on a "navigable river of the United States." The staff's navigability report concludes that the Deschutes River is not navigable in the vicinity of the Bend Hydroelectric Project. It finds that, although portions of the Deschutes River are used by recreational boaters, especially white water rafters, both above and below the project site, the river is not navigable in the vicinity of the project. Popular areas for recreational boating include the upper Deschutes River, from Wickiup Dam to the area north of Bend, and the lower Deschutes River from Pelton Dam to the Columbia River. However, there are large sections of the river that are not used by rafters and boaters, including a section of about 32 river miles in the vicinity of the Bend Project, because of low water caused by irrigation projects, dangers rapids and falls, and dams. The staff's navigability report finds no evidence that the Deschutes River, from the project site to the Columbia River, was ever used or suitable for use for the transportation of persons or property in interstate or foreign commerce.

Comments are invited on the staff's navigability report. If the Commission accepts the staff's conclusions regarding navigability, the likely outcome will be a Commission determination that the Bend Hydroelectric Project is not required to be licensed under Section 23(b)(1) of the FPA.

Implications for Relicensing

As explained in the staff's draft Environmental Assessment (EA), the Bend Hydroelectric Project has negative economic benefits under any proposed operating scenario. Moreover, because of the high cost of prescribed fishway facilities, the costs of operating the project under a subsequent Commission license greatly exceed the costs of decommissioning the project. The Commission staff is completing its environmental review of the relicensing proposal and alternatives, and expects to issue a final EA in the near future.

In recent correspondence with the Commission staff, PacifiCorp has stated that, if the Commission issues a subsequent license that includes mandatory fishways and other agency recommendations for fish and wildlife, the project will be uneconomic to operate. The license has further stated: "PacifiCorp is not likely to accept a new license proffered by the Commission for the Bend Project if such conditions are included." [5]

If licensing is requiring under Section 23(b)(1) of the FPA, a hydroelectric license may not continue to operate its project without a license.[6] If licensing is not required, however, a hydroelectric licensee may, following expiration of its original license, either withdraw its relicense application or reject a new or subsequent license and continue to operate the project without a license under the FPA, subject only to whatever other federal, state, or local laws may be applicable.[7]

This suggests that the State of Oregon may ultimately be responsible for determining whether the Bend Project should continue to operate or should be decommissioned. Similarly, Oregon may ultimately be responsible for determining what conditions should be required, either for continued operation or for decommissioning. To ensure that state officials and all parties to the relicensing proceeding have advance notice of this possibility and of the preliminary navigability finding on which it is based, interested persons are being given notice of the pending jurisdictional inquiry and an opportunity to comment on the staff's navigability report.

Concurrent with publication of this notice, all persons whose names appear on the official service list for the Bend relicensing proceeding will receive a copy of the navigability report. Additional copies are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Comments on the navigability report should be filed with Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Washington, D.C. 20426. Comments should be filed by September 29, 1995, and should reference Project No. 2643–001. For further information, please contact Linda S. Gilbert at (202) 208–5759.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18538 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–393–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

July 24, 1995.

Take notice that on July 20, 1995, Wyoming Interstate Company, Ltd. (WIC) tendered for filing revised tariff sheets, to its FERC Gas Tariff, First Revised Volume No. 1, WIC states that the new tariff sheets are filed to delete Columbia Gas Transmission Corporation (Columbia) as a shipper on WIC. Abandonment authorization was received on February 10, 1995 (70 FERC ¶ 61,157) for the transportation service and the Commission approved of a settlement to which Columbia agreed to pay an exit fee. Certain parties filed for rehearing. On June 15, 1995, the Commission approved a settlement in a related Columbia rate proceeding which rendered the rehearing requests moot. (Docket Nos. GP94–2–003, *et al.*, 71 FERC ¶ 61,337).

WIC has filed revision to Sheet Nos. 4, 5A and 23 to delete Columbia. An effective date of July 1, 1995 was requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before July 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18544 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5266–3]

Proposed Settlement; Acid Rain Allowance Allocations and Reserves Rule Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of *Central Louisiana Electric Company, Inc. v. United States Environmental Protection Agency*, No. 93–1330 (D.C. Cir.).

This case involves a challenge to the final rule, entitled "Acid Rain Allowance Allocations and Reserves," which, *inter alia*, allocated sulfur dioxide emission allowances to Rodemacher Power Station Unit 2. 58 FR 15634, 15669 (March 23, 1993).

For a period of thirty (30) days following the date of publication of this

[1] Swanton Village, Vermont, 70 FERC ¶ 61,325 at pp. 61,992–93 (1995) (citations omitted). *See* Cooley v. FERC, 843 F.2d 1464, 1471 (D.C. Cir. 1988), *cert. denied*, 109 S.Ct. 327 (1988).

[2] *See* Farmington River Power Co. v. Federal Power Commission, 455 F.2d 86 (2d Cir. 1972).

[3] The Deschutes River flows into the navigable Columbia River. It is well-settled that Commerce Clause streams include the headwaters and tributaries of navigable rivers. *See* 70 FERC ¶ 61,325 at p. 61,994.

[4] *See* Federal Power Commission v. Union Electric Co. ("Taum Sauk"), 381 U.S. 90, 97 (1965).

[5] Letter from S.A. DeSousa, PacifiCorp, to John H. Clements, FERC, dated April 18, 1995.

[6] *See* 381 U.S. at 98 n. 10.

[7] *See* Pennsylvania Electric Co., 56 FERC ¶ 61,435 (1991) (hydroelectric licensee with a voluntary license under Section 4(e) of the FPA need not file a relicense application and may continue operating without a license following expiration of the original license).

notice, the Environmental Protection Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Samantha Hooks, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Jon Averback at the above address and must be submitted on or before August 28, 1995.

Dated: July 24, 1995.

Jonathan Z. Cannon,

Assistant Administrator (General Counsel).

[FR Doc. 95–18619 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4725–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 19, 1995 Through June 23, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–FHW–E40759–AL Rating EC2, Birmingham Northern Beltline Project, Construction, I–59/20 west to I–59 northeast in the City of Birmingham, Funding and Possible COE Section 404 Permit, Jefferson County, AL.

Summary

EPA's review revealed that all of the alternatives will impact environmental resources in the highway corridor; additional information on wetlands mitigation was requested.

ERP No. D–GSA–D81026–MD Rating EC2, Food and Drug Administration Consolidation, Site Selection, Montgomery County Campus, Montgomery and Prince Georges Counties, MD.

Summary

EPA expressed environmental concerns regarding the air analysis for the and storm water management facilities. EPA requested that these issues be clarified in the final EIS.

ERP No. D–SFW–K99026–CA Rating LO, Multiple Species Conservation Program Planning Area, Issuance of a Permit to Allow Incidental Take of Threatened and Endangered Species, San Diego County, CA.

Summary

EPA expressed a lack of objections with the draft EIS and the proposed action.

ERP No. D–USN–E11036–FL Rating EC2, Naval Training Center Orlando Disposal and Reuse, Implementation, Orange County, FL.

Summary

EPA had environmental concerns on the lack of information concerning radiological issues; wetlands impacts and mitigation; and air quality monitoring and control measures.

ERP No. D–USN–K11062–CA Rating EC2, San Diego Homeporting Facilities Construction and Operation to Support Berthing One NIMITZ Class Aircraft Carrier, Implementation, San Diego County, CA.

Summary

EPA requested additional information and clarification on the disturbance, dredging, disposal of contaminated and non-contaminated sediment, biological resource issues, and human health and safety issues.

ERP No. DA–AFS–L65147–AK Rating EC2, Bohemia Mountain Timber Sale, Updated Information concerning Resolution of Three Appeal Issues Regarding Harvesting Timber, Tongass National Forest, Stikine Area, AK.

Summary

EPA expressed environmental concerns regarding water quality and fisheries impacts. Additional information is needed on monitoring. EPA requested more information on these issues and also recommended that a detailed water quality monitoring plan be presented.

ERP No. DS–COE–E01002–NC Rating EC2, Texasgulf Open Pit Mine Continuation, Construction and Operation, Additional Information Concerning Alternative E for Wetland Avoidance/Minimization, Permit Approval, Pamlico River, Aurora, Beaufort County, NC.

Summary

EPA had environmental concerns over potential impacts to wetlands, and suggested modifications to further reduce impact to wetlands.

Final EISs

ERP No. F–USN–D11023–MD, Naval Air Warfare Center Aircraft Division, Base Realignment and Construction, Patuxent River, St. Mary's, Calvert and Charles Counties, MD.

Summary

The final EIS adequately addressed EPA's earlier concerns.

Regulations

ERP No. R–AFS–A65160–00, 36 CFR Parts 215, 217 and 219 National Forest System Land and Resource Management Planning.

Summary

While EPA believed that the proposed rule is an improvement, it expressed concern regarding the implementation of ecosystem management and criteria for ecosystem sustainability, diminished public participation and resource protection issues.

Dated: July 25, 1995.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 95–18622 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4725–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed July 17, 1995 Through July 21, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950320, Final EIS, BLM, OR, Upper Klamath Basin Resource Management Plan, Implementation, Klamath Falls Resource Area, Lakeview District, Klamath County, OR, Due: August 28, 1995, Contact: Eric Stone (503) 952–6087.

EIS No. 950321, Final EIS, AFS, CA, Mt. Reba Ski Area Expansion, Stanislaus National Forest, Special Use Permit, Calaveras Ranger District, Alpine County, CA, Due: August 28, 1995, Contact: Dave Freeland (209) 795–1381.

EIS No. 950322, Draft EIS, AFS, WA, First Creek Basin Restoration Project, Implementation, Wenatchee National Forest, Chelan Ranger District, Chelan County, WA, Due: September 13, 1995, Contact: Al Murphy (509) 682–2576.

EIS No. 950323, Draft Supplement, FHW, ME, Sears Island Marine Dry Cargo Terminal and Access Road Construction, Funding, COE Section 404 and 10 Permits, Waldo County, ME, Due: September 29, 1995, Contact: Paul Lariviere (207) 622–8487.

EIS No. 950324, Final EIS, NOA, 1995 Regulatory Amendment for the Western Atlantic Bluefin Tuna Fishery, Implementation, Contact: Richard B. Stone (301) 713–2347.

Under Section 1506.10(d) of the Council on Environmental Quality Regulations For Implementating The Procedural Provisions of the National Environmental Policy Act a 30-day Waiver of the Prescribed Period has been Granted.

EIS No. 950325, Draft EIS, NPS, VA, Richmond National Battlefield Park General Management Plan and Land Protection Plan, Implementation, Hanover, Henrico and Chesterfield Counties, VA, Due: September 11, 1995, Contact: John H. Reber (303) 969–2418.

EIS No. 950326, Draft Supplement, NIH, MD, William H. Natcher Building, Phase II Construction and Consolidation, Updated Information, Located on National Institutes of Health Bethesda Campus, Funding and NPDES Permit, Montgomery County, MD, Due: September 11, 1995, Contact: Janyce Hedetniemi (301) 496–3931.

EIS No. 950327, Final EIS, DOE, SC, Savannah River Site Waste Management Facilities, Implementation, Aiken, Allendale and Barnwell Counties, SC, Due: August 28, 1995, Contact: Arthur B. Gould, Jr. 1–(800)–242–8269.

Amended Notices

EIS No. 950232, Draft Supplement, FHW, NC, US 117 Corridor Improvement Project, US 13/70 at Goldsboro, North to US 301 in Wilson, Funding and COE Section 404 Permit, Updated and Additional information, Wayne and Wilson Counties, NC, Due: July 24, 1995, Contact: Nicholas L. Graf (919) 856–4346.

Published FR—6–09–95 Correction of Document Status from Final to Draft Supplemental EIS.

EIS No. 950315, Draft EIS, EPA/COE, NJ, Hackensack Meadows District (HMD) Special Area Management Plan (SAMP), Development and Implementation, COE Section 10 and 404 Permit Issuance, NJ, Due: September 18, 1995, Contact: Roberta W. Hargrove (212) 637–3495.

Published FR—07–21–95 The US Environmental Protection Agency and the US Army Corps of Engineers (COE) are Joint Lead Agencies for this Project. The COE contact is Joseph J. Seebode, Phone Number (212) 264–3993.

Dated: July 25, 1995.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 95–18624 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5266–6]

Marsh Management Subcommittee; Public Meeting; Cancellation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting cancellation.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice of cancellation is hereby given for the two day meeting of the Marsh Management Subcommittee under the Ecosystem Sustainable Economies Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). The meeting notice was announced in the **Federal Register** on July 17, 1995, published at 60 FR 36414.

Previously Announced Time and Date of Meeting: The Subcommittee was scheduled to meet on August 2–3, 1995.

Previously Announced Location of Meeting: Corps of Engineers New Orleans District Office located at the Foot of Prytania, 7400 Leake Avenue, New Orleans, LA 70118.

Changes in the Meeting: EPA has not scheduled a new meeting. The new date and location for the meeting will be announced in the **Federal Register** after determination.

FOR FURTHER INFORMATION CONTACT: Connie Cahanap, Wetlands Division, OWOW, Mail Code 4502F, U.S. Environmental Protection Agency, Washington, DC 20460, (202) 260–6531.

Dated: July 25, 1995.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 95–18738 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5265–1]

Superfund Program; Revised Model CERCLA RD/RA Consent Decree

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Agency is today publishing a revised version of the Model CERCLA RD/RA Consent Decree. The revised Model, which will supersede the 1991 interim Model, has been jointly modified by EPA and the Department of Justice on the basis of experience to date. The principal impetus behind the important substantive changes contained in the revised Model has been a desire to enhance the fairness and increase the number of settlements in which potentially responsible parties agree to implement government-selected remedies at Superfund sites. By publishing the revised Model EPA seeks to broadly inform affected members of the public of changes in the federal government's policy with respect to settlements for the performance of remedial design/remedial action (RD/RA).

FOR FURTHER INFORMATION CONTACT: Steve Botts, Mail Code 2272, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–5787.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

Memorandum

Subject: Final Revised Model CERCLA RD/RA Consent Decree

From:

Steven A. Herman, Assistant Administrator for Enforcement, and Compliance Assurance

Lois Schiffer, Assistant Attorney General for Environment and Natural Resources, U.S. Department of Justice

To: Regional Administrators, Regions I–X

Attached is the final version of the revised Model CERCLA RD/RA Consent Decree. This document supplants the Interim Model CERCLA RD/RA Consent Decree published in the July 8, 1991 **Federal Register** (56 FR 30996).

Summary

The Model has been successful in achieving, as one of its main goals, a reduction in the amount of time spent on drafting and negotiating individual consent decrees, allowing settlements to be reached more quickly and with fewer transaction costs. The Model also has been effective in ensuring that consent decrees for remedial design/remedial action protect the interests of the public and assure the accomplishment of the important cleanup objectives of the Superfund program.

However, there have been persistent complaints from potentially responsible

parties ("PRPs") that the Model is overly stringent in certain respects. At a number of sites PRPs have indicated that the Model was an impediment to settlement, contributing to an increase in the need to use unilateral orders to accomplish cleanup. Since settlement requires agreement by both sides, we have taken seriously comments by PRPs regarding provisions that they claim create serious obstacles to settlement.

The revised Model represents a major effort to respond to PRP concerns and to protect the interests of the people of the United States. The revised Model also clarifies provisions whose meaning was unclear and brings the Model RD/RA Consent Decree into conformity with other model settlement documents being developed by EPA and the Department of Justice. The new Model decree reflects the sustained efforts of a Headquarters/Region/ DOJ workgroup and considerable input from numerous regional personnel.

Specific Revisions From Old Model

Additional Response Actions

The "Additional Response Actions" section in the old Model has been the subject of by far the most frequent and vociferous criticism by PRPs. This provision required the settling defendants to undertake any additional response actions that EPA may later determine to be necessary in the event that the original remedial action fails to meet the "performance standards" specified in the Decree. PRPs characterized this obligation as a "blank check" that unfairly subjected them to potentially large and unknown costs. Some PRPs indicated that, although they recognize the need for EPA to reserve its rights to seek additional work in the event of remedy failure, it is unfair and unduly burdensome to require PRPs to accept the obligation to perform such unknown work as an affirmative obligation under the Decree.

We are addressing this concern by deleting the "Additional Response Actions" section of the Interim Model, in favor of two new provisions addressing the questions of remedy failure and modifications of the remedial action plan that may be needed as the remedy is implemented.

Modification of the Statement of Work

First, a new paragraph entitled "Modification of the Statement of Work or Related Work Plans" has been added to Section VI of the Model ("Performance of the Work by settling defendants"). This provision will enable EPA to require the settling defendants to implement modifications to the Statement of Work or "SOW" (usually attached to the consent decree), or to work plans submitted under the decree, if such modifications become necessary as the remedy is implemented. Such modifications, however, may be required only to the extent they are "consistent with the scope of the remedy selected in the ROD" (Record of Decision) that the settling defendants have agreed to implement. In order to assure that there is clarity and a common understanding about the scope of the settling defendants' obligations under this provision, the revised Model calls for a site-specific definition of "the scope of the remedy selected in the ROD" to be drafted and negotiated in each decree. This definition should be crafted in terms of the remedial approach stated in the ROD, and not in terms of performance standards or other general remedial goals.

Reservation of Rights

Second, the revised Model contains a new provision in the "General Reservations of Rights" paragraph in Section XXI (Covenants Not To Sue by Plaintiffs), that allows the government to seek, in new litigation, additional response actions necessary to achieve performance standards that are beyond the scope of the remedy selected in the ROD. This reservation is significantly different from the "Additional Response Actions" provision of the current model, in that it does not impose the obligation to perform such response actions as an affirmative obligation under the Decree. This new reservation is accompanied by a footnote stating that it may be omitted in appropriate circumstances, such as in exchange for a premium or other consent decree provision(s), taking into account the risk (of remedy failure) being assumed by EPA.

These revisions represent a significant departure from the approach of the "Additional Response Actions" Section of the old Model. We believe they strike a careful balance between the public's interest in achieving successful remediation of Superfund sites through consent decrees, and the settling defendants' interest in obtaining reasonable certainty regarding the scope of the affirmative obligations they are accepting in entering into a settlement. The revisions address the "blank check" objection to the old Model by limiting the modifications to the work that EPA can require under the Decree to modifications that are consistent with the scope of the remedy set forth in the ROD. By focusing negotiations on the site-specific definition of this term, the revised Model is intended to afford settling defendants certainty regarding the breadth of their affirmative obligations.

Where the new reservation of rights provision is used, settling defendants retain all defenses to liability, as well as their ability to challenge EPA's remedial determinations. Thus, instead of requiring settling defendants to perform additional, unknown response actions, this provision simply reserves the rights and arguments of both sides with respect to liability for additional response actions, beyond the scope of the ROD, that are necessary to achieve performance standards.

Moreover, the Regions will have substantial discretion to omit this reservation in appropriate circumstances, taking into account the risk being assumed by the agency. The magnitude of this risk depends on such factors as the nature and extent of the contamination, physical site conditions, and the reliability of the selected remedial technology. In many cases, this risk may not be substantial, and the considerations (such as a premium or other consent decree provisions) that the government should obtain in consideration for its deletion should reflect this circumstance. Conversely, in those cases where the risk is particularly acute, it may be necessary to retain the reservation or to require a more substantial premium or other consideration in return for its deletion.

In EPA's experience, there have been few situations in which it has been necessary to seek further response actions that go beyond the scope of the remedy selected in the ROD. As the agency's experience with various site conditions, contaminants, and remedial technologies increases, we expect these situations to become even more rare. The ultimate consideration in omitting the new reservation will be whether the final decree, taken as a whole, represents an appropriate settlement in light of all relevant factors, including the risk being accepted by the government on behalf of the American public.

Other Revisions

As required by Section 122(f)(6) of CERCLA, the standard reservations of liability contained in paragraphs 80 and 81 of the old Model (the "reopeners" for "unknown conditions" and "new information") are retained. In addition, the revised Model retains the provision of Paragraph 22 of the old Model (in the "Periodic Review" provision),[1] pursuant to which Settling defendants can be required to perform further response actions under the Decree if these reopener conditions develop. However, in recognition that the main purpose of this provision is to avoid disputes over liability in "reopener litigation" (which are likely to be complicated by loss of evidence over time), the revised Model recognizes that there may be cases in which this provision is not necessary or the problem it addresses can be resolved by an alternative provision.

A number of other important revisions to the Model have also been adopted relating to such issues as stipulated penalties, EPA review of submissions, indemnification, force majeure, and a waiver of contribution claims against very small ("*de micromis*") contributors. Additional modifications have been made to clarify certain provisions and to correct technical errors.

Consultation Procedures

A memorandum accompanying the 1991 version of the Model required Regional offices to consult with EPA Headquarters before offering to PRPs consent decree language significantly at variance with language contained in 10 identified provisions of the Model. In light of Regional experience with the Model to date and in an effort to further streamline the process of finalizing and entering RD/RA consent decrees, OECA has decided to waive this advance consultation requirement.

In lieu of consulting with the Regions in advance of adopting a variant provision, OECA will perform a periodic review of selected provisions from final RD/RA consent decrees to ensure that such provisions remain protective of the interests of the public. Notwithstanding the elimination of the advance consultation requirement, the Regions should continue to comply with the pre-existing delegations (as modified by a recent memorandum entitled "Office of Enforcement and Compliance Assurance and Regional Roles in Civil Judicial and Administrative Site Remediation Enforcement Cases" (May 19, 1995). Those delegations require Headquarters' concurrence in settlements which significantly deviate from written EPA policy. Headquarters also expects Regions to engage in timely and effective communication concerning issues that arise in use of the revised Model, and to refrain from development of regional models that can have the effect of producing inconsistency across the country.

In addition, Regions must continue to consult and work with the Department of Justice in drafting and negotiating all consent decrees.

Effective Date

The revised Model is effective immediately on the date of this memorandum. It should be used as the basis for all consent decrees which accompany special notice letters sent to the PRPs after that date. In cases where a special notice letter for the site or an initial version of the consent decree has been conveyed to the PRPs prior to the date of this memorandum, but settling defendants have not signed a consent decree as of that date, the government negotiation team will have discretion as to whether to employ the old Model or the revised Model as guidance. In cases where the old Model is used, the United States generally will entertain proposals from PRPs for inclusion of language from the revised Model only to the extent that such proposals do not upset the balance struck in the negotiations between the parties up to that point and do not unduly extend or delay negotiation of the final settlement.

The United States will not renegotiate any RD/RA consent decree which has been signed by settling defendants as of the date of this memorandum.

If you have any questions regarding the revised Model Consent Decree, please contact Steve Botts of OECA's Regional Support Division ((202) 260–5787) or Susan Boushell of OECA's Policy and Program Evaluation Division ((703) 603–9063).

cc:

Jean C. Nelson, General Counsel
Kathryn S. Schmoll, Comptroller
Stephen D. Luftig, Director, Office of Emergency and Remedial Response
Regional Counsel, Regions I–X
Waste Management Division Directors, Regions I–X

United States Environmental Protection Agency Model CERCLA RD/RA Consent—Decree July, 1995

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

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In the United States District Court for the District of _____ Division

United States of America [and State of _____] Plaintiffs, v. _____, *Inc.*, Defendants. Civil Action No.

Consent Decree

I. Background

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the _____ Superfund Site in _____, _____, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 CFR Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. 9621(f)(1)(F), EPA notified the State of _____ (the "State") on _____, 19__ of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such

[1] This section is renumbered as Section VII of the revised Model, titled "Remedy Review."

negotiations and be a party to this Consent Decree.

[D. The State of _____ (the "State") has also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. 9607, and [list state laws cited in the State's complaint], for: _____.]

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. 9622(j)(1), EPA notified the [insert the relevant Federal natural resource trustee(s)] on _____, 19__ of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff[s] arising out of the transactions or occurrences alleged in the complaint[s], nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, EPA placed the Site on the National Priorities List, set forth at 40 CFR Part 300, Appendix B, by publication in the **Federal Register** on _____, 19__, _____ Fed. Reg. ____.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA [or the Settling Defendants, other PRPs at the Site, or the State] commenced on _____, 19__, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 CFR 300.430.

I. EPA [or the Settling Defendants, other PRPs at the Site, or the State] completed a Remedial Investigation ("RI") Report on _____, __, 19__, and EPA [or the Settling Defendants, other PRPs at the Site, or the State] completed [issued] a Feasibility Study ("FS") Report on _____, 19__.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on _____, 19__, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on _____, 19__, [on which the State had a reasonable opportunity to review and comment/on which the State has given its concurrence.] The ROD includes [EPA's explanation for any significant differences between the final plan and the proposed plan as well as]a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. Based on the information presently available to EPA [and the State], EPA [and the State] believe[s] that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

M. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

Now, Therefore, it is hereby Ordered, Adjudged, and Decreed:

II. Jurisdiction

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1331 and 1345, and 42 U.S.C. 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint[s], Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. Parties Bound

2. This Consent Decree applies to and is binding upon the United States [and the State] and upon Settling Defendants and their [heirs,] successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. 9607(b)(3).

IV. Definitions

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"_____" shall mean the [Insert name of State pollution control agency or environmental protection agency] and any successor departments or agencies of the State. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incur[s] in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), XV, and Paragraph 85 of Section XXI. Future Response Costs shall also include all Interim Response Costs and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. 9607(a) during the period from [insert the date identified in the Past Response Costs definition] to the date of entry of this Consent Decree.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between [insert the date identified in the Past Response Costs definition] and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree but paid after that date.

"Interest," shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. 9607(a).

[Note: The following definition should be used where the Decree contains a waiver of contribution rights against *de micromis* parties as provided in the final Paragraph of Section XXII (Covenants by Settling Defendants)].

["Municipal Solid Waste" shall mean all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.]

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

[Note: The following definition should be used where the Decree contains a waiver of contribution rights against *de micromis* parties as provided in the final Paragraph of Section XXII (Covenants by Settling Defendants)].

["Owner, Operator, or Lessee of Residential Property" shall mean a person who owns, operates, manages, or leases Residential Property and who uses or allows the use of the Residential Property exclusively for residential purposes.]

"Owner Settling Defendants" shall mean the Settling Defendants listed in Appendix E.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States [, the State of _____,] and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through [insert the date of the most recent cost update], plus Interest on all such costs which has accrued pursuant to 42 U.S.C. 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section __ of the ROD and Section __ of the SOW [and any modified standards established by EPA pursuant to the "technical impracticability" provision of Paragraph 13].

"Plaintiff[s]" shall mean the United States [and the State of _____].

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the [Site or __ Operable Unit at the Site] signed on _____, 19__, by the Regional Administrator, EPA Region __, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

[Note: The following definition should be used where the Decree contains a waiver of contribution rights against *de micromis* parties as provided in the final Paragraph of Section XXII (Covenants by Settling Defendants)]

["Residential Property" shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.]

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean those Parties identified in Appendices D (Non-Owner Settling Defendants) and E (Owner Settling Defendants).

[Note: The following definition should be used where the Decree contains a waiver of

contribution rights against *de micromis* parties as provided in the final Paragraph of Section XXII (Covenants by Settling Defendants)]

["Sewage Sludge" means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.]

"Site" shall mean the _____ Superfund Site, [encompassing approximately __ acres, located at [address or description of location] in [name of city], ____ County, [name of state] and depicted generally on the map attached as Appendix C.]

[Note: The definition of "Site" affects the scope of the covenants not to sue. The definition used should conform with the intended scope of the covenants and the general reservations provided in Section XXI (Covenants Not to Sue by Plaintiff[s].]

[Note: The following two definitions should be used where the Decree contains a waiver of contribution rights against *de micromis* parties as provided in the final Paragraph of Section XXII (Covenants by Settling Defendants)]

["Small Business" shall mean any business entity that employs no more than 100 individuals and is a "small business concern" as defined under the Small Business Act (15 U.S.C. 631 *et seq.*).

"Small Nonprofit Organization" shall mean any organization that does not distribute any part of its income or profit to its members, directors, or officers, employs no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986.]

"State" [or "Commonwealth"] shall mean the State [or Commonwealth] of _____.

[Note: Where the state is a party to the consent decree, definitions of "State Past Response Costs" and "State Future Response Costs" will need to be added to this section as appropriate.]

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. 9601(33); [(3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. 6903(27); and (4) any "hazardous material" under [insert appropriate State statutory citation].

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. General Provisions

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants, to reimburse response costs of the Plaintiff[s], and to resolve the claims of Plaintiff[s] against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States [and the State] for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States [and the State] under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

[Note: For Consent Decrees in which there is an Owner Settling Defendant, add Paragraph 9, below.]

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant(s) shall record [a certified copy of this Consent Decree] [notice of the entry of this Consent Decree] with the Recorder's Office [or Registry of Deeds or other appropriate office], _____ County, State of _____. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree [and any lien retained by the United States] and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of each Owner Settling Defendant with respect to the provision of access under Section IX (Access) [and the implementation of institutional controls under Section ____] shall be binding upon any and all such Settling Defendants and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, each Owner Settling Defendant shall record at the Recorder's Office [or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property] a notice of obligation to provide access under Section IX (Access) and related covenants, if any. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. Any Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA [and the State] of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree, including their obligations to provide or secure access pursuant to Section IX, shall continue to be met by the Settling Defendants. In addition, if the United States [and the State] approve[s], the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Defendants to comply with the Consent Decree.

VI. Performance of the Work by Settling Defendants

[Note: Paragraphs 10–12, below, may be modified on a site-by-site basis to reflect site needs and Regional practice.]

10. Selection of Supervising Contractor

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA [after a reasonable opportunity for review and comment by the State.] Within 10 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA [and the State] in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA [and the State] and must obtain an authorization to proceed from EPA[, after a reasonable opportunity for review and comment by the State,] before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA [and the State] a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA [and the State] of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.]

11. Remedial Design

a. Within ____ days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within ____ days after EPA's issuance of an authorization to proceed, the Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: [List all items which should be included in the Remedial Design Work Plan. This list will be based on site-specific factors and may include the following items: (1) Design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); (2) a treatability study; (3) a Pre-design Work Plan; (4) a preliminary design submittal; (5) an intermediate design submittal; (6) a pre-final/final design submittal; and (7) a Construction Quality Assurance Plan.] In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) Design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal, if required by EPA or if independently submitted by the Settling Defendants, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) Final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan (directed at measuring progress towards

meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.]

12. Remedial Action

a. Within ____ days after the approval of the final design submittal, Settling Defendants shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. 1910.120.

b. The Remedial Action Work Plan shall include the following: [List all activities for which methodologies, plans and schedules should be included in the Remedial Action Work Plan. This list will be based on site specific factors and may include the following: (1) The schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) a groundwater monitoring plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials.] The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

13. The Settling Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

[Note: A "technical impracticability" provision may be inserted here in appropriate cases. If a technical impracticability provision is included, the definition of Performance Standards should be modified to incorporate any modified Performance Standards that may be issued by EPA pursuant to a technical impracticability provision.]

14. Modification of the SOW or Related Work Plans

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 14 and Paragraphs 48 and 49 only, the "scope of the remedy selected in the ROD" is: [site-specific definition to be inserted here]

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 66 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff[s] that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendants shall include in the written notification the following information, where available: (1) The name and location of the facility to which the Waste Material are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. Remedy Review

[Note: This Section may need to be modified or omitted in consent decrees where the United States is not giving a full covenant not to sue subject to pre and post certification reservations (e.g., non-final operable unit consent decrees). This Section may also be omitted where no hazardous substances, pollutants or contaminants will remain at the site after completion of the remedial action.]

17. *Periodic Review.* Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

18. *EPA Selection of Further Response Actions.* If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. *Opportunity To Comment.* Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. *Settling Defendants' Obligation To Perform Further Response Actions.* If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 81 or Paragraph 82 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 81 or Paragraph 82 of Section XXI (Covenants Not To Sue by Plaintiff[s]) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 65 (record review).

21. *Submissions of Plans.* If Settling Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

[Alternative: The preceding two Paragraphs (20 & 21.) may be omitted (1) for Settling Defendants whose liability has been established by court order or judgment; (2) for Settling Defendants who agree to admit or not to contest liability in the event that the United States institutes an action for further relief based on the reservations set forth in Paragraphs 81 or 82 of the Covenant Not To Sue; or (3) in other appropriate cases.]

VIII. Quality Assurance, Sampling, and Data Analysis

22. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all [treatability, design, compliance and monitoring] samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9–88/087), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and [applicable guidance documents.] If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA [and State] personnel and its [their] authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the ["Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988], and any amendments made thereto during the course of the implementation of this Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordanes with the procedures set forth in the QAPP approved by EPA.

23. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA [and the State] or their authorized representatives. Settling Defendants shall notify EPA [and the State] not less than [28] days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA [and the State] shall have the right to take any additional samples that EPA [or the State] deem necessary. Upon request, EPA [and the State] shall allow the Settling Defendants to take split or duplicate samples of any samples it [they] take[s] as part of the Plaintiff's[']oversight of the Settling Defendants' implementation of the Work.

24. Settling Defendants shall submit to EPA [and the State] ____ copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States [and the State] hereby retain[s] all of its [their] information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. Access [and Institutional Controls]

26. Commencing upon the date of lodging of this Consent Decree, the Settling Defendants agree to provide the United States[, the State,] and its [their] representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

a. Monitoring the Work;

b. Verifying any data or information submitted to the United States [or the State];

c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing additional response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV; and

g. Assessing Settling Defendants' compliance with this Consent Decree.

27. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants, as well as for the United States [and the State] and its [their] representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. [NOTE: It may be appropriate to delete the preceding sentence where the property to which access is needed is owned by a non-settling party who is a PRP. (See guidance entitled "Model RD/RA Consent Decree: Acceptable Modifications to Model Language (Directive No. 2)," March 25, 1992)] If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States [or the State] may, as it deems appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States [or the State], in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

28. Notwithstanding any provision of this Consent Decree, the United States [and the State] retain[s] all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

[Add institutional controls provisions as appropriate]

X. Reporting Requirements

29. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State ____ copies of written [monthly] progress reports that: (a) Describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous [month]; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous [month]; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous [month]; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next [six weeks] and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous [month] and those to be undertaken in the next [six weeks]. Settling Defendants shall submit these progress reports to EPA and the State by the [tenth day of every month] following the lodging of this Consent Decree until [EPA notifies the Settling Defendants pursuant to Paragraph 49.b of Section XIV (Certification of Completion).] If requested by EPA [or the State], Settling Defendants shall also provide briefings for EPA [and the State] to discuss the progress of the Work.

30. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

31. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region ____, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

32. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Plaintiff[s] a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

33. Settling Defendants shall submit ____ copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit ____ copies of all such plans, reports and data to the State.

34. All reports and other documents submitted by Settling Defendants to EPA (other than the [monthly] progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XI. EPA Approval of Plans and Other Submissions

35. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) Approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within ____ days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

36. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 35 (a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 35(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

37. a. Upon receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendants shall, within ____ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the ____-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 38 and 39.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

38. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

39. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

40. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. Project Coordinators

41. Within 20 days of lodging this Consent Decree, Settling Defendants[, the State] and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

42. Plaintiff[s] may designate other representatives, including, but not limited to, EPA [and State] employees, and federal [and State] contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

[43. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis.]

XIII. Assurance of Ability to Complete Work

44. Within 30 days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of $ [insert estimated cost of Work] in one or more of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;

(c) A trust fund;

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants;

(e) A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f); or

(f) [Insert any other method(s) appropriate to the particular case.].

45. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 44 (d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 44 (d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA[, after a reasonable opportunity for review and comment by the State,] determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of

receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 44 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

46. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 44 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

47. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. Certification of Completion

[**Note:** Paragraph 48, below, (Completion of the Remedial Action), is only required for Site-wide or Final Operable Unit Consent Decrees, in which the United States has decided to grant a full covenant not to sue (i.e., where Certification of Completion of the Remedial Action is necessary to trigger a full covenant not to sue under Sections 106 and 107 of CERCLA).]

48. Completion of the Remedial Action

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants[,] [and] EPA [,and the State]. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff[s]). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

49. Completion of the Work

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants[,] [and] EPA [and the State]. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. Emergency Response

50. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA [Emergency Response Unit], Region ____. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA [or, as appropriate, the State] take[s] such action instead, Settling Defendants shall reimburse EPA [and the State] all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

51. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States[, or the State,] a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff[s]).

XVI. Reimbursement of Response Costs

52. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall:

[a.] Pay to the EPA Hazardous Substance Superfund $_____, in reimbursement of Past Response Costs, by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID #____ [Insert 4-digit no.; first 2 numbers represent the Region (01–10), second 2 numbers are Region's Site/Spill Identifier number], and DOJ case number _____. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of _____ following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and [names and mailing addresses of the Regional Financial Management Officer and any other receiving officials at EPA].

[**Note:** If the amount owed is less than $10,000, the Settling Defendants should be directed to pay by check instead of EFT. In this event, use the following language for Paragraph 52.a:

[a.] Pay $_____, in reimbursement of Past Response Costs, by a certified or cashier's check or checks made payable to "U.S. Department of Justice." The Settling Defendants shall forward the check(s) to [Insert the address of the Financial Litigation Unit of the U.S. Attorney's Office for the District of _____], referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID #_____ [Insert 4-digit no.; first 2 numbers represent the Region (01–10), second 2 numbers are the Region's Site/Spill ID no.], the DOJ case number _____, and the name and address of the party making payment, and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and [Insert the names and mailing addresses of the Regional Financial Management Officer and any other receiving officials at EPA].]

[b. Pay to the State $_____ in the form of a certified check or checks made payable to _____, in reimbursement of State Past Response Costs. The Settling Defendants shall send the certified check(s) to _____.]

53. [a.] Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan. The United States will send Settling Defendants a bill requiring payment that includes a [Insert name of standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Also insert name of DOJ-prepared cost summary which would reflect costs incurred by DOJ and its contractors, if any.] on a [periodic] basis. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. The Settling Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #_____ [Insert 4-digit no.; first 2 numbers represent the Region (01–10), second 2 numbers are the Region's Site/Spill Identifier number], the DOJ case number _____, and the name and address of the party making payment. The Settling Defendants shall send the check(s) to [Insert appropriate Regional Superfund Lockbox number and address] and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and [Insert the names and mailing addresses of any other receiving officials at EPA].

[b. Settling Defendants shall reimburse the State for all State Future Response Costs not inconsistent with the National Contingency Plan. The State will send Settling Defendants a bill requiring payment that includes a [Insert name of standard State-prepared cost summary, which includes direct and indirect costs incurred by the State and its contractors] on a [periodic] basis. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. The Settling Defendants shall make all payments to the State required by this Paragraph in the manner described in Paragraph 52.b.]

54. Settling Defendants may contest payment of any Future Response Costs under Paragraph 53 if they determine that the United States [or the State] has made an accounting error or if they

allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States [(if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed)] pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States [or the State] in the manner described in Paragraph 53. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of _____ and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), [and the State] a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States [or the State] prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States [or the State, if State costs are disputed,] in the manner described in Paragraph 53. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States [or the State, if State costs are disputed] in the manner described in Paragraph 53; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States [and the State] for its [their] Future Response Costs.

55. In the event that the payments required by Paragraph 52 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 53 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay interest on the unpaid balance. The Interest to be paid on Past Response Costs [and State Past Response Costs] under this Paragraph shall begin to accrue 30 days after the effective date of this Consent Decree. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 53.

XVII. Indemnification and Insurance

56. a. The United States [and the State] do[es] not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States[, the State,] and its [their] officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States [and the State] all costs it [they] incur[s] including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States [or the State] based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. [Neither] the United States [nor the State] shall [not] be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States [or the State].

b. The United States [and the State] shall give Settling Defendants notice of any claim for which the United States [or the State] plans to seek indemnification pursuant to Paragraph 56.a., and shall consult with Settling Defendants prior to settling such claim.

57. Settling Defendants waive all claims against the United States [and the State] for damages or reimbursement or for set-off of any payments made or to be made to the United States [or the State], arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States [and the State] with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

58. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain [until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 48.b. of Section XIV (Certification of Completion)] comprehensive general liability insurance with limits of ____ million dollars, combined single limit, and automobile liability insurance with limits of ____ million dollars, combined single limit, naming the United States [and the State] as [an] additional insured[s]. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA [and the State] certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA [and the State] that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. Force Majeure

59. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, [the Director of the Hazardous Waste Management Division, EPA Region ____], within [insert period of time] of when Settling Defendants first knew that the event might cause a delay. Within [____] days thereafter, Settling Defendants shall provide in writing to EPA [and the State] an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

61. If EPA[, after a reasonable opportunity for review and comment by the State,] agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA[, after a reasonable opportunity for review and comment by the State,] for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA[, after a reasonable opportunity for review and comment by the State,] does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA[, after a reasonable opportunity for review and comment by the State,] agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

62. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 59 and 60, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. Dispute Resolution

[Note: The dispute resolution procedures set forth in this Section may be supplemented to provide for use of mediation in appropriate cases. Mediation provisions should contain time limits to ensure that mediation does not cause delays in dispute resolution that could delay the remedial action.]

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

64. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

65. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ____ days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States [and the State] a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants.

The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 66 or Paragraph 67.

b. Within ____ days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling

Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67. Within —— days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 66 and 67.

66. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) The adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region ____, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 66.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 66.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 66.a.

67. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 65, the Director of the Waste Management Division, EPA Region ____, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 77. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. Stipulated Penalties

69. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 70 and 71 to the United States [and the State—specify percentage split] for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

[70. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

Penalty Per Violation Per Day	Period of Noncompliance

b. [List violations or compliance milestones] The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports [or other written documents] pursuant to Paragraphs _____:

Penalty Per Violation	Per Day Period of Noncompliance

72. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 85 of Section XXI (Covenants Not to Sue by Plaintiff[s]), Settling Defendants shall be liable for a stipulated penalty in the amount of _____.]

73. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) With respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Waste Management Division, EPA Region ____, under Paragraph 66.b. or 67.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

74. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA [and the State] may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

75. All penalties accruing under this Section shall be due and payable to the United States [and the State] within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to [Insert the Regional Lockbox number and address], shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #_____ [Insert 4-digit no; first 2 numbers represent the Region (01–10), second 2 numbers are the Region's Site/Spill Identifier number], the DOJ Case Number _____, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to [Insert the names and mailing addresses of any other receiving officials at EPA.]. [Where a State is entitled to a portion of the stipulated penalties, insert procedures for payment to State.]

76. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

77. Penalties shall continue to accrue as provided in Paragraph 73 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA [and the State] within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA [and the State] within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States [or the State] into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA [and the State] or to Settling Defendants to the extent that they prevail.

78. a. If Settling Defendants fail to pay stipulated penalties when due, the United States [or the State] may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 75.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States [or the State] to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.[1]

79. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. Covenants Not to Sue By Plaintiff[s]

[Note: The first version of Paragraph 80, below, is only used for situations in which the United States has decided not to grant a full covenant not to sue, such as non-final Operable Unit consent decrees. In such cases, Paragraphs 81–83 generally should not be used in the consent decree.]

80. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA [and Section 7003 of RCRA[2]] for performance of the Work [and for recovery of Past Response Costs and Future Response Costs]. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 52 of Section XVI (Reimbursement of Response Costs). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

[Note: Paragraphs 80–83, below, should only be used in Consent Decrees in which the United States has decided to grant a full covenant not to sue.]

80. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 81, 82, and 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA [and Section

[1] A provision requiring EPA to elect between seeking stipulated and statutory penalties for a particular consent decree violation may be substituted here in appropriate cases.

[2] Note that when a 7003 covenant is included, Section 7003(d) of RCRA requires that an opportunity for a public meeting in the affected area be provided.

7003 of RCRA [3]] relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 52 of Section XVI (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 48.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

81. *United States' Pre-certification reservations.* Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

82. *United States' Post-certification reservations.* Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(i) Conditions at the Site, previously unknown to EPA, are discovered, or

(ii) Information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

[3] See footnote #1, *supra.*

83. For purposes of Paragraph 81, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 82, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

[Note: Include Paragraph 84 in all Consent Decrees.]

84. *General reservations of rights.* The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 80. The United States [and the State] reserve[s], and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

(1) Claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) Liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) Liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;

(4) Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(5) Criminal liability;

(6) Liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

[(7) Liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans);] [4]

[4] The Regions may omit this reservation in appropriate circumstances, such as in exchange for a premium or other consent decree provision(s), taking into account the risk being assumed by the Agency.

[Note: Subparagraphs 8 through 10, below, should be used only where appropriate.]

[(8) Previously incurred costs of response above the amounts reimbursed pursuant to Paragraph 52;]

[(9) Liability for additional operable units at the Site or the final response action;]

[(10) Liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs.]

85. *Work Takeover.* In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 66, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs).

86. Notwithstanding any other provision of this Consent Decree, the United States [and the State] retain[s] all authority and reserve[s] all rights to take any and all response actions authorized by law.

[Note: If the State is a Co-plaintiff, insert the State's Covenant Not to Sue the Settling Defendants and Reservation of Rights.]

XXII. Covenants By Settling Defendants

87. *Covenant Not to Sue.* Subject to the reservations in Paragraph 88, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States [or the State] with respect to [FOR FINAL CONSENT DECREES: the Site] [FOR OU DECREES: the Work, past response actions, and [IF ADDRESSED] Past and Future Response Costs as defined herein] or this Consent Decree, including, but not limited to:,

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

[b. Any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site,] or

c. Any claims arising out of response activities at the Site, including claims based on EPA's [and the State's] selection of response actions, oversight of response activities or approval of plans for such activities.

88. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA;

89. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 C.F.R. 300.700(d).

[90. Settling Defendants agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against the following persons:

a. Any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA Section 107(a) (3) or (4), (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of only Municipal Solid Waste or Sewage Sludge owned by such person, and (iii) who is a Small Business, a Small Non-profit Organization, or the Owner, Operator, or Lessee of Residential Property; and

b. Any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a) (3) or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of 55 gallons or less of liquid materials containing hazardous substances, or 100 pounds or less of solid materials containing hazardous substances, except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site.

[Note: provision relating to *de minimis* parties, if appropriate, may be inserted here.]

XXIII. Effect of Settlement; Contribution Protection

91. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

92. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. 9613(f)(2) for matters addressed in this Consent Decree. ["Matters addressed" should be defined explicitly in appropriate cases, e.g., where the scope of contribution protection may otherwise be unclear under the circumstances of the case.]

93. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States [and the State] in writing no later than 60 days prior to the initiation of such suit or claim.

94. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States [and the State] within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States [and the State] within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

95. In any subsequent administrative or judicial proceeding initiated by the United States [or the State] for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States [or the State] in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff[s]).

XXIV. Access to Information

96. Settling Defendants shall provide to EPA [and the State], upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA [and the State], for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

97. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff[s] under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. 9604(e)(7), and 40 CFR 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA [and the State], or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the

Plaintiff[s] with the following: (1) The title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

98. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. Retention of Records

99. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

100. At the conclusion of this document retention period, Settling Defendants shall notify the United States [and the State] at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States [or the State], Settling Defendants shall deliver any such records or documents to EPA [or the State]. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) The title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

101. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. Notices and Submissions

102. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, [the State,] and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # _____
and
Director, Waste Management Division
United States Environmental Protection Agency
Region ___

As to EPA:

[Name]
EPA Project Coordinator
United States Environmental Protection Agency
Region ___

[As to the State:

[Name]
State Project Coordinator
[Address]]

As to the Settling Defendants:

[Name]
Settling Defendants' Project Coordinator
[Address]

XXVII. Effective Date

103. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. Retention of Jurisdiction

104. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. Appendices

105. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.
"Appendix B" is the SOW.
"Appendix C" is the description and/or map of the Site.
"Appendix D" is the complete list of the Settling Defendants.
["Appendix E" is the complete list of the Owner Settling Defendants.]

XXX. Community Relations

106. Settling Defendants shall propose to EPA [and the State] their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA [and the State] in providing information regarding the Work to the public. As requested by EPA [or the State], Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA [or the State] to explain activities at or relating to the Site.

XXXI. Modification

107. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

108. Except as provided in Paragraph 14 ("Modification of the SOW or related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

109. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. Lodging and Opportunity for Public Comment

110. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

111. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. Signatories/Service

112. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

113. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

114. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS ___ DAY OF _____, 19____ .

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. _____, relating to the _____ Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

[Name]
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

[Name]
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

[Name]
Assistant United States Attorney
_____District of _____
U.S. Department of Justice
[Address]
[_____] _____

[Name]
Assistant Administrator for Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
[WHERE OECA CONCURRENCE REQUIRED]
[_____] _____

[Name]
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
[WHERE OECA CONCURRENCE REQUIRED OR OECA ATTORNEY IS PART OF NEGOTIATION TEAM]

[Name]
Regional Administrator, Region ___
U.S. Environmental Protection Agency
[Address]

[Name]
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region ___
[Address]
United States v. _____
Consent Decree Signature Page
FOR THE STATE OF _____
Date:_____ _____

[Name]
[Title]
[Address]

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the _____ Superfund Site.

FOR _____ COMPANY, INC. *
Date: _____

[Name—Please Type]
[Title—Please Type]
[Address—Please Type]

Agent Authorized to Accept Service on Behalf of Above-signed Party:
Name: [Please Type] _____
Title: _____
Address: _____
Tel. Number: _____

[FR Doc. 95–18482 Filed 7–27–95; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Robert T. Heath; Change In Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 1995.

*A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Robert T. Heath, individually and as trustee for the Pennington/Heath Trust, Sebastian, Florida; to vote at least 57 percent of of the voting shares of First National Bancshares of Newton, Inc., Newton, Illinois, and thereby indirect control First National Bank in Newton, Newton, Illinois.

Board of Governors of the Federal Reserve System, July 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18566 Filed 7–27–95; 8:45 am]

BILLING CODE 6210–01–F

National Australia Bank Limited; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in nonbanking activities that the Board has determined to be closely related to banking and permissible for bank holding companies, or to engage in such activities. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. National Australia Bank Limited, Melbourne, Australia, National Equities Limited, Melbourne, Australia, National Australia Group (UK) Limited, London, England, National Americas Holdings Limited, London, England, and MNC Acquisition Co., Melbourne, Australia; to become bank holding companies by acquiring 100 percent of the voting shares of Michigan National Corporation, Farmington Hills, Michigan (MNC), and thereby indirectly acquire Michigan National Bank, Farmington Hills, Michigan, and Bloomfield Hills Bancorp, Inc., Bloomfield Hills, Michigan, and its subsidiary, Bank of Bloomfield Hills, Bloomfield Hills, Michigan.

In connection with this application, Applicant also has applied to acquire Independence One Capital Management Corp., Farmington Hills, Michigan, and thereby engage in providing discretionary and nondiscretionary investment advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y; MNC Leasing Company, Detroit, Michigan, and thereby engage in leasing real and personal property and equipment, pursuant to § 225.25(b)(5) of the Board's Regulation Y; Independence One Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting reinsurance of credit life and credit disability risk, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; Michigan Bank, F.S.B., Troy, Michigan, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y; and Independence One Asset Management Corporation, Irvine, California, and thereby engage in providing asset management, servicing and collection activities, pursuant to Board Order. Applicant also has applied to exercise an option to acquire up to 19.9 percent of the voting shares of MNC.

Board of Governors of the Federal Reserve System, July 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18570 Filed 7–27–95; 8:45 am]

BILLING CODE 6210–01–F

National City Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National City Bancshares, Inc., Evansville, Indiana; to engage, through United Federal Savings Bank, Vincennes, Indiana, in acting as agent in the sale of credit life, mortgage life, and credit accident and health insurance directly related to extensions of credit, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18569 Filed 7–27–95; 8:45 am]

BILLING CODE 6210–01–F

South Banking Company; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 11, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. South Banking Company, Alma, Georgia; to acquire 100 percent of the voting shares of Pineland State Bank, Metter, Georgia.

Board of Governors of the Federal Reserve System, July 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18568 Filed 7–27–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986; Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of information collection requirements contained in the Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986.

SUMMARY: This publication provides notice that the Federal Trade Commission is seeking renewed approval for three years from OMB for the information collection requirements contained in the Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986. The present OMB approval for the information collection requirements is scheduled to expire on August 31, 1995.

The Smokeless Tobacco Act requires, among other things, that manufacturers, packagers, and importers of smokeless tobacco products include health warnings on packages and in advertisements. The Act also requires each manufacturer, packager, and importer of a smokeless tobacco product to submit a plan to the Commission that specifies the methods used to rotate, display, and distribute the warning statements required to appear in advertising and labeling. Section 3(d) directs the Commission to approve plans that provide for rotation, display, and distribution of the warning statements in accordance with the regulations. All the affected companies have previously filed plans, but the plan submission requirement continues to apply to a company that amends its plans, or to a new company that enters the market.

Estimate of Information Collection Burden

In 1986, staff estimates that as many as ten domestic and four foreign smokeless tobacco companies would submit plans specifying the method used to rotate, display, and distribute health warnings in their labeling and advertising. This prediction was accurate. Fourteen plans were received.

When the regulations were first proposed, representatives of the Smokeless Tobacco Council, Inc., indicated that six companies that it represented would require a total of 700 to 800 hours (or about 133 hours apiece, on average) to prepare the required plans. We also assumed that the other companies, whose plans were prepared by other representatives, would require more time, on average, and used 150 hours per plan to account for the remainder of the expected submissions. Based on these assumptions staff estimated that no more than 2,000 hours would be spent to prepare and submit compliance plans. (Six companies total=800 hours, plus eight companies at 150 hours=1,200 hours.) The Commission provided a burden estimate to OMB of 2,000 hours for the reporting requirements.

In 1992, the Commission proposed amendments to the rotation of health warnings on point-of-sale and non-point-of-sale promotional materials. Pursuant to the proposed amendment, affected firms will have to submit new plans for Commission approval. The amendment of previously submitted plans to incorporate plans for promotional materials should require less time than was devoted to the original submissions. As in 1992, there is no substantial basis for calculating the proportion of the original burden estimate that will be attributable to the amendment process and accordingly, the Commission proposes to retain the existing burden estimate for purposes of seeking this extension.

DATES: Comments on this application must be submitted on or before August 28, 1995.

ADDRESSES: Send comments both to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, ATN: Desk Officer for the Federal Trade Commission, and the Office of the Secretary, Room 159, Federal Trade Commission, Washington, D.C. 20580. Copies of the application may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Phillip S. Priesman, Attorney, Federal Trade Commission, Washington, D.C. 20580 (202) 326–2484.

Stephen Calkins,

General Counsel.

[FR Doc. 95–18595 Filed 7–27–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–96]

ATSDR's Final Criteria for Determining the Appropriateness of a Medical Monitoring Program Under CERCLA

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the criteria for determining the appropriateness of a medical monitoring program under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Draft criteria were published for public comment on September 9, 1994 (59 FR 46648). The public comment period ended October 24, 1994. Comments were received from 15 individuals representing States, industry, activist groups, and environmental medicine clinics. This document reflects those comments received on the draft criteria.

ADDRESSES: Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–31, Atlanta, Georgia 30333, telephone (404) 639–6200.

FOR FURTHER INFORMATION CONTACT: Dr. Wendy E. Kaye, Chief, Epidemiology and Surveillance Branch, Division of Health Studies, ATSDR, telephone (404) 639–6203.

SUPPLEMENTARY INFORMATION: Section 104(i)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i)(9)], provides for the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) to initiate a health surveillance program for populations at significantly increased risk of adverse health effects as a result of exposure to hazardous substances released from a facility. A program included under health surveillance is referred to as "Medical Monitoring or Screening" by ATSDR and is defined in the legislation as "the periodic medical testing to screen people at significant increased risk for disease." ATSDR has established criteria to determine when medical monitoring is an appropriate health activity and the requirements for establishing a medical monitoring program at a site. The legislation also states that a mechanism to refer people for treatment should be included in the program. Statutory language only allows ATSDR to provide medical care or treatment in cases of public health emergencies as declared by the President.

Background

ATSDR is responsible for the public health-related activities of CERCLA. ATSDR's primary initial response at a hazardous waste site is the public health assessment, which is required for every site on the National Priorities List (NPL). A public health assessment can also be conducted in response to a petition from the public. Other important components of ATSDR's initial response at sites include health consultations and public health advisories. During the process of developing the public health assessments and health advisories, ATSDR invites the participation of communities through a variety of avenues such as public meetings, public availability sessions, and Community Assistance Panels (CAPs). The documents produced by ATSDR during the process are placed in a public repository to allow the public access to the documents. The public health assessments, health consultations, and public health advisories undergo review by ATSDR to determine if follow-up health-related activities are needed for populations at risk in the affected community.

The types of follow-up health activities recommended for a site will depend on the amount of information on the possible exposures and their suspected pathways. In any case in which an association has not been established between an exposure and a specific adverse health outcome, several research and health education activities may be considered. Those activities could include health outcome studies, an exposure assessment at the site, epidemiologic studies, or professional education.

ATSDR's Division of Health Assessment and Consultation has established a program for the investigation of exposures in communities which enables a more timely response to questions on whether individuals in a community are being exposed. The program incorporates a variety of industrial hygiene techniques for measuring chemicals in the environment, as well as selected biological markers of exposure.

The Division of Health Education provides a wide variety of services to educate health care professionals and communities on the effects of exposures to hazardous substances. Activities in a community around a hazardous waste site may include conducting grand rounds for health care providers on the effects of a specific chemical, providing fact sheets on chemicals, conducting workshops on clues to environmental disease, and producing case studies in environmental medicine.

The Division of Health Studies is responsible for conducting epidemiologic research, including several types of studies (cluster investigations, disease and symptom prevalence studies, analytic epidemiologic studies), surveillance programs, and exposure registries. Cluster investigations and disease and symptom prevalence studies investigate the occurrence of disease in populations. Analytic epidemiology studies are conducted to evaluate the causal nature of associations between exposure to hazardous substances and disease outcomes. The surveillance program focuses on exposures to substances at hazardous waste sites and includes systems that follow populations exposed to hazardous wastes because of where they live or their occupation. It also includes surveillance of emergency events in which hazardous substances are released into the environment. The National Exposure Registry maintains a listing of people exposed to hazardous substances. The Registry is composed of chemical specific subregistries. The chemicals are selected from the ATSDR/EPA priority list of hazardous substances.

Medical monitoring is considered one of several follow-up health activity options under the site-specific work conducted by ATSDR. A medical monitoring program for the community around a site will be considered with other health follow-up activities when the information from ATSDR's initial response at the site is reviewed. In cases in which there is no known association between the exposure and specific adverse health effects (which could include health outcomes, illnesses, or markers of effect), medical monitoring is not an appropriate public health activity. In cases in which there is limited information on a specific health effect's relationship to an exposure, then options such as epidemiologic surveillance, a disease and symptom prevalence study, or an epidemiologic study are more appropriate. When adequate information exists that links exposure to a chemical with a specific adverse health effect, further consideration will be given to the appropriateness of medical monitoring in that population.

Medical monitoring should be directed toward a target community identified as being at "significant increased risk for disease" on the basis of its exposure. Significant increased risk will vary for particular sites depending upon such factors as the underlying risk of the selected outcome, the risk attributable to the exposure, and the presence of sensitive subpopulations. These factors will be considered when evaluating the appropriateness of medical monitoring in a community. The CERCLA legislation also provides for a mechanism for referral for treatment of those who are screened positive for the selected health outcomes; therefore, a mechanism to refer people for diagnosis, interventions, or treatment should be in place prior to the initiation of a medical monitoring program.

The primary purpose of a medical monitoring program is not considered to be a research activity that further investigates the cause-effect relationship between exposure and outcome. The purpose of a medical monitoring program is case-finding in order to refer individuals for further evaluation and, as appropriate, treatment. Within this framework, medical monitoring includes both testing for early biological effect and an assessment of exposure using biological specimens (for example, blood or urine), when appropriate. This is provided as a service to individuals in communities where there is believed to be an increased risk of disease from exposure to hazardous substances released into the environment.

Criteria for Considering Medical Monitoring

The criteria outlined below will be used to determine the appropriateness of conducting medical monitoring in a community and will be applied in a phased approach. Phase I, conducted by ATSDR, consists of an evaluation of the exposure and outcome criteria. Phase II consists of an evaluation of the system criteria. Phase II will be conducted with the input of a panel consisting of community, State and local health officials, and ATSDR. At the end of Phase II, a detailed medical monitoring plan will be written at sites where a monitoring program is established. All of the criteria must be met at a site in order for a medical monitoring program to be established at that site. In addition, resources must be available to initiate and sustain the program.

Phase I

Exposure Criteria

A. There should be evidence of contaminant levels in environmental media that would suggest the high likelihood of environmental exposure to a hazardous substance and subsequent adverse health outcomes.

The National Research Council (NRC) defines exposure as "an event that occurs when there is contact at a boundary between a human and the environment at a specific contaminant concentration for a specified period of time; the units to express exposure are concentration multiplied by time" (NRC, 1991). The specific contaminant concentration and period of time will vary for different chemicals and different media. The exposure must be to a hazardous substance as defined under CERCLA, and the result of a release from a CERCLA-covered facility. A release from a CERCLA-covered facility includes those events that establish an open pathway of exposure (i.e., an unfenced area with high soil contamination could be considered a "release") or allows contaminants to go off-site via air, surface water, ground water, or other pathway. The primary criteria for medical monitoring should be documented evidence of exposure of a population to a hazardous substance in the environment. An exposure will be considered to be at a sufficient level if there is documentation of an increased opportunity for exposure to a level that meets or exceeds some health-based comparison value (such as Minimum Risk Levels (MRLs) or Reference Doses (RfDs)) or that meets or exceeds a level reported in the peer-reviewed literature to result in some adverse health effect. Documentation is considered sufficient if it is from an exposure assessment, environmental exposure modeling, or sampling from a general area (for example, water samples from an aquifer or a town water supply). Documentation of individual levels of exposure is not required. In cases in which exposures are unknown or undocumented, environmental monitoring is a more appropriate initial activity.

B. There should be a well-defined, identifiable target population of concern in which exposure to a hazardous substance at a sufficient level has occurred.

Initially, the target population of concern will be defined geographically on the basis of exposure. In addition, all populations considered will be assessed for the presence of any sub-population at increased risk of the adverse health effects associated with the exposures. An example of a subpopulation at increased risk would be preschool children in an area with known lead exposures. The size of the target population of concern is not a factor in the decision for monitoring. In areas where biological markers of exposure have not been collected, environmental sampling can be used to estimate exposure levels. The target population of concern is the population in which there is documented exposure at a sufficient level to place the individuals in that population at significant increased risk for developing some specific adverse health effect.

Outcome Criteria

A. There should be documented human health research that demonstrates a scientific basis for a reasonable association between an exposure to a hazardous substance and a specific adverse health effect (such as an illness or change in a biological marker of effect).

Previous studies on human populations must demonstrate a reasonable association between a particular exposure and an adverse health effect. In order to make that inference, consideration should be given to the strength, specificity, and consistency of the association among the identified studies. The period of exposure (including the timing and duration of the exposure) and its relationship to the latency period for the disease or illness should also be examined if information is available. Consideration should be given to whether the association has demonstrated a dose-response relationship and whether the association is consistent with the existing body of knowledge. This information could include a variety of occupational, epidemiological, or other studies involving human populations.

B. The monitoring should be directed at detecting adverse health effects that are consistent with the existing body of knowledge and amenable to prevention or intervention measures.

The monitoring should be established for specific adverse health effects. The specific adverse health effect being monitored should be a result of the possible exposure consistent with the existing body of knowledge. An adverse health effect is consistent with the existing body of knowledge if it has been described in the literature as caused by that agent or by similar agents, taking into account structure-activity relations.

In addition, the adverse health effects (disease process, illness, or biomarkers of effect) should be such that early detection and treatment or intervention

interrupts the progress to symptomatic disease, improves the prognosis of the disease, improves the quality of life of the individual, or is amenable to primary prevention. If the adverse health effects that are of concern in an individual or in a community are not easily detectable and not medically treatable, then medical monitoring would not be beneficial and would not be an appropriate public health activity. An easily detectable effect is one that can be found on clinical examination, or through the use of simple, diagnostic tests in an outpatient setting. Also, the test procedures must be acceptable to the patient and the community. The diagnostic tests must be nonexperimental, relatively noninvasive (such as the drawing of a tube of blood for laboratory tests), and simple to administer.

Monitoring for Evidence of Continuing Exposure

At sites with exposure in the community, the monitoring program might include biological markers of continuing exposure. For example, the Bunker Hill Superfund site has had lead screening of children for many years. Those sites would be ones in which the exposure is known to have a variety of adverse health effects, but for which no tests are available to detect those effects at a time when intervention could affect the course of the disease process. In those instances, the primary intervention is to remove the individual from the exposure. This allows the medical monitoring system to recommend referral for intervention prior to the onset of detectable adverse health effects. A monitoring system that includes biomarkers of continuing exposure is similar to medical surveillance of hazardous waste workers where changes indicative of increasing or continued exposures occur sufficiently early that the exposure can be curtailed and the risk for disease reduced (Gochfeld 1990).

Phase II

General Information

Phase II of the program is carried out by ATSDR with assistance from the community. When ATSDR has determined that exposure from a site has met the exposure and outcome criteria, a site panel will be formed based on recommendations from the community and the State and/or local health departments to review the system criteria and to assist in the development of a site-specific medical monitoring plan. The site panel will include representatives from ATSDR, the community, State or local health departments, local medical societies, and subject experts as necessary. The site panel will function in much the same manner as the Community Assistance Panels (CAPs) that are established at some sites during the public health assessment process. The site panel will follow the established procedures for those CAPs. The site panel will be responsible for assessing the available community health resources and determining the feasibility and extent of the screening program for the community. If the panel determines that a screening program is feasible in the community and ATSDR concurs with that decision, ATSDR will develop a site-specific monitoring plan. That plan will be presented to the site panel for review and concurrence. After the plan has been developed and has undergone peer review, it will be presented to the community at large for their input prior to establishing the program.

System Criteria

A. The general requirements for a medical screening program should be satisfied.

The monitoring aspect of a health surveillance program consists of the periodic medical testing to screen individuals who are at increased risk of disease. Monitoring serves to identify those individuals with an unrecognized adverse health effect. This is consistent with the definition of screening as "the presumptive identification of unrecognized disease or defect by the application of tests, examinations, or other procedures which can be applied rapidly. Screening tests sort out apparently well persons who probably have a disease from those who probably do not. A screening test is not intended to be diagnostic. Persons with positive or suspicious findings must be referred to their physicians for diagnosis and necessary treatment." (Commission on Chronic Illness, 1957) In general, the ability to predict the presence or absence of disease from test results depends on the sensitivity and specificity of the test and the prevalence of the disease in the population being tested. The higher the prevalence, the more likely a positive test indicates disease (Mausner & Kramer, 1985). In order for a screening program to be of public health benefit, the population being screened should be at a significantly high risk for the undiagnosed disease (i.e., the disease should have a sufficiently high prevalence in the population).

Given that definition, there are certain requirements for screening programs that should be considered when evaluating a possible medical monitoring program for a site (adopted from Mausner & Kramer, 1985). Those requirements are:

★ The natural history of the disease process should be understood sufficiently for screening.

★ The early detection through screening should be known to have an impact on the natural history of that disease process. For example, the detection of breast cancer while it is localized has been shown to increase the ten-year survival rate. For that reason, several groups have made recommendations for the early detection of breast cancer in asymptomatic women. Those recommendations include breast self-examination, breast physical examination, and mammography (Mettlin & Dodd, 1991; Kelsey & Gammon, 1991).

★ There should be an accepted screening test that meets the requirements for validity, reliability, estimates of yield, sensitivity, specificity, and acceptable cost. The purpose of ATSDR-sponsored medical monitoring is not to develop new screening tests. The medical monitoring program will use tests that have been recommended and used for screening in other settings.

The U.S. Preventive Services Task Force has established criteria for determining the effectiveness of preventive strategies including screening tests. The criteria for effectiveness of a screening test include the efficacy of the screening test and the effectiveness of early detection. The Task Force used efficacy to mean accuracy and reliability. The accuracy is measured using four indices: sensitivity, specificity, positive predictive value, and negative predictive value (see table below for definitions). A test with poor sensitivity will result in a large proportion of persons with disease being told they are free of disease (false-negatives). A test with poor specificity will result in healthy persons being told they have the disease (false-positives). There may be serious consequences in the use of screening tests with poor sensitivity and/or specificity. Persons with false negative results may have delays in diagnosis and treatment. False positive results can result in follow-up testing that is uncomfortable, expensive and potentially harmful. The evaluation and selection of a screening test must include a determination of the likelihood of producing false positive results (the positive predictive value (PPV)). The PPV changes in accordance with the prevalence of the condition in the screened population. PPV is unlike sensitivity and specificity in that it is not a constant characteristic of a screening test. If the condition is sufficiently rare in the screened population, even tests with excellent sensitivity and specificity can have low PPV, having more false positive results than true positive results.

Another important aspect in determining the efficacy of a screening test is the reliability of the test. The reliability (reproducibility) is the ability of the test to give the same result when it is repeated. An accurate test with poor reliability can produce results that vary widely from the correct value, even though the average of the results approximates the true value. Poor reliability may be due to either interobserver variation or intraobserver variation (U.S. Preventive Services Task Force, 1989).

DEFINITION OF TERMS

Term	Definition	Formula*
Sensitivity	Proportion of persons with the condition who test positive.	a / a + c
Specificity	Proportion of persons without the condition who test negative.	d / b + d
Positive Predictive Value	Proportion of persons with positive test who have condition.	a / a + b
Negative Predictive Value	Proportion of persons with negative test who do not have the condition.	d / c + d

*Explanation of Symbols	Condition absent	Condition present
Positive Test	a	b
Negative Test	c	d

Legend: a=true +; b=false +; c=false −; d=true −.

★ The screening program should be one that is feasible and acceptable to individuals and the community. Therefore, plans and possible screening tests for a medical monitoring program will be presented to the community for input prior to the initiation of any recommended program.

B. An accepted treatment, intervention, or both, for the condition (outcome or marker of exposure) must exist and a referral system should be in place prior to the initiation of a medical monitoring program.

There should be established criteria for determining who should receive referral for intervention or treatment. These criteria will be based on the selected effect being screened for and the screening test being used. Results will be evaluated by ATSDR longitudinally and cross-sectionally to identify changes in the system or screening tools that require follow-up (Gochfeld 1990). A referral mechanism should exist so that those who are eligible for the intervention can be referred to a qualified health care provider for further diagnosis, treatment, or intervention. The referral must be for treatment or intervention that is standard practice and not experimental in nature. The medical monitoring (screening) program is not responsible for the cost of the referral, the intervention, or the treatment of individuals participating in the program.

C. The logistics of the system must be resolved before the program can be initiated.

After medical monitoring has been determined to be appropriate for a site, the specifics of the monitoring system will be detailed in a site-specific medical monitoring plan. The site panel consisting of the community members, appropriate health officials, and subject experts as necessary will work with ATSDR to develop and review the site-specific medical monitoring plan. The specifics of the medical monitoring system recommended can vary for each site. The monitoring plan is the protocol for the specific program to be proposed in a community. The plan will outline the target community, the types of outcomes to be screened for, the participants in the referral system, and the program reports. The plan will include a review of the latency period for the outcomes being monitored and the duration of the exposure to define the period of time that the program will operate in a specific site population. The target population; the completeness with which the exposed population can be identified, contacted, and followed; the screening tests; and the selected health outcomes will all influence the specifics of the system. Existing medical facilities and personnel will be used when possible.

The monitoring plan will be submitted for peer review prior to its implementation at a site. The plan for a site might require additional review by an expert panel (ethicists, NRC) to evaluate the screening tests recommended. ATSDR's Division of Health Studies will work closely with the Division of Health Education to provide professional health education when needed to enhance the medical monitoring program.

Medical monitoring is one of ATSDR's service activities and is not considered to be a research tool. The monitoring activity at each site will be routinely evaluated for the effectiveness of the screening tests in place and the types of effects being detected. Due to confidentiality issues in dealing with small groups of people, the reporting from the system will consist of annual reports noting the number of individuals screened, the number of referrals made, and the number of conditions diagnosed in the referral system. ATSDR will develop a list that includes information on the types of exposures seen in the communities and the types of screening tests that were included in the monitoring. ATSDR can provide this information as available to the site panels to assist them in deciding on the types of screening tools based on what has been used in other areas.

The referral system will consist of the review of the screening results and the referral to appropriate health care providers or referral physicians. The specific mechanisms for determining who needs referral and for selecting the health care providers in the referral pool must be in place prior to the initiation of the medical monitoring. Once the participant has been referred to the

referral providers, those providers will be responsible for any subsequent diagnosis, treatment, or intervention.

Summary of Medical Monitoring

Medical monitoring will be considered along with the other health follow-up activities to be recommended for populations around specific sites. The Division of Health Studies will make a determination on whether a site meets the exposure and outcome criteria for medical monitoring. If a site meets the previously discussed criteria and is selected for further consideration of a medical monitoring program, ATSDR will work with the community and other appropriate entities in designing the specific monitoring and referral system for that site's target population. ATSDR will notify, and where appropriate, work with the state health department to establish the program. The Division of Health Studies will monitor the program and be responsible for the oversight on the annual reports.

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Dated: July 24, 1995.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–18578 Filed 7–27–95; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

[Announcement 582]

Analytic Studies to Elaborate the Impact of Race, Ethnicity, and Socioeconomic Status Upon the Health of Minority Populations

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for cooperative agreements to conduct analytic studies to elaborate the impact of race, ethnicity, and socioeconomic status (SES) upon the health of minority populations in the United States. Research sponsored by this announcement will focus on the performance of special studies and analyses of existing data to:

1. Identify the critical features of SES which determine health, delineate the mechanisms and processes whereby social stratification produces disease, and specify the psychological and interpersonal processes that can intensify or mitigate the effects of social structure on health behaviors, access to care, and health outcomes;

2. Explore the need for more accurate descriptions of racial and ethnic status to monitor the differential impact of health policy changes and system reform on minority subpopulations; and,

3. Increase understanding of the impact of ethnicity on health by identifying the ways in which SES, cultural factors, and racial/ethnic variables and discrimination impact on health behaviors, access to health care, and health outcomes.

The "Disadvantaged Minority Health Improvement Act of 1990" (Pub.L. 101–527) which established the Minority Health Statistics Grants Program and subsequent reauthorizing legislation contained in the "Preventive Health Amendments of 1993" (Pub.L. 103–183), recognized the need for improved and refined data to monitor and focus on the differences in health status between and among minority populations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Surveillance and Data Systems. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under section 306(m) of the Public Health Service Act [42 U.S.C. 242k(m)] as amended.

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by nonprofit organizations and institutions, and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, are eligible to apply.

Availability of Funds

Approximately $500,000 will be available in FY 1995 to fund approximately 3 to 7 awards ranging from $50,000 to $200,000. It is expected that the average award will be $150,000. It is expected that the awards will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Applications requesting funds greater than an upper limit of $250,000 total costs for any 12-month budget period will be returned to the applicant without review. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this program announcement is to support special studies and analyses that will elucidate the impact of race/ethnicity and SES upon the health of minority populations in the United States.

Research priorities for race/ethnicity and SES have been divided into several categories. Genetics is an important variable; however, it diverts attention from the more influential social and environmental differences which have erroneously been attributed as race differences. Implicit in these priorities are a number of methodological and analytical issues, such as finding and sampling small groups as well as developing new statistical techniques to analyze new and existing data, which need to be addressed in order to investigate these issues:

Special Studies

- Special studies of minority population to examine changes in behavior, wealth, generational (e.g., immigration); historical (e.g., political, social); population migration (within the United States/in and out of the United States); family structure, and lengthening life span.
- Focused studies on rare populations to address a need for a national origin and generational research, and supplemental race and ethnic descriptors in addition to other identifiers (e.g., the concept of underserved populations can help to eliminate racial lumping).
- Critical synthesis of past theoretical and empirical research on race and ethnicity and SES.
- Studies of the impact of migration, acculturation, and other processes on the health status of minority groups and subgroups.
- Studies of the appropriateness, reliability, and validity of health measures for particular ethnic groups, taking into consideration values, beliefs, and externally-imposed factors that need to be addressed.
- Identify and define the intervening mechanisms that link SES with health service utilization and health status.
- Identify and use additional measures of SES on race and ethnicity classification—including measures of family structure and living arrangements, new measures of economic status (e.g., wealth, per capita income), acculturation, residence, labor force participation (including females), religion/spirituality, alienation, SES in early life.
- Conduct comprehensive studies of stress in family, residential, and occupational environments including financial strain and exposure to discrimination.
- Studies of populations currently in transition.
- Study the use of alternative health resources which supplant traditional resources.
- Conduct research designed to understand and improve self- reporting of race and ethnicity, including:

—how minority populations self-identify and report (cognitive process, etc.),
—effects of mixed parentage, and
—effects of self-identification or self-reporting of persons of biracial or multiracial background.

- Test the reliability of race and ethnic information on vital and medical records (self-reports vs. proxy reports with a focus on mortality statistics and underreporting).
- Conduct research on capturing racial and ethnic information via provider records.
- Conduct special studies and/or analyses to understand the health of racial and ethnic populations where there are known data gaps including:

—the effect of age, gender, generation, education, birthplace, on health status;
—social, economic, environmental (social and physical) and psychological factors affecting health status;
—mental health and stress;
—sources of medical care, prevention care, and payment mechanisms;
—cultural factors affecting health status (e.g., acculturation, assimilation, etc.); and
—alternative health care vs. health status outcome.

- Conduct research to develop additional or enhanced predictors of health status that can explain observed differences between race and ethnic populations, including SES status measures such as:

—generational status
—measures of family structure and living arrangements
—wealth
—per capita income
—labor force participation (including women)
—SES in early life
—income to needs comparisons
—other variables such as: cultural, environmental, and societal.

- Develop and test analytical approaches to better understand the relationship between race, ethnicity, and SES as they pertain to or affect health outcomes.
- Studies to examine the relationship between self actualization, self-esteem, social support and health status or perceived health status among racial/ethnic groups.
- Studies to address environmental equity issues, including psycho/social environments.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

Where applicable recipients will involve community-based organizations, members of the minority population under study, and researchers from universities or private nonprofit organizations throughout the research process. Involvement in these activities may include research design, implementation, analysis, and dissemination of research results. The applicant must address why the involvement of any of the above-referenced groups is not relevant to the proposed project.

In addition, all recipients are expected to determine whether their proposed projects meet the criteria of the Protection of Human Subjects (45 CFR Part 46) requiring review by an institutional review board (IRB). If an IRB review is required and the applicant does not have the capacity to perform an IRB review, the applicant is strongly encouraged to enter into a partnership with universities or other organizations with the capacity to conduct an IRB review.

Each recipient will address the activities in one or both of the following areas, as appropriate:

1. Special studies or analyses

a. Identify a problem or population where there is a unique opportunity to conduct analytic studies or there are gaps in existing information as identified through the research literature, "Healthy People 2000," and/or references cited in the "Where to Obtain Additional Information" section.

b. Identify and define available sources of information and assistance for performing special studies or analyses (e.g., NCHS and other Federal organizations, State/local health departments, universities, survey research organizations, existing Centers of Excellence, community-based organizations, etc.).

c. Develop the research design, implementation and analytic plans for the conduct of special studies or analysis. Applicants should consider the professional acceptability of their methodologic approach (peer review journals/statistical standards, etc.), specific expectations of methods used, comparability to national data sources, and generalizability to other groups or subgroups.

d. Execute the planned study.

e. Disseminate research findings in publications, reports, etc., and within the respective community.

B. CDC Activities

1. Assist in the refinement of analytic and research plans.

2. Make available other information and technical assistance from government sources, as appropriate.

3. Provide liaison with other government agencies, as appropriate.

4. Provide technical assistance on individual analytic and research projects, including those conducted by sub-grantees, as appropriate.

Evaluation Criteria

Applications will undergo an initial peer review evaluation according to the following criteria:

1. The likelihood that new knowledge gained will subsequently contribute to improvement of the ability of the scientific community to identify and meet the data needs of the future. Factors to be considered include: uniqueness of the project objectives and their consistency with program priorities; and the generalizability of the project findings. (25 points)

2. Understanding the technical and substantive issues and the research priorities the project proposes to address; clarity, feasibility, and practicality of the goals and objectives of the project as well as the plan to meet them. (20 points)

3. Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems and proposed solutions; conformance with accepted scientific standards, principles and techniques; and the feasibility and appropriateness of the proposed evaluation plan and mechanism. (20 points)

4. Substantial involvement of community-based organizations and indigenous populations in the research project; links to existing research networks and infrastructures at the local, State and/or national level. (20 points)

5. Capabilities of the proposed investigators, including qualifications, relevant experience in the content and execution of the proposed project, and adequacy of project management to keep project on track and on schedule. (15 points)

A second-level program review will be conducted by senior Federal staff on applications referred from the initial review. All referred applications will be evaluated on an individual basis according to the criteria below:

1. The results of the objective review.

2. Balance in addressing the various racial and ethnic groups and geographic areas.

3. Non-duplication of currently-supported research activities.

4. Generalizability and comparability of research results.

5. Match with available technical assistance.

6. Impact on program budget.

Awards will be made based on merit and priority score ranking by the peer review, program review by senior Federal staff, and the availability of funds.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services' Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Services (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Letters of Intent

Although it is not a prerequisite to apply, potential applicants are encouraged to submit a non-binding letter of intent to the Grants Management Officer (whose address is given in the section titled "Application Submission and Deadline"). It should be postmarked on or before August 15, 1995. The letter should include a brief summary of the research proposal and the names and addresses of the principal investigators. This letter does not influence review or funding decisions. Rather, it enables CDC to effectively plan for the review.

Application Submission and Deadline

The original and five copies of the application PHS form 398 (OMB Number 0925–0001) or PHS form 5161–1 (OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–16, Atlanta, Georgia 30305, on or before August 31, 1995. (Note: local governments may use PHS form 5161–1; however, PHS form 398 is preferred. If using PHS form 5161–1, submit an original and two copies to the address stated above.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package and business management assistance may be obtained from: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404)842–6521.

Programmatic technical assistance may be obtained from Audrey L. Burwell, Grants Coordinator, National Center for Health Statistics, Room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301)436–7062 (E-mail address: AZB2@NCH11a.em.cdc.gov).

Please refer to Announcement Number 562 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202)512–1800.

Information regarding the "Directory of Minority Health Data Resources of the Public Health Service" may be obtained from an information specialist at the Office of Minority Health Resource Center, P.O. Box 3733, Washington, DC 20013–7337, telephone 1–800–444–6472.

Information regarding the "1992 NCVHS Annual Report and the Minority Health Statistics Grants Program Factsheet", "Setting a Research Agenda: Challenges for the Minority Health Statistics Grants Program", and "Race and Ethnic standards for Federal Statistics and Administrative Reporting" may be obtained from Sara Lewis, Program Analyst, National Center for Health Statistics, Room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301)436–7062 (E-mail address: SRD1@NCH11a.em.cdc.gov).

Dated: July 24, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18579 Filed 7–27–95; 8:45 am]

BILLING CODE 4163–18–P

National Institutes of Health

Meeting of the National Advisory Council for Human Genome Research

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, September 11 and 12, 1995, Embassy Suites Chevy Chase Pavilion, Chevy Chase I and II, 4300 Military Road NW., Washington, DC.

This meeting will be open to the public on Monday, September 11, from 8:30 a.m. to 11:30 a.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 11 at 11:30 a.m. to recess and on September 12 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 605, Bethesda, Maryland 20892, (301) 496–0844, will furnish the meeting agenda rosters of Committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 402–2205, two weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18529 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Notice of Meeting of the National Advisory Research Resources Council and its Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health. This meeting will be open to the public as indicated below, to discuss program planning; program accomplishments; administrative matters such as previous meeting minutes; the report of the Director, NCRR; review of budget and legislative updates; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide a summary of meeting and a roster of the members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Name of Committee: The Subcommittee on Planning of the National Advisory Research Resources Council.

Executive Secretary: Louise Ramm, Ph.D., Deputy Director, National Center for Research Resources, Building 12A, Room 4011, Bethesda, MD 20892, Telephone: (301) 496–5023.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room 3B41, Building 31B, Bethesda, Maryland 20892.

Open: September 7, 7:30 a.m.–8:45 a.m.

Name of Committee: National Advisory Research Resources Council.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, Maryland 20892.

Open: September 7, 9 a.m. until recess.

Closed: September 8, 8 a.m. until 9:30 a.m.

Open: September 8, 9:30 a.m. until adjournment.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health.)

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18534 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 18–19, 1995, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public from 11 a.m. to 6 p.m. on September 18, and from 8:30 a.m. to 10:30 a.m. on September 19, for the discussion of program policies and issues, opening remarks, report of the Acting Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 18 from 8:30 a.m. to 11 a.m., and on September 19, from 10:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AS–43H, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, Maryland 20892, telephone: 301–594–4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960.

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18530 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 14–15, 1995, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 14 from 8:30 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on September 14 and from 8:30 a.m. to adjournment on September 15 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–18532 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Collaborative Research Program in Bronchopulmonary Dysplasia (BPD).

Date: August 14–15, 1995.

Time: 7:00 p.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Anthony M. Coelho, Jr., Ph.D., Rockledge II, Room 7182, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0277.

Propose/Agenda: To review and evaluate grant applications

Name of SEP: Insulin in Resistance Atherosclerosis Study (IRAS) (Telephone Conference Call).

Date: August 16, 1995.

Time: 10:00 a.m.

Place: Rockledge II, Room 7178, 6701 Rockledge Drive, Bethesda, Maryland.

Contact Person: David M. Monsees, Ph.D., Rockledge II, Room 7178, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18536 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meetings of the Deafness and Other Communication Disorders Programs Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the Deafness and Other Communication Disorders Programs Advisory Committee. The meetings are open to the public and will take place as telephone conference calls originating in Room 400C, 6120 Executive Blvd., Rockville MD 20852.

Date: September 5, 1995.

Time: 12 pm to 2 pm.

Purpose/Agenda: To discuss future scientific initiatives in the areas of voice, speech, and language.

Date: September 6, 1995.

Time: 12 pm to 2 pm.

Purpose/Agenda: To discuss future scientific initiatives in the areas of hearing, balance, and vestibular.

Date: September 8, 1995.

Time: 12 pm to 2 pm.

Purpose/Agenda: To discuss future scientific initiatives in the areas of smell and taste.

Contact Person: Ralph F. Naunton, M.D., Director, Division of Human Communication, NIDCD/NIH, 6120 Executive Blvd. MSC 7180, Bethesda MD 20892, (301) 496–1804.

Summaries of the meetings and rosters of the members may be obtained from Dr. Naunton's office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Naunton prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18535 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 14–15, 1995, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 14 from 9 a.m. to approximately 3:30 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 14 from approximately 3:30 p.m. to recess and from 9 a.m. to adjournment on September 15, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Kim Whitcher, Council Secretary, NIEHS, PO Box 12233, Research Triangle Park, N.C., 27709 (919–541–7723), will provide summaries of the meeting and rosters of council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Whitcher in advance of the meeting.

Dr. Anne Sassaman, Director and Executive Secretary, Division of Extramural Research and Training, NIEHS, PO Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–18533 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute of Neurological Disorders and Stroke (NINDS).

The National Advisory Neurological Disorders and Stroke Council and its subcommittee meetings will be open to the public as indicated below. Attendance by the public will be limited to space available.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed for the meeting.

Name of Committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council.

Date: September 20, 1995.

Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 1:30 p.m.–recess.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Dates: September 21–22, 1995.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Open: September 21, 9 a.m.–approximately 3 p.m.

Agenda: A report by the Director, NINDS; a report by the Director, Division of Extramural Activities, NINDS; and a presentation by a NINDS grantee.

Closed: September 21, approximately 3 p.m.–recess; September 22, 8:30 a.m.–adjournment.

Executive Secretary: Constance W. Atwell, Ph.D., Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9248.

The following meetings will be totally closed to review and evaluate grant applications.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Date: October 11–13, 1995.

Time: October 11, 7:30 p.m.–recess; October 12, 8 a.m.–recess; October 13, 8 a.m.–adjournment.

Place: Hampshire Hotel, 1310 New Hampshire Avenue, N.W., Washington, DC 20036.

Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

Name of Committee: Neurological Disorders Program Project Review A Committee.

Date: October 25–27, 1995.

Time: October 25, 7:30 p.m.–recess; October 26, 8:30 a.m.–recess; October 27, 8:30 a.m.–adjournment.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dr. Katherine Woodbury, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–14, Bethesda, MD 20892, (301) 496–9223.

Name of Committee: Training Grant and Career Development Review Committee.

Date: November 8–10, 1995.

Time: November 8, 9 a.m.–recess; November 9, 8:30 a.m.–recess; November 10, 8:30 a.m.–adjournment.

Place: Hyatt Islandia, San Diego's Mission Bay, 1441 Quivira Road, San Diego, CA 92109–7896.

Contact Person: Dr. Alfred Gordon, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–14, Bethesda, MD 20892, (301) 496–9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–18531 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 8, 1995.

Time: 4:00 p.m.

Place: NIH, Rockledge II, Room 4208, Telephone Conference.

Contact Person: Dr. Anita Weinblatt, Scientific Review Administrator, 6701 Rockledge Drive, Room 4208, Bethesda, MD 20892, (301) 435–1224.

Name of SEP: Chemistry and Related Sciences.

Date: August 10, 1995.

Time: 2:30 p.m.

Place: NIH, Rockledge II, Room 4150, Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, MD 20892, (301) 435–1719.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 14, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 4200, Telephone Conference.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, MD 20892, (301) 435–1219.

Name of SEP: Chemistry and Related Sciences.

Date: August 15, 1995.

Time: 10:00 a.m.

Place: NIH, Rockledge II, Room 4150, Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, MD 20892, (301) 435–1719.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18537 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Mouse Monoclonal Antibodies Specific for Normal Primate Tissue, Malignant Human Cultured Cell Lines and Human Tumors

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent 5,242,813, U.S. Patent Applications 08/051,133 and 08/363,203 and corresponding foreign patent applications entitled "Mouse Monoclonal Antibodies Specific For Normal Primate Tissue, Malignant Human Cultured Cell Lines and Human Tumors" to Pharmacia, S.P.A. of Milano, Itlay. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention includes three murine monoclonal antibodies (MAb), B1, B3 and B5. These antibodies react strongly with the Lewis Y blood group antigen on many human solid tumors but weakly with normal human tissues. MAb B3 reacts strongly with 10% of transitional cell carcinomas of the bladder, 75% of adenocarcinomas of the colon, 70% of adenocarcinomas of the lung, 65% with adenocarcinomas of the prostrate, 40% of squamous cell carcinomas of the lung and 25% of large cell carcinomas. MAb B3 reacts heterogeneously with 70% of breast carcinomas. Several important characteristics of this antibody make it an ideal candidate for further development: (1) Its strong and uniform reactivity with many human solid carcinomas; (2) its limited reactivity with normal tissues; (3) its expression on both human and monkey tissues will allow for predictive preclinical toxicology studies in monkeys. Additionally, these antibodies, when incorporated as the targeting element of an immunotoxin, have been shown to allow efficient entry of toxin agents into cells. These antibodies should be useful in the diagnosis and treatment of some forms of cancer.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 247; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the any field of use filed in response to this notice will be treated as objections to the grant to the contemplated licenses. Only written comments and/or applications for a license which are received by NIH on or before September 26, 1995 will be considered. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 17, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–18528 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–47]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David Pollack, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing-and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. THe properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (This is not a toll-free number).

Dated: July 21, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 07/28/95

Unsuitable Properties—Building (by State)

Washington

Bldg. 101
Pacific Northwest Fleet Recreation and Education Support Center
Pacific Beach, WA
Landholding Agency: Navy
Property Number: 779530001
Status: Excess
Reason: Extensive deterioration.

Bldg. 129
Pacific Northwest Fleet Recreation and Education Support Center
Pacific Beach, WA
Landholding Agency: Navy
Property Number: 779530002
Status: Excess
Reason: Extensive deterioration.

Bldg. 131
Pacific Northwest Fleet Recreation and Education Support Center
Pacific Beach, WA
Landholding Agency: Navy
Property Number: 779530003
Status: Excess
Reason: Extensive deterioration.

Bldg. 136
Pacific Northwest Fleet Recreation and Education Support Center
Pacific Beach, WA
Landholding Agency: Navy
Property Number: 779530004
Status: Excess
Reason: Extensive deterioration.

[FR Doc. 95–18412 Filed 7–27–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-933-05-5410-00-A130 & A124; AZA 29195 & AZA 29074]

Arizona, Conveyance of Federally-Owned Mineral Interests

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: Pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719), the following applications to purchase Federally-owned mineral interests have been received:

(1) Douglas Land Company, L.L.C. (AZA 29195)

Gila and Salt River Meridian, Arizona

T. 3 N., R. 5 W.,
Sec. 3, lots 3–4, S½NW¼, SW¼ EXCEPT CAP;
Sec. 4, lots 3–4, S½NW¼, SW¼;
Sec. 5, lots 1–2, S½NE¼;
Sec. 8, W½, SE¼ EXCEPT CAP;
Sec. 9, NW¼, S½ EXCEPT CAP;
Sec. 10, W½ EXCEPT CAP;
Sec. 15, W½;
Sec. 23, NW¼.

T. 3 N., R. 6 W.,
Sec. 3, lots 1–2, S½NE¼, SE¼ (locatables only);
Sec. 11, E½ (locatables only).

T. 4 N., R. 5 W.,
Sec. 3, SW¼;
Sec. 5, S½;
Sec. 8, W½;
Sec. 9, all;
Sec. 10, W½, SE¼;
Sec. 11, SE¼;
Sec. 12, W½;
Sec. 13, W½;
Sec. 14, NE¼, S½;
Sec. 15, N½, SW¼;
Sec. 17, E½;
Sec. 22, E½;
Sec. 23, N½, SW¼;
Sec. 34, W½.

T. 6 N., R. 4 W.,
Sec. 33, NE¼, except West 1100 ft. thereof.

Containing 8,243 acres, more or less.

(2) W.J. and Betty Lo Wells (AZA 29074)

Gila and Salt River Meridian, Arizona

T. 16 N., R. 1 E.,
Sec. 7, lots 4–14, N½NE¼, SE¼NE¼, E½SE¼.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated from the mining and the mineral leasing laws. The segregation shall terminate upon issuance of a patent, upon final rejection of the application, or 2 years from the publication date, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Evelyn Stob, Land Law Examiner, Arizona State Office, PO Box 16563, Phoenix, AZ 85011–6563, (602) 650–0518.

Dated: July 20, 1995.

Mary Jo Yoas,

Chief, Lands and Minerals, Operations Section.

[FR Doc. 95–18507 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–32–P

[MT–030–1430–01; MTM 82330]

Proposed Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 19,764.74 acres of public lands in aid of legislation and for protection of the unique resources within the Sweet Grass Hills Area of Critical Environmental Concern and other adjoining land areas. This notice segregates the land for up to 2 years from location and entry under the mining laws. The lands will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION: In aid of legislation, I have approved a petition allowing the Bureau of Land Management to file an application to withdraw for a period of 2 years the following described public lands from location and entry under the mining laws, but not from the public land laws or mineral leasing laws, subject to valid existing rights:

Principal Meridian

T. 37 N., R. 1 E.,
Sec. 1, lots 5 to 8, inclusive;
Sec. 2, lots 5 and 6, and S½ SE¼;
Sec. 11, E½E½;
Sec. 12, lots 1 to 8, inclusive, and S½N½;
Sec. 13, lots 1 to 5, inclusive, W½NE¼, NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
Sec. 14, lots 1 to 3, inclusive, N½, SW¼, and N½SE¼;
Sec. 15, E½E½;
Sec. 22, E½NE¼;
Sec. 23, lot 1, E½NE¼, SW¼NE¼, NW¼, S½SW¼, and SE¼;
Sec. 24, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 25, lots 1 to 10, inclusive, SW¼NE¼, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 26, E½NE¼, N½NW¼, and S½;
Sec. 27, NE¼NE¼, S½NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 34, NE¼NE¼;
Sec. 35, NE¼, E½NW¼, and SW¼NW¼.

T. 36 N., R. 2 E.,
Sec. 5, lot 4;
Sec. 6, lots 1 and 2, and SW¼NE¼;
Sec. 23, E½NE¼ and N½SE¼;
Sec. 24, SW¼NW¼ and W½SW¼;
Sec. 25, SE¼NE¼ and E½SE¼.

T. 37 N., R. 2 E.,
Sec. 5, lot 8;
Sec. 6, lots 6, 7, 8, 9, and 10;
Sec. 7, lots 1 to 4, inclusive, and E½SW¼;
Sec. 17, W½SW¼;
Sec. 18, SW¼NE¼, E½SE¼, and NW¼SE¼;
Sec. 19, lots 2, 3, and 4, NE¼NE¼, SE¼NW¼, and NE¼SW¼;
Sec. 20 NW¼NE¼ and N½NW¼;
Sec. 30, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 31, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, and N½SE¼.

T. 35 N., R. 3 E.,
Sec. 3, lot 4 and SW¼NW¼;
Sec. 4, lots 1 and 2, S½NE¼.

T. 36 N., R. 3 E.,
Sec. 7, lot 2, SW¼NE¼, SE¼NW¼, E½SW¼, and NW¼SE¼;
Sec. 9, NE¼SW¼ and SE¼SE¼;
Sec. 10, S½SW¼ and SW¼SE¼;
Sec. 11, NW¼SW¼;
Sec. 15, NW¼, W½SW¼, and SE¼SW¼;
Sec. 17, lots 1 and 2, E½SW¼, and SE¼;
Sec. 18, lots 5, 6, 11, and 12, and NW¼NE¼;
Sec. 19, lots 3 and 4, E½SW¼, and S½SE¼;
Sec. 20 E½NE¼, NW¼NE¼, NE¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 21, NE¼, N½NW¼, and S½SW¼;
Sec. 22, NW¼;
Sec. 28, W½NE¼, E½NW¼, NW¼NW¼, and SW¼SW¼;
Sec. 29, W½NE¼, W½, and SE¼;
Sec. 30, lots 1 and 2, N½NE¼, SW¼NE¼, E½NW¼, and SE¼SE¼;
Sec. 31, lots 2 and 3, NE¼NE¼, and SW¼SE¼;
Sec. 32, N½N½, SE¼NE¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 33, S½NE¼, N½SE¼, and SE¼SE¼;
Sec. 34, NW¼NE¼, N½NW¼, and SW¼SW¼.

T. 35 N., R. 4 E.,
Sec. 2, lot 2, SW¼NE¼, E½SW¼, and NW¼SE¼.

T. 36 N., R. 4 E.,
Sec. 1, lots 1, 2, and 3, S½NE¼, and NE¼SE¼;
Sec. 9, SE¼;
Sec. 10, lots 3 and 4, and E½SW¼;
Sec. 24, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, and NW¼NW¼;
Sec. 25, lots 1 to 6, inclusive, NE¼, SE¼NW¼, and N½SW¼;
Sec. 26, SE¼NE¼, E½SE¼, and SW¼SE¼;
Sec. 34, E½NE¼ and SW¼NE¼;
Sec. 35, E½NE¼;
Sec. 36, lots 1, 2, 3, and 5.

T. 37 N., R. 4 E.,
Sec. 34, N½N½ and SW¼NE¼;
Sec. 35, NW¼NW¼.

T. 35 N., R. 5 E.,
Sec. 5, lot 4, SW¼NW¼, and NE¼SW¼;
Sec. 6, lots 1, 2 and 5, and SW¼NE¼.

T. 36 N., R. 5 E.,
Sec. 3, lot 1 and NE¼SE¼;

Sec. 4, W½SW¼;
Sec. 5, SW¼SW¼;
Sec. 6, lot 6, NE¼SW¼, and SE¼SE¼;
Sec. 7, lot 1, N½NE¼, and NE¼NW¼;
Sec. 8, E½NE¼, NW¼NE¼, and W½NW¼;
Sec. 9, NW¼NW¼;
Sec. 14, S½SW¼;
Sec. 18, N½NE¼;
Sec. 19, lots 1 to 9, inclusive, N½NE¼, NE¼NW¼, SE¼SW¼, and SW¼SE¼;
Sec. 20 lots 1 to 5, inclusive, N½, N½SE¼;
Sec. 21, N½N½, SE¼NE¼, N½SW¼, and SE¼SE¼;
Sec. 22, W½NW¼, and E½SE¼;
Sec. 23, W½NE¼, SE¼NE¼, NE¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 26, NW¼NW¼;
Sec. 27, W½W½, SE¼SW¼, and SW¼SE¼;
Sec. 28, SE¼NE¼ and SE¼;
Sec. 29, lots 1 to 5, inclusive, lots 7 to 10, inclusive, SW¼NW¼, N½SW¼, and SW¼SW¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, MS 3418, E½, NE¼NW¼, and SE¼SW¼;
Sec. 32, lots 1 to 5, inclusive, E½NE¼, SW¼NE¼;
Sec. 34, N½NE¼.

T. 37 N., R. 5 E.,
Sec. 29, SE¼SE¼;
Sec. 30, SE¼SW¼.

The areas described aggregate approximately 19,764.74 acres in Toole and Liberty Counties, Montana.

The purpose of the proposed withdrawal is to preserve the status quo for the above described public lands, which are either located within or border the Sweet Grass Hills Area of Critical Environmental Concern. The specific objective of this proposal is to protect high value potential habitat for reintroduction of endangered peregrine falcons, areas of traditional religious importance to Native Americans, aquifers that currently provide the only potable water in the area, and seasonally important elk and deer habitat, pending consideration of proposed withdrawal legislation introduced into the 104th Congress, 1st Session. This legislation would, among other things, protect the above described lands and associated resource values from the location of new mining claims.

A withdrawal application, when filed, will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the above described public lands will be segregated temporarily from location and entry under the United States mining laws, subject to valid existing rights, unless the application is denied or canceled or the withdrawal is approved prior to the end of the segregation period.

The temporary uses which may be permitted during this segregative period are those that are currently permitted, including but not limited to the collection of mineral data necessary to determine the validity of existing mining claims, maintenance of existing communication sites, acceptance of applications for new communication sites on East Butte, and activities which will not disturb the surface (such as hunting, hiking, camping, Native American religious practices, water sampling, and vegetation inventories). The existing road closure that is in effect for the Sweet Grass Hills will not be continued. Limited motorized use is available by permit only to livestock ranchers with leases and selected State and Federal government activities. Exploration and development on existing oil and gas leases, minor forest product sales, such as post and pole sales, livestock grazing on existing leases, and maintenance and repair of livestock facilities are allowed. Applications will also be accepted for supporting rights-of-way for local ranching and domestic needs.

Dated: July 24, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–18509 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–DN–P

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 152—Extension

AGENCY: Minerals Management Service, Interior.

ACTION: Notice to extend post-sale evaluation period for Central Gulf of Mexico Lease Sale 142.

SUMMARY: This notice extends by 14 days, the post-sale evaluation period for Central Gulf of Mexico Lease Sale 152. The lease notice was published in the **Federal Register** on April 7, 1995 (60 FR 17797). The Minerals Management Service (MMS) will complete evaluating all the bids received in this sale by August 22, 1995. On May 10, 1995, a record rainfall severely flooded the New Orleans area. The post-sale bid evaluation process has experienced delays because of water damage to the Gulf of Mexico regional office. MMS needs this extension to properly evaluate the bids received.

DATES: The post-sale evaluation period ends on August 22, 1995.

FOR FURTHER INFORMATION CONTACT: John Mirabella or Kumkum Ray, Engineering and Standards Branch, telephone (703) 787–1600.

Dated: July 21, 1995.

Richard J. Glynn,

Associate Director for Offshore Minerals Management (Acting).

[FR Doc. 95–18508 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large

volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and House Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

Volume IV

Illinois
IL950048 (Jul. 28, 1995)

Volume VI

Idaho
ID950013 (Jul. 28, 1995)
Idaho
ID950014 (Jul. 28, 1995)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY950008 (Feb. 10, 1995)
NY950009 (Feb. 10, 1995)
NY950012 (Feb. 10, 1995)
NY950020 (Feb. 10, 1995)
NY950031 (Feb. 10, 1995)
NY950037 (Feb. 10, 1995)

Volume II

District of Columbia
DC950001 (Feb. 10, 1995)
Maryland
MD950010 (Feb. 10, 1995)
MD950035 (Feb. 10, 1995)
MD950043 (Feb. 10, 1995)
MD950048 (Feb. 10, 1995)
Pennsylvania
PA950014 (Feb. 10, 1995)
Virginia
VA950104 (Feb. 10, 1995)
VA950105 (Feb. 10, 1995)
West Virginia
WV950002 (Feb. 10, 1995)
WV950006 (Feb. 10, 1995)

Volume III

Florida
FL950001 (Feb. 10, 1995)
FL950009 (Feb. 10, 1995)
Tennessee
TN950001 (Feb. 10, 1995)
TN950005 (Feb. 10, 1995)

Volume IV

None

Volume V

Arkansas
AR950001 (Feb. 10, 1995)
AR950008 (Feb. 10, 1995)
Iowa
IA950003 (Feb. 10, 1995)
IA950004 (Feb. 10, 1995)
IA950005 (Feb. 10, 1995)
IA950013 (Feb. 10, 1995)
Kansas
KS950012 (Feb. 10, 1995)
Missouri
MO950001 (Feb. 10, 1995)
New Mexico
NM950001 (Feb. 10, 1995)
NM950005 (Feb. 10, 1995)
Oklahoma
OK950013 (Feb. 10, 1995)
OK950016 (Feb. 10, 1995)
OK950017 (Feb. 10, 1995)
OK950024 (Feb. 10, 1995)
Texas
TX950001 (Feb. 10, 1995)
TX950003 (Feb. 10, 1995)
TX950005 (Feb. 10, 1995)

Volume VI

California
CA950002 (Feb. 10, 1995)
Colorado
CO950024 (Feb. 10, 1995)
Idaho
ID950004 (Feb. 10, 1995)
ID950005 (Feb. 10, 1995)
Nevada
NV950001 (Feb. 10, 1995)
NV950002 (Feb. 10, 1995)
NV950005 (Feb. 10, 1995)
NV950006 (Feb. 10, 1995)
NV950007 (Feb. 10, 1995)
Oregon
OR950001 (Feb. 10, 1995)
Utah
UT950001 (Feb. 10, 1995)
UT950004 (Feb. 10, 1995)
UT950007 (Feb. 10, 1995)
UT950034 (Feb. 10, 1995)
Washington
WA950001 (Feb. 10, 1995)
WA950002 (Feb. 10, 1995)
WA950003 (Feb. 10, 1995)
WA950005 (Feb. 10, 1995)
WA950007 (Feb. 10, 1995)
WA950008 (Feb. 10, 1995)
WA950011 (Feb. 10, 1995)
WA950013 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board Systems of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 21st day of July 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–18406 Filed 7–27–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code..

1. *Date:* August 24–25, 1995.
Time: 9:00 a.m. to 5:30 p.m.
Room: M–07.
Program: This meeting will review applications submitted to Humanities Projects in Libraries and Archives program during the July 15, 1995 deadline, submitted to the Division of Public Programs, for projects beginning after December 1, 1995.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–18580 Filed 7–27–95; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456 and STN 50–457]

Commonwealth Edison Company; Braidwood Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–72 and NPF–77, issued to Commonwealth Edison Company (ComEd, the licensee), for operating of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application for an exemption from certain requirements of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." The requested exemption would allow the implementation of a hand geometry biometric system of site access control in conjunction with photograph identification badges, and would allow the badges to be taken off site.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55(a), the licensee is required to establish and maintain an onsite physical protection system and security organization.

In 10 CFR 73.55(d), "Access Requirements," it specifies in part that "The licensee shall control all points of personnel and vehicle access into a protected area." In 10 CFR 73.55(d)(5), it specifies in part that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It further indicates that an individual not employed by the licensee (e.g., contractors) may be authorized access to protected areas without an escort provided the individual, "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area."

Currently, unescorted access for both employee and contractor personnel into the Braidwood Station, Units 1 and 2, is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. The picture badges are issued, stored, and retrieved at the entrance/exit location to the protected area. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site. The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area. The proposal would also allow contractors who have unescorted access to keep their picture badges in their possession when departing the Braidwood site. In addition, the site security plans will be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the Braidwood site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action. In addition to their picture badges, all individuals with authorized unescorted access will have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badges to gain access into the protected area, but must also have their hand geometry confirmed.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. The proposed system is only for individuals with authorized unescorted access and will not be used for individuals requiring escorts.

The underlying purpose for requiring that individuals not employed by the licensee must receive and return their picture badges at the entrance/exit is to provide reasonable assurance that the access badges could not be compromised or stolen with a resulting risk that an unauthorized individual could potentially enter the protected area. Although the proposed exemption will allow individuals to take their picture badges off site, the proposed measures require not only that the picture badge be provided for access to the protected area, but also that

verification of the hand geometry registered with the badge be performed as discussed above. Thus, the proposed system provides an identity verification process that is equivalent to the existing process.

Accordingly, the Commission concludes that the exemption to allow individuals not employed by the licensee to take their picture badges off site will not result in an increase in the risk that an unauthorized individual could potentially enter the protected area. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Denial of the requested action would not significantly enhance the environment in that the proposed action will result in a process that is equivalent to the existing identification verification process.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Braidwood Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on July 19, 1995, the staffer consulted with the Illinois State Official, Mr. Mike Parker, Chief Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated May 22, 1995, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wilmington Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 21st day of July 1995.

For the Nuclear Regulatory Commission.

Ramin R. Assa,

Project Manager, Project Directorate, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18558 Filed 7–27–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Cancellation of Meeting

The 424th meeting of the Advisory Committee on Reactor Safeguards scheduled to be held on August 10–12, 1995, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been cancelled. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 28, 1994 (59 FR 66977).

For further information contact: Mr. Sam Duraiswamy, Chief Nuclear Reactors Branch, (telephone 301–415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

Dated: July 24, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–18556 Filed 7–27–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Entergy Operations, Inc., Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its September 8, 1994, application for proposed amendment to Facility Operating License No. NPF–47 for the River Bend Station, Unit No. 1, located in West Feliciana Parish.

The proposed amendment would have revised the technical specifications pertaining to bypassing the rod withdrawal limiter notch constraints while performing fuel power suppression testing.

The Commission had previously issued a Consideration of Issuance of Amendment published in the **Federal Register** on September 16, 1994 (59 FR 47652). However, by letter dated July 14, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 8, 1994, and the licensee's letter dated July 14, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland, this 20th day of July 1995.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18557 Filed 7–27–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Notice Regarding the 1995 Annual GSP Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the product petitions that are being accepted for consideration in the 1995 Annual GSP Review.

SUMMARY: This notice announces the acceptance of petitions that were filed in the 1995 Annual GSP Review requesting a modification in the list of articles that are eligible for duty-free treatment under the GSP program.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The GSP program is authorized by Title V the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 *et seq.*), and was implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations. The GSP regulations provided for an annual GSP

review, unless otherwise specified by **Federal Register** notice (15 CFR 2007.3 *et seq.*).

In a notice dated May 4, 1995, USTR initiated the 1995 Annual GSP Review and announced a deadline of June 14, 1995 for the filing of petitions (60 FR 22083). USTR received petitions requesting that products be added to, or removed from, the list of articles that are eligible for duty-free treatment under the GSP program, or that a country be granted a waiver of the "competitive need limits" (CNLs) for an eligible article. The CNLs are set forth in section 504(c) of the Trade Act (19 U.S.C. 2464(c)).

USTR also received petitions requesting that certain practices in certain beneficiary developing countries be reviewed to determine whether such countries are in compliance with the eligibility criteria that are set forth in sections 502(b) and 502(c) of the Trade Act (19 U.S.C. 2462(b) and 2462(c)). The consideration of these so-called "country practice" petitions is ongoing.

In accordance with the statutory and regulatory requirements, USTR has reviewed all of the product petitions and has decided which petitions should be accepted for consideration in the 1995 Annual GSP Review. The annex to this notice sets forth the products and the actions that will be considered in the 1995 Annual GSP Review.

Ordinarily, at the time that USTR announces the acceptance of petitions for review, we announce a review timetable that includes a public hearing and an opportunity for public comment on the products and actions that are being considered in the annual review. We are not announcing a review timetable at this time, however, because the GSP program expires on July 31, 1995. Once the program is reauthorized by the Congress, then USTR will announce a review timetable and offer an opportunity for public comment.

As noted above, the consideration of the "country practice" petitions is ongoing. USTR will announce which "country practice" petitions are being accepted for review once the GSP program has been reauthorized.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3901–01–M

Annex

Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Other nuts, fresh or dried, whether or not shelled or peeled:	
		Other:	
		Other:	
		Shelled:	
95-1	0802.90.9090(pt.)1/	Kola nuts	McCormick & Company, Incorporated, Sparks, MD
		Acyclic hydrocarbons:	
		Unsaturated:	
		[Articles provided for in subheadings 2901.21.00 through 2901.24.50, inclusive]	
		Other:	
		[Derived in whole or in part from petroleum, shale oil or natural gas]	
95-2	2901.29.50	Other	Sasol Alpha Olefins, South Africa
		Amine-function compounds:	
		Aromatic polyamines and their derivatives; salts thereof:	
		o-, m-, p-Phenylenediamine, diaminotoluenes, and their derivatives; salts thereof:	
		Other:	
		Other:	
95-3	2921.51.50(pt.)	N-(1,3-Dimethylbutyl)-N'-phenyl-1,4-diaminobenzene	Government of Slovakia; Duslo a.s. Sala, Slovakia; Petrimex a.s. Bratislava, Slovakia; Prochimie International, Inc., New York, NY
		Other heterocyclic compounds:	
		Compounds containing a benzothiazole ring-system (whether or not hydrogenated), not further fused:	
		Other:	
		Other:	
95-4	2934.20.80(pt.)	Benzothiazyl-2-cyclphexyl-sulfenamide	Government of Slovakia; Istrochem, Slovakia; Prochimie International, Inc., New York, NY

1/ The petitioner also requests a waiver of the competitive need limit for Cote d'Ivoire on kola nuts provided for in subheading 0802.90.9090.

Annex (con.)
-2-

Case No.	HTS Subheading	Article	Petitioner
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Carpets and other textile floor coverings, knotted, whether or not made up:	
		Of wool or fine animal hair:	
		[Articles provided for in subheadings 5701.10.13 or 5701.10.16]	
		Other:	
		Hand-hooked, that is, in which the tufts were inserted by hand or by means of a hand tool:	
95-5	5701.10.40(pt.)	Certified handloomed and folklore products	Government of Nepal; Kuber Handicrafts, Nepal
95-6	6901.00.00	Bricks, blocks, tiles and other ceramic goods of siliceous fossil meals (for example, kieselguhr, tripolite or diatomite) or of similar siliceous earths	Government of Venezuela; Ceramica Carabobo, S.A.C.A., Venezuela
		Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:	
		Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:	
		[Combined with sound recording or reproducing apparatus]	
		Other:	
		[FM only or AM/FM only]	
95-7	8527.29.80	Other	Ford Motor Company, Dearborn, MI
		Parts of railway or tramway locomotives or rolling stock:	
		Truck assemblies, axles and wheels, and parts thereof:	
		Other, including parts:	
		Axles and parts thereof:	
95-8	8607.19.03	Axles	Swasap Works, South Africa
B.		Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.	
		Pencils (other than those pencils of heading 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks:	
95-9	9609.10.00	Pencils and crayons, with leads encased in a rigid sheath	Writing Instrument Manufacturers Association, Moorestown, NJ

Annex (con.)
-3-

Case No.	HTS Subheading	Article	Petitioner
C.		Petitions to remove duty-free status from beneficiary developing country/countries for a product on the list of eligible articles for Generalized System of Preferences. 1/	
		Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:	
		Other:	
		Other:	
		Vegetables:	
95-10	2001.90.39(pt.) (Chile)	Sweet bell-type peppers	Cherokee Products Company, Haddock, GA; Del Mar Food Products Corp., Watsonville, CA; Dunbar Foods Corp., Dunn, NC; Moody Dunbar, Inc., Limestone, TN; Furman Foods, Inc., Northumberland, PA; Monticello Canning Co., Inc:, Crossville, TN; Saticoy Foods Corp., Saticoy, CA; The Mancini Packing Co., Zolfo Springs, FL
		Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen:	
		Other vegetables and mixtures of vegetables:	
		Fruits of the genus Capsicum (peppers) or of the genus Pimenta (e.g., allspice):	
		Other:	
		Other:	
95-11	2005.90.5510 (Chile)	Sweet bell-type peppers	do.
		Manganese oxides:	
95-12	2820.10.00 (South Africa)	Manganese dioxide	Ferroalloy Association, Washington, DC
		Glass of heading 7003, 7004 or 7005, bent, edge-worked, engraved, drilled, enameled or otherwise worked, but not framed or fitted with other materials:	
		[Strips not over 15.2 cm in width, measuring over 2 mm in thickness, and having all longitudinal edges ground or otherwise smoothed or processed]	
		Other:	
		[Glass, drawn or blown and not containing wire netting and not surface ground or polished]	
95-13	7006.00.40 (Indonesia)	Other	Glasscraft, Memphis, TN

1/ The country named is the beneficiary developing country specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on that country, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner as well the GSP status of the entire article.

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Case No.	HTS Subheading	Article	Petitioner
D.		Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.	
		Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs:	
		Fish, whole or in pieces, but not minced:	
		Anchovies:	
		In oil, in airtight containers:	
95-14	1604.16.10 (Morocco)	For an aggregate quantity entered in any calendar year not to exceed 3,000 metric tons	Government of Morocco
95-15	1604.16.30 (Morocco)	Other	do.
		Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Saturated monohydric alcohols:	
		Methanol (Methyl alcohol):	
		[Imported only for use in producing synthetic natural gas (SNG) or for direct use as a fuel]	
95-16	2905.11.20 (Venezuela)	Other	Petroquimica de Venezuela, S.A., Venezuela
		Ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Acyclic ethers and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Other:	
		Ethers of monohydric alcohols:	
95-17	2909.19.1010 (Venezuela)	Methyl tertiary-butyl ether (MTBE)	Ecofuel, S.p.A., Italy
		Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Aromatic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:	
95-18	2917.37.00 (Romania)	Dimethyl terephthalate	Government of Romania

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Case No.	HTS Subheading	Article	Petitioner
		Heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts:	
		Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure:	
		[Pyridine and its salts]	
		Other:	
		[Articles provided for in subheadings 2933.39.05 through 2933.39.20, inclusive]	
		Other:	
		Pesticides:	
		Herbicides:	
		[o-Paraquat dichloride]	
95-19	2933.39.25 (Brazil)	Other	American Cyanamid Company, Wayne, NJ
		Compounds containing a quinoline or isoquinoline ring-system (whether or not hydrogenated), not further fused:	
		[Articles provided for in subheadings 2933.40.08 through 2933.40.17, inclusive]	
		Other:	
95-20	2933.40.30 (Brazil)	Pesticides	do.
		Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:	
		Other:	
		Other:	
		Fatty substances of animal or vegetable origin and mixtures thereof:	
95-21	3823.90.4020 (Malaysia)	Mixtures of fatty acid esters	Proctor & Gamble Company, Cincinnati, OH
		Leather of bovine or equine animals, without hair on, other than leather of heading 4108 or 4109:	
		Other bovine leather and equine leather, parchment-dressed or prepared after tanning:	
		[Full grains and grain splits]	
		Other:	
95-22	4104.39.20 (Thailand)	Buffalo	Lackawanna Leather Company, Conover, NC
		Leather of other animals, without hair on, other than leather of heading 4108 or 4109:	
		[Of swine; of reptiles]	
		Of other animals:	
95-23	4107.90.60 (South Africa)	Fancy	Government of South Africa

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Case No.	HTS Subheading	Article	Petitioner
		D. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)	
		Articles of apparel and clothing accessories, of leather or of composition leather:	
		Gloves, mittens and mitts:	
		Specially designed for use in sports:	
		Baseball and softball gloves and mitts (including batting gloves):	
95-24	4203.21.20 (Indonesia)	Batting gloves	Government of Indonesia
		Roofing tiles, chimney pots, cowls, chimney liners, architectural ornaments and other ceramic constructional goods:	
95-25	6905.10.00 (Venezuela)	Roofing tiles	Alfareria El Volcan, C.A., Venezuela; Interclay Corporation, Miami, FL
		Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum, not electrically insulated:	
		[With steel core]	
		Other:	
		Not fitted with fittings and not made up into articles:	
95-26	7614.90.20 (Venezuela)	Electrical conductors	Government of Venezuela; Conal, C.A., Venezuela; Sural C.A., Venezuela
		Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof:	
		Compressors of a kind used in refrigerating equipment (including air conditioning):	
95-27	8414.30.40 (Brazil)	Not exceeding 1/4 horsepower	Whirlpool Corporation, Benton Harbor, MI
		Typewriters and word processing machines:	
		Automatic typewriters and word processing machines:	
		[Word processing machines]	
95-28	8469.10.80 (Indonesia)	Other	Government of Indonesia

Annex (con.)
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Case No.	HTS Subheading	Article	Petitioner
D.	Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)		
		Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:	
		[Articles provided for in subheadings 8471.10.00 or 8471.20.00]	
		Other:	
		[Articles provided for in subheading 8471.91]	
		Input or output units, whether or not entered with the rest of a system and whether or not containing storage units in the same housing:	
		[Combined input/output units]	
		Other:	
		[Keyboards]	
		Display units:	
		Other:	
95-29	8471.92.32 (Malaysia)	With color cathode-ray tube (CRT)	Apple Computer, Inc., Cupertino, CA
95-30	8471.92.32 (Thailand)	With color cathode-ray tube (CRT)	Government of Thailand; Apple Computer, Inc., Cupertino, CA
		[Printer units]	
		Other:	
		[Articles provided for in subheading 8471.92.80]	
		Other:	
95-31	8471.92.84 (Malaysia)	Optical scanners and magnetic ink recognition devices	Apple Computer, Inc., Cupertino, CA
		Electrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof:	
95-32	8517.10.00 (Thailand)	Telephone sets	Government of Thailand
		Other apparatus:	
		Telegraphic:	
95-33	8517.82.40 (Malaysia)	Facsimile machines	Hewlett-Packard Company, Palo Alto, CA
95-34	8517.82.40 (Thailand)	Facsimile machines	Cal-Comp Electronic (Thailand) Company Limited, Thailand; Canon U.S.A., Inc., Lake Success, NY; Sharp Appliances (Thailand) Limited, Thailand; Sharp Electronics Corporation, Mahwah, NJ

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Case No.	HTS Subheading	Article	Petitioner
D.	Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)		
		Turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device:	
		[Coin- or token-operated record players; other record players; turntables; transcribing machines]	
		Other sound reproducing apparatus:	
		[Cassette type]	
95-35	8519.99.00 (Malaysia)	Other	Pioneer Technology (Malaysia) Sdn. Bhd., Malaysia; Santronics (M) Sdn. Bhd., Malaysia; Sanyo Fisher (USA) Corporation, Chatsworth, CA; Thomson Consumer Electronics, Inc., Indianapolis, IN
		Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device:	
		[Dictating machines not capable of operating without an external source of power; telephone answering machines]	
		Other magnetic tape recorders incorporating sound reproducing apparatus:	
95-36	8520.31.00 (Malaysia)	Cassette type	Government of Malaysia
		Video recording or reproducing apparatus, whether or not incorporating a video tuner:	
		Magnetic tape-type:	
		Color, cartridge or cassette type:	
		[Not capable of recording]	
95-37	8521.10.60 (Thailand)	Other	Government of Thailand; Orion Sales, Inc., Olney, IL; World Electric (Thailand) Ltd., Thailand

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Case No.	HTS Subheading	Article	Petitioner
D.	Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)		
		Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:	
		[Articles provided for in subheading 8527.11 or 8527.19]	
		Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:	
		Combined with sound recording or reproducing apparatus:	
95-38	8527.21.10 (Brazil)	Radio-tape player combinations	Ford Motor Company, Dearborn, MI
95-39	8527.21.10 (Malaysia)	Radio-tape player combinations	Sanyo Electric (Penang) Sdn. Bhd., Malaysia; Sanyo Fisher (USA) Corporation, Chatsworth, CA
		Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy:	
		Combined with sound recording or reproducing apparatus:	
		[Articles provided for in subheading 8527.31.05]	
		Other:	
95-40	8527.31.40 (Indonesia)	Combinations incorporating tape players which are incapable of recording	Government of Indonesia
		Other apparatus:	
		[Articles provided for in subheading 8527.90.40]	
		Other:	
		[Articles provided for in subheading 8527.90.50]	
95-41	8527.90.90 (Philippines)	Other	Government of the Philippines Uniden America Corporation, Fort Worth, TX; Uniden Philippines, Inc., Philippines

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Case No.	HTS Subheading	Article	Petitioner
D.	Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.)		
		Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:	
95-42	8544.30.00 (Thailand)	Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships	Government of Thailand; American Yazaki Corporation, Canton, MI
		Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flashbulbs other than discharge lamps of heading 8539; parts and accessories thereof:	
		[Articles provided for in subheadings 9006.10.00 through 9006.40.90, inclusive]	
		Other cameras:	
		[With through-the-lens viewfinder (single lens reflex (SLR)), for roll film of a width not exceeding 35 mm]	
95-43	9006.53.00 (Malaysia)	Other, for roll film of a width of 35 mm	Canon U.S.A., Inc, Lake Success, NY; Canon Opto (Malaysia) Sdn. Bhd., Malaysia
		Photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus; parts and accessories thereof:	
		Electrostatic photocopying apparatus:	
95-44	9009.12.00 (Thailand)	Operating by reproducing the original image via an intermediate onto the copy (indirect process)	Canon U.S.A., Inc, Lake Success, NY; Canon Hi-Tech (Thailand), Ltd., Thailand
		Automatic regulating or controlling instruments and apparatus; parts and accessories thereof:	
		[Thermostats; manostats]	
		Other instruments and apparatus:	
		[Hydraulic and pneumatic]	
		Other:	
		[Automatic voltage and voltage-current regulators]	
95-45	9032.89.60 (Philippines)	Other	Telefunken Microelectronic (Phil.), Inc., Philippines

[FR Doc. 95–18731 Filed 7–27–95; 8:45 am]
BILLING CODE 3801–01–C

PENSION BENEFIT GUARANTY CORPORATION

Request for OMB Extension of Approval for Information Collection: Liability on Termination of or Withdrawal From a Single-Employer Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of extension.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested an extension of approval by the Office of Management and Budget for a currently-approved collection of information (1212–0017) contained in its regulation on Liability on Termination of or Withdrawal from a Single-Employer Plan (29 CFR Part 2622). Current approval of this collection of information expires on September 30, 1995.

ADDRESSES: All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0017), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street NW., Washington, DC 20005–4026, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget extend for three years the approval of the collection of information contained in the PBGC's regulation on Liability on Termination of or Withdrawal from a Single-Employer Plan, 29 CFR Part 2622. Section 4062 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1362 ("ERISA"), provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group ("the employer") incur liability ("employer liability") if the plan terminates with assets insufficient to pay benefit liabilities under the plan. However, the PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 2622.6 of the PBGC's employer liability regulation (29 CFR 2622.6) requires a contributing sponsor or member of the contributing sponsor's controlled group that believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify the PBGC and submit to the PBGC net worth information. This information is necessary to enable the PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth

The PBGC estimates that, for the next three years, 39 employers per year will respond to this collection of information and the average amount of time required to respond will be 24 hours. Thus, the PBGC estimates that the annual burden of this collection of information will be 936 hours.

Issued at Washington, DC this 24th day of July, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–18607 Filed 7–27–95; 8:45 am]

BILLING CODE 7708–01–M

Request for OMB Approval of Information Collection: Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for a new collection of information contained in its regulation on Disclosure to Participants (29 CFR part 2627).

ADDRESSES: All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC is requesting that the Office of Management and Budget approve for three years the collection of information contained in the PBGC's final regulations on Disclosure to Participants, 29 CFR Part 2627.

Section 4011 of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1311), which was added to ERISA by the Retirement Protection Act of 1994, requires plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

On June 30, 1995 (60 FR 34412), the PBGC issued final regulations implementing section 4011. (On July 19, 1995, (60 FR 36998) the PBGC published a clarifying correction to the final regulations.) The regulations, which are effective on July 31, 1995, prescribe which plans are subject to the notice requirement, who is entitled to receive the notice, and the time, form and manner of issuance of the notice. The notice will provide recipients with meaningful, understandable, and timely information that will help them become better informed about their plans and assist them in their financial planning.

This collection of information, which is a disclosure to third parties, is not currently subject to the requirements of the Paperwork Reduction Act (*Dole* v. *United Steelworkers of America*, 494 U.S. 26 (1990)). However, under recent legislation, the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 109 Stat. 163 (1995)), this collection of information will be subject to those requirements effective October 1, 1995.

Small plans (plans with 100 or fewer participants) are exempt from the notice requirement in 1995. The PBGC estimates that approximately 3,000 large plans (plans with more than 100 participants) will be subject to the notice requirement for the 1995 plan year and that the same number of large plans plus approximately 4,500 small plans will be subject to the notice requirement for subsequent years. Thus, over the next three years, an average of 6,000 plans per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information will be 4.39 hours per plan, with an average total annual burden of 26,330 hours.

Issued at Washington, DC this 24th day of July, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–18608 Filed 7–27–95; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36010; File No. SR–Amex–95–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Three Month Extension of its Pilot Program That Amended Rule 109 to Permit Specialists to Grant Stops in a Minimum Fractional Change Market

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 6, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests a three month extension of a pilot program that amended Exchange Rule 109 to permit a specialist, upon request, to grant stops in a minimum fractional change market.[1]

The text of the proposed rule change is available at the Amex and at the Commission.

[1] The Amex received approval to amend Rule 109, on a pilot basis, in Securities Exchange Act Release No. 30603 (Apr. 17, 1992), 57 FR 15340 (Apr. 27, 1992) (File No. SR–Amex–91–05) ("1992 Approval Order"). The Commission subsequently extended the Amex's pilot program in Securities Exchange Act Release Nos. 32185 (Apr. 21 1993), 58 FR 25681 (Apr. 27, 1993) (File No. SR–Amex–93–10) ("April 1993 Approval Order"); 32664 (July 21, 1993), 58 FR 40171 (July 27, 1993) (File No. SR–Amex–93–22) ("July 1993 Approval Order"); 33791 (Mar. 21, 1994), 59 FR 14432 (Mar. 28 1994) (File No. SR–Amex–93–47) ("1994 Approval Order"); and 35310 (Jan. 31, 1995), 60 FR 7236 (Feb. 7, 1995) (File No. SR–Amex–95–01) ("January 1995 Approval Order").

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 31, 1995, the Commission extended its pilot approval of amendments to Exchange Rule 109 until July 21, 1995.[2] The amendments permit a specialist, upon request, to grant a stop[3] in a minimum fractional change market[4] for any order of 2,000 shares or less, up to a total of 5,000 shares for all stopped orders, provided there is an order imbalance, without obtaining prior Floor Official approval. A Floor Official, however, must authorize a greater order size of aggregate share threshold.

During the course of the pilot program, the Exchange has closely monitored compliance with the rule's requirements, analyzed the impact on orders on the specialist's book resulting from the execution of stopped orders at a price that is better than the stop price, and reviewed market depth in a stock when a stop is granted in a minimum fractional change market. The Exchange believes that the amendments to Rule 109 have provided a benefit to investors by providing an opportunity for price improvement, while increasing market depth and continuity without adversely affecting orders on the specialist's book. The Exchange is therefore proposing a three month extension of the pilot program that amended Exchange Rule 109.

[2] *See* January 1995 Approval Order, *supra*, note 1.

[3] An agreement to "stop" stock at a specified price constitutes a guarantee by the member who grants the stop that the order of the member who accepts the stop will be executed at the stop price or better. *See* Amex Rule 109(a).

[4] Amex Rule 127 sets forth the minimum fractional changes for securities traded on the Exchange.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendments to Rule 109 are consistent with these objectives in that they are designed to allow stops, in minimum fractional change market, under limited circumstances that provide for the possibility of price improvement to customers whose orders are granted stops.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex–95–27 and should be submitted by August 16, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5)[5] and Section 11(b)[6] of the Act. The Commission believes that the amendments to rule 109 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum fractional change markets, under limited circumstances that provide the possibility of price improvement to customers whose orders are granted stops.

In the orders approving the pilot procedures,[7] the Commission asked the Amex to study the effects of stopping stock in a minimum fractional change market. The Exchange has submitted to the Commission several monitoring reports regarding the amendments to Rule 109. The Commission believes that the monitoring reports, especially the latest report, provide useful information regarding the effectiveness of the program during the pilot period. The Commission, however, finds that additional time is necessary to evaluate carefully and comprehensively the information provided by the Exchange and the Amex's use of its pilot procedures. Accordingly, the Commission believes that it is reasonable to extend the pilot program until October 21, 1995, to avoid compromising the benefit that investors might receive under Rule 109, as amended, while the Commission is considering whether to permanently approve the pilot program.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission. No comments were received at that time.

[5] 15 U.S.C. 78f (1988 & Suppl. V 1993).

[6] 15 U.S.C. 78k (1988).

[7] *See supra*, note 1.

[8] *See* Securities Exchange Act Release No. 35909 (June 28, 1995), 60 FR 34562 (July 3, 1995) (notice of filing of proposed rule change relating to permanent approval of Amex's pilot program for stopping stock in a minimum fractional change market).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–95–27) is hereby approved on a pilot basis until October 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18603 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–10–M

[Release No. 34–36014; File No. SR–Amex–95–19]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rule 170 Pertaining to Specialists' Liquidating Transactions

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex requests permanent approval of a pilot program that amends Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a "long" positions, or zero plus tick, when covering a "short" position, without Floor Official approval. The pilot program also amends Rule 170 to set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions. In the alternative, the Exchange is proposing a one year extension of the pilot program.

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 22, 1994, the Commission approved, on a one year pilot basis, amendments to Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a "long" position, or a zero plus tick, when covering a "short" position, without Floor Official approval.[3] The amendments also set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

During the course of the pilot program, the Exchange has monitored compliance with the requirements of the Rule, and our findings in this regard have been forwarded to the Commission under separate cover. We believe that the amendments have provided specialists with flexibility in liquidating specialty stock positions in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. In addition, the specialist's concomitant obligation to participate as dealer on the opposite side of the market after a liquidating transaction has been strengthened.

The Exchange is therefore proposing approval of the amendments to Rule 170. In the alternative, the Exchange is requesting an extension of the pilot program for an additional one year period, if the Commission feels that further study and monitoring of the effects of the pilot program are necessary.

[3] The Commission approved the pilot program in Securities Exchange Act Release No. 33957 (April 22, 1994), 59 FR 22188 (April 29, 1994) ("1994 Approval Order"). On April 21, 1995, the Commission granted a three month extension to the pilot program, ending on July 21, 1995. Securities Exchange Release No. 35635 (April 21, 1995), 60 FR 20780 (April 27, 1995).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The proposed rule change is also consistent with Section 11(b) of the Act which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–19 and should be submitted by August 18, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(5) and 11 of the Act.[4] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 11(b) of the Act and Rule 11b–1 thereunder,[5] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Under the pilot program, a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Liquidations on a zero minus or a zero plus tick, which previously required Floor Official approval, can be effected under the pilot procedures without a Floor Official's approval, but continue to be subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, a specialist is required to re-enter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in a significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile market conditions or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In our 1994 Approval Order,[6] the Commission asked the Amex to submit a report setting forth the criteria developed by the Exchange to determine whether liquidating transactions effected by specialists pursuant to the pilot were necessary and appropriate in connection with fair and orderly markets. The Commission also asked the Amex to provide information regarding the Exchange's monitoring of liquidating transactions effected by specialists on any destabilizing tick. In addition, the Commission asked the Amex to provide the following information in its report: (1) a review of all liquidating transactions effected by specialists on any destabilizing ticks; (2) a review of liquidating transactions by specialists to determine that the required Floor Official approval was obtained where necessary; and (3) a review of liquidating transactions in light of dealer participation levels and re-entry into the market in terms of timing and support.

In April 1995, the Commission extended the pilot program for three months to give the Exchange additional time to prepare the report discussed above and submit the data to the Commission for its consideration of whether the pilot program should be granted permanent approval.[7] The Exchange submitted the report in May 1995. After reviewing the data, the Commission agrees with the Exchange that the pilot generally is working well. In particular, the Commission believes the report indicates that specialist generally are entering the aftermarket after effecting liquifying transactions when appropriate and that the Exchange has developed surveillance procedures that enable it to monitor specialists' reliquifying activity.

The Commission believes, however, that further monitoring of the pilot is necessary before permanent approval can be granted. In this regard, the Exchange should continue to emphasize the requirements of the rule, including the necessity for floor official approval of specialists' purchases and sales on direct plus or minus ticks, and that such transactions can only be effected if reasonably necessary for the maintenance of fair and orderly markets. In addition, where proper procedures are not followed, the Amex should take appropriate disciplinary action.

The Commission has therefore decided to extend the pilot program for one year. During the one year extension, the Commission expects the Amex to continue to monitor compliance with the pilot program procedures and report any non-compliance with the rule and the action the Amex has taken as a result of such non-compliance. The Amex should prepare an additional report as described above and submit the data to the Commission for its consideration of whether the pilot

[4] 15 U.S.C. 78f and 78k (1988).

[5] 17 CFR 240.11b–1 (1994).

[6] *See supra* note 3.

[7] *See supra* note 3.

program should be granted permanent approval.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using the identical procedures contained in the pilot program. The rule change that implemented the pilot program was published in the **Federal Register** for the full comment period,[9] and no comments were received. Furthermore, the Commission approved a similar rule change for the NYSE also without receiving comments on the proposal.[10]

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change is approved on an accelerated basis for a one year period ending on July 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18600 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36004; File No. SR–BSE–95–13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Incorporated Relating to a Nine Month Extension of a Pilot Program for Stopping Stock in Minimum Variation Markets

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1995, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] The Commission requests that this report be submitted by April 1996, along with any requests for extension or permanent approval of the pilot.

[9] *See* Securities Exchange Act Release No. (August 25, 1993), 58 FR 45926 (August 31, 1993).

[10] *See* Securities Exchange Act Release No. 31797 (January 29, 1993), 58 FR 7277 (February 5, 1993).

[11] 15 U.S.C. 78s(b)(2) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks a nine month extension of its pilot program regarding stopping stock in minimum variation markets.[1]

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Commission approved pilot provision regarding the execution of stopped orders in minimum variation markets for an additional nine months. The pilot provision expires on July 21, 1995, and this proposal would extend the pilot until April 21, 1996.

The pilot rule requires the execution of stopped orders in minimum variation markets (a) after a transaction takes place on the primary market at the stop price or higher in the case of a buy order (lower in the case of a sell order), (b) after the applicable Exchange share volume is exhausted or (c) at any time prior to (a) or (b) if filled at an improved price.[2] In no event will a stopped order be executed at a price inferior to the stop price. The Exchange states that, as in the case of greater than minimum variation markets, the proposed rule will continue to benefit customers because they might receive a better price than the stop price, yet it also protects prior-entered same-price limit orders on the book.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either soliciteed or received.

III. Solicitation of Comments

Interested persons are invited to submit written data; views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[1] The Commission initially approved the BSE's proposal to codify procedures for stopping stock and to establish a separate pilot program for stopping stock in minimum variation markets in Securities Exchange Act Release No. 35068 (Dec. 8, 1994), 59 FR 64717 (Dec. 15, 1994) (File No. SR–BSE–94–09) ("1994 Pilot Approval Order"). The Commission subsequently extended the BSE's pilot program in Securities Exchange Act Release No. 35474 (Mar. 10, 1995), 60 FR 14471 (Mar. 17, 1995) (File No. SR–BSE–95–03) ("March 1995 Pilot Approval Order").

[2] The Commission notes that, in certain narrow circumstances, a BSE specialist may execute a stopped order before limit order interest on the Exchange is exhausted. To do so, however, the specialist must make the determination that such action is necessary, in his or her professional judgment, to prevent an execution that would create a new high or new low, a double up or down tick or an out-of-range print.

Moreover, the specialist must follow certain procedures designeed to ensure that the BSE's limit order book is adequately protected. First, the specialist must split any contra-side order flow between the stopped order and limit orders with priority at the better price. In addition, if the specialist elects to fill a stopped order at a price better than the stop price before it is otherwise due an execution, he or she must allocate an equal number of shares, up to a maximum of 500 shares, to orders at that price on the limit order book. Finally, if any portion of a stopped order remains unexecuted at the end of the trading day, the specialist must fill such order in its entirety and, as described above, allocate an appropriate number of shares to the book.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–95–13 and should be submitted by August 18, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)[3] and Section 11(b)[4] of the Act. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with the requirement of Section 11(b), and Rule 11b–1 thereunder,[5] that specialist transactions must contribute to the maintenance of fair and orderly markets.

The Commission historically has been concerned that the practice of stopping stock may compromise the specialist's fiduciary duty to unexecuted customer orders on the limit order book.[6] The Commission, however, has approved the practice in limited circumstances where the potential harm is offset by the improvement in the marketplace liquidity and the possibility of price improvement for the customer. Accordingly, those exchanges with stopping stock rules,[7] including the BSE, require their specialists to reduce the spread between the consolidated best bid and offer or, in a minimum variation market, to add size at the inside quote.[8] The Commission believes that such a requirement strikes an appropriate balance between the interests of various market participants. Moreover, by encouraging accurate representation of the trading interest held by the specialist, it also facilitates greater transparency in the securities market.

Despite these potential benefits, the Commission continues to be concerned that, in minimum variation markets, limit orders on the specialist's book may be bypassed when stopped orders are executed at a better price.[9] These concerns are particularly applicable to the BSE's pilot because of the Exchange's unique provisions regarding the execution of stopped orders at an improved price before pre-existing limit order interest at that price is exhausted.[10]

As a result, in the orders approving the BSE's pilot procedures,[11] the Commission asked the Exchange to study the effects of stopping stock in a minimum variation market. Specifically, the Commission requested information on (1) the number of orders stopped in minimum variation markets; (2) the average size of such orders; and (3) the percentage of stopped orders that received price improvement. In addition, the Commission encouraged the BSE to develop an appropriate measure of the pilot program's impact on limit orders, particularly those limit orders on the specialist's book ahead of the stopped stock.

Although the BSE has provided the Commission with the requested information on the number of orders stopped, their average size, and the percentage of such orders that received price improvement, the BSE has not yet developed a measure of the pilot's impact on limit orders. The Commission believes that the BSE needs to submit comprehensive data on the operation of this rule and, in particular, on the impact on limit orders on the specialist's book before the Commission can evaluate fairly the BSE's use of its pilot procedures. To allow such information to be gathered and reviewed, the Commission believes that it is reasonable to extend the pilot program until April 21, 1996. During this extension, the Commission expects the BSE to respond fully to the concerns set forth below.

Accordingly, before the Commission would consider another extension or permanent approval of the Exchange's pilot program, the BSE must submit comprehensive quantitative data on the impact of stopping stock in minimum variation markets on customer limit orders on the specialist's book and demonstrate that the Exchange has the technological capabilities necessary to monitor specialist compliance with the pilot procedures.

The Commission requests that the BSE calculate data based on twenty stocks chosen by the Commission during three different days showing (1) how many orders and shares were stopped in each stock, (2) the average number of limit orders and the average number of shares on the book ahead of the stopped stock, (3) how many orders and shares received price improvement, and (4) how many orders and shares were on the limit order book at the time each order was stopped and the number of such limit orders and shares that were not executed by the end of the trading day. The Exchange should provide the data for each stock for each day, aggregate figures for each stock for all three days, and for all stocks aggregate numbers for each day and for all three days. The Commission requests that the BSE submit a report describing

[3] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[4] 15 U.S.C. 78k (1988).

[5] 17 CFR 240.11b–1 (1994).

[6] *See e.g.*, SEC. Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt 2 (1963). When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives a better price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

[7] *See* NYSE Rule 116.30; American Stock Exchange ("Amex") Rule 109; and Article XX, Rule 37 of the Chicago Stock Exchange ("CHX") Rules.

The relevant NYSE, Amex, and CHX pilot programs permit specialists to stop stock in minimum variation markets. *See also* Securities Exchange Act Release No. 34614 (Aug. 30, 1994), 59 FR 46280 (Sept. 7, 1994) (File No. SR–Phlx–93–41) (approving a Philadelphia Stock Exchange ("Phlx") proposal to codify its procedures for stopping stock into Equity Floor Procedure Advice A–2, Stopping Orders).

[8] *See* Interpretation .50 of Section 30(d), Chapter II of BSE's Rules.

[9] The NYSE, Amex, and CHX pilot programs for stopping stock in minimum variation markets raise concerns with respect to bypassing of limit orders on the *opposite side of the market* from the stopped order and not of limit orders on the same side. The BSE's pilot program, however, raises concerns with respect to limit orders on both sides of the specialist's book because of the special provision in the BSE's pilot program regarding the execution of stopped orders at an improved price before the pre-existing limit orders. The NYSE, Amex, and CHX pilot programs have been extended until October 21, 1995, to allow the Commission to determine whether the benefits of the practice substantially outweigh the costs thereof for permanent approval purposes. For further discussion of the NYSE, Amex and CHX pilot programs and the Commission's rationale for extending them until October 21, 1995, *see* Securities Exchange Act Release Nos. 36009 (July 21, 1995), (File No. SR–NYSE–95–26); 36010 (July 21, 1995), (File No. SR–Amex–95–27); and 36011 (July 21, 1995) (File No. SR–CHX–95–17).

[10] *See supra*, note 2. Because the pilot programs on the NYSE, Amex, and CHX do not have a similar provision as the BSE regarding the execution of stopped orders before pre-existing limit orders and the BSE has limitations on its ability to surveil compliance with procedures when the stopped orders are executed before pre-existing limit orders, the BSE pilot program is only being extended for nine months.

[11] *See* 1994 Pilot Approval Order and March 1995 Pilot Approval Order, *supra*, note 1.

its findings on the above matters by November 17, 1995.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.

It Is Therefore Ordered, pursuant to Section 19(b)(2)[12] that the proposed rule change (SR–BSE–95–13) is hereby approved on a pilot basis until April 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18601 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36011; File No. SR–CHX–95–17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to an Extension of the Pilot Program for Stopped Orders in Minimum Variation Markets

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 7, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for stopped orders in minimum variation markets for an additional three (3) month period.[1] The pilot program is set to expire on July 21, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot program implemented to establish a procedure regarding the execution of "stopped" market orders in minimum variation markets (usually an ⅛th spread market). In 1992, the Exchange adopted interpretation and policy .03 to Rule 37 of Article XX on a pilot basis to permit stopped market orders in minimum variation markets.[2] Prior to the pilot program, no Exchange rule required specialists to grant stops in minimum variation markets if an out-of-range execution would result.[3] While the Exchange has a policy regarding the execution of stopped market orders generally, the Exchange believes it is necessary to establish a separate policy for executing stopped market orders when there is a minimum variation market.

The Exchange's general policy regarding the execution of stopped orders is to execute them based on the next primary market sale. If this policy were used in a minimum variation market, it would cause the anomalous result of requiring the execution of all pre-existing orders even if those orders are not otherwise entitled to be filled.[4]

The Exchange's proposed policy would prevent unintended results by continuing a pilot program, established in 1992, for stopped market orders in minimum variation markets.[5] Specifically, the pilot program would require the execution of stopped market orders in minimum variation markets after a transaction takes place on the primary market at the stopped price or worse (higher for buy orders and lower for sell orders), or after the applicable Exchange share volume is exhausted. In no event will a stopped order be executed at a price inferior to the stopped price.[6] In the Exchange's view, the proposed policy will continue to benefit customers because they might receive a better price than the stop price, yet it also protects Exchange specialists by eliminating their exposure to executing potentially large amounts of pre-existing bids or offers when such executions would otherwise not be required under Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–17 and should be submitted by August 18, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b)(5)[7] and Section 11(b)[8] of the Act. The Commission believes that proposed interpretation and policy .03 to Rule 37 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum variation markets, under limited circumstances that offer primary market price protection for customers whose orders are granted stops, while still adhering to traditional auction market rules of priority and precedence.

In the orders approving the pilot procedures,[9] the Commission asked the CHX to study the effects of stopping stock in a minimum variation market. The Exchange has submitted to the Commission several monitoring reports regarding its pilot program. The Commission believes that the monitoring reports, especially the latest report, provide useful information regarding the effectiveness of the program during the pilot period. The Commission, however, finds that additional time is necessary to evaluate carefully and comprehensively the information provided by the Exchange and the CHX's use of its pilot procedures. Accordingly, the Commission believes that it is reasonable to extend the pilot program until October 21, 1995, to avoid compromising the benefit that investors might receive under Rule 37, as amended, while the Commission is deciding whether to grant permanent approval of the pilot program.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission. No comments were received at that time.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–95–17) is hereby approved on a pilot basis until October 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18605 Filed 7–27–95; 8:45 am]

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[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[1] The Exchange originally received approval of the pilot program in Securities Exchange Act Release No. 30189 (Jan. 14, 1992), 57 FR 2621 (Jan. 22, 1992) (File No. SR–MSE–91–10) ("1992 Approval Order"). The Commission subsequently extended the Exchange's pilot program in Securities Exchange Act Release Nos. 31975 (Mar. 10, 1993), 58 FR 14230 (Mar. 16, 1993) (File No. SR–MSE–93–04) ("March 1993 Approval Order"); 32457 (June 11, 1993), 58 FR 33681 (June 18, 1993) (File No. SR–MSE–93–14) ("June 1993 Approval Order"); 33790 (Mar. 21, 1994), 59 FR 14434 (Mar. 28, 1994) (File No. SR–MSE–93–30) ("1994 Approval Order"); 35431 (Mar. 1, 1995, 60 FR 12796 (Mar. 8, 1995) (File No. SR–CHX–95–04) ("March 1995 Approval Order").

[2] *See* 1992 Approval Order, *supra*, note 1.

[3] The term "out-of-range" means either higher or lower than the price range in which the security traded on the primary market during a particular trading day.

[4] For example, assume the market in ABC stock is 20–20¼; 50 x 50 with ⅛th being out of range. A customer places an order with the Exchange specialist to buy 100 shares of ABC at the market and a stop is effected. The order is stopped at 20⅛ and the Exchange specialist includes the order in his quote by bidding the 100 shares at 20. If the next sale on the primary market is for 100 shares at 20, adopting the Exchange's existing general policy to minimum variation markets would require the specialist to execute the stopped market order at 20. However, because the stopped market order does not have time or price priority, its execution would trigger the requirement for the Exchange specialist to execute all pre-existing bids (in this case 5,000 shares) based on the Exchange's rules of priority and precedence. This is so even though the pre-existing bids were not otherwise entitled to be filled.

In the above example, Exchange Rule 37 (Article XX) requires the Exchange specialist to fill orders at the limit price only if such orders would have been filled had they been transmitted to the primary market. Therefore, the 100 share print at 20 in the primary market would cause at most 100 of the 5,000 share limit order to be filled on the Exchange. However, the Exchange's general policy regarding stopped orders, if applied to minimum variation markets, would require the 100 share stopped market order to be filled, and as a result, all pre-existing bids at the same price to be filled in accordance with Exchange Rule 16 (Article XX).

[5] *See* 1992 Approval Order, *supra*, note 1.

[6] Exchange Rule 28 (Article XX) states:

An agreement by a member or member organization to "stop" securities at a specified price shall constitute a guarantee of the purchase or sale by him or it of the securities at the price or its equivalent in the amount specified.

If an order is executed at a less favorable price than that agreed upon, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

[7] 15 U.S.C. 78f (1988 & Supp. V 1993).

[8] 15 U.S.C. 78k (1988).

[9] *See supra*, note 1.

[10] *See* Securities Exchange Act Release No. 35910 (June 28, 1995), 60 FR 34563 (July 3, 1995) (notice of filing of proposed rule change relating to permanent approval of CHX's pilot program for stopping stock in minimum variation markets).

[11] 16 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36015; File No. SR–NYSE–94–34]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendment of Exchange Rule 92

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As originally filed,[1] the proposed rule change extended the applicability of Rule 29 to trades by a member or member organization on any market center and provided a limited exemption to permit member organizations to trade along with their customers when liquidating a block facilitation position. Amendment No. 1 to SR–NYSE–94–34 expanded the purpose section of the original filing.[2] This Amendment No. 2 to SR–NYSE–94–34 revises the proposed rule change to specifically exclude transactions in securities not listed on the NYSE, transactions by a member organization acting in the capacity of a specialist or market maker on a regional exchange, to the extent that a principal trade is effected and immediately liquidated at the same price to a customer on that exchange. An additional limited exemption also would allow a member or member organization to trade along with a customer when engaging in bona fide arbitrage or risk arbitrage provided certain conditions are met.[3]

The following is the text of the proposed rule change marked to reflect all of the proposed changes to the current rule. Additions to the current

[1] The filing was published for public comment in Securities Exchange Act Release No. 35139 (December 22, 1994), 60 FR 156 (January 3, 1995). The Commission published notice of an extension of the comment period in Securities Exchange Act Release No. 35274 (January 25, 1995), 60 FR 6330 (February 1, 1995).

[2] Amendment No. 1 was included in the original publication for public comment. *See* Securities Exchange Act Release No. 35139, *supra* note 1.

[3] 17 CFR 240.19c–3 (1994).

rule are in italics and deletions are in brackets.

Rule 92: Limitations on Members' Trading Because of Customers' Orders

[(a) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he, his member organization or any other member, allied member or approved person, in such organization or officer thereof, is directly or indirectly interested, while such member personally holds or has knowledge that his member organization holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his member organization holds an unexecuted market order to sell such security in the unit of trading for a customer.

(b) No member shall (1) personally buy or initiate the purchase of any security in the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to sell such security in the unit of trading for customer.]

(a) Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) any Exchange-listed security on the Exchange or any other market center for any account in which such member or member organization or any approved person thereof is directly or indirectly interested (a "proprietary order"), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price.

(b) A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided the customer's order is not for the account of an individual investor, and the customer has given express permission, including an understanding of the relative price and size of allocated execution reports, under the following conditions:

(1) the member or member organization is liquidating a position held in a proprietary facilitation account, and the customer's order is for 10,000 shares or more; or

(2) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transactions, and recording such transactions in an account used solely to record arbitrage transactions (an "arbitrage account").

(c) The provisions of this Rule shall not apply to:

(1) [to] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot dealer to offset odd-lot orders for customers; [or]

(2) [to] any purchase or sale of any security upon terms for delivery other than those specified in such unexecuted market or limited price order [.];

(3) transactions by a member or member organization acting in the capacity of a market maker pursuant to Regulation 240.19c–3 of the Securities and Exchange Commission in a security listed on the Exchange; and

(4) transactions by a member or member organization acting in the capacity of a specialist or market maker on another national securities exchange, to the extent that a riskless principal trade is effected and immediately liquidated at the same price to a customer on that exchange.

Supplementary Material

.10 A member or employee of a member or member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

.20 This Rule shall also apply to a member organization's member on the Floor, who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent the member organization itself could do so under this Rule.

.30 For purposes of paragraph (b) above, the term "account of an individual investor" shall have the same meaning as the meaning ascribed to that term in Exchange Rule 80A. For purposes of paragraph (b)(1) above, the term "proprietary facilitation account" shall mean an account in which a member organization has a director interest and which is used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided in paragraph (b)(1). For purposes of paragraph (b)(2) above, the terms "bona fide arbitrage" and "risk arbitrage' shall have the meaning ascribed to such terms in Securities Exchange Act Release 15533, January 26, 1979. All transactions effected pursuant to paragraph (b)(2) above must be recorded in an arbitrage account.

[.10] *.40* A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule.

[.20] *.50* See paragraph (c)(i) of Rule 800 (Basket Trading: Applicability and Definitions) and paragraph 99 (Off-Hours Trading: Applicability and Definitions) in respect of the ability to initiate basket transactions and transactions through the "off-Hours Trading Facility" (as Rule 900 defines that term), respectively, notwithstanding the limitations of this Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose [4]

Currently, Exchange Rule 92 provides that members may not trade for their own accounts at a price at which they hold executable customer orders. The Rule, by its express terms, does not apply to member organizations or to transactions by members and member organizations in market centers other than the exchange. The rule does not contain any exceptions for any types of proprietary transactions, including transactions where a member firm trades for its own account along with a customer's block-size order when liquidating a proprietary block facilitation position, or transactions involving bona fide arbitrage and risk arbitrage, even if the customer has given permission for the firm to trade along with the order.

The proposed amendments to Rule 92 make clear that the Rule applies only to transactions in NYSE-listed securities and extend the Rule's applicability to member organizations, and to transactions by members and member organizations in market centers other than the Exchange. The proposed amendments contain exemptions for liquidations of block facilitation transactions and for bona fide arbitrage and risk arbitrage, as discussed below. The proposed amendments also provide exemptions, as discussed below, for member organizations acting as market makers pursuant to Rule 19c–3 under the Act, or as regional stock exchange specialists or market makers. In addition, the proposed amendments provide an exemption for member organization proprietary transactions where the member organization has implemented information barrier procedures as discussed below.

Applicability of Rule 92 to Member Organizations

The proposed amendments to Rule 92 would broaden the Rule's applicability to all proprietary trading in NYSE-listed stocks when a member organization has an agency order capable of execution at the price at which a proprietary trade is effected. The Exchange understands that in most "trading along" situations, the same Floor Broker represents the agency and proprietary orders and, even if that was not the case, it would be unacceptable for a firm to enter a proprietary order with a different broker, who could then compete directly with the broker representing the member firm's customer. To better deal with the current trading environment and still meet the high standard of ethical conduct the Exchange expects of its membership when dealing with their customers, the focus of Rule 92 should be placed on the member organization itself. Rule 92 was drafted and promulgated prior to the advent of block positioning and the proliferation of upstairs proprietary position trading by member organizations, but the Rule reflects fundamental concepts, rooted in agency law, that an agent must place a customer's interest ahead of the agent's proprietary interest. The Exchange and its constituent committees that reviewed the proposed amendments to the Rule believe it is appropriate to extend this emphasis on the priority of customer interest to the member organization itself, as well as to the organization's Floor members. While enforcement action has been taken regarding inappropriate proprietary trading vis-á-vis agency orders as violative of the NYSE Rule 476 prohibition against conduct inconsistent with just and equitable principles of trade, recent investigations drew the Exchange's attention to a practice of trading along with, but not ahead of, institutional customer orders with the consent of the consumer. When appropriate, the Exchange will continue to bring enforcement action for violations of Rule 476 in the context of inappropriate proprietary trading. The Exchange also believes that amending Rule 92 offers the best approach to addressing expectations on the subject of member organization proprietary trading in the context of block facilitation. The proposed amendments change the scope and focus of Rule 92 and strike an appropriate balance between block facilitation and customer protection.

Applicability of Rule 92 to Transactions by Members and Member Organizations in Market Centers other than the Exchange

The proposed amendments to Rule 92 extend the application of the Rule to transactions by a member or member organization in a market center other than the Exchange. The Exchange believes it is appropriate that the broad concepts of agency law and fiduciary duty codified in paragraph (a) of Rule 92 be made applicable to all agency representation, irrespective of market center. The exceptions provided in paragraphs (b) and (c) are intended to apply to transactions by members and member organizations on the Exchange. Other market centers may choose to adopt, or not adopt, comparable exceptions. The Exchange, as well as other self-regulatory organizations, has a long history of regulating activities involving, for example, sales practices and the trading of a diverse range of financial products which occur in other market centers. Many of these regulatory activities are conducted through the Intermarket Surveillance Group.

Liquidation of Facilitation Positions

The ability to liquidate a block facilitation position by trading along with a customer's block-size order is generally perceived by positioning firms and their institutional customers as a reasonable aspect of the block facilitation business, provided there is disclosure to customers and customer consent. The inability to liquidate such positions in these circumstances may impede the block facilitation business, as firms may be reluctant to assume block facilitation positions if they cannot liquidate them, subject to appropriate safeguards, while representing customer orders.

The Exchange is proposing to amend Rule 92 to permit member organizations to trade along with a customer, when liquidating a block facilitation position, subject to the following conditions:

- The customer is not an individual investor,[5]
- The customer's order is for 10,000 shares or more;
- The customer has given express permission for the member organization to trade along with the order, including an understanding of the relative price and size of allocated execution reports;
- The member organization is liquidating a position acquired in the course of facilitating a block transaction; and
- The member organization's orders are for an account used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders of 10,000 shares or more (a "proprietary facilitation account").

The Exchange intends to inform members and member organizations that, although the amended rule does not outline a specific method of record keeping evidencing that a customer has given permission to trade along, the burden of proof to demonstrate that customer consent was obtained will fall on the member or member organization.

Bona Fide Arbitrage and Risk Arbitrage Transactions

The Exchange believes it would be appropriate for members and member organizations to be able to trade along with customers in bona fide arbitrage and risk arbitrage transactions, subject to the following conditions:

- The customer is not an individual investor;
- The customer has given express permission for the member organization to trade along with the order, including an understanding of the relative price and size of allocated execution reports; and
- The member organization's transactions are recorded in an account

[4] This discussion consolidates the "Purpose" discussion as submitted in SR–NYSE–94–34 and Amendment No. 1 thereto, *see supra* note 1, and also discusses additional amendments to Rule 92 being filed herein.

[5] The Exchange believes that consent to trade along should be given by a market professional and therefore is limiting these exemptions to orders which are not for the account of an individual investor.

used solely to record arbitrage transactions (an "arbitrage account").

As with the exception for liquidation of block facilitation positions, the burden of proof to demonstrate that customer consent was obtained would fall on the member or member organization. The terms "bona fide arbitrage" and "risk arbitrage" would have the meaning ascribed to them in Securities Exchange Act Release No. 15533.[6]

Exception for Market Makers

The Exchange's proposal would exempt from Rule 92 transactions by a member organization acting in the capacity of a market maker pursuant to Rule 19c–3 under the Act,[7] and transactions by a regional exchange specialist or market maker, to the extent that a riskless principal trade is effected and immediately liquidated at the same price to a customer on that exchange.

Information Barriers

The amendments to Rule 92 provide that a member or employee of a member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders. Each member organization would have the flexibility to implement such procedures as it deemed appropriate to its own business operations.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change will enable member organizations to add depth and liquidity to the Exchange's market, while continuing to provide customer protection through the requirement of customer approval for trading along situations.

[6] Securities Exchange Act Release No. 15533 (January 26, 1979).

[7] Rule 19c–3 under the Act provides that the rules of national securities exchanges may not impose off-board trading restrictions on securities listed after April 26, 1979.

B. Self-Regulatory Organization's Statement on Burden on Competition

As the proposed amendments to Rule 92 would apply equally to all market centers with respect to trading by NYSE members and member organizations, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange understands that the Commission has received comments on SR–NYSE–94–34 and Amendment No. 1 thereto from several self-regulatory organizations and member organizations. The Exchange believes that issues raised by these commentators are addressed herein, and in a letter from James E. Buck, Senior Vice President and Secretary of the Exchange, to Brandon Becker, Director of the Division of Market Regulation, dated March 15, 1995.[8]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–34 and should be submitted by August 18, 1995.

[8] This letter and all other comment letters received by the Commission regarding the NYSE's proposal are available in the Commission's public reference room in File No. SR–NYSE–94–34.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18602 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36009; File No. SR–NYSE–95–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to an Extension of its Pilot Program for Stopping Stock Under Amendments to Rule 116.30

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 19, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a request to extend amendments to Rule 116.30, with respect to the ability of specialists to stop stock in minimum variation markets for three months until October 21, 1995.[1] The text of the proposed rule change is available at the Office of the Secretary, NYSE, and the Commission.

[1] The NYSE received approval to amend Rule 116.30, on a pilot basis, in Securities Exchange Act Release No. 28999 (Mar. 21, 1991), 56 FR 12964 (Mar. 28, 1991) (File No. SR–NYSE–90–48) ("1991 Approval Order"). The Commission subsequently extended the NYSE's pilot program in Securities Exchange Act Release Nos. 30482 (Mar. 16, 1992), 57 FR 10198 (Mar. 24, 1992) (File No. SR–NYSE–92–02) (" 1992 Approval Order"); 32031 (Mar. 22, 1993), 58 FR 16563 (Mar. 29, 1993) (File No. SR–NYSE–93–10) ("1993 Approval Order"); 33792 (Mar. 21, 1994), 59 FR 14437 (Mar. 28, 1994) (File No. SR–NYSE–94–08) "1994 Approval Order"); and 35309 (Jan. 31, 1995) 60 FR 7247 (Feb. 7, 1995) (File No. SR–NYSE–95–02) ("January 1995 Approval Order").

[2] *See* 1991, 1992, and 1993 Approval Orders, *supra*, note 1.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the effectiveness of amendments to Exchange Rule 116.30 that permit a specialist to grant a stop in a minimum variation market. The practice of "stopping" stock by specialists on the Exchange refers to a guarantee by the specialist that an order the specialist receives will be executed at no worse a price than the contra-side price in the market when the specialist receives the order, with the understanding that the order may in fact receive a better price.

Formerly, Exchange Rule 116.30 permitted a specialist to stop stock only when the quotation spread was at least twice the minimum variation (*i.e.*, for most stocks ¼ point), with the specialist then being required to narrow the quotation spread by making a bid or offer, as appropriate, on behalf of the order that is being stopped.

For three years, on March 21, 1991, March 16, 1992, and March 22, 1993, the Commission approved, on a one-year pilot basis each time, amendments to the rule that permit a specialist to stop stock in a minimum variation market (generally referred to as an ⅛-point market).[2] The Exchange sought these amendments on the grounds that many orders would receive an improved price if stopping stock in ⅛ point markets were permitted. The amendments to Rule 116.30 permit a specialist, upon request, to stop individual orders of 2,000 shares or less, up to an aggregate of 5,000 shares of multiple orders, in an ⅛ point market.[3] A specialist may stop an order of a specified larger order size threshold, or a larger aggregate number of shares, after obtaining Floor Official approval.

In the Commission's 1994 Approval Order, which extended the pilot until March 21, 1995, the Commission asked the Exchange to submit a fourth monitoring report on the stopping stock pilot.[4] Subsequently, the Commission approved an extension of the pilot until July 21, 1995, so that the Commission would have additional time to evaluate the new information provided in the fourth monitoring report and to ensure that Rule 116.30, as amended, does not harm public customers with limit orders on the specialist's book.[5]

In connection with the proposed rule change, the Exchange has submitted four monitoring reports to the Commission, which review the operation of the pilot. The Exchange believes that the results obtained by its monitoring effort during the pilot period show that the amendments to Rule 116.30 enable specialists to better serve investors through the ability to offer price improvement to stopped orders, while having relatively little adverse impact on other orders on the book.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The amendments to Rule 116.30 are consistent with these objectives in that they permit the Exchange to better serve its customers by enabling specialists to execute customer orders at improved prices.

[3] The NYSE has stated, both to the Commission and to its members that specialists should only stop stock in a minimum variation market when an imbalance exists on the opposite side of the market and such imbalance is of sufficient size to suggest the likelihood of price improvement. *See, e.g.*, letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated December 27, 1990; NYSE information memo #1809, dated September 12, 1991.

[4] *See* 1994 Approval Order, *supra*, note 1.

[5] *See* January 1995 Approval Order, *supra*, note 1.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.[6]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–95–26 and should be submitted by August 18, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular with Section

[6] The Commission has received a comment letter regarding permanent approval of the NYSE's procedures for stopping stock in minimum variation markets. *See* letter from Junius W. Peake, Monfort Professor of Finance, University of Northern Colorado, to Secretary, SEC, dated March 1, 1995. The Commission believes that it would be more appropriate to address the issues raised by the comment letter in the context of the Exchange's proposal requesting permanent approval of its stopping stock pilot program. *See* Securities Exchange Act Release No. 35908 (June 28, 1995), 60 FR 34564 (July 3, 1995) (notice of filing of proposed rule change relating to permanent approval of NYSE's pilot program for stopping stock in a minimum variation market).

6(b)(5)[7] and Section 11(b)[8] of the Act. The Commission believes that the amendments to Rule 116.30 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum variation markets, under limited circumstances that provide the possibility of price improvement to customers whose orders are granted stops.

In the orders approving the pilot procedures,[9] the Commission asked the Exchange to study the effects of stopping stock in a minimum variation market. The Exchange has submitted to the Commission several monitoring reports regarding the amendments to Rule 116.30. The Commission believes that the monitoring reports, especially the latest report, provide useful information regarding the effectiveness of the program during the pilot period. The Commission, however, finds that additional time is necessary to evaluate carefully and comprehensively the information provided by the Exchange and the NYSE's use of its pilot procedures. Accordingly, the Commission believes that it is reasonable to extend the pilot program until October 21, 1995, to avoid compromising the benefit that investors might receive under Rule 116.30, as amended, while the Commission is considering whether to permanently approve the pilot program.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–95–26) is hereby approved on a pilot basis until October 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–18604 Filed 7–27–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–36003; File No. SR–OCC–95–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Concerning Equity TIMS

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] ("Act"), notice is hereby given that on May 26, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change through May 31, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to have the Commission extend its order granting temporary approval of OCC's use of its Theoretical Intermarket Margin System ("TIMS") for calculating clearing margin positions in equity options.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 1, 1991, the Commission temporarily approved a proposed rule change which authorized OCC to use TIMS to calculate clearing member margin requirements on equity options.[4] Since its initial temporary approval of Equity TIMS, the Commission has extended the temporary approval three times.[5]

Equity TIMS utilizes options price theory (*i.e.*, an option pricing model) to project the cost of liquidating in the event of a "worst case" theoretical change in the price of the underlying securities, each clearing member's short equity option positions and long equity option positions on which OCC is entitled to assert a lien. This projected liquidation cost is then used by Equity TIMS to calculate for each clearing member a margin requirement to cover that cost.

OCC has requested an additional extension so that it can complete its analysis of Equity TIMS. Specifically, in its discussions with the Commission's staff preceding the Commission's initial temporary approval of Equity TIMS, OCC represented that it would undertake to analyze the effects of including equity option volatilities over longer periods in determining margin intervals and would report the results of its analysis to the Commission.[6] OCC recently submitted a report of its analysis to the Commission's staff. Accordingly, OCC seeks an extension of the Commission's temporary approval of Equity TIMS through May 31, 1996, so that the Commission may review and discuss the report and several potential changes to Equity TIMS with OCC.[7]

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will enhance OCC's ability to safeguard the securities and funds in its custody or control or for which it responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[8] of the Act requires the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. Additionally, Section 17A(a)(1) of the Act[9] encourages the use of efficient, effective, and safe procedures for securities clearance and settlement. The Commission continues to believe that OCC's proposal to utilize Equity TIMS meets the requirements of the Act and that it represents an improvement over OCC's previous margin system in several respects.[10] Nevertheless, while the Commission continues to believe that the margin methodology employed by Equity TIMS is basically sound, the Commission staff must fully analyze OCC's report to the Commission and several potential changes to Equity TIMS before determining whether to grant permanent approval for Equity TIMS.

OCC has requested that the Commission find good cause for approving the proposal prior to the thirtieth day after the publication of notice of filing of the proposed rule change. The Commission finds such good cause because the Commission believes that OCC's use of Equity TIMS over the past five years has resulted in better assessments of OCC's risk exposure associated with the clearance and settlement of its clearing members' equity option positions and has resulted in calculations of clearing margin that more accurately reflect that risk exposure. Accordingly, to allow OCC to continue to use Equity TIMS while the Commission and OCC further examine Equity TIMS, the Commission finds that good cause exists for approving the proposed rule change prior to the thirtieth day after publication of notice of filing. The Commission also notes that during the four previous temporary approval periods, OCC has not received any adverse comments regarding Equity TIMS from its clearing members.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–95–07 and should be submitted by August 18, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[11] that the proposed rule change (File No. SR–OCC–95–07) be, and hereby is, approved through May 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95–18606 Filed 7–27–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 35–26337]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 21, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 14, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company, et al. (70–8577)

Consolidated Natural Gas Company ("CNG"), a registered holding company, located at CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, and its wholly-owned subsidiary company, CNG Energy Services Corporation ("Energy Services"), located at One Park Ridge Center, Pittsburgh, Pennsylvania 15244–0746, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45 and 54 thereunder.

CNG and Energy Services request authorization to form a new subsidiary, CNG Special Products and Services, Inc., ("CSPS"), to engage in the business

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[7] U.S.C. 78f (1988 & Supp. V 1993).
[8] 15 U.S.C. 78k (1988).
[9] *See supra*, note 1.
[10] *See* Securities Exchange Act Release No. 35906 (June 28, 1995), 60 FR 34564 (July 3, 1995) (notice of filing of proposed rule change relating to permanent approval of NYSE's pilot program for stopping stock in a minimum variation market).
[11] 15 U.S.C. § 78s(b)(2) (1988).
[12] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] Equity TIMS is a modified version of OCC's Non-Equity TIMS, which is OCC's margin system used to calculate requirements on options for which the underlying asset is anything but an equity security. Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127 [File No. SR–OCC–85–21] (order approving Non-Equity TIMS).
[3] The Commission has modified the text of the summaries prepared by OCC.
[4] After the Commission's approval of File No. SR–OCC–89–12 on March 1, 1991, OCC phased out its previous margin system, which was known as the "production system," and since then has used Equity TIMS to calculate its clearing members' margin requirements on equity option positions. For a complete description of Equity TIMS, refer to Securities Exchange Act Release No. 28928 (March 1, 1991), 56 FR 9995 [File No. SR–OCC–89–12] (order approving the use of Equity TIMS to calculate margin on equity options on a temporary basis through May 31, 1992).
[5] Securities Exchange Act Release Nos. 30761 (May 29, 1992), 57 FR 24286 [File No. SR–OCC–92–15] (order extending the approval of Equity TIMS through May 31, 1993); 32388 (May 28, 1993), 58 FR 31989 [File No. SR–OCC–93–06] (order extending the approval of Equity TIMS through May 31, 1994); and 34085 (May 13, 1994), 59 FR 26534 [File No. SR–OCC–94–03] (order extending the approval of Equity TIMS through May 31, 1995).
[6] OCC initially was delayed because it expanded the scope of its analysis from ten years to thirty years and had difficulty in obtaining an accurate data base of information covering the expanded period of review. OCC also determined that its analysis of equity options volatility would benefit from a review by an outside consultant, and because it took OCC some time to obtain the services of an appropriate consultant, its analysis was delayed further.
[7] OCC has not filed a proposed rule change regarding the potential changes to Equity TIMS; however, OCC will file a draft proposed rule change so that the Commission will have an opportunity to comment on the changes before OCC officially seeks approval of the changes under Section 19(b)(2) of the Act.
[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).
[9] 15 U.S.C. 78q–1(a)(1) (1988).
[10] *Supra* note 4.
[11] 15 U.S.C. 78s(b)(2) (1988).
[12] 17 CFR 200.30–3(a)(12) (1994).

of providing certain energy-related services ("Customer Services")[1] to customers of CNG's local distribution companies ("LDCs") and to others, primarily customers of utilities not affiliated with CNG. Applicants also request authorization, through December 31, 2000, for CNG to lend Energy Services an aggregate of up to $10 million on a revolving basis and for Energy Services, in turn, to provide CSPS with "mirror image" financing reflecting the same source and combination of funds as utilized between CNG and Energy Services.

Energy Services proposes to obtain the funds to lend to CSPS by some combination of (1) selling shares of its common stock, $1.00 par value, to CNG, (2) obtaining open account advances from CNG, or (3) obtaining long-term loans from CNG. Open account advances from CNG to Energy Services would be made under a letter agreement with Energy Services and would be repaid on or before a date not more than one year from the date of the first advance with interest at the same effective rate of interest as CNG's weighted average effective rate for commercial paper and revolving credit borrowings. If no such borrowings are outstanding, the interest rate would be predicated on the Federal Fund's effective rate of interest as quoted daily by the Federal Reserve Bank of New York. Long-term loans to Energy Services would be evidenced by long-term non-negotiable notes of Energy Services (documented by book entry only) maturing over a period of time (not in excess of 30 years) to be determined by the officers of CNG, with the interest predicated on and substantially equal to CNG's cost of funds for comparable borrowings by the parent. In the event CNG has not had recent comparable borrowings, the rate would be tied to the Salomon Brothers indicative rate for comparable debt issuances published in Salomon Brothers, Inc. Bond Market Roundup or similar publication on the date nearest to the time of takedown. All loans would be prepayable at any time without premium or penalty.

CNG will obtain the funds it loans to Energy Services through internal cash generation, issuance of long-term debt securities, as authorized by Commission order dated March 6, 1995 (HCAR No. 26245), borrowings under credit agreements, as authorized by Commission order dated June 29, 1995 (HCAR No. 26321), or through other authorizations approved or to be approved by the Commission.

Applicants expect CSPS to conduct its Customer Services business both within and outside of the four states of Virginia, West Virginia, Pennsylvania and Ohio where CNG's LDCs are located (collectively, "LDC States"). However, applicants state that during the twelve-month period beginning on the first day of January in the year following the date CSPS commences its Customer Services business pursuant to a Commission order issued in this matter, and for each subsequent calendar year thereafter, total revenues of CSPS derived from customers in the LDC States will exceed total revenues of CSPS derived from customers in all other states.

Applicants state that CNG's LDSs will assist CSPS with customer billing, accounting, and other energy-related services and anticipate that these services can be provided to CSPS by the current staff at the LDSs. They state that all services required to conduct the Customer Services business that are provided to CSPS by the LDCs or any other CNG system company will be billed in accordance with section 13(b) of the Act and rules 87, 90 and 91 thereunder.

[1] The Customer Services offered by CSPS would include the following: (1) "Service Line Maintenance Program" (repair of service lines owned by and located on customers' property, in exchange for a nominal monthly fee); (2) "Appliance Guard" (an extended service warranty covering the cost of repairing customers' appliances); (3) "Payment Power" (bill payment protection, up to $400 a month for six months); (4) "Routine Furnace Services" (routine furnace inspection and repair); (5) "One-Package Appliance Inspection and Replacement" (annual inspection, maintenance or replacement of any appliance, including hot water heaters); (6) "Community Bill Payment Center" (a centralized bill payment center for "one stop" payment of all utility and municipal bills); (7) "Energy Audits and Services" (energy audits for institutional customers together with a turnkey service package); (8) "Propane Services" (in areas where it is not economical for local distribution companies to extend natural gas service via underground pipelines); (9) "Gas Fired Electric Generators" (installation of temporary or permanent gas-fired turbines for on-site generation and consumption of electricity); and (10) "Pipeline Maintenance, Construction and Managerial Support Services for Others" (management of construction of and required maintenance on pipelines owned by other utilities and provision of consulting services to small non-affiliated utilities). Applicants state that this is not an exhaustive list of Customer Services and propose to offer other services of a similar nature without additional Commission authorization unless additional funding for CSPS is necessary.

National Fuel Gas Company, et al. 70-8649

National Fuel Gas Company ("National"), a registered holding company, and Horizon Energy Development, Inc. ("Horizon") (collectively, "Applicants"), a to-be-acquired wholly-owned subsidiary company of National, both located at 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Act and rules 43, 45, 53 and 83 thereunder.

National proposes to acquire, for a purchase price of $500,000 all of the issued and outstanding common stock of Horizon, a newly formed New York corporation. National proposes to capitalize Horizon by providing debt and equity capital not to exceed $150 million at any time outstanding through December 31, 2001. Horizon proposes to invest up to $150 million at any time outstanding through December 31, 2001 in a combination of debt, equity, guarantees, and the assumption of liabilities ("Investment Limit") in authorized project activities ("Project Activities").

National proposes to invest in Horizon in the form of acquisitions of capital stock, capital contributions, open account advances and/or loans (collectively, "Investments"). Aggregate Investments shall not exceed $150 million at any time outstanding. Any loans by National to Horizon having maturities of less than nine months shall have terms and conditions parallel to those of similar loans obtained by National. The interest rates on such loans shall not exceed the current LIBOR rates plus 200 basis points. Any loans by National to Horizon having maturities of more than nine months shall have terms and conditions parallel to those of similar loans obtained by National, the proceeds of which shall not exceed the current yields of Treasuries having similar maturities plus 200 basis points.

The proposed Project Activities include development activities concerning investments in, and financing the acquisitions of, one or more companies ("Intermediate Companies") engaged directly or indirectly and exclusively in the business of holding the securities of one or more exempt wholesale generators, ("EWGs"), and foreign utility companies ("FUCOs"), (collectively, "Exempt Projects"). Project Activities also include consulting services and development activities throughout the United States regarding qualifying cogeneration and small power production facilities as defined in the Public Utility Regulatory Policies Act of 1978, and independent power production facilities, (collectively, "Domestic Power Projects.")

Horizon proposes to undertake preliminary development and administrative activities in regard to Domestic Power Projects. Preliminary development activities would include investigating sites, preliminary engineering and licensing activities, acquiring options and rights, contract drafting and negotiating, preparing proposals and other necessary activities to identify and analyze feasible investment opportunities and to initiate the commercialization of a project. Administrative activities include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary for Horizon to manage its development activities and investments in Domestic Power Projects.

Applicants proposed to acquire interests in, finance the acquisition of, and hold the securities of, one or more Intermediate Companies, without filing specific project applications or declarations, within the limitations set forth herein. Applicants request authority for Intermediate Companies to issue and acquire equity and debt securities, with or without recourse to the Applicants, to or from persons other than the Applicants including banks, insurance companies, and other financial institutions ("IC Debt Financing"), for the purpose of financing (including any refinancing of) investments in Exempt Projects.

The Intermediate Companies' investments in Exempt Projects may take the form of the issuance or acquisition of common stock, capital contributions, open account advances, other loans, or the borrowing of funds. Securities issued or acquired by Intermediate Companies may be issued or acquired in one or more transactions from time to time through December 31, 2001. Applicants propose that debt securities issued to persons other than the Applicants, or acquired by Intermediate Companies, may include secured and unsecured promissory notes, and other evidence of recourse and nonrecourse indebtedness.

Securities issued or acquired by Intermediate Companies may be denominated in either U.S. dollars or foreign currencies. The Applicant state that the amount and type of such securities, and the terms thereof, including (in the case of any indebtedness) interest rate, maturity, prepayment or redemption privileges, and the forms of any collateral security granted with respect thereto, would be negotiated on a case by case basis, taking into account differences from project to project in desirable debt-equity ratios, projections of earnings and cash flow, depreciation lives, and other similar financial and performance characteristics. Accordingly, the Applicants propose that they have the flexibility to negotiate the terms and conditions of such securities without further approval by the Commission.

Applicants also request authority to issue guarantees and assume liabilities for development activities in connection with the proposed Exempt Projects and Intermediate Companies up to the proposed Investment Limit. The Applicants further propose to obtain recourse and norecourse debt financing, from unaffiliated third parties to finance investments in Project Activities ("Debt Financing"). All outstanding Debt Financing, including IC Debt Financing, guaranteed by National, or having some other form of recourse to National ("Recourse Debt"), shall not, when aggregated with all other Investments, guarantees and assumed liabilities relating to Project Activities, exceed the Investment Limit at any time. National may charge a commercially reasonable rate for the provisions of such guarantees. Debt Financing not having recourse to National ("Nonrecourse Debt"), shall not constitute part of the proposed Investment Limit.

The term of any Recourse Debt will not exceed 40 years and its interest rate will not exceed 200 basis points over comparable U.S. Treasury securities in effect on the date of issue. The term of any Nonrecourse Debt will not exceed 40 years, and its interest rate (if payable in U.S. dollars) will not exceed 600 basis points over comparable U.S. Treasury securities in effect on the date of issue. If any Recourse Debt or Nonrecourse Debt is denominated in foreign currencies, the terms and interest rate will be commercially reasonable at the time of borrowing. Applicants or the Intermediate Companies may also pay commercially reasonable commitment and other fees with respect to Debt Financing.

Notwithstanding the foregoing, the Applicants state that no equity security having a stated par value would be issued or sold by an Intermediate Company for a consideration that is less than such par value; and that any note, bond or other evidence of indebtedness issued or sold by any Intermediate Company will mature not later than 40 years from the date of issuance thereof, and will bear interest at a rate not to exceed the following: (1) If such note, bond or other indebtedness is U.S. dollar denominated, at a fixed rate not to exceed 6.0% over the yield to maturity on an actively traded, non-callable, U.S. Treasury note having a maturity equal to the average life of such note, bond or other indebtedness, or at a floating rate not to exceed 6.0% over LIBOR from time to time; and (2) if such note, bond or other indebtedness is denominated in the currency of a country other than the United States, the terms and interest rate will be commercially reasonable at the time of borrowing.

Horizon also proposes to participate directly or through Intermediate Companies in joint ventures with non-associates which joint ventures are exclusively in the business of researching investment opportunities in, and owning and developing, Exempt Projects. Horizon further requests authorization to acquire interests in Intermediate Companies prior to such Intermediate Companies acquiring their interests in Exempt Projects, provided that such Intermediate Companies engage and will engage exclusively in the business of investing in Exempt Projects.

Applicants request an exemption from section 13(b) under rule 83 of the Act, for any subsidiary company of National providing services to EWGs which derive no part of their income, directly or indirectly, from the generation of electric energy for sale within the United States, or FUCOs.

Entergy Corporation, et al. 70-8653

Entergy Corporation ("Entergy"), a registered holding company, and its wholly owned subsidiary companies, New Orleans Public Service Inc., Louisiana Power & Light Company, located at 639 Loyola Avenue, New Orleans, Louisiana 70113; Arkansas Power & Light Company, 425 West Capitol Avenue, Little Rock, Arkansas 72201; Gulf States Utilities Company, 350 Pine Street, Beaumont, Texas 77701; Mississippi Power & Light Company, 308 Pearl Street, Jackson, Mississippi 39215 (collectively, "System Operating Companies"); System Energy Resources, Inc. ("SERI"), 1340 Echelon Parkway, Jackson, Mississippi 39213; Entergy Services, Inc. ("ESI"), 639 Loyola Avenue, New Orleans, Louisiana 70113; Entergy Enterprises, Inc. ("EEI"), 900 South Shackleford Road, Little Rock, Arkansas 72211; and Entergy Systems and Service, Inc. ("SASI"), 4740 Shelby Drive, Suite 105, Memphis, Tennessee 38118, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and rules 43, 45, 54, 87, 90 and 91 thereunder.

Entergy proposes to organize a new subsidiary to be called Entergy Technologies Company ("ETC") and to provide funding to ETC, through December 31, 1998, up to an aggregate principal amount of $100 million. Entergy proposes to incorporate ETC under Delaware law as a direct wholly owned subsidiary of EEI, with an authorized capital of up to 1,000 shares of common stock with a par value of $.01 per share. EEI would subscribe to

and purchase all of ETC's common stock for a price of $1,000 per share, using funds contributed or loaned to EEI by Entergy. EEI would provide ETC with additional funding, through December 31, 1998, in the form of capital contributions, open account advances, or loans, or combination thereof, in an aggregate amount not to exceed $100 million. Entergy proposes to provide funding to EEI for reinvestment in ETC out of Entergy's internally generated cash and other available cash resources. Loans from Entergy to EEI and from EEI to ETC will bear interest at a rate per annum not in excess of the prime commercial lending rate announced from time to time by a money center bank designated by Entergy plus 3%, and will have a final maturity not to exceed 20 years from the loan origination date.

In addition, ETC seeks authority to incur borrowings from external sources in an aggregate amount not to exceed $100 million at any one time outstanding. Such borrowings would be evidenced by notes issued by ETC, would have final maturities not to exceed 20 years from their date of issuance, and would bear interest at rates not to exceed the greater of: (1) The prime rate as described above plus 5% per annum; or (2) 14% per annum. EEI and/or Entergy propose to guarantee such loans.

ETC would use the proceeds of such investments by EEI and external borrowings to make payments to the System Operating Companies and ESI, to pay debt service and to meet its working capital and other cash needs.

ETC proposes to enter into arrangements with the System Operating Companies, and other Entergy subsidiary companies permitting ETC to use and make available to nonassociate companies from time to time certain unused capacity on the Entergy System's Telecommunications Backbone System ("Backbone System") for the purpose of providing interstate "long haul" or "carrier of carriers" services.[2]

ETC would enter into one or more Capacity Use and Service Agreements ("Agreement") with the System Operating Companies and ESI under which they would make available to ETC unused capacity on the Backbone System, as determined from time to time. The System Operating Companies and ESI would retain full ownership of, and rights to operate and maintain, their respective portions of the Backbone System. Capacity on the Backbone System would not be deemed unused or made available to ETC for any period of time in which it would interfere with the actual and anticipated usage of the Backbone System for utility purposes by other System companies.

Under the Agreements, ETC would receive only the right to commercialize for interstate carrier of carriers purposes the unused communications capacity on the Backbone System (i.e., the right to commercialize the signal transmission and carrying capability of the Backbone System). Accordingly, the System Operating Companies would not transfer ownership or control of the Backbone System to ETC or to any nonassociate company.

ETC would be responsible pursuant to the Agreements for monitoring, establishing and evaluating operational standards for use of the Backbone System by its nonassociates. ETC also would cause to be developed, constructed and installed, at no cost to the System Operating Companies or ESI, equipment and facilities to link the Backbone System to the telecommunications systems of other carriers. Any such equipment or facilities located on utility property would be owned by the appropriate System Operating Company or ESI. ETC also, under certain circumstances, would make additional investments in advanced electronics and other new technologies that could serve to enhance the transmission capability of the Backbone System. ETC would pay for the full costs (including both capital and increased operating and maintenance expenses) of such upgrades, if such upgrades are not primarily for utility-related purposes or if they would not have been necessary but for the use of capacity by ETC pursuant to the Agreement(s).

ETC may acquire rights to use the capacity of telecommunications systems of non-System parties in order to enhance its ability to commercialize the unused capacity on the Backbone System. This would be done at no cost to the System Operating Companies. Arrangements with nonassociates may take the form of capacity exchanges or other reciprocal use or "in kind" transactions, pooling arrangements, consortia, joint ventures or other transactions involving the use of, or access to, the unused capacity on the Backbone System. The purposes of these transactions would include, but not be limited to, providing alternative or extended routing for fiber-based or wireless telecommunications, creating back-up or other redundant telecommunications networks, and other measures designed to enhance the capability and value of the Backbone System. The particular terms and conditions regarding the provision of interstate carrier of carriers telecommunications services by ETC to nonassociates would be negotiated at arm's length between such parties. In addition, ETC proposes to provide unused capacity on the Backbone System, at cost to associate companies that are not regulated utilities, including EEI and SASI.

ETC also proposes to engage in research and development activities relating to telecommunications and information systems and products that might potentially be deployed on a utility or non-utility basis, or both. ETC will be a "clearinghouse" for telecommunications and information systems technologies, undertaking research and development activities, field testing various manufacturers' equipment, and evaluating prototype technologies and equipment that may be useful in enhancing the operation of utility and nonutility telecommunications facilities. Entergy believes such activities will facilitate the design and development of communications practices and applications in connection with the Backbone System. In conjunction with such activities, ETC may acquire ownership of, or licenses to use or sublicense, telecommunications products or technologies, and may provide consulting services.

Entergy expects to staff ETC initially through a combination of recruiting (e.g., marketing and business staff) and transfers from ESI. Total staffing is not expected to exceed thirty employees, including up to ten employees transferred from ESI. In accordance with the terms of settlement arrangements among the Entergy System Operating Companies and certain of their retail regulators ("Settlement Arrangement"),[3] Entergy would not effect any personnel transfers that would adversely affect ESI or any System Operating Company. Moreover, no more than one percent (1%) of the total number of the personnel of the System Operating Companies and ESI would be utilized by ETC at any one time in connection with its authorized activities.

In exchange for the right under the Agreements, ETC would pay to the respective System companies a monthly charge calculated pursuant to the Settlement Arrangements to fully reimburse each System company for its direct and indirect costs associated with that portion of the capacity of the Backbone System being made available to ETC. ETC will receive from the System Operating Companies under the Agreements, installation, operations, maintenance and repair services relating to their respective portions of the Backbone System. ESI and the System Operating Companies would also charge ETC for the fully allocated direct and indirect cost of the telecommunications services provided in accordance with the Settlement Arrangements.

The System Operating Companies would apply such payments to reduce their costs of service, to the extent that the related facilities are in rate base or otherwise are used in utility operations. The Agreements will contain provisions that ensure that ETC's usage, and the usage by nonassociates, of the Backbone System would not in any way interfere with the operation of the Backbone System by the System Operating Companies and ESI.

To the extent that any upgrades of the Backbone System are contemplated primarily for utility purposes, the System Operating Companies or ESI would fund the costs of and deploy the assets, and payments under the Capacity Use and Service Agreements would be adjusted accordingly. ETC would pay for the full costs (including both capital and increased operating and maintenance expenses) of such upgrades, if such upgrades are not primarily for utility-related purposes or if they would not have been necessary but for the use of capacity by ETC pursuant to the Agreements. ETC will further agree under the Agreement(s) to indemnify and hold harmless the System Companies and ESI from any claims, liabilities and costs arising out of or related to ETC's activities with respect to its customers' use of the Backbone System.

Although ETC will have its own managerial, technical and administrative staff, pending full deployment of its own workforce, and from time to time thereafter, ETC will receive services from ESI and the System Operating Companies, including managerial, accounting, technical, engineering, legal and other services. Therefore, ETC will enter into a service agreement with ESI whereby ESI would perform or cause to be performed for ETC these various services relating to the Backbone System, similar to the services that ESI currently provides to other nonutility Entergy system companies such as EEI.

[2] The Backbone System is the Entergy system's fiber optic network, high capacity analog and digital telecommunications system, related coaxial cables, computers, software and other telecommunications equipment, facilities and property, and any future extensions and additions to such systems, equipment, facilities and property.

[3] The settlement arrangement is currently pending before the Commission under file no. 70-8529.

Leidy Hub, Inc., et al. (70-8655)

Leidy Hub, Inc. ("Leidy Hub"), 10 Lafayette Square, Buffalo, New York 14203, a wholly-owned nonutility subsidiary of National Fuel Gas Company ("NFG"), a registered public utility holding company, and NFG, 30 Rockefeller Plaza, New York, New York 10112, have filed an application-declaration with this Commission under sections 9(a), 10, 12(b) and 13(b) of the Act and rule 45 thereunder.

Leiby Hub proposes to acquire a 14.5% interest in Enerchange, a Delaware member-managed limited liability company, from Hub Services, a nonaffiliated Delaware corporation and a wholly owned subsidiary of NGC Corporation. Enerchange was formed, among other reasons: (i) To develop, implement and operate an electronic gas trading and nomination system; and (ii) to manage, own and operate Enerchange's interests in the Chicago Hub, the California Energy HUB and the Ellisburg-Leigy Northeast Hub, each a natural gas market area hub. As a member of Enerchange, Leidy Hub would make capital contributions from time to time as required by Enerchange's Executive Committee pursuant to the Limited Liability Company Agreement of Enerchange, L.L.C.[4] If another member of Enerchange failed to make any required capital contribution, Leidy Hub proposes that it may make loans to Enerchange to compensate for the defaulting member's unpaid capital contribution. The amount of the loan would be based on the ratio of Leidy Hub's 14.5% interest to the interests of the other nondefaulting members of Enerchange. Enerchange plans to join with a subsidiary of Energy Exchange, Inc., a nonaffiliated Canadian corporation, to acquire a 50% interest in QuickTrade, a Delaware member-managed limited liability company to be formed in the future.[5] QuickTrade would develop and operate an electronic trading and nomination system which could be accessed via computer by buyers and sellers of natural gas to make and accept binding offers to buy or sell gas at specific locations, generally at market hubs. Subscribers to QuickTrade's system would be able to see, on-line in real time, the price at which gas is being sold at any location listed on the system (without being able to see the names of the parties involved). Subscribers will also be able to nominate directly to interstate pipelines to transport or store the gas being sold via the system. The operations of QuickTrade would be limited to "cash forward contracts" typically settled by actual physical delivery. QuickTrade will not be involved with futures contracts.

Enerchange would subscribe to the QuickTrade system and use it to buy and sell natural gas and to engage in market-making activities. Specifically, Enerchange would act as an intermediary between potential buyers and sellers of natural gas, including, without limitation, electronic solictation of transactions between anonymous sellers and buyers, implementation and documentation of such transactions, and assumption of the performance and credit risk associated with such transactions.

It is also proposed that NFG guarantee certain obligations of Leidy Hub, Enerchange and QuickTrade and that Leidy Hub guarantee certain obligations of Enerchange and QuickTrade in a total amount not to exceed $5 million outstanding at any time from time to time for a period not to exceed four years through December 31, 2000. The obligations of Leidy Hub, Enerchange and QuickTrade to be guaranteed would be incurred as a result of the activities undertaken by Enerchange and QuickTrade related to the supply of natural gas. Whenever Enerchange is required to provide a guarantee, it would be provided 14.5% by NFG and/or Leidy Hub and 85.5% by the other members of Enerchange and/or their corporate parents. Such guarantees include the guarantee of obligations associated with: (i) Gas transportation agreements to be entered into by Enerchange with local distribution companies or pipelines; (ii) gas purchase and sale agreements entered into by Enerchange; and (iii) any and all other agreements relating to the transportation, storage or supply (including marketing) of natural gas.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-18598 Filed 7-27-95; 8:45 am]

BILLING CODE 8010-01-M

[4] Leidy Hub and NFG state that such capital contributions would be exempt from the requirement for a declaration under section 12(b) pursuant to rule 45(b)(4).

[5] Leidy Hub and NFG state that Enerchange's participation in this transaction would be exempt from the requirement for a declaration because Enerchange satisfies the requirements of rule 16.

[Investment Company Act Release No. 21225; 811-7378]

U.S. Dollar Cash Reserves Portfolio; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: U.S. Dollar Cash Reserves Portfolio.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on July 12, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, Elizabethan Square, Shedden Road, George Town, Grand Cayman, Cayman Islands, B.W.I.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company that was organized as a business trust under the laws of the State of New York. On December 8, 1992, applicant registered as an investment company under section 8(a) of the Act. On that same date, applicant filed a registration statement under section 8(b) of the Act. The registration statement never became effective.

2. Applicant never issued any securities. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceedings.

3. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

4. Applicant has been dissolved pursuant to the laws of the State of New York.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 95-18599 Filed 7-27-95; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on July 14, 1995.

(Call Reports Clearance Officer on (410) 965-4142 for copies of package.)

Information Collections Conducted by State Disability Determination Services (DDS) on Behalf of SSA—0960-NEW. The information collections are conducted in support of the SSA's disability program. There are three categories of information collections—medical evidence requirements (MER), consultative exams (CE), and consultative exam (CE) providers. DDSs use MER information to determine a person's physical and/or mental status prior to making a disability determination. DDSs use CE information to make disability determinations when the claimant's own medical sources cannot or will not provide the information. The information obtained from claimants is used to obtain release of medical information to personal physicians and to confirm scheduled appointments. DDSs use the CE provider information to verify a medical provider's credentials and license before hiring them to conduct consultative exams. The respondents are medical providers and claimants for CE information collections and medical providers for CE providers and MER information collections.

MER:

Number of Responses: 9.181 million
Frequency of Response: Unknown
Average Burden Per Response: 15 minutes
Estimate Annual Burden: 2,295,250 hours

CE: (Respondents—Medical Providers)

Number of Responses: 3 million
Frequency of Response: Unknown
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 1.5 million hours

CE: (Respondents—Claimants)

Number of Responses:	750,000	1.5 million
Average Burden Per Response:	5 minutes	5 minutes
Estimated Annual Burden:	125,000 hours	250,000 hours

CE Providers:

Number of Responses: 6,300
Frequency of Response: 1
Average Burden: 20 minutes
Estimated Annual Burden: 2,100 hours.

OMB Desk Officer: Laura Oliven

Social Security Adminiatration

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA, New Executive Office Building, Room 10230, Washington, D.C. 20503.

Dated: July 24, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 95-18574 Filed 7-27-95; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Close Program Solicitation No. 95.1, Grants for Aviation Research

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of closure of solicitation.

SUMMARY: The Federal Aviation Administration (FAA) is announcing its intention to close Program Solicitation No. 95.1, Grants for Aviation Research, effective August 25, 1995. The Solicitation will be reopened at a time to be announced after November 1, 1995.

The FAA has the authority to solicit proposals and award grants and cooperative agreements to address the long-term technical needs of the National Airspace System (NAS) pursuant to Section 9205, Aviation Research Grant Program, and Section 9208, Catastrophic Failure Prevention Research Program, of the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 (Pub. L. 101-508) and Section 107 of the Aviation Security Improvement Act of 1990 (Pub. L. 101-604).

ADDRESSES: Inquiries regarding this subject matter should be directed to: Dr. Fred W. Snyder, Grants Officer, Office of Research and Technology Applications, AAR-201, Federal Aviation Administration Technical Center, Atlantic City International Airport, NJ 08405, Phone Number: (609) 485-5769 or (609) 485-5652, Fax Number: (609) 485-6509.

Dated: July 18, 1995.

Andrea Zellweger,

Director, Office of Aviation Research.

[FR Doc. 95-18615 Filed 7-27-95; 8:45 am]

BILLING CODE 4910-13-M

Availability of Solicitation for Development of a High Speed Computer Tomography Explosive Detection Device; Extension

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Solicitation; extension of solicitation closing date.

SUMMARY: This document extends the period for requests for and responses to Federal Aviation Administration Research Grant Solicitation 95.3, Development of a High Speed Computed Tomography Explosive Detection Device (EDS).

DATES: Requests for the solicitation must be received on or before August 1, 1995. The solicitation will close on September 8, 1995. All applications responsive to the solicitation must be received on or before September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Fazen, Federal Aviation Administration Technical Center, Building 270, Room B115, Atlantic City International Airport, NJ 08405, (609) 485-4431.

Dated: July 19, 1995.

Andrea Zellweger,

Director, Office of Aviation Research.

[FR Doc. 95-18616 Filed 7-27-95; 8:45 am]

BILLING CODE 4910-13-M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on August 15, 1995, at 9 a.m. Arrange for oral presentations by August 1, 1995.

ADDRESSES: The meeting will be held at the Regional Airline Association, 1200 19th Street, NW., Washington, DC, 10 a.m.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration (ARM-25), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9683; fax (202) 267-5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on August 15, 1995, at the Regional Airline Association, 1200 19th Street, NW., Washington, DC, 10 a.m. The agenda will include:

- An update on the status of the Digital Information Working Group.
- A status report from the Flight Data Recorder Working Group.
- A discussion of ARAC mailouts.
- Notable comments on specific issues.
- Other business.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by August 1, 1995, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 20, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95-18588 Filed 7-27-95; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; Aviation Systems Design Guidelines for Open Systems Interconnection (OST)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 162 meeting to be held August 15-17, 1995, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for August 15 will be as follows: (1) Chairman's Introductory Remarks; (2) Approval of the Minutes of the Previous Meeting; (3) Reports of Related Activities Being Conducted by Other Organizations; (4) Discussion of Conformance and Interoperability procedures and Standards Applicable to Avionics MOPS; (5) Discussion of Other Issues Related to ANT Router MOPS Development; (6) Other Business; (7) Date and Place of Next Meeting. The August 16-17 agenda will be dedicated to further development of the ATN Router MOPS.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339 (phone) or (202) 833-9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 24, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–18589 Filed 7–27–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc.; Free Flight Implementation Task Force

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Free Flight Implementation Task Force meeting to be held August 15–16, 1995, starting at 9:00 a.m. The meeting will be held at ARINC, 2551 Riva Road, Annapolis, Maryland.

The agenda will be as follows: Tuesday, August 15 Plenary Session: Review of Task Force Objectives and Status (Task Force Chairman and Working Group Co-Chairs). Remainder of August 15 and all of August 16: Separate and Concurrent Working Group Deliberations.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information, should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on July 24, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–18590 Filed 7–27–95; 8:45 am]

BILLING CODE 4810–13–M

Research and Special Programs Administration

[Notice No. 95–6]

Improving the Hazardous Materials Safety Program; Public Meetings Related to Regulatory Review and Customer Service

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces five public meetings to seek information from the public on regulatory reform and improved customer service for RSPA's hazardous materials safety program. This series of meetings is a follow-up to the initial series of public outreach meetings held earlier this year. Please note that meetings three through five below are tentatively scheduled pending approval of FY 1996 funding.

ADDRESSES: See Supplementary Information for specific times, locations, and agendas.

DATES: Public meetings will be held as follows:

(1) September 14, 1995, in Cambridge, Massachusetts.

(2) September 28, 1995, in Philadelphia, Pennsylvania.

(3) October 31, 1995, in Seattle, Washington.

(4) November 2, 1995, in Charlotte, North Carolina.

(5) November 16, 1995, in San Diego, California.

FOR FURTHER INFORMATION CONTACT: Edmund J. Richards, Interagency Hazardous Materials Program Coordinator, (202) 366–0656; or Suezett Edwards, Training and Information Specialist, (202) 366–4900; Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The President also directed that front line regulators "* * * get out of Washington and create grassroots partnerships" with people affected by agency regulations.

On September 11, 1993, the President signed an Executive Order on setting customer service standards. The Executive Order promotes continuing reform of the executive branch's management practices and operations to provide service to the public that matches or exceeds the best service available to the private sector. RSPA is seeking information from individuals and businesses impacted by its hazardous materials safety program to determine the kind and quality of services they want and their level of satisfaction with existing services.

A series of outreach meetings to address these two topics was held earlier this year in San Francisco, California; Chicago, Illinois; Clearwater and Tampa, Florida; Houston, Texas, and Minneapolis, Minnesota. Many participants requested that these meetings be continued on a regular basis and scheduled in areas of the country not previously covered. RSPA is attempting to be responsive to their requests.

Areas of Regulatory Concern

In calling on agencies to review, revise, and when necessary, cut obsolete regulations, the President directed each agency to consider the following issues:

- Is the regulation obsolete?
- Could its intended goal be achieved in more efficient, less obtrusive ways?
- Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?
- Could private business, setting its own standards and being subject to public accountability, do the job as well?
- Could the states or local governments do the job, making Federal regulation unnecessary?
- Can certain regulatory provisions be relaxed without unduly impacting safety?

Improvements to Customer Service

At these meetings, RSPA will solicit comments on the kind and quality of services its customers want and their level of satisfaction with the services currently provided by the hazardous materials safety program. RSPA will use the comments received to establish service standards and measure results against them; provide choices in both the sources of service and the means of delivery; make information, services, and complaint systems easily accessible; and provide a means to address customer complaints. RSPA's current customer services include providing guidance in understanding and complying with the HMR and processing exemptions, approvals, registrations, grant applications and enforcement actions. Other customer services include conduct of multi-modal hazardous materials seminars, operation of the Hazardous Materials Information Exchange (HMIX) electronic bulletin board, and development and dissemination of training and information materials.

Conduct of Meetings

The meetings will be informal, intended to produce a dialogue between agency personnel and those persons directly affected by the hazardous materials safety programs, regulations and customer services. The meeting officer may find it necessary to limit the time allocated each speaker to ensure that all participants have an opportunity to speak. Conversely, a meeting may conclude before the time scheduled if all persons wishing to participate have been heard.

All of the public meetings will have an open agenda and will be held as follows:

(1) September 14, 1995, from 9 a.m. to 4 p.m., in Cambridge, Massachusetts, Volpe National Transportation Systems Center, Kendall Square, Cambridge, Massachusetts, 02142 (Enter through main entrance).

(2) September 28, 1995, from 9 a.m. to 4 p.m., in Philadelphia, Pennsylvania, Federal Reserve Building, 100 N 7th Street (7th and Arch Streets), Philadelphia, Pennsylvania, 19106.

(3) October 31, 1995, from 9 a.m. to 4 p.m., in Seattle, Washington, Jackson Federal Office Building, North Auditorium, 4th Floor, 915 Second Avenue, Seattle, Washington, 98174 (Enter on 2nd Ave. side of building).

(4) November 2, 1995, from 1 p.m. to 6 p.m., in Charlotte, North Carolina, (COHMAT Meeting), Holiday Inn Woodlawn, 212 Woodlawn Road, Charlotte, North Carolina, 28217.

(5) November 16, 1995, from 9 a.m. to 4 p.m., in San Diego, California, Bahia Resort Hotel (COHMED Meeting), 998 West Mission Bay, San Diego, California, 92109.

The meetings scheduled after October 1, 1995 are subject to the approval of FY 1996 program funds. Any changes will be announced in a **Federal Register** notice.

Issued in Washington, D.C. on July 25, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–18614 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collections Submitted to OMB for Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of information collections submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act, various information collections.

DATES: Comments on these information collections are welcome and should be submitted by August 28, 1995.

ADDRESSES: A copy of any information collection may be obtained by calling or writing the OCC contact.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) has sent to OMB information collections for review under the Paperwork Reduction Act as follows:

I. OMB CONTROL NUMBER 1557–0106

Title: (MA)—Securities Exchange Act Disclosure Rules (12 CFR 11).

Type of Review: Regular submission.

Description: This information collection requires national banks to file SEC forms concerning their securities transactions.

Form Number: SEC Forms 3, 4, 5, 8–K, 10, 10–K, 10–Q, Sched. 13D, 13G, 14A, 14B, and 14C.

OMB Number: 1557–0106.

Affected Public: Businesses or other for-profit.

Number of Respondents: 105 respondents.

Total Annual Responses: 504 responses.

Average Hours Per Response: 10.1 hours.

Total Annual Burden Hours: 5,084 hours.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0106, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0106), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Comments: Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

II. OMB CONTROL NUMBER 1557–0120

Title: (MA)—Securities Offering Disclosure Rules (12 CFR 16).

Type of Review: Regular submission.

Description: This information collection requires national banks to conform generally to SEC rules. The information is needed by the public to make informed investment decisions. The affected public consists of national banks that issue securities.

Form Number: None.

OMB Number: 1557–0120.

Respondents: Businesses or other for-profit.

Number of Respondents: 80 respondents.

Total Annual Responses: 140 responses.

Average Hours Per Response: 19 hours.

Total Annual Burden Hours: 2,660 hours.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0120, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0120), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Comments: Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

III. OMB CONTROL NUMBER 1557–0140.

Title: Fiduciary Powers of National Banks and Collective Investment Funds (12 CFR 9)

Type of Review: Regular submission.

Description: The written plan for a collective investment fund provides the operating framework for the fund. The financial report reflects, on an annual basis, the investment status; including investment changes. Both documents serve as the basic disclosure documents for fund participants.

Form Number: None.

OMB Number: 1557–0140.

Respondents: Businesses or other for-profit.

Number of Respondents: 2,700 respondents.

Total Annual Responses: 2,700 responses.

Average Hours Per Response: 6.4 hours.

Total Annual Burden Hours: 17,300 hours.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0140, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0140), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Comments: Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

IV. OMB CONTROL NUMBER 1557–0154.

Title: Investment in Bank Premises or Stock of Corporation Holding Premises (12 CFR 7.3100)

Type of Review: Regular submission.

Description: This regulation prescribes procedures necessary for a national bank to comply with statutory restrictions on its investment in bank premises. A national bank wishing to invest an amount greater than its capital stock must obtain OCC approval under 12 U.S.C. 371d.

Form Number: None.

OMB Number: 1557–0154.

Respondents: Businesses or other for-profit.

Number of Respondents: 589 respondents.

Total Annual Responses: 589 responses.

Average Hours Per Response: 1 hour.

Total Annual Burden Hours: 589 hours.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0154, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202) 874 5090, Legislative and Regulatory Activities Division (1557–0154), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Comments: Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

V. OMB CONTROL NUMBER 1557–0159

Title: Fair Housing Home Loan Data System Regulation (12 CFR 27).

Type of Review: Regular submission.

Description: This information collection is necessary to permit automated statistical analysis to assist the OCC in carrying out its statutory responsibility under the Fair Housing Act. Its major provisions apply only to national banks that engage in high volume real estate lending.

Form Number: None.

OMB Number: 1557–0159.

Respondents: Businesses or other for-profit.

Number of Respondents: 3,763 respondents.

Total Annual Responses: 3,763 responses.

Average Hours Per Response: 1.7 hours.

Total Annual Burden Hours: 6,300 hours.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0159, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

OCC Contact: John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0159), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Comments: Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

Dated: July 24, 1995.

James F.E. Gillespie,

Director, Legislative & Regulatory Activities.

[FR Doc. 95–18571 Filed 7–27–95; 8:45 am]

BILLING CODE 4810–33–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 145

Friday, July 28, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:08 a.m. on Tuesday, July 25, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Matters relating to the Corporation's supervisory activities.

Matters relating to the probable failure of certain insured depository institutions.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: Texas American Bank/Fort Worth, National Association, Forth Worth, Texas
(Case No. 450–05993–95–BOD)

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (C)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 500—17th Street, N.W., Washington, DC.

Dated: July 26, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–18757 Filed 7–26–95; 3:40 pm]

BILLING CODE 6714–01–M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, November 14, 1995 from 9:00 a.m. to 9:45 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, November 14, from 10:00 a.m. to 6:30 p.m., on Wednesday, November 15, from 9:00 a.m. to 6:00 p.m., and on Thursday, November 16, from 9:00 a.m. to 1:00 p.m.

PLACE: The Fairbanks Princess Hotel, 4477 Pikes Landing Road, Fairbanks, Alaska, 99709.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. While subject to change, major issues that the Commission plans to consider at the meeting include: implementation of the 1994 amendments to the Marine Mammal Protection Act; the health and stability of the Bering Sea ecosystem; domestic and international polar bear programs; Glacier Bay National Park vessel entry regulations; bowhead whale research and management issues; the Arctic Environmental Protection Strategy; the Russian Marine Mammal council; Steller sea lions, harbor seals; North Pacific fur seals; sea otters, and standards and guidelines for the care and maintenance of captive marine mammals.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, NW., Room 512, Washington, D.C. 20009, 202/606–5504.

SUPPLEMENTARY INFORMATION: This is a second notice of the Commission's 1995 meeting and does not constitute any significant change in the scheduling, location, or agenda of the meeting as originally published in the June 20, 1995 notice (60 FR 32214).

Dated: July 25, 1995.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 95–18690 Filed 7–26–95; 11:16 am]

BILLING CODE 6820–31–M

EXPORT–IMPORT BANK OF THE UNITED STATES

Open Special Meeting of the Board of Directors of the Export-Import Bank of the United States; Amended Notice

TIME AND PLACE: Thursday, August 3, 1995, at 9:30 a.m. The meeting will be held at Eximbank in Room 1141, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

Agenda

1. Reinventing Ex-Im Bank's Financing Indications and Commitments (published in the Federal Register of July 17, 1995, on page 36461)
2. Extended Financing Option Fee

PUBLIC PARTICIPATION: The meeting will be open to public participation. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3957, not later than Wednesday, August 2, 1995. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to Friday, July 28, 1995, Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3957 or TDD: (202) 535–3377.

MATERIAL WILL BE AVAILABLE ON JULY 24, 1995: If any person would like to get the material in advance of the Open Special Board Meeting, contact Barbara Lane, Room 1112, 811 Vermont Avenue, NW, Washington, DC, (202) 565–3957. If you would like the material faxed or mailed, leave your fax number or address on voice mail.

FURTHER INFORMATION: For further information, contact Barbara Lane, Room 1112, 811 Vermont Avenue, N.W.,

Washington, D.C. 20571, (202) 565–3957.

Carol F. Lee,

General Counsel.

[FR Doc. 95–18697 Filed 7–26–95; 11:16 am]

BILLING CODE 6820–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, August 2, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 26, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18691 Filed 7–26–95; 11:16 am]

BILLING CODE 6210–01–P

ASSASSINATION RECORDS REVIEW BOARD

TIME AND DATE: 11:30 a.m., August 2, through 5:00 p.m. August 3, 1995.

PLACE: ARRB, 600 E Street, NW., 2nd Floor, Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

August 2, 11:30 a.m.: Closed Meeting

1. Review and Accept Minutes of July 27–28 Closed Meeting
2. Document Review and Discussion

August 3, 9:00 a.m.: Continuation of Closed Meeting

1. Document Review, Discussion, and Decisions
2. Designation of Assassination Records

August 3, 1:00 p.m.: Open Meeting

1. Review and Accept Minutes of July 27 Open Meeting
2. Consideration of Sunshine Act and FOIA Regulations

August 3: Continuation of Closed Meeting

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

Tracy J. Shycoff,

Associate Director for Administration.

[FR Doc. 95–18675 Filed 7–25–95; 4:52 pm]

BILLING CODE 6820–TD–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L .94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 31, 1995.

A closed meeting will be held on Thursday, August 3, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (4), (8), (9)(i), and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, August 3, 1995, at 10:00 a.m., will be:

Institution of injunctive action.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: July 26, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–18766 Filed 7–26–95; 3:45 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register

Vol. 60, No. 145

Friday, July 28, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2932 Maine]

S.D. Warren Co., Notice of Intent To File An Application for a New License

June 6, 1995.

Correction

In notice document 95–14260 appearing on page 30859 in the issue of Monday, June 12, 1995, the project number should appear as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-024-05-1430-01; AZA-29177]

Notice of Realty Action; Bureau Motion Recreation and Public Purposes (R&PP) Act Classification; and Termination of Existing R&PP Act Classifications; Arizona

Correction

In notice document 95–16701 appearing on page 35420, in the issue of Friday, July 7, 1995, make the following correction:

On page 35420, in the second column, under the heading **Gila and Salt River Meridian, Arizona**, in the land description, under T. 3 S., R. 7 E., in the third line, "Sec. 9, S½, NE¼, W½, SE¼;" should read "Sec. 9, S½NE¼, W½, SE¼;".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–113; Special Conditions No. 25–ANM–101]

Special Conditions: Modified Boeing Company Model 747–100 and 747–200 Airplane; High Intensity Radiated Fields (HIRF)

Correction

In rule document 95–17589 beginning on page 36967 in the issue of Wednesday, July 19, 1995, make the following correction:

On page 36968, in the first column, under the heading **DATES:**, the text should read as follows: "The effective date of these special conditions is June 29, 1995. Comments must be received on or before September 5, 1995."

BILLING CODE 1505–01–D

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federal register

Friday
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Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 862 et al.

Medical Devices: Class I and Class II Generic Devices; Premarket Notification Exemptions; Final Rule and Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862 and 872

[Docket No. 94M-0250]

Medical Devices; Exemption From Premarket Notification for Certain Classified Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is exempting nine generic types of class I devices from the requirement of premarket notification. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. The exemptions allow the agency to make better use of its resources and thus better serve the public. Elsewhere in this issue of the **Federal Register**, FDA is publishing a withdrawal of a proposed rule to grant exemptions from premarket notification for seven other generic types of class I devices. Also, the agency is proposing to exempt an additional 12 generic types of class I devices from the requirement of premarket notification. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Effective August 28, 1995. Beginning on August 28, 1995, all device manufacturers who have 510(k) submissions pending FDA review for devices falling within a generic category which is subject to this rule, will receive a letter stating that the device is exempt from the premarket notification requirements of the Federal Food, Drug, and Cosmetic Act.

FOR FURTHER INFORMATION CONTACT: Lisa A. Rooney, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 164.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 21, 1994 (59 FR 37378), FDA issued a proposed rule to exempt 164 generic types of class I devices from the requirement of premarket notification, with limitations. Interested persons were given until October 19, 1994, to comment on the proposed rule.

During the comment period, FDA received comments that questioned the appropriateness of the proposed exemptions for a small number of the devices. FDA also received comments requesting the agency to exempt 56 additional generic types of devices. Furthermore, during this time, FDA reconsidered the appropriateness or scope of the proposed exemptions for several devices included in the proposed rule. In the **Federal Register** of December 7, 1994 (59 FR 63005), FDA issued a final rule exempting from the requirement of premarket notification 148 of the 164 generic types of class I devices included in the July 21, 1994, proposed rule. In the preamble to the final rule, the agency stated that, in a future **Federal Register** notice, it would address the requests concerning the 56 additional devices and that it was deferring action on the following 16 devices in order to review the comments received and to reevaluate whether certain of the devices should be exempted from the requirement of premarket notification. (See Table 1).

TABLE 1

21 CFR	Device
862.2270	Thin-layer chromatography system for clinical use.
862.2310	Clinical sample concentrator.
862.2320	Beta or gamma counter for clinical use.
862.2485	Electrophoresis apparatus for clinical use.
862.2720	Plasma oncometer for clinical use.
862.2800	Refractometer for clinical use.
862.2920	Plasma viscometer for clinical use.
864.2280	Cultured animal and human cells.
866.5570	Lactoferrin immunological test system.
868.5620	Breathing mouthpiece.
868.5675	Rebreathing device.
868.5700	Nonpowered oxygen tent.
872.3740	Retentive and splinting pin.
872.3810	Root canal post.
872.6100	Anesthetic warmer.
886.5850	Sunglasses (nonprescription).

After careful review of the comments and reconsideration of the appropriateness or scope of the proposed exemptions for these devices, the agency has concluded that for 9 of the 16 generic types of class I devices listed in Table 1, manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. These nine devices are listed in Table 2.

TABLE 2

21 CFR	Device
862.2310	Clinical sample concentrator.
862.2320	Beta or gamma counter for clinical use.
862.2485	Electrophoresis apparatus for clinical use.
862.2720	Plasma oncometer for clinical use.
862.2800	Refractometer for clinical use.
862.2920	Plasma viscometer for clinical use.
872.3740	Retentive and splinting pin.
872.3810	Root canal post.
872.6100	Anesthetic warmer.

FDA, upon reconsideration, has determined not to grant the proposed exemptions for the following seven devices. (See Table 3).

TABLE 3

21 CFR	Device
862.2270	Thin-layer chromatography system for clinical use.
864.2280	Cultured animal and human cells.
866.5570	Lactoferrin immunological test system.
868.5620	Breathing mouthpiece.
868.5675	Rebreathing device.
868.5700	Nonpowered oxygen tent.
886.5850	Sunglasses (nonprescription).

Elsewhere in this issue of the **Federal Register**, FDA is publishing a withdrawal of the proposed rule to grant exemptions from the requirement of premarket notification for the seven devices listed above. FDA's reasons for deciding not to exempt those seven devices are given in that withdrawal document.

Furthermore, after reviewing the comments requesting FDA to exempt from the requirement of premarket notification 56 additional generic types of devices, FDA has concluded that 33 of these 56 devices should not be exempted from the requirement. As stated below in this document, 10 of these 56 devices, along with 2 additional class I devices, are being proposed for premarket notification exemption elsewhere in this issue of the **Federal Register**. Thirteen of the 56 devices already are exempted from the requirement of premarket notification.

II. Comments

FDA received 10 comments from trade associations, manufacturer associations, a dental firm, a consumer products manufacturer, a company, and a law firm. A summary of the comments and the agency's response to them is provided below.

A. Comments Addressing Specific Devices

1. One comment opposed the proposed exemptions from the requirement of premarket notification for the retentive and splinting pin (§ 872.3740) and the root canal post (§ 872.3810). According to this comment, premarket notification submissions are necessary to ensure that the material used in these devices are biocompatable in order to prevent toxicity and/or allergic reactions. The comment also stated that, because teeth are delicate, these devices must be designed so that no undue stress will be imparted upon the teeth. According to this comment, exempting these devices from premarket notification would result in substandard products being made available to dental professionals. Another comment in favor of the exemption disagreed, stating that it is the "method of use and application" of these devices, not the design or materials used in them that is the determining factor in the safe and effective use of these devices. Moreover, according to this comment, data relating to these devices demonstrate that these devices are well-known, established, safe, and effective.

FDA has concluded that exempting these devices from the requirement of premarket notification will not result in the marketing of substandard devices. First, both devices have a long history of safe use. Second, neither device has a history of adverse events. Third, literature indicates little potential for any danger to public health. Finally, the device identifications clearly describe the material composition of these devices. If devices are made of materials other than those described in the identification, they will be classified into another generic type of device or remain in the same generic type of device, but not be exempt from the requirements of premarket notification.

2. A comment requested that the proposed exemption for carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive (§ 872.3490) be expanded to include other double salts of polyvinylmethylether maleic acid, specifically salts involving those ions that achieve the same technical effect as calcium and sodium, i.e., iron, magnesium, zinc, and potassium.

FDA disagrees with this comment. Although the comment refers to carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive (§ 872.3490), a class I device, the comment is actually requesting FDA to exempt another classified dental adhesive device, polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive (§ 872.3500) which is a class III device.

3. FDA received a comment requesting that an endolumina illuminated bougie (EIB) device, a silicone elastomer coated fiberoptic bundle designed to aid in the identification of the esophagus, rectum, rectosigmoid, and other organs during surgical procedures, be added to the list of class II, tier 1 devices to be proposed for exemption from the requirement of premarket notification in a future issue of the **Federal Register**.

FDA disagrees with this comment. As stated in the July 21, 1994, proposal, in early 1994, FDA's Office of Device Evaluation undertook a risk assessment of all devices in order to ensure the proper allocation of resources for the review process. Under this risk assessment, all class I, class II, and class III devices were placed into one of three tiers based upon the inherent risk associated with each device. Tier 3 devices include all first and second of a kind devices utilizing new technology or having new intended uses(s), as well as other devices determined by their inherent risk to require an intensive review. These tier 3 devices require intensive scientific and labeling review by a review team as well as advisory panel input. Tier 2 devices include devices which require routine scientific and labeling review. This tier encompasses the majority of 510(k)'s and select premarket approval applications. Tier 1 devices include, among other things, devices which have a minimal inherent risk and whose review focuses upon intended use.

FDA had found EIB to be substantially equivalent to both the gastroenterology-urology fiberoptic retractor (§ 876.4530), a class I device and the class I transilluminator (§ 886.1945). However, upon further consideration, FDA now believes that EIB would have been more appropriately classified under the fiberoptic light ureteral catheter (§ 876.4020), a class II device, which is also a fiberoptic bundle that emits light, but is inserted into the ureter to enable it to be seen during lower abdominal or pelvic surgery. While the specific indication statement for these two devices are different, their intended uses are the same and, therefore, the devices are substantially equivalent. Like the fiberoptic light ureteral catheter, EIB is used with a high intensity light source, which could produce heating and potential damage of body tissues. Concerns identified at the time of classification of the fiberoptic light ureteral catheter included thermal burns related to the amount of energy transmitted. For this reason, FDA has placed the fiberoptic light ureteral catheter in class II, tier 2. Additionally, endoscopes (which could have been another predicate) and esophageal dilators (which include the esophageal bougie) are also tier 2 devices. Furthermore, retaining the EIB device in class II, tier 2 is justified because EIB is a one-of-a-kind device. FDA has not yet had sufficient experience with this device to justify a tier 1 premarket review, i.e., a focused labeling review for intended use/indications for use. For the reasons stated above, the EIB device will remain a class II, tier 2 device.

B. Comments Requesting FDA to Expand the Exemption from the Requirement of Premarket Notification to Include an Additional 56 Devices

4. A total of eight comments requested that the 56 devices listed in Table 4 also be exempted from the requirement of premarket notification.

TABLE 4

21 CFR	Device
862.2230	Chromatographic separation material for clinical use.
862.2250	Gas liquid chromatography system for clinical use.
866.2600	Wood's fluorescent lamp.
868.1930	Stethoscope head.
872.3310	Coating material for resin fillings.
872.3730	Pantograph.
872.3820	Root canal filling resin.
872.4200	Dental handpiece and accessories.
872.5470	Orthodontic plastic bracket.
872.5500	Extraoral orthodontic headgear.
872.6050	Saliva absorber.
872.6390	Dental floss (including devices made of any inert materials).
872.6770	Cartridge syringe.
874.1060	Acoustic chamber for audiometric testing.
874.4140	Ear, nose, and throat bur.
874.4175	Nasopharyngeal catheter.
874.4770	Otoscope.
874.5220	Ear, nose, and throat drug administration device.
874.5800	External nasal splint.
876.4890	Urological table and accessories (manually powered).
876.5160	Urological clamp for males.
876.5250	Urine collector and accessories (not connected to indwelling catheter).
878.4040	Surgical apparel (except surgical gowns and masks).
878.4460	Surgeon's gloves.
880.5110	Hydraulic adjustable hospital bed.

TABLE 4—Continued

21 CFR	Device
880.5120	Manual adjustable hospital bed.
880.5180	Burn sheet.
880.6250	Patient examination glove.
880.6280	Medical insole.
880.6350	Battery-powered medical examination light.
880.6970	Liquid crystal vein locator.
884.5150	Nonpowered breast pump.
884.5425	Scented or scented deodorized menstrual pad.
884.5435	Unscented menstrual pad.
886.4370	Keratome (AC powered).
888.5960	Cast removal instrument (AC powered).
892.1300	Nuclear rectilinear scanner.
892.1320	Nuclear uptake probe.
892.1330	Nuclear whole body scanner.
892.1410	Nuclear electrocardiograph synchronizer.
892.1610	Diagnostic x-ray beam limiting device.
892.1620	Cine or spot flourographic x-ray camera.
892.1760	Diagnostic x-ray tube housing assembly.
892.1770	Diagnostic x-ray tube mount.
892.1830	Radiographic patient cradle.
892.1850	Radiographic film cassette.
892.1860	Radiographic film/cassette changer.
892.1880	Wall-mounted radiographic cassette holder.
892.1890	Radiographic film illuminator.
892.1910	Radiographic grid.
892.1970	Radiographic ECG/respirator synchronizer.
892.1980	Radiologic table.

TABLE 4—Continued

21 CFR	Device
892.5770	Powered radiation therapy patient support assembly.
892.5780	Light beam patient position indicator.
892.5930	Therapeutic x-ray tube housing assembly.
892.6500	Personnel protective shield.

FDA has concluded that 18 of the 56 devices listed in Table 4 are not candidates for exemption from the requirement of premarket notification because they are currently classified into class II and/or class III. These devices are listed in Table 5.

TABLE 5

21 CFR	Device
872.3310	Coating material for resin fillings.
872.3820	Root canal filling resin.
872.5470	Orthodontic plastic bracket.
872.5500	Extraoral orthodontic headgear.
872.6770	Cartridge syringe.
884.5425	Scented or scented deodorized menstrual pad.
892.1610	Diagnostic x-ray beam limiting device.
892.1620	Cine or spot flourographic x-ray camera.
892.1760	Diagnostic x-ray tube housing assembly.
892.1770	Diagnostic x-ray tube mount.
892.1830	Radiographic patient cradle.
892.1850	Radiographic film cassette.

TABLE 5—Continued

21 CFR	Device
892.1860	Radiographic film/cassette changer.
892.1880	Wall-mounted radiographic cassette holder.
892.1980	Radiologic table.
892.5770	Powered radiation therapy patient support assembly.
892.5780	Light beam patient position indicator.
892.5930	Therapeutic x-ray housing assembly.

In accordance with section 513(e)(1) of the act (21 U.S.C. 360c(e)(1)), any interested person may petition FDA to reclassify a device based on new information respecting such a device and to exempt such a device from the requirement of premarket notification. The form and content required for such a petition are set forth in 21 CFR 860.123. The request and reasons supporting the request for exemption from the requirement of premarket notification should be included in the supplemental data sheet. If a device is reclassified into class I, FDA may also exempt the device from the requirement of premarket notification.

Thirteen of the 56 devices listed in Table 4 have already been exempted from premarket notification procedures on the dates listed below. These devices are listed in Table 6.

TABLE 6

Date	Federal Register citation	21 CFR	Device
Nov. 9, 1982	47 FR 50823	866.2600	Wood's fluorescent lamp.
June 12, 1989	54 FR 25042	868.1930	Stethoscope head.
Aug. 12, 1987	52 FR 30082	872.3730	Pantograph.
Apr. 5, 1989	54 FR 13828	872.6050	Saliva absorber.
Dec. 7, 1994	59 FR 63005	874.5220	Ear, nose, and throat drug administration device.
Aug. 25, 1987	52 FR 32110	874.5800	External nasal splint.
June 12, 1989	54 FR 25042	876.4890	Urological table and accessories (manually powered).
June 12, 1989	54 FR 25042	880.5110	Hydraulic adjustable hospital bed.
June 12, 1989	54 FR 25042	880.5120	Manual adjustable hospital bed.
Dec. 7, 1994	59 FR 63005	880.5180	Burn sheet.
June 12, 1989	54 FR 25042	880.6280	Medical insole.
Oct. 21, 1980	45 FR 69682	880.6350	Battery-powered medical examination light.
June 12, 1989	54 FR 25042	880.6970	Liquid crystal vein locator.

Ten of the 56 devices listed in Table 4 are candidates for exemption from the requirement of premarket notification. These devices, which are listed in Table 7, along with the flotation cushion (§ 890.3175) and the traction accessory (§ 890.5925), are being proposed for premarket notification exemption elsewhere in today's issue of the **Federal Register**.

TABLE 7

21 CFR	Device
862.2230	Chromatographic separation material for clinical use.

TABLE 7—Continued

21 CFR	Device
872.2230	Dental floss (including devices made of inert materials).
874.1060	Acoustic chamber for audiometric testing.
874.4140	Ear, nose, and throat bur.
874.4175	Nasopharyngeal catheter.

TABLE 7—Continued

21 CFR	Device
874.4770	Otoscope.
884.5150	Nonpowered breast pump.
884.5435	Unscented menstrual pad.
888.5960	Cast removal instrument (AC powered).
892.6500	Personnel protective shield.

For fifteen of the 56 devices listed in Table 8, FDA has concluded that these devices are not candidates for exemption from premarket notification procedures because they do not meet the criteria for exemption which is set out below.

TABLE 8

21 CFR	Device
862.2250	Gas liquid chromatography system for clinical use.
872.4200	Dental handpiece and accessories.
876.5160	Urological clamp for males.
876.5250	Urine collector and accessories (not connected to indwelling catheter).
878.4040	Surgical apparel (except surgical gowns and masks).
878.4460	Surgeon's gloves.
880.6250	Patient examination glove.
886.4370	Keratome (AC powered).
892.1300	Nuclear rectilinear scanner.
892.1320	Nuclear uptake probe.
892.1330	Nuclear whole body scanner.
892.1410	Nuclear electrocardiograph synchronizer.
892.1890	Radiographic film illuminator.
892.1910	Radiographic grid.
892.1970	Radiographic ECG/respirator synchronizer.

As stated in the preamble of July 21, 1994, proposal, in order for devices to be exempted from the requirement of premarket notification, they must meet all of the following criteria: (1) The device does not have a significant history of false or misleading claims; (2) the device does not have a significant history of risk; (3) characteristics of the device necessary for its safe and effective performance are well established; (4) anticipated changes in the device that could affect safety and effectiveness will either: (a) be readily detectable by users by visual examination or other means or (b) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (5) any changes in the device would not be likely to result in a change in the device's classification.

The gas liquid chromatography system for clinical use (§ 862.2250); the urological clamp for males (§ 876.5160); and the urine collector and accessories (§ 876.5250) are class I, tier 2 devices. As stated above, tier 2 devices require review of performance data because characteristics of these devices necessary for their safe and effective performance are not well established.

Characteristics of the dental handpiece and accessories (§ 872.4200) and the nuclear rectilinear scanner (§ 892.1300), which are necessary for their safety and effective performance, are not well established. Moreover, anticipated changes in the devices that could affect safety and effectiveness are not readily detectable visually or by routine testing and could materially increase the risk of injury, incorrect diagnosis, or ineffective treatment.

The keratome (§ 886.4370) is not a candidate for exemption from premarket notification because anticipated changes that could affect the safety and effectiveness of the device are not readily detectable visually or by routine testing.

Surgical apparel (except surgical gowns and masks (§ 878.4040)) and surgeons's gloves (§ 878.4460) are not candidates for exemption from premarket notification procedures because anticipated changes that could affect safety and effectiveness are not readily detectable visually or by routine testing and could materially increase the risk of injury, namely the transmission of blood bourne pathogens.

In the **Federal Register** of January 13, 1989 (53 FR 1604), the exemptions from premarket notification and current good manufacturing practices for patient examination gloves (§ 880.6250) were revoked because of the importance of this device in preventing the transmission between patients and health care workers of human immunodeficiency virus (HIV) that causes acquired immune deficiency syndrome (AIDS).

The nuclear uptake probe (§ 892.1320); the nuclear electrocardiograph synchronizer (§ 892.1410); the nuclear whole body scanner (§ 892.1330); the radiographic film illuminator (§ 892.1890); the radiographic grid (§ 892.1910); and the radiographic ECG/respirator synchronizer (§ 892.1970) are not candidates for exemption from the requirement of premarket notification because anticipated changes that could affect the devices' safety and effectiveness are not readily detectable visually or by routine testing and could materially increase the risk of injury, incorrect diagnosis, or ineffective treatment.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impact

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule reduces a regulatory burden by exempting manufacturers of devices subject to the final rule from the requirement of premarket notification, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Parts 862 and 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 862 and 872 are amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 862.2310 is amended by revising paragraph (b) to read as follows:

§ 862.2310 Clinical sample concentrator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

3. Section 862.2320 is amended by revising paragraph (b) to read as follows:

§ 862.2320 Beta or gamma counter for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

4. Section 862.2485 is amended by revising paragraph (b) to read as follows:

§ 862.2485 Electrophoresis apparatus for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

5. Section 862.2720 is amended by revising paragraph (b) to read as follows:

§ 862.2720 Plasma oncometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

6. Section 862.2800 is amended by revising paragraph (b) to read as follows:

§ 862.2800 Refractometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

7. Section 862.2920 is amended by revising paragraph (b) to read as follows:

§ 862.2920 Plasma viscometer for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 872—DENTAL DEVICES

8. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

9. Section 872.3740 is amended by revising paragraph (b) to read as follows:

§ 872.3740 Retentive and splinting pin.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

10. Section 872.3810 is amended by revising paragraph (b) to read as follows:

§ 872.3810 Root canal post.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

11. Section 872.6100 is amended by revising paragraph (b) to read as follows:

§ 872.6100 Anesthetic warmer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: July 18, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18458 Filed 7–27–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862, 864, 866, 868, and 886

[Docket No. 94M–0260]

Medical Devices; Withdrawal of Proposed Exemptions

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing proposals to exempt seven generic types of class I devices from the requirement of premarket notification. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule exempting nine generic types of class I devices from the requirement of premarket notification. Also elsewhere in this issue of the **Federal Register**, the agency is proposing to exempt an additional 12 generic types of class I devices from the requirement of premarket notification. These actions are being taken under the Medical Device Amendments of 1976.

FOR FURTHER INFORMATION CONTACT: Lisa A. Rooney, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 164.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 21, 1994 (59 FR 37378), FDA issued a proposed rule to exempt 164 generic types of class I devices from the requirement of premarket notification, with limitations. Interested persons were given until October 19, 1994, to comment on the proposed rule.

During the comment period, FDA received comments which questioned the appropriateness of the proposed exemptions for a small number of the devices. FDA also received comments requesting the agency to exempt 56 additional generic types of devices. Furthermore, during this time, FDA was reconsidering the appropriateness or scope of the proposed exemptions for several of the devices included in the proposed rule. In the **Federal Register** of December 7, 1994 (59 FR 63005), FDA issued a final rule exempting from the requirement of premarket notification 148 of the 164 generic types of class I devices included in the July 21, 1994, proposed rule. In the preamble to that rule, the agency stated that, in a future **Federal Register** notice, it would address the requests concerning the 56 additional devices, and that it was deferring action on the following 16 devices in order to review the comments received and to reevaluate whether certain of the devices should be exempted from the requirement of premarket notification. (See Table 1).

TABLE 1

21 CFR	Device
862.2270	Thin-layer chromatography system for clinical use.
862.2310	Clinical sample concentrator.
862.2320	Beta or gamma counter for clinical use.
862.2485	Electrophoresis apparatus for clinical use.
862.2720	Plasma oncometer for clinical use.
862.2800	Refractometer for clinical use.
862.2920	Plasma viscometer for clinical use.
864.2280	Cultured animal and human cells.
866.5570	Lactoferrin immunological test system.
868.5620	Breathing mouthpiece.
868.5675	Rebreathing device.
868.5700	Nonpowered oxygen tent.
872.3740	Retentive and splinting pin.
872.3810	Root canal post.
872.6100	Anesthetic warmer.
886.5850	Sunglasses (nonprescription).

FDA has reviewed the comments and reconsidered the appropriateness or scope of the proposed exemptions for the devices listed above. Upon review and reconsideration, FDA is withdrawing its proposal to exempt six of the devices because the agency has determined that the devices do not meet the criteria for granting such exemptions. These criteria are described in the preamble of the July 21, 1994, proposal. Furthermore, at this time, the agency is withdrawing its proposal to exempt sunglasses (nonprescription) (§ 886.5850) in order to review the large number of comments concerning the proposed limited exemption applicable to this device; however, the agency is continuing to look at ways to appropriately provide an exemption.

The devices for which the proposed exemptions are being withdrawn are listed below.

TABLE 2

21 CFR	Device
862.2270	Thin-layer chromatography system for clinical use.
864.2280	Cultured animal and human cells.
866.5570	Lactoferrin immunological test system.
868.5620	Breathing mouthpiece.

TABLE 2—Continued

21 CFR	Device
868.5675	Rebreathing device.
868.5700	Nonpowered oxygen tent.
886.5850	Sunglasses (nonprescription).

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule exempting 9 devices from the requirement of premarket notification and responding to requests to exempt 56 additional generic types of devices.

II. Summary and Analysis of Comments and FDA's Response

A professional association commented that four anesthesia related devices, the breathing mouthpiece (§ 868.5620); the rebreathing device (§ 868.5675); the nonpowered oxygen tent (§ 868.5700); and the anesthetic warmer (§ 872.6100), should not be exempted from the requirement of premarket notification for the reasons stated below.

A. Breathing Mouthpiece (§ 868.5620)

This association commented that it would be inappropriate to exempt this generic type of class I device from the requirement of premarket notification because a "breathing mouthpiece" may be interpreted to include certain devices for which FDA endorses standard specifications. According to this comment, these detailed standard specifications were established to provide order to the design, performance, and manufacturing of selected airway devices, connectors, and appropriate related apparatus which may be construed as "mouthpieces."

B. Rebreathing Device (§ 868.5675)

This association stated that certain anesthesia machines, volume ventilators, and resuscitation devices are equipped with nonrebreathing and rebreathing devices, used as components within these systems. Certain rebreathing devices have been directly related to death, serious injury, and serious illness resulting from complications caused by their design, performance, use, and misuse. As a result, the comment contends that rebreathing devices should not be exempt from premarket notification requirements.

C. Nonpowered Oxygen Tent (§ 868.5700)

According to this association, the word "nonpowered" is confusing and inappropriate to use to specify a type of oxygen tent because, even if electronic controls are not present and electric power is not required, a pneumatic

system will "power" an oxygen delivery tent. The association stated that such a pneumatic powered oxygen tent falls within the classification of an oxygen administration system which must satisfy certain criteria and specifications. According to the association, review of premarket notification submissions is the only way to ensure that these devices conform to these criteria and specifications. Thus, the association concluded, these devices should not be exempt from the premarket notification requirements.

D. Anesthetic Warmer (§ 872.6100)

This comment was concerned that the words "anesthetic warmer" could be applied literally to refer to certain anesthesiology devices associated with known cases of injury, device failure, and misuse. Further, the comment stated that "anesthetic warmer" could be applied to anesthesiology devices which are required to follow performance and/or safety specifications.

FDA agrees that the breathing mouthpiece (§ 868.5620); the rebreathing device (§ 868.5675); and the nonpowered oxygen tent (§ 868.5700) should not be exempt from the requirement of premarket notification. Thus, the agency is withdrawing the proposed exemptions for these devices because these devices have a significant history of risk and/or characteristics of the devices necessary for their safe and effective performance are not well established. However, FDA has concluded that the anesthetic warmer (§ 872.6100) should be exempt from the requirement of premarket notification. Moreover, FDA believes that the identification of this device is sufficiently clear to exclude the devices referred to in the comment.

III. Reconsideration of the Appropriateness or Scope of the Exemptions

FDA reconsidered the appropriateness of exempting cultured animal and human cells (§ 864.2280) from the requirement of premarket notification.

FDA is withdrawing the proposed exemption for this device because, upon reconsideration, the agency has determined that the device does not meet the exemption criteria. The device is comprised of either continuous cell or primary cell lines for the isolation and identification of various pathogenic organisms. If the cells are continuous lines, it must be assured that a mechanism is in place for the manufacturer to determine that the cell line has not changed from the original cell type. After prolonged passages cell lines will deviate from the original cell line and the sensitivity for isolation of organisms is decreased. On the other hand, if the cell line is primary, there must be assurance that the cell line is not contaminated with adventitious organisms which may preclude the isolation or identification of the pathogen from the patient. Sometimes it is not readily apparent whether the cells are contaminated with adventitious organisms. Furthermore, with the advent of genetically engineered cell lines for identification of specific organisms, information must be reviewed to determine whether the genetically engineered cell lines will function as claimed. Also, it must be assured that the labeling is consistent with the effectiveness and use of the specific cell. If an applicant wishes to make effectiveness or use claims which are not supported in the literature, appropriate studies are required to validate these claims. If the device is inappropriately labeled, the risk of incorrect diagnosis or ineffective treatment may be increased.

Upon reconsideration, FDA is withdrawing the proposed exemption for the lactoferrin immunological test system (§ 886.5570) because it is anticipated that there may be significant changes to this device that could affect its safety and effectiveness. Such changes could involve new intended uses and new matrices for which the agency has no information or data. The device is not well characterized and any anticipated changes that could affect safety or effectiveness are not readily detectable by any means and could increase the risk of incorrect diagnosis. Similarly, it must be assured that the labeling for the device is appropriate and accurate for the proposed claims. If the device is not appropriately labeled and the performance established, there may be an increased risk of misdiagnosis.

FDA is also withdrawing the proposed exemption for the thin-layer chromatography system for clinical use (§ 862.2270). Upon further review, FDA has determined that any anticipated changes that could affect the safety and effectiveness of the device are not readily detectable by any means and could materially increase the risk of incorrect diagnosis.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513 and 701(a) (21 U.S.C. 360c and 371(a)) and under 21 CFR 5.10, the proposed rule published in the **Federal Register** of July 21, 1994, is withdrawn with respect to the 7 devices cited in Table 2 of this document.

Dated: July 18, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18457 Filed 7–27–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 862, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892

[Docket No. 95N–0139]

Medical Devices; Proposed Reclassification and Exemption From Premarket Notification for Certain Classified Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify 112 generic types of class II devices into class I based on new information respecting such devices. FDA is also proposing to exempt the 112 generic types of devices, and 12 already classified generic types of class I devices, from the requirement of premarket notification, with limitations. For the devices for which exemptions are being proposed, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. Granting the exemptions will allow the agency to make better use of its resources and thus better serve the public.

DATES: Submit written comments by October 11, 1995. For the devices the agency is proposing to reclassify into class I and exempt from the requirement of premarket notification, FDA is proposing that any final rule that may issue based on this proposed rule become effective August 28, 1995.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Melpomeni K. Jeffries, Center for Devices and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et. seq.*), as amended by the Medical Devices

Amendments of 1976 (Pub. L. 94–295, hereinafter called the amendments) and the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) establishes three classes of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: Class I, general controls; class II, special controls; and class III, premarket approval.

The effect of classifying a device into class I is to require that the device meet only the general controls which are applicable to all devices. Two types of devices are classified into class I. The first type of class I device is comprised of those devices for which general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the devices (section 513(a)(1)(A)(i) of the act). The second type of class I device consists of those devices for which insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device * * * but are not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health and do not present a potential unreasonable risk of illness or injury (section 513(a)(1)(A)(ii) of the act). A "potential unreasonable risk of illness or injury" includes actual risk, as well as potential risk. Thus, the risk may be one demonstrated by reported injuries; i.e., medical device reports (MDR's), or it may simply be foreseeable. See H. Rept. 853, 94th Cong., 2d. sess. 36 (1990).

The effect of classifying a device into class II is to require the device to meet general controls as well as special controls, which together provide reasonable assurance of the safety and effectiveness of the device. Class II devices include devices which cannot be classified in class I because general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness and for which there is sufficient information to establish special controls to provide such assurance, including the promulgation of performance standards (see section 513(a)(1)(B) of the act).

The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application (PMA) that includes information concerning safety and effectiveness of the device.

II. Reclassification Criteria

Pursuant to section 513(e)(1) of the act, based on new information respecting a device, the agency may, upon its own initiative, by regulation change a device's classification and revoke, because of the change in classification, any regulation or requirement in effect with respect to such device under sections 514 or 515 of the act (21 U.S.C. 360d or 21 U.S.C. 360e). The new information respecting a device must demonstrate that either more regulatory control is needed to provide reasonable assurance of the device's safety and effectiveness or that less regulatory control is sufficient to provide such assurance. The following developments have produced new information relating to the devices which justifies reclassifying these devices.

A. The SMDA Provisions

In the **Federal Register** of September 14, 1984 (49 FR 36326 at 36348), FDA issued MDR regulations (21 CFR part 803). These regulations required manufacturers and importers of medical devices, including diagnostic devices, to report to FDA whenever the manufacturer or importer becomes aware of information that reasonably suggests that one of its marketed devices: (1) May have caused or contributed to a death or serious injury, or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. Because these MDR regulations were not always adequate to protect the public health, the SMDA, which was signed into law on November 28, 1990, added the following MDR requirements and provisions, as well as other requirements and provisions:

(1) Section 518(e) of the act (21 U.S.C. 360h(e)) allows FDA to order a manufacturer or other appropriate firm to immediately cease distribution of a device and immediately notify health professionals and device user facilities to cease using the device after FDA has determined that there is a reasonable probability that the device would cause serious adverse health consequences or death.

(2) Section 519(a)(6) of the act (21 U.S.C. 360i(a)(6)) requires distributors of medical devices to report to FDA adverse experiences related to devices, and to submit copies of reports to device manufacturers.

(3) Section 519(b)(1) of the act (21 U.S.C. 360i(b)(1)) requires certain device user facilities (hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment facilities which are not physician's offices) to report to FDA and the manufacturer, if known, deaths related to medical devices. Additionally, under this section, device user facilities are required to report to the manufacturer, or to FDA if the manufacturer is unknown, device-related serious illnesses or injuries. User facilities are also required to submit a semiannual report to FDA summarizing the reports they have submitted. Under this section, reporting is limited to events involving a facility's patients.

(4) Section 519(d) of the act (21 U.S.C. 360e(d)) requires manufacturers, importers, and distributors to certify to FDA the number of reports submitted in a year or the fact that no such reports have been submitted to the agency.

(5) Section 519(f) of the act (21 U.S.C. 360i(f)) requires manufacturers, importers, and distributors to report to FDA any removals or corrections of a device intended to reduce a risk to health posed by a device or to remedy a violation of the act which may present a risk to health.

These new authorities, which are applicable to all devices, including class I devices, will enable FDA to monitor the 112 devices proposed for reclassification more closely and to take appropriate remedial action, if necessary.

B. The Device Priority Model

Assuring the safety and effectiveness of all medical devices is an extremely complex and difficult task in light of the number and diversity of devices being marketed. Thus, in 1989, FDA's Office of Standards and Regulations established a Device Priority Model (DPM) to help set priorities for all medical device activities (Ref. 1).

The DPM uses six general parameters, referred to as evaluation factors, to describe and calculate a priority score for each device. The six evaluation factors used in the model are: Frequency of mortality, effectiveness, health benefit, frequency of use, frequency of serious injury, and frequency of less serious injury.

The values for these evaluation factors are combined linearly using weights which represent the relative societal importance of each evaluation factor. The evaluation factors and assigned model weights are as follows: Frequency of death .38, frequency of serious injury .30, frequency of less serious injury .12, frequency of use .08, health benefit .08, and effectiveness .04.

After assigning model weights to the evaluation factors, a three level scoring scheme is applied. Predetermined

ranges of the values of the evaluation factors were used to determine a high, medium, or low scoring level. For frequency of death, frequency of serious injury, and frequency of less serious injury, the correspondence between the estimates for evaluation factor values and evaluation factor scores are: High = 100, medium = 50, and low = 0. The corresponding evaluation factor values and evaluation factor scores for the remaining three evaluation factors (frequency of use, health benefit, and effectiveness) are reversed; low = 100, medium = 50, high = 0. The reason for this reversal is as follows: If one considers two devices that are associated with an equal annual incidence of deaths and injuries, the device that should have the highest priority for FDA action is the one with the highest intrinsic risk per use, the lowest health benefit, and the lowest effectiveness.

The resulting number is called the priority score and is calculated by multiplying the score by the weight. The priority score is used to flag devices that may require more extensive analysis.

C. The Three Tier System

In early 1994, FDA's Office of Device Evaluation undertook a risk assessment of all devices in order to ensure the proper allocation of resources for the review process. Under this risk assessment, all class I, class II, and class III devices were placed into one of three tiers based upon the inherent risk associated with each device. Tier 3 devices include many first and second of a kind devices utilizing new technology or having new intended uses(s), as well as other devices determined by their inherent risk to require an intensive review. These tier 3 devices require intensive scientific and labeling review by a review team as well as advisory panel input. Most tier 3 devices require the submission of a premarket approval application. Tier 2 devices include devices which require routine scientific and labeling review. This tier encompasses the majority of 510(k)'s and select PMA's. Tier 1 devices include devices which require only a focused labeling review for intended use/indications for use and devices which have: (1) A score in the DPM less than 30 and/or; (2) no MDR death reports in any of the previous 3 years; and (3) 10 or fewer total injury reports in the previous 3 years.

III. Class II Devices To Be Reclassified Into Class I

The agency has carefully reviewed all available information concerning all class II, tier 1 devices. Based on this review, FDA is now proposing to reclassify 112 class II, tier 1 devices into class I. All of these devices were originally classified into class II under the original definition of class II devices which was defined as "a device which cannot be classified as a class I because general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, for which there is sufficient information to establish a performance standard to provide such assurance, * * *." See H. Rept. 94–853, 94th Cong., 2d sess. 107 (1976). To date, no performance standards have been promulgated. Thus, any risks presented by these 112 devices have been addressed solely by general controls. The lack of adverse events or threats to the public health reported in the new information described above, supports agency's conclusion that general controls are adequate to provide reasonable assurance of safety and effectiveness for the 112 devices. In light of the new SMDA requirements, the new information gathered in response to the development of the DPM, and the three tier risk assessment system, FDA has determined that general controls will provide reasonable assurance of the safety and effectiveness of these devices.

IV. Proposed Exemptions

Section 513(d)(2)(A) of the act authorizes FDA to exempt, by regulation, a generic type of class I device from, among other things, the requirement of premarket notification in section 510(k) of the act (21 U.S.C. 360(k)). Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA. When FDA issued proposed regulations classifying preamendments devices, the agency focused on granting exemptions from the requirement of premarket notification principally when the advisory panels included them in their recommendations to the agency. Subsequently, FDA decided to exempt certain additional class I devices from the requirement of premarket notification in order to reduce the number of unnecessary premarket notifications. Moreover, in accordance with the agency's policy of reducing the number of unnecessary premarket notifications, in the **Federal Register** of December 7, 1994 (59 FR 63005), FDA exempted 148 generic types of class I devices from the requirement of premarket notification, with limitations. These actions help to free agency resources for the review of more complex notifications to FDA.

A. Description of Proposed Exemptions

In considering whether to exempt additional class I devices from premarket notification, FDA focused on whether notification for the type of device is unnecessary for the protection of the public health. For the devices in this document, FDA has concluded that premarket notification is unnecessary primarily for the following reasons:

(1) The device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials. When making these determinations, FDA generally has considered the frequency, persistence, cause, or seriousness of such claims or risks, as well as other factors deemed relevant.

(2) In general, the following factors apply: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that could affect safety and effectiveness will either: (i) Be readily detectable by users by visual examination or other means, such as routine testing, before causing harm, e.g., testing of a clinical laboratory reagent with positive and negative controls; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) any changes in the device would not be likely to result in a change in the device's classification.

For the 124 devices, FDA has made the determinations described above based on its knowledge of the devices, including past experience and relevant reports or studies on device performance. Where FDA has concerns only about certain types of changes to a particular class I device, the agency is proposing a limited exemption from premarket notification for that generic type of device. A limited exemption will specify the types of changes to the device for which manufacturers are required to submit a premarket notification. For example, for some devices FDA is proposing to exempt the device from the requirement of premarket notification except when a manufacturer intends to use a different material.

FDA advises manufacturers that an exemption from the requirement of premarket notification is not an exemption from any of the other general controls under the act, including current good manufacturing practices (CGMP's), unless explicitly stated. Indeed, FDA's decision to propose 510(k) exemptions for these devices is based, in part, on the fact that compliance with CGMP's will help ensure product quality.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device will be based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change or modification to a device, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification are still required to submit a premarket notification to FDA before introducing a device or delivering it for introduction into commercial distribution when:

(1) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device or a legally marketed device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use instead of use by health care professionals; or

(2) The modified device operates using a different fundamental scientific technology than used by the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Such changes or modifications to class I devices that are exempt from premarket notification would mean the exemption would no longer apply. Changes or modifications to devices that are not exempt from premarket notification requirements under any regulation must undergo a more comprehensive assessment to determine the impact of the change or modification on the device's safety and effectiveness. FDA intends to develop guidance clarifying when a change or modification to a device requires submission of a premarket notification as defined in 21 CFR 807.81(a)(3).

On the dates listed in Table I, FDA published final regulations classifying, among others, the devices listed below. When FDA classified these devices, the agency did not exempt them from the requirement of premarket notification. Based on the analysis described above, FDA has now determined that premarket notification with respect to the devices listed below is unnecessary for the protection of the public health and will not advance FDA's public health mission. This approach is consistent with the recommendation in the May 1993 report of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, entitled "Less Than the Sum of its Parts Reforms Needed in the Organization, Management, and Resources of The Food and Drug Administration's Center for Devices and Radiological Health."

As stated above, earlier this year, the Office of Device Evaluation undertook a risk assessment of all devices in order to ensure the proper allocation of resources in the review process. All of the class II devices listed below were placed in tier 1, the category of devices which have a minimal inherent risk and whose review focuses upon intended use. As stated in the **Federal Register** of July 21, 1994 (59 FR 37378), FDA is now proposing to reclassify 112 class II, tier 1 devices into class I and exempt these devices, along with 12 class I, tier 1 devices, from the requirement of premarket notification, with limitations.

FDA is proposing to exempt from the requirement of premarket notification, with limitations, the 124 generic type of devices (including 12 already classified generic types of class I devices; chromatographic separation material for clinical use (§ 862.2230 (21 CFR 862.2230)); dental floss (§ 872.6390 (21 CFR 872.6390)); acoustic chamber for audiometric testing (§ 874.1060 (21 CFR 874.1060)); ear, nose, and throat bur (§ 874.4140 (21 CFR 874.4140)); nasopharyngeal catheter (§ 874.4175 (21 CFR 874.4175)); otoscope (§ 874.4770 (21 CFR 874.4770)); nonpowered breast pump (§ 884.5150 (21 CFR 884.5150)); unscented menstrual pad (§ 884.5435 (21 CFR 884.5435)); cast removal instrument (§ 888.5960 (21 CFR 888.5960)); flotation cushion (§ 890.3175 (21 CFR 890.3175)); traction accessory (§ 890.5925 (21 CFR 890.5925)); and personnel protective shield (§ 892.6500 (21 CFR 892.6500)) listed below:

TABLE 1

CFR part	Title	Number of devices proposed to be exempt
862	Clinical Chemistry and Clinical Toxicology Devices; May 1, 1987 (52 FR 16102)	1
866	Immunology and Microbiology Devices; November 8, 1982 (47 FR 50814)	5
868	Anesthesiology Devices; July 16, 1982 (47 FR 31130)	40
870	Cardiovascular Devices; February 5, 1980 (45 FR 7904)	10
872	Dental Devices; August 12, 1987 (52 FR 300820); November 20, 1990 (55 FR 484360)	4
874	Ear, Nose, and Throat Devices; November 6, 1986 (51 FR 40378)	6
876	Gastroenterology-Urology Devices; November 23, 1983 (48 FR 53012); June 12, 1989 (54 FR 25042)	11
878	General and Plastic Surgery Devices; June 24, 1988 (53 FR 23856)	4
880	General Hospital and Personal Use Devices; October 21, 1980 (45 FR 69678)	4
882	Neurological Devices; September 4, 1979 (44 FR 51726)	2
884	Obstetrical and Gynecological Devices; February 26, 1980 (45 FR 12682)	11
886	Ophthalmic Devices; September 2, 1987 (52 FR 33346); November 20, 1990 (55 FR 48436)	4
888	Orthopedic Devices; September 4, 1987 (52 FR 33686); November 20, 1990 (55 FR 48436)	3
890	Physical Medicine Devices; November 23, 1983 (48 FR 53032)	12
892	Radiology Devices; January 20, 1988 (53 FR 1554)	7
Total		124

TABLE 2.—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

CFR section	Device
862.2230	Chromatographic separation material for clinical use.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of device listed in Table 2 above.

TABLE 3.—IMMUNOLOGY AND MICROBIOLOGY DEVICES

CFR section	Device
866.2160	Coagulase plasma.
866.3720	Streptococcus spp. exoenzyme reagents.
866.5520	Immunoglobulin G (Fab fragment specific) immunological test system.
866.5530	Immunoglobulin G (Fc fragment specific) immunological test system.
866.5860	Total spinal fluid immunological test system.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 3 above.

TABLE 4.—ANESTHESIOLOGY DEVICES

CFR section	Device
868.1100	Arterial blood sampling kit.
868.1575	Gas collection vessel.
868.1870	Gas volume calibrator.
868.2300	Bourdon gauge flowmeter.
868.2320	Uncompensated thorpe tube flowmeter.
868.2340	Compensated thorpe tube flowmeter.
868.2350	Gas calibration flowmeter.
868.2610	Gas pressure gauge.
868.2620	Gas pressure calibrator.
868.2700	Pressure regulator.
868.2675	Differential pressure transducer.
868.2885	Gas flow transducer.
868.2900	Gas pressure transducer.
868.5100	Nasopharyngeal airway.
868.5110	Oropharyngeal airway.
868.5240	Anesthesia breathing circuit.
868.5300	Carbon dioxide absorbent.
868.5310	Carbon dioxide absorber.
868.5320	Reservoir bag.
868.5375	Heat and moisture condenser (artificial nose).
868.5460	Therapeutic humidifier for home use.
868.5530	Flexible laryngoscope.
868.5540	Rigid laryngoscope.
868.5550	Anesthetic gas mask.

TABLE 4.—ANESTHESIOLOGY DEVICES—Continued

CFR section	Device
868.5570	Nonrebreathing mask.
868.5580	Oxygen mask.
868.5590	Scavenging mask.
868.5600	Venturi mask.
868.5770	Tracheal tube fixation device.
868.5780	Tube introduction forceps.
868.5790	Tracheal tube stylet.
868.5810	Airway connector.
868.5820	Dental protector.
868.5860	Pressure tubing and accessories.
868.5975	Ventilator tubing.
868.5995	Tee drain (water trap).
868.6400	Calibration gas.
868.6820	Patient position support.
868.6885	Medical gas yoke assembly.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 4 above.

TABLE 5.—CARDIOVASCULAR DEVICES

CFR section	Device
870.2390	Phonocardiograph.
870.2600	Signal isolation system.
870.2620	Line isolation monitor.
870.2640	Portable leakage current alarm.
870.2810	Paper chart recorder.
870.3650	Pacemaker polymeric mesh bag.
870.3670	Pacemaker charger.
870.3690	Pacemaker test magnet.
870.3935	Prosthetic heart valve holder.
870.3945	Prosthetic heart valve sizer.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 5 above.

TABLE 6.—DENTAL DEVICES

CFR section	Device
872.1840	Dental x-ray position indicating device.
872.1850	Lead-lined position indicator.
872.4630	Dental operating light.
872.6390	Dental floss.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 6 listed above. The proposed exemption for dental floss (§ 872.6390 (21 CFR 872.6390)) is limited and would apply only when the device is composed of inert material and is not coated or impregnated with chemicals intended to provide a therapeutic benefit or interact with tissues of the oral cavity.

TABLE 7.—EAR, NOSE, AND THROAT DEVICES

CFR section	Device
874.1060	Acoustic chamber for audiometric testing.
874.1080	Audiometer calibration set.
874.4140	Ear, nose, and throat bur.
874.4175	Nasopharyngeal catheter.
874.4350	Ear, nose, and throat fiberoptic light source and carrier.
874.4770	Otoscope.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 7 above. The proposed exemption for the otoscope (§ 874.4770 (21 CFR 874.4770)) is limited and would apply only when used in the external ear canal.

TABLE 8.—GASTROENTEROLOGY-UROLOGY DEVICES

CFR section	Device
876.1075	Gastroenterology-urology biopsy instrument.
876.1400	Stomach pH electrode.
876.1500	Endoscope and accessories.
876.1800	Urine flow or volume measuring system.
876.4590	Interlocking urethral sound.
876.4890	Urological catheter and accessories.
876.5090	Suprapubic urological catheter and accessories.
876.5130	Urological catheter and accessories.
876.5450	Rectal dilator.
876.5520	Urethral dilator.
876.5540	Blood access device and accessories.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 8 above. The proposed exemption for the gastroenterology- urology biopsy instrument (§ 876.1075 (21 CFR 876.1075)) is limited and would apply only to the biopsy forceps cover and the nonelectric biopsy forceps. The proposed exemption for the endoscope and accessories (§ 876.1500 (21 CFR 876.1500)) is limited and would apply only to the following specified devices: Photographic accessories for endoscope, miscellaneous bulb adapter for endoscope, binocular attachment for endoscope, eyepiece attachment for prescription lens, teaching attachment, inflation bulb, measuring device for panendoscope, photographic equipment for physiologic function monitor, special lens instrument for endoscope, smoke removal tube, rechargeable battery box, pocket battery box, bite block for endoscope, and cleaning brush for endoscope. The proposed exemption for the urine flow or volume measuring system (§ 876.1800 (21 CFR 876.1800)) is limited and would apply only to the disposable, nonelectrical urine flow rate measuring device and the nonelectrical urinometer. The proposed exemption for the electrically powered urological table and accessories (§ 876.4890 (21 CFR 876.4890)) is limited and would apply only to stirrups. The proposed exemption for the suprapubic urological catheter and accessories (§ 876.5090 (21 CFR 876.5090)) is limited and would apply only to the catheter punch instrument, nondisposable cannula and trocar, and gastro-urological trocar. The proposed exemption for the urological catheters and accessories (§ 876.5130 (21 CFR 876.5130)) is limited and would apply only to the ureteral stylet (guidewire), stylet for gastro-urological catheter, ureteral catheter holder, ureteral catheter adapter, and ureteral catheter connector. The proposed exemption for the urethral dilator (§ 876.5520 (21 CFR 876.5520)) is limited and would apply only to the urethrometer, urological bougie, filiform and filiform follower, and metal or plastic urethral sound. Finally, the proposed exemption for the blood access device and accessories (§ 876.5540 (21 CFR 876.5540)) is limited and would apply only to the following accessories for both the implanted and the nonimplanted blood access device: Cannula clamp, disconnect forceps, crimp plier, tub plier, crimp ring, and joint ring.

TABLE 9.—GENERAL AND PLASTIC SURGERY DEVICES

CFR section	Device
878.4450	Nonabsorbable gauze for internal use.
878.4810	Laser surgical instrument for use in general and plastic surgery and in dermatology.
878.5350	Needle-type epilator.
878.5910	Pneumatic tourniquet.

FDA is proposing to grant an exemption from the requirement of premarket notification for the devices listed in Table 9 above. The proposed exemption for the laser surgical instrument for use in general and plastic surgery and in dermatology (§ 878.4810 (21 CFR 878.4810) is limited and would apply only to gas mixtures used as the lasing medium for this class of lasers.

TABLE 10.—GENERAL HOSPITAL AND PERSONAL USE DEVICES

CFR section	Device
880.2720	Patient scale.
880.2900	Clinical color change thermometer.
880.6320	AC-powered medical examination light.
880.5560	Temperature regulated water mattress.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 10 above.

TABLE 11.—NEUROLOGICAL DEVICES

CFR section	Device
882.1410	Electroencephalograph electrode/lead tester.
882.4325	Cranial drill handpiece (brace).

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 11 above.

TABLE 12.—OBSTETRICAL AND GYNECOLOGICAL DEVICES

CFR section	Device
884.1550	Amniotic fluid sampler (amniocentesis tray).
884.1640	Culdoscope and accessories.
884.1690	Hysteroscope and accessories.
884.1700	Hysteroscopic insufflator.
884.1720	Gynecologic laparoscope and accessories.
884.1730	Laparoscopic insufflator.
884.4530	Obstetric-gynecological specialized manual instrument.
884.5150	Nonpowered breast pump.
884.5425	Scented or scented deodorized menstrual pad.
884.5435	Unscented menstrual pad.
884.5900	Therapeutic vaginal douche apparatus.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 12 above. The proposed exemption for the culdoscope and accessories (§ 884.1640 (21 CFR 884.1640)) and the laparoscope and accessories (§ 884.1720 (21 CFR 884.1720)) are limited and would apply only to culdoscope and laparoscope accessories, respectively, that are not part of a specialized instrument or device delivery system and which do not have adapters, connectors, channels, or do not have portals for electrosurgical, laser, or other power sources. Such culdoscope and laparoscope accessory instruments are limited to: Lens cleaning brush; biopsy brush; clip applier (without clips); applicator; cannula (without trocar or valves); ligature carrier/needle holder; clamp/hemostat/grasper; curette; instrument guide; ligature passing and knotting instrument; suture needle (without suture); retractor, mechanical (noninflatable); snare; stylet; forceps; dissector, mechanical (noninflatable); scissors; and suction/irrigation probe. The proposed exemption for the gynecological hysteroscope and accessories (§ 884.1690 (21 CFR 884.1690)) is limited and would apply only to the following manual accessories: Lens cleaning brush; cannula (without trocar or valves); clamp/hemostat/grasper; curette; instrument guide; forceps; dissector; mechanical (noninflatable); and scissors. The proposed exemption for the hysteroscopic or laparoscopic insufflator accessories (§§ 884.1700 and 884.1730 (21 CFR 884.1700 and 884.1730), respectively) is limited and would apply only to tubing and tubing/filter kits used for hysteroscopic or laparoscopic insufflation as single use tubing kits used for only one clinical purpose, i.e., pneumoperitoneum or intrauterine insufflation, but not both. The proposed exemption does not apply to accessories such as hysteroscopic introducer sheaths or Verres needles. The proposed exemption for the obstetric-gynecological specialized manual instruments (§ 884.4530 (21 CFR 884.4530)) is limited and would apply only to the following devices: Amniotome; uterine curette; cervical dilator (fixed-size bougies); cerclage needle; intrauterine device remover; uterine sound; and gynecological biopsy forceps. The proposed exemption for the nonpowered breast pump (§ 884.5150) is limited and would apply only if the device is using either a bulb or telescoping mechanism which does not develop more than 250 mm Hg suction, and the device materials that contact breast or breast milk do not produce cytotoxicity, irritation, or sensitization effects. The proposed exemption for the scented or scented deodorized menstrual pad (§ 884.5425 (21 CFR 884.5425)) and the unscented menstrual pad (§ 884.5435) is limited and would

apply only if the menstrual pad is made from cotton or rayon and the body contact material(s) are safety tested for dermal irritation, dermal sensitivity, acute toxicity, and mucosal irritation. Finally, the proposed exemption for the therapeutic vaginal douche apparatus (§ 884.5900 (21 CFR 884.5900)) is limited and would apply only to devices which operate by gravity feed.

TABLE 13.—OPHTHALMIC DEVICES

CFR section	Device
886.1405	Ophthalmic trial lens set.
886.1750	Skiascopic rack.
886.1760	Ophthalmic refractometer.
886.3200	Artificial eye.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 13 above. The proposed exemption for the artificial eye (§ 886.3200 (21 CFR 886.3200)) is limited and would apply only to devices made of the same materials, have the same chemical composition, and use the same manufacturing and disinfection processes as currently legally marketed devices.

TABLE 14.—ORTHOPEDIC DEVICES

CFR section	Device
888.1100	Arthroscope.
888.3000	Bone cap.
888.5960	Cast removal instrument.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 14 above. The proposed exemption for the arthroscope (§ 888.1100 (21 CFR 888.1100)) is limited and would apply only to the following manual arthroscope instruments: Cannulas, curettes, drill guides, forceps, gouges, graspers, knives, obturators, osteotomes, probes, punches, rasps, retractors, rongeurs, suture passers, suture knot pushers, suture punches, switching rods, and trocars.

TABLE 15.—PHYSICAL MEDICINE DEVICES

CFR section	Device
890.1575	Force-measuring platform.
890.1600	Intermittent pressure measurement system.
890.1615	Miniature pressure transducer.
890.3175	Flotation cushion.
890.3760	Powered table.
890.5380	Powered exercise equipment.
890.5410	Powered finger exerciser.
890.5660	Therapeutic massager.
890.5925	Traction accessory.
890.5940	Chilling unit.
890.5950	Powered heating unit.
890.5975	Therapeutic vibrator.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 15 above.

TABLE 16.—RADIOLOGY DEVICES

CFR section	Device
892.1700	Diagnostic x-ray high voltage generator.
892.1760	Diagnostic x-ray housing assembly.
892.1770	Diagnostic x-ray tube mount.
892.1830	Radiologic patient cradle.
892.1880	Wall-mounted radiographic cassette holder.
892.5780	Light beam patient position indicator.
892.6500	Personnel protective shield.

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 16 above. The proposed exemption for the personnel protective shield (§ 892.6500 (21 CFR 892.6500)) is limited and would only apply to devices whose labeling specifies the lead equivalence.

V. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. The Device Priority Model: Development and Applications, Office of Standards and Regulations, FDA, Rockville, MD, October 1989.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment or an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impact of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a proposal on small entities. Because this proposal would reduce a regulatory burden by exempting manufacturers of devices subject to the rule from the requirements or premarket notification, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VIII. Request for Comments

Interested persons may, on or before October 11, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Parts 862, 868, 870, 872, 874, 876, 878, 880, 882, 884, 888, and 890

Medical devices.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 862.2230 is amended by revising paragraph (b) to read as follows:

§ 862.2230 Chromatographic separation material for clinical use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

3. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

4. Section 866.2160 is amended by revising paragraph (b) to read as follows:

§ 866.2160 Coagulase plasma.

* * * * *

(b) Classification. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

5. Section 866.3720 is amended by revising paragraph (b) to read as follows:

§ 866.3720 Streptococcus spp. exoenzyme reagents.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

6. Section 866.5520 is amended by revising paragraph (b) to read as follows:

§ 866.5520 Immunoglobulin G (Fab fragment specific) immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

7. Section 866.5530 is amended by revising paragraph (b) to read as follows:

§ 866.5530 Immunoglobulin G (Fc fragment specific) immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

8. Section 866.5860 is amended by revising paragraph (b) to read as follows:

§ 866.5860 Total spinal fluid immunological test system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 868—ANESTHESIOLOGY DEVICES

9. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

10. Section 868.1100 is amended by revising paragraph (b) to read as follows:

§ 868.1100 Arterial blood sampling kit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

11. Section 868.1575 is amended by revising paragraph (b) to read as follows:

§ 868.1575 Gas collection vessel.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

12. Section 868.1870 is amended by revising paragraph (b) to read as follows:

§ 868.1870 Gas volume calibrator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

13. Section 868.1975 is amended by revising paragraph (b) to read as follows:

§ 868.1975 Water vapor analyzer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

14. Section 868.2300 is amended by revising paragraph (b) to read as follows:

§ 868.2300 Bourdon gauge flowmeter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

15. Section 868.2320 is amended by revising paragraph (b) to read as follows:

§ 868.2320 Uncompensated thorpe tube flowmeter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

16. Section 868.2340 is amended by revising paragraph (b) to read as follows:

§ 868.2340 Compensated thorpe tube flowmeter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

17. Section 868.2350 is amended by revising paragraph (b) to read as follows:

§ 868.2350 Gas calibration flowmeter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

18. Section 868.2610 is amended by revising paragraph (b) to read as follows:

§ 868.2610 Gas pressure gauge.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

19. Section 868.2620 is amended by revising paragraph (b) to read as follows:

§ 868.2620 Gas pressure calibrator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

20. Section 868.2700 is amended by revising paragraph (b) to read as follows:

§ 868.2700 Pressure regulator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

21. Section 868.2875 is amended by revising paragraph (b) to read as follows:

§ 868.2875 Differential pressure transducer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

22. Section 868.2885 is amended by revising paragraph (b) to read as follows:

§ 868.2885 Gas flow transducer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket

notification procedures in subpart E of part 807 of this chapter.

23. Section 868.2900 is amended by revising paragraph (b) to read as follows:

§ 868.2900 Gas pressure transducer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

24. Section 868.5100 is amended by revising paragraph (b) to read as follows:

§ 868.5100 Nasopharyngeal airway.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

25. Section 868.5110 is amended by revising paragraph (b) to read as follows:

§ 868.5110 Oropharyngeal airway.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

26. Section 868.5240 is amended by revising paragraph (b) to read as follows:

§ 868.5240 Anesthesia breathing circuit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

27. Section 868.5300 is amended by revising paragraph (b) to read as follows:

§ 868.5300 Carbon dioxide absorbent.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

28. Section 868.5310 is amended by revising paragraph (b) to read as follows:

§ 868.5310 Carbon dioxide absorber.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

29. Section 868.5320 is amended by revising paragraph (b) to read as follows:

§ 868.5320 Reservoir bag.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

30. Section 868.5375 is amended by revising paragraph (b) to read as follows:

§ 868.5375 Heat and moisture condenser (artificial nose).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

31. Section 868.5460 is amended by revising paragraph (b) to read as follows:

§ 868.5460 Therapeutic humidifier for home use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

32. Section 868.5530 is amended by revising paragraph (b) to read as follows:

§ 868.5530 Flexible laryngoscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

33. Section 868.5540 is amended by revising paragraph (b) to read as follows:

§ 868.5540 Rigid laryngoscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

34. Section 868.5550 is amended by revising paragraph (b) to read as follows:

§ 868.5550 Anesthetic gas mask.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

35. Section 868.5570 is amended by revising paragraph (b) to read as follows:

§ 868.5570 Nonrebreathing mask.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

36. Section 868.5580 is amended by revising paragraph (b) to read as follows:

§ 868.5580 Oxygen mask.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

37. Section 868.5590 is amended by revising paragraph (b) to read as follows:

§ 868.5590 Scavenging mask.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

38. Section 868.5600 is amended by revising paragraph (b) to read as follows:

§ 868.5600 Venturi mask.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

39. Section 868.5770 is amended by revising paragraph (b) to read as follows:

§ 868.5770 Tracheal tube fixation device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

40. Section 868.5780 is amended by revising paragraph (b) to read as follows:

§ 868.5780 Tube introduction forceps.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

41. Section 868.5790 is amended by revising paragraph (b) to read as follows:

§ 868.5790 Tracheal tube stylet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

42. Section 868.5810 is amended by revising paragraph (b) to read as follows:

§ 868.5810 Airway connector.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

43. Section 868.5820 is amended by revising paragraph (b) to read as follows:

§ 868.5820 Dental protector.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

44. Section 868.5860 is amended by revising paragraph (b) to read as follows:

§ 868.5860 Pressure tubing and accessories.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

45. Section 868.5975 is amended by revising paragraph (b) to read as follows:

§ 868.5975 Ventilator tubing.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

46. Section 868.5995 is amended by revising paragraph (b) to read as follows:

§ 868.5995 Tee drain (water trap).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

47. Section 868.6400 is amended by revising paragraph (b) to read as follows:

§ 868.6400 Calibration gas.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

48. Section 868.6820 is amended by revising paragraph (b) to read as follows:

§ 868.6820 Patient position support.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

49. Section 868.6885 is amended by revising paragraph (b) to read as follows:

§ 868.6885 Medical gas yoke assembly.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 870—CARDIOVASCULAR DEVICES

50. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

51. Section 870.2390 is amended by revising paragraph (b) to read as follows:

§ 870.2390 Phonocardiograph.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

52. Section 870.2600 is amended by revising paragraph (b) to read as follows:

§ 870.2600 Signal isolation system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

53. Section 870.2620 is amended by revising paragraph (b) to read as follows:

§ 870.2620 Line isolation monitor.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

54. Section 870.2640 is amended by revising paragraph (b) to read as follows:

§ 870.2640 Portable leakage current alarm.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

55. Section 870.2810 is amended by revising paragraph (b) to read as follows:

§ 870.2810 Paper chart recorder.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

56. Section 870.3650 is amended by revising paragraph (b) to read as follows:

§ 870.3650 Pacemaker polymeric mesh bag.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

57. Section 870.3670 is amended by revising paragraph (b) to read as follows:

§ 870.3670 Pacemaker charger.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

58. Section 870.3690 is amended by revising paragraph (b) to read as follows:

§ 870.3690 Pacemaker test magnet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

59. Section 870.3935 is amended by revising paragraph (b) to read as follows:

§ 870.3935 Prosthetic heart valve holder.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

60. Section 870.3945 is amended by revising paragraph (b) to read as follows:

§ 870.3945 Prosthetic heart valve sizer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 872—DENTAL DEVICES

61. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

62. Section 872.1840 is amended by revising paragraph (b) to read as follows:

§ 872.1840 Dental x-ray position indicating device.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

63. Section 872.1850 is amended by revising paragraph (b) to read as follows:

§ 872.1850 Lead-lined position indicator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

64. Section 872.4630 is amended by revising paragraph (b) to read as follows:

§ 872.4630 Dental operating light.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

65. Section 872.6390 is amended by revising paragraph (b) to read as follows:

§ 872.6390 Dental floss.

* * * * *

(b) *Classification. Class I.* If the device is made of inert materials and is not coated or impregnated with chemicals intended to provide a therapeutic benefit or interact with tissues of the oral cavity, it is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 874—EAR, NOSE, AND THROAT DEVICES

66. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

67. Section 874.1060 is amended by revising paragraph (b) to read as follows:

§ 874.1060 Acoustic chamber for audiometric testing.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

68. Section 874.1080 is amended by revising paragraph (b) to read as follows:

§ 874.1080 Audiometer calibration test.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

69. Section 874.4140 is amended by revising paragraph (b) to read as follows:

§ 874.4140 Ear, nose, and throat bur.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

70. Section 874.4175 is amended by revising paragraph (b) to read as follows:

§ 874.4175 Nasopharyngeal catheter.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

71. Section 874.4350 is amended by revising paragraph (b) to read as follows:

§ 874.4350 Ear, nose, and throat fiberoptic light source and carrier.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

72. Section 874.4770 is amended by revising paragraph (b) to read as follows:

§ 874.4770 Otoscope.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when used in the external ear canal.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

73. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

74. Section 876.1075 is amended by revising paragraph (b) to read as follows:

§ 876.1075 Gastroenterology-urology biopsy instrument.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for the biopsy forceps cover and the nonelectric biopsy forceps. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

75. Section 876.1400 is amended by revising paragraph (b) to read as follows:

§ 876.1400 Stomach pH electrode.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

76. Section 876.1500 is amended by revising paragraph (b) to read as follows:

§ 876.1500 Endoscope and accessories.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for the photographic accessories for endoscope, miscellaneous bulb adapter for endoscope, binocular attachment for endoscope, eyepiece attachment for prescription lens, teaching attachment, inflation bulb, measuring device for panendoscope, photographic equipment for physiologic function monitor, special lens instrument for endoscope, smoke removal tube, rechargeable battery box, pocket battery box, bite block for endoscope, and cleaning brush for endoscope. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

77. Section 876.1800 is amended by revising paragraph (b) to read as follows:

§ 876.1800 Urine flow or volume measuring system.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for the disposable, nonelectrical urine flow rate measuring device, and nonelectrical urinometer. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

78. Section 876.4590 is amended by revising paragraph (b) to read as follows:

§ 876.4590 Interlocking urethral sound.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

79. Section 876.4890 is amended by revising paragraph (b) to read as follows:

§ 876.4890 Urological table and accessories.

* * * * *

(b) *Classification.* (1) Class II (performance standards) for the electrically powered urological table and accessories.

(2) Class I for the manually powered table and accessories, and for stirrups for electrically powered table. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

80. Section 876.5090 is amended by revising paragraph (b) to read as follows:

§ 876.5090 Suprapubic urological catheter and accessories.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for the catheter punch instrument, nondisposable cannula and trocar, and gastro-urological trocar. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

81. Section 876.5130 is amended by revising paragraph (b) to read as follows:

§ 876.5130 Urological catheter and accessories.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for the ureteral stylet (guidewire), stylet for gastro-urological catheter, ureteral catheter adapter, ureteral catheter connector, and ureteral catheter holder. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

82. Section 876.5450 is amended by revising paragraph (b) to read as follows:

§ 876.5450 Rectal dilator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

83. Section 876.5520 is amended by revising paragraph (b) to read as follows:

§ 876.5520 Urethral dilator.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for the urethrometer, urological bougie, filiform and filiform follower, and metal or plastic urethral sound. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

84. Section 876.5540 is amended by revising paragraph (b)(3) and by adding new paragraph (b)(4) to read as follows:

§ 876.5540 Blood access device and accessories.

* * * * *

(b) * * *

(3) Class II (performance standards) for accessories for both the implanted and the nonimplanted blood access devices not listed in paragraph (b)(4) of this section.

(4) Class I for the cannula clamp, disconnect forceps, crimp plier, tube plier, crimp ring, and joint ring, accessories for both the implanted and nonimplanted blood access device. The devices subject to this paragraph (b)(4) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

* * * * *

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

85. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

86. Section 878.4450 is amended by revising paragraph (b) to read as follows:

§ 878.4450 Nonabsorbable gauze for internal use.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

87. Section 878.4810 is amended by revising paragraph (b) to read as follows:

§ 878.4810 Laser surgical instrument for use in general and plastic surgery and in dermatology.

* * * * *

(b) *Classification.* (1) Class II.

(2) Class I for special laser gas mixtures used as a lasing medium for this class of lasers. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

88. Section 878.5350 is amended by revising paragraph (b) to read as follows:

§ 878.5350 Needle-type epilator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

89. Section 878.5910 is amended by revising paragraph (b) to read as follows:

§ 878.5910 Pneumatic tourniquet.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

90. The authority citation for 21 CFR 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

91. Section 880.2720 is amended by revising paragraph (b) to read as follows:

§ 880.2720 Patient scale.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

92. Section 880.2900 is amended by revising paragraph (b) to read as follows:

§ 880.2900 Clinical color change thermometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

93. Section 880.5560 is amended by revising paragraph (b) to read as follows:

§ 880.5560 Temperature regulated water mattress.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

94. Section 880.6320 is amended by revising paragraph (b) to read as follows:

§ 880.6320 AC-powered medical examination light.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 882—NEUROLOGICAL DEVICES

95. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

96. Section 882.1410 is amended by revising paragraph (b) to read as follows:

§ 882.1410 Electroencephalograph electrode/lead tester.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

97. Section 882.4325 is amended by revising paragraph (b) to read as follows:

§ 882.4325 Cranial drill handpiece (brace).

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

98. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

99. Section 884.1550 is revised to read as follows:

§ 884.1550 Amniotic fluid sampler (amniocentesis tray.

(a) *Identification.* The amniotic fluid sampler (amniocentesis tray) is a collection of devices used to aspirate amniotic fluid from the amniotic sac via a transabdominal approach. Components of the amniocenteses tray include a disposable 3 inch 20 gauge needle with stylet and a 30 cc. syringe, as well as the various sample collection accessories, such as vials, specimen containers, medium, drapes, etc. The device is used at 16–18 weeks gestation for antepartum diagnosis of certain congenital abnormalities or anytime after 24 weeks gestation when used to assess fetal maturity.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

100. Section 884.1640 is amended by revising paragraph (b) to read as follows:

§ 884.1640 Culdoscope and accessories.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for culdoscope accessories that are not part of a specialized instrument or device delivery system; do not have adapters, connectors, channels, or do not have portals for electrosurgical, laser, or other power sources. Such culdoscope accessory instruments include: Lens cleaning brush, biopsy brush, clip applier (without clips), applicator, cannula (without trocar or valves), ligature carrier/needle holder, clamp/hemostat/grasper, curette, instrument guide, ligature passing and knotting instrument, suture needle (without suture), retractor, mechanical (noninflatable), snare, stylet, forceps, dissector, mechanical (noninflatable) scissors, and suction/irrigation probe. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

101. Section 884.1690 is amended by revising paragraph (b) to read as follows:

§ 884.1690 Hysteroscope and accessories.

* * * * *

(b) Classification. (1) Class II (performance standards).

(2) Class I for hysteroscope accessories that are not part of a specialized instrument or device

delivery system, do not have adapters, connectors, channels, or do not have portals for electrosurgical, laser, or other power sources. Such hysteroscope accessory instruments include: Lens cleaning brush, cannula (without trocar or valves), clamp/hemostat/grasper, curette, instrument guide, forceps, dissector, mechanical (noninflatable), and scissors. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

102. Section 884.1700 is amended by revising paragraph (b) to read as follows:

§ 884.1700 Hysteroscopic insufflator.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for tubing and tubing/filter fits which only include accessory instruments which are not used to effect intrauterine access, e.g., hysteroscopic introducer sheaths, etc., and single-use tubing kits used for only intrauterine insufflation. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

103. Section 884.1720 is amended by revising paragraph (b) to read as follows:

§ 884.1720 Gynecologic laparoscope and accessories.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for gynecologic laparoscope accessories that are not part of a specialized instrument or device delivery system, do not have adapters, connector channels, or do not have portals for electrosurgical, lasers, or other power sources. Such gynecologic laparoscope accessory instruments include: The lens cleaning brush, biopsy brush, clip applier (without clips), applicator, cannula (without trocar or valves), ligature carrier/needle holder, clamp/hemostat/grasper, curette, instrument guide, ligature passing and knotting instrument, suture needle (without suture), retractor, mechanical (noninflatable), snare, stylet, forceps, dissector, mechanical (noninflatable), scissors, and suction/irrigation probe. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

104. Section 884.1730 is amended by revising paragraph (b) to read as follows:

§ 884.1730 Laparoscopic insufflator.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for tubing and tubing/filter kits which include accessory instruments which are not used to effect intra-abdominal access, Verres needles etc., and single-use tubing kits used for only intra-abdominal insufflation (pneumoperitoneum). The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

105. Section 884.4530 is amended by revising paragraph (b) to read as follows:

§ 884.4530 Obstetric-gynecological specialized manual instrument.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for the amniotome, uterine curette, cervical dilator (fixed-size bougies), cerclage needle, IUD remover, uterine sound, and gynecological biopsy forceps. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

106. Section 884.5150 is amended by revising paragraph (b) to read as follows:

§ 884.5150 Nonpowered breast pump.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter if the device is using either a bulb or telescoping mechanism which does not develop more than 250 mm Hg suction, and the device materials that contact breast or breast milk do not produce cytotoxicity, irritation, or sensitization effects.

107. Section 884.5425 is amended by revising paragraph (b) to read as follows:

§ 884.5425 Scented or scented deodorized menstrual pad.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for menstrual pads made from cotton or rayon and for which the body contact material(s) and extracts from the absorbent material(s) are safety tested for dermal irritation, dermal sensitivity, acute toxicity, and mucosal irritation. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

108. Section 884.5435 is amended by revising paragraph (b) to read as follows:

§ 884.5435 Unscented menstrual pad.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device is made from cotton or rayon and for which the body contact material(s) and extracts from the absorbent material(s) are safety tested for dermal irritation, dermal sensitivity, acute toxicity, and mucosal irritation.

109. Section 884.5900 is amended by revising paragraph (b) to read as follows:

§ 884.5900 Therapeutic vaginal douche apparatus.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I if the device is operated by gravity feed. Devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 886—OPHTHALMIC DEVICES

110. The authority citation for 21 CFR 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

111. Section 886.1405 is amended by revising paragraph (b) to read as follows:

§ 886.1405 Ophthalmic trial lens set.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

112. Section 886.1750 is amended by revising paragraph (b) to read as follows:

§ 886.1750 Skiascopic rack.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

113. Section 886.1760 is amended by revising paragraph (b) to read as follows:

§ 886.1760 Ophthalmic refractometer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

114. Section 886.3200 is revised to read as follows:

§ 886.3200 Artificial eye.

(a) *Identification.* An artificial eye is a device resembling the anterior portion of the eye, usually made of glass or plastic, intended to be inserted in a patient's eye socket anterior to an orbital implant, or the eviscerated eyeball, for cosmetic purposes. The device is not intended to be implanted.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter if the device is made from the same materials, has the same chemical composition, and uses

the same manufacturing processes as currently legally marketed devices.

PART 888—ORTHOPEDIC DEVICES

115. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

116. Section 888.1100 is amended by revising paragraph (b) to read as follows:

§ 888.1100 Arthroscope.

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for the following manual arthroscopic instruments: Cannulas, currettes, drill guides, forceps, gouges, graspers, knives, obturators, osteotomes, probes, punches, rasps, retractors, rongeurs, suture passers, suture knotpushers, suture punches, switching rods, and trocars. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

117. Section 888.3000 is amended by revising paragraph (b) to read as follows:

§ 888.3000 Bone cap.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

118. Section 888.5960 is amended by revising paragraph (b) to read as follows:

§ 888.5960 Cast removal instrument.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 890—PHYSICAL MEDICINE DEVICES

119. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

120. Section 890.1575 is amended by revising paragraph (b) to read as follows:

§ 890.1575 Force-measuring platform.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

121. Section 890.1600 is amended by revising paragraph (b) to read as follows:

§ 890.1600 Intermittent pressure measurement system.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

122. Section 890.1615 is amended by revising paragraph (b) to read as follows:

§ 890.1615 Miniature pressure transducer.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

123. Section 890.3175 is amended by revising paragraph (b) to read as follows:

§ 890.3175 Flotation cushion.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

124. Section 890.3760 is amended by revising paragraph (b) to read as follows:

§ 890.3760 Powered table.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

125. Section 890.5380 is amended by revising paragraph (b) to read as follows:

§ 890.5380 Powered exercise equipment.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

126. Section 890.5410 is amended by revising paragraph (b) to read as follows:

§ 890.5410 Powered finger exerciser.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

127. Section 890.5660 is amended by revising paragraph (b) to read as follows:

§ 890.5660 Therapeutic massager.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

128. Section 890.5925 is amended by revising paragraph (b) to read as follows:

§ 890.5925 Traction accessory.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

129. Section 890.5940 is amended by revising paragraph (b) to read as follows:

§ 890.5940 Chilling unit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

130. Section 890.5950 is amended by revising paragraph (b) to read as follows:

§ 890.5950 Powered heating unit.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

131. Section 890.5975 is amended by revising paragraph (b) to read as follows:

§ 890.5975 Therapeutic vibrator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

PART 892—RADIOLOGY DEVICES

132. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

133. Section 892.1700 is amended by revising paragraph (b) to read as follows:

§ 892.1700 Diagnostic x-ray high voltage generator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

134. Section 892.1760 is amended by revising paragraph (b) to read as follows:

§ 892.1760 Diagnostic x-ray tube housing assembly.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

135. Section 892.1770 is amended by revising paragraph (b) to read as follows:

§ 892.1770 Diagnostic x-ray tube mount.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket

notification procedures in subpart E of part 807 of this chapter.

136. Section 892.1830 is amended by revising paragraph (b) to read as follows:

§ 892.1830 Radiologic patient cradle.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

137. Section 892.1880 is amended by revising paragraph (b) to read as follows:

§ 892.1880 Wall mounted radiographic cassette holder.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

138. Section 892.5780 is amended by revising paragraph (b) to read as follows:

§ 892.5780 Light beam patient position indicator.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

139. Section 892.6500 is amended by revising paragraph (b) to read as follows:

§ 892.6500 Personnel protective shield.

* * * * *

(b) *Classification.* Class I. If the device's labeling specifies the lead equivalence, it is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: July 18, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18456 Filed 7–27–95; 8:45 am]

BILLING CODE 4160–01–P

federal register

Friday
July 28, 1995

Part III

Securities and Exchange Commission

17 CFR Parts 210, 239, and 274

Payment for Investment Company Services With Brokerage Commissions; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, and 274

[Release No. 33-7197; IC-21221; FR-46; S7-22-94]

RIN 3235-AF94

Payment for Investment Company Services With Brokerage Commissions

AGENCY: Securities and Exchange Commission.

ACTION: Final amendments to rules and forms.

SUMMARY: The Securities and Exchange Commission is adopting rule and form amendments relating to the reporting of expenses by investment companies. The amendments require an investment company to reflect as expenses in its statement of operations and in other financial information certain liabilities of the company paid by broker-dealers in connection with allocation of the company's brokerage transactions to the broker-dealers and liabilities reduced by certain expense offset arrangements. In addition, the amendments require an investment company to disclose the average commission rate it paid in connection with the purchase and sale of portfolio securities, subject to a *de minimis* exception. The amendments are intended to enhance the information provided to investors so that they may be better able to assess and compare investment company expenses and yield information.

DATES: *Effective Date:* The amendments are effective September 1, 1995.

Compliance Dates: Proxy statements and shareholder reports filed with the Commission and quotations of yield by investment companies in advertisements or sales literature published or distributed on or after December 1, 1995 must comply with the amendments. Required compliance for financial information appearing in registration statements is staggered to reflect the affected investment companies' annual updating schedules. A more detailed discussion of the compliance dates appears in section of this release.

FOR FURTHER INFORMATION CONTACT: Karen J. Garnett, Attorney, Office of Disclosure and Investment Adviser Regulation, (202) 942-0728, or Anthony Evangelista, Assistant Chief Accountant, (202) 942-0636, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting amendments to:

(1) Rule 6-07 of Regulation S-X [17 CFR 210.6-07]; and

(2) Form N-1A [17 CFR 239.15A, 274.11A], Form N-2 [17 CFR 239.14, 274.11a-1], Form N-3 [17 CFR 239.17a, 274.11b], and Form N-4 [17 CFR 239.17b, 274.11c] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("1933 Act") and the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] ("1940 Act").

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I. Background

Some investment companies enter into arrangements under which a broker-dealer agrees to pay the cost of certain products or services provided to the investment company in exchange for fund brokerage ("brokerage/service arrangements"). Under a typical brokerage/service arrangement, a broker agrees to pay a fund's custodian fees or transfer agency fees and, in exchange, the fund agrees to direct a minimum amount of brokerage to the broker. The fund usually negotiates the terms of the contract with the service provider, which is paid directly by the broker.[1]

By entering into a brokerage/service arrangement, a fund can reduce expenses reported to shareholders in its statement of operations, fee table, and expense ratio and can increase its reported yield. A fund is able to decrease expenses and increase yield under these arrangements because the costs paid on behalf of the fund by the broker are embedded in the brokerage commissions the fund pays.[2] Brokerage commissions are reflected in the cost basis of the purchased securities or as a reduction of the proceeds from the sale of securities.

On August 11, 1994, the Commission proposed for public comment amendments to its accounting rules that would require fund financial data to reflect amounts the fund would have paid to its service providers if a broker-dealer or any affiliate of the broker-dealer had not paid or agreed to pay those service providers on behalf of the fund in connection with a brokerage/service arrangement.[3] As proposed, the amendments would require that the adjusted expenses be reflected in a fund's fee table and financial highlights table included in the fund's prospectus, and in the yield quotations in the fund's advertisements and sales literature. In addition, the proposed amendments would require that the financial highlights table disclose the average commission rate paid by the fund.

The Commission received comments on the Proposing Release from 104 commenters.[4] Commenters that addressed the substance of the Commission's proposals generally expressed support for the proposed amendments.[5] These commenters expressed their belief that the proposals would enhance the information

[1] Brokerage/service arrangements are structurally similar to the more common research soft dollar arrangements under which an investment adviser uses client commission dollars to obtain research services. In a research soft dollar arrangement, however, the receipt of a benefit by an adviser through the use of its clients' commission dollars raises conflict of interest concerns addressed by the safe harbor provisions of section 28(e) of the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78bb(e)]. These concerns generally are not raised by brokerage/service arrangements, which typically involve use of a fund's commission dollars to obtain services that directly and exclusively benefit the fund.

[2] The staff has stated that the safe harbor provided by section 28(e) of the 1934 Act does not encompass soft dollar arrangements under which research services are acquired as a result of principal transactions, *i.e.*, when a broker buys or sells securities for or from its own account. U.S. Department of Labor (pub. avail. July 25, 1990). Because brokerage/service arrangements do not rely on the Section 28(e) safe harbor, a fund may use principal as well as agency transactions to accumulate credits with brokers for the payment of fund expenses. Therefore, references in this release to "commissions" or "commission dollars" rather than "spreads" or "mark-ups" are not intended to indicate otherwise.

[3] Investment Company Act Release No. 20472 (Aug. 11, 1994) [59 FR 42187 (Aug. 17, 1994)] ("Proposing Release").

[4] The Commission received a total of 108 comment letters, as four commenters provided two letters each. The comment letters and a summary of comments prepared by the Commission's staff are available for public inspection and copying in the Commission's public reference room in File No. S7-22-94.

[5] Seventy-one of the 104 commenters, however, limited their comments to the issue of whether the Commission should require funds to include as expenses the cost of research services provided by brokers. *See infra* section.

provided to investors so that they may be better able to assess and compare investment company expenses and performance. The Commission is adopting the proposed amendments with several modifications that reflect the comments received.[6]

II. Discussion

A. Accounting for Expenses

1. Brokerage/Service Arrangements

The Commission is adopting, substantially as proposed, amendments to rule 6-07 of Regulation S-X[7] to require that the amounts of various expenses (such as custody fees, transfer agency fees, printing and legal fees, and other miscellaneous fees) listed in a fund's statement of operations be adjusted, or "grossed-up," to include amounts paid with commission dollars.[8] The rule amendments require funds to make adjustments to their statements of operations at the time financial statements are prepared, but do not require daily expense accruals for services paid with commission dollars. The rule amendments do not require funds to adjust amounts in the financial statements other than expenses and the expense ratio.[9]

A majority of the commenters that addressed the substance of the proposal supported the proposed accounting changes. These commenters agreed that the gross-up adjustment to expenses would accurately reflect the economic effect of these arrangements, would assist investors in comparing expenses among funds, and would be consistent with current industry reporting standards for statements of operations. Fund industry commenters stated that the method proposed for reflecting broker-paid liabilities as fund expenses was appropriate and not burdensome.[10] Some commenters, however, opposed the proposal, asserting that grossing-up fund expenses would not provide meaningful disclosure to investors and could mislead investors about the benefits to the fund of brokerage/service arrangements. Other commenters objected to the proposal arguing that it would cause funds to overstate expenses.

Commenters opposing the proposed amendments asserted, in effect, that comparable commission rates might be paid by funds that choose not to enter into brokerage/service arrangements, and, therefore fund services provided under brokerage/service arrangements should be treated as "free" services and payments by brokers should be ignored. If brokers made these payments to funds in the form of cash, however, fund expenses would not be affected. Thus, it is merely the form these payments take, rather than their substance, that has permitted such payments to reduce fund expenses. To the extent that investors benefit from these arrangements (which the Proposing Release acknowledged they may), the benefit is reflected in overall fund return rather than as a reduction of fund expenses—a result that more accurately reflects these arrangements as a rebate on brokerage.

2. Expense Offset Arrangements

a. *Fee Reductions.* Some funds enter into arrangements that, like brokerage/service arrangements, have the effect of reducing reported fund expenses. In these arrangements ("expense offset arrangements"), however, expenses are reduced by foregoing income rather than by recharacterizing them as capital items. For example, a fund may have a "compensating balance" arrangement with its custodian under which the custodian reduces its fees if the fund maintains cash on deposit with the custodian in non-interest or below market interest bearing accounts. Similarly, a fund may enter into a securities lending agreement under which the fund permits the custodian to loan fund securities to third parties (typically unrelated broker-dealers) in exchange for a reduction in custody fees.[11] Expense offset arrangements may involve explicit oral or written agreements regarding the amount of fee reductions. A fund's custody fee may, however, reflect an estimate of the income the custodian expects to derive from an expense offset arrangement, and the resulting fee reduction is not expressly stated in the custodial agreement.

The Commission requested comment whether an adjustment to fund expenses similar to that proposed for brokerage/service arrangements should be required for expense offset arrangements, or whether these arrangements should be addressed in footnotes to the financial statements.[12] In addition, the Commission requested comment whether the amount of any increase in fund expenses to reflect these arrangements should include only amounts that are explicit in the agreement, or should also include amounts implicit in the basic custodian fee.

Most of the commenters addressing this issue supported an adjustment to fund expenses for expense offset arrangements. Commenters generally stated that requiring disclosure for expense offset arrangements would be consistent with requirements relating to brokerage/service arrangements. Commenters were divided, however, on whether the amount of any increase in fund expenses should include only

[6] As discussed in section II.A.2 below, one of these changes requires funds to reflect as expenses liabilities reduced in connection with certain expense offset arrangements.

[7] Article 6 of Regulation S-X specifies the contents of financial statements included in registration statements, proxy statements and shareholder reports of registered investment companies. Rule 6-07 of Regulation S-X sets forth the requirements for investment company statements of operations.

[8] The staff previously has required funds to disclose in footnotes to the fee table, financial highlights table, and financial statements their participation in brokerage/service arrangements and the effect these arrangements may have on the level of brokerage commissions paid to the fund. *See* Proposing Release, *supra* note 3, at n.2. The amendments to rule 6-07 eliminate the need for this disclosure and therefore the staff will no longer require such footnotes.

[9] The Proposing Release explained that a fund's investment adviser can benefit from brokerage/service arrangements, particularly if a reduction in fund expenses affects the amount of any expense waiver or reimbursement by the adviser. Proposing Release, *supra* note 3, at n.1. Section 17(e)(1) of the 1940 Act [15 U.S.C. 80a-17(e)(1)] makes it unlawful for an affiliated person of a fund (such as its adviser) to accept from any source compensation (other than regular wages) for the purchase or sale of fund shares. The receipt by a fund's adviser of any direct or indirect economic benefit as a result of brokerage/service arrangements would almost certainly violate section 17(e)(1), unless the benefit received fell within the safe harbor provided by section 28(e) of the 1934 Act. *See supra* note 1. However, the Commission believes that if a fund adviser voluntarily imposes a limitation on the fund's expenses or waives its fees, the fund's brokerage/service arrangements would not violate section 17(e)(1). Similarly, if compliance with expense limitations imposed by statute or by contract is measured by reference to the fund's total expenses (*i.e.*, expenses adjusted to include the cost of services provided under brokerage/service arrangements), a fund's brokerage/service arrangements would not result in a violation of section 17(e)(1).

[10] In the Proposing Release, the Commission requested comment on an alternative accounting method that would require funds to allocate each commission paid between execution cost and payment for fund services, and to present their financial statements based upon those allocations. This method would have required funds to separate commissions into brokerage and expense components, and reflect the expense component as an expense in the financial statements. Commenters that addressed the alternative accounting method were uniformly opposed to it on grounds that it would be impractical, costly, and burdensome for funds to calculate, as well as difficult to audit.

[11] Securities lending arrangements may raise other issues under the federal securities laws. The Commission is not addressing in this release the merits of any particular securities lending arrangements.

[12] Footnote disclosure of compensating balance arrangements under which the withdrawal or use of cash or cash items is restricted, either legally or as a practical matter, is currently required by rule 6-04.5 of Regulation S-X [17 CFR 210.6-04.5]. In addition, Rule 6-04.11 of Regulation S-X [17 CFR 210.6-04.11] requires fund balance sheets to state the value of securities loaned and to indicate the nature of collateral received as security for the loan.

amounts that are explicit in agreements between the fund and the service provider.

The amendments to rule 6–07 of Regulation S–X, as adopted, require funds to include as expenses the amount of any reduction in fees or expenses arising from expense offset arrangements.[13] A fund's statement of operations must reflect as the cost of services provided the amount that the fund would have paid in the absence of the expense offset arrangement.[14] The requirement only applies to agreements that provide for specified or reasonably ascertainable fee reductions in exchange for use by another person of the fund's assets. It does not apply to fee reductions that are implicit in the service provider's basic fee.

b. *Foregone Income.* The Commission also requested comment whether funds should be required to estimate income foregone under expense offset arrangements and reflect such amounts in fund financial information.[15] The Commission asked commenters to suggest methods for estimating income foregone under these arrangements. Some commenters supported such a requirement, suggesting that funds should make a "reasonable estimate" of foregone income. Other commenters noted the difficulty of estimating lost income and expressed concern that such a requirement could result in misleading financial information. Moreover, one commenter argued that, in order to estimate lost income, a fund would have to assume income, which is inconsistent with generally accepted accounting principles ("GAAP") and could prevent auditors from issuing an unqualified report that fund financial statements are prepared in accordance with GAAP.

The Commission shares certain of these concerns and has therefore decided not to require funds to reflect in fund financial information income foregone as a result of expense offset arrangements. As amended, rule 6–07 requires a fund that enters into an expense offset arrangement to include in a footnote to financial statements a statement that the fund could have invested the assets used by the other person in an income-producing asset if it had not agreed to a reduction in fees or expenses under an expense offset arrangement.

3. Accounting Method

Under rule 6–07, as amended, a fund's total expenses reported in the statement of operations must include expenses paid under brokerage/service and expense offset arrangements.[16] Total expenses are then reduced by the total amount paid under brokerage/service and expense offset arrangements. The remainder appears on the statement of operations as "net expenses."[17] The following example illustrates adjustments to the statement of operations required by the amended rule:

Expenses:	
Management Fee	$50
[Other direct fund expenses]	48
Custodian Fee [would include 8 paid by brokers]	10
Total Expenses	108
Fees Paid Indirectly[18]	(8)
Net Expenses	100

The increase in "Total Expenses," and the offsetting "Fees Paid Indirectly," reflect the amount that the fund would have paid for services in the absence of brokerage/service and expense offset arrangements. If a fund directly negotiates the service provider's fees, the cost of the services for purposes of making the required adjustments is the amount negotiated, presumably the same amount the fund would have paid for the service in the absence of the arrangement. If the fund cannot readily determine the actual cost of such services, *e.g.*, when a broker arranges for the services or provides them itself or through an affiliate, the fund must make a good-faith estimate of the amount it would have paid if it had contracted for the services directly in an arms-length transaction.[19]

4. Financial Statement Note Disclosure

As proposed, the amendments to rule 6–07 would have required a fund to identify separately in a note to the financial statements any expense that the amendments would require to be increased by five percent or more over the amount of the unadjusted expense.[20] Several commenters urged the Commission to require less detailed note disclosure, arguing that shareholders were not interested in individual expense amounts. In response to these concerns, the amended rule requires a fund to state separately in a note to the financial statements the total of expense increases resulting from brokerage/service and expense offset arrangements (which together should be equal to the amount of the "Fees Paid Indirectly" line item in the statement of operations). The amended rule also requires a fund to state in the footnote each category of expense that is increased by an amount equal to at least five percent of total expenses.[21]

B. Exception for Research Services

As proposed, the requirement to adjust reported expenses to include amounts paid with commission dollars excepted the cost of research services (as that term is used in section 28(e) of the 1934 Act) provided by broker-dealers.[22] Most commenters believed that the exception was appropriate. Many pointed out the difficulties of allocating research received by the adviser among accounts when the brokerage of those accounts is used to acquire the research.[23] Some also asserted that it would be difficult to value research services, particularly when combined with brokerage services, while others objected to making assumptions about the value of research services.

A minority of commenters supported the additional disclosure of research soft dollar practices. These commenters expressed concern that such practices pose the same hidden expense problems as brokerage/service arrangements, and that such practices may be more likely to raise conflicts of interest than brokerage/service arrangements. None of the commenters, however, suggested a feasible approach for valuing[24] or allocating[25] research services for purposes of disclosure. Because of the practical difficulties of valuing and allocating research services, the amendments except the cost of research services from the requirement to gross up fund expenses.[26]

C. Fee Table and Financial Highlights Table

The Commission also proposed amendments to the instructions to items of fund registration forms that require funds to include in their prospectuses a table presenting the expenses paid by fund shareholders, either directly or out of the assets of the fund (the "fee table").[27] Most commenters supported these amendments and the Commission is adopting them as proposed.

The amended instructions require that expense percentages included in a fund's fee table be based upon total expenses (i.e., expenses that include amounts paid in connection with brokerage/service arrangements and expense offset arrangements). Similarly, the "ratio of expenses to average net assets" ("expense ratio") in a fund's financial highlights table must reflect total expenses.[28] Funds must also include a footnote to the financial highlights table disclosing the change in the manner in which expenses have been determined.

D. Yield

The Commission is adopting, substantially as proposed, amendments to the instructions to yield formulas for funds (other than money market funds) that require a fund to include the cost of services paid with brokerage commissions in yield quotations appearing in the fund's registration statement and, as a result, in its advertisements.[29] The amended instructions require funds to estimate amounts paid with commission dollars for the period of the yield quotation.[30] A majority of commenters addressing this proposal expressed support for the requirement. These commenters stated that the proposed requirement would prevent funds from overstating yield and would be consistent with the Commission's objective of enhancing investors' ability to compare expenses and yields among funds.[31]

The amendments do not require funds to adjust yield calculations to reflect expense offset arrangements. Because the formula for calculating yield requires funds to reduce income by expenses,[32] any increase in expenses to reflect expense offset arrangements would require a corresponding increase in income by an estimate of income foregone as a result of the arrangement. As discussed above, the amendments do not require estimates of foregone income in the statement of operations. Moreover, because expense offset arrangements generally reduce both income and expenses by similar amounts, reflection of (or failure to reflect) these arrangements in calculation of fund yield should have a minimal effect on the reported yield.

E. Average Commission Rates

The Commission proposed to require funds to disclose the average commission rate paid by a fund in the financial highlights table next to the portfolio turnover rate. Brokerage commissions and other costs incurred in connection with the execution of a fund's portfolio transactions are not reflected in the fund's statement of operations, financial highlights table, or fee table because these costs are treated as capital items that increase the cost of securities purchased or reduce the proceeds of securities sold. The Commission was concerned that funds may not provide adequate information about these costs to investors,[33] particularly in light of the fact that these costs can reflect the cost of research and other benefits the fund adviser may receive in connection with its direction of fund brokerage.[34]

Most fund industry commenters opposed the proposal, asserting that disclosure of average commission rates either would not be meaningful or would be confusing for most investors because average commission rates do not reflect spreads and quality of execution. Furthermore, they argued, factors affecting commission rates, such as the size of the order, the market in which the security trades, and the

[13] Rule 6–07.2(g)(2) of Regulation S–X [17 CFR 210.6–07.2(g)(2)]. Under the amendments, expense offset arrangements include arrangements under which a service provider reduces its fees in return for the use of fund assets as well as arrangements under which another person, in return for the use of fund assets, makes payment to a fund service provider which in turn reduces its fees charged to the fund.

[14] Amendments to fund registration forms adopted today incorporate similar requirements for fund prospectuses by reference to rule 6–07.

[15] Proposing Release, *supra* note 3, at section II.D.

[16] A fund must also use the total expense figure to calculate its expense ratio, its "Other Expenses" listed in the fee table, and its yield. *See infra* sections II.C and II.D.

[17] Because only expenses, and not realized gains/losses or unrealized appreciation/depreciation, are adjusted in the statement of operations, the presentation of "net expenses" is necessary to ensure that net investment income is not affected by the adjustment to expenses.

[18] As amended, rule 6–07 requires funds to include a footnote to the financial statements that states separately the total amount of expenses paid through brokerage/service arrangements and the total amount of expenses paid through expense offset arrangements. *See infra* section II.A.4.

[19] The good-faith estimate may be based upon price quotes for the services obtained by the fund or the amount funds of similar size and having similar investment objectives pay for the same services.

[20] Proposing Release, *supra* note 3, at n.12. The amendments, as proposed, would have permitted funds to aggregate amounts that individually were less than five percent of the unadjusted expense and required funds to state the total of these amounts.

[21] The five percent threshold is consistent with an existing provision of rule 6–07 that requires funds to state separately expense items that exceed five percent of the total expenses shown in the statement of operations. Rule 6–07.2(b) [17 CFR 210.6–07.2(b)].

[22] *See supra* note 1. Because research services are typically provided to the adviser, not the fund, the specific exception may be unnecessary. In light of the widespread use of research soft dollar arrangements, however, the Commission is adopting a specific exception.

[23] Twenty commenters expressly opposed allocation of research on an account-specific basis, stating that such a requirement would be burdensome (with no corresponding benefit to investors), costly, arbitrary or impossible.

[24] One commenter recommended that fund advisers be required to make a good faith estimate of what soft dollar research would have cost in an arms-length transaction. This approach, however, would require fund advisers to report positive values for unsolicited and unused research, which could distort fund expenses if receipt of the research was incidental to brokerage direction decisions made wholly on the basis of the broker's execution capabilities. In addition, good faith estimates may be difficult to make if the services provided are unlike those available for hard dollars.

[25] One commenter recommended that expenses incurred on behalf of more than one fund be allocated in accordance with written formulas approved by the board of directors of each fund. While it is possible that a board of directors may be in a position to provide guidance to an adviser in allocating the cost or value of research among series of a series fund or among funds having a common board of directors, it is unlikely that a board would be in such a position with respect to other clients of the adviser.

[26] The Commission recently proposed new disclosure requirements for soft-dollar practices. Investment Advisers Act Rel. No. 1469 (Feb. 14, 1995) [60 FR 9750 (Feb. 21, 1995)] ("Adviser Soft Dollar Release"). The Commission requested comment on the valuation issue in the Adviser Soft Dollar Release. If the comments received in response to the Adviser Soft Dollar Release suggest a feasible way to address these issues without imposing burdens that outweigh the benefits of disclosure, the Commission may reconsider the exception for research services provided in the amendments adopted today.

[27] Item 2(a)(i) of Form N–1A, Item 3.1 of Form N–2, Item 3(a) of Form N–3, and Item 3(a) of Form N–4.

[28] Item 3(a) of Form N–1A and Item 4.1 of Form N–2. The Commission did not propose amendments to the per share tables in Forms N–3 and N–4.

[29] Paragraph (e)(1) of rule 482 under the 1933 Act [17 CFR 230.482(e)(1)] requires that yield quotations included in fund advertisements be calculated in accordance with the formulas specified in fund registration forms. The yield formulas are set forth in Item 22(b)(ii) of Form N–1A, Item 25(b)(ii) of Form N–3, and Item 21(b)(ii) of Form N–4.

[30] The amendments to Regulation S–X require funds to adjust expenses at the end of a financial statement period, but generally would not require funds to accrue or otherwise determine at the end of the 30-day period for which yield is calculated the amount of expenses paid with brokerage commissions for that period.

[31] The amendments do not revise the manner in which yield is calculated by money market funds. The money market fund yield formula is based upon the net change in the value of a hypothetical account, and any spread or mark-up paid by a fund is amortized and reflected in that change in value. *See, e.g.*, Item 22(a) of Form N–1A. Therefore, requiring money market funds to include fees paid with commission dollars in the calculation of yield would result in those fees being counted twice. The same double-counting problem does not arise with respect to non-money market funds because the yield formula for those funds generally requires that the amortization of premium and accretion of discount on debt securities be based upon the market value of the security, rather than the initial purchase price. *See, e.g.*, Instruction 1(a) to Item 22(b)(ii) of Form N–1A. The mark-up or spread paid by the fund upon the purchase of a security is not reflected in the security's market value and therefore would not be a part of any premium amortized or discount accreted for the purposes of calculating yield. Only two commenters addressed the question of revising the yield formula for money market funds. Both of these commenters agreed with the Commission's analysis of the effect of brokerage/service arrangements on money market fund yield, and both were opposed to such revisions.

[32] *See, e.g.* Item 22(b)(ii) of Form N–1A.

[33] A fund is required to disclose in its Statement of Additional Information the aggregate amount of brokerage commissions it paid to fund affiliates during its three most recent fiscal years. Item 17(b) of Form N–1A.

[34] *See supra* notes 1 and 2.

nature of the brokerage firm capital commitment to the trade, would preclude any useful comparison between funds. Other commenters expressed concern that requiring funds to disclose average commission rates would induce funds to place undue emphasis on lower commission rates rather than quality of execution.

The Commission believes that disclosure of average commission rates can improve investors' ability to evaluate and compare fund brokerage costs, and is adopting the requirement as proposed. While many factors may affect commission rates, many similar factors affect other fund costs. The Commission believes that a comparison of average commission rates among funds will be a useful bench-mark for investors and therefore is adopting the disclosure requirement substantially as proposed.[35]

One commenter urged the Commission to exclude from the requirement to disclose average commission rates funds that have a *de minimis* amount of transactions on which brokerage commissions are paid. Because commission rate information may have limited value in such circumstances, the Commission has adopted an exclusion for funds that, during any fiscal year, invest on average less than ten percent of their net assets in equity securities on which commissions are charged on trades.[36]

F. Effective Date

The amendments are effective September 1, 1995. All funds may elect to comply with the amendments before the effective date or before the compliance dates described below.

G. Compliance Dates

1. Registration Statements

a. *Current Registrants.* Registered investment companies must amend their registration statements to comply with the rule amendments no later than the next post-effective amendment updating financial statements pursuant to section 10(a)(3) of the 1933 Act to reflect information for fiscal years *ending* on or after the effective date.[37] Information regarding average commission rates, however, must be provided only for fiscal years *beginning* on or after the effective date.[38]

b. *New Registrants.* Funds with registration statements effective on or after the effective date of these rule amendments must first reflect these rule amendments in financial information contained in post-effective amendments filed thereafter.

2. Yield Information

Yield quotations appearing in fund advertisements or other sales literature published or distributed on or after December 1, 1995 must be calculated in accordance with the rule amendments.

3. Proxy Statements and Shareholder Reports

Financial information covering fiscal years ending on or after the effective date contained in proxy statements and shareholder reports filed with the Commission must comply with the amendments.

H. Filing Requirements for Post-Effective Amendments

Post-effective amendments to fund registration statements made for purpose of complying with these rule amendments may be made pursuant to the immediate effectiveness provisions of rule 485(b) under the 1940 Act [17 CFR 230.485(b)], provided that the post-effective amendment otherwise meets the conditions for immediate effectiveness under that rule.

III. Cost/Benefit Analysis

The rule and form changes adopted today are intended to improve the reporting of investment company expenses and the ability of investors to compare investment company expenses and yield. While these amendments may increase the cost to funds of preparing financial statements and registration materials, the Commission believes that any such cost increases would, at most, be minimal. A fund that has brokerage/service or expense offset arrangements is required to add two captions and a footnote to its statement of operations and replace the net expense figures currently disclosed in its fee table and financial highlights table with total expense figures. Funds generally should be readily able to determine these figures. Commenters on the proposal stated that funds should also be readily able to estimate expenses paid with brokerage commissions for purposes of yield calculations. Thus, the Commission believes that the costs of the amendments will not be significant and will be substantially outweighed by the benefits to investors of receiving more accurate and useful financial information about funds.

IV. Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Karen J. Garnett, Office of Disclosure and Investment Adviser Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

V. Statutory Authority

The Commission is amending rule 6–07 of Regulation S–X and the various fund registration forms under the authority of section 7 of the 1933 Act [15 U.S.C. 77g] and sections 8 and 38(a) of the 1940 Act [15 U.S.C. 80a–8, 80a–37(a)]. The authority citations for the rule and form amendments precede the text of the amendments.

Text of Rule and Form Amendments

List of Subjects

17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 239 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37a, unless otherwise noted.

2. By adding paragraph 2.(g) to the Statements of Operations § 210.6–07 to read as follows:

§ 210.6–07 Statements of operations.

* * * * *

2. *Expenses.* * * *

(g)(1) *Brokerage/Service Arrangements.* If a broker-dealer or an affiliate of the broker-dealer has, in connection with directing the person's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the person (other than brokerage and research services as those terms are used in section 28(e) of the Securities Exchange Act of 1934 [15 U.S.C. 78bb(e)]), include in the expense items set forth under this caption the amount that would have been incurred by the person for the services had it paid for the services directly in an arms-length transaction.

(2) *Expense Offset Arrangements.* If the person has entered into an agreement with any other person pursuant to which such other person reduces, or pays a third party which reduces, by a specified or reasonably ascertainable amount, its fees for services provided to the person in exchange for use of the person's assets, include in the expense items set forth under this caption the amount of fees that would have been incurred by the person if the person had not entered into the agreement.

(3) *Financial Statement Presentation.* Show the total amount by which expenses are increased pursuant to paragraphs (1) and (2) of this paragraph 2.(g) as a corresponding reduction in total expenses under this caption. In a note to the financial statements, state separately the total amounts by which expenses are increased pursuant to paragraphs (1) and (2) of this paragraph 2.(g), and list each category of expense that is increased by an amount equal to at least 5 percent of total expenses. If applicable, the note should state that the person could have employed the assets used by another person to produce income if it had not entered into an arrangement described in paragraph 2.(g)(2) of this section.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

4. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: The text of Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

5. By revising the introductory text of Instruction 10 to Item 2(a)(i) in Part A of Form N–1A (referenced in §§ 239.15A and 274.11A) to read as follows:

Form N–1A

* * * * *

Part A—Information Required in a Prospectus

* * * * *

Item 2. Synopsis

(a)(i) * * *

Instructions: * * *

10. "Other Expenses" includes all expenses (except nonrecurring account fees and expenses reported in other items of the table) that are deducted from fund assets or charged to all shareholder accounts. The amounts of expenses deducted from fund assets are the amounts shown as expenses in the Registrant's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

* * * * *

6. By amending Item 3(a) in Part A of Form N–1A (referenced in §§ 239.15A and 274.11A) by adding the phrase "Average Commission Rate Paid" below "Portfolio Turnover Rate", by redesignating Instructions 13 and 14 as Instructions 14 and 15, and adding Instructions 13, 16, and 17 to read as follows:

Form N–1A

* * * * *

Part A—Information Required in a Prospectus

* * * * *

Item 3. Condensed Financial Information

(a) * * *

Instructions:

* * * * *

Ratios/Supplemental Data

* * * * * *

13. Compute the "ratio of expenses to average net assets" using the amount of expenses shown in the Registrant's statement of operations for the relevant fiscal year, including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X, and including reductions resulting from complying with paragraphs 2(a) and (f) of Rule 6–07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of Rule 6–07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for fiscal years ending after September 1, 1995.

* * * * *

Average Commission Rate Paid

16. A Registrant that invests not more than ten percent of the value of its average net assets in equity securities on which commissions are charged on trades may omit "average commission rate paid." Compute average net assets based on amounts invested at the end of each fiscal quarter.

17. Compute the "average commission rate paid" as follows: (A) divide the total dollar amount of commissions paid during the fiscal year by (B) the total number of shares purchased and sold during the fiscal year for which commissions were charged. Carry the amount of the average commission rate paid to no fewer than four decimal places. Convert commissions paid in foreign currency into U.S. dollars and cents per share using consistently either the prevailing exchange rate on the date of the transaction or average exchange rate over such period as related transactions took place. Do not include mark-ups, mark-downs, or spreads paid on shares traded on a principal basis unless such mark-ups, mark-downs, or spreads are disclosed on confirmations prepared in accordance with rule 10b–10 under the 1934 Act [17 CFR 240.10b–10].

* * * * *

7. By redesignating Instructions 7 and 8 to Item 22(b)(ii) as Instructions 8 and 9, and adding Instruction 7 to Item 22(b)(ii) in Part B of Form N–1A

[35] The Commission has added instructions to the various fund registration forms describing the method for calculating average commission rate. Instruction 17 to Item 3 of Form N–1A, and Instruction 19 to Item 4 of Form N–2. The instruction requires funds to compute the average commission rate paid by dividing the total dollar amount of commissions paid during the fiscal year by the total number of shares purchased and sold during the fiscal year for which commissions were charged. Funds must convert commissions paid in foreign currencies into US dollars and cents per share. Mark-ups, Mark-downs, and spreads on shares traded on a principal basis are not included in the average commission rate figure unless they are disclosed on confirmations prepared in accordance with rule 10b–10 under the 1934 Act [17 CFR 240.10b–10].

[36] Instruction 16 to Item 3 of Form N–1A, and Instruction 18 to Item 4 of Form N–2.

[37] The financial highlights table in fund prospectuses presents financial data for each of the last ten fiscal years. The amendments do not require funds to reflect total expenses in the expense ratio of the financial highlights table for fiscal years ending before the effective date.

[38] This requirement is consistent with the Commission's proposal. *See* Proposing Release, *supra* note 3, at n.30.

(referenced in §§ 239.15A and 274.11A) to read as follows:

Form N–1A

* * * * *

Part B—Information Required in a Statement of Additional Information

* * * * *

Item 22. Calculation of Performance Data

* * * * *

(b) *Other Registrants* * * *
(ii) *Yield.* * * *
Instructions: * * *

7. If a broker-dealer or an affiliate (as defined in paragraph (b) of Rule 1–02 [17 CFR 210.1–02(b)] of Regulation S–X) of the broker-dealer has, in connection with directing the Registrant's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Registrant (other than brokerage and research services as those terms are used in Section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e))), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Registrant had paid for the services directly in an arms-length transaction.

* * * * *

Note: The text of Form N–2 does not and the amendments will not appear in the Code of Federal Regulations.

8. By revising Instruction 9 to Item 3.1 in Part A of Form N–2 (referenced in §§ 239.14 and 274.11a–1) to read as follows:

Form N–2

* * * * *

Part A—Information Required in a Prospectus

* * * * *

Item 3. Fee Table and Synopsis

1. * * *
Instructions * * *

9. "Other Expenses" includes all expenses (except fees and expenses reported in other items in the table) that are deducted from the Registrant's assets and will be reflected as expenses in the Registrant's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

* * * * *

9. By amending Item 4.1 in Part A of Form N–2 (referenced in §§ 239.14 and 274.11a–1) by adding "*l.* Average Commission Rate Paid" below "k. Portfolio Turnover Rate", by redesignating Instruction 16 as Instruction 17, and adding Instructions 16, 18 and 19 to read as follows:

Form N–2

* * * * *

Part A—Information Required in a Prospectus

* * * * *

Item 4. Financial Highlights

1. *General* * * *
Instructions * * *
Ratios and Supplemental Data * * *

16. Compute the "ratio of expenses to average net assets" using the amount of expenses shown in the Registrant's statement of operations for the relevant fiscal year, including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X, and including reductions resulting from complying with paragraphs 2(a) and (f) of Rule 6–07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of Rule 6–07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for fiscal years ending after September 1, 1995.

* * * * *

Average Commission Rate Paid

18. A Registrant that invests not more than ten percent of the value of its average net assets in equity securities on which commissions are charged on trades may omit "average commission rate paid." Compute average net assets based on amounts invested at the end of each fiscal quarter.

19. Compute the "average commission rate paid" as follows: (A) divide the total dollar amount of commissions paid during the fiscal year by (B) the total number of shares purchased and sold during the fiscal year for which commissions were charged. Carry the amount of the average commission rate paid to no fewer than four decimal places. Convert commissions paid in foreign currency into U.S. dollars and cents per share using consistently either the prevailing exchange rate on the date of the transaction or average exchange rate over such period as related transactions took place. Do not include mark-ups, mark-downs, or spreads paid on shares traded on a principal basis unless such mark-ups, mark-downs, or spreads are disclosed on confirmations prepared in accordance with rule 10b–10 under the 1934 Act [17 CFR 240.10b–10].

* * * * *

Note: The text of Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

10. By revising the introductory text of Instruction 15 to Item 3(a) in Part A of Form N–3 (referenced in §§ 239.17a and 274.11b) to read as follows:

Form N–3

* * * * *

Part A—Information Required in a Prospectus

* * * * *

Item 3. Synopsis

(a) * * *
Instructions: * * *

15. "Other Expenses" includes all expenses (except fees and expenses reported in other items in the table) that are deducted from separate account assets and will be reflected as expenses in the Registrant's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

* * * * *

11. By redesignating Instruction 7 to Item 25(b)(ii) as Instruction 8, and adding Instruction 7 to Item 25(b)(ii) in Part B of Form N–3 (referenced in §§ 239.17a and 274.11b) to read as follows:

Form N–3

* * * * *

Part B—Information Required in a Statement of Additional Information

* * * * *

Item 25. Calculation of Performance Data

* * * * *

(b) *Other Accounts* * * *
(ii) *Yield.* * * *
Instructions: * * *

7. If a broker-dealer or an affiliate (as defined in paragraph (b) of Rule 1–02 [17 CFR 210.1–02(b)] of Regulation S–X) of the broker-dealer has, in connection with directing the Registrant's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Registrant (other than brokerage and research services as those terms are used in Section 28(e) of the Securities Exchange Act of 1934 [15 U.S.C. 78bb(e)]), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Registrant had paid for the services directly in an arms-length transaction.

* * * * *

Note: The text of Form N–4 does not and the amendments will not appear in the Code of Federal Regulations.

12. By revising the introductory text of Instruction 17 to Item 3(a) in Part A of Form N–4 (referenced in §§ 239.17b and 274.11c) to read as follows:

Form N–4

* * * * *

Part A—Information Required in a Prospectus

* * * * *

Item 3. Synopsis

(a) * * *
Instructions: * * *

17. "Other Expenses" includes all expenses (except management fees) that are deducted from portfolio company assets. The amounts of expenses are the amounts shown as expenses in the portfolio company's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

* * * * *

13. By redesignating Instructions 2 and 3 to Item 21(b)(ii) as Instructions 3 and 4, and adding Instruction 2 to Item 21(b)(ii) in Part B of Form N–4 (referenced in §§ 239.17b and 274.11c) to read as follows:

Form N–4

* * * * *

Part B—Information Required in a Statement of Additional Information

* * * * *

Item 21. Calculation of Performance Data

* * * * *

(b) *Other Sub-Accounts* * * *
(ii) *Yield.* * * *
Instructions: * * *

2. If a broker-dealer or an affiliate (as defined in paragraph (b) of Rule 1–02 [17 CFR 210.1–02(b)] of Regulation S–X) of the broker-dealer has, in connection with directing the portfolio company's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the portfolio company (other than brokerage and research services as those terms are used in Section 28(e) of the Securities Exchange Act of 1934 [15 U.S.C. 78bb(e)]), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the portfolio company had paid for the services directly in an arms-length transaction.

* * * * *

Dated: July 21, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18472 Filed 7–27–95; 8:45 am]
BILLING CODE 8010–01–P

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Friday
July 28, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Chapter I

Indian Self-Determination Negotiated Rulemaking Committee Meeting; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter 1

Meeting of the Indian Self-Determination Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior; Indian Health Service, HHS.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Interior (DOI) and the Secretary of Health and Human Services (DHHS) have established an Indian Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended.

The Departments have determined that the establishment of this Committee is in the public interest and will assist the agencies in developing regulations authorized under section 107 of the ISDEAA. The agenda planned for the week include meetings of workgroups as well as the full committee. Workgroups will be finalizing draft regulatory language and recommending adoption by the full committee. The full committee will review and give approval of such language for publication in the **Federal Register**, as a Notice of Proposed Rulemaking.

DATES: The Committee and appropriate workgroups will meet on the following days beginning at approximately 8:30 am and ending at approximately 5:00 pm on each day: Tuesday, August 8, Wednesday, August 9, Thursday, August 10, and Friday, August 11.

ADDRESSES: All meetings August 8 through August 11, 1995, will be held at the: Silver Legacy, 407 N. Virginia Street, Reno, Nevada 89501. Tel.: (702) 329–4777

(Workgroups will also be meeting at the same location.)

Written statements may be submitted to Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street, NW, MS: 4627–MIB, Washington, DC 20240, telephone (202) 208–3708.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street NW., MS: 4627–MIB, Washington, DC 20240, telephone (202) 208–3708

or

Mrs. Merry Elrod, Acting Director, Division of Self-Determination, Indian Health Service, 5600 Fishers Lane, Parklawn Building, Room 6A–05, Rockville, MD 20857, telephone (301) 443–1044.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advanced registration.

Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed above. Summaries of Committee meetings will be available for public inspection and copying ten days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: July 25, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–18641 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–02–M

federal register

Friday
July 28, 1995

Part V

Federal Trade Commission

16 CFR Parts 801 and 802

Premerger Notification; Reporting and Waiting Period Requirements; Proposed Rule

VOL 60 ISS 145 JL 28 1995 JMI

FEDERAL TRADE COMMISSION

16 CFR Parts 801 and 802

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes amendments to the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation.

This notice seeks comments on five proposed rules that would define or create exemptions to the requirements imposed by the act. These proposed rules have been developed to clarify the types of transactions that are in the ordinary course of business of the parties to the transaction and are exempt under section 7A(c)(1) of the Hart-Scott-Rodino-Act. They also provide several new exemptions under section 7A(d)(2)(B) for certain types of acquisitions of realty and carbon-based mineral reserves that appear unlikely to violate the antitrust laws. These proposed rules are designed to reduce the compliance burden on the business community by eliminating the application of the notification and waiting requirements to a significant number of transactions that, in most cases, are unlikely to violate the antitrust laws. They will also allow the enforcement agencies to focus their resources more effectively on those transactions that present the potential for competitive harm.

DATES: Comments must be received on or before September 29, 1995.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 136, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Melea R. Epps, Attorney, or John M. Sipple, Jr., Assistant Director, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

The proposed amendments to the Hart-Scott-Rodino premerger notification rules are designed to reduce the burden of reporting on the public. The Commission has determined that none of the proposed rules is a major rule, as that term is defined in Executive Order 12291. The amendments will not result in any of the following: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market. None of the amendments expands the coverage of the premerger notification rules in a way that would affect small business. Therefore, pursuant to section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354 (September 19, 1980), the Federal Trade Commission has certified that these rules will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of these rules, is therefore inapplicable.

Background

Section 7A of the Clayton Act ("the act"), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires parties to certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General"). The parties must then wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to ensure that certain acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress intended to eliminate the "midnight merger" which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (who are sometimes hereafter referred to as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that either agency determines would present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus, the act requires that the antitrust agencies received prior notification of certain acquisitions, provides tools to facilitate a prompt, thorough investigation of the competitive implications of these acquisitions, and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it. The problem of unscrambling the assets after the transaction has taken place is thereby reduced.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to (a) define the terms used in the act, (b) exempt from the act's notification and waiting period requirements additional classes of persons or transactions which are not likely to violate the antitrust laws, and (c) prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

The Commission, with the concurrence of the Assistant Attorney General, promulgated implementing rules ("the rules") and the Notification and Report Form (the "Form") and issued an accompanying Statement of

Basis and Purpose, all of which were published in the **Federal Register** of July 31, 1978, 43 FR 33451, and became effective on September 5, 1978.

The rules are divided into three parts which appear at 16 CFR parts 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Form, which is completed by persons required to file notification, is an appendix to part 803 of the rules.

Changes of a substantive nature have been made in the premerger notification rules or Form on ten occasions since they were first promulgated: 44 FR 66781 (November 21, 1979); 45 FR 14205 (March 5, 1980); 46 FR 38710 (July 29, 1981); 48 FR 34427 (July 29, 1983); 50 FR 38742 (September 24, 1985); 51 FR 10368 (March 28, 1986); 52 FR 7066 (March 6, 1987); 52 FR 20058 (May 29, 1987); 54 FR 21425 (May 18, 1989) and 55 FR 31371 (August 2, 1990).

The current set of proposed changes to the rules interprets the act and expands the current policies of the Commission's Premerger Notification Office regarding transactions in the ordinary course of business that are exempt from the notification and waiting requirements of the act. The proposals also include several new exemptions for acquisitions of certain types of real property assets and carbon-based mineral reserves. The Commission, as part of its ongoing review of the rules, invites interested persons to submit comments on these proposed rules and the Statement of Basis and Purpose.

Statement of Basis and Purpose for the Commission's Proposed Revisions to the Premerger Notification Rules

Proposed §§ 802.1, 802.2, 802.3, 802.4, and 802.5 describe certain types of acquisitions that would be exempt from the notification requirements of the act. They would replace and expand existing § 802.1, which describes certain applications of the exemption granted by section 7A(c)(1) of the act for acquisitions of goods or realty in the ordinary course of business. Proposed revisions to § 801.15 would define when the aggregation rules apply to acquisitions covered by these newly proposed rules.

In 1985, the Commission proposed three new provisions under part 802. Previously proposed § 802.1 would have addressed the statutory "ordinary course of business" exemption; previously proposed § 802.2 would have exempted certain acquisitions of unimproved land, office buildings and residential properties; and previously proposed § 802.3 would have exempted certain acquisitions of carbon-based mineral reserves.

In response to the 1985 notice of proposed rulemaking, the Commission received twenty comments that focused wholly or in part on the then proposed §§ 802.1, 802.2, and 802.3. The persons who commented are listed in the **Federal Register** of March 6, 1987, 52 FR 7066. The comments are available for public inspection in the Federal Trade Commission's Public Reference Room, Reference number 223.2.1–1–E and F.

On March 23, 1995, the Chairman of the Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice jointly announced eight initiatives for review of transactions under the act. One of the initiatives is a reduction in the number of filings received pursuant to the act. A draft of several revisions to the Hart-Scott-Rodino rules under consideration by the staff of the Commission's Premerger Notification Office (PNO) was made available to the public. Those revisions would eliminate the necessity to file premerger notification for certain transactions that are not likely to violate the antitrust laws. The draft reflected careful consideration by the staff of the comments received in response to the 1985 proposals, the experience of the PNO during the intervening years in its determinations of the reportability of a large number of transactions not specifically exempted by the act or the rules an the experience of the enforcement agencies in conducting their antitrust review of premerger filings.

Included in the March 23 draft was a series of questions to be considered in determining whether the revisions under consideration by the PNO effectively exempted transactions that were unlikely to violate the antitrust laws and facilitated uncomplicated application of the rules. In response to an invitation for comment, the staff of the Commission received extensive input from the private antitrust bar and worked closely with the Department of Justice to address the questions raised in the draft. As a result, the draft revisions were reformulated significantly to enhance their effectiveness in exempting classes of transactions that are unlikely to create competitive problems, while ensuring that the enforcement agencies continue to receive notification of classes of acquisitions that are more likely to present potential antitrust concerns. The Commission now formally proposes the following amendments to the premerger notification rules.

Criteria for the Rules. Section 7A(c)(1) of the act exempts "acquisitions of goods or realty transferred in the ordinary course of business." Existing § 802.1(a) interprets this statutory language to apply the exemption to acquisitions of voting securities of entities holding only realty. Existing § 802.1(b) denies the exemption to the sale of goods or real property if they constitute "all or substantially all of the assets of that entity or an operating division thereof" unless the entity qualifies for the exemption under existing § 802.1(a) because its assets consist solely of real property and assets incidental to the ownership of real property.

The reportability of transfers in the ordinary course of business has long been a frequent source of questions from the public. Proposed § 802.1 represents interpretations of section 7A(c)(1) made by the PNO over the years, and it also broadens these interpretations to exempt additional classes of acquisitions that are unlikely to violate the antitrust laws.

Proposed § 802.1(a) preserves the concept of existing § 802.1(b) and makes the exemption unavailable for acquisitions of all or substantially all of the assets of an operating unit. Operating unit is defined as assets operated by the acquired person as a business undertaking in a particular area or for particular products or services. The sale of all or substantially all of the assets of a business is generally equivalent to the sale of a business enterprise. Although it is possible that the effects of selling capacity might be to enhance competition, it can also diminish competition, and each acquisition must be judged individually. The current and proposed rules therefore require generally that acquisitions that transfer the equivalent of a business remain subject to the prior notification obligations of the act.

Proposed § 802.1 also defines categories of acquisitions of goods that are deemed to be in the ordinary course of business and are therefore exempt from the notification requirements. Individual review of such transactions is typically unnecessary because selling goods is the essence of manufacturing, wholesaling, and retailing businesses. Sales in the ordinary course of business should not in any way diminish the capacity of the selling firm to compete.

Proposed § 802.1 provides that certain acquisitions of used durable goods qualify for exemption from the reporting requirements as transfers of goods in the ordinary course of business. These exemptions for specific types of acquisitions of used durable goods acknowledge that certain transfers of productive assets are made in the ordinary course to increase or upgrade capacity and to improve efficiencies. However, the ordinary course of business exemption generally will not reach other acquisitions involving productive capacity. The Commission invites comment regarding other types of transfers of productive assets, especially those not involving operating units, that may qualify for the ordinary course of business exemption.

Proposed § 802.2 (concerning real property assets) and proposed § 802.3 (concerning carbon-based mineral reserves and rights) are based, for the most part, on the Commission's authority in section 7A(d)(2)(B) of the act to exempt transactions that are unlikely to violate the antitrust laws. These proposals provide exemptions for certain acquisitions of assets that are usually abundant and are used in markets that are unconcentrated. These two factors make it unlikely that a transfer of these types of assets will have anticompetitive effects. It is thus not necessary to examine each individual transaction to determine if it will violate the antitrust laws.

To accommodate parties who choose to structure their transactions as acquisitions of voting securities rather than as acquisitions of the underlying assets, proposed § 802.4 exempts acquisitions of voting securities of issuers whose assets consist solely of the assets exempted by proposed §§ 802.2 and 802.3.

Proposed § 802.5 exempts acquisitions by certain investors of rental real property; the acquisition of which is not already exempted by § 802.2. Proposed § 802.5 is based on the use to which those buyers put the acquired assets. It would exempt institutional investors (as defined in § 802.64) and persons whose sole business is the acquisition or management of investment rental property from the requirements of the act when they are acquiring investment rental property assets. The Commission believes that, so long as the assets remain as investment rental property assets, the acquisition of these assets is unlikely to violate the antitrust laws.

Proposed §§ 802.1, 802.2, 802.3, 802.4 and 802.5 are based on the Commission's authority in section 7A(d)(2)(A) of the act to "define the terms used in (section 7A)" (with the concurrence of the Assistant Attorney General) and sections 7A(d)(2) (B) and (C) to "exempt * * * transactions which are not likely to violate the antitrust laws" and to "prescribe such other rules as may be necessary and appropriate to carry out the purposes of [section 7A]." However, the Commission reserves the right to investigate certain transactions exempted from the reporting requirements by the proposed rules if these transactions are characterized by factors that increase the likelihood that the consummation of the transactions may violate the antitrust laws.

The Commission is aware that even with the significant coverage of the proposed rules, the exempt status of many transactions will remain unaddressed. These proposed rules do not interpret or apply to the entire statutory exemption created by section 7A(c)(1); there remain categories of transactions involving goods and realty that are not expressly treated under the proposed rules. For example, certain acquisitions of credit card receivables and certain acquisitions of assets subject to a lease financing arrangement may qualify for exemption as transfers in the ordinary course of business. Persons who desire advice on the exempt status of any transfer of goods, realty or other assets may contact the Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, or phone (202) 326–3100.

I. Proposed Section 802.1: Acquisition of Goods in the Ordinary Course of Business

Section 7A(c)(1) of the act exempts "acquisitions of goods or realty transferred in the ordinary course of business." Proposed § 802.1 defines some acquisitions of assets that are in the ordinary course of business and other acquisitions that are not. This proposed section only covers transfers of goods. Transfers of realty are covered in proposed § 802.2.

Proposed § 802.1 defines four categories of acquisitions of goods: acquisitions of an operating unit, acquisitions of new goods, acquisitions of current supplies, and acquisitions of used durable goods. The proposed section states whether and under what circumstances each type of acquisition is exempt. These four categories of asset acquisitions are not comprehensive. As noted above, some asset acquisitions may not fit neatly into any of these defined categories.

Proposed § 802.1 has four paragraphs: Paragraph (a) denies the ordinary course of business exemption to any transfer of goods that is equivalent to the sale of a business. The next three paragraphs define acquisitions of goods that may be exempt. Paragraph (b) exempts the acquisition of new goods, and paragraph (c) exempts the acquisition of current supplies. Paragraph (d) defines certain transfers of used durable goods that are within the ordinary course of business. These include the following: acquisitions by or from bona fide dealers and resellers; transfers by an acquired person that has replaced the productive capacity of the assets being sold; and transfers by an acquired person that has outsourced an auxiliary function that was provided by the goods being sold.

In determining whether a given acquisition of goods is in the ordinary course of business and is therefore exempt under a provision of § 802.1, one should first determine if the goods constitute an operating unit. If the goods being sold make up an operating unit of the seller, the inquiry ends there, and the transaction is not exempt. If the goods do not constitute an operating unit, then they should be classified as either new goods, current supplies or used durable goods, and the appropriate provisions under § 802.1 should be applied.

The organization of § 802.1 is intended to make it easier to identify routine acquisitions that meet the criteria of section 7A(c)(1) for an exemption as an acquisition of goods transferred in the ordinary course of business. Sales of new goods and purchases of current supplies are frequent. The objective of the businesses covered by paragraphs (b) and (c) is to buy and sell such goods and supplies; thus such transactions meet the common meaning of transfers in the ordinary course of business. Exempting these transactions facilitates acquisitions of new goods that normally expand the supply of products or expand productive capacity and therefore do not tend to lessen competition. In contrast, acquisitions of entire businesses have greater potential to concentrate productive capacity and thereby may diminish competition.

A. *Operating Units.* Proposed § 802.1(a) excludes the acquisition of all or substantially all of the assets of an "operating unit" from the ordinary course of business exemption. An "operating unit" can be thought of as a collection of assets that has been operated as a business undertaking. The assets of an operating unit can include realty, current supplies and durable goods. Common examples of operating units include, but are not limited to, regional divisions or company branches, international operations, a financial group, transportation operations, a factory or an oil processing facility. Factors important in determining whether a group of asset constitutes an operating unit include the extent to which the assets being sold are devoted to producing a certain product, or the extent to which such assets serve one or more specific geographic markets.

The proposal uses the term "operating unit" rather than the term "operating division" used in existing § 802.1(b). The latter term has created some uncertainty because some business entities use the term "division" in a manner that may not be consistent with this rule. For example, a business might use the term "division" to designate an unincorporated administrative segment of its enterprise, such as the "East Coast Division" or "Tri-State Division." Such usage is designed to serve the needs of the business. The term "operating unit" has been proposed in order to make clear that the application of the rule is not dependent on the terminology used by a business.

The term "operating unit" is defined in the rule as "assets that are operated by the acquired person as a business undertaking in a particular geographic area or for particular products and services, even though those assets may not be organized as a separate legal entity." Example 1 to § 802.1 illustrates a combination of assets that is considered to be an operating unit, the acquisition of which would be excluded from the ordinary course of business exemption. As further guidance in determining when a collection of assets constitutes an operating unit, the following factors are relevant: (1) Whether the seller is terminating a business function as a result of the sale, such as ceasing to sell in a geographic region or manufacturer products for a particular business segment; (2) whether the industry perceives the assets as a separate unit; and (3) whether the sale of assets includes durable goods and the current supplies that are used in the operation of those durable goods.

The sale of an operating unit is one kind of transfer that the premerger notification program was intended to review and thus is not exempt under the ordinary course of business exemption. During review, the antitrust agencies consider whether, and to what extent, concentration of productive capacity may be increased by the sale of a business and whether competition will be adversely affected by the acquisition of a business.

B. *New Goods.* Proposed § 802.1(b) describes the type of acquisitions of goods that are most commonly referred to as acquisitions "in the ordinary course of business." This paragraph exempts acquisitions of new goods that were produced by the seller for the purpose of sale or that were held by the seller solely for the purpose of resale.

Paragraph (b) of proposed § 802.1 focuses on the purpose for which the seller holds the new goods to determine if the transaction is in the ordinary course of business and is therefore exempt. The sales of new goods which the paragraph exempts are routine sales of inventory by manufacturers, wholesalers or retailers conducted in the ordinary course of business. As a general matter, there is no difficulty identifying the goods in the two circumstances in which this exemption applies. Goods that are "produced" mean goods not used by the seller to which he has added value through processing or manufacture and may include refurbished goods. "New goods held at all times by the acquired person solely for resale" means inventory held for sale that is not to be used by the seller or others prior to sale. When the seller uses goods that are held for sale, the exemption does not apply. The paragraph is specifically worded to deny this exemption to any sale of goods that were purchased for use, even if the goods are subsequently sold without being used.

The exemption set forth in paragraph (b) does not apply to any acquisition of new goods which are sold as part of a transaction that includes all or substantially all of the assets of an operating unit. This limitation on the exemption of new goods would apply even if all the assets transferred were new goods held solely for the purpose of resale. For example, if a marine supply wholesaler, which owned only an extensive inventory of hundreds of items from different manufacturers, sells its entire inventory to one person, the acquisition would not be exempt even though the sale is composed entirely of new goods. The sale of all of its inventory would be considered the sale of all or substantially all of its business since the primary assets of such a wholesaling business are inventory.

C. *Current Supplies.* Proposed § 802.1(c) described another category of asset acquisitions—the acquisition of "current supplies"—that qualify for the ordinary course exemption. "Current supplies" is a new term to the rules and is described in subparagraphs (1), (2) and (3). Current supplies include goods bought for resale, raw materials, components, maintenance supplies and the like. Current supplies are purchased frequently and are either consumed in the daily conduct of business or incorporated into a final product. The proposal states that current supplies do not include used durable goods, which are discussed in proposed § 802.1(d).

The acquisition of current supplies is unlikely to create or extinguish a competitive entity and is therefore exempt unless acquired as part of an acquisition of an operating unit. Parties are permitted to claim the exemption even if the goods purchased are not new (so long as they are not used durable goods), so long as the acquired goods are to be held for resale, are to be consumed by the buyer, or are otherwise incorporated in the acquiring person's final product.

In applying paragraph (c), the focus is on the business of the acquiring person to determine if the exemption is available.

D. *Used Durable Goods.* Proposed § 802.1(d) provides that certain acquisitions of used durable goods qualify for the ordinary course of business exemption. The Commission recognizes that sales of used durable goods often meet a common sense definition of transfers of goods in the ordinary course of business and that not all used durable goods acquisitions have competitive significance. Sales of such used durable goods may be routine and considered by parties to be in the ordinary course of their businesses.

Sales of used durable goods may also facilitate the purchase of a new generation of equipment that will increase the productive capacity of a business. Therefore, paragraph (d) represents an attempt to identify certain categories of transfers of used durable goods that meet a common sense definition of "ordinary course" and appear unlikely to violate the antitrust laws: When goods are being acquired by or from persons holding the goods solely for resale; when the acquired person is replacing or upgrading the productive capacity provided by the goods being sold; and when the acquired person is outsourcing the auxiliary support functions performed by the goods being sold. Sales of used durable goods that diminish a company's productive capacity or sales of productive assets that result in a company's exit from a given product or geographic market are not included in the ordinary course of business exemption.

Proposed § 802.1(d) defines an acquisition of used durable goods as a transaction that is in the ordinary course of business if it meets specific criteria. The term "used durable good" is new to the rules currently in force. It is defined in proposed § 802.1(d) as a used good

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which was "designed to be used repeatedly and has a useful life greater than one year."

An acquisition of used durable goods is exempt as within the ordinary course of business if two requirements are satisfied. The first requirement is that they must not be acquired as part of a transfer of an operating unit, defined in paragraph (a) as "assets that are operated by the acquired person as a business undertaking in a particular geographic area or for particular products or services." This restriction prevents a company from using § 802.1(d) to transfer assets that result in the company's exit from a particular product line or regional market without first observing the reporting requirements.

The second requirement for exempting an acquisition of a used durable good is that any one of four criteria set forth in the proposed rule must be satisfied. The first criterion, that the acquiring person must hold the goods at all times solely for resale, and the second, that the acquired person must have held the goods at all times solely for resale, represent an exemption for dealers whose business is to purchase and sell used goods. The proposed exemption is unavailable if the person making the acquisition is in reality an intermediary for either the seller or another person who intends to use the goods (see Example 5 to § 802.1). This limitation attempts to forestall abuse of the dealer exemption by requiring notification in circumstances where there is any possibility that the dealer might be acting as a broker or an agent for an acquiring person or a third party. After considerable assessment of the necessity and applicability of this exemption, the Commission believes that the exemption should be included to allow dealers to make transfers within the ordinary course of their business without having to observe the reporting and waiting requirements. However, the Commission will closely monitor such transactions to ensure that the exemption is not being used as a ploy to circumvent the notification requirements of the act.

The third criterion recognizes that it is in the ordinary course of business for a company to replace or upgrade productive capacity and to sell the capacity it is replacing. Thus, an exemption is permitted for the sale of used durable goods if the productive capacity of these goods is replaced substantially or upgraded. Such replacements may result in an increase in the acquired person's productive capacity or manufacturing efficiencies. The proposed rule allows replacement of the used durable goods by acquisition or by lease. No minimum lease term is specified, however, in order for a transfer of the goods being replaced to be in the ordinary course of business, the replacement goods must be leased for a period that is substantially long enough to maintain or increase the company's current productive capacity. Such a period is industry specific and must be determined in good faith by the acquired person. Because this proposed provision requires that the productive capacity must be replaced substantially, the exemption is lost if the replacement goods result in more than a de minimis decease in the acquired person's capacity or an exit from a line of business or specific product or geographic market in which the acquired person currently operates.

The fourth criterion permits an exemption for sales of used durable goods if the acquired person is replacing an auxiliary support function that had been performed internally using the goods being sold by contracting with the purchaser or a third party to perform substantially similar functions. This provision essentially provides an exemption for the transfer of goods by persons that have elected to outsource certain of their auxiliary support functions. For example, a company may decide that it would be more cost effective to have a third party provide its data processing needs. To accomplish this objective, the company may enter into a contract with a third party for these services and sell all of the equipment it used internally to provide this function. Such transfers appear unlikely to pose any competitive concerns.

Auxiliary support functions include management, accounting, data processing, legal services, research and development, testing and warehousing. Although companies will sometimes outsource the manufacturing of some products they market, the sale of used durable goods that were used to produce those products does not qualify for exemption under this provision. Manufacturing, including the manufacturing of inputs for other products produced by the acquired person, is not an auxiliary function.

The exemption for the transfer of goods in connection with the outsourcing of auxiliary functions may include the sale of goods, such as machinery, that may constitute a discrete business unit. However, such a transfer does not constitute the acquisition of an operating unit unless the goods being sold are also used to derive revenues by providing services to entities not included within the acquired person. A company division that only provides auxiliary support services to the company's operating units is not itself an operating unit. A company unit that provides auxiliary services supports or benefits the company's operating units. For example, in a company containing a unit that only provides the company's internal data processing needs, that unit would be deemed to provide auxiliary support functions. However, if that unit derived revenues from providing data processing services to third parties, then the unit would be considered to be an operating unit. The distinction between an operating unit and a unit providing auxiliary support functions is, to some extent, industry specific.

The replacement and outsourcing exemptions both require that before the exemptions apply, the acquired person has already taken definitive steps to replace the goods being sold or obtain the auxiliary support functions that the goods being sold formerly provided. In addition, these steps must have been taken in good faith; this requirement prevents sham contracts that the acquired person cancels after transferring the productive capacity without observing the notification requirements and without replacing the capacity.

II. Proposed Section 802.2: Certain Acquisitions of Real Property Assets

Proposed § 802.2 identifies six categories of real property acquisitions that would be exempt from the reporting requirements of the act. It would exempt certain acquisitions of new facilities, unproductive real property, office and residential property, hotels and motels, agricultural property, and rental retail space and warehouses.

Some of these proposed provisions would create entirely new exemptions, and they result in part from an extensive review by the enforcement agencies of categories of real property acquisitions that appear "not likely to violate the antitrust laws." Certain of the categories expand the exemption provided in current section 7A(c)(1) for acquisitions of realty in the ordinary course of business. For the most part, the types of real property assets that are included within this exemption are abundant, and their holdings are widely dispersed. Transfers of these categories of real property are generally small relative to the total amount of holdings, and entry into regional and local markets for these types of real property assets is usually easy.

The exemptions for new facilities, unproductive real property, office and residential property, hotels and motels,

agricultural property, rental retail space and warehouses state that any non-exempt assets that are being transferred as part of an acquisition of the exempt assets are separately subject to the requirements of the act and the rules. This approach to non-exempt portions of acquisitions is also used in § 802.3.

A. *New Facilities.* Proposed § 802.2(a) exempts the acquisition of new facilities, which may include real estate, equipment and assets incidental to the ownership of the new facility. The term "new facility" is new to the rules, and reflects the position of the PNO that transfers of "turnkey" facilities, i.e., new facilities capable of commencing operations immediately, are acquisitions of realty in the ordinary course of business and thus are exempt under 7A(c)(1). Although the provision is intended primarily to exempt turnkey facilities, it does not require that the facility be ready for immediate occupancy. The facility may need additional construction or outfitting at the time it is purchased and still qualify for the exemption.

The exemption applies only to new facilities that have not produced income. It also applies only if the acquired person has held the facility at all times solely for sale. The language of the exemption allows holders of the new facilities to be either builders of the facility ("constructed by the acquired person for sale") or other persons, such as a creditor, who take possession of a new facility with the intention of selling it ("held at all times by the acquired person solely for resale"). These limitations prevent the sale by an acquired person of capacity constructed for the acquired person's use, as Example 1 to § 802.2 illustrates.

Proposed § 802.2(a) requires separate valuation of non-exempt assets being purchased in an acquisition of a new facility. If the value of the non-exempt assets exceed $15 million, and no other exemptions apply, then the purchase of these assets are subject to the notification requirements.

B. *Unproductive property.* Proposed § 802.2(b) exempts certain acquisitions of unproductive real property. The primary purpose of this exemption is to eliminate filing requirements for acquisitions of properties that have not generated a significant amount of income during a certain period of time. The exemption incorporates the concepts of undeveloped, non-income producing property, the acquisition of which is in the ordinary course of business, and abandoned property, which is no longer used to generate revenues.

Unproductive real property is real property that has not produced revenues of $5 million during the 36 months preceding the transaction and includes raw land, structures or other improvements and natural resources. Structures and improvements are additions to the real property that add value and include, for example, buildings, parking lots, recreational facilities (*e.g.*, golf courses), orchards and vineyards. Natural resources refers to any assets growing or appearing naturally on the land, such as timber and mineral deposits. Proposed § 802.2(b) excludes from the exemption acquisitions of manufacturing and non-manufacturing facilities that have not yet begun operations (turnkey facilities)—these are addressed in § 802.2(a)—as well as facilities that began operations within twelve months before the acquisition. Production machinery and equipment are not included in the definition of structures and improvements.

The revenue test will exempt most wilderness and rural land that is not used commercially and urban land that is vacant or contains structures that have generated a minimal amount of income during the most recent three-year period.

C. *Office and residential property.* Proposed § 802.2(c) exempts acquisitions of office and residential property. The definition of office or residential property has two components: (1) Real property, the acquisition of which is not exempt under any other provision of the act; and (2) real property used primarily for office or residential purposes. Although the proposed rule does not specify the meaning of "primarily," it is contemplated that at least 75 percent of the space in the qualifying property, excluding common areas and parking facilities, is used for office or residential purposes. Under this definition, the total space being measured should consist of non-exempt property. Therefore, in determining whether a building is being used primarily for office or residential purposes, any portion of the building consisting of rental retail space, the acquisition of which is exempt under § 802.2(f), should be excluded from the determination. This proposal represents a broader exemption than the current PNO policy, which exempts office and residential property only if the value of the retail space being acquired in the same Standards Metropolitan Statistical Area does not exceed $15 million.

If the acquisition includes assets other than office or residential property, the acquisition of those assets is separately subject to the notification requirements. For example, if the acquiring person is also purchasing a factory for $20 million, the acquisition of the factory is separately subject to the reporting requirements. The proposed rule also specifies that if the purchaser is acquiring a business that is conducted on the office or residential property, the acquisition of the business, including the space in which the business is conducted, is subject to the notification requirements of the act. If the value of the business and the space in which the business is conducted exceeds $15 million, the acquisition is reportable.

The inclusion of "assets incidental to the ownership of office and residential property" is derived from the language of existing § 802.1. Although incidental assets may have value apart from the real property, they are often necessary for the continued and uninterrupted use of the property. Therefore, incidental assets are included in the description in proposed § 802.2(c) of office and residential property and are exempt assets.

D. *Hotels and motels.* Proposed § 802.2(d) exempts from the reporting requirements acquisitions of hotels and motels, except when these assets are to be acquired in connection with the acquisition of a ski resort or a casino or other gaming facility. The proposed exemption is based on the Commission's observation that acquisitions of hotels and motels, except for those excluded from the exemption, are unlikely to violate the antitrust laws. These types of assets are plentiful and widely held, and often they are owned by investor groups that hire management firms or national chains to operate the facilities. Even in local market entry appears to be relatively easy.

This exemption would include the acquisition by a national hotel chain of hotel assets of another hotel chain. However, if the acquisition includes assets other than hotels and motels, *e.g.*, the selling firm's trademark or its hotel management business, these assets must be separately valued to determine whether their acquisition is subject to the notification requirements.

E. *Agricultural property.* This section exempts acquisitions of agricultural property and associated assets integral to the agricultural business activities conducted on the property. Agricultural property that is intended to be covered by this exemption is real property that generally derives revenues under Major Groups 01 and 02 of the 1987 Standard Industrial Classification (SIC) Manual. Associated assets integral to the agricultural business activities

conducted on the property to be acquired include equipment, structures, (*e.g.*, barns used to house livestock and other animals), fertilizer, animal feed inventory (*e.g.*, livestock, poultry, crops, fruits, vegetables, milk, and eggs).

As described in the proposed rule, the exemption for the acquisition of agricultural property does not include processing facilities, even though revenues from processing facilities located on a farm may be reported under SIC codes starting with 01 or 02. If a dairy or poultry processing market is concentrated in a given local area, the transfer of in-house processing capacity may have a significant effect on the market. For this reason, the Commission believes that such transfers should be reviewed prior to consummation so the enforcement agencies can determine whether the proposed acquisition will affect competition adversely.

This exemption reflects the Commission's continuing efforts to develop exemptions for categories or acquisitions that are not likely to violate the antitrust laws. In the case of agricultural property exempted by § 802.2, there is an abundance of real property assets with widely dispersed ownership. Such acquisitions are unlikely to have adverse effects on competition.

F. Rental retail space; warehouse. Proposed § 802.2(f) exempts acquisitions of two other categories of real property, rental retail space and warehouses. Rental retail space includes structures that house retail establishments, such as shopping centers, strip smalls, and stand alone buildings. These types of assets are abundant and widely held by insurance companies, banks, other institutional investors and individual investors as investments and rental property. The Commission believes that acquisitions of these types of real property assets are unlikely to violate the antitrust laws.

However, the proposed rule provides that if the acquiring person is also acquiring a business that is conducted on the real property, the acquisition of that business, including the portion of the real property on which the business is conducted, is separately subject to the notification requirement of the act. For example, if any purchaser (including a department store chain) proposed to acquire from any seller (including another department store chain) several shopping centers and the stores of the seller located in the shopping centers, the acquisition of the stores including the portion of the shopping centers in which the stores were located, would be separately subject to the notification requirements. However, the acquisition of the portion of the shopping centers that housed other retail establishments would be exempt under this proposed rule. Example 8 illustrates that the exemption for the acquisition of warehouses is lost if warehouses are being acquired in connection with the acquisition of a wholesale distribution business.

The proposed rule also provides that if an acquisition of rental retail space or a warehouse includes other assets, those other assets are separately subject to the reporting requirements of the act.

III. Proposed Section 802.3: Acquisition of Carbon-Based Mineral Reserves

Proposed § 802.3 adds an exemption for certain acquisitions of carbon-based mineral reserves, whether such reserves are currently in production or have ever been in production. The Commission proposes to exempt acquisitions of carbon-based mineral reserves valued at $200 million or less.

This proposal is designed to exempt acquisitions of producing reserves. If the reserves being acquired are not yet producing, or are producing at a level below the income threshold in § 802.2(b), the acquisition may be exempted by § 802.2(b) as an acquisition of unproductive real property. If the reserves qualify as unproductive property, their acquisition is exempt, regardless of the value of the reserves. Producing reserves are governed by the valuation requirement of § 802.3 and are not exempt if their value exceeds $200 million.

The Commission's studies of the coal and oil and gas industries have shown that the value of the reserves in these industries are substantial compared with asset holdings in other industries. The holdings of reserves in these industries are widely dispersed, and individual acquisitions have had minimal effect on concentration. However, the Commission believes that an unlimited exemption for reserves in these industries is inappropriate, because the scale of the largest acquisitions of reserves warrants an examination of the potential effects on competition.

The $200 million threshold in proposed § 802.3 applies to reserves, rights to the reserves and associated exploration or production assets. The acquisition of these associated assets is not separately reportable because these assets generally have no competitive significance separate from the reserves. In many instances, producing reserves contain dedicated equipment that may have a market value exceeding $15 million but have no practical value absent the reserves. In addition, the wide availability of used equipment in the oil and gas and coal industries makes it unlikely that a servicer of oil fields or coal mines could purchase reserves to restrict supply of available equipment in a given region. Thus, the Commission believes that the inclusion of associated exploration and production assets is necessary to facilitate meaningful application of the exemption.

Associated exploration or production assets are defined in the current proposal to include equipment, machinery, fixtures and other assets that are integral to the exploration or production activities of the reserves. In the oil and gas industry, examples of associated exploration or production assets include proprietary or licensed geological and geophysical data, wells, pumps, compressors, easements, permits and rights of way. Excluded from these assets are flow and gathering pipelines, distribution pipelines, interests in pipelines, processing facilities and refineries. Acquisitions of these assets in certain local markets have, from time to time, raised competitive concerns prompting investigations by the enforcement agencies, and the Commission does not believe that such acquisitions as a class are not likely to violate the antitrust laws.

In the coal industry, associated production assets are facilities and equipment that are dedicated exclusively to production of the reserves being transferred. For example, in surface mining in the western U.S., such assets may consist of various load out facilities, including storage barns and railroad spurs, and heavy equipment such as draglines. Associated production assets would also include the long-term coal contracts and federal leases related to the reserves.

It has been suggested that any exemption for carbon-based mineral reserves be expanded to included all mineral reserves and renewable natural resources. The perceived need for such an exemption regarding non-producing reserves may be lessened by the inclusion in these proposals of § 802.2(b), which would exempt acquisitions of other such reserves that are either not yet producing or have generated revenues below the threshold amount. Regarding producing reserves, the Commission has not included these in § 802.3 because it does not have an adequate factual basis for determining that these categories of transactions should be exempt from the requirements of the act or subject to a threshold higher than the $15 million threshold that is identified in § 802.20.

IV. Proposed Section 802.4: Acquisitions of Voting Securities of Issuers Holding Only Real Property and Carbon-Based Mineral Reserves

Proposed § 802.4 is designed to exempt the acquisition of voting securities of certain real estate companies that hold real property assets the direct acquisition of which are exempt from the reporting requirements pursuant to proposed §§ 802.2 and 802.3. This provision derives in part from existing § 802.1(a) which exempts "an acquisition of the voting securities of an entity whose assets consist solely of real property" and related assets, if a direct acquisition of those real property and related assets would be exempt.

As the Commission stated when it promulgated existing § 802.1: (T)he applicability of (existing 802.1(a)) should not depend upon the form of the acquisition. At least from an antitrust standpoint, whether real estate is acquired directly or by acquiring voting securities would seem to make no difference * * *. 43 FR 33488, July 31, 1978.

Proposed § 802.4(a) retains this approach with regard to new facilities, unproductive real property, office and residential property, hotels and motels, agricultural property, rental retail space and warehouses. Proposed § 802.4(b) contains a comparable exemption for carbon-based mineral reserves.

V. Proposed Section 802.5: Acquisitions of Investment Rental Property Assets by Certain Investors

Proposed § 802.5 would exempt acquisitions of investment rental property by institutional investors (as defined by § 802.64 of the rules) and by persons whose sole business is the acquisition or management of investment rental property. This exemption is based in part on section 7A(c)(11) of the act which exempts "acquisitions, solely for the purpose of investment, by a bank, bank association, trust company, investment company, or insurance company, of * * * (B) assets in the ordinary course of its business." It is designed to exempt most types of real property acquisitions typically made by institutional investors or real estate development and management companies that are not exempted by proposed § 802.2. The proposed rule supplements proposed § 802.2 by recognizing that there may be additional categories of assets that, when transferred to certain parties, are not likely to violate the antitrust laws.

Institutional investors, such as financial institutions, insurance companies, pensions plans and REITs, typically acquire for investment real property such as hotels and shopping centers. Acquisitions of these types of assets are exempt under § 802.2(d) and § 802.2(f)(1), respectively. Proposed § 802.5 is intended to exempt acquisitions of other types of real estate, such as industrial parks, that institutional investors and real estate development and management companies often purchase.

This exemption is applicable only to institutional investors or persons engaged solely in the business of acquiring or managing investment rental property. It applies only to acquisitions of real property that will be held by the purchaser solely for rental or investment purposes. Thus, the intent of the purchaser at the time of the acquisition must be considered to determine whether the exemption is available.

Acquisitions of real property by institutional investors and real estate development and management companies are typically made solely for investment. These investors play no active role in the business conducted on these properties and seek only to profit from their investment in the real estate. In order to reduce risk of loss in the value of the real estate they hold, purchasers of numerous properties generally do not concentrate their investments in a single geographic market. In many cases, these properties are purchased from persons who already maintain them as investment rental property. Given the size and unconcentrated nature of the real estate market, such acquisitions are not likely to violate the antitrust laws.

The requirement that real property, in order to come within the definition of "investment rental property assets," be held solely for rental or investment purposes is designed to exclude from the exemption acquisitions of rental property that may reduce competition. In one such scenario, the acquiring person purchases property that is leased to a competitor of an entity within the same person as the institutional investor, and then chooses not to renew the competitor's lease in order to disadvantage the competitor. Since the purchaser intends to use its ownership of the property to disadvantage a competitor, the property will not be held solely for rental or investment purposes, and the § 802.5 exemption is not available. The requirement that property will be rented only to entities not included within the acquired person is also designed to assure that the exemption will not be available for any acquisition that is designed to achieve business objectives that are not related to the real estate market.

For some acquisitions, in order to determine prior to the acquisition whether the buyer's use requirement will be fulfilled post-acquisition, it may be necessary to examine the acquisition intent of the acquiring person, particularly if that investor is controlled by a person that also controls entities engaged in other businesses. The acquisition intent can be inferred from the context of the transaction and from actions by the acquiring person before the acquisition. Circumstances or conduct such as the following may be scrutinized separately or in combination to determine whether the acquiring person has an intent that is fully consistent with holding property solely as investment rental property assets: (1) The acquiring person undertook, prior to the acquisition, a study of the cost of converting the property for use by one of its businesses; (2) the property is to be converted for use by the acquiring person; (3) the property will be transferred to an entity within the acquiring person which would not qualify for an exemption under § 802.5; (4) prior to the acquisition, the property is being leased to or used by entities included within the acquiring person; (5) a portion of the acquired property is being leased at the time of the acquisition to a competitor of the acquiring person; and (6) the purchase price reflects the value of a business operated on the property rather than the investment rental value of the property.

The investment rental property exemption may apply to real property, such as office or residential property, hotels and motels, that is also exempt under proposed § 802.2. However, the important distinction between § 802.2 and § 802.5 is that § 802.2 exempts acquisitions of specific classes of assets by any acquiring person and does not incorporate the intent-based test of § 802.5. Proposed § 802.5 exempts any type of asset that can be classified as investment rental property, but it is available only to institutional investors and real estate development and management companies. In addition, the exemptions for acquisition of real property under § 802.2 apply even if the acquiring person occupies the property for any purpose; proposed § 802.5 permits the acquiring person to use the acquired investment rental property assets only to manage or operate real property.

VI. Aggregation Rules

Section 801.15 states that the aggregation rules of § 801.13 do not apply to specified classes of transactions. At present, transactions exempted by section 7A(c)(1) of the act fall within one of the classes listed. As a result of § 801.15(a), in determining

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whether the more than $15 million size-of-transaction criterion of section 7A(a)(3) is met, the value of assets acquired in the ordinary course of business is never counted. Because proposed § 802.1 merely declares that certain acquisitions are and are not considered in the ordinary course of business under section 7A(c)(1), it does not appear necessary to list proposed § 802.1 separately in § 801.15(a). However, to eliminate possible confusion, proposed § 802.1 is listed in proposed § 801.15(a), along with 7A(c)(1), to make clear that assets exempted pursuant to § 802.1(a), (b) and (c)(1) are not deemed to be held as the result of an acquisition for aggregation purposes. Therefore, a acquisition of current supplies valued at $8 million is not aggregated with later acquisitions from the same person to determine if a proposed acquisition would exceed the $15 million size-of-transaction notification threshold, since the current supplies are exempt pursuant to section 7A(c)(1) and § 802.1(b).

The other proposed exemptions based on section 7A(c)(1) and other sections of the act, *e.g.*, section 7A(d)(2)(B), are listed separately in § 801.15 to make clear whether and under what circumstances the assets they describe must be aggregated pursuant to § 801.13. Proposed § 802.2, which would exempt acquisitions of new facilities, unproductive real property, office and residential property, hotels and motels, agricultural property, rental retail space and warehouses, is also listed in § 801.15(a), because § 802.2 sets no dollar limit on the amount of exempt assets that may be acquired without prior notification. Proposed § 802.4(a), which exempts acquisitions of voting securities of issuers holding assets whose purchase would be exempt under § 802.2, and proposed § 802.5, which exempts acquisitions of investment rental property by certain investors, also appear in proposed § 801.15(a).

Proposed § 802.3, which exempts acquisitions of carbon-based mineral reserves, and proposed § 802.4(b), which exempts acquisitions of voting securities of issuers holding exempt assets under § 802.3, appear in § 801.15(b). This provision requires parties to aggregate the value of otherwise exempt assets that are transferred in separate acquisitions. Section 801.15(b) provides that the aggregation rules of § 801.13 are to be applied if, as a result of a proposed subsequent transaction, the assets from that transaction and an earlier transaction will exceed a quantitative limitation on the exemption of assets of that kind. Thus the $200 million carbon-based mineral reserves limitation in § 802.3 which was not reached in an earlier acquisition may be exceeded by a subsequent acquisition of reserves.

Example 4 of § 801.15 amends the current Example 4, in which the acquiring person is purchasing two mines. The existing example does not indicate whether the mines contain carbon-based minerals. Based on the value of the mines stated in the example, proposed § 802.3 would exempt their acquisition, if they are carbon-based mineral reserves. To avoid possible confusion, the acquired assets have been changed to manufacturing plants.

List of Subjects in 16 CFR Parts 801 and 802

Antitrust.

Proposals

The Commission proposes to amend title 16, chapter I, subpart H, the Code of Federal Regulations as follows:

PART 801—COVERAGE RULES

1. The authority citation for part 801 continues to read as follows:

Authority: Sec. 7A(d), Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390.

2. Section 801.15(a) (2) and (b) are revised to read as follows:

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

* * * * *

(a) * * *

(2) Sections 802.1, 802.2, 802.4(a), 802.5, 802.6(b)(1), 802.8, 802.31, 802.35, 802.50(a)(1), 802.51(a), 802.52, 802.53, 802.63, and 802.70;

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(9) and §§ 802.3, 802.4(b), 802.50(a)(2), 802.50(b), 802.51(b) and 802.64 unless the limitations contained in section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

* * * * *

3. Section 801.15, Example 4 is revised, and Example 5 is added to read as follows:

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

* * * * *

Examples: * * *

4. Assume that acquiring person "B," a United States person, acquired from corporation X two manufacturing plants located abroad, and assume that the acquisition price was $40 million. In the most recent year, sales in the United States attributable to the plants were $15 million, and thus the acquisition was exempt under § 802.50(a)(2). Within 180 days of that acquisition, "B" seeks to acquire a third plant from X, to which United States sales of $12 million were attributable in the most recent year. Since under § 801.13(b)(2), as a result of the acquisition, "B" would hold all three plants of X, and the $25 million limitation in § 802.50(a)(2) would be exceeded, under paragraph (b) of this rule, "B" would hold the previously acquired assets for purposes of the second acquisition. Therefore, as a result of the second acquisition of all three plants before acquiring the third plant.

5. "A" acquires $100 million in coal rights from "B." Two months later, "A" agrees to acquire oil and gas rights valued at $75 million from "B." Paragraph (b) of this section and § 801.13 require aggregating the previously exempt acquisition of coal rights with the second acquisition. If the two acquisitions, when aggregated, exceed the $200 million limitation on the exemption for carbon-based mineral reserves in § 802.3, "A" and "B" would be required to file notification for the latter acquisition, including within the filings the earlier acquisition. Since, in this example, the total value of the assets in the two acquisitions, when aggregated, is less than $200 million, both acquisitions are exempt from the notification requirements.

PART 802—EXEMPTION RULES

1. The authority citation for part 802 continues to read as follows:

Authority: Sec. 7A(d), Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390.,

2. Section 802.1 is revised to read as follows:

§ 802.1 Acquisitions of goods in the ordinary course of business.

Acquisitions of goods in the ordinary course of business are, pursuant to section 7A(c)(1), exempt from the notification requirements of the act. This section identifies certain acquisitions of goods that are exempt as transfers in the ordinary course of business. This section also identifies certain acquisitions of goods that are not in the ordinary course of business and, therefore, do not qualify for the exemption.

(a) *Operating unit.* An acquisition of all or substantially all the assets of an operating unit is not an acquisition in the ordinary course of business. An operating unit means assets that are operated by the acquired person as a business undertaking in a particular geographic area or for particular products or services, even though those assets may not be organized as a separate legal entity.

(b) *New goods.* An acquisition of new goods produced by the acquired person for sale, or of new goods held by the acquired person solely for resale, is in the ordinary course of business, except when acquired as part of an acquisition described in paragraph (a) of this section.

(c) *Current supplies.* An acquisition of current supplies is in the ordinary course of business except when acquired as part of an acquisition described in paragraph (a) of this section. The term "current supplies" includes the following kinds of assets:

(1) Goods acquired for the purpose of resale (*e.g.*; inventory),

(2) Goods acquired for consumption in the acquiring person's business (*e.g.*, office supplies, maintenance supplies or electricity), and

(3) Goods acquired to be incorporated in the final product (*e.g.*, raw materials and components).

The term "current supplies" does not include used durable goods (see paragraph (d) of this section.

(d) *Used durable goods.* A good is "durable" if it is designed to be used repeatedly and has a useful life greater than one year. An acquisition of used durable goods is an acquisition in the ordinary course of business if the goods are not acquired as part of an acquisition described in paragraph (a) of this section *and* any of the following criteria are met:

(1) The goods are acquired and held by the acquiring person solely for resale; or

(2) The goods are acquired from an acquired person who acquired and has held the goods solely for resale; or

(3) The productive capacity of the goods being sold has been replaced substantially by the acquired person, by acquisition or lease, or the acquired person has in good faith executed a contract, agreement in principle or letter of intent to replace substantially, by acquisition or lease, the productive capacity of the goods being sold; or

(4) The goods have been used by the acquired person to provide auxiliary functions, such as management services, accounting, data processing, and legal services, that support its primary business functions, and the acquired person has in good faith executed a contract, agreement in principle or letter of intent to obtain substantially similar auxiliary functions as were provided by the goods being sold.

Examples: 1. Stereo Corporation, which manufacturers cassette and compact disc players, decides to sell all of the assets of its Customer Service Division to "X" for $16 million. This division repairs the company's products and products manufactured by others. The division's assets include a repair facility valued at $10 million and an inventory of replacement parts valued at $6 million. The combined assets constitute an operating unit of Stereo Corporation. Thus, no part of the acquisition is exempt as an acquisition in the ordinary course of business.

2. "A," a manufacturer of airplane engines, agrees to pay $20 million to "B," a manufacturer of airplane parts, for certain engine components to be used in the manufacture of the airplane engines. The acquisition is exempt under § 802.1(b) as new goods as well as under § 802.1(c)(3) as current supplies.

3. "A," a power generation company, proposes to purchase from "B," a coal company, $25 million of coal under a long-term contract for use in its facilities to supply electric power to a regional public utility and steam to several industrial sites. This transaction is exempt under § 802.1(c)(2) as an acquisition of current supplies. However, if "A" proposed to purchase coal reserves rather than enter into a contract to acquire output of a coal mine, the acquisition would not be exempt as an acquisition of goods in the ordinary course of business. The acquisition may still be exempt pursuant to § 802.3 as an acquisition of reserves of carbon-based minerals if the requirements of that section are met.

4. "A," a national producer of canned fruit, preserves, jams and jellies, agrees to purchase from "B" for $25 million a total of 10,000 acres of orchards and vineyards in several locations throughout the U.S. "A" plans to harvest the fruit from the acreage for use in its canning operations. The acquisition is not exempt under § 802.1 because orchards and vineyards are real property, not "goods." If, on the other hand, "A" had contracted to acquire from "B" the fruit and grapes harvested from the orchards and vineyards, the acquisition would qualify for the exemption as an acquisition of current supplies under § 802.1(c)(3). Although the transfer of orchards and vineyards is not exempt under § 802.1, the acquisition would be exempt under § 802.2 as an acquisition of agricultural property.

5. "A," a major passenger airline, proposes to sell two of its used aircraft for $15.5 million to "B," a used airplane dealer who purchases planes from the major U.S. airline companies. "B's" acquisition of the used airplanes is exempt under § 802.1(d)(1) provided that "B" is not acting as a broker or as the agent for the seller or the ultimate purchaser of the used airplanes.

6. "A," a passenger airline, plans to sell for $18 million two of its used airplanes to "B," a cargo airline. "A" will also sell three of its used airplanes for $25 million to "C," a regional passenger air carrier. "A" has, in good faith, executed a contract to acquire planes with essentially the same capacity from an airplane manufacturer to replace the planes it is selling to "B" and "C." Since "B" and "C" are acquiring goods that the seller, "A," has contracted to replace, both acquisitions are exempt under § 802.1(d)(3).

7. "A," a manufacturing company, has acquired several new machines that will replace equipment on one of its production lines. "A's" capacity to produce the same products will increase modestly when the integration of the new equipment is completed. "B," a manufacturing company that produces products similar to those produced by "A," has entered into a contract to acquire for $18 million the machinery that "A" is replacing. Since "A" is replacing with new machinery the productive capacity of the used equipment it is selling, the acquisition by "B" is exempt under § 802.1(d)(3).

8. "A" will sell to "B" for $16 million all of the equipment "A" uses to perform "A's" data processing requirements. "A" and "B" also entered into a contract which requires "B" to perform "A's" data processing requirements. Although the assets "B" will acquire make up essentially all of the assets of one of "A's" auxiliary support services divisions, the acquisition qualifies for the exemption in § 802.1(d)(4) because auxiliary support functions, however organized, are not an operating unit as defined by § 802.1(a). Auxiliary functions are not a "business undertaking" as that term is used in § 802.1(a). Rather, auxiliary functions provide support and benefit to the company's operating units and support the company's primary business activities: However, if the assets being sold also derived revenues from providing data processing services to third parties, then the transfer of these assets would not be exempt under § 802.1(d)(4), since the equipment is being used in connection with a business undertaking of "A," in addition to providing auxiliary functions to "A".

In this example, the acquisition by "B" is exempt under § 802.1(d)(4) because "A" has entered into a contract for the provision of the auxiliary functions provided by the goods being sold. The exemption would apply even if "A" were contracting for the provision of these services with a party other than "B."

9. "A," an automobile manufacturer, is discontinuing its manufacture of metal seat frames for its cars. "A" enters into a contract with "B," a manufacturer of various fabricated metal products, to sell its seat frame production lines and to purchase from "B" all of its metal seat frame needs for the next five years. This transfer of productive capacity by "A" is not exempt pursuant to § 802.1(d)(4). "A's" sale of production lines is not the transfer of goods that provide auxiliary functions to support the primary business activities of "A"; this manufacturing equipment is an integral part of "A's" production operations and thus comprises an operating unit.

3. Part 802 is amended by adding §§ 802.2, 802.3, 802.4 and 802.5 to read as follows:

§ 802.2 Certain acquisitions of real property assets.

(a) *New facilities.* An acquisition of a new facility is exempt as a transfer of realty in the ordinary course of business. A new facility is a structure that has not produced income *and* was

either constructed by the acquired person for sale or held at all times by the acquired person solely for resale. The new facility may include realty, equipment or other assets associated with the operation of the new facility. In an acquisition that includes a new facility, the transfer of any other assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(b) *Unproductive real property.* An acquisition of unproductive real property shall be exempt from the requirements of the act. In an acquisition that includes unproductive real property, the transfer of any assets that are not unproductive real property shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(1) Unproductive real property is any real property, including raw land, structures or other improvements and natural resources, that has not generated total revenues in excess of $5 million during the thirty-six (36) months preceding the acquisition.

(2) Unproductive real property does not include manufacturing and non-manufacturing facilities that have not yet begun operation or manufacturing or non-manufacturing facilities that began operation within the twelve (12) months preceding the acquisition.

(c) *Office and residential property.* (1) An acquisition of office or residential property shall be exempt from the requirements of the act. In an acquisition that includes office or residential property, the transfer of any assets that are not office or residential property shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition.

(2) Office and residential property is real property, the acquisition of which is not exempt under another provision of the act, that is used primarily for office and residential purposes and includes:

(i) Office buildings,

(ii) Residences,

(iii) Common areas on the property, including parking and recreational facilities, and

(iv) Assets incidental to the ownership of such property, including cash, prepaid taxes or insurance, rental receivables and the like.

(3) If the acquisition includes the purchase of a business conducted on the office and residential property, the transfer of that business, including the space in which the business is conducted, shall be subject to the requirements of the act and these rules as if such business were being transferred in a separate acquisition.

(d) *Hotels and motels.* (1) An acquisition of a hotel or motel shall be exempt from the requirements of the act. In an acquisition that includes a hotel or motel, the transfer of any assets that are not a hotel or motel shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(2) An acquisition of a hotel or motel that includes a casino, or a hotel or motel that is being acquired as part of the acquisition of a ski resort, shall be subject to the requirements of the act and these rules.

(e) *Agricultural property.* An acquisition of agricultural property and associated agricultural assets shall be exempt from the requirements of the act. Agricultural property is real property and assets that primarily generate revenues from the production of crops, fruits, vegetables, livestock, poultry, milk and eggs.

(1) Associated agricultural assets are assets integral to the agricultural business activities conducted on the property. Associate agricultural assets include, but are not limited to, inventory (*e.g.*, livestock, poultry, crops, fruit, vegetables, milk, eggs); equipment dedicated to the income-generating activities conducted on the real property; structures that house livestock and other animals raised on the real property; and fertilizer and animal feed. Associated agricultural assets do not include processing facilities, such as poultry slaughtering and processing facilities.

(2) If an acquisition of agricultural property includes processing facilities and other assets that are not associated agricultural assets, these facilities and assets are subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(f) *Retail rental space; warehouses.* An acquisition of retail rental space (including shopping centers) or warehouses shall be exempt from the requirements of the act, except when the retail rental space or warehouse is to be acquired in an acquisition of a business conducted on the real property. In an acquisition of retail rental space or warehouses, the transfer of any assets that are neither retail rental space nor warehouses shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition.

Examples: 1. "A," a major automobile manufacturer, builds a new automobile plant in anticipation of increased demand for its cars. The market does not improve and "A" never occupies the facility. "A" then sells the facility to "B," another automobile manufacturer. This acquisition is not exempt as an acquisition of an new facility, even though the facility has not produced any income, since "A" did not construct the facility for sale. Also, the acquisition is not exempt as an acquisition of unproductive property since manufacturing facilities that have not yet begun operations are explicitly excluded from that exemption.

2. "A" proposes to acquire a $100 million tract of wilderness land from "B." Copper deposits valued at $17 million and timber reserves valued at $20 million are situated on the land and will be conveyed as part of this transaction. During the last three fiscal years preceding the sale, the property generated $50,000 from the sale of a small amount of timber cut from the reserves. "A's" acquisition of the wilderness land from "B" is exempt as an acquisition of unproductive real property because the property did not generate annual revenues exceeding $5 million during the thirty-six months preceding the acquisition. The copper deposits and timber reserves are by definition unproductive real property and, thus, are not separately subject to the notification requirements.

3. "A" proposes to purchase from "B" for $40 million an old steel mill that is not currently operating to add to "A's" existing steel production capacity. The mill has not generated revenues during the 36 months preceding the acquisition but contains equipment valued at $16 million that "A" plans to refurbish for use in its operations. "A's" acquisition of the mill and the land on which it is located is exempt as unproductive real property. However, the transfer of the equipment and any other assets other than the unproductive property is not exempt and is separately subject to the notification requirements of the act.

4. "A" proposes to purchase two downtown lots, Parcels 1 and 2, from "B" for $40 million. Parcel 1 contains no structures or improvements. A hotel is located on Parcel 2 and has generated $9 million in revenues during the past 3 years. The purchase of Parcel 1 is exempt if it qualifies as unproductive real property; *i.e.*, it has not generated annual revenues in excess of $5 million in the three fiscal years prior to the acquisition. Parcel 2 is not unproductive real property, but its acquisition is exempt under § 802.2(d) as the acquisition of a hotel.

5. "A" intends to purchase a poultry farm from "B." The acquisition of the poultry farm is a transfer of agricultural property that is exempt pursuant to § 802.2(e). If, however, "B" has a poultry slaughtering and processing facility on his farm, "A" would be required to file notification for the acquisition of the processing facility if the higher of the acquisition price or the fair market value of the facility exceeds $15 million.

6. "A" proposes to purchase the prescription drug wholesale distribution business of "B" for $50 million. The business includes six regional warehouses used for "B's" national wholesale drug distribution business. Since "A" is acquiring the warehouses in connection with the acquisition of "B's" prescription drug wholesale distribution business, the acquisition of the warehouses in not exempt. However, "A" must determine the value of the processing facilities and the gathering pipeline system, since these assets are excluded from the exemption in § 802.3 for transfers of associated exploration or production assets. If their value exceeds $15 million, and their acquisition is not otherwise exempt, "A" must file with respect to the transfer of the facilities and the pipeline system.

3. "A," an oil company, proposes to acquire a coal mine and associated production assets for $90 million from "B," an oil company. "A" will also purchase from "B" oil reserves valued at $100 million and an oil refinery valued at $13 million. The acquisition of the coal mine and the oil reserves is exempt pursuant to § 802.3. Although the refinery is excluded from the exemption in § 802.3 for transfers of associated exploration and production assets, "A's" acquisition of the refinery is not subject to the notification requirements of the act because its value does not exceed $15 million.

§ 802.4 Acquisitions of voting securities of issuers holding certain real property assets.

(a) An acquisition of voting securities of an issuer whose assets consist solely of assets whose purchase would be exempt from the requirements of the act pursuant to § 802.2 is exempt from the reporting requirements.

(b) An acquisition of voting securities of an issuer whose assets consist or will consist solely of assets whose purchase would be exempt from the requirements of the act pursuant to § 802.3 is exempt from the reporting requirements.

Example 1. "A," a real estate investment company, proposes to purchase 100 percent of the voting securities of Company C, a wholly-owned subsidiary of "B," a construction company. C's assets are a newly constructed, never occupied hotel, including fixtures, furnishings and insurance policies. The hotel qualifies as a new facility under § 802.2(a), and is also exempt under § 802.2(d). Therefore, the acquisition of the voting securities of C is exempt pursuant to § 802.4(a).

§ 802.5 Acquisitions of investment rental property assets by certain investors.

(a) Acquisitions of investment rental property assets, or of voting securities of an entity the assets of which consist solely of investment rental property assets, by an institutional investor (as defined by § 802.64) or by any person whose sole business is the acquisition or management of investment rental property assets, shall be exempt from the requirements of the act.

(b) Investment rental property assets. Investment rental property assets means real property that:

(1) Will be rented only to entities not included within the acquiring person; and

(2) Will be held solely for rental or investment purposes. Investment rental property assets include:

(i) Property currently rented,

(ii) Property held for rent but not currently rented,

(iii) Common areas on the property,

(iv) Assets incidental to the ownership of property, which may include cash, prepaid taxes or insurance, rental receivables and the like, and

(v) Space occupied by the acquiring person for the sole purpose of maintaining, managing, or supervising the operation of real property.

Example: 1. Insurance Company "A" proposes to acquire a hospital currently leased to and operated by "B," a major for-profit hospital corporation. "A" intends to continue "B's" lease with the exception of one floor of the hospital, which "A" will lease to an independent radiology clinic which the hospital will use for its outpatient radiology needs. This acquisition is an exempt acquisition of investment rental property assets since "A" intends to rent the facility to the hospital and an independent clinic and, thus, is holding the hospital solely for rental and investment purposes.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–18596 Filed 7–27–95; 8:45 am]

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The President

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Presidential Documents

Title 3—

The President

Proclamation 6812 of July 26, 1995

National Korean War Veterans Armistice Day, 1995

By the President of the United States of America

A Proclamation

On July 27, 1953, the guns finally fell silent over the Korean peninsula. Three years of fierce struggle, costing over 600,000 lives among U.S. and allied combatants, ended with a negotiated cease-fire at Panmunjom. At that moment, in the midst of the Cold War, facing the burden of containing a hostile communist world, America could not yet see clearly all that the Korean War had achieved.

Time and history have cleared our vision. More than four decades later, we look back in awe and gratitude at what our Armed Forces and allies accomplished in Korea. Under the banner of the United Nations, they fought to defend freedom and human dignity in the Korean peninsula, demonstrating to the world's totalitarian regimes that men and women of goodwill were ready to pay the ultimate price so that others might enjoy the blessings of liberty. They helped the Republic of South Korea grow, survive, and prosper as an independent and democratic nation and a strong friend of the United States. With their quiet courage and stern resolve, American troops sowed the seeds for the triumph of democracy that is sweeping across the globe today.

Now, at long last, we have a fitting memorial to honor the achievements and the sacrifice of our Korean War veterans. From across this country and around the world, these veterans will gather in our Nation's capital to dedicate the Korean War Veterans Memorial, the enduring testament to their valor and generosity of spirit. America honors their service; we remember their sacrifice; and we are forever in their debt.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 27, 1995, as "National Korean War Veterans Armistice Day." I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of our Nation's Korean War veterans.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–18798
Filed 7–27–95; 10:44 am]
Billing code 3195–01–P

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Federal Register

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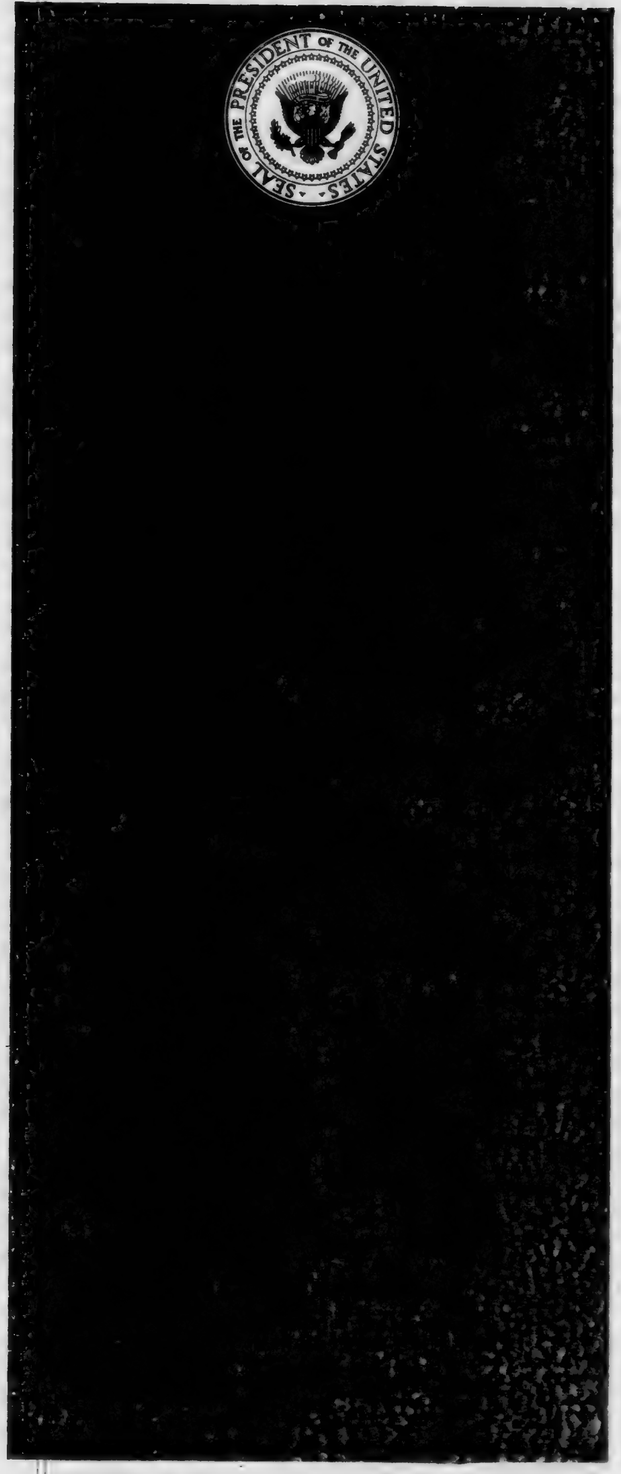
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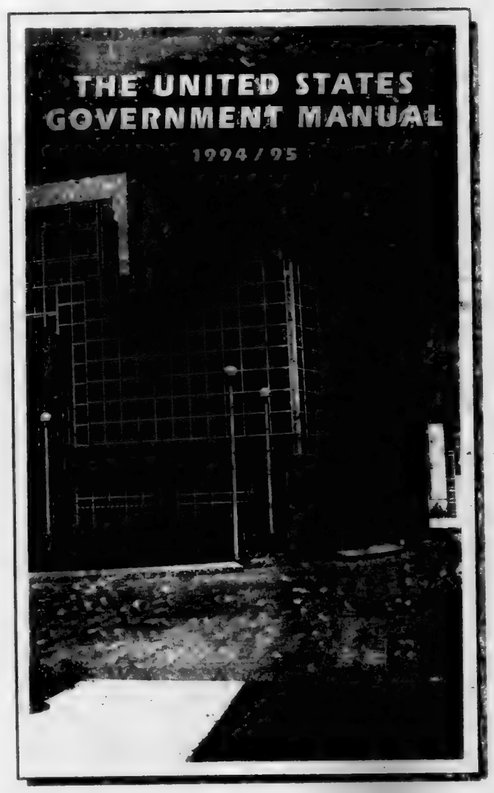
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7–31–95
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federal register

Monday
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federal register

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1690–95]

RIN 1115–AD91

Immigrant Petitions; Children of Widows or Widower

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service ("the Service") regulations by providing clarifying language and procedures for according immigrant status to children of widows or widowers who were not previously eligible for immigration benefits as derivative immediate relatives. This regulation will enhance family well-being by promoting the family unity relationship between the child and his or her widowed mother or father.

DATES: This rule is effective July 31, 1995. Written comments must be submitted on or before September 29, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 "I" Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1690–95 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Ramonia Law-Hill, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 "I" Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Section 302(a)(2) of the Miscellaneous and Technical Amendments of 1991, Public Law 102–232, dated December 12, 1991, amended the Immigration Act of 1990 and the Immigration and Nationality Act (the Act) so that certain widows and widowers of United States citizens would be considered to be immediate relatives and would be able to petition for themselves. This original language, however, did not extend to the children of widows and widowers. Section 219(b) of the Immigration and Nationality Technical Corrections Act of 1994 (Technical Corrections Act), Public Law 103–416, dated October 25, 1994, expanded the definition of the term "immediate relative" in section 201(b)(2)(A)(i) of the Act to include the child of an alien who qualifies as a widow or widower. Section 219(b) also amended section 204(a)(1)(A) of the Act so that the child of a widow or widower could be included in the petition filed by the widow or widower. Before these changes, the child of a widow or widower would only be eligible to acquire immigrant status after the acquisition of immigrant status by the widow or widower, and after the approval of a petition filed by the widow or widower for classification of the child under section 203(a)(2) of the Act. The changes in the Technical Corrections Act now enable the child to be included in the widow or widower's petition and to accompany or follow to join the widow or widower to the United States as a derivative immediate relative. Accordingly, this rule amends 8 CFR 204.2(b)(4) to reflect the changes to the Act. It should be noted that these derivative benefits do not extend to the unmarried or married sons or daughters of widows or widowers of United States citizens. This regulation reflects that exclusion.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 533 (b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule are as follows: The statutory provision addressed in this rule became effective October 25, 1994. It was clear that the Congressional intent was to implement this provision immediately and any further delay would be contrary to this intent. Moreover, this interim rule confers an immediate benefit upon eligible persons who otherwise would not be eligible for legal admission to the United States as permanent residents. Furthermore, this rule does not impose a penalty of any kind. It is imperative that this interim rule become effective upon publication so that those persons who are entitled to the benefit may apply accordingly.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely confers a benefit upon eligible persons and does not impose a penalty of any kind.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section (6)(a)(3)(A).

Executive Order 12612

The regulation will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will enhance family well-being by promoting the family unity relationship between the child and his/her mother or father.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Immigration, Petitions.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

2. In § 204.2 paragraph (b)(4) is revised to read as follows:

§ 204.2 Relative petitions.

* * * * *

(b) * * *

(4) *Derivative beneficiaries.* A child of an alien widow or widower classified as an immediate relative is eligible for derivative classification as an immediate relative. Such a child may be included in the principal alien's immediate relative visa petition, and may accompany or follow to join the principal alien to the United States. Derivative benefits do not extend to an unmarried or married son or daughter of an alien widow or widower.

* * * * *

Dated: July 21, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–18677 Filed 7–28–95; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List. There are no additions to or deletions from the previous Foreign List.

EFFECTIVE DATE: August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to and deletions from the OTC List, which was last published on April 24, 1995 (60 FR 20005), and became effective May 8, 1995. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under rules approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

There are no new additions, deletions or changes to the Board's Foreign List, which was last published on April 24, 1995 (60 FR 20005), and which became effective May 8, 1995. This notice serves as republication of that List with a new effective date of August 14, 1995. The Foreign List includes those foreign securities that meet the criteria in section 220.17 of Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed For Failing Continued Listing Requirements

ACTION PERFORMANCE COMPANIES, INC.
Warrants (expire 04–27–98)
ALL FOR A DOLLAR, INC.
$.01 par common
ALPHA 1 BIOMEDICALS, INC.
$.001 par common Class C, warrants (expire 02–28–97)
ARCUS, INC.
$.01 par common
BIOMEDICAL WASTE SYSTEMS, INC.
Class B, warrants (expire 06–04–96)
BIOMIRA, INC.
Rights (expire 06–02–95)
BPI PACKAGING TECHNOLOGIES, INC.
Class A, warrants (expire 06–16–95)
CAPITAL GAMING INTERNATIONAL, INC.
No par common
CELLCOR, INC.
$.01 par common
CHINATEK, INC.
$.001 par common
COMCENTRAL CORPORATION
$.02 par common
CRAY COMPUTER CORPORATION
$01 par common
DATEQ INFORMATION NETWORK, INC.
$.01 par common
EL PASO ELECTRIC COMPANY
No par common
ENVIRONMENTAL TECHNOLOGIES CORP.
Warrants (expire 07–20–95)
F & M DISTRIBUTORS, INC.
$.01 par common
FIRST COMMERCIAL BANCORP, INC.
$.01 par common
FRANKLIN OPHTHALMIC INSTRUMENTS COMPANY, INC.
$.001 par common
FREYMILLER TRUCKING, INC.
$.01 par common
FUTURE HEALTHCARE, INC.
No par common
GOLDEN SYSTEMS, INC.
No par common
GOTHAM APPAREL CORPORATION
$.001 par common
HUBCO, INC.
Series A, $24.00 stated value preferred
INTERACTIVE NETWORK, INC.
No par common
INTERNATIONAL RESEARCH AND DEVELOPMENT CORPORATION
$.50 par common
JENNIFER CONVERTIBLES, INC.
$.01 par common
LIDAK PHARMACEUTICALS
Class C, warrants (expire 05–26–95)
MEDICIS PHARMACEUTICAL CORPORATION
Class C, warrants (expire 04–10–95)
NEW ENGLAND REALTY ASSOCIATES LIMITED PARTNERSHIP
Depositary Receipts
NOBLE DRILLING CORPORATION
$2.25 par convertible exchangeable preferred
OCTAGON, INC.
$.01 par common Class A, warrants (expire 02–16–99)
ONCOR, INC.
$.01 par common
PACIFIC BASIN BULK SHIPPING LTD.
Units (expire 09–30–99)
PHOTONICS CORPORATION
$.001 par common
PRODUCERS ENTERTAINMENT GROUP LTD., THE
$.001 par common
RIMAGE CORPORATION
Warrants (expire 07–20–95)
SCIENTIFIC SOFTWARE-INTERCOMP
No par common
SELECT MEDIA COMMUNICATIONS, INC.
$.001 par common
SLM INTERNATIONAL, INC.
$.01 par common
SPECTRUM INFORMATION TECHNOLOGIES INC.
No par common
STAPLES, INC.
5% convertible subordinated debentures
STUARTS DEPARTMENT STORES, INC.
$.01 par common
SUNRISE TECHNOLOGIES INTERNATIONAL, INC.
No par common
SWING-N-SLIDE CORPORATION
$.01 par common
TCF FINANCIAL CORPORATION
Series A, noncumulative perpetual preferred Warrants (expire 07–01–95)
TRANS-INDUSTRIES, INC.
$.10 par common
U. S. WIRELESS DATA, INC.
Class A, $.01 par common
UNIMARK GROUP, INC.
Warrants (expire 08–12–99)
UNR INDUSTRIES, INC.
Warrants (expire 06–14–95)
VARI-L COMPANY, INC.
Warrants (expire 04–20–97)
VENTURA COUNTY NATIONAL BANCORP
Rights (expire 06–21–95)
XENOVA GROUP
American Depositary Receipts (Units expire 07–08–95)
XPLOR CORPORATION
$.01 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

ADESA CORPORATION
No par common
ALIAS RESEARCH INC.
No par common
ALLEGHENY & WESTERN ENERGY CORP.
$.01 par common
AMERICAN RECREATION CENTERS, INC.
No par common
AMERICAN SAVINGS OF FLORIDA, FSB
$.01 par common
BANCORP NEW JERSEY, INC.
$.01 par common
BANK MARYLAND CORP.
$.05 par common
BEST POWER TECHNOLOGY, INC.
$.01 par common
BESTOP, INC.
$.002 par common
BROADCAST INTERNATIONAL, INC.
$.10 par common
BROADCASTING PARTNERS, INC.
Class A, $.01 par common
CAREERSTAFF UNLIMITED, INC.
$.0001 par common
CASINO & CREDIT SERVICES, INC.
$.001 par common
CENTRAL MORTGAGE BANCSHARES, INC.
$1.00 par common
CHESAPEAKE ENERGY CORPORATION
$.01 par common
CONTEL CELLULAR, INC.
Class A, $1.00 par common
CORAL GABLES FEDCORP, INC.
$.01 par common
CROCKER REALTH INVESTORS, INC.
$.001 par common
DEERBANK CORPORATION
$1.00 par common
DEKALB ENERGY COMPANY
Class B, no par common
DEWOLFE COMPANIES, INC., THE
$.01 par common
EASEL CORPORATION
$.01 par common
EB, INC.
$2.00 par common
ENVIROQ CORPORATION
$.44 par common
ENVOY CORPORATION
$1.00 par common
FF BANCORP, INC. (Florida)
$1.00 par common
FIRST SOUTHERN BANCORP, INC.
No par common
FLAIR CORPORATION
$.01 par common
GLYCOMED INCORPORATED
No par common
GOLDENBANKS OF COLORADO, INC.
$.05 par common
GRAY COMMUNICATIONS SYSTEMS, INC.
No par common
HCC INSURANCE HOLDINGS, INC.
$1.00 par common

HOMEDCO GROUP, INC.
$.01 par common
INFINITY BROADCASTING CORPORATION
Class A, $.002 par common
INTERTRANS CORPORATION
No par common
INVESTORS BANK CORPORATION
$.01 par common
KEYSTONE HERITAGE GROUP, INC.
$5.00 par common
LAKELAND FIRST FINANCIAL GROUP
$.10 par common
LEASEWAY TRANSPORTATION CORP.
$.01 par common
LOTUS DEVELOPMENT CORPORATION
$.01 par common
NAC-RE CORPORATION
$.10 par common
NFS FINANCIAL CORPORATION
$.01 par common
NUVISION, INC.
$.50 par common
OLD YORK ROAD BANCORP, INC.
$1.00 par common
OLYMPUS CAPITAL CORP.
$1.00 par common
OSHMAN'S SPORTING GOODS, INC.
$1.00 par common
PACO PHARMACEUTICAL SERVICES, INC.
$.01 par common
PARK COMMUNICATIONS, INC.
$.16⅔ par common
PETROLANE INCORPORATED
Class B, $.01 par common
PETSTUFF INC.
$.01 par common
PHARMACY MANAGEMENT SERVICES
$.01 par common
PLAINS SPIRIT FINANCIAL CORP.
$.01 par common
PONCEBANK
$1.00 par common
RE CEPITAL CORPORATION
$.10 par common
REHABILITY CORPORATION
$.01 par common
RENAISSANCE COMMUNICATIONS CORP.
$.01 par common
SHURGARD STORAGE CENTERS, INC.
Class A, $.01 par common
SKYBOX INTERNATIONAL INC.
$.01 par common
THOMAS NELSON, INC.
$1.00 par common
TRANSMEDIA NETWORK, INC.
$.02 par common
VICTORIA FINANCIAL CORPORATION
$.01 par common
WATTS INDUSTRIES, INC.
Class A, $.10 par common
WAVEFRONT TECHNOLOGIES, INC.
No par common
WCT COMMUNICATIONS, INC.
No par common
WHITMAN MEDICAL CORPORATION
No par common
WILEY, JOHN & SONS, INC.
Class A, $1.00 par common
Class B, $1.00 par common
ZILOG, INC.
No par common

Additions to the OTC List

1ST BANCORP (Indiana)
$1.00 par common
ACCUGRAPH CORPORATION
Class A, No par common
ACT NETWORKS, INC.
$.01 par common
AG ASSOCIATES, INC.
No par common
AG-CHEM EQUIPMENT CO., INC.
$.01 par common
AGRIUM INC.
No par common
ALGOMA STEEL, INC.
No par common
ALLERGAN LIGAND RETINOID THERAPEUTICS
Units (expire 06–05–97)
AMERICAN HEALTH PROPERTIES, INC.
No par depositary shares
AMERICAN ONCOLOGY RESOURCES, INC.
$.01 par common
AMERICAN RADIO SYSTEMS CORPORATION
Class A, $.01 par common
ANADIGICS, INC.
$.01 par common
APPS DENTAL, INC.
$.01 par common
ARCSYS, INC.
$.0001 par common
ARGOSY GAMING COMPANY
12% convertible subordinated debentures
ASB FINANCIAL CORPORATION
No par common
BAAN COMPANY NV
NLG .02 par common
BDM INTERNATIONAL, INC.
$.01 par common
BELMONT BANCORP (Ohio)
$.50 par common
BELMONT HOMES, INC.
$.10 par common
BNCCORP, INC.
$.01 par common
BROCKWAY STANDARD HOLDINGS CORPORATION
$.01 par common
BUCYRUS-ERIE COMPANY
$.01 par common
BUSINESS RESOURCE GROUP
$.01 par common
BYRON PREISS MULTIMEDIA COMPANY, INC.
$.001 par common
C. P. CLARE CORPORATION
$.01 par common
CALIFORNIA MICRO DEVICES CORPORATION
No par common
CARETENDERS HEALTH CORPORATION
$.10 par common
CAROLINA SOUTHERN BANK
$5.00 par common
CHAMPION ROAD MACHINERY, LTD.
No par common
CHICAGO MINIATURE LAMP, INC.
$.01 par common
CKF BANCORP, INC. (Kentucky)
$.01 par common
COHESANT TECHNOLOGIES, INC.
$.001 par common
COLUMBIA BANCORP
$.01 par common
COMMUNITY FINANCIAL CORPORATION
$.01 par common
COMPUTER LEARNING CENTERS, INC.
$.01 par common
CONTINENTAL INFORMATION SYSTEMS CORPORATION
$.01 par common
COOPER CAMERON CORPORATION
$.01 par common
COUNSEL CORPORATION
No par common
CRA MANAGED CARE, INC.
$.01 par common
DATALOGIX INTERNATIONAL, INC.
$.01 par common
DAVE & BUSTER'S, INC.
$.01 par common
DENDRITE INTERNATIONAL, INC.
No par common
DESWELL INDUSTRIES, INC.
$.01 par common
Warrants (expire 07–19–2000)
DETOMASO INDUSTRIES, INC.
$2.50 par common
DIASYS CORPORATION
$.001 par common
DIGITAL RECORDERS, INC.
$.10 par common
DISCREET LOGIC, INC.
No par common
DOVE AUDIO, INC.
$.01 par common
EAGLE POINT SOFTWARE CORPORATION
$.01 par common
ECHOSTAR COMMUNICATIONS CORPORATION
Class A, $.01 par common
ELCOTEL, INC.
$.01 par common
ELECTRONICS, MISSILES & COMMUNICATIONS, INC.
$.01–2/3 par common
ENVOY CORPORATION
No par common
ERD WASTE CORPORATION
$.001 par common
EXOGEN INC.
$.0001 par common

FEI COMPANY
No par common
FIDELITY FEDERAL BANCORP
No par common
FINANCING FOR SCIENCE INTERNATIONAL INC.
Warrants (expire 05–19–99)
FIREFOX COMMUNICATIONS, INC.
$.001 par common
FIRST BELL BANCORP, INC. (Pennsylvania)
$.01 par common
FIRST MUTUAL BANCORP, INC.
$.01 par common
FIRST WASHINGTON REALTY TRUST, INC.
$.01 par common
Series A, cumulative convertible preferred
FNB FINANCIAL SERVICES CORPORATION
$1.00 par common
FORT BEND HOLDING CORPORATION
$.01 par common
FRANKLIN FIRST BANCORP, INC. (Kentucky)
$.01 par common
GAME FINANCIAL CORPORATION
$.01 par common
GARDEN FRESH RESTAURANT CORPORATION
$.01 par common
GARDEN RIDGE CORPORATION
$.01 par common
GATEWAY BANCORP, INC. (Kentucky)
$.01 par common
GENERAL CABLE PLC
American Depositary Shares
GLENWAY FINANCIAL CORPORATION
$.01 par common
GREAT AMERICAN BANCORP, INC. (Illinois)
$.01 par common
GREAT BAY POWER CORPORATION
$.01 par common
GREAT TRAIN STORE COMPANY, THE
$.01 par common
HABERSHAM BANCORP (Georgia)
$1.00 par common
HARDINGE, INC.
$.01 par common
HARMONIC LIGHTWAVES, INC.
$.001 par common
HARVEST HOME FINANCIAL CORPORATION
No par common
HF BANCORP, INC. (California)
$.01 par common
HIGHWAYMASTER COMMUNICATIONS, INC.
$.01 par common
HNC SOFTWARE, INC.
$.001 par common
HOWTEK INC.
$.01 par common
HUDSON TECHNOLOGIES, INC.
$.01 par common
Warrants (expire 11–02–99)
IKOS SYSTEMS, INC.
$.01 par common
IMNET SYSTEMS, INC.
$.01 par common
INFERENCE CORPORATION
Class A, No par common
INSTENT, INC.
$.01 par common
INTEGRATED COMMUNICATION NETWORK, INC.
$.01 par common
INTERACTIVE GROUP, INC.
$.001 par common
INTERNATIONAL MUREX TECHNOLOGIES CORPORATION
No par common
INTRAV, INC.
$.01 par common
IRATA, INC.
Class A, $.10 par common
JAMES RIVER BANKSHARES, INC.
$5.00 par common
LASER FRIENDLY INC.
No par common
LEGATO SYSTEMS, INC.
$.0001 par common
LETCHWORTH INDEPENDENT BANCSHARES CORPORATION
$1.00 par common
LINCOLN ELECTRIC COMPANY, THE
No par common
Class A, no par common
MADISON BANCSHARES GROUP, LTD.
$1.00 par common
MARTIN INDUSTRIES, INC.
$.01 par common
MAXIS, INC.
$.0001 par common
MAXUS ENERGY CORPORATION
$4.00 par cumulative convertible preferred
MERIT HOLDING CORPORATION
$2.50 par common
METRA BIOSYSTEMS, INC.
$.01 par common
MFS COMMUNICATIONS COMPANY, INC.
Depositary Shares
MICROS-TO-MAINFRAMES, INC.
$.001 par common
Warrants (expir 10–26–97)
MIDCOM COMMUNICATIONS, INC.
$.0001 par common
MIRAMAR MINING CORPORATION
No par common
MOBLEMEDIA CORPORATION
$.001 par common
MYSOFTWARE COMPANY
$.001 par common
NAL FINANCIAL GROUP, INC.
$.15 par common
NERA AS
American Depositary Receipts
NETWORK EXPRESS, INC.
No par common
NEXGEN, INC.
$.0001 par common
NORTHEAST INDIANA BANCORP, INC.
$.01 par common
NORTHWEST EQUITY CORPORATION
$1.00 par common
NOVADIGM INC.
$.01 par common
NUMBER NINE VISUAL TECHNOLOGY CORPORATION
$.01 par common
NUTRITION FOR LIFE INTERNATIONAL, INC.
$.01 par common
Warrants (expire 07–10–98)
NYNEX CABLECOMMS GROUP PLC
American Depositary Receipts
OCCUSYSTEMS, INC.
$.01 par common
ONTRAK SYSTEMS, INC.
No par common
OPAL, INC.
$.01 par common
ORAVAX, INC.
$.001 par common
OSHAP TECHNOLOGIES LTD.
Rights
PARADIGM TECHNOLOGY, INC.
$.01 par common
PERFORMANCE SYSTEMS INTERNATIONAL, INC.
$.01 par common
PHOENIX GOLD INTERNATIONAL, INC.
No par common
PHOENIX SHANNON PLC
American Depositary Receipts
PIONEER COMPANIES, INC.
Class A, $.01 par common
PIXTECH, INC.
$.01 par common
PLAINTREE SYSTEMS, INC.
No par common
PLAY BY PLAY TOYS & NOVELTIES, INC.
No par common
PREMIER LASER SYSTEMS, INC.
Class A, No par common
Class A, warrants (expire 11–30–99)
Class B, warrants (expire 11–30–99)
PRINS RECYCLING CORPORATION
$.001 par common
PROGRAMMER'S PARADISE, INC.
$.01 par common
REPUBLIC ENGINEERED STEELS, INC.
$.01 par common
REPUBLIC ENVIRONMENTAL SYSTEMS, INC.
$.01 par common
RESMED, INC.
$.004 par common
RESOURCE MORTGAGE CAPITAL, INC.
Series A, $.01 par convertible preferred
RESURGENCE PROPERTIES, INC.
$.01 par common
ROCKFORD INDUSTRIES, INC.
No par common
ROSE'S STORES, INC.

No par common
ROYCE LABORATORIES, INC.
$.005 par common
RTW, INC.
No par common
SCANSOURCE, INC.
No par common
SDNB FINANCIAL CORP.
Rights
SEER TECHNOLOGIES, INC.
$.01 par common
SEROLOGICALS CORPORATION
$.01 par common
SFS BANCORP, INC. (New York)
$.01 par common
SGV BANCORP, INC. (California)
$.01 par common
SINCLAIR BROADCAST GROUP, INC.
Class A, $.01 par common
SITEL CORPORATION
$.001 par common
SOS STAFFING SERVICES, INC.
$.01 par common
SOUTHLAND CORPORATION, THE
$.0001 par common
SOVEREIGN BANCORP, INC. (Pennsylvania)
Series B, 6¼% cumulative convertible preferred
SPINE-TECH, INC.
$.01 par common
SPYGLASS, INC.
$.01 par common
STORMEDIA INCORPORATED
Class A, $.013 par common
STUDIO PLUS HOTELS, INC.
$.01 par common
SUN INTERNATIONAL HOTELS LTD.
Series B, common
SYMETRICS INDUSTRIES, INC.
$.25 par common
TAITRON COMPONENTS INC.
Class A, $.001 par common
TELE-COMMUNICATIONS INTERNATIONAL, INC.
Class A, $1.00 par common
TELE-COMMUNICATIONS, INC.
Series A, Liberty Media Group ($1.00 par common)
TELTREND INC.
$.01 par common
TRANSWITCH CORPORATION
$.001 par common
TSX CORPORATION
$.01 par common
UNIMARK GROUP, INC., THE
$.01 par common
UNITED COMPANIES FINANCIAL CORPORATION
$2.00 par convertible preferred
UNITED SECURITY BANCORPORATION (Washington)
No par common
US ORDER, INC.
$.001 par common
US-CHINA INDUSTRIAL EXCHANGE, INC.
$.01 par common
USDATA CORPORATION
$.01 par common
Rights
UUNET TECHNOLOGIES, INC.
$.001 par common
VIDAMED, INC.
$.001 par common
VIDEO UPDATE, INC.
Class A, $.01 par common
Class A, warrants (expire 07–20–99)
Class B, warrants (expire 07–20–99)
VIDEOSERVER, INC.
$.01 par common
VISTA BANCORP, INC. (New Jersey)
$.50 par common
VOXEL
No par common
WEITZER HOMEBUILDERS, INC.
Class A, $.01 par common
WESTERN POWER & EQUIPMENT CORPORATION
$.001 par common
WOOD BANCORP, INC. (Ohio)
$.01 par common
YARDVILLE NATIONAL BANCORP
No par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), July 25, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–18743 Filed 7–28–95; 8:45am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–23–AD; Amendment 39–9319; AD 95–15–13]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Aircraft Limited) Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes.This action requires inspecting the main passenger/crew door locking mechanism to ensure that a taper pin is installed, installing a taper pin if not already installed, and modifying the passenger door warning system. The actions specified by this AD are intended to prevent the inability to open the passenger/crew door or failure of the passenger door warning system, which could result in passenger injury if emergency evacuation is needed.

DATES: Effective September 7, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7,1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Models 3101 and 3201 airplanes was published in the **Federal Register** on February 22, 1995 (60 FR 9794). The action proposed to require inspecting the main passenger/crew door locking mechanism to ensure that a taper pin is installed, installing a taper pin if not already installed, and modifying the passenger door warning system. Accomplishment of the proposed inspection and possible installation would be in accordance with Jetstream Service Bulletin (SB) 52–A-JA911140, which incorporates the following pages:

Pages	Revision level	Date
4, 5, 7, and 9 ..	Original Issue	Feb. 3, 1992.
2	Revision 1	June 26, 1992.
1, 3, 6, and 8 ..	Revision 2	Oct. 6, 1992.

Accomplishment of the proposed door warning system modification would be in accordance with Jetstream SB 52–JM 7793, which incorporates the following pages:

Pages	Revision level	Date
4 through 11	Original Issue	Nov. 19, 1992.
1, 2, and 3	Revision 1	Aug. 10, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 200 airplanes in the U.S.registry will be affected by this AD, that it will take approximately 10 work hours (2 workhours for the taper pin installation and 8 workhours for the passenger door warning system modification) per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts to accomplish the modifications will be provided by JAL at no cost to the owner/operator. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $120,000. This figure is based on the assumption that no affected owner/operator has accomplished either of the modifications; that all airplanes will need a taper pin installed on the passenger/crew door locking mechanism; and that no airplane owner/operator has accomplished the passenger door warning system modification. The FAA anticipates that a majority of the affected airplanes already have taper pins installed and passenger door warning system modifications incorporated, thereby reducing the cost impact upon the public.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–15–13 Jetstream Aircraft Limited: Amendment 39–9319; Docket No. 92–CE–23–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 500 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the inability to open the passenger/crew door or failure of the passenger door warning system, which could result in passenger injury if emergency evacuation is needed, accomplish the following:

(a) For all affected airplanes that have a main passenger/crew door installed with one of the following serial numbers, accomplish paragraphs (a)(1) and (a)(2) of this AD, as applicable:

WIPL–SD–0001 through WIPL–SD–0005, WIPL–SD–0008 through WIPL–SD–0031, WIPL–SD–0034 through WIPL–SD–0046, WIPL–SD–0049, WIPL–SD–0051 through WIPL–SD–0065, WIPL–SD–0067, WIPL–SD–0070, WIPL–SD–0071, SDJ10883, SDJ10884A, SDJ10884B, and SDJ10886 through SDJ10891

(1) To ensure that a part number SP28E4 taper pin is installed, visually inspect the passenger/crew door locking mechanism in the area between the locking dog and indicator button assembly in accordance with Part 2 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 52–A–JA 911140, which incorporates the following pages:

Pages	Revision level	Date
4, 5, 7, and 9	Original Issue.	Feb. 3, 1992.
2	Revision 1 ...	June 26, 1992.
1, 3, 6, and 8	Revision 2 ...	Oct. 6, 1992.

(2) If a taper pin (part number SP28E4) is not installed, prior to further flight, accomplish Part 3 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 52–A–JA 911140.

(b) For all affected airplanes regardless of the serial number passenger door installed, modify the passenger door warning system in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 52–JM 7793, which incorporates the following pages:

Pages	Revision level	Date
4 through 11	Original Issue.	Nov. 19, 1992.
1, 2, and 3	Revision 1 ...	Aug. 10, 1993.

Note 2: Compliance with a previous revision level of the service bulletins referenced in this AD fulfills the applicable requirements of this AD and is considered "unless already accomplished" for that portion of the AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(e) The inspection and possible installation required by this AD shall be done in accordance with Jetstream Service Bulletin 52–A–JA 911140, which incorporates the following pages:

Pages	Revision level	Date
4, 5, 7, and 9	Original Issue.	Feb. 3, 1992.
2	Revision 1 ...	June 26, 1992.
1, 3, 6, and 8	Revision 2 ...	Oct. 6, 1992.

The modification required by this AD shall be done in accordance with Jetstream Service Bulletin 52–JM 7793, which incorporates the following pages:

Pages	Revision level	Date
4 through 11	Original Issue.	Nov. 19, 1992.
1, 2, and 3	Revision 1 ...	Aug. 10, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9319) becomes effective on September 7, 1995.

Issued in Kansas City, Missouri, on July 17, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18124 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–183–AD; Amendment 39–9310; AD 95–15–07]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to British Aerospace Model BAC 1–11 200 and 400 series airplanes, that currently requires structural inspections and repairs or replacements, as necessary. This amendment requires additional inspections of certain Structural Significant Items (SSI) and expansion of the inspection area for certain other SSI's. This amendment is prompted by the results of a structural integrity audit, which indicated that in order to maintain the structural integrity of these airplanes as they approach or exceed the manufacturer's original fatigue design life goal, certain SSI's need to be inspected. The actions specified by this AD are intended to ensure continuing structural integrity of these airplanes.

DATES: Effective August 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 30, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 87–24–06 R1, amendment 39–6037 (53 FR 37993, September 29, 1988), which is applicable to British Aerospace Model BAC 1–11 200 and 400 series airplanes, was published in the **Federal Register** on April 17, 1995 (60 FR 19179). The action proposed to require a revision of the FAA-approved maintenance inspection program to include additional structural inspections of certain Structural Significant Items (SSI), expansion of the inspection area for certain other SSI's, and repair or replacement of cracked parts; and establishes a life limit for the engine mount/attachment structure on certain airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 158 work hours per airplane to accomplish the actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $293,880, or $9,480 per airplane, per inspection cycle.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6037 (53 FR 37993, September 29, 1988), and by adding a new airworthiness directive (AD), amendment 39–9310 , to read as follows:

95–15–07 • British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–9310. Docket 94–NM–183–AD. Supersedes AD 87–24–06 R1, Amendment 39–6037.

Applicability: Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure continuing structural integrity of the airplane, accomplish the following:

(a) Within 6 months after November 3, 1988 (the effective date of AD 87–24–06 R1, amendment 39–6037), incorporate a revision into the FAA-approved maintenance inspection program which requires inspections, repairs, and replacements, as necessary, in accordance with Table 1, Table 2, and Table 3 of British Aerospace BAC 1–11 Alert Service Bulletin 51–A-PM5830, Issue 3, dated March 19, 1987. The revision to the maintenance inspection program must include procedures to notify the manufacturer when Structural Significant Items (SSI) are found cracked or otherwise significantly deteriorated. [Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.] The inspection thresholds, repetitive intervals, and inspection techniques are listed in the alert service bulletin.

(b) Within 6 months after the effective date of this AD, replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD, with a revision which requires inspections, repairs, and replacements, as necessary, in accordance with Table 1 (except Maintenance Planning Guide Reference Numbers 52–10- 6R and 53–10–29R), Table 2, and Table 3 of British Aerospace BAC 1–11 Alert Service Bulletin 51–A-PM5830, Issue 4, dated January 28, 1993. The revision to the maintenance inspection program must include procedures to notify the manufacturer when SSI's are found cracked or otherwise significantly deteriorated. [Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.] The inspection thresholds, repetitive intervals, and inspection techniques are listed in the alert service bulletin.

Note 2: Maintenance Planning Guide (MPG) Reference Numbers 52–10–6R and 53–10–29R, listed in Table 1 of British Aerospace BAC 1–11 Alert Service Bulletin 51–A-PM5830, Issue 4, dated January 28, 1993, are excluded from the requirements of this AD for the following reasons:

MPG reference No.	Reason
52–10–6R	Required by AD 87–21–06, amendment 39–5744.
53–10–29R ..	Will be addressed in a separate rulemaking action.

(c) Within one year after November 3, 1988 (the effective date of AD 87–24–06 R1, amendment 39–6037), or prior to the accumulation of the number of landings listed in the landing threshold indicated in British Aerospace BAC 1–11 Alert Service Bulletin 51–A-PM5830, Issue 3, dated March 19, 1987, whichever occurs later, and thereafter, at intervals not to exceed the number of landings specified in the alert service bulletin, accomplish the inspections, repairs, and replacements, as necessary, of the SSI's identified in Table 1, Table 2, and Table 3 of that service bulletin.

(d) Within one year after the effective date of this AD, or prior to the accumulation of the number of landings listed in the landing threshold indicated in British Aerospace BAC 1–11 Alert Service Bulletin 51–A-PM5830, Issue 4, dated January 28, 1993, whichever occurs later, and thereafter, at intervals not to exceed the number of landings specified in the alert service bulletin, accomplish the inspections, repairs, and replacements, as necessary, of the SSI's identified in Table 1 (except Maintenance Planning Guide Reference Numbers 52–10–6R and 53–10–29R), Table 2, and Table 3 of the alert service bulletin.

Note 3: For operators that have accomplished this inspection previously in accordance with the requirements of AD 87–24–06 R1, amendment 39–6037: This paragraph requires that the next scheduled inspection for that SSI be performed within the repetitive interval specified for that SSI in the alert service bulletin after the last inspection performed in accordance with the requirements of AD 87–24–06 R1 for that SSI.

(e) For any cracked structure detected during any inspection required by this AD, prior to further flight, accomplish either paragraph (e)(1), (e)(2), or (e)(3) of this AD.

(1) Replace the cracked part with a serviceable part of the same part number, in accordance with the Airplane Maintenance Manual. Or

(2) Repair the cracked structure in accordance with the Structural Repair Manual, listed in the service bulletin. Or

(3) Repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections, repairs, and replacements shall be done in accordance with British Aerospace BAC 1–11 Alert Service Bulletin 51–A-PM5830, Issue 4, dated January 28, 1993; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on August 30, 1995.

Issued in Renton, Washington, on July 12, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–17553 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–ASO–20]

Establishment of Class E Airspace; Cocoa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description of a final rule that was published in the **Federal Register** on June 27, 1995, Airspace Docket No. 93–ASO–20. The description as published in the **Federal Register** on June 27, 1995, inadvertently states that the airspace extends each side of the 127° bearing northeast, instead of each side of the 307° bearing northwest of the Merritt Island NDB.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 95–15715, Airspace Docket No. 93–ASO–20, published on June 27, 1995 (60 FR 33106), established Class E airspace at Cocoa, FL, to provide adequate Class E airspace for IFR operations at Merritt Island Airport. The description as published in the **Federal Register** on June 27, 1995, inadvertently states that the airspace extends each side of the 127° bearing northeast, instead of each side of the 307° northwest of the Merritt Island NDB. This correction to the airspace designation does not affect the size of the Class E airspace area.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E airspace area at Cocoa, FL, as published in the **Federal Register** on June 27, 1995 (60 FR 33106), (**Federal Register** Document 95–15715; page 33106, column 2), and the description in FAA Order 7400.9B, which is incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

* * * * *

ASO FL E5 Cocoa, FL [Corrected]

Merritt Island Airport, FL
(Lat. 28°20'30" N, long. 80°41'08" W)
Merritt Island NDB
(Lat. 28°20'27" N, long. 80°41'18" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Merritt Island Airport and within 2.5 miles each side of the 307° bearing from the Merritt Island NDB, extending from the 6.3-mile radius to 7 miles northwest of the NDB; excluding that airspace within the Titusville, FL, and Melbourne, FL, Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on July 19, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–18732 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 778 and 799

[Docket No. 950720186–5186–01]

RIN 0694–AA69

Revisions to the Export Administration Regulations: Exports of Vaccines

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commerce Control List (CCL), which appears in the Export Administration Regulations (EAR). This rule revises the scope of controls applicable to vaccines that contain Australia Group (AG) controlled microorganisms or toxins that are currently classified under 1C61B. This rule amends the CCL by creating a new Export Control Classification Number (ECCN) 1C91F to authorize the export of vaccines that contain AG-controlled microorganisms or toxins under the provisions of General License G–DEST to eligible destinations (i.e. all destinations except Country Groups S and Z, and Iran).

This rule will reduce the licensing and paperwork burden on U.S. exporters of vaccines without jeopardizing U.S. policy objectives in stemming the proliferation of biological weapons.

EFFECTIVE DATE: This rule is effective July 26, 1995.

FOR FURTHER INFORMATION CONTACT: For questions on vaccines, call James Seevaratnam, Bureau of Export Administration, telephone: (202) 482–3343; or Patricia Sefcik, telephone: (202) 482–0707.

SUPPLEMENTARY INFORMATION:

Background

ECCN 1C61B contains a list of microorganisms and toxins that require a validated license to all destinations except Canada. The list of controlled organisms corresponds to the list of controlled items agreed to by the Australia Group, a multilateral group dedicated to preventing the proliferation of chemical and biological weapons. This rule removes validated export licensing requirements on vaccines that contain microorganisms or toxins controlled under ECCN 1C61B because there is no consensus for multilateral controls under the Australia Group and because the United States Government agrees that it is highly unlikely that vaccines, whether live, attenuated or dead, can directly aid in the development, production and weaponization of biological weapons agents.

Specifically, this rule amends the CCL by creating a new Export Control Classification Number (ECCN) 1C91F to authorize the export of vaccines that contain AG-controlled microorganisms or toxins under the provisions of General License G–DEST to eligible destinations (i.e. all destinations except Country Groups S and Z, and Iran). Extra caution should be exercised when making any large shipment (i.e. 5,000 doses or more), or when making any shipment to destinations, projects, or facilities of proliferation concern that are identified in Supplement No. 5 to Part 778 of the EAR. Also note that pursuant to the Iraqi Sanctions Regulations (31 CFR 575.205 of January 18, 1991), no goods, technology (including technical data or other information), or services may be exported from the United States, or if subject to U.S. jurisdiction, exported or reexported from a third county to Iraq, to any entity owned or controlled by the Government of Iraq, except as authorized by the Department of Treasury's Office of Foreign Assets Control.

This export licensing liberalization has no effect on the regulatory requirements of any other agency or department, e.g., Food and Drug Administration, U.S. Department of Agriculture.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010 and 0694–0067.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 778 and 799 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citations for 15 CFR Part 778 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended [(extended by Pub. L. 103–10, 107 Stat. 40 and by Pub. L. 103–277, 108 Stat. 1407)]; Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); and E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994).

2. The authority citation for 15 CFR Part 799 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); and E.O. 12938 of November 14, 1994 (59 FR 59099 of November 16, 1994).

PART 778—[AMENDED]

3. Section 778.8(a)(3) is revised to read as follows:

§ 778.8 Chemical precursors and biological agents, and associated equipment, software, and technology.

(a) * * *

(3) Viruses, viroids, bacteria, fungi, and protozoa controlled by ECCN 1C61B require a validated license to all destinations except Canada. Vaccines that contain items controlled under ECCN 1C61B are controlled by ECCN 1C91F, and are eligible for General License G–DEST to all destinations except Country Groups S and Z, and Iran.

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

4. In Category 1 (Materials), ECCN 1C61B is amended by revising the heading and the Requirements Section, and a new ECCN 1C91F is added immediately following ECCN 1C88D, to read as follows:

1C61B Microorganisms and toxins.

Requirements

Validated License Required: QSTVWYZ
Unit: $ Value
Reason for Control: CB
GLV: $0
GCT: No
GFW: No

Note: Notwithstanding the provisions of this entry, all vaccines are excluded from the scope of this entry. See ECCN 1C91F.

* * * * *

1C91F Vaccines containing microorganisms and/or toxins controlled by ECCN 1C61B.

Requirements

Validated License Required: SZ, Iran
Unit: $ Value
Reason for Control: FP
GLV: No
GCT: No
GFW: No

Note: Vaccines that do not contain items controlled by ECCN 1C61B are controlled by ECCN 1C96G.

Dated: July 26, 1995.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 95–18688 Filed 7–28–95; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 508

RIN 1205–AA88 and RIN 1215–AA

Attestations by Employers for Off-Campus Work Authorization for Foreign Students (F–1 Nonimmigrants)

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

VOL
60
ISS
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ACTION: Joint interim final rule.

SUMMARY: The Department of Labor (DOL) amends regulations relating to attestations by employers seeking to use nonimmigrant foreign (F–1) students in off-campus work. DOL continues to review comments submitted by the public on the interim final rule and expects to publish a final rule shortly. However, existing attestations expire at the close of July 1995. For that reason, this rule extends the period of applicability of attestations for two months, through September 30, 1995.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart J, and 29 CFR part 508, subpart J, contact Ms. Flora T. Richardson, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–219–5263 (this is not a toll-free number).

On 20 CFR part 655, subpart K, and 29 CFR part 508, subpart K, contact the Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Immigration Act of 1990 (IMMACT) sec. 221 and Immigration and Nationality Act secs. 101(a)(15)(F) and 214 create a pilot program, of limited duration, allowing a nonimmigrant foreign student admitted on F–1 visas to work off-campus if: (1) He/she has completed one academic year as such a nonimmigrant and is maintaining good academic standing at the institution; (2) he/she will not be employed off-campus for more than 20 hours per week during the academic term (but may be employed full-time during vacation periods and between terms); and (3) the employer provides an attestation to the Department of Labor (DOL) and to the educational institution that it unsuccessfully recruited for the position for at least 60 days and will pay the higher of the actual wage at the worksite or the prevailing wage for the occupation in the area of employment. The employer submits such attestations to DOL and the educational institution for foreign students to receive work authorization, if otherwise qualified. The attestation process is administered by the Employment and Training Administration. Complaints and investigations regarding violations of employer attestations are handled by the Wage and Hour Division, Employment Standards Administration. If DOL determines an employer made a materially false attestation or failed to pay wages in accordance with an attestation, the employer, after notice and opportunity for a hearing, may be disqualified from employing F–1 students under the program.

An interim final rule, requesting comments was published November 6, 1991. 56 FR 56860. The interim final rule provided that the employer's attestation may remain in effect, unless withdrawn or invalidated, through no later than September 30, 1994, the original statutory termination date for the pilot. Public Law 103–416 extended the program. Currently, existing attestations are valid through July 31, 1995. 60 FR 34131 (June 30, 1995). Analysis of the comments is ongoing. The rule published today extends attestations through September 30, 1995. A final rule is expected to be published shortly. Should that not occur, the interim final rule will be extended again.

Absent today's amendment, all previously valid attestations would expire at the close of July 31, 1995, and no new attestations could be filed. Without the amendment, F–1 students would not have work authorization under this program. New attestations filed after the effective date of today's rule also are valid through September 30, 1995, unless withdrawn or invalidated. Today's rule alleviates hardships for covered students and employers, and the limited extension gives DOL additional opportunity to complete analysis of comments on the interim final rule. For these reasons, DOL for good cause finds a proposed rule is impracticable and contrary to the public interest (5 U.S.C. 553(b)(B)); and finds good cause to make the rule effective immediately (5 U.S.C. 553(d)(3)). The rule is not significant under E.O. 12866. The rule was not preceded by a proposed rule and, thus, is not covered by the Regulatory Flexibility Act. When the interim final rule was published, however, DOL notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the rule did not have a significant economic impact on a substantial number of small entities. The program is not in the *Catalog of Federal Domestic Assistance.*

List of Subjects

20 CFR Part 655

Adminstrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 508

Administrative practice and procedure, Aliens, Employment, Enforcement, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

Text of Joint Interim Final Rule

The text of the joint interim final rule appears below:

1. Section _____.900(b)(2)(i) is amended by removing the date "July 31, 1995" and adding in lieu thereof the date "September 30, 1995".

2. Section _____.900(d) is amended by removing the date "July 31, 1995" and adding in lieu thereof the date "September 30, 1995".

3. Section _____.900 is amended by revising paragraph (e), to read as follows:

§ _____.900 Purpose, procedure and applicability of subparts J and K of this part.

* * * * *

(e) *Revalidation of employer attestations in effect on July 31, 1995.* Any employer's attestation which was valid on July 31, 1995, is revalidated effective on July 31, 1995, and shall remain valid through September 30, 1995, unless withdrawn or invalidated.

4. Section _____.910(b)(2)(i) is amended by removing the phrase "through July 31, 1995" and adding in lieu thereof the phrase "through September 30, 1995."

5. Section _____.910(e) is amended by removing from the first sentence the phrase "expires on September 30, 1996,)"and adding in lieu thereof the phrase "expires on September 30, 1996"; by removing from the first sentence the phrase "after July 31, 1995" and adding in lieu thereof the phrase "after September 30, 1995"; and by removing from the penultimate sentence the phrase "prior to July 31, 1995" and adding in lieu thereof the phrase "prior to September 30, 1995".

6. Section _____.940(d)(1)(i)(B) is amended by removing the date "July 31, 1995" and adding in lieu thereof the date "September 30, 1995".

7. Section _____.940(h)(1) is amended by removing the date "July 31, 1995" and adding in lieu thereof the date "September 30, 1995".

8. Section _____.940(h)(3) is amended by removing the date "July 31, 1995" and adding in lieu thereof the date "September 30, 1995".

Adoption of Joint Interim Final Rule

The agency-specific adoption of the Joint Interim Final Rule, which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

1. Part 655 of chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

a. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; and 29 U.S.C. 49 *et seq.*

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

b. Part 655 is amended as set forth in the Joint Interim Final Rule, which appears at the end of the end of the common preamble.

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

2. Part 508 of chapter V of title 29, Code of Federal Regulations, is amended as follows:

PART 508—ATTESTATIONS FILED BY EMPLOYERS UTILIZING F–1 STUDENTS FOR OFF-CAMPUS WORK

a. The authority citation for part 508 continues to read as follows:

Authority: 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

b. Part 508 is amended as set forth in the Joint Interim Final Rule, which appears at the end of the end of the common preamble.

Signed at Washington, DC, this 25th day of July, 1995.

Raymond Uhalde,

Deputy Assistant Secretary for Employment and Training.

Maria Echaveste,

Administrator, Wage and Hour Division; Employment Standards Administration.

[FR Doc. 95–18628 Filed 7–28–95; 8:45 am]

BILLING CODE 4510–10–M; 4510–27–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[T.D. ATF-350; RE: Notice No. 740]

Materials and Processes Authorized for the Production of Wine and for the Treatment of Juice, Wine and Distilling Material; Revised Alcohol Tolerance on Labels of Wine Under 7 Percent Alcohol by Volume (90F-280T)

CFR Correction

In title 27 of the Code of Federal Regulations, parts 1 to 199, revised as of April 1, 1995, on page 507, in § 24.246, the entry for Calcium sulfate (gypsum) was inadvertently removed and should be inserted alphabetically as follows:

§ 24.246 Materials authorized for treatment of wine and juice.

Materials and Use	Reference or limitation
• • • •	
Calcium sulfate (gypsum): To lower pH in sherry wine.	The sulfate content of the finished wine shall not exceed 2.0 g/L, expressed as potassium sulfate. 27 CFR 24.214. 21 CFR 184.1230 (GRAS)
• • • •	

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 247

RIN 0790–AG16

Department of Defense Newspapers and Civilian Enterprise Publications

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This rule revises and provides DoD policy and updates procedures to meet changed circumstances for publishing DoD internal command information newspapers and civilian enterprise publications. It has minimal impact on some civilian printers who are contracted to print the publications.

EFFECTIVE DATE: June 21, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Frank Theising, USA, (703) 274–4868.

SUPPLEMENTARY INFORMATION: On April 10, 1995 (68 FR 18049), DoD published a proposed rule. No comments were received.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 247 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 44)

It has been certified that 32 CFR part 247 does not impose any reporting or

recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 247

Defense communications, Government publications, and Newspapers and magazines.

Accordingly, 32 CFR part 247 is revised to read as follows:

PART 247—DEPARTMENT OF DEFENSE NEWSPAPERS AND CIVILIAN ENTERPRISE PUBLICATIONS

Sec.

247.1 Purpose.
247.2 Applicability.
247.3 Definitions.
247.4 Policy.
247.5 Responsibilities.
247.6 Procedures.
247.7 Information requirements.

Appendix A to Part 247—Funded Newspapers

Appendix B to Part 247—CE Publications

Appendix C to Part 247—Mailing of DoD Newspapers, CE Guides, and Installation Maps; Sales and Distribution of Non-DoD Publications

Appendix D to Part 247—AFIS Print Media Directorate

Appendix E to Part 247—DoD Command Newspaper Review System

Appendix F to Part 247—Deputy Secretary of Defense Policy Memorandum

Authority: 10 U.S.C. 121 and 133.

§ 247.1 Purpose.

This part implements 32 CFR part 372 and implements policy, assigns responsibilities, and prescribes procedures concerning authorized DoD Appropriated Funded (APF) and Civilian Enterprise (CE) newspapers, CE guides, and installation maps in support of the DoD Internal Information Program.

§ 247.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and includes the Coast Guard when operating as a Military Service in the Navy.

(b) Does not apply to the *Stars and Stripes (S&S)* newspapers and business operations. *S&S* guidance is provided in 32 CFR part 246.

(c) The term Commander, as used in this part, also means Heads of the DoD Components.

§ 247.3 Definitions.

Civilian Enterprise (CE) guides and installation maps. Authorized publications containing advertising that are prepared and published under contract with commercial publishers. The right to circulate the advertising in these publications to the DoD readership constitutes contractual consideration to pay for these DoD publications. The publications become the property of the command, installation, or intended recipient upon delivery in accordance with terms of the contract. Categories of these publications are:

(1) *Guides.* Publications that provide DoD personnel with information about the mission of their command; the availability of command, installation, or community services; local geography; historical background; and other information. These publications may include installation telephone directories at the discretion of the commander; however, separate CE telephone directories are not authorized.

(2) *Installation Maps.* Publications designed for orientation of new arrivals or for visitors.

DoD newspapers. Authorized, unofficial publications, serving as part of the commander's internal information program, that support DoD command internal communication requirements. Usually, they are distributed weekly or monthly. DoD newspapers contain most, if not all, of the following elements to communicate with the intended DoD readership: command, military department, and DoD news and features; commanders' comments; letters to the editor; editorials; commentaries; features; sports; entertainment items; morale, welfare, and recreation news and announcements; photography; line art; and installation and local community news and announcements. DoD newspapers do not necessarily reflect the official views of, or endorsement of content by, the Department of Defense.

(1) *CE newspapers.* Newspapers published by commercial publishers under contract with the DoD Components or their subordinate commands. The commander or public affairs office provides oversight and final approval authority for the news and editorial content of the paper. Authorized news and information sources include the Office of the Assistant to the Secretary of Defense for Public Affairs (OATSD(PA)), AFIS, the Military Departments, their subordinate levels of command, and other Government Agencies. CE contractor personnel may provide material for use in the newspaper if approved by the commander or public affairs officer (PAO), as the commander's representative. These newspapers contain advertising sold by the commercial publisher on the same basis as for CE guides and installation maps and may contain supplements or inserts. They become the property of the command, installation, or intended recipient upon delivery in accordance with terms of the contract.

(2) *Funded newspapers.* Newspapers published by the DoD Components of their subordinate commands using appropriated funds. The editorial content of these newspapers is prepared by the internal information section of the public affairs staff or other internal sources. Usually, these newspapers are printed by the Government Printing Office (GPO) or under GPO contract in accordance with Government printing regulations. 32 CFR part 397 specifies DPS as the sole DoD conduit to the GPO.

(3) *Overseas Unified Command (UC) newspapers.* Newspapers published for overseas audiences approved by the Assistant to the Secretary of Defense for Public Affairs (ATSD(PA)) to provide world, U.S., and regional news from commercial sources, syndicated columns, editorial cartoons, and applicable U.S. Government, Department of Defense, Component, and subordinate command news and information.

(4) *News bulletins and summaries.* Publications of deployed or isolated commands and ships compiled from national and international news and opinion obtained from authorized sources. News bulletins or summaries may be authorized by the next higher level of command when no daily English language newspapers are readily available.

Inserts. A flier, circular, or freestanding advertisement placed within the folds of the newspaper. No disclaimer or other labeling is required.

Option. A unilateral right in a contract by which, for a specified time, the Government may elect to acquire additional supplies or services called for by the contract, or may elect to extend the term of the contract.

Organizational Terms

(1) *Command.* A unit or units, an organization, or an area under the command of one individual. It includes

organizations headed by senior civilians that require command internal information-type media.

(2) *DoD Components.* See § 247.2(a).

(3) *Installation.* A DoD facility or ship that serves as the base for one or more commands. Media covered by this Part may serve the command communications needs of one or several commands located at one installation.

(4) *Major command.* A designated command such as the Air Mobility Command or the Army Forces Command that serves as the headquarters for subordinate commands or installations that have the same or related missions.

(5) *Subordinate levels.* Lower levels of command.

Supplements. Features, advertising sections, or morale, welfare and recreation sections printed with or inserted into publications for distribution. Supplements must be labeled "Supplement to the (name of newspaper)." Editorial content in supplements is subject to approval by the commander or the PAO as his or her agent.

§ 247.4 Policy.

It is DoD policy that:

(a) A free flow of news and information shall be provided to all DoD personnel without censorship or news management. The calculated withholding of news unfavorable to the Department of Defense is prohibited.

(b) News coverage and other editorial content in DoD newspaper and publications shall be factual and objectives. News and headlines shall be selected using the dictates of good taste. Morbid, sensational, or alarming details not essential to factual reporting shall be avoided.

(c) DoD newspapers shall distinguish between fact and opinion, both of which may be part of a news story. When an opinion is expressed, the person or source shall be identified. Accuracy and balance in coverage are paramount.

(d) DoD newspapers shall distinguish between editorials (command position) and commentaries (personal opinion) by clearly identifying them as such.

(e) News content in DoD newspapers shall be based on releases, reports, and materials provided by the DoD Components and their subordinate levels, DoD newspaper staff members, and other government agencies. DoD newspapers shall credit sources of all material other than local, internal sources. This includes, but is not limited to, Military Department news sources, American Forces Information Service, and command news releases.

(f) DoD newspapers may contain articles of local interest to installation personnel produced outside official channels (e.g., stringers, local organizations), provided that the author's permission has been obtained, the source is credited, and they do not otherwise violate this part.

(g) DoD newspapers normally shall not be authorized the use of commercial news and opinions sources, such as Associated Press (AP), United Press International (UPI), New York Times, etc., except as stated in this paragraph and the following paragraph. The use of such sources is beyond the scope of the mission of command or installation newspapers and puts them in direct competition with commercial newspapers. The use of such sources may be authorized for a specific DoD newspaper by the cognizant DoD Component only when other sources of national and international news and opinion are not available.

(h) Overseas Unified Command (UC) newspapers published outside the United States may purchase or contract for and carry news stories, features, syndicated columns, and editorial cartoons from commercial services or sources. A balanced selection of commercial news or opinion shall appear in the same issue and same page, whenever possible, but in any case, over a reasonable time period. Selection of commercial news sources, syndicated columns, and editorial cartoons to be purchased or contracted for shall be approved by the UC Commanders. Overseas UC newspapers, news bulletins, and news summaries authorized to carry national and world news may include coverage of U.S. political campaign news from commercial news sources. Presentation of such political campaign news shall be made on a balanced, impartial, and nonpartisan basis.

(i) The masthead of all DoD newspapers, guides, and installation maps shall contain the following disclaimer printed in type no smaller than 6-point: "This (DoD newspaper/guide or installation map) is an authorized publication for members of the Department of Defense. Contents of (name of the DoD newspaper/this guide/this installation map) are net necessarily the official views of, or endorsed by, the U.S. Government, the Department of Defense, or (the name of the publishing DoD Component)."

(j) The masthead of DoD CE newspapers, guides, and installation maps shall contain the following statements in addition to that contained in paragraph (i) of this section:

(1) "Published by (name), a private firm in no way connected with the (Department of Defense/the U.S. Army/the U.S. Navy/the U.S. Air Force/the U.S. Marine Corps) under exclusive written contract with (DoD Component or subordinate level)."

(2) "The appearance of advertising in this publication, including inserts or supplements, does not constitute endorsement by the (Department of Defense/the U.S. Army/the U.S. Navy/the U.S. Air Force/the U.S. Marine Corps), or (name of commercial publisher) of the products or services advertised."

(3) "Everything advertised in this publication shall be made available for purchase, use, or patronage without regard to race, color, religion, sex, national origin, age, marital status, physical handicap, political affiliation, or any other nonmerit factor of the purchaser, user, or patron." If a violation or rejection of this equal opportunity policy by an advertiser is confirmed, the publisher shall refuse to print advertising from that source until the violation is corrected.

(k) DoD newspapers, guides, and installation maps shall not contain campaign news, partisan discussions, cartoons, editorials, or commentaries dealing with political campaigns, candidates, or issues. DoD CE newspapers, guides, and installation maps shall not carry paid political advertisements for a candidate, party, or which advocate a particular position on a political issue. This includes those advertisements advocating a position on any proposed DoD policy or policy under review.

(l) DoD newspapers shall support the Federal Voting Assistance Program by carrying factual information about registration and voting laws, especially those on absentee voting requirements of the various States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. DoD newspapers shall use voting materials provided by the Director, Federal Voting Assistance Program; the OSD; and the Military Departments. Such information is designed to encourage DoD personnel to register as voters and to exercise their right to vote as outlined in 32 CFR part 46.

(m) DoD newspapers and CE guides shall comply with DoD Instruction 1100.13 [1] pertaining to polls, surveys, and straw votes.

(1) The DoD Components and subordinate levels may authorize polls

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

on matters of local interest, such as soldier of the week, and favorite athlete.

(2) A DoD newspaper, guide, or installation map shall not conduct a poll, a survey, or a straw vote relating to a political campaign or issue.

(3) Opinion surveys must be in compliance with Military Service regulations.

(n) DoD newspapers will support officially authorized fund-raising campaigns (e.g., Combined Federal Campaign (CFC)) within the Department of Defense in accordance with DoD Directive 5035.1.[2] News coverage of the campaign will not discuss monetary goals, quotas, competition or tallies of solicitation between or among agencies. To avoid any appearance of endorsement, features and news coverage will discuss the campaign in general and not address specific agencies within the CFC.

(o) DoD newspapers, guides, or installation maps shall not:

(1) Contain any material that implies that the DoD Components or their subordinate levels endorse or favor a specific commercial product, commodity, or service.

(2) Subscribe, even at no cost, to a commercial or feature wire or other service whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

(3) Carry any advertisement that violates or rejects DoD equal opportunity policy. (See paragraph (j)(3) of this section).

(p) All commercial advertising, including advertising supplements, shall be clearly identifiable as such. Paid advertorials and advertising supplements may be included but must be clearly labeled as advertising and readily distinguishable from editorial content.

(q) Alteration of official photographic and video imagery will comply with the Deputy Secretary of Defense policy memorandum, subject: Alteration of Official Photographic and Video Imagery, December 9, 1994, (appendix F of this part).

(r) Commercial sponsors of Armed Forces Professional Entertainment Program events and morale, welfare and recreation events may be mentioned routinely with other pertinent facts in news stories and announcements in DoD newspapers. (See DoD Instructions 1330.13[3] and 1015.2.[4]

(s) Book, radio, television, movie, travel, and other entertainment reviews may be carried if written objectively and if there is no implication of endorsement by the Department of Defense or any of its Components or their subordinate levels.

(t) All printing using appropriated funds will be obtained in accordance with 32 CFR part 397.

§ 247.5 Responsibilities.

(a) The *Assistant to the Secretary of Defense for Public Affairs*, consistent with 32 CFR part 375, shall:

(1) Develop policies and provide guidance on the administration of the DoD Internal Information Program.

(2) Provide policy and operational direction to the Director, AFIS.

(3) Monitor and evaluate overall mission effectiveness within the Department of Defense for matters under this part.

(b) The *Director, American Forces Information Service*, shall:

(1) Develop and oversee the implementation of policies and procedures pertaining to the management, content, and publication of DoD newspapers, guides, and installation maps.

(2) Serve as DoD point of contact with the Joint Committee on Printing, Congress of the United States, for matters under this Instruction.

(3) Serve as the DoD point of contact in the United States for UC newspaper matters.

(4) Provide guidance to the UCs, Military Departments, and other DoD Components pertaining to DoD newspapers and CE publications.

(5) Monitor effectiveness of business and financial operations of DoD newspapers and provide business counsel and assistance, as appropriate.

(6) Sponsor a DoD Interservice Newspaper Committee composed of representatives of the Military Departments to coordinate DoD command or installation newspaper matters.

(7) Provide a press service for joint-Service news and information for use by authorized DoD newspaper editors.

(c) *The Secretaries of the Military Departments* shall:

(1) Provide policy guidance and assistance to the Department's newspapers and CE publications.

(2) Encourage the use of CE newspapers when they are the most cost-effective means of fulfilling the command communication requirement.

(3) Ensure that adequate resources are available to support authorized internal information products under this part.

(4) Designate a member of their public affairs staff to serve on the DoD Interservice Newspaper Committee.

(5) Ensure all printing obtained with appropriated funds complies with 32 CFR part 397.

(d) *The Commanders of Unified Combatant (UC) Commands* shall:

(1) Publish UC newspapers, if authorized. In discharging this responsibility, the UC Commander shall ensure that policy, direction, resources, and administrative support are provided, as required, to produce a professional quality newspaper to support the command mission.

(2) Ensure that the UC newspaper is prepared to support U.S. forces in the command area during contingencies and armed conflict.

§ 247.6 Procedures.

(a) *General.* (1) National security information shall be protected in accordance with 32 CFR parts 159 and 159a.

(2) Specific items of internal information of interest to DoD personnel and their family members prepared for publication in DoD newspapers, guides, or installation maps may be made available to requesters if the information can be released as provided in 32 CFR parts 285 and 286.

(3) Editorial policies of DoD newspapers, guides, and installation maps shall be designed to improve the ability of DoD personnel to execute the missions of the Department of Defense.

(4) DoD editors of publications covered under this part shall conform to applicable policies, regulations, and laws involving libel, photographic image alteration, copyright, classification of information, and U.S. Government printing and postal regulations.

(5) DoD newspapers, guides, and installation maps shall comply with 32 CFR part 310 regarding the DoD privacy program.

(b) *Establishment of DoD newspapers.* (1) Commanders are authorized to establish Funded newspapers (Appendix A to this part) or CE newspapers (Appendix B to this part) when:

(i) A valid internal information mission requirement exists.

(A) Command or installation newspapers provide the commander a primary means of communicating mission-essential information to members of the command. They provide feedback through such forums as letters to the editor columns. This alerts the commander to the emotional status and state of DoD knowledge of the command. The newspaper is used as a return conduit for command information to improve attitudes and increase knowledge.

(B) News and feature treatment on individuals and organizational elements of the command provides a crossfeed of DoD information, which improves internal cooperation and mission performance. Recognition of excellence in individual or organizational performance motivates and sets forth expected norms for mission accomplishment.

(C) The newspaper improves morale by quelling rumors, and keeping members informed on DoD information that will affect their futures. It provides information and assistance to family members, which improve their spirits and thereby the effectiveness of their military service and/or civilian member. The newspaper encourages participation in various positive leisure-time activities to improve morale and deter alcohol abuse and other pursuits that impair their ability to perform.

(D) The newspaper provides information to make command members aware of the hazards of the abuse of drugs and other substances, and of the negative impact that substance abuse has on readiness.

(E) CE newspapers provide advertisements that guide command members to outlets where they may fulfill their purchasing needs. A by-product of this commercial contact is increased installation-community communication, which enhances mutual support.

(F) The newspaper increases organizational cohesiveness and effectiveness by providing a visual representation of the essence of the command itself.

(G) Good journalistic practices are vital, but are not an end unto themselves. They are the primary means to enhance receptivity of command communication through the newspaper.

(H) The newspaper exists to facilitate accomplishment of the command or installation mission. That is the only basis for the expenditure of DoD resources to produce them.

(ii) A newspaper is determined by the commander and the next higher level of command to be the most cost-effective means of fulfilling the command internal communication requirement.

(2) The use of appropriated funds is authorized to establish a Funded newspaper if a CE newspaper is not feasible. The process of establishing a newspaper must include an investigation of the feasibility of publishing under the CE concept. This investigation must include careful consideration of the potential for real or apparent conflict of interest. If publishing under the CE concept is determined to be feasible, commanders must ensure that they have obtained approval to establish the newspaper before authorizing their representatives to negotiate a contract with a CE publisher.

(3) DoD newspapers are mission activities. The use of nonappropriated funds for any aspect of their operations is not authorized.

(4) Appropriated funds shall not be used to pay any part of the commercial publisher's costs incurred in publishing a CE publication.

(5) Only one DoD newspaper is authorized for each command or installation.

(i) If a newspaper is required at an installation where more than one command or headquarters is collocated, the host commander shall be responsible for publication of one funded or CE newspaper for all. The host command shall provide balanced and sufficient coverage of the other commands, their personnel, and activities in that locality. These commands, or headquarters, shall assist the staff of the host newspaper with coverage. If required by unusual circumstance, a commander other than the host may publish the single authorized newspaper when the majority of affected organizations concur.

(ii) This provision is not intended to prohibit the headquarters of a geographically dispersed command that receives its local coverage in the host installation newspaper from publishing a command-wide newspaper; nor is it intended to prohibit a command that has information needs that are significantly different from the majority of the host installation audience from publishing a separate newspaper, when authorized by the designated approving authority. (See appendix E to this part).

(iii) *Establishment of CE Guides and Installation Maps.* When valid communication requirements exist, publications in this category may be established by the commander, if feasible. (See appendix B to this part) Only one CE guide and installation map is authorized for each command or installation. The requirements of paragraph (b)(4) of this section, apply to CE guides and installation maps. These publications shall be approved by the next higher level. Approval authorities shall exercise care not to overburden community advertisers.

(iv) *Use of trademark.* The DoD Components and their subordinate levels shall trademark—State, Federal, or both—the names of their newspapers, guides, and installation maps, when possible.

(v) *Use of recycled products.* The public affairs office shall, whenever possible, based on contractual agreements, use recycled paper for publications covered under this part.

(vi) *Mailing requirements and sales and distribution on non-DoD publications.* See appendix C to this part.

(vii) *AFIS print media directorate.* See appendix D to this part.

(viii) *DoD command newspaper review system.* See appendix E to this part.

(6) When, in the opinion of the Assistant to the Secretary of Defense for Public Affairs, or the UC Commander, a UC newspaper is needed, establishment shall be directed by the Secretary of Defense. Both appropriated and nonappropriated funds may be used in the publication of overseas UC newspapers.

§ 247.7 Information requirements.

The biennial reporting requirement contained in this part has been assigned Report Control Symbol DD–PA(BI) 1638.

Appendix A to Part 247—Funded Newspapers

A. *Purpose.* Funded newspapers support the command communication requirements of the DoD Components and their subordinate commands. Normally, printing is accomplished by a commercial printer under contract or in government printing facilities in accordance with 32 CFR part 397. The editorial content of these newspapers and distribution are accomplished by the contracting command. Overseas, Funded newspapers are authorized to be printed under contract with the *S&S*. Where printing by *S&S* is not feasible because of distance or other factors, Funded newspapers may be printed by other means. These are evaluated on a case-by-case basis with the cognizant DPS office.

B. *Name.* The name of the publication may include the name of the command or installation, or, the name of the command or installation may appear separately in the nameplate (flag). The emblem of the command or installation may be included in the nameplate, also. When possible, the DoD Components and their subordinate levels shall trademark the names of their publications, as stated in § 247.5(d).

C. *Masthead.* The masthead shall include the names of the commanding officer and the PAO, the names and editorial titles of the staff of the newspaper, and the mailing address and telephone number of the editorial staff, in addition to that required in § 247.4(i).

D. *News and editorial materials.* The commander and the public affairs staff shall generate and select news, information, photographs, editorial, and other materials to be used. Authorized news and information sources include the Office of the Assistant to the Secretary of Defense for Public Affairs (OATSD(PA)), AFIS, the Military

[2] See footnote 1 to § 247.4(m).
[3] See footnote 1 § 247.4(m).
[4] See footnote 1 to § 247.4(m).

Departments, their subordinate levels of command, and other Government Agencies. Civilian community service news and announcements of benefit to personnel assigned to the command or installation and their family members may also be used. Photographic images used will be in compliance with § 247.4(r).

E. *Assignment of personnel.* Military and DoD civilian personnel may not be assigned to duty at the premises of the contract printer to perform any job functions that are part of the business activities or contractual responsibilities of the contract printer. Members of the public affairs staff who produce editorial content may work on the premises as liaison and monitor to specify and coordinate layout and other production details provided for in the command contract with the contract printer. A member of the public affairs staff shall review proof copy to prevent mistakes.

F. *Funding.* The expense of publishing and distributing Funded newspapers is charged to appropriated funds of the publishing command.

G. *Printing.* Printing of a funded newspaper shall be handled in accordance with 32 CFR part 397 in conjunction with public affairs as the office of primary interest.

H. *Distribution.* Funded newspapers may be distributed through official channels.

Appropriated funds and manpower may be used for distribution of Funded newspapers, as required.

I. *Advertising.* Funded newspapers shall not carry commercial advertising. As a service, the Funded newspaper may carry nonpaid listings of personally owned items and services for sale by members of the command. Noncommercial news stories and announcements concerning nonappropriated fund activities and commissaries may be published in funded newspapers.

J. *Employment and gratuities.* DoD personnel shall not accept employment by or gratuities from GPO-contracted printers under contract to print funded newspapers. To avoid a conflict of interest, employment of spouses and minor children of DoD personnel by a contract printer shall be in accordance with the 32 CFR part 84.

Appendix B to Part 247—CE Publications

A. *Purpose.* CE publications consist of DoD newspapers, guides, and installation maps. They support command internal communications. The commander or public affairs office provides oversight and final approval authority for the news and editorial content of the publication. CE publishers sell advertising to cover costs and secure earnings, print the publications, and may make all or part of the distribution. Periodically, CE publishers compete for contracts to publish these publications. Neither appropriated nor nonappropriated funds shall be used to pay for any part of a CE publisher's costs incurred in publishing a CE publication.

B. *Name.* The name of the publication may include the name of the command or installation, or the name of the command or installation may appear separately in the nameplate (flag). The emblem of the command or installation may also be included in the nameplate. When possible, the DoD Components and their subordinates shall trademark the names of their publications, as stated in § 247.6(d).

C. *Masthead.* The masthead shall include the following in addition to that required in § 247.4(i) and (j). "The editorial content of this publication is the responsibility of the (name of command or installation) Public Affairs Office." The names of the commanding officer and PAO, the names and editorial titles of the staff assigned the duty of preparing the editorial content, and the office address and telephone number of the editorial staff shall be listed in the masterhead of DoD newspapers, but is not required in CE guides and installation maps. The names of the publisher and employees of the publisher may be listed separately.

D. *News and editorial materials.* The commander or the public affairs office shall provide oversight and final approval authority for news, information, photographs, editorial, and other materials to be used in a CE publication in the space allotted for that purpose by written contract with the commercial publisher. Authorized news and information sources include the OATSD(PA), AFIS, the Military Departments and their subordinate levels of command, and other Government Agencies. CE contractor personnel may provide material for use in the publication if approved by the commander or PAO, as the commander's representative. Commercial news and opinion sources, such as AP, UPI, New York Times, etc., are not normally authorized for use in DoD newspapers except as stated in § 247.4(q). The paper may publish community service news and announcements of the civilian community for the benefit of command or installation personnel and their families. Imagery used will be in compliance with § 247.4(r).

E. *Assignment of personnel.* Neither military nor DoD civilian personnel shall be assigned to duty at the premises of the CE publisher. Neither military nor DoD civilian personnel shall perform any job functions that are part of the business activities or contractual responsibilities of the CE publisher either at the contractor's facility or the Government facility. The PAO and staff who produce the non-advertising content of the CE publication may perform certain installation liaison functions on publisher premises including monitoring and coordinating layout and design and other publishing details set forth in the contract to ensure the effective presentation of information. One or more members of the public affairs staff shall review proof copy to prevent mistakes. Newspaper text-editing-system pagination and copy terminals owned by the CE publisher may be placed in the command or installation public affairs office under contractual agreement for use by the public affairs staff to coordinate layout and ensure that the preparation of editorial material is performed in such a way as to enhance the efficiency and effectiveness of the printing and publication functions performed by the CE publisher. All costs of these terminals shall be borne by the CE newspaper publishers who shall retain title to the equipment and full responsibility for any damage to or loss of such equipment. The relationship between the public affairs staff and employees of the CE contractor is that of Government employees working with employees of a private contractor. Supervision of CE employees; that is, the responsibility to rate performance, set rate of pay, grant vacation time, exercise discipline, assign day-to-day administrative tasks, etc., remains with the CE publisher. Any modification of the contract must be made by the responsible contracting officer. Public affairs staff members must be aware that employees of the contractor are not employees of the government and should be treated accordingly.

F. Distribution of CE Publications

1. A funded newspaper shall not be distributed as an insert to a CE newspaper, unless provided for in the CE contract, nor shall a CE newspaper be distributed as an insert to a funded newspaper.

2. Supplements, clearly labeled as such, and advertising inserts, may be inserted into and distributed with a CE newspaper.

3. The commercial publisher of a CE publication shall make as much of the distribution to the intended readership as possible. CE publications may be distributed through official channels.

4. Except as authorized by the next higher headquarters for special situations or occasions (such as an installation open house), CE newspapers shall not be distributed outside the intended DoD audience and retirees, which includes family members. The CE publisher may provide complete copies of each specific issue of a CE publication to an advertiser whose advertisement is carried therein.

5. The CE publisher of a CE newspaper will provide the appropriate number of news racks determined by the installation commander for publication distribution. CE publishers are responsible for maintenance of these racks.

6. CE guides and installation maps may be delivered in bulk quantities to the appropriate installation offices to distribute these publications through official channels as necessary.

G. Responsibilities Regarding Advertising

1. Only the CE publisher shall use the space agreed upon for advertising. While the editorial content of the publication is completely controlled by the installation, the advertising section, including its content, is the responsibility of the CE publisher. The public affairs staff, however, retains the responsibility to review advertisements before they are printed.

2. Any decision by a CE publisher to accept or reject an advertisement is final. The PAO may discuss with a publisher their decision not to run an advertisement, but cannot substitute his judgment for that of the publisher.

3. Before each issue of a CE publication is printed, the public affairs staff shall review advertisements to identify any that are contrary to law or to DoD or Military Service regulations, including this part, or that may pose a danger or detriment to DoD personnel or their family members, or that interfere with the command or installation missions. It is in the command's best interest to carefully apply DoD and Service regulations and request exclusion of only those advertisements that are clearly in violation of this part. If any such advertisements are identified, the public affairs office shall obtain a legal coordination of the proposed exclusion. After coordination, the public affairs office shall request, in writing if necessary, that the commercial publisher delete any such advertisements. If the publisher prints the issue containing the objectionable advertisement(s), the commander may prohibit distribution in accordance with DoD Directive 1325.6.[1]

4. DoD Directive 1325.6 gives the commander authority to prohibit distribution on the installation of a CE publication containing advertising he or she determines likely to promote a situation leading to potential riots or other disturbances, or when the circulation of such advertising may present a danger to loyalty, discipline, or morale of personnel. Each commander shall determine whether particular advertisements to be placed by the publisher in a CE publication serving the command or installation may interfere with successful mission performance. Some considerations in this decision are the local situation, the content of the proposed advertisement, and the past performance of the advertiser. Prior to making a determination to prohibit distribution of a CE newspaper, the commander shall obtain a legal coordination.

5. CE publications may carry paid and nonpaid advertising of the products and services of nonappropriated fund activities and commissaries, if allowed by DoD and Military Service regulations. (See DoD Instruction 1015.2.)[2]

6. Bingo games and lotteries conducted by a commercial organization whose primary business is conducting lotteries may not be advertised in CE publications. Non-lottery activities (such as dining at a restaurant or attending a musical performance) of a commercial organization whose primary business is conducting lotteries may be advertised in CE publications. Exceptions are allowed for authorized State lotteries, lotteries conducted by a not-for-profit organization or a governmental organization, or conducted as a promotional activity by a commercial organization and clearly occasional and ancillary to the primary business of that organization. An exception also pertains to any gaming conducted by an Indian tribe under 25 U.S.C. 2720. See section D. of appendix C to this part.

H. CE Guides and Maps

1. The name of the publication may include the name and emblem of the command or installation.

2. At the discretion of the commander, an installation telephone directory may be included as a section of a CE guide. The telephone section shall be integral to the guide, not separable, and part of the guide contract specifications. Separate CE telephone directories are not authorized. Required communication security information shall be printed on the first page of the telephone section and not on the cover of the guide. The cover of the guide may notify users that the publication contains the telephone directory.

3. CE contracts for guides and maps shall establish firm delivery dates and shall contain provisions to ensure distribution is controlled by the command. Delivery dates may vary for guides and maps to make them more attractive to advertisers. The contract provisions shall specify delivery dates.

I. *Employment and gratuities.* DoD personnel involved with CE contracts shall not accept employment by or gratuities from a CE publisher. To avoid a conflict of interest, employment of spouses and minor children of DoD personnel by a contract publisher shall be in accordance with 32 CFR part 84.

J. Contracting for a CE Publication

1. *General.* The DoD Components and their subordinate commands are authorized to contract in writing for CE publications. The underlying premise of the CE concept is that the DOD Components and their subordinate commands will save money by transferring certain publishing and distribution functions to a commercial publisher selected through a competitive process. The CE publication is printed and delivered to the command, installation, or its readership in accordance with the terms of a written contract. Oral contracts are not acceptable. The right to sell and circulate advertising to the complete readership in the CE publication provides the publisher revenue to cover costs and secure earnings. The command or installation guarantees first publication and distribution of locally-produced editorial content in the publication. The publication becomes the property of the command, installation, or intended reader upon delivery in accordance with terms of the contract.

2. *Contracting process.* Whether a first time initiative to establish a CE publication or a recompetition of an existing CE contract, the process must start with advance planning as to the nature of the command's requirements, the contracting strategy, and the market of potential advertisers and competitors for the job. The CE contract solicitation and the contract itself must contain a statement of work that describes in legally sufficient detail the Government's requirements and the conditions and restrictions under which the contractor will perform. The cognizant contracting office for the CE contracting action shall be the contracting office which normally provides contracting support to the command for service contracts and other procurements of a general nature which are above the simplified small purchase threshold. The contracting officer shall combine the statement of work with appropriate contractual terms and conditions, using 48 CFR chapter I and II as guides, although CE contracts are not subject to the FAR or DFARS, because they do not involve the expenditure of appropriated funds. The resulting solicitation and contract shall completely identify the rights and obligations of both parties. Proposals shall be solicited from all known commercial publishers who could potentially become the CE contractor. Upon evaluation of the competing proposals by the Source Selection Advisory Committee (SSAC) and selection of a winner by the selecting official, the CE contract shall be awarded by the contracting officer. The CE contract shall not require the contractor to pay money to the command or to provide goods, services, or other consideration not directly related to the CE publication. In the event that only one offer is received, the SSAC may recommend to the selecting official that no award be made or that the contracting officer enter into negotiations with the sole offeror to obtain the best possible service and product for the Government.

3. *Statement of Work (SOW).* The SOW should be written to have the CE contractor perform as many of the publishing and distribution functions as practical to generate maximum savings to the Department of Defense. In so doing, care must be taken to balance Government requirements with a realistic view of the advertising revenue potential so as to achieve a contract that is commercially viable. The command's internal information needs shall be paramount. Some of the key issues that shall be addressed in the SOW follow:

a. A general description of the scope of the proposed contract including the name and nature of the publication involved; for example, weekly newspaper, annual guide and installation map. Normally, guides and installation maps are included in the same contract.

b. A description of editorial content to be carried; e.g., news, features, supplements, and factual information, along with provisions addressing the possible inclusion of contractor-furnished advertising supplements for newspapers, provided any such supplement shall have the prior approval of the commander.

c. A description of the rules for the inclusion of advertising in the publication. This provision shall specify that the commander's representative shall have the authority to specify newspaper advertising layout when required to enhance communications' effectiveness of the publication and shall require the contractor to notify advertisers of the requirements in § 247.4(i) and (j). The Military Departments will coordinate a standard set of ratios of advertising-to-editorial copy for multiples of pages for run of the publication advertising in CE newspapers that will be included in all DoD Component regulations supplementing this part. The recommended annual average is a ratio of 60/40. Inserts and advertising supplements will not count in the total ad to copy ratio; however, the commander may prohibit the distribution of supplemental advertising deemed excessive. Contract provisions shall be formulated to prohibit the amount of advertising a publisher sells from forcing the contracting command or installation public affairs staff to produce editorial content exceeding that required for the command internal communication mission of the newspaper.

d. A provision substantially as follows: "The contractor agrees not to enter into any

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section 4. of this appendix.

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exclusive advertising agreement with any firm, broker, or individual for the purpose of selling advertising associated with this contract."

e. A description of the CE contractor's responsibilities for distribution of the newspaper. This provision should address such matters as contractor furnishing of news racks along with contractor responsibility for maintenance of these racks.

f. A description of contractor-owned and/or contractor-furnished equipment such as text editing, copy terminals, and modems determined to be required to coordinate layout and ensure that the preparation of editorial material is performed in such a way as to enhance the effisiency and effectiveness of the publication process.

g. A description of contractor-furnished editorial support services determined to be required. Such description must be in terms of the end product required; e.g., photography service and/or writer/reporter services, and not as a requirement to make available certain contractor personnel. In day-to-day performance and administration of the CE contract, contractor personnel performing such support services shall not be treated in any way as though they are Government employees.

h. A provision that the use, where economically feasible, of recycled paper for internal products will be a consideration for awarding the contract, as stated in § 247.6(e)

i. SOW's and RFP's for CE newspapers shall specify standard newsprint, recylable, sucject to requirements of applicable laws and regulations.

4. *Contract provisions.* The CE concept is based on an exception to the Government Printing and Binding Regulations[3] published by the Congressional Joint Committee on Printing. While CE contracts are not subject to the FAR (48 CFR chapter I) or the DFARS (48 CFR chapter II), the FAR contains many clauses that are useful in protecting the interest of the Governemnt. The following clauses may be helpful in obtaining the best possible CE publication.

a. *Status of FAR clause.* To clarify the status of FAR clauses appearing in CE contracts, the following clause shall be included in all CE contracts:

"The (name of DoD installation/unit/organization) is an element of the United States Government. This agreement is a United States Government contract authorized under the provisions of Department of Defense Instruction 5120.4 as an exception to the Government Printing and Binding Regulations published by the Congressional Joint Committee on Printing. Although this contract is not subject to the Federal Acquisition Regulation (FAR) or the Defense Supplement (DFARS), FAR clauses useful in protecting the interests of the Government and implementing those provision required by law are included in this contract."

b. *Option clause.* Insert a clause substantially the same as the following to extend the term of the CE publisher contract:

(1) "The Government may extend the term of this contract by written notice to the contractor within [insert in the clause the period of time in which the contracting officer has to exercise the option]; provided that the Government shall give the contractor a preliminary written notice of its intent to exercise the option at least 60 days before the contract expires. The preliminary notice does not commit the government to exercise the option." In the case of base closure or realignment the publisher has the right to request a renegotiation of the contract.

(2) "If the Government exercises this option, the extended contract shall be considered to include this option provision."

(3) "The total duration of this contract, including the exercise of any options under this clause, shall not exceed 6 years."

c. *Default clause.* Insert the following clause in solicitations and contracts:

(1) "The Government may, be written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:

(a) Deliver the CE publications in the quantities required or to perform the services within the time specified in this contract or any extension;

(b) Make progress, so as to endanger performance of this contract;

(c) Perform any of the other provisions of this contract."

(2) "If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the contracting officer considers appropriate, supplies or services similar to those terminated. However, the contractor shall continue the work not terminated."

(3) "The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract."

d. *Termination for convenience of the Government.* Insert the following clause in solicitations and contracts:

"The contracting officer, by written notice, may terminate this contract, in whole or in part if the services contracted for are no longer required by the Government, or when it is in the Government's interest, such as with installation closures. Any such termination shall be at no cost to the Government." The Government will use its best efforts to mitigate financial hardship on the publisher.

5. *Term of contract.* CE contracts may be entered into for an initial period of up to 2 years, and may contain options to extend the contract for one or more additional periods of 1 or 2 years duration. The total period of the contract, including options, shall not exceed 6 years, after which the contract must be recompeted.

6. *Exercise of options.* Under normal circumstances, when the contractor is performing satisfactorily, options for additional periods of performance should be exercised. However, the exercise of the option is the exclusive right of the Government, and decisions not to exercise the option, or to test the market before option exercise, are within the contracting officer's discretion working in concert with the PAO and other command officials.

7. *Modification of the contract.* Any changes to the SOW or other terms and conditions of the contract shall be made by written contract modification signed by both parties.

8. *SSAC.* The commander shall appoint an SSAC. The committee shall participate in the development of the Source Selection Plan (SSP) before the solicitation of proposals, evaluate proposals, and recommend a source to the selecting official. Since cost is not a factor in the evaluation, award will be based on technical proposals, the offeror's experience and/or qualifications, and past performance.

a. The SSAC shall consist of a minimum of five voting members: A chairperson, who shall be a senior member of the command; senior representatives from public affairs and printing; and a minimum of two other functional specialists with skills relevant to the selection process. Each SSAC shall have non-voting legal and contracting advisors to assist in the selection process.

b. In arriving at its recommendations, the SSAC shall follow the SSP and avail itself of all relevant information, including the proposals submitted, independently derived data regarding offerors' performance records, the results of on-site surveys of offerors' facilities, where feasible, and in appropriate cases, personal presentations by offerors.

c. The work of the SSAC must be coordinated with the contracting officer to ensure that the process is objective and fair. All communications between the offerors and the Government shall be through the contracting officer. No member of the SSAC or the selecting official shall communicate directly with any offeror regarding the source selection.

d. In cases where a losing competitor requests a debriefing from the contracting officer, members of the SSAC may be called upon to participate so as to give the losing competitor the most thorough explanation practical as to why its proposal was not successful. No information regarding competitors' proposals shall be discussed with the unsuccessful offerors during debriefings, discussions, or negotiations.

9. *SSP.* A SSP (see sample SSP at attachment 1 to this appendix) must be developed early in the planning process to serve as a guide for the personnel involved and ensure a fair and objective process and a successful outcome. The contracting officer is primarily responsible for development of the SSP, in coordination with the PAO and other members of the SSAC. Ideally, the SSP should be completed and approved prior to issuance of the solicitation; it must be completed and approved before the receipt of proposals.

10. *Evaluation criteria and proposal requirements.* The solicitation must specify, in relative order of importance, the factors the Government will consider in selecting the most advantageous proposal. In addition, the solicitation must specify the types of information the proposal must contain to be properly evaluated. These two aspects of the solicitation must closely parallel one another. The contracting officer is primarily responsible for development of these two solicitation provisions, in coordination with the PAO, legal counsel, and members of the SSAC.

a. *Evaluation criteria for award.* Drawing upon the SSP, this feature of the solicitation must advise offerors what factors the Government will consider in evaluating proposals and the relative importance of each factor. The attached sample SSP (attachment 1 to this enclosure) provides an example of criteria that might be used. Note that under the "Services and/or Items Offered" factor, paragraph E.2.b. of attachment 1 to this appendix, it is necessary to list and indicate the relative importance of services and/or items *above the minimum requirements of the SOW* that the command would consider desirable and that, if offered, will enhance the offeror's evaluation standing. The offer of services and/or items not listed in the evaluation criteria shall not be considered in the evaluation of proposals, but may be accepted in the contract award if deemed valuable to the Government, PROVIDED the service and/or item involved is directly related to producing the publication and not in violation of any other statute or regulation. Examples of items that cannot be considered during the evaluation process are; press kits, laminated maps, economic development reports, or other separate publications not an integral part of the CE newspaper, guide, or installation map.

b. *Proposal requirements.* This provision of the solicitation must describe the specific and general types of information necessary to be submitted as part of the proposal to be evaluated. Offerors shall be notified that unnecessarily elaborate proposals are not desired.

[3] Copies may be obtained, at cost, from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Attachment 1 to Appendix B to Part 247—SSP

A. Introduction

1. The objectives of this plan are:

a. To ensure an impartial, equitable, and thorough evaluation of all offerors' proposals in accordance with the evaluation criteria presented in the request for proposals (RFP).

b. To ensure that the contracting officer is provided technical evaluation findings of the SSAC in such a manner that selection of the offer most advantageous to the Government is ensured.

c. To document clearly and thoroughly all aspects of the evaluation and decision process to provide effective debriefings to unsuccessful offerors, to respond to legal challenges to the selection, and to ensure adherence to evaluation criteria.

2. This plan will be used to select a CE contractor for publication of the _____ newspaper (CE guide or installation map) and will:

a. Give each SSAC member a clear understanding of his or her responsibilities as well as a complete overview of the evaluation process.

b. Establish a well-balanced evaluation structure, equitable and uniform scoring procedures, and a thorough and accurate appraisal of all considerations pertinent to the negotiated contracting process.

c. Provide the selecting official with meaningful findings that are clearly presented and founded on the collective, independent judgment of technical and managerial experts.

d. Ensure identification and selection of a contractor whose final proposal offers optimum satisfaction of the Government's technical and managerial requirements as expressed in the RFP.

e. Serve as part of the official record for the evaluation process.

B. Organization and Staffing

1. The SSAC will consist of the Chairperson and a minimum of four other voting committee members plus the non-voting advisors to the SSAC.

2. The SSAC committee members are:

Name	Position
	Chairperson
	Member
	Member
	Member
	Member
	Legal Advisor[1]
	Contract Advisor[1]

[1] Non-voting members.

C. Responsibilities

1. Selecting Official:

a. Approves the SSP.

b. Reviews the evaluation and findings of the SSAC.

c. Considers the SSAC's recommendation of award.

d. Selects the successful offeror.

2. Chairperson of the Source Selection Advisory Committee (C/SSAC):

a. Reviews the SSP.

b. Approves membership of the SSAC.

c. Analyzes the evaluation and findings of the SSAC and applies weights to the evaluation results.

d. Approves the SSAC report for submission to the selecting official.

3. Contracting Officer:

a. Is responsible for the proper and efficient conduct of the entire source selection process encompassing solicitation, evaluation, selection, and contract award.

b. Provides SSAC and the selecting official with guidance and instructions to conduct the evaluation and selection process.

c. Receives proposals submitted and makes them available to the SSAC, taking necessary precautions to ensure against premature or unauthorized disclosure of source selection information.

4. SSAC members shall:

a. Familiarize themselves with the RFP and SSP.

b. Provide a fair and impartial review and evaluation of each proposal against the solicitation requirements and evaluation criteria.

c. Provide written documentation substantiating their evaluations to include strengths, weaknesses, and any deficiencies of each proposal.

5. Legal advisor:

a. Reviews RFP and SSP for form and legality.

b. Advises the SSAC members of their duties and responsibilities, regarding procurement integrity issues and confidentiality requirements.

c. Participate in SSAC meetings and provide legal advice as required.

d. Provides legal review of all documents supporting the selection decision to ensure legal sufficiency and consistency with the evaluation criteria in the RFP and SSP.

e. Advises the selecting official on the legality of the selection decision.

D. Administrative Instructions

1. *Evaluation overview.* The advisory committee will operate with maximum flexibility. Collective discussion by evaluators at committee meetings of their evaluation findings is permitted in the interchange of viewpoints regarding strengths, weaknesses, and deficiencies noted in the proposals relating to evaluation items. Evaluators will not suggest or disclose numerical scores or other information regarding the relative standing of offerors outside of committee meetings.

2. *Evaluation procedure.* The evaluation of offers is based on good judgment and a thorough knowledge of the guidelines and criteria applicable to each evaluation factor.

a. Numerical scoring is merely reflective of the composite findings of the SSAC. The evaluation scoring system is used as a tool to assist the Chairperson of the SSAC in determining the proposal most advantageous to the Government.

b. The most important documents supporting the contract award will be the findings, conclusions, and reports of the SSAC.

3. *Safeguarding data.* The sensitivity of the proceedings and documentation require stringent and special safeguards throughout the evaluation process:

a. Inadvertent release of information could be a source of considerable misunderstanding and embarrassment to the Government. It is imperative, therefore, for all members of the SSAC to avoid any unauthorized disclosures of information pertaining to this evaluation. Evaluation participants will observe the following rules:

(1) All offeror and evaluation materials will be secured when not in use (i.e., during breaks, lunch, and at the end of the day).

(2) All attempted communications by offeror's representatives shall be directed to the contracting officer. No communications between members of the SSAC or the selecting official and offerors regarding the contract award or evaluation is permitted except when called upon under the provisions of paragraph J.8.d, of appendix B to this part.

(3) Neither SSAC members or the selecting official shall disclose anything pertaining to the source selection process to any offeror except as authorized by the contracting officer.

(4) Neither SSAC members or the selecting official shall discuss the substantive issues of the evaluation with any unauthorized individual, even after award of the contract.

E. Technical Evaluation Procedures

1. *Evaluation process.* Proposals will be evaluated based on the following criteria as indicated in Section M of the solicitation: The evaluation worksheet (attachment 2 to this appendix) shall be used to score the

technical factors. Using the technical evaluation worksheet, each member of the SSAC will independently review each proposal and assign an appropriate number of points to each factor being considered. Point scores for each factor will range from "0" to "5" based on the committee member's evaluation of the proposal. Upon completion of individual evaluations, the group will meet in committee with the Chairperson and arrive at a single numeric score for each factor in the proposal.

2. *Criteria.* An example of applicable evaluation criteria and their relative order of importance are listed below in paragraphs E.2. a. through d of this appendix. Criteria and weights are provided as an example only. The SSAC must determine its own weighting factors tailored to meet the needs of the particular CE publication and describe the relative weights assigned to the RFP; e.g., "Evaluation factors are listed in descending order of importance; criteria #1 is twice as important as criteria #2," etc.

a. *Technical and production capability.* Scores will range from "0" (unacceptable), to "5" (exhibits state-of-the-art, award winning, or clearly superior technical ability to produce the required newspaper, guide, or installation map). Factors to be considered for newspaper contracts include: Level of automation; compatibility of automation with existing PAO automation (unless other automation is provided); printing capability; production equipment; physical plant (capabilities); and driving distance to the plant. Similar factors may be considered for guides and installation maps.

b. *Services and/or items offered.* Scores will range from "0" (unacceptable), to "5" (the offer of equipment, such as automation equipment; or services, such as editorial or photographic services as set forth in the contract solicitation that will greatly enhance the newspaper and/or its production). Factors to be considered for newspapers include: Offer of automation equipment and the quality and amount of equipment offered; the quality and amount of services offered; the usefulness of the services and/or items to the pubic affairs office in enhancing the newspaper; the impact of the services and/or items on other parts of the contract. Similar factors may be considered for guides and installation maps. The offer of equipment or services not specifically related to producing the publication will not result in the assignment of a higher score.

c. *Past performance record.* Scores will range from "0" (no experience in newspaper, guide, or installation map publishing and/or unsatisfactory, previous performance), to "5" (long-term, highly successful experience publishing similar newspapers, guides, or installation maps). Factors to be considered include: demonstrated ability to successfully produce a CE or similar publication; demonstrated printing ability (types of printing, history of newspaper, guide, or installation map printing); demonstrated success in contract performance in a timely and responsive manner; demonstrated capability to sell advertising and successfully recoup publication costs.

d. *Management approach.* Scores will range from "0" (approach unacceptable), to "5" (proposal demonstrates a sound and innovative approach to interfacing with the PAO and managing the CE publication operation). Factors to be considered include: The offeror's proposed approach to:

(1) Interfacing with the PAO staff.

(2) Controlling the quality and timeliness of the finished product.

(3) Sale of ads of the type that enhance the publication's image in the community and with the readership at large.

(4) Ensuring that contractor's personnel are properly supervised and managed.

3. *Weighting factors.* Points will be assigned to the final score of each factor in a proposal as determined by multiplying the score assigned (e.g., "0," "1," "2," "3," "4," or "5") by the relative weight of the individual criterion as indicated:

Factor	Relative weight (percent)	Maximum points
Criterion 1	40	200
Criterion 2	30	150
Criterion 3	20	100
Criterion 4	10	50
		500

(Example Only):

Criterion 1 Score 5 (5 × 40) Total Points	200
Criterion 1 Score 4 (4 × 30) Total Points	120
Criterion 1 Score 3 (3 × 20) Total Points	60
Criterion 1 Score 2 (2 × 10) Total Points	20
	400

4. *Report of findings and recommendations.* After the SSAC has completed final evaluation of proposals and all weighting has been completed, the committee will prepare a written report of its findings and recommendations, setting forth the consensus of the committee and its composite scores (Sample at attachment 3 to this appendix). The Chairperson will sign the report to confirm its accuracy and his agreement with the recommendation. All copies of proposals and evaluation worksheets will be returned to the contracting officer.

Attachment 2 to Appendix B to Part 247—Sample Evaluation Worksheet

CONTRACTOR _____

Evaluator _____

DATE _____

Evaluation Criteria and Scores (Range 0–5 Points for Each)

1. Technical and production capability:

_____

2. Services and items offered:

_____

3. Past performance record:

_____

4. Management approach:

_____

[1] NARRATIVE DISCUSSION:
Strengths
Weaknesses
Deficiencies

Attachment 3 to Appendix B to Part 247—Sample Memorandum for Selecting Official

Subject: Evaluation of Proposals RFP No. _____

1. All proposals received in response to subject RFP have been evaluated by the Source Selection Advisory Committee (SSAC). The results and comments are listed below.

a. Offeror's proposals were rated as follows:

Offeror Name	Numerical Score

b. Summary Narrative Comments. (This section of the report shall be a summary of the individual strengths and weaknesses in each proposal, along with any deficiencies that are susceptible to being cured through written or oral discussions with the offeror, as noted by the SSC evaluators. This summary should be supported by detailed narratives contained on the individual evaluator's worksheets.)

2. Recommendation.

_____
Chairperson, SSAC

Appendix C to Part 247—Mailing of DoD Newspapers, CE Guides, and Installation Maps; Sales and Distribution of Non-DoD Publications

A. *Policy.* It is DoD policy that mailing costs shall be kept at a minimum consistent with timeliness and applicable postal regulations. (See DoD Instruction 4525.7[1] and DoD 4525.8–M.[2] Responsible officials shall consult with appropriate postal authorities to obtain resolution of specific problems.

B. *Definition.* DoD appropriated fund postage includes all means of paying postage using funds appropriated for the Department of Defense. These means include meter imprints and stamps, permit imprints, postage stamps, and other means authorized by the U.S. Postal Service.

C. Use of Appropriated Fund Postage

1. DoD appropriated fund postage shall be used only for:

a. Mailing copies to satisfy mandatory distribution requirements.

b. Mailing copies to other public affairs offices for administrative purposes.

c. Mailing copies to headquarters in the chain of command.

[1] Discussions of strengths, weaknesses, and deficiencies should reference the specific evaluation factor involved to ensure that proposals are evaluated only against the criterion set forth in the RFP, to facilitate debriefings, and to provide an effective defense to any challenges regarding the legality of the selection process.)

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section A. of this appendix.

d. Bulk mailings of DoD newspapers to subordinate units for distribution to members of the units.

e. Mailing information copies to other U.S. Government Agencies, Members of Congress, libraries, hospitals, schools, and depositories.

f. Mailing of an individual copy of a DoD newspaper or CE publication in response to an unsolicited request from a private person, firm, or organization, if such response is in the best interest of the DoD Components or its subordinate levels of command.

g. Mailing copies of DoD newspapers, guides, or installation maps to incoming DoD personnel and their families to orient them to their new command, installation, and community.

2. DoD appropriated fund postage shall not be used for mailing:

a. To the general readership of DoD newspapers, guides, and installation maps, unless specifically excepted in this part.

b. By a CE publisher.

c. CE publications other than newspapers in bulk. (See paragraph C.1.d. of this section).

3. Generally, DoD newspapers and CE publications shall be mailed as second class Requester Publication Rate, third-class bulk, or third- or fourth-class mail.

D. *Legal prohibitions.* Compliance with 18 U.S.C. 1302 and 1307 is mandatory. 18 U.S.C. 1302 prohibits the mailing of publications containing advertisements of any type of lottery or scheme that is based on lot or chance. 18 U.S.C. 1307 authorizes exceptions pertaining to authorized State lotteries, lotteries conducted by a not-for-profit organization or a governmental organization, or conducted as a promotional activity by a commercial organization and clearly occasional and ancillary to the primary business of that organization. An exception also pertains to any gaming conducted by an Indian tribe under 25 U.S.C. 2720. Lottery is defined as containing the following three elements:

1. Prize (whatever items of value are offered in the particular game).

2. Chance (random selection of numbers to produce a winning combination).

3. Consideration (requirement to pay a fee to play).

E. Review of Mailing and Distribution Effectiveness

1. Mailing and distribution lists shall be reviewed annually to determine distribution effectiveness and continuing need of each recipient to receive the publication.

2. Distribution techniques, target audiences, readers-per-copy ratios, and use of the U.S. Postal Service to ensure the most economical use of mail services consistent with timeliness shall be revalidated annually.

F. *Non-DoD publications.* A commander shall afford reputable distributors of other publications the opportunity to sell or give away publications at the activity he or she commands in accordance with DoD Directive 1325.6.[3] Such publications shall not be distributed through official channels. These publications may be made available through subscription paid for by the recipient or placed in specific general use areas designated by the commander, such as the foyers of open messes or exchanges. They will be placed only in stands or racks provided by the responsible publisher. The responsible publisher will maintain the stand or rack to present a neat and orderly appearance. Subscriptions paid for by a recipient may be home-delivered by the commercial distributor in installation residential areas.

[3] See footnote 1 to section A. of this appendix.

Appendix D to Part 247—AFIS Print Media Directorate

A. *General.* The Print Media Directorate (AFIS–PM), an element of AFIS, develops, publishes, procures, and distributes a variety of print media products that support DoD-wide programs and policies for targeted audiences throughout the DoD community. Products include the following:

1. *Press and Art Pack*, a weekly package of camera-ready articles, photographs, and art distributed principally to DoD newspaper editors containing articles addressing several of the DoD internal information plan subject areas.

2. *DEFENSE* magazine, a bimonthly periodical featuring articles authored by senior military and civilian officials on DoD programs and policies. An annual almanac edition highlights DoD's organization.

3. *Defense Billboard*, a monthly poster featuring topics of particular interest to junior Military Service members, but applicable to general DoD audiences.

4. Pamphlets, booklets, and other posters covering a variety of joint interest information topics.

5. AFIS–PM also posts the *Press and Art Pack* and selected feature stories on Army, Navy, Air Force, Coast Guard, and OATSD(PA) computer bulletin boards. PAOs and editors may download text and art in a form readily usable for word processing or desktop publishing.

B. *Use of materials published by print media directorate.* With the exception of copyrighted matter, all materials published by AFIS–PM may be reproduced or adapted for use by DoD newspaper editors as appropriate. When AFIS–PM material is edited or revised, accuracy and conformance to DoD policy and accepted standards of good taste will be maintained. Due to the policy-oriented nature of *DEFENSE* magazine contents, particular care shall be taken to preserve the original context, tone, and meaning of any material adapted, revised, or edited from this publication.

C. *Eligible activities.* The following activities are eligible to receive the above listed AFIS–PM products:

1. All authorized DoD newspapers.

2. Headquarters of the DoD Components and their subordinate commands.

3. Proponent offices of DoD periodicals published by the DoD Components.

4. AFRTS networks and outlets.

5. Isolated commands and detachments at which DoD newspapers are not readily available.

D. Procedures

1. The *Press and Art Pack* is mailed directly to requesting eligible organizations. Requests should be forwarded directly to: American Forces Information Service, Director of Print Media, 601 North Fairfax Street, Room 230, Alexandria, VA 22314–2007.

2. Requests shall include name and address of newspaper or activity, frequency of publication, whether the requesting newspaper is funded or CE, and a sample copy of the publication.

3. Notification of changes of address, newspaper title, or other status shall be forwarded immediately to the address in paragraph D.1. of this appendix.

4. All other AFIS–PM materials should be requisitioned through the Military Service's or organization's publications distribution system.

Appendix E to Part 247—DoD Command Newspaper Review System

A. *Purpose.* The purpose of the DoD command newspaper review system is to assist commanders in establishing and maintaining cost-effective internal communications essential to mission accomplishment. The system also enables internal information managers to assess the cost and effective use of resources devoted to command newspapers and to provide requested reports.

B. *Policy.* DoD newspapers shall be reviewed and reported biennially. The review process is not intended to replace day-to-day quality assurance procedures or established critique programs.

C. *Review criteria.* Each newspaper shall be evaluated on the basis of mission essentiality, communication effectiveness, cost-effectiveness, and compliance with applicable regulations.

D. Reporting Requirements

1. The DoD Components (less the Military Departments) shall forward, by January 31 of each even numbered year, the information indicated at attachment 1 to this appendix for each newspaper published to: Director, American Forces Information Service, Attn: Print Media Plans and Policy, 601 North Fairfax Street, Alexandria, VA 22314–2007.

2. No later than April 15 of each even-numbered year, the Secretary (or designee) of each Military Department shall forward to the address above a report of the Military Department's review of newspapers. This report shall include summary data on total number of newspapers, along with a listing of the information indicated at attachment 1 to this appendix.

3. One information copy of each issue of all DoD newspapers shall be forwarded on publication date to the address in paragraph H.1. of this appendix.

4. Information copies of CE newspaper contracts shall be forwarded to the address in paragraph H.1. of this appendix, upon request.

5. Administrative Instructions shall be issued by the Director, AFIS, for the annual review and reporting of newspapers.

Attachment 1 to Appendix E to Part 247—Newspaper Reporting Data

As required by section H. of this appendix, the following information shall be provided biennially regarding newspapers:

A. Name of newspaper.

B. Publishing command and mailing address.
C. Printing arrangement:
1. Government equipment.
2. Government contract with commercial printer.
3. CE contract with commercial publisher (give name, mailing address, and phone number of commercial publisher).
D. Automation capabilities (desktop publishing, computer bulletin board, etc.)
E. Frequency and number of issues per year.
F. Number of copies printed and estimated readership.
G. Paper size (metro, tabloid, or magazine/newsletter) and average number of pages per issue.
H. Size of newspaper staff, listed as full time, part time, and contractor-provided.

Appendix F to Part 247—Deputy Secretary of Defense Policy Memorandum

The Deputy Secretary of Defense

Washington, D.C. 20301

December 9, 1994.

Memorandum for Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, Under Secretaries of Defense Director, Defense Research and Engineering, Assistant Secretaries of Defense, General Counsel of the Department of Defense, Inspector General of the Department of Defense, Director, Operational Test and Evaluation, Assistants to the Secretary of Defense, Director, Administration and Management, Directors of the Defense Agencies, Directors of DOD Field Activities

Subject: Alteration of Official Photographic and Video Imagery

Photographic and video imagery has become an essential tool of decision makers at every level of command and in every theater of military operations. Mission success and ultimately the lives of our men and women in uniform depend on this imagery being complete, timely, and, above all, highly accurate. Anything that weakens or casts doubt on the credibility of this imagery within or outside the Department of Defense will not be tolerated.

The emergence of digital technology has significantly increased the capability of altering photographic and video imagery. This capability represents a potential threat to the credibility of Defense imagery. Since current Federal Regulations and DoD Directives do not specifically address the deliberate alteration of official photographic records, I believe guidance is required. I am providing this guidance by establishing the following as Department of Defense policy on the alteration of official photographic and video imagery:

a. The alteration of official Defense imagery by persons acting for or on behalf of the Department of Defense is prohibited except as outlined below:

(1) Photographic techniques common to traditional darkrooms and digital imaging stations such as dodging, burning, color balancing, spotting, and contrast adjustment that are used to achieve the accurate recording of an event or object are not considered alterations.

(2) Photographic and video image enhancement, exploitation, and simulation techniques used in support of unique cartography, geodesy, intelligence, medical, RDT&E, scientific, and training requirements are authorized if they do not misrepresent the subject to the original image.

(3) The obvious masking of portions of a photographic image in support of specific security or criminal investigation requirements is authorized.

(4) The use of cropping, editing, or enlargement to selectively isolate, link, or display a portion of a photographic or video image is not considered alteration. However, cropping, editing, or image enlargement which has the effect of misrepresenting the facts or circumstances of the event or object as originally recorded constitutes a prohibited alteration.

(5) The digital conversion and compression of photographic and video imagery are authorized.

(6) Photographic and video post-production enhancement, including animation, digital simulation, graphics, and special effects, used for dramatic or narrative effect in education, recruiting, safety and training illustrations, publications, or productions is authorized under either of the following conditions:

(a) the enhancement does not misrepresent the subject of the original image, or;

(b) it is clearly and readily apparent from the context or from the content of the image or accompanying text that the enhanced image is not intended to be an accurate representation of any actual event.

b. Official Defense imagery includes all photographic and video images, regardless of the medium in which they are acquired, stored, or displayed, that are recorded or produced by persons acting for or on behalf of Department of Defense activities, functions, or missions.

My intent with the above policy is to ensure the absolute credibility of official DoD photographic and video imagery within and outside the Department of Defense.

This memorandum is effective immediately. A DoD Directive incorporating the substance of this memorandum shall be issued within 90 days.

Dated: July 21, 1995.

John Deutsch.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18470 Filed 7–28–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905–AE17

Grants for the Establishment of Departments of Family Medicine

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to a final rule that revised the existing regulations governing the Grants for the Establishment of Departments of Family Medicine program published in the **Federal Register** on May 30, 1995 (60 FR 28065).

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Betty B. Hambleton at (301) 443–1590.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published on May 30, 1995, the preamble discussion for § 57.1709 on page 28066, third column, indicated in paragraph (b) that the Department was removing "the parenthetical phrase at the end of the section text citing the OMB approval number regarding information collection requirements as no longer necessary". The parenthetical phrase to be removed read "(Approved by the Office of Management and Budget under control number 0915–0060)". When the final rule was published, the parenthetical phrase was not removed in the regulatory text on page 28067. This notice is correcting that editorial mistake.

Correction of Publication

Accordingly, the publication on May 30, 1995 of the final regulations, which were the subject of FR Doc. 95–13130, is corrected as follows:

§ 57.1709 [Corrected]

Item 6. On page 28067, in the third column, § 57.1709 is corrected to read as follows:

§ 57.1709 What other audit and inspection requirements apply to grantees?

Each entity which receives a grant under this subpart must meet the requirements of 45 CFR part 74 concerning audit and inspection.

Dated: July 20, 1995.

Neil Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–18627 Filed 7–28–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1]

Organization and Delegation of Powers and Duties; Transfer of Delegation From Coast Guard to Saint Lawrence Seaway Development Corporation

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The Coast Guard's responsibility for administering the Secretary's functions under the Great Lakes Pilotage Act of 1960, as amended, and the Secretary's authority to enter into, revise, or amend arrangements with Canada, are being transferred to the Saint Lawrence Seaway Development Corporation. This rule amends the delegations to be in accordance with the changed responsibilities. The rule is necessary to reflect the delegations in the Code of Federal Regulations.

DATES: This rule becomes effective October 30, 1995; comments must be received on or before September 29, 1995. Late-filed comments will be considered only to the extent practicable.

ADDRESSES: All signed, written comments should be sent, preferably in triplicate, to the Docket Clerk, OST Docket No. 1, United States Department of Transportation, 400 7th Street SW., Room PL–401, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, United States Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Coast Guard's responsibility for administering the Secretary's functions under the Great Lakes Pilotage Act of 1960, as amended, (the Act) is being transferred to the Saint Lawrence Seaway Development Corporation (SLSDC). This rule amends the delegations to be in accordance with the changed responsibilities. The functions that are being transferred are considered to have economic effects and include the following: (1) Investigation and prosecution of violations of the Act; (2) registration, qualification, and training of registered pilots; (3) association working rules and dispatching procedures; (4) pilot working conditions; (5) selection of pilots; (6) number of pilots; (7) availability of pilots; (8) number of pilotage pools; (9) articles of association; (10) auditing; and (11) ratemaking. The licensing of pilots and the investigation and prosecution of marine accidents and incidents are essential Coast Guard safety functions that are separate from the Act and Great Lakes Pilotage regulations. These functions will remain with the Coast Guard.

In response to pilot concerns, transfer of economic pilotage responsibilities to the SLSDC will place pilotage under permanent civilian authority, and placing pilotage in a smaller organization with an established presence on the Great Lakes will give pilotage issues greater visibility and more timely attention. In addition, SLSDC is being given authority to negotiate directly with Canada, which will allow timely adjustments to pilotage rates. The lack of timely adjustments has been a subject of past pilot criticism.

The Secretary's authority to enter into, revise, or amend arrangements with Canada is being delegated to SLSDC Administrator in coordination with the General Counsel of the Department of Transportation. A Memorandum of Arrangements between the United States and Canada, last renegotiated in 1977, states that the Secretary and the Minister of Transport of Canada "will arrange for the establishment of regulations imposing identical rates, charges, and any other conditions or terms for services of pilots in the waters of the Great Lakes. * * *" In 1983, the Act was amended to provide that the "Secretary, subject to the concurrence of the Secretary of State, may make agreements with the appropriate agency of Canada to * * * prescribe joint or identical rates and charges * * *."

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. Nevertheless, because of Congressional and public interest in Great Lakes Pilotage, the Department is opening a public docket for this rule and providing 60 days for the receipt of public comment. We will consider any new matters presented to us during the 60-day comment period. We will make revisions to this rule if we believe they are warranted. Unless rescinded by a subsequent publication in the **Federal Register**, the interim final rule will go into effect on October 30, 1995. If the delegation to SLSDC becomes effective, we will publish a final rule that will redesignate those portions of the Coast Guard's Great Lakes Pilotage regulations that are necessary for SLSDC to carry out its responsibilities under the Act.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.46 [Amended]

2. Section 1.46(a) is removed and reserved.

3. Section 1.52 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 1.52 Delegations to Saint Lawrence Seaway Development Corporation Administrator.

* * * * *

(d) Carry out the Great Lakes Pilotage Act of 1960, as amended, (46 U.S.C. 9301 *et seq.*).

(e) Under the 1977 Memorandum of Arrangements with Canada and the Great Lakes Pilotage Act of 1960, as amended in 1983 (46 U.S.C. 9305), enter into, revise, or amend arrangements with Canada in coordination with the General Counsel.

Issued at Washington, DC this 20th day of July, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–18499 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–62–P

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Proposed Rules

Federal Register
Vol. 60, No. 146
Monday, July 31, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 277

[Amendment No. 368]

RIN 0584–AB92

Food Stamp Program: Automated Data Processing Equipment and Services; Reduction in Reporting Requirements

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to increase the cost thresholds above which prior written Federal approval of State automated data processing (ADP) equipment and services acquisitions is required for Federal financial participation. The effect of the proposed changes would be a reduction in State reporting requirements.

Additionally, State request would be deemed to have provisionally met the prior approval requirement if FCS does not approve, disapprove, or request additional information about the request within 60 days of the agency's letter to the State acknowledging its receipt. Finally, this rule proposes to eliminate the requirement that State agencies submit written information pertaining to the State biennial system security reviews. States would be required to maintain copies of the report and pertinent supporting documentation for FCS review.

DATES: Comments must be received on or before September 29, 1995 in order to be assured of consideration.

ADDRESSES: Comments should be addressed to John H. Knaus, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at that address.

FOR FURTHER INFORMATION CONTACT: Questions concerning this proposed rulemaking should be addressed to Mr. Knaus at the above address or by telephone at (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rulemaking has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program (FSP) is listed in the Catalog of Federal Domestic Assistance under 10.551 and information on State agency administrative matching grants for the FSP is listed under 10.561. For the reasons set forth in the final rule and related notice to 7 CFR 3015, subpart v (48 FR 29115), the FSP is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the FSP the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or Part 283 (for rules related to QC Liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This rulemaking has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980, 5 U.S.C. 601–612). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule will affect State agencies by reducing the reporting requirements applicable to them.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), information collection requirements relating to automated data processing and information retrieval systems have been approved by OMB Approval No. 0584–0083. The provisions of this rule do not contain any additional reporting and/or recordkeeping requirements subject to OMB approval.

Background

State agencies acquire ADP equipment and services for computer operations which support the FSP. For Federal financial participation, States are required to obtain prior written Federal approval when ADP acquisitions for total State and Federal costs exceed the thresholds established in 7 CFR 277.18. Currently, prior approval is required for competitively bid ADP acquisitions of $500,000 or more; sole source acquisitions costing more than $100,000; project increases of $300,000 or more; most procurement documents (requests of proposals (RFPs) and contracts) of $500,000 or more; and contract amendments that cost $100,000 or more.

ADP equipment and services acquisitions under $5 million account for a small percentage of the total cost of State systems development. In the interest of improved efficiency and effectiveness of the ADP process, the Department proposes to increase thresholds above which prior approval is required. This change would reduce the reporting burden on States and provide for better use of Federal resources.

The higher thresholds proposed in this rule would require prior approval from the U.S. Department of Agriculture (USDA) Food and Consumer Service (FCS) for: (1) advance planning documents (APDs) for ADP equipment and services acquisitions of $5 million or more in total Federal and State costs; (2) justifications for noncompetitive ADP acquisitions from nongovernment sources of more than $1 million but no more than $5 million in total Federal and State costs; (3) requests for proposals and contracts of more than $5 million in total Federal and State costs for competitive procurements and more than $1 million for noncompetitive acquisitions from nongovernmental sources, unless specifically exempted by FCS; (4) contract amendments for cost increases exceeding $1 million or time extensions of more than 120 days; (5) annual APD updates for projects with total acquisition costs of more than $5 million; and (6) as-needed APD updates for cost increases of $1 million or more (the percentage of cost benchmark is removed).

Additionally, this rule proposes to add a provision to regulations which will promote efficient operation of the prior approval requirement. The prior approval requirement would be deemed to have been provisionally met if FCS has not approved, denied or requested additional information on the request within 60 days of the Agency's written acknowledgement of its receipt. With this change, States would have a firmer basis upon which to establish project timeframes, including the need for FCS approvals. The possibility of increased costs attributable to a delay in FCS action on State funding requests would also be reduced.

This change would allow States which are confident that their requests are in compliance of Federal requirements to proceed after the 60-day period has expired without awaiting final FCS approval. However, the provisional approval would not exempt a State from having to meet all other Federal requirements which pertain to the acquisition of ADP equipment and services. Such acquisitions remain subject to Federal audit and review, and the final determinations of these audits and reviews.

Currently, State agencies are required to submit to FCS information pertaining to the biennial security review. As proposed, State agencies would no longer be required to submit this information; but security review reports and pertinent supporting documentation would have to be maintained for Federal onsite review.

This rulemaking reflects concerned efforts on the part of USDA and DHHS to promote inter-Departmental consistency and standardization. The Departments are publishing similar regulations in coordination with each other.

Regulation Changes

Regulations now require prior written approval for acquisition of ADP equipment and services if total costs are $500,000 or more in Federal and State funds. If the State plans to acquire the equipment and services non-competitively from a non-government source, prior approval is required when the total acquisition costs are greater than $100,000.

This rulemaking proposes to revise 7 CFR 277.18(c)(1) by raising the thresholds for approval of competitive acquisitions to those that will cost $5 million or more in total Federal and State funds. As proposed, noncompetitive acquisitions of $5 million or more would also require prior approval. In addition, noncompetitive acquisitions from a non-governmental source that have total State and Federal acquisition costs of more than $1 million but no more than $5 million would need prior approval of the justification for the sole source purchase. No changes are proposed for the requirements in this paragraph that apply to Electronic Benefit Transfer (EBT) systems.

Paragraphs (c)(2)(ii) (A) and (B) currently provide that, unless specifically exempted by FCS, prior written approval must be received before the release of a Request for Proposal (RFP) or execution of a contract where costs are anticipated to equal or exceed $500,000. This rule proposes to increase the threshold for prior approval of competitive procurements to those costing more than $5 million and, for noncompetitive procurements from non-government sources, to those costing more than $1 million. States could be required to submit RFPs and contracts under the threshold amounts on an exception basis or if the procurement strategy is not adequately described in the APD.

Changes to thresholds for contract amendments, specified in paragraph (c)(2)(ii)(C), are also proposed. Regulations now require that, unless specifically exempted by FCS, prior approval is required before the State's signing of a contract amendment unless it involves cost increases of less than $100,000 or time extensions of less than 60 days, and is an integral part of the APD. This rule proposes to change that requirement to provide that, unless specifically exempted by FCS, prior Federal approval would be required for contract amendments involving cost increases greater than $1 million or contract time extensions of more than 120 days. States would also be required to submit contract amendments under these thresholds on an exception basis or if the contract amendment is not adequately justified in the APD.

Proposed changes to paragraphs (c)(2)(ii) (A), (B) and (C), as discussed above, would retain FCS' right to review and approve all RFPs, contracts, and contract amendments, regardless of dollar amount on an exception basis. The exception basis could include instances where new program requirements or technology are involved, or when adequate justification in the APD has not been provided. EBT system requirements in these paragraphs would be unchanged.

States are currently required to submit for approval an annual APD Update for approved planning and implementation APDs when the total acquisition costs exceed $1 million. This rule proposes to increase the threshold for submission of these documents to those costing more than $5 million.

Paragraph (e)(3)(i) now recommends submission of "as-needed" APD updates whenever there is a significant increase ($300,000 or 10 percent, whichever is less) in total costs for a commitment of Federal financial participation for the increase. As proposed, the amount of a significant increase in total project costs would be raised to $1 million or more. There would no longer be a percentage of cost benchmark.

This rule proposes to add a new paragraph after paragraph (c)(4). To promote operation of the prior approval requirement, this new paragraph, (c)(5), would provide for provisional approval of the prior approval requirement if FCS has not provided written approval, disapproval, or a request for additional information within 60 days of issuing an acknowledge of receipt of a State's request.

Finally, this rule proposes to amend paragraph (p)(3), which requires States agencies to submit information related to the biennial security review. As proposed, State agencies would be required to maintain reports of their biennial ADP system reviews and pertinent supporting documentation for Federal on-site review.

List of Subjects in 7 CFR Part 277

Claims, Computer technology, Grant programs, Social programs.

Accordingly, 7 CFR part 277 is proposed to be amended as follows:

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

1. The authority citation for Part 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 277.18,

a. paragraph (c)(1) is revised;

b. the second sentence in paragraph (c)(2)(ii)(A) is removed and two sentences are added in its place;

c. the second sentence in paragraph (c)(2)(ii)(B) is removed and two sentences are added in its place;

d. the second sentence in paragraph (c)(2)(ii)(C) is removed and two sentences are added in its place;

e. paragraph (c)(5) is added;

f. paragraph (e)(1) is amended by removing to words "$1 million" and adding in their place the words "$5 million";

g. paragraph (e)(3)(i) is amended by removing the words "($300,000 or 10 percent, whichever is less)" and adding in their place the words "($1 million or more)";

h. the third and fourth sentences of paragraph (p)(3) are removed and one sentence is added in their place.

The revisions and additions read as follows:

§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.

* * * * *

(c) *General acquisition requirements.—(1) Requirement for prior FCS approval.* A State agency shall obtain prior written approval from FCS as specified in paragraph (c)(2) of this section when it plans to acquire ADP equipment or services with proposed FFP that it anticipates will have total acquisition costs of $5 million or more in Federal and State funds. This applies to both competitively bid and sole source acquisitions. A State agency shall also obtain prior written approval from FCS of its justification for a sole source acquisition when it plans to acquire ADP equipment or services non-competitively from a non-governmental source which has a total State and Federal acquisition cost of more than $1 million but no more than $5 million. However, a State agency shall obtain prior written approval from FCS for the acquisition of ADP equipment or services to be utilized in and EBT system regardless of the cost of the acquisition. The State agency shall request prior FCS approval by submitting the planning APD, the Implementation APD or the justification for the sole source acquisition signed by the appropriate State official to the FCS regional office.

(2) *Specific prior approval requirements.* * * *

(ii) * * *

(A) * * * However, RFPs costing up to $5 million for competitive procurement and up to $1 million for noncompetitive acquisitions from non-governmental sources and which are an integral part of the approval APD need not be submitted to FCS. Stated will be required to submit RFPs under this threshold amount on an exception basis or if the procurement strategy is not adequately described in an APD. * * *

(B) * * * However, contracts costing up to $5 million for competitive procurements and up to $1 million for noncompetitive acquisitions from nongovernmental sources, and which are an integral part of the approved APD need not be submitted to FCS. States will be required to submit contract amendments under this threshold amount on an exception basis or if the procurement strategy is not adequately described in an APD. * * *

(C) * * * However, contract amendments involving cost increases of up to $1 million or time extensions of up to 120 days, and which are an integral part of the approved ADP need not be submitted to FCS. States will be required to submit contract amendments under these threshold amounts on an exception basis or if the contract amendment is not adequately justified in an APD. * * *

* * * * *

(5) *Prompt action on requests for prior approval.* FCS will reply promptly to State requests for prior approval. If FCS has not provided written approval, disapproval or a request for additional information within 60 days of FCS' letter acknowledging receipt of the State's request, the request will be deemed to have provisionally met the prior approval requirement in 277.18(c). However, provisional approval will not exempt a State from having to meet all other Federal requirements which pertain to the acquisition of ADP equipment and services. Such requirements remain subject to Federal audit and review.

* * * * *

(p) * * *

(3) * * * State agencies shall maintain reports of their biennial ADP system security reviews, together with pertinent supporting documentation, for Federal on-site review.

* * * * *

Dated: July 26, 1995.

Ellen Haas,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 95–18789 Filed 7–28–95; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110A]

RIN 1904–AA84

Alternative Fuel Transportation Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of limited reopening of the comment period.

SUMMARY: On February 28, 1995, the Department of Energy (DOE) published a notice of proposed rulemaking (60 FR 10970) to implement statutorily-required alternative fueled vehicle acquisition requirements applicable to certain alternative fuel providers and State government fleets under sections 501 and 507(o) of the Energy Policy Act of 1992 (Act), respectively. Public hearings were held in three cities and the 60-day public comment period closed on May 1, 1995. The principal purpose of this notice is to reopen the comment period for 30 days in order to solicit comments on: options for defining the term "substantial portion" which is used to determine coverage for certain petroleum producers and importers; and options for modifying the proposed definition of "alternative fuel" with respect to alcohol fuels and biodiesel. In addition, this document announces DOE's receipt of new information regarding automakers' alternative fueled vehicle production plans for the near future.

DATES: Written comments (11 copies) on the issues presented in this notice must be received by the Department on or before August 30, 1995.

ADDRESSES: Written comments (11 copies) should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, Docket No. EE–RM–95–110A, 1000 Independence Ave., SW, Washington, DC 20585, (202–586–3012).

Docket: Supporting information used in developing the proposed rule and written comments received on the Notice of Proposed Rulemaking are

contained in Docket No. EE–RM–95–110A. This Docket is available for examination in DOE's Freedom of Information Reading Room, 1E–090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–6116.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 28, 1995, DOE published a notice of proposed rulemaking on implementation of statutorily-required alternative fueled vehicle acquisition requirements applicable to certain alternative fuel providers and State government fleets. Since the close of the 60-day comment period on that notice of proposed rulemaking, the Department has been reviewing the public comments. As a result of this review, the Department is now considering several policy options that are sufficiently different from the terms of the notice of proposed rulemaking to warrant an additional, focused opportunity for public comment.

On June 12, 1995, the Department published a notice reopening the record for additional public comment on options being considered for providing more lead time between the date the final rule is promulgated and the date the obligation to comply begins. 60 F.R. 30795. Today the Department publishes a notice reopening the record for additional public comment on issues relating to the definitions of "substantial portion" and "alternative fuel." In addition, the Department is taking this opportunity to give notice of the receipt of new information regarding the availability of alternative fueled vehicles.

II. Definition of "Substantial Portion"

Section 501(a)(2) of the Energy Policy Act of 1992 (the "Act") defines the class of alternative fuel providers potentially subject to the alternative fueled vehicle acquisition requirements to include persons who: (1) qualify as a "covered person" under section 301(5) of the Act, 42 U.S.C. 13211(5), and (2) produce or import an average of 50,000 barrels per day or more of petroleum and "a substantial portion of whose business is producing alternative fuels." 42 U.S.C. 13251(a)(2)(C). Thus, the term "substantial portion" is a key statutory determinant of whether a covered person that produces or imports petroleum is an alternative fuel provider required by the Act to acquire alternative fueled vehicles.

However, even if an entity meets all of the qualifications for a section 501(a)(2)(C) alternative fuel provider, including the "substantial portion" test, it nevertheless may be excepted from the vehicle acquisition requirements under section 501(a)(3) or exempted by DOE under section 501(a)(5). Under section 501(a)(3)(A), the vehicle acquisition requirements only apply to an affiliate, division or business unit of a covered person who is substantially engaged in the alternative fuels business. *See* proposed § 490.304. Moreover, under section 501(a)(3)(B), the vehicle acquisition requirements do not apply to any entity whose principal business is transforming alternative fuel into a product other than alternative fuel or consuming such fuel to manufacture a product that is not an alternative fuel. Under section 501(a)(5), DOE may exempt alternative fuel providers from the vehicle acquisition requirements if they can show either that (1) alternative fuels that meet their normal business requirements and practices are not available; or (2) that alternative fueled vehicles that meet their normal business requirements and practices are not offered for purchase or lease on reasonable terms and conditions. See proposed § 490.308.

In the February 28, 1995 notice of proposed rulemaking, DOE proposed to define the term "substantial portion" to mean that at least two percent of a covered person's refinery yield of petroleum products is composed of alternative fuels. See proposed § 490.301. DOE explained that it chose the two percent of refinery yield threshold because it represented the average yield for the production of alternative fuels by petroleum refiners, as reported by the Energy Information Administration. 60 FR 10978.

The notice of proposed rulemaking also explained that in developing the proposed definition of "substantial portion," the Department had considered, as an alternative, basing the definition on the portion of the gross revenue an entity derives from the production of alternative fuels. Ultimately, DOE did not propose a gross revenue threshold because the information needed to support that alternative was more fragmented than that available to support the two percent of refinery yield criterion, and DOE believed the percent of refinery yield criterion would adequately define the class of petroleum producers and importers who are "covered persons" under the Act. 60 FR 10979. Nevertheless, DOE asked for comment on whether reliable information exists that would allow establishment of a revenue measure for determining whether alternative fuels production comprises a substantial portion of a company's business, and it solicited suggestions for any other alternative definitions of "substantial portion." 60 FR 10979.

DOE received many comments on the definition of "substantial portion." Some commenters supported DOE's proposed definition of "substantial portion," agreeing that if at least two percent of a refinery's product yield is composed of an alternative fuel, the fuel provider should have to meet the Act's acquisition requirements. However, most comments on this issue criticized the two percent of refinery yield as being too low a threshold. Some commenters stated that the two percent refinery yield of petroleum products threshold would impose vehicle acquisition requirements on many refineries that only produce alternative fuels (principally propane) as incidental by-products of the refining process. Several commenters recommended that DOE modify the rule to provide that at least 10 percent of a covered the percent of refinery yield criterion which focuses solely on refining operations.

Despite the lack of comprehensive, publicly available information about petroleum producers' and importers' revenue sources on a product-by-product basis, DOE has been able to collect enough information about their sales of alternative fuels to frame a possible definition of "substantial portion" based on percent of gross revenue derived from alternative fuels.

One option DOE is considering is whether to define "substantial portion" to mean that at least 30 percent of the annual gross revenue of a covered person is derived from the sale of alternative fuels. This percentage of gross revenue appears to be an appropriate gross revenue threshold for two reasons. First, available information shows that major U.S. energy producing companies historically derive at least 30 percent of their annual gross revenue from the sale of alternative fuels.[1] Major energy producers are typically consolidated or integrated companies that are involved in oil and gas

[1] Sources used were: Energy Information Administration's *Performance Profiles of Major Energy Producers, 1993* (DOE/EIA–0206); Moody's 1994 Industrial Manual; 1995 U.S.A. Oil Industry Directory; and Standard & Poor's 1994 Register—Corporations.

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exploration, oil and gas production or importing, petroleum refining and marketing, transportation of products, other energy operations (coal, nuclear and other energy) and nonenergy businesses (primarily chemicals). Second, this definition would exclude from the class of covered persons subject to the vehicle acquisition person's refinery yield of petroleum products must be composed of alternative fuels before that person would be deemed to have a "substantial portion" of its business involved in the production of alternative fuels. Other commenters urged DOE to adopt a definition of "substantial portion" that would be the same as the "principal business" criterion used in section 501(a)(2) for defining other categories of alternative fuel providers.

A few of the commenters recommended that DOE adopt a percentage of gross revenue derived from the sale of alternative fuels as the basis for the definition of "substantial portion." They pointed out that gross revenue is the measure used for determining whether other alternative fuel providers are "covered persons" because their "principal business" is in alternative fuels. In their view, if gross revenue can be used to determine whether an entity's principal business involves alternative fuels, it also should be used for determining whether a petroleum producer or importer has a substantial portion of its business in the production of alternative fuels.

After carefully reviewing all of the comments received on this issue, DOE thinks that a percentage of gross revenue derived from the sale of alternative fuels may be a better measure of an entity's involvement in the alternative fuels business than is the percentage of refinery yield of petroleum products included in the proposed rule's definition of "substantial portion." As pointed out by some commenters, a gross revenue measure can be applied to all producers and importers of petroleum, unlike the requirements those refiners who produce alternative fuels only as an incidental by-product of the refining process. Refiners are typically involved only in petroleum refining and marketing operations.

DOE also believes this gross revenue percentage comports with the terms of section 501(a)(2) of the Act, 42 U.S.C. § 13251(a)(2). If the term "substantial portion" were defined to include a percentage of gross revenue derived from alternative fuels that was higher than 30 percent, the distinction in the Act between "substantial portion" which applies to covered petroleum producers and importers (§ 501(a)(2)(C)) and "principal business" which applies to other alternative fuel providers (§ 501(a)(2)(A) and (B)) would be rendered meaningless. As noted in the preamble to the notice of proposed rulemaking, alternative fuels constitute an entity's "principal business" if the entity derives a plurality of its gross revenue from sales of alternative fuels, and a plurality may be less than 50 percent. 60 FR 10978. Therefore, DOE believes that 30 percent of gross revenue from alternative fuels may constitute a reasonable basis for the definition of "substantial portion."

This possible interpretation of "substantial portion" also appears to be consistent with the underlying intent of Congress with regard to petroleum-related entities. That intent was to apply the alternative fueled vehicle acquisition requirements only to major energy producers and importers.

DOE requests comments from interested members of the public on this possible option for defining "substantial portion" or any alternative options they would like DOE to consider. DOE is particularly interested in receiving data or analysis that are relevant to this issue.

III. Definition of "Alternative Fuel"

Section 301(2) of the Energy Policy Act,[2] 42 U.S.C. 13211, defines the term "alternative fuel" to mean "methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits."

[2] The conference report on the Energy Policy Act of 1992 states that "the intent of section 501(a)(1) is not to cover all affiliates or divisions of the many large energy companies which have some, but not all, of their corporate units engaged in alternative fuels operations. For example, the oil and gas production affiliate or division of a major energy company described in 501(a)(1)(C) would be covered; so might a propane pipeline unit or a natural gas processing division, if the "substantially engaged" test is met. But an oil tanker division, a gasoline marketing affiliate, or a petrochemical unit whose major operations are the production of plastics, for example, would not be covered. . . ." H.R. Rep. 1018, 102d Cong., 2d Sess. 387 (1992).

A. Alcohol Blends

In proposed § 490.2, DOE defined "alternative fuel" to include mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols. However, the proposal did not decrease the alcohol percentage to no less than 70 percent as authorized by section 301(2) of the Act. DOE received comments requesting that the definition of "alternative fuel" include alcohol blends down to no less than 70 percent alcohol by volume. These comments point out that automobile manufacturers' winter test programs have shown that lower level alcohol blends are required for improved cold start performance in winter conditions and are recommended in Owners' Manuals. Some comments also point out that recent cold weather testing by American Automobile Manufacturers Association (AAMA) members on alcohol blends indicates that the cold start threshold (the lowest temperature at which a vehicle will start) can be lowered by 10–15 degrees Fahrenheit by decreasing the alcohol content from 85% down to 70%. However, none of these commenters submitted test data to support their request to lower the minimum alcohol percentage.

DOE recognizes the concerns that these commenters have with the cold start capability of alcohol-fueled vehicles in winter conditions. DOE, therefore, invites interested persons to provide additional data, reports and analyses that are relevant to this matter. DOE will evaluate any information it receives in response to this invitation and decide whether to amend the proposed definition of "alternative fuel" to include a lower alcohol percentage as provided in section 301(2).

B. Biodiesel

Many commenters requested that biodiesel be included in the Department's regulatory definition of "alternative fuel." As described in the comments, biodiesel is produced from vegetable oils, such as soybean oil, which are biological materials. The commenters stated that biodiesel offers significant reduction in harmful tailpipe emissions of hydrocarbons, carbon monoxide and particulate matter; is essentially free of sulfur and harmful aromatics; and is non-toxic and biodegradable. These commenters also submitted information to show that biodiesel can be made wholly from domestic products, and that it has a positive energy balance in its production process.

After carefully reviewing all of the comments on this issue, it appears that neat (or 100 percent) biodiesel is already covered in the statutory and proposed regulatory definitions of "alternative fuel" which refer to any "fuel, other than alcohol, that is derived from biological materials." The Department, therefore, is considering amending the proposed definition of "alternative fuel" specifically to include neat biodiesel. DOE requests interested members of the public to submit views and information relating to this possible revision to the definition of the term "alternative fuel." It is noted that a DOE interpretation of "alternative fuel" to include neat biodiesel would not relieve biodiesel manufacturers from other federal or state regulatory requirements or modify automobile manufacturer warranty requirements with respect to motor fuels.

Many commenters also urged DOE to include mixtures or blends of biodiesel in the definition of "alternative fuel." The issue of including biodiesel mixtures or blends comprised of more than 20 percent biodiesel is currently under study. However, this subject is complex and will require significantly more data and information, and a separate, future rulemaking, before DOE can make a determination as to whether to include them in the definition of "alternative fuel."

IV. Automobile Manufacturers' Alternative Fueled Vehicle Production Plans

On May 25, 1995, representatives of DOE met with representatives of the American Automobile Manufacturers Association (AAMA). This meeting was one in a series of periodic meetings that have been held between the DOE and the AAMA since 1993 to exchange information on subjects of mutual interest. At this meeting, the automobile manufacturers' representatives presented DOE with publicly available information about each company's upcoming alternative fueled vehicle production plans.

Both Ford and Chrysler provided to DOE a one-page list of their alternative fueled vehicle offerings for Model Years 1995 and 1996. Ford also provided a copy of a presentation that was delivered on May 2, 1995, at the 6th Annual Alternative Vehicle Fuels Market Fair & Symposium in Austin, Texas. This presentation included detailed information regarding when Ford alternative fueled vehicles could be ordered and when deliveries can be expected.

Although Chrysler representatives did not provide DOE with documentation of its plans, they did state that Chrysler will begin taking orders for its dedicated compressed natural gas line of trucks and full-size vans (utilizing the 5.2L engine) in June 1995, with deliveries scheduled to begin in August 1995. Chrysler plans to begin taking orders for dedicated compressed natural gas minivans (using the 3.3L engine) during the last quarter of 1995, with anticipated deliveries scheduled to begin in the first quarter of 1996. Chrysler representatives also stated that an electric minivan may be available in calendar year 1997.

General Motors (GM) representatives stated that GM does not plan to manufacture any alternative fueled vehicles for Model Year 1996. However, GM does plan on making alternative fueled vehicles in Model Year 1997. According to a May 11, 1995, press release that GM provided, all of the model year 1997 Chevrolet S-series and GMC Sonoma 4-cylinder light duty pickup trucks will be produced as flexible-fuel vehicles, which can operate on ethanol, gasoline, or a combination of the two fuels. These trucks are scheduled for production beginning in the summer of 1996. GM also indicated that customers can currently order vehicles in several models and engine families that are powered by gaseous fuel compatible engines. These engines can be converted to operate on propane or natural gas. According to GM, the engine families that are gaseous fuel compatible and the vehicles that they power are the 4-cylinder 2.2L (Corsica), the 4.3L V–8 (Caprice), and the 6.0L V–8 and 7.0L V–8 (Topkick, Kodiak and School Bus).

Copies of the written information provided to DOE at this meeting have been entered into the public docket for this rulemaking.

Issued in Washington, DC, July 26, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy

[FR Doc. 95–18737 Filed 7–28–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ANM–13]

Proposed Amendment to Class E Airspace; Sheridan, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Sheridan, Wyoming, Class E airspace to accommodate a new instrument approach procedure at Sheridan County Airport, Sheridan, Wyoming. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before August 31, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–13, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–13, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANM–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each

substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Sheridan, Wyoming, to accommodate a new instrument approach procedure at Sheridan County Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. This action also incorporates revised coordinates for the airport reference point (ARP) due to construction of a new runway. Class E airspace is published in Paragraph 6002 and 6005, respectively, of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979): and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E Airspace areas designated as a surface area for an airport.

* * * * *

ANM WY E2 Sheridan, WY [Revised]

Sheridan County Airport, WY
(Lat 44°46'26" N, long. 106°58'37"W)
Sheridan VORTAC
(Lat. 44°50'32" N, long. 107°03'40" W)

Within a 4.5-mile radius of the Sheridan County Airport, and within 4.5 miles each side of the 157° bearing from the airport, extending from the 4.5-mile radius to 17.6 miles southeast of the airport, and within 3.5 miles each side of the Sheridan VORTAC 312° and 327° radials extending from the 4.5-miles radius to 10.1 miles northwest of the VORTAC, and within 3.5 each side of the Sheridan VORTAC 140° radial extending from the 4.5-mile radius to 20.4 miles southeast of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

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ANM WY E5 Sheridan, WY [Revised]

Sheridan County Airport, WY
(Lat. 44°46'26" N, long. 106°58'37" W)
Sheridan VORTAC
(Lat. 44°50'32" N, long. 107°03'40" W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the Sheridan County Airport; that airspace extending upward from 1,200 feet above the surface within 6.1 miles southwest and 8.7 miles northeast of the Sheridan VORTAC 138° and 318° radials extending from 16.1 miles northwest to 29.6 miles southeast of the VORTAC, and that airspace southeast of Sheridan bounded on the north by a line located 4.3 miles south of and parallel to the Sheridan VORTAC 104° radial, on the east by a 30.5-mile radius of the Sheridan VORTAC, and on the south by line located 8.7 miles north of and parallel to the Sheridan VORTAC 138° radial.

* * * * *

Issued in Seattle, Washington, on July 5, 1995.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–18734 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR PART 260

Request for Comment Concerning Environmental Marketing Guides

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "FTC" or "Commission") is requesting public comments on its Guides for the Use of Environmental Marketing Claims ("guides"). The guides were issued on July 28, 1992, and included a provision for public comment and review three years after adoption for the purpose of determining how well they are working and the need for any modifications. The Commission is also requesting comments about the overall costs and benefits of the guides and their overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this proposal. All comments submitted will be placed on the public record and will be made available to interested persons for inspection and copying at the Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C., Room 130. Following the period for written comments, Commission staff plans to conduct a Public Workshop-Conference to afford Commission staff and interested parties an opportunity to explore and discuss the issues raised during the comment period.

DATES: Comments must be submitted on or before September 29, 1995. Notification of interest in representing an affected, interested party at the Public Workshop-Conference must be submitted on or before August 30, 1995. A list of affected interests appears in Part 2 of this Notice.

The Public Workshop-Conference will be held in Washington, D.C. on November 13 and 14, 1995, from 8:30 a.m. until 5 p.m.

ADDRESSES: Six paper copies of each written comment should be submitted to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments about the guides should be identified as "16 CFR Part 260—Comment." To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5–1/4 or a 3–1/2 inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies or comments in electronic form.

The FTC will make this notice and, to the extent technically possible, all comments received in response to this notice available to the public through the Internet. To access this notice and the comments filed in response to this notice, access the World Wide Web at the following address: http://www.ftc.gov

At this time, the FTC cannot receive comments made in response to this notice over the Internet.

Notification of interest in the Public Workshop-Conference should be submitted in writing to Kevin Bank, Division of Advertising Practices, Federal Trade Commission, Washington, D.C. 20580. The Public Workshop-Conference will be held in Washington, D.C. on November 13 and 14, 1995.

FOR FURTHER INFORMATION CONTACT: Kevin Bank, (202) 326–2675, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review FTC rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission.

1. Background

A. Scope of Guides

The Guides for the Use of Environmental Marketing Claims or "guides" were adopted by the Commission on July 28, 1992, and published in the **Federal Register** on August 13, 1992 (57 FR 36,363 (1992)). Like other industry guides issued by the Commission, the Environmental Marketing Guides "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry." 16 CFR 1.5. Conduct inconsistent with the guides may result in corrective action by the Commission if this conduct is found to be in violation of applicable statutory provisions. The Commission promulgates industry guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Environmental Marketing Guides indicate how the FTC will apply Section 5 of the Federal Trade Commission Act ("FTC Act") in the area of environmental marketing claims.[1] Section 5 of the FTC Act prohibits unfair or deceptive advertising claims. The guides apply to all forms of marketing of products to the public, whether through labels, package inserts, or promotional materials.

The guides reiterate Commission policy regarding how Section 5 applies to advertising claims generally, as enunciated in the Commission's Policy Statement on Deception,[2] and its Policy Statement on the Advertising Substantiation Doctrine.[3] They outline four general principles that apply to all environmental marketing claims: *i.e.*, that qualifications and disclosures should be sufficiently clear and prominent to prevent deception; that claims should make clear whether they apply to the product, the package or a component of either; that claims should not overstate an environmental attribute or benefit, expressly or by implication; and that comparative claims should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception.

In addition, the guides address eight specific categories of environmental claims: general environmental benefit claims, such as "environmentally friendly"; "degradable" claims; "compostable" claims; "recyclable" claims; "recycled content" claims; "source reduction" claims; "refillable" claims; and "ozone safe"/"ozone friendly" claims. Each guide describes the basic elements necessary to substantiate the claim; including suggested qualifications that may be used to avoid deception. In addition, each guide is followed by several examples that illustrate different uses of the particular term that do and do not comport with the guides. In many of the examples, one or more options are presented for qualifying a claim. The guides state that these options are intended to provide a "safe harbor" for marketers who want certainty about how to make environmental claims, but that they do not represent the only permissible approaches to qualifying a claim.

B. General Areas of Interest for FTC Review

The guides provide that three years after adoption, the Commission "will seek public comment on whether and how the guides need to be modified in light of ensuing developments."

As part of this three-year review of the guides, the Commission is seeking comment on a number of general issues relating to the guides' efficacy and the need, if any, to revise or update the guides. The Commission is also seeking comment on a number of specific issues related to particular environmental claims addressed by the guides.

The first issue of general interest to the Commission is whether and to what extent any changes in consumer perceptions related to environmental marketing may warrant revisions to the guides. The Commission believes that this three-year review is important to ensure that the guides are responsive to any changes over time, both in consumer knowledge and awareness of environmental issues and consumer perception of specific claims. On this question, the Commission is seeking to obtain specific consumer survey evidence and consumer perception data addressing consumer understanding of environmental claims as well as the efficacy of various approaches suggested in the current guides for qualifying such claims.

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[1] 15 U.S.C. 45.

[2] Federal Trade Commission Policy Statement on Deception, *appended to Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984).

[3] Federal Trade Commission Policy Statement Regarding Advertising Substantiation, *appended to Thompson Medical Co.*, 104 F.T.C. 648 (1984).

Second, the Commission is generally interested in whether and to what extent new developments in environmental technology may need to be taken into account. The Commission recognized in originally issuing its guides that the science and technology in the environmental area was constantly changing, and that new developments, for example, in the areas of recycling capabilities and composting, might affect the accuracy of environmental claims. This concern about evolving technology was one of the principal reasons the Commission chose to reexamine the guides three years after their issuance.

Third, the Commission seeks to evaluate the impact of the guides on environmental marketing and is seeking to obtain information about what effect the guides have had on the prevalence and accuracy of various environmental claims and whether new environmental claims have emerged that should be addressed by the guides. As it indicated in its original notice on environmental marketing claims, the Commission is concerned both that its guides not inadvertently encourage misleading claims and that they do not chill truthful, non-misleading claims.[4] The Commission has some data to suggest that certain types of claims, such as recycled content claims, are being more frequently qualified and that other claims that would likely be found deceptive under the guides, such as degradable claims for products that are typically disposed in landfills, have become extremely rare. These data also suggest that the total number of environmental claims, at least as measured on a wide range of supermarket products, has not diminished.[5]

A fourth question of general interest to the Commission is the interaction of its guides with other regulation of environmental marketing at the federal, state and local level. The Commission is seeking comment on how federal, state and local laws and regulations governing environmental marketing relate to the guidance provided by the Commission.

The Commission has posed below a number of questions intended to focus comments on these areas of general interest in evaluating the guides. There are, in addition, a few specific issues that have come to the Commission's attention relating to particular environmental claims. For example, the Commission has, on occasion, received informal input on the efficacy of its guidance on specific claims as well as requests for clarification through additional examples to the guides. The questions included in this notice, therefore, also address a number of claim-specific issues. The inclusion of such issues in this notice is to facilitate comment and the inclusion or exclusion of any issue should not be interpreted as an indication of the Commission's intent to make any specific modifications to the guides.

The Commission requests that commenters address any or all of these questions, focusing on the areas in which the commenter has particular expertise. The Commission also requests that responses to its questions be as specific as possible, include a reference to the question being answered, and refer to empirical data wherever available and appropriate.

C. Empirical Evidence on Consumer Perception and Marketing Trends

Since the guides were issued, the Commission has received some empirical evidence both on marketing trends in the environmental area and on consumer perception of certain marketing claims. The Commission believes that this evidence may provide valuable information on the impact of its guides on the prevalence and accuracy of environmental marketing claims, as well as suggesting certain specific areas where further clarification of the guides may be appropriate to prevent deception.

To aid the comment process, therefore, the Commission is placing on the public record several surveys. The first is an "audit" tracking environmental marketing claims in the marketplace since the issuance of the guides, conducted by Robert N. Mayer, Jason Gray-Lee and Debra L. Scammon of the University of Utah and Brenda J. Cude of the University of Illinois ("Utah Tracking Study"). The audit was performed on brands in sixteen supermarket product categories every six months, beginning in September 1992, with the most recent occurring in September 1994.

Auditors gathered data from supermarkets in five geographically dispersed locations throughout the country. The claim categories tracked in the study are recycled content, recyclability, source reduction, degradability, toxicity, effect on ozone, general environmental benefit claims, third party certification claims, and "green" brand names containing words like "enviro," "eco" and "natural."

In addition, the Commission is placing on the public record consumer surveys examining consumers' perceptions of various environmental claims. The first survey was conducted for the Commission in January 1993 ("FTC survey"). This mall intercept survey of 480 consumers tested their perception of several environmental claims on aerosol products including claims that the products are: "Environmentally Friendly," "Environmentally Friendly—Will Not Harm the Ozone Layer," "Ozone Friendly," and "No CFCs." The second series of surveys was conducted by the Council on Packaging in the Environment (COPE) in March 1993, September 1993, and December 1994 ("COPE surveys"). These omnibus, nationwide telephone surveys have included questions testing consumer perception of various kinds of "recyclable" claims, consumers' beliefs regarding the availability of recycling programs in their community, and consumer understanding of the term "non-toxic." Finally, the Commission is placing on the public record a survey conducted by the Paper Recycling Coalition testing consumer understanding and perception of recycled content claims and the chasing arrows symbol, as well as consumer understanding of the term "post consumer." ("PRC Survey"). The PRC survey was conducted at three geographically dispersed malls in March 1995.

The Commission is seeking comment on these surveys and also requests that commenters provide any additional empirical evidence available to them bearing on the issues raised by these surveys. The surveys are available for inspection and copying at the Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C., Room 130.

D. Commission Enforcement Actions

Since the adoption of the guides, the Commission has continued to enforce its statutory mandate to prohibit false and misleading claims through a case-by-case approach to environmental claims. In the past three years, the Commission has entered into twenty-two consent orders with a variety of companies and individuals, settling charges that they made false and/or unsubstantiated environmental claims about their products. The advertising claims challenged in these cases include "environmentally safe," "recyclable," "recycled," "ozone friendly," "degradable," "recyclable via municipal composting," "practically non-toxic," and "chlorine-free process." The Commission is seeking comment on whether there are principles in these cases which are appropriate for incorporation into the guides. These consent agreements are available for inspection and copying at the Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C., Room 130.

[4] Petitions for Environmental Marketing and Advertising Guides; Public Hearings, 56 FR 24,968 (May 31, 1991).

[5] See discussion of Utah Tracking Study, *infra*.

2. Public Workshop-Conference

The FTC staff will conduct a Public Workshop-Conference to discuss written comments received in response to this Notice of Request for Public Comment. The purpose of the conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised in the guideline review process, and, in particular, to examine publicly areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus of opinion among participants or between participants and Commission staff with respect to any issue raised in the guide review process. Commission staff will consider and review the comments made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning the guide review.

Commission staff will select a limited number of parties, to represent the significant interests affected by the guideline review. These parties will participate in an open discussion of the issues.

In addition, the conference will be open to the general public. Members of the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the guide review process. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as the number of persons who wish to make statements.

Written submissions of views, or any other written or visual materials, will not be accepted during the conference. The discussion will be transcribed and the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following affected interests: individual manufacturers and trade associations whose members are involved with environmental marketing issues; consumer and environmental organizations; federal, state and local governmental authorities with experience in environmental issues; and academics or polling firms involved in the area of environmental claims.

Parties to represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment on or before September 29, 1995.

2. The party notifies Commission staff of its interest and authorization to represent an affected interest on or before August 30, 1995.

3. The party's participation would promote a balance of interests being represented at the conference.

4. The party's participation would promote the consideration and discussion of a variety of issues raised in the guide review process.

5. The party has expertise in activities possibly affected by the review of the existing guides.

6. The number of parties selected will not be so large as to inhibit effective discussion among them.

Parties interested in participating and authorized to represent an affected interest at the conference must notify Commission staff on or before August 30, 1995. Prior to the conference, parties selected to represent an affected interest will be provided with computer disks containing copies of comments received in response to this notice by the close of the comment period. The Public Workshop-Conference will be held on November 13 and 14, 1995.

3. Issues for Comment

The Commission solicits written public comment on the following questions:

A. General Issues

1. Is there a continuing need for the guides?

(a) What benefits have the guides provided to consumers?

(b) Have the guides imposed costs on consumers?

2. What changes, if any, should be made to the guides to increase the benefits of the guides to consumers?

(a) How would these changes affect the costs the guides impose on firms subject to their provisions?

3. What significant burdens or costs, including the cost of adherence, have the guides imposed on firms subject to their provisions?

(a) Have the guides provided benefits to such firms?

4. What changes, if any, should be made to the guides to reduce the burdens or costs imposed on firms subject to their provisions?

(a) How would these changes affect the benefits provided by the guides?

5. Since the guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on the guides?

(a) What impact, if any, have the guides had on the development of environmentally beneficial innovations in technology and products?

(b) Is there other information concerning science or technology that the Commission should consider in determining whether the guides should be modified?

6. Do the guides overlap or conflict with other federal, state, or local laws and regulations? Is there evidence concerning whether the guides have assisted in promoting national consistency with respect to the regulation of environmental claims?

7. Are there international developments with respect to environmental marketing claims that the Commission should consider as it reviews the guides? Do these developments indicate that the guides should be modified?

8. What new evidence is available concerning consumer perception of environmental claims? Please provide any empirical data that are available on all categories of environmental claims, including claims not currently covered by the guides. Does this new information indicate that the guides should be modified?

9. What new evidence is available concerning consumer awareness of and knowledge about environmental issues? Please provide any available empirical data. Does this new information indicate that the guides should be modified?

10. What impact have the guides had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

11. To what extent have the guides reduced consumer skepticism or confusion about environmental claims?

12. What evidence is available concerning the degree of industry compliance with the guides?

(a) To what extent has there been a reduction in deceptive environmental claims since the guides were issued?

(b) To what extent has there been an increase in the degree and accuracy of qualifications of environmental claims?

Please provide any available empirical data, including any data relevant to the findings of the Utah Tracking Study cited above. Does this evidence indicate that the guides should be modified?

13. To what extent have the guides reduced manufacturers' uncertainty

about which claims might lead to FTC law enforcement actions?

14. Is there a need for guidance on environmental claims not currently addressed in the guides? If so, what specific claims should be addressed and what form should this guidance take?

15. Are there claims addressed in the guides on which guidance is no longer needed?

B. Specific Issues

A number of specific issues concerning the guides have arisen since their adoption. The Commission is seeking comment on these issues but the questions listed below should not be construed as an indication of the Commission's intent to make any specific modifications to the guides.

16. The Commission is seeking comment on the following specific issues relating to the "ozone friendly/ ozone safe" guide.

(a) To what extent do phrases like "ozone friendly" or "No CFCs," by themselves, convey broad claims of environmental benefit to consumers, including claims about the harmlessness of the product to the atmosphere as a whole (*i.e.*, both the upper ozone layer and ground-level air pollution)? How important is the context in which the claim appears? Please provide any empirical data, including any data relevant to the findings of the FTC survey.[6] Are there methodological issues concerning the survey that are relevant to the survey's findings? Does the survey evidence suggest that the guides should be modified? If so, what form should the modification take? How would these modifications affect the benefits the guides provide to consumers and the costs they impose on firms subject to their provisions?

17. The Commission is seeking comment on the following specific issues relating to the "recyclable" and "compostable" guides:

(a) The September 1993 COPE survey (cited above) may be interpreted to suggest that the presence of a "recyclable" claim may not increase the percentage of consumers who think that recycling facilities for a product or package are available in their community. Please provide any empirical data regarding whether an unqualified recyclable or an unqualified compostable claim conveys a deceptive claim concerning local availability. Are there methodological issues concerning the COPE survey that are relevant to its findings? Does the COPE survey and any other new evidence provided indicate that the recyclable and/or compostable sections of the guides should be modified, and if so, in what manner? What effect would the proposed changes have on the benefits the guides provide to consumers and the costs that the guides impose on firms?

(b) The COPE surveys (cited above) suggest that certain of the qualifying disclosures suggested in the recyclable and compostable guides may be more effective than others in conveying to consumers that facilities may not be available in their community to recycle or compost the product. Please provide any empirical data relevant to the findings of the COPE surveys. Are there methodological issues concerning the COPE surveys that are relevant to the surveys' findings? Does the COPE evidence (or any other evidence provided) indicate that these disclosures should be modified, and if so, in what manner? How would such modifications affect the benefits the guides provide to consumers and the costs they impose on firms?

(c) Please provide any relevant empirical data regarding consumer perception of phrases such as "Please Recycle" and "Coded for Recycling" and of the "three chasing arrows" logo. To what extent do such claims suggest to consumers that a product or package is recyclable? What, if any, modifications should be made to the guides in light of such consumer perceptions? How would such modifications affect the benefits the guides provide to consumers and the costs they impose on firms?

(d) The Society of the Plastics Industry (SPI) code, a logo introduced in 1988 for voluntary use by SPI, has since been mandated for use on certain plastic packages by thirty-nine states to facilitate identification of different types of plastic resins. In its guides, the Commission states that the use of the code, without more, on the bottom of a package, or in a similarly inconspicuous location, does not constitute a claim of recyclability. What consumer perception data are available concerning how consumers interpret the SPI code? What, if any, modifications should be made to the guides in light of such data? How would such modifications affect the benefits the guides provide to consumers and the costs they impose on firms?

18. Please provide any empirical data relevant to whether consumers perceive that products made from reconditioned parts that would otherwise have been thrown away should qualify as "recycled" products. What modifications, if any, should be made to the guides to address these consumer perceptions? How would such modifications affect the benefits the guides provide to consumers and the costs they impose on firms?

19. Are there other specific issues concerning the guides that the Commission should review? What empirical data are available to assist the Commission in its review of these issues? What, if any modifications should be made in light of these issues? How would such modifications affect the benefits the guides provide to consumers and the costs they impose on firms?

List of Subjects in 16 CFR Part 260:

Environmental marketing claims: Advertising.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. 95–18720 Filed 7–28–95; 8:45 am]

BILLING CODE 6750–01–P

[6] The FTC survey (cited above) suggests that when consumers see claims like "No CFCs" and "Ozone Friendly" on aerosol products, they may interpret the claim to mean that the product is not only harmless to the upper ozone layer, but to the atmosphere as a whole. In *Creative Aerosol Corp.*, No. C–3548 (January 13, 1995) (final consent order), the Commission required the company to cease and desist from representing, through the use of terms such as "No Fluorocarbons," that any product containing Volatile Organic Compounds (VOCs), will not harm the atmosphere, unless the claim is substantiated. The Order defines VOCs as "any compound of carbon which participates in atmospheric photochemical reactions as defined by the Environmental Protection Agency," that is, compounds of carbon that EPA has determined are potential contributors to smog.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 102

RIN 1515–AB19; RIN 1515–AB34

Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable to Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a document, published in the **Federal Register** on July 12, 1995, which set forth additional proposed amendments to the interim Customs Regulations establishing rules for determining the country of origin of a good for purposes of Annex 311 of the North American Free Trade Agreement. The correction involves an erroneous citation to a Customs ruling discussed in the Background portion of the document.

EFFECTIVE DATE: This correction is effective July 31, 1995.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 1995, Customs published in the **Federal Register** (60 FR 35878) a notice of proposed rulemaking setting forth proposed amendments to interim regulations establishing rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement for purposes of Annex 311 of that Agreement. Those proposed amendments were in addition to proposed amendments to the same interim regulations published on May 5, 1995, in the **Federal Register** (60 FR 22312).

In the Background discussion in the July 12, 1995, document regarding the Customs position on the effect that diluting certain chemical substances with inert ingredients has on origin determinations, the citation to "HRL 555604" should have read "HRL 555064". This document corrects that erroneous citation.

Correction of Publication

In the document published in the **Federal Register** on July 12, 1995 (60 FR 35878), on page 35880, in the second column, third line, the reference "HRL 555604" is corrected to read "HRL 555064".

Dated: July 24, 1995.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 95–18643 Filed 7–28–95; 8:45 am]

BILLING CODE 4820–02–P

Notices

Federal Register
Vol. 60, No. 146
Monday, July 31, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on August 15, 1995, at the Muckleshoot Senior Center, 39015 172nd Avenue Southeast, in Auburn, Washington. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Review, discussion and recommendations on Mt. Baker-Snoqualmie National Forest watershed analysis priorities, according to criteria selected by the Advisory Committee at its July 18 meeting; (2) reconsideration of a tabled motion recommending that the Mt. Baker-Snoqualmie National Forest undertake a cooperative watershed analysis on the Middle Fork Snoqualmie River (Washington), provided that funding is received from the State of Washington Interagency Committee for Outdoor Recreation (IAC) and King County (Washington); (3) an overview of the access and travel management planning process on the Mt. Baker-Snoqualmie National Forest; (4) other topics as appropriate; and (5) open public forum. A field trip for Advisory Committee members will take place the following day, August 16, 1995. Members will tour portions of the White River Ranger District, commencing at the White River Ranger District Office, 857 Roosevelt Avenue East, in Enumclaw, Washington, at 8:30 a.m., and ending at the District Office about 5:00 p.m. Focus of the field trip will be road decommissioning sites, riparian area treatments, and in-stream structures for fish habitat improvement. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Citizens are also welcome to join the August 16 field trip; however, they must provide their own transportation.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Chris Hansen-Murray, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3276.

Dated: July 25, 1995.

Daniel T. Harkenrider,

Acting Forest Supervisor.

[FR Doc. 95–18711 Filed 7–28–95; 8:45 am]

BILLING CODE 3410–11–M

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, August 17, 1995. The meeting will be a field review of management practices and issues of Northwest Forest Plan implementation. The field trip will begin at 9:00 a.m. and conclude at approximately 4:00 p.m. from the Mt. Hood National Forest, Estacada Ranger Station, 595 NW Industrial Way; Estacada, Oregon. The field trip is open to the public; however, noncomittee members must provide their own transportation.

FOR FURTHER INFORMATION CONTACT:

For an itinerary of the field trip including the travel route and planned stops and other questions regarding this meeting, contact Neal Forrester, Designated Federal Official; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon; 503–465–6924.

Dated: July 25, 1995.

Marsha Scutvick,

Deputy Forest Supervisor.

[FR Doc. 95–18745 Filed 7–28–95; 8:45 am]

BILLING CODE 3410–11–M

Proposal to Require the Use of Certified Noxious Weed-Free Forage on National Forest System Lands in Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Regional Foresters of the Intermountain, Northern, and pacific Northwest Regions of the Forest Service are proposing a requirement that all National Forest visitors in Idaho and the Selway-Bitterroot Wilderness Portion of the Bitterroot National Forest in Montana use certified noxious weed-free hay, straw or mulch when visiting National Forest System lands in those two states. This requirement will affect visitors who routinely use hay or straw on the National Forests such as: recreationists using pack and saddle stock, ranchers with grazing permits, outfitters, and contractors who use straw or other mulch for reseeding purposes. These individuals or groups would be required to purchase certified noxious weed-free forage products or use other approved products such as processed pellets before entering and while on National Forest system Lands in the aforementioned States.

DATES: The comment period ends August 30, 1995.

ADDRESSES: Send written comments to Regional Forester, USDA Forest Service, Federal Building, 324 25th street, Ogden, UT 84401.

FOR FURTHER INFORMATION CONTACT:

Northern Region

James Olivarez, Federal Building, P.O. Box 7669, Missoula, MT 59807, (406) 329–3621

Intermountain Region

Frank Gunnell, Federal Building, 324 25th Street, Ogden, UT 84401, (801) 625–5829

Pacific Northwest Region

Susan Holtzman, 333 S.W. 1st Ave., P.O. Box 3623, Portland, OR 97208, (503) 326–3879

Background

Noxious weeds are a serious problem in the Western United States. Species like Leafy Spurge, Spotted Knapweed, Musk Thistle, Purple Loosestrife and others are alien to the United States and have no natural enemies to keep their populations in balance. Consequently, these undesirable weeds invade healthy ecosystems, displace native vegetation, reduce species diversity, and destroy wildlife habitat. Widespread infestations lead to soil erosion and stream sedimentation. Furthermore, noxious weed invasions weaken reforestation efforts, reduce domestic and wild ungulates grazing capacity, aggravate and occasionally injure forest visitors, and threaten federally protected plants and animals.

To curb the spread of noxious weeds, a growing number of Western states have jointly developed noxious weed-free forage certification standards and, in cooperation with various federal, state and county agencies, passed weed-control laws. Because hay and other forage products containing noxious weeds are part of the infestation problem, states have developed a hay inspection/certification/identification process and are encouraging forage producers to grow noxious weed-free products.

In cooperation with the states of Idaho and Montana, the U.S. Forest Service is proposing—for all National Forest System lands within Idaho and the Selway-Bitterroot Wilderness portion of the Bitterroot National Forest in Montana—a ban on hay, straw or mulch that has not been state certified. This proposal includes a public information plan to insure that: (1) this ban (a.k.a. closure order) is well publicized and understood; and (2) National Forest visitors will know where they can purchase state-certified hay or other products.

The Forest Service invites written comment and suggestions on this proposal. Written comments must be received with 30 days from the date of publication in the **Federal Register**.

Dated: July 25, 1995.

Dale N. Bosworth,

Regional Forester, Intermountain Region.

John M. Hughes,

Deputy Regional Forester, Northern Region.

John E. Lowe,

Regional Forester, Pacific Northwest Region.

[FR Doc. 95–18710 Filed 7–28–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Export Administration

[Docket No. 5101–01]

Lucach Corporation, Respondent and Golamreza Zandianjazi, Also Known as Reza Zandian

Related Parties; Final Decision and Order

Respondent Lucach Corporation ("Lucach") is charged with violating § 787.5(a) and § 787.6 of the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1995)) ("the Regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2410 (1991, Supp. 1993, and Public Law 103–277, July 5, 1994)) ("the Act"). Specifically, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department) alleges that Lucach exported a U.S.-origin computer system (an IBM RISC System 6000 Model 520H) from the United States to Iran without the required validated export license. In addition, Lucach is alleged to have made a false or misleading statement of material fact in connection with the preparation and use of a Shipper's Export Declaration.

On June 29, 1995, the Administrative Law Judge (ALJ) issued his recommended Decision and Order, a copy of which is attached hereto and made a part hereof. On the basis of the Department's default submission and all of the supporting evidence presented, the ALJ found that Lucach committed the violations alleged in the Charging Letter issued against it on December 6, 1993. The ALJ also found that Golamreza Zandianjazi, also known as Reza Zandian, is related to Lucach by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services. Accordingly, the ALJ ordered, *inter alia*, that Lucach and Zandian be denied all export privileges for a period of ten years. Having examined the record, including the submissions by the Respondent and by the Department, I hereby affirm the Decision and Order of the ALJ in all respects.

This Order constitutes the final Agency action in this matter.

Dated: July 24, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

In the matter of: Lucach Corporation, 17526 Von Karmen, Irvine, California 92714, Respondent.

Recommended Decision and Order

On December 6, 1993, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), issued a Charging Letter to Lucach Corporation (Lucach), addressed to the attention of Golamreza Zandianjazi, also known as Reza Zandian, President, alleging that Lucach violated § 787.5(a) and 787.6 of the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1995)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2410 (1991, Supp. 1993, and Public Law 103–277, July 5, 1994)) (the Act). On February 1, 1994, the Charging Letter was accepted by Amin Daghig as agent for Reza Zandian.

On March 1, 1994, Lucach, through counsel, entered an appearance and requested an extension of time to answer the Charging Letter. In that submission, counsel also acknowledged service of the Charging Letter on Lucach. On April 7, 1994, an answer and demand for hearing were filed by counsel.

On April 17, 1995, I issued an Order setting this matter for hearing on May 23, 1995 and directing the parties to report to me on the progress of settlement discussions. On April 21, 1995 and on May 9, 1995, in accordance with my order of April 17, 1995, the parties filed joint submissions on settlement discussions Also on May 9, 1995, shortly after authorizing counsel for the Department to execute the Joint Submission on Settlement Discussions on his behalf and to file the Submission with the Administrative Law Judge, counsel for Lucach filed a Motion to Withdraw Representation.[1] On May 10, 1995, I granted counsel's request to withdraw.

On May 17, 1995, following the withdrawal of counsel, the Department filed a petition to vacate the April 17, 1995 scheduling Order. On May 18, 1995, I issued an Order vacating the scheduling Order and providing the Department until June 16, 1995 "to indicate whether [it] intends to proceed with this case." On June 16, 1995, the Department advised me that it intended to proceed with the case and requested that I set a new scheduling order in the case. On June 19, 1995, I issued an Order stating that "[t]he appropriate way to resolve the proceeding under these circumstances is pursuant to

[1] In that Motion, counsel represented, *inter alia*, that Zandian told counsel that he (Zandian) "had sold his stock in Respondent [Lucach] in 1989 and had at no time thereafter been a director, officer or employee of Respondent."

§ 788.8." In that Order, I also determined that "[i]t appears that respondent does not intend to pursue its interest in this proceeding." In accordance with my Order of June 19, 1995, the Department submitted its Default Submission on June 28, 1995.

Background

In the December 6, 1993 Charging Letter, the Department alleged that, on or about July 5, 1991, Lucach, through its Computer World USA Division (also known as the USD Division), and its then-General Manger, Charles Reger,[2] exported a U.S.-origin computer from the United States to Iran without the validated export license required by § 772.1(b) of the Regulations. The Department alleged that, by exporting a commodity to any person or destination in violation of or contrary to the terms of the Act or any regulation, order, or license issued under the Act, Lucach violated § 787.6 of the Regulations. The Charging Letter also alleged that, on or about July 5, 1991, Reger, acting in his capacity as General Manager of Lucach, signed a Shipper's Export Declaration (SED) representing that the commodities described thereon, including a U.S.-origin computer, qualified for export from the Untied States to Iran under general license G–DEST. In fact, the computer required a validated export license for export from the United States to Iran. The Department alleged that, by making a false or misleading statement of material fact in connection with the preparation and use of an SED, an export control document, Lucach violated § 787.5(a) of the Regulations.

Finding

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that Lucach committed the violations alleged in the Charging Letter issued against it on December 6, 1993.

For those violations, the Department urges as a sanction that Lucach's export privileges be denied for 10 years. In light of the nature of the violations, I concur in the Department's recommendation. I also find, as represented by the Department in its submission, that Golamreza Zandianjazi, also known as Reza Zandian, is related to Lucach by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services and that, in order to prevent evasion, any denial of Lucach's export privileges should also be made applicable to Zandian.

Accordingly, it is therefore ordered,

First, that all outstanding individual validated licenses in which Lucach Corporation appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Lucach's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, that Lucach Corporation, 17526 Von Karmen, Irvine, California 92714, and all of its successors, assigns, officers, representatives, agents, and employees, shall, for a period of 10 years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly, or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in § 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to the respondent by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order. Based on the showing made by the Department, I have determined that the following individual is related to Lucach by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services and, accordingly, is hereby made subject to this order:

Golamreza Zandianjazi, also known as Reza Zandian with addresses at 17526 Von Karmen, Irvine, California 92714
c/o Computer World Europe, Rue Jean-Grandel, BP 12–95102 Argenteuil, France and
c/o Computer World Middle East, 50 Molla Sadra Avenue, 14357 Tehran, Iran.

C. As provided by § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on Lucach, Zandian, and the Department.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C.A. app. § 2412(c)(1)) and the Regulations (15 CFR 788.23).

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., N.W., Room 3898B, Washington, D.C., 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Dated: June 29, 1995.

Edward J. Kuhlmann,

Administrative Law Judge.

[FR Doc. 95–18696 Filed 7–28–95; 8:45 am]

BILLING CODE 3510–DT–M

[2] The Department also initiated an administrative proceeding against Reger. However, after receiving information that Reger was deceased, the Department withdrew the Charging Letter issued against him.

International Trade Administration

[A–580–006]

Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 23, 1994, the Department of Commerce (the Department) published a notice of preliminary results of administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea. The review covers four manufacturers/exporters of the subject merchandise and the period April 1, 1993, through March 31, 1994. Based on petitioners' withdrawal of requests for review, the Department previously terminated the review of three additional manufacturers/exporters.

We have determined that one of the four manufacturers/exporters being reviewed made no shipments of subject merchandise to the United States during the period of review. The remaining three manufacturers/exporters failed to respond to our request for information.

Although we gave interested parties an opportunity to comment on the preliminary results, no comments were submitted. However, these final results reflect a change in the margin we assigned Samsung in the preliminary results of review. Because Samsung had no shipments of subject merchandise during the period of review, we preliminarily assigned Samsung the margin (0.37 percent) calculated for the most recent period (1990–91) in which it had shipments of subject merchandise to the United States. However, pursuant to a remand ordered by the Court of International Trade (CIT) (*see United Electronic Workers of America, et al.* v. *United States*, Consolidated Court No. 93–11–00719, July 5, 1994), we have determined that Samsung's margin for the last administrative review (1990–91) in which it had shipments of subject merchandise to the United States was 0.47 percent. *See, Color Television Receivers from the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review*, 60 FR 35895 (July 12, 1995). While these final results reflect the change in Samsung's margin from 0.37 to 0.47 percent, Samsung's current cash deposit rate remains unchanged at zero percent, reflecting the fact that Samsung's margin remains *de minimis*.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1994, the Department published (59 FR 16615) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on CTVs from the Republic of Korea (49 FR 18336, April 30, 1984) for the period April 1, 1993, through March 31, 1994 (eleventh review). We received a timely request for review from the United Electronic Workers of America, Independent (formerly the Independent Radionic Workers of America), the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, and the Industrial Union Department, AFL–CIO, petitioners in this proceeding. On May 12, 1994, the Department published a notice of initiation (59 FR 24683) covering the following seven manufacturers/exporters: Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung International, Inc. (Samsung); Cosmos Electronics Manufacturing, Ltd. (Cosmos); Quantronics Manufacturing, Ltd. (Quantronics); Tongkook General Electronics, Inc. (Tongkook); Daewoo Electronics Co., Ltd., and Daewoo Electronics Corp. of America, Inc. (Daewoo); Goldstar Electronics International, Inc., Goldstar Co., Ltd., and Goldstar of America, Inc. (Goldstar); and Samwon Electronics, Ltd (Samwon). On May 23, 1994, petitioners submitted a timely withdrawal of their request for review of Goldstar. Pursuant to 19 CFR 353.22(a)(5) the Department terminated the review of Goldstar on June 29, 1994 (59 FR 33486). On June 29, and August 22, 1994, petitioners submitted additional requests to terminate the reviews of Daewoo and Samwon, respectively. Pursuant to 19 CFR 353.22(a)(5), the Department terminated the reviews of Daewoo and Samwon on December 23, 1994 (59 FR 66292). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1993 through March 31, 1994.

Final Results of Review

Samsung reported, and the Department verified through the U.S. Customs Service, that Samsung made no shipments of subject merchandise to the United States during the period of review. Therefore, Samsung's current cash deposit rate will remain unchanged. This rate is zero percent because the margin assigned to Samsung in the most recent administrative review in which it had shipments of subject merchandise (0.47 percent) was a *de minimis* rate.

Since Cosmos, Quantronics, and Tongkook failed to respond to our questionnaire, we have determined that, in accordance with section 776(c) of the Tariff Act, the use of best information available (BIA) is appropriate. Our regulations provide that we may consider whether a party refuses to provide information in determining what is the best information available (19 CFR 353.37(b)). Department practice dictates that when a company fails to provide the information requested in a timely manner, the Department considers the company uncooperative and generally assigns that company the higher of (a) the highest rate assigned to any company in any previous review or the less-than-fair-value (LTFV) investigation, or (b) the highest rate for a responding company with shipments during the period of review. *See Final Results of Antidumping Duty Administrative Review, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the*

Federal Republic of Germany, et al., 56 FR 31692 (July 11, 1994). *See also Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1195, 1191–92 (Fed. Cir. 1993), *Krupp Stahl AG et al* v. *United States*, 822 F. Supp. 789 (CIT May 26, 1993). Therefore, we have used the highest rate from the LTFV investigation, which was 16.57 percent, in determining the margins for these three companies for this review.

Therefore, consistent with the preliminary results, the final results for the period April 1, 1993, through March 31, 1994, are as follows:

Manufacturer/exporter	Percent margin
Samsung	[1] 0.47
Cosmos	16.57
Quantronics	16.57
Tongkook	16.57

[1] No shipments or sales subject to this review. Rate from last segment of the proceeding in which the firm had shipments/sales.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of CTVs entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established above; (2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be the "all others" rate of 13.90 percent established in the LTFV investigation (49 FR 18336). These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 20, 1995.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–18741 Filed 7–28–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administrative

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Proton Electronic Industrial Co. (Proton), the Department of Commerce (the Department) initiated a review for that respondent on May 15, 1995, for the period April 1, 1994 through March 31, 1995. On July 13, 1995, Proton filed a timely withdrawal of its request for this review. Because there were no requests for review from other interested parties we are terminating this review.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: John Kugelman or Michael J. Heaney, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 482–0649 or 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984, the Department published in the **Federal Register** (49 FR 18336) the antidumping duty order on color television receivers, except for video monitors, from Taiwan. On April 4, 1995, the Department published in the **Federal Register** (60 FR 17052) the opportunity to request an administrative review. On May 1, 1995, Proton requested a review for the period April 1, 1994 through March 31, 1995. On May 15, 1995, in accordance with 19 CFR 353.22(c), we initiated an administrative review for the period April 1, 1994 through March 31, 1995 (60 FR 25885).

We had initiated a review for Proton covering sales of color television receivers, except for video monitors, for the period April 1, 1994 through March 31, 1995. We received a timely request for withdrawal of this request from Proton. Because there were no requests for review from other interested parties, we are terminating this review in accordance with 19 CFR 353.22(a)(3).

This termination notice is in accordance with 19 CFR 353.22(a)(3).

Dated: July 25, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–18742 Filed 7–28–95; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on June 1, 1995, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–423–077
Belgium
Sugar
Objection Date: June 21, 1995, June 30, 1995
Objector: Florida Sugar Marketing and Terminal Association, Inc. American Sugar Cane League et. al.
Contact: Joe Fargo at (202) 482–5345

A–427–078
France
Sugar
Objection Date: June 21, 1995, June 30, 1995
Objector: Florida Sugar Marketing and Terminal Association, Inc. American Sugar Cane League et. al.
Contact: Joe Fargo at (202) 482–5345

A–428–802
Germany
Industrial Belts, except Synchronous and V belts
Objection Date: June 30, 1995
Objector: Gates Rubber Company
Contact: Zev Primor at (202) 482–4114

A–428–061
Germany
Precipitated Barium Carbonate
Objection Date: June 20, 1995
Objector: Chemical Products Corporation
Contact: Kim Moore at (202) 482–0090

A–428–082
Germany
Sugar
Objection Date: June 21, 1995, June 30, 1995
Objector: Florida Sugar Marketing and Terminal Association, Inc. American Sugar Cane League et. al.
Contact: Joe Fargo at (202) 482–5345

A–588–706
Japan
Nitrile Rubber
Objection Date: June 28, 1995
Objector: Zeon Chemicals Inc.
Contact: Sheila Forbes at (202) 482–0065

A–401–040
Sweden
Stainless Steel Plate
Objection Date: June 23, 1995
Objector: Allegheny Ludlum Steel Corporation
Contact: Michael Heaney at (202) 482–4475

A–583–080
Taiwan
Carbon Steel Plate
Objection Date: June 28, 1995
Objector: Bethlehem Steel Corporation
Contact: Michael Heaney at (202) 482–4475

A–583–505
Taiwan
Oil Country Tubular Goods
Objection Date: June 27, 1995, June 30, 1995
Objector: North Star Steel Company, Maverick Tube Corporation
Contact: Michael Heaney at (202) 482–4475

Dated: July 25, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–18739 Filed 7–28–95; 8:45 am]

BILLING CODE 3510–DS–P

Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of September 1995.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Japan
Amorphous Silica Filament Fabric
A–588–607
52 FR 35750
September 23, 1987
Contact: Leon McNeill at (202) 482–4236

The People's Republic of China
Cotton Printcloth
A–570–101
48 FR 41614
September 16, 1983
Contact: Zev Primor at (202) 482–4114

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders

and findings or to terminate the suspended investigations by the last day of September 1995. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 31, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–18740 Filed 7–28–95; 8:45 am]

BILLING CODE 3510–DS–P

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the final evaluation findings for the Apalachicola (Florida) National Estuarine Research Reserve (NERR), and the states of Delaware, New Jersey, Pennsylvania, and Washington Coastal Management Programs. Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approved coastal management programs and the operation and management of NERRs.

The states of Delaware, New Jersey, Pennsylvania and Washington were found to be implementing and enforcing their Federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2) (A)–(K), and adhering to the programmatic terms of their financial assistance awards. Apalachicola NERR was found to be satisfactorily adhering to programmatic requirements of the NERR system.

Copies of these final evaluation findings may be obtained upon request from: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910 (301) 713–3087 x126.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 17, 1995.

Dr. David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–18678 Filed 7–28–95; 8:45 am]

BILLING CODE 3510–08–M

National Oceanic and Atmospheric Administration

Coastal Nonpoint Pollution Control Program: Public Hearing on Draft Programmatic Environmental Impact Statement

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Public Hearing and Availability of Draft Programmatic Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, the National Oceanic and Atmospheric Administration (NOAA) has prepared and circulated a draft programmatic environmental impact statement (PEIS). The draft PEIS was prepared to assess the environmental impacts associated with the approval of state and territory coastal nonpoint pollution control programs. This draft PEIS will form the basis for the subsequent NEPA documents (environmental impact statements or assessments) NOAA will prepare on each of the 29 state and territory coastal nonpoint programs expected to be submitted to NOAA and the Environmental Protection Agency (EPA) for approval.

The requirements of 40 C.F.R. parts 1500–1508 [Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act] apply to the preparation of the draft PEIS. Specifically, 40 C.F.R. section 1506.6 requires agencies to provide public notice of NEPA-related hearings and the availability of environmental documents. This notice is part of NOAA's action to comply with the public hearing requirement.

The PEIS was filed with EPA on July 7, 1995 and a notice of its availability was published at 60 FR 36279 on July 14, 1995. NOAA will hold a public hearing on this draft PEIS at NOAA Buildings SSMC 3, 1315 East-West Highway, Silver Spring, MD, Room 4527, on August 11, 1995, at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Marcella Jansen, Coastal Programs Division (NORM/3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713–3098, x143.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 25, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–18684 Filed 7–28–95; 8:45 am]

BILLING CODE 3510–12–M

[I.D.072095A]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 961 (P771 #72).

SUMMARY: Notice is hereby given that Dr. Howard Braham, National Marine Mammal Laboratory, Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Pt. Way NE, Bin C15700, Seattle, WA 98115–0070, has been issued a permit to biopsy sample 120 beluga whales (*Delphinapterus leucas*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On May 2, 1995, notice was published in the **Federal Register** (60 FR 21503) that a request for a scientific research permit to biopsy sample beluga whales had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: July 24, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–18637 Filed 7–28–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

July 25, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has agreed to increase the 1995 Guaranteed Access Levels (GALs) for Categories 338/339/638/639 and 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62717, published on December 6, 1994; and 60 FR 17326, published on April 5, 1995.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, as amended on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 1, 1995, you are directed to increase the current Guaranteed Access Levels (GAL) for the following categories:

Category	Guaranteed access level
338/339/638/639	3,500,000 dozen.
352/652	12,500,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–18689 Filed 7–28–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in S&P/BARRA Growth Index and S&P/BARRA Value Index Futures and Option Contracts. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before August 30, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Reference should be made to the CME S&P/BARRA Growth Index and S&P/BARRA Value Index Futures and Option Contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K street, N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the Exchange in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552 (1987)) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the Exchange in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 25, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–18640 Filed 7–28–95; 8:45 am]

BILLING CODE 4351–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of request for nominations.

SUMMARY: Section 302 of Public Law (PL) 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its 11 members are appointed by the Secretary of the Army. This notice is to solicit nominations for eight (8) appointments or reappointments to two-year terms that will begin January 1, 1996.

EFFECTIVE DATE: July 31, 1995.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Zirschky, Acting Assistant Secretary of the Army (Civil Works) (703) 697–4671.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of PL 99–662. The substance of those provisions is as follows:

Selection

Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics.

Service

The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

Appointment

The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (PL 92–463 as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

Carriers and Shippers

The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

Geographical Representation

The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and describe in PL 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Interacoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

Commodity Representation

Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in Waterborne Commerce of the United States. In rank order they are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

Reflecting preceding selection criteria, the current representation by the six (6) Board members whose terms expire December 31, 1995, is as follows: One member representing the Upper Mississippi River (Region 1) two members representing the Lower Mississippi River (Region 2), two member representing the Ohio River (Region 3), and one member representing the GIWW-East (Region 5). Also these Board members represent three shippers, two carriers and one representing both.

Two (2) of the six members whose terms expire December 31, 1995, are eligible for reappointment.

Nominations to replace Board members whose terms expire December 31, 1995, may be made by individuals, firms or associations. Nominations will:

(1) State the region to be represented;

(2) State whether the nominee is representing carriers, shippers or both;

(3) Provide information on the nominee's personal qualifications;

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed. Nominations received in response to last year's **Federal Register** notice published August 25, 1994 must be renominated again in 1995.

Deadline for Nominations

All nominations must be received at the address shown above no later than August 31, 1995.

Gregory D. Showalter,

Army Federal Register, Liaison Officer.

[FR Doc. 95–18683 Filed 7–28–95; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Notice of hearing.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming hearing of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: August 3 and 4, 1995, 8:30 a.m.–5:30 p.m.

ADDRESSES: Los Angeles Unified School District, 450 North Grand Avenue, Room H160 Los Angeles, California 90012.

FOR FURTHER INFORMATION CONTACT: Sal Lopez, Special Assistant, White House Initiative on Educational Excellence for Hispanic Americans, Department of Education, 600 independence Avenue, S.W., Room 2115, Washington, D.C., 20202–3601, Telephone: (202) 401–8551.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans was established under Executive Order 12900 on February 22, 1994. The Commission was established to advise on Hispanic achievements of the National Goals, as well as other educational accomplishments. This hearing of the Commission is open to the public. The public is being given less than fifteen days' notice of this hearing because of administrative difficulties in scheduling the location. The Agenda includes:

August 3, 1995, Thursday, 8:30 a.m.–5:30 p.m.

Introductions and Commission update; press conference; public policy and administration; public testimony, teacher training.

August 4, 1995, Friday, 8:30 a.m.–5:30 p.m.

Local level education policy and governance; Hispanic special needs and appropriate practices; education equity issues.

Records are kept of all Commission proceedings, and are available for public inspection at the White House Initiative On Educational Excellence For Hispanic Education at 600 Independence Avenue, S.W., Room 2115, Washington, D.C. 20202–3601 from the hours of 9 a.m. to 5 p.m.

Dated: July 26, 1995.

Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 95–18773 Filed 7–27–95; 9:08 am]

BILLING CODE 4000–01–M

Office of Management

Senior Executive Service: Performance Review Board

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board (PRB).

SUMMARY: Notice is hereby given of the names of members of the Department of Education's PRB.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Team, Human Resources Group, Office of Management, Department of Education, Room 1135, FOB–10B, 600 Independence Avenue, SW, Washington, DC 20202, Telephone: (202) 401–0546. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 4314 (c)(1) through (5) of Title 5, U.S.C. requires each agency to establish one or more Senior Executive Service (SES) PRBs. The Board shall review and evaluate the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and make recommendations to the appointing authority relative to the performance of the senior executive.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Rodney McCowan, Chair, Alicia Coro, Co-Chair, Mary Jean LeTendre, Philip Link, Dorothy Berry, Thomas Skelly, Carol Cichowski, Larry Oxendine, John Higgins, Gary Rasmussen, Hazel Fiers, Susan Craig, Jeanette Lim, Andrew Pepin, Charles Hansen, Thomas Hehir, Jamienne Studley, Thomas Wolanin, Therese Dozier. The following executives have been selected to serve as alternate members of the Performance Review Board: Francis Corrigan, Steven Winnick, Raymond Pierce, Eugene Garcia.

Dated July 25, 1985.

Rodney McCowan,

Assistant Secretary for Management.

[FR Doc. 95–18670 Filed 7–28–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With The Commission

July 25, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Exemption.

b. *Project No:* P–9805–001.

c. *Date Filed:* July 20, 1995.

d. *Applicant:* Rockfish Corporation.

e. *Name of Project:* Woolen Mills Hydroelectric Project.

f. *Location:* On the Rivanna River, Albemarle County, Charlottesville, VA.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)–825(r).

h. *Applicant Contact:* Mr. John K. Pollock, P.O. Box 265, Batesville, VA 22924, (804) 823–7330.

i. *FERC Contact:* Diane M. Murray, (202) 219–2682.

j. *Comment Date:* August 21, 1995.

k. *Description:* The exemptee requests surrender of his exemption. There have been no land or water disturbing activities at the project.

l. This notice also consists of the following standard paragraphs: B, C1 and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable. and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18668 Filed 7–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–613–000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

July 24, 1995.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP95–613–000]

Take notice that on July 13, 1995, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP95–613–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a small volume metering facility for the City of Clearwater, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new small volume facility at the existing Clearwater North Station on the 4-inch Clearwater North Lateral in Pinellas County, Florida. The proposed new metering facility will serve as an additional delivery point to Clearwater under two existing firm transportation service agreements pursuant to FGT's Rate Schedules FTS–1 and FTS–2 and under an existing interruptible transportation service agreement pursuant to FGT's Rate Schedule ITS–1. FGT indicates that Clearwater would reimburse FGT for the construction costs which is estimated to be $37,000.

Comment date: September 7, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP95–622–000]

Take notice that on July 17, 1995, East Tennessee Natural Gas Company (East Tennessee), a Tennessee Corporation, P.O. Box 2511, Houston, Texas 77252, filed a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) and under its blanket authority granted September 1, 1982, in Docket No. CP82–412–000, for authorization to install a delivery point for continuing firm service to Dunlap Natural Gas (Dunlap), a municipal corporation, located in Marion County, Tennessee, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, East Tennessee states that Dunlap is replacing its distribution mainline and has requested East Tennessee to install a new delivery station at M.P. 3211–1+1.54 in Marion County, Tennessee, to replace existing station No. 75–9018 located at M.L.V. 3211–1. East Tennessee proposes to install, own, and operate and maintain a two-inch hot tap; approximately twenty-five feet of two-inch interconnecting pipe, and measurement facilities, including electronic gas measurement equipment. The hot tap and interconnecting pipe will be located on East Tennessee's existing right-of-way. The measurement facilities will be located on a site provided by Dunlap, adjacent to East Tennessee's existing right-of-way.

East Tennessee states that the total quantities to be delivered to Dunlap will not exceed the total quantities authorized. East Tennessee asserts that the establishment of the proposed delivery point is not prohibited by East Tennessee's tariff, and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of East Tennessee's other customers.

Comment date: September 7, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP95–624–000]

Take notice that on July 17, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–624–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Lone Star Gas Company (Lone Star), one 10-inch meter and appurtenant facilities in Fashing Field, Atascosa County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Comment date: August 14, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP95–627–000]

Take notice that on July 19, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed a prior notice request with the Commission in Docket No. CP95–627–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a cross-over tie on the Grants Pass Lateral in Multnomah County, Oregon, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Northwest proposes to construct and operate a 3-inch tap, two 4-inch regulators, a relief valve, and appurtenances on its 20-inch diameter Grants Pass Lateral loop line as an additional tie-in for the Reynolds Metal meter station. Northwest states that the proposed tie-in would provide an alternate means of gas supply whenever the Grants Pass Lateral line is out of service. Northwest also states that since it needs to construct the proposed tie-in in order to maintain service to Reynolds Metal whenever the Grants Pass Lateral line is out of service, Northwest would pay the estimated $78,000 construction cost for the facilities. Northwest further states that the design capacity and delivery pressure of the meter station would not change as a result of the proposed loop line tie-in.

Comment date: September 7, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18700 Filed 7–28–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP95–326–000 and RP95–242–000]

Natural Gas Pipeline Company of America; Notice of Continuing Technical Conference

July 25, 1995.

Take notice that the technical conference in this proceeding which was convened on July 13, 1995, will continue on Thursday, August 3, 1995, at 9:30 a.m., in the Commission Meeting Room at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18669 Filed 7–28–95; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project—Proposed Firm and Nonfirm Transmission Service Rates for the Phoenix Area

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Rates for Firm Transmission Service and Nonfirm Transmission Service for the Pacific Northwest-Pacific Southwest Intertie Project Rate Adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing two rates for firm transmission service and a rate for nonfirm transmission service for the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie).

The power repayment study indicates that the proposed rates for firm and nonfirm transmission service are necessary because of increases in operation and maintenance expenses, and the anticipated decrease in current marketable capacity from the 500-kilovolt (kV) transmission lines. The proposed rates for firm and nonfirm transmission service will supersede the existing rates that became effective August 1, 1993, and were extended on May 17, 1995 (60 FR 26433) until October 1, 1996. The proposed rates for firm and nonfirm transmission service are to become effective January 1, 1996.

The existing firm transmission service rate for the 230/345-kV transmission lines is $4.46 per kilowatt per year (kW/year) and the existing nonfirm transmission service rate is 1.00 mills per kilowatthour (mills/kWh).

The proposed firm transmission service rate for the 230/345-kV transmission lines is $7.37/kW/year; the proposed rate for the 500-kV transmission lines is $16.00/kW/year; and the proposed combined nonfirm transmission service rate is 2.11 mills/kWh.

The Acting Assistant Secretary of Energy for Energy Efficiency and Renewable Energy of the Department of Energy (DOE), approved the existing rates on an interim basis for firm and nonfirm transmission service on July 14, 1993. The Federal Energy Regulatory Commission (FERC) confirmed and approved the rates on a final basis for firm and nonfirm transmission service on March 24, 1994 (66 FERC ¶62,180). The existing rates were designed to recover all annual costs and investment repayment of both the existing 230/345-kV lines and the new 500-kV lines. The existing rates for firm and nonfirm transmission service were placed in effect on August 1, 1993, and consisted of a two-step rate adjustment process. Step one of the firm transmission service rate was approved to be in effect through September 30, 1995, and step two of the existing rates was to become effective on October 1, 1995, and continue through July 31, 1998.

During the last AC Intertie rate adjustment process (WAPA–56), the Colorado River Commission of Nevada, the Arizona Power Authority, the Arizona Subcontractor Group, the Arizona Power Pooling Association, Inc., and the Salt River Project Agricultural Improvement and Power District filed a Motion to Intervene and Protest FERC confirmation and approval of the AC Intertie rates described in Rate Order No. WAPA–56. On December 28, 1993, Western filed a Stipulation Agreement signed by Western and these customers in which the intervenors withdrew their protests and Western agreed to re-examine the issues raised as well as commence a new rate adjustment proceeding during fiscal year 1995.

Western has re-examined the issues raised during the last rate adjustment process along with the current issues regarding the rate impact from the additional capacity. Due to customer request, Western has developed and is proposing two firm transmission service rates and a nonfirm transmission service rate for the AC Intertie Project to supersede step one of the existing rates which were extended for firm and nonfirm transmission service. The major difference between step two of the existing rates and the proposed rates is the separate marketing and rate-setting design of the 500-kV system.

In response to additional AC Intertie customer requests, Western is proposing a rate design for the firm transmission

service that consists of (1) a rate for the firm transmission service from the existing 230/345-kV transmission lines and (2) a rate for the firm transmission service of the 500-kV transmission lines. The firm transmission service rate for the 500-kV transmission lines is designed to recover all annual costs for repayment of the new investment. Based upon its studies, Western expects that the marketable capacity used in the rate calculation for the 500-kV transmission lines to be 668 megawatts (MW). Western is proposing a firm transmission service rate of $7.37/kW/year for the 230/345-kV system and a firm transmission service rate of $16.00/kW/year for the 500-kV system.

Western is also proposing a nonfirm transmission service rate of 2.11 mills/kWh for both the 230/345-kV and 500-kV system that will supersede the existing nonfirm transmission service rate of 1.00 mills/kWh. The non-firm transmission service rate combines the rate of 1.40 mills/kWh for the 230/345-kV system and a rate of 3.04 mills/kWh for the 500-kV system for a combined rate of 2.11 mills/kWh.

The following table displays the existing rates, the step two of the previously approved rates, the proposed AC Intertie 230/345-kV transmission system rates, and the proposed 500-kV transmission system rates:

Type of service	Existing rates 230/345-kV system extended through 10/01/1996	Existing rates step two 230/345/ 500-kV system 07/31/98	Proposed rates 230/345-kV system 01/01/1996 through 09/30/2000	Proposed rates 500-kV system 01/01/1996 through 09/30/2000
Firm Transmission Service	$4.46/kW/year	$8.01/kW/year	$7.37/kW/year	$16.00/kW/year.
Combined Nonfirm Transmission Service	1.00 mills/kWh	1.52 mills/kWh	2.11 mills/kWh	2.11 mills/kWh.

The proposed rates for the 500-kV transmission lines are based on investments, an estimated marketable capacity, and a percentage distribution of the projected expenses and revenues. The final marketable capacity that will be contracted is not yet determined. Should there be contracts for more than the estimated marketable capacity of 668 MW, Western would foresee an increase in firm revenue, thereby, providing for a decrease to the proposed rate of $16.00/kW/year. Conversely, if less than the estimated capacity is contracted, Western would increase the proposed rate of $16.00/kW/year to ensure that the revenue requirement is satisfied. The proposed rate for the 230/345 kV system represents an 8.68 percent decrease from the existing step two rate of $8.01/kW/year. The non-firm transmission rate represents an increase of 39 percent from the existing non-firm transmission service rate.

Since the proposed rates constitute a major rate adjustment for transmission service, as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the final proposed AC Intertie rates to the Deputy Secretary of the Department of Energy (Deputy Secretary). If approved by the Deputy Secretary, the provisional rates would remain in effect on an interim basis until confirmed and approved as final rates by FERC.

DATES: The consultation and comment period will begin with the publication of this notice in the **Federal Register** and will end not less than 90 days later, or October 17, 1995, whichever occurs later. A public information forum will be held at 1 p.m. on August 24, 1995, at Western's Phoenix Area Office, 615 South 43rd Avenue, Phoenix Arizona. A public comment forum at which Western will receive oral and written comments will be held at 1 p.m. on September 18, 1995, also at Western's Phoenix Area Office.

Written comments regarding the proposed rates should be received by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

ADDRESSES: For Further Information Contact: Mr. J. Tyler Carlson, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2521.

SUPPLEMENTARY INFORMATION: Transmission rates for the AC Intertie are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); and the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)), and section 8 of the Act of August 31, 1964 (16 U.S.C. 837g).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of DOE delegated (1) the authority to develop long term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rates for transmission service are and will be available for inspection and copying at the Phoenix Area Office, located at 615 South 43rd Avenue, Phoenix, AZ 85005.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866 (58 FR 51735). Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*; Council On Environmental Quality (40 CFR Parts 1500–1508) and DOE NEPA regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Issued in Golden, Colorado, July 18, 1995.

J.M. Shafer,

Administrator.

[FR Doc. 95–18736 Filed 7–28–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5266–9]

Agency Information Collection Activities Up for Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before September 29, 1995.

ADDRESSES: 401 M St., SW., Washington, DC 20460 MC: 5306W.

FOR FURTHER INFORMATION CONTACT: Judy Taylor, (703) 308–7277 (phone); 308–8686 (fax).

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are businesses and non-governmental organizations that join the voluntary WasteWi$e program.

Title: Reporting Requirements Under EPA WasteWi$e Voluntary Challenge Program (OMB No. 2050–0139).

Abstract: EPA's Office of Solid Waste (OSW) is requesting approval to collect information from respondents that participate in EPA's voluntary WasteWi$e program. The program encourages businesses to engage in waste reduction activities and focuses on three waste reduction areas: waste prevention, recycling collection, and purchasing or manufacturing items with recycled content.

To participate in the program, an organization must complete and submit a registration form to EPA. The registration form provides EPA with general company information and specifies the facilities committed to the WasteWi$e program: it must be signed by a senior official who has authority to commit the company to the program. In addition, each participant must develop waste reduction goals and complete and submit a one-time Goals Identification Form to EPA; participants must also report annually on the progress made toward achieving those goals in the Annual Reporting Form.

The information collected will be used by EPA to develop and provide targeted technical information to assist organizations' waste reduction programs, identify and exchange waste reduction opportunities, and gauge the program's progress.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated technology, e.g., permitting electronic submission of responses.

Burden Statement: The current ICR, submitted in 1994, estimated respondent burden for this collection to average as follows: Estimated Hours Per Respondent: 16 hours per response for the Registration Form; 48 hours per response for the Goals Identification Form; 78 hours per response for the Annual Reporting Form; for an estimated annual respondent burden of 142 hours in the first year and 78 hours each subsequent year. These estimates included all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Estimated Number of Respondents: 200 in year 1; 300 in year 2; and 400 in year 3.

Estimated Number of Responses per Respondent: 3 during first year of participation; 1 in subsequent years.

Estimated Total Annual Burden on Respondents: 28,500 hours in year 1; 29,850 in year 2; and 37,650 in year 3.

Frequency of Collection: One-time and annual.

No person is required to respond to a collection of information unless it displays a currently valid control number. The control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: July 26, 1995.

Elliott P. Laws,

Assistant Administrator, Solid Waste and Emergency Response.

[FR Doc. 95–18833 Filed 7–28–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2066]

Petition for Reconsideration of Actions in Rulemaking Proceedings

July 26, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed August 15, 1995. See § 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b) (1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Review of the Pioneer's Preference Rules. (ET Docket No. 93–266)

Number of Petition Filed: 1

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Canovansas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, Santa Isabel and Vieques, Puerto Rico, and Christiansted and Fredericksted, Virgin Islands. (MM Docket No. 91–259 and RMs 7309, 7942, 7943, 7944 and 7948)

Number of Petitions Filed: 2

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Fredericksburg, Helotes and Castroville, Texas) (MM Docket No. 94–125 and RM–8534 and RM–8575)

Number of Petition Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18695 Filed 7–28–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1054–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1054–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated June 2, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 2, 1995.

Mercer County for Individual Assistance, Public Assistance and Hazard Mitigation assistance.

Cooper County for Public Assistance (already designated for Individual Assistance and Hazard Mitigation assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Chief of Staff.

[FR Doc. 95–18721 Filed 7–28–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to the Office of Management and Budget (OMB) for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), as amended. Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, 800 N. Capital Street, NW., Washington, DC 20573–0001, telephone number (202) 523–5800. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review; 46 CFR Part 540 and Related Application Form FMC–131

FMC requests an extension of clearance for 46 CFR Part 540 which implements sections 2 and 3 of Public Law 89–777 (46 U.S.C. 817 (d) and (e) and related application Form FMC–131. P.L. 89–777 requires vessel owners, charterers, and operators of American and foreign passenger vessels having 50 or more berth or stateroom accommodations and embarking passengers at United States ports, to establish their financial responsibility to meet liability incurred for death or injury and to indemnify passengers in the event of nonperformance of a voyage or cruise. The Commission estimates an annual respondent universe of 60 cruise line operators who possess Certificates (Performance and Casualty) for 125 vessels. Total estimated respondent bureau is 1603 manhours: 1315 manhours for complying with the regulation and 288 manhours for completion of the form. Total cost to the Federal Government is estimated at the $140,000; total cost to respondents is estimated at $83,000.

Joseph C. Polking,

Secretary.

[FR Doc. 95–18728 Filed 7–28–95; 8:45 am]

BILLING CODE 6730–01–M

Notice of Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to Office of Management and Budget (OMB) for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et. seq.*), as amended. Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, telephone number (202) 523–5800. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review; 46 CFR Part 510 and Related Application Form FMC–18

FMC requests an extension of clearance for 46 CFR Part 510 which sets forth regulations providing for the licensing of ocean freight forwarders in the U.S. foreign export commerce and related application Form FMC–18. The Commission has revised the Form FMC–18 which results in a reduction in burden on the freight forwarding industry. There are approximately 1,850 respondents annually affected at an estimated cost of $55,000. The annual manhour burden has been estimated as follows: 46 CFR 510–463 manhours recordkeeping and 874 manhours for the rest of the regulation; Form FMC–18–606 manhours. The estimated annual cost to the Federal Government is $163,000.

Joseph C. Polking,

Secretary.

[FR Doc. 95–18729 Filed 7–28–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Commerzbank AG, Frankfurt am Main, Germany; Application to Engage in Nonbanking Activities

Commerzbank AG, Frankfurt am Main, Germany (Applicant), has applied, pursuant to Section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to acquire at least 60 percent and up to 100 percent of the partnership interest in Martingale Asset Management, L.P., Boston, Massachusetts (Company), and thereby to engage *de novo* in the following nonbanking activities: (1) providing investment and financial advisory services; and (2) providing investment advice to nonaffiliated persons with respect to the purchase and sale of financial futures contracts *and options on such contracts* on bonds, interest rates, and stock and bond indices that the Board has previously approved. Applicant proposes to provide investment advice to clients (A) directly, (B) through two unaffiliated, registered, open-end investment companies, and (C) through limited partnerships, for which Company would act as general partner and in which Company would maintain a financial interest. The scope of the proposed activity is nationwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity that the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y (49 FR 806 (1984)).

The Board has previously approved, by regulation, providing investment and financial advisory services, 12 CFR 225.25(b)(4)(i)-(iv) and (vi)(A)(1) and (2), and providing investment advice to non-affiliated persons with respect to the purchase and sale of financial futures contracts *and options on such contracts*, 12 CFR 225.25(b)(19). The Board also has previously determined by order that the provision of investment advisory services with respect to financial futures on bonds, interest rate, and stock and bond indices is a permissible activity pursuant to Section 4(c)(8) of the BHC Act. *See* SR 93-27; *National Westminster Bank plc*, 78 Federal Reserve Bulletin 953 (1992); *Manufacturers Hanover Corporation*, 76 Federal Reserve Bulletin 774 (1990); and *The HongKong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990). The Board also has approved the providing of investment advice through limited partnerships. *See Meridian Bancorp, Inc.*, 80 Federal Reserve Bulletin 736 (1994). Applicant maintains that Company will conduct its proposed investment advisory activities subject to the requirements and limitations of the Board's Regulation Y and the conditions and limitations of the Board's previous orders.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition in the delivery of high quality investment management services. Applicant also believes that approval of this application would allow Company to enhance its services to existing clients and provide additional investment advisory services to new clients. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 15, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, July 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18693 Filed 7–28–95; 8:45 am]

BILLING CODE 6210–01–F

Colfax Bancshares, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-16899) published on page 35748 of the issue for Tuesday, July 11, 1995.

Under the Federal Reserve Bank of Chicago heading, the entry for Colfax Bancshares, Inc., is revised to read as follows:

1. Dentel Bancorporation, Victor, Iowa; and Colfax Bancshares, Inc., Victor, Iowa, to acquire 100 percent of the voting shares of Maxwell Bancorporation, Maxwell, Iowa, and thereby indirectly acquire Maxwell State Bank, Maxwell, Iowa.

Comments on this application must be received by August 4, 1995.

Board of Governors of the Federal Reserve System, July 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18692 Filed 7–28–95; 8:45 am]

BILLING CODE 6210–01–F

Ide Grove Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than August 15, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ida Grove Bancshares, Inc., Ida Grove, Iowa; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18694 Filed 7–28–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Title II of the Older Americans Act Amendments of 1987, Pub. L. 100–175 as amended by Pub. L. 102–375 and Pub. L. 103–171, that the 1995 White House Conference on Aging Advisory Committee on Disabilities will hold a meeting on Thursday, August 10, 1995 from 10 a.m. to 2:30 p.m. More specific information on the location of the meeting can be obtained by calling the telephone number given below.

The meeting of the Committee shall be open to the public. Records shall be kept of all Committee proceedings and will be available for public inspection at 501 School Street, SW, 8th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: White House Conference on Aging, 501 School Street, SW, 8th Floor, Washington, DC 20024; telephone (202) 245–7116.

Dated: July 25, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 95–18701 Filed 7–28–95; 8:45 am]

BILLING CODE 4130–02–M

Food and Drug Administration

[Docket No. 95F–0191]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the General Electric Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyestercarbonate resins produced by the condensation of 4,4′-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride such that the finished resins are composed of 45 to 85 percent ester of which up to 55 percent is the terephthaloyl isomer, as articles or components of articles in contact with food.

DATES: Written comments on the petitioner's environmental assessment by August 30, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4470) has been filed by the General Electric Co., One Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposes to amend the food additive regulations in § 177.1585 *Polyestercarbonate resins* (21 CFR 177.1585) to provide for the safe use of polyestercarbonate resins produced by the condensation of 4,4′-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride such that the finished resins are composed of 45 to 85 percent ester of which up to 55 percent is the terephthaloyl isomer, as articles or components of articles in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 30, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 14, 1995.

George W. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–18626 Filed 7–28–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0093]

Determination of Regulatory Review Period for Purposes of Patent Extension; NISOCOR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NISOCOR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product NISOCOR (nisoldipine). NISOCOR is indicated for the treatment of hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for NISOCOR (U.S. Patent No. 4,154,839) from Bayer AG, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 22, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of NISOCOR represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for NISOCOR is 4,965 days. Of this time, 4,292 days occurred during the testing phase of the regulatory review period, while 673 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: July 2, 1981. The applicant claims May 22, 1989, as the date the investigational new drug application (IND) became effective, based on IND 33,244. However, FDA records indicate that the effective date for the first IND submitted for NISOCOR, IND 18,813, was July 2, 1981, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: April 1, 1993. The applicant claims March 31, 1993, as the date the new drug application (NDA) for NISOCOR (NDA 20–356) was initially submitted. However, FDA records indicate that NDA 20–356 was submitted on April 1, 1993.

3. *The date the application was approved*: February 2, 1995. FDA has verified the applicant's claim that NDA 20–356 was approved on February 2, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,377 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 29, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 29, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 19, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–18687 Filed 7–28–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications

Committee Name: National Institute of Mental Health Special Emphasis Panel

Date: July 30–August 1, 1995

Time: 7 p.m.

Place: Galleria Park Hotel, 191 Sutter Street, San Francisco, CA 94104

Contact Person: Jean G. Noronha, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, telephone: 301, 443–1000.

Committee Name: National Institute of Mental Health Special Emphasis Panel

Date: August 2–August 4, 1995

Time: 7 p.m.

Place: Madison Hotel, 1177 15th Street NW., Washington, DC 20036

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel

Date: August 16, 1995

Time: 8:30 a.m.

Place: Loews, 51st and Lexington, New York, NY

Contact Person: Angela L. Redlingshafer, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, telephone: 301, 443–1367.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, Small Business Innovation Research; 93.242, Mental Health

Research Grants; 93.121, Scientist Development Awards; 93.282, Mental Health Research Service Awards for Research Training)

Dated: July 25, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–18853 Filed 7–28–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3911–N–02]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1515. The Telecommunication Device for the Deaf (TDD) number is (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235), approved December 15, 1989, requires that HUD "publish in the **Federal Register** a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from April 1, 1995 through June 30, 1995.

1. Community Lending Corporation, College Park, Maryland

Action: Probation and proposed civil money penalty in the amount of $5,000.

Cause: Failure by the company to remit to the Department mortgage insurance premiums collected from borrowers in connection with five HUD-FHA insured mortgage transactions; and failure to timely submit loans to HUD-FHA for mortgage insurance endorsement.

2. World Wide Credit Corporation, San Diego, California

Action: Proposed Settlement Agreement of a civil money penalty in the amount of $1,500; indemnification for any claim losses in connection with 10 improperly originated Title I loans; and implementation of a Quality Control Plan.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA Title I program requirements that included: failure to document borrower's source of funds required for loan fees and closing costs; advising borrowers that loan fees may be deducted from loan proceeds; improperly advising borrowers to obtain gift letters; and omitting the loan disbursement date on the Note.

3. Greystone Servicing Corporation, Inc., New York, New York

Action: Settlement Agreement that includes a payment to the Department in the amount of $228,000 and assurance by the company of compliance with the requirements of the Government National Mortgage Association (GNMA).

Cause: Violation of GNMA requirements resulting from the improper termination of 57 GNMA mortgage-backed securities pools.

4. Whitehall Funding, Inc., Davenport, Iowa

Action: Settlement Agreement that includes a payment to the Department in the amount of $75,000 and assurance by the company of compliance with the requirements of the Government National Mortgage Association (GNMA).

Cause: Violation of GNMA requirements resulting from the improper termination of 13 GNMA mortgage-backed securities pools.

5. Washington Credit Union, Lynwood, Washington

Action: Probation and proposed civil money penalty in the amount of $10,000.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA Title I property improvement loan program requirements that included: failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); failure to comply with dealer approval requirements; failure to report to HUD-FHA borrowers' uncompleted property improvements; failure to resolve a borrower complaint against a dealer; failure to verify a borrower's source of funds for the required initial payment; and inaccurate completion certificates.

6. Carl I Brown & Company, Kansas City, Missouri

Action: Proposed Settlement Agreement that includes payment to the Department of $75,000; payment of a civil money penalty in the amount of $30,000; and corrective action by the company to assure compliance with HUD-FHA requirements.

Cause: Review by HUD's contractor of the company's single family mortgage insurance claims submissions and loan servicing procedures that disclosed violations of HUD-FHA requirements. The violations included: overpayment by HUD of expenses paid; payment for preservation and protection work not performed; overpayment for tax refunds; improperly prepared claims submissions; inadequate quality control; improper dispositions of mortgagor escrow surpluses; and inadequate servicing of defaulted loans.

7. PNC Mortgage Corp. of America, Vernon Hills, Illinois

Action: Proposed Settlement Agreement that includes payment to the Department in the amount of $84,375, and if determined to be appropriate, reimbursement for marketing losses resulting from untimely submitted insurance claims.

Cause: Review by HUD's contractor of the company's single family mortgage insurance claims submissions citing violations of HUD-FHA requirements that included: untimely submission of insurance claims; and incorrect dates on claim forms.

8. Charter Mortgage Corporation, Fort Lauderdale, Florida

Action: Probation

Cause: A HUD monitoring review that disclosed violations of HUD-FHA requirements that included: failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); failure to maintain an adequate Quality Control Plan; permitting improperly secured secondary financing to close HUD-FHA insured mortgages; failure to remit to HUD-FHA Up-Front Mortgage Insurance Premiums (UFMIPs) and late charges; submission of erroneous HUD–1 Settlement Statements; and failure to retain complete loan origination files.

9. The Professional Investment & Financial Group, San Gabriel, California

Action: Proposed Settlement Agreement that includes payment to the Department of a civil money penalty in the amount of $1,000; and revision of the advertising used by the company in its HUD-FHA Title I program activities.

Cause: Use of misleading advertising by the company in connection with the Title I property improvement loan program.

10. Magna Financial Corporation, Irvine, California

Action: Settlement Agreement that includes indemnification to the Department for any claim losses in connection with five improperly originated Title I loans; payment to the Department of a civil money penalty in the amount of $1,000; and corrective action to assure compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed violations by the company of HUD-FHA Title I property improvement loan program requirements that included: failure to verify borrowers' source of funds required for initial payment; failure to properly verify borrower's income; requiring a minimum loan amount; failure to meet program requirements for the promissory note; failure to ensure that detailed descriptions of improvements were provided by borrowers; and failure to comply with HUD-FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

11. Randall Mortgage, Inc., Maitland, Florida

Action: Settlement Agreement that includes: indemnification to the Department in the amount of $87,657 for its claim loss in connection with an improperly originated HUD-FHA insured mortgage; indemnification for any future claim losses in connection with seven improperly originated mortgages; payment to the Department of a civil money penalty in the amount of $2,500; and corrective action to assure compliance with HUD-FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD-FHA requirements that included: failure to maintain an adequate Quality Control Plan for the origination of HUD-FHA insured mortgages; failure to verify borrowers' source of funds used for downpayment; failure to ensure that borrowers made the minimum required investment in the property; requiring a borrower to deposit excess escrow funds at closing; inadequate or lack of face-to-face interviews with borrowers; and failure to properly complete HUD Form 92900 Applications.

Dated: July 20, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–18727 Filed 7–28–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–942–1110–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., July 21, 1995.

The plat representing the dependent resurvey of portions of the subdivisional lines, the 1962–1969 fixed and limiting boundary, the 1962–1969 meander lines of the right and left banks of Henrys Fork, of certain islands, and of lot 22 in section 16, the subdivision of section 15, and the survey of portions of the meander lines of the 1993–1994 right and left banks of Henrys Fork, of lot 13 in section 16, and of a partition line in section 15, T. 7 N., R. 40 E., Boise Meridian, Idaho, Group No. 816, was accepted, July 18, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: July 21, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–18673 Filed 7–28–95; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–1640–00]

Idaho: Filing of Plats of Survey; Idaho

The plat, in 2 sheets of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., July 21, 1995.

The plat, in 2 sheets, representing the corrective dependent resurvey of a portion of the subdivisional lines and the dependent resurvey of portions of the west boundary, subdivisional lines, and the boundaries of certain segregation and mineral surveys, the subdivision of certain sections, and the survey of lot 18 in section 17, T. 48 N., R. 2 E., Boise Meridian, Idaho, Group No. 859, was accepted, July 18, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 21, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–18672 Filed 7–28–95; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Petroglyph National Monument, Draft General Management Plan/ Development Concept Plan/ Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Draft General Management Plan/ Development Concept Plan/ Environmental Impact Statement for Petroglyph National Monument, Bernalillo County, New Mexico.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and Public Law 101–313 (the legislation that established the monument) the National Park Service announces the availability of the Draft General Management Plan/Development Concept Plan/Environmental Impact Statement (GMP/DCP/EIS) for Petroglyph National Monument. This notice also announces public meetings for the purpose of receiving public comment on the Draft GMP/DCP/EIS.

The Draft GMP/DCP/EIS has been prepared in cooperation with the City of Albuquerque, the State of New Mexico, and the Federal Aviation Administration. The purpose of this Draft GMP/DCP/EIS is to set forth the basic management philosophy of the monument and the overall approaches to resource management, visitor use, and facility development that would be implemented over the next 10–15 years.

Petroglyph National Monument, encompassing 7,244 acres, was established in June 1990 as a new unit of the National Park System to preserve the more than 15,000 prehistoric and historic petroglyphs and other significant natural and cultural resources that are on the west side of

Albuquerque, New Mexico. The monument is the first National Park System area specifically established to protect and interpret rock carvings and their setting.

Public input and meetings identified issues and concerns addressed in the combined document, which include partnership responsibilities, cultural and natural resource protection, protection of sites and values of culturally affiliated groups, and location and function of visitor and administrative facilities such as a visitor center, parking areas and trail heads, a heritage education center, and a petroglyph research center. Other issues addressed in the GMP/DCP/EIS include interpretation, education, visitor circulation and access, public use of the monument, and boundary adjustments.

There are four alternatives for the development, resource management, and visitor use of the monument. The alternatives describe different visitor experiences and different kinds and locations for facilities under a common resource management and protection approach. All alternatives have a common resource management approach because of resource management laws and policies that apply to various aspects of all National Park System areas, including cultural landscape and archaeological site values, natural resources, and various other aspects of monument management.

Alternative 1: The overall approach of the proposed action and National Park Service's preferred alternative, would be to provide various ways for visitors of different ages and abilities to see and appreciate many of the monument's significant resources. Visitors would be directed to a visitor conter/heritage education center at Boca Negra Canyon. Horseback and bicycle riding would be permitted on selected designated mesa-top trails and at three crossing points. No horses or bicycles would be allowed in petroglyph viewing areas or archaeological sites anywhere in the monument. Mesa-top resources and visitor experiences would be monitored to identify adverse impacts. Most impacts on the cultural and natural resources would be minimal or, in some cases, beneficial. New structures would impact the cultural landscape. There could be adverse impacts on values held by culturally affiliated groups from the intrusion of bicycles and horses.

Alternative 2: This alternative would preserve the greatest portion of the monument and adjacent lands in as natural a condition as possible, with the fewest intrusions from development and fewer opportunities for public access and use. Visitors would be directed to a visitor center in Lava Shadows where they would have access to selected petroglyphs. A heritage education center would be built at Boca Negra Canyon. Visitors would have more opportunities to see the petroglyphs with a greater sense of solitude than in Alternative 1. More areas of the monument would be reserved for research, American Indian use, and occasional guided tours than in the other alternatives. Horse and bicycle use would not be permitted in this alternative except at two escarpment crossings. Impacts would be similar to and in some cases slightly more positive under this alternative than under Alternative 1 because there would be fewer facilities and these facilities would be in previously disturbed areas.

Alternative 3: The overall approach would be to provide the easiest and greatest amount of access to areas with many petroglyphs and to the scenic mesa-top vistas. Visitors would be directed to a visitor/heritage education center in Rinconada Canyon. From the visitor center many visitors would drive to a new 10-mile mesa-top loop road that would provide easy access to the mesa-top views and the volcanoes. Parking and trails would be developed at the volcanoes and geologic windows areas. Horse and bicycle use would be provided at three escarpment crossings. This alternative would have the greatest impact on natural resources, cultural resources, and values held by culturally affiliated groups.

Alternative 4: The "no-action" alternative, describes the conditions and impacts that would exist at the monument without a change in current management direction or an approved management plan. There would be no new visitor or heritage education center. This alternative would have the fewest facilities. Horseback and bicycle riding would be permitted within the monument only where currently allowed. The interim visitor center at Las Imagines would become the primary visitor center, accommodating only a limited number of visitors. Archeological sites, petroglyphs, and the cultural landscape would continue to be adversely impacted by vandalism.

DATES: Comments on the Draft GMP/DCP/EIS should be received no later than November 6, 1995. The dates and times for public meetings regarding the Draft GMP/DCP/EIS can be obtained by contacting Petroglyph National Monument at 505–839–4429.

ADDRESSES: Comments on the Draft GMP/DCP/EIS should be submitted to Superintendent, Petroglyph National Monument, 4735 Unser Blvd., NW., Albuquerque, New Mexico 87120, 505–839–4429.

SUPPLEMENTARY INFORMATION: Public reading copies of the Draft GMP/DCP/EIS will be available for review at the following locations: Department of Interior Natural Resources Library, 1849 C Street, NW., Washington, DC 20240; Office of Public Affairs, National Park Service, 1849 C Street, NW., Washington, DC 20240; Southwest Systems Support Office, 1100 Old Santa Fe Trail, Santa Fe, New Mexico; Petroglyph National Monument, Las Imagines Visitor Center, 4735 Unser Blvd., NW., Albuquerque, New Mexico; and local public libraries.

Dated: July 21, 1995.

Ernest W. Ortega,

Acting Superintendent, Southwest System Office.

[FR Doc. 95–18676 Filed 7–28–95; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1730–95; AG Order No. 1981–95]

RIN 1115–AC30

Extension of Designation of Bosnia-Hercegovina; Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until August 10, 1996, the Attorney General's designation of Bosnia-Hercegovina under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act, as amended ("the Act"). Accordingly, eligible aliens who are nationals of Bosnia-Hercegovina, or who have no nationality and who last habitually resided in Bosnia-Hercegovina, may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already have registered for the initial period of Temporary Protected Status which ended on August 10, 1993. In addition, some Bosnians may be eligible for late initial registration pursuant to 8 CFR 240.2(f)(2).

EFFECTIVE DATES: This extension of designation is effective on August 11, 1995, and will remain in effect until August 10, 1996. The primary re-registration procedures become effective on July 31, 1995, and will remain in effect until August 29, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Pub. L. 101–649 and section 304(b) of Pub. L. 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on August 10, 1992, the Attorney General designated Bosnia-Hercegovina for Temporary Protected Status for a period of 12 months, 57 FR 35604. The Attorney General extended the designation of Bosnia-Hercegovina under the Temporary Protected Status program for additional 12-month periods until August 10, 1995, 59 FR 36219.

This notice extends the designation of Bosnia-Hercegovina under the Temporary Protected Status program for an additional 12 months, in accordance with sections 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Bosnia-Hercegovina, or who have no nationality and who last habitually resided in Bosnia-Hercegovina, must comply in re-registering for Temporary Protected Status.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Bosnia-Hercegovina's Temporary Protected Status designation, late initial registrations are possible for some Bosnians under 8 CFR 240.2(f)(2). Such late initial registrant must have been "continuously physically present" in the United States since August 10, 1992, and must have had a valid immigrant or non-immigrant status during the original registration period.

An Application for Employment Authorization, Form I–765, must always be filed as part of either a re-registration or as part of a late initial registration together with the Application for Temporary Protected Status, Form I–821. The appropriate filing fee must accompany Form I–765 unless a properly documented fee waiver request is submitted to the Immigration and Naturalization Service or the applicant does not request employment authorization. The Immigration and Naturalization Service requires Temporary Protected Status registrants to submit Form I–765 for data-gathering purposes.

Notice of Extension of Designation of Bosnia-Hercegovina Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254a), and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have had consultations with the appropriate agencies of the Government concerning (a) the conditions in Bosnia-Hercegovina; and (b) whether permitting nationals of Bosnia-Hercegovina and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, to remain temporarily in the United States is contrary to the national interest of the United States. As a result, I determine that the conditions for the original designation of Temporary Protected Status for Bosnia-Hercegovina continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Bosnia-Hercegovina under section 244A(b) of the Act is extended for an additional 12-month period from August 11, 1995, to August 10, 1996.

(2) I estimate that there are approximately 400 nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) A national of Bosnia-Hercegovina, or an alien having no nationality who last habitually resided in Bosnia-Hercegovina, who received a grant of Temporary Protected Status during the initial period of designation from August 10, 1992, to August 10, 1993, must comply with the re-registration requirement contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Bosnia-Hercegovina, or an alien having no nationality who last habitually resided in Bosnia-Hercegovina, who previously has been granted Temporary Protected Status, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on July 31, 1995, and ending on August 29, 1995, in order to be eligible for Temporary Protected Status during the period from August 11, 1995, until August 10, 1996. Late Re-registration applications will be allowed pursuant to 8 CFR 240.17(c).

(5) There is no fee for Form I–821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1), currently seventy dollars ($70), will be charged for Form I–765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must nonetheless file Form I–821 together with Form I–765, but in such cases both Form I–821 and Form I–765 should be submitted without fee.

(6) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 10, 1996, the designation of Bosnia-Hercegovina under the Temporary Protected Status program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(7) Information concerning the Temporary Protected Status program for nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: July 25, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–18715 Filed 7–28–95; 8:45 am]

BILLING CODE 4410–01–M

[INS No. 1729–95; AG Order No. 1982–95]

RIN 1115–AC30

Extension of Designation of Somalia; Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until September 17, 1996, the Attorney General's designation of Somalia under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act, as amended ("the Act"). Accordingly, eligible aliens who are nationals of Somalia, or who have no nationality and who last habitually resided in Somalia may re-register for Temporary Protected Status and extension of employment

authorization. This re-registration is limited to persons who already have registered for the initial period of Temporary Protected Status which ended on September 16, 1992. In addition, some Somalians may be eligible for late initial registration pursuant to 8 CFR 240.2(f)(2).

EFFECTIVE DATES: This extension of designation is effective on September 18, 1995, and will remain in effect until September 17, 1996. The primary re-registration procedures become effective on August 19, 1995, and will remain in effect until September 17, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Pub. L. 101–649 and section 304(b) of Pub. L. 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on September 16, 1991, the Attorney General designated Somalia for Temporary Protected Status for a period of 12 months, 56 FR 46804. The Attorney General extended the designation of Somalia under the Temporary Protected Status program for additional 12-month period until September 17, 1995, 59 FR 43359.

This notice extends the designation of Somalia under the Temporary Protected Status program for an additional 12 months, in accordance with sections 244A(b)(3)(A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Somalia, or who have no nationality and who last habitually resided in Somalia, must comply in re-registering for Temporary Protected Status.

In addition to timely re-registrations and late re-registration authorized by this notice's extension of Somalia's Temporary Protected Status designation, late initial registrations are possible for some Somalians under 8 CFR 240.2(f)(2). Such late initial registrants must have been "continuously physically present" in the United States since September 16, 1991, and must have had a valid immigrant or non-immigrant status during the original registration period.

An Application for Employment Authorization, Form I–765, must always be filed as part of either a re-registration or as part of a late initial registration together with the Application for Temporary Protected Status, Form I–821. The appropriate filing fee must accompany Form I–765 unless a properly documented fee waiver request is submitted to the Immigration and Naturalization Service or the applicant does not request employment authorization. The Immigration and Naturalization Service requires Temporary Protected Status registrants to submit Form I–765 for data-gathering purposes.

Notice of Extension of Designation of Somalia Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254a), and pursuant to sections 244A(b)(3)(A) and (C) of the Act, I have had consultations with the appropriate agencies of the Government concerning (a) the conditions in Somalia; and (b) whether permitting nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, to remain temporarily in the United States is contrary to the national interest of the United States. As a result, I determine that the conditions for the original designation of Temporary Protected Status for Somalia continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Somalia under section 244A(b) of the Act is extended for an additional 12-month period from September 18, 1995, to September 17, 1996.

(2) I estimate that there are approximately 350 nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) A national of Somalia, or an alien having no nationality who last habitually resided in Somalia, who received a grant of Temporary Protected Status during the initial period of designation from September 16, 1991, to September 16, 1992, must comply with the re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Somalia, or an alien having no nationality who last habitually resided in Somalia, who previously has been granted Temporary Protected Status, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on August 19, 1995, and ending on September 17, 1995, in order to be eligible for Temporary Protected Status during the period from September 18, 1995, until September 17, 1996. Late re-registration applications will be allowed pursuant to 8 CFR 240.17(c).

(5) There is no fee for Form I–821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1), currently seventy dollars ($70), will be charged for Form I–765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must nonetheless file Form I–821 together with Form I–765, but in such cases both Form I–821 and Form I–765 should be submitted without fee.

(6) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before September 17, 1996, the designation of Somalia under the Temporary Protected Status program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register.**

(7) Information concerning the Temporary Protected Status program for nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: July 25, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–18714 Filed 7–28–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Availability of Benefits Quality Control Annual Report Results

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of the Unemployment Insurance Benefits Quality Control Annual Report for Calendar Year 1994.

SUMMARY: The purpose of this notice is to announce the availability of the Unemployment Insurance (UI) Quality Control (QC) 1994 Annual Report which contains the results of each State's Benefits Quality Control (BQC) Program and how it may be obtained.

DATES: The Federal digest will be available after July 31, 1995.

ADDRESSES: Copies may be obtained by writing to Mary Ann Wyrsch, Director, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, N.W., Room S–4231, Washington, D.C. 20210. The digest and this notice contain a list of names and addresses of persons in each State who will provide additional information regarding the individual State report and clarifications upon request.

FOR FURTHER INFORMATION CONTACT: John Sharkey, Chief, Division of System Operations and Analysis, Office of Quality Control at 202–219–7656. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Each week, staff in each State's Employment Security Agency investigate random samples of UI benefit payments and record information based on interviews with claimants, employers, and third parties to determine whether State law, policy, and procedure were followed correctly in processing the sampled payment.

The Department of Labor is publishing results from the investigations in a digest which includes information on the 52 jurisdictions participating in the UI QC program. Five items are reported for each State: total UI benefit dollars paid to the population of claimants, size of the QC samples, and the percentages of proper payments, overpayments, and underpayments in the population estimated from the QC investigations. Ninety-five percent confidence intervals have been computed for each of the three percentages presented (proper payments, overpayments, and underpayments). States have been encouraged to provide narratives to further clarify the meaning of the data based on their specific situations.

Since States' laws, policies, and procedures vary considerably, the data cannot be used to draw comparisons among States.

In addition, each State has published its Annual Report separately. Persons wanting clarification or additional information concerning a specific State's report are encouraged to contact the individual identified in the attached mailing list.

Signed at Washington, D.C., on July 25, 1995.

Timothy Barnicle,

Assistant Secretary of Labor for Employment and Training.

UI QC Annual Report CY 1994

State Contacts

Alabama

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Alaska

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Arizona

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Arkansas

Phil Price, Interim Director, AR Employment Security Dept., P.O. Box 2981, Little Rock, AR 72203, (501)682–2121

or

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California

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Colorado

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Connecticut

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Delaware

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District of Columbia

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Illinois

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Louisiana

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Maine

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Maryland

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Mississippi

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or

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Missouri

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Nebraska

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or

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Nevada

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New Hampshire

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New Jersey

Paulette Laubsch, Assistant Commissioner, Employment Security & Job Training, New Jersey Department of Labor, CN 058, Trenton, NJ 08625, (609) 984–5666

New Mexico

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Pennsylvania

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Puerto Rico

Carmen Otero de McCulloch, Assistant Secretary, PR Dept. of Labor and Human Resources, 505 Munoz Rivera Avenue, Hato Rey, PR 00918, (809) 754–2131

Rhode Island

Lawrence Fitch, Director, Dept. of Employment Security, 24 Mason Street, Providence, RI 02903, (401) 277–3648

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Tennessee

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Texas

Bert West, UI QC Supervisor, UI Quality Control, (512) 463–2394

or

Mike Sheridan, Director, Unemployment Insurance, (512) 463–0735

Both at:

Texas Employment Commission, 101 E 15th Street, Austin, TX 78778

Utah

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Vermont

Robert Herbst, Quality Control Chief, Dept. of Employment & Training, P.O. Box 488, Montpelier, VT 05602, (802) 828–4382

Virginia

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Washington

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West Virginia

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Wisconsin

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Wyoming

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[FR Doc. 95–18698 Filed 7–28–95; 8:45 am]

BILLING CODE 4510–30–M

Public Meeting; Federal Committee on Apprenticeship

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

Pursuant to section 10(a)(2) of the Federal Advisory Committee act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on August 16, 1995, at the Sheraton Inn at Ann Arbor, 3200 Boardwalk, Ann Arbor, Michigan 48108. The agenda will include:

9:00 a.m. Call to Order
Administrative Matters
- Meeting Logistics

Approval of Minutes
Report on National Skill Standards Board
Work Group Reports and Recommendations
- Reauthorization/funding Carl Perkins Vocational Education Act
- Pilot test projects for promotion/expansion of registered apprenticeship
- National Registered Apprenticeship Award Program
- Regulatory Barriers to Expansion of Registered Apprenticeship
- Legislation affecting registered apprenticeship Briefing on "Apprenticeship: The Answer for America's Future" (Oct. 1–3, 1995, Washington Hilton, Wash., DC)

National Association of State and Territorial Apprenticeship Directors (NASTAD) Report
National Association of Governmental Labor Officials (NAGLO) Report
Bureau of Apprenticeship and Training Report
Public Comments
Other Business
12:30 p.m. Adjournment

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion M. Winters at (202) 219–5921, Ext. 114 no later than August 4, 1995, if special accommodations are needed.

Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Designated Federal Official at any time prior to the meeting. His address is: Mr. Anthony Swoope, Director, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–4649, Washington, D.C. 20210.

Fifteen duplicate copies are needed for the members and for inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official by August 11, 1995. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, D.C., this 25th day of July 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 95–18716 Filed 7–28–95; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

Oregon State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for occupational Safety and Health (hereinafter called the Assistant Secretary (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required. The Oregon plan also provides for the adoption of Federal standards as State standards by reference.

In response to Federal standard changes, the State has submitted by letter dated May 10, 1994, a standard amendment identical to 29 CFR 1910.110(d)(11), Storage and Handling of Liquefied Petroleum Gases, as published in the **Federal Register** (58 FR 15089) on March 19, 1993. This correction was made when the standard was reprinted on August 27, 1993.

In response to Federal standard changes, the State has submitted by letter dated April 21, 1994, State standard amendments identical to 29 CFR 1910.94, 1910.96 and 1910.100, Subpart G—Occupational Health and Environmental Control, as published in the **Federal Register** (58 FR 35308) on June 30, 1993. These corrections were made when the standard was reprinted on April 6, 1994.

In response to Federal standard changes, the State has submitted by letter dated November 4, 1994, State standard amendments identical to 29 CFR 1910.132, 1910.133, 1910.135, 1910.136 and 1910.138 and Appendices A and B, Personal Protective Equipment, as published in the **Federal Register** (59 FR 6126) on February 9, 1994. In addition, several Oregon-initiated rules at OAR 437–02–123 through 137 were delegated because the new Federal adoption now covers these areas. The changes were adopted in Administrative Order 5–1994, on September 30, 1994, and became effective on September 30, 1994.

In response to Federal standard changes, the State has submitted by letter dated November 4, 1994, State standard amendments identical to Federal changes to 29 CFR 1910.146(k)(2)(ii) and the "Atmospheric monitoring" section of Appendix E,

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"Sewer System Entry", of the Permit-Required Confined Spaces standard, as published in the **Federal Register** (59 FR 26114) on May 19, 1994. The change was adopted in Administrative Order 5–1994, on September 30, 1994, and became effective on September 30, 1994. OSHA previously approved Oregon's Permit-Required Confined Spaces standard in the **Federal Register** (58 FR 57631) on October 26, 1993.

On its own initiative, the State of Oregon has submitted by letter dated February 10, 1994, a repeal of most of the State standard OAR 437. Division 116, Carcinogens, and a renumbered State-initiated rule for Carcinogens in Laboratories, OAR 437–02–391. Oregon has repealed most of Division 116 because the carcinogens in this code have been replaced by separate federal standards for individual carcinogens. The State's original Carcinogens standard, OAR 437 Chapter 22–017(D), received Federal Register approval (40 FR 50583) on October 30, 1975. The State's standard was subsequently recodified, without change, as OAR 437, Division 116, and received Federal Register approval (52 FR 27077) on July 17, 1987. The change was adopted in Administrative Order 12–1993 on August 20, 1993, and became effective on November 1, 1993.

On its own initiative, the State of Oregon has submitted by letter dated February 10, 1994, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a redesignated, renumbered and slightly amended standard for Thiram, which is not covered by OSHA. The State's original standard OAR 437, Division 130, received Federal Register approval (44 FR 71469) on December 11, 1979. The amendment to the standard deleted a minor exemption to an eye protection requirement. The change was adopted in Administrative Order 12–1993 on August 20, 1993, and became effective on November 1, 1993.

On its own initiative, the State of Oregon has submitted by letter dated February 10, 1994, a renumbered and slightly amended standard for MOCA (4, 4'–Methylene bis (2-Chloro-Aniline)), which is not covered by OSHA. The State's original standard OAR 437, Chapter 22–017(D) received Federal Register approval (40 FR 50583) on October 30, 1975. The State's original standard was subsequently recodified, without change, as OAR 437, Division 116, and received Federal Register approval (52 FR 27077) on July 17, 1987. This change is needed because the State's one code at Division 116, which covered all carcinogens, was replaced by 16 separate standards identical to the federal. However, since MOCA is not required by OSHA, a separate standard for MOCA is necessary. The only changes to the standard were to change the word carcinogen to MOCA, him/her to them and his/her to their. The change was adopted in Administrative Order 12–1993 on August 20, 1993, and became effective on November 1, 1993.

On its own initiative, the State of Oregon has submitted by letter dated February 10, 1994, repeal of OAR 437, Division 137 and adoption by reference of 29 CFR 1910.1002, Coal Tar Pitch Volatiles. The State's original standard received Federal Register approval (50 FR 20105) on May 14, 1985. The change was adopted in Administrative Order 12–1993 on August 20, 1993, and became effective on November 1 1993.

On its own initiative, the State of Oregon has submitted by letter dated February 10, 1994, a repeal of most of OAR 437, Division 116 and the adoption by reference of the toxic and hazardous substances at 29 CFR 1910.1003 and 1910.1004, and 1910.1006 through 1910.1016. The State's original standard, OAR Chapter 22–017(D), received Federal Register approval (40 FR 50583) on October 30, 1975. The State's standard was subsequently recodified, without change, as OAR 437, Division 116, and received Federal Register approval (52 FR 27077) on July 17, 1987. The change was adopted in Administrative Order 12–1993 on August 20, 1993, and became effective on November 1, 1993.

On its own initiative, the State of Oregon has submitted by letter dated February 10, 1994, a repeal of OAR 437, Division 131, and the adoption by reference of 29 CFR 1910.1017, Vinyl Chloride. The original standard received Federal Register approval (45 FR 81132) on December 9, 1980. The change was adopted in Administrative Order 12–1993 on August 20, 1993, and became effective on November 1, 1993.

On its own initiative, the State of Oregon has submitted by letter dated February 10, 1994, a repeal of OAR 437, Division 100, and the adoption by reference of 29 CFR 1910.1018, Inorganic Arsenic. The original standard received Federal Register approval (45 FR 47546) on July 15, 1980. The change was adopted in Administrative Order 12–1993 on August 20, 1993, and became effective on November 1, 1993.

On its own initiative, the State of Oregon has submitted by letter dated February 10, 1994, the adoption by reference of 29 CFR 1910.1029, Coke Oven Emissions. Previously, the State certified that there was no industry where the standard would apply. The change was adopted in Administrative Order 12–1993 on August 20, 1993, and became effective on November 1, 1993.

On its own initiative, the State of Oregon has submitted by letter dated February 10, 1994, a repeal of OAR 437, Division 132, and the adoption by reference of 29 CFR 1910.1044, 1,2-Dibromo-3-Chloropropane. The original standard received Federal Register approval (44 FR 71470) on December 11, 1979. The change was adopted in Administrative Order 12–1993 on August 20, 1993, and became effective on November 1, 1993.

On its own initiative, the State of Oregon has submitted by letter dated February 10, 1994, a repeal of OAR 437, Division 135, and the adoption by reference of 29 CFR 1910.1045, Acrylonitrile. The original standard received Federal Register approval (45 FR 47546) on July 15, 1980. The change was adopted in Administrative Order 12–1993 on August 20, 1993, and became effective on November 1, 1993.

All State letters were sent from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan.

2. Decision

OSHA has determined that the State standard amendments are at least as effective as the comparable Federal standards, as required by Section 18(c)(2) of the Act. OSHA has also determined that these State standard amendments are identical to the Federal amendments, except for the Carcinogens in Laboratories, Thiram, and MOCA changes which are substantially identical to the previously approved standards. OSHA therefore approves the standards; however, the right to reconsider this approval is reserved for the Carcinogens in Laboratories, Thiram, and MOCA amendments should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator,

Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW, Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard changes are identical to the federal standards which were promulgated in accordance with the federal law including meeting requirements for public participation.

2. The standard changes were adopted in accordance with the procedural requirements of State law and further pubic participation would be repetitious.

This decision is effective July 31, 1995.

(Sec. 18, Pub. L. 91–596, 84 Stat. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 20th day of March 1995.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 95–18699 Filed 7–28–95; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–64; Exemption Application No. D–09878, et al.]

Grant of Individual Exemptions; Tenneco, Inc., Health Care Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Tenneco, Inc. Health Care Plan (the Plan) Located in Houston, Texas

[Prohibited Transaction Exemption 95–64; Exemption Application No. D–09878]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act shall not apply to the contribution to the Plan of common stock (the Stock) of Tenneco, Inc. (Tenneco) by Tenneco or any of its subsidiaries, provided the following conditions are satisfied: (a) The Plan will dispose of the Stock received within 2 business days of receipt, either by sale on the open market or by sale to Tenneco; (b) any sale of the Stock from the Plan to Tenneco will comply with conditions (1) and (2) of section 408(e) of the Act; and (c) Tenneco will pay any and all transactional costs for any sales by the Plan on the open market.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 22, 1995 at 60 FR 27124.

Written Comments: The Department received nine written comments and numerous telephone inquiries with respect to the proposed exemption in which the writers and callers sought additional information concerning the proposed exemption. The Department provided this information by telephone. In addition, the Department received one written comment requesting that the Department deny the exemption application. The commentator complained about the increase in his required contribution to the Plan, and also stated that he disagreed with the applicant's representation that the market price of the Stock will not be diluted by the infusion of shares in the market as a result of the subject transaction.

The applicant responded to this comment by stating that the required increases in participants' contributions to the Plan were made for legitimate business reasons and were unrelated to the transaction which is the subject of the exemption request. With regard to the commentator's second point, the applicant responded that the sale of the Stock by the Plan should not lead to a dilution of the price of the Stock because the volume of Stock passing through the Plan will be relatively small. It is intended that the Plan will receive a contribution from Tenneco (and sell each share immediately thereafter) of approximately 691,000 shares of the Stock over a six-month period. In 1994, the average daily trading volume of Stock on the New York Stock Exchange was approximately 540,000 shares per day. Because the number of shares involved in the subject transaction is relatively small compared to the general trading volume of the Stock, the applicant anticipates that there will be no effect on the market price of the Tenneco shares.

The Department has considered the entire record, including the comments submitted and the applicant's responses thereto, and has determined to grant the exemption as it was proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Brown Group, Inc. 401(k) Savings Plan (the Plan) Located in St. Louis, Missouri

[Prohibited Transaction Exemption 95–65; Exemption Application No. D–09951]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the guarantee (the Guarantee) by The Brown Group, Inc. (the Employer), the sponsor of the Plan, of amounts due the Plan with respect to a guaranteed investment contract issued by Confederation Life (Confederation Life), including the Employer's potential cash advances to the Plan (the Advances) pursuant to the Guarantee and the potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Advances are made in lieu of amounts due the Plan under the terms of the GIC;

(C) The Repayments are restricted to cash proceeds actually received by the Plan from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the terms of the GIC, or from the sale or transfer of the GIC to unrelated third parties (the GIC Proceeds), and no other Plan assets are used to make the Repayments; and

(D) The Repayments will be waived to the extent the Advances exceed the GIC Proceeds.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on May 10, 1995 at 60 FR 24903.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

BlackRock Financial Management L.P. (BlackRock) Located in New York, New York

[Prohibited Transaction Exemption 95–66; Application No. D–09963]

Exemption

The restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the proposed cross-trading of equity or debt securities between various accounts managed by BlackRock (the Accounts) where at least one Account involved in any cross-trade is an employee benefit plan account (Plan Account) for which BlackRock acts as a fiduciary.

Conditions and Definitions

This exemption is subject to the following conditions:

1. (a) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a fiduciary with respect to each such Plan, the fiduciary of which is independent of BlackRock;

(b) The authorization referred to in paragraph (a) is terminable at will without penalty to such Plan, upon receipt by BlackRock of written notice of termination; and

(c) Before an authorization is made, the authorizing Plan fiduciary must be furnished with any reasonably available information necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, a description of BlackRock's cross-trade practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests.

2. (a) No more than three (3) business days prior to the execution of any cross-trade transaction, BlackRock must inform an independent fiduciary of each Plan involved in the cross-trade transaction: (i) that BlackRock proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available; (ii) the current trading price for such securities; and (iii) the total number of shares to be acquired or sold by each such Plan;

(b) Prior to each cross-trade transaction, the transaction must be authorized either orally or in writing by the independent fiduciary of each Plan involved in the cross-trade transaction;

(c) If a cross-trade transaction is authorized orally by an independent fiduciary, BlackRock will provide written confirmation of such authorization in a manner reasonably calculated to be received by such independent fiduciary within one (1) business day from the date of such authorization;

(d) The authorization referred to in this paragraph (2) will be effective for a period of three (3) business days; and

(e) No more than ten (10) days after the completion of a cross-trade transaction, the independent fiduciary authorizing the cross-trade transaction must be provided a written confirmation of the transaction and the price at which the transaction was executed.

3. (a) Each cross-trade transaction is effected at the current market value for the security on the date of the transaction, which shall be, for equity securities, the closing price for the security on the date of the transaction, and for debt securities, the fair market value for the security as determined in accordance with paragraph (b) of Rule 17a–7 issued by the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940 (the 1940 Act);

(b) The cross-trade transaction is effected at a price that: (1) in the case of any equity security, is within 10 percent of the closing price for the security on the day before the date on which BlackRock receives authorization from the independent Plan fiduciary to engage in the cross-trade transaction; and (2) in the case of any debt security, is within 10 percent of the fair market value of the security on the last valuation date preceding the date on which BlackRock receives authorization by the independent Plan fiduciary to engage in the cross-trade transaction as determined in accordance with SEC Rule 17a–7(b) of the 1940 Act;

(c) The securities involved in the cross-trade transaction are those for which there is a generally recognized market;

(d) The cross-trade transaction is effected only where the trade involves less than five (5) percent of the aggregate average daily trading volume of the securities which are the subject of the transaction for the week immediately preceding the authorization of the transaction. A cross-trade transaction may exceed this limit only by express authorization of independent fiduciaries on behalf of Plans affected by the transaction, prior to the execution of the cross-trade.

4. For all accounts participating in the cross-trading program, if the number of units of a particular security which any accounts need to sell on a given day is less than the number of units of such security which any accounts need to buy, or vice versa, the direct cross-trade opportunity must be allocated among the buying or selling accounts on a pro rata basis.

5. (a) BlackRock furnishes the authorizing Plan fiduciary at least once every three months, and not later than 45 days following the period to which it relates, a report disclosing: (i) a list of all cross-trade transactions engaged in on behalf of the Plan; and (ii) with respect to each cross-trade transaction, the prices at which the securities involved in the transaction were traded on the date of such transaction; and

(b) The authorizing Plan fiduciary is furnished with a summary of the information required under this paragraph 4(a) at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following: (i) a description of the total amount of Plan assets involved in cross-trade transactions during the period; (ii) a description of BlackRock's cross-trade practices, if such practices have changed materially during the period covered by the summary; (iii) a statement that the Plan fiduciary's authorization of cross-trade transactions may be terminated upon receipt by BlackRock of the fiduciary's written notice to that effect; and (iv) a statement that the Plan fiduciary's authorization of the cross-trade transactions will continue in effect unless it is terminated.

6. The cross-trade transaction does not involve assets of any Plan established or maintained by BlackRock or any of its affiliates.

7. All Plans that participate in the cross-trade program have total assets of at least $25 million.

8. BlackRock receives no fee or other compensation (other than its agreed upon investment management fee) with respect to any cross-trade transaction.

9. BlackRock is a discretionary investment manager with respect to Plans participating in the cross-trade program.

10. For purposes of this exemption:

(a) "Cross-trade transaction" means a purchase and sale of securities between accounts for which BlackRock or an affiliate is acting as an investment manager;

(b) "Affiliate" means any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with BlackRock;

(c) "Plan Account" means an account holding assets of one or more employee benefit plans that are subject to the Act, for which BlackRock acts as a fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 7, 1995, at 60 FR 30111.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 26th day of July 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–18718 Filed 7–28–95; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–09783 et al.]

Proposed Exemptions; Texas Commerce Bank National Association

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Texas Commerce Bank National Association (Texas Commerce) Located in Houston, TX

[Application No. D–09783]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the leasing, since September 15, 1993, of certain office space in a building (the Building) owned by the Maritime Association—I.L.A. Pension Fund (the Pension Plan) to Texas Commerce, a party in interest with respect to the Pension Plan.

This proposed exemption is conditioned on the following requirements:

(a) The trustees of the Pension Plan (the Trustees), who are independent of Texas Commerce, believe that the leasing of office space in the Building by the Plan to Texas Commerce is and will continue to be in the best interest of the Pension Plan and its participants and beneficiaries.

(b) The decision by the Pension Plan to enter into and continue leasing office space in the Building to Texas Commerce has been made and will continue to be made by the Trustees in consultation with an independent property manager and an independent fiduciary.

(c) The terms of the lease have remained and will remain at least as favorable to the Pension Plan as those obtainable in an arm's length transaction with an unrelated party.

(d) The rental charged by the Pension Plan under the lease has been based and will continue to be based upon arm's length negotiations with unrelated parties.

(e) The Trustees, in conjunction with the independent fiduciary, have and will continue to (i) monitor the terms and conditions of the lease as well as the terms and conditions of the exemption and (ii) take all actions that are necessary and proper to safeguard the interests of the Pension Plan and its participants and beneficiaries.

(f) The subject lease has involved and will continue to involve less than 25 percent of the Pension Plan's total assets.

Effective Date: If granted, this proposed exemption will be effective September 15, 1993.

Summary of Facts and Representations

1. The Pension Plan is a multiemployer, Taft-Hartley plan that has been established and maintained in accordance with section 302(c)(5) of the Labor Management Relations Act of 1947, as amended, between the South Atlantic and Gulf Coast District International Longshoremen's Association (the Union) and the West Gulf Maritime Association (the Association). The Pension Plan is administered by a board of 16 trustees, one-half of whom are appointed by the Association and one-half of whom are appointed by the Union. The principal offices of the Pension Plan are located in Houston, Texas, Investment decisions for the Pension Plan are made by the Trustees and various investment consultants. As of September 30, 1994, the Pension Plan had net assets of $409,325,675. As of August 4, 1994, the Pension Plan had 6,069 participants.

2. The Union and its affiliated locals represent longshoremen from Lake Charles, Louisiana to Brownsville, Texas. There are 31 affiliated locals in this geographic area.

3. The Association is a Texas nonprofit corporation exempt from taxation under section 501(c)(6) of the Code. Its members include business organizations engaged in the shipping industry from Lake Charles, Louisiana to Brownsville, Texas. Approximately 35 members of the Association contribute to the Plan.

4. Texas Commerce is a national banking association with locations in Houston and other Texas cities. It is a wholly owned subsidiary of Texas Commerce BrancShares, Inc., which is a wholly owned subsidiary of the New York City-based Chemical Banking Corporation. Texas Commerce provides a full range of banking and trust services to its customers. It currently serves as a fiduciary to the Pension Plan but it has no investment discretion with respect to the Pension Plan's real estate assets including the subject Building described herein.

5. First City Bank Texas (First City) was a national banking association with locations in Houston and other Texas cities. During 1979, First City entered into a lease agreement under which it leased space in a building located at 11550 Fuqua, Houston, Texas. The Building is a five-story office building containing 88,678 square feet of gross space and 83,636 square feet of net rentable space. It is situated on an approximately 3.5 acre tract of land. The owner of the Building was Crow-Southpoint #1, Ltd. (Crow), a Texas limited partnership. First City used the office space in the Building as a bank lobby.

6. In October 1982, the Plan purchased a 60 percent interest in the Building from Crow for $3.9 million. This transaction, together with a loan and lease agreement were covered by Prohibited Transaction Exemption (PTE) 85–79, (50 FR 18945), an administrative exemption that was granted by the Department on May 3, 1985. PTE 85–79, which was retroactive to October 27, 1982, provided for the formation of a joint venture (the Joint Venture) between the Pension Plan and Crow. Upon the formation of the Joint Venture, Crow became a party in interest with respect to the Pension Plan.

The terms of the Joint Venture were negotiated and approved by Mr. John D. O'Connell of O'Connell and O'Connell, Inc., a real estate consultant, who was designated by the trustees of the Pension Plan to serve as the independent fiduciary on behalf of the Pension Plan. Mr. O'Connell renders investment advice to the Pension Plan with respect to real estate transactions and supervises the making of real estate investments on behalf of the Pension Plan.

The terms of the Joint Venture were as follows: (a) Crow would be the managing general partner of the Joint Venture; (b) Crow would contribute the Building, a 3.5 acre site improved with a five-story office building to the Joint Venture in return for a 40 percent ownership interest; (c) the Pension Plan would be required to make a $3.9 million capital contribution to the Joint Venture in return for a 60 percent ownership interest; (d) the Pension Plan would be required to make a loan of $2 million to Crow at 11.25 percent interest only for a 15 year term, with interest payable annually on the anniversary date of the loan and principal due upon maturity; (e) the loan would be secured by Crow's 40 percent ownership interest in the Joint Venture and would be used to clear complete title to the Building and to repay Crow the funds it expended for the acquisition of the Building; (f) net cash flow from the operations of the Joint Venture would be distributed 60 percent to the Pension Plan and 40 percent to Crow; (g) Crow would be appointed by the Joint Venture as manager of the Building receiving from the Joint Venture both a management fee and leasing commissions pursuing to a Management Agreement between Crow and the Joint Venture; (h) the Pension Plan would be required to approve leases in excess of 10,000 square feet or for terms in excess of five years and any capital expenditure in excess of $50,000 would have to be submitted to the Pension Plan for approval; and either (i) partner in the Joint Venture could cause a sale of the project subject to a right of first offer to the other partner.

Aside from the formation of the Joint Venture, PTE 85–79 provided specific exemptive relief that permitted the Pension Plan to make the $2 million loan to Crow under the terms specified above. PTE 85–79 also allowed Crow to receive lease commissions paid by the Joint Venture pursuant to the terms of the Management Agreement.

7. Also commencing in October 1982, the Pension Plan began occupying office space in the Building for its administrative offices and also leasing space therein to the Maritime Association—I.L.A. Welfare Fund (the Welfare Plan) and the Maritime Association I.L.A. Vacation Plan (the Vacation Plan). The Welfare Plan and the Vacation Plan are not parties in interest with respect to the Pension Plan but they do have common trustees. The applicant represents that the leasing arrangement between the Pension Plan, the Welfare Plan and the Vacation Plan satisfies the terms and conditions of PTE 77–10 (42 FR 33918, July 1, 1977).[1]

8. In October 1992, two events occurred involving the Pension Plan. First, Ameritrust Texas, N.A. (Ameritrust), a national banking association with locations in Houston and other Texas cities, began providing custodial, investment management and securities lending services to the Pension Plan as well as to the Welfare Plan and the Vacation Plan. At that time, Ameritrust had no relationship to First City or to Texas Commerce. Second, First City was taken over by the Federal Deposit Insurance Corporation (the FDIC) due to First City's insolvency.

9. In December 1992, the Pension Plan acquired the 40 percent interest in the Building that was held by Crow as a result of Crow's default, in October 1991, on the $2 million loan and failure to cure the event of default. The Pension Plan then foreclosed on Crow's interest in the Joint Venture. The Joint Venture was dissolved and the Pension Plan assumed exclusive ownership of the Building. The Pension Plan incurred no loss in connection with the assumption of the Building.

10. In February 1993, Texas Commerce acquired all of the assets of First City from the FDIC. The office space became a bank lobby for Texas Commerce and Texas Commerce executed a new lease with the Pension Plan effective April 18, 1993. The applicant represents that no administrative exemptive relief was requested because Texas Commerce was not a party in interest at the time of the execution of the lease.

11. The terms of the Texas Commerce lease provide for a primary term of five years with an option to renew and extend for up to three successive five year terms of five years each. The rentable area is 15,713 square feet of space. The rental amount includes base rent of $14.67 per square foot or $230,509.58 per year ($19,209.14 per month) and an operating expense of $6.67 per square foot or $104,805.71 per year. Thus, the total rent is $21.34 per square foot or $335,315.39 per year. The lease also includes an alteration allowance of $50,000.[2] In the event of a default, Texas Commerce is required to reimburse the Pension Plan on demand for all costs reasonably incurred by the Pension Plan on demand for all costs reasonably incurred by the Pension Plan in connection therewith, including attorney's fees, court costs and related costs plus interest thereon at an annual rate equal to the prime rate charged by Texas Commerce to its most creditworthy borrowers for short-term commercial loans. The same default provisions also apply in the event of a default by the Pension Plan.

12. The trustees of the Pension Plan utilized the services of Mr. Brint Davis of Trammel Crow Houston, Inc., an independent building property manager and Mr. O'Connell, the independent fiduciary for the Pension Plan in PTE 85–79, to represent the interests of the Pension Plan in negotiating the lease with Texas Commerce. The applicant represents that neither Mr. O'Connell nor Mr. Davis are employees, officers, or directors of Texas Commerce nor is there any other relationship or connection between these individuals and Texas Commerce. Mr. Davis's employer is the exclusive leasing agent and property manager for the Building. Mr. O'Connell reviews all leases in the Building on behalf of the Pension Plan to ascertain that the leases are comparable in terms to the conditions prevailing in the market. Mr. O'Connell states that he has advised the Pension Plan on real estate matters for more than 15 years.

13. In negotiating the terms of the lease for which Texas Commerce pays a base rent of $14.67 per square foot on an "as is basis," Mr. O'Connell represents that the subject Building is located in an isolated area with very few comparables and no comparable bank leases. He explains that office space in this unique area enjoys almost 100 percent occupancy so that rents, if and when available, are about $16 per square foot. He further explains that the closest areas that might be considered comparable to the Building are the Clearlake area and the Hobby Airport area where rents are approximately $12 per square foot.

14. On September 15, 1993, Texas Commerce acquired 100 percent of the stock of Ameritrust. This event caused the existing lease to become a prohibited transaction in violation of the Act but not under the Code. Also effective as of September 15, 1993, Ameritrust was renamed Texas Commerce Trust Company, National Association (Texas Commerce Trust). Texas Commerce Trust continued to provide to the Plans the same services initially provided by Ameritrust.

On December 17, 1993, Texas Commerce Trust was dissolved and merged into the Trust Department of Texas Commerce. As a result of the merger, the lease became a prohibited transaction under the Code as well as under the Act.[3]

[1] The Department expresses no opinion herein on whether the leasing arrangement between the Pension Plan, the Welfare Plan and the Vacation Plan complies with PTE 77–10.

[2] Article 9.01 of the Texas Commerce lease allows the lessee to move, relocate or demolish interior walls inside the leased space and to paint or finish the walls as the lessee may choose. The lessee is also permitted to add cabinets and fixtures as needed for its business and to select floor coverings for the area.

Notwithstanding the alteration allowance provision set forth in the lease, it is represented that the Trustees of the Pension Plan did not allow the office space currently occupied by Texas Commerce to be altered in such a manner that such space could be leased only to certain types of lessees. The applicant states that the original buildout of the subject space was pursuant to a 1979 lease between Crow and First City. The applicant further represents that the 1979 lease was negotiated at arm's length by unrelated parties and had a primary term of 20 years. The applicant notes that the Pension Plan did not acquire an equity interest in the Building until 1982.

[3] According to the applicant, Texas Commerce was a party in interest with respect to the Pension Plan under section 3(14)(H) of the Act because it was a 10 percent or more shareholder of Texas Commerce Trust, which was a service provider to the Pension Plan. Because section 4975 of the Code does not include 10 percent shareholders of service providers in the list of disqualified persons, the applicant represents that the lease transaction was not subject to the excise tax provisions under

Continued

Neither First City, Texas Commerce, Ameritrust, Texas Commerce Trust, nor any of their affiliates have ever had any relationship to the Pension Plan other than as a result of the lease and the services provided by Ameritrust and its successors, Texas Commerce Trust and Texas Commerce.

15. Currently, Texas Commerce provides the same custodial, investment management and securities lending services to the Pension Plan, the Welfare Plan, the Vacation Plan and certain miscellaneous accounts (the Accounts) that were provided by Ameritrust and Texas Commerce Trust. The fees associated with custodial services totaled $126,100 for the Plans and the Miscellaneous Accounts for the year ending December 31, 1994. Also for the year ending December 31, 1994, the fees associated with investment management services totaled $106,660, excluding the Building. Further, the fees associated with securities lending services provided the Plans and the Miscellaneous Accounts by Texas Commerce and its predecessors totaled $48,000 for the period, October 1, 1993 through July 31, 1994.

16. Since the inception of the lease, Texas Commerce has continued to pay rent to the Pension Plan in a timely manner without default or rental delinquencies. However, the applicant is aware of the fact that a prohibited transaction occurred in violation of the Act on September 15, 1993. Therefore, the applicant has requested exemptive relief with respect to the past and continued leasing of office space in the Building by the Pension Plan to Texas Commerce. If granted, the proposed exemption will be retroactive to September 15, 1993.[4]

17. Mr. O'Connell notes that the space presently leased to Texas Commerce was originally leased to First City. In the course of time, he states that Texas Commerce acquired most of the assets of First City which resulted in a duplication or overlap of banking facilities in many areas of Harris County including the area in which the Building is situated. Mr. O'Connell further notes that he, the Pension Plan Trustees and Mr. Davis, determined that Texas Commerce was the most attractive lessee given the failure of First City, the relative proximity of Texas Commerce and the substantial cost that would be incurred to renovate the space to a non-bank lessee since the space had been originally configured for a bank tenant. Mr. O'Connell also represents that the Texas Commerce lease has required no improvements or alterations by the lessee and has provided immediate income to the Pension Plan with no out-of-pocket costs. Moreover, he states that the presence of the city's largest bank has been a valuable enhancement to the Building. Given these factors, Mr. O'Connell represents that the rental charged for the subject space is above fair market value and that the lease continues to be a valuable asset of the Pension Plan.

Mr. O'Connell also confirms that his firm has continuously monitored rental rates for other properties comparable to the Building over the past five years. Further, during this period, he represents that his firm has continuously monitore the terms and conditions of all leases involving the Building. Without qualification, he represents that the terms and conditions of the lease between the Plan and Texas Commerce have, at all times, been at arm's length and have provided the Plan with fair market value rent since the inception of the subject lease to present, including September 15, 1993 when the lease became a prohibited transaction.

18. In addition to Mr. O'Connell's review of the lease, the Trustees of the Pension Plan have reviewed the investment needs of the Pension Plan and the terms and conditions of the Texas Commerce lease. Based upon their consideration of such matters, the Trustees believe the lease is in the best interest of the Pension Plan. The Trustees, in conjunction with Mr. O'Connell, are monitoring the lease on behalf of the Pension Plan, enforcing the payment of rent and the proper performance of all other obligations of Texas Commerce thereunder. In addition, the Trustees have the obligation to assess the prudence of the continued ownership by the Pension Plan of the Building and to negotiate, when appropriate, favorable terms with respect to the sale, lease or other disposition of the Building. Further, the Trustees are also responsible for ensuring that all terms and conditions of the exemption are, at all times, satisfied.

19. In summary, it is represented that the transactions satisfy the criteria for an administrative exemption under section 408(a) of the Act because:

(a) The Trustees believe that the leasing of office space in the Building by the Plan to Texas Commerce is and will continue to be in the best interest of the Pension Plan and its participants and beneficiaries.

(b) The decision by the Pension Plan to enter into and continue leasing office space in the Building to Texas Commerce has been made and will continue to be made by the Trustees in consultation with an independent property manager and an independent fiduciary.

(c) The terms of the lease have remained and will remain at least as favorable to the Pension Plan as those obtainable in an arm's length transaction with an unrelated party.

(d) The rental charged by the Pension Plan under the lease has been based and will continue to be based upon arm's length negotiations with unrelated parties.

(e) The Trustees, in conjunction with the independent fiduciary, have and will continue to (i) monitor the terms and conditions of the lease as well as the terms and conditions of the exemption and (ii) take all actions that are necessary and proper to safeguard the interests of the Pension Plan and its participants and beneficiaries.

(f) The subject lease has involved and will continue to involve less than 125 percent of the Pension Plan's total assets.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Retirement Plan for Employees of Automobile Club of New York, Inc. (the Plan) Located in Garden City, New York

[Application No. D–09882]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the purchase (the Purchase) by the Plan of a certain office building (the Building) from Automobile Club of New York, Inc. (the Club), a sponsor of the Plan and a party in interest with respect to the Plan; (2) a subsequent leaseback (the Lease) of the Building by the Plan to the Club; and (3) the potential future exercise of (a) a repurchase option (the Repurchase Option) between the Club and the Plan; and (b) a make whole obligation (the Make Whole Obligation) whereby the Club will pay the Plan the difference between the original acquisition price paid by the Plan for the Building, and the price received by the Plan upon the sale of a Building to a purchaser other than the Club; provided that the following conditions are satisfied:

(1) all terms and conditions of the Purchase, the Lease, the Repurchase Option, and the Make Whole Obligation are and will be at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) the Lease will have an initial term of fifteen years with three five-year renewal options, and will be a triple net lease under which the Club as the tenant is obligated for all operating expenses, including real estate taxes, insurance, repairs, maintenance, electricity and other utilities;

(3) the fair market value of the Building has been determined by an independent qualified appraiser, and will be updated as of the date of purchase by the Plan;

(4) with respect to the Lease, the fair market rental amount has been and will be determined by an independent qualified appraiser, which amount will never be below the initial fair market annual rental amount of $470,000;

(5) with respect to the Lease, appraisals of the Building will be performed at three-year intervals during the initial fifteen-year term of the Lease, and at five-year intervals with respect to the three renewal periods for purposes of updating the fair market rental amount to be received by the Plan;

(6) the fair market value of the Building will not exceed 25% of the Plan's total assets. Notwithstanding this condition, if the 25% limitation is ever exceeded the Club will have 60 days to comply with the 25% limit. In the event the 25% limit cannot be met within the 60 days, the Plan will undertake an orderly disposition of the Building in such manner as to cure the violation within nine (9) months of the date when the 25% limit was initially exceeded. If at any time during the 9-month disposition period, the Building exceeds 30% of the Plan's total assets, the exemption, if granted, will no longer be available;

(7) an independent fiduciary will be appointed to review, approve and monitor the transactions described herein, and the fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Club or related parties, will not exceed 1% of its annual income for each fiscal year that it continues to serve in the independent fiduciary capacity with respect to these transactions;

(8) U.S. Trust, as the independent fiduciary, will evaluate the transactions described herein and deemed them to be administratively feasible, protective and in the interest of the Plan;

(9) U.S. Trust, as the independent fiduciary, will monitor the terms and the conditions of the exemption and the Lease throughout its initial term plus the three renewal periods, and will take whatever action is necessary to protect the Plan's rights;

(10) U.S. Trust, as the independent fiduciary, will monitor the net subleasing amount received by the Club during any annual period under the Lease. If such subleasing amount results in a profit to the Club, the Club will contribute this profit to the Plan; and

(11) the Plan will bear no costs or expenses with respect to the transactions described herein.

Summary of Facts and Representations

1. The Plan is a defined benefit plan established in 1965. As of December 31, 1993, the Plan had approximately 703 participants. As of May 31, 1995, the market value of the Plan's total assets was $24,185,650. The Plan administrator is the retirement committee which is appointed by the Board of Directors of the Club. United States Trust Company of New York (U.S. Trust) is the Plan trustee and the independent fiduciary with respect to the transactions described herein. The Club, established in 1934, is a not for profit subchapter "C" corporation organized under New York State Law. The Club is affiliated with the American Automobile Association, and is in the business of providing certain travel services to its members. The named fiduciary under the Plan is the Club.

2. The applicant proposes to enter into the following transactions. First, the Plan will purchase the Building from the Club at fair market value and hold the title to the Building through a tax exempt 501(c)(2) corporation. U.S. Trust represents that this will insulate the Plan's other assets from liabilities associated with owning the Building. Subsequently, the Club will lease the Building from the Plan at fair market rental, and sublease certain portions of the Building to parties unrelated to the Plan.

3. The Building was initially appraised (Initial Appraisal) as of October 19, 1993, by Martin B. Levine, MAI (Mr. Levine) and Paul Leprohon (Mr. Leprohon, collectively, the Appraisers). Messrs. Levine and Leprohon are qualified independent Appraisers with Koeppel Tener Rigaldi, Inc. (KTR), a national real estate appraisal and consulting firm. Mr. Levine is a director of the New York appraisal division of KTR. In the Initial Appraisal, the Appraisers determined the fair market value of the leased fee interest of the Building to be $4,700,000. In this regard, it is represented that $32,500 is payable directly to the Club by the operator of the adjacent Harkness property as a result of a certain air rights lease, and that this income was a factor in determining the value of the Building.[5] Because the Building is a multi-tenanted income producing facility, the Appraisers primarily relied on the income capitalization approach supported by the sales comparison approach. The Building is the property located at 1881 Broadway, New York, New York, and it is situated at the northwest corner of Broadway and West 62nd Street. The Building is a 4 story plus basement, class "B" office building, with retail space on the grade floor. The Building contains approximately 24,005 square feet of gross leasable area, of which 8,405 square feet is retail space comprised of 3,405 square feet at grade level and 5,000 square feet of finished, non-selling, below grade space.

4. In the Initial Appraisal, the Appraisers also established a fair market rental for the Building. The Appraisers analyzed recent lease transactions within the Building itself in conjunction with leases recently signed within competing buildings which are located on the West Side of Midtown Manhattan. As such, the Appraisers concluded that the market rent for the Building's office component is $20.00 per square foot. For the retail component, the market rent is estimated to be $85.00 for grade floor space and $12.75 per square foot for below grade space.

5. On January 10, 1995, the Appraisers prepared a limited scope appraisal of the Building (Updated Appraisal) as an update to the Initial Appraisal. In the Updated Appraisal, the Appraisers also relied on the income

section 4975 of the Code until the merger of Texas Commerce Trust into Texas Commerce in December 1993. At that time, Texas Commerce became a service provider to the Plan by reason of section 4975(e)(2)(B) of the Code.

[4] It is represented that once the Trustees and Texas Commerce realized that a prohibited transaction had occurred, the parties caused an exemption application to be prepared in January 1994 and subsequently finalized in July 18, 1994. It is also represented that the Trustees and Texas Commerce did not initially realize that the acquisition by Texas Commerce of Ameritrust made the lease a prohibited transaction. Further, the applicant notes that the exemption request was not filed as a result of an investigation by either the Department or the Internal Revenue Service.

[5] The air rights income, in the amount of $32,500 per year, is the rent due under the air rights lease, which permitted air rights over 1881 Broadway (i.e., the Building) to be used to erect a larger building than would otherwise be possible on 1887 Broadway site. The air rights lease expires in 86 years.

capitalization and sales comparison approaches, and concluded that as of December 31, 1994, the free and clear market value of the leased fee interest in the Building, including the income from the air rights lease, is $5,200,000. This increase in the fair market value is due to the market conditions improving in the year 1994, as evidenced by declining vacancy rate and concessions in the form of free rent, large tenant improvement allowances and favorable below-market renewal options becoming less common.

In the Updated Appraisal, the Appraisers stated that the market rent for the Building's office component is $21 per square foot, and the market rent for the retail component is estimated to be $90 per square foot for the grade floor space and $13.50 per square foot for the below grade space. Therefore, in establishing the fair rental value of the Building, the Appraisers determined that as of December 31, 1994, the fair market rental of the Building under a triple net lease is $470,000 for the first year, and that this figure includes the $32,500 income from leasing the air rights for the next 84 years. The Appraisers also stated that based upon their market analysis, they project that all retail and basement rents will increase by 4% per year, and office rents will increase by 4% per year for renewal purposes.

6. Once the Plan purchases the Building from the Club, the Plan will lease (the Lease) the Building back to the Club, and the Club will sublease portions of the Building to unrelated, third parties. The Lease will be a triple net lease and will be net of all operating expenses, including real estate taxes, insurance, repairs, maintenance, electricity and other utilities.[6] The Lease will have an initial term of fifteen (15) years, with three renewable options of five years each at the discretion of U.S. Trust. Renewal periods of the Lease will occur upon the Club, as the lessee, notifying the Plan, as lessor, in writing no later than ten months before the end of the expiring term. The rental rate will be determined by reference to an independent qualified appraiser retained by the Plan as the lessor. The fair market rent will be binding upon the Club as the lessee, unless the Club disputes it in thirty days. In the case of such a dispute, the matter would go to arbitration, which according to U.S. Trust, is customary in commercial lease agreements. If the arbitrators cannot reach an agreement between themselves within fifteen days, they shall appoint a third independent appraiser. For purposes of the Lease, appraisals of the Building are scheduled at 3 year intervals during the initial 15 year term of the Lease, and at five year intervals with respect to the three renewal periods. Annual appraisals will be required, however, to determine the annual funding obligation for the Plan, Form 5500 financial statements and to monitor compliance with the 25% limitation.

7. The Lease provides that the annual base rent (Base Rent) during the initial 15 year term shall be the higher of the annual rental rate for the preceding three year period, or the appraised rental value. Therefore, once the Base Rent is established for the first 3 years of the term of the Lease, the rental rate cannot fall below that amount, it can only go higher. During the three renewal periods, the Base Rent will be adjusted every five years and will be increased at least 10% during each Renewal period. The applicant further represents that rental amounts under the Lease will never be below the initial fair market annual rental amount of $470,000, as established by the Appraisers. The Lease also provides for a security deposit (Security Deposit) to be paid by the lessee to the lessor, and U.S. Trust represents that the Security Deposit will be ⅙ of the Base Rent payable in a given year. The Lease also provides for certain additional rent, which is expenses related to the Building that will be borne by the Club as the tenant. U.S. Trust represents that this is more protective of the rights and remedies available to the landlord (i.e., the Plan) in the event of nonpayment of rent. The Club will also obtain a fire and hazard/casualty insurance policy for the Building. The Plan will be the beneficiary and loss payee with respect to the hazard and liability insurance on the Building.

8. The applicant also represents that if during any annual period of the Lease, the net subleasing amount received by the Club results in a profit to the Club, the Club will contribute this profit to the Plan. In this regard, the total subleasing amounts will be subject to an annual audit by an independent auditor which is currently Peat Marwick. Specifically, upon performing annual audits of the Club's books, Peat Marwick will submit accounting to U.S. Trust, showing total rents collected from subleases, including recoverables,[7] and total operating expenses for the Building during that year.[8] U.S. Trust has agreed to provide necessary oversight in this matter.

9. The Plan will also have the right to require the Club to repurchase the Building, at a price which will be the greater of the Building's fair market value or the Plan's purchase price (the Repurchase Option). The Repurchase Option can be exercised under certain circumstances under discretion of U.S. Trust as the independent fiduciary, including, material misrepresentations regarding the Building in the contract for sale; the Building's fair market value exceeding 25% of the Plan's assets; at the expiration of the Lease; upon the breach of the Lease by the Club; if the Club defaults on the Lease; to satisfy the cash needs of the Plan; and, in the event of a material loss to the Building by fire, condemnation, etc. It is also represented that the Repurchase Option can be exercised at the end of the initial 15 year term of the Lease, and at the end of each renewal period. In the event the Club fails to repurchase the Building under the Repurchase Option, the Plan has the following remedies. If the Plan has to sell the Building to a third party for an amount less than payable by the Club under the Repurchase Option, the Club is obligated to pay the Plan any difference. Furthermore, the calculation of the difference between the price paid by the third party and the price payable by the Club will include the fact that the Club is obligated to pay all costs and expenses associated with the purchase of the Building, while in a sale to a third party, the Plan may have to pay certain expenses related to that sale, as is customary for a seller in a commercial transaction. In this regard, the applicant represents that the Club will pay the Plan the fair market rental for the entire Building, as well as for the space it occupies within the Building.

10. In the event the Club fails to repurchase the Building within sixty (60) days of the Building being put to it by the Plan under the Repurchase Option, the Club will pay the Plan the difference (if any) between the original acquisition price paid by the Plan for the Building and the price received by the Plan on the sale of the Building to a purchaser other than the Club (the "Make Whole Obligation"). In this regard, U.S. Trust has examined the Club's financial statements and held discussions with the Club's management, and concluded that the Club currently has sufficient net worth to satisfy the Repurchase Agreement and the Make Whole Obligation by either repurchasing the Building, or paying the difference between the price paid by the Plan for the Building and the price realized on the sale of the Building by the Plan. U.S. Trust will continue to monitor the Club's financial condition before it finalizes the purchase of the Building by the Plan. It is also represented that if the Building is to be sold to another party in interest with respect to the Plan, as defined by section 3(14) of the Act, the applicant will seek exemptive relief from the Department prior to the consummation of the sale.

11. The independent fiduciary for the Purchase, the Lease, the Repurchase Option and the Make Whole Organization will be U.S. Trust, a bank and trust company formed under the laws of New York and an experienced employee benefits trust fiduciary with approximately $31 billion in assets under management, and custodial assets of $397 billion.[9] U.S. Trust and its wholly owned subsidiary, U.S. Trust Company of California, N.A. have extensive experience serving as fiduciaries for ERISA plans. U.S. Trust also represents that it has considerable experience in monitoring ownership interests relating to leases for large pension plans.

12. U.S. Trust represents that it has the following relationships to the Plan and the Club. U.S. Trust was appointed trustee (the Trustee) of the Plan on November 4, 1965. Under the terms of the Trust Agreement, U.S. Trust, as the Plan Trustee, has full discretion to invest the Plan's assets within the framework of the general investment guidelines provided by the Club. As the Trustee for the Plan, U.S. Trust may determine the value of any Plan's assets for which there is no publicly quoted price, and U.S. Trust manages approximately $24 million of assets for the Plan. In addition to the Plan Trustee role, U.S. Trust manages approximately $1,200,000 in a cash fund for the Club, which represents 0.004% of the total assets managed by U.S. Trust.[10] U.S. Trust also maintains that the income received by it for serving in the independent fiduciary capacity in these transactions, combined with any other fees derived from the Club or related parties will not exceed 1% of its annual income for each fiscal year that U.S. Trust continues to serve in the independent fiduciary capacity with respect to the transactions described herein.

13. In its capacity as the independent fiduciary, U.S. Trust has reviewed the condition of the Building, the financial condition of the Club, the Plan's current investment portfolio and its general investment guidelines. U.S. Trust represents that it has been advised by legal counsel of its ERISA fiduciary responsibilities. U.S. Trust represents that it will have the following responsibilities under the Lease and the renewal periods. In this regard, the triple net Lease places upon the Club, as the tenant, all responsibility with respect to the Building; its repair, maintenance, etc., and all costs and expenses related thereto, including without limitation, those costs related to real estate taxes and insurance. U.S. Trust will monitor the collection of rent from the Club as the tenant, the Club's compliance with other Lease obligations, the value of the Plan's assets to make sure the value of the Building does not exceed 25% of the total Plan assets, and assure periodic valuations of the Building by an independent appraiser.

14. U.S. Trust has concluded that the transactions described herein should be structured as follows. The Building purchase price to the Plan should not exceed fair market value. The base payments under the triple net Lease should at least equal the Building's fair rental value. The fair market value and the fair rental value should be determined by an independent qualified appraiser, and negotiated by the parties at arm's length. In this regard, U.S. Trust represents that it reserves the right to negotiate a purchase price below the appraised fair market value of the Building and with respect to the Lease, and to negotiate a Base Rent above the fair market rent as established by an appraiser. U.S. Trust represents that this approach would benefit the Plan. U.S. Trust also states that the Plan will achieve at least an 11% return on its investment (the Rate of Return), which will be based on the purchase price the Plan pays for the Building. The Plan will also receive the return due to any appreciation in the market value of the Building. This Rate of Return will exceed the Plan's historical rate of return which ranged from 9.3% to 9.6%. The applicant states that the Rate of Return will have an effect on the fair market rent paid by the Club to the Plan under the Lease. For example, the Updated Appraisal gives the fair market value of the Building as $5,200,000, and as such a minimum return of 11% would require that the annual net payment under the Lease by the Club to the Plan be at least $572,000. However, the Rate of Return can increase when another appraisal of the Building is done at closing, and U.S. Trust analyzes the prevailing market conditions and the Club's financial condition.

15. U.S. Trust compared the risk and rate of return on the Building with other investments (including real estate investments) available to the Plan, the expenses and liabilities associated with the acquisition and ownership of the Building, the Club's financial condition and prospects, and its ability to satisfy its obligations under the Lease. U.S. Trust represented that the Plan has sufficient liquidity to acquire the Building, and that none of the Plan's assets are currently invested in real property. U.S. Trust also stated that the Club should have the financial resources to satisfy either the Repurchase Option or the Make Whole Obligation. U.S. Trust concluded that the transactions described herein are more favorable to the Plan than similar transactions with an unrelated party, and are inherently protective of the Plan.

16. U.S. Trust has evaluated the Plan's total investment portfolio and the safeguards for this investment, including the Repurchase Option and the Make Whole Obligation, as well as the Club's ability to satisfy these obligations. U.S. Trust has determined that the acquisition of the Building by the Plan will not impair the Plan's ability to pay benefits and expenses. U.S. Trust has concluded that the acquisition of the Building by the Plan is consistent with the diversification requirements of section 404(a)(1) of the Act, as the Building will represent approximately 21.5% of the Plan's assets.

17. U.S. Trust proposes to monitor that the Building does not exceed 25% of the Plan's assets in several ways. The Plan will obtain annual appraisals of the Building's fair market value at the end of the Plan's fiscal year (December 31) for purposes of complying with the 25% limitation. U.S. Trust represents that the total plan assets may be subject to periodic scrutiny for purposes of determining compliance with the 25% of plan assets' limitation. The Club will have sixty (60) days to cure any violation of the 25% limitation. In this

[6] The applicant represents that the Lease will provide that any fees that may be incurred by the Plan in connection with the Lease, the Building or the transactions described herein, will be reimbursed to the Plan and/or paid by the Club.

[7] Recoverables means any amounts collected over and above basic rents, such as escalations for light, power, taxes and maintenance, etc.

[8] Annual operating expenses for the Building include real estate taxes, building maintenance and repairs, security, insurance, air conditioning, power, electricity, carting, water and sewer, etc.

[9] In this regard, the applicant makes a request regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace U.S. Trust, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will have responsibilities, experience and independence similar to those of U.S. Trust.

[10] In this regard, U.S. Trust represents that the $1.2 million do not represent assets of the Club managed by U.S. Trust as the Plan trustee, but that they are assets managed by U.S. Trust in a separate capacity.

regard, U.S. Trust can request the Club to take one of several remedial actions.. The Club can make additional cash contributions to the Plan, it can prepay rent to the Plan, it can purchase the Building from the Plan under the Repurchase Option; or the Club can take other measures as may be acceptable to U.S. Trust.[11] Failing these remedies, from the date the 25% limitation is first exceeded the Plan will undertake an orderly disposition of the Building in such manner as to cure the violation within 9 months (the Disposition Period).

18. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) all terms and conditions of the Purchase, the Lease, the Repurchase Option, and the Make Whole Obligation are and will be at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) the Lease will have an initial term of fifteen years with three five year renewal options, and will be a triple net lease under which the Club as the tenant is obligated for all operating expenses, including real estate taxes, insurance, repairs, maintenance, electricity and other utilities;

(3) the fair market value of the Building has been determined by an independent qualified appraiser, and will be updated as of the date of purchase by the Plan;

(4) with respect to the Lease, the fair market rental amount has been and will be determined by an independent qualified appraiser, which amount will never be below the initial fair market annual rental amount of $470,000;

(5) with respect to the Lease, appraisals of the Building will be performed at three year intervals during the initial fifteen year term of the Lease, and at five year intervals with respect to the three renewal periods for purposes of updating the fair market rental amount to be received by the Plan;

(6) the fair market value of the Building, generally, will not exceed 25% of the Plan's total assets;

(7) an independent fiduciary will be appointed to review, approve and monitor the transactions described herein, and the fees received by the independent fiduciary for serving in such capacity, combined with any other fees derived from the Club or related parties, will not exceed 1% of its annual income for each fiscal year that it continues to serve in the independent fiduciary capacity with respect to these transactions;

(8) U.S. Trust, as the independent fiduciary, will evaluate the transactions described herein and deemed them to be administratively feasible, protective and in the interest of the Plan;

(9) U.S. Trust, as the independent fiduciary, will monitor the terms and the conditions of the exemption and the Lease throughout its initial term plus the three renewal periods, and will take whatever action is necessary to protect the Plan's rights;

(10) U.S. Trust, as the independent fiduciary, will monitor the net subleasing amount received by the Club during any annual period under the Lease. If such subleasing amount results in a profit to the Club, the Club will contribute this profit to the Plan; and

(11) the Plan will bear no costs or expenses with respect to the transactions described herein.

Notice to Interested Persons

The applicant represents that, within five (5) days of the publication of the notice of proposed exemption (the Notice) in the **Federal Register**, all interested persons will receive a copy of the Notice, the beginning and ending information that appears with the Notice, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), either by posting on bulletin boards at locations at which employees covered under the Plan are employed, or by first class mail to the last known address to all other interested persons, including retirees, separated vested employees and beneficiaries of deceased participants. Comments and hearing requests on the proposed exemption are due thirty-five (35) days after the date of publication of this proposed exemption in the **Federal Register.**

For Further Information Contact: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of July, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–18717 Filed 7–28–95; 8:45 am]

BILLING CODE 4510–29–P–M

[11] The Department notes that if at any time during the 9 month Disposition Period, the Building exceeds 30% of the Plan's total assets, the exemption, if granted, will no longer be available. The Department further notes that it expects U.S. Trust, consistent with its fiduciary responsibilities under Title I of the Act, to periodically monitor the financial condition of the Club in order to take a remedial action not requiring the disposition of the Building.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc., Waterford Steam Electric Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–38, issued to Entergy Operations, Inc., (the licensee), for operation of the Waterford Steam Electric Station Unit, No. 3 (Waterford 3) located in St. Charles Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of November 16, 1993, as supplemented on August 19, 1994, march 30, and June 19, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension for the Type A test (containment integrated leak rate test) by approximately 18 months, from the September 1995 refueling outage to the refueling outage in 1997, would be granted.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the September 1995 refueling outage, to the 1997 refueling outage, thereby saving the cost of performing the test and eliminating the test period from the critical path time of the outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at Waterford 3 to show good containment performance and will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee will perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is so measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impact of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Waterford Steam Electric Station, Unit No. 3.

Agencies and Persons Consulted

In accordance with its stated policy, on June 30, 1995, the NRC staff consulted with the Louisiana State official, Prosanta Chowdhun of the LA Radiation Protection Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 16, 1993, as supplemented by letters dated August 19, 1994, March 30, and June 19, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 14th day of July 1995.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18685 Filed 7–28–95; 8:45 am]

BILLING CODE 7590–01–M

Proposed Generic Communication and Draft Regulatory Guide; Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment on the proposed bulletin and draft guide.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a bulletin titled "Potential Plugging of Emergency Core Cooling Suction Strainers for Debris in Boiling Water Reactors"; the text of the bulletin is included in this notice under the Supplementary Information heading. The proposed bulletin would request boiling water reactor (BWR) licensees to implement appropriate procedural measures and plant modifications to minimize the potential for clogging of suppression pool suction strainers of emergency core cooling systems (ECCS) by debris generated during a loss-of-coolant accident (LOCA). The NRC has also issued a related Draft Regulatory Guide, DG–1038, "Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident," which is a proposed Revision 2 to Regulatory Guide 1.82. The draft guide provides additional technical guidance to BWR licensees. The draft guide has not received complete staff review and does not represent an official NRC staff position.

The proposed bulletin and draft guide are being issued to involve the public in the development of a regulatory position in this area. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed bulletin and draft guide. The titles of the proposed bulletin and draft guide should be mentioned in all correspondence.

The staff is also seeking specific technical comments from interested parties on the following questions:

1. Does reflective metallic insulation contribute to the potential clogging of the ECCS suction strainers? Provide any available supporting data with the response.

2. How effective are alternative strainer designs (e.g., the "star" strainer or the "stacked disk" strainer) at preventing or reducing the potential for strainer clogging? Provide any available supporting test data with the response.

3. How effective are active features (e.g., self-cleaning strainer designs or backflushing of strainers) at mitigating or preventing strainer clogging? Provide any available supporting test data with the response.

4. What criteria should be used for determining adequate sizing of passive ECCS suction strainers? The staff is seeking specific comments and supporting technical justification regarding what assumptions should be used in estimating the strainer head loss including types and amounts of debris generated, debris characteristics (e.g., size and shape), amounts of debris transported from the drywell to the suppression pool, calculation of debris quantities entrained on the strainer surfaces, and head loss correlations. Where possible, supporting data should be provided along with recommended assumptions.

5. What actions would be required by licensees to ensure operability of active features (e.g., backflush and self-cleaning strainers) installed in response to the proposed bulletin's requested actions? The staff is also seeking suggestions on ways to incorporate appropriate actions and surveillance requirements into the Technical Specifications (TS) which are consistent with the form of the improved standard TS for the associated safety systems.

The proposed bulletin, draft guide, and supporting documentation were discussed in meeting number 275 of the Committee to Review Generic Requirements (CRGR) on June 27, 1995. The relevant information that was sent to the CRGR to support its review of the proposed bulletin is available in the NRC Public Document Room under accession number 9507200223. The NRC will consider comments received from interested parties before issuing the final version of the proposed bulletin and draft guide. The NRC's evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees.

Public Meeting: During the public comment period, the staff will hold a public meeting with the Boiling Water Reactor Owners Group to discuss the above questions as well as any other comments on the proposed bulletin and draft guide. The meeting will be held on August 24 and 25, 1995. The meeting will run from 8:00 a.m. to 5:00 p.m. on August 24th and from 8:00 a.m. to 12:00 p.m. on August 25th. The public meeting will be held at the Two White Flint North Auditorium, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, Maryland. A meeting notice will be issued approximately two weeks prior that will provide the agenda for the meeting. Interested parties, who have questions about the proposed bulletin or draft guide and plan to attend this meeting, are requested to submit their questions in writing to the staff at least a week before the meeting, so that the staff may be better prepared to respond to the questions at the meeting. Written questions for the meeting should be sent to M. David Lynch, U.S. Nuclear Regulatory Commission, Mail Stop 0–13 D1, Washington, DC 20555–0001.

Visitor parking is very limited around the NRC office in Rockville, Maryland. No visitor parking is available in the NRC buildings. It is recommended that people attending the meeting commute to the meeting via the Metro. The NRC is located immediately across the street from the White Flint Metro stop.

DATES: Comment period expires October 2, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: The proposed bulletin and the draft guide are available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the proposed bulletin or the draft guide may be obtained free of charge by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Distribution and Mail Services Section. Requests for single copies of the proposed bulletin or draft guide may also be faxed to (301) 415–2260. Telephone requests cannot be accommodated. Regulatory guides and bulletins are not copyrighted, and NRC approval is not required to reproduce them. Both the proposed bulletin and draft guide can be accessed electronically; instructions for doing this are provided below.

Written comments on the proposed bulletin and draft guide may be submitted to the Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

ELECTRONIC ACCESS: The proposed bulletin and draft guide may be viewed electronically, and comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board Service (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

By using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find that the "FedWorld Online User's Guides" are particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem may be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take the user to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If the user accesses NRC from FedWorld's main menu, the user may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if the user accesses NRC at FedWorld by using the NRC's toll-free number, the user will have full access to all NRC systems, but will not have access to the main FedWorld system.

If the user contacts FedWorld using Telnet, the user will see the NRC area and menus, including the Rules menu. The user will be able to download documents and leave messages, but will not be able to write comments or upload files (comments). If the user contacts FedWorld using file transfer protocol (FTP), all files can be accessed and downloaded but uploads are not allowed; the user will only see a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Accessing FedWorld through the World Wide Web, like FTP, only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780, e-mail axd3@nrc.gov.

FOR FURTHER INFORMATION CONTACT: M. David Lynch at (301) 415–3023, e-mail mdl@nrc.gov or Robert Elliott at (301) 415–1397, e-mail rbe@nrc.gov.

SUPPLEMENTARY INFORMATION:

United States Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555

NRC Bulletin 95–XX: Potential Plugging of Emergency Core Cooling Suction Strainers by Debris in Boiling Water Reactors

Addressees

All holders of operating licenses or construction permits for boiling-water reactors (BWRs).

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this bulletin to: (1) Request addressees to implement appropriate procedural measures and plant modifications to minimize the potential for clogging of emergency core cooling system (ECCS) suppression pool suction strainers by debris generated during a loss-of-coolant accident (LOCA), and

(2) Require that addressees report to the NRC whether and to what extent the requested actions will be taken and notify the NRC when actions associated with this bulletin are complete.

Background

On July 28, 1992, an event occurred at Barseback Unit 2, a Swedish BWR, which involved the plugging of two ECCS suction strainers. The strainers were plugged by mineral wool insulation that had been dislodged by steam from a pilot-operated relief valve that spuriously opened while the reactor was at 3,100 kPa [435 psig]. Two of the five strainers on the suction side of the containment spray pumps were in service and became partially plugged with mineral wool. Following an indication of high differential pressure across both suction strainers 70 minutes into the event, the operators shut down the containment spray pumps and backflushed the strainers. The Barseback event demonstrated that the potential exists for a pipe break to generate insulation debris and transport a sufficient amount of the debris to the suppression pool to clog the ECCS strainers.

On January 16 and April 14, 1993, two events involving the clogging of ECCS strainers also occurred at the Perry Nuclear Power Plant, a domestic BWR. The first Perry event involved clogging of the suction strainers for the residual heat removal (RHR) pumps by debris in the suppression pool. The second Perry event involved the deposition of filter fibers on these strainers. The debris consisted of glass fibers from temporary drywell cooling unit filters that had been inadvertently dropped into the suppression pool, and corrosion products that had been filtered from the pool by the glass fibers which accumulated on the surface of the strainer. The Perry events demonstrated the deleterious effects on strainer pressure drop caused by the filtering of suppression pool particulates (corrosion products or "sludge") by fibrous glass materials entrained on the ECCS strainer surfaces. These corrosion products are typically present in large quantities in domestic BWRs. Separate test programs have been conducted by the Boiling Water Reactor Owners Group (BWROG) and the staff to quantify this filtering effect.

Based on these events, the NRC issued Bulletin 93–02, "Debris Plugging of Emergency Core Cooling Suction Strainers," on May 11, 1993. The bulletin requested licensees to remove fibrous air filters and other temporary sources of fibrous material, not designed to withstand a LOCA, from the containment. In addition, licensees were requested to take any immediate compensatory measures necessary to ensure the functional capability of the ECCS.

Following these events, the staff performed calculations to assess the vulnerability of each domestic BWR. The results of these calculations showed that the potential existed for the ECCS suction strainers to lose net positive suction head (NPSH) margin due to clogging of the suction strainers by LOCA-generated debris. The staff then conducted a detailed study of a reference BWR 4 plant with a Mark I containment. The preliminary results of the staff study are contained in a draft report, "Parametric Study of the Potential for BWR ECCS Strainer Blockage Due to LOCA Generated Debris," which was published in August 1994. The preliminary study results reaffirmed the results of the earlier staff calculations.

Members of the NRC staff also attended an Organization for Economic Cooperation and Development/Nuclear Energy Agency (OECD/NEA) workshop on the Barseback incident held in Stockholm, Sweden, on January 26 and 27, 1994. Representatives from other countries at this conference discussed actions taken or planned which would prevent or mitigate the consequences of BWR strainer blockage. Based on the preliminary results of the staff's study, as reinforced by information learned at the OECD/NEA workshop, the staff issued NRC Bulletin 93–02, Supplement 1, "Debris Plugging of Emergency Core Cooling Suction Strainers," on February 18, 1994. The purpose of the bulletin supplement was to request that BWR licensees take the appropriate interim actions to ensure reliability of the ECCS so that the staff and industry would have sufficient time to develop a permanent resolution. In addition, the bulletin supplement informed licensees of pressurized water reactors (PWRs) and BWRs of new information on the vulnerability of ECCS suction strainers in BWRs and containment sumps in PWRs to clogging during the recirculation phase of a LOCA.

Licensee responses to NRC Bulletin 93–02 and its supplement have demonstrated that appropriate interim measures have been implemented by licensees to ensure adequate protection of public health and safety, and to allow continued operation until the final actions requested in this bulletin are implemented.

In responding to these bulletins, licensees ensured: (1) the availability of alternate water sources (both safety and non-safety related sources) to mitigate a strainer clogging event, (2) that emergency operating procedures (EOPs) provided adequate guidance on mitigating a strainer clogging event, (3) that operators were adequately trained to mitigate a strainer clogging event, and (4) that loose and temporary fibrous materials stored in containment were removed. In addition, a generic safety assessment conducted by the Boiling Water Reactor Owners Group (BWROG)

concluded that operators would have adequate time to make use of alternate water sources (25–35 minutes). The staff also notes that the probability of the initiating event is low. The actions requested in this bulletin will ensure that the ECCS can perform its safety function and minimize the need for operator action to mitigate a LOCA.

Discussion

The results of the staff study, initially documented in the draft NUREG/CR–6224, demonstrate that for the reference plant, there is a high probability that the available NPSH margin for the ECCS pumps will be inadequate following dislodging of insulation caused by a LOCA and transport of insulation debris to the suction strainers. In addition, the study calculated that the loss of NPSH could occur quickly (less than 10 minutes into the event). The study also demonstrated that determining the adequacy of NPSH margin for an ECCS system is highly plant-specific because of the large variations in such plant characteristics as containment type, ECCS flow rates, insulation types, plant layout, and available NPSH margin. The final version of NUREG/CR–6224 is scheduled for issuance in September 1995.

The Barsebäck event demonstrated that a pipe break can generate and transport large quantities of insulation debris to the suppression pool where they can be deposited onto strainer surfaces and potentially cause the ECCS to lose NPSH. The Perry events further demonstrated that fibrous insulation debris combined with corrosion products present in the suppression pool (sludge) can exacerbate the problem. This phenomenon was confirmed in the staff study which showed that the calculated loss of NPSH could occur soon (less than 10 minutes) after ECCS initiation. The effect of filtering sludge from the suppression pool water by fibrous debris deposited on the strainer surface was further confirmed in NRC-sponsored testing conducted at the Alden Research Laboratory which demonstrated that the pressure drop across the strainer was greatly increased by this filtering effect. Additional testing sponsored by the NRC at Alden Research Laboratory demonstrated that the energy conveyed to the suppression pool during the "chugging" phase of a LOCA is sufficient to ensure that the fibrous debris and sludge are well-mixed and evenly distributed in the suppression pool, and can remain suspended for a sufficiently long period of time to allow large quantities to be deposited onto the strainer surfaces. The staff has concluded that this problem is applicable to all domestic BWRs. The basis for the staff's conclusion is as follows: (1) there does not appear to be any features specific to a particular plant, class of plants, or containment type which would mitigate or prevent the generation, transport to the suppression pool, or deposition on the ECCS strainers of sufficient material to clog the strainers, and (2) parametric analyses performed in support of the NUREG/CR–6224 study using parameter ranges which bound most domestic BWRs failed to find parameter ranges which would prevent BWRs with other containment types from being susceptible to this problem. In addition, the staff study was conducted on a Mark I; Barsebäck had a strainer clogging event and is similar in design to a Mark II; and Perry, a Mark III, also had a strainer clogging event.

Section 50.46 of Title 10 of the Code of Federal Regulations (10 CFR 50.46) requires that licensees design their ECCS systems to meet five criteria, one of which is to provide long-term cooling capability of sufficient duration following a successful system initiation so that the core temperature shall be maintained at an acceptably low value and decay heat shall be removed for the extended period of time required by the long-lived radioactivity remaining in the core. The ECCS is designed to meet this criterion, assuming the worst single failure. Experience gained from operating events and detailed analysis, as previously discussed, demonstrate that excessive buildup of debris from thermal insulation, corrosion products, and other particulates on ECCS pump strainers is highly likely to occur, creating the potential for a common-cause failure of the ECCS, which could prevent the ECCS from providing long-term cooling following a LOCA. The staff concludes; therefore, that this issue must be resolved by licensees in order to ensure compliance with the regulations; specifically, to ensure that long-term cooling can be provided in accordance with 10 CFR 50.46.

Plant-specific analyses to resolve this issue are difficult to perform because a substantial number of uncertainties are involved. Examples of these uncertainties include the amount of debris that would be generated by a pipe break for various insulation types; the amount of the debris that would be transported to the suppression pool; the characteristics of debris reaching the suppression pool (e.g., size and shape); and head loss correlations for various insulation types combined with suppression pool corrosion products, paint chips, dirt, and other particulates. Many of these uncertainties would be plant-specific because of the differences in plant characteristics, such as plant layout, insulation types, ECCS flow rates, containment types, and NPSH margin. Testing may be required to quantify these uncertainties for licensees to demonstrate compliance with 10 CFR 50.46.

The staff has also closely followed the work of the BWROG to resolve this issue. The BWROG has evaluated several potential solutions, and is currently testing three new strainer designs: two passive strainer designs and one self-cleaning design. The ongoing BWROG effort is consistent with the options proposed in this bulletin for resolution of the the ECCS potential strainer clogging issue. These options are discussed in the next section under Requested Actions. The BWROG is also developing a utility resolution guidance (URG) document for providing the utilities with: 1) guidance on evaluation of the ECCS potential strainer clogging issue for their plant, 2) a standard industry approach to resolution of the issue which is technically sound, and 3) guidance which is consistent with the requested actions in this bulletin for demonstrating compliance with 10 CFR 50.46. The staff considers this document to be an important part of the implementation of the final resolution of this issue, and will closely monitor the development and application of the URG.

Requested Actions

All BWR licensees are requested to implement appropriate measures to ensure the capability of the ECCS to perform its safety function following a LOCA. The staff has identified three potential resolution options; however, licensees may propose others which provide an equivalent level of assurance that the ECCS will be able to perform its safety function following a LOCA. The three options identified by the staff are as follows:

Option 1: Installation of a large capacity passive strainer design. Draft Regulatory Guide DG–1038, proposed Revision 2 of Regulatory Guide 1.82 (RG 1.82), "Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident," has been revised to provide additional technical guidance to BWR licensees on the conduct of evaluations to ensure compliance with 10 CFR 50.46. If this option is selected by a licensee, the strainer design used should have sufficient capacity to ensure that debris loadings equivalent to a scenario calculated in accordance with Section C.2.2 of DG–1038 do not cause a loss of net positive suction head (NPSH) for the ECCS. This option has two main advantages. First, it is completely passive and, therefore, requires no operator intervention. Second, it does not require an interruption of ECCS flow. While this is the most advantageous of the options identified, the staff recognizes that it may be difficult for most licensees to implement this option due to the difficulty in providing sufficient structural support for the strainers to handle LOCA-induced hydrodynamic loads. However, the staff notes that licensees may take appropriate measures in combination with this option to reduce the potential debris sources in containment and the suppression pool, which would, in turn, reduce the required capacity and physical size of the strainer, and therefore, assist in reducing the structural burden of the strainer installation. Licensees choosing this option for resolution should establish programs, as necessary, to ensure that the potential for debris to be generated and transported to the strainer surface does not at any time exceed the assumptions used in estimating the amounts of debris for sizing of the strainers in accordance with DG–1038.

Option 2: Installation of a self-cleaning strainer.

This option automatically prevents strainer clogging by providing continuous cleaning of the strainer surface with a scraper blade or brush. Like Option 1, the self-cleaning strainer design would not rely on operator action or interrupt ECCS flow. However, this option does rely on an active component which is fully exposed to the LOCA effects in the suppression pool to keep the strainer surface clean. Therefore, appropriate measures should be taken to ensure the operability of the strainer. Installation of this type of strainer should be combined with the following measures to protect the strainer and ensure its operability: (1) implementation of reasonable measures to eliminate debris sources which could potentially damage or overload the strainer during a LOCA, including, as a minimum, removal of all debris from the suppression pool every refueling outage, and (2) implementation of surveillances to ensure periodic cleaning of the suppression pool and the operability of the strainer.

Option 3: Installation of a backflush system.

The backflush system is a reactive system that relies on operator action to remove debris from the surface of the strainer to prevent it from clogging. In order to ensure that operators can adequately deal with a strainer clogging event, installation of this type of system should be combined with the following measures: (1) reasonable measures to maximize the amount of time before clogging could occur; (2) instrumentation and alarms to indicate when strainer differential pressure increases; (3) operator training on recognition and mitigation of a strainer clogging event, and (4) implementation of surveillances to ensure the operability of the strainer instrumentation and backflush system. A supporting analysis for installation of a backflush system which is consistent with Section C.2.2 of DG–1038 should be performed to demonstrate that operators have sufficient time to recognize the onset of clogging and to take appropriate action, taking into consideration their other responsibilities after a LOCA. In addition, this analysis should ensure that operators have the capability and sufficient time to cycle backflushing at the expected frequency and for the required total number of actuations anticipated in providing long-term core cooling following a LOCA.

Compliance with 10 CFR 50.46 requires the use of safety grade equipment. Any request to deviate from this position would require an exemption with a supporting technical analysis, and must meet the specific requirements of 10 CFR 50.12. Active features such as backflush and the self-cleaning strainer must be supported by test data that demonstrate the design effectiveness for removal of debris entrained on the surface of the strainer. Strainers installed for Option 1 must be supported by test data that demonstrate their performance characteristics, and their ability to handle the worst case scenario for debris deposition on the strainer surface.

On July 22, 1993, the Commission published its final policy statement on Technical Specifications (TS) improvements for nuclear power reactors in the **Federal Register** (58 FR 39132). Part of that policy statement stated that the purpose of TS is to impose those conditions or limitations upon reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety by identifying those features that are of controlling importance to safety and establishing on them certain conditions of operation which cannot be changed without prior Commission approval. Based on this purpose and 10 CFR 50.36, the Commission also provided four criteria that delineate those constraints on design and operation of nuclear power plants that belong in TS. Criterion 3 of the policy statement states that a structure, system or component which is part of the primary success path and which functions or actuates to mitigate a Design Basis Accident or Transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier should be captured in the TS. The staff believes that self-cleaning strainers, backflush systems, and instrumentation installed to support backflush systems meet Criterion 3 of the Commission's policy and should be captured in the TS because these components are necessary for the primary success path (i.e., the ECCS) to mitigate design basis LOCA. TS should be proposed to support the above actions and should include, where appropriate for the option selected: (1) appropriate limiting conditions for operation (LCOs); (2) channel checks, channel functional tests, and calibrations of strainer instrumentation at an interval commensurate with other ECCS instrumentation, and (3) testing of active features at the same interval as functional tests of the low-pressure coolant injection (LPCI) system. The final version of this bulletin will include sample TS for Options 2 and 3.

Plant procedures and other actions implemented in response to NRC Bulletin 93–02 and its supplement, should remain in place until the final corrective actions requested in this bulletin have been implemented.

All licensees are requested to implement these actions by December 31, 1997. This timeframe for implementation of the final resolution is considered appropriate by the staff due to the interim actions already taken by licensees and the low probability of the initiating event.

Required Response

All addressees are required to submit the following written reports:

(1) Within 180 days of the date of this bulletin, a report indicating whether the addressee intends to comply with these requested actions, including a detailed description of planned actions and mitigative strategies to be used, the schedule for implementation, and proposed TS; or, if the licensee does not intend to comply with these actions, a detailed description of the safety basis for the decision. The report must contain a detailed description of any proposed alternative course of action, the schedule for completing this alternative course of action, the safety basis for determining the acceptability of the planned alternative course of action, and proposed TSs, if

appropriate, that support the proposed alternative course of action and are consistent with the Commission's Policy Statement on TS. The staff considers the 180-day response period to be appropriate given the amount of engineering that licensees may wish to perform before they provide their formal response to the staff.

(2) Within 30 days of completion of all requested actions, a report confirming completion and summarizing any actions taken.

Address the required written reports to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555–0001, under oath or affirmation under the provisions of Section 182a, the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, submit a copy of the reports to the appropriate regional administrator.

Related Generic Communications

NRC Bulletin 93–02, "Debris Plugging of Emergency Core Cooling Suction Strainers," dated May 11, 1993 and its supplement dated February 18, 1994.

Backfit Discussion

The actions requested by this bulletin are considered backfits in accordance with NRC procedures and are necessary to ensure that licensees are in compliance with existing NRC rules and regulations. Specifically, 10 CFR 50.46 requires that adequate ECCS flow be provided to maintain the core temperature at an acceptably low value and to remove decay heat for the extended period of time required by the long-lived radioactivity remaining in the core following a design-basis accident. Therefore, this bulletin is being issued as a compliance backfit under the terms of 10 CFR 50.109(a)(4)(i), and a full backfit analysis was not performed. An evaluation was performed in accordance with NRC procedures, including a statement of the objectives of and the reasons for the requested actions and the basis for invoking the compliance exception. A copy of this evaluation will be made available in the NRC Public Document Room.

Paperwork Reduction Act Statement

The information collections contained in this request are covered by the Office of Management and Budget clearance number 3150–0011, which expires July 31, 1997. The public reporting burden for this collection of information is estimated to average 160 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, D.C. 20503.

Compliance with the following request for information is purely voluntary. The information would assist NRC in evaluating the cost of complying with this bulletin:

(1) The licensee staff time and costs to perform requested inspections, corrective actions, and associated testing;

(2) The licensee staff time and costs to prepare the requested reports and documentation;

(3) The additional short-term costs incurred as a result of the inspection findings, such as the costs of the corrective actions or the costs of down time;

(4) An estimate of the additional long-term costs that will be incurred in the future as a result of implementing commitments such as the estimated costs of conducting future inspections or increased maintenance.

Dated at Rockville, Maryland, this 19th day of July 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director Division of Project Support Office of Nuclear Reactor Regulation.

John W. Craig,

Deputy Director Division of Engineering Technology Office of Nuclear Regulatory Research.

[FR Doc. 95–18686 Filed 7–28–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, et al.; San Onofre Nuclear Generating Station, Units 2 and 3; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has acted on a Petition for action under 10CFR 2.206 received from Richard M. Dean, dated September 19, 1994, as supplemented on December 2 and December 7, 1994, for the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3.

In a letter dated September 19, 1994, the Petitioner requested that the NRC shut down the SONGS facility based upon gross negligence by Southern California Edison Company in not having an escape plan. The Petitioner asserted as a basis for this request that the closure of the Pacific Coast Highway at the Dana Point/San Clemente border (due to a landslide on January 16, 1993) invalidates the emergency evacuation plans for the residents of San Clemente. In letters dated December 2 and December 7, 1994, the Petitioner again requested the NRC to close the SONGS facility. The Petitioner asserted as a basis for this request that the recent financial losses incurred by Orange County called into question the County's ability to effectively participate in emergency evacuation plans in the event of a emergency at SONGS. Since these concerns were closely related to those expressed in the Petitioner's September 19, 1994, petition, they were treated as supplements to this petition.

The Director of the Office of Nuclear Reactor Regulation has determined that the request should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–95–14), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room located at the University of California Main Library, P.O. Box 19577, Irvine, California 92713.

Dated at Rockville, Maryland, this 24th day of July 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

Appendix to Director's Decision Under 2.206

I. Introduction

By Petition dated September 19, 1994, Mr. Richard M. Dean (Petitioner) requested that the Nuclear Regulatory Commission (NRC) take action with regard to San Onofre Nuclear Generating Station (SONGS). The Petitioner requested that the NRC shut down the SONGS facility based upon gross negligence by Southern California Edison Company in not having an escape plan. The Petitioner asserted as a basis for this request that the closure of the Pacific Coast Highway (PCH) at the Dana Point/San Clemente border (due to a landslide on January 16, 1993) invalidates the emergency evacuation plans for the residents of San Clemente. Notice of receipt of the Petition indicating that a final decision with respect to the requested action would be forthcoming at a later date was published in the Federal Register on November 9, 1994 (59 FR 55900).

The Petitioner, in letters dated December 2 and December 7, 1994, again requested the NRC to close the SONGS facility. The Petitioner asserted as a basis for this request that the recent financial losses incurred by Orange County called into question the county's ability to effectively participate in emergency evacuation plans in the event of an emergency at SONGS. Since these concerns were closely related to those expressed in the Petitioner's September 19, 1994, Petition, they were treated as supplements to that Petition.

Because the Petition involves matters related to offsite emergency planning, the NRC requested the assistance of the Federal Emergency Management Agency (FEMA) in responding to the issues raised by the Petition. By Presidential directive, FEMA has been assigned the responsibility for assessing the adequacy of offsite emergency plans for the area surrounding a nuclear plant. The NRC is responsible for assessing the adequacy of onsite emergency plans and has the final licensing authority. FEMA responded to NRC's request for assistance by letter dated March 22, 1995.

II. Discussion

Title 10 of the Code of Federal Regulations (CFR), Part 50, § 50.54(q), states in part that "A licensee authorized to posses and operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b)." Section 50.54(s)(1) states in part that "Each licensee who is authorized to possess and/or operate a nuclear power reactor shall submit to NRC within 60 days of the effective date of this amendment the radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within a plume exposure pathway EPZ, as well as the plans of State governments wholly or partially within an ingestion pathway EPZ." Section 50.47(a)(1) states in part that "no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protection can and will be taken in the event of a radiological emergency." Section 50.47(a)(2) further states in part, "The NRC will base its findings on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented." The review and approval of State and local radiological emergency plans and preparedness by FEMA are performed under the provisions of 44 CFR Part 350.

Officials from the State of California, Orange County, the City of San Clemente, and other jurisdictions in the emergency planning zone (EPZ) for the SONGS facility have participated in the development of the Radiological Emergency Preparedness (REP) plans to be implemented in the event of an incident at the facility. These REP plans have been evaluated in detail during each of the biennial REP exercises that began in May 1981; findings of these exercises have been reported to the NRC by FEMA. During these biennial exercises, evacuation route impediments, such as landslides, are simulated to test the capability of the offsite response organization to deal with such a contingency. The California State and local officials have continued to meet such challenges successfully during these biennial REP exercises. The most recent exercise was conducted in September 1993. As documented in (1) the October 13, 1993, letter from the NRC to Southern California Edison Company, forwarding the staff's inspection report of the September 1993 exercise, and (2) the March 27, 1995, letter from FEMA to the NRC, forwarding its report on the exercise, the offsite radiological emergency response plans and preparedness for the State of California and the affected local jurisdictions can be implemented and are adequate to provide reasonable assurance that appropriate measures can be taken off site to protect the health and safety of the public in the event of a radiological emergency at the site.

The Petitioner's assertion that with the closure of the PCH, Interstate 5 is the only route out of San Clemente is incorrect. The SONGS EPZ has a total of 10 sectors for evacuation purposes. Three of these sectors comprise to the City of San Clemente. The portion of the PCH affected by the landslide only affects the evacuation of one sector, Sector 3, of the City of San Clemente.

The landslide on January 16, 1993, closed the PCH at the San Clemente and Dana Point border. More landslides occurred in February 1993. However, an alternate route was established around the landslide area by local officials to act as a substitute evacuation route while the PCH was being repaired. The PCH had been scheduled to reopen in January 1995. However, in January 1995, the entire area received extremely heavy rainfall, causing further delays in the reopening of this portion of the PCH. The PCH was officially reopened on April 5, 1995. During reconstruction activities, the PCH was not open to the general public. However, two lanes were open for construction traffic and they could have been used to supplement the alternate route, if needed, as a means for evacuating the area. As stated by FEMA in its letter dated March 22, 1995, since an alternate evacuation route was established during the period when the PCH was closed to normal traffic and since the PCH was available for emergency use, the safe evacuation of the citizens of San Clemente was not compromised.

With respect to the Petitioner's concerns regarding the ability of Orange County to effectively participate in emergency evacuation activities considering the County's current financial difficulties, FEMA concludes that Orange County is meeting its obligations in this matter. According to FEMA's letter dated March 22, 1995, Orange County officials are aware that the current financial situation presents a major challenge in restructuring and prioritizing services to meet their objectives and mandates within their available resources. However, the Board of Supervisors recognizes that the primary mission of the County or of the local County government is the protection of health, safety, and welfare of the citizens and visitors to the County. During this financial crisis, the Board has repeatedly reiterated and publicly confirmed that these services are the highest priority for all County agencies and departments, including those services provided to contract cities such as San Clemente. In addition, a representative of the County is an active participant on the SONGS Interjurisdictional Planning Committee (IPC), which meets on a formal basis with officials of SONGS, the affected cities, the Camp Pendleton Marine Corps Base, the State Department of Parks and Recreation, the Capistrano Unified School District, San Diego County, and Federal and State emergency organizations to coordinate their nuclear power plant plans, preparedness, and procedures for emergency response to an emergency or incident at the SONGS site. The IPC also coordinates the multiagency planning, training, and drills for multihazard emergency response. The IPC representatives meet at least monthly to ensure their planning and preparedness measures are thoroughly coordinated and current. Accordingly, as stated by FEMA in its letter dated March 22, 1995, Orange County's financial difficulties are not preventing it from meeting its emergency evacuation responsibility.

III. Conclusion

The institution of proceedings pursuant to section 2.206 is appropriate only if substantial health and safety issues have been raised. *See Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), CLI–75–8, 2 NRC 173, 175 (1975); *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 924 (1984). This is the standard that has been applied to the concerns raised by the Petitioner to determine whether the action requested by the Petitioner is warranted. With regard to the request made by the Petitioner to shut down the SONGS facility, I find no basis for taking this action. The respective local jurisdictions have maintained their emergency plans in effect and continue to monitor them on a regular basis to ensure they remain current and coordinated. Appropriate evacuation routes are available. Local officials are aware of their resource limitations and have focused resources to ensure that the health, safety, and welfare of the citizens are of priority. FEMA has repeatedly determined that offsite emergency response plans and preparedness can be implemented and are adequate to provide reasonable assurance that appropriate measures can be taken offsite to protect the health and safety of the public in the event of a radiological emergency at the SONGS facility. On the basis of FEMA's findings, the NRC continues to find that there is reasonable assurance that adequate protection can and will be taken in the event of a radiological emergency at the SONGS facility. For the reasons discussed above, no basis exists for taking any action in response to the Petition as no substantial health or safety issues have been raised by the Petition. Accordingly, the Petitioner's request for action pursuant to Section 2.206 is denied.

A copy of this Decision will be filed with the Secretary of the Commission for the

Commission to review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 24 day of July 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18744 Filed 7–28–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Form Under Review by the Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800

Upon Written Request, Copy Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 103f–3—File No. 270–237

Proposed Revisions:

Rule 52—File No. 270–326

Rule 45—File No. 270–164

Form U–1—File No. 270–128

Proposed New Rule and Form:

Rule 58 and Form U–9C–3—File No. 270–400

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted to OMB requests for approval on the following rules and forms:

Rule 10f–3 permits, under certain conditions, purchases of securities from underwriting syndicates whose members include affiliated persons of the purchasing investment company. The rule requires disclosure of those transactions in the investment company's Form N–SAR, and also requires investment companies to keep records of transactions made in reliance upon the rule. It is estimated that 600 respondents will expend 600 burden hours annually to comply with Rule 10f–3.

Rule 52 permits public-utility and nonutility subsidiary companies of registered holding companies to issue and sell certain securities without filing a declaration if certain conditions are met. Within ten days after the issue or sale of any security exempt under rule 52 (or, in some cases, on a quarterly basis), the issuer or seller must file with the Commission a certificate of notification on Form U–6B–2 containing the information prescribed by that form. The proposed amendments to rule 52 would exempt additional public-utility and nonutility financing. The current reporting requirement would not change as a result of these amendments.

Rule 45 requires the filing of a declaration to obtain Commission approval for a registered holding company or subsidiary company to extend its credit, indemnify or make any capital contribution to any company in the same holding company system, and provides exceptions from the declaration requirement. The proposed amendment to rule 45 would expand the exceptions to conform to the proposed amendments to rule 52. It is estimated that 14 respondents will expend a total 46 burden hours annually to comply with Rule 45.

Form U–1 is used to file applications and declarations requesting Commission authorization of transactions for the acquisition of securities by a company in a registered holding company system. It is estimated that 111 respondents will expend a total of 17,206 burden hours annually.

Proposed rule 58 would permit a registered holding company and its subsidiaries to acquire securities of an "energy-related company" or a "gas-related company", as defined in the rule, without filing an application on Form U–1, subject to certain limitations. Within 60 days after the end of the first calendar quarter in which any exempt acquisition is made, and each calendar quarter thereafter, the registered holding company would be required to file with the Commission a certificate of notification on Form U–9C–3 containing the information prescribed by that form. It is estimated that 61 respondents would expend 4 hours per quarterly filing (or 16 hours per year) to comply with Rule 58 and Form U–9C–3.

General comments regarding the estimated burden hours should be directed to the Clearance Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of the Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and SEC Clearance Officer, Office of Management and Budget, Paperwork Reduction Projects 3235–0226 (Rule 10f–3), 3235–0369 (Rule 52), 3235–0154 (Rule 45) 3235–0125 (Form U–1) and Rule 58 and Form U–9C–3, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 17, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18657 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

Approval; Amendments to:

Regulation S–X—File No. 270–3

Form N–1A—File No. 270–21

Form N–2—File No. 270–21

Form N–3—File No. 270–281

Form N–4—File No. 270–282

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval amendments to Regulation S–X under the Securities Act of 1933 (the "1933 Act") and Form N–1A, Form N–2, Form N–3, and Form N–4 under the 1933 Act and the Investment Company Act of 1940 (the "1940 Act"). The amendments pertain to the disclosure of investment company ("funds") expenses when such expenses are paid by third parties in exchange for allocation of fund brokerage or use of fund assets.

S–X requires funds to include in their statements of operations the amount of any expenses paid by third parties in exchange for allocation of fund brokerage or use of fund assets. The amendments to Form N–1A, Form N–2, Form N–3 and Form N–4 require that this "total expense" figure also be set forth in the fee table and financial highlights table in fund prospectuses and be used, in part, to calculate fund yield. The change in burden associated with these amendments will be reflected in the burdens associated with the various forms to be amended.

It is estimated that 300 funds that file on Form N–1A will each incur 3.0 burden hours in addition to the time currently required to complete the Form, 750 funds that file on Form N–1A will each incur 2.0 additional burden hours, and 1,950 funds that file on Form N–1A will each incur 1.0 additional burden hour. It is estimated that 12 funds that file on Form N–2 will each incur 2.5 burden hours in addition to the time currently required to complete the Form, 31 funds that file on Form N–2 will each incur 1.5 additional burden hours, and 82 funds that file on Form N–2 will each incur 1.0 additional burden hour. It is estimated that five funds that file on Form N–3 will each incur 1.5 burden hours in addition to the time currently required to complete Form N–3, while 13 funds that file on Form N–3 will each incur 1.0 additional burden hour. Finally, it is estimated that 28 funds that file on Form N-4 will each incur 1.5 burden hours in addition to the time currently required to complete Form N–4, while 72 funds that file on Form N–4 will each incur 1.0 additional burden hour.

The estimates of burden hours set forth above are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

General comments may be directed to the OMB Clearance Officer for the Securities and Exchange Commission at the address below. Comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and to the Securities and Exchange Commission's Clearance Officer, Office of Information and Regulatory Affairs, Paperwork Reduction Act numbers 3235–0009 (for Regulation S–X), 3235–0307 (for Form N–1A), 3235–0026 (for Form N–2), 3235–0316 (for Form N–3), and 3235–0318 (for Form N–4), Office of Management and Budget, Room 3228, New Executive Office Building, Washington, D.C. 20543.

Dated: July 21, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18667 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36020; File Nos. SR–CBOE–95–11; SR–PSE–95–04; SR–Phlx–95–12; SR–Amex–95–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Related Amendments by the Chicago Board Options Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.; and Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Related Amendments by the American Stock Exchange, Inc., Relating to Listing Standards for Options on Securities Issued in Certain Corporate Restructuring Transactions

July 24, 1995.

I. Introduction

On January 26, February 13, February 15, and February 17 the Chicago Board Options Exchange, Inc. ("CBOE"), the Philadelphia Stock Exchange, Inc. ("Phlx"), the Pacific Stock Exchange, Inc. ("PSE"), and the American Stock Exchange, Inc. ("Amex") (collectively the "Exchanges"), respectively, submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] proposed rule changes to adopt listing standards for options on securities issued in certain corporate restructuring transactions.

On February 17, 1995, February 21, 1995, February 21, 1995 and July 11, 1995, the CBOE, PSE, Phlx and Amex, respectively, submitted to the Commission Amendment No. 1 to their proposed rule changes in order to make certain technical corrections to the text of the proposals.[3] On May 10, 1995, the CBOE submitted to the Commission Amendment No. 2 to its proposed rule change.[4] On June 13, 1995, the CBOE submitted to the Commission Amendment No. 3 to its proposed rule change.[5] On July 11, 1995, the Amex submitted to the Commission Amendment Nos. 2 and 3 to its proposed rule change.[6] On June 26, July 11 and July 11, 1995, the Phlx, PSE, and the Amex submitted to the Commission Amendment Nos. 2, 2, and 4, respectively, to their proposed rule changes.[7] On July 11, 1995, the Phlx submitted to the Commission Amendment No. 3 to its proposed rule changes.[8]

Notices of the CBOE, PSE and Phlx proposals and Amendment No. 1 to PSE's and Phlx's proposed rule changes were published for comment in the **Federal Register** on February 8, 1995, March 1, 1995 and March 1, 1995, respectively.[9] No comments were

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CBOE, PSE, Phlx and Amex submitted identical revisions to their proposed rule changes in order to clarify that comparative asset values and revenues shall be derived from *the later of* the most recent annual or most recently available comparable interim financial statements of each of the respective issuers. *See* Letters from Michael Meyer, Attorney, Schiff, Hardin & Waite, dated February 17, 1995, Michael Pierson, Senior Attorney, PSE, dated February 21, 1995, and Michele Weisbaum, Associate General Counsel, Phlx, dated February 21, 1995, to Beth Stekler, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission. *See also* Letter from Claire McGrath, Special Counsel, Amex, to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission, dated July 11, 1995 ("Amex Letter") (collectively "Amendment No. 1").

[4] Amendment No. 2 to CBOE's proposal makes certain technical changes and states that under narrowly defined circumstances, the CBOE may determine that the public ownership of shares and holder requirements for the Restructure Security are satisfied based on these same characteristics of the Original Security. *See* Letter from Michael Meyer, Attorney, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, OMS, Market Regulation, Commission, dated May 10, 1995 ("CBOE Amendment No. 2").

[5] Amendment No. 3 to CBOE's proposed rule change makes further technical changes, and eliminates the reference to rights offerings in paragraph (c) of proposed new Interpretation and Policy .05 to CBOE Rule 5.3. *See* Letter from Michael Meyer, Attorney, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, OMS, Market Regulation, Commission, dated June 13, 1995 ("CBOE Amendment No. 3").

[6] The Amex submitted Amendment No. 2 to its proposed rule change in order to delete any and all references to restructuring transactions involving shareholders other than existing shareholders of the issuer of the Original Security. The Amex also submitted Amendment No. 3 to its proposed rule change to correct a technical error in proposed rule 916.01(6) by properly referencing various commentaries. *See* Amex Letter, *supra* note 3.

[7] The Phlx, PSE, and Amex amended the text of their proposed rules to conform to the language filed by the CBOE. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, OMS, Market Regulation, Commission, dated June 26, 1995 ("Phlx Amendment No. 2"), Letter from Michael Pierson, Senior Attorney, PSE, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated July 11, 1995 ("PSE Amendment No. 2"). *See also* Amex Letter, *supra* note 3.

[8] The Phlx submitted Amendment No. 3 to its proposed rule change to make certain technical clarifications, and to revise paragraph (b) of proposed new Commentary .05 to Phlx Rule 1009 to state that option contracts may not be initially listed for trading on a Restructure Security until shares of the Restructure Security are issued and outstanding and are the subject of trading that is not on a "when issued" basis. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated July 11, 1995 ("Phlx Amendment No. 3").

[9] *See* Securities Exchange Act Release Nos. 35315 (February 1, 1995), 60 FR 7598 (File No. SR–CBOE–

Continued

received on the proposals. This order approves the proposed rule changes by the CBOE, PSE, Phlx and Amex. The proposed rule change by the Amex, as amended, and certain amendments by the CBOE, PSE, and Phlx, have been approved on an accelerated basis.

II. Background

The Exchanges currently maintain uniform standards regarding the approval for listing of underlying securities for options trading.[10] Specifically, to be the subject of options trading, the underlying security must meet the following guidelines: (1) Trading volume in all markets of at least 2.4 million shares in the preceding twelve months ("Volume Test"); (2) market price per share of at least $7.50 for the majority of business days during the three calendar month period preceding the date of selection ("Price Test"); (3) a minimum public ownership of 7 million shares ("Public Ownership Requirement");[11] and (4) a minimum of 2,000 holders ("Holder Requirement").[12] An exchange must determine that a security satisfies the above requirements, as of the date it is selected for options trading ("selection date"), which is the date the exchange files for certification of the listing of the option with the Options Clearing Corporation ("OCC"). Depending upon the interest and response from other options exchanges, the exchange may begin options trading from three or five business days after the selection date.

The Exchanges have adopted maintenance criteria for withdrawal of approval of an underlying security subject to options trading.[13] A security previously approved for options transactions shall be deemed not to meet the guidelines for continued listing if (1) Trading volume in all markets is less than 1.8 million shares in the preceding twelve months ("Maintenance Volume Test"); (2) market price per share closes below $5.00 on a majority of business days during the preceding six calendar months ("Maintenance Price Test");[14] (3) public ownership amounts to fewer than 6.3 million shares ("Maintenance Public Ownership Requirement"); or (4) there are fewer than 1,600 holders ("Maintenance Holder Requirement").[15]

Both the initial and maintenance listing criteria are intended to ensure, among other things, that options are only traded on stocks with adequate depth and liquidity so that the options and their underlying components are not readily susceptible to manipulation.

III. Description of the Proposals

The Exchanges propose to amend their rules to facilitate the earlier listing of options on securities issued in certain corporate restructuring transactions. The proposals will apply to securities ("Restructure Security") issued by a public company to existing shareholders, with existing publicly traded shares subject to options trading, in connection with certain "restructuring transactions."[16]

Under the current standards, an exchange is generally precluded from listing eligible options on newly issued securities for at least three months, given that the guidelines require three months of price history to determine if the underlying security meets the Price Test. Additionally, an exchange may only list eligible options on newly issued securities, if the underlying security meets the Volume Test which requires trading volume in all markets of at least 2.4 million shares in the preceding twelve months. The proposed rule changes, however, would facilitate the earlier listing of options on a Restructure Security by permitting an exchange to determine whether a Restructure Security satisfies the Volume Test and Price Test by reference to the trading volume and market price history of an outstanding equity security ("Original Security") previously issued by the issuer of the Restructure Security, or affiliate thereof. In addition, the Exchanges propose specific criteria for evaluating the distribution of shares of a Restructure Security for purposes of meeting the Public Ownership and Holder Requirements. To the extent that the initial options listing requirements are satisfied based upon these "lookback" provisions to the Original Security and the other provisions of the proposal, then an exchange will permit options trading to begin on the ex-date for the transaction.[17]

Before an exchange may invoke this proposed "lookback" provision and utilize the volume and price of the Original Security for purposes of meeting the options eligibility criteria for the Restructure Security, the Restructure Security must first satisfy one of four alternate conditions. The first three alternate conditions are intended to ensure that the trading volume and market price history of the Original Security represent a reasonable surrogate for determining the likely future trading volume and price data of the Restructure Security. Under these conditions either, (a) the aggregate market value of the Restructure Security, (b) the aggregate book value of the assets attributed to the business represented by the Restructure Security (minimum $50 million) or (c) the revenues attributed to the business represented by the Restructure Security (minimum $50 million) must exceed one of two stated percentages of the same measure for the Original Security.[18] The threshold percentages will be 25% if the applicable measure determined with respect of the Original Security represents an interest in the combined enterprise prior to the restructuring transaction, and 33⅓% if the applicable measure determined with respect of the Original Security represents an interest in the remainder of the enterprise after the restructuring transaction. The fourth alternate condition is that the aggregate market value represented by the Restructure Security be at least $500 million. This condition is based on the Exchanges' view that even if a Restructure Security does not meet the comparative tests outlined above, a Restructure Security with an aggregate market value of 4500 million, by virtue of its absolute size, represents a substantial portion of the Original Security, and thus should qualify for the "lookback" provision.

If any one of the four conditions set forth above is satisfied, a Restructure Security will qualify for the "lookback" provision. Under the "lookback" provision, a Restructure Security may be eligible for options trading immediately upon its issuance provided the following requirements are satisfied. First, the Restructure Security must satisfy the options Volume and Price Tests. Under the proposals, an exchange may be permitted to determine whether a Restructure Security satisfies the Volume and Price Tests by reference to the trading volume and market price history of the Original Security. Under the proposed rule change, the trading volume and market price history of the Original Security that occurs *prior to the restructuring ex-date* can be used for these calculations (emphasis added).[19] Volume and price data may be derived from "when issued" trading in the Restructure Security. However, once an exchange uses "when issued" volume or prices for the Restructure Security to satisfy the relevant guidelines, it may not use the Original Security for that purpose on any subsequent trading day. In addition, both the trading volume and market price history of the Original Security must be used, if either is so used.

Additionally, an exchange must determine whether a Restructure Security will satisfy the Public Ownership and Holder Requirements. This determination will either be based on facts and circumstances that will exist on the intended date for listing the option, or based on assumptions that are permitted under the proposal. Because the shares of the Restructure Security are to be issued or distributed to the shareholders of the issuer of the Original Security, the Exchanges propose that these requirements may be satisfied based upon the exchange's knowledge of the existing number of outstanding shares and holders of the Original Security.

The Exchanges further proposes that if a Restructure Security is to be listed on an exchange or in an automatic quotation system that subjects it to an initial listing requirement of no less than 2,000 holders, then the options exchange may assume that the Holder Requirement will be satisfied. Similarly, if a Restructure Security is to be listed on an exchange or in an automatic quotation system subject to an initial listing requirement of no less than public ownership of 7 million shares, then the options exchange may assume that Public Ownership Requirement will be satisfied. Additionally, if an exchange determines that at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, then it may assume that the Restructure Security will satisfy both the Public Ownership and Holder Requirements.[20]

An exchange, however, shall not rely on the above assumptions if, after reasonable investigation, it determines that either the public ownership of shares or the holder requirement, in fact, will not be satisfied on the intended date for listing the option. In addition, pursuant to the proposal, other exchanges will have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to public ownership and holders.

Finally, the proposal will adopt a similar "lookback" provision for the Maintenance Volume Test and the Maintenance Price Test. Specifically, for purposes of satisfying these requirements, the trading volume and market price history of the Original Security, as well as any "when issued" trading in the Restructure Security, can be used for such calculations, provided that they are only used for determining price and volume history for the period prior to commencement of trading in the Restructure Security.

IV. Commission Finding and Conclusions

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of Section 6(b)(5),[21] in that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that it is necessary for securities to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security to become options eligible. These standards are imposed to ensure that those issuers upon whose securities options are to be traded are financially sound companies whose trading volume, market price, number of holders, and public ownership of shares are substantial enough to ensure adequate depth and liquidity to sustain options trading that is not readily susceptible to manipulation. The Commission also recognizes that under current equity options listing criteria, existing shareholders of an issuer that becomes involved in a restructuring transaction, may be precluded for a significant period from employing an adequate hedging strategy involving options on any newly acquired Restructure Security received in connection with such transaction.

Accordingly, to determine whether the earlier listing of options overlying a Restructure Security is reasonable, the Commission must balance the benefits of providing adequate hedging strategies to shareholders of the issuer of the Restructure Security, and the risks of approving certain securities for options trading before such securities actually satisfy the options eligibility criteria, which currently, for newly issued securities, can not occur, at the very least, prior to three months after the security begins trading.[22] The Commission believes that the proposed limited exception to established equity options listing procedure strikes such a reasonable balance.

As discussed in more detail below, the Commission believes that the conditions of the new rule will help to ensure that only those securities that are most likely to have adequate depth and liquidity will be eligible for options trading prior to the establishment of a recognized trading history. Additionally, by facilitating the earlier listing of options on a Restructure Security, the Commission believes that investors formerly holding the Original Security, upon which options are currently traded, should be able to

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95–11); 35410 (February 22, 1995), 60 FR 11158 (File No. SR–PSE–95–04 and Amendment No. 1); and 35409 (February 22, 1995), 60 FR 11159 (File No. SR–Phlx–95–12 and Amendment No. 1).

[10] *See* Amex Rule 915; CBOE rule 5.3; PSE Rule 3.6; Phlx Rule 1009; and NYSE Rule 715.

[11] Shares that are owned by persons required to report their stock holdings under Section 16(a) of the Act (*i.e.*, directors, officers, and 10% beneficial owners) are excluded from this calculation.

[12] This proposal addresses price, volume, public ownership, and holder requirements specifically. For a Restructure Security to meet initial listing requirements, however, it must additionally comply with all requirements set forth by the Exchanges in their options eligibility rules. For example, the security must be registered, and listed on a national securities exchange, or traded through the facilities of a national securities association and reported as a "national market system" ("NMS") security as set forth in Rule 11Aa3–1 under the Act, and the issuer must be in compliance with any applicable requirements of the Act. *See supra* note 10.

[13] *See* Amex Rule 916; CBOE Rule 5.4; PSE Rule 3.7; Phlx Rule 1010; and NYSE Rule 716.

[14] Additional criteria permits the underlying security under certain circumstances to trade as low as $3.00 for a temporary period of time. *See* Id.

[15] This proposal addresses maintenance criteria for market price and trading volume specifically. For a Restructure Security to meet maintenance requirements for an underlying security subject to options trading, however, it must additionally comply with all requirements set forth by the Exchanges in their options eligibility rules. *See supra* note 13.

[16] The proposal defines a "restructuring transaction" as a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction.

[17] Option contracts may not be initially listed for trading in respect of a Restructure Security until the ex-date. The ex-date occurs at such time when shares of the Restructure Security become issued and outstanding and are the subject of trading that are not on a "when issued" basis or in any other way contingent on the issuance or distribution of the shares. *See e.g.*, Phlx Amendment No. 3, *supra* note 8.

[18] Aggregate market value will be based on share prices that are either (a) all closing prices in the primary market on the last business day preceding the selection date or (b) all opening prices in the primary market on the selection date. The aggregate market value of the Restructure Security may be determined from "when issued" prices, if available.

Asset values and revenues will be derived from the later of (a) the most recent annual financial statements or (b) the most recent interim financial statements of the respective issuers covering a period of not less than three months. Such financial statements may be audited or unaudited and may be pro forma.

[19] *See supra* Section II.

[20] According to the CBOE, for most restructuring transactions, it should be possible to know or to deduce from publicly available information on the distribution of the Restructure Security (or a worst case estimate of the number of shares that will be publicly held and the number of shareholders) upon completion of the restructuring transaction. As proposed, an exchange could make the necessary determination prior to the ex-date and could certify the Restructure Security for options trading on that basis. See Letter from Michael Meyer, Attorney, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, OMS, Market Regulation, dated January 25, 1995 ("CBOE Letter").

[21] 15 U.S.C. 78f(b)(5).

[22] *See supra* Section II.

better hedge the risk of their newly acquired stock position in the Restructure Security.[23]

Despite the benefits of the proposal, the Commission believes that the proposal should only apply to restructuring transactions that involve financially sound and sufficiently large companies. The Commission believes that the Exchanges have addressed this concern by adding conditions to the proposal that require that Restructure Security to either satisfy certain comparative test (comparing the Restructure Security, or its related business with that of the Original Security, or its related business),[24] or meet a very high aggregate market value standard ($500 million).

The Commission believes that if one of the comparative tests is satisfied, the Restructure Security should adequately resemble the Original Security to qualify for the "lookback" provision. Under the "lookback" provision, a Restructure Security will be able to satisfy the Volume and Price Tests if the trading volume and market price history of the Restructure Security, together with the trading volume and market price history of the Original Security occurring prior to the ex-date, meet the existing related requirements. Moreover, the Commission believes that, given the limited scope of the proposal, it is appropriate to conclude that a Restructure Security with an aggregate market value of at least $500 million appropriately qualifies for the "lookback" provision.

The Commission also believes that it is appropriate for an exchange to count "when issued" trading in the Restructure Security when determining if the Restructure Security will satisfy the Volume and Price Tests set forth in the initial options listing requirements. However, once an exchange begins to use "when issued" volume or price history for the Restructure Security to satisfy the Volume or Price Tests, it may not use the Original Security for such purposes on any subsequent trading day. In addition, both the trading volume and market price history of the Original Security must be used, if either is so used. For example, if in order to satisfy the Volume Test for a Restructure Security for which the ex-date is expected to be February 1, 1996, an exchange may elect to base its determination on the trading volume of the Original Security from February 1, 1995 through December 27, 1995, and then utilize the trading volume in the when-issued market for the Restructure Security from December 28, 1995 through January 31, 1996, in determining whether options covering the Restructure Security may be listed on the February 1 ex-date. Under this example, after December 28, 1995, only when-issued trading data for the Restructure Security may be used in determining whether it meets the Volume and Price Tests. An exchange, however, would be permitted to use the volume and price history of the Original Security throughout the entire period prior to February 1, 1996, provided that it did not rely on any when-issued trading data during that period.

The Commission notes that an exchange shall not use trading history relating to the Original Security after the ex-date to meet the initial options listing requirements for the option contracts overlying the Restructure Security. Additionally, the condition that option contracts overlying a Restructure Security shall not be initially listed for trading until such time as shares of the Restructure Security are issued and outstanding and are the subject of trading that is not on a "when issued" basis or in any other way contingent on the issuance or distribution of the shares will ensure that options will only be traded a Restructure Security when it is certain the security is actually issued and outstanding.

In addition to satisfying the Volume and Price Tests, a Restructure Security must also meet certain distribution requirements before an exchange can deem such security to be options eligible. Specifically, the Restructure Security must have 2,000 holders, and 7 million shares must be owned by persons not required to report their stock holdings under Section 16(a) of the Act to be options eligible. Under the most typical restructuring transaction, a spin-off to existing shareholders of the issuer of the Original Security, an exchange should be able to determine from publicly available information or otherwise reasonably deduce whether the Restructure Security will satisfy the 2,000 shareholders requirement and the public ownership of 7 million shares requirement.[25] As an example, if Issuer A, having public ownership of 10 million shares of common stock owned by 5,000 holders intends to effect a spin-off of a subsidiary, whereby one share of the subsidiary is issued to existing shareholders of Issuer A for each currently held outstanding share of Issuer A, immediately following the spin-off the former subsidiary will have public ownership of 10 million shares and 5,000 holders. As a result, the former subsidiary will satisfy both the public ownership of 7 million shares and 2,000 holder requirements.

As an alternative to the above, the proposal provides that an exchange may make certain limited assumptions based on facts and circumstances that will exist on the intended date for listing the options in order to determine the Public Ownership and Holder Requirements. First, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement that the issuer have no less than 2,000 holders, the Commission believes that it is reasonable for an exchange to assume that its comparable option listing requirement will be satisfied. Second, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement of no less than public ownership of 7 million shares, the Commission believes that it is reasonable for the an exchange to assume that its comparable option listing requirement will be satisfied.

The Commission notes that currently no exchange or automatic quotation system has a public ownership initial stock listing standard that is as stringent as those required under the options eligibility requirements. Moreover, a stock exchange may now be able to list stocks pursuant to alternate listing standards. For example, the Commission has recently approved alternate listing standards for companies listed on the New York Stock Exchange ("NYSE"), including, among other things, the distribution of shares.[26] Under these alternate listing standards, the NYSE is currently allowed to list certain companies with 500 shareholders that meet heightened requirements in other areas in lieu of its 2,200 total shareholder requirement.

[23] Although the proposals do not specifically address it, the Commission understands that the application of the proposals is limited to instances where options are listed on the Original Security.

[24] *See supra* note 18 and accompanying text. The Commission notes that the Exchanges proposed that comparative asset values and revenues, when used to determine whether the above-mentioned conditions are satisfied, shall be derived "from the later of the most recent annual or most recently available comparable interim *(not less than three months* financial statements." This provision means that the interim financial statements must cover a period of not less than three months.

[25] The Commission notes that "public ownership of shares, as referred to herein, are shares that are owned by persons not required to report their stock holdings under Section 16(a) of the Act (*i.e.*, directors, officers, and 10% beneficial owners).

[26] *See* Paragraph 102.01 of the NYSE's Listed Company Manual. *See also* Securities Exchange Act Release No. 35571 (April 5, 1995), 60 FR 18649 (April 12, 1995) (order approving proposed rule change relating to domestic listing standards).

Therefore, the Exchanges should be careful to precisely determine which listing standards are being applied to the listing of the Restructure Security prior to making a determination as to whether the Restructure Security meets the corresponding options listing criteria.

Additionally, the proposal provides that if at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, an exchange may assume that the Restructure Security will satisfy both the public ownership of shares and holder requirements. The Commission believes this is appropriate because it appears unlikely that a Restructure Security with at least 40 million issued and outstanding shares, will have fewer than 2,000 holders or less than 7 million shares owned by persons not required to report holdings under Section 16(a) the Act.

The Commission believes that concerns associated with the ability of an exchange to make important listing decisions based on assumptions rather than confirmed facts are alleviated by the crucial provision contained in the proposal that an exchange shall not rely on the above assumptions if, after a reasonable investigation, it determines that either the public ownership of shares or the holder requirement, in fact, will not be satisfied on the intended date for listing the option. At the very least, an exchange should investigate the basis for its assumptions regarding the public ownership of shares and number of shareholders just prior to selecting the option and just prior to trading the option, utilizing a worst case analysis in making its assumptions that the Restructure Security will meet these listing standards upon completion of the restructuring transaction.[27]

In addition, other exchanges will continue to have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to public ownership and holders. The Commission believes that this provision provides an important check and should help to ensure that no unqualified securities are listed for options trading.

The Commission also believes that it is appropriate for an exchange to apply the "lookback" provision, to determine if a Restructure Security will satisfy the Maintenance Volume and Price Tests. The Commission believes that it is appropriate to use the trading volume and market price history of the Original Security, as well as any "when issued" trading in the Restructure Security for such calculations, provided that they are only used for determining price and volume history for the period prior to commencement of trading in the Restructure Security.

The Commission notes that because the Maintenance Volume and Price Test are calculated on a rolling forward basis, "when issued" trading history for the Restructure Security or trading history for the Original Security prior to the ex-date may be used for maintenance calculations for no more than twelve months after the ex-date for the Restructure Security with respect to the Maintenance Volume Test, and for no more than six months after the ex-date for the Restructure Security with respect to the Maintenance Price Test. For example, if in order to satisfy the Maintenance Volume Test for a Restructure Security on November 1, 1995, for which the ex-date is September 1, 1995, an exchange may elect to base its determination on the trading volume of the Original Security from November 1, 1994 through August 1, 1995, the trading volume in the when-issued market for the Restructure Security from August 2, 1995 through August 31, 1995, but must use the trading volume in the Restructure Security from September 1, 1995 through November 1, 1995. Similarly, in order to satisfy the Maintenance Price Test for the same Restructure Security on November 1, 1995, an exchange may elect to base its determination on the trading price of the Original Security from August 1, 1995 through August 15, 1995, the trading price in the when-issued market for the Restructure Security from August 16, 1995 through August 31, 1995, but must use the trading price in the Restructure Security form September 1, 1995 through November 1, 1995.

The Commission notes that the Exchanges' proposals only permit them to avail themselves of the accelerated listing procedures for a traditional restructuring transaction that is limited to the distribution of shares to existing shareholders of the issuer of the Original Security. Accordingly, the Commission notes that this proposal does not address or apply to restructuring transactions that involve a sale of such securities to the general public, including, but not limited to, initial public offerings or secondary offerings. The Commission is approving the current proposal based, in part, on the need for investors and other market participants with combined stock/option positions in an Original Security to be able to maintain their positions immediately following a restructuring transaction. Otherwise, holders of the Original Security might be temporarily prevented (until the Restructure Security independently satisfies the options listing criteria) from adequately hedging their involuntarily received new positions in the Restructure Security.

The Commission also notes that this proposal does not address or apply to restructuring transactions that involve a sale of such securities in a rights offering to existing holders of the Original Security. The Commission believes that the contingencies in the terms of such an offering make it too difficult to determine whether the number of subscribers for such an offering would be adequate to meet the Pubic Ownership and Holder Requirements and therefore such an offering does not justify the immediate availability of options for the underlying security.

The Commission believes that any future exchange proposing to expand the scope of this proposal beyond that of restructuring transactions involving distributions of securities to existing shareholders or expanding the rule to include rights offerings must address potential concerns associated with being able to adequately determine the minimum number of publicly owned shares and holders of the Restructure Security that will exist on the intended date for listing the options in order to justify accelerated availability of options trading.

The Commission finds good cause for approving the proposed rule change by the Amex prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, the Commission notes that the Amex's proposed rule change is substantively similar to those proposed by the CBOE, PSE, and Phlx. The Amex rule change proposal raises no issues that are not raised by the other exchanges. Additionally, the Commission notes that the CBOE, PSE, and Phlx proposals were subject to a full notice and comment period, and no comments were received. Accordingly, the Commission believes that it is consistent with section 6(b)(5) of the Act to approve Amex's proposed rule change, as amended, on an accelerated basis.

The Commission also finds good cause for approving identical Amendment No. 1 to the proposed rule changes from the CBOE and Amex prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** This amendment clarifies that comparative asset values

[27] *See e.g.* CBOE Letter, *supra* note 20.

and revenues shall be derived from *the later of* the most recent annual or most recently available comparable interim financial statements of each of the respective issuers. The Commission believes that this amendment helps to clarify the method of determining comparative asset values and revenues and contains only minor variations from the original proposals. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) of the Act to approve Amendment No. 1 to CBOE's and Amex's proposed rule changes on an accelerated basis.

The Commission finds good cause for approving Amendments Nos. 2 and 3 to the Amex's proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 2 to Amex's proposal addresses the scope of transactions qualifying for the proposed equity options listing criteria by deleting any and all references to restructuring transactions involving shareholders other than existing shareholders of the issuer of the Original Security. This amendment ensures that the accelerated options listing procedures as proposed by the exchanges, apply only to a restructuring transaction involving existing shareholders of the issuer of the Original Security. The Commission believes that Amendment No. 2 to Amex's proposal effectively narrows the scope, and accurately reflects the original intent, of the proposed rule change. Amendment No. 3 to Amex's proposal corrects a technical error in proposed rule 916.01(6) by properly referencing various commentaries. The Commission does not believe the amendment raises any new or unique regulatory issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) of the Act to approve Amendment Nos. 2 and 3 to Amex's proposal on an accelerated basis.

The Commission finds good cause for approving Amendments Nos. 2 and 3 to the CBOE's proposed rule changes, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, Amendment No. 2, to CBOE's proposal makes certain technical changes to clarify the meaning of the proposed rule changes to achieve greater uniformity with the language of the other exchanges, and to properly reflect the original intent of the proposed rule change. Additionally, Amendment No. 2 to CBOE's proposal states that under narrowly defined circumstances, the CBOE may determine that the public ownership of shares and holder requirements are satisfied based on these same characteristics in respect of the Original Security. Amendment No. 3 to CBOE's proposed rule changes makes further technical changes, and eliminates the reference to rights offerings in paragraph (c) of proposed new Interpretation and Policy .05 to CBOE Rule 5.3. The Commission does not believe these amendments raise any new or unique regulatory issues. In particular, the Commission believes that the amendments clarify the meaning, and reflect the scope of the proposed rule change, as originally intended. Therefore, the Commission believes it is consistent with Sections 6(b)(5) of the Act to approve Amendments Nos. 2 and 3 to CBOE's proposed rule changes, respectively, on an accelerated basis.

The Commission finds good cause for approving Amendments Nos. 2, 2, and 4 to the Phlx's, PSE's, and Amex's proposed rule changes, respectively, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** These amendments merely conform the Phlx's, PSE's, and Amex's proposed rule changes to Amendment Nos. 2 and 3 to CBOE's proposal. The Commission does not believe the amendments raised any new or unique regulatory issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) of the Act to approve Amendments Nos. 2, 2 and 4 to Phlx's, PSE's, and Amex's proposed rule changes, respectively, on an accelerated basis.

The Commission finds good cause for approving Amendment No. 3 to the Phlx's proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, Amendment No. 3 to Phlx's proposal makes certain technical clarifications and revises paragraph (b) of proposed new Commentary .05 to Phlx Rule 1009 to state that option contracts may not be initially listed for trading on a Restructure Security until shares of the Restructure Security are issued and outstanding and are the subject of trading that is not on a "when issued" basis. Because Phlx Amendment No. 3 merely reverses an unintended amendment to the proposed rule change as originally filed, the Commission does not believe the amendment raises any new or unique regulatory issues. Therefore, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 3 to Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning the Amex proposal Amendments Nos. 1, 2, 3 and 4 to Amex's proposal; CBOE Amendment Nos. 1, 2 and 3; Phlx Amendment Nos. 2 and 3; and PSE Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the Exchanges. All submissions should refer to SR–CBOE–95–11; SR–PSE–95–04; SR–Phlx–95–12; and SR–Amex–95–07 and should be submitted by August 21, 1995.

V. Conclusion

Based on the above findings, the Commission believes the proposals are consistent with Section 6(b)(5) of the Act by facilitating transactions in securities while at the same time ensuring continued protection of investors. As noted above, the strict conditions of the rule should help to identify for accelerated options eligibility only those Restructure Securities that will have adequate depth and liquidity to support options trading. At the same time it will provide investors with a better opportunity to hedge their positions in both the Original and the Restructure Security.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule changes (SR–CBOE–95–11; SR–PSE–95–04; SR–Phlx–95–12; and SR–Amex–95–07), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18707 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

[Release No. 34–36008; File No. SR–NSCC–95–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding a Technical Correction to its Fee Schedule

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 5, 1995, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–95–08) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change makes a technical correction to NSCC's fee schedule to include a fee inadvertently deleted when changes were made to NSCC's rules and fees to accommodate three day settlement of securities transactions ("T+3").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Prior to the recent amendments to its rules and fees to accommodate T+3 settlement, NSCC's fee structure had a category labeled Basket Trades in the Trade Comparison and Recording Fee section and a separated basket fee in the Pass Through and Other Fees section. Within the Trade Comparison section, NSCC had two charges, a $30 charge for the processing of baskets (*i.e.* processing of a basket includes such things as the bursting of the basket into the underlying security components) and a $10 charge for the processing of mini baskets. The $30 fee category also was used to charge members for the creation and redemption of index receipts. The fee schedule also had a separate charge of $125 per month which covered the production of the composition file for baskets and index receipts. When NSCC revised its rules and fees for T+3, it deleted references to and fees for baskets because NSCC does not process these items any longer. This resulted in the unintentional deletion of the fee category used for the creation and redemption of index products. It did not delete the $125 charge for the production of a composition file for baskets.

The purpose of the proposed rule change is to restore and to rename the $30 fee that NSCC charges to process index receipts (*i.e.*, to accept creation and redemption instructions) and to rename the fee associated with the production of the composition file. The new names will reflect the fact that the fees are for services provided in connection with index receipts.

The proposed rule change is consistent with Section 17A(b)(3)(D)[3] of the Act, as amended, which requires that the rules of a registered clearing agency provide for the equitable allocation of reasonable fees for the services which it provides to participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A)(ii)[4] of the Act and pursuant to Rule 19b–4(e)(2)[5] in that the proposed rule change establishes or changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W. Washington D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal offices of NSCC.

All submissions should refer to File No. SR–NSCC–95–08 and should be submitted by August 21, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18704 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified parts of these statements.

[3] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[4] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[5] 17 CFR 240.19b–4(e)(2) (1994).

[6] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–36019; File No. SR–NYSE–95–16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment to a Proposed Rule Change Relating to the Options Market Maker Exemption From the NASD Short Sale Bid Test for Certain Merger and Acquisition Securities

July 24, 1995.

I. Introduction

On April 21, 1995, the New York Stock Exchange, Inc. ("NYSE" or

"Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to extend the market maker exemption from the NASD's bid test rule to Nasdaq National Market ("Nasdaq/NM" or "NM") securities involved in merger and acquisition ("M&A") transactions. The proposed rule change was published for comment and appeared in the **Federal Register** on May 10, 1995.[3] On May 31, 1995, the NYSE filed Amendment No. 1 to its proposal.[4] This order approves the proposal, as amended.

II. Description of the Proposal

In November 1994, the Commission approved proposals submitted by the options exchanges concerning a market maker exemption [5] to the NASD bid test rule [6] applicable to short sales of NM securities traded through Nasdaq. The Exchanges' proposals were approved on a temporary basis to remain in effect concurrently with the NASD's bid test rule pilot program.[7]

The NYSE's market maker exemption from the NASD short sale rule is codified as Rule 759A. NYSE Rule 759A allows each exchange options specialist and Competitive Options Trader ("COT") to rely on the NASD's options market maker exemption to effect short sales in Nasdaq/NM securities at or below the best bid when the displayed bid is below the preceding best bid if the short sale qualifies as an "exempt hedge transaction."[8] The NYSE now proposes to expand the definition of "exempt hedge transaction" to include certain short sales in M&A securities, defined as the securities of a company that is a party (or a prospective party) to a publicly announced M&A with an issuer of a Nasdaq/NM security that underlies an Exchange-listed option.[9] Specifically, exempt hedge transactions would include short sales in M&A securities effected by a qualified Exchange options market maker to hedge, and which in fact serves to hedge, an existing or prospective position[10] in an Exchange-listed option overlying an NM security of another company that is a party to the M&A.[11] Thus, with respect to an Exchange options specialist, the exemption would apply to short sales of a company that is a party to an M&A with a company whose Nasdaq/NM security underlies a speciality stock option; with respect to a COT, the exemption would apply to short sales of a company that is a party to an M&A with a company whose Nasdaq/NM security underlies an Exchange-listed stock option.

Finally, the Exchange's proposal effects certain minor technical changes to the wording of its Rule 759A.

III. Discussion

The Commission believes that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission believes the Exchange's proposal is consistent with the requirements of Section 6(b)(5) of the Act [12] in that it is designed to remove impediments to, and perfect the mechanism of, a free and open market, and to protect investors and the public interest.

The Commission approved the NASD's short sale rule on a temporary basis on June 29, 1994.[13] In so doing, the Commission stated that the short sale rule, together with the market maker exemption, is a reasonable approach to regulating short sales of Nasdaq/NM securities. The Commission believes that the Exchange's proposal is consistent with the NASD's bid test rule and addresses the limitations established by the NASD concerning the applicability of the market maker exemption.

Specifically, the Exchange's proposal is designed to extend the market maker exemption to the stock of a company that is involved in a publicly announced M&A with a company whose stock is designated Nasdaq/NM security. The Commission believes that when a designated Nasdaq/NM security becomes involved in an M&A, options specialists and COTs may need to hedge positions in options overlying such a designated Nasdaq/NM security by buying or selling the securities of the other company involved in the M&A, whether or not the other company's stock has listed overlying options. Indeed, where there are no options on the other company's stock, buying or selling that company's stock at times may be the only feasible way for an options specialist or COT to hedge positions in options on the designated Nasdaq/NM security, given the risk arbitrage relationship that is likely to exist between the two stocks. Therefore, the Commission believes that by allowing options specialists and COTs to sell short, for hedging purposes, shares of a company that is involved in an M&A with a company whose stock is a designated Nasdaq/NM security, and by designating such sales as bid test exempt, the Exchange's proposal will enhance the ability of its options specialists and COTs to perform their market making functions, thereby contributing to the liquidity of the market for options, as well as the liquidity of the market for the stocks of both companies.

The Commission notes that the proposed extension of the market maker exemption from the short sale rule is limited to publicly announced M&As. Moreover, the Exchange's options specialists and COTs may avail themselves of the M&A extension to the exemption only if the short sales are made to hedge existing or prospective positions in Exchange-listed options on a security of another company involved in the M&A, and the short sales are or will be "exempt hedge transactions" as defined by the Exchange.[14]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 states that to qualify as an exempt hedge transaction, a short sale in a Nasdaq/NM security must in fact serve to hedge an overlying options position. Amendment No. 1 also includes certain non-substantive language inadvertently omitted from the original filing.

The Commission believes that these changes serve to clarify the Exchange's proposal and make it consistent with the provisions of the other Exchanges relating to the market maker short sale exemption for certain M&A securities. Accordingly, the Commission believes the Amendment raises no new or unique regulatory issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act [15] to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–16 and should be submitted by August 21, 1995.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–NYSE–95–16), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18706 Filed 7–28–95; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1)(1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35672 (May 4, 1995), 60 FR 24942.

[4] In Amendment No. 1, the Exchange modifies its proposal to clarify that to qualify as an exempt hedge transaction, a short sale in an M&A security must in fact serve to hedge a market maker's position. In addition, Amendment No. 1 includes a revised *Exhibit 1* that incorporates certain non-substantive language inadvertently omitted from the original filing. Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Francois Mazur, Staff Attorney, Division of Market Regulation, Commission, dated May 26, 1995 ("Amendment No. 1").

[5] Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999 (approving proposals by the American Stock Exchange, Inc. ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), NYSE, Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.).

[6] The NASD bid test rule prohibits broker-dealers from effecting short sales, for themselves or their customers, at or below the "bid" when the current "inside" or best bid is below the previous inside bid. NASD Rules of Fair Practice ("NASD Rules"), Art. III, § 48. *See* Securities Exchange Act Release No. 34277 (June 6, 1994), 59 FR 34885 (amending the NASD Rules to add the short sale rule). The NASD bid test rule is also referred to as the "short sale rule."

[7] *See* Securities Exchange Act Release No. 34632, *supra* note 5. The Commission approved the NASD's short sale rule on an eighteen month temporary basis, effective September 6, 1994, through March 5, 1996. *Id.*

[8] The NYSE currently defines an "exempt hedge transaction," in relevant part, as a short sale in an NM security effected to hedge, and which in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in one or more transactions contemporaneous with the short sale. *See* NYSE Rule 759A(a)(i).

[9] Proposed NYSE Rule 759A(a)(ii).

[10] A "prospective position" refers to a position that might be created as the result of specific, communicated indications of interest that the specialist or COT has initiated prior to the hedge transaction.

[11] The NASD provides an exemption from the bid test rule for risk arbitragers (and other NASD members) who take positions in stocks involved in M&A transactions. *See* Securities Exchange Act Release No. 34277, *supra* note 6. The NASD short sale rule states that once an M&A has been publicly announced, a qualified market maker in one of the two affected securities may immediately register as a qualified market maker in the other M&A security. *See* NASD Rules, Article III, § 48(1)(3)(iii). Consequently, such a market maker may rely on the market maker exemption for short sales of the other M&A security.

Recently, the Amex, CBOE, and PSE amended their respective rules to extend the market maker exemption from the bid test rule to certain short sales of the stock of a company that is involved in a publicly announced M&A with a company whose stock is a designated Nasdaq/NM security. Securities Exchange Act Release No. 35211 (January 10, 1995), 60 FR 3887. A "designated NM security" is an NY security which the market maker has designated as qualifying for the bid test exemption. *See e.g.*, CBOE Rule 15.10(c)(2)(B).

[12] 15 U.S.C. § 78f(b)(5) (1988).

[13] Securities Exchange Act Release No. 34277, *supra* note 6.

[14] *See supra* note 8.

[15] 15 U.S.C. 78f(b)(5) and 78s(b)(2) (1988).

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36013; File No. SR–PHILADEP–95–04]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

July 24, 1995.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 10, 1995, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by Philadep. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep is filing the proposed rule change in order to revise, consolidate, and restate its published schedule of fees and charges (attached as Exhibit 1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise, consolidate, and restate Philadep's published schedule of fees and charges. It has been nearly four years since Philadep filed a comprehensive fee schedule. Philadep has adjusted the graduated Legal Deposit Fees to reflect a new tier of volume related discounts which provides that Philadep participants with monthly legal deposits of 2,501 to 3,000 will be charged a flat rate of $3.50 per deposit and that Philadep participants having monthly legal deposits of 3,001 or more will be charged at flat rate of $2.75 per deposit.[3] Philadep believes these fees will be highly competitive and will encourage current and prospective Philadep participants to increase their use of this service. Philadep also has consolidated and restated all other existing fees and charges and hereafter annually will file a comprehensive schedule of fees and charges.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among Philadep's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not perceive any burdens on competition as a result of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by Philadep.

[3] Previously, Philadep participants were charged $3.50 for every deposit over 2,500.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

A Philadep participant bulletin will notify participants of the fee schedule changes and advise them to whom they may direct questions upon receipt of the new fee schedule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[4] of the Act and pursuant to Rule 19b–4(e)(2)[5] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by Philadep. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to File No. SR–PHILADEP–95–04 and should be submitted by August 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

Exhibit 1

SR–Philadep–95–04

PHILADELPHIA DEPOSITORY TRUST COMPANY CONSOLIDATED RESTATEMENT OF FEES[1]

Service	Fee
1. Account fees:	
a. General Maintenance Fee	$360.00 per month with account activity. $150.00 per month for accounts with less than $10.00 of depository activity.
b. Pledge Bank Fee	$100.00 per month.
c. Manual Interface Fee	$150.00 per month in addition to the general maintenance fee.
d. Bearer Municipal Bonds	$200.00 per month in addition to the general maintenance fee. $260.00 per month for bearer bond account only.
2. Custody fees:	
a. Registered Securities	Base fee of $0.50 per issue, per month. Plus for each 100 shares or $4,000.00 in bonds: 0–1 Million Shares—$0.01. 1–5 Million Shares—$0.005. Over 5 Million Shares—$0.0025. Additional $0.50 fee per issue if Philadep eligible only, per month.
b. Bearer Municipal Bonds	Base fee of $1.45 per issue, per month. Plus for each $1,000 of par value: $0–$0.5 Billion—$0.010. $0.5–$1.0 Billion—$0.007. More than $1 Billion—$0.005.
3. Deposit fees:	
a. Registered Securities	$1.60 per deposit*.
b. Bearer Municipal Bonds	$8.00 per deposit.
4. Deposit reject fees:	
a. Registered Securities	No charge if total deposit rejects are less than 1% of total deposits for the month. Charge of $10.00 per reject if more than 1%.
b. Bearer Municipal Bonds	$10.00 per reject.
5. Legal deposits	Processing fees are based on monthly deposit volume:

Volume level	Per deposit
0–100	$8.50.
101–500	$6.00.
501–1,000	$5.50.
1001–1,700	$5.00.
1701–2,500	$4.50.
[2,501 and over	$3.50].
2,501–3,000	$3.50 flat fee for all legal deposits.
3,001 and over	$2.75 flat fee for all legal deposits.

[4] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).
[5] 17 CFR 240.19b–4(e)(2) (1994).
[6] 17 CFR 200.30–3(a)(12) (1994).

	No charge for deposit rejects. Transfer agent charges will be passed through to the participant on an item for item basis.
6. Withdrawals:	
a. Registered Securities	$2.60 per manual (paper) transfer.* $1.65 per computer to computer transfer.* $2.60 per terminal originated transfer.*
b. By Certificate	$17.95 per urgent certificate withdrawal (same-day or next-day).*
7. Customer name mailing:	
a. Full Service	$0.65 per transfer, plus appropriate transfer withdrawal charge (fee does not include postage and delivery valuation charges)
b. Interdepository	$0.75 per transfer, for securities delivered interdepository plus appropriate transfer withdrawal charge (fee does not include postage and delivery valuation charges)
8. Certificate fees	$5.75 deposits. $7.50 transfers.
9. Accommodation transfers and ironclads	$5.00 per request, plus applicable transfer agent fees.
10. MDO movements:	
a. Automated Bookentry Delivery/Receive	$0.75 per movement.
b. Manual Bookentry Delivery/Receive	$1.50 per movement.
c. Automatic Bookentry Interdepository Deliveries	$0.50 per CUSIP (daily deliveries). $0.55 per CUSIP (weekly deliveries). $0.60 per CUSIP (bi-weekly deliveries). $0.65 per CUSIP (monthly deliveries).
c. Bearer Municipal Bonds Automated or Manual	$0.94 per movement.
11. CNS/PHILADEP Movements	$0.20 per movement.
12. Underwritings	$400.00 plus $3.00 per million (plus applicable activity charges).
13. Pledge fees:	
a. Bank loan pledge or release	$0.35 each per line item to broker and bank.
b. OCC pledge or release	$0.35 per line item.
c. SCCP margin pledge (no charge for release)	$0.10 per line item.
14. Dividend and interest payments	$1.50 per cash line item. $10.00 per stock dividend payment.
15. Reorganization fees:	
a. Mandatory Exchanges	$23.00 per position.
b. Voluntary Offers	$30.00 per instruction received before cut-off. $50.00 per instruction received after cut-off, with authorization.
c. Redemptions: Stocks, Corporate Bonds, Registered Municipal Bonds, others.	$25.00 per position.
d. Post Corporate Actions	$17.50 per item (plus costs).
16. Combined legal deposits and letters of correction (ironclads)	$6.25 per item (one legal deposit and one letter of correction is defined as one item).
17. Research fees:	
a. Per photocopy of records	$4.00.
b. Per microfiche copy	$4.00.
c. Items less than 90 days old	No charge.
d. Items 1 year old or less	$15.00 per hour.
e. Items over 1 year old	$15.00 per hour, $25.00 minimum, plus archive retrieval costs.
18. Reports on microfiche	$1.25 per page.
19. Eligibility book	$8.00 per book.
20. Stock loan program—Interest charge to lender	Percentage of bank broker call rate.
21. National institutional delivery system (NIDS):	
a. Confirms	$0.40 per confirm.
b. For each unaffirmed trade reported	$0.09 to broker.
c. For each eligible trade reported	$0.09 to broker and clearing agent.
d. For each ineligible trade reported	$0.09 to broker and clearing agent.
e. Automated Settlement	$0.26 per receive and per delivery to broker and clearing agent.
22. Philadep discounts—Participants may select one of the following discount plans (the greater discount will apply):	
a. Volume	5% off Philadep charges for participants with 10,001 to 15,000 trades per month. An additional 5% off Philadep charges for participants with 15,001 to 30,000 trades per month. An additional 5% off Philadep charges for participants with 30,001 to 45,00 trades per month. An additional 5% off Philadep charges for participants with 45,001 or more trades per month.
b. Automated Deposit Reporting Service (ADRS)	$0.40 per deposit for participants utilizing Philadep ADRS and CNM services.
23. Computer Transmission/tapes:	
a. Eligibility Files:	
1. Daily Update	$50.00 per month.
2. Weekly Full File	$200.00 per month.
3. Monthly or on Request	$75.00 each request.
b. Bookkeeping Positions:	
1. Daily	$150.00 per month.
2. Weekly	$100.00 per month.

3. Monthly or on Request	$50.00 each request.
c. Activity:	
b. Bookkeeping Positions:	
1. Daily	$150.00 per month.
d. Bookkeeping plus Activity:	
1. Daily	$250.00 per month.
2. Weekly	$200.00 per month.
e. Cash Settlement (fee includes both dividends and reorganizations; transmissions are separate)	
1. Daily	$100.00 per month.
f. Record Date Positions:	
1. Daily	$100.00 per month.
g. Status of Withdrawals by Transfer:	
1. Daily	$100.00 per month.
24. Philanet terminal:	
a. Dedicated Line	$250.00 per month.
b. Dial-up Line	$150.00 per month.
c. Installation	$500.00.
d. Usage	No charge.
25. Position listings	$45.00—per individual request (per date, per CUSIP) (plus costs) $360.00 annually—monthly basis (plus costs). $1,300.00 annually—weekly basis (plus costs).

[1] June 29, 1995 Board resolved amendments denoted—deletions bracketed, additions italicized.
*Transfer and deposit activity subject to pass-through costs.

[FR Doc. 95–18702 Filed 7–28–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–36012; File No. SR–SCCP–95–02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

July 24, 1995.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 10, 1995, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP is filing the proposed rule change in order to revise, consolidate, and restate its published schedule of fees and charges (attached as Exhibit 1).

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Summaries of the most significant aspects of such statements are set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise, consolidate, and restate SCCP's published schedule of fees and charges. It has been nearly four years since SCCP filed a comprehensive fee schedule. SCCP has deleted from its published fee schedule certain charges for services no longer offered to SCCP participants. Such services include draft services, physical deliveries and receives, national transfer services, signature guarantees, and correspondent delivery collection services.[2] SCCP also has modified the New York office transactions fee schedule section from the previous five general categories, which excluded pass through costs, to seventeen individual fees which reflect the inclusion of such pass through costs. Finally, SCCP has consolidated and restated all other existing fees and charges and hereafter annually will file a comprehensive schedule of all fees and charges.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among SCCP's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not perceive any burdens on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

A SCCP participant bulletin will notify participants of the fee schedule changes and will advise them to whom they may direct questions upon receipt of the new fee schedule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and pursuant to Rule 19b-4(e)(2)[4] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by SCCP. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] SCCP also is eliminating the separate charge for daily transmission of T+4 settling trades information. SCCP participants will still be able to obtain information for purchase and sale trades plus T+2 settling trades for one charge.

[3] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[4] 17 CFR 240.19b–4(e)(2) (1994).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–95–02 and should be submitted by August 21, 1995.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[5]

Margaret H. McFarland,
Deputy Secretary.

Exhibit 1

SR–SCCP–95–02

STOCK CLEARING CORPORATION OF PHILADELPHIA CONSOLIDATED RESTATEMENT OF FEES[1]

Service	Fee
1. Account fees:	
a. Maintanance Fee	$150.00 per month (20 or fewer trades per month). $250.00 per month (over 20 trades per month). $650.00 per month (specialist).
b. Additional Suffix	$32.00 per month per suffix.
2. Trade recording fees:	
a. Regular Trades	$0.47 per side.
b. PACE Trades	$0.30 per side.
c. Municipal Bonds Trades	$1.00 per compared side.
d. Yellow Tickets (between two accounts)	$0.47 per side.
e. Basket Trades	$0.60 per side for 1–1,000 trades per month. $0.54 per side for 1,001–3,000 trades per month. $0.48 per side for 3,001–5,000 trades per month. $0.40 per side for more than 5,000 trades per month.
3. Value fees:	
a. CNS Accounts	$0.05 per $1,000 of contract value.
b. Margin Accounts	$0.035 per $1,000 of contract value.
c. PACE Trades	None.
d. Maximum Value Charge	$25.00 per trade per side.
4. Volume discounts (trade recording fees and value charges):	
a. CNS Trades settling at SCCP (utilizing PACE)	$0.77 per side maximum with 4,000 or more PACE trades per month.
5. Specialist discounts for trades cleared through a SCCP margin account:	

Volume level (including PACE trades)	Discount per side
2,501 to 10,000 sides per month	$0.05
10,001 to 15,000 sides per month	$0.10
15,001 to 20,000 sides per month	$0.15
20,001 to 25,000 sides per month	$0.20
25,001 to 30,000 sides per month	$0.25
30,001 to 35,000 sides per month	$0.30
35,001 to 40,000 sides per month	$0.35
40,001 and over	$0.40

6. Municipal bond margin service	$500.00 per month with activity.
7. Treasury transactions:	
a. Per trade transaction	$40.00 (plus pass through costs).
b. Per withdrawal—Bearer	$15.00.
c. Per withdrawal—Registered	$10.00.
d. Per transfer	$10.00.
8. Margin account pledge fees	$1.00.
9. New York office transactions:	
a. Over the Window Delivery Clearing House	$5.00.
b. Over the Window Delivery Paid or Suspended	$5.00.
c. Over the Window Delivery "Don't Know"	$10.00.
d. Over the Window Receive Clearing House	$6.00.
e. Dividend Settlement Service	$5.00.
f. Envelope Settlement Service/InterCity/Funds Only Settlement Service.	$5.00.
g. Over the Window Delivery Fed Funds	$22.50.
h. Over the Window Receive Fed Funds	$22.50.
i. Syndicate Re-Delivery Paid	$14.00.
j. Syndicate Re-Delivery "Don't Know"	$17.00.

[5] 17 CFR 200.30–3(a)(12) (1994).

k. Securities Hold	$5.00.
l. Reorganization Pick-up	$5.00.
m. Reorganization Reject	$10.00.
n. Reorganization Agent Delivery	$15.00.
o. Syndicate Pick-Up	$17.00.
p. Miscellaneous	$5.00.
q. Deliveries to New Jersey	$12.00 per item (plus costs).
10. Margin account interest:	
Charge on net debit balances	½% above bank broker call rate.
11. Research fees:	
a. Per photocopy of input forms	$4.00.
b. Per microfiche copy	$4.00.
c. Items less than 90 days old	No charge.
d. Items 1 year old or less	$15.00 per hour.
e. Items over 1 year old	$15.00 per hour, $25.00 minimum, plus archive retrieval costs.
12. Computer transmission/tapes:	
a. Purchase and Sale Trade Data (daily)	$100.00 per month.
[b. T+4 Settling Trades (daily)	$100.00 per month].
[c.]*b.* Purchase and Sale Trades plus T+[4]*2* Settling Trades (daily)	$150.00 per month.
[d.]*c.* Miscellaneous	$150.00 per month; includes 6 tapes/transmission.
	$25.00 per additional tape/transmission.
13. Lost and stolen securities program	$100.00 per year, $2.50 per inquiry.
14. P&L statement charges	$0.01 per line.
15. Buy-ins	$5.00 per item submitted.
16. Member to member envelope service	$5.00 per envelope (charged to sender), plus carrier costs.
[17. Draft fees	$6.50 per item, plus additional bank charge].
[18. Physical deliveries/receives	$5.00 per item (plus costs)].
[19. National transfer service (NTS):	
a. Per envelope for delivery to New York, New Jersey, Boston, Hartford and Providence.	$1.50 (plus costs).
b. Per envelope for delivery to all other areas (plus $0.05 per $1,000 value)].	$1.00 (plus costs).
[20. Signature guarantee program:	
a. Less than $26.00/mo. in over the window deposit activity	$21.00 per month.
b. $26.01 to $130.00/mo. in over the window deposit activity	$50.00 per month.
c. $130.00 and over/mo. in over the window deposit activity]	$100.00 per month.
[21. Correspondent delivery collection service (CDCS):	
a. Per item	$5.00 (plus costs).
b. Per reclamation	$6.00 (plus costs).
c. Per item overnight	$6.00 (plus costs).

[1] June 29, 1995 Board resolved amendments denoted—deletions bracketed, additions italicized.

[FR Doc. 95–18703 Filed 7–28–95; 8:45 am]
BILLING CODE 8010–01–M

[Investment Company Act Release No. 21228; 811–7968]

Nuveen California Premium Income Municipal Fund 2; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen California Premium Income Muncipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On August 10, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on September 17, 1993 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On November 19, 1993 applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series M. The registration statement was declared effective on December 20, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On June 29, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen California Premium Income Municipal Fund, a Massachusetts business trust registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On July 22, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on August 23, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on October 21. 1994.

5. As of November 7, 1994, the effective date of the reorganization, applicant had outstanding 2,233,987 shares of common stock and 640 shares of MuniPreferred, Series M. As of that date, applicant's aggregate net assets were $37,803,999.42, and the liquidation value of its MuniPreferred, Series M, was $16,000,000, and the net asset value per common share of the applicant was $9.76. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series M), and (c) 640 shares of the Acquiring Fund's MuniPreferred, Series M.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series M, in exchange for each share of the applicant's MuniPreferred, Series M, held by its preferred shareholders. Previously, on October 28, 1994, the applicant had declared a dividend of all investment company taxable income in the amount of $207,090.59 (as of the close of business on November 7, 1994) payable to common shareholders of record as of November 7, 1994. On November 7, 1994 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series M of the applicant through and including November 7, 1994 was declared, payable no later than November 8, 1994, in the amount of $9,510.41.

7. Applicant and the Acquiring Fund incurred expenses of $208,081 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $82,704, and the Acquiring Fund paying a total of $125,377.

8. As of the date of the filing of the application, applicant had no remaining assets, no debts or other liabilities and no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18647 Filed 7–28–95; 8:45 am]
BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21239; 811–7714]

Nuveen Florida Premium Income Municipal Fund; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Florida Premium Income Municipal Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On May 13, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on June 18, 1993 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On August 17, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series F. The registration statement was declared

effective on September 20, 1993 and the initial public offering of its preferred shares commenced shortly thereafter.

3. On August 30, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Florida Quality Income Municipal Fund, a Massachusetts business trust registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On October 12, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on October 31, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on December 22, 1994.

5. As of January 10, 1995, the effective date of the reorganization, applicant had outstanding 2,650,533 shares of common stock and 800 shares of MuniPreferred, Series F. As of that date, applicant's aggregate net assets were $49,625,429.68, and the liquidation value of its MuniPreferred, Series F, was $20,000,000, and the net asset value per common share of the applicant was $11.18. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series F), and (c) 800 shares of the Acquiring Fund's MuniPreferred, Series F.

6. Application was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series F, in exchange for each share of the applicant's MuniPreferred, Series F, held by its preferred shareholders. Previously, on December 30, 1994, the applicant declared a dividend of all investment company taxable income in the amount of $280,691.44 (as of the close of business on January 10, 1995) payable to common shareholders of record as of January 10, 1995. On January 6, 1995 a dividend of all accumulated but unpaid dividends on MuniPreferred, Series F of the applicant through and including January 10, 1995 was declared, payable on January 17, 1995, in the amount of $4,046.08.

7. Applicant and the Acquiring Fund incurred expenses of $173,471 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $39,391, and the Acquiring Fund paying a total of $134,080.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $6,049.81. Otherwise, applicant has no debts or liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18660 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21238; 811–7496]

Nuveen Insured Florida Premium Income Municipal Fund 2; Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Insured Florida Premium Income Municipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1.1 Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On February 11, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on March 18, 1993 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On June 9, 1993 applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered 820 shares of preferred stock ("MuniPreferred"), Series W. The registration statement was declared effective on July 12, 1993 and the initial public offering of its preferred stock commenced shortly thereafter.

3. On August 30, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Insured Florida Premium Income Municipal Fund, a Massachusetts business trust registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On October 7, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on October 31, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on December 22, 1994.

5. As of January 9, 1995, the effective date of the reorganization, applicant had outstanding 5,508,850 shares of common stock and 1,640 shares of MuniPreferred, Series W shares. As of that date, applicant's aggregate net assets were $104,559,214.71, and the liquidation value of its MuniPreferred, Series W, was $41,000,000, and the net asset value per common share of the applicant was $11.54. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for the assumption of substantially all of the applicant's liabilities and the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series W), and 1,640 shares of the Acquiring Fund's MuniPreferred, Series W.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholder and (b) to its preferred shareholders one share of the Acquiring Fund MuniPreferred, Series W, in exchange for each share of the applicant's MuniPreferred, Series W, held by its preferred shareholders. Previously, on December 30, 1994, the applicant had declared a dividend of all investment company taxable income and realized capital gains in the amount of $645,637.22 (as of the close of business on January 9, 1995) payable to common shareholders of record as of January 9, 1995. On January 4, 1995 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series W of the applicant through and including January 9, 1995 was declared, payable on January 12, 1995, in the amount of $23,311.48.

7. Applicant and the Acquiring Fund together incurred expenses of $180,590 in connection with the reorganization. Applicant and the Acquiring Fund bore $70,204 and $110,386, respectively, of such expenses based on their respective asset size.

8. As of May 31, 1995, applicant has liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $6,652.65. Otherwise, the applicant has no debts of other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Security.

[FR Doc. 95–18658 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21245; 811–7480]

Nuveen Insured New York Premium Income Municipal Fund 2; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Insured New York Premium Income Municipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment

company organized as a Massachusetts business trust. On February 11, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on March 18, 1993 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On June 9, 1993 applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series T. The registration statement was declared effective on July 12, 1993, and the initial public offering of its preferred stock commenced shortly thereafter.

3. On July 27, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Insured New York Premium Income Municipal Fund Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a-8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On September 1, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on September 21, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on November 18, 1994.

5. As of December 7, 1994, the effective date of the reorganization, applicant had outstanding 4,252,118 shares of common stock and 1,280 shares of MuniPreferred, Series T. As of that date, applicant's aggregate net assets were $78,846,744.05, and the liquidation value of its MuniPreferred, Series T, was $32,000,000, and the net asset value per common share of the applicant was $11.02. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series T), and (c) 1,280 shares of the Acquiring Fund's MuniPreferred, Series T.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholder the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred Series T, in exchange for each share of the applicant's MuniPreferred, Series T, held by its preferred shareholders. Previously, on November 25, 1994, the applicant had declared a dividend of all investment company taxable income in the amount of $410,754.60 (as of the close of business on December 7, 1994) payable to common shareholders of record as of December 7, 1994. On December 6, 1994 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred Series T of the applicant through and including December 7, 1994 was declared, payable on December 14, 1994, in the amount of $2,980.85.

7. Applicant and the Acquiring Fund together incurred expenses of $189,611 in connection with the reorganization. Applicant and the Acquiring Fund bore $98,665 and $95,946, respectively, of such expenses based on their respective asset size.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $25,478.78. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18653 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21237; 811–7790]

Nuveen Maryland Premium Income Municipal Fund 2; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Maryland Premium Income Municipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0546 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On June 14, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on July 23, 1993, and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On September 13, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series W. The registration statement was declared effective on November 5, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On July 27, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Maryland Premium Income Municipal Fund, a Massachusetts business trust registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On September 2, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on September 28, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on November 18, 1994.

5. As of December 8, 1994, the effective date of the reorganization, applicant had outstanding 4,616,257 shares of common stock and 1,404 shares of MuniPreferred, Series W. As of that date, applicant's aggregate net assets were $84,880,037.42, and the liquidation value of its MuniPreferred, Series W, was $35,100,000, and the net asset value per common share of the applicant was $10.78. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series W), and (c) 1,404 shares of the Acquiring Fund's MuniPreferred, Series W.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholder the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of the Acquiring Fund MuniPreferred, Series W, in exchange for each share of the applicant's MuniPreferred, Series W, held by its preferred shareholders. Previously, on November 25, 1994, the applicant had declared a dividend of all investment company taxable income in the amount of $436,236.29 (as of the close of business on December 8, 1994). On December 7, 1994 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series W of the applicant through and including December 8, 1994 was declared, payable on December 15, 1994, in the amount of $3,461.86.

7. Applicant and the Acquiring Fund incurred expenses of $195,590 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $88,500, and the Acquiring Fund paying a total of $107,090.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $22,231.61. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18659 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21244; 811–7498]

Nuveen Michigan Premium Income Municipal Fund 2; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Michigan Premium Income Municipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 Fifth Street, N.W., Washington, D.C. 20549.

Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On February 11, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on March 18, 1993 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On June 9, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series M. The registration statement was declared effective on July 12, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On June 29, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Michigan Premium Income Municipal Fund, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

4. On July 15, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on August 19, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on October 6, 1994.

5. As of November 8, 1994, the effective date of the reorganization, applicant had outstanding 2,871,673 shares of common stock and 840 shares of MuniPreferred, Series M. As of that date, applicant's aggregate net assets were $52,646,602.98, and the liquidation value of its MuniPreferred, Series M, was $21,000,000, and the net asset value per common share of the applicant was $11.02. Substantially all of applicant's assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series M), and (c) 840 shares of the Acquiring Fund's MuniPreferred, Series M.

6. The applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of the Acquiring Fund MuniPreferred, Series M, in exchange for each share of the applicant's MuniPreferred, Series M, held by its preferred shareholders. Previously, on October 28, 1994, the applicant had declared a dividend of all investment company taxable income in the amount of $258,163.40 (as of the close of business on November 8, 1994) payable to common shareholders of record as of November 8, 1994. On November 7, 1994 a dividend of all accumulated but unpaid dividends of shares of MuniPreferred, Series M of the applicant through and including November 8, 1994 was declared, to be paid no later than November 15, 1994, in the amount of $1,941.60.

7. Applicant and the Acquiring Fund incurred expenses of $207,366 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $86,442, and the Acquiring Fund paying a total of $120,924.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $50,178.31. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18652 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21232; 811–6381]

Nuveen New Jersey Quality Income Municipal Fund, Inc.; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT : Nuveen New Jersey Quality Income Municipal Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by

mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Minnesota corporation. On August 13, 1991, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1993 to register shares of its common stock. The registration statement was declared effective on October 17, 1991 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On January 10, 1992, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"). Series TH. The registration statement was declared effective on February 13, 1992, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On August 30, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen New Jersey Investment Quality Municipal Fund, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On October 7, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on October 31, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on December 22, 1994.

5. As of January 10, 1995, the effective date of the reorganization, applicant had outstanding 7,251,162 shares of common stock and 2,000 shares of MuniPreferred, Series TH. As of that date, applicant's aggregate net assets were $150,384,882.50, the liquidation value of its MuniPreferred, Series TH, was $50,000,000, and the net asset value per common share of the applicant was $13.84. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (1) the assumption of substantially all of the applicant's liabilities, (2) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series TH), and 2,000 shares of the Acquiring Fund's MuniPreferred, Series TH.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series TH, in exchange for each share of the applicant's MuniPreferred, Series TH, held by its preferred shareholders. Previously, on December 30, 1994, the applicant declared a dividend of all investment company taxable income in the amount of $757,021.31 (as of the close of business on January 10, 1995) payable to common shareholders of record as of January 10, 1995. On January 5, 1995 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series TH of the applicant through and including January 10, 1995 was declared, payable on January 13, 1995, in the amount of $27,742.85.

7. Applicant and the Acquiring Fund together incurred expenses of $225,078 in connection with the reorganization. Applicant and the Acquiring Fund bore $87,589 and $137,489, respectively, of such expenses, based on their respective asset size.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $1,845.28. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file a certificate of dissolution with the Secretary of State of Minnesota as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18662 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21247; 811–7494]

Nuveen New Jersey Premium Income Municipal Fund 2; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen New Jersey Premium Income Municipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On February 11, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to registered shares of its common stock. The registration statement was declared effective on March 18, 1993, and the initial public offering of its common shares commenced shortly thereafter.

2. On June 9, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series W. The registration statement was declared effective on July 12, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On August 30, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen New Jersey Premium Income Municipal Fund, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of the applicant's liabilities in exchange for shares of the Acquiring Fund's common stock. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On October 7, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on October 28, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholder's meeting held on January 13, 1995.

5. As of February 6, 1995, the effective date of the reorganization, applicant had outstanding 4,857,358 shares of common stock and 1,400 shares of MuniPreferred, Series W. As of that date, applicant's aggregate net assets were $96,377,670.41, and the liquidation value of its MuniPreferred, Series W, was $36,000,000, and the net asset value per common share of the applicant was $12.43. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series W), and (c) 1,440 shares of Acquiring Fund MuniPreferred, Series W.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred Series W, in exchange for each share of the applicant's MuniPreferred, Series W, held by its preferred shareholders. Previously, on January 26, 1995, the Applicant had declared a dividend of all investment company taxable income in the amount of $384,217.02 (as of the close of business on February 6, 1995) payable to common shareholders of record as of February 6, 1995. On February 1, 1995, a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series W of the applicant through and including February 6, 1995, was declared, payable on February 9, 1995, in the amount of $16,025.15.

7. Total expenses incurred by the Applicant, New Jersey Premium Income Municipal Fund 3 and the Acquiring Fund in the reorganization were $209,175. Based on their respective asset sizes, Applicant, Nuveen New Jersey Premium Income Municipal Fund 3, and the Acquiring Fund bore $78,967, $42,371 and $87,837, respectively, of such expenses.

8. As of the date of the application, applicant had no remaining assets, no debts or other liabilities other than those to be paid by the Acquiring Fund, and no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18654 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21235; 811–7718]

Nuveen New Jersey Premium Income Municipal Fund 3; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Reregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen New Jersey Premium Income Municipal Fund 3.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On May 13, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on June 18, 1993 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On August 17, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series T, The registration statement was declared effective on September 20, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On August 30, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen New Jersey Premium Income Municipal Fund, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On October 7, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on October 28, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on January 13, 1995.

5. As of February 6, 1995, the effective date of the reorganization, applicant had outstanding 2,084,643 shares of common stock and 624 shares of MuniPreferred, Series T. As of that date, applicant's aggregate net assets were $40,792,573.56, and the liquidation value of its MuniPreferred, series T, was $15,600,000, and the net asset value per common share of the applicant was $12.08. Substantially all of applicant's assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series T), and (c) 624 shares of the Acquiring Fund's MuniPreferred, Series T.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholder the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series T, in exchange for each share of the applicant's MuniPreferred, Series T, held by its preferred shareholders. Previously, on January 26, 1995, the applicant had declared a dividend of all investment company taxable income in the amount of $79,007.97 (as of the close of business on February 6, 1995) payable to common shareholders of record as of February 6, 1995. On January 31, 1995 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series T of the applicant through and including February 6, 1995 was declared, payable on February 8, 1995, in the amount of $7,691.22.

7. Applicant, Nuveen New Jersey Premium Income Municipal Fund 2, and the Acquiring Fund incurred expenses of $209,175 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $42,371, Nuveen New Jersey Premium Income Municipal Fund 2 paying a total of $78,967, and the Acquiring Fund paying a total of $87,837.

8. As of the date of the filing of the application, applicant had no remaining assets, no debts or other liabilities other than those that will be paid by the Acquiring Fund, and no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18666 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21240; 811-6080]

Nuveen New York Municipal Market Opportunity Fund, Inc.; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen New York Municipal Market Opportunity Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from he SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Minnesota corporation, On April 6, 1990, applicant registered under the At and filed a registration statement on Form N-2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of it common stock. The registration statement was declared effective on May 18, 1990, and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On June 18, 1990, applicant filed a registration statement on Form N-2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series M. The registration statement was declared effective on July 23, 1990, and the initial pubic offering of its preferred shares commenced shortly thereafter.

3. On July 27, 1994, applicant's Board of Directors approved a plan of reorganization whereby Nuveen New York Performance Plus Municipal Fund, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a-8 under the Act, the Board of Directors of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On September 8, 1994, the Acquiring Fund filed a registration statement on Form N-14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on September 30, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on December 8, 1994.

5. As of January 10, 1995, the effective date of the reorganization, applicant had outstanding 5,880,403 shares of common stock and 1,600 shares of MuniPreferred, Series M. As of that date, applicant's aggregate net assets were $130,279,930.69, and the liquidation value of its MuniPreferred, Series M, was $40,000,000, and the net asset value per common share of the applicant was $15.35. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series M), and (c) 1,600 shares of the Acquiring Fund's MuniPreferred, Series M.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series M, in exchange for each share of the applicant's MuniPreferred, Series M, held by its preferred shareholders. Previously, on December 30, 1994, the applicant declared a dividend of all investment company taxable income in the amount of $725,878.75 (as of the close of business on January 10, 1995) payable to common shareholders of record on January 10, 1995. On January 9, 1995 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series M of the applicant through and including January 10, 1995 was declared, payable on January 17, 1995, in the amount of $3,835.78.

7. Applicant and the Acquiring Fund, and Nuveen New York Premium Income Municipal Fund together incurred expenses of $312,799 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $118,312, Acquiring Fund paying a total of $141,236, and Nuveen New York Premium Income Municipal Fund paying a total of $53,251.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $23,229.91. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file a certificate of dissolution with the Secretary of State of Minnesota as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-18656 Filed 7-28-95; 8:45 am]

BILLING CODE 8010-01-M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21243; 811-7716]

Nuveen New York Premium Income Municipal Fund; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen New York Premium Income Municipal Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state that nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as Massachusetts business trust. On May 13, 1993, applicant registered under the Act and filed a registration statement on Form N-2 pursuant to section 8(b) of the Act and under the Securities Act of 1993 to register shares of its common stock. The registration statement was declared effective on June 18, 1993, and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On August 17, 1993, applicant filed a registration statement on Form N-2 under the Securities Act of 1993 whereby it registered shares of preferred stock ("MunicPreferred"), Series F. The registration statement was declared effective on September 20, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On July 27, 1994, applicant's Board of Trustee approved a plan of reorganization whereby Nuveen New York Performance Plus Municipal Fund, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a-8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On September 8, 1994, the Acquiring Fund filed a registration statement on Form N-14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on September 30, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on December 8, 1994.

5. As of January 10, 1995, the effective date of the reorganization, applicant had outstanding 1,909,411 shares of common stock and 572 shares of MuniPreferred, Series F. As of that date, applicant's aggregate net assets were $34,156,148.19, and the liquidation value of its MuniPreferred, Series F, was $14,300,000, and the net asset value per common share of the applicant was $10.40. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of MuniPreferred, Series F), and (c) 572 shares of the Acquiring Fund's MuniPreferred, Series F.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholder the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholder one share of the Acquiring Fund's MuniPreferred, Series F, in exchange for each share of the applicant's MuniPreferred, Series F, held by its preferred shareholders. Previously, on December 30, 1994, the applicant had declared a dividend of all investment company taxable income in the amount of $180,630.28 (as of the close of business on January 10, 1995) payable to common shareholders of record as of January 10, 1995. On January 6, 1995 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series F of the applicant through and including January 10, 1995 was declared, payable on January 17, 1995, in the amount of $2,702.65.

7. Applicant, Nuveen New York Municipal Market Opportunity Fund, Inc., and the Acquiring Fund incurred expenses of $312,799 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $53.251, Nuveen New York Municipal Market Opportunity Fund, Inc. paying a total of $118,312, and the Acquiring Fund paying a total of $141,236.

8. As of May 31, 1995, applicant has liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $20,167.27. Otherwise, Applicant has

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant has no security holders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18649 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21227; 811–7124]

Nuveen Ohio Premium Income Municipal Fund, Inc.; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Ohio Premium Income Municipal Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Minnesota corporation. On August 21, 1992, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on December 17, 1992, and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On March 18, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series TH. The registration statement was declared effective on April 8, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On June 29, 1994, applicant's Board of Directors approved a plan of reorganization whereby Nuveen Ohio Quality Income Municipal Fund, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would require substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Directors of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On August 9, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on August 31, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on October 6, 1994.

5. As of November 8, 1994, the effective date of the reorganization, applicant had outstanding 3,341,640 shares of common stock and 1,000 shares of MuniPreferred, Series TH. As of that date, applicant's aggregate net assets were $63,748,522.80, the liquidation value of its MuniPreferred, Series TH, was $25,000,000, and the net asset value per common share of the applicant was $11.60. Substantially all of applicant's assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series TH), and (c) 1,000 shares of the Acquiring Fund's MuniPreferred Series TH.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series TH, in exchange for each share of the applicant's MuniPreferred, Series TH, held by its preferred shareholders. Previously, on October 28, 1994, the applicant had declared a dividend of all investment company taxable income in the amount of $324,473.24 (as of the close of business on November 8, 1994) payable to common shareholders of record as of November 8, 1994. On November 3, 1994 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series TH of the applicant through and including November 8, 1994 was declared, payable no later than November 9, 1994, in the amount of $11,216.65.

7. Applicant, Nuveen Ohio Premium Income Municipal Fund 2, and the Acquiring Fund incurred expenses of $294,729 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $93,676, Nuveen Ohio Premium Income Municipal Fund 2 paying a total of $74,151, and the Acquiring Fund paying a total of $126,952.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $43,761.29. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file a certificate of dissolution with the Secretary of State of Minnesota as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18646 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21233; 811–7786]

Nuveen Ohio Premium Income Municipal Fund 2; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Ohio Premium Income Municipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On June 14, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of common stock. The registration statement was declared effective on July 23, 1993 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On September 13, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series M. The registration statement was declared effective on November 5, 1993 and the initial public offering of its preferred shares commenced shortly thereafter.

3. On June 29, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Ohio Quality Income Municipal Fund, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On August 9, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on August 31, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on October 6, 1994.

5. As of November 8, 1994, the effective date of the reorganization, applicant had outstanding 2,229,722 shares of common stock and 680 shares of MuniPreferred, Series M. As of that date, applicant's aggregate net assets were $40,428,812.80, and the liquidation value of its MuniPreferred, Series M, was $17,000,000, and the net asset value per common share of the applicant was $10.51. Substantially all of applicant's assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series M), and (c) 680 shares of the Acquiring Fund's MuniPreferred, Series M.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series M, in exchange for each share of the applicant's MuniPreferred, Series M, held by its preferred shareholders. Previously, on October 28, 1994, the applicant had declared a dividend of all investment company taxable income in

[1] Applicant and the Aquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

the amount of $176,593.98 (as of the close of business on November 8, 1994) payable to common shareholders of record as of November 8, 1994. On November 7, 1994 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series M of the applicant through and including November 8, 1994 was declared, payable no later than November 15, 1994, in the amount of $1,211.37.

7. Applicant, Nuveen Ohio Premium Income Municipal Fund, Inc., and the Acquiring Fund incurred expenses of $294,779 in connection with the reorganization. these expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $74,151, Nuveen Ohio Premium Income Municipal Fund, Inc. paying a total of $93,676, and the Acquiring Fund paying a total of $126,952.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $40,080.99. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18663 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21229; 811–7122]

Nuveen Pennsylvania Premium Income Municipal Fund; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Pennsylvania Premium Income Municipal Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On August 21, 1992, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on December 17, 1992, and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On March 18, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("Munipreferred"), Series F. The registration statement became effective April 8, 1993 and the initial public offering of its preferred shares commenced shortly thereafter.

3. On August 30, 1994, and October 26, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Pennsylvania Premium Income Municipal Fund 2, a Massachusetts business trust registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On October 7, 1994, the Acquiring fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on October 31, 1994. The reorganization was approved by the applicant's shareholders approved by the applicant's shareholders at the annual shareholders's meeting held on January 13, 1995.

5. As of February 7, 1995, the effective date of the reorganization, applicant has outstanding 5,803,736 shares of common stock and 1,800 share of MuniPreferred, Series F. As of that date, applicant's aggregate net assets were $121,701,117.75 and the liquidation value of its MuniPreferred, Series F, was $45,000,000, and the net asset value per common share of the applicant was $13.22. Substantially all of applicant's assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series F), and (c) 1,800 shares of the Acquiring Fund's MuniPreferred, Series F.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series F, in exchange for each share of the applicant's MuniPreferred, Series F, held by its preferred shareholders. Previously, on January 26, 1995, the applicant declared a dividend of all investment company taxable income in the amount of $433,539.08 (as of the close of business on February 7, 1995) payable to common shareholders of record as of February 7, 1995. On February 3, 1995 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series F of the applicant through and including February 7, 1995 was declared, payable on February 13, 1995, in the amount of $9,370.28.

7. Applicant, Nuveen Pennsylvania Premium Income Municipal Fund 3, and the Acquiring Fund incurred expenses of $231,564 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $87,207, Nuveen Pennsylvania Premium Income Municipal Fund 3 paying a total of $46,740, and the Acquiring Fund paying a total of $97,617.

8. As of the date of the filing of the application, applicant had no remaining assets, no debts or other liabilities and no shareholders.

9. Applicant has not, in the last 18 months, transferred any of its asset to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18661 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21241; 811–6380]

Nuveen Pennsylvania Quality Income Municipal Fund; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Pennsylvania Quality Income Municipal Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organizes as a Massachusetts business trust. On August 13, 1991, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on October 17, 1991, and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On January 10, 1992, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series TH. The registration statement was declared effective on February 13, 1992 and the initial public offering of its preferred shares commenced shortly thereafter.

3. On August 30, 1994, and October 26, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Pennsylvania Investment Quality Municipal Fund, a Massachusetts business trust registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On October 7, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on October 31, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on December 22, 1994.

5. As of January 9, 1995, the effective date of the reorganization, applicant had outstanding 7,142,414 shares of common stock and 2,000 shares of MuniPreferred, Series TH. As of that date, applicant's aggregate net assets were $152,750,727.28, and the liquidation value of its MuniPreferred, Series TH, was $50,000,000, and the net asset value per common share of the applicant was $14.39. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series TH), and (c) 2,000 shares of the Acquiring Fund's MuniPreferred, Series TH.

6. The applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholder one share of Acquiring Fund MuniPreferred, Series TH, in exchange for each share of the applicant's MuniPreferred, Series TH, held by its preferred shareholders. Previously, on December 30, 1994, the applicant declared a dividend of all investment company taxable income in the amount of $665,672.98 (as of the close of business on January 9, 1995) payable to common shareholders of record as of January 9, 1995. On January 5, 1995 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series TH of the applicant through and including January 9, 1995 was declared, payable on January 13, 1995, in the amount of $21,863.33.

7. Applicant and the Acquiring Fund together incurred expenses of $220,386 in connection with the reorganization. Applicant and the Acquiring Fund bore $100,103 and $120,283, respectively, of such expenses, based on their respective asset size.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $9,093.29. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18651 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21246; 811–7712]

Nuveen Pennsylvania Premium Income Municipal Fund 3; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Pennsylvania Premium Income Municipal Fund 3.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On May 13, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on June 18, 1993, and the initial public offering of applicant's common stock commenced shortly thereafter.

2. On August 17, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series M. The registration statement was declared effective on September 20, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On August 30, 1994, and October 26, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Pennsylvania Premium Income Municipal Fund 2, a Massachusetts business trust registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On October 7, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on October 31, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on January 13, 1995.

5. As of February 7, 1995, the effective date of the reorganization, applicant had outstanding 2,820,654 shares of common stock and 844 share of MuniPreferred, Series M. As of that date, applicant's aggregate net assets were $2,820,654, and the liquidation value of its MuniPreferred, Series M, was $21,000,000, and the net asset value per common share of the applicant was $12.04. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series M), and (c) 844 shares of the Acquiring Fund's MuniPreferred, Series M.

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholder the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of the Acquiring Fund MuniPreferred, Series M, in exchange for each share of the applicant's MuniPreferred, Series M, held by its preferred shareholders. Previously, on January 26, 1995, the applicant had declared a dividend of all investment company taxable income in the amount of $161,623.47 (as of the close of business on February 7, 1995) payable to common shareholders of record as of February 7, 1995. On February 6, 1995 a dividend of all accumulated but unpaid dividends of shares of MuniPreferred, Series M of the applicant through and including February 7, 1995 was declared, payable on February 14, 1995, in the amount of $2,184.75.

7. Applicant, Nuveen Pennsylvania Premium Income Municipal Fund, and the Acquiring Fund incurred expenses of $231,564 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $46,740, Nuveen Pennsylvania Premium Income Municipal Fund paying a total of $87,201, and the Acquiring Fund paying a total of $97,617.

8. As of the date of the filing of the application, applicant had no remaining assets, no debts or other liabilities other than those that will be paid by the Acquiring Fund, and no security holders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18655 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21242; 811–7126]

Nuveen Premium Income Municipal Fund 3, Inc.; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Premium Income Municipal Fund 3, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Minnesota corporation. On August 21, 1992, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on October 23, 1992 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On January 12, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series M. The registration statement was declared effective on February 8, 1993 and the initial public offering of its preferred shares commenced shortly thereafter.

3. On April 26 and April 27, 1994, applicant's Board of Directors approved a plan of reorganization whereby Nuveen Premium Income Municipal Fund 4, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Directors of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On June 3, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

reorganization by applicant's shareholders. The registration statement was declared effective on June 21, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on August 12, 1994.

5. As of September 8, 1994, the effective date of the reorganization, applicant had outstanding 7,144,440 shares of common stock and 2,200 shares of MuniPreferred, Series M. As of that date, applicant's aggregate net assets were $156,784,456.75, the liquidation value of its MuniPreferred, Series M, was $55,000,000, and the net asset value per common share of the applicant was $14.25. Substantially all of applicant's assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series M), and (c) 2,200 shares of the Acquiring Fund's MuniPreferred, Series M.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of applicant held by its common shareholders and (b) to its preferred shareholders one share of the Acquiring Fund's MuniPreferred, Series M, in exchange for each share of applicant's MuniPreferred, Series M, held by its preferred shareholders. Previously, on August 29, 1994, the applicant had declared dividends of all investment company taxable income in the amount of $420,487.18 (as of the close of business on September 8, 1994) payable to common shareholders of record as of September 8, 1994. On September 1, 1994 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series M of the applicant through and including September 8, 1994 was declared, payable no later than September 9, 1994, in the amount of $47,058.

7. Applicant, Nuveen Premium Income Municipal Fund 5 ("NPU"), Nuveen Premium Income Municipal Fund 6 ("NPB") and the Acquiring Fund incurred expenses of $573,095 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $111,067, NPU paying a total of $126,119, NPB paying a total of $87,491, and the Acquiring Fund paying a total of $248,418.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $32,044.91. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file a certificate of dissolution with the Secretary of State of Minnesota as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18650 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21230; 811–7904]

Nuveen Premium Income Municipal Fund 5; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Premium Income Municipal Fund 5.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 Fifth Street, NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On April 2, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on May 20, 1993 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On August 2, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series T and Series F. The registration statement was declared effective on August 17, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On April 26 and April 27, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Premium Income Municipal Fund 4, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Funds. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the

applicant would not be diluted as a result of the reorganization.[1]

4. On June 3, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on June 21, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on August 12, 1994.

5. As of September 8, 1994 the effective date of the reorganization, applicant had outstanding 8,657,118 shares of common stock, 1,328 shares of MuniPreferred, Series T, and 1,328 shares of MuniPreferred, Series F. As of that date, applicant's aggregate net assets were $174,334,454.86, and the liquidation value of the MuniPreferred, Series T, was $33,200,000, and the liquidation value of MuniPreferred, Series F, was $33,200,000 and the net asset value per common share of the applicant was $12.47. Substantially all of applicant's assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series T and Series F), and (c) 1,328 shares of the Acquiring Fund's MuniPreferred, Series T2, and 1,328 shares of the Acquiring Fund's MiniPreferred, Series F2.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholder the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of the Acquiring Fund MuniPreferred, Series T2 and Series F2, respectively, in exchange for each share of the applicant's MuniPreferred, Series T and Series F, respectively, held by its preferred shareholders. Previously, on August 29, 1994, the applicant had declared a dividend of all investment company taxable income and realized capital gains in the amount of $643,223.87 (as of the close of business on September 8, 1994) payable to common shareholders of record as of September 8, 1994. On September 6 and September 2, 1994, respectively, a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series T and Serires F of the applicant through and including September 8, 1994 was declared, payable no later than September 9, 1994, in the amount of $5,820.44 and $8,047.68, respectively.

7. Applicant, Nuveen Premium Income Muncipal Fund 3, Inc. ("NPN"), Nuveen Premium Income Municipal Fund 6 ("NPB") and the Acquiring Fund incurred expenses of $573,095 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $126,119, NPN paying a total of $111,067, NPB paying a total of $87,491, and Acquiring Fund paying a total of $248,418.

8. As of the date of the application, applicant had no remaining assets, no debts or other liabilities other than those that will be paid by the Acquiring Fund, and no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18645 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21234; 811–7966]

Nuveen Premium Income Municipal Fund 6; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Premium Income Municipal Fund 6.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On August 10, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on September 17, 1993, and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On November 19, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

stock ("MuniPreferred"), Series W. The registration statement was declared effective on December 20, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On April 26 and April 27, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Premium Income Municipal Fund 4, Inc., a Minnesota corporation registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On June 3, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on June 21, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on August 12, 1994.

5. As of September 8, 1994, the effective date of the reorganization, applicant had outstanding 5,745,310 shares of common stock and 1,680 shares of MuniPreferred, Series W. As of that date, applicant's aggregate net assets were $111,120,891.47, and the liquidation value of its MuniPreferred, Series W, was $42,000,000, and the net asset value per common share of the applicant was $12.03. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (1) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series W), and (c) 1,680 shares of the Acquiring Fund's MuniPreferred, Series W.

[1] Applicant and Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series W, in exchange for each share of the applicant's MuniPreferred, Series W, held by its preferred shareholders. Previously, on August 29, 1994, the applicant had declared a dividend of all investment company taxable income and realized capital gains in the amount of $413,087.79 (as of the close of business on September 8, 1994) payable to common shareholders of record as of September 8, 1994. On September 7, 1994 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series W of the applicant through and including September 8, 1994 was declared, payable no later than September 9, 1994, in the amount of $3,336.00.

7. Applicant, Nuveen Premium Income Municipal Fund 3, Inc. ("NPN"), Nuveen Premium Income Municipal Fund 5 ("NPU") and the Acquiring Fund incurred expenses of $573,095 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $87,491, NPN paying a total of $111,067, NPU paying a total of $126,119, and the Acquiring Fund paying a total of $248,418.

8. As of the date of the application, applicant had no remaining assets, no debts or other liabilities other than those that will be paid by the Acquiring Fund, and no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18665 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21236; 811–7050]

Nuveen Select Tax-Free Income Portfolio 4; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Select Tax-Free Income Portfolio 4.

RELEVANT ACT SECTION: Section 8(f).

SUMMRY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On July 28, 1992, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on September 18, 1992 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On April 13, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Select Tax-Free Income Portfolio 3, a Massachusetts business trust registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

3. On May 6, 1994, the Acquiring Fund filed a registration statement of Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on June 10, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on August 3, 1994.

4. As of August 4, 1994, the effective date of the reorganization, applicant had outstanding 6,353,141 shares of common stock. As of that date, applicant's aggregate net assets were $89,634,486.14, and the net asset value per common share of the applicant was $14.11. Substantially all of applicant's assets were transferred to the Acquiring Fund in exchange for the assumption of substantially all of the applicant's liabilities and the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets.

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

5. Applicant was subsequently liquidated and distributed pro rata to its shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its shareholders. Previously, on July 22, 1994, the applicant had declared a dividend of all investment income taxable income in the amount of $202,665.00 (as of the close of business on August 4, 1994) payable to shareholders of the record as of August 4, 1994.

6. Applicant and the Acquiring Fund incurred expenses of $171,169 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $86,082, and the Acquiring Fund paying a total of $85,087.

7. As of the date of the filing of the application, applicant had no remaining assets, no debts or other liabilities other than those that will be paid by the Acquiring Fund, and no securityholders.

8. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18644 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21226; 811–7128]

Nuveen Texas Premium Income Municipal Fund; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Texas Premium Income Municipal Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On August 21, 1992, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on December 17, 1992, and the initial public offering of its common shares commenced shortly thereafter.

2. On March 18, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1993 whereby it registered shares of preferred stock ("MuniPreferred"), Series M. The registration statement was declared effective on April 8, 1993, and the initial public offering of its preferred shares commenced shortly thereafter.

3. On June 29, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Texas

Quality Income Municipal Fund, a Massachusetts business trust registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund's common stock. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On July 26, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on August 23, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on October 6, 1994.

5. As of November 8, 1994, the effective date of the reorganization, applicant had outstanding 2,476,985 shares of common stock and 760 shares of MuniPreferred, Series M. As of that date, applicant's aggregate net assets were $47,805,776.03, the liquidation value of its MuniPreferred, Series M, was $19,000,000, and the net asset value per common share of the applicant was $11.63. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares having an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series M), and (c) 760 shares of Acquiring Fund MuniPreferred, Series. M.

6. Applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series M, in exchange for each share of the applicant's MuniPreferred, Series M, held by its preferred shareholders. Previously, on October 28, 1994, the Applicant declared a dividend of all investment company taxable income in the amount of $228,625.72 (as of the close of business on November 8, 1994) payable to common shareholders or record as of November 8, 1994. On November 7, 1994, a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series M of the applicant through and including November 8, 1994, was declared, to be paid no later than November 15, 1994, in the amount of $1,743.66.

7. Total expenses incurred by the Applicant and the Acquiring Fund in connection with the reorganization were $195,419. Applicant and the Acquiring Fund bore $64,727 and $130,692, respectively, of such expenses, based on their respective asset sizes.

8. As of May 31, 1995, applicant had liabilities for which it has retained cash in the amount of $43,382,32, for certain liabilities accrued for in connection with the reorganization. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18648 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21231; 811–7788]

Nuveen Virginia Premium Income Municipal Fund 2; Notice of Application

July 21, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Virginia Premium Income Municipal Fund 2.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company organized as a Massachusetts business trust. On June 14, 1993, applicant registered under the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register shares of its common stock. The registration statement was declared effective on July 23, 1993 and the initial public offering of applicant's common shares commenced shortly thereafter.

2. On September 13, 1993, applicant filed a registration statement on Form N–2 under the Securities Act of 1933 whereby it registered shares of preferred stock ("MuniPreferred"), Series T. The registration statement was declared effective on November 5, 1993 and the initial public offering of its preferred shares commenced shortly thereafter.

3. On July 27, 1994, applicant's Board of Trustees approved a plan of reorganization whereby Nuveen Virginia Premium Income Municipal Fund, a Massachusetts business trust registered under the Act as a closed-end management investment company (the "Acquiring Fund"), would acquire substantially all of applicant's assets and assume substantially all of applicant's liabilities in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the Board of Trustees of the applicant determined that the reorganization was in the best interest of the applicant and that the interests of the existing shareholders of the applicant would not be diluted as a result of the reorganization.[1]

4. On August 31, 1994, the Acquiring Fund filed a registration statement on Form N–14, which contained proxy materials soliciting the approval of the reorganization by applicant's shareholders. The registration statement was declared effective on September 28, 1994. The reorganization was approved by the applicant's shareholders at the annual shareholders' meeting held on November 3, 1994.

5. As of December 8, 1994, the effective date of the reorganization, applicant had outstanding 2,730,426 shares of common stock and 832 shares of MuniPreferred, Series T. As of that date, applicant's aggregate net assets were $49,584,291.77, and the liquidation value of its MuniPreferred, Series T, was $20,800,000, and the net asset value per common share of the applicant was $10.54. Substantially all of applicants assets were transferred to the Acquiring Fund in exchange for (a) the assumption of substantially all of the applicant's liabilities, (b) the number of Acquiring Fund common shares have an aggregate net asset value equal to the value of the applicant's net assets (calculated net of the liquidation preference of applicant's MuniPreferred, Series T), and (c) 832 shares of the Acquiring Fund's MuniPreferred, Series T.

6. The applicant was subsequently liquidated and distributed (a) *pro rata* to its common shareholders the Acquiring Fund common shares (or cash in lieu of fractional shares) received by the applicant pursuant to the reorganization in exchange for the common shares of the applicant held by its common shareholders and (b) to its preferred shareholders one share of Acquiring Fund MuniPreferred, Series T, in exchange for each share of the applicant's MuniPreferred, Series T, held by its preferred shareholders. Previously, on November 25, 1994, the applicant had declared a dividend of all investment company taxable income in the amount of $260,760.95 (as of the close of business on December 8, 1994) payable to common shareholders of record as of December 8, 1994. On December 6, 1994 a dividend of all accumulated but unpaid dividends on shares of MuniPreferred, Series T of the applicant through and including December 8, 1994 was declared, payable on December 14, 1994, in the amount of $3,078.40.

7. Applicant and the Acquiring Fund incurred expenses of $171,635 in connection with the reorganization. These expenses were borne by the foregoing entities based on their respective asset size, with applicant paying a total of $60,601, and the Acquiring Fund paying a total of $111,034.

8. As of May 31, 1995, applicant had liabilities accrued in connection with the reorganization for which it has retained cash in the amount of $13,356.50. Otherwise, Applicant has no debts or other liabilities other than those that will be paid by the Acquiring Fund. As of the date of the filing of the application, applicant had no securityholders.

9. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are, securityholders of the applicant. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file for termination with the Commonwealth of Massachusetts as soon as practicable after the granting of the order requested by the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18664 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC–21249/812–8480]

SunAmerica Series Trust, et. al.; Notice of Application

July 25, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: SunAmerica Series Trust ("SunAmerica Trust"), Anchor Pathway Fund ("Anchor Fund"), Anchor Series Trust ("Anchor Trust"); and SunAmerica Equity Funds, SunAmerica Income Funds and SunAmerica Money Market Funds, Inc. (collectively, the "Retail Funds").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) for an exemption from section 17(a) and rule 17g–1(b) thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit each of applicants' present and future series (each, a "Fund") to (a) purchase fidelity bond coverage and/or directors' and officers'/errors and omissions ("D&O/E&O") insurance (fidelity bond and D&O/E&O insurance collectively referred to as "Insurance Coverage") from National Union Fire Insurance Company of Pittsburgh, PA or any other insurance company that may be an affiliated person of an affiliated person of such Fund solely because the affiliated person is a subadvisor to the Fund and (b) settle any claims that may arise in connection with such Insurance Coverage. The order also would permit Anchor Fund to be named as a joint insured on a fidelity bond with the other Funds, even though Anchor Fund does not meet the requirements of rule 17g–1(b)(3) under the Act.

FILING DATE: The application was filed on February 13, 1995 and amended on July 6, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on August 21, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 733 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. SunAmerica Trust, a registered open-end management investment company, has fourteen series Funds. Shares of SunAmerica Trust are issued only in connection with investments in variable annuity contracts issued by Anchor National Life Insurance Company ("Anchor National"). Anchor National is a wholly owned subsidiary of Sun Life Insurance Company of America, a wholly owned subsidiary of SunAmerica Inc. SunAmerica Asset Management Corp. ("SAAMCo"), an indirect wholly owned subsidiary of Anchor National, serves as investment adviser for all the Funds of SunAmerica Trust. All of the Funds of SunAmerica Trust, except the High-Yield Bond Portfolio and the Cash Management Portfolio, have a subadviser which is not an affiliated person or an affiliated person of an affiliated person of SAAMCo.

2. Anchor Fund, a registered open-end management investment company, has seven series Funds. Shares of the Anchor Fund are issued in connection with investments in variable annuity contracts issued by Anchor National. Capital Research and Management Company serves as the investment adviser to the Anchor Fund. Anchor Investment Adviser, Inc., an indirect wholly owned subsidiary of Anchor National and an affiliate of SAAMCo and SunAmerica Capital Services, Inc. ("SACS"), is the Anchor Fund's business manager.

3. Anchor Trust, a registered open-end management investment company, has twelve series funds. Shares of Anchor Trust are issued only in connection with investments in variable annuity and variable life insurance contracts issued by Anchor National, Phoenix Mutual, First SunAmerica Life Insurance Company and Presidential Life Insurance Company. First SunAmerica Life Insurance Company is an indirect wholly-owned subsidiary of SunAmerica Inc. SAAMCo serves as investment adviser, and Wellington Management Company serves as subadviser, to all the Funds of Anchor Trust.

4. SunAmerica Equity Funds and SunAmerica Income Funds are registered open-end management investment companies. SunAmerica Equity Funds has six series Funds and SunAmerica Income Funds has five series Funds. SunAmerica Money Market funds, Inc., a registered open-end management investment company, has one series fund. Shares of these Retail Funds are offered to the public. SACS acts as distributor to the Retail Funds and is an indirect wholly owned subsidiary of Anchor National and an affiliate of SAAMCo. SAAMCo is the investment adviser for all Funds comprising the Retail Funds. GSAM International and American International Group Asset Management, Inc. ("AIGAM") serve as subadvisers for certain portions of the Global Balanced fund series of SunAmerica Equity Funds. In addition, AIGAM has subcontracted with its affiliate, AIGAM International Limited, to provide the Global Balanced Fund with asset allocation and subadvisory services in respect to European securities markets. Each of AIGAM and AIGAM's affiliated companies is an indirect wholly owned subsidiary of American International Group, Inc., an international insurance organization.

5. National Union Fire Insurance Company of Pittsburgh, PA ("National Union") is a wholly-owned subsidiary of American International Group, Inc. Neither National Union nor any affiliated person thereof is an affiliated person of SAAMCo, Anchor Investment Adviser, Inc., Anchor National, or any officer, trustee, director or employee of any applicant. Neither National Union nor any affiliated person thereof owns 5% or more of the shares of any Fund.

6. Applicants request that a Fund be permitted to (a) Purchase Insurance Coverage from National Union or any other insurance company who may be an affiliated person of an affiliated person of such Fund solely because the affiliated person is a subadviser to the fund and (b) settle any claims that may arise in connection with such Insurance Coverage. Applicants further request relief for any other registered investment company, or series thereof, which in the future is advised by SAAMCo, or an entity in control of, controlled by, or under common control with SAAMCo, or whose shares are distributed by SACS, or an entity in control of, controlled by, or under common control with SACS, and which is a member of the SunAmerica "[g]roup of investment companies" as defined in rule 11a–3(a)(5) under the Act. At present, the only existing Fund that may rely on the requested relief is the Global Balanced Fund because of the relationship between AIGAM and National Union.

7. Applicants also request that Anchor Fund be named as a joint insured on a fidelity bond with the other Funds.

8. All of the Funds (except Anchor Fund) are currently joint insureds under one fidelity bond and one D&O/E&O policy in order to obtain the maximum coverage for the lowest possible cost. One of the methods of negotiating coverage and premiums is to solicit quotations from as many different insurance companies as possible. Applicants believe that there are only five major carriers of fidelity bond coverage, including National Union, with a combined capacity of over $100 million, and that there are several other carriers that provide excess rather than primary coverage. National Union is one of the highest rated of these companies and applicants believe that National Union accounts for a significant amount of this capacity. Given the limited universe of insurance companies that provide fidelity bond coverage, applicants believe that it is not in the best interests of the Funds or their shareholders to preclude the funds from purchasing Insurance Coverage from an insurance company such as National Union merely because of its affiliation with the subadviser to one or more of the Funds.

9. Applicants state that no person who is potentially in a position to control or influence SAAMCo or the Funds' decisions with respect to Insurance Coverage will have a relationship with any affiliated insurance company from which coverage will be purchased or with which settlements will be negotiated. Pursuant to the conditions set forth below, in addition to the finings to be made by the trustees of each Fund at the time of purchasing Insurance Coverage, rule 17g–1 requires that the trustees of each Fund who are not interested persons of the Fund (the "disinterested trustees"), approve the form and amount of fidelity bond coverage for each Fund, as well as the allocation of the premium of a joint insured bond. Similarly, rule 17d–1(d)(7) requires the disinterested to make certain findings relating to each Fund's participation in a joint D&O/E&O insurance policy and the proposed allocation of premiums. Applicants believe that the requirements of approval by the disinterested trustees impose an additional level of protection against any conflicts of interest which could arise from the use of an affiliated insurance company.

10. Anchor Fund is currently covered by a single insured bond. Applicants state that the inclusion of Anchor Fund as an additional insured on a joint bond will result in cost savings for Anchor Fund for at least comparable coverage to that which it currently maintains. Applicants believe that there are economies of scale realized in the pricing of fidelity bonds. Applicants state that the inclusions of Anchor Fund as an additional insured on the other Funds' joint bond will potentially result in lower costs of coverage for such other Funds. Therefore, the addition of Anchor Fund could potentially allow a greater number of insureds to share the same costs, thereby reducing the cost for each insured.

Applicants' Legal Analysis

1. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. The sale of fidelity bond coverage to a fund by an affiliated person or an affiliated person of an affiliated person is a principal transaction prohibited by section 17(a). The settlement of claims under such a fidelity bond also would be prohibited by section 17(a) because the settlement of a claim under an insurance policy entails the release of a property right (i.e., of a right to sue under the policy with respect to the claim).

2. Applicants state that the only type of principal transaction intended to be permitted under the requested order is one that might be deemed to be prohibited by section 17(a) solely because of an insurance company's relationship with the subadviser to one or more Funds. Applicants believe that the proposed transactions will meet the standards of section 17(b). SAAMCo is the entity responsible for negotiating the Insurance Coverage on behalf of each Fund, as well as any settlements of claims submitted to the insurance company. SAAMCo and its affiliates will be unaffiliated with any insurance company that may be considered to provide any part of such Insurance Coverage. In all cases for which relief is being sought, the sudadviser and the affiliated insurance company will be separate legal entities. Accordingly, if SAAMCo decides to purchase all or any portion of the Funds' Insurance Coverage from an affiliated insurance company, or to settle a claim with an affiliated insurance company for less than the face amount thereof, SAAMCo can neither lose nor gain financially on the basis of whether the transaction is beneficial or detrimental to such affiliated insurance company.

3. SAAMCo, SACS and Sun America Fund Services, Inc. ("SAFS"), (an affiliate of SAAMCo and SACS which serves as shareholder servicing agent for the Retail Funds), are joint insureds under the Fund's current Insurance Coverage. SAAMCo therefore has an interest in obtaining the best possible coverage at the lowest possible cost for all of the insureds. Furthermore, applicants state that in negotiating the amount of any extra-judicial settlement under Insurance Coverage on behalf of a Fund with an affiliated insurance company, SAAMCo has an interest in maximizing the Fund's recovery. SAAMCo's advisory fees are determined as a percentage of Fund assets, and, accordingly, SAAMCo has an interest in maximizing the assets of each Fund. Applicants believe that because there will be no conflict of interest inherent in the Funds' decision to purchase Insurance Coverage from an affiliated insurance company or to settle a claim under such coverage, there is no danger of overreaching on the part of any person concerned with the transaction.

4. Section 17(g) and rule 17g–1 thereunder require that officers and employees of investment companies with access to company assets be bonded against larceny and embezzlement by a reputable fidelity insurance company. Under the rule, a group of related investment companies or an investment company and certain affiliates may use a joint insured bond. Rule 17f–1(b)(3) specifies the types of persons that may be joint insureds under a fidelity bond. Under section 6(c), the SEC may exempt classes of transactions from any provisions of the Act or of any rule if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants request that Anchor Fund be permitted to be named as a joint insured on a joint fidelity bond with the other Funds, SAAMCo, SACS and SAFS, even though Anchor Fund does not meet the requirements of rule 17g–1(b)(3). Applicants state that Anchor Investment Adviser, Inc., an affiliate of SAAMCo, is the business manager for Anchor Fund and as such acts as administrator for Anchor Fund. In addition, the officers and trustees of Anchor Fund are the same persons as the officers and trustees of SubAmerica Trust. Applicants believe that there is a reasonable business relationship between Anchor Fund and the other Funds and that the inclusion of Anchor Fund in a bond with the other Funds is consistent with the intention reflected in rule 17g–1(b)(3) to permit participation in a joint bond by investment companies that are related.

Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Prior to the purchase of any Insurance Coverage from an affiliated insurance company, and before any material amendment to such Insurance Coverage, a majority of the trustees of each of the Funds, and a majority of the trustees who are not interested persons of the Funds, will find that the Insurance Coverage selected will provide the best available protection for shareholders of the Funds ad the lowest cost available in light of the coverage.

2. In the event of a loss covered by such Insurance Coverage, the trustees of the Fund incurring the loss, including a majority of the trustees who are not interested persons of the Fund, will evaluate and approve the amount of the loss, and the Fund will submit a claim for that amount to the affiliated insurance company. If the affiliated insurance company makes a insurance offer for less than the amount submitted, the adequacy of the settlement offer will be evaluated by the Fund's trustees. Such a settlement may be accepted if the trustees of the Fund, including a majority of the trustees who are not interested persons of the Fund, determine that the settlement offer is reasonable and fair and does not involve overreaching on the part of the affiliated

insurance company and is in the best interest of the Fund and its shareholders.

3. The board will record and preserve a description of al affiliated insurance company transactions, their findings, the information or materials upon which their findings are based and the basis thereof. All such records will be maintained for a period of not less than six years, the first two years in an easily accessible place, and will be available for inspection by the staff of the SEC.

For the Commission, by the Division of Implementation Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18705 Filed 7–28–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2800]

Florida; Declaration of Disaster Loan Area

Pasco County and the contiguous Counties of Hernando, Hillsborough, Pinellas, Polk, and Sumter in the State of Florida constitute a disaster area as a result of damages caused by flooding which occurred on July 18. Applications for loans for physical damage may be filed until the close of business on September 25, 1995, and for economic injury until the close of business on April 25, 1996, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 280006 and for economic injury the number is 857800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 25, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–18674 Filed 7–28–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 21, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–329
Date filed: July 19, 1995
Parties: Members of the International Air Transport Association
Subject: TC23 Telex Mail Vote 749, Europe-Southwest Pacific General Increase, r–1—Intermediate Fares r–2—First Class Fares
Proposed Effective Date: September 1, 1995

Docket Number: OST–95–330
Date filed: July 19, 1995
Parties: Members of the International Air Transport Association
Subject: TC12 Telex Mail Vote 748, North Atlantic-Africa Rescission Resolution 003
Proposed Effective Date: August 31, 1995

Docket Number: OST–95–333
Date filed: July 19, 1995
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1677 dated July 11, 1995, US-Europe resolutions r–1 to r–33
Proposed Effective Date: August 31, 1995

Paulette V. Twine,

Chief, Documentary Services Division

[FR Doc. 95–18682 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 21, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–331
Date filed: July 19, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 16, 1995
Description: Application of Midway Airlines Corporation pursuant to 49 U.S.C. § 4402 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to permit Midway to provide scheduled foreign air transportation of persons, property and mail between: (1) Raleigh/Durham, North Carolina and St. Maarten, Netherlands Antilles, and (2) Raleigh/Durham, North Carolina and Cancun, Mexico.

Docket Number: OST–95–335
Date filed: July 20, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 17, 1995
Description: Application of Eva Airways Corporation, pursuant to 49 U.S.C. § 41302 and Subpart Q of the Regulations, applies for an amendment to its foreign air carrier permit to engage in the scheduled foreign air transportation of persons, property and mail beyond EVA's authorized U.S. points (Guam, Honolulu, Seattle, San Francisco, Los Angeles, Dallas and New York) to Panama City, Panama, and vice versa.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–18681 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Extension of the Public Comment Period Regarding the Notice of Intent to Prepare Supplemental Environmental Impact Statement; Cal Black Memorial Airport, Halls Crossing, Utah

AGENCY: Federal Aviation Administration (FAA).

ACTION: Extension of comment period.

SUMMARY: The Northwest Mountain Region of the FAA announces it has extended the public comment period regarding its notice of intent to prepare Draft and Final Supplemental Environmental Impact Statements (SEIS) for further study of potential noise impacts associated with operation of Cal Black Memorial Airport at Halls Crossing, Utah. Interested agencies and persons are invited to submit written comments as to their concerns regarding potential noise impacts upon areas surrounding the airport and how those impacts could be addressed in the Draft SEIS.

DATES: In order to be considered, written comments must be received on or before September 29, 1995.

ADDRESSES: Send comments to Mr. Dennis G. Ossenkop, Federal Aviation Administration, Airports Division, 1601 Lind Ave. S.W., Renton, WA 98055–4056. Questions concerning the draft EIS or the process being applied by the FAA in connection with this study should also be directed to Mr. Ossenkop.

SUPPLEMENTARY INFORMATION: The public scoping (comment) period for the Supplemental Environmental Impact Statement, Cal Black Memorial Airport, Halls Crossing, Utah, has been extended because of possible misunderstanding that might have occurred due to two typographical errors in the Notice of Intent published in the **Federal Register** dated March 23, 1995, on page 15320. Specifically, under Supplementary Information, the word "reserved" should have read "reversed". Secondly, under Supplementary Information, the case number "988" should have read case number "998". The FAA regrets any inconvenience these errors may have created.

Issued in Renton, Washington on July 17, 1995.

Lowell H. Johnson,

Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

[FR Doc. 95–18733 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 186 Standards for Airport Security Access Control

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2) notice is hereby given for special committee 186 meeting to be held August 16–17, 1995. The August 16 Working Groups 1 and 2 sessions will be 9 a.m.–12 noon, and the Plenary Session will begin at 1:00 p.m. The August 17 Plenary Session will begin at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Report of Working Group Activities: a. Working Group 1 Report (Operations Working Group); b. Working Group 2 Report (Technical Working Group); (4) Report on FAA DLORT Activity; (5) Reports on Activities at MITRE: a. Analysis of the Necessary Capabilities of an ADS–B System; b. Update on the Universal Access Transceiver (UAT); (6) Secondary Methods of Position Determination: a. Airborne—Passive Listening to Interrogations/Replies; b. Ground—Multilateration of ADS–B Signals; (7) TCAS/ADS–B Architectures; (8) Presentation of Self-Organizing TDMA Data Link; (9) Other Business; (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on July 25, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–18735 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the National Railroad Passenger Corporation (AMTRAK) a request for a waiver of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved and the nature of the relief being requested.

National Railroad Passenger Corporation Waiver Petition Docket Number H–95–3

The National Railroad Passenger Corporation (AMTRAK) seeks a waiver of compliance with certain provisions of the Locomotive Safety Regulations (49 CFR Part 229). AMTRAK is requesting a temporary waiver of compliance with Section 229.29, for eleven locomotives equipped with the New York Air Brake Company/Knorr Brake Corporation Computer Controlled Brake (CCB). Section 229.29 stipulates that all brake valves must be cleaned, tested and inspected every 736 calendar days. On January 29, 1985, FRA granted approval for the 26–L type air brake equipment to be cleaned, inspected and tested every 1,104 calendar days. The petition requests that the CCB brake valves be maintained on a 5-year test interval.

The CCB brake equipment combines certain pneumatic features of the 26L brake with microprocessor controls. The CCB pneumatic and electro-pneumatic devices rely on poppet valve and seat technology which has been proven in service in other Knorr brake equipment.

Locomotive AMTRAK 809 was equipped with the CCB brake equipment when built by General Electric Company (GE) in 1993. It was placed in service on August 31, 1993, and has since accumulated over 260,000 miles in intercity revenue operation both as a lead and trail unit. Early software logic defects were corrected as they occurred and the CCB system has been reliable since. Amtrak is requesting the waiver for this locomotive and for 10 additional P40 locomotives (Amtrak 700–709) now being delivered by GE.

The CCB system consists of a console desk controller, an electronic control system unit and a pneumatic interface unit. The electronic control system unit contains the logic processor (computer), power supply, input/output interfaces, diagnostic program and brake operation programs. The desk console controller contains the standard automatic and independent brake operating handles. The console controller also contains a direct connection to brake pipe which is utilized for emergency brake applications. The pneumatic interface unit contains the connections to the standard train line and locomotive multiple unit pneumatic lines. The pneumatic unit contains all of the devices which are driven by the electronic control system to perform all functions currently carried out by the 26–L brake system.

The brake system includes advanced diagnostics and a self test program. The self test program is manually initiated and provides a test of all electronic and pneumatic interface functions. Any faults detected are displayed on the system unit. In-service faults are detected and stored in non-volatile memory. The railroad states that safety is enhanced by the CCB Equipment in (1) constant vigilance for deviation from performance by the microcomputer, (2) the control of faults to a known safe

condition, and (3) the capability of warning the operator of a fault condition. These features are not available in the existing 26–L Brake Equipment. Life of all components are rated in excess of 5-years.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–95–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, DC on July 26, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation

[FR Doc. 95–18680 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 21, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the customer satisfaction survey described below in early August, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by July 27, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.
Project Number: SOI–011.
Type of Review: Revision.
Title: Customer Satisfaction Study for New 1040 Forms.
Description: There is an ongoing effort within the IRS to both increase customer satisfaction with the forms that taxpayers are required to submit, as well as increase the efficiency with which the IRS uses modern technology to machine read and process those forms. In order to further this effort, the IRS, under the guidance of the Tax Forms Standardization project office, is performing some final testing on a new version of the 1040 form.
Respondents: Individuals or households.
Estimated Number of Respondents: 350.
Estimated Burden Hours Per Respondent: 1 hour, 34 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 546 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–18642 Filed 7–28–95; 8:45 am]

BILLING CODE 4830–01–P

Office of the Comptroller of the Currency

Information Collections Submitted to OMB for Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of information collections submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act, various information collections.

DATES: Comments on these information collections are welcome and should be submitted by August 28, 1995.

ADDRESSES: A copy of any information collection may be obtained by calling or writing the OCC contact.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) has sent to OMB information collections for review under the Paperwork Reduction Act as follows:

I. OMB Control Number 1557–0070

Title: (MA)—Insider Transactions (12 CFR 31).
Type of Review: Regular submission.
Description: This information collection implements statutes that require national bank insiders to report indebtedness and national banks to disclose the indebtedness of executive officers and principal stockholders to the bank or its correspondent banks.
Form Number: FFIEC 004.
OMB Number: 1557–0070.
Affected Public: Businesses or other for-profit.
Number of Respondents: 33,350 respondents.
Total Annual Responses: 67,100 responses.
Average Hours Per Response: 1.4 hours.
Total Annual Burden Hours: 96,533 hours.
OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0070, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.
OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0070), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.
Comments: Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

II. OMB Control Number 1557–0155

Title: Payment of Dividends; Capital Limitations (12 CFR 5.61(c), 5.61(d), and 5.62(e)).
Type of Review: Regular submission.
Description: These regulations prescribe capital and earnings limitations on the payment of dividends by national banks. The regulations require maintenance of records and the submission of requests for approval to pay dividends in excess of certain limitations. The regulations are necessary for bank safety and soundness.
Form Number: None.
OMB Number: 1557–0155.
Respondents: Businesses or other for-profit.
Number of Respondents: 192 respondents.
Total Annual Responses: 192 responses.
Average Hours Per Response: 3.2 hours.
Total Annual Burden Hours: 617 hours.
OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0155, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.
OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0155), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.
Comments: Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

III. OMB Control Number 1557–0156

Title: (MA)—Monthly Consolidated Foreign Currency Report.
Type of Review: Regular submission.
Description: This information is needed to monitor the foreign exchange positions of major institutions and to detect changes in policy in individual banks. Also used as an aid in the analysis of foreign markets. All respondents are major U.S. banks or branches or agencies of foreign banks.
Form Number: FFIEC 035.
OMB Number: 1557–0156.
Respondents: Businesses or other for-profit.
Number of Respondents: 29 respondents.
Total Annual Responses: 348 responses.
Average Hours Per Response: 12.7 hours.
Total Annual Burden Hours: 4,413 hours.
OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0156, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.
OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0156), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.
Comments: Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

IV. OMB Control Number 1557–0176

Title: Record and Disclosure Requirements—FRB Regs B, C, E, M, and Z.
Type of Review: Regular submission.
Description: This burden is attributable to FRB Regs B (Equal Credit Opportunity), C (Home Mortgage Disclosure), E (Electronic Funds Transfer), M (Consumer Leasing), and Z (Truth-in-Lending).
Form Number: None.
OMB Number: 1557–0176.
Respondents: Businesses or other for-profit.
Number of Respondents: 3,650 respondents.
Total Annual Responses: 3,650 responses.
Average Hours Per Response: 1,558 hour.
Total Annual Burden Hours: 5,842,600 hours.
OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0176, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.
OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0176), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.
Comments: Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above

V. OMB Control Number 1557–0193

Title: Community Development Information Collection.
Type of Review: Regular submission.
Description: The OCC needs hard data to determine the level and type of national bank activity in local community development. The OCC uses the information collected from national banks to determine the effectiveness of its program to encourage national banks to continue and expand their community development efforts.
Form Number: None.
OMB Number: 1557–0193.
Respondents: Businesses or other for-profit.
Number of Respondents: 3,150 respondents.
Total Annual Responses: 3,150 responses.
Average Hours Per Response: 2 hours.
Total Annual Burden Hours: 6,300 hours.
OMB Reviewer: Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0193, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.
OCC Contact: John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0193), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.
Comments: Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

Dated: July 25, 1995.

James F.E. Gillespie,

Director, Legislative & Regulatory Activities.

[FR Doc. 95–18671 Filed 7–28–95; 8:45 am]

BILLING CODE 4810–33–P

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury Department.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Treasury Department, Internal Revenue Service, gives notice of a proposed alteration to the system of records entitled Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS 34.018, which is subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system notice was last published in its entirety in the **Federal Register**, vol. 57, page 14056, on April 17, 1992.

DATES: Comments must be received no later than August 30, 1995. The alteration to the system of records will be effective September 11, 1995, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to Chief Information Officer, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for public inspection and copying in the Internal Revenue Service's Freedom of Information Reading Room, 1111 Constitution Avenue, NW, Room 1621, Washington, DC 20224, telephone number (202) 622–5164, (not a toll free call).

FOR FURTHER INFORMATION CONTACT: Barbara Macken, Project Manager, IDRS Monitoring Project, Systems Development Projects Management IS:D, Chief Information Officer, Internal Revenue Service, (703) 235–0147.

SUPPLEMENTARY INFORMATION: The purpose of the alteration is to enable the Internal Revenue Service to implement the Electronic Audit Research Log (EARL) system, which is being implemented to enhance voluntary compliance through the assurance of ethical conduct by IRS employees. The alteration to the existing Privacy Act notice is to ensure this system of records, including the EARL system, is in compliance with the Privacy Act. Several other changes are being made to the notice due to organizational changes and changes in reference to resource materials. We are also proposing an amendment of 31 CFR 1.36 to exempt this system of records from certain provisions of the Privacy Act. The exemption is intended to comply with legal prohibitions against the disclosure of certain kinds of information and to protect certain information on individuals maintained in this system of records.

The specific changes to the record system being altered are set forth below.

Under "System Location:", after "Service Centers" add "Regional Offices, Customer Service Sites, Submission Processing Centers, Development Centers, Computing Centers, Field Information Systems Offices (FISO)".

Under "Categories of Records in the System", add ", including record logs of employees who have accessed taxpayer records in a manner that appears to be inconsistent with standard IRS practice(s)."

Under "Authority for Maintenance of the System", 26 U.S.C. 6103 is being added.

Under "Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:", delete "Disclosures are not made outside the Department." Add the following routine use:

"Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103."

Under "Storage:", delete current text, and replace with "Magnetic media, hard copy and optical storage media."

Under "Retrievability:", delete current text and replace with "Indexed by employee's Social Security Number and employee identification number. Also may be retrieved by the Taxpayer Identification Number (TIN) of the taxpayer whose account is being accessed, date and time, command code, and terminal."

Under "Safeguards:", delete "Manager's Security Handbook, IRM 1(16)12", and replace with "Automated Information Systems Security Handbook, IRM 2(10)00."

Under "System Manager(s) and Address:", delete "Systems Management Division, Information Systems Management", and replace with "Operations Division, Network and Systems Management."

Under "Notification Procedure:", delete current text, and replace with "This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual."

Under "Record Access Procedure:", delete current text, and replace with "This system is exempt and may not be accessed for purposes of inspection or for contest of content of records."

Under "Record Source Categories:", delete current text, and replace with "This system of records contains, (1) tax returns and return information, (2) account transaction and inputs to tax accounts, (3) employee user identification and profile information, (4) access record logs to tax accounts, and (5) data may also be retrieved from other published IRS systems of records used in the operation of this system."

Under "Exemptions Claimed for this System:," delete the word, "none", and replace with "This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

The system notice, as amended, is published in its entirety below. A proposed rule exempting this system from certain provisions of the Privacy Act is to be published separately in the **Federal Register**.

Dated: July 20, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

TREASURY/IRS 34.018

SYSTEM NAME:

Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS.

SYSTEM LOCATION:

National Office, District Offices, Internal Revenue Service Centers, Regional Offices, Customer Service Sites, Submission Processing Centers, Development Centers, Computing Centers, Field Information Systems Offices (FISO) and the Austin Compliance Center. (See IRS Appendix A for addresses at 57 FR 14110, April 17, 1992.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Employees who input or who are authorized to input IDRS transactions and (2) taxpayers whose accounts are accessed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record logs of the employees who are authorized access to IDRS and of employee inputs and inquiries processed through IDRS terminals, including record logs of employees who have accessed IDRS in a manner that appears to be inconsistent with standard IRS practice(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 6103, 7602, 7801 and 7802.

PURPOSE(S):

To aid the ongoing efforts of the IRS to enhance the protection of confidential tax returns and return information from unauthorized access, by assuring the public that their tax information is being protected in an ethical and legal manner, thereby promoting voluntary taxpayer compliance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATETORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM ;

STORAGE:

Magnetic media, hard copy, and optical storage media.

RETRIEVABILITY:

Indexed by employee's Social Security Number and employee identification number. Also may be retrieved by the Taxpayer Identification Number (TIN) of the taxpayer whose account is being accessed, date and time, command code, and terminal identification.

SAFEGUARDS:

Access controls will not be less than those provided by the Automated Information Systems Security Handbook, IRM 2(10)00.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbook, IRM 1(15)59.1 through 1(15)59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Program Management and Evaluation Section, Information Systems Security Program Branch, Operations Management Division, Network and Systems Management, Information Systems, National Office.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system is exempt and may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains (1) tax returns and return information, (2) account transactions and inputs to tax accounts, (3) employee user identification and profile information, (4) access record logs to accounts, and (5) data may also be retrieved from other IRS published systems of records used in the operation of this system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

[FR Doc. 95–18719 Filed 07–28–95; 8:45 am]

BILLING CODE 4810–35–P

Office of Thrift Supervision

Standard Federal Savings Association, Frederick, MD; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of § 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Standard Federal Savings Association, Frederick, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 30, 1995.

Dated: July 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–18630 Filed 7–28–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–39; OTS No. 03971]

First Federal Savings and Loan Association of Gadsden, Gadsden, AL; Approval of Conversion Application

Notice is hereby given that on July 24, 1995, the Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Gadsden, Gadsden, Alabama, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Atlanta Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: July 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–18634 Filed 7–28–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–36; OTS No. 06450]

First Federal Savings Bank, Cynthiana, KY; Approval of Conversion Application

Notice is hereby given that on July 5, 1995, the Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Cynthiana, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: July 25, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–18631 Filed 7–28–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–38; OTS No. 00341]

Hardin Federal Savings Bank, Hardin, MO; Approval of Conversion Application

Notice is hereby given that on July 24, 1995, the Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Hardin Federal Savings Bank, Hardin, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: July 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–18633 Filed 7–28–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–37; OTS No. 03307]

Klamath First Federal Savings and Loan Association, Klamath Falls, OR; Approval of Conversion Application

Notice is hereby given that on July 24, 1995, the Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Klamath First Federal Savings and Loan Association, Klamath Falls, Oregon, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Street, Suite 400, San Francisco, California 94104.

Dated: July 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–18632 Filed 7–28–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–40; OTS No. 06864]

Harrodsburg First Federal Savings and Loan Association, Harrodsburg, KY; Approval of Conversion Application

Notice is hereby given that on July 24, 1995, the Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Harrodsburg First Federal Savings and Loan Association, Harrodsburg, Kentucky, to convert to the stock form

of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 60601–4360.

Dated: July 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–18635 Filed 7–28–95; 8:45 am]

BILLING CODE 6725–01–M

[AC–41; OTS No. 07274]

Nelson County Federal Savings and Loan Association, Bardstown, Kentucky; Approval of Conversion Application

Notice is hereby given that on July 24, 1995, the Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Nelson County Federal Savings and Loan Association, Bardstown, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 60601–4360.

Dated: July 25, 1995.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 95–18636 Filed 7–28–95; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 146
Monday, July 31, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL WOMEN'S BUSINESS COUNCIL

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100–403 as amended, the National Women's Business Council announces forthcoming Council Meetings. The meeting will cover the National Women's Business Council and the Interagency Committee on Women's Business Enterprise's annual report and outreach.

DATE: August 8, 1995 from 2:00 pm to 6:00 pm.

ADDRESS: The White House Conference Center, 726 Jackson Place, Truman Conference Room, Washington, D.C.

DATE: August 9, 1995 from 9:00 am to 11:00 am.

ADDRESS: White House—Indian Treaty Room.

STATUS: Open to the public/Open to the press.

CONTACT: For further information contact Amy Millman, Executive Director or Juliette Tracey, Deputy Director, National Women's Business Council, 409 Third Street, S.W., Suite 5850, Washington, D.C. 20024, (202) 205–3850.

Natasha Ning,

Public Relations Coordinator, National Women's Business Council.

[FR Doc. 95–18889 Filed 7–27–95; 3:55 pm]

BILLING CODE 8025–01–M

Corrections

Federal Register
Vol. 60, No. 146
Monday, July 31, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071295A]

Marine Mammals

Correction

In notice document 95–17690 appearing on page 37054 in the issue of Wednesday, July 19, 1995, in the first column, under the heading **DATES**, in the fifth line, "[*insert date 30 days after date of publication in the Federal Register*]" should read "August 18, 1995."

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE-RM-93-801]

Energy Conservation Program for Consumer Products: Proposed Rulemaking Regarding Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers

Correction

In proposed rule document 95–17625 beginning on page 37388 in the issue of Thursday, July 20, 1995, make the following correction:

§ 430.32 [Corrected]

On page 37415, in § 430.32, in the table, in the third column, in the ninth entry, "38.0" should read "398.0".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 50

Office of the Secretary

45 CFR Part 94

RIN 0905-AE01

Objectivity in Research

Correction

In rule document 95–16799 beginning on page 35810, in the issue of Tuesday, July 11, 1995, make the following corrections:

1. On pages 35818 through 35819, §§50.604, 50.605, and 50.606 should be removed.

2. The following sections were inadvertently omitted and should read as set forth below:

§ 94.4 Institutional responsibility regarding conflicting interests of investigators.

Each Institution must:

(a) Maintain an appropriate written, enforced policy on conflict of interest that complies with this part and inform each Investigator of that policy, the Investigator's reporting responsibilities, and of these regulations. If the Institution carries out the PHS-funded research through subcontractors, or collaborators, the Institution must take reasonable steps to ensure that Investigators working for such entities comply with this part, either by requiring those Investigators to comply with the Institution's policy or by requiring the entities to provide assurances to the Institution that will enable the Institution to comply with this part.

(b) Designate an institutional official(s) to solicit and review financial disclosure statements from each Investigator who is planning to participate in PHS-funded research.

(c)(1) Require that by the time an application is submitted to PHS, each Investigator who is planning to participate in the PHS-funded research has submitted to the designated official(s) a listing of his/her known Significant Financial Interests (and those of his/her spouse and dependent children):

(i) That would reasonably appear to be affected by the research for which PHS funding is sought; and

(ii) In entities whose financial interests would reasonably appear to be affected by the research.

(2) All financial disclosures must be updated during the period of the award, either on an annual basis or as new reportable Significant Financial Interests are obtained.

(d) Provide guidelines consistent with this part for the designated official(s) to identify conflicting interests and take such actions as necessary to ensure that such conflicting interests will be managed, reduced, or eliminated.

(e) Maintain records of all financial disclosures and all actions taken by the Institution with respect to each conflicting interest for three years after final payment or, where applicable, for the other time periods specified in 48 CFR part 4, subpart 4.7.

(f) Establish adequate enforcement mechanisms and provide for sanctions where appropriate.

(g) Certify, in each contract proposal, that:

(1) There is in effect at that Institution a written and enforced administrative process to identify and manage, reduce or eliminate conflicting interests with respect to all research projects for which funding is sought from the PHS;

(2) Prior to the Institution's expenditure of any funds under the award, the Institution will report to the PHS Awarding Component the existence of any conflicting interest (but not the nature of the interest or other details) found by the Institution and assure that the interest has been managed, reduced or eliminated in accordance with this part; and, for any interest that the Institution identifies as conflicting subsequent to the Institution's initial report under the award, the report will be made and the conflicting interest managed, reduced, or eliminated, at least on an interim basis, within sixty days of that identification.

(3) The Institution agrees to make information available, upon request, to the HHS regarding all conflicting interests identified by the Institution and how those interests have been managed, reduced, or eliminated to protect the research from bias; and

(4) The Institution will otherwise comply with this part.

§ 94.5 Management of conflicting interests.

(a) The designated official(s) must: Review all financial disclosures; and determine whether a conflict of interest exists, and is so, what actions should be taken by the institution to manage, reduce, or eliminate such conflict of interest. A conflict of interest exists when the designated official(s) reasonably determines that a Significant Financial Interest could directly and significantly affect the design, conduct, or reporting of the PHS-funded research. Examples of conditions or restrictions that might be imposed to manage conflicts of interest include, but are not limited to:

(1) Public disclosure of significant financial interests;
(2) Monitoring of the research by independent reviewers;
(3) Modification of the research plan;
(4) Disqualification from participation in all or a portion of the research funded by the PHS;
(5) Divestiture of significant financial interests, or;
(6) Severance of relationships that create actual or potential conflicts.

(b) In addition to the types of conflicting financial interests described in this paragraph that must be managed, reduced, or eliminated, an Institution may require the management of other conflicting financial interests, as the Institution deems appropriate.

§ 94.6 Remedies.

(a) If the failure of an Investigator to comply with the conflict of interest policy of the Institution has biased the design, conduct, or reporting of the PHS-funded research, the Institution must promptly notify the PHS Awarding Component of the corrective action taken or to be taken. The PHS Awarding Component will consider the situation and, as necessary, take appropriate action or refer the matter to the institution for further action, which may include directions to the Institution on how to maintain appropriate objectivity in the funded project.

(b) The HHS may at any time inquire into the Institutional procedures and actions regarding conflicting financial interests in PHS-funded research, including a review of all records pertinent to compliance with this part. HHS may require submission of the records or review them on site. To the extent permitted by law HHS will maintain the confidentiality of all records of financial interests. On the basis of its review of records and/or other information that may be available, the PHS Awarding Component may decide that a particular conflict of interest will bias the objectivity of the PHS-funded research to such an extent that further corrective action is needed or that the Institution has not managed, reduced, or eliminated the conflict of interest in accordance with this part. The issuance of a Stop Work Order by the Contracting Officer may be necessary until the matter is resolved.

(c) In any case in which the HHS determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment has been designed, conducted, or reported by an Investigator with a conflicting interest that was not disclosed or managed as required by this part, the Institution must require disclosure of the conflicting interest in each public presentation of the results of the research.

BILLING CODE 1505–01–D

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federal register

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Part II

Postal Service

39 CFR Part 111
Revisions to Standards for Palletization; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Palletization

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule modifies previously published proposed revisions to the Domestic Mail Manual (DMM) standards concerning the preparation of mail on pallets. See 59 FR 42536–42540 (August 18, 1994). As a result of further review of postal operating needs and comments received in response to the proposal, both in writing and at a public meeting, the Postal Service has modified its original proposal and has decided to provide additional opportunity for comment.

This proposed rule is intended to establish certain basic preparation standards, such as levels of sortation and maximum pallet loads, that mailers will be required to meet for all classes of mail. Mailers will have more flexibility in other areas of pallet preparation, such as top-capping, stacking, pallet box construction, absolute minimum volumes, and stretchwrapping of pallets.

DATES: Comments must be received on or before August 30, 1995.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Business Mail Acceptance, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: The proposed revised makeup standards grew out of the proposed rule published in the **Federal Register** on August 18, 1994 (59 FR 42536–42540). These standards are based both on current Postal Service processing needs and safety concerns and on mailers' comments concerning their processing abilities, service needs, and transportation methods.

1. General

This proposed rule is intended to establish certain basic preparation standards, such as levels of sortation and maximum pallet loads, that mailers will be required to meet for all classes of mail. Mailers will have more flexibility in other areas of pallet preparation, such as top-capping, stacking, pallet box construction, absolute minimum volumes, and stretchwrapping of pallets.

Pallet loads may be prepared according to best industry practices, provided that these standards result in pallets that can be handled safely and that maintain their integrity throughout transportation and postal processing. Recommended guidelines, developed by Postal Service Engineering, will also be published in the DMM for those mailers seeking assistance in establishing optimal preparation methods to ensure that their products arrive at the proper destinations in the condition expected.

The use of pallets that are not provided by the Postal Service and that are not prepared to the required levels of sortation (sometimes referred to as "courtesy pallets") is recognized as a key issue to many mailers. A revised policy regarding the definition, preparation, and acceptance of such pallets is included in the new proposed rule published below.

The Postal Service will rely on a consistent mechanism to enforce standards and provide feedback to those mailers who are not preparing pallets in a manner that maintains the integrity of loads throughout transportation and processing. Under the revised proposed standards, all pallets presented to the Postal Service for acceptance, whether the pallets are provided by the Postal Service or the mailer, must meet the basic standards in the DMM pertaining to the following:

a. Pallet labels.

b. Physical pallet dimensions (40 inches by 48 inches, designed for four-way entry, etc.).

c. Pallet load integrity, stacking, and minimum and maximum loads and heights.

d. Package, sack, and tray preparation.

e. Permissible levels of sortation applicable to the class and type of mail placed on the pallets.

The flexibility in pallet minimum weights and the increase in maximum pallet height and tiers of trays described below should promote and facilitate mailers' adherence to makeup requirements. Exceptions for acceptance of pallets that do not meet basic DMM standards for height, weight, safety, load integrity, and permissible levels of sortation undermine efforts to assure safe and efficient handling of palletized loads. Such exceptions will not be permitted. (See section 8, Pallets Not Prepared to Finest Depth of Sort, which provides some relief for mailers who currently have difficulty preparing mailings on pallets to the required levels of sortation.)

In addition, the Postal Service will consider individual pallet shipments that are entered under the plant-verified drop shipment (PVDS) program to be bedloaded if the load integrity of the pallets is compromised when they are presented for acceptance at a destination entry postal facility, such that the shipment requires driver unloading.

The Postal Service will establish a standardized system to monitor load integrity of customers' pallets at mailers' plants where mailings are prepared (when mail is verified by on-site postal personnel) and at postal facilities where mailings are entered and will inform mailers when their preparation methods result in pallets that do not meet the basic pallet integrity and safety standards (for example, the load on pallet is not secure, has toppled, is leaning, or exceeds the maximum weight or height restrictions). In conjunction with a steering committee of customers, the Postal Service is currently formulating specific standards for identifying, quantifying, handling, and providing feedback regarding pallet load integrity problems and requests comments on that issue. Where possible, this feedback system will be incorporated into the existing Drop Shipment Appointment System (DSAS).

After notification and an opportunity to make changes to improve load integrity, if the mailer's methods still do not work, the mailer will be required to meet the specifications developed by Postal Service Engineering for strapping of single pallets, stretchwrapping of pallets, pallet box construction and dimensions, stacking of pallets, maximum height/tiers of trays, and top-cap use. The specifications were published in the original proposed rule and are included in the proposed DMM revisions that follow. Mailers will be suspended from the pallet program if their pallets continue to fail to meet the minimum load integrity levels that Postal Service Engineering specifications are aimed to reach.

2. Bulk Mail Center Processing Needs

The proposed sortation and preparation standards described below will address existing capacity constraints and keep the bulk mail center (BMC) network flowing smoothly by moving as much mail as possible farther into the distribution network through pallet cross-dock operations.

These standards will further the Postal Service's current priority of providing relief to the BMCs for processing packages of flats and trayed letter mail. Relaxed standards on pallet minimum and maximum load size for these mail types will provide the most relief to the BMCs without extending Postal Service pallet-handling resources beyond supportable limits.

The initial proposal to require that all trays on BMC pallets and working pallets must be strapped, regardless of where the pallets are deposited, remains unchanged. Mailers will not be required to strap trays placed on pallets made up to finer levels of sortation. This option will provide an inducement to mailers to prepare pallets to the finest depth of sort, allowing for greater cross-dock opportunities at the BMCs and providing relief for BMC operations heavily affected by unstrapped trays.

The requirement that exists in current regulations to sleeve all trays containing letter-size automation rate mail that does not originate and destinate in the delivery area of the same SCF and that may be processed at a BMC or AMF is extended to include trays containing non-automation rate letter-size mail.

3. Height and Weight Restrictions

The maximum weight for any single pallet or any pallets stacked together (pallets and mail) is 2,200 pounds as originally proposed.

Pallet maximum height restrictions are increased to 84 inches for stacked pallets as well as for single pallets with pallet boxes. Pallet loads exceeding 84 inches, however, pose safety concerns and handling problems because of the heights of dock doors and ceilings within postal facilities and the heights of doors and internal spaces within Postal Service trailers and other vehicles. This change is more consistent with current practices of many mailers using pallet boxes and stacking smaller pallets to make optimum use of transportation for drop shipping and is an increase from the initial proposed maximum of 77 inches for all pallets including stacked pallets.

The maximum height for single pallets containing packages or sacks (not placed in pallet boxes) will remain at 77 inches as originally proposed. This height limit should not negatively impact mailers because packages on pallets will usually reach the weight maximum of 2,200 pounds before reaching the height limit.

If the Postal Service identifies any non-BMC postal facilities that cannot accommodate a pallet load as high as 84 inches because of physical limitations (for example, low dock door or ceiling heights or other physical obstructions), mailers participating in the plant-verified drop shipment (PVDS) program will be advised of these limitations when they make appointments to deposit mailings. In any such limited situation, mailers may be asked to prepare pallets less than 84 inches high until the plants are modified to accept standard pallet loads.

Under the revised rules for packages, parcels, and sacks on pallets, mailers must prepare a required level of pallet when they have 500 pounds of mail for that destination. When smaller loads are desirable, mailers may prepare pallets for any required or optional levels of sortation when they have from 250 to 499 pounds of mail for a destination. The minimum weight used to build pallet loads may vary from 250 to 500 pounds for pallets within a single mailing. The original proposal required pallet preparation at 250 pounds.

Trays of letter-size mail on pallets are prepared based on the number of tiers. The revised rules give mailers the option of preparing a pallet when they have from three to five tiers of 1- or 2-foot managed mail (MM) or extended managed mail (EMM) trays with a mandatory preparation requirement at six tiers. The minimum may vary for pallets within a single mailing.

The maximum load for trays on pallets is 12 tiers, not to exceed 2,200 pounds gross. The original proposal would have required mailers to prepare a pallet when they had three tiers of MM trays or two tiers of EMM trays for a required level of sortation.

When placing trays on pallets, mailers must take extra precautions to place the fullest trays on the bottom and the least full trays on top to avoid crushing the lower trays and causing the entire load to topple.

Mailers are reminded that under the Postal Service's guidelines for the plant-verified drop shipment (PVDS) program, the driver is required to unload mail entered at delivery units. In some instances, this unloading requires breaking down palletized loads because of the physical limitations of a delivery unit such as small or congested offices that cannot accommodate large or stacked pallets.

4. Stacking Pallets

The Postal Service is proposing to allow mailers to double-stack or triple-stack pallets up to the maximum allowable height and weight (84 inches/2,200 pounds total for the stacked pallets), provided that such pallets are presented for acceptance at the mailer's plant or a postal facility in a manner that ensures safe and efficient unloading, handling, and transporting. Triple-stacking will allow mailers to make better use of transportation for drop shipments when low-weight pallets are prepared.

When stacking pallets, the mailer must place the heaviest pallet on the bottom and the lightest pallet on the top to prevent crushing or other damage to mail on the bottom. If part of the load is crushed, the entire load is likely to collapse.

Stacked pallets must be top-capped (except for the top pallet) and banded together. The top caps must provide a flat surface for safe and efficient stacking and must be of sufficient quality to maintain the integrity of the load and protect the mailpieces. The Postal Service will closely monitor the preparation of all stacked pallets, particularly those that are triple-stacked, to ensure that they can be handled safely and without damage to the mail on the pallets.

Whenever possible, Mailers are requested to place pallets for the same processing facility together to facilitate moving as much mail as possible directly into cross-dock operations at BMCs for further movement into the distribution network.

5. Pallet Boxes

Pallet boxes may be used to hold parcels and sacks. The revised proposal allows mailers to use pallet boxes constructed of single-wall or double-wall corrugated fiberboard, as well as triple-wall corrugated fiberboard, provided that the pallet box and its load maintain their stability and integrity throughout transportation and postal processing. In the original proposal, mailers were required to use pallet boxes constructed of triple-wall corrugated fiberboard.

The height of pallet boxes will not be limited except by the maximum combined pallet, box, and mail load (contents of the box) height of 84 inches or by those non-BMC postal facilities that do not have equipment for handling or unloading full-size pallet boxes (boxes more than 60 inches high).

Boxes must be secured to the pallet to ensure that they can be safely unloaded from vehicles (and reloaded, if necessary) and processed as a single unit to the point where the contents are distributed. The mail must be evenly distributed within the pallet box so that the load does not shift in transit and cause the box to break, topple, or fall off the pallet in transit or during processing.

The flexibility in box construction will provide mailers with the opportunity to use boxes that are compatible with those used in their other manufacturing processes and to minimize costs. However, if the Postal Service notifies a mailer that the mailer's pallet boxes continually fail to

remain intact or that the loads in any way do not meet the basic pallet integrity standards (for example, the load on pallet is not secure or completely contained, has toppled, is leaning, or exceeds the maximum weight or height restrictions), the mailer will be required to meet the Postal Service preparation standards developed by Postal Service Engineering, including the use of triple-wall corrugated fiberboard boxes.

6. Top-Capping

Under the new proposal, mailers are required to top-cap only stacked pallets (the bottom pallet if pallets are presented to the Postal Service double-stacked; the bottom and middle pallets if pallets are presented triple-stacked). Mailers may determine the best method for ensuring pallet integrity and will have the opportunity to use manufacturing materials that already come into their plants as top-capping material. Mailers must not use flimsy paper obtained from ends of paper rolls or similar material as top caps because this material, used alone, can cause stack failure.

The Postal Service's original proposal required top caps meeting strict Postal Service Engineering construction standards on all pallets other than on full-size pallet boxes. Mailers will be required to meet these strict standards only after they are informed by the Postal Service that their methods do not ensure the integrity of mail on pallets that they prepare.

7. Pallet Strapping

The original proposal to require mailers to strap or band (the terms are used interchangeably) all pallets is also relaxed. Depending on the characteristics of a mail load, strapping might not be the most effective method of ensuring load integrity throughout transportation and processing.

Loads can compress themselves during storage in a mailer's plant or while in transit, causing strapping to become loose. In those instances, stretchwrap can be more effective in securing loads on a single pallet.

Mailers are required to strap all stacked pallets together with at least two straps. The strap must be plastic or metal at least ½ inch wide. The minimum breaking strength for plastic strapping must be at least 800 pounds and for metal strapping at least 1,200 pounds. These minimums ensure that the strapping does not break and cause injuries to postal employees handling pallets.

8. Pallets Not Prepared to Finest Level of Sort

The Postal Service recognizes that some mailers have difficulty preparing mailings on pallets to the proposed required levels of sortation and that these mailers will need an opportunity to make necessary changes to their systems and to work with their customers to generate mailings in a manner that is more compatible with placing the mailings onto the required levels of pallets.

To accommodate these needs, the Postal Service will allow mailers to place mailings onto pallets that are not prepared to the required finest levels of sortation for a period not to exceed 6 months from the effective date of the final rule implementing this proposed rule.

Regardless of the level of sortation and whether postal or mailer-provided pallets are used, all pallets must meet all other DMM standards for preparation and labeling based on the class and type of mail.

During this 6-month transition, mailers will be required, at a minimum, to sort individual mailings (a mailing represented by a single mailing statement) to a destination BMC (state distribution center (SDC) for second-class mail) when there are 500 pounds or more of mail (or six tiers of trays) within a single mailing to that BMC/SDC if mailings are presented to destination entry offices under the PVDS program.

Remaining mail may be sacked or bedloaded or placed onto residual or working pallets properly labeled to the origin BMC/SDC or plant (see section 10, Pallet Sortation). Mailers will be required to comply with all DMM standards after the 6-month phase-in.

9. Placement of Automation and Non-Automation Rate Letter-Size Mailings in Trays on Pallets

Mailers may place trays from letter-size automation rate mailings onto pallets together with trays from letter-size non-automation rate mailings prepared to any level of sortation except the optional 5-digit level. This placement will allow mailers to achieve finer levels of sortation using fewer pallets.

10. Pallet Sortation

The proposed required and optional sortations, which are consistent with national distribution network policy changes, are shown in the following chart.

Class and category	Sortation
2C/3C letter-size mail (in trays/sacks on pallets)	Required: SCF, BMC[1] (3C)/SDC(2C). Optional: 5D, ADC, working pallet.[2]
2C/3C/4C flats, irregular parcels, and outside parcels	Required: 5D, SCF. Optional: 3D, ADC, BMC[1] (3C/4C)/SDC(2C), working pallet.[2]
3C/4C machinable parcels	Required: 5D, BMC.[1] Optional: working.[2]

[1] Or ASF for third-class and fourth-class DBMC discounts, as applicable.
[2] Origin BMC(3C/4C)/SDC(2C) or plant pallet for residual mail. Labeled to BMC/SDC or plant serving post office where mailings are entered (accepted) into mailstream. May be prepared after all required and optional levels of pallets are prepared. Limited to 10 percent of total pallets in any mailing or job. When insufficient volume to prepare finer levels of required pallets for a mailing or job, working pallets for non-PVDS mailings may be prepared in excess of 10 percent limit (all possible optional BMC/SDC pallets must be prepared first, where applicable).

The proposed option to prepare area distribution center (ADC) pallets for mail other than machinable parcels will improve processing opportunities.

Current DMM standards preclude mailers from placing onto pallets SDC, state, and mixed-states packages of second-, third-, and fourth-class mail and trays of residual mail from automation-rate mailings. SDC, state, and mixed-states packages are generally placed into sacks.

These sacks, like trays of residual mail, may not be placed onto an authorized level of pallet and are generally bedloaded, placed loose in a vehicle on top of authorized pallets, or placed onto unauthorized or "courtesy pallets" for transport to an entry postal facility.

Because of these restrictions, some mailers cannot create 100 percent palletized mailstreams and these mailers might have to retain sacking operations for a small portion of their mail, while preparing the balance as packages placed directly onto pallets.

These operational inefficiencies also affect the Postal Service when these partially palletized loads are unloaded from vehicles at entry or downstream postal facilities.

In order to provide mailers with additional opportunities to eliminate split production lines (for example, packages on pallets and packages in sacks), the new proposed rule allows mailers to palletize trays of residual letter-size mail and to place SDC, state, and mixed-states packages of flats meeting the package preparation standards for packages onto pallets.

Trays of residual mail from automation mailings may be placed onto the appropriate level of pallet where possible (for example, AADC trays on ADC or BMC pallets). Trays of working mail and SDC, state, and mixed-states packages may be placed onto working pallets labeled to the origin BMC or SDC or to the plant serving the office where mailings are entered.

As noted above, working pallets must not exceed 10 percent of the total number of pallets for a single mailing or job. These working pallets must be loaded to the maximum to minimize pallet handlings.

When placing mail onto pallets, if there is a conflict between the labeling lists (service area ZIP Codes) of the container (for example, tray or sack) and the pallet on which it is placed (for example, the range of ZIP Codes assigned to a single SCF or a single AADC may be assigned (split) to two or more BMCs), mailers must place the container onto the pallet for the facility serving the ZIP Code on the destination (top) line of the container. Any applicable destination entry discounts may be claimed for mail properly palletized in this manner.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), 553(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following units of the Domestic Mail Manual as noted below:

E—Eligibility

* * * * *

E300 THIRD-CLASS MAIL

* * * * *

E333 CARRIER ROUTE PRESORT

* * * * *

3.0 PRESORT

[Introductory paragraph 3.1 previously revised in Postal Bulletin 21888, March 2, 1995, as follows:]

3.1 Qualifying Mail

Each qualifying piece must be part of a group of 10 or more addressed pieces correctly packaged to the same carrier route that is, in turn, correctly placed in a carrier route, 5-digit carrier routes, or 3-digit carrier routes tray or sack. Such trays must be full; sacks must contain at least 125 addressed pieces or 15 pounds of addressed pieces. Qualifying mail also includes:

* * * * *

[Add new 3.1c as follows:]

c. Correctly presorted carrier route packages correctly sorted to the appropriate level of pallet.

* * * * *

E350 Destination Entry Discounts

* * * * *

3.0 Deposit

* * * * *

[Revise the heading and introductory paragraph of 3.8 as follows:]

3.8 Unloading

The unloading of vehicles is subject to these conditions:

[Add new 3.8a and redesignate current 3.8a through 3.8c as 3.8b through 3.8d, respectively.]

a. Properly prepared containerized loads (e.g., pallets) are unloaded by the USPS at BMCs, ASFs, and SCFs. The USPS does not unload or permit a mailer/mailer agent to unload containerized loads that have not maintained their integrity in transit.

[Amend redesignated 3.8b by deleting the second sentence as follows:]

b. At delivery units, the driver must unload containerized drop shipments within 1 hour of arrival.

* * * * *

E400 FOURTH-CLASS MAIL

* * * * *

E416 Special Fourth-Class Rates

* * * * *

2.0 SPECIAL FOURTH-CLASS PRESORT

* * * * *

[Revise the first sentence of the introductory paragraph of 2.6 (previously revised and redesignated from 2.5 to 2.6 in Postal Bulletin 21884, January 5, 1995) as follows:]

2.6 Level A

To qualify for the special fourth-class presort level A rate, a piece must be in a mailing of at least 500 pieces receiving identical service, properly prepared and presorted under M404 in full 5-digit sacks or under M044 on 5-digit pallets. These conditions also apply:

* * * * *

[Revise the first sentence of 2.7 (previously revised and redesignated from 2.6 to 2.7 in Postal Bulletin 21884, January 5, 1995) as follows:]

2.7 Level B

To qualify for the special fourth-class presort level B rate, a piece must be in a mailing of at least 500 pieces receiving identical service, properly prepared and presorted under M404 in full or substantially full bulk mail center (BMC) sacks or under M044 on destination BMC pallets. Mailings of at least 500 nonmachinable outside parcels may qualify for presort level B if made up to preserve presort by BMC as prescribed by the mailing office postmaster. The postmaster may require up to a 24-hour notice before the mailing is presented.

* * * * *

E450 DESTINATION BMC/ASF DISCOUNT

* * * * *

3.0 DEPOSIT

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[Revise the introductory paragraph of 3.8 as follows:]

3.8 Unloading

The unloading of DBMC mailings is subject to these conditions:

[Revise 3.8a as follows:]

a. Properly prepared containerized loads (e.g., pallets) are unloaded by the USPS. The USPS does not unload or permit a mailer/mailer agent to unload containerized loads that have not maintained their integrity in transit.

* * * * *

L—Labeling Lists

* * * * *

[Revise the heading of L101 as follows:]

L101 ADCs—PRESORTED FIRST-CLASS, ALL ZIP+4 BARCODED FLAT-SIZE MAILINGS, AND ALL ADC PALLETS

* * * * *

M—Mail Preparation and Sortation

M000 GENERAL PREPARATION STANDARDS

* * * * *

M030 Container Preparation

M031 Labels

* * * * *

[Amend 4.8 by deleting the words "optional city" in the first sentence as follows:]

4.8 Delivery Office, SCF, DDU, and DSCF Rates

If a 5-digit, 3-digit, or SCF pallet contains copies claimed at second-class delivery office and SCF zone rates, or third-class DDU and DSCF rates, as applicable, the contents line of the pallet label must show the designation DDU/SCF, after the description of the contents.

* * * * *

M033 Sacks and Trays

1.0 BASIC STANDARDS

* * * * *

[Add new 1.4 and 1.5 as follows:]

1.4 Sleeving and Strapping

Except under 1.5, each letter mail tray must be sleeved. All nonpalletized trays of letter mail transported from the mailer's plant to a BMC, ASF, or AMF on USPS or mailer transportation and all trays placed on BMC or mixed BMC/SDC pallets must also be secured by a plastic strap placed tightly around the length of the tray. The strap must not crush the tray or sleeve. Strapping is not required on trays placed on pallets prepared to finer levels of sortation.

1.5 Sleeving Exception

When all pieces in a mailing originate and destinate in the delivery area of the same SCF and the trays containing those pieces are not processed at a BMC or AMF, the processing and distribution manager may (on request) issue a written authorization to the mailer to submit the mailing in trays without sleeves.

* * * * *

[Revise the heading of 3.0 as follows:]

3.0 BASIC STANDARDS FOR TRAYS—AUTOMATION RATES

* * * * *

[Delete current 3.6 and 3.7.]

M040 Palletization

[Revise the heading of M041 as follows:]

M041 Standards for Palletized Mailings

[Revise the heading of 1.0 as follows:]

1.0 PHYSICAL PALLET CHARACTERISTICS

[Amend 1.1 by deleting "and a volume of up to 65 cubic feet" in the second sentence as follows:]

1.1 Construction

Whether provided by the USPS or mailer, all pallets in a palletized mailing must be made of high-quality material. Pallets must be designed to hold loads equal to a gross weight of 2,200 pounds.

* * * * *

[Revise the heading of 1.4 and amend the section by adding "Except for pallet boxes under 4.3," as follows:]

1.4 Stretchwrap

Except for pallet boxes under 4.3, loaded pallets of mail must be wrapped with shrinkable or stretchable plastic strong enough to retain the integrity of the pallet during transportation and handling.

[Add new 1.5 and 1.6 as follows:]

1.5 Nonstandard Pallets Prohibited

All mail on pallets presented to the USPS, whether on postal pallets or mailer-provided pallets, must meet the standards in 1.1 through 1.4 and the standards applicable to the class and type of mail placed on the pallets.

1.6 Nonconforming Mailers

The USPS informs mailers when their preparation methods result in pallets that fail to meet the basic pallet integrity and safety standards (e.g., load on pallet is not secure, has toppled, is leaning, exceeds the maximum weight or height restrictions). Where possible, this feedback system is incorporated into the existing Drop Shipment Appointment System (DSAS). Once notified and given an opportunity to make changes to improve load integrity, if a mailer—s methods do not work, the mailer is considered nonconforming and is required to meet the specifications in 2.0 through 5.0 for nonconforming mailers for top-cap use, stacking of pallets, pallet box construction, and maximum height/tiers of trays. Mailers are suspended from the pallet program if their pallets continue to fail to meet the minimum load integrity levels.

[Revise current 2.0 as follows:]

2.0 TOP CAPS

2.1 Use

Top caps are required on the lower pallet(s) when pallets are stacked. Pallets that are not stacked when presented to the USPS for acceptance are not required to be top-capped. Flimsy paper (e.g., the ends of paper rolls) or similar material must not be used alone as a top cap. Any other material that protects the integrity of the mail may be used.

2.2 Securing

When used, a top cap must be secured to the pallet, horizontal to the plane of the pallet, with strapping, banding, or stretchwrap strong enough to keep the cap in place so that it protects the mail and maintains the integrity of the pallet load. At least two straps are required.

2.3 Nonconforming Mailers

Nonconforming mailers (see 1.6) must use top caps on all loaded pallets, regardless of weight, holding letter trays (MM and EMM) of mail, packages of mail, and bricklayed parcels. Top caps are not required on loaded pallets, regardless of weight, holding either sacks or parcels contained in fiberboard pallet boxes prepared under 4.0. Top caps must be approximately 48 inches long, 40 inches wide, and meet any of these construction standards:

a. Five wood boards with uniform edges and nine-leg pallet contact for stacking.

b. Fiberboard box end style, with minimum 3-inch side, with wall material a minimum of double-wall corrugated fiberboard C and/or B flute.

c. Fiberboard honeycomb covered on both sides with heavy linerboard, minimum ½ inch thick.

d. Corrugated fiberboard C flute sheet covering the entire top of the load with standard pallet solid fiberboard corner edge protectors.

[Amend current 3.0 by combining current 3.1 and 3.2 and adding new 3.2 and 3.3 as follows:]

3.0 STACKING PALLETS

3.1 Double- or Triple-Stacking

Pallets may be double- or triple-stacked if the combined gross weight of the stacked pallets is not more than 2,200 pounds; the heaviest pallet is on the bottom and the lightest pallet is on the top; the pallets are banded together with appropriate strapping material to maintain their integrity during transportation and handling; each lower pallet is top-capped; and the combined height of the stacked pallets is not more than 84 inches.

3.2 Same Facility

Pallets for the same processing facility should be stacked together when possible.

3.3 Nonconforming Mailers

Nonconforming mailers (see 1.6) who stack pallets must do so as follows:

a. Pallets may be double-stacked if the combined gross weight of the stacked pallets is not more than 2,200 pounds; the heavier pallet is on the bottom; the pallets are banded together with appropriate strapping material to maintain their integrity during transportation and handling; and the combined height of the stacked pallets is not more than 77 inches. Pallets of sacks not placed in fiberboard boxes must not be double-stacked.

b. Pallets holding MM or EMM trays of letter-size mail or bricklayed parcels may be triple-stacked if the combined gross weight of the stacked pallets is not more than 2,200 pounds. No other type of pallet may be triple-stacked. The heaviest pallet must be on the bottom and the lightest on the top; the pallets must be banded together with appropriate strapping material to maintain their integrity during transportation and handling; and the combined height of the stacked pallets must not be more than 77 inches.

[Redesignate current 4.0 as 5.0; add new 4.0 as follows:]

4.0 PALLET BOXES

4.1 Use

Mailers may use pallet boxes constructed of single-, double-, or triple-wall corrugated fiberboard placed on pallets to hold sacks or parcels prepared under M042, M043, or M044. The box must protect the mail and maintain the integrity of the pallet load throughout transportation, handling, and processing.

4.2 Maximum Height

The combined height of the pallet, pallet box, and mail must not be more than 84 inches. The USPS may restrict the use of pallet boxes more than 60 inches high at non-BMC postal facilities that do not have equipment for handling or unloading such containers.

4.3 Securing

A pallet box must be secured to the pallet base with strapping, banding, stretchable plastic, shrinkwrap, or by any other means that ensures that the pallet can be safely unloaded from vehicles (and reloaded, if necessary) and processed as a single unit to the point where the contents are distributed. The mail must be evenly distributed within the pallet box so that the load remains intact and does not shift in transit causing the box to break, topple, or fall off the pallet in transit or during processing.

4.4 Nonconforming Mailers

Nonconforming mailers (see 1.6) may use pallet boxes only if constructed of triple-wall corrugated fiberboard (C and/or B flute) material with a maximum height of 77 inches.

[Revise the heading of redesignated 5.0 as follows:]

5.0 PALLET PREPARATION

[Revise redesignated 5.1 as follows:]

5.1 Presort

Pallet preparation and sortation is subject to the specific standards in M042 through M048. Pallet sortation is intended to presort the palletized portion of a mailing to at least the finest extent required for the rate claimed. Generally, pallet sortation is sequential from the lowest (finest) level to the highest and must be completed at each required level before the next optional or required level is prepared. As applicable, presort levels and standard preparation terms for pallets are defined in M020, M042, M043, M044, and M048.

[Revise redesignated 5.2 as follows:]

5.2 Minimum Load

In a single mailing, the minimum load per pallet is 250 pounds (of second-, third-, and fourth-class packages, parcels, and sacks); or three layers of MM or EMM trays (of second- or third-class letter-size mail).

[Renumber redesignated 5.3 as 5.7; add new 5.3, 5.4, 5.5, and 5.6 as follows:]

5.3 Required Preparation

Pallets are prepared as follows:

a. A pallet must be prepared to a required level of sortation whenever there are 500 pounds of mail (for second-, third-, and fourth-class packages, sacks, and parcels) or six layers of MM or EMM trays (for second- and third-class letter-size mail).

b. Up to 10 percent of the total pallets in any mailing or job may be working pallets labeled to the BMC (third- or fourth-class mail) or SDC (second-class mail) serving the post office where mailings are entered (accepted) into the mailstream. The processing and distribution manager may issue a written authorization to the mailer to label working pallets to the post office or processing and distribution center serving the post office where mailings are entered. For non-PVDS mailings, the 10 percent limit may be exceeded when finer levels of pallets could not be prepared.

5.4 Maximum Weight

The maximum weight is 2,200 pounds (mail and pallet) for all pallets.

5.5 Maximum Height

The combined height of a single pallet and its load must not exceed the following:

a. 84 inches for a fiberboard pallet box and its contents (sacks or parcels) on a pallet.

b. 77 inches for packages, bundles, parcels, or sacks on pallets.

c. 12 layers of MM or EMM trays.

5.6 Nonconforming Mailers

For nonconforming mailers (see 1.6) the combined height of a pallet and its load must not exceed 77 inches for sacks, packages, bundles, parcels, and full-size fiberboard pallet boxes; or five layers of EMM trays; or six layers of MM trays.

5.7 Mixed Rates

Regular rate and special rate mail may be placed on the same pallet, subject to the terms of the mailer's pallet authorization and the standards applicable to the rates claimed.

[Add new 6.0 as follows:]

6.0 ADDITIONAL STANDARDS FOR TRAYS (LETTER MAIL), PACKAGES, BUNDLES, AND SACKS ON PALLETS

6.1 Other Standards

Trays of letter mail, packages, bundles, and sacks must be prepared under the respective standards for the class of mail and rate claimed.

6.2 Trays—Second- and Third-Class Mail

Trays from automation rate mailings must not be placed on 5-digit pallets with trays from non-automation rate mailings.

6.3 Records—Second- and Third-Class Mail

When two or more mailings are placed together on pallets, the mailer must maintain records for each mailing as required by standard.

6.4 Packages, Bundles, and Sacks

Subject to the applicable standards, mailers must sack mail that is not prepared as packages or bundles on pallets. For second-class mail, mailers must separately sack packages of each second-class publication not palletized under M042 or excluded from palletization; however, packages of each publication and edition may be sacked together if adequate documentation is provided. Sacks (including sacks of packages not placed on pallets) containing packages remaining after all pallets are prepared may be presented with the palletized mail (on the same mailing statement) if segregated from the palletized portion of the mailing.

M042 Second-Class Mail

* * * * *

2.0 PACKAGES

[Amend 2.1 by adding a second sentence as follows:]

2.1 Standards

Package presort and labeling must meet the applicable general standards in M020 and M030, except as noted below. The palletized portion of a mailing may not include packages sorted to foreign destinations.

* * * * *

[Delete current 2.5.]

3.0 OPTIONAL BUNDLES

[Amend 3.1 by adding a second sentence as follows:]

3.1 Standards

Bundle presort and labeling must meet the applicable general standards in M020 and M030, except as noted below. The palletized portion of a mailing may not include bundles sorted to foreign destinations.

* * * * *

[Revise 3.3 as follows:]

3.3 Sortation

Sortation is in the same sequence as sacks.

* * * * *

[Delete current 3.5.]

[Add new 4.0 as follows; delete current 6.0 and redesignate current 4.0 and 5.0 as 5.0 and 6.0, respectively.]

4.0 PALLET PRESORT AND LABELING

Presort sequence and labeling:

a. 5-digit (required for packages, bundles, sacks, and machinable parcels; optional for trays); use destination of packages, etc., for Line 1.

b. 3-digit (optional); use L002, Column A, for Line 1.

c. SCF (required); use L002, Column B, for Line 1.

d. ADC (optional); use L101 for Line 1.

e. SDC (required); use L201 for Line 1.

f. Working (optional), mixed SDC; use L201 for Line 1 based on ZIP Code of entry office (in "Destination ZIP Codes" column); (label to plant serving entry post office if authorized by processing and distribution manager).

[Revise the heading of redesignated 5.0 as follows:]

5.0 ADDITIONAL STANDARDS FOR PALLETS OF PACKAGES, BUNDLES, OR SACKS

[Delete redesignated 5.1, 5.3, and 5.5; renumber redesignated 5.2 and 5.4 as 5.1 and 5.2, respectively.]

* * * * *

[Amend renumbered 5.2 by deleting "optional city" in the first sentence as follows:]

5.2 Delivery Office Rates

When a 5-digit, 3-digit, or SCF pallet contains copies claimed at delivery office rates and copies claimed at other rates, the copies claimed at delivery office rates must be placed on the top of the pallet. These copies must be separated from the other copies. Any effective method (such as a slipsheet) may be used.

[Revise the heading of redesignated 6.0 as follows:]

6.0 PALLETS OF COPALLETIZED FLAT-SIZE PUBLICATIONS

[Delete redesignated 6.3, 6.4, and 6.6; renumber redesignated 6.5 and 6.7 through 6.10 as 6.3 and 6.4 through 6.7, respectively.]

* * * * *

[Revise 6.2 as follows:]

6.2 Exclusion

The palletized portion of a mailing may not include packages or bundles sorted to foreign destinations.

* * * * *

M043 Third-Class Mail

* * * * *

[Revise the heading of 2.0 as follows:]

2.0 PACKAGES

[Amend 2.1 by adding a second sentence as follows:]

2.1 Standards

Package presort and labeling must meet the applicable general standards in M020 and M030, except as noted below. The palletized portion of a mailing may not include packages sorted to foreign destinations.

* * * * *

[Delete current 2.5.]

3.0 OPTIONAL BUNDLES

[Amend 3.1 by adding a second sentence as follows:]

3.1 Standards

Bundle presort and labeling must meet the applicable general standards in M020 and M030, except as noted below. The palletized portion of a mailing may not include bundles sorted to foreign destinations.

* * * * *

[Revise 3.3 as follows:]

3.3 Sortation

Sortation is the same sequence as sacks.

* * * * *

[Add new 4.0; delete current 9.0 and redesignate current 4.0 through 8.0 as 5.0 through 9.0, respectively.]

4.0 PALLET PRESORT AND LABELING

4.1 Pallets of Packages, Bundles, Sacks, or Trays

Presort sequence and labeling:

a. 5-digit (required for packages, bundles, and sacks; optional for trays); use destination of packages, etc., for Line 1.

b. 3-digit (optional); use L002, Column A, for Line 1.

c. SCF (required); use L002, Column B, for Line 1.

d. ADC (optional); use L101 for Line 1 (deposit pallet at BMC serving 3-digit ZIP Code on Line 1 if DBMC rate claimed).

e. Destination BMC (required); use L705 (or L708 if DBMC rate claimed) for Line 1 and show any required processing code right-justified on Line 2.

f. Working (optional), mixed BMC; use L705 for Line 1 based on ZIP Code of entry office (in "Destination ZIP Codes" column) and show any required processing code right-justified on Line 2; (label to plant serving entry post office if authorized by processing and distribution manager).

4.2 Pallets of Machinable Parcels

Presort sequence and labeling:

a. 5-digit (required); use destination of parcels for Line 1.

b. ASF (allowed and required only if DBMC rate is claimed for mail deposited at ASF); use L708 for Line 1.

c. Destination BMC (required); use L705 for Line 1 (or L708 if DBMC rate claimed) and show any required processing code right-justified on Line 2.

d. Mixed BMC (optional); use L705 for Line 1 based on ZIP Code of entry office (in "destination ZIP Codes" column) and show any required processing code right-justified on Line 2.

4.3 Line 2

Line 2: 3C, processing category, and any processing code if required by 4.2.

[Revise the heading of redesignated 5.0 as follows:]

5.0 ADDITIONAL STANDARDS FOR PALLETS OF PACKAGES OR BUNDLES

[Delete redesignated 5.1, 5.3, and 5.6; renumber redesignated 5.2, 5.4, and 5.5 as 5.1, 5.2, and 5.3, respectively.]

* * * * *

[Amend 5.2 by deleting "optional city" in the first sentence as follows:]

5.2 DDU Rates

When a 5-digit, 3-digit, or SCF pallet contains pieces claimed at destination delivery unit (DDU) rates and pieces claimed at other rates, the pieces claimed at DDU rates must be placed on the top of the pallet. These pieces must be separated from the other pieces. Any effective method (such as a slipsheet) may be used.

* * * * *

[Revise the heading of redesignated 7.0 as follows:]

7.0 ADDITIONAL STANDARDS FOR PALLETS OF COPALLETIZED FLAT-SIZE MAILINGS

[Amend redesignated 7.1 by changing the references from "4.2 through 4.6" to "5.1 through 5.3."]

7.1 Standards

Copalletized flat-size mailings must meet the standards in 5.1 through 5.3 and those below.

* * * * *

[Delete redesignated 7.3, 7.4, and 7.9 and renumber 7.5 through 7.12 as 7.3 through 7.9, respectively.]

* * * * *

[Revise the heading of redesignated 8.0 as follows:]

8.0 ADDITIONAL STANDARDS FOR PALLETS OF MACHINABLE THIRD-CLASS PARCELS

[Delete redesignated 8.1, 8.2, 8.3, and 8.5; renumber 8.4 as 8.0. Amend 8.0 by changing the references in the first sentence from "7.2a through 7.2c" to "4.2a through 4.2c" and in the second sentence from "7.2b and 7.2c" to "4.2b and 4.2c" as follows:] Pieces may be eligible for the 3/5 presort rate if prepared under 4.2a through 4.2c. This eligibility includes pieces correctly presorted under 4.2b and 4.2c to the service area of the origin ASF/BMC.

* * * * *

[Revise the heading of redesignated 9.0 as follows:]

9.0 ADDITIONAL STANDARDS FOR PALLETS OF THIRD- AND FOURTH-CLASS MACHINABLE PARCELS

[Delete redesignated 9.1, 9.2, 9.3, and 9.6; renumber 9.4 through 9.8 as 9.1 through 9.4, respectively.]

[Amend 9.1 by changing the reference "8.3" to "4.2" as follows:]

9.1 Line 2

Line 2: 3C/4C MACH and any processing code if required by 4.2.

[Amend 9.2 by changing the references in the first sentence from "8.2a through 8.2c" to "4.2a through 4.2c" and in the second sentence from "8.2b and 8.2c" to "4.2b and 4.2c" as follows:]

9.2 3/5 Presort Rate

Pieces may be eligible for the 3/5 presort rate if prepared under 4.2a through 4.2c. This eligibility includes pieces correctly presorted under 4.2b and 4.2c to the service area of the origin ASF/BMC.

* * * * *

M044 Fourth-Class Mail

* * * * *

[Revise the heading of 2.0 as follows:]

2.0 PACKAGES

[Amend 2.1 by adding a second sentence as follows:]

2.1 Standards

Package presort and labeling must meet the applicable general standards in M020 and M030, except as noted below. The palletized portion of a mailing may not include packages sorted to foreign destinations.

* * * * *

[Delete current 2.4.]

[Add new 3.0; delete current 5.0; redesignate current 3.0 and 4.0 as 4.0 and 5.0, respectively.]

3.0 PALLET PRESORT AND LABELING

3.1 Pallets of Packages, Bundles, or Sacks

Presort sequence and labeling:

a. 5-digit (required); use destination of packages, etc., for Line 1.

b. 3-digit (optional); use L002, Column A, for Line 1.

c. SCF (required); use L002, Column B, for Line 1.

d. ADC (optional); use L101 for Line 1 (deposit pallet at BMC serving 3-digit ZIP Code on Line 1 if DBMC rate claimed).

e. Destination BMC (optional); use L705 (or L708 if DBMC rate claimed) for Line 1 and show any required processing code right-justified on Line 2.

f. Working (optional), mixed BMC; use L705 for Line 1 based on ZIP Code of entry office (in "Destination ZIP Codes" column) and show any required processing code right-justified on Line 2; (label to plant serving entry post office if authorized by processing and distribution manager).

3.2 Pallets of Machinable Parcels

Presort sequence and labeling:

a. 5-digit (required); use destination of parcels for Line 1.

b. ASF (allowed and required only if DBMC rate is claimed for mail deposited at ASF); use L708 for Line 1.

c. Destination BMC (required); use L705 for Line 1 (or L708 if DBMC rate claimed) and show any required processing code right-justified on Line 2.

d. Mixed BMC (optional); use L705 for Line 1 based on ZIP Code of entry office (in "Destination ZIP Codes" column) and show any required processing code right-justified on Line 2.

3.3 Pallets of Special Fourth-Class Presort

a. 5-digit (Level A only; required); use destination of pieces or packages for Line 1.

b. Destination BMC (Level B only; required); use L705 for Line 1 and show any required processing code right-justified on Line 2.

3.4 Line 2

Line 2: 4C, processing category, and any processing code if required by 3.1 through 3.3.

[Revise the heading of redesignated 4.0 as follows:]

4.0 ADDITIONAL STANDARDS FOR PALLETS OF PACKAGES

[Delete redesignated 4.1, 4.2, and 4.4; renumber 4.3 and 4.5 as 4.1 and 4.2, respectively.]

* * * * *

[Revise the heading of redesignated 5.0 as follows:]

5.0 ADDITIONAL STANDARDS FOR PALLETS OF MACHINABLE PARCELS

[Delete redesignated 5.1, 5.2, and 5.3; renumber 5.4 through 5.6 as 5.1 through 5.3, respectively.]

* * * * *

M048 Automation-Compatible Flats

* * * * *

2.0 PACKAGE AND PALLET PREPARATION

[Revise 2.1 as follows:]

2.1 Packages

Packages to be presented on pallets must be prepared and presorted under the general standards in M020 and M030 and those applicable to the class and rate claimed.

[Revise 2.2 as follows:]

2.2 Pallets

Pallets must be prepared under the general standards in M041.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–18629 Filed 7–28–95; 8:45 am]

BILLING CODE 7710–12–P

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federal register

Monday
July 31, 1995

Part III

Department of Transportation

Federal Aviation Administration

Airflight Patterns Over the State of New Jersey; Effects of Changes; Final Environmental Impact Statement; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28241]

Final Environmental Impact Statement; Effects of Changes in Aircraft Flight Patterns Over the State of New Jersey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Final Environmental Impact Statement (EIS) and Invitation to Comment.

SUMMARY: On July 28, 1995, the FAA issued a Final Environmental Impact Statement (FEIS) required under Section 9119 of the Aviation Safety and Capacity Expansion Act of 1990 (ASCEA), Public Law 101–508. That section directed the FAA to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) on the effects of changes in aircraft flight patterns over the State of New Jersey as a result of the implementation of the Expanded East Coast Plan (EECP).

The proposed Federal action is to continue the current routes and procedures that were implemented as part of the EECP in 1987 and 1988, and modified to 1991. FAA has identified the continuation of current routes and procedures, as modified to incorporate a mitigation measure identified as the Solberg Mitigation Proposal, as both the preferred alternative and the environmentally preferable alternative. The Solberg Mitigation Proposal reduces aircraft noise in the Scotch Plains, and Fanwood areas of Union County, New Jersey. This is one of the five areas that experienced increased noise as a result of the implementation of the EECP.

The FAA prepared the FEIS based upon the findings in the post-scoping document issued in June 1991, the Draft EIS (DEIS) issued in November 1992, and the Supplemental DEIS (SDEIS) issued in September 1994.

The SDEIS contained the analysis of the Solberg Mitigation Proposal, the agency's analysis of the New Jersey Coalition Against Aircraft Noise (NJCAAN) Ocean Routing Proposal, responses to comments on the DEIS, Appendix F, and other new information. In response to the large number of comments concerning noise impacts over particular communities, the FAA included Appendix F, which provides the changes in noise levels predicted for each census block in New Jersey with each alternative, the mitigation proposal, and the NJCAAN ocean routing proposal.

The FAA also carefully considered testimony from over 480 Federal, state, and local elected and appointed officials and citizens and from the 2800 written comments received at more than 30 public hearings and meetings during the 515-day comment period.

After issuance of the Record of Decision and reporting to Congress pursuant to Section 9119 of ASCEA concerning this EIS process, the FAA intends to continue working with affected communities to identify and develop new strategies to mitigate aircraft noise as part of a "follow-on" study. That study will be a follow-on study insofar as it will address aeronautical and aircraft noise issues. It will be a planning study independent of the statutory EIS requirement.

The following is a summary of key portions contained in the FEIS and is not intended to duplicate or cover every aspect of the FEIS.

Alternatives

The FAA conducted an extensive scoping process to identify a reasonable range of alternatives for study in the EIS. The scoping process indicated that citizen concerns focused on arrivals and departures at the three major airports in the New York metropolitan area.

In the FEIS, the FAA analyzed the following alternatives based on citizen input and independent evaluation:

- Alternative A. Maintain the current (as defined in 1991) EECP structure (Proposed Action and No Action).
- Alternative B. Return to 1986 air traffic routes and procedures using 1991 traffic (Rollback).
- Alternative C2. Route Newark south flow departure traffic over Raritan Bay to the ocean at night only (Oceanic/military routing (nighttime only) for Newark departures).
- Alternative D3. Spread aircraft departing Newark runways 22L and 22R to three different headings (Spreading or fanning).

Environmental Consequences

Twenty-one environmental categories were analyzed for environmental consequences. The impact categories of chief concern were noise, air, and water quality. Analysis revealed that none of the alternatives, except Return to 1986 Routes and Procedures, would cause significant impacts.

The following is a brief description of the noise impacts associated with the alternatives and the Solberg Mitigation Proposal contained in the FEIS. Other Environmental Consequences are summarized in more detail in Section 1.7, Chapter 1 of the FEIS.

1. Alternative B, Return to 1986 Routes and Procedures

Noise analysis indicates that, in comparison to implementation of the EECP, return to 1986 routes and procedures with 1991 traffic would increase noise by DNL 5 dB or greater above DNL 45 dB for 1.45 million people. Approximately 45,622 individuals would experience a reduction in noise by DNL 5 dB or greater above DNL 45 dB. It would also increase noise by 1.5 dB within the 65 DNL contour in one small area of Holgate, New Jersey. The latter impact on Holgate appears to result solely from the assumptions used to reconstruct and model this alternative.

2. Alternatives C2 and D3, Nighttime Use of Ocean Routing and Spreading

Nighttime Use of Ocean Routing and Spreading would provide marginal noise relief. Nighttime Ocean Routing would increase noise by DNL 5 dB or greater above DNL 45 dB for about 4,349 people and would not decrease noise by a similar amount, while the Spreading alternative would neither increase nor decrease noise impacts by DNL 5 dB or greater above DNL 45 dB. Both the Nighttime Ocean Routing and Spreading alternatives have potential impacts outside of New Jersey.

3. Solberg Mitigation Proposal

The Solberg Mitigation Proposal described below under the section "Mitigation" would reduce noise by DNL 5 dB or greater above DNL 45 dB for approximately 18,755 residents of the Scotch Plains and Fanwood areas of Union County. This is one of the five areas that experienced noise increases of DNL 5 dB or greater above DNL 45 dB as a result of implementing the EECP. No increases by DNL 5 dB or greater above DNL 45 dB would occur in the study area. The Solberg Mitigation Proposal would allow for unrestricted climb by Newark westbound departures and would only shift, not lower, potentially conflicting arrivals to LaGuardia, 10 miles to the south.

Mitigation Measures

Opportunities for mitigation were explored although the levels of noise increase and exposure resulting from implementation of the EECP and its alternatives, with the exception of one area affected by Alternative B, are well below the established thresholds at which FAA considers compatible for residential land uses. The Solberg mitigation measure would realign westbound departure routes from Newark International Airport to the Solberg navigational aid in Readington, New Jersey. It would reduce the noise impacts in the Scotch Plains and Fanwood areas of Union County, areas that experienced increased noise as a result of implementation of the EECP.

The Solberg mitigation measure and mitigation measures considered, but not retained for detailed study, are discussed in detail in Chapter 6 of the FEIS.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Marx, Program Manager, ATM–700, Federal Aviation Administration, 800 Independence Avenue, Washington, D.C. 20591.

Any person may obtain a copy of the executive summary of the FEIS or the entire FEIS by submitting a request to the FAA contact identified above. Copies of the comments on the DEIS and SDEIS are available for review in the FAA Docket, Numbers 26987 and 27649, also at the above address. Appendix A of the FEIS contains responses to public comments.

The FEIS will also be available for review at the following public libraries:

Teaneck Public Library, 840 Teaneck Road, Teaneck, NJ 07868
Newark Public Library, 5 Washington Street, P.O. Box 630, Newark, NJ 01701–0830
Parsippany-Troy Hills Free Public Library, P.O. Box 5303, Parsippany, NJ 07054
Piscataway Township Free Public Library, John F. Kennedy Memorial Library, 500 Hoes Lane, Piscataway, NJ 08854
Cherry Hill Free Public Library, 100 Kings Highway North, Cherry Hill, NJ 08034
Jersey City Public Library, 472 Jersey Ave., Jersey City, NJ 07302–3499, Attn: Directors Office
Staten Island, New York Public Library, St. George Library Center, 5 Central Place, Staten Island, NY 10301

Camden Free Public Library, 616 Broadway, Camden, NJ 08103
Vineland Free Public Library, 1058 E. Landis Ave., Vineland, NJ 08360
Middletown Township Public Library, 55 New Monmouth Road, Middletown, NJ 07748
Free Public Library of the City of Trenton, 120 Academy Street, Trenton, NJ 08607–2448
Ridgewood Public Library, 125 North Maple Ave., Ridgewood, NJ 07450–3288
Free Public Library of Woodbridge, George Frederick Plaza, Woodbridge, NJ 07195, Attn: Reference Desk
Elizabeth Public Library, 11 S. Broad Street, Elizabeth, NJ 07201
Paterson Free Public Library, Danforth Memorial Library, 250 Broadway, Paterson, NJ 07501
Cranford Public Library, 224 Walnut Ave., Cranford, NJ 07016
Rochelle Park Public Library, 405 Rochelle Ave., Rochelle Park, NJ 07882
Runnemede Public Library, Broadway & Black Horse Pike, P.O. Box 119, Runnemede, NJ 08078
Tinton Falls Public Library, 684 Tinton Ave., Tinton Falls, NJ 07724
New Jersey State Library, Department of Education, 185 W. State Street, Trenton, NJ 08825–0520
Joint Free Public Library of Morristown and Morris Township, 1 Miller Road, Morristown, NJ 07960
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Sussex County Library, RD–3, Box 170, Route 655, Homestead Road, Newton, NJ 07860
Warren County Library, Court House Annex, Belevedre, NJ 07823, Attn: Reference Day Dept.
Atlantic city Library, 1 North Tennessee Ave., Atlantic City, NJ 08401
Gloucester County Library, 200 Holly Dell Drive, Sewell, NJ 08080
Somerset County Library, P.O. Box 6700, Bridgewater, NJ 08807
Salem Library, Broadway, Salem, NJ 09079
Burlington County Library, 1257 Westwoodlane Road, Mt. Holly, NJ 08060

Comment Period: Although the Council on Environmental Quality regulations do not provide for a formal comment period after issuance of a FEIS, due to the technical complexity of issues raised and to maximize public participation FAA is soliciting comments on the FEIS for a period of 45 days. These comments will be considered by the decision maker in determining FAA's course of action and issuing the Record of Decision. The opportunity to comment will extend from July 28, until September 11, 1995.

Written comments on the FEIS should be received at the following address, in triplicate, by September 11, 1995: Headquarters Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 28241, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be delivered or inspected at Room 915G in FAA headquarters between 8:30 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays. Late-filed comments will be considered to the extent practicable.

Issued in Washington, DC on July 28, 1995.

James H. Washington,

Deputy Director of Air Traffic.

[FR Doc. 95–18730 Filed 7–28–95; 8:45 am]

BILLING CODE 4910–13–M

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Part IV

The President

Proclamation 6813—To Amend the Generalized System of Preferences

Notice of July 28, 1995—Continuation of Iraqi Emergency

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Presidential Documents

Title 3—

The President

Proclamation 6813 of July 28, 1995

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to section 504(c) of the Trade Act of 1974, as amended ("Trade Act")(19 U.S.C. 2464(c)), beneficiary developing countries are subject to limitations on the preferential treatment afforded under the Generalized System of Preferences (GSP). Pursuant to section 504(c)(3) of the Trade Act, the President may waive the application of section 504(c) of the Trade Act after receiving the advice of the International Trade Commission, determining that the waiver is in the national economic interest of the United States, and publishing such determination in the **Federal Register**. Pursuant to section 504(c)(5) of the Trade Act, a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) of the Trade Act during the preceding calendar year. Pursuant to section 504(d)(2) of the Trade Act (19 U.S.C. 2464(d)(2)), the President may disregard the limitations provided in section 504(c)(1)(B) of the Trade Act with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount that bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

2. Section 502(b)(7) of the Trade Act (19 U.S.C. 2462(b)(7)) provides that a country that has not taken or is not taking steps to afford workers in that country internationally recognized worker rights, as defined in section 502(a)(4) of the Trade Act (19 U.S.C. 2462(a)(4)), is ineligible for designation as a beneficiary developing country for purposes of the GSP. Section 502(c)(7) of the Trade Act (19 U.S.C. 2462(c)(7)) provides that, in determining whether to designate a country as a beneficiary developing country under the GSP, the President shall take into account whether the country has taken or is taking steps to afford internationally recognized worker rights to workers in that country. Section 504 of the Trade Act (19 U.S.C. 2464) authorizes the President to withdraw, suspend, or limit the application of duty-free treatment under the GSP with respect to any country after considering the factors set forth in sections 501 and 502(c) of the Trade Act (19 U.S.C. 2461 and 2462(c)).

3. Pursuant to section 504(c)(3) of the Trade Act, I have determined that it is appropriate to waive the application of section 504(c) of the Trade Act with respect to certain eligible articles from a beneficiary developing country. I have received the advice of the International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers and I have determined, based on that advice and the considerations described in sections 501 and 502(c) of the Trade Act, that such waivers are in the national economic interest of the United States. Pursuant to section 504(c)(5) of the Trade Act, I have determined that a country should be redesignated as a beneficiary developing country with respect to certain eligible articles. Pursuant to section 504(d)(2) of

the Trade Act, I have determined that section 504(c)(1)(B) of the Trade Act should not apply with respect to certain eligible articles.

4. Pursuant to sections 502(b)(7), 502(c)(7), and 504 of the Trade Act, I have determined that Maldives has not taken and is not taking steps to afford internationally recognized worker rights to workers in Maldives. Accordingly, I have determined that it is appropriate to suspend the designation of Maldives as a beneficiary developing country for purposes of the GSP.

5. Pursuant to sections 501 and 502 of the Trade Act, and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Moldova as a beneficiary developing country for purposes of the GSP.

6. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 501, 502, 504, and 604 of the Trade Act, do proclaim that:

(1) In order to restore preferential tariff treatment under the GSP to a country that has been excluded from the benefits of the GSP for certain eligible articles, the Rates of Duty 1–Special subcolumn for HTS subheadings 0713.31.40, 1102.30.00, 1103.14.00, 4104.39.20, 7113.11.50, 7113.20.50, 9401.40.00, 9401.61.60, 9401.69.80, 9403.30.80, 9403.40.90, and 9403.50.90 are modified by deleting the symbol "A*" in parentheses, and by inserting the symbol "A" in lieu thereof.

(2) In order to provide that a country that has not been treated as a beneficiary developing country with respect to certain eligible articles should be restored as a beneficiary developing country with respect to such articles for purposes of the GSP, general note 4(d) to the HTS is modified by deleting the following from such note: "0713.31.40 Thailand", "1102.30.00 Thailand", "1103.14.00 Thailand", "4104.39.20 Thailand", "7113.11.50 Thailand", "7113.20.50 Thailand", "9401.40.00 Thailand", "9401.61.60 Thailand", "9401.69.80 Thailand", "9403.30.80 Thailand", "9403.40.90 Thailand", and "9403.50.90 Thailand".

(3)(a) The waivers of the application of section 504(c) of the Trade Act shall apply to imports of eligible articles from Thailand that are provided for in HTS subheadings 6702.90.65, 7113.11.20, 7113.19.50, and 9403.60.80.

(b) In order to restore preferential tariff treatment: (i) the Rates of Duty 1–Special subcolumn for HTS subheadings 6702.90.65, 7113.11.20, and 9403.60.80 are modified by deleting the symbol "A*" in parentheses, and by inserting the symbol "A" in lieu thereof; (ii) general note 4(d) is modified by deleting the following from such note: "6702.90.65 Thailand", "7113.11.20 Thailand", and "9403.60.80 Thailand"; and (iii) general note 4(d) is modified by deleting "Thailand" set out opposite 7113.19.50.

(4) General note 4 to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by: (a) deleting "Maldives" from the list of independent countries in general note 4(a), and deleting "Maldives" from the list of least-developed beneficiary developing countries in general note 4(b); and

(b) inserting "Moldova" in alphabetical order in the list of independent countries in general note 4(a).

(5) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(6)(a) The modifications to the HTS made by paragraphs (1) and (2) shall be effective July 31, 1995.

(b) The United States Trade Representative shall issue a notice in the **Federal Register** announcing when the modifications to the HTS made by paragraph (3)(b) shall be effective.

(c) The modifications to the HTS made by paragraph (4)(a) shall be effective 60 days after the date of publication of this proclamation in the **Federal Register**.

(d) The modification to the HTS made by paragraph (4)(b) shall be effective with respect to articles that are: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of July, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–18923
Filed 7–28–95; 10:36 am]
Billing code 3195–01–P

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Presidential Documents

Notice of July 28, 1995

Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order No. 12722, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders Nos. 12722 of August 2, 1990, and 12724 of August 9, 1990, the President imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to the United States interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1995. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
July 28, 1995.

[FR Doc. 95–18924
Filed 7–28–95; 10:37 am]
Billing code 3195–01–P

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H.R. 1944/P.L. 104–19

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

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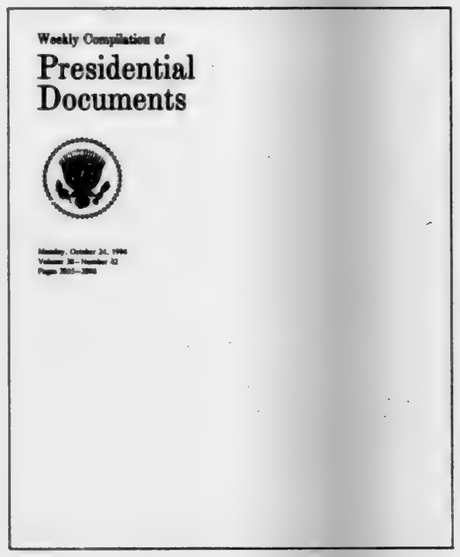
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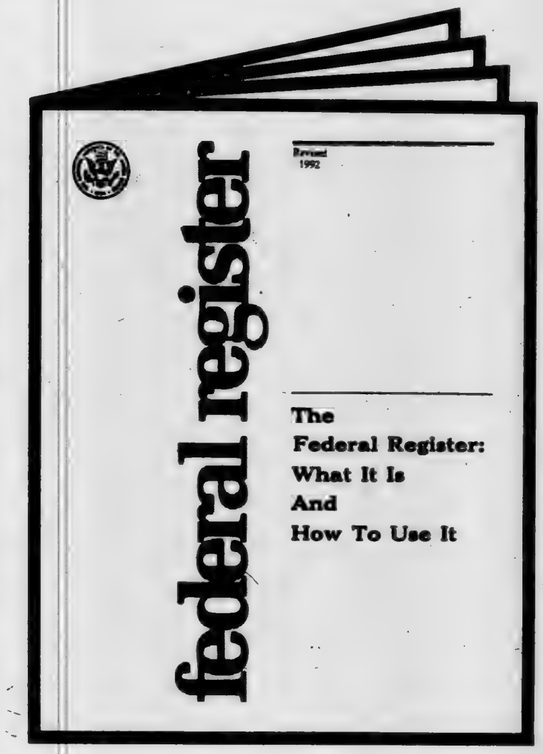
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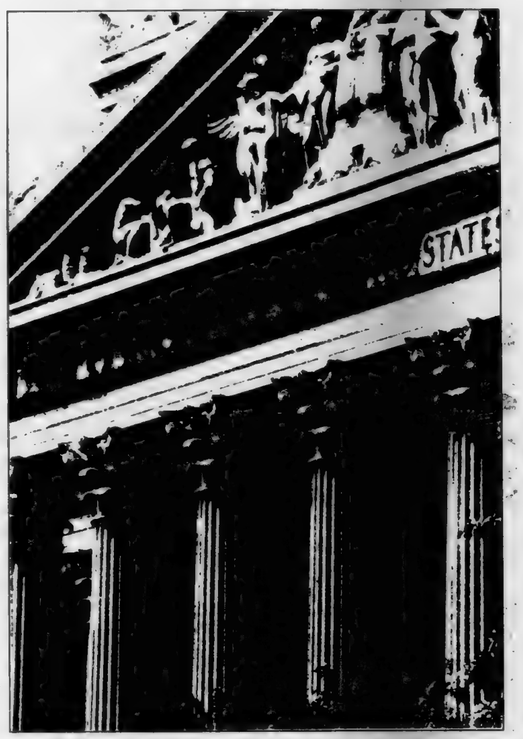
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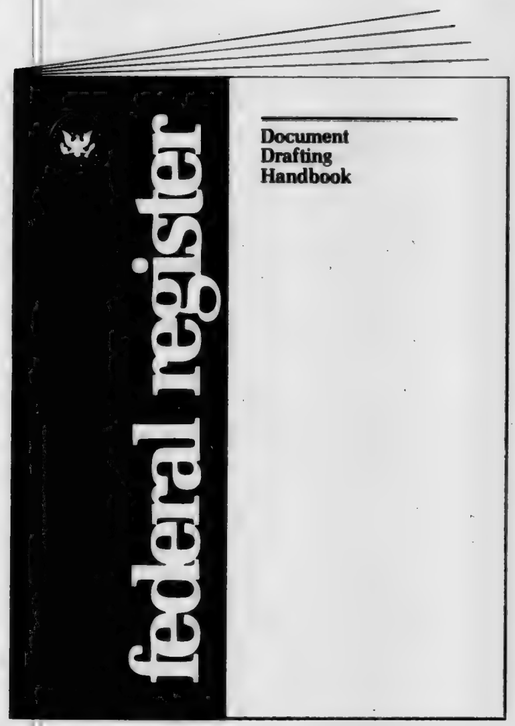
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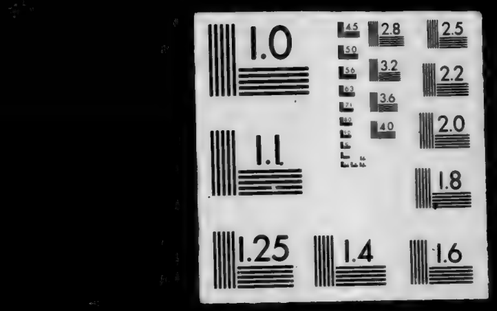
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federal register

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206–AG 62

Bringing Nonpermanent Excepted Positions Into the Competitive Service

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations governing retention of employees whose excepted positions are brought into the competitive service to permit the employees to receive term appointments if their excepted appointments had time limits longer than 1 year. This will avoid hardship to the employees, who could otherwise be retained only as temporary employees without benefits.

EFFECTIVE DATE: August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 606–0830, or fax (202) 606–0390.

SUPPLEMENTARY INFORMATION: Civil Service Rule III (5 CFR 3.1) authorizes OPM to prescribe conditions under which "a person who occupies a permanent position when it is placed in the competitive service * * * or is otherwise made subject to competitive examination" may acquire a competitive status. OPM's regulations implementing this authority are found in 5 CFR 315.701, 316.701, and 316.702.

Currently, those regulations permit nonpermanent employees whose positions are brought into the competitive service to be retained only under temporary appointments limited to 1 year or less. However, some nonpermanent excepted appointments are more comparable to term appointments, i.e., they are made for periods longer than 1 year and confer eligibility for within-grade increases, promotions and reassignments, and retirement and insurance benefits.

On April 7, 1995 (60 FR 17655), we proposed regulations to permit employees holding such appointments to receive noncompetitive term appointments if their positions are brought into the competitive service. We received no substantive comments on the proposed regulations and are adopting them as final regulations with no change. The regulations also make editorial changes and remove obsolete references to the Federal Personnel Manual.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

List of Subjects in 5 CFR Part 316

Government employees.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 316 as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, and E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

2. In § 316.701, paragraph (c) is revised to read as follows:

§ 316.701 Public or private enterprise taken over by the Government.

* * * * *

(c) An agency may retain an employee under paragraph (a) of this section in a position that it determines is noncontinuing under a temporary appointment. That appointment may be made for a period not to exceed 1 year and will be subject to the time limits set out in § 316.402.

3. In § 316.702, paragraphs (b)(1) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 316.702 Excepted positions brought into the competitive service.

* * * * *

(b)(1) When an agency retains an employee under paragraph (a) of this section who was serving in an excepted position under an indefinite appointment or an appointment without time limit, the agency may convert that employee's appointment to career or career-conditional under § 315–701.

* * * * *

(c) An employee who was serving under an excepted appointment limited to 1 year or less may be retained as a temporary employee under paragraph (a) of this section until the scheduled expiration date of the employee's excepted appointment. Extension of the employee's temporary appointment beyond that date will be subject to the provisions of § 316.402.

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The appointment will be subject to all conditions generally applicable to term appointments and may be extended up to the maximum limit for term appointments established under § 316.301. Service under the employee's excepted appointment counts against the maximum limit for the term appointment.

[FR Doc. 95–18709 Filed 7–31–95; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 94–069–2]

Unshu Oranges From the Republic of Korea

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation and interstate movement of citrus fruit to allow, under certain conditions,

Unshu oranges grown in citrus-canker free zones on Cheju Island, Republic of Korea, to be imported into the United States and moved interstate. This action relieves restrictions on the importation into and distribution within the United States of Unshu oranges from Cheju Island, Republic of Korea, without presenting a significant risk of spreading citrus canker.

EFFECTIVE DATE: July 24, 1995.

FURTHER INFORMATION CONTACT: Mr. Peter Grosser or Mr. Frank Cooper, Senior Operations Officers, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a disease that affects citrus, and is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The strain of citrus canker that occurs in the Republic of Korea infects the twigs, leaves, and fruit of a wide spectrum of *Citrus* species.

The regulations in 7 CFR 319.28 (referred to below as the regulations) prohibit the importation of citrus from Eastern and Southeastern Asia, Japan, Brazil, Paraguay, and other designated areas, except for Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma) grown in citrus canker-free areas in Japan. After meeting certain growing, packing, and inspection requirements, Japanese Unshu oranges may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States. Also, under the regulations in 7 CFR 301.83, Unshu oranges grown in Japan are prohibited from being moved interstate from any quarantined area into or through any nonquarantined area of the United States; all areas of the United States, except for American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States, are quarantined.

On March 29, 1995, we published in the **Federal Register** (60 FR 16067–16069, Docket No. 94–069–1) a proposal to amend the regulations by allowing the importation of Unshu oranges from Cheju Island, Republic of Korea, under the same conditions that apply to Unshu oranges grown in Japan. We proposed to allow these importations at the request of the Ministry of Agriculture, Forestry and Fisheries of the Republic of Korea, and after the Animal and Plant Health Inspection Service (APHIS) conducted pest risk assessments that indicated that Unshu oranges from Cheju Island, Republic of Korea, could be imported into the United States under the conditions proposed without significant plant pest risk. Copies of the pest risk assessments are available, upon written request, from the person listed under **FOR FURTHER INFORMATION CONTACT.**

We solicited comments concerning our proposal for 30 days ending April 28, 1995. We received three comments by that date. They were from a state department of agriculture and two industry groups. One comment supported the proposal as written. Two commenters were both concerned with the potential pest risk and the replacement of plant pathologists with plant protection officers. The comments are discussed below by topic.

Pest Risk

Two commenters expressed concerns that the pest risk review was inadequate. They both felt that too much emphasis was placed on comparisons to Japan and the implied similarity in the growing areas. One commenter agreed that our experience with Japan showed a minimal threat from the importation of Unshu Oranges from Japan. However, that commenter was concerned about the lack of experience that we have with the Republic of Korea and recommended that we should only permit Unshu oranges from the Republic of Korea to be imported into greatly restricted areas of the United States, as was done many years ago for Unshu oranges from Japan. The other commenter was concerned about the occurrence of citrus canker on Cheju Island, Republic of Korea. Both commenters were concerned about the interception of black spot on Unshu oranges from the Republic of Korea.

The regulations in 7 CFR 319.28(b) detail extensive safeguards on the growing, packing, and inspection of Unshu oranges exported from Japan into the United States. These safeguards also will apply to Unshu oranges imported from the Republic of Korea. Recent pest risk assessments for Unshu oranges from Japan and the Republic of Korea have shown that these safeguards will prevent the introduction of citrus canker and other citrus diseases from Unshu oranges imported into the United States from both Japan and Cheju Island, Republic of Korea.

Our recommendation to permit entry under specified conditions was based on literature surveys for plant pests, the pest list provided by Korea, records of pest interceptions at U.S. ports, surveys conducted by Korea, and two on-site surveys conducted by APHIS. We also used our experience with the success of the safeguards used in Japan. We reviewed the evidence gathered from the sources mentioned above to determine what pests we might encounter. Although, citrus canker does occur in the Republic of Korea, one of our requirements is that the Unshu oranges must be grown and packed in canker-free export areas. These export areas must also be surrounded by a 400-meter-wide canker-free buffer zone in which only certain varieties of citrus may be grown. These safeguards, combined with required inspections, sterilizations, and other precautions, are sufficient to ensure the Unshu oranges are canker-free.

The comment about black spot of citrus disease referred to interceptions of black spot on Unshu oranges from the Republic of Korea. Citrus fruit from the Republic of Korea has been prohibited entry into the United States, therefore, we have no interception records of black spot from export quality fruit. Interceptions of fruit with black spot, referred to by the commenter, were from baggage and therefore may or may not have been on fruit produced in the Republic of Korea. Evidence of the occurrence of black spot in the Republic of Korea is inconclusive. Quarantine officials from the National Plant Quarantine Service of the Republic of Korea have stated that the disease has not been detected in their surveys. However, even if black spot is present in the Republic of Korea, we have determined that the safeguards provided for in the regulations will prevent the introduction of citrus-canker and other citrus diseases such as black spot into the United States from Unshu oranges from the Republic of Korea. Therefore, we are not making any changes based on this comment.

One commenter was concerned that no workplan was available to verify the Republic of Korea's ability to comply with the requirements for certification.

A workplan is an agreement that identifies both countries' responsibilities for preclearance programs. Workplans for the importation into the United States of fruits and vegetables under preclearance programs are implemented prior to commencement of a preclearance program. These workplans are not drafted or evaluated until a proposed rule has been published in the **Federal Register**. A workplan between APHIS and the Republic of Korea's plant protection services has been agreed to and will be implemented soon. Therefore, we are not making any changes based on this comment.

Plant Protection Officers

Two commenters were concerned about the replacement of plant pathologists with plant protection officers. They felt that the required inspections should continue to be performed by qualified plant pathologists. One commenter believed that plant protection officers might accurately identify canker symptoms, but that only trained plant pathologists could detect the incidence of other diseases, such as black spot, on fruit presented for inspection. It is our experience that plant protection officers can be trained to detect these diseases in the field, and that requiring plant pathologists to inspect the fruit is unnecessary.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Unshu oranges from Korea will begin soon. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities.

This final rule allows Unshu oranges grown on Cheju Island, Republic of Korea, to be imported into and through 45 States after meeting certain requirements.

Unshu oranges are imported for a small market in the United States and sell for two to three times the price of the domestically grown Satsuma tangerines, a citrus fruit similar to the Unshu orange. Imported Unshu oranges are available for only a short period each year, from early November into mid-January.

In the 1992–93 growing season, domestic producers grew approximately 362 million pounds of tangerines in Arizona, California, and Florida. We estimate annual domestic production of Satsuma tangerines to be about 1.9 million pounds, 0.52 percent of total domestic tangerine production.

We anticipate that following the promulgation of this rule, the Republic of Korea initially could export about 1.1 million pounds of Unshu oranges to the United States and increase this amount to around 3.3 to 4.4 million pounds within a few years. While 4.4 million pounds of imported Unshu oranges from the Republic of Korea would only amount to 1.2 percent of the total domestic tangerine production, it would constitute over twice the annual domestic production of Satsuma tangerines. Again, however, these imported Unshu oranges could cost up to three times as much as domestically produced Satsuma tangerines.

The aggregate economic impact of this rule is expected to be positive. U.S. consumers will benefit from a greater availability of Unshu oranges. U.S. importers will also benefit from a greater availability of Unshu oranges to import.

In the course of rulemaking, if we had come across evidence indicating that importation of Unshu oranges from the Republic of Korea would pose a significant risk of plant pest introduction, we would have considered either developing alternative requirements regarding that importation or continuing to prohibit the importation of Unshu oranges from the Republic of Korea. However, our pest risk assessments and our review of public comments on the proposal indicated that importation of Unshu oranges from the Republic of Korea would pose no significant risk of plant pest introduction.

Executive Order 12778

This rule allows Unshu oranges to be imported into the United States from Cheju Island, Republic of Korea. State and local laws and regulations regarding Unshu oranges imported under this rule will be preempted while the fruit is in foreign commerce. Fresh Unshu oranges are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule; and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 are amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.83 [Amended]

2. In § 301.83, paragraph (a) is amended by adding the phrase "or on Cheju Island, Republic of Korea," immediately following "Japan".

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.28 [Amended]

4. Section 319.28 is amended as follows:

a. Paragraph (a)(1) is amended by adding the phrase "the Republic of Korea," immediately following the phrase "Japan and adjacent islands,".

b. In paragraph (b), the introductory text is amended by adding the phrase "or on Cheju Island, Republic of Korea," immediately following "Japan".

c. In paragraph (b)(1), the first sentence is amended by removing the phrase "Japanese Plant Protection

Service" and adding the phrase "plant protection service of the country of origin" in its place; and in the third and sixth sentences, the word "pathologists" is removed and the phrase "protection officers" is added in its place and the word "Japan" is removed and the phrase "the country of origin" is added in its place.

d. Paragraph (b)(2) is amended by removing the word "pathologists" and adding the phrase "protection officers" in its place and by removing the word "Japan" and adding the phrase "the country of origin" in its place.

e. Paragraph (b)(4)(ii) is amended by removing the phrase "Japanese Plant Protection Service" and adding the phrase "plant protection service of the country of origin" in its place.

f. Paragraph (b)(7) is removed.

g. In paragraph (f), the word "Japan" is removed and the phrase "the country of origin of the Unshu oranges" is added in its place.

Done in Washington, DC, this 24th day of July 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–18778 Filed 7–31–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV95–922–2IFR]

Expenses for the 1995–96 Fiscal Year for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses for the 1995–96 fiscal year for Marketing Orders (M.O.) No.'s 922 and 923, covering apricots and sweet cherries grown in designated counties in Washington, and M.O. No. 924 covering fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization of these budgets enables the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Marketing Committee (Committees) established under these marketing orders to incur expenses that are reasonable and necessary to administer the programs. Funds to administer the programs are derived from assessments on handlers.

DATES: Effective beginning April 1, 1995, through March 31, 1996. Comments must be received by August 31, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456; or by FAX: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW., Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreements and Marketing Order No. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action authorizes expenses for the 1995–96 fiscal period which began April 1, 1995, through March 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 55 handlers of Washington apricots, 55 handlers of Washington sweet cherries, and 30 handlers of Washington-Oregon fresh prunes subject to regulation under their respective marketing orders. In addition, there are about 190 Washington apricot producers, 1,100 Washington sweet cherry producers, and 350 Washington-Oregon fresh prune producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

An annual budget of expenses is prepared by each marketing order committee and submitted to the Department for approval. The members of the Committees are handlers and producers of the regulated commodities. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Washington Apricot Marketing Committee met on May 25, 1995, and unanimously recommended 1995–96 expenses of $9,594, which is $4,008 less in expenses than the $13,602 amount that was recommended for the 1994–95 fiscal year.

Shipments of fresh apricots for the current fiscal year are estimated at 5,150 tons. Funds in the reserve, estimated at $16,798, will be adequate to cover the recommended expense amount.

The Washington Cherry Marketing Committee also met on March 25, 1995, and unanimously recommended 1995–96 expenses of $55,393. This represents a decrease of $44,820 from the $100,213 recommended for the previous fiscal year.

The Committee anticipates shipments of 41,000 tons of fresh sweet cherries. Funds in the reserve, estimated at $112,995, will be adequate to cover budgeted expenses.

The Washington-Oregon Fresh Prune Marketing Committee also met on March 25, 1995, and unanimously recommended a 1995–96 expense amount of $10,018. In comparison, this represents a decrease of $8,742 in expenses from the $18,760 that was recommended for 1994–95 fiscal year.

Shipments of fresh prunes for the current fiscal year are estimated at 4,900 tons. Funds in the reserve, estimated at $16,204, will adequately cover recommended expenses.

Each Committee unanimously voted against having assessment rates for their respective programs for the 1995–96 fiscal year. In comparison, assessment rates for the 1994–95 fiscal year were $0.50 per ton for fresh apricots, $1.00 per ton for sweet cherries, and $1.00 per ton for fresh prunes.

Major expense categories for the Committees are for the administration of these marketing orders. Administrative expenses include $43,000 for salaries, $2,700 for travel, and $15,600 for office operations. The stone fruit marketing Committees share office expenses, based on an agreement among the Committees.

Since no assessment rates are being recommended at this time, no additional costs will be imposed on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including information and recommendations submitted by the Committees and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1995–96 fiscal year for the Committees began April 1, 1995, and the Committees need to have approval to pay their respective expenses which are incurred on a continuous basis; (2) this action is similar to previously recommended budgets; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are amended as follows:

1. The authority citation for 7 CFR parts 922, 923, and 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the Code of Federal Regulations.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new § 922.234 is added to read as follows:

§ 922.234 Expenses and assessment rate.

Expenses of $9,594 by the Washington Apricot Marketing Committee are authorized for the fiscal year ending March 31, 1996. Any unexpended funds may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new § 923.235 is added to read as follows:

§ 923.235 Expenses and assessment rate.

Expenses of $55,393 by the Washington Cherry Marketing Committee are authorized for the fiscal year ending March 31, 1996. Any unexpended funds may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

4. A new § 924.235 is added to read as follows:

§ 924.235 Expenses and assessment rate.

Expenses of $10,018 by the Washington-Oregon Fresh Prune Marketing Committee are authorize for the fiscal year ending March 31, 1996. Any unexpended funds may be carried over as a reserve.

Dated: July 26, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–18787 Filed 7–31–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 948

[Docket No. FV95–948–1FIR]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Colorado potatoes are subject to assessments. Funds to administer the Colorado potato marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period, which began July 1, 1995, and ends June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 producers of Colorado Area III potatoes under the marketing order and approximately 15 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Colorado Area III potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area III potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area III potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on April 13, 1995, and unanimously recommended a 1995–96 budget of $27,362.50, $3,037.50 more than the previous year. Budget items for the 1995–96 Federal portion of the administrative budget which have increased compared to those budgeted for 1994–95 (in parentheses) are: Audit, $450 ($400), medical insurance, $685 ($620), office equipment, $4,500 ($2,000), payroll tax, $902.50 ($880), Federal meetings, $500 ($400), and $300 for other salary for which no funding was recommended last year.

The Committee also unanimously recommended an assessment rate of $0.02 per hundredweight, the same as last season. This rate, when applied to anticipated potato shipments of 1,200,500 hundredweight, will yield $24,010 in assessment income. This, along with $1,500 in interest income, $1,200 in rent from the sublease of office space to the State inspection service, and $652.50 from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1995–96 fiscal period, estimated at $35,195, will be within the maximum permitted by the order of two fiscal periods' expenses.

An interim final rule was published in the **Federal Register** on May 31, 1995 (60 FR 28318). That interim final rule added § 948.213 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through June 30, 1995. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on July 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

Note: This section will not appear in the Code of Federal Regulations.

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim final rule adding § 948.213 which was published at 60 FR 28318, May 31, 1995, is adopted as a final rule without change.

Dated: July 26, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–18786 Filed 7–31–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 993

[Docket No. FV95–993–1IFR]

Dried Prunes Produced in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 993 for the 1995–96 crop year. Authorization of this budget enables the Prune Marketing Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1995, through July 31, 1996. Comments received by August 31, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California prunes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable prunes handled during the 1995–96 crop year, which begins August 1, 1995, and ends July 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,360 producers of California dried prunes under this marketing order, and approximately 20 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California dried prune producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 crop year was prepared by the Prune Marketing Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of dried California prunes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 22, 1995, and unanimously recommended a 1995–96 budget of $275,280, $5,080 more than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Executive salaries, $87,980 ($83,850), clerical salaries, $19,440 ($18,650), office rent, $22,000 ($21,500), postage and messenger, $5,500 ($5,000), rental of equipment, $3,000 ($500), purchase of equipment, $5,000 ($4,500), acreage survey, $10,500 ($10,000), and reserve for contingencies, $19,310 ($19,250). Items which have decreased compared to the amount budgeted for 1994–95 (in parentheses) are: Employee benefits $15,400

($15,800), repairs and maintenance, $3,000 ($4,000), stationary and printing, $4,000 ($6,500), and Committee travel, $9,000 ($9,500). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $1.55 per salable ton, $0.05 less than the previous year. This rate, when applied to anticipated shipments of 177,600 salable tons, will yield $275,280 in assessment income, which will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

While this action will impose some additional cost on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the crop year begins on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable California prunes handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 993.346 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 993.346 Expenses and assessment rate.

Expenses of $275,280 by the Prune Marketing Committee are authorized, and an assessment rate of $1.55 per salable ton of dried prunes is established for the crop year ending July 31, 1996. Unexpended funds may be carried over as a reserve within the limitations specified in § 993.81(c).

Date: July 26, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–18788 Filed 7–31–95; 8:45 am]

BILLING CODE 3410–02–P–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 132

[T.D. 95–58]

RIN 1515–AB73

Export Certificates for Beef Subject to Tariff-Rate Quota

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis in order to set forth the form and manner by which an importer makes a declaration that a valid export certificate is in effect for imported beef which is the subject of a tariff-rate quota and the product of a participating country, as defined in interim regulations of the United States Trade Representative.

DATES: Interim rule effective August 1, 1995; comments must be received on or before October 2, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Cooper, Quota Branch, (202) 927–5401.

SUPPLEMENTARY INFORMATION:

Background

As a result of the Uruguay Round Agreements, approved by Congress in section 101 of the Uruguay Round Agreements Act (Pub. L. 103–465), the President, by Presidential Proclamation No. 6763, established a tariff-rate quota for imported beef.

Briefly, under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota tariff rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota tariff rate, to imports of the product in excess of the given amount. Of course, the preferential, in-quota tariff rate would be applicable only to the extent that the in-quota quantity for the country involved had not been exceeded.

The specific imported beef, as well as the various countries, eligible for the in-quota tariff rate are set forth in Additional U.S. Note 3, Schedule XX, Chapter 2, of the Harmonized Tariff Schedule of the United States. The eligible countries which may export such beef to the United States and avail themselves of the preferential, in-quota tariff rate include Australia, New Zealand and Japan.

As part of the implementation of the tariff-rate quota for beef, the United States, specifically, the United States Trade Representative (USTR), is offering these exporting countries that have an allocation of the in-quota quantity the opportunity to use export certificates for their qualifying beef exports to the United States. Although countries that have an allocation of the in-quota quantity are referred to in the statutory law as "participating countries", for purposes of this interim rule, a participating country constitutes an allocated country that has been authorized to participate in the export certificate program. Notably, New Zealand has already requested the opportunity to participate in the export certificate program.

While a country does not need to participate in the export certificate program in order to receive the in-quota tariff rate for its share of the in-quota quantity, using export certificates provides an effective and expeditious means of assuring an exporting country that only those exports that it intends for the United States market are counted against its in-quota allocation, which helps ensure that such exports do not disrupt the orderly marketing of beef in the United States.

An exporting country using export certificates in this regard must notify the USTR and provide the necessary supporting information. Customs will then be responsible for ensuring that no imports of beef from that country are counted against the country's in-quota allocation unless such beef is covered by a proper export certificate.

Accordingly, the USTR has undertaken interim rulemaking in this matter (15 CFR part 2012) (60 FR 15229, March 23, 1995). In addition, along with the interim rulemaking of the USTR, Customs is issuing this interim rule in order to set forth the form and manner by which an importer declares that a valid export certificate exists, including a unique number therefor which must be referenced on the entry, or withdrawal from warehouse, for consumption. This interim rule also sets forth the record retention period for the certificate and requires the submission of such certificate to Customs upon request.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this interim rule because it is within the foreign affairs function of the United States. Furthermore, for the above reason, pursuant to 5 U.S.C. 553 (d)(1) and (d)(3), there is no need for a delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Russell Berger, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 132

Customs duties and inspection, Imports, Postal service, Quotas.

Amendment to the Regulations

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR ch. I), is amended as set forth below.

PART 132—QUOTAS

1. The general authority citation for part 132 continues to read as follows, and specific sectional authority for § 132.15 is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

§ 132.15 also issued under 19 U.S.C. 1484, 1508, and Schedule XX, HTSUS.

2. Part 132 is amended by adding a new § 132.15 to read as follows:

§ 132.15 Export certificate for beef subject to tariff-rate quota.

(a) *Requirement.* In order to claim the in-quota tariff rate of duty on beef, defined in 15 CFR 2012.2(a), that is the product of a participating country, defined in 15 CFR 2012.2(e), the importer must possess a valid export certificate at the time that such beef is entered, or withdrawn from warehouse for consumption. The importer shall record the unique identifying number of the export certificate on the entry summary or the warehouse withdrawal (CF 7501, column 34).

(b) *Validity of certificate.* The export certificate, to be valid, must meet the requirements of 15 CFR 2012.3(b), and with respect to the requirement of 15 CFR 2012.3(b)(3) that the certificate be distinct and uniquely identifiable, the certificate must have a distinct and unique identifying number composed of three elements set forth in the following order:

(1) The last digit of the year for which the export certificate is in effect;

(2) The 2-digit ISO country of origin code from Annex B of the HTSUS which identifies the participating country (see § 142.42(d) of this chapter); and

(3) Any 6-digit number issued by the participating country with respect to the export certificate.

(c) *Retention and submission of certificate to Customs.*

(1) *Retention.* The export certificate must be retained by the importer for a period of at least 5 years from the date of entry, or withdrawal from warehouse, for consumption (see § 162.1c of this chapter).

(2) *Submission to Customs.* The importer shall submit a copy of the export certificate to Customs upon request.

Approved: July 25, 1995.

George J. Weise,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–18814 Filed 7–31–95; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

26 CFR Part 31

[TD 8604]

RIN 1545–AS22

Liability of Third Parties Paying or Providing for Wages: Suit Period and Its Extension and Maximum Amount Recoverable

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the liability of lenders, sureties, or other third persons for withholding taxes when those persons have supplied funds, either directly to employees or to or for the account of an employer, for the specific purpose of paying wages of the employees of that employer. The final regulations affect third parties paying or providing for wages.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Walker, (202) 622–3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations contain changes to § 31.3505–1. Section 3505 of the Internal Revenue Code (Code) was added by section 105(a) of the Federal Tax Lien Act of 1966, Public Law 89–719 (1966). Treasury regulations were issued with an effective date of August

19, 1976 (TD 7430). Neither the Code section nor the regulations has been amended since enactment or issuance, respectively. The IRS published a notice of proposed rulemaking in the **Federal Register** on November 22, 1994, (59 FR 60099) providing proposed rules under section 3505 of the Code. No public comments were received and accordingly, the final regulations are identical to the proposed regulations.

Explanation of Provisions

Under section 3505(b), if a lender, surety, or other person (the lender) supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of that employer, and the lender has actual notice or knowledge (within the meaning of section 6323(i)(1)) that the employer does not intend or will not be able to make timely payment or deposit of the required withholding taxes, the lender shall be liable to the United States in a sum equal to the taxes (together with interest) that are not paid over to the United States by the employer with respect to those wages. The lender's liability for withholding taxes, in lieu of the employer, is limited to an amount equal to 25 percent of the amount of wages so supplied to or for the account of the employer. See section 3505(b) (final sentence).

Existing regulations provide that the 25-percent limitation applies only to the tax, and not the interest on that tax, with the result that the lender could be held liable for more than 25 percent of the amount of funds it supplied. The courts that have addressed this issue, however, have held that the 25-percent limitation on the amount of wages supplied by a third party is an absolute cap with respect to the recovery of withholding taxes and prejudgment interest. *United States* v. *Metro Constr. Co., Inc.*, 602 F.2d 879 (9th Cir. 1979); *United States* v. *Intercontinental Ind., Inc.*, 635 F.2d 1215 (6th Cir. 1980); *United States* v. *Hannan Co.*, 639 F.2d 284 (5th Cir. 1981); *Taubman* v. *United States*, 449 F. Supp. 520 (E.D. Mich. 1978). See also *O'Hare* v. *United States*, 878 F.2d 953 (6th Cir. 1989); *United States* v. *Security Pacific Business Credit, Inc.*, 956 F.2d 703 (7th Cir. 1992); *United States* v. *Vaccarella*, 735 F. Supp. 1421 (S.D. Ind. 1990).

These final regulations conform to judicial interpretation and clarify that interest will continue to be computed in addition to any withholding tax liability, but only to an overall maximum of 25 percent of the amount of the funds supplied by the lender.

The final regulations also change the period of limitations for collection of the withholding taxes and interest from six years to ten years. This revision will conform the period of limitations for the purposes of section 3505 with the general rule on limitations on collection. See section 6502, amended by the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, section 11317(a)(1) (1990).

Finally, § 31.3505–1(d)(3) has been added to provide for extensions of the period of limitation for collection because, on occasion, the IRS or the lender requires additional time for compliance with the regulation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Robert Walker, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 31.3505–1 [Amended]

Par. 2. Section 31.3505–1 is amended by:

1. Removing the phrase "for such taxes" from the second sentence of paragraph (b)(1).

2. Removing the phrase ", plus interest thereon" from the final sentence of paragraph (b)(2), *Example (1).*

3. Removing the phrase "for withholding taxes" from the fifth sentence of paragraph (b)(2), *Example (2).*

4. Removing the phrase "plus interest thereon" from the final sentence of paragraph (b)(2), *Example (2).*

5. Revising the final sentence of paragraph (d)(1).

6. Revising the final sentence of paragraph (d)(2)(iii).

7. Adding paragraphs (d)(3) and (g).

The additions and revisions read as follows:

§ 31.3505–1 Liability of third parties paying or providing for wages.

* * * * *

(d) * * *

(1) * * * In the event that the lender, surety, or other person does not satisfy the liability imposed by section 3505, the United States may collect the liability by appropriate civil proceedings commenced within 10 years after assessment of the tax against the employer.

* * * * *

(2) * * *

(iii) * * * Thus, after the second payment by the employer, the lender's liability under section 3505(b) is $75 ($250 less $175), plus interest due on the underpayment for the period of underpayment, to a maximum of $250, 25 percent of the funds supplied.

(3) *Extensions of the period for collection.* Prior to the expiration of the 10-year period for collection after assessment against the employer, the lender, surety, or other third party may agree in writing with the district director, service center director, or compliance center director to extend the 10-year period for collection. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. If any timely proceeding in court for the collection of the tax and any applicable interest is commenced, the period during which such tax and interest may be collected shall be extended and shall not expire until the liability for the tax (or a judgment against the lender, surety, or other third party arising from such liability) is satisfied or becomes unenforceable.

* * * * *

(g) *Effective date.* These regulations are effective on August 1, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 21, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–18625 Filed 7–31–95; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 111

Changes in Preferred Postage Rates—Second-Class Mail, Third-Class Mail, and Fourth-Class Library Rate Mail

AGENCY: Postal Service.

ACTION: Postage rate changes; Corrections.

SUMMARY: This document contains postage rate corrections to three of the several rate tables published in the **Federal Register** on July 5, 1995 (60 FR 34854–34856). As a customer convenience, the corrected tables are reprinted in this document along with the remaining tables published on that date.

EFFECTIVE DATE: The Board of Governors has directed that the changes pertaining to postage rates be implemented effective 12:01 a.m., Sunday, October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 268–5316.

In the rules beginning on page 34854 in the issue of Wednesday, July 5, 1995, make the following corrections:

On page 34855 in table 7.0, Special Bulk Third-Class Nonletter-Size Minimum Per-Piece Rates—Pieces 0.2149 Lb. (3.4383 Oz.) or Less, in the eleventh column titled 3/5–Digit Barcoded, the second row shown in the table was "0.130." This row should read "0.131."

On page 34856 in table 8.0, Special Bulk Third-Class Piece/Pound Rates—Pieces More Than 0.2149 Lb. (3.4383 Oz.), in the fourth column titled Carrier route, the second row shown in that table (continued from page 34855) was "0.38." This row should read "0.386."

On page 34856 in table 6.0, Library Rates, in the second column titled Single-piece rate, the ninth row through the seventieth row shown in the table began with "3.99" and ended with "16.19." These should read "4.00" and "16.81," respectively. All rates shown from 9 pounds through 70 pounds were incorrectly calculated with the accumulative addend of 20 cents. The correct accumulative addend is 21 cents.

Dated: July 27, 1995.

Stanley Mires,

Chief Counsel, Legislative.

BILLING CODE 7710–12–P

Changes in Preferred Postage Rates—Second-, Third-, and Fourth-Class Mail Effective October 1, 1995

Domestic Mail Manual

R—Rates and Fees

* * * * *

R200 Second-Class Mail

* * * * *

2.0 IN-COUNTY RATES

* * * * *

2.2 Piece Rates

Per addressed piece:

Level	Regular	ZIP+4 (Letter-Size)	Barcoded (Letter-Size)	ZIP+4 Barcoded (Flat-Size)
J1	$0.080	$0.080	$0.080	$0.080
J3	0.080	0.076	0.076	0.065
J5	0.080	0.076	0.063	0.065
K1	0.042	—	—	—
K2	0.037	—	—	—
K3	0.035	—	—	—

* * * * *

3.0 SPECIAL NONPROFIT RATES

3.1 Pound Rates

Pound rates are:

For the nonadvertising portion—$0.140 per pound or fraction.

* * * * *

3.2 Piece Rates

Per addressed piece:

Level	Regular	ZIP+4 (Letter-Size)	Barcoded (Letter-Size)	ZIP+4 Barcoded (Flat-Size)
G	$0.208	$0.200	$0.188	$0.181
H3	0.157	0.152	0.145	0.139
H5	0.157	0.152	0.137	0.139
I1	0.112	—	—	—
I2	0.110	—	—	—
I3	0.104	—	—	—

* * * * *

4.0 CLASSROOM RATES

* * * * *

4.2 Piece Rates

Per addressed piece:

Level	Regular	ZIP+4 (Letter-Size)	Barcoded (Letter-Size)	ZIP+4 Barcoded (Flat-Size)
G	$0.168	$0.161	$0.151	$0.145
H3	0.125	0.121	0.115	0.110
H5	0.125	0.121	0.108	0.110
I1	0.087	—	—	—
I2	0.085	—	—	—
I3	0.080	—	—	—

* * * * *

R300 Third-Class Mail

* * * * *

6.0 SPECIAL BULK THIRD-CLASS LETTER-SIZE MINIMUM PER-PIECE RATES—PIECES 0.2149 LB. (3.4383 OZ.) OR LESS

Entry Discount	Nonautomation Rates				Automation Rates				
	Basic	3/5	Carrier Route	Saturation W-S	Basic ZIP+4	3/5 ZIP+4	Basic Barcoded	3-Digit Barcoded	5-Digit Barcoded
None	$0.124	$0.111	$0.086	$0.083	$0.117	$0.107	$0.106	$0.101	$0.093
BMC	0.112	0.099	0.074	0.071	0.105	0.095	0.094	0.089	0.081
SCF	0.106	0.093	0.068	0.065	0.099	0.089	0.088	0.083	0.075
Delivery Unit	—	—	0.063	0.060	—	—	—	—	—

7.0 SPECIAL BULK THIRD-CLASS NONLETTER-SIZE MINIMUM PER-PIECE RATES—PIECES 0.2149 LB. (3.4383 OZ.) OR LESS

Entry Discount	Nonautomation Rates					Automation Rates				
	Basic	3/5	Carrier Route	125-Pc. W-S	Saturation W-S	Basic ZIP+4	3/5 ZIP+4	Basic Barcoded	3-Digit Barcoded	3/5-Digit Barcoded
None	$0.175	$0.161	$0.128	$0.126	$0.121	—	—	$0.149	—	$0.143
BMC	0.163	0.149	0.116	0.114	0.109	—	—	0.137	—	0.131
SCF	0.157	0.143	0.110	0.108	0.103	—	—	0.131	—	0.125
Delivery Unit	—	—	0.105	0.103	0.098	—	—	—	—	—

8.0 SPECIAL BULK THIRD-CLASS PIECE/POUND RATES—PIECES MORE THAN 0.2149 LB. (3.4383 OZ.)

Per Piece/ Pound	Nonautomation Rates					Automation Rates				
	Basic	3/5	Carrier Route	125-Pc. W-S	Saturation W-S	Basic ZIP+4	3/5 ZIP+4	Basic Barcoded	3-Digit Barcoded	3/5-Digit Barcoded
Per-Piece Rates (for all entry categories)	$0.074	$0.060	$0.027	$0.025	$0.020	—	—	$0.048	—	$0.042
			Plus					Plus		
Per-Pound Rates (by entry discount)										
None	$0.470	$0.470	$0.470	$0.470	$0.470	—	—	$0.470	—	$0.470
BMC	0.410	0.410	0.410	0.410	0.410	—	—	0.410	—	0.410
SCF	0.386	0.386	0.386	0.386	0.386	—	—	0.386	—	0.386
Delivery Unit	—	—	0.362	0.362	0.362	—	—	—	—	—

* * * * *

- 6 -

R400 Fourth-Class Mail

* * * * *

6.0 LIBRARY RATES

Weight Not Exceeding (pounds)	Single-Piece Rate
1	$1.12
2	1.53
3	1.94
4	2.35
5	2.76
6	3.17
7	3.58
8	3.79
9	4.00
10	4.21
11	4.42
12	4.63
13	4.84
14	5.05
15	5.26
16	5.47
17	5.68
18	5.89
19	6.10
20	6.31
21	6.52
22	6.73
23	6.94
24	7.15
25	7.36
26	7.57
27	7.78
28	7.99
29	8.20
30	8.41
31	8.62
32	8.83
33	9.04
34	9.25
35	9.46
36	$ 9.67
37	9.88
38	10.09
39	10.30
40	10.51
41	10.72
42	10.93
43	11.14
44	11.35
45	11.56
46	11.77
47	11.98
48	12.19
49	12.40
50	12.61
51	12.82
52	13.03
53	13.24
54	13.45
55	13.66
56	13.87
57	14.08
58	14.29
59	14.50
60	14.71
61	14.92
62	15.13
63	15.34
64	15.55
65	15.76
66	15.97
67	16.18
68	16.39
69	16.60
70	16.81

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[FR Doc. 95–18847 Filed 7–31–95; 8:45 am]
BILLING CODE 7710–12–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH50–5–7072, FRL–5258–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 2, 1995, the United States Environmental Protection Agency (USEPA) published a proposed and direct final rulemaking notice to approve the ozone redesignation request and associated section 175A maintenance plan for Toledo, Ohio under the Clean Air Act. The 30-day comment period for these notices concluded on June 1, 1995. Four comment letters were received in response to the May 2, 1995 proposal, and included adverse comments and a request to extend the comment period. The USEPA withdrew the direct final rulemaking but denied the request to extend the public comment period. This final rule summarizes all adverse comments and USEPA's responses, and finalizes the approval of the redesignation to attainment of the National Ambient Air Quality Standard for ozone and section 175A maintenance plan for the Toledo area.

EFFECTIVE DATE: This action will be effective August 1, 1995.

ADDRESSES: Copies of the SIP revisions, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Angela Lee at (312) 353–5142 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5142.

SUPPLEMENTARY INFORMATION:

I. Background Information

The 1977 Act required areas that were designated nonattainment to develop SIPs with sufficient control measures to expeditiously attain and maintain applicable standards. For Ohio, Lucas and Wood Counties were designated nonattainment for ozone, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR part 81. After enactment of the amended Act on November 15, 1990, the nonattainment designation of the Toledo area continued by operation of law according to section 107(d)(1)(C)(i) of the Act; furthermore, the area was classified by operation of law as moderate for ozone pursuant to section 181(a)(1) (56 FR 56694, November 6, 1991), codified at 40 CFR 81.336.

More recently, ambient monitoring data for the Toledo area show no violations of the ozone National Ambient Air Quality Standard (NAAQS) during the period from 1990 through 1992. The area, therefore, became eligible for redesignation from nonattainment to attainment consistent with the amended Act. On September 17, 1993, Ohio requested redesignation of the area to attainment with respect to the ozone NAAQS. To ensure continued attainment of the ozone standard, Ohio submitted an ozone maintenance SIP for the Toledo area with the redesignation request. On November 1, 1993, Ohio held a public hearing on the maintenance plan and redesignation request.

On May 2, 1995, the USEPA published a proposed (60 FR 21490) and direct final rule (60 FR 21456) to approve the redesignation request and section 175A maintenance plan as revisions to the Ohio ozone State Implementation Plan (SIP). The USEPA withdrew the direct final rule on June 19, 1995, (60 FR 31917) in response to receiving adverse comments. This final rule addresses these comments and takes final action regarding the redesignation and section 175A maintenance plan for the Toledo area.

II. Summary of Comments and Responses

USEPA has considered the adverse comments received and has decided to proceed with formal action approving the redesignation. A summary of adverse comments received in response to the May 2, 1995 proposed and direct final rulemaking notices (60 FR 21490, 60 FR 21456) and responses to these comments is provided below. Comments were made by two residents of the Toledo, Ohio area, Environment Canada, and the Citizens Commission for Clean Air in the Lake Michigan Basin.

(1) *Comment:* A commentor objects to the use of the direct final procedure when the proposed redesignation is neither noncontroversial nor routine. Another commentor objected to the final rule procedure due to insufficient opportunity for public comment. Several commentors requested that the direct final rule be withdrawn and republished as a proposed rule. The commentors also requested a 30 day extension of the public comment period. One commentor stated that "most citizens have not heard about the opportunity to comment, and should be afforded additional time to do so." Another commentor requested an extension of the comment period so that concerns about increased vehicle emissions caused by new road construction projects and a possible increase in highway tolls can be evaluated and addressed.

(1) *Response:* The USEPA did not expect adverse comments regarding the approval of the ozone redesignation request and viewed its decision as noncontroversial since it believed that all of the Clean Air Act requirements for redesignation were met. In response to the adverse comment letters which were received, the USEPA withdrew the direct final rule. In any event, that process preserves the public opportunity to comment as a proposed rule was published the same day as the direct final rule was published at 60 FR 21490.

The USEPA is denying the extension requests because it believes the period provided for public comment was adequate in light of the issues presented by the Toledo redesignation request. USEPA further notes that the public had many opportunities to become informed about the issues as Ohio itself had its own public comment period and that a public function for the rulemaking package was held on March 14, 1995, in Toledo, Ohio, which was shown on television news programs. Moreover, USEPA has already exceeded the statutory deadline of section 107(d)(3)(d) to act on this request which expired on March 17, 1995—and does not believe further delay in the action is appropriate.

(2) *Comment:* Several commentors stated that the last two summers were abnormally cool and that data for the last 10 years indicate a trend toward warmer summers in the Toledo area. The commentors requested that USEPA delay rulemaking so that one or two years of monitoring data could be collected to ensure that the improvement in air quality was not caused by cooler temperatures. The commentors also stated that it would be a waste of resources to redesignate the area to attainment when a violation

would require a redesignation back to nonattainment.

(2) *Response:* The USEPA may not delay action on this redesignation request since section 107(d)(3)(E) requires USEPA to act on complete redesignation requests within 18 months of their receipt—a period that expired on March 17, 1995. Furthermore, in establishing the criteria for determining if an area is in attainment of the ozone standard, USEPA used three years of ambient monitoring data. See 40 CFR part 50, Appendix H. The USEPA notes that the Toledo area has been in attainment for four consecutive three-year periods (1989–1991, 1990–1992, 1991–1993, and 1992–1994). This includes six years of ambient monitoring data. Thus, Toledo has already been in attainment substantially longer than the three-year period required. The CAA expressly contemplates the possibility that areas redesignated to attainment may violate the NAAQS after redesignation and requires contingency plans to address future violations. Ohio has adopted such a plan for Toledo. If a violation occurs, Stage II Vapor Recovery Program (Stage II) and a vehicle inspection and maintenance program (I/M) will be implemented according to a specified schedule. If a violation occurs after these programs have been implemented, nitrogen oxides (NO_x) Reasonably Available Control Technology requirements will be implemented in the area.

(3) *Comment:* Toledo will not be able to maintain attainment on a permanent and enforceable basis and therefore does not meet requirement 107(d)(3)(E) of the Clean Air Act. The rulemaking notice states that the *measures* are permanent and enforceable, but does not show that the *improvement* is permanent and enforceable. The improvement in air quality is temporary since emission increases resulting from increased vehicle miles travelled (VMT) will surpass the emission reductions from these measures. Short term emissions reductions and cooler temperatures have been used to claim that a long term improvement in air quality has occurred. Long term air quality will not improve and will decrease due to emissions increases which will offset the gains which have been made. Insufficient data has been gathered on which to base a long term prediction, and models have been based on biased assumptions regarding the effect of capacity expansions. The USEPA should require the state to submit additional information regarding current trends in land use and transportation in the Toledo area. The commentor mentioned trends which were not conducive to efficient transportation such as decreasing bus ridership, increasing tolls on the Ohio Turnpike, widening of I–75 which will lead to increased VMT, increasing single-occupant vehicle capacity, and increasing use of the Toledo Airport. Another commentor submitted excerpts from an article regarding traffic flow on congested roads from the *American Scientist* dated November-December 1988 written by Joel E. Cohen, Professor of Populations, Rockefeller University.

The USEPA and the State of Ohio have failed to demonstrate that the improvement in air quality was due to permanent and enforceable emission reductions rather than atypically cool ozone seasons in 1992 and 1993. Also the controls on the volatility of gasoline through lowering of the Federal Volatility standard and controls new cars under the Federal Motor Vehicle Emissions Control Program (FMVECP) are insufficient to guarantee permanent improvements under the Clean Air Act. These measures represent only a few of the requirements that should have been enacted prior to any serious consideration of the redesignation request by USEPA.

(3) *Response:* Section 107(d)(3)(E)(iii) of the Clean Air Act requires the USEPA to determine that "the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions." Ohio met this requirement by estimating emission reductions from federally mandated controls on new cars and on fuel volatility as well as reductions which took place at the British Petroleum Refinery. These controls provided a significant reduction in the areas emissions and the State has shown that no additional reductions are needed to maintain the standard. See 60 FR 21456 and 60 FR 21490.

With respect to the issue of unusual meteorology, the USEPA has compared the average meteorological parameters of maximum daily temperature, minimum daily temperature, average daily temperature, cooling degrees, and days with high temperatures greater than 90 degrees fahrenheit for the periods of June through August, 1991 through 1993, with the 30-year norms for these parameters. The 1991 through 1993 averages for these parameters agreed with those for the 30-year norms with only minor differences. Based on these averaged parameters, it can be concluded that the 1991 through 1993 period was not unusually cool in terms of temperatures. Thus, the State has adequately demonstrated that the air quality improvement was not due to unusually favorable meteorology.

To meet section 107(d)(3)(E)(iii), the improvement in air quality does not have to be shown to be permanent, only the measures that resulted in the improvement need to be permanent and enforceable. However, section 107(d)(3)(E)(iv) does require that the area have a fully approved maintenance plan showing that the ozone standard will be maintained for ten years into the future. This can be done through air quality modeling or by using emissions projections. Ohio demonstrated that, by considering the growth in the area (including VMT growth) and existing controls on emission sources, emissions will remain below the attainment year inventory through the year 2005. In projecting mobile source emissions, Ohio obtained VMT based on the Highway Performance Modeling System which uses traffic counting data for the year 1990. To forecast VMT to the year 2005, Ohio used growth parameters based on modeling of the Long Range Transportation Plan (future highway network). This modeling process incorporated population growth estimates from Ohio Data Users Center, employment forecasts and other forecasts of socio-economic data. The methodology which was used to project emissions is reasonable. The USEPA notes that the emissions projection for mobile sources in the maintenance plan establishes the emissions budget which will be used for determining conformity of transportation plans and transportation improvement programs for the Toledo area. The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

The May 2, 1995 notice describes a tracking plan for updating the emission inventory. As discussed, Ohio has committed to submitting periodic inventories every 3 years. Ohio will compare the projected emissions in the redesignation request with actual emissions. If volatile organic compounds (VOC) emissions exceed 95 percent of 1990 levels, Ohio will implement Stage II and/or I/M.

If the periodic inventories exceed the attainment level of emissions in the maintenance plan, the USEPA may issue a SIP call to the area under section 110(k)(5) on the basis that the State made inadequate assumptions in projecting the inventory used to demonstrate maintenance. In this event, the USEPA may require the State to correct the projection inventory and, if increases are projected, propose and ultimately implement maintenance measure(s) to lower the emissions to a level at or below the attainment year level. Under section 175A of the Clean Air Act, Ohio must submit a demonstration that the ozone standard will be maintained for another ten years, eight years after the area is redesignated to attainment. This is expected to result in the Toledo area maintaining the ozone standard for the next 20 years.

(4) *Comment:* Two commentors requested that USEPA prepare an Environmental Impact Statement (EIS) as the redesignation constitutes a major federal action with the potential for significant impacts on the human environment. A number of transportation and land use control measures which would have resulted under requirements applied to nonattainment areas will not be required. The EIS should consider downwind transport of ozone precursors, and the effect of such transport on the Northeastern United States.

(4) *Response:* USEPA is not required to prepare an EIS in connection with this redesignation. Section 7(c)(1) of the Energy Supply and Environmental Coordination Act (Pub. L. 93–319) states that "[n]o action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856)." This redesignation does not affect the applicability of the National Environmental Policy Act (NEPA) to particular transportation projects in the Toledo area. In addition, the transportation and general conformity rules will still apply after the area is redesignated to attainment. (Conformity determinations for transportation plans, transportation improvement projects, and Federal actions must demonstrate that the emissions budget established by the maintenance plan is not exceeded.)

The redesignation does not allow States to automatically remove control programs which have contributed to an area's attainment of a U.S. National Ambient Air Quality Standard (NAAQS) for any pollutant. Sources of ozone precursors in the Toledo area must continue to implement all control equipment and/or measures in accordance with applicable rules, regulations and permits. Other control programs required by the Act will be implemented in the area, regardless of the ozone designation, such as title IV NO_x controls, section 112 toxic controls and on-board vapor recovery requirements. Upon redesignation to attainment, Toledo will be subject to the Prevention of Significant Deterioration provisions (PSD) of the Clean Air Act that apply to stationary sources of air pollution.

The State has assessed emission increases due to growth in all potential sources of emissions and has shown that reductions in emissions over the maintenance period will more than offset any increases in emissions of VOC and NO_x. As stated in the **Federal Register** notice (60 FR 21456), USEPA will address transport of ozone precursors to downwind areas under section 110 of the Clean Air Act based on a domain-wide modeling analysis. Should this or other studies provide a sufficient scientific basis for taking action in the future, the USEPA will take appropriate action notwithstanding the redesignation of the Toledo area to attainment for ozone.

(5) *Comment:* The USEPA should delay rulemaking on this and all other ozone redesignation requests pending a re-evaluation of the current ozone standard to determine if public health is adequately protected. Recent studies indicate that health impacts occur at lower levels of ozone than the current ozone standard.

(5) *Response:* The USEPA is currently in the process of reevaluating the ozone NAAQS and expects to make a final decision in mid-1997. Until any change is made, however, the USEPA is bound to implement the provisions of the Act as they relate to the current standard, including those relating to designations and redesignation. Moreover, as previously noted under section 107(d)(3)(D) USEPA has 18 months in which to act on a redesignation request and has no authority to delay rulemaking until the entire evaluation of the ozone NAAQS is complete.

(6) *Comment:* Ozone levels exceeded 0.124 parts per million (ppm) at the Yondota Avenue monitor in 1991, 1993, and 1994. From these occurrences, and the absence of mandated forceful control measures post 1994, it is very difficult to have the expectation that the Yondota station will remain in attainment.

(6) *Response:* Exceedances of the ozone standard did occur at the Yondota monitor in 1991, 1993 and 1994, but did not cause a violation of the ozone standard. The control measures approved into the State's Implementation Plan will remain in place to ensure that the ozone standard is maintained. Ohio's maintenance demonstration shows that future emission levels will remain below levels associated with attainment. Continued maintenance of the ozone NAAQS will be determined by continued ambient monitoring. If a violation does occur at the Yondota monitor after the redesignation is approved, Stage II and I/M will be implemented. In addition, the area will be subject to the PSD program, FMVECP, and other measures.

(7) *Comment:* Environment Canada commented that air quality needs to be managed in a regional context and evaluated over a long term period that takes meteorological variations into consideration. Environment Canada is disappointed that current USEPA policy does not reflect this opinion. Environment Canada believes that the ground level ozone standards in effect in the United States allow such high levels of ozone and ozone precursors to flow into Canada as to make it practically impossible for Canada to reach its ground level ozone objective of 82 parts per billion. Another commentor asserted that USEPA failed to consider adverse impacts of transport of ozone and ozone precursors to the Province of Ontario, Detroit, the Northeastern United States and the Lake Michigan Basin. USEPA has failed to obtain a legally enforceable commitment from the State of Ohio to cooperate in developing a strategy to reduce the documented problem of ozone transport throughout Eastern North America. Another commentor stated that the air quality problem is not being solved, it is being moved off to other downwind states. This breaks the spirit of the Clean Air Act.

(7) *Response:* The USEPA would like to note that the governments of the United States and Canada are in the process of developing a joint study of the transboundary ozone phenomena under the U.S.-Canada Air Quality Agreement. It is envisioned that this regional ozone study will provide the scientific information necessary to understand what contributes to ozone levels in the region, as well as what control measures would contribute to reductions in ozone levels. Should this or other studies provide a sufficient scientific basis for taking action in the future, the USEPA will take an appropriate course of action. The USEPA may take appropriate action notwithstanding the redesignation of the Toledo area. Therefore, the USEPA does not believe that the contentions regarding transboundary impact provide a basis for delaying action at this time on this redesignation or disapproving the redesignation. This is particularly true since approval of the redesignation is not expected to result in an increase in ozone precursor emissions and is not expected to adversely affect air quality

in Canada. In fact, a decrease in both VOC and NO_X emissions from the Toledo area is expected over the 10-year maintenance period. It should also be noted that redesignation does not allow States to automatically remove control programs which have contributed to an area's attainment of a U.S. National Ambient Air Quality Standard for any pollutant. As discussed previously, the USEPA's general policy is that a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment unless an appropriate demonstration,[1] based on computer modeling, is approved by the USEPA. In this case, no previously implemented control strategies are being relaxed as part of this redesignation.

(8) *Comment:* The maintenance demonstration overestimates reductions in VOC and NO_X emissions, especially for the latter which relies heavily on NO_X emission reductions obtained from modifications at the British Petroleum refinery and underestimated economic, population and VMT growth projections. VMT growth projections fail to consider the ensuing sprawl caused by the development of a corridor from northeast to southern Ohio. USEPA reliance on assurances from the State of Ohio that VOC and NO_X emissions in the Toledo area will decrease 35 percent and 38 percent, respectively, from attainment levels by 2005, is speculative and suspect given continued urban growth and sprawl along major transportation corridors.

(8) *Response:* The methodology used to project emissions followed USEPA guidance. Point source emissions were projected by accounting for known changes to sources for each year between 1990 and 2005 and applying a growth factor based on manufacturing employment data provided by the Bureau of Economic Analysis, United States Department of Commerce, to derive inventories for all ensuing years. Manufacturing employment is expected to remain relatively constant. The NO_X emission reductions which would result from compliance with Title IV NO_X requirements are reasonable. Population projections were obtained from using data from the Ohio Data Users Center (ODUC). ODUC takes into account past trends, the age of the population, economic cycles, and other factors in estimating the future population of the area. Ohio used the Highway Performance Modeling System which uses actual traffic counts to obtain 1990 levels of VMT. This model was developed by the Federal Highway Administration and is an acceptable model for estimating VMT. To project levels of VMT, Ohio used the Long Range Transportation Planning Program which considered the future transportation network. The methodology used to project mobile source emissions was reasonable and should not underpredict growth.

While the overall VMT are expected to increase, this growth will be offset by the FMVECP which will be providing emissions reductions in the area through the production of cleaner automobiles. In addition this area is still subject to the transportation conformity requirements and must show that the expected transportation projects in the area will conform to the ozone SIP for the area. This will help to ensure that growth in VMT will not increase emissions to a point where the ozone standard could be violated. In addition, Ohio has committed to submit an emissions inventory every three years to USEPA. If the total of point, area, and mobile VOC emissions exceed 95 percent of 1990 levels, Ohio has committed to implement either Stage II or I/M or both. Mobile source inventories will incorporate new VMT estimates.

(9) *Comment:* Ohio has not made the necessary commitments to ensure the prompt implementation and operation of the contingency plan in the event of a violation. It is unlikely that Stage II would be re-implemented given that the Director of the Ohio Environmental Protection Agency (OEPA) suspended Stage II on September 17, 1993.

(9) *Response:* The State provided a schedule in their contingency plan for implementing Stage II and an automobile inspection and maintenance program. This schedule was provided in the direct final rule published on May 2, 1995. The Director of the OEPA also committed in the SIP submittal to implementing the contingency plan for the area in the event of a violation in the area. As the compliance deadlines for Stage II begin as early as 6 months after a violation and I/M testing is to commence within 18 months of a violation, the contingency measures satisfy the statutory criteria section of section 175A.

(10) *Comment:* Ohio's failure to implement a part D New Source Review program for Toledo, Ohio cannot be excused by the memorandum from Mary Nichols entitled, "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment". The USEPA cannot waive statutory requirements of the Clean Air Act when such waivers frustrate the purpose of the Clean Air Act which is to provide clean air, not convenient loopholes for state responsibilities under the Clean Air Act.

(10) *Response:* The USEPA believes that its decision not to insist on a fully-approved NSR program as a pre-requisite to redesignation is justifiable as an exercise of the Agency's general authority to establish de minimis exceptions to statutory requirements. *See Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979). Under *Alabama Power Co.* v. *Costle*, the USEPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally.

In this context, the issue presented is whether the USEPA has the authority to establish an exception to the requirements of section 107(d)(3)(E) that the USEPA have fully-approved a SIP meeting all of the requirements applicable to the area under section 110 and part D of title I of the Act. Plainly, the NSR provisions of section 110 and part D are requirements that were applicable to the Ohio area seeking redesignation at the time of the submission of the request for redesignation. Thus, on its face, section 107(d)(3)(E) would seem to require that the State have submitted and the USEPA have fully-approved a part D NSR program meeting the requirements of the Act before the areas could be redesignated to attainment.

Under the USEPA's de minimis authority, however, the Agency may establish an exception to an otherwise plain statutory requirement if its fulfillment would be of little or no environmental value. In this context, it is necessary to determine what would be achieved by insisting that there be a fully-approved part D NSR program in place prior to the redesignation of the Toledo area. For the following reasons, the USEPA believes that requiring the adoption and full-approval of a part D NSR program prior to redesignation would not be of significant environmental value in this case.

Ohio has demonstrated that maintenance of the ozone NAAQS will occur even if the emission reductions expected to result from the part D NSR program do not occur. Ohio assumed that NSR would not apply after redesignation to attainment, and therefore, assumed source growth factors based on projected growth in the economy and in the area's population. (It should be noted that the growth factors assumed may be overestimates under PSD, which would restrain source growth through the application of best available control techniques.) Thus, contrary to the assertion of the commentor, Ohio has demonstrated that there is no need to retain the part D NSR as an operative program in the SIP during the maintenance period in order to provide for continued maintenance of the NAAQS. (If this demonstration had not been made, NSR would have had to have been retained in the SIP as an operative program since it would have been needed to maintain the ozone standard.)

The other purpose that requiring the full-approval of a part D NSR program might serve would be to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by section 107(d)(3)(E)(iv) and 175A(d). These provisions require that, for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area." Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a "measure" for the control of the pertinent air pollutants.

As the USEPA noted in the proposal regarding this redesignation request, the term "measure" is not defined in section 175A(d) and Congress utilized that term differently in different provisions of the Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress required that SIPs to include "enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of the Act." In section 110(a)(2)(C), Congress required that SIPs include "a program to provide for the enforcement of the *measures* described in subparagraph (A), *and* regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D." (Emphasis added.) If the term measures as used in section 110(a)(2) (A) and (C) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures *and* preconstruction review under parts C and D (PSD or NSR). Unless "measures" referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished "measures" from preconstruction review. On the other hand, in other provisions of the Act, such as section 161, Congress appeared to include PSD within the scope of the term "measures."

The USEPA believes that the fact that Congress used the undefined term "measure" differently in different sections of the Act is germane to this issue. This indicates that the term is susceptible to more than one interpretation and that the USEPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, the USEPA believes it is reasonable to interpret "measure," as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR.[2] This distinguishes NSR from other required programs under the Act, such as inspection and maintenance and Reasonably Available Control Technology programs, which have no corollary for attainment areas. Moreover, the USEPA believes that those other required programs are clearly within the scope of the term "measure."

The USEPA's logic in treating part D NSR in this manner does not mean that other applicable part D requirements, including those that have been previously met and previously relied upon in demonstrating attainment, could be eliminated without an analysis demonstrating that maintenance would be protected. As noted above, Ohio has demonstrated that maintenance would be protected with PSD requirements in effect, rather than those of part D NSR. Thus, the USEPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved. Moreover, the USEPA has not amended its policy with respect to the conversion of other SIP elements to contingency provisions, which provides that they may be converted to contingency provisions only upon a showing that maintenance will be achieved without them being in effect. Finally, as noted above, the USEPA believes that the NSR requirement differs from other requirements, and does not believe that the rationale for the NSR exception extends to other required programs.

The position taken in this action is consistent with the USEPA's current national policy. That policy permits redesignation to proceed without otherwise required NSR programs having been fully approved and converted to contingency provisions provided that the area demonstrates, as has been done in this case, that maintenance will be achieved with the application of PSD rather than part D NSR.

(11) *Comment:* Permitting Toledo, Ohio to defer adoption and implementation of I/M according to the revised USEPA I/M Program Requirements Rule published on January 5, 1995, at 60 FR 1735 frustrates meaningful control of vehicle emissions.

(11) *Response:* While the revised I/M rule (60 FR 1735) allows the I/M program to be placed in the contingency plan, there are still ongoing emission reductions in the area due to the FMVECP. The maintenance demonstration shows that the mobile source emissions are expected to decrease from 102,560 pounds of volatile organic compounds per day in 1996 to 57,412 pounds per day in 2005. The mobile source emissions of oxides of nitrogen are expected to decrease from 65,128 pounds per day in 1996 to 49,374 pounds per day in 2005. These

[1] Such a demonstration must show that removal of a control program will not interfere with maintenance of the ozone NAAQS and would entail submittal of an attainment modeling demonstration with the USEPA's current *Guideline on Air Quality Models*. Also, see memorandum from Gerald A. Emison, April 6, 1987, entitled *Ozone Redesignation Policy*, and memorandum from Michael H. Shapiro, September 17, 1993, entitled *State Implementation Plan (SIP) Requirements for Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992.*

[2] The U.S. EPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, 40 CFR part 51 appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply. The USEPA believes that in any area that is designated or redesignated as attainment under section 107, but experiences violations of the NAAQS, these provisions should be interpreted as requiring major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio, and as presuming that 1:1 NO_X offsets are necessary. See October 14, 1994 memorandum from Mary Nichols entitled *Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.*

are significant reductions and are expected to ensure that the area maintains the ozone standard. Thus, deferral of the I/M program does not frustrate meaningful control of vehicle emissions.

(12) *Comment:* One commentor stated that Toledo illegally obtained a waiver from NO_X conformity requirements under a section 182(f) submittal, and because of it NO_X conformity requirements should be incorporated into Toledo's maintenance plan. The commentor notes that a NO_X waiver for conformity purposes can only be issued under section 182(b)(1)(A). Also, not requiring Toledo, Ohio to submit general and transportation conformity SIP revisions with the redesignation request removes any incentive for Toledo, Ohio to adopt procedures for preventing emissions from transportation and federal construction projects contributing to ozone pollution levels. Another commentor stated that land use and transportation controls under the Clean Air Act will not be taken, resulting in increased pollution, if these requirements are changed.

(12) *Response:* Ohio is currently developing transportation and conformity SIP revisions. The USEPA expects to receive these submittals this summer. Maintenance areas are subject to the transportation and general conformity rules and therefore, must submit the SIP revisions required by these rules. The approval of these submissions was not required for the approval of the redesignation request because the redesignation request was submitted before the transportation and general conformity SIPs were due and were, therefore, not applicable requirements for purposes of evaluating this redesignation. Upon redesignation, the transportation conformity rule requires that a regional emission analyses of proposed transportation plans and programs for the Toledo area demonstrate that emissions from the future transportation system are below the motor vehicle emission budget established in the maintenance plan and lower than 1990 levels. The general conformity rule will also apply to the Toledo area after redesignation.

With respect to conformity, USEPA's conformity rules[3] [4] currently provide a NO_X waiver from certain requirements if an area receives a section 182(f) exemption. Under the transportation conformity rule, a NO_X waiver relieves an area only of the requirement to meet the "build/no build" and "less-than-1990-baseline" tests. In a notice published in the June 17, 1994 **Federal Register** (59 FR 31238, 31241), entitled "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," USEPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and transportation improvement program (TIP) are consistent with the motor vehicle emissions budget for NO_X even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current published transportation conformity rules. USEPA is in the process of amending the conformity rule to remedy the problem.

An issue concerning the appropriate Act authority for granting transportation-related NO_X waivers has been raised by several commentors. NO_X exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). These commentors argue that exemptions from the NO_X transportation conformity requirements must follow the process provided in section 182(b)(1), since this is the only section explicitly referenced by section 176(c)(3)(A)(iii) in the Act's transportation conformity provisions.

With certain exceptions, USEPA agrees that section 182(b)(1) is the appropriate authority under the Act for waiving the transportation conformity rule's NO_X "build/no build" and "less-than-1990" tests, and is planning to amend the rule to be consistent with the statute. However, USEPA believes that this authority is only applicable with respect to those areas that are subject to section 182(b)(1).

The change in authority for granting NO_X waivers from section 182(f) to section 182(b)(1) has different impacts for areas subject to section 182(b)(1) depending on whether the area is relying on "clean air" data or on modeling data. Areas relying on modeling data must meet the procedure established under section 182(b)(1), including submitting the exemption request as part of a SIP revision. The USEPA may not take action on exemptions for such areas until the rulemaking amending the transportation conformity rule to establish section 182(b)(1) as the appropriate authority for granting such relief has been completed. "Clean data" areas that would otherwise be subject to section 182(b)(1), such as Cincinnati and Cleveland, will be relieved of the transportation conformity rule's interim period NO_X requirements at such time as USEPA takes final action implementing its recently-issued policy regarding the applicability of section 182(b)(1) requirements for areas demonstrating attainment of the ozone NAAQS based on "clean data". This policy is contained in a May 10, 1995, memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," which should be referred to for a more thorough discussion. The aspect of the policy that is relevant here is USEPA's determination that the section 182(b)(1) provisions regarding reasonable further progress (RFP) and attainment demonstrations may be interpreted so as not to require the SIP submissions otherwise called for in section 182(b)(1) if an ozone nonattainment area that would otherwise be subject to those requirements is in fact attaining the ozone standard (i.e., attainment of the NAAQS is demonstrated with 3 consecutive years of complete, quality-assured, air-quality monitoring data). Any such "clean data" areas, under this interpretation, would no longer be subject to the requirements of section 182(b)(1) once USEPA takes final rulemaking action adopting the interpretation in conjunction with its determination that the area has attained the standard. At that time, such areas would be treated like ozone nonattainment areas classified marginal and below, and hence eligible for NO_X waivers from the interim-period transportation conformity requirements by obtaining a waiver under section 182(f), as described below.

Marginal and below ozone nonattainment areas (which represents the majority of the areas USEPA is taking action on today) are not subject to section 176(c)(3)(A)(iii) because they are not subject to section 182(b)(1), and general federal actions are also not subject to section 176(c)(3)(A)(iii) (and, hence, are not subject to section 182(b)(1) either). These areas, however, are still subject to the conformity requirements of section 176(c)(1), which sets out criteria that, if met, will assure consistency with the SIP. The USEPA believes it is reasonable and consistent with the Act to provide relief under section 176(c)(1) for areas not subject to section 182(b)(1) from applicable NO_X conformity requirements where the Agency has determined that NO_X reductions would not be beneficial, and to rely, in doing so, on the NO_X exemption tests provided in section 182(f) for the reasons given below.

The basic approach of the Act is that NO_X reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach but also includes specific substantive tests which provide a basis for USEPA to determine when NO_X requirements should not apply. Whether under section 182(b)(1) or section 182(f), where USEPA has determined that NO_X reductions will not benefit attainment or would be counterproductive in an area, USEPA believes it would be unreasonable to insist on NO_X reductions for purposes of meeting RFP or other milestone requirements. Moreover, there is no substantive difference between the technical analysis required to make an assessment of NO_X impacts on attainment in a particular area whether undertaken with respect to mobile source or stationary source NO_X emissions. Consequently, USEPA believes that granting relief from the NO_X conformity requirements of section 176(c)(1) under section 182(f) in these cases is appropriate.

III. Final Rulemaking Action

The USEPA approves the redesignation of the Toledo, Ohio ozone area to attainment and the section 175A maintenance plan as a revision to the Ohio SIP. The State of Ohio has satisfied all of the necessary requirements of the Act.

USEPA finds that there is good cause for this redesignation to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which exempts the area from certain Clean Air Act requirements that would otherwise apply to it. The immediate effective date for this redesignation is authorized under both 5 U.S.C 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 100 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments being proposed for approval in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being proposed for approval by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs or $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Motor vehicle pollution, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, and Wilderness areas.

[3] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act," November 24, 1993 (58 FR 62188).

[4] "Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).

Dated: July 5, 1995.

David A. Ullrich,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, parts 52 and 81, are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1870 is amended by adding a new paragraph (c)(105) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(105) On September 17, 1993, the Ohio Environmental Protection Agency requested the redesignation of Lucas and Wood Counties to attainment of the National Ambient Air Quality Standard for ozone. To meet the redesignation criteria set forth by section 107(d)(3)(E)(iii) and (iv), Ohio credited emissions reductions from the enclosure of the "oily ditch" at the British Petroleum Refinery in Oregon, Ohio. The USEPA is approving the Director's Finding and Order which requires the enclosure of the "oily ditch" into the SIP for Lucas and Wood Counties.

(i) Incorporation by reference.

(A) letter dated June 2, 1994, from Donald R. Schregardus, Director, Ohio Environmental Protection Agency, to Valdas Adamkus, Regional Administrator, USEPA, Region 5, and one enclosure which is the revised Director's Final Findings and Orders in the matter of BP Oil company, Toledo Refinery, 4001 Cedar Point Road, Oregon, Ohio, Fugitive Emissions from the Refinery Waste Water System "Oily Ditch", effective June 2, 1994.

3. Section 52.1885 is amended by adding paragraph (b)(5) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(b) * * *

(5) Lucas and Wood Counties.

* * * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.336 is amended by revising the entry in the ozone table for Toledo to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Toledo area:				
Lucas County	August 1, 1995	Attainment.		
Wood County	August 1, 1995	Attainment.		

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–18510 Filed 7–31–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409 and 484

[BPD–469–CN]

RIN 0938–AD78

Medicare Program; Medicare Coverage of Home Health Services, Medicare Conditions of Participation, and Home Health Aide Supervision; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects several errors made in a final rule published on December 20, 1994 (59 FR 65482) concerning Medicare coverage of home health services, Medicare conditions of participation, and home health aide supervision.

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Julie Brown, (410) 966–4669.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1994, we published a final rule concerning Medicare coverage of home health services, Medicare conditions of participation, and home health aide supervision. (59 FR 65482) In it were a number of technical errors:

When revising our regulations at 42 CFR 409.42(d) (redesignated as § 409.42(b)), we inadvertently revised obsolete regulations text.

When adding § 409.45, we overlooked the statutory name change in section 1861(b)(6) of the Social Security Act as amended by section 4039(b)(2) of the Omnibus Budget Reconciliation Act of 1987.

When adding § 484.36(d)(4)(iii), we overlooked the training requirements in § 484.36(b). However, we proposed the addition of paragraph (d)(4) in order to identify the responsibilities of an HHA or hospice that furnishes services under arrangement, including "ensuring that the aides have met the training requirements." (56 FR 49157) Section 484.36(b) contains training requirements.

There were also a number of incorrect crossreferences.

Correction of Publication

Accordingly, the publication on December 20, 1994, of the final regulation, which was the subject of FR Doc. 94–31062, is corrected as follows:

§ 409.42 [Corrected]

Page 65494, column 1: In § 409.42(b), line 6, the words "with the HHA's policy and" are removed.

Page 65494, column 1: In § 409.42(c)(2), (c)(3), and (c)(4), the phrase "§ 409.44(b)" is revised to read "§ 409.44(c)".

§ 409.45 [Corrected]

Page 65495, column 2: In § 409.45(a), the phrases "§ 409.44(a)" and "§ 409.44(b)" in lines 6 and 8, respectively, are revised to read "§ 409.44(b)" and "§ 409.44(c)", respectively.

Page 65496, column 2: In § 409.45(g)(4), lines 3 through 5, the words "Council on Podiatry Education of the American Podiatric Association" are revised to read "Council on Podiatric Medical Education of the American Podiatric Medical Association."

§ 409.49 [Corrected]

Page 65497, column 3: In § 409.49(f), line 2, the phrase "§ 410.36(b)" is revised to read "§ 410.36(a)(2)".

§ 484.36 [Corrected]

Page 65498, column 3: In § 484.36(d)(4)(iii), line 4, the phrase "paragraph (a)" is revised to read "paragraphs (a) and (b)".

Dated: July 21, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–18771 Filed 7–31–95; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7622]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region V				
Indiana:				
Connersville, city of, Fayette County ..	180061	April 11, 1975, Emerg.; August 1, 1995, Reg.; August 1, 1995, Susp.	August 1, 1995	August 1, 1995.
Delphi, city of, Carroll County	180020	July 25, 1975, Emerg.; August 1, 1995, Reg.; August 1, 1995, Susp.	.....do	Do.
Region II				
New York: Ellicottville, town of, Cattaraugus County.	360069	May 28, 1975, Emerg.; May 15, 1978, Reg.; August 2, 1995, Susp.	August 2, 1995	August 2, 1995.
Region V				
Indiana:				
Fort Wayne, city of, Allen County	180003	May 24, 1974, Emerg.; April 3, 1985, Reg.; August 2, 1995, Susp.	.....do	Do.
New Haven, city of, Allen County	180004	January 30, 1975, Emerg.; July 18, 1983, Reg.; August 2, 1995, Susp.	.....do	Do.
Monroe County, unincorporated areas	180444	June 18, 1985, Emerg.; April 1, 1984, Reg.; August 2, 1995, Susp.	.....do	Do.
Ohio:				
Bexley, city of, Franklin County	390168	November 21, 1973, Emerg.; November 15, 1978, Reg.; August 2, 1995, Susp.	.....do	Do.
Columbus, city of, Franklin County	390170	May 21, 1971, Emerg.; July 5, 1983, Reg.; August 2, 1995, Susp.	.....do	Do.
Franklin County, unincorporated areas.	390167	April 19, 1973, Emerg.; July 5, 1983, Reg.; August 2, 1995, Susp.	.....do	Do.
Gahanna, city of, Franklin County	390171	May 17, 1973, Emerg.; August 1, 1983, Reg.; August 2, 1995; Susp.	.....do	Do.
Gienford, village of, Perry County	390442	August 11, 1978, Emerg.; August 2, 1995, Reg.; August 2, 1995, Susp.	.....do	Do.
Grandview Heights, city of, Franklin County.	390172	June 6, 1975, Emerg.; August 15, 1980, Reg.; August 2, 1995, Susp.	.....do	Do.
Grove City, city of, Franklin County ...	390173	October 15, 1974, Emerg.; May 1, 1984, Reg.; August 2, 1995, Susp.	.....do	Do.
Grove City, city of, Franklin County ...	390174	November 7, 1974, Emerg.; September 1, 1983, Reg.; August 2, 1995, Susp.	.....do	Do.
Obetz, city of, Franklin County	390176	March 23, 1978, Emerg.; January 16, 1981, Reg.; August 2, 1995, Susp.	.....do	Do.
Whitehall, city of, Franklin County	390180	October 7, 1974, Emerg.; July 18, 1985, Reg.; August 2, 1995, Susp.	.....do	Do.
Region VI				
Arkansas: Weiner, city of, Poinsett County	050373	October 31, 1975, Emerg.; September 28, 1982, Reg.; August 16, 1995, Susp.	.....do	Do.
Oklahoma: Blaine County, unincorporated areas.	400011	May 28, 1993, Emerg.; August 2, 1995, Reg.; August 2, 1995, Susp.	.....do	Do.
Texas:				
Arlington, city of, Tarrant County	485454	July 31, 1970, Emerg.; December 30, 1970, Reg.; August 2, 1995, Susp.	.....do	Do.
Bedford, city of, Tarrant County	480585	January 19, 1973, Emerg.; July 18, 1977, Reg.; August 2, 1995, Susp.	.....do	Do.
Benbrook, city of, Tarrant County	480586	November 2, 1973, Emerg.; July 2, 1979, Reg.; August 2, 1995, Susp.	.....do	Do.
Blue Mound, city of, Tarrant County ..	480587	July 3, 1975, Emerg.; July 16, 1980, Reg.; August 2, 1995, Susp.	.....do	Do.
Burleson, city of, Tarrant County	485459	December 17, 1971, Emerg.; November 2, 1973, Reg.; August 2, 1995, Susp.	.....do	Do.
Colleyville, city of, Tarrant County	480590	January 29, 1975, Emerg.; December 1, 1982, Reg.; August 2, 1995, Susp.	.....do	Do.
Crowley, city of, Tarrant County	480591	February 20, 1975, Emerg.; April 15, 1981, Reg.; August 2, 1995, Susp.	.....do	Do.
Dalworthington Gardens, city of, Tarrant County.	481013	July 21, 1977, Emerg.; May 17, 1982, Reg.; August 2, 1995, Susp.	.....do	Do.
Edgecliff Village, town of, Tarrant County.	480592	June 5, 1975, Emerg.; August 19, 1986, Reg.; August 2, 1995, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Euless, city of, Tarrant County	480593	August 20, 1974, Emerg.; April 3, 1985, Reg.; August 2, 1995, Susp.	.....do	Do.
Everman, city of, Tarrant County	480594	July 1, 1975, Emerg.; September 17, 1980, Reg.; August 2, 1995, Susp.	.....do	Do.
Forest Hill, city of, Tarrant County	480595	February 19, 1974, Emerg.; August 1, 1978, Reg.; August 2, 1995, Susp.	.....do	Do.
Haltom City, city of, Tarrant County ...	480599	January 14, 1972, Emerg.; February 1, 1978, Reg.; August 2, 1995, Susp.	.....do	Do.
Haslet, city of, Tarrant County	480600	December 18, 1981, Emerg.; October 15, 1985, Reg.; August 2, 1995, Susp.	.....do	Do.
Hurst, city of, Tarrant County	480601	February 11, 1972, Emerg.; October 15, 1985, Reg.; August 2, 1995, Susp.	.....do	Do.
Lakeside, city of, Tarrant County	480604	January 19, 1973, Emerg.; August 3, 1984, Reg.; August 2, 1995, Susp.	.....do	Do.
Mansfield, city of, Tarrant County	480606	February 28, 1975, Emerg.; December 18, 1985, Reg.; August 2, 1995, Susp.	.....do	Do.
North Richland Hills, city of, Tarrant County.	480607	March 31, 1972, Emerg., April 1, 1981 Reg., August 2, 1995, Susp.	.....do	Do.
Southlake, city of, Tarrant County	480612	September 30, 1974, Emerg., July 5, 1982, Reg., August 2, 1995 Susp.	.....do	Do.
Westover, town of, Tarrant County	480615	July 2, 1975, Emerg., June 5, 1985, Reg., August 2, 1995, Susp.	.....do	Do.
Westworth Village, city of Tarrant County.	480616	January 24, 1975, Emerg., June 3, 1986, Reg., August 2, 1995, Susp.	.....do	Do.
Region VII				
Missouri:				
Ballwin, city of, St. Louis County	290328	July 8, 1975, Emerg., January 2, 1981, Reg., August 2, 1995, Susp.	.....do	Do.
Bella Villa, city of, St. Louis County ...	290329	June 18, 1975, Emerg., July 16, 1979 Reg., August 2, 1995, Susp.	.....do	Do.
Bellefontaine Neighbors, city of, St. Louis County.	290330	December 10, 1973, Emerg., September 29, 1978, Reg., August 2, 1995, Susp.	.....do	Do.
Black Jack, city of, St. Louis County ..	290336	July 2, 1974, Emerg., January 2,1981, Reg., August 2, 1995, Susp.	.....do	Do.
Chesterfield, city of, St. Louis County	290896	September 3, 1971, Emerg., September 15, 1978, Reg., August 2, 1995, Susp.	.....do	Do.
Clarkson Valley, City of, St. Louis County.	290340	May 27, 1975, Emerg., April 8, 1977, Reg., August 2, 1995, Susp.	.....do	Do.
Creve Coeur, city of, St. Louis County	290344	March 27, 1974, Emerg., August 1, 1978, Reg., August 2, 1995, Susp.	.....do	Do.
Ellisville, city of, St. Louis County	290348	February 5, 1975, Emerg., September 9, 1980, Reg., August 2, 1995, Susp.	.....do	Do.
Eureka, city of, St. Louis County	290349	January 23, 1974, Emerg., July 5, 1977, Reg., August 2, 1995, Susp.	.....do	Do.
Hazelwood, city of, St. Louis County .	290357	November 27, 1973, Emerg., April 1, 1980, Reg., August 2, 1995, Susp.	.....do	Do.
Maplewood, city of, St. Louis County .	295266	May 21, 1971, Emerg., November 23, 1973, Reg., August 2, 1995, Susp.	.....do	Do.
Maryland Heights, city of, St. Louis County.	290869	April 4, 1986, Emerg., September 30, 1988, Reg., August 2, 1995, Susp.	.....do	Do.
Moline Acres, city of, St. Louis County.	290370	September 17, 1974, Emerg., May 19, 1981, Reg., August 2, 1995, Susp.	.....do	Do.
Northwoods, city of St. Louis County .	290372	April 12, 1974, Emerg., December 2, 1980, Reg., August 2, 1995, Susp.	.....do	Do.
Norwood Court, village of, St. Louis County.	290867	August 14, 1978, Emerg.; March 18, 1980, Reg.; August 2, 1995, Susp.	.....do	Do.
Oakland, city of, St. Louis County	290373	June 5, 1975, Emerg.; January 16, 1981, Reg.; August 2, 1995, Susp.	.....do	Do.
Perniscot County, unincorporated areas.	290779	April 8, 1975, Emerg.; May 17, 1982, Reg.; August 2, 1995, Susp.	.....do	Do.
St. John, city of, St. Louis County	290384	May 9, 1975, Emerg.; April 15, 1977, Reg.; August 2, 1995, Susp.	.....do	Do.
St. Louis County, unincorporated areas.	290327	September 3, 1971, Emerg.; September 15, 1978, Reg.; August 2, 1995, Susp.	.....do	Do.
Sunset Hills. city of, St. Louis County	290387	June 28, 1973, Emerg.; September 1, 1977, Reg.; August 2, 1995, Susp.	.....do	Do.
Velda Village Hills, village of, St. Louis County.	290857	November 10, 1989, Emerg.; May 1, 1990, Reg.; August 2, 1995, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Webster Groves, city of, St. Louis County.	290394	January 23, 1974, Emerg.; September 29, 1978, Reg.; August 2, 1995, Susp.	.....do	Do.
Winchester, city of, St. Louis County .	290397	June 18, 1975, Emerg.; September 30, 1976, Reg.; August 2, 1995, Susp.	.....do	Do.
Region X				
Washington: Okanogan, city of, Okanogan County.	530119	March 6, 1974, Emerg.; September 30, 1977, Reg.; August 2, 1995, Susp.	.....do	Do.
Region II				
New York:				
Ballston Spa, village of, Saratoga County.	360710	July 7, 1975, Emerg.; June 1, 1984, Reg.; August 16, 1995, Susp.	August 16, 1995	August 16, 1995.
Charlton, town of, Saratoga County ...	360712	July 24, 1975, Emerg.; July 18, 1985, Reg.; August 16, 1995, Susp.	.....do	Do.
Corinth, town of, Saratoga County	360715	August 6, 1975, Emerg.; March 1, 1984, Reg.; August 16, 1995, Susp.	.....do	Do.
Corinth, village of, Saratoga County ..	360714	April 28, 1975, Emerg.; March 1, 1984, Reg.; August 16, 1995, Susp.	.....do	Do.
Mechanicville, city of, Saratoga County.	360721	July 1, 1975, Emerg.; January 5, 1984, Reg.; August 16, 1995, Susp.	.....do	Do.
Milton, town of, Saratoga County	360722	June 26, 1975, Emerg.; May 15, 1985, Reg.; August 16, 1995, Susp.	.....do	Do.
Moreau, town of, Saratoga County	360723	August 11, 1975, Emerg.; June 15, 1984, Reg.; August 16, 1995, Susp.	.....do	Do.
Providence, town of, Saratoga County	361190	October 5, 1984, Emerg.; December 2, 1985, Reg.; August 16, 1995, Susp.	.....do	Do.
Round Lake, village of, Saratoga County.	360726	July 29, 1975, Emerg.; January 5, 1984, Reg.; August 16, 1995, Susp.	.....do	Do.
Schuylerville, village of, Saratoga County.	360729	July 2, 1975, Emerg.; June 1, 1984, Reg.; August 16, 1995, Susp.	.....do	Do.
South Glens Falls, village of, Saratoga County.	360730	September 23, 1975, Emerg.; June 5, 1985, Reg.; August 16, 1995, Susp.	.....do	Do.
Stillwater, town of, Saratoga County ..	360731	July 9, 1975, Emerg.; June 1, 1984, Reg.; August 16, 1995, Susp.	.....do	Do.
Stillwater, village of, Saratoga County	360732	June 24, 1975, Emerg.; January 5, 1984, Reg.; August 16, 1995, Susp.	.....do	Do.
Waterford, town of, Saratoga County .	360734	July 26, 1974, Emerg.; December 4, 1979, Reg.; August 16, 1995, Susp.	.....do	Do.
Region VI				
Texas:				
Guadalupe County, unincorporated areas.	480266	September 22, 1972, Emerg.; March 1, 1979, Reg.; August 16, 1995, Susp.	.....do	Do.
LaVernia, city of, Wilson County	481050	March 9, 1977, Emerg.; May 1, 1978, Reg.; August 16, 1995, Susp.	.....do	Do.
Wilson County, unincorporated area ..	480230	January 10, 1974, Emerg.; March 15, 1978, Reg.; August 16, 1995, Susp.	.....do	Do.
Region VII				
Missouri: Columbia, city of, Boone County	290036	August 27, 1971, Emerg.; August 27, 1971, Reg.; August 16, 1995, Susp.	.....do	Do.
Region VIII				
Colorado:				
Adams County, unincorporated areas	080001	January 14, 1972, Emerg.; February 1, 1979, Reg.; August 16, 1995, Susp.	.....do	Do.
Arapahoe County, unincorporated areas.	080011	February 4, 1972, Emerg.; August 15, 1977, Reg.; August 16, 1995, Susp.	.....do	Do.
Aurora, city of, Adams and Arapahoe Counties.	080002	August 20, 1971, Emerg.; June 1, 1978, Reg.; August 16, 1995, Susp.	.....do	Do.
Brighton, city of, Adams County	080004	August 2, 1974, Emerg.; November 16, 1977, Reg.; August 16, 1995, Susp.	.....do	Do.
Englewood, city of, Arapahoe County	085074	February 26, 1971, Emerg.; February 11, 1972, Reg.; August 16, 1995, Susp.	.....do	Do.
Federal Heights, city of, Adams County.	080240	July 28, 1976, Emerg.; April 15, 1986, Reg.; August 16, 1995, Susp.	.....do	Do.
Greenwood Village, city of, Arapahoe County.	080195	March 16, 1976, Emerg.; January 5, 1978, Reg.; August 17, 1994, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Sheridan, city of, Arapahoe County ...	080018	February 4, 1972, Emerg.; July 13, 1976, Reg.; August 16, 1995, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: July 24, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–18722 Filed 7–31–95; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–200; RM–8018]

Radio Broadcasting Services; Bronson and Cross City, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies the reallotment of Channel 295C1 from Cross City, Florida, to Bronson, Florida, as requested by Women in Florida Broadcasting, Inc. *See* 57 FR 42537, September 15, 1992. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92–200, adopted July 18, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18799 Filed 7–31–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 92–244; RM–8027, RM–8182, RM–8183]

Radio Broadcasting Services; Charlotte Amalie, Cruz Bay, Frederiksted, Christiansted, VI, and Aguada, Gurabo, Utuado, San Juan, Ponce and Carolina, PR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Paradise Broadcasting Corporation, substitutes Channel 267B for Channel 222B at Cruz Bay, Virgin Islands, and modifies Station WDCM(FM)'s construction permit accordingly (RM–8182). Additionally, the mutually exclusive proposal of Robert E. Miller, Jonathan Cohen and Arthur V. Belendiuk, d/b/a Calypso Communications, proposing the substitution of Channel 267B for Channel 246B at Charlotte Amalie, Virgin Islands, is denied (RM–8027). *See* 57 FR 58769, December 11, 1992. Channel 267B can be allotted at Cruz Bay in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.0 kilometers (11.8 miles) west. The coordinates for Channel 267B at Cruz Bay are North Latitude 18–21–31 and West Longitude 64–58–21. *See* Supplementary Information, *infra.*

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92–244, adopted July 14, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

At their request, the counterproposal jointly filed by El Mundo Broadcasting Corporation, Estereotempo, Inc., Radio Redentor, Inc. and Aurio Matos, is dismissed (RM–8183). With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by removing Channel 222B and adding Channel 267B at Cruz Bay.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18797 Filed 7–31–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 60, No. 147
Tuesday, August 1, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 950710175–5175–01]

RIN 0691–AA25

Direct Investment Surveys; Change in Reporting Requirements for the Annual Survey of U.S. Direct Investment Abroad (BE–11)

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules will amend 15 CFR 806.14 to revise the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. The BE–11 is mandatory survey of U.S. direct investment abroad conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. The proposed rules will:

(1) Raise the overall exemption level for the survey, and the exemption level for reporting individual nonbank foreign affiliates on Forms BE–11B(LF) and BE–11C, from $15 million to $20 million.

(2) Institute a short form, Form BE–11B(SF), for U.S. companies to report their majority-owned nonbank foreign affiliates with assets, sales, and net income in the $20 to $50 million range.

(3) For fiscal year 1997 only, require the largest nonbank foreign affiliates owned between 10 and 20 percent to be reported on Form BE–11C, along with affiliates owned between 20 and 50 percent. In all years, nonbank foreign affiliates owned between 20 and 50 percent by all U.S. Reporters (U.S. parent companies) of the affiliate combined must be reported on Form BE–11C if their assets, sales, or net income exceed $20 million. For fiscal year 1997 only, Form BE–11C must also be filed for nonbank foreign affiliates owned, directly and/or indirectly, at least 10 percent by one U.S. Reporter (i.e., U.S. parent company), but less than 20 percent by all U.S. Reporters of the affiliate combined, if the affiliate's total assets, sales, or net income exceed $100 million. Reporting for the largest affiliates owned between 10 and 20 percent is needed in at least one year between benchmark surveys, in order to maintain reliable estimates of data for the universe of foreign affiliates (which is defined by law to include all foreign business enterprises owned 10 percent or more by a U.S. person). A similar requirement was imposed in the 1987 and 1992 annual surveys, which fell between earlier benchmark surveys.

Raising the overall exemption level will reduce the number of U.S. parent companies and foreign affiliates that must be reported in the survey, and instituting a short form for smaller majority-owned affiliates will reduce the number of items to be reported for those affiliates. Thus, the proposed changes will reduce both the reporting and processing burdens of the survey. (As noted below, however, BEA is proposing to add several items to the survey forms, which does not require a rule change; the addition of the items will increase the reporting burden, partially offsetting the reduction in burden due to raising the exemption level and instituting the short form).

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before September 15, 1995.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economics Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Shipping and Receiving, Section M–100, 1441 L Street, NW., Washington, DC 20005. Comments received will be available for public inspection in Room 7006, 1441 L Street NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: The BE–11, Annual Survey of U.S. Direct Investment Abroad, is part of BEA's regular data collection program for U.S. direct investment abroad. The survey is mandatory and is conducted pursuant to the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended).

The BE–11 survey consists of an instruction booklet, a claim for not filing the BE–11, and the following report forms:

1. Form BE–11A for reporting by a U.S. Reporter that is not a bank;
2. Form BE–11B(LF) (Long Form) for reporting majority-owned nonbank foreign affiliates with assets, sales, or net income greater than $50 million (positive or negative);
3. Form BE–11B(SF) (Short Form) for reporting majority-owned nonbank foreign affiliates with assets, sales, or net income greater than $20 million, but not greater than $50 million (positive or negative); and
4. Form BE–11C for reporting minority-owned nonbank foreign affiliates.

A. Form BE–11A must be filed by each nonbank U.S. person having a foreign affiliate reportable on Form BE–11B(LF), BE–11B(SF), or BE–11C. Under these proposed rules, the exemption level for reporting individual foreign affiliates on Form BE–11B(LF) or (SF) or BE–11C—and, thus, for determining whether a U.S. person has to file Form BE–11A—would be raised from $15 million to $20 million. The exemption level is the level of a foreign affiliate's assets, sales, or net income below which a Form BE–11B(LF) or (SF) or BE–11C is not required. Raising the exemption level lowers the number of reports that otherwise must be filed, thus reducing the reporting and processing burdens. The proposed exemption level of $20 million is the same as that recently approved for the related quarterly Form BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate. The exemption level for the BE–11 survey was last raised following the 1989 benchmark survey and was effective with the annual survey covering the year 1990.

In addition to raising the exemption level, these proposed rules will institute the BE–11B(SF) short form. Majority-owned nonbank foreign affiliates for which assets, sales, or net income is greater than $20 million (positive or negative), but for which no one of these items is greater than $50 million (positive or negative), will be required to be reported on Form BE–11B(SF). The use of a short form means that, for about 3,700 foreign affiliates, U.S. companies will now report significantly fewer data items than on the last (1993) annual survey.

For fiscal year 1997 only, these proposed rules will require the largest nonbank foreign affiliates owned between 10 and 20 percent to be reported on Form BE–11C, along with affiliates owned between 20 and 50 percent. In all years, reporting on Form BE–11C is required if an affiliate is owned between 20 and 50 percent by all U.S. Reporters combined and if its assets, sales, or net income exceed $20 million. Primarily to reduce reporting burden of the survey, affiliates owned less than 20 percent do not have to be reported. However, U.S. direct investment abroad is defined by law to include all foreign business enterprises owned 10 (not 20) percent or more, directly or indirectly, by a U.S. person. BEA conducts periodic benchmark surveys of U.S. direct investment abroad (the BE–10), covering all foreign affiliates owned 10 percent or more. A benchmark survey for the year 1994 is now being conducted; the next survey will cover the year 1999. In order to maintain reliable estimates of data for the universe of all foreign affiliates in nonbenchmark years, reporting for the largest affiliates owned between 10 and 20 percent is needed for at least one year between benchmark surveys. Although the U.S. ownership percentages in these affiliates are low, some of the affiliates are very large and have a sizable impact on the estimates. Under these proposed rules, reporting of Form BE–11(C) for nonbank foreign affiliates owned directly and/or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which assets, sales, or net income exceed $100 million would be required for fiscal year 1997 only. A similar one-year requirement was imposed in the 1987 annual survey (between the 1982 and 1989 benchmark surveys) and in the 1992 annual survey (between the 1989 and 1994 benchmark surveys).

These new rules, if approved, will be effective with the survey covering fiscal year 1995. The 1995 forms will be mailed out in March 1996 and will be due May 31, 1996. The last BE–11 survey covered the year 1993. (A BE–11 survey is not conducted in a year, such as 1994, when a BE–10 benchmark survey is conducted.)

BEA is proposing a number of other changes to the report forms themselves—such as modifications, additions, and deletions. These changes, however, do not require rule changes and are not reflected in these proposed rules. The major changes are the addition of five items on Form BE–11A to facilitate the estimation of U.S. parent companies' gross product in the United States annually; the addition of three items on Form BE–11B(LF) to collect affiliates' equity investment in other foreign affiliates needed to arrive at the correct values for affiliates' income and owners' equity; and the addition of an item on Form BE–11B(LF) (which is also included on new Form BE–11B(SF)) to collect property, plant, and equipment (PP&E) expenditures. Projected and actual expenditures for PP&E had been collected on the BE–133 B and C surveys, which were discontinued in June 1993. At that time, respondents were informed that an item on actual expenditures would be added to the annual survey. All the items being added are currently only available on benchmark surveys.

Other changes to the survey include the collection of "total sales," rather than "sales of services," by transactor on Form BE–11A; the collection of research and development expenditures on a performed "by" basis (the basis used by the National Science Foundation), rather than a performed "for" basis, on Form BE–11A and Forms BE–11B (LF) and (SF); the addition of an item on Forms BE–11B (LF) and (SF) to obtain information on an indirectly-owned foreign affiliate's foreign parent's identify and ownership interest in its subsidiary; and the replacement on Form BE–11C of one item, on U.S. ownership in the affiliate, with two items—one on direct ownership interest and the other on indirect ownership interest.

The reporting burden for the 1995 BE–11 (OMB Control No. 0608–0053) survey is estimated at 88,940 hours, 16,360 less than the estimate currently in the OMB inventory. The reduction in burden is more than accounted for by raising the exemption level from $15 million to $20 million and by instituting the BE–11B short form, partly offset by natural growth in the universe and the addition of new items.

A copy of the proposed survey forms may be obtained from: Office of the Chief, Direct Investment Abroad Branch, International Investment Division (BE–69(A), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–5566.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request for review of the forms has been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act.

The public reporting burden for a U.S. company for this collection of information can range from 4 hours for the smallest and least complex U.S. Reporter that has one affiliate, to approximately 3,000 hours for a large U.S. Reporter that has up to 150 affiliates with a wide range of activities; the average burden per Reporter is 62 hours. The estimated burden includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public regarding the burden estimate or any other aspect of this collection of information should be addressed to: Acting Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce. (OMB Control No. 0608–0053).

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these proposed rules, if adopted, will not have a significant economic impact on a substantial number of small entities. The exemption level is set in terms of the size of a U.S. company's foreign affiliates. Only if the affiliate's assets, sales, or net income exceeds $20 million must it be reported. Usually, the U.S. parent company (the one required to file the report) is many times larger.

In addition, by raising the exemption level from $15 million to $20 million, U.S. parent companies will no longer have to report for affiliates between $15 and $20 million. This change should reduce the reporting burden on smaller U.S. businesses that own these affiliates.

Also, to minimize the reporting burden on smaller U.S. businesses, majority-owned affiliates with assets, sales, and net income in the range of $20 million to $50 million will be reported on the abbreviated BE–11B(SF), or short form, rather than the BE–11B(LF), or long form.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, U.S. investment abroad, Penalties, Reporting and recordkeeping requirements.

Dated: June 30, 1995.

J. Steven Landefeld,

Acting Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

§ 806.14 [Amended]

2. Section 806.14(f)(3) introductory text, (f)(3)(i), (f)(3)(ii), (f)(3)(iii), (f)(3)(iv)(A) through (C), (f)(3)(v) are revised to read as follows:

* * * * *

(f) * * *

(3) BE–11—Annual Survey of U.S. Direct Investment Abroad: A report, consisting of Form BE–11A and Form(s) BE–11B(LF), BE–11B(SF), and/or BE–11C, is required of each nonbank U.S. Reporter who, at the end of the Reporter's fiscal year, had a nonbank foreign affiliate reportable on Form BE–11B(LF), BE–11B(SF), or BE–11C. Forms required and the criteria for reporting on each are as follows:

(i) Form BE–11A (Report for U.S. Reporter) must be filed by each nonbank U.S. person having a foreign affiliate reportable on Form BE–11B(LF), BE–11B(SF), or BE–11C.

(ii) Form BE–11B(LF) or (SF) (Report for Majority-owned Foreign Affiliate).

(A) A BE–11B(LF) (Long Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $50 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(B) A BE–11B(SF) (Short Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $20 million (positive or negative), but for which no one of these items was greater than $50 million (positive or negative), at the end of, or for, the affiliate's fiscal year.

(iii) Form BE–11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $20 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 1997 only, a Form BE–11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) * * *

(A) None of its exemption level items is above $20 million.

(B) For fiscal year 1997 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of its exemption level items exceeds $100 million.

(C) For fiscal years other than 1997, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(D) * * *

(E) * * *

(v) Notwithstanding the above, a Form BE–11B(LF), BE–11B(SF), or BE–11C must be filed for a foreign affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

* * * * *

[FR Doc. 95–18804 Filed 7–31–95; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 94–105]

RIN 2115–AE99

Coast Guard Rulemaking Procedures

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: On June 14, 1995, the Coast Guard published a notice of proposed rulemaking (60 FR 31267) proposing the use of a "direct final rule" process for use with noncontroversial rules. Because of a request for additional time to comment on the proposed rulemaking the comment period is being reopened for 30 additional days.

DATES: Comments must be received on or before August 31, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–105), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT R. Goldberg, Staff Attorney, Regulations and Administrative Law Division, Office of Chief Counsel, U.S. Coast Guard Headquarters, (202) 267–6004.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking published on June 14, 1995 invited and encouraged interested persons to participate in the proposed rulemaking by submitting written comments, including views, data or arguments by July 14, 1995. An organization requested additional time to prepare comments citing the need for additional time to disseminate information to effected persons. Because of this request the comment period is reopened for 30 additional days. Coast Guard is reopening the comment period on the notice of proposed rulemaking, "Coast Guard Rulemaking Procedures" which proposes allowing the use of direct final rulemaking procedures in certain situations. The NPRM was published in the **Federal Register** on June 14, 1995 (60 FR 31267) with a comment period that ended July 14, 1995.

Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–105) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Dated: July 24, 1995.

J.E. Shkor,

Rear Admiral, U.S. Coast Guard, Chief Counsel.

[FR Doc. 95–18763 Filed 7–31–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–5266–7]

RIN 2060–AE30

Criteria for the Certification and Determination of the Waste Isolation Pilot Plant's Compliance With Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Re-opening public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is re-opening the public comment period on previously proposed criteria for certifying and determining whether the Department of Energy's Waste Isolation Pilot Plant (WIPP) complies with the disposal standards set forth in 40 CFR 191 (Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes). The proposed criteria and accompanying information were published in the **Federal Register** on January 30, 1995 (60 FR 5766–5791).

DATES: Comments in response to today's document must be received by September 15, 1995.

ADDRESSES: Comments in response to today's document should be submitted, in duplicate, to: Docket No. A–92–56, Air Docket, room M–1500 (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Mary Kruger or Elizabeth Forinash; telephone (202) 233–9310; address: Criteria and Standards Division, Mail Code 6602J, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. The proposed criteria and supplementary information are located in Docket A–92–56. The DOE draft compliance application, described below, is located in Docket A–93–02

SUPPLEMENTARY INFORMATION: The Department of Energy has proposed to use the WIPP, an underground geological repository in Eddy County, New Mexico, for the disposal of radioactive waste generated by atomic energy defense activities. On January 30, 1995 (60 FR 5766–5791), EPA published proposed criteria for certifying and determining whether the WIPP complies with EPA's radiation protection disposal standards set forth in 40 CFR 191. The final criteria will be used by EPA in determining whether the WIPP disposal system complies with the disposal standards, based on a compliance certification application to be submitted by DOE. See section 8 of the WIPP Land Withdrawal Act, Pub. L. No. 102–579.

EPA held a 90-day public comment period on the January 30, 1995 proposed WIPP compliance criteria that concluded on May 1, 1995. See 60 FR at 5766. EPA also conducted public hearings to receive additional public comments on the proposed criteria. The hearings were held in New Mexico from March 21–24, 1995. See 60 FR at 11060.

EPA received a request that EPA extend the initial 90-day public comment period by at least 30 days. In addition, DOE has submitted to EPA, in two parts, a draft compliance certification application. The DOE submittals have been placed in the compliance certification docket No. A–93–02, identified above. EPA does not expect DOE's draft compliance certification application to influence the contents of EPA's final compliance criteria. Nevertheless, members of the public have expressed concern that the draft application may affect EPA's final criteria.

EPA is re-opening the public comment period on the proposed compliance criteria until September 15, 1995, after considering the general request to extend the initial public comment period and to provide an opportunity for the public to comment on the proposed compliance criteria in light of DOE's draft compliance certification application. Comments in response to today's document must be received by September 15, 1995. The public is referred to the January 30, 1995 **Federal Register**, 60 FR 5766–5791, which contains the compliance criteria and accompanying information.

EPA will shortly announce a separate opportunity for public comment on DOE's draft compliance certification application. These comments will be considered in EPA's staff-level review of the draft application. EPA's staff-level review of the DOE draft application has no binding legal effect. EPA will determine whether the WIPP facility is in compliance with EPA's radiation disposal standards only after EPA issues final compliance criteria, receives a final DOE compliance certification application, and conducts a WIPP certification rulemaking proceeding in accordance with the Administrative Procedure Act rulemaking requirements at 5 U.S.C. 553.

Additional Docket Information

The Agency is currently maintaining the following public information dockets: (1) Dockets No. A–92–56 and A–93–02, located in room 1500 (first floor in Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (open from 8:00 a.m. to 4:00 p.m. on weekdays); (2) EPA's docket in the Government Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (3) EPA's docket in the Fogelson Library of the College of Santa Fe in Santa Fe, New Mexico located at 1600 St. Michaels Drive (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, 1:00 p.m. to 9:00 p.m. on Sunday); and (4) EPA's docket in the Municipal Library of Carlsbad, New Mexico located at 101 S. Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). As provided in 40 CFR part 2, a

reasonable fee may be charged for photocopying docket materials.

Richard Wilson,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 95–18834 Filed 7–31–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400095; FRL–4956–8]

Di-(2-ethylhexyl) Adipate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant a petition to delist di-(2-ethylhexyl) adipate (DEHA) (Chemical Abstract Service (CAS) No. 103-23-1), also known as bis-(2-ethylhexyl) adipate, from the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This action is based on EPA's preliminary conclusion that DEHA meets the deletion criteria of EPCRA section 313(d)(3). Specifically, EPA is proposing to grant this petition because, based on the total weight of available data, EPA believes that: (1) DEHA cannot reasonably be anticipated to cause significant acute adverse human health effects at concentration levels expected to occur beyond facility site boundaries and thus does not meet the criterion of EPCRA section 313(d)(2)(A); (2) DEHA does not meet the criterion of EPCRA section 313(d)(2)(B) because it cannot reasonably be anticipated to cause cancer, teratogenic effects, immunotoxicity, neurotoxicity, gene mutations, liver, kidney, reproductive, or developmental toxicity or other serious or irreversible chronic health effects; and (3) DEHA does not meet the criterion of EPCRA section 313(d)(2)(C) because it cannot reasonably be anticipated to cause significant and serious adverse effects on the environment.

DATES: Written comments on this proposed rule must be received by October 2, 1995.

ADDRESSES: Submit written comments in triplicate and identified with docket number "OPPTS–400095" to: OPPT Document Control Officer (7407), Environmental Protection Agency, Rm. NE–G99, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–400095. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit V. of this document.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, 202-260-9592, e-mail: doa.maria@epamail.epa.gov, for specific information regarding this proposed rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, in Virginia and Alaska: 703-412-9877, or Toll free TDD: 800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99-499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Section 313 of EPCRA established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. DEHA was included in the initial list of chemicals and categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemical substances from the section 313 list (59 FR 61439, November 30, 1994).

II. Description of Petition and Other Applicable Regulations

On January 18, 1995, EPA received a petition from the Chemical Manufacturers Association to exclude di-(2-ethylhexyl) adipate (DEHA) from section 313 of EPCRA. Specifically, the petition requests that DEHA be deleted from the list of reportable chemicals and not be subject to the annual reporting requirements under EPCRA section 313 and section 6607 of the PPA. The petitioner contends that DEHA should be deleted from the EPCRA section 313 list because, in their opinion, the available data show that DEHA does not meet the criteria for inclusion on the list of EPCRA section 313 chemicals.

Under the Safe Drinking Water Act, DEHA has a Maximum Contaminant Level of 0.4 milligrams per liter (mg/L).

III. EPA's Technical Review of Di-(2-ethylhexyl) adipate

A. Chemistry

DEHA (CAS No. 103-23-1), also known as bis(2-ethylhexyl) adipate and as dioctyl adipate, is an aliphatic ester used primarily as a plasticizer in a variety of products such as polyvinyl chloride (PVC) and other plastics, cellophane, rubber, and cosmetics. It is a light-colored, oily liquid with low water solubility (0.78 milligrams/liter (mg/L) at 22 °C measured in 1986). DEHA has a very high boiling point (410 °C), low volatility, very low pour point, and excellent low temperature fluidity (Ref. 1).

B. Toxicological Evaluation

Information on DEHA was reviewed for evideace indicating: (1) Bioavailability and metabolism; (2) acute toxicity; (3) chronic toxicity; (4) carcinogenicity; and (5) ecotoxicity.

1. *Bioavailability and metabolism.* DEHA is well absorbed from the gastrointestinal tract of rats, mice, monkeys, and humans (Ref. 2). No data were available concerning the possible absorption of DEHA from the lung or through the skin.

DEHA is rapidly hydrolyzed to adipic acid and 2-ethylhexanol both *in vivo* and *in vitro*. 2-Ethylhexanol is subsequently metabolized to ethylhexanoic acid and other acid and hydroxy acid derivatives and their gluconuride conjugates. Adipic acid is further oxidized to carbon dioxide. Excretion is primarily in the urine, with smaller amounts excreted in the expired air (carbon dioxide) and feces (Ref. 2).

2. *Acute toxicity.* DEHA exhibits slight acute toxicity. The oral median Lethal Dose (LD_{50}) value for rats is greater than 8 grams per kilogram (g/kg), and the dermal LD_{50} value for rabbits is greater than 9 g/kg (Ref. 2). There was no mortality among rats exposed by inhalation to a saturated vapor. DEHA was not irritating to rabbit eyes and skin, and it was not a dermal sensitizer in guinea pigs.

3. *Chronic toxicity.* Several chronic and subchronic feeding studies in rats and mice show that DEHA is not highly toxic. The primary effect in both species appears to be body weight depression. In rats, the Lowest Observed Adverse Effect Level (LOAEL) was 1,125 milligrams per kilogram per day (mg/kg/day) for both the chronic and 13-week studies. In mice, the LOAELs ranged from 2,800 mg/kg/day (chronic study) to 900 mg/kg/day (13-week study) (Ref. 2).

The weight of the evidence from several mutagenicity assays indicates that DEHA is probably not mutagenic (Ref. 2). Although most mutagenicity assays on DEHA are negative, DEHA does produce chromosome mutations in mammalian cells in culture (weakly), increase DNA synthesis in rats *in vivo*, and induce dominant lethals in mice *in vivo*. A positive response in the dominant lethal without collaborating genotoxicity data in assay systems designed to assess basic mutagenicity hazard is not an indication of potential mutagenicity (Ref. 2).

Data on both developmental and reproductive system toxicity are limited (Ref. 2). For developmental toxicity, a standard protocol test is available for only one species. For reproductive toxicity, there is a one-generation test, but not a multi-generation test. The one-generation reproduction study on male and female rats showed a reduction in litter size with administration of approximately 1,080 mg/kg/day of DEHA in feed, but the reduction was small and not statistically significant. The dominant-lethal assay discussed above found a dose-related increase in early fetal death, but the increase was not statistically significant and doses (0.46 to 9.2 g/kg, by single interperitoneal injection) were high.

4. *Carcinogenicity.* The National Toxicology Program tested DEHA for carcinogenicity in male and female rats and mice treated via diet (Ref. 2). Doses were approximately 700 or 1,500 mg/kg/day in the rat and 2,800 or 7,000 mg/kg/day in the mouse. The chemical was carcinogenic for female mice, inducing a significantly increased incidence of hepatocellular carcinomas. A marginally significant increase in hepatocellular carcinomas and adenomas combined was reported for male mice as compared with that of the concurrent controls. DEHA was not carcinogenic for the rats of either sex.

5. *Ecotoxicity.* DEHA is not expected to pose a significant hazard to the environment. Based on structure activity relationships (SARs), no toxic effects are anticipated for both freshwater and saltwater species at saturation (Ref. 2). For sediment species, acute and chronic toxicity are expected to occur only at high concentrations: 1,000 and 100 mg/kg (dry weight), respectively.

C. Environmental Fate

DEHA released to air has an estimated half-life for hydroxy radical oxidation of 5.2 hours. No information was found on photolysis of DEHA in air.

DEHA released to water is expected to undergo biodegradation in the water column with a half-life on the order of days to weeks. It will also partition readily to sediment based on its estimated soil organic carbon partition coefficient of 15,500. Once bound to sediments, DEHA will probably continue to biodegrade, but possibly at a significantly slower rate (halflife on the order of months). Hydrolysis is not expected to be a significant removal process below pH 9 (estimated half-life = 3.2 years at pH 7).

DEHA released to soil is expected to adsorb strongly based on its estimated soil organic carbon partition coefficient (15,500). Biodegradation is possible, and could further mitigate migration through soil. Biodegradation half-life in soils is estimated on the order of weeks.

DEHA is expected to be removed from wastewater in biological wastewater treatment systems by adsorption and biodegradation. Based on available biodegradation data and physical chemistry properties, 90 percent removal in Publicly Owned Treatment Works was estimated.

D. Exposure and Releases

Reported releases of DEHA were retrieved from the Toxic Release Inventory System (TRIS) and used to estimate air and water concentrations using TRIAIR and TRIWATER modeling techniques. The estimated maximum Lifetime Average Daily Potential Dose via inhalation (0.00178 mg/kg/day) is over 300-fold less than the Reference Dose (RfD) (0.6 mg/kg/day). The difference for oral exposure is much greater for water (Ref. 3). Based on this information, releases of DEHA are not expected to result in exposures of concern for human health or the environment.

The Agency believes that exposure considerations are appropriate in making determinations: (1) Under section 313(d)(2)(A); (2) under section 313(d)(2)(B) for chemicals that exhibit low to moderately low toxicity based on a hazard assessment; and (3) under section 313(d)(2)(C) for chemicals that are low or moderately ecotoxic but do not induce well-documented serious adverse effects. The Agency believes that exposure considerations are not appropriate in making determinations: (1) Under section 313(d)(2)(B) for chemicals that exhibit moderately high to high human toxicity based on a hazard assessment; and (2) under section 313(d)(2)(C) for chemicals that are highly ecotoxic or induce well-established adverse environmental effects. Given DEHA's low chronic toxicity and low ecotoxicity, exposure considerations are appropriate for detrminations under sections 313(d)(2)(B) and (C) as part of this proposed rule to delist. A more detailed discussion of EPA's listing determination guidelines is provided in the **Federal Register** of November 30, 1994 (59 FR 61442).

E. Technical Sumimary

Based on the total weight of available toxicity data, EPA believes that DEHA cannot reasonably be anticipated to cause significant adverse effects on human health or the environment. DEHA exhibits slight acute toxicity and causes adverse chronic effects only at high doses. Furthermore, DEHA is not expected to pose a significant hazard to the environment. In addition, based on EPA's exposure assessment, releases of DEHA are not expected to result in exposures of concern.

IV. Rationale for Proposal to Grant

EPA is granting the petition by proposing to delete DEHA from the EPCRA section 313 list of toxic chemicals. This decision is based on the

Agency's preliminary determination that DEHA does not meet the toxicity criterion of EPCRA section 313(d)(2)(A) because it cannot reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

EPA has preliminarily concluded that DEHA does not meet the criterion of EPCRA section 313(d)(2)(B) because it cannot reasonably be anticipated to cause teratogenic effects, immunotoxicity, neurotoxicity, or liver, kidney, reproductive, or developmental toxicity or other serious or irreversible chronic health effects. Furthermore, while EPA has classified DEHA as a Group C, possible human carcinogen, clear evidence of carcinogenicity was observed in only one species-sex group (mice-female) in the animal studies. EPA believes that there is a lack of clear evidence of possible carcinogenicity in male mice. Therefore, EPA believes that, overall, the evidence is too limited to establish that DEHA is likely to cause cancer. EPA believes that DEHA has low chronic toxicity and accordingly has considered exposure factors. As stated above, EPA has concluded that anticipated exposure concentrations of DEHA are not expected to result in significant adverse effects. Therefore, EPA has preliminarily concluded that DEHA does not meet the EPCRA section 313(d)(2)(B) listing criterion.

EPA has also preliminarily determined that DEHA does not meet the toxicity criterion of EPCRA section 313(d)(2)(C) because it cannot reasonably be anticipated to cause adverse effects on the environment of sufficient seriousness to warrant continued reporting.

Thus, in accordance with EPCRA section 313(d)(3), EPA is proposing to delete DEHA from the section 313 list of toxic chemicals.

V. Rulemaking Record

A record has been established for this proposed rule under docket number "OPPTS–400095" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

VI. References

(1) USEPA, OPPT, EETD. Jenny Tou, "Chemistry Report on Di(2-ethylhexyl) Adipate," dated April 27, 1995.

(2) USEPA, OPPT, CSRAD. Memorandum from Lorraine Randecker to Fred Metz, entitled "Petition to Delist Di(2-ethylhexyl) Adipate," dated May 22, 1995.

(3) USEPA, OPPT, EETD. David Lynch, "Exposure Assessment for DEHA in Response to Delisting Petition," dated March 21, 1995.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and therefore not subject to OMB review.

EPA estimates that the reduction in costs to industry associated with the deletion of DEHA would be approximately $322,620. The costs savings to EPA are estimated at $8,664, if DEHA is deleted from the EPCRA section 313 list.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the rule. Because this proposed rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local or tribal governments, and the private sector. This action does not result in the expenditure of $100 million or more by any State, local or tribal governments, or by anyone in the private sector. The costs associated with this action are described in the Executive Order 12866 unit above.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community Right-to-Know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: July 24, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by deleting the entry for Bis(2-ethylhexyl) adipate under paragraph (a) and the entire CAS number entry for 103-23-1 under paragraph (b).

[FR Doc. 95–18870 Filed 7–31–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 1

[MM Docket No. 95–110; FCC 95–277]

Broadcast Services; Allocations; Automatic Stay

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This Notice of Proposed Rule Making proposes to delete the automatic stay provision in Section 1.420(f) of the Commission's rules. That rule applies to proposals to amend the FM and TV Tables of Allotments and provides for an automatic stay upon the filing of a petition for reconsideration of any Commission order modifying an authorization to specify operation on a different channel. The purpose of the proposed amendment is to remove any incentive to challenge an agency order simply to delay institution of expanded service by a competitor, and to expedite provision of improved service to the public.

DATES: Comments are due by August 28, 1995, and reply comments are due by September 12, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews (202–739–0774), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making (NPRM) in MM Docket No. 95–110, adopted July 10, 1995, and released July 21, 1995. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. With this Notice of Proposed Rule Making (NPRM), the Commission proposes to delete that portion of Section 1.420(f) of its rules, 47 CFR 1.420(f), which provides for an automatic stay, upon the filing of a petition for reconsideration, of any Commission order modifying an authorization to specify operation on a different channel. The purpose of the proposed amendment is to remove an apparent incentive for the filing of petitions for reconsideration that are largely without merit and to expedite provision of expanded service to the public.

2. Section 1.420(f) provides, in pertinent part:

> * * * The filing of a petition for reconsideration of an order modifying an authorization to specify operation on a different channel shall stay the effect of a change in the rules pending action of the petition.

3. Although Section 1.420(f) refers only to petitions for reconsideration, the Commission staff has also applied the automatic stay to orders challenged by applications for review.[1] Our proposal to delete the automatic stay provision for petitions for reconsideration would also eliminate automatic stays in the context of applications for review.

4. The automatic stay was adopted by the Commission in 1975 as part of a provision that requires service of petitions for reconsideration in proceedings for amendment of the FM and TV Tables of Allotments on any licensee or permittee whose authorized frequency could be changed. Thus, it is apparent that the automatic stay was intended to help ensure that affected parties have the opportunity to comment before proposed modifications to their authorizations become effective.

5. Our intent in proposing to delete the automatic stay provision is to discourage parties from filing meritless petitions for reconsideration or applications for review that can substantially delay implementation of improved broadcast service. It is our experience that parties increasingly are filing challenges to approvals of their competitor's proposals to improve service, thereby triggering the automatic stay. Only a very small percentage of these petitions or applications for review are ultimately successful. Because the stay prohibits licensees from constructing modified facilities authorized by the Commission until final resolution of any outstanding reconsideration or application for review,[2] or until the stay is lifted, the stay provides an incentive for parties to challenge agency approval of a competitor's modification proposal simply to forestall institution of new competitive service. These petitions cause unjustifiable expense for parties and absorb valuable staff resources.

6. Elimination of the automatic stay would facilitate implementation of improved service to licensee communities, thereby promoting more efficient use of broadcast spectrum and resulting in significant public interest benefits. Because Section 1.420(f) will continue to require that petitions for reconsideration be served on any licensee or permittee whose authorization could be modified, the rights of these interested parties to be affirmatively informed of actions potentially affecting their interests will continue to be protected.

7. Elimination of the automatic stay, while allowing licensees to commence construction and operation of their modified facilities, would not prejudice final resolution of any challenges to the initial staff decision. Licensees who proceed, where feasible, to construct and operate new facilities in instances in which a petition for reconsideration or application for review is pending bear the risk of an adverse final decision, and must take whatever steps are necessary to comply with the final order. Moreover, the Commission retains the authority to impose a stay in individual cases where circumstances warrant.[3]

8. We propose both to eliminate the automatic stay in prospective cases, and to lift the stay with respect to any petitions for reconsideration or applications for review pending as of the effective date of the Report and Order in this proceeding. We believe that lifting the stay in pending cases will further our objective of expediting provision of improved service to the public. We invite comment on this second aspect of our proposal in particular, as well as on our general proposal to eliminate the automatic stay.

Administrative Matters

9. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 28, 1995 and reply comments on or before September 12, 1995. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

10. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Analysis

11. Reason for Action: This proceeding was initiated to improve Commission procedures governing proposals to amend the FM and TV Tables of Allotments.

[1] *See Arlington TX*, 6 FCC Rcd 2050, 2051 n. 2 (1991).

[2] *See, e.g., Arlington, TX, supra* n. 1.

[3] *See* 47 CFR 1.102(b), 1.106(n), and 1.115(h).

12. Objectives of the Action: The actions proposed in the *Notice* are intended to reduce the workload in the Allocations Branch of the Policy and Rules Division of the FCC's Mass Media Bureau by eliminating an apparent incentive to challenge agency approval of another station's modification proposal.

13. Legal Basis: The proposed action is authorized under sections 4 and 303 of the Communications Act of 1934, as amended. 47 U.S.C. §§ 154, 303.

14. Reporting, Record-keeping and Other Compliance Requirements: None.

15. Federal Rules which Overlap, Duplicate or Conflict with the Proposed rule: None.

16. Description, Potential Impact and Number of Small Entities Involved: Approximately 11,000 existing television and radio broadcasters of all sizes may be affected by the proposals contained in this *Notice*.

17. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The proposals contained in this *Notice* do not impose additional burdens on small entities.

18. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of the *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq* (1981).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18802 Filed 7–31–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 61, 64, and 69

[CC Docket No. 95–116; FCC 95–284]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted a Notice of Proposed Rulemaking (Notice) seeking comment on a wide variety of policy and technical issues concerning the portability of telephone numbers. Number portability is the ability of end users to retain their telephone number when they switch to a new service provider, a new location, or a new service. Number portability provides consumers with greater personal mobility and flexibility in the way they use telecommunications services, and it fosters competition among alternative providers of local telephone and other telecommunications services. Through this Notice the Commission will examine the overall benefits, technical feasibility, and implementation costs of number portability in various forms.

DATES: Comments must be received on or before September 12, 1995; reply comments must be received on or before October 12, 1995.

ADDRESSES: Comments and reply comments must be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554; one copy shall also be filed with the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, NW., Suite 140, Washington, DC 20037 (202/857–3800). The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Matthew J. Harthun, (202) 418–1590 or Carol E. Mattey, (202) 418–1580, Policy and Program Planning Division. Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Notice of Proposed Rulemaking

A. Portability for Geographic Telephone Numbers

The Commission tentatively concludes that the portability of geographic telephone numbers benefits consumers by providing them greater personal mobility and flexibility in the use of telecommunications services and by contributing to the development of competition among alternative providers of local telephone and other telecommunications services. The Commission seeks comment on this tentative conclusion and on the public interest benefits of number portability. Furthermore, the Commission tentatively concludes that it should assume a leadership role in developing a national number portability policy due to the impact on interstate telecommunications. It seeks comment on this tentative conclusion and on the specific nature of the Commission's role. The Commission recognizes, however, that it has insufficient information on the costs (monetary and nonmonetary) of making geographic telephone numbers portable either between service providers, services, or locations. Therefore, it seeks comment on: (1) The feasibility, limitations and costs of longer-term number portability solutions; (2) the feasibility, limitations, and costs of interim number portability measures; and (3) issues associated with a transition to a permanent number portability environment.

1. Importance of Number Portability

1. *Service Provider Number Portability.* In light of its tentative conclusions that the portability of geographic numbers benefits consumers and would contribute to the development of competition among alternative providers of local telephone services, the Commission identifies, and seeks comment on, specific issues concerning the competitive impact of number portability.

2. The competitive importance of service provider number portability depends primarily on the value that customers assign to their current telephone numbers. When end users attach a significant value to retaining their telephone numbers while changing service providers, a lack of number portability likely would deter entry by competitive providers of local services. Business customers, in particular, may be reluctant to incur the administrative, marketing, and goodwill costs of changing telephone numbers. These disincentives to changing service providers may be mitigated, however, if a significant number of customers change their telephone numbers for other reasons. Both residential and business customers change their numbers for a variety of reasons; for example, customers move to areas served by different central offices. Moreover, changes in area codes, such as area code splits or overlays, create a certain level of number churn.

3. The Commission asks commenting parties to provide studies, data, and other information on the relative importance of service provider number portability to the decisions of end users when considering whether to take service from competing providers. It is particularly interested in assessing the importance of number portability relative to other potential deterrents to competitive entry into the provision of local services. Commenting parties also are invited to provide studies, data, and other information on the extent to which situations, such as number churn, and other factors enable competing providers of local telephone services to compete for customers without service provider number portability. Further, the Commission seeks specific information on whether different customer groups vary with respect to the value they assign to service provider number portability.

4. To the extent that wireless service providers offer services in competition with local telephone companies, a lack of service provider portability may significantly hamper their ability to compete efficiently to serve existing customers of the incumbent wireline service providers. Parties are asked to provide comment, studies, data, and other information on: (1) The competitive significance of service provider number portability for the development of competition between wireline and wireless service providers; and (2) the current, and estimated future, demand of wireless customers for portable wireless telephone numbers when they change their service provider either to another wireless service provider or to a wireline provider. The Commission previously sought comment on certain "number transferability" issues in the *Second CMRS Interconnection NPRM* (60 FR 20949, at ¶ 94, n. 192). It noted there that it might address those issues in this or in the *CMRS Interconnection* proceeding.

5. *Service Portability.* The need for service portability arises when a particular service is available only through a particular switch. The same factors that inhibit customers from changing number in order to change service providers may also deter customers from taking new services. The Commission seeks comment on the demand for service portability, and the extent to which a lack of service portability inhibits the growth of new services, such as integrated service digital network (ISDN). It seeks comment, studies, data, and other information on the relative importance of service portability to the decision of end users when considering whether to switch from one service to another. It also seeks comment on what federal policy objectives would be served by encouraging (or possibly mandating) implementation of service portability, and steps the Commission could take to encourage service portability.

6. *Location Portability.* Today, telephone subscribers must change their telephone numbers when they move outside the area served by their current central office. Location portability would enable subscribers to keep their telephone numbers when they move to a new neighborhood, a nearby community, across the state, or even, potentially, across the country. The Commission seeks comment on the extent to which there is demand for location portability and the geographic area in which portability is desired by consumers. What federal policy objectives would be served by encouraging (or possibly mandating) implementation of location portability, and how could such objectives be attained? The Commission seeks comment on the potential impact that implementation of location portability for wireline telephone number may have on the development of the 500 personal communications services market. Conversely, it seeks comment on the cross-elastic effects of the availability of personal mobility services offered through 500 and wireless services on demand for location portability of wireline telephone numbers. Finally, it seeks comment, studies, data, or other information on the extent to which end users are requesting 800 numbers to obtain location portability.

2. The Commission's Role

7. Currently, it appears unlikely that market forces alone will drive the development and deployment of a number portability solution. The Commission seeks comment on whether there should be a regulatory mandate requiring the availability of number portability measures for geographic telephone numbers. Assuming market forces will push the development and deployment of number portability, the Commission seeks comment on whether market forces are sufficient to promote a nationwide, uniform development of number portability absent such a regulatory mandate.

8. The Commission tentatively concludes that it has a significant interest in promoting the nationwide availability of number portability due to the likely impact upon interstate telecommunications. In the United States, the same set of telephone numbers is used to route intrastate, and international telephone calls to individual telecommunications customers. The Commission tentatively conclude that it is within the Commission's jurisdiction to ensure that the portability of telephone numbers within the numbering system is handled efficiently and fairly. The Commission also tentatively concludes that there is a federal interest in this area because deployment of different number portability solutions across the country would have a significant impact on the provision of interstate telecommunications services. Finally, the Commission tentatively concludes that it has a federal interest in fostering the development of number portability due to its interest in efficient use of the numbering resource.

9. The Commission recognizes that state regulators also have legitimate interests in the development of number portability, and that they are conducting tests and deploying number portability measures. While the Commission encourages these tests because they will provide empirical evidence and other relevant information, it notes that state requirements governing number portability should not thwart or impede national policies, such as nondiscrimination and competitive neutrality. The Commission seeks comment on areas where state and federal policies on number portability are likely to diverge or become inconsistent, and on the additional costs associated with having different number portability approaches on a state-by-state basis or on a regional basis. Parties should address the need to develop a uniform solution to the provision of number portability, and whether the deployment of different number portability methods across the country is in the public interest.

10. In the event the Commission concludes that number portability should be implemented on a nationwide basis, what specific actions can and should it take to expedite such implementation? For instance, should the Commission direct implementation of number portability by a date certain and direct an industry group to develop a detailed implementation plan? Alternatively, should the Commission adopt rules specifying how number portability shall be implemented? If it mandates implementation of specific number portability measures, upon whom should this obligation fall, and what is a realistic time frame in which that mandate should become effective?

11. Finally, the Commission seeks comment on its appropriate role in establishing technical and performance standards for number portability. Should it leave the establishment of

number portability standards to industry organizations and standards-setting bodies, and simply monitor the activities of these groups? Or, should it direct industry bodies to resolve certain issues (technical or otherwise)? If so, which issues should be designated for resolution by these groups, and to which organizations should they be directed? Is it reasonable for the Commission to establish deadlines for the resolution by industry of issues involving number portability? If so, parties should provide recommended time frames. Alternatively, should the Commission take a more active role in the development of such number portability standards? For example, should it develop, and mandate compliance with, particular number portability standards, or should it establish non-binding standards or guidelines?

3. Longer-Term Number Portability Solutions

12. The Commission seeks comment on what longer-term number portability solution is in the public interest. For purposes of this section, the Commission intends "number portability" to encompass service provider, service, and location portability because a method for providing location portability likely will also enable customers to change service providers and services without changing their telephone numbers. The Commission asks commenting parties to draw upon relevant information obtained through the various ongoing number portability trials.

13. *Current Proposals.* In response to the New York request for proposals (RFP), MCI Metro (partnered with DSC Communications, Northern Telecom, Tandem Computers, and Siemens Stromberg-Carlson) has proposed a database method that would enable end users within a particular geographic region (most likely a state) to retain their NXX code and line number if they change their local service provider. AT&T has proposed to the Industry Numbering Committee (INC) workshop a similar database method for providing service provider portability on a regional basis. The trial in Seattle, Washington is testing a method developed by Stratus Computer and U.S Intelco—namely, a mapping scheme that uncouples the end user's telephone number from its geographic location. Finally, in the context of the INC number portability workshop, GTE has proposed to implement number portability by requiring customers to change, on a one-time basis, their telephone number to, for example, a 700 number.

14. The Commission seeks comment on the advantages and disadvantages of the MCI Metro, AT&T, Seattle, and GTE proposals. It asks whether any of these proposals provide a workable model for national implementation of number portability for geographic numbers and whether there are other workable proposals.

15. The Commission tentatively concludes that a number portability environment should support operator services and enhanced 911 services. It seeks comment on the extent to which the various proposals support these services. The Commission also tentatively concludes that any number portability proposal should efficiently use telephone numbers. It seeks comment on the impact that each of the proposals would have on the numbering resource.

16. *Call Processing Scenarios.* The Commission seeks comment on which of the following three call processing scenarios, or any alternative, would best serve the public interest. The three scenarios are: (1) The terminating "access" provider (TAP) scenario, which places the burden of doing the database query on the terminating access provider; (2) the originating service provider (OSP) scenario, which requires the originating service provider to perform the database query and pass the information necessary to complete the routing of a call to subsequent carriers; and (3) the N–1 ("N minus 1") scenario, where the carrier immediately prior to the terminating service provider performs the database query. The Commission requests that commenters discuss the different burdens that each scenario would place on the relevant carriers involved, any methods that would reduce the number of database queries, the burden such scenarios would place on current SS7 networks and next-generation system signaling networks, and the network modifications such scenarios would require. The Commission also requests that commenters address the impact that any call processing scenario would have on transmission quality, call set-up time, and any other relevant service quality considerations. The Commission seeks comment on how various call processing scenarios would operate under the proposals offered by MCI Metro, AT&T, GTE, or any alternative, and on whether certain proposals are limited to specific call processing scenarios. It also seeks comment on which carrier, or carriers, perform the database query in the Seattle trial, and what has been learned from that experience.

17. *Geographic Scope.* The Commission seeks comment on whether telephone numbers should be portable within local calling areas, throughout a particular area code, state-wide, regionally, nationwide, or on some other basis. What are the advantages and disadvantages of each of these alternatives, and what are the implications of each for carriers and their customers? For example, what changes would the different alternatives require for carrier billing systems? To what extent do varying approaches differently impact different types of carriers, such as local exchange carriers (LECs), new wireline carriers, and wireless carriers?

18. What is the geographic scope of the number portability trial in Seattle, and what geographic scope is contemplated in the proposals offered by MCI Metro, AT&T and GTE? The Commission seeks comment on whether these proposals could be used to provide number portability on a nationwide basis without significant network modifications.

19 *Architecture.* The Commission seeks comment on what database architecture would best serve the public interest. To what extent is the database used to provide 800 number portability a useful model? Is it technically feasible to deploy a single database to implement number portability on a nationwide basis, or should a database solution be designed to use a number of distributed (that is, regional) databases? If the latter, in what geographic areas should such databases operate, and what are the advantages, disadvantages, and relative costs of each approach?

20. The Commission also seeks comment on the method for administering and modifying the data contained in the database(s). Is it better to update and modify such data from a single, central location, or should that process be initiated by different sources? If a de-centralized system for updating the data is preferred, what processes will be required to ensure that the data in different databases is updated consistently and without discrepancies? The Commission also seeks comment on the types of information the database(s) will need to contain and who should be permitted access to such data.

21. *Administration of the Database.* The Commission seeks comment on who should own the database(s) used to provide a longer-term number portability solution. Further, it seeks comment on how such a database (or databases) should be maintained and funded. The Commission seeks comment on the criteria that should be used to evaluate potential administrators of a number portability database system and who should select the administrator. Finally, the Commission seeks comment on the scope of responsibilities that should be placed on the administrator or administrators of such a database or databases.

22. *Costs and Cost Recovery Issues.* In order to weigh the public interest benefits of deploying a longer-term number portability solution against the current interim measures, the Commission must consider the costs associated with designing, building, and deploying such a longer-term solution. The Commission requests comment, data, studies and other information on the estimated costs to design, build, and deploy a longer-term database solution. The Commission also seeks comment on how these costs should be allocated between federal and state jurisdictions. Commenting parties should, to the extent possible, estimate both the total cost of infrastructure necessary to deploy number portability and the long-term incremental cost of deploying number portability, exclusive of other costs such as network equipment and hardware and software upgrades that would be incurred without implementation of number portability.

23. The Commission also seeks comment on how and from whom the costs of designing, building, deploying, and operating a database system should be recovered. If the Commission mandates that LECs implement number portability, should they be allowed to treat these as exogenous costs, and thereby increase their rates? Parties should comment on whether the costs of a database system should be shared between all carriers using the system. Alternatively, should competing providers of local telephone services and their customers bear the costs of such a database system?

4. Interim Number Portability Measures

24. To evaluate whether a transition to a longer-term number portability solution is in the public interest, the Commission must understand what measures are currently available for providing number portability.

25. The Commission seeks comment on the costs, and offsetting benefits, of implementing the interim number portability measures, such as remote call forwarding (RCF), flexible direct inward dialing (DID), and their derivatives. The Commission recognizes that RCF and flexible DID have significant limitations. Parties are asked to comment and elaborate on the limitations and disadvantages of RCF, flexible DID, and their derivatives. Further, the Commission asks commenting parties to discuss the availability of these interim measures and their effectiveness as an interim substitute for a database number portability solution. Finally, parties should consider whether these interim measures can be improved so that they are workable, long-term solutions, and if so, at what cost.

26. *Cost Recovery for Interim Measures.* The Commission seeks comment on whether the costs of interim number portability measures should be recovered from the new local service providers, or their customers. The Commission also seeks comment on the amounts charged for these interim measures, whether such rates have a significant competitive impact, and whether reductions in such rates would make these measures more workable as long-term solutions. Finally, it asks parties to propose alternative ways to recover the costs of interim measures.

5. The Transition From Interim Portability Measures

27. It is not clear at this point whether the industry will move to a longer-term solution that provides only service provider number portability, or will evolve to a location portability environment. Commenting parties should identify any transitional issues that are unique to either environment and the particular impacts that short-term choices may have on longer-term possibilities.

28. *Transition to Service Provider Portability.* The Commission seeks comment on the estimated time frame to design, build, and deploy a system that would provide service provider portability. Commenting parties should address the modifications that would be necessary to implement a transition to service provider portability, including, but not limited to, modifications to the carriers' networks, operating procedures (for example, billing and collection procedures), and dialing plans. The Commission seeks comment on whether the ability to transfer wireless telephone numbers between different service providers (wireline and wireless) places the same burden on the LECs and other carriers as transferring wireline telephone numbers.

29. *Transition to Location Portability.* The Commission also seeks comment on the estimated time frame to design, build, and deploy a system capable of providing location portability. Commenting parties should address the modifications that would be necessary to implement a transition to location portability, including, but not limited to, modifications to the carriers' networks, operating procedures (for example, billing and collection procedures), and dialing plans.

30. In a location portability environment, the association between telephone numbers and geographic locations will dissolve, and dialing parties may not be able to determine from the telephone number they dial the charge incurred by placing a telephone call. The Commission seeks comment on the impact that a transition to location portability would have on consumers, the network, service providers, and others. Are there ways to provide dialing parties notification of the charge they will incur when they dial a particular number? What effect will location portability have on operator services, director assistance, enhanced services, the way carriers determine rates for toll and interLATA calls, and billing systems? What impact would location portability have on the current administration of the numbering resource?

31. *Public Interest of a Transition to Longer-Term Solution.* To determine what would best serve the public interest, the Commission seeks comment comparing the relative costs and benefits associated with the current interim solutions to the costs and benefits associated with alternative longer-term solutions. In answering this question, parties are encouraged to focus on the costs and benefits of the specific proposals currently being tested in Seattle and developed by MCI Metro, AT&T, and GTE. Is it in the public interest to require only that carriers make available interim measures that accommodate number portability and not require the implementation of a longer-term number portability solution? The Commission also seeks comment on the additional costs that would be incurred, and the benefits that would be attained, by evolving to location portability from an intermediate step of service provider portability.

B. Portability for Non-geographic Telephone Numbers

32. The Commission tentatively concludes that service provider portability for 900 and 500 (PCS N00) numbers is beneficial for customers of those services. The Commission seeks comment on this tentative conclusion and on the costs (monetary and nonmonetary) of making such portability available. The term "PCS" is used here generically as "a set of capabilities that allows some

combination of personal mobility, terminal mobility, and service profile management." PCS N00 number portability includes 500 number portability. The term "PCS" or "personal communications services" as used here is different from the term "personal communications services" as defined in part 24 of the Commission's rules. (47 CFR 24.5). The Commission seeks to gather more information to determine whether the public interest would be served by mandating portability for 900 and PCS N00 services, and it considers other issues related to the implementation of such number portability.

33. The Commission seeks comment on whether developing and deploying a method for providing number portability for geographic telephone numbers could, or should, include service provider number portability for non-geographic telephone numbers, such as 500 and 900 numbers. It is technically possible, and cost effective, to use the same database method, and possibly the same database, to provide service provider portability for geographic and service-specific (non-geographic) telephone numbers? Similarly, is it technically possible, and cost effective, to use the same database to provide service provider portability for all types of non-geographic numbers, such as 800, 500, and 900 numbers, or is it preferable to use separate databases for each type of non-geographic number?

1. 900 Service Provider Portability

34. The Commission seeks comment on various issues relating to portability of 900 numbers. The Commission asks parties to address the extent to which 900 number portability will lower prices and thereby stimulate demand for 900 number services. Parties are asked to provide comment, studies, data, and other information on the estimated cost of designing, building, and deploying a 900 database, and the estimated costs of operating such a database. Is it technically feasible to upgrade the existing 800 database and associated software to accommodate 900 numbers, and if so, at what cost? Is advanced intelligent network (AIN) a less costly way to implement 900 number portability? The Commission also seeks comment on whether it should direct an industry group to develop an implementation plan for a 900 number portability database, and if so, to which industry group should this task be referred. If the Commission decides to mandate implementation of service provider portability for 900 numbers, what is a realistic schedule for implementation?

2. 500 Service Provider Portability

35. Presently, LECs provide 500 access by two methods: Switch-based translation or database capabilities. The Commission seeks comment on the extent to which LECs are using AIN capabilities or database technology to provide 500 access, and on the impact that PCS N00 service provider portability would have on the LEC networks. The Commission also seeks comment on whether it is feasible (both technically and economically) to provide PCS N00 service provider portability in a switched-based translation environment.

36. The Commission asks parties to address the extent to which PCS N00 number portability will lower prices, and thereby stimulate demand for PCS N00 number services. Parties are asked to provide comment, studies, data, and other information on the estimated costs of designing, building, and deploying a PCS N00 database, and the estimated costs of operating such a database. The Commission seeks comment on whether it is technically feasible to upgrade the existing 800 database and associated software to accommodate PCS N00 numbers, and if so, at what cost.

37. On May 17, 1995, the INC submitted a report to the Bureau that sets forth alternative database architectures for such portability and an estimated implementation schedule. *See* letter from Denny Byrne and Robert Hirsch, Co-Chairs, INC, to Kathleen M.H. Wallman, Chief, Common Carrier Bureau, FCC, dated May 17, 1995, attaching *INC Report on PCS N00 Portability*, INC 95–05212–010 (*PCS N00 Portability Report*)(incorporated into the docket of this proceeding). The Commission seeks comment on the advantages, disadvantages, and relative costs of the proposed architectures and call flow scenarios set forth in the *PCS N00 Portability Report*.

38. The Commission tentatively concludes that the owner/operator of the service management systems administering the PCS N00 database should be a neutral third party. The Commission seeks comment on the tentative conclusion. The Commission also seeks comment on: (1) Who will be the owner/operator of the service management systems administering the data contained in the PCS N00 database; (2) how will the owner/operator be selected; (3) how will the costs of providing PCS N00 number portability be recovered; and (4) by what date should PCS N00 number portability be deployed.

39. The Commission further seeks comment on whether it should direct an industry group to proceed with the development of an implementation plan for PCS N00 service provider portability. Assuming such a directive is in the public interest, it seeks comment on what industry group (for example, Alliance for Telecommunications Industry Solutions or the Telecommunications Industry Association) should be selected to develop the detailed implementation plan for the database. Finally, the Commission asks parties to comment on the estimated implementation schedule set forth in the *PCS N00 Portability Report* and to propose an alternative schedule, if appropriate.

C. Procedural Matters

40. *Ex Parte.* This is a non-restricted notice and comment rulemaking. *Ex parte* presentations are permitted, except during the Sunshine period, provided they are disclosed as provided in the Commission's rules. (47 CFR 1.1202, 1.1203, and 1.1206(a)).

41. *Regulatory Flexibility Act.* As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities resulting from the policies and proposals set forth in the *Notice*. The IRFA is contained in appendix A to the *Notice*. The Secretary shall cause a copy of the *Notice*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

42. *Notice and Comment.* Notice is given of the proposed changes in the Commission's policies regarding number portability. Comment is invited on the proposals pursuant to sections 1, 4(i), 4(j), 201–205, 218, and 332 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, and 332. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. Parties wanting each Commissioner to receive a personal copy of their comments must file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, NW., Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), 2100 M Street, NW., Suite 140, Washington, DC 20037 (202/857–3800). Comments and reply comments will be available for pubic inspection during regular business in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC.

D. Ordering Clauses

43. Accordingly, it is ordered that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 218, and 332 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, and 332, a notice of proposed rulemaking is hereby adopted.

44. It is further ordered that the Petition for Rulemaking filed by the Teleservices Industry Association on October 18, 1994, is granted.

List of Subjects in 47 CFR Parts 61, 64, and 69

Communications common carriers, Telephone.

Federal Communications Commissions.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18601 Filed 7–31–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 95–113; RM–8664]

Radio Broadcasting Services; Salem, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Salem-Teikyo University proposing the allotment of Channel 258A at Salem, West Virginia, as the community's second local FM transmission service. Channel 258A can be allotted to Salem in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 258A at Salem are North Latitude 39–17–00 and West Longitude 80–34–00. Since Salem is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before September 18, 1995 and reply comments on or before October 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street NW., Suite 200, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–113, adopted July 7, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18792 Filed 7–31–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–120, RM–8650]

Radio Broadcasting Services; Premont, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Paulino Bernal, licensee of Station KMFM(M), Channel 285A, Premont, Texas, seeking the substitution of Channel 264C3 for Channel 285A at Premont, Texas and modification of Station KMFM(FM)'s license to reflect the non-adjacent higher class channel. Channel 264C3 can be allotted to Premont in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.7 kilometers (4.8 miles) east in order to avoid a short spacing conflict with the licensed site of Station KBDR(FM), Channel 263C2, Mirando City, Texas. The coordinates for Channel 264C3 at Premont are 27–21–35 and 98–02–45. Mexican concurrence will be requested for this proposal. In addition, in the event that competing expressions of interest are received, we may not modify petitioner's authorization since there are no additional Class C3 channels available for use by any other interested parties.

DATES: Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry D. Wood, Jones, Waldo, Holbrook & McDonough, 2300 M Street NW., Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–120, adopted July 14, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18794 Filed 7–31–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–122, RM–8668]

Radio Broadcasting Services; Lexington, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Floriplex, Inc., proposing the allotment of Channel 243A to Lexington, Tennessee, as the community's second commercial FM service. Channel 243A can be allotted to Lexington in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.1 kilometers (5.6 miles) northeast in order to avoid a short-spacing conflict with the licensed site of Station WMOD(FM), Channel 244A, Bolivar, Tennessee. The coordinates for Channel 243A at Lexington are 35–43–33 and 88–21–13.

DATES: Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis . Corbett, Leventhal, Senter & Lerman, Suite 600, Washington, DC 10006–1809 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–122, adopted July 18, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18796 Filed 7–31–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–114, RM–8666]

Radio Broadcasting Services; Raton, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by N'Joy Broadcasting seeking the allotment of Channel 243A to Raton, NM, as the community's second local FM service. Channel 243A can be allotted to Raton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–54–00 North Latitude and 104–24–00 West Longitude.

DATES: Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mary Alice Rateau, 8264 South Cody, Littleton, CO 80123 (Petitioner) and Larry G. Fuss, P.O. Box 1787, Cleveland, MS 38732 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–114, adopted July 10, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18793 Filed 7–31–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–112, RM–8663]

Radio Broadcasting Services; Lordsburg, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Hildalgo County Broadcasters to allot Channel 279C3 to Lordsburg, NM, as the community's second local FM service. Channel 279C3 can be allotted to Lordsburg in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 32–20–48; 108–42–36. Mexican concurrence in the allotment is required since Lordsburg is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1225 Connecticut Avenue NW., Suite 300, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–112, adopted July 10, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18795 Filed 7–31–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–111, RM–8652]

Radio Broadcasting Services; Athens, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by WMS1, Inc., requesting the allotment of Channel 241A to Athens, Illinois, as that community's first local transmission service. Channel 241A can be allotted to Athens in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) southwest, in order to avoid a short-spacing to the licensed sites of Station WHOW(FM), Channel 240A, Clinton, Illinois, and Station KMXG(FM), Channel 241C1, Clinton, Iowa. The coordinates for Channel 241A at Athens, Illinois are North Latitude 39–53–57 and West Longitude 89–46–04.

DATES: Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Larry Williams, WMS1, Inc., 2901 S. Holmes, Springfield, Illinois 62704.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–111, adopted July 5, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18800 Filed 7–31–95; 8:45 am]

BILLING CODE 6712–01–F

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC–220]

The Municipality of Anchorage, AK—Notices for Rate Increases for Alaska Intermodal Motor/Water Traffic—Petition for Rulemaking

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a change in its regulations to require carriers filing new short-notice publications generally to send the filings to the subscriber not later than the time the copies for official filing are sent to the Commission. This change will give subscribers more time to consider the short-notice publications.

DATES: Written comments must be filed with the Commission by August 31, 1995.

ADDRESSES: Send an original and 10 copies of pleadings referring to Ex Parte No. MC–220 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423; and (2) Petitioner's representative: William P. Jackson, Jackson & Jessup, P.C., Post Office Box 1240, Arlington, VA 22210–0540.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Commission is instituting a rulemaking proceeding in response to a petition filed May 25, 1994, by the municipality of Anchorage, AK. Petitioner requested new regulations that would facilitate challenges to short-notice rate increase publications for intermodal motor/water service to and from Alaska. The Commission is proposing to require that all short-notice publications—including (1) short-notice publications not involving the intermodal Alaska trade; and (2) rate decreases as well as increases—be sent to subscribers on the date the publications are sent to the Commission for filing. The full text of the regulation is set forth below.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2209, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Regulatory Flexibility Analysis

We certify that the proposed regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The proposed rule directly affects only the mailing date for notification. Although it may, in a minor way, facilitate the ability of small businesses to challenge rate changes, the effect of the proposed rule, if adopted, will not be significant. Nevertheless, we welcome any comments regarding the effect of the proposal on small entities.

Environmental and Energy Considerations

The proposed rule will not significantly affect either the quality of the human environment or the conservation of energy resources. We preliminarily conclude that, if we subsequently adopt the proposed rule, an environmental assessment would not be necessary under our regulations because the proposed action would not result in any changes in carrier operations. See 49 CFR 1105.6(c)(2). Nevertheless, we invite comments on the environmental and energy impacts of the proposal.

List of Subjects in 49 CFR Part 1312

Household goods freight forwarders, Motor carriers, Moving of household goods, Pipelines, Tariffs, Water carriers.

Decided: July 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1312 is proposed to be amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS OF MOTOR, PIPELINE AND WATER CARRIERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS

1. The authority citation for part 1312 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10762, and 10767.

2. Section 1312.6, paragraph (b)(2) is proposed to be revised to read as follows:

§ 1312.6 Furnishing copies of tariff publications.

* * * * *

(b) * * *

(2) Newly-issued tariffs, supplements, or loose-leaf pages, including short-notice publications, shall be sent to each subscriber not later than the time the copies for official filing are sent to the Commission, except that with the advance, written permission of the subscriber, any publication may be sent not later than 5 working days after the time the copies are sent to the Commission.

* * * * *

[FR Doc. 95–18825 Filed 7–31–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 950209046–5191–04; I.D. 071495A]

RIN 0648–AG82

Pacific Coast Groundfish Fisheries; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that the Pacific Fishery Management Council (Council) is considering whether there is a need to impose additional management measures to further limit harvest capacity in the nontrawl limited entry fishery for sablefish in the Pacific groundfish fishery in the exclusive economic zone (EEZ) off the States of Washington, Oregon, and California. If it is determined that there is a need to impose additional management measures, the Council may recommend a rulemaking to do so. Possible measures include the establishment of a limited entry program for the sablefish fishery through the establishment of a sablefish endorsement for nontrawl limited entry "A" permits to control participation or effort in the nontrawl sablefish fishery. If a limited entry program is established, the Council is considering June 29, 1995, as a possible control date. Consideration of a control date is intended to discourage new entry by nontrawl "A" permit holders into the sablefish fishery based on economic speculation during the Council's deliberation on the issues. Persons interested in the limited entry sablefish fishery should contact the Council to stay up to date on the management direction in the fishery.

DATES: Comments must be submitted by August 31, 1995.

ADDRESSES: Comments should be directed to the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson 206–526–6140; or Rodney R. McInnis 310–980–4040.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan (FMP) for Pacific groundfish was approved on January 4, 1982 (47 FR 43964; October 5, 1982), and implementing regulations appear at 50 CFR parts 611 and 663. On November 16, 1992, NMFS published final regulations implementing Amendment 6 to the Pacific groundfish FMP (57 FR 54001), codified at 50 CFR part 663, subpart C. Amendment 6 and its implementing regulations establish a license limitation limited entry program for the commercial groundfish fishery based on the issuance of gear-specific Federal limited entry permits. Limited entry permits are endorsed for one or more of three gear types (trawl, longline, and trap (or pot)). A vessel meeting specific minimum landing requirements with a particular gear during the qualifying "window period" (July 11, 1984, through August 1, 1988) received a transferable permit with an "A" endorsements for that gear.

Amendment 6 also divides the Pacific Coast commercial groundfish fishery into two segments. The first segment is the limited entry fishery, consisting of vessels with limited entry permits endorsed for longline and/or trap (or pot) gear and all vessels using trawl gear. The second segment is the open access fishery, consisting of vessels using all other gear, as well as vessels that do not have limited entry permits endorsed for use of longline or trap (or pot) gear, but that make small landings with longline or trap (or pot) gear.

The annual sablefish harvest guideline, after deductions for treaty Indian harvest and allocation to the open access fishery, is divided between the limited entry trawl fishery (58 percent) and the limited entry longline/fish trap (or pot) fishery (42 percent), which is called the nontrawl fishery. The regular sablefish fishing season for nontrawl vessels with limited entry permits has been progressively shorter each year for the past several years as a result of shrinking harvest guidelines and increased fishing effort. Competition for the limited resource has reached critical levels, and the Council has considered several approaches to addressing the major problems. The 1995 season is expected to be the shortest on record, approximately 7 days. Despite the fact that the number of nontrawl limited entry "A" licenses is limited to 237, only 131 landed sablefish during 1994, leaving an additional 106 permits that represent latent effort that potentially could participate in future sablefish harvests.

In June 1995, the Council held a scoping meeting to solicit input from the industry and the public on future management of the nontrawl fisheries. Based on the results of the meeting, the Council is beginning the development of management options for the fishery. The range of options the Council will consider includes, but is not limited to, limiting participation in the sablefish fishery only to those permit holders with a past history of sablefish landings, differential cumulative trip limits based on fishermen receiving "points" for meeting certain qualifying criteria, a two-tier system of cumulative trip limits based on historical sablefish landings during particular qualifying time periods, equal shares or cumulative trip limits, associating trip limits with permits and allowing use of more than one permit on a vessel, split seasons, and area management. The Council has previously considered individual transferable quota (ITQ) options, but has delayed, indefinitely, further consideration pending changes to the Magnuson Act.

Implementation of any management measures for the fishery may require preparation by the Council of an amendment to either or both the Pacific groundfish FMP or its implementing regulations. The Council will discuss these issues at its August 1995 meeting in San Francisco, CA. In either event, publication of a proposed rule with a public comment period, NMFS' approval of the rule or FMP amendment, and publication of a final rule would be required.

As the Council considers management options, some permit holders who do not currently harvest sablefish with limited entry gear, and have never done so, may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings of sablefish. When management authorities begin to consider limited access management regimes, this kind of speculative entry often is responsible for a rapid increase in fishing effort in fisheries that are already fully developed or overdeveloped. The original fishery problems, such as overcapitalization or overfishing, may be exacerbated by the entry of new participants. If management measures to limit participation or effort in the fishery are determined to be necessary, the Council is considering June 29, 1995, as the control date. Anyone entering the fishery after that date may not be assured of future participation in the fishery if a management regime is developed and implemented that limits the number of participants in the fishery.

Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the sablefish fishery. Fishermen are not guaranteed future participation in the sablefish fishery, regardless of their date of entry or intensity of participation in the fishery before or after the control date under consideration. The Council may subsequently choose a different control date, or it may choose a management regime that does not make use of such a date. For example, on February 5, 1992 (57 FR 4394), NMFS published in the **Federal Register** a notice of control date informing fishermen that a vessel or individual entering the Pacific groundfish or Pacific halibut fisheries off the States of Washington, Oregon, and California, may be assigned a lesser priority for issuance and shares of ITQ shares in a potential ITQ-based limited access system. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. Other qualifying criteria, such as documentation of commercial landings and sales, may be applied for entry. The Council may choose also to take no further action to control entry or access to the sablefish fishery, in which case the control date may be rescinded.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 27, 1995.

Richard B. Stone,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–18832 Filed 7–27–95; 3:08 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 147
Tuesday, August 1, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–059–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Dekalb Genetics Corporation seeking a determination of nonregulated status for a corn line designated as B16 that has been genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn line presents a plant pest risk.

DATES: Written comments must be received on or before October 2, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–059–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–059–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Reding, Biotechnologist, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road, Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7601.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On May 25, 1995, APHIS received a petition (APHIS Petition No. 95–145–01p) from the Dekalb Genetics Corporation (Dekalb) of Mystic, CT, requesting a determination of nonregulated status under 7 CFR part 340 for a glufosinate tolerant corn line designated as B16. The Dekalb petition states that the subject corn line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, corn line B16 has been genetically engineered with the *bar* gene isolated from *Streptomyces hygroscopicus* that encodes a phosphinothricin acetyltransferase (PAT) enzyme, which, when introduced into a plant cell, inactivates glufosinate, also known as phosphinothricin, the active ingredient in the herbicide Liberty®. The *bar* gene was introduced into the subject corn line by microprojectile bombardment and its expression is under the control of the 35S promoter derived from the plant pathogen cauliflower mosaic virus and the *Agrobacterium tumefaciens* transcript 7 (Tr 7) 3' regulatory region. Dekalb's corn line B16 is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogenic sources. The subject corn line has been evaluated in field trials conducted since 1991 under APHIS permits or notifications. In the process of reviewing the applications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

This genetically engineered corn line is also currently subject to regulation by other agencies. The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. Plants that have been genetically modified for tolerance or resistance to herbicides are not regulated under the FIFRA because the plants themselves are not considered pesticides.

In cases in which the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, the EPA must approve the new or different use. In conducting such an approval, the EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Dekalb's corn line B16 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 24th day of July 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–18777 Filed 7–31–95; 8:45 am]

BILLING CODE 3410–34–P

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Alton (IL), Columbus (OH), and Farwell (TX) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of Alton Grain Inspection Department (Alton), will end March 31, 1996; the designation of Columbus Grain Inspection, Inc. (Columbus), will end February 28, 1996; and the designation of Farwell Grain Inspection, Inc. (Farwell), will end January 31, 1996, according to the Act, and GIPSA is asking persons interested in providing official services in the Alton, Columbus, and Farwell areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before August 30, 1995.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

GIPSA designated Alton, main office located in Florissant, Missouri, to provide official inspection services under the Act on April 1, 1993; Columbus, main office located in Circleville, Ohio, to provide official inspection services under the Act on March 1, 1993; and Farwell, main office located in Farwell, Texas, to provide official inspection services under the Act on February 1, 1993.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Alton ends on March 31, 1996. The designation of Columbus ends on February 28, 1996, and the designation of Farwell ends on January 31, 1996. The geographic area presently assigned to Alton, in the State of Illinois, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Calhoun, Jersey, and Madison (West of State Route 4 and North of Interstate 70 and 270) Counties.

The geographic area presently assigned to Columbus, in the States of Ohio and Michigan, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Ohio:

Bounded on the North by the northern Lucas County line east to Lake Erie; the Lake Erie shoreline east to the Ohio-Pennsylvania State line;

Bounded on the East by the Ohio-Pennsylvania State line south to the Ohio River;

Bounded on the South by the Ohio River south-southwest to the western Scioto County line; and

Bounded on the West by the western Scioto County line north to State Route 73; State Route 73 northwest to U.S. Route 22; U.S. Route 22 west to U.S. Route 68; U.S. Route 68 north to Clark County; the northern Clark County line west to State Route 560; State Route 560 north to State Route 296; State Route 296 west to Interstate 75; Interstate 75 north to State Route 47; State Route 47 northeast to U.S. Route 68 (including all of Sidney, Ohio); U.S. Route 68 north to U.S. Route 30; U.S. Route 30 east to State Route 19; State Route 19 north to Seneca County; the southern Seneca County line west to State Route 53; State Route 53 north to Sandusky County; the southern Sandusky County line west to State Route 590; State Route 590 north

to Ottawa County; the southern and western Ottawa and Lucas County lines.

In Michigan: those sections of Jackson, Lenawee, and Monroe Counties which are east of State Route 127 and south of State Route 50.

Columbus' assigned geographic area does not include the following export port locations inside Columbus' area which have been and will continue to be serviced by FGIS: The Andersons, Toledo and Maumee, Ohio; Cargill, Inc., Toledo and Maumee, Ohio; Countrymark Cooperative, Inc., Toledo, Ohio; and Burdick Grain, Huron, Ohio.

The geographic area presently assigned to Farwell, in the States of Arizona, New Mexico, and Texas, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Maricopa, Pinal, and Yuma Counties, Arizona. Bernalillo, Chaves, Curry, DeBaca, Eddy, Guadalupe, Lea, Quay, Roosevelt, San Miguel, Santa Fe, Torrance, and Union Counties, New Mexico.

Bailey, Deaf Smith (west of State Route 214), Lamb (south of U.S. Route 70 and west of FM 303), and Parmer Counties, Texas.

Interested persons, including Alton, Columbus, and Farwell, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Alton specified geographic area is for the period beginning April 1, 1996, and ending January 31, 1999. Designation in the Columbus specified geographic area is for the period beginning March 1, 1996, and ending January 31, 1999. Designation in the Farwell specified geographic area is for the period beginning February 1, 1996, and ending January 31, 1999. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 19, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–18724 Filed 7–31–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity to Comment on the Applicant for the Northern Michigan Region

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicant for designation to provide official services in the Northern Michigan region.

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by August 30, 1995.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 1, 1995, **Federal Register** (60 FR 28570), GIPSA asked persons interested in providing official services in the Northern Michigan region to submit an application for designation. There was one applicant. Michigan Grain Inspection Services, Inc. (Michigan), main office located in Marshall, Michigan, applied for the entire area specified in the June 1, 1995, **Federal Register**.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of this applicant. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicant written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 19, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–18723 Filed 7–31–95; 8:45 am]

BILLING CODE 3410–EN–F

Designation for the Fremont (NE) and Titus (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Fremont Grain Inspection Department, Inc. (Fremont), and Titus Grain Inspection, Inc. (Titus), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: September 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 1, 1995, **Federal Register** (60 FR 11069), GIPSA asked persons interested in providing official services in the geographic areas assigned to Fremont and Titus to submit an application for designation. Applications were due by March 31, 1995. Fremont and Titus, the only applicants, each applied for designation in the entire area they are currently assigned.

GIPSA requested comments on the applicant in the April 21, 1995, **Federal Register** (60 FR 19882). Comments were due by May 30, 1995. GIPSA received one comment by the deadline. The comment supported the designation of Titus.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Fremont and Titus are able to provide official services in the geographic areas for which they applied. Effective September 1, 1995, and ending August 31, 1998, Fremont and Titus are designated to provide official inspection services in the geographic areas specified in the March 1, 1995, **Federal Register**. Interested persons may obtain official services by contacting Fremont at 402–721–1270 and Titus at 317–497–2202.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 19, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–18726 Filed 7–31–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity to Comment on the Applicants for the Amarillo (TX), Schaal (IA), and Wisconsin Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA request comments on the applicants for designation to provide official services in the geographic areas currently assigned to Amarillo Grain Exchange, Inc. (Amarillo), D. R. Schaal Agency, Inc. (Schaal), and Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by August 30, 1995.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 1, 1995, **Federal Register** (60 FR 28570), GIPSA asked persons interested in providing official services in the geographic areas assigned to Amarillo, Schaal, and Wisconsin to submit an application for designation. There were four applicants: Amarillo and Schaal applied for designation to provide official inspection services in the entire areas currently assigned to them; A. V. Tischer and Son, Inc. (Tischer), applied for the portions of Schaal s area that does not include the grain elevators that are located inside Schaal s area; and Wisconsin applied for designation to provide official inspection and Class X and Y weighing services in the entire area currently assigned to them.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 19, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–18725 Filed 7–31–95; 8:45 am]

BILLING CODE 3410–EN–F

AGENCY FOR INTERNATIONAL DEVELOPMENT

Loan Guarantees to Israel; Notice of Investment Opportunity

The Government of Israel (the "GOI") wishes to select a lead managing underwriter for the structuring and sale of U.S. Agency for International Development ("USAID")-guaranteed loans. The USAID-guaranteed loans have been authorized by Public Law 102–391, and are being provided in connection with Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries.

The legislation authorizes the guaranty by USAID of up to $10 billion principal amount of loans over a five-year period, with a maximum of $2 billion in loans, offered in one or more trenches, to be guaranteed in each of the five fiscal years. This Notice is in connection with the GOI's selection of managing underwriters for an offering contemplated to be made under the authorization for the current fiscal year.

The lead managing underwriter for the proposed transaction will be selected through a competitive bid on the expected pricing date. In order to pre-qualify for participation in the competitive sale, potential bidders must demonstrate the requisite financial and technical capabilities by their responses to a Request for Proposals ("RFP"), which will be available from the GOI on or about July 28, 1995. Proposals must be submitted, in accordance with the RFP, by 5:00 p.m. on August 7, 1995. For information regarding the submission of proposals, please contact Mr. Eliahu Ziv-Zitouk, Chief Fiscal Officer, Ministry of Finance of the Government of Israel, 800 Second Avenue, New York, N.Y. 10017 (fax: 212/499–5715).

The GOI reserves the right to limit the number of firms that are eligible to submit bids to underwrite the proposed transaction, and to reject any or all bids. In order to be eligible for selection as a managing underwriter, an institution must be a member of the National Association of Securities Dealers, and otherwise meet the legal requirements for serving such role. All firms are encouraged to seek to prequalify, regardless of ethnic origin, race or gender.

The full repayment of the loans will be guaranteed by USAID. To be eligible for an USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 226 of the Foreign Assistance Act of 1961, as amended. Disbursements under the loans will be subject to certain conditions required of the GOI by USAID as set for in agreements between USAID and the GOI.

Additional information regarding USAID's responsibilities in this guaranty program can be obtained from the undersigned: Room 225, SA–2, 515 22nd Street NW., Washington, DC 20523–0235, Telephone: 202/663–2773.

Dated: July 27, 1995.

Michael G. Kitay,

Assistant General Counsel, Agency for International Development.

[FR Doc. 95–18906 Filed 7–31–95; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–815]

Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Gray Portland Cement and Clinker From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The appeal period for the court decision in *Nihon Cement Co., Ltd. et al.* v. *United States*, Slip Op. 95–53 has expired. Accordingly, given that the decision was not appealed, the Department is amending its final determination of sales at less than fair value and order in the antidumping duty investigation of Gray Portland Cement and Clinker from Japan (Cement from Japan) in accordance with that decision.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or John Brinkmann, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, D.C., 20230; telephone (202) 482–0186 or 482–5288, respectively.

BACKGROUND: On March 28, 1995, in the case of *Nihon Cement Co., Ltd. et al.* v. *United States*, Slip Op. 95–53 (*Nihon*), the United States Court of International Trade (CIT) affirmed the Department's redetermination on remand of the investigation of sales at less than fair value of Cement from Japan (56 FR 12156, March 22, 1991, as amended by 56 FR 21658, May 10, 1991). In that redetermination, the Department recalculated the deposit rates of Onoda Cement Co. (Onoda), Nihon Cement Co., Ltd.(Nihon), and the "All Others" rate. On May 10, 1995, the Department published notice of the court decision and the new rates (60 FR 24832, May 10, 1995). In that notice the Department stated that it must continue to suspend liquidation until a "conclusive" decision in this action is reached. Because none of the parties appealed the CIT's decision and the opportunity to appeal has expired, the Department is amending the rates calculated in the final determination and order. The new rates are: 70.52 for Onoda; 69.89 for Nihon; and 70.23 for "All Others". We will instruct Customs to continue to suspend liquidation, and collect cash deposits, at the new rates for Nihon and "All Others". The effective cash deposit rate for Onoda has been determined by a subsequent administrative review, and is therefore not affected by the recalculation of these rates.

Dated: July 25, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–18859 Filed 7–31–95; 8:45 am]

BILLING CODE 3510–DS–P

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/255.22 (1993)), as amended (*see* Interim Regulations, 60 FR 25130 (May 11, 1995)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than August 31, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

Antidumping duty proceedings	Period
AUSTRALIA: Corrosion-Resistant Carbon Steel Flat Products (A–602–803)	08/01/94–07/31/95
BELGIUM: Cut-to-Length Carbon Steel Plate (A–423–805)	08/01/94–07/31/95
BELGIUM: Industrial Phosphoric Acid (A–423–602)	08/01/94–07/31/95
BRAZIL: Cut-to-Length Carbon Steel Plate (A–351–817)	08/01/94–07/31/95
CANADA: Corrosion-Resistant Carbon Steel Flat Products (A–122–822)	08/01/94–07/31/95
CANADA: Cut-to-Length Carbon Steel Plate (A–122–823)	08/01/94–07/31/95
CANADA: Magnesium (A–122–814)	08/01/94–07/31/95
FINLAND: Cut-to-Length Carbon Steel Plate (A–405–802)	08/01/94–07/31/95
FRANCE: Corrosion-Resistant Carbon Steel Flat Products (A–427–808)	08/01/94–07/31/95
FRANCE: Industrial Nitrocellulose (A–427–009)	08/01/94–07/31/95
GEORGIA: Titanium Sponge (A–833–803)	08/01/94–07/31/95
GERMANY: Cold-Rolled Carbon Steel Flat Products (A–428–814)	08/01/94–07/31/95
GERMANY: Corrosion-Resistant Carbon Steel Flat Products (A–428–815)	08/01/94–07/31/95
GERMANY: Cut-to-Length Carbon Steel Plate (A–428–816)	08/01/94–07/31/95
ISRAEL: Industrial Phosphoric Acid (A–508–604)	08/01/94–07/31/95
ITALY: Grain Oriented Electrical Steel (A–475–811)	02/09/94–07/31/95
ITALY: Granular Polytetrafluoroethylene Resin (A–475–703)	08/01/94–07/31/95
ITALY: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished (A–475–603)	08/01/94–07/31/95
JAPAN: Acrylic Sheet (A–588–055)	08/01/94–07/31/95
JAPAN: Brass Sheet and Strip (A–588–704)	08/01/94–07/31/95
JAPAN: Corrosion-Resistant Carbon Steel Flat Products (A–588–826)	08/01/94–07/31/95
JAPAN: Certain High-Capacity Pagers (A–588–007)	08/01/94–07/31/95
JAPAN: Granular Polytetrafluoroethylene Resin (A–588–707)	08/01/94–07/31/95
KAZAKHSTAN: Titanium Sponge (A–834–803)	08/01/94–07/31/95
KOREA: Cold-Rolled Carbon Steel Flat Products (A–580–815)	08/01/94–07/31/95
KOREA: Corrosion-Resistant Carbon Steel Flat Products (A–580–816)	08/01/94–07/31/95
MEXICO: Cut-to-Length Carbon Steel Plate (A–201–809)	08/01/94–07/31/95
MEXICO: Gray Portland Cement and Clinker (A–201–802)	08/01/94–07/31/95
NETHERLANDS: Brass Sheet and Strip (A–421–701)	08/01/94–07/31/95
NETHERLANDS: Cold-Rolled Carbon Steel Flat Products (A–421–804)	08/01/94–07/31/95

Antidumping duty proceedings	Period
POLAND: Cut-to-Length Carbon Steel Plate (A–455–802)	08/01/94–07/31/95
ROMANIA: Cut-to-Length Carbon Steel Plate (A–485–803)	08/01/94–07/31/95
RUSSIA: Titanium Sponge (A–821–803)	08/01/94–07/31/95
SPAIN: Cut-to-Length Carbon Steel Plate (A–469–803)	08/01/94–07/31/95
SWEDEN: Cut-to-Length Carbon Steel Plate (A–401–805)	08/01/94–07/31/95
TAIWAN: Clear Sheet Glass (A–583–023)	08/01/94–07/31/95
THAILAND: Malleable Cast Iron Pipe Fittings (A–549–601)	08/01/93–07/31/94
THE PEOPLE'S REPUBLIC OF CHINA: Petroleum Wax Candles (A–570–504)	08/01/94–07/31/95
THE PEOPLE'S REPUBLIC OF CHINA: Sulfanilic Acid (A–570–815)	08/01/94–07/31/95
TURKEY: Acetylsalicylic Acid (Aspirin) (A–489–602)	08/01/94–07/31/95
UNITED KINGDOM: Cut-to-Length Carbon Steel Plate (A–412–814)	08/01/94–07/31/95
UKRAINE: Titanium Sponge (A–823–803)	08/01/94–07/31/95
UKRAINE: Uranium (A–823–802)	08/01/94–07/31/95
YUGOSLAVIA: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished (A–479–601)	08/01/94–07/31/95
Countervailing Duty Proceedings	
BELGIUM: Cut-to-Length Carbon Steel Plate (C–423–806)	01/01/94–12/31/94
BRAZIL: Cut-to-Length Carbon Steel Plate (C–351–818)	01/01/94–12/31/94
CANADA: Alloy Magnesium (C–122–815)	01/01/94–12/31/94
CANADA: Live Swine (C–122–404)	04/01/94–03/31/95
CANADA: Pure Magnesium (C–122–815)	01/01/94–12/31/94
FRANCE: Corrosion-Resistant Carbon Steel (C–427–810)	01/01/94–12/31/94
GERMANY: Cold-Rolled Carbon Steel Flat Products (C–428–817)	01/01/94–12/31/94
GERMANY: Corrosion-Resistant Carbon Steel (C–428–817)	01/01/94–12/31/94
GERMANY: Cut-to-Length Carbon Steel Plate (C–428–817)	01/01/94–12/31/94
ISRAEL: Industrial Phosphoric Acid (C–508–605)	01/01/94–12/31/94
KOREA: Cold-Rolled Carbon Steel Flat Products (C–580–818)	01/01/94–12/31/94
KOREA: Corrosion-Resistant Carbon Steel Plate (C–580–818)	01/01/94–12/31/94
MALAYSIA: Extruded Rubber Thread (C–557–806)	01/01/94–12/31/94
MEXICO: Cut-to-Length Carbon Steel Plate (C–201–810)	01/01/94–12/31/94
NEW ZEALAND: Low-Fuming Brazing Copper Rod and Wire (C–614–501)	08/01/94–12/31/94
SPAIN: Cut-to-Length Carbon Steel Plate (C–469–804)	01/01/94–12/31/94
SWEDEN: Cut-to-Length Carbon Steel Plate (C–401–804)	01/01/94–12/31/94
THAILAND: Certain Circular Welded Steel Pipes and Tubes (C–549–501)	01/01/94–12/31/94
UNITED KINGDOM: Cut-to-Length Carbon Steel Plate (C–412–815)	01/01/94–12/31/94
ZIMBABWE: Carbon Steel Wire Rod (C–796–801)	01/01/94–12/31/94
Suspension Agreements	
JAPAN: Erasable Programmable Read Only Memories (EPROMS) (C–588–505)	08/01/94–07/31/95

In accordance with sections 353.22(s) and 355.22(a) of the regulations, in interested party as defined by section 353.2(k) or 355.2(i) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to section 355.22(a) of the Department's Interim Regulations, an interested party, as defined in section 355.2(i)(2)–(6), must specify the individual producers or exporters covered by the order for which they are requesting a review. Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or exporters.

If the interested party intends for the Secretary to conduct an antidumping or countervailing duty review of an exporter (or a producer if that producer also exports merchandise from other suppliers) which produced subject merchandise in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by August 31, 1995. If the Department does not receive, by August 31, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: July 26, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–18860 Filed 7–31–95; 8:45 am]

BILLING CODE 3510–DS–M

Intent To Revoke Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty order listed below. Domestic interested parties who object to revocation of this order must submit their comments in writing not later than the last day of August 1995.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 CFR 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty order listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with § 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in §§ 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke this order pursuant to this notice, and no interested party (as defined in § 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to interested parties and proceed with the revocation effective January 1, 1995. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order pursuant to § 355.25(d)(4).

The order listed below is also subject to section 753 of the Act; however, any revocation pursuant to section 753 would be effective March 3, 1995, the date Zimbabwe acceded to the World Trade Organization. As such, the requirements of section 753 do not affect the procedures for revocation under § 355.25(d)(4) of the regulations since the effective date of any revocation under the regulations would be January 1, 1995.

Countervailing duty order	
Zimbabwe: Wire Rod (C–796–601)	08/15/86 51 FR 29292

Opportunity To Object

Not later than the last day of August 1995, domestic interested parties may object to the Department's intent to revoke this countervailing duty order. Any submission objecting to the revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under §§ 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: July 26, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–18861 Filed 7–31–95; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 070795C]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and Fish and Wildlife Service (FWS), Interior.

ACTION: Receipt of modification request for a scientific research permit (P771#65).

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, 7600 Sand Point Way, NE., BIN C15700 Building 1, Seattle, WA 98115–0070 has requested a modification to permit no. 842 to take the marine mammals listed below for the purpose of scientific research.

DATES: Written comments must be received on or before August 31, 1995.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700 Building 1, Seattle, WA 98115–0070;

Director, Southwest Region, NMFS, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802–4213; and

U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, VA 22203 (703/358–2104).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910, within 30 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gary Barone (301–713–2289).

SUPPLEMENTARY INFORMATION: Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The subject modification to permit no. 842, issued on June 2, 1993, (58 FR 32543) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act, (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–227).

The permit holder seeks authorization to extend the permit from the original expiration date of June 30, 1996 until June 30, 1999.

Dated: July 11, 1995.

Eugene Nitta,

Acting Chief, Permits & Documentation Division, National Marine Fisheries Service.

Dated: July 20, 1995.

Maggie Tieger,

Chief, Branch of Permits, U.S. Fish and Wildlife Service.

[FR Doc. 95–18851 Filed 7–31–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 072595A]

Pacific Halibut Fisheries; Area 2A Non-treaty Commercial Fishery Reopening

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes an inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: 8:00 a.m., through 6:00 p.m., local time, July 18, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 9

Area 2A Non-treaty Commercial Fishery to Reopen

The July 5 fishing period in Area 2A resulted in a catch of 9.07 metric tons (mt) (20,000 lb), leaving 32.22 mt (71,052 lb) in the commercial catch limit. Although 350 commercial licenses were issued in Area 2A, very few vessels participated in the July 5th opening, resulting in a low catch. The total catch limit remaining, including the "rolled-over" amount from the salmon troll fishery, is 387.89 mt (85,157 lb).

Area 2A will reopen on July 18 for 10 hours from 8:00 a.m. to 6:00 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, WA (46°53'18" N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (lb)	
Length	Letter	Dressed, head-on	Dressed, head-off*
0–25	A	225	200
26–30	B	240	210
31–35	C	380	335
36–40	D	1,050	925
41–45	E	1,130	995
46–50	F	1,350	1,190
51–55	G	1,510	1,330
56+	H	2,275	2,000

*Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Dated: July 26, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–18850 Filed 7–31–95; 8:45 am]

BILLING CODE 3510–22–W

International Trade Administration

Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty orders and findings and to terminate suspended investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of August 1995.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

France
Industrial Nitrocellulose
A–427–009
48 FR 36303
August 10, 1983
Contact: David Dirstine at (202) 482–4033

Georgia
Titanium Sponge
A–833–803
33 FR 12138
August 28, 1968
Contact: David Genovese at (202) 482–4697

Japan
Acrylic Sheet
A–588–055
41 FR 36497
August 30, 1976
Contact: Kim Moore at (202) 482–0090

Japan
Brass Sheet & Strip
A–588–704
53 FR 30454
August 12, 1988
Contact: Chip Hayes at (202) 482–5047

Japan
High Capacity Pagers
A–588–007
48 FR 37058
August 16, 1983
Contact: Charles Riggle at (202) 482–0650

Taiwan
Clear Sheet Glass
A–583–023
36 FR 16508
August 21, 1971
Contact: Kim Moore at (202) 482–0090

Thailand
Malleable Pipe Fittings
A–549–601
52 FR 37351
August 20, 1987
Contact: Carlo Cavagna at (202) 482–4851

The People's Republic of China
Petroleum Wax Candles
A–570–504
51 FR 30686
August 28, 1986
Contact: Valerie Turoscy at (202) 482–0145

Yugoslavia
Tapered Roller Bearings
A–479–601
52 FR 30417
August 14, 1987
Contact: Wendy J. Frankel at (202) 482–0367

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of August 1995. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–19035 Filed 7–31–95; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 95–C0014]

Provisional Acceptance of a Settlement Agreement and Order

In the matter of Terri Treat, Individually and as the sole proprietor of Clouds d/b/a, Cotton Cloud Futon corporation.

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13. Published below is a provisionally-accepted Settlement Agreement with Cotton Cloud Futon corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 16, 1995.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should sent written comments to the Comment 95–C0014, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 26, 1995.

Sadye E. Dunn,

Secretary.

In the matter of Terri Treat, individually and as the sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation.

[CPSC Docket No. 95–C0014]

Complaint; Nature of Proceedings

Pursuant to the provisions of the Flammable Fabrics Act, as amended, (15 U.S.C. 1191 *et seq.*; hereinafter the "FFA"); the Federal Trade Commission Act, as amended, (15 U.S.C. 41 *et seq.*; hereinafter, the "FTCA"); and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, as amended), 16 CFR part 1632 (hereinafter, the "Mattress Standard"), the Consumer Product Safety Commission having reason to believe that Terri Treat, individually and as the sole proprietor of Clouds DBA, Cotton Cloud Futon Corporation hereinafter, "Respondent"), 1916 N.E. Broadway, Portland, OR 97232, has violated the provisions of said Acts; and further, it appearing to the Commission that a proceeding by it in respect those violations would be in the public interest, therefore, it hereby issues its Complaint stating its charges as follows:

1. Respondent Terri Treat is the sole proprietor of Clouds DBA, Cotton Cloud Futon Corporation, 1916 N.E. Broadway, Portland, OR 97005; and in that capacity, is responsible for the acts, practices, and policies of Clouds DBA, Cotton Cloud Futon Corporation.

2. Respondent is now and has been engaged in the manufacturing for sale, sale, and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, as the term "commerce" is defined in section 2(b) of the FFA, 15 U.S.C. 1191(b), futon mattresses described as follows: (a) All cotton, (b) cotton-foam core, (c) poly-cotton, (d) poly-cotton foam core, (e) wool-cotton, (f) wool-cotton foam core, (g) wool-poly/cotton, (h) wool-poly/cotton foam core, (i) infant, (j) artland feather bed, and (k) 100% recycled dacron.

3. Each futon mattress identified in paragraph 3 of the complaint is intended or promoted for sleeping upon.

4. Each futon mattress identified in paragraph 3 of the complaint is, therefore:

(a) A "mattress" within the meaning of § 1632.1(a) of the Mattress Standard (FF 4–72, as amended), 1632.1(a); and

(b) An "interior furnishing" and a "product" as these terms are defined in sections 2 (e) and (h) of the FFA, as amended, 15 U.S.C. 1191 (e) and (h).

5. Respondent is subject to, and has failed to comply with, the Mattress Standard in that:

(a) Respondent failed to do prototype testing of the ticking substitution procedure required by § 1632.3 or 1632.6 of the Mattress Standard, 16 CFR 1632.3 or 1632.6.

(b) Respondent failed to maintain the manufacturing or test specifications or test records, ticking substitution specifications or test records, or other records required by § 1632.31 (c)(1) or (c)(5) and (c)(6), 16 CFR 1632.31 (c)(1) or (c)(5) and (c)(6).

6. The acts by Respondent set forth in paragraph 5 of the complaint are unlawful and constitute an unfair method of competition and an unfair and deceptive practice in commerce under the FTCA, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a cease and desist order may be issued against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

Relief Sought

7. The staff seeks issuance of a cease and desist order against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the _____ day of _____, 1995.

By direction of the Commission:

Dated:_____

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

In the matter of Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation.

[CPSC Docket No. 95–C0014]

Consent Order Agreement

Terri Treat, individually, and as the sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation (hereinafter, "Respondent"), enters into this Consent Order Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission (hereinafter, "Commission") pursuant to the procedures for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.13.

This Agreement and Order are for the sole purpose of settling allegations of the staff (1) that Respondent violated section 3(a) of the Flammable Fabrics Act (FFA), as amended, 15 U.S.C. 1192(a) and the Standard for the Flammability of Mattresses and Mattress Pads, as amended, 16 CFR part 1632 (FF 4–72) (hereinafter, the "Mattress Standard"), as more fully set forth in the Complaint accompanying this Agreement; and (2) that Respondent knowingly violated section 3(a) of the FFA, as amended, 15 U.S.C. 1192(a) and the Mattress Standard.

Respondent and the Staff Agree

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following Acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), *Flammable Fabrics Act (15 U.S.C. 1191 et seq.*), and the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Terri Treat is the sole proprietor of Clouds DBA, Cotton Cloud Futon Corporation, 1916 N.E. Broadway, Portland, OR 97005; and in that capacity is responsible for the acts, practices, and policies of Clouds DBA, Cotton Cloud Futon Corporation.

3. Respondent is now and has been engaged in one or more of the following: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, as amended, 15 U.S.C. 1191 *et seq.*, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), as amended, 16 CFR part 1632.

4. Respondent denies the allegations of paragraphs 1 through 6 of the Complaint that Respondent violated section 3(a) of the FFA, as amended, 15 U.S.C. 1192(a); and the Mattress Standard.

5. Respondent denies that she knowingly violated section 3(a) of the FFA, as amended, 15 U.S.C. 1192(a); and the Mattress Standard.

6. This Agreement is entered into for the purposes of settlement only and does not constitute a determination by the Commission that Respondent (a) violated or (b) knowingly violated the FFA and the Mattress Standard.

7. Respondent agrees to pay in settlement of the staff's allegations a civil penalty as set forth in the incorporated Order.

8. This Agreement does not constitute an admission by Respondent that a civil penalty is appropriate.

9. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

10. Upon final acceptance of this Consent Order Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights she may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the Flammable Fabrics Act as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

11. Violation of the provisions of the Order may subject Respondent to a civil and/or criminal penalty for each such violation, as prescribed by law.

12. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and the Commission may publicize the terms of the Consent Order Agreement.

13. Agreements, understandings, representations, or interpretations made outside the Consent Order Agreement may not be used to vary or to contradict its terms.

14. Upon acceptance of this Agreement, the Commission shall issue the following Order incorporated herein by reference.

Dated: June 26, 1995.

Respondent Terri Treat

Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance.

Dated: July 5, 1995.

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

[CPSC Docket No. 95–C0014]

In the matter of Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation.

Order

Upon consideration of the Consent Order Agreement entered into between Respondent Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Respondent Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation; and it appearing that the Consent Order Agreement is in the public interest,

I

It is ordered that the Consent Order Agreement be and hereby is accepted.

II

It is further ordered that Respondent, and her successors and assigns, agents, representatives, and employees of the Respondent, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which is subject to and fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), as amended, 16 CFR part 1632.

III

It is further ordered that Respondent conduct prototype testing for each mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), as amended, 16 CFR part 1632.

IV

It is further ordered that Respondent prepare and maintain written records of the prototype testing specified in paragraph III of

this Order for each mattress design, including photographs of the tested mattresses, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), as amended, 16 CFR part 1632.

V

It is further ordered that Respondent prepare and maintain a written record of the manufacturing specifications of each mattress prototype in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), as amended, 16 CFR part 1632.

VI

It is further ordered that Respondent conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution of materials after prototype testing, in accordance with all applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), as amended, 16 CFR part 1632.

VII

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications of any new ticking or tape edge material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), as amended, 16 CFR part 1632.

VIII

It is further ordered that Respondent prepare and maintain a written record of the manufacturing specifications of any new foam core material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), as amended, 16 CFR part 1632.

IX

It is further ordered that Respondent prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), as amended, 16 CFR part 1632, including:

(a) Records to support any determination that a particular material other than ticking or tape edge did not influence ignition resistance;

(b) Ticking certification test results or a certification from the ticking supplier; and

(c) Records describing the disposition of all failing and rejected prototype mattresses.

X

It is further ordered that upon final acceptance of the Consent Order Agreement by the Commission, Respondent Terri Treat pay to the Commission a civil penalty in the amount of Ten Thousand And 00/100 Dollars ($10,000.00) in two payments of Five Thousand And 00/100 Dollars ($5,000.00) each. The first payment of Five Thousand And 00/100 Dollars ($5,000.00) shall be due on July 1, 1995 or within twenty (20) days after service of the Final Order of the Commission accepting this Consent Order Agreement (hereinafter, the "anniversary date"), whichever is later. The second payment of Five Thousand And 00/100 Dollars ($5,000.00) shall be paid on July 1, 1996 or within one year of the anniversary date. Upon failure by Respondent to make payment or upon the making of a late payment by Respondent, the entire amount of the civil penalty shall be due and payable, and interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

XI

It is further ordered that Respondent shall within ninety (90) days after service upon her of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which she has complied with this Order.

XII

It is further ordered that for a period of three (3) years from the date this Order becomes final pursuant to 16 CFR 1605.13(e), Respondent notify the Commission at least thirty (30) days prior to any proposed change in the way Respondent does business which may affect her compliance obligations arising out of this Order.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**.

So ordered by the Commission, this 26th day of July, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–18750 Filed 7–31–95; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: August 24, 1995 (830 to 400).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: July 27, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18816 Filed 7–31–95; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 8 August, 1995.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C.§ 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: July 27, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18817 Filed 7–31–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement for the Disposal and Reuse of the Naval Air Station (NAS) Glenview, IL

Pursuant to Council on Environmental Quality Regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Proposed Disposal and Reuse of the NAS Glenview, Illinois.

In response to the recommendations of the 1993 Department of Defense Base Realignment and Closure Commission (BRAC–93) and to legislative requirements of the 1990 Base Realignment and Closure Act (Pub. L. 101–510), NAS Glenview, Illinois is to be closed and the property to be made available for disposal and reuse. The Navy has prepared a DEIS which addresses the environmental impacts of disposing NAS Glenview and of its potential reuse. The purpose of the DEIS is to assist the Secretary of the Navy in making a decision concerning the disposition of NAS property. It is the Navy's policy to adopt the community's redevelopment plan as its preferred alternative. The preferred alternative presented in the DEIS is the Consensus Reuse Plan approved by the Glenview Community Reuse Planning Group.

The preferred alternative for NAS Glenview is a combination of land uses which integrates the site with the Glenview community. It includes low and moderate density residential, a variety of public uses, retail, office/warehouse, light industrial, commercial, a sports, leisure, and entertainment component, a new Metra commuter rail station, and land devoted to open space and preservation of the existing golf course. The plan will generate approximately 5,100 jobs, slightly increase the amount of wetlands, and increase local traffic in the area of the base.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held at the Glenview Village Hall, 1225 Waukegan Rd. on Thursday evening, August 17, 1995, from 7 p.m. until the end of public comment or 12 midnight.

The public hearing will be conducted by the Navy. Federal, state and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a legal stenographer; however, to ensure accuracy of the record, all statements should be submitted in writing. All statements, oral and written, will become a part of the public record of this study, and will be responded to in the Final Environmental Impact Statement. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit his/her comments to five minutes. If longer statements are to be presented, they should be summarized for the public hearing and submitted in long-form at the hearing or mailed to the address listed at the end of this announcement. All written comments must be postmarked by 5 September 1995, to become a part of the official record.

Additional information concerning this notice may be obtained by contacting Tom Burst (Code 064TB), Southern Division, Naval Facilities Engineering Command, PO Box 190010, North Charleston, South Carolina, 29419–9010, telephone (803) 743–0590.

Dated: July 25, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–18823 Filed 7–31–95; 8:45 am]

BILLING CODE 3810–FF–M

Notice of Public Hearing for the Draft Environmental Impact Statement for the Disposal and reuse of Naval Air Station (NAS) Dallas, TX

Pursuant to Council on Environmental Quality Regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Proposed Disposal and Reuse of NAS Dallas, Texas.

In response to the recommendations of the 1993 Department of Defense Base Realignment and Closure Commission (BRAC–93) and to legislative requirements of the 1990 Base Realignment and Closure Act (Pub. L. 101–510), NAS Dallas, Texas is to be closed and the property to be made available for disposal and reuse. Approximately 25% of NAS Dallas property is owned by the Navy; the remaining portion is leased to the U.S. Government by the City of Dallas, and will be returned to the city in accordance with the lease agreement. The Navy has prepared a DEIS which addresses the environmental impacts of disposing Navy-owned property at NAS Dallas and of its potential reuse. The purpose of the DEIS is to assist the Secretary of the Navy in making a decision concerning the disposition of NAS property. It is the Navy's policy to adopt the community's redevelopment plan as its preferred alternative. The preferred alternative presented in the DEIS is Industrial Aviation Use; other alternatives discussed are Industrial Park, Aviation Manufacturing Facility, General Aviation Use, Non-Aviation Mixed Use, and No Action.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and local libraries in Dallas and Grand Prairie. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held in Building 12 auditorium, NAS Dallas, 8100 West Jefferson Blvd., Dallas, TX on Wednesday evening, August 16, 1995, at 7 p.m. This meeting will be advertised in the Dallas and Grand Prairie area newspapers.

The public hearing will be conducted by the Navy. Federal, state and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a legal stenographer; however, to ensure accuracy of the record, all statements should be submitted in writing. All statements, oral and written, will become a part of the public record of this study, and will be responded to in the Final Environmental Impact Statement. Equal

weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit his/her comments to five minutes. All written comments must be postmarked by August 28, 1995 to become a part of the official record. Additional information concerning this notice may be obtained by contacting Darrel Molzan (Code 064DM), Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina, 29419–9010, telephone (803) 743–0993.

Dated: July 25, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–18824 Filed 7–31–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

[CFDA NO: 84.031G]

Endowment Challenge Grant Program; Extension of Closing Date For Receipt of Applications for New Awards For Fiscal Year 1995 Under the Endowment Challenge Grant Program

The Department of Education published a notice in the **Federal Register** of June 10, 1994 (58 FR 50151) that established June 16, 1995 as the closing date for submission of applications under the Endowment Challenge Grant Program. The Department is reopening and extending the application period to August 31, 1995 to allow those institutions to apply that have only recently been declared eligible in response to the notice in the **Federal Register** of July 3, 1995 (60 FR 34523).

Deadline for Transmittal of Applications: August 31, 1995.

Deadline for Intergovernmental Review: Not applicable.

Applications Available: Applications will be mailed to institutions newly designated as eligible to apply for a grant under the Endowment Challenge Grant Program.

For Information Contact: Thomas Keyes, U.S. Department of Education, 600 Independence Ave., S.W., Suite 600–C, Portals Building, Washington, DC 20202–5337. Telephone: (202) 708–8833, or (202) 708–8866. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED BOARD), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C 1065.

Dated: July 27, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–18876 Filed 7–31–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–632–000]

Columbia Gas Transmission Corporation; Notice of Application

July 26, 1995.

Take notice that on July 21, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–632–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for The Peoples Natural Gas Company (Peoples) which was authorized in Docket No. CP77–354,[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to abandon a transportation service for Peoples which was being rendered under an agreement dated March 29, 1977, on file as Columbia's Rate Schedule X–59. The transportation agreement for Rate Schedule X–59 provides that Columbia receives into its Line 7917 in Fayette County, Pennsylvania up to 170 Mcf per day of natural gas from Peoples and transports this gas, less retainage, for the account of Peoples to Columbia Gas of Pennsylvania, Inc. at a delivery point also in Fayette County. Columbia states that volumes were last transported under Rate Schedule X–59 in May 1995 and that Peoples has agreed to the cancellation and termination of the transportation agreement for Rate Schedule X–59. Columbia further states that the proposed abandonment will not result in or cause any interruption, reduction, or termination of firm natural gas service presently rendered to any of its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 16, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18760 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–M

[1] *See* FPC 961 (1977).

[Docket No. RP95–129–001]

Kern River Gas Transmission Company; Notice of Refund Report

July 26, 1995.

Take notice that on July 14, 1995, Kern River Gas Transmission Company (Kern River), filed its refund report made in compliance with the April 3, 1995 Stipulation and Consent

Agreement (Stipulation) in the above referenced docket and the Commission's May 5, 1995 order approving the Stipulation.

Kern River stated that on June 23, 1995, a total refund of $662,500.00 was sent to the Kern River's firm transportation customers. Kern River apportioned the refund amounts based upon the actual contract demands in effect for each shipper for each month during the period March 1, 1993 through December 31, 1994. The report identifies each firm shipper, its aggregate contract demand during the referenced period, its resulting allocation percentage, and the refund amount.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 2, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18783 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–628–000]

Koch Gateway Pipeline Company; Request Under Blanket Authorization

July 26, 1995.

Take notice that on July 19, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP95–628–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to seek certificate authority to operate an existing delivery tap as a jurisdictional facility, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway requests authorization to place into jurisdictional service a two-inch tap constructed under Section 311(a) of the NGPA and § 284.3(c) of the Commission's Regulations. Koch installed a delivery tap to serve the Washington Parish Utilities (Washington Parish), a local distribution company, from Koch Gateway's Bogalusa 10-inch line, designated as Index 301–4, Washington Parish, Louisiana. Washington Parish reimbursed Koch Gateway approximately $11,000 for the installation of the facilities. Certification of the facilities will provide Washington Parish with the additional flexibility of being able to use these facilities as a delivery point on Washington Parish's blanket transportation agreements with Koch Gateway.

Koch Gateway proposes to provide Section 311 transportation service to Washington Parish pursuant to § 284(B) of the Commission's Regulations. Once these facilities are certificated Koch Gateway will also provide jurisditional transportation services pursuant to Koch Gateway's NNS rate schedule and its blanket transportation certificate issued in Docket No. CP88–6–000. Washington Parish estimates that its average daily requirements at this point are 5 MMBtu. The volume delivered to this new point under the firm agreement will be within the certificated entitlement of that existing service.

Koch Gateway further states it will operate the proposed facilities in compliance with 18 CFR Part 157, Subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18779 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR95–7–000]

Longhorn Partners Pipeline; Notice of Petition for Declaratory Order

July 26, 1995.

Take notice that on June 30, 1995, AXIS Gas Corporation (AXIS), pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 387.207(a)(2), filed a request for a declaratory order.

AXIS states that Longhorn Partnerships Pipeline (LPP), a partnership being formed by Axis, intends to convert certain crude oil pipeline facilities, which in conjunction with new pipeline facilities to be constructed, will provide common carrier transportation service for refined petroleum products from the Gulf Coast to El Paso, Texas—and through connecting pipelines into Arizona and New Mexico. The existing pipeline facilities proposed to be converted to this new pipeline are currently owned and operated by Exxon Pipeline Company (EPC). EPC currently moves crude oil on these facilities from West Texas (Crane, TX) to the Houston, Texas (Baytown, TX) area.

AXIS and its financial partner signed a letter of intent to purchase the pipeline facilities owned by EPC on June 9, 1995. That letter provides that a binding purchase and sale agreement must be entered into by a certain date. In the event that, before such date, the Commission has not declared that LPP will be allowed to include the full purchase price paid for these facilities in its cost-of-service calculations, AXIS will be unable to go forward with the contemplated project and the terms of the proposed agreement will expire. Notwithstanding that AXIS and its financial partner would continue to believe that the project would be commercially viable (apart from regulatory considerations), and notwithstanding the material benefits that the project would confer on shippers and consumers of petroleum products in the Southwest, AXIS and its financial partner would be unwilling to assume the regulatory risk that LPP would not be allowed to recover the purchase price paid to EPC. Accordingly, AXIS requests that this matter be handled on an expedited basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules an Regulations. All

such motions or protests should be filed on or before August 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18781 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER94–1384–001, ER94–1450–004, ER94–1685–001, ER94–1690–001, ER94–1691–002, ER95–393–001]

Morgan Stanley Capital Group Inc., Coastal Electric Services Company, Citizens Lehman Power Sales, Engelhard Power Marketing, Inc., AIG Trading Corporation, CLP Hartford Sales, L.L.C.; Order Granting Rehearing in Part and Denying Rehearing in Part, Announcing Elimination of Power Marketer Business and Financial Arrangements Reporting Requirement, and Providing Guidance on Determining "Affiliation" Under Part II of the Federal Power Act

Issued July 26, 1995.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Background

In a November 8, 1994 order issued in Docket No. ER94–1384–000, *Morgan Stanley Capital Group, Inc.*, 69 FERC ¶ 61,175 (1994) (November 8 Order), the Commission accepted for filing the application of Morgan Stanley Capital Group Inc. (MS Capital) for authorization to engage in wholesale electric energy transactions as a marketer at market-based rates. In the November 8 Order, the Commission denied MS Capital's request for relaxed reporting requirements and imposed the same filing and reporting requirements as those applicable to other power marketers. The Commission announced that it would reconsider these reporting requirements in a future generic proceeding applicable to all public utilities selling power at market-based rates. The Commission also denied MS Capital's request for waiver of the annual charge obligation and clarified that such obligation is applicable to all power marketers.

These cases present an appropriate vehicle for addressing the major issues in the November 8 Order. The Commission will address other issues as they become ripe for resolution.

Requests for Rehearing of November 8 Order

On December 8, 1994, MS Capital filed a request for rehearing and modification of and for interim relief from the November 8 Order. MS Capital seeks relief from the November 8 Order in two respects. First, MS Capital asks the Commission to reverse its decision to require MS Capital to report business and financial arrangements between it (or an affiliate) and any entity that buys from or sells power to it, or at least to grant interim relief from that reporting requirement pending the outcome of the generic proceeding announced in the November 8 Order. MS Capital argues, among other things, that compliance with the requirement to report business and financial arrangements would be needlessly onerous and would inhibit the participation of experienced and highly qualified financial companies such as MS Capital in the markets for wholesale sales of electricity. MS Capital also questions whether the business and financial arrangements reporting requirement would provide the Commission and its staff with any meaningful data that could be used to detect reciprocal dealing. If the Commission does not reverse or stay application of the business and financial arrangements reporting requirement, MS Capital proposes several limitations to the scope of that requirement.

Second, MS Capital asks the Commission to reverse, or defer, its holding that power marketers are subject to the Commission's annual charge requirement. MS Capital asks the Commission, at a minimum, to defer its decision to collect annual charges from power marketers for a start-up (*e.g.*, three-year) period "until power marketers are better established," after which time the Commission could evaluate "whether power marketers impose regulatory burdens on the Commission comparable to the burdens created by regulation of utilities with cost-based rates." MS Capital Rehearing Request at 3, 18.

On December 8, 1994, the Electric Power Monitoring Group and its individual members [1] filed a motion to intervene out-of-time and a request for rehearing of the November 8 Order. The Electric Power Monitoring Group seeks rehearing of the Commission's ruling requiring all power marketers to pay annual charges. The Electric Power Monitoring Group argues, among other things, that: (1) The Commission has not adequately justified its departure from past policy and precedent pursuant to which it previously declined to assess power marketers annual charges; (2) the Commission has limited jurisdiction over power marketers, which does not warrant subjecting them to the annual charge requirement; (3) the Commission does not devote significant resources to the regulation of power marketers as to justify subjecting them to the annual charge requirement; [2] and (4) subjecting power marketers to the annual charge requirement effectively discriminates against power marketers, which will not be able to recover the annual charges in a cost of service rate as do other public utilities subject to the annual charge requirement.

On December 8, 1994, Citizens Lehman Power Sales (CL Sales) also filed a motion for leave to intervene out-of-time and a request for rehearing of the November 8 Order. CL Sales asks the Commission, pending its generic proceeding, to drop the business and financial arrangements reporting requirement and to rely upon existing complaint procedures. If the Commission decides to maintain the reporting requirement in the interim, CL Sales asks the Commission to clarify that its decision to exclude transitory holdings in connection with investment or merchant banking, market-making, or asset management activities for purposes of determining generation dominance [3] also applies to the business and financial arrangements reporting requirement.

On December 9, 1994, Calpine Power Marketing Inc. (Calpine) filed a motion for leave to intervene out-of-time and a request for clarification of the November 8 Order. Like CL Sales, Calpine asks the Commission to clarify that the November 8 Order's exclusion of transitory holdings for purposes of assessing market power is equally applicable to reciprocal dealing concerns and thus also applies to the business and financial arrangements reporting requirement.

On July 7, 1995, MS Capital filed a motion for interim relief from the

[1] The members of the Electric Power Monitoring Group joining in the pleading are Enron Power Marketing, Inc., Valero Power Services Company, Electric Clearinghouse, Inc., Intercontinental Energy Corporation, and KCS Energy Management Services, Inc.

[2] The Electric Power Monitoring Group argues that the Commission has failed to supply documentation to support its claim that it "can spend as much (if not more) time evaluating power marketer requests as it can other types of rate applications." 69 FERC at 61,697. The Electric Power Monitoring Group submits that such an analysis should be performed in a rulemaking proceeding of general applicability.

[3] See 69 FERC at 61,693.

business and financial arrangements reporting requirement and for prompt initiation and completion of the generic reporting requirements proceeding. MS Capital again asks the Commission, pending the outcome of the generic proceeding announced in the November 8 Order, to stay the business and financial arrangements reporting requirement or to limit its scope.

As we explain below, we will grant MS Capital's request for rehearing concerning the business and financial arrangements reporting requirement.[4] With the issuance of this order, we will no longer require MS Capital, or any power marketer with market-rate authority, to report business and financial arrangements between the marketer (or an affiliate of the marketer) and the entities that buy power from, sell power to, or transmit power on behalf of, the marketer. We also provide guidance in this order concerning the determination of affiliation under Part II of the Federal Power Act (FPA). Further, we will deny the requests for rehearing of our decision in the November 8 Order to apply the annual charge obligation to all power marketers.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1995), the Commission finds that the late interventions in this proceeding of CL Sales, the Electric Power Monitoring Group (and its individual members identified *supra* note 1), and Calpine will not prejudice the interests of any party and that good cause exists to permit the late interventions.

Business and Financial Arrangements Reporting Requirement

We will grant MS Capital's request for rehearing with regard to the business and financial arrangements reporting requirement. We will, effective as of the date of issuance of this order, no longer require power marketers to comply with that reporting requirement.

As the Commission explained in the November 8 Order, the Commission has required power marketers, as a condition of market rate approval, to report business and financial arrangements involving the marketer (or an affiliate of the marketer) and the entities that buy power from, sell power to, or transmit power on behalf of, the marketer. 69 FERC at 61,694.[5] This reporting requirement was designed to assist the Commission in detecting reciprocal dealing.

We have given careful consideration to the concerns voiced by MS Capital (and other power marketers) that the costs and burdens of the business and financial arrangements reporting requirement far outweigh any possible benefits of such reporting. We find that MS Capital has raised valid concerns as to, among other things, the breadth of such reporting requirement, the "potentially impossible compliance burden" that the requirement imposes on marketers such as MS Capital that are "involved in numerous, disparate investments and business arrangements pertaining to thousands of different business matters,"[6] and the adequacy of the resulting data in detecting reciprocal dealing.

On this basis, we conclude that the business and financial arrangements reporting requirement imposes costs and burdens on power marketers (in terms of compiling and filing the data) as well as on the Commission (in terms of reviewing the data for the purpose of detecting reciprocal dealing) that are not justified by the potential benefits of such reporting. As a result, although the possibility of reciprocal dealing remains a valid concern, we do not believe that the business and financial arrangements reporting requirement is an effective means of detecting such behavior by power marketers. Rather, we believe that this matter can be appropriately addressed through a complaint mechanism.

In several orders issued in the other dockets that are captioned in this order, we indicated that the same reporting requirements and reporting options that the Commission imposed on MS Capital apply to other power marketers with market-based rate authority.[7] Consistent with our holdings in that regard, we clarify that our decision to eliminate the business and financial arrangements reporting requirement, effective on the date of issuance of this order, applies not just to MS Capital, but to all other power marketers with authorization to engage in wholesale electric energy transactions at market-based rates, including, but not limited to, the power marketer applicants in Docket Nos. ER94–1450, ER94–1685, ER94–1690, ER94–1691, and ER95–393.[8]

Determination of Affiliation

In the November 8 Order, the Commission directed MS Capital, as a condition to authorization to transact at market-based rates, to report, among other things, affiliation with any entity that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. 69 FERC at 61,695. The Commission also directed MS Capital to revise its proposed rate schedule to eliminate all sales to affiliates at market-based rates.[9] Indicating that it has not yet determined affiliation under Part II of the FPA based on a bright line test, the Commission directed MS Capital, "until the Commission provides more guidance," to determine affiliation by applying the definition set forth in the Uniform System of Accounts. 69 FERC at 61,693 n.4. Under that definition, "affiliated companies" are defined as "companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the [subject] company." 18 CFR Part 101, Definitions, 5.

We take this opportunity to provide further guidance to MS Capital, and to all public utilities,[10] concerning the determination of affiliation under Part II of the FPA. The Commission believes that it is appropriate, in the move toward competitive bulk power markets, to adopt a definition of affiliation that

[4] In light of our decision to eliminate altogether the business and financial arrangements reporting requirement for power marketers, we will dismiss as moot the requests of CL Sales and Calpine for rehearing and clarification, respectively, as to the scope of that requirement.

[5] See, *e.g.*, Louis Dreyfus Electric Power, Inc., 61 FERC ¶ 61,303 (1992). In Enron Power Marketing, Inc., 65 FERC ¶ 61,305 (1993), *order on clarification and reh'g*, 66 FERC ¶ 61,244 (1994), the Commission limited the reporting requirement to the activities of any affiliates located or doing business in the United States, Puerto Rico, Canada, and Mexico.

[6] MS Capital Rehearing Request at 4, 5.

[7] See Engelhard Power Marketing, Inc., 70 FERC ¶ 61,250 (1995) (*Engelhard*); CLP Hartford Sales, L.L.C., 71 FERC ¶ 61,127 (1995) (*CLP Hartford*); AIG Trading Corporation, 71 FERC ¶ 61,148 (1995) (*AIG*); Citizens Lehman Power Sales, 71 FERC ¶ 61,149 (1995) (*Citizens Lehman*); Coastal Electric Services Company, 71 FERC ¶ 61,374 (1995) (*Coastal*).

[8] Of course, the elimination of the business and financial arrangements reporting requirement should not be construed as affecting, in any way, a power marketer's obligation to file quarterly transaction reports. See *infra* note 15 (discussing the need for power marketers to file reports of jurisdictional transactions).

[9] The Commission noted that its decision in this regard was consistent with recent orders in which the marketer voluntarily agreed to a ban on sales to affiliates in order to ameliorate any possible concern for affiliate abuse. 69 FERC at 61,694 n.5. See Heartland Energy Services, Inc., 68 FERC ¶ 61,223 at 62,063 (1994) (*Heartland*); InterCoast Power Marketing Company, 68 FERC ¶ 61,248 at 62,133 (1994); LG&E Power Marketing Inc., 68 FERC ¶ 61,247 at 62,123 (1994). At the same time, the Commission explained that the general ban on sales to affiliates "is without prejudice to MS Capital filing in the future a specific proposal to sell power to an affiliate, which would provide the Commission with an opportunity to consider the possibility of affiliate abuse in the context of a specific transaction." 69 FERC at 61,694.

[10] See 16 U.S.C. 824(e) (1988).

will provide greater certainty to all market participants. To this end, we announce that all non-EWG public utilities should, effective as of the date of this order, define "affiliate" as that term is used in the Commission's regulations regarding Standards of Conduct for Interstate Pipelines with Marketing Affiliates, for matters arising under Part II of the FPA.[11] Under § 161.2 of the Commission's regulations, a voting interest of 10 percent creates a rebuttable presumption of control for purposes of determining the existence of an affiliate relationship.

We recognize that Congress, in promulgating section 214 of the FPA,[12] as added by the Energy Policy Act of 1992, specified that the Commission must use the Public Utility Holding Company Act of 1935 (PUHCA) section 2(a) definition of "affiliate" (which, *inter alia*, contains a 5 percent voting interest test) for purposes of determining whether an electric utility is an affiliate of an EWG for purposes of evaluating EWG rates. Therefore, all EWG public utilities should, as of the effective date of this order, use the PUHCA section 2(a) definition of "affiliate" for matters arising under Part II of the FPA. However, we do not believe there is any reason for the Commission to adopt the same affiliation standard for public utilities that are not EWGs. Instead, we believe that the 10 percent rebuttable presumption that the Commission has adopted for determining affiliation of natural gas marketers with interstate pipelines is also appropriate for determining affiliation for non-EWG public utilities.

We reiterate here our holding in the November 8 Order that, for purposes of complying with the requirement to report affiliation with any entity that owns generation or transmission facilities or inputs to electric power production, MS Capital "need not report the mere transitory holdings of its affiliates in electric facilities and inputs." 69 FERC at 61,695. However, MS Capital must "report all of its own investments in electric facilities and inputs." *Id.* As we stated in the November 8 Order, "there is no reason to ascribe generation ownership or control to MS Capital because of transitory holdings of electric utility stocks by Morgan Stanley[13] in connection with investment or merchant banking, market-making, or asset management activities." *Id.* at 61,693.

Annual Charge Requirement

We will deny rehearing of the requests of MS Capital and the Electric Power Monitoring Group for waiver of the Commission's annual charge requirement established in Part 382 of the Commission's regulations. We addressed this issue in detail in the November 8 Order, where we stated:

> There is no reason that public utilities that are power marketers should not pay their fair share of the Commission's annual charges. Indeed, waiver of annual charges for power marketers would give them a benefit that other public utilities do not enjoy and would result in such utilities picking up those costs incurred by the Commission in regulating power marketers.

69 FERC at 61,697.[14]

Neither MS Capital nor the Electric Power Monitoring Group has presented any persuasive reasons for us to depart from this conclusion or to defer our decision to collect annual charges from power marketers. We disagree with MS Capital's and the Electric Power Monitoring Group's assertions that Commission jurisdiction over power marketers somehow is more "limited" than its jurisdiction over other FERC-jurisdictional public utilities, and their belief that the time and resources expended on regulation of power marketers are so insignificant as to compel waiver of the annual charge requirements for this entire class of public utilities (to the detriment of other classes of public utilities).[15]

We also disagree with the contention of the Electric Power Monitoring Group that the Commission has not adequately justified its decision to overturn its earlier statement in *Howell Gas Management Company*, 40 FERC ¶ 61,336 (1987) (*Howell Gas*) that "annual charges are not occasioned if a utility is exempt from the requirements to file Form No. 1" (40 FERC at 62,025 n.8). As the Commission explained in the November 8 Order:

> At the time of Commission action in *Howell Gas*, annual charges comprised only a small portion of the Commission's fee assessment program, while most of the Commission's revenues were collected as filing fees assessed on individual applications. Since then, the Commission has eliminated most of its filing fees and now recovers the bulk of its revenues as annual charges established in section 382 of the regulations. Therefore, a material change in circumstances has occurred subsequent to *Howell Gas*, and we specifically overturn our statement quoted above.

69 FERC at 61,697.

The Electric Power Monitoring Group objects that the Commission, in "conclusory fashion," determined that the shift in emphasis from filing fees to annual charges constitutes a "material change in circumstances" and "offered no analysis supporting" this determination.[16] We find this argument to be without support. We believe that the shift from filing fees to annual charges on its face constitutes a material change in circumstances. Moreover, as we made clear in the November 8 Order, the annual charges at issue in *Howell Gas* were assessed under the now-deleted section 36.1 of the Commission's regulations, the predecessor to current section 382. As we noted, "[a]t no time has any marketer successfully requested, or has the Commission granted, waiver of section 382." *Id.* at 61,697 n.12. In these circumstances, we believe that the Commission has amply explained its decision to subject power marketers to the annual charge requirement.

The Commission Orders

(A) The motions to intervene out-of-time of CL Sales, the Electric Power Monitoring Group, and Calpine are hereby granted.

(B) The requests for rehearing and clarification of the November 8 Order are hereby granted in part and denied in part (or dismissed) as discussed in the body of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18830 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–P

[11] 18 CFR 161.2 (1995). Section 161.2(a) defines "affiliate" as "another person which controls, is controlled by, or is under common control with, such person." Section 161.2(b) states that "control (including the terms 'controlling,' 'controlled by,' and 'under common control with') . . . includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control."

[12] 16 U.S.C.A. 824m (West Supp. 1995).

[13] As used in the November 8 Order, the term "Morgan Stanley" refers to any and all Morgan Stanley Group Inc. affiliates other than MS Capital. *See* 69 FERC at 61,691.

[14] In several orders issued subsequent to the November 8 Order, we have denied rehearing of requests by other power marketers for waiver of the annual charge requirement. *See, e.g., Citizens Lehman*, 71 FERC at 61,475; AIG, 71 FERC at 61,473; *CLP Hartford*, 71 FERC at 61,409.

[15] For example, the Electric Power Monitoring Group incorrectly asserts that the quarterly transaction reports that power marketers are required to file with the Commission "are collected simply to maintain potential evidence in the event of a complaint being filed against a power marketer." Electric Power Monitoring Group Rehearing Request at 7. As the Commission has previously indicated, "the requirement that marketers file quarterly reports detailing the purchase and sale transactions undertaken in the prior quarter is necessary to ensure that contracts relating to rates and services are on file, as required by section 205(c) of the FPA, 16 U.S.C. 824d(c) (1988), and to allow the Commission to evaluate the reasonableness of the charges and to provide for ongoing monitoring of the marketer's ability to exercise market power." *Heartland*, 68 FERC at 62,065–66.

[16] Electric Power Monitoring Group Rehearing Request at 4.

[Docket Nos. RP95–326–000 and RP95–242–000]

Natural Gas Pipeline Company of America; Continuing Technical Conference

July 25, 1995.

Take notice that the technical conference in this proceeding which was convened on July 13, 1995, will continue on Thursday, August 3, 1995, at 9:30 a.m., in the Commission Meeting Room at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18784 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–188–001]

NorAm Gas Transmission Company; Notice of Compliance Filing

July 26, 1995.

Take notice that on April 14, 1995, pursuant to the Commission's order issued on March 30, 1995,[1] NorAm Gas Transmission Company (NorAm), tendered for filing materials supporting its claim of $65 million in take-or-pay and contract reformation costs.

NorAm states that as required by the Order, slip op. at 4 and Ordering Paragraph (C), NorAm is submitting supporting documentation to enable the Commission to determine that the costs proposed for recovery relate to the settlements underlying the two previous filings in Docket Nos. RP93–88–000 and RP94–166–000, along with proof of NorAm's payment of the subject $65 million.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 2, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18782 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–M

[1] 70 FERC ¶ 61,368.

[Docket No. EL95–64–000, et al.]

Freedom Energy Company, et al.; Electric Rate and Corporate Regulation Filings

July 25, 1995.

Take notice that the following filings have been made with the Commission:

1. Freedom Energy Company

[Docket No. EL95–64–000]

Take notice that on July 14, 1995, Freedom Energy Company, (Freedom) tendered for filing a Petition for Declaratory Ruling and Request for Expedition. Freedom states that it seeks a declaratory ruling that: (i) It will be eligible to apply under Transmission Service Tariff No. 1—Long-Term Firm Transmission Service ("Tariff No. 1") for transmission services of its purchased power over Public Service Company of New Hampshire's ("PSNH") transmission facilities to Freedom's distribution facilities for resale to Freedom's retail customers and (ii) as a New Hampshire public utility, Freedom will be eligible to apply for an order under Section 211 and 212(h) of the Federal Power Act (FPA) directing PSNH to provide Freedom with transmission services.

Comment date: August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy Western Area Power Administration (Salt Lake City Area Office) v. Public Service Company of New Mexico)

[Docket No. EL95–65–000]

Take notice that on July 18, 1995, the Western Area Power Administration (Western) of the United States Department of Energy tendered for filing a Complaint for Rate Relief from the Public Service Company of New Mexico (PNM). Western is seeking relief from the rate it presently pays PNM for the firm point-to-point transmission service under Amendment No. 1 to Contract No. 8–07–40–P0695.

Comment date: August 24, 1995, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before August 24, 1995.

3. Northern Indiana Public Service Company

[Docket No. ER95–1140–000]

Take notice that on July 5, 1995, Northern Indiana Public Service Company tendered for filing additional information to its May 31, 1995 filing in the above-referenced docket.

Comment date: August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp

[Docket No. ER95–1146–000]

Take notice that on July 17, 1995, PacifiCorp tendered for filing an amendment in the above-referenced docket.

Comment date: August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin))

[Docket No. ER95–1357–000]

Take notice that on July 10, 1995, Wisconsin Electric Power Company (WEPCO), Northern States Power Company (Minnesota) NSP, and Northern States Power Company (Wisconsin) (NSP–W) (together, "the Applicants") jointly filed an "Amended and Restated Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company and Wisconsin Energy Company" ("Interchange Agreement").

Since 1970, NSP and NSP–W have coordinated the planning and operation of their combined electric system, and equalized the production and transmission costs of that system, under an Agreement to Coordinate Planning and Operations and Interchange Power and Energy.

On April 28, 1995, NSP and Wisconsin Energy Corporation, the parent company of WEPCO, entered into an agreement to merge. Under the merger agreement, NSP–W and WEPCO will merge to form Wisconsin. Following the merger, WEC and NSP will operate as subsidiaries of Primergy Corp., a registered holding company.

The principal purpose of the filing in this docket is to add WEC as a party to the current NSP Interchange Agreement and thereby permit the Primergy system to operate in the same coordinated manner, and share production and transmission costs on the same basis, as the NSP system currently does.

The Applicants have requested that this proceeding be consolidated with

the Section 203 proceeding relating to approval of the proposed merger.

Copies of the filing were served on each of the state commissions that regulate the Applicants' electric rates and each of the Applicants' wholesale customers.

Comment date: August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18828 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 6901–026 West Virginia]

City of New Martinsville, WV; Notice of Availability of Draft Environmental Assessment

July 26, 1995.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to amend the license for the New Cumberland Hydroelectric Project. The application is to reduce the spillflow requirement at the project. The DEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The New Cumberland Hydroelectric Project is located on the Ohio River in Hancock County, West Virginia and Jefferson County Ohio.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Please affix Project No. 6901–026 to all comments. For further information, please contact the project manager, Ms. Monica Maynard, at (202) 219–2652.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18831 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–597–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

July 25, 1995.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company

[Docket No. CP95–597–000 of America]

Take notice that on July 3, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP95–597–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a rescheduling of deliveries service provided for The Peoples Gas Light and Coke Company (Peoples), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that pursuant to a rescheduling of deliveries agreement dated August 3, 1977 between Natural and Peoples (Natural's Rate Schedule X–91), it rescheduled deliveries of up to 1,000,000 Mcf of sales gas sold to Peoples under Natural's Rate Schedule DMQ–1 during the period of March 1 through October 31 of each year and delivered such gas for the account of Peoples to Michigan Wisconsin Pipe Line Company, now known as ANR Pipeline Company (ANR), near Woodstock located in McHenry County, Illinois, at a daily rate of 5,000 Mcf together with an additional volume of gas for compressor fuel equal to five percent (5%) of the volume delivered.

Natural further states that by a letter of Peoples to Natural dated May 22, 1995, Peoples notified Natural that Natural's rescheduling of deliveries service for Peoples under the Agreement and Natural's Rate Schedule X–91 was no longer required. The service, it is said, is performed under the Agreement and Natural's Rate Schedule X–91, authorized in Docket No. CP77–515.

Comment date: August 15, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Equitrans, Inc.

[Docket No. CP95–609–000]

Take notice that on July 11, 1995, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pa 15275–1102, filed in Docket No. CP95–609–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to place in service certain facilities to permit the development and operation of additional storage capacity ad deliverability at its existing Hunters Cave storage field, Green County, Pennsylvania and to provide incremental firm gas storage service to customers on a non-discriminatory open-access basis, effective immediately upon issuance for use during the 1995–96 winter heating season, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that through storage deliverability restoration activities undertaken pursuant to its Part 157 blanket certificate, the work performed has added 500,000 Mcf of working storage capacity to the Hunters Cave reservoir. Equitrans states further that Commission approval is sought to put the new and reworked wells in service in order to allow Equitrans to use the additional working gas created by these facilities during the 1995–96 winter heating season. Equitrans avers that the use of these facilities this winter would give Equitrans increased reliability and flexibility in operating its system for the benefit of all customers and would allow the storage capacity to be offered to those customers participating in an opening season for service to begin November 1, 1995.

Equitrans states that the incremental storage service would be offered on a non-discriminatory open-access basis pursuant to Part 284, Subpart G of the Commission's Regulations. The service, it is said, would be offered under Equitrans' existing Rate Schedule 115SS.

Comment date: August 15, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP95–617–000]

Take notice that on July 14, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP95–617–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a new delivery point in Clinton County, Pennsylvania for National Fuel Gas Distribution (National Fuel), under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern states that cost of the facility would be approximately $1,000,721 and that National Fuel would reimburse Texas Eastern for 50% of actual costs and expenses for the filter separator and its installation.

Texas Eastern states further that the proposed facilities would allow Texas Eastern to deliver an additional 45,000 Dth/d to National Fuel pursuant to Rate Schedule IT–1. The proposed delivery point, it is said, would have no effect on Texas Eastern's peak day or annual deliveries and would be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Comment date: September 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP95–620–000]

Take notice that on July 17, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–620–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon facilities in Louisiana, under NGT's blanket certificate issued in Docket No. CP82–384–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to abandon Line RM–14, in its entirety, one 1-inch tap and 1-inch meter station, in Caddo Parish, Louisiana, which provide service to Athens Brick Plant. Also, it is proposed that a 1-inch inactive tap used to deliver gas to a rural customer served by Arkla. It is stated that both Arkla and the rural customer have consented to the abandonment which will cost $10,797.

Comment date: September 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Company

[Docket No. CP95–629–000]

Take notice that on July 20, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP95–629–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate a new delivery point located in Dodge County, Minnesota, to accommodate natural gas deliveries to Al-Corn Clean Fuels, Inc. (Al-Corn), under Northern's blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the proposed delivery point will be used to accommodate natural gas deliveries to Al-Corn for use in its plant near Claremont, Minnesota. Northern explains that it will provide service to Al-Corn pursuant to Northern's existing transportation rate schedules and a transportation service agreement. Northern relates that the proposed volumes to be delivered to Al-Corn at the Al-Corn #1 TBS delivery point are 1,200 Mcf on a peak day and 438,000 Mcf on an annual basis. Northern estimates the cost of constructing the delivery point at $135,000.

Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed without detriment or disadvantage to Northern's other customers.

Comment date: September 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company

Docket No. CP95–633–000

Take notice that on July 21, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP95–633–000 pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point, authorized in blanket certificate issued in Docket No. CP82–401–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to install and operate a new delivery point, the Medford TBS #2, in Steel County, Minnesota to accommodate natural gas deliveries to Northern States Power-Minnesota (NSP-M). NSP-M has requested the construction of the proposed delivery point to serve a new customer, the Jerome Foods Plant. The estimated cost to construct the proposed Medford TBS #2 would be $50,000.

Comment date: September 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP95–635–000]

Take notice that on July 21, 1995, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158–0900, filed in Docket No. CP95–635–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a crossover tie-in between an existing meter station and Northwest's 24-inch mainline loop in Baker County, Oregon, under the blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the Durkee Meter Station in Baker County, Oregon, consisting of a 4-inch tap on Northwest's 22-inch mainline, two 1-inch regulators, a 4-inch turbine meter and appurtenances, was authorized to be constructed and operated in Docket No. CP88–67–000, with a maximum design delivery capacity of approximately 4,490 dt equivalent of natural gas per day. Northwest also states that the meter station was installed to permit Northwest to initiate interruptible transportation service for Ash Grove Cement Company.

Northwest proposes to construct and operate a 4-inch tap and appurtenances on its 24-inch mainline loop as an additional tie-in for the meter station in order to provide an alternative means of gas supply to the meter station when the 22-inch mainline, which normally serves the station, is out of service. Northwest proposes no change in the design capacity and delivery pressure of the meter station. Northwest estimates a

facility cost of $32,436. Northwest indicates that, because this expenditure is necessary for Northwest to maintain existing services, it will not require any cost reimbursement from Ash Grove.

Comment date: September 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18829 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5267–4]

Supplement Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Supplement Submission.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that a supplement to the Information Collection Request (ICR) abstracted in the **Federal Register** on June 30, 1995 has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR and the supplement describe the nature of the information collection and its expected cost and burden; where appropriate, they include the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: For further information, or for a copy of this ICR and/or the ICR supplement, contact Sandy Farmer at (202) 260–2740, please refer to EPA ICR #1587.03.

SUPPLEMENTARY INFORMATION:

Office of Air Quality Planning and Standards

Title: Clean Air Act, Title V—Operating Permits Regulations-Information Requirements Supplement, (EPA ICR #1587.03; OMB #2060–0234.)

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described in 40 CFR Part 70 establishing the minimum elements governing the development of State operating permit programs. Under this ICR, State and local government permitting authorities and stationary sources of air pollution will incur costs and burden. Permitting authorities have been working on their Title V programs since the promulgation of this original ICR on 7/1/92. EPA has completed the majority of reviews of Title V programs submitted by State and local agencies. State and local authorities must provide EPA with the following: (1) Title V permit program; (2) permit applications and proposed permits; and (3) upon occurrence, applications for permit revisions and proposed revisions.

Under this ICR, owners and operators of affected sources must provide the State or local permitting authority with (1) An operating permit application every 5 years; (2) semi-annual submission of monitoring or recordkeeping data; (3) annual certification of compliance; and (4) upon occurrence, applications for permit revisions. Sources must maintain all records that are representative of compliance with the Title V program.

This ICR submission is only for a year extension to July 31, 1996. During this time, the Office of Air Quality Planning and Standards will finish the development of the new Title V Compliance rule. A final rule is expected to be promulgated by December 31, 1995. At that time, a new ICR will be submitted to OMB for review, containing the updated burden hour calculations.

The supplement includes burden estimates that will be placed on the public and State and local authorities during the period of July 31, 1995 through July 31, 1996.

Burden Statement: Due to the completion of the Title V permitting program development by State and local permitting authorities, this ICR supplement represents the actual public reporting burden over the next year.

Respondents: State and local governments and stationary sources.

Estimated Total Annual Burden on Respondents: 8,262,672 hours.

Estimated Number of Respondents: 34,324 respondents.

Frequency of Collection: Semi-annually, annually, upon occurrence and every 5 years.

Send comments regarding the burden estimate, or any other aspect of this information collection supplement, including suggestions for reducing burden, (please refer to EPA ICR #1587.03 and #2060–0234) to:

Sandy Farmer, EPA ICR #1587.03, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M Street, SW., Washington, D.C. 20460
and
Troy Hillier, OMB #2060–0243, Office of Management and Budget, Office of Information and Regulation Affairs, 725 17th Street, NW., Washington, D.C. 20503.

Dated: July 25, 1995.

Joseph Retzer,

Regulatory Information Division.

[FR Doc. 95–18865 Filed 7–31–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5268–5]

Environmental Laboratory Advisory Board; Establishment

AGENCY: Environmental Protection Agency.

ACTION: Establishment of Advisory Committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App., EPA is giving notice of the establishment of an advisory committee. This committee will provide recommendations and comments on the process and procedures to develop and operate a national environmental laboratory accreditation program, and will be known as the "Environmental Laboratory Advisory Board" (ELAB). EPA has determined that the establishment of this advisory committee is in the public interest and will assist the Agency in performing its duties under its various statutes. Copies of the Committee's charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA.

The membership of the ELAB has not yet been appointed by the Administrator. Consistent with the objectives of the National Environmental Laboratory Accreditation Conference and the requirements of FACA, the membership of the ELAB will be balanced among the Agency's various outside stakeholder interests. The first meeting of the ELAB will be announced separately in a **Federal Register** notice.

FOR FURTHER INFORMATION: Please contact Jeanne Hankins Mourrain, National Exposure Research Laboratory, (MD–77B), Research Triangle Park, NC 27711; telephone 919/541–1120; FAX 919/541–7953.

Dated: July 6, 1995.

E. Ramona Trovato,

Director, Office of Radon and Indoor Air.

[FR Doc. 95–18868 Filed 7–31–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–62149; FRL–4966–5]

Lead Hazard Information Pamphlet; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the joint EPA and Consumer Product Safety Commission (CPSC) final Lead Hazard Information Pamphlet entitled "Protect Your Family From Lead In Your Home" (formerly entitled: "Lead-Based Paint: Protect Your Family") for public distribution. EPA developed this Pamphlet in response to Congressional concerns about the public's knowledge of lead-based paint hazards in the home. The Pamphlet was developed pursuant to section 406(a) of the Toxic Substances Control Act (TSCA), after consultation with the Centers for Disease Control and Prevention (CDC), the Department of Housing and Urban Development (HUD), and CPSC. After extensive product testing and public review, EPA, in consultation with cooperating Federal agencies, has developed a final draft and is beginning efforts to distribute the pamphlet to the general public.

DATES: Copies of the Lead Hazard Information Pamphlet will be available August 1995.

ADDRESSES: Single copies of the pamphlet may be obtained by calling the National Lead Information Clearinghouse (NLIC) at 1–800–424–LEAD or TDD: 1–800–526–5456, or the EPA Public Information Center at (202) 260–2080.

Multiple copies are available through the Government Printing Office (GPO). The public may order by calling the GPO Order Desk at (202) 512–1800, faxing (202) 512–2233, or writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Request the publication by title, "Protect Your Family From Lead in Your Home," and/or GPO stock number 055–000–00507–9. The price is $26.00 per pack of 50 copies. The Pamphlet may be reproduced by an individual or corporation without permission from EPA or CPSC.

Organizations that wish to reprint may obtain negatives and/or black and white reproducible copy from NLIC at 1–800–424–LEAD. The pamphlet is available electronically, and may be accessed through the Internet at: gopher.epa.gov.

FOR FURTHER INFORMATION CONTACT: For general information on lead poisoning prevention, call the National Lead Hotline at 1–800–LEAD–FYI or TDD: 1–800–526–5456, or the TSCA Hotline at (202) 554–1404 or TDD: (202) 554–0551. For specific questions on lead hazard information, call the National Lead Information Clearinghouse, 1–800–424–LEAD or TDD: 1–800–526–5456. For technical information contact: Paula Moser, Environmental Protection Agency, Office of Pollution Prevention and Toxics, (7404), 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–1865, Fax: (202) 260–0770, or Ken Giles, Consumer Product Safety Commission, Office of Public Affairs, 4330 East-West Highway, Bethesda, MD 20814, Telephone (301) 504–0580, Fax: (301) 504–0862.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Congressional mandate in section 406(a) of TSCA, EPA has developed a final lead hazard information pamphlet. Congress specifically required that the pamphlet: (1) Contain information regarding the health risks associated with exposure to lead; (2) provide information on the presence of lead-based paint hazards in Federally-assisted, Federally-owned, and target housing; (3) describe the risks of lead exposure for children under 6 years of age, pregnant women, women of childbearing age, persons involved in home renovation (of target housing), and others residing in a dwelling with lead-based paint hazards; (4) describe the risks of renovation in a dwelling with lead-based paint hazards; (5) provide information on approved methods for evaluating and reducing lead-based paint hazards and their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards; (6) advise persons how to obtain a list of contractors certified pursuant to TSCA section 402 in lead-based paint hazard evaluation and reduction in the area in which the pamphlet is to be used; (7) state that a risk assessment or inspection for lead-based paint is recommended prior to the purchase, lease, or renovation of target housing; (8) state that certain State and local laws impose additional requirements related to lead-based paint in housing and provide a listing of Federal, State, and local agencies in each State, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing; and (9) provide such other information about environmental hazards associated with residential real property as the Administrator deems appropriate.

EPA and HUD will distribute this pamphlet under several Congressional directives that will be implemented in separate rulemaking initiatives. Section 406(b) of TSCA requires that EPA promulgate regulations requiring each

person who performs a renovation of target housing for compensation to provide a lead hazard information pamphlet to the owner(s) and occupant(s) of such housing prior to commencing the renovation.

Section 1012 of the Residential Lead-Based Paint Hazard Reduction Act requires that HUD provide the pamphlet to purchasers and tenants of housing receiving Federal assistance. Section 1018 of that Act requires that EPA and HUD promulgate regulations requiring sellers or lessors of target housing to provide purchasers and lessees with the lead hazard information pamphlet.

These different regulations are currently under development and will be announced in the **Federal Register** when completed. In addition to its regulatory distribution, this pamphlet will be used by other Federal programs to support their educational and outreach goals and obligations. CPSC, a cosponsor of the pamphlet, will distribute the pamphlet to interested parties through its ongoing outreach efforts. This pamphlet will also become an information resource for families through the National Lead Information Center and other Federal information outlets.

II. EPA's Development Process

A. Interagency Consultation

Throughout development of the draft and final pamphlet, EPA has worked closely with other interested Federal agencies, including HUD, CDC, CPSC, and the 14 other agencies involved in the Federal Interagency Task Force on Lead Poisoning Prevention.

B. Public Review and Comment

EPA developed a draft pamphlet and released it for a 60–day public comment period on March 9, 1994 (59 FR 11119), generating feedback from approximately 70 public commenters. These comments addressed stylistic, editorial, and policy concerns. All comments received have been placed into the public docket and are available for public review in the TSCA Nonconfidential Information Center (NCIC) from noon to 4 p.m, Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC.

C. Targeted Focus Tests and Interviews

EPA also conducted focus tests to obtain feedback on the pamphlet's readability within lower reading-level audiences. EPA conducted these tests during the spring and summer of 1994 in five cities: Mobile, AL, Haywood, CA, Washington, DC, Atlanta, GA, and Chicago, IL. The tests consisted of moderated group discussions and one-on-one interviews which allowed EPA to probe for areas in the pamphlet that needed simplification, clarification, or rewording. EPA targeted lower reading-level audiences in recognition that such audiences typically have the greatest trouble benefiting from written health information, are least able to participate in traditional public review and comment periods, and may also be at special risk of lead hazard exposure. The focus tests proved valuable in providing comments on specific words, phrases, and graphics, and in providing overall impressions of the draft pamphlet's strengths and weaknesses. EPA has placed summaries and background materials from the focus tests into the public docket.

D. Informal Public Meeting

On August 29, 1994, EPA held an informal public meeting in Washington, DC after publishing a notice in the **Federal Register** (59 FR 42043) and notifying all initial commenters. The meeting, which was moderated by an impartial facilitator, probed the attendants for comments on various aspects of a revised draft pamphlet using many of the same questions posed to focus group participants. Attendants at the meeting represented a wide range of views and backgrounds. A written verbatim transcription of the meeting is available for review in the public docket.

III. Summary of Key Comments and Changes

During the public comment period, focus tests, and the public meeting, EPA received hundreds of comments and recommendations for improving the pamphlet, covering editorial, layout, graphics, and policy recommendations. EPA and consulting agencies have considered all comments in developing this revised pamphlet. A Response to Comments Document is available for review in the public docket. Below is a summary of some of the key points raised and changes to the pamphlet.

1. *Pamphlet layout/design/format.* EPA received many comments concerning the draft pamphlet's length, reading level and overall design. To respond to these concerns EPA has shortened the length of the pamphlet by 10 pages and completely redesigned the graphic look and layout of the final pamphlet. This redesign includes making better use of artwork, bold fonts, bullets, and sidebars to emphasize key messages and highlight important information.

EPA has also lowered the reading level of the pamphlet overall and has simplified the wording wherever possible. The new draft provides pages at the beginning and end of the pamphlet summarizing/emphasizing key points and messages and action items for reader consideration. Using these different techniques, EPA and CPSC believe that the revised pamphlet provides varying levels of detail to different audiences, depending on their education and areas of interest. At all levels of the pamphlets detail, however, EPA and CPSC have sought to reinforce the prevention theme of the document.

Recognizing that private reproduction of the pamphlet will be a key mechanism for distribution, EPA has resized the pamphlet to use a 5½ x 8½ format to facilitate photocopy reproduction using regular 8½ x 11 paper. In addition to providing color negatives to private entities that wish to reproduce the pamphlet in color, EPA is also releasing black and white camera-ready copy of the pamphlet available for photocopy and print reproduction. To further encourage such reproduction, EPA has also added space on the back cover for names and contact information of organizations that reprint and distribute the pamphlet.

2. *Role of qualified professionals in reducing lead hazards.* Several commenters suggested that the pamphlet address the role certified professionals should play in identifying and reducing lead hazards under future Federal regulations. Recognizing that the pamphlet will be distributed in advance of the completion of Federal training and certification standards for lead workers, the pamphlet focuses on the use of lead hazard reduction professionals "with special training for correcting lead problems" rather than requiring the use of certified contractors, which may not be available in many States. The pamphlet does, however, acknowledge that a certification program is being put into place and that persons are encouraged to use certified lead abatement contractors where possible.

3. *Detail of discussion of lead hazard evaluation and reduction techniques.* Feedback from public commenters and focus test participants indicated that much of the discussion of lead hazard evaluation and reduction methods was too detailed and technical to serve the pamphlet's general purpose. At the same time, many commenters recommended that the pamphlet include additional discussion of the difference between risk assessments and inspections as well as the differences between abatement and interim controls. Recognizing that the concepts of risk assessment versus inspection and abatement versus interim controls are crucial distinctions for future hazard reduction efforts, EPA has added language clarifying these terms. However, EPA has also removed much of the more technical discussion of the specific steps involved in each activity. This revised language more effectively accomplishes the pamphlets goal of providing homeowners and occupants with an understanding of the key concepts and activities in reducing their risk of lead hazard exposure.

4. *Testing/screening children for lead.* EPA received considerable comment on appropriate recommendation language for childhood testing and screening. EPA has worked closely with CDC to analyze these comments and to develop revised testing and screening language that is fully consistent with CDC guidelines and also understandable for lay readers.

5. *Developing workable effective day-to-day cleaning measures.* A number of commenters suggested modifications to simple steps recommended for reducing lead hazards in housing. In particular, commenters identified potential issues related to recommending trisodium phosphate (TSP) or other high phosphate cleaning products for regular cleaning on all surfaces. In consultation with other Federal agencies, EPA has revised the recommendations to place the focus more on day-to-day types of home maintenance activities that can be effective at reducing, but not eliminating, lead hazard when conducted regularly.

6. *Comments not addressed.* EPA received many specific language changes and detailed policy recommendations that were not incorporated into the final pamphlet. During the pamphlet's revision, EPA, CPSC, and other participating agencies analyzed each recommendation in terms of the policy, technical, and editorial merit (and in light of the pamphlet's goals, target audience, and scope). As the whole document evolved, changes to the draft pamphlet frequently rendered some specific comments moot. The fact that a comment is not directly reflected in the final pamphlet does not necessarily indicate that the comment lacked merit. Rather, many comments were excluded since the comments no longer fit within the pamphlet's level of detail or scope.

IV. Alternative Languages

EPA recognizes that this lead hazard information may be important in some communities that have a limited ability to utilize information provided in English. For that reason, EPA is currently developing a Spanish language version of the pamphlet. EPA and CPSC will announce the availability of the Spanish-language pamphlet in the **Federal Register** when available and immediately begin efforts to distribute the document through available channels.

In addition, the Agency is exploring avenues such as public-private partnerships for conducting translations into additional languages, such as Chinese and Korean. Organizations interested in working with EPA and CPSC to print and distribute the pamphlet, or to develop new pamphlet translations should write to: Paula Moser, Program Development Branch, Environmental Protection Agency (7404), 401 M St., SW., Washington, DC 20460.

Based on the response from interested organizations, EPA and CPSC will develop a plan for preparing additional translations.

List of Subjects

Environmental protection, Lead.

Dated: July 25, 1995.

Lynn R. Goldman

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–18875 Filed 7–31–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–211042A; FRL–4968–9]

TSCA Section 21 Petition; Response to Citizens' Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Response to citizens' petition.

SUMMARY: On April 19, 1995, EPA received a petition under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620, signed by 24 environmental groups located in 10 western and mid-western States. The petition asserts that cement-producing plants that burn hazardous waste-derived fuel (WDF) in their kilns have higher concentrations of toxic metals in their cement end-products, and that these products therefore pose risks to end-users. The petition requests that EPA promulgate a rule under section 6 of TSCA requiring those producers who burn WDF to label their cement with a notice advising consumers of that fact, and cautioning them to avoid emitting or breathing the cement dust and to avoid direct contact.

The petition is denied on two grounds: (a) petitioners have not substantiated the assertion that burning WDF increases risks posed to end-users of cement; and (b) for risk protection purposes, the label requested essentially duplicates labeling already required by the Occupational Safety and Health Administration (OSHA).

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543, 401 M St. SW., Washington, DC 20460, (202–260–1024), Internet: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

Section 21 of TSCA provides that any person may petition EPA to initiate proceedings for issuance of rules under sections 4, 6, and 8 of TSCA, or to issue orders under sections 5(e) or 6(b)(2) of TSCA. A section 21 petition must set forth facts which petitioners believe establish the need for the rules requested. EPA is required to grant or deny the petition within 90 days. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons in the **Federal Register**.

Within 60 days of denial, or if EPA fails to respond in 90 days, the petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking. For a petition for a new rule, the court must provide opportunity for the petition to be considered *de novo*. After hearing the evidence, the court can order EPA to initiate the requested action.

II. Approach to Reviewing Petition

Immediately following receipt of the petition, on April 19th, a Workgroup was established with representatives from EPA's Offices of Pollution Prevention and Toxics; Solid Waste and Emergency Response; and General Counsel. After receiving an unsolicited comment on the petition, on May 15th, the Agency decided to publish a Notice of Receipt (60 FR 30538, June 9, 1995), in order to afford all interested parties an opportunity to comment. In keeping with the 90 day deadline for reaching closure, the Workgroup briefed the Director of the Office of Pollution Prevention and Toxics on May 17th, and the Office Director subsequently presented the case to the Assistant Administrator for Prevention, Pesticides and Toxic Substances for a decision.

In response to the FR Notice of Receipt, comments were received from 8 individuals and 10 organizations. Several samples of current cement packaging and Material Safety Data Sheets (MSDSs) were also received. All comments were reviewed and considered by the Agency before reaching its final determination to deny the petition.

III. Background

On April 19, 1995, EPA received a petition under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620, signed by 24 environmental groups located in 10 western and mid-western States. The petition asserts that cement-producing plants that burn hazardous waste-derived fuel (WDF) in their kilns have higher concentrations of toxic metals in their cement end-products, and that these products therefore pose risks to end-users. The petition requests that EPA promulgate a rule under section 6 of the TSCA requiring those producers who burn WDF to label their products, in both English and Spanish, with the following label.

WARNING: THIS PRODUCT WAS MADE WHILE BURNING HAZARDOUS WASTE AND CONTAINS RESIDUALS OF THAT HAZARDOUS WASTE, INCLUDING INCREASED AMOUNTS OF TOXIC AND CARCINOGENIC METALS. AVOID EMITTING AND BREATHING DUST FROM THIS PRODUCT AND AVOID DIRECT CONTACT WITH THIS PRODUCT.

Cement is made by heating limestone, clay and other substances to very high temperatures in rotary kilns to form a granular material called "clinker", which is then cooled and ground up with gypsum to make cement powder. Cement kiln dust (CKD) waste is generated during the production of clinker. Releases to air, water and land from cement kilns are regulated under the Clean Air Act (CAA), Clean Water Act (CWA), and Resource Conservation and Recovery Act (RCRA). In 1992, 23 of the 111 domestic cement-producing plants burned WDF to supplement traditional fossil fuels (FF) (Ref. 3, p.7367). Air emissions and disposal of residues from kilns burning WDF are regulated under the Boiler and Industrial Furnace (BIF) regulations issued under RCRA.

While not central to the petition, CKD is tangentially related to petitioners's concerns. CKD is particulate matter, including toxic metals, that has been removed from kiln stack gases by air pollution control equipment. Once removed, CKD may be: (a) reintroduced into the kiln as feedstock; (b) used for such beneficial purposes as general construction, waste stabilization, or as a substitute for lime and fertilizer in agriculture; or (c) simply disposed. Pursuant to RCRA section 8002(o), EPA published a *Report to Congress on Cement Kiln Dust* in 1993 in which the Agency concluded that although risks associated with CKD management are generally low, CKD could, under some circumstances, pose a danger to human health and the environment (Ref. 2). No decision was made at that time regarding the need to treat CKD as hazardous waste under RCRA Subtitle C.

In February of this year, pursuant to RCRA section 3001(b)(3)(C), the Agency published a *Regulatory Determination on Cement Kiln Dust* (60 FR 7366, February 7,1995) in which it concluded that additional control of CKD is warranted, and that it would use RCRA Subtitle C and other authorities to control risks where appropriate (Ref. 3). Pending development of those regulations, CKD retains its exemption from regulation under Subtitle C pursuant to the Bevill Amendment contained in section 3001(b)(3)(A). The Regulatory Determination also stated that the Agency would propose exclusion of clinker as "derived-from" hazardous waste when CKD is reintroduced into the kiln as feedstock. Although the Bevill Amendment conditionally exempted CKD from regulation as hazardous waste under Subtitle C, the BIF regulations require kilns burning WDF to test their CKD to ensure that it is not significantly affected by the practice (40 CFR 260.112).

The activities described above address CKD waste disposal issues (the focus of both the Report to Congress and the Regulatory Determination). The petition, on the other hand, is primarily concerned about potential hazards to users posed by toxic metals introduced into cement via combustion of WDF. There are, however, four sources of toxic metals in cement: (1) the original feedstock; (2) CKD recycled as feedstock; (3) the fuel, both FF and WDF, used to heat the kiln; and (4) equipment and processes used, particularly refractory kiln bricks and the steel balls used to grind clinker (Ref. 1, p.50). The relative contribution of each of the four potential sources varies by an unknown extent from facility to facility and from time to time. The concentrations of metals in cement from any given plant are a function of complex interactions among all of these variables. A plant burning FF, using feedstock with a high metal content, and recycling CKD extensively, for example, might produce cement with high concentrations of metals, while one burning WDF using the same feedstock, but discarding most of its CKD, might produce cement with lower concentrations.

IV. Adverse Effects Associated with Cement

Based on information provided by petitioners, adverse effects associated with cement cited in the petition include: (a) cement eczema or cement dermatitis; (b) lung cancer; (c) asthma; and (d) a variety of other effects including nosebleeds, ulcers, respiratory distress and pneumoconiosis. Of these, cement dermatitis is the most common effect associated with cement, because the relationship between exposure to cement and dermatitis is well-established, and because the effect can occur at relatively low levels of exposure. Frank cement dermatitis is generally preceded by a number of years of skin irritation, abrasions, and cracks. Once established, cement dermatitis is chronic, even if there is no further exposure to cement. The dermatitis sensitization threshold is reported to be in the range of 10 to 15 parts per million (ppm) hexavalent chromium in cement.

V. Analysis of Petition

As general background, petitioners argue that CAA, CWA and RCRA regulations are tightening restrictions on kiln-generated discharges of toxic metals to air, water and land, without restricting transfer of these metals into the cement itself. They contend that this incentive structure has increased the toxic metals content of cement. However, petitioners offer no evidence that concentrations of metals in cement have in fact increased. With respect to the objective of the petition, EPA notes that if restricting toxic metals from all compartments except the end-product is a problem, it would be a problem for all kilns, not simply those burning WDF. The essence of the petition is the more specific assertion that burning WDF increases the amount of toxic metals in cement.

The petition's assertion is based entirely upon evidence petitioners adduce from a 1992 study, published by the Portland Cement Association (PCA), that presented data on heavy metal concentrations found in both CKD and cement produced in facilities using FF only, and in facilities using WDF (Ref. 1). The study determined both "total" (acid soluble) and "leachable" (water soluble) concentrations of 12 metals (arsenic, antimony, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver and thallium) in both CKD and cement drawn from 97

North American kilns. The results were tabulated, among other ways, according to whether the originating kilns burned FF or WDF. Relevant findings of the study were that (a) the mean "total metal" concentration of only one metal, chromium, was statistically significantly higher in cement from kilns burning WDF than from kilns burning FF; (b) for the remaining 11, some of the "total metal" concentrations were higher and some lower , but none by statistically significant amounts; and (c) none of the "leachable metal" concentrations differed significantly in cement for any of the 12 metals. Evidence brought forth by petitioners therefore suggests only that burning WDF may increase concentrations of chromium in cement; no empirical case is made for metals in general.

Petitioners, however, have not established that burning WDF increases even chromium concentrations in cement. There are two flaws in the reasoning and evidence presented. The first has to do with the inability of the cited PCA study to identify the source of metal concentrations found in the cement samples. Although the study documented statistically significant higher mean levels of total chromium (113 vs. 61.7 ppm) in cement from the kilns burning WDF, the authors of that study explicitly cautioned against attributing the difference to type of fuel burned:

> Identification of the specific sources of the twelve chemical elements in the samples is beyond the scope of this study. Sources include fuel, raw materials, refractories, and processing equipment that comes into contact with the materials. For any particular kiln system, the concentration of these elements in cement and kiln dust is a function of the manufacturing process and the total metals input from all sources.
>
> Because of widespread interest in the burning of alternate fuels in cement kilns, comparisons are presented in this data summary between kiln systems using waste fuels and coal, coke or natural gas. However, the reader should not infer that observed differences are necessarily attributable to the waste fuels, as that is only one of many sources of metals in this multivariate system. (Ref. 1; p.1 of Data Summary appended to reference)

Construction Technology Laboratories (CTL), the firm PCA used to conduct the study, reiterated this concern in an April 24, 1995 letter addressed to the Executive Director of the Cement Kiln Recycling Coalition (CKRC), a trade association of cement producers that burn WDF. That letter, forwarded by CKRC to EPA on May 15, 1995, states in part, that "It was not the purpose of the study to determine the specific sources of trace elements in cements. The work on which this report is based did not include a complete material balance for each plant that submitted samples. Therefore, increases or decreases in trace metals concentrations cannot necessarily be attributed to fuel type."

The second point has to do with the substance selected by petitioners for discussion. They highlighted the statistically significant higher concentration of "total chromium" found by the PCA study in cement from kilns that burned WDF. The following table (derived from Ref. 1) also shows the concentrations of "leachable chromium" found in the same study. The mean difference in leachable chromium between kilns burning WDF and FF is not statistically significant. The evidence from the study cited by petitioners for increased chromium in kilns burning WDF is therefore mixed.

TOTAL AND LEACHABLE CHROMIUM LEVELS FOUND IN CEMENT PRODUCED BURNING WDF AND FF (PPM)

Levels	Total Chromium		Leachable Chromium	
	WDF Cement	FF Cement	WDF Cement	FF Cement
Minimum	33.3	24.6	3	<1.2
Mean	113	61.7	12	10
Maximum	422	214	24	31

This table also sheds light on any practical impact WDF might add to risks posed by chromium in cement. The mean concentrations of leachable chromium in cement produced with either WDF or FF are in the 10 to 15 ppm range — levels at which cement dermatitis could be expected if precautionary steps were not taken to avoid dermal contact. The maximum levels of leachable chromium detected in both types of cement are well above the upper end of that range. For total chromium, all values are well above the threshold levels. The risks are therefore potentially present in cement regardless of the type of fuel used. If these risks are considered sufficiently serious to warrant labeling, therefore, the precautionary warning sought by petitioners should arguably be affixed to all cement packaging, not simply to cement produced in kilns burning WDF.

The only study petitioners cite as demonstrating that burning WDF increases levels of chromium (or any other metal) in cement more than burning FF, therefore, cannot confirm that assertion. It further suggests that even if the assertion were demonstrated, the magnitude of the increase in the amount of chromium, relative to the amount typically found in all cement, would not materially alter the pre-existing level of potential risk. In summary, the only evidence petitioners cite as evidence that burning WDF adds toxic metals to cement is a study which:

- Found that concentrations of "total chromium", not metals in general, were statistically significantly higher in cement produced in kilns burning WDF—but did not, and was not intended to, attribute that difference to WDF;
- Found no statistically significant difference in the concentration of leachable chromium in cement produced with and without burning WDF; and
- Found that burning both FF and WDF generates concentrations of chromium in cement at and above reported threshold levels for cement dermatitis.

EPA's analysis of (a) the material presented by petitioners, and (b) the PCA study[1], has concluded that petitioners have not provided convincing evidence for their basic contention, or for the need for regulation under TSCA.

VI. Other Evidence

Other data are available that bear on the question of whether use of WDF adds metals to cement. EPA's *Regulatory Determination on Cement Kiln Dust*, although not concerned with cement, did compare metal

[1] The petition did not include the PCA study. The findings reported in the petition regarding the PCA study were drawn from data about that study cited in a secondary article supplied by petitioners. The caveats on use of the study's findings, contained in the original, did not appear in the secondary work.

concentrations found in CKD produced in plants burning FF and WDF. That determination noted that:

> For many of the toxic metals, the concentrations detected in kiln dust were not significantly different whether the dust is generated from kilns that burn or do not burn hazardous waste. However, for lead, cadmium, and chromium, the mean concentrations found in CKD generated by kilns that burn hazardous waste is measurably higher than in CKD from those kilns that do not burn hazardous waste; conversely, thallium and barium concentrations are measurably higher in CKD from kilns that do not burn hazardous waste (Ref. 3, p.7369).

Again, the evidence is inconsistent; concentrations of some metals in WDF-generated CKD are higher, but others are lower. The continuing difficulty, however, is in establishing causality. As previously noted, the concentration of metals found in any given plant's cement results from complex interactions among several site-specific variables; in the absence of a study controlling for these variables, one cannot confidently attribute variations in metal concentrations among plants to any one source. There is one industry study, *A Comparison of Metal and Organic Concentrations in Cement and Clinker Made With Fossil Fuels to Cement and Clinker Made with Waste Derived Fuels* (Ref. 4), that determined the concentrations of metals in cement produced at a single facility that initially used WDF, and then switched temporarily to FF. Other operating conditions were held constant in both time periods, and 20 cement samples were taken in each. That study found detectable amounts of four metals. In one phase (pH=5 extract waters), the mean concentration of antimony was statistically significantly higher in the cement generated burning WDF, but there were no significant differences for either cadmium or chromium. In the second phase (pH=10 extract waters), the mean concentration of chromium in cement produced while burning WDF was statistically significantly lower than in cement produced burning FF—exactly opposite to the PCA findings. The differences for nickel were insignificant.

The totality of evidence, then, does not confirm that burning WDF in kilns materially increases concentrations of metals in cement. It also shows that decreased concentrations of metals can occur, and the net human health potential, if any, is simply unknown. In any event, based on the available information, the type of fuel burned in kilns appears to be a minor determinant of the concentration of metals in cement relative to (a) the extent to which CKD is recycled as feedstock, and (b) the metals content of the original feedstock. Finally, the evidence indicates that all domestic[2] cement poses a potential problem to long-term users who fail to take precautionary steps to avoid exposures. Any labeling intended to warn users of this hazard should therefore be applied to all cement, not simply to cement produced with WDF.

VII. OSHA's Labeling Requirement

The current regulatory situation recognizes the need for comprehensive labeling of cement. Although petitioners state that the problems they discuss cannot be adequately addressed under other statutes, OSHA's Hazard Communication Standard (29 CFR 1910.1200) does, in fact, require cement manufacturers to label virtually all containers of their products with essentially all of the information petitioners want to convey, other than the fact that the cement was produced through burning of WDF. This requirement extends to all cement, not just that produced with WDF. Pertinent provisions of the Hazard Communication Standard require chemical manufacturers (cement producers, for this purpose, are considered chemical manufacturers) of products for which there is evidence of health hazard to label all containers of the product providing: (a) the identity of the chemical; (b) appropriate hazard warnings; and (c) the name and address of the manufacturer (29 CFR 1910.1200(f)). Manufacturers must also ensure that distributors and employers using the product are furnished with appropriate MSDS, and downstream wholesalers and retailers are required to ensure that these warnings are carried with the product through the distribution chain to the ultimate end-user. A typical cement bag label reads as follows:

> **CAUTION EYE AND SKIN IRRITANT**
>
> Contains Portland Cement (CAS No. 65997–15–1). Do not allow contact with eyes or skin. Contains concrete aggregates Sand/Gravel (CAS No. 14808–60–7). Avoid breathing dust—respirable Silica may cause serious lung problems.
>
> Use gloves, goggles, dust masks, and waterproof protective clothing. If material gets into eyes, rinse immediately with clean water and seek prompt medical attention. If material gets onto skin or saturates clothing, rinse immediately and thoroughly with clean water. CONTACT WITH WET PORTLAND CEMENT MAY CAUSE SERIOUS SKIN BURNS."

EPA believes that the hazard communication label required by OSHA provides sufficient warning to users of cement to allow them to take appropriate steps to protect themselves from exposure to cement products.

VIII. Comments Received

EPA published a Notice of Receipt of the Petition in the **Federal Register** (60 FR 30538; June 9, 1995), in order to provide opportunity to comment to all interested parties. Comments were received from 8 individuals, all of whom supported the petition, and 10 organizations. Several samples of current cement packaging and MSDSs were also received. All comments were reviewed and considered by the Agency before reaching its final determination to deny the petition.

Six of the 10 organizations wrote in support of the petition. Of these, 3 were among the 24 signers of the petition itself; 1 is another environmental group; 1 is a general contractor; and 1, Rollins Environmental Services, operates hazardous waste incinerators. The Rollins submission included two studies bearing on the question of the contribution of WDF to metals in cement. The first study was a mass balance analysis conducted at Rutgers University with the support of the Association for Responsible Thermal Treatment (ARTT), an organization of some hazardous waste incinerator companies. That study models the operation of cement kilns, and concludes, among other things, that burning WDF could increase the metals content of cement. The second study is a risk assessment undertaken by ENVIRON Corporation, using the data generated by the Rutgers model, and a portion of the PCA data. These studies were reviewed by EPA, insofar as time permitted, but did not alter the Agency's decision on the petition because: (a) there is no apparent justification for substituting modeling data for the extensive empirical monitoring data available; (b) the model itself appears flawed in that a light weight aggregate kiln, rather than a cement kiln, was used in its development; (c) the model has only recently been developed, and has not yet been peer reviewed; and (d) the ENVIRON study is largely based upon the unpersuasive modeling results (Refs. 5 and 6).

The four organizations that wrote in opposition to the petition included the CKRC; the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers Helpers; LaFarge Corporation, a cement producer that burns WDF; and Union Carbide Corporation, a company that uses cement kilns to handle wastes produced manufacturing petrochemicals. These commenters generally noted advantages that acrue from recovering energy from waste by burning it as fuel in kilns, asserted that petitioners had not provided sufficient evidence of increased risk, and cited the current regulatory requirement for labeling.

[2]There is some evidence that the hexavalent chromium content of cement can be reduced by adding ferrous sulfate. Petitioners cite references indicating that Denmark has made it illegal to sell cement with more than 2 ppm CR (VI).

IX. Disposition of Petition

Based upon (a) the lack of convincing evidence that WDF contributes materially to the hazards posed by cement; and (b) the fact that current OSHA regulations already require virtually everything petitioners request, other than a reference to WDF, the petition is denied.

X. References

The following references were used in reviewing this petition:

1. Portland Cement Association. An Analysis of Selected Trace Metals in Cement and Kiln Dust, 1992.

2. USEPA. Report to Congress on Cement Kiln Dust. Office of Solid Waste and Emergency Response. USEPA 530–S–94–001, December 1993.

3. USEPA. Regulatory Determination on Cement Kiln Dust: Final Rule. Office of Solid Waste and Emergency Response. USEPA 60 FR 7366, February 7, 1995.

4. NSF. A Comparison of Metal and Organic Concentrations in Cement and Clinker made with Fossil Fuels to Cement and Clinkers Made with Waste Derived Fuels: Final Report. *NSF International*. November 13, 1995.

5. Review of Comments submitted by Rollins Environmental Services; memorandum from Oscar Hernandez to Edward Brooks, July 13, 1995.

6. Review of Rutgers' Model as Discussed in Submission by Rollins Environmental Services: June 26, 1995; memorandum from William A. Schoenborn to Edward Brooks, July 18, 1995.

XI. Public Record

EPA has established a public record of those documents the Agency considered in reviewing this petition. The record consists of documents in the file designated by Docket Number OPPT–211042, located in the TSCA Public Docket Office. This Docket is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center, Rm. NEB–607, 401 M St., SW., Washington, DC 20460. The public record consists of all documents in the OPPT file and all documents cited in the documents in that file.

List of Subjects

Environmental Protection, hazardous waste.

Dated: July 24, 1995.

Susan H. Wayland,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–18871 Filed 7–31–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5268–3]

Science Advisory Board Drinking Water Committee Open Meeting August 16–18, 1995

Under the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Drinking Water Committee (DWC) will meet Wednesday through Friday, August 16–18, 1995 at the Courtyards of Marriott, 2899 Jeff Davis Highway, Arlington, VA 22202, telephone (703) 549–3434. The meeting will take place from 9 am to 4:30 pm on August 16th, 8:30 am to 5 pm on August 17th and from 8:30 until approximately noon on August 18th. The meeting is open to the public and seating is on a first-come basis.

At this meeting, the Committee plans to: (1) Discuss potential activities for fiscal year 1996; (2) conduct a review of the Agency's drinking water distribution systems research; (3) conduct a review of the health significance of HPC bacteria; (4) receive briefings from the Agency's Offices of Water (OW) and Research and Development (ORD) on issues such as: (a) disinfection byproducts research plan, (b) regulatory reassessment, (c) ground water disinfection rule, (d) cooperative projects in risk assessment between EPA and ILSI, (e) microbial contaminants risk assessment, and (f) drinking water contaminant selection process. Some of these briefings are subject to change and other briefings may also be presented. As of the preparation date of this notice, the Committee has not been provided with any review materials. For further information on available materials and on the specific topics listed above, please contact Mr. Flaak, Designated Federal Official, at the numbers given below.

For copies of the agenda and other practical meeting information, please contact Ms. Mary Winston, Staff Secretary, telephone: (202) 260–6552; FAX: (202) 260–7118. For more detailed or technical information related to the meeting, please contact Mr. Robert Flaak, Designated Federal Official, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at telephone: (202) 260–5133, fax: (202) 260–7118, or via the INTERNET at: FLAAK.ROBERT @EPAMAIL.EPA.GOV).

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak no later than August 10, 1995, in order to be included on the Agenda. Written statements of any length (at least 35 copies) may be provided to the Committee up until the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes or less, at the Chair's discretion.

Dated: July 24, 1995.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–18835 Filed 7–31–95; 8:45 am]

BILLING CODE 6560–50–P–M

[FRL–5267–1]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: EPA will transfer Confidential Business Information (CBI) to its contractor SAIC, Inc., and its subcontractors: ICF Inc., DPRA and Kerr Associates Confidential Business Information (CBI) that has been or will be submitted to EPA under Section 3007 the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than August 11, 1995.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305), U.S. Environmental Protection Agency,

401 M Street SW., Washington, DC 20460, 202–260–3410.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract 68–W4–0030, SAIC, Inc., and its subcontractors, will assist the Waste Management Division, Office of Solid Waste, by providing technical support for: establishing Land Disposal Restriction (LDR) treatment standards, the review of petitions for case-by-case extensions, to LDR treatment standards effective date, studies of RCRA waste information needs and the development of rules or reports pertaining to newly listed and identified wastes under the LDR program. SAIC, Inc., and its subcontractors, will need access to CBI submitted to the Office of Solid Waste to complete this work. Specifically, SAIC, Inc., and its subcontractors, need access to the CBI that EPA collected, under the authority of Section 3007 of RCRA, in Industry Studies Surveys and other studies of the following industries: mineral processing, organobromine production, carbamates production, wood preserving, dyes and pigments manufacturing, chlorinated aliphatics production, solvent users, petroleum refinery, paint production, cement kilns; and information on decharacterized ignitable, corrosive, reactive, and toxicity characteristic waste. SAIC, Inc., and its subcontractors, will use the information to assist EPA in the following: development of regulations; guidance documents; outreach materials and publications; collection and analysis of data; development and evaluation of waste prevention and management alternatives; and development and delivery of training programs.

In accordance with 40 CFR 2.305(h), EPA has determined that SAIC, Inc., and its subcontractors, require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing their review of materials submitted, SAIC, Inc., and its subcontractors, will return all CBI to EPA.

EPA will authorize SAIC, Inc., and its subcontractors, for access to CBI under the conditions and terms in EPA's "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." Prior to transferring CBI to SAIC , Inc. and its subcontractors, EPA will review and approve their security plans and SAIC, Inc., and its subcontractors, will sign non-disclosure agreements.

Date: July 20, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 95–18862 Filed 7–31–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. 95–11]

Mar-Mol Co., and CopyCorp v. Sea-Land Service, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Mar-Mol Co. and CopyCorp ("Complainants") against Sea-Land Service, Inc. ("Respondent") was served July 26, 1995. Complainants allege that Respondent has violated section 18(a) of the Shipping Act of 1916, 46 U.S.C. app. 817 and Section 2 of the Intercoastal Shipping Act of 1993, 46 U.S.C. app. 844 in connection with its improper publication, assessment and collection of a charge denominated as a License Tax, applicable to its ocean transportation service between points and ports in the United States and points and ports in Puerto Rico.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by July 26, 1996, and the final decision of the Commission shall be issued by November 28, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 95–18822 Filed 7–31–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License, Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2379	Fabian Forwarding Company, Inc., 125 Yellowstone Drive, Reno, NV 89512.	July 17, 1995.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–18775 Filed 7–31–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1693
Name: Mattoon & Co., Inc.
Address: 35 Market St., San Francisco, CA 94103
Date Revoked: July 3, 1995
Reason: Surrendered license voluntarily.

License Number: 3698
Name: Sea Link Corporation
Address: 1601 South State Road 7, Ft. Lauderdale, FL 33317
Date Revoked: July 12, 1995
Reason: Failed to furnish a valid surety bond.

License Number: 3893
Name: Global Shipping and Trade Services, Inc.
Address: 2050 S. Oneida St., Ste. 116, Denver, CO 80224
Date Revoked: July 14, 1995
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–18776 Filed 7–31–95; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0263, General Services Administration Multiple Award Schedule (MAS) Discount Schedule and Marketing Data.

This information collection was established to determine the commerciality of items offered, set the Government's negotiation objective, and determine price reasonableness.

Agency: Office of GSA Acquisition Policy.

Addresses: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets, NW., Washington, DC 20405.

Annual Reporting Burden: 4,000 responses per year; 15 hours per response; annual burden hours 60,000.

For Further Information Contact: Ida Ustad (202–501–1043).

Copy of Proposal: A copy of this proposal may be obtained from the Information Collection Management (CAIR), Room 7102, GSA Building, 18th & F Streets, NW., Washington, DC 20405, or by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: July 24, 1995.

Kenneth S. Stacey,

Acting Director, Information Management Division (CAI).

[FR Doc. 95–18785 Filed 7–31–95; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Child Care and Development Block Grant Reporting Requirements

OMB No.: 0980–0241

Description: The purpose of this collection is to obtain data from CCDBG grantees regarding their efforts to increase the availability, affordability and quality of child care using CCDBG funds. This data collection is mandated by statue

Respondents: State governments

Title	No. of resondents	No. of responses per respondent	Average burden per response	Burden
ACF–700	282	1	40	11,280
Estimated Total Annual Burden Hours: 11,280				

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Systems, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer

OMB Comment: Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Ms. Wendy Taylor

Dated: July 26, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–18863 Filed 7–31–95; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Proposed Information Collections Submitted for Public Comment and Recommendations

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Administration for Children and Families (ACF) is publishing the following summary(ies). Request copies of the proposed collection of information and the related instructions by writing to: The Administration for Children and Families, Office of Information Systems, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: Reports Clearance Officer.

Comments are invited to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on respondents through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Proposed Project(s):

Title: Report on Claims of Good Cause for Refusing to Cooperate in Establishing Paternity and Security Child Support

OMB No.: 0960–0177

Description: This form is an enumeration of the reportable items established in 45 CFR (232.48). The report tabulates the good cause reasons for failure to cooperate in establishing paternity and security child support

Respondents: State governments

Title	No. of respondents	No. of responses per respondent	Average burden per response	Burden
AFC–4680	54	2	4.0	432
Estimated Total Annual Burden: 432.				

Dated: July 24, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–18864 Filed 7–31–95; 8:45 am]

BILLING CODE 4184–01–M

Agency for Health Care Policy and Research

Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of August 1995:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: August 14, 1995, 10 a.m.

Place: Holiday Inn Washington National Airport, 1489 Jefferson Davis Highway, Borman Room, Arlington, VA 22202.

Open August 14, 10 a.m. to 10:15 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications submitted in response to a request for applications proposing health services research on advance directives.

Agenda: The open session of the meeting on August 14, from 10:00 a.m. to 10:15 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact J. Terrell Hoffeld, D.D.S., Ph.D., Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 25, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–18748 Filed 7–31–95; 8:45 am]

BILLING CODE 4160–90–M

Agency for Toxic Substances and Disease Registry

[ATSDR–98]

Policy on Government-to-Government Relations With Native American Tribal Governments

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces a draft policy that ATSDR proposes to conduct a government-to-government relationship with federally recognized tribal governments. The public is invited to comment on this draft policy statement.

DATES: Comments must be received on or before August 31, 1995.

ADDRESSES: Submit written comments relating to the draft policy statement to: Office of Federal Programs, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–28, Atlanta, Georgia 30333, telephone (404) 639–0730.

FOR FURTHER INFORMATION CONTACT: Dr. Mark M. Bashor, Associate Administrator for Federal Programs, ATSDR, telephone (404) 639–0730.

SUPPLEMENTARY INFORMATION: The mission of ATSDR is to prevent exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment. In carrying out its programs, ATSDR works with other Federal, State, and local government agencies, and tribal organizations to protect public health.

The U.S. Government has a unique government-to-government relationship with tribal governments as established by the U.S. Constitution, by treaties, by statute, by court decisions, and by Executive Orders. ATSDR is strongly committed to building a more effective day-to-day working relationship with tribal governments. This relationship respects their rights of self-government because of their sovereign status.

In fulfilling the commitment to establish and maintain government-to-government relations with federally recognized tribal governments, ATSDR will be guided by:

(1) Section 126 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the principles set forth in the President's "Memorandum for the Heads of Executive Departments and Agencies; Subject: Government-to-Government Relations with Native American Tribal Governments" (April 29, 1994). In particular, ATSDR will

- In a manner consistent with the protection of public health, consult with tribal governments to ensure that tribal rights and concerns are considered before ATSDR takes actions, makes decisions, or implements programs that may affect tribes; and
- Establish procedures to work directly and effectively with tribal governments on ATSDR programs.

(2) The needs and culture of individual tribal governments;

(3) ATSDR's prior and ongoing experience with tribal governments, and recognized organizations associated with such governments; and

(4) A recognized need to enhance coordination with other agencies with related areas of responsibility.

Dated: July 26, 1995.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 95–18826 Filed 7–31–95; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

[INFO–95–01]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Canters for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request study materials on the proposed project, call the CDC Reports Clearance Officer on (404) 639–3453.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Emergency Department Prevention of Alcohol-related Injuries—New—The contribution of alcohol to injuries due to motor vehicle crashes, violence, and other causes has been a public health concern for many years. Because the emergency department(ED) is the primary source of treatment for many individuals with alcohol-related injuries, the ED visit provides a unique opportunity for early recognition and initial clinical management of a major injury risk factor, excessive alcohol consumption. The field of alcohol treatment is evolving rapidly and therapeutic attention is increasingly directed toward persons with mild or moderate drinking problems who do not require specialized treatment. Controlled studies in outpatient primary care settings have demonstrated that interventions consisting of as little as a single brief interview and feedback session can decrease alcohol consumption in 40% to 47% of excessive drinkers at 6 months followup. The purpose of this study is to design, implement, and evaluate the effectiveness of an ED-based prevention program for injured patients with alcohol problems that incorporates promising new screening methods and a brief intervention.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Patients	1750	2	0.2

2. HIV Prevention Programs in Minority and other Community-Based Organizations Project Reports (0920–0249)—Reinstatement—In FY 1994, CDC awarded approximately $8,400,000 to national/regional organizations for HIV/STD prevention programs. In FY 1996 the President's budget includes a request of $15.8 million to continue this program. CDC is responsible for monitoring and evaluating HIV/STD prevention activities conducted with these funds. These reports allow CDC to measure the progress of activities and services supported with these funds which in turn assures quality programming. This is a request to continue to require quarterly progress reports from national/regional minority organizations funded by CDC.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Organization	90	4	1

3. Applied Research for Traumatic Brain Injury (TBI) Follow-Up Registry—New—The purpose of this data collection is to plan, implement, and support a population-based registry of persons sustaining TBI to better define the outcomes and secondary conditions associated with the injury. One grant recipient will develop population-based follow-up and data collection methods statewide or in a population defined by a geo-political jurisdiction of 1.5 million or more persons to define the long-term public health impacts of TBI. Tracking mechanisms to follow-up persons with TBI will be developed, a minimal data set will be defined to include demographic and cost data and information about primary and secondary conditions, injury severity, impairments, disabilities, services needed and used, and community reintegration.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
TBI patients	1000	2	0.5

4. Epidemiology of Fatiguing Illness in Wichita: A Population-Based Study—New—In 1994, OMB approved the information collection "Epidemiology of Fatiguing Illness in Wichita: A Population-Based Study" under OMB Number 0920–0336. Data from this cross-sectional, point prevalence, random-digit-dial survey of prolonged fatiguing illness in San Francisco, CA concluded that CFS continues to exist and that prolonged fatigue occurs in over five percent of the population in San Francisco.

The proposed study replicates the San Francisco study using identical methodology and data collection instruments. Beginning with a random-digit-dial telephone survey to identify fatigued individuals, followed by a case-control study where surveillance interview instruments will be used to obtain comparative data on fatigued individuals and matched health (non-fatigued) controls. Study objectives remain to refine estimates of CFS in Wichita, identify similarities and differences among cases and controls, and to evaluate the merits of a physician-based surveillance conducted by the Wichita department of health.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Individuals screened	13,000	1	0.083
Individuals interviewed	1,200	1	0.25

5. Refinement of an Instrument on Teen Pregnancy and Contraceptive Use—New—The University of Alabama School of Public Health, through a cooperative agreement with CDC, will develop an instrument that can be used to obtain information about contraceptive decision making and unintended pregnancy among teens. The CDC instrument is to identify factors associated with (1) Early initiation of contraception for sexually active teens; (2) use of effective contraceptive methods; (3) attitudes and beliefs about different methods; (4) timing status of pregnancy and whether an unintended pregnancy resulted from no use or ineffective use; (5) the influence of alcohol and other drugs on contraceptive use; and, (6) the impact of an unintended pregnancy on subsequent contraceptive use. To develop the new instrument, UAB will first conduct and use data from focus groups with teens. Second, the new instrument will be administered by trained interviewers to

a sample of teens pregnant for the first time and sexually active nonpregnant adolescents aged 15–17 in Birmingham, Alabama. Once all of the interviews are completed, data from the questionnaires will be analyzed to determine: (1) The average length of the interview; (2) the reactions of the respondents to the interview questions; (3) questions that were difficult for the respondents and interviewers; and (4) the actual responses to the interview questions. Based on the above analyses, UAB will prepare a report for CDC which will include a revised questionnaire, and recommendations for future use of this type of instrument.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Pregnant adolescents	100	1	0.75
Sexually active nonpregnant adolescents	100	1	0.75

6. Functional Outcome and Use of Services Following Firearm Injuries—New—Patients admitted to an urban hospital for treatment of a firearm injury will be followed in order to: (1) Examine the nature and extent of functional limitations and disability following a firearm injury, (2) examine the factors that influence patient recovery, and (3) document the use of post-acute services and barriers to receiving those services. The following data will be collected: (1) Patients will be interviewed in person prior to discharge and by phone at 3 months and 9 months after discharge; (2) the medical record will also be abstracted.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Patients with firearms injuries	320	3	0.60

7. Ciguatera Fish Poisoning Study—New—Approximately 100 patients with acute ciguatera fish poisoning and matched controls who provide written consent before entry into the study will be surveyed about their fish consumption practices, history of ciguatera fish poisoning and symptoms experienced. Objectives of the study will be to examine risk factors for illness, including fish exposure and demographic characteristics of patients. The study will also attempt to identify distinct or characteristic symptom complexes and responses of patients to various treatments. The study will permit systematic collection of toxic fish specimens for further development of fish screening tests. Respondents will be patients over age 18 presenting to emergency rooms and diagnosed with ciguatera fish poisoning.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Diagnosed patients	200	2	0.75

8. A Case-Control Study to Determine if College Attendance is a Risk Factor for Development of Invasive Meningococcal Disease (0920–0321)—Reinstatement—The frequency of reports of fatal or life-threatening meningococcal disease in previously healthy college students raises the possibility that college students are at increased risk of meningococcal disease. Potential similarities between college students and military recruits, for whom increased risk has been clearly established and who are routinely vaccinated against meningococcal disease upon entry, suggest the need to clarify the role of college attendance in the occurrence of meningococcal disease. To determine if college attendance is a risk factor for meningococcal disease NCID hopes to conduct a retrospective, case-control study based on cases identified by state health departments. (0920–0321)

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Infected college students	400	1	0.355

9. Nationally Sexually Transmitted Disease morbidity Surveillance system—Continuation—The purpose of these reports is to collect STD morbidity surveillance data from state health departments nationwide. The data are used by health care planners at the national, state, and local levels to develop and evaluate STD prevention and control programs. In addition there are many other users of the data including scientist, researchers, educators, students and the media.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
State and large city health departments	60	4	2
State and large city health departments	60	12	0.583
State and large city health departments	60	2	3

Dated: July 20, 1995.

Joseph R. Carter,

Acting Associate Director for Management And Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18827 Filed 7–31–95; 8:45 am]

BILLING CODE 4163–18–P

Disabilities Prevention Program Project Workshop

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disabilities Prevention Program Project Workshop.

Times and Dates: 4 p.m.–6 p.m., August 29, 1995, 8:30 a.m.–4:30 p.m., August 30, 1995, 8:30 a.m.–12 noon, August 31, 1995.

Place: Marriott Pavilion Hotel, One South Broadway, St. Louis, Missouri 63102, telephone 314/421–1776.

Status: Open to the public for observation, participation, comment, and is limited only by space available. The meeting room will accommodate approximately 100 people.

Purpose: The meeting will provide a forum for presentations and discussions on the surveillance of secondary conditions associated with primary disabilities, current and future program priorities, and future Federal funding policies. In addition, individualized technical assistance related to project issues will be available to State grantees.

Matters To Be Discussed: Topics to be discussed will include: Updates on the National Disabilities Prevention Program and National legislation; background and concepts of International Classification of Impairment, Disabilities, and Handicap and how secondary conditions fit; state of the art and practical illustrations of secondary conditions; defining the role of the States in disability prevention; and a question and answer session.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jack Stubbs, Project Officer, Disabilities Prevention Program, NCEH, CDC, 4770 Buford Highway, NE, Mailstop F–29, Chamblee, Georgia 30341–3724, telephone 404/488–7080, FAX 404/488–7075.

Dated: July 25, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Diseases Control and Prevention (CDC).

[FR Doc. 95–18836 Filed 7–31–95; 8:45 am]

BILLING CODE 4160–18–M

Advisory Committee for Energy-Related Epidemiologic Research; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research.

Times and Dates: 9 a.m.–5 p.m., August 23, 1995, 9 a.m.–12 noon, August 24, 1995.

Place: Sheraton Suites Hotel, 801 North Saint Asaph Street, Alexandria, Virginia 22314.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice and recommendations to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry, on the establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies. The Committee will take into consideration information and proposals provided by the Department of Energy (DOE), the Advisory Committee for Environment Safety and Health which was established by DOE under the guidelines of a Memorandum of Understanding between HHS and DOE, and other agencies and organizations, regarding the direction HHS should take in establishing the research agenda and in the development of a research plan.

Matters To Be Discussed: The Committee will meet to discuss working group recommendations, environmental data and research methods, the research agenda, and public involvement activities. Presentations will be made by DOE on the Conference on Epidemiologic Data Resources and occupational surveillance plans and progress.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE, Mailstop F–35, Atlanta, Georgia 30341–3724, telephone 404/488–7040.

Dated: July 25, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18840 Filed 7–31–95; 8:45 am]

BILLING CODE 4163–18–M

Workshop to Review the Evidence for an Association Between Exposure to Stachybotrys Arta and Diseases Among Infants

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Workshop to Review the Evidence for an Association Between Exposure to Stachybotrys Atra and Diseases Among Infants.

Time and Date: 9 a.m.–4:30 p.m., August 25, 1995.

Place: CDC, 4770 Buford Highway, NE, Building 101, Room 1301, Chamblee, Georgia 30341–3724, telephone 404/488–7322.

Status: Open to the public, limited only by the space available. The room will accommodate approximately 50 people.

Purpose: In November 1994, CDC responded to a request from the Ohio Department of Health to assist in the investigation of a cluster of cases of pulmonary hemosiderosis among infants in Cleveland. In December 1994, CDC was asked to respond to a request from the Illinois Department of Health to investigate a similar cluster in Chicago. Preliminary data from both investigations are now available. This workshop is being held to solicit individual advice and recommendations from scientists and representatives of other Federal agencies, State and local governments, academia, and the public, regarding additional epidemiologic research needs in studying the association between exposure to Stachybotrys atra and diseases among infants. The results of the workshop will be used to aid in the development of a proposed research agenda.

Matters To Be Discussed: Topics will include the presentation of preliminary results from the epidemiologic investigations from the Cleveland area in November–December 1994 and the Chicago area in December 1994–January 1995, followed by open discussions of data and suggestions for additional analyses.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: James Rifenburg, Public Health Advisor, Air Pollution and Respiratory Health Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, Mailstop F–39, Chamblee, Georgia 30341–3724, telephone 404/488–7322, FAX 404/488–7335.

Dated: July 25, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18837 Filed 7–31–95; 8:45 am]

BILLING CODE 4163–18–M

Public Health Response to Nasopharyngeal Radium Irradiation Workshop

Yale University School of Medicine, the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC), the Department of Veterans Affairs, and the Connecticut Department of Health announce the following meeting.

Name: The Public Health Response to Nasopharyngeal Radium Irradiation Workshop.

Times and Dates: 8:30 a.m.–5:15 p.m., September 27, 1995, 8:30 a.m.–12:45 p.m., September 28, 1995.

Place: Quality Inn (Conference Center), 100 Pond Lily Avenue, New Haven, Connecticut 06525, telephone 203/387–6651.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 250 people.

Purpose: The purpose of this workshop is to review information on the medical use of nasopharyngeal radium irradiation, a medical treatment used from approximately 1940 to 1960, to evaluate current knowledge of risks of potential adverse health effects, and determine what, if any, public health assessments are needed for persons and populations who received nasopharyngeal radium irradiation.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Jan Stolwijk, Ph.D., Department of Epidemiology and Public Health, Yale University School of Medicine, 60 College Street, PO Box 208034, New Haven, Connecticut 06520–8034, telephone 203/785–2880, FAX 203/785–6980, or Anne Mellinger, M.D., Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 404/488–7040, FAX 404/488–7044, e-mail: akm0@cehdeh1.em.cdc.gov.

Dated: July 25, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18838 Filed 7–31–95; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee; Meeting.

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and

Prevention (CDC), announces the following committee meeting.

Name: NCVHS Executive Subcommittee.

Times and Dates: 9 a.m.–5 p.m., August 29, 1995, 9 a.m.–2 p.m., August 30, 1995.

Place: The Bavarian Inn, Route 1, Shepherdstown, West Virginia 25443.

Status: Open.

Purpose: The purpose of this meeting is for the Executive Subcommittee to review accomplishments, structure, needs and work plans of NCVHS and individual subcommittees.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: July 25, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18839 Filed 7–31–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 95N–0185]

Drug Export; Arimidex (Anastrozole) 1 Milligram (mg) Tablet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 29, 1995 (60 FR 33810). The document announced that Zeneca Pharmaceuticals Inc., was requesting conditional approval for export of the human drug Arimidex (Anastrozole) 1 mg tablet to the United Kingdom. The document contained an error in indication for use. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: In FR Doc. 95–15969 appearing on page 33810 in the **Federal Register** of Thursday, June 29, 1995, the following correction is made:

On page 33810, in the second column, under the heading **SUPPLEMENTARY INFORMATION**, line 29, the word "colorectal" is corrected to read "breast".

Dated: July 24, 1995.

Betty L. Jones,

Acting Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–18747 Filed 7–31–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0230]

Statement Regarding the Demonstrations of Effectiveness of Human Drug Products and Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its position regarding demonstrations of product effectiveness in new drug applications (NDA's) and premarket approval applications (PMA's). In evaluating NDA's and PMA's, FDA weighs the product's demonstrated effectiveness against its risks and considers other factors such as the seriousness and outcome of the disease being treated and the adequacy of existing treatments. The agency does not require new human drug products or medical devices to be more effective than existing therapies nor does it necessarily require the product to be compared to other products. However, for products intended to treat life-threatening diseases, diseases with irreversible morbidity, and contagious diseases that pose serious health risks to others, it is essential for public health protection that a new therapy be as effective as existing, approved therapies.

DATES: Written comments by October 30, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2831.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton announced plans for reforming the Federal regulatory system as part of his "Reinventing Government" initiative. Part of this reform is aimed at reviewing regulatory processes to determine which requirements could be reduced or eliminated without lowering health and safety standards.

Pursuant to the President's "Reinventing Government" initiative, FDA made several recommendations with respect to the regulation of human drug products and medical devices. One recommendation was the issuance of a public statement clarifying certain aspects of the standards for the effectiveness of human drug products and medical devices.

The Federal Food, Drug, and Cosmetic Act (the act) requires NDA's and PMA's to contain full reports of information demonstrating that the drug or device is safe and effective under conditions of use in the product's proposed labeling. (See sections 505(b) and 515(c) of the act (21 U.S.C. 355(b) and 360e(c)).) The agency must deny approval of a NDA or a PMA if it finds that the application does not demonstrate that the product is safe and effective for the uses indicated in the product's proposed labeling. (See sections 505 (c) and (d) and 515(d) of the act.)

Pharmaceutical and device manufacturers have sometimes claimed that the agency requires new human drug products and especially class III devices (devices for which insufficient information exists to assure that general controls and special controls provide reasonable assurance of safety and effectiveness; in general, these are the higher risk devices) to be more effective for their intended uses than comparable therapies that are already approved for marketing. These firms assert that FDA's requirements for demonstrating effectiveness present unreasonable difficulties in developing new therapies and bringing those new therapies to market.

This notice is intended to address the concerns about a comparative effectiveness standard that have been raised. In evaluating the safety of a new drug or medical device, FDA weighs the product's demonstrated effectiveness against its risks to determine whether the benefits outweigh the risks. This weighing process also takes into account information such as the seriousness and outcome of the disease, the presence and adequacy of existing treatments, and adverse reaction and other safety data.

In evaluating effectiveness, FDA reviews new drug products and devices on their merits. FDA does not require new drug products or devices to be more effective than approved therapies for the same disease or condition. In general, both new drug products and class III devices must be shown to be effective through evidence consisting of clinical investigations that provide a basis on which it can be concluded that the new drug product or class III device will be safe and have the effect that it is represented to have.

For most new drug products and new class III devices intended to treat serious illness or provide symptomatic relief, a showing of effectiveness is usually based on a clinical trial comparing the product to a placebo. Such a showing does not necessarily involve a comparison to another active treatment or a product that is known to be effective.

In certain circumstances, however, it may be important to consider whether a new product is less effective than available alternative therapies, when less effectiveness could present a danger to the patient or to the public. For example, it is essential for public health protection that a new therapy be as effective as alternatives that are already approved for marketing when: (1) The disease to be treated is life-threatening or capable of causing irreversible morbidity (e.g., stroke or heart attack); or (2) the disease to be treated is a contagious illness that poses serious consequences to the health of others (e.g., sexually transmitted diseases).

It should be noted that new products are often developed for particular subpopulations who either do not respond to or are not able to tolerate an existing approved therapy. FDA will generally approve for use in such a subpopulation a product that is shown to have effectiveness in this group, regardless of whether the product can be shown to be as effective in the broad target population as the alternative therapy. This is because, in effect, there is no available alternative therapy for the subpopulation. For example, a number of patients cannot tolerate a widely used therapy for an acquired immune deficiency syndrome (AIDS)-related pneumonia. FDA approved atovaquone for use in these patients even though the drug had been shown to be less effective than the standard therapy when tested in a broad population.

An additional issue related to product effectiveness concerns the assertion, by some industry officials, that the act not be interpreted as requiring multiple clinical studies when one "pivotal" study could suffice.

FDA believes good science dictates that a showing of effectiveness must be methodologically sound and provide a high level of confidence in the validity of the result. For human drug products, this ordinarily is achieved by independently replicating the result in a second study, to constitute an adequate demonstration of effectiveness for a new product. While a second study may well be needed to replicate results demonstrated in a first study, in some instances, it is possible to replicate results within one large, well-designed, multi-center study. FDA emphasizes that this approach can be successful only when results are strong. The agency has, in the past, approved new human drug products on the basis of a single, multi-center study. Examples include dornase alfa for the treatment of cystic fibrosis, timolol for treatment of people after a heart attack, and zidovudine for AIDS. A statistically marginal result, even in a very large study, cannot provide convincing evidence without replication.

For medical devices, where the mechanism of action is a result of product design and substantially verified by in vitro performance testing, the agency has routinely relied on single studies evaluated for internal and across-center consistency to provide this high level of confidence in the result.

Dated: July 27, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18677 Filed 7–31–95; 8:45 am]

BILLING CODE 4160–01–F–M

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 58 FR 14214, March 16, 1993) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

The Office of the Center Director (OCD), Center for Drug Evaluation and Research (CDER) is being reorganized to enhance CDER's responsiveness to its internal and external customers. The Executive Operations Staff is being established to combine project management, executive secretariat, and program management functions. The functions and staff of the Division of Regulatory Affairs are being transferred from the Office of Compliance to OCD as the Regulatory Affairs Staff.

Under section HF–B, Organization:

1. Delete the subparagraph *Office of the Center Director (HFN1)* under the *Center for Drug Evaluation and Research (HFN),* in its entirety and insert a new subparagraph reading as follows:

Office of the Center Director (HFN1). Promulgates, plans, administers, coordinates, and evaluates overall Center scientific, management, and regulatory programs, plans, and policies.

Provides leadership and direction for all Center activities.

Coordinates and directs the Center management, planning, and evaluation systems to assure optimum utilization of Center manpower, financial resources, and facilities.

Directs Center operations for equal employment activities.

2. Insert a new subparagraph *Executive Operations Staff (HFN11)* under the *Office of the Center Director (HFN1)* reading as follows:

Executive Operations Staff (HFN11). Provides executive secretariat support to the Immediate Office of the Center Director, including coordinating executive and legislative correspondence and activities; managing the preparation and coordination of meetings; and preparing background material, graphics, and other information for meetings, speeches, and presentations.

Provides project management support for Centerwide and Agencywide initiatives to improve the quality and timeliness of regulatory reviews and improve team-based management practices.

Provides management support and advice to senior Center management concerning Center programs, including Center extramural contracts and grants activities.

3. Insert a new subparagraph, *Regulatory Affairs Staff (HFN13),* under the *Office of the Center Director (HFN1)* reading as follows:

Regulatory Affairs Staff (HFN13). Initiates, develops, and reviews regulations, policies, procedures, and guidelines that affect the drug approval process.

Serves as the Center's focal point on regulatory issues providing advice and assistance on such matters as scope, applicability, and intents of the Food, Drug, and Cosmetic Act and other laws, regulations, and policies.

4. Delete the subparagraph, *Office of Compliance (HFND),* under the *Center for Drug Evaluation and Research (HFN)* and insert a new subparagraph reading as follows:

Office of Compliance (HFND). Monitors the quality of marketed drugs through product testing, surveillance, and compliance programs.

Advises the Center Director and other Agency officials on FDA's regulatory responsibilities for drugs.

Develops standards for drug industry practices, including Current Good Manufacturing Practice (CGMP) regulations, and ensures their uniform interpretation.

Directs the Center's bioresearch monitoring program for drug products.

Identifies problems in drug regulation, manufacturing, and quality assurance and conducts voluntary compliance programs and studies.

Develops drug quality assurance and surveillance programs; coordinates and directs their field implementation; and advises other Center components on these programs.

Coordinates Center-field relations; provides support and guidance to the field on legal actions, case development, and contested cases; and reviews and decides disposition of field submissions involving deviations from standards.

Initiates Center-field surveillance assignments to monitor pivotal research data submitted as part of premarketing applications.

Recommends approval, denial of approval, or revocation of approval of activities that use methadone and other drugs for which treatment standards have been promulgated, taking any appropriate compliance action.

Evaluates, in coordination with appropriate Agency Regulatory affairs officials, a firms' conformance with CGMP in producing drugs for procurement by Federal and State agencies.

Evaluates, classifies, and recommends drug recalls and provides Center coordination with field recall activities.

Develops and implements policies and procedures in support of Center compendial operations and directs the Compendial Monographs Development and Evaluation Program.

5. *Prior Delegations of Authority.* Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: July 19, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–18754 Filed 7–31–95; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Conference Grant Review-1 Program (Teleconference).

Dates: August 11, 1995.

Time: 12 noon.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892.

Contact Person: Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-R03 Review-3 (Teleconference).

Dates: August 18, 1995.

Time: 2 p.m.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20893.

Contact Person: Dr. Yong Shin, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Clinton Core Centers Review.

Dates: October 18–20, 1995.

Time: 9 a.m.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20893.

Contact Person: Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the extramural research review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: July 26, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–18856 Filed 7–31–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: August 17, 1995.

Time: 1 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Rehana A. Chowdhury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6470.

The meeting will be closed in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.242, Mental Health Research Grants; 93.121, Scientist Development Awards; 93.282, Mental Health Research Service Awards for Research Training)

Dated: July 26, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–18858 Filed 7–31–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 17, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 4200, Telephone Conference.

Contact Person: Dr. Gil Meier, Scientific Review Admin., 6701 Rockledge Drive, Room 4200, Bethesda, MD 20892, (301) 435–1219.

Name of SEP: Behavioral and Neurosciences.

Date: August 17, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 5192, Telephone Conference.

Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, MD 20892, (301) 435–1278.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337. 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18854 Filed 7–31–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: August 4, 1995.

Time: 1:00 p.m.

Place: NIH, Rockledge II, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, MD 20892, (301) 435–1783.

The meeting will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337. 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–18855 Filed 7–31–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: August 16, 1995.

Time: 11 a.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Rehana A. Chowdhury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301 443–6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.242, Mental Health Research Grants; 93.121, Scientist Development Awards; 93.282, Mental Health Research Service Awards for Research Training)

Dated: July 26, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–18857 Filed 7–31–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3936–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under Section 221(g)(4) of the Act during the six-month period beginning July 1, 1995, is 6¾ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1995, is 7¼ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Financial Services Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, Room 3119, Washington, DC 20024. Telephone (202) 755–7450 ext. 125, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the

period beginning July 1, 1995, is 7¼ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 7¼ percent for the six-month period beginning July 1, 1995. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1995.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995-	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" of interest in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of eight- to twelve-year maturities, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning July 1, 1995, is a 6¾ percent.

HUD expects to publish its next notice of change in debenture interest rates in December 1995.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: July 24, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–18769 Filed 7–31–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–030–030216–1220–00–24–1A]

Implementation of Planning Document Restricting Vehicle Use to Designated Roads and Trails, Limiting Use of Certain Vehicles, and Prohibiting the Use of Firearms Within Designated Safety Zones Within the Chinks Peak/ Blackrock Canyon Resource Activity Planning Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Title 43 CFR Group 8000–Recreation Programs, and in accordance with the principles established by the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, that lands administered by the Bureau of Land Management within Bannock County, Idaho, known as the Chinks Peak/ Blackrock Canyon Planning Area have certain roads and trails which have been designated for specific types of vehicle use. For the purposes of this notice, a vehicle is defined as: Any device used for transporting personnel or material with wheels, tracks, or skids for traveling over land, water, or snow, and is propelled by a living or non-living power source contained or carried on or within the device. Includes bicycles.

The following vehicle restrictions apply to this planning area:

(1) The connector trail between Blackrock Canyon and Caddy Canyon (T. 7 S., R. 35 E., Sec. 12, BM, T. 7 S., R. 36 E., Sec. 7 and 18, BM.) is open only to vehicles 48 inches in width or less;

(2) The current designation on the road that parallels the Right Hand Fork of Blackrock Creek from Katsilometes Spring to the top of the canyon, (T. 7 S., R. 35 E., Sec. 12, BM. and T. 7 S., R. 36 E., Sec. 7 and 6, BM.), is being changed from open to all motor vehicles to open only to vehicles less than 48 inches in width;

(3) The trail connecting Sorrel Canyon to the top of Caddy Canyon (T. 7 S., R. 36 E., Sec. 5, 6, 8 and 9, BM.) and on into Blackrock Canyon is designated as a non-motorized vehicle trail only;

(4) The trail in T. 7 S., R 36 E., Sec. 6, 7, 13, and 18, BM. is open only to vehicles less than 48 inches in width.

(5) Any other travel within the planning area is restricted to travel on designated roads and trails by any vehicle.

(6) The entire planning area is closed to all vehicles from November 15 to April 15 of each year, with the exception of the area identified as the Northeast subunit. This area is open to snowmobiles as identified in the **Federal Register** notice dated September 5, 1980.

The above vehicle restrictions apply to all public lands bounded by the following description: From the junction of Interstate I–15 and the Pocatello Creek Road following I–15 southerly to Inkom, Idaho and the junction of I–15 and the Rapid Creek Road, thence northerly on the Rapid Creek Road to the West Fork of Rapid Creek Road (known as the Hoot Owl Road), thence westerly on the West Fork of Rapid Creek to the junction of the West Fork of Rapid Creek and the Buckskin Road, thence westerly on the Buckskin Road to the junction of the Pocatello Creek Road to the point of beginning.

In addition to the above vehicle restrictions, the Bureau of Land Management is also implementing a shooting restriction area or safety zone. The need for this restriction is due to the heavy recreational use of the area along the main Blackrock Canyon Road from the Public Land boundary up to and including Katsilometes Spring, (T. 7 S. R. 35 E., Sec. 11, 12, and 14, BM.). It has been determined that in the interest of the public's safety and well being, shooting of any firearm is prohibited within 150 yards of either side of the above designated road.

The plan implementing these actions was approved on May 25, 1995 by Pocatello Area Manager Jeff S. Steele. The plan was jointly prepared through public input and a public meeting held on February 2, 1995. The planning area covers approximately 13,806 acres of Public lands administered by the Bureau of Land Management.

The official map of the above vehicle designations and planning area is on file at the Pocatello Resource Area Office, Bureau of Land Management, 1111 N. 8th. Ave., Pocatello, Idaho, 83201. Copies of the map are available upon request.

The following individuals are exempt from this notice: individuals involved in the performance of their official duties and administration of the area such as the BLM, Local and Federal fire fighting agency's, local law enforcement, search and rescue, or other individuals so authorized by the Bureau of Land Management.

EFFECTIVE DATE: This restriction notice shall be effective immediately and shall stay in effect until modified or rescinded.

FOR FURTHER INFORMATION CONTACT: Jeff S. Steele, Pocatello Resource Area Manager, Bureau of Land Management, 1111 N. 8th. Ave. Pocatello, Idaho 83201 (208) 236–6860.

Dated: July 6, 1995.

Jeff S. Steele,

Area Manager.

[FR Doc. 95–17839 Filed 7–31–95; 8:45 am]

BILLING CODE 4310–GG–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 22, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by August 16, 1995.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Baldwin County

Brunell House, 12113 Jessamine St., Magnolia Springs, 95001019

Fayette County

Rose, Edward, House, 325 2nd Ave., NW., Fayette, 95001020

Lauderdale County

Downtown Florence Historic District, Roughly, 104 N. Court St.—119 S. Court St. (E side), 100–128 E. Tennessee St. and 106, 108 and 110 S. Seminary St., Florence, 95001021

Macon County

Butler Chapel African Methodist Episcopal Zion Church, 1002 N. Church St., Tuskegee, 95001022

Tallapoosa County

Herzfeld, Reuben, House, 497 Hillabee St., Alexander City, 95001023

DELAWARE

New Castle County

Iron Hill School No. 112C, 1335 Old Baltimore Pike, Pencader Hundred, Newark vicinity, 95001032

North Saint Georges Historic District, Roughly, along Main, Broad, Delaware and Church Sts., Red Lion Hundred, St. Georges, 95001033

IOWA

Audubon County

Kimballton Commercial District (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), Jct. of Alfred and Main Sts., Kimballton, 95001016

Kimballton West 2nd—West 3rd Street Residential District (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), Roughly, W. 2nd St. from IA 44 to S of Odense St. and W. 3rd St. from IA 44 to Esbeck St., Kimballton, 95001017

MASSACHUSETTS

Worcester County

East Blackstone Friends Meetinghouse, 197 Elm St., Blackstone, 95001035

Holden Center Historic District (Boundary Increase), Roughly, along Highland, Main, Reservoir, Pleasant and Walnut Sts. and Woodland, Phillips and Lovell Rds., Holden, 95001031

Southwick—Daniels Farm, 286 Mendon St., Blackstone, 95001030

MICHIGAN

Manistee County

Udell Lookout Tower, Forest Rd. 5207, Huron—Manistee NF, Wellston, 95001013

NEW MEXICO

Colfax County

Villa Philmonte Historic District, Philmont Scout Ranch, Cimarron vicinity, 95001018

Lincoln County

Hopeful Lode, (Mining Sites in the Nogal Mining District of the Lincoln National Forest MPS), Along Forest Rd. 108, 6 mi. N of jct. of Forest Rds. 107 and 108, N of Bonito Lake, Nogal vicinity, 95001014

NEW YORK

Kings County

Renaissance Apartments, 480 Nostrand Ave., Brooklyn, 95001026

Otsego County

Lindesay Patent Rural Historic District (Boundary Increase), Roughly bounded by US 20, NY 166, Fields Rd., O'Neil Rd., Co. Rd. 33 and Shipway Rd., Cherry Valley, 95001024

Washington County

Village of Greenwich Historic District, Roughly, along Academy, Church, Cottage, Gray, Main, Prospect and Salem Sts. and Washington Sq., Town of Greenwich, Greenwich, 95001025

OHIO

Licking County

Outville Depot, 6750 Outville Rd., SW., Pataskala vicinity, 95001034

TENNESSEE

Dickson County

Leech—Larkins Farm (Historic Family Farms in Middle Tennessee MPS), 4199 TN 47, Charlotte vicinity, 95001015

TEXAS

Galveston County

Illies Building—Justine Apartments, (Galveston Central Business District—Downtown MPS), 503 21st St., Galveston, 95001028

Tarrant County

Shaw, Thomas and Marjorie, House, 2404 Medford Ct. E., Fort Worth, 95001029

Travis County

Brewer, John Henry and Minnie Tate, House, 1108 S. Chicon St., Austin, 95001027

WASHINGTON

Kitsap County

Jackson Hall Memorial Community Hall, 9161 Washington Ave., Silverdale, 95001036

[FR Doc. 95–18852 Filed 7–31–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 2, 1995, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

The firm plans to import the listed controlled substances to manufacture pharmaceutical products.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 24, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–18751 Filed 7–31–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated April 4, 1995, and published in the **Federal Register** on April 12, 1995, (60 FR 18618), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Hydromorphone (9150), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–18753 Filed 7–31–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated March 8, 1995, and published in the **Federal Register** on March 14, 1995, (60 FR 13736), Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 24, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–18752 Filed 7–31–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Agency Reporting/Recordkeeping Requirements To Be Reviewed by the Office of Management and Budget (OMB); Correction

AGENCY: Employment Standards Administration, Labor.

ACTION: Correction.

SUMMARY: In notice document 95–17997 beginning on page 37675 in the issue of Friday, July 21, 1995, make the following corrections:

On page 37675; in the last column, the sentence which reads: "Comments on the information collection should be directed to the Agency Clearance Officer within 30 days of this notice" should be changed to read: "Comments on the information collection should be directed to the Agency Clearance Officer within 60 days of this notice." On page 37676 first column, 38 U.S.C. 2012 should be changed to read U.S.C. 4212.

Dated: July 27, 1995.

Margaret J. Sherrill,

Chief, Branch of Management, Review and Analysis, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 95–18821 Filed 7–31–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Advisory Council on Unemployment Compensation; Notice of Meeting

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4007, Feb. 3, 1992). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the ACUC to evaluate the overall unemployment insurance program.

The ACUC recently, through requests for proposals, commissioned researchers to prepare reports on a variety of topics associated with the ACUC's deliberations on the reform of the unemployment insurance system. The purpose of this meeting is to provide a forum for presentation and discussion of the results of these research findings.

Time and Place: The meeting will be held from 8 a.m. to 5:30 p.m. on August 17, 1995 and from 8 a.m. to 4:15 p.m. on August 18, 1995 at Hampton Inn, 8 Mountain View Drive, Colchester, Vermont. A lunch break is scheduled from 12:15 p.m. to 1:45 p.m. on August 17, 1995 and from 12:00 p.m. to 1:30 p.m. on August 18, 1995.

Agenda: Conference participants will present and discuss the following commissioned reports:

1. Do Employees Take Advantage of Free-Layoff Loopholes in Unemployment Insurance?
2. The Effects of UI Payroll Tax on Layoffs, Employment, and Wages: A Natural Experiment in Washington State
3. Unemployment Insurance and Household Welfare: Microeconomic Evidence 1980–93
4. Optimal Unemployment Insurance
5. The Role of UI in Addressing Structural Unemployment: Lessons from Other Nations
6. Repeat Use of Unemployment Insurance
7. The Design of Extended Unemployment Benefit Programs
8. The Evaluation of Unemployment Insurance
9. Interstate Competition in the UI Program
10. Incentive Compatibility in Administering the UI System
11. Rethinking Federal and State Roles in Unemployment Insurance
12. The Unemployment Experience of Immigrants
13 Eligibility Disputes in UI: A Comparison of the U.S. and Other Systems
14. Understanding Denials and Appeals in the U.S.

Public Participation: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal official (DFO), listed below, at least 7 days prior to the meeting.

For Additional Information Contact: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S4231, Washington, DC 20210. She may be reached at (202) 219–7831 (this is not a toll-free number).

Signed at Washington, DC, this 27th day of July 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor.

[FR Doc. 95–18820 Filed 7–31–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–067)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83–1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 31, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0084), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bessie B. Berry, NASA Reports Officer, (202) 358–1368.

Reports

Title: NASA Customer Satisfaction Surveys Under E.O. 12862.

OMB Number: 2700–0084.

Type of Request: Extension.

Frequency of Report: Semi-annually.

Type of Respondent: Individuals or households, business or other for profit, not-for-profit institutions.

Number of Respondents: 1,000.

Total Annual Responses: 1,000.

Hours Per Request: .25.

Total Annual Burden Hours: 250.

Abstract-Need/Uses: Short, focused, limited surveys of NASA's customers conducted in response to E.O. 12862—NASA will use information collected to improve customer satisfaction with Agency's products and services.

Dated: July 21, 1995.

Donald J. Andreotta,

Deputy Director, IRM Division.

[FR Doc. 95–18849 Filed 7–31–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Opera-Musical Theater Advisory Meetings

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Professional Companies Sections A and B) to the National Council on the Arts will be held. Panel A will meet from 9 a.m. to 7:30 p.m. on August 8–10, and from 9 a.m. to 5 p.m. on August 11. Panel B will meet from 9 a.m. to 7:30 p.m. on August 14–16 and from 9 a.m. to 5 p.m. on August 17. This meeting will be held in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 8 and 14 from 9 a.m. to 9:45 a.m. for orientation and introductory remarks and on August 11 and 17 from 3:45 p.m. to 5 p.m. for a policy discussion and guideline review.

The remaining portions of this meeting from 9:45 a.m. to 7:30 p.m. on August 8 and 14 from 9 a.m. to 7:30 p.m. on August 9, 10, 15 and 16 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be maintained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5788.

Dated: July 26, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–18765 Filed 7–31–95; 8:45 am]

BILLING CODE 7537–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP (NIJ) No. 1056]

ZRIN 1121–ZA18

National Institute of Justice Solicitation "Fellowship Opportunities at the National Institute of Justice"

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice Solicitation "Fellowship Opportunities at the National Institute of Justice".

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

DATES: The deadlines for receipt of proposals are close of business on September 15, 1995 and April 15, August 15 and December 16, 1996.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The National Institute of Justice is soliciting proposals from criminal justice professionals and scholars to undertake studies as part of NIJ's fellowship programs, which include the Visiting Fellowship Program, the Assistant Attorney General's Graduate Research Fellowship Program, the Graduate Research Fellowships at Historically Black Colleges and Universities, the Graduate Law Enforcement Technology Fellowship, the John B. Pickett Fellowships in Criminal Justice Policy and Management, and the NIJ Internship Program. Interested persons should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Fellowship Opportunities at the National Institute of Justice" (refer to document No. SL000123). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 95–18756 Filed 7–31–95; 8:45 am]

BILLING CODE 4410–18–P

National Institute of Justice

[OJP (NIJ) No. 1057]

ZRIN 1121–ZA19

National Institute of Justice Solicitation "NIJ Requests Proposals for Research in Action Partnerships"

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice Solicitation "NIJ Requests Proposals for Research in Action Partnerships".

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

DATES: The deadline for receipt of proposals is close of business on September 8, 1995.

FOR FURTHER INFORMATION CONTACT: John Thomas, National Institute of Justice, at (202) 514–6206.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

Through this solicitation the National Institute of Justice is seeking to encourage the development of partnerships with national professional and membership organizations representing the various professional groups within law enforcement and criminal justice or representing elected governmental officials at the State or local levels. Partnerships are sought with two goals in mind—to encourage the understanding and use of research results, and to encourage the use of new communications technologies. Interested persons should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "NIJ Requests Proposals for Research in Action Partnerships" (refer to document No. SL000128). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 95–18755 Filed 7–31–95; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–8 (50–317/318)]

Baltimore Gas and Electric Co.; Issuance of Amendment to Materials License SNM–2505

The U.S. Nuclear Regualtory Commission (the Commission) has issued Amendment No. 1 to Materials License No. SNM–2505 held by Baltimore Gas and Electric Company for the receipt and storage of spent fuel at the Calvert Cliffs Nuclear Power Plant in an independent spent fuel storage installation (ISFSI), located in Calvert County, Maryland. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications in the license to exempt the first two dry shielded canisters (DSC) (Serial Nos. BGE 24P–R011 & BGE 24P–R002) from the Technical Specification limits on the vacuum drying process. The safety evaluation report on the amendment demonstrates that the first and second DSC meet the design criterion. The report also demonstrates that there is reasonable assurance that the public health and safety will not be endangered by activities authorized under this amendment and that the amendment will not have a significant impact on the human environment.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. In accordance with 10 CFR 72.46(b)(2), prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration. Interested persons may request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.21, an environmental assessment need not be prepared in connection with issuaance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated July 29, 1994, and additional information dated September 26 1994, and March 31, 1995, and (2) Amendment No. 1 to Materials License No. SNM–2505, with the Commission's letter to the licensee. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Calvert County Public Library, Fourth Street, PO Box 405, Price Frederick, Maryland 20678.

Dated at Rockville, MD., this 21st day of July 1995.

For the Nuclear Regulatory Commission,

William D. Travers,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–18806 Filed 7–31–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 328]

Sequoyah Nuclear Plant Units 1 and 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–77 and DPR–79 issued to the Tennessee Valley Authority (the licensee) for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Soddy Daisy, Tennessee.

The proposed amendments would incorporate new requirements associated with steam generator tube inspections and repair in the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications. The new requirements would establish alternate steam generator tube plugging criteria at the tube support plate intersections.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free-span tubing (no tube support place restraint) at room temperature conditions shows burst pressures in excess of 5,000 pounds per square inch (psi) for indications of outer diameter stress corrosion cracking with voltage measurements as high as 19 volts. Burst testing performed on intersections pulled from SQN with up to a 1.9-volt indication shows measured burst pressure in excess of 6,600 psi at room temperature. Burst testing performed on pulled tubes from other plants with up to 7.5-volt indications shows burst pressures in excess of 5,200 psi at room temperatures. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the safety-factor requirements of NRC Regulatory Guide (RG) 1.121.

Tube burst criteria are inherently satisfied during normal operating conditions because of the proximity of the tube support plate (TSP). Since tube-to-tube support plate proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics that maintain a margin of safety of 1.43 times the bounding faulted condition steam line break (SLB) pressure differential. During a postulated SLB, the TSP has the potential to deflect during blowdown following a main SLB, thereby uncovering the TSP intersections.

Based on the existing database, the RG 1.121 criterion requiring maintenance of a safety factor of 1.43 times the SLB pressure differential on tube burst is satisfied by ⅞-inch-diameter tubing with bobbin coil indications with signal amplitudes less than 8.82 volts (WCAP-13990), regardless of the indicated depth measurement. A 2.0-volt plugging criterion (resulting in a projected end-of-cycle [EOC] voltage) compares favorably with the 8.82-volt structural limit considering the extremely slow apparent voltage growth rates and few numbers of indications at SQN. Using the established methodology of RG 1.121, the structural limit is reduced by allowances for uncertainty and growth to develop a beginning of cycle (BOC) repair limit that would preclude indications at EOC conditions that exceed the structural limit. The nondestructive examination (NDE) uncertainty component is 20.5 percent, and is based on the Electric Power Research Institute (EPRI) alternate repair criteria (ARC).

Test data indicates that tube burst cannot occur within the TSP, even for tubes that have 100 percent throughwall electro-discharge machining notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Because of the few number of indications at SQN, the EPRI methodology of applying a growth component of 35 percent per effective full power year (EFPY) will be used. Near-term operating cycles at SQN are expected to be bounded by 1.23 years, therefore, a 43 percent growth component is appropriate. When these allowances are added to the BOC alternate plugging criteria (APC) of 2.0 volts in a deterministic bounding EOC voltage of approximately 3.26 volts for a Cycle 7, operation can be established. A 5.58-volt deterministic safety margin exists (8.82 structural limit—3.26-volt EOC equal 5.56-volt margin).

For the voltage/burst correlation, the EOC structural limit is supported by a voltage of 8.82 volts. Using this structural limit of 8.82 volts, a BOC maximum allowable repair limit can be established using the guidance of RG 1.121. The BOC maximum allowable repair limit should not permit the existence of EOC indications that exceed the 8.82-volt structural limit. By adding NDE uncertainty allowances and an allowance for crack growth to the repair limit, the structural limit can be validated. Therefore, the maximum allowable BOC repair limit (RL) based on the structural limit of 8.82 volts can be represented by the expressions:

RL+(0.205×RL)+(0.43×RL)=8.82 volts, or,

the maximum allowable BOC repair limit can be expressed as,

RL=8.82-volt structural limit/1.64=5.4 volts.

This RL (5.4 volts) is the appropriate limit for APC implementation to repair bobbin indications greater than 2.0 volts independent of rotating pancake coil (RPC) confirmation of the indication. This 5.4-volt upper limit for non-confirmed RPC calls is consistent with other recently approved APC programs (Farley Nuclear Plan, Unit 2).

The conservatism of the growth allowance used to develop the repair limit is shown by the most recent SQN eddy current data. Two tubes plugged in Unit 1 during the last outage had less than one volt of growth over the past five operating cycles. Only seven tubes in Unit 2 required repair because of outside diameter stress corrosion cracking (ODSCC) at the TSP intersections.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated main SLB outside of containment, but upstream of the main steam isolation valve (MSIV), represents the most limiting radiological condition relative to the APC. Implementation of the APC will determine whether the distribution of cracking indications at the TSP intersections is projected to be such that primary-to-

secondary leakage would result in site boundary doses within a small fraction of the 10 CFR part 100 guidelines. A separate analysis has determined this allowable SLB leakage limit to be 4.3 gallons per minute (gpm) in the faulted loop. This limit uses the TS reactor coolant system (RCS) Iodine-131 activity level of 1.0 microcuries per gram dose equivalent Iodine-131 and the recommended Iodine-131 transient spiking values consistent with NUREG–0800. The analysis method is WCAP–14277, which is consistent with the guidance of the NRC draft generic letter (GL) and will be used to calculate EOC leakage. Because of the relatively low number of indications at SQN, it is expected that the actual leakage values will be far less than this limit. Additionally, the current Iodine-131 levels at SQN range from about 25 to 100 times less than the TS limit.

Application of the criteria requires the projection of postulated SLB leakage, based on the projected EOC voltage distribution for Cycle 8 operation. Projected EOC voltage distribution is developing using the most recent EOC eddy current results and a voltage measurement uncertainty. Data indicates that a threshold voltage of 2.8 volts would result in throughwall cracks long enough to leak at SLB condition. The draft GL requires that all indications to which the APC are applied must be included in the leakage projection. Tube pull results from another plant with ⅞-inch tubing with a substantial voltage growth database have shown that tube wall degradation of greater than 40 percent throughwall was readily detectable either by the bobbin or RPC probe.

The tube with maximum throughwall penetration of 56 percent (42 average) had a voltage of 2.02 volts. The SQN Unit 1 pulled tube had a 1.93-volt indication with a maximum depth of 91 percent and did not leak at SLB condition. Based on the SQN pulled tube and industry pulled tube data supporting a lower threshold for SLB leakage of 2.8 volts, inclusion of all APC intersections in the leakage model is quite conservative. The ODSCC occurring at SQN is in its earliest stages of development. The conservative bounding growth estimations to be applied to the expected small number of indications for the upcoming inspection should result in very small levels of predicted SLB leakage. Historically, SQN has not identified ODSCC as a contributor to operational leakage.

I order to assess the sensitivity of an indication's BOC voltage to EOC leakage potential, a Monte Carlo simulation was performed for a 2.0-volt BOC indication. The maximum EOC voltage (at 99.8 percent cumulative probability) was found to be 4.8 volts. The leakage component from an indication of this magnitude, using either the NUREG–1477 or EPRI leakage models, is 0.12 or 0.028 gpm, respectively.

Therefore, as implementation of the 2.0-volt APC does not adversely affect steam generator (S/G) tube integrity and implementation will be shown to result in acceptable dose consequences, the proposed amendment does not result in significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Implementation of the proposed S/G tube APC does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism that could result in an accident outside of the region of the TSP elevations; no ODSCC is occurring outside the thickness of the TSP. Neither a single or multiple tube rupture event would be expected in a S/G in which the plugging criteria is applied (during all plant conditions).

TVA will implement a maximum leakage rate limit of 150 gallon per day per S/G to help preclude the potential for excessive leakage during all plant conditions. The SQN TS limits on primary-to-secondary leakage at operating conditions include a maximum of 0.42 gpm (600 gallons per day [gpd]) for all S/Gs, or, a maximum of 150 gpd for any one S/G. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown is based upon leak-before-break considerations to detect a free-span crack before potential tube rupture during faulted plant conditions. The 150-gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of 1.43 against bursting at faulted conditions maximum pressure differential. A voltage amplitude of 8.82 volts for typical ODSCC corresponds to meeting this tube burst requirement at a lower 95 percent prediction limit on the burst correlation coupled with 95/95 lower tolerance limit material properties. Alternate crack morphologies can correspond to 8.82 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at 1.43 times the SLB pressure differential and the SLB pressure differential alone are approximately 0.57 inch and 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of 0.4-inch-long cracks at nominal leak rates and 0.6-inch-long cracks at the lower 95 percent confidence level leak rates. Since tube burst is precluded during normal operation because of the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during SLB conditions, the leakage from the maximum permissible crack must preclude tube burst at SLB conditions. Thus, the 150-gpd limit provides for plant shutdown before reaching critical crack lengths for SLB conditions. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during blowdown. Partial uncover will provide benefit to the burst capacity of the intersection.

As S/G tube integrity upon implementation of the 2.0-volt APC continues to be maintained through in-service inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety.

The use of the voltage based APC at SQN is demonstrated to maintain S/G tube integrity commensurate with the criteria of RG 1.121. RG 1.121 describes a method acceptable to the NRC Staff for meeting General Design Criteria (GDC) 14, 15, 31, and 32 by reducing the probability or the consequences of S/G tube rupture. This is accomplished by determining the limiting conditions of degradation of S/G tubing, as established by in-service inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst-case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to a S/G tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the TSP elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and radiological consequences are not adversely impacted.

In addressing the combined effects of loss-of-coolant accident (LOCA), plus safe shutdown earthquake (SSE) on the S/G component (as required by GDC 2), it has been determined that tube collapse may occur in the S/Gs at some plants. This is the case as the TSP may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate because of the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with S/G tube collapse. First, the collapse of S/G tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA, which in turn, may potentially increase peak clad temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Consequently, since the leak-before-break methodology is applicable to the SQN reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator line break or the pressurize surge line break. LOCA loads for the primary pipe breaks were used to bound the conditions at SQN for smaller breaks. The results of the analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in S/G tube collapse or significant deformation. The LOCA, plus SSE tube collapse evaluation performed for another plant with Series 51 S/Gs using bounding input conditions (large-break loadings), is applicable to SQN. Therefore, at SQN, no tubes will be excluded from using the voltage repair criteria due to deformation of collapse of S/G tubes following a LOCA plus an SSE.

Addressing RG 1.83 considerations, implementation of the bobbin probe voltage based interim tube plugging criteria of 2.0 volt is supplemented by: (1) Enhanced eddy current inspection guidelines to provide consistency in voltage normalization, (2) a 100 percent eddy current inspection sample size at the TSP elevations, and (3) RPC inspection requirements for the larger indications left in service to characterize the principal degradation as ODSCC.

As noted previously, implementation of the TSP elevation plugging criteria will decrease the number of tubes that must be repaired. The installation of S/G tube plugs reduces the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Pubic Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 31, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a

hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Frederick J. Hebdon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Council, Tennessee Valley Authority, ET 11H, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 19, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, MD, this 26th day of July 1995.

For the Nuclear Regulatory Commission,
David E. LaBarge, Sr.
Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 95–18805 Filed 7–31–95; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–155]

Consumer Power Co.; Big Rock Point Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–6, issued to Consumers Power Company (the licensee), for operation of the Big Rock Point Plant, located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the TS to conform to the wording of the revised 10 CFR part 20 which was published in the **Federal Register** on May 21, 1991 (56 FR 23391), and implemented at Big Rock Point on January 1, 1993. The proposed action would also change the TS to reflect a separation of chemistry and radiation responsibilities. The proposed action is in accordance with the licensee's application for amendment dated March 4, 1993, as revised April 14, 1993, and as supplemented April 19 and May 31, 1995.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that with respect to the proposed action, in regards to the actual release rates as referenced in TS as a dose rate to the maximally exposed member of the public, there will be no increase in the probability or consequences of accidents, no changes in the types or amounts of any effluents that may be released offsite, and no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Big Rock Point Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on July 17, 1995, the staff consulted with the Michigan State official, Robert DeHaan (acting for Dennis Hahn) of the Nuclear Facilities and Environmental Monitoring section office of the Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments. The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the application for amendment dated March 4, 1993, as revised April 14, 1993, as supplemented April 19 and May 31, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the North Central Michigan College, 1515

Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Md., this 26th day of July 1995.

For the Nuclear Regulatory Commission,
John N. Hannon,
Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.
[FR Doc. 95–18807 Filed 7–31–95; 8:45 am]
BILLING CODE 7590–01–M

Intent To Remove the United Technologies Pratt & Whitney Middletown, Conn. Site from the NRC Site Decommissioning Management Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to remove the United Technologies Pratt & Whitney Middletown, Connecticut site from the NRC Site Decommissioning Management Plan.

SUMMARY: This is a notice to inform the public that the U.S. Nuclear Regulatory Commission is considering removing the United Technologies Pratt & Whitney Middletown, Connecticut site from the NRC Site Decommissioning Management Plan (SDMP). The NRC expects to determine that remediation of residual radioactive contamination in a building on the site has successfully been completed and the facility meets the current NRC criteria for release for unrestricted use.

DATES: The NRC hereby provides notice of an opportunity to comment on the proposed NRC action. Comments must be submitted within thirty (30) days of the date of publication of this **Federal Register** notice.

ADDRESSES: Written comments should be sent to USNRC, Region I, Attn: Mark Roberts, Senior Health Physicist, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Hand deliver comments to 475 Allendale Road, King of Prussia, PA 19406 between 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Mark Roberts, Division of Radiation Safety and Safeguards, USNRC, Region I, 475 Allendale Road, King of Prussia, PA 19406, Telephone: (610) 337–5094.

SUPPLEMENTARY INFORMATION: The United Technologies Pratt & Whitney site in Middletown, Connecticut was identified in 1992 by the NRC as a site where residual radioactive contamination might be present above NRC criteria as a result of past operations. Radioactive contamination was identified by Pratt & Whitney in one of the buildings on the site. In order to ensure that remediation of the building was accomplished in a timely manner, the NRC added this site to its SDMP. Pratt & Whitney has remediated residual contamination in the building, performed radiological surveys in that building and other buildings where radioactive materials may have been used, and requested by letter dated April 27, 1995, that the NRC remove the Middletown, Connecticut site from the SDMP. The request before the NRC at this time is to concur with the view of Pratt & Whitney that the site meets the current criteria for release for unrestricted use and thus can be released for unrestricted use and removed from the SDMP.

The staff of the NRC's Region I Division of Radiation Safety and Safeguards has reviewed and approved various remediation activities since 1992. The staff has also reviewed various records of past activities at the site and the radiological surveys performed by Pratt & Whitney's contractor and conducted confirmatory radiological measurements at the site. The NRC staff has not yet completed all of these reviews, but, based on information available at this time, expects to determine that the facility meets the requirements for release for unrestricted use and to remove the site from the SDMP in 1995.

For further details with respect to this action, documents are available for inspection at the NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I Office should call Ms. Cheryl Buracker at (610) 337–5093 several days in advance to assure that the documents will be readily available for review.

Dated at Rockville, MD, this 26th day of July, 1995.

For the Nuclear Regulatory Commission.
Michael F. Weber,
Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.
[FR Doc. 95–18809 Filed 7–31–95; 8:45 am]
BILLING CODE 7590–01–P

Review of Revised NRC Systematic Assessment of Licensee Performance (SALP) Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is reviewing its Systematic Assessment of Licensee Performance (SALP) program that was last revised on May 19, 1993. Public comments are requested on the revised program and its implementation. The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens. Comments received will be used in the NRC's review of the SALP program.

DATES: The comment period expires August 31, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, Mail Stop: T–6D–59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Gamberoni, Mail Stop: O–12E–4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–1144.

SUPPLEMENTARY INFORMATION:

Background

The Office of Nuclear Reactor Regulation (NRR) has begun a review of the implementation of the SALP program. The SALP program was revised on May 19, 1993, to improve the focus on significant performance issues, communication with licensees, and licensees' and the public's understanding of SALP results. Specific program changes included reducing the number of functional areas from seven to four, changing the board membership to Senior Executive Service (SES) members, shortening the SALP report, eliminating the draft initial report, changing the nature of the SALP meeting with the licensee from a presentation to more of a discussion, and focusing on the last six months of performance. Implementation of the revised program began for assessment periods ending after July 19, 1993.

This review will attempt to determine if the revisions to the SALP program have been effective in focusing the SALP reports on significant performance issues and have resulted in

better communication with the licensees and the public, leading to a better understanding of SALP results.

The NRC SALP program objectives are:

(1) To conduct an integrated assessment of licensee safety performance that focuses on the safety significance of the NRC findings and conclusions during an assessment period;

(2) To provide a vehicle for meaningful dialogue with the licensee regarding its safety performance based on the insights gained from synthesis of NRC observations;

(3) To assist NRC management in making sound decisions regarding allocation of NRC resources used to oversee, inspect, and assess licensee performance; and

(4) To provide a method for informing the public of the NRC's assessment of licensee performance.

The SALP program guidance is located in NRC Management Directive 8.6, "Systematic Assessment of Licensee Performance (SALP)," approved July 14, 1993.

Scope of the Review

This review will focus primarily on the effectiveness of the May 19, 1993, changes. General feedback on the SALP program is also invited. Additional detail on the scope of the review is given in the questions below. Commenters are not obligated to and need not address every issue.

In providing comments, please key your response to the number of the applicable question (e.g., "Response to A.1"). Comments should be as specific as possible. The use of examples is encouraged.

Comments are requested on the following issues:

A. Functional Areas

1. Are the current four functional areas (operations, maintenance, engineering, and plant support) an improvement compared to the previous seven functional areas?

2. Are the plant support functional area messages clear in characterizing individual elements (radiological controls, emergency preparedness, security, fire protection, chemistry, and housekeeping)?

3. Are additional improvements needed for the designation of functional areas? What types of improvements?

B. Management Involvement

1. Did increased NRC management involvement in the SALP program result in program improvements and improved communication with licensee management?

2. Did the SALP program changes result in better licensee and public understanding of the SALP results?

3. Did increased involvement of the regional administrator or deputy at the SALP meeting result in improved communication with licensee management?

4. Was the change in SALP presentation meeting format—from a presentation to more of a discussion—effective in improving communication with licensee management?

5. Are additional improvements needed in the areas of communications with licensee management and licensee and public understanding of SALP results? What types of improvements?

C. Assessment Period

1. What bases should be considered when determining SALP period length and how should they be applied?

2. SALP assessments currently range from 12 to 24 months (nominally 18 month average). Is this variation in practice appropriate?

3. How long should the SALP assessment period be for good, average, and poor performing plants?

D. SALP Report

1. Are the new, shorter SALP reports more effective in communicating the results of the NRC's assessment of safety performance than the previous, more lengthy reports?

2. Are SALP reports appropriately focused on safety issues and do they deliver a clear message?

3. Do SALP reports provide a balanced assessment of licensee safety performance (and are positive aspects of licensee safety performance appropriately considered)?

4. Do SALP reports consistently focus on the last six months of performance? Is this practice appropriate?

5. Is the level of detail in the SALP report appropriate?

6. Are SALP report conclusions well-supported by documented facts?

7. Are SALP report cover letter messages consistent with the associated SALP report messages?

8. Are licensee self-assessment efforts adequately recognized in the SALP report and cover letter?

9. Are additional improvements needed in the SALP reports? What types of improvements?

E. Additional Comments

In addition to the above issues, commenters are invited to provide any other views on the NRC SALP program that could assist the NRC in improving its effectiveness.

Dated at Rockville, MD, this 26th day of July 1995.

For the Nuclear Regulatory Commission.

Richard W. Borchardt,

Chief, Inspection Program Branch, Directorate for Inspection and Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18808 Filed 7–31–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Add a Record System

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to add a record system.

SUMMARY: OPM proposes to add one system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency.

DATES: The proposed system of records will be effective without further notice on August 31, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to Office of Personnel Management, ATTN: Leslie Crawford (Freedom of Information/Privacy Act Coordinator), Office of Information Technology, 1900 E Street NW., CHP 500, Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Leslie Crawford at (703)908–8565.

SUPPLEMENTARY INFORMATION: The system notice is published under the requirements of the Privacy Act (5 U.S.C. 552a(e)(4)). This notice covers records that may contain individually identifiable information about health care providers (physicians, hospitals and other individuals or entities which furnish health care services or supplies) and other participants excluded from participation in the Federal Employee Health Benefits Program (FEHBP), and other federally authorized financial and nonfinancial assistance and benefits under programs and activities (nonprocurement) administered by OPM. Exclusion may be based on debarment or suspension, ineligibility, or for other reasons.

OPM's Internal and Central system notices were previously published in the **Federal Register** in full on April 12, 1993 (58 FR 19154). OPM's Governmentwide system notices were last published in full on August 10, 1992 (57 FR 35698), with a correction published on November 30, 1992 (57 FR 56733).

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

OPM/CENTRAL–14

SYSTEM NAME:

Debarment or Suspension Records for Federal Employees Health Benefits Program (FEHPB).

SYSTEM LOCATION:

Administrative Sanctions Branch, Office of the Inspector General, Office of Personnel Management, 1900 E Street, NW., Room CHP 1314, Washington, DC 20415–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health care providers (physicians, hospitals and other individuals or entities which furnish health care services or supplies) and other participants who have been or are in the process of being debarred, suspended, determined to be ineligible, or otherwise excluded from participating in the Federal Employee Health Benefits Program (FEHBP), and other federally authorized financial and nonfinancial assistance and benefits under programs and activities (nonprocurement) administered by OPM.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a listing of health care providers and other participants, debarred, suspended, determined to be ineligible, or otherwise excluded from participation in the FEHBP and other federally authorized financial and nonfinancial assistance and benefits under programs and activities (non-procurement) administered by OPM. It includes records such as general correspondence, statements of cause, case files, and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM INCLUDES THE FOLLOWING WITH ANY REVISIONS OR AMENDMENTS:

5 U.S.C. Appendix 3, Executive Orders 12549 and 12689, and 5 CFR part 970.

PURPOSE:

Executive Orders 12549 and 12689 provide that Executive departments and agencies participate in a governmentwide system for nonprocurement debarment and suspension. This system of records documents OPM's participation in the program to reduce fraud and abuse in Federal nonprocurement programs and decisions regarding actions taken to exclude participants in Federally authorized nonprocurement programs administered by OPM.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

e. To disclose information to the National Archives and Records Administration for use in records management inspections.

f. By OPM in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when:

(1) OPM, or any component thereof; or

(2) Any employee of OPM in his or her official capacity; or

(3) Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

(4) The United States, when OPM determines that litigation is likely to affect OPM or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

h. To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

i. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S. 7201.

j. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

k. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

l. To disclose records to appropriate Federal, State and local agencies if necessary and relevant to administering Federal financial or nonfinancial assistance programs or benefits.

m. To disclose records for performance of a Federal duty to a State or local agency, or financial institution.

n. To disclose information on excluded health care providers to other persons involved in or affected by the action.

o. To disclose information to agencies or organizations that license, certify, regulate, investigate, or prosecute persons or organizations that provide health-related services or items to

determine possible disqualifying actions, practices, or conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

These records are maintained in paper copy and automated form.

RETRIEVABILITY:

These records are retrieved by name, address, occupation, Social Security Number, and case number.

SAFEGUARDS:

Paper records are stored in lockable filing cabinets or secured rooms. Automated records are protected by ID/password security system. Records are available only to those persons whose official duties require access.

RETENTION AND DISPOSAL:

Records are placed in inactive files (cut at the end of each fiscal year) when the case is closed. Inactive records are destroyed after 10 years.

SYSTEM MANAGER AND ADDRESS:

Chief, Administrative Sanctions Branch, Office of the Inspector General Office of Personnel Management, 1900 E Street, NW., Room CHP 1314, Washington, DC 20415–0001.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information on them should contact the system manager indicated above. Individuals must furnish the following for their records to be located and identified:

a. Full name.
b. Case number, if applicable.
c. Address.
d. Date of Birth.
e. Social Security Number and Tax Identification Number.
f. Health Insurance related Identification Number.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records should contact the system manager indicated above. Individuals must provide the following information for their records to be located and identified:

a. Full name.
b. Case number, if applicable.
c. Address.
d. Date of Birth.
e. Social Security Number and Tax Identification Number.
f. Health Insurance related Identification Number.

Individuals requesting access must also follow the OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records should contact the system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Case number, if applicable.
c. Address.
d. Date of Birth.
e. Social Security Number and Tax Identification Number.
f. Health Insurance related Identification Number.

Individuals requesting amendment must also follow the OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual(s) to whom the record pertain(s).
b. Federal agencies.
c. State and local law enforcement officials.
d. Private agencies and organizations.

[FR Doc. 95–18708 Filed 7–31–95; 8:45 am]
BILLING CODE 8325–01–M

POSTAL SERVICE

Verification Procedures for Second-Class Publications

AGENCY: Postal Service.

ACTION: Notice of revised procedures.

SUMMARY: On January 20, 1995, the Postal Service published a notice for public comment in the **Federal Register** (60 FR 4207–4208) concerning revised procedures for conducting verifications of publications authorized for mailing at second-class postage rates. Under the revised procedures, the Postal Service will separate the verification process into two reviews, one for validating correct postage payment and one for determining continued eligibility for second-class authorizations. A postage payment review will be conducted at least once a year for each authorized second-class publication. An eligibility review will be conducted as determined by the Postal Service from circulation data provided by the publisher of an authorized second-class publication.

EFFECTIVE DATE: August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Edward J. Mayhew, (212) 613–8747.

SUPPLEMENTARY INFORMATION: In accordance with its statutory responsibilities, the Postal Service must ensure that authorized second-class publications meet all applicable second-class eligibility requirements and that the proper amount of postage is paid on mailings of those second-class publications. See 39 U.S.C. 404, 3685.

The physical inspection of mailings of second-class publications and the examination of records and documentation related to those mailings have been the principal means used by the Postal Service to carry out its statutory responsibilities. A long-standing goal of the Postal Service has been to review all publications on an annual basis. An annual review of every publication, however, has not always been possible at all post offices, particularly those offices where large numbers of different publications are entered at second-class rates.

1. Background

Currently, the Postal Service schedules a second-class publication for review every 1 to 3 years, depending on the number of second-class publications authorized original entry at the post office conducting the review. For the issue of the publication to be examined, the review centers on these two activities:

a. Substantiating that the publication meets second-class eligibility requirements, particularly circulation requirements.

b. Verifying that the mailing statement submitted with the mailing of the publication is complete and the postage payment correct.

After a careful analysis of its review procedures for second-class publications, the Postal Service determined that the current procedures no longer promote the most efficient use of postal resources. On one hand, the Postal Service believes that, for some publications, eligibility reviews do not serve a significant purpose. Where other evidence provides assurance that a publication remains eligible for second-class mailing privileges, an on-site review simply confirms a fact already known. On the other hand, the Postal Service believes that annual postage payment reviews for all publications not only confirm the accuracy of postage payment but also prevent a potential for long-term accumulations of any revenue deficiency that might be discovered during the reviews.

Accordingly, the Postal Service proposed revising its review procedures for second-class publications by separating the procedures along the lines of the two review activities, each with different scheduling criteria as follows:

a. For the eligibility review, an annual review is to be conducted only for publications with a confirmed legitimate circulation of 60 percent or less on randomly selected issues.

b. For the postage payment review, an annual review is to be conducted for all publications, regardless of the percentage of confirmed legitimate circulation.

The proposed changes sought to shift postal personnel and other resources from verifications that serve limited purposes (that is, eligibility reviews that only confirm independent assurances of continued second-class eligibility) to verifications that respond to concerns about revenue protection (that is, postage payment reviews that uncover potential revenue deficiencies).

2. Revised Procedures

The revised review procedures will separate the postage payment review from the eligibility review. Each second-class publication will receive an annual postage payment review at each post office where second-class postage is paid. This review will be conducted at the time of mailing. Publishers claiming automation and presort rates will also be required, at the time of the postage payment review, to submit documentation substantiating eligibility for those rates. This documentation consists of the same documentation already required under current procedures.

For those publications subject to circulation standards (general, requester, institutions and societies, and some foreign), the Postal Service will determine whether to conduct an eligibility review by using the data provided by the publisher on PS Form 3526, Statement of Ownership, Management, and Circulation (that is, a review will be scheduled according to the percentage of paid or requested circulation shown on the form). The Postal Service still retains its right, however, to review a publication if a question arises about the eligibility of that publication for second-class mailing privileges, regardless of the data provided on PS Form 3526.

When a second-class publication is selected for an eligibility review, the publisher will be notified by the post office serving the known office of publication. The publisher will be advised of the issue to be verified. To conduct the review as quickly and efficiently as possible, the Postal Service will ask the publisher to provide circulation information before the review date. For this purpose, the Postal Service has revised PS Form 3548, Review and Verification of Circulation.

Accordingly, the original entry post office will mail the publisher a blank PS Form 3548 with a cover letter asking the publisher to complete the unshaded parts of the form for a specified publication issue. The publisher will have 15 days from the receipt of the form to complete and return the form to the postmaster of the original entry office.

The unshaded parts of PS Form 3548 filled in by the publisher will contain information about the total distribution of the issue to be reviewed. A Postal Service representative will examine the circulation records at the known office of publication to verify compliance with circulation requirements.

Publications reviewed by Postal Service-approved independent audit bureaus will continue to have their eligibility and postage payment reviews conducted by those bureaus. Consistent with current practice, the Postal Service still retains the right to review the records of any publication and to reach its own conclusion about compliance of the publication with the applicable eligibility requirements. Publications mailed under the Centralized Postage Payment System will continue to have postage payment reviews conducted annually by the New York Rates and Classification Service Center.

3. Public Comments

The comment period ended on February 21, 1995, and only three written comments were received. After thorough consideration of those comments, the Postal Service adopts the revised procedures as proposed.

The first commenter did not object to the separation of the review process into eligibility and postage payment reviews but did object to what the commenter viewed as "the proposed weakening of current second-class subscriber verification procedures." The commenter expressed concerns that the Postal Service would determine which publications to review by relying solely on data provided by publishers on PS Form 3526, Statement of Ownership, Management, and Circulation. The commenter asserted that reliance on such data "is inadequate to police those who misstate circulation data so as to qualify improperly for second-class mailing privileges." The commenter also objected to the Postal Service policy concerning the release of second-class mailing statements under the Freedom of Information Act.

As an initial matter, the Postal Service plans to conduct eligibility reviews of publications whenever it believes that valid reasons exist for such reviews, regardless of the data provided by a publisher on Form 3526. The Postal Service agrees with the commenter that the vast majority of publishers file honest reports and strongly believes that this practice will not change with the revised review procedures. Those publishers tempted to deceive the Postal Service under the revised procedures can just as readily provide false information under current procedures. Criminal and civil fraud provisions, however, provide a strong deterrent to such activity.

As far as the commenter's objection to Postal Service policy on the release of mailing statements under the Freedom of Information Act, a response to that objection is outside the scope of this notice.

The second commenter expressed concerns that the Postal Service was "moving backward" in its attempt to conduct reviews of authorized publications. The commenter predicted that, under the revised review procedures, entry post offices serving publishers' printers and fulfillment houses would be overwhelmed with publication issues to be verified. Such a large number of postage payment reviews to be conducted at one time would, according to the commenter, delay the processing of publications not having appropriate documentation to support analyses of zone-rated advertising portions in the publications.

The Postal Service assures publishers that the revised review procedures have been tested and that they will not cause congestion or processing delays at business mail entry units or detached mail units. The documentation from which the review data will be drawn is the same documentation required with the mailing of a publication under current procedures. The Postal Service wishes to remind publishers that although some shift in the number of reviews will occur at certain post offices, only one issue of a publication will be reviewed each year and publishers will receive prior notification of the review date.

The third commenter remarked that the revised procedures are too burdensome because they impose "a new level of review on second-class publications" and because they eliminate the "responsibility bulk mail acceptance clerks have for the information and advice they give mailers." The commenter, while "agree[ing] with the philosophy" that the Postal Service should conduct eligibility reviews "according to its judgment of the necessity for the review," asserted that some publishers

mail publications that do not always qualify for second-class rates and that revocations of second-class mailing privileges take an average of 10 years, with a minimum of 6 years.

The Postal Service believes that the revised review procedures do not entail an additional level of review. Postage payment reviews have been a long-standing part of Postal Service audits of second-class publications. The revised procedures ensure that all publications are reviewed on a uniform annual basis in contrast to the current system in which some publications are reviewed at least three times as often as others.

The Postal Service also believes that the commenter's concerns that the procedure will add an extra layer of staff effort and increase handling costs is unfounded. The revised review procedures simply reallocate current resources to more productive functions. These procedures do not lessen the responsibility of acceptance clerks, who perform an important role at the deposit point in examining the mail for proper preparation. These clerks cannot be expected, however, to uncover all possible errors during their reviews. To do so would require an in-depth scrutiny that increases considerably the cost of reviews, if done on each mailing, and delays the acceptance and processing of the mailing.

With respect to the comment about the responsibility of postal employees providing accurate information, the Postal Service believes that the commenter is concerned that the revised procedures will increase revenue deficiency assessments and possibly even criminal penalties, both of which the commenter finds objectionable in cases where a postal employee makes an error in calculating postage or accepting the mail or the employee provides incorrect advice to a publisher about second-class eligibility requirements. This commenter's concerns suggest that the Postal Service audit its own acceptance practices at postal facilities and devote more resources to training employees.

The commenter's suggestions about examining acceptance procedures at business mail entry units and improving employee training are well taken. The Postal Service does, in fact, conduct frequent audits of mail acceptance procedures at its facilities. The Postal Service also provides training for postal employees throughout the year, using classroom and on-the-job instruction to convey the intent of new and current programs, policies, and procedures.

With respect to the concerns about the imposition of a revenue deficiency where a mailer has relied on the advice of a postal employee, the Postal Service notes, as in prior rulemakings, that the Postal Service is required to collect debts owed to it but will consider requests for relief or compromise of deficiencies on a case-by-case basis, consistent with existing policies. See 59 FR 23161–23162 (May 5, 1994).

An annual postage payment review will facilitate the discovery of preparation problems. Although this review, on occasion, might result in the assessment of a revenue deficiency, an annual review avoids the expense and processing delays associated with in-depth reviews of each mailing. An annual review also ensures that all publishers operate under the same rules, consistent with the commenter's belief that the eligibility rules for second-class mailing privileges should be enforced uniformly.

Although the average revocation action does not approach the age estimated in the comment, the Postal Service acknowledges that venerable cases exist. The Postal Service is making efforts to expedite these cases while complying with its obligation to afford all publishers due process.

Appropriate procedures to reflect these changes will be implemented upon publication of this notice.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–18761 Filed 7–31–95; 8:45 am]

BILLING CODE 7710–12–P

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of the addition of three new routine uses in a system of records.

SUMMARY: This document publishes notice of the addition of three new routine uses to Privacy Act system of records USPS 120.140, Personnel Records—Employee Assistance Program (EAP) Records. One routine use permits disclosure to a contractor and is adopted to support administration and evaluation of the Postal Service's EAP by the Public Health Service (PHS) and by private contractors. The other two routine uses support disclosures allowed by PHS and Postal Service regulations. One permits disclosure to medical personnel to the extent necessary to meet a medical emergency. The other one allows disclosure to qualified personnel for purposes of conducting research, audit, or program evaluation.

DATES: This proposal will become effective without further notice September 11, 1995, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting/Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8650, Washington, DC 20260–5242. Copies of all written comments will be available for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff at (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Division of Federal Occupational Health of the PHS largely administers the Postal Service's new EAP, providing counseling and other assistance to all postal employees and their family members. EAP services are also available to employees and family members under nine pilot programs administered by private contractors or in-house by the Postal Service. In order for contractors to provide program services or other legitimate agency functions, such as program evaluation, the Postal Service must release to the contractors relevant information from EAP records. New routine use No. 1 allows such disclosure. The Postal Service applied this routine use to most of its systems of records in its last compilation of records systems published in the **Federal Register** on October 26, 1989 (54 FR 43652–43715).

In addition, PHS and Postal Service regulations applicable to program records allow disclosure without patient consent to medical personnel in medical emergencies and for research, audit, and evaluation activities. Although these disclosures are permitted to some extent by exceptions within the Privacy Act, new routine uses No. 2 and No. 3 are added to clearly permit disclosures that conform with PHS and Postal Service regulations.

The system changes are not expected to have any effect on individual privacy rights. EAP participant records are protected by federal law and regulations, and these records receive the highest degree of confidentiality. Contractors who receive information pursuant to new routine use No. 1 are made subject to subsection (m) of the Privacy Act and are required to apply appropriate protections subject to the audit and inspection of the Postal Inspection Service. An interagency agreement between the Postal Service and the PHS also contains provisions requiring procedures for safeguarding the confidentiality of EAP records and restricting disclosure by the PHS without Postal Service approval. In addition, the PHS, as a federal agency, is governed by the Privacy Act with respect to the handling of such records.

Routine use No. 2 parallels the compelling circumstances exception in the Privacy Act and is adopted in conformance with PHS and Postal Service regulations allowing disclosure in medical emergency situations. Disclosure is limited to that information necessary to meet the emergency.

Similarly, disclosure under routine use No. 3 is permitted by Postal Service and PHS regulations and, to some extent, by an exception in the Privacy Act. Postal Service regulations provide that records of evaluation, research, or audit resulting from a disclosure under routine use No. 3 may not contain personal identifying information.

Pursuant to 5 U.S.C. 552a(r) and paragraph 4.c.(1)(f) of Appendix 1 of Office of Management and Budget Circular A–130, Federal Information Resources Management, interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

The most recent description of USPS 120.140 appears at 56 FR 21396 dated May 8, 1991. It is proposed that routine uses No. 1, No. 2, and No. 3 be added as follows to that system description:

USPS 120.140

SYSTEM NAME:

Personnel Records—Employee Assistance Program (EAP) Records, 120.140.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records or information from this system may be disclosed to an expert, consultant, or other individual who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any individual with whom the Postal Service contracts to reproduce by typing, photocopying, or other means any records for use by Postal Service officials in connection with their official duties or to any individual who performs clerical or stenographic functions relating to the official business of the Postal Service.

2. Records or information from this system may be made to medical personnel to the extent necessary to meet a medical emergency involving the participant.

3. Non-identifying records or information from this system may be disclosed to qualified personnel for purposes of research, audit, or program evaluation.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–18848 Filed 7–31–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by the Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street NW., Washington, D.C. 02549

Proposed Amendments to:

Form N–1A, File No. 270–21
Form N–3, File No. 270–281
Form 12b–25, File No. 270–71

Proposed New Rule:

Rule 30b3–1, File No. 270–402

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval proposed amendments and a new proposed rule for the following:

Form N–1A is the registration form used by open-end management investment companies ("mutual funds") to comply with the registration statement requirements of the Investment Company Act of 1940 ("1940 Act") and to register their securities under the Securities Act of 1933 ("1933 Act"). Form N–1A permits mutual funds, including money market funds, to provide investors with a simplified prospectus covering matters of fundamental importance about the funds. More detailed information is provided to interested investors through the Statement of Additional Information ("SAI").

The proposed amendments would primarily affect money market funds. The amendments are intended to shorten and simplify prospectuses for money market funds by permitting the funds to transfer substantial amounts of detailed information regarding their investment policies and operations to the SAI, and by otherwise simplifying the form's requirements and instructions. While prospectuses are widely distributed by funds to shareholders and potential investors, the SAI need only be made available to investors upon request. As a result, it is believed that the approximately 1,300 money market funds subject to Form N–1A's requirements would experience reduced printing and mailing costs associated with a briefer prospectus. There would be no reduction or increase in the reporting burden incurred by money market funds when they file their Form N–1A registration statements with the Commission because the funds would continue to be required to provide almost all of the information eliminated from the prospectus in the SAI. As a result, the estimated reporting burden for a money market fund filing Form N–1A if the proposed amendments are adopted would continue to be 1,064.24 hours.

Similar amendments are being proposed to Form N–3, the registration form used by separate accounts organized as management investment companies ("separate accounts") to comply with the registration statement requirements of the 1940 Act and to register their securities under the 1933 Act. These amendments would shorten the prospectuses of separate accounts that are money market funds and the 53 separate money market accounts subject to Form N–3's requirements would experience a reduction in printing and mailing costs associated with a briefer prospectus. As described above with regard to Form N–1A, there will be no change in the burden associated with filing Form N–3 registration statements with the Commission because filers would continue to be required to provide almost all of the information eliminated from the prospectus in the SAI. As a result, the estimated reporting burden for a money market account filing Form N–3 if the proposed amendments are adopted would continue to be 518 hours.

Additional amendments are being proposed that would not impose any additional recordkeeping or reporting burden on funds.

Rule 12b–25 under the Securities Exchange Act of 1934 ("1934 Act") prescribes the manner in which notification should be given to the Commission when certain reports required by the 1934 and 1940 Acts and rules thereunder are filed late. Form 12b–25 is a notification of the late filing by a registrant. All burdens associated with Rule 12b–25 are reflected in the burdens reports for Form 12b–25. Under current burden estimates, 4,266 respondents file Form 12b–25 annually at 2.5 burden hours per response with a total annual burden of 10,655 hours. Under the amendment to form 12b–25

being proposed, it is estimated that an additional 220 respondents will file Form 12b–25 annually at 2.5 burden hours per response, for an additional annual burden of 550 hours, and a revised total burden of 11,105 hours.

Proposed Rule 30b3–1 requires money market funds to file quarterly reports with the Commission detailing their portfolio holdings. This information will better enable the Commission to detect and deter money market fund non-compliance with the federal securities laws, particularly Rule 2a–7 under the 1940 Act, the rule which restricts the types of instruments in which money market funds can invest. The reports would be filed electronically through the Commission's electronic filing system, called EDGAR (Electronic Data Gathering, Analysis and Retrieval). It is estimated that 1,300 respondents will file the report four times a year at 2 burden hours per response for a total burden of 10,400 hours annually.

General comments and comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and the Clearance Officer for the SEC, Project Numbers 3235–0307 (Form N–1A), 3235–0316 (Form N–3), and 3235–0058 (Form 12b–25), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20543.

Dated: July 24, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18815 Filed 7–31–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36025; File No. SR–NASD–95–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Schedule A of the By-Laws Concerning Registration and Filing Fees

July 26, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 20, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under § 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The NASD is, however, requesting that the fee be implemented on August 1, 1995. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Section 2 to Schedule A of the By-Laws to temporarily increase certain filing fees to recover the costs associated with the redesign of the Central Registration Depository ("CRD"). Proposed new language is italicized, proposed deletions are in brackets.

Schedule A

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

* * * * *

Fees

Sec. 2.

* * * * *

(b) Each member shall be assessed a fee of [$65.00] *$85.00* for each application filed with the Association for registration of a registered representative or registered principal *from August 1, 1995 through December 31, 1996. Such fee shall be $70.00 from January 1, 1997 through December 31, 1997 and shall be $65.00 thereafter.* Additionally, each member shall be assessed a surcharge of [$85.00] *$95.00* for registrations involving a special registration review *filed with the Association from August 1, 1995 through December 31, 1997 and shall be $85.00 thereafter.* The following shall apply to the filing of applications to re-register or transfer the registration of registered persons or registered principals in connection with acquisition of all or a part of a member's business by another member:

No. of registered personnel transferred	Discount (percent)
1,000–1,999	10
2,000–2,999	20
3,000–3,999	30
4,000–4,999	40
5,000 and over	50

(h) (i) Each member shall be assessed a fee of [$25.00] *$40.00* for each notice of termination of a registered representative or registered principal filed with the Corporation as required by Section 3 of Article IV of the By-Laws *from August 1, 1995 through December 31, 1996. Such fee shall be $35.00 from January 1, 1997 through December 31, 1997 and shall be $25.00 thereafter.*

(ii) A late filing fee of [$50.00] *$65.00* shall be assessed a member who fails to file with the Corporation written notice of termination of a registered representative or registered principal within thirty (30) calendar days of such termination *from August 1, 1995 through December 31, 1996. Such fee shall be $60.00 from January 1, 1997 through December 31, 1997 and shall be $50.00 thereafter.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD has a major systems development project underway to completely redesign the CRD. The CRD is a computerized system for one-stop registration and licensing of NASD members and their associated persons. The system was developed in 1981 to standardize and streamline the registration process by accommodating a single filing and payment of fees for registration in multiple jurisdictions. Today the system processes filings on behalf of 50 states, the District of Columbia and Puerto Rico, seven (7) self-regulatory organizations and the SEC.

The redesigned CRD, scheduled for a staged implementation in 1996–1997, will feature electronic filings, re-engineered work processes, expedited relicensing and a highly structured, relational database to better serve the information requirements of regulators, members and investors. In addition, the new system will include investment adviser registration for the SEC and states, an E-mail communication capability for system participants and a document imaging/storage/retrieval service for support documents required in certain filing situations.

The NASD had originally intended to fund the CRD redesign effort from the current registration filing fees based on expected activity levels in the 1995–1997 period. In 1995 registration activity declined significantly, and the resulting lower revenue levels are now expected to continue through 1997. The NASD believes it is necessary to institute the temporary fee increase in order to continue the investment in this important systems project. The temporary fees will be implemented on August 1, 1995, and will apply to all filings received on or after that date. The fee increase will be reduced for most types of filings made in calendar 1997 and will return to their current levels in calendar 1998.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act[1] which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges in that the proposed rule provides a consistent basis for assessments among member firms and fairly assesses a charge to cover the costs incurred by the Association in the redesign of the CRD System.

(B) Self-Regulatory Organization's State on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(D)(ii) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a due, fee or other charge. However, the NASD has determined to implement the rule change on August 1, 1995.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. § 78o–3.

IV. Solicitation of Comments

Interested persons are invited to submit data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–95–32 and should be submitted by August 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18818 Filed 7–31–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S–923]

Mormac Marine Transport, Inc.; Notice of Application for Modification of Operating-Differential Subsidy Agreement, Contract MA/MSB–295(c) and extension of subsidizable life of the MORMACSTAR and MORMACSUN

By application dated July 10, 1995, pursuant to section 605(b) of the Merchant Marine Act, 1936, as amended (Act) Mormac Marine Transport, Inc. (Mormac) requests that the subsidized life of the MORMACSTAR and the MORMACSUN (Vessels) be extended to January 31, 1997. In addition, pursuant to Article II–25 of ODSA MA/MSB–295(c) Mormac requests that Article I–3(a) of ODSA MA/MSB–295(c) be modified to permit a subsidy sharing arrangement between the Vessels and the MORMACSKY.

Mormac notes that the ODSA applicable to the MORMACSKY (MA/MSB–295(c)) terminates on January 31, 1997. Without an extension of its subsidized life the MORMACSTAR would conclude its subsidized life on December 9, 1995 (MA/MSB–295(b)) and the MORMACSUN would conclude its subsidized life on June 22, 1996 (MA/MSB–295(c)).

Extending the subsidized life of the Vessels and establishing a subsidy sharing arrangement will, according to Mormac, permit the Vessels to remain active participants in the U.S. foreign trade for one additional year and six additional months, respectively, while concurrently helping to ensure the employment of U.S. seafarers for this additional time. Mormac also points out that the Vessels would remain available for use in times of national emergency during the extended subsidizable life.

Mormac contends that the Vessels are actively engaged in the international trade and well maintained. Neither is required to exit the trade as a single hull vessel until 2003. The public interest and the U.S. merchant marine, Mormac asserts, would be supported by the approval of its request.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on August 10, 1995. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

Dated: July 26, 1995.

By Order of the Maritime Subsidy Board.

Joel C. Richard,

Secretary.

[FR Doc. 95–18791 Filed 7–31–95; 8:45 am]

BILLING CODE 4810–61–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 25, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1056.
Regulation ID Number: INTL–61–86 Final.
Type of Review: Extension.
Title: Foreign Tax Credit: Notice and Adjustment Due to Foreign Tax Redeterminations.
Description: Section 905(c) requires notification and redetermination of a taxpayer's United States tax liability to account for the effect of a foreign tax redetermination, in certain cases. The reporting requirements will enable the Internal Revenue Service to recompute a taxpayer's United States tax liability.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 10,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8,750 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 95–18844 Filed 7–31–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 25, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1013.
Form Number: IRS Form 8612.
Type of Review: Revision.
Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.
Description: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 20.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 hours, 13 minutes.
Learning about the law or the form—1 hour, 35 minutes.
Preparing and sending the form to the IRS—1 hour, 46 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 191 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 95–18846 Filed 7–31–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 25, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0047.
Form Number: IRS Form 990 and Schedule A (Form 990).
Type of Review: Extension.
Title: Return of Organization Exempt From Income Tax Under Section 501(c) of the Internal Revenue Code (except black lung benefit trust or private foundation) or section 4947(a)(1) nonexempt charitable trust (Form 990).

Organization Exempt Under Section 501(c)(3) (Except Private Foundation), 501(e), 501(f), 501(k), or Section 4947(a)(1) Nonexempt Charitable Trust, Supplementary Information (Schedule A (Form 990)).

Description: Form 990 is needed to determine that the Internal Revenue Code (IRC) section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. Schedule A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 327,953

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 990	Schedule A
Recordkeeping	92 hrs., 47 min.	49 hrs., 59 min.
Learning about the law or the form	17 hrs., 5 min.	9 hrs., 8 min.
Preparing the form	22 hrs., 9 min.	10 hrs., 22 min.
Copying, assembling, and sending the form to the IRS	48 min.	0

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 52,372,061 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan
Departmental Reports Management Officer.
[FR Doc. 95–18845 Filed 7–31–95; 8:45 am]
BILLING CODE 4830–01–P

[Treasury Directive Number 15–13]

Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms, Under 31 U.S.C. 333, Misuse of Treasury Name or Symbol

Dated: July 24, 1995.

1. *Purpose.* This Directive delegates to the Director, Bureau of Alcohol, Tobacco and Firearms ("ATF"), certain criminal investigatory authority and civil penalty enforcement authority under 31 U.S.C. 333 relating to misuse of the name or symbol of the Department of the Treasury or any Treasury component or employee thereof as specified below.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 333, and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Director, Bureau of Alcohol, Tobacco and Firearms, authority to investigate criminal violations of, and to assess civil penalties under, section 333 involving: (a) the misuse of the name or symbol of the Bureau of Alcohol, Tobacco and Firearms or the name of any ATF employee; or (b) the name or symbol of the Department of the Treasury or the Secretary or any Treasury employee in connection with activities within the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms.

3. *Civil Penalty Authority.* The Director, Bureau of Alcohol, Tobacco and Firearms, will assess, mitigate and collect civil penalties in accordance with guidelines issued by the Office of the Under Secretary (Enforcement).

4. *Redelegation.* The authority delegated by this Directive may be redelegated.

5. *Authorities.*

a. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 31 U.S.C. 333.

6. *References.*

a. Treasury Directive (TD) 73–03, "Official Flags of the Department of the Treasury."

b. TD 73–04, "Official Seal of the Department of the Treasury."

c. 18 U.S.C. 701.

7. *Expiration Date.* This Directive shall expire three years from the date of issuance unless cancelled or superseded by that date.

8. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,
Under Secretary (Enforcement).
[FR Doc. 95–18841 Filed 7–31–95; 8:45 am]
BILLING CODE 4810–25–P

[Treasury Directive Number 15–31]

Delegation of Authority to the Commissioner, United States Customs Service, Under 31 U.S.C. 333, Misuse of Treasury Name or Symbol

Dated: July 24, 1995.

1. *Purpose.* This Directive delegates to the Commissioner, United States Customs Service, certain criminal investigatory authority and civil penalty enforcement authority under 31 U.S.C. 333 relating to misuse of the name or symbol of the Department of the Treasury or any Treasury component or employee thereof as specified below.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 333, and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Commissioner, United States Customs Service, authority to investigate criminal violations of, and to assess civil penalties under, section 333 involving: (a) The misuse of the name or symbol of the Customs Service or the name of any Customs employee; or (b) the name or symbol of the Department of the Treasury or the Secretary or any Treasury employee in connection with activities within the jurisdiction of the Customs Service.

3. *Civil Penalty Authority.* The Commissioner, United States Customs Service, will assess, mitigate and collect civil penalties in accordance with guidelines issued by the Office of the Under Secretary (Enforcement).

4. *Redelegation.* The authority delegated by this Directive may be redelegated.

5. *Authorities.*

a. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 31 U.S.C. 333.

6. *References.*

a. Treasury Directive (TD) 73–03, "Official Flags of the Department of the Treasury."

b. TD 73–04, "Official Seal of the Department of the Treasury."

c. 18 U.S.C. 701.

7. *Expiration Date.* This Directive shall expire three years from the date of issuance unless cancelled or superseded by that date.

8. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,
Under Secretary (Enforcement).
[FR Doc. 95–18842 Filed 7–31–95; 8:45 am]
BILLING CODE 4810–25–P

[Treasury Directive Number 15–43]

Delegation of Authority to the Commissioner, Internal Revenue Service, Under 31 U.S.C. 333, Misuse of Treasury Name or Symbol

Dated: July 24, 1995.

1. *Purpose.* This Directive delegates to the Commissioner, Internal Revenue Service, criminal investigatory authority and civil penalty enforcement authority under 31 U.S.C. 333 relating to misuse of the name or symbol of the Department of the Treasury or any Treasury component or employee thereof as specified below.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 333, and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Commissioner, Internal Revenue Service, authority to investigate criminal violations of, and to assess civil penalties under, section 333 involving: (a) The misuse of the name or symbol of the Internal Revenue Service or the name of any IRS employee; or (b) the name or symbol of the Department of the Treasury or the Secretary or any Treasury employee in connection with activities within the jurisdiction of the Internal Revenue Service.

3. *Civil Penalty Authority.* The Commissioner, Internal Revenue Service, will assess, mitigate and collect civil penalties in accordance with guidelines issued by the Office of the Under Secretary (Enforcement).

4. *Redelegation.* The authority delegated by this Directive may be redelegated.

5. *Authorities.*

a. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 31 U.S.C. 333.

6. *References.*

a. Treasury Directive (TD) 73–03, "Official Flags of the Department of the Treasury."

b. TD 73–04, "Official Seal of the Department of the Treasury."

c. 18 U.S.C. 701.

7. *Expiration Date.* This Directive shall expire three years from the date of issuance unless cancelled or superseded by that date.

8. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,

Under Secretary (Enforcement).

[FR Doc. 95–18843 Filed 7–31–95; 8:45 am]

BILLING CODE 4810–25–P

Customs Service

[T.D. 95–57]

Cancellation of Customs Broker Licenses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Cancellation of licenses.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker licenses have been cancelled due to the death of the broker. These licenses were issued in the Houston-Galveston District.

James Costello—06974
Allan Frank LaBay—02640
Robert Wayne Manuel—05155
Walter Revere Zanes, Jr.—02855
Pamela J. McGruder—11011

Dated: July 25, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–18746 Filed 7–31–95; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat.985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27293, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Art, Politics and Change: Jewish Artists in Russia, 1890–1990" (See list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Jewish Museum, New York, New York from on or about September 24, 1995, to on or about January 28, 1996, and at one or more subsequent U.S. locations yet to be determined, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 26, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–18759 Filed 7–31–95; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "PARIS MODERN: The Swedish Ballet 1920–1925" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determined that the exhibition or display of the listed exhibit objects at The Museum at the Fashion Institute, New York, New York from on or about October 9, 1995, through January 15, 1996; The McNay Art Museum, San Antonio, Texas from on or about February 12, 1996 through May 12, 1996; and The Fine Arts Museums of San Francisco, San Francisco, California from on or about June 15, 1996 through September 8, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 26, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–18758 Filed 7–31–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202 619–5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547.

[1] A copy of this list may be obtained by contacting Mrs. Carol B. Epstein, Assistant General Counsel, at 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001

DEPARTMENT OF VETERANS AFFAIRS

Request for Public Comments on Proposed Information Collections

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0031.

Title and Form Number: Veterans Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

Type of Information Collection: Revision of a currently approved collection.

Need and Uses: The form is used by veterans to apply for specially adapted housing grants. The information is used by VBA to determine if it is economically feasible for a veteran to reside in specially adapted housing and also to compute the proper grant amount.

Affected Public: Individuals or households.

Estimated Annual Burden: 115 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 460.

OMB Control Number: 2900–0463.

Title and Form Number: Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowance, VA Form 21–8951.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Need and Uses: The form is to be used by a VA beneficiary who is also a reservist or guardsman to report the number of days he or she is in training and to waive VA disability benefits for an equal number of days. The information will be used by VBA to adjust VA benefits, thus preventing an overpayment.

Affected Public: Individuals or households.

Estimated Annual Burden: 700 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 21,000.

ADDRESSES: Requests for copies of the forms, the request for clearance, and supporting documentation or comments and recommendations concerning the proposals should be directed to Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

DATES: Comments and recommendations on the proposals for the collection of information should be received on or before October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 565–4412.

Dated: July 25, 1995.

By direction of the Secretary.

William T. Morgan,

Management Analyst Officer.

[FR Doc. 95–18767 Filed 7–31–95; 8:45 am]

BILLING CODE 8320–01–M

Requests for Public Comments on Proposed Collections of Information

AGENCY: Office of Information Resources Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Information Resources Management (IRM), Department of Veterans Affairs, will submit to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0028

Title and Form Number: Application for Service Representatives for Placement on Mailing List, VA Form 3215

Type of Information Collection: Extension of a currently approved collection

Need and Uses: The form is used by service organizations for placing their representatives on the mailing list to receive VA publications. The information is used by VA regional offices for forwarding publications to the service organizations to be used in rendering services and representation to veterans, their spouses and dependents

Affected Public: Individuals or households

Estimated Annual Burden: 150 hours

Estimated Average Burden Per Respondent: 10 minutes

Frequency of Response: On occasion

Estimated Number of Respondents: 150

ADDRESSES: Requests for a copy of the form, the request for clearance, and supporting documentation or comments and recommendations concerning the proposal should be directed to Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–4412.

DATES: Comments and recommendations on the proposals for the collection of information should be received by October 2, 1995.

Dated: July 25, 1995.

By direction of the Secretary.

William T. Morgan,

Management Analyst Officer.

[FR Doc. 95–18768 Filed 7–31–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 147
Tuesday, August 1, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, August 3, 1995

The Federal Communications' Commission will hold an Open Meeting on the subjects listed below on Thursday, August 3, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Final Report of the Hearing Aid-Compatibility Negotiated Rulemaking Committee (CC Docket No. 87–124). Summary: The Commission will be presented with a staff report on the recommendations of the Hearing Aid-Compatibility Negotiated Rulemaking Committee.

2—Common Carrier—Title: Report on Consumer Protection and Enforcement Issues. Summary: The Commission will be presented with a staff report on Common Carrier-related consumer protection and enforcement issues.

3—International—Title: Progress Statement on International Dial-a-porn Crackdown. Summary: The Commission will be presented with a staff report on the crackdown on international dial-a-porn.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureem Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: July 27, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18951 Filed 7–28–95; 2:27 pm]

BILLING CODE 6712–01–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, August 7, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–19051 Filed 7–28–95; 3:52 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Week of July 31, August 7, 14, and 21, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of July 31

There are no meetings scheduled for the Week of July 31.

Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

Week of August 14—Tentative

There are no meetings scheduled for the Week of August 14.

Week of August 21—Tentative

Tuesday, August 22

10:00 a.m.

Briefing on Changes to the Performance Indicator Program (Public Meeting) (Contact: Steve Mays, 301–415–7496)

11:30 a.m.

Affirmation Session (Public Meeting) (Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)

a. Final Amendment to 10 CFR Part 50, Appendix J, "Containment Leakage Testing," to Adopt Performance-Oriented and Risk-Based Approaches (Tentative) (Contact: Andrew Bates, 301–415–1963)

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley A. Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–18922 Filed 7–28–95; 10:25 am]

BILLING CODE 7590–01–M

federal register

Tuesday
August 1, 1995

Part II

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2510

Plans Established or Maintained Pursuant to Collective Bargaining Agreements; Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Proposed Regulation for Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40) (A)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001–1461 (ERISA or the Act), setting forth specific criteria that must be met in order for the Secretary of Labor (the Secretary) to find that an agreement is a collective bargaining agreement for purposes of this section. The proposed regulation also sets forth criteria for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that meet the requirements of the proposed regulation are excluded from the definition of "multiple employer welfare arrangements" under section 3(40) of ERISA and consequently are not subject to state regulation of multiple employer welfare arrangements as provided for by the Act. If adopted, the proposed regulation would affect employee welfare benefit plans, their sponsors, participants, and beneficiaries as well as service providers to plans.

DATES: Written comments concerning this proposed rule must be received by October 2, 1995.

ADDRESSES: Interested persons are invited to submit written comments (preferably three copies) concerning the proposals herein to: Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210. Attention: Proposed Regulation Under Section 3(40). All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Ave., N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mark Connor, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm N–5669, 200 Constitution Ave., N.W., Washington, DC 20210 (telephone (202) 219–8671) or Cynthia Caldwell Weglicki, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Rm N–4611, 200 Constitution Ave., N.W., Washington, DC 20210 (telephone (202) 219–4592). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

Notice is hereby given of a proposed regulation under section 3(40) of ERISA, 29 U.S.C. 1002(40). Section 3(40)(A) defines the term multiple employer welfare arrangement (MEWA) in pertinent part as follows:

> The term "multiple employer welfare arrangement" means an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) [of section 3 of the Act] to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained—
>
> (i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements * * *.

This provision was added to ERISA by the Multiple Employer Welfare Arrangement Act of 1983, Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)), which also amended section 514(b) of ERISA. Section 514(a) of the Act provides that state laws which relate to employee benefit plans are generally preempted by ERISA. Section 514(b) sets forth exceptions to the general rule of section 514(a) and subjects employee benefit plans that are MEWAs to various levels of state regulation depending on whether or not the MEWA is fully insured. Sec. 302(b), Pub. L. 97–473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).[1]

The Multiple Employer Welfare Arrangement Act legislation was introduced to counter what the Congressional drafters termed abuse by the "operators of bogus 'insurance' trusts." 128 Cong. Rec. E2407 (1982) (Statement of Congressman Erlenborn). In his comments, Congressman Erlenborn noted that certain MEWA operators had been successful in thwarting timely investigations and enforcement activities of state agencies by asserting that such entities were ERISA plans exempt from state regulation by the terms of section 514 of ERISA. The goal of the bill, according to Congressman Erlenborn, was to remove "any potential obstacle that might exist under current law which could hinder the ability of the States to regulate multiple employer welfare arrangements to assure the financial soundness and timely payment of benefits under such arrangements." *Id.* This concern was also expressed by the Committee on Education and Labor in the Activity Report of the Pension Task Force (94th Congress, 2d Session, 1977) cited by Congressman Erlenborn:

> It has come to our attention, through the good offices of the National Association of State Insurance Commissioners, that certain entrepreneurs have undertaken to market insurance products to employers and employees at large, claiming these products to be ERISA covered plans. For instance, persons whose primary interest is in the profiting from the provision of administrative services are establishing insurance companies and related enterprises. The entrepreneur will then argue that his enterprise is an ERISA benefit plan which is protected under ERISA's preemption provision from state regulation.

Id. As a result of the addition of section 514(b)(6), certain state laws regulating insurance apply to employee benefit plans that are MEWAs. However, the definition of a MEWA in section 3(40) provides that an employee benefit plan is not a MEWA if it is established or maintained pursuant to an agreement which the Secretary finds to be a collective bargaining agreement. Such a plan is therefore not subject to state insurance law regulation under section 514(b)(6). This exclusion is necessary to avoid disrupting the activities of legitimate Taft-Hartley plans.

[1] The Multiple Employer Welfare Arrangement Act of 1983 added section 514(b)(6) which provides a limited exception to ERISA's preemption of state insurance laws that allows states to exercise regulatory authority over employee welfare benefit plans that are MEWAs. Section 514(b) provides, in relevant part, that:

> (6)(A) Notwithstanding any other provision of this section—(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—
>
> (I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and
>
> (II) provisions to enforce such standards, and
>
> (ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.
>
> Thus an employee welfare benefit plan that is a MEWA remains subject to state regulation to the extent provided in section 514(b)(6)(A). MEWAs which are not employee benefit plans are unconditionally subject to state law.

While the Multiple Employer Welfare Arrangement Act of 1983 significantly enhanced the states' ability to regulate MEWAs, problems in this area continue to exist as the result of the exception for collectively bargained plans contained in the 1983 amendments. This exception is now being exploited by some MEWA operators who, through the use of sham unions and collective bargaining agreements, market fraudulent insurance schemes under the guise of collectively bargained welfare plans exempt from state insurance regulation.[2] Another problem in this area involves the use of collectively bargained arrangements as vehicles for marketing health care coverage nationwide to employees and employers with no relationship to the bargaining process or the underlying agreement.

The Department believes that regulatory guidance in this area is necessary to ensure that (1) state insurance regulators have ascertainable guidelines to help identify and regulate MEWAs operating in their jurisdiction and (2) sponsors of employee health benefit programs will be able to determine independently whether their plans are established or maintained pursuant to collective bargaining agreements for purposes of section 3(40)(A) without imposing the additional burden of having to apply to the Secretary for an individual finding.[3]

The proposed regulation first establishes specific criteria that the Secretary finds must be present in order for an agreement to be a collection bargaining agreement for purposes of section 3(40) and, second, establishes certain criteria applicable to determining when an employee benefit plan or other arrangement is established or maintained under or pursuant to such an agreement for purposes of section 3(40). In this regard, the Department notes that section 3(40) not only requires the existence of a *bona fide* collective bargaining agreement, but also requires that the plan be "established or maintained" pursuant to such an agreement. The Department believes that, in establishing the exception under section 3(40)(A)(i) of the Act, Congress intended to accommodate only those plans established or maintained to provide benefits to bargaining unit employees on whose behalf the plans where collectively bargained. For this reason, the Department believes that the exception under section 3(40)(A)(i) should be limited to plans providing coverage primarily to those individuals covered under collective bargaining agreements. Accordingly, the criteria in the proposed regulation relating to whether a plan or other arrangement qualifies as "established or maintained" is intended to ensure that the statutory exception is only available to plans whose participant base is predominately comprised of the bargaining unit employees on whose behalf such benefits were negotiated.

The proposed regulation would, upon adoption, constitute the Secretary's finding for purposes of determining whether an agreement is a collective bargaining agreement pursuant to section (3(40) of the Act. The Department does not intend to make individual findings or determinations concerning an entity's compliance with the proposed regulation. The criteria contained in the proposed regulation are designed to enable entities and state insurance regulatory agencies to determine whether the requirements of the statute are met. Under the proposed regulation, entities seeking to comply with these criteria must, upon request, provide documentation of their compliance with the criteria to the state or state agency charged with investigating and enforcing state insurance laws.

[2] In addition, the Department has received requests to make individual determinations concerning the status of particular plans under section 3(40). *See, e.g., Ocean Breeze Festival Park v. Reich*, 853 F. Supp. 906, 910 (1994) (denying motion for mandamus and granting leave to amend complaint), *summary judgement granted sub nom. Virginia Beach Policemen's Benevolent Association, et al., v. Reich*, 881 F. Supp. 1059 (E.D.Va. 1995); *Amalgamated Local Union No. 355 v. Gallagher*, No. 91 CIV 0193(RR) (E.D.N.Y. April 15, 1991).

[3] It is the Department's position that the language of section 3(40) of ERISA does not require the Secretary to make individual findings that specific agreements are collective bargaining agreements. Moreover, a district court recently found that the Secretary has no "statutory responsibility" to make individualized findings. *Virginia Beach Policeman's Benevolent Association v. Reich*, 881 F. Supp. 1059, 1069–70 (E.D.Va. 1995).

B. Description of the Proposal

Proposed § 2510.3–40(a) follows the language of section 3(40)(A) of the Act and states that the term multiple employer welfare arrangement does not include an employee welfare benefit plan which is established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements. Proposed § 2510.3–40(b) provides criteria which the Secretary finds to be essential for an agreement to be collectively bargained for purposes of section 3(40)(A) of the Act. Proposed § 2510.3–40(c) sets forth requirements concerning individuals covered by the employee welfare benefit plan that must be satisfied in order for an employee welfare benefit plan to be considered established or maintained under or pursuant to a collective bargaining agreement as defined in § 2510.3–40(b). Proposed § 2510.3–40(d) provides definitions of the terms "employee labor organization" and "supervisors and managers" for purposes of this section. Proposed § 2510.3–40(e) explains that a plan does not satisfy the requirements of this section if the plan or any entity associated with the plan (such as the employee labor organization or the employer) fails or refuses to comply with the requests of a state or state agency with respect to any documents or other evidence in its possession or control that are necessary to make a determination concerning the extent to which the plan is subject to state insurance law. Proposed § 2510.3–40(f) provides that, in a proceeding brought by a state or state agency to enforce the insurance laws of the state, nothing in the proposed regulation shall be construed to prohibit allocation of the burden of proving the existence of all the criteria required by this section to the entity seeking to be treated as other than a MEWA.

Under the proposed regulation, a plan that fails to meet the applicable criteria would be a MEWA and thus subject to state insurance laws as provided in section 514(b)(6) of ERISA.

Each subsection of the proposed regulation is described in detail below.

1. General Rule and Scope

Proposed regulation 29 CFR 2510.3–40 establishes criteria which must be met for a plan to be established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements for purposes of section 3(40) of the Act. The proposed regulation is not intended to apply to or affect any other provision of federal law.[4]

In the Department's view, the exclusion of collectively bargained plans or other arrangements from the definition of a MEWA in section 3(40)(A) is an exception to the general statutory rule. Thus the entity asserting the applicability of the provisions concerning collectively bargained plans

[4] The Department notes that section 3(40) of ERISA is not the only provision that provides special rules to be applied to agreements that the Secretary finds to be collectively bargained. For example, sections 404(a)(1) (B) and (C) of the Internal Revenue Code (Code) provide special rules to determine the maximum amount of deductible contributions in the case of amendments to plans that the Secretary of Labor finds to be collectively bargained. In addition, Code sections 410(b)(3) and 413(a) exclude from minimum coverage requirements certain employees covered by an agreement that the Secretary finds to be a collective bargaining agreement.

in section 3(40) has the burden of providing evidence of compliance with the conditions of the statutory exception and the criteria set forth in the proposed regulation.[5] Accordingly, if an entity's status as established or maintained pursuant to one or more agreements which satisfy the criteria of the proposed regulation is challenged by a state or state agency, the entity seeking to be treated as other than a MEWA must produce sufficient evidence to establish that all of the requirements of the proposed regulation have been met.[6]

2. Definition of a Collective Bargaining Agreement

Proposed § 2510.3–40(b) establishes criteria that an agreement must meet in order to be a collective bargaining agreement for purposes of this section. An agreement constitutes a collective bargaining agreement only if the agreement is in writing and is executed by or on behalf of an employer of employees described in § 2510.3–40(c)(1) and by representatives of an employee labor organization meeting the requirements of § 2510.3–40(d)(1). In addition, the agreement must also be the result of good faith, arms-length bargaining binding signatory employers and the employee labor organization to the terms of the agreement for a specified project or period of time, and the agreement must be one which cannot be unilaterally amended or terminated. The Department notes that agreements in which an employer adopts all provisions of an existing agreement binding an employer and an employee labor organization to the terms and conditions of a collective bargaining agreement, such as a pattern agreement, will not fail to satisfy the requirements of proposed § 2510.3–40(b) if the original agreement as initially adopted satisfied the requirements of this section. The Department has also determined that collective bargaining agreements containing an agreement not to strike and providing that the collective bargaining agreement will terminate upon the initiation of a strike, often called "no strike" provisions, will not fail to satisfy the proposed regulation solely by reason of such provisions.

Proposed § 2510.3–40(b)(6) requires that a collective bargaining agreement may not provide for termination of the agreement solely as a result of the failure to make contributions to the plan. Proposed § 2510.3–40(b)(7) provides that an agreement will not constitute a collective bargaining agreement under this section if, in addition to the provision of health coverage, the agreement encompasses only the minimum requirements mandated by law with respect to the terms and conditions of employment (*e.g.*, minimum wage and workers' compensation). The phrase "terms and conditions of employment" as used in the proposed regulation is intended to have the same meaning and application as in case law decided under the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* (NLRA), and would include wages, hours of work and other matters of employment such as grievance procedures and seniority rights. For purposes of this section, the expiration of a collective bargaining agreement will not in and of itself prevent the agreement from satisfying the requirements under the proposed regulation if the agreement, although expired, continues in force.

3. Plans Established or Maintained

The proposed regulation also establishes certain criteria to determine when a plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40). Proposed § 2510.3–40(c) provides that in situations where a plan covers both individuals who are members of a group or bargaining unit represented by an employee labor organization as defined in proposed § 2510.3–40(d)(1) as well as other individuals, the plan will not be considered to be established or maintained pursuant to one or more collective bargaining agreements unless no less than 85% of the individuals covered by the plan are present or certain former employees and their beneficiaries, excluding supervisors and managers as defined in paragraph (d)(2), who are currently or who were previously covered by a collective bargaining agreement.[7] In addition, three groups of individuals may participate in the plan but are not counted in determining the total number of individuals covered by the plan for purposes of calculating the 85% limitation: (1) Present or former employees of the plan or of a related plan established or maintained pursuant to the same collective bargaining agreement; (2) present or former employees of the employee labor organization as defined in paragraph (d)(1) that is a signatory to the collective bargaining agreement pursuant to which the plan is maintained, and (3) beneficiaries of individuals in groups (1) and (2).

For purposes of the proposed regulation, the term "former employee" is limited to individuals who are receiving workers' compensation or disability benefits, continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) (Part 6 of title I of ERISA, 29 U.S.C. §§ 1161–1168), or who have retired or separated from employment after working for more than 1000 hours a year for at least three years for a signatory employer or employee organization, or the plan or related plan. For purposes of paragraph (c)(4), to be considered an employee of the plan, a related plan, or the signatory employee labor organization, an individual must work a least (A) 15 hours a week or 60 hours a month during the period of coverage under the plan, or (B) have worked at least 1000 hours in the last year and currently be on *bona fide* leave based on sickness or disability of the individual or the individual's family or on earned vacation time.

The proposed regulation requires that the plan satisfy the 85% limitation on the last day of each of the previous five calendar quarters unless the plan has not been in existence for five calendar quarters. If the plan or other arrangement has been in existence for a shorter period of time, it must satisfy the 85% limitation on the last day of each calendar quarter during which it has been in existence.

Through the requirement that no less than 85% of individuals covered by the plan be present or former bargaining

[5] 2A Sutherland Statutory Construction § 47.11 (Norman J. Singer ed. 5th ed. 1992); *United States* v. *First City National Bank of Houston*, 386 U.S. 361, 366 (1967) (burden of establishing applicability of statutory exception is on entity that asserts it); *Federal Trade Commission* v. *Morton Salt Co.*, 334 U.S. 37, 44–45 (1948) ("First, the general rule of statutory construction [is] that the burden of proving justification or exemption under a special exception to the prohibitions of a statute generally rests on one who claims its benefits * * *.")

[6] See *Donovan* v. *Cunningham*, 716 F. 2d 1455, 1467–68 n.27 (5th Cir. 1983) (citing *Securities and Exchange Commission* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953), "As the Supreme Court has observed in a different context, it seems 'fair and reasonable' to place the burden of proof upon a party who seeks to bring his conduct within a statutory exception to a broad remedial scheme.")

[7] Although the proposed regulation itself does not impose any specific restrictions concerning individuals who may be included in the 15%, the entity as a whole must comply with the requirements of section 3(1) of ERISA in order to be an employee welfare benefit plan covered by the Act. Section 3(1) provides that status as an ERISA covered plan is dependent on the composition and attributes of the participant base as well as the characteristics of the employer and employee organization. *See, e.g., Bell* v. *Employee Security Benefits Association*, 437 F. Supp. 382 (1977); Advisory Opinion 93–32 (letter to Mr. Kevin Long, December 16, 1993); Advisory Opinion 85–03A (letter to Mr. James Ray, January 15, 1985); Advisory Opinion 77–59 (letter to Mr. William Hager, August 26, 1977).

unit members, the proposed regulation intends to treat as MEWAs arrangements that permit individuals to participate in an employee welfare benefit plan solely as a result of membership or affiliation with an entity and not as a result of the individuals being legitimately represented in collective bargaining by a *bona fide* employee labor organization.[8] The Department believes that the 85% limitation in the proposed regulation is consistent with the purpose of the statutory exception in section 3(40)(A)(i) of ERISA for employee welfare benefit plans which are established or maintained as the result of collective bargaining on behalf of employees concerning the terms and conditions of their employment. To the extent that the Department's position as indicated in Advisory Opinion 9106A (January 15, 1991) to Gerald Grimes, Oklahoma Insurance Commissioner (concerning a trust that provided health care and other benefits to "associate members" of a labor organization who were not represented by the organization in collective bargaining), appears to express a different position, it would be superseded by the adoption of a final regulation that incorporates this requirement.

4. Definition of Employee Labor Organization

Proposed § 2510.3–40(d)(1) defines the term "employee labor organization" for purposes of this section. Proposed § 2510.3–40(d)(1)(i) provides that, with respect to a particular collective bargaining agreement, an employee labor organization must represent the employees of each signatory employer in one of two ways. All of a signatory employer's bargaining units covered by the collective bargaining agreement must either be certified by the National Labor Relations Board, or the employee labor organization must be lawfully recognized by the signatory employer as the exclusive representative for the employer's bargaining unit employees covered by the collective bargaining agreement. Such representation must take place without employer interference or domination. For purposes of the proposed regulation, employer interference or domination in the formation, administration, or operation of the employee labor organization includes taking an active part in organizing an employee organization or committee to represent employees; bringing pressure upon employees to join an employee organization; improperly favoring one of two or more employee organizations that are competing to represent employees; or otherwise unlawfully promoting or assisting in the formation or operation of the employee organization.

Under proposed § 2510.3–40(d)(1)(ii), an employee labor organization must operate for a substantial purpose other than that of offering or providing health coverage. Proposed § 2510.3–40(d)(1)(iii) states that an employee labor organization may not pay commissions, fees, or bonuses to individuals other than full-time employees of the employee labor organization in connection with the solicitation of employers or participants with regard to a collectively bargained plan. In addition, under subsection (d)(1)(iv), the term "employee labor organization" does not include an organization that utilizes the services of licensed insurance agents or brokers for soliciting employers or participants in connection with a collectively bargained plan. Proposed § 2510.3–40(d)(1)(v) requires an employee labor organization to be a "labor organization" as defined in section 3(i) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 402(i). Proposed § 2510.3–40(d)(1)(vi) also requires an employee labor organization to qualify as a tax-exempt labor organization under section 501(c)(5) of the Internal Revenue Code of 1986. It is the view of the Department that these criteria are necessary to distinguish organizations that provide benefits through legitimate employee representation from organizations that are primarily in the business of marketing commercial insurance products.

5. Supervisors and Managers

Proposed § 2510.3–40(d)(2) defines the terms "supervisors and managers" for purposes of this section. Proposed § 2510.3–40(d)(2) defines as "supervisors and managers" those employees of a signatory employer to a collective bargaining agreement who, acting on behalf of the employer, have the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or who have responsibility to direct other employees or to adjust their grievances, or who have power to make effective recommendations concerning any of the actions described above. In order to be considered a supervisor or manager, an individual must be able to use independent judgment in the exercise of authority, responsibility, and power, and that exercise must be more than a routine or clerical function.

6. Failure To Provide Documents

The proposed regulation provides that even if a plan meets the requirements of subsections 2510.3–40 (b) and (c) of this section, it will not be considered to be established or maintained pursuant to an agreement that the Secretary finds to be a collective bargaining agreement if an entity, plan, employee labor organization or employer which is a party to the agreement fails or refuses to provide documents or evidence in its possession or control to a state or state agency which reasonably requests documents or evidence in order to determine the status of any entity either under the proposed regulation or under state insurance laws. While the proposed regulation enumerates criteria designed to enable entities to determine whether the requirements of the statute are met, the Department intends that, when requested to do so, entities will provide documentation of their compliance with the criteria to the state or state agency charged with investigating and enforcing state insurance laws. An entity seeking to be treated as other than a MEWA under the provisions of the proposed regulation has the burden of producing sufficient documents and other evidence to prove that it meets the criteria of the proposed regulation and is therefore entitled to application of the statutory exemption from the definition of a MEWA.

The Department anticipates that states or state agencies, including any commission, board or committee charged with investigating and enforcing state insurance laws, will utilize existing jurisdiction under state laws to require the production of documents and other evidence. Where the entity's compliance with the criteria of the proposed regulation is disputed by a state or state agency, the Department expects that the state or state agency will use its existing authority under state law to bring the matter before the appropriate state adjudicatory body to determine the facts. The proposed regulation does not restrict the authority of the state or state agency to reinvestigate the entity at any time if it believes the entity is not in compliance with the proposed regulation or with state laws.

7. Allocation of Burden of Proof

The proposed regulation provides that, in a proceeding brought by a state

[8] A number of instances have been brought to the Department's attention where entities have attempted to utilize purported collective bargaining agreements as a basis for marketing insurance coverage, generally under the guise of "associate membership," to non-bargaining unit individuals and unrelated employers. *See, e.g., Empire Blue Cross and Blue Shield* v. *Consolidated Welfare*, 830 F. Supp. 170 (E.D.N.Y. 1993).

or a state agency to enforce the insurance laws of the state, nothing in the proposed regulation shall be read or construed to prohibit the allocation of the burden of proving the existence of all criteria required by this section to the entity seeking to be treated as other than a MEWA. The proposed regulation enumerates criteria designed to enable entities to determine whether the requirements of the statute are met. However, as discussed in paragraph 1. General Rule and Scope, supra, the Department believes that when challenged, the entity asserting the applicability of an exception has the burden of providing evidence of compliance with each of the terms of the proposed regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. The Pension and Welfare Benefits Administration has determined that, if adopted, this proposed rule may have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 603 of the Regulatory Flexibility Act (5 U.S.C. § 601, *et seq.*), the following initial regulatory flexibility analysis is provided:

(1) PWBA is considering the proposed regulation because it believes that regulatory guidance in this area is necessary to ensure (a) that state insurance regulators have ascertainable guidelines to help identify and regulate MEWAs operating in their jurisdictions, and (b) that sponsors of employee welfare benefit plans will be able to determine independently whether their plans are expected plans under section 3(40)(A) of ERISA. A more detailed discussion of the agency's reasoning for issuing the proposed regulation is found in the Background section, above.

(2) The objective of the proposed regulation is to provide guidance on the application of an exception to the definition of the term "multiple employer welfare arrangement" (MEWA) which is found in section 3(40) of ERISA and applies to certain employee welfare benefit plans. The legal basis for the proposed regulation is found at ERISA section 3(40) (23 U.S.C. 1002(40)); an extensive list of authority may be found in the Statutory Authority section, below.

(3) No accurate estimate of the number of small entities affected by the proposed regulation is available. No small governmental jurisdictions will be affected. It is estimated that a substantial number of small businesses and organizations will be affected, due to the fact that it is precisely those entities, seeking group health care coverage, that are most harmed by unscrupulous entrepreneurs who purport to provide employee health benefits. In a report entitled "Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements," the United States General Accounting Office (GAO) calculated that between January 1988 and June 1991, fraudulent MEWAs left at least 398,000 participants and their beneficiaries with $123 million in unpaid medical claims and left many other participants without the health insurance they had paid for.[9] By restricting fraudulent and financially unsound MEWAs, the proposed regulation may limit the sources of health care coverage offered to small businesses. On the other hand, MEWAs that either meet the section 3(40) criteria or meet state regulatory standards are less likely to demonstrate the type of fraudulent or imprudent activity that prompted Congressional action. The GAO Report indicated that, during the January 1988 and June 1991 period, more than 600 MEWAs failed to comply with state insurance laws and some violated criminal statutes.[10] Consequently, small entities will receive a benefit from the reduced incidence of fraud and insolvency among the pool of MEWAs in the marketplace. To the extent that MEWAs themselves are small entities, they too will be affected by the proposed regulation.

(4) No identical reporting or recordkeeping is required under the proposed rule. However, this regulation clarifies the information that must be provided upon request to state authorities by those MEWAs wishing to take advantage of the exception under section 3(40)(A) of ERISA. The information to be provided will vary depending upon the entity involved but will include a written collective bargaining agreement and records on the individual covered by the plan for at least the last five calendar quarters. Such information is routinely prepared and held in the ordinary course of business under current law by most small entities. It is anticipated that the preparation of some of these documents would require the professional skills of an attorney, accountant, or other health benefit plan professional; however, the majority of the recordkeeping may be handled by clerical staff.

(5) No federal rules have been identified that duplicate overlap or conflict with the proposed rule.

(6) No significant alternatives which would minimize the impact on small entities have been identified. The proposed regulation is less costly in comparison with the alternative methods of determining compliance with section 3(40), such as case-by-case analysis by PWBA of each employee welfare benefit plan, or litigation. The costs of such alternatives would be unduly burdensome on small entities. No federal reporting is required. Instead, the proposed regulation would create standards by which the MEWAs may be reviewed by the states. It would be inappropriate to create an alternative with lower compliance criteria, or an exemption under the proposed regulation, for small MEWAs because those are the entities which pose a higher degree of risk of non-performance due to their increased likelihood of being under-funded or otherwise having inadequate reserves to meet the benefits claims submitted for payment.

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the Department has determined that this program creates a improved method for statutory compliance that will reduce paperwork and regulatory compliance burdens on state governments, businesses, including small businesses and organizations, and make better use of scarce federal resources, in accord with the mandates of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the President's priorities. The Department believes this notice is "significant" under category (4), *supra*, and subject to OMB review on that basis.

[9] GAO/HRD–92–40 (March 1992) at 2.

[10] *Id.*

Paperwork Reduction Act

The proposed regulation does not contain any information collection or recordkeeping requirements as those terms are defined under the Paperwork Reduction Act because the information to be provided on request to state authorities will vary in each instance depending on the entity involved. Consequently, there is no requirement that the entities comply with identical reporting or recordkeeping requirements. 5 CFR 1320.7(c). Thus, the proposed regulation imposes no additional federal paperwork burden and the Paperwork Reduction Act does not apply.

Statutory Authority

This regulation is proposed pursuant to section 3(40) of ERISA (Pub. L. 97–473, 96 Stat. 2611, 2612, 29 U.S.C. 1002(40)) and section 505 (Pub. L. 93–406, 88 Stat. 892, 894, 29 U.S.C. 1135) of ERISA and under Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pension and Welfare Benefit Administration.

Proposed Regulation

For the reasons set out in the preamble, the Department proposes to amend Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2510—[AMENDED]

1. The authority for Part 2510 is revised to read:

Authority: Secs. 3(2), 111(c), 505, Pub. L. 93–406, 88 Stat. 852, 894 (29 U.S.C. 1002(2), 1031, 1135); Secretary of Labor's Order No. 27–74, 1–86 (51 FR 3521, January 28, 1986), 1–87 (52 FR 13139, April 21, 1987), and Labor Management Services Administration Order No. 2–6.

Section 2510.3–40 is also issued under sec. 3(40), Pub. L. 97–473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)).

Section 2510.3–101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR 1978 Comp., p. 332, effective under E.O. 12108, 44 FR 1065, 3 CFR 1978 Comp. p. 275 and sec. 11018(d) of Pub. L. 99–272, 100 Stat. 82.

Section 2510.3–102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR 1978 Comp., p. 332, effective under E.O. 12108, 44 FR 1065, 3 CFR comp., p. 275.

2. Part 2510 is amended by adding new § 2510.3–40 to read:

§ 2510.3–40 Plans established or maintained pursuant to one or more collective bargaining agreements.

(a) *General.* Section 3(40)(A) of the Employee Retirement Income Security Act of 1974 (the Act) provides that the term "multiple employer welfare arrangement" (MEWA) does not include an employee welfare benefit plan or other arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary of Labor (the Secretary) finds to be a collective bargaining agreement(s). The purposes of the proposed regulation are to establish specific criteria that the Secretary finds must be met for an agreement to be a collective bargaining agreement and to establish criteria for determining when an employee benefit plan is established or maintained pursuant to such an agreement.

(b) *Collective Bargaining Agreement.* The Secretary finds, for purposes of section 3(40)(A) of the Act, that an agreement constitutes a collective bargaining agreement only if the agreement—

(1) is in writing;

(2) is executed by, or on behalf of, an employer of employees represented by an employee labor organization;

(3) is executed by an employee labor organization;

(4) is the product of good faith, arms-length bargaining between one or more employers and an employee labor organization or uniformly incorporates and binds one or more employers and an employee labor organization to the terms and conditions of another agreement which as originally negotiated and adopted satisfies the requirements of this section;

(5) binds signatory employers and the employee labor organization to the terms of the agreement for a specified project or period of time, cannot be unilaterally amended or terminated and contains procedures for amending the terms and conditions of the agreement;

(6) does not terminate solely as a result of failure to make contributions to the plan; and

(7) in addition to the provision of health coverage, provides more than the minimum requirements mandated by law with respect to the terms and conditions of employment (*e.g.*, provides for more than minimum wage and workers' compensation).

(c) *Established or Maintained.* An employee benefit plan is not established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40)(A) of the Act unless not less than 85 percent of the individuals covered by the plan are—

(1) employees, excluding supervisors and managers, currently included in one or more groups or bargaining units of employees covered by one or more collective bargaining agreements as defined in paragraph (b) of this section which expressly refer to the plan and provide for contributions thereto; or

(2) persons who were formerly employees described in paragraph (c)(1) of this section who are receiving workers' compensation or disability benefits, COBRA continuation coverage pursuant to Part 6 of title I of ERISA, 29 U.S.C. 1161–1168, or who have retired or separated from employment after working more than 1,000 hours a year for at least three years; or

(3) beneficiaries of individuals included in paragraphs (c)(1) and (2) of this section.

(4) For purposes of this subsection, the following individuals covered by the plan or other arrangement shall not be counted in determining the total number of individuals covered by the plan—

(i) employees of the plan or another plan established or maintained pursuant to the same collective bargaining agreement(s);

(ii) employees of an employee labor organization that meets the requirements of paragraph (d)(1) of this section and that is a signatory to the collective bargaining agreement(s) pursuant to which the plan is maintained;

(iii) persons who were formerly employees described in paragraphs (c)(4) (i) and (ii) of this section who are receiving workers' compensation or disability benefits, COBRA continuation coverage pursuant to part 6 of title I of ERISA, 29 U.S.C. 1161–1168, or who have retired or separated from employment after working more than 1,000 hours a year for at least three years; or

(iv) beneficiaries of individuals included in paragraphs (c)(4) (i), (ii) and (iii) of this section;

(v) provided that, for purposes of paragraphs (c)(4) (i) and (ii) of this section, in order to be an employee, an individual must work at least:

(A) 15 hours a week or 60 hours a month during the period of coverage under the plan, or

(B) Have worked more than 1000 hours in the last year and currently be on *bona fide* leave based on sickness or disability of the individual or the individual's family or on earned vacation time.

(5) For purposes of calculating whether the 85% limitation has been met, a plan or other arrangement must satisfy the requirements of paragraphs (c) (1) through (4) of this section on the last day of—

(i) each of the previous five calendar quarters; or

(ii) if the plan has been in existence for fewer than five calendar quarters, every calendar quarter during which the plan has been in existence.

Definitions

(1) *Employee Labor Organization.* For purposes of this section, an "employee labor organization" shall mean an organization that—

(i) represents, with respect to a particular collective bargaining agreement, the employees of each signatory employer to the agreement where:

(A) All of the employer's bargaining units covered by the agreement are certified by the National Labor Relations Board, or

(B) The employee labor organization is lawfully recognized by the signatory employer (*e.g.*, without employer interference or domination) as the exclusive bargaining representative for the employer's bargaining unit employees covered by the agreement;

(ii) provides substantial representational services to employees regarding the terms and conditions of their employment in addition to health coverage;

(iii) does not pay commissions, fees, or bonuses to individuals, other than full-time employees of the employee labor organization, in connection with the solicitation of employers or participants;

(iv) does not utilize the services of licensed insurance agents or brokers for soliciting employers or participants;

(v) is a "labor organization" as defined in section 3(i) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. section 402(i); and

(vi) qualifies as a tax-exempt labor organization under section 501(c)(5) of the Internal Revenue Code of 1986.

(2) Supervisors and Managers. For purposes of this section, "supervisors and managers" shall mean any employees of a signatory employer to an agreement described in paragraph (b) of this section who, acting in the interest of the employer, have—

(i) Authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees; or

(ii) Responsibility to direct other employees or to adjust their grievances; or

(iii) Power to make effective recommendations concerning the actions described in paragraphs (d)(2) (i) and (ii) of this section;

as long as the exercise of the authority, responsibility and power in paragraphs (d)(2) (i), (ii) or (iii) of this section is not of a merely routine or clerical nature, but requires the use of independent judgment.

(e) *Failure to provide documents or other necessary evidence.* This section shall not apply to any plan or other arrangement if, in conjunction with an investigation or proceeding by a state or state agency, the plan, arrangement, any employee labor organization or employer which is a party to the agreement(s) at issue fails or refuses to provide the state or state agency with any document or other evidence in its possession or control that is reasonably requested by the state or state agency for the purpose of determining the status of the plan or other arrangement under state insurance laws or under this section.

(f) *Allocation of burden of proof.* In a proceeding brought to enforce state insurance laws, nothing in the proposed regulation shall be construed to prohibit a state or state agency from allocating the burden of proving the existence of all the criteria required by this section to the entity seeking to be treated as other than a MEWA.

Signed at Washington, DC, this 26th day of July 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 95–18749 Filed 7–27–95; 11:12 am]

BILLING CODE 4510–29–M

federal register

Tuesday
August 1, 1995

Part III

Department of Education

34 CFR Part 366

Centers for Independent Living; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 366

RIN 1820–AA81

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Centers for Independent Living (CIL) program. These regulations are needed to establish indicators of minimum compliance with the evaluation standards for centers for independent living enacted in the Rehabilitation Act of 1973 (Act), as amended by the Rehabilitation Act Amendments of 1992 (1992 Amendments) and the Rehabilitation Act Amendments of 1993 (1993 Amendments).

EFFECTIVE DATE: These regulations take effect August 31, 1995.

FOR FURTHER INFORMATION CONTACT: John Nelson, U.S. Department of Education, 600 Independence Avenue, SW., Room 3326, Mary E. Switzer Building, Washington, DC 20202–2741. Telephone or TDD: (202) 205–9362.

SUPPLEMENTARY INFORMATION: The CIL program supports the planning for and establishing, conducting, administrating, assisting, and evaluating of centers. These regulations add a new subpart G to 34 CFR part 366, which contains the regulations governing the CIL program. Section 725(b) of the Act establishes evaluation standards for centers. Section 706(b) of the Act requires the Secretary to publish indicators of what constitutes minimum compliance with the evaluation standards. Subpart G incorporates these evaluation standards and compliance indicators into the program regulations.

The CIL program is an important part of the National Education Goals. This program supports the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Rehabilitation Act Amendments of 1986, Pub. L. 99–506, required that the Secretary publish indicators of what constitutes minimum compliance with the evaluation standards under section 711(e) of the Act, as it existed prior to the 1992 Amendments, Pub. L. 102–569. The Secretary published proposed compliance indicators in the **Federal Register** in an advance notice of proposed rulemaking (ANPRM) on July 10, 1992. The Secretary received over 100 written comments during the comment period on the ANPRM, as well as 35 oral comments during a public meeting held on August 27, 1992. Following the publication of the ANPRM, the Secretary also solicited and received input from experts in the field concerning alternative approaches to the indicators.

The major elements of six of the evaluation standards proposed by the U.S. Department of Education (Department) in the ANPRM were codified as part of the Act by the 1992 Amendments, which was enacted shortly after publication of the ANPRM. In addition, the 1992 Amendments requires that the Secretary publish indicators of what constitutes minimum compliance with the evaluation standards under section 725(b) of the Act.

On October 27, 1993, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 57942) proposing to amend existing regulations for the CIL program by establishing indicators of minimum compliance with the new evaluation standards. On December 21, 1993 (58 FR 67383), the Secretary extended the comment period on the NPRM to coincide with the comment period on the proposed regulations implementing other changes to Title VII of the Act. The major issues related to the CIL program were discussed in the preamble to the NPRM.

In general, the commenters agreed with the direction that the Department had taken. However, a significant number of the commenters were opposed to the bifurcated approach of demonstrating compliance with the evaluation standards through (1) Baseline requirements that had to be met by all centers and (2) a selection of various activities that centers could choose from to earn a minimum number of bonus points. Some commenters believed that this approach placed small centers at a disadvantage. Another commenter stated that this approach appeared to establish two sets of minimum standards without establishing one absolute minimum standard. The Secretary agrees that the indicators should be simplified by eliminating the requirement that centers engage in various activities within each of the indicators to earn a minimum number of bonus points to comply with the evaluation standards. Therefore, in response to these and other public comments, the final regulations delete the bonus point approach, including all of the bonus point activities. In addition, the final regulations include other changes to the NPRM made in response to public comment.

The Secretary also is moving to 34 CFR part 366 two of the definitions that were proposed to be added to 34 CFR part 364 in the NPRM.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 99 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. General comments are discussed first, followed by comments on specific sections of the regulations. Because the bonus point activities have been eliminated as part of the elimination of the bonus point approach, comments on each of these bonus point activities are not discussed. In addition, technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

General Comments

Comments: One commenter expressed concern that the proposed regulations did not include or mention assistive technology services and devices. This commenter recommended that centers demonstrate how these services and devices are provided.

Discussion: Although a center may provide assistive services and devices to a particular individual, assistive services and devices are not listed in the Act as a specific IL service that a center is required to provide. Therefore, the Secretary does not believe centers should be required to demonstrate that they have provided these services to achieve minimum compliance with the evaluation standards for the CIL program.

Changes: None.

Comments: Several commenters recommended that the regulations place more emphasis on advocacy activities and less on service delivery. In addition, some commenters recommended that the regulations place more emphasis on outcomes and less on process.

Discussion: The Secretary believes that the final regulations properly reflect the emphasis on advocacy activities, service delivery, and outcomes found in the Act.

Changes: None.

Comments: None.

Discussion: Since publication of the NPRM, the Secretary has amended 34 CFR 75.118(a) and deleted the requirement for applications for non-competing continuation awards. In the place of an application, an applicant for a continuation award needs to submit only a simple performance report.

Changes: The Secretary has deleted all references to an application for a continuation award and substituted "annual performance report" in its place in these final regulations.

Definitions (§ 366.5)

Comments: None.

Discussion: Since publication of the NPRM, the Secretary has reviewed the final regulations for IL services programs (34 CFR part 366) that were published in the **Federal Register** on August 15, 1994 (59 FR 41880) and determined that a definitions section was inadvertently left out of part 366. This omission was the result of the separate publication of this subpart G, which included proposed definitions applicable only to part 366 but did not add a definitions section to part 366. Therefore, the Secretary is correcting this omission at this time.

Changes: The Secretary is adding a new "§ 366.5 *What definitions apply to this program?*" to 34 CFR part 366 of the final regulations for IL services programs. In addition, the Secretary is redesignating current "§ 366.5 *How are program funds allotted?*" as § 366.6.

Comments: None.

Discussion: Since publication of the NPRM, the Secretary has published final regulations for the IL services programs. See 59 FR 41880–41912. The Secretary included definitions for the following terms in those final regulations: "Individual with a significant disability," "Minority group," "Significant disability," and "Unserved and underserved groups or populations." Therefore, the Secretary does not believe it is necessary to repeat those definitions in these final regulations. In addition, the Secretary has determined that the proposed definitions of "consumer," "consumer service record," "cross-disability peer counseling," "information and referral services," "independent living skills training," and "peer counseling" are unnecessary. The Secretary does not believe it is necessary or useful to establish definitions for these terms through regulations. The Secretary expects that States and centers will interpret these terms in a manner that will provide for the efficient and proper administration of this program. However, comments on requirements related to the terms "decisionmaking position" and "staff position" indicate that definitions of these terms will assist centers in determining how to comply with these requirements.

Changes: The Secretary has deleted the definitions of "consumer," "consumer service record," "cross-disability peer counseling," "information and referral services," "independent living skills training," "individual with a significant disability," "minority group," "peer counseling," "significant disability," and "unserved or underserved" from the final regulations.

Comments: Several commenters suggested that the definition of "decisionmaking position" be clarified.

Discussion: The Secretary agrees that this definition should be clarified by removing the reference to first-line and second-line supervisors. The Secretary believes that any supervisor should be included in the definition of "decisionmaking position." The Secretary also believes that this definition provides flexibility for centers to determine who exercises decisionmaking authority within a center.

Changes: The Secretary has revised the definition of a "decisionmaking position" to clarify that any position within a center that carries the authority to establish policy for the center is included within this definition.

Comments: A few commenters recommended that the proposed definition of "staff position" be revised to conform with the definition of this term established by the U.S. Department of Labor (DOL). However, none of the commenters stated the DOL definition or identified where this definition can be found. One commenter suggested that decisionmakers be included in the definition of "staff position" because decisionmakers are also "staff."

Discussion: Neither the Secretary nor DOL staff consulted by ED staff is aware of a DOL definition of "staff position" or "decisionmaking position." Although a definition exists for the term "employee" in regulations implementing the Fair Labor Standards Act, the Secretary does not believe DOL's definition of "employee" is either helpful or necessary for purposes of this indicator. Nevertheless, nothing in the definition of "staff position" in the final regulations is inconsistent with DOL's definition of "employee." The Secretary does not agree that decisionmakers should be included as "staff" for purposes of this indicator because this would create an unnecessary overlap between the meaning of the terms "staff position" and "decisionmaking position."

Changes: None.

Comments: Several commenters recommended additional definitions for the following terms: "increasing and improving community options," "increasing and improving community capacity," "self-help and self-advocacy," and "systems advocacy."

Discussion: The Secretary does not believe it is necessary or useful to establish definitions for these terms through regulations. The Secretary expects that States and centers will interpret these terms in a manner that will provide for the efficient and proper administration of this program.

Changes: None.

Multi-State Centers (§ 366.62)

Comments: Several commenters recommended that centers serving more than one State or region and receiving funds from multiple sources be reviewed for compliance with the evaluation standards as a single center.

Discussion: The Secretary agrees with the commenters. The regulations are silent on this issue and neither require nor permit the Department to conduct separate reviews of a center for each grant that the center receives from the Department. The Secretary believes section 706(c)(1) of the Act provides sufficient guidance on the Secretary's responsibility to conduct on-site compliance reviews of centers and does not believe it is necessary to regulate further on this issue.

Changes: None.

Staff Positions (§ 366.63(a)(1))

Comments: A few commenters agreed with the exclusion of personal care assistants, readers, and interpreters from the determination of a center's compliance with the requirement that more than 50 percent of a center's decisionmaking and staff positions be filled by individuals with disabilities. These commenters recommended adding van drivers to the list of those persons to be excluded from this determination. A couple of commenters disagreed with the exclusion of personal care assistants, readers, and interpreters from this determination.

Discussion: The Secretary believes that a center should have the option of excluding drivers, as well as interpreters, personal assistants, and readers, from the determination of a center's compliance with this provision.

Changes: The Secretary has added drivers to § 366.63(a)(1)(ii) of the final regulations and given a center the option of excluding drivers, interpreters, personal assistants, and readers from the determination of the center's compliance with this requirement.

Comments: Several commenters did not understand or disagreed with the proposed use of total number of hours worked by paid employees to determine a center's compliance with the requirement that more than 50 percent

of a center's decisionmaking and staff positions must be filled by individuals with disabilities. One commenter stated that this approach would be burdensome and would require unnecessary reporting and recordkeeping. A couple of commenters suggested that only "positions" be considered to determine compliance with this requirement and that the positions must be based on 40 full-time equivalent (FTE) hours per week. Another commenter questioned whether the total number of hours worked will be determined using expected or actual number of hours worked.

Discussion: The Secretary does not agree that this requirement is burdensome or will require unnecessary reporting and recordkeeping. Centers already are required to maintain records of the number of hours their paid employees work each week. Using the number of hours worked to determine compliance with the greater than 50 percent staffing requirement would not require additional recordkeeping. In addition, the Secretary believes that overtime hours should be excluded from this determination because extra hours worked by individual employees could produce a distorted representation of a center's work force. Also, centers with equal numbers of staff who are individuals with significant disabilities and who are not individuals with significant disabilities might simply assign overtime to their staff who are individuals with significant disabilities to comply with the greater than 50 percent staffing requirement. Excluding overtime will simplify the calculation that a center needs to make to comply with this requirement.

Finally, the Secretary believes that only those hours for which an employee is compensated should be considered to determine compliance with the greater than 50 percent staffing requirement because of the difficulty in determining the number of extra hours an employee may have worked for which the employee was not compensated.

Changes: The Secretary has revised § 366.63(a)(1)(iii) to exclude overtime from the determination of a center's compliance with this requirement. In addition, the Secretary has revised this provision to include only those hours for which an employee is actually paid in determining a center's compliance with this requirement.

Comments: Several commenters disagreed with the proposed use of the three-month period preceding the application date to determine a center's compliance with the requirement that more than 50 percent of a center's decisionmaking and staff positions must be filled by individuals with disabilities. Several commenters recommended that the relevant period be the six-month period preceding the application date because data collected during the six-month period preceding the end of the project year would be more reliable. A couple of commenters suggested that the relevant period be the 12-month period preceding the application date.

Discussion: The Secretary agrees with the commenters that the three-month period is too short and that the six-month period preceding the end of the reporting period is the least burdensome timeframe for a center to gather information concerning its paid employees. The Secretary also agrees that data collected during the six-month period preceding the end of the project year will be more reliable than the three-month period proposed in the NPRM.

In addition, the NPRM was published before the Department eliminated the need for grantees to submit applications for non-competing continuation awards. Grantees are now required only to submit an annual performance report that demonstrates their compliance with statutory and regulatory requirements and the terms of the grant award. The final regulations reflect this change by eliminating any reference to continuation applications and referring instead to annual performance reports.

Changes: The Secretary has changed the period of consideration in § 366.63(a)(1)(iii) of the final regulations from the three-month period preceding the date the center submits its continuation application to the last six months of the period covered by the center's most recent annual performance report.

Comments: A couple of commenters recommended that individuals who are on family or maternity leave be counted during the three-month period preceding the application date to determine a center's compliance with the 50 percent requirement.

Discussion: The Secretary agrees that an individual who is on unpaid family or maternity leave during any or all of the six-month period should be included in this determination. Compliance with the 50 percent requirement should not be affected just because an employee of a center is on unpaid family or maternity leave during this six-month period. In making its determination, a center will use the number of weekly hours worked by an employee prior to going on unpaid family or maternity leave.

Changes: The Secretary has added language to § 366.63(a)(1)(iii) to permit a center to include employees on unpaid family or maternity leave for determining its compliance with the 50 percent requirement. A center must include in this determination its employees who are on unpaid family or maternity leave during the six-month period.

Self-Help and Self-Advocacy

Comments: None.

Discussion: Pursuant to the NPRM, a center would have been required to provide evidence that it established written policies for promoting self-help and self-advocacy among individuals with significant disabilities. Since publication of the NPRM, the Secretary has reviewed this section and determined that whether or not a center has written policies is unimportant if the center actually promotes self-help and self-advocacy among individuals with significant disabilities.

Changes: The Secretary has deleted the requirement for written policies from the final regulations.

Development of Peer Relationships and Peer Role Models (§ 366.63(3)(iii))

Comments: One commenter stated that the use of individuals with significant disabilities as instructors is more effective than written policies and procedures.

Discussion: The Secretary agrees that written policies are unimportant if the center actually promotes the development of peer relationships and peer role models among individuals with significant disabilities. However, the Secretary also believes that the development of peer relationships and peer role models among individuals with significant disabilities can be accomplished in a variety of ways and does not believe it is necessary to require a center to use individuals with significant disabilities as instructors to meet this requirement.

Changes: The Secretary has deleted the requirement for written policies from the final regulations.

Equal Access (§ 366.63(a)(4)) and Provision of Services on a Cross-Disability Basis (§ 366.63(b)(1))

Comments: Some commenters recommended that the proposed regulations be clarified to permit centers to provide services or programs that are targeted or limited to persons with a single type of disability (e.g., individuals who are blind or deaf).

Discussion: The 1992 Amendments require that centers receiving funds under Title VII of the Act provide IL services to individuals with significant disabilities without regard to the type or types of specific significant disabilities of the individuals or groups of individuals. Under the final regulations, a center must provide the IL core services to individuals with significant disabilities in a manner that is neither targeted nor limited to a particular type of significant disability. In addition, a center may not limit the provision of any other IL service that could be provided to individuals with a variety of significant disabilities to individuals with a particular type of significant disability. For example: A center may not limit the provision of personal assistance services to individuals who are blind. However, a center may limit the provision of Braille instruction to individuals who are blind. The availability of an IL service (other than the IL core services) may be limited to individuals with a particular type of significant disability only if that IL service is unique to the significant disability of the individuals to be served.

Whether a center may target individuals with a particular type of significant disability for a particular type of IL service is a different question. If a center has identified individuals with a particular type of significant disability as an "unserved or underserved group or population" pursuant to the definition in 34 CFR 364.4(b), the center may target this unserved or underserved group or population for any IL service, including the IL core services. However, the center may not limit the IL services it provides to only this group or population of individuals with a particular type of significant disability.

Changes: The Secretary has added language to § 366.63(b)(1) of the final regulations that allows a center to restrict the availability of an IL service (other than the IL core services) to individuals with a particular type of significant disability if the IL service (other than the IL core services) is unique to that significant disability of the individuals to be served.

Comments: One commenter recommended that the proposed regulations include an assurance that centers conduct affirmative action programs to hire members of minority groups. This commenter believes that Federal laws generally require recipients of Federal funds to conduct affirmative action programs to hire members of minority groups, even though the commenter did not identify any specific statute.

Discussion: Although section 725(c)(5) of the Act requires that an applicant for funds under Part C of Chapter 1 of Title VII of the Act take affirmative action to employ and advance in employment qualified individuals with significant disabilities, nothing in Title VII requires centers receiving funds under Part C of Chapter 1 of Title VII of the Act to take affirmative action to employ and advance in employment qualified minorities.

Changes: None.

Comments: One commenter recommended that a center's written policies and materials be available in alternative formats as a means of providing equal access to individuals with disabilities.

Discussion: The Secretary agrees that a center should make available, as appropriate, all of its written policies and materials in alternative formats for effective communication. In addition, the Secretary believes that, as appropriate, a center should make its IL services available in alternative formats. For example, if a center provides a list of available housing units that are accessible to individuals with significant disabilities as part of its information and referral services, then the center should make this list available, as appropriate, either orally, in Braille, or on tape, if the written form of the list prevents effective communication with an individual requesting the list.

Changes: The Secretary has added a new § 366.63(a)(5) to the final regulations that requires a center to make available, as appropriate, all of its written policies and materials in alternative formats for effective communication. In addition, this new provision requires a center to make available, as appropriate, its IL services in alternative formats.

Cross-Disability (§ 366.63(b))

Comments: One commenter recommended that a center be able to comply with the cross-disability requirement by demonstrating a fairly even distribution of services across a simple majority of the Federal disability reporting categories.

Discussion: The Secretary agrees that a center that demonstrates a fairly even distribution of services across a simple majority of the Federal disability reporting categories is presumed to be in compliance with the cross-disability requirement, if no evidence exists that the center has denied eligibility for an IL service to any individual with a significant disability based on the type of the individual's disability. Because other evidence may exist that a center is not in compliance with this requirement, the Secretary does not believe it is appropriate to create an irrebuttable presumption of compliance.

Changes: None.

Comments: One commenter recommended that the proposed regulations be clarified to ensure that all of the core services are available to an individual regardless of the individual's disability. Another commenter recommended that the proposed regulations be revised to prevent a center from relying on an individual's secondary disability to comply with the cross-disability requirement. Another commenter recommended that centers maintain a tracking system to ensure that all individuals in need of IL services are served by the center.

Discussion: The Secretary agrees that the language in the proposed regulations should be clarified to ensure that all of the core services are available to an individual regardless of the individual's disability and to prevent a center from relying on an individual's disability (whether "secondary" or otherwise) to comply with the cross-disability requirement. By forbidding a center from targeting or limiting the IL core services based on an individual's type of significant disability, the classification of an individual's significant disability as "primary" or "secondary" will be irrelevant for purposes of providing the IL core services and for complying with the cross-disability requirement.

In addition, the Secretary believes that the reporting requirements and recordkeeping requirements are adequate to prevent discrimination on the basis of type of disability and to ensure that centers provide the IL core services to individuals with a broad range of disabilities. Therefore, the Secretary does not agree that these regulations should require centers to maintain a tracking system as suggested by the commenter.

Changes: The Secretary has added language to § 366.63(b)(3) of the final regulations to clarify that a center may not target or limit the IL core services to any individual or group of individuals with significant disabilities based on the type of significant disability of the individual or group of individuals.

IL Goals (§ 366.63(c))

Comments: One commenter recommended that centers be required to achieve a 25 percent success rate on the IL goals identified by consumers. Another commenter stated that the attempt to achieve an IL goal is as important as achieving it.

Discussion: The Secretary does not believe it is appropriate to establish a percentage that centers must attain for the achievement of IL goals developed

by consumers. The populations served by different centers may vary so widely that a reasonable percentage for one center may be unrealistic for another center.

Changes: None.

Comments: A few commenters stated that requiring a center to measure or track the achievement of IL goals by consumers is inappropriate or may be nearly impossible.

Discussion: Any measurement of the achievement of IL goals would require uniformity to be meaningful. However, IL goals and how they are achieved is not uniform. Therefore, the Secretary agrees that requiring a center to measure the achievement of IL goals by a consumer is inappropriate. However, the Secretary believes that maintaining records of the IL goals that consumers believe they have achieved is appropriate and feasible, both for the consumer and the center.

Changes: The Secretary has deleted the requirement that a center measure the achievement of IL goals by consumers but has specified that consumer service records meet the requirements of 34 CFR 364.53. Section 364.53 includes the requirements that a consumer service record include (1) the IL goals or objectives established and achieved by the consumer; and (2) either an IL plan or a waiver signed by the consumer that an IL plan is unnecessary.

Comments: None.

Discussion: Pursuant to the NPRM, a center was required to facilitate the development and achievement of IL goals selected by individuals with significant disabilities who request assistance from the center. Since publication of the NPRM, the Secretary has reviewed this section and determined that compliance with this standard can best be accomplished by requiring a center to assess consumer satisfaction with the center's services and policies in facilitating consumers' achievement of IL goals. In addition, the Secretary believes compliance will be further insured by requiring a center to provide this information to its governing board and the appropriate SILC. Finally, the Secretary believes that notifying consumers of their right to develop or waive the development of an IL plan (ILP) also is important to insure compliance with this standard.

Changes: The Secretary has added a requirement to the final regulations that a center (1) assess consumer satisfaction with the center's services and policies in facilitating consumers' achievement of IL goals and provide this information to its governing board and the appropriate SILC; and (2) notify all consumers of their right to develop or waive the development of an ILP.

Comments: A few commenters recommended that any reporting requirements be limited in scope and suggested that a consumer service record not be required for "casual services." A couple of commenters suggested that an "intake sheet" be sufficient as a case service record. Another commenter recommended that a case service record include only the consumer's application form and any notes by the center staff member who works with the consumer.

Discussion: The information that must be included in a consumer service record is described in 34 CFR 364.53. The Secretary believes that this information is necessary for the proper and efficient administration of this program. An "intake sheet" or an application form and notes made by the center's staff member who works with the consumer are sufficient if they include the information required by 34 CFR 364.53.

Changes: The Secretary has added language to the definition of consumer service record in the final regulations to clarify that a consumer service record must meet the requirements of 34 CFR 364.53.

Community Options and Community Capacity (§ 366.63(d))

Comments: One commenter stated that this indicator is meaningless without further explanation and definitions of the required activities. Another commenter recommended that these regulations require more specific measures of compliance. Another commenter recommended that the term "community advocacy," which is used in this provision, be defined. Another commenter stated that clarification is needed on what constitutes a center's service area.

Discussion: The Secretary does not believe it is necessary to define further the activities that a center must carry out to comply with this indicator. The Secretary believes that each center should have flexibility in defining these activities within the context of its own operating environment and service area. The Secretary also expects that each center will define its own service area and describe the area it expects to serve in its application for funding under this program. Finally, the Secretary believes that the term "community advocacy" is encompassed by the term "systems (or systemic) advocacy," which is defined in 34 CFR 364.4(b) of the IL regulations. The IL regulations were published on August 15, 1994 (59 FR 41880).

Changes: None.

Comments: A few commenters recommended that centers not be responsible for removing community barriers or for serving as a catalyst for change in the community. One of these commenters recommended that centers not be evaluated on how well the community responds to the needs of individuals with disabilities.

Discussion: Nothing in the proposed regulations required a center to remove community barriers or to serve as a catalyst for change in the community. Furthermore, nothing in the proposed regulations provided that centers would be evaluated on how well the community responds to the needs of individuals with disabilities. However, to the extent that a center engages in systems advocacy, the Secretary fully expects that a center will engage in activities that are designed to accomplish these goals.

Changes: None.

Comments: One commenter recommended that a center's compliance with the community options and community capacity indicator not be based solely on the center's activities within its service area.

Discussion: Although a center may engage in advocacy or other activities that may have an impact outside of its service area, the Secretary believes that a center's performance under its Title VII grant must be assessed in terms of the beneficiaries the grant was intended to serve, i.e., the individuals within the center's service area.

Changes: None.

Comments: One commenter recommended that centers be required to provide annual community accessibility updates to help centers develop strategies for prioritizing the removal of identified community barriers and to document the results of activities that have been completed to remove those barriers.

Discussion: The Secretary does not believe that centers should be required to develop strategies for prioritizing the removal of identified community barriers. The Secretary believes it is sufficient for a center to comply with the requirements already established for this indicator.

Changes: None.

Comments: One commenter recommended that outreach materials be provided in accessible formats.

Discussion: The Secretary believes that new § 366.63(a)(5) will ensure that a center will provide outreach materials in accessible formats.

Changes: None.

IL Services (§ 366.63(e))

Comments: One commenter stated that cross-disability counseling is not a valid service because the commenter believes that "peer" means a person with a similar disability.

Discussion: The Secretary disagrees that "peer counseling" is limited to counseling by an individual with a disability that is similar to the disability of the consumer. The Secretary believes that an individual with a significant disability may engage in peer counseling for another individual with a significant disability, regardless of the types of significant disabilities of the two individuals.

Changes: None.

Resource Development (§ 366.63(f))

Comments: One commenter recommended that a center be rewarded only for specific activities that result in increased funding and that automatic State appropriations not be included in determining the success of a center's fundraising activities.

Discussion: The Secretary encourages States to participate in the funding of centers. Therefore, the Secretary believes it is appropriate to include State funds in determining the success of a center's fundraising activities.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1980

Sections 366.62 and 366.63 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

States and centers are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 40 hours per response for 200 respondents, including the time for gathering and maintaining the data needed and for completing and reviewing the collection of information.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 366

Education, Grant programs—social programs, Vocational rehabilitation, Recordkeeping and reporting requirements.

(Catalog of Federal Domestic Assistance Number 84.132—Centers for Independent Living)

Dated: July 26, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends Part 366 of Title 34 of the Code of Federal Regulations as follows:

PART 366—CENTERS FOR INDEPENDENT LIVING

1. The authority citation for part 366 is revised to read as follows:

Authority: 29 U.S.C. 796d–1(b) and 796f–796f–6, unless otherwise noted.

§ 366.6 [Redesignated from § 366.5]

2. Section 366.5 is redesignated as § 366.6.

3. A new § 366.5 is added to read as follows:

§ 366.5 What definitions apply to this program?

Decisionmaking position means the executive director, any supervisory position, and any other policymaking position within the center.

Staff position means a paid non-contract position within the center that is not included within the definition of a "decisionmaking position."

(Authority: 29 U.S.C. 796a(a))

4. Part 366 is amended by adding a new Subpart G consisting of §§ 366.60 through 366.63 to read as follows:

Subpart G—Evaluation Standards and Compliance Indicators

Sec.

366.60 What are project evaluation standards?
366.61 What are the compliance indicators?
366.62 What are the requirements for continuation funding?
366.63 What evidence must a center present to demonstrate that it is in minimum compliance with the evaluation standards?

Subpart G—Evaluation Standards and Compliance Indicators

§ 366.60 What are the project evaluation standards?

To be eligible to receive funds under this part, an applicant must agree to comply with the following evaluation standards:

(a) *Evaluation standard 1—Philosophy.* The center shall promote and practice the IL philosophy of—

(1) Consumer control of the center regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center;

(2) Self-help and self-advocacy;

(3) Development of peer relationships and peer role models;

(4) Equal access of individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(5) Promoting equal access of individuals with significant disabilities to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, on the same basis that access is provided to other individuals with disabilities and to individuals without disabilities.

(b) *Evaluation standard 2—Provision of services.* (1) The center shall provide IL services to individuals with a range of significant disabilities.

(2) The center shall provide IL services on a cross-disability basis (i.e., for individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of populations that are unserved or underserved by programs under Title VII of this Act).

(3) The center shall determine eligibility for IL services. The center may not base eligibility on the presence of any one specific significant disability.

(c) *Evaluation standard 3—Independent living goals.* The center shall facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance in the development and achievement of IL goals from the center.

(d) *Evaluation standard 4—Community options.* The center shall conduct activities to increase the availability and improve the quality of community options for IL to facilitate the development and achievement of IL goals by individuals with significant disabilities.

(e) *Evaluation standard 5—Independent living core services.* The center shall provide IL core services and, as appropriate, a combination of any other IL services specified in section 7(30)(B) of the Act.

(f) *Evaluation standard 6—Activities to increase community capacity.* The center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

(g) *Evaluation standard 7—Resource development activities.* The center shall conduct resource development activities to obtain funding from sources other than Chapter 1 of Title VII of the Act.

(Authority: 29 U.S.C. 796f–4)

§ 366.61 What are the compliance indicators?

(a) The compliance indicators establish the activities that a center shall carry out to demonstrate minimum compliance with the evaluation standards in § 366.60.

(b) If a center fails to satisfy any one of the indicators, the center is out of compliance with the evaluation standards.

(Authority: 20 U.S.C. 796d–1(b))

§ 366.62 What are the requirements for continuation funding?

(a) To be eligible to receive a continuation award for the third or any subsequent year of a grant, a center shall—

(1) Have complied fully during the previous project year with all of the terms and conditions of its grant;

(2) Provide adequate evidence in its most recent annual performance report that the center is in minimum compliance with the evaluation standards in § 366.60 (Cross-reference: See §§ 366.50 (h) and (i) and 34 CFR 75.118(a)); and

(3) Meet the requirements in this Part 366.

(b) If a recipient receives funding for more than one center, each individual center that receives a continuation award shall meet the requirements of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0606.)

(Authority: 29 U.S.C. 711(c), 796d–1(b), 796e, and 796f–4)

§ 366.63 What evidence must a center present to demonstrate that it is in minimum compliance with the evaluation standards?

(a) *Compliance indicator 1—Philosophy.*

(1) *Consumer control.*

(i) The center shall provide evidence in its most recent annual performance report that—

(A) Individuals with significant disabilities constitute more than 50 percent of the center's governing board; and

(B) Individuals with disabilities constitute more than 50 percent of the center's—

(*1*) Employees in decisionmaking positions; and

(*2*) Employees in staff positions.

(ii) A center may exclude personal assistants, readers, drivers, and interpreters employed by the center from the requirement in paragraph (a)(1)(B) of this section.

(iii) The determination that over 50 percent of a center's employees in decisionmaking and staff positions are individuals with disabilities must be based on the total number of hours (excluding any overtime) for which employees are actually paid during the last six-month period covered by the center's most recent annual performance report. However, a center must include in this determination its employees who are on unpaid family or maternity leave during this six-month period.

(2) *Self-help and self-advocacy.* The center shall provide evidence in its most recent annual performance report that it promotes self-help and self-advocacy among individuals with significant disabilities (e.g., by conducting activities to train individuals with significant disabilities in self-advocacy).

(3) *Development of peer relationships and peer role models.* The center shall provide evidence in its most recent annual performance report that it promotes the development of peer relationships and peer role models among individuals with significant disabilities (e.g., by using individuals with significant disabilities who have achieved IL goals [whether the goals were achieved independently or through assistance and services provided by a center] as instructors [volunteer or paid] in its training programs or as peer counselors).

(4) *Equal access.* The center shall provide evidence in its most recent annual performance report that it—

(i) Ensures equal access of individuals with significant disabilities, including communication and physical access, to the center's services, programs, activities, resources, and facilities, whether publicly or privately funded. Equal access, for purposes of this paragraph, means that the same access is provided to any individual with a significant disability regardless of the individual's type of significant disability.

(ii) Advocates for and conducts activities that promote the equal access to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, for individuals with significant disabilities. Equal access, for purposes of this paragraph, means that the same access provided to individuals without disabilities is provided in the center's service area to individuals with significant disabilities.

(5) *Alternative formats.* To ensure that a center complies with § 366.63(a)(4) and for effective communication, a center shall make available in alternative formats, as appropriate, all of its written policies and materials and IL services.

(b) *Compliance indicator 2—Provision of services on a cross-disability basis.* The center shall provide evidence in its most recent annual performance report that it—

(1) Provides IL services to eligible individuals or groups of individuals without restrictions based on the particular type or types of significant disability of an individual or group of individuals, unless the restricted IL service (other than the IL core services) is unique to the significant disability of the individuals to be served;

(2) Provides IL services to individuals with a diversity of significant disabilities and individuals who are members of populations that are unserved or underserved by programs under Title VII of the Act; and

(3) Provides IL core services to individuals with significant disabilities in a manner that is neither targeted nor limited to a particular type of significant disability.

(c) *Compliance indicator 3—Independent living goals.* (1) The center shall provide evidence in its most recent annual performance report that it—

(i) Maintains a consumer service record that meets the requirements of 34 CFR 364.53 for each consumer;

(ii) Facilitates the development and achievement of IL goals selected by individuals with significant disabilities who request assistance from the center;

(iii) Provides opportunities for consumers to express satisfaction with the center's services and policies in facilitating their achievement of IL goals and provides any results to its governing board and the appropriate SILC; and

(iv) Notifies all consumers of their right to develop or waive the development of an IL plan (ILP).

(2) The center shall provide evidence in its most recent annual performance report that the center maintains records on—

(i) The IL goals that consumers receiving services at the center believe they have achieved;

(ii) The number of ILPs developed by consumers receiving services at the center; and

(iii) The number of waivers signed by consumers receiving services at the center stating that an ILP is unnecessary.

(d) *Compliance indicator 4—Community options and community capacity.* The center shall provide evidence in its most recent annual performance report that, during the project year covered by the center's most recent annual performance report, the center promoted the increased availability and improved quality of community-based programs that serve individuals with significant disabilities and promoted the removal of any existing architectural, attitudinal, communication, environmental, or other type of barrier that prevents the full integration of these individuals into society. This evidence must demonstrate that the center performed at least one activity in each of the following categories:

(1) Community advocacy.

(2) Technical assistance to the community on making services, programs, activities, resources, and facilities in society accessible to individuals with significant disabilities.

(3) Public information and education.

(4) Aggressive outreach to members of populations of individuals with significant disabilities that are unserved or underserved by programs under Title VII of the Act in the center's service area.

(5) Collaboration with service providers, other agencies, and organizations that could assist in improving the options available for individuals with significant disabilities to avail themselves of the services, programs, activities, resources, and facilities in the center's service area.

(e) *Compliance indicator 5—IL core services and other IL services.* The center shall provide evidence in its most recent annual performance report that it provides—

(1) Information and referral services to all individuals who request this type of assistance or services from the center in formats accessible to the individual requesting these services; and

(2) As appropriate in response to requests from individuals with significant disabilities who are eligible for IL services from the center, the following services:

(i) IL skills training.

(ii) Peer counseling (including cross-disability peer counseling).

(iii) Individual and systems advocacy.

(iv) A combination, as appropriate, of any two or more of the IL services defined in section 7(30)(B) of the Act.

(f) *Compliance indicator 6—Resource development activities.* The center shall provide evidence in its most recent annual performance report that it has conducted resource development activities within the period covered by the performance report to obtain funding from sources other than Chapter 1 of Title VII of the Act.

(Approved by the Office of Management and Budget under control number 1820–0606.)

(Authority: 29 U.S.C. 711(c), 796d–1(b), and 796f–4)

[FR Doc. 95–18774 Filed 7–31–95; 8:45 am]

BILLING CODE 4000–01–P

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federal register

Tuesday
August 1, 1995

Part IV

Department of the Treasury
Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Department of the Treasury
Office of Thrift Supervision

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12 CFR Part 3, et al.

Capital; Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 6

[Docket No. 95–18]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Docket No. R–0887]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB61

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 565 and 567

[Docket No. 95–140]

RIN 1550–AA84

Capital; Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance

AGENCIES: Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (FRB); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS), Department of the Treasury.

ACTION: Joint interim rule with request for comments.

SUMMARY: The OCC, FRB, FDIC, and OTS (the Agencies) are amending their capital adequacy standards for banks, bank holding companies, and savings associations (banking organizations) to treat originated mortgage servicing rights (OMSRs) the same as purchased mortgage servicing rights (PMSRs) for regulatory capital purposes. The interim capital rule was developed in response to the Financial Accounting Standards Board's issuance of Statement No. 122, "Accounting for Mortgage Servicing Rights," which eliminates the accounting distinction between OMSRs and PMSRs by requiring OMSRs to be capitalized as balance sheet assets, a treatment previously required only for PMSRs. Under the interim rule, both OMSRs and PMSRs are "included in" (i.e., not deducted from) regulatory capital when determining Tier 1 (core) capital for purposes of the Agencies' risk-based and leverage capital standards, and when calculating tangible equity for purposes of prompt corrective action, subject to the regulatory capital limitations that previously applied only to PMSRs. Thus, the effect of the interim rule is to permit OMSRs in regulatory capital, subject to certain limitations.

DATES: The interim rule is effective August 1, 1995. Comments must be received by October 2, 1995.

ADDRESSES: Commenters should respond to their primary federal regulator. All comments will be shared among all of the Agencies.

OCC: Written comments should be submitted to Docket No. 95–18, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219, Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

FRB: Comments should refer to Docket No. R–0887, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FDIC: Written comments shall be addressed to Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room F–402, 1776 F Street NW., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov) Comments will be available for inspection at the FDIC's Reading Room, Room 7118, 550 17th Street NW., Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 95–140. These submissions may be hand-delivered to 1700 G Street, N.W. between 9 a.m. and 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments will be available for inspection at 1700 G Street, N.W., from 1:00 p.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Christine A. Smith, Esq., Professional Accounting Fellow, (202/874–5180), Roger Tufts, Senior Economic Advisor, (202/874–5070), Office of the Chief National Bank Examiner; Mitchell Stengel, Financial Economist, (202/874–5431), Risk Analysis Division; Ronald Shimabukuro, Senior Attorney, or P. Moni SenGupta, Attorney, (202/874–5090), Legislative and Regulatory Activities Division, Washington, D.C. 20219.

FRB: Arthur W. Lindo, Supervisory Financial Analyst, (202/452–2695) or Thomas R. Boemio, Supervisory Financial Analyst, (202/452–2982), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: For supervisory issues, Stephen G. Pfeifer, Examination Specialist, (202/898–8904), Accounting Section, Division of Supervision; for legal issues, Jules E. Bernard, Counsel, (202/898–3731), Legal Division.

OTS: John F. Connolly, Senior Program Manager for Capital Policy, (202/906–6465), or Timothy J. Stier, Assistant Chief Accountant, (202/906–5699), Supervision; Deborah Dakin, Assistant Chief Counsel, (202/906–6445), Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background

Mortgage servicing rights are the contractual obligations undertaken by an institution to provide servicing for mortgage loans owned by others, typically for a fee. Originated mortgage servicing rights (OMSRs) generally represent the servicing rights acquired when an institution originates mortgage loans and subsequently sells the loans but retains the servicing rights. Purchased mortgage servicing rights (PMSRs) are mortgage servicing rights that have been purchased from other parties.

In May 1995, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 122 (FAS 122), "Accounting for Mortgage Servicing Rights." FAS 122 eliminates the accounting distinction between OMSRs and PMSRs and the need for companies engaged in mortgage banking to sell OMSRs in order to realize their value for financial statement purposes. FAS 122 specifies that capitalized mortgage servicing rights are to be treated as a single type of asset, regardless of how these rights were acquired. As a result, upon an institution's adoption of FAS 122, both OMSRs and PMSRs must be capitalized as balance sheet assets, a treatment previously permitted only for PMSRs. Both types of mortgage servicing rights may be reported in the same balance sheet asset category. Thus, on a prospective basis, under generally accepted accounting principles (GAAP), there generally will no longer be any significant accounting distinction between OMSRs and PMSRs for reporting, valuation, or disclosure purposes.

Prior to the issuance of FAS 122, GAAP referred to PMSRs as intangible assets. FAS 122 eliminates the reference to PMSRs as intangible assets but does not characterize mortgage servicing rights as either intangible or tangible assets. FAS 122 indicates that no characterization of mortgage servicing rights as either intangible or tangible assets is necessary because similar characterizations are not made for most other assets. However, FAS 122 also indicates that the elimination of the intangible asset reference does not imply that mortgage servicing rights are tangible assets.

FAS 122 requires that mortgage servicing rights be considered impaired whenever their fair value is less than their amortized cost. A valuation allowance is required for the amount of any impairment, which must be measured by stratifying mortgage servicing rights based on one or more of the predominant risk characteristics of the underlying loans. These characteristics may include loan type, size, note rate, date of origination, term and geographic location.

FAS 122 is effective for financial statements prepared in accordance with GAAP for fiscal years beginning after December 15, 1995, although FASB encourages earlier application. On June 21, 1995, the Federal Financial Institutions Examination Council (FFIEC) announced that banks must adopt FAS 122 for purposes of the Reports of Condition and Income (Call Report) as of the same effective date and with earlier application permitted to the extent allowable in this accounting standard. The OTS requires savings associations to follow GAAP for regulatory reporting and, thus, FAS 122's effective date provisions are also applicable for Thrift Financial Report purposes.[1]

Interim Amendments to the Capital Adequacy Guidelines

Banking organizations adopting FAS 122 early could reflect OMSRs on their regulatory reports as soon as June 30, 1995.[2] In view of this implementation schedule, the Agencies are now adopting an interim rule that is effective immediately in order to give banking organizations that adopt FAS 122 early direction on the regulatory capital treatment of OMSRs.

Under the interim rule, for risk-based and leverage capital purposes, mortgage servicing rights, including both PMSRs and OMSRs[3], and purchased credit card relationships (PCCRs) may be included in capital only to the extent that, in the aggregate, they do not exceed 50 percent of Tier 1 (core) capital.[4] For purposes of calculating Tier 1 (core) capital, all mortgage servicing rights are valued—as PMSRs previously were—at the lesser of 90 percent of fair market value or 100 percent of their book value (net of any valuation allowance). In addition, under the interim rule, the amount of mortgage servicing rights that may be included in tangible equity for purposes of prompt corrective action is the same as that permitted in Tier 1 (core) capital.

The Agencies are adopting this interim rule because they believe that the risk characteristics of OMSRs are similar to those of PMSRs. In view of the subjectivity and uncertainty surrounding the valuation of PMSRs and the consequent risks resulting from a high concentration of these assets, the Agencies previously decided to limit the amount of PMSRs that an institution could include in regulatory capital. Therefore, the Agencies believe that it is consistent to limit OMSRs in the same manner as PMSRs, pending a review of the comments received on this interim rule and the Agencies' resulting determination of the appropriate capital treatment of mortgage servicing rights. This interim capital rule is consistent with the recommendations provided on June 21, 1995, to the Agencies by the FFIEC's Task Force on Supervision.

The Agencies are seeking comment on all aspects of this interim rule. The Agencies also request specific comment on the following:

(1) For regulatory capital purposes, the Agencies have considered PMSRs as intangible assets. This determination was based, in part, on the prior GAAP characterization of this asset. FAS 122 indicates indifference toward any characterization of mortgage servicing rights (both PMSRs and OMSRs) as intangible or tangible assets.

(a) Should mortgage servicing rights be viewed as intangible assets for regulatory capital purposes?

(b) If mortgage servicing rights are considered to be intangible assets for regulatory capital purposes, should they continue to be subject to the regulatory capital limitations previously applied only to PMSRs?

(c) If mortgage servicing rights are considered to be tangible assets for regulatory capital purposes, what regulatory capital limitations, if any, should apply?

(2) How should any deferred tax liability associated with PMSRs and OMSRs be treated when calculating a regulatory capital limit?

(3) When an institution originates mortgage loans and swaps them for mortgage-backed securities, including agency guaranteed mortgage-backed securities, FAS 122 requires the institution to attribute a separate cost basis to the loan and servicing right components of such mortgage-backed securities. What is the appropriate regulatory capital treatment of mortgage servicing rights that are associated with mortgage-backed securities that are

[1] Commercial banks are required to file quarterly Consolidated Reports of Condition and Income (Call Reports) and should report OMSRs and PMSRs in Schedule RC-M (Memoranda), item 6.a., "Mortgage servicing rights" and in Schedule RC (Balance Sheet), item 10, "Intangible assets." Bank holding companies with total consolidated assets of $150 million or more file quarterly Consolidated Financial Statements for Bank Holding Companies (FR Y–9C reports) with the Federal Reserve, and should report OMSRs and PMSRs in Schedule HC—Consolidated Balance Sheet, item 10.a., "Mortgage servicing rights." Savings Associations are required to file quarterly Thrift Financial Reports and should report capitalized OMSRs and PMSRs on Thrift Financial Report Schedule SC, line 640, which is currently labeled "purchased loan servicing rights."

[2] Banking organizations that do not adopt FAS 122 early may not capitalize OMSRs in 1995 and would not reflect the asset on their regulatory reports. In the interim, such institutions should continue to report PMSRs in accordance with the existing Call Report and Thrift Financial Report instructions until they adopt FAS 122 in 1996.

[3] Due to the 50 percent of Tier 1 (core) capital limitation, it is possible that at least some of the OMSRs an institution reports as balance sheet assets for Call Report and Thrift Financial Report purposes may be required to be deducted in computing regulatory capital under this interim rule. For purposes of determining the amount of any OMSRs that would be deducted (or disallowed) under this 50 percent of Tier 1 (core) capital limitation, institutions may choose to reduce their otherwise disallowed OMSRs by the amount of any associated deferred tax liability. Any such deferred tax liability used in this manner would not be available for the institution to use in determining the amount of any net deferred tax assets that may be included in Tier 1 (core) capital for risk-based and leverage capital purposes.

[4] The 25 percent of Tier 1 (core) capital sublimit on PCCRs is not affected by this rulemaking. In addition, all other intangible assets continue to be fully deducted from capital.

acquired in swap transactions and included in an institution's assets?

Regulatory Flexibility Act Analysis

The Agencies do not believe that the adoption of their interim rule will have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because of the pre-FAS 122 accounting treatment of OMSRs, no banking organizations—large or small—currently carry any OMSRs, which are the subject of the interim rule, as assets on their balance sheets or include them in capital. The Agencies' interim rule, in combination with the requirement that institutions adopt FAS 122 for regulatory reporting purposes, allows banking organizations to increase their regulatory capital by including OMSRs in assets and Tier 1 (core) capital. This interim rule would only affect those banking organizations that originate and subsequently sell or securitize mortgage loans but retain the servicing rights. In addition, FAS 122 is to be applied prospectively. As a result, OMSRs will only need to be capitalized for those transactions that occur after the date as of which an institution adopts FAS 122. Moreover, because the risk-based and leverage capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

OCC and OTS Executive Order 12866 Statement

The Comptroller of the Currency and the Director of the OTS have determined that the interim rule described in this notice is not a significant regulatory action under Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act and Regulatory Burden

The Agencies have determined that this interim rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulation that imposes additional requirements on insured depository institutions. The Agencies have found that their interim rule does not impose any additional reporting or recordkeeping burdens. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate. The Agencies have decided that their interim rule should be effective immediately because it provides institutions with information on the regulatory capital treatment for OMSRs that may begin to be reported on the June 30, 1995 Call Report and Thrift Financial Report.

Administrative Procedure Act

Pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553, the Agencies find good cause for issuing this interim rule in advance of the receipt of comments from interested parties and for waiving the 30-day delay of effectiveness provisions of the Administrative Procedures Act. This "good cause" determination is based upon institutions' immediate need to know how to treat OMSRs in computing regulatory capital. This guidance is necessary because the Financial Accounting Standards Board, on May 12, 1995, revised the treatment of OMSRs under generally accepted accounting principles by adopting Statement of Financial Accounting Standard No. 122 (FAS 122), "Accounting for Mortgage Servicing Rights," which institutions may adopt beginning in reports prepared as of June 30, 1995. Under FAS 122, OMSRs will be capitalized and included in assets with corresponding increases to an institution's capital base. Prior to the issuance of FAS 122, OMSRs were not capitalized and not recorded on the balance sheet. This interim rule allows institutions that early adopt FAS 122 in their June 30, 1995, regulatory reports to include OMSRs in assets and regulatory capital, subject to certain limitations.

OCC and OTS Unfunded Mandates Act Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this interim rule, in conjunction with FAS 122, permits OMSRs to be capitalized as balance sheet items, a treatment that was previously only permitted for PMSRs. Under the interim rule, OMSRs will be included in calculating Tier 1 (core) capital for risk-based capital and leverage capital standards subject to the same constraints that are imposed on PMSRs. Thus, no additional cost of $100 million or more, to State, local, or tribal governments or to the private sector will result from this rule. Accordingly, the OCC and the OTS have not prepared a budgetary impact statement nor specifically addressed any regulatory alternatives.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 6

Capital, National banks.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons set out in the joint preamble, the Office of the Comptroller of the Currency amends 12 CFR chapter I as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In part 3, paragraph (c)(2) of § 3.100 is revised to read as follows:

§ 3.100 Capital and surplus.

* * * * *

(c) * * *

(2) Mortgage servicing rights;

* * * * *

3. In appendix A to part 3, paragraph (c)(13) of section 1 is revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions

* * * * *

(c) * * *

(13) *Intangible assets* include mortgage servicing rights, purchased credit card relationships (servicing rights), goodwill, favorable leaseholds, and core deposit value.

* * * * *

4. In appendix A to part 3, paragraphs (c) introductory text, (c)(1), and (c)(3) of section 2 are revised to read as follows:

* * * * *

Section 2. Components of Capital

* * * * *

(c) *Deductions From Capital.* The following items are deducted from the appropriate portion of a national bank's capital base when calculating its risk-based capital ratio:

(1) *Deductions from Tier 1 capital.* The following items are deducted from Tier 1 capital before the Tier 2 portion of the calculation is made:

(i) All goodwill subject to the transition rules contained in section 4(a)(1)(ii) of this appendix A;

(ii) Other intangible assets, except as provided in section 2(c)(2) of this appendix A; and

(iii) Deferred tax assets, except as provided in section 2(c)(3) of this appendix A, that are dependent upon future taxable income, which exceed the lesser of either:

(A) The amount of deferred tax assets that the bank could reasonably expect to realize within one year of the quarter-end Call Report, based on its estimate of future taxable income for that year; or

(B) 10% of Tier 1 capital, net of goodwill and all intangible assets other than mortgage servicing rights and purchased credit card relationships, and before any disallowed deferred tax assets are deducted.

(2) *Qualifying intangible assets.* Subject to the following conditions, mortgage servicing rights (originated and purchased) and purchased credit card relationships need not be deducted from Tier 1 capital:

(i) The total of all intangible assets which are included in Tier 1 capital is limited to 50 percent of Tier 1 capital, of which no more than 25 percent of Tier 1 capital can consist of purchased credit card relationships. Calculation of these limitations must be based on Tier 1 capital net of goodwill and other disallowed intangible assets.

(ii) Each intangible asset which is included in Tier 1 capital must be valued at the lesser of:

(A) 90 percent of the fair market value of the intangible asset, determined in accordance with section 2(c)(2)(iii) of this appendix A; or

(B) 100 percent of the remaining unamortized book value of the intangible asset, determined at least quarterly in accordance with the instructions of the Call Report.

(iii) Banks shall determine the current fair market value of each intangible asset included in Tier 1 capital at least quarterly. The quarterly determination of the current fair market value of the intangible asset must include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates. In determining the current fair market value of the intangible asset, the bank shall apply an appropriate market discount rate to the expected net cash flows of the intangible asset.

* * * * *

PART 6—PROMPT CORRECTIVE ACTION

1. The authority citation for part 6 continues to read as follows:

Authority: 12 U.S.C. 93a, 1831o.

2. In subpart A to part 6, paragraph (g) of § 6.2 is revised to read as follows:

§ 6.2 Definitions.

* * * * *

(g) *Tangible equity* means the amount of Tier 1 capital elements in the OCC's Risk-Based Capital Guidelines (appendix A to part 3 of this chapter) plus the amount of outstanding cumulative perpetual preferred stock (including related surplus) minus all intangible assets except mortgage servicing rights to the extent permitted in Tier 1 capital under section 2(c) in appendix A to part 3 of this chapter.

* * * * *

Dated: July 21, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

For the reasons outlined in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR Chapter II as set forth below.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c) (5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 208.31, paragraph (f) is revised to read as follows:

§ 208.31 Definitions.

* * * * *

(f) *Tangible equity* means the amount of core capital elements in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part), plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets except mortgage servicing rights to the extent that the Board determines that mortgage servicing rights may be included in calculating the bank's tier 1 capital.

* * * * *

3. Appendix A to part 208 is amended by revising section II.B.1.b. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

B. * * *

1. * * *

b. *Other intangible assets.* i. The only types of identifiable intangible assets that may be included in, that is, not deducted from, a bank's capital are readily marketable mortgage servicing rights and purchased credit card relationships, provided that, in the aggregate, the total amount of these assets included in capital does not exceed 50 percent of tier 1 capital. Purchased credit card relationships are subject to a separate sublimit of 25 percent of tier 1 capital.[14]

ii. For purposes of calculating these limitations on mortgage servicing rights and purchased credit card relationships, tier 1 capital is defined as the sum of core capital

[9] [Reserved].

[14] Amounts of mortgage servicing rights and purchased credit card relationships in excess of these limitations, as well as all other identifiable intangible assets, including core deposit intangibles and favorable leaseholds, are to be deducted from a bank's core capital elements in determining tier 1 capital. However, identifiable intangible assets (other than mortgage servicing rights and purchased credit card relationships) acquired on or before February 19, 1992, generally will not be deducted from capital for supervisory purposes, although they will continue to be deducted for applications purposes.

elements, net of goodwill and all identifiable intangible assets other than mortgage servicing rights and purchased credit card relationships, regardless of the date acquired. This method of calculation could result in mortgage servicing rights and purchased credit card relationships being included in capital in an amount greater than 50 percent—or in purchased credit card relationships being included in an amount greater than 25 percent—of the amount of tier 1 capital used to calculate an institution's capital ratios. In such instances, the Federal Reserve may determine that a bank is operating in an unsafe and unsound manner because of over-reliance on intangible assets in tier 1 capital.

iii. Banks must review the book value of all intangible assets at least quarterly and make adjustments to these values as necessary. The fair market value of mortgage servicing rights and purchased credit card relationships also must be determined at least quarterly. The fair market value generally shall be determined by applying an appropriate market discount rate to the expected future net cash flows. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates.

iv. Examiners will review both the book value and the fair market value assigned to these assets, together with supporting documentation, during the examination process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of a bank's intangible assets.

v. The amount of mortgage servicing rights and purchased credit card relationships that a bank may include in capital shall be the lesser of 90 percent of their fair market value, as determined in accordance with this section, or 100 percent of their book value, as adjusted for capital purposes in accordance with the instructions in the commercial bank Consolidated Reports of Condition and Income (Call Reports). If both the application of the limits on mortgage servicing rights and purchased credit card relationships and the adjustment of the balance sheet amount for these intangibles would result in an amount being deducted from capital, the bank would deduct only the greater of the two amounts from its core capital elements in determining tier 1 capital.

vi. The treatment of identifiable intangible assets set forth in this section generally will be used in the calculation of a bank's capital ratios for supervisory and applications purposes. However, in making an overall assessment of a bank's capital adequacy for applications purposes, the Board may, if it deems appropriate, take into account the quality and composition of a bank's capital, together with the quality and value of its tangible and intangible assets.

vii. Consistent with long-standing Board policy, banks experiencing substantial growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets.

2. * * *

* * * * *

4. Appendix A to part 208 is amended by revising section II.B.4. to read as follows:

* * * * *

II. * * *

B. * * *

4. *Deferred tax assets.* The amount of deferred tax assets that are dependent upon future taxable income, net of the valuation allowance for deferred tax assets, that may be included in, that is, not deducted from, a bank's capital may not exceed the lesser of: (i) the amount of these deferred tax assets that the bank is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year,[20] or (ii) 10 percent of tier 1 capital. The reported amount of deferred tax assets, net of any valuation allowance for deferred tax assets, in excess of the lesser of these two amounts is to be deducted from a bank's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than mortgage servicing rights and purchased credit card relationships, before any disallowed deferred tax assets are deducted. There generally is no limit in tier 1 capital on the amount of deferred tax assets that can be realized from taxes paid in prior carryback years or from future reversals of existing taxable temporary differences, but, for banks that have a parent, this may not exceed the amount the bank could reasonably expect its parent to refund.

* * * * *

5. Appendix B to part 208 is amended by revising section II.b. to read as follows:

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

* * * * *

II. * * *

b. A bank's tier 1 leverage ratio is calculated by dividing its tier 1 capital (the numerator of the ratio) by its average total consolidated assets (the denominator of the ratio). The ratio will also be calculated using period-end assets whenever necessary, on a case-by-case basis. For the purpose of this leverage ratio, the definition of tier 1 capital for year-end 1992 as set forth in the risk-based capital guidelines contained in Appendix A of this part will be used.[2] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the bank's Reports of Condition and Income (Call Reports), less goodwill; amounts of mortgage servicing rights and purchased credit card relationships that, in the aggregate, are in excess of 50 percent of tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of tier 1 capital; all other intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of this Appendix A.[3]

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Appendix A to part 225 is amended by revising section II.B.1.b. to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

B. * * *

1. * * *

b. *Other intangible assets.* i. The only types of identifiable intangible assets that may be included in, that is, not deducted from, a organization's capital are readily marketable mortgage servicing rights and purchased credit card relationships, provided that, in the aggregate, the total amount of these assets included in capital does not exceed 50 percent of tier 1 capital. Purchased credit card relationships are subject to a separate sublimit of 25 percent of tier 1 capital.[15]

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[20] To determine the amount of expected deferred tax assets realizable in the next 12 months, an institution should assume that all existing temporary differences fully reverse as of the report date. Projected future taxable income should not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences a bank expects to reverse within the year. Such projections should include the estimated effect of tax planning strategies that the organization expects to implement to realize net operating losses or tax credit carryforwards that would otherwise expire during the year. Institutions do not have to prepare a new 12 month projection each quarter. Rather, on interim report dates, institutions may use the future taxable income projections for their current fiscal year, adjusted for any significant changes that have occurred or are expected to occur.

[2] At the end of 1992, tier 1 capital for state member banks includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, tier 1 capital excludes goodwill; amounts of mortgage servicing rights and purchased credit card relationships that, in the aggregate, exceed 50 percent of tier 1 capital; amounts of purchased credit card relationships that exceed 25 percent of tier 1 capital; all other intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

[3] Deductions from tier 1 capital and other adjustments are discussed more fully in section II.B. in Appendix A of this part.

[15] Amounts of mortgage servicing rights and purchased credit card relationships in excess of these limitations, as well as all other identifiable intangible assets, including core deposit intangibles and favorable leaseholds, are to be deducted from an organization's core capital elements in determining tier 1 capital. However, identifiable intangible assets (other than mortgage servicing rights and purchased credit card relationships) acquired on or before February 19, 1992, generally will not be deducted from capital for supervisory purposes, although they will continue to be deducted for applications purposes.

ii. For purposes of calculating these limitations on mortgage servicing rights and purchased credit card relationships, tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than mortgage servicing rights and purchased credit card relationships, regardless of the date acquired. This method of calculation could result in mortgage servicing rights and purchased credit card relationships being included in capital in an amount greater than 50 percent—or in purchased credit card relationships being included in an amount greater than 25 percent—of the amount of tier 1 capital used to calculate an institution's capital ratios. In such instances, the Federal Reserve may determine that an organization is operating in an unsafe and unsound manner because of overreliance on intangible assets in tier 1 capital.

iii. Bank holding companies must review the book value of all intangible assets at least quarterly and make adjustments to these values as necessary. The fair market value of mortgage servicing rights and purchased credit card relationships also must be determined at least quarterly. The fair market value generally shall be determined by applying an appropriate market discount rate to the expected future net cash flows. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates.

iv. Examiners will review both the book value and the fair market value assigned to these assets, together with supporting documentation, during the inspection process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of an organization's intangible assets.

v. The amount of mortgage servicing rights and purchased credit card relationships that a bank holding company may include in capital shall be the lesser of 90 percent of their fair market value, as determined in accordance with this section, or 100 percent of their book value, as adjusted for capital purposes in accordance with the instructions to the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C Report). If both the application of the limits on mortgage servicing rights and purchased credit card relationships and the adjustment of the balance sheet amount for these intangibles would result in an amount being deducted from capital, the bank holding company would deduct only the greater of the two amounts from its core capital elements in determining tier 1 capital.

vi. The treatment of identifiable intangible assets set forth in this section generally will be used in the calculation of a bank holding company's capital ratios for supervisory and applications purposes. However, in making an overall assessment of an organization's capital adequacy for applications purposes, the Board may, if it deems appropriate, take into account the quality and composition of an organization's capital, together with the quality and value of its tangible and intangible assets.

vii. Consistent with long-standing Board policy, banking organizations experiencing substantial growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets.

2. * * *

* * * * *

3. Appendix A to Part 225 is amended by revising section II.B.4. to read as follows:

* * * * *

II. * * *

B. * * *

4. *Deferred tax assets.* The amount of deferred tax assets that are dependent upon future taxable income, net of the valuation allowance for deferred tax assets, that may be included in, that is, not deducted from, a banking organization's capital may not exceed the lesser of: (i) the amount of these deferred tax assets that the banking organization is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year,[23] or (ii) 10 percent of tier 1 capital. The reported amount of deferred tax assets, net of any valuation allowance for deferred tax assets, in excess of the lesser of these two amounts is to be deducted from a banking organization's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than mortgage servicing rights and purchased credit card relationships, before any disallowed deferred tax assets are deducted. There generally is no limit in tier 1 capital on the amount of deferred tax assets that can be realized from taxes paid in prior carryback years or from future reversals of existing taxable temporary differences.

* * * * *

4. Appendix D to part 225 is amended by revising section II.b. to read as follows:

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

II. * * *

b. A banking organization's tier 1 leverage ratio is calculated by dividing its tier 1 capital (the numerator of the ratio) by its average total consolidated assets (the denominator of the ratio). The ratio will also be calculated using period-end assets whenever necessary, on a case-by-case basis. For the purpose of this leverage ratio, the definition of tier 1 capital for year-end 1992 as set forth in the risk-based capital guidelines contained in Appendix A of this part will be used.[2] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the organization's Consolidated Financial Statements (FR Y–9C Report), less goodwill; amounts of mortgage servicing rights and purchased credit card relationships that, in the aggregate, are in excess of 50 percent of tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of tier 1 capital; all other intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of this Appendix A.[4]

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 26, 1995

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

For the reasons outlined in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends 12 CFR chapter III as set forth below.

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[23] To determine the amount of expected deferred tax assets realizable in the next 12 months, an institution should assume that all existing temporary differences fully reverse as of the report date. Projected future taxable income should not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences a bank holding company expects to reverse within the year. Such projections should include the estimated effect of tax planning strategies that the organization expects to implement to realize net operating losses or tax credit carryforwards that would otherwise expire during the year. Institutions do not have to prepare a new 12 month projection each quarter. Rather, on interim report dates, institutions may use the future taxable income projections for their current fiscal year, adjusted for any significant changes that have occurred or are expected to occur.

[3] At the end of 1992, tier 1 capital for banking organizations includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of tier 1 capital.) In addition, as a general matter, tier 1 capital excludes goodwill; amounts of mortgage servicing rights and purchased credit card relationships that, in the aggregate, exceed 50 percent of tier 1 capital; amounts of purchased credit card relationships that exceed 25 percent of tier 1 capital; all other intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

[4] Deductions from tier 1 capital and other adjustments are discussed more fully in section II.B. in Appendix A of this part.

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In § 325.2, paragraph (n) is amended by removing the word "purchased" each place it appears and paragraph (s) is revised to read as follows:

§ 325.2 Definitions.

* * * * *

(s) *Tangible equity* means the amount of core capital elements as defined in Section I.A.1. of the FDIC's Statement of Policy on Risk-Based Capital (appendix A to this Part 325), plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets except mortgage servicing rights to the extent that the FDIC determines pursuant to § 325.5(f) of this part that mortgage servicing rights may be included in calculating the bank's Tier 1 capital.

* * * * *

§ 325.5 [Amended]

3. Section 325.5 is amended by removing the words "purchased mortgage servicing rights" and adding, in their place, the words "mortgage servicing rights" in paragraphs (f), (g)(2)(i)(B), and (g)(5).

Appendix A to Part 325 [Amended]

4. In Appendix A to part 325, remove the words "purchased mortgage servicing rights" in footnote 2 to "Table I—Definition of Qualifying Capital" and add, in their place, the words "mortgage servicing rights".

Appendix B to Part 325 [Amended]

5. In Appendix B to part 325, section IV.A.:

a. Remove the words "purchased mortgage servicing rights" and add, in their place, the words "mortgage servicing rights" each place they appear in footnote 1 and in the last sentence of the last paragraph; and

b. Remove the words "purchased servicing intangibles" and add, in their place, the words "servicing intangibles" in the last sentence of the last paragraph.

By order of the Board of Directors.

Dated at Washington, DC, this 21st day of July, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

For the reasons outlined in the joint preamble, the Office of Thrift Supervision hereby amends 12 CFR chapter V as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 565—PROMPT CORRECTIVE ACTION

1. The authority citation for part 565 continues to read as follows:

Authority: 12 U.S.C. 1831o.

2. Section 565.2 is amended by revising paragraph (f) to read as follows:

§ 565.2 Definitions

* * * * *

(f) *Tangible equity* means the amount of a savings association's core capital as defined in part 567 of this subchapter plus the amount of its outstanding cumulative perpetual preferred stock (including related surplus), minus intangible assets as defined in § 567.1(m) of this subchapter and mortgage servicing rights not includable in core capital pursuant to § 567.12 of this subchapter.

* * * * *

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by revising paragraph (m) to read as follows:

§ 567.1 Definitions.

* * * * *

(m) *Intangible assets.* The term *intangible assets* means assets referred to as intangible assets in authoritative literature on generally accepted accounting principles. These intangible assets include, but are not limited to, goodwill, favorable leaseholds, core deposit premiums and purchased credit card relationships. Mortgage servicing rights (either originated or purchased) are not intangible assets under this definition.

* * * * *

3. Section 567.5 is amended by revising paragraphs (a)(2) heading, (a)(2)(i) and (a)(2)(ii) to read as follows:

§ 567.5 Components of capital.

(a) * * *

(2) *Deductions from core capital.* (i) Intangible assets, as defined in § 567.1(m) of this part, are deducted from assets and capital in computing core capital, except as otherwise provided by § 567.12 of this part.

(ii) Mortgage servicing rights (both originated and purchased) that are not includable in tangible and core capital pursuant to § 567.12 of this part are deducted from assets and capital in computing core capital.

* * * * *

4. Section 567.6 is amended by revising paragraphs (a)(1)(iv)(L) and (a)(1)(iv)(M) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(iv) * * *

(L) Mortgage servicing rights and intangible assets includable in core capital pursuant to § 567.12 of this part;

(M) Excess servicing receivables;

* * * * *

5. Section 567.9 is amended by revising paragraph (c)(1) to read as follows:

§ 567.9 Tangible capital requirement.

* * * * *

(c) * * *

(1) Intangible assets, as defined in § 567.1(m) of this part, and mortgage servicing rights (purchased or originated) not includable in core and tangible capital pursuant to § 567.12 of this part.

* * * * *

6. Section 567.12 is amended by revising the section heading and paragraphs (a) through (f) to read as follows:

§ 567.12 Qualifying intangible assets and mortgage servicing rights.

(a) *Scope.* This section prescribes the maximum amount of qualifying intangible assets, as defined in § 567.1(m) of this part, and mortgage servicing rights that savings associations may include in calculating tangible and core capital.

(b) *Definition. Qualifying intangible assets and mortgage servicing rights* means purchased credit card relationships and mortgage servicing rights (both originated and purchased). Mortgage servicing rights (both originated and purchased) may be included (that is, not deducted) in computing core and tangible capital. Purchased credit card relationships may be included in computing core capital, but must be deducted in computing tangible capital. These qualifying intangible assets and mortgage servicing rights may be included in capital only in accordance with the limitations and restrictions set forth in this section. Intangible assets, as defined in § 567.1(m) of this part, other than purchased credit card relationships and core deposit intangibles grandfathered by paragraph (g)(3) of this section, must be deducted in computing tangible and core capital.

(c) *Market valuations.* The OTS reserves the authority to require any savings association to perform an independent market valuation of qualifying intangible assets and mortgage servicing rights on a case-by-case basis or through the issuance of policy guidance. An independent market valuation, if required, shall be conducted in accordance with any policy guidance issued by the OTS. A required valuation shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or attrition rates. The valuation shall determine the current fair market value of the qualifying intangible assets and mortgage servicing rights by applying an appropriate market discount rate to the net cash flows expected to be generated from the qualifying intangible assets and mortgage servicing rights. This independent market valuation may be conducted by an independent valuation expert evaluating the reasonableness of the internal calculations and assumptions used by the association in conducting its internal analysis. The association shall calculate an estimated fair market value for the qualifying intangible assets and mortgage servicing rights at least quarterly regardless of whether an independent valuation expert is required to perform an independent market valuation.

(d) *Value limitation.* For purposes of calculating core capital under this part (but not for financial statement purposes), qualifying intangible assets and mortgage servicing rights must be valued at the lesser of:

(1) 90 percent of their fair market value determined in accordance with paragraph (c) of this section; or

(2) 100 percent of their remaining unamortized book value determined in accordance with the instructions for the Thrift Financial Report.

(e) *Core capital limitation.*—(1) *Aggregate limit.* The maximum aggregate amount of qualifying intangible assets and mortgage servicing rights that may be included in core capital shall be limited to the *lesser* of:

(i) 50 percent of the amount of core capital computed before the deduction of any disallowed qualifying intangible assets or mortgage servicing rights; or

(ii) The amount of qualifying intangible assets and mortgage servicing rights determined in accordance with paragraph (d) of this section.

(2) *Reduction by deferred tax liability.* Associations may elect to reduce the amount of their disallowed (i.e., not includable in capital) originated mortgage servicing rights exceeding the 50 percent aggregate limit by the amount of any associated deferred tax liability.

(3) *Sublimit for purchased credit card relationships.* In addition to the aggregate limitation on qualifying intangible assets and mortgage servicing rights set forth in paragraph (e)(1) of this section, a sublimit shall apply to purchased credit card relationships. The maximum allowable amount of purchased credit card relationships shall be limited to the lesser of:

(i) 25 percent of the amount of core capital computed before the deduction of any disallowed qualifying intangible assets or mortgage servicing rights; or

(ii) the amount of purchased credit card relationships determined in accordance with paragraph (d) of this section.

(f) *Tangible capital limitation.* The maximum amount of mortgage servicing rights that may be included in tangible capital shall be the same amount includable in core capital in accordance with the limitations set by paragraph (e)(1) of this section.

* * * * *

Dated: July 25, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–18772 Filed 7–31–95; 8:45 am]

BILLING CODES 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

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federal register

Tuesday
August 1, 1995

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 25, 26, and 202

Mortgagee Review Board; Proceedings Before a Hearing Officer; Approval of Lending Institutions and Mortgagees; Technical Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 25, 26, and 202

[Docket No. FR–3065–F–04]

RIN 2501–AB24

Mortgagee Review Board; Proceedings Before a Hearing Officer; Approval of Lending Institutions and Mortgagees; Technical Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; technical amendments.

SUMMARY: This rule changes the Department's regulations governing sanctions imposed by the Mortgagee Review Board. The rule also makes conforming changes to the regulations concerning HUD's hearing officers and approval of Title I lenders, consistent with the revisions herein and in the recent revisions to 24 CFR part 24. The changes to the Mortgagee Review Board actions are intended to follow more closely the statutory provisions set forth at 12 U.S.C. 1708(c). These revisions are necessary to comply with the President's directive to streamline agency operations throughout the executive branch. The revisions are also an element in the Government reinvention process at the Department.

EFFECTIVE DATE: August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Emmett N. Roden, Assistant General Counsel for Administrative Proceedings, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10251, Washington, DC 20410, telephone (202) 708–2350. The telephone number for the hearing impaired (TDD) is (202) 708–9300. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 202(c) of the National Housing Act (12 U.S.C. 1708(c)) established the Mortgagee Review Board (the Board). Section 202(c)(4) directs the Board to "hold a hearing on the record" concerning certain sanctions it has taken against a mortgagee, if the mortgagee so requests within 30 days notice of the Board's action. However, the Department's regulations have delegated the Board's authority to hold hearings to hearing officers (administrative law judges and Board of Contract Appeals judges). These proceedings have proven extremely time-consuming and expensive. Accordingly, this rule provides for the Board to delegate its hearing authority to a hearing official who will conduct informal hearings under stated time limitations, thereby streamlining the hearing process. The rule further provides that the hearing official may, at his or her discretion, refer matters to an administrative law judge or Board of Contract Appeals judge, or to another "independent" official for findings of fact. The term "independent" means that the other official will not be a member of the Board or employed within an office acting as an advisor to the Board as that term is described at § 25.4(b).

The rule also implements the 1992 amendments to section [illegible]2 (Pub. L. 102–550, approved October 28, 1992). These amendments limited the duration of a suspension issued by the Board to one year, unless extended for a period not longer than six months to protect the public interest, or unless extended with the mortgagee's agreement. The amendments also clarified that the term "mortgagee" includes a lender or loan correspondent approved under Title I of the National Housing Act.

In addition, the final rule reinstates a provision of 24 CFR 25.9 that the Department inadvertently deleted by a September 9, 1993 revision to the rule (58 FR 47379). This section (former § 25.9(x)) cited as grounds for an administrative action the failure by a mortgagee to remit, or timely remit, mortgage insurance premiums, loan insurance charges, late charges, or interest penalties to the Department. The final rule revises the current § 25.9(x) and moves the miscellaneous offense provision at § 25.9(w) to a more logical position at the end of § 25.9. The rule also restores provisions limiting discovery in § 25.8 that the Department inadvertently deleted in the proposed rule.

The rule also makes conforming changes to the Department's regulations at 24 CFR parts 26 and 202, governing hearing officers and Title I lenders, respectively, consistent with these revisions to the Board's regulations and revisions to 24 CFR part 24, published in the **Federal Register** June 26, 1995 (60 FR 33037, 33046).

Discussion of Public Comment

On December 20, 1994 (59 FR 65700) the Department published a proposed rule amending 24 CFR parts 25 and 26 of the Code of Federal Regulations. One comment was received, from the Administrative Conference of the United States (ACUS).

Comment: The commenter urged the Department to follow procedures similar to those proposed in Recommendation 95–2, "Debarment and Suspension from Federal Programs," adopted by ACUS on January 18, 1995. ACUS Recommendation item II recommends that cases involving disputed issues of material fact be referred to administrative law judges, military judges, administrative judges of boards of contract appeals, or similarly independent hearing officers for hearings and preparation of (1) findings of fact, (2) a recommended decision, or (3) an initial decision, subject to agency appeal. Item II of the ACUS Recommendations also recommends that debarring officials be senior agency officials who are guaranteed sufficient independence to provide due process, and that such officials ensure that information used as the basis for a sanction appear in the administrative record of the decision.

Response: It should be noted that Board sanctions are substantially different from suspensions and debarments. Unlike those sanctions, which have Government-wide effect, the most severe Board sanction involves withdrawal of a mortgagee's license, previously granted by the Department, to participate in the insured mortgage programs of the Federal Housing Administration (FHA). Board sanctions are imposed only after the subject mortgagees have received advance notice of the allegations against them and an opportunity to respond to those allegations. A majority of the Board, composed of several of the Department's highest officials, must vote to impose a sanction. Considerable independence is thus statutorily guaranteed with respect to every Board action.

Furthermore, the governing statute provides, at section 202(c)(4)(B), that upon receipt of a request for a hearing "the Board shall hold a hearing on the record * * *." Accordingly, a hearing official must be designated by the Board, and all hearings must be recorded.

However, in response to this comment and to reflect comparable revisions to the Department's final rule on suspensions and debarments, published in the **Federal Register** on June 26, 1995, this rule was revised to adopt procedures similar to the first suggested hearing method in ACUS Recommendation Item II. Thus, a hearing official designated by the Board shall conduct hearings on Board sanctions, and may, at his or her discretion, refer factual disputes to an administrative law judge, member of the Department's Board of Contract Appeals, or other independent official for findings of fact.

Findings and Other Matters

National Environmental Policy Act

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the Department's regulations, the policies and procedures contained in this rule relate only to administrative decisions, which do not constitute development decisions and do not affect the physical condition of a project area or building. Therefore, this rule is categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule implements statutory authority intended to protect the Department's programs from abusive practices, but it will have no adverse or disproportionate economic impact on small businesses.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being. No significant change in existing policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns. Therefore, the rule is not subject to review under the Order.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the final rule is not subject to review under the Order.

Semiannual Agenda

This rule was listed as item 1379 in the Department's Semiannual Agenda published on May 8, 1995 (60 FR 23368, 23369) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

24 CFR Part 26

Administrative practice and procedure.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 25, 26, and 202 are amended as follows:

PART 25—MORTGAGEE REVIEW BOARD

1. The authority citation for part 25 is revised to read as follows:

Authority: 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715b and 1735(f)–14; 42 U.S.C. 3535(d).

2. Section 25.2 is revised to read as follows:

§ 25.2 Establishment of Board.

The Mortgagee Review Board (the Board) was established in the Federal Housing Administration, which is in the Office of the Assistant Secretary for Housing—Federal Housing Commissioner, by section 202(c)(1) of the National Housing Act (12 U.S.C. 1708(c)(1)), as added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989). Except as limited by this part, the Board shall exercise all of the functions of the Secretary with respect to administrative actions against mortgagees and lenders and such other functions as are provided in this part. The Board may, in its discretion, approve the initiation of a suspension or debarment action against a mortgagee or lender by any Suspending or Debarring Official under part 24 of this subtitle A. The Board shall have all powers necessary and incident to the performance of these functions. The Board may redelegate its authority to review submissions and conduct hearings under § 25.8. The Board may also redelegate its authority to impose administrative sanctions on the grounds specified in §§ 25.9 (e), (h), and (u), and to take all other nondiscretionary acts. With respect to actions taken against Title I lenders and loan correspondents, the Board may redelegate its authority to take administrative actions for failure to remain in compliance with the requirements for approval in 24 CFR 202.3(j), 202.4(a), 202.5 (a) and (c), and 202.6 (a) and (e).

3. In § 25.3, definitions for "*Hearing officer*" and for "*Hearing official*" are added in alphabetical order, to read as follows:

§ 25.3 Definitions.

* * * * *

Hearing officer. An Administrative Law Judge or Board of Contract Appeals judge authorized by the Secretary, or by the Secretary's designee, to issue findings of fact or other appropriate findings under § 25.8(d)(2).

Hearing official. An official designated by the Board to conduct hearings under § 25.8.

* * * * *

4. Section 25.5 is amended by revising paragraphs (c)(1), (c)(2), and (d)(4)(iii), to read as follows:

§ 25.5 Administrative actions.

* * * * *

(c) *Suspension*—(1) *General.* The Board may issue an order temporarily suspending a mortgagee's HUD/FHA approval if there exists adequate evidence of violation(s) under § 25.9 and continuation of the mortgagee's HUD/FHA approval, pending or at the completion of any audit, investigation, or other review, or such administrative or other legal proceedings as may ensue, would not be in the public interest or in the best interests of the Department. Suspension shall be based upon adequate evidence.

(2) *Duration.* A suspension shall last for a specified period of time, but not less than 6 months and generally not more than 1 year. The Board may extend the suspension for an additional 6 months if it determines that the extension is in the public interest. These time limits may also be extended upon the voluntary written agreement of the mortgagee.

* * * * *

(d) * * *

(4) * * *

(iii) Upon receipt of the Board's decision under § 25.8(e).

* * * * *

5. Section 25.7 is revised to read as follows:

§ 25.7 Notice of administrative action.

Whenever the Board takes an action to issue a letter of reprimand, to place a mortgagee on probation, or to suspend or withdraw a mortgagee's approval, the Board shall promptly notify the mortgagee in writing of the

determination. Except for a letter of reprimand, the notice shall describe the nature and duration of the administrative action, shall specifically state the violations, and shall set forth the findings of the Board. The notice shall inform the mortgagee of its right to a hearing, pursuant to § 25.8, regarding the administrative action (except for a letter of reprimand) and of the manner and time in which to request a hearing. A supplemental notice may be issued in the discretion of the Board to add or modify the reasons for the action.

6. Section 25.8 is revised to read as follows:

§ 25.8 Hearings and hearing request.

(a) *Hearing request.* A mortgagee that is issued a probation, suspension, or withdrawal action is entitled to a hearing on the record. The mortgagee shall submit its request for a hearing within 30 days of receiving the Board's notice of administrative action. The request shall be addressed to the Board Docket Clerk, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. The request shall specifically respond to the violations set forth in the notice of administrative action. If the mortgagee fails to request a hearing within 30 days after receiving the notice of administrative action, the Board's action shall become final.

(b) *Procedural rules.* The hearing official shall hold a de novo hearing within 30 days of HUD's receipt of the mortgagee's request, unless the mortgagee requests a later hearing date. The mortgagee or its representative shall be afforded an opportunity to appear, submit documentary evidence, present witnesses, and confront any witness the agency presents. The parties shall not be allowed to present members of the Board as witnesses. At the mortgagee's request, a transcribed record of the hearing shall be made available at cost to the mortgagee.

(c) *Hearing location.* The hearing shall generally be held in Washington, D.C. However, upon a showing of undue hardship or other cause, the hearing official may, in his or her discretion, order the hearing to be held in a location other than Washington, D.C.

(d) *Hearing official's recommendation.* (1) The hearing official shall issue written findings and a recommended decision to the Board within 45 days after the conclusion of the hearing, unless the hearing official extends this period for good cause or refers a matter for findings of fact or other appropriate findings pursuant to paragraph (d)(2)(i) of this section. The findings and recommendation shall be based upon the facts as found, together with any information and argument submitted by the parties and any other information in the administrative record.

(2) *Referral to a hearing officer or other independent official.* (i) The hearing official may, at his or her discretion, refer disputed material facts to a hearing officer or other independent official for findings of fact. The hearing official may also, at his or her discretion, refer other issues to a hearing officer or other independent official for appropriate findings. The hearing official shall provide the parties with notice of the referral. The hearing official may reject the findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(ii) The provisions of part 26 of this subtitle A shall be applicable to proceedings before a hearing officer, with the following limitations:

(A) No appeal to the Secretary may be taken under §§ 26.24 through 26.26 of this subtitle A with respect to any order or decision by the hearing officer.

(B) Discovery shall be limited to exclude requests for answers to interrogatories, requests for admissions, and production of documents that either do not pertain to the appealing mortgagee, or pertain to reviews or audits by the Department or administrative actions by the Board against mortgagees other than the appealing mortgagee. Members of the Board shall not be subject to deposition, nor shall they be required to testify at any hearing.

(iii) Proceedings before a hearing officer or other independent official shall commence within 45 days after referral by the hearing official, unless the parties agree to an extension of time. The hearing officer or other independent official shall issue the requested findings of fact or other appropriate findings to the hearing official within 30 days after the conclusion of such proceedings. The time limitations of this paragraph may be extended upon issuance of a written notice describing good cause for such extension.

(iv) The hearing official shall provide a recommended decision to the Board within 15 days after the findings are issued.

(v) [Reserved].

(e) *Decision by the Board.* The Board shall issue its decision within 15 days after the hearing official issues the recommended decision. The Board's decision shall be mailed to the mortgagee, and shall serve as the final agency action concerning the mortgagee.

7. Section 25.9 is amended by revising paragraphs (i), (w), (x), and (bb), and by adding paragraph (ee), to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(i) Failure or refusal of an approved mortgagee to comply with an order of the Board, the Secretary, the hearing official, hearing officer or other independent official to whom matters are referred under § 25.8(d)(2).

* * * * *

(w) Failure to remit, or timely remit, mortgage insurance premiums, loan insurance charges, late charges, or interest penalties to the Department;

(x) Failure to submit a report required under 24 CFR § 202.19 within the time determined by the Commissioner, or to commence or complete a plan for corrective action under that section within the time agreed upon by the Commissioner;

* * * * *

(bb) Breach by the mortgagee of a fiduciary duty owed by it to any person as defined in § 25.3, including GNMA and the holder of any mortgage-backed security guaranteed by GNMA, with respect to an insured loan or mortgage transaction.

* * * * *

(ee) Any other reason the Board or the Secretary determines to be so serious as to justify an administrative sanction.

§ 25.12 [Amended]

8. In § 25.12, paragraph (a) is amended by removing the words "Hearing Officer," from the fifth sentence, and by adding in their place the words "hearing official," and by removing the last sentence of the paragraph.

9. Section 25.16 is revised to read as follows:

§ 25.16 Prohibition against modification of Board orders.

No hearing official, hearing officer, or other independent official before whom proceedings are conducted under § 25.8 shall modify or otherwise disturb in any way an order or notice by the Board.

§ 25.17 [Removed and reserved]

10. Section 25.17 is removed and reserved.

PART 26—PROCEEDINGS BEFORE A HEARING OFFICER

11. The authority citation for part 26 is revised to read as follows:

Authority: 42 U.S.C. 3535(d).

12. Section 26.1 is amended by revising the second sentence to read as follows:

§ 26.1 Purpose.

* * * These rules of procedure apply to hearings with respect to determinations by the Multifamily Participation Review Committee pursuant to 24 CFR part 200, subpart H, to hearings conducted pursuant to referrals by debarring or suspending officials under 24 CFR part 24, and to hearings conducted pursuant to referrals by a hearing official under 24 CFR part 25, unless such regulations at 24 CFR parts 24, 25, or 200, provide otherwise.

* * *

13. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

14. In § 202.9, paragraph (a) is revised, and paragraphs (c) and (d) are removed, to read as follows:

§ 202.9 Administrative actions.

(a) *General.* Administrative actions that may be taken against Title I lenders are set forth in § 25.5 of this title. Civil money penalties may also be imposed against Title I lenders in accordance with § 25.13 of this title and 24 CFR part 30. For purposes of this section, the term "lender" shall also include a loan correspondent as defined in § 202.2(b).

* * * * *

Dated: July 24, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–18790 Filed 7–31–95; 8:45 am]

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H.R. 1944/P.L. 104–19

Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995 (July 27, 1995; 109 Stat. 194; 61 pages)

(The List of Public Laws that printed on July 28, 1995, is being corrected by replacing "1955" with "1995" in the title above.)

S. 523/P.L. 104–20

To amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes. (July 28, 1995; 109 Stat. 255; 2 pages)

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 60, No. 148
Wednesday, August 2, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–95–302]

Peaches; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Peaches by changing the method in which peaches are sized. The revision will bring the standards into conformity with current cultural, harvesting and marketing practices by revising the definition of "diameter" from the shortest distance to the greatest distance. The Agricultural Marketing Service (AMS), in cooperation with industry, and other interested parties develops and improves standards of quality, condition, quantity, grade, and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090–6456, (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. The revision of U.S. Standards for Grades of Peaches will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The proposed rule, United States Standards for Grades of Peaches, was published in the **Federal Register** on March 3, 1995, (60 FR 11918).

The National Peach Council (NPC), with the support of the Georgia Peach Council, New Jersey Peach Promotion Council, Inc., and the South Carolina Peach Council and Promotion Board, Inc., requested that the USDA revise the United States Standards for Grades of Peaches, which were last revised in 1952. The NPC requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices. The NPC contends that due to new improved varieties, that changes to the current standards are necessary. Currently, peaches are sized based on the shortest diameter, which requires the use of a caliper or slotted sizing ring. This method was adopted several years ago when most peaches were oblong and heavily sutured. Industry research has demonstrated that today's varieties are generally much more round and more uniform in shape than older varieties. The shape of peaches is similar to nectarines. Nectarines are sized by using the greatest diameter of the nectarine, which allows fruit to be sized using a sizing ring. Therefore, in order to create uniformity in the marketplace, peaches should be sized on the same basis as nectarines, by using the greatest dimension measured at right angles to a line from stem to blossom end of the fruit, using a sizing ring.

The 60-day comment period on the proposed rule ended May 2, 1995, and a total of twenty-six comments were received from growers, shippers, and receivers. All comments were in favor of the proposal in its entirety, although concerns were raised. In addition, one comment was received from the Agricultural Research Service (ARS).

A copy of the proposed rule was provided to the ARS for helping identifying studies, data collection or other information relevant to the possible effect of the proposed revision on pesticide use. ARS reported that they were unable to find much information on the subject. The information that was found by ARS proved not to be relevant.

Twenty-six comments were in favor of revising the United States Standards for Grades of Peaches by changing the method in which peaches are sized from shortest diameter using a caliper or slotted sizing ring to the greatest diameter using a sizing ring. It is believed that this revision will create uniformity within the marketplace.

One comment from a receivers association went on to state that they were concerned that the proposed change would allow shippers to market smaller peaches than those that are marketed under the current method of sizing peaches. They did not believe that shipment of smaller peaches would be beneficial to the receivers, wholesalers, retailers or consumers. Another comment from a State association stated that "it is estimated that fruit sized with a ring will yield approximately four fruit per pound while fruit labeled the same size but measured with a caliper will yield only three fruit per pound." Although this change in sizing method may yield slightly more fruit per pound, this change is insignificant when considering the ease of determining size by the new method.

Sizing machinery used by packers/shippers has never measured peaches based on a slotted sizing method. Most automated sizing methods have generally been based on a ring sizing

VerDate

method. As a result, peach industry packers/shippers had to estimate the size of the final pack. Ultimately, this meant using trial and error methods to yield properly sized fruit. This change should result in a more uniform and accurately sized pack, and at the same time alleviate the unnecessary time spent by these individuals by eliminating this trial and error method.

The revision will affect peaches that are sized to a minimum diameter, which are mostly grown on the east coast and some in the Midwest. This will not affect peaches grown on the west coast as they are sized based on 7 CFR part 917, consisting of a weight-count system.

AMS develops and improves standards of quality, condition, grade, and packaging in order to facilitate efficient marketing. The provisions of this final rule are the same as those in the proposed rule.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In part 51, § 51.1216(c) is revised to read as follows:

Subpart—United States Standards for Grades of Peaches

§ 51.1216 Size requirements.

* * * * *

(c) *Diameter* means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.

* * * * *

Dated: July 24, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–18904 Filed 8–1–95; 8:45 am]

BILLING CODE 3410–02–P

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

Official/Unofficial Weighing Service

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Direct final rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations and the President's Regulatory Review Initiative, the Federal Grain Inspection Service (FGIS), of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending portions of Part 800, General Regulations under the United States Grain Standards Act, as amended (USGSA) to allow official agencies to provide both official and unofficial weighing within their assigned area of responsibility but not at the same facility. This action will make official Class X and Class Y weighing services more readily available at a lower cost to the grain industry at nonexport locations.

DATES: This rule will be effective on October 2, 1995. Unless we receive written adverse comments or written notice of intent to submit adverse comments on or before September 1, 1995.

ADDRESSES: Please send any adverse comments or notice of intent to submit adverse comments to George Wollman, GIPSA–FGIS, USDA, Room 0623–S, P.O. Box 96454, Washington, D.C. 20090–6454; FAX (202) 720–4628. All comments received will be made available for public inspection at the above address during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

George Wollman, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This amended rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

James R. Baker, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities. Most users of the official inspection and weighing services and those persons that perform those services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Further, the standards are applied equally to all entities.

Information Collection and Record Keeping Requirement

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and Record keeping requirements in Part 800 have been approved previously by OMB and assigned OMB No. 0580–0013.

Background

Enactment of the United States Grain Standards Act of 1976, as amended, required FGIS to establish a national weighting program for gain. Regulations under the USGSA prohibit designated agencies or official personnel from providing official services if they provide similar unofficial services. Designated agencies are agencies granted authority under the USGSA to provide either official inspection service, or Class X or Class Y weighing services or both, at locations other than export port locations. A large portion (88%) of the designated agencies are designated for inspection services only. The reason is that before 1976 most grain inspection agencies were already providing weighing as an accessory service to grain inspection. The agencies were affiliated with and supervised by the then existing weighting and inspection bureaus under the direction of the Association of American railroads, local grain exchanges, boards of trade, and various State programs. After the FGIS weighting programs started, the weighing being performed by the grain inspection agencies became unofficial weighing. Most agencies continued their unofficial weighing and applied for inspection designations only.

Since 1976 many inspection and weighing bureaus, boards of trade, and the Association of American Railroads have ceased providing supervision of this unofficial service. Because of the decreasing availability of supervision caused by the lack of supervising entities, the need for more access to Class X or Class Y weighing exists. If allowed to provide both types of service,

many more agencies who are now designated for inspection only could also provide official weighing service. Designated agencies can provide Class X and Class Y weighing at a much lower cost than FGIS field offices due to their proximity to the grain facilities.

FGIS initially did not allow agencies to provide both types of service because confusion may have resulted on the part of the grain industry and agency licensees on which type of service the agency was providing.

FGIS has reevaluated this policy because of the distinct differences in the services. Primary differences between official and unofficial weighing are: (1) Official weighing requires an officially tested scale; (2) FGIS has established procedures to maintain proper operation and accurate weighing; (3) FGIS provides an official grain weight certificate certifying the accuracy of weighing. This rule continues to separate official and unofficial weighing service by not allowing agencies to provide both types of service at the same facility.

This rule does not change the requirements for inspection services. FGIS proposes to change only the weighing provisions of the regulations.

We are publishing this rule without a prior proposal because we regularly update the regulations and view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or suggest the rule should be changed. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final, confirming that it is effective on the date indicated in this document.

Direct Final Action

List of Subjects in 7 CFR Part 800

For reasons set forth in the preamble, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

2. Section 800.76(a) is revised as follows:

§ 800.76 Prohibited Services; restricted services.

(a) *Prohibited services.* No agency shall perform any inspection function or provide any inspection service on the basis of unofficial standards, procedures, factors, or criteria if the agency is designated or authorized to perform the service or provide the service on an official basis under the Act. No agency shall perform official and unofficial weighing on the same mode of conveyance at the same facility.

* * * * *

3. Section 800.186(c)(3) introductory text is revised to read as follows:

§ 800.186 Standards of conduct.

(c) * * *

(3) Excluding the unofficial weighing described in § 800.76(a) engage in any outside (unofficial) work or activity that:

* * * * *

4. Section 800.195(f)(5)(ii) is revised to read as follows:

§ 800.195 Delegations.

(f) * * *

(5) * * *

(ii) Unofficial activities. Excluding the unofficial weighing described in § 800.76(a) delegated State or personnel employed by the State shall not perform any unofficial service that is the same as any of the official services covered by the delegation.

* * * * *

6. Section 800.196(g)(6)(ii) is revised to read as follows:

§ 800.196 Designations.

(g) * * *

(6) * * *

(ii) Unofficial activities. Excluding the unofficial weighing described in § 800.76(a) the agency or personnel employed by the agency shall not perform any unofficial service that is the same as the official services covered by the designation.

* * * * *

Dated: July 25, 1995.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 95–18905 Filed 8–1–95; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–09–AD; Amendment 39–9326; AD 95–16–06]

Airworthiness Directives; Jetstream Aircraft Limited HP137 Mk1 and Jetstream Series 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 83–05–01, which currently requires the following on Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream series 200 airplanes: repetitively inspecting the wing lower skin panels at the main gear bay cutouts for loose or damaged rivets and cracks, replacing loose or damaged rivets, and repairing any cracked wing lower skin panel. The Federal Aviation Administration's policy on commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require reinforcing the wing lower skin at both the landing gear cutouts at Wing Station (WS) 115 and the undercarriage bay cutouts at WS 60 and WS 90, as terminating action for the repetitive inspections that are currently required by AD 83–05–01. The actions specified in the proposed AD are intended to prevent wing damage caused by cracks or loose or damaged rivets in the wing lower skin panels, which, if not detected and corrected, could result in structural damage to the point of failure.

DATES: Effective September 26, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager, Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc.,

Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–09–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Marvin R. Nuss, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to JAL HP137 Mk1 and Jetstream series 200 airplanes was published in the **Federal Register** on March 2, 1995 (60 FR 11637). The action proposed to supersede AD 83–05–01 with a new AD that would (1) retain the requirements of repetitively inspecting the wing lower skin panels at the main gear bay cutouts for loose or damaged rivets and cracks, replacing loose or damaged rivets, and repairing any cracked wing lower skin panel; and (2) require reinforcing the wing lower skin (incorporation of Modifications Nos. 5221 and 5146) as terminating action for the repetitive inspections. The proposed inspection would be accomplished in accordance with Jetstream Service Bulletin (SB) No. 7/3, dated October 1980. Modification 5221 would be accomplished in accordance with Jetstream SB 57–JM5221, dated September 28, 1984, and Modification 5146 would be accomplished in accordance with Part 2 of Modification No. 5146 Ref 7/5146, dated October 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of this AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 10 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 332 work hours per airplane to accomplish the required modifications (172 work hours for Modification 5221 and 160 work hours for Modification 5146), and that the average labor rate is approximately $60 an hour. Parts cost approximately $12,000 per airplane ($2,400 for Modification 5221 and $9,600 for Modification 5146). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $319,200 ($31,920 per airplane).

All 10 of the affected airplanes are HP137 Mk1 airplanes; there are no Jetstream series 200 airplanes registered in the United States, but they are type certificated for operation in the United States. According to FAA records, none of these HP137 Mk1 airplanes are in operation. JAL no longer stocks Modification No. 5221, but can develop modification kits within three months after order. Since there are no airplanes currently in operation, the cost impact of this AD is narrowed to only those owners/operators returning their airplane to operation.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 83–05–01, Amendment 39–4573, and adding a new AD to read as follows:

95–16–06. Jetstream Aircraft Limited: Amendment 39–9326; Docket No. 95–CE–09–AD; Supersedes AD 83–05–01, Amendment 39–4573;

Applicability: HP137 Mk1 and Jetstream series 200 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent wing damage caused by cracks or loose or damaged rivets in the wing lower skin panels, which, if not detected and corrected, could result in structural damage to the point of failure, accomplish the following:

(a) Upon the accumulation of 6,500 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (compliance with superseded AD 83–05–01), and thereafter at intervals not to exceed 100 hours TIS until the modifications required by paragraphs (b)(1) and (b)(2) of this AD are incorporated, accomplish the following:

(1) Inspect the wing lower skin between Wing Station (WS) 60 and WS 115 for loose or damaged rivets or cracks in accordance with section 3. ACTION, paragraphs (a) through (e), of Jetstream Service Bulletin (SB) No. 7/3, dated October 1980.

(2) Replace any loose or damaged rivets and repair any cracked wing lower skin panel in accordance with section 3. ACTION, paragraphs (f) through (k), of Jetstream SB No. 7/3, dated October 1980.

(b) Upon the accumulation of 10,000 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following:

(1) Reinforce the wing lower skin at the landing gear bay cutouts at WS 115 in accordance with Jetstream SB 57–JM5221, dated September 28, 1984. This is referred to as Modification 5221.

(2) Reinforce the wing lower skin at undercarriage bay cutouts between WS 60 and WS 90 in accordance with Part 2 of Modification No. 5146 Ref. 7/5146, dated October 1984.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of compliance time that provides an equivalent level of safety, may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(e) The inspections and replacements required by this AD shall be done in accordance with Jetstream Service Bulletin No. 7/3, dated October 1980. The reinforcements required by this AD shall be done in accordance with Jetstream Service Bulletin 57–JM5221, dated September 28, 1984, or Modification No. 5146 Ref. 7/5146, dated October 1984, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager, Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9326) supersedes AD 83–05–01, Amendment 39–4573.

(g) This amendment (39–9326) becomes effective on September 26, 1995.

Issued in Kansas City, Missouri, on July 24, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18712 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–123–AD; Amendment 39–9324; AD 95–16–05]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires an inspection to identify defective lower drag links on the nose landing gear (NLG), and replacement of defective drag links with new parts. This amendment is prompted by a report indicating that a potential failure condition of the lower drag link on the NLG could occur due to improper de-embrittlement treatment of the drag link during manufacturing. The actions specified in this AD are intended to prevent collapse of the NLG due to failure of the lower drag link as a result of improper de-embrittlement treatment of the drag link.

DATES: Effective August 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 1995.

Comments for inclusion in the Rules Docket must be received on or before October 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–123–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA received a report indicating that a potential failure condition exists relative to the lower drag link (assembly part number ACG7208–507 and detail part number ACG7208–17) of the nose landing gear (NLG) installed on McDonnell Douglas Model MD–11 series airplanes. This condition is the result of improper de-embrittlement treatment of a certain batch of drag links during manufacturing. The discrepant drag links are identifiable by serial number. Failure of the lower drag link on the NLG, if not corrected, could result in collapse of the NLG.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–32A058, dated June 30, 1995, which describes procedures for a one-time visual inspection to identify defective lower drag links on the NLG, and replacement of defective drag links with new parts. The inspection involves identifying the serial number of the lower drag links. Replacement of any defective drag link found will minimize the possibility of failure of the lower drag link and subsequent collapse of the NLG.

Since an unsafe condition has been identified that is likely to exist or develop on other Model MD–11 series airplanes of the same type design, this AD is being issued to prevent collapse of the NLG due to failure of the lower drag link on the NLG.

This AD requires a one-time visual inspection to identify defective lower drag links on the NLG, and replacement of defective drag links with new parts. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

This AD also requires that operators submit a report of inspection results to the FAA.

This AD requires that the inspection be accomplished within 120 days. A compliance time of 120 days is usually sufficient to provide for a brief period for public comment before the adoption of a final rule. In this AD, however, that compliance time was selected because

of a short-term problem with availability of sufficient replacement parts if defective parts are found; a shorter compliance time might have resulted in the unnecessary removal of airplanes from service pending delivery of replacement parts. Nevertheless, the FAA has determined that immediate adoption of this rule is necessary in this case because of the importance of initiating the required inspection and eliminating the discrepant parts from the fleet as soon as possible.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–123–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–16–05 McDonnell Douglas: Amendment 39–9324. Docket 95–NM–123–AD.

Applicability: Model MD–11 series airplanes, manufacturer's fuselage numbers 0447 through 0527 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the nose landing gear (NLG) due to failure of the lower drag link on the NLG, accomplish the following:

(a) Within 120 days after the effective date of this AD, perform a visual inspection to identify the serial number of the lower drag link (assembly part number ACG7208–507 and detail part number ACG7208–17) on the NLG, in accordance with McDonnell Douglas Alert Service Bulletin MD11–32A058, dated June 30, 1995. Prior to further flight, replace any lower drag link having a serial number identified in Figure 1 of the alert service bulletin with a new part having a serial number other than those identified in Figure 1 of the alert service bulletin. Perform the replacement in accordance with the alert service bulletin.

(b) Within 10 days after accomplishing the inspection required by this AD, report inspection results, positive or negative, to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(c) After the effective date of this AD, no person shall install on the NLG of any airplane a lower drag link (assembly part number ACG7208–507 and detail part number ACG7208–17) having a serial number identified in Figure 1 of McDonnell Douglas Alert Service Bulletin MD11–32A058, dated June 30, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–32A058, dated June 30, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 17, 1995.

Issued in Renton, Washington, on July 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18586 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ANM–11]

Amendment of Class E Airspace; Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Salt Lake City, Utah, Class E airspace. This action is necessary to accommodate a new instrument approach procedure at Salt Lake City International Airport, Salt Lake City, Utah.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–11, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On May 9, 1995, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) to amend the Salt Lake City, Utah, Class E airspace area (60 FR 24595). This action is necessary to accommodate a new instrument approach procedure at Salt Lake City International Airport, Salt Lake City, Utah. The area will be depicted on aeronautical charts for pilot reference.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. The coordinates for this ajrspace docket are based on North American Datum 83. Class E airspace areas extended upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Salt Lake City, Utah. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulation action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * * *

ANM UT E5 Salt Lake City, UT [Revised]

Salt Lake City International Airport, UT
(Lat. 40°47'13" N, long. 111°58'08" W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 41°00'00" N, long. 111°45'03" W, thence south along long. 111°45'03" W, to lat. 40°22'30" N, thence southeast to lat. 40°10'20" N, long. 111°35'03" W, thence southwest to lat. 40°03'30" N, long. 111°48'33" W, thence northwest to lat. 40°43'00" N, long. 112°22'03" W, thence north along long. 112°22'03" W, to lat. 41°00'00" N, thence east along lat. 41°00'00" N, to the point of beginning; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 41°00'00" N, on the east by long. 111°25'33" W, on the south by lat. 39°56'30" N, to long. 111°55'03" W, thence south along long. 111°55'03" W, to lat. 39°48'00" N, long. 111°55'03" W, thence south along long. 111°55'03" W, to lat. 39°48'00" N, long. 111°55'03" W, thence south to lat. 39°04'00" N, long. 112°27'30" W, thence northwest to lat. 39°48'00" N, long. 112°50'00" W, thence west via lat. 39°48'00" N, to the east edge of Restricted Area R–6402A, and on the west by the east edge of Restricted Area R–6402A, Restricted Area R–6402B and Restricted Area R–6406B and long. 113°00'03" W; that airspace of Salt Lake City extending upward from 11,000 feet MSL bounded on the northwest by the southeast edge of V–32, on the southeast by the northwest edge of V–235, on the southwest by the northeast edge of V–101 and on the east by long. 111°25'33" W; excluding that airspace within the Evanston, WY, 1,200-foot Class E airspace area; that airspace southeast of Salt Lake City extending upward from 13,500 feet MSL bounded on the northeast by the southwest edge of V–484, on the south by the north edge of V–200 and on the west by long. 111°25'33" W; excluding the portion within Restricted Area R–6403 and the Bonneville, UT Class E airspace area.

* * * * * *

Issued in Seattle, Washington, on July 5, 1995.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–18917 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 204

[Docket No. 950203036–5180–02; I.D. 070695A]

NOAA Information Collection Requirements; Update and Consolidation

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS consolidates and updates Office of Management and Budget (OMB) control numbers for NOAA information collection requirements and makes minor corrections to the accompanying text. The intent is to update, simplify, and shorten the regulations, while still making this information available to the public.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, NMFS, 301/713–2344.

SUPPLEMENTARY INFORMATION: Part 902 of title 15 CFR and part 204 of title 50 CFR display control numbers assigned to NOAA and NMFS information collection requirements, respectively, by OMB, pursuant to the Paperwork Reduction Act. These parts fulfill the requirement that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement.

This final rule, technical amendment, consolidates the list of OMB control numbers associated with NOAA information collection requirements contained in regulations appearing in CFR titles 15 and 50, Because NMFS is a component of NOAA, these parts logically can be combined to shorten the regulations and to ease use by the public. All of the collection-of-information requirements consolidated in 15 CFR 902.1(b) have previously been submitted to OMB for approval during implementation of regulations appearing in the individual parts of titles 15 and 50; this final rule does not involve any new reporting or recordkeeping requirements. In addition, the list of OMB approval numbers is corrected and updated to reflect the currently valid OMB approvals, and the text of § 902.1(a) is updated to reflect the Paperwork Reduction Act of 1995.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

Because this rule only consolidates existing information for purposes of public information, it is strictly administrative in nature; no useful purpose would be served by providing prior notice and opportunity for comment on this rule. Accordingly, under 5 U.S.C. 553(b)(B), it is unnecessary to provide such notice and opportunity for comment. Also, because this rule is only administrative in nature and is not a "substantive rule" under 5 U.S.C. 553(d), it will be immediately effective upon publication.

This rule is exempt from review under E.O. 12866.

List of Subjects in 15 CFR Part 902 and 50 CFR Part 204

Reporting and recordkeeping requirements.

Dated: July 25, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, NOAA.

For the reasons set out in the preamble, under the authority of 44 U.S.C. 3501 *et seq.*, 50 CFR chapter II and 15 CFR chapter IX are amended as follows:

15 CFR Chapter IX

1. 15 CFR part 902 is revised to read as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

Authority: 44 U.S.C. 3501 *et seq.*

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays the control numbers assigned to information collection requirements of the National Oceanic and Atmospheric Administration (NOAA) by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA). NOAA intends that this part comply with the requirements of section 3507(c)(B)(i) of the PRA, which requires that agencies inventory and display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
15 CFR	
Part 908	–0025.
Part 911	–0157.
917.11	–0008, –0019 and –0034.
917.22	–0008, –0019 and –0034.
917.30(b)	–0008, –0019 and –0034.
917.41	–0008, –0019 and –0034.
917.43(c)	–0119.
918.7	–0147.
Part 921, subpart B	–0121.
Part 923	–0119.
924.6	–0141.
928.3	–0119.
929.10	–0141.
935.9	–0141.
936.8	–0141.
937.8	–0141.
938.8	–0141.
941.11	–0141.
942.8	–0141.
943.10	–0141.
944.9	–0141.
Part 960, subpart B	–0174.
Part 970	–0145.
Part 971	–0170.
Part 981	–0144.
50 CFR	
216.22	–0178.
216.23	–0179.
216.24(b)	–0083.
216.24(c)	–0083.
216.24(d)	–0083, –0084, –0099 and –0217.
216.24(e)	–0040.
216.31	–0084.
216.33	–0084.
216.45	–0084.
222.11–2	–0078.
222.11–8	–0079.
222.12–7	–0078.
222.12–8	–0078.
222.22	–0230.
222.23	–0084.
227.72	–0230 and –0267.
228.4	–0151.
228.6	–0151.
228.14	–0151.
228.25	–0151.
228.37	–0151.
228.55	–0151.
229.5	–0224.
229.6	–0225.
229.7	–0225.
255.4	–0012.
259.30	–0090.
259.35	–0041.
260.103	–0266.
280.10	–0148.
280.50	–0202.
280.51	–0239.
280.53	–0040.
282.3	–0218.
282.5	–0218.
285.7	–0202.
285.8	–0202.
285.21	–0202.
285.27	–0247.
285.28	–0202.
285.29	–0239.
285.52	–0202.
285.53	–0168.
285.54	–0239.
285.55	–0239.
285.201	–0040.
296.5	–0082.
299.3	–0228.
299.4	–0228.
299.5	–0228.
380.4	–0194.
380.5	–0194.
380.6	–0194.
380.8	–0194.
380.20	–0194.
380.24	–0194.
380.28	–0194.
601.37	–0192.
611.3	–0089.
611.4	–0075.
611.6	–0075.
611.8	–0075.
611.9	–0075.
611.12	–0075.
611.50	–0075.
611.61	–0075.
611.70	–0075.
611.80	–0075.
611.81	–0075.
611.82	–0075.
611.90	–0075.
611.92	–0075.
611.93	–0075.
611.94	–0075.
625.4	–0202.
625.5	–0202.
625.6	–0018, –0212 and –0229.
625.20	–0202.
625.27	–0202.
628.4	–0202.
630.4	–0205.
630.5	–0013 and –0016.
630.10	–0016.
630.31	–0277.
638.4	–0205.
638.5	–0016.
638.27	–0016.
640.4	–0205.
641.4	–0205.
641.5	–0013 and –0016.
642.4	–0205.
642.5	–0013 and –0016.
644.24	–0216.
645.4	–0205.
645.6	–0205.
646.4	–0205.
646.5	–0013 and –0016.
646.6	–0205.
646.10	–0262.
649.4	–0202.
649.5	–0202.
649.6	–0202.
650.4	–0202.
650.5	–0202.
650.6	–0202.
650.7	–0018, –0212 and –0229.
650.24	–0202.
650.25	–0202.
650.26	–0202.
650.28	–0202.
651.4	–0202.
651.5	–0202.
651.6	–0202.
651.7	–0018, –0212 and –0229.
651.20	–0202.
651.21	–0202.
651.22	–0202.
651.28	–0202.
651.29	–0202.
652.4	–0202.
652.5	–0202.
652.6	–0212 and –0229.
652.9	–0202.
652.20	–0238.
652.24	–0240.
653.5	–0013.
655.4	–0202.
658.5	–0013.
661.4	–0222.
661.20	–0222.
663.4	–0271.
663.10	–0203.
663.11	–0203.
663.33	–0203.
669.6	–0205.
672.4	–0206.
672.5	–0213.
672.6	–0206.
674.4	–0206.
675.4	–0206.
675.5	–0213.
675.6	–0206.
675.27	–0269.
676.3	–0206.
676.4	–0206.
676.5	–0206.
676.13	–0272.
676.14	–0272.
676.17	–0272.
676.20	–0272.
676.21	–0272.
676.25	–0269.
677.4	–0206.
677.6	–0280.
677.10	–0280.
678.4	–0205.
678.5	–0013, –0016 and –0229.
678.10	–0016.
680.4	–0204.
680.5	–0214.
680.10	–0204.
681.4	–0204.
681.5	–0214.
681.10	–0214.
681.24	–0214.
681.25	–0214.
681.30	–0204.
683.4	–0214.
683.9	–0204 and –0214.
683.21	–0204.
683.25	–0204.
683.27	–0214.
683.29	–0214.
685.4	–0214.
685.9	–0204.
685.11	–0214.
685.13	–0214.
685.14	–0214.
685.15	–0204.
585.24	–0214.
695.4	–0205.
695.5	–0016.

50 CFR Chapter II

PART 204—[REMOVED]

2. 50 CFR part 204 is removed.

[FR Doc. 95–18638 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–22–P

15 CFR Part 905

[Docket No. 950104002–5188–02; I.D. 061394C]

RIN 0648–AE40

Use In Enforcement Proceedings of Information Collected by Voluntary Fishery Data Collectors

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary), through NOAA, publishes this final rule restricting the use of information collected by voluntary fishery data collectors (VFDC). This rule limits the extent to which such information can be used in civil and criminal enforcement proceedings conducted pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). In implementing these regulations, NOAA seeks to encourage the use of VFDCs by the fishing industry, while protecting the necessary use of observer information by law enforcement personnel.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Joel La Bissonniere, (301) 427–2202.

SUPPLEMENTARY INFORMATION: Section 303(f) of the Magnuson Act calls upon

the Secretary to issue regulations that restrict, in civil and criminal enforcement proceedings conducted under the Magnuson Act, MMPA, and ESA, the use of information collected by VFDCs for conservation and management purposes while aboard a vessel.

On March 3, 1995, NOAA published a proposed rule in the **Federal Register** (60 FR 11947) implementing this statutory mandate. The proposed rule encouraged industry participation in voluntary observer programs by limiting the risk of prosecution based upon information collected by a VFDC. The proposed rule also protected essential law enforcement activities by allowing the use of VFDC information in limited circumstances. With this proposed rule, NOAA sought to balance two equally important methods of conserving and managing living marine resources: The use of observer data for scientific purposes and for compliance monitoring.

Under the proposed rule, information collected by a VFDC may not initially be introduced as evidence by the government against any consenting owner that is a party to an enforcement proceeding. By contrast, any party other than the government may introduce such information, presumably for purposes of establishing innocence. Once introduced, however, any party including the government may introduce all other information collected by the VFDC.

The proposed rule provided two exceptions to these general restrictions. First, the restrictions do not apply to the use of independent evidence derived from information collected by a VFDC. Second, the restrictions do not apply in any enforcement proceeding alleging the assault, intimidation, or harassment of any person, or the impairment or interference with the duties of a VFDC.

Comments and Responses

Comments on this proposed rule were invited until May 2, 1995. Two organizations responded: The Center for Marine Conservation (CMC); and the Manomet Observatory for Conservation and Sciences (Manomet).

Comment: Manomet believes that the restrictions outlined in the proposed rule will not adequately encourage industry participation with voluntary observer programs. Rather, industry participation would be enhanced if NOAA prohibited the use, in any prosecution against a consenting owner, of information collected by a VFDC.

Response: A total prohibition on the use of VFDC information is inappropriate for several reasons. First, a total prohibition is contrary to the plain language of the statute. Section 303(f) of the Magnuson Act calls for regulations that restrict the use of VFDC information in enforcement proceedings. The statute does not call for a total prohibition on the use of VFDC information.

Second, a total prohibition is inconsistent with the larger goals established by Congress. All three statutes seek to manage and conserve living marine resources through the acquisition of scientific data and through effective enforcement. Historically, observers have played a critical role in facilitating both goals. A total prohibition ignores the essential role played by enforcement. By restricting the use of VFDC information, NOAA seeks to balance these important management tools, providing industry with an incentive to carry voluntary observers, while protecting the government's ability to use such information in very limited circumstances.

Third, a total prohibition is constitutionally suspect. In certain instances, information collected by a VFDC may establish a party's innocence. Denying a party the right to use VFDC information in a criminal proceeding might run counter to a party's right to compulsory process under the Sixth Amendment of the U.S. Constitution.

Comment: Manomet is opposed to the use of VFDC information for investigative purposes. In a somewhat related comment, CMC supports the use of independent evidence derived from information collected by VFDCs.

Response: Consistent with section 303(f) of the Magnuson Act, these regulations only govern the use of VFDC information in civil and criminal enforcement proceedings. They do not control the use of VFDC information for other investigative purposes. Information obtained by VFDCs may be used for investigative purposes, provided that it is accessible to enforcement personnel.

These regulations, however, do not expand enforcement's authority to access information collected by VFDCs. Rather, access to information collected by VFDCs remains subject to existing statutory, regulatory and internal agency provisions that govern access to various categories of information collected by the government.

NOAA supports the use, in enforcement proceedings, of independent evidence derived from information collected by VFDCs. Absent this exception, prosecutors might be denied use of relevant evidence, wholly unrelated to the purposes of part 905, simply because the evidence was acquired through information collected by a VFDC.

Comment: Manomet believes that information collected by a VFDC should be admissible if a VFDC, stationed aboard one vessel, observes a violation that is committed aboard another vessel.

Response: NOAA agrees with this comment. Under these regulations, information collected by a VFDC may not be introduced by the government against any consenting party to an enforcement proceeding. A consenting party is defined to include only the owner, operator, or crewmember of a vessel carrying a VFDC.

Comment: Manomet believes that NOAA should clarify which observer programs are entitled to the evidentiary protections afforded by these regulations. Some uncertainty remains since some programs that are mandatory in nature, are operated on a voluntary basis. With such programs, confusion exists as to whether observers are stationed on a voluntary or mandatory basis.

Response: Pursuant to section 303(f) of the Magnuson Act, NOAA must implement regulations restricting the use of observer information, when the observer stationed aboard a vessel is not required by the Magnuson Act, MMPA, ESA, or implementing regulations. Consistent with this mandate, these evidentiary restrictions only apply when the observer is stationed aboard a vessel under a purely voluntary scheme. These restrictions do not apply to mandatory programs that are operated on a voluntary basis.

Comment: Manomet supports the government's ability to use information collected by a VFDC in any enforcement proceeding that alleges the assault, intimidation, or harassment of an observer.

Response: NOAA agrees with this comment. In fact, these evidentiary restrictions do not apply in any enforcement proceeding that alleges the assault, intimidation, or harassment of any person, including a VFDC. This expansive language is premised upon the view that these restrictions seek to reduce the risk of prosecution for fishing-related violations. They are not designed to shield misconduct unrelated to fishing activities.

Changes From the Proposed Rule

The language of this final rule is identical to the language contained in the proposed rule that was published on March 3, 1995.

Classification

This action has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published along with the proposed rule. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 905

Fisheries, Statistics.

Dated: July 26, 1995.

Terry D. Garcia,

General Counsel, National Oceanic and Atmospheric Administration.

For the reasons set out in the preamble, 15 CFR part 905 is added to read as follows:

PART 905—USE IN ENFORCEMENT PROCEEDINGS OF INFORMATION COLLECTED BY VOLUNTARY FISHERY DATA COLLECTORS

Sec.
905.1 Scope.
905.2 Definitions.
905.3 Access to information.
905.4 Use of information.
905.5 Exceptions.

Authority: 16 U.S.C. 1853(f).

§ 905.1 Scope.

This part applies to the use, in enforcement proceedings conducted pursuant to the Magnuson Act, the MMPA, and the ESA, of information collected by voluntary fishery data collectors.

§ 905.2 Definitions.

When used in this part:

Consenting owner means the owner, operator, or crewmember of a vessel carrying a voluntary fishery data collector.

Enforcement proceeding means any judicial or administrative trial or hearing, initiated for the purpose of imposing any civil or criminal penalty authorized under the Magnuson Act, MMPA, or ESA, including but not limited to, any proceeding initiated to: Impose a monetary penalty; modify, sanction, suspend or revoke a lease, license or permit; secure forfeiture of seized property; or incarcerate an individual.

ESA means the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations.

Information means all observations, data, statistics, photographs, film, or recordings collected by a voluntary fishery data collector for conservation and management purposes, as defined by the Magnuson Act, MMPA, or ESA, while onboard the vessel of a consenting owner.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*, and implementing regulations.

MMPA means the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and implementing regulations.

Secretary means the Secretary of Commerce, the Secretary of the Interior, their chosen designees, or any other Federal agency authorized to enforce the provisions of the Magnuson Act, MMPA, or ESA.

Vessel means any vessel as defined at 16 U.S.C. 1802(31).

Voluntary fishery data collector means:

(1) Any person, including an observer or a sea sampler;

(2) Placed aboard a vessel by the Secretary;

(3) For the purpose of collecting information; and

(4) Whose presence aboard that vessel is not required by the Secretary pursuant to provisions of the Magnuson Act, MMPA, or ESA, or their implementing regulations.

§ 905.3 Access to information.

Information collected by a voluntary fishery data collector:

(a) Is subject to disclosure to both the Secretary and the public, to the extent required or authorized by law; and

(b) Is subject to discovery by any party to an enforcement proceeding, to the extent required or authorized by law.

§ 905.4 Use of information.

(a) Except as provided for in paragraph (b) of this section, information collected by a voluntary fishery data collector may not be introduced by the Secretary as evidence against any consenting owner that is a party to an enforcement proceeding.

(b) Provided that all applicable evidentiary requirements are satisfied:

(1) Information collected by a voluntary fishery data collector may be introduced in an enforcement proceeding by any party except the Secretary;

(2) If information is introduced pursuant to paragraph (b)(1) of this section, all information collected by a voluntary fishery data collector may be introduced by any other party, including the Secretary.

(c) Independent evidence derived from information collected by a voluntary fishery data collector may be introduced by any party, including the Secretary, in an enforcement proceeding.

§ 905.5 Exceptions.

The provisions of this part shall not apply in any enforcement proceeding against a consenting owner that alleges the actual or attempted:

(a) Assault, intimidation, or harassment (including sexual harassment) of any person; or

(b) Impairment or interference with the duties of a voluntary fishery data collector.

[FR Doc. 95–18899 Filed 8–1–95; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM94–14–001]

Nuclear Plant Decommissioning Trust Fund Guidelines; Order Granting Rehearing for Purpose of Further Consideration and Granting Limited Stay of Certain Portions of Final Rule

Issued July 27, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order granting rehearing for purpose of further consideration and granting limited stay of certain provisions of final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting rehearing for the purpose of further considering the matters that parties have raised in requests for rehearing and clarification and is staying certain provisions of the Final Rule. The provisions that the Commission is staying involve the requirements that: Public utilities create a separate fund for Commission-jurisdictional Fund collections; and Fund investment managers have a net worth of at least $100 million. The grant of rehearing for the purpose of further consideration and the stay of these provisions will afford the Commission time to consider the merits of the parties' requests.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph C. Lynch (Legal Information), Federal Energy Regulatory Commission, Office of the General

Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, Telephone: (202) 208–2128

James K. Guest (Accounting Information), Office of Chief Accountant, 825 North Capitol Street NE., Washington, D.C. 20426, Telephone: (202) 219–2602.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3401, at 941 North Capitol Street NE., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington, D.C. 20426.

[Docket No. RM94–14–001]

Nuclear Plant Decommissioning Trust Fund Guidelines; Order Granting Rehearing for Purpose of Further Consideration and Granting Limited Stay of Certain Portions of Final Rule

Issued July 27, 1995.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

On June 16, 1995, the Commission issued a Final Rule in *Nuclear Plant Decommissioning Trust Fund Guidelines*,[1] setting forth requirements for the formation, organization and purpose of nuclear plant decommissioning trust funds (Fund) and for Fund investments. The Commission has received motions for stay and/or requests for rehearing and for clarification from: a group of investment management firms and trust companies; a group of public utility companies; Strong Capital Management, Inc.; Commonwealth Edison Company; Indiana Michigan Power Company; Maine Yankee Atomic Power Company; New England Public Power Nuclear Customers; and Edison Electric Institute.

In the absence of Commission action within 30 days, the requests for rehearing would be deemed to have been denied. 18 CFR 385.713. In order to allow sufficient time for due consideration of the matters raised, we will grant rehearing for the limited purpose of further consideration.

A number of the parties request that the Commission stay the following provisions of the Final Rule while the requests for rehearing are pending:

1. The requirement that public utilities must establish a separate nuclear decommissioning trust fund for Commission-jurisdictional Fund collections; and

2. The requirement that a Fund investment manager must have a net worth of at least $100 million.[2]

In acting on stay requests, the Commission applies the standard set forth in the Administrative Procedure Act,[3] *i.e.*, the stay will be granted if the Commission finds that "justice so requires."[4] In this instance, we will grant a stay of the two challenged provisions of the Final Rule so that we may further consider them while the requests for rehearing are pending.

The remaining provisions of the Final Rule will go into effect on July 31, 1995.

The Commission orders:

(A) Rehearing is hereby granted for the limited purpose of further consideration.

(B) The following note is added to the end of § 35.32 (18 CFR 35.32):

Note: The following provisions of this section are stayed as of July 31, 1995:

1. The requirements in 18 CFR 35.32(a)(1) and (f) that public utilities must establish a separate nuclear decommissioning trust fund for Commission-jurisdictional Fund collections.

2. The requirement in 18 CFR 35.32(a)(4) (the words "and any other Fiduciary") that a Fund investment manager must have a net worth of at least $100 million.

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19034 Filed 7–28–95; 3:37 pm]

BILLING CODE 6717–01–P

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18 CFR Part 284

[Docket No. RM93–4–008; Order No. 563–E]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued July 27, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order modifying capacity release data sets.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order making changes to its capacity release data sets and Electronic Data Interchange implementation guide in response to a filing by the Electronic Bulletin Board Working Group. The Commission's order revises its "Standardized Data Sets and Communication Protocols," available at the Commission's Public Reference and Files Maintenance Branch.

EFFECTIVE DATE: Pipelines must implement the new requirements by October 25, 1995.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 208–1283

Brooks Carter, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 501–8145.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington D.C. 20426.

Order Modifying Capacity Release Data Sets

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

On June 29, 1995, the Electronic Bulletin Board (EBB) Working Group submitted a consensus proposal to modify the capacity release data sets adopted by the Commission in Order No. 563.[1] The filing also contained proposed revisions to the Electronic Data Interchange (EDI) implementation guide relating to these changes. The approved data sets and implementation guide are included in a document entitled "Standardized Data Sets and Communication Protocols," available at the Commission's Public Reference and Files Maintenance Branch.

The Working Group requests that the changes become effective 90 days after a Commission order to provide sufficient implementation time. The Working Group, through a filing made on May 11, 1995, also provided notification that, by consensus agreement, it intends to transfer future responsibility for maintenance of the capacity release data sets and for the PI GRID™ Common Code Database to the Gas Industry Standards Board.

Pursuant to the process adopted by the Commission to make modifications to the data sets,[2] public notice of the June 29, 1995 filing was issued on July 3, 1995, with comments due by July 12, 1995.

Natural Gas Clearinghouse (NGC), a member of the Working Group, filed a comment stating that the field entitled discount indicator needs to be clarified. The discount indicator is a mandatory "yes/no" field where:

"Y" signifies that the rates associated with the capacity being released include rates discounted by transporter which could result in additional charges to the bidder if other than the Gas transaction points used to describe the capacity are utilized, and "N" or blank, signifies that no discounts apply.

NGC states that this field was accepted at its behest to reflect the Commission's decision in *ANR*,[3] under which a replacement shipper may be assessed charges in excess of its bid if it uses alternate receipt or delivery points.

NGC contends that, after the Working Group filed the data sets, an ambiguity became apparent. It is concerned that parties that were not a part of the Working Group process may interpret this provision to mean that the field would be coded as "yes" whenever a shipper is releasing capacity on which it pays discounted rates. NGC maintains that it and the Working Group's intent was that the field be coded "yes" only when the replacement shipper would be exposed to a higher rate for the use of alternate points. NGC requests clarification of this point and also recommends revision to the description of the field to better reflect this intent.[4]

The Commission accepts the data sets and EDI implementation guide, and will grant the clarification and accept the proposed language revision requested by NGC. This clarification will help ensure that the discount indicator field is coded in a consistent manner so that replacement shippers can rely on the information provided.

In *El Paso*[5] and *ANR*,[6] the Commission explained that when a replacement shipper obtains capacity that the pipeline sold to the releasing shipper at a discount rate, the replacement shipper may be subject to additional charges for using alternate receipt or delivery points.[7] The replacement shipper is subject to additional charges only when the releasing shipper includes a specific condition in the release obligating the replacement shipper to pay the additional charges resulting from its use of alternate points. Absent an express condition, the replacement shipper pays the rate established by its bid and the releasing shipper is required to pay the differential between the discount rate and the maximum rate.

In line with this policy, the Commission clarifies that the discount indicator is to be coded "yes" only when the replacement shipper could be subject to additional charges for changing points. This clarification will ensure that replacement shippers receive consistent and correct information about their potential exposure to additional charges. The language revision suggested by NGC provides a better reflection of this intent than the version proposed by the Working Group and, therefore, will be adopted.

Pipelines will be required to implement the new fields within 90 days of the date of this order. The "Standardized Data Sets and Communication Protocols" will be modified to include the new fields and will be made available at the Commission's Public Reference and Files Maintenance Branch.

The Commission Orders

(A) The data sets and implementation guide are accepted with the revision discussed in the body of this order.

(B) Pipelines must implement the requirements of this order within 90 days of the date of the order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18957 Filed 8–1–95; 8:45 am]

BILLING CODE 6717–01–P

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[1] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[2] Order No. 563–A, III FERC Stats. & Regs. Preambles at 31,036–37.

[3] ANR Pipeline Company, 66 FERC ¶ 61,340, at 62,130–32 (1994).

[4] Specifically, NGC recommends the field be reworded to state:

"Y" signifies that the rates associated with the capacity being released include rates discounted by transporter which *that* could result in additional charges to the bidder if other than the Gas transaction points used to describe the capacity are utilized, and "N" or blank, signifies that no discounts *such additional charges could* apply.

NGC states the revised definition should be included in both the "description of field" and the "data type and explanation" columns.

[5] El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,991 (1993).

[6] ANR Pipeline Company, 66 FERC ¶ 61,340, at 62,130–32 (1994).

[7] In general, when the pipeline has sold capacity at a discount, the pipeline is entitled to collect the maximum rate when shippers change to alternate points (unless the pipeline has agreed by contract that the discounted rate applies to all points).

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–206B]

Safety Standards for Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; correcting amendment.

SUMMARY: Negotiated rulemaking is currently underway to develop a proposed revision of OSHA's standards for steel erection in subpart R of part 1926. That proposal is expected to include fall protection requirements for employees performing steel erection work. OSHA has concluded that the Agency's recently revised general requirements for fall protection (subpart M of part 1926) should be amended at this time to clarify that they do not apply to any steel erection activities. Therefore, OSHA is withdrawing amendments to subpart E which have not yet become effective and is amending certain provisions of subpart M of part 1926 in order to maintain the fall protection requirements for steel erection that were in effect before the issuance of revised subpart M.

EFFECTIVE DATE: This document is effective on August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION:

I. Background

On August 9, 1994, the Occupational Safety and Health Administration (OSHA) issued a final rule on Fall Protection in the Construction Industry, 29 CFR part 1926, subpart M (59 FR 40672), which became effective, except as described below, on February 6, 1995. With respect to steel erection activities, the new subpart M established the duty to provide fall protection for employees engaged in steel erection in structures other than buildings (revised §§ 1926.500(a)(2)(iii)), and 1926.501(b)) and established the fall protection systems criteria and training requirements for employees engaged in all steel erection work (revised §§ 1926.500(a)(2)(iii), (a)(3), (a)(4), 1926.502, and 1926.503).

On October 7, 1994, five steel erection companies petitioned OSHA for an administrative stay of final subpart M to the extent the standard applies to steel erection activities. They argued that OSHA had not given fair notice that subpart M would apply to the steel erection industry at all, and that, in consequence, they did not have the opportunity to comment on this issue.

After reviewing the rulemaking record in light of petitioner's fair notice claims, OSHA agreed that the petitioners and other interested persons did not receive adequate notice of OSHA's intention that some steel erection activities would be covered by revised subpart M. Because of the notice deficiency, OSHA recognized that the rulemaking record was incomplete with respect to steel erection and that revised subpart M was not a final rule to the extent it applied to steel erection.

Accordingly, OSHA granted the request for an administrative stay and delayed the effective date of revisions to subpart M and subpart E, to the extent they applied to steel erection, until August 6, 1995 (60 FR 5131, January 26, 1995). OSHA explained in the January 1995 notice that it intended to reopen the subpart M record for supplemental comments concerning subpart M coverage of certain steel erection work. See 60 FR 5131.

For construction activity other than steel erection, revised subpart M and supporting amendments to subparts E, H, N, P, Q, and V became effective on February 6, 1995.

At the time OSHA granted the petitioners' request for an administrative stay and delayed the effective date of revised subpart M, a negotiated rulemaking committee was in the process of developing a proposal to revise 29 CFR part 1926, subpart R. Subpart R currently applies to steel erection of buildings. The Steel Erection Negotiated Rulemaking Advisory Committee, SENRAC, was expected to issue a proposal in June 1995 which would, among other things, expand subpart R's scope. In order to avoid overlap or conflict between two rulemakings concerning steel erection fall hazards, OSHA decided to wait to reopen subpart M for additional comment concerning coverage of steel erection until after SENRAC's June proposal made clear which steel erection activities would remain unregulated by subpart R. Accordingly, OSHA delayed the effective date of revisions to subpart E and subpart M purporting to apply to steel erection for six months, or until August 6, 1995 (60 FR 5131, January 26, 1995).

To date, SENRAC has not decided which steel structures will be subject to subpart R's fall protection requirements. Accordingly, OSHA has granted SENRAC additional time to develop a proposal to revise subpart R. In light of these developments, further extending the administrative stay of subpart M would prolong indefinitely the time in which the text of the standard does not reflect the standard's actual scope. OSHA has decided therefore that subpart M should be amended at this time to accurately reflect that it does not cover steel erection and that subpart E should be amended so that the generic fall protection provisions that have applied to steel erection continue in effect.

OSHA intends, after the SENRAC proposal is issued and the scope of the subpart R revision rulemaking is definite, to formally propose to amend subpart M to include any steel erection activity omitted from the subpart R revision process.

Until subparts M and R are finally revised, the Agency's enforcement policy on fall protection during steel erection is the policy outlined in Deputy Assistant Secretary Stanley's July 10, 1995 memorandum to the Office of Field Programs, "Fall Protection in Steel Erection." The memorandum provides that the term "steel erection activities" means the movement and erection of skeleton steel members (structural steel) in or on buildings or non-building structures. It includes the initial connecting of steel, employees moving point-to-point, installing metal floor or roof decking, welding, bolting and similar activities.

The memorandum further provides that steel erection does not include the erection of steel members such as lintels, stairs, railings, curtainwalls, windows, architectural metalwork, column covers, catwalks, and similar non-skeletal items or the placement of reinforcing rods in concrete structures.

Accordingly, OSHA is amending subpart M and subpart E in order to maintain, until such time as further rulemaking procedures may be initiated and completed, the fall protection requirements for steel erection that were in effect before the issuance of revised subpart M.

II. Summary and Explanation

A. Personal Protective Equipment—Subpart E

OSHA is amending subpart E to withdraw the actions whereby the Agency removed §§ 1926.104, Safety belts, lifelines and lanyards; 1926.105, safety nets; and 1926.107 (b), (c) and (f) (definitions for the terms "lanyard", "lifeline" and "safety belt", respectively), insofar as those provisions relate to steel erection. Through this amendment, OSHA will maintain the existing fall protection requirements for steel erection activities pending rulemaking that addresses the steel erection industry.

B. Scope and Application—Subpart M

OSHA is amending § 1926.500(a), Scope and application, of subpart M to indicate clearly that the provisions of revised §§ 1926.501, Duty to have fall protection; 1926.502, Fall protection systems criteria and practices; and 1926.503, Training requirements, do not apply to steel erection activities. The revised provision clearly indicates that subpart R and specified provisions of subpart E cover steel erection.

Exemption From Delayed Effective Date Requirement

Under 5 U.S.C. 553, OSHA finds that there is good cause for making this amendment effective upon publication in the **Federal Register**. This amendment simply maintains the fall protection requirements which have applied to the steel erection industry, notwithstanding the promulgation of subpart M, Fall protection, so it does not increase the existing regulatory burden.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

List of Subjects in 29 CFR Part 1926

Construction industry, Construction safety, Excavations, Fall protection, Hoisting safety, Occupational safety and Health, Protective equipment, Safety, Tools.

Accordingly, pursuant to sections 4, 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333); section 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 1–90 (55 FR 35736); and 29 CFR part 1911, the amendment to 29 CFR part 1926 made in the **Federal Register** on August 9, 1994 (59 FR 40672) is further amended as set forth below.

Signed at Washington, D.C. this 28th day of July 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

Subpart E—[Amended]

1. The authority citation for subpart E of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

2. Amendatory items 4, 5, 6, and 7 to subpart E, published in the **Federal Register** issue of August 9, 1994 (59 FR 40729) and stayed in the issue of January 26, 1995 (60 FR 5131), are withdrawn.

Subpart M—Fall Protection

3. The authority citation for subpart M of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR Part 1911.

4. Paragraphs (a)(2)(iii), (a)(3)(iv) and (a)(4) of § 1926.500 are revised to read as follows:

§ 1926.500 Scope, application, and definitions applicable to this subpart.

(a) * * *

(2) * * *

(iii) Requirements relating to fall protection for employees performing steel erection work are provided in § 1926.105 and in subpart R of this part.

* * * * *

(3) * * *

(iv) Section 1926.502 does not apply to steel erection activities. (Note: Section 1926.104 sets the criteria for body belts, lanyards and lifelines used for fall protection in steel erection activities. Paragraphs (b), (c) and (f) of § 1926.107 provide definitions for the pertinent terms).

(4) Section 1926.503 sets forth requirements for training in the installation and use of fall protection systems, except in relation to steel erection activities.

* * * * *

[FR Doc. 95–18921 Filed 8–1–95; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations; Information and Informational Materials

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Treasury Department is amending the Cuban Assets Control Regulations (the "Regulations") to bring the Regulations into conformity with amendments to the Trading with the Enemy Act concerning information and informational materials included in the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing, tel.: 202/622–2480, or William B. Hoffman, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 and type "/GO/FAC" or call 202/512–1530 for disks or paper copies. This file is available for downloading in WordPerfect 5.1, ASCII, and Postscript formats. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem dial 703/321–3339, and select self–expanding file "T11FR00.EXE" in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

Section 525 (b) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103–236, 108 Stat. 474, amended section 5(b)(4) of the Trading with the Enemy Act, 50 U.S.C. App. 1–44 ("TWEA"), to expand the list of items considered to be information or informational materials to include compact discs, CD ROMs, artworks, and news wire feeds. In addition, section 5(b)(4) of TWEA, as

amended, exempts from the authority granted to the President the authority to regulate or prohibit, directly or indirectly, the importation from any country or the exportation to any country, whether commercial or otherwise, of information or informational materials, regardless of format or medium of transmission.

Section 515.206 of the Regulations is amended to reflect the exemption that applies to transactions concerning information and informational materials. The definition of the term "information or informational materials" contained in § 515.332 is amended to conform the section to amended section 5(b)(4) of TWEA. Conforming amendments are also made to § 515.545, which authorizes transactions related to the importation and exportation of information and informational materials. Section 515.570, which authorizes the importation of paintings and drawings, is removed from the Regulations because the exemption contained in § 515.206, as amended, makes this separate authorization unnecessary.

Section 515.542, which concerns authorization for telecommunications is revised to generally license certain forms of telecommunications services between Cuba and the United States. The provision of, and payments for, telecommunications services between Cuba and the United States are governed exclusively by section 1705 of the Cuban Democracy Act, 22 U.S.C. 6001–6010 ("CDA"). That section authorizes such services, but permits the regulation of payments to Cuba for telecommunications. The CDA provision on telecommunications preempts the provisions of TWEA on information and informational materials to the extent that the provisions are inconsistent. The general license contained in § 515.542(b) authorizes the provision of telecommunications services between Cuba and the United States. Consistent with the authority provided in the CDA, § 515.542(c) requires the obtaining of specific licenses on a case–by–case basis as a condition for any full or partial payments to Cuba arising out of telecommunications services between the United States and Cuba.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Cuba, Currency, Estates, Exports, Fines and penalties, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 1–44; 22 U.S.C. 6001–6010; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart B—Prohibitions

2. Section 515.206 is amended by revising the references to § 515.550 to read § 515.545 in Examples 2, 3, and 4; by removing paragraph (b) and redesignating paragraphs (c),(d), and (e) as paragraphs (b),(c), and (d) respectively; by adding the words, "information or" before the words, "informational materials," each time they are used in redesignated paragraph (b) and Example 3; by removing the word "synchronization" and the comma following it from Example 4; and by revising the section heading and paragraph (a) to read as follows:

§ 515.206 Exemption of information and informational materials.

(a) The importation from any country and the exportation to any country of information or informational materials as defined in § 515.332, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part except for payments owed to Cuba for telecommunications services between Cuba and the United States, which are subject to the provisions of § 515.542.

* * * * *

Subpart C—General Definitions

3. Section 515.332 is revised to read as follows:

§ 515.332 Information and informational materials.

(a) For purposes of this part, the term *information and informational materials* means:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, news wire feeds, and other information and informational articles.

(2) To be considered informational materials, artworks must be classified under Chapter subheadings 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information and informational materials* does not include items:

(1) That would be controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1993) (the "EAA"), or section 6 of the EAA to the extent that such controls promote nonproliferation of antiterrorism policies of the United States, including "software" that is not "publicly available" as these terms are defined in 15 CFR Parts 779 and 799.1 (1994); or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

4. The section heading and paragraphs (b) and (c) of § 515.542 are revised to read as follows:

§ 515.542 Telecommunications, information, and informational materials.

* * * * *

(b) Except as provided in paragraph (c) of this section, all transactions incident to the use of cables, satellite channels, radio signals, or other means of telecommunications for the provision of telecommunications services between Cuba and the United States, including telephone, telegraph and similar services, and the transmission of radio and television broadcasts and news wire feeds between Cuba and the United States, are authorized.

(c) Full or partial payments owed to Cuba as a result of telecommunications services authorized in paragraph (b) of this section are prohibited unless authorized pursuant to specific licenses, which will be issued on a case–by–case basis provided such payments are determined to be consistent with the public interest and the foreign policy of the United States.

5. The section heading and paragraph (a) of § 515.545 are revised to read as follows:

§ 515.545 Transactions related to information and informational materials.

(a) Except as provided in § 515.542(c), all financial and other transactions directly incident to the importation or exportation of information or informational materials are authorized.

* * * * *

§ 515.570 [Removed]

6. Section 515.570 is removed.

Dated: July 14, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 18, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 95–18952 Filed 7–28–95; 12:34 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC23

Voyageurs National Park; Aircraft Operations—Designation of Areas

AGENCY: National Park Service, Interior.

ACTION: Interim rule.

SUMMARY: The National Park Service (NPS) is adopting this interim rule for Voyageurs National Park to allow an activity that has been identified in the 1980 Master Plan and the 1992 Wilderness Plan. The interim rule will designate certain areas open to aircraft use within the park for a limited duration of time while the agency develops a special regulation to address the activity through public notice and comment rulemaking. This addition is necessary because NPS general regulations require special regulatory designations for areas in parks open to the operation or use by aircraft. The intended effects are to ensure safety, protect resources and provide appropriate enjoyment to park users.

DATES: This rule is effective on August 2, 1995 and will expire upon the publication of a final rule developed through the normal public notice and comment rulemaking process. Written comments will be accepted through October 2, 1995.

ADDRESSES: Comments should be addressed to: Superintendent, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649–8904.

FOR FURTHER INFORMATION CONTACT: Chief Ranger, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649–8904, Telephone: (218) 283–9821.

SUPPLEMENTARY INFORMATION:

Background

The enabling legislation for Voyageurs National Park states "The Secretary may, when planning for development of the park, include appropriate provisions for * * * use by seaplanes * * *." 16 U.S.C. Section 160h. The 1980 Master Plan for the park states that float planes and ski planes will be allowed upon all lakes deemed safe by the Minnesota Department of Transportation. It also states that this allowance would be subject to the findings of the wilderness study. The 1992 wilderness study recommended that planes be allowed on the four major lakes (Rainy, Kabetogama, Namakan and Sand Point), as well as the following interior lakes: Locator, War Club, Quill, Loiten, Shoepack, Little Trout and Mukooda. The park has received several requests for permission to land float planes on park lakes this summer.

Public aircraft use on park waters occurred prior to the designation of the park in 1971. This use is primarily related to fishing, camping, transportation to resorts and summer dwellings and is typical for the area. Float plane use is mainly associated with the four major lakes with use of the interior lakes constituting less than 1% of the park's use. Aircraft are currently prohibited from using about 22 small interior lakes that have been determined to be too small to use safely by the Minnesota Department of Transportation. Three other lakes that have been used periodically and are accessible by hiking trails will not be opened to float plane use by this regulation. The closing of these three interior lakes will allow the park to manage the interior lakes on an equitable basis since other motorized uses are prohibited. Section 2.17 of 36 CFR prohibits the operation or use of aircraft on lands and waters within park areas except at locations designated through the special rulemaking process.

This interim rule will allow the park to grant appropriate requests for aircraft operation this summer. It will also increase public safety by identifying where and under what conditions aircraft are allowed to operate and improving information to the public on where they may expect to see aircraft within the park. This will lessen potential conflicts among user groups and encourage those that do not want to associate with aircraft operations to select areas within the park that are closed to aircraft use. There will be increased enjoyment among users by delineating areas appropriate to specialized uses. By identifying areas open to aircraft use, the park will be able to limit aircraft use to less sensitive areas and improve protection of resources. The park will also be able to improve information to pilots on what areas are open and what areas are closed to aircraft operations as well as information on sensitive areas that would be affected by aircraft use. This regulation will allow the park to identify those areas where appropriate use may occur, improve public information and protect area resources.

The NPS is adopting this interim rule to allow an activity that has been identified as compatible with the establishment of the park and an activity that was specifically identified in the park's enabling legislation as an acceptable activity in the park. Because of the time requirements associated with the normal rulemaking process, and the fact that the NPS has been unable to proceed in a timely manner with a proposed rule this summer, the agency has determined that an interim rule would allow for aircraft use in a more expeditious manner. The interim rule will allow aircraft use to occur while the agency proceeds with the required rulemaking to adopt a permanent special regulation for Voyageurs National Park.

The NPS is adopting this interim rule pursuant to the "good cause" exception of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) from general notice and comment rulemaking. As discussed above, the NPS believes that this exception is warranted in order to authorize float plane use this summer, insofar as such use is identified in the park's enabling legislation, management plan, wilderness plan, environmental assessment and environmental impact statement. Moreover, the development of these documents solicited and provided ample opportunity for public comment, and the public comment revealed support for appropriate aircraft use.

Because public comment is a principal reason for the general regulation requirement of special regulations to allow the designation of locations for this activity, the NPS finds that notice and comment are unnecessary and contrary to the public interest for this interim rule. Furthermore, the NPS is developing and will be publishing soon in the **Federal Register** a proposed rule requesting public comment on a special regulation to allow the use of aircraft in Voyageurs National Park. This interim rule is

limited in duration and will terminate with the publication of a final rule in the **Federal Register**.

The NPS has also determined, in accordance with the Administrative Procedure Act (5 U.S.C. 553(d)(3)), that the publishing of this interim rule 30 days prior to the rule becoming effective would be counterproductive and unnecessary for the reasons discussed above. A 30-day delay would be contrary to the public interest. Therefore, under the "good cause" exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), it has been determined that this interim rulemaking is excepted from the 30-day delay in the effective date and shall therefore become effective on the date published in the **Federal Register**.

Drafting Information. The primary authors of this interim rule are Bruce D. McKeeman, Chief Ranger, Voyageurs National Park and Dennis Burnett, Washington Office of Ranger Activities.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

Pursuant to the Act of January 3, 1968, 84 Stat. 1972, 16 U.S.C. Section 160f(b), the NPS prepared a Wilderness Recommendation and, pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4332 *et seq.*, prepared an Environmental Impact Statement (EIS) assessing the effects of the Wilderness Recommendation. On page 30 of the EIS, the section titled "Provisions Common To All Alternatives" states: "Under all alternatives motorized vehicles and aircraft would be allowed on Rainy, Kabetogama, Namakan and Sand Point lakes, subject to established regulations. Special regulations for aircraft access in the park will be required, * * *". On page 35, the section titled "Alternatives" also states that the alternatives address the appropriateness of motorized use in the park, specifically the location of snowmobile routes and portages, as well as the lakes open to aircraft and motorboat use." Each of the six alternatives specifically lists the lakes that will be open to motorized and aircraft use. The NPS consulted with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. Section 1536 and they issued a "No Jeopardy Opinion" as part of their biological opinion. Public input was provided during a series of public hearings. Extensive public comment, both oral and written, was received regarding the matter of snowmobile use and wilderness designation. There were very few comments received concerning aircraft use.

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The economic effects of this rulemaking are local in nature and negligible in scope.

Based on this determination, and in accord with the procedural requirements of the National Environmental Policy Act (NEPA), and by Departmental guidelines in 516 DM 6 (49 FR 21438), an Environmental Assessment (EA), which included consultation with the U.S. Fish and Wildlife Service, and a Finding of No Significant Impact (FONSI) have been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chap. I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and DC Code 40–721 (1981).

2. In § 7.33, a new paragraph (c) is added to read as follows:

§ 7.33 Voyageurs National Park.

* * * * *

(c) *Aircraft.* (1) Aircraft may be operated on the entire water surface and frozen lake surface of the following lakes, except as restricted in paragrah (c)(4) of this section and § 2.17 of this chapter: Rainy, Kabetogama, Namakan, Sand Point, Locator, War Club, Quill, Loiten, Shoepack, Little Trout and Mukooda.

(2) Approaches, landings and take-offs shall not be made within 500 feet of any developed facility, boat dock, float, pier, ramp or beach.

(3) Aircraft may taxi to and from a dock or ramp designated for their use for the purpose of mooring and must be operated with due care and regard for persons and property and in accordance with any posted signs or waterway markers.

(4) Areas within the designated lakes may be closed to aircraft use by the Superintendent taking into consideration public safety, wildlife management, weather and park management objectives.

Dated: July 21, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–18885 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[NC–72–1–6953a; FRL–5258–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 9, 1991, the North Carolina Department of Environmental Management (NCDEM), submitted a maintenance plan and a request to redesignate the Charlotte area from nonattainment to attainment for carbon monoxide (CO). The Charlotte CO nonattainment area consists only of Mecklenburg County. Subsequently, NCDEM submitted supplemental material to the Charlotte submittal on October 7, 1994. Included with this package was a request to redesignate the Raleigh/Durham area from nonattainment to attainment for CO. The Raleigh/Durham CO nonattainment area consists of Durham and Wake Counties. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving the North Carolina request because it meets the maintenance plan and redesignation requirements set forth in the CAA.

DATES: This action will be effective September 18, 1995, unless critical or adverse comments are received by September 1, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to Ben Franco, at the EPA Regional office listed below. Copies of the redesignation request and the State of North Carolina's submittal are available for public review during normal business hours at the addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Department of Environment, Health and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626–0535.

FOR FURTHER INFORMATION CONTACT: Ben Franco of the EPA Region 4 Air Programs Branch at (404) 347–3555, ext. 4211, and at the above address.

SUPPLEMENTARY INFORMATION: In a March 15, 1991, letter to the EPA Region 4 Administrator, the Governor of North Carolina recommended the areas of Raleigh/Durham and Charlotte be designated as nonattainment for CO, as required by section 107(d)(1)(A) of the 1990 CAA (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–767lq)). The cities were designated nonattainment and classified as "moderate," except for Charlotte which was classified as "not classified," under the provisions outlined in sections 186 and 187 of the CAA (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR part 81, § 81.334). The National Ambient Air Quality Standard (NAAQS) for CO is 9.5 ppm. CO nonattainment areas can be classified as moderate or serious, based on their design values. Since Raleigh/Durham had a design value of 10.9 ppm (based on 1988 and 1989 data), the area was classified as moderate. The Charlotte area was a pre-1990 nonattainment area and was designated by operation of law. However, the Charlotte area was classified as "not classified" because it had a design value of 8.4 ppm (based on 1988 and 1989 data), which is below the 9.5 ppm. The CAA established an attainment date of December 31, 1995, for all moderate CO areas. "Not Classified" areas, such as Charlotte, must attain by November 15, 1995.

The Raleigh/Durham and Charlotte areas have ambient air quality monitoring data showing attainment of the CO NAAQS from 1990 through 1993. The areas continued to monitor attainment in 1994 and 1995. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on August 9, 1991, and October 7, 1994, the State of North Carolina submitted CO redesignation requests and maintenance plans for the Charlotte and Raleigh/Durham areas, respectively. The October 7, 1994, submittal included a revision of the 1991 Charlotte redesignation request. The request for redesignation submittal and maintenance plan was approved by NCEMC on September 8, 1994. North Carolina submitted evidence that a public hearing was held on March 28 and March 30, 1994.

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;

2. The area must meet all applicable requirements under section 110 and Part D of the CAA;

3. The area must have a fully approved state implementation plan under section 110(k) of CAA;

4. The air quality improvement must be permanent and enforceable; and,

5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

On November 12, 1991, and December 8, 1994, Region 4 determined the Charlotte and Raleigh/Durham submittal, respectively, constituted a complete redesignation request under the general completeness criteria of 40 CFR 51, appendix V, sections 2.1 and 2.2.

The North Carolina redesignation request for the Raleigh/Durham and Charlotte areas meet the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. Attainment of the CO NAAQS

The North Carolina requests are based on an analysis of quality assured CO air monitoring data which is relevant to the maintenance plan and to the redesignation requests. The ambient air CO monitoring data for calendar year 1991 through calendar year 1993 shows no violations of the CO NAAQS in the Raleigh/Durham and Charlotte areas. The most recent ambient CO data for the calendar year 1994 continue to show no violations in the Raleigh/Durham and Charlotte areas. Because the Raleigh/Durham and Charlotte areas have complete quality assured data showing no more than one exceedance of the standard per year over at least two consecutive years, the area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.9 and Appendix C1). North Carolina has committed to continue monitoring in this area in accordance with 40 CFR Part 58.

2. Meeting Applicable Requirements of Section 110 and Part D

The 1990 CAA Amendments, modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the 1990 Amendments prior to or at the time the State submitted its redesignation request.

A. Section 110 Requirements

Section 110 was amended by the 1990 Amendments. The North Carolina SIP meets the requirements of amended section 110(a)(2). The State implemented an Oxygenated Fuel program in the area of Raleigh/Durham during the 1992 and 1993 winter seasons. The Charlotte area was not required to implement an Oxygenated Fuels program. EPA has reviewed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before Raleigh/Durham and Charlotte may be redesignated to attainment, the applicable requirements of Part D must be fulfilled. Subpart I of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 3 of Part D establishes additional requirements for nonattainment areas classified under section 186(a). The Raleigh/Durham area was classified as moderate (See 40 CFR 81.334). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of Subpart 1 of Part D, specifically sections 172(c) and 176, and the requirements of Subpart 3 of Part D, which became due on or before August 9, 1991, and October 7, 1994, the dates the State submitted complete redesignation requests for Charlotte and Raleigh/Durham, respectively. EPA interprets, according to section 107(d)(3)(E)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that become applicable to the subject area prior to or at time of the submission of the redesignation request. Requirements of the CAA due subsequent to the submission of the redesignation request will continue to be applicable to the area (See section 175A(c)) until the redesignation request is approved. If the redesignation is

disapproved, the State remains obligated to fulfill those requirements.

B1. Subpart 1 of Part D

Section 172(c) of Subpart 1 sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator but no later than three years after an area is designated as nonattainment. Because the Raleigh/Durham area was designated as a new CO nonattainment area on June 6, 1992, the section 172(c) requirements are due by June 6, 1995. Therefore, the submission by North Carolina of New Source Review and contingency measures required under 172(c) are not yet due. To the extent the moderate CO nonattainment area requirements of section 187(a) supersede the section 172(c) requirements, as is the case with emission inventories, North Carolina has complied with those requirements.

B2. Subpart 1 of Part D

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to general and transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"). Section 176 further provides that the conformity revisions to be submitted by States be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed States that the EPA conformity regulations would establish a submittal date (*see* 57 FR 13498, 13557 (April 16, 1992)).

EPA promulgated final conformity regulations on November 24, 1993 (58 FR 62188)) and November 30, 1993 (58 FR 63214). These conformity rules require that the States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of North Carolina is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, North Carolina is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. On March 3, 1995, NCDEM submitted general and transportation conformity regulations.

B3. Subpart 3 of Part D

Under section 187(a) areas designated nonattainment for CO under the amended CAA and classified as moderate were required to meet several requirements by November 15, 1992. Consequently, these requirements are pertinent only for the Raleigh/Durham area. These requirements included a 1990 Emission Inventory, an Inspection and Maintenance Program (I/M), and an Oxygenated Fuel Program. EPA has reviewed and is approving in this notice, North Carolina's 1990 Base Year Emission Inventory. Section 211(m) further required North Carolina to submit an oxygenated fuels regulation for the Raleigh/Durham area. NCDEM submitted a complete Oxygenated Fuel SIP on November 20, 1992, which was approved by EPA on June 30, 1994. On August 5, 1994, NCDEM submitted a complete I/M SIP, which was approved by EPA on June 2, 1995. Therefore, all Subpart 3 requirements that were applicable at the time the State submitted its redesignation request have been met.

3. Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the preamended CAA and EPA's approval of SIP revisions under the 1990 Amendments, EPA has determined that the Raleigh/Durham and Charlotte areas have a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended CAA, EPA approved the North Carolina SIP control strategy for the Charlotte nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. The control measures due to an I/M program generates annual CO reductions of about 12 percent. The fleet turnover under the Federal Motor Vehicle Emission Control Program produced annual CO emission reductions of 6 percent. There were additional emission reductions of 19 to 21 percent in the Raleigh/Durham area due to the implementation of an Oxygenated Fuels program during the winter seasons of 1992 and 1993.

In association with its emission inventory discussed below, the State of North Carolina has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of North Carolina's maintenance plan for the Raleigh/Durham and Charlotte areas because EPA finds that North Carolina's submittals meet the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 16, 1992, the State of North Carolina submitted a comprehensive inventory of CO emissions of the Raleigh/Durham and Charlotte areas. The inventory includes emissions from area, stationary, and mobile sources using 1990 as the base year for calculations.

The State submittal contains the detailed inventory data and summaries by county and source category. The comprehensive base year emissions inventory was submitted in the National Emission Data System format. The inventory was prepared in accordance with EPA guidance. It also contains summary tables of the 1990 and 1991 base years and projections to the year 2005 for the Charlotte and Raleigh/Durham areas, respectively.

1990 CO BASE YEAR EMISSIONS INVENTORY RALEIGH/DURHAM NONATTAINMENT AREA (TONS PER DAY)

Year	Area	Nonroad	Mobile	Point	Total
1990	40.57	5.03	594.671	.977	641.25

RALEIGH/DURHAM NONATTAINMENT AREA CO EMISSIONS INVENTORY SUMMARY (TONS PER DAY)

Year	Area	Nonroad	Mobile	Point	Total
1991	57.12	5.22	569.82	1.00	633.16
1993[1]	57.60	5.58	419.68	1.01	483.87
1996[2]	60.01	6.25	483.50	1.08	550.84
1999[2]	63.45	7.18	507.5	1.13	579.26
2002[3]	65.90	8.08	530.8	1.16	605.94
2005[4]	67.87	8.98	552.80	1.20	630.85

[1] Oxygenated Fuel program in place (2.7% Oxygen by weight).
[2] Oxygenated Fuel program in place (2.0% Oxygen by weight).
[3] Oxygenated Fuel program in place (2.2% Oxygen by weight).
[4] Oxygenated Fuel program in place (2.6% Oxygen by weight).

CHARLOTTE NONATTAINMENT AREA CO EMISSIONS INVENTORY SUMMARY (TONS PER DAY)

Year	Area	Nonroad	Mobile	Point	Total
1990	33.74	7.39	429.06	23.55	493.76
1993	35.59	7.97	390.31	9.00	442.87
1996	37.11	8.55	395.87	3.94	445.47
1999	39.23	9.16	393.59	4.11	446.09
2002	40.75	10.00	401.55	4.28	456.58
2005	41.96	10.97	419.62	4.43	476.98

B. Demonstration of Maintenance—Projected Inventories

Total CO emissions were projected from 1990 base year out to 2005 for the Charlotte area, and from 1991 out to 2005 for the Raleigh/Durham area. These projected inventories were prepared in accordance with EPA guidance. The difference between Raleigh/Durham's 1990 Base Year Inventory area sources and 1991 Base Year were due to different methodologies. For 1991, additional data was included in the calculation of the emissions. North Carolina will reduce the minimum oxygen content for the Oxygenated Fuel program in Raleigh/Durham. The projections show that calculated CO emissions, assuming a less stringent oxygenated fuels program, are not expected to exceed the level of the base year inventory during this time period. Therefore, based on the results of Mobile5A modeling, it is anticipated that Raleigh/Durham will maintain the CO standard with this program. It is also anticipated that the Charlotte area will maintain the CO NAAQS over the projected years. In case of an air quality problem, an Oxygenated Fuel program will be implemented in Charlotte, as a contingency measure.

C. Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Raleigh/Durham and Charlotte areas depend, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has committed to submit periodic inventories of CO emissions every three years.

D. Contingency Plan

The level of CO emissions in the Raleigh/Durham and Charlotte areas will largely determine their ability to stay in compliance with the NAAQS in the future. Section 175A(d) of the CAA requires that the contingency provisions include a requirement that the State implement all measures contained in the SIP prior to redesignation. Therefore, North Carolina has provided contingency measures with a schedule for implementation in the event of a future CO air quality problem. The plan contains triggering mechanisms to determine when contingency measures are needed. The Raleigh/Durham and Charlotte contingency plans, primary trigger will be a violation of the CO NAAQS. A secondary trigger will be activated within 30 days of the State finding either: (1) The periodic emissions inventory exceeds the base inventory by 10 percent or more, or (2) a monitored air quality exceedance pattern indicates that an actual CO NAAQS violation may be imminent. A pattern will be deemed to indicate an imminent violation if (a) one exceedance of the standard per year has been monitored at a single monitor for two successive years and those exceedances are at least greater than 20 percent above the standard (i.e., 10.8 ppm or above) or (b) the monitored air quality exceedance pattern otherwise suggests that a CO NAAQS violation is likely. Within 45 days of the trigger, the State will activate the pre-adopted regulations discussed below to become effective at the beginning of the next CO season. When other measures are needed to ensure that a future violation of the CO NAAQS does not occur, the State will complete the adoption process within one year of the secondary trigger. In case of a primary or secondary trigger, NCDEM will implement one or a combination of the following contingency measures: implementing either a 2.7 or 3.1 percent Oxygenated Fuel program, expanding the I/M program coverage, enhanced I/M, transportation control measures, or employee commute options program. EPA finds that the contingency measures provided in the State submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

EPA is approving the Raleigh/Durham and Charlotte CO maintenance plans because they meet the requirements set forth in section 175A of the CAA. EPA is also approving the 1990 emissions inventory as complying with the requirements of section 172(c)(3) and 187(a)(1). In addition, the Agency is approving the requests and redesignating the Raleigh/Durham and Charlotte CO areas to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 18, 1995, unless, by September 1, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 18, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The CO SIP is designed to satisfy the requirements of Part D of the CAA and to provide for attainment and maintenance of the CO NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation (section 179(a) of the CAA) and in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k)(2) of the CAA.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that the approval of the redesignation request will not have an impact on any small entities.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A and section 187(a)(1) of the Clean Air Act. The rules and commitments approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a mandate upon the private sector, EPA's action will impose no new requirements under State law; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, results from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: June 26, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(82) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(82) The redesignation and maintenance plan for Raleigh/Durham and Charlotte submitted by the North Carolina Department of Environmental Management on October 7, 1994 and August 9, 1991, as part of the North Carolina SIP. The emission inventory projections are included in the maintenance plans.

(i) Incorporation by reference. Section 3 of the Redesignation Demonstration and Maintenance Plan for Raleigh/Durham, Winston-Salem, and Charlotte Carbon Monoxide Nonattainment Area adopted on September 8, 1994.

(ii) Other material. None.

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PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.334 the "North Carolina-Carbon Monoxide" table is amended by removing the entries for "Charlotte area and Raleigh-Durham area"; and by adding entries for Mecklenburg, Durham, and Wake Counties in alphabetical order; and by revising the entry "Rest of State" to read "Statewide".

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—CARBON MONOXIDE

	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Statewide		Unclassifiable/Attainment		
Durham County	September 18, 1995.			
Mecklenburg County	September 18, 1995.			
Wake County	September 18, 1995.			

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–18881 Filed 8–1–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 61

[FRL–5269–8]

Interim Approval of Delegation of Authority; National Emission Standards for Hazardous Air Pollutants; Radionuclides; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is granting interim delegation of authority to the state of Washington to implement and enforce two National Emission Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides: National Emission Standards for Emissions of Radionuclides other than Radon from Department of Energy Facilities (40 CFR part 61, subpart H) and National Emission Standards for Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not covered by subpart H (40 CFR part 61, subpart I), as promulgated, for sources subject to the part 70 operating permits program of the state of Washington under Title V of the Clean Air Act.

DATES: This action will be effective on October 2, 1995 unless adverse comments are received by September 1, 1995. If the effective date is delayed due to comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Richard Poeton, Air & Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, Washington, 98101, and concurrently to Allen W. Conklin, Head, Air Emissions and Defense Waste Section, Washington Department of Health, Airdustrial Center Building #5, P.O. Box 47827, Olympia, Washington, 98504–7827.

Copies of the state of Washington's application are available for public inspection during normal business hours at the above locations.

FOR FURTHER INFORMATION CONTACT: Richard Poeton at (206) 553–8633.

SUPPLEMENTARY INFORMATION:

Background

Due to the unique nature of radionuclide materials, delegation of authority to states to implement and enforce a NESHAP program for radionuclides is not automatic, and certain standards may only be delegated as promulgated. EPA's regional offices have traditionally assumed the lead responsibility for administering the radionuclides NESHAP. However, EPA is committed to enabling state and local governments, as partners, to implement and enforce the requirements of the Clean Air Act.

On March 28, 1994, the state of Washington submitted an application for approval of its programs and delegation of authority under section 112(l) of the Clean Air Act and in accordance with 40 CFR 63.91, for NESHAPS pertaining to radionuclide emissions (40 CFR part 61, subparts H and I, as promulgated). These standards have been incorporated into the law of the state of Washington.

EPA already promulgated interim approval of the Part 70 operating permits program under Title V of the Clean Air Act for the state of Washington (see 59 FR 55813 (November 9, 1994)). Part 70 approval also confers approval under section 112(l) for delegation of unchanged federal standards because requirements for part 70 approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements. Therefore, for part 70 sources, Part 70 approval also constitutes approval under section 112(l)(5) of the state's programs for delegation of section 112 standards that are unchanged from federal standards as promulgated.

EPA is granting interim delegation as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. However, as required by 40 CFR 63.91(a)(2), EPA is seeking public comments for 30 days. Comments shall be submitted concurrently to EPA and the state of Washington. If no adverse comments are received in response to this rule, this

Federal Register notice will serve as the final notice of the interim delegation of the implementation and enforcement of this program. The effective date will be 60 days from the date of this publication and no further activity is contemplated in relation to this rule. If EPA receives adverse comments, this direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the accompanying proposed rule which appears in the proposed rule section of this **Federal Register**. However, EPA will not institute a second comment period on this action. Thus, any parties interested in commenting on this action should do so in the next 30 days.

Final Action

Pursuant to Section 112(l) of the Clean Air Act, 42 U.S.C. 7412(l), and 40 CFR 63.91, EPA hereby grants interim delegation of its authority for the implementation and enforcement of the following National Emission Standards for Radionuclides for sources subject to part 70 and located, or to be located, in the state of Washington:

(1) National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities (40 CFR part 61, Subpart H); and

(2) National Emission Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by Subpart H (40 CFR part 61, Subpart I).

This interim delegation is limited to the NESHAP standards and authorities as promulgated in 40 CFR part 61, Subparts H and I, applied to part 70 sources, and incorporated into the law of the state of Washington: the delegation does not extend to any additional state standards. Specifically, EPA's interim delegation applies to WAC 246–247–040(1), to the extent the standards reference the federal standards as promulgated; WAC 246–247–075(1); WAC 246–247–080(2); WAC 246–247–085(1), where it incorporates by reference the monitoring, testing, quality assurance, recordkeeping, reporting, and compliance determination procedures and requirements of the federal standards. The federal requirement to file an application to construct or modify has not been incorporated into Washington state law. Therefore, facilities subject to the federal NESHAPs are still required to submit all such applications to EPA.

Not all authorities for the implementing and enforcing the NESHAPs can be delegated to the state. For instance, the EPA Administrator retains authority to implement those sections of the NESHAP that require approval of equivalency determinations and alternative test methods, allow waivers for emission testing and compliance, and to promulgate rules to implement 40 CFR part 61.

EPA retains concurrent enforcement authority. In exercising its concurrent authority, EPA is not bound by any state action or determination in carrying out any authority delegated to the state pursuant to section 112(l). If at any time there is a conflict between the state and federal regulations, the federal standards apply if they are more stringent than the state regulations.

This interim delegation, which may not be renewed, extends until November 9, 1996, which is the expiration date of the interim approval of the Washington Title V operating permits program. If EPA grants full approval of the Washington Title V operating permits program, full delegation of these two radionuclide NESHAPS (40 CFR part 61, subparts H and I) for part 70 sources may be incorporated into that approval. If EPA has not granted full delegation to the state by that date, EPA will resume sole authority for implementation of the federal radionuclide NESHAPS in Washington at that time.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Intergovernmental relations, Radiation protection.

Dated: July 20, 1995.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 95–18987 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 86

[AMS–FRL–5268–6]

RIN 2060–AC65

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Regulations Requiring On-Board Diagnostic Systems—Revision to Requirements for Storage of Engine Conditions Associated With Extinguishing a Malfunction Indicator Light

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final rulemaking makes certain technical revisions to the requirements associated with on-board diagnostic (OBD) systems, as specified by § 86.094–17. Changes are being made to the provisions associated with extinguishing an illuminated malfunction indicator light. The current provisions contained in § 86.094–17(d) have proven to be unexpectedly burdensome on the industry and do not provide the expected beneficial effects to vehicle owners, repair shop personnel, or air quality.

DATES: This final action will become effective on October 2, 1995, unless notice is received by September 1, 1995, that any person wishes to submit adverse comments. Should EPA receive such notice, EPA will publish one subsequent action in the **Federal Register** withdrawing this final action.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: The Air Docket, room M–1500 (Mail Code 6102), Waterside Mall, Attention: Docket No. A–90–35, 401 M Street, SW., Washington, DC 20460. Materials relevant to this rulemaking are contained in Docket No. A–90–35, and are available for public inspection and photocopying between 8:00 a.m. and 5:30 p.m. Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Todd Sherwood, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Todd Sherwood, (313) 668–4405.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On February 19, 1993, the EPA promulgated a final rulemaking requiring manufacturers of light-duty vehicles and light-duty trucks to install on-board emission control diagnostics (OBD) systems on such vehicles beginning in model year 1994.[1] The regulations promulgated in that final rulemaking require that, "If a malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which engine speed is within 375 rpm, engine load is within 10 percent, and the engine's warm-up status is the same as that under which the malfunction was first detected, and no new malfunctions have been detected."[2] The State of California, in its second phase of OBD requirements (OBD II),[3] had adopted the same requirement, but limited its applicability to fuel system and engine misfire malfunctions. In contrast, the federal requirement applies to all malfunctions. For non-fuel system and non-misfire related malfunctions, the OBD II regulation allowed the MIL to be extinguished after undergoing three subsequent trips without recurrence of the malfunction, regardless of whether or not the vehicle experienced similar engine conditions (i.e., engine speed, engine load, engine warm-up as described above) during the subsequent trips.

[1] 58 FR 9468, February 19, 1993.

[2] 40 CFR 86.094–17(d).

The intent behind the federal OBD provision was to have the MIL illuminated for any and all malfunctions unless it could be verified that the malfunction was not valid, or that the malfunction was only intermittent and no longer existed. Pursuant to that intent, EPA decided to require that the MIL must remain illuminated until the vehicle takes three subsequent trips during which engine conditions are similar and the malfunction does not reappear. This decision was made assuming that usually only one malfunction, and no more than two or three malfunctions, would exist on a vehicle at any given time with one malfunction trouble code stored for each. However, because of the way most OBD systems are designed, one real malfunction may cause storage of several different trouble codes; and, a set of "similar operating conditions" are, by manufacturer design not by regulation, stored for each trouble code, not one set for each malfunction. Consequently, according to auto manufacturers, two or three malfunctions could result in storage of as many as 15 trouble codes, with a set of similar operating conditions stored in the memory bank of the on-board computer for each of 15 trouble codes, rather than each of three malfunctions. As a result, auto manufacturers have stated that they are forced to dedicate enough computer memory to store similar engine conditions for as many as 50 to 200 trouble codes, depending on the number of codes used by the manufacturer, because they cannot risk having insufficient storage capacity in the unlikely event that such a high number of malfunctions are detected and trouble codes stored. Such computer memory requirements are costly, are inconsistent with California OBD II computer memory requirements, and, as explained below, are not necessary to achieve a highly effective OBD system.

[3] Title 13, California Code of Regulations, § 1968.1(d).

II. Requirements of this Direct Final Rulemaking

This direct final rulemaking restricts the applicability of the requirement preventing the MIL from being extinguished unless the vehicle takes three subsequent sequential trips where similar engine operating conditions occur and the malfunction does not reoccur. The "similar engine conditions" requirement shall be restricted solely to the fuel system and engine misfire related malfunctions. For all other malfunctions, the MIL may be extinguished if the vehicle experiences three subsequent sequential trips where the malfunction does not reoccur, regardless of engine conditions.

EPA has determined that it is unnecessary and inappropriate to require "similar engine conditions" to be present for three trips before extinguishing the MIL for all non-fuel system and non-misfire related malfunctions. The similar engine conditions required for storage relate to engine operating speed and load. Under the regulations initially promulgated, these conditions would need to be stored for all malfunctions so that a vehicle passing through these same conditions without re-detecting the malfunction would be allowed to extinguish the MIL under the presumption that the first detection was not a valid detection. However, only fuel system and engine misfire related malfunctions are likely to occur exclusively at certain speed and load conditions. Therefore, only for malfunctions associated with the fuel system or engine misfire is it appropriate to assure the vehicle has been operated over the same speed and load conditions before determining the malfunction is not recurring. For all other malfunctions, the engine speed and load are not pertinent to the decision of whether the first malfunction detection was correct or incorrect. Therefore, for malfunctions other than those associated with fuel system or engine misfire, the vehicle will still have to undergo three trips without re-detecting the malfunction, but the engine speed and load would not be considered and, therefore, would not have to be stored in computer memory.

It is important to note that recent revisions to the California OBD II regulation specify three "driving cycles" rather than three "trips" prior to extinguishing the MIL.[4] The revised OBD II requirements define a driving cycle as "engine startup, and engine shutoff," while a "trip" is specified as vehicle operation of sufficient length such that all components other than the catalyst and evaporative system are monitored. The federal OBD regulation specifies that all components be monitored periodically, but no less frequently than once per Urban Dynamometer Driving Schedule (UDDS) or similar "trip." The preamble to the Agency's final rulemaking also states that all components monitored by the OBD system shall be evaluated at least once every trip, with one CVS–72 driving cycle qualifying as a trip.[5]

Therefore, under the OBD II regulation, MIL illumination associated with a specific malfunction can effectively be extinguished after three successful monitoring events provided the malfunction is not again detected[6], regardless of whether or not every component has been monitored. Under the federal OBD use of the term "trip," the same holds true. The intent being that three subsequent sequential successful monitoring events occur without again detecting the malfunction prior to extinguishing an illuminated MIL associated with that malfunction.

III. Public Participation and Effective Date

The Agency is publishing this action as a direct final rule because it views the changes contained herein as noncontroversial and anticipates no adverse or critical comments. This direct final rulemaking alters an existing provision by reducing the required memory of vehicle computers and having no resultant impact on OBD effectiveness or air quality.

This action will be effective on October 2, 1995, unless EPA is notified by September 1, 1995, that adverse or critical comments will be submitted. Should EPA receive such notice, EPA will publish one action withdrawing this final action and another proposing this action and requesting comments.

[4] California Air Resources Board Mail-Out #95–03.

[5] The CVS–72 driving cycle is equivalent to the UDDS as defined in 40 CFR part 86, Appendix I, paragraph (a).

[6] Specifically, the MIL may be extinguished after three subsequent sequential driving cycles during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction.

IV. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866,[7] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. Also, this rule is not subject to the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, because it does not have costs of $100 million or more.

B. Reporting and Recordkeeping Requirements

This direct final rulemaking does not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemaking.[8]

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of federal regulations upon small entities. This direct final rulemaking will provide a small cost savings to both large and small volume automobile manufacturers by reducing the required computer memory capacity of their vehicle computers. This direct final rulemaking will have no impact on businesses which manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair.

Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(B) *et seq.*, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

E. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the on-board diagnostic systems on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this direct final rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the relevant files are described below.

TTNBBS can be accessed using a dial-in telephone line (919) 541–5742 and a 1200, 2400, or 9600 bps modem (equipment up to 14.4 Kbps can be accommodated). The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

(T) Gateway to TTN Technical Areas (Bulletin Boards)
(M) OMS
(K) Rulemaking and Reporting

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. File information can be obtained from the "READ.ME" file. To download a file, the user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 Eastern Time, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at (919) 541–5384 in Research Triangle Park, North Carolina, during normal business hours Eastern Time.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

Subpart A—[Amended]

2. Section 86.094–17 is amended by revising paragraph (d) to read as follows:

§ 86.094–17 Emission control diagnostic system for 1994 and later light-duty vehicles and light-duty trucks.

* * * * *

(d) The MIL shall illuminate and remain illuminated when any of the conditions specified in paragraphs (a) and (b) of this section are met, or whenever the engine control enters a default or secondary mode of operation. The MIL shall blink under any period of operation during which engine misfire is occurring at a level likely to cause catalyst damage as determined by the manufacturer. The MIL shall also illuminate when the vehicle's ignition is in the "key-on" position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which engine speed is within 375 rpm, engine load is within 10 percent, and the engine's warm-up status is the same as that under which the malfunction was first detected, and no new malfunctions have been detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected.

* * * * *

[FR Doc. 95–18990 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

[7] 58 FR 51735 (October 4, 1993).

[8] 58 FR 9468, February 19, 1993; and, 59 FR 38372, July 28, 1994.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30 and 150

[CGD 95–900]

RIN 2115–AF07

Bulk Hazardous Materials; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

SUMMARY: This Document contains corrections to the final rule [CGD 95–900], which was published Thursday, June 29, 1995, (60 FR 34043). The rule amends the regulations on carriage of bulk hazardous materials by adding cargoes recently authorized for carriage or added to the International Maritime Organization's Chemical Codes.

EFFECTIVE DATE: This rule is effective on August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final rule contains typographical errors and omissions which may prove to be misleading and are in need correction.

Correction of Publication

Accordingly, the publication on June 29, 1995, of the final rule [CGD 95–900], which was the subject of FR Doc. 95–15749, is corrected as follows:

1. On page 34045, in the second column, in paragraph 2.c. fourth line, paragraph 2.e. third line, paragraph 2.f. fourth line, paragraph 2.h. fourth line, and paragraph 2.i. third line, the superscript period "." should be a bullet "•".

2. On the same page, in the second column, in paragraph 2., the following words should be in bold face type:

a. Paragraph 2.c., fifth line, the word "alkyl".

b. Paragraph 2.d., starting on the fifth line, the words "Poly(2-8)alkylene glycol monoalkyl (C1–C6) ether acetate."

c. Paragraph 2.e., fifth line, the word "Polydimethylsiloxane".

d. Paragraph 2.f., fifth line, the word "mixture".

e. Paragraph 2.i., fourth line, the words "Alcohols (C13+)".

3. On the same page, in the third column, in paragraph 6.d., "(c10+)" should read "(C10+)".

4. On page 34046, in the first column, in paragraph q., seventh line, add a quotation mark before the word "Related".

5. On the same page, in the second column, fourth line, the number "7" should be "8".

6. On the same page, in the second column, paragraph s. should read as follows:

s. In the "Chemical name" column, remove the words "Ethylene glycol ethyl ether" and add, in their place, the words "Ethylene glycol ethyl ether, *see* Polk(2-8)alkylene glycol monoalkyl (C1–C6) ether", and in the "Related CHRIS codes" column for the new entry, add the code "PAG".

7. On the same page, in the second column, in paragraph t., second and third lines, add a quotation mark before the word "Diethyl".

8. On the same page, in the third column, first line, add "2–" before the word "Ethoxyethyl".

9. On the same page, in the third column, paragraph ee., fourth line, add a quotation mark before the word "Ethylene".

10. On page 34047, in Table 1, in the entry for "Ammonia,aqueous, *see* Ammonium hydroxide", the letters "AMH" should be removed from the "CHRIS code" column to the "Related CHRIS codes" column; and, in the entry for "Glycidyl ester of C10 trialkyl acetic acid, *see* Glycidyl ester of tridecyl acetic acid", the letters "GILT" should be moved from the "CHRIS code" column to the "Related CHRIS codes" column.

11. On page 34048, in Table 1,in the entry for "*Octyl phthalate, see* Dialkyl (C7–C13) pathalates", the letters "DAN" should be moved from the "CHRIS code" column to the "Related CHRIS codes" column; and, in the entry for "Oils, edible: Maize", the letters "LEO/OCO" should be moved from the "CHRIS code" column to the "Related CHRIS codes" column.

12. On page 34049, in Table 1, in the entry for "Soyabean oil (epoxidized)", the letters "OSC/EVO" should be moved from the "CHRIS code" column to the "Related CHRIS codes" column; in the entry for "*Tetraprophlbenzene, see* Alkyl(69+)benzens", the letters "AKB" should be moved from the "CHRIS code" column to the "Related CHRIS codes" column; in the entry "1,3,5-Trioxane", in the "Group No." column, replace the number "242" with "241"; in the entry for "Trixylyl phosphate, *see* Trixylenyl posphate", the letters "TRP" should be moved from the "CHRIS code" column to the "Related CHRIS codes" column; and, in the entry for "Urea solution", the letters "URE" should be moved from the "CHRIS code" column to the "Related CHRIS codes" column.

13. On the same page, in the third column, in paragraph e., third line, add a quotation mark before the second letter "N–"; and in paragraph f., first line, "Phonols" should be "Phenols";

14. On page 34051, in Table 1, in column a., the entry—

"Bromochlorone- thane" should read "Bromochloromethane";

"Dibromo-methane" should read "Dibromomethane";

"3,4- Dichloro- 1-butene"should "3,4-Dichloro-1-butene";

"N-(2- Methoxy-1-ethyl)-2-ethyl-6-methyl chloro-acetanilide, *see* Metolachlor" should read "N-(2-Methoxy-1-methyl ethyl)-2-ethyl-6-methyl chloroacetanilide, *see* Metolachlor";

"Nitro propane (20%), Nitroethane (80%) 7" should read "Nitropropane (20%), Nitroethane (80%) 7"; and

"Potassium polysul aide, Potassium thiosulfate solution (41% or less)" should read "Potassium polyslfide, Potassium thiosulfate solution (41% or less)".

Dated: July 24, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–18764 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–14–M

46 CFR Part 160

[CGD 94–110]

RIN 2115–AE96

Recreational Inflatable Personal Flotation Device Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard published an interim rule (IR) on Recreational Inflatable Personal Flotation Device (PFD) Standards on June 23, 1995, which introduced a new concept for approval of PFDs, the "Life-Saving Index" (LSI). Comments on the IR indicate that there is some confusion and uncertainty about use of the LSI. The Coast Guard will conduct a public meeting to discuss the use of the LSI in the approval of inflatable PFDs. This meeting is intended for PFD and inflation system manufacturers and technical experts knowledgeable in the field as well as other interested parties.

DATES: The meeting will be held August 28, 1995, from 9 a.m. to 4 p.m. Notice of interest in participation should be made by August 23, 1995 to ensure adequate space is available. Written material must be received not later than October 23, 1995.

ADDRESSES: The meeting will be held at U.S. Coast Guard Headquarters, Room 2415, 2100 Second Street, SW, Washington, DC 20593–0001. Persons having an interest in participating in the meeting, should notify the Coast Guard by contacting Mr. Samuel Wehr, Office of Marine Safety, Security and Environmental Protection, Attn: G–MVI–3/14, 2100 Second Street, SW, Washington, DC 20593–0001, telephone (202) 267–1444 between the hours of 8 a.m. and 4 p.m. Monday through Friday except Federal holidays, or facsimile (202) 267–1069.

Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA) (CGD 94–110), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Wehr, Office of Marine Safety, Security and Environmental Protection, Attn: G–MVI–3/14, 2100 Second Street, SW, Washington, DC 20593–0001, telephone (202) 267–1444 between the hours of 8 a.m. and 4 p.m. Monday through Friday except Federal holidays, or facsimile (202) 267–1069.

SUPPLEMENTARY INFORMATION: The Coast Guard has received comments indicating that the "Life-Saving Index" (LSI) provisions of the Recreation Inflatable Personal Flotation Device Standards IR published in the **Federal Register** on June 23, 1995 (60 FR 32836) are confusing and have caused uncertainty for manufacturers. Appendix A to the Draft Regulatory Evaluation, which is on file as part of the docket where indicated under **ADDRESSES** and was sent to manufacturers, provides a great deal of guidance on how to apply the LSI provisions in the approval process. However, to facilitate the use of this method for approval so that as wide a variety as possible of inflatable PFDs can be approved, the Coast Guard is holding this meeting.

The agenda for the August 28, 1995 meeting will include the following topics:

(1) Overview of Appendix A to the Draft Regulatory Evaluation.

(2) Response to questions on the information in Appendix A to the Draft Regulatory Evaluation.

(3) Sample calculations of LSIs for representative PFD designs.

(4) Discussion of methods to standardize the LSI model.

(5) Discussion of potential methods to demonstrate increased wearability values for inflatable PFDs.

(6) Coast Guard policy on annual review and revision of the minimum LSI value required for approval and impact on existing approvals issued under the LSI.

(7) Discussion of PFD information pamphlet requirements and standardization.

Attendance is open to the public, but notice of intent to attend the meeting is requested in order that adequate space and audio/visual aids can be provided. In order to determine what accommodations need to be arranged, persons wishing to attend the meeting should notify Mr. Samuel Wehr at the number listed under **FOR FURTHER INFORMATION CONTACT** by August 23, 1995.

Participants are reminded that discussion of issues outside the above agenda may be limited by the Coast Guard.

With advance notice and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should make notification no later than 4 p.m. Thursday, August 24, 1995. Individuals making oral presentations at the meeting are encouraged to submit a written copy of their remarks for the rulemaking docket.

Interested persons are also invited to participate by providing written comments as requested in response to the IR cited above.

If as an outgrowth of this meeting, a standard is developed for the LSI Model, which provides a suitable basis for the evaluation of inflatable PFDs under 46 CFR 160.076–27, notice of proposed rulemaking (NPRM) or supplemental NPRM (SNPRM) in which the Coast Guard discusses and proposes adoption of all or part of it, will be published in the **Federal Register**.

Dated: July 27, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19007 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA95–1524]

Anti-Drug Abuse Act of 1988

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order will amend the Commission's Rules to reflect the correct citation to the Anti-Drug Abuse Act of 1988. The Commission amended its rules to be in compliance with the Anti-Drug Abuse Act of 1988. The purpose of this Order is to provide guidance to the public and avoid any potential uncertainty.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Wendy A. Whitley, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Order

Adopted: July 7, 1995; Released: July 10, 1995

In the Matter of: Amendment of Sections 1.2001 and 1.2002 of the Commission's Rules.

By the Managing director:

1. By this Order, we amend Sections 1.2001 and 1.2002 of the Commission's Rules, 47 CFR 1.2001 and 1.2002 to reflect the correct citation to the Anti-Drug Abuse Act of 1988. 21 U.S.C. 862. The citation to this act was changed subsequent to the time our rules were written.

2. Accordingly, pursuant to Section 0.231(b) of the Commission's rules 47 CFR 0.231(b), It is ordered that Sections 1.2001 and 1.2002 of the Commission's Rules, 47 CFR 1.2001, 1.2002 are amended as set forth below effective upon publication in the **Federal Register**.

Federal Communications Commission

Andrew S. Fishel,

Managing Director.

Rule Changes

PART 1—PRACTICE AND PROCEDURE

Part 1 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.2001 is revised to read as follows:

§ 1.2001 Purpose.

To determine eligibility for professional and/or commercial licenses issued by the Commission with respect to any denials of Federal benefits imposed by Federal and/or state courts under authority granted in 21 U.S.C. 862.

3. Section 1.2002 is amended by revising paragraph (a) to read as follows:

§ 1.2002 Applicants required to submit information.

(a) In order to be eligible for any new, modified, and/or renewed instrument of authorization from the Commission, including but not limited to, authorizations issued pursuant to sections 214, 301, 302, 303(1), 308, 310(d), 318, 319, 325(b), 351, 361(b), 362(b), 381, and 385 of the Communications Act of 1934, as amended, by whatever name that instrument may be designated, all applicants shall certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. 21 U.S.C. 862. If a section 5301 certification has been incorporated into the FCC application form being filed, the applicant need not submit a separate certification. If a section 5301 certification has not been incorporated into the FCC application form being filed, the applicant shall be deemed to have certified by signing the application, unless an exhibit is included stating that the signature does not constitute such a certification and explaining why the applicant is unable to certify. If no FCC application form is involved, the applicant must attach a certification to its written application. If the applicant is unable to so certify, the applicant shall be ineligible for the authorization for which it applied, and will have 90 days from the filing of the application to comply with this rule. If a section 5301 certification has been incorporated into the FCC application form, failure to respond to the question concerning certification shall result in dismissal of the application pursuant to the relevant processing rules.

* * * * *

[FR Doc. 95–18949 Filed 8–1–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 95–19; Notice 2]

RIN 2127–AF–84

Consumer Information Regulations; Fees for Course Monitoring Tires and for Use of Traction Skid Pads

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends NHTSA's consumer information regulations on uniform tire quality grading by establishing fees for the purchase of treadwear course monitoring tires and for the use of the traction skid pads at NHTSA's Uniform Tire Quality Grading Test Facility in San Angelo, Texas.

DATES: The amendment established by this final rule will become effective on September 1, 1995.

Any petitions for reconsideration must be received by NHTSA not later than September 1, 1995.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clive Van Orden, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (202–366–2830).

SUPPLEMENTARY INFORMATION: This rule was preceded by a notice of proposed rulemaking (NPRM) that NHTSA published on March 24, 1995 (60 FR 15529). The NPRM noted that under uniform tire quality grading (UTQG) standards at 49 CFR 575.104, tires must be labelled with information indicating their relative performance in the areas of treadwear, traction, and temperature resistance. For the purpose of evaluating treadwear performance, NHTSA established a 400 mile roadway course near San Angelo, Texas, which is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. Under the UTQG standards, the projected mileage obtained for tested tires must be corrected to account for environmental and other variations that occur during testing on the course. This is done by comparing the performance of the tested tires to that of course monitoring tires run in the same convoy. The course monitoring tires are specially manufactured under controlled conditions so that they can be used as a grading standard, and are made available by NHTSA for purchase at the San Angelo test facility.

The NPRM noted that the UTQG standards also require that tire traction be evaluated on skid pads that have specified locked-wheel traction coefficients. Two of these traction skid pads have been constructed at NHTSA's facility in San Angelo, as well as at several commercial facilities that may also be used by tire manufacturers.

The NPRM stated that an audit conducted by the Department of Transportation's Office of Inspector General (OIG) concluded that NHTSA was not recovering the full cost of the course monitoring tires that it sells at San Angelo and was not charging a user fee for the use of the traction skid pads at that facility, contrary to the requirements of Office of Management

and Budget (OMB) Circular A–25, which establishes Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or resources. To address these deficiencies, the NPRM proposed to establish $379.00 as the fee for each course monitoring tire that NHTSA sells, and to assess a user charge of $288 per day for the use of the traction skid pads at San Angelo. The NPRM included calculations showing these amounts to be the minimum necessary for NHTSA to recover the direct and indirect costs that it incurs in furnishing these goods and services.

Two comments were submitted in response to the NPRM. The first of these was from Standards Testing Labs (STL) of Massillon, Ohio. STL challenged the statement in the NPRM that manufacturers are not restricted to the use of the traction skid pads at NHTSA's facility in San Angelo, and may instead use those at any commercial facility. STL contended that the list of commercial facilities provided in the NPRM included ones that were abandoned and others that are ill suited to meet the grade testing criteria of the UTQG standards. STL further contended that the statement regarding the availability of commercial facilities is undermined by the fact that these facilities were already in existence when NHTSA constructed traction skid pads at San Angelo, and that the agency has since replaced the pads at least once in their original location, and then relocated the pads to an oval track with all new asphalt and concrete surfaces. In STL's opinion, these actions were taken so that a facility meeting the requirements of the UTQG standards would be available.

STL further contended that because NHTSA built and must maintain traction skid pads at San Angelo in order to test assigned grades for traction compliance purposes, the agency incurs little if any additional costs in making the facility available for grade assignment purposes. STL estimated that the proposed fee for the traction skid pads will increase user costs by 70%, and will produce a decrease in the volume of testing. If costs are to be shared, STL stated it would be more equitable for the user fee to be imposed on a "per set" rather than a "daily" basis, since testing for any given day is sometimes aborted through no fault of the tester, due primarily to changes in the weather or to pad instability.

In response to the first issue raised by STL, NHTSA notes that it identified commercial facilities with traction skid pads in the NPRM to support the agency's position that the government is not acting in a sovereign capacity in making the San Angelo facility available for traction tests, and that it may accordingly charge a market rate for those services, as provided in OMB Circular A–25. This listing was not intended to suggest that all of the named facilities are well suited to meet the grade testing criteria of the UTQG standards. The capability of any of these facilities to meet those criteria is a matter of objective analysis that does not turn on whether the facility predated NHTSA's construction of traction skid pads at San Angelo.

STL's contention that NHTSA incurs little if any additional costs in making the traction skid pads at San Angelo available for commercial use is erroneous. Any use of the facility contributes to the deterioration of the skid pad surfaces, and reduces the service life of monitoring and maintenance support equipment. Even if this were not the case, NHTSA would still be obligated to impose a user fee for the use of the traction skid pads. As noted in the NPRM, OMB Circular A–25 expresses the general policy that "[a] user charge . . . will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." The OIG cited this policy in its audit report findings that NHTSA's failure to assess a fee for the use of the traction skid pads was contrary to the requirements of OMB Circular A–25. The agency proposed a user fee for the traction skid pads at San Angelo in order to correct this deficiency.

As noted in the NPRM, NHTSA proposed a fee of $288.00 per day for the use of the traction skid pads at San Angelo by performing the following calculation, based on an equivalent of 360 days of industry use in 1993:

Skid pad calibration expenses	$6,210
General facility costs relating to skid pads	7,140
Depreciable items (skid system, water truck, air compressor, skid track, tractor sweeper, equipment, buildings)	65,904
Salaries relating to skid pads	24,375
Total	103,629

$103,629/360 days industry use = $287.86 cost per day.

Since NHTSA recognizes that some users may not need a full day to conduct traction testing, and that some tests may have to be aborted for reasons beyond the user's control, such as weather conditions or pad instability, the agency agrees with STL's contention that it would be more equitable for the user fee to be imposed on something other than a "daily" basis. STL recommended that the fee instead be imposed on a "per set" basis. Because inefficiencies may result in some users taking longer than others in performing each "set," NHTSA has concluded that it would be more reasonable for the fee to be calculated at an hourly rate. The UTQG facility at San Angelo is open each day for eight and one-half hours, from 7:30 am to 4:00 pm. Based on a daily rate of $288.00, the hourly rate would be $34.00. NHTSA is adopting this hourly rate as the user fee for the traction skid pads at San Angelo. Fees will be assessed at this hourly rate for each hour and for each fraction of a hour that the traction skid pads are used.

A second comment was submitted in response to the NPRM, by the Rubber Manufacturers Association (RMA), on behalf of U.S. tire manufacturers. The RMA took exception to the proposed charge of $379.00 for each course monitoring tire that NHTSA sells, on the basis that manufacturers are obliged to purchase these tires from a single source—the Federal government—and that such a circumstance can lead to what the RMA characterized as excessive "monopoly-type" pricing. The RMA acknowledged that the government must cover its costs in setting the purchase price for course monitoring tires, but requested that NHTSA devise a plan for controlling and reducing overhead costs to keep the program efficient for tire manufacturers and effective for U.S. taxpayers.

NHTSA proposed a charge of $379.00 for each course monitoring tire, which was derived by performing the following calculation for the 700 course monitoring tires that are purchased annually by the agency:

Purchase price of course monitoring tires	$175,000
General facility costs relating to tires	3,400
Warehouse storage fees	24,000
Salaries relating to tires	29,825
Testing fees to establish base course wear rate for tires	32,800
Total	265,025

Number of tires purchased= 700

$265,025/700 = $378.61 cost per tire.

Two-thirds of the $379.00 proposed charge is attributable to NHTSA's acquisition cost of $250.00 for each tire. That price, which is set by the tire's manufacturer, is a matter beyond the government's control. An additional $45.00 is attributable to the testing that NHTSA must perform to establish the base course wear rate for these tires. Warehousing expenses result in an additional charge of $34.00 for each tire. The only component of the proposed charge attributable to overhead expenses is the $50.00 that covers general facility costs and salaries relating to the testing, maintenance, and sale of the tires. In order to control these costs, NHTSA uses a minimal staff and relies extensively on electronic mail in processing orders for course monitoring tires. The $50.00 overhead expense represents thirteen percent of the sale price of each tire, an amount that appears quite reasonable, particularly when compared to overhead charges in the range of 110 to 150 percent that are applied within the tire industry. Although it recognizes that it is the only source for the purchase of these tires, as a government agency, NHTSA is in no position to take advantage of this situation by charging what the RMA characterizes as "monopoly" rates. If it recovered more than its actual costs in the sale of course monitoring tires, NHTSA would be in violation of a law that prohibits government agencies from augmenting the funds that they are appropriated by Congress. In view of these circumstances, NHTSA is adopting the proposed charge of $379.00 as the fee for the course monitoring tires that it sells.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment resulting from this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

The agency believes that motor vehicle and tire manufacturers and tire brand owners typically do not qualify as small entities. This amendment may affect small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles and tires. However, because the user fees established through this amendment can be spread across a manufacturer's entire production, the amendment should have a negligible cost impact on vehicles and tires. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units that purchase motor vehicles should not be significantly affected by these user fees.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, P.L. 96–511, the agency notes that there are no information collection requirements associated with this rulemaking action.

6. Civil Justice Reform

This rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, § 575.104, *Uniform tire quality grading standards*, in Title 49 of the Code of Federal Regulations at Part 575, is amended as follows:

PART 575—[AMENDED]

1. The authority citation for Part 575 will continue to read as follows:

Authority: 49 U.S.C. 322, 30111, and 30123; delegation of authority at 49 CFR 1.50.

2. A new Appendix D is added to § 575.104, to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

Appendix D—User Fees

1. *Course Monitoring Tires:* A fee of $379.00 will be assessed for each course monitoring tire purchased from NHTSA at Goodfellow Air Force Base, San Angelo, Texas This fee is based upon the direct and indirect costs attributable to: (a) The purchase of course monitoring tires by NHTSA, (b) a pro rata allocation of salaries and general facility costs associated with maintenance of the tires, (c) warehouse storage fees for the tires, and (d) testing fees paid by NHTSA to establish the base course wear rate for the tires.

2. *Use of Government Traction Skid Pads:* A fee of $34.00 will be assessed for each hour, or fraction thereof, that the traction skid pads at Goodfellow Air Force Base, San Angelo, Texas are used. This fee is based upon the direct and indirect costs attributable to: (a) depreciation on facilities and equipment comprising or used in conjunction with the traction skid pads (i.e., skid system, water truck, air compressor, skid track, tractor sweeper, equipment, buildings), (b) the calibration of the traction skid pads, and (c) a pro rata allocation of salaries and general facility costs associated with maintenance of the traction skid pads.

3. Fee payments shall be by check, draft, money order, or Electronic Funds Transfer System made payable to the Treasurer of the United States.

4. The fees set forth in this Appendix continue in effect until adjusted by the Administrator of NHTSA. The Administrator reviews the fees set forth in this Appendix and, if appropriate, adjusts them by rule at least every 2 years.

Issued on: July 27, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–19018 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 210, 216, 250, 270, and 604

[Docket No. 950718182–5182–01; I.D. 070695B]

RIN 0648–AI08

Removal of Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the Code of Federal Regulations (CFR) to remove regulations that are no longer needed. This action is consistent with the President's Regulatory Reform Initiative.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, NMFS, 301/713–2344.

SUPPLEMENTARY INFORMATION:

On March 4, 1995, as part of the President's Regulatory Reform Initiative, the President directed agencies to conduct a page-by-page review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform. After conducting a review of 50 CFR parts 210, 216 (subparts G and H), 250, 270, and 604, it was determined that they were not needed and could be removed.

50 CFR Part 210

Part 210 contains regulations that were promulgated under the North Pacific Fisheries Act of 1954, which implemented the International Convention for the High Seas Fisheries of the North Pacific Ocean. After that convention was replaced by the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, the 1954 statute was repealed by Public Law 102–567. Thus, part 210 is without statutory basis and is being removed.

50 CFR Part 216, Subparts G and H

Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) authorize the Assistant Administrator for Fisheries, NOAA (AA) to (1) issue regulations governing the taking of marine mammals incidental to commercial fishing operations; (2) waive section 101's moratorium on the taking and importing of marine mammals under the AA's jurisdiction, and adopt regulations with respect to the taking and importing of such mammals; and (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut, or Eskimo, respectively. In prescribing regulations to carry out the provisions of these sections, section 101 requires that the procedures of section 103 (16 U.S.C. 1373) be followed. Section 103(d) requires that regulations be made on the record after opportunity for an agency hearing on such regulations and on any determination by the AA to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)).

On March 5, 1975 (40 FR 10183), NMFS issued rules of practice and procedure for all hearings conducted pursuant to section 103(d). Subpart G of part 216 contains these rules. Since that time, MMPA 103(d) hearings have been held for only six rulemaking proceedings. As a result of amendments to the MMPA in 1984, 1991, and 1994, it is unlikely that section 103(d) hearings will be conducted in the foreseeable future. If section 103(d) rules of practice and procedure are needed in the future, NMFS will provide parties and the presiding Administrative Law Judge with proposed guidance for conducting the proceeding. As part of the pre-hearing conference, the participants will determine the process for conducting the hearing. Subpart H of part 216 contains only a reference note that is no longer needed. Because part 216 subparts G and H are no longer necessary, they are being removed.

50 CFR Part 250

Part 250 of title 50 CFR contains regulations that implemented section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c), which established a Fisheries Loan Fund (Fund). Under that Act, the Fund ceased to exist on September 30, 1986, and any balance remaining in the Fund was transferred to the Treasury as miscellaneous receipts. Thus, part 250 is no longer needed and is being removed.

50 CFR Part 270

Part 270 of title 50 CFR governs the establishment and conduct of Fish and Seafood Promotional Councils (Councils) under the authority of the Fish and Seafood Promotion Act of 1986. That Act authorized the establishment of a National Council to carry out generic marketing programs, including consumer education and research. Congress funded the National Council, but did not fund the Regional Councils. Funding for the National Council expired in fiscal year 1991; no Regional Councils have been established by the industry, and NMFS is unaware of any plans to do so. Therefore, part 270 is no longer needed and is being removed.

50 CFR Part 604

Part 604 of title 50 CFR contains abbreviated summaries of laws, other than the Magnuson Fishery Conservation and Management Act, that are applicable to the development of fishery management plans. The information in part 604 is readily available to the public elsewhere, and its maintenance in part 604 is not needed. Therefore, part 604 is being removed.

Classification

Because this rule only removes regulations that are no longer necessary, no useful purpose would be served by providing prior notice and opportunity for public comment on this rule. Accordingly, under 5 U.S.C. 553(b)(B), the AA, for good cause, finds that it is unnecessary to provide prior notice and an opportunity for public comment for this rule. Also, because this rule only removes regulations that are no longer needed, the AA, for good cause, finds that no useful purpose would be served by delaying the rule's effective date for 30 days. Therefore, this rule is made effective upon publication.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects

50 CFR Part 210

Fisheries.

50 CFR Part 216

Administrative Practice and procedure, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 250

Fisheries, Fishing vessels, Loan programs-business, Reporting and recordkeeping requirements.

50 CFR Part 270

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements, Seafood.

50 CFR Part 604

Administrative practice and procedure, Fisheries, Fishing.

Dated: July 26, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 210; part 216, subparts G (consisting of §§ 216.70–216.90) and H (Note); and parts 250, 270, and 604 are removed; and subchapter H is vacated.

[FR Doc. 95–18897 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 60, No. 148

Wednesday, August 2, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is committed to providing federal credit unions (FCUs) greater flexibility in pursuing lending opportunities that are consistent with principles of safety and soundness. The NCUA Board is therefore proposing to amend its regulations on loan participation to broaden loan participation authority by removing the requirement that the participation agreement precede loan disbursement.

DATES: Comments must be postmarked or posted on the NCUA electronic bulletin board by October 2, 1995.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA's current "participation loan" regulation requires the participation agreement to precede any disbursement of the loan proceeds. When Section 701.22 of NCUA's Rules and Regulations was originally issued, the Board discussed the term "participation" as follows:

> In granting Federal credit unions the power to participate in making loans to members, Congress was using the term "participation" to mean arrangements made prior to or at the time of origination and carried out within a reasonable time thereafter. Thus, 107(13) (of the Federal Credit Union Act, 12 U.S.C. § 1757(13)) was adopted to allow Federal credit unions to sell certain loans subsequent to origination * * *
>
> 43 FR 51610 (November 6, 1978).

However, the Board amended its opinion in 1981 as follows:

> The participation regulation applies where a third party funnels funds into the credit union with the intent of actually participating in making the loan, for example where the participant will assist in preparing the loan documentation and the participant's funds will actually be disbursed at origination. The participation regulation does not apply when an organization merely arranges to purchase loans subsequently originated by the credit union.
>
> 49 FR 31660 (June 17, 1981).

In 1991, the Board considered but later rejected changes which would have amended the definition of "participation loan" and deleted the requirement that the loan participation agreement precede loan disbursement. The Board was concerned that:

> FCUs may have a decreased interest in properly underwriting a loan if they know they can later reduce their risk by selling participation interests in it. Alternatively, FCUs interested in obtaining a participation after the loan is made may not properly investigate the loan and may instead rely on the original participants to have properly underwritten the loan. FCUs may jump in without a proper due diligence review.
>
> 56 FR 15034, 15035 (April 15, 1991).

The Board now believes that the concerns it expressed in 1991 can be addressed through the FCUs exercise of due diligence before entering into participation agreements as required in this proposal. The FCU is still required to have a master participation agreement. The proposal does not specify at what point the agreement must be executed. The Board invites comment on whether the rule should require that the agreement (without identifying the specific loans) must be in place prior to the disbursement of the loan if the loan is intended for participation, and prior to the sale of the loan if the loan was originally made to hold in portfolio.

Although the regulation does not require that specific provisions be included in the master agreement, prudence dictates that at a minimum the agreement shall: (1) Identify types of loans; (2) state servicing and collection requirements; (3) provide that in the event of a loss each participant shall share in the loss equal to its interest in the participation loan; (4) provide for the distribution of payments of principal to each participant proportionate to its interest in the participation loan; (5) provide for loan status reports to each participant; and (6) state the terms or conditions under which the agreement may be terminated or modified.

Under the proposal, the "originating lender" is required to use the same underwriting standards it uses for loans that are not being sold as participation loans unless there is a participation agreement in place prior to the disbursement of the loan. If a participation agreement is in place prior to disbursement, all of the participating credit unions will have agreed on underwriting standards. The originating lender would reflect those standards either in its loan policies or the participation agreement. Also, the proposal requires the purchaser of a participation interest to have a participation policy in place prior to entering into a participation agreement.

Current Section 701.22(b)(2), as well as the proposed rule, allow either the board of directors or the investment committee to execute the participation agreement. In recognition of the far reaching impact a participation agreement has on an FCU's lending, investment and business strategies, the Board is interested in receiving comments on whether this authority should be solely with the board of directors.

With these safeguards in place, it is contemplated that eliminating the "prior to disbursement" restriction may assist FCUs with their liquidity management and will also provide FCUs with a means of reducing risk. By deleting this requirement, the Board recognizes that there may be some overlap between Sections 701.22 and 701.23 of NCUA's Rules and Regulations; the eligible obligations rule. This is a result of the interplay of Sections 107(5)(E) and 107(13) of the FCU Act. Both of these sections authorize the purchase and sale of a partial interest in certain loans. A loan purchase or sale will be viewed as permissible provided it is authorized under either section.

The Board welcomes comment on this proposal.

B. Section-by-Section Analysis

Proposed Section 701.22(a)(1)

Deletes the requirement that the participation agreement precede disbursement of the loan but retains the requirement of a participation agreement and that the participation be made with "eligible organizations."

Proposed Section 701.22(b)(2)

The phrase "prior to final disbursement" has been eliminated.

Proposed Section 701.22(c)(4)

A phrase has been added to the "originating lender" approval provision requiring the FCU to use the same underwriting standard for participation loans as those used for loans not being sold as participation loans unless there is a participation agreement in place prior to the disbursement of the loan. An additional sentence has also been added, requiring that, where a participation agreement is in place prior to disbursement, either the originating credit union's loan policies or the participation agreement addresses participation loan underwriting standards.

Proposed Section 701.22(d)(1)

A phrase has been added to the "non originating lender" approval provision requiring the FCU to have a participation policy in place prior to entering into a participation agreement.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a potential number of small credit unions (primarily those under $1 million in assets). The NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

These amendments do not change the paperwork requirements.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to federal credit unions.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 27, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Pub. L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.22 is amended by revising paragraphs (a)(1), (b)(2), (c)(4) and (d)(1) to read as follows:

§ 701.22 Loan participation.

(a) * * *

(1) *Participation loan* is a loan where one or more eligible organizations participates pursuant to a written agreement with the originating lender.

* * * * *

(b) * * *

(2) A written master participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors or the investment committee and retained in the Federal credit union's office. The agreement shall include provisions which identify the participation loan or loans; and

* * * * *

(c) * * *

(4) Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. Where a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from non-participation loan underwriting standards.

(d) * * *

(1) Participate only in loans it is empowered to grant, having a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement;

* * * * *

[FR Doc. 95–18892 Filed 8–1–95; 8:45 am]

BILLING CODE 7535–01–P

12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule will consolidate all current regulations and requirements that apply to federally insured state-chartered credit unions (FISCUs) in one place, part 741, Requirements for Insurance. The proposal will not impose any new requirements on FISCUs.

DATES: Comments must be postmarked or posted on the NCUA electronic bulletin board by October 2, 1995.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration Board, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Linda Groth, State Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360 or Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Request for Comments

The NCUA Board seeks comments on the proposed changes to part 741 of the NCUA Rules and Regulations.

Background

Part 741 applies to all credit unions whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF). It applies to federal credit unions (FCUs), FISCUs and credit unions making application for insurance of accounts. It prescribes requirements for obtaining and maintaining federal insurance and for the payment of insurance premiums and an insurance capitalization deposit.

Part 741 also serves as a reference for FISCUs in determining which NCUA rules apply to them. It is NCUA's general practice, when a regulation for FCUs also applies to FISCUs, to refer to the regulation in part 741.

Some regulations that apply to FISCUs, however, are not currently included in part 741. Additionally, the Agreement for Insurance of Accounts, which outlines conditions for state-chartered credit unions obtaining and maintaining federal insurance, contains requirements that are not included in part 741. This proposal corrects those shortcomings by addressing, in part 741, all regulations and requirements that apply to FISCUs. This revision will aid FISCUs by simplifying the process of determining which regulations they must follow. The revision does not impose any additional requirements or new burdens on FISCUs.

Additionally, the proposed revision reorganizes part 741 into subparts A and B. Subpart A contains requirements that apply to all insured credit unions and are not codified elsewhere in NCUA's regulations. Subpart B contains requirements that are set forth in various other parts of NCUA's regulations affecting FCUs and that are, by incorporation in part 741, applicable to FISCUs as well.

Section-by-Section Analysis

Proposed Section 741.0

This section has been modified to include an explanation of new subpart A which contains substantive requirements that are not codified elsewhere in this chapter and new subpart B which lists additional regulations, set forth elsewhere in this chapter as applying to federal credit unions, that also apply to FISCUs.

Subpart A

Proposed Sections 741.1, 741.2, 741.4, 741.5, 741.6, 741.7, 741.8 and 741.9.

In the current part 741, these sections appear as §§ 741.7, 741.5, 741.11, 741.10, 741.13, 741.12, 741.4 and 741.14, respectively. Except for the renumbering, the sections are unchanged. Only technical changes are made to these sections. They are as follows: The sections are renumbered. Section 741.1 is revised to clarify that pursuant to NCUA's examination authority, records and documents must be made available to the NCUA Board or its representative. The last fifteen words of section 741.2 are dropped because they are redundant. Section 741.4(b)(3) is revised to clarify that the NCUA Board may temporarily establish a normal operating level for the NCUSIF of less than 1.3%. Section 741.4(d) is revised to clarify that the annual insurance premium may be waived by the NCUA Board.

Proposed Section 741.3

This proposed section on criteria for insurance is a restatement of the existing § 741.9, with some minor changes. The introduction has been amended by adding the phrase, "and in continuing insurability" after "insurance" to clarify that the criteria listed in this section apply in order to maintain, as well as to obtain, federal insurance.

Proposed § 741.3(a)(3) incorporates a requirement imposed on FISCUs by the Agreement for Insurance of Accounts. An Investment Valuation Reserve Account must be established for those investments owned by FISCUs that do not conform to NCUA's investment regulation for federal credit unions (12 CFR part 703). The reserve must equal the net excess of book value over current market value. If the market value cannot be determined, a reserve equal to the full book value must be established. Current § 741.9(a)(3) requires a special reserve account, but does not address the market value issue.

The requirement that state-chartered corporate credit unions comply with part 704 has not been carried over from current § 741.9(a)(3) to proposed § 741.3(a)(3), because it is contained in proposed § 741.3(b)(3).

Similarly, the requirement that management agree to comply with "full and fair disclosure" has not been carried over from current § 741.9(c) to proposed § 741.3(c), because it is contained in proposed § 741.3(a)(1).

Proposed Section 741.10

This section is new and incorporates requirements currently imposed on FISCUs by the Agreement for Insurance of Accounts. It affects those FISCUs permitted by state law to accept uninsured nonmember shares or deposits. The FISCU is required to identify these nonmember accounts as nonmember shares or deposits on all statements or reports required by the NCUA Board and advise, in writing, any nonmember share and deposit holders that their accounts are not insured by NCUSIF. This would not apply to low income nonmember deposits that are insured pursuant to § 701.32.

Subpart B

Proposed Sections 741.201, 741.203, 741.204 and 741.205

These proposed sections appear in the current rule as §§ 741.1, 741.3, 741.6 and 741.8 respectively. Except for renumbering, these sections remain unchanged.

Proposed Section 741.202

This section appears in the current rule as § 741.2. It is changed for clarification purposes only. Proposed § 741.202(b) substitutes the term "financial officer" for "treasurer". The purpose of the change is to conform the wording to the Federal Credit Union Bylaws.

Proposed Sections 741.206 Through 741.218

As described below, these sections refer to other existing regulations that apply to FISCUs and are not currently addressed in part 741.

Proposed Section 741.206

This new section addresses NCUA's regulation concerning Corporate Credit Unions (part 704).

Proposed Section 741.207

This new section addresses the Community Development Revolving Loan Program for Credit Unions and Designation as a Low Income Credit Union (part 705 and § 701.32(d)).

Proposed Section 741.208

This new section provides that FISCUs choosing to merge or voluntarily terminate or convert their insured status must meet the requirements of Section 206 of the FCU Act (12 U.S.C. 1786) and parts 708a and 708b of the NCUA Rules and Regulations.

Proposed Section 741.209

This new section addresses Management Official Interlocks (part 711).

Proposed Section 741.210

This new section addresses the Central Liquidity Facility (part 725).

Proposed Section 741.211

This new section addresses Advertising (part 740).

Proposed Section 741.212

This new section addresses Share Insurance (part 745).

Proposed Section 741.213

This new section addresses Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations (part 747).

Proposed Section 741.214

This new section addresses the Report of Crime or Catastrophic Act and Bank Secrecy Act compliance (part 748).

Proposed Section 741.215

This new section addresses the Records Preservation Program (part 749).

Proposed Section 741.216

This new section addresses Flood Insurance (part 760).

Proposed Section 741.217

This new section addresses Truth in Savings (part 707).

Proposed Section 741.218

This new section addresses Involuntary Liquidation and Creditor Claims (part 709).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe the significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). This proposal is a compilation of existing regulations and requirements in place for FISCUs. It does not add any additional requirements or burden. Accordingly, the NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a significant number of small credit unions and that a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The proposed rule does not impose any new paperwork requirements.

Executive Order 12612

The proposed rule does not make any substantive changes. Therefore, no new analysis of part 741's effect on state interests is required.

List of Subjects in 12 CFR Part 741

Bank deposit insurance, Credit unions and Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 27, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to revise part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

Sec.

741.0 Scope.

Subpart A—Regulations that Apply to Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That are Not Codified Elsewhere in NCUA's Regulations

741.1 Examination.
741.2 Maximum borrowing authority.
741.3 Criteria.
741.4 Insurance premium and one percent deposit.
741.5 Notice of termination of excess insurance coverage.
741.6 Financial and statistical and other reports.
741.7 Conversion to a state-chartered credit union.
741.8 Purchase of assets and assumption of liabilities.
741.9 Uninsured membership shares.
741.10 Disclosure of share insurance.

Subpart B—Regulations Codified Elsewhere in NCUA's Regulations as Applying to Federal Credit Unions That Also Apply to Federally Insured State-Chartered Credit Unions

741.201 Minimum fidelity bond requirements.
741.202 Audit and verification requirements.
741.203 Minimum loan policy requirements.
741.204 Maximum public unit and nonmember accounts, and low-income designation.
741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.
741.206 Corporate credit unions.
741.207 Community development revolving loan program for credit unions.
741.208 Mergers of Federally insured credit unions: voluntary termination or conversion of insured status.
741.209 Management official interlocks.
741.210 Central Liquidity Facility.
741.211 Advertising.
741.212 Share insurance.
741.213 Administrative actions, adjudicative hearings, rules of practice and procedure.
741.214 Report of Crime or Catastrophic Act and Bank Secrecy Act compliance.
741.215 Records preservation program.
741.216 Flood insurance.
741.217 Truth in savings.
741.218 Involuntary liquidation and creditor claims.

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

§ 741.0 Scope.

The provisions of this part apply to federal credit unions, federally insured state-chartered credit unions, and credit unions making application for insurance of accounts pursuant to Title II of the Act, unless the context of a provision indicates its application is otherwise limited. This part prescribes various requirements for obtaining and maintaining federal insurance and the payment of insurance premiums and capitalization deposit. Subpart A of this part contains substantive requirements that are not codified elsewhere in this chapter. Subpart B of this part lists additional regulations, set forth elsewhere in this chapter as applying to federal credit unions, that also apply to federally insured state-chartered credit unions. As used in this part, *insured credit union* means a credit union whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Subpart A—Regulations That Apply To Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That Are Not Codified Elsewhere in NCUA's Regulations

§ 741.1 Examination.

As provided in Sections 201 and 204 of the Act (12 U.S.C. 1781 and 1784), the NCUA Board is authorized to examine any insured credit union or any credit union making application for insurance of its accounts. Such examination may require access to all records, reports, contracts to which the credit union is a party, and information concerning the affairs of the credit union. Upon request, such documentation must be provided to the NCUA Board or its representative. Any credit union which makes application for insurance will be required to pay the cost of such examination and processing. To the maximum extent feasible, the NCUA Board will utilize examinations conducted by state regulatory agencies.

§ 741.2 Maximum borrowing authority.

Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act, or any insured credit union, must not borrow, from any source, an aggregate amount in excess of 50 per centum of its paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss).

§ 741.3 Criteria.

In determining the insurability of a credit union which makes application for insurance and in continuing the insurability of its accounts pursuant to Title II of the Act, the following criteria shall be applied:

(a) *Adequacy of reserves.*

(1) *General rule.* State-chartered credit unions must meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on federal credit unions by Section 116 of the Act and part 702 of this chapter.

(2) *Charges against reserves.* State-chartered credit unions may charge losses, including losses other than loan losses, against the statutory reserve in accordance with either state law or procedures established by the state supervisory authority. However, charges for losses other than loan losses shall be made only after notification to the Regional Director, unless the credit union's ratio of capital to assets is greater than 6 percent and the charge reduces the ratio by no more than ½ percent. For purposes of this section, capital is defined as the total of the Regular Reserve, the Allowance for Loan Losses, the Allowance for Investment Losses, Undivided Earnings, and other reserves.

(3) *Special reserve for nonconforming investments.* State-chartered credit unions (except state-chartered corporate credit unions) are required to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments beyond those authorized in the Act or the NCUA Rules and Regulations. For any investment other than loans to members and obligations or securities expressly authorized in Title I of the Act and part 703 of this chapter, as amended, state-chartered credit unions (except state-chartered corporate credit unions) are required to establish and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When at the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

(b) *Financial condition and policies.* The following factors are to be considered in determining whether the credit union's financial condition and policies are both safe and sound:

(1) The existence of unfavorable trends which may include excessive losses on loans (i.e., losses which exceed the regular reserve or its equivalent [in the case of state-chartered credit unions] plus other irrevocable reserves established as a contingency against losses on loans), the presence of special reserve accounts used specifically for charging off loan balances of deceased borrowers, and an expense ratio so high that the required transfers to reserves create a net operating loss for the period or that the net gain after these transfers is not sufficient to permit the payment of a nominal dividend;

(2) The existence of written lending policies, including adequate documentation of secured loans and the protection of security interests by recording, bond, insurance, or other adequate means, adequate determination of the financial capacity of borrowers and comakers for repayment of the loan, and adequate determination of value of security on loans to ascertain that said security is adequate to repay the loan in the event of default;

(3) Investment policies which are within the provisions of applicable law and regulations, i.e., the Act and part 703 of this chapter for federal credit unions and the laws of the state in which the credit union operates for state-chartered credit unions, except state-chartered corporate credit unions. State-chartered corporate credit unions are permitted to make only those investments that are in conformance with part 704 of this chapter and applicable state laws and regulations;

(4) The presence of any account or security, the form of which has not been approved by the Board, except for accounts authorized by state law for state-chartered credit unions.

(c) *Fitness of management.* The officers, directors, and committee members of the credit union must have conducted its operations in accordance with provisions of applicable law, regulations, its charter and bylaws. No person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted of any criminal offense involving dishonesty or breach of trust, except with the written consent of the Board.

(d) *Insurance of member accounts would not otherwise involve undue risk to the NCUSIF.* The credit union must maintain adequate fidelity bond coverage as specified in § 741.201. Any circumstances which may be unique to the particular credit union concerned shall also be considered in arriving at the determination of whether or not an undue risk to the NCUSIF is or may be present. For purposes of this section, the term "undue risk to the NCUSIF" is defined as a condition which creates a probability of loss in excess of that normally found in a credit union and which indicates a reasonably foreseeable probability of the credit union becoming insolvent because of such condition, with a resultant claim against the NCUSIF.

(e) *Powers and purposes.* The credit union must not perform services other than those which are consistent with the promotion of thrift and the creation of a source of credit for its members, except as otherwise permitted by law or regulation.

(f) *Letter of disapproval.* A credit union whose application for share insurance is disapproved shall receive a letter indicating the reasons for such disapproval, a citation of the authority for such disapproval, and suggested methods by which the applying credit union may correct its deficiencies and thereby qualify for share insurance.

(g) Nothing herein shall preclude the NCUA Board from imposing additional terms or conditions pursuant to the insurance agreement.

§ 741.4 Insurance premium and one percent deposit.

(a) *Scope.* This section implements the requirements of Section 202 of the Act (12 U.S.C. 1782) providing for capitalization of the NCUSIF through the maintenance of a deposit by each insured credit union in an amount equaling one percent of its insured shares and payment of an annual insurance premium.

(b) *Definitions.* For purposes of this section:

(1) *Insurance year* means the period from January 1 through December 31;

(2) *Insured shares* means the total amount of a credit union's share, share draft and share certificate accounts, or their equivalent under state law (which may include deposit accounts), authorized to be issued to members, other credit unions, public units, or nonmembers (where permitted under the Act or equivalent state law). "Insured shares" does not include amounts in excess of insurance coverage as provided in part 745 of this chapter; and

(3) *Normal operating level* means a total value of the NCUSIF equity equaling 1.3 percent of the aggregate of all insured shares in insured credit unions as of the end of the preceding insurance year, or such lower value as established by action of the NCUA Board.

(c) *One percent deposit.* Each insured credit union shall maintain with the NCUSIF during each insurance year a deposit in an amount equaling one percent of the total of the credit union's insured shares as of the close of the preceding insurance year. The deposit amount shall be adjusted annually on a date to be determined by the NCUA Board.

(d) *Premium.* Unless waived by the NCUA Board, each insured credit union shall pay to the NCUSIF, on a date to be determined by the NCUA Board, an insurance premium for that insurance year in an amount equaling one-twelfth of one percent of the credit union's total insured shares as of the close of the preceding insurance year.

(e) *Redistribution of NCUSIF equity.* When the NCUSIF exceeds its normal operating level, the NCUA Board will, at least annually, make a proportionate adjustment for insured credit unions of the amount necessary to reduce the NCUSIF to its normal operating level. Such adjustment will be in the form determined by the NCUA Board and

may include a waiver of insurance premiums, premium rebates, and/or distributions from NCUSIF equity.

(f) *Forms 1304 and 1305.* A certified copy of Form 1304 will be provided to all federally insured state-chartered credit unions and Form 1305 to all federally chartered credit unions in connection with the computation and funding of their annual premium payment and any change in their one percent deposit. Form 1305 also includes the annual operating fee. Forms 1304 and 1305 are invoices and are precalculated based on the credit union's previous year's insured shares. The forms provide for any adjustments declared by the NCUA Board, resulting in a single net transfer of funds between the credit union and the NCUA. Additional copies of each credit union's Form 1304 and 1305 may be obtained from the appropriate NCUA Regional Office.

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the insurance year in which it has obtained its charter shall not be required to pay an insurance premium for that insurance year. The credit union shall fund its one percent deposit on a date to be determined by the NCUA Board in the following insurance year, but shall not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

(h) *Conversion to Federal insurance.* An existing credit union that converts to insurance coverage with the NCUSIF during an insurance year shall immediately fund its one percent deposit based on the total of its shares as of the close of the month prior to conversion and shall pay a premium (unless waived in whole or in part for all insured credit unions during that year) in an amount that is prorated to reflect the remaining number of months in the insurance year. The credit union will be entitled to a prorated share of any distribution from NCUSIF equity declared subsequent to the credit union's conversion.

(i) *Mergers of nonfederally insured credit unions.* Where a nonfederally insured credit union merges into a federally insured credit union, the continuing federally insured credit union shall immediately pay to the NCUSIF a prorated insurance premium (unless waived in whole or in part for all federally insured credit unions), and an additional one percent deposit based upon the increase in insured shares resulting from the merger.

(j) *Return of deposit.* Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit. Any solvent credit union that is closed due to involuntary liquidation shall be entitled to a return of its deposit prior to final distribution of member shares. Any other credit union whose insurance coverage with the NCUSIF terminates will be entitled to a return of the full amount of its deposit immediately after the final date on which any shares of the credit union are insured, except that the NCUA Board reserves the right to delay payment by up to one year if it determines that immediate payment would jeopardize the financial condition of the NCUSIF. This includes termination of insurance due to mergers and consolidations. A credit union that receives a return of its deposit during an insurance year shall have the option of leaving a nominal sum on deposit with the NCUSIF until the next distribution from NCUSIF equity and will thus qualify for a prorated share of the distribution.

(k) *Assessment of administrative fee and interest for delinquent payment.* Each federally insured credit union shall pay to the NCUA an administrative fee, the costs of collection, and interest on any delinquent payment of its capitalization deposit or insurance premium. A payment will be considered delinquent if it is postmarked later than the date stated in the invoice provided to the credit union. The NCUA may waive or abate charges or collection of interest, if circumstances warrant.

(1) The administrative fee for a delinquent payment shall be an amount as fixed from time to time by the NCUA Board based upon the administrative costs of such delinquent payments to the NCUA in the preceding year.

(2) The costs of collection shall be calculated as the actual hours expended by NCUA personnel multiplied by the average hourly cost of the salaries and benefits of such personnel.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. 3717.

§ 741.5 Notice of termination of excess insurance coverage.

In the event of a credit union's termination of share insurance coverage other than that provided by the NCUSIF, the credit union must notify all members in writing of such termination at least 30 days prior to the effective date of termination.

§ 741.6 Financial and statistical and other reports.

(a) Each operating insured credit union with assets in excess of $50,000,000 shall file with the NCUA a quarterly Financial and Statistical Report on Form NCUA 5300, on or before January 22 (as of the previous December 31), April 22 (as of the previous March 31), July 22 (as of the previous June 30) and October 22 (as of the previous September 30) of each year. All other operating insured credit unions shall file with the NCUA on or before January 31 and on or before July 31 of each year a semiannual Financial and Statistical Report on Form NCUA 5300, as of the previous December 31 (in the case of the January filing) or June 30 (in the case of the July filing).

(b) Insured credit unions shall, upon written notice from the NCUA Board or Regional Director, file such financial or other reports in accordance with instructions contained in such notice.

§ 741.7 Conversion to a state-chartered credit union.

Any federal credit union that petitions to convert to a state-chartered federally insured credit union is required to apply to the Regional Director for continued insurance of its accounts and meet the requirements as stated in the Act and this part. If the application for continued insurance is not approved, such insurance will terminate subject to the conditions set forth in section 206(d) of the Act.

§ 741.8 Purchase of assets and assumption of liabilities.

(a) Any credit union insured pursuant to Title II of the Act must apply for and receive approval from the NCUA Board before either purchasing or acquiring loans or assuming or receiving an assignment of deposits, shares, or liabilities from:

(1) Any credit union that is not insured pursuant to Title II of the Act;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in paragraphs (a)(1) or (a)(2) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under § 701.23(b)(1) (iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under § 701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions; or

(2) Assumptions or receipt of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which an NCUSIF-insured credit union perfects a security interest in connection with an extension of credit to any member.

§ 741.9 Uninsured membership shares.

Any credit union that is insured pursuant to Title II of the Act may not offer membership shares that, due to the terms and conditions of the account, are not eligible for insurance coverage. This prohibition does not apply to shares that are uninsured solely because the amount is in excess of the maximum insurance coverage provided pursuant to part 745 of this chapter.

§ 741.10 Disclosure of share insurance.

Any credit union which is insured pursuant to Title II of the Act and is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units (or, for low-income designated credit unions, any nonmembers), shall identify such nonmember accounts as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union shall advise any present nonmember share and deposit holders by letter that their accounts are not insured by the NCUSIF. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

Subpart B—Regulations Codified Elsewhere in NCUA's Regulations as Applying to Federal Credit Unions That Also Apply to Federally Insured State-Chartered Credit Unions

§ 741.201 Minimum fidelity bond requirements.

(a) Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act must possess the minimum fidelity bond coverage stated in § 701.20 of this chapter in order for its application for such insurance to be approved and for such insurance coverage to continue. A federally insured credit union whose fidelity bond coverage is terminated shall mail notice of such termination to the Regional Director not less than 35 days prior to the effective date of such termination.

(b) Corporate credit unions must comply with § 704.17 of this chapter in lieu of § 701.20.

§ 741.202 Audit and verification requirements.

(a) The supervisory committee of each credit union insured pursuant to Title II of the Act shall make or cause to be made an audit of the credit union at least once every calendar year covering the period elapsed since the last audit. The audit must fully meet the requirements set forth in §§ 701.12 and 701.13 of this chapter.

(b) Each credit union which is insured pursuant to Title II of the Act shall verify or cause to be verified, under controlled conditions, all passbooks and accounts with the records of the financial officer not less frequently than once every 2 years. The verification must fully meet the requirements set forth in §§ 701.12(e) and 701.13 of this chapter.

§ 741.203 Minimum loan policy requirements.

Any credit union which is insured pursuant to Title II of the Act must:

(a) Adhere to the requirements stated in § 701.21(h) of this chapter concerning member business loans, § 701.21(c)(8) of this chapter concerning prohibited fees, and § 701.21(d)(5) of this chapter concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority; and

(b) adhere to the requirements stated in part 722 of this chapter concerning appraisals.

§ 741.204 Maximum public unit and nonmember accounts, and low-income designation.

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act must:

(a) Adhere to the requirements of § 701.32 of this chapter regarding public unit and nonmember accounts, provided it has the authority to accept such accounts. Requests by federally insured state-chartered credit unions for an exemption from the limitation of § 701.32 will be made and reviewed on the same basis as that provided in § 701.32 for federal credit unions, provided, however that NCUA will not grant an exemption without the concurrence of the appropriate state regulator.

(b) Obtain a low-income designation in order to accept nonmember accounts, other than from public units or other credit unions, provided it has the authority to accept such accounts under state law. The state regulator shall make the low-income designation with the concurrence of the appropriate regional director. The designation will be made and reviewed by the state regulator on the same basis as that provided in § 701.32(d) for federal credit unions. Removal of the designation by the state regulator for such credit unions shall be with the concurrence of NCUA.

§ 741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.

Any federally insured credit union chartered for less than 2 years or any credit union defined to be in troubled condition as set forth in § 701.14(b)(3) of this chapter must adhere to the requirements stated in § 701.14(c) concerning the prior notice and NCUA review. Federally insured state-chartered credit unions must submit required information to both the appropriate NCUA Regional Director and their state supervisor. NCUA will consult with the state supervisor before making its determination pursuant to § 701.14(d)(2) and (f). NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual pursuant to § 701.14(d)(1).

§ 741.206 Corporate credit unions.

Any corporate credit union insured pursuant to Title II of the Act shall adhere to the requirements of part 704 of this chapter.

§ 741.207 Community development revolving loan program for credit unions.

Any credit union which is insured pursuant to Title II of the Act and is a "participating credit union," as defined in § 705.3 of this chapter, shall adhere to the requirements stated in part 705 of this chapter.

§ 741.208 Mergers of federally insured credit unions: voluntary termination or conversion of insured status.

Any credit union which is insured pursuant to Title II of the Act and which merges with another credit union or non credit union institution, and any state-chartered credit union which voluntarily terminates its status as a federally-insured credit union, or converts from federal insurance to other insurance from a government or private source authorized to insure member accounts, shall adhere to the applicable requirements stated in Section 206 of the Act and parts 708a and 708b of this

chapter concerning mergers and voluntary termination or conversion of insured status.

§ 741.209 Management official interlocks.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 711 of this chapter concerning management official interlocks, issued under the provisions of the Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.).

§ 741.210 Central liquidity facility.

Any credit union which is insured pursuant to Title II of the Act and is a member of the Central Liquidity Facility, shall adhere to the requirements stated in part 725 of this chapter.

§ 741.211 Advertising.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements prescribed by part 740 of this chapter.

§ 741.212 Share insurance.

(a) Member share accounts received by any credit union which is insured pursuant to Title II of the Act in its usual course of business, including regular shares, share certificates, and share draft accounts, are insured subject to the limitations and rules in subpart A of part 745 of this chapter.

(b) The payment of share insurance and the appeal process applicable to any credit union which is insured pursuant to Title II of the Act are addressed in subpart B of part 745 of this chapter.

§ 741.213 Administrative actions, adjudicative hearings, rules of practice and procedure.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the applicable rules of practice and procedures for administrative actions and adjudicative hearings prescribed by part 747 of this chapter. Subpart E of part 747 applies only to federal credit unions.

§ 741.214 Report of crime or catastrophic act and bank Secrecy Act Compliance.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 748 of this chapter.

§ 741.215 Records preservation program.

Any credit union which is insured pursuant to Title II of the Act shall maintain a records preservation program as prescribed by part 749 of this chapter.

§ 741.216 Flood insurance.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 760 of this chapter.

§ 741.217 Truth in savings.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 707 of this chapter.

§ 741.218 Involuntary liquidation and creditor claims.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the applicable provisions in part 709 of this chapter. Section 709.3 of part 709 applies only to federal credit unions.

[FR Doc. 95–18693 Filed 8–1–95; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ANM–3]

Proposed Alteration of Federal Airways V–19, V–148, and V–263; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to realign three Federal airways located in Colorado. In May, the Byers, CO, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) became operational as part of the new Denver Airport airspace realignment. Consequently, the FAA is proposing to realign Federal Airways V–19, V–148, and V–263. This proposal would enhance air traffic procedures.

DATES: Comments must be received on or before August 18, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 95–ANM–3, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANM–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign three Federal airways, V–19, V–148, and V–263, because of the commissioning of the Byers, CO, VOR/DME. This proposal would enhance air traffic procedures. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–19 [Revised]

From Newman, TX, via INT Newman 266° and Truth or Consequences, NM, 159° radials; Truth or Consequences; INT Truth or Consequences 028° and Socorro, NM, 189° radials; Socorro; Albuquerque, NM; INT Albuquerque 036° and Santa Fe, NM, 245° radials; Santa Fe; Las Vegas, NM; Cimarron, NM; Pueblo, CO; Colorado Springs, CO; INT Colorado Springs 036° and Byers, CO, 211°T(201°M) radials; Byers; Gill, CO; Cheyenne, WY; Muddy Mountain, WY; 5 miles, 45 miles 71 MSL, Crazy Woman, WY; Sheridan, WY; Billings, MT; 38 miles 72 MSL, INT Billings 347° and Lewistown, MT, 104° radials; Lewistown; INT Lewistown 322° and Havre, MT, 226° radials; to Havre.

* * * * *

V–148 [Revised]

From Falcon, CO; Byers, CO; Thurman, CO; 65 MSL INT Thurman 067° and Hayes Center, NE, 246° radials; Hayes Center; North Platte, NE; O'Neill, NE; Sioux Falls, SD; Redwood Falls, MN; Gopher, MN; Hayward, WI; Ironwood, MI; to Houghton, MI.

* * * * *

V–263 [Revised]

From Corona, NM, INT Corona 278° and Albuquerque, NM, 160° radials; Albuquerque; INT Albuquerque 019° and Santa Fe, NM, 268° radials; Santa Fe; Las Vegas, NM; Cimarron, NM; Tobe, CO; 54 miles 69 MSL; Lamar, CO; 17 miles 63 MSL; Hugo, CO; Byers, CO; to Akron. From Pierre, SD; Aberdeen, SD.

* * * * *

Issued in Washington, DC, on July 26, 1995.

Reginald C. Matthews

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–18914 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–019A]

RIN 1218–AA51

Permit-Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of informal public hearing; reopening of public comment period; correction.

SUMMARY: This notice schedules an informal public hearing concerning OSHA's proposal (59 FR 60735) to modify the existing rescue provisions of the standard (§ 1910.146) covering entry into permit-required confined spaces. The Agency requests that interested parties present testimony and evidence regarding the issues raised by the proposed revision and by this hearing notice. This notice also reopens the public comment period and corrects an error in the proposed revision.

DATES: An informal public hearing will begin at 9 a.m. on September 27, 1995 and on each succeeding day.

Notices of intention to appear at the informal pubic hearing, along with all testimony and evidence which will be introduced into the hearing record, must be postmarked by September 13, 1995.

Comments must be postmarked by September 13, 1995.

ADDRESSES: Notices of intention to appear at the hearing and testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue N.W., Washington, D.C. 20210, telephone (202) 219–8615.

The informal public hearing will be held in the Frances Perkins Building auditorium, U.S. Department of Labor, 200 Constitution Avenue N.W., 20210.

FOR FURTHER INFORMATION CONTACT: *Hearings:* Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue N.W., Washington, D.C. 20210, telephone (202) 219–8615. *Proposal:* Mr. Richard E. Liblong, Office of Information, Division of Consumer Affairs, U.S. Department of Labor, room N3647, 200 Constitution Avenue N.W., Washington, D.C. 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: On January 14, 1993, the Occupational Safety and Health Administration (OSHA) issued a General Industry standard (§ 1910.146) to require protection for employees who enter permit-required confined spaces (permit spaces). The permit space standard, which provides a comprehensive regulatory framework for the safe performance of entry operations, became effective on April 15, 1995.

On March 15, 1993, the United Steelworkers of America (USWA) petitioned the United States Court of Appeals for the 11th Circuit for judicial review of § 1910.146. In particular, the USWA contended that § 1910.146(k)(2), which addresses the use of off-site rescue services, was vague and ineffective. The USWA also stated that OSHA had inappropriately omitted both a requirement for testing or monitoring performed to comply with the standard and a requirement for employees to

have access to testing or monitoring results.

Based on discussions with the USWA, OSHA agreed to initiate further rulemaking, issuing a notice of proposed rulemaking (NPRM) (59 FR 60735) on November 28, 1994. The proposed revisions to § 1910.146(k)(2) more clearly express what the Agency intended when it promulgated the permit space standard. They state specifically that host employers must ensure that prospective rescuers who are not employees of the host employer are able to respond to a rescue summons in a timely manner and are equipped and trained to perform permit space rescues at the host employer's facility.

In addition, based on information received subsequent to the promulgation of § 1910.146, OSHA proposed to make § 1910.146(k)(3)(i), which deals with the point of attachment for a retrieval line, more performance-oriented by allowing any point of attachment which enables the entrant's body to present the smallest possible profile during retrieval.

Also, the Agency asked for public input on the USWA's suggestion that OSHA add provisions which would require that employers provide for employee observation of permit space testing or monitoring, and that employers also provide employee access to the results of permit space testing or monitoring.

The NPRM set a 90 day comment period, ending on February 27, 1995, to receive written comments on the proposed revisions and the issues raised. OSHA received 51 written comments (Exs. 161–1 through 161–51). Several commenters (Ex. 161–21, 161–22, 161–38, 161–40, 161–44) required that OSHA convene an informal public hearing to address their concerns. The comments received in response to the proposed revision and issues raised are available for inspection and copying in the OSHA Docket Office, Docket No. S–019A, room N2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Based on the response to the NPRM, OSHA has decided to convene an informal public hearing, beginning on September 27, 1995, and to reopen the comment period to obtain public input regarding the need to more clearly express a host employer's responsibility to assess a prospective rescue service's capabilities (i.e., is equipped, trained, and can respond in a timely manner) and regarding the need for employee participation in testing and monitoring. The Agency requests that hearing participants and commenters provide supporting information for any recommendations, so OSHA can adequately assess these materials when drafting the final rule for this rulemaking.

Rescue and Emergency Services

Existing paragraph (k)(1) sets requirements for employers who have their own employees enter permit spaces to provide rescue and emergency services. The criteria set by this paragraph are designed to protect such employees from permit space hazards and to maximize their ability to provide effective rescue and emergency services. Paragraph (k)(1) applies both to rescuers employed by employers who are conducting permit space operations and to rescuers employed by outside rescue services, insofar as such employers are regulated by OSHA (State and local government employees in non-State Plan States are not covered).

OSHA's experience indicates that many employers who conduct permit space operations rely on off-site rescue services, such as those provided by local fire departments, in lieu of establishing an adequate rescue capability using their own employees. The Agency has acknowledged that there are circumstances where it is reasonable for "host employers" to rely on persons other than their own employees to provide rescue and emergency services. Accordingly, existing paragraph (k)(2) sets criteria for the use of such "outside" rescue and emergency services.

In particular, the host employer must provide the "outside rescuers" with pertinent information about the identified permit space hazards and give them access to any permit space from which rescue may be necessary, so that the rescue service can develop appropriate rescue plans and can practice performing rescues.

Pursuant to §§ 1910.146(d)(9) and (f)(11), the host employer is currently required to establish effective means of summoning rescuers and document those means in the entry permit. Unless non-entry rescue procedures have been implemented or the potential rescuers are standing by as entry operations proceed, some time will pass between the transmittal of the rescue summons and the retrieval of an entrant. OSHA expects affected employers to make arrangements for rescue which maximize the likelihood that entrants will be retrieved safely while minimizing the risks for potential rescuers.

However, in response to a submission (Ex. 1) from the United Steelworkers of America (USWA), the Agency has acknowledged (59 FR 60736) that the final rule may not have been sufficiently clear as to a "host" employer's responsibility for the performance of "outside" rescue services. Accordingly, the Agency has proposed to revise § 1910.146(k)(2) so the standard clearly indicates that "host" employers are required to retain rescue services that can respond adequately and in a timely fashion when summoned to perform rescues.

In response, some commenters (Exs. 161–9, 161–13, 161–31, 161–42 and 161–50) expressed support for the proposed revisions as the appropriate means to ensure that rescue services performed adequately. Those commenters indicated that compliance would pose no difficulties.

On the other hand, several commenters (Exs. 161–1, 161–2, 161–5, 161–6, 161–11 and 161–33) expressed concern that the proposed language appears to rule out the use of outside rescue services. Those commenters stated that OSHA should not discourage the use of off-site rescue services because there will be situations where affected employers have no viable alternative to relying on those services. Furthermore, those commenters have indicated that an "off-site" rescue service summoned by a "host" employer might well be able to respond at least as quickly and effectively as an "on-site" resuce service set up by the employer conducting entry operations.

One commenter (Ex. 161–1) expressed concern that "[a]doption of this section as stated may force small inexperienced employers into establishing in-house resuce teams with little or no practical training." In addition, a commenter (Ex. 161–6) stated that "[o]n-site rescue teams are usually comprised of electricians, pipefitters, maintenance workers and other craftspeople where rescue is a sideline. Whereas most on-site teams are only given a minimal amount of time to train, many off-site technical rescue teams do nothing but train for and run fire and rescue calls." However, another commenter (Ex. 161–40) stated that on-site employees, properly trained and equipped, would perform better than off-site rescue services, because on-site personnel would be familiar with the facility and closer to the spaces being entered.

In addition, the USWA (Ex. 161–38) commented as follows:

> In our June 22, 1993 letter, the USWA expressed concern that the provisions of the standard (primarily paragraph (k)(2)) allowing off-site rescue services were vague and ineffective. In subsequent discussions with OSHA and the DOL solicitors, we argued that only an on-site rescue service could respond in time to save the life of an entrant overcome by a hazardous atmosphere, trapped by an engulfing liquid or solid, or critically injured by some other confined space hazard. We also pointed out that the standard imposes a number of requirements on on-site rescue services, but not on off-site services, thus giving employers an unwarranted incentive to choose off-site services.
>
> Subsequent discussions with employers and professional rescue services, along with comments submitted to this docket [S–019A] by other parties, have caused us to modify that position. We remain skeptical that an off-site service can respond rapidly enough in most circumstances. We are, however, willing to admit the possibility. In addition, the mere fact that a rescue service is maintained on site is no guarantee that the service will reach the scene of an emergency on time, especially in a very large plant. Accordingly, we would support a performance-based approach to this issue, so long as the desired performance was spelled out with sufficient specificity, and so long as it applied to both on-site and off-site rescue services.

A number of commenters (Exs. 161–1, 161–14, 161–20, and 161–29) suggested that the Agency drop the proposed revisions to § 1910.146(k). For example, a commenter (Ex. 161–35) stated that the proposed revision "places the host employer in an unenviable position of being held accountable for the performance of specified employee activities over which the host employer has no control." In addition, a commenter (Ex. 161–20) indicated that the rationale behind the proposed revisions failed to take into account the application of the requirements in existing § 1910.146(k)(1) to all employers (except some public sector employers) who send employees into permit spaces to perform rescues. That commenter also stated as follows:

> Many employers will use off-site services because they do not have the specialized rescue training and experience of these organizations. If a host employer is utilizing the outside rescuer because it does not have the expertise to maintain a team in-house, how can the host determine, let alone be held accountable as to whether that expertise is "functioning appropriately"? [emphasis in original]

Other commenters (Ex. 161–26, 161–37, 161–42, 161–46) suggested that any revision of existing § 1910.146(k) be limited to providing clear guidance regarding how to assess the relative merits of on-site and off-site options, and set performance criteria that would apply to *all* rescue services. These commenters were primarily concerned that the Agency apply the same criteria to all rescuers, whether on-site or off-site.

For example, several commenters (Exs. 161–23, 161–30, 161–38 and 161–45) asked that the Agency indicate clearly what constitutes "timely" response to a rescue summons. Some commenters. (Exs. 161–2, 161–6, 161–7 and 161–26) noted that rescuer proficiency was as important as the response time and suggested that OSHA set performance criteria for assessing the timeliness of response. Another commenter (Ex. 161–38) suggested that employers be required to have rescuers arrive within *four* minutes of summons where entrant has been exposed to atmospheric or engulfment hazards, and within *10* minutes otherwise.

One commenter (Ex. 161–25) stated as follows:

> Even with well trained rescue personnel on-site, extracting an incapacitated person from a confined space while attempting to adminster first aid is not a quick process. Therefore, the fact that rescue capability happens to be off-site and perhaps is unfamiliar with the site's confined spaces may have little impact on the ultimate outcome of such an incident.

Another commenter (Ex. 161–39) recognized that a rescue service which responds to a permit space accident within four minutes will still need time to prepare for entry, making it "impossible for an outside rescue service to * * * have oxygen to the patient within four minutes." However, that commenter stated "if the rescuers can get to the patient close to this four-minute time frame, then a rescue may still be possible."

Other commenters (Exs. 161–14, 161–20, 161–28 and 161–33) stated that OSHA should not attempt to specify what constitutes "timeliness" because the existing standard provides sufficient guidance regarding how to assess the adequacy of rescuer response in a specific situation. For example, a commenter (Ex. 161–33) stated as follows:

> After careful deliberation, the Agency properly rejected any attempt to incorporate a timeliness requirement into the standard. Rather than adopting a timeliness requirement which would be infeasible, would encourage conduct likely to endanger rescuers, and inevitably would be subject to inconsistent enforcement through subjective (if not arbitrary) 20–20 hindsight, the Agency concluded "that prevention of emergencies in permit spaces is the most effective approach to this problem." 58 FR 4527/1.

The Agency recognizes that permit space hazards vary in their capacity to kill or permanently injure employees and that what constitutes "timely" rescue will vary accordingly. A commenter (Ex. 161–6) has indicated that immediate rescue is not always imperative, because a slightly hypoxic environment may disable an entrant without creating a risk of permanent brain damage. Another commenter (Ex. 161–38) took issue with that comment, stating that OSHA must require rescue within the first few minutes, because the Agency cannot assume an environment is only slightly hypoxic.

Some atmospheric hazards can cause death or permanent injury within four to six minutes. However, rescuers responding from outside of the immediate area of the entry space would usually not be able to begin a rescue in four to six minutes. Therefore, the only way rescuers could successfully retrieve entrants under such circumstances would be to have personnel present and prepared to initiate rescue throughout the period of entry operations. One commenter (Ex. 161–33) has stated that the proposed rule appears to require "a rescue team to be standing by immediately outside every space during every entry." The commenter indicated that such a measure would be inappropriate where there was "non-emergency entry into a permit space."

As stated both in the NPRM and elsewhere in this notice, OSHA intended this rulemaking simply to clarify the existing requirements of § 1910.146(k)(2). In particular, the Agency has attempted to indicate clearly that an employer who retains an off-site rescue and emergency service must ensure that the designated service has the equipment, training and overall ability to respond in a timely fashion when summoned to rescue a permit space entrant. OSHA does not thereby intend to require that host employers "guarantee" the performance of off-site services, to make compliance more burdensome for off-site services than for on-site services, or to prevent the use of off-site services. The Agency has consistently maintained that the purpose of § 1910.146(k) is to require that employers' provisions for rescue, by whatever means, are adequate. The proposed amendment to § 1910.146(k)(2) (59 FR 60735) was intended solely to clarify the original intent of that paragraph.

As amended, paragraph (k)(2) would read as follows:

> (2) When an employer (host employer) arranges to have persons other than the host employer's employees (outside rescuer) perform permit space rescue, the host employer shall ensure that:
>
> (i) The outside rescuer can effectively respond in a timely manner to a rescue summons.
>
> (ii) The outside rescuer is equipped, trained and capable of functioning appropriately to perform permit space rescues at the host employer's facility.

(iii) The outside rescuer is aware of the hazards they may confront when called on to perform rescue at the host employer's facility.

(iv) The outside rescuer is provided with access to all permit spaces from which rescue may be necessary so that the outside rescuer can develop appropriate rescue plans and practice rescue operations.

The Agency requests testimony and further comment concerning both the need for and the adequacy of the proposed language. Does the proposed language adequately clarify the host employer's responsibilities in using the services of a rescue service not comprised of his own employees? If not, how can the proposed provisions be further improved? Is addition guidance necessary?

Two commenters (Ex. 161–2 and 161–44) have provided examples of programs for the proper organization, training and equipping of rescue services. The Agency solicits input regarding the extent to which it would be appropriate to incorporate criteria, such as that provided by the commenters, either as regulatory text or in a non-mandatory appendix.

Employee Participation in Testing and Monitoring

In response to a submission from the USWA (Ex. 1), the NPRM solicited comment as to whether § 1910.146 should be revised to require that affected employees, or their designated representatives, be permitted to observe the evaluation of confined space conditions, including any testing or monitoring conducted under the permit space standard. The USWA (Ex. 161–38), which requested a hearing on this issue, expressed support for incorporation of employee participation into the permit standard. In particular, the USWA stated that such a provision was required under section 8(c)(3) of the OSH Act, which provides for employee observation of monitoring performed to verity compliance with health standards. The commenter also stated "A worker entering a confined space risks sudden death if the monitoring is not done properly. Surely that worker should have the right to observe the monitoring."

Other commenters (Exs. 161–39 and 161–43) stated that it was appropriate to require employee participation in monitoring and testing because it would reassure employees that the results were accurate and reliable. In addition, a commenter (Ex. 161–40) indicated that employee participation in monitoring was an example of the approaches that could be used to involve workers in the development and implementation of a permit space program.

On the other hand, some commenters (Exs. 161–9, 161–12, 161–13, 161–25,161–30, 161–50) opposed the inclusion of a requirement for employee observation of monitoring, stating that existing § 1910.146 already addressed employee access to monitoring information and that the suggested requirement would impose unreasonable burdens and delays. Other commenters (Exs. 161–20, 161–26, 161–29, 161–35, 161–48) also stated that section 8(c)(3) of the OSH Act does not require employee participation in permit space monitoring, because § 1910.146 is a *safety* standard and the statute applies to the promulgation of *health* standards.

In addition, some commenters (Exs. 161–15, 161–27 and 161–35) stated that adoption of the suggested provision would intrude on labor/management relations by mandating collaboration, while other commenters (Exs. 161–26 and 161–49) expressed concern that such a requirement would raise safety problems because employees would be exposed to dangerous atmospheres. One other commenter (Ex. 161–45) stated that it was unnecessary to mandate employee participation, but that permit space programs should provide for the survey of a permit space at an affected employee's request, as a means of building trust that the employer is looking out for the well-being of the employees.

In response to the above-described comments, OSHA requests additional input regarding the need for regulatory language addressing employee participation in permit space monitoring.

Correction

In its notice of November 28, 1994 (59 FR 60735) OSHA made an error in the regulatory text portion of the proposed revision of paragraph (k)(3)(i). The preamble discussion (in the middle column of page 60738) makes it clear that OSHA intended to amend only the first sentence of paragraph (k)(3)(i). However, the proposed regulatory text (in the third column of page 60739) did not include the existing paragraph (k)(3)(i) language which provides for the use of wristlets, creating the impression that OSHA intended to disallow the use of wristlets. Indeed, several commenters (Exs. 161–20, 161–25, 161–26, 161–48) called the omission to the Agency's attention and expressed support for the retention of the sentence in the final rule. The exclusion of the sentence regarding the use of wristlets from the proposal was inadvertent. Therefore, the proposed revision to paragraph (k)(3)(i), of § 1910.146, beginning on the tenth line of the third column of page 60739, is corrected to read as follows:

(i) Each authorized entrant shall use a chest or full body harness, with a retrieval line attached at the center of the entrant's back near shoulder level, above the entrants head or other point which the employer can establish will ensure that the entrant will present the smallest possible profile during removal. Wristlets may be used in lieu of the chest or full body harness if the employer can demonstrate that the use or full body harness is infeasible or creates a greater hazard and that the use of wristlets is the safest and most effective alternative.

* * * * *

Public Participation—Notice of Hearing

Pursuant to section 6(b) of the act, an opportunity to submit oral testimony concerning the proposed revisions and issues raised will be provided at an informal public hearing scheduled to begin at 9 a.m. on September 27, 1995 in the auditorium of the Francis Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The hearing will be extended to subsequent days as necessary.

Notice of Intention To Appear

All persons desiring to participate at the hearing must file, in quadruplicate, a notice of intention to appear, postmarked on or before September 13, 1995. The notice must be addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket S–019A, room N3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219–8615. The notice of intention to appear may also be transmitted by facsimile to (202) 219–5986, provided the original and 3 copies of the notice subsequently are sent to Mr. Hall.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, room N2625, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219–7894, must contain the following information:

(1) The name, address, and telephone number of each person wishing to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A statement of the position that will be taken with respect to each issue addressed, and;

(6) Whether the party expects to submit documentary evidence, and, if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of the testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked on or before September 13, 1995. These materials will be available for inspection and copying at the Technical Data Center Docket Office. The amount of time requested in each submission will be reviewed. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be provided appropriate notice.

Any party who has not substantially complied with the requirements for requesting more than 10 minutes of presentation time will be limited to a 10 minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

The hearing will be open to the public, and any interested person is welcome to attend. However, only persons who have filed proper notice of intention to appear will be permitted to ask questions and otherwise participate fully in the proceeding.

Any participant who requires audiovisual equipment for their oral testimony must submit a request for such equipment in their notice of intent to appear, specifying the type of equipment needed.

Conduct and Nature of Hearing

The hearing will commence at 9 a.m. on September 27, 1995 in Washington, D.C. Any procedural matters relating to the hearing will be resolved immediately after commencement. The informal nature of the rulemaking hearing to be held is established in the legislative history of section 6 of the Act and is reflected in the OSHA hearing regulations (see 29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested parties is allowed on the issues, it is clear that the hearing shall remain informal and legislative in type. The intent, in essence, is to provide an opportunity for effective oral presentation by interested parties which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearing will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who will have all the necessary and appropriate authority to conduct a full and fair informal hearing as provided in 29 CFR 1911, including the powers to:

(1) Regulate the course of the proceedings;

(2) Dispose of procedural requests, objections and comparable matters;

(3) Confine the presentation to the matters pertinent to the issues raised;

(4) Regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, question and permit the questioning of any witness and to limit the time for questioning, and;

(6) In the Judge's discretion, keep the record open for a reasonable, stated time to receive written information and additional data, views and arguments from any person who participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed revisions and issues raised will be reviewed in light of all testimony and written submissions received as part of the record. Decisions made by OSHA concerning the proposed revisions and issues will be based on the entire record of the proceeding, including the written comments and data received from the public.

Written Comments

Interested persons are invited to submit written data, views and arguments with respect to the issues raised in this notice. These comments must be postmarked on or before September 13, 1995, and submitted in quadruplicate to the Docket Office, Docket No. S–019A, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219–7894. Comments limited to 10 pages or less also may be transmitted by facsimile to (202) 219–5046, provided the original and three copies are sent to the Docket Office thereafter. Written submissions must clearly identify the issue addressed and the position taken with respect to each issue.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address.

All timely written submissions will be made a part of the record for this proceeding.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, D.C. this 28th day of July, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–18920 Filed 8–1–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

Collection From Third Party Payers of Reasonable Costs of Healthcare Services

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a new rule under the Third Party Collection program for determining the reasonable costs of health care services provided by facilities of the uniformed services in cases in which care is provided under TRICARE Resource Sharing Agreements. For purposes of the Third Party Collection program such services will be treated the same as other services provided by facilities of the uniformed services. The proposed rule also lowers the high cost ancillary threshold value from $60 to $25 for patients that come to the uniformed services facility for ancillary services requested by a source other than a uniformed services facility provider. The reasonable costs of such services will be accumulated on a daily basis.

DATES: Written comments on this proposed rule must be received on or before October 2, 1995.

ADDRESSES: LCDR Pat Kelly, Office of the Assistant Secretary of Defense

(Health Affairs), Health Services Operations and Readiness, Pentagon Room 3E343, Washington, D.C. 20301–1200.

FOR FURTHER INFORMATION CONTACT: LCDR Patrick Kelly, (703) 756–8910.

SUPPLEMENTARY INFORMATION: Currently, the Third Party Collection program regulation includes a special rule for Partnership Program providers. The Partnership Program allows civilian health care providers authorized to provide care under the CHAMPUS program to provide services to CHAMPUS beneficiaries in military hospitals and to receive payment from the CHAMPUS program. Pursuant to CHAMPUS payment rules, CHAMPUS is always the secondary payer to other health insurance plans; Thus, CHAMPUS may not make payment to the Partnership Program provider in cases in which the beneficiary has other health insurance. To accommodate this CHAMPUS requirement, the third Party Collection program currently excludes Partnership Program provider services from the military hospital claims. Thus, for example, for inpatient hospital care, the Third Party Payer now receives two claims, one from the military facility for the hospital and ancillary costs, and a separate claim from the provider for the professional services.

The current practice has produced some confusion in that it is a departure from the normal procedure for claims arising from care provided by military hospitals. In addition, because the Partnership Program providers function independently from the military hospital's management system, there are no DoD standards that govern the amounts claimed by various Partnership Program providers.

DoD is now proceeding with implementation of a major managed care program, called TRICARE, in its military medical treatment facilities and CHAMPUS. Under TRICARE, regional managed care support contractors will work with military treatment facilities on a wide range of managed care activities. Among the activities of the managed care contractors is the Resource Sharing Program. Under this program, the contractor makes agreements with military hospitals in the region under which the contractor will supply personnel and other resources in order to allow the facility to increase the services it can make available to DoD health care beneficiaries. The TRICARE program is now the subject of a separate rulemaking proceeding, which will result in comprehensive regulations codified at 32 CFR 199.17.

TRICARE Resource Sharing Agreements are similar to Partnership Program payment arrangements in that both result in civilian providers coming into the military facility and providing care in that facility. However, a significant difference exists in the method of payment. Under the Partnership Program, payment is on a fee-for-service basis under the normal operation of the CHAMPUS program. Under Resource Sharing, the method of payment may be on a salary basis or other arrangement made by the managed care support contractor. Under the Partnership Program, the CHAMPUS second payer requirement applies. Under Resource Sharing Agreements, the overall managed care contract separates the financing from the normal CHAMPUS payment rules and allows for special payment rules.

Based on this, we are establishing a special rule for Resource Sharing Agreements. Or, more accurately, we are establishing the normal rule for Resource Sharing Agreements. That is to say that care provided in whole or in part through TRICARE Resource Sharing Agreements will be handled for purposes of third party billings just like all other services provided in the military facility, and will be billed at the same rates. The special rule applicable to the Partnership Program providers, under which two claims are made to the third party payer, will not apply under TRICARE Resource Sharing Agreements. As a result, care provided in military facilities will be billed to third party payers in the same manner and same amount, regardless of whether the professional services were provided by a military physician or Resource Sharing Agreement provider.

The TRICARE program is being phased in region-by-region throughout the United States. As it takes hold, we expect the Partnership Program to be phased out and be replaced by TRICARE Resource Sharing Agreements. Thus, in several years, the special Partnerhship Program rule will no longer be needed, and the simpler, single-claim rule for TRICARE Resource Sharing Agreements will apply. We view this as both a simplification and an improvement in the Third Party Collection program.

With respect to regulatory procedures, this proposed rule is not a significant regulatory action under Executive Order 12866, nor does it significantly affect a substantial number of small entities under the Regulatory Flexibility Act, nor impose new information collection requirements under the Paperwork Reduction Act. This is a proposed rule. All public comments are invited. We expect to proceed with promulgation of a final rule within approximately 60 days after close of the comment period.

List of Subjects in 32 CFR Part 220

Claims, Health care, Health insurance.

For the reasons stated in the preamble, 32 CFR part 220 is proposed to be amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

1. The authority citation for part 220 continues to read as follows:

Authority: 5 U.S.C 301; 10 U.S.C. 1095.

2. Section 220.8 is amended by revising paragraphs (h) and (k) to read as follows:

§ 220.8 Reasonable costs.

* * * * *

(h) *Special rule for certain ancillary services ordered by outside providers and provided by a facility of the Uniformed Services.* If a Uniformed Services facility provides certain ancillary services, prescription drugs or other procedures requested by a source other than a Uniformed Services facility and are not incident to any outpatient visit or inpatient services, the reasonable cost will not be based on the usual DRG or per visit rate. Rather, a separate standard rate shall be established based on the accumulated cost of the particular services, drugs, or procedures provided during one day. The billing threshold shall be published annually. For fiscal year 1996 that threshold limit shall be $25. The reasonable cost for the services, drugs or procedures to which this special rule applies shall be calculated and made available to the public annually.

* * * * *

(k) *Special rules for TRICARE Resource Sharing Agreements and Partnership Program providers.*

(1) *In general.* This paragraph (k) establishes special Third Party Collection program rules for TRICARE Resource Sharing Agreements and Partnership Program providers.

(i) TRICARE Resource Sharing Agreements are agreements under the authority of 10 U.S.C. 1096 and 1097 between uniformed services treatment facilities and TRICARE managed care support contractors under which the TRICARE managed care support contractor provides personnel and other resources to the uniformed services treatment facility concerned in order to help the facility increase the availability of health care services for beneficiaries. TRICARE is the managed care program authorized by 10 U.S.C. 1097 (and

several other statutory provisions) and established by regulation at 32 CFR 199.17.

(ii) Partnership Program providers provide services in facilities of the uniformed services under the authority of 10 U.S.C. 1096 and the CHAMPUS program. They are similar to providers providing services under TRICARE Resource Sharing Agreements, except that payment arrangements are different. Those functioning under TRICARE Resource Sharing Agreements are under special payment arrangements with the TRICARE managed care contractor; those under the Partnership Program file claims under the standard CHAMPUS program on a fee-for-service basis.

(2) *Special rule for TRICARE Resource Sharing Agreements.* Services provided in facilities of the uniformed services in whole or in part through personnel or other resources supplied under a TRICARE Resource Sharing Agreement are considered for purposes of this Part as services provided by the facility of the uniformed services. Thus, third party payers will receive a claim for such services in the same manner and for the same costs as any similar services provided by a facility of the uniformed services.

(3) *Special rule for Partnership Program providers.* For inpatient services for which the professional provider services were provided by a Partnership Program provider, the professional charges component of the total inpatient DRG rate will be deleted from the claim from the facility of the uniformed services. The third party payer will receive a separate claim for professional services directly from the individual health care provider. The same is true for the professional services provided on an outpatient basis under the Partnership Program. Claims from Partnership Program providers are not covered by 10 U.S.C. 1095 or this part, but are governed by statutory and regulatory requirements of the CHAMPUS program.

* * * * * *

July 28, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18961 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–95–023]

RIN 2115–AE47

Drawbridge Operation Regulations; Chicago River, Illinois

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; notice of public hearing.

SUMMARY: The Coast Guard is proposing changing the operating regulations governing the drawbridges over the Chicago River system, most of which are owned and operated by the City of Chicago. This proposed rule would establish the times when, and the conditions under which, the bridges need to open for the passage of commercial and recreational vessels, and require advance notice of a recreational vessel's time of intended passage through the bridges. Special provisions would be added to provide drawbridge openings for flotillas of five or more recreational vessels. The proposed regulations have one set of rules for the period of high vessel activity, 1 April through 30 November, and other rules for the remainder of the year. Further, certain bridges on the North Branch of the Chicago River have been deleted from the previous permanent rule because they no longer exist or are no longer in the route of commercial or recreational vessels. The changes are being proposed in response to a request by the City of Chicago to reduce the number of required bridge openings. That request was premised on the unique situation in Chicago, where 26 bridges cross the Chicago River and its North and South branches in the very heart of the City. As a result, City officials asserted that drawbridge openings in Chicago have a greater potential impact on vehicular traffic than in any other major city in the United States. This action should accommodate the needs of vehicle traffic while providing for the reasonable needs of navigation. The Coast Guard will hold a public hearing on this proposal on August 22, 1995, in Chicago, IL.

DATES: Written comments on this proposed rulemaking must be received by August 30, 1995.

The hearing will be held on August 22, 1995, from 7 p.m. until 11 p.m.

ADDRESSES: Comments should be addressed to, and documents referenced in this preamble are available for inspection and copying at, the office of the Commander (obr), Ninth Coast Guard District, room 2083, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The public hearing on August 22, 1995 will be held at the Ralph H. Metcalfe Federal Building, 77 West Jackson Street, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Malone, Bridge Branch, Ninth Coast Guard District, (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document were: Commander James M. Collin, U.S. Coast Guard, and Project Counsel; Mr. A.F. Bridgman, Jr., Chief, Regulations and Administrative Law Division, U.S. Coast Guard.

Request for Comments

The Coast Guard encourages interested persons to submit written data or views concerning this proposed rule. Persons submitting comments should include their names and addresses and identify this notice [CGD09–95–023]. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. The comment period has been limited to August 30, 1995, in order to enable the Coast Guard to have a final rule in effect by the end of the boating season.

Public Hearing

The Coast Guard will hold a public hearing on this proposal on August 22, 1995, from 7 p.m. until 11 p.m. at the Ralph H. Metcalfe Federal Building, 77 West Jackson Street, Chicago, IL 60604. Attendance at the hearing is open to the public. Persons wishing to make oral presentations should notify Ms. Carolyn Malone at the number listed under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted at the hearing for inclusion in the public docket. Individuals making oral presentations at the hearing are encouraged to submit a written copy of their remarks for the rulemaking docket.

Regulatory History

Since the 1970's, the regulations for the operation of the bridges on the

Chicago River had provided for on signal openings seven days a week, except during rush hours Monday through Fridays. This regulation is referred to as the "permanent rule." On May 12, 1993, under the provisions of 33 CFR 117.43, the Coast Guard published (58 FR 27933) a deviation from the permanent rule to allow the City of Chicago to limit weekday openings for recreational vessels, to require advance notice for opening, and to require the recreational vessels to be organized in flotillas of five to twenty-five vessels for passage. Deviations such as this for not more than 90 days are utilized to evaluate suggested changes to drawbridge operation requirements. Subsequent deviations, with varying requirements, were published on June 16 (58 FR 33191), August 12 (58 FR 42856), October 21 (58 FR 54289) and November 29, 1993 (58 FR 62532).

On Wednesday, December 22, 1993, the Coast Guard published a notice of proposed rulemaking and notice of public hearing entitled Drawbridge Operation Regulation: Chicago River, IL (58 FR 67745). The Coast Guard received 132 letters commenting on this proposal. A public hearing was held on January 20, 1994 in Chicago, Illinois, attended by 107 persons, of whom 32 made oral statements or furnished data on the proposed regulations.

Following this notice and comment rulemaking, on April 18, 1994, the Coast Guard promulgated a new final rule for drawbridge operations on the Chicago River. This rule provided for evening openings on Tuesday and Thursday, Saturday and Sunday openings during the day, and Wednesday daylight openings from April 15 through June 15. It also specified a flotilla size of between 5 and 25 vessels.

On September 26, 1994, the United States District Court for the District of Columbia issued an order in the case of *Crowley's Yacht Yard, Inc., Plaintiff,* v. *Federico Pena, Secretary, United States Department of Transportation, Defendant,* (C.A. No. 94–1152 SSH), rescinding the new final rule published on April 18, 1994, and reinstating the previous regulations or permanent rule. The Court's decision was based on its conclusion that there was not a sufficient basis in the administrative record to support the Coast Guard's decision to allow weekday daylight openings only in the spring, and its view that a traffic study provided by the City was suspect since it took place in part during the "Taste of Chicago" festival, which resulted in increased vehicular traffic.

As a result of the Court decision and to gather data for future use, the District Commander authorized a temporary deviation to the permanent rule for the period October 11, 1994 through December 5, 1994. A notice of this deviation, soliciting comments on the effect of the deviation, was published on October 24, 1994 (59 FR 53351). The deviation provided for openings of bridges, with a twenty-four hour advance notice to the City of Chicago, from 7 a.m. to 7 p.m. on Saturdays and Sundays, and on Wednesdays between the hours of 6:30 p.m. and 10 p.m., throughout the entire period. In addition, from October 11 through October 23 the draws were to be opened between the hours of 10:30 a.m. to 1:30 p.m. on Tuesdays and Thursdays, and from October 23 through December 5 the draws were to be opened for vessel passage between the hours of 10:30 a.m. and 1:30 p.m. on Wednesdays. Flotilla size was specified. The Coast Guard decided on this approach since it was consonant with public comments on behalf of the City and its citizens urging that "on demand" openings should not continue, and also with the boatyards which had stated that some weekday openings were necessary. Moreover, the schedule set forth in this deviation accommodated the Court's concern by providing weekday openings during the fall season.

The comment period ended on January 15, 1995. The Coast Guard received twenty-one comments on this deviation. The City expressed opposition to any new permanent regulation for the spring 1995 breakout. In support of its position, the City provided data concerning the number of boat runs during the preceding spring and fall seasons, including the number of boats traversing through the drawbridges and the number of times the individual drawbridges were opened and delays that occurred. The City was unable to provide a vehicular traffic count for the fall, but stated that it would provide traffic count statistics for the spring season. The City urged a deviation schedule allowing one weekday daylight opening and weekend openings. Comments from the boatyards favored the existing regulatory structure and also opposed a new permanent regulation for the spring breakout. Thirteen of the other twenty comments favored no change to the existing regulations and expressed opposition to establishing minimum and maximum flotilla sizes. Other comments indicated that, if a change is necessary, there should be weekday daylight openings and expressed opposition to flotilla sizes.

On February 16, 1995 (60 FR 8941), the Coast Guard published a Notice of Intent to issue a temporary deviation for the spring breakout and announced a public hearing to discuss the proposed schedule in the deviation. The proposed deviation would have required the draws to open, except during rush-hours, for recreational vessels that had provided twenty-four hours notice of their intended passage through the draws. This proposal was published to provide a basis for discussion and comment. The proposal explicitly noted that any deviation ultimately issued for the spring 1995 season might differ as a result of comments received and positions expressed during the course of a public hearing scheduled for March 9, 1995.

The hearing provided all concerned parties with the opportunity to present oral and written statements, with supporting data, to the Coast Guard for evaluation to determine if any revisions should be made to the proposed deviation. A Coast Guard representative presided at the hearing which was well attended. In addition to individual comments by boaters and other interested persons, there were multiple presentations, primarily by representatives of three interested groups: the City of Chicago, the boatyards, and national level maritime organizations.

The vast majority of the 68 written comments were received from a wide variety of Chicago civic organizations and businesses, including property owners and managers and developers. Individual businesses commenting ranged from taxi companies and delivery services to Union Station, AMTRAK, and De Paul University. The City of Chicago, including the Chicago Police Department and members of the Chicago City Council, also submitted comments and additional data. These comments opposed the temporary deviation which would have allowed unrestricted weekday openings, other than during rush hours, and urged that openings be limited to weekends and evenings. They vigorously opposed any daytime weekday openings. The boating organizations and the boatyards favored a 24-hour notification with no additional restrictions other than during rush hours.

At the public hearing, City representatives stated that they have determined that weekday daylight openings are not necessary, since all outgoing and incoming vessels can be accommodated on weekends. They stated that weekday openings are too disruptive to emergency services, commercial vehicular traffic during business hours, and pedestrian and midday vehicular traffic.

Representatives of commercial interests stated their opposition to weekday openings due to disruption of deliveries, public transportation, and emergency services. Representatives of the boatyards stated that the permanent regulation in effect should not be modified until data are collected for an entire navigation season. They discussed their practice of voluntarily arranging flotillas to minimize the number of openings required, and asserted there was a need for individual vessels to transit the Chicago River system in order to obtain routine servicing or repairs. They asserted that failure to provide convenient access to the boatyards seriously affected their business, citing a reduction in the number of vessels utilizing their yards for winter storage as well as a decline in income from repairs. Representatives of the boaters stated that not all boats can participate in weekend flotillas, but they can join weekday daylight flotillas. In their opinion, nighttime navigation is not conducive to safety. Individual boaters also expressed concern over the safety of large flotillas transitting the confined waters of the Chicago River system. Representatives of national manufacturing and boating interests expressed concern that the right of free navigation was being unduly restricted by the proposed temporary deviation, and that if the Coast Guard restricted openings on the Chicago River, it would be a precedent for restricting navigation elsewhere.

As a result of the public hearing and a reassessment of all the comments received, the Coast Guard promulgated a temporary deviation to the operating schedule of the Chicago River Bridges on April 10, 1995 (60 FR 18006) covering the period from April 15, 1995 to July 13, 1995. The temporary deviation featured daytime and evening openings on Tuesdays and Thursdays as well as weekend openings, flotilla maximums, and 24-hour advance notice prior to opening. The temporary deviation recognized the concerns of the City and business interests by limiting weekday openings. It also addressed the concerns expressed by the boatyards and boaters by not requiring a minimum flotilla size and by providing for transits on four days of the week. The advance notice requirement was selected as being adequate to allow scheduling of bridge openings by the City, but responsive to unanticipated needs for transits by boats. It provided the basis for comparing the merits of an alternative schedule with previously imposed schedules. Simultaneously, the Coast Guard published on April 10, 1995 (60 FR 18061) a Notice of Intent to form a negotiated rulemaking committee to bring together representatives of all affected parties to attempt to reach consensus on a new permanent rule.

On May 18, 1995, the United States District Court for the District of Columbia vacated the April 10, 1995 temporary deviation and reinstated the permanent rule in effect previously, codified at 33 C.F.R. 117.391 (1993). The Court's decision was premised on its conclusion that the Coast Guard's authority to issue temporary deviations is subject to the Administrative Procedures Act constraints and that, while the Coast Guard had provided notice, comment, and a hearing, the Court did not have before it the administrative record on which the decision was based. Although the reinstated permanent rule provides for opening the bridges "on signal" except during rush hours, the drawbridges have been operating on scheduled weekend and limited weekday openings through voluntary cooperative agreements between the principal boatyards and the City.

Negotiated Rulemaking

As detailed above, there have been a wide variety of temporary deviations and one permanent rule addressing bridge operating schedules on the Chicago River. In addition, there have been two court challenges that have overturned these schedules and reinstated the pre-1993 operating regulations. There have also been periods of voluntary cooperation when boatyard owners and City representatives have worked together to established scheduled openings within regulatory parameters. All of these activities have supported the idea that a formal negotiated rulemaking leading to a meeting of the minds and cooperation by all interested parties would provide the best chance for successful rulemaking. Utilizing an experienced and impartial facilitator, the Coast Guard contacted representatives of the City, commercial interests, boatyards, and boaters, and determined that they would participate in a negotiated rulemaking and received their assurances they would negotiate in good faith.

In light of the difficulties experienced in arriving at a drawbridge rule that best accommodates the needs of vehicular and boating traffic, as required by the 1988 amendment to 33 U.S.C. 499, which provides that rules and regulations governing drawbridges shall, to the extent practical and feasible, provide for regularly scheduled openings that would help reduce motor vehicle traffic delays and congestion, the Coast Guard chartered a negotiated rulemaking committee in accordance with the Federal Advisory Committee Act (5 U.S.C. App) (FACA). The negotiating committee, consisting of representatives of the City of Chicago, Chicago commercial interests, boatyards on the Chicago River system, the Chicago Yachting Association, and the Coast Guard, met to share views and attempted to come to consensus on the best possible operating parameters for the operation of the City of Chicago bridges. The committee met under the guidance of an experienced neutral facilitator, on June 5, 14, 20, 28 and July 12, 1995. During the day-long sessions the committee engaged in detailed discussions concerning the history of drawbridge operations, future concerns, and the goals sought by the interest groups represented. Despite a full and frank exchange of views, the presentation of several alternatives by the Coast Guard, and modifications suggested by members, the committee was unable to come to consensus on an appropriate operating schedule for the bridges. As stated in the notice announcing the establishment of the negotiated rulemaking committee, the Coast Guard is committed to proceeding with notice and comment rulemaking procedures in order to have a final rule in place by the end of the boating season in the fall, 1995, when recreational vessels leave Lake Michigan for winter storage. Accordingly, the Coast Guard has published this notice of proposed rulemaking and has scheduled a public hearing. In the absence of a consensus-based rule, this proposal is based on the extensive administrative record that the Coast Guard has assembled to date.

Summary of Issues

When the City of Chicago first came to the Coast Guard in 1993 with a request to change the bridge regulation that had been in existence since the 1970's, the Coast Guard began looking at whether that "on demand" regulation was appropriate. A primary factor in this review was the statutory change in 1988 that specifically requires the Coast Guard to balance land and water transportation needs. As amended in 1988, 33 U.S.C. 499 provides that rules and regulations governing drawbridges shall, to the extent practical and feasible, provide for regularly scheduled openings of drawbridges during seasons of the year, and during times of the day, when scheduled openings would help reduce motor vehicle traffic delays and congestion on roads and highways linked by drawbridges. As noted above, and detailed more fully below, Chicago

is unique in that no other major city has so many drawbridges incorporated into a downtown web of thoroughfares. Thus the potential for disruption of vehicular traffic related to openings of the drawbridges is greater in Chicago than in any other major city in the United States.

In recent years the number of boatyards on the Chicago River system has decreased. There also has been evidence of physical deterioration in bridge operations. Due to changes in the number of personnel utilized by the City to open the bridges, costs associated with operating the bridges have increased. Expanded commercial development outside of Chicago's "Loop" business district has generated additional vehicular and pedestrian traffic demands, raising concerns from City commercial interests as well as City officials. As a result, there has been growing disbelief on the part of the City and boatyards that voluntary cooperation among them would continue to provide for mutually satisfactory drawbridge operations. The City has desired increased predictability and a move away from an "on demand" opening schedule that leaves the City at the mercy of any boater's request to have up to 26 bridges, most owned by the City, open on demand. The City has asserted that the existing rule cost the City thousands of dollars in labor, caused thousands of hours of vehicle and pedestrian delay for each series of bridge openings, and benefited only a relatively few boat owners who chose to traverse the Chicago River without lowering the masts on their vessels. The boatyard owners also have wanted predictable drawbridge openings but were concerned that limited openings, particularly during weekday daylight hours, would adversely affect their business. The boaters were concerned that individual boaters would continue to have reasonable opportunity to traverse the river.

At the outset, the Coast Guard recognized that the situation involving the drawbridges over the Chicago River and its branches was both complex and unique. The Chicago River and the North and South branches divide the core portion of the third largest city in the United States into three segments. The main branch virtually bisects the downtown area, at the North edge of the Chicago Loop. There is virtually no vessel destination in the main branch. Recreational vessels that require bridge openings normally transit the entire main branch segment enroute to destinations on either Lake Michigan or the North or South branches, thus requiring the opening of all ten bridges over the main branch. In addition, due to the confined nature of the Chicago River and the close proximity of the bridges, few recreational sailing vessels "cruise" on the river. These circumstances are drastically different from the normal situations addressed by drawbridge regulations. Virtually all of the Coast Guard's drawbridge regulations concern single bridges. The procedures and guidance in the Bridge Administration Manual (COMDTINST M16590.5A) primarily address those normal situations. Accordingly, in the Chicago situation the Coast Guard adopted a systems approach to analyzing the need for changes to the existing rules and, if changes were found to be appropriate, the nature of those changes. It was recognized that unique solutions might be required and that any revised rules that resulted should not be considered as setting a precedent for the drawbridge regulations where normal navigational and land traffic exists.

In addition, the Coast Guard realized that it was necessary to distinguish between the provisions of the existing permanent rule and the practices that had been followed, on a voluntary basis, in earlier years and during more recent times. The existing rule requires the bridges to be opened on demand, and bridge logs for the years prior to 1993 showed that bridges were opened frequently, during weekday daylight hours, for single vessel transits. In 1992, apparently related to an accident involving the Michigan Avenue bridge and the flooding of a tunnel under the main branch of the river, the City desired to limit weekday daylight openings, concentrate openings on weekends, and arrange for recreational vessels to transit in flotillas. Since 1993, weekday daylight openings have been limited through the voluntary practices of the boatyards in grouping vessels into flotillas for transits, particularly during the spring breakout and the return to winter storage in the fall. While this practice has worked, with varying degrees of friction, to limit the number of drawbridge openings and the consequent impact on land traffic, the statute obligates the Coast Guard to regulate drawbridge openings, where necessary. If there is a need to restrict the number of openings of the drawbridges over the Chicago River, the Coast Guard cannot leave it to the good will of the boatyard owners and individual boaters to limit their requests for openings. There are no market forces available to balance the needs of the recreational boater and the citizens of the City. It is the Coast Guard's obligation to promulgate a rule which will balance the needs of land and maritime transportation and that clearly sets forth the rights and obligations of the bridge owner and the vessel owners.

It should be noted that the proposed rulemaking does not govern all the drawbridges on the Chicago River. The proposal only affects the bridges owned or operated by the City. With the exception of bridges which carry Chicago Transit Authority trains, the bridges carry vehicular and pedestrian traffic. There are four railroad bridges, not owned by the City, that are manned by bridge tenders 24 hours a day. These bridges would continue to open on signal for both commercial and recreational vessels.

Summary of Comments

Over the course of the history outlined above there have been two public hearings and many comments from a wide variety of special and public groups as well as individuals. Positions over the course of this two and one-half year process have run the spectrum from opening the bridges on demand, with no flotilla or advance notice restrictions, to opening only on weekends with a variety of restrictions. The following discussion briefly summarizes the positions of the interested parties, which have remained essentially unchanged since the City first requested a change to the existing regulations.

The City representatives have urged that weekday daylight openings are not necessary, since all outgoing and incoming vessels can be accommodated on weekends. Weekday openings are too disruptive to commercial vehicular traffic during business hours, emergency services, and midday pedestrian, public transit, and vehicular traffic. The City has submitted lengthy comments and data concerning the problems caused by multiple openings and the costs associated with maintaining and operating the aging drawbridges. Representatives of the City have attended hearings and discussed the potential impact of bridge openings on emergency response by police, fire, and rescue vehicles. In addition, City representatives have commented on the detrimental effects of vehicle delays on the environment and commercial development. The comments submitted on behalf of the City particularly oppose on demand openings.

Businesses in Chicago are not in favor of weekday daylight openings due to disruption of deliveries, public transportation, and emergency services. Comments to this effect have been received from taxi companies, couriers, parcel delivery companies, an ambulance company, hotels, a bank, parking companies, property management firms, De Paul University, Union Station, AMTRAK, and business associations. The commercial and business interest comments particularly oppose on demand openings.

Representatives of the boatyards contended that predictable and readily available openings are essential to their continued business viability. They urged that provision for passage of single vessels must be retained and the rules should be as flexible as possible to account for peak traffic and unexpected vessels. They also urged that the regulations presently in effect should not be modified until data are collected for an entire navigation season to depict seasonal changes of impact.

Boating interests urged that requiring flotillas was too restrictive of the right to navigation and that openings during the weekday daylight hours were essential. Boating interests and individual boaters generally supported on demand openings, although some comments indicated that limited restrictions on weekday openings would be acceptable. They also indicated that if a change was necessary, there should be daylight openings during the weekdays and openings should not be restricted to strictly nighttime hours from Monday through Friday. Concerns were expressed about the difficulties encountered in arranging flotillas and the hazards to safe navigation presented by large numbers of vessels transiting the confined waters of the Chicago River. Some concerns were also expressed over the increased hazards to safety inherent in transiting the Chicago River and navigating on Lake Michigan at night.

The above summary contains the essence of the comments received by the Coast Guard over the past two and one-half years. The record of comments and data is voluminous. Some of the comments are duplicative, having been submitted directly to the Coast Guard and also included in submissions by the City. Extracts from the comments and references to the data can be found in the documents filed by both the plaintiff and the defendant in the litigation outlined above, copies of which have been included in the public record of this rulemaking.

The Coast Guard will continue to consider all comments previously received and all comments submitted in response to this notice of proposed rulemaking. It is not necessary to resubmit comments or data previously filed. Comments are desired that specifically address the methodology employed by the Coast Guard in developing the proposed rule, as discussed below, the data on which the proposal is based, or that provide new data.

Proposed Rule

In light of all the comments thus far received, in writing and during public hearings, the Coast Guard is proposing a rule that it believes best accommodates the needs of the City and its citizens, the commercial interests, the boatyards, and the individual boater, while still conforming to the statutory mandate which, in the Coast Guard's view, requires balancing the requirement that drawbridges be opened for the passage of vessels with the requirement that, to the extent practical and feasible, the regulations should provide for scheduled openings that would help reduce motor vehicle delay and congestion.

The proposed regulation would have different rules apply to the period of high vessel activity from April 1 through November 30 of each year and the period of low activity, from December 1 through March 31 of the following year. As data, written comments, and presentations at hearings show, the recreational boating season is over well before November 30 and from December 1 through March 30 there is little vessel traffic on the Chicago River. The current regulations provide different rules for the period from April 1 through December 31, and January 1 through March 31, each year.

Other than the above change, the proposed rules maintain the existing provisions for commercial vessels. Editorial changes have been made to clarify the rules and adopt a new format, which separates the regulations for commercial vessels from those for recreational vessels. The proposed rules also eliminate reference to some bridges which no longer exist.

For recreational vessels, the existing permanent rule provides that bridges will open on signal from April 1 through December 31, except for specified rush hours. In some cases, where bridges are not continually manned, a delay of up to 30 minutes is permitted before opening the bridge. The proposed rules would impose the following limitations:

(1) On Saturdays and Sundays openings to accommodate two transits would be available each day, if requested 20 hours in advance of the intended time of passage, without regard to the number of vessels.

(2) Weekday daytime openings, with no minimum flotilla requirement, would be limited to Wednesday morning, with 20-hour advance notice.

(3) On Monday and Friday evenings, after 6:30 p.m., the bridges would be required to open to accommodate transits, if requested 6 hours in advance, with no minimum flotilla requirement.

(4) In addition to the above openings, which would be available for the passage of one or more vessels, supplemental openings could be scheduled for flotillas of 5 or more vessels, with 20-hour advance notice. These openings could not be requested for rush hour periods.

(5) If requests were received for both outbound and inbound transits, the inbound transit would be scheduled to commence after the outbound transit had cleared Lakeshore Drive, so that only one opening of the Lakeshore Drive bridge could accommodate both transits.

The following discussion explains how these proposed rules were developed:

In crafting these regulations the Coast Guard took into account all the comments received from prior Chicago River rulemaking activities, in writing and at hearings, as well as views expressed and data furnished during the extensive negotiated rulemaking process. During the course of the negotiated rulemaking procedure the City of Chicago provided the Coast Guard and the committee with two volumes of traffic data to assist in determining the scope of the problems associated with bridge openings and to point out factors or parameters that would suggest solutions. They also had the consultant who prepared the study present at two meetings to answer questions on methodology and other study issues. In addition, the Coast Guard considered the voluntary practices followed by the boatyards and the City, which have demonstrated that using flotillas and scheduling openings in advance is a feasible means of reducing the number of drawbridge openings necessary to accommodate a major portion of the needs of recreational boaters.

First, the Coast Guard decided to concentrate on the situation affecting the 10 bridges across the Chicago River. While opening bridges across the North and South branches does impact land traffic in the downtown area, particularly traffic using the Ohio Street and Congress Street Parkway bridges, it is the Coast Guard's impression that the impact is not as immediate or as severe as the impact of opening the bridges on the Chicago River since, other than the two bridges mentioned, they are not primary arteries or are not in close proximity to the Chicago Loop. As

discussed above, whether a recreational vessel's transit originates on or terminates on either the North or South branch, and involves some or all of the bridges on either branch, the transit invariably involves opening all of the bridges on the Chicago River. If a beneficial and balanced approach is to be taken in modifying the existing regulations, the changes must address these bridges. In addition, it is the position of the Coast Guard that if a regulation can be developed that provides a reasonable balance between the needs of land and vessel traffic for the bridges on the Chicago River, a logical extension of those rules to the North and South branches would be appropriate.

The second step was to ascertain whether there was a demonstrable need to change the existing regulations. The traffic data presented by the City were based on directional traffic counts, taken at fifteen minute intervals, 24 hours per day, at certain bridges. Normal traffic flow counters and methodologies were used to record traffic activity for one week in the fall of 1994 and two weeks in the spring of 1995. The data showed that downtown Chicago traffic does not follow a typical urban traffic pattern. Rather than traffic levels increasing during the morning rush hour, decreasing during midday, and increasing again during the evening rush hour, the traffic increased in the morning, then declined slightly, but remained high until early evening. There was no significant variation in the traffic patterns or volumes between the two periods.

Although the traffic counts do not cover the full boating season, the Coast Guard has no reason to believe that there is substantially more or less vehicle traffic during the summer months. Chicago traffic does not appear to vary appreciably on a seasonal basis.

The study counted traffic during 1994 on the Lake Shore Drive, Michigan Avenue, Wells Street and LaSalle Street bridges. In 1995 the study counted traffic on the Lake Shore Drive, Michigan Avenue, Clark Street and Dearborn Street Bridges. It was determined that the location of the traffic counter on Lake Shore Drive was not in the best location to provide accurate traffic data for the bridge, since a substantial amount of traffic could exit before crossing the bridge, and some traffic may have been counted that did not cross the bridge. In lieu of disregarding the traffic on this major artery entirely, the volumes recorded for Lake Shore Drive were reduced by half for purposes of this proposed rule. The City has been requested to provide an accurate traffic count for this bridge prior to the public hearing. While the Coast Guard has received additional data from the City, the Coast Guard has not yet analyzed this new information in light of the entire record. The Coast Guard will consider these newly submitted data, any revised data, and any comments on the accuracy of those data, before action on a final rule. The 1994 and 1995 data were extrapolated to the other downtown bridges. Based on this analysis, it is conservatively estimated that in excess of 3,000 vehicles are potentially affected by each sequence of bridge openings on weekdays between the hours of 10:15 a.m. to 3:15 p.m.

The average opening cycle for a bridge takes 8 minutes for a single vessel transit and 10 minutes for a flotilla of 10 or more vessels. There was no significant variation in the opening time associated with the number of vessels in a flotilla. The average time for vehicle traffic to return to normal after an opening was 4 minutes, although there was substantial variation between bridges which appears related to the volume of traffic on a particular bridge.

From these data the Coast Guard concluded that the existing permanent rule does not strike a reasonable balance between the needs of vehicular traffic and the needs of recreational boaters. The existing rule requires the drawbridges to be opened, on demand, as many times as recreational boaters want, within specified times. Other than the rush hour restrictions, the rule does not provide for regularly scheduled openings and the data indicate that openings have the potential for affecting a large number of vehicles during periods of heavy traffic.

There is no set formula for balancing the burden on vehicular traffic against the burden on marine traffic. The Bridge Administration Manual indicates that the length of delay caused by a bridge opening, by itself, does not justify restricting bridge openings. There is sound reason for this, since the amount of delay caused by a bridge opening can be the result of many factors, including some within the control of the bridge owner, from initial design of the bridge through current maintenance and operational practices. On heavenly traveled roads the delay to people in vehicles will invariably exceed the delay to people on recreational vessels, unless the time between required openings is extremely long. Any attempt to measure and weigh the value of waiting time to persons in vehicles and compare it to the value of unrestricted scheduling to boaters is misleading. As noted previously, the statute requires the regulation to provide for scheduled openings to reduce motor vehicle traffic delays and congestion, where practical and feasible. The Coast Guard construes the statute as requiring only a common sense evaluation, on a broad level, of the impact of bridge openings on vehicular traffic and the reasonable expectations of the owners and operators of vessels to be able to use the navigable waters of the United States. In this instance the Coast Guard believes that an appropriate balance requires some restriction, beyond the current rush hour limitations, on the right of vessel owners and operators to request openings. The balance must reflect vehicular traffic needs and the peculiarities of the Chicago Loop and Must also accommodate the needs of boaters. A proper balance is not one that continues on demand openings except during rush hours. The voluntary restraint and scheduling efforts practiced by the boatyards and boaters do not cure the defects in the existing permanent rule. Since there are no market forces that are operable to limit or control exercise of the right to demand bridge openings, the Coast Guard concluded that revision of the existing rule was appropriate if a practical and feasible method of scheduling could be devised.

The third step was to analyze the available data to determine if there is a practical and feasible way to schedule or limit openings that would help reduce vehicle traffic delays and congestion on the roads and highways served by the bridges on the Chicago River. To do this, the Coast Guard analyzed available data from 1990 through July 5, 1995 concerning vessel transits of the Chicago River, concentrating on those transits that took place on weekdays. Data on several years of vessel traffic levels were provided by the City of Chicago, contained in their Drawbridge Study or previously furnished to the Coast Guard.

The number of vessels requesting transit each year ranged from a low of 461, in the spring of 1992, to a high of 662 in the fall of 1991. Of these, the number of vessels transiting on weekdays ranged from a high of 207 in the spring of 1990 to a low of 78 in the spring of 1993. Prior to 1993, approximately one-third of the vessel transits occurred on weekdays. In 1994 and 1995 the percentage of weekday transits decreased to 25% or less. It is noted that the data were influenced by the various restrictions in place since 1993, including the temporary deviation in effect from April 15, 1995 to May 18, 1995, and by the voluntary cooperative scheduling arranged between the

boatyards and the City that accommodated a substantial majority of vessel transits on weekends. These restraints favored flotillas of between 5 and 25 vessels on a run. Data available for spring transits in 1990 and 1991, where no restrictions were in effect, indicate that approximately 75% of the vessels transiting on weekdays did so in flotillas of 5 or more. Less than 100 vessels out of a total of 399 transited singly or in flotillas of less than 5 vessels, yet these vessel transits accounted for approximately two-thirds of the weekday openings.

Based on the data indicating that approximately one-quarter of the vessels utilizing daytime weekday openings are causing two-thirds of these openings, the Coast Guard believes that some restrictions on the number of daytime weekday openings that these vessels can request would help reduce traffic delays and congestion. It also appears that the use of flotillas is a practical and feasible means of providing for a large majority of the transits necessary to provide for the reasonable needs of navigation. It does not appear that providing on demand openings for single vessels on each weekday is necessary to accomodate the reasonable needs of navigation. The spring, 1995, breakout season appears to confirm the practicality of using flotillas. There were 69 openings during the period from April 15 to July 5. Of these, 41 were for flotillas of five or more vessels. Another 14 were for groups of from two to four vessels. Only 14 were for single vessels, of which 9 were on weekdays.

A review of the data showed that the greatest number of outbound vessels during the weekdays in April and May 1990 and 1991 occurred on Wednesday. Traditionally, Wednesday had been the day most used for outbound vessel movements prior to 1992. In 1994, a change to Tuesday and Thursday occurred after a temporary deviation of the drawbridge regulation was implemented. In 1995, the greatest number of outbound vessel movements occurred on Tuesday and Thursday due to the deviation in place and the voluntary agreement to follow that schedule after it was ruled invalid by the court.

The rule that the Coast Guard is proposing would not require the City to open the bridges for weekday transits of less than five vessels except on Monday and Friday evenings and on Wednesday morning. Monday and Friday evenings were selected to facilitate vessel transits from Lake Michigan to the boatyards for repairs or servicing after a weekend of sailing, and return to the Lake before the following weekend, a need that has been repeatedly expressed by boating interests. Wednesday morning was selected based on the pattern existing in the absence of restrictions and to equalize the periods when vessels not traversing in flotillas of five or more could be denied passage. On any day except Tuesdays and Thursdays, a single vessel would be able to transit the Chicago River at some point during the day. This, the Coast Guard believes, reasonably accommodates the expressed need for opportunities to secure midweek repairs to vessels and return to Lake Michigan. The rule provides for openings at any time for emergencies, and nothing in the rule precludes the City from responding to other requests.

The boatyards and boaters have urged maximum flexibility in arranging and scheduling flotillas. The voluntary scheduling practices agreed to by the City and the boatyards during recent years was discussed during the negotiated rulemaking sessions and the possibility of including provisions in the regulations that would provide flexible arrangements for flotillas was considered. The Coast Guard has adopted the concept of encouraging the use of flotillas to limit the number of openings required by proposing to require openings for flotillas of five or more vessels. The Coast Guard has also adopted the practice of allowing the scheduling of these flotillas to be as agreed to between the City and the boatyards. The proposed rule does not restrict openings for vessels transiting in flotillas of five or more, except for requiring advance notice and maintaining the existing rush hour closure times; however, the proposed rule does not schedule these openings. Thus, the proposed rule provides the flexibility urged by the boatyards and boaters. As discussed later, the City's countervailing need for predictability of schedules and time to mobilize bridge opening teams is provided by proposing to require longer advance notice of a requested opening.

The fourth step was to determine whether restricting bridge operations to particular times of the day would help reduce vehicle delay and congestion. The data indicate that downtown Chicago traffic does not follow a typical urban traffic pattern. Rather than traffic levels increasing during the morning rush hours, decreasing during midday, and then increasing again for the evening rush hours, the traffic only decline slightly after morning rush hours and remained high until early evening. The lowest level of weekday daytime traffic occurred between 10 a.m. and noon. The traffic data support the existing rush hour closed periods, which end at 6:30 p.m. Weekend traffic levels are lower than weekday levels, with the lowest levels occurring before 1 p.m.

In order for weekday daytime openings on the Chicago River to be least disruptive to vehicular traffic, the runs should start at 10 a.m. or as soon thereafter as practical. The first bridge would open at that time, with all other bridges following in sequence. Each bridge should be open as the vessel or lead vessel in a flotilla approaches, so that continuous movement of the vessel(s) can be maintained. Due to the proximity of the bridges, it may be necessary to have more than one bridge open at a time. For transits inbound from Lake Michigan, bridges on the North or South branches would continue this sequential opening pattern, depending on the destination of the vessel(s). For transits originating on the North or South branches, it will be necessary for the party requesting the run and the City to agree on the time for starting the run in order to have the vessel(s) arrive at the Franklin Street bridge as close to 10 a.m. as practical. Outbound transits will occur after 10 a.m. due to the rush hour restrictions on certain bridges on the North and South branches. This approach, which does not specify the exact time each bridge will open, is different from the usual drawbridge regulatory scheme but is based on the systems approach taken in this rulemaking. Comments are specifically requested on the feasibility of this approach and any problems that it may cause.

The fifth and final step was to determine whether requiring advance notice of a requested transit is appropriate and, if so, how much advance notice should be provided. The bridges are not manned continuously and, if the rule provides for restricted openings, it would be extremely burdensome to require all the bridges to be manned at all times. Due to the city's manpower constraints, the practice has been for necessary personnel to move from bridge to bridge as a vessel transit proceeds from Lake Michigan to the boatyards or in the opposite direction. The City has asserted that, at the present time, it requires assembling a crew of electricans and other tradesmen to ensure the satisfactory operation of the bridges. While efforts are underway to improve the operation of the bridges there is no reason to believe that this situation will improve in the near future. Thus, the City asserts a need for time to assign appropriate personnel and schedule their work hours to accommodate requested transits.

On the other hand, the boatyards and boaters have asserted that requiring a lengthy advance notice makes scheduling vessel transits difficult, especially when assembling a flotilla of 5 or more vessels. They also assert the unpredictability of single vessels desiring passage for maintenance or repairs.

In an attempt to accommodate these conflicting needs, the proposed rule provides for 20 hours advance notice for weekend and Wednesday daytime openings and for flotillas of 5 or more vessels. A 6 hour advance notice would be required for evening openings. Except for Sunday openings, these requirements should enable the City to arrange for the necessary personnel during normal business hours, either for an opening that evening or the next day, and would allow boaters and the boatyards to arrange for openings on relatively short notice. The Coast Guard believes that providing boaters an opportunity to request a Sunday opening, based on events occurring on Saturday, is appropriate and not unduly burdensome for the City.

The above discussion summarizes the analysis, methodology, and conclusions of the Coast Guard in arriving at this proposed rulemaking. During the many discussions with interested parties that have occurred, certain other issues were raised that are not determinative of the issues, but which still merit discussion.

The City expressed concern that runs would be scheduled in response to a request and crews mobilized, but that no vessels would show up. The available data do indicate that this has occurred, but the Coast Guard is unable to conclude that this is a problem requiring regulatory action. The statutes addressing drawbridge operation are generally directed at the responsibities of the bridge owner and provide penalties for not opening the bridge when required to do so. No specific penalties are provided under these statutes penalizing the vessel operator who does not show up for a requested opening, although there are prohibitions against requesting unnecessary openings. The Coast Guard will monitor this situation and may address it in a separate rulemaking if it appears necessary.

The data on pedestrian delays caused by drawbridge openings were informative but did not contribute significantly to the Coast Guard's decisions in the formulation of this proposed regulation. The amount of delay to vehicles and the extent of the vehicle "backup" also did not contribute significantly to the formulation of this proposal. Delay to land traffic caused by a drawbridge opening is unavoidable but can be mitigated by efficient operation of the bridges. The Coast Guard is not aware of any standardized method of determining the value of delay time and current procedures require only the submission of traffic count data. Therefore, the Coast Guard did not quantify delay time or assign a value to it to balance land traffic and vessel transits. The proposed action should reduce the number of openings and, therefore, the cumulative delay time of pedestrians and vehicles, which could be substantial, should be reduced.

During the negotiated rulemaking process, a letter from the boatyard's attorneys contained the following allegations concerning deficiencies in the traffic data presented by the City:

1. The letter asserted that the study grossly overstates the delay time by assuming each person is delayed 12 minutes.

Response: Coast Guard regulations, policy and procedures do not require data to be expressed in terms of person-hours of delay. The volume of vehicular and pedestrian traffic was considered, but delay time was not a determining factor in the rulemaking decision. Assigning a value to person-hours delay appears to be even more subjective than determining the impact of bridge openings on vehicles. Persons delayed could be engaged in personal affairs or on a business venture. The Coast Guard has not relied on estimates of person-hours of delay in formulating the proposed schedule of drawbridge openings in this rulemaking.

2. The letter asserted that, in addition to the methodological error described above, the placement of vehicle counters has led to a significant overstatement of bridge traffic.

Response: The location of the traffic counter on Lake Shore Drive was identified as being susceptible to recording traffic that did not cross the drawbridge over the Chicago River. The level of traffic recorded at the Lake Shore Drive counting station and projected for crossing the bridge may be subject to some inaccuracies. However, Lake Shore Drive Bridge is but one of 10 drawbridges on the main branch of the Chicago River. Although the data from Lake Shore Drive may be inaccurate, data from other bridges were considered accurate. As previously stated, the data pertaining to Lake Shore Drive were discounted for the purpose of developing this proposal and the City has been asked to provide more accurate data in time for the public hearing.

3. The letter assets that, in addition to the above errors, the traffic data are skewed by a failure to separate out delays caused by bridge malfunctions and other problems unrelated to boaters.

Response: The length of delays to land traffic caused by individual bridge opening was not a significant factor in formulating this regulation. Regardless of whether delays to land traffic were attributable to mechanical or other problems, the delay would not occur unless the bridge was opened for the passage of vessels. The length of the delay was not quantified or assigned a value in developing these proposed regulations.

4. The letter asserts that the evidence of delays to emergency vehicles is not believable.

Response: The information regarding documented cases of delays to emergency vehicles was requested by the Coast Guard to verify the cases reported by the City of Chicago. Impacts of drawbridges on emergency vehicle response were considered, but were not a determinative factor, in developing this proposed regulation. Emergency land vehicles are given special consideration, as stated in 33 CFR 117.31, which allows drawbridges to close for passage of emergency vehicles. In addition, readily available alternative routes exist. Requiring advance notice of requested opening will facilitate dispatching emergency vehicles when bridge openings occur.

5. The letter asserts that the conclusion that current restrictions on weekday daytime openings "only achieve a small reduction in land traffic impacts" and, therefore, support complete elimination of weekday daytime openings, is contradicted by the study's own data.

Response: The Coast Guard reviewed the data and has found that there is evidence of heavy vehicular traffic during most of the weekday hours, not just during rush hours. The proposed rule is based on evidence that there is a drop in weekday land traffic between 10 a.m. and noon. Bridge openings during that period would therefore have the least impact on land traffic, especially if the number of weekday openings is minimal. The proposed regulation provides that single vessels or flotillas of less than five vessels may request passage only on Wednesday in this time period.

The City asserts that there should be no continuation of on demand openings and expressed a desire for consistency and predictability to schedule bridge crews. The proposed restrictions on the days and times that openings can be requested for vessels not transiting in a flotilla of five or more, and the notification requirements, are designed to accommodate those positions. The City also expressed major concerns about traffic and business disruption attributable to drawbridge openings. The data provided give evidence of patterns showing decreased traffic Saturday and Sunday mornings, weekday mornings near the 10 a.m. hour and during the evenings after 6:30 p.m. This proposal attempts to schedule openings to closely track the times when traffic and business disruption would be the least.

The boatyards' major concerns, as expressed through their comments, were that due to the unpredictable needs and desires of their customers they needed to be able to transit the river every day. the proposed rule addresses these concerns by allowing for daily transit for flotillas of 5 or more vessels, with advance notice. The boatyards said they needed access for repair work and to allow growth. Access by even a single vessel 5 days a week, with advance notice, addresses those needs. Boatyards also expressed a desire for some combination of predictability and flexibility. the notice requirements and supplementary openings in the proposal are designed to meet those concerns.

A major innovation in this rule is the addition of supplemental opening times. These unlimited openings, governed by a 20 hour notice requirement and a flotilla size of at least five vessels, allow the boatyards to schedule runs up or down the river as necessary: weekday daytime with rush hour limitations, weekends, or evenings.

Under this regime the boatyards would have a great amount of flexibility to meet the needs of their customers and grow, while at the same time, the notice and flotilla requirements would give the City enough lead time to meet its need for predictability in scheduling the complex series of openings necessary to accommodate a transit of the Chicago River system.

When looking at the spring 1995 period of cooperation between the competing interests, this proposed rule is designed to accommodate the needs expressed by the affected parties.

Regulatory Evaluation

This rule is not considered to be a significant rulemaking activity under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The economic impact of the proposed rule cannot be accurately determined. Its primary impact is on weekday openings of the bridges. The number of openings for single vessels, or groups of less than 5, should be substantially reduced. The number of these weekday runs each year has been approximately 60. If all these runs were eliminated, and no additional flotilla runs were added, the City could save approximately $400,000 per year. Since single vessel transits could still occur on 5 days a week, not all these runs will be eliminated. Assuming these runs will be reduced 50%, the savings to the City would be under $200,000 per year. However, the rule allows an unlimited number of flotilla runs to be scheduled, and it is impossible to predict how many will be actually utilized. Available data indicate that there are approximately 90 total runs per year. Assuming that flotilla runs increase by 10 per year due to the limitations on single vessel transits, the cost to the City would be approximately $70,000. Thus, the net savings to the City are estimated to be approximately $130,000 per year.

The boatyards have asserted that restricting openings of the drawbridges will adversely affect their business, because boaters will be unwilling to put up with the restrictions and will utilize boatyards in locations other than on the Chicago River. Information submitted to the Coast Guard indicates that the number of vessels using the affected boatyards has decreased and that utilizing alternative boatyards has increased. Some of this displacement is asserted to have been caused by the recent restrictions on drawbridge openings. Other displacements may be attributable to the inherent difficulties in transiting numerous drawbridges to get to the boatyards. Some loss of business may be due to different reasons, such as development of alternative facilities or personal choice of the boat owner. The Coast Guard has received assertions that the net income of the boatyards has been substantially reduced by past restrictions on bridge openings. This reduction appears to be a transfer of economic costs and benefits, and not an increased cost to the boat owner. The Coast Guard does not have an estimate of the dollar value of this transfer and invites comment on the economic impact of the proposed rules.

The Coast Guard has considered whether the proposed restrictions on bridge openings constitutes a "taking" under the Fifth Amendment to the Constitution, as discussed in E.O. 12630 and the Attorney General's Guidelines implementing that Order. The proposed regulation does not directly regulate the use of the boatyards' property, but it has been asserted that the restrictions will adversely affect their profit. It is the Coast Guard's position that the proposed regulation will substantially advance the governmental purpose of balancing the needs of land transportation and the navigational rights of recreational boaters. The proposed provisions for supplemental openings, as required, for flotillas of 5 or more vessels and the provisions ensuring access by all vessels on 5 out of the 7 days in each week should minimize the impact on the boatyards. The Coast Guard does not believe that the proposed regulations have significant taking implications. However, comments and data on this issue are specifically requested.

Small Entities

The Regulatory Flexibility Act requires an assessment of whether the proposed rule would have a significant economic impact on a substantial number of small entities. For this proposal, the Coast Guard considers any business employing less than 500 persons to be a small entity. The four boatyards remaining on the North and South branches of the Chicago River are small businesses and they have asserted that restricting the drawbridge openings will adversely affect their businesses. The proposed rule is not seen as having a significant adverse economic effect on any other business.

As discussed above, the Coast Guard has carefully considered the boatyards' views and has proposed unlimited supplemental openings to give the boatyards considerable flexibility to satisfy their customers' needs. The five-boat minimum for flotillas is based on an analysis of the data on past voluntary practices, which indicated that this limit is feasible. The rule does restrict single vessel passages, but does not prohibit them. The restrictions are considered to be the minimum necessary to achieve the intent of the statute.

Therefore, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. The Coast Guard specifically request comments on the impacts of the proposed rule on small entities and will consider any information provided before promulgating the final rule.

Collection of Information

The proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). No reports or information would be submitted to the government. As is common with all other drawbridge regulations, persons

desiring passage of a vessel have to make their requests known to the operator of a drawbridge, frequently some time in advance. This advance notice is normally a single phone call. Advance notice has been required under the existing rule for drawbridges on the Chicago River and a simple verbal request for bridge openings would continue to be required under the proposed rules.

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612 and has determined that this proposal, if adopted, will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for part 117 continues to read as follows:.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.391 is revised to read as follows:

§ 117.391 Chicago River.

The draws of the bridges operated by the City of Chicago shall operate as follows:

(a) For commercial vessels:

(1) From April 1 through November 30—

(i) The draws of the bridges across the Chicago River from its mouth to the junction of the North and South Branches, across the South Branch from the junction to and including the Roosevelt Road, and the Kinzie and Ohio Street bridges across the North Branch shall open on signal; except that, from Monday through Friday from 7:30 a.m. to 10:30 a.m., and 4 p.m. to 6:30 p.m., the draws need not be opened for the passage of commercial vessels.

(ii) The draws of the bridges across the North Branch of the Chicago River at Grand Avenue, the bridges across the North Branch of the Chicago River north of the Ohio Street bridge to and including North Halsted Street, and bridges across the South Branch of the Chicago River north of South Halsted Street to, but not including Roosevelt Road, shall open on signal; except that, from Monday through Friday from 7 a.m. to 8 a.m. and 5:30 p.m. to 6:30 p.m., the draws need not open for the passage of commercial vessels.

(iii) The draws of the bridges across the North Branch of the Chicago River north of North Halsted Street and the South Branch of the Chicago River south of South Halsted Street shall open on signal; except that, from Monday through Friday from 7 a.m. to 8 a.m. and 5:30 p.m. to 6:30 p.m. the draws need not be opened for the passage of commercial vessels.

(iv) Subject to the restrictions in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the draws of the Randolph Street, Cermak Road, and Loomis Street bridges across the South Branch of the Chicago River, shall open on signal. The draws of the following bridges in Chicago shall open on signal if tended or within 30 minutes after notice is given to the City of Chicago Bridge Desk:

South Branch

Washington Street
Madison Street
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Congress Street (Eisenhower Expressway)
Harrison Street
Roosevelt Road
Eighteenth Street
Canal Street
South Halsted Street

West Fork of the South Branch

South Ashland Avenue
South Damen Avenue

Chicago River, North Branch

Grand Avenue
Chicago Avenue
North Halsted Street
Ogden Street
Division Street

(2) From December 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, and the South Branch of the Chicago River shall open on signal if at least 12 hours notice is given. However, the bridges need not open during those periods of time specified in paragraphs (a)(1) (i), (ii) and (iii) of this section.

(b) For recreational vessels:

(1) From April 1 through November 30—

(i) The draws shall be scheduled to open, before 1 p.m., twice on Saturdays and twice on Sundays if requests for passage have been received at least 20 hours in advance. If the bridges have been authorized to remain closed for portions of a Saturday or Sunday to accommodate special events, openings shall be scheduled after 1 p.m. as necessary to provide two openings.

(ii) The draws shall open on Monday and Friday, after 6:30 p.m. Each opening requires notice that has been given at least 6 hours in advance of a vessel's requested time of passage.

(iii) The draws shall open on Wednesdays at 10 a.m., or as soon thereafter as practical, if a request for passage has been given at least 20 hours in advance.

(iv) The draws shall open at times in addition to those listed in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, after notice has been given at least 20 hours in advance requesting passage for a flotilla of at least five vessels. However, the bridges need not open during those periods of time specified in paragraphs (a)(1) (i), (ii) and (iii) of this section.

(2) From December 1 through March 31, the draws of the highway bridges across the Chicago River, the North Branch of the Chicago River, and the South Branch of the Chicago River need open on signal only if at least 48 hours notice is given. However, the bridges need not open during those periods of time specified in paragraphs (a)(1) (i), (ii) and (iii) of this section.

(3) Paragraph (b) of this section applies to the following listed bridges:

Main Branch

Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
LaSalle Street
Wells Street
Franklin-Orleans Street

South Branch

Lake Street
Randolph Street
Washington Street
Monroe Street
Madison Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road
18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch

Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

(c) The following bridges need not be opened for the passage of vessels: The draws of the North Avenue, Cortland Street, Webster Avenue, North Ashland Avenue, Chicago and Northwestern Railroad, North Damen Avenue, and Belmont Avenue bridges across the North Branch of the Chicago River, and the draws of the North Halsted St. bridge, the Ogden Ave. bridge, the Division St. bridge and the Chicago, Milwaukee, St. Paul and Pacific Railroad bridge across the North Branch Canal.

(d) The opening signal for all Chicago River bridges is three short blasts or by shouting, except that four short blasts is the opening signal for the Chicago and Northwestern railroad bridge near Kinzie Street and the Milwaukee Road bridge near North Avenue and five short blasts is the opening signal for the Lake Shore Bridge when approaching from the north.

(e) The emergency provisions of § 117.31 apply to the passage of all vessels and the operation of all bridges on the Chicago River.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95–18976 Filed 7–26–95; 2:49 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5269–1]

Preparation, Adoption, and Submittal of State Implementation Plans; Appendix M, Test Methods 204, 204A–204F

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to add seven methods to appendix M of 40 CFR part 51 for capture efficiency (CE) testing to assist States in adopting enforceable CE measurement protocols into their State implementation plans (SIP's) for ozone. These proposed methods, in conjunction with the protocols, would also improve EPA's ability to enforce State regulations to reduce volatile organic compounds (VOC) emissions in ozone nonattainment areas.

DATES: *Comments.* Comments must be received on or before October 2, 1995.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 16, 1995, hearing will be held on August 30, 1995, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Betty Sorrell at (919) 541–5582 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by August 16, 1995.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to Public Docket No. A–91–70 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code: 6102, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in Room M–1500 Waterside Mall (ground floor), and may be inspected from 8:30 a.m.–12 p.m. and 1:30 p.m.–3:00 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling *202–260–7548.* A reasonable fee may be charged for copying docket materials.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Betty Sorrell (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5582.

Docket. A Docket A–91–70, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m.–12 p.m. and 1:30 p.m.–3:00 p.m., Monday through Friday, at the EPA's Air Docket Section Mail Code: 6102, Room M–1500, Waterside Mall (ground floor), 401 M Street, SW., Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Sorrell, Source Characterization Group A (MD–19), Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–4825.

SUPPLEMENTARY INFORMATION: The proposed regulatory text of the proposed rule is not included in this **Federal Register** notice, but is available in Docket No. A–91–70 or by written or telephone request from the Air Docket (see **ADDRESSES**). If necessary, a limited number of copies of the Regulatory Text are available from the EPA contact persons designated earlier in this notice. This Notice with the proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of the phone call. Dial (919) 541–5742 for up to a 14400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

I. Summary

On February 10, 1995, EPA released a document entitled "Guidelines for Determining Capture Efficiency" which recommended the use of a permanent total enclosure (PTE), temporary total enclosure (TTE), or a building enclosure for determining CE. The EPA is proposing to add seven test methods, needed to carrying out the recommended protocols, to appendix M in 40 CFR part 51. The methods being proposed today can be used by States in developing CE protocols for regulated coating and printing facilities employing a VOC capture system and control device. The use of alternative methods and protocols is discussed in the guidance document mentioned above.

Each of the EPA recommended protocols relies on the use of an enclosure to contain the VOC emitted from a process. Either a gas/gas protocol (gas-phase measurements only) or a liquid/gas protocol (both liquid- and gas-phase measurements) would be considered acceptable in conjunction with the construction of a TTE around the process. The gas/gas or liquid/gas protocol could also be employed in situations where the building or room around the process meet the requirements in proposed Method 204 for a TTE.

An owner or operator installing a PTE meeting the requirements in proposed Method 204 would not be required to perform CE testing, because the CE would be assumed to be 100 percent. Testing of the destruction or removal efficiency of the control device would

still be required in order to provide a measure of the overall control efficiency of the total emission control system.

II. The Rulemaking

This rulemaking proposes to add seven methods for measuring CE to appendix M of 40 CFR part 51 to provide methods that States can use in their SIP's.

III. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed amendment in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to within 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they may effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [Section 307(d)(7)(A)].

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

D. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year. Section 204 requires the Agency to establish a plan for obtaining input from and informing , educating , and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The RFA specifically requires the completion of an analysis in those instances where small business impacts are possible. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have an impact on small entities because no additional costs will be incurred.

F. Paperwork Reduction Act

The rule does not change any information collection requirements subject of Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

G. Statutory Authority

The statutory authority for this proposal is provided by section 110 of the Clean Air Act, as amended: 42 U.S.C., 7410.

Dated: July 25, 1995.

Carol M. Browner,

The Administrator.

[FR Doc. 95–18994 Filed 8–1–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Parts 52 and 81

[NC72–1–6953b; FRL–5258–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of North Carolina for the purpose of redesignating the areas of Charlotte and Raleigh/Durham to attainment for carbon monoxide (CO). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by September 1, 1995.

ADDRESSES: Written comments should be sent to Ben Franco, EPA Region 4, Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia, 30365. Copies of the redesignation request and the State of North Carolina's submittals are available for public review during normal business hours at the addresses listed below. EPA's technical support document (TSD) is available for public review during normal business hours at the EPA addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Department of Environment, Health and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626–0535.

FOR FURTHER INFORMATION CONTACT: Ben Franco of the EPA Region 4 Air Programs Branch at (404) 347–3555, ext. 4211, and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 26, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–18882 Filed 8–1–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 61

[FRL–5269–9]

Interim Approval of Delegation of Authority; National Emission Standards for Hazardous Air Pollutants; Radionuclides; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to grant interim delegation of authority to the state of Washington to implement and enforce two National Emission Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides. The request for delegation was submitted by the state pursuant to 40 CFR 63.91 for delegation of federal standards, as promulgated. In the final rules section of this **Federal Register**, EPA is granting interim approval of the state's request for delegation as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. EPA's rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Thus, any parties interested in commenting on this action should do so in the next 30 days.

DATES: Comments on this proposed rule must be received in writing by September 1, 1995.

ADDRESSES: Written comments should be addressed to Richard Poeton, EPA Region 10, AT–082, 1200 6th Avenue, Seattle, Washington 98191 and concurrently to Allen W. Conklin, Head, Air Emissions and Defense Waste Section, Washington Department of Health, Airdustrial Center Building #5, P.O. Box 47827, Olympia, Washington, 98504–7827. Copies of the material submitted to EPA are available for public inspection during normal business hours at the above locations.

FOR FURTHER INFORMATION CONTACT: Richard Poeton at (206) 553–8633.

SUPPLEMENTARY INFORMATION: See the information provided in the final action which is located in the final rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 61

Environmental Protection, Air pollution control, Intergovernmental relations, Radiation protection.

Authority: 42 U.S.C. 7412.

Dated: July 20, 1995.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 95–18988 Filed 8–1–95; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 180

[PP 8E3574/P620; FRL–4963–5]

RIN 2070–AC18

Terbufos; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend the time-limited import tolerance for combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) green coffee beans for an additional 2 years. American Cyanamid Co. submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) requesting the proposed regulation to establish a maximum permissible level for combined residues of the insecticide/nematicide in or on the commodity.

DATES: Comments, identified by the document control number [PP 8E3574/P620], must be received on or before September 1, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132 CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m.,

Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 8E3574/P620]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600; e-mail: forrest.robert@epamail.epa.gov. .

SUPPLEMENTARY INFORMATION: EPA issued rules, published in the **Federal Register** of May 19, 1993 (58 FR 29118), and May 26, 1993 (58 FR 30220), which announced its decision to establish a time-limited tolerance for residues of the insecticide/nematicide terbufos on coffee beans for a period extending to May 19, 1995. The Agency limited the period of time that the regulation was to be in effect because the available rat metabolism study was found to only partially satisfy current guideline requirements of 85-1.

The American Cyanamid Co. has submitted a new rat metabolism study and has requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.352 by converting the 2-year time-limited import tolerance for combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity coffee beans at 0.05 part per million (ppm) to permanent status.

The designation, coffee beans, is corrected to read "green coffee beans" to reflect the current definition of this raw agricultural commodity.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog-feeding study with a lowest-observable-effect level (LOEL) of 0.015 milligram/kilogram/day (mg/kg/day) (the lowest dose tested) based on the inhibition of plasma cholinesterase activity.

2. A 4-week dog plasma cholinesterase study with a no-observable-effect level (NOEL) of 0.005 mg/kg/day in which inhibition of plasma cholinesterase activity was observed at the 0.015-dose level, the highest dose tested. This represents an increase in the NOEL value for plasma cholinesterase activity from 0.0013 (which was previously considered as the NOEL for this study), and is consistent with the LOEL observed for this activity in the 1-year dog study referenced in item one above where effects were also observed at the 0.015-dose level. Doses of 0.00125, 0.0025, 0.005, and 0.015 were administered in the 4-week dog study.

3. A 1-year rat feeding study with an NOEL of 0.5 ppm (0.025 mg/kg) for inhibition of plasma and brain cholinesterase activity.

4. An 18-month mouse carcinogenicity study with no carcinogenic effect observed at dosages up to and including 12.0 ppm (1.7 mg/kg/day), which was the highest level tested.

5. A 2-year rat carcinogenicity study with no carcinogenic effects observed at doses up to and including 2.0 ppm (0.10 mg/kg/day).

6. A three-generation rat reproduction study with a NOEL of 0.25 ppm (0.0125 mg/kg) for reproductive effects.

7. A rat teratology study with a NOEL of 0.1 mg/kg/day for developmental toxicity.

8. A rabbit teratology study with a NOEL of 0.25 mg/kg/day for developmental toxicity.

9. An acute delayed neurotoxicity study in chickens, which was negative for neurotoxic effects under the conditions of the study (highest dose tested was 40 mg/kg).

10. Several mutagenic tests which were all negative. These include a dominant-lethal study in rats; an acute *in vivo* cytogenic assay in rats; an Ames test including metabolic activation; a DNA repair chromosomal aberration (CHO cells); CHO/HGPRT mutation assay; and a rat hepatocyte primary culture/DNA repair test.

11. In a metabolism study with rats, 69.3 to 86.3% of the dose was excreted in the urine within 168 hours. The total recovery of the dose ranged from 89.1 to 98.7%. There was no evidence of terbufos or its metabolites bioaccumulating in tissues. The percentage of phosphorylated and nonphosphorylated metabolites recovered in the urine ranged from nondetectable to 0.68% and from 5.6 to 18.4 percent, respectively. The predominant compound recovered in the feces was the parent.

The reference dose(RfD), based on the plasma cholinesterase inhibition (ChE) NOEL as defined in a 4-week dog study (0.005 mg/kg/day) and using a safety factor of 100 to account for the inter-species extrapolation and intra-species variability, is calculated to be 0.00005 mg/kg of body weight (bwt)/day. The co-critical study is a 1-year dog feeding study in which an NOEL was not established. The LOEL was 0.015 mg/kg based on chloinesterase inhibition. The theoretical maximum residue contribution (TMRC) for existing tolerances and the current action is 0.000052 mg/kg/bwt/day for the overall U.S. population. The current action will increase the TMRC by 0.000003 mg/kg/bwt/day (6 percent of the RfD).

This tolerance and previously established tolerances utilize a total of 110 percent of the RfD for the overall U.S. population and represent an increase in the previously calculated value of 42.1%.

Available information on anticipated residues and/or percent of crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance-level residues and 100 percent crop treated. The ACR from established tolerances and the current action is estimated at 0.000016 mg/kg/day and utilizes 32.7 percent of the RfD for the U.S. population.

The ARC for children, aged 1 to 6 years old, and nonnursing infants (the group most highly exposed) for the established tolerances utilize 77.3 and 81.0 percent of the RfD, respectively. This action will not increase exposure to these subgroups because there is no information on coffee consumption for these subgroups.

Utilizing the NOEL from the 4-week dog plasma cholinesterase study (0.005 mg/kg/day), the estimated margins of exposure (MOEs) calculated as the acute dietary risk for coffee alone is 125 for four of the five subgroups indicating that coffee per se does not present an unacceptable acute risk and does not appear to substantially increase the acute dietary risk from terbufos. For the remaining subgroup, nonnursing infants, there is no exposure resulting from the green coffee bean tolerance.

The Agency is currently conducting a reassessment of all the established tolerances for terbufos and, if warranted, will refine the estimated MOEs based on results of that reassessment. The current estimated acute dietary risk for all the established terbufos tolerances indicates that an unacceptable risk exists assuming that residue levels are at the established tolerance and that 100 percent of the crop is treated. The Agency believes that actual residues to which the public is likely to be exposed are considerably less than indicated for the following reasons.

1. Most treated crops have residue levels which are below the established tolerance level at the time of consumption.

2. Not all the planted crop for which a tolerance is established is normally treated with the pesticide.

The nature of the residue in plants is adequately understood for the use of terbufos on coffee beans imported from Central America. There are no animal feed items involved with this use. Therefore, it is expected that no secondary residues in meat, milk, poultry, and eggs will result from the use of the pesticide on coffee beans.

An adequate analytical method, gas chromatography with a flame photometric detector, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes.

There are currently no regulatory actions pending against the continued registration of this chemical.

The Agency is limiting the period of time that the proposed regulation is to be in effect to allow the Agency to complete its in-depth reassessment of the current established tolerances for terbufos. Upon completion of this reassessment, and, if warranted, the Agency will consider the establishment of a permanent tolerance for green coffee beans.

Residues not in excess of 0.05 part per million in or on green coffee beans after expiration of the tolerance will not be considered actionable if the insecticide-nematicide is legally applied during the term of, and in accordance with, provisions of the time-limited tolerance.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3574/P620]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 8E3574/P620] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 8E3574/P620], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 18, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.352, by revising paragraph (b), to read as follows.

§ 180.352 Terbufos; tolerances for residues.

* * * * *

(b) A time-limited tolerance to expire (date 2 years after date of publication of final rule based on this proposal) is established for combined residues of the insecticide/nematicide terbufos (*S*-[[1,1-dimethyl)thio] methyl] *O,O*-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodity:

Commodity	Parts per million
* * * * *	
Coffee beans, green[1]	0.05
* * * * *	

[1]There are no U.S. registrations as of August 2, 1995 for the use of terbufos on the growing crop, coffee.

[FR Doc. 95–19004 Filed 8–1–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 180 and 185

[OPP–300393; FRL–4967–1]

RIN 2070–AC18

Mevinphos; Proposed Amendment and Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of all tolerances listed at 40 CFR 180.157 and 185.4200 for residues of the insecticide mevinphos (Phosdrin®) in or on all raw agricultural commodities and processed foods. EPA is initiating this action because all U.S. mevinphos registrations were canceled on July 1, 1994. Because existing stocks of mevinphos may be used through November 30, 1995, the proposed revocations will become effective May 31, 1996, in order to ensure that no mevinphos residue will occur on legally treated crops, whether they are raw agricultural commodities or processed foods.

DATES: Written comments, identified by the docket control number OPP–300393, must be received on or before October 2, 1995.

ADDRESSES: By mail, submit comments to: Public Response Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–300393." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit V. of this preamble.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Dumas, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person: Special Review Branch, Third floor, Crystal Station 1, 2800 Crystal Drive, Arlington, VA 22202, Telephone number: (703) 308–8015, e-mail: dumas.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Mevinphos (Phosdrin®) is a broad-spectrum organophosphate insecticide primarily used on specialty/minor use crops. It is used chiefly as an acaricide and was registered for use on 25 crops (principally leafy greens and cole crops) before cancellation. It has been produced in the U.S. by the sole technical registrant, Amvac Corporation of Los Angeles, California. Prior to its cancellation, approximately 200,000 to 500,000 pounds of active ingredient were used annually in the U.S.

II. Legal Background

The Federal Food, Drug, and Cosmetic Act (FFDCA) authorizes the establishment by regulation of maximum permissible levels of pesticides in or on foods. Such regulations are commonly referred to as "tolerances." Without such tolerances or exemptions from tolerances, a food containing pesticide residues is considered to be "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). Commodities subject to this proposal must no longer contain mevinphos residues following the revocation of the tolerances. To establish a tolerance for pesticide residues in or on raw agricultural commodities under section 408 of FFDCA, EPA must find that the promulgation of the rule would "protect the public health" (21 U.S.C. 346a(b)). To establish food additive regulations (FARs) to cover pesticide residues in processed foods under section 409 of FFDCA, EPA must determine that the proposed use of the food additive will be safe (21 U.S.C. 348). For a pesticide to be sold and used in the production of a food crop or food animal, the pesticide must not only have appropriate tolerances or FARs under FFDCA, but must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.). FIFRA requires the registration of pesticides that are sold and distributed in the U.S.

This document proposes the revocation of all tolerances and FARs (hereafter tolerances will refer to both tolerances and FARs) established under sections 408 and 409 of the FFDCA, 21 U.S.C. 301 et seq., for residues of the pesticide mevinphos in or on all previously registered crops, as listed in 40 CFR 180.157 and 185.4200. In the absence of the appropriate clearances under FFDCA for residues of a pesticide on food or feed, any agricultural commodity or processed food domestically produced and/or imported into the United States found to contain mevinphos residues is adulterated under section 402 of FFDCA.

III. Regulatory Background

On June 30, 1994, when EPA was prepared to issue a Notice of Intent to Suspend all mevinphos registrations because of acute poisoning incidents involving agricultural workers, Amvac submitted a request for voluntary cancellation. EPA accepted this request and on July 1, 1994, issued a Cancellation Order for all mevinphos registrations, effective immediately. The Agency subsequently published a Notice of Receipt of Request for Cancellation, Announcement of Cancellation Order, and FIFRA section 6(g) Notification for Mevinphos in the **Federal Register** of August 1, 1994 (59 FR 38973). The Cancellation Order was subsequently modified on January 13, 1995, to extend the distribution, sale, and use to November 30, 1995, from December 30, 1994, for sale and distribution and February 28, 1995, for use. Notice of this amendment was published on April 5, 1995 (60 FR 17357).

IV. Current Proposal

EPA is proposing to revoke all mevinphos tolerances. The proposed date of revocation is May 31, 1996. EPA believes that there is little likelihood, if any, that residues of mevinphos would be observed in legally treated commodities after May 31, 1996. Also, mevinphos is not persistent and the Agency does not believe that mevinphos residues will be found in processed foods. Therefore, setting action levels is not necessary.

The Agency believes that it is appropriate to initiate revocation of tolerances at this time because mevinphos is no longer registered in the U.S. In accordance with the voluntary cancellation requested by Amvac, the sole technical registrant for mevinphos, all use of mevinphos is scheduled to cease after November 30, 1995. EPA believes that it is appropriate to revoke tolerances covering residues of a pesticide for which there is no legal domestic use unless it can be shown by interested parties that there is a need for the tolerances, and that the tolerances are protective of the public health. Such tolerances may be needed, for example, if interested parties can show that the pesticide is used in foreign countries on crops that may be destined for the U.S.

It should be noted that in order for any tolerances to be retained, EPA must determine, under sections 408 and 409 of FFDCA, that the particular tolerance is protective of public health. For EPA to make this public safety finding, it must have adequate data to assess the risks that may result from exposure to mevinphos residues in or on food. EPA generally requires submission of such information (such as residue data) to support pesticide registrations under FIFRA and to maintain tolerances under FFDCA. With all domestic use of mevinphos ending November 30, 1995, EPA must have adequate data to demonstrate that imported foods treated with mevinphos are safe. Such data are not available at this time and EPA does not anticipate the receipt of such data because the sole technical registrant for mevinphos has voluntarily canceled all of its U.S. mevinphos registrations.

Based upon available data, the Agency has completed a preliminary acute dietary risk assessment from exposure to mevinphos. The assessment indicates a concern, particularly for infants and children. EPA recognizes that the dietary risk concern may be diminished if interested parties submit adequate exposure and/or toxicity data that show that the preliminary assessment is not accurate. However, the data base currently available to EPA is inadequate and does not appear to provide a basis to conclude that the preliminary assessment is inaccurate.

This proposal serves as a notice to all parties interested in the disposition of mevinphos tolerances. If EPA does not receive comment by October 2, 1995, EPA will issue a final order revoking all mevinphos tolerances. Because EPA believes it is appropriate to preclude review of objections raising issues not provided in comments submitted in response to the proposal, EPA encourages all parties interested in the status of mevinphos tolerances to submit comments.

V. Public Docket

A record has been established for this rulemaking under docket number "OPP–300393" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for the rulemaking as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

VI. Other Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1994), the Agency must determine whether the regulatory action is "significant," and therefore, subject to all the requirements of the Order, such as Regulatory Impact Assessments and review by the Office of Management and Budget (OMB). In section 3(f), the Order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the national economy of $100 million or more, or adversely and materially affecting a sector of the national economy, such as productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues out of legal mandates, the President's priorities, or the principles set forth in the Order.

Pursuant to the terms of this Order, EPA has determined that this proposed rule is not "significant" and, therefore, is not subject to the requirements of the Order, such as OMB review or other actions. EPA does not expect any significant economic impacts to result from the revocation of mevinphos tolerances, because all U.S. mevinphos registrations have been canceled and no further use of mevinphos will be permitted after November 30, 1995.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have any impact on small businesses, small governments, or small organizations.

This proposed rule is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner, as well as to prevent food commodities containing any mevinphos residues from entering the U.S.

As stated above, because mevinphos is not registered in the U.S. and will not be used in the U.S. after November 30,

1995, EPA does not expect significant any economic impact at any level of business enterprise if mevinphos tolerances are revoked on May 31, 1996; especially since all use of mevinphos will have ended 6 months before this date. Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. (Sec. 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 a(m))).

List of Subjects in Parts 180 and 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 1995.

Losi Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180 and 185 be amended to read as follows:

1. In Part 180:

PART 180—AMENDED

a. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.157 [Removed]

b. Section 180.157 is removed.

2. In Part 185:

a. The authority citation for part 185 would continue to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.4200 [Removed]

b. Section 185.4200 is removed.

[FR Doc. 95–18874 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, 424, 485, and 489

[BPD–825–CN]

RIN 0938–AG95

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1996 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; correction.

SUMMARY: In the June 2, 1995, issue of the **Federal Register** (60 FR 29202), we published a proposed rule addressing revisions to the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system.

Additionally, in the addendum to that proposed rule, we described proposed changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. The changes would be applicable to discharges occurring on or after October 1, 1995. We also set proposed rate-of-increase limits as well as proposing policy changes for hospitals and hospital units excluded from the prospective payment systems. This document corrects errors made in the proposed rule.

FOR FURTHER INFORMATION CONTACT: Nancy Edwards (410) 966–4532.

SUPPLEMENTARY INFORMATION: In our June 2, 1995, proposed rule (60 FR 29202), we stated that we were including as Appendix C the report to Congress on our initial recommendation on the update factors for prospective payment hospitals and hospitals excluded from the prospective payment system (60 FR 29258). The report consists of letters to the President of the Senate and the Speaker of the House of Representatives. Subsequently, we discovered that the incorrect report was inadvertently printed in the proposed rule.

In addition to publishing the proper report to Congress, we are making several other corrections to the June 2, 1995 proposed rule.

The proposed rule (FR Doc 95–13183) published June 2, 1995 (60 FR 29202) is corrected as follows:

1. On page 29250, beginning at the bottom of the second column, section VIII.B.9 of the preamble is deleted and replaced with the following: 9. PPS Payment Impact File

This file contains data used to estimate FY 1996 payments under Medicare's prospective payment systems for hospitals' operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, the PPS–IX and PPS–X Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment system published in the **Federal Register**. This file is available for release one month after publication of the proposed rule in the **Federal Register**, with an updated version available one month after publication of the final rule.

Media: Diskette

File Cost: $145.00

Periods Available: FY 1996 PPS Update

§ 412.23 [Corrected]

2. On page 29251, second column, in § 412.23(e)(2)(i), at the end of the fifth line, add the word "or".

3. On page 29329, Table 6c—Invalid Diagnosis Codes is corrected and new Table 6d—Invalid Procedure Codes is added to read as follows:

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
005.8	Other bacterial food poisoning	N	6	182, 183, 184.
278.0	Obesity	N	10	296, 297, 298.
415.1	Pulmonary embolism and infarction	Y	4	78
			15	387, 389.
569.6	Colostomy and enterostomy malfunction	Y	6	188, 189, 190.
690	Erythematosquamous dermatosis	N	9	283, 284.
787.9	Other symptoms involving digestive system	N	6	182, 183, 184.
989.5	Toxic effect of other substances, chiefly nonmedicinal as to source	N	21	449, 450, 451.
997.0	Central nervous system complications	Y	1	34, 35
			15	387, 389.
997.9	Complications affecting other specified body systems, not elsewhere classified	Y	21	452, 453.
V12.5	Personal history of diseases of circulatory system	N	23	467.

TABLE 6C.—INVALID DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
V43.8	Organ or tissue replaced by other means, not elsewhere classified	N	23	467
V59.0	Blood donor	N	23	467.

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
33.5	Lung transplant	Y	Pre	495.
39.7	Periarterial sympathectomy	Y	5	478, 479.
60.2	Transurethral prostatectomy	Y	11	306, 307.
			12	336, 337, 476.

4. On pages 29376 through 29379, appendix C is removed and the following added in its place:

Appendix C—Report to Congress on the Update Factor for Prospective Payment Hospitals and Hospitals Excluded From the Prospective Payment System

The Secretary of Health and Human Services

Washington, DC 20201

May 26, 1995.

The Honorable Albert Gore, Jr.,
President of the Senate, Washington, D.C. 20510

Dear Mr. President: Section 1886(e)(3)(B) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in inpatient hospital payment rates for Fiscal Year (FY) 1996 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and unites excluded from PPS. This submission constitutes the required report.

My recommendations are consistent with the provisions of the Omnibus Budget Reconciliation Act (OBRA) of 1993 in which I am required to establish the update for PPS hospitals in both large urban areas and other areas as the market basket rate of increase reduced by 2.0 percentage points. The Office of Management and Budget currently estimates the PPS market basket rate of increase for FY 1996 to be 3.4 percent. Accordingly, we recommend an update for both large urban and other areas of 1.4 percent.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection to maintain access to services for Medicare beneficiaries. SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate. Under our recommendation and OBRA 1993, the update to hospital-specific rates equals the increase for all PPS hospitals; that is, market basket rate of increase of 3.4 percent minus 2.0 percentage points, or 1.4 percent.

Hospitals and distinct part hospital units that are excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Consistent with current law, we recommend an increase in the TEFRA limit equal to the rate of increase in the excluded hospital market basket (3.4 percent) minus the applicable reduction for each hospital. The applicable reduction with respect to a hospital is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for the fiscal year. Therefore, the hospital-specific update can vary between 2.4 and 3.4 percent. The weighted average update to the payment limit for PPS excluded hospitals and units equals 2.85 percent.

My recommendation for the updates is based on current projections of relevant data. A final recommendation on the appropriate percentage increases for FY 1996 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Prospective Payment Assessment Commission (ProPAC).

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 1996.

I am pleased to provide my recommendations to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,

Donna E. Shalala.

The Secretary of Health and Human Services

Washington, DC 20201

May 26, 1995.

The Honorable Newt Gingrich,
Speaker of the House of Representatives, Washington, D.C. 20515

Dear Mr. Speaker: Section 1886(e)(3)(B) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in inpatient hospital payment rates for Fiscal Year (FY) 1996 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

My recommendations are consistent with the provisions of the Omnibus Budget Reconciliation Act (OBRA) of 1993 in which I am required to establish the update for PPS hospitals in both large urban areas and other areas as the market basket rate of increase reduced by 2.0 percentage points. The Office of Management and Budget currently estimates the PPS market basket rate of increase for FY 1996 to be 3.4 percent. Accordingly, we recommend an update for both large urban and other areas of 1.4 percent.

Sole community hospitals (SCHs) are the sole source of care in their areas and are afforded special payment protection to maintain access to services for Medicare beneficiaries. SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate. Under our recommendation and OBRA 1993, the update to hospital-specific rates equals the increase for all PPS hospitals; that is, market basket rate of increase of 3.4 percent minus 2.0 percentage points, or 1.4 percent.

Hospitals and distinct part hospital units that are excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Consistent with current law, we recommend an increase in the TEFRA limit equal to the rate of increase in the excluded hospital market basket (3.4 percent) minus the applicable reduction for each hospital. The applicable reduction with respect to a hospital is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for the fiscal year. Therefore, the hospital-specific update can vary between 2.4 and 3.4 percent. The weighted average update to the payment limit for PPS excluded hospitals and units equals 2.85 percent.

My recommendation for the updates is based on current projections of relevant data. A final recommendation on the appropriate percentage increases for FY 1996 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Prospective Payment Assessment Commission (ProPAC).

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 1996.

I would be pleased to discuss this recommendation with you. I am also sending a copy of this letter to the President of the Senate.

Sincerely,

Donna E. Shalala.

5. On page 29380, appendix D, second column, the second full paragraph is removed and the following added in its place:

In its March 1, 1995 report, ProPAC recommended update factors to the standardized amounts equal to the percentage increase in the market basket minus 1.8 percentage points for hospitals in both large urban and other areas. Based on its current market basket rate of increase estimate of 3.4 percent, ProPAC's recommended update to the standardized amounts equals 1.6 percent for hospitals in both large urban and other areas. ProPAC recommended that the update for the hospital-specific rates applicable to sole community hospitals be the same factor as the rate for all other prospective payment hospitals. This recommendation would result in a 1.6 percent update to the hospital-specific rates. The components of ProPAC's update factor recommendations are described in detail in the ProPAC report, which is published as Appendix E to this document. We discuss ProPAC's recommendations concerning the update factors and our responses to these recommendations below.

6. On page 29380, appendix D, section III is corrected up to the *Response* on page 29381, column 1 as follows:

III. ProPAC Recommendation for Updating the Prospective Payment System Standardized Amounts

For FY 1996, ProPAC recommends that the standardized amounts be updated by the following factors:

- The projected increase in the HCFA hospital market basket index, currently estimated at 3.5 percent, with an adjustment of −0.1 percentage points to account for the different wage and salary price proxies used for the ProPAC market basket rate of increase.
- A negative adjustment of 1.8 percentage points to correct for substantial error in the FY 1994 market basket forecast;
- A positive adjustment of 0.3 percentage points to reflect the cost-increasing effects of scientific and technological advances;
- A negative adjustment of 0.3 percentage points to encourage hospital productivity improvements; and
- A net adjustment of zero percentage points for case-mix change in FY 1995.

Overall, the net increase employing the above factors is the percentage increase in the hospital market basket minus 1.9 percentage points. Based on HCFA's market basket estimate of 3.5 percent, ProPAC recommends that hospitals in large urban and other areas receive a 1.6 percent update.

7. On page 29383, Table 1—Comparison of FY 1996 Update Recommendations is removed and the following added in its place:

TABLE 1.—COMPARISON OF FY 1996 UPDATE RECOMMENDATIONS

	HHS	ProPAC
Market Basket	MB	MB
Difference Between HCFA & ProPAC Market Baskets		−0.1
Subtotal	MB	MB–0.1
Policy Adjustment Factors:		
Productivity	−0.7 to −0.8	−0.3
Intensity	0.0	
Science and Technology		+0.3
Practice Patterns		(1)
Real Within DRG Change		(2)
Subtotal	−0.7 to −0.8	+0.0
Case Mix Adjustment Factors:		
Projected Case Mix Change	−0.8	−1.0
Real Across DRG Change	0.8	+0.8
Real Within DRG Change	(3)	+0.2
Subtotal	0.0	0.0
Effect of 1994 Reclassification and Recalibration	−0.3	—
Forecast Error Correction	−1.8	−1.8
Total Recommended Update	MB–2.8 to MB–2.9	MB–1.9

(1) Included in ProPAC's Productivity Measure.
(2) Included in ProPAC's Case Mix Adjustment.
(3) Included in HHS's Intensity Factor.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 21, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–18770 Filed 8–1–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 5, 10, 12, and 15

[CGD 95–062]

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as revised by the 1995 Amendments to It

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting, availability of documents, and request for comments.

SUMMARY: The Coast Guard is holding a public meeting to discuss the outcome of the 1994 Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), which adopted comprehensive amendments to the Annex to STCW. The amendments are scheduled to come into force on February 1, 1997, and they may affect virtually all phases of the system used in the United States to train, test, evaluate, document, and license merchant mariners. The meeting will provide an opportunity for the public to comment on the steps that the Coast Guard considers necessary to implement the requirements of STCW as amended under the laws of the United States, including regulations of the Coast Guard.

DATES: The meeting will be held August 31, 1995, from 9:30 a.m. to 2:30 p.m. Written comments must be received not later than September 29, 1995.

ADDRESSES: The meeting will be held in room 2415, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket [CGD 95–062] and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. A copy of the 1995 Amendments to STCW may be obtained by writing Commandant (G–MOS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or by calling (202) 267–0214, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays. Requests may also be submitted by facsimile at (202) 267–4570.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Young, Operating and Environmental Standards Division (G–MOS), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–0214.

SUPPLEMENTARY INFORMATION:

Background and Discussion

On July 7, 1995, a Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), meeting at the International Maritime Organization in London, adopted a package of Amendments to STCW. The amendments will enter into force on February 1, 1997, unless a third of the parties to the Convention, or parties representing over 50 percent of the world's shipping tons, object to them by August 1, 1996. Because they were adopted unanimously by the Conference, no objections are expected. Consequently, the Coast Guard is taking necessary steps to implement them, to ensure that U.S. documents and licenses are issued in compliance with them.

The Coast Guard will hold a public meeting on August 31, 1995, to discuss the outcome of the Conference and seek public comment on how the 1995 Amendments to STCW, adopted by the Conference, should be implemented. Comments are invited not only on the substance of any new requirements but also on the economic impact of meeting the requirements, whether on individuals, maritime training, owners and operators of vessels, small businesses, or others.

The Coast Guard must consider revising the current regulations on licensing and documentation (46 CFR Parts 5, 10, 12, and 15) as well as those on workhours and watchkeeping (46 CFR Part 15) to reflect the requirements of the 1995 Amendments to STCW. The following is a list of the most significant changes necessary to the regulations:

1. All candidates for STCW certificates (i.e., licenses and documents for service on seagoing ships) will have to undergo approved training and assessment of competence.

2. Virtually all training will be subject to a system of approval and independent monitoring under standards of quality. Persons engaged in training, whether on board ship or at shore-side training facilities, will have to meet qualification standards. Many will have to use a training-record book.

3. Assessment of competence will involve both examination, to verify a sufficient level of knowledge and understanding of essential subjects, and demonstration of practical skills. Persons engaged in assessment of competence, whether on board ship or at shore-side assessment facilities, will themselves have to meet qualification standards. They will have to document proof of candidates' successful demonstration of skills.

4. Simulators used in training or assessment must meet certain performance standards.

5. All persons employed or engaged on seagoing vessels (i.e., all persons on board except passengers) will have to undergo familiarization training to ensure they can look after themselves in the event of an emergency or a life-threatening situation. Persons responsible for safety or pollution prevention (i.e., the required crew complement, as well as those with assigned safety duties) will have to get additional basic training in safety, including firefighting. Persons responsible for medical care must also meet certain standards.

6. All persons employed or engaged on seagoing vessels must meet certain standards of medical fitness.

7. Current standards for unlicensed seamen must be reviewed to ensure they reflect the 1995 Amendments to STCW relating to ratings for those who are members of navigational watches on ships of 500 gross tons or more, or those who are members of engine-room watches or are designated to perform duties in periodically unmanned engine-rooms on seagoing ships powered by propulsion machinery of 750 kW [1000 hp] or more.

8. Watchkeeping personnel must receive a minimum of rest. Masters must arrange watchkeeping adequate for safe watches.

9. Suspension-and-revocation procedures must enable the taking of appropriate action against a licensed or documented person who has (a) allowed a shipboard function to be performed by a person not holding a required STCW certificate or (b) certified that a skill has been properly demonstrated when it has not, or when it has not been directly observed.

10. Companies must ensure that new crewmembers are familiarized with ship-specific equipment, procedures, and other arrangements necessary for performing their jobs.

11. New regulations may be necessary to address the special provisions governing personnel on tankers and on ro-ro passenger ships.

12. New policy will be necessary to implement expanded port-state control.

Beyond the above, specific revisions will be necessary to ensure that requirements for being issued a license or document under domestic regulations fully meet those of the 1995 Amendments to STCW. For example, officers of the navigational watch will need training in the use of Automatic Radar Plotting Aids (ARPA) for service on ships fitted with ARPA. Also, such officers will have to hold radio operators' certificates valid under the Global Maritime Distress and Safety System (GMDSS) for service in ships operating in the GMDSS.

In revising domestic regulations, the Coast Guard should consider harmonizing the license categories with the structure outlined in the 1995 Amendments to STCW, which is as follows:

Deck Department

1. Officers of the navigational watch on ships of 500 gross tons or more.
2. Officers of the navigational watch on ships of less than 500 gross tons not engaged on near-coastal voyages.
3. Officers of the navigational watch on ships of less than 500 gross tons engaged on near-coastal voyages.
4. Masters and Chief Mates on ships of 3000 gross tons or more.
5. Master and Chief Mates on ships of between 500 and 3000 gross tons.
6. Masters on ships of less than 500 gross tons not engaged on near-coastal voyages.
7. Masters on ships of less than 500 gross tons engaged on near-coastal voyages.

Engine Department

1. Officers in charge of the engineering watch in manned engine-rooms.
2. Designated duty engineers in periodically unmanned engine-rooms.
3. Chief engineer officers of ships powered by main propulsion machinery of 3,000 kW [4000 hp] or more.
4. Second engineer officers of ships powered by main propulsion machinery of 3,000 kW [4000 hp] or more.
5. Chief engineer officers of ships powered by main propulsion machinery of between 750 kW [1000 hp] and 3,000 kW [4000 hp].
6. Second engineer officers of ships powered by main propulsion machinery

of between 750 kW [1000 hp] and 3,000 kW [4000 hp].

Likewise, in revising domestic regulations, the Coast Guard should consider applying the standards of competence set out in tables in the 1995 Amendments to STCW, by incorporating those tables by reference into the appropriate sections of the revised regulations.

The above subjects will be open for discussion and comment at the meeting on August 31. Any comments received at the meeting or in response to this notice will be taken into account in the development of implementing-regulations.

Attendance at the meeting is open to the public. Members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted before, during, or after the meeting.

Dated: July 27, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19006 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–124, RM–8573]

Radio Broadcasting Services; Atlantic, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Wireless Communications Corp. seeking the allotment of Channel 239C3 to Atlantic, IA, as the community's first local FM transmission service. Channel 239C3 can be allotted to Atlantic in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–24–00 North Latitude and 95–00–54 West Longitude.

DATES: Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry A. Friedman, Esq., Semmes, Bowen & Semmes, Suite 900, 1025 Connecticut Avenue, NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–124, adopted July 20, 1995, and released July 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–18950 Filed 8–1–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

RIN 2127–AF49

Federal Motor Vehicle Safety Standards; Termination of Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates rulemaking in response to a petition filed by Karen Slay, asking that NHTSA require manufacturers of pickup trucks to place some kind of warning or recommendation on the cargo beds and in the owner's manual "stating the dangers of passengers riding in the cargo area of these vehicles." Pickup manufacturers have agreed to include in their owners' manuals clear and specific warnings about the dangers of riding in cargo areas of vehicles and to join with the agency, vehicle dealers, and other interested organizations in a broad-based effort to educate the public about the dangers associated with riding in the cargo areas of vehicles. In these circumstances, NHTSA has concluded that no regulatory action is needed at this time.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Vehicle Safety Standards, NHTSA (NPS–10), 400 Seventh Street, S.W., Washington, DC 20590. Mr. Kratzke can be reached by telephone at (202) 366–5203 or FAX at (202) 366–4329.

SUPPLEMENTARY INFORMATION: Karen Slay, a Lubbock, Texas housewife and mother of four, filed with NHTSA a petition for rulemaking dated October 13, 1994. In this petition, Ms. Slay requested that NHTSA require manufacturers of pickup trucks to place some kind of warning or recommendation on the cargo beds and in the owner's manual "stating the dangers of passengers riding in the cargo area of these vehicles." Ms. Slay referred to a July 3, 1994 crash in Scurry County, Texas, in which eight children were killed and four others seriously injured. These 12 children were riding in the cargo bed of the pickup and all were ejected upon impact.

Ms. Slay indicated her understanding that State, not Federal, laws and regulations address how vehicles may be operated on the public roads. She stated that she has begun a "campaign or crusade" to get the law in her home State of Texas changed as it relates to persons riding in the cargo bed of pickups, "so that Texas children do not lose their lives as innocent victims." However, Ms. Slay believed that a Federal requirement for a warning label and information in the owner's manual would serve a useful purpose by alerting persons to the hazards of riding in the cargo bed. In addition, Ms. Slay indicated her belief that not one pickup designer ever intended for the cargo area to be used for passengers.

NHTSA began its consideration of this request by determining the size of the safety problem. From 1983 to 1993, there were about 210 fatalities to occupants of pickup cargo beds each year. The number of deaths each year shows remarkably little variation, beginning with 213 fatalities in 1983 and concluding with 211 fatalities in 1993. While the total size of the problem of injuries and fatalities to cargo bed occupants is small in the context of overall traffic safety (about one-half of one percent of annual motor vehicle fatalities), the relative constancy of the number over this decade suggests that it has not been much affected by the many safety improvements made to pickups during that decade, nor has it been much affected by the changes in personal behavior by vehicle occupants during that decade, such as significant increases in safety belt use by occupants and significant decreases in drunk and drugged driving. This suggests it may be appropriate for NHTSA to try a new approach specifically targeted to reduce injuries and deaths to passengers in cargo beds. NHTSA granted Ms. Slay's petition on January 25, 1995, to allow for a full and careful consideration of the issues raised.

However, the grant of the petition did not mean the agency endorsed Ms. Slay's suggested solution to the problem. The fatality data show that most of the fatalities in pickup cargo beds are teenagers or young adults aged 20–29. People in these age groups have traditionally been among the least receptive to safety warnings on labels. This information raises doubts about the effectiveness of a warning label as a solution to this problem.

Given all of this information, NHSTA sought a creative alternative to address this safety risk outside of the traditional regulatory process. NHTSA began by sending a letter to each of the pickup manufacturers asking for their reaction to Karen Slay's petition and her suggested solution to the problem. Although the manufacturers did not agree with labeling their trucks, they did agree with Ms. Slay that something ought to be done. All of the pickup manufacturers agreed to voluntarily include clear language in each pickup owner's manual warning against riding in beds. Chrysler, Ford, and General Motors, whose vehicles collectively comprise more than 86 percent of annual pickup sales in the U.S., went a step further. These three manufacturers agreed to provide a simple and uniform warning about the hazards of riding in cargo areas in the owner's manuals for each of their vehicles starting no later than the 1997 model year. All of the pickup manufacturers also committed to join in a broad-based effort to raise the public's awareness of this safety concern, including joining in promoting the adoption and enforcement of State laws restricting people from riding in pickup cargo beds and joining in a public education campaign on this subject.

Having this understanding with the pickup manufacturers was encouraging, but NHTSA believed it needed to involve more potential partners in this effort if it was to be successful. Accordingly, the agency contacted the National Automobile Dealers Association to see if they would join in the effort to address this problem. The dealers' organization agreed. Also, the National PTA had written a letter to NHTSA in support of Karen Slay's petition. NHTSA contacted the National PTA to see if it would agree to participate in an information campaign on the hazards of riding in cargo beds, and the National PTA agreed to do so.

NHTSA held a news conference on May 25, 1995 to announce this new cooperative effort to reduce injuries and deaths in pickup truck cargo beds. This cooperative effort will rely on the slogan "Kids Aren't Cargo" to raise the public's awareness about this safety risk. NHTSA has followed this up by including some "Kids Aren't Cargo" materials in the Campaign Safe and Sober materials made available to all of the States and by contacting national organizations other than the National PTA to see if they are interested in joining this effort.

Since manufacturers and others have already voluntarily committed to join in a broad-based effort to reduce the injuries and deaths to occupants of cargo beds, there is no reason to proceed with consideration of a regulatory requirement to achieve that same goal. Accordingly, the rulemaking action associated with the January 25, 1995 grant of Karen Slays's petition for rulemaking is hereby terminated.

This termination should not be misinterpreted. If at some point in the future it becomes clear that the "Kids Aren't Cargo" campaign has not achieved its purpose, the agency will evaluate all of its options to reduce injuries and deaths to occupants in cargo areas, including possible regulatory requirements. At this time, however, the agency believes the "Kids Aren't Cargo" campaign represents an approach that is more likely to address effectively this safety risk than a regulatory approach would be. Therefore, rulemaking action on the Slay petition is terminated.

The agency would like to close by expressing its appreciation to Ms. Slay for her petition and her work in this area. It is rare that an individual citizen with no previous involvement in the area of highway safety or dealing with State and Federal government can get a bill introduced in the State legislature and pass one of the two houses easily on its first hearing, and move the Federal government to put together a coalition of parties to try to address the issue on a National level. These accomplishments can be traced to a single citizen working out of her house with no funding, no list of members for whom she purported to speak—nothing more than her dedication to this issue and her ability to present clear, reasonable, and articulate arguments for why some action was necessary.

Issued on July 27, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–19024 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD35

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Arctostaphylos Pallida (Pallid Manzanita), a Plant From the Northern Diablo Range of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Arctostaphylos pallida* (pallid manzanita) as a threatened species, pursuant to the Endangered Species Act of 1973, as amended (Act). This plant species is found only in the northern Diablo Range of California in Alameda and Contra Costa Counties. The species is threatened by shading and competition from native and non-native plants, fire suppression, habitat fragmentation, hybridization, disease, herbicide spraying, unauthorized tree cutting, inadequate regulatory mechanisms, and stochastic events by virtue of the small isolated nature of the remaining populations. This proposal, if made final, would extend Federal protection and recovery provisions afforded by the Act for this species.

DATES: Comments from all interested parties must be received by October 9, 1995. Public hearing requests must be received by September 25, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent

to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received and information used to support this proposal will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dale Pierce, Assistant Field Supervisor, Sacramento Field Office (see **ADDRESSES** section) (telephone 916/979–2710; facsimile 916/979–2723).

SUPPLEMENTARY INFORMATION:

Background

Arctostaphylos pallida (pallid manzanita) is found only in the northern Diablo Range of California. The Diablo Range is part of the inner South Coast Range of California. The Diablo Range extends in a northwest to southeast direction as a more or less continuous mountain chain, 32 to 48 kilometers (km) (20 to 30 miles (mi)) wide, for approximately 300 km (190 mi) from San Pablo Bay in central California to Polonio Pass in northeast San Luis Obispo County. The altitude of the Diablo Range varies from 600 to 1,280 meters (m) (2,000 to 4,200 feet (ft)) and is broken by four or five east to west passes. These passes divide the Diablo Range into several distinct units: Contra Costa Hills, Mt. Diablo, Mt. Hamilton Range, Panoche Hills, San Carlos Range, and Estrella Hills (Sharsmith 1982). *Arctostaphylos pallida* occurs in the Contra Costa Hills section of the Diablo Range.

Portions of the Diablo Range are thought to have been surrounded by marine embayments since the middle Miocene era, when modern flora and fauna were developing (Sharsmith 1982). Much of the surface of the Diablo Range is comprised of rock in the Franciscan series. The soils formed from Franciscan rock are believed to control partially the present distribution of plant species in the Diablo Range (Sharsmith 1982). Serpentine rock, which is a frequent component of Franciscan rock, yields a soil rich in heavy metals and low in the nutrients required for plant growth (Kruckeberg 1984). Because of the distinctive serpentine soil and the long exposure of this land mass to colonization by plants, a distinctive group of plant species has developed in the Diablo Range.

Alice Eastwood described *Arctostaphylos pallida* in 1933 from specimens collected in 1902 by W.W. Carruth in the "East Oakland Hills." This area is believed to be Huckleberry Ridge in Alameda and Contra Costa Counties, California. *Arctostaphylos pallida* is a member of the *A. andersonii* complex, a group of *Arctostaphylos* species found in central coastal California. The species is considered by some taxonomists to be *A. andersonii* var. *pallida* Adams ex McMinn (Amme and Havlik 1987a); McMinn reduced the species to the varietal level in 1939. However, Wells (1993) treats the species as *A. pallida*.

Arctostaphylos pallida is an upright, non-burl-forming shrub in the heath family (Ericaceae). *Arctostaphylos pallida* grows from 2 to 4 m (6.5 to 13.0 ft) high or more with rough, gray or reddish bark. The twigs are bristly. The ovate to triangular leaves are bristly, strongly overlapping, and clasping; they are 2.5 to 4.5 centimeters (cm) (1.0 to 1.8 inches (in.)) long and 2 to 3 cm (0.8 to 1.2 in.) wide. The dense, white flowers are urn-shaped and 6 to 7 millimeters (mm) (0.2 to 0.3 in.) long. Flowering period is from December to March. *Arctostaphylos tomentosa* ssp. *crustacea* commonly co-occurs with *A. pallida* but is a burl-forming species with spreading leaves (Amme *et al.* no date, Wells 1993).

Arctostaphylos pallida continues to occupy its original range in Alameda and Contra Costa Counties, where it is known from approximately 13 populations. The two largest populations are located at Huckleberry Ridge, the type locality in Alameda and Contra Costa Counties, and at Sobrante Ridge in Contra Costa County. Several other small, natural and planted populations occur in Alameda and Contra Costa Counties. The species is found from 200 to 445 m (656 to 1,460 ft) in elevation, primarily on thin soils composed of chert and shale (Amme and Havlik 1987a). Generally, the plants are found in manzanita chaparral habitat that frequently is surrounded by oak woodlands and coastal scrub (Amme *et al.* no date). The two largest occurrences occupy an area of approximately 34 hectares (ha) (82 acres (ac)). These two populations are found in maritime chaparral, a habitat with mesic soil conditions and a maritime influence. Many of the smaller populations occur in coastal scrub (B. Olson, East Bay Chapter, California Native Plant Society (CNPS), *in litt.* 1994). *Arctostaphylos pallida* is threatened by shading and competition from other plant species, fire suppression, hybridization with other *Arctostaphylos* species, herbicide spraying, habitat fragmentation resulting from past housing and road construction, unauthorized tree cutting, fungal disease, inadequate regulatory mechanisms, and stochastic events.

Previous Federal Action

Federal government action on this species began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Arctostaphylos pallida* (as *Arctostaphylos andersonii* var. *pallida*) as endangered. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above taxon was included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Arctostaphylos pallida* was included in the June 16, 1976, publication.

General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the June 6, 1976, proposal along with four other proposals that had expired.

The Service published a Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Arctostaphylos pallida* as a Category 1 candidate species for Federal listing. Category 1 taxa are those for which the Service has on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published a supplement to the Notice of Review (48 FR 53640). This supplement changed this taxon from a Category 1 to a Category 2 candidate species. Category 2 taxa are those for which data in the Service's possession indicate listing is possibly appropriate, but for which sufficient data on biological vulnerability and threats are not currently known or on file to support proposed rules. The plant notice was revised on September 27, 1985 (50 FR 39526). *Arctostaphylos pallida* was again included as a Category 2 candidate species. In the revision of the plant notice published on February 21, 1990 (55 FR 6184), *A. pallida* was included as a Category 1 candidate species. In the revision of the plant notice published on September 30, 1993 (58 FR 51144), this category remained unchanged.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Arctostaphylos pallida* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1983 through 1992. In 1993, the Service found that the petitioned listing of *Arctostaphylos pallida* was again warranted but precluded by other higher priority listing actions. Publication of this proposal constitutes the final finding for the petitioned action for this species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Arctostaphylos pallida* Eastw. (pallid manzanita) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* The current range of *Arctostaphylos pallida* is unchanged from what was known to exist at the time the species was described in 1933; however, the present populations of this species are thought to be smaller due to habitat fragmentation by urbanization (B. Olson, CNPS, *in litt.* 1994). The distribution of *A. pallida* consists of 2 large populations and approximately 11 smaller populations in Alameda and Contra Costa Counties, California. Both large populations occur on lands owned by the East Bay Regional Park District (EBRPD) (Amme and Havlik 1987b) with the smaller populations occurring on other park lands or on privately owned land (B. Olson, *in litt.* 1994). Up to 50 percent of the original *A. pallida* population on Huckleberry Ridge, which occurs in both Alameda and Contra Costa Counties, has been developed for housing or is privately owned. This residential development has eliminated a large number of *A. pallida* plants and fragmented and reduced the amount of habitat at this site (Amme and Havlik 1987b). Splitting the habitat into smaller, more isolated units has and may further alter the physical environment of the habitat, changing the amount of incoming solar radiation, water, wind, or nutrients for the remnant vegetation (Saunders *et al.* 1991). In addition, a higher proportion of these fragmented natural areas is subject to influences of external factors (e.g., invasion of non-native plants, foot traffic, and increased erosion) that disrupt natural ecosystem processes.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although this species is not known to be sought after by collectors, *A. pallida* is commercially cultivated (Wells 1993). Many members of this genus are considered desirable for landscape use and are collected for cultivation. Overutilization is not currently known to be a threat to this species, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this proposal.

C. *Disease or predation.* Approximately 50 percent of the Huckleberry Ridge population of *Arctostaphylos pallida* was affected by a fungal infection in the 1980's that attacked the roots of the plants, causing branch and stem dieback (Amme and Havlik 1987a, CDFG 1987). This population remains in poor condition (Amme and Havlik 1987a). If the wet, cold weather conditions that induced the fungal infection are repeated, another infection could occur, resulting in reduced vigor of the population (D. Amme, pers. comm. 1994).

D. *The inadequacy of existing regulatory mechanisms.* The State of California Fish and Game Commission has listed *Arctostaphylos pallida* as an endangered species under the California Endangered Species Act (chapter 1.5 § 2050 *et seq.* of the California Fish and Game Code, and title 14 California Code of Regulations 670.2). Listing by the State of California requires individuals to obtain a memorandum of understanding with the California Department of Fish and Game (CDFG) to possess or "take" a listed species. Although the "take" of State-listed plants is prohibited (California Native Plant Protection Act, chapter 10, division 2, § 1908 and California Endangered Species Act, chapter 1.5, division 3, § 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law only requires that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, Fish and Game Code, chapter 10, § 1900 *et seq.*).

The California Environmental Quality Act (CEQA) requires full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency.

CDFG and EBRPD jointly developed the Alameda Manzanita Management Plan in 1987. This plan has not, however, been adopted completely. The mission of the plan was to determine and implement management activities that would improve the condition of the species and help in its recovery (Amme

and Havlik 1987b). Currently, EBRPD is reducing the amount of flammable dead plant material in the Huckleberry Ridge population (E. Leong, EBRPD, pers. comm. 1994). The reduction in plant litter, in turn, has helped to stimulate germination of the species (D. Amme, pers. comm. 1994).

E. *Other natural or manmade factors affecting their continued existence.* Fragmentation of *Arctostaphylos pallida* habitat caused by residential development at Huckleberry Ridge has also resulted in introduced exotic landscape and weedy plant species that compete with the remnant population (Amme and Havlik 1987b). Although no current residential construction threatens the remaining Huckleberry Ridge populations of *A. pallida*, the populations of fewer than 10 plants in this area are threatened by stochastic events due to the small number of plants in combination with competition with aggressive plant species and loss of habitat from past urbanization. These small populations are threatened by shading from planted eucalyptus (*Eucalyptus* sp.), Monterey pines (*Pinus radiata*), and cypresses (*Cupressus* sp.) and by competition with aggressive non-native plant species including French broom (*Cytisus monspessulanus*), periwinkle (*Vinca major*), and German ivy (*Senecio mikanioides*) (Amme *et al.* no date).

The genetic integrity of *Arctostaphylos pallida* is threatened by hybridization resulting from the introduction of other species of *Arctostaphylos* into the vicinity of *A. pallida* populations (D. Amme, pers. comm. 1994). At least three other species of *Arctostaphylos* have been used for landscaping on Manzanita Way, a road that borders the Huckleberry Ridge Preserve. Hybridization of *A. pallida* with at least two other species is known to have occurred (Amme and Havlik 1987a). Hybridization could result in a hybrid manzanita swarm taking the place of *A. pallida* (Amme and Havlik 1987b, Amme *et al.* no date).

Alteration of the natural fire regime threatens *Arctostaphylos pallida* by inhibiting seed germination and nutrient recycling that occurs naturally after fires. Fires are currently suppressed on Huckleberry Ridge and Sobrante Ridge to protect the surrounding residential areas (D. Amme, pers. comm. 1994; A. Olivera, Park Supervisor, Sobrante Ridge Preserve, EBRPD, pers. comm. 1994). For non-burl-forming manzanitas such as *A. pallida*, fire is a necessary part of reproduction (Keeley 1992). Following fire or other disturbance, regeneration occurs from seed rather than from burls.

The accumulated leaf and bark litter, fallen fruits, and roots of *Arctostaphylos* species, however, have a self-inhibitory effect on seed germination (Amme and Havlik 1987b). Fire is believed to remove these toxic materials and promote subsequent germination of *Arctostaphylos* and other herbs and shrubs (Amme *et al.* no date). Fire also is necessary to the species to recycle limited nutrients in the soil (Amme and Havlik 1987b).

The roadside spraying of herbicides has had negative effects on regeneration of *Arctostaphylos pallida* along Skyline Boulevard (Amme and Havlik 1987a). Unauthorized tree cutting also poses a threat to *A. pallida*. At least two mature *A. pallida* plants have been killed by unauthorized cutting of eucalyptus trees, for unknown purposes, that subsequently fell on the *A. pallida* plants (Amme and Havlik 1987b).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Arctostaphylos pallida* in determining to propose this rule. This species is not now in immediate danger of extinction throughout all or a significant portion of its range. *Arctostaphylos pallida* exists as 2 major and 11 small occurrences and is located almost entirely on EBRPD property. The largest occurrences of *A. pallida* are protected from habitat loss resulting from urbanization or land use conversion. However, *A. pallida* is threatened by shading and competition from native and non-native plant species, fire suppression, hybridization, herbicide spraying, disease, tree cutting, habitat fragmentation resulting from past urbanization, stochastic events, and inadequate regulatory mechanisms.

Although not in immediate danger of extinction at this time, *Arctostaphylos pallida* is likely to become an endangered species in the foreseeable future if the present threats persist and population declines continue. As a result, the preferred action is to list *Arctostaphylos pallida* as a threatened species. Critical habitat is not being proposed for this taxon at this time, as discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed. The Service finds that designation of critical habitat is not prudent for this species at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Arctostaphylos pallida faces anthropogenic threats (see Factors A and E in "Summary of Factors Affecting the Species") and occurs entirely on non-Federal land. All of the 13 occurrences of *A. pallida* are located near or adjacent to residential areas and public roads. The publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant vulnerable to incidents of vandalism and, therefore, could contribute to the decline of the species. Although this species is not known to be sought after by collectors, *A. pallida* is commercially cultivated (Wells 1993). Many members of this genus are considered desirable for landscape use and are collected for cultivation. The desirability and accessibility of the species, therefore, could make the plants subject to collection if their precise location was publicized.

In addition, critical habitat designation for the species is not prudent due to lack of benefit. At present, all known populations occur on non-Federal land, with no Federal action, authorization, licensing, or funding currently occurring on these lands. Due to the small, fragmented populations of this species, any future Federal actions, authorizations, or funded projects that would appreciably diminish the value of the known habitat for the survival and recovery of the species may also jeopardize its continued existence. A jeopardy opinion would require formal agency consultation with the Service on virtually any federally-related project. Therefore, the Service finds that designation of critical habitat for this plant is not prudent at this time, because such designation would likely provide no benefit beyond that the species would receive by virtue of its designation as a threatened species. Further discussion of jeopardy opinions and consultation is included in the following section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

None of the populations of *Arctostaphylos pallida* occur on Federal lands; however, some populations occur on protected non-Federal lands. The EBRPD owns and manages the land where both major populations of *A. pallida* occur. The EBRPD and CDFG jointly developed the Alameda Manzanita Management Plan in 1987. Although this plan was not adopted by Alameda or Contra Costa County governments, portions of the plan are in use by the EBRPD where the species occurs (D. Amme, pers. comm. 1944; Ed Leong, EBRPD, pers. comm. 1994).

Listing this plant species would necessitate development of a recovery plan. Such a plan would bring together both State and Federal efforts for conservation of the plant. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the plant species. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to the State for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened species. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. The protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, education purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because the species is not common in the wild.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. Collection, damage, or destruction of listed species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. *Arctostaphylos pallida* is not known to occur on any Federal lands; however, such activities on non-Federal lands would constitute a violation of section 9, if conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that would be affected by this listing and result in a violation of section 9. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to *Arctostaphylos pallida*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be

determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the species; and

(4) Current or planned activities in the subject areas and their possible impacts on the species.

The Service specifically solicits expert opinion from independent specialists regarding pertinent scientific or commercial data and assumptions relating to taxonomy, population models, and supportive biological and ecological information.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received by September 25, 1995. Such requests must be made in writing and be addressed to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Elizabeth Warne, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17 subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Arctostaphylos pallida.	Pallid manzanita	U.S.A. (CA)	Ericaceae—Heath .	T	NA	NA	
.	.	.	.	.	.	.	.

Dated: July 5, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–18813 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AD36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Nine Plants from the Grasslands or Mesic Areas of the Central Coast of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Alopecurus aequalis* var. *sonomensis* (Sonoma alopecurus), *Astragalus clarianus* (Clara Hunt's milkvetch), *Carex albida* (white sedge), *Clarkia imbricata* (Vine Hill clarkia), *Lilium pardalinum* ssp. *pitkinense* (Pitkin Marsh lily), *Plagiobothrys strictus* (Calistoga allocarya), *Poa napensis* (Napa bluegrass), *Sidalcea oregana* ssp. *valida* (Kenwood marsh checkermallow), and *Trifolium amoenum* (showy Indian clover) as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). These nine species grow in a variety of habitats including valley grasslands, meadows, freshwater marshes, seeps, and broad-leaf upland forests in Marin, Napa, and Sonoma counties on the central coast of California. Habitat loss and degradation, competition from aggressive plant species, elimination through plant community succession, grazing, inadequate regulatory mechanisms, collection for horticultural use, and hydrological modifications to wetland areas threaten the continued existence of these plants. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants.

DATES: Comments from all interested parties must be received by October 9, 1995. Public hearing requests must be received by September 25, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dale Pierce, Assistant Field Supervisor, Sacramento Field Office (see **ADDRESSES** section) (telephone 916/979–2710; facsimile 916/979–2723).

SUPPLEMENTARY INFORMATION:

Background

Populations of the nine plant species in this proposed rule are found in Sonoma County and east as far as Napa Valley, California. *Alopecurus aequalis* var. *sonomensis* (Sonoma alopecurus), *Carex albida* (white sedge), *Clarkia imbricata* (Vine Hill clarkia), *Lilium pardalinum* ssp. *pitkinense* (Pitkin Marsh lily), *Sidalcea oregana* ssp. *valida* (Kenwood Marsh checkermallow), and *Trifolium amoenum* (showy Indian clover) are found in mesic areas mostly within 33 kilometers (km) (15 miles (mi)) of the central coast of California. *Astragalus clarianus* (Clara Hunt's milkvetch), *Plagiobothrys strictus* (Calistoga allocarya), and *Poa napensis* (Napa bluegrass) are found up to 70 km (32 mi) inland in a variety of habitats around the City of Calistoga in the Napa Valley, California. Urbanization, road construction, a possible water storage project, airport construction, development of hot springs into commercial resorts, agricultural land conversion, wetland drainage, waste disposal, competition with aggressive plant species, collection for horticultural use, and livestock grazing have destroyed much of the habitat and numerous populations of these nine plant species. Historically, these nine species have not been known to occur outside of Alameda, Marin, Mendocino, Napa, Santa Clara, Solano, and Sonoma counties.

Discussion of Inland Species

The habitats in which *Plagiobothrys strictus* and *Poa napensis* can be found include meadows near small thermal hot springs underlain by gravelly loams mixed with clays that are associated with high water tables. High concentrations of boron, arsenic, and sulfates, which are usually toxic to plants, are found in thermal pools and meadows. A few unique plants have evolved under these normally adverse conditions, including *P. strictus* and *P. napensis*. *Astragalus clarianus* occurs in openings within valley grasslands or in broad-leaf upland forests. *Astragalus clarianus*, *P. strictus*, and *P. napensis* have only been found in Napa and Sonoma counties. Large amounts of habitat have been lost to urbanization, road construction, lake building, airport construction, and development of hot springs into commercial resorts.

Willis Jepson (1925a) first described *Astragalus clarianus* in 1909 from specimens collected by Clara Hunt in the Conn Valley near St. Helena, Napa County, California. Axel Rydberg (1929) and Willis Jepson (1936) treated this taxon as *Hamosa clariana* and *Astragalus rattani* var. *clarianus*, respectively. Rupert Barneby (1950) re-established *Astragalus clarianus* as a full species. *Astragalus clarianus* is a low-growing annual herb belonging to the pea family (Fabaceae). *Astragalus clarianus*, a slender, sparsely leafy plant, is sparingly covered with sharp, stiff, appressed hairs. The simple single or few basally branching, ascending stems reach 7 to 20 centimeters (cm) (3 to 8 inches (in.)) in height. The leaves are alternate, 1.5 to 6.0 cm (0.5 to 2.5 in.) long, with 5 to 9 uncrowded leaflets 2 to 10 millimeters (mm) (0.1 to 0.4 in.) long. The leaflets are oblong to obovate, narrow at the base, and notched at the tip. Small, pea-like flowers appear from March through April. The petals are bicolored, with the wings whitish and the banner and keel purple in the upper third. The keel is longer and wider than the wings. The horizontal to declining seed pods are narrow, linear, slightly curved, pointed at both ends, and occur on a 1.5 to 2.5 mm (0.06 to 0.10 in.) long slender stalk. *Astragalus rattanii* var. *jepsonianus* looks similar to *A. clarianus*, but grows 10 to 36 cm (4 to 14 in.) tall, has larger flowers, and seed pods that are not elevated on a seed stalk.

Astragalus clarianus is found on thin, rocky clay soils derived from volcanic substrates in foothill grasslands, in openings in *Arctostaphylos* (manzanita), and in openings in *Quercus douglasii* (blue oak) woodlands over an elevational range of 75 to 225 meters (m) (240 to 750 feet (ft)). Historically, six populations were known from Napa and Sonoma counties. Two historical populations have been extirpated by urbanization and viticulture (California Natural Diversity Data Base (CNDDB) 1993). The population at the type locality was reduced in size by the creation of Lake Hennessey in the 1940s. Currently, three populations are found in northwestern Napa County and one on the eastern side of adjacent Sonoma County. Collectively, the four populations of *A. clarianus* are scattered over approximately 16 hectares (ha) (40 acres (ac)) (CNDDB 1994). "The trend for Clara Hunt's milkvetch is one of decline as a result of habitat destruction and modification" (California Department of Fish and Game (CDFG 1991)). The four populations of *A. clarianus* are variously threatened by urbanization, recreational activities, airport maintenance, elimination due to plant community succession, competition from nonnative weed species, inadequate regulatory mechanisms, stochastic events, and a possible future water storage project. One population occurs in the Bothe Napa Valley State Park. Another population occurs on the shore of Lake Hennessey and is owned by The City of Napa. Two remaining populations occur on private land.

Edward Greene (1892) and Willis Jepson (1901) treated *Plagiobothrys strictus* as *Allocarya stricta* and *Allocarya californica* var. *stricta*, respectively, before Ivan Johnston (1923) assigned the present name, *Plagiobothrys strictus*, to specimens collected on alkaline flats near sulphur springs at Calistoga, Napa County, California. *Plagiobothrys strictus* is a small, erect, annual herb belonging to the borage family (Boraginaceae). *Plagiobothrys strictus* grows 1 to 4 decimeters (dm) (4 to 15 in.) in height. The nearly hairless plant has either a single stem or branches from near the base. The linear lower leaves are 4 to 9 cm (1.5 to 4 in.) long. Small, usually paired, white flowers appear in March to April in a slender, unbranched inflorescence. The fruit is an egg-shaped nutlet about 1.5 mm (0.6 in.) long, keeled on the back, with wart-like projections without any prickles. *Plagiobothrys greenei*, *P. lithocaryus*, *P. mollis* var. *vestitus*, *P. stipitatus*, and *P. tener* occur in vernal pools and have ranges that overlap with the range of *Plagiobothrys strictus*, but they do not resemble *P. strictus*.

Plagiobothrys strictus is found in vernal pools adjacent to and fed by hot springs and small geysers in foothill grasslands at an elevational range of 90 to 160 m (300 to 500 ft). Three historical populations occurred within a 3 km (2 mi) radius of Calistoga, Napa County, California. One population has been extirpated by urbanization and agricultural land conversion. One remaining population of *P. strictus* occurs at a small, undeveloped thermal hot spring. The other population occurs at the Calistoga Airport in the center of the city of Calistoga. The combined area of the two remaining populations in Napa County is less than 80 square (sq) m (900 sq ft) (California Native Plant Society (CNPS) 1990). Most of the thermal hot springs in Napa County have been developed. The remaining undeveloped hot springs occupy very few acres (Dave Steiner, Napa County Soil Conservation Service, pers. comm. 1993). "The overall trend for Calistoga popcornflower (*Plagiobothrys strictus*) is one of decline" (CDFG 1991). The species is threatened by recreational activities, airport maintenance, urbanization, inadequate regulatory mechanisms, and stochastic events. Both populations occur on private land and neither is protected.

Alan Beetle (1947) first described *Poa napensis* in 1946 from specimens that he collected in a meadow moistened by seepage from hot springs, 3 km (2 mi)

north of Calistoga at Myrtledale Hot Springs, Napa County, California. *Poa napensis* is an erect, tufted perennial bunchgrass belonging to the grass family (Poaceae) that grows to 1 dm (4 in.) in height. Leaves are folded, stiffly erect, 1 mm (0.04 in.) wide, with the basal leaves 20 cm (8 in.) long and upper stem leaves to 15 cm (6 in) in length. A few stiff, erect flowering stems appear in May and grow 7 dm (27 in) in height. Flower clusters occur as a pale green to purple, condensed, oblong-oval panicle 10 to 15 cm (4 to 6 in) long and 2 to 5 cm (0.8 to 2.0 in) wide. *Poa napensis* most closely resembles *P. unilateralis* (ocean bluff bluegrass) but differs in leaf and panicle form as well as habitat.

Poa napensis is found in valley grasslands and moist, alkaline meadows fed by hot springs. The elevational range of this plant is 100 to 120 m (340 to 400 ft) within a radius of 6 km (4 mi) of Calistoga. Historically, the range of this plant has been diminished by the development of recreational hot springs and the growth of the town of Calistoga. The larger population of *P. napensis* near Myrtledale Hot Springs occurs in a 100 sq m (1,100 sq ft) area, with an additional small population of 100 plants just across an adjoining road (CDFG 1979). Both remaining populations of *P. napensis* are dependent on moisture derived from adjacent hot springs or overland runoff. Any development that would alter the hydrology or flow from these hot springs would be detrimental to these populations (CDFG 1979). "The trend for Napa bluegrass is one of decline" (CDFG 1991). *Poa napensis* is threatened by recreational activities, airport maintenance, urbanization, inadequate regulatory mechanisms, and stochastic events. The two extant populations are on private land and are not protected.

Coastal Species

Alopecurus aequalis var. *sonomensis*, *Carex albida*, *Lilium pardalinum* ssp. *pitkinense*, and *Sidalcea oregana* ssp. *valida* are restricted to permanent freshwater wetlands in or near Pitkin Marsh, north of San Francisco Bay, California. *Clarkia imbricata* is restricted to a very narrow range in open grasslands near Pitkin Marsh. The Pitkin Marsh area, in which several disjunct and restricted species are found, is contained in the Franciscan area, described by Jepson (1925b) as a portion of the Coast Ranges that supports a high degree of plant endemism. The Coast Ranges in this area, south of the city of Healdsburg, are lower in elevation in comparison to areas north of Healdsburg, thus increasing the exposure of this inland area to the influence of cool, moist ocean air currents. Many species in this region reach their southernmost limit and are often separated by long distances from the major portions of their ranges (Rubtzoff 1953). Historically, these five species were not known to occur outside Sonoma and Marin counties (CNDDB 1993). *Carex albida* occurs in a sphagnum bog in Lower Pitkin Marsh, Sonoma County. *Alopecurus aequalis* var. *sonomensis*, *L. pardalinum* ssp. *pitkinense*, and *S. oregana* ssp. *valida* are restricted to moist soils in permanent freshwater marshes in Sonoma and Marin counties. *Clarkia imbricata* occurs on acid sands and has not been found outside a very restricted range in Sonoma County. Historically, the widest ranging of the nine species is *Trifolium amoenum*, which occurred from Mendocino County south to Sonoma, Marin, Alameda and Santa Clara counties and east to Napa and Solano counties. *Trifolium amoenum* typically was found in low, wet swales and grasslands. This species was considered extinct until 1993, when a single plant was discovered in Sonoma County. Seeds from this individual were collected and *T. amoenum* currently exists only in cultivation. The land that most recently supported this taxon is privately owned. Habitat of this species has been lost to land conversion for urbanization or agriculture, livestock grazing, wetland drainage, waste disposal, and competition with aggressive species.

On May 7, 1955, Peter Rubtzoff (1961) collected *Alopecurus aequalis* var. *sonomensis* in Guerneville Marsh, Sonoma County, California. He described the species in 1961. Specimens of this taxon collected as early as 1880 in Sonoma and Marin counties had been identified as *Alopecurus aequalis* Sobol., a circumboreal foxtail grass found as far south as Mendocino County. These specimens, however, deviated considerably from typical *A. aequalis* and were identified by Rubtzoff as *A. aequalis* var. *sonomensis*.

Alopecurus aequalis var. *sonomensis* is a tufted perennial in the grass family (Poaceae) that reaches 30 to 75 cm (12 to 30 in.) in height. The stems are mostly erect and either straight or weakly bent near the base. The leaf blades are up to 7.5 mm (0.3 in.) wide. The panicle is 2.5 to 9.0 cm (1.0 to 3.5 in.) long and 4 to 8 mm (0.1 to 0.3 in.) wide. The spikelets are usually tinged violet-gray near the tip. The awn is straight, and exceeds the lemma body by 1.0 to 2.5 mm (0.04 to 0.1 in.). This variety is distinguished from *A. aequalis* var. *aequalis* by a more robust, upright appearance, generally wider panicle, violet-gray tinged spikelets, and longer awn (Rubtzoff 1961; W. Crins, Ontario Ministry of Natural Resources, *in litt.* 1993).

Alopecurus aequalis var. *sonomensis* is currently known from only five natural populations. The three sites in Sonoma County are privately owned and the two sites on the Point Reyes National Seashore, in Marin County, are federally owned (CNDDB 1993; V. Norris, Marin CNPS, pers. comm. 1993). The elevational range of the species is from 6 to 210 m (20 to 680 ft). The total number of plants is estimated at 200 (B. Guggolz, CNPS, pers. comm. 1993). *Alopecurus aequalis* var. *sonomensis* was known historically from 16 populations. The historical range was approximately 48 km (30 mi), reaching north from Point Reyes Peninsula to Guerneville and east to Cunningham Marsh. Although fewer sites are now present, the range of the species has changed little. The numbers of populations of this species are declining due to competition from nonnative plant species, trampling and grazing by cattle, and low regeneration. The species is also threatened by inadequate regulatory mechanisms. Two attempts to reintroduce the species in the Point Reyes National Seashore failed. One attempt was destroyed by a flash flood (CNDDB 1992; V. Norris, pers. comm. 1993).

John Bigelow collected the type specimen of *Carex albida* in 1854 on Santa Rosa Creek, Sonoma County, California. Liberty Bailey described the species in 1889. Specimens of the plant subsequently collected by John T. Howell and John W. Stacey in 1937 in Pitkin Marsh were described by them as *C. sonomensis* (Stacey 1937). Howell (1957) later stated that the herbarium specimen of *C. albida* had been misinterpreted by Stacey and others and that *C. sonomensis* is a synonym of *C. albida*.

Carex albida is a loosely tufted perennial herb in the sedge family (Cyperaceae). The stems are triangular, 4 to 6 dm (1.3 to 2.0 ft) tall, erect, and longer than the leaves. The leaves are flat and 3 to 5 cm (1 to 2 in.) wide with closed sheaths. The inflorescence consists of 4 to 7 ovoid or obovoid to oblong spikelets 8 to 18 mm (0.3 to 0.7 in.) long. The achenes (fruits) are three-sided when mature. The sacs (perigynia) surrounding the achenes are light green to yellow-green when mature and 3.0 to 4.5 mm (0.1 to 0.2 in.) long. Several traits distinguish *C. albida* from other closely related sedges. *Carex albida* has inflorescences with staminate flowers above the pistillate flowers, especially on the terminal inflorescence, lateral spikelets, and leaves that are shorter than the stems and 3 to 5 mm (0.1 to 0.2 in.) wide.

Carex albida, which was thought to be extinct, is currently known from only one population, discovered in 1987. The population contains approximately 800 to 1,000 plants on privately owned property in Sonoma County (CDFG 1993a, CNDDB 1993). *Carex albida* was known historically from four other locations: the type locality on Santa Rosa Creek, one site in Perry Marsh, and two sites in Pitkin Marsh, all in Sonoma County. The marsh habitat containing *C. albida* at the Santa Rosa Creek site was destroyed in the 1960s by channelization and other alterations to Santa Rosa Creek (B. Guggolz, *in litt.* 1993). The Perry Marsh site has been used for cannery waste disposal beginning in 1971, causing the probable loss of the population (CNDDB 1993). One of the Pitkin Marsh populations has not been seen since 1951. Permission for access to the second Pitkin Marsh site has been denied since 1976. The occurrence has not been confirmed since that time. Pitkin Marsh, which has become drier in recent years because of the addition of wells and other construction that have altered marsh hydrology, likely no longer supports the species (B. Guggolz, *in litt.* 1993). The known remaining population of *C. albida* is found in a sphagnum bog near Pitkin Marsh, between 45 and 60 m (150 and 200 ft) in elevation. The original habitat of all populations occurred within an area of approximately 10 sq km (4 sq mi). The species occurs in conjunction with *Lilium pardalinum* ssp. *pitkinense*, spikerush (*Eleocharis* spp.), rush (*Juncus* spp.), and Himalayan blackberry (*Rubus discolor*). *Carex albida* is threatened by potential alteration of hydrology from changes in land use or potential disturbance from a proposed wastewater treatment project, inadequate regulatory mechanisms, competition from nonnative species, stochastic events, small population size, and potential disturbance from repair or alteration of a nearby State highway.

Frank H. Lewis and Margaret Lewis (1953) described *Clarkia imbricata* from specimens they collected on July 10, 1951, along the roadside of Vine Hill Road, near Pitkin Ranch. Searches for this plant at the type locality have been made since 1974, but no plants have been observed (CNDDB 1994). Currently, *C. imbricata* is known from two populations in southern Sonoma County.

Clarkia imbricata is an erect, annual herb in the evening-primrose family (Onagraceae). The stems grow to 6 dm (2.5 ft) tall, unbranched or with numerous short branches in the upper parts. This plant is densely leafy, with entire, lanceolate leaves 2.0 to 2.5 cm (0.8 to 1.0 in.) long and 4 to 7 mm (0.2 to 0.3 in.) broad that are ascending and overlapping. The showy inflorescences appear from June through July. The flowers are grouped closely together and each flower has a conspicuous funnel-shaped tube at its base. Each flower has four fan-shaped, lavender petals 2.0 to 2.5 cm (0.8 to 1.0 in.) long with a V-shaped purple spot extending from the middle to the upper margin of the petal. *Clarkia purpurea* ssp. *viminea* is the only other *Clarkia* taxon with which *C. imbricata* can be confused. *Clarkia purpurea* ssp. *viminea* has a much shorter, funnel-shaped tube and does not have the relatively broad, ascending, overlapping leaves of *C. imbricata*.

Historically, *Clarkia imbricata* has never been common. This taxon is only known from two populations found in grasslands on acidic sand in Sonoma County. The type locality is presumed to have been extirpated by changing land uses (CNDDB 1994, B. Guggolz, *in litt.* 1993). The remaining natural population was the source population for cuttings that were transplanted into a preserve in 1974. The elevational range for the two extant populations is 60 to 75 m (200 to 250 ft). The two populations are 1.2 km (0.75 mi) apart and occur on privately owned land. The natural population contains 2,000 to 5,000 plants and occurs on an open, flat grassland surrounded by a variety of introduced trees and shrubs. The planted population, located in a 0.6 ha (1.5 ac) preserve, has fluctuated between 200 and 300 plants. The preserve is owned and managed by the California Native Plant Society. The planted population recently has expanded its range onto the adjacent private parcel east of the preserve, where 70 to 100 plants were found in 1993. Both populations are threatened variously by agricultural land use conversion, inadequate regulatory mechanisms, stochastic events, and damage associated with trespassers collecting other rare plants found in the preserve (B. Guggolz, *in litt.* 1993).

Lawrence Beane and Albert M. Vollmer first collected *Lilium pardalinum* ssp. *pitkinense* on July 20, 1954, in Pitkin Marsh, Sonoma County, California. Beane (1955) described the plant as *Lilium pitkinense*. The plant subsequently was treated as a subspecies of *L. pardalinum* (Skinner 1993).

Lilium pardalinum ssp. *pitkinense* is an herbaceous, rhizomatous perennial in the lily family (Liliaceae). The slender, erect stems reach 1 to 2 m (3 to 6 ft) in height. Leaves are yellow-green, up to 14 cm (5.5 in.) long, and 1 to 2 cm (0.4 to 0.8 in.) wide. The leaves are generally scattered along the stem, but in some plants occur in 2 or 3 whorls of 3 to 6 leaves near the middle of the stem. The inflorescence is a terminal raceme. The flowers are large, showy, and nodding. The petals, which are reflexed from the middle, are red at the outer edge changing to yellow at the center with small, deep maroon dots mostly within the yellow zone. Anthers are purple-brown. The fruit is an elliptical capsule containing many rounded seeds (CDFG 1993b). The species flowers from June to July. *Lilium pardalinum* ssp. *pitkinense* is distinguished from *L. pardalinum* ssp. *pardalinum* by generally shorter petals and anthers.

Lilium pardalinum ssp. *pitkinense* grows only in permanently saturated, sandy soils in freshwater marshes and wet meadows that are 35 to 60 m (115 to 200 ft) in elevation. Only three populations of *L. pardalinum* ssp. *pitkinense* were recorded historically. All the sites are found in Sonoma County on privately owned land. The three populations, located over a distance of 13 km (8 mi), are presumed extant. Since 1975, access to one of the sites has been denied by the landowner (CNPS 1988a). As a result, the status of this population has not been confirmed. Currently, 200 individual plants remain on the two known sites (CDFG 1993b; B. Guggolz, pers. comm. 1993). The extent of the two populations has declined from loss of habitat from urbanization and competition with blackberries (*Rubus* spp.) (CDFG 1993b). Collection of plants, seeds, and bulbs for horticultural use, competition from invasive plant species, potential disturbance from a proposed subdivision, grazing, stochastic events, inadequate regulatory mechanisms, and low plant numbers threaten this species (Lynn Lozier, The Nature Conservancy (TNC), *in litt.* 1990).

Edward L. Greene (1897) first described *Sidalcea oregana* ssp. *valida* in June, 1894, based on material he collected from Knight's Valley, Sonoma County, California. Since then, this taxon has been known as *S. maxima* (Baker), *S. oregana* var. *spicata* (Jepson), *S. eximia* (Baker), and *S. spicata* ssp. *valida* (Wiggins) (CNPS 1988c). Charles Hitchcock (1957) treated the genus *Sidalcea* and recognized four subspecies, including *S. oregana* ssp. *valida*.

Sidalcea oregana ssp. *valida* is a perennial herb in the mallow family (Malvaceae). The plants are 1 to 2 m (3 to 6 ft) tall. The leaves are rounded. Lower leaves have 5 to 7 shallow lobes; upper leaves are generally smaller and divided into 3 to 5 entire, lanceolate segments. The compound inflorescence consists of densely flowered, spike-like racemes 2 to 5 cm (0.8 to 2.0 in.) long. Petals are 1.0 to 1.5 cm (0.4 to 0.6 in.) long, notched at the apex, and deep pink-mauve. The flowers appear from late June to September. *Sidalcea oregana* ssp. *valida* differs from *S. oregana* ssp. *eximia* in having a hairless calyx.

Sidalcea oregana ssp. *valida* has never been recorded as abundant and only two occurrences, both located on privately owned land, have ever been known. *Sidalcea oregana* ssp. *valida* inhabits freshwater marshes approximately 150 m (490 ft) in elevation, at Kenwood Marsh and Knight's Valley, Sonoma County, California. The two sites are located approximately 29 km (18 mi) apart. The Knight's Valley population covers less than 0.1 ha (0.25 ac). This population was reported to have fewer than 100 plants in 1979 (CDFG 1987) and approximately 60 plants in 1993 (N. Wilcox, State Water Resources Control Board, pers. comm. 1993). The Kenwood Marsh population contained approximately 70 individuals in 1993 (A. Howald, CDFG, pers. comm. 1993). Both populations are adversely affected by trampling and reduced seed set resulting from cattle grazing. Potential alteration of the hydrology of Kenwood Marsh due to urbanization and water withdrawal threatens the species (A. Howald, pers. comm. 1993). The plants may also suffer from competition by common tule (*Scirpus acutus*) and yellow star-thistle (*Centaurea solstitialis*), and from periodic maintenance of the Sonoma Aqueduct located in Kenwood Marsh (A. Howald, pers. comm. 1993). This species is also threatened by stochastic events and inadequate regulatory mechanisms.

Edward L. Greene described *Trifolium amoenum* in 1891 from specimens that he collected near Vanden, Solano County, California, in 1890. Historically, this species has been found in a variety of habitats including low, wet swales, grasslands, and grassy hillsides up to 310 m (1,020 ft) in elevation. This annual plant, which is a member of the pea family (Fabaceae), is hairy, erect, and grows to 1 to 6 dm (4 to 27 in.) in height. The leaves are pinnately compound, widely obovate, and 2 to 3 cm (0.8 to 1.2 in.) long. The flowers, which are purple with white tips, are 12 to 16 mm (0.5 to 0.6 in.) long and occur in dense, round or ovoid heads, 2 to 3 cm (0.8 to 1.2 in.) long. Flowers appear from April to June. *Trifolium amoenum* is similar in appearance to *T. macraei*, but is generally larger and the flowers lack subtending bracts.

In 1993, Peter Connors, Bodega Marine Laboratory, discovered a single *Trifolium amoenum* plant in Sonoma County. The species was previously considered extinct. The land on which this plant was found is privately owned and is currently for sale (P. Connors, Bodega Marine Laboratory, pers. comm. 1994; CNDDB 1994). This property currently is not being used. If it is sold, it may be converted to residential use, similar to other land parcels surrounding this site (P. Connors, pers. comm. 1994). In 1994, Dr. Connors grew 18 plants in cultivation from seed produced by the single plant found in 1993 (Connors 1994). These plants were grown to produce seed for later reintroduction efforts (P. Connors, pers. comm. 1994). The soil seed bank in the remaining natural habitat within the species' historical range may contain *T. amoenum* seed. Should *T. amoenum* be found in these areas; the species would likely be threatened by urbanization, competition with nonnative plants, land conversion to agriculture, livestock grazing, stochastic events, and inadequate regulatory mechanisms.

Previous Federal Action

Federal government actions on these nine species began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense* (as *L. pitkinense*), *Plagiobothrys strictus, Poa napensis*, and *Trifolium amoenum* as endangered and *Sidalcea oregana* ssp. *valida* as threatened. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in Section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above eight taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Poa napensis*, and *Trifolium amoenum* were included in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

The Service published a Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Alopecurus aequalis* var. *sonomensis, Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum* as Category 1 candidate species. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published a supplement to the Notice of Review in the **Federal Register** (48 FR 53640). This supplement changed *Alopecurus aequalis* var. *sonomensis, Astragalus clarianus, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum* from Category 1 to Category 2 candidates. Category 2 taxa are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules.

The plant notice was revised again on September 27, 1985 (50 FR 39526). The candidate status of eight of the plant species remained unchanged in this notice. *Trifolium amoenum* was included as a Category 2* candidate, indicating that the Service had evidence that the species might be extinct. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184). In this revision, *Astragalus clarianus, Plagiobothrys strictus, Poa napensis*, and *Sidalcea oregana* ssp. *valida* were returned to Category 1 status. The Service made no changes to the status of any of the nine species in the plant notice published on September 30, 1993 (58 FR 51144). The Service approved Category 1 status for *Alopecurus aequalis* var. *sonomensis* on August 26, 1993. However, the status change was inadvertently not published in the plant notice published on September 30, 1993. Since the publication of that notice, additional information has been received on the status of *Trifolium amoenum*, indicating its rediscovery. The Service, therefore, believes that sufficient information is now available to support the listing of these nine species.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Astragalus clarianus, Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Plagiobothrys strictus, Poa napensis, Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum* because the 1975 Smithsonian report had been accepted as a petition. The Service found that the petitioned listing of those eight taxa was warranted but precluded by other higher priority listing actions. The finding was reviewed annually in October from 1983 through 1993. Publication of this proposal constitutes the final finding for the petitioned action for these eight species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Alopecurus aequalis* Sobol. var. *sonomensis* Rubtzoff (Sonoma alopecurus), *Astragalus clarianus* Jepson (Clara Hunt's milkvetch), *Carex albida* Bailey (white sedge), *Clarkia imbricata* Lewis and Lewis (Vine Hill clarkia), *Lilium pardalinum* Kellogg. ssp. *pitkinense* (Beane and Vollmer) M. Skinner (Pitkin Marsh lily), *Plagiobothrys strictus* (Greene) I.M. Johnston (Calistoga allocarya), *Poa napensis* Beetle (Napa bluegrass), *Sidalcea oregana* (Nutt.) Gray ssp. *valida* (Greene) C.L. Hitchcock (Kenwood Marsh checkermallow), and *Trifolium amoenum* Greene (showy Indian clover) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Habitat destruction, including urbanization, land use changes, and alteration in hydrology of springs poses the most serious threat to the survival of most of these nine plant species.

Inland Species

Astragalus clarianus is known currently from three populations in Napa County and one in Sonoma County (CNDDB 1993, CNPS 1989). The four populations face a variety of threats to their continued existence. Historically, one population in Napa County occupied a larger area but the creation of Lake Hennessey in the 1940s inundated much of the site (Lynn Lozier, pers. comm. 1993). The city of Napa owns the lake and uses Lake Hennessey as a water source for the town. Recently, the city of Napa conducted a feasibility study that considered raising the elevation of the dam as part of a project to increase water storage for the city. Such an elevation change would have raised the lake level, submerging the population of *A. clarianus* (Jake Ruygt, CNPS, *in litt.* 1993). This increased water-storage project at Lake Hennessey has been determined by the city of Napa to be too costly (Don Ridenhour, Public Works Dept., city of Napa, pers comm. 1993). Any future water storage project that would involve increasing the height of the dam and raising the level of Lake Hennessey would constitute a threat to the population of *A. clarianus* due to its proximity to the lakeshore. In December 1990, this remnant population was nearly destroyed when dredge spoils from the lake were placed on top of it (A. Howald, pers. comm. 1993). Eight plants of *A. clarianus* were counted at this site in 1991, 325 plants in 1992, and 156 plants in 1993 (CDFG 1989; J. Ruygt, *in litt.* 1993). The city of Napa, in cooperation with CDFG, removed most of the dredge spoils and fenced the 1 ha (2 ac) area, placing a gate in the fence for fishing access to the lake. Disturbance associated with dredge spoils removal resulted in proliferation of nonnative weeds that further threaten the site, as discussed below under Factor E. The fenced and gated area remains a favorite fishing access to the lake and receives significant use by the public (CDFG 1989). The city of Napa has repaired damage to the fence several times (A. Howald, pers. comm. 1993).

Another population of *Astragalus clarianus* exists in Bothe Napa Valley State Park. Plant numbers have ranged from 8 plants in 1988 to 101 plants in 1993 on a 1 ha (2 ac) monitoring site (J. Ruygt, *in litt.* 1993). The larger portion of the population of *A. clarianus* outside of the monitoring zone occurs sparsely on a 6 ha (15 ac) area. This area has been historically protected by placing brush piles next to a foot trail to divert people away from the population (Bill Grummer, Bothe Napa Valley State Park, California Dept. of Parks and Recreation, pers. comm. 1993). Although the general plan for the park indicates a campground to be placed over the larger portion of *A. clarianus*, the Service does not consider this plan as an imminent threat because of lack of funding and possible revisions to the park plan (B. Grummer, pers. comm. 1993). Although the campground development may be relocated away from the population of *A. clarianus*, the Service considers that increased recreational use from an additional campground in this park constitutes a potential threat.

Another population of *Astragalus clarianus* occurs nearer to the city of Santa Rosa in eastern Sonoma County. This population, scattered over 6 ha (15 ac), is on privately owned land under a voluntary protection agreement with TNC. Upslope and adjacent to this population is the 454 ha (1,350 ac) approved subdivision, Saddle Mountain Development. Soil erosion from proposed road and pad construction for house lots potentially threatens this population of *A. clarianus* (J. Ruygt, *in litt.* 1993).

Over 70 percent of the original habitat of *Plagiobothrys strictus* has been destroyed by urbanization and viticulture (CNPS 1990). The two remaining populations of *P. strictus* are threatened by urbanization (CNDDB 1994, CNPS 1990). One population site occurs at the Calistoga Airport. The construction of the airport fragmented and reduced this population to fewer than 100 plants. Further development at this site could potentially threaten this population (J. Ruygt, *in litt.* 1993). Another population of *P. strictus* is scattered over a 4 ha (10 ac) area of private land near Myrtledale Hot Springs. This population has been bisected by an asphalt road. The landowner has proposed to build a convalescent community on this site, but has been unsuccessful due to current zoning status (CDFG 1988; J. Ruygt, *in litt.* 1993).

Historically, the habitat of each of the two remaining populations of *Poa napensis* has been reduced by the development of health spas and resorts in the city of Calistoga and other construction activities at the Calistoga Airport (CNPS 1987). The remnant population of *P. napensis* at the Calistoga Airport was thought to be extirpated as a result of construction activities in 1981, because no plants were found that year. By 1987, however, 500 plants were counted at the airport location (CDFG 1979; J. Ruygt, *in litt.* 1993). Because *Poa napensis* and *Plagiobothrys strictus* co-occur at the Calistoga Airport and another site in the city of Calistoga, the threats from urbanization, including construction of a hospital, are similar for both species at these sites (CNPS 1987, 1990; J. Ruygt, *in litt.* 1993).

Coastal Species

The single known population of *Carex albida* is located approximately 46 m (150 ft) from State Highway 116, which is a potential source of disturbance. Any change in hydrology of the area resulting from highway construction or maintenance or change in land use would adversely affect the population. Draining the wetland would not only directly impact the species, but would encourage the spread of blackberry (*Rubus* spp.). Invading blackberry vines have become dominant in other parts of Pitkin Marsh that have been drained (CNDDB 1993; B. Guggolz, *in litt.* 1993).

A wastewater treatment project for the cities of Forestville and Graton, Sonoma County, is proposed to be built 0.3 km (0.2 mi) from the single extant population of *Carex albida*. Potential impacts from this project include application of recycled wastewater and temporary or permanent removal of wetlands, riparian vegetation, and special status plants and their habitats (Environmental Science Associates (ESA) 1993). From 1,200 to 4,900 cubic m (1 to 4 ac-ft) of wastewater per year would be applied on approximately 14 to 27 ha (35 to 60 ac) of land. Although the population of *C. albida* would not be directly impacted, the application of this volume of wastewater could result in the alteration of the remaining habitat within the historical range of *C. albida* through modification of surface drainage patterns (ESA 1993). The historical ranges of *Lilium pardalinum* ssp. *pitkinense* and *Alopecurus aequalis* var. *sonomensis* also occur within the project boundaries.

The type locality of *Clarkia imbricata* along the roadside at Pitkin Ranch was extirpated prior to 1974, as a probable result of changes in land use or roadside maintenance (B. Guggolz, *in litt.* 1993). Another population of *C. imbricata* in Sonoma County has been extirpated as a result of Christmas tree farming and weed control activities (B. Guggolz, *in litt.* 1993). The larger of the two extant populations of *C. imbricata* is threatened by changing land use such as agricultural land conversion (B. Guggolz, *in litt.* 1993).

One population of *Lilium pardalinum* ssp. *pitkinense* was largely destroyed by urbanization in 1961; however, approximately 200 plants remain (CDFG 1993b; B. Guggolz, pers. comm. 1993). Although a subdivision is currently planned for the area surrounding a portion of this population, the landowner has agreed to place the *L. pardalinum* ssp. *pitkinense* habitat area in a conservation easement. The agreement between CDFG and the landowner places all sensitive natural resource areas in a conservation easement for long-term management, with CDFG as easement holder (A. Buckmann, CDFG, *in litt.* 1993). Wetland fills at Pitkin Marsh have lowered the water table and resulted in drier soil conditions, which has negatively affected *L. pardalinum* ssp. *pitkinense*. This change in habitat quality is considered an ongoing threat to the population at Pitkin Marsh, since there are only two plants remaining (CDFG 1993b).

The two populations of *Sidalcea oregana* ssp. *valida* are threatened by permitted and apparently unauthorized water diversions from the unnamed stream that feeds Kenwood Marsh. In the past, unauthorized diversions have removed all water from the stream channel, eliminating one source of surface water to the marsh (A. Howald, pers. comm. 1993). Plant census data from 1991 indicate that the eastern subpopulation in Kenwood Marsh declined by approximately 40 percent and the western subpopulation declined by approximately 30 percent compared to 1989 and 1990 data. These figures suggest that the Kenwood Marsh population may be experiencing a delayed response to a drought. The effects of the drought may be exacerbated by effects of increased surface water diversion and result in a further decline in the population (John Turner, CDFG, *in litt.* 1993).

Trifolium amoenum has been extirpated from all of its 24 historical occurrences in 7 counties. Loss of this habitat resulted primarily from urbanization and land conversion to agriculture (Zoe Chandik, CNPS, *in litt.* 1993). The most recently discovered occurrence, found in 1993 in Sonoma County, consisted of one plant located on privately owned property that is currently for sale (CNDDB 1994). If this property is developed or altered, it may no longer contain suitable habitat for *T. amoenum*. In addition, the human population of Sonoma County is expected to grow by 21.4 percent by the year 2000 (California Department of Finance 1992), and any remaining *T. amoenum* habitat may be converted to urban use.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

One of the two populations of *Lilium pardalinum* ssp. *pitkinense* has been nearly extirpated by uncontrolled collection of plants, seeds, and bulbs for horticultural use. This species was abundant historically at the Pitkin Marsh site, but the removal of plants and bulbs for horticultural use has reduced this population to two plants (CDFG 1993b). Similar activities at the remaining site, containing only 200 plants, would result in the extinction of the species (B. Guggolz, pers. comm. 1993). Of the two remaining populations of *Clarkia imbricata*, one population is found in a preserve owned by the California Native Plant Society (CNPS). Although CNPS has attempted to discourage unauthorized collection by fencing the preserve and by not publicizing the exact location of the site, trespassers have damaged the fence, trampled the vegetation, and collected seed of *C. imbricata* on several occasions (B. Guggolz, *in litt.* 1993). Any occurrences of *Trifolium amoenum* that may be discovered in the future also may attract collectors of plants or seed because the species was previously considered to be extinct. Overutilization is currently not known to be a factor for the remaining six species, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this proposal.

C. Disease or Predation

All five populations of *Alopecurus aequalis* var. *sonomensis* are grazed by cattle (CNDDB 1993), but only two populations in Sonoma County, containing a total of 50 plants, are currently threatened by cattle grazing (CNDDB 1993). One population on the Point Reyes National Seashore was fenced in 1987 to stop cattle from overgrazing (V. Norris, *in litt.* 1993). The species presently consists of only 200 known plants.

Carex albida is currently not grazed, although cattle graze other portions of the parcel on which the species is located. A change in management of the site to allow grazing near *C. albida* may adversely affect the species (B. Guggolz, *in litt.* 1993). The associated trampling and disturbance of the wet soils would also be detrimental to the species (J. Mastrogiuseppe, Washington State Univ., pers. comm. 1993).

Sidalcea oregana ssp. *valida* is adversely affected at both of its locations by trampling and reduced seed set resulting from cattle grazing (CNDDB 1993). *Lilium pardalinum* ssp. *pitkinense* has been enclosed with 2 m (6 ft) high wire fencing at both locations to prevent grazing by cattle, horses, and deer. In spite of this effort, the plants continue to suffer herbivory resulting in loss of flowers and seeds (L. Lozier, *in litt.* 1990).

Trifolium amoenum may have disappeared from some of its former locations due to grazing (Connors 1994). This species is a large clover that blooms when many grassland plants have already turned brown, likely making it attractive to grazing herbivores. Most recent sightings of the plant were located outside of fences along roadsides, suggesting that the species survived for a period where it was protected from grazing (Connors 1994). Although no naturally occurring populations of this species are currently known, any populations that are subsequently discovered on pasture land may be subject to the same grazing pressure as historical populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The California Fish and Game Commission has listed *Carex albida, Clarkia imbricata, Lilium pardalinum* ssp. *pitkinense, Poa napensis,* and *Sidalcea oregana* ssp. *valida* as endangered species under the California Endangered Species Act (Division 3, Chapter 1.5 section 2050 et seq. of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). The California Fish and Game Commission has also listed *Astragalus clarianus* and *Plagiobothrys strictus* as threatened species. Listing by the State of California requires individuals to obtain a memorandum of understanding with CDFG to possess or "take" a listed species. Although the "take" of State-listed plants is prohibited (California Native Plant Protection Act, Division 2, Chapter 10, section 1908 and California Endangered Species Act, Division 3, Chapter 1.5, section 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law only requires that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, Division 2, Chapter 10, section 1913).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for State listing as rare, threatened, or endangered, but are not so listed, are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

Hot spring areas and perennial freshwater emergent marshes are generally small and scattered, and treated as isolated wetlands or waters of the United States for regulatory purposes by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. However, this law by itself does not protect *Alopecurus aequalis* var. *sonomensis, Carex albida, Lilium pardalinum* ssp. *pitkinense, Poa napensis, Plagiobothrys strictus, Sidalcea oregana* ssp. *valida,* and *Trifolium amoenum*. Nationwide Permit No. 26 (33 CFR part 330 Appendix B (26)) was established by the Corps to facilitate issuance of permits for discharge of fill into wetlands up to 4 ha (10 ac). For project proposals falling under Nationwide Permit 26, the Corps has been reluctant to withhold authorization unless a listed threatened or endangered species is known to be present, regardless of the significance of other wetland resources. Section 404 regulations require an applicant to obtain an individual permit to fill isolated wetlands or waters greater than 4 ha (10 ac). In either case, candidate species receive no special consideration. Additionally and equally important, the upland watersheds that contribute significantly to the hydrology of marshes are not provided any direct protection under section 404. Disturbance to or loss of seep or marsh habitat and alteration of hydrology have damaged populations and habitat as discussed previously under Factor A. Reductions in water volume or inundation of the sites have the potential to adversely affect the seven plant taxa listed above. Thus, as a consequence of the small size of these marsh, meadow, and hot spring areas and lack of protection of associated uplands, these types of habitats receive insufficient protection under section 404 of the Clean Water Act.

The Sonoma County Department of Planning has designated Pitkin, Cunningham, and Kenwood Marshes as "critical habitat" (Sonoma County 1989). The streams within these marshes are designated as "riparian corridors." It is not likely that these designations will adequately protect the species involved. County policies for "critical habitat" designation include 15 m (50 ft) setbacks of construction from wetland boundaries and preparation of biotic resource assessments for development of mitigation measures, if the planning director determines that a "critical habitat" area will be impacted (Sonoma County 1989). A setback may be waived, however, if the setback is determined to make the parcel unsuitable for construction. The single population of *Carex albida* and the larger population of *Lilium pardalinum* ssp. *pitkinense* occur within 15 m (50 ft) of streams in Sonoma County (CNDDB 1993). The Sonoma County policy for "riparian corridors" allows the removal of riparian vegetation as part of a pest management program administered by the County Agricultural Commissioner, as well as construction of roads and summer dams (Sonoma County 1989). In addition, agricultural projects that may involve removal of native vegetation, including the proposed species or alteration of their habitats, are considered in Sonoma County to be "ministerial" (K. Ellison, Sonoma County Department of Planning, pers. comm. 1993). Ministerial projects are those projects that the public agency must approve after the applicant shows compliance with certain legal requirements. They may be approved or carried out without undertaking CEQA review.

Only a few measures have been taken to protect some of the species in this proposed rule. In 1989, the landowners of the two confirmed populations of *Lilium pardalinum* ssp. *pitkinense*

entered into voluntary protection agreements with TNC (CDFG 1993b). Since that time, TNC and the California Conservation Corps have jointly built and maintained cattle exclosures in an attempt to protect the plants at both sites. Some plants, however, continue to suffer herbivory from livestock and wildlife, resulting in loss of flowers and seeds (L. Lozier, *in litt.* 1990). A Memorandum of Understanding is currently in effect between CDFG and the Berry Botanic Garden, Portland, Oregon, for research on germination and recovery of this species (CDFG 1993b). Additionally, TNC obtained a voluntary agreement in 1990 with private landowners to protect one population of *Astragalus clarianus*. CDFG is proposing to purchase approximately 37 ha (90 ac) of the Kenwood Marsh as an ecological preserve (A. Howald, pers. comm. 1993). The date for acquisition of the preserve, however, is dependent on cooperation with the current landowners. The owner of one parcel, which contains approximately one half of the Kenwood population, has declined to sell her property to the State (N. Wilcox, pers. comm. 1994). Purchase of the land as a preserve would prevent grazing on the site and would allow direct management of the plant population with possible opportunities to expand the population (A. Howald, pers. comm. 1993). The preserve would be comprised of only a small portion of the watershed, however, limiting the protection that the preserve could afford to the hydrology of the marsh (N. Wilcox, pers. comm. 1994). TNC also has entered into a verbal conservation agreement with a landowner for the protection of one of the two populations of *Clarkia imbricata*. However, this larger population of *C. imbricata* was mowed before seed set in 1989 and 1991, reducing the seed production and number of plants in the years following mowing (B. Guggolz, *in litt. 1993*).

Seed from cultivated *Trifolium amoenum* plants is currently being collected for future reintroduction efforts (P. Conners, pers. comm. 1994). In addition, half of the seed that was recovered from the single plant in 1993 was deposited for long-term storage at the U.S. Department of Agriculture National Seed Storage Laboratory in Fort Collins, Colorado (Conners 1994).

Although Point Reyes National Seashore (Seashore) is part of the National Park system, 17 cattle and dairy ranches are contained within the Seashore boundaries. Grazing and ranching, which have occurred on the peninsula for more than a century, have been determined to be "consistent with the purpose for which the Seashore was authorized" (Clark and Fellers 1987). Fowler and Fellers (1985) state that grazing has been a serious threat to *Alopecurus aequalis* var. *sonomensis* occurrences located on the Seashore.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Alopecurus aequalis var. *sonomensis* suffers from competition from aggressive emergent wetland species, including rushes (*Juncus* spp.) and sedges (*Cyperus* spp.) at one location. These wetland plants have nearly extirpated *A. aequalis* var. *sonomensis* from that site (V. Norris, *in litt.* 1993; CNDDB 1993). Additionally, *A. aequalis* var. *sonomensis* is not readily propagated. Two attempts to reintroduce the species from seed to suitable habitat within its range have failed. Naturally occurring floods also may be an ongoing threat. One reintroduction failed due to a flash flood in 1993 (V. Norris, pers. comm. 1993).

The population of *Astragalus clarianus* located on the north shore of Lake Hennessey has an infestation of an aggressive and dominating nonnative weed, yellow star-thistle (*Centaurea solstitialis*). This nonnative weed infestation was a direct result of ground disturbance associated with the removal of dredge spoils that were placed on top of this population as discussed under Factor A (A. Howald, pers. comm. 1993). Competition from this nonnative annual weed is also considered a threat to the population of *A. clarianus* at the Bothe Napa Valley State Park (J. Ruygt, *in litt.* 1993). A proposed application to build two small agricultural water storage reservoirs along a creek in Napa County would avoid direct impacts to another population of *A. clarianus*, but ground disturbance would most likely introduce this same nonnative aggressive weed (A. Howald, pers. comm. 1993). Establishment of yellow star-thistle from this proposed activity is considered a threat to this population.

Plant succession may be excluding or reducing the population of *Astragalus clarianus* at one site (J. Ruygt, *in litt.* 1993) where *A. clarianus* grows sparingly in the interspaces of the developing manzanita plant community. As new manzanita seedlings emerge and grow and the existing plants grow larger, less and less interspace between plants is available for *A. clarianus*. Fire suppression has reduced fire occurrences in the manzanita community. Periodic fire is needed to reduce manzanita cover and create interspaces for this plant. This species, therefore, is vulnerable to habitat loss from advancing plant succession. Another population of *A. clarianus* is threatened by competition from French broom (*Genista monospessulana*), a nonnative aggressive shrub (CNDDB 1993).

The potential for loss of the Kenwood Marsh population of *Sidalcea oregana* ssp. *valida* from stochastic events, because of the small population size, is exacerbated by drought and water diversions. In addition, this population is being encroached upon by aggressive weeds, including yellow star-thistle and blackberry (*Rubus* spp.) (A. Howald, pers. comm. 1993). One of the Kenwood Marsh subpopulations was driven over by Sonoma County personnel during maintenance of the Sonoma Aqueduct, which passes through Kenwood Marsh. The maintenance activity occurred late in the season when the soil was relatively dry, resulting in minimal damage to the plants. If maintenance activities occur during a time when the soil is saturated, they pose a threat to the plants (A. Howald, pers. comm. 1993).

Because it is unlikely that *Lilium pardalinum* ssp. *pitkinense* is self-pollinating, single plants or widely separated plants in sparse populations may not set viable seed (Mark Skinner, CNPS, pers. comm. 1993). The two remaining plants at Pitkin Marsh are monitored closely by CNPS volunteers and have not been observed to have set seed for several years (M. Skinner, pers. comm. 1993). Much of Pitkin Marsh has been invaded by blackberry vines that compete with *L. pardalinum* ssp. *pitkinense* for space, light, and nutrients (CDFG 1993b).

Grass mowing, vehicle traffic, and parking have impacted and continue to threaten one population of *Poa napensis* at the Calistoga Airport site (CNPS 1990; Robert Soreng, Cornell Univ., *in litt.* 1993). Grass mowing is done at regular intervals through the spring and summer growing season to reduce fire and aircraft safety hazards. The airport is used by a spray plane service, recreational gliders, and associated tow planes. The service vehicles for the planes and private vehicle traffic of the customers impact this population of *P. napensis*, especially during the spring and summer when airport use increases.

The extirpation of all historical populations of *Trifolium amoenum* may have partially been a result of competition with weedy, nonnative plant species. A recent germination study of other *Trifolium* species from historical *T. amoenum* habitat in Sonoma County suggested that some annual *Trifolium* species germinate in late November, well after many introduced species, including redstem storkbill (*Erodium cicutarium*), ripgut brome (*Bromus diandrus*), and California burclover (*Medicago polymorpha*) (Connors 1994). By germinating and growing earlier, it is likely that nonnative species have reduced the numbers of *T. amoenum* plants by occupying available space (Connors 1994).

Small numbers of populations and small population size threaten most of the plants proposed herein. There are 5 populations of *Alopecurus aequalis* var. *sonomensis* with a total of 200 plants. There are 2 populations of *Lilium pardalinum* ssp. *pitkinense* with a total of 200 plants. There are 2 populations of *Sidalcea oregana* ssp. *valida* with fewer than 100 plants. These three species may be subject to increased genetic drift and inbreeding as a consequence of their small population sizes (Menges 1991, Ellstrand and Elam 1993). The increased homozygosity results in a loss of genetic fitness (Ellstrand and Elam 1993). The reduction in genetic fitness affords less chance of any species to successfully adapt to any environmental changes. The very small numbers make them extremely vulnerable to extirpation from stochastic events.

In addition to the 3 species listed above, there are only 4 populations of *Astragalus clarianus* with fewer than 2,000 plants; 1 population of *Carex albida* with 800 to 1,000 plants; 2 populations of *Clarkia imbricata* with fewer than 6,000 plants; 3 populations of *Plagiobothrys strictus* with fewer than 10,000 plants; and 3 populations of *Poa napensis* with fewer than 1,000 plants. Fewer than 18 *Trifolium amoenum* plants exist in cultivation. The combination of a few small populations, very narrow range, and restricted habitat makes these nine species susceptible to destruction of all or a significant portion of any population from random natural events, such as flood, drought, disease, or other natural occurrences (Shaffer 1981, Primack 1993). Such events are not usually a concern until the number of individuals or geographic distribution become as limited as is the case with the species discussed herein. Once a plant population is reduced due to habitat destruction and fragmentation, the remnant population has a higher probability of extinction from random events. Thus, all nine taxa are threatened by potential loss of genetic fitness associated with their small populations or damage and destruction by random natural events across the entire range of each taxon.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Cattle grazing or competition with aggressive plant species threatens 3 of the 5 remaining populations of *Alopecurus aequalis* var. *sonomensis*, totalling approximately 200 plants. Efforts to reintroduce this species to sites within its range have failed. *Alopecurus aequalis* var. *sonomensis* is susceptible to extinction due to small numbers of populations and individuals and is threatened by inadequate regulatory mechanisms. If combined, all four populations of *Astragalus clarianus* could fit into a 0.5 ha (1 ac) area and are threatened variously by a potential water storage project, a potential subdivision, competition from nonnative plant species, recreational activities, airport maintenance, inadequate regulatory mechanisms, stochastic events, and elimination through plant community succession. The single *Carex albida* population, totaling approximately 800 to 1,000 plants, is located 46 m (150 ft) from a State highway and is threatened by potential changes in the site's hydrology resulting from wetland drainage or fill, competition from aggressive plant species, changes in land management by the owner, highway construction or maintenance, potential disturbance from a proposed wastewater treatment project, inadequate regulatory mechanisms, and stochastic events. The two remaining populations of *Clarkia imbricata* are threatened by changing land use, unauthorized collection, inadequate regulatory mechanisms, and stochastic events. The 2 remaining populations of *Lilium pardalinum* ssp. *pitkinense*, totalling approximately 200 plants, suffer from uncontrolled collection of plants, seeds, and bulbs for horticultural use, and by grazing. One population is potentially threatened by a proposed wastewater treatment project; the other population is potentially threatened by a proposed subdivision. *Lilium pardalinum* ssp. *pitkinense* also is threatened by nature of its small populations, stochastic events, and inadequate regulatory mechanisms. If combined, the remaining populations of *Plagiobothrys strictus* and *Poa napensis* would occupy an area of less than 0.5 ha (1 ac) each and are surrounded by hot springs resorts or housing. *Plagiobothrys strictus* and *Poa napensis* co-occur at two sites and both species are threatened by airport activities, including traffic and vehicle parking on the plants, grass mowing, and potential development of remnant habitat, including the construction of a hospital at this site. Additionally, all populations of the two species are threatened by potential alteration of hot springs hydrology, stochastic events, and inadequate regulatory mechanisms. The two populations of *Sidalcea oregana* ssp. *valida* are threatened by trampling and reduced seed set resulting from cattle grazing, aqueduct maintenance, competition from nonnative plant species, potential loss of normal hydrology from urbanization, inadequate regulatory mechanisms, and stochastic events and reduced genetic fitness because of the small number of individuals and populations.

Trifolium amoenum has been extirpated from all 24 historical occurrences in 7 counties; the species currently exists as 18 plants in cultivation. This species is threatened by stochastic events due to the small number of plants, competition with aggressive plant species, loss of habitat from urbanization, livestock grazing, and inadequate regulatory mechanisms.

These nine species are imminently threatened by extinction throughout all or a significant portion of their range by the factors summarized above and therefore meet the definition of endangered in the Act. Based on this evaluation, the preferred action is to list *Alopecurus aequalis* var. *sonomensis*, *Astragalus clarianus*, *Carex albida*, *Clarkia imbricata*, *Lilium pardalinum* ssp. *pitkinense*, *Plagiobothrys strictus*, *Poa napensis*, *Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum* as endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not

prudent for these nine plant taxa at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As required for proposals to designate critical habitat, the publication of maps and the precise locations of involved plant populations could contribute to the further decline of the nine taxa proposed herein and increase enforcement problems, particularly in the case of *Lilium pardalinum* ssp. *pitkinense*. This taxon, which is threatened primarily by uncontrolled collection for horticultural use, is especially at risk from additional publicity. Two of the three privately owned populations of *Alopecurus aequalis* var. *sonomensis* are found in close proximity to *L. pardalinum* ssp. *pitkinense*. Although *A. aequalis* var. *sonomensis* is not collected for horticultural use, any increase in publicity of *A. aequalis* var. *sonomensis* could lead to collection or destruction of that species, as well as increased collection of *L. pardalinum* ssp. *pitkinense*. One of the two populations of *Clarkia imbricata* in a preserve owned by the California Native Plant Society has experienced unauthorized collection, despite a deliberate decision not to publicize the preserve's exact location. Thus, the Service finds that designation of critical habitat for *Alopecurus aequalis* var. *sonomensis*, *Clarkia imbricata*, and *Lilium pardalinum* ssp. *pitkinense* is not prudent because of potential vandalism and uncontrolled collection for horticultural use. No *Trifolium amoenum* plants are currently known to exist in the wild, but designation of critical habitat could encourage vandalism and preclude recovery efforts for the species.

The single *Carex albida* population and a portion of one of the two populations of *Sidalcea oregana* ssp. *valida* are adjacent to State highways. Any specific locality information could subject these species to activities that would jeopardize their survival. Thus, the Service finds that designation of critical habitat is not prudent for *Carex albida* and *Sidalcea oregana* ssp. *valida* because of potential vandalism.

Because *Astragalus clarianus*, *Plagiobothrys strictus*, and *Poa napensis* have very specific known habitat requirements and occur at very few locations in or near cities, any activity that would adversely modify habitat or destroy plants would likely jeopardize the continued existence of each of these species. Therefore, the Service finds that designation of critical habitat is not prudent for *Astragalus clarianus*, *Plagiobothrys strictus*, and *Poa napensis* because it would not provide additional benefit beyond that provided by listing for the conservation of the species.

Additionally, publicity that might result in public trespass on privately owned sites by individuals seeking the plants could reduce the landowners' willingness to cooperate with public or private agencies in their protection efforts for the involved taxa (B. Guggolz, pers. comm. 1993). Designation would provide no additional benefit to any of these nine species beyond the benefit received by virtue of their designation as endangered species. Protection of these nine species will be addressed through the recovery process and through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All nine plant species may be affected by Federal mortgage programs, including those managed by the Veterans Administration and the U.S. Department of Housing and Urban Development (Federal Home Administration loans). Since six of the nine taxa proposed herein exist in or near marshes, meadows, perennial streams, or thermal hot springs, the Corps may become involved in regulating fill of these wetland areas through jurisdiction of section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*). The plants may also be affected by road and highway construction by the Federal Highway Administration. The National Park Service may become involved through section 7 consultation because of potential grazing impacts to *Alopecurus aequalis* var. *sonomensis* at Point Reyes National Seashore (Seashore). The Seashore has twice attempted to reintroduce *A. aequalis* var. *sonomensis* using seed collected within the Seashore. In 1987, the Seashore erected a cattle exclosure fence to protect this species from grazing (V. Norris, *in litt.* 1993).

Listing *Alopecurus aequalis* var. *sonomensis*, *Astragalus clarianus*, *Carex albida*, *Clarkia imbricata*, *Lilium pardalinum* ssp. *pitkinense*, *Plagiobothrys strictus*, *Poa napensis*, *Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum* would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the nine plant species. Additionally, pursuant to section 6 of the Act, the Service would be more likely to grant funds to affected states for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it

illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction of any such species on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plant species in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. The Service anticipates that few permits would ever be sought or issued for eight of the species because they are not common in cultivation or in the wild. *Lilium pardalinum* ssp. *pitkinense*, however, is collected for horticultural use.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing of the nine plant species on proposed and ongoing activities within the species' range. The Service believes that activities such as landscape maintenance, clearing vegetation for firebreaks, and livestock grazing on privately owned lands, not under Federal funding or authorization, would not be considered a violation of section 9 of the Act. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Ave., Portland, Oregon 97232–4181 (phone 503/231–2063, facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, trade, or other relevant data concerning any threat (or lack thereof) to *Alopecurus aequalis* var. *sonomensis*, *Astragalus clarianus*, *Carex albida*, *Clarkia imbricata*, *Lilium pardalinum* ssp. *pitkinense*, *Plagiobothrys strictus*, *Poa napensis*, *Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum*;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received by September 25, 1995. Such requests must be made in writing and addressed to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are Elizabeth Warne and Kenneth Fuller, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Alopecurus aequalis var. sonomensis.	Sonoma alopecurus	U.S.A. (CA)	Poaceae	E		NA	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Astragalus clarianus.	Clara Hunt's milkvetch.	U.S.A. (CA)	Fabaceae	E		NA	NA
Carex albida	White sedge	U.S.A. (CA)	Cyperaceae	E		NA	NA
Clarkia imbricata	Vine Hill clarkia	U.S.A. (CA)	Onagraceae	E		NA	NA
Lilium pardalinum ssp. *pitkinense.*	Pitkin Marsh lily	U.S.A. (CA)	Liliaceae	E		NA	NA
Plagiobothrys strictus.	Calistoga allocarya	U.S.A. (CA)	Boraginaceae	E		NA	NA
Poa napensis	Napa bluegrass	U.S.A. (CA)	Poaceae	E		NA	NA
Sidalcea oregana ssp. *valida*	Kenwood Marsh checkermallow.	U.S.A. (CA)	Malvaceae	E		NA	NA
Trifolium amoenum.	Showy Indian clover	U.S.A. (CA)	Fabaceae	E		NA	NA

Dated: July 5, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–18812 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

[RIN 1018–AD09]

Endangered and Threatened Wildlife and Plants; Proposed Rule to Determine Five Plants and a Lizard from Monterey County, California, as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for four plants and a reptile: *Astragalus tener* var. *titi* (coastal dunes milk-vetch), *Piperia yadonii* (Yadon's piperia), *Potentilla hickmanii* (Hickmann's potentilla), *Trifolium trichocalyx* (Monterey clover) and the black legless lizard (*Anniella pulchra nigra*); and threatened status for *Cupressus goveniana* ssp. *goveniana* (Gowen cypress). The six taxa are found primarily along the coast of northern Monterey County, California. The five plant taxa and the lizard are threatened by one or more of the following: alteration, destruction, and fragmentation of habitat resulting from urban and golf course development; recreational activities; highway widening; military activities; competition with non-native species; and alteration of natural fire cycles. All taxa are also threatened with stochastic extinction due to the small numbers of populations or individuals. This proposed rule, if made final, would extend the Act's protection to these taxa.

DATES: Comments from all interested parties must be received by October 9, 1995. Public hearing requests must be received by September 25, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California, 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Ventura Field Office (see ADDRESSES section) (telephone number 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Monterey Peninsula on the central California coast has been noted for a high degree of species endemism (Axelrod 1982, Howitt 1972, Raven and Axelrod 1978). Species with more northern affinities reach their southern limits on the Peninsula; species with more southern affinities reach their northern limits here as well (Howitt and Howell 1964). The Monterey Peninsula is influenced by a maritime climate that is even more pronounced due to the upwelling of cool water from the Monterey submarine canyon. Rainfall amounts to only 38 to 51 centimeters (cm) (15 to 20 inches) per year, but summer fog-drip is a primary source of moisture for taxa that would otherwise not be able to persist with such low rainfall. Some taxa, such as the coastal closed-cone pines and cypresses may represent relicts of species that once had a more continuous, widespread distribution in the more mesic climate of the late Pleistocene period, then retreated to small pockets of cooler and wetter conditions along the coast ranges during the hotter and drier xerothermic period between 8,000 and 4,000 years ago (Axelrod 1982).

In 1602, the Spanish government commissioned Sebastian Viscaino to map the coastline; he travelled as far north as the Mendocino coast. In his journal, he made note of the "pine covered headlands" and the "great pine trees, smooth and straight, suitable for the masts and yards of ships" that he saw while anchored in Monterey Bay (F.B. Larkey in Howitt 1972). During the early 1900s, Willis L. Jepson characterized the forests on the Monterey Peninsula as the "most important silva ever", and encouraged Samuel F. B. Morse of the Del Monte Properties Company to explore the possibilities of preserving the unique forest communities (F. B. Larkin in Howitt 1972). Morse believed that developing recreational facilities would allow income to be derived from the property while maintaining the forest intact.

In 1941, maps were compiled by the U.S. Forest Service to show plant associations that were similar in "fire-hazard characteristics and in uses or qualities of economic importance" (U.S. Forest Service 1941). The bulk of the Monterey Peninsula was mapped as Monterey pine forest with a discrete stand of Bishop pine in the center of the peninsula. The coastline was fringed with either "barren" stretches, grassland, or "sagebrush", and a stretch of "cypress species" extending east along the coast from what is known as Cypress Point. By 1930, however, the construction of three golf courses likely resulted in the removal of a number of Monterey pines.

Three native Monterey pine (*Pinus radiata*) stands remain in California: on the Monterey Peninsula; near Ano Nuevo Point in northern Santa Cruz County; and near Cambria in San Luis Obispo County. The Monterey Peninsula stand is not only the most extensive of the three, it is also unique in its association with *Pinus muricata* (Bishop pine), *Cupressus goveniana* ssp. *goveniana* (Gowen cypress), and *Cupressus macrocarpa* (Monterey cypress). While *P. radiata* grows well on a wide variety of soils, it does not do well on the acidic, poorly-drained soils found on Huckleberry Hill centrally located on Monterey Peninsula. Here, the less aggressive *C. goveniana* ssp. *goveniana* and *P. muricata* are spared competition from *P. radiata*. Some of the chaparral species associated with these forest stands include *Arctostaphylos pumila* (sandmat manzanita), *Arctostaphylos hookeri* ssp. *hookeri* (Hooker's manzanita), *Ceanothus dentatus* (toothleaf lilac), and *Ericameria fasciculata* (Eastwood's ericameria) (Holland 1986, Vogl *et al.* 1988).

Much of what the Forest Service mapped in 1941 as grassland or "barren" (which most likely included coastal dunes) on the peninsular coastline has been subsequently converted to golf courses. Remnant dunes support a coastal dune scrub community dominated by *Artemisia pycnocephala* (beach sagewort), *Baccharis pilularis* (coyote bush), and several bush lupines (*Lupinus arboreus, L. chamissonis*). The southernmost occurrences for *Erysimum menziesii* (Menzies wallflower), *Layia carnosa* (beach layia), *Lupinus tidestromii* (Tidestrom's lupine), and *Gilia tenuiflora* ssp. *arenaria* (dune gilia), all federally endangered species, occur on these remnant dunes (Holland 1986, U.S. Fish and Wildlife Service 1992). It is uncertain what species characterized the grasslands mapped by the Forest Service. Aside from harboring small populations of several of the species that are contained within this proposed rule, these patches of herbaceous vegetation support a large number of non-native grasses and succulents, as well as opportunistic native herbaceous species (Ferreira 1992a, Ferreira 1992b). As for the patches mapped by the Forest Service as "sagebrush", these most likely matched what is currently called coastal sage scrub, a community dominated by *Artemisia californica* (California sagebrush). For the most part, these patches occurred within what are now urbanized portions of the cities of Monterey and Pacific Grove and the Pacific Grove Municipal Golf Course.

Astragalus tener var. *titi* (coastal dunes milk-vetch) was first collected by Mrs. Joseph Clemens in 1904 along 17-Mile Drive on the Monterey Peninsula "near an old hut composed of abalone shells and coal-oil cans." Alice Eastwood (1905) later named the plant *Astragalus titi* in honor of Dr. F. H. Titus. Subsequently, John Thomas Howell (1938), while comparing a specimen of *A. tener* that was collected by David Douglas near Salinas, Monterey County, remarked that although "*Astragalus titi* Eastwood has generally been regarded as the same as *Astragalus tener*, * * * the two plants are not the same and *Astragalus titi* seems worthy of varietal, if not specific recognition." Rupert Barneby published the combination *A. tener* var. *titi* in 1950, noting the difference in flower size, habitat, and geographic range between it and *A. tener* var. *tener* (Barneby 1950).

Astragalus tener var. *titi* is a diminutive annual herb of the pea family (Fabaceae). The slender, slightly pubescent stems reach 1 to 1.5 decimeters (dm) (4 to 6 inches) in height, with leaves that are 7 to 11 pinnately compound and 2 to 7 cm (0.8 to 2.7 inches) long with slightly bilobed tips. The tiny lavender to purple flowers are 5 to 6 millimeters (mm) (0.25 inches) long and are arranged in subcapitate racemes of 2 to 12 flowers. The linear seed pods are straight to sickle-shaped and 6 to 14 mm (0.25 to 0.6 inches) long (Bittman 1985).

Two historical locations from Los Angeles County (Hyde Park in Inglewood and Santa Monica) and two from San Diego County (Silver Strand and Soledad) were annotated by Barneby as *Astragalus tener* var. *titi* (Barneby 1950). Numerous unsuccessful searches for the plant have been made in these locations over the past decade (Ferreira 1992a, Julie Vanderweir, botanical consultant, San Diego County, pers. comm., 1992). It is unlikely that suitable habitat remains, since the Los Angeles County locations have been heavily urbanized. The Silver Strand area is owned by the Department of Defense (Miramar Naval Weapons Center), and a portion has been subjected to amphibious vehicle training exercises. Another portion of Silver Strand has been leased by the Navy to the California Department of Parks and Recreation for development of a campground and recreational facilities.

The only known extant population of *Astragalus tener* var. *titi* occurs along 17-Mile Drive on the western edge of the Monterey Peninsula on land owned by the Pebble Beach Company. The milk-vetch occurs on a relatively flat coastal terrace within 30 meters (m) (100 feet (ft)) of the ocean beach and 8 m (25 ft) above sea level. The loamy fine sands that comprise a series of shallow swales on the terrace surface support standing water during wet winter and spring seasons. Individual plants are found on the bottoms or sides of the swales growing in association with other low growing grasses and herbs, including the non-native *Carpobrotus edulis* (hottentot fig) and *Plantago coronopus* (cut-leaf plantain). In 1992, only 120

individuals were counted from the known population, which over the past decade had fluctuated from 15 to 1,000 individuals (Ferreira 1992a).

The population was bisected by construction of 17-Mile Drive, which also likely altered the local hydrology. Half of the remaining habitat occurs between the road and the ocean bluff's edge, and the other half occurs between the interior side of the road and a horse trail that runs parallel to a golfing green. *Astragalus tener* var. *titi* is currently threatened with alteration of habitat from trampling associated with several recreational activities, including hiking, picnicking, ocean viewing, wildlife photography, equestrian use, and golfing. The species also faces threats from stochastic (i.e., random) extinction by virtue of the small size of the remaining population. The plant may also be threatened with competition from the non-native *Carpobrotus edulis* and *Plantago coronopus*, though current management by the Pebble Beach Company includes hottentot fig removal from a portion of the habitat.

Cupressus goveniana ssp. *goveniana* (Gowen cypress) was first discovered by Karl Hartweg "on the pine barrens of Huckleberry Hill (Monterey Peninsula)" in 1846. The plant was described as *Cupressus goveniana* by British horticulturalist George Gordon in 1849 who named it after fellow horticulturalist James R. Gowen (Sargent 1896). Charles Sargent (1896) described the tree as being widely distributed "from the plains of Mendocino County to the mountains of San Diego County" as he included taxa now recognized as distinct in his definition of *C. goveniana*. John G. Lemmon published the name *C. goveniana* var. *pigmaea* in 1895 to refer to the stands found on the "White Plains" of Mendocino County, also referred to as pygmy cypress or Mendocino cypress. As a result of this segregation, the material from the Monterey area would be treated as *C. goveniana* var. *goveniana*. However, Bartel (1993), in keeping with the use of subspecies in the treatment of Cupressus, used *C. goveniana* ssp. *goveniana* for the revision of Jepson's Manual. The Service is using Bartel's subspecific treatment for this taxon.

Cupressus goveniana ssp. *goveniana* (Gowen cypress) is a small coniferous tree or shrub in the cypress (Cupressaceae) family. Most of the 10 taxa in the genus *Cupressus* found in California have relatively small ranges (Bartel 1993). Of the three coastal cypresses, native stands of *C. macrocarpa* (Monterey cypress) and *C. goveniana* ssp. *goveniana* are both restricted to the Monterey Peninsula and Point Lobos in Monterey County.

Cupressus goveniana ssp. *goveniana* generally reaches a height between 5 and 7 m (17 to 23 ft) (Munz 1968), though Griffin noted one individual that was 10 m (33 ft) high at Huckleberry Hill (Griffin and Critchfield 1976). The sparsely branched tree forms a short, broad crown with a spread of 2 to 4 m (7 to 13 ft). The bark is smooth brown to gray, but becomes rough and fibrous on old trees. The scale-like foliage is a light rich green, with leaves 1 to 2 mm long (0.04 to 0.08 inches). The female cones are subglobose (nearly spherical), 10 to 15 mm (0.4 to 0.6 inches) long, and produce 90 to 110 seeds (Wolf and Wagener 1948). The cones, which typically mature in 2 years, remain closed for many years while attached to the cone. Seeds can be released upon mechanical removal from the tree, or more typically upon death of the tree or supporting branch as by heat generated by a wildfire. *Cupressus goveniana* ssp. *goveniana* is distinguished from its close relative *C. goveniana* ssp. *pigmaea* (pygmy or Mendocino cypress) by its much taller stature, the lack of a long, whip-like terminal shoot, and light to yellow-green rather than dark dull green foliage (Bartel 1993).

Only two natural stands of Cupressus goveniana ssp.*goveniana* are known to exist, though individuals can be found locally in cultivation. *Cupressus goveniana* ssp. *goveniana* is associated with *Pinus radiata* (Monterey pine), *Pinus muricata* (Bishop pine), and several taxa in the heath family (Ericaceae) (e.g. *Vaccinium*, *Gaultheria*, (*Arctostaphylos*) on poorly drained, acidic, podsol soils (Griffin and Critchfield 1976). The largest stand, referred to here as the Del Monte Forest stand, is near Huckleberry Hill on the western side of the Monterey Peninsula. This stand covers approximately 40 hectares (100 acres), with individuals scattered within a kilometer (½ mile) of the main stand.

At least three fires have burned portions of the Del Monte Forest stand in the last 100 years. A large fire burned most of the stand in 1901 (Coleman 1905, and Dunning 1906, in Vogl *et al.* 1988). The northern portion of the stand apparently burned in 1959 (California Department of Fish and Game (CDFG) 1992). The most recent fire burned through the central and eastern portions of the population in 1987. Wolf and Wagener (1948) reported that patches of crowded, poorly developed individuals, referred to as "canes", were cut for posts, making it difficult to determine the original extent of the grove.

The Del Monte Forest stand is on lands owned by the Pebble Beach Company and the Del Monte Forest Foundation (DMFF). The purpose of the DMFF, originally established as the Del Monte Foundation in 1961 by the Pebble Beach Company, is to "acquire, accept, maintain, and manage lands in the Del Monte Forest which are dedicated to open space and greenbelt" (DMFF, *in litt.*, 1992). A large portion of the Del Monte Forest stand is within a 34-hectare (84-acre) area designated as a botanical reserve (Samuel F.B. Morse Botanical Reserve) in the 1960s and donated to DMFF in 1976. In the early 1980s, development of the Poppy Hills Golf Course removed 840 Gowen cypress trees and surrounded other small patches by fairways. The remaining portion of the stand is on lands designated as "open space", and a conservation easement for this area is currently being acquired by DMFF.

A second smaller stand of *Cupressus goveniana* ssp. *goveniana* approximately 16 to 32 hectares (40 to 80 acres) in size occurs 10 km (6 miles) to the south near Gibson Creek on a 60-hectare (150-acre) parcel acquired by the California Department of Parks and Recreation (DPR) (Point Lobos State Reserve) in 1962. The very western edge of the stand is on privately owned ranchlands (Jones and Stokes Associates, Inc. 1989). In this stand, *C. goveniana* ssp. *goveniana* is associated with *Pinus radiata* and chaparral species Griffin and Critchfield 1976, Vogl *et al.* 1988). Due to the physical inaccessibility of the Point Lobos stand and the Reserve's mandate to protect sensitive plant taxa, the Point Lobos stand exhibits fewer signs of human disturbance than the Del Monte Forest stand.

Despite measures taken to protect the *Cupressus goveniana* ssp. *goveniana* stand at the Del Monte Forest, such as establishing the Morse Reserve, the opportunities for maintaining a viable long-term stand may be compromised by the site's close proximity to urbanization. This species is threatened by habitat alteration and destruction due to the influence of continued urban development in Pebble Beach and to the disruption of natural fire cycles as a result of fire suppression activities. In addition, the Del Monte Forest stand has been invaded by aggressive non-native species, including *Cortaderia sellanoa* (pampasgrass) and *Cytisus monspessulanus* (French broom). An increase in such invasive alien plants will undoubtedly alter the composition of the plant community and may adversely affect *C. goveniana* ssp. *goveniana*. The cypress is also

threatened with stochastic (i.e., random) extinction due to the small amount of habitat occupied by the species.

Piperia yadonii (Yadon's piperia) was first collected by Leroy Abrams in 1925 in open pine forest near Pacific Grove. At that time, it was identified as *Piperia unalascensi* (Morgan and Ackerman 1990), a polymorphic, wide-ranging species found from Alaska to Colorado, southern California, and northwestern Mexico. In the most recent treatment of the genus *Piperia*, James D. Ackerman (1977) segregated out several long-spurred taxa from the *P. unalascensis* complex, but attempted no analysis of the short-spurred forms. Subsequently, Morgan and Ackerman (1990) segregated out two new taxa from the *P. unalascensis* complex. One of these, *P. yadonii*, was named after Vernal Yadon, previous Director of the Museum of Natural History in Pacific Grove, Monterey County.

Piperia yadonii is a slender perennial herb in the orchid family (Orchidaceae). During the first few years of growth, the plant is visible only by its one or two lanceolate to oblanceolate basal leaves which die back each winter. In mature plants, the leaves are 10 to 15 cm (4 to 6 inches) long and 2 to 3 cm (0.8 to 1.2 inches) wide. After several years of vegetative growth, the plant sends up a single stem to 80 cm (31 inches) tall with flowers arranged in a dense narrow-cylindrical raceme. The flowers consist of three petal-like sepals and three petals, which together appear as one flower containing six tepals. The upper three tepals are basically green and the lower three white. The lowermost tepal is specialized into a lip that is narrowly triangular and is strongly decurved such that the tip nearly touches the spur of the flower (Morgan and Ackerman 1990). *Piperia yadonii* is sympatric with *P. elegans*, *P. elongata*, *P. michaelii*, and *P. transversa*, but is distinguished from them by the shorter spur length, the particular pattern of green and white floral markings, and the earlier flowering time (R. Morgan, botanical consultant, Soquel, California, pers. comm., 1992).

Piperia yadonii is found within Monterey pine forest and maritime chaparral communities in northern coastal Monterey County from the Monterey Peninsula northeast to the Elkhorn Slough area. This plant occurs primarily on sandstone and sandy soils that are often poorly drained, though dry in summer when the plants are flowering (Morgan and Ackerman 1990). Six populations are clustered on the Monterey Peninsula; two are on Pebble Beach Company lands, two are on DMFF lands, and two are in city parks in Pacific Grove and Monterey. Four populations are clustered generally between Prunedale and Elkhorn Slough; three of these are on privately owned lands, including one population on land managed by The Nature Conservancy (TNC) (Blohm Ranch), and one is on County property (Manzanita County Park). One small population is located at the northernmost corner of Fort Ord near Marina.

Recent surveys by Morgan indicate that the largest population, consisting of approximately 500 individuals, is scattered along a 2.1 km (1.3 mile) stretch of private road in Pebble Beach (Morgan, *in litt.*, 1992). One population, located in Long Valley between Prunedale and Elkhorn Slough, comprises approximately 150 individuals; the remaining populations range in size from a few individuals to fewer than 100 individuals (Morgan, *in litt.*, 1992).

Piperia yadonii was once more abundant on the Monterey Peninsula. Many historic collections were made from the Pacific Grove area, which has since been urbanized. It is also likely that the plant was previously more abundant in the Prunedale-Elkhorn Slough area; a lack of historical collections from this area is probably a reflection of the lower intensity of botanical collecting compared to the Monterey Peninsula area. Continued alteration and destruction of habitat due to urban and golf course development is currently the greatest threat to *P. yadonii*. Other threats include competition with non-native species, roadside mowing, and a proposed realignment of Highway 101 known as the Prunedale bypass. The small numbers of individuals and populations also make *P. yadonii* vulnerable to stochastic extinction.

Potentilla hickmanii (Hickmann's potentilla) was originally collected by Alice E. Eastwood in 1900 "near the reservoir which supplies Pacific Grove, [Monterey County] California, along the road to Cypress Point". The reference to a reservoir could refer to Forest Lake in Pebble Beach but more likely refers to the Pacific Grove reservoir (Ferreira 1992b). Eastwood (1902) described the species 2 years later, naming it after J. B. Hickman who was her guide on that collecting trip.

Potentilla hickmanii is a small perennial herb in the rose family (Rosaceae) that annually dies back to a woody taproot. The leaves are pinnately compound into generally six paired, palmately cleft leaflets each 2 to 8 mm (0.08 to 0.3 inches) long and 1 to 3 mm (0.04 to 0.1 inches) wide. Several reclining stems 8 to 15 cm (3 to 6 inches) long support two to four branched cymes (flowering stems) each of which is one- to two-flowered. The flowers consist of 5 ovate to obtuse sepals 6 mm (0.23 inches) long; yellow obcordate petals 6 mm (0.23 inches) long and 5 mm (0.19 inches) wide; and 20 stamens (Abrams 1944, CNPS 1987). *Potentilla hickmanii* is separated from two other potentillas that occur on the Monterey Peninsula (*P. egedii* var. *grandis* and *P. glandulosa*) by a combination of its small stature, leaflet size and shape, and color of the petals.

Only three historical locations for the plant are known (CDFG 1992). A collection was made by Ethel K. Crum in 1932, apparently in the vicinity of Eastwood's original collection. Ferreira (1992b) surveyed the area surrounding the Pacific Grove reservoir in 1992, but found no *Potentilla hickmanii* plants or suitable habitat for the species. A second location was observed by E.C. Suttliffe at Moss Beach near Half Moon Bay, San Mateo County, in 1933. This occurrence is presumed to be extirpated by urban development in the Half Moon Bay area.

Potentilla hickmanii is currently known from only one location, on the western Monterey Peninsula, in a meadow opening within Monterey pine forest. Loamy fine sandy soils support a meadow community of non-native grasses and several introduced and native herbs. A total of 24 individuals of *P. hickmanii* were located during 1992 surveys, 9 of which are within a small exclosure constructed by the Pebble Beach Company to protect the plants; the other 15 are located within 30 m (100 ft) of the exclosure (Ferreira 1992b). The Pebble Beach Company has maintained management responsibilities for the meadow, though ownership of the land has been transferred to the Del Monte Forest Foundation. *Potentilla hickmanii* is currently threatened with alteration of habitat resulting from recreational activities. The meadow, called Indian Village, is available for use by residents of Pacific Grove and has been developed as an outdoor recreational park. The extremely small numbers of individual plants and populations also make *P. hickmanii* vulnerable to stochastic extinction.

Trifolium trichocalyx (Monterey clover) is a member of the pea family (Fabaceae). The genus *Trifolium* is well-represented in North America, with approximately 50 species recognized in California (Munz 1959). Members of this herbaceous genus are characterized by the palmately three-foliate leaves (hence the name *Trifolium*) and flowers in spheroid or oblong heads.

Trifolium trichocalyx was first collected by Amos A. Heller "in sandy pine woods about Pacific Grove" in 1903, and described by him the following year (Heller 1904). Laura F. McDermott (1910) considered the taxon a variety of *T. oliganthum* in her treatment of the genus, but this was not recognized in subsequent floras. Axelrod (1982) deferred to Gillett's suggestion that *T. trichocalyx* is a sporadic hybrid between *T. microcephalum* and *T. variegatum* and recommended removing it from the list of taxa considered Monterey endemics. This view was challenged by Vernal Yadon (*in litt.*, 1983) who had grown *T. trichocalyx* and observed that it consistently produces up to seven seeds per pod, while both purported parents were two-seeded taxa. *Trifolium trichocalyx* has continued to be recognized as a distinct taxon by Abrams (1944), Munz (1959), Howitt and Howell (1964) and Isely (1993) and is accepted as such by the Service.

Trifolium trichocalyx is a much-branched prostrate annual herb with leaflets that are obovate-cuneate, 0.4 to 1.2 cm (0.2 to 0.5 inches) long, truncate or shallowly notched at the apex, and spinulose-denticulate along the margins. The numerous flowers are clustered into heads subtended by a laciniate-toothed involucre. The calyces are 7 mm (0.3 inches) long, toothed, and conspicuously pilose; the purple corollas scarcely equal the length of the calyx; the deciduous seed pods enclose up to seven seeds. The plant can be quite inconspicuous, as the prostrate branches may be only 3 to 4 cm (1.2 to 1.6 inches) long. With favorable conditions, however, branches may reach a length of 20 to 30 cm (8 to 12 inches) (Abrams 1944, Yadon, *in litt.*, 1983). Branches from one large plant may spread through the forest litter and give the appearance of many plants. Of the four species of *Trifolium* growing on Huckleberry Hill, all except *T. trichocalyx* contain two seeds per pod. *Trifolium trichocalyx* is currently known from only one area, Huckleberry Hill, covering approximately 16 hectares (40 acres) (Ferreira 1992c) on the Monterey Peninsula. The plant occurs in openings within Monterey pine forest on poorly drained soils consisting of coarse loamy sands. *Trifolium trichocalyx* appears to be a fire-follower, taking advantage of the reduced forest cover for the first few years after a fire, and then becoming more scarce as it is shaded out or outcompeted as the forest community recovers. Heller's collection in 1903 was made 2 years after a fire in the area. Only scattered individuals were reported by Theodore Niehaus in 1973 and 1979 and by Yadon in 1980 in forest openings or edges (CDFG 1992). One of these sites is presumed to have been extirpated when Poppy Hills Golf Course was developed in 1980; the other two are within the boundaries of the Morse Botanical Reserve.

Surveys for *Trifolium trichocalyx* were conducted in 1988. No plants were found at the locations previously reported by Niehaus and Yadon. However, several hundred to 1,000 plants were scattered throughout the 1987, 80-ha (200-acre) burn near Huckleberry Hill, just to the east of the historical locations (CDFG 1992). No *T. trichocalyx* were found during a 1992 survey of this area, probably because the dense cover of *Pinus radiata* (Monterey pine) seedlings and resprouting chaparral species did not allow the clover to persist. While no living plants of *T. trichocalyx* currently exist in native habitat, it is expected that a seedbank will persist in the soil until they are "released" again by a fire event. Major threats to the continued existence of *Trifolium trichocalyx* include alteration of natural fire cycles, a proposed development that overlaps with the southern portion of the habitat for the clover (as mapped in 1988), and stochastic extinction due to the small amount of remaining habitat and the ephemeral nature of the plant's reappearance after fires.

The black legless lizard was originally described by Fischer in 1885 as *Anniella nigra* (Fischer 1885 in Murphy and Smith 1991). It differs from the silvery legless lizard, *A. pulchra*, in having a darker dorsum, shorter tail, and longer preanal scales. Currently, the black legless lizard is considered a subspecies of *A. pulchra* (Bezy *et al.* 1977), a species with a range extending from the San Francisco Bay area south through western California to northern Baja California, Mexico. Hunt (1983) revised the taxonomy, changing the name of the black legless lizard to *A. nigra nigra* and the silvery legless lizard to *A. nigra argenteum*. However, this nomenclature was not widely accepted. The International Commission on Zoological Nomenclature has been petitioned to conserve the name Anniella *pulchra nigra* (Murphy and Smith 1985, 1991); the Commission has not yet responded with an official position on the subject. The Service accepts the more widely accepted treatment of the black legless lizard as *A. pulchra nigra*.

Anniella pulchra nigra has been collected primarily from coastal areas of the Monterey Peninsula and Monterey Bay between the Salinas and Carmel Rivers (Bury 1985, Miller 1943). *Anniella* with dark dorsums, possibly intergrades with the silvery legless lizard, have been collected north of the Salinas River and more than 160 km (100 miles) to the south in the Morro Bay and Pismo Beach areas (Miller 1943); the taxonomy of *Anniella* in these intergrade areas is unclear. Miller (1943) and Bury (1985) considered the black legless lizard to be restricted to the coastal area between the Salinas and Carmel Rivers. Bezy and others (1977) showed the black legless lizard as occurring in the Monterey area and somewhat south, while Stebbins (1985) considered the distribution of this taxon to be the Monterey Peninsula, Monterey Bay, and Morro Bay. All of these authors agree that coastal specimens of *Anniella* from between the Salinas and Carmel Rivers are black legless lizards. As a result, this proposal applies only to *A. p. nigra* from this area and, specifically, the range of this taxon as described by Miller (1943) and Bury (1985).

Based on electrophoretic analyses of *Anniella pulchra nigra* individuals collected from the vicinity of Asilomar on the Monterey Peninsula and Fort Ord on Monterey Bay, Bezy and others (1977) demonstrated that genetic distance between *A. p. nigra* and *A. p. pulchra* was consistent with subspecific classification. Further electrophoretic work has demonstrated genetic differences between dark morphs of *A. p. pulchra* from Morro Bay and the *A. p. nigra* from the Monterey Peninsula (Rainey 1984). This latter work also revealed considerable differences in allele frequencies among sites on the Monterey Peninsula, indicating genetic subdivisions even within that limited area. The emergence of a distinct form of *Anniella* on the Monterey Peninsula probably occurred when the Peninsula was isolated from the mainland as an island. Also, the Peninsula at one time extended farther to the north, providing greater geographic isolation than at present. In post-Pleistocene times there were also large rivers and bays in lowland areas which may have further isolated populations of *Anniella* (Bury 1985).

The black legless lizard (*Anniella pulchra nigra*) is a burrowing, limbless lizard about the diameter of a pencil and reaches a maximum length of about 23 cm (9 inches). It has a black or dark brown dorsum (hatchlings are light colored) and is yellow ventrally (Fisher 1934, Gans *et al.* 1992, Hunt in prep., Stebbins 1985). This species is distinguished from the silvery legless lizard (*A. p. pulchra*) by dark dorsal coloration, lower dorsal caudal scale count, and a relatively short tail (*Bezy*

et al. 1977, Bury and Corn 1984, Hunt 1983, Miller 1943).

Bury (1985) surveyed most potential habitat for the black legless lizard, as well as sites as far south as Morro Bay and north to Ano Nuevo State Reserve in San Mateo County where intergrades might occur. Black legless lizards were found at 17 sites, all of which lie on or near approximately 45 km (28 miles) of coastline between the Salinas and Carmel Rivers. Key sites included City of Monterey lands south of Salinas River National Wildlife Refuge, Marina State Beach, and Fort Ord, all on Monterey Bay; and several smaller areas on the Monterey Peninsula, including dunes or sandy areas at the U.S. Navy Post-graduate School, Monterey State Beach, Point Pinos, Asilomar State Beach, Spanish Bay, and Carmel State Beach. The largest population of the black legless lizard on federal land is on the Fort Ord property. This military base is undergoing closure; much of the land will be transferred to State and University ownership, and habitat management plans that call for the protection of the lizard will be developed.

Within the very limited range of the black legless lizard, habitat destruction due to urbanization, particularly on the Monterey Peninsula, has severely reduced the distribution of this lizard. About 60 percent of all localities that historically supported black legless lizards no longer contain suitable habitat (Lawrence E. Hunt, University of California, Santa Barbara, pers. comm., 1993). Remaining habitat is degraded by human trampling, sand mining, vehicular use, and introduction of exotic plants, particularly *Carpobrotus edulis* (hottentot fig) and related species and *Ammophila arenaria* (Marram grass). Remaining habitat has also been fragmented by highways and other forms of development (Bury 1985).

Previous Federal Action

Federal government action on the five plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that report, *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* were recommended for endangered status. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and of the Service's intention thereby to review the status of the plant taxa named therein. The above three taxa were included in the July 1, 1975 notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* were included in the June 16, 1976, **Federal Register** proposal.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the portion of the June 6, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* as category-1 species. Category-1 species are taxa for which data in the Service's possession are sufficient to support proposals for listing. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). In both of these notices, *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* were included as category-2 species. Category-2 species are taxa for which data in the Service's possession indicate listing may be appropriate, but for which additional data on biological vulnerability and threats are needed to support a proposed rule. In the 1985 notice, *Cupressus goveniana* ssp. *goveniana* (as *Cupressus goveniana*) was also included for the first time as a category-2 species. On February 21, 1990 (55 FR 6184), the plant notice was again revised, and *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* were included as category-1 species, primarily because of additional survey information supplied by the California Natural Diversity Data Base, which indicated that the extremely limited populations of these taxa made them particularly vulnerable to impacts from a number of human activities and naturally caused stochastic events. Those three species also appeared as category 1 species in the current plant notice of review (September 30, 1993; 58 FR 51144). *Cupressus goveniana* ssp. *goveniana* was retained as a category-2 species in the 1990 and 1993 notices of review.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* because the 1975 Smithsonian report was accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. In October 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991 and 1992, the Service found that the petitioned listing of *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* was warranted, but that the listing of these species was precluded by other pending proposals of higher priority. Publication of this proposal constitutes the final finding for the petitioned actions on these three species.

The portion of this proposal to list *Piperia yadonii* is largely based on scientific and commercial information on the species, unpublished reports from the California Department of Fish and Game, and information submitted by Randall Morgan, which provides sufficient information to support a proposed rule to list this species as endangered. *Piperia yadonii* first appeared as a candidate in the 1993 notice of review (58 FR 51144) in category 1.

A reevaluation of the existing data on the status of *Cupressus goveniana* ssp. *goveniana* and threats to its continued existence provides sufficient information to support a proposal to list this species as threatened.

In its original Review of Vertebrate Wildlife, published in the **Federal Register** on December 30, 1982 (47 FR 58454), the Service included the black legless lizard as a category-2 candidate for listing. Subsequent revised candidate lists published September 18, 1985 (50 FR 37958); January 6, 1989 (54 FR 554); and November 21, 1991 (56 FR

58804), also included this taxa as a category-2 candidate. New information on the extent of habitat loss and the effects of *Carpobrotus edulis* (hottentot fig) on habitat quality now support a proposed rule to list this species as endangered.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus tener* Gray var. *titi* (Eastw.) Barneby (coastal dunes milk-vetch), *Cupressus goveniana* Gord. ssp. *goveniana* (Gowen cypress), *Piperia yadonii* Morgan & Ackerman (Yadon's piperia), *Potentilla hickmanii* Eastw. (Hickman's potentilla), *Trifolium trichocalyx* Heller (Monterey clover), and the black legless lizard (*Anniella pulchra nigra* Fischer) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Three of the plant taxa— *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx*—occur solely on the Monterey Peninsula. The largest of two *Cupressus goveniana* ssp. *goveniana* stands occurs on the Monterey Peninsula, as does the largest population of *Piperia yadonii*. Habitat for all five plant taxa has been altered, destroyed, and fragmented by the subdivision of residential lots and conversion to golf courses and other recreational facilities.

Of the approximately 4,000 hectares (ha) (10,000 acres) of Monterey Pine forest mapped on the Peninsula by the U.S. Forest Service in the 1930s, less than 10 percent remains. This remaining 10 percent is comprised of scattered islands of forest, the largest of which are a few hundred hectares (several hundred acres) in size. The Pebble Beach Company is currently developing a proposal to convert 277 ha (685 acres) into 17 residential subdivisions, another golf course, and associated recreational facilities (Pebble Beach Company 1992). Several of these subdivisions could remove individuals or clumps of *Cupressus goveniana* ssp. *goveniana* that currently survive as islands of native vegetation within the golf course landscape. A planned subdivision is adjacent to occurrences of *T. trichocalyx* and *Astragalus tener* var. *titi* at the Indian Village site. Several of the planned subdivisions may adversely affect *Piperia yadonii*.

Additional development in Pebble Beach is currently being planned that may affect habitat for *C. goveniana* ssp. *goveniana*, *P. yadonii*, and *T. trichocalyx* (Pebble Beach Company 1992). A hospice facility, to be built on lands donated by the Pebble Beach Company and recently approved by the City of Monterey, will remove a portion of a population of *P. yadonii* (Earth Metrics Inc. 1992). Maintenance of facilities, including mowing of golf courses and roadsides can indirectly affect *A. tener* var. *titi*, *P. hickmanii*, and *P. yadonii*.

The black legless lizard was never widely distributed. It is still extant within its range between the Salinas and Carmel Rivers; however, much of the coastal sandy plains and dunes that were historic habitat for this lizard have been converted to urban or other uses, particularly on the Monterey Peninsula. Although precise estimates are unavailable, in 1984 Bury found fewer than 35 hectares (86 acres) of suitable habitat for this species on the Monterey Peninsula (Bury 1985). Another 10 to 14 ha (25 to 35 acres) of potentially suitable habitat existed near Fan Shell Beach on the Monterey Peninsula but was not surveyed at the time (R.B. Bury, National Biological Survey, Ft. Collins, Colorado, pers. comm., 1993). This habitat is still intact, but remains to be surveyed (T. Moss, Asilomar State Beach, California, pers. comm., 1993). In reference to the Monterey Peninsula, Bury (1985) states that "prior habitat was much more extensive but has been obliterated by urbanization, roadways, sand mining, and other surface-modifying activities."

On Monterey Bay, south of the Salinas River, Bury (1985) identified about 374 hectares (925 acres) of potential *Anniella pulchra nigra* habitat, but nearly all areas examined were impacted by one or more human uses suspected of negatively impacting legless lizard habitat and populations, including sand mining, human trampling, military activities, and off-road vehicle activities. The largest contiguous tract of black legless lizard habitat exists at Ford Ord, although estimates on the extent of habitat differ. Estimates of suitable habitat at Fort Ord vary from 190 hectares (470 acres) (Bury 1985) to 1,206 hectares (2,980 acres) (U.S. Army Corps of Engineers 1993). The latter figure is based primarily on potentially suitable habitat in which the presence of the black legless lizard has not been confirmed. Additional suitable habitat existed in 1984 on unsurveyed private lands on Monterey Bay, but this habitat was of limited distribution, in very small parcels, and subject to development (R.B. Bury, pers. comm., 1992).

Exact amount of habitat loss throughout the range since 1984 has not been quantified (R.B. Bury, pers. comm., 1993; T. Moss, pers. comm., 1993). Of 27 localities from which legless lizards have been collected between the Salinas and Carmel Rivers, only 10 or 11 still contain suitable habitat (L. E. Hunt, pers. comm., 1993).

Although heavily impacted by military activities, the largest acreage of remaining suitable habitat for the black legless lizard identified by Bury (1985) occurs at Fort Ord. This U.S. Army base is scheduled to be closed, with the closure process occurring over a period of several years. Activities associated with the closure process, such as disposal (sale of the land) and clean-up, could adversely affect the species. The future disposition of the land is unknown at this time, however, it is likely that some portion of the base will be acquired by the private sector for development. Planned development at Sand City, adjacent to Fort Ord, would result in a loss of black legless lizard habitat, although restoration and long-term conservation of lands set aside for Smith's blue butterfly (*Ephilotes enoptes smithi*), a federally listed endangered species, would enhance the value of remaining habitat within Sand City for this lizard.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not currently known to be a factor for the five plant taxa, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity following publication of this proposal. *Piperia yadonii*, like many other orchids and showy-flowered monocots, may be particularly vulnerable to collecting by amateur and professional horticulturalists due to the plant's attractive flower and the ease with which it can be transplanted.

Vandalism is a potential threat for these plant species. The sites that these plants inhabit could be easily vandalized, resulting in the destruction of the plants. Many of the sites where these plants exist are small and easily accessible, increasing their susceptibility to destruction.

Although the black legless lizard is of interest to many people because it is an unusual reptile, overutilization does not appear to be a factor threatening the species (Bury 1985). The State of California prohibits taking or possession of black legless lizards without a special permit (see Factor D). Federal listing could raise the interest in this animal among reptilian trade markets and increase the threat of collection. Interest in the species among reptile collectors could pose a serious threat to populations that contain few individuals.

C. Disease or Predation

Disease and predation are not known to be factors affecting the five plant taxa being proposed as endangered. Several references discuss diseases that affect cypresses (Peterson 1967, Wagener 1948). However, diseases, such as the oak root fungus (*Armillariella mellea*) and the canker-producing strain of *Cornyeum*, primarily seem to attack cypresses planted outside of their native range and in nursery settings (Wagener 1948). No signs of disease or predation have been noted by biologists familiar with the two *Cupressus goveniana* ssp. *goveniana* stands (Jim Griffin, Research Botanist, Hastings Natural History Reservation, Carmel Valley, CA, pers. comm., 1992, Yadon, pers. comm., 1992).

The black legless lizard has no known diseases, and, although it harbors some internal parasites (Hunt and vanLobenSels in press in Bury 1985), populations of this lizard do not seem to be negatively affected by either disease or parasites. Many lizards have broken or scarred tails, indicating possible attempted predation (Bury 1985). Miller (1944) indicated predation by feral house cats may affect some populations.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (California Fish and Game Code section 1900 *et seq.*) and the California Endangered Species Act (California Fish and Game Code section 2050 *et seq.*), the California Fish and Game Commission has listed *Astragalus tener* var. *titi*, *Potentilla hickmanii*, and *Trifolium trichocalyx* as endangered. *Piperia yadonii* and *Cupressus goveniana* ssp. *goveniana* are on List 1B of the California Native Plant Society's (CNPS) Inventory (CNPS 1992), indicating that, in accordance with section 1901, of the California Department of Fish and Game Code, it is eligible for State listing. Though both the Native Plant Protection Act and the California Endangered Species Act prohibit the "take" of State-listed plants (section 1908 and section 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (section 1913).

The Pebble Beach Company, the primary landowner on the Monterey Peninsula, has developed policy to protect sensitive species and habitats for current management activities, as well as planning of future development (Fryberger, *in litt.*, 1992). While portions of the *Astragalus tener* var. *titi* population and the *Potentilla hickmanii* population have been fenced off, the remaining portions remain vulnerable to disturbance. No specific protection currently exists for *Piperia yadonii*. *Cupressus goveniana* ssp. *goveniana* and habitat for *T. trichocalyx* are partially protected by the restriction on development within the Morse Reserve. However, development of a golf course in the early 1980s removed a significant number of *C. goveniana* ssp. *goveniana* trees and fragmented the remaining habitat. Development is currently being planned within historical habitat for both of these taxa adjacent to the Reserve.

A management plan for Point Lobos State Park (California Department of Parks and Recreation 1979) states that the major management effort within the preserve will be "management toward the pristine state, that is, the state the ecosystem(s) would have achieved if European man had not interfered," but also to provide limited public access to the *Cupressus goveniana* ssp. *goveniana* area. The stand is currently protected from human disturbance by virtue of its isolation and lack of public access, but the acquisition of key parcels now in private ownership may allow for development of limited public access. Any future development on adjacent private parcels may increase the vulnerability of *C. goveniana* ssp. *goveniana* to human disturbance.

The black legless lizard is listed as a protected reptile under Section 650 of the California Sport Fishing regulations. Except under special permit from the California Department of Fish and Game, collection of black legless lizards is prohibited by the State of California. The habitat of this species, however, is not specifically protected by any State or Federal regulation. Land use on black legless lizard habitat is controlled by local zoning, California State Park regulations on State parks such as Marina and Monterey State Beaches, and land management practices on Federal lands, including the Salinas River National Wildlife Refuge, Fort Ord, and the Naval Post-graduate School. The black legless lizard is often given special consideration in land use planning and National Environmental Policy Act and California Environmental Quality Act compliance documents. The California Coastal Act regulates approval of developments within the coastal zone and has slowed the loss of coastal habitats such as the dunes and sand habitats used by black legless lizards. This species has also been afforded some protection indirectly through special management for Federal candidate plant species that occur in coastal areas. Where the black legless lizard is sympatric with the endangered Smith's blue butterfly, protection of habitat for the butterfly has also benefitted the legless lizard.

These regulatory mechanisms have slowed the loss, degradation, and fragmentation of black legless lizard habitat, but additional protection is needed to address regional habitat conservation and long-term survival and recovery of this species.

Sand City is in the process of developing a habitat conservation plan for a 13 acre area known as East Dunes. This area supports Smith's blue butterfly (*Euphilotes enoptes smithi*), *Gilia tenuiflora* var. *arenaria* (sand gilia), *Chorizanthe pungens* var. *pungens* (Monterey spineflower), species that are federally listed as endangered, and the black legless lizard. Sand City is including the black legless lizard in this planning process, and it is likely that the plan would adequately provide for the conservation needs of the lizard on this one site.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Two of the five plant taxa occur in small patches of meadow habitat containing a high percentage of non-native taxa. Along 17-Mile Drive, *Astragalus tener* var. *titi* occurs with the non-native *Plantago coronopus* (cut-leaf plantain) and *Carpobrotus edulis*. These non-native species spread rapidly and compete aggressively with native species for space. The Pebble Beach Company has an active *C. edulis* eradication program in and adjacent to the exclosure on the ocean side of 17-Mile Drive. However, *C. edulis* has been planted and is being maintained within a few feet of the unfenced portion of the milk-vetch habitat on the inland side of 17-Mile Drive, and *P. coronopus*, a prolific seeder, is physically crowding

out native species on both sides of 17-Mile Drive (Ferreira 1992a).

The only population of *Potentilla hickmanii* occurs at Indian Village, where Ferreira (1992b) noted four non-native grass taxa associated with the potentilla at this site: *Aira caryophylla, Bromus mollis, Festuca arundinacea,* and *Lolium multiflorum.* The *Festuca* may have been introduced in a "meadow mix" used on adjacent fairways; its stature and invasiveness appear to offer competition to the potentilla. *Plantago coronopus* is also present at this site.

Cortaderia atacamensis (pampasgrass) and *Cytisus* sp. (genesta) are two other alien plant taxa that compete with native species on the Monterey Peninsula. The Pebble Beach Company has an on-going eradication program for these two taxa in the Huckleberry Hill area adjacent to the *Cupressus goveniana* ssp. *goveniana.* However, numerous fire roads provide open habitat for these invasive taxa and it is unlikely that they will ever be completely eradicated from the area.

Nearly all occupied or potentially occupied black legless lizard localities have substantial populations of exotic plants, particularly *Carpobrotus edulis* (hottentot fig). Legless lizards are primarily associated with moist soil and leaf litter under native vegetation such as *Lupinus albifrons* (bush lupine), *Haplopappus ericoides* (mock heather), and *Artemisia* sp. (sagewort), and are less abundant in areas dominated by *C. edulis* (Bury 1985, City of Sand City 1992, Miller 1944, Morey 1988, Stebbins 1954). As part of habitat restoration efforts at Asilomar State Beach, over 12 hectares (30 acres) of *C. edulis* were removed by hand. During this effort, black legless lizards were not found in pure stands of *C. edulis,* but were encountered where native shrubs were mixed with the hottentot fig (T. Moss, pers. comm., 1993). Hottentot fig may negatively affect insect populations, the prey base for the black legless lizard (Miller 1944, Stebbins 1954), and thus, adversely affect *Anniella* populations (Bury 1985).

Fire plays an important role in the regeneration of all cypress taxa. Alteration of the natural fire cycle may negatively affect *Cupressus goveniana* ssp. *goveniana* regeneration. Fire is essential since it opens cones that otherwise remain unopened on the trees, and it creates conditions appropriate for seedling establishment (Vogl *et al.* 1988).

Griffin (pers. comm., 1992) and Ferreira (1992c) have noted that establishment of *Pinus radiata* (Monterey pine) seedlings after the 1987 fire has been so vigorous that the pine may be expanding its range at the expense of *Cupressus goveniana* ssp. *goveniana.* Yadon (retired Director, Pacific Grove Museum of Natural History, pers. comm., 1992) believes that the pine's preference for richer soils than those that support *C. goveniana* ssp. *goveniana* would prevent long-term establishment of pines in *C. goveniana* ssp. *goveniana* habitat.

Alteration of habitat due to continuing recreational use of portions of Pebble Beach threaten the precipitously small populations of *Astragalus tener* var. *titi,* and *Potentilla hickmanii.* Trampling by humans and horses can affect these taxa directly, as well as alter soil compaction and erodability such that non-native taxa increase at the expense of native taxa.

At least three, and possibly all, of the five plant taxa are threatened with stochastic extinction by virtue of the limited number of individuals and/or range of the existing populations. Inbreeding may affect small populations, making local extirpations more likely from the inability to produce viable offspring in sufficient numbers. Small populations are also vulnerable to extinction by a single human-caused or natural event. While annual plant taxa, such as *Astragalus tener* var. *titi,* will undergo radical fluctuations in population size, the long-term perpetuation of this taxa depends on maintaining seed production at some critical level, and maintaining appropriate habitat for population expansion. While short-lived perennial taxa like *Piperia yadonii* and *Potentilla hickmanii* may be able to persist through a few climatically unfavorable years, it is still essential to maintain critical seed production levels and to maintain appropriate habitat. *Trifolium trichocalyx* exemplifies a taxon that may persist only as a seedbank for years until released by a fire event. Maintaining habitat and certain fire management prescriptions may be required to prevent the extinction of this species.

The range occupied by *Cupressus goveniana* ssp. *goveniana* is considered extremely small; only *Cupressus abramsiana* (Santa Cruz cypress) and *C. macrocarpa* (Monterey cypress) have stands that occupy as few hectares (acres) as *C. goveniana* ssp. *goveniana* (Griffin and Critchfield 1976). Apparently the 1901 fire on Huckleberry Hill reduced *C. goveniana* ssp. *goveniana* to only a few hectares. Though later observers commented on the extent of recolonization after the fire (Dunning 1906 in Vogl *et al.* 1988, Wolf 1948), the reduction in genetic variability from such events may leave species unable to adapt to changing environmental conditions (Brussard 1985, Menges 1990, Shaffer 1981).

Existing black legless lizard habitat is severely fragmented due to construction of roads, golf courses, and other urban development that creates barriers to movement and isolates populations. Some extant populations are restricted to extremely small habitat patches, such as at Monterey State Beach and the U.S. Navy Post-Graduate School, where a population persists on a remnant 0.5-hectare (1.2-acre) habitat patch (Bury 1985). Because of small size, these fragmented populations have an increased probability of extinction from stochastic (i.e., random) events (Wilcox and Murphy 1985). Once extirpated, isolation can prevent recolonization of these habitat patches (Frankel and Soule 1981).

The black legless lizard exhibits relatively low fecundity and it is suspected that not all adult females breed each year (Goldberg and Miller 1985, Miller 1944). The related silvery legless lizard has a 4 month gestation period, and produces only 1 or 2 eggs per adult female per year (Goldberg and Miller 1985). Similarly, an average of 1.7 eggs were found in the oviducts of black legless lizards (Miller 1944). This low reproductive potential implies relatively long population recovery times and a heightened sensitivity to habitat impacts such as off-road vehicles, trampling, and other disturbances.

Strong storms and extreme high tides periodically occur at Monterey Bay. These high tides can result in erosion of coastal dunes and shorelines, causing destruction of habitat and mortality of black legless lizards. Without adjacent refugia, such habitats can become devoid of lizards with little chance of recolonization. Because of the fragmented distribution and relatively low reproductive potential of the black legless lizard, these natural events may increase the chance of local extirpations.

As mentioned in Factor A, the alien plant *Carpobrotus edulis* may negatively impact native insect populations that provide prey for *Anniella* species (Miller 1944) and that could conceivably affect *Anniella* populations (Bury 1985).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the Service finds that *Astragalus tener* var. *titi, Piperia yadonii, Potentilla hickmanii, Trifolium trichocalyx,* and the black legless lizard are in imminent danger of extinction throughout all or a significant portion of their ranges. Threats to these four taxa include one or more of the following: habitat destruction, residential development, road maintenance activities, competition from alien plants, alteration of natural fire cycles, military activities, and extinction from stochastic events.

For the reasons discussed above, the Service finds that *Cupressus goveniana* ssp. *goveniana* is likely to become endangered within the foreseeable future throughout all or a significant portion of its range due to habitat alteration and destruction, urban development, disruption of natural fire cycles, competition from alien plants, and stochastic events. The Service has determined that threatened rather than endangered status is appropriate for *C. goveniana* ssp. *goveniana* primarily because one of two populations (the Gibson Creek stand managed by the California Department of Parks and Recreation) has not been significantly affected by human activities. Also, since it is long-lived, *C. goveniana* ssp. *goveniana* may be able to withstand a certain level of habitat disturbance as long as sufficient habitat is maintained. Other alternatives to this action were considered but not preferred because not listing this species at all would not provide adequate protection and not be in keeping with the purposes of the Act, and listing it as endangered would not be appropriate, as the California Department of Parks and Recreation has decreased the danger of extinction at the present time. Therefore, the preferred action is to propose *Astragalus tener* var. *titi, Piperia yadonii, Potentilla hickmanii, Trifolium trichocalyx,* and the black legless lizard as endangered; and *Cupressus goveniana* ssp. *goveniana* as threatened.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the taxa are determined to be endangered or threatened. Critical habitat results in additional protection to a species' habitat with respect to projects that are federally authorized, funded, or carried out, through the consultation requirements described in section 7 of the Act. The Service finds that designation of critical habitat is not presently prudent for these taxa. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is imperiled by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

In the case of *Astragalus tener* var. *titi, Potentilla hickmanii, Piperia yadonii, Cupressus goveniana* ssp. *goveniana, Trifolium trichocalyx,* and the black legless lizard both criteria are met. The publication of critical habitat descriptions and maps required in a proposal for critical habitat could increase the degree of threat to these six taxa from possible take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. These six taxa occur within small areas at few locations and are vulnerable to stochastic extinction. The listing of these plants and the lizard as either endangered or threatened publicizes the rarity of the taxa and thus can make them attractive to researchers, curiosity seekers, or collectors of rare plants or animals.

A determination of critical habitat would result in no known benefit to these taxa. The closure of Fort Ord is resulting in the transfer of lands to State Parks and the University of California at Santa Cruz ownership. These lands will be designated as protected habitats for which habitat management plans are under development. Other than the Fort Ord property, most of the known populations of these species are found on state or private lands where Federal involvement in land-use activities does not generally occur. Additional protection resulting from critical habitat designation is achieved through the section 7 consultation process. Since section 7 would not apply to land-use activities occurring on State and private lands and Fort Ord will designate protected habitats for these species, critical habitat designation would not appreciably benefit these species.

All Federal and State agencies involved and local major land owners and planning agencies have been notified of the general location and importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following a listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Two of the taxa, *Piperia yadonii* (Yadon's piperia) and the black legless lizard, occur within the boundaries of Fort Ord. Military training activities may affect these taxa and their habitat as could the Federal decision for the ultimate disposition of this property. The Department of Defense would be required to consult with the Service on actions that may affect these two species. Other Federal lands that support habitat for the black legless lizard include the Salinas National Wildlife Refuge and the Naval Post-graduate School in Monterey; however, there are no currently proposed activities on those lands that would affect the lizard. Urban development projects that are occurring on private lands may require permits from Federal agencies, such as section 404 permits from the Army Corps of Engineers.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants,

and at 50 CFR 17.71 and 17.72 for threatened plants set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the four plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. *Cupressus goveniana* ssp. *goveniana* (Gowen cypress), proposed to be listed as threatened, would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E); 50 CFR 17.61, 17.71).

Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Several central coast nurseries have cultivated *Cupressus goveniana* ssp. *goveniana* on occasion, but it apparently is not popular enough to be kept in stock on a regular basis. The Pebble Beach Company is actively cultivating this plant to be used in efforts to restore disturbed habitat (Fryberger, in litt., 1992).

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. With respect to the black legless lizard, these prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations on listed plants and wildlife and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Permits Branch, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6241, facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received by September 25, 1995. Such requests must be made in writing and addressed to the Field Supervisor of the Ventura Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Ventura Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Constance Rutherford and James Rorabaugh, Ventura Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under REPTILES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	When listed	Status	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
Lizard, black legless	*Anniella pulchra nigra*	U.S.A. (CA)	Entire		E	NA	NA

3. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Astragalus tener var. *titi.*	Coastal dunes milk-vetch.	U.S.A. (CA)	Fabaceae	E		NA	NA
Cupressus goveniana ssp. *goveniana.*	Gowen cypress	U.S.A. (CA)	Cupressaceae	T		NA	NA
Piperia yadonii	Yadon's piperia	U.S.A. (CA)	Orchidaceae	E		NA	NA
Potentilla hickmanii	Hickman's potentilla	U.S.A. (CA)	Rosaceae	E		NA	NA
Trifolium trichocalyx	Monterey clover	U.S.A. (CA)	Fabaceae	E		NA	NA

Dated: December 30, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

Editorial note: This document was received at the Office of the Federal Register on July 27, 1995.

[FR Doc. 95–18811 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AD34

Endangered and Threatened Wildlife and Plants; Proposed Endangered or Threatened Status for Seven Plants From the Mountains of Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list two plants as endangered under the Endangered Species Act of 1973, as amended (Act): *Poa atropurpurea* (San Bernardino bluegrass) and *Taraxacum californicum* (California dandelion). The Service also proposes to list five plants as threatened: *Arabis johnstonii* (Johnston's rock-cress), *Arenaria ursina* (Bear Valley sandwort), *Castilleja cinerea* (ash-grey Indian paintbrush), *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild buckwheat), and *Trichostema austromontanum* ssp. *compactum* (Hidden Lake bluecurls).

These species are restricted to the Transverse and Peninsular Ranges of southern California, primarily the San Bernardino and San Jacinto mountains. *Arenaria ursina, Castilleja cinerea,* and *Eriogonum kennedyi* var. *austromontanum* occur primarily on pebble plains that are relatively open areas with clay soils. *Poa atropurpurea* and *Taraxacum californicum* are found in mountain meadows. The only known population of *Trichostema austromontanum* ssp. *compactum* is associated with an ephemeral pond. *Arabis johnstonii* is found in forest and chaparral habitats. These seven taxa are threatened by one or more of the following: urbanization, habitat degradation by domestic animals, grazing, competition from introduced weeds, off-road vehicle (ORV) use, trampling, recreational development, alteration of the hydrologic regime, overcollection, and genetic absorption with exotic species. *Poa atropurpurea,*

T. californicum, and *T. austromontanum* ssp. *compactum* are also threatened by stochastic extinction due to their small population sizes and limited distributions. This proposed rule, if made final, would extend protection under the Act to these species.

DATES: Comments from all interested parties must be received by October 9, 1995. Public hearing requests must be received by September 25, 1995.

ADDRESSES: Comments and materials concerning this proposal should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich, Field Supervisor, at the above address (619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

Arabis johnstonii (Johnston's rock-cress) is a herbaceous perennial in the mustard family (Brassicaceae), with leaves in a basal rosette from which the flowering stem arises. The leaves, which range from 1 to 2 centimeters (cm) (0.4 to 0.8 inches (in.)) long and 1.5 to 3.5 millimeters (mm) (0.06 to 0.14 in.) wide, are narrowly spatulate to oblanceolate, entire, and densely pubescent with fine dendritic (branched) hairs. This species blooms from February to June. It has purple flowers with four petals, 8 to 10 mm (0.32 to 0.4 in.) long. The fruit is a hairless, narrow silique (a linear, many-seeded pod), 3 to 5 cm (1.2 to 2 in.) long and 2 to 3 mm (0.08 to 0.12 in.) wide. *Arabis johnstonii* was first collected in 1922 by Philip A. Munz and I. M. Johnston at Kenworthy, San Jacinto Mountains, Riverside County and described by Munz (1932). *A. johnstonii* is readily distinguishable from all other *Arabis* species in its range by the size and shape of its petals, siliques, and basal leaves (Berg and Krantz 1982).

Arabis johnstonii is found in chaparral and pine forest habitats from 1,400 to 2,150 meters (m) (4,500 to 7,050 feet (ft)) in the southern San Jacinto Mountains. Two distinct population centers are known; one in the vicinity of Garner Valley and the other approximately 6.5 kilometers (km) (4 miles (mi)) east of Garner Valley along the Desert Divide. This species occurs on U.S. Forest Service and private land. Beginning around the late 1800's, habitat loss and degradation began as a result of urbanization and cattle trampling in the Garner Valley, and the construction of the Desert Divide trail. Urban and recreational pressures have substantially affected the species over the past 30 years.

Arenaria ursina (Bear Valley sandwort), *Castilleja cinerea* (ash-grey Indian paintbrush), and *Eriogonum kennedyi* var. *austromontanum* (southern mountain wild buckwheat) are perennial plants that occur predominantly on pebble plains in the San Bernardino Mountains of San Bernardino County. These plains are sparsely vegetated openings in the surrounding forest with clay soils supporting a uniquely adapted assemblage of plant species. Pebble plain habitat is found between 1,800 and 2,300 m (6,000 and 7,500 ft) in elevation, and occurs only within a 240 square km (92 square mile (sq mi)) area in the San Bernardino Mountains (Derby and Wilson 1978, Derby 1979, Krantz 1981a, Neel and Barrows 1990). Due to the unique combination of edaphic and climatic factors, pebble plains contain numerous plant species that are either endemic to the San Bernardino Mountains, or represent disjunct occurrences of species more common elsewhere.

Arenaria ursina is a low-lying perennial herb in the pink family (Caryophyllaceae) with many stems from 6 to 15 cm (2 to 6 in.) long. It has small, white, five-parted flowers with petals 4 to 5 mm (0.16 to 0.2 in.) long and nerveless sepals 3 to 4 mm (0.12 to 0.16 in.) in length with broad papery margins. This species blooms from May to August. *A. ursina* was first collected by S. B. Parish at Bear Valley in the San Bernardino Mountains in 1882, and described by B. L. Robinson (1894). It was subsequently reduced to a variety of *A. capillaris* by A. Gray (1897). B. Maguire (1951) returned the plant to species status. *A. ursina* is readily distinguished from other *Arenaria* species within its range by its sharp-pointed leaves, glandular-hairy stems, and sepals that are obtuse or rounded (Neel and Barrows 1990, Hickman 1993).

Seven populations of *Arenaria ursina* are known from pebble plain habitat in the vicinity of Big Bear and Baldwin Lakes, including Holcomb Valley, Sugarloaf Mountain, and Onyx Ridge (Krantz 1981a, Neel and Barrows 1990). Some of these populations occur on land owned by the California Department of Fish and Game (CDFG) and by private landowners. Most of the extant populations occur on Forest Service land and range from 1,800 to 2,900 m (6,000 to 9,500 ft) in elevation (Griggs 1979, Krantz 1981a, Neel and Barrows 1990). Habitat loss for this species began in the 1880's with the construction of the Big Bear Lake reservoir in the San Bernardino Mountains in an area that likely contained extensive meadows and pebble plains. Over the past 100 years, cattle trampling, mining, timber harvest, off-road vehicle use, fuelwood harvesting, campground and ski area development, and urbanization have affected the habitat of this species.

Castilleja cinerea is a semi-parasitic perennial plant in the snapdragon family (Scrophulariaceae), with few to many ascending to decumbent stems, ½ to 2 decimeters (dm) (4 to 8 in.) tall, sprouting from a woody root-crown. The short grayish leaves are from 1 to 2 cm (0.4 to 0.8 in.) long and are covered with whitish hairs. The inflorescence is a greenish yellow spike, tinged with red or purplish, and with distinctive yellowish hairs on the lower bracts. It flowers primarily in June and July. *C. cinerea* was described by Gray (1883) based on specimens collected by S. B. and W. F. Parish at Bear Valley in 1882. *C. cinerea* is easily distinguished from other species of *Castilleja* within its range by its yellow spike and calyx lobes of equal length (Neel and Barrows 1990).

Castilleja cinerea is known from fewer than 20 localities at the eastern end of the San Bernardino Mountains. The range of this taxon extends from Snow Valley and Fish Camp eastward to Onyx Peak, a distance of about 24 km (15 mi), and from South Fork Meadows northward to Holcomb Valley, a distance of about 19 km (12 mi) (Heckard 1980, Neel and Barrows 1990). Although most populations occur on pebble plains, *C. cinerea* is not strictly endemic to pebble plains. This species is also found near the Snow Valley Ski Area and along Sugarloaf Ridge in pine forest habitats. *C. cinerea* is known to occur on CDFG land, and Forest Service land, including land that is leased for vacation homes and a ski area. Habitat loss for this species began in the 1880's with the construction of the Big Bear Lake reservoir in the San Bernardino Mountains in an area that likely contained extensive meadows and pebble plains. Cattle trampling, mining, timber harvest, off-road vehicle use, fuelwood harvesting, campground and ski area development, and urbanization have affected habitat for this species.

Eriogonum kennedyi var. *austromontanum* is a low, branched perennial 8 to 15 dm (31 to 59 in.) high, in the buckwheat family (Polygonaceae). This species blooms from July through September, and forms loose leafy mats with oblanceolate leaves from 6 to 12 mm (0.2 to 0.5 in.) long. The type specimen, collected in 1920 by R. D. Harwood, is from Bear Valley in the San Bernardino Mountains. *E. k.* var. *austromontanum* was originally described by Munz and Johnston (1924). Though later treated as a subspecies by Stokes (1936), this designation is not generally accepted (Munz and Reveal 1968, Hickman 1993). This taxon is similar in appearance to *E. k.* var. *kennedyi* (Kennedy's buckwheat) (Munz and Reveal 1968). Although the two taxa are very similar in morphology and habitat characteristics, *E. k.* var. *kennedyi* can usually be distinguished by its smaller leaves, 2 to 4 mm (0.08 to 0.16 in.) long, and achenes, 2 mm (0.08 in.) long (Reveal 1979). Another species that could potentially be confused with *E. k.* var. *austromontanum* is *E. wrightii* ssp. *subscaposum*, which has a branched inflorescence and is found in yellow pine forest (Neel and Barrows 1990).

Eriogonum kennedyi var. *austromontanum* is known from six populations in the San Bernardino Mountains, primarily in the Bear Valley and Baldwin Lake areas (Krantz 1981a, Neel and Barrows 1990). *E. k.* var. *austromontanum* is known to occur on Forest Service, CDFG, and private land. The construction of the Big Bear Lake reservoir in the 1880's began habitat loss for this species. This area in the San Bernardino Mountains likely contained extensive meadows and pebble plains. Since then, cattle trampling, mining, timber harvest, off-road vehicle use, fuelwood harvesting, campground and ski area development, and urbanization have continued to affect habitat of this species.

Poa atropurpurea is a perennial in the grass family (Poaceae) with creeping rhizomes and erect stems from 3 to 4.5 dm (12 to 18 in.) high. The inflorescence is a dense spikelike panicle, with smooth, faintly nerved lemmas 2.5 to 3 mm (0.1 to 0.12 in.) long, and glumes 1.5 to 2 mm (0.06 to 0.08 in.) long. This species flowers from early May to June or July. *P. atropurpurea* was described by Scribner (1898) based on specimens collected by S. B. Parish in 1894 at Bear Valley. *P. atropurpurea* is known to occur in meadows of the Big Bear area in the San Bernardino Mountains and in the Laguna Mountains in San Diego County from about 1,800 to 2,300 m (6,000 to 7,500 ft) in elevation (Sproul 1979, Krantz 1981b, Curto 1992). Several other native and at least one exotic species of *Poa* can be found within the range of *P. atropurpurea*, including *P. fendleriana* (mutton grass), *P. incurva*, *P. nevadensis* (Nevada bluegrass), *P. pratensis* (Kentucky bluegrass), and *P. secunda* (*scabrella*) (Malpais bluegrass). *P. atropurpurea* is distinguished from *P. pratensis* by its smaller stature, contracted panicle, and lemmas that lack a tuft of cobwebby hairs at the base (Pierce and Beauchamp 1979). *P. atropurpurea* and *P. pratensis* are distinguished from the other sympatric *Poa* species by creeping rhizomes (Munz 1974).

Habitat for *Poa atropurpurea* is known to exist on Forest Service, CDFG, municipal, and private land in the San Bernardino Mountains. Eleven known population centers of *P. atropurpurea* currently are known to exist. These populations are distributed within a 13 km (8 mi) radius of the town of Sugarloaf (Krantz 1981b). Of these, two localities are on Forest Service land (Holcomb Valley and Wildhorse Meadows), one is administered by CDFG (North Baldwin), one is cooperatively owned by the Forest Service and a private youth camp (Hitchcock Ranch), and seven are privately owned. Eight of the 11 known sites are less than 2.5 hectares (ha) (6 acres (ac)) in size. Fewer than 40 ha (100 ac) of habitat for this species are known to remain in the San Bernardino Mountains: about 9 ha (23 ac) are administered by the Forest Service, 2 ha (5 ac) by the CDFG, and 28 ha (69 ac) are privately owned (Krantz 1981b). In 1979, four known populations of *P. atropurpurea* occurred in the Laguna Mountains. Sproul (1979) reported this taxon to be "one of the rarest and most threatened plants in the Laguna-Morena area." From 1981 until 1993, *P. atropurpurea* was considered to be extirpated from the Laguna Mountains because no individuals could be found despite repeated surveys for this taxon (Curto 1992; Kirsten Winter, U.S. Forest Service, pers. comm. 1993). In spring of 1993, two sites that currently support *P. atropurpurea* were located in the Laguna Mountains within the Cleveland National Forest (Raymond Vizgirdas, U.S. Fish and Wildlife Service biologist, pers. comm. 1993). Each of the 2 populations consists of about 50 individuals (Winter, pers. comm. 1993).

Habitat loss for this species began in the 1880's with the construction of the Big Bear Lake reservoir in the San Bernardino Mountains in an area that likely contained extensive meadows and pebble plains. Since then, grazing, cattle trampling, mining, timber harvest, off-road vehicle use, fuelwood harvesting, campground and ski area development, and urbanization have continued to affect habitat for this species.

Taraxacum californicum is a thick-rooted perennial in the sunflower family (Asteraceae), 0.5 to 2 dm (0.2 to 0.7 ft) high, with light green, oblanceolate, subentire to sinuate-dentate leaves from 5 to 12 cm (2 to 5 in.) long and 1 to 3 cm (0.4 to 1.2 in.) wide. The numerous light yellow flowers are borne on leafless stalks, and bloom from May to August. The outer phyllaries (outer bracts beneath the inflorescence) are erect, lance-ovate, 5 to 7 mm (0.2 to 0.3 in.) long; the inner phyllaries are lance-linear, 12 to 15 mm (0.5 to 0.6 in.) long. This species has been previously treated as *T. officinale* var. *lividum* by Koch (*in* Hall 1907), as *T. lapponicum* by Handel-Mazzetti (1907), as *T. ceratophorum* by Sherff (1920), and *T. ceratophorum* var. *bernardinum* by Jepson (1925). *T. californicum* was described by Munz and Johnston (1925) based on specimens collected by S.B. and W.F. Parish at Bear Valley in 1882. Munz and Johnston (1924) emphasized the morphological distinctiveness of *T. californicum*, in addition to its extremely disjunct distribution. They elevated this taxon to species status primarily on the basis of its small achenes and erect appressed phyllaries. *T. californicum* is readily distinguished from other members of this genus within its range by its lighter green foliage, subentire leaves, erect phyllaries, and paler yellow flowers (Krantz 1980).

Taraxacum californicum occurs in moist meadow habitats in the San Bernardino Mountains from 2,000 to 2,800 m (6,700 to 9,000 ft) in elevation, often in association with *Poa atropurpurea* and other rare species. This species is known to occur on Forest Service, CDFG, municipal, and private land. Fewer than 15 occurrences of *T. californicum* currently are known, with population sizes ranging from 2 to 300 individuals. About half of these occurrences are located within or adjacent to developed areas such as Big Bear City, Big Bear Lake Village, and Sugarloaf in San Bernardino County. Habitat loss for this species began in the 1880's with the construction of the Big Bear Lake reservoir in the San Bernardino Mountains in an area that likely contained extensive meadows and pebble plains. Since then grazing, cattle trampling, mining, timber harvest, off-road vehicle use, fuelwood harvesting, campground and ski area development, and urbanization continue to affect habitat for this species.

Both *Poa atropurpurea* and *Taraxacum californicum* are found in wet meadow habitats, primarily in the northeastern San Bernardino Mountains. These taxa are further restricted to the relatively open edges or ecotonal (border) areas that offer less competition from more mesic species such as *P. pratensis*, *Carex* spp. or

Juncus spp. (Krantz 1981b). The perimeter of such meadows often intergrades with sagebrush scrub dominated by *Artemisia tridentata* or montane forest dominated by *Pinus jeffreyi*.

Trichostema austromontanum ssp. *compactum* is a compact, soft-villous (with long, shaggy hairs) annual in the mint family (Lamiaceae), approximately 10 cm (4 in.) tall. This species flowers in July and August. Its tiny blue, five-lobed flowers are less than 2 mm (0.1 in.) long, with two blue stamens. The fruit is a smooth, four-lobed nutlet. *T. austromontanum* ssp. *compactum* was described by Lewis (1945) based on specimens collected by M.L. Hilend at Hidden Lake (San Jacinto Mountains, Riverside County).

Trichostema austromontanum ssp. *compactum* has historically been restricted to a single vernal pool known as Hidden Lake at an elevation of about 2,400 m (8,000 ft) in the San Jacinto State Wilderness Area. Hidden Lake is the only naturally occurring body of water in the San Jacinto Mountains. The entire known range for this species encompasses less than 0.8 ha (2 ac) (Michael Hamilton, James Reserve Manager, pers. comm. 1993). The population size of *T. austromontanum* ssp. *compactum* declines during periods of either above or below normal precipitation because of its position along the perimeter of the vernal pool habitat (Hamilton 1991). Between 1979 and 1991, the population sizes of this species fluctuated from 11 to 10,000 individuals (Hamilton 1991). Since the creation of the Palm Springs tramway in 1964, Hidden Lake has incurred a greater intensity of trampling damage.

Previous Federal Action

Federal government actions on the seven taxa under consideration in this rule began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened, endangered, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and its intention to review the status of the plant taxa named therein. *Arenaria ursina*, *Poa atropurpurea*, and *Trichostema austromontanum* ssp. *compactum* were included in that notice as endangered species, and *Arabis johnstonii*, *Castilleja cinerea*, and *Taraxacum californicum* were listed as threatened. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the **Federal Register** notice dated July 1, 1975. *A. ursina*, *P. atropurpurea*, and *T. a.* ssp. *compactum* were included in the proposed rule.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the outstanding portion of the June 16, 1976, proposal, along with four other proposals that had expired.

On December 15, 1980, the Service published a revised Notice of Review of plants in the **Federal Register** (45 FR 82480). *Arabis johnstonii*, *Poa atropurpurea*, *Taraxacum californicum*, and *Trichostema austromontanum*. ssp. *compactum* were included in that notice as category 1 candidate species for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* were included in the notice as category 2 candidate species. Category 2 taxa are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. The status of these seven taxa remained unchanged in the Notice of Review published on September 27, 1985 (50 FR 39526). In the February 21, 1990, Notice of Review (55 FR 6184), *Arenaria ursina* was changed to a category 1 candidate species. The status of the other six taxa remained unchanged. In the revision of the plant notice published on September 30, 1993, (58 FR 51144), these categories remained unchanged.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for the seven taxa covered by this rule, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1983 through 1994. Publication of this proposed rule constitutes the final 1-year petition finding for the seven taxa.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Arabis johnstonii* Munz (Johnston's rock-cress), *Arenaria ursina* Robinson (Bear Valley sandwort), *Castilleja cinerea* Gray (ash-grey Indian paintbrush), *Eriogonum kennedyi* Porter ex Watson var. *austromontanum* Munz & Johnston (southern mountain wild buckwheat), *Poa atropurpurea* Scribner (San Bernardino bluegrass), *Taraxacum californicum* Munz & Johnston (California dandelion), and *Trichostema austromontanum* Lewis ssp. *compactum* Lewis (Hidden Lake bluecurls) are as follows (see Table 1):

TABLE 1.—SUMMARY OF THREATS

Species	Threats					
	Trampling	Exotic plants	ORV activity	Development activity	Grazing	Limited numbers
Arabis johnstonii	X		X	X	X	
Arenaria ursina	X	X	X	X		
Castilleja cinerea	X	X	X	X	X	
Eriogonum kennedyi var. *austromontanum*	X	X	X	X		
Poa atropurpurea	X	X	X	X	X	X
Taraxacum californicum	X	X	X	X	X	X
Trichostema austromontanum ssp. *compactum*	X					X

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* The seven taxa considered herein currently are threatened by a variety of activities that result in habitat modification, destruction, degradation, and fragmentation. These activities include urbanization, vehicular activity, hydrologic alterations, and habitat degradation by livestock.

Five of the seven taxa proposed in this rule (*Poa atropurpurea*, *Taraxacum californicum*, *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum*) are predominantly found in pebble plains or meadow habitats in the vicinity of Big Bear Lake in the eastern San Bernardino Mountains. Pebble plains soils contain significant amounts of clay, and are subject to extreme diurnal and seasonal variation in soil temperature and moisture conditions. These soils have an extremely slow infiltration rate and, thus, have a high runoff potential.

Prior to European settlement, pebble plain and meadow habitats were much more abundant in the Big Bear Valley. Krantz (1987) estimated that over 1,000 ha (2,500 ac) of pebble plains and natural meadowlands were lost due to the construction of a dam and the resultant creation of Big Bear Lake in 1883. Subsequent urbanization of the valley, land disturbance from livestock, and off-road vehicle use, destroyed or damaged much of the remaining pebble plain and meadow habitat (Krantz 1987, Neel and Barrows 1990). These factors contributed to the decline of two meadow endemic species found only in the Big Bear Valley area, *Sidalcea pedata* (pedate checker-mallow) and *Thelypodium stenopetalum* (slender-petaled mustard), which were federally listed as endangered in 1984 (49 FR 34497). Nine existing pebble plain complexes have been identified (Neel and Barrows 1990). Less than 220 ha (550 ac) of this highly restricted community remain; about 208 ha (514 ac) is administered by the Forest Service and approximately 12 ha (32 ac) occurs on private land (Neel and Barrows 1990).

Recreational activities have affected and continue to affect the habitat of *Arabis johnstonii*, *Arenaria ursina*, *Castilleja cinerea*, *Eriogonum kennedyi* var. *austromontanum*, *Trichostema austromontanum* ssp. *compactum*, *Poa atropurpurea*, and *Taraxacum californicum*. These activities include heavy, widespread hiking; off-road vehicle use; and development of campgrounds, trails, and ski areas. The San Bernardino National Forest (SBNF) has the highest recreational use of any national forest (SBNF Draft Wildlife, Fisheries, Botany, and Threatened and Endangered Species Program 5-year plan, 1992). The Forest Service has implemented a number of measures (including fencing and signing) to protect pebble plains from illegal off-road vehicle activity. Despite this action, over 40 percent of the pebble plains habitat within Forest Service jurisdiction remains unprotected (Neel and Barrows 1990). Because of the heavy recreational pressures on the SBNF, unauthorized off-road vehicle use remains a threat to these species. The Forest Service has limited resources available for preventing recreational impacts to these habitats. Most of the privately owned pebble plains habitat receive no formal protection. A few, however, have voluntary non-binding landowner agreements to protect this habitat. See Factor D for additional information.

Vehicles cause considerable damage to pebble plains habitat, and all pebble plains habitat have some road development. The pebble plains are extremely susceptible to damage during spring thaw (Krantz 1981a). During the wet season, vehicles both directly destroy plants and create deep ruts that change the water flow patterns over the pebble plains, potentially indirectly affecting greater numbers of plants (Neel and Barrows 1990). All known *Arenaria ursina and Eriogonum kennedyi* var. *austromontanum* populations have been affected by vehicle use to some extent (Krantz 1981a). Vehicular activity directly impacts plants by crushing the plants and compacting and eroding the soil. Although the erosion potential of the soil is not considered high, due to the moderate slopes and rainfall, vehicle use can lead to a breakdown in soil structure (Neel and Barrows 1990). Vehicular activity also favors the establishment of species more tolerant of such disturbance, thereby altering the composition of the plant community over time.

Extensive damage to the pebble plains near North Baldwin Lake occurred in March 1992. A construction vehicle (front-end loader) from the adjacent San Bernardino County landfill was driven over this plant site while the soils were saturated and highly vulnerable to disturbance (Neel and Chaney 1992). Although the site was completely fenced and posted as a rare plant site, the driver trespassed onto the site, drove over the identifying signs and fences, and caused extensive damage to the habitat in an apparently intentional act of vandalism (Tim Krantz, consultant, *in litt.* 1993). Over 1,200 sq m (13,000 sq ft) of pebble plain habitat was moderately to severely damaged from this event. Although restoration was required by the Forest Service, it was not entirely successful since the indirect effects, including alteration of surface hydrology and the subsequent invasion of exotic species, can have significant, long-term effects on this delicate ecosystem (Neel and Chaney 1992, Krantz, *in litt.* 1993). These impacts are not easily reversed because soil compaction could impede germination and the exotic species could compete for nutrients for extensive periods of time.

Incidents involving destruction or degradation of pebble plains habitat by off-road vehicles and vehicular trespass have occurred in the past, and continue to present a significant threat to all pebble plain sites (Maile Neel, SBNF,

pers. comm. 1993, Krantz, *in litt.* 1993). For example, unpermitted grading destroyed a portion of the Castle Glen pebble plain in 1991 (Krantz, *in litt.* 1993). Generally, when such an event occurs, restoration is not undertaken since the persons responsible for the habitat destruction usually cannot be identified, and the Forest Service has insufficient staffing and funding to adequately restore all such disturbed areas. The cumulative effects of unauthorized off-road vehicle use resulted in the almost complete devegetation of a pebble plains site in the SBNF near Sugarloaf (Neel and Barrows 1990). Privately owned pebble plains habitat is unprotected at several locations, including the Big Bear Lake and Sawmill population complexes. In addition, unregulated off-road vehicle activity degraded part of the Horseshoe pebble plain (Sawmill complex) under both Forest Service and private ownership (Krantz, *in litt.* 1993). See Factor D for additional information.

Chaparral and forest habitats in the Garner Valley and Lake Hemet areas containing *Arabis johnstonii* continue to be destroyed or degraded by livestock trampling, and residential and recreational developments, including groundwater drawdown by numerous wells (Hamilton, pers. comm. 1993). These activities contributed to the decline of *A. johnstonii* in the region. The Garner and Wellman grazing allotments may affect several populations of *A. johnstonii* in Garner Valley. The clay substrate is especially vulnerable to trampling and disruption by cattle during the saturated period in winter and early spring. Berg and Krantz (1982) noted evidence of cattle-induced impacts to the substrate in the vicinity of Quinn Flat, located in central Garner Valley, which contains a dense population of *A. johnstonii*.

The decline of Poa atropurpurea and *Taraxacum californicum* can be attributed to a number of activities that destroyed and degraded their habitat, including urbanization, livestock, off-road vehicles, and hydrologic alteration. For example, the creation of Big Bear Lake inundated hundreds of acres of meadows that provided habitat for several sensitive taxa (Krantz 1981b). Subsequent urbanization and recreational developments at the lake eliminated or fragmented many populations of *P. atropurpurea* and *T. californicum* (Krantz 1980; California Natural Diversity Data Base 1992).

At least 70 percent of the remaining *Poa atropurpurea* habitat is unprotected. In several areas of the San Bernardino Mountains, *P. atropurpurea* is sympatric with two State and federally listed endangered species, *Sidalcea pedata* (pedate checker-mallow) and *Thelypodium stenopetalum* (slender-petaled mustard), and was similarly impacted by urbanization and development of meadow habitat. For example, development of the Big Bear airport facilities and the expansion of Bear Mountain Ski Area destroyed two populations of *P. atropurpurea*. A portion of another site was intentionally graded by the landowner in 1991, which also destroyed *S. pedata* habitat (CDFG 1991, Krantz, *in litt.* 1993). Since most of the remaining populations of *P. atropurpurea* are very small, their long-term survival is questionable (Krantz, *in litt.* 1993) (See Factor E). By 1979, half of the four known *Poa atropurpurea* populations in Laguna Meadow (San Diego County) were damaged by cattle trails, telephone line trenching, and soil removal for the construction of an earthen dam at Big Laguna Lake (Sproul 1979). The long-term alteration of surface and subsurface hydrology in Laguna Meadow through dam construction and livestock presence resulted in soil disturbance. In addition, several prolonged drought events in the early 1950's, middle 1970's, and late 1980's may have contributed to the decline of *P. atropurpurea* in this area (Curto 1992).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a threat for any of the taxa under consideration in this proposed rule. All of the taxa proposed herein could potentially suffer vandalism either directly, or indirectly due to habitat destruction. An example of vandalism to pebble plains habitat is the incident at North Baldwin Lake (see Factor A), where a construction vehicle was driven over the plant site even though the site was completely fenced and posted as rare plant habitat. The plant habitat was extensively damaged (Tim Krantz, consultant, *in litt.* 1993).

C. *Disease or predation.* Disease is not known to be a factor affecting any of the taxa under consideration in this rule. However, consumption by livestock is a threat to *Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum, Poa atropurpurea, and Taraxacum californicum* (Krantz 1981a, Krantz, *in litt.* 1993). Krantz (1981b) noted that since animals grazed during the flowering period of P. *atropurpurea*, seed set and sexual reproduction are reduced. *T. californicum* is vulnerable to consumption as its flower heads and leaves are erect and readily removed by grazers (Krantz *in litt.* 1993). In the Big Bear Basin, wild burros forage in and around pebble plain and wet meadow habitats. Feral burros have been observed at North Baldwin and on the pebble plains of Gold Mountain and Sawmill Complex. Though levels of use and degrees of impact from burro grazing and trampling have not been systematically recorded, browsed plants and hoof prints in wet clay soils were noted (Neel and Barrows 1990).

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could provide some protection for these species include: (1) Listing under the California Endangered Species Act, (2) provisions under the California Native Plant Protection Act, (3) consideration under the California Environmental Quality Act (CEQA), (4) Forest Service management policies, (5) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations, (6) State wilderness area management policies, (7) conservation provisions under the Federal Clean Water Act, and (8) local laws and regulations.

The Native Plant Protection Act (Chapter 10, Sec. 1908 *et seq.*) and the California Endangered Species Act (Chapter 1.5, Sec. 2080 *et seq.*) prohibit the "take" of State-listed plants. State law does not, however, protect the plants from taking via habitat modification or land use change by the landowner. After the CDFG notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (Chapter 10, Sec. 1913).

Although State laws could provide a measure of protection to the species, these laws are not adequate to protect the species in all cases. Numerous activities do not fall under the purview of the laws, such as certain projects proposed by the Federal government and projects falling under State statutory exemptions. Where overriding social and economic considerations can be demonstrated, these laws allow project proposals to go forward, even in cases where the continued existence of the species may be jeopardized, or where adverse impacts are not mitigated to the point of insignificance.

The taxa in this rule are included in the California Native Plant Society inventory, but none have been listed by the State. Hence, the California Endangered Species Act currently provides no protection for these species. Since the Native Plant Protection Act only applies to plant species listed by the State, this act also provides no protection to the seven species in this rule. Although these seven taxa are not listed by the State, the CEQA specifies that a species not included on the State list shall be considered to be endangered if the species can be shown to meet the criteria for State listing.

The CDFG recognizes that plants on Lists 1A, 1B, and 2 of the "Inventory of Rare and Endangered Vascular Plants of California" (Smith and Berg 1988) would normally qualify for State listing. All seven plant taxa in this rule are included on California Native Plant Society List 1B, i.e. plants rare, threatened, or endangered in California and elsewhere (Smith and Berg 1988). CDFG generally requests the inclusion of such species in Environmental Impact Reports. However, several projects resulted in the loss of habitat for these taxa, including the expansion of the Big Bear Airport, ski areas, and the development of the Moonridge Golf Course in sensitive meadow habitat (California Natural Diversity Data Base 1992). In addition, projects such as the Eagle Point development have already been approved but do not provide adequate mitigation for the sensitive meadow plants (Neel, pers. comm. 1993). Recently, the City of Big Bear graded habitat containing the federally listed endangered plant species *Sidalcea pedata* without providing appropriate mitigation measures (Mary Meyer, CDFG, pers. comm. 1993). Furthermore, these taxa face threats that are not easily controlled by existing regulations, particularly unauthorized off-road vehicle activity.

With the exception of *Trichostema austromontanum* ssp. *compactum*, which only occurs on State land, all of the taxa under consideration in this rule are found on the SBNF and are recognized by the Forest Service as "sensitive species" (SBNF 1989). The Forest Service has policies to protect sensitive plant taxa, including attempting to establish these species in suitable or historic habitat, encouraging land acquisitions to protect sensitive plant habitat, establishing refugia for pebble plains species, and not permitting activities that may alter the hydrology or meadow habitat for sensitive plants (SBNF 1989). These guidelines, however, have not been entirely effective. Bluff Lake, which is privately owned and contains populations of *Poa atropurpurea* and *Taraxacum californicum*, was identified as a potentially suitable mitigation bank of wetland and wet meadow habitat for developments in the region. It was identified as a high priority for the Forest Service's Land Ownership Adjustment Program (Bruce Daniels, City of Big Bear Lake, *in litt.* 1992). Unfortunately, plans to acquire Bluff Lake are no longer being pursued because the parcel is not available for sale (Neel, pers. comm. 1993).

Although the Forest Service does not permit activities that alter the hydrology of pebble plains or meadows, unauthorized off-road vehicle use continues to be a problem in many areas and contributes to hydrologic modifications of these sensitive habitats. Even if most of the remaining pebble plains and meadow habitats on the SBNF could be adequately protected from human disturbance, the amount of habitat presently occupied by five of the seven taxa under consideration in this rule may not be sufficient to maintain their long-term viability.

The Holcomb Valley/North Baldwin Lake region, which contains known populations of five of the plant taxa in this proposed rule and significant examples of pebble plains habitat, was designated as a Special Interest Area by the Forest Service in 1989 due to its combination of unique botanical, zoological, and historical resources (Lardner, pers. comm. 1993). This designation means that certain activities, such as plant collecting, are restricted. At present, no specific management plan has been developed for the area due to resources being directed toward higher priority activities (Neel, pers. comm. 1993). The "Barstow-to-Vegas" motorcycle race was authorized by the Forest Service to pass through this area in 1992 and 1993 (Loe, pers. comm. 1992, 1994). Although the race is confined to existing dirt roads and no direct impacts to sensitive plants were incurred (Neel, pers. comm. 1993), this officially sanctioned large scale off-road vehicle event took place in one of the highly significant and vulnerable plant habitat areas of the forest (Krantz 1981a). The potential exists for indirect impacts such as foot trampling to occur within the area of these plants. Since the race is likely to become an annual event, it is a potential threat to sensitive plant habitat.

Two of the species in this proposal, *Poa atropurpurea* and *Taraxacum californicum* could potentially be affected by projects requiring a permit under section 404 of the Clean Water Act. Under section 404, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, which include navigable and other waters, their headwaters (streams with an average annual flow of less than 5 cubic feet per second), and wetlands (either isolated or adjacent to other waters). Section 404 regulations require that applicants obtain a permit for projects that involve the discharge of fill into waters of the U.S. Projects that qualify for authorization under Nationwide Permit 26 (NWP 26) and will adversely impact 0.41 ha to 4.0 ha (1 to 10 ac) of waters above the headwater point or in isolated waters (including wetlands) can be permitted with minimal environmental review by the Corps (33 CFR Part 330). Projects that qualify for authorization under NWP 26 that affect less than 0.41 ha (1 ac) of isolated waters including wetlands may proceed without notifying the Corps if the project meets the terms and conditions of the Nationwide Permit. Formal evaluation of the impacts of such a project is thus precluded under the section 404 permit process. An individual permit may be required by the Corps if a project otherwise qualifying under NWP 26 would have greater than minimal adverse environmental impacts. The Corps is generally reluctant to withhold authorization under NWP 26 unless the existence of a federally proposed or listed threatened or endangered species would be affected. Candidate species receive no special consideration under section 404, regardless of the type of permit deemed necessary. Thus, these two taxa currently receive insufficient protection under section 404.

Representatives from various Federal, State, and local agencies, and individuals from the private sector are developing a Coordinated Resource Management Plan (CRMP) for the Big Bear Valley region. The CRMP process is essentially a planning tool that operates on the local level to minimize conflicts among various user groups, landowners, and governmental agencies (CRMP Handbook 1990). The goal of this process is to identify sensitive biological resources and to integrate conservation efforts with those of public and private entities. Although the Service supports these efforts, no protection for any of the species described herein can be guaranteed. This process is ongoing, and is not legally binding for participants (John Hanlon, U.S. Fish and Wildlife Service, pers. comm. 1993).

E. *Other natural or manmade factors affecting their continued existence.* The seven taxa considered in this rule currently are threatened by a variety of other factors including: trampling by humans and livestock, competition with other plant species, genetic absorption, drought, and stochastic events.

Activities related to fuelwood harvesting affect *Arenaria ursina, Castilleja cinerea, Eriogonum kennedyi* var. *austromontanum, Poa*

atropurpurea, and *Taraxacum californicum* due to human trampling of habitat and individual plants.

Trampling by recreational users adversely affects populations of at least three of the species (*Castilleja cinerea*, *Taraxacum californicum*, and *Trichostema austromontanum* ssp. *compactum*). Individuals of *Trichostema* showed reduced vigor under conditions of moderate to heavy trampling by recreational users (Hamilton 1991). Trampling by recreational users and livestock adversely affects *T. californicum* and favors the establishment of *Taraxacum officinale*, since the latter species responds to disturbance by producing flower heads close to the soil surface (Krantz, *in litt.* 1993). At least one population of *C. cinerea* was affected by trampling by recreational users. This site, located across from Snow Valley Ski Area within a Forest Service lease tract, was fragmented by the construction of several large cabins, a parking lot, and trails. In addition, increased trampling and excessive amounts of dust generated during the Barstow-to-Vegas motorcycle race in Holcomb Valley may impact populations of five of the species in this proposed rule: *Arenaria ursina*, *C. cinerea*, *Eriogonum kennedyi* var. *austromontanum*, *Poa atropurpurea*, and *T. californicum* (Neel, pers. comm. 1993).

Due to its accessibility, the *Trichostema austromontanum* ssp. *compactum* population at Hidden Lake is particularly vulnerable to trampling by recreational users. This site, managed by the California Department of Parks and Recreation, has been extremely popular with recreational users since the development of the Palm Springs tramway in 1964. Several measures were initiated by the State during the past decade to protect the vernal pool ecosystem and the *Trichostema* population, including removing references to the site from park interpretive materials. These measures, however, have not prevented impacts from trampling by hikers and horses. Fencing is not permitted because the site is located within a State wilderness area (Hamilton, pers. comm. 1992).

The presence of livestock typically changes the composition of native plant communities by reducing or eliminating those species that cannot withstand trampling, and enabling more resistant (usually exotic) species to increase in abundance. Livestock trampling and competition from exotic species could adversely affect all seven of these plant taxa. Taxa that were not previously part of the native flora may be introduced and flourish under a grazing regime. They may reduce or eliminate native plant species through competition for resources. Introduced species are used as forage in San Bernardino and Cleveland National Forest grazing allotments. The native grass *Poa atropurpurea* cannot successfully compete with these populations of non-native grass species (Winter 1991). Evidence of cattle-induced impacts in the vicinity of Quinn Flat, in central Garner Valley, was observed where a population of *Arabis johnstonii* exists (Berg and Krantz 1982).

Sites supporting *Arabis johnstonii*, *Arenaria ursina*, *Castilleja cinerea*, *Eriogonum kennedyi*, *Poa atropurpurea*, and *Taraxacum californicum* were moderately to heavily degraded by cattle trampling in the past (e.g., Big Meadow, Wildhorse Meadow, Holcomb Valley, Hitchcock Ranch, Bluff Lake, Garner Valley, and Laguna Meadow). Some areas continue to be grazed by cattle, horses, or burros. The Santa Ana grazing allotment includes a population of *C. cinerea* on Sugarloaf Ridge (Melody Lardner, SBNF, pers. comm. 1993). In the Cleveland National Forest, the major threat to P. *atropurpurea* is grazing, as all the Laguna Meadow populations are located within grazing allotments.

Introduced species of grasses and forbs have invaded many of California's native plant communities. Such weedy species can displace the native flora by competing for nutrients, water, light, and space. Weedy plant invasions are facilitated by disturbances such as grazing, urban and residential developments, and various recreational activities. Introduced weeds became established in many portions of the San Bernardino, San Jacinto, and Laguna mountains reducing the amount of suitable habitat for *Taraxacum californicum*, *Poa atropurpurea*, and other native plant species. For example, the invasion of the exotic cheatgrass (*Bromus tectorum*) is considered to be a threat to the Sawmill pebble plain habitat, which supports populations of *Arenaria ursina*, *Castilleja cinerea*, and *Eriogonum kennedyi* var. *austromontanum* (Neel and Barrows 1990). In most localities, *T. californicum* was out-competed by the widespread, non-native *T. officinale*, especially in areas that were disturbed by grazing or human activities. Exotic grass and weed species could displace populations of both *P. atropurpurea* and *T. californicum* through competition if activities such as grazing, trampling, and off-road vehicles that favor aggressive introduced species continue.

Two species are threatened with the loss of their genetic distinctiveness due to genetic exchange with species of the same genera. *Poa atropurpurea* has potentially been affected by genetic absorption by the widespread non-native *P. pratensis* (Pierce and Beauchamp 1979, Sproul 1979, Curto 1992). Genetic absorption of *P. atropurpurea* by the exotic *P. pratensis* is a threat to the long-term viability of this species. *Taraxacum californicum* may also be threatened with genetic absorption by the introduced *T. officinale* (Krantz, *in litt.* 1993). Apparent hybrids between these two taxa were observed in areas where they overlap in distribution (Krantz, pers. comm. 1993; Krantz 1980). Since *T. californicum* rarely occurs in the absence of *T. officinale*, the potential for loss of genetic distinctiveness of the restricted species exists. Although both *T. californicum* populations are protected, in part, by fencing of habitat at North Baldwin Lake (owned by CDFG) and Holcomb Valley (Forest Service), this species is likely threatened at all sites by genetic absorption and competition with *T. officinale*.

Drought conditions can also negatively affect pebble plains species. The severe drought in 1989 dramatically reduced the number of flowering individuals of pebble plains taxa and their associated insect pollinators (Freas and Murphy 1990). Since both *Arenaria ursina* and *Eriogonum kennedyi* var. *austromontanum* are dependent on insects for seed set, such environmental conditions can adversely affect their reproductive success (O'Brien 1980, Freas and Murphy 1990). Therefore, if numbers of these species continue to decline and reproductive success is low, a series of drought events may pose a threat to the species because of now limited distribution.

Stochastic extinction threatens the plants discussed herein, particularly *Poa atropurpurea*, *Taraxacum californicum*, and *Trichostema austromontanum* ssp. *compactum*, by virtue of their small population size and limited distribution. Genetic viability is reduced in small populations, making them vulnerable to extinction by manmade or natural events. The potential for local extirpation precipitated by small population size can be exacerbated by environmental conditions such as the recent drought. For example, the few numbers of *P. atropurpurea* individuals at the two remaining sites in the Laguna Mountains could be eliminated by grazing (i.e., consumption, trampling, soil disturbance), competition from alien plants, alteration of the hydrologic regime, or other forms of disturbance,

resulting in the extirpation of the species (Curto 1992). Most known populations of *T. californicum*, including Hitchcock Ranch, Big Meadow (Forest Service), and Pan Hot Springs (City of Big Bear), are so limited in numbers (R. Vizgirdas, U.S. Fish and Wildlife Service, pers. comm. 1992) that they may not survive in the future without recovery actions such as reducing competition from exotic plants and restoring degraded habitat areas.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the Service finds that *Poa atropurpurea* and *Taraxacum californicum* are in imminent danger of extinction throughout all or a significant portion of their ranges due to habitat destruction and alteration resulting from urban and recreational development; grazing; trampling by livestock and humans; inadequacy of existing regulatory mechanisms; genetic absorption; stochastic extinction; and competition from exotic plant species. Therefore, the preferred action is to list *P. atropurpurea* and *T. californicum* as endangered. Other alternatives to this action were considered but not preferred because not listing these species at all, or listing them as threatened would not provide adequate protection or would not be in keeping with the purposes of the Act.

For the reasons discussed above, the Service finds that *Arabis johnstonii*, *Arenaria ursina*, *Castilleja cinerea*, *Eriogonum kennedyi* var. *austromontanum*, and *Trichostema austromontanum* ssp. *compactum* are likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges if identified threats are not reduced or eliminated. Threats to these five taxa include habitat destruction and alteration from urban development and off-road vehicle activity; habitat degradation and predation by livestock and feral burros; trampling; and stochastic events. The Service has determined that threatened rather than endangered status is appropriate for *A. johnstonii*, *A. ursina*, *C. cinerea*, *E. kennedyi* var. *austromontanum*, and *T. a.* ssp. *compactum* primarily because the Forest Service has initiated some measures to protect these species. Management activities conducted by the Forest Service (such as fencing, signing, and monitoring various sensitive habitat areas) have reduced the potential for habitat destruction by human activities to the degree that the danger of extinction for these taxa is not imminent. However, the signs and fences are often destroyed or removed, hence most localities containing these taxa remain vulnerable to trespass by off-road vehicles and other recreational users (Neel, pers. comm. 1993). Other alternatives to this action were considered but not preferred because not listing these species at all would not provide adequate protection and would not be in keeping with the purposes of the Act. Listing them as endangered would not be appropriate as the Forest Service has decreased the danger of extinction at the present time. Critical habitat is not being proposed for these species at this time, as discussed below.

Critical Habitat

Critical habitat is defined by section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.21) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these taxa at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed in Factors A and B, vandalism, primarily by through unauthorized trespassing in motorized vehicles, is a threat to these species. One documented example of intentional habitat destruction has been cited above in an area containing several of the species proposed herein for listing. Acts of vandalism and habitat destruction against other Federally listed endangered species in the region discussed in this rule have occurred when the location of plant populations were divulged (Mary Meyer, CDFG, pers. comm. 1995). The publication of the required maps and descriptions for a critical habitat proposal would increase the degree of threat to these taxa from possible take or vandalism. The listing of species as endangered or threatened publicizes their rarity, and can make them more susceptible to collection by researchers or curiosity seekers. Designation of critical habitat could further contribute to their decline and increase enforcement problems.

In addition, designation of critical habitat would not be beneficial for these species. All Federal agencies and local planning agencies involved were notified of the location and importance of protecting habitat for these species. For the populations under Federal jurisdiction, protection of the habitat of these species will be addressed through the Act's section 4 recovery process and section 7 consultation process. Those populations extant on privately owned lands would receive no benefit from critical habitat designation. For the reasons discussed above, the Service finds that designation of critical habitat for these taxa is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of

proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with section 7 regarding these species include the Forest Service through its management activities, and the U.S. Army Corps of Engineers and the Environmental Protection Agency, through their permit authority under section 404 of the Clean Water Act. The Federal Housing Administration may be affected through funding of housing loans where these species or their habitat occurs. The Federal Highway Administration may be affected through potential funding of future highway construction that could affect these species. The Federal Energy Regulatory Commission may be involved through its permitting authority for utility projects that might potentially affect these taxa.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR parts 17.61 or 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale any such species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to these species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 for endangered plants and Part 17.72 for threatened plants also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits area also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few permits would ever be sought or issued because these species are not in cultivation or common in the wild.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. Six of the seven species in this rule are known to occur on lands managed by the Forest Service. Collection, damage or destruction of these species on Forest Service lands is prohibited although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands would constitute a violation of section 9 of the Act if conducted in knowing violation of California State law, including State criminal trespass law. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding activities that may constitute violations of section 9 should be directed to the Field Supervisor of the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; Facsimile 503/231–6243)

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The Service specifically solicits opinion from independent specialists regarding pertinent scientific or commercial data and assumptions relating to taxonomy, population models, and supportive biological and ecological information.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor of the Carlsbad Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Edna Rey Vizgirdas, Carlsbad Field Office (see **ADDRESSES** section) or telephone 619–431–9440.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend Part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Arabis johnstonii	Johnston's rock-cress.	U.S.A. (CA)	Brassicaceae	T		NA	NA
Arenaria ursina	Bear Valley sandwort	U.S.A. (CA)	Caryophyllaceae	T		NA	NA
Castilleja cinerea	Ash-grey Indian paintbrush.	U.S.A. (CA)	Scrophulariaceae	T		NA	NA
Eriogonum kennedyi var. *austromontanum.*	southern mountain wild buckwheat.	U.S.A. (CA)	Polygonaceae	T		NA	NA
Poa atropurpurea	San Bernardino blue-grass.	U.S.A. (CA)	Poaceae	E		NA	NA
Taraxacum californicum.	California dandelion	U.S.A. (CA)	Asteraceae	E		NA	NA
Trichostema austromontanum ssp. *compactum.*	Hidden Lake bluecurls.	U.S.A. (CA)	Lamiaceae	T		NA	NA

Dated: July 5, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–18975 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 23

RIN 1018–AC70

Export of River Otters Taken in Tennessee in the 1995–96 and Subsequent Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. Exports of animals and plants listed on Appendix II of CITES require an export permit from the country of origin. As a general rule, export permits are only issued after two conditions are met. First, the exporting country's CITES Scientific Authority must advise the permit-issuing CITES Management Authority that such exports will not be detrimental to the survival of the species. This advice is known as a "no-detriment" finding. Second, the Management Authority must make a determination that the animals or plants were not obtained in violation of laws for their protection. If live specimens are being exported, the Management Authority must also determine that the specimens are being shipped in a humane manner with minimal risk of injury or damage to health.

The purpose of this proposed rulemaking is to announce proposed findings by the Scientific and Management Authorities of the United States on the proposed export of river otters harvested in the State of Tennessee, and to propose the addition of Tennessee to the list of States and Indian Nations for which the export of river otters is approved. The Service intends to apply these findings to harvests in Tennessee during the 1995–96 season and subsequent seasons, subject to the conditions applying to approved States.

DATES: The Service will consider comments received on or before October 2, 1995 in making its final determination on this proposal.

ADDRESSES: Please send correspondence concerning this proposed rule to the Office of Scientific Authority; Mail Stop: 725 Arlington Square; U.S. Fish and Wildlife Service; 1849 C St. NW, Washington, DC 20240 (FAX number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; Room 750, 4401 North Fairfax Drive; Arlington, Virginia, 22203. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington Square Building, 4401 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Finding—Dr. Marshall A. Howe, Office of Scientific Authority; phone 703–358–1708; FAX 703–358–2276.

Management Authority Findings/State Export Programs—Ms. Carol Carson, Office of Management Authority; Mail Stop: Arlington Square, Room 420c; U.S. Fish and Wildlife Service; Washington, DC 20240 (phone 703–358–2095; FAX 703–358–2280).

SUPPLEMENTARY INFORMATION: On January 5, 1984 (49 FR 590), the Service published a rule granting export approval for river otters and certain other CITES-listed species of furbearing mammals from specified States and Indian Nations and Tribes for the 1983–84 and subsequent harvest seasons. In succeeding years, approval for export of one or more species of furbearers has been granted to other States and Indian Nations, Tribes, or Reservations through the rulemaking process. These approvals were and continue to be subject to certain population monitoring and export requirements. The purpose of this notice is to announce proposed findings by the Scientific and Management Authorities of the United States on the proposed export of river otters, *Lontra* (=*Lutra*) *canadensis*, harvested in the State of Tennessee, and to add Tennessee to the list of States and Indian Nations for which the export of river otters is approved. The Service proposes these findings for the export of specimens harvested in the State of Tennessee during the 1995–96 season and subsequent seasons, subject to the conditions applying to other approved entities.

CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (*e.g.*, because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

In the January 5, 1984, **Federal Register** (49 FR 590), the Service announced the results of a review of listed species at the Fourth Conference of the CITES Parties that certain species of furbearing mammals, including the river otter, should be regarded as listed in Appendix II of CITES because of similarity in appearance to other listed species or geographically separate populations. The January 5, 1984, document described how the Service, as Scientific Authority, planned to monitor annually the population and trade status of each of these species and to institute restrictive export controls if prevailing export levels appeared to be contributing to a trend of long-term population decline. The document also described how the Service, as Management Authority, would require States to assure that specimens entering trade are marked with approved, serially unique tags as evidence that they had been legally acquired.

Scientific Authority Findings

Article IV of CITES requires that, before a permit to export a specimen of a species included in Appendix II can be granted by the Management Authority of an exporting country, the Scientific Authority must advise "that such export will not be detrimental to the survival of that species." The Scientific Authority for the United States must develop such advice, known as a no-detriment finding, for the export of Appendix II animals in accordance with Section 8A(c)(2) of the Endangered Species Act of 1973, as amended (the Act). The Act states that the Secretary of the Interior is required to base export determinations and advice "upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice."

The river otter is managed by the wildlife agencies of individual States or Indian Nations. Those States and Indian Nations from which the Service has approved the export of river otters in 1983–84 and subsequent seasons were identified in the January 5, 1984, **Federal Register** (49 FR 590) and listed in 50 CFR 23.53. Each export-approved State or Indian Nation in which this animal is harvested has a program to regulate the harvest. Based on information received from the State of Tennessee, the Service proposes adding that State to the list of States and Indian Nations approved for export of river otters.

Given that the river otter is listed on Appendix II of CITES primarily because of similarity of appearance to other listed species in need of rigorous trade controls, an important component of the no-detriment finding by the Scientific Authority is consideration of the impact of river otter trade on the status of these other species. The Scientific Authority has determined that the dual practice of (1) issuing export permits naming the species being traded and (2) marking pelts with tags bearing the name of the species, country and State of origin, year of harvest, and a unique serial number, is sufficient to eliminate potential problems of confusion with, and therefore risk to, other listed species (see Management Authority Findings for tag specifications).

In addition to considering the effect of trade on species or populations other than those being exported from the United States, the Service will regularly examine information provided by the State of Tennessee to determine if there is a population decline in river otters that might warrant more restrictive export controls. This monitoring and assessment will follow the same procedures adopted for other States and Indian Nations. As part of this monitoring program, the States and Indian Nations that have been approved for export of river otters are requested annually to certify that the best available biological information derived from professionally accepted wildlife management practices indicates that harvest of river otters during the forthcoming season will not be detrimental to the survival of the species.

Whenever available information from the States or other sources indicates a possible problem in a particular State, the Scientific Authority will conduct a comprehensive review of accumulated information to determine whether conclusions about the treatment of these species as listed for similarity of

appearance need to be adjusted in the State.

Natural repopulation of river otters has been occurring in western Tennessee since the 1950's. This increase is consistent with a widespread pattern in the United States and is believed, in part, to reflect colonization of suitable habitat created recently by a rapidly expanding beaver population. Tennessee has supported a study of the demography, food habits, and habitat use of river otters in the State. The results of these studies show that age and sex ratios of river otters in western Tennessee are similar to those of healthy river otter populations elsewhere, including populations experiencing harvest.

The Tennessee Wildlife Resources Agency has conducted experimental river otter trapping seasons annually since 1989 in the western part of the State. Total annual harvest has ranged from 71 (1990–91) to 176 (1992–93). In the central and eastern parts of Tennessee, this species is still classified under State law as threatened and is not legally harvested at this time. The available biological and harvest information leads the Service to conclude that export of river otters legally harvested in Tennessee will not be detrimental to the survival of the species.

All otters taken by trappers are required to be marked with special tags approved by the Wildlife Resources Agency. The State also conducts a questionnaire survey of licensed trappers annually. These surveys identify the size and geographic derivation of the river otter harvest and will provide insight into State river otter population trends over time. Analysis of these data should detect population declines symptomatic of either an unhealthy population or overharvest in time to take corrective action through regulatory adjustments or other means.

Based upon (a) the information presented by the Tennessee Wildlife Resources Agency, including river otter harvest regulations, and (b) the determination that permitting and tagging requirements will eliminate the possibility that other similar-appearing, CITES-listed species in trade will be misrepresented as river otters, the Service proposes to issue Scientific Authority advice in favor of export of river otters harvested in 1995–96 and subsequent seasons from Tennessee.

Management Authority Findings

Exports of Appendix II species are allowed under CITES only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws for the protection of the involved species. The Service, therefore, must be satisfied that the river otter pelts, hides, or products being exported were not obtained in violation of State, Indian Nation, Tribal, Reservation, or Federal law in order to allow export. Evidence of legal taking for Alaskan gray wolf, Alaskan brown or grizzly bear, American alligator, bobcat, lynx, and river otter is provided by State or tribal tagging programs. The Service annually contracts for the manufacture and delivery of special CITES animal-hide tags for export-qualified States and Indian Nations, Tribes, and Reservations. The Service has adopted the following export requirements for the 1983–84 and subsequent seasons:

(1) Current State or Indian Nation, Tribe, or Reservation hunting, trapping, and tagging regulations and sample tags must be on file with the Office of Management Authority;

(2) The tags must be durable and permanently locking and must show U.S.-CITES logo, State or Indian Nation, Tribe, or Reservation of origin, year of take, species, and a unique serial number;

(3) The tag must be attached to all pelts taken within a minimum time after take, as specified by the State and Indian regulation, and such time should be as short as possible to minimize movement of untagged pelts;

(4) The tag must be permanently attached as authorized and prescribed by the State or Indian regulation;

(5) Takers/dealers who are licensed/registered by States or Indian Nations, Tribes, or Reservations must account for tags received and must return unused tags to the State or Indian Nation, Tribe, or Reservation within a specified time after the taking season closes; and,

(6) Fully manufactured fur (or hide) products may be exported from the United States only when the CITES export tags, removed from the hides used to make the product being exported, are surrendered to the Service prior to export.

Proposed Export Decision

The Service proposes to approve exports of Tennessee river otters harvested during the 1995–96 or subsequent harvest seasons on the grounds that both Scientific Authority and Management Authority criteria have been satisfied.

Comments Solicited

The Service requests comments on these proposed findings and the proposed rulemaking adding Tennessee to the list of States approved for export of river otters. The final decision on this proposed rule will take into account comments received and any additional information received. Such consideration may lead to findings different from those presented in this proposal.

Effects of the Rule and Required Determinations

The Department has previously (48 FR 37494) determined that the export of river otters of various States and Indian Tribes or Nations, taken in the 1983–84 and subsequent harvest seasons, was not a major Federal action that would significantly affect the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347). This action is covered under an existing Departmental categorical exclusion for amendments to approved actions when such changes have no potential for causing substantial environmental impact.

This rule was not subject to Office of Management and Budget review under Executive Order 12866 and will not have significant economic effects on a substantial number of small entities as outlined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because the existing rule treats exports on a State-by-State and Indian Nation-by-Indian Nation basis and proposes to approve export in accordance with a State or Indian Nation, Tribe, or Reservation management program, the rule will have little effect on small entities in and of itself. The proposed rule would allow continued international trade in river otters from the United States in accordance with CITES, and it does not contain any Federalism impacts as described in Executive Order 12612.

This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This proposal is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*). The authors are Marshall A. Howe, Office of Scientific Authority, and Carol Carson, Office of Management Authority.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Imports, Transportation, Treaties.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service proposes to amend Part 23 of Title 50, Code of Federal Regulations, as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.C. 1087; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

2. In Subpart F—Export of Certain Species, revise § 23.53 to read as follows:

§ 23.53 River otter (Lontra canadensis).

States for which the export of the indicated season's harvest may be permitted under § 23.15 of this part:

(a) *States and Harvest Seasons Approved for Export of River Otter From the United States.*

	1977–78[1]	11978–79[2]	1979–80[3]	1980–81	1981–82	1982–83	1983–84 and subsequent	1995–96 and subsequent
Alabama	Q	+	+	+	+	+	+	+
Alaska	+	+	+	+	+	+	+	+
Arkansas	Q	+	+	+	+	+	+	+
Connecticut	Q	+	+	+	+	+	+	+
Delaware	Q	+	+	+	+	+	+	+
Florida	Q	+	+	+	+	+	+	+
Georgia	Q	+	+	+	+	+	+	+
Louisiana	Q	+	+	+	+	+	+	+
Maine	Q	+	+	+	+	+	+	+
Maryland	Q	+	+	+	+	+	+	+
Massachusetts	Q	+	+	+	+	+	+	+
Michigan	Q	+	+	+	+	+	+	+
Minnesota	Q	+	+	+	+	+	+	+
Mississippi	Q	+	+	+	+	+	+	+
Montana	Q	+	+	+	+	+	+	+
New Hampshire	Q	+	+	+	+	+	+	+
New Jersey	–	–	–	–	–	+	+	+
New York	Q	+	+	+	+	+	+	+
North Carolina	Q	+	+	+	+	+	+	+
Oregon	Q	+	+	+	+	+	+	+
Penobscot Nation	–	–	–	–	–	–	+	+
Rhode Island	Q	+	–	–	–	–	–	–
South Carolina	Q	+	+	+	+	+	+	+
Tennessee	–	–	–	–	–	–	–	+*
Vermont	Q	+	+	+	+	+	+	+
Virginia	Q	+	+	+	+	+	+	+
Washington	Q	+	+	+	+	+	+	+
Wisconsin	Q	+	+	+	+	+	+	+

[1] For further information see 42 FR 43729, Aug. 30, 1977; 43 FR 11081, Mar. 16, 1978; and 43 FR 29469, July 7, 1978.
[2] For further information see 43 FR 11096, Mar. 16, 1978; 43 FR 13913, Apr. 3, 1978; 43 FR 15097, Apr. 10, 1978; 43 FR 29469, July 7, 1978; 43 FR 35013, Aug. 7, 1978; 43 FR 36293, Aug. 16, 1978; and 43 FR 39305, Sept. 1, 1978.
[3] For further information see 44 FR 25383, Apr. 30, 1979; 44 FR 31583, May 31, 1979; 44 FR 40842, July 12, 1979; 44 FR 52289, Sept. 7, 1979; and 44 FR 55540, Sept. 26, 1979.
Q Export approved with quota.
+ Export approved.
– Export not approved.
* Export for 1994–95 approved administratively.

(b) *Condition on export:* Each pelt must be clearly identified as to species, State of origin and season of taking by a permanently attached, serially numbered tag of a type approved by the Service and attached under conditions established by the Service. Exception to tagging requirement: finished furs and fully manufactured fur products may be exported from the U.S. when the State export tags, removed from the pelts used to manufacture the product being exported, are surrendered to the Service before export. Such tags must be removed by cutting the tag straps on the female side next to the locking socket of the tag, so that the locking socket and locking tip remain joined.

Dated: July 14, 1995.

Robert P. Davison,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–18970 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 60, No. 148
Wednesday, August 2, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department's intention to revise a currently approved information collection and currently approved license application forms for the purpose of permitting importers, manufacturers, and exporters of certain dairy articles subject to tariff-rate import quota licensing requirements to apply for such licenses in 1996.

DATES: Comments should be submitted on or before August 14, 1995.

ADDRESSES: Comments should be sent to the Dairy Import Quota Manager, Import Policies and Programs Division, AG BOX 1021, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250–1021. All comments received will be available for public inspection in room 5541 South Building at the above address between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays. All responses to this notice will be summarized and included in the request submitted to the Office of Management and Budget on this matter.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, room 5541 South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1021 or telephone (202) 720–2916. Copies of the information collection may be obtained from Pamela Hopkins, Information Collection Coordinator, room 4957 South Building, U.S. Department of Agriculture, AG BOX 1060, Washington, D.C. 20250–1060 or telephone (202) 720–6713.

SUPPLEMENTARY INFORMATION:

Background

Import Regulation 1, Revision 7 governs the administration of the import licensing system for certain dairy articles which were subject to quotas proclaimed under section 22 of the Agricultural Adjustment Act of 1933, as amended (Section 22). As a result of entry into force of the Uruguay Round Trade Agreements, Section 22 quotas on dairy articles were replaced by tariff-rate quotas (TRQs) on January 1, 1995 and proclaimed in the Harmonized Tariff Schedule of the United States (HTS). TRQs provide for the entry of a specified quantity of an article (in-quota quantity) at a reduced tariff rate during a given period. There is no limitation on the total amount of an article which may be entered, but quantities entered in excess of an in-quota quantity are subject to a higher tariff rate. For certain dairy articles subject to TRQs, imports may only be entered at the in-quota tariff rate by a person or firm to whom the Department has issued an import license. Import licenses are valid for a 12-month period from January 1 through December 31 of each year.

For 1995, existing license forms were issued to import that quantity of imports which had been subject to absolute quotas and licensing requirement when Section 22 quotas were in effect. The issuance of licenses for the Uruguay Round in-quota quantity increases for certain dairy articles, which became effective on January 1, 1995, was effected through an interim rule published in the **Federal Register** on January 6, 1995, which amended Import Regulation 1, Revision 7 for this purpose. A subsequent **Federal Register** notice, published on May 2, 1995, further amended Import Regulations 1, Revision 7, to implement the issuance of licenses for Uruguay Round in-quota quantity increases for cheese imported from certain countries which became effective on July 1, 1995. A revision to the approved information collection and license application forms was approved by the Office of Management and Budget for the Uruguay Round in-quota quantity license application forms for 1995. The Department intends to revise the currently approved information collection and currently approved applications forms to permit importers, manufacturers, and exporters of dairy articles subject to TRQ licensing requirements to apply for licenses to import in-quota quantities of such dairy articles for 1996. The Department intends to request expedited clearance from the Office of Management and Budget on the proposed revisions in order to implement the application process in the most efficient and timely manner.

Supporting Statement

A. Justification

1. *Circumstances requiring the collection of the information.* Dairy products which were subject to absolute quotas under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624) were converted to tariff-rate quotas on January 1, 1995 under Presidential Proclamation 6763 of December 23, 1994 which implemented trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations. That Proclamation also implemented the President's authority to allocate the in-quota quantities of dairy products subject to tariff-rate quotas among supplying countries proclaimed in the Harmonized Tariff Schedule (HTS) as a result of the entry into force of the Uruguay Round Agreements. Congress approved the Uruguay Round Agreements under section 101(a) of the Uruguay Round Agreements Act (P.L. 103–465, 108 Stat. 4809).

The importation of most cheese and cheese products and certain non-cheese dairy articles must be accompanied by a license issued by the Department to enter at the TRQ in-quota tariff rate. The import licensing system is administered by the Department in accordance with Import Regulation 1, Revision 7 (7 CFR part 6). The Department expects to publish a revised Import Regulation, as envisioned in the Advanced Notice of Proposed Rulemaking (59 FR 28495), in the near future for the 1996 quota year. The Department intends to revise the currently approved information collection and currently approved application forms for 1996 for the purpose of issuing revised and improved license application forms permitting importers, manufacturers, and exporters of dairy products to apply for import licenses for the 1996 quota year.

2. *Purpose of information to be used.* The basic information regarding the purpose of the information to be used in the collection, provided in the current supporting statement is applicable with the following changes.

In addition to information requested in the application forms in 1995, the revised forms require that applicants for all lottery licenses rank order their requests in order of preference (most desirable to least desirable) as was required of applicants for Uruguay Round in-quota quantities of non-cheese dairy articles in the 1995 quota year. The purpose of applicants rank ordering their requests for licenses is to establish a rank order lottery system which is intended to provide a better alignment between importers' requirements and licenses obtained. In addition, the revised forms will add EC Uruguay Round in-quota quantities of cheese to the license application form for designated licenses. This is being done to implement the U.S. Uruguay Round commitment to the EC permitting the EC to designate importers for such cheese. Information which will no longer be required on a revised form is that applicants for historical licenses list each historical license allocated to that person or firm. This information is now considered redundant based on its availability in the computer data bank.

3. *Use of improved information technology.* The information provided in the supporting statement for the currently approved collection of information is applicable. In recent years, a system was developed under which basic applications could be read by an optical scanner. To further increase the ease of processing, and to reflect the proposed revised forms have been simplified and redesigned into an enhanced machine-readable format. The simplified forms require applicants to fill in a circle opposite the articles that they are applying for a license to import. The importer's control number will also be entered by filing in circles opposite the appropriate digit numbers.

4. *Efforts to identify duplication.* Not applicable.

5. *Methods to minimize burdens of small business entities.* The information provided in the supporting statement for the currently approved collection of information is applicable.

6. *Consequences if information collection were less frequent.* The information provided in the supporting statement for the currently approved collection of information is applicable.

7. *Inconsistency with guidelines in 5 CFR 1320.6.* The information provided in the supporting statement for the currently approved collection of information is applicable.

8. *Consultations with persons outside the agency.* The information provided in the supporting statement for the currently approved collection of information is applicable.

9. *Confidentiality provided to respondents.* The information provided in the supporting statement for the currently approved collection of information is applicable.

10. *Questions of a sensitive nature.* Not applicable.

11. *Annual cost to Government and respondents.* The information provided in the supporting statement for the currently approved collection of information is applicable, but the estimated costs for 1994 need to be updated. For 1995, the salaries and other administrative costs are estimated to be $322,681. The fee for 1995 was $89 for each import license issued. The cost to the respondents is included in item 12 below.

12. *Estimate of burden.* The information provided in the supporting statement for the currently approved collection of information is applicable for licenses issued in 1995. The estimate of the burden for 1996 is indicated in the following table.

Form No.	No. of responses	No. of responses per applicant	Total annual responses	Hours per response	Total
922	500	1	500	0.025	125
923	600	1	600	0.050	300
923A	.....	.....	.....	.....	.....
923B*	.....	.....	.....	.....	.....
Total	1,100	.....	1,100	.....	425

*923, 923A and 923B constitute one form.

13. *Reasons for the change in burden.* There is a reduction of 429 hours in the estimate of the burden of information collection between 1995 and 1996 which is based mainly on the elimination of forms 924 and 924A which were needed to conduct the separate application procedures under which licenses for the Uruguay Round in-quota increases where issued for January and July of that year. The elimination of these forms is estimated to reduce the total number of estimated responses for all types of licenses from 1,560 to 1,100. The estimated burden is also being reduced based on the use of the revised and improved application forms. The result is an estimated reduction in the total annual average hours used in preparing responses from 920 hours to 425 hours. There is no data with respect to the annual cost incurred by each respondent (person or firm) based on the amount of time used in filling out the application forms and the average hourly salary of such respondents. It is extremely difficult to calculate this cost because the executive or administrative level of the individual responsible for filling out the forms tends to vary depending on the size and location of the person or firm, the size of the license portfolio, and experience of the person or firm in importing licensed dairy products. Based on our research, the estimated total annual cost associated with the estimated total burden of 425 hours is $12,750.

14. Tabulation, analysis and publication plans. Not applicable.

Signed at Washington, D.C., July 28, 1995.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 95–19027 Filed 8–1–95; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).
Title: Application for Export License.
Agency Form Number: BXA 622P.
OMB Approval Number: 0694–0005.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 11,763 hours.
Number of Respondents: 28,211.
Avg Hours Per Response: Ranges between 20 and 25 minutes.
Needs and Uses: The information provided in the export license application is used as the basis for decisions to grant licenses for export of goods and technology that are controlled for reasons of national security and foreign policy.
Affected Public: Businesses or other for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).
Title: Project License Procedure.
Agency Form Number: None.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 323 hours.
Number of Respondents: 107.
Avg Hours Per Response: Approximately 3 hours.
Needs and Uses: The Project License Procedure is one of several special licenses established by BXA which authorize multiple shipments under a single license. It is a license used for the export of commodities and or technical data needed for large–scale overseas operations.
Affected Public: Businesses or other for–profit institutions.
Frequency: Annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).
Title: Short Supply Regulations Petroleum (Crude Oil).
Agency Form Number: None.
OMB Approval Number: 0694–0027.
Type of Request: Reinstatement of a previously approved collection.
Burden: 144 hours.
Number of Respondents: 24.
Avg Hours Per Response: Approximately 6 hours.
Needs and Uses: The export of U.S. domestic crude oil is restricted by five separate but overlapping statutes. The information collected in support of license applications for crude oil is used by licensing officers to determine the exporter's compliance with these statutes.
Affected Public: Businesses or other for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).
Title: Special Chemical License Procedure.
Agency Form Number: None.
OMB Approval Number: 0694–0067.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 556 hours.
Number of Respondents: 200.
Avg Hours Per Response: Ranges between 1 and 15 hours depending on the requirement.
Needs and Uses: BXA requires validated licenses for the export of precursor chemicals and certain dual–use equipment. To reduce the paperwork on exporters, BXA established a special procedure that allows U.S. exporters to make multiple shipments under one license. The information provided is used to make sure that all parties involved in the transaction are reputable and that proliferation controls are strictly observed.
Affected Public: Businesses or other for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Small–Craft Facility Questionnaire.
Agency Form Number: NOAA 77–1.
OMB Approval Number: 0648–0021.
Burden: 266 hours.
Number of Respondents: 2,000.
Avg Hours Per Response: 8 minutes.
Needs and Uses: The National Ocean Service (NOS) produces charts and publications that help ensure safe navigation on the nation's waterways. To meet the needs of recreational boaters, small–craft nautical charts are produced that contain information on marinas. NOS' requests marina operators to update information on the services provided as charts are revised.
Affected Public: Individuals, businesses or other for–profit institutions, state, local or tribal government.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.
Title: Cooperative Charting Program.
Agency Form Number: NOAA 77–4 and 77–5.
OMB Approval Number: 0648–0022.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 45,000 hours.
Number of Respondents: 3,000 (on average 5 responses per respondent).
Avg Hours Per Response: 3 hours.
Needs and Uses: This collection is used by members of the U.S. Power Squadrons and the U.S. Coast Guard Auxiliary to report observed needs for chart corrections. The information received is used by NOAA in maintaining and preparing the nautical charts that are used throughout the nation by recreational boaters and commercial vessels for safe navigation.
Affected Public: Individuals, not–for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Coastal Zone Management Program Administrative Grants.
Agency Form Number: None.
OMB Approval Number: 0648–0119.
Burden: 5,899.
Number of Respondents: 34.

Avg Hours Per Response: Ranges between 10 and 480 hours depending on the requirement.

Needs and Uses: Coastal zone management grants provide funds to states and territories to implement federally–approved coastal zone management plans and develop assessment documents and multi–year strategies. Information is used to determine if activities achieve national coastal management and enhancement objectives and if states are adhering to their approved plans.

Affected Public: State government.

Frequency: Quarterly, semi-annually, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Management and Oversight of the National Estuarine Research Reserves System.

Agency Form Number: None.

OMB Approval Number: 0648–0121.

Type of Request: Revision of a currently approved collection.

Burden: 10,400.

Number of Respondents: 19.

Avg Hours Per Response: Ranges between 1 hour and 2,012 depending on the requirement.

Needs and Uses: Grant funds are available to states to establish estuarine research reserves. Other funds are available for research within these areas. Applications are necessary to determine eligibility, and reports are necessary to track the use of Federal funds.

Affected Public: State government, individuals, non–for–profit institutions.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.

Title: National Marine Sanctuary Permits.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0141.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 426 hours.

Number of Respondents: 248.

Avg Hours Per Response: Ranges between 30 minutes and 2 hours depending on the requirement.

Needs and Uses: The Marine Protection, Research, and Sanctuaries Act, provides for the establishment of National Marine Sanctuaries. The intended effect is to protect the conservation, recreational, ecological, historical, research, educational and aesthetic qualities of these special areas. Individuals who wish to conduct research or other regulated activities in a National Marine Sanctuary must submit an application for a permit. NOAA reviews the request to ensure that the activity is appropriate for a Sanctuary. Persons issued permits are required to submit activity reports.

Affected Public: Individuals, businesses or other for–profit institutions, non–for–profit institutions, federal, state, local and tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application for Designation as a Sea Grant College or Regional Consortia.

Agency Form Number: None.

OMB Approval Number: 0648–0147.

Burden: 20 hours.

Number of Respondents: 1.

Avg Hours Per Response: 20 hours.

Needs and Uses: The National Sea Grant College Act, as amended by Public Law 94–461, provides for the designation of eligible institutions as Sea Grant Colleges or Consortia if certain criteria are met. Applications desiring such a designation must provide an outline of their capabilities and the reasons why they wish to be designated. The information is used for designation decisions.

Affected Public: Not–for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Final Regulations for Deep Seabed Mining Commercial Recovery.

Agency Form Number: None.

OMB Approval Number: 0648–0170.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1 hour.

Number of Respondents: None at this time.

Avg Hours Per Response: N/A.

Needs and Uses: Regulations have been issued that contain the requirements for applications for permits for the commercial recovery of manganese nodules from the deep seabed under the Deep Seabed Hard Mineral Resources Act. Although no applications are anticipated in the near future, the regulations have been issued so that business persons know what the application requirements will entail.

Affected Public: Businesses or other for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Western Alaska Community Development Quota Program.

Agency Form Number: None.

OMB Approval Number: 0648–0269.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,517 hours.

Number of Respondents: 13 but with multiple submissions.

Avg Hours Per Response: Varies depending on the requirements but ranges between 10 and 160 hours.

Needs and Uses: The North Pacific Fishery Management Council requested that the National Marine Fisheries Service implement the Western Alaska Community Development Quota Program. This program is intended to help provide stable, long–term employment in disadvantaged communities by guaranteeing them a definite proportion of pollock, halibut, and sablefish resources. The information provided through the application process is used to determine the community's eligibility for this program and to make allocation decisions. Quota monitoring reporting requirements are also in place.

Affected Public: Individuals, businesses or other for–profit institutions.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: July 24, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–18939 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–428–814]

Certain Cold-Rolled Carbon Steel Flat Products From Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on *Certain Cold-Rolled Carbon Steel Flat Products From Germany* (A–428–814). The review covers sales from one manufacturer of the subject merchandise to the United States during the period August 18, 1993 through July 31, 1994.

We have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results of the administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–1395 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On July 9, 1993 the Department published in the **Federal Register** (58 FR 37136) the final affirmative antidumping duty determination on certain cold-rolled carbon steel flat products from Germany, for which we published an amendment and an antidumping duty order on August 19, 1993 (58 FR 44170). On August 3, 1994, the Department published the notice of "Opportunity to Request an Administrative Review" of this order for the period August 18, 1993 through July 31, 1994 (59 FR 39543). C.D. Walzholz, J.N. Eberle & Cie, GmbH, Rochlinger Kaltwalzwerk and Thyssen Stahl AG (Thyssen) requested an administrative review. We initiated the administrative review on September 8, 1994 (59 FR 46391). Subsequently, C.D. Walzholz, J.N. Eberle & Cie, GmbH, and Rochlinger Kaltwalzwerk requested that they be allowed to withdraw from the administrative review. On April 12, 1995, we published a "Notice of Partial Termination of Administrative Review of Antidumping Order" with respect to these three respondents (60 FR 18581). The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review (POR) is August 18, 1993 through July 31, 1994. This review covers sales of cold-rolled carbon steel by one manufacturer (Thyssen).

United States Price

The Department used exporter's sales price (ESP) because all sales to the first unrelated purchaser in the United States, whether before or after importation, met the requirements set forth by Section 772(c) of the Tariff Act. ESP was based on the packed prices at which the merchandise was sold under various terms to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign inland freight, plant freight, ocean freight, marine insurance, brokerage and handling, U.S. inland freight, U.S. duty, U.S. credit, discounts, inventory carrying costs, technical service expenses, warranties, warehousing, and indirect selling expenses (which include interest on fixed assets, other U.S.-incurred selling expenses, and export selling expenses).

We also adjusted ESP for value added in further manufacturing, including an allocation of profit earned on U.S. sales.

We adjusted USP for taxes in accordance with our practice as outlined in various determinations, including *Silicomanganese from Venezuela; Final Determination of Sales at Less Than Fair Value,* 59 FR 55435, 55439 (November 7, 1994).

At the German and U.S. verifications, Thyssen suggested various corrections to be made to its database. At verification, the Department accepted the changes because each change was minor and ministerial in nature. On May 12, 1995, the Department instructed Thyssen to make all of the changes to its database, excluding the change suggested by Thyssen for certain discounts, as explained below. On May

22, 1995, Thyssen submitted a revised tape which incorporated these corrections. Based on a review of all of Thyssen's submissions and the Department's findings at verification, the Department determined that the revised May 22, 1995, tape contains the following problems: (1) the identification and deletion of what Thyssen characterized as "duplicate" invoices in a manner inconsistent with the changes suggested by Thyssen at verification; (2) unexplained changes to unshipped balances for one order; (3) changes to quantity of U.S. sales from Richburg, a division of Thyssen, Inc. (TINC), other than those suggested by Thyssen at verification, and other inconsistencies in the changes which Thyssen did suggest; (4) unexplained quantity and price changes for four observations; and (5) errors in the discount field for one U.S. customer. Due to these discrepancies we are unable to perform an accurate calculation for certain sales. Counsel for petitioners has argued that the Department should use total BIA in this case due to the deficiencies in Thyssen's response. We have determined, however, that resorting to total best information available ("BIA") is not warranted because Thyssen's U.S. database is not sufficiently flawed such that the response as a whole is unreliable. *See National Steel Corporation v. United States*, 870 F. Supp. 1130, 1135 (CIT 1994); *see also* the July 20, 1995, decision memorandum from Richard O. Weible to Roland L. MacDonald. Instead, we used a margin based upon BIA only for those sales of U.S. products where we did not have complete and accurate information.

The adversity of the information used as partial BIA depends upon the level of sufficiency of the information provided. When partial BIA is warranted, but the errors in the information submitted constitute a failure to provide the necessary data, the Department consistently applies adverse BIA. *Id.* (citing, *inter alia*, *Certain Corrosion-Resistant Carbon Steel Flat Products From Finland*, 58 Fed. Reg. 37,122, 37,124 (1993)). By contrast, when only a minor adjustment in the data is involved or there is an inadvertent gap in the record, we apply a less adverse or neutral surrogate. *Nat'l Steel* at 1136.

Thyssen's revised database did contain unauthorized changes and other unexplained problems. However, the sales affected are minimal in quantity, and the apparent inaccuracies consist mostly of data-entry problems rather than omissions or insufficiencies in Thyssen's reporting. For these reasons, we have not applied the most adverse partial BIA. We have chosen as BIA Thyssen's weighted-average margin from the original investigation.

We disallowed the exchange rate expense which Thyssen claimed due to unexplained changes in this expense in the May 22, 1995 submission. *(See Analysis Memorandum to the File*, June 16, 1995).

Also, due to inaccurate and deficient information provided during the verification of product characteristics for one U.S. sale, we are assigning to that sale a margin based on BIA, as previously described. Further, Thyssen failed to report contemporaneous home market sales for 1992 requirements contract sales by the Budd Company, a related parts manufacturer. We have assigned these sales a margin based on BIA, as previously described (*see Analysis Memorandum to the File*, June 16, 1995). Finally, Thyssen failed to include in its database a storage/warehouse expense incurred by TINC on certain U.S. sales. We adjusted U.S. price to account for this expense, where appropriate (*see Analysis Memorandum to the File*, June 16, 1995). Also, due to errors noted at verification, we adjusted warehousing expense for the automotive division for both fiscal years.

No other adjustments were claimed or allowed.

Foreign Market Value

Based on a comparison of the volume of home market and third country sales, we determined that the home market was viable. Therefore, in accordance with section 773(a)(1)(A) of the Tariff Act, we based FMV on the packed prices at which the merchandise was sold under various terms to related and unrelated purchasers in the home market.

Based on a review of Thyssen's submissions and findings at verification, the Department determined that Thyssen need not report the home market sales made by Thyssen's related parties to the first unrelated party (downstream sales). The vast majority of the products sold by these related parties in the home market possessed physical characteristics that made them less similar to those imported into the United States than those sold directly by Thyssen to its related and unrelated home market customers in transactions suitable for matching purposes. The Department determined that only a small portion of the downstream sales could provide potential matches to the company's U.S. sales. Considering the burden that would have been required to report these sales relative to the potential utility of the sales, we determined that they need not be reported (*see Analysis Memorandum to the File*, June 16, 1995).

Petitioners alleged that Thyssen sold cold-rolled carbon steel in the home market at prices below their cost of production (COP). Based on this allegation, the Department determined that it had reasonable grounds to believe or suspect that Thyssen had sold steel flat products in the home market at below cost prices. A cost investigation was therefore initiated in accordance with section 773(b) of the Tariff Act. As a result, we investigated whether Thyssen sold such or similar merchandise in the home market at prices below the COP. In accordance with 19 CFR 353.51(c), we calculated COP for Thyssen as the sum of reported materials, labor, factory overhead, and general expenses. We compared COP to home market prices, discounts, and movement expenses. Based on our verification of Thyssen's cost response, we made the following adjustments to its COP data:

1. We recalculated the allocation of the thirteenth month adjustment on the basis of costs reported in the unconsolidated Thyssen Stahl income statements for the respective fiscal years.

2. We reduced the claimed interest income offset by eliminating dividend income.

3. We recalculated net financing expense on a model-specific basis by applying the net financing expense ratio to the COM of each unique product.

After computing COP, we compared the VAT-neutral product-specific COP to the VAT-neutral reported prices net of movement charges and discounts. In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of Section 773(b)(1) that below cost sales be disregarded only if made in substantial quantities, we applied the following methodology. For each model for which less than 10 percent, by quantity, of the home market sales during the POR were made at prices below COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less that 90 percent, of the home market sales during the POR were priced below COP, we excluded those sales priced

below COP, provided that they were made over an extended period of time. For each model for which 90 percent or more of the home market sales during the POR were priced below COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Tariff Act, we used the constructed value (CV) of those models, as described below. *See, e.g., Mechanical Transfer Presses from Japan, Final Results of Antidumping Duty Administrative Review*, 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 58 FR 64720, 64729 (December 8, 1993).

Because Thyssen provided no indication that its below-cost sales of models within the "greater than 90 percent" and the "between 10 and 90 percent" categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales of models within the "10 to 90 percent" category which were made below cost over an extended period of time. In addition, as a result of our COP test for home market sales of models within the "greater than 90 percent" category, we based FMV on CV for all U.S. sales for which there were insufficient sales of the comparison home market model at or above COP. Finally, where we found, for certain of Thyssen's models, home market sales for which less than 10 percent were made below COP, we used all home market sales of these models in our comparisons.

We also used CV as FMV for those U.S. sales for which there was no contemporaneous sale of such or similar merchandise in the home market. We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, labor, factory overhead, and U.S. packing in our calculations. Where the general expenses were less than the statutory minimum of 10 percent of the cost of manufacture (COM), we calculated general expenses as 10 percent of the COM. Where the actual profits were less than the statutory minimum of 8 percent of the COM plus general expenses, we calculated profit as 8 percent of the sum of COM plus general expenses. Based on our verification of Thyssen's cost response, we made the same adjustments to respondent's CV data as we made to its COP data, as discussed above.

In accordance with section 773 of the Tariff Act, for those U.S. models for which we were able to find a home market such or similar match that had sufficient above-cost sales, we calculated FMV based on the packed prices at which the merchandise was sold under various terms to unrelated purchasers or to related purchasers (where an arm's-length relationship was demonstrated) in the home market. We made adjustments, where applicable, for freight, inland insurance, discounts, credit and warehousing in accordance with 19 CFR 353.56(a)(1). We adjusted FMV for indirect selling expenses in the home market, which include plant freight, warranty, technical services, inventory carrying costs and other indirect selling expenses. We limited the home market indirect selling expense deductions by the amount of indirect selling expenses incurred in the United States, in accordance with 19 CFR 353.56(b)(2). FMV was also adjusted for differences in physical characteristics. After deducting home market packing, we added packing expenses incurred in Germany for U.S. sales to FMV. We adjusted for the German value added tax. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of USP to FMV we preliminarily determine that the following margin exists for the period August 18, 1993 through July 31, 1994:

Manufacturer/reseller/exporter	Margin (percent)
Thyssen	4.80

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentages stated above.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided for by section 751(a)(1) of the Tariff Act. A cash deposit of estimated antidumping duties shall be required on shipments of certain cold-rolled carbon steel flat products from Germany as follows: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) For previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 19.02 percent. This is the "all others" rate from the LTFV investigation. *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Germany*, 58 FR 44170 (August 19, 1993).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the

subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19013 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–331–602]

Certain Fresh Cut Flowers From Ecuador; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the Floral Trade Council, petitioner in this proceeding, to conduct an administrative review, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on certain fresh cut flowers from Ecuador. The review covers twelve producers and/or exporters of this merchandise and the period March 1, 1993 through February 28, 1994.

We have preliminary determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Schauer, Joseph A. Fargo, or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733/4477.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 8494) the antidumping duty order on certain fresh cut flowers from Ecuador. On March 4, 1994, the Department published a notice of "Opportunity to Request Administrative Review" with respect to the period March 1, 1993 through February 28, 1994 (59 FR 14608). The Department received a timely request for review from the petitioner, the Floral Trade Council, on March 31, 1994, in accordance with 19 CFR 353.22(a). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act"). Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by the review are shipments of certain fresh cut flowers from Ecuador (standard carnations, standard chrysanthemums, and pompom chrysanthemums). This merchandise is classifiable under Harmonized Tariff Schedule ("HTS") items 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Flores La Antonia, Flores del Quinche S.A., Florisol Cia Ltda., Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, Guaisa S.A., Inlandes S.A., Mundiflor, and Velvet Flores Cia S.A., which are producers and/or exporters of certain fresh cut flowers from Ecuador to the United States and the period March 1, 1993 through February 28, 1994.

Best Information Available

Because certain companies did not provide a response to the Department's request for information, in accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for these firms. The Department's regulations provide that we may take into account whether a party refuses to provide information in determining what rate to use as BIA (19 CFR 353.37(b)). Generally, whenever a company refuses to cooperate with the Department or otherwise significantly impedes the proceeding, we use as adverse BIA the highest rate for any company for the same class or kind of merchandise from this or any other segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as cooperative BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the same class or kind of merchandise from the same country. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 57 FR 28360, 28379–80 (July 24, 1992); *see also Allied-Signal Aerospace Co.* v. *United States* 996 F.2d 1185 (Fed. Cir. 1993).

For these preliminary results we have applied a cooperative BIA rate to sales made by Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, and Mundiflor. These firms are no longer in business, and we have preliminarily determined, in accordance with the standards enumerated in *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part)*, 59 FR 15159 (March 31, 1994) ("*Colombian Flowers*"), that they are incapable of responding to the Department's questionnaire. In *Colombian Flowers*, the Department treated bankrupt, or otherwise out of business, firms as cooperative provided that they explained their situation to the Department. In this case, the firms mentioned above submitted certifications that they are no longer in business and thus could not respond. Therefore, in accordance with *Colombian Flowers*, we preliminarily find these firms to be cooperative.

In this proceeding, none of the firms named above had ever received a higher margin than that calculated for Flores La Antonia in the instant review. Therefore, we have applied the rate calculated for Flores La Antonia, which is 28.44 percent, to Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, and Mundiflor.

United States Price

Pursuant to section 777A of the Tariff Act, we preliminarily determined that it was appropriate to average U.S. prices on a monthly basis in order (1) to use actual price information that is often available only on a monthly basis; (2) to account for large sales volumes; and (3) to account for perishable product pricing practices. *See Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Colombia*, 56 FR 50554 (October 7, 1991).

In calculating United States price (USP), we used purchase price (PP) when sales were made to unrelated purchasers in the United States prior to the date of importation, or exporter's sales price (ESP) when sales were made to unrelated purchasers in the United States after the date of importation, both pursuant to section 772 of the Tariff Act.

We calculated purchase price to the first unrelated purchaser in the United States. The terms of PP sales were either f.o.b. Quito or c.i.f. Miami. We made deductions, where appropriate, for foreign inland freight, air freight, brokerage and handling, U.S. Customs duties, and return credits.

ESP, for sales made on consignment or through a related affiliate, was calculated based on the packed price to the first unrelated customer in the United States. We made adjustments, where appropriate, for foreign inland freight, brokerage and handling, air freight, box charges, credit expenses, returned merchandise credits, royalties, U.S. Customs duties, and either commissions paid to unrelated U.S. consignees or indirect selling expenses of related consignees.

Foreign Market Value

In calculating foreign market value, the Department used home market prices since there were sufficient sales of such or similar merchandise in the home market. *See* section 773(a)(1) of the Tariff Act.

Home market prices were based on the packed, ex-factory or delivered prices to unrelated purchasers in the home market pursuant to section 773(a)(1) of the Tariff Act. Where applicable, we made adjustments for post-sale movement expenses and differences in packing in accordance with section 773(a)(1) of the Tariff Act. We also made adjustments for differences in circumstances of sale in accordance with 19 CFR 353.56, as follows. For comparisons to PP sales, we deducted home market direct selling expenses and added U.S. direct selling expenses. For comparisons to ESP sales, we deducted home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in PP and ESP calculations and to offset U.S. indirect selling expenses deducted in ESP calculations, but not exceeding the amount of the indirect U.S. expenses in accordance with 19 CFR 353.56(b).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period March 1, 1993 through February 28, 1994:

Manufacturer/exporter	Margin (percent)
Flores la Antonia	28.44
Flores del Quinche S.A	1.25
Florisol Cia Ltda	0.06
Flores de Ibarra	28.44
Flores de Puewmbo	28.44
Flores del Ecuador	28.44
Flores Pichincha	28.44
Florestrade	28.44
Guaisa S.A	(1)
Inlandes S.A	(1)
Mundiflor	28.44
Velvet Flores Cia S.A	(1)

[1] No shipments during the period of review; since there was no prior review of this company, the "all other" rate from the less-than-fair-value (LTFV) investigation is applicable.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 5.89 percent, the "all others" rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22(c)(5)).

Date: July 26, 1995.

Susan Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19015 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–502]

Iron Construction Castings from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the Municipal Castings Fair Trade Counsel and its individually-named members, Alhambra Foundry, Inc., Allegheny Foundry Co., Bingham & Taylor Division, Virginia Industries, Inc., Charlotte Pipe & Foundry Co., East Jordan Iron Works, Inc., Inland Foundry Company, Inc., LeBaron Foundry Inc., Municipal Castings, Inc., Neenah Foundry Co., Opelika Foundry Co., Tyler Pipe Industries Inc., U.S. Foundry & Manufacturing Co., and Vulcan Foundry, Inc., the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on iron construction castings from the People's Republic of China (PRC). The review covers one producer/exporter, the Liaoning Branch of the China National Machinery Import and Export Corporation (MACHIMPEX, Liaoning)

and entries of the subject merchandise into the United States during the period May 1, 1993, through April 30, 1994. We have preliminarily determined that a dumping margin exists for MACHIMPEX, Liaoning. The Department based this margin on the best information available (BIA).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1994, the Department published in the **Federal Register** (59 FR 23051) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on iron construction castings from the PRC (51 FR 17222 (May 9, 1986)). In accordance with 19 CFR 353.22(a)(1), the petitioner requested an administrative review for MACHIMPEX, Liaoning. On June 15, 1994, the Department published a notice of initiation of this review (59 FR 30770), covering the period May 1, 1993, through April 30, 1994. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review are iron construction castings, limited to manhole covers, rings and frames; catch basin grates and frames; cleanout covers and frames used for drainage or access purposes for public utility, water, and sanitary systems; valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. Certain iron construction castings are currently classifiable under numbers 7352.10.00.00 and 7325.10.00.50 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive as to the scope of the order.

This review covers sales of the subject merchandise manufactured by MACHIMPEX, Liaoning and entered into the United States during the period May 1, 1993, through April 30, 1994.

Use of Best Information Available

On July 27, 1994, the Department sent to the respondent, MACHIMPEX, Liaoning, a questionnaire to determine whether it was eligible for a separate rate in this review. On October 11, 1994, the Department sent to the respondent a general antidumping questionnaire. Although we established that the respondent received both questionnaires, MACHIMPEX, Liaoning failed to respond to either questionnaire. The Department therefore determines that MACHIMPEX, Liaoning is an uncooperative respondent, and that the use of BIA is appropriate, in accordance with section 776(c) of the Act. Whenever, as here, a company refuses to cooperate with the Department, or otherwise significantly impedes an antidumping proceeding, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value (LTFV) investigation or in prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise. (*See Antifriction Bearings from France, et. al; Final Results of Review*, 58 FR 39729 (July 26, 1993).) As BIA, we have assigned the rate of 92.74 percent, which is the highest rate found for any iron construction casting producer from the prior reviews and the LTFV investigation. Since MACHIMPEX, Liaoning did not respond to our separate rates questionnaire, we have determined that we will not give a separate rate to MACHIMPEX, Liaoning.

Preliminary Results of Review

We preliminarily determine that a margin of 92.74 percent exists for MACHIMPEX, Liaoning for the period May 1, 1993 through April 30, 1994.

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the publication date of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs.

The following deposit requirements shall be effective for all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company, MACHIMPEX, Liaoning, shall be the rate established in the final results of this review; (2) for Minmetals Guangdong, which received a separate rate for the most recent period for which it was reviewed, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be 92.74 percent, the PRC country-wide rate; and (4) for non-PRC exporters of the subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19012 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–201–505]

Porcelain-on-Steel Cookingware from Mexico; Preliminary Results of a Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico. We preliminarily determine the net subsidy to be *de minimis* for Acero Porcelanizado, S. A. de C.V. (APSA) and 0.53 percent *ad valorem* for all other companies for the period January 1, 1993 through December 31, 1993. If the final results remain the same as these preliminary results of administrative review, we will instruct U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Norma Curtis or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1986, the Department published in the **Federal Register** (55 FR 51139) the countervailing duty order on porcelain-on-steel cookingware from Mexico. On November 26, 1993, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (58 FR 62326) of this countervailing duty order. We received a timely request for review from APSA, a respondent company.

We initiated the review, covering the period January 1, 1993 through December 31, 1993 (POR), on January 18, 1994 (59 FR 2593). We conducted a verification of the questionnaire responses on September 7, 1994 through September 14, 1994. The review covers two manufacturers/exporters of the subject merchandise, APSA and Cinsa, S.A. de C.V. (Cinsa), which accounted for all exports of POS cookware during the POR and ten programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751 (a) of the Tariff act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by this review are shipments of porcelain-on-steel cookingware from Mexico. The products are porcelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item number 7323.94.0020 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight its share of total Mexican exports to the United States of subject merchandise, including all companies, even those with *de minimis* and zero rates. We then summed the individual companies' weight-averaged rates to determine the subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR § 355.7 (1994), we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR § 355.22(d)(3). APSA had a significantly different net subsidy rate during the review period pursuant to 19 CFR § 355.22(d)(3). This company is treated separately for assessment and cash deposit purposes. All other companies are assigned the country-wide rate.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. *BANCOMEXT Financing for Exporters*

Banco Nacional de Comercio Exterior, S.N.C. (Bancomext) is a government program through which short-term financing is provided to producers or trading companies engaged in export activities. In order to be eligible for Bancomext financing a company must be established according to Mexican law, 30 percent Mexican national owned, and be an exporter. Bancomext provides two types of financing to exporters, denominated in either U.S. dollars or in Mexican pesos: working capital (pre-export loans), and loans for export sales (export loans). In addition, Bancomext may provide financing to foreign buyers of Mexican goods and services.

The Department has previously found this program to confer an export subsidy to the extent that the loans are provided at preferential terms (*See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992)). In this review the Government of Mexico provided no new information that would lead the Department to alter that determination.

Both APSA and Cinsa had Bancomext loans on which interest was due during the POR. We found that the annual interest rates that Bancomext charged to borrowers for certain loans on which interest payments were due during the review period were lower than the commercial rates. The dollar-denominated Bancomext loans under review were granted at annual interest rates ranging from 6.0 percent to 8.75 percent. For these loans, we used the average quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which resulted in an annual average benchmark of 6.5 percent in 1993. This is the same benchmark calculation methodology that has been applied in prior reviews (*See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992)).

The peso-denominated Bancomext pre-export loan under review was granted at an annual interest rate of 14.8 percent. As a basis for our benchmark for this loan, we have relied in part on the effective rates for the years 1981 through 1984, as published monthly in the Banco de Mexico's Indicadores Economicos y Moneda (I.E.), because the Banco de Mexico stopped publishing data on nominal and effective commercial lending rates in Mexico after 1984. We calculated the average difference between the I.E. effective interest rates and the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, for the years 1981 through 1984. We added this average difference to the 1993 average annual CPP rates. For the peso-denominated loan on which interest was due during 1993, we

calculated an annual benchmark of 29.79 percent. This is the same benchmark calculation methodology that has been applied in prior reviews (*See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992)). We consider the benefits from short-term loans to occur at the time the interest is paid. Because interest on Bancomext pre-export loans is paid at maturity, we calculated benefits based on loans that matured during the review period; such loans were obtained between December 1992 and September 1993.

During verification at APSA, we discovered one short-term loan that appears to be a Fomex loan which was not reported in the questionnaire responses. Fomex was a program previously found countervailable by the Department and operates much like the Bancomext program which the Department has also found countervailable (*See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992)). However, the interest rate for this loan is higher than the benchmark and, therefore, there is no benefit to APSA.

During verification at the Government of Mexico, we discovered one Bancomext loan for Cinsa that had not been reported in the questionnaire responses, and for which the company did not provide the interest rate upon request at verification. (*See Bancomext Section of the Government of Mexico's Verification Report* dated May 9, 1995 and *Short-Term Loan Section of Cinsa's Verification Report* dated May 9, 1995, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce). Section 776(c) of the Act requires the Department to use best information available (BIA) whenever a party or any other person refuses or is unable to produce information requested. Furthermore, 19 CFR 355.37 (1994) requires the Department to use BIA "whenever the Secretary: (1) does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or (2) is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted". Since the interest rate for this loan was not reported in the questionnaire responses nor provided at verification when requested, we must use BIA to calculate the benefit from this loan. Therefore, as BIA we are assigning this loan a zero interest rate, and have used that rate to calculate the benefit from this loan. The interest rate we are applying as BIA is zero percent because it is the most adverse interest rate.

To calculate the benefit for each exporter, we multiplied the difference between the interest rate charged to exporters for these loans and the benchmark interest rate by the principal and then multiplied this amount by the term of the loan divided by 365. Because one company's monthly sales figures are indexed to account for inflation, we adjusted that company's benefit amounts to be on the same terms as the sales figures. Since neither APSA nor Cinsa was able to tie their loans to specific sales, we divided the benefit by total export sales. On this basis, we preliminarily determine the subsidy from this program to be 0.02 percent *ad valorem* for APSA and 0.60 percent *ad valorem* for Cinsa.

2. *FONEI Long-Term Financing*

The Fund for Industrial Development (FONEI) was a Government of Mexico trust administered by the Banco de Mexico until its dissolution on December 31, 1989. FONEI was a specialized financial development fund that provided long-term loans at below-market rates. FONEI was designed to foster the efficient production of services and industrial goods by Mexican companies.

The Department has previously found this program to confer a subsidy because it provides loans on terms inconsistent with commercial considerations and restricts loan benefits to companies located in specific regions (*See Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992)). In this review the Government of Mexico provided no new information that would lead the Department to alter that determination.

Cinsa had a FONEI loan outstanding during the review period. Because this peso-denominated loan had a variable interest rate, we treated it as a series of short-term loans, as we have done previously in *Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 48163; September 24, 1991) and *Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 562; January 7, 1992). To calculate the benefit from this loan, we used the same benchmark as for the peso-denominated Bancomext pre-export loan. We compared this benchmark with the interest rate in effect for each FONEI loan payment made during the review period and multiplied the difference by the outstanding loan principal. We divided the benefit by the company's total sales to all markets during the review period. On this basis, we preliminarily determine the subsidy from this program to be 0.01 percent *ad valorem* for Cinsa.

II. Programs Preliminarily Found Not to be Used

We also examined the following programs and preliminarily determine that the exporters of the subject merchandise did not apply for or receive benefits under these programs during the review period:

(A) Certificates of Fiscal Promotion (CEPROFI)
(B) PITEX
(C) Other Bancomext Preferential Financing
(D) Import Duty Reductions and Exemptions
(E) State Tax Incentives
(F) Article 15 Loans
(G) NAFINSA FOGAIN-type Financing
(H) NAFINSA FONEI-type Financing

Preliminary Results of Review

For the period January 1, 1993 through December 31, 1993, we preliminarily determine the net subsidy to be 0.02 percent *ad valorem* for APSA and 0.53 percent *ad valorem* for all other companies. In accordance with 19 CFR 255.7, any rate less than 0.5% *ad valorem* is *de minimis*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess the following countervailing duties:

Manufacturer/exporter	Rate (percent)
APSA	0.00
All Other Companies	0.53

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from APSA, and 0.53 percent of the f.o.b. invoice price on all shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit written arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19014 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–401]

Certain Textile Mill Products From Thailand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of the Countervailing Duty Administrative Review on Certain Yarn Products covered under the Suspended Investigation on Certain Textile Mill Products from Thailand.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of Certain Yarn Products covered under the suspended countervailing duty investigation on Certain Textile Mill Products from Thailand ("suspension agreement"). We have preliminarily determined that for the period May 18, 1992, through December 31, 1993, the signatories were not in violation of the suspension agreement. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Lisa Yarbrough or Jackie Wallace, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1990, the Department published in the **Federal Register** (55 FR 48885) a notice terminating in part the suspension agreement on Certain Textile Mill Products from Thailand (50 FR 9837, March 12, 1985). On May 9, 1992, the Court of International Trade (CIT) held that the Department's termination was not in accordance with the law because the Department failed to strictly follow 19 CFR 355.25(d)(4). The Court of Appeals for the Federal Circuit (CAFC) affirmed the decision of the CIT on October 12, 1993, and instructed the Department to reinstate the suspension agreement. Subsequently, on October 22, 1993, the Department reinstated the suspension agreement, effective May 18, 1992, the date the Department published notice of the CIT decision.

On March 4, 1994 , the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (59 FR 10368) of the suspended investigation for the period May 18, 1992 to December 31, 1993. The Department received requests for an administrative review of certain yarn products on March 31, 1994, from the American Yarn Spinners Association (AYSA) and certain individual yarn producers. On April 15, 1994, the Department initiated a countervailing duty administrative review on Certain Yarn Products for the period May 18, 1992 to December 31, 1993 (59 FR 18099, April 15, 1994). The Department verified the responses of the Royal Thai Government (RTG) and the Thai Textile Manufacturers Association (TTMA) from January 16 through January 25, 1995 pursuant to the administrative review.

Due to prior analysis of interested party status of AYSA in 1990, the Department initiated this review on certain yarn products only for the period May 18, 1992, through December 31, 1993 (FR 59 18099, April 15, 1994). The review covers nine programs and eight producers/exporters: Saha Union, Venus Thread, Union Thread, Union Spinning, Thai Melon, Thai American, Thai Blanket, and Thai Synthetic.

Applicable Statue and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of certain yarns from Thailand. During the period of review, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 5204.11.0000, 5204.19.0000, 5204.20.0000, 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000, 5206.45.0000, 5207.10.0000, 5207.90.0000, 5401.10.0000, 5402.31.3000, 5402.32.3000, 5402.33.6000, 5406.10.0020, 5406.10.0040, 5406.10.0090, 5508.20.0000, 5510.12.0000, 5510.90.4000, and 5511.30.0000.

Analysis of Programs

1. Electricity Discounts

Under Section II(b) of the suspension agreement, the producers and exporters are not to apply for, or receive, any discount on electricity rates provided by the electricity authorities of Thailand (the Electricity Generating Authority of Thailand (EGAT), Metropolitan Electricity Authority (MEA) or the Provincial Electricity Authority (PEA)) for exports of subject merchandise.

EGAT is the general producing authority of electricity in Thailand selling to regional authorities such as MEA and PEA. PEA and MEA in turn sell electricity to companies in their jurisdiction. This program was

terminated effective January 1, 1990. However, producers and exporters who applied for discounts on exports prior to January 1, 1990, are still eligible to receive residual benefits on those exports.

Based on our verification, we found that neither EGAT, MEA, or PEA provided residual benefits during the POR on exports of subject merchandise to the United States. *See* verification report dated June 1, 1995.

2. Repurchase of Industrial Bills

Under Section II(f) of the suspension agreement, the producers and exporters are not to apply for, or receive, any promissory notes from the Bank of Thailand (BOT) for exports of subject merchandise to the United States.

In 1988, this program was changed from "Rediscount of Industrial Bills" to "Repurchase of Industrial Bills" (*see* "Notification of the Bank of Thailand #2531 re: Repurchase of Industrial Bills 1988"). Under this program, companies can receive discounted financing for working capital on industrial bills for a period of 120 days. This program operates similarly to the Export Packing Credit Program where companies can receive financing from a commercial bank or the Industrial Finance Corporation at interest rates of 10% or less. The BOT will then repurchase 50% of the bills from the commercial bank or Industrial Finance Corporation.

Based on our verification, we found the signatories subject to this review were not among those that applied for, or received, industrial bills for exports of subject merchandise to the United States during the POR. *See* verification report dated June 1, 1995.

3. Investment Promotion Act: Section 28, 31, 35, and 36

Under Section II (i) of the suspension agreement, the producers and exporters are to notify the Department in writing prior to applying for, or receiving, benefits under the Investment Promotion Act on shipments exported to the United States.

The Investment Promotion Act of 1977 (IPA) is a general act, administered by the Board of Investment (BOI), that allows for the promotion of different industries selected for development assistance by the BOI. Under this program, producers and exporters must be granted a BOI license which enables them to receive various IPA benefits. Such benefits include the following:

Section 28—IPA Section 28 provides an exemption from payment of import duties on imported machinery.

Section 31—IPA Section 31 provides an exemption of juristic person income tax on the net profit derived from the promoted activity.

Section 35—IPA Section 35 provides certain income tax benefits to firms located in investment promotion zones.

Section 36 (1)—IPA Section 36(1) allows companies an exemption from import duties on raw and essential materials used to produce goods for export.

Section 36 (4)—IPA Section 36(4) grants companies permission to deduct from taxable income an amount equal to 5% of the increase in export earnings over the previous year.

Based on our verification, we found no indication of signatories receiving benefits under these programs during the POR. *See* verification report dated June 1, 1995.

4. International Trade Promotion Fund

Under Section II(h) of the suspension agreement, the producers and exporters are to notify the Department in writing prior to applying for or accepting any new benefit which is, or is likely to be, a countervailable bounty or grant on shipments of subject merchandise exported, directly or indirectly, to the United States. Although the Department has never determined this program to be countervailable, we reviewed this program in the administrative review.

This program, governed by the "Rule on Administration of the International Trade Promotion Fund (ITPF), B.E. 2532 (1989)," promotes and develops Thai exports worldwide through incoming and outgoing trade missions. The ITPF provides training and seminars for exporters, and publicity through public advertisements.

Based on our verification, we confirmed that Saha Union and its relateds (Union Spinning, Union Thread, and Venus Thread) participated in an international trade fair, promoting subject merchandise. Saha Union and its related companies paid their own expenses to participate in the trade fair. *See* verification report dated June 1, 1995.

5. Export Processing Zones

Under Section II (i) of the suspension agreement, producers and exporters shall notify the Department in writing prior to making an application to locate in an Export Processing Zone.

This program is governed by the "Industrial Estates Authority of Thailand Act, B.E. 2522, 1979." Under this program, a company must apply to the Industrial Estate Authority of Thailand (IEAT) for permission to locate in an export processing zone (EPZ). All EPZ's are located inside an industrial estate. Companies located within an EPZ can receive import duty exemptions on equipment and raw materials, and exemption of export duties on exported goods.

Based on our verification, we found no use of this program by signatories to the suspension agreement. *See* verification report dated June 1, 1995.

6. Duty Drawback

Under Section II (c) of the suspension agreement, exporters and producers are not to apply for, or receive, rebates on shipments of subject merchandise in excess of the import duties paid on items that are physically incorporated into exported products.

Under this program, Thai Customs will refund import duties paid on imported goods used in the production of an exported product. In order to qualify for duty drawback, the goods must be exported through an authorized port, the exports must be shipped within one year of the date of importation of the goods on which drawback is claimed, and the producer/exporter must request drawback within six months of the date of exportation of the goods.

During the POR, Saha Union, Union Spinning, Union Thread, Venus Thread, and Thai Melon used duty drawback on exported goods of subject merchandise to the United States. Based on verification, we found that the amount of drawback received was not in excess of the items physically incorporated into the exported product. *See* verification report dated June 1, 1995.

7. Double Deduction for Foreign Marketing Expenses

Under Section II (e) of the suspension agreement, the producers and exporters are not to apply for, or receive, the double deduction of foreign marketing expenses for income tax purposes or financing on concessionary terms from the BOT on exports of subject merchandise.

From 1978 through 1981, the BOI granted trading companies a benefit on the double deduction of foreign marketing expenses from taxable income. In order to receive this benefit, a company had to be promoted through the BOI. This program was terminated in 1981 "BOI Announcement No. 1/2524."

Based on verification, we found no use of this benefit. *See* verification report dated June 1, 1995.

8. Tax Certificates

Under Section II (c) of the suspension agreement, the producers and exporters can apply or receive tax certificates on shipments of subject merchandise exported directly or indirectly to the United States for import duties paid on items that are physically incorporated into exported products. If the producers and exporters apply for tax certificates in excess of the items physically incorporated, the suspension agreement requires that the producers and exporters repay to the RTG, in an annual adjustment, the amount in which the tax certificates exceed the import duties on physically incorporated inputs.

Tax certificate applications are made on a shipment by shipment basis after the producer/exporter receives payment for its shipment. The application can include up to 10 shipments and must be submitted within one year of the shipment date. Exporters can apply for an extension if they do not meet the one year deadline.

The law governing this program is the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act, B.E. 2524 (1981)." Effective January 1, 1992, new nominal rebate rates were established for all products by the Committee on Tax and Duty Rebates for Exported Goods Produced in the Kingdom. The new nominal rates applicable to signatories are categorized by the following sectors: spinning, weaving, made-up textile goods, and knitting. Because nominal rates are in excess of the physically incorporated inputs, the Department has calculated, and requested that the RTG implement non-excessive rates. *See* verification report dated September 15, 1994, and letter from Roland L. MacDonald to Arthur J. Lafave III dated November 15, 1994.

Thai Melon, Thai American, Thai Synthetic, and Thai Blanket have applied for tax certificates at nominal rates during the period of review (POR). The Department will require that these companies repay the RTG, in an annual adjustment, the amount in which the tax certificates exceed the import duties on physically incorporated inputs. *See* verification report dated June 1, 1995.

9. Export Packing Credits

Under Section II (a) of the suspension agreement, the producers and exporters are not to apply for, or receive, Export Packing Credits (EPCs) from the BOT that permit the rediscounting of promissory notes arising from shipments of subject merchandise to the United States.

EPCs are pre-shipment short-term loans available to exporters for a maximum of 180 days from the date of issuance. Under the EPC program, commercial banks issue loans based on promissory notes from creditworthy exporters. Such notes have to be supported by an irrevocable letter of credit, a sales contract, a purchase order, or a warehouse receipt. The commercial bank will then resell 50% of the promissory note to the BOT at a lower interest rate. The maximum interest rate a commercial bank can charge the exporter is 10% per annum.

If an exporter does not fulfill the contract by the due date of the EPC, the BOT will automatically charge the commercial bank a penalty interest rate. The commercial bank will then pass this penalty onto the exporter. The penalty interest rate is 6.5% per annum calculated over the full term of the loan. However, penalties can be refunded if the exporter ships the merchandise within 60 days after the due date. If only a portion of the goods is shipped by the due date, the exporter receives a partial refund in proportion to the value of the goods shipped.

Based on our verification, we found that Thai Melon and Thai American did use this program for exports of certain yarns to the United States during the review period. *See* verification report dated June 1, 1995.

The Department has calculated a subsidy rate for EPCs received by Thai Melon and Thai American for this administrative review. We first computed the total benefit received on the export packing credits. We then calculated a company specific subsidy rate for Thai Melon and included Thai American in the company rate because it is a related party . Next, we weight-averaged the benefit rate received by the company by its share of total exports of subject merchandise to the United States. The net subsidy received on EPCs for this administrative review is 0.19%.

Preliminary Results of Review

As a result of our review, we preliminarily determine that for the period May 18, 1992 through December 31, 1993, the signatories were not in violation of the suspension agreement. Due to the unusual circumstances surrounding this case and the reinstatement of the suspension agreement, we do not consider the calculation of EPCs in this POR to constitute a violation of the agreement within the meaning of 19 CFR Section 355.19 (d)(1994). However, we note that Section II (a) of the suspension agreement prohibits participation by any signatory in the EPC program at noncommercial rates and terms for subject merchandise. Thus, in future reviews, the signatories shall follow Section II (a) of the suspension agreement or they will be found in violation of the agreement.

For those signatories who received tax certificates in excess of the import duties paid on items physically incorporated into exports of subject merchandise, we will require that they repay to the RTG, in an annual adjustment, any amount by which the tax certificates exceed the amount of import duties on physically incorporated inputs. The annual adjustment shall be calculated in accordance with Section II c(i)(ii) of the suspension agreement.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice.

Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication, in accordance with 19 CFR 355.38(c)(1994). Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief, in accordance with 19 CRF 355.38(d)(1994). Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs (19 CRF 355.38(f)(1994)). Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CRF 355.38(e)(1994). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c)(1994), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief, or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)(1994)) and 19 CFR 355.22(1994).

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19016 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 051595K]

Marine Mammals and Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 958 (P476B).

SUMMARY: Notice is hereby given that the University of Washington, Washington Cooperative Fish & Wildlife Research Unit, School of Fisheries, WH–10, Seattle, WA 98195 (Principal Investigator: Mr. Glenn VanBlaricom) has been issued a permit to harass up to 276 gray whales (*Eschrichtius robustus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg 1, Seattle, WA 99115–0070 (206/526–6150); and

Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Gary Barone (301/713–2289).

SUPPLEMENTARY INFORMATION: On September 26, 1994, notice was published in the **Federal Register** that an application had been filed by the above-named individual. The requested permit has been issued, under the authority of the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 *et seq.*), the regulations governing endangered species permits (50 CFR parts 217–227), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and the fur seal regulations at 50 CFR part 215.

Issuance of this Permit as required by the ESA of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: July 26, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–18898 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

July 27, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 336/636 is being increased by application of swing and carryforward. The limit for Category 341 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65531, published on December 20, 1994). Also see 59 FR 66007, published on December 22, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 27, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 3, 1995, you are directed to amend the directive dated December 15, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit[1]
336/636	200,225 dozen.
341	878,725 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–18937 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations on Cotton and Man-Made Fiber Nightwear and Pajamas

July 27, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 29, 1995, under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations with the Government of Costa Rica with respect to cotton and man-made fiber nightwear and pajamas in Categories 351/651, produced or manufactured in Costa Rica.

The purpose of this notice is to advise the public that, pursuant to the ATC, if no solution is agreed upon in consultations with the Government of Costa Rica, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Costa Rica and exported during the twelve-month period which began on June 29, 1995 and extends through June 28, 1996, at a level of not less than 170,979 dozen.

A summary statement of serious damage, or actual threat thereof, concerning Categories 351/651 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 351/651, or to comment on domestic production or availability of products included in Categories 351/651, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Costa Rica.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 351/651. Should such a solution be reached in consultations with the Government of Costa Rica, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Summary Statement of Serious Damage

Cotton and Manmade Fiber Pajamas and Other Nightwear—Category 351/651

June 1995

The initial determination of serious damage, or actual threat thereof, to the U.S. industry producing cotton and manmade fiber pajamas and other nightwear, Category 351/651, was made in March 1995. Pursuant to Article 6, paragraph 5, of the Agreement on Textiles and Clothing, the March 1995 statement of serious damage, or actual threat thereof, for cotton and manmade fiber pajamas and other nightwear, Category 351/651, is herein updated to include Costa Rica to which serious damage, or actual threat thereof, is attributed.

At the time of the initial determination of serious damage, or actual threat thereof, imports from Costa Rica were down. Imports from Costa Rica are now surging, increasing 17 percent for the year ending March 1995 when compared with the same period in a year earlier, and are up 129 percent during the first quarter of 1995 when compared with the same period in 1994.

Serious damage, or actual threat thereof, to the domestic industry resulting from the sharp and substantial increase in imports of cotton and manmade fiber pajamas and other nightwear is attributed to imports from Jamaica, El Salvador, Costa Rica, and Honduras. The combination of surging imports and low priced goods from these countries have resulted in loss of domestic output, market share, investment, employment, man-hours worked, and total annual wages.

Total imports from these countries increased from 377,536 dozen in 1992 to 1,014,361 dozen in 1994, a sharp and substantial increase of 169 percent. During the year ending March 1995 imports from these countries increased 52 percent when compared with the same period a year earlier. Together their year ending March 1995 imports were 9.1 percent of total Category 351/651 imports and were 9.9 of total U.S. production of Category 351/651 in calendar year 1994.

[FR Doc. 95–18938 Filed 8–1–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Notice to Amend Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 1, 1995, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of an altered system report.

Dated: July 26, 1995.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service *(February 22, 1993, 58 FR 10023).*

* * * * *

CHANGES

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'Social Security Numbers.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add ', and 8013; and E.O. 9397.'

PURPOSE(S):

Add ', and to monitor individual customer refunds.'

* * * * *

RETRIEVABILITY:

Add ', Social Security Numbers'

* * * * *

NOTIFICATION PROCEDURE:

Add between 'Service, P.O.' 'ATTN: SD,'

RECORDS ACCESS PROCEDURE:

Add between 'Service, P.O.' 'ATTN; SD,'

* * * * *

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, P.O. Box 660202, Dallas, TX 75266–0202; HQ Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf; regional, area, post and base Exchanges in the United States.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army and Air Force Exchange Service (AAFES) customers who purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual Social Security numbers, copies of layaway tickets, requests for refunds, special order forms/ procurement request/logs, cash receipt/ charge or credit vouchers, repair vouchers, warranty documents, correspondence between AAFES and the customer and/or vendor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012, 3013, 8012, and 8013; and E.O. 9397.

PURPOSE(S):

To record customer transactions/ payment for layaway and special orders; to determine payment status before finalizing transactions; to identify account delinquencies and prepare customer reminder notices; to mail refunds on canceled layaway or special orders; to process purchase refunds; to document receipt from customer of merchandise subsequently returned to vendors for repair or replacement and initiate follow-up actions, and to monitor individual customer refunds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file boxes and cabinets.

RETRIEVABILITY:

By customer's surname, document control number, Social Security Number and/or due date.

SAFEGUARDS:

Records are maintained in secured areas, accessible only to authorized personnel having need for the information in the performance of their duties.

RETENTION AND DISPOSAL:

Cancelled or completed layaway tickets are held for 6 months after cancellation or delivery of merchandise; purchase orders are retained for 2 years; refund vouchers are retained for 6 years; returned merchandise slips are retained for 6 years; cash receipt vouchers are retained for 3 years; repair/replacement order slips are held 2 years. All records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, PO Box 660202, Dallas, TX 75266–0202.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: SD, PO Box 660202, Dallas, TX 75266–0202.

Individual should provide name and sufficient details or purchase to enable locating pertinent records, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: SD, PO Box 660202, Dallas, TX 75266–0202.

Individual should provide name and sufficient details or purchase to enable locating pertinent records, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; vendor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–18968 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–F

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 232, Contract Financing, and Related Clause at 252.232–7007; OMB Control Number 0704–0359.

Type of Request: Extension.

Number of Respondents: 800.

Responses per Respondent: 1.

Annual Responses: 800.

Average Burden per Response: 1 hour.

Annual Burden Hours: 800.

Needs and Uses: This requirement provides for the collection of information from contractors who are awarded incrementally funded, fixed-price DoD contracts. The information collected hereby, constitutes a notification of the Federal Government by the contractor, when the work under the contract will, within ninety days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will also be used to determine what course of action the Government will take; i.e., allot additional funds for continued performance, terminate the contract, or terminate certain contract line items.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18963 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Subpart 203.170, Statutory Prohibitions on Compensation to Former DoD Employees, and Related Clause at 252.203–7000; OMB Control Number 0704–0277.

Type of Request: Extension.

Number of Respondents: 1,000.

Responses per Respondent: 1.

Annual Responses: 1,000.

Average Burden per Response: 8 hours.

Annual Burden Hours: 8,000.

Needs and Uses: This requirement provides for the collection of information from major contractors who employ certain former DoD employees. The information collected hereby, constitutes an annual report to the Secretary of Defense of the employment of these individuals.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18962 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Subpart 223.70, Hazardous Waste Disposal, and Clause at 252.223–7005; OMB Control Number 0704–0343.

Type of Request: Extension

Number of Respondent: 45.

Responses per Respondent: 1.

Annual Responses: 45.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 22.

Needs and Uses: This requirement provides for the collection of information from contractors performing offsite hazardous waste treatment or disposal services for DoD. It will be used to verify that such contractors have adequate liability insurance or financial assurance to cover sudden and non-sudden accidental occurrences, in accordance with 10 USC 2708.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18966 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Forms, and OMB Control Number: DoD FAR Supplement, Appendix F, Material Inspection and Receiving Report; DD Forms 250, 250C, and 250–1; OMB Control Number 0704–0248.

Type of Request: Expedited Processing—Approval Date Requested: 30 days following publication in the **Federal Register.**

Number of Respondents: 7,800,000.

Responses per Respondent: 1.

Annual Responses: 7,800,000.

Average Burden per Response: 8 minutes.

Annual Burden Hours: 988,000

Needs and uses: This requirement provides for the collection of

information in support of material inspection, shipping, and receiving reports. It will be used to process inspections, receipt of materials, and payments to contractors.

Affected Public: Business or other for-profit; Not-for-profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1995.

Patricia L.Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18965 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: DoD FAR Supplement, Subpart 223.72, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.

Type of Request: New collection.

Number of Respondents: 230.

Responses per Respondent: 1.

Annual Responses: 230.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 58.

Needs and Uses: The information collected hereby, is required to notify the Federal Government of subcontracts involving arms, ammunition, and explosives. It will be used to monitor contractor compliance with the requirements of DoD 5100.76–M, "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives."

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18964 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0078]

Clearance Request for Make-or-Buy Program

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0078).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Make-or-Buy Program.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Price, performance, and/or implementation of socio-economic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, Subpart 15.7, Make-or-Buy Programs, of the FAR—

(i) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, i.e., a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(ii) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(iii) Prescribes the contract clause at FAR 52.215–21, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *8* hours per termination, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405.

The annual reporting burden is estimated as follows: Respondents, *200*; responses per respondent, *3*; total annual responses, *600*; preparation hours per response, *8*; and total response burden hours, *4,800*.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0078, Make-or-Buy Program, in all correspondence.

Dated: July 24, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–18998 Filed 8–1–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

ACTION: Notice.

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on September 21, 1995 and from 8:30 a.m. to 4:30 p.m. on September 22, 1995. The meeting will be held at The Nonantum Inn, 95 Ocean Avenue, Kennebunkport, Maine 04046. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests, Department of Defense's Student Testing Program, and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than September 1, 1995.

Dated: July 28, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18967 Filed 8–1–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Corps of Engineers, Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Proposed Wyoming Valley Inflatable Dam in Luzerne County, Pennsylvania

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District U.S. Army Corps of Engineers is preparing a formulation/design report with an integrated Supplemental Environmental Impact Statement (SEIS) for the construction of an inflatable dam in the Wyoming Valley region of the Susquehanna River Basin. This study is being accomplished as part of the continuing project process. The National Environmental Policy Act (NEPA) document is intended to supplement previous NEPA work accomplished, a final EIS which was done in September 1981 and a SEIS done in January 1995, for both the Phase I and Phase II General Design Memorandums (GDM). The dam is a component of the Wyoming Valley Levee Raising Project mitigation plan. The formulation/design study will review the recommended plans identified in the Wyoming Valley Inflatable Dam, Luzerne County, Pennsylvania Reconnaissance Report, dated April 1991, formulate additional plans as necessary, evaluate the associated impacts, and then provide a detailed analysis of the selected plan. The selected plan will be the alternative that fulfills Federal economic, engineering and environmental criteria and is preferred by both the Federal and non-Federal parties. The study was authorized under Section 102(w) of the Water Resources Development Act of 1992.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and SEIS can be addressed to Ms. Susan B. Hughes, Project Management, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PP–C, P.O. Box 1715, Baltimore, Maryland 21203–1715.

SUPPLEMENTARY INFORMATION: 1. The study area is located in northeastern Pennsylvania. The proposed inflatable dam would be constructed in an area known as the Wyoming Valley in Luzerne County, which extends along the Susquehanna River from the Borough of Pittston southwest approximately 15 miles to Nanticoke City. The Wyoming Valley is heavily developed, primarily by urban residential, commercial, and industrial facilities. There are also several abandoned and active coal mining operations in the valley.

2. The study area was plagued with recurring floods from the Susquehanna River for many years until a series of Federally authorized flood protection measures were constructed in the 1930's, 1940's and 1950's. The existing flood damage reduction system is composed of four projects, which are located in the Boroughs of Kingston and Edwardsville; the Boroughs of Swoyersville and Forty Fort; the Borough of Plymouth; and the Township of Hanover and the City of Wilkes-Barre.

3. In June 1972, Tropical Storm Agnes, the largest flood of record, overtopped the existing flood protection system by four to five feet. In December of 1972, the Baltimore District completed a document titled "Wyoming Valley Flood Control, Susquehanna River, Pennsylvania" which recommended that the existing flood protection system be modified to protect against an Agnes-level flood. In 1981, a more detailed Phase I General Design Memorandum (GDM)/Feasibility Report and Final Environmental Impact Statement (FEIS) were completed which recommended that the existing flood protection system be raised to protect against an Agnes-level flood. Section 401(a) of the Water Resources Development Act of 1986 (Public Law 99–662) authorized the construction of the project recommended in the 1981 Phase I GDM.

4. Section 102(w) of the Water Resources Development Act of 1992 (Public Law 102–580) modified the previous authorization as follows: "to direct the Secretary to complete the final phase II design memorandum for the project (including the results of a review of nonstructural mitigation plans for the purpose of ameliorating damages from induced flooding)". As such, the inflatable dam is being considered as a form of mitigation for the Wyoming Valley Levee Raising project.

5. The Phase II GDM for the Wyoming Valley Levee Raising project, which was made available for public review in November 1994, included the inflatable dam as a measure to mitigate against adverse intangible social and economic impacts of the improved levee system. A SEIS was completed for the Phase II GDM. The proposed mitigation plan was addressed within the GDM/SEIS. However, detailed investigations of the proposed inflatable dam were not.

6. The SEIS currently being prepared will build upon the previous environmental impact statements and address cumulative impacts related to the entire project. A range of alternatives will be analyzed and discussed. The formulation/design report will review the reconnaissance report and use it as the foundation for its analysis. Based on the reconnaissance report, preliminary formulation indicates that the dam would be located 220 feet upstream of the abandoned Delaware and Hudson railroad bridge crossing the Susquehanna River. The dam would consist of four inflatable rubber segments anchored to reinforce concrete piers, abutments and sill, spanning a total length of 850 feet across the Susquehanna River. Dam heights between 6.5 feet, 8 feet, and 10 feet will be investigated. The boating pool created by the 6.5-foot dam would extend approximately 4.4 miles upstream to Forty Fort and would provide about 365 acres of boating area (total surface area=410 acres). The deepest portion of the lake would be

near the activity centers at Kirby, Nesbitt, and River Commons Park. The higher alternatives would require larger foundations to support larger bags and the deeper impoundment provided by the dam. The boating pool created by the 10-foot dam would extend approximately 5.5 miles upstream near Monocanock Island and would provide about 495 acres of boating area (total surface area=520 acres).

7. The Baltimore District is preparing a SEIS which will document the alternatives analysis and describe the impacts of the proposed projects on environmental and cultural resources in the study area and the overall public interest. If applicable, the SEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of Section 404 of the Clean Water Act of 1977 (Public Law 95–217).

8. A notice will be distributed to interested private individuals and organizations, as well as Federal, state, and local agencies, informing them of our intent to prepare a SEIS, and requesting their comments. The Baltimore District invites potentially affected Federal, state, and local agencies and other interested organizations and parties to participate in this study. Agencies that will be involved in the study and SEIS process include, but are not limited to the following: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Geological Survey; U.S. Natural Resources Conservation Service; U.S. National Park Service; Pennsylvania Department of Environmental Resources; Pennsylvania Historical and Museum Commission; Pennsylvania Fish and Boat Commission; Pennsylvania Game Commission; Luzerne County, Pennsylvania; and the Susquehanna River Basin Commission. Additional study newsletters, notices and workshops may be included as part of the public involvement program, as needed.

9. The draft SEIS is tentatively scheduled to be available for public review in early summer 1996.

Randall R. Inouye,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 95–18940 Filed 8–1–95; 8:45 am]

BILLING CODE 3710–41–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 9, 1995. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 11 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 10 a.m. at the same location and will include status reports on the Christina River Basin study and proposed Lehigh River Basin flood warning system as well as an opportunity for public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *C S Water & Sewer Associates D–76–21 (Revised).* An application to revise DRBC Docket No. D–76–21 to approve an existing discharge from a 0.1 million gallons per day (mgd) sewage treatment plant (STP) to an unnamed tributary of the Delaware River. The STP was originally approved predicated upon a discharge directly to the Delaware River. The project STP is located in Lackawaxen Township, Pike County, Pennsylvania. The STP will continue to serve the community of Masthope Rapids.

2. *Borough of Shoemakersville D–90–7 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 7.5 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 1, 3, 4, 5 and 6. Commission approval on March 28, 1990 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 7.5 mg/30 days. The project is located in the Borough of Shoemakersville and Perry Township, Berks County, Pennsylvania.

3. *Jackson Township Municipal Utilities Authority D–94–18 CP.* An application for approval of a ground water withdrawal project to supply up to 21.6 mg/30 days of water to the Six Flags Great Adventure theme park from new recharge/withdrawal Well No. 12, and to retain the existing withdrawal limit of 26.42 mg/30 days from all Delaware River Basin wells. During periods of seasonal low water demand, the applicant proposes to inject treated water from existing Well Nos. 7 and 10 into Well No. 12 at a rate of 250 gallons per minute (gpm) to store the higher quality water within the aquifer for later withdrawal during periods of seasonal high water demand. The project is located in Jackson Township, Ocean County, New Jersey.

4. *Rosenberger's Dairies, Inc. D–95–1.* An application for approval of a ground water withdrawal project to supply up to 2.6 mg/30 days of water to the applicant's dairy production and processing facility from new Well No. 4, and to limit the withdrawal from all wells to 3.4 mg/30 days. The project is located in Hatfield Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Crompton & Knowles Corporation D–95–8.* A project to modify and expand the applicant's existing 0.18 mgd Gibraltar industrial wastewater treatment plant (IWTP) by replacing an earthen bio-lagoon surface impoundment with above-ground tanks. The IWTP will continue to serve only the applicant's dye and chemical manufacturing plant and will discharge at an average monthly rate of 0.22 mgd via an existing outfall on the Schuylkill River. The IWTP is located approximately one mile east of the Town of Gibraltar in Robeson Township, Berks County, Pennsylvania.

6. *Tel Hai Retirement Community D–95–21.* A project to modify and expand an existing 50,000 gallons per day (gpd) tertiary level STP to provide an additional 20,000 gpd capacity in order to serve a new apartment complex and community center for the applicant's retirement community. The STP will continue to serve only the applicant's retirement community in Honey Brook Township, Chester County, Pennsylvania. The expanded STP will continue to provide tertiary treatment and discharge to Two Log Run, a tributary of the West Branch Brandywine Creek.

7. *Connaught Laboratories Inc. D–95–34.* A project to modify the applicant's existing 0.15 mgd IWTP which will continue to serve both the applicant's vaccine production operations and the adjacent Salk Institute laboratory. The IWTP is located just east of State Route 611 in Pocono Township, Monroe County, Pennsylvania. The treated effluent will continue to discharge to Swiftwater Creek and the permitted discharge volume and effluent characteristics will remain unchanged.

8. *George School D–95–39.* An application for approval of a ground water withdrawal project to supply up to 5.18 mg/30 days of water to the applicant's pond from Newtown Artesian Water Company's Well No. 10 which is located in Newtown Township. The proposed allocation of ground water is an increase from 1.37 mg/30 days to 5.18 mg/30 days. The pond will be used for teaching ecological and environmental courses. The project well is located in Newtown Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: July 25, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–18941 Filed 8–1–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Filing the Fiscal Operations Report for 1994–95 and Application to Participate for 1996–97 (FISAP) in the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Work-Study (FWS) Programs (ED FORM 646–1; OMB No. 1840–0073).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for fiscal year 1996 funds—for use in the 1996–97 award year (July 1, 1996 through June 30, 1997)—under the Federal Perkins Loan, FWS, and FSEOG programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the costs of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. However, the Secretary will not allocate funds under the Federal Perkins Loan, FWS, and FSEOG programs for the 1996–97 award year to any institution that is not currently eligible unless the institution files its institutional participation application and other documents required for an eligibility and certification determination by the closing date that will appear in a separate notice in the **Federal Register**.

The Secretary further gives notice that an institution that had a Federal Perkins Loan fund or expended FWS or FSEOG funds during the 1994–1995 award year (July 1, 1994, through June 30, 1995) is required to submit a Fiscal Operations Report to the Secretary to report its program expenditures as of June 30, 1995.

Applicants that did not participate in the Federal Perkins Loan Program, FWS Program, or FSEOG Program in the 1994–95 award year will be required to submit data for the application portion of the FISAP only. The Department is mailing only the application portion of the FISAP to first-time applicants.

In addition, an institution must submit one original completed FISAP signature page and one original signed combined lobbying, debarment, and drug-free workplace certifications form (ED 80–0013 and referred to collectively as the "compliance certifications" form) for the 1996–97 award year.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 2, respectively, of title IV of the Higher Education Act of 1965, as amended.

DATES: *Closing Date and Methods for Submitting a FISAP and Required Signed Documents.* An institution may submit its FISAP by—

(1) Submitting the completed data on a data diskette provided by the Department of Education (the Department);

(2) Creating a tape from data stored on a mainframe computer and submitting that tape in a format defined by the Department; or

(3) Transmitting the data from a personal or mainframe computer through a modem.

To ensure consideration for 1996–97 funds, an institution must submit an electronic FISAP by data diskette, tape, or modem, as well as one original completed FISAP signature page and one original signed "compliance certifications" form by September 29, 1995.

ADDRESSES: *FISAP Delivered by Mail.* A diskette or tape containing FISAP data along with one original completed FISAP signature page and one original signed "compliance certifications" form must be addressed to FISAP, c/o Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland 20910.

An institution must show proof of mailing its FISAP and the required signed documents by September 29, 1995. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the Secretary of Education.

If a FISAP and the required signed documents are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

FISAP Delivered by Hand. A diskette or tape containing FISAP data along with one original completed FISAP signature page and one original signed "compliance certifications" form must be taken to Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland.

Hand-delivered FISAP diskettes or tapes and the required signed documents will be accepted between 9 a.m. and 5 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. A FISAP and the required signed documents that are hand-delivered will not be accepted after 5 p.m. on September 29, 1995.

FISAP Delivered Electronically. A FISAP that is delivered electronically must be transmitted by either a personal or mainframe computer to the host Department computer using a modem. If you are transmitting electronically via a modem, the data transmission must be completed prior to midnight, Eastern time, on September 29, 1995. (For purposes of this notice, this deadline means that an institution has all of September 29, 1995, to transmit electronically via a modem.) The institution should print a copy of its transmission receipt for its records. In addition, one original completed FISAP signature page and one original signed "compliance certifications" form must be mailed to Electronic FISAP, c/o Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland 20910, by September 29, 1995. An institution must show proof of mailing the required signed documents by the deadline. Proof of

mailing is explained under the heading "FISAP Delivered by Mail."

SUPPLEMENTARY INFORMATION: FISAP materials are mailed by the Department in late July 1995. An institution must prepare and submit its FISAP in accordance with the information included in the package.

The program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the programs.

Applicable Regulations

The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Perkins Loan Program, 34 CFR Part 674.

(3) Federal Work-Study Programs, 34 CFR Part 675.

(4) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(6) New Restrictions on Lobbying, 34 CFR Part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(8) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: To receive information or to request FISAP materials, contact Ms. Sandra Donelson, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 4714, ROB–3), Washington, D.C. 20202–5458. Telephone (202) 708–9751. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

(Catalog of Federal Domestic Assistance Numbers: 84.038 Federal Perkins Loan Program; 84.033 Federal Work-Study Program; and 84.007 Federal Supplemental Educational Opportunity Grant Program)

Dated: July 27, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–18928 Filed 8–1–95; 8:45 am]

BILLING CODE 4000–01–P

Office of Postsecondary Education

Availability of the Amendments to the National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1994–95 School Year

AGENCY: Department of Education.

ACTION: Notice of availability of the amendments to the 1994–95 National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools.

SUMMARY: Institutions and borrowers participating in the Federal Perkins Loan and National Direct Student Loan Programs and other interested persons are advised that they may obtain information regarding the amendments to the National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1994–95 School Year (Directory). The amendments identify changes in the list of schools that qualify borrowers for teacher cancellation benefits under each of the loan programs.

DATES: The amendments to the Directory are currently available.

ADDRESSES: Information concerning specific schools listed in the amendments to the Directory may be obtained from Systems Administration Branch, Campus-Based Programs System Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 4621, ROB–3), Washington, D.C. 20202–5453, Telephone (202) 708–6730.

Information concerning deferment and/or cancellation of a National Direct Student Loan or Federal Perkins Loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3053, ROB–3), Washington, D.C. 20202–5345, Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: The amendments to the Directory are available at (1) each institution of higher education participating in the Federal Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** (60 FR 5659) on January 30, 1995, indicating that the Directory was available. The Secretary has revised the Directory due to the opening and closing of schools, school name changes, and the need for other corrections. These revisions are listed in the amendments to the Directory.

The procedures for selecting the schools that qualify borrowers for cancellation benefits are described in the Federal Perkins Loan Program regulations at 34 CFR 674.53 and 674.54. The Secretary has determined that for the 1994–95 academic year full-time teaching in the schools set forth in the Directory and the amendments to the Directory qualifies a borrower for cancellation benefits.

The Secretary is providing the amendments to the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1994–95 academic year.

The Office of Postsecondary Education retains, on a permanent basis, copies of all published Directories and amendments.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct and Federal Perkins Student Loan Cancellations)

Dated: July 28, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–18927 Filed 8–1–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

(FE Docket No. EA–109)

Application to Export Electricity; Arizona Public Service Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Arizona Public Service Company (APS) has requested authorization to export electric energy to Mexico.

DATES: Comments, protests, or requests to intervene must be submitted on or before September 1, 1995.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act. In addition, the construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038.

On June 22, 1995, APS filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to the Comision Federal de Electricidad (CFE), the national electric utility of Mexico, pursuant to section 202(e) of the Federal Power Act. APS proposes to export to CFE emergency energy pursuant to a Reciprocal Emergency Assistance Agreement between APS and CFE. This agreement commits both parties to establish 34.5 kilovolt (kV) electric transmission interconnections between the communities of Agua Prieta, Sonora, Mexico and Douglas, Arizona, and San Luis Rio Colorado, Sonora, Mexico, and San Luis, Arizona, and to provide emergency assistance when requested by the other party in order to mutually increase each party's distribution system reliability. Under two separate applications, APS has applied to FE for Presidential permits to construct the international transmission facilities required by this agreement. These applications have been docketed as PP–107 and PP–108, respectively.

Procedureal Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with sections 385.211 or 385.214 of the rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Dennis Beals, Arizona Public Service Company, P.O. Box 53999, Station 9860, Phoenix, Arizona 85072–3999, (602) 250–3101 and Bruce Gardner, Esq., Arizona Public Service Company, P.O. Box 53999, Station 9820, Phoenix, Arizona 850772–3999, (602) 250–3507.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after the DOE determines whether the proposed action would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on July 26, 1995.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–19032 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–P

[Number DE–PS07–95ID13375]

Amendment No. 1 to Solicitation for Financial Assistance; Refractory Containment Research, Development and Demonstration

The U.S. Department of Energy, Idaho Operations Office, published a complete solicitation in the **Federal Register** (Vol. 60, No. 122, Page Numbers 32948 through 32952) on June 26, 1995, requesting cost shared applications for Refractory Containment Research, Development and Demonstration. The purpose of this Amendment No. 1 is to change the following:

1. Page 32948, "**DATES:** The deadline for receipt of applications is 4:00 p.m. MDT, August 17, 1995." is changed to "**DATES:** The deadline for receipt of applications is 4:00 p.m. MDT, August 31, 1995."

2. Page 32949, under E. Application Evaluation, a. Application Deadline: The sentence, "The deadline for receipt of applications is 4:00 p.m. MDT, August 17, 1995." is changed to "The deadline for receipt of applications is 4:00 p.m. MDT, August 31, 1995."

3. Page 32950, under e. Merit Reviews. The sentence "Selections for negotiations are expected to be made October 6, 1995, and financial assistance awards are expected to be made beginning November 26, 1995." is changed to "Selections for negotiations are expected to be made October 20, 1995, and financial assistance awards are expected to be made beginning December 9, 1995."

Dated: July 20, 1995.

R. Jeffrey Hoyles,

Director of Procurement Services Division.

[FR Doc. 95–19033 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Site Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy

ACTION: Notice of open meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site

Specific Advisory Board (EM SSAB), Kirtland Area Office (Sandia)

DATES: Thursday, August 10, 1995: 6:45 pm–10:00 pm (Mountain Daylight Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th Street NW., Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505)845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:45 pm—Public Comment Period
7:00 pm—Issues Discussion: Future Land Use, Corrective Action Management Units
8:30 pm—Board Organizational Structure
9:30 pm—Evaluation
10:00 pm—Adjourn

A final agenda will be available at the meeting Thursday, August 10, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on July 28, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–19031 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–007]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Central Air Conditioner and Central Air Conditioning Heat Pump Test Procedure to Kool-Fire

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. CAC–007) granting a Waiver to Kool-Fire from the existing Department of Energy test procedure for central air conditioners and central air conditioning heat pumps. The Department is granting Kool-Fire's Petition for Waiver from the existing Department of Energy central air conditioner and central air conditioning heat pump test procedure for the company's lines of HC and LTH burner-assisted heat pumps.

FOR FURTHER INFORMATION CONTACT:

Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9611

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR Part 430, § 430.27(l), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Kool-Fire has been granted a Waiver from the existing Department of Energy central air conditioner and central air conditioning heat pump test procedure for the company's lines of HC and LTH burner-assisted heat pumps.

Issued in Washington, DC, on July 19, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order; Department of Energy; Office of Energy Efficiency and Renewable Energy

In the Matter of: Kool-Fire (Case No. CAC–007).

Background:

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires the Department to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, the Department further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until the Department issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Kool-Fire filed a "Petition for Waiver," dated July 18, 1994, in accordance with Section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on March 3, 1995, Kool-Fire's petition, and solicited comments, data, and information respecting the petition. 60 FR 11967. Kool-Fire also filed an "Application for Interim Waiver" under Section 430.27(g), which the Department granted on February 22, 1995. 60 FR 11968, March 3, 1995.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with the Federal Trade Commission (FTC) concerning the Kool-Fire Petition. The FTC did not have any objections to the issuance of the waiver to Kool-Fire.

Assertions and Determinations

Kool-Fire's Petition seeks a waiver from the Department's testing of the heating mode operation for its burner-assisted heat pumps because the current Department test procedure does not address burner-assisted heat pumps. Thus, the Department is granting a waiver of the requirement to test Kool-Fire's HC and LTH models in the heating mode.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Kool-Fire (Case No. CAC–007) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4) and (5).

(2) Kool-Fire shall be required to test its lines of HC and LTH heat pumps on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix M, for the cooling mode of operation, Section 2.1. The heating mode test, Section 2.2, is waived.

(3) The Waiver shall remain in effect from the date of issuance of this Order until the Department prescribes final test procedures appropriate to the HC and LTH lines of burner-assisted heat pumps manufactured by Kool-Fire.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective July 27, 1995, this Waiver supersedes the Interim Waiver granted Kool-Fire on February 22, 1995. 60 FR 11967, March 3, 1995 (Case No. CAC–007).

Issued In Washington, DC, on July 27, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–19011 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Proposed Agency Information Collection Under OMB Review

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the Proposed Revision of Form RW–859, "Nuclear Fuel Data," Proposed New Form RW–859S, "Nuclear Fuel Data Supplement," and Solicitation of Comments.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed revision to the Form RW–859, "Nuclear Fuel Data," and proposed new survey Form RW–859S, "Nuclear Fuel Data Supplement."

DATES: Written comments must be submitted by October 2, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Ms. Kathy Gibbard, Program Manager, Form RW–859 and RW–859S, U.S. Department of Energy, Energy Information Administration (EI–531), 1000 Independence Avenue, S.W., Washington, DC 20585, or via e-mail (internet) Kathy.Gibbard.@HQ.DOE.GOV. FAX (202) 254–5765.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ms. Gibbard at the address listed above, telephone (202) 254–5559.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Nuclear Waste Policy Act of 1982, as amended (NWPA), 42 U.S.C. 10101 *et seq.*, requires that the Secretary develop and implement programs to dispose of spent nuclear fuel. The Office of Civilian Radioactive Waste Management (OCRWM) uses the information from Form RW–859 to understand and explore the specific requirements of developing and conducting programs to effectuate the purposes of the NWPA.

The EIA administers the Form RW–859, "Nuclear Fuel Data", which is used to collect data from owners of commercial nuclear power plants and owners and caretakers of spent nuclear fuel. The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) authorizes the EIA to collect data. The current Form RW–859 collects data on every fuel assembly discharged from domestic commercial nuclear reactors,

spent fuel projected to be discharged, and spent fuel storage pool inventories and capacities. The form has been approved through December 31, 1997. Major revisions to Form RW–859 necessitate that the proposed form and new supplemental schedule be approved by the Office of Management and Budget (OMB).

II. Current Actions

This notice is to solicit comments on proposed revisions to Form RW–859 and corresponding instructions. The extension request to OMB will be through December 31, 1998. The DOE is proposing to reduce the content of the Form RW–859 survey to only collect data elements that require annual update. Data that are not subject to annual revision will be collected every five years on a new Form RW–859S supplementary survey form. A summary of the proposed changes follows.

The following items will no longer be collected on the survey:

- Capacity data other than licensed capacity and current usable capacity
- Temporarily discharged fuel (all discharged fuel will now be designated as permanently discharged) and changes in assembly status
- Cross-reference assembly identifiers including American National Standard Institute (ANSI) identifier and fuel fabricator assembly identifiers
- Data on reconstituted fuel.

The following items will no longer be collected annually on the Form RW–859 survey, but will be collected once every five years on the Form RW–859S survey supplement:

- Dates not subject to annual revision (license renewal, reactor retirement, etc.)
- Cask-handling data
- Specific data on canisters and their contents
- Nonfuel components data.

The following items have been added to the annual Form RW–859 survey:

- Questions on quality assurance procedures and traceability
- Assembly-specific information on initial uranium content, initial enrichment, and burnup
- Current cycle start date.

The following will now be collected on the five-year Form RW–859S supplement:

- Reactor information including type, nuclear steam system supplier, design type, operational status, location, and rating
- Pool site configuration
- Crane data including capacity, limiting factors, dimensions, and clearance
- Site specific access and configuration data for the receiving/upending area, cask handling area, pool cask loading area, and set-down platform area
- Transportation data including information on on-site roads, rail, and barge
- Historical assembly-specific data not previously reported.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

General Issues

EIA is interested in receiving comments from persons regarding:

A. Whether the proposed collection(s) of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. Practical utility is the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted in accordance with the due date specified in the instructions?

C. Public reporting burden for the annual Form RW–859 data collection is estimated to average 40 hours per response. Public reporting burden for the five-year Form RW–859S supplement is estimated to be 100 hours for the initial data collection and 20 hours for subsequent data collections. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

D. What is the estimated cost of completing these forms, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the forms?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

D. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, July 20, 1995.

John Gross,

Acting Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–18391 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2680–017 Michigan]

Consumers Power Company and the Detroit Edison Company; Notice of Availability of Draft Environmental Assessment

July 27, 1995.

A draft environmental assessment (DEA) is available for public review. The DEA is for a settlement agreement containing proposed measures for fish protection and angler access at the Ludington Pumped Storage Project (FERC No. 2680). The DEA finds that approval of the settlement agreement and implementation of the proposed measures for fish protection and angler access would not constitute a major federal action significantly affecting the quality of the human environment. The Ludington Pumped Storage Project is located on the Eastern Shore of Lake Michigan in Mason County, Michigan.

The DEA was prepared by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Please denote "Comments: Project No. 2680–017" on all comments. For more information, please contact the project manager, John Mudre, at (202) 219–1208.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18958 Filed 8–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–257–001]

Equitrans, Inc.; Notice of Motion to Place Rates Into Effect

July 27, 1995.

Take notice that on July 24, 1995, Equitrans, Inc. (Equitrans) filed a motion to place into effect revised tariff sheets in accordance with the Commission's May 31, 1995 Order in this proceeding.

Equitrans states that the sheets listed in Appendix A of the Motion were included in Equitrans' April 28, 1995 filing, and Equitrans is moving to place them into effect without any modification. The rate and tariff sheets listed in Appendix B of the motion have been modified to incorporate minor clerical and conforming changes. Both sets of tariff sheets are proposed to become effective on August 1, 1995 in compliance with the May 31, 1995 Order. Equitrans has requested a waiver to permit the minor and clerical changes to the tariff sheets contained in Appendix B and any other waivers necessary to permit the Appendix A and B tariff sheets to become effective August 1, 1995.

Equitrans also states that the tariff sheets implement a new Appalachian pooling service for Equitrans' customers (APS service) which will make it easier for customers to nominate Appalachian production on the Equitrans system, while reducing administrative responsibility of the pipeline in scheduling and balancing the numerous Appalachian receipt points which Equitrans operates.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Section 835.211 of the Commission Rules of Practice and Procedure. All such protests should be filed on or before August 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Parties that have already filed motions to intervene in this proceeding need not file another motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18894 Filed 8–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–394–00]

Tennessee Gas Pipeline Company; Notice of Petition for Extension

July 27, 1995.

Take notice that on July 20, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a Statement in Support of Maintaining its Transportation Cost Rate Adjustment Mechanism (TCRA) contained in Article XXIV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1.

Tennessee states that it is filing its Statement in accordance with Commission's ruling, in Tennessee's restructuring dockets, that indicates it intended to review the TCRA two years from the effective date of restructured services on Tennessee's system. Tennessee states that the TCRA should be maintained because the TCRA is necessary to allow Tennessee to continue to recover its eligible and prudent stranded upstream transportation costs in accordance with the Commission's findings in Docket No. RP93–148 and in the "Ozark Exit Fee" docket.

Tennessee also states that the TCRA should be maintained because Tennessee has made significant progress in reducing its TBO costs, and that the TCRA has been shown to be a proven and effective TCRA "tracker" mechanism that ensures that only those costs incurred under the unexpired TBO contracts are recovered from Tennessee's customer for the term of those contracts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18896 Filed 8–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–48–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 27, 1995.

Take notice that on July 25, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 revised tariff sheets, as listed on Appendix A. attached to the filing.

proposed to be effective April 1, 1995, June 1, 1995, June 11, 1995 and July 1, 1995.

Trunkline states that this filing is being made in compliance with Section 154.41(b) of the Commission's Regulations. The revised tariff sheets reflect updates to the Index of Firm Customers.

Trunkline states that copies of this filing are being mailed to affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing ar on file with the Commission and are available for public inspecion in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95-18895 Filed 8-1-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER95-1358-000]

Wisconsin Energy Company and Northern States Power Company; Notice of Filing

July 27, 1995.

Take notice that on July 10, 1995, Wisconsin Energy Company and Northern States Power Company tendered for filing two transmission service tariffs: A Network Integration Service Tariff, and a Point-to-Point Transmission Service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-18959 Filed 8-1-95; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearing and Appeals

Cases Filed; During the Week of June 26 Through June 30, 1995

During the Week of June 26 through June 30, 1995, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: July 26, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 26 through June 30, 1995]

Date	Name And Location Of Applicant	Case No.	Type of Submission
June 23, 1995 .	General Equities, Inc., Washington, D.C.	RR304-31	Request for Modification/Rescission in the Arco Refund Proceeding. If Granted: The February 23, 1995 Decision and Order, Case Number RR304-31, issued to General Equities, Inc. would be modified regarding the firm's application for refund submitted in the ARCO refund proceeding.
June 26, 1995 .	Fruehauf Trailer Corporation, Cleveland, Ohio.	RR321-184	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The May 16, 1995 Dismissal, Case No. RF321-20350, issued to Freuhauf Trailer Corporation, would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
June 26, 1995 .	Richland Operations Office, Richland, Washington.	VSO-0044	Request for Hearing under 10 CFR Part 710. If Granted: An individual whose security clearance was suspended by the Richland Operations Office would receive a hearing under 10 CFR Part 710.
June 26, 1995 .	Simmons Oil Corp., Washington, D.C.	RD326-323	Motion for Discovery. If Granted: Discovery would be granted to Simmons Oil Corporation in connection with the statement of objections submitted in response to a proposed decision that tentatively denied the firm's request for a refund based upon alleged overcharges made by the Tesoro Petroleum Corporation.
June 28, 1995 .	Albuquerque Operations Office, Albuquerque, New Mexico.	VSA-0018	Request for Review of Opinion under 10 CFR Part 710. If Granted: The June 16, 1995 Opinion of an Office of Hearings and Appeals Hearing Officer, Case No. VSO-0018, would be reviewed at the request of an individual whose security clearance was suspended by the Albuquerque Operations Office.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 26 through June 30, 1995]

Date	Name And Location Of Applicant	Case No.	Type of Submission
June 28, 1995 .	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO-0045	Request for Hearing under 10 CFR Part 710. If Granted: An individual whose security clearance was suspended by the Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
June 28, 1995 .	Crock Texaco, Crock Texaco Service, Crock Texaco Service La Mesa, California.	RR321-186, RR321-187, RR321-188	Requests for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The June 15, 1995 Dismissal, Case Nos. RF321-19894, RF321-19895 and RF321-19896, issued to Crock Texaco, Crock Texaco Service and Crock Texaco Service would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.
June 30, 1995 .	Herbert Easterly, Crossville, Tennessee	VFA-0054	Appeal of an Information Request Denial. If Granted: The Freedom of Information Request Denial issued by the DOE Office of Inspector General would be rescinded, and Herbert Easterly would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[June 26 through June 30, 1995]

Date Received	Name of Refund Proceeding/Name of Refund Application	Case Number
6/26/95	Supplemental crude refunds	RB272-7 thru RB272-11.
6/26/95 thru 6/30/95	ARCO refund applications	RF304-15472 thru RF304-15478.
6/26/95 thru 6/30/95	Crude oil refund applications RG272-362 thru RG272-492..	
6/26/95	Supplemental crude refunds	RK272-499 thru RK272-528.
	Texaco refund applications	RF321-21076 thru RF321-21079.

[FR Doc. 95-19029 Filed 8-1-95; 8:45 am]

BILLING CODE 6450-01-P

Notice of cases Filed; Week of June 5 through June 9, 1995

During the Week of June 5 through June 9, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. July 26, 1995.

Dated: July 26, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 5 to June 9, 1995]

Date	Name and location of applicant	Case No.	Type of submission
6/5/95	Kanab Texaco, Kanab, Utah	RR321-183	Modification/Rescission First Stage. If granted: The May 12, 1995 Dismissal Letter, Case Number RF321-6331, issued to Kanab Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
6/7/95	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSA-0014	Request for Review of Opinion under 10 C.F.R. Part 710. If granted: The May 8, 1995 Opinion of the Office of Hearings and Appeals, Case No. VSO-0014, would be reviewed at the request of an individual employed at Oak Ridge Operations Office.
6/7/95	Oakland Operations Office, Oakland, California.	VSO-0039	Request for hearing under 10 C.F.R. Part 710. If granted: An individual employed at Oakland Operations Office would receive a hearing under 10 C.F.R. Part 710.
6/9/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO-0040	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 5 to June 9, 1995]

Date	Name and location of applicant	Case No.	Type of submission
6/5/95	Munir A. Malik, Hartford, Connecticut	VFA–0048	Appeal of an Information Request Denial. If granted: The May 2, 1995 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Munir A. Malik would receive access to certain Department of Energy information.
6/5/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0038	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
6/5/95	Sangre deCristo Animal Protection, Inc., Albuquerque, New Mexico.	VFA–0047	Appeal of an Information Request Denial. If granted: The April 27, 1995 Freedom of Information Request Denial issued by the U.S. Department of Energy would be rescinded, and Sangre deCristo Animal Protection, Inc. would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[Week of June 5 to June 9, 1995]

Date received	Name of refund proceedings/name of refund application	Case No.
3/17/95 thru 6/9/95	Supplemental Crude Applications	RK272–204 thru RK272–317
6/5/95 thru 6/9/95	Crude Oil Refund Applications	RG272–296 thru RG272–316
6/5/95	State Escrow Distribution	RF302–16
6/7/95	Citronelle Refunds Applications	RF345–41 thru RF345–43
6/8/95	Texaco Refund Applications	RF321–21072 thru RF321–21074
6/9/95	Supplemental Crude Refunds	RB272–5

[FR Doc. 95–19030 Filed 8–1–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Reference and Equivalent Method Designations

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated two additional equivalent methods and one additional reference method for ambient air monitoring. One of the equivalent methods is for the measurement of ambient concentrations of ozone and the other is for the measurement of ambient concentrations of lead. The reference method is for the measurement of ambient concentrations of carbon monoxide.

The new equivalent method for ozone is an automated method (analyzer) which utilizes the measurement principle based on absorption of ultraviolet radiation by ozone at a wavelength of 254 nm. This new designated method is identified as follows:

EQOA–0895–105, "Environment S.A. Model Q_341M UV Photometric Ozone Analyzer," operated on a full scale range of 0–500 ppb, at any temperature in the range of 15° C to 35° C, with the response time set to 50 seconds, and with or without any of the following options:

(1) Internal Ozone Generator
(2) Span External Control
(3) RS232–422 Serial Interface
(4) Internal Printer

Note: In addition to the standard U.S. electrical power voltage and frequency (115 Vac, 60 Hz), this analyzer is approved for use, with proper factory configuration, on 50 Hertz line frequency at any of the following voltage ranges: 105–125 Vac (115 V nominal) or 210–250 Vac (230 V nominal).

This method is available from Environmental S.A., 111, bd Robespierre, 78300 Poissy, France or from Environment U.S.A., 570 Higuera Street, Suite 25, San Luis Obispo, CA 93401. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 60, Number 111, June 9, 1995, page 30535.

The new reference method for carbon monoxide is an automated method (analyzer) which utilizes a cross flow modulated version of the measurement principle (non-dispersive infrared (NDIR) photometry) and the calibration procedure specified in appendix C of 40 CFR part 50. The new designated method is identified as follows:

RFCA–0895–106, "Horiba Instruments Incorporated, Model APMA–360 Ambient Carbon Monoxide Monitor," operated on the 0–50 ppm range, with the Line Setting set to "MEASURE", with the Analog Output set to "MOMENTARY VALUE", and with or without the optional Rack Mounting Plate and Side Rails.

Note: In addition to the standard U.S. electrical power voltage and frequency (115 Vac, 60 Hz), this analyzer is approved for use, with proper factory configuration, on 50 Hertz line frequency at any of the following voltage ranges: 100–115 Vac and 220–240 Vac.

This method is available from Horiba Instruments Incorporated, 17671 Armstrong Avenue, Irvine, CA 92714. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 60, Number 111, June 9, 1995, page 30535.

A test analyzer representative of each of these methods has been tested by the respective applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicants, EPA has determined, in accordance with part 53, that these methods should be designated, respectively, as an equivalent method and a reference method.

The new equivalent method for the determination of lead in suspended particulate matter collected from ambient air uses a graphite furnace atomic absorption method and is identified as follows:

EQL–0895–107, "Determination of Lead Concentration in Ambient Particulate Matter by Flameless (Graphite Furnace) Atomic Absorption (City of Houston, Texas)."

The applicant's request for an equivalent method determination for the above method was received on May 23, 1995. This method has been tested by the applicant, the Health and Human Services Department of Houston, Texas, in accordance with the test procedures prescribed in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method.

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with nitric acid facilitated by heat. The lead content of the sample is analyzed by a Perkin Elmer HGA graphite furnace with Zeeman background correction and AS–40 Autosampler. Technical questions concerning the method should be directed to the City of Houston, Health and Human Services Department, Environmental Chemistry Service, 1115 S. Braeswood, Houston, Texas 77030.

The information submitted by the three applicants will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, each of these methods is acceptable for use by States and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, each method must be used in strict accordance with the operation or instruction manual associated with the method or the procedures and specifications provided in the method description and subject to any limitations (e.g., operating temperature range) specified in the applicable designation (see description of the methods above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a designation applies to any analyzer which is identical to the analyzer described in the designation. In some cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading. States or other agencies using a graphite furnace atomic absorption method that employs procedures and specifications significantly different from those in method EQL–0895–107 must seek approval for their particular method under the provisions of Section 2.8 of Appendix C to 40 CFR part 58 (Modification of Methods by Users) or may seek designation of such a method as an equivalent method under the provisions of 40 CFR part 53.

Part 53 requires that sellers of designated method analyzers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, National Exposure Research Laboratory, Air Measurements Research Division (MD–78A), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning any of the methods should be directed to the applicant. Additional information concerning this action may be obtained from Frank F. McElroy, Air Measurements Research Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

J.K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–18984 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–M

Acid Rain Division

[FRL–6269–4]

Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA today announces the allocation of allowances to small diesel refineries for desulfurization of fuel

during 1994, plus additional allocations for desulfurization from October 1, 1993 through December 31, 1993. The eligibility for and calculation of allowances to small diesel refineries is in accordance with Section 410(h) of the Clean Air Act, implemented at 40 CFR part 73, subpart G, and the notice published at 60 FR 14836, March 21, 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, EPA Acid Rain Division (6204J), 401 M St., SW, Washington DC; telephone (202) 233–9074.

SUPPLEMENTARY INFORMATION: EPA's Acid Rain Program was established by Title IV of the Clean Air Act Amendments of 1990 (CAAA) to reduce acid rain in the continental United States. The Acid Rain Program will achieve a 50 percent reduction in sulfur dioxide (SO_2) emissions from utility units. The SO_2 reduction program is a flexible market-based approach to environmental management. As part of this approach, EPA allocates "allowances" to affected utility units. Each allowance is a limited authorization to emit up to one ton of SO_2. At the end of each calendar year, each unit must hold allowances in an amount equal to or greater than its SO_2 emissions for the year. Allowances may be bought, sold, or transferred between utilities and other interested parties. Those utility units whose annual emissions are likely to exceed their allocations may install control technologies or switch to cleaner fuels to reduce SO_2 emissions or buy additional allowances.

Section 410(h) of the Clean Air Act provides allowances for small diesel refineries that desulfurize diesel fuel from October 1, 1993 through December 31, 1999. Small refineries are not otherwise affected by the Acid Rain Program and do not need the allowances to comply with any provision of the Clean Air Act. Thus, the allowances serve as a financial benefit to small diesel refineries desulfurizing diesel fuel. On July 7, 1994, EPA announced the first allocation of allowances under the small diesel refinery program.

In late 1994, EPA was informed by several refiners that there was confusion regarding eligibility for the program. To resolve the confusion, EPA provided notice on March 21, 1995 (60 FR 14836) that extended the submittal date for requesting allowances for desulfurization in 1993 and in 1994 until May 15, 1995.

The following table lists 1,458 allowances to be allocated to five eligible refineries for desulfurization from October 1, 1993 through December 31, 1993. These refineries and allowances are in addition to the 7,944 allowances allocated in 1994 to fifteen refiners (see 59 FR 34811, July 7, 1994), bringing the total number of allowances allocated to 9,402. The allowances have a compliance year of 1995.

Refiner	Refinery name or location	Allocation
Big West Oil	Flying J	303
Crysen	Woods Cross, Utah	162
Hunt	Tuscaloosa, Alabama	580
La Gloria	Crown	400
Witco	Golden Bear	13

The following table lists the allowances allocated to eligible small diesel refineries for desulfurization in 1994. A total of 28215 allowances are allocated to 19 refiners. These allowances have a compliance year of 1995.

Refiner	Refinery name or location	Allocation
Big West Oil	Flying J	1230
Cenex	Laurel, Montana	1500
Crysen	Woods Cross, Utah	278
Frontier	Cheyenne, Wyoming	1500
Gary Williams	Bloomfield	1232
Giant	Ciniza	1275
Holly	Lea	1438
	Navajo	1479
	Montana	334
Hunt	Tuscaloosa, Alabama	1500
Kern	Bakersfield, California	1500
La Gloria	Crown	1500
Lion	El Dorato	1500
Paramount	Paramount, California	1500
Pennzoil	Atlas	1500
	Roosevelt	214
Powerine	Santa Fe Springs	1500
Pride	Abilene, Texas	1263
Sinclair	Little America	1362
	Sinclair, Wyoming	1500
	Tulsa, Oklahoma	1500
U.S. Oil & Refining	Tacoma, Washington	935
Witco	Golden Bear	51
Wyoming Refining	Denver, Colorado	623

Requests for allowances for desulfurization during 1995 are due no later than April 1, 1996. Allowances allocated in 1996 will have a compliance year of 1996.

Dated: July 27, 1995.

Paul M. Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 95–18989 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5270–4]

Maryland: Final Determination of Adequacy of the State's Municipal Solid Waste Landfill Permitting Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of Final Determination of Partial Program Adequacy for the State of Maryland's Application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, state/tribal landfill permit programs. The Agency intends to approve adequate state/tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved state/tribal permit programs provide interaction between the state/tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in state/tribal areas with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the state/tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a state/tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The State of Maryland, through the Maryland Department of the Environment (MDE), applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Maryland's MSWLF permit program application and proposed a determination on March 21, 1995, that Maryland's MSWLF permit program is adequate to ensure compliance with a major portion of the revised MSWLF Criteria, as described below. EPA is today issuing a final determination that the State of Maryland's program is adequate for partial approval.

EFFECTIVE DATE: The determination of adequacy for the State of Maryland shall be effective immediately.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew Uricheck, mailcode (3HW50), telephone (215) 597–7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs that incorporate the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which state/tribal programs must satisfy to be determined adequate.

EPA intends to approve state/tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits or other forms of prior approval, as imposing several minimum requirements. First, each state/tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state/tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state/tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state/tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether state/tribal programs are "adequate" based on the criteria outlined above.

B. State of Maryland

On August 26, 1993, MDE submitted an application for adequacy determination for its MSWLF permit program. On March 21, 1995, EPA published a tentative determination of adequacy for most of the Maryland program, as described in detail below. Further background on the tentative determination of adequacy appears at Vol. 60, No. 54 **Federal Register** 14938–14941, March 21, 1995.

A public comment period began on March 21, 1995, and ended on May 19, 1995. As announced in the notice of tentative determination, a public hearing was held on May 17, 1995, in Baltimore, MD. Few people requested the opportunity to speak or offered public comments at the public hearing.

In the State's application for an adequacy determination, Maryland documented non-regulatory revisions to many portions of their existing program which had not fully met the Federal requirements in EPA's 40 CFR Part 258. EPA tentatively determined in the March 21, 1995 **Federal Register** that these changes, as described below, allowed Maryland's MSW landfill permitting program to be eligible for EPA approval as ensuring compliance with 40 CFR Part 258. Those portions of the Maryland municipal solid waste landfill permitting program proposed to be eligible for partial approval are as follows:

Subpart A—General

The existing Maryland requirements fully comply with 40 CFR Section 258.1, Purpose, Scope, and Applicability. MDE permit application checklists and internal guidance have been revised to fully incorporate the requirements of § 258.2, Definitions and § 258.3, Consideration of other Federal laws.

Subpart B—Location Restrictions

1. The existing Maryland requirements fully comply with § 258.11, Floodplains.

2. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of § 258.10, Airport Safety; § 258.12, Wetlands; § 258.13, Fault areas; § 258.14, Seismic Impact Zones; § 258.15, Unstable Areas; and § 258.16, Closure of Existing Landfill Units.

Subpart C—Operating Criteria

1. The existing Maryland requirements fully comply with: § 258.20, Hazardous Waste Exclusion; § 258.21, Daily Cover; § 258.22, Disease Vectors Control; § 258.24, Air Criteria; § 258.25, Access requirements; and § 258.27, Surface Water Requirements.

2. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of: § 258.23, Explosive Gas Control; § 258.26, Run-On/Run-Off Control Systems; § 258.28, Liquids Restrictions; and § 258.29, Record Keeping.

Subpart D—Landfill Design

1. MDE permit application checklists and internal guidance have been revised to incorporate the requirements of the § 258.40 design criteria. MDE now requires, as a minimum at all new MSW landfills and expansions to existing landfills, the bottom liner system described in § 258.40 (b). This consists of a composite liner composed of an upper synthetic (plastic) component in direct contact with a lower component at least two feet thick made of compacted soil (clay). MDE also allows an alternate design that meets the performance standards established in § 258.40 (a) and (c). MDE requires that conformance be demonstrated through the use of mathematical modeling, such as the Hydrologic Evaluation of Landfill Performance Model (HELP) and Multimedia Exposure Assessment Model (MULTIMED). MDE has, to date, submitted several alternate liner systems to EPA under the 40 CFR § 258.40(e) Liner Petition Process, which were subsequently approved, thereby demonstrating to EPA that this process is successfully in place. Submittal to EPA for such alternate liner approvals will no longer be required upon EPA final approval of this portion of the State's program.

Subpart E—Ground-Water Monitoring and Corrective Action

1. The previously existing Maryland requirements for groundwater sampling and corrective action were in need of substantial upgrading to meet the 40 CFR Part 258 requirements. Using existing authorities, MDE is requiring all current landfill operators to amend their existing ground-water monitoring plans to meet the requirements of Subpart E in terms of monitoring frequency and coverage, including the pollution parameters listed in Appendices I and II of 40 CFR Part 258. For proposed facilities and changes to existing facilities, MDE has amended their application forms and checklists to require the preparation and implementation of a monitoring program which incorporates the complete EPA requirements (§§ 258.50 thru 258.55).

2. In the assessment of corrective measures, selection of remedies, and implementation of corrective actions, MDE will use the EPA regulations (§§ 258.56; 258.57; 258.58) to guide their enforcement actions.

Subpart F—Closure and Post-Closure Care

1. Closure Criteria (§ 258.60)—Maryland now requires flexible membrane caps, where appropriate, in accordance with the EPA regulations, and is implementing the closure periods required.

C. Public Comments

EPA Region III received the following written and/or verbal public comments on its tentative determination of full program adequacy approval of the Maryland MSW landfill permitting program.

The first commenter questioned if revisions made by MDE to their existing guidances, checklists and procedures to more fully comply with the Federal requirements, but made before MDE regulations were revised, were in compliance with the Maryland Administrative Procedure Act (MAPA). This issue was specifically addressed in a December 15, 1994 letter from MDE to EPA, in response to a question raised by EPA. MDE, supported by a statement from their Attorney General's Office, and referencing several specific existing regulations, took the position that their existing regulations allow them flexibility to expand their checklists, procedures, and guidances to require additional information and/or impose additional conditions on persons applying for a landfill permit in Maryland. In response to the commenter, MDE reiterated this position to EPA in a letter dated June 26, 1995. Furthermore, MDE has formally agreed to incorporate these changes in their regulations as soon as possible, thereby satisfying another concern expressed by this commenter.

A commenter objected to MDE's commitment to specify a synthetic membrane final cover whenever the bottom liner permeability is less than 1x10–5 cm/sec, since this would be far more stringent than the EPA requirements. We agree that this is more stringent than the minimum EPA requirements, but the states are always free to adopt requirements more stringent than the federal requirements. MDE, in a letter dated June 26, 1995, agreed with this commenter, and has revised their checklists and proposed regulations to conform to the federal criteria requiring a final cover of no more permeability than the bottom liner. Thus, a synthetic cap will not be required under all circumstances, but only when the bottom liner contains a synthetic liner or at specific sites where the State believes a more impervious cap is needed to protect groundwater.

This same commenter stated that the MDE checklists for groundwater monitoring did not allow the owner/operators to do verification sampling before having to issue a notification of the finding and beginning assessment sampling, if a statistical increase is found under detection monitoring. This again is more stringent than the EPA requirements. MDE, in the June 26, 1995 letter to EPA, agreed with this statement also, and has revised their permit review checklists to adopt the federal criteria more exactly.

This same commenter noted that the ASTM standard for a minimum sampling well diameter is two inches, while the MDE requirement is four inches. He stated that the installation and operation of a four-inch diameter well was obviously more expensive than a two-inch well, and his company has successfully been using two-inch wells. EPA does not prescribe a minimum well diameter. MDE's response was that state procedures allow a permittee to request a variance to the four-inch diameter requirement, and, in fact, they have granted such variances to the commenter's company in the past.

A commenter also criticized the requirement to analyze groundwater samples for the extensive parameter lists contained in Appendices I and II, and the prohibition of field filtering groundwater samples. Both of these issues are beyond the scope of this determination, as they address the 40 CFR 258 regulations as issued. This commenter also noted that his company was working with EPA Headquarters over its concerns on the field-filtering ban. We encourage this effort as the more appropriate means to affect a change in the EPA requirements.

A commenter objected to the MDE requirement that four samples be taken to establish background groundwater quality conditions. EPA requirements do not establish a specific number of samples to be taken, only that the number is appropriate to the statistical method of analysis chosen. MDE responded in the June 26, 1995 letter to EPA that they agree, and have revised their permit review checklists to more specifically reference the federal criteria.

As a State's regulations and statutes are amended to comply with the federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** and will summarize the Agency's decision and the portion(s) of the State MSWLF permit program affected. It will also provide a 30-day public comment period. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

To ensure compliance with all of the revised Federal Criteria and to obtain full EPA approval, MDE must revise the following aspects of its permit program. Consequently, these portions of the Maryland program are not being proposed for approval:

(1) Post-Closure Care Requirements (§ 258.61)—MDE must amend its existing regulations extending the post-closure care period of closed landfills from a minimum of 5 years to 30 years, with the flexibility to increase or decrease that period as necessary or demonstrated. The extension of the period required for financial assurance will require legislative action. The State must also specifically require leachate collection and treatment, as well as gas and groundwater monitoring, as post-closure care requirements. MDE has committed to make these changes.

(2) Subpart G—Financial Assurance Criteria (§§ 258.70—258.74)—Maryland's only existing financial assurance requirements are limited to the posting of a $5000 per acre closure bond, and even this requirement exempts, by statute, local governments, who currently operate most MSW landfills in Maryland. To comply with Federal requirements, MDE has committed to prepare a major revision to its regulations, adopting the financial assurance requirements in 40 CFR part 258 for closure, post-closure care, and corrective action. It is believed that these revisions will require an act by the Maryland legislature to revise the statute exempting local governments from financial assurance requirements. MDE has committed to submit the required legislation for consideration at the next General Assembly session.

Maryland has submitted a revised schedule, in a letter to EPA dated June 26, 1995, for completing the necessary changes to the laws, regulations, and/or guidance to comply with the remaining 40 CFR part 258 requirements. This schedule commits to revising the remaining portions of the MDE program not currently proposed for approval and have them in effect by December 20, 1996. Maryland will submit an application for full program approval to EPA when these revisions are effective.

D. Decision

Taking into consideration the public comments received as a result of our tentative determination, and several revisions made to the MDE program as a result thereof, we conclude that the State of Maryland's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Maryland is granted a determination of adequacy for partial approval of its municipal solid waste permit program, for those portions of their program as described above.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state/tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in Maryland's program are currently in effect as a matter of State law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply, nor do these requirements become enforceable by EPA as federal law. Consequently, EPA does not find it necessary to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: July 25, 1995.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 95–19002 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–180977; FRL 4968–6]

Cymoxanil; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the New Jersey Department of Environmental Protection (hereafter referred to as the "Applicant") to use the pesticide cymoxanil (CAS 57966–95–7) to treat up to 6,500 acres of tomatoes to control metalaxyl-resistant late blight. The Applicant proposes the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180977," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-180977]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8326; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of cymoxanil on tomatoes to control late blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Recent failures to control late blight in tomatoes as well as potatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight *Phytophthora infestans*, which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the U.S. were previously controlled by treatment with metalaxyl. The Applicants state that presently, there are no fungicides registered in the U.S. that will provide adequate control of the immigrant strains of late blight. The Applicant states that cymoxanil has been shown to be effective against these strains of late blight. Cymoxanil holds current registrations throughout many European countries for control of this disease. The Applicant indicates that a 75 percent yield reduction is expected based on the current infestation. Net revenues are expected to be reduced by over $7 million for the affected acreage without the use of cymoxanil.

The Applicant proposes to apply cymoxanil, manufactured by E. I. duPont de Nemours Co., as Curzate M-8, at a maximum rate of 0.1 lbs. a.i. (1.25 lb. of product) per acre by ground or air, with a maximum of 3 applications per season. A 14-day PHI will be observed. Use under this exemption could potentially amount to a maximum 1,950 lb. of cymoxanil. This notice does not constitute a decision by EPA on the application. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

A record has been established for this notice under docket number "OPP–180977" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the New Jersey Department of Environmental Protection.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: July 20, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–19005 Filed 8–1–95; 8:45 am]

BILLING CODE 6560-50-F

[OPP–66215; FRL–4965–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by October 31, 1995, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305–5761; hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 32 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. —REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000070–00011	Kill-Ko Horse and Cattle Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins 2,2-Dichlorovinyl dimethyl phosphate
000070–00138	Rigo Wasp Spray with Baygon	*o*-Isopropoxyphenyl methylcarbamate 2,2-Dichlorovinyl dimethyl phosphate
000241 OR–91–0010	Pursuit Herbicide	Ammonium salt of (+/-)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-
000303–00150	Zilch Liquid Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil Isooctyl(2-ethyl-4-methylpentyl) 2,4-dichlorophenoxyacetate
000352 TN–94–0005	Dupont Bladex 4l Herbicide	Cyanazine
000655–00491	Prentox Vapon 2	2,2-Dichlorovinyl dimethyl phosphate
000655–00703	Prentox Fly & Mosquito Killer	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins 2,2-Dichlorovinyl dimethyl phosphate
000655–00730	Prentox Greenhouse Spray	2,2-Dichlorovinyl dimethyl phosphate
001677–00132	Solidyne	Polyethoxypolypropoxyethanol - iodine complex Phosphoric acid
001677–00138	Mikrocide	onylphenoxypolyethoxyethanol - iodine complex Phosphoric acid
001677–00151	Iodofoam Concentrate 20	onylphenoxypolyethoxyethanol - iodine complex
001769–00063	Flair Aerosal Air Sanitizer and Deodorant	1,2-Propanediol
001769–00255	Root Out	2,6-Dichlorobenzonitrile
001769–00277	ational Chemsearch San-5-Pine	2-Benzyl-4-chlorophenol Pine oil
001769–00322	Aerosol Paint-Sect	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
003125 WA–80–0069	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
004581–00230	Ziram F-4	Zinc dimethyldithiocarbamate
005197–00051	Kem New Formula 7–11	Ammonium 2-phenylphenate
006218–00013	Flora-Fog Vapona Greenhouse Fogging Insecticide	2,2-Dichlorovinyl dimethyl phosphate
006218–00026	Flora Fume Vapona Greenhouse Misting Insecticide	2,2-Dichlorovinyl dimethyl phosphate
006218–00070	Summit Tobacco Warehouse Fogging Insecticide	2,2-Dichlorovinyl dimethyl phosphate
006378–00022	Lab One	Potassium 2-benzyl-4-chlorophenate *o*-Phenylphenol, potassium salt
006962–00027	Steriloid Bacteriostat	Potassium 2-benzyl-4-chlorophenate *o*-Phenylphenol, potassium salt
007401–00060	Ferti-Lome Universal Garden Spray (containing Sevin & K	2,4-Dinitro-6-octyl* phenyl crotonate, 2,6-dinitro-4-octyl* phenyl crotonate and 1-Naphthyl-*N*-methylcarbamate
007969–00042	Basagran Manufacturers Concentrate	3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
007969–00054	Laddok Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
007969–00103	Prompt Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 3-Isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide, sodium salt
010370–00127	Staffel's Malathion 25% Wettable Powder	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
019713–00222	Malathion Grain Protectant Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
019713–00335	Aidex Mal Ex Dust Dry Insecticid	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
064296–00001	Bio-Path Fly Control Chamber	(*Z*)-9-Tricosene Metarhizium anisopliae Strain ESF1

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this ninety-day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. –REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000303	Huntington Laboratories,inc., 968–970 E. Tipton St., Huntington, IN 46750.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000655	Prentiss Inc., 21 Vernon Street, C.B. 2000, Floral Park, NY 11001.
001677	Ecolab Inc., 370 Wabasha St. Ecolab Center, St Paul, MN 55102.
001769	CH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004581	Elf Atochem North America Inc., Agrichemicals Div, 2000 Market St, 21st Floor, Philadelphia, PA 19103.
005197	Systems General, Inc., Box 152170, Irving, TX 75015.
006218	Summit Chemical Co, 7657 Canton Center Dr, Baltimore, MD 21224.
006378	Lab Automated Chemicals, Division of Systems General Inc., Box 152170, Irving, TX 75015.
006982	Madison Bionics, Division of Systems General, Inc., 1630 E. Northgate, Irving, TX 75062.
007401	Voluntary Purchasing Group Inc., Box 460, Bonham, TX 75418.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd, Montvale, NJ 07645.
019713	Drexel Chemical Co, Box 13327, Memphis, TN 38113.
064296	Ecoscience Corp., 377 Plantation Dr, Worcester, MA 01605.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredients will not longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. – ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

Cas No.	Chemical Name	EPA Company No.
52704–98–0.	Ammonium 2-phenylphenate	005197

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before October 31, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for one year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: July 13, 1995.

Frank Smith,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–18873 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–84027; FRL–4965–5]

Cancellation of Pesticides for Non-Payment of 1995 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October, 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for about 1,215 registrations. Section 4(i)(5)(D) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all but a few of them have been issued within the past few days. The Agency is deferring cancellation for certain of these registrations, however, to permit time for affected users to explore alternatives to cancellation directly with the registrants.

DATES: Reports of agreements to support continued registration or transfer of the registrations for which cancellation is being deferred must be received by October 31, 1995.

FOR FURTHER INFORMATION CONTACT: To report agreements to support continued registration of any of the products for which cancellation has been deferred, for instructions on payment of delinquent maintenance fees for these products, or for further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (7504C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 226, Crystal Mall No. 2, 1921 Jefferson Davis Highway South, Arlington, VA 22202, (703) 305–6426. e-mail jamula.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 4(i)(5) of FIFRA, as amended in October, 1988 and again in December, 1991 requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The 1990 Farm Bill amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 52 minor agricultural use registrations at the request of the registrants.

In late November, 1994, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-March to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Late payments of the fees were accepted until April 15, when the actual process of cancellation was begun.

Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 16,704 section 3 registrations, or about 95 percent of the registrations on file in December, 1994. Fees have been paid for about 2,574 section 24(c) registrations, or about 90 percent of the total on file in November, 1994. Cancellations for non-payment of the maintenance fee affect about 940 section 3 registrations and about 275 section 24(c) registrations.

II. Product Cancellations not affecting status of Active Ingredient

In the case of all but four section 3 registrations discussed in Section III below, the active ingredients will remain available in other registered products. We anticipate two types of impact for the bulk of these cancellations. First, some of these disappearing registrations will be survived in the market by substantially identical registrations. These substantially identical products may not, however, be readily available wherever a disappearing product was sold, so there may be local or regional disruptions while distribution patterns are adjusted. We expect these disruptions to be minor and temporary.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 1996, the due date for the next annual registration maintenance fee. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the order.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Second, in some cases unique non-agricultural uses will disappear, although the active ingredients will remain available for different uses in other products. When this situation occurs, there may be more serious impacts on users of the canceled products. Once again, existing stocks of the canceled products already in channels of trade will be usable to mitigate these impacts in the short term. For the longer term the mechanisms of section 3 amendments and 24(c) registrations will remain available to obtain replacement registrations.

Neither of these types of impact leaves users without the means to replace lost registrations; neither is considered to justify further deferral of cancellations for non-payment of the maintenance fee. Thus all these registrations for which the active ingredient will remain in other products have been canceled.

III. Cancellations Leading to Disappearance of Active Ingredients

A second type of impact arises if an active ingredient that is now or has recently been available in the marketplace disappears. The Agency believes there are four registered active ingredients in this category. Of these four active ingredients, none has been subject to prior regulatory action and all are likely to disappear as a consequence of these cancellations. One is a plant growth regulator; one is a microbial; one is a microbiocide, and one is a bacteriostat. If the last section 3 registration for an ingredient disappears, the section 24(c) registration process is unlikely to be able to compensate for the loss.

These four ingredients, grouped by these same general categories of use patterns, are listed along with the EPA Company Number of their registrants in the following Table 1.

TABLE 1. – ACTIVE INGREDIENTS WITH RECENT PRODUCTION PENDING CANCELLATION OF ALL PRODUCTS FOR NON-PAYMENT OF 1995 REGISTRATION MAINTENANCE FEES, IN SEQUENCE BY BROAD USE PATTERN

Chemical Name	Registration No.	Product Name
A. Plant Growth Regulator.		
Glyphosate, Sesquisodium	000524–00332	Polado Plant Growth Salt Regulator
B. Microbial Pesticide.		
Bacillus Thuringiensis subsp. san diego	053219–00001	M-ONE Insecticide
C. Microbiocide.		
Amines, N-coco alkyl-trimethylenedi-, adipates	010349–00014	NALCO VISCO 1151
D. Bacteriostat.		
Quaternary ammonium compounds, benzyl-C10–18-alkylbis(hydroxy ethyl)-, chloride.	010349–00003	NALCO ADOMALL

Because these active ingredients are likely to disappear with their product registration, the Agency has deferred for 90 days the cancellation of these 4 registrations. During that time those registrants or other affected persons may make arrangements to continue the registration.

We encourage individual users or user groups who are concerned about the potential loss of these active ingredients to work directly with the registrant identified by the first 6 digits of the Reg. No. in Table 1 to persuade them to continue to support the ingredient, or to identify third parties who would be willing to support the ingredient if the registration were transferred to them. The full names and addresses of current registrants appear in Table 2 below. We also encourage users to consult with the Cooperative Extension Service or other local sources to identify alternatives to these active ingredients.

If the Agency is notified within 90 days of this notice at the address given above either (1) that the registrant will continue to support the registration, or (2) that an agreement has been reached to transfer the registration to another party, we will reinstate the registration to full active status as soon as the delinquent maintenance fee payment is received. It should be emphasized, however, that any such registrations would still be subject to all requirements for reregistration, including reregistration fees (except as they may be reduced through the statutory provisions for small businesses or low volume uses).

TABLE 2. – REGISTRANTS OF SELECTED REGISTRATIONS PENDING CANCELLATION FOR NON-PAYMENT OF 1995 REGISTRATION MAINTENANCE FEE

EPA Company No.	Company Name and Address
000524	Monsanto Co., 700 14th St., N.W., Suite 1100, Washington, DC 20005.
010349	NALCO Chemical Co., One NALCO Center, Box 87, Naperville, IL 60563.
053219	MYCOGEN Corp., 4980 Carroll Canyon Rd., San Diego, CA 92121.

In addition to publishing this notice in the **Federal Register**, we are sending it directly to the States, to the U.S. Department of Agriculture, and to other parties who have previously expressed concern for minor uses. They should be receiving the notice at approximately the same time it is published. We hope that this extraordinary notification effort, and the deferral of cancellations for the most sensitive registrations, will serve to prevent any avoidable loss of critical minor use pesticides.

Because so many registrations are involved, it would be impractical to list those which have been canceled in this notice. Complete lists of registrations canceled for non-payment of the maintenance fee will, however, be available for reference during normal business hours in the OPP Public Docket, Room 1128, Crystal Mall 2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: July 19, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–18872 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5269–2]

42 U.S.C. Section 122(h) Proposed Administration Agreement

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed settlement.

SUMMARY: USEPA is proposing to settle a claim under section 107 of CERCLA for response costs incurred during removal activities at the Nelson McCoy Pottery site in Roseville, OH. Respondents have agreed to reimburse USEPA in the amount of $125,000. USEPA today is proposing to approve this settlement offer because it reimburses USEPA, in part, for costs incurred during USEPA's removal action.

DATES: Comments on this proposed settlement must be received by September 1, 1995.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Ms. Cheryl Allen at (312) 353–6196 before visiting the Region V Office). U.S. Environmental Protection Agency, Region V, Office of Superfund, Removal and Enforcement Response Branch, 77 W. Jackson Blvd. Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Cheryl Allen, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago Illinois 60604, (312) 353–6196.

FOR FURTHER INFORMATION CONTACT: Cheryl Allen, Office of Public Affairs, at (312) 353–6196.

SUPPLEMENTARY INFORMATION: The Nelson McCoy Pottery site, an abandoned pottery production plant located in a rural/residential area in Roseville, Ohio (Muskingum County), is not on the National Priorities List. In response to a request from the State of Ohio, USEPA investigated the Nelson McCoy site and undertook response actions designed to minimize the immediate threat, test the materials involved and properly dispose of the hazardous waste.

Respondents are a number of individuals and a corporation that generated hazardous substances at the site in the form of lead contaminated water, flammable wastes and hazardous solid wastes, as well as another party seeking to purchase the site for future use. A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement.

Comments should be sent to Ms. Cheryl Allen of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

William E. Muno,

Associate Director for Superfund.

[FR Doc. 95–18983 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–OW–5270–8]

Interim Economic Guidance for Water Quality Standards Workbook

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: EPA now has available *Interim Economic Guidance for Water Quality Standards Workbook*, (EPA 823–B–95–002). This interim document provides guidance with respect to the economic considerations incorporated in the water quality standards regulation affecting uses, variances, and the antidegradation policy.

The purpose of this interim guidance is to assist States, Tribes and other affected parties in understanding the economic factors that may be considered and the types of tests that can be used to determine if a designated use can be attained, if a variance is warranted, or if degradation of high quality water is warranted. States may use alternative economic analysis from that offered in the interim guidance.

EPA plans to revise this guidance from time to time based on experience gained in its implementation. Comments on this guidance are welcome at any time.

FOR FURTHER INFORMATION CONTACT: Rafael Stein, Economic and Statistical Analysis Branch, Office of Science and Technology, Office of Water, Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. The telephone number is 202–260–5385.

FOR COPIES OF THE DOCUMENT CONTACT: Water Resource Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The telephone number is 202–260–7786.

Dated: June 28, 1995.

Dana D. Minerva,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 95–18993 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Notice

July 28, 1995

The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments concerning the Commission's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated information techniques are requested.

Written comments should be submitted on or before October 2, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov. Copies may also be obtained via fax by contacting the Commission's Fax on Demand System. To obtain fax copies call 202–418–0177 from the handset on your fax machine, and enter the document retrieval number indicated below for the collection you wish to request, when prompted.

OMB Approval Number: 3060–0028.

Title: Application for Authorization in the Auxiliary Radio Broadcast Services.

Form No.: FCC 313.

Type of Review: Extension of existing collection.

Resopondents: Businesses or other for-profit; State, Local or Tribal Governments.

Number of Respondents: 1,500.

Estimated Time Per Response: 5.166 hours.

Total Annual Burden: 7,749 hours.

Needs and Uses: This collection of information is used by applicants/licensees of AM, FM and TV Broadcast stations and eligibile networks when applying for a remote pickup, aural microwave, television microwave and other auxiliary Broadcast stations. The data collected is used by FCC staff to determine eligibility for a license; to determine if the proposal will meet statutory requirements; to aid in frequency spectrum management and to ensure interference will not be cuased. This data is also used to issue an authorization and may be used for enforcement purposes when necessary.

Fax Document Retrieval Number: 600028.

OMB Approval No: 3060–0398.

Title: Sections 2.948, 15.117(G)(2), 15.117(G)(3), 80.1053(C) Equipment Authorization Measurement Standards.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Business and other for-profit.

Number of Respondents: 20 recordkeepers; and 400 respondents.

Estimated Time Per Response: 5 hours per recordkeeper; and 23.125 hours per response.

Total Annual Burden: 9,350.

Needs and Uses: Parties performing measurements for certification or verification of intentional or unintentional radiators will be subject to the requirement to file horizontal and vertical site attenuation data of their measurement facility, that sshows conformance with the criteria of American National Standards Institute (ANSI) test procedure C63.4–1922. The information gathered is used by the Commission to ensure that data that accompanies all requests for equipment authorizations is valid, and that proper testing procedures are utilized. Testing ensures that potential interference to radio communications is controlled, and if necessary the data may be used for investigating complaints of harmful interference or for verifying the manufactures compliance with the rules.

Fax Document Retrieval Number: 600398.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19086 Filed 8–1–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Shelley Moine Customs Brokers, 1200 S. 192nd, Suite 204, Seattle, WA 98148, Shelley Moine, Sole Proprietor

Prime International Agency Inc., 2111 South Acacia Ave., Compton, CA 90220, Officers: Stephen Juang, President, Johnny Wang, Director.

Dated: July 27, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–18908 Filed 8–1–95; 8:45 am]

BILLING CODE 6730–01–M

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

William D. Hathaway,

Chairman.

The Members of the Performance Review Board Are

1. Ming Chen Hsu, Commissioner
2. Delmond J.H. Won, Commissioner
3. Joe Scroggins, Jr., Commissioner
4. Harold J. Creel, Commissioner
5. Norman D. Kline, Chief Administrative Law Judge
6. Frederick M. Dolan, Jr., Administrative Law Judge
7. Charles E. Morgan, Administrative Law Judge
8. Robert D. Bourgoin, General Counsel
9. Joseph C. Polking, Secretary
10. Edward P. Walsh, Managing Director
11. Bruce A. Dombrowski, Deputy Managing Director
12. Vern W. Hill, Director, Bureau of Hearing Counsel
13. Sandra L. Kusumoto, Director, Bureau of Administration
14. Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis
15. Norman W. Littlejohn, Director, Bureau of Investigations
16. Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–18907 Filed 8–1–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Community Trust Financial Services Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Trust Financial Services Corporation, Hiram, Georgia; to establish Community Loan Company, Hiram, Georgia, a joint venture with Danny H. Drummond, and thereby engage in the sale of credit-related insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y, and tax planning and preparation services to individuals, businesses, and non-profit organizations, pursuant to § 225.25(b)(21) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18932 Filed 8–1–95; 8:45 am]

BILLING CODE 6210–01–F

Fleet Financial Group, Inc. ; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-17974) published on page 37642 of the issue for Friday, July 21, 1995.

Under the Federal Reserve Bank of Boston heading, the entry for Fleet Financial Group, Inc., is revised to read as follows:

Comments on this application must be received by September 12, 1995.

Board of Governors of the Federal Reserve System, July 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18934 Filed 8–1–95; 8:45 am]

BILLING CODE 6210–01–F

Firstbank of Illinois Co., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 25, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstbank of Illinois Co., Springfield, Illinois; to acquire 100 percent of the voting shares of Confluence Bancshares Corp., St. Peters, Missouri, and thereby indirectly acquire Duchesne Bank, St. Peters, Missouri.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., Clayton, Missouri; to acquire at least 50 percent of the voting shares of First Commercial Bancorp, Inc., Sacramento, California, and thereby indirectly acquire First Commercial Bank, Sacramento, California. **Comments regarding this application must be received not later than August 11, 1995.**

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Rice Insurance Agency, Inc., Strasburg, Colorado; to acquire 100 percent of the voting shares of Collegiate Peaks Bancorporation, Buena Vista, Colorado and thereby indirectly acquire Collegiate Peaks Bank, Buena Vista, Colorado.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Saving Bank of Washington Bancorp, Inc., Walla Walla, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of First Savings Bank of Washington, Walla Walla, Washington, in connection with the conversion of First Savings Bank of Washington Bancorp, Walla Walla, Washington, from a mutual bank holding company to a stock holding company.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105, or Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Wells Fargo and Company, San Francisco, California (Wells Fargo); and HSBC Holdings PLC, London, United Kingdom, HSBC Holdings BV, Amsterdam, The Netherlands, and Marine Midland Banks, Inc., Buffalo, New York, to acquire Wells Fargo HSBC Trade Bank, N.A., San Francisco, California (TradeBank). Wells Fargo will control 80 percent of the voting shares of TradeBank and HSBC will control 20 percent of the voting shares of TradeBank.

Board of Governors of the Federal Reserve System, July 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18933 Filed 8–1–95; 8:45 am]

BILLING CODE 6210–01–F

New York Mills Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. New York Mills Bancshares, Inc., New York Mills, Minnesota; to engage *de novo* in lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18935 Filed 8–1–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 16, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota, to acquire through its subsidiaries, Norwest Financial Special Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa, Orlandi Valuta, Los Angeles, California, and Orlandi Valuta Nacional, Boulder City, Nevada, and thereby engage in money transmission activities to foreign countries, pursuant to *Philippine Commercial International Bank*, 77 Federal Reserve Bulletin 271 (1991).

Board of Governors of the Federal Reserve System, July 27, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–18936 Filed 8–1–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–3586]

Glaxo plc; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a British drug company to divest, within nine months, Wellcome's worldwide research and development assets for non-injectable drugs, or else agree to have a Commission-appointed trustee to complete the transaction. In addition, the consent order requires Glaxo, for a period of ten years, to obtain Commission approval before acquiring more than one percent interest in any entity involved in the clinical development, manufacture or sale of migraine drugs.

DATES: Complaint and Order issued June 14, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Claudia Higgins or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Wednesday, March 29, 1995, there was published in the **Federal Register**, 60 FR 16139, a proposed consent agreement with analysis In the Matter of Glaxo plc, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comment have been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–18953 Filed 8–1–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942 3294]

J. Walter Thompson USA, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New York-based advertising agency, which prepared advertisements for Jenny Craig, Inc., from claiming that any weight-loss program is recommended, approved, or endorsed by any person, group, or other entity, unless it possesses and relies upon competent and reliable scientific evidence to substantiate the representation. In addition, the consent agreement prohibits the respondent from misrepresenting the existence, results, or interpretations of any test, study, or survey.

DATES: Comments must be received on or before October 2, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Matthew Gold, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of J. Walter Thompson USA, Inc., a corporation, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between J. Walter Thompson USA, Inc., a corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent J. Walter Thompson USA, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 466 Lexington Avenue, New York, New York 10017.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order conclusions of law; contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the term "diet-related food" shall mean any food (as that term is defined in 15 U.S.C. § 55(b)) whose labeling or advertising makes any claim regarding its weight loss or weight maintenance benefits.

I

It is ordered that respondent, J. Walter Thompson USA, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such program is recommended, approved or endorsed by any person, group or other entity, unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For the purposes of this order, "competent and reliable scientific evidence" shall mean those tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know of an inadequacy of substantiation for the representation.

II

It is further ordered that respondent, J. Walter Thompson USA, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss or weight control program, weight loss product, health or fitness program, exercise equipment, or diet-related food, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that the test, study or survey did not prove, demonstrate or confirm the representation.

III

It is further ordered that for five (5) years after the date of the last dissemination of the representation to which they pertain, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation that may affect compliance obligations under this Order, including but not limited to any change in corporate name or address, dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

V

It is further ordered that respondent shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representative or employees engaged in the preparation, review or placement of advertising or other materials covered by this Order, and shall secure from each such person a signed statement acknowledging receipt of this Order.

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent J. Walter Thompson USA, Inc., a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review that agreement and the comments received and will decide whether it should withdraw from the agreement and take

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

other appropriate action or make final the agreement's proposed order.

The Commission's complaint in this matter charges J. Walter Thompson with engaging in deceptive practices in connection with the advertising of the Jenny Craig Weight Loss Program. The advertisements at issue contain variations of the claim that nine out of ten Jenny Craig clients would recommend the Jenny Craig Weight Loss Program to a friend.

According to the complaint, print and television advertisement for the Jenny Craig Weight Loss Program represented that ninety percent or more of Jenny Craig customers would recommend the Jenny Craig Weight Loss Program. The complaint also alleges that those advertisements represented that competent and reliable studies or surveys establish that claim.

The complaint further alleges that J. Walter Thompson lacked substantiation for its "nine out of ten" claims, and falsely claimed that competent and reliable studies or surveys support those claims. Finally, the complaint alleges that J. Walter Thompson knew or should have known that these claims were false and misleading.

The consent order contains provisions designed to remedy the violations charged and to prevent J. Walter Thompson from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits J. Walter Thompson from misrepresenting that any weight loss program is recommended, approved or endorsed by any person, group or other entity unless it possesses and relies upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates the representation. Part I provides J. Walter Thompson with a defense to liability if it neither knew nor had reason to know of an inadequacy of substantiation for the representation.

Part II prevents J. Walter Thompson from misrepresenting, with regard to any diet-related food, or any weight loss or weight control program, weight loss product, health or fitness program or exercise equipment, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey. "Diet-related food" is defined as "any food (as that term is defined in 15 U.S.C. § 55(b)) whose labeling or advertising makes any claim regarding its weight loss or weight maintenance benefits." Part II provides J. Walter Thompson with a defense to liability if it neither know nor had reason to know that the test, study or survey did not prove, demonstrate or confirm the representation.

Part III requires J. Walter Thompson to maintain certain materials relating to advertisements covered by this order and to make such documents available for FTC inspection.

Part IV requires J. Walter Thompson to notify the Commission of any changes in the corporate structure that might affect compliance with the order.

Part V requires J. Walter Thompson to distribute copies of the order to certain company officials and employees and certain other representatives and agents of the company, and to secure from each such person a signed statement acknowledging receipt of the order.

Part VI requires J. Walter Thompson to file with the Commission one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

Concurring Statement of Commissioners Roscoe B. Starek, III and Christine A. Varney

In the Matter of J. Walter Thompson USA, Inc., File No. 942–3294

Although we have voted to accept the consent order negotiated with J. Walter Thompson USA, Inc. ("JWT") in this matter, we write to comment on the scope of the product coverage in Part II of the order. Part II addresses the false "establishment" claim challenged in paragraphs five and six of the complaint, *i.e.*, the claim that a valid study or survey showed that ninety percent or more of Jenny Craig Weight Loss Program customers would recommend the program to their friends. Part II of the order prohibits misrepresentations regarding the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey, in connection with the promotion of any weight loss or weight control program, weight loss product, health or fitness program, exercise equipment, or diet-related food.

On three previous occasions JWT has signed consent orders settling allegations that it misrepresented the results of surveys or tests.[1] Because of the narrow scope of the product coverage applicable to the relevant order provisions, the Commission, on each occasion, had to pursue a new Section 5 case against the company, rather than being able to seek civil penalties for an order violation. Thus, the Commission's history with JWT raises the question of whether broader product coverage is warranted in this case.[2]

Extension of an order's product coverage beyond the product or service at issue in a complaint may be justified so long as the order bears a reasonable relationship to the unlawful practices alleged. *See Stouffer Foods Corp.*, D. 9250, slip op. at 17 (Sept. 26, 1994) (citing *Jacob Siegel Co.* v. *FTC*, 327 U.S. 608, 612–13 (1946)). The Commission generally considers three criteria to determine whether an order bears a reasonable relationship to a particular Section 5 violation: (1) the seriousness and deliberateness of the violation; (2) the ease with which the violative claim may be transferred to other products; and (3) whether the respondent has a history of prior violations. *Stouffer*, slip op. at 17 (citing cases). All three elements need not be present to warrant fencing-in. *Sears, Roebuck & Co.* v. *FTC*, 676 F.2d 385, 392 (9th Cir. 1982) ("In the final analysis, we look to the circumstances as a whole and not to the presence or absence of any single factor.").

Although we do not have the benefit of a litigated record, from the evidence presented so far, it appears that in this case, the first two, and arguably the third, elements weigh in favor of broad fencing-in. First, the alleged violations are both deliberate and serious. The survey from which the "nine out of ten" claim was derived was obviously and severely flawed. JWT, the largest ad agency in the country, surely must be deemed to have expertise in conducting consumer surveys. Any ignorance in this regard must have been cured by the Commission's earlier decision to hold it liable for the dissemination of misrepresentations about the results of surveys.

The evidence also suggests the violations were serious, as measured by the extent of dissemination. The ad campaign in question was a national one that ran for over a year, and the ads were given to franchisees to run in their areas. Furthermore, the great length of the campaign's dissemination schedule indicates the campaign must have been quite costly.

The second element, the ease with which the violative claims may be transferred to other products, also supports fencing-in. The results of surveys or studies are easily misrepresented, regardless of the type of product or service. The fairly obvious transferability of this type of claim is borne out by the prior consent orders, as those cases involved a diverse range of product categories (surveys of professionals, major home appliances, and automobiles).

The final element is the respondent's history of past violations. The question of whether consent orders may be used as evidence of past violations is at best unsettled. *Compare ITT Continental Baking Co.* v. *FTC*, 521 F.2d 207, 222 n.23 (2d Cir. 1976) (because consent orders do not constitute an admission that the respondent has violated the law, the Commission may not rely on consent orders as evidence of additional illegal conduct when formulating cease and desist orders in other proceedings) *with Thompson Medical Co.*, 104 F.T.C. 648, 833 n.78 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987) (while stating that a single consent order would not be used as a basis for concluding that the respondent has a history of past violations, the Commission expressly took no position on whether a pattern of consent orders would be a sufficient history of past violations to warrant fencing-in). Regardless of whether the prior consent orders may be considered evidence of past violations, they show that JWT was aware of the Commission's concern about this type of claim and of the requirements of the law with respect to claims involving surveys and tests.

Despite these concerns, for several reasons we believe that accepting the order as negotiated appears to be appropriate. For example, we understand that JWT has made clear it would litigate if the Commission attempted to obtain broader coverage; litigation inevitably presents resource allocation questions.[3] In addition, broad product coverage obviously weighs more heavily on an ad agency such as JWT that handles accounts for a divers assortment of products and services, than on a manufacturer or advertiser offering a limited range of products.[4] We write only to point out that in light of all the circumstances of this case, broad product coverage in Part II could have been justified as reasonably related to the violations alleged.

[1] *J. Walter Thompson Co.*, 97 F.T.C. 333 (1981) (complaint alleged that JWT misrepresented that "4 out of 5 dentists recommend" the Water Pik; consent order prohibits claims regarding surveys of professional groups unless the surveys were designed, executed, and analyzed in a competent and reliable manner); *J. Walter Thompson Co.*, 94 F.T.C. 331 (1979) (complaint alleged that JWT misrepresented the results of tests of the cleaning effectiveness of Sears dishwashers; consent order prohibits, in advertising for major home appliances, misrepresenting the results of tests, studies, surveys, etc.); *J. Walter Thompson Co.*, 84 F.T.C. 736 (1974) (complaint alleged that JWT misrepresented the results of studies on the safety of Ford automobiles; consent order prohibits, in advertising for automobiles, presenting the results of tests, experiments, or demonstrations unless competent and reliable to prove the claimed feature).

[2] It is true that this consent order has broader product coverage than the prior JWT orders and appears to cover the range of diet- and fitness-related products.

[3] Even so, a litigated order could be beneficial for several reasons. First, in case of future similar violations by JWT, a litigated order clearly could be used as evidence of prior law violations. Second, while there is no guarantee that the Commission would obtain broader product coverage in litigation than is contained in this consent order, it seems unlikely that the Commission would do any worse, and the potential gain is great, both in terms of having JWT under a broader order and in terms of precedential value for other cases. Third, a litigated opinion might resolve some of the uncertainties concerning the precedential value of prior consent orders.

[4] On the other hand, the potential burden of a broad order is partially mitigated by the fact that, as an ad agency, JWT's order contains a safe harbor insulating it from liability unless it knows or should know that the survey or test did not prove, demonstrate, or confirm the representation. In addition, it is not unusual for orders covering establishment claims to have broad product coverage because the type of claim covered—the results or validity of tests or surveys—is fairly discrete.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part

J. Walter Thompson USA, Inc., File No. 942–3294

I dissent from Part II of the proposed consent order because the product coverage is too narrow. Part II would prohibit J. Walter Thompson from making deceptive establishment claims for any weight loss or weight control program, weight loss product, health or fitness program, exercise equipment, or diet-related food. Although the product coverage in this provision does go beyond the product with respect to which a violation has been alleged, given the particular facts of this case, I would impose even broader product coverage. In my view, J. Walter Thompson relied on a clearly flawed study in making its deceptive claims, and it continued to make claims based on this flawed study even after it had received contradictory results from a more reliable study that it had commissioned. J. Walter Thompson also could readily transfer deceptive test result claims to other products, as demonstrated by the fact that J. Walter Thompson has entered into three other consent agreements to settle allegations that it made deceptive claims concerning survey or test results for three disparate products.[1] Given that J. Walter Thompson's deception appears to have been deliberate and that its deception readily could be transferred to other products, *see Stouffer Foods Corp.*, D. 9250, slip op. at 17 (Sept. 26, 1994), broader product coverage is appropriate.

[FR Doc. 95–18954 Filed 8–1–95; 8:45 am]

BILLING CODE 6750–01–M

[1] *J. Walter Thompson Co.*, 97 F.T.C. 323 (1981); (dental cleaning device); *J. Walter Thompson Co.*, 94 F.T.C. 331 (1979) (dishwashers); *J. Walter Thompson Co.*, 84 F.T.C. 736 (1974) (automobiles). Assuming the allegations in this and the previous cases to be true, we would have to conclude that J. Walter Thompson has had difficulty comprehending that the conduct alleged is conduct about which the Commission is concerned.

[Dkt. C–3588]

Korean Video Stores Association of Maryland, et al.; Prohibited Trade Practices, and Affirmative Correction Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Maryland based video store association and its members from entering into any agreement to raise, fix, or maintain prices in the retail video tape rental business; and requires, within 30 days, its members to display a poster announcing the settlement, in both English and Korean, in their respective stores and to publish the entire text of the poster in three Korean-language newspapers in the Washington, DC area.

DATES: Complaint and Order issued June 20, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Joseph G. Krauss, FTC/S–3627, Washington, DC 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: On Tuesday, April 11, 1995, there was published in the **Federal Register**, 60 FR 18411, a proposed consent agreement with analysis In the Matter of Korean Video Stores, et al., for the purpose of soliciting public comment.

Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–18955 Filed 8–1–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951–0024]

Summit Communications Group, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Summit and seven Wometco Cable TV companies from agreeing, attempting to agree or carrying out an agreement with any cable television provider to allocate or divide markets, customers, contracts or territories for cable television service in the incorporated and unincorporated areas of the Georgia counties of Cobb, Bartow, Dekalb, Walton, Gwinnett, Fulton, Douglas, Fayette, Coweta, Clayton, Henry, Rockdale, Newton and Cherokee.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

DATES: Comments must be received on or before October 2, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe or Robert Doyle, Jr., FTC/S–2105, Washington, DC 20580. (202) 326–2610 or 326–2819.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of Summit Communications Group, Inc., a corporation, and Wometco Cable TV of Georgia, Inc., a corporation; Wometco Cable TV of Cobb County, Inc., a corporation; Wometco Cable TV of Clayton County, Inc., a corporation; Wometco Cable TV of Conyers-Rockdale, Inc., a corporation; Wometco Cable TV of Fayette County, Inc., a corporation; Wometco Cable TV of Fulton County, a corporation; and Wometco Cable TV of Henry County, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Summit Communications Group, Inc. ("Summit"), a Delaware corporation, and Wometco Cable TV of Georgia, Inc., a Georgia corporation, Wometco Cable TV of Cobb County, Inc., a Georgia corporation, Wometco Cable TV of Clayton County, Inc., a Georgia corporation, Wometco Cable TV of Conyers-Rockdale, Inc., a Georgia corporation, Wometco Cable TV of Fayette County, Inc., a Georgia corporation, Wometco Cable TV of Fulton County, a Georgia corporation, and Wometco Cable TV of Henry County Inc., a Georgia corporation (hereinafter collectively referred to as "Wometco"), and it now appearing that Summit and Wometco are willing to enter into an agreement containing an order to cease and desist from the acts and the practices being investigated and providing for other relief:

It is hereby agreed by and between Summit and Wometco, by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Summit is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 115 Perimeter Center Place, Suite 1150, Atlanta, Georgia 30346.

2. Proposed respondent Wometco Cable TV of Georgia, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 5979 Fairburn Road, Douglasville, Georgia 30134.

3. Proposed respondent Wometco Cable TV of Cobb County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1145 Powder Springs Road, Marietta, Georgia 30064.

4. Proposed respondent Wometco Cable TV of Clayton County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 6435 Tara Boulevard, Suite 22, Jonesboro, Georgia 30236.

5. Proposed respondent Wometco Cable TV of Conyers-Rockdale, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1361 Iris Drive, Conyers, Georgia 30209.

6. Proposed respondent Wometco Cable TV of Fayette County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 107 South Glynn Street, Fayetteville, Georgia 30214.

7. Proposed respondent Wometco Cable TV of Fulton County is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 6435 Tara Boulevard, Suite 22, Jonesboro, Georgia 30236.

8. Proposed respondent Wometco Cable TV of Henry County, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 6435 Tara Boulevard, Suite 22, Jonesboro, Georgia 30236.

9. Time Warner Inc. ("TWI") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 75 Rockefeller Plaza, New York, New York 10019. After consummation of a proposed acquisition of Summit by TWI, Summit will become a wholly-owned subsidiary of TWI.

10. U S WEST, Inc. ("USW") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business at 7800 East Orchard Road, Englewood, Colorado 80111. USW is an owner of approximately 25% of Time Warner Entertainment Company, L.P., an affiliate of TWI. On December 6, 1994, USW, through its wholly-owned subsidiary Multimedia Cable, Inc., a Delaware corporation, acquired Wometco.

11. Summit and Wometco admit all the jurisdictional facts set forth in the draft of complaint.

12. Summit and Wometco waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

13. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Summit and Wometco, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

14. This agreement is for settlement purposes only and does not constitute an admission by Summit or Wometco that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

15. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Summit or Wometco, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the compliant and decision containing the agreed-to order to the addresses of Summit and Wometco, as stated in this agreement, shall constitute service. Summit and Wometco waive any right each may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

16. Summit and Wometco have read the proposed compliant and order contemplated hereby. They understand that once the order has been issued, each will be required to file one or more compliance reports showing that each has fully complied with the order. Summit and Wometco further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is Ordered that, as used in this order, the following definitions shall apply:

A. "Summit" means Summit Communications Group, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns, its subsidiaries, divisions, groups and affiliates controlled by Summit, and the respective directors, officers, employees, agents, representatives, successors and assigns of each:

B. "Wometco" means Wometco Cable TV of Georgia, Inc., Wometco Cable TV of Cobb County, Inc., Wometco Cable TV of Clayton County, Inc., Wometco Cable TV of Conyers-Rockdale, Inc., Wometco Cable TV of Fayeete County, Inc., Wometco Table TV of Fulton County, Wometco Cable TV of Henry County, Inc., their directors, officers, employees, agents and representatives, predecessors, successors and assigns, their subsidiaries, divisions, groups and affiliates controlled by Wometco, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

C. "TWI" means Time Warner Inc., its directors, officers, employees agents and representatives, predecessors, successors and assigns, it subsidiaries, divisions, group and affiliates controlled by TWI, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

D. "USW" means US West, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns, its subsidiaries, divisions, groups and affiliates controlled by USW, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

E. "Commission" means the Federal Trade Commission;

F. "Cable Operator" means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more Cable Television Systems; "Cable Operator" includes the partners, directors officers, employees, and agents of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words "subsidiary," "affiliate," and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

G. "Cable Television Service" means the delivery to the home of various entertainment and informational programming via a Cable Television System.

H. "Cable Television System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Television Service, which includes video programming and which is provided to multiple subscribers within a community. The term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; or (b) a facility that serves only subscribers in one or more multiple dwelling units under common ownership, control, or management, unless such facility or facilities uses a public right-of way.

I. "Relevant Geographic Area" means the incorporated and unincorporated areas of the counties of Cobb, Bartow, Dekalb, Walton, Gwinnett, Fulton, Douglas, Fayette, Coweta, Clayton, Henry, Rockdale, Newton, and Cherokee, in the State of Georgia.

J. "Overbuilding" means instances in which two or more Cable Operators have the facilities to provide and are capable of providing Cable Television Service to the same subscribers.

II

It is further ordered that Summit and Wometco each cease and desist from, directly, indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, combining or attempting to combine, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, carrying out or attempting to carry out, or soliciting or attempting to solicit, any combination, agreement, or understanding, either express or implied, with any Cable Operator or other provider or potential provider of Cable Television Service in any part of the Relevant Geographic Area:

A. To allocate or divide markets, customers, contracts, or territories for Cable Television Service in any part of the Relevant Geographic Area. "Customers" includes, but is not limited to, residents of existing, newly-constructed, or future housing developments, subdivisions, apartment complexes, or hotels; and

B. To refrain from Overbuilding any portion of any Cable Television System in any part of the Relevant Geographic Area.

Provided that nothing contained in the foregoing paragraphs of this order shall be construed to prohibit TWI or USW from engaging in any lawful conduct or entering into any lawful agreement.

III

It is further ordered that Summit and Wometco shall:

A. Within thirty (30) days after the date this order becomes final, distribute a copy of the complaint and order to each of their directors, officers, and supervisory employees who are in any way involved in Cable Television Service in the Relevant Geographic Area;

B. For a period of three (3) years after the date this order becomes final, furnish a copy of the complaint and order to each of their new directors, officers, and to each of their supervisory employees in any way involved in Cable Television Service in the Relevant Geographic Area, at the time they

become a director, officer, or supervisory employee;

C. For a period of three (3) years from the date this order becomes final, and within thirty (30) days after the date any entity becomes a majority-owned subsidiary of Summit or Wometco, provide a copy of the complaint and order to all directors, officers, and supervisory employees of such entity who are in any way involved in Cable Television Service in the Relevant Geographic Area.

IV

It is ordered that Summit and Wometco:

A. Within sixty (60) days after the date this order becomes final, and annually for the next five (5) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, shall each file a verified written report with the Commission setting forth in detail the manner and form in which each has complied and is complying with this order;

B. For the purpose of determining or securing compliance with this order, shall permit any duly authorized representative of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Summit or Wometco, relating to any matters contained in this order; and

2. Upon five days' notice to Summit and Wometco, and without restraint or interference from them, to interview officers, directors, or employees of Summit and Wometco, relating to any matters contained in this order. Summit and Wometco, and the officers, directors, and employees, may have counsel present.

C. Shall notify the Commission at least thirty (30) days prior to any proposed change in Summit or Wometco affecting the provision of Cable Television Service in the Relevant Geographic Area, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that may affect their compliance obligations arising out of this order.

V

It is further ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment from Summit Communications Group, Inc. ("Summit"), and Wometco Cable TV of Georgia, Inc., Wometco Cable TV of Cobb County, Inc., Wometco Cable TV of Clayton County, Inc., Wometco Cable TV of Conyers-Rockdale, Inc., Wometco Cable TV of Fayette County, Inc., Wometco Cable TV of Fulton County, and Wometco Cable TV of Henry County, Inc. (hereinafter collectively referred to as "Wometco"), an agreement containing a proposed consent order to cease and desist.

The agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint prepared for issuance by the Commission along with the proposed order alleges that on or about April 26, 1990, officials of Summit and Wometco reached an understanding concerning which of the two companies would serve apartment complexes and/or housing complexes in an area of unincorporated Cob County, Georgia, where both companies have franchise authority to provide cable television service. The Complaint alleges that this understanding between Summit and Wometco was in operation from late April 1990 until at least March 24, 1993. The Complaint alleges that this understanding reached by Summit and Wometco was an agreement not to compete and has had the purpose or effect, or the tendency and capacity, to restrain competition unreasonably and to injure consumers by restraining competition between providers of cable television services in parts of unincorporated Cobb County, and depriving cable television subscribers in parts of unincorporated Cobb County of access to a competitively determined price and quality of cable television services.

Summit and Wometco have signed a consent agreement containing the proposed order. The proposed order prohibits Summit and Wometco from directly or indirectly combining or attempting to combine, entering into or attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, carrying out or attempting to carry out, or soliciting or attempting to solicit any combination, agreement, or understanding, either express or implied, with any cable operator or other provider or potential provider of cable television services to (a) allocate or divide markets, customers, contracts, or territories for cable television service, and (b) refrain from overbuilding any portion of any cable television system, in any part of the incorporated and unincorporated areas of the counties of Cobb, Bartow; Dekalb, Walton, Gwinnett, Fulton, Douglas, Fayette, Cowetta, Clayton, Henry, Rockdale, Newton, and Cherokee, in the State of Georgia.

The purpose of this analysis is to invite public comment concerning the proposed consent order. This analysis is not intended to consent order. This analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way. The agreement would settle charges by the Commission that the proposed respondents violated Section 5 of the Federal Trade Commission Act by engaging in practices that restricted competition between providers of cable television services in parts of unincorporated Cobb County, Georgia.

Statement of the Commission; Summit Communications Group, Inc.

[File No. 951–0024]

In this matter, the Commission has alleged that the respondents, Summit and Wometco, which were competing providers of cable television service, entered into a market allocation agreement. Such an agreement is *per se* illegal and, in this case, deprived cable television subscribers of a competitive marketplace.

The two respondents were Georgia-based firms, each of which offered cable television services in some or all of fourteen Georgia counties. Subsequent to the alleged illegal conduct, Wometco was acquired by U.S. West, and after commencement of the Commission's investigation, Summit was acquired by Time-Warner. Thus, both Summit and Wometco are under the active control of major cable television firms whose managements were not implicated by the allegations of the Commission's complaint.

The proposed order prevents these respondents from engaging in similar conduct in the fourteen counties in Georgia where either of the two firms had operations, a far broader area than the small area in one county where the parties had cable systems capable of competing for business. Under the unique circumstances of this proceeding, the Commission has concluded that relief may be limited in this fashion.

The Commission's policy is that where *per se* illegal conduct is found, it will seek the broadest possible relief, without geographic limitation. *Boulder Ridge Cable TV*, Docket No. C–3537 (Oct. 19, 1994). Only in extraordinary cases, such as this one, will it be appropriate to limit the scope of relief.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part; Summit Communications Group, Inc.

[File No. 951–0024]

I concur in the Commission decision to issue a complaint alleging that the respondents conspired to allocate the market for cable television services. Market allocation agreements, including this one, are *per se* unlawful. *Addyston Pipe and Steel Co. v. United States*, 175 U.S. 211 (1899).

I dissent from the decision to limit the cease and desist order against Summit Communications Group, Inc. (Summit) and the seven named Wometco cable systems to a small geographic area surrounding Atlanta, Georgia. Summit operates cable television systems outside the fourteen Georgia counties that are included in the geographic coverage of the order, and the order does nothing to prevent future violations at those systems. If, after the order is issued, Summit enters an identical market allocation agreement at a cable system outside these fourteen counties, the Commission's only recourse will be to initiate an administrative proceeding to obtain still another order.

Market allocation, like price fixing, has long been deemed *per se* unlawful, and no proof of market power is necessary to condemn the conduct. Nothing about the fourteen Georgia counties renders them uniquely susceptible to market allocation schemes. Since market allocation is unlawful whenever and wherever it occurs, I see no reason to limit the prohibition in the order to a tiny geographic region.

The complaint and order set forth no rationale for drawing a line around these fourteen counties as the geographic metes and bounds of the order's coverage. The actual agreements alleged in paragraphs six through eleven of the complaint relate to the provision of cable television service to the Asbury Village apartment complex and specific housing subdivisions. As alleged in paragraph thirteen of the complaint, the restraint of trade had its anticompetitive effect only in these unincorporated areas of Cobb County, Georgia. The absence of any apparent rationale is troubling. In future cases, it opens the door to unguided negotiations regarding the geographic scope of conduct orders.

This is the second consent agreement involving allegations of market allocation in which the Commission has limited the coverage of the order to a narrow geographic area (*B & J School Bus Service, Inc.*, Docket No. C–3425 (April 22, 1993)). I dissented from the limitation on the geographic coverage of the order on the ground that in the rare case in which the Commission uncovers a flagrant *per se* violation such as bid rigging, price fixing or market allocation, it should take strong action to prohibit the participants in conspiracy from repeating the violation. I expressed concern that the Commission was signalling a new leniency toward *per se* antitrust violations. In accepting this second order with such a weak and limited remedy, the Commission appears to eliminate the possibility that the school bus order can be disregarded as an aberration.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–18956 Filed 8–1–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), is publishing the following summaries of proposed collections for public comment.

1. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Peer Review Organization (PRO) Reporting Forms; *Form Nos.:* HCFA 613–627; *Use:* PROs are authorized to review inpatient and outpatient services for quality of care provided and to eliminate unreasonable, unnecessary, and inappropriate care provided to Medicare beneficiaries. The PROs are required to report the results of the review to HCFA. *Frequency:* Monthly, quarterly; *Affected Public:* Business or other for profit; *Number of Respondents:* 53; *Total Annual Hours:* 10,759.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Oregon Medicaid Reform Demonstration, Baseline Survey; *Form No.:* HCFA R–179; *Use:* The baseline survey is one component in the evaluation of the Oregon Medicaid Reform Demonstration (OMRD), a demonstration authorized under section 115 of the Social Security Act. The purpose of the survey is to gather information on the health status, past utilization, and level of satisfaction of a sample of newly enrolled OMRD recipients, in a way that allows followup contact, and maximizes the likelihood of preenrollment recall. *Frequency:* Annually; *Affected Public:* Individuals or households; *Number of Respondents:* 2,667; *Total Annual Hours:* 500.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in HSQ 108–F, Assumption of Responsibilities; *Form No.:* HCFA R–71; *Use:* Rule establishes the review functions to be performed by the PRO and outlines the relationships among PROs, providers, practitioners, beneficiaries, fiscal intermediaries, and carriers. *Frequency:* Monthly, quarterly; *Affected Public:* Business or other for profit; *Number of Respondents:* 53; *Total Annual Hours:* 46,653.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medical Records Review Under Prospective Payment System (PPS); *Form No.:* HCFA R–50; *Use:* PROs are authorized to conduct medical review activities under the PPS. In order to conduct medical review activities, we depend upon hospitals to make available specific records. *Frequency:* Annually; *Affected Public:* Business or other for profit; *Number of Respondents:* 6,412; *Total Annual Hours:* 22,400.

5. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Medicare Cataract Surgery Alternate Payment Demonstration; *Form No.:* HCFA–R–177; *Use:* To test the feasibility of a negotiated bundled payment for the entire episode of cataract surgery with an intraocular lens implant and, provide insight into appropriateness indicators and effective quality assurance and utilization review mechanisms for cataract surgery. *Frequency:* Annually; *Affected Public:* Business or other for profit institutions; *Number of Respondents:* 1,686; *Total Annual Hours:* 506.

6. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Home Health Agency Survey and Deficiencies Report, Home Health Functional Assessment Instrument; *Form Nos.:* HCFA–1572, HCFA–1515; *Use:* In order to participate in the Medicare program as a home health agency (HHA) provider, the HHA must meet Federal standards. These forms are used to record information about patients' health and provider compliance with requirement and report information to the Federal Government. *Frequency:* Annually; *Affected Public:* Business or other for profit; *Number of Respondents:* 8,622; *Total Annual Hours:* 129,330.

7. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Survey Team Composition and Workload Report; *Form No.:* HCFA–670; *Use:* This form will provide information on resource utilization applicable to survey activity in the Medicare/Medicaid provider/supplier types and Clinical Laboratory Improvement Amendment (CLIA) laboratories. This information will assist HCFA in determining Federal reimbursement for surveys conducted. *Frequency:* Annually; *Affected Public:* State, local, or tribal governments; *Number of Respondents:* 53; *Total Annual Hours:* 71,667.

8. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Field Testing of the Uniform Needs Assessment Instrument; *Form No.:* HCFA-R–180; *Use:* The validity, reliability, and administrative feasibility of the Uniform Needs Assessment instrument will be

tested in a small-scale trial. Also, a high risk screener will be developed to identify hospital patients in need of extensive discharge planning. Testing will be done in two phases approximately 1 year apart. Each phase will involve 12 provider sites, 420 patients, and 840 total assessments. *Frequency:* Annually; *Affected Public:* Individuals or households, business or other for profit, and not-for-profit institutions; *Number of Respondents:* 420; *Total Annual Hours:* 1,050.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 24, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–18942 Filed 8–1–95; 8:45 am]

BILLING CODE 4120–03–P

Statement of Organization, Functions, and Delegations of Authority; Update of Regional Office Division Level Functional Statements

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 59, No. 60, pp. 14658–14659, dated Tuesday, March 29, 1994) is being amended to reflect changes to the functional statements to the Division level components within the HCFA Regional Offices (ROs). Eight of the ROs propose to streamline their organizational structure in accordance with HCFA's Strategic Plan (SP) and the recommendations contained in the National Performance Review. Seattle plans to streamline as a demonstration project to last up to 18 months. Seattle will establish seven organizations, called Clusters, that will report to the Office of the Regional Administrator (ORA). The other ROs will retain the basic three division structure, including the Division of Health Standards and Quality (DHSQ), the Division of Medicaid, and the Division of Medicare, in each of the ROs affected by this proposal. The changes to the functional statements at the division level are minor and can best be characterized as updates and clarifications of functional responsibilities. The primary changes occur at the branch level where the ROs propose to realign components to improve services to beneficiaries, streamline their functions, to reduce the number of supervisory positions, enhance employee empowerment and meet the goals of the HCFA SP. The functional responsibilities of the Division of Medicare and the Division of Medicaid are the same in all regions, except Seattle, with minor variations indicated in the functional statements.

The functional statements for DHSQ and the Divisions of Medicaid and Medicare in Denver and San Francisco are being republished. The functional statements for these two ROs will remain operational until revised by a proposal later in the year. There are thus four distinct functional statements for the DHSQ due to variations caused by the concentration of primary responsibility for medical review activities in three regions (Boston, Dallas, and Kansas City). The other ROs will continue to have responsibility for some aspects of medical review but will not have the primary responsibility for the function. The first statement applies to those ROs (New York, Philadelphia, Atlanta, and Chicago) that do not have primary responsibility for the medical review function. The second statement applies to two of the ROs that have primary medical review responsibility, Boston and Dallas. In both of these regions, the medical review function will be assigned to DHSQ. The third DHSQ statement applies to Kansas City, where the medical review function will be assigned to the immediate ORA rather than DHSQ. The fourth statement applies to the Denver and San Francisco which retain the current DHSQ functional responsibility until revised by a streamlining proposal later this year.

The functional statements for DHSQ and the Division of Medicaid and the Division of Medicare in Denver and San Francisco are being republished to avoid confusion.

The specific amendments to Part F. are as follows:

- Section F.10.D.6 (Organization) is amended to read as follows:

6. Office of the Regional Administrator

a1. Division of Health Standards and Quality (FLD(2–5)A)
a2. Division of Health Standards and Quality (FLD(1,6)A)
a3. Division of Health Standards and Quality (FLD(7)A)
a4. Division of Health Standards and Quality (FLD(8,9)A)
b1. Division of Medicaid (FLD(1–4, 6–7)B)
b2. Division of Medicaid and Managed Care (FLD(5)B)
b3. Division of Medicaid (FLD(8–9)B)
c1. Division of Medicare (FLD(1–7)C)
c2. Division of Medicare (FLD(8–9)C)
d1. Medicare Operations and Policy Cluster (FLDXD)
d2. Medicaid Operations and Policy Cluster (FLDXE)
d3. Program Fiscal Integrity Cluster (FLDXF)
d4. Consumer Services and Information Cluster (FLDXG)
d5. Managed Care Operations Cluster (FLDXH)
d6. Health Care Quality Improvement Cluster (FLSXJ)
d7. Certification Improvement Cluster (FLDXK)

Section F.20.D.6.a (Functions) is amended to read as follows:

a1. Division of Health Standards and Quality (FLD(2–5)A)

- Assures that health care services provided under the Medicare, Medicaid, and CLIA programs are furnished in the most effective and efficient manner consistent with recognized professional standards of care.
- Interprets and implements health safety standards and evaluates their impact on utilization and quality of health care services.
- Determines approval and denial of all provider and supplier certification actions under the Medicare program.
- Initiates and implements remedial actions, including termination of agreements or alternative sanctions against health care facilities not in compliance with Medicare requirements.
- Makes final determination on all initial and supplemental budget requests submitted by State survey agencies.
- Monitors and evaluates State activities related to Medicare and Medicaid survey and certification.
- Oversees and monitors joint State survey agency/ESRD Network activities.
- Authorizes investigation of complaints received from the public, the Congress, the media, and other sources which allege deficiencies in the quality of care rendered by certified health care providers.
- Coordinates State survey agency activities related to COBRA dumping, sanctions and civil money penalties.
- Actively participates in and takes a lead role in training, outreach and collaborative activities involving providers, provider groups, and State survey agencies, relating to quality of health care services.
- Provides leadership in the development, implementation and continuation of Continuous Quality Improvement activities for the State survey agencies and providers.
- Directs RO activities in support of HCFA's National Managed Care Program.

a2. Division of Health Standards and Quality (FLD(1,6)A)

- Oversees, monitors, coordinates, and evaluates the State Survey agencies, Peer Review Organizations (PROs), and ESRD Networks.
- Assures that health care provided under the Medicare, Medicaid, and CLIA programs are appropriate, of high quality, and meet recognized professional standards of care.
- Improves the quality of care provided to Medicare beneficiaries by administration of the PROs and ESRD Network programs, hereafter referred to as Quality Improvement Programs (QIPs). Under the Health Care Quality Improvement Program (HCQIP), QIPs collaborate with providers to identify and act upon opportunities for the quality of health care services.
- Oversees the negotiation and award of contracts for QIPs.
- Interprets and implements health and safety standards and evaluates, through surveillance, and surveys, their impact on the utilization and quality of health care services.
- Evaluates services to ensure protection of beneficiaries receiving health care services under the Medicare, Medicaid, and CLIA programs.
- Provides leadership and direction in beneficiary information and outreach activities concerning health care services, including information to enable beneficiaries to make informed health care choices.
- Determines program eligibility for all providers and suppliers under the Medicare program, and executes required agreements.
- Initiates, implements, and coordinates State related adverse actions and alternative remedies, including civil money penalties, and Federal activities against health care facilities not in compliance with Medicare or CLIA requirements.
- Makes final determination on all budget request submitted by State survey agencies.
- Establishes and maintains an extensive data and information gathering system involving all aspects of the certification program, CLIA, and QIPs.
- Authorizes investigation of complaints received from beneficiaries, the public, the Congress, the media, and other sources which allege deficiencies in the quality of care rendered by certified health care providers.
- Actively participates in and takes a lead role in training, outreach and collaborative activities involving providers, provider groups, health care professionals, professional reorganizations, consumer groups, and State survey agencies, relating to quality of health care services.
- Provides leadership in the development, implementation and continuation of continuous Quality Improvement activities for the State survey agencies and providers.
- Provides leadership in the quality improvement aspects of HCFA's National Managed Care Program.
- Develops and conducts training programs for the State survey agencies.
- Provides clinical assistance and technical direction to QIPs in the selection and evaluation of project, and develops, executes and measures HCFA directed cooperative clinical projects.

a3. Division of Health Standards and Quality (FLD(7)A)

- Oversees, monitors, and evaluates the State survey agencies and Medicaid State agencies.
- Assures that health care services provided under the Medicare, Medicaid, and CLIA programs are furnished in the most effective manner consistent with recognized professional standards of care.
- Interprets and implements health and safety standards and evaluates, through surveillance, assessments and surveys, their impact on the utilization and quality of health care services.
- Determines approval, denial, or termination of all provider and supplier certification actions under the Medicare program.
- Implements and coordinates State, Contractor, and carrier activities related to adverse sanctions and alternative remedies.
- Makes final determination on all budget requests submitted by State survey agencies.
- Establishes and maintains an extensive data and information gathering system involving all aspects of the certification.
- Authorizes investigation of complaints received from the public, the Congress, the media, and other sources which allege deficiencies in the quality of care rendered by certified health care providers.
- Actively participates in and takes a lead role in training, outreach and collaborative activities involving providers, provider groups, and State survey agencies, relating to quality of health care services.
- Provides leadership in the development, implementation and continuation of continuous Quality Improvement activities for the State survey agencies and providers.

a4. Division of Health Standards and Quality (FLD(8,9)A)

- Assures that health care services provided under the Medicare and Medicaid programs are furnished in the most effective and efficient manner consistent with recognized professional standards of care.
- Interprets and implements health safety standards and evaluates their impact on utilization and quality of health care services.
- Determines approval and denial of all provider and supplier certification actions under the Medicare program.
- Initiates and implements remedial actions, including termination of agreements against health oare facilities not in compliance with Medicare requirements.
- Makes final determination on all initial and supplemental budget requests submitted by State survey agencies.
- Monitors and evaluates State activities related to Medicare and Medicaid survey and certification.
- Oversees, monitors, and evaluates Peer Review Organizations (PROs), including recommendations for contract renewal, extension, and modification.
- Recommends approval or withholding of monthly voucher payments to PROs.
- Authorizes investigation of complaints received from the public, the Congress, the media, and other sources which allege deficiencies in the quality of care rendered by certified health care providers.
- Coordinates State survey agency activities related to sanctions and civil money penalties.

b1. Division of Medicaid (FLD(1–4,6–7)B)

- Plans, manages and provides Federal leadership to State agencies in program development, implementation, maintenance, and the regulatory review of State Medicaid program management activities under title XIX of the Social Security Act.
- Plans, directs, coordinates, and approves Medicaid State agency data processing systems (including MMIS)), proposals, modifications, operations,

contracts, and reviews. Assists Medicaid State agencies in developing innovative automated data processing health care systems. Assures the propriety of Federal expenditures.

• Reviews, evaluates, and determines acceptability of audit findings and recommendations and takes necessary clearance and closure actions.

• Maintains day-to-day liaison with State agencies and monitors their Medicaid program activities and practices by conducting periodic program management and financial reviews to assure State adherence to Federal law and regulations.

• Reviews, approves, recommends disapproval, and maintains official State plans and plan amendments for medical assistance.

• Reviews, approves, and monitors State payment systems and determines the allowablity of claims for Federal financial participation. Takes action to disallow claims when expenditures are not in accordance with Federal requirements and defends such action before the Departmental Appeals Board and in court. Defers payment action on questionable State claims for allowability.

• Reviews States' Medicaid quarterly estimates and statement of expenditures and recommends the amount to be estimated and allowed in the quarterly grants.

• Implements title XIX special initiatives and special or experimental programs such as Maternal and Child Health, Acquired Immune Deficiency Syndrome, statewide 1115 waivers, Freedom of Choice Waivers (1915(b), Home and Community Based Services Waivers (1915c), and operations of major management initiatives.

• Provides consistent guidance, technical assistance, and policy interpretation to States on Medicaid program and financial issues.

• Responds to beneficiary, Congressional, provider, and public inquiries concerning Medicaid issues, including Freedom of Information Act requests.

• Conducts customer outreach and service initiatives.

• Reviews and approves managed care contracts and prepaid health plans.

b2. Division of Medicaid and Managed Care (FLD(5)B)

• Provides Federal leadership to State agencies in program implementation, maintenance, and regulatory review of State Medicaid program management activities under Title XIX of the Social Security Act.

• Assures the propriety of Federal Medicaid expenditures and, where appropriate, takes action to disallow claims.

• Consults with and provides guidance to States on appropriate matters including the interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States.

• Provides consistent policy guidance to States on Medicaid program administration and the amount, duration, scope, and payment for health services under the State program.

• Monitors State agency Medicaid activities by conducting periodic program management and financial reviews to assure State adherence to Federal laws and regulations.

• Reviews, approves, and maintains official State plans and State plan amendments for medical assistance.

• Directs activities in support of the Medicare managed care program including technical support and oversight of these plans.

• Reviews, approves or recommends for disapproval, and monitors State institutional payment plans and systems (after CO concurrence for hospitals and long term care facilities).

• Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed.

• Defers payment action on questionable State claims for allowability.

• Issues orders suspending Federal financial participation on unallowable State Title XIX payments and defends disallowance actions at Departmental Appeals Board.

• Plans, directs, and coordinates the review and approval of Medicaid State agency data processing systems, proposals, modifications, operations, and contracts.

• Implements Title XIX special initiatives, such as maternal and child health, Acquired Immune Deficiency Syndrome, managed care plans, health maintenance organization contracts, and other special or experimental programs and operations of major management initiatives.

• Performs Medicaid eligibility quality control reviews over State Medicaid eligibility and inspection of care practices to assure their ongoing compliance with Medicaid laws and regulations.

b3. Division of Medicaid (FLD(6–9)B)

• Provides Federal leadership to State agencies in program implementation, maintenance, and regulatory review of State Medicaid program management activities under Title XIX of the Social Security Act.

• Assures the propriety of Federal Medicaid expenditures and, where appropriate, takes action to disallow claims.

• Consults with and provides guidance to States on appropriate matters including the interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States.

• Provides consistent policy guidance to States on Medicaid program administration and the amount, duration, scope, and payment for health services under the State program.

• Monitors State agency Medicaid activities by conducting periodic program management and financial reviews to assure State adherence to Federal laws and regulations.

• Reviews, approves, and maintains official State plans and State plan amendments for medical assistance.

• Reviews, approves or recommends for disapproval, and monitors State institutional payment plans and systems (after CO concurrence for hospitals and long term care facilities).

• Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed.

• Defers payment action on questionable State claims for allowability.

• Issues orders suspending Federal financial participation on unallowable State Title XIX payments and defends disallowance actions at Departmental Appeals Board.

• Plans, directs, and coordinates the review and approval of Medicaid State agency data processing systems, proposals, modifications, operations, and contracts.

• Implements Title XIX special initiatives, such as Maternal and Child Health, Acquired Immune Deficiency Syndrome, prepaid health plans, health maintenance organization contracts, and other special or experimental programs and operations of major management initiatives.

• Performs Medicaid eligibility quality control reviews over State Medicaid eligibility and inspection of care practices to assure their ongoing compliance with Medicaid laws and regulations.

c1. Division of Medicare (FLD(1–7)C)

• Directs Medicare program administration through working relationship with contractors, providers, physicians, beneficiaries, the Social Security Administration district offices, the Administration on Aging, the Office of Inspector General, and other Federal agencies, as well as local and national organizations and individuals, as required.

• Directs the review and revaluation of the effectiveness of the Medicare program.

• Directs activities in support of the Managed Care Program including technical support and oversight of Health Maintenance Organizations, and other prepaid contractors.

• Monitor all aspects of contractor performance including claims/bills processing; coverage decisions; Medical Review; the detection of fraud, abuse, and waste in the Medicare Program; overpayment identification and collection; Medicare Secondary Payer (MSP); provider payment and audit; payment to physicians and suppliers; and electronic media claims.

• Coordinates on-going contractor fiscal management activities, including subcontracting, cash management activities, and compliance with the Chief Financial Officers Act.

• Negotiates and approves Medicare contractor budget and budget modifications.

• Directs and coordinates Medicare contractor system and workload transaction activities. Provides advice in the development of the Medicare Transaction System (MTS).

• Evaluates Medicare contractor performance and prepares annual Report of Contractor Performance.

• Manages beneficiary, provider, and public information programs.

• Recommends renewals, non-renewals, rescissions, and terminations of Medicare contracts.

• Coordinates the ESRD program.

c2. Division of Medicare (FLD(8, 9)C)

• Directs Medicare program administration through working relationship with contractors, providers, physicians, the Social Security Administration regional offices, the Administration on Aging, the Office of Inspector General, and other local and national organizations and individuals, as required.

• Directs the review and evaluation of the effectiveness of the Medicare program.

• Directs activities in support of the Managed Care Program including technical support and oversight of health maintenance organizations, and other prepaid contractors.

• Monitors all aspects of contractor performance including claims processing, coverage decisions, overpayment identification and collection, Medicare secondary payor, provider payment and audit, payment to physicians and suppliers, and electronic media claims.

• Coordinates ongoing contractor fiscal management activities, including subcontracting.

• Negotiates and approves Medicare contractor budget modifications.

• Evaluates Medicare contractor performance and prepares annual contractor evaluation report.

• Manages beneficiary, provider, and public information programs.

• Recommends renewals, non-renewals, recessions, and terminations of Medicare contracts.

d1. Medicare Operations and Policy Cluster (FLDXD)

• Directs and coordinates the assessment of Medicare fiscal intermediary contractor performance to ensure compliance with their Medicare contracts. Oversees corrective action and resolution of operational problems.

• Integrates program integrity considerations into all aspects of contractor operations to manage trust fund and general fund expenditures in a responsible manner, referring potential fraud cases for development and action to the Program Fiscal Integrity Cluster.

• Applies data analysis to assess risk and/or vulnerability of payment policies to ensure appropriateness of program expenditures and recommends policy and procedure changes to CO as needed.

• Monitors, evaluates, and assesses Medicare contractors' performance.

• Recommends renewals, non-renewals, rescissions, and terminations of Medicare contracts.

• Monitors the Medicare Common Working File host contractor's performance and oversees the operations and interfaces of the host and satellites.

• Provides specialized technical support and expertise to Medicare contractors and other HCFA components in such areas as ESRD, rural health clinics, Part B payment, medical review, coverage, and coding issues.

• Oversees and evaluates Part B payment changes and Part A and Part B medical review activities.

• Directs the review of Medicare contractor data processing systems, proposals, and modifications.

• Reviews, negotiates, and recommends approval of contractor budgets, modifications to budget allotments, and final settlement of contractor costs.

• Monitors Medicare contractor banking activities and recommends approval of contractor banking agreements.

• Maintains letter of credit and allotment controls on Medicare contractors to monitor funds drawn for administrative purposes.

• Provides technical assistance to Medicare contractors in implementing corrective actions, resolving operational problems, improving their contract performance, and in implementing special HCFA initiatives.

• Conducts special studies of contractor's performance and identifies opportunities for improving contractor's effectiveness.

• Coordinates and provides guidance to Medicare contractors and providers/suppliers in resolving billing, payment, coverage, claims processing, and customer service issues.

• Evaluates proposed regulatory and policy changes to the Medicare program and makes recommendations for CO consideration.

• Provides specialized technical support and oversight in such areas as Part A and Part B appeals.

d2. Medicaid Operations and Policy Cluster (FLDXE)

• Directs and coordinates the assessment of Medicaid State agencies compliance with the Medicaid State plans, with the exception of institutional payment State plans.

• Provides specialized technical support and expertise to Medicaid State agencies and other HCFA components including those related to non-institutional payment; early and periodic screening, diagnosis, and treatment; third-party liability; eligibility, entitlement, and coverage of health services; the Vaccines for Children program, and maternal and infant health.

• Provides technical assistance to State agencies in implementing corrective actions, resolving problems, and improving the effectiveness of their performance.

• Negotiates compliance issues and other problems with State agency management.

• Reviews and approves Medicaid State plan amendments, except for institutional payment State plans.

• Oversees, coordinates, and assesses the operation of State Medicaid Home and Community-Based Services Waivers.

• Provides highly specialized technical direction and assistance to States regarding computer systems applications, particularly for the Medicaid Management Information System (MMIS) and the Family Assistance Management Information System procurement, development, and installations.

d3. Program Fiscal Integrity Cluster (FLDXF)

- Conducts annual System Performance Reviews on MMIS computer systems to validate their compliance with Federal specifications as well as to confirm their ongoing eligibility for enhanced Federal funding.
- Oversees fiscal operations of the Medicare and Medicaid programs.
- Provides leadership and technical assistance to Medicaid State agencies in the development and maintenance of their Medicaid financial management activities, including the recovery of Medicaid overpayments, Medicaid utilization control; and inspection of care reviews.
- Conducts periodic comprehensive on-site financial reviews to assure State adherence to Federal laws, regulations, and State plans. Provides technical expertise and guidance in the financial system and cost allocation areas.
- Reviews State quarterly statements of expenditures and recommends appropriate actions (including acceptance, deferral or disallowance) on amounts claimed; and in a case of disallowance, prepares HCFA position for Departmental Appeals Board.
- Reviews State Medicaid budget estimates projecting future Federal funding requirements and recommends appropriate State funding levels to CO.
- Reviews, approves, or recommends disapproval, and monitors State institutional payment plans and systems for hospitals and nursing facilities, and determines the allowability or nonallowability of claims for Federal financial participation (FFP); and where State expenditures have not been made in accordance with an approved plan or Federal requirements, takes action to disallow such claims.
- Reviews the effectiveness of specific Medicaid program areas operated by State agencies, using data analysis techniques to assess whether the State program meets intent.
- Together with State agency staff, develops studies to help the State assess its own effectiveness.
- Participates with CO components in the development and design of quality measurements of the Medicaid program's effectiveness.
- Evaluates Medicare contractor's activities involving Medicare Secondary Payor (MSP) performance and negotiates MSP subrogation cases.
- Monitors and negotiates the settlement and resolution of audit findings pertaining to the Medicare or Medicaid programs which originate from HHS' Office of Inspector General or the General Accounting Office.
- Conducts quality assurance reviews of Medicare contractor claims payment operations.
- Monitors Medicare contractor overpayment identification and collection activities, pursues collection of overpayments referred to the RO, authorizes extended repayment schedules, assists regional counsel in bankruptcy cases; prepares overpayment cases for offset against Medicaid payments and Internal Revenue Service refunds; and refers cases to the Department of Justice for possible litigation as appropriate.
- Provides technical assistance to Medicare contractors, Medicaid State agencies, and other HCFA components in the area of Medicare and Medicaid payment and fiscal administration.
- Performs special studies of Medicare institutional payment practices and recommends corrective action to close loopholes identified.
- Conducts the Medicare cost report evaluation program.
- Recommends approval or disapproval of common audit agreements, rural referral centers, and sole community provider exemption requests.
- Performs reviews of allowability of costs claimed by Medicare contractors on the Final Administrative Cost Reports.
- Monitors and reviews Medicare contractors compliance with the Chief Financial Officer's Act.
- Directs the region's efforts to develop and refer cases of suspected fraud in Medicare and Medicaid, maintaining close contact with OIG, Medicaid fraud units at State Agencies, and the Department of Justice.
- Coordinates fraud and abuse activities with other HCFA ROs, Medicare contractors, other third party payers, and CO.
- Reviews the effectiveness of specific Medicaid program areas operated by State agencies, using data analysis techniques to assess whether the State program meets intent.

d4. Consumer Services and Information Cluster (FLDXG)

- Ensures that Medicare and Medicaid beneficiaries are informed of HCFA program benefits, rights, and responsibilities through a comprehensive marketing strategy to varied audiences.
- Monitors, evaluates, and assesses the performance of Medicare contractors in their beneficiary outreach and service organizations.
- Coordinates the operation of a public information and outreach programs directed at beneficiary groups, professional organizations, advocacy organizations, other health care entities, and the media.
- Directs the implementation of HCFA beneficiary services initiatives, such as the Medigap, Retired Senior Volunteer Programs, Information Counseling Assistance grants, and Qualified Medicare Beneficiary (QMB) programs.
- Provides direction, technical assistance, and training to the Social Security Administration district offices concerning Medicare entitlement, post-entitlement, and beneficiary education functions, and monitors the performance of these functions.
- Coordinates and controls the processing of responses to all beneficiary, provider, and Congressional inquiries.
- Provides specialized technical support and oversight in such areas as QMB and buy in.
- Works closely with local congressional and Governor's offices to provide a full array of constituent services and support.

d5. Managed Care Operations Cluster (FLDXH)

- Conducts a broad range of activities to oversee the operation of Medicare and Medicaid managed care plans to protect access to care and to enhance access to care, especially in rural or other undeserved areas.
- Provides leadership and oversight of health care delivery systems in Medicare and Medicaid that depart from the traditional fee-for-service model.
- Provides technical advice to health care plans that want to enter into risk and cost contracts for Medicare.
- Evaluates applications from managed care plans to become Medicare risk or cost contractors and/or expand operations to assure compliance with applicable laws and regulations; recommends approval or denial of such applications.
- Reviews and approves managed care plan marketing materials to assure adherence to laws and regulations and to assure that Medicare beneficiaries receive appropriate and clear information about the plans' benefit package and consumer protection.
- Assures contract compliance through periodic monitoring of plan performance.
- In cases of non-compliance, approves corrective action plan from the managed care plans and monitors adherence to the corrective action plan.
- Maintains ongoing relations with managed care plans in the region and works with central office to resolve problems plans have with HCFA policy or procedures; recommends changes to CO in policy and procedures as appropriate.
- Operates a program of beneficiary services that includes direct contact with the Medicare beneficiary to resolve problems with particular plans, contract through congressional offices concerning beneficiary problems, and contact plans to resolve beneficiary problems.
- Resolves systems problems that affect beneficiary eligibility/entitlement under a particular managed care plan.
- Receives and evaluates complaints from beneficiaries concerning quality of care and refers such complaints to PROS for further investigation as appropriate.
- Conducts data analysis of plan performance indicators to determine whether plans need technical assistance or corrective action.
- Through ongoing information gathering in the health care marketplace, provides early warning to CO on polices that might impede the risk contracting in Medicare as commercial/public member limits and rate setting.
- Provides leadership and technical support to States in designing and implementing Medicaid managed care programs.
- Evaluates requests for freedom of choice waivers for Medicaid managed care plans to assure that access to care is maintained or enhanced and that projected costs comply with applicable law and regulation.
- Reviews and approves contracts between States and providers to assure compliance with Federal law and regulation.
- Provides early technical assistance to States that plan to apply for Section 1115 waivers to implement Statewide health care reform.
- Works closely with CO to evaluate requests for Section 1115 waivers, assuming a lead role when the waiver is approved and implementation begins.
- Provides ongoing technical assistance to States with active statewide Section 1115 waivers to assure that conditions of the waiver are adhered to and that access to care is adequate.
- Provides technical assistance to States in finding creative and new methods of delivering Medicaid services through a variety of managed care arrangements.

d6. Health Care Quality Improvement Cluster (FLDXJ)

- Assures that medical care, paid for by Federal Medicare funds, is medically necessary and meets recognized professional standards and quality of care through funding and the monitoring of Peer Review Organizations (PROs) and ESRD Networks in a multi-regional geographic area.
- Provides leadership to PROs and networks to design projects that will improve care to Medicare beneficiaries.
- Maintains knowledge of HCFA data bases, as well as other large health related data bases, and uses these to evaluate care provided to the Medicare population.
- Oversees the PROs' development of local quality studies to assure scientific merit and program relevance.
- Encourages PROs and ESRD networks to work with providers to use the results of local quality studies to fashion interventions to improve care.
- Conducts special regionwide studies to evaluate care provided to Medicare beneficiaries, including beneficiary groups which may have special health care needs, and works through PROs to help providers design interventions to improve care.
- Disseminates useful information to providers and to beneficiaries to improve quality of care.
- Convenes groups at the local level to collaborate on studies involving the quality of care provided to the Medicare, Medicaid, and managed care populations; this includes bringing together variously funded sources such as universities, foundations, and State offices with similar interests in quality of care.
- Participates in the negotiation and award of contracts to PROs.
- Prepares technical and budget evaluations of contract proposals received from PROs, and makes judgments to commit Federal funds for program implementation.
- Monitors and assesses the overall quality performance of PROs including success in using local projects to improve care for Medicare beneficiaries.

d7. Certification Improvement Cluster (FLDXK)

- Manages the State agency evaluation program and assesses the performance of the State survey agency in their survey and certification review process for compliance with performance standards.
- Works with the States to design internal quality assurance programs.
- Negotiates State agency agreements and issues substantive regional guidelines containing policy and procedural interpretations relating to certification activities.
- Evaluates complaints from the public, media, Congress, and others alleging deficient standards in provider facilities, and instructs State agencies to investigate, as appropriate.
- Makes final recommendations on all initial budget and supplemental budget requests submitted by State agencies.
- Takes adverse actions against non-complying Medicare facilities.
- Establishes and maintains a data and information gathering system involving all aspects of the certification program.
- Conducts Federal surveys of providers and suppliers of health services to ensure that State monitoring is satisfactory.
- Performs or authorizes validation surveys in accredited institutions to determine their compliance with Federal standards.
- Conducts surveillance and assessment of State agency operations regarding quality of care, and assists them in developing the capability to provide direct assistance to providers and suppliers of health services in the improvement of their performance.
- Conducts studies, pilot projects, and experimental programs and assists in implementing techniques designed to improve the survey and certification process and peer review systems.
- Conducts training of State surveyors as needed and indicated by Federal monitoring.

Dated: July 19, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–18977 Filed 8–1–95; 8:45 am]

BILLING CODE 4120–01–P

Substance Abuse and Mental Health Services Administration

Cooperative Agreement With the State of Hawaii

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of planned cooperative agreement award to the State of Hawaii to serve a rural area in the Hawaiian Islands with a focus on substance abuse among Native Hawaiians and other residents of rural Hawaii.

SUMMARY: The Center for Substance Abuse Treatment (CSAT), SAMHSA, is publishing this notice to provide information to the public of a planned single source cooperative agreement award to the State of Hawaii for the development and evaluation of systems of substance abuse and/or dependence intervention, treatment and recovery

services among rural Native Hawaiians. Other residents of rural Hawaii residing in the particular services area may also be provided services. The anticipated project period is three years and the estimated FY 1995 award is $500,000. An award will be made based on an acceptable application that is approved by a peer review committee and the CSAT National Advisory Council.

AUTHORITY/JUSTIFICATION: A cooperative agreement award will be made under the authority of section 510(b)(1) of the Public Health Service (PHS) Act, as amended (42 U.S.C. 290bb–3).

The Catalog of Federal Domestic Assistance number for this program is 93.122.

The State of Hawaii has been selected for an award because of the special substance abuse problems of Native Hawaiians. Hawaii also has the highest percentage of chronic drinkers in the Nation. Among Native Hawaiians who self reported drinking patterns from the age of 18 to 34, 90 percent of males and 67 percent of females identified themselves as heavy drinkers and/or substance abuse users. Almost one-fifth of the adult drinking population meet the screening criteria for alcoholism and over 10 percent of pregnant women tested in a four-month period had positive drug urine results at the time of delivery.

In addition, rural remote areas of Hawaii, such as the Neighbor Islands of Kauai, Maui, Molokai, Lanai and the Big Island of Hawaii, are very isolated and have limited substance abuse treatment and related services. Lack of transportation and communication are common problems, thus, access to the very limited substance abuse and related health care services is difficult, if not impossible.

The availability of treatment services for Native Hawaiians and other neighboring residents of rural areas is inadequate to meet the extensive needs for treatment and related services. For example, there are only 32 licensed residential treatment beds in Maui, 30 on the Big Island and 6 on Kauai. None exist on Lanai or Molokai. The Neighbor Islands have virtually no methadone services, either for methadone detoxification or maintenance. The Big Island has just begun to provide methadone maintenance to 30 of those in need. Three hundred and fifteen individuals are currently on the Big Island waiting list for these services. In view of these considerations and in order to assure that specific attention is focused on rural Native Hawaiians and their neighbors, it has been determined that $500,000 should be reserved for the exclusive purpose of providing services to this population in need.

The proposed project will focus on improving the availability and accessibility of substance abuse treatment services for Native Hawaiians and other neighboring residents of rural Hawaii. No non-native Hawaiian residing in the service area will be denied services based on their status as non-native Hawaiians. Further, the required evaluation component of the program will provide information useful in the future design of rural substance abuse treatment programs.

Since the only sizable number of Native Hawaiians are found in Hawaii, and consistent with CSAT's goals to coordinate Federal, State and local treatment planning and coordination provision of other health care services, and data collection efforts, and to work in partnership with the single State agencies (SSAs) to administer discretionary funds to the maximum extent practical, eligibility is being limited to the State of Hawaii. The Hawaii Department of Health, as the SSA for alcohol and drug abuse, is uniquely qualified to carry out the proposed project because it has mechanisms in place for securing pertinent information from public and private nonprofit agencies for service planning, management, evaluation and data collection. It also has the unique ability to coordinate health services, oversight and maximize the long-term benefit of the award. It is anticipated that the high degree of interdisciplinary State involvement will facilitate planning and integration of services, as well as State support of systemic improvements after Federal support is no longer available.

The cooperative agreement mechanism is being used for this award in order to facilitate the coordination of this project with the five projects funded under this program in September 1993, as well as with other SAMHSA, PHS, HHS, and Departments of Justice, Housing and Labor programs.

FOR FURTHER INFORMATION CONTACT: Clifton D. Mitchell, CSAT/SAMHSA, Rockwall II, Room 740, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–8802.

Dated: July 26, 1995.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–18880 Filed 8–1–95; 8:45 am]

BILLING CODE 4162–20–P

Center for Mental Health Services; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in September 1995.

The meeting of the CMHS National Advisory Council will include a discussion of the mission and programs of the Center, administrative announcements and program developments. It will focus on managed care initiatives across the country and CMHS's leadership role in providing consultative services to states pursuing managed care activities. The Council will also be performing review of applications for Federal assistance and individual contract proposals; therefore, portions of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and/or a roster of Council members may be obtained from: Gloria Yockelson, Committee Management Officer, CMHS, Room 18C–07, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–7919.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services, National Advisory Council.
Meeting dates: September 11–12, 1995.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Closed: September 11, 8:30 a.m.–10:30 a.m.
Open: September 11, 10:30 a.m.–5 p.m.
Open: September 12, 9 a.m.–adjournment.
Contact: Anne Mathews-Younes, Ed.D., Room 11C–26, Parklawn Building, Telephone: (301) 443–3606.

Dated: July 25, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–18887 Filed 8–1–95; 8:45 am]

BILLING CODE 4162–20–P

National Advisory Council; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in September 1995.

The September 1 teleconference meeting will include the review, discussion and evaluation of contract proposals. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552 b(c) (3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A portion of the meeting will be open in order to allow public participation. Attendance by the public will be limited to space available.

A summary of the meeting and a roster of Council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 12C–15, Rockville, Maryland 20857. Telephone: (301) 443–4640.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Substance Abuse and Mental Health Services Administration, National Advisory Council.
Meeting Date: September 1, 1995.
Place: Substance Abuse and Mental Health Services Administration—Parklawn Building, Conference Rm. 12–94, 5600 Fishers Lane, Rockville, MD 20857.
Open: September 1, 1994 1 p.m. to 1:30 p.m.
Closed: September 1, 1995, 1:30 p.m. to 3:30 p.m.
Contact: Toian Vaughn, Room 12C–15, Parklawn Building, Telephone: (301) 443–4640 and FAX: (301) 443–1450.

The September 11 meeting of the SAMHSA National Advisory Council will include discussions of SAMHSA's reauthorization, budget issues, and status of SAMHSA's Strategic Plan. There will also be discussions on the services research activities and research dissemination efforts of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse. In addition, there will be status reports by the Council's workgroups on Health Care Reform, Children's Services, and Co-Occurring Mental Illness and Substance Use Disorders.

The meeting will be open and attendance by the public will be limited to space available.

A summary of the meeting and a roster of Council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 12C–15, Rockville, Maryland 20857. Telephone: (301) 443–4640.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Substance Abuse and Mental Health Services Administration, National Advisory Council.
Meeting Date: September 11, 1995.
Place: Omni-Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.
Open: September 11, 1995, 9 a.m. to 6 p.m.
Contact: Toian Vaughn, Room 12C–15, Parklawn Building, Telephone: (301) 443–4640 and FAX: (301) 443–1450.

Dated: July 25, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–18879 Filed 8–1–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–3647–N–06]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 20, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Contributions for Operating Subsidies—Performance Funding System: Determination of Operating Subsidy, Vacancy Rule (FR–3647).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The information is used by Public Housing Authorities/Indian Housing Authorities (PHAs/IHAs) for inclusion in budget submissions which are reviewed and approved by Field Offices as the basis for obligating operating subsidies. The information is necessary in order to calculate the eligibility for operating subsidies under the Performance Funding System.

Form Number: HUD–52728–A.

Respondents: State, Local or Tribal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52728–A	3,100		1		2		6,200

Total Estimated Burden Hours: 6,200.
Status: Reinstatement with changes.
Contact: Stephen H. Sprague, HUD, (202) 708–1872; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 20, 1995.

[FR Doc. 95–18878 Filed 8–1–95; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–95–1610–00]

Red Rock Canyon National Conservation Area; Preparation of the Final General Management Plan/ Environmental Impact Statement

Dated: July 18, 1995.

AGENCY: Bureau of Land Management, Interior.

ACTION: Preparation of the Final General Management Plan/Environmental Impact Statement (GMP/EIS) for Red Rock Canyon National Conservation Area (RRCNCA).

SUMMARY: Pursuant to Public Law 103–621 (11/2/94) which expanded the boundaries of RRCNCA as designated in the Red Rock Canyon National Conservation Establishment Act Public Law 101–621 (11/16/90) and amends portions of the Act, the Las Vegas District, BLM, is initiating preparation of a Final General Management Plan/ Environmental Impact Statement (GMP/ EIS) for the NCA as expanded. An Interim GMP (IGMP) based on a Draft GMP for the RRCNCA as originally designated has been completed and will be in effect until completion of the Final GMP.

Public scoping meetings will be held in September to receive public comment on issues related to the lands added to the NCA as well as revisit issues from the planning process to date. Written comments and discussions from past meetings will continue to be considered in the process of developing the final GMP. The meeting dates and locations are as follows:

Wednesday, September 6, 1995—7:00 pm to 9:00 pm
Saturday, September 9, 1995—7:00 pm to 9:00 pm

The above meetings will be held at the BLM District Office located at 4765 Vegas Drive, Las Vegas, Nevada, 89108. Written comments may be mailed to the same address to the attention of Gene Arnesen or Dave Wolf.

For additional information call Gene Arnesen at 647–5068 or Dave Wolf at 647–5074.

Dated: July 18, 1995.

Michael F. Dwyer,

District Manager.

[FR Doc. 95–19017 Filed 8–1–95; 8:45 am]
BILLING CODE 4310–HC–M

[AZ–040–05–1040–00]

Meeting for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: Friday August 25, 1995, 10 a.m.–4 p.m., Safford District Office. Saturday, September 9, 1995, 10 a.m.–4 p.m., Safford District Office.

ADDRESSES: BLM Safford District Office, 711 14th Ave., Safford, Arizona.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by the Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Committee is continuing work on the Gila Box Interdisciplinary Activity Plan, which will be completed by December 1995.

At these meetings the committee will (1) continue to refine management actions and (2) finalize preferred alternative.

All meetings are open to the public. Interested persons may make oral statements to the Committee (from 10:30–11 a.m.) or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Resource Area Manager at least two working days prior to the meeting. Written statements are also accepted at any time during preparation of the draft plan; and will be reviewed by the committee.

States should be mailed to Elmer Walls, Team Leader, Gila Resource Area, 711 14th Ave., Safford, Arizona 85546.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION: Meg Jensen, Gila Resource Area Manager, or Elmer Walls, Team Leader, 711 14th Ave., Safford Arizona 85546, Telephone (520) 428–4040.

Dated: July 25, 1995.

Melanie J. Rohrer,

Acting District Manager.

[FR Doc. 95–18883 Filed 8–1–95; 8:45 am]
BILLING CODE 4310–32–M

[NV–030–1430–01; CAS 2404]

Termination of Classification of Public Lands for Multiple-Use Management and Opening Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a classification of public land for multiple-use management (CAS 2404). The land will be opened to the operation of the public lands laws including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The land has been and remains open to the operation of the mineral leasing laws.

EFFECTIVE DATE: Termination of the classification is effective on August 2, 1995. The land will be open to entry at 10 a.m. on September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2800 Cottage Way, Room E–2845, Sacramento, California 95825–1889; telephone number 916–979–2858, or Steep Weiss, BLM Walker Resource Area Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706–0638; telephone number 702–885–6134.

SUPPLEMENTARY INFORMATION: On March 27, 1969, approximately 38,815 acres of public lands were classified for multiple-use management under the Act of September 19, 1964 (43 U.S.C. 1411–18). The land was segregated from appropriation under the public lands laws and the general mining laws. The classification decision was published in the **Federal Register**, on April 4, 1969 (34 FR 6124). On September 14, 1984, that classification was terminated for all but 2,120 acres, which are described below. The decision to terminate the classification in part was published in the **Federal Register** on September 21, 1984 (49 FR 37183).

Pursuant to the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), and the regulations contained in 43 CFR 2091.7–1(b)(3) and 2461.5(c)(2), the Classification of Public Lands for Multiple-Use Management , CAS 2404, is hereby terminated in its entirety and

the segregation for the following described land is hereby terminated:

Mount Diablo Meridian

T. 10 N., R. 20 E.,
Sec. 3, lots 2 and 3, W½ lot 9, W½E½ lot 9, lots 10 to 14, inclusive, W½SW¼, and W½E½SW¼;
Sec. 4, lots 5 to 8, inclusive, E½ lot 9, E½ lot 10, E½ lot 11, lots 17 and 18, and S½SE¼;
Sec. 8, NE diagonal ½ of SE¼;
Sec. 9, SW¼;
Sec. 10, E½SE¼SE¼;
Sec. 11, W½NW¼NE¼, NE¼NW¼, E½NW¼NW¼, E½SW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, E½NW¼SW¼, SW¼SW¼, and W½SE¼SW¼;
Sec. 14, W½NW¼NW¼;
Sec. 15, NE¼NE¼ and E½NE¼SW¼;
Sec. 22, SW¼SE¼;
Sec. 26, NW¼NW¼;
Sec. 27, N½NE¼.
T. 11 N., R. 20 E.,
Sec. 32, W½SW¼.

Aggregating approximately 2,120 acres in Alpine County. The classification no longer serves a needed purpose as to the land described above and is hereby terminated.

At 10 a.m. on September 1, 1995, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on September 1, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on September 1, 1995, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: July 13, 1995.

Ed Hastey,

State Director.

[FR Doc. 95–18944 Filed 8–1–95; 8:45 am]
BILLING CODE 4310–40–P

[WY–920–41–5700; WYW103178]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

July 24, 1995.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW103178 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW103178 effective March 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 95–18943 Filed 8–1–95; 8:45 am]
BILLING CODE 4310–22–M

[NM–010–05–1220–00/G010–G5–0009]

Establishment of Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Lands in Albuquerque District, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Proposed supplementary rules; request for comment.

SUMMARY: These proposed rules, published for a 30-day comment period, are needed for managing actions, activities, and use on public lands, including lands that have been acquired or conveyed to the BLM. These rules would establish criteria for individual conduct to protect persons, property, and public lands and resources, and would supplement those established under 43 CFR Subparts 8365.1 and 8365.2. They would apply to all public lands under the jurisdiction of the BLM's Albuquerque District, New Mexico. Supplementary rulemaking is provided for under Title 43 CFR, Subpart 8365.

The users of public lands are expected to follow certain rules designed to protect the lands and its natural resources, to mitigate use conflicts, to implement management plans, and for the protection, comfort and well-being of other users of the public lands. These rules will also provide for the protection of persons and resources in the interest and spirit of cooperation with local, state and other federal agencies. Except as otherwise provided for by federal law or regulations, state and local laws and ordinances shall apply and be enforced by the appropriate state and local authorities.

This notice supersedes previous notices published in the **Federal Register** on August 17, 1989 (Vol. 54, No. 158), and February 1, 1991 (Vol. 56, No. 28), which established Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas and Other Public Lands in the Albuquerque District, New Mexico.

Definitions: As used in these supplementary rules, the term:

—*Abandonment* means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.
—*Administrative activities* are those activities conducted under the authority of the BLM in accordance with applicable laws, regulations and policies.
—*Authorized Officer* means any employee of the BLM who has been delegated the authority to perform the duties in 43 CFR, Part 8360.
—*Boat launching/taking out* means the transfer of a boat from or to a vehicle or trailer, to or from the water to begin or end a floatboat trip.
—*Campfire* means a controlled fire occurring outdoors for cooking, branding, personal warmth, lighting, ceremonial or aesthetic purposes.
—*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or the parking of a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy. Occupying a developed campsite or an approved location within developed recreation areas and sites during the established night period of 10 p.m. to 6 a.m. will be considered

overnight camping for fee collection and enforcement purposes.

—*Developed recreation sites and areas* are those that contain structures or capital improvements primarily used for recreation purposes by the public. Development may vary from limited improvements for protecting the resources and the safety of users, to distinctly defined sites where developed facilities are provided for concentrated public recreation use. Such sites meet criteria of the Land and Water Conservation Fund Act of 1965 (as amended) for fee collection sites.

—*Disorderly conduct* is engaging in fighting; addressing any offensive, derisive, or annoying communication to any other person who is lawfully present when such communication has a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed; or making statements or other actions directed toward inciting or producing imminent lawless action and likely to incite or produce such action.

—*Historic or prehistoric structure or ruin site* is any location that meets the standards for inclusion on the National Register of Historic Places as defined in 36 CFR 60.4, without regard to whether the site has been nominated or accepted.

—*Occupancy* means the taking or holding possession of a campsite or residence on public land.

—*Pet* means a dog, cat or any animal that has been domesticated.

—*Public lands* are any lands, interest in lands, or related waters owned by the United States and administered by the BLM. Related waters are those that lie directly over or adjacent to public lands and that require some management control to protect federally administered resources or to provide for enhanced visitor safety and other recreation experiences.

—*Public nudity* means appearing nude on public lands when such activity is within view of unaffiliated persons. Nudity is defined as the failure to cover the rectal area, pubic area, or genitals. A female is also nude if she fails to cover at least the areola portions of both breasts. Each such covering must be fully opaque. No person under the age of 10 years shall be considered publicly nude.

—*Reasonable quantities* for piñon nuts are 25 pounds per year; for seeds are 1 cubic foot per year per species; for other edible plants or plant parts mean personal consumption on site; for woody material are only enough to burn in authorized campfires; for plant materials (or plant parts) are 1 cubic foot per species per year; and for specimens and samples of rocks and minerals are small amounts of non-renewable resources used for hobby purposes, not to exceed 250 pounds per year and not to include common mineral materials.

—*Special Recreation Management Area (SRMA)* means an area where special or more intensive types of resource and user management are needed.

—*Stove fire* means a fire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including space-heating devices.

—*Vehicle* means any motorized or mechanized device, not including bicycles or wheelchairs, that is propelled or pulled by any living or other energy source, and capable of travel by any means over ground or water.

—*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, speargun, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapon, nun-chucks, clubs, billy-clubs, and any device modified for use or designed for use as a striking instrument; to include any weapon the possession of which is prohibited under New Mexico law.

Supplementary Rules—All Public Lands

In addition to regulations contained in 43 CFR 8365.1, the following supplementary rules apply to all public lands in the Albuquerque District, including those lands acquired or conveyed to the BLM, and related waters. Unless authorized by written permission, no person shall:

Sanitation

• Construct or maintain any pit toilet facility, other than shallow holes or trench toilets developed for use by backcountry visitors for stays lasting 14 days or less. All holes, trenches or pits must be a minimum of 100 feet from any permanent water source.

• Dump or dispose of sewage or sewage treatment chemicals from self-contained or containerized toilets except at facilities provided for that purpose.

Occupancy and Use

• Camp or occupy any site on public lands for a period longer than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas or sites with other designated camping stay limits. The 28-day period begins when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation. After the 14th day of occupation, campers must move beyond a 25-mile radius from the previous location, and must not return to a location within this radius for 30 days or longer.

• Park any motor vehicle for longer than 30 minutes or camp within 300 yards of any spring, manmade water hole, water well, or watering tank used by wildlife or domestic stock.

• Dispose of any burning or smoldering material except at sites or facilities provided for that purpose.

• Violate the terms, stipulations, or conditions of any permit or use authorization.

• Fail to show a permit or use authorization to any Bureau of Land Management employee upon request.

• Camp or occupy, or build any fire on or in any historic or prehistoric structure or ruin site.

Vehicles

• Operate an off-road vehicle without full-time use of an approved spark arrester and muffler.

• Operate, park or leave a motorized vehicle in violation of posted restrictions or in such a manner or location as to:

1. Create a safety hazard,
2. Interfere with other authorized users or uses,
3. Obstruct or impede normal or emergency traffic movement,
4. Interfere with or impede administrative activities,
5. Interfere with the parking of other vehicles,
6. Park more than 300 feet from an existing or designated route, subject to any superseding requirements for such use along designated or existing routes, or

• Operate a vehicle in violation of state motor vehicle laws or regulations.

Public Health and Safety

• Possess or use fireworks.

• Sell or make a gift of an alcoholic beverage to a person under 21 years of age.

• Possess an alcoholic beverage if under 21 years of age.

• Ignite or burn any material containing or producing toxic or hazardous material.

• Carry concealed weapons in violation of state law.

• Discharge a firearm or any other implement capable of taking human life, causing injury, or damaging property:

1. In or within 150 yards of a dwelling, building, campsite or occupied area, or

2. On, from or across a developed road; from within a fenced right-of-way; within 40 feet of a road if no fence exists; across a body of water adjacent thereto; or in any manner or place whereby any person or property is exposed to injury or damage as a result of such discharge.

♦ Conduct themselves in a disorderly fashion.

♦ Fail to prevent a pet from harassing, molesting, injuring, or killing humans, domesticated animals, wildlife or livestock.

♦ Fail to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

♦ Enter a cave without each person wearing a safety helmet (hard hat) with chin strap and carrying at least three sources of light.

Property and Resources

♦ Cut, remove or transport woody materials including (but not limited to):

1. Any type or variety of vegetation,
2. Fuelwood or firewood (either green or standing deadwood), and
3. Live plants,

except as authorized by 43 CFR 8365.1–5 (b) and (c) (which allow the collection of commonly available renewable resources such as flowers, berries, nuts, seeds, cones and leaves; and the collection of forest products for use in campfires on the public lands).

♦ Remove or transport any mineral resources, including, but not limited to, rock, sand, gravel, other mineral materials, or decorative landscaping materials on or from public lands without written consent, proof of purchase, or a valid permit.

♦ Annoy or disturb bats, raptors, reptiles or other protected species, including nesting sites or areas.

Supplementary Rules—Developed Recreation Sites/Areas, Special Recreation Management Areas

In addition to the regulations contained in 43 CFR 8365.1, 8365.2 and those listed above, the following rules will be applied in accordance with 43 CFR 8365.2. Unless authorized by written permit, no person shall:

Occupancy and Use

♦ Reserve camping space, except at group facilities. Camping space is available on a first-come, first-served basis.

♦ Camp at one area or site within a developed campground for longer than 7 days in any 28-consecutive-day period unless extended by the authorized officer. After the 7th day, campers must move to a public land site at least 25 miles from the previous location and must not return to the previous location for 30 days or longer.

• Park more than 2 motorized vehicles at any approved site and/or cause that site to be occupied by more than 15 individuals, unless the site is posted otherwise or designated for group use. (Groups exceeding these limits may occupy additional sites and/or additional designated parking areas.)

• Camp or occupy, between 10:00 pm and 6:00 am, the Black Rock Spring, County Line, John Dunn Bridge, Lover's Lane, Manby Spring, Quartzite, La Ventana Natural Arch, Tent Rocks, Bluewater Canyon, Cañon Tapia, Guadalupe Ruin and Community, and Ward Ranch Recreation Areas/Sites; Wild Rivers Recreation Area's Bear Crossing and Chawalauna Overlooks; or Orilla Verde Recreation Area's Gauging Station picnic site.

• Engage in non-commercial floatboating without the following items in each group, unless otherwise indicated by permit or registration requirements:

1. A first-aid kit,
2. An approved U.S. Coast Guard Type I, III or V life preserver for each individual (which must be worn at all times while on the rivers),
3. An extra life preserver for each boating party, excluding kayaks and canoes,
4. A bailing bucket of at least 2-gallon capacity aboard each non-self-bailing watercraft, excluding kayaks and canoes,
5. A length of rope at least equal to the length of the boat,
6. A throw line of at least 60 feet for each boat, excluding kayaks,
7. Patching and repair equipment,
8. An air pump for inflatable watercraft, and
9. An extra oar or pair of paddles for each oar- or paddle- powered watercraft, excluding kayaks.

• Engage in noncommercial floatboating within the boundaries of the Rio Grande Wild and Scenic River without completing a BLM boating registration form for each day, or for each trip if a multi-day trip.

• Build, tend, or use a campfire except in a stove, grill, fireplace or ring provided for such purpose in developed recreations areas or sites.

• Ride a horse or a bicycle in areas or on trails posted as closed to such use.

• Launch or take out boats at sites not designated for such use on the Rio Grande between John Dunn Bridge Recreation Site and the Velarde Diversion Dam (T. 23 N., R. 9 E., sec. 34). All sites not designated for such use are closed to boat launching/takeout.

Vehicles

• Use a motorized craft, including inboard or outboard motors, jet skis or hovercraft on the Rio Grande Wild and Scenic River, and the Lower Gorge Special Recreation Management area between the County Line Recreation Site and the Velarde Diversion Dam; and on the Rio Chama Wild and Scenic River.

• Operate non-street-legal motorized vehicles within the boundaries of all recreation areas or sites.

• Operate motor vehicles within the Ignacio Chavez Grant or Elk Springs during seasonal closures.

• Operate motor vehicles within the San Ysidro Trials Limited Area except as authorized by special use permit.

• Park a vehicle other than in areas established for such use; or further than 25 feet from designated roads, subject to any superseding requirements of such use along wilderness area boundaries, or to restrictions that may be in place along designated roads.

Property and Resources

• Cut or gather green trees or their parts, or remove down or standing dead wood for any purpose, including use in campfires.

• Climb or walk on the "tent rock" formations in the Tent Rocks Recreation Area.

• Participate in technical rock climbing within the La Ventana Natural Arch area.

• Use mechanized equipment or create bank disturbance in association with recreational gold panning. Panning with hand tools below the water line is allowed.

Public Health, Safety and Comfort

• Fail to immediately remove and dispose of in a sanitary manner, all pet fecal material, trash, garbage or waste created.

• Bring a pet on any nature or interpretive trails, caves, and freshwater springs that are signed as prohibited to pets. Animals trained to assist handicapped persons are exempt from this rule.

• Fail to maintain quiet between the hours of 10:00 p.m. to 6:00 a.m., or other hours as posted. During this period no person shall create noise that disturbs other visitors.

• Post or distribute any signs, posters, printed material or commercial advertisements without written approval by the authorized officer.

• Use, display or carry weapons within developed campsites or picnic areas.

• Bring equine stock, llamas, cattle or other livestock within campgrounds or picnic areas unless facilities have been specifically provided for such use.

• Discharge firearms or other weapons, or hunt and trap within a developed recreation area or within 150 yards of a developed recreation site.

• Be publicly nude at Wild Rivers, Orilla Verde or Santa Cruz Lake Recreation Areas; Lower Gorge Special Recreation Management Area; or John Dunn Bridge Recreation Site.

• Shower or bathe at any improved or developed water source, outdoor hydrant pump, faucet, or fountain, or restroom water faucet, unless such water source is designated for that purpose.

List of Developed Recreation Sites/ Areas and Special Recreation Management Areas In

Rio Puerco Resource Area

1. Tent Rocks
   T. 16 N., R. 5 E., secs. 3, 4, 5
   T. 17 N., R. 5 E., secs. 27–31
2. El Malpais National Conservation Area
   a. La Ventana Natural Arch Special Management Area
   T. 8 N., R. 10 W., secs. 33, 34
   T. 7 N., R. 10 W., secs. 3, 4
   b. South Narrows Recreation Area
   T. 7 N., R. 10 W., sec. 17
   c. El Malpais Ranger Station
   T. 9 N., R. 9 W., sec. 32
3. Elk Springs
   T. 18 N., R. 1 W., secs. 1–4
   T. 19 N., R. 1 W., secs. 10, 11, 14, 15, 21–23, 26–29, 33–35
4. Pronoun Cave Complex
   T. 6 N., R. 5 W., secs. 10, 14
5. Guadalupe Ruin and Community
   T. 15 N., R. 3 W., secs. 14, 15, 22, 23
6. Cañon Tapia (applies only to lands within the canyon)
   T. 15 N., R. 3 W., sec. 20, 21, 22, 29, 31
7. Ignacio Chavez Grant
   T. 15 N., R. 3 W.
   T. 15 N., R. 4 W.
   T. 15 N., R. 5 W.
   T. 15 N., R. 6 W.
   T. 16 N., R. 4 W., secs. 19, 20, 21, 22, 27, 28, 29, 30
   T. 16 N., R. 5 W., secs. 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30
   T. 16 N., R. 6 W.
8. San Ysidro Trials Area
   T. 15 N., R. 1 E., secs. 3, 4, 9, 10
   T. 16 N., R. 1 E.
9. Bluewater Canyon
   a. Canyon Entrance
   T. 12 N., R. 11 W., sec. 5
   b. Lands Within Canyon
   T. 12 N., R. 11 W., secs. 5, 6

Taos Resource Area

1. Lower Gorge Special Recreation Management Area
   T. 26 N., R. 11 E., sec. 31, river section to T. 23 N., R. 9 E., sec. 34, including:
   a. Quartzite Recreation Site T. 24 N., R. 11 E., sec. 32
   b. County Line Recreation Site T. 23 N., R. 11 E., secs. 14, 15
   c. Lover's Lane Recreation Site T. 23 N., R. 10 E., sec. 20
2. Orilla Verde Recreation Area
   T. 24 N., R. 11 E., secs. 2, 10, 11, 14–16, 20–22, 28, 29
3a. Rio Chama Wild and Scenic River
   T. 24 N., R. 2 E., sec. 1; T. 24 N., R. 3 E., secs. 5, 6, 8–10, 13–15; T. 25 N., R. 2 E., secs. 2, 3, 11, 13, 14, 23, 24, 25, 36; T. 25 N., R. 3 E., sec. 31; T. 26 N., R. 2 E., secs. 3, 4, 9, 10, 15, 16, 21, 22, 26, 27, 34; T. 27 N., R. 2 E., secs. 9, 10, 15, 16, 21, 22, 27, 28, 33, 34
3b. Ward Ranch Recreation Site
   T. 27 N., R. 2 E., sec. 27
4. Rio Grande Wild and Scenic River
   T. 23 N., R. 10 E., secs. 1, 11–16, 22; T. 23 N., R. 11 E., secs. 5–7; T. 24 N., R. 11 E., secs. 2, 10, 11, 15, 16, 20, 21, 28, 29, 31–33; T. 25 N., R. 11 E., secs. 1, 12, 13, 23–26, 35, 36; T. 26 N., R. 11 E., secs. 1, 12–14, 23–26, 35, 36; T. 27 N., R. 11 E., sec. 36; T. 27 N., R. 12 E., secs. 5, 7, 8, 17–19, 30, 31; T. 28 N., R. 12 E., secs. 5–10, 16–20, 29–30; T. 29 N., R. 12 E., secs. 4, 5, 8, 9, 16, 17, 20, 29–32; T. 30 N., R. 12 E., secs. 6, 7, 17–20, 29, 30, 32; T. 31 N., R. 11 E., secs. 1, 2, 11, 14, 23–26; T. 31 N., R. 12 E., secs. 30, 31; and T. 32 N., R. 11 E., secs. 24, 25, 36.
   a. John Dunn Bridge Recreation Site T. 27 N., R. 12 E., sec. 31
   b. Manby Spring Recreation Site T. 26 N., R. 11 E., sec. 12
   c. Black Rock Spring Recreation Site T. 26 N., R. 11 E., sec. 1
5. Santa Cruz Lake Recreation Area
   T. 20 N., R. 10 E., secs. 7, 18
6. Wild Rivers Recreation Area
   T. 29 N., R. 12 E., secs. 16, 17, 20, 29, 31, 32
   T. 28 N., R. 12 E., secs. 4, 5, 6, 8, 9, 16, 17

DATES: Comments on the proposed rules will be accepted until September 1, 1995. Comments received or postmarked after the above date may not be considered in the decision-making process on the final rulemaking.

ADDRESSES: Comments should be sent to: District Manager (014), BLM, 435 Montaño NE, Albuquerque, New Mexico 87107. All written comments made pursuant to this action will be made available for public inspection during normal business hours (7:45 a.m. to 4:15 p.m., MDT) at the above address.

FOR FURTHER INFORMATION CONTACT: John Bristol, Outdoor Recreation Planner, BLM, Albuquerque District Office, 435 Montaño NE, Albuquerque, New Mexico 87107, Telephone: (505) 761–8755.

SUPPLEMENTARY INFORMATION: The New Mexico State Director is establishing these supplementary rules for the Albuquerque District.

They are necessary to protect persons, property and public lands and resources currently under BLM administration, and those lands acquired for inclusion within the administrative jurisdiction of the district as provided for in 43 CFR 8365.1–6. These supplementary rules apply to all persons using public lands. Violations of these rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Exceptions to these proposed supplementary rules may be permitted by the authorized officer, subject to the limits and restrictions of controlling federal and state law. Persons granted use exemptions must possess written authorization from the BLM office having jurisdiction over the area. Users must further comply with the zoning, permitting, rules or regulatory requirements of other agencies, where applicable.

Dated: July 17, 1995.

Gilbert J. Lucero,

Associate State Director, New Mexico.

[FR Doc. 95–18945 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–FB–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–805140

Applicant: Vincent dePaul Kelly, Alexandria, VA

The applicant has requested a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) from the captive herd maintained by Contour, National Nature Conservation and Tourism Board, South Africa, for the purpose of enhancement of the species.

PRT–805134

Applicant: Kimberly Whitman, Villanova Univ., Villanova, PA

The applicant requests a permit to import up to 30 - 1ml blood samples collected in the wild from Rodrigues fruit bats (*Pteropus rodricensis*) on Rodrigues Island, Mascarene Islands, Mauritius, for the purpose of scientific research to determine genetic diversity.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 28, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–18995 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Timber Harvest Operation by Pine Belt Regional Solid Waste Management Authority in Perry County, Mississippi

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice.

SUMMARY: Pine Belt Regional Solid Waste Management Authority (Applicant) is seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act), as amended. The permit would authorize the take of the gopher tortoise (*Gopherus polyphemus*), a threatened species, in Perry County, Mississippi for a period of 20 years. The proposed taking is incidental to the construction and operation of a solid waste landfill within a 340-acre tract located approximately 2 miles north of Runnelstown in Sections 8 and 9, Township 5 North, Range 11 West. The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. The Service prepared the EA and the HCP was developed by the Applicant. Copies of the EA and HCP may be obtained by making a request to the Regional Office address below. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be received on or before September 1, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Requests must be in writing to be processed. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jackson, Mississippi, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–*804406* in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213, (telephone 601/965–4900, fax 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Will MacDearman at the Jackson, Mississippi Field Office, or Rick G. Gooch at the Atlanta, Georgia Regional Office.

SUPPLEMENTARY INFORMATION: The gopher tortoise, *Gopherus polyphemus*, is listed as a threatened species in the western part of its range, from the Tombigbee and Mobile Rivers in Alabama west to southeastern Louisiana. As a native burrowing species of the fire-maintained longleaf pine ecosystem, typical gopher tortoise habitat consists of frequently burned longleaf pine or longleaf pine/scrub oak uplands on moderately well-drained to xeric soils. About 80 percent of the original habitat for gopher tortoises has been lost due to urbanization and agriculture. Certain forest management practices in remaining upland pine habitats have also adversely affected the gopher tortoise. Silvicultural systems using intensive site preparation, dense plantations and stands of loblolly pine or slash pine, and infrequent fire have reduced or eliminated the open forest and sunny forest floor of grasses and forbs where gopher tortoises burrow, nest, and feed. Though gopher tortoises are widely distributed in south Mississippi, most populations are fragmented, small in size, and functionally non-viable.

Section 9 of the Act, and implementing regulations, prohibits taking the gopher tortoise. Taking, in part, is defined as an activity that kills, injures, harms, or harasses a listed endangered or threatened species. Section 10(a)(1)(B) of the Act provides an exemption, under certain circumstances, to the Section 9 prohibition if the taking is incidental to, and not the purpose of otherwise lawful activities.

Gopher tortoise surveys conducted by the Applicant have identified at least one tortoise and six other burrows in the landfill operations area. Two of these burrows exhibited signs of recent gopher tortoise use within the past year. This area will consist of four waste disposal cells and sites for the excavation and stocking of soil to be used to cover solid wastes. Tortoises within the area would be expected to be taken as an incidental consequence of landfill construction and operation. Heavy equipment operations can directly kill or injure tortoises as a result of their becoming crushed or entombed in burrows. The HCP describes measures the Applicant will take to avoid and mitigate such taking. Prior to landfill construction, the Applicant will survey the operations area to identify, trap, and relocate gopher tortoises to an adjacent site designated as a permanent gopher tortoise habitat conservation area. The conservation area, owned by the Applicant, consists predominately of suitable habitat, a longleaf pine/blackjack oak upland, that is partially occupied by other gopher tortoises. The Applicant will manage the conservation area using a program of prescribed fire and tree thinning to maintain and improve habitat conditions for the gopher tortoise. Without such active management, particularly the use of prescribed fire, gopher tortoise habitat would deteriorate as a natural consequence of ecological succession.

Also, a temporary conservation area will be managed using the same methods as in the permanent conservation area. About one-half of the temporary area contains solid waste cells that are forecast to be used about 20 years from now. No tortoises currently occupy this portion, though habitat is suitable. The remaining portion of the temporary area, which is occupied by tortoises, may be used within 5–10 years to provide soil for waste overfill. Tortoises in this remaining portion will be relocated to the permanent conservation area prior to landfill operations.

The EA considers the environmental consequences of two alternatives; issue the requested permit as conditioned by the HCP, or take no action (deny permit). The Service has made a preliminary determination that the Applicant has satisfactorily complied with the statutory and regulatory criteria for permit issuance. The Service's proposed alternative is to issue the requested incidental take permit. The principal environmental consequence of

permit issuance, in the Service's assessment, is to the gopher tortoise. Permits authorizing the disposal and management of solid wastes at the landfill are otherwise administered according to Federal and State statutory/regulatory standards by the Environmental Protection Agency, the Mississippi Department of Environmental Quality, and the Mississippi Permit Board.

Dated: July 26, 1995.

Garland B. Pardue,

Acting Regional Director.

[FR Doc. 95–18980 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment and Receipt of an Application Submitted by Jack Primus Partners, L.P. for an Incidental Take Permit for Red-cockaded Woodpeckers in Association With the Sale and Development of a Property in Berkeley County, South Carolina

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice.

SUMMARY: Jack Primus Partners, L.P. (Applicant) has applied to the Fish and Wildlife Service for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize for a period of 99 years the incidental take of a federally endangered species, the red-cockaded woodpecker *Picoides borealis* (RCW) known to occur on a property owned by the Applicant in Berkeley County, South Carolina. The Applicant proposes to sell the 996-acre property located on the Cainhoy Peninsula, 5 miles northeast of North Charleston, for development purposes. The proposed permit would authorize incidental take of RCWs on this property in exchange for mitigation elsewhere as described further in the Supplementary Information Section below.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be sent to the Regional Permit Coordinator in Atlanta, Georgia, at the address below and should be received on or before September 1, 1995.

ADDRESSES: Persons wishing to review the application, HCP, or EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office; or the Asheville, North Carolina, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit number PRT–*804465* in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801, (telephone 704/258–3939).

FOR FURTHER INFORMATION CONTACT: Ms. Janice Nicholls at the Asheville, North Carolina, Field Office, or Mr. Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: The red-cockaded woodpecker is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees used by a breeding group is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature, fire-maintained, ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest populations occur on federally owned lands such as military installations and national forests.

In South Carolina there are an estimated 681 active RCW clusters as of 1994; 67 percent are on Federal lands, 6 percent are on State lands, and 27 percent are on private lands. The populations on public lands are generally stable, and in some cases are increasing. The overall population trend on private lands in South Carolina, on the other hand, is downward. Most RCW populations on private lands are relatively small and isolated.

The Applicant's land in Berkeley County hosts a small and isolated population of RCWs. As of 1993, there were two active RCW clusters; one breeding group and one solitary adult male. The nearest known RCW groups occur on private lands approximately 1 to 2 miles to the north of the Jack Primus Tract. The nearest known population occurs several miles away on the Francis Marion National Forest to the northeast, and on the privately owned Medway Plantation located opposite the Cooper River from the Jack Primus Tract. The Applicant proposes to sell the Jack Primus Tract for development. Development of the tract may result in death of, or harm to, any remaining RCWs through the loss of nesting and foraging habitat.

The EA considers the environmental consequences of three alternatives, including the proposed action. The proposed action alternative is issuance of the incidental take permit and implementation of the HCP as submitted by the Applicant. The HCP will provide for the provisioning of six clusters with artificial starts and cavities on suitable habitat on the Medway Plantation. The Medway Plantation is under a long-term conservation easement with the primary objective of perpetuating and conserving the natural values of the property, which includes managing a portion of the property to perpetuate a mature longleaf pine ecosystem. The HCP will also involve the implementation of a population monitoring program for a specified time period at Medway Plantation to determine success of the provisioning efforts. The HCP provides a funding source for these mitigation measures.

Dated: July 26, 1995.

Garland B. Pardue,

Acting Regional Director.

[FR Doc. 95–18985 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Draft Facility Development Plan Shenandoah National Park, Virginia; Availability of Draft Plan and Environmental Impact Statement

ACTION: Notice of release.

SUMMARY: The National Park Service, Shenandoah National Park, Virginia, has prepared a draft Facility Development Plan/Environmental Impact Statement for the park. This plan provides the analysis necessary to determine the needs for employee housing, office spaces, maintenance areas, and emergency facilities for the park. In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service is required to prepare an environmental impact statement to assess the impacts of the proposed action. The National Park Service is the responsible federal agency.

Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the release of the Draft Facility Development Plan/Environmental Impact Statement for Shenandoah National Park, Virginia.

DATES: The Draft Facility Development Plan/Environmental Impact Statement will be on public review from August 1, 1995 to October 1, 1995. Three public meetings will be held on:

Tuesday, August 8, 1995, from 7 p.m. to 9 p.m. at the Page County Board of Supervisors Room, Department of Social Services building, South Court Street, Luray, VA.

Wednesday, August 9, 1995 from 7 p.m. to 9 p.m. at the Rappahannock County Library, U.S. Highway 211, Little Washington, VA.

Thursday, August 10, 1995 from 7 p.m. to 9 p.m. at the Rockingham County Administration Center, 20 East Gay Street, Harrisonburg, VA.

The purpose of these meetings is to discuss the draft plan and its environmental impact statement. Verbal and written comments on the plan/EIS will be accepted at the meeting or by mail until October 1, 1995.

ADDRESSES: Shenandoah National Park, Route 4, Box 348, Luray, Virginia 22835.

FOR FURTHER INFORMATION CONTACT: Assistant Superintendent, Vaughn Baker, Shenandoah National Park, Route 4, Box 348, Luray, Virginia 22835. Telephone (703) 999–3400.

SUPPLEMENTARY INFORMATION: A range of issues and preliminary alternatives for the Facility Development Plan were developed and analyzed. Preliminary alternatives for consideration include the no action alternative; development of facilities and housing in accordance with the park's *General Management Plan*; moving all housing and development out of the park; and mixing the housing within the park, in a park community at headquarters, and through leases in adjacent towns.

For copies of the Draft Facility Development Plan/Environmental Impact Statement for Shenandoah National Park please contact the Assistant Superintendent at the above address.

Dated: July 20, 1995.

Chrysandra Walter,

Deputy Field Director, Northeast Field Area.

[FR Doc. 95–18884 Filed 8–1–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–364]

Certain Miscellaneous Products: Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: July 24, 1995.

SUMMARY: Following receipt on July 17, 1995, of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–364, Certain Miscellaneous Products: Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information may be obtained from David Lundy, Office of Industries (202–205–3439) or Donita Marakovits, Office of Industries (202–205–3430); and on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal (202–205–1810).

BACKGROUND: Chapter 4 and Annex 401 of the North American Free Trade Agreement (NAFTA), which entered into force on January 1, 1994, contain the rules of origin for application of the tariff provisions of the NAFTA to trade in goods.

Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 of the Act is that the President obtain advice, regarding any proposed modification in the Rules contained in Annex 401 of the Act, from the United States International Trade Commission.

In its report the Commission will, as requested by the USTR in his letter received on July 17, 1995, provide advice on the probable effect of the proposed modifications to the rules of origin that are attached to the letter. As requested, the Commission will provide such advice by September 15, 1995. Copies of the proposed revised rules, which cover certain goods described in Chapters 1 through 97 of the Harmonized Tariff Schedule of the United States, will be available from the Office of the Secretary at the Commission or from the Commission's Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

In a previous request dated May 5, 1995, the USTR requested the Commission to provide advice on the probable effect of modifications to the NAFTA rules of origin pertaining to certain chemicals and chemical products. In response, the Commission instituted investigation No. 332–363, Chemicals and Chemical Products: Probable Effect of Certain Modifications to North American Free Trade Agreement Rules of Origin Pertaining to Such Products; the Commission's report on that investigation will be provided to the USTR by September 5, 1995.

PUBLIC HEARING: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on August 16, 1995. All persons shall

have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m. on August 7, 1995. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., August 9, 1995; the deadline for filing post-hearing briefs or statements is 5:15 p.m., August 21, 1995. In the event that, as of the close of business on August 7, 1995, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–2000) after August 7, 1995, to determine whether the hearing will be held.

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on August 21, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: July 25, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–18996 Filed 8–1–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32740]

Burlington Northern Railroad Company—Trackage Rights Exemption—Union Pacific Railroad Company

The Union Pacific Railroad Company (UP) has agreed to grant approximately 7.9 miles of local trackage rights to Burlington Northern Railroad Company (BN).[1] The trackage rights extend from milepost 0.0 at East Olympia to milepost 7.24 at Olympia, WA, together with the following connections: approximately 1,428 feet of the east leg of the wye track at East Olympia; former Track No. 8 extension of branch trackage between milepost 7.24 and milepost 7.29; Track No. 29 between milepost 6.93 and milepost 7.22; and between the point of switch in Track No. 29, opposite branch track at milepost 7.15, and milepost 7.20. The trackage rights were to become effective on July 31, 1995.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Michael E. Roper, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 25, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–18969 Filed 8–1–95; 8:45 am]

BILLING CODE 7035–01–P

[1] This trackage rights agreement expands on an earlier agreement where UP granted overhead trackage rights to BN between these points as part of a joint relocation project. *Burlington Northern Railroad Company and Oregon-Washington Railroad & Navigation Company—Joint Project for Relocation of a Line of Railroad*, Finance Docket No. 30932 (ICC served Dec. 5, 1986).

[2] The effective date is calculated from July 24, 1995, the filing date for additional information necessary to clarify the transaction.

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States; Advisory Committee on Rules of Appellate Procedures.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation and will start each day at 8:30 a.m.

DATES: October 19–21, 1995.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: July 26, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–18971 Filed 8–1–95; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judical Conference of the United States; Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 to 4:00 p.m..

DATES: September 7–8, 1995.

ADDRESSES: Portland Marriott Hotel, 1401 S.W., Front Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 26, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–18972 Filed 8–1–95; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States; Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation and will start each day at 8:30 a.m.

DATE: November 9–11, 1995.

ADDRESSES: University of Alabama School of Law, Hayes Conference Room 344, 101 Paul Bryant Drive, Tuscaloosa, Alabama.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 26, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–18973 Filed 8–1–95; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States; Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will start each day at 8:30 a.m.

DATE: October 16–17, 1995.

ADDRESSES: The Equinox Hotel, Historic Route 7A, Manchester Village, Vermont.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 26, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–18974 Filed 8–1–95; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. American Bar Association; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *American Bar Association*, Civil Action No. 95–1211.

The Complaint in this case alleges that the defendant conspired to violate Section 1 of the Sherman Act, 15 U.S.C. § 1, allowing the law school accreditation process to be captured by those with a direct interest in its outcome. Among other things, the ABA adopted and enforced law school accreditation Standards, Interpretations, and Rules that unreasonably raised salaries paid to law school faculty, deans, and other professional personnel.

The proposed Final Judgment enjoins the defendant from adopting or enforcing any Standard, Interpretation, or Rule that conditions accreditation on salaries and other benefits paid to law school professional personnel and from using compensation data in connection with the accreditation of a law school. It also enjoins the defendant from refusing to accredit proprietary law schools and from prohibiting ABA–accredited law schools from accepting transfer credits from state-accredited law schools.

The proposed Final Judgment requires that the defendant establish a commission to review accreditation standards regarding student/faculty ratios, teaching loads, sabbaticals, and bar preparation courses. It further requires changes in the composition of the defendant's accrediting committees.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. The comments and responses to them will be published in the **Federal Register** and filed with the Court. Comments should be directed to John F. Greaney, Chief, Computers and Finance Section, Room 9903, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Washington, DC 20001 (telephone: 202/307–6122).

Rebecca P. Dick,

Deputy Director of Operations Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. American Bar Association, Defendant.

Stipulation

The undersigned parties, by their respective attorneys, stipulate that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court; and

3. Pending approval of the Final Judgment by the Court, defendant agrees to be bound by the provisions of the proposed Final Judgment and to be subject to the jurisdiction of this Court. If plaintiff withdraws it consent, or if the proposed Final Judgment is not entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any proceeding.

For Plaintiff United States:

Anne K. Bingaman,
Assistant Attorney General.
Joel I. Klein,
Deputy Asst. Attorney General.
Rebecca P. Dick,
Asst. Director of Operations.
John F. Greaney,
Chief, Computers & Finance Section.
Scott N. Sacks,
Asst. Chief, Computers & Finance Section.
Antitrust Division, U.S. Department of Justice,
D. Bruce Pearson,
Molly L. Debusschere,
Jessica N. Cohen,
James J. Tierney,
Attorneys, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 9901, Washington, DC 20001, Tel: 202/307–0809, Fax: 202/616–5980.

For Defendant American Bar Association:

Darryl L. DePriest,
General Counsel.

American Bar Association, 541 N. Fairbanks Court, Chicago, Illinois 60611, Tel: 312/988–5215, Fax: 312/988–5217.

Certificate of Service

On June 27, 1995, I caused a copy of the foregoing Stipulation to be served by facsimile and first-class mail upon:

David T. Pritikin, **Esquire Sidley & Austin, One First National Plaza, Chicago, Illinois 60603.**

Jessica N. Cohen

Final Judgment

Plaintiff, United States of America, filed its Complaint on June 27, 1995. Plaintiff and defendant American Bar Association ("ABA"), by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any party with respect to any issue of fact or law. Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby Ordered, Adjudged And Decreed:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against the ABA under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Definitions

As used in this Final Judgment:

(A) "ABA" means the American Bar Association and all of its components.

(B) "Accreditation Committee" means the Accreditation Committee of the Section of Legal Education and Admissions to the Bar of the ABA.

(C) "Board" means the ABA Board of Governors.

(D) "Council" means the Council of the Section of Legal Education and Admissions to the Bar of the ABA.

(E) "Faculty" means all persons who teach classes (except adjunct professors), including administrators who teach, *emeritus* of senior faculty, visiting professors, joint-appointed faculty, clinical instructors, and instructors holding short-term appointments.

(F) "Section" means the ABA's Section of Legal Education and Admissions to the Bar.

(G) "Standards," "Interpretations" and "Rules" mean the Standards for Approval of Law Schools and Interpretations and Rules of Procedure for Approval of Law Schools and Polices of the Council of the Section and its Accreditation Committee.

III

Applicability

This Final Judgment shall apply to the ABA and its governors, officers, employees, and full-time consultants involved in law school accreditation.

IV

Prohibited Conduct

The ABA is enjoined and restrained from:

(A) adopting or enforcing any Standard, Interpretation or Rule, or taking any action that has the purpose or effect of imposing requirements as to the base salary, stipends, fringe benefits, or other compensation paid law school deans, associate deans, assistant deans, faculty, library directors, librarians, or other law school employees, or in any way conditioning the accreditation of any law school on the compensation paid law school deans, associate deans, assistant deans, faculty, library directors, librarians, or other law school employees;

(B) collecting from or disseminating to any law school data concerning compensation paid or to be paid to deans, administrators, faculty, librarians, or other employees;

(C) using law school compensation data in connection with the accreditation or review of any law school; and

(D) adopting or enforcing any Standard, Interpretation or Rule, or taking any action that has the purpose or effect of prohibiting a law school from:

(1) enrolling a member of the bar or graduate of a state-accredited law school in an LL.M. program or other post-J.D. program;

(2) offering transfer credits for any course successfully completed at a state-accredited law school, except that the ABA may require that two-thirds of the credits required for graduation must be successfully completed at an ABA-approved law school; or

(3) being an institution organized as a for-profit entity.

V

Permitted Conduct

Nothing herein shall be construed to prohibit the ABA from: (1) adopting or applying such other reasonable Standards, Interpretations or Rules, consistent with all other provisions of this Final Judgment, as are necessary to attract and retain a competent faculty; (2) investigating or reporting on whether a law school is in compliance with such Standards, Interpretations or Rules, or the cause of non-compliance; or (3) requiring that a law school take remedical action to comply with such Standards, Interpretations or Rules as a condition of obtaining or maintaining ABA approval.

VI

Additional Relief

The ABA shall:

(A) require that all Interpretations and Rules be subjected to the same public comment and review process and approval procedures that apply to proposed Standards;

(B) permit appeals from Accreditation Committee Action Letters to the Council;

(C) revise the Council's membership as follows:

(1) for a period of five years, all elections shall be subject to Board approval;

(2) members shall serve staggered three-year terms, with a two-term limit; however, officers may serve as officers for an additional term beyond the six-year limit; and

(3) no more than 50% of the members shall be law school deans or faculty;

(D) revise the Accreditation Committee's membership as follows:

(1) for a period of five years, all appointments shall be subject to Board approval;

(2) all members shall serve staggered three-year terms, with a two-term limit; and

(3) no more than 50% of the members shall be law school deans or faculty;

(E) revise the Standards Review Committee's membership as follows:

(1) for a period of five years, all appointments shall be subject to Board approval;

(2) members shall serve one three-year term; and

(3) no more than 50% of the members shall be law school deans or faculty;

(F) require that no more than 40% of the members of the Nominating Committee for officers of the Section shall be law school deans or faculty;

(G) require that each site evaluation team include, to the extent reasonably feasible, at least:

(1) one university administrator who is not a law school dean or faculty member; and

(2) one practicing lawyer, judge or public member;

(H) require the Accreditation Committee after each meeting to send a written report to the Council, that may be done on a confidential basis if necessary, identifying all actions taken by it, including a list identifying all law schools on report or under review, and for each law school, identifying the areas of actual or apparent non-compliance and the length of time the law school has been on report or under review;

(I) require the Council to send an annual report to the Board, that may be done on a confidential basis if necessary, on its accreditation activities during the preceding year, including a list identifying all law schools on report or under review, and for each law school, identifying the areas of actual or apparent non-compliance and the length of time the law school has been on report or under review;

(J) require Council approval and Board receipt of annual and site inspection questionnaires before they are sent to law schools;

(K) publish annually in *The ABA Journal* and the Section's *Review of Legal Education in the United States:*

(1) all proposed Standards, Interpretations, Rules, and Policies, and the name(s) of the sponsors of each; and

(2) the date, place, and names of the evaluators for each law school and foreign program inspected; and

(L) hire, by October 31, 1995, an outside independent consultant who is an expert on education and accreditation and who is not a legal educator, to assist in validating all Standards and Interpretations, as required by the Department of Education, and develop a plan for validation by December 31, 1995.

VII

Special Commission

The ABA shall:

(A) establish a Special Commission to Review the Substance and Process of the ABA's Accreditation of American Law Schools to determine whether the Standards, Interpretations, and Rules, and their enforcement governing the following subjects should be revised:

(1) faculty teaching-hours;

(2) leaves of absence, compensated or otherwise, for faculty and other staff;

(3) the calculation of the faculty component of student-faculty ratios;

(4) physical facilities;

(5) the allocation of resources to a law school by the law school or its parent university; and

(6) the treatment of bar preparation courses;

(B) require that the Special Commission complete its review no later than February 29, 1996. The Special Commission shall file its report with the Board. Upon completing its review, the Board shall file its report with the Court and the United States setting out its analysis and any proposed revisions; and

(C) allow the Untied States 90 days in which to review the Special Commission's report and determine whether to challenge any of the proposals. The United States may challenge any such proposal and, if the ABA chooses to defend it, the challenge will be decided by this Court applying a Rule of Reason antitrust analysis.

VIII

Compliance Program

The ABA is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of the entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the ABA's law school accrediting activities to ensure that they comply with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(A) reviewing the ABA's Standards, Interpretations, Rules, and practices, and identifying and recommending the elimination of any provisions or activities that violate or are inconsistent with Sections IV or VI above to the Board or to the ABA's House of Delegates within 90 days of entry of this Final Judgment;

(B) distributing a copy of this Final Judgment within 30 days of entry to:

(1) all members of the Board and officers of the ABA, the Section and the Law Student Division;

(2) all members of the Council, Accreditation Committee and Standards Review Committee;

(3) all university presidents with ABA-approved law schools, the deans of all ABA-approved law schools, the Chief Justices or Judges of the highest Courts of the States and other admitting jurisdictions, and to make a best effort to notify the deans of all state-accredited law schools; and

(4) all persons serving on site inspection teams during the term of this Final Judgment;

(C) causing this Final Judgment to be published in the next issue of *The ABA Journal* and the *Student Lawyer* following the entry of the Final Judgment;

(D) providing the United States, during the term of the Final Judgment, a copy of all proposed changes to these Standards, Interpretations and Rules before they are acted on by the House of Delegates, and a copy of all Standards, Interpretations and Rules adopted by the House;

(E) briefing annually the Section's Officers, all members of the Council, Committee and Standards Review Committee, the Consultant and the Consultant's staff, and all participants at site inspectors' workshops on the meaning and requirements of this Final Judgment;

(F) obtaining from all Section officers, all members of the Council, Accreditation committee and Standards Review Committee, and the Consultant and the Consultant's staff an annual written certification that they: (1) have read, understand, and agree to abide by the terms of this Final Judgment; and (2) are not aware of any violation of this Final Judgment that they have not reported to the Antitrust Compliance Officer; and

(G) obtaining from the Executive Director of The ABA, the Consultant and the Consultant's staff, an annual written certification that they have been advised and understand that their failure to comply with the Final Judgment may result in conviction for contempt of court.

IX

Certification

(A) Within 90 days after the entry of this Final Judgment, the ABA shall certify to the United States whether it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VIII above.

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, the Antitrust Compliance Officer shall certify annually to the Court and the United States whether the ABA has complied with the provisions of Section VIII.

(C) At any time, if the Antitrust Compliance Office learns of any past, current or anticipated violation of Sections IV or VI of this Final Judgment, the ABA shall, within 45 days after such knowledge is obtained, take action, or where appropriate initiate action, to terminate or modify the activity so as to comply with this Final Judgment.

X

Plaintiff Access

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the

United States shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the ABA, be permitted:

(1) access during the ABA's office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) to interview the ABA's officers, employees, or agents,who may have counsel present, regarding such matters. The interviews shall be subject to the ABA's reasonable convenience and without restraint or interference by the ABA.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, the ABA shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section X shall be divulged by the United States to any person other than a duly-authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

Further Elements of Decree

(A) This Final Judgment shall expire 10 years from the date of entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

DATE: _____

_____

UNITED STATES DISTRICT JUDGE

Certificate of Service

On June 27, 1995, I caused a copy of the foregoing Proposed Final Judgment to be served by facsimile and first-class mail upon:

David T. Pritikin,

Esqurie Sidley & Austin One First National Plaza Chicago, Illinois 60603.

Jessica N. Cohen

United States of America, Plaintiff, v. American Bar Association, Defendant.

Civil Action NO. 95–1211 (CR)
Filed: June 27, 1995

Competititve Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of defendant American Bar Association ("ABA") in this civil antitrust action.

I

Nature and Purpose of the Proceeding

A. The Complaint

On June 27, 1995, the United States filed a civil antitrust suit alleging that the ABA violated Section 1 of the Sherman Act in its accreditation of law schools. The Complaint alleges that the ABA restrained competition among professional personnel at ABA-approved law schools by fixing their compensation levels and working conditions, and by limiting competition from non-ABA-approved schools. The Complaint also alleges that the ABA allowed its law school accreditation process to be captured by those with a direct interest in its outcome. Consequently, rather than setting minimum standards for law school quality and thus providing valuable information to consumers, the legitimate purposes of accreditation, the ABA at times acted as a guild that protected the interests of professional law school personnel.

The United States and the ABA have agreed that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the Final Judgment will terminate this civil action, except that the Court will retain jurisdiction for further proceedings that may be required to enforce or modify the Judgment, or to punish violations of any of its provisions.

B. Law School Accreditation

The Section of Legal Education and Admissions to the Bar ("Section of Legal Education") administers law school accreditation. It was created in 1883 as the first Section of the ABA and assumed the role of an accrediting agency in 1921.

ABA approval is critical to the successful operation of a law school. The bar admission rules in over 40 States require graduation from an ABA-approved law school in order to satisfy the legal education requirement for taking the bar examination. In addition, the ABA is the only agency recognized by the United States Department of Education as a law school accrediting agency.

In 1973, the ABA adopted its current Standards for the Approval of Law Schools ("Standards"), setting forth the minimum requirements for legal education that must be met to obtain and maintain ABA approval. Law schools were required to be in full compliance with the Standards commencing with the 1975–76 academic year. The Standards and their Interpretations covered many aspects of the operation of a law school, including its salary structure, student-faculty ratios, faculty leave policies, faculty workloads, and physical facilities.

The Section of Legal Education is governed by its Council, which has supervisory authority on all accreditation matters. The Council has established a Standards Review Committee that reviews the Standards and their "Interpretations" and recommends changes to the Council. The Council has also established an Accreditation Committee, which closely oversees the inspection of new law schools and the sabbatical reinspections of previously approved law schools, and make the initial recommendations regarding ABA approval.

The Accreditation Committee enforces the Standards through extensive on-site inspections of law schools. Provisionally approved law schools are inspected every year until receiving full approval, and fully approved law schools are inspected every seven years, except for an initial visit three years after first gaining full approval. Site inspection teams prepare detailed reports for the Accreditation Committee. The Accreditation Committee may "continue" the accreditation of an approved law school, require additional information from a law school in actual or apparent non-compliance with the Standards or about whom the Accreditation Committee has "concerns," or require a show cause hearing for law schools in apparent non-compliance with the Standards or their Interpretations.

The day-to-day operation of the ABA's accreditation process is directed by the ABA's Consultant on Legal Education. The Consultant prepares "Action Letters" that inform the law school deans and university presidents of the Accreditation Committee's findings and conclusions.

II

Description of the Practices Involved in the Alleged Sherman Act Violation

At trial, the United States would have proved the following:

A. Anticompetitive Standards And Practices

1. Capture Of The Accreditation Process. Legal educators, including current and former law school dean, faculty, and librarians, control and dominate the ABA's law school accreditation process. Approximately 90% of the Section of Legal Education's members are legal educators. In substantial part, this is because of the Section of Legal Education's Faculty Group Membership Program, under which ABA-approved law schools may obtain a group discount on dues for their faculty. Many law schools pay their faculty's dues and the faculties of about 145 of the 1774 ABA-approved law schools hold ABA membership through the Faculty Group Membership Program.

All current members of the Standards Review Committee and a majority of the current members of the Accreditation Committee are legal educators. The typical site inspection team has 5–7 members, all or nearly all of whom are legal educators. The Consultant's position has traditionally been held by a legal educator. The incumbent has served as Consultant for over 20 years and is a former dean and a current law school faculty member.

2. *Professional Staff Compensation.* ABA Accreditation Standard 405(a) required that faculty compensation be comparable with that of other ABA-approved schools. In practice, this Standard was extended to cover deans' and professional librarians' salaries. The ABA collected extensive, detailed salary information, among other data collected, in annual questionnaires that ABA-approved law schools were required to complete. Often, the comparable schools consisted of a "peer group" of schools chosen by the professional staff of the inspected school. The "peer group" could be and at times was manipulated to include higher-rated law schools or law schools located in higher-cost areas. Law schools also at times were placed on report under Standard 405(a) by the Accreditation Committee because of unfavorable salary structure comparisons, not because of poor faculty quality.

3. *Boycotts of non-ABA-approved schools.* The ABA prohibited an ABA-approved school from granting any transfer credits for courses successfully completed at state-accredited or unaccredited law schools, but permitted a law school, under certain conditions, to allow credits for courses taken at a foreign law school (Standard 308 and its Interpretation). The ABA also prohibited ABA-approved law schools from matriculating graduates of state-accredited or unaccredited law schools, but permitted, under certain circumstances, the matriculation of graduates of foreign law schools (Interpretation 3 of Standard 307). The ABA rejected a 1979 amendment that would have allowed law schools the discretion to admit any bar members to their graduate programs. In practice, the ABA permits only the law school, and not the affected individual, to apply for a waiver of the Interpretation, and such applications have been denied. Standard 202 prohibited the accreditation of proprietary law schools. The ABA has never approved a proprietary law school and the Accreditation Committee twice recommended against approval of one proprietary law school.

These Standards, Interpretations, and their application have unreasonably restricted competition in the market for the services of professional law school personnel. The salary Standard and its application had the effect of ratcheting up law school salaries. The Standard relating to proprietary law schools erected an unnecessary barrier to competition from these schools, which often provide their professional staff with lower salaries and fewer amenities than do ABA-approved schools. The restrictions on enrolling graduates of non-ABA-approved schools, and on offering transfer credits for course work completed at those schools, were unreasonable restraints of trade aimed at deterring effective competition from law schools that are likely to pay less in salaries and benefits to their professional staffs.

B. Other Accreditation Standards And Practices

4. Student-To-Faculty Ratios. In its Interpretations of Standards 201 and 401–405, the ABA declared that a student-to-faculty ratio of 20:1 or less is presumably in compliance with its accreditation standards but that a faculty ratio of 30:1 or more is not. While the Interpretation counts a part-time student as two-thirds the equivalent of a full-time student, the ABA has counted only full-time, tenure-track professors as "faculty," thereby excluding from the count administrators who teach, *emeritus* or senior faculty who teach, some visiting professors, joint-appointed faculty (faculty holding appointments in two departments in a university) who teach, adjunct professors, clinical and other instructors holding short-term contracts, and tenured faculty teaching part-time because of family responsibilities. Although part of the policy supporting reduced student-faculty ratios is the desirability of smaller classes and increased student-faculty contact, the ABA did not measure actual class size or effectively measure actual student-faculty contacts. The growth of full-time faculty at ABA-approved law schools substantially exceeded the growth of student enrollment at such schools in the past 10 years.

5. Teaching Loads. Standard 404 sets a maximum 8-hour-per-week teaching load or, if a course is duplicated, a 10-hour load. In practice, an hour was defined as 50 minutes.

6. Compensated Leaves Of Absence. Standard 405(b) required that faculty members be afforded a "reasonable opportunity for leaves of absence and for scholarly research." In some instances, this Standard has been applied in practice to require paid sabbaticals, summer stipends, and other forms of research compensation.

7. Bar Preparation. While Standard 301 requires a law school to maintain an educational program designed to qualify its students for admission to the bar, Standard 302(b) prohibits a law school from offering a bar preparation course for credit or requiring one for graduation, even for students identified as being at risk of failing the bar examination. A bar preparation course cannot be offered as a required course, even when a law school meets the ABA minimum credit requirements without counting the bar preparation course.

8. Facilities. Standard 701 requires an "adequate" physical plant. Nearly all ABA-approved law schools occupy new facilities or have made substantial renovations to existing facilities since the new Standards were adopted in 1973. Despite this, over one-third of all ABA-approved schools were put on report for "inadequate facilities" by the Accreditation Committee in 1994, including law schools of recognized distinction.

9. Resources. Standard 201 requires that a law school have the necessary resources to provide a sound legal education, and Standard 209 requires adequate resources to sustain a sound educational program. These Standards have been applied at times by the Accreditation Committee to place law schools on report for alleged shortcomings. In 1994, about 50 law schools, including many of recognized high quality, were on report for

allocating inadequate resources to their law school program.

Some of the Standards, Interpretations, and other factors described in paragraphs 4 through 9 may reflect relevant considerations in assessing the quality of a law school's educational program. At times, however, they too have been applied inappropriately to restrict competition in the law school labor market.

III

Explanation of the Proposed Final Judgment

Prohibited Conduct. The proposed Final Judgment prohibits the recurrence of conduct that is plainly anticompetitive. Specifically, the Final Judgment will eliminate the adoption or enforcement of any Standard, Interpretation or Rule, or the taking of any action that imposes requirements as to the base salary, stipends, fringe benefits, or other compensation paid to law school faculty, administrators or other law school employees. The Final Judgment also will eliminate the collection or dissemination of compensation data for deans, administrators, faculty, librarians, or other employees, and the use of compensation data in connection with the accreditation of any law school. In addition, the Final Judgment eliminates any Standard, Interpretation or Rule prohibiting the enrollment of a member of a bar or a graduate of a state-accredited law school in a post-J.D. program, or the acceptance of any transfer credits from state-accredited law schools. The ABA is also prohibited from accrediting only law schools organized as not-for-profit institutions.

Additional Relief. The proposed Final Judgment also contains structural provisions to ensure that the law school accreditation process is governed by persons other than those with a direct economic interest in its outcome and that the process is brought more into public view. As the Complaint states, it is the view of the United States that during the past 20 years, the law school accreditation process has been captured by legal educators who have a direct interest in the outcome of the process. Most of the process, as it applied to individual law schools, was carried out by the Accreditation Committee and the Consultant's office and was kept from public view and the supervision of the ABA's Board of Governors and House of Delegates. In addition, the individuals who serve on the Accreditation Committee and in the Consultant's office had been in these positions for many years. Finally, the Interpretations of the accreditation Standards were in some cases more plainly anticompetitive than the Standards themselves, yet their adoption was not subject to the same public comment and hearings requirements as amendments to the Standards.

Accreditation matters for individual law schools often remained before the Accreditation Committee because it required repeated reports from law schools under review, thereby lengthening the accreditation process. At one point in 1994, 56% of ABA-approved law schools were under continuing Accreditation Committee review and 16% more were undergoing sabbatical reinspections that school year.

As remedies, the proposed Final Judgment provides:

1. Proposed Interpretations will be subject to the same public comment and hearings requirements as proposed Standards. All proposed Interpretations, Standards, Rules, and Policies must be published annually in the ABA Journal and the Review of Legal Education in the United States.

2. Law schools may take immediate appeals to the Council from adverse Accreditation Committee Action Letters. The Accreditation Committee must also report to the Council following each meeting all accreditation actions that it took during the meeting.

3. Elections to the Council will be subject to the Board of Governors' approval, no more than 50% of the Council membership may be law school deans or faculty, and members will be subject to a two-term limit. Only 40% of the members of the Nominating Committee may be law school deans or faculty.

4. Appointments to the Accreditation Committee will be subject to Board approval. No more than 50% of the Accreditation Committee may be law school deans or faculty, and members will be subject to a two-term limit. The same requirements apply to the Standards Review Committee, except that its members are limited to one term.

5. To the extent reasonably feasible, accreditation site inspection teams will include at least one practicing lawyer, judge or public member, and one non-law school university administrator. The ABA will annually publish the names of those who participated in domestic and foreign site inspections and the schools they inspected.

6. The Council must annual report to the Board on its accreditation activities, including identifying all schools under accreditation review and the reasons the law schools are under review.

7. The Council must approve, and the Board review, all annual and site inspection questionnaires sent to law schools.

8. By October 31, 1995, the ABA will hire an outside independent consultant, who is not a legal educator, to assist in evaluating the ABA's accreditation Standards and Interpretations and develop a plan for their validation by December 31, 1995.

Special Commission. The ABA has established a Special Commission To Review The Substance And Process Of The ABA's Accreditation Of American Law Schools. A number of subjects of the accreditation process raise legitimate educational policy issues, but were applied at times to achieve anticompetitive, guild objectives, as discussed in Section II above. These subjects are: Faculty teaching-hour requirements; compensated and other required leaves of absence for faculty and other staff; the manner in which the ABA calculated the faculty component in calculating student-faculty ratios; physical facilities; the allocation of resources to the law school, and bar preparation courses. The Special Commission will review these subjects and report to the Board of Governors no later than February 29, 1996. Upon completing its review, the Board will file its report with the United States and the Court. The United States may challenge any proposal in the report within 90 days of the Commission's report. Any such challenge will be decided by the Court applying an antitrust analysis. This is novel relief in a government antitrust case, resulting from a recognition that some accreditation practices implicate both antitrust and educational policy concerns. Since the ABA had initiated the Special Commission in response to academic criticism of its accreditation process and its perception of possible antitrust problems, the United States has agreed that the ABA may first attempt to reconcile antitrust and educational concerns through its Special Commission.

IV

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the defendant in this case.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to John F. Greaney, Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, D.C. 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment.

VI

Determinative Materials/Documents

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

VII

Alternatives to the Proposed Final Judgment

The United States considered other relief in addition to the remedies contained in the proposed Final Judgment. In particular, early in the investigation, the United States proposed injunctive relief eliminating: the ABA's prohibition of credits for a bar review course: the ABA's practice of attributing no value to teachers other than full-time tenure-track faculty in calculating student-faculty ratios; the maximum teaching hour limits; the faculty leave of absence requirements; and the requirement that substantially all first-year courses be taught by full-time faculty. Later the United States proposed other relief, all of which is included in the proposed Final Judgment. The United States made these proposals during the negotiating process as its investigation proceeded and as it learned more about the ABA's practices and their competitive effects.

The United States eventually concluded, on the basis of the evidence it had gathered, that mere amendment of the ABA's Standards and practices would not provide adequate or permanent relief and that reform of the entire accreditation process was needed. While a prohibition of some of the rules was warranted, as is accomplished by the proposed Final Judgment, the larger and more fundamental problem of regulatory capture also had to be addressed.

Moreover, a number of the Standards, Interpretations and practices at issue, although sometimes misapplied to further guild interests in the past, concern matters of legitimate educational concern. The United States concluded that appraisal of whether the provisions and practices listed in Section IV.D of the Complaint are anticompetitive or set a procompetitive minimum educational standard for law school programs should be made in the first instance by the ABA itself, subject to subsequent review. The United States agreed to submit the first four of the practices initially of most concern to it, along with others about which it had developed concern, to review by the ABA's Special Commission. (In the case of first-year teaching requirements, on the basis of evidence it subsequently gathered the United States abandoned its initial opposition). If the Special Commission fails to consider adequately the antitrust implications of continuing the ABA's past practices in these areas, the Final Judgment permits the United States to challenge the Special Commission's proposals and seek further injunctive relief from the Court.

The United States had also earlier proposed that the ABA's Special Commission be separately constituted as an antitrust review committee whose membership would be one-third practitioners, judges, and public members; one-third non-law school university administrators; and one-third law school administrators and faculty. Although the Government recognized that a number of members of the Special Commission had participated in the accreditation process in the past, it also considered that the Special Commission was already constituted and had progressed in its work, that ABA leadership was now familiar with and sensitive to antitrust concerns, and that the Commission report was subject to challenge by the United States and review by the Court.

Another alternative to the proposed Final Judgment is a full trial of the case. A trial would involve substantial cost both to the United States and to the defendant, and is not warranted since the Final Judgment provides all substantial relief the Government would likely obtain following a successful trial.

Dated: July 14, 1995.

Respectfully submitted,

D. Bruce Pearson
James J. Tierney
Jessica N. Cohen
Molly L. DeBusschere
Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, D.C. 20001, Tel: 202/307–0809, Fax: 202/616–8544.

Certificate of Service

On July 14, 1995, I caused a copy of the United States' Competitive Impact Statement to be served by facsimile and first-class mail upon:

Ronald S. Flagg, Esquire, Sidley & Austin, 1722 Eye Street, N.W., Washington, D.C. 20006, fax: (202) 736–8711

David T. Pritikin, Esquire, Sidley & Austin, One First National Plaza, Chicago, Illinois 60603, fax: 312/853–7036

and

Darryl L. DePriest, 541 N. Fairbanks Court, Chicago, Illinois 60611, fax: 312/988–5217.

James J. Tierney

[FR Doc. 95–18946 Filed 8–1–95; 8:45 am]
BILLING CODE 4410–01–M

Drug Enforcement Administration

Jonathan L. Wilson, D.V.M.; Denial of Application

On June 2, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jonathan L. Wilson, of Kennett, Missouri (Respondent), proposing to deny his application for a DEA Certificate of Registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent was not authorized to handle controlled substances in the State of Missouri. 21 U.S.C. 823(f).

The Order to Show Cause was sent to Respondent by certified mail, return receipt requested. DEA received a receipt, signed by "J.L. Wilson" and dated June 8, 1995. Respondent did not request a hearing on the matter, nor forward any response to the Order to Show Cause to DEA, within the thirty days provided in 21 CFR 1301.54. Pursuant to 21 CFR 1301.57, the Deputy

Administrator hereby enters his final order based upon the investigative file.

By letter dated July 27, 1992, the Missouri Department of Health denied Respondent's application for a Missouri Controlled Substances Registration effective June 24, 1992. The Missouri Department of Health's decision was based on the following: (1) Respondent's inability to accept responsibility for diverting Demerol (a Schedule II controlled substance) for personal use and abuse; and (2) Respondent's having provided false or misleading information on his application by failing to disclose the revocation of his Mississippi Veterinary License in September of 1976.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to dispense controlled substances by the state in which he proposes to practice. *See Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Robert F. Witek, D.D.S.*, 52 FR 4770 (1987). Because Respondent is not authorized to handle controlled substances in the State of Missouri, the Deputy Administrator cannot permit him to obtain a DEA Certificate of Registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that any pending applications for a DEA Certificate of Registration as a practitioner on behalf of Jonathan L. Wilson, be, and they hereby are denied. This order is effective September 1, 1995.

Dated: July 27, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–18978 Filed 8–1–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

July 27, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ({202} 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 1:00 p.m. and 4:00 p.m. Western time, Monday through Friday.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Examinations and Tests of Electrical Equipment.
OMB Number: 1219–0067.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 2,231,536.
Estimated Time Per Respondent: .77 hours.
Total Burden Hours: 1,726,992.
Description: Requires coal mine operators to frequently examine, test, and properly maintain all electric equipment and to keep records of the results of the examinations and tests.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Approval Requirements for Electric Motor Assemblies.
OMB Number: 1219–0115.
Frequency: On occasion.
Affected Public: Business or other for-profit.
Number of Respondents: 89.
Estimated Time Per Respondent: 3.0224 hours.
Total Burden Hours: 269.
Description: Establishes specific requirements for MSHA approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines.

Type of Review: Revision.
Agency: Bureau of Labor Statistics/Employment and Training Administration.
Title: February 1996 CPS Displaced Worker, Job Tenure, and Occupational Mobility Supplement.
OMB Number: 1220–0104.
Agency Number: CPS–1.
Frequency: One-time survey.
Affected Public: Individuals or households.
Number of Respondents: 55,000.
Estimated Time Per Respondent: .15 hours.
Total Burden Hours: 8,250.
Description: The information collected in this supplement will be used to determine the size and nature of the population affected by job displacement and, hence, the needs and scope of the Job Training Partnership Act Programs (or subsequent consolidated programs serving adult displaced workers). The information collected also will be used to assess employment stability by determining the length of time workers have been with their current employer and estimating the incidence of occupational change over the course of a year. In addition, data on job tenure for all workers are needed to calculate displacement rates among various worker groups so that comparison can be made over time and among different affected groups. Combining the questions on displacement, tenure, and occupational change will enable analysts to obtain a more complete picture of employment stability.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–18979 Filed 8–1–95; 8:45 am]

BILLING CODE 4510–43–M

Mine Safety and Health Administration

Petitions for Modification

This notice amends an affirmative decision issued by the Administrator of Metal and Nonmetal Mine Safety and Health on a petition for modification of the application of a mandatory safety standard to correct the word "shop" in a document published in the **Federal Register** on June 20, 1995 (60 FR 32180) to read "shot".

Docket No.: M–94–38–M
FR Notice: 59 FR 50008
Petitioner: Independent Aggregates
Reg Affected: 30 CFR 56.6306(b)
Summary of Findings: Petitioner's proposal to continue drilling the shot pattern while loading is in progress by completing a drill hole and immediately loading the hole while continuing to drill a new hole considered acceptable alternative method. Granted with conditions.

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–95–92–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1002 to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. The petitioner proposes to use high-voltage (4,160 volts) cables inby the last open crosscut to supply power to longwall equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Costain Coal, Inc.

[Docket No. M–95–93–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459–0289 has filed a petition to modify the application of 30 CFR 75.364(b)(4) to its Wheatcroft Mine (I.D. No. 15–13920) located in Webster County, Kentucky. Due to deteriorating roof conditions in the Main North and 1st North Panel and the approaches to the No. 10 seals, traveling the area would be unsafe. The petitioner proposes to establish evaluation points to determine the direction and quantity of air going into the affected area and to examine these points on a weekly basis. The petitioner states that application of the standard would result in a diminution of safety to the persons making weekly examinations. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Western Mingo Coal Company

[Docket No. M–95–94–C]

Western Mingo Coal Company, P.O. Box 119, Naugatuck, West Virginia 25685 has filed a petition to modify the application of 30 CFR 75.350 to its Northern Mingo No. 2 Mine (I.D. No. 46–08369) located in Mingo County, West Virginia. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. CONSOL of Kentucky, Inc.

[Docket No. M–95–95–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 to its 9AB - H4 Mine (I.D. No. 15–17667) located in Floyd County, Kentucky. The petitioner requests a modification of the standard to permit the use of a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors. The petitioner proposes to use a single overhead pipe system with 1/2-inch orifice automatic sprinklers located on 10-foot centers to cover 50 feet of fire-resistant belt or 150 feet of nonfire-resistant belt with actuation temperatures between 200 and 230 degrees fahrenheit and with water pressure equal to or greater than 10 psi; to have automatic sprinklers located not more than 10 feet apart in order for the discharge of water to extend over the belt drive, belt take-up, electrical control, and gear reducing unit; and to conduct annual functional tests of each water sprinkler system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Cyprus Cumberland Resources Corporation

[Docket No. M–95–96–C]

Cyprus Cumberland Resources Corporation, 9100 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.507 to its Cumberland Mine (I.D. No. 36–05018) located in Green County, Pennsylvania. The petitioner proposes to use nonpermissible submersible pumps to dewater bleeder sumps or bleeder entries in order to provide unrestricted airflow into the return air shaft or through the return entries. The petitioner states that these pumps are designed to cease operation when the water level is 3 feet above the level of the pump motor and would operate on a 480-volt three-phase alternating current electrical power circuit with a resistor grounded wye transformer protected by a line power ground-fault, pilot combination unit; that proposed revisions for their training plan would be implemented and given to the District Manager for the area in which the pump and pump electrical controls are located; and that the training plan would specify task training for all selected mine electricians who will perform electrical work on the pumps. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Cyprus Empire Corporation

[Docket No. M–95–97–C]

Cyprus Empire Corporation (previously Empire Energy Corporation), P.O. Box 68, Craig, Colorado 81626 has filed a petition to modify the application of 30 CFR 75.1002 to its Eagle No. 5 Mine (I.D. No. 05–01370) located in Moffat County, Colorado. The petitioner requests that Item 10 of MSHA's Proposed Decision and Order granting petition for modification, docket number M–84–263–C be amended. The petitioner states that it is imperative that as products meet flame resistance and other MSHA specifications, they become available for use instead of obsolete products; and that the request to amend the presently approved petition addresses this specific issue.

7. Mt. Top Coal Company

[Docket No. M–95–98–C]

Mt. Top Coal Company, 104 E. Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.335 to its Buck Mt. Slope (I.D. No. 36–07359) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Key West Mining, Inc.

[Docket No. M–95–99–C]

Key West Mining, Inc., P.O. Box 768, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.360 to its Mine No. 3 (I.D. No. 44–03264) located in Buchanan County, Virginia. The petitioner requests relief from the standard requiring preshift examinations of underground conveyor belts in its entirety. The petitioner states that the area cannot be traveled safely due to deteriorating roof conditions in the No. 1 conveyor belt entry starting at a location approximately 170 feet from the surface and extending for a distance of approximately 90 feet. As an alternative, the petitioner proposes to visually examine the 90 feet area affected from both the inby and outby ends. The petitioner states that

application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Performance Coal Company

[Docket No. M–95–100–C]

Performance Coal Company, P.O. Box 69, Naoma, West Virginia 25140 has filed a petition to modify the application of 30 CFR 75.350 to its Upper Big Branch South Mine (I.D. No. 46–08436) located in Raleigh County, West Virginia. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Performance Coal Company

[Docket No. M–95–101–C]

Performance Coal Company, P.O. Box 69, Naoma, West Virginia 25140 has filed a petition to modify the application of 30 CFR 75.1700 to its Upper Big Branch South Mine (I.D. No. 46–08436) located in Raleigh County, West Virginia. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. C.L.D., Inc.

[Docket No. M–95–10–M]

C.L.D., Inc., 2765 East 500 South, Vernal, Utah 84078 has filed a petition to modify the application of 30 CFR 57.4760(a) to its Cowboy No. 1 and 2 Mine (I.D. No. 42–02096) located in Uintah County, Utah. The petitioner requests a variance from the mandatory safety standard because the mining methods used at its gilsonite mines do not provide a physical means to comply with the standard. The petitioner states that a gilsonite mine uses an open-trench method of mining and that the mines are connected to other mines and are self-ventilating. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 1, 1995. Copies of these petitions are available for inspection at that address.

Dated: July 25, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–18947 Filed 8–1–95; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 7, 1995, through July 21, 1995. The last biweekly notice was published on Wednesday, July 19, 1996 (60 FR 37084).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 1, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be

filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: July 3, 1995

Description of amendments request: The proposed Technical Specification (TS) amendment temporarily adds new ACTION Statements 3.8.1.1.f and 3.8.1.1.g to TS 3.8.1.1, "A.C. Sources - Operating," to provide a method of responding to sustained degraded switchyard voltage. Bases 3/4.8.1, "A.C. Sources," 3/4.8.2, "D.C. Sources," and 3/4.8.3, "Onsite Distribution Systems," are also being revised to provide guidance on how and why degraded offsite power voltage and the number of startup transformers in service affect compliance with GDC 17 and to give the basis for the additional ACTION statements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not significantly increase the probability of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The safety function of the Electrical Distribution System (EDS) is to provide sufficient capacity and capability to assure that 1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure

boundary are not exceeded as a result of anticipated operational occurrences and 2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents. In addition, it shall have sufficient independence, redundancy, and testability to perform its safety function assuming a single failure. The proposed ACTIONs will restore the EDS to conformance with General Design Criterion (GDC) 17 of Appendix A to 10 CFR 50. Once in conformance with GDC 17, the system will be capable of performing its safety function as analyzed in Chapters 6 and 15 of the UFSAR. The proposed temporary change has no effect on the probability of accident initiation, therefore, the probability of an accident previously evaluated has not been significantly increased.

The consequences of an accident previously evaluated in the UFSAR will not be significantly increased. Restoring one train to OPERABLE, by blocking Fast Bus Transfer (FBT), within one hour is consistent with the response time of Technical Specification (TS) ACTION 3.0.3. The second train will be restored to OPERABLE by having its Emergency Diesel Generator (EDG) started, loaded, and separated from offsite power within two hours or FBT will be blocked within two hours. Action within two hours is consistent with the plant—s TS since TS ACTION 3.8.2.1.a, "D. C. Sources - Operating," would be the most limiting requirement with one train of inoperable electric power. In a degraded voltage event, the ability of the Class 1E 125VDC battery chargers to perform their function is indeterminate, therefore, the Class 1E 125VDC batteries must be assumed to provide the 125VDC control power to the Class 1E Engineered Safety Features (ESF) circuit breakers for both of their sequences. The battery capacity calculations assume only one sequence. Once one train is restored to OPERABLE and the other train—s EDG demonstrated to be OPERABLE by loading and separating from the grid, ACTION 3.8.1.1.a, for one INOPERABLE offsite power supply, allows operation to continue for up to seventy-two hours. If both trains are blocked, then both trains are OPERABLE.

The proposed change will ensure that the train that blocks FBT will be in conformance with GDC 17 should a subsequent accident occur. As such, that train of ESF equipment will be supplied Class 1E preferred and standby power in the manner assumed by Chapters 6 and 15 analyses. Starting, loading, and separating the other train—s EDG from offsite power ensures that the second train of ESF equipment is prepared to respond to any subsequent accident. This configuration presents one OPERABLE offsite circuit and two OPERABLE EDGs to any subsequent accident, and would be capable of withstanding the single failures in the UFSAR Table 15.0-0, "Single Failures." Optionally, with both trains blocked, both are OPERABLE and would be capable of withstanding the single failures in the UFSAR Table 15.0-0, "Single Failures."

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Given the current licensing basis, the proposed temporary TS change does not create the possibility of an accident of a new or different kind. The plant is currently licensed to have both trains of FBT blocked when low switchyard voltages exist in order to prevent the loss of power generated by the nuclear power unit from causing the loss of the preferred power circuits. The proposed temporary TS ACTIONs 3.8.1.1.f and 3.8.1.1.g are being added as ACTIONs to prevent a double sequencing event from occurring. The train that is blocked is consistent with previous UFSAR Chapter 6 and Chapter 15 safety analyses since it will conform to GDC 17 prior to the onset of the accident. Under this condition it will be able to contribute to the mitigation of an accident and withstand the effects of any single failure equal to its ability when initially analyzed and licensed. The EDG which is loaded and isolated from offsite power also contributes to GDC 17 compliance since the entire system can withstand a Loss of Offsite Power (LOP) and a single failure of an EDG. With both trains blocked, the EDS is in compliance with GDC 17 and is analyzed.

It is understood that an accident of a different kind will exist if a degraded voltage condition occurs coincident with an accident (e.g., LOCA [versus the analyzed LOP + LOCA]). Should such an accident occur, the manual action described in the proposed ACTION statements could not be credited to protect the plant. However, the purpose of proposed ACTIONs 3.8.1.1.f and 3.8.1.1.g is to provide an appropriate response to degraded voltage prior to an accident by eliminating the malfunction of a different type (double sequencing) and an accident of a different type (e.g., degraded voltage + LOCA) for one train within one hour and for the second train within two hours. This duration of response is consistent with the required responses currently in the TSs 3.0.3, 3.8.2.1.a, and 3.8.1.1.a.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety has not been reduced in that the train which has FBT blocked prior to the onset of an accident will be in conformance with GDC 17 (which is the basis to TS 3/4.8.1). Since the blocked train is in conformance with GDC 17 prior to the onset of an accident, it will support the single failure analyses and the safety analyses to the extent previously analyzed and licensed. The train not blocked will have its EDG started, loaded, and separated from offsite power prior to the end of the second hour. Action within two hours is consistent with TS 3.8.2.1.a. The proposed action recovers one train of A.C. sources in one hour and places the plant in a configuration of one less power source than is required by LCO 3.8.1.1 within two hours. Currently, TS ACTION 3.8.1.1.a (one power source inoperable) has a duration of seventy-two hours. The proposed ACTION requires responses within time frames consistent with TSs 3.0.3, 3.8.2.1.a, and 3.8.1.1.a, and therefore, does not reduce the margin of safety. Optionally, restoration of the second train by blocking FBT within two hours is also consistent with response times required by TS 3.0.3 and 3.8.2.1.a and therefore, also does not reduce the margin of safety. TS 3.8.1.1.a would not be required with both trains of FBT blocked as all four AC power sources would then be OPERABLE.

Regulatory Guide 1.93, "Availability of Electric Power Sources," Revision 0, December 1974 recognizes that under certain conditions it may be safer to continue operation at full or reduced power for a limited time than to effect an immediate shutdown based on the loss of some of the required electric power sources. In an effort to minimize the risk to the health and safety of the public, the proposed ACTIONs 3.8.1.1.f and 3.8.1.1.g balance the risk of a forced shutdown against the risk of remaining at power with a degraded switchyard voltage.

Probabilistic Risk Analysis (PRA) has compared the probability of a core melt event for 1) blocking fast bus transfer in one train after one hour for the next seventy-one hours, and in the second train after two hours for the next seventy hours; 2) blocking fast bus transfer in one train after the first hour for the next seventy-one hours, and supplying power to the other train from the EDG after the second hour for seventy hours; and 3) a normal shutdown assuming the plant is in a normal configuration and no other transients or accidents except an uncomplicated reactor trip occurs during the shutdown process. Seventy-two hours was chosen for comparison purposes as the proposed ACTIONs would allow operation for up to seventy-two hours with one offsite circuit INOPERABLE.

The PRA has shown that the probability of a core melt event during power operation with FBT blocked in one train after one hour for the next seventy-one hours, and in the second train after two hours for the next seventy hours is approximately 1.91E-6. The probability of a core melt event during power operation with FBT blocked in one train after one hour for the next seventy-one hours and the EDG powering the opposite train after the second hour for the next seventy hours (the proposed configuration) is between approximately 1.91E-6 and 1.93E-6. A range is provided because the current PRA model can only model blocking both trains or the EDGs supplying both trains. The risk lies somewhere between the two values. The probability of a core melt event due to a normal shutdown assuming the plant is in a normal configuration and no other transients or accidents except an uncomplicated reactor trip occurs during the shutdown process is 2.4E-6. The risk can not be calculated for a forced shutdown with degraded switchyard voltage present but it is expected to be higher. Therefore, the analysis provided is conservative.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: July 14, 1995

Description of amendment request: The proposed amendment would change the scram insertion times, Section 3.3.C, Minimum Critical Power Ratio section, Section 4.11.C and the associated bases in Section 2.1.1 and 3/4.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Section 2.1 Bases - Safety Limits

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because equivalent fuel cladding protection (99.9 percent of all fuel rods do not experience transition boiling following a design basis transient) is provided.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not affect the function of any structure, system or component.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because the utilization of current General Electric fuel designs provides an equivalent margin of safety. As stated previously, equivalent fuel cladding protection is provided and ensures that 99.9 percent of all fuel rods will not experience transition boiling following a design basis transient.

Section 3.3.C - Scram Insertion Times

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability of consequences of an accident previously evaluated. The correlation of the scram insertion times with the actual notch position will simplify the surveillance procedure while maintaining the accuracy of the test.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical modifications are associated with the proposed change and it does not affect the function of any structure, system or component.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. The notch positions were chosen to coincide with the relative insertion values specified in the Technical Specifications. Use of the proposed combination of notch positions and scram insertion times will maintain the existing margins of safety that 99.9 percent of all fuel rods will not experience transition boiling following a design basis transient.

Section 4.11.C - Minimum Critical Power Ratio (MCPR) Calculation Method

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the method used to calculate the measured scram speed distribution is consistent with the PNPS [Pilgrim Nuclear Power Station] licensing basis.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not affect the function of any structure, system or component.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety because the proposed changes provide equivalent fuel cladding protection which ensures that 99.9 percent of all fuel rods will not experience transition boiling following a design basis transient.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Ledyard B. Marsh

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment requests: September 17, 1993, as supplemented July 20, 1995

Description of amendment requests: As a result of findings by a Diagnostic Evaluation Team inspection performed by the NRC staff at the Dresden Nuclear Power Station in 1987, Commonwealth Edison Company (ComEd, the licensee) made a decision that both the Dresden Nuclear Power Station and sister site Quad Cities Nuclear Power Station needed attention focused on the existing custom Technical Specifications (TS) used.

The licensee made the decision to initiate a Technical Specification Upgrade Program (TSUP) for both Dresden and Quad Cities. The licensee evaluated the current TS for both Dresden and Quad Cities against the Standard Technical Specifications (STS) contained in NUREG-0123, "Standard Technical Specifications General Electric Plants BWR/4." The licensee's evaluation identified numerous potential improvements such as clarifying requirements, changing TS to make them more understandable and to eliminate interpretation, and deleting requirements that are no longer considered current with industry practice. As a result of the evaluation, ComEd has elected to upgrade both the Dresden and Quad Cities TS to the STS contained in NUREG-0123.

The TSUP for Dresden and Quad Cities is not a complete adaption of the STS. The TSUP focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GL), and (4) relocating specific items to more appropriate TS locations.

The September 17, 1993, and July 20, 1995, applications proposed to upgrade only Section 3/4.7 (Containment Systems) of the Dresden and Quad Cities TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current

requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.7 is based on STS guidelines or later operating BWR plants' NRC accepted changes. Any deviations from STS requirements do not significantly increase the probability or consequences of any previously evaluated accidents for Dresden or Quad Cities Stations. The proposed amendment is consistent with the current safety analyses and has been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems that make up the Containment Systems are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations; therefore, the probability of any accident previously evaluated is not increased by the proposed amendment. In addition, the proposed surveillance requirements for the proposed amendments to these systems are generally more prescriptive than the current requirements specified within the Technical Specifications. The additional surveillance requirements improve the reliability and availability of all affected systems and, therefore, reduce the consequences of any accident previously evaluated, as the probability of the systems outlined within Section 3/4.7 of the proposed Technical Specifications performing their intended function is increased by the additional surveillances.

Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Other changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these provide additional restrictions which are in accordance with the current safety analysis, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses.

The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.7 is based on STS guidelines or later operating BWR plants' NRC accepted changes. The proposed amendment has been reviewed for acceptability at the Dresden or Quad Cities Nuclear Power Stations considering similarity of system or component design versus the STS or later operating BWRs. Any deviations from STS requirements do not create the possibility of a new or different kind of accident previously evaluated for Dresden or Quad Cities Stations. No new modes of operation are introduced by the proposed changes. Surveillance requirements are changed to reflect improvements in technique, frequency of performance or operating experience at later plants. Proposed changes to action statements in many places add requirements that are not in the present technical specifications. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems that make up the Containment Systems are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations. In addition, the proposed surveillance requirements for affected systems associated with the Containment Systems are generally more prescriptive than the current requirements specified within the Technical Specifications; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Other changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain with their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to Technical Specification Section 3/4.7 implements present requirements, or the intent of present requirements in accordance with the guidelines set forth in the STS. Any deviations from STS requirements do not significantly reduce the margin of safety for Dresden or Quad Cities Stations. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden or Quad Cities based on system design, safety analysis requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden or Quad Cities and maintain necessary levels of system or component reliability, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of systems associated with the Containment Systems when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Connecticut Yankee Atomic Power Company, and Northeast Nuclear Energy Company, et al., Docket Nos.50-213, 50-245, 50-336, and 50-423 Haddam Neck Plant, and Millstone Nuclear Power Station, Units 1,2, and 3, Middlesex County and New London County, Connecticut

Date of amendment request: June 6, 1995

Description of amendment request: The proposed amendment will modify the size of the Plant Operations Review Committee (PORC) which will collectively have the experience and expertise in various areas of plant operation, and will clarify the composition of the Site Operations Review Committee (SORC).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

These proposed changes do not involve an SHC because the changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The PORC is an oversight group and helps to ensure that the units are operated in a safe manner. To accomplish this the PORCs provide their recommendations on the safety related activities to the Vice President - Haddam Neck Plant for Haddam Neck and to the respective Nuclear Unit Directors for Millstone. Each Millstone

Unit has its own PORC. It is proposed that the members of the

PORC be selected by the respective Nuclear Unit Director based on their knowledge and expertise in specific key plant functions. The Millstone Station has one SORC. The SORC is also an oversight group whose charter is to advise the Senior Vice President - Millstone Station on all matters related to nuclear safety at the Millstone site. The Haddam Neck Plant, being a single unit site, has one PORC, which advises the Vice President - Haddam Neck Plant. The members of the Haddam Neck Plant PORC will be selected by the Vice President - Haddam Neck Plant based on their knowledge and expertise in specific key plant functions. The PORC and SORC add to the defense-in-depth concept provided by the design, operation, maintenance, and quality oversight by promoting excellence through the conduct of their affairs and by maintaining a diligent watch over their responsibilities.

These administrative changes will revise the composition section of the technical specifications for the PORC members. Millstone Unit individuals will be appointed by the Nuclear Unit Directors if the individual meets one or more of the following areas of expertise: Plant Operations, Engineering, Reactor Engineering, Maintenance, Instrumentation and Controls, Health Physics, Chemistry, Work Planning and Control, and Quality Services. The Haddam Neck Plant, due to its broader scope of review also include[s] an individual experienced in Security and specific experience in Electrical Maintenance and Mechanical Maintenance. The individuals who will serve on PORC shall continue to meet the criteria of ANSI N18.1-1971. This approach is consistent with the standard technical specifications and NUREG 0800, Section 13.4. For SORC at the Millstone Station, the method of identifying who shall serve as Vice Chairperson has been modified for clarity. The Site Services Director position is proposed to be eliminated since this position no longer exists. The functions previously performed by this individual have been assumed by those individuals who currently serve on SORC. Finally, [the TS relating to] the individual who shall represent Quality and Assessment Services shall be modified to allow a qualified member of Quality and Assessment Services to serve on SORC.

The remaining portions of the technical specifications related to PORC and SORC are not being revised.

These modifications broaden the unit committee participation and reflect current organizational positions and will not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed administrative enhancements to the composition of the PORC and Millstone Station SORC will not affect the way in which the units are physically operated. These administrative changes to PORC and SORC continue to meet the guidelines of ANSI N18.7-1976. The modifications to PORC and SORC continue to allow these groups to provide a thorough review of activities at the units.

The proposed modification does not impact any initiating events, and, therefore, cannot create the possibility of any new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

These proposed administrative changes will not impact the margin of safety provided by PORC and SORC. The PORC and SORC will continue to be staffed by qualified individuals experienced in the operation of the plants. These administrative changes will modify how the composition of the PORC and SORC members are presented in the technical specifications, but will not adversely impact their ability to review and comment on operations at the units.

These changes do not impact any protective boundaries nor do they impact the safety limits for the protective boundaries. These proposed changes are administrative in nature. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street Middletown, Copnnecticut 06457, for the Haddam Neck Plant, and the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, for Millstone 1, 2, and 3.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: July 5, 1995

Description of amendment request: The proposed amendment would change the Administrative Controls section of the Palisades Technical Specifications. The changes involve deleting training requirements in the Administrative Controls section, revising the Plant Review Committee composition, and revising the function and composition of the plant safety and licensing staff review requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change does not affect the probability or consequences of an accident. The changes are administrative, deleting an unnecessary specification on staff training requirements, eliminating the specific references to the Nuclear Engineering and Construction Organization (NECO) staff, and requiring that the Plant Review Committee (PRC) chairman, alternate chairman, and members be designated in administrative procedures by the Plant General Manager. Further administrative changes clarify the function of the Plant Safety and Licensing organization and eliminate the numerical requirement for five staff members to fulfill the organization function.

The removal of an obsolete staff training requirement does not diminish the regulatory requirement to have an adequately trained staff. The accredited training programs for the plant staff ensure an appropriate level of training is conducted to maintain an appropriate skill and knowledge base for the staff. The requirements of 10CFR55 provide the necessary rules for operator licenses. Since a trained staff will be maintained, there will [be] no increase in the probability or consequences of an accident as a result of this change.

The composition of the PRC will not be affected by this change as it will, at a minimum, be comprised of personnel from the operations, engineering, radiological services and maintenance departments as required by the Technical Specifications. The composition of the Plant Safety and Licensing organization as a whole may change. The function of the organization as it relates to these Technical Specifications, however, will not be affected. These changes have no affect on the plant accident analyses. Qualified personnel will continue to conduct the PRC and Plant Safety and Licensing reviews. Therefore, the changes do not increase the probability or consequences of an accident.

B. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative and do not create the possibility of a new or different kind of accident. Staff training will continue to meet the accreditation requirements of the National Academy for Nuclear Training Accreditation Board and the requirements for the Systematic Approach to Training. Operators' license training will continue to meet the regulatory requirements of 10CFR55. Activities conducted by the Plant Review Committee and the Plant Safety and Licensing staff will continue to be accomplished by a staff which meets the qualification requirements of the Technical Specifications. These administrative changes will not affect the operation of the plant or the safety function of plant equipment nor will it affect the quality of the review activities. Therefore, there will be no possibility that a new or different kind of accident will be created.

C. Involve a significant reduction in a margin of safety.

The changes do not affect installed plant equipment nor do they affect plant

operations. These administrative changes have not affected the probability or consequences of a previously analyzed accident or created the possibility of a new or different kind [of] accident from any previously evaluated. Therefore, they do not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: John N. Hannon

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: October 11, 1994, as supplemented June 23, 1995.

Description of amendment request: The proposed amendments would revise Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and BVPS-2) Technical Specifications (TSs) 1.18, "Quadrant Power Tilt Ratio," 3/4.2.4, "Quadrant Power Tilt Ratio," the Table Notation of TS Table 3.3.-1, "Reactor Trip System Instrumentation," and associated Bases to incorporate the guidance provided in the NRC's Improved Standard Technical Specifications (NUREG-1431) applicable to these TSs. The proposed amendments would clarify the requirements of the subject TSs with regard to the use of excore power range neutron flux detectors to monitor quadrant power tilt ratio when an excore power range neutron flux instrument is inoperable. The proposed change would also make several minor editorial changes in the subject TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The existing quadrant power tilt ratio (QPTR) definition and Surveillance Requirement (SR) 4.2.4.c are inconsistent concerning reactor power limitations when performing QPTR surveillance requirements. The proposed change modifies these and related requirements to improve the understanding and consistency by generally incorporating the Improved Standard Technical Specification (ISTS) requirements of NUREG-1431.

Editorial changes have been incorporated throughout the proposed specifications to address ISTS or plant specific convention and do not affect the accident analyses. The QPTR definition has been modified to reflect the ISTS wording and eliminate the inconsistency with SR 4.2.4.c. This change does not reduce the QPTR testing requirements or affect the accident analyses assumptions. The current action statements require power reduction along with a reduction in power range high neutron flux trip setpoints when the QPTR exceeds the limit. This ensures the core conditions are consistent with the accident analyses assumptions. With the modified action statements and the QPTR exceeding the limit, power reduction is also required along with performing a flux map to verify the peaking factors are within the accident analyses assumptions. In addition, the safety analyses must be re-evaluated to confirm the results remain valid prior to increasing power with an indicated tilt condition. The new action statements provide methods different from the current requirements. However, they satisfy the same objective, to ensure the conditions assumed in the accident analyses are maintained. Therefore, these changes will not involve significant increase in the probability or consequences of an accident previously evaluated.

The current surveillance requirements define the methods and frequencies for verifying the QPTR is within the limit specified in the limiting condition for operation. The proposed SRs include associated notes that allow separation of a power range channel into two portions made-up of the Nuclear Instrumentation System (NIS) and the excore detector portion. If an excore detector portion of a power range channel is inoperable, then the power range channel is inoperable since the detector provides input to the NIS which inputs to the solid state protection system. However, if the excore detector is operable and the NIS is inoperable, then the power range channel is inoperable but the ability to monitor the QPTR is unaffected. When the NIS portion of a channel is inoperable, appropriate actions are applied in accordance with Specification 3.3.1. The new SRs continue to require the same testing and frequencies as the current SRs along with reducing the need to interpret the requirements when special conditions exist. Therefore, the proposed SRs will not affect the accident analyses or significantly increase the probability or consequences of an accident previously evaluated.

Table 3.3-1 Action 2 applies when a power range channel is inoperable. This action has been reformatted to incorporate changes similar to those adopted in the QTPR SR which allow separation of a power range channel into the NIS portion and the excore detector portion. Proposed Action 2.a applies to an inoperable power range high neutron flux channel and Action 2.b applies to "all other channels" which includes the Low Setpoint function along with the High Positive and High Negative Rate functions. The new action is modified by Note (3) to allow bypassing the inoperable channel for surveillance testing and setpoint adjustment and by Note (4) that only requires performing SR 4.2.4 when the power range high neutron flux channel input to QPTR is inoperable. The new action does not require reducing the power range neutron flux setpoint like the current action since the proposed action is to perform the QPTR surveillance or shutdown which is more conservative than the current action requirement, otherwise, the new action requires essentially the same steps to be performed as the current action. Therefore, the proposed action will not affect the accident analyses or involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes are proposed to allow flexibility in plant operations by modifying the QPTR action and surveillance requirements to allow separation of a power range channel into the NIS portion and the excore detector portion. The modified action and surveillance requirements continue to provide monitoring of those parameters required to ensure the core is operating safely. Since these changes are not significantly different from the current requirements and no change is being introduced that would affect the accident analyses assumptions, we have concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes incorporate modifications generally consistent with the ISTS QPTR requirements to ensure the core power distribution is adequately monitored. The revised action statements provide for peaking factor verification as a logical compensatory measure to ensure the core is operating within required limits. This is more conservative than the current requirements and provides additional assurance that Specification 3.2.4 will continue to govern the QPTR limitations in a manner consistent with the accident analyses assumptions. The revised SR provides clear and understandable testing requirements to reduce confusion concerning how the QPTR is to be monitored based on plant conditions. The proposed change does not introduce any new mode of plant operation or require any physical modification to the plant, therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The QPTR limit ensures that the gross radial power distribution is maintained within the assumptions used in the safety analyses. The QPTR is one of the variables that is monitored to ensure the core operates within the bounds used in the safety analyses. When the QPTR is maintained below 1.02 it provides an indication that the peaking factors are within the limiting values by preventing and undetected change in the gross radial power distribution. The proposed changes ensure the required parameters are verified during the applicable conditions and on a consistent basis, therefore, these changes will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: May 19, 1995

Description of amendment request: The proposed amendments revise the specifications to permit the reactor building personnel airlock doors to remain open during fuel handling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change would allow the containment personnel airlock doors to remain open during fuel movement and core alterations. These doors are normally closed during this time period in order to prevent the escape of radioactive material in the event of a fuel handling accident. These doors are not initiators of any accident. The probability of a fuel handling accident is unaffected by the position of the containment personnel airlock doors.

The proposed change alters assumptions made in evaluating the radiological consequences of a fuel handling accident inside the reactor containment building. Allowing the containment personnel airlock doors to remain open during fuel movement and core alterations does increase, however not significantly, the consequences of a fuel handling accident inside containment. Previously, the fuel handling accident inside containment was bounded by the fuel handling accident analysis in the spent fuel pool area of the auxiliary building. Part of the dose increase has been offset by the increase in the minimum decay time before irradiated fuel may be moved inside the reactor containment building. Extending the minimum decay time actually decreases the consequences of a fuel handling accident by reducing the radioactive inventory of the irradiated fuel which could possibly be released during a fuel handling accident. The revised fuel handling accident analysis results in maximum offsite doses of 43.4 Rem and 41.8 Rem to the thyroid and 0.616 Rem and 0.598 Rem to the whole body for ANO-1 and ANO-2, respectively. The calculated offsite doses are well within the limits of 10CFR Part 100. Also, the calculated doses are larger than the actual doses which would be expected during a fuel handling accident because the calculation does not incorporate the closing of at least one of the personnel airlock doors following evacuation of containment. The proposed change would significantly reduce the dose to workers in the containment in the event of a fuel handling accident by expediting the containment evacuation process.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve the addition or modification of any plant equipment. Also, the proposed change would not alter the design, configuration, or method of operation of the plant.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

This proposed change has the potential for an increased dose at the site boundary due to a fuel handling accident; however, the dose remains within acceptable limits. The margin of safety as defined by 10CFR Part 100 has not been significantly reduced. There is an increase in the calculated offsite dose resulting from a fuel handling accident; however, the increase is not significant and is well within the limits specified in 10 CFR Part 100. The overall significance will be offset by the increased minimum decay time, the decreased potential radiation dose to workers, and the increased availability of the personnel airlock door in the event of a fuel handling accident. Closing at least one of the personnel airlock doors following an evacuation of containment, further reduces the offsite doses in the event of a fuel handling accident which partially compensates for the higher offsite doses calculated as a result of this proposed change.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. BecknerEntergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: March 17, 1995

Description of amendment request: The proposed amendment revises requirements associated with channel functional tests of the core protection calculator following a high temperature alarm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The core protection calculators (CPCs) are not accident initiators, therefore this change does not increase the probability of an accident previously evaluated.

The core protection calculators (CPCs) are dedicated minicomputers that receive key parameters necessary to calculate the departure from nucleate boiling ratio (DNBR) and local power density (LPD) and issue a reactor trip command prior to reaching plant conditions that may damage the fuel in the reactor. Subjecting a computer to elevated temperatures may affect the reliability of the computer calculations. This change in the Arkansas Nuclear One-Unit 2 (ANO-2) Technical Specifications (TS) will require a verification of the CPC operability, by the performance of a channel functional test, in the event a cabinet high temperature switch is actuated. This is a more accurate indication of the operating environment of the CPCs than the current requirement to perform the test based upon room temperature. The ability of the CPCs to monitor DNBR and LPD and issue a trip command when appropriate will not be affected in any way by this change, therefore the consequences of an accident previously evaluated are not increased.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Because the proposed changes do not alter the design, configuration, or method of operation of the plant, they do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

These proposed changes do not alter the acceptance criteria of any surveillance requirements. The changes do not alter any assumptions used in accident analysis, change any actuation setpoints, nor allow

operations in any configuration not previously analyzed. This change will trigger a verification of affected CPC operability based on cabinet temperature instead of room temperature, which is a more accurate indication of the operating environment of the CPC computer. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 4, 1995

Description of amendment request: The proposed amendment revises operating criteria and requirements associated with containment personnel air locks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the

Probability or Consequences of an Accident Previously Evaluated.

The containment air locks are passive components integral to the containment structure and are not evaluated to be accident initiators, therefore, the proposed amendment does not involve an increase in the probability of an accident previously evaluated.

Each air lock door is rated for and tested to full design pressure of the containment building. If one door were inoperable in each air lock, the remaining door, since required to remain closed and locked, would provide the necessary fission product barrier to prevent an uncontrolled release, therefore the amendment allowance for an inoperable air lock door in each air lock does not increase the consequences of any previously evaluated accident.

During a situation where one containment air lock door is inoperable and the operable door is opened, a breech in containment integrity would essentially exist while the operable door remains open. The time required for a containment air lock door to be open for ingress or egress does not exceed two to three minutes. The amendment provision to allow unlocking and opening an operable air lock door for ingress and egress to facilitate air lock maintenance necessary to restore operability does not increase the consequences of any previously evaluated accident since the time necessary for the door to be open is bounded by the existing one hour time allowance for an actual breech of containment integrity (TS 3.6.1.1.)

The containment air lock interlock functions to prevent simultaneous opening of both air lock doors thereby creating a breech in containment integrity. A dedicated individual stationed at the air lock to administratively control door operations, or locking closed an operable door will adequately assure containment integrity. The addition of this technical specification action statement, therefore, does not increase the consequences of any previously evaluated accident.

Performance of the overall air lock leakage test requires opening the outer air lock door for installation of the mechanical dogging devices on the inner door. The current technical specifications make no provisions for this entry and thus would require a plant shutdown if the inner door was inoperable in an air lock. The proposed amendment removes the requirement to shut down when the barrel leak rate is due. The time required for the containment air lock doors to be opened for dog installation would be the same as for ingress and egress as discussed above, therefore this change does not increase the consequences of any previously evaluated accident.

10 CFR 50, Appendix J contains containment leakage testing requirements, including specific requirements for containment building air locks. Changing the TS surveillance requirements to refer to 10 CFR 50, Appendix J for these test requirements will not degrade these tests, therefore this change does not increase the consequences of any previously evaluated accident.

The air lock door seal pressure test is performed any time the air lock is used for containment access during modes of operation when containment integrity is required. The door seal test is intended to be a gross test to verify that the door seals were not damaged during the opening and closing cycle(s). This test does not replace the required overall barrel leakage test. Based on information provided by the air lock vendor, a test pressure of 10 psig is sufficient to perform this gross seal verification. A change in the allowable leakage rate is requested to remove a specific numerical value from the TS surveillance requirements section and replace it with a fraction of L_{a}. This new acceptable leakage rate remains relatively insignificant and is bounded by the overall air lock leakage rate. Based on these facts this change in test pressure and associated acceptance criteria does not increase the consequences of any previously evaluated accident.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Because the proposed changes do not change the design, configuration, or method of operation of the plant, they do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes to ANO-2 TS involve allowing brief breaches in containment integrity for the purpose of repairing inoperable air lock components or performing surveillances required by 10 CFR 50, Appendix J. These cases are adequately bounded by the one hour allowable outage time afforded by TS 3.6.1.1.

The addition of a specific action statement addressing an inoperable air lock interlock provides those actions necessary to assure the maintenance of containment integrity. This is achieved by locking an operable door in the affected air lock when not in use and stationing a dedicated individual at the air lock, during periods of ingress and egress, whose sole responsibility is to insure only one air lock door is opened at a time thereby duplicating the function of the mechanical interlock.

The proposed changes also consist of administrative changes removing an outdated exemption to 10 CFR 50, Appendix J and removing specific surveillance requirements from the specifications, instead referring to the controlling requirements of 10 CFR 50, Appendix J. This is consistent with the provisions of NUREG 1432 "Revised Standard Technical Specifications for Combustion Engineering Plants," Rev. 0.

None of the proposed changes increase the allowable overall air lock leakage rate, nor affect the acceptance criteria of the overall integrated containment leakage rate. All of the changes are bounded by existing analyses for all evaluated accidents and do not create any situations that alter the assumptions used in these analyses. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 19, 1995

Description of amendment request: The proposed amendment adds criteria to address optional inspections of steam generator tubes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Steam generator tubes are inspected on a periodic basis to reduce the probability of a steam generator tube rupture or tube leakage. Five special interest groups are being added for optional inspections in addition to the general tube inspections currently required by the technical specifications. These special interest groups define areas of tubes where known or potential degradation mechanisms may exist for which additional inspection, above that currently required in the technical specifications, may be beneficial. Inspection of these special interest groups may utilize probes which more readily detect indications which may be found in the special interest areas. The increased detection capability will reduce the probability that a structurally significant flaw will go undetected during an inspection. The minimum sample size and expansion criteria (should a flaw be found) for inspections of special interest groups are based on percentages of tubes potentially affected by the specific degradation mechanisms for which the special inspection is being performed. The percentages used are the same as used for the current general tube inspections. The expansion criteria allow expansion within the area of interest without affecting the expansions of any general tube inspection. By expanding within the area of interest, a more complete inspection for the defects caused by a specific degradation mechanism can be performed than if the expansion were conducted in tubes not necessarily affected by the degradation mechanism, which is possible with the current technical specifications. Therefore, this change does not involve a significant increase in the probability of an accident previously considered.

The proposed change does not increase the amount of radioactive material available for release or modify any systems used for mitigation of such releases during accident conditions. The steam generator tubing will continue to be examined on the frequency currently specified in the technical specifications. This change will allow steam generator examinations to focus on known areas of interest without requiring unnecessary expansion. The integrity of the steam generators will continue to be assured at an equivalent level. Therefore, the change does not involve a sighificant increase in the consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Special inspections such as the ones being added to the technical specifications have been conducted in the past at ANO-2. The method of inspection, pushing or pulling a probe through the steam generator tubes from the primary side, is the same method employed for the current technical specification required inspections. Inspection methodology is not being changed by incorporation of these special interest groups into the technical specifications. No design or operational characteristics of the plant are changed by the proposed amendment.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed amendment adds special interest groups for optional inspection into the technical specifications. These inspections concentrate on areas of interest using inspection methodology that is equivalent or better at finding specific types of flaws than the methodology used for the currently required general tube inspections. If the special interest groups are not inspected, the existing technical specification requirements for inspection still apply.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 19, 1995

Description of amendment request: The proposed amendment increases the allowed outage time for an emergency diesel generator from 72 hours to seven days. Additionally, the amendment authorizes one, ten-day diesel generator maintenance outage every fuel cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The emergency diesel generators (EDGs) are backup alternating current power sources designed to power essential safety systems in the event of a loss of offsite power. EDGs are not an accident initiator in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The EDGs provide backup power to components that mitigate the consequences of accidents. The proposed changes to allowed outage times (AOTs) do not affect any of the assumptions used in deterministic safety analysis.

In order to fully evaluate the EDG AOT extension, probabilistic safety analysis methods were utilized. The results of these analyses indicate no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD-996, Combustion Engineering Owners Group "Joint Applications Report for Emergency Diesel Generators AOT Extension."

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

This proposed change does not alter the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes do not affect the technical specification limiting conditions for operation or their bases which support the deterministic analyses used to establish the margin of safety. Evaluations used to support the requested technical specification changes have been demonstrated to be either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD-996.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 19, 1995

Description of amendment request: The proposed amendment increases the allowed outage time for an inoperable

Safety Injection Tank (SIT) from one hour to 24 hours. Additionally, the amendment limits power operation to 72 hours when certain SIT related instrument functions are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The Safety Injection Tanks (SITs) are passive components in the Emergency Core Cooling System. The SITs are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

SITs were designed to mitigate the consequences of Loss of Coolant Accidents (LOCA). These proposed changes do not affect any of the assumptions used in deterministic LOCA analysis. Therefore, the consequences of accidents previously evaluated do not change.

In order to fully evaluate the effect of the SIT Allowable Outage Time (AOT) extension, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD-994, Combustion Engineering Owners Group "Joint Applications Report for Safety Injection Tank AOT/STI Extension."

The change pertaining to SIT inoperability based solely on instrumentation malfunction does not involve a significant increase in the consequences of an accident as evaluated and endorsed by the NRC in NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements."

Therefore, this change does not involve an increase in the probability or a significant increase in the consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

This proposed change does not change the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes do not affect the limiting conditions for operation or their bases that are used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrated that the changes are either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD-994.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 19, 1995

Description of amendment request: The proposed amendment increases the allowed outage time for one train of low pressure safety injection from 72 hours to seven days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The low pressure safety injection system (LPSI) is part of the Emergency Core Cooling System subsystem. Inoperable LPSI components are not considered to be accident initiators. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The LPSI system was designed to mitigate the consequences of a large loss of coolant accident (LOCA). These proposed changes do not affect any of the assumptions used in deterministic LOCA analysis.

In order to fully evaluate the LPSI AOT extension, probabilistic safety analysis methods were utilized. The results of these analyses indicate no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD-995, Combustion Engineering Owners Group "Joint Applications Report for Low Pressure Safety Injection System AOT Extension."

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

This proposed change does not change the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes do not affect the technical specification limiting conditions for operation or their bases which support the deterministic analyses used to establish the margin of safety. Probabilistic evaluations used to support the requested technical specification changes have been demonstrated to be either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD-995.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 26, 1995

Description of amendment request: The amendment revises the snubber visual inspection intervals to match the schedule developed by the NRC staff for use with a 24 month refueling interval. This schedule was documented in Generic Letter 90-09. The licensee has made wording changes not contained in Generic Letter 90-09. These changes are as follows:

a) Section 4.5.Q.1 - GL 90-09 wording "...performance of the following augmented inservice inspection program in addition to the requirements of Section 4.0.5."

Proposed Technical Specification wording "...performance of the following inspection program."

b) Section 4.5.Q.1.a - GL 90-09 wording "...based on the criteria of Table 4.7.2 and the first inspection interval determined using the criteria shall be based upon the previous inspection interval established by the requirements in effect before Amendment (*). "Proposed Technical Specification wording "...based on the criteria provided in Table 4.5.1."

c) Section 4.5.Q.1.b - GL 90-09 wording "...All snubbers found connected to an inoperable common hydraulic fluid reservoir shall be counted as unacceptable for determining the next inspection interval."

Proposed Technical Specification deletes this sentence.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment would revise the basis for the snubber visual inspection to be consistent with the bases described in Generic Letter 90-09.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not affect the probability of occurrence nor does it affect the consequences of an accident previously evaluated as the requested visual inspection interval has been determined generically to be a safe and acceptable alternative to the existing visual inspection requirements as documented by the NRC in Generic Letter 90-09. With the completion of over 25 years of operating experience and only detecting one visual inspection failure, GPU Nuclear agrees that the existing intervals are overly conservative and can be extended to those described in the generic letter.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As the requested change deals only with the frequency of visual inspection and not with the content, scope, or acceptance criteria of the inspection, no new or different type of accident has been created.

3. Involve a significant reduction in the margin of safety.

The margin of safety as defined in the bases of the Technical Specifications is not reduced as the requested requirements provide the same degree of confidence in snubber operability at the existing requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Phillip F. McKee

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 31, 1995

Description of amendment request: The proposed amendment would modify (by relocation to the Technical Requirements Manual) Technical Specification (TS) 3/4.1.2.1, Boration Systems/Flow Paths - Shutdown, TS 3/4.1.2.2, Boration Systems/Flow Paths - Operating, TS 3/4.1.2.3, Charging Pumps - Shutdown, TS 3/4.1.2.4, Charging Pumps - Operating, TS 3/4.1.2.5, Borated Water Sources - Shutdown, TS 3/4.1.2.6, Borated Water Sources - Operating, TS 3/4.4.2.1, Safety Valves - Shutdown, and the associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to the subject Technical Specifications is of an administrative nature in that the subject Technical Specifications and Bases will be relocated in their entirety to the Technical Requirements Manual. Future changes to the relocated requirements will be in accordance with 10CFR50.59 and approved station procedures.

Whether the listed Technical Specifications and Bases are located in Technical Specifications or the Technical Requirements Manual has no effect on the probability or consequences of an accident previously evaluated.

The proposed change does not alter the assumptions previously made in the listed Technical Specifications. The proposed change allows the Commission and the South Texas Project more effective use of personnel resources to control requirements that meet the four Criteria in the Final Policy Statement. The proposed change will not change the dose to workers.

Since the probability of an accident is unaffected by administratively relocating the subject Technical Specification, and the doses are not affected and do not exceed acceptance limits, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to the subject Technical Specifications is of an administrative nature in that the subject Technical Specifications and Bases will be relocated in their entirety to the Technical Requirements Manual. Future changes to the relocated requirements will be in accordance with 10CFR50.59 and approved station procedures. Whether the listed Technical Specifications and Bases are located in Technical Specifications or the Technical Requirements Manual has no effect on any previously evaluated accident. It does not represent a change in the configuration or operation of the plant and, therefore, does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

The proposed change to the subject Technical Specifications is of an administrative nature in that the subject Technical Specifications and Bases will be relocated in their entirety to the Technical Requirements Manual. Future changes to the relocated requirements will be in accordance with 10CFR50.59 and approved station procedures. The margin of safety is not reduced when the requirements are relocated to a Licensee-controlled document because the requirements to change a License Basis Document via the 10CFR50.59 process ensure the same questions concerning the margin of safety required for license amendments are asked. Therefore, this proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: William D. Beckner

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 28, 1995

Description of amendment request: The proposed amendment would revise technical specifications related to the standby liquid control (SLC) system. The proposed changes include increasing the required reactor pressure vessel boron concentration and modifying the SLC pump operability testing surveillance frequency from monthly to quarterly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The current analysis requires the SLC system to be capable of bringing the reactor 3% delta - k subcritical assuming a cold xenon free condition. The increase in SLC storage tank boron concentration limits will ensure this capability is maintained for future reload cores using the same 3% delta - k shutdown reactivity margin without imposing restrictions in cycle exposure for current and future anticipated core configurations. The change in the surveillance frequency for SLC pump operability testing to once each three months is in agreement with the ASME Code. The relaxation of the testing interval for the SLC pumps decreases pump degradation, and eliminates an unnecessary burden on personnel resources without compromising plant safety. In addition, the administrative changes only correct typographical and editorial errors.

Since these proposed changes do not affect precursors for any accident or transient analyzed in Chapter 14 of the USAR, there is no increase in the probability of any accident previously evaluated. Furthermore, since these changes will ensure the ability of the SLC system to mitigate the consequences of an accident for future anticipated core designs, they do not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The change in the SLC storage tank boron concentration limits will ensure that a cold xenon-free reload core can be brought to a subcritical condition as previously analyzed. The change in the frequency of the SLC pump operability testing to once each three months is in agreement with the ASME Code. The relaxation in the testing interval for the SLC pumps decreases pump degradation, and eliminates an unnecessary burden on personnel resources without compromising plant safety. In addition, the administrative changes only correct typographical and editorial errors.

These proposed changes do not affect the design, function, or operation of the SLC or any other system. Also, these changes do not introduce any new modes of operation or modify existing equipment design. Therefore, they do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes will not create a significant reduction in the margin of safety. The proposed increase in the required boron concentration in the reactor pressure vessel will ensure the SLC system will be capable of bringing a cold xenon-free reload core subcritical while maintaining the 3% delta - k shutdown reactivity margin as specified in the previous operating cycle. The change in the frequency of SLC pump operability testing to once each three months is in agreement with the ASME Code. The relaxation in the testing interval for the SLC pumps decreases pump degradation, and eliminates an unnecessary burden on personnel resources without compromising plant safety. In fact, it increases SLC system availability. In addition, the administrative changes only correct typographical and editorial errors. Therefore, it is concluded that the requested changes do not create a significant reduction in the existing margin of safety as defined in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: William D. Beckner North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 16, 1995

Description of amendment request: The proposed amendment would change the minimum boron concentration specified for the refueling water storage tank (RWST) in Limiting Condition for Operation (LCO) in Technical Specification (TS) 3.1.2.5 and would replace the minimum specified concentration for boron with an acceptable range of boron concentration for the RWST and the accumulators in the LCOs for TS 3.1.2.6, 3.5.1.1, and 3.5.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the changes are proposed to assure that the post-event shutdown margin required by the Technical Specifications will continue to be met and the consequences of a boron dilution event will remain as previously evaluated. The changes do not affect the design or manner of operation of any structure, system, or component important to safety.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated and do not involve a change to any structure, system, or component important to safety. The proposed changes merely assure that station will be operated within original design limits.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes merely assure that the station will continue to be operated within the original design limits. Therefore, the acceptance criteria for previously evaluated accidents will continue to be met.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston MA 02110-2624.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: July 11, 1995

Description of amendment request: The proposed amendment modifies Technical Specification 3.5.F.7 to also allow the use of pull-to-lock switches to defeat the automatic initiation of the emergency core cooling system (ECCS) while in the refuel condition. The proposed amendment also makes administrative changes and makes changes to the associated Bases section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10 CFR 50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

This change to LCO [Limiting Condition for Operation] 3.5.F.7(e) will allow an alternative means of de-energizing power to the selected ECCS pump motors during refueling. The current

technical specification already allows these motors to be de-energized. Use of the pull-to-lock switches provides a safer method of achieving this condition. The pull-to-lock condition of the switches is annunciated in the control room. Therefore, the switches will not be inadvertently left in the pull-to-lock position.

Deletion of the statement that the 4160 volt supply breakers are racked in does not affect the requirement of LCO 3.5.F.7 to ensure the specified ECCS subsystems are OPERABLE.

Therefore, there is no change in the probability or consequences of an accident previously analyzed due to this change.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The use of an alternative means of de-energizing power from the selected ECCS pump motors does not create a possibility of a new or different kind of accident. Using the control room pull-to-lock switch to disable the pump motor circuit breaker has the same effect on the ECCS pump as the removal of the circuit breaker from the switchgear.

Deletion of the statement that the 4160 volt supply breakers are racked in does not affect the requirement of LCO 3.5.F.7 to ensure the specified ECCS subsystems are OPERABLE.

3. Involve a significant reduction in the margin of safety.

The proposed change to the Millstone Unit No. 1 Technical Specifications does not reduce the margin of safety. By using the control room pull-to-lock switches to disable the ECCS pump motors, instead of racking out the pump motor circuit breakers, it is possible to reenergize the ECCS pumps more quickly in an emergency, should one occur. The time savings can be translated into added safety margin from a shutdown risk perspective. The ability to disable and enable the pumps from the control room, instead of the switchgear area, also contributes to this added safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: July 18, 1995

Description of amendment request: The proposed amendment request will add operability and surveillance requirements for reactor pressure vessel (RPV) overfill protection instrumentation. The proposed amendment will also add the associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10 CFR 50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The new LCO [Limiting Condition for Operation] and surveillance requirements ensure that the reactor high water level feedwater pump trip instrumentation is available. This technical specification change does not involve the addition of new equipment or logic. This change does not add new surveillance requirements for the instrumentation. This change simply establishes requirements for the operation and surveillance of

reactor high water level feedwater pump trip instrumentation in the technical specifications. The implementation of this technical specification change will decrease the likelihood of an RPV overfill. No other postulated event is affected by the addition of this instrumentation to the technical specifications.

Thus, adding the proposed requirements to the technical specifications will not increase the probability or consequences of any previously evaluated transients or accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No new failure modes are introduced by the addition of the reactor high water level feedwater pump trip instrumentation LCO and surveillance requirements. Modifying the technical specifications to formally add surveillance requirements already being performed in accordance with plant procedures will not modify plant response to any operational or transient event. Increasing the surveillance interval of the LITS [level indicating transmitter switches] from annual to once per operating cycle will not significantly affect reliability. Ensuring the operability of installed instrumentation does not add new or different kinds of accidents.

Therefore, the new LCO and surveillance requirements do not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The surveillance requirements being added in this change are consistent with current surveillances being performed for this instrumentation, with the exception that the LITS are currently calibrated on an annual rather than operating cycle basis. These surveillance and shutdown requirements ensure that protection from RPV overfill is maintained as assumed in the safety analyses.

Therefore, there is no impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 7, 1995

Description of amendment request: The proposed change to technical specification 3/4.7.6 is being made to: 1) increase the allowable control room air conditioning (CRAC) system in-leakage from 100 cubic feet per minute (cfm) to 130 cfm; 2) provide a more conservative value for the maximum differential pressure across the high efficiency particulate air (HEPA) filters and charcoal adsorbers; 3) clarify that when the CRAC system is shifted to "recirculation," this will be performed from the normal mode; and 4) modify the corresponding basis to reflect the above changes and to note that there are certain infrequent situations during which the control room emergency ventilation system (CREVS) will not automatically operate.

Basis for proposed no significant hazards consideration determination: As

required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

...The proposed changes do not involve an SHC because the changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The CRAC system in the recirculation mode is used to mitigate the effects of an accident. Surveillance Requirement 4.7.6.1.e.2 has been modified to clarify that the system will automatically switch from the normal mode into a recirculation mode. This change and the proposed modifications to the acceptance criterion for the differential pressure across the HEPA filters and charcoal adsorbers and the increase in the control room in-leakage have no [e]ffect on the probability of an accident previously evaluated. The consequences of the accidents that have been previously evaluated have been reviewed to determine the impact of these proposed modifications. The increase in the in-leakage will affect the results of previously generated accident analysis. The accidents evaluated, namely the Millstone Unit No. 1 MSLB [main steam line break] and LOCA [loss-of-coolant accident), Millstone Unit No. 2 LOCA, both high and low wind speed case, and Millstone Unit No. 3 LOCA have been reviewed. The Millstone Unit No. 1 LOCA doses to the Millstone Unit No. 2 control room were qualitatively determined to be bounded by the Millstone Unit No. 2 LOCA cases. Therefore the Millstone Unit No. 1 LOCA was not performed. The remaining accidents were performed. The resultant doses are nearly identical to the existing doses found in the Millstone Unit No. 2 Final Safety Analysis Report and are all within the regulatory limits. To perform these revised control room dose calculations; NNECO used certain new assumptions which NNECO believes better model the control room and the effects the accident will have on the control room. The most significant change with the assumptions is the use of ICRP 30 in lieu of Regulatory Guide 1.109, Revision 1 for iodine dose conversion factors. The NRC has used ICRP 30 over the past 5 years for other applications and its use in this instance is appropriate.

The change in the acceptance criterion for the differential pressure across the HEPA filter and charcoal adsorbers is a conservative modification in that the value given is a plant specific value and will be more indicative of blocked or clogged filters in actual plant conditions. These proposed changes do not have any negative impact on the consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed modifications to Surveillance Requirement 4.7.6.1 will clarify a portion of a surveillance requirement and will modify the differential pressure across the HEPA filters and the charcoal adsorbers. These changes will not create the possibility of a new or different kind of accident from any previously evaluated. The increase in the allowable control room in-leakage value from it[s] current level of 100 cfm to its new value of 130 cfm also does not create the possibility of a new or different kind of accident. The CRAC system is used to mitigate the consequences of an accident.

3.Involve a significant reduction in the margin of safety.

The proposed modifications do not decrease the margin of safety provided. Using the new accident assumptions, the limiting accidents were re-calculated to determine the impact on the Millstone Unit No. 2 control room. These values are similar to the values found in the Millstone Unit No. 2 Final Safety Analysis Report and the Millstone Unit No. 2 Safety Evaluation Report and are within the regulatory limits established for the control room operators. Since the re-calculated doses have been shown to be within limits, it has been concluded that there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 8, 1995

Description of amendment request: The Millstone Unit No. 3 Technical Specification Section 3/4.8.4.3 requires removal of electrical power to the safety injection accumulator isolation valves in Modes 1, 2, 3, and 4 in order to protect the containment electrical penetrations and penetration conductors. Bases Section 3/4.8.4 states that containment electrical penetrations and penetration conductors are protected by either deenergizing circuits not required during normal plant operation (Modes 1 through 4) or by demonstrating the operability of primary and backup overcurrent protection circuit breakers during performance of periodic surveillances. It is proposed that Section 3/4.8.4.3 will be deleted since the containment electrical penetration and penetration conductors for these circuits are protected by primary and backup penetration circuit breakers which are demonstrated to be operable by periodic surveillance testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised Technical Specification Section 3.5.1 requirements will provide guidance to ensure that power to the accumulator isolation valves is removed when the accumulators are required to be operable and will clarify these requirements.

Removal of the electrical penetration protection requirements of Section 3/4.8.4.3 is justified since Section 3/4.8.4.1 (Containment Penetration Conductor Overcurrent Protective Devices) will provide guidance to ensure that two breakers in series protect the electrical penetrations and penetration conductors against an overcurrent condition and the single failure of a circuit breaker. The two breakers in series also protect the Class 1E buses against a variety of overcurrent conditions including electrical faults which may be introduced due to the possible submergence of the accumulator isolation valves during a LOCA [loss-of-coolant accident].

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The amended Technical Specification Section 3.5.1 requirements will provide guidance to ensure that the accumulator isolation valves are deenergized when the accumulators are required to be operable. Deletion of the Technical Specifications Section 3.5.1 requires that electrical power to the safety injection accumulator isolation valves (3SIL*MV8808A, B, C, D) be removed for the accumulators to be operable. This requirement prevents the inadvertent closure of these isolation valves which would block the safety function of the accumulators. Section 4.5.1.c requires demonstrating accumulator operability by "At least once per 31 days when the RCS [reactor coolant system] pressure is above 1000 psig by verifying that power to the isolation valve operator is disconnected by removal of the breaker from the circuit." The surveillance requirements for verifying removal of power to the accumulator isolation valves for Section 4.5.1.c will be changed to "At least once per 31 days when the RCS pressure is above 1000 psig by verifying that the associated circuit breakers are locked in a deenergized position or removed."

The proposed change will clarify requirements for securing these breakers in the off (tripped) position in the applicable modes. In addition, index page xi has been revised to reflect the deletion of Section 3/4.8.4.3. Attachments 1 and 2 provide the mark-up and retyped pages of the Millstone Unit No. 3 Technical Specifications, respectively and reflect the currently issued version of the pages.

Millstone Unit No. 3 Technical Specifications Section 3/4.8.4.3 will not create the possibility of a new or different kind of accident from any accident previously evaluated since two breakers in series protect against an overcurrent condition and a single failure of a circuit breaker. The proposed amendment will not result in physical plant changes and there are no new credible failure modes. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The revised Technical Specification Section 3.5.1 will require that the accumulator isolation valves have their power deenergized when the accumulators are required to be operable. This requirement will maintain accumulator operability by assuring the accumulator isolation valves remain open.

The removal of the Millstone Unit No. 3 Technical Specification Section 3/4.8.4.3 is safe since redundant circuit breakers in series for the accumulator isolation valves will provide assurance that the electrical penetration and penetration conductors are protected against overcurrent conditions. This will provide assurance that the containment boundary is intact.

The proposed amendment will not adversely impact the physical protective boundaries (fuel matrix/cladding, RCS pressure boundary and containment) and therefore will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 9, 1995

Description of amendment request: The proposed amendment relocates Surveillance Requirement 4.6.6.1.d.3 for attaining a negative pressure in the secondary containment to Specification 3.6.6.2, Secondary Containment. The Action Statement of Section 3.6.6.1 is revised to decouple Sections 3.6.6.1 and 3.6.6.2. In addition, Definition 1.12, "Secondary Containment Boundary" is deleted and included in the Bases Section 3/4.6.6, Secondary Containment. Bases Section 3/4.6.6.2, Secondary Containment is expanded using the guidance of the improved standard technical specifications (STS) for Westinghouse plants (NUREG-1431).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to LCO [limiting condition for operation] 3.6.1.2, LCO 3.6.6.1 and LCO 3.6.6.2 Action Statements, relocation of Surveillance Requirement 4.6.6.1.d.3 to Specification 3.6.6.2, changes to Bases Section 3/4.6.6.1, 3/4.6.6.2, and 3/4.6.6.3, and deletion of Definition 1.12 will resolve the conflict that currently exists between Specifications 3.6.6.1 and 3.6.6.2. Specifically, the requirement to establish and maintain a negative pressure in the secondary containment boundary included in Specification 3.6.6.1 belongs to Specification 3.6.6.2. In the event Secondary Containment operability is not maintained, the Action Statement for LCO 3.6.6.2 requires that Secondary Containment operability must be restored within 24 hours. Twenty-four hours is a reasonable completion time considering the limited leakage design of containment and the low probability of a DBA [design basis accident] occurring during this time period. Therefore, it is considered that there exists no loss of safety function. The proposed changes do not modify the LCO or surveillance acceptance criterion, nor do they change the frequency of the surveillances. The proposed changes do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions. Therefore, the structures, systems, or components will perform their intended function when called upon. The proposed changes do not affect the probability of any previously evaluated accident. Additionally, the proposed changes are consistent with the new, improved STS for Westinghouse plants (NUREG-1431).

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not make any physical or operational changes to existing plant structures, systems, or components. The proposed changes do not introduce any new failure modes. The proposed changes simply resolve a conflict which currently exists between Specifications 3.6.6.1 and 3.6.6.2. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not have any adverse impact on the accident analyses. Also, the proposed changes resolve a conflict which currently exists between Specifications 3.6.6.1 and 3.6.6.2. The structures, systems, or components covered under Specifications 3.6.6.1 and 3.6.6.2 will performed-[sic] their intended safety function when called upon.

Based on the above, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 20, 1995

Description of amendment request: The proposed amendment relocates the applicable requirements of Specification 3.6.3 for the main steam line isolation valves (MSIVs) to Specification 3.7.1.5, "Main Steam Line Isolation Valves." In addition, the Applicability section of Specification 3.7.1.5 is revised to indicate that Specification 3.7.1.5 is applicable in Mode 1 and in Modes 2, 3 and 4, except where all MSIVs are closed and deactivated (i.e., in Modes 2, 3, and 4, Specification 3.7.1.5 is applicable only if the MSIVs are open). Also, the Action Statement for the Limiting Condition for Operation (LCO) 3.7.1.5 has been revised using the guidance of the improved standard technical specifications (STS) for Westinghouse plants (NUREG-1431).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Applicability section, Action Statements, and Surveillance Requirements of Specification 3.7.1.5 and the proposed changes to Specification 3.6.3 preserve the assumptions in the existing safety analysis. The proposed changes to the Applicability Section of Specification 3.7.1.5 will require the MSIVs to be operable in Mode 1 and in Modes 2, 3, and 4, except when closed and deactivated. The closure of the MSIVs in Modes 2, 3, or 4 is acceptable because when they are closed, they are already performing their safety function. Since the MSIV closure time has not been changed, there is no adverse impact on the accidents previously evaluated.

The proposed changes do not involve any physical changes to the plant, and do not alter the way any structure, system, or component functions. Therefore, the proposed changes do not affect the probability of any previously evaluated accident. Additionally, the proposed changes are consistent with the new, improved STS for Westinghouse plants (NUREG-1431).

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not make any physical changes to existing plant structures, systems, or components. When the MSIVs are closed and deactivated, they are already in the safe position; therefore, the proposed changes do not introduce a new failure mode. Additionally, the MSIV closure time (i.e., surveillance acceptance criterion) is not changed. The purpose of the surveillance is to ensure that the MSIVs can perform their safety function, and this requirement is preserved.

Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not revise the closure time of the MSIVs. This provides assurance that the MSIVs will perform their design safety function to mitigate the consequences of an accident. In addition, when they are closed in Modes 2, 3, and 4, they are already performing their safety function. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: June 26, 1995

Description of amendment request: This proposed amendment would revise Technical Specification 2.3 to extend the allowed outage time (AOT) from 24 hours to 7 days for an inoperable low-pressure safety injection pump. This amendment request is a collaborative effort of participating Combustion Engineering Owners Group members and is based on an integrated assessment of plant operations and deterministic and probabilistic analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The low pressure safety injection (LPSI) system is part of the emergency core cooling system. Inoperable LPSI components are not accident initiators in any accident previously evaluated. Therefore, these changes do not involve an increase in the probability of an accident previously evaluated.

The LPSI system is primarily designed to mitigate the consequences of a large loss of coolant accident (LOCA). These proposed changes do not affect any of the assumptions in the deterministic LOCA analysis. Hence the consequences of accidents previously evaluated do not change.

In order to fully evaluate the LPSI allowed outage time (AOT) extension, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD-995, "Combustion Engineering Owners Group Joint Applications Report for Low Pressure Safety Injection System AOT Extension."

The CEOG report reviewed the risk factors that are impacted by extending the AOT for a single LPSI pump from 24 hours to seven (7) days, and demonstrates that the increase in risk is negligible. In order to perform a more complete assessment of the overall change in risk, an accounting for avoided risks associated with reducing power and going to hot or cold shutdown was also considered. This "transition risk" is important in understanding the trade-off between the risk of shutting down the plant compared with restoring a LPSI pump to operability while at power.

In assessing overall plant risk, the risk avoided based on LPSI system maintenance while in cold shutdown must also be considered. Every time the plant is placed in cold shutdown, the LPSI system is required for decay heat removal when in the shutdown cooling mode of operation. Maintenance performed on the LPSI system during shutdown cooling operations may add to the risk of a loss of shutdown cooling event. Therefore, performing LPSI system maintenance with the unit on-line, when the LPSI system is not normally in demand, represents a decrease in shutdown risk.

The CE study concluded that the change in core damage frequency due to increasing the LPSI AOT from 24 hours to seven (7) days is insignificant. Additionally, when the reduction in transition and shutdown risks are considered, it can be shown that there is an overall reduction in plant risk. Thus, it is the conclusion of the study that the overall plant impact will either be risk beneficial or risk neutral.

Therefore, the proposed changes would not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

These proposed changes do not affect the limiting conditions for operation or their bases used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate this change. These evaluations demonstrate that the changes are either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD-995. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: James R. Curtiss, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: June 27, 1995

Description of amendment request: This proposed amendment would revise Technical Specification 2.2 on the chemical and volume control system to reformat, clarify the requirements, and be more consistent with Combustion Engineering Standard Technical Specifications (STS) as presented in NUREG-0212, Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes incorporate required actions, restrictions, and surveillance requirements for the Chemical and Volume Control System (CVCS) similar to Combustion Engineering Standard Technical Specifications (NUREG-0212 Revision 2).

Technical Specification (TS) 2.2(1) specifies the requirements for borated water sources and flow paths when the reactor is subcritical and fuel is in the reactor. In order for a flow path to be operable, a charging or high pressure safety injection pump is required to be operable to inject the boric acid solution into the Reactor Coolant System. Currently this specification does not state any operability requirements for boric acid transfer pumps, charging pumps or high pressure safety injection pumps. In addition, this specification does not state any required actions to be taken if the borated water source or flow path is not operable.

Therefore, the proposed changes incorporate requirements for the CVCS during shutdown into separate Limiting Conditions for Operations (LCOs) that will address the requirements for borated water sources, boric acid flow paths, charging pumps, and boric acid transfer pumps.

The proposed changes delete operability and surveillance requirements for level instrumentation on the boric acid storage tanks. Level instrumentation by itself does not fulfill a safety function. The proposed changes will still require verification of tank level.

Additionally, level instrumentation on the boric acid storage tanks does not meet any of the four criteria for inclusion into Technical Specifications as presented in the Final Policy Statement on Technical Specifications Improvements. This instrumentation is not installed instrumentation used to detect a significant degradation of the RCS boundary, a design feature or operating restriction that is an initial condition of a Design Basis Accident, a component that is part of the primary success path or actuates to mitigate a DBA, nor is it a component that has been shown to be significant to public health and safety. Therefore, testing and maintenance of the level instrumentation will be controlled outside of the TS.

TS 2.2(3) specifies the Modifications of Minimum Requirements that are allowed during Power Operation. This specification is inconsistent with TS 2.2(2) which states the minimum requirements and is incomplete as it does not address components during Modes 3, 4, and 5. The proposed changes incorporates consistent allowed outage times for the various components, and additional required actions for component inoperability during Modes 4 and 5 when fuel is in the reactor.

The proposed changes incorporate additional operability requirements for the CVCS and required actions to be taken for CVCS component inoperability during Modes 4 and 5 when fuel is in the reactor. The proposed changes delete inconsistencies and clarify operability requirements for the CVCS whenever the reactor coolant temperature (T_{cold}) is greater than or equal to 210 degrees F, and ensures that operation of the system is consistent with its design bases. The proposed changes also revise the allowed outage time for CVCS components from 24 hours to 72 hours based on Standard Technical Specifications. This change is insignificant based on the FCS plant specific probabilistic risk assessment. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of this proposed change. No new modes of operation are proposed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes incorporate additional operability requirements, delete inconsistencies, and clarify operability requirements for the CVCS to ensure that operation of the system is consistent with its design bases. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: James R. Curtiss, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: July 11, 1995

Description of amendment request: The proposed amendment would allow up to 24 hours to restore Safety Injection Tank (SIT) operability if the SIT is inoperable due to level and/or pressure outside prescribed limits or if the associated isolation valve is in other than the full open position. The proposed change would also allow up to 72 hours to restore SIT operability if the SIT is inoperable due to boron concentration outside prescribed limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety injection tanks (SITs) are passive components in the emergency core cooling system. The SITs are not an accident initiator in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

SITs were designed to mitigate the consequences of a loss of coolant accident (LOCA). These proposed changes do not affect any of the assumptions used in deterministic LOCA analysis. Hence the consequences of accidents previously evaluated do not change.

In order to fully evaluate the affect of the SIT allowable outage time (AOT) extension, probabilistic safety analysis (PSA) methods were utilized. The results of these analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated. These analyses are detailed in CE NPSD-994, "Combustion Engineering Owners Group Joint Applications Report for Safety Injection Tank AOT/STI Extension."

The AOT extension based upon boron concentration outside the prescribed limits

does not involve a significant increase in the consequences of an accident as evaluated and approved by the NRC in NUREG-1432, "Standard Technical Specifications for Combustion Engineering Plants." This proposed change is applicable to FCS.

Therefore, the proposed changes would not increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of these proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the limiting conditions for operation or their bases that are used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrated that the changes are either risk neutral or risk beneficial. These evaluations are detailed in CE NPSD-994. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: James R. Curtiss, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: June 23, 1995

Description of amendment request: This Technical Specifications (TS) Change Request involves a one-time (i.e., temporary) change affecting the Allowed Outage Time (AOT) for the Emergency Service Water (ESW) System; Residual Heat Removal Service Water (RHRSW) System; the Suppression Pool Cooling, the Suppression Pool Spray, and Low Pressure Coolant Injection (LPCI) modes of the Residual Heat Removal (RHR) System; and Core Spray System to be extended from 3 and 7 days to 14 days during the Limerick Generating Station (LGS), Unit 1, sixth refueling outage scheduled to begin January, 1996. This proposed extended AOT will allow adequate time to install isolation valves and cross-ties on the ESW and RHRSW Systems to facilitate future inspections or maintenance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed one-time TS changes will not increase the probability of an accident since it will only extend the time period that the 'A' ESW and RHRSW loops and the affected equipment can be out-of-service. The extension of the time duration that certain equipment is out-of-service has no direct physical impact on the plant. The proposed inoperable systems are normally in a standby mode while the unit is in OPCON 1 or 2 and are not directly supporting plant operation. Therefore, they can have no impact on the plant that would make an accident more likely to occur due to their inoperability.

During transients or events which require these systems to be operating, there is sufficient capacity in the operable loops to support plant operation or shutdown, in-so-much that failures that are accident initiators will not occur more frequently than previously postulated.

In addition, the consequences of an accident previously evaluated in the SAR [Safety Analysis Report] will not be increased. With the 'A' loops of ESW and RHRSW inoperable, a known quantity of equipment is either inoperable or the equipment is not fully capable of fulfilling its design function under all design conditions due to certain support systems not being operable. Based on the support functions of the ESW and RHRSW systems, a review of the plant was performed to determine the impacts that the inoperable ESW and RHRSW 'A' loops would have on other systems. The impacts were identified for each system, as discussed in the preceding Safety Assessment, and it was determined whether there were any adverse affects on the systems. It was then determined how the adverse affects would impact each system's design basis and overall plant safety. The consequences of any postulated accidents occurring on Unit 2 during this AOT extension was found to be bounded by the previous analyses as described in the SAR.

The existing AOTs limit the amount of time that the plant can operate with certain equipment inoperable, where single failure criteria is still met. The minimum equipment required to mitigate the consequences of an accident and/or safely shutdown the plant will be operable or the plant will be shutdown. Therefore, by extending certain AOTs and extending the assumptions concerning the combinations of events and single failures for the longer duration of each extended AOT, we conclude, based on the evaluations above, that at least the minimum equipment required to mitigate the consequences of an accident and/or safely shutdown the plant will still be operable during the extended AOT. Therefore, the consequences of an accident previously evaluated in the SAR will not be increased.

Therefore, these proposed one-time TS changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed one-time TS changes will not create the possibility of a different type of accident since it will only extend the time period that the 'A' ESW and RHRSW loops and the affected equipment can be out-of-service. The extension of the time duration that certain equipment is out-of-service has no direct physical impact on the plant and does not create any new accident initiators. The systems involved are either accident mitigation systems, safe shutdown systems or systems that support plant operation. All of the possible impacts that the inoperable equipment may have on its supported systems were previously analyzed in the SAR and are the basis for the present TS ACTION statements and AOTs. The impact of inoperable support systems for a given time duration was previously evaluated and any accident initiators created by the inoperable systems was evaluated. The lengthening of the time duration does not create any additional accident initiators for the plant.

Therefore, the proposed one-time TS changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The ESW and RHRSW systems and their supported systems are designed with sufficient independence and redundancy such that the removal from service of a component/subsystem will not prevent the systems from performing their required safety functions. Since removal of an ESW and a RHRSW loop from service with one unit in operation and the other unit in a refueling outage is allowed by the current Technical Specifications, then the concern is the reduced margin of safety incurred by extending the affected AOTs.

The present ESW and RHRSW AOT limits were set to ensure that sufficient safety-related equipment is available for response to all accident conditions and that sufficient decay heat removal capability is available for a LOCA/LOOP [Loss-of-Coolant Accident/ Loss-of-Offsite Power] on one unit and simultaneous safe shutdown of the other unit. A slight reduction in the margin of safety is incurred during the proposed extended AOT due to the increased risk that an event could occur in a fourteen day period versus a three or seven day period. This increased risk is judged to be minimal due to the low probability of an event occurring during the extended AOT and based on the following discussion of minimum ECCS [Emergency Core Cooling System]/decay heat removal requirements.

The reduction in the margin of safety is not significant since the remaining operable ECCS equipment is adequate to mitigate the consequences of any accident. This conclusion is based on the information contained in the UFSAR [Updated Final SAR] reference documents NEDO-24708A and NEDC-30936-A. These documents describe the minimum requirements to successfully terminate a transient or LOCA initiating event (with scram), assuming multiple failures with realistic conditions were used to justify certain TS AOTs per UFSAR sections 6.3.1.1.2.o and 6.3.3.1. The minimum requirements for short term response to an accident would be either one LPCI pump or one Core Spray loop in conjunction with ADS [Automatic Depressurization System], which would be adequate to re-flood the vessel and maintain core cooling sufficient to preclude fuel damage. For long term response, the minimum requirements would be one loop of RHR for decay heat removal, along with another low pressure ECCS loop. These minimum requirements will be met since implementation of the proposed TS changes will require the operability of HPCI [High Pressure Coolant Injection], ADS, two LPCI subsystems (or one LPCI subsystem and one RHR subsystem during decay heat removal) and one Core Spray subsystem be maintained during the 14 day period. A Special Procedure will be written to ensure the operability of specified components and that other appropriate compensatory measures are implemented.

Compensatory measures will be taken prior to or during the proposed extended AOT for those fire regions that rely on one or more safe shutdown methods which would all be unable to safely shutdown the plant with inoperable loops of the ESW and RHRSW systems or the inoperable systems that ESW or RHRSW support. These compensatory measures will offset the increased risk of a fire event occurring in the vulnerable areas, during the fourteen day versus three day AOT period. Therefore, the proposed extended AOT does not adversely affect the approved level of fire protection as described in UFSAR Appendix 9A (Fire Protection Evaluation Report).

A Special Procedure will be written to administratively control the requirement to maintain the operability of specified components and implementation of any appropriate compensatory measures which are deemed necessary during the proposed AOT. In addition, operations personnel are fully qualified by normal periodic training to respond to and mitigate a Design Basis Accident, including the actions needed to ensure decay heat removal while LGS Unit 1 and Unit 2 are in the operational configurations described within this submittal. Accordingly, procedures are already in place that cover safe plant shutdown and decay heat removal for situations applicable to those in the proposed AOTs.

A Probabilistic Safety Assessment (PSA) Study was performed for an ESW and RHRSW loop being out-of-service for 14 days on an operating unit. The Core Damage Frequency (CDF) increased by 3.14×10^{-6}, from 5.11×10^{-5} /reactor-year to 8.25×10^{-6}/ reactor-year. In absolute terms, this is not a significant increase in risk. In addition, the modifications to be installed during this proposed extended AOT will allow for future maintenance and inspections to be performed on the ESW and RHRSW loops without removing an entire loop from service, which will reduce risk in the future. For example, if the ESW loop unavailability, due to testing or maintenance, is reduced by half, the CDF will decrease by more than four percent. It will also minimize the potential need for future AOT extensions on these systems.

Therefore, the implementation of the proposed one-time TS changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: John F Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 29, 1994

Description of amendment request: The proposed Technical Specification changes represent revisions to Sections 3/4.3.7.2 "Seismic Monitoring Instrumentation" and 3/4.3.7.3 "Meteorological Instrumentation." The proposed revisions remove the requirements from the Technical Specifications and relocates the appropriate descriptive information and testing requirements to the Hope Creek Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the operation of any systems or components, and no changes to existing structures. Neither the relocation of the seismic/meteorological specifications to the UFSAR nor the elimination of the Special Report requirements represent changes that affect plant safety or alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are procedural in nature concerning the operability and surveillance of instrumentation that are not safety related and will not impact the operation of any plant safety related component or equipment. Therefore, these changes will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

In accordance with the guidance provided by the NRC regarding the improvement of Technical Specifications, SECY-93-067, the proposed changes relocate the seismic and meteorological instrumentation portions of the Technical Specifications, with the exception of the Special Report requirements, to the UFSAR. These instruments are not safety related and do not have any associated safety margins which could be affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 23, 1994

Description of amendment request: The proposed changes to the Technical Specifications (TSs) would revise TS 4.8.2.1, "Electrical Power Systems D. C. Sources, Surveillance Requirements," and associated Bases Section B 3/4.8.2. The proposed changes would (1) increase the terminal voltage acceptance criteria for the battery discharge test from 106 to 108 VDC, (2) delete a "one time only" test that is no longer applicable, (3) delete the battery load profile from the TS, and (4) revise TS Table 4.8.2.1-1, "Battery Surveillance Requirements," to agree more closely

with the BWR4 Standard Technical Specification format.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

....will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes restore the conservatism to the battery voltage requirements by raising the minimum acceptable terminal voltage for the 125 VDC system in order to support proper operation of the connected loads. This change will cause no change in the probability of any accident and will, by providing increased support for connected loads, provide assurance [that] the consequences of previously evaluated accidents remain within limits. Removal of the load profile table does not affect the surveillance test loading which is contained in the station procedures. The (*) footnote deletion is purely editorial and has no safety bearing. Table changes agree with the format and wording of the improved BWR4 Standard Technical Specifications.

2....will not create the possibility of a new or different kind of accident from any previously evaluated.

The revision of the battery sizing calculations did not change the design base requirement to supply the designed load for a duty cycle of 4-hours. The proposed change to the minimum acceptable battery terminal voltage for the 125 VDC system ensures proper voltages at the battery loads. No other changes to the physical plant or to the manner in which it is operated are caused by the proposed amendment; therefore, there is no new or different kind of accident created by this change.

3....will not involve a significant reduction in a margin of safety.

The revision of the battery sizing calculations did not change the design base requirement to supply the designed load for a duty cycle of 4-hours; however, battery capacity sizing parameter of end cell voltage was changed to a more conservative value to account for minimum load voltage requirements. Load profiles for these batteries were slightly modified to incorporate more precise yet conservative load current values. These batteries were evaluated using a 25% additional capacity margin for aging as required by IEEE-450. In addition, the batteries have a design margin of 5 to 10% for load growth and/or less than optimum operating condition of the battery; thereby, maintaining safety margins. Additionally, changes are comparable to the format and ACTIONS of the improved BWR4 STS. Permitting 31 days to restore a battery to within CATEGORY A and/or B limits per the improved BWR4 STS does not involve a reduction in any margin of safety since the battery, in Category C, remains operable, as discussed in the BASES.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 28, 1994

Description of amendment request: The proposed Technical Specification (TS) revisions provide as follows: (1) The setpoints and allowable values for the Average Power Range Monitor (APRM) flow-biased upscale scram/control rod block would be modified to improve operating margin in the Extended Load Line Limit Analysis (ELLLA) region; (2) The proposed changes to the Rod Block Monitor (RBM) trip function would transfer control of the setpoint and allowable value for the RBM - upscale rod block to the Core Operating Limits Report (COLR); (3) For the Reactor Coolant System (RCS) recirculation flow upscale trip function, the proposed changes would revise the trip setpoint and allowable value to reflect 105% of rated core flow.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

A. Changes to APRM Flow-Biased Scram/Control Rod Block

The proposed changes to the Average Power Range Monitor (APRM) flow-biased scram/control rod block setpoints and allowable values were evaluated using NRC approved procedures and methods. The results of this evaluation are demonstrated in NEDC-31487. Application of this change in APRM flow-biased scram/control rod block setpoints and allowable values to Reload 5/Cycle 6 is confirmed in General Electric Document No. 23A7219.

Analysis presented in NEDC-31487 demonstrate that performance in the ELLLA region is within design limits for overpressure protection, stability, loss-of-coolant, containment, reactor internals, flow-induced vibration, and reactor internal pressure difference. Impact of ELLLA operation on anticipated transients without scram is evaluated in Section 7.6.1.7.2 of the UFSAR. Application of ELLLA region extension to Reload 5/Cycle 6 has been confirmed in GE Document No. 23A7219.

Because operation with the APRM flow-biased scram/control rod block setpoints and allowable values is within the bases reviewed and approved by the NRC in the UFSAR [Updated Final Safety Analysis Report], this change does not significantly increase the possibility or consequences of an accident previously evaluated.

B. Transfer of RBM Setpoint Control to the COLR

The proposed changes would transfer control of the setpoint and allowable value for the rod block monitor (RBM) - Upscale rod block to the Core Operating Limits Report (COLR). Technical Specification 6.9.1.9, "Core Operating Limits Report," requires that the analytical methods used to determine core operating limits be those previously reviewed and approved by the NRC and that the core operating limits be determined such that all applicable limits of the safety analysis are met.

The setpoint and allowable value incorporate a controlling value which will be specified in the COLR and noted as such by reference in the Technical Specifications. Therefore, the setpoint and allowable value would continue to be controlled in a manner that would ensure that safety analysis limits are met and implementation of the proposed changes would not reduce the level of assurance provided by the existing Technical Specifications. Based upon the above information, we conclude that implementation of the proposed change would not significantly increase the probability or consequences of an accident previously evaluated.

C. RCS Recirculation Flow Revisions

The original analysis used to support operation up to 105% of rated core flow is contained in NEDC-31487. NEDC-31487 addresses the full range of transient and accident events associated with operation up to 105% of rated core flow. The affects of operation with the revised RCS recirculation flow upscale trip setpoint and allowable value are bounded by the analysis presented in NEDC-31487.

In addition, cycle specific analysis performed for Reload 5/Cycle 6, have incorporated the assumption of operation up to 105% of rated core flow and have confirmed that operation is within allowable design limits.

Based on the above information, we conclude that the proposed change would not significantly increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated.

A. Changes to APRM Flow-Biased Scram/Control Rod Block

The proposed changes to the APRM flow-biased scram/control rod block setpoints and allowable values would not create any new operating modes, accident scenarios, equipment failure modes, or fission product release paths. Based upon the above information, we conclude that the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

B. Transfer of RBM Setpoint Control to the COLR

The proposed transfer of control of the RBM setpoint and allowable value to the COLR would not alter the function of the RBM system nor involve any type of plant modification. In addition, operation with the revised setpoint and allowable value would not create any new operating modes, accident scenarios, equipment failure modes, or fission product release paths. Based upon the above information, we conclude that the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. RCS Recirculation Flow Revisions

The proposed changes would not alter the function of the RCS recirculation flow upscale trip function nor involve any type of plant modification. In addition, operation with the revised RCS recirculation flow upscale trip setpoint and allowable value would not create any new operating modes, accident scenarios, equipment failure modes, or fission product release paths. Based upon the above information, we conclude that the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

A. Changes to APRM Flow-Biased Scram/Control Rod Block

The Bases for Hope Creek Technical Specification 2.2.1 state that the APRM setpoints were selected to provide adequate margin for the safety limits while allowing operating margins that reduce the possibility of unnecessary shutdowns.

The proposed changes would ensure that these objectives are met. The Minimum Critical Power Ratio (MCPR) operating limit specified in the Hope Creek COLR was determined using the APRM flow-biased scram/control rod block setpoints and allowable values proposed in this amendment application and has been chosen to ensure that the cladding safety limit would not be violated during normal plant operations and anticipated transients. Since the operating limit MCPR is chosen such that the cladding safety limit is maintained, adequate margins for the safety limits are ensured. The proposed changes would also serve to ensure that the objective of avoiding unnecessary shutdowns is met by furnishing greater margin between the operating envelope and the setpoint at lower flows.

Based on the above information, we conclude that the proposed changes would not significantly reduce a margin of safety.

B. Transfer of RBM Setpoint Control to the COLR

The proposed transfer of control of the RBM setpoint and allowable value to the COLR would not alter the function of the RBM system nor involve any type of plant modification. In addition, operation with the revised setpoint and allowable value would not create any new operating modes, accident scenarios, equipment failure modes, or fission product release paths. Based upon the above information, we conclude that the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. RCS Recirculation Flow Revisions

The proposed changes would not alter the function of the RCS recirculation flow upscale trip function nor involve any type of plant modification. In addition, operation with the revised RCS recirculation flow upscale trip setpoint and allowable value would not create any new operating modes, accident scenarios, equipment failure modes, or fission product release paths. Based upon the above information, we conclude that the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

A. Changes to APRM Flow-Biased Scram/Control Rod Block

The Bases for Hope Creek Technical Specification 2.2.1 state that the APRM setpoints were selected to provide adequate margin for the safety limits while allowing operating margins that reduce the possibility of unnecessary shutdowns.

The proposed changes would ensure that these objectives are met. The Minimum Critical Power Ratio (MCPR) operating limit specified in the Hope Creek COLR was determined using the APRM flow-biased scram/control rod block setpoints and allowable values proposed in this amendment application and has been chosen to ensure that the cladding safety limit would not be violated during normal plant operations and anticipated transients. Since the operating limit MCPR is chosen such that the cladding safety limit is maintained, adequate margins for the safety limits are ensured. The proposed changes would also serve to ensure that the objective of avoiding unnecessary shutdowns is met by furnishing greater margin between the operating envelope and the setpoint at lower flows.

Based on the above information, we conclude that the proposed changes would not significantly reduce a margin of safety.

B. Transfer of RBM Setpoint Control to the COLR

The proposed transfer of control of the RBM setpoint and allowable value to the COLR would not affect the methodology for establishing the core operating limits. The setpoint and allowable value are modified to incorporate a controlling value which will be included in the COLR and indicated as such by reference in the Technical Specifications. Therefore, the setpoint and allowable value would continue to be controlled in a manner that would ensure that safety analysis limits are met. We conclude that implementation of the proposed changes would not significantly reduce a margin of safety.

C. RCS Recirculation Flow Revisions

The HCGS was licensed to operate up to 105% of rated core flow as part of Amendment 15. The analysis used to justify operation up to 105% of rated core flow is contained in NEDC-31487. NEDC-31487 addresses the full range of transient and accident events associated with operation up to 105% of rated core flow. The affects of operation with the revised RCS recirculation flow upscale trip setpoint and allowable value are bounded by the analysis presented in NEDC-31487.

In addition, cycle specific analysis performed for Reload 5/Cycle 6, have incorporated the assumptions of operation up to 105% of rated core flow and have confirmed that operation is within allowable design limits.

Based on the above information, we conclude that the proposed changes would not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library,190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: January 11, 1995

Description of amendment request: The proposed Technical Specification (TS) revision provides changes to TS Section 3/4.3.8 "Turbine Overspeed Protection System." The proposed revision removes these requirements from the TS and relocates the Bases to the Hope Creek Updated Final Safety Analysis Report (UFSAR) and the Surveillance Requirements to the applicable surveillance procedures. The Limiting Conditions for Operation (LCOs) would be eliminated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to existing structures, and no changes to the operation of any systems or components. Specifically, the deletion of the LCO's by this submittal will not alter established turbine overspeed protection system operation. Procedural guidance will be provided in the event of an inoperable control, stop, or intermediate valve to place the system in a safe condition. The relocation of this specification to the UFSAR and surveillance procedures will continue to ensure that the probability of unacceptable damage to safety-related structures, systems, and components from turbine missiles remains acceptably low. Relocation of this specification's Bases and Surveillance Requirements to the UFSAR and surveillance procedures, respectively, and the deletion of the LCO's represents changes that do not affect plant safety and do not alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are procedural in nature concerning the location of the descriptive information and surveillance requirements for the turbine overspeed protection system. Removing these specifications from the Technical Specifications and placing them in the UFSAR and surveillance procedures will not alter the operation of the turbine overspeed protection system or its ability to perform its intended function. Procedural guidance will be provided to assist in placing the system in a safe condition while maintenance and testing of this system will continue in accordance with the turbine manufacturers recommendations taking into consideration plant operating experience and ASME guidance. Therefore, these changes will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes relocate the Turbine Overspeed Protection System portion of the Technical Specifications to the UFSAR and surveillance procedures in accordance with guidance provided by the NRC Final Policy Statement regarding the improvement of Technical Specifications. The requirements that will reside in the UFSAR for the turbine overspeed protection system will ensure that the system remains capable of protecting against excessive turbine overspeed. Therefore, the proposed changes will not involve a significant reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: January 20, 1995

Description of amendment request: The proposed Technical Specification (TS) revision represents changes to TS Section 3/4.11.2.6 "Explosive Gas Mixture," TS Table 3.3.7.11-1 "Radioactive Gaseous Effluent Monitoring Instrumentation," and TS Table 4.3.7.11-1 "Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements." The proposed revision would remove these TS from the Technical Specifications and relocate the Bases to the Hope Creek Updated Final Safety Analysis Report (UFSAR) and the Surveillance Requirements to the applicable surveillance procedures. The Limiting Conditions for Operation (LCOs) would be eliminated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the operation of any systems or components, and no changes to existing structures. The relocation of this specification to the UFSAR and surveillance procedures will continue to ensure that the entrainment of hydrogen in the main condenser is monitored and controlled. Relocation of this specification's Bases and Surveillance Requirements to the UFSAR and surveillance procedures, respectively, and the deletion of the LCO's represent changes that do not affect plant safety and do not alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are procedural in nature concerning the location of the descriptive information and surveillance requirements for the explosive gas mixture monitoring instrumentation. Removing these specifications from the Technical Specifications and placing them in the UFSAR and surveillance procedures will not alter the operation of the explosive gas monitors or their ability to perform intended functions. Maintenance and testing of these monitors will continue based upon the manufacturers' recommendations taking into consideration plant operating experience. Therefore, these changes will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes relocate the Explosive Gas Mixture specifications from the Technical Specifications to the UFSAR and surveillance procedures in accordance with guidance provided by the NRC Final Policy Statement regarding the improvement of Technical Specifications. The requirements that will reside in the UFSAR and surveillance procedures for the explosive gas mixture monitoring instrumentation will ensure that the ability to determine main condenser hydrogen concentrations is properly maintained. Therefore, the proposed changes will not involve a significant reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: January 20, 1995

Description of amendment request: The proposed change to the Technical Specifications (TS) would revise TS 4.1.3.1.2.b, "Control Rods - Surveillance Requirement" to change the required action to be taken when a control rod becomes immovable due to excessive friction or mechanical interference from "at least once per" 24 hours to "within" 24 hours. The other control rods would be tested within 24 hours and every 7 days thereafter, as opposed to the current requirement of testing every 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves no hardware changes, no changes to the operation of any systems or components, and no changes to existing structures. The revision of the control rod movement test frequency represents a change that does not affect plant safety and does not alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change is procedural in nature concerning the frequency of control rod movement tests for all withdrawn control rods after a control rod has been determined to be immovable due to excessive friction or mechanical interference. The methodology for determining additional immovable control rods remain unchanged. The proposed change while slightly increasing the possibility of an undetected immovable control rod will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

The proposed change is in accordance with recommendations provided by the NRC regarding the improvement of Technical Specifications. This change will result in the perpetuation of current safety margins while reducing regulatory burden and decreasing equipment degradation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 1, 1995

Description of amendment request: The proposed change would revise the Technical Specifications to make them more restrictive regarding control rod drive (CRD) scram time testing. CRD scram time testing would be required following maintenance prior to considering the CRD operable, and could be performed at any reactor

pressure. Additional testing would be required when reactor coolant pressure is greater than or equal to 950 psig and prior to 40 percent rated thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems and components are maintained consistent with the safety analysis and licensing basis. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed change does impose different requirements. However, these changes are consistent with assumptions made in the safety analysis and licensing basis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The imposition of more restrictive requirements either has no impact on or increase in the margin of plant safety. As provided in the discussion of the change, each change in this category is by definition providing additional restrictions to enhance plant safety. The change maintains requirements within safety analyses and licensing bases. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: April 10, 1995

Description of amendment request: The proposed amendment would revise the following Technical Specifications (TS) and their associated Bases: TS 3/4.7.1.2, "Auxiliary Feedwater System," to clarify Action "a" by inserting "or both" steam generators" and to remove references to pressure indicators and specific pressure readings and adding performance based requirements; TS 3/4.7.1.3, "Condensate Storage Tanks," to modify the Limiting Condition for Operation (LCO) to more closely conform to standard TS; and TS 3/4.7.1.7, "Motor Driven Feedwater Pump System," to consolidate the requirements of 2 current surveillance requirements and clarify the operability requirements when local manual valves are realigned for testing purposes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that asignificant hazards consideration does not exist because operation of the Davis-besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previous analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed. The proposed changes are clarifications and the incorporations of the guidance provided by NUREG-1430. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change the way the plant is operated and, no new or different failure modes have been defined for any plant system or component important to safety, nor has any limiting single failure been identified as a result of the proposed changes. No new or different types of failures or accident initiators are introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because the proposed changes are clarifications and the incorporations of the guidance provided by NUREG-1430, and continue to ensure the availability and capability of the Auxiliary Feedwater System, Service Water System and the Motor Driven Feedwater Pump System when called upon to perform their functions. The proposed changes will not adversely impact any safety analysis assumptions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 1, 1995

Description of amendment request: The proposed amendment would change the allowed outage time from 72 hours to 7 days for one unavailable emergency diesel generator (EDG) as detailed in Technical Specification 3.8.1.1, "AC Power Sources, Operating," and its associated Bases 3.0.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, in accordance with this change would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed change to increase the allowed outage time for one emergency diesel generator from three (3) days to seven (7) days does not make a change to any accident initiator, initiating condition or assumption. The accident previously evaluated in the DBNPS Updated Safety Analysis Report (USAR) Section 15.2.9, Loss of All AC Power to the Station

Auxiliaries (Station Blackout), is not affected by this proposed change. The proposed change does not involve a significant change to the plant design or operation, only to the allowed outage time, and based on a review of the available alternate A.C. power sources, the effect on probabilistic risk at power, the effect on shutdown risk, and maintenance planning and scheduling, this change has been determined to be acceptable.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not invalidate assumptions used in evaluating the radiological consequences of an accident, does not alter the source term or containment isolation and does not provide a new radiation release path or alter potential radiological releases.

2. Not create the possibility of a new or different kind of accident from any previously evaluated because the proposed change does not introduce a new or different accident initiator or introduce a new or different equipment failure mode or mechanism.

3. Not involve a significant reduction in the margin of safety because the proposed change does not significantly reduce the margin to safety which exists in the present Technical Specification action statements. The DBNPS USAR Section 15.2.9 evaluates the acceptability of the loss of all A.C. power to the station, including the loss of both EDGs, and the margin of safety in this analysis is not affected by the proposed change. in addition, since the issuance of the original DBNPS Operating License Technical Specifications Toledo Edison has installed a Station Blackout Diesel Generator (SBODG), comparable in continuous rating to the EDGs and capable of providing emergency A.C. power in the event all three offsite 345 kV transmission lines and the two EDGs are unavailable. This has positive effect on maintaining the margin to safety which exists in the Technical Specifications with a three day allowed outage time, which was established prior to installation of the SBODG.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 7, 1995

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.9.4, Refueling Operations - Containment Penetrations, and associated Bases 3/4.9.4, Containment Penetrations. The proposed changes include revising the Limiting Condition for Operation (LCO) 3.9.4.b to allow both doors of the containment personnel airlock to be open during core alterations or movement of irradiated fuel within the containment, provided that certain specified conditions are meet. Additional changes are proposed to revise or clarify TS LCO 3.9.4.c, TS Action 3.9.4.a, and TS Surveillance Requirement 4.9.4, and modify the Bases to reflect the requested changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Plant (DBNPS), Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no Updated Safety Analysis Report (USAR) accident initiators are affected by the proposed changes.

The proposed change to TS LCO 3.9.4.b would allow both doors of the containment personnel air lock to be open during core alterations or movement of irradiated fuel within the containment, provided that certain specified conditions are met. The containment personnel air lock is not an initiator to any accident. Whether the containment personnel air lock doors are open or closed during fuel movement and core alterations has no effect on the probability of any accident previously evaluated.

The proposed clarification of TS LCO 3.9.4.c, changing the term "outside atmosphere" to "atmosphere outside containment," and the proposed change to TS LCO 3.9.4.c.1, confirming that, in addition to a manual or automatic isolation valve, or a blind flange, equivalent means may be used to close a containment penetration, have no bearing on the probability of an accident previously evaluated.

The proposed changes to TS Action 3.9.4.a, TS Surveillance Requirement (SR) 4.9.4, and TS Bases 3/4.9.4 are administrative changes and have no bearing on the probability of an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate accident conditions or assumptions used in evaluating the radiological consequences of any accident.

he analysis results for a fuel handling accident inside containment, as presented in Section 15.4.7.3 of the DBNPS USAR, are well within the 10 CFR 100 guideline values. Since the analysis does not take credit for containment isolation, the status of the personnel air lock has no impact on the acceptability of the results. In the event of a fuel handling accident, release of radioactive material will continue to be minimized since the air lock door will remain capable of being closed. Further, the proposed change could significantly reduce the dose to workers in the containment in the event of a fuel handling accident by speeding the containment evacuation process.

Since an engineering evaluation described in proposed Bases 3/4.9.4 will ensure that a particular containment penetration closure technique is capable of restricting the release of radioactive material from a fuel handling accident, the proposed change to TS LCO 3.9.4.c.1, confirming that an equivalent means may be used to close a containment penetration, has no adverse effect on the consequences of an accident previously evaluated.

The proposed clarification of TS LCO 3.9.4.c, and the proposed changes to TS Action 3.9.4.a, TS SR 4.9.4, and TS Bases 3/4.9.4 are administrative changes and have no effect on the consequences of an accident previously evaluated.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because there are no new failure modes or mechanisms associated with the proposed changes, nor do the proposed changes involve any modification of plant equipment or changes in plant operational limits.

As described above, the analysis results for a fuel handling accident inside containment does not take credit for containment isolation. Thus the proposed change to TS LCO 3.9.4.b to allow both doors of the containment personnel air lock to be open during core alterations or movement of irradiated fuel within the containment could affect the release path for radioactive material released during a fuel handling accident, however no new or different kind of accident will result.

3. Not involve a significant reduction in the margin of safety.

The analysis results for a fuel handling accident inside containment, as presented in [Section 15.4.7.3 of] the DBNPS USAR, are well within the 10 CFR 100 guideline values. Since the analysis does not take credit for containment isolation, the status of the personnel air lock has no impact on the acceptability of the results.

The proposed change to TS LCO 3.9.4.c.1 regarding the use of equivalent means of containment penetration closure has no adverse impact on the margin of safety since an equivalent containment penetration closure technique will provide the same assurance of containment closure during core alterations or movement of irradiated fuel inside containment.

The various administrative changes and clarifications proposed will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: June 23, 1995

Description of amendment request: The proposed amendment would relocate Technical Specifications (TS) 3/4.3.3.3 - Seismic Instrumentation, TS 3/4.3.3.4 - Meteorological Instrumentation, and TS 3/4.4.11 - Reactor Coolant System Vents and associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previous analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed.

The proposed changes are deletions and relocations of specifications that do not meet the NRC Final Policy Statement [58 FR 39132, dated July 22, 1993] criteria for inclusion in TS. Furthermore, these relocations and deletions are consistent with the NRC guidance for TS provided by the "Improved Standard Technical Specifications for Babcock and Wilcox Plants," NUREG-1430, Revision 0. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change the way the plant is operated, and no new or different failure modes have been defined for any plant system or component important to safety, nor has any limiting single failure been identified as a result of the proposed changes. No new or different types of failures or accident initiators are introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because Seismic Instrumentation, Meteorological Instrumentation, and Reactor Coolant System Vents are not inputs in the calculation of any safety margin with regard to TS Safety Limits, Limiting Safety System Settings, other TS Limiting Conditions for Operation, or other previously defined margins for any structure, system, or component important to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: July 14, 1995

Description of amendment request: The proposed Technical Specifications (TS) changes would provide a two-hour allowed outage time (AOT) for one residual heat removal (RHR) pump to accommodate plant safety and emergency power systems surveillance testing and permit depressurizing safety injection (SI) accumulators in lieu of accumulator isolation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of the Surry Power Station in accordance with the proposed change will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Surveillance and testing requirements are necessary to assure that RHR and interfacing systems' reliability is maintained. Existing analyses demonstrate that adequate shutdown cooling will be maintained with one train of RHR Operable and in service. Analyses also demonstrate that alternate shutdown cooling modes remain available with adequate decay heat removal capability. Furthermore, the opposite train of RHR remains available while in the two hour surveillance AOT. The response time and operator actions required to place the available RHR train in service are consistent with similar operator response times and actions

required to place alternate shutdown cooling modes in service. The administrative controls and procedures in place assure adequate shutdown cooling capability is maintained as supported by existing analyses.

The existing safety analyses demonstrate that Reactor Coolant System [RCS] integrity will be maintained when SI accumulator pressure is below the pressurizer PORV [power operated relief valve] LTOPS [low temperature overpressure system] setpoint. Therefore, SI accumulator isolation is not required to ensure Reactor Coolant System integrity. With RCS temperature below the LTOPS enabling temperature, automatic actuation of the pressurizer PORVs or other TS specified relief paths ensure the assumed design basis reactor vessel beltline flaw will not propagate under design basis low temperature overpressurization accident conditions. System design and configuration adequately mitigate an LTOPS actuation due to an SI accumulator discharge with no negative consequences regarding RCS structural integrity or SBLOCA [small break loss-of-coolant accidents] concerns.

Therefore, the proposed Allowed Outage Time for an inoperable RHR loop and the ability to depressurize the SI accumulator in lieu of SI accumulator isolation do not increase the probability or consequence of any previously analyzed accidents.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed two hour AOT for one train of the RHR System will preclude the possibility of a Technical Specification violation for conditions where a train of RHR is out of service for surveillance testing. Calculations by Westinghouse with evaluations and supporting analyses performed by Virginia Power, confirm the adequacy of decay heat removal with one RHR train in service, and multiple alternate shutdown cooling modes remain available. There are no plant modifications required by this proposed TS change. Further, the proposed change does not invalidate any

component design criteria or the assumptions of the UFSAR [updated final safety analysis report] accident analyses. The RHR System is being operated in a manner consistent with the design basis and configuration of the system and is supported by existing analyses and procedural controls.

There are no new failure modes or mechanisms associated with the proposed change to allow the depressurizing of a SI accumulator to a pressure value below the LTOPS setpoint. The LTOPS enabling temperature remains unchanged. No operating limits or setpoints are added or deleted by the proposed change. Reactor Coolant System pressure relief paths are not affected.

Therefore, the possibility of a new or different kind of accident is not being created by the proposed Allowed Outage Time for an inoperable RHR loop and the ability to depressurize the SI accumulator in lieu of SI accumulator isolation.

(3) Involve a significant reduction in margin of safety.

The proposed Technical Specifications change does not involve a reduction in a margin of safety. The existing safety analyses demonstrate that adequate shutdown cooling will be maintained when a train of RHR is out of service for up to two hours for plant system surveillance testing, while the operable train of RHR is operating. Supporting analyses determined that the RHR System meets the design cooldown requirements for a reactor core rating of 2546 MWth [megawatt thermal] with either one or both trains of RHR in service. Additionally, an evaluation of the technical basis for shutdown operations for the proposed Surry core uprating to 2546 MWth determined that the administrative controls and Abnormal Procedures in place at Surry ensure adequate decay heat removal capability during shutdown conditions. The administrative controls and procedure revisions are supported by a detailed series of thermal-hydraulic calculations for various loss of RHR scenarios. There is no reduction in shutdown cooling capability due to the proposed TS change, and no reduction in the capability to mitigate a loss of decay heat removal event since the RHR train affected by the testing is available and can be restored in a comparable time period to that required to restore RHR to service in the event of loss of station power or loss of the operating train of RHR. Consequently, system design, plant configuration, and administrative controls remain available to adequately mitigate a loss of RHR event with a single train of RHR out of service for up to two hours during plant system surveillance testing. It may be concluded that there is no reduction in the margin of safety due to the proposed Technical Specification change.

Existing safety analyses also demonstrate that Reactor Coolant system integrity will be maintained in the event of an inadvertent SI accumulator discharge when SI accumulator pressure is below the pressurizer PORV LTOPS setpoint. Sufficient administrative controls are maintained to ensure LTOPS is "Enabled" and SI accumulators are isolated at the appropriate RCS conditions to minimize the possibility of challenging RCS integrity. Technical Specifications administrative controls that prevent inadvertent charging pump operation, maintain adequate relief paths, and restrict Steam Generator primary to secondary temperature differential remain in place. Consequently, the Technical Specifications change ensures that an inadvertent SI accumulator discharge cannot challenge RCS structural integrity during LTOPS conditions when SI accumulator pressure is below the pressurizer PORV LTOPS setpoint.

Therefore, the proposed Allowed Outage Time for an inoperable RHR loop and the ability to depressurize the SI accumulator in lieu of SI accumulator isolation does not reduce any margin of safety as defined in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: David B. Matthews

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 14, 1995, as supplemented by letter dated July 13, 1995.

Description of amendment request: This amendment request proposes to revise Technical Specification (TS) 3.2.3, "Nuclear Enthalpy Rise Hot Channel Factor," TS 6.9.1.9, "Core Operating Limits Report," and the associated Bases sections. The revisions are needed to incorporate changes associated with the planned implementation of advanced nuclear and core thermal-hydraulic design methodologies licensed from Westinghouse Electric Corporation for core reload design, starting with Cycle 9.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence and the consequences of an accident evaluated previously in the Updated Safety Analysis Report (USAR) are not increased due to the proposed technical specification changes. The Technical Specification changes being requested are to reflect revised calculational methods to be used for core reload design, starting with Cycle 9. There are no changes being made to any licensed design parameters from previous cycles. Thus, it is concluded that the probability and consequences of the accidents previously evaluated in the USAR are not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no new type of accident or malfunction being created. The proposed changes only provide revised analysis methodologies to support core reload design, starting with Cycle 9. The requested changes do not change the method and manner of plant operation. The safety design bases in the USAR have not been altered. Thus, the requested changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not change the plant configuration in a way that introduces a new potential hazard to the plant and do not involve a significant reduction in the margin of safety. The analyses and evaluations discussed in the safety evaluation (Attachment I) [Attached to Wolf Creek Nuclear Operating Corporation's letter number ET 95-0051, dated June 14, 1995] demonstrates that all applicable design criteria continue to be met for the changes. Therefore, it is concluded that the margin of safety, as described in the bases to any technical specification, is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 23, 1995

Description of amendment request: The amendment relates to Commonwealth Edison Company's (ComEd) request to reflect the merger between IIGEC, MidAmerican, Midwest Power Systems Inc., and Midwest Resources, Inc. By letter dated November 21, 1994, Iowa-Illinois Gas and Electric Company (IIGEC) requested approval, pursuant to Section 50.80 of Title 10 of the Code of Federal Regulations, of the transfer of its ownership share of 25 percent of Quad Cities Nuclear Power Station, Units 1 and 2, to MidAmerican Energy Company (MidAmerican).

Date of publication of individual notice in **Federal Register:** July 5, 1995 (60 FR 35054)

Expiration date of individual notice: August 4, 1995

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: March 31, 1995

Description of amendment request: The proposed amendment will delete Technical Specification (TS) Sections 1.38 and 1.39, "Definitions, Fuel Assembly Types," revise TS Sections 3/4.9.3, "Refueling Operations, Decay Time" and TS 3/4.9.14, "Refueling Operations, Spent Fuel Pool - Reactivity Condition," replace TS Sections 5.6.1.1, "Spent Fuel," and TS 5.6.3, "Capacity," and add a new TS Section 3/4.9.15, "Refueling Operations, Spent Fuel Pool Cooling." These changes would support a rerack of the spent fuel pool to expand the spent fuel pool's storage capacity from 1168 assemblies to 1480 assemblies so as to accommodate a full-core-discharge through the current validity date of the Haddam Neck operating license (2007).

Date of publication of individual notice in **Federal Register:** May 12, 1995 (60 FR 25746)

Expiration date of individual notice: June 12, 1995

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: June 14, 1995

Brief description of amendments: The amendments revise the requirement to perform an emergency diesel generator (EDG) automatic start and sequence loading test immediately following the 24 hour EDG endurance test.

Date of issuance: July 18, 1995

Effective date: July 18, 1995

Amendment Nos.: 166 and 154

Facility Operating License Nos. DPR-39 and DPR-48: The amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration determination: Yes (60 FR 34308). This notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 31, 1995, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendments, finding of exigent circumstances and final no significant hazards consideration determination is contained in a Safety Evaluation dated July 18, 1995.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 31, 1995

Brief description of amendments: The amendments revise Technical Specification section 3.9.4 to allow, under certain conditions, both containment personnel airlocks to be open during core alterations.

Date of issuance: July 12, 1995

Effective date: July 12, 1995

Amendment Nos.: 197 and 182

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29879)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station,Nemaha County, Nebraska

Date of amendment request: May 2, 1995

Brief description of amendment: The amendment revised Surveillance Requirement 4.7.A.2.f.1 to allow a one-time extension for the performance of Type B local leak rate testing of the drywell head and manport from July 17, 1995, until startup from Refueling Outage 16, scheduled to commence on October 13, 1995.

Date of issuance: July 11, 1995

Effective date: July 11, 1995

Amendment No.: 170

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29879)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 1995No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, NE 68305.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 10, 1995

Brief description of amendment: The amendment revises the Technical Specifications to delete the power range negative flux trip from Tables 2.2-1, 3.3-1, and 4.3-1, and delete the associated Bases Section 2.0.

Date of issuance: July 11, 1995

Effective date: As of the date of issuance to be implemented within30 days.

Amendment No.: 116

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 1, 1995 (60 FR 11135)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, MillstoneNuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 29, 1995

Brief description of amendment: The amendment revises Technical Specification 3.10.5 to allow more than one control bank to be fully withdrawn from the core simultaneously in order to conduct rod drop time response testing.

Date of issuance: July 11, 1995

Effective date: As of the date of issuance to be implemented within60 days.

Amendment No.: 117

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29880) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northern States Power Company, Docket No. 50-263, Monticello NuclearGenerating Plant, Wright County, Minnesota

Date of application for amendment: February 12, 1993, as supplemented by letters dated March 22, 1993, and August 25, 1994

Brief description of amendment: The amendment increases the minimum core spray pump flow to more conservatively account for emergency core cooling systems bypass leakage paths. The amendment also makes various typographical, editorial and administrative corrections and changes.

Date of issuance: July 12, 1995

Effective date: July 12, 1995

Amendment No.: 93

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41508). The August 25, 1994 letter provided clarifying information within the scope of the original submittal and did not change the staff's initial proposed no significant hazards considerations determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: November 11, 1994, as supplemented by letters dated April 7, 1995, and June 26, 1995

Brief description of amendment: The amendment implements administrative changes to TS 5.2 and 5.5. These changes reflect organizational changes in OPPD senior management, delete specific titles of personnel on the Plant Review Committee (PRC), revise the makeup of the PRC quorum, revise the membership of the Senior Audit and Review Committee (SARC), delete SARC audit frequencies and add minor clarifications to the descriptions of SARC reviews and audits.

Date of issuance: July 21, 1995

Effective date: July 21, 1995

Amendment No.: 168

Facility Operating License No. DPR-40. Amendment revised the TechnicalSpecifications.

Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65819). The April 7, 1995, and June 26, 1995, letters provided clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: March 1, 1995

Brief description of amendment: The amendment revises TS 2.5, 2.8, 2.11, 3.2, and 3.10 and relocates administrative controls for the emergency and security plans from TS 5.5 and 5.8 to the plans. The relocation is in accordance with Generic Letter (GL) 93-07, "Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans."

Date of issuance: July 21, 1995

Effective date: July 21, 1995

Amendment No.: 169

Facility Operating License No. DPR-40: The amendment revised the TechnicalSpecifications.

Date of initial notice in **Federal Register:** April 12, 1995 (60 FR 18627) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pacific Gas and Electric Company, Docket No. 50-133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: April 10, 1995

Brief description of amendment: This amendment revised License No. DPR-7, to permit the provisions of 10 CFR 50.59 to be applied with respect to changes to the facility or procedures described in the Decommissioning Plan or changes to the Decommissioning Plan, and the conduct of tests or experiments not described in the Decommissioning Plan.

Date of issuance: July 7, 1995

Effective date: This license amendment is effective as of the date of its issuance and must be fully implemented no later than 30 days from the date of issuance.

Amendment No.: 29Facility License No. DPR-7: This amendment revised License No. DPR-7

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29885)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Humboldt County Library, 636 F Street, Eureka, California 95501.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: November 21, 1994

Brief description of amendment: This amendment changes the technical specifications (TS) by allowing the third Type A Containment Integrated Leakage Rate Test in the second 10-year service period to be conducted during refueling outage 11 scheduled for September 1997. This TS change is consistent with a one-time exemption from Appendix J to 10 CFR Part 50 that extends the 10-year service period and allows the three type A tests to be performed at intervals that are not approximately equal.

Date of issuance: July 10, 1995

Effective date: July 10, 1995

Amendment No.: 210

Facility Operating License No. DPR-56: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 23, 1995 (60 FR 27340)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

PECO Energy Company, Public Service Electric and Gas Company,Delmarva Power and Light Company, and Atlantic City Electric Company,Docket No. 50-278, Peach Bottom Atomic Power Station,Unit No. 3, York County, Pennsylvania

Date of application for amendment: June 23, 1993, as supplemented by letters dated April 5, May 2, June 6, June 8, July 6 (two letters), July 7, July 20, July 28 (two letters), September 16, September 30, and October 14, 1994 and June 22, 1995.

Brief description of amendment: The amendment raises the authorized maximum power level from 3293 MWt to a new limit of 3458 MWt. The amendment also approves changes to the Technical Specifications to implement operation at the increased power limit.

Date of issuance: July 18, 1995

Effective date: As of date of issuance and is to be implemented prior to startup in Cycle 11, currently scheduled for October 1995.

Amendment No.: 211

Facility Operating License No. DPR-56: Amendment revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** August 29, 1994 (59 FR 44432)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 10, 1995

Brief description of amendments: Remove the response time limit Tables 3.3.1-2, 3.3.2-3, and 3.3.3-3 from the Technical Specifications, and add the information to the Final Safety Analysis Report in accordance with Generic Letter 93-08.

Date of issuance: July 11, 1995

Effective date: July 11, 1995

Amendment Nos.: 148 and 118

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60FR 29887)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 11, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: November 21, 1994, as supplemented April 6, and July 3, 1995

Brief description of amendments: These amendments make changes affecting the Administrative Controls Section of the Technical Specifications. The areas changed are Nuclear Effectiveness and Efficiency Design Study (NEEDS) Organization Title Changes; Minimum Shift Crew Composition; delete Independent Technical Review Section from TS; delete Nuclear Review Board (NRB) Review Section from TS; and delete NRB Audit Section from TS.

Date of issuance: July 18, 1995

Effective date: Units 1 and 2, as of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 96 and 60

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24914)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 31, 1994, as supplemented July 3, 1995

Brief description of amendments: These amendments modify TS Sections 3.4.9.1, 3.4.9.2, 3.9.11.1, 3.9.11.2, and the associated Bases Sections 3/4.4.9 and 3/4.4.11, to permit the use of either an "analytical approach" (i.e., calculation) or "demonstrations" to ensure the operability of an alternate decay heat removal method, rather than the existing TS requirement which stipulates that operability of the alternate decay removal method be demonstrated.

Date of issuance: July 18, 1995

Effective date: Units 1 and 2, as of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 97 and 61

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55884)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 22, 1994, as supplemented July 3, 1995

Brief description of amendments: These amendments revise Technical Specification Surveillance Requirement 4.1.3.1.4a to delete the requirement that the Scram Discharge Volume (SDV) be determined operable by testing the SDV vent and drain valves from a configuration of less than or equal to 50% rod density.

Date of issuance: July 18, 1995

Effective date: Units 1 and 2, effective as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 98 and 62

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55881)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 22, 1994, as supplemented by letter dated July 3, 1995

Brief description of amendments: The amendments revise the Technical Specifications surveillance requirements for scram insertion times and revise the TS surveillance requirements for control rod block and source range monitoring instrumentation.

Date of issuance: July 18, 1995

Effective date: Units 1 and 2, effective as of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 99 and 63

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55881)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station (FSV), Unit No. 1, Platteville, Colorado

Date of application for amendment: Amendment No. 88, April 14, 1995.

Brief description of amendment: This amendment would revise the FSV Decommissioning Technical Specifications (DTS) by: revising the FSV DTS to reflect recent organizational changes resulting from corporate restructuring to prepare for repowering the site with natural gas-power turbines and to incorporate editorial changes. The staff has determined that the proposed amendment does not require a significant hazard consideration, pursuant to 10 CFR 50.92.Possession-Only License No. DPR-34: Amendment revises the DTS.

Local Public Document Room location: Weld Library District - Downtown Branch, 919 7th Street, Greeley, CO 80631.

Sacramento Municipal Utility District, Docket No. 312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: February 28, 1995

Brief description of amendment: This amendment relocates the quality assurance audit frequencies from the technical specifications to the Rancho Seco Quality Manual and changes the reporting frequency of the Radioactive Effluent Release Report from semi-annual to annual.

Date of issuance: July 19, 1995

Effective date: July 19, 1995

Amendment No.: 122

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16200)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Central Library, Government Documents, 828 I Street, Sacramento, California 95814.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: September 15, 1993, as supplemented by letter dated September 6, 1994.

Brief description of amendments: The amendments revised Technical Specification (TS) Table 2.2-1, "Reactor Protective Instrumentation Trip Setpoint Limits," Table 3.3-1, "Reactor Protective Instrumentation," Table 3.3-3, "Engineered Safety Feature Actuation System Instrumentation," and Table 3.3-4, "Engineered Safety Feature Actuation System Instrumentation Trip Values," and the associated Bases. The revisions to the notes in these tables change the pressure at which the low pressurizer pressure trip bypass shall be automatically removed to a consistent value of "before pressurizer pressure exceeds 500 psia (the corresponding bistable allowable value is less than or equal to 472 psia)." In addition, the wording of the notes is revised to make the notes more consistent with each other.

Date of issuance: July 14, 1995

Effective date: July 14, 1995, to be implemented within 30 days of the date of issuance.

Amendment Nos.: Unit 2 - Amendment No. 120; Unit 3 - Amendment No. 109

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50975). The September 6, 1994, supplemental letter provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 14, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Main Library, University of California, P.O. Box 19557,Irvine, California 92713.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: September 3, 1992

Brief description of amendments: These amendments revise TS 3/4.4.8 "Pressure/Temperature Limits - Reactor Coolant System," and their associated Bases, following NRC guidance provided in Generic Letter 91-01, "Removal of the Schedule for Withdrawal of Reactor Vessel Material Specimens from Technical Specifications." This generic letter allows licensees to remove the reactor vessel material surveillance capsule withdrawal schedules from the TS because they are a duplication of the requirements of 10 CFR Part 50 Appendix H.

Date of issuance: July 17, 1995

Effective date: July 17, 1995, to be implemented within 30 days of issuance

Amendment Nos.: Unit 2 - Amendment No. 121; Unit 3 - Amendment No. 110

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8781)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: April 30, 1993, as supplemented by letters dated July 6, 1994 (separate letters for each unit), and letter dated January 27, 1995.

Brief description of amendments: These amendments revise TS 3/4.4.8.1, "Pressure-Temperature Limits," TS 3.4.8.3.1, "Overpressure Protection Systems-RCS Temperature less than or equal to °F [for Unit 2, less than or equal to 246°F for Unit 3]," TS 3.4.8.3.2, "Overpressure Protection Systems-RCS Temperature ≤256°F [for Unit 2, ≤246°F for Unit 3]," and the associated TS Bases. The proposed change (1) revises the reactor coolant system (RCS) pressure-temperature (P-T) limits and the low temperature overpressure protection (LTOP) enable temperatures to be effective until 20 effective full power years (EFPY) of operation and (2) makes minor editorial changes.

Date of issuance: July 18, 1995

Effective date: July 18, 1995, to be implemented within 30 days of issuance

Amendment Nos.: Unit 2 - Amendment No. 122; Unit 3 - Amendment No. 111

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** Unit 2 - July 7, 1993 (58 FR 36445); Unit 3 - June 23, 1993 (58 FR 34094). The two supplemental letters dated July 6, 1994, and the January 27, 1995, supplemental letter provided clarifying information and did not change the initial no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: March 30, 1994

Brief description of amendment: The amendments implement an analog transmitter/trip system on BFN Unit 3, revise the reactor vessel water level safety limit and limiting safety system setting for BFN Units 1 and 3, add instrument identifiers and revise calibration frequencies and functional test requirements for BFN Unit 2, revise the calibration frequency for instrumentation actuating the suppression chamber-reactor building vacuum breakers, and provide editorial changes.

Date of issuance: July 17, 1995

Effective date: July 17, 1995

Amendment Nos.: 222, 237, 196

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 28, 1994(59 FR 49435) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public library, South Street, Athens, Alabama 356114.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: January 30, 1995

Brief description of amendment: The proposed amendment revises reactor coolant system pressure-temperature curves, changes bases for Technical Specification 3/4.4.9, Pressure Temperature Limits, and revises License Condition 2.C(3)(d) to reflect a change from 10 effective full power years (EFPY) to 21 EFPY.

Date of issuance: July 20, 1995

Effective date: July 20, 1995

Amendment No.: 199

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 15, 1995 (60 FR 14029)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 8, 1994

Brief description of amendment: The amendment revises Technical Specifications (TS) 4.2.2.2, 4.2.2.4, and 6.9.19. The changes address

incorporating a penalty in the Core Operating Limits Report (COLR) to account for heat flux (F_Q) increases greater than 2 percent between measurements.

Date of issuance: July 20, 1995

Effective date: July 20, 1995

Amendment No.: 101

Facility Operating License No. NPF-30. Amendment revises the Technical Specification Surveillance Requirements and Administrative Controls.

Date of initial notice in **Federal Register:** December 21, 1994 (59 FR 65823). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: November 22, 1994

Brief description of amendments: The amendments revised the Technical Specifications to delete unnecessary descriptive phrases regarding the number of cells in the station and emergency diesel generator batteries.

Date of issuance: July 11, 1995

Effective date: July 11, 1995

Amendment Nos.: 201 and 201

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 12, 1995 (60 FR 18630)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 2nd day of August, 1995.

For the Nuclear Regulatory Commission

Jack W. Roe, 4Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 95–18610 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–F

[Docket No. 50–255]

Consumers Power Company; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Consumers Power Company, (licensee) for an amendment to Facility Operating License No DRP–20 issued to the licensee for operation of Palisades, located in Covert Township, Van Buren County, Michigan. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on May 25, 1994 (59 FR 27053).

The purpose of the licensee's amendment request was to relocate certain Technical Specifications (TS) containing fuel cycle-specific parameter limits that can change with core reloads to a Core Operating Limits Report. Several of the TS bases have also been revised to refer to limits relocated to the COLR.

The NRC staff has concluded that the licensee's request cannot be fully granted. The removal of the power distribution measurement uncertainty factors in Table 3.23.3 and the addition of certain references to TS 6.9.1.f are denied. The licensee was notified of the Commission's denial of the proposed change by a letter dated July 26, 1995.

By September 1, 1995, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

For further details with respect to this action, see (1) the application for amendment dated April 7, 1994, as supplemented April 27, 1995, and (2) the Commission's letter to the licensee dated July 26, 1995.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555 and at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 26th day of July 1995.

For the Nuclear Regulatory Commission.

Marsha Gamberoni,

Project Manager, Project Directorate III–I, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18929 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–206, 50–361, 50–362]

In the Matter of Southern California Edison Company (San Onofre Nuclear Generating Station, Units 1, 2, and 3).

Southern California Edison Co.

Exemption

I

Southern California Edison Company (SCE or the licensee) is the holder of Facility Operating License No. DPR–13, which authorizes possession and maintenance of the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1) and Facility Operating License Nos. NPF–10 and NPF–15, which authorizes operation of San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS 2 and 3), respectively. The licenses provide, among other things, that the SONGS units are subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The facilities consist of three pressurized water reactors at the SCE site located in San Diego County, California. SONGS 1 is permanently shut down, while Unites 2 and 3 remain operational.

II

It is stated in 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), that "The licenses shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

It is specified in 10 CFR 73.55(d), "Access Requirements," paragraph (1) that "The licensee shall control all points of personnel and vehicle access into a protected area." It is specified in 10 CFR 73.55(d)(5) that "A numbered

picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without an escort provided that the individual, "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *."

By letter dated March 13, 1995, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5). Specifically, the requested exemption would allow contractors who have unescorted access to retain possession of their picture badges instead of returning them as they exit the protected area. (The existing regulations allow licensee employees authorized unescorted access to protected areas to retain their badges upon departure from the protected area.) The proposed exemption is a preliminary step towards enabling SCE to revise the SONGS security plan under 10 CFR 50.54(p) to facilitate implementation of an alternative unescorted access system which would eliminate the need for site security personnel to issue and retrieve picture badges at the entrance/exit locations to the protected area and would eventually allow all individuals (contractors and SCE employees) with unescorted access to the protected area to keep their picture badges in their possession when departing the SONGS protected area.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. The Code of Federal Regulations at 10 CFR 73.55 allows the Commission to authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the proposed measures meet the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Currently, unescorted access into the protected area for both employee and contractor personnel into the SONGS plants is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges offsite. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges offsite.

The proposed alternative measure, to provide an equivalent level of protection against radiological sabotage, is a system that will require that all individuals with authorized unescorted access have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badge to gain access to the protected area, but must also have their hand geometry confirmed. initially, following revision to the site security plan, individuals with unescorted access will be allowed to retrieve their own badges before entering the protected area and return their badges to storage locations when existing the protected area for retrieval on their next entrance. Eventually, following changes to the security plan conducted under 10 CFR 50.54(p), all individuals, including contractors, who have authorized unescorted access into the protected area may be allowed to keep their picture badges in their possession when departing the SONGS protected area.

All other access processes, including search function capability, will remain the same. A security officer responsible for access control will continue to be positioned within a hardened structure. It should be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing which demonstrated that the hand geometry equipment that SCE proposed to use possesses strong performance characteristic. Details of the testing performed, available in thee Sandia report, "A performance Evaluation of Biometric Identification Devices," SAND91—0276 UC—906 Unlimited Release, June 1991, demonstrated that the hand geometry equipment is capable of meeting a detection probability of 90 percent with a 95 percent confidence level. Based on the Sandia report, the false acceptance rate for the proposed hand geometry system would be at least equivalent to that of the current photo-identification system. The site security plans will be revised in accordance with 10 CFR 50.54(p) to allow implementation of the hand geometry system.

IV

For the foregoing reasons, the Commission has determined that the proposed alternative measure for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed system's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5 this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Southern California Edison Company an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescort4ed access into the protected area, can retrieve their own badges before entering the protected area and return their badges to the badge storage location when existing the protected area.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (60 FR 37110 as July 19, 1995).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of July 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Divisions of Project Support, Office of Nuclear Reactor Regulations.

[FR Doc. 95–18926 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–M

Status and Notice of Availability of Two Policy Statements Concerning the Agreement State Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Status of policy statements and notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the

status of Commission action on the two policy statements: Statement of Principles and Policy for the Agreement State Program and the Policy Statement on Adequacy and Compatibility of Agreement State Programs. NRC is also announcing the availability of the policy statements to interested parties.

ADDRESSES: Copies of the policy statements may be obtained by calling Vicki Bolling at (301)–415–2326 or by writing to U.S. Nuclear Regulatory Commission, Document Control Desk, P1–37, Washington, DC 20555, Attn: Vicki Bolling, OSP. These documents are available for inspection in the Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC between 7:45 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Schneider, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)–415–2320.

SUPPLEMENTARY INFORMATION: The Commission has approved, in principle, the Policy Statements entitled "Statement of Principles and Policy for the Agreement State Program" and "Policy Statement on Adequacy and Compatibility of Agreement State Programs" with the stipulations discussed below.

The Commission is going to defer implementation of the policy statements until implementing procedures are developed and approved by the Commission. The NRC staff is to develop the implementing procedures and any necessary changes to the two policy statements and resubmit the policy statements and implementing procedures to the Commission by September 30, 1996. Copies of the two policy statements may be obtained from the address listed in this notice. Until the policy statements and final implementing procedures are approved by the Commission, the NRC staff will continue to use the policy statement on Discontinuance of the NRC Authority and Assumption Thereof by States Through Agreement: Criteria for Guidance of States and NRC, published January 23, 1981 (46 FR 7540), as revised July 21, 1983 (48 FR 33376), for new agreements.

The Office of State Programs B.7 Procedure for compatibility will be utilized in connection with the interim implementation of the Integrated Materials Performance Evaluation Program (IMPEP) to evaluate Agreement State programs until the final implementing procedures for the two policy statements and any revisions to the policy statements are approved by the Commission. NRC plans to issue a **Federal Register** Notice in the near future, which will address how IMPEP will be integrated into the current framework for Agreement State program reviews.

Dated at Rockville, Maryland, this 27th day of July, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–18925 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Simulation Facility Certification.

3. The form number if applicable: NRC Form 474.

4. How often the collection is required: One time requirement for initial certification and quadrennial thereafter.

5. Who will be required or asked to report: All power reactor licensees and applicants for an operating license.

6. An estimate of the number of responses: 20 annually.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 2,400 (approximately 120 hours per response).

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: Licensed power facilities that propose the use of a simulation facility consisting solely of a plant-referenced simulator for the conduct of NRC licensing operating tests are required to submit NRC Form 474.

The information on the form consists of the results of performance testing completed on the subject simulation facility and a schedule for the conduct of performance tests for the subsequent four-year period. NRC uses this information to ascertain the acceptability of simulation facilities for use in the conduct of operating tests for nuclear power plant operator and senior operator candidates and to determine whether to initiate a simulation facility inspection at a specific site due to concerns about their suitability for use in operating tests.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0138), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 27th day of July, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–18930 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company, Iowa-Illinois Gas and Electric Company, Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–29 and DPR–30, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application for an exemption from certain requirements of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." The requested exemption would allow the implementation of a hand geometry biometric system of site access control in conjunction with photograph identification badges, and would allow the badges to be taken off site.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55(a), the licensee is required to establish and maintain an onsite physical protection system and security organization.

In 10 CFR 73.55(d), "Access Requirements," it specifies in part that "The licensee shall control all points of personnel and vehicle access into a protected area." In 10 CFR 73.55(d)(5), it specifies in part that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It further indicates that an individual not employed by the licensee (e.g., contractors) may be authorized access to protected areas without an escort provided the individual, "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area."

Currently, unescorted access for both employee and contractor personnel into the Quad Cities Station, Units 1 and 2, is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. The picture badges are issued, stored, and retrieved at the entrance/exit location to the protected area. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site. The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area. The proposal would also allow contractor who have unescorted access to keep their picture badges in their possession when departing the Quad Cities site. In addition, the site security plans will be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the Quad Cities site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action. In addition to their picture badges, all individuals with authorized unescorted access will have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badges to gain access into the protected area, but must also have their hand geometry confirmed.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. The proposed system is only for individuals with authorized unescorted access and will not be used for individuals requiring escorts.

The underlying purpose for requiring that individuals not employed by the licensee must receive and return their picture badges at the entrance/exit is to provide reasonable assurance that the access badges could not be compromised or stolen with a resulting risk that an unauthorized individual could potentially enter the protected area. Although the proposed exemption will allow individuals to take their picture badges off site, the proposed measures require not only that the picture badge be provided for access to the protected area, but also that verification of the hand geometry registered with the badge be performed as discussed above. Thus, the proposed system provides an identity verification process that is equivalent to the existing process.

Accordingly, the Commission concludes that the exemption to allow individuals not employed by the licensee to take their picture badges off site will not result in an increase in the risk that an unauthorized individual could potentially enter the protected area. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Denial of the requested action would not significantly enhance the environment in that the proposed action will result in a process that is equivalent to the existing identification verification process.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Quad Cities Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on July 20, 1995, the staff consulted with the Illinois State Official, Mr. Mike Parker, Chief, Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated June 21, 1995, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 25th day of July 1995.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–18931 Filed 8–1–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36027; File No. SR–CHX–95–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Implementation of Modified Versions of the SuperMAX System on a Pilot Basis

July 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on June 29, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On July 21, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add subsection (e) and subsection (f) to Rule 37 of Article XX relating to the CHX's MAX System. The text of the proposed rule is as follows [new text is italicized]:

Article XX

Rule 37

(e) The Exchange's Enhanced SuperMAX program shall be an automatic execution program within MAX in which a Specialist may voluntarily choose to participate on a stock-by-stock basis. A Specialist shall decide if his or her stock will be eligible for Enhanced SuperMAX treatment. In the event that a stock is eligible for Enhanced SuperMAX treatment (pursuant to paragraph (e) of this Rule) and SuperMAX treatment (pursuant to paragraph (c) of this Rule) at the same time, the size of the order will determine which program will be followed for execution. An order of 599 shares or less will execute according to the SuperMAX program and an order greater than 599 shares will execute according to the Enhanced SuperMAX program. In the event that a Specialist determines that his stock is eligible for Enhanced SuperMAX and voluntarily chooses to participate in Enhanced SuperMAX, agency market orders up to and including 1099 shares (or such greater size specified by a specialist and approved by the Exchange) in that stock may automatically be stopped and executed in MAX, through the Enhanced SuperMAX program, without any specialist intervention based on the following criteria:

(1) Stopping. If an agency market order eligible for Enhanced SuperMAX would create either a double up tick (buy order) or double down tick (sell order) if the order was executed at the consolidated best bid or offer ("NBBO") the Enhanced SuperMAX program will "stop" the order. Once stopped, the order will not receive an execution that is worse than the stop price. Notwithstanding anything in the previous sentence to the contrary, agency market orders in markets quoted with a minimum variation (usually 1/8 spread) will not be stopped. Orders not stopped will be immediately executed based upon the NBBO as the case may be.

(2) Pricing. Buy Orders stopped under (1) above will be executed as follows:

(i) If the next primary market sale is equal to or less than the last sale then the stopped order will be executed at such last sale price (subject, however, to the Exchange's block protection policy as set forth in interpretation and policy .06 of Rule 7 of this Article).

(ii) If the next primary market sale is greater than the last sale then the stopped order will be executed at such next primary market sale price. However, if the next primary market sale is greater than the stop price then the stopped order will be filled at the stopped price (i.e. at the offer).

Sell orders stopped under (1) above will be executed as follows:

(iii) If the next primary market sale is equal to or greater than the last sale then the stopped order will be executed at such last sale price (subject, however, to the Exchange's block protection policy as set forth in interpretation and policy .06 of Rule 7 of this Article).

(iv) If the next primary market sale is less than the last sale then the stopped order will be executed at such primary market sale price. However, if the next primary market sale is less than the stop price then the stopped order will be filled at the stopped price (i.e. at the bid).

(3) Operating Time. Enhanced SuperMAX will operate each day that the Exchange is open for trading from 8:45 a.m. (C.T.) until the close. In unusual trading situations, individual stocks or all stocks may be removed from Enhanced SuperMAX with the approval of two members of the Committee on Floor Procedure.

(4) Timing. Orders entered into Enhanced SuperMAX shall, when due a fill under the Enhanced SuperMAX program, be immediately executed without any delay (i.e. 0 seconds).

(5) Applicability to Odd-Lots. Although an order generated by the Odd-Lot Execution Service ("OLES") is a professional order (because it is deemed to be for the account of a broker-dealer), it is nonetheless eligible for Enhanced SuperMAX execution if: (i) the issue is on Enhanced SuperMAX, (ii) it is an order for 200 shares or less, and (iii) it is an OLES passively driven, system-generated market order (and not an actively managed order).

(6) Out of Range. Notwithstanding anything in this paragraph (e) to the contrary, Enhanced SuperMAX will not execute an order at the NBBO if such execution would result in an out of range execution.

(7) Other. Any eligible order in a stock included in Enhanced SuperMAX which is manually presented at the Specialist post by a floor broker must also be guaranteed an execution by the Specialist pursuant to the criteria set forth in this paragraph (e). In the event that a contra side order which would better an Enhanced SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the Enhanced SuperMAX criteria must be adjusted to the better price.

(f) The Exchange's Timed Enhanced SuperMAX program shall be an automatic execution program within MAX in which a Specialist may voluntarily choose to participate on the stock-by-stock basis. A Specialist shall decide if his or her stock will be eligible for Timed Enhanced SuperMAX treatment. In the event that a Specialist determines that his or her stock is eligible for Timed Enhanced SuperMAX and voluntarily chooses to participate in Timed Enhanced SuperMAX, agency market orders up to and including 1099 shares (or such greater size as specified by the Specialist and approved by the Exchange) will automatically be executed in MAX, through the Timed Enhanced SuperMAX program, without any Specialist intervention, in accordance with the Enhanced SuperMAX program and rules (as specified in paragraph (e) of this Rule and subparagraphs (1) through (7) thereunder) with the following modification:

(1) Timer. In the event that an order is stopped pursuant to the criteria described in paragraph (e)(1) of this Rule, such order shall be executed at the stopped price if there are no executions in the primary market at the end of the applicable Time Out Period (as defined below). For purposes of this paragraph (f), the Time Out Period shall be the time specified by the specialist on stock-by-stock basis based on the size of the order. Such Time Out Period shall be preselected by a specialist, may be changed by a specialist no more frequently than once a month and may be no less than 30 seconds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 22, 1995, the Commission approved a proposed rule change of CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[2] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

The purpose of the proposed rule change is to set forth two options available under this new rule. One option is merely a reactivation of the Exchange's Enhanced SuperMAX program, a program originally approved by the Commission on a pilot basis in 1991.[3] Unlike the old pilot program, however, the new Enhanced SuperMAX program will be available starting at 8:45 a.m. instead of 9:00 a.m. This program differs from the Exchange's SuperMAX program is that under this program, certain orders are "stopped" at the NBBO[4] and are executed with reference to the *next* primary market sale instead of the previous primary market sale.

The other option is a slight variation on the Enhanced SuperMAX program. This other option, the Timed Enhanced SuperMAX program, will execute orders in the same manner as the Enhanced SuperMAX program except that if there are no executions in the primary market after the order has been stopped for a designated time period, the order will be executed at the stopped price at the end of such period. Such period, known as a time out period, will be pre-selected by a specialist on a stock-by-stock basis based on the size of the order, may be changed by a specialist no more frequently than once a month, and may be no less than 30 seconds.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–15 and should be submitted by August 23, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully CHX's proposed rule change and concludes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Act.[5]

The proposed rule change provides for modified versions of the SuperMAX system[6] (Enhanced SuperMAX and Timed Enhanced SuperMAX). These modified versions will operate as separate systems and will be available to CHX specialists as additions or alternatives to SuperMAX.[7] Participation in Enhanced SuperMAX and Timed Enhanced SuperMAX will be voluntary for specialists and will apply on a stock-by-stock basis for agency market orders of 1,099 shares or fewer in Dual Trading Systems issued.[8]

Under the proposed rule change, Enhanced SuperMAX and Timed Enhanced SuperMAX would automatically stop a market order if its execution at the consolidated best bid or offer ("BBO") would create either a double up tick or double down tick. If the execution at the BBO would not result in a double up tick or double down tick, then Enhanced SuperMAX and Timed Enhanced SuperMAX would execute the order at the BBO. Once a security chosen by a specialist for Enhanced SuperMAX and Timed Enhanced SuperMAX is stopped, a buy (sell) order is guaranteed at least the offer (bid) price prevailing at the time of the stop ("stop price").

The stopped Enhanced SuperMAX and Timed Enhanced SuperMAX eligible order would be executed based upon the next sale in the primary market according to the execution criteria. The Enhanced SuperMAX and Timed Enhanced SuperMAX algorithm compares the previous last sale price to the next sale price, and considers the direction of the market by those sales prices, to determine the price at which the stopped market order will be filled. The procedures under Enhanced SuperMAX and Timed Enhanced SuperMAX are identical except the stopped order in Timed Enhanced SuperMAX will be executed at the expiration of a specified time period as designated by a specialist.

Under the proposal, Enhanced SuperMAX and Timed Enhanced SuperMAX would not execute an order at the BBO if such execution would

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[1] See letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated July 21, 1995. In Amendment No. 1, the Exchange requests that the proposed rule change be considered under 19(b)(2) on one-year pilot basis rather than under 19(b)(3)(A) and makes certain clarifying changes to the text of Item I.

[2] See Securities Exchange Act Release No. 325753 (May 22, 1995), 60 FR 28007 (May 26, 1995) (File No. SR–CHX–95–08).

[3] See Securities Exchange Act Release No. 30058 (Dec. 10, 1991), 56 FR 65765 (Dec. 18, 1991) (order approving SR–MSE–91–12). The pilot program was subsequently extended in Securities Exchange Act Release Nos. 30701 (May 14, 1992), 57 FR 21683 (May 21, 1992) (File No. SR–MSE–92–06); 310238 (Aug. 13, 1992), 57 FR 37856 (Aug. 20, 1992) (File No. SR–MSE–92–09); and 31857 (Feb. 12, 1993) 58 FR 9227 (Feb. 19, 1993) (File No. SR–MSE–01).

[4] The term national best bid or best offer is defined under SEC Rule 11Ac1–2 as the highest bid or lowest offer for a reported security made available by any reporting market center pursuant to Rule 11Ac1–1 or the highest bid or lowest offer for a security other than a reported security disseminated by an over-the-counter market maker in Level 2 or 3 of Nasdaq.

[5] 15 U.S.C. 78f(b)(5) (1988 & Supp. V. 1993).

[6] SuperMAX is a system that automatically improves executions of small agency market orders from the consolidated best bid or offer according to certain predefined criteria. In 1990, the Commission first approved SuperMAX on a pilot basis. See Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20880 (May 21, 1990) (File No. SR–MSE–90–05). In 1993, the Commission approved SuperMAX on a permanent basis. For more detail regarding SuperMAX, see *infra* note 12 and the accompanying text.

[7] The Exchange will file an amendment to the proposed rule change in the near future to codify the procedures with respect to a specialist's ability to make a security eligible for Enhanced SuperMAX and Time Enhanced SuperMAX. A specialist will be permitted to engage and disengage Enhanced SuperMAX and Timed Enhanced SuperMAX for a given stock only once a month. See letter from David Rusoff, Foley & Lardner, to Glen Barretine, Senior Counsel, SEC, dated July 21, 1995.

[8] The Dual Trading System of the Exchange allows the execution of both round-lot and odd-lot orders in certain issues assigned to specialists on the Exchange and listed on either the New York Stock Exchange or the American Stock Exchange.

result in an out-of-range execution.[9] If a specialist chooses the Enhanced SuperMAX and Timed Enhanced SuperMAX, the criteria for the systems must be followed for all eligible stocks. If a specialist chooses to have Enhanced SuperMAX and Timed Enhanced SuperMAX run concurrently with SuperMAX, then the size of the agency market order would determine which method of execution will be followed. An order of 599 shares or fewer will be executed according to SuperMAX rules; an order of 600 shares to 1,099 shares will be executed according to Enhanced SuperMAX and Timed Enhanced SuperMAX rules. An order will never be subject to execution under the rules of both SuperMAX and Enhanced SuperMAX (or Timed Enhanced SuperMAX).

Any eligible order in a stock included in Enhanced SuperMAX or Timed Enhanced SuperMAX that is manually presented at the specialist post by a floor broker also must be guaranteed an execution by the specialist pursuant to the appropriate system criteria. In the unlikely event that a contra side order that would better the Enhanced SuperMAX and Timed Enhanced SuperMAX execution is presented at the post, the specialist must adjust the incoming order that was executed pursuant to the Enhanced SuperMAX or Timed Enhanced SuperMAX criteria. During volatile periods, individual stocks or all stocks may be removed from Enhanced SuperMAX or Timed Enhanced SuperMAX with the approval of two members of the Committee on Floor Procedure.[10]

The Exchange represented that as a result of testing extensively both versions of Enhanced SuperMAX, the Exchange concludes that Enhanced SuperMAX and Timed Enhanced SuperMAX will not have any significant impact upon CHX's systems capacity.[11]

In 1991, the Commission approved on a pilot basis Enhanced SuperMAX to run concurrently with SuperMAX, which was on a pilot at that time.[12] In the initial Enhanced SuperMAX pilot program approval order, the Commission expressed concerns about the possible adverse effects on execution quality of a lack of order exposure.[13] The Commission also acknowledged, however, that increased order exposure may impose certain economic costs in terms of execution delay and interjection of manual processing. Moreover, the Commission recognized that most of the Exchange's automatic execution systems in effect (at this time) provided executions at the quote only.

In approving the Enhanced SuperMAX feature on a pilot basis, the Commission believed that this proposal was less ideal than SuperMAX, but that the Commission would revisit its concerns in the event that the CHX requested permanent approval. In this regard, the Commission stated that any request for permanent approval must be accompanied by a report containing certain data on the Enhanced SuperMAX system.[14]

The Commission believes that pricing and execution procedures of Enhanced SuperMAX and Timed Enhanced SuperMAX are consistent with the maintenance of fair and orderly auction markets on national securities exchanges. Moreover, the Commission believes that the execution criteria of Enhanced SuperMAX and Timed Enhanced SuperMAX should contribute to an orderly market because they help to reduce variations from trade to trade on low volume. Finally, although the proposals will not automatically provide price improvement, they will provide some opportunity for customers to receive a better price. The Enhanced SuperMAX being proposed in this filing is identical to the previous pilot program except that the start up time will be 8:45 a.m. (C.T.). The Timed Enhanced SuperMAX procedures are identical to those of Enhanced SuperMAX except that the stopped order will be executed at the top price after a period of time that has been designated by the specialist but may not be shorter than 30 seconds has expired. This additional feature is intended to allow orders in inactive stocks to be provided with an opportunity for price improvement but to be executed without unduly delay. Therefore, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, perfect the mechanisms of a free and open market, and in general to protect investors and the public interest.

The Commission believes that it would be appropriate to allow the Exchange to implement Enhanced SuperMAX and Timed Enhanced SuperMAX for a one-year period to afford the Exchange and the Commission an opportunity to monitor the operation of the systems and determine their effectiveness. The Exchange should monitor the use of the systems during the one-year pilot period and assure the Commission that there are no adverse effects on the quality of customer order executions. Moreover, the Exchange should examine the use of the systems during the pilot period to determine whether specialists are choosing the appropriate system for each of their stocks.

The Commission, therefore, requests that the Exchange submit a report to the Commission by May 31, 1996, describing its experience with the pilot program. At a minimum, this report should contain the following data gathered during the first 9-month period after the start-up date for Enhanced SuperMAX and Timed Enhanced SuperMAX: (1) The number of orders executed in SuperMAX, Enhanced SuperMAX, and Timed Enhanced SuperMAX; (2) share and dollar volume for all three systems; (3) comparisons of orders executed under SuperMAX, Enhanced SuperMAX, and Timed Enhanced SuperMAX, indicating where orders executed under one system would have received a more favorable execution under another system; (4) the number of specialists using each system, and the number of stocks included in each; (5) the average length of time between receipt of an order and execution under each system; (6) the types of securities being chosen for each system (if a pattern is discernable); (7) a break down of each issue chosen for each system during the pilot period, including each date the issue was placed on each system and removed; and (8) whether any distinguishable market condition existed when an issue was placed on or taken off each system. Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot program also should be submitted to the Commission by May 31, 1996, as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can enable public customers to receive the benefits of Enhanced SuperMAX and Timed Enhanced SuperMAX without delay. Moreover, the Enhanced SuperMAX feature previously has been on a pilot program from December 1991 through April 1993, and the Commission is approving CHX's Enhanced SuperMAX and Timed Enhanced SuperMAX only for a one-year pilot period.[15] During that time, the Commission and the Exchange will be able to examine whether these programs are successful at providing for automatic execution of orders at prices consistent with the maintenance of fair and orderly markets and can determine whether to extend the pilots for a further period or make the programs permanent. The Commission, therefore, believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.[16]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CHX–95–15) is approved on a pilot basis until July 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–18960 Filed 8–1–95; 8:45 am]

BILLING CODE 8010–01–M

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[9] The term "out-of-range" means either higher or lower than the price range in which the security traded on the primary market during a particular trading day.

[10] When stocks are removed from Enhanced SuperMAX or Timed Enhanced SuperMAX, CHX would broadcast a message through the MAX system indicating that the affected stocks are off Enhanced SuperMAX or Timed Enhanced SuperMAX. Telephone conversation between David Rusoff, Foley & Lardner, and Jennifer Choi, Attorney, Division of Market Regulation, SEC. on July 21, 1995.

[11] *See* letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated July 21, 1995.

[12] The Exchange sought approval of the Enhanced SuperMAX program to evaluate both Enhanced SuperMAX and SuperMAX systems and determine which system it wanted to implement. In 1993, the Exchange chose to implement SuperMAX rather than Enhanced SuperMAX and sought approval of SuperMAX on a permanent basis. The Commission permanently approved SuperMAX believing that the automated execution feature of SuperMAX would provide a more efficient means of bettering the execution price on a large volume of electronically delivered market orders than through manual processing. The Enhanced SuperMAX pilot expired in 1993 without the Exchange requesting an extension or permanent approval. *See* Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 30969 (July 21, 1993) (File No. SR–MSE–93–10) (approving permanently SuperMAX).

[13] *See* Secutiries Exchange Act Release No, 30058 (Dec. 10, 1991), 56 FR 65765 (Dec. 18, 1991) (order approving SR–MSE–91–12).

[14] In the initial pilot approval order, the Commission described its concerns with the program and requested that the Exchange submit a report detailing the use of the pilot. The Exchange, however, did not submit a report because specialists on the Exchange made little or no use of the pilot program. Telephone conversation between David Rusoff, Foley & Lardner, and Glen Barrentine and Jennifer Choi, SEC. on July 18, 1995.

[15] The Enhanced SuperMAX system has been published for comment in the **Federal Register** previously, and there have been no adverse comments on it.

[16] 15 U.S.C. 78f (1988 & Supp. V 1993).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3a(a)(12) (1994).

DEPARTMENT OF STATE

[Public Notice 2232]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

SUMMARY: The Office of Overseas Schools of the Department of State is responsible for determining that adequate educational opportunities exist at Foreign Service posts for dependents of U.S. Government personnel stationed abroad, and for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The Foreign Assistance Act of 1961, as amended, Mutual Educational and Cultural Affairs Act of 1961, as amended, and the Department of State Basic Authorities Act of 1956, as amended by the Foreign Service Act of 1980, authorize the function of the Office of Overseas Schools. The information gathered enables the Office of Overseas Schools to advise the Department and other foreign affairs agencies regarding current and constantly-changing conditions, and also to make judgments regarding assistance to schools for the improvement of educational opportunities. The following summarizes the information collection proposals submitted to OMB:

1. Type of request—Reinstatement.
   Originating office—Bureau of Administration, Office of Overseas Schools.
   Title of information collection—Overseas Schools Questionnaire.
   Form No.—FS–573, FS–573A, FS–573B.
   Frequency—Annually.
   Respondents—American sponsored schools overseas.
   Estimated number of respondents—190.
   Average number of responses per respondent—1.
   Average hours per response—1 hour.
   Total estimated burden hours—190.
2. Type of request—Reinstatement.
   Originating office—Bureau of Administration, Office of Overseas Schools.
   Title of information collection—Request for Assistance.
   Form No.—FS–574.
   Frequency—Annually.
   Respondents—American sponsored schools overseas.
   Estimated number of respondents—190.
   Average number of responses per respondent—1.
   Average hours per response—.5.
   Total estimated burden hours—95.

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: June 25, 1995.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 95–18901 Filed 8–1–95; 8:45 am]

BILLING CODE 4710–24–M

Bureau of Political-Military Affairs

[Public Notice 2211]

Determination Under the Arms Export Control Act

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice hereby is given that the Under the Secretary of State for Arms Control and International Security Affairs has made a determination pursuant to Section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: May 15, 1995.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 95–18902 Filed 8–1–95; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 2233]

Privacy Act of 1974; Altered Systems of Records

Notice is hereby given that the Department of State proposes to alter three systems of records, STATE–05, STATE–26 and STATE–39 pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on July 20, 1995.

It is proposed that the current system STATE–05 entitled "Consular Service and Assistance Records" be renamed

"Overseas Citizens Services Records." The system names for Passport Records (STATE–26) and Visa Records (STATE–39) will not change. It is also proposed that the three system descriptions include revisions and/or additions to each section except "Systems exempted from certain provisions of the Act." The altering of these systems of records will reflect more accurately the Bureau of Consular Affairs' recordkeeping practices, the enlargement of the scope of its mandate, and a reorganization of its activities and operations. It should be noted that the Overseas Citizens Services Records and Passport Records may overlap due to their inter-relationship. Also, records about consular affairs matters will be removed from Overseas Records, STATE–25 and will become part of STATE–05, STATE–26 and/or STATE–39. STATE–25 will be amended and updated in the near future.

Any persons interested in commenting on these altered systems of records may do so by submitting comments in writing to Margaret P. Grafeld; Chief, Privacy, Plans, and Appeals Division; Office of Freedom of Information, Privacy and Classification Review; Room 1239, Department of State, 2201 C Street, NW, Washington, DC 20520–1239. These systems of records will be effective 40 days from the date of publication, unless we receive comments which will result in a contrary determination.

The altered system descriptions, "Overseas Citizens Services Records, STATE–05," "Passport Records, STATE–26" and "Visa Records, STATE–39" will read as set forth below.

Dated: July 19, 1995.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration.

STATE–05

SYSTEM NAME:

Overseas Citizens Services Records.

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION:

Department of State, 2201 C Street, NW, Washington, DC 20520 and overseas at U.S. embassies, U.S. consulates general and consulates. (A list of overseas posts is available from the Bureau of Consular Affairs, Room 4800, Department of State, Washington, DC 20520–4818.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assisted by the Office of Overseas Citizens Services or by consular officers overseas including persons, generally U.S. citizens, who:

(a) Seek to establish claims to U.S. citizenship or inquire concerning possible loss of U.S. citizenship;

(b) Apply for U.S. passports or Consular Reports of Birth Abroad;

(c) Register as U.S. citizens living or traveling abroad;

(d) Are evacuated to the United States or a third country as the result of a civil disorder, natural disaster or similar emergency in an overseas locale;

(e) Initiate, or are the subjects of, requests relating to their welfare and whereabouts;

(f) Receive financial assistance or are repatriated;

(g) Receive emergency medical assistance;

(h) Are detained or arrested overseas;

(i) Seek or receive notarial, authentication, or judicial assistance;

(j) Die overseas or are involved in the disposition of a decedent's personal estate;

(k) Assert an interest in property abroad;

(l) Are living overseas and claim or receive federal benefits;

(m) Are involved in an international child custody dispute, possible child abuse case, or child support enforcement proceeding;

(n) Vote in U.S. federal or state elections while living overseas;

(o) Register with the U.S. Selective Service System while living overseas;

(p) Are inquiring concerning an international adoption;

(q) Are American seamen who have inquired about seamen consular services;

(r) Have sought or received benefits by virtue of having been held hostage overseas or by virtue of their relationship with an individual held hostage overseas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(a) 8 U.S.C. 1401 *et seq.* (Adjudication of claim to U.S. citizenship);

(b) 8 U.S.C. 1481, 1501 (Adjudication of possible loss of nationality and preparation of Certificates of Loss of Nationality);

(c) 22 U.S.C. 211a, 212, 213, 217(a), 218 (Passport application and issuance);

(d) 22 U.S.C. 2705 (Preparation of Consular Reports of Birth);

(e) 22 U.S.C. 1731 (Protection of naturalized U.S citizens abroad);

(f) 22 U.S.C. 2671(b)(2)(B) (Repatriation loan for destitute U.S. citizens);

(g) 22 U.S.C. 2670(j) (Provision of emergency medical/dietary assistance);

(h) 22 U.S.C. 2151n–1 (Assistance to arrested citizens) (Repealed, but applicable to past records.);

(i) 22 U.S.C. 4215, 4221 (Administration of oaths, affidavits, and other notarial acts);

(j) 28 U.S.C. 1740, 1741 (Authentication of documents);

(k) 28 U.S.C. 1781–1783 (Judicial assistance to U.S. and foreign courts);

(l) 22 U.S.C. 4196 (Notification of death; inventory of decedents' effects;

(m) 22 U.S.C. 5502–5513 (Secs. 204–215) (Assistance in aviation disasters abroad);

(n) 22 U.S.C. 4195, 4197 (Estates of deceased citizens);

(o) 22 U.S.C. 3904 (Assistance to other agencies);

(p) 42 U.S.C. 402 (Old-age and survivors insurance benefits payments);

(q) 50 App. U.S.C. 453, 454, Presidential Proclamation No. 4771, July 2, 1980 (Selective Service registration);

(r) 42 U.S.C. 1973ff–1973ff–6 (Overseas absentee voting);

(s) 22 U.S.C. 4193, 4194, 4205–4207, 46 U.S.C. 10318 (Assistance to shipping and seamen);

(t) 46 U.S.C. 10701–10705 (Responsibility for deceased seamen and their effects);

(u) 42 U.S.C. 11601–11610, International Child Abduction Remedies Act; Convention on the Civil Aspects of International Child Abduction; E.O. 12648, August 11, 1988, 53 FR 30637);

(v) Sec. 599C of Pub. L. 101–513 as amended (Claims to benefits by virtue of hostage status).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for passports and registration as U.S. citizens;* Consular Reports of Birth;* Certificates of Loss of Nationality of the United States;* Reports of Death;* emergency medical and dietary loan applications; repatriation loan applications; applications for benefits for hostages; seamen services records; welfare and whereabouts records; federal benefits claims; property claims; arrest cases; estate cases; judicial assistance cases; international adoption cases; and child custody cases, including applications filed under the Hague Convention on International Child Abduction.

These records may also include: registration cards; interview worksheets; fingerprint cards; documents of identity; affidavits of identity; and various related forms not otherwise stated as well as communications from U.S. embassies, U.S. consulates general, consulates, federal, state and local government agencies, members of Congress, officials of foreign governments and courts or organizations such as the Red Cross, subject of the record, attorneys, relatives and other interested parties.

* These records are eventually transferred from Overseas Citizens Services Records, STATE–05, to Passport Records, STATE–26.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the Overseas Citizens Services Records is used primarily in the adjudication of claims relating to acquisition or loss of U.S. citizenship; the protection and assistance of individuals abroad; the assistance to individuals involved in child custody; adoption and child support enforcement proceedings; and the resolution of property, estate, and benefits claims arising under the pertinent statutes. The routine uses for Passport Records, STATE–26, apply to applications for passports and registration as U.S. citizens, Consular Reports of Birth, Certificates of Loss of Nationality of the United States, Reports of Death, and related documentation. The principal users of this information outside the Department of State are: Social Security Administration; Veterans Administration; Department of Health and Human Services; U.S. Public Health Service; Office of Personnel Management; Railroad Retirement Board; Treasury Department; Department of Labor; Department of Justice; Drug Enforcement Administration; Selective Service; Department of Defense; Federal Aviation Administration; U.S. Maritime Administration; Department of Commerce; Foreign Claims Settlement Commission; Immigration and Naturalization Service; Secret Service; Internal Revenue Service for the current addresses of specifically identified taxpayers in connection with pending actions to collect taxes accrued, examinations, and/or other related tax activities; Foreign and domestic airlines when the information is required for the purpose of notifying next-of-kin of the death, injury or status of the individual to whom it pertains, or in connection with a medical evaluation of the individual to whom it pertains; Funeral homes in connection with the death abroad of citizens of the U.S.; Members of Congress when the information is requested on behalf of the individual to whom access is authorized under these rules; Shipping companies when the information is maintained pursuant to the Department's responsibility under Title 46 of the U.S. Code; Immediate families when the information is required for the benefit of the subject by the individual's immediate family; Private United States citizen "wardens" designated by U.S. embassies and U.S. consulates general and consulates to serve, primarily in emergency and evacuation situations, as channels of communication with other Americans in the local community; Attorneys when the individual to whom the information pertains is the client of the attorney making the request, or when the attorney is acting on behalf of some other individual to whom access is authorized under these rules; the Red Cross; State law enforcement agencies; including state prosecutors; Foreign governments, embassies and consulates when the request for information is made pursuant to customary international practice; Private citizens whenever the individual to whom the information pertains has authorized the Department in writing to release such information; INTERPOL; National Center for Missing and Exploited Children; Various central authorities of member countries of the Hague International Child Abduction Convention; Contacts identified by state governments to assist in implementation of the Hague International Child Abduction Convention; Bar associations and legal aid services to assist in facilitating operations under the Hague International Child Abduction Convention; Local police in connection with notification of next-of-kin and child custody disputes; Social service agencies; and Parents involved in Hague International Child Abduction cases. This information may also be released on a need-to-know basis to other government agencies having statutory or other lawful authority to maintain such information; information is made available to routine users only for an established routine use. Also see the "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

By individual name, passport number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation, and contractors have had background investigations in accordance with the scope of their contract. Access to the Department of State and posts abroad is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas access to which is limited to authorized personnel. Access to computerized data bases is password-protected and under the responsibility of the system manager and persons who report to him or her. The system manager has the capability of printing audit trails of access from the electronic media, thereby permitting regular *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of these records varies depending upon the specific kind of record involved. They are retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Freedom of Information, Privacy, and Classification Review; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1239.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Secretary for Overseas Citizens Services; Room 4800; Department of State; 2201 C Street, NW; Washington, DC 20520–4818. At overseas locations, the on-site system manager is the Chief of the Consular Section or another State Department employee with responsibility for consular services as provided by the post in question.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of Overseas Citizens Services might have records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1239. The individual must specify that he/she wishes the Overseas Citizens Services Records checked. At a minimum, the individual must include: Name; date and place of birth; current mailing address and zip code; signature; a brief description of the circumstances which may have caused the creation of the record, including the location (city and country); and the approximate dates which give the individual cause to believe that Overseas Citizens Services has records pertaining to him/her. A request to search Overseas Citizens Services Records, STATE–05, will be treated also as a request to search Passport Records, STATE–26, when it pertains to passport, registration,

citizenship, birth or death records transferred from STATE–05 to STATE–26.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORDS SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records; consular officers; relatives; and interested federal, state and local agencies; and officials of foreign governments and courts or organizations such as the Red Cross.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records are exempted from 5 U.S.C. 522a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f). See Department of State Rules published in the **Federal Register**.

STATE–26

SYSTEM NAME:

Passport Records.

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION:

Department of State, Passport Services, Annex 17, 1111 19th Street, NW, Washington, DC 20522–1705.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who have applied for the issuance, amendment, extension or renewal of U.S. passports;

(b) Individuals who have been issued U.S. passports or had passports amended, extended, renewed, limited, revoked or denied;

(c) Individuals who have applied to have births overseas reported as births of U.S. citizens overseas;

(d) Individuals for whom Consular Reports of Birth Abroad of U.S. citizens or Certifications of Birth have been issued;

(e) Individuals who have applied at American Diplomatic or Consular posts for registration and have so registered;

(f) Individuals who have been issued Certificates of Identity or Cards of Registration and Identity as U.S. citizens;

(g) Individuals for whom the Department of State has issued Certificates of Loss of Nationality of the United States;

(h) Individuals who have applied at American Diplomatic or Consular Posts for issuance of Certificates of Witness to Marriage, and, individuals who have been issued Certificates of Witness to Marriage;

(i) Deceased individuals for whom a Report of Death of an American Citizen Abroad has been obtained;

(j) Individuals who although U.S. citizens are not or may not be entitled under passport laws and regulations to the issuance or possession of U.S. passports or other documentation or service;

(k) Individuals whose previous passport records must be reviewed before further action can be taken;

(l) Individuals who requested passport records under FOIA or the Privacy Act, whether successful or not;

(m) Individuals who have corresponded with Passport Services concerning various aspects of the issuance or denial of U.S. passports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(a) 8 U.S.C. 1401–1503 (Acquisition and Loss of U.S. Citizenship's use of U.S. Passports);

(b) 18 U.S.C. 911, 1001, 1541 thru 1546

(c) 22 U.S.C. 211a thru 218, 1172 (now repealed), 2658, 2662, 2705: Executive Order 11295, August 5, 1966, 31 FR 10603; (Authority of the Secretary of State in granting and issuing U.S. passports);

(d) 8 U.S.C. 1185 (Travel documentation of Citizens).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for passports, or applications for amendment, extension or renewal of passports; applications for registration at American Diplomatic and Consular Posts as U.S. citizens or for issuance of Certificates of Identity or Cards of Identity and Registration as U.S. Citizens; Consular Reports of Birth Abroad of United States citizens; Certificates of Witness to Marriage; Certificates of Loss of United States Nationality; Certificates of Expatriation; Oaths of Repatriation; and Reports of Death of an American Citizen Abroad. Names of persons who have applied for, been issued passports or related facilities; and, to the extent not included in the Application for Vital Records or other category of records maintained by this agency; the names of persons who have been issued Consular Reports of Birth; Certificates of Birth; Consular Certificates of Repatriation; Certificates of Witness to Marriage; Certificates of Loss of United States Nationality; Reports of Death of an American Citizen Abroad; or been registered or issued Certificates of Identity or Cards of Identity and Registration as U.S. citizens; Lookout files which identify those persons whose cases require other than routine examination or action; Miscellaneous materials—those documents/records maintained separately, if not in the application, including but not limited to: Investigatory reports compiled in connection with granting or denying passport and related services or prosecuting violations of passport criminal statutes; transcripts and opinions on administrative hearings, appeals and civil actions in federal courts; legal briefs, memoranda, judicial orders and opinions arising from administrative determinations relating to passports and citizenship; birth and baptismal certificates; court orders; arrest warrants; medical, personal and financial reports; affidavits; inter-agency and intra-agency memoranda, telegrams, letters and other miscellaneous correspondence; an electronic index of all passport application records created since 1978 and some passport application records created between 1962 and 1978; a currently expanding electronic index of Department of State Reports of Birth of American Citizens abroad which will eventually include all such documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information maintained in the Passport Services records is used to establish the U.S. citizenship and identity of persons for a variety of legal purposes including, but not limited to the adjudication of passport applications and requests for related services, social security benefits, employment applications, estate settlements and federal and state law enforcement investigations. The principal users of this information outside the Department of State are: Internal Revenue Service for the current addresses of specifically identified taxpayers in connection with pending actions to collect taxes accrued, examinations, and/or other related tax activities; Foreign governments, to permit such governments to fulfill passport control and immigration duties; Federal, state, local or other agencies having information on an individual's history, nationality or identity; to the extent necessary to obtain information from these agencies relevant to adjudicating an application for a passport or related service or where there is reason to believe that an individual has applied for or is in possession of a U.S. passport

fraudulently or has violated the law; Immediate families when the information is required by the individual's immediate family and may be released consistent with the Privacy Act and/or the Freedom of Information Act; Private U.S. citizen "wardens" designated by U.S. embassies and consulates to serve, primarily in emergency and evacuation situations, as channels of communication with other U.S. citizens in the local community; Attorneys when the individual to whom the information pertains is the client of the attorney making the request; Members of Congress when the information is requested on behalf of the individual to whom access is authorized under these rules. This information may also be released on a need-to-know basis to other government agencies having statutory or other lawful authority to maintain such information; information is made available to routine users only for an established routine use. Also see the "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, electronic media.

RETRIEVABILITY:

By individual name or passport number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation and contractors have background investigations in accordance with their contracts. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to passport office annexes have security access controls (code entrances) and/or security alarm systems. All records containing personal information are maintained in secured file cabinets or in restricted areas access to which is limited to authorized personnel. Access to computerized data bases is password-protected and under the responsibility of the system manager and persons who report to him or her. The system manager has the capability of printing audit trails of access from the electronic media, thereby permitting regular *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of these records varies depending upon the specific record involved. They are retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Freedom of Information, Privacy and Classification Review; Room 1239; Department of State; 2201 C Street, NW., Washington, DC 20520–1239.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Secretary of State for Passport Services, Room 5807; Department of State; 2201 C Street, NW., Washington, DC 20520–4818.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that Passport Services might have records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review; Room 1239; Department of State; 2201 C Street, NW., Washington, DC 20520–1239. The individual must specify that he/she wishes the Passport Services records checked. At a minimum, the individual must include: Name, date and place of birth, current mailing address, zip code, signature and passport number if known. A request to search Passport Records, STATE–26, will be treated also as a request to search Overseas Citizens Services Records, STATE–05, when it pertains to passport, registration, citizenship, birth or death records transferred from STATE–05 to STATE–26.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records; law enforcement agencies; investigative intelligence sources, investigative security sources and officials of foreign governments.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records are exempted from 5 U.S.C. 552(a), (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f). See Department of State Rules published in the **Federal Register**.

STATE–39

SYSTEM NAME:

Visa records.

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION:

Visa Office, Department of State, Annex 1, 2401 E Street NW, Washington, DC 20522–0113; Department of State, 2201 C Street NW, Washington, DC 20520–4818; National Visa Center, 32 Rochester Avenue, Portsmouth, NH 63801; U.S. embassies, consulates general and consulates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for visas; aliens who may be ineligible to receive visas including certain dual national U.S. nationals who aside from their U.S. nationality may otherwise be ineligible to receive visas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1101–1503 (Immigration and Nationality Act of 1952, as amended).

CATEGORIES OF RECORDS IN THE SYSTEM:

Visa applications and related forms; fingerprints; birth, marriage, death and divorce certificates; documents of identity; interview worksheets; biographic information sheets; affidavits of relationship; medical examinations and immunization reports; police records; educational and employment records; bank statements; communications between the Visa Office, the National Visa Center and U.S. embassies, U.S. consulates general and U.S. consulates, other U.S. government agencies, international organizations, foreign missions, members of Congress, attorneys, relatives of visa applicants and other interested parties; and internal Department of State correspondence relating to visa adjudication.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used to assist consular officers in the Department and overseas in dealing with problems of a legal, technical or procedural nature that may arise in considering an application for a U.S. visa. The principal users of this information outside the Department of State (and its embassies, consulates general and consulates) are: the Immigration and Naturalization Service of the Department of Justice, to coordinate the approval of petitions and the issuance of visas; the Department of

Justice including the Federal Bureau of Investigation (and its National Crime Information Center) and the Drug Enforcement Administration; Department of the Treasury, including the Customs Service; Department of Labor; Central Intelligence Agency; Department of Defense; and Congress. Limited unclassified information is released to interested persons inquiring as to the status of a particular visa case. The information may also be released to other government agencies having statutory or other lawful authority to use such information. It is used to produce statistical information for management purposes and to compile reports required by statute. Also see the "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy, microfilm.

RETRIEVABILITY:

Individual name, case number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation and contractors have had background investigations in accordance with the scope of their contract. Access to the Department and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel and authorized contractors of the Department of State. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of these records varies depending upon the specific kind of record involved. Files of closed cases are retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Freedom of Information, Privacy, and Classification Review; Room 1239; Department of State; 2201 C Street NW; Washington, DC 20520–1239.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Secretary for Visa Services, Room 6811, Department of State, 2201 C Street, NW, Washington, DC 20520–4818; Director, National Visa Center, 32 Rochester Avenue, Portsmouth, NH 63801. At specific overseas locations the one-site manager is the consular officer responsible for visa processing.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe the Department of State might have visa records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review; Room 1239; Department of State; 2201 C Street NW; Washington, DC 20520–1239. The individual must specify that he/she wishes the visa records for his/her application at a specific post/posts or in the United States to be checked. At a minimum, the individual must include: Name (and any aliases); date and place of birth; date and place of application; current mailing address and zip code; and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Freedom of Information, Privacy and Classification Review (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records; from attorneys/agents representing these individuals; and from relatives; sponsors; members of Congress; U.S. government agencies; international organizations; and local sources at posts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). See Department of State Rules published in the **Federal Register**.

[FR Doc. 95–18903 Filed 8–1–95; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–063]

New York Port Oil Pollution Minimization Demonstration

AGENCY: Coast Guard, DOT.

ACTION: Notice of Port Demonstration; request for proposals to participate.

SUMMARY: The Interagency Coordinating Committee on Oil Pollution Research invites interested parties to participate in the New York Port Oil Pollution Minimization Demonstration (Port Demonstration). The purpose of this demonstration, which is mandated by the Oil Pollution Act of 1990 (OPA 90), is to showcase recently developed innovative technologies from oil pollution research and development programs since the passage of OPA 90. These technologies are used in spill prevention, response, mitigation, fate and effects, and restoration. Interested parties are requested to submit proposals for demonstration their technologies. Federal, State, and local government officials, as well as research institutions, colleges, and universities, will receive written invitations to participate and observe. The Port Demonstration will be open to the public.

DATES: The Port Demonstration will be held October 26 through 28, 1995. Proposals for presentations must be received by September 1, 1995.

ADDRESSES: The Port Demonstration will be held at the United States Merchant Marine Academy (USMMA), Kings Point, NY. Proposals for demonstrating technology should be sent to the USCG Research and Development Center (Environmental Safety Branch), 1082 Shennecossett Road, Groton, CT 06340.

FOR FURTHER INFORMATION CONTACT: LTJG Dan Frank, USCG Research and Development Center, 1082 Shennecossett Road, Groton, CT 06340, telephone (203) 441–2761, facsimile (203) 441–2792.

SUPPLEMENTARY INFORMATION: All technologies proposed for demonstration must have been researched and developed since August 1990. Technology presentation proposals will be accepted in any of the following areas:

(1) Improved designs and operational practices for vessels, pipelines, and facilities;

(2) Improved designs to prevent or mitigate tanker and barge spills;

(3) Improved systems for mechanical recovery including containment, skimming, separation, storage, and collection;

(4) Improved systems for chemical and biological cleanup;

(5) Improved spill management and information systems;

(6) Technologies to protect public and responder safety and health;

(7) Technologies to monitor exposure to oil and oil by-products;

(8) Improved training for responders;

(9) Methods to restore or rehabilitate natural resources;

(10) Innovations in bioremediation technology;

(11) Innovations in Vessel Traffic Systems;

(12) Predictive models for fate, transport and effects of oil discharges;

(13) Methods to assess natural resource damages;

(14) Ecologically sensitive area assessment, monitoring and evaluation;

(15) Collection of environmental baseline data;

(16) Monitoring and evaluation of long-term oil discharge effects;

(17) Application of geographic and vessel simulation models for contingency plan development and evaluation, and personnel training;

(18) Oil pollution risk assessment;

(19) Improved methods for aerial surveillance, sensor analysis, and data transmission to responders;

(20) Casual relationship of human factors to accidents;

(21) Oil spill response expert systems;

(22) Waterways management techniques;

(23) Alternative countermeasures (e.g., in situ burning);

(24) Vessel inspection and salvage;

(25) Spilled oil behavioral studies (e.g., fate and effects); and

(26) Improved oil spill response management practices and systems approaches.

Each technology presentation proposal must include the following information:

(1) Submitter's name, address, and organization or company;

(2) A brief description of the technology to be demonstrated, including the dates the technology was researched and developed and placed into service or may be placed into service;

(3) Identification of which of the topical areas relates to the demonstration. If your technology supports more than one topical area, the primary area should be identified and comments made as to secondary areas the technology addresses; and

(4) Type of demonstration (e.g., exhibit booth, outdoor static equipment display or on-water demonstration) and an estimate of the amount of space needed for the exhibit; booth-type exhibits are limited to an area of 10 feet (wide), 10 feet (deep) and 8 feet (high). If your technology requires an on-water demonstration, or more detailed information is needed, please contact LTJG Frank for requirements.

If your organization has several technologies, and the technologies relate to different topic areas, then a separate proposal is required for each technology. Presentation proposals that are not in one of the listed topical areas will be considered on a case-by-case basis.

The Interagency Subcommittee for Port Demonstrations will review each proposal and select parties to participate in the demonstration. The Interagency Subcommittee for Port Demonstrations reserves the right of selection of exhibits and their decisions will be final. Parties whose proposals are accepted will be notified in writing. Upon acceptance, a one-time fee of $600 is required for each accepted proposal. This fee is required by the USMMA Continuing Education Department and must be received by them no later than 1 October 1995.

Dated: July 27, 1995.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19009 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–065]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. The agenda will include working group reports, discussion of various Coast Guard programs such as Prevention Through People and Casualty Investigation and introduction of the new Executive Director. The meeting will be open to the Public.

DATES: Meetings of the TSAC working groups will be held on Tuesday, August 29, 1995. These meetings are scheduled to run from 9 a.m. to 4:30 p.m. The TSAC meeting will be held on Wednesday, August 30, 1995, from 9 a.m. to 1 p.m. Written material should be submitted by August 16, 1995, and persons wishing to make oral presentations should notify the Assistant Executive Director not later than August 23, 1995.

ADDRESSES: The TSAC working groups and Committee will meet in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Assistant Executive Director, LTJG Patrick J. DeShon, Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street, S.W., Washington, DC 20593, telephone (202) 267–2997.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 1 et seq. The agenda for the Committee meeting includes the following.

Work Group Reports

(1) Licensing of towing vessel operators;

(2) Radar training for towing vessel operators;

(3) Prevention Through People;

(4) Towing gear standard for vessels pushing ahead/towing alongside;

(5) Distinguishing the marine assistance and commercial towing industries;

(6) Casualty Investigation QAT results; New Issues

(1) Adequacy of tug/barge navigation lights;

(2) Revision of Title Code of Federal Regulations, marine investigation regulations.

With advance notice, and at the discretion of the Chair, members of the public may present oral statements during the meeting. Persons wishing to make oral representations should notify the TSAC Assistant Executive Director at (202) 267–2997 no later than August 23, 1995. Written materials may be submitted for presentation to the Committee any time; however, to ensure distribution to each Committee member, 20 copies of the written material should be submitted to the Assistant Executive Director at the address listed in **FOR FURTHER INFORMATION CONTACT** by August 16, 1995

Dated: July 27, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19008 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–14–M

Office of Commercial Space Transportation

[Docket 50324]

Commercial Space Transportation; Grant of Petition for Waiver of Safety Criterion for METEOR Reentry Vehicle System

AGENCY: Office of the Secretary; Office of Commercial Space Transportation, DOT.

ACTION: Notice.

SUMMARY: Pursuant to 49 U.S.C. Subtitle IX, ch. 701, formerly the Commercial Space Launch Act of 1984, as amended, and the Department of Transportation licensing regulations, the Department of Transportation (the Department) has been evaluating a proposed commercial reentry vehicle system as part of the first application for a license to place a reentry vehicle into space. EER Systems Corporation, the operator of the proposed reentry vehicle system, has petitioned the Department for relief from the first of three safety criteria against which its vehicle is being assessed. The Department has determined to waive the accuracy and reliability criterion in light of the applicant's proposed operations and that doing so will not jeopardize public safety. This notice sets forth the basis for the Department's determination to grant the petition.

FOR FURTHER INFORMATION CONTACT: Ronald K. Gress, Deputy Associate Director for Licensing and Safety, Office of Commercial Space Transportation, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 (202) 366–2929.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation's (the Department) Office of Commercial Space Transportation (Office) is evaluating the first commercial reentry vehicle system, known as METEOR (Multiple Experiment to Earth Orbit and Return), to determine whether it may be launched into space. The Office is conducting its review as part of the Department's responsibility to license and otherwise regulate commercial space launch activities under 49 U.S.C. Subtitle IX, ch. 701—"Commercial Space Launch Activities," formerly the Commercial Space Launch Act of 1984, as amended. Under 49 U.S.C. Subtitle IX, ch. 701, the Department has broad authority to determine whether the launch of an otherwise unlicensed payload, such as a reentry vehicle system, should be prevented because the launch would jeopardize public health and safety, safety of property, or any national security or foreign policy interest of the United States (49 U.S.C. 70104(c)). The Office is the Secretary's designee for carrying out the Department's mandate under the statute.

OCST's Payload Determination Process

The Office's approach to evaluating the first commercial reentry vehicle system is described in two Notices previously published in the **Federal Register** (57 FR 10213–10216, published March 24, 1992; and 57 FR 55021, published November 23, 1992). Under that approach, the applicant or operator of the reentry vehicle system is required to apply for and obtain a favorable payload determination, consisting of: (i) A vehicle safety approval (VSA), whereby the applicant demonstrates that its integrated system is capable of being operated safely, and (ii) an operations review approval (ORA), whereby the operator demonstrates its capability to operate the system safely. Both approvals (VSA and ORA) are necessary to obtain a favorable payload determination.

The first Notice set forth the three criteria against which the COMET (COMmercial Experiment Transporter) reentry vehicle system would be assessed for purposes of obtaining a VSA. The latter Notice set forth the Office's intent to issue a single license authorizing the launch into space of the COMET reentry vehicle system, subject to, among other things, a favorable payload determination for the reentry vehicle system. Although the three criteria enumerated by the Office in the first Notice were developed in response to the COMET Program, which has since been discontinued, they are equally applicable to the pending application for METEOR.[1]

EER Systems Corporation (EER) is proposing to operate and reenter the METEOR reentry vehicle system and has applied to the Office for a payload determination. By letter dated May 1, 1995, EER petitioned the Office requesting relief from the probability of accuracy criterion (Criterion 1) enumerated in the March 24, 1992 Notice.

The METEOR Program

Under the METEOR Program, EER is proposing to launch the METEOR reentry vehicle system to low earth orbit using its newly-developed Conestoga launch vehicle. The Conestoga will be launched from NASA's Wallops Flight Facility, Virginia. EER is currently authorized to launch the Conestoga launch vehicle under License No. LLS 94–030. The authorization to launch is conditional upon issuance by the Office of final mission approval, including a favorable payload determination, for the METEOR reentry vehicle system.

The METEOR Program is similar to COMET. EER is proposing to launch METEOR to a 40.5 degree inclination low earth orbit (approximately 250 nautical miles) where it will remain on orbit for approximately 30 days for long duration microgravity experiments. Upon command from EER ground personnel, the reentering portion of the system (the reentry vehicle) will separate from the service module, its retromotor will activate, and the reentry vehicle will reenter along a ballistic trajectory to a designated landing site on earth. The reentry vehicle is smaller than the Mercury capsules used to return astronauts to earth in the early years of the manned space program, weighs about 730 pounds and is roughly three feet high by 52 inches in diameter at its widest point. The reentry vehicle is unguided; however, its ability to land within the designated site is affected by several factors determined immediately preceding initiation of reentry, including pointing accuracy, timing of the retroburn, and duration of the retroburn. Upon descent, a parachute is released to assure a soft landing. The service module will remain on orbit and continue to support microgravity experiments for approximately 130 days or more. The service module's orbit will eventually decay and it will reenter the earth's atmosphere, burning up during reentry and presenting no greater risk to public safety than other reentering orbital debris.

In a significant departure from the COMET Program, EER's proposal designates an oceanic landing site, whereas the COMET proposal had designated the Utah Test and Training Range, a 24 x 51 mile U.S. Government facility located in a sparsely populated area of Utah. EER is proposing to reenter the METEOR reentry vehicle in the Atlantic Ocean and has designated as its landing site an area that is 18.4 nautical miles wide and 87.1 nautical miles long, centered around a targeted mid-point approximately 85 miles off the coast of Virginia.

[1] The COMET Program, as originally administered, was suspended in May 1994, when NASA determined not to augment a grant to the Center for Space Transportation and Applied Research (CSTAR), which was responsible for procuring the COMET mission. Nearly a year later, EER Systems Corporation (EER), one of the original participants in the COMET Program, advised the Office that it had taken over the COMET Program and would be responsible for the entire program, including the reentry. The spacecraft, originally developed by Space Industries, Inc., as part of the COMET Program, has been renamed METEOR.

Vehicle Safety Approval Criteria

The three criteria enumerated in the March 24, 1992 Notice for the first COMET mission, and now METEOR, all of which would have to be satisfied under the Notice, are as follows:

1. The probability of the reentry vehicle landing outside the designated landing site shall not be greater than three in one thousand missions.

2. The additional risks to the public in the immediate vicinity of the landing site (i.e., the area within 100 miles of the designated landing site) shall not exceed the normal background risks to which those individuals would ordinarily be exposed but for the reentry missions. This normal background risk is characterized as: the probability of any casualty occurring within the 100-mile zone shall not exceed one in a million on an annual basis. In addition, the probability of any casualty occurring within the zone shall not exceed one in a million for a single mission.

3. The additional risks to the general public beyond the 100-mile zone around the designated landing site, and to property on orbit, shall not exceed normal background risks to which the public would ordinarily be exposed but for the reentry missions. This normal background risk is characterized as: the probability of any casualty occurring shall not exceed one in a million on an annual basis. In addition, the probability of any casualty occurring in the area that is both outside of the designated landing site and the 100-mile zone around the site shall not exceed one in a million for a single mission.

The March 24, 1992 Notice also provides supporting rationale for the criteria and explains their separate but interrelated safety objectives generally as follows:

- Criterion 1 is intended to assure reliable, accurate, incident-free reentry operations in order to foster public acceptance of commercial space transportation and minimize public exposure to risk. Criterion 1 assumes nominal pre-reentry operations conditions and addresses factors that affect accuracy after reentry is initiated. In its petition, EER has requested that OCST waive this criterion.
- Criterion 2 is intended to limit risks to the population that believes it may be more exposed to hazards resulting from commercial reentry operations because of their proximity to the designated landing site and to ensure they face no greater risk from commercial reentry operations than ordinary background risk. Criterion 2 becomes most relevant in the event of a system error or failure that causes a deviation from the vehicle's planned trajectory.
- Criterion 3 is intended to limit risks to the general public to ensure it, too, faces no additional risk beyond ordinary background risk as a result of commercial reentry activities. Criterion 3 addresses the risks posed by an essentially random reentry as a result of a major system failure during the reentry process.
- As stated in the March 24, 1992 Notice, the criteria acknowledge that some hazards, and therefore risks accompany the proposed reentry activity. The criteria reflect those hazards reduced to acceptable levels of risk. Through the criteria, the Office has established a level of acceptability comparable to that employed in other safety regulatory regimes, such as those administered by the Environmental Protection Agency, and consistent with risk thresholds utilized by Federal launch ranges as part of range safety.

Since early 1992, when the criteria addressing the COMET Program proposal were established, the design of the reentry vehicle system and the proposal to reenter it have evolved and matured. These developments have allowed the Office to assess specific aspects of reentry risks and their impact on public safety with greater clarity.

The three criteria are intended to address the risks to public safety that result from a human-induced reentry. For the majority of its mission, the risks presented by the METEOR reentry vehicle system are the same as those presented by other space payloads. It is the fact that the METEOR reentry vehicle is operated so as to land at a designated landing site and designed to withstand the stress of reentry that raises the potential of risk to public safety. Accordingly, in evaluating whether METEOR satisfies the criteria, the Office considers only human-induced or intentional reentries. The Office has determined that a human-induced reentry occurs when reentry is intentionally initiated upon command from ground personnel and the vehicle returns to earth within one orbit. The Office believes that there should be a direct relationship between initiating reentry and the reentry event itself for it to be considered human-induced or intentional. If the vehicle does not reenter upon command within one orbit, the direct relationship is broken and the vehicle remains on orbit as any other payload. A malfunctioning vehicle that remains on orbit and then reenters the atmosphere as a result of orbital decay or other intervening events has not completed a human-induced or intentional reentry and the criteria do not apply.[2] Thus, the Office considers only those system failures or nominal system variations that may occur during the course of a "human-induced" or intentional reentry in assessing METEOR's ability to meet Criteria 1, 2 and 3.

Petition to Waive Criterion 1

EER's petition requesting relief from Criterion 1 is based, in part, on its misunderstanding of performance-based criteria. In establishing performance-based criteria for COMET, the Office stated its belief that, unlike design standards, "performance-based criteria allow the maximum flexibility in developing a safe and cost-effective product. The Office further believes that performance-based criteria enhance the public interest by encouraging innovation and technology development. This environment promotes safe space transportation services at lower cost and helps assure that customers' needs are addressed." (57 FR 10213, 10215)

In its petition, EER asserts, among other things, the difficulty of using performance-based standards to demonstrate reliability in the absence of flight performance history. EER further maintains that satisfying Criteria 2 and 3, without Criterion 1, would be sufficient to ensure that public safety is not compromised. EER suggests that Criterion 1 affords no additional protection to the public beyond that provided by satisfying Criteria 2 and 3.

Although the Office disagrees with EER's characterization of performance-based standards, the Office has evaluated whether Criterion 1 may be waived for the METEOR reentry mission without jeopardizing public safety. The Office undertook this evaluation because it is consistent with the Department's statutory mandate to issue a favorable payload determination allowing METEOR to be launched for its intended reentry mission if the Office finds that the proposed mission can be conducted without jeopardizing public safety and U.S. national interests.

[2] Even if an operator attempts an intentional reentry, it may fail for a number of reasons. METEOR includes a number of built-in fail-safe systems that automatically terminate the reentry sequence if certain conditions that would cause an inaccurate or otherwise unsafe reentry are detected. In addition, a system required for reentry to proceed could fail, leaving the reentry vehicle on orbit for more than one orbit. In both instances, there has not been a human-induced reentry and the spacecraft assumes a status essentially equivalent to other objects left in space. In the Office's assessment of the vehicle, neither of these failure scenarios are considered in determining whether the criteria have been met.

In conducting its evaluation, the Office considered the relationship between accuracy (Criterion 1) and public safety. While accuracy contributes significantly to assuring public safety and is important to developing public and consumer confidence, the Office considered whether there are circumstances in which intentional reentry can occur and public safety is assured without the demonstrated level of accuracy required by Criterion 1. Next, the Office considered whether these circumstances would, in fact, occur in carrying out the METEOR reentry mission. Finally, the Office considered whether, if Criterion 1 is waived, additional measures are appropriate to ensure that public safety is protected.

The Office has determined that there are circumstances in which the relationship of reentry vehicle accuracy to public safety becomes less significant. The three criteria were developed to have a mutually reinforcing effect on public safety. Although their objectives are interrelated, they were designed so that Criterion 1 can compensate if the ability of the reentry vehicle system to meet Criteria 2 and 3 is marginal, and vice versa. Stated another way, the probability of a casualty is, among other things, a function of the probability of missing the landing site. Other contributing factors include the size and mass of the vehicle upon impact, its contents, and the population distribution in the area where the vehicle could impact if it missed the designated landing site. For example, if a reentry vehicle is extremely small and contains no hazardous materials, the probability of a casualty during a reentry would be quite low, even if the vehicle had little probability of landing in the designated site. However, the probability of a casualty could be high if that vehicle were quite large, contained explosives or hazardous materials, or if the vehicle was likely to impact in a densely populated area if it missed the designated landing site. Thus, under certain conditions, it may be possible to relax or eliminate an accuracy criterion if the risk to public safety remains within acceptable levels. They are as follows:

- If it can be shown that there are well-defined areas within which the vehicle is most likely to land if it misses the designated landing site, and that the risk to the population within these areas is within acceptable limits;
- If it can be shown that the vehicle, if it misses the designated landing site, is unlikely to survive rentry or is likely to reenter in a condition that presents little risk to exposed populations because it contains little mass, no hazardous materials, or both; or
- If it can be shown that risk mitigation measures (e.g., public notices or warnings, emergency response plans) can be implemented to limit the risk to exposed populations to acceptable levels in the event the vehicle misses the designated landing site.

To determine whether any of these circumstances will exist for METEOR, the Office analyzed a broad range of failure scenarios that may occur when a human-induced or intentional reentry occurs. In conducting risk scenario analyses, the Office used a conservative approach in that it did not consider the mitigating effects of a parachute system built into the reentry vehicle to soften landing impacts.

In the event of a minor system error or failure, such as one that alters the aerodynamic characteristics of the vehicle as it descends, the Office determined that the dispersion area or "footprint" within which the vehicle would be expected to land would most likely be enlarged, shifted, or both. The vehicle would still land in the general vicinity of the landing site, that is, within the 100-mile zone. Given EER's designated landing site in the Atlantic Ocean, the 100-mile zone around the designated landing site is principally ocean area or some sparsely populated land areas. Based on dispersion, vehicle break-up and other risk analyses, the Office determined that risk to public safety would remain well within the threshold of normal background risk identified in Criterion 2.

In the event of a major system failure which causes a random reentry, such as severe misalignment of the vehicle during retroburn resulting in insufficient thrust to deorbit along the desired trajectory, the Office determined that the only population placed at risk would be those persons residing along the orbital path, or ground trace, of the final orbit. This area occupies a swath approximately 20 miles wide and extending approximately 3,000 miles beyond the designated landing site. The area is so limited because of the limited cross-range capability of the vehicle. Because of the inclination of the orbit and the designated landing site, most of this ground trace is over uninhabited broad ocean. The effect of alignment or burn errors increases very rapidly with the magnitude of the error, so that if the METEOR reentry vehicle travels beyond 3,000 miles from the intended landing site it will remain in space for more than one orbit. Although the ground trace includes some areas of the United States, the likelihood of landing on land is small, given that most of the ground trace is over ocean. Moreover, the areas of the United States in which the reentry vehicle could land are relatively sparsely populated and, based on dispersion, vehicle break-up and other risk analyses, the Office found that risk to public safety would remain within the threshold of normal background risk identified in Criterion 3.

A gross failure that causes the vehicle to remain on orbit for more than one orbit after the intended reentry need not be considered under the vehicle safety criteria. Nevertheless, the Office evaluated the risks associated with a gross failure and determined that risk to public safety still would remain well within the threshold of normal background risk identified in Criterion 3. In fact, the Office determined that an intact reentry module that impacted on earth or the reentering debris from the reentry of the entire vehicle system (the reentry vehicle joined to the service module) would be smaller than, and therefore pose less risk than, the debris believed to survive the reentry of large abandoned satellites or spent upper stages of Titan, Atlas, and Delta launch vehicles.

Accordingly, the Office has determined that there are circumstances in which intentional reentry of METEOR can occur and public safety will be assured without the demonstrated level of accuracy required under Criterion 1, and that these circumstances do, in fact, exist for METEOR. There are well-defined areas within which the reentry vehicle is most likely to land if it misses the designated landing site. The risk to the population within these areas falls within acceptable limits. The small size and mass of the reentry vehicle and the lack of hazardous materials on the vehicle would minimize the potential risk to public safety if it misses the designated landing site. Moreover, under certain failure scenarios, the reentry vehicle would break up and reenter in small bits of debris, much of which would likely burn up as it passes through the atmosphere.

The Office has concluded that, in light of the performance characteristics of the METEOR reentry vehicle, the proposed mission including an oceanic landing, the small size of the reentry vehicle and the absence of hazardous materials on the reentry vehicle, public safety and U.S. national interests would not be jeopardized if the landing accuracy (Criterion 1) is waived. However, as a condition of the waiver, the Office is requiring that EER implement a public information communications plan under which the affected public would be informed of the reentry activity, including the estimated time and location. EER must also have in place an emergency response plan whereby local officials may be notified in the event of an off-site landing and vehicle recovery can be conducted effectively.

In addition, NASA's Wallops Flight Facility has agreed to provide range safety support for the reentry which includes coordination, through appropriate Federal agencies, of notices to air and marine traffic in the vicinity of the designated landing site to minimize risks during the reentry.

Accordingly, the Office has determined that, for METEOR, Criterion 1 may be waived and the relief requested in EER's petition is granted.[3]

Issued in Washington, DC, this 28th day of July, 1995.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 95–18997 Filed 7–28–95; 3:05 pm]

BILLING CODE 4910–62–U

[3] At the time the COMET Program was suspended, a petition submitted by Space Industries, Inc., as applicant for a payload determination, was pending. No final action was taken in light of the decision to discontinue the COMET Program. In granting the petition for METEOR, the Office has made no determination as to whether doing so would have been appropriate for COMET or any other reentry vehicle system or mission.

Office of the Secretary

Minority Business Resource Center Advisoty Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held Monday, September 11, 1995, from 2:00–4:00 p.m. at the Department of Transportation, 400 7th Street, S.W., Conference Room 8236–8240, Washington, D.C. 20590. The agenda for the meeting is as follows:

—Financial Programs
—Outreach
—Certification
—Procurement Opportunities
—Affirmative Action Issues

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Office of Small and Disadvantaged Business Utilization, Minority Business Resource Center by 4:00 p.m. on Thursday, September 7, 1995. Information pertaining to the meeting may be obtained from Mrs. Marie A. Hendricks, Office of Small and Disadvantaged Business Utilization, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 366–1930 or (800) 532–1169. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on July 27, 1995.

Luz A. Hopewell

Director Office of Small and Disadvantaged Business Utilization.

[FR Doc. 95–18910 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Proposed Advisory Circular 20–XX, Commercial Assistance During Construction of Amateur-Built Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 20–XX, Commercial Assistance During Construction of Amateur-Built Aircraft, for review and comments. The proposed AC 20–XX provides information and guidelines developed by the FAA, the Experimental Aircraft Association (EAA), and industry regarding the applicability of commercial assistance in the construction or partial construction of amateur-built aircraft, with emphasis on kit aircraft.

DATE: Comments submitted must identify the proposed AC 20–XX, project number, 95–005, and be received by September 1, 1995.

ADDRESSES: Copies of the proposed AC 20–XX can be obtained from and comments may be returned to the following: Federal Aviation Administration, Aircraft Certification Service, Production and Airworthiness Certification Division, AIR–200, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: George McNeill, AIR–230, Production and Airworthiness Certification Division, Room 815, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 20–XX provides information and guidance to persons involved in the construction of amateur-built aircraft, the manufacturer of kits designed to be assembled into aircraft by amateur-builders, builders of aircraft fabricated from plans for certification as amateur-built, and persons providing assistance to amateur-builders.

Comments Invited

Interested persons are invited to comment on the proposed AC 20–XX listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 20–XX may be examined before and after the comment closing date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on July 27, 1995.

Michael Gallagher,

Manager, Production & Airworthiness Certification Division.

[FR Doc. 95–18916 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Watertown Regional Airport Watertown, South Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on or about July 10, 1995, the Flight Service Station (FSS) at Watertown, South Dakota will be permanently closed. Services to the aviation public in the Watertown flight plan area, formerly provided by Watertown FSS, are being provided by the Automated Flight Service Station (AFSS) at Huron, South Dakota. This information will be reflected in the FAA organization statement the next time it is reissued. (Sec. 313 (a), 72 Stat. 752; 49 U.S.C. 1354.)

William C. Withycombe,

Acting Regional Administration, Great Lakes Region.

[FR Doc. 95–18912 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held August 21, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Action on Open Items from Previous Meetings: Report of Ad Hoc Group for Systems Issues; Plan for Better Coordination in the Aviation Community Among RTCA, ICAO, EUROCAE, and Other Activities; Recommendations to Resolve Data Link Air Traffic Services Communication (ATSC) Recording Requirements Issues; Ohio University Letter Regarding Certification of GPS-Based Systems; (4) Other Business; and (5) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on July 27, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–18913 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capital Construction Fund

Under the authority in Section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (the Act, 46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under Section 607 of the Act shall be 7.18 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1995. The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

So Ordered By: Maritime Administrator, Maritime Administration; Administrator, National Oceanic and Atmospheric Administration; Assistant Secretary for Tax Policy, Department of the Treasury.

Dated: July 27, 1995.

A.J. Herberger,

Maritime Administrator.

D. James Baker,

Administrator, National Oceanic and Atmospheric Administration.

Leslie Samuals,

Assistant Secretary for Tax Policy.

[FR Doc. 95–19026 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Nissan

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Nissan North America, Inc., (Nissan) for an exemption of a high-theft line (whose nameplate is confidential) from the parts-marking requirements of the vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms Gray's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In a letter dated April 28, 1995, Nissan North America, Inc., an American subsidiary of Nissan Motor Company, Ltd., a Japanese corporation, requested exemption from the parts-marking requirements of the theft prevention standard for a motor vehicle line. The nameplate of the line and the model year of introduction are confidential. The letter requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for the entire line. In a May 8, 1995, telephone conversation with NHTSA officials, Nissan clarified the scope of its petition.

Nissan's April 28 letter and information provided in the May 8 telephone conversation, together constitute a complete petition, as required by 49 CFR Part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter dated May 24, 1995, to Nissan, the agency granted the petitioner's request for confidential treatment of most aspects of its petition, including the nameplate of the line and the model year of its introduction.

In its petition, Nissan provided a detailed description and diagrams of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine starter interrupt function and an alarm function. The antitheft device is activated by removing the ignition key and locking the doors with it. The alarm monitors the doors, hood, battery terminals and circuitry, and engine starter circuit.

In order to ensure the reliability and durability of the device, Nissan stated that it conducted tests, based on its own specified standards. Nissan provided a detailed list of the tests conducted. Nissan stated its belief that the device is reliable and durable since the device complied with Nissan's specified requirements for each test.

Nissan compared the device proposed for its new line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements.

Nissan has concluded that the antitheft device proposed for its new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. Nissan bases its belief on reduced theft rates of the 300ZX, Maxima, and Infiniti Q45 car lines. Nissan stated that the 300ZX has been equipped with an antitheft device since the model designation was changed from 280ZX in July 1983. The company asserts that the thefts of the 300ZX has dropped significantly for that line, resulting in a 51 percent decrease for the MY 1984 theft rates and a 42 percent drop for the MY 1985 rates as compared to the MY 1983 rates (thefts per 1,000 produced). Nissan believes that the reduction of theft rates for the 300ZX are primarily attributable to the antitheft systems installed. Since the vehicle line that is the subject of this petition will be equipped with a similar system as the 300ZX, Nissan expects that the antitheft system of the vehicle line for which it now seeks an exemption will also be as effective in reducing and deterring theft.

Additionally, Nissan provided theft experience for the Maxima and Q45 vehicle lines. The 1985 through 1994 MY Nissan Maxima has been equipped with a device similar to that which is planned for the line that is the subject of this petition. The antitheft device has been installed on the Maxima since it was revised from the Model 810 Sedan in October 1984. Nissan's petition indicated that a 47% decrease in theft occurred for the 1985 Maxima as compared to the MY 1984 Model 810 Sedan. Nissan also stated that the Infiniti Model Q45 theft rates indicates that the system's design is effective. Based on the 1990–91 MY theft data, the Infiniti Model Q45 theft rate is 2.1522 per 1,000 vehicles, which Nissan asserts is significantly below the median rate for those calendar years.

Based on the evidence submitted by Nissan, the agency believes that the antitheft device for the new Nissan line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standards (49 CFR Part 541).

The agency believes that the device will provide the types of performance listed in 49 CFR Part 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6 (a)(4) and (5), the agency finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Nissan provided about its device, much of which is confidential. This confidential information included a description of reliability and functional tests conducted by Nissan for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the line from the parts-marking requirements of 49 CFR Part 541.

If Nissan decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50

Issued on: July 22, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–19023 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 95–44; Notice 2]

Decision That Nonconforming 1989 Honda Civic DX Hatchback Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1989 Honda Civic DX Hatchback passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1989 Honda Civic DX Hatchback passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1989 Honda Civic DX Hatchback), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period,

NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to decide whether 1989 Honda Civic DX Hatchback passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 30, 1995 (60 FR 28201) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–128 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1989 Honda Civic DX Hatchback not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1989 Honda Civic DX Hatchback originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19019 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–46; Notice 2]

Decision That Nonconforming 1972 Through 1976 Bristol VRT Buses Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1972 through 1976 Bristol VRT buses are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1972 through 1976 Bristol VRT buses are not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATE: The decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.—certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Double Decker Bus Company of Denver, Colorado (Registered Importer No. R–93–015) petitioned NHTSA to decide whether 1972 through 1976 Bristol VRT buses are eligible for importation into the United States. NHTSA published notice of the petition on June 1, 1995 (60 FR 28648) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–10 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1972 through 1976 Bristol VRT buses are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19020 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–60; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1994 and 1995 BMW 730i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 and 1995 BMW 730i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994 and 1995 BMW 730i passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 1, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Imported 90–007) has petitioned NHTSA to decide whether 1994 and 1995 BMW 730i passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 1994 and 1995 BMW 740i passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren-Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1994 and 1995 BMW 730i passenger cars to 1994 and 1995 BMW 740i passenger cars, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that 1994 and 1995 BMW 730i passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their 1994 and 1995 BMW 740i passenger cars, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1994 and 1995 BMW 730i passenger cars are identical to 1994 and 1995 BMW 740i passenger cars with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that 1994 and 1995 BMW 730i passenger cars are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a)(substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of the appropriate symbol on the seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 109 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies and front sidemakers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that in conformity with the standard, some of the subject vehicles manufactured before September 1993 may be equipped with only driver's side air bags and knee bolsters, but that all such vehicles manufactured after September 1993 are so equipped on both the driver's and the passenger's side. The petitioner also states that the vehicles are equipped with Type 2 seat belts in the front and rear outboard seating positions, and with a Type 1 seat belt in the rear center seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on 1994 and 1995 BMW 730i passenger cars must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested

but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19021 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–59; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars that are not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 1, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 (Model ID 129.076) passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are the 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler-Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surface,s* 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshiled Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that non-U.S. certified 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of the appropriate symbol on the seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner states that in conformity with the standard, some of the subject vehicles manufactured before September 1993 may be equipped with only driver's side air bags and knee bolsters, but that all such vehicles manufactured after September 1993 are so equipped on both the driver's and the passenger's side. The petitioner also states that the vehicles are equipped with Type 2 seat belts in both front outboard seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on non-U.S. certified 1993 Mercedes-Benz 600SL and 1994 and 1995 Mercedes-Benz SL600 passenger cars must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19022 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Departmental Offices' Performance Review Board (PRB) and supersedes the list published in 59 FR 142 dated July 26, 1994, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of members of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The names and title of the PRB members are as follows:

Joan Affleck-Smith—Director, Office of Financial Institutions Policy
John J. Auten—Director, Office of Financial Analysis
William E. Barreda—Deputy Assistant Secretary (Trade and Investment Policy)
Ralph L. Bayrer—Director, Office of Synthetic Fuels
Cynthia Beerbower—Deputy Assistant Secretary (Tax Policy)
Darcy E. Bradbury—Deputy Assistant Secretary for Federal Finance
Richard S. Carnell—Assistant Secretary (Financial Institutions)
Joyce H. Carrier—Deputy Executive Secretary (Public Liaison)
Mary E. Chaves—Director, Office of International Debt Policy
Wushow Chou—Deputy Assistant Secretary (Information Systems)
Anna Dickey—Director, Office of Enforcement Budget Policy
Lowell Dworin—Director, Office of Tax Analysis
James H. Fall, III—Deputy Assistant Secretary (Developing Nations)
James J. Flyzik—Director, Office of Telecommunications Management
Jon M. Gaaserud—Director, U.S. Saudi Arabian Joint Commission Program Office
Geraldine A. Gerardi—Director for Business Taxation
William H. Gillers—Director, Office of Management Advisory Services
Robert F. Gillingham—Deputy Assistant Secretary (Policy Coordination)
W. Scott Gould—Deputy Assistant Secretary Departmental Finance and Management
John D. Hawke—Under Secretary for Domestic Finance
Edward S. Knight—General Counsel
David Lipton—Deputy Assistant Secretary (Eastern European and Former Soviet Union Policy)
Joan Logue-Kinder—Assistant Secretary (Public Affairs)
Fe Morales Marks—Deputy Assistant Secretary (Financial Institutions Policy)
George Muñoz—Assistant Secretary (Management and Chief Financial Officer)
Gerald Murphy—Fiscal Assistant Secretary
Ronald K. Noble—Under Secretary (Enforcement)
Jill K. Ouseley—Director, Office of Market Finance
Linda Robertson—Assistant Secretary (Legislative Affairs)
Alex Rodriguez—Deputy Assistant Secretary (Administration)
Victor Rojas—Deputy Assistant Secretary for Legislative Affairs (Banking & Finance)
Leslie Samuels—Assistant Secretary (Tax Policy)
Howard Schloss—Deputy Assistant Secretary for Public Affairs
Charles Schotta—Deputy Assistant Secretary (Middle East & Energy Policy)
G. Dale Seward—Director, Automated Systems Division
Jeffrey Shafer—Assistant Secretary (International Affairs)
Sylvia Mathews—Chief of Staff
Jane L. Sullivan—Director, Office of Information Resources Management
Lawrence H. Summers—Under Secretary for International Affairs
Mozelle Thompson—Deputy Assistant Secretary (Government Financial Policy)
Edwin A. Verburg—Director, Financial Services Directorate
Robert Welch—Director, Office of Procurement

FOR FURTHER INFORMATION CONTACT: Rosemary Downing, Executive Secretary, PRB, Room 1318, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone: (202) 622–1440. This notice does not meet the Department's criteria for significant regulations.

George Muñoz,

Assistant Secretary of the Treasury (Management).

[FR Doc. 95–18948 Filed 8–1–95; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 148

Wednesday, August 2, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 4, 1995.

PLACE: 2033 K St. N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19082 Filed 7–31–95; 11:07 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 18, 1995.

PLACE: 2033 K St. NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A.Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19084 Filed 7–31–95; 11:07 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 11, 1995.

PLACE: 2033 K St. NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19083 Filed 7–31–95; 11:07 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 25, 1995.

PLACE: 2033 K St. NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–19085 Filed 7–31–95; 11:07 am]

BILLING CODE 6351–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9 a.m., Wednesday, August 9, 1995.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Part of this meeting will be closed to the public. The rest of the meeting will be open to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Federal Home Loan Bank Resales with Members.
2. Adoption of Final Rule Regarding Procedures for FHLBank Access to Nonpublic Information of Federal Financial Regulatory Agencies.
3. Federal Home Loan Bank of San Francisco's Request for Additional AHP Funds for Neighborhood Housing Services.
4. FHLBank Presidents' Compensation Plan.
5. Transfer of Membership and Sale of Advances.
6. Membership.
7. Interpretation of Financial Management Policy.
8. Federal Home Loan Bank of Dallas' Special Investment Authority.

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Federal Home Loan Bank of Dallas: Affordable Housing Program Project, Tunica Courts, L.P., Tunica, Mississippi.
2. Ineligible Use of AHP Funds—Federal Home Loan Bank of New York.

The above matter is exempt under section 552b(c)8 of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–19069 Filed 7–28–95; 5:00 pm]

BILLING CODE 6725–01–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 37499, July 20, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Thursday, July 27, 1995.

CHANGE IN THE MEETING: The following topic was added to the agenda during the open meeting.

- Revised 1995 Affordable Housing Program Priority for the Federal Home Loan Bank of Atlanta.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–19052 Filed 7–28–95; 5:00 pm]

BILLING CODE 6725–01–M

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federal register

Wednesday
August 2, 1995

Part II

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 3

Federal Reserve System
12 CFR Part 208

Federal Deposit Insurance Corporation
12 CFR Part 325

Risk-Based Capital Standards; Interest Rate Risk; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–17]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–0802]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB22

Risk-Based Capital Standards: Interest Rate Risk

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The OCC, the Board, and the FDIC (collectively referred to as the banking agencies) are issuing this final rule to implement the portion of Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) that requires the banking agencies to revise their risk-based capital standards to ensure that those standards take adequate account of interest rate risk. This final rule amends the capital standards to specify that the banking agencies will include, in their evaluations of a bank's capital adequacy, an assessment of the exposure to declines in the economic value of the bank's capital due to changes in interest rates.

Concurrent with the publication of this final rule, the banking agencies are issuing for comment, a joint policy statement that describes the process the banking agencies will use to measure and assess the exposure of a bank's net economic value to changes in interest rates. After the banking agencies and banking industry gain sufficient experience with the proposed measurement process, the banking agencies intend, through a subsequent rulemaking process, to issue a proposed rule that would establish an explicit capital charge for interest rate risk that will be based upon the level of a bank's measured interest rate risk exposure.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT:

OCC: Christina Benson, Capital Markets Specialist, or Lisa Lintecum, National Bank Examiner (202/874–5070), Office of the Chief National Bank Examiner; Michael Carhill, Financial Economist, Risk Analysis Division (202/874–5700); and Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202/874–5090), Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board of Governors: James Houpt, Assistant Director (202/452–3358), William F. Treacy, Supervisory Financial Analyst (202/452–3859), Division of Banking Supervision and Regulation; Gregory Baer, Managing Senior Counsel (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: William A. Stark, Assistant Director (202/898–6972) or Phillip J. Bond, Senior Capital Markets Specialist (202/898–3519), Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Interest rate risk is the exposure of a bank's current and future earnings and equity capital arising from adverse movements in interest rates. This risk results from the possibility that changes in interest rates may have an adverse impact on a bank's earnings and its underlying economic value. Changes in interest rates affect a bank's earnings by changing its net interest income and the level of other interest-sensitive income and operating expenses. The underlying economic value of the bank's assets, liabilities, and off-balance sheet items also are affected by changes in interest rates. These changes occur because the present value of future cash flows, and in some cases the cash flows themselves, change when interest rates change. The combined effects of the changes in these present values reflect the change in the underlying economic value of the bank's capital as well as provide an indicator of the expected change in the bank's future earnings arising from the change in interest rates.

Interest rate risk is inherent in the role of banks as financial intermediaries. Interest rate risk, however, introduces volatility to bank earnings and to the economic value of the bank. A bank that has an excessive level of interest rate risk can face diminished future earnings, impaired liquidity and capital positions, and, ultimately, may jeopardize its solvency.

Section 305 of FDICIA, Pub. L. 102–242 (12 U.S.C. 1828 note), requires the banking agencies to revise their risk-based capital guidelines to take adequate account of interest rate risk. Section 305 of FDICIA also requires the banking agencies to publish final implementing regulations by June 19, 1993, and to establish transition rules to facilitate compliance with those regulations.

The banking agencies have not met the June 19, 1993, statutory date for publishing a final rule for this section of FDICIA. This delay reflects the difficult tradeoffs the banking agencies have faced in developing and implementing a rule that provides a sufficiently accurate basis for estimating banks' interest rate risk exposures and their need for capital, yet maintains enough transparency and simplicity to allow bank management to readily determine their regulatory capital requirements. The banking agencies also are mindful of the need to avoid unnecessary regulatory burdens associated with this rule, consistent with Section 335 of the Reigle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (12 U.S.C. 1828 note).

II. September 1993 Proposal

A. Proposal

In September 1993, the banking agencies issued a proposed rule that solicited comments on a framework for measuring banks' interest rate risk exposures and determining the amount of capital needed by a bank to account for interest rate risk. See 58 FR 48206 (September 14, 1993).

The framework outlined by the banking agencies in the September 1993 proposed rule incorporated the use of a three-level measurement process to evaluate banks' interest rate risk exposures. The first measure was a quantitative screen, based on existing Consolidated Report of Condition and Income (Call Report) information, that would exempt potential low risk banks from additional reporting requirements. The exemption screen was based on two criteria: (1) the amount of a bank's off-balance sheet interest rate contracts in relation to its total assets, and (2) the relation between a bank's fixed- and floating-rate loans and securities that mature or reprice beyond five years and its total capital.

Banks not meeting the proposed exemption test would have been required to calculate their economic exposure by either: (1) a supervisory model that measured the change in the economic value of the bank for a specified change in interest rates; or (2) the bank's own interest rate risk model, provided that the model was deemed adequate by examiners for the nature and scope of the bank's activities and that it measured the bank's economic exposure using the interest rate scenarios specified by the banking agencies.

The September 1993 proposed rule also sought comment on two alternative methods for determining the amount of capital a bank may need for interest rate risk. Both approaches proposed to focus supervisory attention and need for capital on those banks whose measured exposure exceeded a proposed supervisory threshold level.[1] One method (Minimum Capital Standard) proposed to establish an explicit minimum capital standard for interest rate risk. This approach would have relied on the results of either the supervisory model or banks' own models and would have required banks to have capital sufficient to cover the amount by which their measured exposure exceeded a supervisory threshold level. The second approach (Risk Assessment) proposed to use model results as one of several factors that examiners would consider when determining a bank's capital needs for interest rate risk. Under this approach, a bank's need for capital would be determined on a case-by-case basis as part of each banking agency's examination process. In determining the need for capital, examiners would consider the quality of the bank's interest rate risk management, internal controls and the overall financial condition of the bank. Banks that had measured exposures in excess of the supervisory threshold and weak interest rate risk management systems would generally be required to hold additional capital for interest rate risk.

B. Comments

The banking agencies collectively received a total of 133 comments on the September 1993 proposed rule. The majority of commenters were banks. Thrifts, trade associations, bank consultants, other government-sponsored agencies and other regulators also commented. The majority of commenters responded favorably to modifications that the banking agencies made from the earlier advance notice of proposed rulemaking published in the **Federal Register** on August 10, 1992. *See* 57 FR 35507 (August 10, 1992). In particular, most commenters expressed strong support for using the results of banks' own interest rate risk models to determine their levels of exposure and corresponding need for capital. Commenters noted the potential inaccuracies of standardized regulatory models, such as the proposed supervisory model, as one reason for allowing the use of internal models. Internal models, they believed, would better capture the unique characteristics of individual bank portfolios. Many commenters also stated that permitting the use of internal models would provide banks with incentives to improve their internal risk measurement systems.

The vast majority of commenters also urged the banking agencies to adopt a "Risk Assessment" approach for determining capital adequacy. Among the reasons cited for this approach were concerns about the accuracy of the proposed supervisory model and the need to consider qualitative factors, such as the quality of a bank's risk management process and its ability to respond to changing market conditions, in evaluating capital. Many commenters believed that by considering such factors, the banking agencies would reward banks that have superior risk management capabilities.

Some commenters believed that the banking agencies' primary focus when evaluating the level of a bank's interest rate risk exposure should be on the exposure of the bank's near-term (one- to two-year) reported earnings, rather than on its exposure to economic value. While recognizing the importance of understanding the degree to which a bank's reported earnings are vulnerable to changing interest rates, the banking agencies have concluded that the economic value perspective more effectively identifies the risks that the bank's current business activities pose to its financial condition, its longer-term earnings and solvency, and hence the adequacy of its capital levels. Economic value measures the effect of a change in interest rates on the value of *all* future cash flows generated by a bank's current financial instruments, not just those that affect earnings over the next few months or quarters. Indeed, an earnings analysis provides information only on positions repricing within the forecast horizon, and thus would not take account of the full magnitude of risk. As a result, the effect of embedded and explicit options can be significantly understated by such an analysis. In contrast, an economic value perspective captures the effect of changing interest rates for all time periods, and offers a superior vehicle for assessing the effect of those rate changes on positions that have option characteristics. In addition, an economic value perspective offers important insights into the effect of changing interest rates on the liquidity of a bank's assets.

Many commenters also raised common concerns about various elements of the measurement process outlined in the September 1993 proposed rule. Most commenters believe that the proposed treatment of non-maturity deposits understate their effective maturity. Others raised concerns about the accuracy of the proposed supervisory model and the appropriateness of the proposed exemption test criteria. The measurement system, proposed in today's joint-policy statement, includes a discussion of these comments and incorporates a number of changes to the September 1993 proposed rule in response to commenters' concerns.

III. Final Rule and Two-Step Process for Establishing Minimum Capital Standards

After careful consideration of all the comments, the banking agencies have decided to implement minimum capital standards for interest rate risk exposures in a two-step process.

This final rule implements the first step of that process by revising the capital standards of the banking agencies to explicitly include a bank's exposure to declines in the economic value of its capital due to changes in interest rates as a factor that the banking agencies will consider in evaluating a bank's capital adequacy.[2] This final rule does not codify a measurement framework for assessing the level of a bank's interest rate risk exposure. The information and exposure estimates collected through a new proposed supervisory measurement process, described in the banking agencies' joint policy statement on interest rate risk, would be one quantitative factor used by examiners to determine the adequacy of an individual bank's capital for interest rate risk. The focus of that proposed process is on a bank's economic value exposure. Other quantitative factors that examiners will consider include the bank's historical financial performance and its earnings exposure to interest rate movements. Examiners also will consider qualitative

[1] A threshold level representing a decline in economic value equal to 1.0 percent of assets was proposed by the banking agencies.

[2] The exposure of a bank's economic value is generally the change in the present value of its assets, less the change in the present value of its liabilities, plus the change in the value of its interest rate off-balance-sheet contracts. It represents the change in the underlying economic value of the bank's capital.

factors, including the adequacy of the bank's internal interest rate risk management. Consistent with each banking agency's safety and soundness guidelines, the banking agencies expect a bank to properly manage all of its risks, including its interest rate risk, in a manner commensurate with its risk profile. Nothing in this rule is intended to diminish the importance or need for a bank to have an effective risk management system.

This final rule represents the banking agencies' adoption of the Risk Assessment approach described in the September 1993 proposed rule with the exception that, unlike that proposed rule, this final rule does not establish an explicit supervisory threshold that defines whether a bank had an above "normal" level of interest rate risk exposure. The banking agencies have concluded that it is appropriate to first collect industry data and to evaluate the level of interest rate risk exposure in the banking industry before establishing an explicit supervisory threshold above which capital would be required. It is important to note, however, that the banking agencies intend for this case-by-case approach for assessing a bank's capital adequacy for interest rate risk to be a transitional arrangement.

The second step of the banking agencies' process will be to issue a proposed rule that would establish an explicit minimum capital charge for interest rate risk, based on the level of bank's measured interest rate risk exposure. The banking agencies anticipate that the proposed policy statement on the supervisory assessment of interest rate risk will provide the foundation for the proposed rule that would propose the establishment of an explicit minimum capital requirement. The banking agencies will implement this second step at some future date, through a subsequent and separate proposed rule after the banking agencies and the banking industry have gained more experience with the proposed supervisory measurement and assessment process.

During the transitional period before the second rulemaking process is initiated, the banking agencies will work with the industry to determine what, if any, further modifications to the proposed measurement process are warranted. Such modifications may include further refinements to the supervisory model and to other criteria used by examiners to evaluate the adequacy of banks' internal models. The transition period also allows the banking agencies to collect and monitor more rigorous and consistent information on the level of banks' interest rate risk exposures. This experience and information will assist the banking agencies in formulating a proposed rule for explicit minimum capital standards for interest rate risk.

Second 305(b)(2) of FDICIA requires the banking agencies to discuss the development of comparable standards with members of the supervisory committee of the Bank for International Settlements (BIS). The Basle Committee on Banking Supervision, under the auspices of the BIS, has been working on ways to incorporate interest rate risk into the Basle Accord on risk-based capital standards. *See* International Convergence of Capital Measurement and Capital Standards (July 1988). The banking agencies are participating actively in that international effort. However, the timing of any international standard for monitoring and assessing capital for interest rate risk is uncertain. Given the importance of interest rate risk to the safety and soundness of the banking industry and the mandate of section 305 of FDICIA, the banking agencies have concluded that they should not delay the implementation of this rule and measurement process until an international standard is achieved. The banking agencies will continue to work with international organizations to develop consistent international capital standards. At the time that an international agreement emerges on either a measurement system or explicit minimum capital standard, the banking agencies will revisit their rules in light of the international standard.

IV. Regulatory Flexibility Act Statement

Each banking agency has concluded after reviewing the final regulations that the regulations, if adopted, will not impose a significant economic hardship on small institutions. The final rules do not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. Each banking agency therefore hereby certifies pursuant to section 605b of the Regulatory Flexibility Act (5 U.S.C. 605b) that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

V. Executive Order 12866

The Comptroller of the Currency has determined that this final rule is not a significant regulatory action under Executive Order 12866.

VI. OCC Response to Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that this final rule will not result in expenditures by state, local and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, this final rule will clarify the authority of the OCC to require additional capital for any significant exposure to declines in the economic value due to changes in interest rates. Under the proposed joint policy statement, the supervisory model and internal bank models will serve as supervisory tools to assist examiners in assessing capital adequacy. Any decision to require additional capital will be made on a case-by-case basis as prescribed under the current capital procedures.

List of Subjects

OCC

12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

Board

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

FDIC

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. Section 3.10 is revised to read as follows:

§ 3.10 Applicability.

The OCC may require higher minimum capital ratios for an individual bank in view of its circumstances. For example, higher capital ratios may be appropriate for:

(a) A newly chartered bank;

(b) A bank receiving special supervisory attention;

(c) A bank that has, or is expected to have, losses resulting in capital inadequacy;

(d) A bank with significant exposure due to the risks from concentrations of credit, certain risks arising from nontraditional activities, or management's overall inability to monitor and control financial and operating risks presented by concentrations of credit and nontraditional activities;

(e) A bank with significant exposure to declines in the economic value of its capital due to changes in interest rates;

(f) A bank with significant exposure due to fiduciary or operational risk;

(g) A bank exposed to a high degree of asset depreciation, or a low level of liquid assets in relation to short term liabilities;

(h) A bank exposed to a high volume or, or particularly severe, problem loans;

(i) A bank that is growing rapidly, either internally or through acquisitions; or

(j) A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships.

3. In appendix A to part 3, section 1, paragraph (b)(1) is revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 1 * * * (b) * * * (1) The risk-based capital ratio derived from these guidelines is an important factor in the OCC's evaluation of a bank's capital adequacy. However, since this measure addresses only credit risk, the 8% minimum ratio should not be viewed as the level to be targeted, but rather as a floor. The final supervisory judgment on a bank's capital adequacy is based on an individualized assessment of numerous factors, including those listed in 12 CFR 3.10. With respect to the consideration of these factors, the OCC will give particular attention to any bank with significant exposure to declines in the economic value of its capital due to changes in interest rates. As a result, it may differ from the conclusion drawn from an isolated comparison of a bank's risk-based capital ration to the 8% minimum specified in these guidelines. In addition to the standards established by these risk-based capital guidelines, all national banks must maintain a minimum capital-to-total assets ratio in accordance with the provisions of 12 CFR part 3.

* * * * *

Office of the Comptroller of the Currency

Dated: June 29, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 revised to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318.

2. Appendix A to part 208 is amended by revising the fifth and sixth paragraphs under "*I. Overview*" to read as follows:

Appendix A to Part 1208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

I. Overview

* * * * *

The risk-based capital ratio focuses principally on broad categories of credit risk, although the framework for assigning assets and off-balance-sheet items to risk categories does incorporate elements of transfer risk, as well as limited instances of interest rate and market risk. The framework incorporates risks arising from traditional banking activities as well as risks arising from nontraditional activities. The risk-based ratio does not, however, incorporate other factors that can affect an institution's financial condition. These factors include overall interest-rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment, loan portfolio, and other concentrations of credit; certain risks arising from nontraditional activities; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks, including the risks presented by concentrations of credit and nontraditional activities.

In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of those factors, including, in particular, the level and severity of problem and classified assets as well as a bank's exposure to declines in the economic value of its capital due to changes in interest rates. For this reason, the final supervisory judgment on a bank's capital adequacy may differ significantly from conclusions that might be drawn solely from the level of its risk-based capital ratio.

* * * * *

By Order of the Board of Governors of the Federal Reserve System.

Dated: July 7, 1995.

William W. Wiles,

Secretary of Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In appendix A to part 325, the fifth undesignated paragraph of the introductory text is revised to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

The risk-based capital ratio focuses principally on broad categories of credit risk, however, the ratio does not take account of many other factors that can affect a bank's financial condition. These factors include

overall interest rate risk exposure, liquidity, funding and market risks; the quality and level of earnings; investment, loan portfolio, and other concentrations of credit risk, certain risks arising from nontraditional activities; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks, including the risk presented by concentrations of credit and nontraditional activities. In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors, including, in particular, the level and severity of problem and adversely classified assets as well as a bank's interest rate risk as measured by the bank's exposure to declines in the economic value of its capital due to changes in interest rates. For this reason, the final supervisory judgment on a bank's capital adequacy may differ significantly from the conclusions that might be drawn solely from the absolute level of the bank's risk-based capital ratio.

By order of the Board of Directors.

Dated at Washington, D.C. this 27th day of June, 1995.

Federal deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–18098 Filed 8–1–95; 8:45 am]

BILLING CODES 4810–33–M, 6210–01–M, 6714–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–17]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–0802]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Joint Agency Policy Statement: Supervisory Policy Statement Concerning a Supervisory Framework for Measuring and Assessing Banks' Interest Rate Risk Exposure

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement; request for comment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, "the agencies") seek comment on a proposed interagency Supervisory Policy to establish a uniform supervisory framework for measuring banks' interest rate risk (IRR) exposures. The proposed policy establishes a framework that the agencies would use to measure and monitor the level of IRR at individual banks. The measurement process proposed and described in this policy statement is intended to facilitate the agencies' assessment of a bank's IRR exposure and its capital adequacy. The results of the supervisory and internal models would be one factor used by the agencies in their assessments' of a bank's capital adequacy for IRR. Other factors that the agencies will consider include the quality of the bank's IRR risk management process, the overall financial condition of the bank, and the level of other risks at the bank for which capital is needed. Pursuant to the final rule banks may be required to hold additional capital.

The proposed supervisory framework provides measures of the change in a bank's economic value for a given change in interest rates using a supervisory model. The framework also considers the results of a bank's internal model results when that model provides a measure of the change in a bank's economic value. Banks not specifically exempted from detailed IRR reporting would submit new IRR Call Report schedules indicating the maturity, repricing, or price sensitivity of their various on- and off-balance sheet instruments. A bank also would have the option of reporting its internal model estimates of the price sensitivity of its major portfolios and its economic value.

Concurrent with the publication of this proposed Supervisory Policy statement, the agencies have issued a final rule that amends their capital guidelines for IRR. Those amendments indicate that the agencies will consider in their evaluation of a bank's capital adequacy, the exposure of a bank's capital and economic value to changes in interest rates. The amendments are in response to section 305 of the FDIC Improvement Act of 1991 (FDICIA) which requires the agencies to amend their risk-based capital standards to take adequate account of interest rate risk.

As noted in the discussion of the final rule on IRR, the agencies intend, at a subsequent date, to incorporate explicit minimum requirements for IRR into their risk-based capital standards. The agencies anticipate that the measurement framework described in this proposed policy, will be the basis for such a capital requirement. Toward that end, the agencies intend to work with the industry to evaluate the reliability and accuracy of the results from the supervisory model and bank internal models. Any explicit minimum capital charge would be implemented through the agencies' rulemaking process and would provide the opportunity for public comment before a final rule is adopted.

DATES: Comments must be received by October 2, 1995.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments will be shared among the agencies.

OCC: Written comments should be submitted to Docket No. 95–17, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219, Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

Board of Governors: Comments, which should refer to Docket No. R–0802, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room B–1122 between 9:00 a.m. and 5:00 p.m., except as provided in 261.8 of the Board's "Rules Regarding Availability of Information," 12 CFR 261.8.

FDIC: Written comments should be sent to, Jerry L. Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–402, 1776 F Street N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments @ fdic.gov]. Comments will be available for inspection and photocopying in Room 7118, 550 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Christina Benson, Capital Markets Specialist, or Lisa Lintecum, National Bank Examiner (202/874–5070), Office of the Chief National Bank Examiner; Michael Carhill, Financial Economist, Risk Analysis Division (202/874–5700); and Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division (202/874–4460), Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board of Governors: James Houpt, Assistant Director (202/452–3358), William F. Treacy, Supervisory Financial Analyst (202/452–3859), Division of Banking Supervision and Regulation; Gregory Baer, Managing Senior Counsel (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: William A. Stark, Assistant Director (202/898–6972) or Phillip J. Bond, Senior Capital Markets Specialist (202/898–3519), Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Introduction

Interest rate risk is the risk that changes in market interest rates will have an adverse effect on a bank's

earnings and its underlying economic value. Changes in interest rates affect a bank's reported earnings by changing its net interest income and the level of other interest-sensitive income and operating expenses. The underlying economic value of the bank's assets, liabilities, and off-balance sheet instruments also is affected by changes in interest rates. These changes occur because the present value of future cash flows and in some cases, the cash flows themselves, are affected when interest rates change. The combined effects of the changes in these present values reflect the change in the bank's underlying economic value.

Interest rate risk is inherent in the role of banks as financial intermediaries. However, a bank that has an excessive level of interest rate risk can face diminished future earnings, impaired liquidity and capital positions, and, ultimately, may jeopardize its solvency.

The agencies believe that safety and soundness requires effective management and measurement of interest rate risk, and each agency has provided supervisory guidance to banks and examiners on this subject. In addition, the agencies believe that a bank's capital adequacy should be assessed in the context of the risks it faces, including interest rate risk. Section 305 of FDICIA Pub. L. 102–242 (12 U.S.C. 1828 note), on which a final rule is being issued at the same time as this statement, specifically requires the agencies to take account of interest rate risk in assessing capital adequacy. Both of these aspects of interest rate risk depend on, among other things, a meaningful measurement of the bank's risk exposure.

The agencies believe that a bank should have an IRR measurement system that is commensurate with the nature and scope of its IRR exposures. Among the difficulties in performing a supervisory evaluation of interest rate risk, however, is that measurement systems and management philosophies can differ significantly from one bank to another. As a result, although two banks may each be well-managed, their measured exposure may not be directly comparable. This difficulty has been magnified by the rapid pace of change in financial markets and instruments themselves.

In implementing Section 305 of FDICIA, and in light of the rapid evolution in financial instruments and practices, the agencies believe there is a need for a more formal supervisory assessment of banks' interest rate risk exposures. To support that effort, the agencies propose a measurement framework that includes a supervisory measurement system ("supervisory model") that will, on a standardized basis, measure the risk of all banks not exempted from reporting additional information on their IRR exposures. In addition, banks will be encouraged to report, through a voluntary and confidential supplemental Call Report schedule, the results of their internal IRR measurement systems. These measured results would then serve as an additional source of information for an examiner's assessment of the bank's risk management and capital adequacy. The results also would provide information on industry trends and patterns that will better inform both present and future supervisory efforts related to interest rate risk.

The measurement framework described in this policy statement focuses on the exposure to a bank's underlying economic value from movements in market interest rates. The exposure to a bank's economic value, as used in this policy statement, is defined as the change in the present value of its assets, minus the change in the present value of its liabilities, plus the change in the present value of its off-balance sheet interest-rate positions. The agencies haven chosen this focus because they believe that changes in a bank's economic value best reflect the potential impact of embedded options and the potential exposure that the bank's current business activities pose to the bank's future earnings stream, and hence, its ability to sustain adequate capital levels. Changes in economic value measure the effect that a change in interest rates will have on the value of all of the future cash flows generated by a bank's current financial positions, not just those cash flows which affect earnings over the few months or quarters. Thus, changes in economic value provide a more comprehensive measure of risk than measures which focus solely on the exposure to a bank's near-term earnings. It is for this reason that the agencies have amended their capital standards to identify explicitly a bank's exposure to declines in economic value from changes in interest rates as an important factor to consider in evaluating a bank's capital adequacy.

II. Summary of Approach

In assessing the sensitivity of a bank's economic value to changes in interest rates, the agencies are proposing to use the results of a supervisory model and, for those electing to provide such analysis, the results of banks' own internal models. These assessments will rely on data reported in regulatory Call Reports. Recognizing that the burden for reporting IRR exposures would fall most heavily on smaller organizations with limited resources, the policy statement makes provisions for smaller, well-managed institutions that are less likely to be significantly exposed to IRR to be exempt from additional reporting. As described in further detail in the policy statement, the agencies propose that banks with (i) assets under $300 million, (ii) composite supervisory CAMEL ratings of 1 or 2 and, (iii) moderate or low holdings of assets with intermediate and long term maturity or repricing characteristics, be exempted from expanded reporting requirements for IRR.

Banks that are not specifically exempted by the proposed policy statement will submit additional Call Report information on the repricing and maturity of their portfolios. The proposed supervisory model applies a series of IRR risk-weights to a bank's reported repricing and maturity balances. These weights estimate the price sensitivity of a bank's reported balances to a 200 basis point increase and decrease in interest rates. The summation of these balances, along with certain price sensitivity information that a bank may be required to self-report, results in a net risk-weighted exposure for the bank. That exposure represents the estimated change in the bank's economic value to the specified rate change.

The proposed supervisory model represents a refinement of the model presented in the September 1993 notice of proposed rulemaking (September NPR) [58 FR 48206, September 14, 1993]. The September NPR solicited comments on a framework for measuring banks' exposure to IRR for capital purposes pursuant to Section 305 of FDICIA. The final rule for Section 305 does not incorporate an explicit measurement framework for IRR into the agencies' risk-based capital standards. The agencies have concluded that it is appropriate to first collect industry data and evaluate the performance of the measurement framework before explicitly incorporating the results of that framework into their risk-based capital standards. The data collected by the agencies will assist current supervisory efforts and will facilitate the development of a measurement framework that could be explicitly incorporated into capital standards in the future. This proposed policy statement would implement that supervisory measurement framework. The proposed framework is broadly consistent with the one discussed in the September NPR. The agencies, however, have made several refinements to the supervisory model to improve its accuracy while still endeavoring to limit the burden of the expanded reporting and maintain model transparency. The refinements to the September NPR model include:

(1) Separate risk-weights and reporting for residential adjustable-rate mortgages;
(2) Separate risk-weights and reporting for residential fixed-rate mortgages and all other amortizing assets;
(3) Self-reporting by banks of price sensitivities of instruments with complex and/or non-standardized cash flow characteristics such as structured notes, collateralized mortgage obligations (CMOs), and mortgage servicing rights;
(4) Supplemental reporting for banks with concentrations in adjustable- and fixed-rate mortgage loans.
(5) Greater flexibility in reporting deposits without stated maturity or repricing dates;
(6) Separate reporting and treatment in the baseline schedule for residential mortgage loans which are held by the bank for sale and delivery to a secondary market participant under terms of a binding commitment.

A summary of the public comments and agency analysis that led to these refinements are included in section IV of this document and the refinements themselves are described in detail in the policy statement and accompanying reporting instructions.

For a bank choosing also to report the results of its internal IRR model, the agencies are proposing to collect the dollar change in value of the bank's major portfolios and the net change in the bank's economic value using the same rate scenario incorporated in the supervisory model. To the extent specific details concerning a bank's financial instruments are incorporated in an internal model with adequate integrity and reasonable assumptions, those results should provide the agencies with an improved understanding of a bank's IRR profile. For a bank reporting internal model results, an examiner would have the benefit of weighing the results of both measures in assessing a bank's overall IRR exposure for capital adequacy purposes. Moreover, comparisons between the results of the supervisory model and internal models are expected to aid the agencies in determining what, if any, refinements should be made to the proposed measurement framework before incorporating it into a minimum capital charge for IRR.

III. CDFI Section 335 Considerations

On September 23, 1994 the Reigle Community Development and Regulatory Improvement Act of 1994 ("CDFI") (Pub. L. 103–325) was enacted. Section 335 of CDFI amended section 305 of FDICIA by instructing the agencies to be sure that steps taken to implement Section 305 "take into account the size and activities of the institutions and do not cause undue reporting burdens." The agencies believe that the Congressional mandate to avoid undue reporting burdens is also applicable and desirable for purposes of implementing the proposed policy statement. Consequently, as already noted, the agencies have formulated a reporting exemption test that takes into account the size and activities of an institution. In addition, the reporting requirements for the supervisory model also considers the nature and scope of a bank's activities. Banks holding certain types of financial instruments that often have complex or nonstandardized cash flow characteristics will be expected to have the ability to calculate on their own, or obtain from reliable sources, estimates of those instruments' market value sensitivity. Banks with holdings of fixed- and adjustable-rate residential mortgage loans and securities that exceed certain levels would be required to report additional information on those portfolios to better assess the embedded option risks associated with those products.

IV. September 1993 Notice of Proposed Rulemaking

A. Description of September NPR

In September 1993, the Banking Agencies issued a notice of proposed rulemaking (September NPR) [58 FR 48206, September 14, 1993] that solicited comments on a framework for measuring a bank's IRR exposure and determining the amount of capital the bank needed for IRR.

The framework outlined in the September NPR incorporated the use of a three-level measurement process to evaluate banks' IRR exposures. The first measure was a quantitative screen, based on existing Call Report information, that exempted potential low risk banks from additional reporting requirements. The exemption screen used two criteria: (1) The amount of a bank's off-balance-sheet interest rate contracts in relation to its total assets; and (2) the relation between a bank's fixed- and floating-rate loans and securities that mature or reprice beyond five years and its total capital.

Banks not meeting the proposed exemption test were required to calculate their economic exposure by either: (1) A supervisory model that measured the change in the economic value of bank for a specified change in interest rates; or (2) the bank's own IRR model, provided that the model was deemed adequate by examiners for the nature and scope of the bank's activities and that it measured the bank's economic exposure using the interest rate scenarios specified by the agencies.

B. Comments on the September NPR Measurement Framework

The agencies collectively received a total of 133 comments on the September NPR. The majority of commenters were banks. Thrift, trade associations, bank consultants, and other government-sponsored agencies and regulators also commented. The majority of commenters responded favorably to modifications that the agencies made from an earlier, advanced notice of proposed rulemaking (ANPR) [57 FR 35507, August 10, 1992]. In particular, most commenters expressed strong support for using the results of a bank's own IRR model to determine its level of exposure and corresponding need for capital. Commenters noted the potential inaccuracies of standardized regulatory models as one reason for allowing the use of internal models. Internal models, they believed, would better capture the unique characteristics of individual bank portfolios. Many commenters also stated that permitting the use of internal models would provide banks with incentives to improve their internal risk measurement systems.

Many commenters raised concerns about various elements of the measurement framework outlined in the September NPR. Most commenters believed that the proposed treatment of non-maturity deposits understated their effective maturity. Others questioned the accuracy of the proposed supervisory model and the appropriateness of the proposed exemption test criteria.

C. Agencies' Responses to Comments

The agencies have carefully considered the concerns raised by commenters regarding the structure and elements of the proposed measurement framework and the accuracy of the proposed supervisory model. Although the agencies have decided to retain many of the principles and structures outlined in the September NPR framework, the agencies are also proposing several modifications and refinements to that framework. These modifications include changes to the proposed exemption criteria, the structure of the supervisory model, and the treatment of certain types of assets and non-maturity deposits. These modifications are discussed in greater detail in the sections that follow.

1. Exemption Criteria

The September NPR included criteria that would exempt a bank from additional measurement and reporting requirements. The proposal set forth the following two criteria that a bank would have to meet to qualify for an exemption:

(1) The total notional principal amount of all of the bank's off-balance-sheet interest rate contracts must not exceed 10 percent of its assets; and

(2) 15 percent of the sum of the bank's fixed- and floating-rate loans and securities that mature or reprice beyond 5 years must be less than 30 percent of its total capital.

There was general support among commenters for some type of exemption. The majority of commenters addressing this issue, however, voiced concerns with the proposed test. Many commenters believed that a 10 percent threshold for off-balance sheet contracts would discourage the use of such instruments in managing and reducing IRR exposures. Commenters also expressed concerns that the maturity test, incorporated in the second criterion, used contractual maturities. rather than expected average lives and would overstate the risk associated with amortizing loans and securities, such as mortgage-related products. Several commenters suggested modifying the criterion to use bank management's estimates of average lives, rather than contractual maturities.

Several commenters questioned whether the proposed exemption criteria provided sufficient safeguards against exempting banks that may pose significant risks to the Bank Insurance Fund due to their potential IRR exposures. A few commenters noted the potential for material intermediate-term maturity (e.g., 1- to 5-years) mismatches. A minority of commenters question the need for, or efficacy of, any exemption test.

The agencies continue to believe that an exemption is desirable and that section 335 of CDFI Bill reinforces the need to consider ways of minimizing burdens associated with this policy statement. The agencies also believe that there is a need to ensure sufficient safeguards against exempting banks that may pose significant systemic risks or costs to the Bank Insurance Fund. Consequently, the agencies propose to modify the exemption test to focus on three considerations: the size of the bank; the quality of its overall condition and management, as measured by its composite CAMEL rating; and the level of its potential repricing exposure as measured by its intermediate and longer-term assets. Specifically, to be exempted, a bank would have to meet the all of the following three conditions:

(1) The bank must have total assets of less than $300 million; and

(2) Have a "1" or "2" composite CAMEL [1] rating from its primary supervisor; and

(3) The sum of:

(a) 30 percent of its loans and securities with contractual maturity or repricing dates between one and five years, and

(b) 100 percent of its loans and securities with contractual maturity or repricing dates beyond five years must be less than 30 percent of the bank's total assets.

Banks that meet this proposed exemption test could elect to submit the proposed IRR Call Report schedules on a voluntary basis. The agencies encourage such voluntary reporting.

The exemption test does not alleviate the need for an exempted bank to employ sound IRR measurement and management practices and to have sufficient capital for its risk exposure. Exempted banks will continue to be subject to safety and soundness IRR examinations that the agencies may conduct. As a result of such examinations, a bank that is exempt from this policy statement may be directed by their primary supervisor to improve its IRR measurement and management practices, or to hold additional capital for IRR. In addition, the agencies would retain the right to require any bank to comply with the provisions of this policy statement and any subsequent rulemakings regarding IRR.

2. Interest Rate Scenarios

The September NPR outlined a number of factors that should be considered in selecting an appropriate interest scenario for measuring banks' IRR exposures and evaluating capital adequacy. These factors included:

(1) The time horizon over which banks and supervisors could reasonably be expected to identify risk and implement mitigating responses;

(2) The likelihood of occurrence, as reflected by historical rate volatility; and

(3) The appropriate historical sample period used to determine the likelihood of a given rate movement.

The agencies sought comment on several alternative methodologies for developing appropriate interest rate scenarios, including both parallel and non-parallel changes in interest rates. Among the non-parallel methods, the interest rate scenario could be based upon observed nominal changes in interest rates, or upon observed proportional changes in interest rates. As an alternative, the agencies also sought comment on using a simple parallel shift in interest rates across the entire maturity spectrum ("parallel rate shocks").

The agencies received a range of comments on the selection and determination of the appropriate interest rate scenarios. Commenters were divided on whether a short or long historical sample was most appropriate for determining the potential range of interest rate movements. Those favoring a shorter sample period believed such a period best reflected current and likely probabilities of rate changes. Others favored a longer sample period, primarily to minimize the impact of any one rate cycle. Opinions were also divided on whether a monthly, quarterly, or annual time horizon was most appropriate for analyzing potential rate scenarios. The majority of commenters favored either a monthly or quarterly horizon, on the grounds that such time frames represented the time bank management would need to implement risk mitigating actions in response to an adverse movement in interest rates. Others, however, disagreed and favored the use of an annual time horizon.

Commenters also expressed diverse views on whether the proposed rate scenarios should be based on nominal or proportional changes in historical rates, or on the basis of a simple parallel rate shock. A majority of commenters argued against the use of parallel rate shocks, on the grounds that such scenarios were not realistic of probable future interest rate changes. Of these commenters, most favored scenarios that would be based on proportional rate changes, such that the size of the rate change used to measure exposures would depend upon, and vary with, the current level of market interest rates. Other commenters, however, favored the use of parallel rate shocks, primarily on the grounds of simplicity and ease of understanding.

The agencies propose to use a simple 200 basis point, instantaneous parallel upward and downward shift in interest rates for measuring and evaluating

[1] CAMEL refers to the Uniform Financial Institution's Rating System that the agencies have adopted. Each bank is assigned a uniform composite rating based on an evaluation of pertinent financial and operational standards, criteria and principles. This overall rating is expressed through use of a numerical scale of "1" through "5" with "1" indicating the highest rating and "5" the lowest. The composite rating assess five key performance dimensions that are commonly identified by the acronym "CAMEL": Capital adequacy, Asset quality, Management, Earnings and Liquidity.

banks' exposures for purposes of assessing capital adequacy. The agencies believe that such rate movements are realistically conservative given the movements in interest rates experienced in 1994. They also believe that such rate scenarios are sufficiently transparent and easy to understand that they can be easily incorporated into either a bank's own IRR model or the supervisory model. The scenarios are incorporated into the proposed supervisory model via the proposed risk-weights that are applied to a bank's reported maturity and repricing balances.

The agencies stress that their adoption of these rate scenarios does not replace the need for a bank to evaluate its IRR exposure over a wider range of possible rate changes for its own risk management purposes. Such rate changes may include non-parallel yield curve shifts and gradual, as well as immediate, rate changes. To ensure greater consistency, however, in the agencies' assessments of banks' exposures and their need for capital, banks are encouraged to include the proposed instantaneous and parallel 200 basis point rate scenarios into their internal IRR measurement processes.

3. Structure of Supervisory Model

The supervisory model in the September NPR grouped assets, liabilities, and off-balance-sheet positions by various categories, based on their general cash flow and product characteristics. Each category and time band was assigned risk-weights corresponding to a rising rate scenario and a declining-rate scenario. The risk-weights were constructed by the agencies, using hypothetical market instruments that were representative of the category being measured. For amortizing instruments, the risk-weights incorporated assumptions about prepayments.

A number of commenters expressed concerns regarding the accuracy of the model proposed in the September NPR. Frequently cited concerns included: the use of hypothetical, rather than bank-specific, instruments to derive risk weights; the level of data aggregation; the use of standardized prepayment assumptions; and the treatment of interest rate protection agreements (caps and floors). A number of commenters voiced concerns about the treatment of residential mortgage-related products. In general, these commenters believed that additional detail on mortgage holdings, such as coupon information on fixed-rate mortgages, and more explicit information on periodic and lifetime interest caps for adjustable-rate products, would improve the model's accuracy.

The agencies sought comment in the September NPR on whether commercial banks with portfolios that are similar to thrift should be required to use the Net Portfolio Value model used by the Office of Thrift Supervision (OTS) for federally-supervised thrift institutions. Most commenters believed that such a requirement would impose substantially greater reporting burdens without necessarily improving the accuracy of the measure and might create incentives for banks to substitute such a model for the judgment of bank management. A minority of commenters disagreed and stated that the approach and data used by the OTS were superior and more accurate than what the banking agencies had proposed.

The agencies have carefully considered commenters' concerns about the proposed supervisory model's accuracy. The agencies believe it is critical to have a supervisory model that can identify banks with significant IRR exposures. They also are attentive to the risk that model measurement errors could lead to undesirable incentives or incorrect assessments regarding the risk and complexity of products, activities, or banks. At the same time, the agencies recognize the need to balance the desire for increased accuracy against the potential costs of greater reporting detail and model complexity. The agencies are particularly concerned that the supervisory model retain sufficient transparency so that bankers can understand its methodology and anticipate and compute their bank's measured exposure and that it not replace the role or need for sound internal interest rate risk management systems.

The agencies intend to make five modifications to the structure of the supervisory model to improve its accuracy and which are described below. The first four changes modify the basic supervisory model outlined in the September NPR. This revised basic model will be the baseline model for non-exempted banks. The last modification creates supplemental modules for banks that have concentrations in residential mortgage-related instruments. The agencies are mindful that the supplemental schedules will impose additional reporting requirements for some banks. Nonetheless, the agencies are concerned that the baseline model may not be sufficiently accurate to capture the risk at banks with significant holdings of mortgage loans or mortgage pass-through securities, and therefore propose to require additional reporting for those banks. A detailed description of the model, the risk weights, and information requirements are discussed in the policy statement. Schedule 1, provided in the attached policy statement, illustrates the type of information that will be used in the baseline supervisory model, while Schedules 2–4 illustrate the information used for the supplemental modules.

a. *Adjustable-rate residential mortgages.* The first modification that the agencies have made is to treat adjustable-rate residential mortgage loans and securities (ARMs) separately from fixed-rate residential mortgage assets. As modified, information on ARMs will be reported by a bank on the basis of the reset frequency of the ARM's pricing index, rather than by the ARM's next date to repricing. In addition, a bank will report ARMs that are currently within 200 basis points of their lifetime cap separately from those ARMs that are further away from their lifetime caps. The agencies believe that this stratification of ARM products will provide a better reflection of their potential price sensitivity to changes in market interest rates than the treatment described in the September NPR.

b. *Fixed-rate residential mortgages and other amortizing assets.* The second modification the agencies made is to treat fixed-rate residential mortgage assets separately from other amortizing assets. In the September NPR, these assets had been combined into a single category. As a result of this combination, the same prepayment assumptions were applied to all amortizing assets. By separating these two categories, the agencies propose to apply different prepayment assumptions to the two categories.

c. *Self-reporting of market value sensitivities.* The third modification will require a bank that holds certain types of financial instruments to provide in its Call Report submissions, estimates of changes in market value sensitivities of those instruments for the specified 200 basis point interest rate scenarios. These estimates may be obtained from the bank's own internal risk measurement systems or from reliable third-party sources, provided that the bank knows, understands, and documents the assumptions underlying those estimates. All estimates and supporting documentation will be subject to examiner review. The September NPR used this approach for certain mortgage derivatives securities. The agencies propose to extend this treatment to other products. The products for which banks would be required to self-report market value sensitivities generally have complex options or cash flow

characteristics. These characteristics make it difficult to adequately measure these products in a standardized model without collecting detailed transaction-oriented data.

Self-reporting of market value sensitivities generally would be required for the following products or portfolios:

(1) All mortgage-backed derivative securities that meet the FFIEC's definition of "high-risk."[2]

(2) All structured notes, as defined in the Call Report instructions;

(3) Non-high-risk mortgage derivative securities when those holdings represent 10 percent or more of a bank's assets.

(4) Mortgage servicing rights that are capitalized and reported on the bank's balance sheet;

(5) Off-balance-sheet interest rate options, caps, and floors, including interest rate swaps with embedded option characteristics.

The agencies believe that given the potential price sensitivity of these products or portfolios to interest rate changes, it is reasonable to expect banks to be able to calculate or obtain reliable estimates of their market value sensitivities. Industry comments on the availability of such information are especially welcomed.

d. *Trading account portfolios.* The agencies also propose to change the manner in which trading account positions are treated in the supervisory model. These changes are in response to commenters concerns regarding the burden associated with distributing trading positions into the maturity ladder and applying a 200 basis point rate shock to those positions.

As modified, banks will be asked to self report the change in the economic value of all of their trading account positions for a 100 basis point parallel increase or decrease in interest rates. This rate change, smaller than the 200 basis point change used for the rest of the bank's holdings, reflects the shorter holding period typical for trading account positions. It also is similar to the 100 basis point scenario used by the Basle Committee on Banking Supervision (Basle Committee) in its April 1995 proposal on capital requirements for the market risks of traded debt securities.[3]

The agencies believe the self-reporting treatment for trading accounts is consistent with supervisory guidance issued by each of the agencies that directs banks with significant trading activities to have internal risk measurement and limit systems commensurate with the size and complexity of their activities.

As previously noted, the Basle Committee has recently released for comment a proposal to incorporate the market risks of trading activities into the Basle Accord risk-based capital standards.[4] The agencies published in the **Federal Register** on July 25, 1995 (60 FR 38082) a notice of proposed rulemaking on the Basle market risk proposal. If the agencies adopt a final rule to implement the Basle market risk proposal for banks with a large concentration of trading activities, the agencies anticipate that modifications to this policy statement will be required to ensure that IRR exposures arising from those activities are not "double-counted." One approach that the agencies are considering is to exclude trading activities from this proposed policy statement and IRR measure for those banks that are subject to the market risk proposal. If such an approach is adopted, those banks would be exempted from having to report the changes in the market value of their trading portfolios for the IRR measure. If, however, a bank's trading portfolio offsets the exposure from other components of the bank's balance sheet, this treatment would overstate the bank's total IRR exposure.

e. *Supplemental modules.* The final modification made by the agencies to the supervisory model structure is the development of supplemental modules for fixed-rate and adjustable-rate residential mortgage loans and pass-through securities. A bank whose holdings of these products exceeds certain threshold levels will be required to report additional information on those holdings in their Call Report submissions. The agencies will apply expanded tables of risk-weights to those portfolios. The supplemental module for fixed-rate residential mortgages requires a bank to stratify its balances into eight coupon ranges. The agencies have developed separate risk-weights for each coupon range which reflect the differences in expected prepayment speeds that are associated with the underlying coupon rates. To develop these risk-weights, the agencies have used the September 30, 1994 pricing tables generated by the Office of Thrift Supervision's Net Portfolio Value Model.[5] The agencies will apply this supplemental module and associated risk-weights when a bank's holdings of fixed-rate residential mortgage loans and pass-through securities represent 20 percent or more of its total assets. Schedule 2 in the attached policy statement illustrates the information that will be used in the supplemental module for fixed-rate residential mortgages. This expanded module will be optional for a bank whose holdings of these instruments are less than 20 percent of its assets.

Two levels of supplemental modules have been developed by the agencies for adjustable-rate residential mortgages. The first level, illustrated by Schedule 3 in the attached policy statement, requires information on ARMs to be stratified by reset frequency (as in the baseline model), periodic caps, and the ARMs' distances from lifetime caps. This module will be used by the agencies when a bank's ARM holdings are greater than 10 but less than 25 percent of its assets. The second level, illustrated by Schedule 4 in the attached policy statement, requires that ARM balances be further stratified by the underlying rate index of the ARM. This module will apply to banks whose holdings equal or exceed 25 percent of their total assets. The agencies have developed risk-weights that correspond with each various reset frequency, lifetime cap, periodic cap, and, index combination, again using pricing tables generated from the OTS Net Portfolio Value Model.

The agencies are mindful that many commenters to the September NPR raised concerns about tradeoffs between attempts to improve the supervisory model accuracy and associated reporting burdens, especially with regards to the use of the OTS model. Nonetheless, the agencies believe the distribution of coupons for fixed-rate mortgage portfolios and the interaction of the parameters illustrated in Schedules 3 and 4 significantly affect the price sensitivity of mortgage loans and securities. The agencies believe that by explicitly considering these parameters, the supplemental modules will enhance the accuracy of the supervisory model. The agencies believe that this increased accuracy is warranted due to the increased holdings of mortgage products among commercial and savings banks. They also note the flexibility that many banks exercise in their ability to tailor the various pricing combinations of their ARM products. As banks expand their activities in these products, the agencies are particularly concerned that banks not ignore the potential impact and interaction of these pricing parameters.

Draft instructions for completing the supplemental modules and a technical description of the risk-weights used in the modules are provided in the appendices 2 and 4 to the proposed policy statement.

4. *Non-maturity deposit assumptions.* The September NPR established limits on the maximum maturities that a bank could attribute to its non-maturity deposits when measuring its IRR exposures for capital adequacy. Non-maturity deposits were defined to be those instruments without a specific maturity or repricing date and included demand deposits (DDA), negotiable order of withdrawal (NOW), savings, and money market deposit (MMDA) accounts. In the September NPR, banks were subject to the following constraints in distributing these deposits across time bands:

(1) A bank could distribute its DDA and MMDA accounts across any of the first three time bands, with a maximum of 40 percent of those balances in the 1 to 3 year time band;

(2) A bank could distribute its savings and NOW account balances across any of the first four time bands, with a maximum of 40 percent of the total of those balances in the 3 to 5 year time band.

The treatment of non-maturity deposits was one of the most commented upon aspects of the September NPR. Most commenters stated that the proposed treatment could, in many cases, understate the effective maturity of these deposits and urged the agencies to adopt a more flexible approach or extend the permissible maturities. Commenters expressed concern that the adoption of the proposed rules could lead to incorrect assessments of risk exposures or inappropriate incentives to shorten asset maturities.

The agencies recognize that the treatment of non-maturity deposits will be, for many banks, the single most important assumption in measuring their IRR exposures. The agencies also agree that many banks historically have been able to exercise considerable flexibility in the timing and magnitude of pricing changes for these accounts. It is for this reason that the agencies had proposed to allow banks some flexibility in the treatment of these deposits. Nonetheless, the agencies believe that there are risks associated with assuming that a bank has sufficient flexibility in its management of these deposits so as to offset any IRR position it may have. While these deposits can, in many circumstances, help to mitigate a bank's IRR exposure, historical experience suggests that an institution can incur significant levels of IRR though it may have sizeable holdings of non-maturity deposits. The agencies also are concerned that increased competitive pressures and changing customer demographics may, over time, make these deposits more rate sensitive or prone to migration into other investment vehicles.

Given these considerations, the agencies believe it is appropriate to extend, but not eliminate, the maximum permissible maturities for non-maturity deposits. Within these maturity ranges, a bank would have the flexibility to distribute its balances based on its own assumptions and experience. The agencies will expect that bank management will be able to document to examiners the rationale for the treatment they have chosen.

In addition to extending permissible maturities, the agencies believe that demand deposit balances held by businesses should be treated differently than demand balances held by other entities. In particular, the agencies believe that a shorter maturity is appropriate for commercial demand deposit accounts since many of these accounts are in the form of compensating balances.[6] The implicit earnings from these compensating balances are often used to offset service charges incurred by the customer, and the level of these implicit earnings attributed to the deposits is generally dependent upon the level of current market rates. As such, these balances behave very much like interest-sensitive balances. As market rates increase, the level of balances drops due to a higher earnings credit, while as rates decline, the level of balances will generally increase.

The agencies propose to extend the range of permissible maturities for non-maturity deposits by revising the distribution rules for those deposits. As proposed, a bank may distribute its deposits across time bands according to its individual assumptions and experience, subject to the following constraints:

(1) Commercial Demand Deposits: A bank would report 50 percent of it's commercial demand deposits in the 0–3 month time band. The remaining balances may be distributed across the first four time bands, with a maximum of 20 percent of total balances in the 3–5 year time band.

(2) Retail DDA, Savings, and NOW Accounts: A bank may distribute the balances in these accounts across any of the first five time bands, with a maximum of 20 percent in the 5–10 year time band and no more than 40 percent combined in the 3–5 and 5–10 year bands.

(3) MMDA Accounts: A bank may distribute the balances in these accounts across any of the first three time bands, with a maximum of 50 percent in the 1–3 year band.

Table A summarizes the distribution that would result if a bank reported its balances so as to maximize its allowable maturities.

TABLE A.—MATURITY DISTRIBUTION LIMITS FOR NON-MATURITY DEPOSITS

	0–3 months (percent)	3–12 months (percent)	1–3 years (percent)	3–5 years (percent)	5–10 years (percent)
Commercial DDA	50	0	30	20	
Retail DDA	0	0	60	20	20
MMDA	0	50	50		
Savings	0	0	60	20	20
NOW	0	0	60	20	20

[2] Effective February 10, 1992, the agencies and the Office of Thrift Supervision adopted revised supervisory policies on securities activities that were developed under the auspices of the FFIEC. The revised policies established a framework for identifying "high-risk mortgage derivative products."

[3] The Basle Committee on Banking Supervision is a committee of banking supervisory authorities which was established by the central-bank Governors of the Group of Ten countries in 1975.

[4] The Committee's proposal is described in a consultative paper, entitled "Planned Supplement to the Capital Accord to Incorporate Market Risks," issued in Basle, Switzerland on April 12, 1995. Copies of that paper may be obtained by contacting: The OCC's Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219. A copy of the paper also is available at the FDIC Reading Room, 550 North 17th Street, NW, Washington, D.C.

[5] Appendix 4 of the policy statement provides a description of the derivation of the risk-weights for the baseline supervisory model and supplemental modules.

[6] For purposes of this policy statement, the term "commercial" is used to mean "nonpersonal" as that term is defined under the Board of Governor of the Federal Reserve System's Regulation D dealing with reserve requirements.

The agencies believe that these maturity limits provide appropriate guidelines for the purpose of standardized IRR measurement across the banking industry. These limits are not intended to replace the need for banks to evaluate and consider the sensitivity of their individual deposit bases when managing their IRR exposures. Examiners will consider a bank's assessment of its deposit base and how those assessments may differ from those used in the standardized supervisory model during the examination process when evaluating a bank's capital adequacy for IRR. The agencies do not propose to require banks to incorporate these assumptions into their internal IRR models when submitting internal model results to the agencies. Rather, through the examination process, examiners will consider whether the treatment used in the bank's model is appropriate, based on the analysis the bank provides.

5. Use of a Bank's Internal IRR Model

The September NPR permitted a bank to use the results of its internal IRR model, as an alternative to the supervisory model, when assessing its need for capital for IRR, provided that its model was deemed adequate by the appropriate supervisor. Most commenters expressed strong support for using the results of a bank's internal model and believed that such a model would provide a more accurate assessment of risk than the proposed supervisory model.

The proposed policy statement provides for the consideration of a bank's internal model results in the assessment of that bank's level of IRR exposure and its need for capital. The results and quality of a bank's IRR measurement process will be one factor that examiners will consider in assessing a bank's need for capital. Among the factors that an examiner will consider when evaluating the quality of a bank's internal model is whether the risk profile it generates is an adequate measure of the bank's risk position, taking account of the types of instruments held or offered by the bank, the integrity and completeness of the data used in the model, and whether the assumptions and relationships underlying the model are reasonable. When assessing the exposure of a bank's economic value to changes in interest rates, examiners generally will place greater reliance on the results of a bank's internal model, rather than the supervisory model, provided that the bank's own model:

(1) Measures IRR from an economic perspective, as defined in this proposal;

(2) Uses the proposed supervisory scenario of an instantaneous and parallel 200 basis point movement in interest rates; and

(3) Is deemed by the examiner to provide a more accurate assessment of the bank's IRR risk profile than the supervisory model and meets the criteria discussed in Section VII of the proposed policy statement.

Reacting to the September NPR, some commenters requested the agencies to provide more explicit guidelines on the criteria that examiners will use to evaluate the adequacy of a bank's model. Other commenters cautioned the agencies against creating checklists of acceptable assumptions or measurement techniques. Such lists, they believed, would be incomplete given the diverse nature of banks and would stifle innovation in both risk measurement and product development. Some commenters also expressed concern that the assumptions and results of the supervisory model would be used as an explicit benchmark against which internal models would be judged and compared. These commenters were concerned that examiners would require the bank to conduct detailed and ongoing reconciliations between the bank's internal model and the supervisory model results. Such requirements, they believed, imposed unnecessary burdens and lessened the incentives for banks to use their own IRR models. Commenters raising these concerns generally urged the agencies to refrain from imposing supervisory model assumptions on bank models and from requiring banks that have their own internal model to report the information required for the supervisory model.

A key issue for the agencies, and one reason for delaying the implementation of explicit minimum capital standards for IRR, is the degree of specification the agencies need to establish when internal models are used for assessing regulatory capital adequacy. The agencies are aware that there are a variety of measurement systems and assumptions in use by the industry to measure exposures. While such variation may be appropriate given the diverse nature of commercial banks, it may lead to different assessments of risk and hence, capital requirements, for institutions that have similar risk profiles. More explicit guidance from the agencies on acceptable techniques and assumptions could help to lessen this variation and the risk that different amounts of capital may be required for banks with similar portfolios. Such guidance also would help reduce inconsistencies among examiners and agencies in evaluating internal models. Efforts to devise more explicit guidance could, however, result in standards which are inappropriate for some institutions and may impede the industry's continued innovation of more sophisticated risk measurement techniques. The agencies welcome industry comments and suggestions on criteria and standards that they should establish for accepting internal model results.

With regard to reporting, the agencies propose that internal model results be reported on voluntary basis in a supplemental Call Report schedule like that portrayed in Schedule A. In response to the concerns of many commenters, the agencies propose that such reporting be on a confidential basis. Although many commenters to the September NPR requested that banks submitting internal model results not be required to also report the data required for the supervisory model, the agencies propose the data for the supervisory model be collected from all non-exempt banks. While recognizing the reporting burden that this imposes, the agencies believe that collecting data for both internal and the proposed supervisory model results will be important for effective supervision. Moreover, such data also will help the agencies evaluate the use of both the supervisory model and internal models as the basis for ultimately establishing minimum capital charges for IRR. By monitoring the maturity and repricing data collected for the supervisory model, the agencies will be able to assess whether supervisory and internal models results capture major shifts in portfolio compositions. Such monitoring may help identify key model assumptions that should be highlighted for examiner review and common strengths or weaknesses of internal measures when compared to the supervisory model. This information will help the agencies to provide better guidance to examiners and bankers on acceptable risk measurement techniques. It will also assist the agencies in determining what, if any, improvements could be made to the proposed supervisory model before explicit minimum capital charges are implemented.

V. Reporting Requirements

The implementation of this policy statement relies on changes to the Call Report. The examples of Call Report schedules shown in this proposal and the accompanying draft reporting instructions for those schedules are provided to assist the reader in analyzing the full implications of the proposal. Once comments are received on the measurement framework and any modifications that the agencies believe are appropriate are made, the proposed Call Report schedules would also be amended to reflect those changes. At that time, the Call Report schedules would be submitted to FFIEC's Reports Task Force for inclusion in the comment document for March 1996 Call Report changes. The FFIEC will submit any Call Report changes to OMB for review as required under the Paperwork Reduction Act 44 U.S.C. 3501. Opportunity for public comment is always provided in relation to such a submission. Nevertheless, the agencies invite comments regarding the paperwork implications of this proposed policy statement, and will carefully consider any comments received in the development of the policy, as well as in recommending to the FFIEC proposed revisions to the Call Report.

VI. Implementation Schedule

The agencies propose to require any additional reporting by non-exempt banks beginning with the March 1996 Call Reports. Full implementation of this policy statement for assessing the adequacy of bank capital would be effective December 31, 1996.

VII. Requests for Comments

Comments are requested on all aspects of the proposed policy statement, including the suggested implementation schedule. The agencies particularly request comments on the following issues:

1. Exemption for Small Banks

The agencies propose to exempt certain small banks from the proposed policy statement and associated reporting requirements in order to lessen regulatory burdens on small, well-managed banks. The criteria for exemption considers the size of the bank, its overall CAMEL rating and the proportion of assets in intermediate and longer-term maturities.

a. Are the three criteria used for the exemption appropriate and reasonable?

b. Does the use of a bank's confidential CAMEL rating as one of the exemption criteria raise concerns that it may allow public users of Call Reports to discern a bank's CAMEL rating?

c. Does the proposed exemption criteria provide adequate safeguards against exempting banks that pose significant risks to the deposit insurance fund due to IRR?

2. Baseline Supervisory Model

The agencies are proposing that all non-exempted banks provide information for a baseline supervisory model, the results of which, would be one factor that an examiner would use to assess a bank's level of IRR exposure and its need for capital. The baseline model uses seven time bands and applies a series of risk-weights to a bank's reported repricing and maturities balances in each of those time bands. For certain types of instruments or activities, a bank would be required to provide their own estimate of the change in value (self-report) of the instruments or activities for the specified interest rate scenario.

a. Does the proposed baseline supervisory model provide a reasonable basis for measuring a bank's IRR exposure? If not, what changes should be made to the model?

b. Are the amount and type of data proposed to be collected for the model appropriate and reasonable? If not, what changes could be made either to improve the usefulness of the data collected and/or reduce the burden of the proposal?

c. Do banks have the ability to calculate or obtain reasonable estimates of changes in market values for the items where self-reporting would be required? If not, how should such items be incorporated into the model? What factors should examiners consider in reviewing and assessing the reliability of bank's self-reported estimates?

d. Are the risk-weights proposed for the baseline model appropriate for an immediate and parallel 200 basis change in interest rates?

e. What portion, if any, of the proposed Call Report interest rate risk data and output from the proposed supervisory measurement system should be made available to the public through Call Report disclosures and the Uniform Bank Performance Report?

3. Treatment of Non-Maturity Deposits

The agencies propose limits on how a bank could distribute deposits without specified maturities (DDA, NOW, MMDA and savings) among the time bands for the supervisory model. In setting these limits, the agencies propose to treat commercial DDA balances separately from other DDA balances. As proposed, these limits only apply to the standardized supervisory model. The proposal would give an examiner the latitude to use a bank's own non-maturity deposit assumptions when evaluating the bank's capital adequacy for IRR provided that the bank can demonstrate and support those assumptions.

a. Is it appropriate to treat commercial DDA balances separately from other DDA balances?

b. Are the proposed maturity limits reasonable for a standardized reporting and measurement framework?

c. Is it appropriate to give examiners latitude to use a bank's own non-maturity deposit assumptions? If so, should the agencies specify minimum standards of analysis that will be acceptable for banks that wish to use their own assumptions? What types of analyses or factors should be incorporated into such standards?

4. Supplemental Modules for Mortgage Holdings

The agencies have proposed supplemental reporting and expanded risk-weight tables that would apply to banks that have concentrations in either fixed- or adjustable-rate residential mortgage products. These supplemental modules are designed to improve the supervisory model's accuracy by incorporating more fully, the parameters which may affect a mortgage's price sensitivity. The agencies propose to derive the risk-weights for the supplemental modules from pricing tables generated by the OTS's Net Portfolio Value Model (OTS model).

a. Is the information that would be collected for the supplemental modules appropriate and meaningful? If not, what changes should be made?

b. Are the thresholds proposed for requiring a bank to use the supplemental modules appropriate? If not, what threshold would be appropriate?

c. Do the supplemental modules and risk-weights sufficiently address concerns about the supervisory model's accuracy for banks with significant holdings of residential mortgage products? Will their use lessen the possibility of different regulatory treatment for institutions subject to the OTS model and those subject to this policy statement?

d. Will the use of the supplemental modules and the associated risk-weights used in those modules provide appropriate incentives for bank decision-making? Will their use discourage the development of a bank's own measurement capabilities?

e. Is the OTS model a reasonable source for developing the risk-weights used in this module? If not, are there other sources that would be more better?

f. The agencies believe the supplemental schedules related to mortgages are necessary because the price sensitivity of these products may vary substantially depending upon their coupon and cap characteristics. Are the proposed supplemental schedules appropriate and is the level of precision sought by the agencies reasonable?

5. Frequency of Updating Risk-Weights

In the interest of minimizing regulatory burden and providing greater transparency and certainty for the supervisory model, the agencies propose to update the risk weights for the baseline and supplemental schedules only in the event of a significant movement in market rates or other market factors that materially change the accuracy of the derived price sensitivities and associated risk weights. The OTS, in contrast, recalculates the price sensitivities for its model each quarter in order to achieve the precision it believes necessary to distinguish among different coupon rates of mortgage and other products.

a. Does the agencies' intention to limit the updating of risk-weights represent an appropriate balance among the objectives of minimizing regulatory burden, providing transparency and certainty, and providing sufficient measurement accuracy? If not, what other approaches would be appropriate?

b. Does this limitation on updating risk weights materially reduce the benefits and accuracy that the supplemental schedules for mortgages are designed to provide?

c. The supplemental reporting schedule for fixed-rate mortgages proposes to collect balance information by set coupon ranges. An alternative that the agencies have considered is to collect balances on the basis of their distance from prevailing current market coupons. Such a treatment would allow the risk weight applied to any given mortgage coupon to vary as its spread to current mortgage rates varies. Would such a treatment be an improvement over the approach currently proposed by the agencies? What, if any, difficulties would be encountered in reporting balances on the basis of their spread to current mortgage coupons?

6. Use of Carrying Values

In the interest of simplicity, the agencies propose to apply the risk weights, including those derived from the OTS price sensitivities, to the carrying value of a bank's instruments. To the extent that the carrying and market values differ, this introduces an error in the estimated price sensitivity of an instrument. The price sensitivity of instruments whose market values exceed their carrying values will be understated whereas the price sensitivity of instruments whose market values are below carrying values will be overstated.

a. Is the use of carrying values an appropriate simplification and does the use of carrying values for both assets and liabilities sufficiently mitigate the materiality of such errors? If not, what other approach(es) would be appropriate?

7. Use of Internal Models

a. Does the proposed policy statement provide appropriate incentives for the use of banks' internal models and for banks to enhance their internal risk measurement systems?

b. Are the criteria described for assessing a bank's internal model appropriate? What other factors or criteria should examiners consider in assessing and reviewing a bank's internal model results?

c. Should the agencies provide additional guidelines on acceptable parameters, assumptions, and methodologies for internal models? What types of guidance would be most useful?

d. Is the proposed voluntary schedule for reporting internal model results appropriate? Are there sufficient incentives for banks to provide this information on a voluntary basis?

8. Treatment of Trading Account

The agencies propose that banks "self-report" the change in value of their trading account activities for a 100 basis point change in interest rates. The agencies also are considering whether trading account activities should be excluded from this policy statement and IRR measure if a bank is subject to the market risk capital requirements as proposed by the Basle Committee.

a. Is the 100 basis point interest rate scenario that the agencies propose to use when measuring the IRR exposure in a bank's trading portfolio appropriate? If not, what scenario would be appropriate?

b. What modifications, if any, should be made to this proposal for banks that may be subject to the Basle Committee's proposed capital standards for market risk in trading activities? What, if any, operational problems would be created if such banks were simply exempted from including and reporting their trading activities for purposes of this policy statement? What, if any, competitive issues would such a treatment present?

The text of the proposed policy statement follows. The first two appendices to the proposed policy statement provide proposed reporting schedules and accompanying instructions for those schedules that are under consideration by the agencies as part of this proposed policy statement. The third appendix provides the risk weights that would be used in the proposed supervisory model. The fourth appendix provides technical descriptions of the derivation of the model's risk weights and the supplemental modules for residential mortgage-related products.

Proposed Policy Statement

I. Purpose

This supervisory policy statement is adopted by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (FDIC), collectively, the "agencies." The statement establishes a supervisory framework that the agencies will use to assess and measure the interest rate risk (IRR) exposures of insured commercial and FDIC supervised savings banks. The results of this measurement framework will be used by the agencies in their evaluation of a bank's IRR exposure and whether it needs capital for IRR. Each agency has additional guidance and policies on the measurement and management of IRR. Those policies and guidelines set forth each agency's expectations regarding safe and sound banking practices for IRR management. This policy statement does not replace or supersede those issuances. The adoption of this policy statement by the agencies does not replace the agencies' expectations that all insured depository institutions have internal IRR measurement and management processes that are commensurate with the nature and level of their IRR exposures.

II. Background

Interest rate risk is the adverse effect that changes in market interest rates have on a bank's earnings and its underlying economic value. Changes in interest rates affect a bank's earnings by changing its net interest income and the level of other interest-sensitive income and operating expenses. The underlying economic value of the bank's assets, liabilities, and off-balance sheet instruments also are affected by changes in interest rates. These changes occur because the present value of future cash flows and in some cases, the cash flows themselves, change when interest rates change. The combined effects of the changes in these present values reflect the change in the bank's underlying economic value.

Interest rate risk is inherent in the role of banks as financial intermediaries. Interest rate risk, however, introduces volatility to bank earnings and to the economic value of the bank. A bank that has an excessive level of IRR can diminish its future earnings, impair its liquidity and capital positions, and, ultimately, jeopardize its solvency.

The agencies believe that safety and soundness requires effective management and measurement of IRR, and each agency has provided supervisory guidance to banks and examiners on this subject. In addition, the agencies believe that a bank's capital adequacy should be assessed in the context of the risks it faces, including interest rate risk. Both of these aspects of IRR depend, among other things, on a meaningful measurement of the bank's risk exposure.

The agencies believe that a bank should have an IRR measurement system that is commensurate with the nature and scope of its IRR exposures. Among the difficulties in performing a supervisory evaluation of interest rate risk, however, is that measurement systems and management philosophies can differ significantly from one bank to another. As a result, although two banks may each be well-managed, their measured exposure may not be directly comparable. This difficulty has been magnified by the rapid pace of change in financial markets and instruments themselves. In light of the rapid evolution in financial instruments and practices, the agencies believe there is a need for the more formal assessment of banks' IRR exposures that this policy statement establishes.

The measurement framework described in this policy statement focuses on the exposure to a bank's underlying economic value from movements in market interest rates. The exposure to a bank's economic value, as used in this policy statement, is defined as the change in the present value of its assets, minus the change in the present value of its liabilities, plus the change in the present value of its interest-rate related off-balance sheet positions. The agencies have chosen this focus because they believe that changes in a bank's economic value best reflect the potential effect of embedded options and the potential exposure that the bank's current business activities pose to the bank's future earnings stream, and hence, its ability to sustain adequate capital levels. Changes in economic value measure the effect that a change in interest rates will have on the value of all of the future cash flows generated by a bank's current financial positions, not just those cash flows which affect earnings over the few months or quarters. Thus, changes in economic value provide a more comprehensive measure of risk than measures which focus solely on the exposure to a bank's near-term earnings.

III. Definitions and Applicability

A. Definitions

For the purpose of this policy statement, the following definitions apply:

(1) Interest Rate Risk Exposure means the estimated dollar decline in the economic value of the bank in response to a potential change in market interest rates under the specified interest rate scenarios, as measured by either the supervisory measure or, where applicable, a bank's internal model.

(2) Economic value of the bank means the net present value of its assets, minus the net present value of its liabilities, plus the net present value of its off-balance-sheet instruments.

(3) Interest rate scenarios means the specified changes in market interest rates used in calculating a bank's IRR exposure.

(4) Mortgage derivative products means interest-only and principal-only stripped mortgage-backed securities (IOs and POs), tranches of collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICS), CMO and REMIC residual securities, and other instruments having the same characteristics as these securities.

(5) Net risk-weighted position means the sum of all risk-weighted positions of a bank's assets, liabilities and off-balance sheet items, plus the estimated change in market values for any self-reported items. For the purposes of the supervisory measure, this number represents the amount by which the economic value of the bank is estimated to change in response to a potential change in market interest rates under the specified interest rate scenarios.

(6) Non-maturity deposits mean demand deposit accounts (DDAs), money market deposit accounts (MMDAs), savings accounts, and negotiable order of withdrawal accounts (NOWs).

(7) Notional principal amount means the total dollar amount upon which payments on a contract are based.

(8) Structured notes mean those instruments identified as structured notes for Call Report purposes.

(9) Commercial demand deposits mean "nonpersonal" demand deposits as that term is defined under the Board of Governors of the Federal Reserve System's Regulation D.

B. Applicability and Exemption for Small Banks With Low Risk

All banks will be subject to the provisions of this policy statement and will be expected to provide information for the supervisory model, unless:

(1) The total assets of the bank are less than $300 million, and;

(2) The bank's primary supervisor has assigned it a composite CAMEL rating of either "1" or "2"; and

(3) The sum of:

(a) 30% of the bank's fixed- and floating-rate loans and securities that have contractual maturity or repricing dates between 1 and 5 years, and

(b) 100% of the bank's fixed- and floating-rate loans and securities that have contractual maturity or repricing dates beyond 5 years,

is less than or equal to 30% of the bank's total assets.

Notwithstanding this exemption, the appropriate bank supervisor may apply any or all provisions of this policy statement to a bank if the supervisor deems such application is necessary to ensure the capital adequacy of the bank. This means that a bank which otherwise meets the exemption criteria may be required by the agencies to provide maturity and repricing data needed for the supervisory model. The agencies would intend to invoke this requirement only in circumstances where a bank appears to have excessive IRR levels and lacks sufficient internal risk measures such that a determination of its need for capital cannot be adequately assessed by the agencies. Banks that are exempted from the provisions of this policy statement would continue to be subject to safety and soundness IRR examinations and, as a result of such exams, could be directed by their supervisor to improve or strengthen their risk management practices, or hold additional capital for IRR.

If a previously exempted bank fails to meet the exemption criteria as of the June reporting date, it would be required to report the necessary data in the Reports of Condition and Income beginning in March of the next year regardless of its exemption status for the remainder of the current year. The one exception to this requirement is a bank that is involved in business combinations (pooling of interest, purchase acquisitions, or reorganizations) that would result in a change in their exemption status. In those instances, the bank will be subject to any new reporting requirements beginning with the first quarterly report date following the effective date of the business combination involving the bank and one or more depository institutions.

C. Specified Interest Rate Scenarios

For the purpose of measuring a bank's level of IRR exposure for capital adequacy, under either the supervisory model or a bank's internal model, the

agencies will consider both a rising and falling interest rate scenario based on an instantaneous uniform 200 basis point parallel change in market interest rates at all maturities. The agencies may, from time to time, modify the specified interest rate scenarios as appropriate, considering historical and current interest rate levels, interest rate volatilities and other relevant market and supervisory considerations.

IV. Description of the Supervisory Model

A. Overview

The intent of the supervisory model is to provide the agencies with a measure that estimates the sensitivity of a bank's economic value to a specified change in interest rates with sufficient accuracy so as to allow the agencies to identify banks that have high IRR exposures. The model applies a series of IRR risk weights to a bank's reported repricing and maturity balances. These weights estimate price sensitivity of a bank's reported balances to a 200 basis point change in interest rates. The summation of these weighted balances, along with certain price sensitivity information that a bank may be required to self-report, results in a net risk-weighted exposure for the bank. This net risk-weighted exposure is an estimate of the sensitivity of the bank's economic value to the specified change in interest rates.

The maturity and repricing information contained in the Call Report that all non-exempted banks are required to file, along with the IRR risk weights that are applied to that information, form the baseline supervisory model. Banks with concentrations in fixed- or adjustable-rate residential mortgage products are required to submit additional information on those holdings through supplemental Call Report schedules. Supplemental IRR risk weights are applied to this information. These supplemental reporting schedules and IRR risk weights are referred to as supplemental modules to the baseline supervisory model.

B. Supervisory Model Calculations

The structure and format of the supervisory model is designed to allow a bank manager to be able to calculate the IRR exposure of his or her bank so as to not be dependent upon the agencies for obtaining model results. The calculation of a bank's IRR exposure using the supervisory model generally requires the following steps

(1) The bank's assets, liabilities, and off-balance sheet contracts must be assigned to the appropriate balance sheet categories based on the instrument's cash flow characteristics.

(2) Within each balance sheet category, each asset, liability or off-balance sheet contract must be assigned to the appropriate time band generally based on each instrument's remaining maturity or next repricing date.

(3) Balances within each time band must be multiplied by the appropriate risk weight to produce a risk-weighted position for each interest rate scenario.

(4) All risk-weighted positions must be summed to produce a net risk-weighted position for each interest rate scenario which is the basis for determining the bank's measured exposure to interest rate risk.

A bank performs the first two steps in its compilation and submission of the IRR Call Report schedules. Those schedules and accompanying instructions are contained in the Appendices 1 and 2 to this policy statement. The risk-weights required for step three are contained in the tables in Appendix 3 to this policy statement.

C. Information Requirements of the Supervisory Model

Use of the supervisory model requires information on the maturity and repricing characteristics of a bank's assets, liabilities and off-balance-sheet positions. This information is collected by the agencies through the quarterly Call Report submissions filed by non-exempted banks and illustrated by Schedule 1.[7] This reporting schedule requires a bank to report its assets, liabilities and off-balance-sheet items across seven maturity ranges (time bands) based on the instrument's time remaining to maturity or next repricing date. The time bands used:

(1) Less than or equal to 3 months;
(2) Greater than 3 months and less than or equal to 12 months;
(3) Greater than 1 year and less than or equal to 3 years;
(4) Greater than 3 years and less than or equal to 5 years;
(5) Greater than 5 years and less than or equal to 10 years;
(6) Greater than 10 years and less than or equal to 20 years;
(7) Greater than 20 years.

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[7] The agencies have not yet recommended to the Federal Financial Examination Council (FFIEC), Call Report changes for IRR. The schedules and associated reporting requirements and instructions that are discussed in this proposed policy statement and appendix are under consideration by the agencies. These items are included in this policy statement to provide commenters with a fuller understanding of the proposal and to give them opportunities to comment on items under consideration by the agencies. The agencies plan to forward to the FFIEC recommended Call Report changes for IRR. Once final recommendations are made by the agencies, the FFIEC will publish the proposed changes for public comment.

BASELINE

Schedule 1

Proposed Interest Rate Risk Schedule

(to be completed by non-exempt institutions only)

Dollar Amounts in Thousands	(Column A) Total Bil Mil Thou	(Column B) Up to 3 months Bil Mil Thou	(Column C) > 3 months and <= 1 year Bil Mil Thou	(Column D) > 1 year and <= 3 years Bil Mil Thou	(Column E) > 3 years and <= 5 years Bil Mil Thou	(Column F) > 5 years and <= 10 years Bil Mil Thou	(Column G) > 10 years and <= 20 years Bil Mil Thou	(Column H) > 20 years Bil Mil Thou
Maturity and repricing data: Please break out the following items according to their remaining term to maturity or time to repricing:								
1. Debt Securities (exclude self reported items):	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
a. ARM securities (see Memoranda below)	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
b. Fixed rate mortgage securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
c. All other amortizing securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
d. Non-amortizing securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
e. Zero or low coupon securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
2. Loans and Leases:	RCFD XXXX							
a. ARM loans (see Memoranda below)	RCFD XXXX							
b. Fixed rate mortgage loans	RCFD XXXX							
c. Mtg loans held for sale w/ firm commitments	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
d. Other amortizing loans	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
e. All other loans	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
3. All other int-bearing assets (Bal. dve. Fed Funds)	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
4. Liabilities:	RCFD XXXX							
a. Time deposits	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
b. All other int.-bearing nondeposit liabilities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
c. Commercial DDAs - riding rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
d. MMDAs - riding rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
e. NOWs, savings & other DDAs - riding rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
f. Commercial DDAs - declining rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
g. MMDAs - declining rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
h. NOWs, savings & other DDAs - decl. rates	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
5. Off-balance sheet positions:	RCFD XXXX							
a. Non-amortizing	RCFD XXXX							
b. Amortizing	RCFD XXXX							
Self Reported Items:								
6. High risk mortgage securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
7. Non-high-risk CMOs	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
8. Structured notes	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
9. Mortgage servicing rights	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
10. Interest rate swaps w/ embedded options	RCFD XXXX							
11. Interest rate options	RCFD XXXX							
12. Trading account	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX

Memoranda	(Column A) 0 to 6 Months	(Column B) 6 Months to 1 Year	(Column C) Over 1 Thru 3 Years	Over Lifetime Cap
1. ARM Securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
2. ARM Loans	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
3. ARM Securities				RCFD XXXX
4. ARM Loans				RCFD XXXX

	(Column A) Carrying Value	(Column B) Market Value	(Column C) Floating Rate	(Column D) Declining Rate
Self Reported Items:				
6. High risk mortgage securities	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
7. Non-high-risk CMOs	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
8. Structured notes	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
9. Mortgage servicing rights	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX
10. Interest rate swaps w/ embedded options		RCFD XXXX	RCFD XXXX	RCFD XXXX
11. Interest rate options		RCFD XXXX	RCFD XXXX	RCFD XXXX
12. Trading account	RCFD XXXX	RCFD XXXX	RCFD XXXX	RCFD XXXX

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In the interest of minimizing reporting burdens, no coupon or yield data are collected for the baseline supervisory model. Rather, the model applies general assumptions regarding coupon rates and other characteristics of the underlying assets, liabilities, and off-balance-sheet instruments in developing the interest rate sensitivity weights. Banks with concentrations in fixed-rate or adjustable-rate residential mortgages are required to provide additional information on those holdings. For fixed-rate mortgages, this information includes data on the underlying coupons of the mortgage assets. For adjustable-rate mortgages, the information includes data on lifetime and periodic caps. These supplemental modules for fixed- and adjustable-rate mortgages are discussed in Section E of this policy statement.

A brief description of how various types of assets, liabilities, and interest-rate related off-balance sheet instruments are reported is provided below. Instructions for completing the schedules required for the supervisory model are provided in the Call Report package issued by the FFIEC.[8]

a. *Reporting for assets.* The price sensitivity of a financial instrument is determined by the instrument's cash flow characteristics. Accordingly, maturity and repricing data on most assets are collected in one of five categories that reflect different types of cash flows:

(1) *Adjustable-rate 1–4 family mortgage instruments,* including adjustable-rate mortgage loans and adjustable-rate, pass-through mortgage securities. This category would not include home-equity loans; those loans would be reported with other amortizing loans based on their remaining maturity or next repricing date;

(2) *Fixed-rate 1–4 family mortgages,* including both fixed-rate mortgage loans and pass-through, fixed-rate mortgage-backed securities, again excluding home-equity loans;

(3) *Other amortizing loans and securities,* including asset-backed securities, consumer loans and other easily identifiable instruments that involve scheduled periodic amortization of principal more frequently than once a year;

(4) *Zero- or low-coupon securities,* including securities with coupons of less than 3 percent that do not involve scheduled periodic payments of principal; and

(5) *All other loans and securities,* including loans and securities that involve only periodic payments of interest, with payment of principal at maturity.

Banks holding certain types of assets are required to self-report the current market value and estimates of the change in market value of these instruments for the specified interest rate scenarios. Banks can use either their internal estimates or estimates obtained from a reliable third-party source, provided that the bank knows, understands, and documents the assumptions and methodologies used to calculate the estimated market value sensitivities. Assumptions, pricing methodologies and all other documentation must be reasonable and available for examiner review. Self-reporting is used for the following assets:

(1) *All mortgage-backed derivative securities that meet the FFIEC's definition of "high-risk."*[9]

(2) *All structured notes,* as defined in the Call Report instructions;

(3) *Non-high risk mortgage derivative securities* when those holdings represent 10 percent or more of a bank's assets. Banks whose holdings are less than 10 percent of assets have the option of either self-reporting or reporting those instruments as non-amortizing securities based on bank management's estimate of the instrument's current average life.

(4) *Trading account portfolios.* A bank should report the change in the economic value of all of their trading account positions for a 100 basis point parallel increase and decrease in interest rates.[10]

(5) *Mortgage servicing rights* that are capitalized and reported on the bank's balance sheet.

b. *Reporting for Liabilities.* The majority of bank liabilities repay principal only at maturity. Hence, the supervisory model applies the same set of risk-weights to all of a bank's interest-sensitive liabilities. Bank liabilities differ, however, in the certainty of their maturity. In particular, many bank liabilities have uncertain or indeterminate contractual maturities. Given these differences, liabilities with contractual maturities are reported separately from those with indeterminate contractual maturities.

The agencies have adopted uniform rules for distributing non-maturity deposits accounts across the time bands. These rules specify the longest time band that can be used for each type of deposit and the maximum percentage amount that can be reported into that time band. In its reporting of these deposits, a bank may distribute such deposits across the time bands according to the bank's own assumptions and experience, subject to the following constraints:

(1) *Commercial Demand Deposits:* A bank should report 50 percent of its commercial demand deposits in the 0–3 month time band. The remaining balances may be distributed across the first four time bands, with a maximum of 20 percent of total balances in the 3–5 year time band.

(2) *Retail DDA, Savings, and NOW Accounts:* A bank may distribute the balances in these accounts across any of the first five time bands, with a maximum of 20 percent in the 5–10 year time band and no more than 40 percent combined in the 3–5 and 5–10 year bands.

(3) *MMDA Accounts:* A bank may distribute these balances across any of the first three time bands, with a maximum of 50 percent in the 1–3 year band.

Within these deposit reporting parameters, a bank is permitted to use different distributions of these deposits for the rising and falling rate scenarios. This flexibility is designed to reflect the embedded optionality associated with these products.

c. *Reporting for Off-Balance-Sheet Positions.* Off-balance-sheet contracts that represent a firm obligation for both parties are reported within the maturity ladder framework using a two-entry approach to reflect how the contract alters the timing of cash flows. For interest rate swaps, the first entry would be reported in the time band corresponding to the next repricing date of the contract, and the second entry would be reported in the time band corresponding to the maturity of the instrument. For futures, forwards, and FRAs, the first entry would be reported in the time band corresponding to settlement date of the contract, and the second entry would be reported in the time band corresponding to the settlement date *plus* the maturity of the instrument underlying the contract.

Contracts that are based on non-amortizing instruments are reported separately from those based on amortizing principal amounts or on underlying instruments that amortize. Examples of "non-amortizing" contracts include futures, forward-rate agreements, swaps on which the notional principal amount of the contract does not amortize, securitization of credit card receivables under a spread account approach, and firm commitments to buy or sell non-mortgage loans or securities. Examples of "amortizing" contracts are commitments to buy and sell mortgages and commitments to originate mortgage loans.

Self Reporting for Options

Option-related contracts are not distributed and reported within the time bands of the maturity ladder schedule. A bank that holds such contracts is required to "self-report" the market value sensitivities of those positions.[11]

D. IRR Risk Weights

Under the supervisory model, a bank's IRR exposure is calculated by multiplying its reported repricing and maturity positions by IRR risk weights. These risk weighted positions, when summed and added to the sensitivities of any self-reported items, form the bank's net risk-weighted position.

Each risk weight is constructed to approximate the percentage change in value of the reported position that would result from a 200 basis point, instantaneous and uniform movement in market interest rates. Separate risk weights are used for the rising and falling interest rate scenarios to account for the asymmetrical price behavior of various bank assets, liabilities and off-balance-sheet instruments.

The set of risk weights used in the baseline supervisory model for each scenario consists of:

(1) Four "ARM" risk weights for adjustable-rate residential mortgage loans and securities. There is one risk weight for each of the three reset frequency categories, plus one risk-weight for those ARMs that are within 200 basis points of their lifetime cap;

(2) Seven "Fixed-Rate Residential Mortgage" risk weights (i.e., one for each time band) for fixed-rate residential mortgage loans and pass-through mortgage securities;

(3) Seven "Other Amortizing" risk weights for asset-backed securities, consumer loans and amortizing off-balance-sheet instruments;

(4) Seven "Zero or Low Coupon" asset risk weights for instruments with a coupon of 3 percent or less;

(5) Seven "All Other" asset risk weights for non-amortizing instruments; and,

(6).Seven liability risk weights for all liability instruments.

The risk weights used in the baseline supervisory model are provided in Table 1 and also in Appendix 3 of the policy statement. The agencies propose to limit the frequency of revisions to the risk-weights such that revisions would not be made until such time as market rates have moved sufficiently as to prompt a revision of all the risk weights. Such changes may occur only once every several years.

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[8] Draft reporting instructions for the schedules under consideration by the agencies are provided in Appendix 2 of this policy statement. As previously noted, the schedules and associated reporting requirements and instructions discussed in this proposed policy statement have not been finalized and submitted to the FFIEC.

[9] Effective February 10, 1992 agencies and the Office of Thrift Supervision adopted revised supervisory policies on securities activities that were developed under the auspices of the FFIEC. The revised policies established a framework for identifying "high-risk mortgage derivative products."

[10] The agencies expect banks to have prudential internal risk limits and effective risk measurement systems for their trading activities. For banks with significant trading operations, the adequacy and results of those systems will be closely reviewed by examiners and would be incorporated into their assessment of the bank's overall risk position. The Basle Committee on Bank Supervision is also considering methods of evaluating IRR in trading accounts and determining appropriate capital requirements. This process could lead to an international agreement which would affect the treatment of trading activities for U.S. banks.

[11] This differs from earlier proposals where the agencies proposed that options-related contracts be reported on the basis of their delta-equivalent values. The agencies have made this change in the treatment of option-related contracts due to their concerns that delta-equivalent values may be difficult to compute for longer-dated caps and floors, and the limitations of using delta as a proxy for market value sensitivities when evaluating effect of large rate movements.

Table 1

Derivation of Risk Weights (excluding 1-4 yr. family mortgages)

Amortizing Instruments				Scenario 1 200 basis point rise		Scenario 2 200 basis point decline	
Time Band	Maturity*	Coupon	Price (% OF PAR)	Price (% OF PAR)	% Change in Present Value (Risk Weights)	Price (% OF PAR)	% Change in Present Value (Risk Weights)
0-3 Months	1.5 Mo.	7.5	100.00%	99.75%	-0.25%	100.25%	0.25%
3-12 Months	7.5 Mo.	7.5	100.00%	99.25%	-0.75%	100.75%	0.75%
1-3 Years	2 Years	7.5	100.00%	98.00%	-2.00%	102.00%	2.00%
3-5 Years	4 Years	7.5	100.00%	96.30%	-3.70%	103.90%	3.90%
5-10 Years	7.5 Years	7.5	100.00%	93.50%	-6.50%	107.20%	7.20%
10-20 Years	15 Years	7.5	100.00%	88.90%	-11.10%	113.30%	13.30%
Over 20 Years	25 Years	7.5	100.00%	84.90%	-15.10%	120.00%	20.00%
All Other Instruments							
0-3 Months	1.5 Mo.	7.5	100.00% **	99.75%	-0.25%	100.25%	0.25%
3-12 Months	7.5 Mo.	7.5	100.00% **	98.80%	-1.20%	101.30%	1.30%
1-3 Years	2 Years	7.5	100.00%	96.40%	-3.60%	103.80%	3.80%
3-5 Years	4 Years	7.5	100.00%	93.40%	-6.60%	107.10%	7.10%
5-10 Years	7.5 Years	7.5	100.00%	89.40%	-10.60%	112.20%	12.20%
10-20 Years	15 Years	7.5	100.00%	84.10%	-15.90%	120.30%	20.30%
Over 20 Years	25 Years	7.5	100.00%	81.00%	-19.00%	127.00%	27.00%
Liabilities							
0-3 Months	1.5 Mo.	3.75	100.00% **	99.75%	0.25%	100.25%	-0.25%
3-12 Months	7.5 Mo.	3.75	100.00% **	98.80%	1.20%	101.20%	-1.20%
1-3 Years	2 Years	3.75	100.00%	96.30%	3.70%	103.90%	-3.90%
3-5 Years	4 Years	3.75	100.00%	93.00%	7.00%	107.60%	-7.60%
5-10 Years	7.5 Years	3.75	100.00%	88.00%	12.00%	114.00%	-14.00%
10-20 Years	15 Years	3.75	100.00%	80.10%	19.90%	126.20%	-26.20%
Over 20 Years	25 Years	3.75	100.00%	73.70%	26.30%	140.30%	-40.30%
Zero or Low Coupon Securities							
0-3 Months	1.5 Mo.	0	99.08%	98.83%	-0.25%	99.32%	0.25%
3-12 Months	7.5 Mo.	0	95.51%	94.37%	-1.20%	96.67%	1.30%
1-3 Years	2 Years	0	86.31%	83.06%	-3.80%	89.72%	4.00%
3-5 Years	4 Years	0	74.49%	68.99%	-7.40%	80.49%	8.10%
5-10 Years	7.5 Years	0	57.57%	49.85%	-13.40%	66.57%	15.70%
10-20 Years	15 Years	0	33.14%	24.85%	-25.00%	44.31%	33.80%
Over 20 Years	25 Years	0	15.87%	9.82%	-38.10%	25.76%	62.30%

* No prepayments are assumed for these hypothetical instruments
** Actual initial price is slightly less than par

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Table 1(con't)

Derivation of Risk Weights for 1-4 yr. family mortgages

Fixed-Rate Mortgages				Scenario 1 200 basis point rise		Scenario 2 200 basis point decline	
Time Band	Maturity*	Coupon	Price (% OF PAR)	Price (% OF PAR)	% Change in Present Value (Risk Weights)	Price (% OF PAR)	% Change in Present Value (Risk Weights)
0-3 Months	1.5 Mo.	7.50%	100.00%	99.77%	-0.20%	100.23%	0.20%
3-12 Months	7.5 Mo.	7.50%	100.00%	99.30%	-0.70%	100.71%	0.70%
1-3 Years	2 Years	7.50%	100.00%	98.08%	-2.00%	101.98%	2.00%
3-5 Years	4 Years	7.50%	98.76%	93.10%	-5.70%	103.17%	4.50%
5-10 Years	7.5 Years	7.50%	97.57%	90.19%	-7.60%	103.25%	5.80%
10-20 Years	15 Years	7.50%	95.55%	87.40%	-8.50%	102.74%	7.50%
Over 20 Years	25 Years	7.50%	92.07%	81.46%	-11.50%	101.87%	10.60%

Adjustable-Rate Mortgages					Price (% OF PAR)	% Change in Present Value (Risk Weights)	Price (% OF PAR)	% Change in Present Value (Risk Weights)
Reset Frequency	Maturity*	Coupon	Price (% OF PAR)					
0 to 6 Months	6 mo CMT	7.50%	101.31%	(a)	97.03%	-4.20%	102.93%	1.60%
6 Months to 1 Year	12 mo CMT	7.50%	102.12%	(b)	97.60%	-4.40%	104.04%	1.90%
Greater than 1 Year	3 yr CMT	7.50%	99.58%	(c)	92.99%	-6.60%	104.62%	5.10%
Near Lifetime Cap	12 mo CMT	7.50%	99.10%	(d)	92.13%	-7.00%	103.42%	4.40%

* No prepayments are assumed for these hypothetical instruments

(a) 6 mos CMT, 100 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(b) 12 mo. CMT, 200 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(c) 3 yr. CMT, 200 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(d) 12 mo. CMT, no periodic cap, 275 bp margin, 200 bp from lifetime cap

The agencies constructed the risk weights shown in Table 1 by using hypothetical market instruments that are representative of the category being measured. The risk weights are based on the percentage change in the present value of the benchmark instruments for the specified interest rate scenario. Risk weights for adjustable- and fixed-rate residential mortgage loans and securities were derived from data provided by the *OTS (Office of Thrift Supervision) Net Portfolio Value Model* as of September 30, 1994 for use in the *OTS Asset and Liability Pricing Tables* published by the OTS. The mortgage risk weights directly incorporate convexity for the rate scenario and prepayment assumptions for mortgage loans and securities.[12] A complete description of the instruments and methodologies used by the agencies to construct the risk weights for each category is contained in Appendix 4 of this policy statement.

[12] Convexity refers to the non-linear price/yield relationship of fixed-rate financial instruments. Instruments without option features, such as Treasury notes, have positive convexity, meaning that as the price of the instrument falls, its yield will increase by a proportionately greater amount. Other instruments, such as certain mortgage-backed securities, have negative convexity.

E. Description of Supplemental Modules

Residential mortgage products have option features that make the value of the instrument more sensitive to interest rate changes than many other types of financial instruments. To more accurately measure the sensitivity of these products, a bank that has holdings of these instruments in excess of specified levels is required to provide additional information on those holdings in its Call Report submissions. The agencies will apply expanded tables of risk weights to those portfolios when estimating the bank's IRR exposure. Both one-to-four family residential mortgage loans and pass-through securities are considered mortgage holdings for these supplemental modules. Mortgage loans that a bank has funded but holds for sale do not need to be reported in the supplemental modules or included in the calculation of a bank's holdings of mortgage products provided that the bank has a firm and binding commitment from a third party to purchase the loan. Loans with such binding commitments are reported separately in Schedule 1 and receive a risk-weight commensurate with short-term (three months or less) non-amortizing instruments. A bank, however, may elect to report these loans in the supplemental reporting schedules.

1. Fixed-Rate Residential Mortgages: A bank with fixed-rate residential mortgage holdings that exceeds 20% of its total assets will report as part of its quarterly Call Report submissions, additional information on those holdings based upon their time remaining to maturity and coupon rate (Schedule 2). The term "coupon rate" for fixed-rate mortgage loans refers to the loan's stated coupon rate, while for pass-through securities, it refers to the weighted average coupon (WAC) of the underlying mortgages. For each maturity and coupon range, the agencies have developed and will apply risk weights which reflect the differences in expected price sensitivities that are associated with each coupon range.

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SCHEDULE 2
FIXED-RATE MORTGAGES

To be completed by banks with fixed-rate mortgage holdings greater than 20% of total assets

1. Test for determining whether Schedule 2 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted fixed-rate mortgage holdings" greater than 20 percent of total assets as of the report date.....

Yes	No

Balances with Coupons of:	Remaining Time to Maturity			
	(Column A) 5 Years or Less	(Column B) Over 5 Years Through 10 Years	(Column C) Over 10 Years Through 20 Years	(Column D) Over 20 Years
2. <6.75%				
3. 6.76% - ≤7.25%				
4. 7.26% - ≤7.75%				
5. 7.76% - ≤8.25%				
6. 8.26% - ≤8.75%				
7. 8.76% - ≤9.25%				
8. 9.26% - ≤9.75%				
9. >9.75%				

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2. Adjustable-Rate Residential Mortgages: Adjustable-rate mortgage loans and securities have price sensitivities that are substantially different than fixed-rate mortgage assets primarily due to their coupon reset features. The coupon adjustments are generally limited by caps and floors both for the life of the mortgage and also at their rest period. These caps are known as lifetime and period caps. In general, there are three factors that most influence the price sensitivity of an ARM: the reset frequency, the periodic cap, and the lifetime cap. The relationship between the periodic and lifetime caps and the effect of that relationship on ARM prices is complex and varies based upon the likelihood that either cap will become binding. Consequently, information on both the periodic cap and the lifetime cap will be collected from banks with significant ARM holdings.

A bank with ARM holdings greater than 10% but less than 25% of its total assets will through its Call Report submissions, provide additional information on those holdings (Schedule 3). The bank will report its ARM balances by the ARM's reset frequency, the nature of its periodic cap, and the distance to its lifetime cap. ARM balances will be reported for the three reset frequencies (6 months or less, over 6 months but less than or equal to 1 year, and over 1 year). The three reset frequencies are divided by whether or not the ARM carries a periodic cap, and in the over 6 months to 1 year column, by the size of the periodic cap. The distance to the lifetime cap is stratified into four groups:

(1) ARMs that are within 200 basis points of their lifetime caps;

(2) ARMs that are 201 to 400 basis points from their lifetime caps;

(3) ARMs that are 401 to 600 basis points from their lifetime caps;

(4) ARMs that are more than 600 basis points from their lifetime caps.

A bank whose ARM holdings exceed 25% of its total assets will provide further information on its ARM balances, including information on the ARM's index type and weighted average coupon, as illustrated by Schedule 4.

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SCHEDULE 3
ADJUSTABLE-RATE MORTGAGES

To be completed by banks with ARM holdings greater than or equal to 10% but less than 25% of total assets

1. Test for determining whether Schedule 3 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted adjustable-rate mortgage holdings" greater than or equal to 10 percent but less than 25 percent of total assets as of the report date.....

Yes	No

	Reset Frequency						
	6 Months or Less		Over 6 Months through 1 Year			Over 1 Year	
	(Column A) No periodic cap	(Column B) Periodic cap	(Column C) No periodic cap	(Column D) Periodic cap 150bp or less	(Column E) Periodic cap more than 150bp	(Column F) No periodic cap	(Column G) Periodic Cap
Instruments 200 basis points or less from the lifetime cap							
2. Balance							
Instruments 201 to 400 basis points from the lifetime cap							
3. Balance							
Instruments 401 to 600 basis points from the lifetime cap							
4. Balance							
Instruments more than 600 basis points from the lifetime cap and/or with no lifetime cap							
5. Balance							

SCHEDULE 4
ADJUSTABLE-RATE MORTGAGES

To be completed by banks with ARM holdings greater than or equal to 25% of assets

1. Test for determining whether Schedule 4 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted adjustable-rate mortgage holdings" greater than or equal to 25 percent of total assets as of the report date.....

Yes	No

	Current Market Index By Reset Frequency							Lagging Market Index by Reset Frequency	
	6 Months or Less		Over 6 Months to 1 Year			Over 1 Year		(Col. H) 1 Month or Less	(Col. I) Over 1 Month
	(Col. A) No periodic cap.	(Col. B) Periodic Cap	(Col. C) No periodic cap	(Col. D) Periodic Cap of 150 bp or less	(Col. E) Periodic Cap more than 150bp	(Col. F) No periodic cap	(Col. G) Periodic cap		
Instruments 200 basis points or less from the lifetime cap									
2. Balance									
3. WAC									
Instruments 201 to 400 basis points from the lifetime cap									
4. Balance									
5. WAC									
Instruments 401 to 600 basis points from the lifetime cap									
6. Balance									
7. WAC									
Instruments more than 600 basis points from the lifetime cap and/or with no lifetime cap									
8. Balance									
9. WAC									

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V. Calculation of IRR Exposure

A bank's IRR exposure is calculated for both the rising and declining interest rate scenarios. The exposures derived for each scenario may differ in magnitude due to asymmetries in the price sensitivity of financial instruments as interest rates change (e.g., convexity). For each scenario, the first step in computing a bank's IRR exposure is to multiply each reported repricing or maturity position (as reported in Schedules 1, 2, 3 or 4) by the appropriate risk weight. This product, referred to as the "risk weighted position," represents the estimated dollar change in the present value of that position for the 200 basis point rate scenario. The next step is to sum all of the risk weighted positions and add to these positions the sensitivities of any self-reported items. This result, referred to as the "net risk weighted position," represents the estimated change in the economic value of the bank and is the bank's IRR exposure for the that rate scenario.

Appendix 1 provides example worksheets and IRR calculations for hypothetical banks subject to the baseline and supplemental modules.

VI. Use of a Bank's Internal IRR Model Results

The supervisory model set forth in this policy statement is one tool that examiners will use to assess a bank's level of IRR exposure and its need for capital. Examiners also will consider the IRR exposures that are indicated by the bank's internal IRR model. The agencies recognize that many banks have sophisticated internal models for measuring IRR that take account of complexities that are not captured by the supervisory model and that are tailored to the products, activities, and circumstances of each bank. In cases where the bank's internal model provides a more accurate assessment of the bank's IRR exposure, the results of that model will be the primary basis for an examiner's conclusion about the bank's level of IRR exposure.

Factors that examiners will consider in determining whether a bank's internal model provides a more accurate assessment of the bank's IRR profile than the supervisory model include:

(1) Whether the bank's internal model is appropriate to the nature, scope, and complexities of the bank and its activities;

(2) Whether the model includes all material IRR positions of the bank;

(3) Whether the model provides a more precise measurement of the changes in the economic value to the bank than the supervisory model;

(4) Whether the model considers all relevant repricing data, including information on contractual maturities and repricing dates, contractual interest rate floors and/or ceilings;

(5) Whether the model measures the bank's IRR exposure over a probable range of potential interest rate changes, including but not limited to, the rate scenarios established in this policy statement;

(6) Whether the assumptions and structure of the model are reasonable, documented and periodically reviewed and validated by an appropriate level of senior management that has sufficient independence from units that take or create IRR exposures;

(7) Whether the results of the model are communicated to and reviewed by senior management and the institution's Board of Directors on at least a quarterly basis.

VII. Use of Measurement Process Results

The results of the measurement process established by this policy statement will be one factor that an examiner will use when evaluating a bank's capital adequacy with regards to IRR. In reviewing a bank's capital adequacy, an examiner will consider the exposure of the bank's capital and economic value to changes in interest rates, as measured by the supervisory model and, where applicable, the bank's internal model. Other factors that an examiner will consider include the quality of a bank's IRR management, internal controls, and the overall financial condition of the bank, including its earnings capacity, capital base, and the level of other risks which may impair future earnings or capital. When assessing the adequacy of the bank's IRR management process, an examiner will consider:

(1) The adequacy and effectiveness of senior management and Board oversight;

(2) The adequacy of and compliance with the bank's policies, procedures and internal controls;

(3) The existence of and adherence to specific risk limits relating to loss of capital;

(4) Management's knowledge and ability to identify and manage sources of IRR effectively; and

(5) The adequacy of internal risk measurement and monitoring systems.

At the completion of each safety and soundness examination, examiners will form and document conclusions as to the adequacy of a bank's capital and risk management process with regard to interest rate risk. An examiner's conclusions about both the level of risk and the adequacy of the risk management process will play an integral role in determining a bank's need for capital for IRR. Banks with high levels of measured exposure or weak management systems generally will need to hold capital for IRR. The specific amount of capital that may be needed will be determined on a case-by-case basis by the examiner and the appropriate supervisory agency. This determination and the examiner's overall conclusions regarding IRR will be discussed with bank management at the close of each examination.

During the intervals between examinations, the agencies will use the supervisory model to help monitor changes in a bank's IRR exposure. Significant changes in reported exposures or in a bank's overall financial condition will be analyzed by the bank's primary supervisor to determine whether additional supervisory actions are warranted. Such actions may include additional discussions with bank management, requests for additional information, on-site reviews of the bank, and reevaluation of the bank's capital adequacy.

Appendix 1—Proposed Call Report Schedules and Supervisory Model Worksheets

This appendix contains sample call report schedules and worksheets that would be used for the proposed supervisory model. As noted in the proposed policy statement, the schedules shown in this appendix are under consideration by the agencies but have not yet been submitted to the FFIEC for approval. These schedules and worksheets are included in this document to provide readers and commenters a better understanding of the proposed supervisory risk measurement system.

I. Sample Call Report Schedules

Schedule 1 illustrates the information that would be collected from all banks that do not meet the reporting exemption criteria. This information would be used for the baseline supervisory model. Schedules 2–4 illustrate the information that would be collected from non- exempt banks that have concentrations in fixed- or adjustable-rate residential mortgage loans or pass-through securities. This information would be used in lieu of the items for these portfolios on Schedule 1. The balances reported in the supplemental schedules would be subjected to the expanded set of risk weights shown in Appendix 3. Draft reporting instructions for Schedules 1–4 are provided in Appendix 2.

Schedule 5 illustrates the information on a bank's internal IRR model results that the agencies propose to collect on a voluntary and confidential basis. A bank that has an internal IRR model that measures the bank's economic exposure for a 200 basis point parallel rate shock would provide summary information on the estimated change in value for various asset, liability, and off-balance-sheet categories.

BILLING CODE 6714-01-P

Schedule 1

BASELINE

Proposed Interest Rate Risk Schedule
(to be completed by non-exempt institutions only)

Maturity and repricing data:
Please report the following items according to their remaining term to maturity or time to repricing:

Dollar Amounts in Thousands	(Column A) Total Bil	Mil	Thou	(Column B) Up to 3 months Bil	Mil	Thou	(Column C) > 3 months and <= 1 year Bil	Mil	Thou	(Column D) > 1 year and <= 3 years Bil	Mil	Thou	(Column E) > 3 years and <= 5 years Bil	Mil	Thou	(Column F) > 5 years and <= 10 years Bil	Mil	Thou	(Column G) > 10 years and <= 20 years Bil	Mil	Thou	(Column H) > 20 years Bil	Mil	Thou
1. Debt Securities (exclude self reported items):	RCFD																							
a. ARM securities (see Memoranda below)	3300																							
b. Fixed rate mortgage securities	RCFD																							
c. All other amortizing securities	3300																							
d. Non-amortizing securities	8339																							
e. Zero or low coupon securities	RCFD																							
2. Loans and Leases:	3300																							
a. ARM loans (see Memoranda below)	RCFD																							
b. Fixed rate mortgage loans	3300																							
c. Mtg loans held for sale w/ firm commitment	RCFD																							
d. Other amortizing loans	3300																							
e. All other loans	RCFD																							
3. All other int-bearing assets (Incl. Fed Funds)	3300																							
4. Liabilities:	RCFD																							
a. Time deposits	3300																							
b. All other int. bearing nondeposit liabilities	RCFD																							
c. Commercial DDAs - rising rate	3300																							
d. MMDAs - rising rate	RCFD																							
e. NOWs, savings & other DDAs - rising rate	3300																							
f. Commercial DDAs - declining rate	RCFD																							
g. MMDAs - declining rate	3300																							
h. NOWs, savings & other DDAs - decl. rate	RCFD																							
5. Off-balance sheet positions:	3300																							
a. Non-amortizing	RCFD																							
b. Amortizing	3300																							
	RCFD																							
	3300																							

Self Reported Items:	(Column A) Carrying Value RCFD	3300	(Column B) Market Value RCFD	3300
6. High risk mortgage securities				
7. Non-high risk CMOs				
8. Structured notes				
9. Mortgage servicing rights				
10. Interest rate swaps w/ embedded options				
11. Interest rate options				
12. Trading account	RCFD	3300	RCFD	3300

Memoranda	(Column A) 0 to 6 Months RCFD	3300	(Column B) 6 Months to 1 Year RCFD	3300	(Column C) Greater Than 1 Year RCFD	3300
1. ARM Securities						
2. ARM Loans						

	Near Lifetime Cap RCFD	3300
3. ARM Securities		
4. ARM Loans		

(Column A) Total Bil	Mil	Thou	(Column B) Trading Rate Bil	Mil	Thou	(Column C) Declining Rate Bil	Mil	Thou

SCHEDULE 2
FIXED-RATE MORTGAGES

To be completed by banks with fixed-rate mortgage holdings greater than 20% of total assets

1. Test for determining whether Schedule 2 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted fixed-rate mortgage holdings" greater than 20 percent of total assets as of the report date.....

Yes	No

Balances with Coupons of:	Remaining Time to Maturity			
	(Column A) 5 Years or Less	(Column B) Over 5 Years Through 10 Years	(Column C) Over 10 Years Through 20 Years	(Column D) Over 20 Years
2. <6.75%				
3. 6.76% - ≤7.25%				
4. 7.26% - ≤7.75%				
5. 7.76% - ≤8.25%				
6. 8.26% - ≤8.75%				
7. 8.76% - ≤9.25%				
8. 9.26% - ≤9.75%				
9. > 9.75%				

SCHEDULE 3
ADJUSTABLE-RATE MORTGAGES

To be completed by banks with ARM holdings greater than or equal to 10% but less than 25% of total assets

1. Test for determining whether Schedule 3 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted adjustable-rate mortgage holdings" greater than or equal to 10 percent but less than 25 percent of total assets as of the report date.....

Yes	No

	Reset Frequency						
	6 Months or Less		Over 6 Months through 1 Year			Over 1 Year	
	(Column A) No periodic cap	(Column B) Periodic cap	(Column C) No periodic cap	(Column D) Periodic cap 150bp or less	(Column E) Periodic cap more than 150bp	(Column F) No periodic cap	(Column G) Periodic Cap
Instruments 200 basis points or less from the lifetime cap							
2. Balance							
Instruments 201 to 400 basis points from the lifetime cap							
3. Balance							
Instruments 401 to 600 basis points from the lifetime cap							
4. Balance							
Instruments more than 600 basis points from the lifetime cap and/or with no lifetime cap							
5. Balance							

SCHEDULE 4
ADJUSTABLE-RATE MORTGAGES
To be completed by banks with ARM holdings greater than or equal to 25% of assets

1. Test for determining whether Schedule 4 should be completed.

Indicate in the appropriate box at the right whether the bank has "total adjusted adjustable-rate mortgage holdings" greater than or equal to 25 percent of total assets as of the report date.....

Yes	No

	Current Market Index By Reset Frequency							Lagging Market Index by Reset Frequency	
	6 Months or Less		Over 6 Months to 1 Year			Over 1 Year		(Col. H) 1 Month or Less	(Col. I) Over 1 Month
	(Col. A) No periodic cap	(Col. B) Periodic Cap	(Col. C) No periodic cap	(Col. D) Periodic Cap of 150 bp or less	(Col. E) Periodic Cap more than 150bp	(Col. F) No periodic cap	(Col. G) Periodic cap		
Instruments 200 basis points or less from the lifetime cap									
2. Balance									
3. WAC									
Instruments 201 to 400 basis points from the lifetime cap									
4. Balance									
5. WAC									
Instruments 401 to 600 basis points from the lifetime cap									
6. Balance									
7. WAC									
Instruments more than 600 basis points from the lifetime cap and/or with no lifetime cap									
8. Balance									
9. WAC									

Schedule 5
Results of Internal IRR Measurement System

To be filed by intitutions that use an internal interest rate risk measurement system.

Dollar Amounts in Thousands	Rising Rates Bil	Rising Rates Mil	Rising Rates Thou	Declining Rates Bil	Declining Rates Mil	Declining Rates Thou
Interest Rate Risk Sensitivity Analysis - Estimated Change in Economic Value						
1. Debt securities:						
a. ARM securities	RCFD XXXX			RCFD XXXX		
b. Fixed rate mortgage securities	RCFD XXXX			RCFD XXXX		
c. All other amortizing securities	RCFD XXXX			RCFD XXXX		
d. Non-amortizing securities	RCFD XXXX			RCFD XXXX		
e. Zero or low coupon securities	RCFD XXXX			RCFD XXXX		
2. Loan and Leases						
a. ARM loans	RCFD XXXX			RCFD XXXX		
b. Fixed rate mortgage loans	RCFD XXXX			RCFD XXXX		
c. Other amortizing loans	RCFD XXXX			RCFD XXXX		
d. All other loans	RCFD XXXX			RCFD XXXX		
3. Mortgage servicing rights	RCFD XXXX			RCFD XXXX		
4. Trading account (on and off-balance sheet)	RCFD XXXX			RCFD XXXX		
5. All other interest-bearing assets (Bal. due, Fed funds)	RCFD XXXX			RCFD XXXX		
6. Total Liabilities:						
a. Non-maturity deposits (MMDAs, DDAs, NOWs, savings)	RCFD XXXX			RCFD XXXX		
b. Time deposits	RCFD XXXX			RCFD XXXX		
c. All other interest-bearing non-deposit liabilities	RCFD XXXX			RCFD XXXX		
7. Off-balance sheet contracts (nontrading account)						
a. Non-amortizing and amortizing	RCFD XXXX			RCFD XXXX		
b. Interest rate options	RCFD XXXX			RCFD XXXX		
8. Total Assets - Total Liabilities +/- off-balance sheet	RCFD XXXX			RCFD XXXX		

BILLING CODE 6714-01-C

II. Baseline Supervisory Model Worksheet

To illustrate how a bank's IRR exposure would be calculated under the baseline supervisory model, the following worksheets are provided for a hypothetical bank (Bank A) that is not exempted from reporting (see policy statement) and has filed the proposed Schedule 1. Since Bank A's fixed-rate residential mortgage loan and security holdings are less than 20% of its total assets and its adjustable-rate holdings are less than 10% of total assets, it is not subject to any the supplemental reporting schedules. Schedule 1A shows the completed Schedule 1 for Bank A. Tables 1A and 2A are the baseline model worksheets for the rising and falling rate scenarios, respectively for Bank A.

Column A in Tables 1A and 2A combine and transcribe the balance information that Bank A reported. For example, Bank A reported $4.126 million of fixed-rate mortgage securities and $5.432 million of fixed-rate mortgage loans that had maturities of 10- to 20-years. These balances have been combined and reported in Item 1(f) in Tables 1A and 2A.

Column B in Tables 1A and 2A shows the supervisory model risk weights for each instrument type and maturity category. The risk weights represent the estimated percentage change in the value of the reported balances for a 200 basis point rise (Table 1A) and decline (Table 2A) in interest rates. For example, the value of a 3- to 5-year non-amortizing loan or security, as shown in Item 6(d) is estimated to decline by 6.60% if interest rates increase by 200 basis points and increase in value by 7.10% if rates decline by 200 basis points. The risk weights shown in Column B are established by the agencies and published in Appendix 3 to this policy statement. Because liabilities represent future obligations of the bank, the risk-weights used for liabilities are shown as positive numbers for the rising rate scenario (representing a benefit to the bank) and negative numbers for the declining rate scenario.

Column C in Tables 1A and 2A represents the estimated dollar change in the present value of each reported balance. These values are obtained by multiplying the reported balance in Column A by the corresponding risk weight in Column B. For example, Bank A has $3.458 million in ARMs that are near their lifetime caps (line 2(d) in Tables 1A and 2A). The agencies have estimated that the value of such ARMs will decline by approximately 7.00% if rates increase by 200 basis points. Thus, the estimated decline in value for Bank A's reported ARM balances near lifetime caps is approximately $242 thousand ($3.458 million times −7.00%). Note that for self-reported items, no multiplication is needed. Rather, the estimated dollar change in value reported by the bank in Schedule 1A is incorporated directly into the exposure estimate.

Bank A's net IRR exposure is calculated by summing the individual risk-weighted positions and self-reported change amounts shown in Column C. The sum of the risk-weighted asset positions plus self-reported items for Bank A indicates a decline in value for these portfolios of approximately $17.560 million under the rising rate scenario. This decline is partially offset by $11.093 million and $0.266 million increases in value for liabilities and other off-balance sheet items, respectively. Bank A's net risk-weighted position is the sum of these items and indicates that the economic value of Bank A is expected to decline by $6.201 million under the rising rate scenario. Conversely, under the declining rate scenario, the economic value of Bank A is expected to increase by $10.103 million.

BILLING CODE 6714-01-P

Schedule 1A
Bank A.

Proposed Interest Rate Risk Schedule
(to be completed by non-exempt institutions only)

Maturity and repricing data:
Please break out the following items according to their remaining term to maturity or time to repricing

Dollar Amounts in Thousands	(Column A) Total Bil	Mil	Thou	(Column B) Up to 3 months Bil	Mil	Thou	(Column C) <= 1 year Bil	Mil	Thou	(Column D) <= 3 years Bil	Mil	Thou	(Column E) <= 5 years Bil	Mil	Thou	(Column F) <= 10 years Bil	Mil	Thou	(Column G) <= 20 years Bil	Mil	Thou	(Column H) > 20 years Bil	Mil	Thou
1. Debt Securities (exclude self reported items):																								
a. ARM securities (see Memoranda below)	10	943		0			564			834			118			2	254		4	126		9	823	
b. Fixed rate mortgage securities	18	699		654			661			322			429			4	553		4	554		1	363	
c. All other amortizing securities	15	173		15	626		440			176			813			12	141		19	675		0		
d. Non-amortizing securities	74	234		3	264		106			986			0			0			0			0		
e. Zero or low coupon securities	9	356																						
2. Loan and Leases:																								
a. ARM loans (see Memoranda below)	15	842		0			0			1	234		1	312		4	234		5	432		23	637	
b. Fixed rate mortgage loans	35	849		334			121			884			995			2	634		3	761		4	983	
c. Fixed & adjustable rate mortgage loans with firm commitments to sell	1	652		46	231		19	418		15	770		10	442		10	340		0			0		
d. Other amortizing loans	16	710		3	100		1	333		0			0			0			0			0		
e. All other loans	102	201																						
3. All other net-bearing assets (Incl. Am. Fed Funds)	4	433		3	100		1	333		-3	100		-500			0			0			0		
4. Liabilities:																								
a. Time deposits	72	121		36	306		32	559		1	333		1	933		0			0			0		
b. All other interest-bearing non-deposit liabilities	18	839		2	237		8	387		8	215		0			0			0			0		
c. Commercial DDAs - rising rate	26	209		13	136		0			7	844		5	239		0			0			0		
d. MMDAs - rising rate	28	312		0			14	156		14	156		0			0			0			0		
e. NOWs, savings, & other DDAs - rising rate	145	393		18	928		14	156		85	915		28	839		28	659		0			0		
f. Commercial DDAs - declining rate	26	209		3	386		7	281		0			0			0			0			0		
g. MMDAs - declining rate	28	312		2	200		16	756		8	170		0			0			0			0		
h. NOWs, savings, & other DDAs - declining rate	145	393					60	141		61	273		10	145		9	634		0			0		
5. Off-Balance Sheet Swaps, Futures, FRAs, Commitments, etc.																								
a. Nonamortizing (excluding trading amount)	0			3	200		400			-3	100		-500			0			0			0		
b. Amortizing (excluding trading amount)	0			900			0			0			0			0			0			0		

Memoranda:	(Column A) Carrying Value			(Column B) Market Value		
Self Reported Items:						
6 High Risk Mortgage Securities	5	234		5	414	
7 Non-High Risk CMOs	1	199		1	996	
8 Structured Notes	2	349		2	043	
9 Mortgage Servicing Rights	1	462		1	673	
10 Interest Rate Swaps with Embedded Options					385	
11 Interest Rate Options				1	520	
12 Trading Account	3	943		4	763	

Reset Frequency:	(Column C) Rising Rate			(Column D) Declining Rate		
0 to 6 Months	3	275		3	754	
6 Months to 1 Year	2	733		5	885	
Greater Than 1 Year	6	471		1	131	
Memoranda:						
1. ARM Securities	4	930		5	885	
2. ARM Loans	5	983		1	995	
Note: Lifetime Cap				2	943	
3. ARM Securities	1	181		1	673	
4. ARM Loans	2	277		385		
				655		
				5	124	

Interest Rate Risk Worksheet (200 Basis Point Rising Rate Scenario) **Table 1A**
Bank A

Reporting Institution: Sample Bank A (Baseline Schedule Only)

$ THOUSANDS	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position (A)x(B)	(D) Total Risk Weighted Position
I. INTEREST - SENSITIVE ASSETS				
1. FRM's				
(a) Up to 3 months	$0	-0.25%	$0	
(b) 3 to 12 months	$564	-0.70%	($4)	
(c) 1 to 3 years	$2,068	-2.00%	($41)	
(d) 3 to 5 years	$2,430	-5.70%	($139)	
(e) 5 to 10 years	$6,468	-7.80%	($492)	
(f) 10 to 20 years	$9,558	-8.50%	($812)	
(g) Greater than 20 years	$33,460	-11.50%	($3,848)	
2. ARM's				
(a) 0 to 6 months	$9,238	-4.20%	($388)	
(b) 6 months to 1 year	$9,204	-4.40%	($405)	
(c) Greater than 1 year	$4,883	-4.80%	($322)	
(d) Near Lifetime Cap	$3,458	-7.00%	($242)	
3. FRM's and ARM's with Binding Commitments	$1,652	-0.25%	($4)	
4. Other Amortizing Loans & Securities				
(a) Up to 3 months	$998	-0.20%	($2)	
(b) 3 to 12 months	$2,782	-0.70%	($19)	
(c) 1 to 3 years	$5,288	-2.00%	($106)	
(d) 3 to 5 years	$8,422	-3.70%	($312)	
(e) 5 to 10 years	$7,187	-4.50%	($497)	
(f) 10 to 20 years	$4,315	-11.10%	($479)	
(g) Greater than 20 years	$4,983	-15.10%	($752)	
5. Zero or low coupon securities				
(a) Up to 3 months	$3,264	-0.25%	($8)	
(b) 3 to 12 months	$3,106	-1.20%	($37)	
(c) 1 to 3 years	$2,986	-3.80%	($113)	
(d) 3 to 5 years	$0	-7.40%	$0	
(e) 5 to 10 years	$0	-13.40%	$0	
(f) 10 to 20 years	$0	-25.80%	$0	
(g) Greater than 20 years	$0	-36.10%	$0	
6. All other securities and loans				
(a) Up to 3 months	$61,857	-0.25%	($155)	
(b) 3 to 12 months	$31,858	-1.30%	($382)	
(c) 1 to 3 years	$20,946	-3.80%	($754)	
(d) 3 to 5 years	$18,255	-6.80%	($1,295)	
(e) 5 to 10 years	$22,481	-10.80%	($2,380)	
(f) 10 to 20 years	$19,675	-15.90%	($3,129)	
(g) Greater than 20 years	$1,363	-19.80%	($258)	
7. Self Reporting Items				
(a) High risk mortgage securities	$5,405		($473)	
(b) Non-high risk CMO's	$1,864		($121)	
(c) Structured notes	$2,694		($230)	
(d) Mortgage servicing rights	$1,835		$153	
(e) Swaps with embedded options	$1,230		($1,750)	
(f) Options, caps, floors, etc.	$1,520		$960	
(g) Trading account	$4,763		($243)	
8. Total Interest-Sensitive Assets	$319,968		($17,560)	($17,560)
II. ALL OTHER ASSETS	$8,000			
III. TOTAL ASSETS	$327,968			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$51,879	0.25%	$129	
(b) 3 to 12 months	$95,182	1.35%	$661	
(c) 1 to 3 years	$117,453	3.75%	$4,348	
(d) 3 to 5 years	$58,091	7.00%	$2,520	
(e) 5 to 10 years	$28,639	12.05%	$3,437	
(f) 10 to 20 years	$0	19.99%	$0	
(g) Greater than 20 years	$0	29.30%	$0	
2. Total Interest-Sensitive Liabilities	$350,874		$11,093	
V. NONINTEREST-SENSITIVE LIABILITIES	$1,123			
VI. TOTAL LIABILITIES	$289,997		$11,093	$11,093
VII. EQUITY CAPITAL	$37,971			
VIII. OFF-BALANCE SHEET POSITIONS				
1. Interest rate futures, forwards, and swaps				
(a) Up to 3 months	$3,200	-0.25%	($8)	
(b) 3 to 12 months	$400	-1.20%	($5)	
(c) 1 to 3 years	($3,100)	-3.80%	$112	
(d) 3 to 5 years	($500)	-6.60%	$33	
(e) 5 to 10 years	$0	-10.60%	$0	
(f) 10 to 20 years	$0	-15.80%	$0	
(g) Greater than 20 years	$0	-19.00%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$800	-0.20%	($2)	
(b) 3 to 12 months	$0	-0.70%	$0	
(c) 1 to 3 years	$0	-2.00%	$0	
(d) 3 to 5 years	$0	-3.70%	$0	
(e) 5 to 10 years	$0	-6.50%	$0	
(f) 10 to 20 years	$0	-11.10%	$0	
(g) Greater than 20 years	($900)	-15.10%	$136	
3. Total Off-Balance-Sheet Positions	$0		$266	$266
Net Risk Weighted Positions				($6,201)
Net Position/ Assets				-1.89%

Interest Rate Risk Worksheet (200 Basis Point Declining Rate Scenario) **Table 2A**
Bank A

Reporting Institution: Sample Bank A (Baseline Schedule Only)

$ THOUSANDS	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position (A)x(B)	(D) Total Risk Weighted Position
I. INTEREST - SENSITIVE ASSETS				
1. FRM's				
(a) Up to 3 months	$0	0.20%	$0	
(b) 3 to 12 months	$564	0.70%	$4	
(c) 1 to 3 years	$2,068	2.00%	$41	
(d) 3 to 5 years	$2,430	4.50%	$109	
(e) 5 to 10 years	$6,468	5.80%	$375	
(f) 10 to 20 years	$9,558	7.50%	$717	
(g) Greater than 20 years	$33,460	10.60%	$3,547	
2. ARM's				
(a) 0 to 6 months	$8,034	1.60%	$129	
(b) 6 months to 1 year	$12,053	1.90%	$229	
(c) Greater than 1 year	$4,018	5.10%	$205	
(d) Near Lifetime Cap	$2,679	4.40%	$118	
3. FRM's and ARM's with Binding Commitments	$1,652	0.25%	$4	
4. Other Amortizing Loans & Securities				
(a) Up to 3 months	$998	0.20%	$2	
(b) 3 to 12 months	$2,782	0.70%	$19	
(c) 1 to 3 years	$5,206	2.00%	$104	
(d) 3 to 5 years	$8,422	3.90%	$250	
(e) 5 to 10 years	$7,187	7.20%	$517	
(f) 10 to 20 years	$4,315	13.30%	$574	
(g) Greater than 20 years	$4,983	20.00%	$997	
5. Zero or low coupon securities				
(a) Up to 3 months	$3,264	0.25%	$8	
(b) 3 to 12 months	$3,106	1.30%	$40	
(c) 1 to 3 years	$2,986	4.00%	$119	
(d) 3 to 5 years	$0	8.10%	$0	
(e) 5 to 10 years	$0	15.70%	$0	
(f) 10 to 20 years	$0	33.80%	$0	
(g) Greater than 20 years	$0	62.30%	$0	
6. All other securities and loans				
(a) Up to 3 months	$61,857	0.25%	$155	
(b) 3 to 12 months	$31,858	1.30%	$414	
(c) 1 to 3 years	$20,946	3.80%	$796	
(d) 3 to 5 years	$18,255	7.10%	$1,296	
(e) 5 to 10 years	$22,481	12.20%	$2,743	
(f) 10 to 20 years	$19,675	20.30%	$3,994	
(g) Greater than 20 years	$1,363	27.00%	$368	
7. Self Reporting Items				
(a) High risk mortgage securities	$5,405		$482	
(b) Non-high risk CMO's	$1,864		$132	
(c) Structured notes	$2,694		$249	
(d) Mortgage servicing rights	$1,835		($142)	
(e) Swaps with embedded options	$1,230		($345)	
(f) Options, caps, floors, etc.	$1,520		($465)	
(g) Trading account	$4,763		$361	
8. Total Interest-Sensitive Assets	$319,968		$17,427	$17,427
II. ALL OTHER ASSETS	$8,000			
III. TOTAL ASSETS	$327,968			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$63,027	-0.25%	($158)	
(b) 3 to 12 months	$125,124	-1.20%	($1,501)	
(c) 1 to 3 years	$79,991	-3.90%	($3,080)	
(d) 3 to 5 years	$13,078	-7.60%	($918)	
(e) 5 to 10 years	$9,634	-14.00%	($1,349)	
(f) 10 to 20 years	$0	-26.20%	$0	
(g) Greater than 20 years	$0	-40.30%	$0	
2. Total Interest-Sensitive Liabilities	$288,874		($7,006)	
V. NONINTEREST-SENSITIVE LIABILITIES	$1,123			
VI. TOTAL LIABILITIES	$289,997		($7,006)	($7,006)
VII. EQUITY CAPITAL	$37,971			
VIII. OFF-BALANCE SHEET POSITIONS				
1. Interest rate futures, forwards, and swaps				
(a) Up to 3 months	$3,200	0.25%	$8	
(b) 3 to 12 months	$400	1.30%	$5	
(c) 1 to 3 years	($3,100)	3.80%	($118)	
(d) 3 to 5 years	($500)	7.10%	($36)	
(e) 5 to 10 years	$0	12.20%	$0	
(f) 10 to 20 years	$0	20.30%	$0	
(g) Greater than 20 years	$0	27.00%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$900	0.20%	$2	
(b) 3 to 12 months	$0	0.70%	$0	
(c) 1 to 3 years	$0	2.00%	$0	
(d) 3 to 5 years	$0	3.90%	$0	
(e) 5 to 10 years	$0	7.20%	$0	
(f) 10 to 20 years	$0	13.30%	$0	
(g) Greater than 20 years	($900)	20.00%	($180)	
3. Total Off-Balance-Sheet Positions	$0		($318)	($318)
Net Risk Weighted Positions				$10,103
Net Position/ Assets				3.08%

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III. Supplemental Module Worksheets

The calculation of net IRR exposure for a bank using the supplemental schedules is similar to the process described for the baseline model. The primary difference is that the risk-weighted positions for the applicable residential mortgage portfolios are derived from the supplemental schedules and expanded risk-weight tables rather than from baseline schedules.

To illustrate the calculation, worksheets are provided for a hypothetical bank (Bank B) that has filed supplemental Schedule 2 (fixed-rate mortgages) and Schedule 4 (adjustable-rate mortgages). Bank B uses these schedules because both its fixed-rate and adjustable-rate residential mortgage loans and pass-through securities holdings exceed 25% of its total assets. Schedules 1B, 2B and 4B (corresponding to the proposed Schedules 1, 2 and 4) show the data that Bank B has reported. Table 1B is the worksheet used to calculate Bank B's IRR exposure for the rising rate scenario. This worksheet is similar to the worksheets used for the baseline model. Column A combines and transcribes the balance information that Bank B reported in Schedules 1B, 2B and 4B. Column B shows the applicable risk-weights for each instrument and maturity category. Column C reflects the estimated dollar change in value for each portfolio. The only difference in this worksheet and the one used for the baseline model is that risk-weighted positions in Column C for the fixed- and adjustable-rate mortgages are obtained by applying the expanded set of risk-weights (provided in Appendix 3) to the balances reported in Schedules 2B and 4B.

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Schedule 1B
Bank B

Proposed Interest Rate Risk Schedule
(to be completed by non-exempt institutions only)

Maturity and repricing data:
Please break out the following items according to their remaining term to maturity or time to repricing:

Dollar Amounts in Thousands	(Column A) Carrying Value Bil	Mil	Thou	(Column B) Market Value Bil	Mil	Thou	(Column C) Rising Rates Bil	Mil	Thou	(Column D) Declining Rates Bil	Mil	Thou	(Column E) <= 5 years Bil	Mil	Thou	(Column F) <= 10 years Bil	Mil	Thou	(Column G) <= 20 years Bil	Mil	Thou	(Column H) > 20 years Bil	Mil	Thou
1. Debt Securities (exclude self reported items):																								
a. ARM securities (see Memoranda below)		61	803																					
b. Fixed rate mortgage securities		89	277																					
c. All other amortizing securities		15	173																					
d. Non-amortizing securities		74	234																					
e. Zero or low coupon securities		9	356																					
2. Loan and Leases:																								
a. ARM loans (see Memoranda below)		92	713																					
b. Fixed rate mortgage loans		54	968																					
c. Fixed & adjustable rate mortgage loans with firm commitments to sell		1	652																					
d. Other amortizing loans		16	710																					
e. All other loans		102	201																					
3. All other interest-bearing assets (Incl. Fed Funds)		4	433																					
4. Liabilities:																								
a. Time deposits		261	221																					
b. All other interest-bearing non-deposit liabilities		18	839																					
c. Commercial DDAs - rising rates		26	209																					
d. MMDAs - rising rates		28	312																					
e. NOWs, savings, & other DDAs - rising rates		143	393																					
f. Commercial DDAs - declining rates		26	209																					
g. MMDAs - declining rates		28	312																					
h. NOWs, savings, & other DDAs - declining rates		143	393																					
5. Off-Balance Sheet Swaps, Futures, FRAs, Commitments, etc.																								
a. Nonamortizing (excluding trading account)		0																						
b. Amortizing (excluding trading account)		0																						

Memoranda:	(Column A) Carrying Value			(Column B) Market Value			(Column C) Rising Rates			(Column D) Declining Rates		
Self Reported Items:												
6. High Risk Mortgage Securities		5	234		5	403		4	930		5	885
7. Non-High-Risk CMOs		1	199		1	864		1	743		1	996
8. Structured Notes		2	369		2	694		2	464		2	943
9. Mortgage Servicing Rights		1	462		1	835		1	948		1	673
10 Interest Rate Swaps with Embedded Options					1	230			-520			345
11 Interest-Rate Options					1	570		2	320			855
12 Trading Account		3	963		4	763		4	320		5	124

Memoranda:	Reset Frequency: 0 to 6 Months			6 Months to 1 Year			Greater Than 1 Year		
1. ARM Securities		17	135		17	733		20	754
2. ARM Loans		25	705		26	600		31	131
	Note: Lifetime Cap								
3. ARM Loans		6	181						
4. ARM Securities		9	277						

Interest Rate Risk Worksheet (200 Basis Point Rising Rate Scenario) **Table 1B**
Bank B

Reporting Institution: Sample Bank B with Supplemental Schedules

$ THOUSANDS	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position	(D) Total Risk Weighted Position
I. INTEREST - SENSITIVE ASSETS				
1. FRM's				
(a) Result from Table 2B	$144,245		($13,796)	
2. ARM's				
(a) 6 mo. Current Market Index (Table 3B)	$32,758		($2,372)	
(b) 6 mo. to 1 yr. Current Market Index (Table 4B)	$34,411		($2,051)	
(c) Over 1 yr. Current Market Index (Table 5B)	$42,802		($3,379)	
(d) Lagging Market Index (Table 6B)	$44,545		($2,814)	
3. FRM's and ARM's with Binding Commitments	$1,652	-0.25%	($4)	
4. Other Amortizing Loans & Securities				
(a) Up to 3 months	$988	-0.20%	($2)	
(b) 3 to 12 months	$2,782	-0.70%	($19)	
(c) 1 to 3 years	$5,206	-2.00%	($104)	
(d) 3 to 5 years	$6,422	-3.70%	($238)	
(e) 5 to 10 years	$7,187	-6.50%	($467)	
(f) 10 to 20 years	$4,315	-11.10%	($479)	
(g) Greater than 20 years	$4,983	-15.10%	($752)	
5. Zero or low coupon securities				
(a) Up to 3 months	$3,264	-0.25%	($8)	
(b) 3 to 12 months	$3,106	-1.20%	($37)	
(c) 1 to 3 years	$2,986	-3.80%	($113)	
(d) 3 to 5 years	$0	-7.40%	$0	
(e) 5 to 10 years	$0	-13.40%	$0	
(f) 10 to 20 years	$0	-25.00%	$0	
(g) Greater than 20 years	$0	-38.10%	$0	
6. All other securities and loans				
(a) Up to 3 months	$61,857	-0.25%	($155)	
(b) 3 to 12 months	$31,858	-1.20%	($382)	
(c) 1 to 3 years	$20,946	-3.60%	($754)	
(d) 3 to 5 years	$18,255	-6.60%	($1,205)	
(e) 5 to 10 years	$22,481	-10.60%	($2,383)	
(f) 10 to 20 years	$19,675	-15.90%	($3,128)	
(g) Greater than 20 years	$1,363	-19.00%	($259)	
7. Self Reporting Items				
(a) High risk mortgage securities	$5,403		($473)	
(b) Non-high risk CMO's	$1,864		($121)	
(c) Structured notes	$2,694		($230)	
(d) Mortgage servicing rights	$1,835		$153	
(e) Swaps with embedded options	$1,230		($1,750)	
(f) Options, caps, floors, etc.	$1,520		$800	
(g) Trading account	$4,763		($243)	
8. Total Interest-Sensitive Assets	$537,396		($36,767)	($36,767)
II. ALL OTHER ASSETS	$4,000			
III. TOTAL ASSETS	$541,396			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$93,879	0.25%	$235	
(b) 3 to 12 months	$140,002	1.20%	$1,680	
(c) 1 to 3 years	$147,453	3.70%	$5,456	
(d) 3 to 5 years	$68,001	7.00%	$4,760	
(e) 5 to 10 years	$28,639	12.00%	$3,437	
(f) 10 to 20 years	$0	19.90%	$0	
(g) Greater than 20 years	$0	26.30%	$0	
2. Total Interest-Sensitive Liabilities	$477,974		$15,567	
V. NONINTEREST-SENSITIVE LIABILITIES	$1,123			
VI. TOTAL LIABILITIES	$479,097		$15,567	$15,567
VII. EQUITY CAPITAL	$62,299			
VIII. OFF-BALANCE SHEET POSITIONS				
1. Interest rate futures, forwards, and swaps				
(a) Up to 3 months	$3,200	-0.25%	($8)	
(b) 3 to 12 months	$400	-1.20%	($5)	
(c) 1 to 3 years	($3,100)	-3.60%	$112	
(d) 3 to 5 years	($500)	-6.60%	$33	
(e) 5 to 10 years	$0	-10.60%	$0	
(f) 10 to 20 years	$0	-15.90%	$0	
(g) Greater than 20 years	$0	-19.00%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$900	-0.20%	($2)	
(b) 3 to 12 months	$0	-0.70%	$0	
(c) 1 to 3 years	$0	-2.00%	$0	
(d) 3 to 5 years	$0	-3.70%	$0	
(e) 5 to 10 years	$0	-6.50%	$0	
(f) 10 to 20 years	$0	-11.10%	$0	
(g) Greater than 20 years	($900)	-15.10%	$136	
3. Total Off-Balance-Sheet Positions	$0		$266	$266
Net Risk Weighted Positions				($20,944)
Net Position/ Assets				-3.87%

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Table 2B illustrates how the change in value for Bank B's fixed-rate mortgage portfolio is calculated. The first block of information in Table 2B is the balances that Bank B reported in Schedule 2B. Note that the total balance shown in the right-hand corner of Table 2B, $144.245 million, corresponds to the total balance shown in Column A for line 1 in Table 1B. The second block of information reproduces the risk-weights shown in Appendix 3 for Schedule 2. The last block of information shows the net risk-weighted position for each coupon and maturity category and is derived by multiplying the balances shown in the first block by the corresponding risk-weight in the second block. For example, Bank B has $1.008 million of fixed-rate balances with a maturity of 5–10 years and coupons between 6.76 and 7.25 percent. The agencies have estimated the present value of such balances will decline by 7.80% if interest rates increase by 200 basis points. Thus, the estimated decline in the value of these balances is $79 thousand, the product of $1.008 million times −7.80%. The change in value for each maturity and coupon category are summed to produce a net change in Bank B's fixed-rate mortgage portfolio of −$13.796 million. This amount is transcribed to Column C in line 1 for the worksheet shown in Table 1B.

SCHEDULE 2B.—BANK B—FIXED-RATE MORTGAGES

[Supplemental Reporting Schedule]

[To be completed by banks with FRM holdings > 20% of total assets]

Balance with coupons of:	Remaining time to maturity (Column A) 5 years or less	(Column B) over 5 years through 10 years	(Column C) over 10 years through 20 years	(Column D) over 20 years
2. <=6.75%	$149	$246	$1,284	$9,362
3. 6.76%–7.25%	793	1,0008	2,451	10,041
4. 7.26%–7.75%	726	1,095	2,068	13,498
5. 7.76%–8.25%	833	1,163	1,984	15.984
6. 8.26%–8.75%	623	1,994	2,201	16,498
7. 8.76%–9.25%	511	2,541	2,468	27,375
8. 9.26%–9.75%	336	2,006	1,604	19,230
9. >=9.75%	597	736	948	1,892

TABLE 2B.—BANK B—FIXED-RATE MORTGAGES

[Supplemental Reporting Worksheet]

Balance from Schedule 2B

Balance with coupons of:	Remaining time to maturity (Column A) 5 years or less	(Column B) over 5 years through 10 years	(Column C) over 10 years through 20 years	(Column D) over 20 years	Total
2.<=6.75%	$149	$246	$1,284	$9,362	$11,041
3. 6.76%–7.25%	793	1,008	2,451	10,041	14,293
4. 7.26%–7.75%	726	1,095	2,068	13,498	17,387
5. 7.76%–8.25%	833	1,163	1,984	15,984	19,964
6. 8.26%–8.75%	623	1,994	2,201	16,498	21,316
7. 8.76%–9.25%	511	2,541	2,468	27,375	32,895
8. 9.26%–9.75%	336	2,006	1,604	19,230	23,176
9. >9.75%	597	736	948	1,892	4,173
Total	4,568	10,789	15,008	113,880	144,245

Risk Weights—Rising Rates

Balance with coupons of:	Remaining time to maturity (Column A) 5 years or less (percent)	(Column B) over 5 years through 10 years (percent)	(Column C) over 10 years through 20 years (percent)	(Column D) over 20 years (percent)
<=6.75%	−6.00	−7.90	−8.90	−12.30
6.76%–7.25%	−5.90	−7.80	−8.80	−11.90
7.26%–7.75%	−5.70	−7.60	−8.50	−11.50
7.76%–8.25%	−5.50	−7.20	−8.20	−11.00

Risk Weights—Rising Rates

Balance with coupons of:	Remaining time to maturity			
	(Column A) 5 years or less (percent)	(Column B) over 5 years through 10 years (percent)	(Column C) over 10 years through 20 years (percent)	(Column D) over 20 years (percent)
8.26%–8.75%	−5.20	−6.80	−7.70	−10.30
8.76%–9.25%	−4.70	−6.10	−7.10	−9.50
9.26%–9.75%	−4.10	−5.40	−6.40	−8.50
>=9.75%	−3.00	−3.90	−4.90	−6.30

Net Position (Balance × Risk Weight) ($)

Balance with coupons of:	Remaining time to maturity				Total
	(Column A) 5 years or less	(Column B) over 5 years through 10 years	(Column C) over 10 years through 20 years	(Column D) over 20 years	
<=6.75%	($9)	($19)	($114)	($1,152)	($1,294)
6.76%–7.25	(47)	(79)	(216)	(1,195)	(1,536)
7.26%–7.75%	(41)	(83)	(176)	(1,552)	1,853)
7.76%–8.25%	(46)	(84)	(163)	(1,758)	(2,050)
8.26%–8.75%	(32)	(136)	(169)	(1,699)	(2,037)
8.76%–9.25%	(24)	(155)	(175)	(2,601)	(2,955)
9.26%–9.75%	(14)	(108)	(103)	(1,635)	(1,859)
>=9.75%	(18)	(29)	46)	(119)	(212)
Total	(231)	(693)	(1,162)	(11,711)	(13,796)

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Schedule 4B
BANK B
ADJUSTABLE RATE MORTGAGES
(SUPPLEMENTAL REPORTING SCHEDULE)
(To be completed by banks with ARM holdings greater than 25% of total assets)

	Current Market Index Reset Frequency						Lagging Market Index by Reset Frequency	
	6 Months or Less		Over 6 Months to 1 Year		Over 1 Year		1 Month or Less	Over 1 Month
	(Col. A) No Periodic Cap	(Col. B) Periodic Cap	(Col. C) No Periodic Cap	(Col. D) Periodic Cap of 150 bp or Less	(Col. E) Periodic Cap More Than 150 bp	(Col. F) No Periodic Cap	(Col. G) Periodic Cap	
Instruments 200 basis points or less from the lifetime cap								
2. Balance	$203	$3,023	$425	$1,265	$1,789	$493	$4,063	$1,693	$2,849
3. WAC	7.80%	5.60%	7.50%	8.10%	9.20%	8.30%	7.40%	7.50%	8.20%
Instruments 201 to 400 basis points from the lifetime cap									
4. Balance	$756	$5,361	$1,816	$1,932	$2,695	$803	$7,723	$3,649	$5,113
5. WAC	6.50%	4.65%	6.30%	7.50%	8.00%	7.50%	6.80%	6.20%	7.30%
Instruments 401 to 600 basis points from the lifetime cap									
6. Balance	$864	$9,123	$1,069	$3,016	$6,432	$1,236	$11,189	• $6,183	$6,934
7. WAC	6.10%	4.83%	5.30%	6.60%	7.00%	7.30%	6.40%	4.80%	5.60%
Instruments more than 600 basis points from the lifetime cap									
8. Balance	$864	$12,564	$2,312	$3,765	$7,895	$1,432	$15,863	$8,931	$9,193
9. WAC	8.00%	3.20%	3.90%	4.60%	5.80%	5.80%	4.70%	4.20%	4.90%

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Tables 3B–6B illustrate how the change in value for Bank B's ARM holdings is calculated. Table 3B shows the calculation for the Bank B's ARMs that are priced off of the current market index and have heset frequencies or 6 months or less. Table 4B shows the similar calculation for the current market-indexed ARMs with reset frequencies of 6 months to 1 year while Table 5B is for the current market-indexed ARMs with reset frequencies over 1 year. Table 6B is for Bank B's lagging market-indexed ARMs. The steps for calculating the change in value for each of these sub-portfolios is identical so only Table 3B is described.

The first block of information on Table 3B is the balance and coupon data that Bank B reported for this category of ARMs on Schedule 4B. The second block of information reproduces the applicable risk weights for this product in the rising rate scenario from Appendix 3. The highlighted risk weights represent the risk weights applied to the balances and coupon data reported by Bank B in Schedule 4B. The third block of information is the net position for each category of ARMs, representing the estimated decline in value for a 200 basis increase in interest rates. The net position is derived by multiplying the balance shown in the first block by the corresponding risk-weight in the second block. For example, Bank B has $3.023 million of current market-indexed ARMs that have a reset frequency of 6 months or less that are currently within 200 basis points of their lifetime cap and that also have a periodic cap. These balances have a weighted average coupon of 5.60%. The applicable risk-weight for these mortgages is the one shown for ARMs with these characteristics and a weighted average coupon between 4.76 and 6.25 percent, or —8.70%. The decline in value for these mortgage loan balances is $263 thousand, the product of the balance ($3.023 million) times the applicable risk weight (−8.70%). Similar calculations are used to for the remaining balances reported in Tables 3B–6B. The total amounts are then summed ($2.372 million) and reported in Column C of the worksheet in Table 1B.

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Table 3B
BANK B
ADJUSTABLE RATE MORTGAGES
Current Market Index - 6 Month or Less Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap						
	200 basis points or less		201 to 400 basis poi		401 to 600 basis po	Over 600 basis points	Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Balance	$203	$3,023	$756	$5,361	$864	$9,123	$864	$12,564	$32,758
WAC	7.80%	5.60%	6.50%	4.65%	6.10%	4.83%	8.00%	3.20%	

Risk Weights - Rising Rates

	Distance from The Lifetime Cap						
	200 basis points or less		201 to 400 basis poi		401 to 600 basis po	Over 600 basis points	
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap
Weighted Average Coupon Range	4.75% and under	-9.20%	-9.20%	-8.80%	-9.00%	-7.20%	-8.20%	-4.40%	-7.10%
	4.76% to 6.25%	-8.70%	-8.70%	-7.70%	-8.20%	-5.20%	-6.90%	-2.40%	-5.60%
	6.26% to 7.75%	-7.40%	-7.60%	-5.80%	-6.70%	-3.00%	-5.00%	-1.20%	-3.90%
	Over 7.75%	-5.10%	-5.30%	-3.60%	-4.20%	-1.50%	-2.70%	-0.70%	-2.10%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap						
	200 basis points or less		201 to 400 basis points		401 to 600 basis point	Over 600 basis points	Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Net Position	($10)	($263)	($44)	($482)	($45)	($629)	($6)	($892)	($2,372)

Table 4B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - 6 Months to 1 Year Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap												
	200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points			Total
	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	
Balance	$425	$1,265	$1,789	$1,816	$1,932	$2,695	$1,069	$3,016	$6,432	$2,312	$3,765	$7,895	$34,411
WAC	7.50%	8.10%	9.20%	6.30%	7.50%	8.00%	5.30%	6.60%	7.00%	3.90%	4.60%	5.80%	

Risk Weights - Rising Rates

		Distance from The Lifetime Cap											
		200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points		
		No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp
Weighted Average Coupon Range	4.75% and under	-9.20%	-9.30%	-9.20%	-8.90%	-9.10%	-9.00%	-7.60%	-8.70%	-8.20%	-5.10%	-8.20%	-7.10%
	4.76% to 6.25%	-8.70%	-8.80%	-8.70%	-8.00%	-8.40%	-8.20%	-5.80%	-7.70%	-6.90%	-3.00%	-7.20%	-5.60%
	6.26% to 7.75%	-7.70%	-7.80%	-7.70%	-6.40%	-7.30%	-6.80%	-3.60%	-6.40%	-5.10%	-1.60%	-5.90%	-4.00%
	Over 7.75%	-5.80%	-6.20%	-5.80%	-4.20%	-5.50%	-4.70%	-1.90%	-4.60%	-3.10%	-1.00%	-4.30%	-2.50%

Net Position (Balance x Net Position)

	Distance from The Lifetime Cap												
	200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points			Total
	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	
Net Position	($33)	($78)	($104)	($116)	($141)	($127)	($62)	($193)	($328)	($118)	($309)	($442)	($2,051)

Table 5B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - Over 1 Year Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Balance	$493	$4,063	$803	$7,723	$1,236	$11,189	$1,432	$15,863	$42,802
WAC	8.30%	7.40%	7.50%	6.80%	7.30%	6.40%	5.80%	4.70%	

Risk Weights - Rising Rates

		Distance from The Lifetime Cap							
		200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points	
		No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap
Weighted Average Coupon Range	5.50% and under	-9.20%	-9.20%	-8.90%	-9.00%	-7.90%	-8.80%	-6.30%	-8.60%
	5.51% to 8.00%	-8.20%	-8.20%	-7.60%	-8.00%	-6.10%	-7.50%	-4.20%	-7.40%
	8.01% to 10.50%	-5.60%	-5.60%	-4.60%	-5.30%	-3.10%	-4.90%	-2.30%	-4.80%
	Over 10.50%	-3.30%	-3.30%	-2.80%	-3.10%	-2.10%	-2.80%	-2.10%	-2.80%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Net Position	($28)	($333)	($61)	($618)	($75)	($839)	($60)	($1,364)	($3,379)

Table 6B
BANK B
ADJUSTABLE RATE MORTGAGES

Lagging Market Index - Reset Frequencies (RF)

Balance from Schedule 4B

	Distance from The Lifetime Cap						Total
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		
	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	
Balance	$1,693	$2,849	$3,649	$5,113	$6,183	$6,934	$8,931	$9,193	$44,545
WAC	7.50%	8.20%	6.20%	7.30%	4.80%	5.60%	4.20%	4.90%	

Risk Weights - Rising Rates

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		
	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	
Weighted Average Coupon Range	5% and under	-9.30%	-9.20%	-9.00%	-9.00%	-7.50%	-8.20%	-5.00%	-7.00%
	5.01% to 6.50%	-8.40%	-8.10%	-7.40%	-7.30%	-4.90%	-5.70%	-2.80%	-4.30%
	6.51% to 8%	-7.50%	-7.20%	-6.20%	-6.20%	-3.70%	-4.50%	-2.20%	-3.50%
	Over 8%	-4.80%	-5.30%	-3.70%	-4.50%	-2.20%	-3.50%	-1.70%	-3.20%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		
	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	
Net Position	($127)	($151)	($270)	($317)	($464)	($395)	($447)	($644)	($2,814)

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Tables 7B–12B show the calculations for Bank B's IRR exposure for the declining rate scenario.

BILLING CODE 6714-01-P

Interest Rate Risk Worksheet (200 Basis Point Declining Rate Scenario) **Table 7B**
BANK B

Reporting Institution: Sample Bank B with Supplemental Schedules

$ THOUSANDS	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position (^_^)	(D) Total Risk Weighted Position
I. INTEREST - SENSITIVE ASSETS				
1. FRM's				
(a) Result from FRM Table 8B	$144,245		$10,886	
2. ARM's				
(a) 6 mo. Current Market Index (Table 9B)	$32,758		$1,865	
(b) 6 mo. to 1 yr. Current Market Index (Table 10B)	$34,411		$1,224	
(c) Over 1 yr. Current Market Index (Table 11B)	$42,802		$3,045	
(d) Lagging Market Index (Table 12B)	$44,545		$1,852	
3. FRM's and ARM's with Binding Commitments	$1,652	0.25%	$4	
4. Other Amortizing Loans & Securities				
(a) Up to 3 months	$988	0.20%	$2	
(b) 3 to 12 months	$2,782	0.70%	$19	
(c) 1 to 3 years	$5,206	2.00%	$104	
(d) 3 to 5 years	$6,422	3.90%	$250	
(e) 5 to 10 years	$7,187	7.20%	$517	
(f) 10 to 20 years	$4,315	13.30%	$574	
(g) Greater than 20 years	$4,983	20.00%	$997	
5. Zero or low coupon securities				
(a) Up to 3 months	$3,264	0.25%	$8	
(b) 3 to 12 months	$3,106	1.30%	$40	
(c) 1 to 3 years	$2,986	4.00%	$119	
(d) 3 to 5 years	$0	8.10%	$0	
(e) 5 to 10 years	$0	15.70%	$0	
(f) 10 to 20 years	$0	33.80%	$0	
(g) Greater than 20 years	$0	62.30%	$0	
6. All other securities and loans				
(a) Up to 3 months	$61,857	0.25%	$155	
(b) 3 to 12 months	$31,858	1.30%	$414	
(c) 1 to 3 years	$20,946	3.80%	$796	
(d) 3 to 5 years	$18,255	7.10%	$1,296	
(e) 5 to 10 years	$22,481	12.20%	$2,743	
(f) 10 to 20 years	$19,675	20.30%	$3,994	
(g) Greater than 20 years	$1,363	27.00%	$368	
7. Self Reporting Items				
(a) High risk mortgage securities	$5,403		($473)	
(b) Non-high risk CMO's	$1,864		($121)	
(c) Structured notes	$2,694		($230)	
(d) Mortgage servicing rights	$1,835		$153	
(e) Swaps with embedded options	$1,230		($1,750)	
(f) Options, caps, floors, etc.	$1,520		$800	
(g) Trading account	$4,763		($243)	
8. Total Interest-Sensitive Assets	$537,396		$29,409	$29,409
II. ALL OTHER ASSETS	$4,000			
III. TOTAL ASSETS	$541,396			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$105,257	-0.25%	($263)	
(b) 3 to 12 months	$210,024	-1.20%	($2,520)	
(c) 1 to 3 years	$108,981	-3.90%	($4,250)	
(d) 3 to 5 years	$44,078	-7.60%	($3,350)	
(e) 5 to 10 years	$9,634	-14.00%	($1,349)	
(f) 10 to 20 years	$0	-26.20%	$0	
(g) Greater than 20 years	$0	-40.30%	$0	
2. Total Interest-Sensitive Liabilities	$477,974		($11,732)	
V. NONINTEREST-SENSITIVE LIABILITIES	$1,123			
VI. TOTAL LIABILITIES	$479,097		($11,732)	($11,732)
VII. EQUITY CAPITAL	$62,299			
VIII. OFF-BALANCE SHEET POSITIONS				
1. Interest rate futures, forwards, and swaps				
(a) Up to 3 months	$3,200	0.25%	$8	
(b) 3 to 12 months	$400	1.30%	$5	
(c) 1 to 3 years	($3,100)	3.80%	($118)	
(d) 3 to 5 years	($500)	7.10%	($36)	
(e) 5 to 10 years	$0	12.20%	$0	
(f) 10 to 20 years	$0	20.30%	$0	
(g) Greater than 20 years	$0	27.00%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$900	0.20%	$2	
(b) 3 to 12 months	$0	0.70%	$0	
(c) 1 to 3 years	$0	2.00%	$0	
(d) 3 to 5 years	$0	3.90%	$0	
(e) 5 to 10 years	$0	7.20%	$0	
(f) 10 to 20 years	$0	13.30%	$0	
(g) Greater than 20 years	($900)	20.00%	($180)	
3. Total Off-Balance-Sheet Positions	$0		($318)	($318)
Net Risk Weighted Positions				$17,358
Net Position/ Assets				3.21%

6714-01-C

TABLE 8B.—BANK B—FIXED-RATE MORTGAGES

[Supplemental Reporting Worksheet]

Balance from Schedule 2B

Balance with coupons of:	Remaining time to maturity (Column A) 5 years or less	(Column B) over 5 years through 10 years	(Column C) over 10 years through 20 years	(Column D) over 20 years	Total
2. <=6.75%	$149	$246	$1,284	$9,362	$11,041
3. 6.76%–7.25%	793	1,008	2,451	10,041	14,293
4. 7.26%–7.75%	726	1,095	2,068	13,498	17,387
5. 7.76%–8.25%	833	1,163	1,984	15,984	19,964
6. 8.26%–8.75%	623	1,994	2,201	16,498	21,316
7. 8.76%–9.25%	511	2,541	2,468	27,375	32,895
8. 9.26%–9.75%	336	2,006	1,604	19,230	23,176
9. >9.75%	597	736	948	1,892	4,173
Total	4,568	10,789	15,008	113,880	144,245

Risk Weights—Declining Rates

Balance with coupons of:	Remaining time to maturity (Column A) 5 years or less (percent)	(Column B) over 5 years through 10 years (percent)	(Column C) over 10 years through 20 years (percent)	(Column D) over 20 years (percent)
<=6.75%	5.80	7.80	9.30	13.40
6.76%–7.25%	5.20	6.90	8.50	12:10
7.26%–7.75%	4.50	5.80	7.50	10.60
7.76%–8.25%	3.70	4.80	6.50	9.10
8.26%–8.75%	3.10	3.80	5.50	7.60
8.76%–9.25%	2.60	3.10	4.50	6.20
9.26%–9.75%	2.30	2.70	3.80	5.10
>=9.75%	2.10	2.40	2.90	3.50

Net Position (Balance x Risk Weight) ($)

Balance with coupons of:	Remaining time to maturity (Column A) 5 years or less (percent)	(Column B) over 5 years through 10 years (percent)	(Column C) over 10 years through 20 years (percent)	(Column D) over 20 years (percent)	Total
<=6.75%	$9	$19	$119	$1,255	$1.402
6.76%–7.25%	41	70	208	1,215	1,534
7.26%–7.75%	33	54	155	1,431	1,682
7.76%–8.25%	31	56	129	1,455	1,670
8.26%–8.75%	19	76	121	1,254	1,470
8.76%–9.25%	13	79	111	1,697	1,900
9.26%–9.75%	8	54	61	981	1,104
>=9.75%	13	18	27	66	124
Total	166	434	932	9,353	10,886

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Table 9B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - 6 Month or Less Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis poi		401 to 600 basis po		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Balance	$203	$3,023	$756	$5,361	$864	$9,123	$864	$12,564	$32,758
WAC	7.80%	5.60%	6.50%	4.65%	6.10%	4.83%	8.00%	3.20%	

Risk Weights - Declining Rates

		Distance from The Lifetime Cap							
		200 basis points or less		201 to 400 basis poi		401 to 600 basis po		Over 600 basis points	
		No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap
Weighted Average Coupon Range	4.75% and under	10.30%	10.40%	8.50%	9.30%	4.70%	7.10%	1.80%	5.30%
	4.76% to 6.25%	7.90%	8.20%	5.70%	6.70%	2.30%	4.40%	0.80%	3.20%
	6.26% to 7.75%	4.50%	4.80%	3.00%	3.50%	1.00%	1.90%	0.50%	1.40%
	Over 7.75%	2.00%	2.40%	1.30%	1.80%	0.60%	1.10%	0.50%	1.00%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis point		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Net Position	$4	$248	$23	$499	$20	$401	$4	$666	$1,865

Table 10B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - 6 Months to 1 Year Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap												
	200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points			Total
	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	
Balance	$425	$1,265	$1,789	$1,816	$1,932	$2,695	$1,069	$3,016	$6,432	$2,312	$3,765	$7,895	$34,411
WAC	7.50%	8.10%	9.20%	6.30%	7.50%	8.00%	5.30%	6.60%	7.00%	3.90%	4.60%	5.80%	

Risk Weights - Declining Rates

		Distance from The Lifetime Cap											
		200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points		
		No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp
Weighted Average Coupon Range	4.75% and under	10.40%	10.40%	10.40%	8.90%	9.70%	9.30%	5.50%	8.40%	7.10%	2.30%	7.60%	5.30%
	4.76% to 6.25%	8.40%	8.70%	8.40%	6.30%	7.80%	6.90%	2.90%	6.40%	4.60%	1.20%	5.80%	3.40%
	6.26% to 7.75%	5.30%	5.90%	5.30%	3.60%	5.10%	4.00%	1.40%	4.00%	2.30%	0.80%	3.70%	1.80%
	Over 7.75%	2.50%	2.90%	2.50%	1.70%	2.40%	1.80%	0.90%	1.90%	1.00%	0.70%	1.80%	0.90%

Net Position (Balance x Net Position)

	Distance from The Lifetime Cap												
	200 basis points or less			201 to 400 basis points			401 to 600 basis points			Over 600 basis points			Total
	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	No Periodic Cap	Periodic Cap of 150 bp or Less	Periodic Cap More Than 150 bp	
Net Position	$23	$17	$45	$65	$99	$49	$31	$121	$148	$53	$286	$268	$1,224

Table 11B
BANK B
ADJUSTABLE RATE MORTGAGES

Current Market Index - Over 1 Year Reset Frequency

Balance from Schedule 4B

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Balance	$493	$4,063	$803	$7,723	$1,236	$11,189	$1,432	$15,863	*******
WAC	8.30%	7.40%	7.50%	6.80%	7.30%	6.40%	5.80%	4.70%	

Risk Weights - Declining Rates

		Distance from The Lifetime Cap							
		200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points	
		No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap
Weighted Average Coupon Range	5.50% and under	10.00%	10.00%	9.00%	9.50%	6.70%	8.70%	4.30%	8.40%
	5.51% to 8.00%	7.50%	7.50%	6.20%	7.00%	3.90%	6.40%	2.60%	6.20%
	8.01% to 10.50%	3.20%	3.20%	2.60%	2.90%	2.00%	2.70%	1.90%	2.60%
	Over 10.50%	2.10%	2.30%	2.00%	2.20%	1.90%	2.20%	1.90%	2.20%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	No Periodic Cap	Periodic Cap	
Net Position	$16	$305	$50	$541	$48	$716	$37	$1,332	$3,045

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Table 12B
BANK B
ADJUSTABLE RATE MORTGAGES

Lagging Market Index - Reset Frequencies (RF)

Balance from Schedule 4

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	
Balance	$1,693	$2,849	$3,649	$5,113	$6,183	$6,934	$8,931	$9,193	$44,545
WAC	7.50%	8.20%	6.20%	7.30%	4.80%	5.60%	4.20%	4.90%	

Risk Weights - Declining Rates

		Distance from The Lifetime Cap							
		200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points	
		1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF
Weighted Average Coupon Range	5% and under	10.60%	10.50%	9.00%	9.30%	5.50%	6.70%	2.70%	4.80%
	5.01% to 6.50%	7.30%	7.20%	5.40%	5.60%	2.70%	3.40%	1.80%	2.60%
	6.51% to 8%	5.20%	5.40%	3.80%	4.20%	2.00%	2.70%	1.60%	2.40%
	Over 8%	2.40%	3.30%	2.00%	3.00%	1.60%	2.70%	1.60%	2.60%

Net Position (Balance x Risk Weights)

	Distance from The Lifetime Cap								
	200 basis points or less		201 to 400 basis points		401 to 600 basis points		Over 600 basis points		Total
	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	1 Month or less RF	Over 1 Month RF	
Net Position	$88	$94	$197	$215	$340	$236	$241	$441	$1,852

Appendix 2—Draft Reporting Instructions

General Instructions

I. Interest Rate Risk Reporting Requirements

A. Schedule 1

Schedule 1 must be completed by those commercial banks and FDIC-supervised savings banks which do not meet all of the following exemption criteria:

(1) The institution's total assets are less than $300 million, and

(2) The bank's primary federal supervisor has assigned the institution a composite CAMEL rating of either "1" or "2"; and

(3) The sum of:

a. 30% of the institution's fixed- and floating-rate loans and securities with contractual maturity or repricing dates between 1 and 5 years, and

b. 100% of the institution's fixed- and floating-rate loans and securities with contractual maturity or repricing dates beyond 5 years,

is less than 30% of the institution's total assets as of the report date.

Exempted institutions may file Schedule 1 on a voluntary basis. Institutions that file Schedule 1 should report "N/A" in Schedule RC–B, Memorandum Item 2; Schedule RC–C, Part I, Memorandum Item 2 on FFIEC 034; Schedule RC–C, Part I, Memorandum Item 3 on FFIEC 031, 032, and 033; and Schedule RC–E, Memorandum Items 5 and 6. FDIC-supervised savings banks which file Schedule 1 should report "N/A" in Schedule RC–J.

All shifts in reporting status, with one exception, are to begin with the March Reports for Condition and Income. Such a shift will take place only if the reporting bank's condition fails to meet the exemption criteria, as previously noted, as of the June reporting date. Banks involved with business combinations (pooling of interests, purchase acquisitions, or reorganizations) will be subject to new reporting requirements, if any, beginning with the first quarterly report date following the effective date of a business combination involving a bank and one or more depository institutions.

II. Criteria for Required Completion of Supplemental Schedules 2–4

These schedules are applicable only to banks that answered "yes" to the reporting requirement for Schedule 1. This section identifies which of the supplemental interest rate risk reporting schedules, if any, must be completed based on the reporting bank's level of mortgage holdings as a percent of total assets as of the report date.

A. Schedule 2

If "total adjusted fixed-rate mortgage holdings" divided by total assets (on an unrounded basis) is greater than 20 percent of total assets, then the bank should place an "X" in the box marked "Yes". Otherwise, indicate "No" in Item 1. If the box marked "Yes" is checked, then the bank must complete Schedule 2. Banks completing Schedule 2 should only report the total amount of fixed-rate mortgage holdings on Schedule 1, Items 1(b) and 2(b), in Column A; the distribution of these instruments across Columns B through H is not required.

For purposes of this item, "total adjusted fixed-rate mortgage holdings" equals the sum of the bank's permanent loans secured by first liens on 1–4 family residential mortgages, which have fixed interest rates; and the bank's mortgage-backed pass-through securities not held for trading, which have fixed interest rates less any of those loans held for sale and delivery to secondary market participants such as FNMA or FHLMC under terms of a binding commitment.

B. Schedule 3

If "total adjusted adjustable-rate mortgage holdings" divided by total assets (on an unrounded basis) is equal to or greater than 10 percent but less than 25 percent of total assets, then the bank should place an "X" in the box marked "Yes" in Item No. 1. Otherwise, indicate "No" in Item No. 1. If the box marked "Yes" is checked, then the bank must complete Schedule 3. Banks completing Schedule 3 are exempt from completing Schedule 4 and the memoranda section of Schedule 1.

C. Schedule 4

If "total adjusted adjustable-rate mortgage holdings" divided by total assets (on an unrounded basis) is greater than or equal to 25 percent of total assets, then the bank should place an "X" in the box marked "Yes" in Item No. 1. Otherwise, indicate "No" in Item No. 1. If the box marked "Yes" is checked, then the bank must complete Schedule 4. Banks completing Schedule 4 are exempt from completing Schedule 3 and the memoranda section of Schedule 1.

For purposes of Schedules 3 and 4, "total adjusted adjustable-rate mortgage holdings" equals the sum of the bank's permanent loans secured by first liens on 1–4 family residential mortgages which have adjustable interest rates and the bank's mortgage pass-through securities not held for trading which have adjustable interest rates less any of those loans held for sale and delivery to secondary market participants such as FNMA or FHLMC under terms of a binding commitment.

Institutions that are not required to complete the supplemental schedules may elect to do so on a voluntary basis.

III. Reporting Instructions—Schedule 1

The information required in Schedule 1 primarily represents the distribution across Columns B through H of maturity and repricing data for selected assets, liabilities and off- balance sheet items that are outstanding as of the report date. These distributed dollar amounts must equal the total dollar amounts reported in Column A. Assets in nonaccrual status are excluded from this schedule. Additionally, a self-reporting section is to be completed by those banks holding particular types and/or concentrations of interest rate sensitive assets and off-balance sheet contracts. This section requests information concerning the carrying value of these items as well as estimates of market value changes for the 200 basis point rising and falling interest rate scenarios. The carrying value of the bank's trading account holdings is requested separately in the self-reported section, along with market value changes given 100 basis point rising and falling interest rate scenarios. Estimates for self-reported items may be obtained from a reliable third party source or from the institution's internal risk measurement system. Schedule 1 also contains a memoranda section for the reporting of adjustable-rate mortgage holdings by reset frequency for those banks with less than 10% of total assets in adjustable-rate mortgages.

Definitions

A fixed interest rate is a rate that is specified at the origination of the transaction, is fixed and invariable during the term of the asset or liability, and is known to both the borrower and the lender. Also treated as a fixed interest rate is any rate that changes during the term of the asset or liability on a predetermined basis, with the exact rate of interest over the life of the instrument known with certainty to both the borrower and the lender at origination or when the instrument is acquired.

The remaining maturity is the amount of time remaining from the report date until the final contractual maturity of an asset or liability.

A floating or adjustable rate is a rate that varies, or can vary, in relation to an index, to some other interest rate such as the rate on certain U.S. Government securities or the bank's "prime rate," or to some other variable criterion the exact value of which cannot be known in advance.

The reset or repricing frequency is how often the contract permits the interest rate on an instrument to be changed (e.g., daily, monthly, quarterly, semiannually, annually) without regard to the length of time between the report date and the date the rate can next change.

The next repricing date is the amount of time remaining from the report date until the instrument's contract permits the rate of interest to change.

Distribution of Securities, Loans and Leases, and Other Interest-Bearing Assets

Banks must distribute the carrying value of selected securities, loans and leases and other interest-bearing assets in the specified balance sheet categories of this schedule in accordance with the procedures set forth in the item instructions below.

All permanent loans secured by first liens on 1–4 family residential mortgages and 1–4 family residential mortgage pass-through securities should be reported on the following basis:

(1) The entire carrying value of each asset with a fixed rate of interest should be reported on the basis of the asset's remaining contractual maturity, and

(2) The entire carrying value of each asset with a floating or adjustable rate of interest should be reported on the basis of its reset frequency.

The bank's own estimates of expected cash flows associated with these mortgage products should not be used in this schedule. Loans held for sale and delivery to secondary market participants under terms of binding commitments are reported separately in Item No. 2(c) without regard to maturity or repricing.

The carrying value of other debt securities, all other loans and leases, and all other interest-bearing assets should be reported on the following basis:

(1) Assets which carry a fixed rate of interest should be spread among the Columns according to their remaining maturity (as defined below), and

(2) Assets which carry a floating or adjustable rate of interest should be reported on the basis of the time remaining until the next repricing date.

Distribution of Time Deposits, Non-Maturity Deposits, and All Other Interest-Bearing Liabilities

All time deposits and other interest-bearing nondeposit liabilities should be distributed across Columns B through H according to remaining contractual maturity for fixed-rate liabilities and according to next repricing date for adjustable-rate liabilities. The maturity and repricing for all non-maturity deposits (DDAs, MMDAs, NOW accounts, and other savings deposits) is determined by bank management based on its own assumptions and experience and must be reported in both rising and falling interest rate scenarios in accordance with the parameters described in the item instructions below.

Distribution of Off-Balance Sheet Positions

Institutions are required to distribute selected off-balance sheet contracts that are not held for trading among the time bands (Columns) of Schedule 1. The off-balance sheet items include interest rate forward contracts, interest rate futures contracts, interest rate swaps without embedded options, and commitments to originate, buy, and sell loans and securities. Such commitments should exclude unused lines of credit and commitments to sell 1–4 family mortgage loans that the bank holds for sale and delivery to secondary market participants.

Off-balance sheet contracts should be reported as either amortizing or non-amortizing contracts depending on whether the notional value of the contract amortizes over time.

The selected off-balance sheet items must be reported using two entries to reflect the timing of the cash flows. The notional amounts of the contracts are offsetting: one entry is positive and the other is an offsetting negative entry. This reporting method reflects the way in which the off-balance sheet instruments affect the institution's balance sheet. In general, if the outstanding contract serves to lengthen an asset's maturity (i.e., long futures) then the first entry is negative and the second entry is positive. If the outstanding contract serves to shorten an asset's maturity (i.e., pay-fixed swap) then the first entry is positive and the second entry is negative. Reporting instructions for particular types of off-balance sheet contracts are provided in sections that follow.

Excluded from this section are: (1) Interest rate option contracts, including caps, floors, collars, corridors, and swaptions, and (2) interest rate swaps with embedded options, such as index amortizing swaps. These items are included in the self-reported section below.

Self-Reported Items

This self-reported section requests information regarding certain assets and off- balance sheet contracts. Institutions are required to provide estimates of changes in market values for each instrument given both a 200 basis point rise and decline in interest rates. These estimates may be obtained from reliable third party sources or from the institution's internal risk measurement system.

Item Instructions

The total amount reported in Column A must equal the sum of Columns B through H.

Item 1, Debt Securities (exclude self reported items): The sum of Items 1(a) and 1(b), Column A for this item plus the amount of nonaccrual pass-through securities included in Schedule RC-N, Column C, must equal the sum of Schedule RC-B, Items 4(a)(1) through 4(a)(3), Columns A and D.

Fixed-rate debt securities should be reported without regard to their call date unless the security has actually been called. When fixed-rate debt securities have been called, they should be reported on the basis of the time remaining until the call date. Adjustable-rate debt securities should be reported on the basis of their reset frequency without regard to their call date even if the security has actually been called.

Fixed-rate debt securities that the reporting bank has the option to redeem prior to maturity ("put bonds") should be reported on the basis of the time remaining until the earliest "put" date. Adjustable-rate "put bonds" should be reported on the basis of reset frequency without regard to "put" dates.

The information requested in Items 1(c), 1(d), and 1(e) applies to both fixed-rate and adjustable-rate instruments.

Item 1(a), ARM Securities (use Memoranda section below): Report the total carrying value [13] of all adjustable-rate mortgage-backed pass-through certificates, such as those guaranteed by the Government National Mortgage Association (GNMA) and those issued by the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and others (e.g., other depository institutions or insurance companies)

[13] For purposes of this schedule, available-for-sale debt securities are to be reported on the basis of their fair value, while held-to-maturity debt securities are to be reported on the basis of their amortized cost. Therefore, throughout the instructions to this schedule, references to the carrying value should be read as such.

which are included in Schedule RC–B, Items 4(a)(1) through 4(a)(3).

The reporting of these adjustable-rate pass-through securities by reset frequency depends upon the institution's asset concentration level and is requested in the Memoranda Section of this schedule as well as in Schedules 3 and 4.

Item 1(b), Fixed-Rate Mortgage Securities: Report the carrying value of all fixed-rate mortgage-backed pass-through certificates, such as those guaranteed by the Government National Mortgage Association (GNMA) and those issued by the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and others (e.g., other depository institutions or insurance companies) which are included in Schedule RC–B, Items 4(a)(1) through 4(a)(3).

Item 1(c), All Other Amortizing Securities: Report the carrying value of all other debt securities (not reported in Items 1(a) and 1(b) above) which have regularly scheduled principal amortization more frequently than on an annual basis, exclude amortizing securities which require a balloon payment of 25 percent or more of the original principal at maturity. This may include:

(1) U.S. Government agency and corporation obligations reported in Schedule RC–B, Item 2(a) and 2(b).

(2) Securities issued by states and political subdivisions in the U.S. reported in Schedule RC–B, Items 3(a) through 3(c).

(3) Other debt securities reported in Schedule RC–B, Item 5, including home equity loan-backed securities (and the appropriate subitems on the FFIEC 031, 032, and 033 report forms).

Exclude from all other amortizing securities:

(1) All equity securities reported in Schedule RC–B, Items 6(a) through 6(c).

(2) Zero- or low-coupon (3 percent or less) securities (report in Item 1(e) below).

(3) All debt securities which are on nonaccrual status.

(4) All structured notes (include in Item 8 of the self-reported items below).

(5) All "high-risk" mortgage securities (include in Item 6 of the self-reported items below.)

(6) CMO and REMIC holdings. If CMO and REMIC holdings exceed 10% of total assets, they must be included in Items 6 or 7 of the self-reporting section below. For holdings of 10% or less of assets, an institution may elect to report these balances in the non-amortizing section based on bank management's estimate of the instrument's current average life.

Item 1(d), Non-Amortizing Securities: Report all debt securities with coupons greater than 3 percent that have either: (1) regularly scheduled principal payments less frequently than on an annual basis, or (2) full repayment of principal at maturity. Also reported in this item are amortizing securities which require a balloon payment of 75 percent or more of the original principal at maturity. Non-amortizing securities may include:

(1) U.S. Treasury securities reported in Schedule RC–B, Item 1.

(2) U.S. Government agency and corporation obligations reported in Schedule RC–B, Items 2(a) and 2(b).

(3) Securities issued by states and political subdivisions in the U.S. reported in Schedule RC–B, Items 3(a) through 3(c).

(4) CMOs and REMICs reported in Schedule RC–B, Items 4(b)(1) through 4(b)(3) if the institution is not required or does not elect to self-report the estimated changes in the market values of these instruments for a 200 basis point increase and decrease in interest rates. Institutions should not report CMO and REMIC holdings in this item if these exceed 10% of total assets. If CMOs and REMIC holdings exceed 10% of total assets, they must be included in the self-reporting section below.

(5) Other debt securities reported in Schedule RC–B, Item 5 (and the appropriate subitems on the FFIEC 031, 032, and 033 report forms).

Exclude from non-amortizing securities:

(1) All equity securities reported in Schedule RC–B, Items 6(a) through 6(c).

(2) Zero- or low-coupon (3 percent or less) securities (report in Item 1(e) below).

(3) All debt securities which are on nonaccrual status.

(4) All structured notes (include in Item 8 of the self-reported items below).

(5) All "high-risk" mortgage securities (include in Item 6 of the self-reported items below).

(6) Non-high-risk mortgage securities that are included in the self-reported items below.

Item 1(e), Zero- or Low-Coupon Securities Report: On the basis of final maturity, all holdings of debt securities with coupon rates of 3 percent or less. Such holdings may include:

(1) U.S. Treasury securities reported in Schedule RC–B, Item 1, including all U.S. Treasury bills issued on a discount basis.

(2) U.S. Government agency and corporation obligations reported in Schedule RC–B, Items 2(a) and 2(b).

(3) Securities issued by states and political subdivisions in the U.S. reported in Schedule RC–B, Items 3(a) through 3(c).

(4) Other debt securities reported in Schedule RC–B, Item 5 (and the appropriate subitems on the FFIEC 031, 032, and 033 report forms).

Exclude from zero- or low-coupon securities:

(1) All equity securities reported in Schedule RC–B, Items 6(a) through 6(c).

(2) All debt securities which are on nonaccrual status.

(3) All structured notes (include in Item 8 of the self-reported items below).

(4) All "high-risk" mortgage securities (include in Item 6 of the self-reported items below).

Item 2, Loans and Leases: Loan amounts should be reported net of unearned income to the extent that they have been reported net of unearned income in Schedule RC–C.

The sum of Items 2(a), 2(b) and 2(c), Column A of this schedule, plus the amount of permanent loans secured by first liens on 1–4 family residential mortgages in nonaccrual status reported in Schedule RC–N, Column C, Memorandum Item 4(c)(2) on FFIEC 033 and 034, and Memorandum Item 3(c)(2) on FFIEC 031 and 032 must equal RC–C, Item 1(c)(2)(a).

Included in Items 2(c), 2(d) and 2(e) is information regarding both fixed- and adjustable-rate instruments.

Item 2(a), ARM Loans (use Memorandum section below): Report the total amount of permanent loans secured by first liens on 1–4 family residential mortgages that are included in RC–C, Item 1(c)(2)(a), which are subject to a floating or adjustable interest rate. Exclude from this item any loans in nonaccrual. Also exclude loans held for sale with firm commitments (report in Item 2(c) below).

The reporting of these items according to reset frequency depends on the institution's asset concentration level and is requested in the Memoranda section of this schedule as well as Schedules 3 and 4.

Item 2(b), Fixed-Rate Mortgage Loans: Report all permanent loans secured by first liens on 1–4 family residential mortgages included in RC–C, Item 1(c)(2)(a) that are subject to a fixed or predetermined interest rate on the basis of time remaining until their final contractual maturity. Exclude any loans in nonaccrual status. Also exclude loans held for sale with firm commitments (report in Item 2(c) below).

Item 2(c), Mortgage Loans Held for Sale with Firm Commitments: Report in this item the total amount of all outstanding loans secured by first liens on 1–4 family residential mortgages which are held by the bank for sale and delivery to a secondary market participant under the terms of a binding commitment.

Item 2(d), Other Amortizing Loans: Report all other loans and leases with regularly scheduled principal amortization (more frequently than annually), which are not included above in Items 2(a), 2(b) and 2(c).

Include in this item all revolving lines of credit and credit card receivables. The reporting of adjustable-rate revolving credit should be according to the next repricing date, while fixed-rate revolving credit should be reported based on management determination of the likely repayment horizon. Relevant considerations in assigning a repayment period should include, at a minimum: (1) Required minimum monthly payments, (2) the effect of "payment holidays," (3) historical repayment patterns, (4) the effect of credit card accounts used strictly for transactions purposes, and (5) the effect of pricing incentives such as tiered rates linked to the amount outstanding.

Exclude amortizing loans which require a balloon payment of 75 percent or more of the original principal at maturity. For this schedule, such loans are considered to be non-amortizing and are included in Item 2(d), "All other loans", below. Also exclude any loans in nonaccrual status.

Item 2(e), All Other Loans: Report all other loans and leases with no scheduled principal amortization or with principal amortization scheduled annually or less frequently that are not included above in Items 2(a) through 2(c). Also include loans which require a balloon payment of 25 percent or more of the original principal at maturity. Exclude any loans in nonaccrual status.

Item 3, All Other Interest-Bearing Assets: Report all interest-earning assets, other than loans and securities. The sum of the amount reported in Column A for this item must equal the sum of Schedule RC, Item 1(b), "Interest-bearing balances due from depository institutions," Item 3(a), "Federal funds sold," and Item 3(b) "Securities purchased under agreements to resell," less any amount reported in nonaccrual status.

Item 4, Liabilities: For purposes of this schedule, report all fixed-rate time deposits and interest-bearing nondeposit liabilities on the basis of their remaining maturity, and adjustable-rate time deposits and nondeposit interest-bearing liabilities on the basis of their next repricing date. Non-maturity deposits include: (1) Commercial demand deposit accounts; (2) money market deposit accounts (MMDAs); and (3) NOW accounts, all other savings deposits, and all other retail demand deposit accounts. The distribution of these non-maturity deposits across the time bands will be based on management determination within defined constraints.

The term "commercial" for purposes of this schedule refers to all demand deposit accounts in which the beneficial interest is held by a depositor that is not an individual or sole proprietorship. Such accounts include, but are not limited to, demand deposits held by: corporations, partnerships, and other associations; the U.S. and foreign governments; states and political subdivision in the U.S.; U.S. and foreign banks. Only those commercial accounts which are noninterest-bearing demand deposit accounts are differentiated for reporting purposes; all other commercial deposits (i.e., NOW accounts, MMDAs and other savings deposits) are not differentiated for purposes of this schedule.

The term "retail" for purposes of this report refers to all demand deposit accounts in which the beneficial interest is held by a depositor that is an individual or sole proprietorship.

Institutions must report all non-maturity deposits across the time bands each quarter according to management's own assumptions and experience in both a rising rate and a declining rate scenario in accordance with the following parameters:

(1) Commercial Demand Deposit Accounts: A minimum of 50 percent of an institution's commercial demand deposit accounts is required to be reported in Column B, "Up to 3 months." The remaining balances can be distributed across Columns B through E ("Up to 3 months," "Greater than 3 months–1 year," "1–3 years," and "3–5 years") with a maximum of 20 percent of the total balance in Column E, "3–5 years."

(2) MMDA Accounts: These deposit accounts may be distributed across Columns B through D ("Up to 3 months," "Greater than 3 months–1 year," and "1–3 years") with a maximum of 50 percent reported in the Column D, "1–3 years."

(3) NOW Accounts, Other Savings Deposits and Retail Demand Deposit Accounts: These deposit accounts may be distributed across Columns B through F ("Up to 3 months," "Greater than 3 months–1 year," "1–3 years," "3–5 years," and "5–10 years") under the following constraints: a maximum of 20 percent in Column F, "5–10 years," and a maximum of 20 percent combined in Columns E and F, "3–5 years" and "5–10 years."

Item 4(a), Time Deposits: Report the total amount of all time deposits, regardless of amount. This item includes both time certificates of deposit and open-account time deposits. The amount in Column A must equal the sum of Schedule RC–E, Memorandum Items 2(b), 2(c), and 2(d). For purposes of this schedule, time deposits with "step up" features should be reported on the basis of remaining maturity.

Item 4(b), All Other Interest-Bearing Nondeposit Liabilities: The amount reported in this item must equal the sum of the following items from Schedule RC: Item 14(a), "Federal funds purchased;" Item 14(b), Securities sold under agreements to repurchase;" Item 15(a), "Demand notes issued to the U.S. Treasury;" Item 16(a), "Other borrowed money with original maturity of one year or less;" Item 16(b), "Other borrowed money with original maturity of more than one year;" Item 17, "Mortgage indebtedness and obligations under capitalized leases;" Item 19, "Subordinated notes and debentures;" and Item 22, "Limited-life preferred stock and related surplus."

Item 4(c), Commercial Demand Deposits—Rising Rates: Report the total amount of all demand deposit accounts (included in Schedule RC–E, Columns A and B) representing funds in which any beneficial interest is held by a depositor which is not an individual or sole proprietorship.

Item 4(d), MMDAs—Rising Rates: Report the total amount of all MMDAs as reported on Schedule RC–E, Memorandum Item 2(a)(1).

Item 4(e), NOW Accounts, Other Savings Deposits, and Other Demand Deposits—Rising Rates: Report the total amount of all NOW accounts that are included in Schedule RC–E, Memorandum Item 3, all other savings deposits as reported on Schedule RC–E, Memorandum Item 2(a)(2), and all demand deposits representing funds in which any beneficial interest is held by an individual or sole proprietorship included in Schedule RC–E, Item 1, Columns A and B.

Item 4(f), Commercial Demand Deposits—Declining Rates: Report the total amount of all demand deposit accounts (included in Schedule RC–E, Columns A and B) representing funds in which any beneficial interest is held by a depositor which is not an individual or sole proprietorship.

Item 4(g), MMDAs—Declining Rates: Report the total amount of all MMDAs as reported on Schedule RC–E, Memorandum Item 2(a)(1).

Item 4(h), NOW Accounts, Other Savings Deposits, and Other Demand Deposits—Declining Rates: Report in this item the total amount of all NOW accounts that are included in Schedule RC–E, Memorandum Item 3, all other savings deposits as reported on Schedule RC–E, Memorandum Item 2(a)(2), and all demand deposits representing funds in which any beneficial interest is held by an individual or sole proprietorship included in Schedule RC–E, Item 1, Columns A and B.

Item 5, Off-Balance Sheet Positions: In this section, respondents must report selected off-balance sheet contracts using two entries. Each contract has two offsetting entries (one is positive, one is negative) which reflect the timing of the cash flows. This reporting method reflects the way in which the off-balance sheet instruments affect the institution's economic value.

Item 5(a), Non-Amortizing Contracts: Report the notional amounts of the following contracts that are not held for trading: (1) Futures contracts whose predominant risk characteristic is interest rate risk as reported in Schedule RC–L, Item 14(a), "Futures contracts, Column A, "Interest Rate Contracts;" (2) forward contracts whose predominant risk characteristic is interest rate risk reported in Schedule RC–L, Item 14(b), "Forward contracts," Column A, "Interest Rate Contracts;" and (3) interest rate swaps, excluding basis swaps, reported in Schedule RC–L, Item 14(e), "Swaps," Column A, "Interest Rate Contracts." Also included in this item are commitments to originate, buy, and sell non-amortizing loans and securities. Exclude all unused lines of credit.

Exclude from this item all exchange-traded option contracts and over-the-counter option contracts and any swaps with embedded options. Swaptions, i.e., options to enter into a swap contract, and contracts known as caps, floors, collars and corridors should be reported as options and are included in Item 11 of the self-reported section below. Also exclude all contracts held for trading (report in Item 12 of the self-reporting section below.)

Futures contracts and interest rate forwards must be reported in Columns B through H on the following basis: The first entry corresponds to the settlement date of the contract, and the offsetting entry corresponds to the settlement date plus the maturity of the instrument underlying the contract.

Long positions in futures contracts and forward rate agreements represent commitments to purchase specified financial instruments at a specified future date at a specified price or yield. For outstanding long positions, the first entry corresponding to the contract settlement date must be negative. The offsetting positive entry must be reported according to the settlement date plus the maturity of the instrument underlying the contract.

Short positions in futures contracts and forward rate agreements represent commitments to sell specified financial instruments at a specified future date at a specified price or yield. For an outstanding short position, the first entry corresponding to the contract settlement date must be positive. The offsetting negative entry must be reported according to the settlement date plus the maturity of the instrument underlying the contract.

Interest rate swaps must be reported in Columns B through H on the following basis: The first entry corresponds to the next repricing date of the adjustable-rate coupon, and the offsetting entry corresponds to the maturity of the swap.

For swaps in which the reporting bank pays an adjustable rate and receives a fixed rate, the first entry corresponding to the next repricing date of the floating rate coupon must be negative. The offsetting positive entry must be reported according to the maturity of the swap.

For swaps in which the reporting bank pays a fixed rate and receives an adjustable rate, the first entry corresponding to the next repricing date of the floating rate coupon must be positive. The offsetting negative entry must be reported according to the maturity of the swap.

Securitized credit cards where the credit card holders pay a fixed rate and the security has an adjustable-rate coupon are treated similarly to interest rate swaps. Like swaps, the first entry corresponds to the repricing date of the adjustable-rate coupon that is paid to the holder of the security. However, the offsetting entry in these transactions corresponds to the expected maturity of the security. Exclude securitized credit cards where the cards and the security are both fixed rate or both variable rate.

Firm commitments to originate, buy or sell non-amortizing loans or securities must be reported in Columns B through H on the following basis: The first entry corresponds to the settlement date of the commitment contract. The offsetting entry corresponds to the settlement date plus the maturity of the underlying instrument if the underlying instrument carries a fixed rate, or to the settlement date plus the time until the next repricing date of the underlying instrument if the underlying instrument carries an adjustable rate.

For commitments to originate or buy non-amortizing loans or securities, the first entry corresponding to the contract settlement date must be negative. The offsetting positive entry must be reported according to the settlement date plus the maturity of the underlying instrument if the underlying instrument carries a fixed rate, or to the settlement date plus the time until the next repricing date of the underlying instrument if the underlying instrument carries an adjustable rate.

For commitments to sell non-amortizing loans or securities, the first entry corresponding to the contract settlement date must be positive. The offsetting negative entry must be reported according to the settlement date plus the maturity of the underlying instrument if the underlying instrument carries a fixed rate, or to the settlement date plus the time until the next repricing date of the underlying instrument if the underlying instrument carries an adjustable rate.

Item 5(b) Amortizing Contracts: Report all outstanding commitments to originate, buy and sell mortgages and other amortizing loans and securities. Include only those commitments for which interest rates have already been locked in, either on a fixed-rate or adjustable-rate basis. Also include all other interest rate contracts whose notional value amortizes over time.

Commitments to originate, buy or sell mortgages and other amortizing loans or securities must be reported in Columns B through H on the following basis: The first entry corresponds to the settlement date of the commitment contract. The offsetting entry corresponds to the settlement date plus the maturity of the underlying instrument if the underlying instrument carries a fixed rate, or to the settlement date plus the time until the next repricing date of the underlying instrument if the underlying instrument carries an adjustable rate. All commitments should be reported on a gross basis, using a zero percent fallout factor.

For commitments to originate or buy mortgages and other amortizing loans or securities, the first entry corresponding to the contract settlement date must be negative. The offsetting positive entry must be reported according to the settlement date plus the maturity of the underlying instrument if the underlying instrument carries a fixed rate, or to the settlement date plus the time until the next repricing date of the underlying instrument if the underlying instrument carries an adjustable rate.

For commitments to sell mortgages and other amortizing loans or securities, the first entry corresponding to the contract settlement date must be positive. The offsetting negative entry must be reported according to the settlement date plus the maturity if the underlying instruments carry a fixed rate, or to the settlement date plus the time until the next repricing date if the underlying instruments carry an adjustable rate.

Self-Reported Items

Maturity and repricing information is not requested in this section. However, banks must report the carrying value of on-balance sheet instruments in Column A and the market value of all instruments in Column B. In addition banks must report in Columns C and D, respectively, each instrument's estimated change in market value given a 200 basis point instantaneous and parallel rise and decline in interest rates. These estimates may be obtained from a reliable third party source or from the institution's internal risk measurement system. Item 7 in this section requests estimated market value changes of the institution's trading account holdings given 100 basis point instantaneous and parallel rise and decline in interest rates.

Item 6, High-Risk Mortgage Securities: Report all high-risk mortgage securities included in Schedule RC–B, Memorandum Item 8. This item includes all mortgage derivative products (stripped mortgage-backed securities, CMOs, REMICs, and CMO and REMIC residuals) that meet the definition of a high-risk mortgage security under the FFIEC's Supervisory Policy Statement on Securities Activities.

Item 7, Nonhigh-Risk Mortgage Securities: Non-high risk mortgage securities are those mortgage derivative products which did not meet the definition of a high-risk mortgage security under the FFIEC's Supervisory Policy Statement on Securities Activities as of their most recent testing date. Institutions with greater than 10% of total assets in nonhigh-risk mortgage derivative securities as of the report date must report information about such instruments in this item. Institutions that are not required to complete this item may elect to do so on a voluntary basis.

Item 8, Structured Notes: Report all structured notes included in Schedule RC–B, Memorandum Item 9. Structured notes are debt securities whose cash flow characteristics are dependent upon one or more indices and/or have embedded forwards or options. Included below is a list of common structures. For further information concerning these products, refer to the instructions for Schedule RC–B, Memorandum Item 9.

(1) Step-up Bonds
(2) Index Amortizing Notes (IANs)
(3) Dual Index Notes
(4) De-leveraged Bonds
(5) Range Bonds
(6) Inverse Floaters

Item 9, Mortgage Servicing Rights: Report the unamortized portion of excess residential mortgage servicing fees receivable included in Schedule RC–F, Item 3. Also report the unamortized amount (carrying value) of mortgage servicing rights included in Schedule RC–M, Item 7(a) on FFIEC 034; Item 5(a) on FFIEC 033; and Item 6(a) on FFIEC 031 and 032.

Item 10, Interest Rate Swaps with Embedded Options: Report all interest rate swaps with embedded options. Exclude all interest rate swaps held for trading.

Item 11, Interest Rate Options: Report interest rate option contracts not held in trading accounts, including options to purchase/sell interest-bearing financial instruments and whose predominant risk characteristic is interest rate risk as well as contracts known as caps, floors, collars, corridors and swaptions. Include all exchange-traded and over-the-counter interest rate contracts as reported on Schedule RC–L, Items 14(c), Column A, and Item 14(d), Column A.

Item 12, Trading Account: Report in this item the carrying value of all trading account assets, liabilities and off-balance sheet contracts. Also report the market value changes of these holdings given both a 100 basis point instantaneous and parallel rise and decline in interest rates. The carrying value of these items are included in Schedule RC, Items 5 and 15(b), and Schedule RC–L, Item 15, Column A on FFIEC 033 and 034; and Schedule RC–D, Items 12 and 15, and Schedule RC–L, Item 15, Column A on FFIEC 031 and 032.

Memoranda Section

This memoranda section is to be completed only by those banks whose ARM holdings are less than 10% of total assets as of the report date and have checked an "X" in the "No" boxes on Item 1 of both Schedules 3 and 4.

Memoranda Items 1–4 divide total ARM securities and loans included in Schedule 1, Items 1(a) and 2(a) above into two categories, those adjustable-rate instruments whose rates are greater than or equal to 200 basis points (bp) away from their lifetime interest rate cap, and those whose rates are less than 200 bp from their lifetime interest rate cap. The lifetime interest rate cap is the upper limit on the mortgage rate that can be charged over the life of a loan. Report in Memorandum Items 1 and 2 the entire amount of those instruments whose rates are greater than or equal to 200 bp away from their lifetime interest rate cap according to the frequency with which the interest rate on the mortgage may contractually reset. Report in Memorandum Items 3 and 4 the total amount of adjustable ARM securities and loans whose rates are less than 200 bp from their lifetime interest rate cap.

With respect to the relationship of this memoranda section to the main body of this schedule, the sum of Memorandum Items 1, Columns A through C, and Memorandum Item 3 must equal Schedule 1, Item 1(a).

The sum of Memoranda Item 2, Columns A through C, and Memorandum Item 4 must equal Schedule 1, Item 2(a).

Memoranda

Item 1, ARM Securities: Report the carrying value of all adjustable-rate, mortgage-backed pass-through securities on the basis of their reset frequency. Exclude any securities in nonaccrual status. Also exclude those pass-through securities whose rates are less than 200 bp of their lifetime interest rate cap. For this memoranda section, such securities are to be reported in Memorandum Item 3.

Column A, 0 to 6 Months: Report the dollar amount of the bank's adjustable-rate pass-through securities whose rates may reset semiannually or more frequently (e.g., semiannually, quarterly, monthly, weekly, daily).

Column B, 6 Months to 1 Year: Report the dollar amount of the bank's adjustable-rate, pass-through securities whose rates reset annually or more frequently, but less frequently than semiannually.

Column C, Greater than 1 Year: Report the dollar amount of the bank's adjustable-rate, pass-through securities whose rates reset less frequently than annually.

Item 2, ARM Loans: Report all adjustable-rate, permanent loans secured by first liens on 1–4 family residential mortgages on the basis of the reset frequency. Exclude all loans in nonaccrual status. Also exclude those loans whose rates are less than 200 bp from their lifetime interest rate cap. For this memoranda section, such loans are to be reported in Memorandum Item 4.

Column A, 0 to 6 Months: Report the dollar amount of the bank's adjustable-rate, permanent loans secured by first liens on 1–4 family residential mortgages whose rates reset

semiannually or more frequently (e.g. semiannually, quarterly, monthly, weekly, daily.)

Column B, 6 Months to 1 Year: Report the dollar amount of the bank's adjustable-rate, permanent loans secured by first liens on 1–4 family residential mortgages whose rates reset annually or more frequently, but less frequently than semiannually.

Column C, Greater than 1 Year: Report the dollar amount of the bank's adjustable-rate, permanent loans secured by 1–4 family residential mortgages whose rates reset less frequently than annually.

Near Lifetime Cap

Item 3, ARM Securities: Report the total amount of the bank's adjustable-rate, pass-through securities whose rates are less than 200 bp from their lifetime interest rate cap.

Item 4, ARM Loans: Report the total amount of the bank's adjustable-rate, permanent loans secured by 1–4 family residential mortgages whose rates are less than 200 bp from their lifetime interest rate cap.

IV. Reporting Instructions—Schedule 2

General Instructions

Institutions which complete Schedule 2 should only report the total amount of fixed-rate mortgage holdings on Schedule 1, Items 1(b) and 2(b), Column A. The distribution of these instruments across Columns B through H is not required.

The information required in this supplemental schedule represents the distribution of individual fixed-rate mortgages holding balances by maturity and coupon rate. In the distribution of Schedule 2 items, the entire carrying value of all fixed-rate mortgage holdings should be reported on the basis of final maturities. The bank's own estimate of expected cash flows is not reported on this schedule.

Items 2 through 9 of Schedule 2 list eight coupon rate ranges, beginning with a rate of less than or equal to 6.75% proceeding in 50 bp increments, to a rate of greater than 9.75%. Columns A through D list four time ranges, which represent the time remaining from the report date until the final maturity of the instrument: 5 years or less, over 5 years through 10 years, over 10 years through 20 years, and greater than 20 years. Respondents must report selected assets by the coupon rate [14] in each of the relevant time bands.

[14] The term "coupon rate" is used in this schedule as a generic term, but for loans and pass-through securities it has two distinct definitions. Whereas loans are to be reported according to each individual loan's coupon or stated interest rate, pass-through securities are to be reported according to the weighted average coupon (WAC) of the underlying collateral. If this rate is not known, it should be estimated by adding 50 bp to the rate the bank receives on each pass-through certificate. The 50 bp represents the deduction of servicing fees and any applicable guarantee fees. As a consequence of these fees, the pass-through rate is lower than the WAC of the underlying of mortgages. Therefore, to estimate the WAC of the mortgage pool, the fees should be added back to the pass-through rate.

Examples

An 8%, fixed-rate, residential mortgage loan which matures in 15 years would be reported in Item 5, Column C.

An 8.5%, fixed-rate, mortgage pass-through security which matures in three years would be reported in Item 7, Column A. Note that 50 bp added to the 8.5% rate results in a 9% estimated weighted average coupon rate of the underlying collateral.

For purposes of this supplemental schedule the following definitions apply:

A fixed interest rate is a rate that is specified at the origination of the transaction, is fixed and invariable during the term of the loan or security, and is known to both the borrower and the lender. Also treated as a fixed interest rate is a predetermined interest rate which is a rate that changes during the term of the loan or security on a predetermined basis, with the exact rate of interest over the life of the instrument known with certainty to both the borrower and the lender at loan origination or when the debt security is acquired.

Remaining maturity is the amount of time remaining from the report date until the final contractual maturity of a loan or debt security.

The carrying value of a held-to-maturity pass-through security is its amortized cost, while the carrying value of an available-for-sale pass-through security is its fair value.

All loans are to be reported net of unearned income to the extent that the loans have been reported net of unearned income in Schedule RC–C, Item 1(c)(2)(a).

Include as fixed interest rate residential mortgage holdings the following instruments:

(1) All permanent loans secured by first liens on 1–4 family residential mortgages included in Schedule RC–C, Item 1(c)(2)(a), that have fixed interest rates regardless of whether they are current or are reported as "past due and still accruing" in Schedule RC–N, Columns A and B.

(2) The carrying value of all pass-through securities which have fixed interest rates and are included in Schedule RC–B, Items 4(a)(1) through 4(a)(3), Columns A and D.

Exclude from this schedule

(1) Fixed-rate residential mortgage loans held for sale and delivery to secondary market participants, such as FNMA and FHLMC, under terms of a binding commitment.

(2) Fixed-rate residential mortgage holdings that are on nonaccrual status.

(3) All collateralized mortgage obligations (CMOs), real estate mortgage investment conduits (REMICs), and stripped mortgage-backed securities.

(4) All pass-through securities held for trading.

Column Instructions

Distribute the carrying value of selected assets in accordance with the procedures described for Columns A through D below.

Report in Column A the entire carrying value of the bank's fixed-rate residential mortgage holdings with remaining maturities of 5 years or less.

Report in Column B the entire carrying value of the bank's fixed-rate residential mortgage holdings with remaining maturities of over 5 years through 10 years.

Report in Column C the entire carrying value of the bank's fixed-rate residential mortgage holdings with remaining maturities of over 10 years through 20 years.

Report in Column D the entire carrying value of the bank's fixed-rate residential mortgage holdings with remaining maturities of over 20 years.

Item Instructions

Item 1: Test for determining whether Schedule 2 should be completed. Either repeat the instruction on page 1 of the General Instructions or cross-reference it. In Items 2 through 9, distribute, in accordance with Column instructions, the carrying value of the bank's fixed-rate residential mortgage holdings.

Item 2: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of less than or equal to 6.75%.

Item 3: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 6.76% through 7.25%.

Item 4: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 7.26% through 7.75%.

Item 5: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 7.76% through 8.25%.

Item 6: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 8.26% through 8.75%.

Item 7: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 8.76% through 9.25%.

Item 8: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of 9.26% through 9.75%.

Item 9: Report the bank's fixed-rate residential mortgage holdings with a coupon rate of greater than or equal to 9.76%.

V. Reporting Instructions—Schedule 3

General Instructions

This supplemental schedule primarily requests information related to the interest rate sensitivity of adjustable-rate mortgage (ARM) holdings. The information required in this supplemental schedule represents the categorization of the reporting bank's ARM holdings according to the distinct characteristics of each loan or security. The defining ARM characteristics requested for this schedule include:

(1) Reset frequency. The reset frequency is how often the contract permits the interest rate on a loan to be changed (e.g., daily, monthly, quarterly, semiannually, annually) without regard to the length of time between the report date and the date the rate can next change.

(2) Lifetime interest rate cap. The lifetime cap is the upper limit on the mortgage rate that can be charged over the life of a loan. This lifetime loan cap is expressed in terms of the initial rate. For example, if the initial mortgage rate is 7% and the lifetime cap is 5%, the maximum interest rate that the bank can charge over the life of the loan is 12%.

(3) Periodic cap. A periodic cap limits the amount that the interest rate may increase at the reset (repricing) date. The periodic cap is expressed in basis points (bp). For example, the bank owns a 7% adjustable-rate mortgage loan. If the periodic cap is 100 bp, then the maximum rate the bank can charge at the next reset date is 8%. If the indexing rate rose by 150 bp, making the fully indexed mortgage rate 8.5%, the bank could only charge 8% at the next reset date.

Schedule 3, Columns A through G, list three reset frequency Columns which are divided by the presence of a periodic cap, and, in the over "6 months through 1 year" Column only, by the size of the periodic cap. Items 2 through 5 list four basis point ranges for how far the ARM's current rate is from the instrument's lifetime interest rate cap. In terms of ARM pass-through securities, the information required pertains to the relationship between the current interest rates and caps of the underlying mortgages. If the loans in the mortgage pool are not uniform in terms of periodic caps and lifetime caps, the weighted cap information is required.

In the distribution of Schedule 3 items, the entire carrying value of all ARM holdings should be reported on the basis of the reset frequency.

Examples

An adjustable-rate permanent loan secured by a first lien on a 1–4 family residence whose current rate is 7.5% and that has a lifetime cap of 12% and a periodic cap of 200 bp which reprices annually would be reported to Item 4, Column E.

An adjustable-rate pass-through security whose current coupon is 8% and has a lifetime cap of 10.5% and a periodic cap of 100 bp which reprices semiannually would be reported to Item 3, Column B.

For purposes of this supplemental schedule the following definitions apply:

A floating or adjustable rate is a rate that varies, or can vary, in relation to an index, to some other interest rate such as the rate on certain U.S. Government securities or the bank's "prime rate," or to some other variable criterion the exact value of which cannot be known in advance. Therefore, the exact rate the loan or security carries at any subsequent time cannot be known at the time of origination or acquisition.

All loans are to be reported net of unearned income to the extent that the loans have been reported net of unearned income on RC–C, Item 1(c)(2)(a).

Include as adjustable-rate residential mortgage holdings the following instruments:

(1) All permanent loans secured by first liens on 1–4 family residential mortgages included in Schedule RC–C, Item 1(c)(2)(a), that have adjustable interest rates, regardless of whether they are current or are reported as "past due and still accruing" in Schedule RC–N Columns A and B.

(2) The carrying values [15] of all pass-through securities which have adjustable interest rates and are included in RC–B, Items 4(a)(1) through 4(a)(3), Columns A and D.

Exclude from this schedule

(1) Adjustable-rate residential mortgage loans held for sale and delivery to secondary market participants such as FNMA and FHLMC under terms of a binding commitment.

(2) All adjustable-rate mortgage holdings that are on nonaccrual status.

(3) All collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), and stripped mortgage-backed securities.

(4) All pass-through securities held for trading.

Column Instructions

Distribute the carrying value of selected assets in accordance with the procedures described for Columns A though G below.

Report in Column A the carrying value of the bank's ARM holdings which reprice in 6 months or less and have no periodic cap.

Report in Column B the carrying value of the bank's ARM holdings which reprice in 6 months or less and have a periodic cap.

Report in Column C the carrying value of the bank's ARM holdings which reprice over 6 months through 1 year and have no periodic cap.

Report in Column D the carrying value of the bank's ARM holdings which reprice over 6 months through 1 year and have a periodic cap equal to or less than 150 bp.

Report in Column E the carrying value of the bank's ARM holdings which reprice over 6 months through 1 year and have a periodic cap greater than 150 bp.

Report in Column F the carrying value of the bank's ARM holdings which reprice over 1 year and have no periodic cap.

Report in Column G the carrying value of the bank's ARM holdings which reprice over 1 year and have a periodic cap.

Item Instructions

In Items 2 through 5, distribute, in accordance with column instructions, the carrying value of the bank's ARM holdings.

Item 1: Test for determining whether Schedule 3 should be completed. Either repeat the instruction on page 1 of the General Instructions or cross-reference it.

Item 2: Report the bank's ARM holdings that are within 200 bp of their lifetime cap.

Item 3: Report the bank's ARM holdings that are 201–400 bp from their lifetime cap.

Item 4: Report the bank's ARM holdings that are 401–600 bp from their lifetime cap.

Item 5: Report the bank's ARM holdings that are greater than 600 bp from their lifetime cap.

[15] For purposes of this schedule, available-for-sale debt securities are to be reported on the basis of their fair value, while held-to-maturity debt securities are to be reported on the basis of their amortized cost. Therefore, throughout the instructions to this schedule, references to the carrying value should be read as such.

VIII. Reporting Instructions—Schedule 4

General Instructions

This supplemental schedule primarily requests information related to the interest rate sensitivity of adjustable-rate mortgage (ARM) holdings. The information required in this supplemental schedule represents the categorization of the reporting bank's ARMs according to the distinct characteristics of each loan or security. The characteristics of an ARM include:

(1) Underlying Index. The underlying index of an ARM represents the base or reference point for calculating the mortgage rate of an ARM loan. There are two main categories of indices: (1) those based on a current market index, and (2) those derived from a lagging market index. A current market index is one that adjusts quickly to changes in market interest rates. Examples include rates on Treasury securities, and the London Interbank Offered Rate (LIBOR). A lagging market index is one that adjusts to changes in market interest rates more slowly than the —current market indexes— such as rates on Treasury securities, the London Interbank Offered Rate (LIBOR), etc. Examples of lagging market indexes are the various published FHLB cost-of-funds indexes and the National Average Contract Rate for the Purchase of Previously Occupied Homes.

(2) Lifetime Interest Rate Cap. The lifetime cap is the upper limit on the mortgage rate that can be charged over the life of a loan. This lifetime loan cap is expressed in terms of the initial rate. For example, if the initial mortgage rate is 7% and the lifetime cap is 5%, the maximum interest rate that the bank can charge over the life of the loan is 12%.

(3) Periodic Cap. A periodic cap limits the amount that the interest rate may increase or decrease at the reset (repricing) date. The periodic cap is expressed in basis points (bp). For example, the bank owns a 7% adjustable-rate mortgage loan. If the periodic cap is 100 bp, then the maximum rate the bank can charge at the next reset date is 8%. Even if the indexing rate rose by 150 bp, making the fully indexed mortgage rate 8.5%, the bank could only charge 8% at the next reset date.

(4) Reset Frequency. The reset or repricing frequency is how often the contract permits the interest rate on a loan to be changed (e.g., daily, monthly, quarterly, semiannually, annually) without regard to the length of time between the report date and the date the rate can next change.

Columns A through I on Schedule 4 list the two major indices, current and lagging, each of which is divided by reset frequencies. The current market index columns are further divided by the presence of a periodic cap, and, in the —Over 6 months through 1 year— columns only, by the size of the periodic cap. Items 2 through 9 cover four distance groups, in terms of basis point ranges, of current ARM rates in relation to the instrument—s lifetime interest rate cap. For each distance group, both the ARM balances and the associated weighted average coupon (WAC) rates must be reported. The weighted average coupon rate for this schedule is determined by multiplying the balance of each ARM loan by the applicable annual interest rate (i.e., the annualized rate in effect for the asset as of the report date) and by dividing the sum of all such calculated amounts by the total carrying value of the category. The WAC required for ARM securities in this schedule is that of the underlying mortgages, which should be estimated by adding 75 bp to the bank's pass-through rate. The 75 bp represents the deduction of servicing fees and any applicable guarantee fees. As a consequence of these fees, the coupon rate of the pass-through is lower than that of the WAC of the underlying mortgages. Therefore, to estimate the WAC of the mortgage pool, the fees should be added back to the coupon rate.

Examples

An adjustable-rate permanent loan secured by a first lien on a 1–4 family residence repricing quarterly whose current rate is 7.25% and has a lifetime cap of 10%, no periodic cap, and based on the COFI index would be reported in Items 4 and 5, Column I.

An ARM pass-through security, repricing annually whose current coupon is 7.75% and has a lifetime cap of 14.25%, periodic cap of 200 bp, and based on the Treasury index would be reported in Items 6a and 7, Column E. Note the WAC of the underlying mortgages in this case is estimated to be 8.5%, which is the pass-through rate of 7.75% plus 75 bp.

For purposes of this supplemental schedule the following definitions apply:

A floating or adjustable rate is a rate that varies, or can vary, in relation to an index, to some other interest rate such as the rate on certain U.S. Government securities or the bank's "prime rate," or to some other variable criterion the exact value of which cannot be known in advance. Therefore, the exact rate the loan or security carries at any subsequent time cannot be known at the time of origination or acquisition.

All loans are to be reported net of unearned income to the extent that the loans have been reported net of unearned income on RC-C, Item 1(c)(2)(a).

Adjustable-rate residential mortgage loans that are held by the bank for sale and delivery to a secondary market participant under the terms of a binding contract should be reported according to their repricing frequency regardless of the delivery date specified in the commitment.

Include as adjustable-rate residential mortgage holdings the following instruments:

(1) All permanent loans secured by first liens on 1–4 family residential mortgages included in Schedule RC-C, Item 1(c)(2)(a) that have adjustable interest rates, regardless of whether they are current or are reported as "past due and still accruing" in Schedule RC-N, Columns A and B.

(2) The carrying values [16] of all pass-through securities which have adjustable interest rates and are included in RC-B, Items 4(a)(1) through 4(a)(3), Columns A and D.

Exclude from this schedule:

(1) All adjustable-rate mortgage holdings that are on nonaccrual status.

(2) All collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits.

Column Instructions

Distribute the balance of selected assets in accordance with the procedures described for Columns A through I below.

Report in Column A the balance of the bank's ARM holdings which are based on the current market index, reprice 6 months or less, and have no periodic cap.

Report in Column B the balance of the bank's ARM holdings which are based on the current market index, reprice 6 months or less, and have a periodic cap.

Report in Column C the balance of the bank's ARM holdings which are based on the current market index, reprice, over 6 months through 1 year, and have no periodic cap.

Report in Column D the balance of the bank's ARM holdings which are based on the current market index, reprice over 6 months through 1 year,, and have a periodic cap equal to or less than 150 bp.

Report in Column E the balance of the bank's ARM holdings which are based on the current market index, reprice over 6 months through 1 year, and have a periodic cap greater than 150 bp.

Report in Column F the balance of the bank's ARM holdings which are based on the current market index, reprice over 1 year, and have no periodic cap.

Report in Column G the balance of the bank's ARM holdings which are based on the current market index, reprice over 1 year, and have a periodic cap.

Report in Column H the balance of the bank's ARM holdings which are based on the lagging market index and reprice1 month or less.

Report in Column I the balance of the bank's ARM holdings which are based on the lagging market index and reprice over 1 month.

[16] For purposes of this schedule, available-for-sale debt securities are to be reported on the basis of their fair value, while held-to-maturity debt securities are to be reported on the basis of their amortized cost. Therefore, throughout the instructions to this schedule, references to the carrying value should be read as such.

Item Instructions

In Items 2 through 9, distribute, in accordance with column instructions, the carrying value as well as the weighted average coupon rate of the bank's ARM holdings.

Items 2 and 3: Report the bank's ARM holdings which are within 200 bp of their lifetime cap.

Items 4 and 5: Report the bank's ARM holdings which are 201–400 bp from their lifetime cap.

Items 6 and 7: Report the bank's ARM holdings which are 401–600 bp from their lifetime cap.

Items 8 and 9: Report the bank's ARM holdings which are greater than 600 bp from their lifetime cap.

Appendix 3—Risk Weight Tables

This appendix contains the risk weights that would be used in the proposed supervisory model. Table 1 provides the risk weights used for the baseline module and reporting Schedule 1. Table 2 provides the risk weights used for the fixed-rate mortgage supplemental module and Schedule 2 while Table 3 provides the risk weights used for adjustable-rate mortgages reported in Schedule 3. Table 4 provides the risk weights used for adjustable-rate mortgages reported in Schedule 4.

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Table 1

Derivation of Risk Weights (excluding 1-4 yr. family mortgages)

Time Band	Maturity*	Coupon	Price (% OF PAR)	Scenario 1: 200 basis point rise — Price (% OF PAR)	Scenario 1: 200 basis point rise — % Change in Present Value (Risk Weights)	Scenario 2: 200 basis point decline — Price (% OF PAR)	Scenario 2: 200 basis point decline — % Change in Present Value (Risk Weights)
Amortizing Instruments							
0-3 Months	1.5 Mo.	7.5	100.00%	99.80%	-0.20%	100.20%	0.20%
3-12 Months	7.5 Mo.	7.5	100.00%	99.30%	-0.70%	100.70%	0.70%
1-3 Years	2 Years	7.5	100.00%	98.00%	-2.00%	102.00%	2.00%
3-5 Years	4 Years	7.5	100.00%	96.30%	-3.70%	103.90%	3.90%
5-10 Years	7.5 Years	7.5	100.00%	93.50%	-6.50%	107.20%	7.20%
10-20 Years	15 Years	7.5	100.00%	88.90%	-11.10%	113.30%	13.30%
Over 20 Years	25 Years	7.5	100.00%	84.90%	-15.10%	120.00%	20.00%
All Other Instruments							
0-3 Months	1.5 Mo.	7.5	100.00% **	99.75%	-0.25%	100.25%	0.25%
3-12 Months	7.5 Mo.	7.5	100.00% **	98.80%	-1.20%	101.30%	1.30%
1-3 Years	2 Years	7.5	100.00%	96.40%	-3.60%	103.80%	3.80%
3-5 Years	4 Years	7.5	100.00%	93.40%	-6.60%	107.10%	7.10%
5-10 Years	7.5 Years	7.5	100.00%	89.40%	-10.60%	112.20%	12.20%
10-20 Years	15 Years	7.5	100.00%	84.10%	-15.90%	120.30%	20.30%
Over 20 Years	25 Years	7.5	100.00%	81.00%	-19.00%	127.00%	27.00%
Liabilities							
0-3 Months	1.5 Mo.	3.75	100.00% **	99.75%	0.25%	100.25%	-0.25%
3-12 Months	7.5 Mo.	3.75	100.00% **	98.80%	1.20%	101.20%	-1.20%
1-3 Years	2 Years	3.75	100.00%	96.30%	3.70%	103.90%	-3.90%
3-5 Years	4 Years	3.75	100.00%	93.00%	7.00%	107.60%	-7.60%
5-10 Years	7.5 Years	3.75	100.00%	88.00%	12.00%	114.00%	-14.00%
10-20 Years	15 Years	3.75	100.00%	80.10%	19.90%	126.20%	-26.20%
Over 20 Years	25 Years	3.75	100.00%	73.70%	26.30%	140.30%	-40.30%
Zero or Low Coupon Securities							
0-3 Months	1.5 Mo.	0	99.08%	98.83%	-0.25%	99.32%	0.25%
3-12 Months	7.5 Mo.	0	95.51%	94.37%	-1.20%	96.67%	1.30%
1-3 Years	2 Years	0	86.31%	83.06%	-3.80%	89.72%	4.00%
3-5 Years	4 Years	0	74.49%	68.99%	-7.40%	80.49%	8.10%
5-10 Years	7.5 Years	0	57.57%	49.85%	-13.40%	66.57%	15.70%
10-20 Years	15 Years	0	33.14%	24.85%	-25.00%	44.31%	33.80%
Over 20 Years	25 Years	0	15.87%	9.82%	-38.10%	25.76%	62.30%

* No prepayments are assumed for these hypothetical instruments
** Actual initial price is slightly less than par

Table 1(con't)

Derivation of Risk Weights for 1-4 yr. family mortgages

Fixed-Rate Mortgages

Time Band	Maturity*	Coupon	Price (% OF PAR)	Scenario 1: 200 basis point rise — Price (% OF PAR)	Scenario 1: 200 basis point rise — % Change in Present Value (Risk Weights)	Scenario 2: 200 basis point decline — Price (% OF PAR)	Scenario 2: 200 basis point decline — % Change in Present Value (Risk Weights)
0-3 Months	1.5 Mo.	7.50%	100.00%	99.80%	-0.20%	100.20%	0.20%
3-12 Months	7.5 Mo.	7.50%	100.00%	99.30%	-0.70%	100.70%	0.70%
1-3 Years	2 Years	7.50%	100.00%	98.08%	-2.00%	101.98%	2.00%
3-5 Years	4 Years	7.50%	98.76%	93.10%	-5.70%	103.17%	4.50%
5-10 Years	7.5 Years	7.50%	97.57%	90.19%	-7.60%	103.25%	5.80%
10-20 Years	15 Years	7.50%	95.55%	87.40%	-8.50%	102.74%	7.50%
Over 20 Years	25 Years	7.50%	92.07%	81.46%	-11.50%	101.87%	10.60%

Adjustable-Rate Mortgages

Reset Frequency	Maturity*	Coupon	Price (% OF PAR)	Scenario 1: 200 basis point rise — Price (% OF PAR)	Scenario 1: 200 basis point rise — % Change in Present Value (Risk Weights)	Scenario 2: 200 basis point decline — Price (% OF PAR)	Scenario 2: 200 basis point decline — % Change in Present Value (Risk Weights)	
0 to 6 Months	6 mo CMT	7.50%	101.31%	97.03%	-4.20%	102.93%	1.60%	(a)
6 Months to 1 Year	12 mo CMT	7.50%	102.12%	97.60%	-4.40%	104.04%	1.90%	(b)
Greater than 1 Year	3 yr CMT	7.50%	99.58%	92.99%	-6.60%	104.62%	5.10%	(c)
Near Lifetime Cap	12 mo CMT	7.50%	99.10%	92.13%	-7.00%	103.42%	4.40%	(d)

* No prepayments are assumed for these hypothetical instruments

(a) 6 mos CMT, 100 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(b) 12 mo. CMT, 200 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(c) 3 yr. CMT, 200 bp periodic cap, 275 bp margin, 500 bp from lifetime cap
(d) 12 mo. CMT, no periodic cap, 275 bp margin, 200 bp from lifetime cap

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TABLE 2
FIXED-RATE MORTGAGES RISK WEIGHTS
for
SCHEDULE 2

Risk Weights - Rising Rate

Balances with Coupons of:	Remaining Time to Maturity			
	5 Years or Less	Over 5 Years Through 10 Years	Over 10 Years Through 20 Years	Over 20 Years
≤ 6.75%	(6.0%)	(7.9%)	(8.9%)	(12.3%)
6.76% - ≤7.25%	(5.9%)	(7.8%)	(8.8%)	(11.9%)
7.26% - ≤7.75%	(5.7%)	(7.6%)	(8.5%)	(11.5%)
7.76% - ≤8.25%	(5.5%)	(7.2%)	(8.2%)	(11.0%)
8.26% - ≤ 8.75%	(5.2%)	(6.8%)	(7.7%)	(10.3%)
8.76% - ≤ 9.25%	(4.7%)	(6.1%)	(7.1%)	(9.5%)
9.26% - ≤ 9.75%	(4.1%)	(5.4%)	(6.4%)	(8.5%)
> 9.75%	(3.0%)	(3.9%)	(4.9%)	(6.3%)

Risk Weights - Declining Rate

Balances with Coupons of:	Remaining Time to Maturity			
	0 to 5 Years	5 to 10 Years	10 to 20 Years	> 20 Years
≤ 6.75%	5.8%	7.8%	9.3%	13.4%
6.76% - ≤7.25%	5.2%	6.9%	8.5%	12.1%
7.26% - ≤7.75%	4.5%	5.8%	7.5%	10.6%
7.76% - ≤8.25%	3.7%	4.8%	6.5%	9.1%
8.26% - ≤ 8.75%	3.1%	3.8%	5.5%	7.6%
8.76% - ≤ 9.25%	2.6%	3.1%	4.5%	6.2%
9.26% - ≤ 9.75%	2.3%	2.7%	3.8%	5.1%
> 9.75%	2.1%	2.4%	2.9%	3.5%

TABLE 3
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS
for
SCHEDULE 3

	Reset Frequency						
	6 Months or Less		Over 6 Months to 1 Year			Over 1 Year	
	No periodic cap	Periodic cap	No periodic cap	Periodic Cap less than 150bp	Periodic cap more than 150bp	No periodic cap	Periodic cap
Instruments 200 basis points or less from the lifetime cap							
Rising rates	(6.6)	(6.8)	(7.0)	(7.3)	(7.0)	(7.3)	(7.3)
Declining rates	3.7	4.0	4.4	4.9	4.4	6.0	6.0
Instruments 201 to 400 basis points from the lifetime cap							
Rising rates	(5.1)	(5.9)	(5.6)	(6.7)	(6.1)	(6.6)	(7.0)
Declining rates	2.4	2.9	2.9	4.2	3.3	5.0	5.6
Instruments 401 to 600 basis points from the lifetime cap							
Rising rates	(2.5)	(4.2)	(3.0)	(5.8)	(4.4)	(5.0)	(6.6)
Declining rates	0.9	1.6	1.2	3.2	1.9	3.2	5.1
Instruments more than 600 basis points from the lifetime cap							
Rising rates	(1.1)	(3.3)	(1.4)	(5.4)	(3.5)	(3.6)	(6.5)
Declining rates	0.5	1.3	0.8	3.0	1.5	2.3	4.9

TABLE 4
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS
for
SCHEDULE 4

(Each of the following tables corresponds to a column on Schedule 4)

Current Market Index - 6 Month or Less Reset Frequency - No Periodic Cap

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	4.75% and under	(9.2%)	10.3%	(8.8%)	8.5%	(7.2%)	4.7%	(4.4%)	1.8%
	4.76% to 6.25%	(8.7%)	7.9%	(7.7%)	5.7%	(5.2%)	2.3%	(2.4%)	0.8%
	6.26% to 7.75%	(7.4%)	4.5%	(5.8%)	3.0%	(3.0%)	1.0%	(1.2%)	0.5%
	Over 7.75%	(5.1%)	2.0%	(3.6%)	1.3%	(1.5%)	0.6%	(0.7%)	0.5%

Current Market Index - 6 Month or Less Reset Frequency - With Periodic Cap

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	4.75% and under	(9.2%)	10.4%	(9.0%)	9.3%	(8.2%)	7.1%	(7.1%)	5.3%
	4.76% to 6.25%	(8.7%)	8.2%	(8.2%)	6.7%	(6.9%)	4.4%	(5.6%)	3.2%
	6.26% to 7.75%	(7.6%)	4.8%	(6.7%)	3.5%	(5.0%)	1.9%	(3.9%)	1.4%
	Over 7.75%	(5.3%)	2.4%	(4.2%)	1.8%	(2.7%)	1.1%	(2.1%)	1.0%

TABLE 4 (Continued)
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS

Current Market Index - 6 Months to 1 Year Reset Frequency - No Periodic Cap

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	4.75% and under	(9.2%)	10.4%	(8.9%)	8.9%	(7.6%)	5.5%	(5.1%)	2.3%
	4.76% to 6.25%	(8.7%)	8.4%	(8.0%)	6.3%	(5.8%)	2.9%	(3.0%)	1.2%
	6.26% to 7.75%	(7.7%)	5.3%	(6.4%)	3.6%	(3.6%)	1.4%	(1.6%)	0.8%
	Over 7.75%	(5.8%)	2.5%	(4.2%)	1.7%	(1.9%)	0.9%	(1.0%)	0.7%

Current Market Index - 6 Months to 1 Year Reset Frequency
Periodic Cap Less than 150 bp

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	4.75% and under	(9.3%)	10.4%	(9.1%)	9.7%	(8.7%)	8.4%	(8.2%)	7.6%
	4.76% to 6.25%	(8.8%)	8.7%	(8.4%)	7.8%	(7.7%)	6.4%	(7.2%)	5.8%
	6.26% to 7.75%	(7.8%)	5.9%	(7.3%)	5.1%	(6.4%)	4.0%	(5.9%)	3.7%
	Over 7.75%	(6.2%)	2.9%	(5.5%)	2.4%	(4.6%)	1.9%	(4.3%)	1.8%

TABLE 4 (Continued)
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS

Current Market Index - 6 Months to 1 Year Reset Frequency
Periodic Cap Greater than 150 bp

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	4.75% and under	(9.2%)	10.4%	(9.0%)	9.3%	(8.2%)	7.1%	(7.1%)	5.3%
	4.76% to 6.25%	(8.7%)	8.4%	(8.2%)	6.9%	(6.9%)	4.6%	(5.6%)	3.4%
	6.26% to 7.75%	(7.7%)	5.3%	(6.8%)	4.0%	(5.1%)	2.3%	(4.0%)	1.8%
	Over 7.75%	(5.8%)	2.5%	(4.7%)	1.8%	(3.1%)	1.0%	(2.5%)	0.9%

Current Market Index - Over 1 Year Reset Frequency - No Periodic Cap

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	5.50% and under	(9.2%)	10.0%	(8.9%)	9.0%	(7.9%)	6.7%	(6.3%)	4.3%
	5.51% to 8.00%	(8.2%)	7.5%	(7.6%)	6.2%	(6.1%)	3.9%	(4.2%)	2.6%
	8.01% to 10.50%	(5.6%)	3.2%	(4.6%)	2.6%	(3.1%)	2.0%	(2.3%)	1.9%
	Over 10.50%	(3.3%)	2.1%	(2.8%)	2.0%	(2.1%)	1.9%	(2.0%)	1.9%

TABLE 4 (Continued)
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS

Current Market Index - Over 1 Year Reset Frequency - With Periodic Cap

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	5.50% and under	(9.2%)	10.0%	(9.0%)	9.5%	(8.8%)	8.7%	(8.6%)	8.4%
	5.51% to 8.00%	(8.2%)	7.5%	(8.0%)	7.0%	(7.5%)	6.4%	(7.4%)	6.2%
	8.01% to 10.50%	(5.6%)	3.2%	(5.3%)	2.9%	(4.9%)	2.7%	(4.8%)	2.6%
	Over 10.50%	(3.3%)	2.3%	(3.1%)	2.2%	(2.8%)	2.2%	(2.8%)	2.2%

Lagging Market Index - 1 Month or Less Reset Frequency

		Distance From The Lifetime Cap							
		200 basis points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	5% and under	(9.3%)	10.6%	(9.0%)	9.0%	(7.5%)	5.5%	(5.0%)	2.7%
	5.01% to 6.5%	(8.4%)	7.3%	(7.4%)	5.4%	(4.9%)	2.7%	(2.8%)	1.8%
	6.51% to 8%	(7.5%)	5.2%	(6.2%)	3.8%	(3.7%)	2.0%	(2.2%)	1.6%
	Over 8%	(4.8%)	2.4%	(3.7%)	2.0%	(2.2%)	1.6%	(1.7%)	1.6%

TABLE 4 (Continued)
ADJUSTABLE-RATE MORTGAGES RISK WEIGHTS

Lagging Market Index - Over 1 Month Reset Frequency

		Distance From The Lifetime Cap							
		200 Basis Points or Less		201 to 400 Basis Points		401 to 600 Basis Points		Over 600 Basis Points	
		Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates	Rising Rate	Declining Rates
Weighted Average Coupon Range	5% and under	(9.2%)	10.5%	(9.0%)	9.3%	(8.2%)	6.7%	(7.0%)	4.8%
	5.01% to 6.5%	(8.1%)	7.2%	(7.3%)	5.6%	(5.7%)	3.4%	(4.3%)	2.6%
	6.51% to 8%	(7.2%)	5.4%	(6.2%)	4.2%	(4.5%)	2.7%	(3.5%)	2.4%
	Over 8%	(5.3%)	3.3%	(4.5%)	3.0%	(3.5%)	2.7%	(3.2%)	2.6%

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Appendix A—Technical Description of Supplemental Modules and Risk Weights

This appendix is intended to provide detailed information on the methods used to derive the risk weights used in the supervisory measurement system. Descriptions of the derivation of non-mortgage risk weights are provided, followed by the descriptions for fixed and adjustable-rate mortgage risk weights. Titles and locations of reference documents are also provided.

I. Non-Mortgage Risk Weights

The non-mortgage risk weights were derived using hypothetical market instruments that are representative of the asset or liability category that is measured. Each weight approximates the percentage change in the price of the benchmark instruments given a 200 basis point, instantaneous and uniform shift in market interest rates. Separate risk weights are constructed for the rising and falling interest rate scenarios for the following categories:

(1) Other amortizing assets;
(2) Zero or low coupon assets;
(3) All other assets;
(4) Liabilities; and
(5) Off-balance sheet.

A. Benchmark Instruments for Non-Mortgage Risk Weights

The benchmark instruments for each category of assets and liabilities, corresponding maturities, coupons and bond-equivalent yields are listed below.

(1) *Other Amortizing Assets:* For other (non-mortgage) amortizing assets, a benchmark monthly amortizing instrument with an original maturity equal to the end point of the specific time band; a remaining maturity equal to the midpoint of the time band; and a coupon and bond-equivalent yield equal to 7.50% was used.[17] No prepayments are assumed for this category of instruments.

(2) *Zero- or Low-Coupon Assets:* The risk weights for zero- or low-coupon instruments were calculated using the percentage change in the price of a zero-coupon instrument with an assumed maturity equal to the mid-point of each time band and a bond-equivalent yield of 7.50%.

(3) *All Other Assets:* The risk weights for the "All Other" category were calculated assuming semi-annual interest payments, a maturity equal to the mid-point of each time band, and an assumed coupon and yield equal to 7.50%.

(4) *Liabilities:* The only set of risk weights used for liabilities is represented by the percentage price change for a semi-annual interest-bearing instrument with an assumed coupon and yield equal to 3.75%.[18]

(5) *Off-Balance Sheet Positions:* The risk weights for interest rate futures, forwards and swaps are the same as those applied to the "All Other" category. Off-balance sheet positions with amortizing features are assigned the same risk weights as the "Other Amortizing" category.

B. Derivation of Non-Mortgage Risk Weights

The prices and risk weights for each rate scenario were calculated in the following manner:

(1) The benchmark instruments were priced at par in the base case, or current interest rate environment. Using the coupon and maturity of the instruments and static discounted cash flow analysis, the bond-equivalent yields were calculated.

(2) Prices for the benchmark instruments were then calculated for the rising and declining rate scenarios by shifting the bond-equivalent yields up and down by 200 basis points. The present values of the expected cash flows in each scenario were then determined to arrive at the new price for each instrument.

(3) The percentage change in the price from the base case price of par represents the risk weight for the benchmark instrument in the corresponding rate scenarios. If the risk weight was determined to be less than 1 percentage point, it was expanded to the nearest 5 basis points interval. If the risk weight was greater than 1 percentage point, it was rounded to the nearest 10 basis points interval.

II. Treatment of Fixed-rate Mortgages and Derivation of Risk Weights

Office of Thrift Supervision Pricing Information

Representative benchmark mortgage instruments used in the calculation of risk weights for Schedules 1 through 4 were based on instruments available in the *Office of Thrift Supervision (OTS) Asset and Liability Price Tables* as of September 30, 1994. Publicly available data on certain coupon ranges and weighted average remaining maturities (WARM) not specifically presented in the *OTS Asset and Liability Price Tables* were obtained from the OTS as part of a separate data request by the agencies.

Representative benchmark fixed-rate mortgage instruments for Schedule 1 were drawn from a combination of hypothetical mortgage pass-through instruments and mortgage pool securities listed in the *OTS Asset and Liability Price Tables.* The mortgage pool security price information contained in the *OTS Asset and Liability Price Tables* were calculated using the OTS Net Portfolio Value Model. A brief overview of the pricing methodology in The *OTS Net Portfolio Value Model Manual,* published in November 1994, states that "the model uses the options-based approach to determine the market value of 1 to 4 family mortgages. Cash flows consist of scheduled principal payments, interest, and prepaid principal. Prepayments are modeled using a prepayment equation that relates the prepayment rate for a particular period to, among other factors, the difference between the mortgage coupon rate and the current market interest rate. Scheduled principal and interest cash flows are estimated by amortizing the remaining balance in each period over its remaining term. To calculate market values in each of the alternate interest rate scenarios, cash flows for that scenario are discounted by the simulated Treasury rates for that scenario plus the option-adjusted spread." For additional detail and model specifications, refer to The *OTS Net Portfolio Value Model,* published by the OTS, Risk Management Division, Washington, District of Columbia. Copies of the aforementioned publication are available for review in the FDIC Reading Room, 550 North 17th Street, N.W., Washington, District of Columbia, and the in the OCC Library at 250 E Street SW., Washington, District of Columbia.

The OTS model projects prices for numerous fixed-rate and adjustable-rate mortgage securities with various weighted average coupons (WAC) and WARM given different interest rate scenarios. Price tables are provided for different types of mortgage pool securities. Each table contains mortgage pool security prices as a percentage of the underlying mortgage balance in the base case (current interest rates) as well as price projections for interest rate movements up and down 400 basis points in 100 basis point increments.

Fixed-rate residential mortgage assets have embedded options that make the value of the instrument more sensitive to interest rate changes than fixed maturity instruments. In order to more effectively analyze the impact of embedded options on the value of this asset class, additional reporting schedules are required depending on the amount of an institution's mortgage holdings in relation to its total assets. Both one-to-four family residential mortgage loans and pass-through securities are considered mortgage holdings for the purposes of these schedules. CMOs and other mortgage derivative securities are accorded separate treatment as described in the body of the Policy Statement.

A. Benchmark Instruments

Risk weights have been derived from a group of benchmark fixed-rate mortgages with attributes most representative of the mortgage market as of September 30, 1994. Balances reported by banks would be assigned risk weights corresponding to these benchmark instruments. It is believed that the benchmark risk weights will provide reasonable approximations of the price sensitivity of an institution's actual holdings.

1. Benchmark Instruments for Schedule 1

For Schedule 1, outstanding balances would be reported according to their remaining maturity in one of seven time bands represented by Columns B through H of Schedule 1 as shown in Table 1. The balances in each time band would be assigned risk weights equal to the price sensitivity of the benchmark instruments chosen for that specific time band. The benchmark instrument for the first three time bands (Columns B, C, and D) on Schedule 1 are monthly amortizing instruments with original maturities equal to the end point of the specific time band; remaining maturities equal to the midpoint of each time band; and a coupon and bond-equivalent yield equal to 7.50%. No prepayments are assumed for those time bands.

TABLE 1.—FIXED-RATE MORTGAGES RISK WEIGHT DERIVATIONS FOR SCHEDULE 1

Column	B	C 3 Months to 1 year	D	E	F	G	H
	≤ 3 months		1 to 3 years	3 to 5 years	5 to 10 years	10 to 20 years	> 20 years
Source	Discounted Cash Flow.	Discounted Cash Flow.	Discounted Cash Flow.	OTS Data	OTS Data	OTS Data	OTS Data.

The benchmark mortgage instruments for the remaining four time bands are as follows:

(1) Column E (3 to 5 years): 7-year fixed-rate balloon mortgage pool security with a 48-month WARM and a 7.50% WAC;

(2) Column F (over 5 to 10 years): 7-year fixed-rate balloon mortgage pool security with a 72-month WARM and a 7.50% WAC;

(3) Column G (over 10 to 20 years): 15-year fixed-rate mortgage pool security with a 160-month WARM and a 7.50% WAC;

(4) Column H (over 20 years): FHLMC/FNMA 30-year fixed-rate mortgage pool security with a 330-month WARM and a 7.50% WAC.

The coupon rate of 7.50 percent was chosen for consistency with the average effective annualized yield on earning assets at all commercial banks as of September 30, 1994. Consideration was also given to the average dollar amount of outstanding 30 year Federal National Mortgage Association (FNMA) mortgage pass-through securities in September 1994.

2. Benchmark Instruments for Schedule 2

The benchmark instruments used to derive the risk weights for Schedule 2 include the following:

(1) Column A (0–5 years): 7-year fixed-rate balloon mortgage pool security with a 48 month WARM;

(2) Column B (Over 5 to 10 years): 7-year fixed-rate balloon mortgage pool security with a 72 month WARM;

(3) Column C (Over 10 to 20 years): 15-year fixed-rate mortgage pool security with a 160 month WARM;

(4) Column D (Over 20 years): FHLMC/FNMA 30-year fixed-rate mortgage pool security with a 330 month WARM.

The weighted average coupon rates of the benchmark instruments were the midpoints of the coupon ranges with the exception of those coupons equal to or less than 6.75 percent and equal to or greater than 9.76 percent. For those coupon ranges, the WACs used were 6.50 percent and 10.50 percent respectively.

B. Derivation of Fixed-rate Mortgage Risk Weights

The following examples have been taken directly from the information contained in the OTS Asset and Liability Price Tables as of 9/30/94 as well as data obtained from the OTS in a separate request by the agencies. As previously noted, the OTS price tables present prices of mortgage pool securities based on bond-equivalent yields, given an increase and decrease in interest rates from 100 to 400 basis points in 100 basis point increments. The supervisory measurement system risk weights are derived using the 200 basis point increase and decrease scenarios.

Table 2 includes prices for the representative mortgage instrument chosen for the first column of Schedule 2, which is a 7-year fixed-rate balloon with a 48-month WARM. All mortgage holding balances reported in the 0–5 year column would receive a risk weight equal to the percentage change in price for this instrument given ±200 basis point rate shifts. Price changes for each benchmark vary depending on the particular WAC as depicted in the table. The midpoint of each WAC range was selected to determine which benchmark instrument to use from the OTS price table.

TABLE 2.—7–YEAR FIXED-RATE BALLOON WITH A 48–MONTH WARM PRICES AS A PERCENT OF THE UNDERLYING MORTGAGE BALANCE AS OF SEPTEMBER 30, 1994

0–5 Year time band benchmark			
Interest rate scenario			
Coupon	–200 bp	0 bp	+200 bp
≥6.75%	101.57	96.01	90.26

[17] For the third quarter of 1994, the average effective yield on earning assets at all commercial banks was approximately 7.50% on an annualized basis.

[18] The 3.75% coupon approximates the effective cost of interest-bearing liabilities at all commercial banks for the third quarter of 1994 on an annualized basis.

TABLE 2.—7-YEAR FIXED-RATE BALLOON WITH A 48-MONTH WARM PRICES AS A PERCENT OF THE UNDERLYING MORTGAGE BALANCE AS OF SEPTEMBER 30, 1994—Continued

0–5 Year time band benchmark			
	Interest rate scenario		
Coupon	–200 bp	0 bp	+200 bp
6.76%–≤7.25%	102.54	97.50	91.77
7.26%–≤7.75%	103.17	98.76	93.10
7.76%–≤8.25%	103.74	100.01	94.49
8.26%–≤8.75%	104.33	101.23	96.00
8.76%–≤9.25%	104.89	102.26	97.47
9.26%–≤9.75%	105.34	102.99	98.74
>9.75%	106.30	104.12	100.98

Example of a Risk Weight Calculation: The risk weights for the 7.26%-7.75% coupon range are calculated as follows: Using 7.50 percent as the midpoint of the coupon range, the base case price as of September 30, 1994, for a 7.50 percent, 7-year fixed-rate balloon mortgage, with a 48 month WARM is 98.76. In the +200 bp scenario, the base price of 98.76 is subtracted from +200 bp price of 93.10: (93.10−98.76= −5.66). The absolute change is −5.66 representing a percentage decrease in price of −5.7% (−5.66/98.76=−0.057 or −5.7%.) Negative 5.7% serves as the risk weight for the benchmark mortgage in the +200 bp scenario. As a result, all balances reported on Schedule 2, in the 0–5 year remaining maturity column, and the 7.26%–7.75% coupon row would receive a risk weight of −5.7 in the rising rate analysis.

In the –200 bp scenario, the base price of 98.76 is subtracted from the –200 bp price of 103.17: (103.17−98.76=4.41). The absolute change is 4.41 representing a percentage increase in price of 4.5% (4.41/98.76=0.0446 or 4.5%). The risk weight for this benchmark mortgage becomes 4.5% in the -200 bp scenario. Consequently, all balances in this item receive the 4.5% risk weight in the declining rate analysis. The aforementioned method for calculating the risk weights is used to determine the risk weights for the other mortgage instruments. Tables 3, 4, and 5 are the price tables for the other three fixed-rate benchmark instruments used in the supervisory measurement system.

TABLE 3.—7-YEAR FIXED-RATE BALLOON WITH A 72-MONTH WARM PRICES AS A PERCENT OF THE UNDERLYING MORTGAGE BALANCE AS OF SEPTEMBER 30, 1994

>5–10 year time band benchmark	Coupon		
	Interest rate scenario		
	−200 bp	0 bp	+200 bp
≤8.75%	101.24	93.90	86.47
6.76%–≤7.25%	102.46	95.89	88.44
7.26%–≤7.75%	103.25	97.57	90.19
7.76%–≤8.25%	103.94	99.211	92.02
8.26%–≤8.75%	104.63	100.79	93.98
8.76%–≤9.25%	105.30	102.14	95.89
9.26%–≤9.75%	105.87	103.10	97.55
≤9.75%	107.09	104.57	100.53

TABLE 4.—15-YEAR FIXED-RATE POOL WITH A 160-MONTH WARM PRICES AS A PERCENT OF THE UNDERLYING MORTGAGE BALANCE AS OF SEPTEMBER 30, 1994

>10–20 year time band benchmark			
	Interest rate scenario		
Coupon	−200 bp	0 bp	+200 bp
≤8.75%	99.74	91.29	83.12
6.76%–≤7.25%	101.39	93.48	85.28
7.26%–≤7.75%	102.74	95.55	87.40
7.76%–≤8.25%	103.93	97.59	89.59
8.26%–≤8.75%	105.09	99.64	91.93
8.76%–≤9.25%	106.31	101.70	94.45
9.26%–≤9.75%	107.53	103.63	96.99
≤9.75%	109.79	106.72	101.53

TABLE 5 30-YEAR FIXED-RATE POOL WITH A 330-MONTH WARM PRICES AS A PERCENT OF THE UNDERLYING MORTGAGE BALANCE AS OF SEPTEMBER 30, 1994

20 year time band benchmark			
	Interest rate scenario		
Coupon	−200 bp	0 bp	+200 bp
≤6.75%	97.78	86.20	75.61
6.76%–≤7.25%	100.13	89.33	78.66
7.26%–≤7.75%	101.87	92.07	81.46
7.76%–≤8.25%	103.36	94.73	84.33
8.26%–≤8.75%	104.77	97.36	87.33
8.76%–≤9.25%	106.20	99.97	90.52
9.26%–≤9.75%	107.67	102.49	93.80
≤9.75%	110.67	106.91	100.15

III. Treatment of Adjustable-Rate Mortgages and Derivation of Risk Weights

Adjustable-rate mortgage loans and securities (ARMS) have price sensitivities that are substantially different than fixed-rate mortgage assets primarily due to their coupon reset features. The coupon adjustments are generally limited by caps and floors both for the life of the mortgage and also at their reset period. These caps are known as lifetime caps and periodic caps. In general, there are three factors that most influence the price sensitivity of an ARM: the reset frequency, the periodic cap, and the lifetime cap.

A review of ARM price behavior reveals that the relationship between the periodic and lifetime caps and the effect of that relationship on ARM prices is complex and varies based upon the likelihood that either cap will become binding. Consequently, information on both the periodic cap and the lifetime cap would be reported by institutions with significant ARM holdings. Benchmark mortgages representative of the ARM market have been identified and are used to assign risk weights. Supplemental reporting schedules were also developed to capture the effect of these characteristics on the price of ARMs.

A. Benchmark ARM Instruments

The coupon ranges provided in Schedule 4 were chosen to be representative of the ARM securities outstanding. In an effort to maintain consistency with the risk weights applied to the non-mortgage products and FRM holdings in Schedule 1, a 7.5% WAC was selected for all of the benchmark ARM instruments in Schedule 1 as well as for Schedule 3.

1. Benchmark Instruments for Schedule 1

The benchmark instruments for Schedules 1, 3, and 4 represent the characteristics of the ARM mortgages most prevalent in the market place according to reported index, margin, periodic cap, and distance to lifetime cap. Schedules 1 and 3 are based on instruments with 7.5% WACs and share other common characteristics, hence, all of the benchmark instruments and risk weights used for Schedule 1 may be found in Schedule 3. However, the benchmark WACs in Schedule 4 do not necessarily fall precisely on a 7.5 percent WAC. To obtain the 7.5 percent WAC sensitivity for Schedules 1 and 3 an additional interpolation was used. The interpolation used was the following:

(1) for the 6-month and 1-year ARMs: $P_{7.5}=1/3[P_{8.5}-P_{7.0}]+P_{7.0}$;

(2) for the 3-year ARMs: $P_{7.5}=1/3[P_{9.5}-P_{7.5}]+P_{6.5}$.

Where as $P_x=Price_{WAC(X)}$

The benchmark instruments for Schedule 1 are as follows:

(1) Reset Frequency—0 to 6 Months: Six month Constant Maturity Treasury (CMT) index, 275 basis point margin, four month reset period, 100 basis point periodic cap and 500 basis points to the lifetime cap;

(2) Reset Frequency—6 Months to 1 Year: One year CMT, 275 basis point margin, six month reset period, 200 basis point periodic cap and 500 basis points to the lifetime cap;

(3) Reset Frequency—Greater than 1 Year: Three year CMT, 275 basis point margin, 18 month reset period, 200 basis point periodic cap and 500 basis points to the lifetime cap;

(4) Reset Frequency—Near Lifetime Cap: One year CMT, 275 basis point margin, six month reset period, no periodic cap and 200 basis points from the lifetime cap.

2. Benchmark Instruments for Schedule 3

The benchmark instruments for Schedule 3 represent the characteristics of the ARM mortgages most prevalent in the market place according to reported index, margin, periodic cap, and distance to lifetime cap. Banks are required to report their ARM holdings by reset frequency, periodic interest rate cap levels, and distance from the lifetime cap in Schedule 3. The benchmark instruments for each reset frequency and lifetime cap are summarized in Table 6.

TABLE 6.—BENCHMARK INSTRUMENTS FOR SCHEDULE 3

RESET frequency						
6 Months or less: 6 Month treasury 275 margin 330 month WARM 7.50% WAC		Over 6 months to 1 year: 1 Year treasury 275 margin 330 month WARM 7.50% WAC			Over 1 year: 3 Year treasury 275 margin 330 month WARM 7.50% WAC	
No Cap: No periodic cap	Cap: 100 bp periodic cap and floor	No Cap: No periodic cap	Cap <150bp: 100 bp periodic cap and floor	Cap > 150bp: 200 bp periodic cap and floor	No Cap: No periodic cap	Cap: 200 bp periodic cap
DISTANCE FROM LIFETIME CAP						
Instruments 200 basis points or less from lifetime cap: 200 basis points Instruments 201 to 400 basis points from lifetime cap: 300 basis points. Instruments 401 to 600 basis points from lifetime cap: 500 basis points. Instruments more than 600 basis points from lifetime cap: 700 basis points.						

3. Benchmark Instruments for Schedule 4

Schedule 4 collects information on an ARM's rate index, reset frequency, periodic and lifetime caps as shown in Table 7.

TABLE 7.—ADJUSTABLE-RATE MORTGAGE INFORMATION FOR SCHEDULE 4

Current market index by reset frequency							Lagging market index by reset frequency	
6 Months or less		Over 6 months to 1 year			Over 1 year		1 Month or less	Over 1 month
No cap	Cap	No Cap	Cap of 150 bp or less	Cap of more than 150	No Cap	Cap		

Treasury ARM securities were used as the benchmark for the class of mortgages labeled *Current Market Index*. COFI ARM securities were used as the benchmark for the class of mortgages labeled as *Lagging Market Index*. Within each reset frequency and cap range for the *Current Market Index* and *Lagging Market Index* mortgage classes, benchmark instruments were used. The WAC and cap benchmarks for the instruments used for Schedule 4 are as follows:

a. Current Market Index By Reset Frequency

(1) 6 Months or Less, No Cap: 6-month Treasury ARM securities, as published in the OTS price tables as of September 30, 1994, subject to the aforementioned linear interpolation were used for this category. OTS price tables provide price data on 7.00 percent WAC and 8.50 percent WAC 6-Month Treasury ARM securities. The benchmark weighted average coupons for each WAC range are provided in Table 8.

TABLE 8.—BENCHMARK WACS FOR 6 MONTH TREASURY ARMS

Weighted average coupon	Benchmark WAC (percent)
4.75% and under	4.00
4.76% to 6.25%	5.50
6.26% to 7.75%	7.00
Over 7.75%	8.50

(2) 6 Months or Less, Cap: The same benchmark WAC's as those listed in Table 7 were used for the benchmark instruments in this category, subject to a 100 basis point periodic cap and floor.

(3) Over 6 Months to 1 year, No Cap: 12-Month Treasury ARM securities, as published in the OTS price tables as of September 30, 1994, were used for this category. Because the WAC ranges provided in the OTS price tables vary based on the underlying index, the WAC ranges developed for the supervisory measurement system also vary with the underlying index. OTS price tables provide price information on 7.00 percent WAC and 8.50 WAC 12–Month Treasury ARM securities. The benchmark weighted average coupon used for the WAC ranges are provided in Table 9.

TABLE 9.—BENCHMARK WACS FOR 12-MONTH TREASURY ARMS

Weighted average coupon	Benchmark WAC (percent)
4.75% and under	4.00
4.76% to 6.25%	5.50
6.26% to 7.75%	7.00
Over 7.75%	8.50

(4) Over 6 Months to 1 Year, Cap of 150 Basis Points of Less: The same benchmark WAC's as those listed in Table 10 were used for the benchmark instruments in this category, subject to a 100 basis point periodic cap and floor.

(5) Over 6 Months to 1 Year, Cap of More Than 150 Basis Points: The same benchmark WAC's as those listed in Table 10 were used for the benchmark instruments in this category, subject to a 200 basis point periodic cap and floor.

(6) Over 1 Year, No Cap: 36–Month Treasury ARM securities, as published in the OTS price tables as of September 30, 1994, were used for this category. Because the WAC ranges provided in the OTS price tables vary based on the underlying index, the WAC ranges developed for the supervisory measurement system also vary with the underlying index. OTS price tables provide price information on 6.50 percent WAC and 9.50 WAC 36-Month Treasury ARM securities. The benchmark weighted average coupons used for the WAC ranges are provided in Table 10.

TABLE 10.—BENCHMARK WACS FOR 36 MONTH TREASURY ARMS

Weighted average coupon	Benchmark WAC (percent)
5.50% and under	4.50
5.51% to 8.00%	8.50
8.01% to 10.50%	9.50
Over 10.50%	11.50

(7) Over 1 Year, Cap: The same benchmark WAC's as those listed in Table 11 were used for the benchmark instruments in this category, subject to a 200 basis point periodic cap and floor.

b. Lagging Market Index By Reset Frequency

(1) 1 Month or Less: 1 Month COFI ARM securities, as published in the OTS price tables as of September 30, 1994, were used for this category. Because the WAC ranges provided in the OTS price tables vary based on the underlying index, the WAC ranges developed for the supervisory measurement system also vary with the underlying index. OTS price tables provide price information on 6.00 percent WAC and 7.00 WAC 1 Month COFI ARM securities. No periodic cap or floor were used for the benchmark instrument in this category. Table 11 provides the benchmark weighted average coupons used for each WAC range.

TABLE 11.—BENCHMARK WACS FOR 1 MONTH COFI ARMS

Weighted average coupon	Benchmark WAC (percent)
5.00% and under	4.00
5.01% to 6.50%	6.00
6.51% to 8.00%	7.00
Over 8.00%	9.00

(2) Over 1 Month: The same benchmark WAC's as those listed in Table 12 were used for the benchmark instruments in this category, subject to a 200 basis point periodic cap and floor.

B. Derivation of Benchmark Instrument Prices and Risk Weights

Benchmark ARM instruments used in the calculation of risk weights for Schedules 1,3, and 4 were based on ARM securities available in the OTS Asset and Liability Price Tables as of September 30, 1994 and industry data. The OTS price tables do not contain prices for the benchmark instruments used in the supervisory measurement system.

Using the OTS price tables, a series of linear interpolations was performed to generate prices for the benchmark instruments, using bond-equivalent yields, selected for the supervisory measurement system. Prices were calculated for each WAC underlying a benchmark instrument (e.g., for benchmark instruments tied to the 6-month CMT-based ARM, WACs of 4.00 percent, 5.50 percent, 7.00 percent, 7.50 percent and 8.50 percent were calculated). Prices for the benchmark instruments for each of the selected WACs were interpolated for selected loan characteristics (i.e., margin, lifetime cap, and reset frequency) in each of the three interest rate scenarios used in the supervisory measurement system (i.e., +200 basis points, base case, and −200 basis points). Table 12 presents the OTS price table for a 6 month CMT-based ARM with a 7.0 percent WAC.

TABLE 12.—6-MONTH TREASURY ARM SECURITY PRICES AS OF SEPTEMBER 30, 1994 (WAC 7.00 PERCENT)

ARM parameters			Interest rate scenario		
Margin	Lifetime cap (percent)	Months to reset	−200 Price	0 Base	+200 Price
200 basis points	11.0	2	100.85	99.64	95.13
200 basis points	11.0	6	101.34	99.42	94.03
200 basis points	15.0	2	100.86	100.07	97.56
200 basis points	15.0	6	101.35	99.85	96.32
350 basis points	11.0	2	104.30	101.68	95.29
350 basis points	11.0	6	104.52	100.73	94.18
350 basis points	15.0	2	104.39	103.02	99.02
350 basis points	15.0	6	104.61	102.02	97.60

In addition to the criteria established in the OTS price table presented above, the ARM securities have the following characteristics:

(1) WARM of 330 months;

(2) Lifetime floor 1200 basis points below the lifetime cap; and

(3) Periodic cap and floor of 100 basis points.

The OTS price table provides the data for the linear interpolation process. As stated above, an interpolated price for each property of the benchmark instrument is derived through this process.

For each value of a selected variable, a linear interpolation was performed to generate a particular price of the benchmark instrument. With each layer of interpolation, a new set of prices was produced. At the completion of the requisite number of interpolations needed to generate a price estimate given the set of criterion for the variables underlying a benchmark instrument, the resulting price table was used to calculate the risk weights for that particular instrument. Once the interpolated price table was developed, the risk weights were calculated in the same manner as those for fixed-rate mortgages.

Office of the Comptroller of the Currency

Dated: June 29, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

By Order of the Board of Governors of the Federal Reserve System.

Dated: July 7, 1995.

William Wiles,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC this 27th day of June, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–18099 Filed 8–1–95; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P

VOL 60 SS 148 AG 2 995 UMI

federal register

Wednesday
August 2, 1995

Part III

Securities and Exchange Commission

17 CFR Parts 270 and 274

Status of Investment Advisory Programs Under the Investment Company Act of 1940; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC–21260; IA–1510; S7–24–95]

RIN 3235–AG07

Status of Investment Advisory Programs Under the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form; request for comment.

SUMMARY: The Commission is publishing for public comment revised proposed rule 3a–4 under the Investment Company Act of 1940, which would provide a nonexclusive safe harbor from the definition of investment company for certain programs under which investment advisory services are provided to clients. Programs that are organized and operated in a manner consistent with the rule's conditions would not be required to register under the Investment Company Act or to comply with the Act's substantive requirements. The Commission also is proposing Form N–3a4 under the Investment Company Act, which would be filed with the Commission by sponsors of programs intending to rely on rule 3a–4. The rule and form are intended to provide guidance regarding the status of investment advisory programs under the Investment Company Act, and to facilitate Commission examination of persons involved in the operation of these programs. Finally, in connection with the preparation of an interpretive release, the Commission is requesting comment regarding the application of certain provisions of the Investment Advisers Act of 1940 to investment advisers participating in investment advisory programs.

DATES: Comments on the revised proposed rule and the proposed form should be received on or before October 2, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comment letters should refer to File No. S7–24–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, or Eric C. Freed, Special Counsel, (202) 942–0660, Office of Chief Counsel, Division of Investment Management, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is publishing for comment revised proposed rule 3a–4 [17 CFR 270.3a–4] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (the "Investment Company Act"). Rule 3a–4 would provide a nonexclusive safe harbor from the definition of investment company for certain programs under which investment advisory services are provided to clients ("investment advisory programs"). The Commission also is proposing new Form N–3a4 [17 CFR 274.222] under the Investment Company Act, which would be filed by sponsors of investment advisory programs that intend to rely on rule 3a–4. Finally, the Commission is requesting comment with respect to certain issues that investment advisory programs raise under the Investment Advisers Act of 1940 (the "Advisers Act").

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Executive Summary

The Commission is publishing for public comment revised proposed rule 3a–4 under the Investment Company Act to provide a nonexclusive safe harbor from the definition of investment company for certain investment advisory programs. Investment advisory programs typically are designed to provide the same or similar professional portfolio management services on a discretionary basis to a large number of individual clients.

Revised proposed rule 3a–4 would exclude any investment advisory program from the definition of investment company provided that the program is organized and operated in compliance with the rule's conditions.[1] The revised proposed rule would require that: (i) Each client's account be managed on the basis of the client's financial situation, investment objectives, and instructions; (ii) the sponsor of the program obtain information from each client that is necessary to manage the client's account individually; (iii) the sponsor and portfolio manager be reasonably available to consult with clients; (iv) each client have the ability to impose reasonable restrictions on the management of the account; (v) each client be provided with a quarterly statement containing a description of all activity in the client's account; (vi) each client retain the indicia of ownership of all securities and funds in the account; (vii) the sponsor establish and effect written procedures that are reasonably designed to ensure that each of the conditions of rule 3a–4 is met; (viii) if the sponsor designates another person to perform certain obligations under the rule, the sponsor obtain from that person a written agreement to perform those obligations; (ix) the sponsor maintain and preserve the policies, procedures, agreements and other documents relating to the program in the manner set forth in the rule; and (x) the sponsor furnish to the Commission upon demand copies of specified documents. The conditions of the revised proposed rule are based on the conditions of a previously proposed rule, as modified and interpreted in a series of no-action letters issued by the Commission staff over the past thirteen years.

Programs that are organized and operated in a manner consistent with the rule would not be required to register under the Investment Company Act or be subject to that Act's provisions. The rule is intended to be a nonexclusive safe harbor; it is not intended to create any presumption about a program that is not organized and operated in compliance with the rule.

The Commission also is proposing Form N–3a4 under the Investment

[1] If revised proposed rule 3a–4 is adopted, interests in investment advisory programs that are organized and operated in compliance with the conditions of the rule would not require registration under section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

Company Act. Revised proposed rule 3a–4 would require Form N–3a4 to be filed by sponsors of programs intending to rely on the rule.

Finally, the Commission is requesting comment with respect to the application of certain provisions of the Advisers Act to investment advisers participating in investment advisory programs. These comments will be considered in the preparation of an interpretive release dealing with certain issues raised under the Advisers Act by investment advisory programs.

I. Background

In recent years, there has been a proliferation of investment advisory programs that typically are designed to provide professional portfolio management services to a large number of individual clients. These programs have historically been marketed to clients who are investing an amount of money less than the amount otherwise required by portfolio managers but more than the minimum account size of most mutual funds.

Investment advisory programs typically are organized and administered by a sponsor, which provides, or arranges for the provision of, asset allocation advice and administrative services.[2] In some programs, the sponsor or its employees also provide portfolio management services, including the selection of particular securities, to the program's clients. In other programs, the sponsor selects, or provides advice to clients regarding the selection of, a portfolio manager (which may or may not be affiliated with the sponsor).[3] In these programs, the sponsor generally is responsible for continuously monitoring the portfolio manager selected and its management of client accounts. The sponsor, rather than the portfolio manager, often serves as the primary contact for the client in connection with the program.[4] The sponsor and the portfolio managers usually meet the definition of "investment adviser" under the Advisers Act[5] and are required to register under that Act,[6] unless they are excepted from the definition of investment adviser[7] or exempted from registration.[8]

Included among these investment advisory programs are those commonly referred to as "wrap fee programs." In a wrap fee program, the client is typically provided with portfolio management, execution of transactions, asset allocation, and administrative services for a single fee based on assets under management.[9] As of year-end 1994, assets in wrap fee programs totaled approximately $116.8 billion, an increase of 42 percent over a two-year period.[10]

Under wrap fee and other investment advisory programs, a client's account typically is managed on a discretionary basis in accordance with pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially the same securities in their accounts. In light of this similarity of management, some of these investment advisory programs meet the definition of investment company under the Investment Company Act, and can be deemed to be issuing securities for purposes of the Securities Act of 1933 ("Securities Act").[11]

Section 3(a)(1) of the Investment Company Act defines the term investment company generally to include any "issuer" which is engaged primarily in the business of investing, reinvesting, or trading in securities.[12] The definition of issuer includes any organized group of persons, whether or not incorporated, that issues or proposes to issue any security.[13] An investment advisory program could be considered to be an issuer because the client accounts in the program, taken together, could be considered to be an organized group of persons.[14] Investors in the program could be viewed as purchasing securities in the form of investment contracts.[15] If an investment advisory

[2] The sponsor is often a broker-dealer or mutual fund adviser or, in some instances, a bank or money management firm. See, *e.g.*, Wall Street Preferred Money Managers, Inc. (pub. avail. Apr. 10, 1992) (broker-dealer); Strategic Advisers Inc. (pub. avail. Dec. 13, 1988) (mutual fund adviser); Atlantic Bank of New York (pub. avail. June 7, 1991) (bank). The sponsor also may execute some or all of the transactions in client accounts.

[3] More than one portfolio manager may manage the client's assets, depending on the program, the client's investment objectives, and the size of the client's account. *See, e.g.*, Westfield Consultants Group (pub. avail. Dec. 13, 1991); Rauscher Pierce Refsnes, Inc. (pub. avail. Apr. 10, 1992); Wall Street Preferred Money Managers, Inc., *supra* note .

[4] Some investment advisory programs, however, are marketed by the sponsor through unaffiliated investment advisers, such as small financial planners. In some of these programs, the unaffiliated investment adviser rather than the sponsor may serve as the primary contact for its clients that participate in the program. *See, e.g.*, Westfield Consultants Group, *supra* note .

[5] 15 U.S.C. 80b-1 *et seq.*

[6] Section 203(a) of the Advisers Act (15 U.S.C. 80b–3(a)) requires any person who meets the definition of investment adviser and is not otherwise exempt from registration to register with the Commission. Section 202(a)(11) of the Advisers Act (15 U.S.C. 80b–2(a)(11)) defines "investment adviser" as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities . . . ."

[7] See section 202(a)(11)(A)–(F) of the Advisers Act (15 U.S.C. 80b–2(a)(11)(A)–(F)) (persons excepted from the definition of investment adviser). A sponsor of an investment advisory program that is a broker-dealer or a registered representative of a broker-dealer generally cannot rely on the exception from the definition of investment adviser for broker-dealers in section 202(a)(11)(C) of the Advisers Act. *See, e.g.*, National Regulatory Services, Inc. (pub. avail. Dec. 2, 1992). That exception is available only to a broker-dealer that provides investment advice that is "solely incidental" to its brokerage business and that does not receive special compensation for the investment advice. Id. The staff is of the view that an investment advisory program generally is not incidental to a sponsor's broker-dealer business and, at least in a wrap fee program, the sponsor's portion of the wrap fee is special compensation. *Id.*

[8] *See* section 203(b) of the Advisers Act (15 U.S.C. 80b-3(b)) (persons exempted from registration). Unlike a person excepted from the definition of investment adviser, a person that meets the definition but is exempted from registration remains subject to the Advisers Act's antifraud provision, section 206 (15 U.S.C. 80b–6). The exemption from registration provided in section 203(b)(3) of the Advisers Act would not be available as a general matter to the sponsor or portfolio manager of an investment advisory program because participation in the program would cause the sponsor or portfolio manager to be holding itself out to the public as an investment adviser. *See, e.g.*, Resource Bank & Trust (pub. avail. Mar. 29, 1991).

[9] *See* paragraph (g)(4) of rule 204–3 under the Advisers Act (17 CFR 275.204–3(g)(4)) (defining wrap fee program for purposes of wrap fee brochure requirement).

[10] The Cerulli Report, The State of the Wrap Account Industry 3 (1995). According to this report, assets in mutual fund wrap programs, also called mutual fund asset allocation programs, represented 11% of total assets in wrap fee programs as of year-end 1994. These programs differ from traditional wrap fee programs, in part, in that a client's assets are allocated only among specified mutual funds.

[11] 15 U.S.C. 77a *et seq.* See In the Matter of Clarke Lanzen Skalla Investment Firm, Inc., Investment Company Act Release No. 21140 (June 16, 1995); *SEC* v. *First National City Bank*, Litigation Release No. 4534 [1969–1970 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92592 (Feb. 6, 1970).

[12] 15 U.S.C. 80a–3(a)(1).

[13] Section 2(a)(22) of the Investment Company Act defines issuer generally to include any person who issues any security (15 U.S.C. 80a–2(a)(22)). Under section 2(a)(28), a person includes a company, and under section 2(a)(8), a company includes any organized group of persons, whether incorporated or not (15 U.S.C. 80a–2(a)(28), 2(a)(8)).

[14] The accounts managed by a particular portfolio manager also can be considered an organized group of persons under certain circumstances. The legislative history of the Investment Company Act explained that one type of investment company involves "an agency relationship between the individual contributors to the fund and the management upon whom they confer substantially a power of attorney to act as agent in the investment of the moneys contributed. The group of individual investors is not a legal entity but rather constitutes in essence a combination of distinct individual interests." H.R. Doc. No. 707, 75th Cong., 3rd Sess. 24 (1939). In *Prudential Insurance Co. of America* v. *SEC*, the court, citing this legislative history, found that an organized group of persons does not refer only to identifiable business entities. 326 F.2d 383 (3rd Cir.), *cert. denied*, 377 U.S. 953 (1964).

[15] The definition of security in both section 2(a)(36) of the Investment Company Act (15 U.S.C.

Continued

program is deemed to be an "issuer," it also would be deemed to be an investment company because it is engaged in the business of investing, reinvesting, or trading in securities.

The status of investment advisory programs under the Investment Company Act and the Securities Act has been a subject of debate for twenty-five years. In 1972, the Commission established the Advisory Committee on Investment Management Services for Individual Investors ("Advisory Committee") to assist the Commission in developing policies regarding these programs.[16] The Advisory Committee published a report generally concluding that an investment advisory program should not be required to register under the Investment Company Act as long as the program's clients maintain all indicia of ownership of the securities in their accounts, thereby avoiding the "pooling" of client assets.[17]

In 1980, the Commission proposed rule 3a–4 under the Investment Company Act, which would have provided a safe harbor from the definition of investment company for investment advisory programs meeting the conditions of the rule.[18] The proposed rule would have required that: (i) The client receive continuous advice based on its individual needs; (ii) the persons authorized to make investment decisions have significant contact with the client, as described in the rule; (iii) each client maintain all indicia of ownership of the securities in its account; and (iv) each client have the opportunity and authority to instruct the person managing its account to refrain from purchasing particular securities that otherwise might be purchased. The Commission expressed the view that when an investment manager provides each client with individualized treatment, the likelihood of a common enterprise existing among a group of advisory clients is substantially reduced and no investment company is created.[19]

Commenters generally opposed the proposed rule, arguing, among other things, that the rule's conditions were burdensome, would cause unnecessary changes in industry practice, and were too detailed for purposes of a safe harbor rule.[20] In contrast, one commenter argued that the proposed rule would have permitted programs that are *de facto* investment companies to be excluded from regulation under the Investment Company Act merely by meeting "mechanistic and ritualistic conditions," the performance of which is not indicative of individualized investment advice being provided.[21] The proposed rule was never adopted.

Since the proposal of rule 3a–4, the Division of Investment Management ("Division") has responded to numerous inquiries with respect to the status of wrap fee and other types of investment advisory programs under the Investment Company Act. The Division has issued over 20 letters to persons requesting assurance that the Division would not recommend that the Commission bring enforcement action with respect to investment advisory programs that are not registered under the Investment Company Act (the "no-action letters").[22] Each of these letters was conditioned on representations that were based primarily on the terms of proposed rule 3a–4.[23]

II. Discussion

The investment advisory program industry has developed and matured since the original proposal of rule 3a–4 in 1980. During this time period, the Commission has acquired substantial experience with the organization and operation of investment advisory programs. This experience has come from the review of numerous requests for no-action relief, as well as from examinations of sponsors and other registered investment advisers that are involved with operating these programs. For many of these programs, registration and regulation under the Investment Company Act would not appear to be necessary.[24] Nevertheless, that the law in this area has been defined and redefined principally through a series of no-action letters has created some uncertainty regarding the status of these programs under the federal securities laws. While counsel can (and frequently does) offer advice and issue opinions based on the no-action letters, those letters do not provide the same degree of certainty that would be provided by a Commission rule and may not be as readily accessible. The Commission is therefore publishing for comment revised proposed rule 3a–4 to provide a regulatory safe harbor from investment company regulation for programs that satisfy certain conditions. The Commission also is proposing new Form N–3a4, which would be filed with the Commission by sponsors of

80a–2(a)(36)) and section 2(1) of the Securities Act (15 U.S.C. 77b(1)) includes an "investment contract." The Supreme Court, in *SEC v. W.J. Howey Co.*, defined an investment contract for purposes of the Securities Act as a scheme that "involves an investment of money in a common enterprise with profits to come solely from the efforts of others." 328 U.S. 293, 301 (1946). The Commission has taken the view that an investment advisory program could satisfy the common enterprise element of the *Howey* test if the accounts are discretionary, the investors receive the same or substantially overlapping investment advice, and the investment advice is not "individualized." *See* Individualized Investment Management Services, Investment Company Act Release No. 11391 (Oct. 10, 1980), 45 FR 69479 (Oct. 21, 1980) ("Release 11391"). *See also* In the Matter of Clarke Lanzen Skalla Investment Firm Inc., *supra* note ; SEC v. First National City Bank, *supra* note.

[16] The Advisory Committee was established after the Commission instituted an enforcement action against an investment adviser and broker-dealer for operating an unregistered investment company in the form of an investment advisory program. While the program was advertised as offering individualized advice, the adviser invested client funds in a virtually identical manner and made investment decisions in a generally uniform manner to all clients. SEC v. First National City Bank, *supra* note . The Division subsequently denied no-action relief to similar investment advisory programs. *See, e.g.*, Wheat & Co., Inc. (pub. avail. July 9, 1971); Finanswar America/Investments, Inc. (pub. avail. Apr. 26, 1971); Jacobs Persinger & Parker (pub. avail. Mar. 8, 1971).

[17] Advisory Committee on Investment Management Services for Individual Investors, Small Account Investment Management Services (Jan. 1973). The Advisory Committee also concluded that the interests in the program (*i.e.*, the client accounts) should not be required to be registered as securities under the Securities Act if the program provides each client with individualized treatment.

[18] See Release 11391, *supra* note . Release 11391 also stated that the Commission's Division of Corporation Finance had indicated that if rule 3a–4 was adopted, that Division would not recommend that the Commission take enforcement action under the Securities Act with respect to the interests in an investment advisory program operated in accordance with the proposed rule's requirements. *Id.* at n.15.

[19] *Id.* at note and accompanying text. Although the statements in the Release 11391 focused on the necessity for each client to be provided with individualized treatment, the proposed rule also would have included conditions designed to avoid the "pooling" of client assets.

[20] E.g., Letter from the American Bar Association to George A. Fitzsimmons, Secretary, SEC 1–2, 4 (Jan. 9, 1981), File No. S7–854; Letter from the Investment Counsel Association of America, Inc. to George A. Fitzsimmons, Secretary, SEC 3–4 (Jan. 9, 1981), File No. S7–854; Letter from Neuberger and Berman to George A. Fitzsimmons, Secretary, SEC 2 (Jan. 12, 1981), File No. S7–854.

[21] Letter from the Investment Company Institute to George A. Fitzsimmons, Secretary, SEC 2, 4 (Jan. 9, 1981), File No. S7–854. This commenter also pointed out that the proposed rule would have permitted commercial banks, which are excepted from regulation under the Advisers Act, to sponsor investment advisory programs without being subject to the Advisers Act's prohibitions against conflicts of interest, the Act's brochure requirements, and inspection by Commission staff. Id. at 2.

[22] In each case, the Division of Corporation Finance also has granted no-action relief with respect to registration of interests in the programs under the Securities Act.

[23] *See, e.g.*, Wall Street Preferred Money Managers, Inc., *supra* note ; Rauscher Pierce Refsnes, Inc., supra note .

[24] The Commission, however, recently brought an enforcement action against a sponsor of an investment advisory program that was operating as an unregistered investment company. In the Matter of Clarke Lanzen Skalla Investment Firm, Inc., supra note .

investment advisory programs intending to rely on rule 3a–4.[25]

A. Revised Proposed Rule 3a–4

Revised proposed rule 3a–4 would provide a nonexclusive safe harbor from the definition of investment company for investment advisory programs that are organized and operated in a manner consistent with the rule's conditions.[26] The revised proposed rule would include a number of conditions intended to ensure that clients in programs that rely on the rule receive individualized treatment. While the Commission believes that an investment advisory program that meets the rule's conditions need not be regulated as an investment company, the Commission acknowledges that there may be investment advisory programs that do not comply with all of the rule's conditions and yet also should not be regulated as investment companies. Thus, revised proposed rule 3a–4 is intended to be a nonexclusive safe harbor, and is not intended to create any presumption about a program that is not organized and operated in compliance with the rule's requirements.[27]

1. Role of the Sponsor

Generally, the rule would require the "sponsor" of the program or another person designated by the sponsor to perform the duties and responsibilities set forth in the rule. Under paragraph (b), "sponsor" would be defined as any person who receives compensation for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program. This definition is the same as the definition of sponsor used in paragraph (f) of rule 204–3 under the Advisers Act, which sets forth a separate brochure requirement for sponsors of wrap fee programs.[28] The definition of sponsor is broad, and, in some investment advisory programs, more than one person performing services for the program may meet the definition. Accordingly, paragraph (b) would provide that if a program has more than one sponsor, the sponsors must designate one person as the principal sponsor, and that person would be responsible for carrying out the sponsor's duties and responsibilities under the rule.[29]

2. Individualized Treatment

Revised proposed rule 3a–4 would contain four provisions that are intended to ensure that clients of investment advisory programs that are organized and operated in reliance on the rule receive individualized treatment. These provisions are based on provisions of rule 3a–4 as originally proposed, as those conditions were applied in the no-action letters.

i. Management of Client Accounts. Paragraph (a)(1) would require that each client's account be managed on the basis of the client's financial situation, investment objectives, and instructions.[30] This paragraph is derived from a provision in the originally proposed rule that would have required each client to be furnished with continuous advice as to the investment of funds on the basis of the client's individual needs.[31]

Paragraph (a)(1) is intended to delineate one of the key differences between clients of investment advisers and investors in investment companies. Each client of an investment adviser typically is provided with individualized advice regarding the management of the client's account that is based on the client's financial situation and investment objectives. The investment adviser of an investment company, on the other hand, need not consider the individual needs of the company's shareholders when making investment decisions regarding the company's portfolio, and has no obligation to ensure that each security purchased for the company's portfolio is an appropriate investment for each shareholder. Thus, the clients of an investment advisory program complying with paragraph (a)(1) would receive individualized advice of a type not typically provided to investment company shareholders.

Unlike the originally proposed rule, paragraph (a)(1) of the revised proposed rule would not require a portfolio manager to make separate determinations regarding the appropriateness of each transaction for each client prior to effecting the transaction.[32] The revised proposed rule also would modify the Commission's prior view that the use of model portfolios is "presumptively inconsistent with individualized treatment."[33] The Commission believes that an investment advisory program in which clients with similar investment objectives hold substantially the same securities in their accounts in accordance with the portfolio manager's model does not necessarily indicate that the clients in the program have not received individualized treatment, particularly if the program is operated in a manner consistent with revised proposed rule 3a–4.[34]

[25] The Commission previously has adopted amendments to rule 204–3 (17 CFR 275.204–3) and Form ADV under the Advisers Act to require sponsors of wrap fee programs to provide prospective clients of these programs with specified information. Disclosure by Investment Advisers Act Regarding Wrap Fee Programs, Investment Advisers Release No. 1411 (Apr. 19, 1994), 59 FR 21657 (Apr. 26, 1994).

[26] If revised proposed rule 3a–4 is adopted, interests in investment advisory programs that are organized and operated in compliance with the conditions of the rule would not require registration under the Securities Act. See Preliminary Note to revised proposed rule 3a–4.

[27] *Id.* In addition, adoption of revised proposed rule 3a–4 would not affect the status of no-action letters previously issued by the Division with respect to investment advisory programs. Therefore, investment advisory programs that operate in a manner consistent with these letters would not be required to register under the Investment Company Act. If rule 3a–4 is adopted, the Division as a general matter will not consider requests for no-action or exemptive relief with respect to programs that do not comply with the rule.

[28] The sponsor of an investment advisory program usually is required to register under the Advisers Act and comply with the substantive provisions of that Act and the rules thereunder. *See supra* notes—and accompanying text. Revised proposed rule 3a–4 would be available to any sponsor of investment advisory programs, even if the sponsor is excepted from the definition of investment adviser under the Act (e.g., banks) or is exempt from registration. Persons wishing to rely on the revised proposed rule, however, would be required, among other things, regardless of their status under the Advisers Act, to furnish certain specified records to the Commission upon demand. *See infra* section II.A.4. (Written Procedures and Agreements).

[29] Paragraph (b) would not specify which sponsor must be designated as the principal sponsor. However, the principal sponsor would be responsible for carrying out the duties of the sponsor under the rule, which would include establishing and effecting written procedures and entering into agreements with other persons. *See infra* section II.A.4. (Written Procedures and Agreements). Typically the principal sponsor would be the person or entity that is responsible for the overall organization and operation of the program. The person designated as the principal sponsor would be the person whose name appears on the program's Form N–3a4. *See infra* section II.B. (Form N–3a4).

[30] Under paragraph (a)(1), a sponsor or portfolio manager would have to comply with any instructions given by a client concerning the management of the client's account in an investment advisory program, unless the instructions are so extensive or burdensome to the management of the account as to be unreasonable, or the sponsor or portfolio manager believes that the instructions are inappropriate for the client. *See infra* section II.A.2.iii. (Reasonable Management Restrictions). In these cases, the sponsor or portfolio manager must notify the client that, unless the instructions are modified, the client will not be permitted to participate in the program.

[31] *See* proposed paragraph (a)(1).

[32] See Release 11391, *supra* note 15, at text accompanying n.18.

[33] *See id.*, at text following n.18.

[34] The Division has issued no-action letters with respect to programs that allocate client assets in accordance with computerized investment allocation models. *See, e.g.*, Qualivest Capital Management Inc. (pub. avail. July 30, 1990) (sponsor will use computerized investment allocation model to allocate and reallocate client assets among money managers); Atlantic Bank of

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ii. Client Contact—Initial and Ongoing

Paragraph (a)(2) would contain four requirements that generally are intended to ensure that the sponsor has sufficient contact with each client to be able to obtain the information necessary to manage the client's account in accordance with paragraph (a)(1). Paragraph (a)(2)(i) would require that, at the opening of the account, the sponsor or a person designated by the sponsor[35] obtain information from the client concerning the client's financial situation and investment objectives. The client must at that time also be asked to provide specific instructions, if any, concerning the management of the account. The provision permits the sponsor (or its designee) to obtain this information through interviews (either in person or by telephone) and/or through questionnaires that clients must complete and return prior to the opening of the account.[36]

Paragraph (a)(2)(ii) would require that, at least annually, the sponsor or a person designated by the sponsor contact the client to determine whether there have been any changes in the client's financial situation, investment objectives, or instructions. This contact need not be made in any particular way and could be made, for example, in person, by telephone, or by letter requesting the client to provide the information.[37] The provision would require sponsors to request current information about clients of the program that is necessary for the individualized management of a client's account.

Paragraph (a)(2)(iii) would require that, at least quarterly, the sponsor or a person designated by the sponsor notify the client in writing that the sponsor or designated person should be contacted if there have been any changes in the client's financial situation, investment objectives or instructions.[38] The paragraph also requires the sponsor or designated person to provide the client with a means in which such contact is to be made (e.g., by giving a telephone number or an address). Like paragraph (a)(2)(ii), this provision is intended to provide a procedure by which sponsors can obtain current information about clients of the program. However, unlike paragraph (a)(2)(ii), paragraph (a)(2)(iii) would require the sponsor or designated person only to remind the client to contact the sponsor or designated person if any changes have occurred in the client's financial situation, investment objectives, or instructions. The client would be responsible for contacting the sponsor or designated person if changes had occurred.[39]

Paragraphs (a)(2)(i)-(iii) would place the obligations to contact or notify the client on the sponsor or a person designated by the sponsor. In contrast, the originally proposed rule would have required the portfolio manager to contact the client.[40] The revised proposed rule recognizes that, in many investment advisory programs, the sponsor is the person primarily responsible for client contact.[41] The revised proposed rule, however, would permit a person other than the sponsor to fulfill these obligations, so long as the sponsor specifically designated the person to do so.[42]

Regardless of the person responsible for contacting the client and obtaining the information necessary to manage the client's account, the Commission expects that, in most cases, the information obtained would be provided to the client's portfolio manager. If such information is not provided to the portfolio manager, the manager may not be able to manage the client's account on the basis of the client's financial situation, investment objectives, and instructions, as would be required under paragraph (a)(1). The Commission, however, requests comment whether the sponsor or designated person should be explicitly required by rule 3a-4 to convey this information to the portfolio manager.

Paragraph (a)(2)(iv) would require the sponsor and the client's portfolio manager to be reasonably available to consult with the client concerning the management of the client's account. This provision is intended to provide for reasonable client access to the sponsor and the portfolio manager to ask questions or to seek additional information about an investment advisory program. Even if a program's sponsor serves as the primary contact for clients in the program, a procedure must be provided by which the client has reasonable access to the portfolio manager.[43] Individualized treatment would not be provided if a program's procedures do not provide an opportunity for reasonable availability of the portfolio manager.[44]

New York, *supra* note 2 (sponsor's asset allocation recommendation will be based on client's investment needs and sponsor's model portfolios).

[35] *See infra* note 63.

[36] *See, e.g.*, Rauscher Pierce Refsnes, Inc., *supra* note 3 (prospective client will be interviewed and client will complete questionnaire during interview); Strategic Advisers, Inc., *supra* note 2 (prospective client will be interviewed over the telephone); Manning & Napier Advisors, Inc. (Apr. 24, 1990) (prospective client initially will submit written questionnaire followed by interview over telephone).

[37] The Commission recognizes that in some circumstances the sponsor or designated person may be unable to reach the client. The Commission would not take any enforcement action under this provision if the sponsor or designated person is unsuccessful in obtaining this information from the client, provided the sponsor or designated person makes reasonable efforts to contact the client and documents these efforts. Sponsors may wish to include the procedures for contacting clients and documenting these efforts in the procedures enacted pursuant to paragraph (a)(6)(i) of the rule. *See infra* section II.A.4. (Written Procedures and Agreements).

[38] The notice need not be included as a separate piece of paper, but could be included on another mailing sent to the client. For example, the notification could appear in the quarterly statement that would be sent to clients in accordance with proposed paragraph (a)(4). *See infra* section II.A.2.iv. (Quarterly Account Statements). The notice also could be delivered to the client by e-mail or other electronic means consented to by the client.

[39] *See, e.g.*, Scudder, Stevens & Clark Ltd. (pub. avail Aug. 17, 1988) (quarterly statement will include a reminder that client should contract sponsor if client needs or objectives change); Qualivest Capital Management, Inc. *supra* note 34 (client will be sent reminders to notify sponsor of any change in client's financial situation or investment objectives).

[40] Paragraph (b) of proposed rule 3a-4.

[41] *See, e.g.*, Strategic Advisers, Inc., *supra* note (sponsor primarily responsible); Wall Street Preferred Money Managers, Inc., *supra* note (same).

[42] The revised proposed rule would permit persons such as portfolio managers or advisers that refer clients to the program to be primarily responsible for client contact. Paragraph (a)(6)(i) would require the sponsor to obtain from each designated person an agreement in writing to perform these duties. In addition, paragraph (a)(6)(i) would require the sponsor to establish written procedures that are reasonably designed to ensure that each of the conditions of the rule is met. The procedures might, for example, describe in detail the manner in which paragraphs (a)(2)(i)-(iii) are to be effectuated, specify the persons primarily responsible for client contact, and include provisions designed to monitor and record the actions taken by such persons. *See infra* section II.A.4. (Written Procedures and Agreements).

[43] *See, e.g.*, Rauscher Pierce Refsnes, Inc., *supra* note 3 (the portfolio manager, when necessary, will be available to discuss more complex questions regarding the client's account); Westfield Consultants Group, *supra* note 3 (client will be furnished the name and direct telephone number of manager, who will be reasonably available during business hours). In one no-action request, a representation was made that the client would be able to contact an unaffiliated adviser, the sponsor or the portfolio manager to obtain information or assistance during normal business hours, but the client might be charged hourly fees whenever the client requests the services of investment officers to answer specific questions regarding investment strategies with respect to its account. Manning & Napier Advisors, Inc., *supra* note 36. Sponsors of programs complying with revised proposed rule 3a-4 may impose similar procedures, provided the client is informed prior to entering the program that such fees may be charged.

[44] Whether a sponsor or portfolio manager is "reasonably available" would depend on an analysis of the facts and circumstances. The procedures required under paragraph (a)(6)(i) may include provisions detailing the manner in which the sponsor and the portfolio manager intend to meet this requirement. Such procedures could, for example, describe the manner in which the sponsor and portfolio manager will be reasonably available to clients while still allowing for time to perform their duties. However, a sponsor or portfolio manager would not be "reasonably available," for example, if a client's contact with the sponsor or portfolio manager were limited to viewing or listening to recorded interviews.

iii. Reasonable Management Restrictions

Paragraph (a)(3) would require each client to have the ability to impose reasonable restrictions on the management of its account. These restrictions could include, for example, the designation of particular securities or types of securities that should not be purchased for the client's account.

The originally proposed rule would have required that each client have the ability to instruct its portfolio manager to refrain from purchasing particular securities that otherwise might be purchased.[45] Under the revised proposal, the client must be able to impose reasonable restrictions on the management of its account. The revised proposal specifically states that restrictions may include prohibitions with respect to the purchase or sale of particular securities or types of securities.

Whether a particular restriction is reasonable would depend on an analysis of relevant facts and circumstances, including the nature of the restriction and the portfolio manager's investment strategy.[46] For example, the exclusion of individual stocks, stocks of an industry group, or stocks from a specific country generally would be considered to be reasonable restrictions. A restriction would not be unreasonable simply because it placed administrative burdens on the manager or could affect the performance of the accounts. Nonetheless, a restriction would be unreasonable if it was clearly contradictory to the adviser's investment philosophy or strategies. For example, it may be unreasonable for a client to instruct a portfolio manager whose investment strategy is to achieve long-term capital appreciation through investments in equity securities to purchase only short-term debt securities. Restrictions also may be deemed unreasonable if the client changes the restrictions on the account with such frequency that it interferes with the orderly management of the account. This may be true even if each individual restriction, taken alone, would be reasonable.[47]

The ability of clients of a program to place restrictions is a critical factor in determining whether individualized treatment is provided under that program. This ability is a crucial difference between a client receiving investment advisory services and an investor in an investment company.[48]

iv. Quarterly Account Statements

Paragraph (a)(4) would require that each client be provided, on a quarterly basis, with a statement describing all activity in the client's account during the preceding quarter, including all transactions made on behalf of the account, all contributions and withdrawals made by the client, and all fees and expenses charged to the account. The statement also would be required to include the value of the account at both the beginning and end of the quarter. The originally proposed rule also would have required quarterly statements, but did not specify the information to be included in such statements.[49]

v. Minimum Account Size

Like the proposed rule, the revised proposed rule would not specify a minimum size for client accounts in the program, leaving the account size for each program up to the sponsor of the program.[50] The conditions of the revised proposed rule should be sufficient to ensure individualized treatment. In addition, innovations in computer technology may permit individualized treatment to be provided to clients, including those with relatively small accounts, with greater efficiency and minimal costs. A requirement for a minimum account size also could effectively deny certain investors the opportunity to participate in investment advisory programs that may be appropriate for them. Nonetheless, providing individualized advice to a large number of small accounts may be so costly and time-consuming as to render individualized treatment impracticable.

The Commission requests comment whether a minimum account size should be required. Commenters favoring this requirement should specify the minimum size that they believe that would be most appropriate (*e.g.*, $50,000, $100,000, $200,000), and address whether the minimum amount should be required to be met only at the time the account is opened, or whether the minimum or some lesser amount should be required to be maintained while the client remains in the program. Commenters favoring a requirement that a client maintain a minimum account size while in the program also should comment whether the client should be removed from the program if the account size fell below the initial minimum due to investment loss rather than withdrawal. In addition, commenters favoring a minimum size requirement should address whether the minimum should apply to the client's aggregate investment in the program, or to each account managed by a portfolio manager. Commenters should also address whether any or all of the conditions of the revised proposed rule would be rendered unnecessary by a minimum account size requirement. Finally, commenters should address whether programs with small account minimums should be subject to additional conditions not imposed on programs with larger minimums, and if so, what those conditions should be.

3. Indicia of Ownership

Paragraph (a)(5) would require that a client in an investment advisory program retain certain indicia of ownership of all securities and funds in the client's account. The paragraph lists specific attributes of ownership that the client must retain.

The proposed rule would have required clients to maintain all indicia of ownership of the funds in their accounts, and specified certain requisite attributes of ownership.[51] The revised proposed rule would not require the client to maintain all indicia of ownership, but would require the client

[45] Proposed paragraph (d). The no-action letters involving investment advisory programs typically have included representations that were based on the proposed provision. *See, e.g.*, Rauscher Pierce Refsnes, Inc, *supra* note; 3.

[46] The procedures required by paragraph (a)(6)(i) may define what restrictions are considered unreasonable. To the extent that the "unreasonableness" of restrictions is a matter of judgment, the procedures, for example, may identify the person or persons responsible for this determination and specify the factors to be considered by those persons. *See infra* section II.A.4. (Written Procedures and Agreements).

[47] If particular restrictions sought to be imposed by a client are found to be unreasonable, the client should be notified and given a chance to restate the restriction more reasonably. If unable or unwilling to do so, the client may be removed from the program.

[48] Under paragraph (a)(2), a sponsor or person designated by the sponsor would be required to ask the client for instructions regarding the management of its account. The request for instructions is intended, in part, to give the client the opportunity to convey any investment restrictions it wishes to impose on the management of its account.

[49] Proposed paragraph (b)(3). A number of the no-action letters have specified the content of the quarterly reports. *See* Westfield Consultants Group, *supra* note 2 (quarterly statements will contain a review and analysis of client account); Strategic Advisers, Inc., *supra* note 2 (quarterly statements will contain a description of investments); Republic National Bank of New York (pub. avail. Aug. 23, 1982) (quarterly statements will show holdings, value and change in value since preceding quarter).

[50] The Division has granted no-action relief to investment advisory programs with varying minimum account sizes. *See, e.g.*, Qualivest Capital Management, Inc., *supra* note 34 ($5 million); Atlantic Bank of New York, *supra* note 2 ($500,000); Wall Street Preferred Money Managers, Inc., *supra* note 2 ($100,000); Strategic Advisers, Inc., *supra* note 2 ($50,000).

[51] Proposed paragraph (c).

to maintain, at a minimum, those indicia listed. The Commission believes that these specific indicia of ownership, which are based on those represented as being retained by clients of programs described in the no-action letters, provide clients with the ability to act as owners of their securities.[52]

i. Ability to Withdraw and Pledge Securities

Paragraph (a)(5)(i) would require that the clients be able to withdraw securities or cash from their accounts. Paragraph (a)(5)(ii) also would specify that clients must be able to pledge the securities in their accounts.[53] Under some circumstances, programs may require a client to withdraw the securities from his or her account before using them as collateral. Such a requirement would be consistent with the rule.

ii. Right to Vote Securities

Paragraph (a)(5)(iii) would require that the client have the right to vote the securities in his or her account. Implicit in this requirement is the requirement that the client receive proxies in sufficient time to permit the client to consider how to vote and to submit the proxy. The provision would permit clients to delegate the authority to vote securities to another person, such as the portfolio manager or other fiduciary.[54] However, the client must be permitted to revoke the delegation at any time.[55]

iii. Right to Receive Confirmations and Other Documents

Paragraph (a)(5)(iv) would provide, in part, that the client must have the right to receive in a timely manner confirmations of securities transactions of the type required by rule 10b–10[56] under the Securities Exchange Act of 1934.[57] Proposed rule 3a–4 would have required clients to receive a "notification of each security transaction."[58] In subsequent no-action letters, the Division modified this position, permitting monthly account statements to be provided to clients unless more frequent confirmations were requested.[59]

Under the revised proposal, clients could waive receipt of individual confirmations to the extent the waiver would otherwise be permitted under rule 10b–10. Thus, paragraph (a)(5) effectively would provide a client in an investment advisory program with the option to receive either individual confirmations for each transaction or periodic statements, delivered no less frequently than quarterly, that include the information required by rule 10b–10 with respect to all transactions that occurred within the period covered by the statement.[60]

Paragraph (a)(5)(iv) also would require the client (or the client's agent) to be provided with other documents that the client (or its agent) would receive had the same securities been owned by the client outside the program. These documents may include prospectuses, periodic shareholder reports, proxies, and any other information and disclosure required by applicable laws or regulations.[61]

iv. Rights as Securityholders

Paragraph (a)(5)(v) would require that a client have the right to proceed directly as a securityholder against the issuer of any security in the client's account without having to join any person involved in the operation of the program or any other client of the program as a condition precedent to proceeding against an issuer. This provision, which is based on conditions in several no-action letters,[62] is intended to ensure that the client would have the same rights as any person holding the same securities outside an investment advisory program. The right to proceed against an issuer of securities in a client's account is another important difference between a client of an investment adviser and an investment company shareholder, as the latter generally would not be able to proceed directly against an issuer of securities held by the investment company.

4. Written Procedures and Agreements

Paragraph (a)(6) contains four requirements regarding the establishment of written procedures and agreements covering the operation of the program and the maintenance of records related to these procedures and agreements. These conditions and their purposes are described in more detail below. The Commission, however, is sensitive to imposing undue burdens on sponsors of investment advisory programs. Comment is therefore requested whether any of the conditions discussed below would impose an undue burden on persons relying on the rule, or whether the burden of any condition would outweigh its benefits. Comment is specifically requested whether any of these conditions can be eliminated, consolidated, or otherwise made less burdensome without compromising investor protection.

Paragraph (a)(6)(i) would require the sponsor of the program to establish and effect written policies and procedures that are reasonably designed to ensure that each of the provisions of the rule is implemented. The paragraph also would require that, to the extent that the sponsor designates another person to carry out certain obligations under the rule, the sponsor must obtain from that person an agreement in writing to carry out those obligations. These provisions are designed to require the sponsor to formalize the manner in which it intends to comply with rule 3a–4, and, if the sponsor delegates its responsibilities under the rule, to specifically record the delegation and obtain from the other parties an agreement acknowledging their responsibilities.[63] The requirement that a sponsor establish and effect written procedures detailing compliance with the conditions of rule 3a–4 also is intended to provide the Commission with a readily available source of information regarding the manner in which the rule is being interpreted and applied by the investment advisory industry.

Paragraph (a)(6)(ii)(A) would require the sponsor to maintain and preserve all written policies, procedures and agreements that pertain to the operation of the investment advisory program in its office for as long as it serves as the sponsor of that program.[64] The paragraph also would require the sponsor to maintain and preserve these documents in an easily accessible place for not less than three years after the sponsor ceases to serve as sponsor of the program. Given the importance of these documents, the Commission believes that the documents must be maintained and preserved in the office of the sponsor for as long as the sponsor acts in that capacity, so that they are available for easy reference. These documents also must be retained in an easily accessible place for three years after the sponsor of the program ceases to serve as the sponsor should any questions later arise about the operation of the program.

Paragraph (a)(6)(ii)(B) would require the sponsor or another person designated by the sponsor to maintain and preserve all documents created pursuant to the policies and procedures governing the operation of the program, such as client contracts, client questionnaires, and copies of client statements, in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the document was created. Under this provision, these documents would be required to be maintained and preserved in a manner similar to that required for advisory books and records under paragraph (e)(i) of rule 204–2.[65] Unlike rule 204–2, however, paragraph (a)(6)(ii)(B) would not require the documents to be kept for the first two years in the office of the person creating or receiving the records (i.e., the sponsor). Rather, the paragraph would permit the sponsor to designate another person to maintain and preserve these documents.[66]

Paragraph (a)(6)(iii) would require the sponsor to enter into a written agreement with any person designated to maintain and preserve the books and records pertaining to the program (other than the written policies, procedures and agreements). The paragraph also would require that the agreement include a list of the books and records maintained and preserved by that person and a provision obligating the person maintaining the books and records to provide the sponsor with copies of such books and records within a reasonable time of the sponsor's request.

These requirements are intended to avoid duplicative recordkeeping by allowing the sponsor to designate another person involved in the operation of the investment advisory program to maintain copies of books and records provided that person has a contractual obligation to provide the records to the sponsor upon request. In addition, the requirement that each party's recordkeeping responsibilities be included in the party's agreement with the sponsor would help to ensure that each person is aware of its responsibilities. Finally, since the provision would require that the sponsor be able to request and obtain promptly the books and records maintained by such persons, it effectively would permit the sponsor to monitor more effectively the person's performance of its duties under the contract, and help facilitate Commission examinations.

Paragraph (a)(6)(iv) would require the sponsor to furnish to the Commission upon demand copies of the policies, procedures, all documents created pursuant to the policies and procedures, and the written agreements with other persons involved in the operation of the program. This provision is intended to facilitate Commission examination of investment advisory programs relying on rule 3a–4.

As discussed above, most sponsors of investment advisory programs are required to be registered under the Advisers Act.[67] Thus, these sponsors are already required under section 204 of the Advisers Act to make advisory records available to the Commission upon request.[68] Revised proposed rule 3a–4, however, would be available to all sponsors of investment advisory programs, regardless of their status under the Advisers Act. Accordingly, paragraph (a)(6)(iv) is intended to ensure that the Commission would have access to certain records with respect to investment advisory programs that are sponsored by persons that are not subject to the Advisers Act.

B. Form N–3a4

Paragraph (a)(7) would require any sponsor of an investment advisory program intending to rely on the safe harbor provided in rule 3a–4 to file with the Commission Form N–3a4.[69] Form

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[52] The revised proposed rule would not require the client to be the record owner of the securities held in its account. The Division has taken the position that an investment advisory program would not be deemed to be an investment company solely because securities are held in nominee or street name. The Division reasoned that placing securities in nominee or street name is an administrative mechanism used to record and facilitate the transfer of ownership. In addition, requiring securities to be held in the client's name would be inconsistent with Commission policy of encouraging the holding of securities in nominee name to promote the establishment of centralized clearance and settlement systems and the elimination of certificated securities. UMB Bank, n.a. (pub. avail. Jan. 23, 1995) (investment company securities). *See, e.g.*, Manning & Napier Advisors, Inc., *supra* note 36 (non-investment company securities). The recent enforcement action against Clarke Lanzen Skalla Investment Firm, Inc., in which, among other things, securities purchased on behalf of clients were held in nominee name, was not inconsistent with the Division's position in the UMB Bank no-action letter. *See supra* note 11.

[53] The proposed rule would have required that the client maintain the right to "hypothecate" securities in its account. That term is not included in the revised proposed rule because it is generally considered to be synonymous with "pledge." *See* **Black's Law Dictionary** 669 (5th ed. 1979).

[54] Any such delegation should be contained in the investment advisory agreement or in another document and retained with the records relating to the program. The procedures for delegation may also be specified in the procedures adopted under the rule.

[55] The procedure for such revocation should be described in the procedures for the program. *See infra* section II.A.4. (Written Procedures and Agreements).

[56] 17 CFR 240.10b–10. If a program is structured so that each client's securities transactions are executed by a registered broker-dealer, rule 10b–10 would govern the delivery of confirmations. If client transactions are executed by an entity that is not subject to rule 10b–10, the revised proposed rule would require the delivery of confirmations in the manner required by rule 10b–10, to the same extent as if the transactions were executed by a registered broker-dealer.

[57] 15 U.S.C. 78a *et seq.*

[58] Proposed paragraph (c)(2).

[59] *See, e.g.*, Westfield Consultants Group, *supra* note; Manning & Napier Advisors, Inc., *supra* note; Jefferies & Company (pub. avail. June 16, 1989).

[60] The Commission has taken the view that, for purposes of complying with rule 10b–10, a broker-dealer may provide a person whose account is managed on a discretionary basis by a fiduciary, such as a client in an investment advisory program, with a periodic statement (delivered no less frequently than quarterly) in lieu of the immediate confirmation for each transaction, if the broker-dealer obtains from the person a written agreement stating that the immediate confirmation will be provided to the fiduciary. The periodic statement the broker-dealer sends to the person must contain the same information that could have been in the immediate confirmation for each transaction. Although the person may waive his or her right to the immediate confirmation, the person may not waive his or her right to the periodic statement. Confirmation of Transactions, Securities Exchange Act Release No. 34962, notes 34–36 and accompanying text (Nov. 10, 1994), 59 FR 59612 (Nov. 17, 1994). By reference to rule 10b–10, the revised proposed rule would incorporate this position.

[61] The Commission recently approved a proposed amendment of a rule of the National Association of Securities Dealers, Inc. to permit beneficial owners of stock to designate a registered investment adviser to receive and vote proxies on their behalf. Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Interpretation of the Board of Governors—Forwarding of Proxy and Other Material Under Article III, Section 1 of the NASD Rules of Fair Practice, Securities Exchange Act Release No. 35681 (May 5, 1995), 60 FR 25749 (May 12, 1995).

[62] *E.g.*, Westfield Consultants Group, *supra* note 3; Manning & Napier Advisors, Inc., *supra* note 36; Jefferies & Company, *supra* note 59; Rauscher Pierce Refsnes, Inc., *supra* note 3.

[63] In addition, because the procedures would be reasonably designed to ensure that the provisions of the rule are implemented, sponsors may wish to specify in the procedures the persons other than the principal sponsor that are involved in the operation of the program, and each person's duties. The procedures need not, however, specify each individual by name.

[64] Because an adviser may have more than one office, paragraph (a)(6)(ii)(A) would provide that these records should be kept "in an appropriate office of the sponsor." This language is similar to that used in paragraph (e)(i) of rule 204–2 under the Advisers Act (15 CFR 275.204–2), which sets forth the recordkeeping requirements for investment advisers.

[65] See *supra* note 64. Revised proposed rule 3a–4 would not require the creation of any records other than the policies, procedures, and written agreements if the sponsor designates another person to perform obligations under the revised proposed rule or to maintain and preserve certain books and records. Paragraphs (a)(6)(i), (a)(6)(iii). Paragraph (a)(6)(ii)(B), however, would specify how records that are created pursuant to the policies and procedures (whether or not also required by rule 204–2 under the Advisers Act) must be maintained. If records pertaining to the program are required to be created under rule 204–2, but not under the policies or procedures, those records would be required to be maintained in accordance with paragraph (e) of rule 204–2. See National Regulatory Services, Inc., *supra* note (portfolio manager in an investment advisory program must maintain records of brochure delivery at its office, even if sponsor created such records).

[66] However, as discussed below, the sponsor would be required to enter into a written agreement with the designated person that specifies that documents to be maintained by that person and that copies of such documents would be provided to the sponsor upon request.

[67] *See supra* notes 5–8 and accompanying text.

[68] 15 U.S.C. 80b–4.

[69] In addition, in the event that another person had previously served as principal sponsor of, and

Continued

N–3a4 would notify the Commission of investment advisory programs that are intended to be organized and operated in compliance with the rule's requirements.[70] The form would assist the Commission in monitoring the use of rule 3a–4 and facilitate Commission examination of persons involved in investment advisory programs.

C. Advisers Act Issues Raised by Investment Advisory Programs

Wrap fee and other investment advisory programs raise, in addition to the Investment Company Act issues addressed in this release, a number of issues under the Advisers Act. The Commission expects to publish an interpretive release that would address many of these issues.

In particular, the Commission expects that the release will address the suitability obligations of sponsors and portfolio managers to clients of the investment advisory program, including suitability obligations regarding client participation in the program, the selection of portfolio managers, and the selection of investments. The release will discuss how an adviser's obligation to seek best execution applies in the context of wrap fee programs when brokerage commissions are not charged separately for each transaction. In addition, the interpretive release may discuss the application of the restrictions on principal and agency cross transactions in section 206(3) of the Advisers Act to investment advisory programs, including whether these restrictions apply to transactions with a sponsor that is unaffiliated with the portfolio manager recommending the transactions. Finally, the release may address certain issues unique to programs under which client assets are invested in mutual funds, including the disclosure obligations of investment advisers regarding the various fees associated with these programs.[71]

The release will not be issued until after comments have been received on revised proposed rule 3a–4. This timing would allow the interpretive release to reflect, where appropriate, these comments. Such a time schedule will also permit the consideration of comment from members of the investment advisory program industry regarding the issues expected to be addressed in the interpretive release. Commenters are urged to submit such comments on these and any other issues investment advisory programs raise under the Advisers Act. Comment is specifically requested regarding how investment advisers participating in investment advisory programs currently understand and comply with their Advisers Act obligations. Commenters also are urged to suggest specific factual situations that the release should address.

III. Cost/Benefit Analysis

Revised proposed rule 3a–4 under the Investment Company Act would provide a nonexclusive safe harbor from the definition of investment company for investment advisory programs. Programs that are organized and operated in a manner consistent with the rule's conditions would not be required to register under the Investment Company Act or comply with the Act's substantive requirements. The revised proposed rule is intended to provide guidance to persons operating investment advisory programs regarding the status of these programs under the Investment Company Act, and help to ensure that such programs do not operate as investment companies without clients of the programs benefitting from the Act's protections.

Proposed Form N–3a4 would be filed with the Commission by sponsors of programs intending to rely on rule 3a–4. The proposed form would help the Commission in monitoring the use of rule 3a–4 and facilitate Commission examination of persons involved in these programs.

The Commission anticipates that the cost of compliance with revised proposed rule 3a–4 and the proposed form would be small. In addition, the Commission does not believe that compliance with any of the proposed provisions would be unduly burdensome. Comment is requested, however, on the costs and benefits associated with the revised proposed rule and proposed form. Commenters should submit estimates for any costs and benefits perceived, together with any supporting empirical evidence available.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding revised proposed rule 3a–4 and proposed Form N–3a4. The Analysis notes that the revised proposed rule is intended to provide a nonexclusive safe harbor from the definition of investment company for investment advisory programs organized and operated in compliance with the conditions of the rule, and that the proposed form would be filed with the Commission by sponsors of investment advisory programs intending to rely on the rule. The Analysis explains that the rule is intended to provide guidance regarding the status of investment advisory programs under the Investment Company Act, and that the rule and the form would facilitate Commission examination of persons involved in the operation of a program. The Analysis concludes that the rule would not be overly costly or burdensome to sponsors of investment advisory programs that intend to rely on the safe harbor. A copy of the Initial Regulatory Flexibility Analysis may be obtained from Rochelle Kauffman Plesset, at Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

V. Statutory Authority

The Commission is publishing for public comment revised proposed rule 3a–4 and Form N–3a4 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), –37(a)].

Text of Revised Proposed Rule and Proposed Form

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. By adding § 270.3a–4 to read as follows:

§ 270.3a–4 Status of investment advisory programs.

Note: This section is a nonexclusive safe harbor from the definition of investment company for certain programs that provide investment advisory services to clients. Interests in programs that are organized and operated in compliance with the conditions of § 270.3a–4 also are not required to be registered under section 5 of the Securities Act of 1933 [15 U.S.C. 77e]. The section is not intended, however, to create any presumption about a program that is not organized and operated in compliance with the conditions.

(a) Notwithstanding section 3(a) of the Act [15 U.S.C. 80a–3], any program under which investment advisory services are provided to clients will not be deemed to be an investment company within the meaning of the Act, *provided that:*

(1) Each client's account in the program is managed on the basis of the client's financial situation, investment objectives, and instructions.

(2) (i) At the opening of the account, the sponsor or another person designated by the sponsor obtains information from the client regarding the client's financial situation and investment objectives, and gives the client the opportunity to provide specific instructions concerning the management of the account;

(ii) At least annually, the sponsor or another person designated by the sponsor contacts the client to determine whether there have been any changes in the client's financial situation, investment objectives, or instructions in the preceding year;

(iii) At least quarterly, the sponsor or another person designated by the sponsor notifies the client in writing to contact the sponsor or such other person if there have been any changes in the client's financial situation, investment objectives, or instructions, and provides the client with a means through which such contact is to be made; and

(iv) The sponsor and persons authorized to make investment decisions for the client's account are reasonably available to the client for consultation.

(3) Each client has the ability to impose reasonable restrictions on the management of its account, including the designation of particular securities or types of securities that should not be purchased for the account, or that should be sold if held in the account.

(4) The sponsor or person designated by the sponsor provides each client with a quarterly statement containing a description of all activity in the client's account during the preceding quarter, including all transactions made on behalf of the account, all contributions and withdrawals made by the client, all fees and expenses charged to the account, and the value of the account at the beginning and end of the quarter.

(5) Each client retains indicia of ownership of all securities and funds in the account, including the right to:

(i) Withdraw securities or cash;

(ii) Pledge securities;

(iii) Vote securities, or delegate the authority to vote securities to another person;

(iv) Be provided in a timely manner with confirmations of securities transactions of the type required by § 240.10b–10 of this chapter, and all other documents that would have been provided to the client (or the client's agent) had the client purchased or sold the same securities outside the program; and

(v) Proceed directly as a securityholder against the issuer of any security in the client's account and not be obligated to join any person involved in the operation of the program, or any other client of the program, as a condition precedent to initiating such proceeding.

(6) (i) The sponsor of a program relying on this section must establish and effect written policies and procedures that are reasonably designed to ensure that each of the conditions of this section is met. To the extent that the sponsor designates another person to carry out its obligations under this section, the sponsor must obtain from that person an agreement in writing to carry out those obligations.

(ii) Notwithstanding the requirements of paragraph (e) of § 275.204–2 of this chapter as such requirements would apply to the records set forth in paragraph (a)(6)(ii) of this section:

(A) The sponsor shall maintain and preserve in an appropriate office of the sponsor during the period that it serves as the sponsor of the program, and in an easily accessible place for a period not less than three years after the sponsor ceases to serve in that capacity, all written policies, procedures and agreements required to be established under paragraphs (a)(6)(i) and (a)(6)(iii) of this section; and

(B) The sponsor or another person designated by the sponsor shall maintain and preserve in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the document was created, all documents created pursuant to the policies and procedures (including any client contracts, client questionnaires, and copies of client statements).

(iii) The sponsor shall enter into a written agreement with any person designated by the sponsor to maintain and preserve the books and records pertaining to the program (other than those specified in paragraph (a)(6)(ii)(A) of this section). Such agreement shall include a list of the books and records to be maintained and preserved by that person and a provision that the person will provide the sponsor copies of such books and records within a reasonable time of the sponsor's request.

(iv) The sponsor shall furnish to the Commission upon demand copies of all documents maintained under paragraph (a)(6)(ii) of this section.

(7) The sponsor has filed with the Commission Form N–3a4 [17 CFR 274.222] and any amendments thereto.

(b) As used in this section, the term sponsor refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program. If a program has more than one sponsor, one person shall be designated the principal sponsor, and such person shall comply with the provisions of this section relating to the duties and responsibilities of the sponsor.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29 unless otherwise noted.

4. By adding § 274.222 to subpart C to read as follows:

§ 274.222 Form N–3a4, Notification of reliance on rule 3a–4 under the Investment Company Act.

This form shall be filed with the Commission as required by rule 3a–4 (§ 270.3a–4 of this chapter) by sponsors of investment advisory programs that intend to rely on the safe harbor provided by that rule.

Editorial Note: The text of Form N–3a4 appears in the Appendix to this document and will not appear in the Code of Federal Regulations.

Dated: July 27, 1995.

By the Commission.

Margaret L. McFarland,

Deputy Secretary.

Appendix

Note: The following Appendix will not appear in the Code of Federal Regulations.

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submitted Form N–3a4 with respect to, an investment advisory program, the new principal sponsor would be required to submit an amended Form N–3a4 identifying itself as the new sponsor and specifying the name of the prior principal sponsor.

[70] Paragraph (a)(7) also would require sponsors to file with the Commission any amendments to the form. Thus, proposed Form N–3a4 also would be used to change information included in a prior filing, to notify the Commission that the sponsor no longer intends to operate the program in reliance on the safe harbor, or to notify the Commission that a program operating in reliance on the safe harbor will cease operations.

[71] The recently adopted wrap fee disclosure requirements set forth in Schedule H of Form ADV apply only to sponsors of wrap fee programs and not to sponsors of mutual fund wrap programs.

OMB APPROVAL
OMB Number:
Expires:
Estimated average burden hours per response:

Form N–3a4

U.S. Securities and Exchange Commission

Washington, D.C. 20549

Notification of Intention to Rely on Safe Harbor Pursuant to Rule 3a–4 [17 CFR 270.3a–4]

[ ] Initial Filing [ ] Amendment [ ] Withdrawal

1. Full name of investment advisory program:

2. Full name of principal sponsor (as defined in rule 3a–4) of investment advisory program:

3. Principal sponsor's status under the Investment Advisers Act
[ ] Principal sponsor is registered under that Act; its SEC Investment Advisers Act file number is: 801
[ ] Principal sponsor is not registered under that Act

4. Address of principal sponsor's principal place of business (number, street, city, state, zip code):

5. Telephone number at this location (include area code):

6. If another person had previously served as principal sponsor of, and filed Form N–3a4 with respect to, the investment advisory program identified in Item 1:

a. Full name of previous principal sponsor:

b. Previous principal sponsor's status under the Investment Advisers Act
[ ] Previous principal sponsor is/was registered under that Act; its SEC Investment Advisers Act file number is/was: 801–
[ ] Previous principal sponsor is/was not registered under that Act

7. The undersigned hereby notifies the Securities and Exchange Commission, in its capacity as principal sponsor, that
[ ] it intends to operate the program in reliance on the safe harbor provided in rule 3a–4 under the Investment Company Act of 1940.
[ ] it no longer intends to operate the program in reliance on the safe harbor provided in rule 3a–4 under the Investment Company Act of 1940.
[ ] the program will cease operating as an investment advisory program as of _____ (insert date in blank).

Signed by: _____
(Name of person signing on behalf of principal sponsor)

(title of person)

Date: _____

Instructions

1. This form is to be used to notify the Commission of the intention of the principal sponsor of an investment advisory program to operate the program in reliance on the safe harbor in rule 3a–4 under the Investment Company Act. This form also is to be used to amend a prior filing, to notify the Commission that the sponsor no longer intends to operate the program in reliance on the safe harbor, or to notify the Commission that a program operating in reliance on the safe harbor will cease operations.

2. This form shall be filed in triplicate with the Commission. One copy shall be manually signed; the other copies may have facsimile or typed signatures.

3. Under Item 1, insert name under which the investment advisory program is marketed to clients. If no such name is used, insert a name used to identify the program in internal documents (e.g. contracts) or any other name that would clearly identify the program.

4. The principal sponsor of an investment advisory program shall file this form promptly after becoming principal sponsor of the program. In the event that the previously submitted form becomes inaccurate, the principal sponsor shall amend the form by submitting an amended form, completed in its entirety, with the appropriate box checked at the top of the form. If a previous principal sponsor of the program had filed a Form N–3a4, the new principal sponsor shall submit an amended form, completed in its entirety including the information requested in Item 6.

5. If the principal sponsor no longer intends to operate the program in reliance on rule 3a–4, or the program is ceasing operations, the principal sponsor shall withdraw its notification on Form N–3a4 by submitting another form, completed in its entirety including the information required in Item 7, and checking the appropriate box at the top of the form.

[FR Doc. 95–18891 Filed 8–1–95; 8:45 am]
BILLING CODE 8010–01–P

federal register

Wednesday
August 2, 1995

Part IV

Environmental Protection Agency

40 CFR Part 136
Guidelines Establishing Test Procedures for the Analysis of Pollutants; Chlorinated Pesticides and PCBs by Disk Extraction; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–5267–2]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Chlorinated Pesticides and PCBs by Disk Extraction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This amendment to the Guidelines Establishing Test Procedures approves the use of an additional procedure for the determination of chlorinated pesticides and polychlorinated biphenyls (PCBs) in wastewater by adding appropriate citations to Tables IC and ID and by amending the incorporation by reference section of the regulation accordingly. The method differs from other approved methods in that it incorporates a disk of octadecyl-bonded silica enmeshed in a matrix of inert polytetrafluoroethylene (PTFE) fibrils for extraction of the analytes. The precision and recovery for the chlorinated pesticides and PCBs using this technique are not substantially different from those obtained using the liquid-liquid extraction technique already approved. Use of approved analytical techniques is required whenever the waste constituent specified is required to be measured for: an NPDES permit application; discharge monitoring reports; state certification; and other requests from the permitting authority for quantitative or qualitative effluent data. Use of approved test procedures is also required for the expression of pollutant amounts, characteristics, or properties in effluent limitations guidelines and standards of performance and pretreatment standards, unless otherwise specifically noted or defined.

DATES: This rule shall be effective on September 1, 1995. In accordance with 40 CFR 23.2 (45 FR 26048), these amendments to the regulation shall be considered issued for purposes of judicial review at 1 p.m. eastern time, August 16, 1995.

The incorporation by reference of certain publications listed in the regulation is approved by the Office of the Federal Register as of September 1, 1995.

Under section 509(b)(1) of the Clean Water Act, judicial review of these amendments can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after they are considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, these amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Longbottom, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569–7308.

SUPPLEMENTARY INFORMATION:

I. Authority

This regulation is promulgated under authority of sections 301, 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended) (the "Act"). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402. Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act". Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act".

II. Regulatory Background

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations. New source discharges must meet new source performance standards based on the best available demonstrated control technology. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under Section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that permitted discharges will not cause or contribute to a violation of water quality standards, including designated water uses.

For use in permit applications, discharge monitoring reports, and state certification and to ensure compliance with effluent limitations, standards of performance, and pretreatment standards, EPA has promulgated regulations providing nationally-approved testing procedures at 40 CFR Part 136. Test procedures have previously been approved for 262 different parameters. Those procedures apply to the analysis of inorganic (metal, non-metal, mineral) and organic chemical, radiological, bacteriological, nutrient, demand, residue, and physical parameters.

Additionally, some particular industries may discharge pollutants for which test procedures have not been proposed and approved under 40 CFR Part 136. Under 40 CFR Part 122.41 permit writers may impose monitoring requirements and establish test methods for pollutants for which no approved Part 136 method exists. 40 CFR 122.41(j)(4). EPA may also approve additional test procedures when establishing industry-wide technology-based effluent limitations guidelines and standards as described at 40 CFR 401.13.

The procedures for approval of alternate test procedures (ATPs) are described at 40 CFR 136.4 and 136.5. Under these procedures the Administrator may approve alternate test procedures for nationwide use which are developed and proposed by any person. 40 CFR 136.4 (a). Dischargers seeking to use such alternate test procedures on a limited basis (e.g., for their own discharge), must apply to the State or Regional EPA permitting office in which the discharge occurs approval under 136.4 (d). As specified below, today's rule approves an optional nationwide alternate procedure for determination of chlorinated pesticides and PCBs in wastewater test samples.

III. The Disk Extraction Test Procedure

The 3M Corporation, in accordance with the regulations published at 40 CFR section 136.5, applied for nationwide approval of their "Organochlorine Pesticides and PCBs in Wastewater Using Empore Disk". 3M subsequently presented data to meet the method comparability criteria set forth in the EPA "Protocol for Approval of Alternate Test Procedures for Inorganic and Organic Analytes in National Pollutant Discharge Elimination System Monitoring", July 12, 1993.

Extraction and concentration are preparation steps that are required prior to the determination of many organic analytes that are found in wastewater. The disk extraction procedure is proposed as an alternate to the presently approved liquid-liquid extraction procedure.

A. Scope of the Procedure

Method 3M 0222 is designed as an alternate test procedure for currently approved EPA Method 608. The Empore™ disk is used in place of liquid-liquid extraction. This method is being promulgated as an alternative procedure for the determination of nineteen specified organochlorine pesticides and seven PCBs listed below:

Aldrin
alpha-BHC
beta-BHC
Chlordane
delta-BHC
Dieldrin
Endosulfan I
Endosulfan II
Endosulfan sulfate
Endrin
Endrin aldehyde
gamma-BHC PCB-1254
Heptachlor
Heptachlor epoxide
Methoxychlor
Toxaphene
4,4'-DDD
4,4'-DDE
4,4'-DDT
PCB-1016
PCB-1221
PCB-1232
PCB-1242
PCB-1248
PCB-1254
PCB-1260

The parameters listed in the table can be determined by gas chromatography using Method 3M 0222. When the method is used to analyze unfamiliar samples for any or all of the compounds listed, compound identifications should be supported by at least one additional qualitative technique. The method describes analytical conditions for a second gas chromatographic column that can be used to confirm measurements made with the primary column.

B. Summary of the Methods

A measured volume of sample, approximately 1–L, is extracted using a 90 mm Empore™ disk. The disk is eluted with acetone followed by methylene chloride. The eluant is dried by pouring through anhydrous sodium sulfate and exchanged to hexane during concentration to a volume of 10-mL or less. The eluant is separated by gas chromatography and the analytes are then measured with an electron capture detector.

The method provides a Florisil column cleanup procedure and an elemental sulfur removal procedure using activated copper powder to aid in the elimination of interferences that may be encountered.

C. Technical Justification for Approved Procedure

The approval of this procedure is based on Agency review of the supporting information and data submitted by the applicant, 3M Corporation. EPA is approving the method based on the method description in EPA's Environmental Monitoring Management Council format, comparative analyses using the proposed and approved procedures, and EPA's technical and statistical reviews of each data package.

3M Corporation provided test data comparing the proposed procedure with appropriate approved procedure. The results from the proposed alternate method were compared to the approved EPA Method using liquid-liquid extraction/gas chromatography procedures. EPA statisticians and chemists conducted independent reviews of the data. The recovery and precision of all the submitted data for both the approved and proposed methods were also compared to the recovery and precision acceptance criteria derived for EPA Method 608 from Performance Evaluation Studies WP 18 and 23.

The Agency has judged the currently approved Method 608 method to be acceptable in the evaluation of the proposed procedure. EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (EMSL-Cincinnati) thoroughly reviewed and evaluated the supporting data submitted by the 3M Corporation. The comparability reviews indicated that the analyses afforded comparable recovery and precision in the recommended concentration ranges for the listed organochlorine pesticides and PCBs. EPA proposed approval of the Empore™ disk procedure and sought public comment on the suitability of this method as an alternate procedure for use in the determination of the parameters listed in 59 FR 65878 (December 21, 1994). The administrative record is on file at EMSL-Cincinnati, 26 W. Martin Luther King Dr., Cincinnati, Ohio 45268. The record is available for public inspection. The approved procedure is also available from 3M Corporation, 3M Center Building 220–9E–10, St. Paul, MN 55144–1000.

Based on EMSL-Cincinnati's review, and pursuant to 40 CFR Section 136.5, EPA has approved the 3M Corporation's "Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk" method as an acceptable alternative procedure for nationwide use. Specifically, the method exhibits sufficient precision and recovery to establish (1) its acceptability under Part 136 and (2) its comparability to the approved procedure for analysis of the specified organochlorine pesticides and PCBs. As an approved alternate test procedure, this procedure is acceptable for use by any person required to test for these parameters.

IV. Public Comments and Response to Most Significant Comments

The Agency requested comments on the proposal to approve the 3M method for pesticides and PCB's. Comments were received from 5 individuals/organizations. All commenters favored approval of disk extraction as an acceptable alternate procedure (ATP). The most significant comments were as follows:

Comment: Other companies produce extraction disks on inert surfaces, so all references in the method to the disk in the 3M method should be generic in nature so that other commercial products can be used by the analyst. Commenter supports feasibility of generic approach by noting the method includes initial quality control demonstrations that can demonstrate applicability of the alternative vender's product, and that EPA used general product description language in the comparable method approved in 40 CFR 141 for drinking water analyses.

Response: EPA's limited resources are not sufficient to fully evaluate all new technologies that may be applicable to monitoring programs under the Clean Water Act. The nationwide alternate test procedure (ATP) program was established 40 CFR Part 136.4 to allow developers of new commercial instruments, product or supplies to demonstrate the efficacy of the measurement technology to measure pollutant concentration levels. The ATP program is expensive for the applicant as applicability to a broad variety of wastewaters must be demonstrated. The Agency does not require this applicant to demonstrate that the extraction technology can be made to work using competitor's products. The use of a competitive product in this method would require additional method development to optimize solvents, flow rates, and other features of the method. After these procedures have been standardized, a suitable demonstration of applicability is required. Because of the diverse nature of wastewaters under this regulation, a general statement of applicability could be made only if a number of different wastewaters are tested. Limited use approval could be obtained on a case-by-case basis by demonstrating applicability to an individual discharger's wastestream.

The quality control tests in the 3M method referenced by the commenter are performed using reagent water and will not demonstrate applicability to wastewater. The Agency actions in Part 141 were based on research on drinking water with commercial products from multiple suppliers. Since drinking waters do not contain the high organic loads and suspended solids that challenge the solid-phase extraction procedures, it is easier to establish general applicability to the matrix.

Comment: Commenter has tried these disks and has encountered some problems with plugging and finds no mention of what to do when this happens. Suggests method be limited to samples with less than 2–5% solids.

Response: In the comparison study performed by 3M, both the approved EPA Method 608 and the alternate 3M method produced lower results for wastewaters with very high suspended solids and the 3M method contains an appropriate caution in this regard. A sample with 2–5% solids is generally classified as a sludge and is beyond the scope of this rulemaking.

Comment: Commenter provided a series of questions for EPA to use in its evalation of the 3M method. The questions addressed technical specifications for the inert and active components of the disk, and possible limitations of the method caused by absorptive capacity, selective absorption or sample pH.

Response: The applicant voluntarily provided EPA with detailed responses to each of the questions, although much of this information would normally be treated by EPA as confidential business information. The applicant's response has been incorporated into the administrative record for this rulemaking. Alternate test procedures are evaluated primarily on the basis of method performance characteristics including accuracy, precision, and sensitivity data quality.

V. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, EPA must judge whether a regulation is "major" and, therefore, requires a regulatory impact analysis. EPA has determined that this regulation is not major as it will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the effects described in the Executive Order. This final rule would simply specify an alternative analytical procedure which may be used by laboratories in measuring concentrations of organochlorine pesticides and PCBs using EPA Method 608 and, therefore, would have no adverse economic impacts. This rule is not considered significant under the Executive Order.

B. Regulatory Flexibility Act

This amendment is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.) because it will not have a significant economic impact on a substantial number of small entities. The procedure included in this final rule would give all laboratories the flexibility to use this alternate procedure or not to use it.

C. Paperwork Reduction Act

This rule contains no requests for information activities and, therefore, no information collection request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, (44 U.S.C. 3501 et seq.).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a written statement to accompany rules where the estimated costs to State, local, or tribal governments, or to the private sector will be § 100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

EPA estimates that the costs to State, local or tribal governments, or the private sector, from this rule will be far less than § 100 million. This rule should have minimal impact, if any, on the existing regulatory burden imposed on NPDES permittees required to monitor for regulated pollutants because the rule would merely make additional options available to the laboratory analyst conducting an existing approved test method. EPA has determined that an unfunded mandates statement therefore is unnecessary. Similarly, the method approved today does not establish any regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Water pollution control.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

In consideration of the preceding, EPA amends part 136 of title 40 Chapter I of the Code of Federal Regulations as follows:

PART 136—AMENDED

1. The authority citation for 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251 *et seq.*)(the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended as follows:

a. In Table 1C of paragraph (a) by revising entries 76. PCB–1016, 77. PCB–1221, 78. PCB–1232, 79. PCB–1242, 80. PCB–1248, 81. PCB–1254, 82. PCB–1260; and by adding footnote 8.

b. In Table ID of paragraph (a) by revising entries 1. Aldrin, 8. α-BHC, 9. β-BHC, 10. δ-BHC, 11. γ-BHC (Lindane), 15. Chlordane, 18. 4,4′-DDD, 19. 4,4′-DDE, 20. 4,4′-DDT, 28. Dieldrin, 32. Endosulfan I, 33. Endosulfan II, 34. Endosulfan sulfate, 35. Endrin, 36. Endrin aldehyde, 40. Heptachlor, 41. Heptachlor epoxide, 46. Methoxychlor, and 69. Toxaphene; and by adding footnote 8.

§ 136.3 Identification of test procedures.

(a) * * *

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter[1]	EPA method number[2,7] GC	GC/MS	HPLC	Standard methods 18th ed.	ASTM	Other
•	•	•	•	•	•	•
76. PCB–1016	608	625		6410 B		Note 3, p. 43; note 8.
77. PCB–1221	608	625		6410 B		Note 3, p. 43; note 8.
78. PCB–1232	608	625		6410 B		Note 3, p. 43; note 8.

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter[1]	EPA method number[2,7] GC	GC/MS	HPLC	Standard methods 18th ed.	ASTM	Other
79. PCB–1242	608	625		6410 B		Note 3, p. 43; note 8.
80. PCB–1248	608	625				Note 3, p. 43; note 8.
81. PCB–1254	608	625		6410 B		Note 3, p. 43; note 8.
82. PCB–1260	608	625		6410 B, 6630 B		Note 3, p. 43; note 8.

Table IC Notes

[1] All parameters are expressed in micrograms per liter (μg/L).

[2] The full text of Methods 601–613, 624, 625, 1624 and 1625, are given at appendix A, "Test Procedures for Analysis of Organic Pollutants," of this part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at appendix B, "Definition and Procedure for the Determination of the Method Detection Limit" of this part 136.

[3] "Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September, 1978.

[7] Each analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–613, 624, 625, 1624 and 1625 (See appendix A of the part 136) in accordance with procedures each in section 8.2 of each of these Methods. Additionally, each laboratory, on and on-going basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for Methods 1624 and 1625) of all samples to monitor and evaluate laboratory data quality in accordance with sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance.

[8] "Organochlorine Pesticides and PCBs in Wastewater Using Empore TM Disk", 3M Corporation Revised 10/28/94.

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES[1]

Parameter μg/L	Method	EPA[2,7]	Standard methods 18th ed.	ASTM	Other
1. Aldrin	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
•	•	•	•	•	•
8. α-BHC	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 8.
	GC/MS	[5]625	6410 B		
9. β-BHC	GC	608	6630 C	D3086–90	Note 8.
	GC/MS	[5]625	6410 B		
10. δ-BHC	GC	608	6630 C	D3086–90	Note 8.
	GC/MS	[5]625	6410 B		
11. λ-BHC (Lindane)	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
•	•	•	•	•	•
15. Chlordane	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 8.
	GC/MS	625	6410 B		
•	•	•	•	•	•
16. 4,4′–DDD	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
19. 4,4′–DDE	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
20. 4,4′–DDT	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
•	•	•	•	•	•
28. Dieldrin	GC	608	6630 B & C		Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
•	•	•	•	•	•
32. Endosulfan I	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 8.
	GC/MS	[5]625	6410 B		
33. Endosulfan II	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 8.
	GC/MS	[5]625	6410 B		
34. Endosulfan Sulfate	GC	608	6630 C		Note 8.
	GC/MS	625	6410 B		
35. Endrin	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter µg/L	Method	EPA [2 7]	Standard methods 18th ed.	ASTM	Other
36. Endrin aldehyde	GC/MS	[5]625	6410 B		
	GC	608			Note 8.
	GC/MS	625			
• • •	•	•	•	•	•
40. Heptachlor	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
41. Heptachlor epoxide	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 6, p. S73; note 8.
	GC/MS	625	6410 B		
• • •	•	•	•	•	•
46. Methoxychlor	GC		6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
• • •	•	•	•	•	•
69. Toxaphene	GC	608	6630 B & C	D3086–90	Note 3, p. 7; note 4, p. 30; note 8.
	GC/MS	625	6410 B		
• • •	•	•	•	•	•

Table ID Notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table 1C, where entries are listed by chemical name.

[2] The full text of Methods 608 and 625 are given at Appendix A. "Test Procedures for Analysis of Organic Pollutants", of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B. "Definition and Procedure for the Determination of the Method Detection Limit", of this Part 136.

[3] "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater", U. S. Environmental Protection Agency, September, 1978. This EPA publication includes thin-layer chromatography (TLC) methods.

[4] "Methods for Analysis of Organic Substances in Water and Fluvial Sediments", Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987).

[5] The method may be extended to include α-BHC, 1T1δ-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist in the sample, Method 608 is the preferred method.

[6] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency". Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this Part 136) in accordance with procedures given in section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

[8] "Organochlorine Pesticides and PCBs in Wastewater Using Empore™ Disk", 3M Corporation, Revised 10/28/94.

3. In 136.3(b) the list entitled "References, Sources, Costs, and Table Citations" is amended by adding paragraph (33) to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

(b) * * *

References, Sources, Costs, and Table citations:

* * * * *

(33) "Organochlorine Pesticides and PCBs in Wastewater Using Empore ™ Disk" Test Method 3M 0222, Revised 10/28/94. 3M Corporation, 3M Center Building 220–9E–10, St. Paul, MN 55144–1000. Method available from 3M Corporation. Table IC, Note 8 and Table ID, Note 8.

[FR Doc. 95–18866 Filed 8–1–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
August 2, 1995

Part V

Securities and Exchange Commission

17 CFR Part 270

Custody of Investment Company Assets Outside the United States; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–21259; International Series Release No. 831; File No. S7–23–95]

RIN 3235–AE98

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments and request for comment.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Company Act of 1940 that governs the custody of investment company assets outside the United States. The amendments would revise the findings that currently must be made in establishing foreign custody arrangements to focus exclusively on the safekeeping of investment company assets. In addition, the amendments would provide investment companies with greater flexibility to address foreign custody arrangements by permitting a company's board of directors to delegate its responsibilities under the rule to evaluate these arrangements. The amendments also would expand the class of foreign banks and securities depositories that could serve as investment company custodians. The proposed amendments are intended to facilitate the use of foreign custody arrangements, consistent with the safekeeping of investment company assets.

DATES: Comments must be received on or before October 6, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. All comment letters should refer to File No. S7–23–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Krentzman, Assistant Chief, or Kenneth J. Berman, Assistant Director, (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to rule 17f–5 (17 CFR 270.17f–5) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act").

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I. Executive Summary

The Commission is proposing amendments to rule 17f–5 to facilitate the use of foreign custody arrangements by registered management investment companies ("funds"). Among other things, the amendments would revise the findings that must be made in establishing foreign custody arrangements. Under the current rule, a fund's board of directors must find that the fund's arrangements are consistent with the best interests of the fund and its shareholders. This standard may be overbroad since it suggests, for example, that, in considering foreign custody arrangements, a fund's board needs to assess factors other than custodial risks. The amended rule would require findings that the fund's foreign custody arrangements will provide reasonable protection for fund assets. The proposed "reasonable protection" standard should facilitate evaluations of foreign custody arrangements by focusing exclusively on safekeeping considerations.

The amendments also would allow fund directors to play a more traditional oversight role with respect to foreign custody arrangements than that required under the current rule. Under the amendments, the board would be permitted to delegate its responsibility under the rule to evaluate foreign custody arrangements to the fund's investment adviser or officers or a U.S. or foreign bank. The amended rule would provide the board with the flexibility to assign different delegates responsibility for addressing different aspects of the fund's arrangements. The amended rule also would provide for general board oversight of a delegate's actions by requiring the delegate to provide the board with periodic reports concerning the fund's arrangements. The board would no longer be required to approve foreign custody arrangements annually.

In addition to updating and refining certain other provisions of rule 17f–5, the amendments would expand the class of foreign banks and depositories that could serve as fund custodians. Foreign banks would no longer have to meet specific capital requirements and foreign depositories would no longer have to operate the only system for the handling of securities in a country. The amended rule would require foreign custodians to be subject to foreign regulation. In addition, in connection with a custodian's selection, the amended rule would require a finding that the custodian will provide reasonable protection for the fund's assets based on all relevant factors, including the custodian's financial strength. This approach seeks to address safekeeping considerations without imposing capital and other requirements that may unnecessarily limit fund use of appropriate foreign custodians.

II. Background

Over the last ten years, the fund industry has become increasingly international in its investment perspective. At the end of 1984, shortly after rule 17f–5 was adopted, only 35 funds invested significant amounts of their assets in foreign securities.[1] By the end of 1994, the number of funds participating in foreign markets had increased almost twentyfold, with over 650 funds investing significant amounts of their assets outside the United States.[2]

[1] Investment Company Institute, The Growth Continues 1993 Perspective on Mutual Fund Activity 7 (Summer 1993); Lipper Analytical Services, Inc. ("Lipper"), Year Over Year Comparison of Growth by Objective of Closed-End Funds (1980–1990) (prepared for the Commission).

[2] Investment Company Institute, Trends in Mutual Fund Activity (Dec. 1994) (ICI News No. ICI–95–05); Lipper, Closed-End Fund Performance Analysis Service (Jan. 31, 1995) (as supplemented by the Commission staff to reflect closed-end funds that liquidated or converted to open-end status during the ten-year period ending December 31, 1994). Based on Commission filings, the Division of Investment Managements estimates that over 2,200

The availability of custodial arrangements in foreign markets where a fund invests is important. Maintaining securities outside of their primary market can add significant costs to investing in that market and may preclude foreign investment.[3]

Section 17(f) of the Act and the rules thereunder govern the safekeeping of fund assets.[4] The legislative history and requirements of section 17(f) indicate that Congress intended fund assets to be kept by financially secure entities that have sufficient safeguards against misappropriation.[5] Under section 17(f), only U.S. banks and their foreign branches, members of a U.S. securities exchange, funds themselves, and U.S. securities depositories may serve as fund custodians.[6] Before rule 17f–5 was adopted, therefore, funds seeking to maintain their assets outside the United States could use only foreign branches of U.S. banks as foreign custodians.[7]

Rule 17f–5 expanded the foreign custody arrangements available to funds.[8] Under the rule, the fund's board of directors must approve each country where the fund's assets will be maintained, each foreign bank or depository that will hold the assets, and the contract governing the arrangement.[9] The rule requires foreign custody contracts to contain certain provisions, and Notes to the rule enumerate factors that the board should consider in placing fund assets in foreign countries and with foreign custodians.[10] In addition, the rule requires the fund's board to monitor foreign custody arrangements and to approve the arrangements at least annually.[11]

Rule 17f–5 limits "eligible foreign custodians" to foreign banks and trust companies that either have more than $200 million in shareholders' equity or are majority-owned subsidiaries of U.S. banks or bank holding companies with more than $100 million in shareholders' equity.[12] Foreign depositories that hold fund assets must operate either the only system for a country's handling of securities or a transnational system for the central handling of securities.[13]

The Commission's Division of Investment Management ("Division") has received extensive submissions urging amendment of rule 17f–5 from the Investment Company Institute ("ICI") and a group of custodians that provide global custody services to funds (the "Custodian Group").[14] These commenters, as well as others, have indicated that rule 17f–5 places inappropriate burdens on fund directors.[15] Commenters have observed that the rule requires directors to "micro-manage" foreign custody arrangements, which is inconsistent with the oversight role directors generally perform.[16] Commenters also have indicated that directors usually lack the expertise to make foreign custody determinations, and that, in discharging their responsibilities under the rule, directors rely almost exclusively on the analysis and recommendations of third parties such as the fund's adviser and primary custodian.[17]

Commenters, including the ICI and the Custodian Group, also have indicated that the rule's definition of an eligible foreign custodian is too restrictive.[18] Since rule 17f–5 was adopted, foreign custodial arrangements have evolved significantly. Today, the safekeeping of foreign investments typically is effected through the fund's primary custodian, which uses a global custody network consisting of various foreign custodians with which the primary custodian has established relationships.[19] In addition, many countries have securities depositories, which offer "paperless" book-entry systems for the custody of fund assets.[20]

A number of exemptive orders and no-action letters have addressed the

fund portfolios maintained some of their assets in foreign custody arrangements during the past year.

[3] Moving securities away from their primary market may entail additional costs in connection with hiring a servicing agent in the primary locality to collect and disseminate information with respect to the securities, transferring the securities to an eligible custodian and procuring insurance for possible loss in transit, and exchanging coupons for interest or dividends or for new shares in connection with a rights offering. Exemption for Custody of Securities by Foreign Banks and Foreign Securities Depositories, Investment Company Act Release No. 12354 (Apr. 5, 1982), 47 FR 16341, 16342 (hereinafter 1982 Proposing Release). Funds also may be prevented from, or delayed in, selling the securities if they are unable to make timely delivery to prospective purchasers in the primary market. *Id.* In addition, the best price for a foreign security typically may be obtained in its primary market. *Id.*

[4] 15 U.S.C. 80a–17(f).

[5] Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 264 (1940). Cf. 10 SEC Ann. Rep. 169 (1944) (discussing section 17(f) and its protections against theft and embezzlement by affiliated persons).

[6] Bank custodians must be subject to federal or state regulation and have at least $500,000 in aggregate capital, surplus, and undivided profits. Investment Company Act sections 2(a)(5), 15 U.S.C. 80a–2(a)(5) (defining bank), and 26(a)(1), 15 U.S.C. 80a–26(a)(1) (containing the $500,000 capital requirement). *See also* rule 17f–1, 17 CFR 270.17f–1 (custody by members of a U.S. securities exchange), rule 17f–2, 17 CFR 270.17f–2 (custody by funds themselves), and rule 17f–4, 17 CFR 270.17f–4 (custody by U.S. securities depositories). *See* generally Custody of Investment Company Assets with Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 20313 (May 24, 1994), 59 FR 28286 (proposing rule 17f–6, which would permit custody of fund assets by futures commission merchants and commodity clearing organizations).

[7] 1982 Proposing Release, *supra* note 3, at 16342 n.11. Before rule 17f–5 was adopted, several Commission orders under section 17(f) permitted funds to place their assets with certain foreign banks if the fund's U.S. custodian assumed responsibility for the arrangement. *See* Chase Manhattan Bank, Investment Company Act Release Nos. 12002 (Oct. 23, 1981), 46 FR 53567 (Notice of Application) and 12053 (Nov. 20, 1981), 24 SEC Docket 109 (Order).

[8] Exemption for Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 14132 (Sept. 7, 1984), 49 FR 36080 (hereinafter 1984 Adopting Release). Rule 17f–5 was proposed in 1982 and reproposed in 1984. *See* 1982 Proposing Release, *supra* note 3; Exemption for Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 13724 (Jan. 17, 1984), 49 FR 2904 (hereinafter 1984 Reproposing Release). In addition, certain technical amendments were made to the rule after its adoption. Custody of Investment Company Assets Outside of the United States, Investment Company Act Release Nos. 14548 (May 31, 1985), 50 FR 24540 (hereinafter 1985 Release Proposing Amendments), and 14711 (Sept. 11, 1985), 50 FR 37654 (hereinafter 1985 Release Adopting Amendments))

[9] Rule 17f–5(a)(1)(i)–(iii). *See also* "Discussion—Assets Maintained in Foreign Custody" below.

[10] Rule 17f–5(a)(1)(iii), Rule 17f–5, Notes 1 and 2.

[11] Rule 17f–5(a)(2) and (3).

[12] Rule 17f–5(c)(2)(i) and (ii). Non-subsidiary foreign bank and trust companies also must be subject to foreign regulation.

[13] Rule 17f–5(c)(2)(iii) and (iv).

[14] Letter from Matthew P. Fink, President, ICI, to Marianne K. Smythe, Division Director, SEC (Jan. 16, 1993) (hereinafter ICI Letter I); Letter from Catherine L. Heron, Vice President (Tax and Pension), ICI, to Barry P. Barbash, Division Director, SEC (Oct. 13, 1993) (hereinafter ICI Letter II); Letter from Stephen K. West, Sullivan & Cromwell, to Barry P. Barbash, Division Director, SEC (Sept. 29, 1994) (hereinafter ICI Letter III); Letter from Daniel L. Goelzer, Baker & Mackenzie (on behalf of Bankers Trust Company, Boston Safe Deposit and Trust Company, Brown Brothers Harriman & Co., Chase Manhattan Bank, Morgan Guaranty Trust Company of New York, Morgan Stanley Trust Company, and State Street Bank and Trust Company), to Barry P. Barbash, Division Director, SEC (Feb. 9, 1994) (hereinafter Custodian Letter I); Letter from Daniel L. Goelzer, Baker & Mackenzie, to Elizabeth R. Krentzman, Special Counsel, SEC (Oct. 20, 1994) (hereinafter Custodian Letter II); Letter from Daniel L. Goelzer, Baker & Mackenzie, to Barry P. Barbash, Division Director, SEC (Nov. 3, 1994) (hereinafter Custodian Letter III). These letters are located in the Commission's Public Reference Room under File No. S7–23–95.

[15] *See* Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 270 n.78 (1992) (hereinafter Protecting Investors report).

[16] *Id.*

[17] *Id.*

[18] *See, e.g.*, ICI Letter II, *supra* note 14; Custodian Letter I, *supra* note 14.

[19] *See* John Paul Lee & Richard Schwartz, Global Custody: A Guide for the Nineties (1990). Funds also use different custodian networks for different geographical regions. *See* Andrew Sollinger, *Breaking Away*, Institutional Investor 171 (Sept. 1991).

[20] *See* Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets 7, 51–64 (Mar. 1989) (hereinafter Group of Thirty Report).

eligibility of certain foreign banks and depositories to serve as fund custodians.[21] Obtaining administrative relief with respect to a particular custodian, however, may involve significant amounts of time and expense, and may delay or impede investment in some foreign jurisdictions. Exemptive orders and no-action letters also may have the unintended effect of suggesting Commission approval with respect to safekeeping abilities of some custodians, particularly in the case of foreign depositories.

Based on the evolution of foreign markets and related custodial systems, the concerns raised by industry commenters, and the Commission's administrative experience, the Commission is proposing amendments to rule 17f–5. The amendments seek to facilitate the use of foreign custody arrangements, consistent with the safekeeping of fund assets.

III. Discussion

A. Standard for Evaluating Foreign Custody Arrangements

Rule 17f–5 currently requires fund boards of directors to find that the fund's foreign custody arrangements are consistent with the best interests of the fund and its shareholders. This finding must be made with respect to the custody of the fund's assets in a particular country, each foreign custodian that holds the assets, and the foreign custody contract.[22] The Commission believes that the "best interest" standard may be overly broad and difficult for directors to apply. The standard and certain Notes to the current rule, for example, suggest that, in considering foreign custody arrangements, a fund's board needs to assess factors other than custodial risks, such as the risk of expropriation.[23]

The Commission believes that the amended rule should require foreign custody arrangements to be evaluated based on the level of safekeeping they will afford fund assets. Thus, the amended rule would require findings that the fund's foreign custody arrangements will provide reasonable protection for fund assets. The proposed "reasonable protection" standard is intended to facilitate evaluations of foreign custody arrangements by focusing exclusively on the safekeeping of fund assets.

B. Delegation of Board Responsibilities

1. Appropriate Delegate for Foreign Custody Decisions

The amended rule would permit fund boards to play a role more consistent with their traditional oversight role in connection with a fund's foreign custody arrangements, by allowing the board to delegate its responsibilities under the rule to the fund's investment adviser or officers or a U.S. or foreign bank.[24] The fund's investment adviser or custodian are likely to be in a better position than the fund's board to evaluate the sorts of factors that would be involved in assessing whether a custodial arrangement will afford reasonable protection for fund assets. Under the amended rule, the board could use different delegates for different foreign custody responsibilities.[25] This approach seeks to provide the board with the flexibility to delegate components of foreign custody decisions to the entity it determines is in the best position to evaluate those aspects of the fund's arrangements.[26]

In selecting particular delegates for foreign custody decisions, the board, under the amended rule, would need to find that it is reasonable to rely on the delegate to perform the delegated responsibilities.[27] Factors typically involved in making this determination would include the expertise of the delegate and, if applicable, the delegate's intended use of third party experts in performing its responsibilities.[28] Other relevant factors may include, in the case of foreign delegates, the board's ability to monitor the delegate's performance and the fund's ability to obtain U.S. jurisdiction over the delegate if problems arise in the delegate's performance.

The amended rule would not require the board to approve the fund's foreign custodians or other foreign custody matters on an initial or annual basis.[29] The board also would not be required to pre-approve or ratify actions taken by the delegate, such as the selection of particular foreign custodians or changes in those arrangements.[30] Instead, the amended rule would require the delegate to provide the board with written reports notifying the board of the placement of the fund's assets in a particular country and with a particular custodian.[31] The delegate also would have to provide written reports of any material changes in the fund's arrangements.[32] These reports, which are intended to facilitate the board's oversight of the delegate's performance, would be provided to the board no later than the next regularly scheduled board meeting following the delegate's actions.[33]

The Commission requests comment on the proposed approach and possible alternatives. The Commission requests specific comment on the proposed entities to which foreign custody responsibilities could be delegated. In particular, the Commission requests comment whether U.S. and foreign bank delegates should be required to meet specific capital standards. The Commission also requests comment whether custodian delegates should be limited to U.S. banks.[34] Alternatively, should the rule permit the board to use any party that, in the board's judgment, would be qualified to make foreign custody decisions?

The Commission also requests comment whether the amended rule should require the same delegate to evaluate all aspects of the fund's arrangements or tie certain responsibilities to particular delegates.[35] The ICI and the Custodian Group, for example, indicated that the fund's adviser should be the exclusive delegate for considering a county's custodial risks because of the relationship between decisions to invest in the country and maintain the fund's assets in that country.[36] They also suggested that U.S. bank custodians should be the only eligible delegates for selecting the fund's foreign custodians.[37] The ICI suggested that evaluating foreign custodian arrangements is within the expertise of the fund's U.S. custodian and not the fund's adviser.[38] The Custodian Group expressed concerns about advisers being in a position to make a U.S. custodian use a foreign custodian with which the U.S. custodian does not have a pre-existing relationship and whose practices and procedures do not meet the U.S. custodian's standards.[39]

Although these approaches may limit flexibility, they could eliminate potential questions between different delegates concerning their respective roles in foreign custody matters. They also could eliminate the need to attribute various foreign custody risks to the practices of a particular country or foreign custodian.[40]

The Commission also requests comment on the proposed requirements relating to the board's delegation. The Commission requests specific comment on requiring the board to determine that it is reasonable to rely on the delegate to perform the delegated responsibilities and whether another standard would be more appropriate. The Commission also requests comment on requiring delegates to provide the board with periodic reports concerning the fund's arrangements. In particular, does the proposed approach appropriately address the role of the board in foreign custody matters? Should, for example, the rule require the board to establish guidelines and procedures governing a delegate's responsibilities?[41] Should the rule specify particular representations that delegates must make in performing their responsibilities?[42] Should the rule mandate the standard of care to be used by delegates in making custodial decisions?[43]

Finally, the Commission requests comment generally on the relationship between the level of the delegate's role in selecting foreign custodians and the flexibility that a fund should have in using particular custodians. For example, current rule 17f–5 both limits the class of foreign banks that are eligible to hold fund assets (based on, among other things, their shareholder's equity) and requires the fund's board to select an appropriate custodian from that class based on several qualitative factors (such as the bank's reputation). As discussed below, the amended rule would not require foreign custodians to satisfy an objective financial standard.[44] The amended rule instead would require the board's delegate to select foreign custodians based on the qualitative determination that the custodian will provide reasonable protection for the fund's assets.[45]

The Commission requests comment on an alternative approach that would rely exclusively on objective standards to determine those custodians that would be eligible to hold fund assets. Under this approach, having determined that a potential custodian meets the rule's objective standards, a delegate would not be required to evaluate the appropriateness of the foreign custodian based on any qualitative determination. Nor would the delegate be required by the rule to provide the fund's board with specific reports concerning the fund's arrangements.[46] Commenters favoring this approach should recommend specific objective standards that would not unduly limit or preclude the use of qualified foreign custodians.[47] Commenters also should consider whether objective standards, by themselves, would protect fund assets or whether, consistent with the current rule, delegates should be required to consider additional qualitative factors.

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[21] *See* "Discussion—Eligible Foreign Custodians" below.

[22] *See* rule 17f–5(a)(1)–(3).

[23] *See* 1984 Reproposing Release, *supra* note 8, at 59608 (in making the required best interest finding, the board should weigh the risks of maintaining the securities in or near a country against the benefits of the arrangement).

[24] The Commission previously considered permitting U.S. custodians to select particular foreign custodians. 1982 Proposing Release, *supra* note 3, at 16345–46; 1984 Reproposing Release, *supra* note 8, at 2910. *See also* Protecting Investors report, *supra* note 15, at 270–71 (recommending that the Commission consider revising rule 17f–5 to make the fund's adviser or primary domestic custodian responsible for foreign custody matters, subject to the board's general oversight; also recommending that the Commission consider requiring indemnification protections from the fund's domestic custodian).

[25] The adviser, for example, could evaluate the risks associated with the custody of the fund's assets in a particular jurisdiction and a U.S. custodian could evaluate the risks of using specific foreign custodians.

[26] Proposed rule 17f–5(b). U.S. bank delegates would have to be subject to federal or state regulation by virtue of the definition of bank in section 2(a)(5) of the Act. Through the definition of "qualified foreign bank," proposed rule 17f–5(d)(6) would require foreign delegates to be regulated as either a foreign banking institution or trust company by the government of the country under whose laws it is organized or any agency thereof.

[27] Proposed rule 17f–5(b)(1).

[28] *See generally* Custodian Letter II, *supra* note 14, at 2 (indicating that U.S. custodians can provide information regarding the nature and operation of a foreign country's custody facilities); Gordon Altman Butowsky Weitzen Shalov & Wein, A Practical Guide to the Investment Company Act 30 (1993) (indicating that, under the current rule, the fund's custodian typically provides the board with information concerning foreign legal restrictions and the qualifications of the foreign custodians used by the fund); Glorianne Stromberg, Regulatory Strategies for the Mid-'90s; Recommendations for Regulating Investment Funds in Canada (prepared for the Canadian Securities Administrators) 242 (Jan. 1995) (suggesting it is unlikely that an individual investment company or its adviser will have the expertise or bargaining power to deal with numerous and varied foreign custodians throughout the world).

[29] *See* rule 17f–5(a)(3) (requiring the board to annually approve foreign custody arrangements). *See also* Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Investment Company Act Release No. 19719 (Sept. 17, 1993), 58 FR 49919 (rule amendments eliminating certain annual approval requirements).

[30] The amended rule, however, would not preclude a board and its delegate from agreeing that the board's guidance would be sought on a particular matter, such as changing custodians. *See* Custodian Letter II, *supra* note 14, at 16–17 (expressing concerns that, without the board's involvement, responsibility for changing custodians could increase a delegate's liability if, for example, the delegate does not make a custodian change and fund assets are lost as a result of the custodian's insolvency).

[31] Proposed rule 17f–5(b)(2).

[32] *Id.* A material change in the fund's arrangements could include a delegate's decision to remove the fund's assets from a particular jurisdiction or custodian. A material change also could include circumstances that may adversely affect a foreign custodian's financial or operational strength, such as a change in control resulting from the custodian's sale. If appropriate, the delegate's report could discuss the reasons for continuing to maintain the fund's assets in the country or with a particular custodian.

[33] Proposed rule 17f–5(b)(2). *See* ICI Letter I, *supra* note 14, at 6–7; Custodian Letter I, *supra* note 14, at 18 (recommending that delegates provide written year-end reports).

[34] Several exemptive orders relating to rule 17f–5 involve foreign banks and their foreign subsidiaries. *See, e.g.*, Barclays Bank PLC, Investment Company Act Release Nos. 20128 (Mar. 10, 1994), 59 FR 12390 (Notice of Application) and 20192 (Apr. 5, 1994), 56 SEC Docket 1117 (Order).

[35] Requiring the same delegate to evaluate all aspects of foreign custody arrangements could effectively eliminate the potential for U.S. custodians to serve as delegates, since the Custodian Group has suggested that U.S. custodians may be unwilling to evaluate the prevailing custodial risks of a particular country. *See infra* note 36 and accompanying text.

[36] ICI Letter I, *supra* note 14, at 4, n.5; ICI Letter III, *supra* note 14, at 1–3; Custodian Letter I, *supra* note 14, at 6–7; Custodian Letter II, *supra* note 14, at 2. *See also* Custodian Letter III, *supra* note 14, at 2. The Custodian Group indicated that, because decisions relating to a country's prevailing custodial risks may depend on the fund's investment strategies and willingness to accept certain risks, custodians are not in a position to make these assessments. Custodian Letter I, *supra* note 14, at 6–7; Custodian Letter II, *supra* note 14, at 2; Custodian Letter III, *supra* note 14, at 2. The Custodian Group also asserted that requiring U.S. custodians to evaluate prevailing custodial risks would transfer new liabilities to U.S. banks, which could raise bank regulatory concerns. *Id.* at 5–6.

As discussed *infra* notes 62–68 and accompanying text, the ICI and the Custodian Group viewed differently the responsibilities involved in determining whether to maintain custody of fund assets in a particular country.

[37] ICI Letter III, *supra* note 14, at 3 and at 1, 6 (Exhibit A); Custodian Letter I, *supra* note 14, at 8–9 and at 3–4, 7–8 (Exhibit A) (also recommending that boards be permitted to delegate to U.S. custodians the authority to negotiate and approve foreign custody contracts and to monitor the fund's arrangements).

[38] ICI Letter III, *supra* note 14, at 3.

[39] Custodian Letter I, *supra* note 14, at 8.

[40] Under the current rule, for example, the board is responsible for both the decision to place fund assets in a particular country and with a particular custodian. If a country's prevailing custodial risks are not evaluated by the board in deciding to maintain assets in a particular jurisdiction, these risks would be considered in selecting particular custodians in that jurisdiction. *See also infra* notes 49 and 71 and accompanying text.

[41] *See* ICI Letter III, *supra* note 14, at 1–3 (Exhibit A); Custodian Letter I, *supra* note 14, at 3–5 (Exhibit A) (recommending board-approved guidelines and procedures that include factors governing a delegate's selection of foreign custodians). *See also* rules 10f–3, 17a–7, and 17e–1 under the Act, 17 CFR 270.10f–3, –17a–7, –17e–1 (consistent with this approach).

[42] *See* ICI Letter III, *supra* note 14, at 5 (Exhibit A); Custodian Letter I, *supra* note 14, at 7 (Exhibit A) (recommending that delegates make certain representations to the board prior to using a foreign custodian).

[43] *See* ICI Letter III, *supra* note 14, at 3 and at 1, 6 (Exhibit A); Custodian Letter I, *supra* note 14, at 8–9 and at 3–4, 7–8 (Exhibit A) (recommending that, in selecting foreign custodians, U.S. bank delegates be required to act with the degree of care, prudence, and diligence of a reasonable professional custodian under applicable state law).

[44] *See* "Eligible Foreign Custodians" below.

[45] *See* "Selecting Foreign Custodians" below.

[46] This approach would be consistent with the provisions of section 17(f) governing the custody of fund assets with a domestic bank. *See supra* note 6.

[47] *See* "Eligible Foreign Custodians" below.

2. Custody in Foreign Countries

a. Prevailing Custodial Risks

Rule 17f–5 requires a fund's board to approve each country where the fund's assets will be maintained.[48] Because placing fund assets in a particular country may affect the safekeeping of those assets, the amended rule would continue to address the risks associated with custody of a fund's assets in a foreign country.[49]

The amended rule would require a finding that custody of the fund's assets in a particular country can be maintained in a manner that will provide reasonable protection for those assets.[50] Making the proposed determination would not require a finding that fund assets could never be lost in a foreign country.[51] Rather, the proposed determination would require the delegate to consider whether the fund's assets will be maintained in a manner that will provide reasonable *protection* based on all relevant factors and, in particular, the factors specified in the amended rule.[52]

The amended rule would require the delegate to evaluate, among other factors, the prevailing practices in a country for the safekeeping of the fund's assets.[53] Evaluating a country's custodial practices typically would involve, among other things, considering the manner in which securities are maintained (*e.g.*, whether securities are held in physical or uncertificated form), the physical protections available for certificated securities (*e.g.*, the use of vaults or other facilities), the method of keeping custodial records (*e.g.*, the use of computers, microfilm or paper records), custodial communication systems (*e.g.*, the use of electronic media, telex, or telephone), security and data protection practices (*e.g.*, alarm systems and the use of pass codes and back-up procedures for electronically stored information), and the protections provided by governmental or other regulatory oversight.[54] These considerations seek to address the systemic custodial risks of a particular country. Although evaluating a country's custodial practices would require knowledge of foreign custody arrangements, it would not require a finding concerning the protections provided by any specific foreign custodian.[55]

In evaluating the custodial risks of a particular country, the delegate would be required to assess any adverse effects foreign law may have on the safekeeping of fund assets.[56] The delegate specifically would have to consider whether foreign law would restrict (A) the access of the fund's accountants to the custodian's books and records and (B) the fund's ability to recover its assets in the event of a custodian's bankruptcy or a loss of assets in the custodian's control. These factors are derived from the Notes to the current rule.[57] The amended rule would broaden the current rule, however, by requiring consideration of all relevant foreign legal constraints, in addition to those governing the custodian's books, bankruptcy, and loss of assets.[58]

In addition, the amended rule would permit the delegate to consider any special arrangements that mitigate prevailing custodial risks.[59] Such arrangements would include, for example, insurance or guarantee agreements covering the loss of fund assets. Such arrangements also may include instituting special procedures that depart from prevailing practices and are designed to reduce custodial risks. A recent Division no-action position, for example, was based, in part, on the existence of certain contractual protections that would not otherwise have been given in the course of the country's prevailing custody practices.[60]

The Notes to the current rule instruct the fund's board to consider the likelihood of various adverse political events (*e.g.*, the expropriation or freezing of assets) and potential difficulties in converting the fund's cash and cash equivalents to U.S. dollars.[61] The amended rule would not address these risks. Although these risks may affect the safety and liquidity of fund assets, they appear to relate more to the investment risks of a particular country than the custodial risks of that country. Adverse political events and foreign exchange problems, for example, may threaten fund assets regardless of where the assets are held. The Commission believes that these risks should be considered in connection with the determination that a fund should *invest* in a particular country.

The ICI and the Custodian Group recommended different approaches to evaluating a country's prevailing custodial risks. The ICI recommended eliminating country-related risk determinations from the rule.[62] The ICI indicated that, for the most part, the risks of maintaining assets in a particular jurisdiction (*e.g.*, expropriation risks) are independent of the risks associated with using a specific foreign custodian.[63] The ICI indicated that, as a consequence, assessments of country-related risks are not appropriate considerations for a foreign custody rule.[64] The ICI also expressed concerns that requiring evaluations of a country's prevailing custodial risks would transfer to the country selection process the responsibility to determine whether one or more custodians in a country could provide reasonable protections for the fund's assets.[65]

The Custodian Group recommended that the rule require an evaluation of a country's prevailing custodial risks prior to placing assets in that jurisdiction.[66] As to the factors governing these assessments, the Custodian Group recommended that the Commission consider adding two new factors to the Notes to the current rule.[67] The Custodian Group's new factors would require the board's delegate to evaluate each securities depository in the country and to consider whether the financial systems in the country, including the methods for securities settlement and custody, are sufficient to provide reasonable protection for the fund's assets.[68]

The Commission requests comment on these two approaches. The Commission also requests comment on an alternative approach that would make evaluations of a country's prevailing custodial risks part of the custodian selection process. Such an approach would simplify the rule and should not raise any safekeeping concerns since the factors that relate to a country's prevailing custodial risks would be evaluated in connection with a custodian's selection.[69]

b. Compulsory Depositories

Certain countries have depositories the use of which is unavoidable for the custody of foreign securities purchased by a fund (a "compulsory depository"). Because the custody of fund assets in a foreign country may necessitate using any compulsory depository in the country, the amended rule would make the selection of compulsory depositories part of the assessment of a country's prevailing custodial risks.[70] The amended rule would require a finding that using a compulsory depository will provide reasonable protection for the fund's assets based on factors specified in the amended rule governing the selection of foreign custodians.[71]

The amended rule would define a compulsory depository as a depository the use of which is mandatory (i) by law or regulation, (ii) because securities cannot be withdrawn from the depository, or (iii) because maintaining securities outside the depository is not consistent with prevailing custodial practices.[72] Part (iii) of the proposed definition is intended to recognize cases when a depository's use is effectively compulsory as a result of prevailing practices even though securities may be held outside of the depository.[73] Determining whether a depository's use is compulsory would depend on the facts and circumstances presented.[74] Factors relevant to making this determination may include whether virtually all securities are maintained in the depository, whether the depository's involvement is required to transfer securities ownership, and whether significant time and expense are associated with keeping securities outside the depository.[75]

The Commission requests comment on requiring compulsory depositories to be evaluated in connection with assessments of a country's prevailing custodial risks.[76] The Commission also requests comment on the proposed definition of compulsory depository.

3. Selecting Foreign Custodians[77]

The amended rule would require a finding that using a particular custodian will provide reasonable protection for the fund's assets.[78] Selecting foreign custodians would not involve reassessments of a country's prevailing custodial risks and the use of any compulsory depositories. Under the amended rule, these matters would be evaluated in determining whether the custody of the fund's assets in the country will provide reasonable protection for those assets.[79]

In selecting foreign custodians, the delegate would not be required to find that assets could never be lost while in the foreign custodian's possession. Instead, the amended rule would focus on the reasonableness of a custodian's protections based on all relevant factors and, in particular, those factors specified in the amended rule.[80] The proposed factors that would govern the selection of foreign custodians are

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[48] See rule 17f–5(a)(1)(i).

[49] *See* Custodian Letter I, *supra* note 14, at 6–7 (indicating that deciding to place assets in a particular country may mean accepting certain risks if custodial protections comparable to those of the United States are not available in the foreign jurisdiction).

The proposed approach also seeks to address circumstances where different delegates assess the custodial risks of a particular country and the risks of using a particular foreign custodian. If, for example, a country's prevailing custodial risks are not evaluated by a delegate in deciding to maintain assets in the country, a different delegate selecting the fund's foreign custodians could determine that the custody of the fund's assets in that country presents unacceptable risks, without regard to the protections provided by any specific custodian. Delegates making the respective country-wide and custodian risk assessments could, in effect, disagree over the appropriateness of maintaining fund assets in the country. Such disputes may have to be resolved by the board, which could undermine the purposes of delegation by re-involving the board in foreign custody decisions.

[50] Proposed rule 17f–5(a)(1). Consistent with the current rule, this finding would have to be made prior to placing the fund's assets in the country. The amended rule would not address the *investment* risks associated with investing in foreign securities, since these risks fall outside the scope of rule 17f–5.

[51] This approach would be consistent with the current rule.

[52] Throughout this release, references are made to a delegate's responsibilities, since the amendments contemplate that the board will use one or more delegates to establish and oversee the fund's foreign custody arrangements. If, however, the board decides to retain decision-making authority for foreign custody matters, these responsibilities would remain with the board. The amended rule uses the term *foreign custody manager* to recognize that a delegate or the board may assume responsibility for the fund's arrangements. *See* proposed rule 17–f(d)(1).

[53] Proposed rule 17f–5(a)(1)(i).

[54] The importance of each of these factors would depend on the particular jurisdiction and related securities market. For example, vault facilities and alarm systems may be less important in markets where securities are primarily held in book-entry form. Similarly, the need for electronic information systems may be more important in markets with a high volume of securities transactions than in markets where trading is less frequent. *See* Custodian Letter II, *supra* note 14, at 4–5.

[55] *See* "Selecting Foreign Custodians" below.

[56] Proposed rule 17f–5(a)(1)(ii).

[57] *See* rule 17f–5, Notes 1(a)–(c).

[58] In evaluating any adverse effects foreign law may have on the safekeeping of fund assets, consideration of U.S. legal standards may be relevant. In determining whether custody of fund assets in a particular country will provide reasonable protection for those assets, however, delegates would not be required to find that the protections provided by foreign law are equivalent to U.S. standards.

[59] Proposed rule 17f–5(a)(1)(iii).

[60] Templeton Russia Fund, Inc. (pub. avail. Apr. 18, 1995) (contracts between the fund's foreign custodian and certain registries).

[61] Rule 17f–5, Notes 1(d)–(e).

[62] ICI Letter III, *supra* note 14, at 3–7. The ICI's proposal would require the decision to place assets in a particular jurisdiction to have been made by the board or adviser as a condition precedent to selecting specific foreign custodians. *Id.* at 6–7. The ICI indicated that the board or adviser would consider the custodial risks of a particular jurisdiction in deciding whether to *invest* in the country. ICI Letter I, *supra* note 14, at 4, n.5; ICI Letter III, *supra* note 14, at 6–9.

[63] ICI Letter III, *supra* note 14, at 3–7, 10. As discussed in the text above, the amended rule would not address political and foreign exchange considerations.

[64] ICI Letter III, *supra* note 14, at 6–7, 10.

[65] *Id.* at 3–8 (commenting on the Custodian Group's recommendations). *See supra* 49 and 55 notes and accompanying text (regarding the approach of the amended rule).

[66] Custodian Letter I, *supra* note 14, at 3–7.

[67] *Id.* at 7.

[68] *Id.*

[69] This approach, however, may have potential drawbacks in connection with boards selecting different delegates to evaluate different aspects of the fund's arrangements. *See supra* note 35 and *infra* note 70 and accompanying text.

[70] *See* Custodian Letter I, *supra* note 14, at 4–5, 6–7 and Custodian Letter II, *supra* note 14, at 11–12 (indicating that, once a fund invests in a country with a compulsory depository, the fund's custodian (or any foreign bank custodian in that country) has no choice but to use the compulsory depository). The current rule does not distinguish between compulsory depositories and other foreign custodians or associate the use of any specific foreign custodian with the decision to maintain assets in a particular country.

[71] Proposed rule 17f–5(a)(1) and (a)(1)(iv). *See also* proposed rule 17f–5(a)(2)(i)–(iii), discussed *infra* notes 80–91 and accompanying text. The Commission recognizes that, conceptually, the decision to use a compulsory depository appears to fall within the scope of the rule's provisions governing the selection of foreign custodians (discussed in the text below). The Commission also recognizes that a significant number of foreign depositories may be considered compulsory depositories. Consequently, requiring compulsory depositories to be evaluated in connection with a country's prevailing custodial risks could mean that the majority of depository decisions will not be made by the delegate selecting the fund's other foreign custodians.

[72] Proposed rule 17f–5(d)(4). *See also* proposed rule 17f–2(d)(3)(iv) (defining an eligible foreign custodian to include a compulsory depository). The proposed definition should be construed narrowly. If maintaining assets in a depository or with a foreign bank custodian are feasible alternatives, the Commission believes the decision to use a depository should be made in connection with the custodian selection process. See "Selecting Foreign Custodians" below.

[73] *See* ICI Letter III, *supra* note 14, at 10 (Exhibit A); Custodian Letter I, *supra* note 14, at 13-(Exhibit A) (suggesting that a depository should be considered to be compulsory if securities held outside the depository cannot be traded or transferred in accordance with routine clearance and settlement practices).

[74] When different delegates evaluate country-wide and foreign custodian risks and disagree on whether using a depository is compulsory, the depository's status may have to be determined by the board.

[75] *See* Custodian Letter II, *supra* note 14, at 14–15 (discussing these considerations).

[76] *See* ICI Letter III, *supra* note 14, at 10 (recommending that evaluations of compulsory depositories be part of the custodian selection process); Custodian Letter I, supra note 14, at 4–5, 6–7 (consistent with proposed approach).

[77] Any custodian selected by the delegate would have to be an "eligible foreign custodian" as defined in proposed rule 17f–5(d)(3). *See* "Eligible Foreign Custodians" below.

[78] Proposed rule 17f–5(a)(2). *See also* ICI Letter III, *supra* note 14, at 5 (Exhibit A); Custodian Letter I, *supra* note 14, at 7 (Exhibit A) (recommending that U.S. bank delegates be required to represent to the board that a foreign custodian's internal controls or established procedures are adequate to provide reasonable protection for fund assets).

The proposed approach would be consistent with that governing country-wide custodial risks evaluations. Like the current rule, the proposed finding of reasonable protection would have to be made prior to placing the fund's assets with the foreign custodian.

[79] Proposed rule 17f–5(a)(2). *See* "Custody in Foreign Countries" above.

[80] Proposed rule 17f–5(a)(2) (i) through (iii). As indicated in the text accompanying note 71 *supra*, proposed rule 17f–5(a)(1) would require delegates that evaluate the protection afforded fund assets held by a compulsory depository to consider the factors set forth in rule 17f–5(a)(2) (i) through (iii) governing the selection of foreign custodians.

derived from the Notes to the current rule.[81]

The Notes to rule 17f–5 address a foreign custodian's financial strength, its general reputation and standing in the country, and its ability to provide efficiently the custodial services required and the relative costs of those services.[82]

In addition to a custodian's financial strength,[83] the amended rule would address a custodian's reputation and standing generally, rather than in the country where the custodian is located.[84] A custodian's reputation and standing outside of its own country may be relevant, especially in the case of multi-national banks. By no longer tying consideration of a custodian's reputation and standing to the country where the custodian is located, the amended rule seeks to provide delegates with greater flexibility to evaluate a custodian's reputation based on the facts and circumstances relevant to the particular custodian. The amended provision also would require, in the case of a securities depository, consideration of the depository's operating history and number of participants.[85]

In addition, the amended provision would no longer address a custodian's efficiency and relative costs. Weighing a custodian's efficiency against the costs of its services does not appear to be particularly germane to the safety of fund assets in the hands of that custodian. Although these matters would not be addressed under the amended rule, the delegate may appropriately consider custodial efficiency and costs in selecting a foreign custodian.

The Notes to rule 17f–5 also state that the fund's board should consider whether a foreign custodian will provide a level of safeguards not materially different from those of the fund's U.S. custodian.[86] The Commission believes that foreign custodian arrangements, although different from U.S. arrangements, nonetheless may provide reasonable and effective safeguards for fund assets.[87] Accordingly, the amended rule would focus on whether a foreign custodian would provide reasonable protection for fund assets, and would specifically require the delegate to consider the custodian's practices, procedures, and internal controls in making this determination.[88]

The protections provided by custodians within a foreign country may vary widely. Thus, one custodian's practices and internal controls may provide reasonable protections, while those of other custodians may not. In addition, although the rule would not require parity between foreign and U.S. custodian arrangements, reference to U.S. standards may be relevant in determining whether a foreign custodian's practices and internal controls will reasonably protect fund assets.

Finally, the amended rule would require the delegate to assess the likelihood of U.S. jurisdiction over and enforcement of judgments against a foreign custodian.[89] The proposed requirement would broaden the Notes to the current rule, which address whether a foreign custodian has any branch offices in the United States.[90] Under the proposed approach, in addition to considering domestic branches, the delegate could take into account other jurisdictional and enforcement means, such as whether a foreign custodian has appointed an agent for service of process in the United States or consented to U.S. jurisdiction.[91]

The Commission requests comment on the proposed approach and the factors that delegates would be required to consider in selecting foreign custodians.

4. Foreign Custody Contracts

a. Proposed Approach

Rule 17f–5 currently requires the fund's foreign custody arrangements to be governed by a written contract that has been approved by the board.[92] The current rule also enumerates specific provisions that must be included in the contract. The contract generally must provide that: (A) The fund will be indemnified and its assets insured in the event of loss; (B) the fund's assets will not be subject to liens or other claims in favor of the foreign custodian or its creditors; (C) the fund's assets will be freely transferable without the payment of money; (D) records will be kept identifying the fund's assets as belonging to the fund; (E) the fund's independent public accountants will be given access to those records or confirmation of the contents of those records; and (F) the fund will receive periodic reports, including notification of any transfers to or from the fund's account.[93]

The amended rule would retain the requirement of a written foreign custody contract, but would not enumerate specific provisions that must be included in the contract.[94] In proposing this approach, the Commission does not intend to imply that the contract provisions required under the current rule are not important. Rather, the Commission believes that funds should be able to establish contractual arrangements that reflect the particular circumstances presented. Contract provisions other than those currently required may be important in any given foreign market or for a specific foreign custodian. In addition, certain practical problems and interpretive questions have arisen regarding the current contract requirements.[95] As custody practices change, similar issues may arise in the future that could delay or preclude certain arrangements.

The amended rule would require a finding that the foreign custody contract will provide reasonable protection for the fund's assets based on all factors relevant to the safekeeping of such assets. Determining whether a contract provides such protection typically would involve consideration of the contract provisions required under the current rule as well as those customarily provided by U.S. custodians and other foreign custodians operating in the country.[96]

In addition, the Commission understands that funds often contract with their primary custodians for foreign custody services; the primary custodian, in turn, enters into separate contracts with the fund's foreign bank custodians. When the fund's contractual relationship with a foreign custodian is indirect, the delegate should consider the fund's rights vis-a-vis both the contracting intermediary custodian and the foreign custodian that holds the fund's assets. The delegate, for example, should consider whether the intermediary custodian has agreed in its contract with the fund to obtain indemnification or other contractual protections from the foreign custodian. The delegate also should consider, among other things, whether the fund would be able to assert claims directly against the foreign custodian in the event of loss.[97]

The Commission also understands that depository arrangements typically are not governed by contract.[98] In addition, a foreign depository's services often are not provided directly to the fund or its primary custodian.[99] Depository services typically are provided through foreign banks that have an established relationship with the depository.[100] The amended rule, like the current rule, would not require foreign depositories to be parties to the fund's foreign custody contract.[101] Instead, the delegate should consider the responsibilities of the bank custodian interacting with the depository, along with the rights of the fund in relation to both the intermediary custodian and depository.

The Commission requests comment on the proposed approach. The Commission requests specific comment whether the amended rule should require specific contract provisions. In particular, would the proposed approach facilitate the use of foreign custody arrangements or create difficulties in obtaining important contractual protections from foreign custodians? For example, codifying specific contract requirements may offer certain advantages to fund shareholders by removing these protections from the items that could be subject to negotiation. The Commission also requests comment whether the amended rule should include specific factors (such as those discussed above) that delegates would have to consider in evaluating the protections provided by a contract.[102]

b. Request for Comment on Specific Contract Provisions

The ICI and the Custodian Group recommended retaining the rule's current contract requirements, with certain modifications.[103] The Commission requests comment on the current provisions and the related recommendations of the ICI and the Custodian Group. In addition, the Custodian Group indicated that the rule's current contract requirements have become industry standards for custodial arrangements involving foreign banks.[104] The Commission requests specific comment whether this is the case.

The ICI and the Custodian Group recommended modifying the current requirement prohibiting liens on the fund's assets.[105] The ICI and the Custodian Group indicated that this requirement should not apply to cash, since, in most jurisdictions, cash may become subject to creditors' claims if a custodian becomes bankrupt.[106]

The ICI and the Custodian Group also recommended modifying the current recordkeeping requirement to specifically recognize the permissibility of "omnibus accounts."[107] These accounts contain the assets of more than one custodial customer, and are established by intermediary custodians with foreign banks and securities depositories.[108] In an omnibus account structure, the intermediary, which is reflected on the foreign custodian's books as the record owner of the assets, is responsible for maintaining records that identify each of its customer's assets.[109]

The ICI and the Custodian Group disagreed on how the rule should address indemnification and insurance.[110] The ICI recommended

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[81] See rule 17f–5, Notes 2(a)–(d).

[82] Rule 17f–5, Note 2(a).

[83] In evaluating a custodian's financial strength, the delegate, for example, may consider capitalization, financial history, and any other lines of business undertaken by the custodian and the potential effects of such businesses on the custodian's financial condition and operations.

[84] Proposed rule 17f–5(a)(2)(i).

[85] These matters currently are addressed as a separate Note under rule 17f–5. Rule 17f–5, Note 2(d). Although certain matters (*i.e.*, operating history and number of participants) would specifically apply to depositories, all of the factors set forth in proposed rule 17f–5(a)(2) (i) through (iii) would have to be considered when selecting foreign depositories.

The Custodian Group indicated that information concerning certain depositories may be difficult or impossible to obtain. The ICI and the Custodian Group recommended that the rule address this problem by requiring consideration of a depository's operating history if such information is "reasonably obtainable." ICI Letter III, *supra* note 14, at 2–3 (Exhibit A); Custodian Letter I, *supra* note 14, at 14–16 and at 4 (Exhibit A).

The extent (or absence) of information about a foreign depository may be relevant in determining whether the depository will provide reasonable protection for fund assets. For example, the lack of available information about a depository's operating history may militate against the depository's use. Consequently, the amended rule would not make an exception when information about a depository is not available.

[86] Rule 17f–5, Note 2(b).

[87] *See* Custodian Letter II, *supra* note 14, at 3–6.

[88] Proposed rule 17f–5(a)(2)(ii). *See* ICI Letter III, *supra* note 14, at 2 (Exhibit A); Custodian Letter I, *supra* note 14, at 9–11 and at 4 (Exhibit A) (recommending that the rule focus on the protections provided by foreign custodians rather than the equivalency of those protections to U.S. standards).

When different delegates evaluate country-wide and foreign custodian risks, the delegates may come to different determinations, which are attributable to the different assessments involved. *See* text accompanying note 55 *supra* (regarding evaluations of a country's prevailing custodial risks).

[89] Proposed rule 17f–5(a)(2)(iii).

[90] *See* rule 17f–5, Note 2(c).

[91] The Commission recognizes that U.S. jurisdiction may not be obtainable over certain foreign depositories. As with the other factors under the amended rule, an affirmative finding of U.S. jurisdiction would not be required. Rather, the absence of U.S. jurisdiction would have to be considered in making the overall determination that using the custodian will provide reasonable protection for fund assets.

[92] Rule 17f–5(a)(1)(iii).

[93] Rule 17f–5(a)(1)(iii)(A)–(F).

[94] Proposed rule 17f–5(a)(3).

[95] *See* "Request for Comment on Specific Contract Provisions" below.

[96] The proposed approach would not require a finding that the foreign custody contract provides protections equivalent to U.S. safeguards or that the contract addresses every possible contingency for loss of the fund's assets. Rather, the amended rule would focus on whether the contract would provide reasonable protection for the fund's assets.

[97] *See, e.g.*, Citibank, N.A., Investment Company Act Release Nos. 18710 (May 15, 1992), 57 FR 21835 (Notice of Application) and 18782 (June 12, 1992), 51 SEC Docket 1533 (Order) (contract between the intermediary U.S. custodian and the foreign custodian gives the fund the right to enforce the agreement directly against the foreign custodian).

[98] See Custodian Letter II, *supra* note 14, at 6–8. The ICI and the Custodian Group recommended that any required contract provisions should not apply to depositories. ICI Letter III, *supra* note 14, at 3–5 (Exhibit A); Custodian Letter I, *supra* note 14, at 11–12. The ICI and the Custodian Group recommended requiring the rules or established practices of a depository to provide specific safeguards relating to the free transferability of the fund's assets, the keeping of adequate records, and periodic reporting and notification of asset transfers. ICI Letter III, *supra* note 14, at 3–5 (Exhibit A); Custodian Letter I, *supra* note 14, at 12.

[99] See Custodian Letter I, *supra* note 14, at 11–12.

[100] *Id.* (indicating that, from the fund's perspective, a depository typically will be a custodian for a foreign bank custodian, which is itself a subcustodian of the fund's U.S. custodian). *See also* Custodian Letter II, *supra* note 14, at 6–8.

[101] *See* Investment Company Institute 2–3 (pub. avail. Nov. 4, 1987) (hereinafter 1987 Division Letter).

[102] Including specific factors does not appear to be necessary since the Commission understands that foreign custody contracts incorporating important contractual protections are a matter of standard industry practice. *See, e.g.*, Custodian Letter I, discussed *infra* note 103.

[103] ICI Letter I, *supra* note 14, at 5 (indicating that it is appropriate for the rule to require certain essential contract provisions); Custodian Letter I, *supra* note 14, at 11. The ICI and the Custodian Group recommended that the contract requirements apply only to foreign bank custodians. See *supra note* (regarding the ICI and the Custodian Group's recommendations for depository arrangements).

[104] See Custodian Letter I, *supra* note 14, at 11

[105] ICI Letter III, *supra* note 14, at 12; Custodian Letter I, *supra* note 14, at 21–22. *See* rule 17f–5(a)(1)(iii)(B).

[106] ICI Letter III, *supra* note 14, at 12; Custodian Letter I, *supra* note 14, at 21–22.

[107] ICI Letter III, *supra* note 14, at 3–4 (Exhibit A); Custodian Letter I, *supra* note 14, at 22–23. See rule 17f–5(a)(1)(iii)(D).

[108] Custodian Letter I, *supra* note 14, at 22–23. The ICI and the Custodian Group also recommended specifically recognizing the role of U.S. intermediary custodians in connection with the current provisions relating to indemnification and insurance, access to the foreign custodian's books, and periodic reporting. ICI Letter III, supra note , at 3–4 (Exhibit A); Custodian Letter III, *supra* note 14, at 5–6 (Exhibit A). This approach may help clarify the rule's requirements, although it does not appear to be necessary.

[109] Although the recommended change may help clarify the rule's requirements, it is not necessary. The current rule does not prescribe a specific manner for keeping custody records. *See* also State Street Bank and Trust Company (pub. avail. Feb. 28, 1995) (regarding the permissibility of omnibus accounts).

[110] By its terms, rule 17f–5 requires foreign custody contracts to provide that the fund will be indemnified *and* its assets insured in the event of loss. Rule 17f–5(a)(1)(iii)(A). Consistent with a prior Division no-action position, the ICI and the Custodian Group recommended requiring either indemnification or insurance. ICI Letter III, *supra* note 14, at 5 (Exhibit A); Custodian Letter III, *supra* note 14, at 4 (Exhibit B). *See also* 1987 Division Letter, *supra* note 101, at 2–3. The ICI and the Custodian Group also recommended requiring fund assets to be protected for losses resulting from a foreign custodian's failure to use reasonable care. ICI Letter III, *supra* note 14, at 5 (Exhibit A);

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that, instead of requiring indemnification or insurance as a contract provision, the rule require the fund's U.S. custodian (acting as the delegate responsible for the foreign custody contract) to represent that the fund's overall contractual arrangements provide indemnification or insurance protections.[111] The ICI indicated that, under its approach, indemnification or insurance protections could appear either in the fund's contract with its U.S. custodian or in the contract between the U.S. custodian and the foreign custodian.[112] The Custodian Group objected to the ICI's approach, arguing that it would make custodian delegates responsible for indemnifying or insuring depository arrangements.[113]

5. Monitoring Custody Arrangements and Withdrawing Assets From Custodians

The amended rule would require the delegate to monitor the continuing appropriateness of the custody of the fund's assets in a country, with a particular custodian, and under the foreign custody contract.[114] This requirement seeks to address the possibility that the fund's arrangements, although consistent with the amended rule's requirements when initially entered into, may later fail to provide reasonable protection for fund assets.[115] The proposed monitoring requirement would involve establishing a means of receiving sufficient and timely information to respond to material changes.[116] Determining appropriate monitoring procedures would depend on the facts and circumstances involved. For example, custodial practices in certain countries or used by certain custodians may require frequent monitoring, while other arrangements require significantly less oversight.[117]

If an arrangement no longer meets the requirements of the amended rule, the fund would have to withdraw its assets from the country or custodian as soon as reasonably practicable. The current rule requires a fund in these circumstances to withdraw its assets from a foreign custodian as soon as reasonably practical, but specifies that, in any event, assets withdrawals must be made within 180 days.[118] The amended rule would eliminate the 180 day provision and focus instead on the importance of taking prompt action based on the circumstances presented. For example, a fund that invests its assets primarily in a single country may require more time to withdraw those assets than a fund that has placed only a small percentage of its assets with a particular custodian or in a particular country.

The Commission requests comment on the proposed monitoring requirement. The Commission requests specific comment whether the amended rule should require asset withdrawals to be effected within a specific time period.[119] Commenters favoring this approach should indicate what the time period should be and whether a period of less than 180 days (*e.g.*, 90 days) would be appropriate. The Commission also requests comment whether, as an alternative or in addition to providing a specific grace period, the rule should require the use of interim arrangements, such as insurance or third-party indemnification agreements, to protect against possible loss of fund assets until alternative arrangements can be made.

C. Eligible Foreign Custodians

1. Banks and Trust Companies

a. Proposed Approach

The amended rule would define an "eligible foreign custodian" as foreign banks and trust companies that are subject to foreign bank or trust company regulation.[120] An eligible foreign custodian also would include majority-owned foreign subsidiaries of a qualified U.S. bank or a U.S. bank holding company.[121] The amended rule would not subject foreign bank and trust custodians to specific capital requirements.[122] The amended rule, however, would prohibit foreign bank and trust custodians from being affiliated persons of the fund or affiliated persons of such persons.[123]

Rule 17f–5 currently limits the class of eligible fund custodians to foreign banks and trust companies that have more than $200 million in shareholders' equity and majority-owned foreign subsidiaries of qualified U.S. banks or bank-holding companies that have more than $100 million in shareholders' equity.[124] Although this approach seeks to protect against the risk of loss from a custodian's insolvency,[125] the shareholders' equity requirement has become an inflexible standard that does not address matters, such as credit and market risks, that may affect an institution's financial health.[126]

Custodian Letter III, *supra* note 14, at 4 (Exhibit B). See 1987 Division Letter, *supra* note 14, at 2–3 (indicating that the rule requires indemnification or insurance to cover foreseeable risks of loss).

[111] ICI Letter I, *supra* note 14, at 5 (noting that indemnification provisions often are included in the fund's contract with its U.S. custodian); ICI Letter III, *supra* note 14, at 12 and at 4 (Exhibit A).

[112] ICI Letter III, *supra* note 14, at 12. This approach currently is permitted under rule 17f–5, which does not specify the party that must provide indemnification and insurance protections. *See* rule 17f–5(a)(1)(iii)(A).

[113] Custodian Letter III, *supra* note 14, at 4. The Custodian Group would not require indemnification or insurance with respect to depository arrangements. *Id. See also* Custodian Letter II, *supra* note 14, at 6–7 (indicating that depositories often establish compensation funds for losses attributable to the depository).

[114] Proposed rule 17f–5(a)(4). *See* rule 17f–5(a)(2) (requiring a system to monitor the fund's arrangements to ensure compliance with the conditions of the rule).

[115] The amended rule seeks to clarify the scope of the monitoring requirement by tying monitoring obligations to the reasonable protection findings required to be made in establishing foreign custody arrangements. *See* ICI Letter III, *supra* note 14, at 6 (Exhibit A); Custodian Letter I, *supra* note 14, at 17 (recommending that monitoring responsibilities relate to specific representations that would have to be made when custody arrangements are entered into).

[116] *See* 1984 Reproposing Release, *supra* note 8, at 2910 (consistent with the proposed approach). *See also* 1987 Division Letter, *supra* note 101, at 4 n.5 (indicating that, under the current rule, the board generally may rely on the fund's U.S. custodian or another third-party expert to oversee the fund's arrangements so long as the expert agrees to notify the board of any material changes, and that the board is not required to review periodic reports in the absence of a material change).

[117] The ICI and the Custodian Group recommended allowing delegates to satisfy their monitoring obligations by periodically, but no less frequently than annually, reviewing a foreign custodian's financial position and internal controls. ICI Letter III, *supra* note 14, at 6 (Exhibit A); Custodian Letter I, *supra* note 14, at 17 (also indicating that, in a formal sense, the board or a custodian delegate could not be expected to monitor continuously a foreign custodian's financial position and internal controls).

[118] Rule 17f–5(a)(4). *See generally* 1985 Release Proposing Amendments, *supra* note 8, at 24541 (proposing a 90-day grace period); 1985 Release Adopting Amendments, *supra* note 8, at 37655 (adopting a 180-day grace period to provide sufficient time for funds to negotiate alternative arrangements).

[119] *See* ICI Letter III, *supra* note 14, at 6 (Exhibit A); Custodian Letter I, *supra* note 14, at 8 (Exhibit A) (incorporating the 180-day grace period of the current rule).

[120] Proposed rule 17f–5(d)(3)(i).

[121] A "qualified U.S. bank" would be defined in proposed rule 17f–5(d)(5). Under current rule 17f–5, the definition of a qualified U.S. bank mirrors the definition of "bank" in section 2(a)(5), except that it requires certain banks and trust companies that receive deposits or exercise fiduciary powers and that are subject to state or federal regulation *to be organized under state or federal law*. *See* 15 U.S.C. 2(a)(5)(C) and rule 17f–5(c)(3)(iii). Proposed rule 17f–5(d)(5) would not change this definition.

[122] The Commission previously considered using this approach. *See* 1982 Proposing Release, *supra* note 3, at 16347.

[123] *See* section 2(a)(3), 15 U.S.C. 80a–2(a)(3) (defining affiliated person).

[124] Rule 17f–5(c)(2) (i) and (ii).

[125] *See* John Downes & Jordan Elliot Goodman, Dictionary of Finance and Investment Terms 377 (2d ed. 1987) (defining shareholders' equity as total assets minus total liabilities of a corporation). *Cf.* 1984 Reproposing Release, *supra* note 8, at 2907 (indicating that the rule's capital requirements seek to address disparities in the protections provided by various foreign regulatory systems).

[126] The shareholders' equity requirement has been the subject of several no-action letters and a number of exemptive orders. *See infra* notes 128, 142, and 144 and accompanying text.

Shareholders' equity also does not provide a uniform assessment of financial strength, since it may be calculated differently depending both on the country where the institution is organized and the institution's accounting practices.[127]

In addition, the shareholders' equity requirement may limit unnecessarily the class of eligible foreign custodians. Certain highly capitalized custodians, such as national banks that maintain substantial government-funded reserves to satisfy their liabilities, do not have shareholders' equity.[128] In addition, in certain emerging and smaller markets, very few or no foreign custodians have sufficient shareholders' equity to meet the $100 million and $200 million standards.[129]

In proposing to eliminate specific capital requirements, the Commission does not intend to imply that a custodian's financial strength is not important to the custodian's ability to serve a fund.[130] The amended rule would require the board's delegate to determine that foreign custodians will provide reasonable protection for the fund's assets based on, among other things, a custodian's financial strength.[131] This approach should sufficiently address the adequacy of a custodian's capital, without imposing specific capital requirements.

The Commission requests comment on the proposed approach. The Commission requests specific comment whether the current shareholders' equity requirement should be retained, with higher or lower standards.[132] For example, the ICI and the Custodian Group recommended lowering the current $100 million and $200 million standards to expand the class of eligible foreign custodians in emerging and smaller markets.[133] In particular, they recommended that a custodian with more than $25 million in shareholders' equity should be eligible to hold fund assets, if it is one of the five largest banks in the country.[134] The Custodian Group indicated that this approach should not present significant risks, given the limited amount of assets likely to be maintained in smaller markets and the other protections of the rule.[135]

The Commission also requests comment whether any additional entities, such as foreign broker-dealers, should be permitted to serve as custodians.[136] Commenters addressing this issue should consider the circumstances under which additional types of entities should be permitted to hold fund assets. For example, should these entities be subject to capital or other special requirements?[137]

Finally, the Commission requests comment on prohibiting affiliated foreign custody arrangements. Custody by fund affiliates raises special investor protection concerns. To guard against potential abuses resulting from control over fund assets by related persons, rule 17f–2 under the Act, the Commission rule applicable to funds that retain custody of their own assets, has been applied to affiliated custody arrangements.[138]

The Commission is aware of only one existing affiliated foreign custody arrangement, and believes that other such arrangements may be best addressed on a case-by-case basis.[139] The Commission recognizes, however, that affiliated arrangements may become more prevalent as global investing and custodian networks continue to grow and as the fund industry continues to consolidate.[140] The Commission, therefore, requests comment whether the proposed prohibition would be unduly restrictive and whether the prohibition should apply only to certain affiliated arrangements, such as when there is a control relationship between the fund's adviser and a foreign custodian.[141] The Commission also requests comment whether there are alternative safeguards that would address the investor protection concerns raised by these arrangements. For example, should fund boards establish and oversee affiliated arrangements without the discretion to delegate this responsibility?

b. Other Alternatives Considered

The Commission considered several other approaches to defining an eligible foreign custodian. These alternatives could be used in lieu of the current shareholders' equity requirement or in conjunction with reduced capital standards. The Commission requests comment on each approach.

The Commission considered using an approach that would focus on a bank or trust company's safekeeping abilities.[142]

[127] The Commission previously sought to address this problem by proposing that shareholders' equity be calculated according to generally accepted accounting principles. 1985 Release Proposing Amendments, *supra* note 8. The Commission decided to postpone final action on this proposal due to concerns that compliance costs would be excessive. 1985 Release Adopting Amendments, *supra* note 8.

[128] *See* 1984 Adopting Release, *supra* note 8, at 36082. Custodians organized as private banks also may not have shareholders' equity. No-action letters, however, have found the capital of certain private banks to be the equivalent of shareholders' equity. *See* Pictet & Cie (pub. avail. Sept. 8, 1993) (private bank with partners' equity); Union Bank of Norway (pub. avail. Nov. 30, 1992) (private bank found to have the equivalent of paid-in capital and retained earnings).

[129] *See* Custodian Letter I, *supra* note 14, at 18–19.

[130] *See generally Sub-custodian Services Survey*, Euromoney 116 (Jan. 1994) (indicating that U.S. custodians view capitalization and credit rating as the most significant considerations in selecting foreign custodians).

[131] *See* "Delegation of Board Responsibilities—Selecting Foreign Custodians" above.

[132] *See* ICI Letter II, *supra* note 14, at 3 (suggesting that the Commission consider whether the current standards are unnecessarily high); Custodian Letter I, *supra* note 14, at 18 (indicating that the shareholders' equity requirement "has served the Custodian community well in major, established markets").

[133] ICI Letter III, *supra* note 14, at 7 (Exhibit A); Custodian Letter I, *supra* note 14, at 18–19. *See also* "Other Alternatives Considered" below (regarding the ICI's and the Custodian Group's other recommendations).

[134] ICI Letter III, *supra* note 14, at 7 (Exhibit A); Custodian Letter I, *supra* note 14, at 18–19. *See also* 1984 Adopting Release, *supra* note 8, at 36082 (rejecting the use of foreign bank custodians that constitute one of the five largest banks in a country when no bank in that country meets the shareholders' equity requirement).

[135] Custodian Letter I, *supra* note 14, at n.12. The Custodian Group also noted that smaller banks would not become eligible custodians in larger markets, since they would not be one of the five largest banks in the country. *Id.* at 19.

[136] When a foreign entity acts as both a bank and broker-dealer, it would meet the definition of an eligible foreign custodian if the division or part of the entity that has custody of fund assets is regulated under foreign law as a banking institution. *See generally* 1984 Reproposing Release, *supra* note 8, at 2907–08 (not allowing foreign broker-dealers to serve as custodians since funds had not expressed an interest in these arrangements). *See also* Canada Trustco Mortgage Company (pub. avail. Dec. 29, 1989) (loan company with wholly-owned trust subsidiary deemed to be an eligible foreign custodian).

[137] Broker-dealers, for example, could be required to be subject to foreign regulatory requirements relating to their financial responsibility and the segregation and handling of customer securities. *See, e.g.*, rule 206(4)–2(b) under the Investment Advisers Act of 1940, 17 CFR 275.206(4)–2(b). *See also* rule 17f–1 under the Act.

[138] *See, e.g.*, Pegasus Income and Capital Fund, Inc. (pub. avail. Dec. 1, 1977) (custody by U.S. adviser-bank). Rule 17f–2 appears to be unworkable in the foreign custody context because the rule requires, among other things, fund assets to be maintained in a bank that is subject to state or federal regulation; the fund's assets also must be subject to Commission inspection and verified by an independent public accountant. Rule 17f–2(b), (d), and (e). *See* 1984 Reproposing Release, *supra* note 8, at 2907–08.

The Division currently is reviewing rule 17f–2, and may recommend in the future that the Commission propose certain changes in the rule's requirements.

[139] Dean Witter World Wide Investment Trust (pub. avail. Mar. 14, 1988) (affiliation between the fund's sub-adviser and primary custodian deemed sufficiently remote so as not to require the protections of rule 17f–2).

[140] *See* John Waggoner, *Urge to Merge Hits Mutual Funds*, USA Today, Feb. 8, 1995, at 1B. *See also* Timothy L. O'Brien and Steven Lipin, *In the Latest Round of Banking Mergers, Even Big Institutions Become Targets*, Wall St. J., July 14, 1995, at A3.

[141] *See* section 2(a)(3)(C) of the Act.

[142] *See* Permanent Trustee Company Limited, Investment Company Act Release Nos. 17833 (Oct.

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Under this approach, a bank or trust company would be an eligible foreign custodian if it had maintained custody of a substantial amount of assets (*e.g.*, $500 million) over a specified period of time (*e.g.*, the past five years) and had not incurred any material loss of custodial assets during that period. Commenters addressing this alternative should discuss the criteria that should be used to establish a custodian's safekeeping abilities and the feasibility of monitoring compliance with such criteria.[143]

The ICI and the Custodian Group recommended using an approach based on prior exemptive orders.[144] Under this alternative, a foreign bank or trust company would not have to satisfy a shareholders' equity requirement if (i) the bank or trust company is a subsidiary of the fund's primary custodian; (ii) the primary custodian meets certain capital requirements; and (iii) the primary custodian assumes financial responsibility for the bank or trust custodian's use.[145] The Commission requests commenters addressing this alternative to consider the appropriateness of allowing U.S. and foreign banks to serve as both assurance-providers and delegates for foreign custodian selection.[146] The Commission also requests commenters to consider whether assurance arrangements should be limited to parent custodians and their foreign subsidiaries.[147]

In addition, the ICI recommended that the Commission consider using an investment grade rating from a nationally recognized statistical rating agency as a means of determining a foreign bank's eligibility to serve as a fund custodian.[148] The ICI also recommended that the Commission consider using international capital standards, such as those approved by the Basle Committee on Banking Regulations and Supervisory Practices (the "Basle Accord").[149]

2. Non-Compulsory Depositories and Transnational Systems[150]

Under the amended rule, an eligible foreign custodian would include a securities depository or clearing agency that operates a system for the central handling of securities or equivalent book-entries that is regulated by a "foreign financial regulatory authority," which would include a foreign government, an agency thereof, or a foreign self-regulatory organization.[151] An eligible foreign custodian also would include a depository or clearing agency that operates a transnational system for the central handling of securities or equivalent book-entries.[152]

Rule 17f–5 currently requires depositories and clearing agencies that are not transnational systems to operate the only system for the handling of securities in a country.[153] This requirement seeks to ensure a country's interest in establishing and maintaining a depository's integrity.[154] The Commission believes, however, that the current provision, which has been the subject of a number of no-action positions, is overly restrictive.[155] With the increased immobilization and dematerialization of securities, the Commission believes that rule 17f–5 should not constrain the use of depository arrangements.[156]

The amended rule would address a country's interest in a depository by requiring the depository to be subject to foreign regulation by the government, an agency thereof, or a self-regulatory organization. The amended rule also would require, among other things, consideration of the depository's operating history and number of participants and whether the depository will provide reasonable protection for the fund's assets.[157] This approach should sufficiently address a depository's custodial integrity, while giving funds the flexibility to use a depository that may not operate an exclusive book-entry system.

The Commission requests comment on the proposed approach. The Commission requests specific comment on requiring regulatory oversight of depository arrangements and on permitting such oversight to be conducted by self-regulatory organizations.[158] The Commission also requests comment whether transnational depositories should be required to be subject to similar or other requirements.[159]

D. Assets Maintained in Foreign Custody

Rule 17f–5 permits funds to use foreign custody arrangements for their foreign securities, cash, and cash equivalents.[160] Rule 17f–5 defines foreign securities to include those that are issued and sold primarily outside the United States by foreign and U.S. issuers.[161] By restricting the types of securities that may be maintained outside the United States, the rule seeks to establish a nexus between its scope and its purpose, *i.e.*, to give funds the flexibility to keep abroad assets that are purchased or intended to be sold abroad.[162] In addition, rule 17f–5 limits the cash and cash equivalents that funds may maintain outside the United States to amounts that are reasonably necessary to effect the fund's foreign securities transactions.[163]

The amended rule would not change these restrictions, although it would simplify the definition of foreign securities by eliminating references to specific types of issuers.[164] The Commission requests comment whether any other changes should be made. In particular, should the amended rule continue to restrict the types of securities and amounts of cash and cash equivalents that may be maintained outside the United States?

E. Canadian and Other Foreign Funds

Rule 17f–5 contains special provisions governing the foreign custody arrangements of registered Canadian funds.[165] To address jurisdictional concerns, these provisions are more restrictive than those applied to U.S. funds.[166] Rule 17f–5 allows Canadian funds to maintain their assets only in overseas branches of qualified U.S. banks.[167] The rule also places responsibility for the fund's foreign custody arrangements on the fund's board of directors.[168]

Canadian investment companies have not sought to register under the Act for some time, and very few Canadian funds currently offer their shares in the United States.[169] Accordingly, the amended rule would make limited changes in the foreign custody requirements applicable to Canadian funds. The amended rule would revise the current "best interest" standard for placing fund assets in a particular country and require instead a finding that such custody will provide reasonable protection for the fund's assets.[170] In addition, the amended rule would eliminate the current requirement that the board of a Canadian fund review and approve foreign custody arrangements at least annually. Under the amended rule, the board instead would be required to monitor the continuing appropriateness of the fund's arrangements.[171] If an arrangement no longer meets the rule's requirements, the fund would be required to withdraw its assets from the country or custodian as soon as reasonably practicable.[172]

The Commission requests comment on the proposed approach. The Commission requests specific comment whether the special provisions applicable to Canadian funds should be eliminated. Under this approach, a Canadian fund's foreign custody arrangements could be considered in connection with the fund's registration under the Act. In evaluating proposed arrangements, the Commission would be able to consider any jurisdictional concerns and the requirements of rule 17f–5 applicable to U.S. funds in effect at that time.

Alternatively, should the amended rule allow Canadian funds to use foreign custody arrangements on the same basis as their U.S. counterparts?[173] Commenters favoring this alternative should consider whether any special requirements should be imposed to address jurisdictional concerns. For example, should Canadian funds be required to consent to U.S. jurisdiction or should limits be placed on the amount of a Canadian fund's assets that could be maintained outside the United States?[174]

F. Disclosure of Custody Risks

The Notes to rule 17f–5 currently instruct the fund's board to consider disclosing in the fund's prospectus material risks, if any, associated with the fund's foreign custody arrangements.[175] The amended rule would not address disclosure issues. The Commission believes that these issues are more appropriately addressed by individual funds in considering their disclosure obligations under the Securities Act of 1933.[176]

G. Unit Investment Trusts

Under the Act, unit investment trusts ("UITs") are required to maintain their assets in the custody of U.S. banks or their foreign branches.[177] UITs generally are not permitted to use the foreign

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31, 1990), 55 FR 46749 (Notice of Application) and 17888 (Nov. 30, 1990), 47 SEC Docket 1627 (Order) (granting exemptive relief from the shareholders' equity requirement based on the applicant's established record as a custodian and certain other factors).

[143] In some foreign countries, for example, the amount of assets in a custodian's safekeeping may be considered proprietary information that would not be available to delegates.

[144] *See, e.g.*, Chase Manhattan Bank, Investment Company Act Release Nos. 18025 (Mar. 4, 1991), 56 FR 10451 (Notice of Application) and 18077 (Apr. 2, 1991), 48 SEC Docket 864 (Order).

[145] ICI Letter III, *supra* note 14, at 8–10 (Exhibit A); Custodian Letter I, *supra* note 14, at 20 and at 10–12 (Exhibit A) (the primary custodian would have to be either a U.S. bank with more than $100 million in shareholders' equity or a foreign bank or trust company with more than $200 million in shareholder's equity; in addition, the primary custodian would have to assume responsibility for any loss arising from the arrangement (including losses attributable to the foreign custodian's bankruptcy or insolvency) to the same extent as if the primary custodian had itself performed the custody services). *See also supra* note 24.

[146] For example, banks serving as both assurance-provider and the board's delegate may be inclined to disregard custodial problems in hopes of delaying or avoiding their indemnification responsibilities. On the other hand, banks serving in both capacities may be more vigilant in establishing and overseeing foreign custody arrangements, since they would be liable for losses associated with the foreign custodian's use.

[147] *See* State Street Bank and Trust Company, Investment Company Act Release Nos. 20519 (Aug. 31, 1994), 59 FR 46463 (Notice of Application) and 20583 (Sept. 27, 1994), 57 SEC Docket 2091 (Order) (custodian providing assurances was not the foreign custodian's parent). *See also* Bank van Haften Labouchere N.V., Investment Company Act Release Nos. 19073 (Nov. 2, 1992), 57 FR 53531 (Notice of Application) and 19135 (Dec. 1, 1992), 52 SEC Docket 2892 (Order) (assurances provided by a foreign company that was not an eligible foreign custodian since it was primarily engaged in the insurance business).

[148] ICI Letter II, *supra* 14, at 3. *See also* Nationally Recognized Statistical Rating Organizations, Securities Act Release No. 7085 (Aug. 31, 1994), 59 FR 46314 (requesting comment on the role of ratings generally in the federal securities laws).

[149] ICI Letter II, *supra* 14, at 3. In general, the Basle Accord seeks to establish minimum standards of capital adequacy for internationally active banks through a ratio that measures an institution's capital in relation to credit risk. *See* Basle Committee on Banking Regulations and Supervisory Practices, International Convergence of Capital Measurement and Capital Standards, Fed. Banking L. Rep. (CCH) ¶ 5403 at 3309 (amended Nov. 6, 1991).

[150] *See also* "Custody in Foreign Countries—Compulsory Depositories" above.

[151] Proposed rule 17f–5(d)(3)(ii) (using the definition of foreign financial regulatory authority in section 3(a)(52) of the Securities Act of 1934 [15 U.S.C. 78c(a)(52)]). *See* 1984 Reproposing Release, *supra* note 8, at 2908 n.31 (noting that securities depositories may be denominated clearing agencies in some countries).

[152] Proposed rule 17f–5(d)(3)(iii). *See* rule 17f–5(c)(iv) (consistent with the proposed approach).

[153] Rule 17f–5(c)(2)(iii).

[154] *See* 1984 Reproposing Release, *supra* note 8, at 2908.

[155] *See, e.g.*, 1987 Division Letter, *supra note* 101, at 3 (taking a no-action position with respect to certain groups of depositories that are integrated and effectively function as one system within a country); Custody of B Shares Trading on the Shenzhen and Shanghai Securities Exchanges (pub. avail. Apr. 26, 1993) (no-action position with respect to depositories that operate the central system for a particular issue and class of securities). *See generally* Templeton Russia Fund, *supra* note 60 (addressing the unique custodial and settlement arrangements in Russia). *See also* ICI Letter III, *supra* note 14, at 10 (Exhibit A); Custodian Letter I, *supra* note 14, at 21 and at 12–13 (Exhibit A) (recommending expanding the class of eligible foreign depositories by codifying prior no-action positions).

[156] Securities are immobilized by storing stock certificates or other indicia of securities ownership with the depository. Securities are dematerialized by dispensing with physical evidence of securities ownership. Group of Thirty Report, *supra* note 20, at 55–56. *See also* Custodian Letter I, *supra* note 14, at 14 (indicating that depositories generally are subject to strict government regulation and provide a high level of safety for fund assets).

[157] *See* "Delegation of Board Responsibilities—Selecting Foreign Custodians" above.

[158] *See* 1984 Reproposing Release, *supra* note 8, at 2908 (not requiring depositories to be regulated by foreign governments or agencies thereof since several principal depositories would not meet the requirement).

[159] The Commission understands that there are very few transnational systems, and is not aware of any problems associated with the current transnational provision.

[160] Rule 17f–5(a).

[161] Rule 17f–5(c)(1).

[162] *See* 1984 Reproposing Release, *supra* note 8, at 2907.

[163] Rule 17f–5(a).

[164] Proposed rule 17f–5(a) and (d)(2).

[165] *See* rule 17f–5(b). Section 7(d) of the Act prohibits foreign investment companies from publicly offering their securities in the United States unless the Commission issues an order permitting registration under the Act. 15 U.S.C. 80a–7(d). Rule 7d–1 sets forth conditions governing applications by Canadian funds that seek Commission orders pursuant to section 7(d). 17 CFR 270.7d–1. Among other conditions, rule 7d–1 provides that the assets of Canadian funds are to be held in the United States by a U.S. bank, except as provided under rule 17f–5. Rule 7d–1(b)(8)(v). Although rule 7d–1 by its terms only applies to Canadian funds, funds organized in other jurisdictions generally have agreed to comply with its conditions as a prerequisite to receiving a section 7(d) order. Protecting Investors report, *supra* note 15, at 193 n.23.

[166] *See* 1984 Reproposing Release, *supra* note 8, at 2906–07; 1984 Adopting Release, *supra* note 8, at 36082.

[167] *See* 1984 Adopting Release, *supra* note 8, at 36082 (indicating that, by restricting custody to *overseas* branches of U.S. banks, Canadian funds may not maintain their assets with Canadian branches of U.S. banks).

[168] *See* rule 17f–5(b)(1)–(3).

[169] Protecting Investors report, *supra* note 15, 193 n.23 (noting that, in 1992, ily three Canadian funds were active).

[170] *See* "Standard for E ating Foreign Custody Arrangements" above.

[171] Proposed rule 17f 2).

[172] Proposed rule 1' 3). *See* "Delegation of Board Responsibilit itoring Custody Arrangements and ' ring Assets from Custodians" above

[173] The ICI and the Custodian Group recommended this approach. ICI Letter I, *supra* note 14, at 4 (also recommending that the foreign custody arrangements of any non-Canadian foreign funds continue to be evaluated on a case-by-case basis); Custodian Letter I, *supra* note 14, at 1 (Exhibit A).

[174] In 1991, a South African fund was allowed to rely on rule 17f–5 as if it were a U.S. fund. ASA Limited, Investment Company Release Nos. 17904 (Dec. 17, 1990) 55 FR 52925 (Notice of Application), and 17945 (Jan. 15, 1991), 47 SEC Docket 1535 (Order). Although the fund's custody arrangements were not restricted to foreign branches of U.S. banks, limits were placed on the amount of the fund's assets that could be held overseas. *Id.*

[175] Rule 17f–5, Note 3.

[176] *See, e.g.*, Forms N–1A, 17 CFR 239.15A (the registration form for open-end funds) and N–2, 17 CFR 274.11a–1 (the registration form for closed-end funds). Item 4(c) of Form N–1A and item 8.3.a of Form N–2 require disclosure in the prospectus of the principal risk factors associated with investing in the fund. Item 13(c) of Form N–1A and item 17.3 of Form N–2 require disclosure in the Statement of Additional Information ("SAI") of the risks inherent in certain significant investment policies, such as investing in foreign securities. Guide 9 to Form N–2 instructs funds with more than 10% of their assets in foreign securities to discuss in the SAI the fund's foreign custody arrangements. *See generally* Templeton Russia Fund, *supra* note 60 (apprising fund investors of certain custodial risks in Russia).

[177] A UIT is a type of fund that issues redeemable securities representing an undivided interest in a portfolio of specified securities. 15 U.S.C. 80a–4(2). *See* Investment Company Act §§ 2(a)(5) (defining bank) and 26(a)(1) (requiring UIT custodians to have at least $500,000 in capital, surplus and undivided profits).

custodians available to funds under rule 17f–5.[178] The foreign custody arrangements of UITs may raise special concerns, since UITs do not have boards of directors to oversee the arrangements.[179]

The Commission requests comment on the appropriateness of a rule that would expand the foreign custody arrangements available to UITs.[180] The Commission requests specific comment on allowing UIT sponsors, custodian banks or other parties to establish and monitor foreign custody arrangements, without independent oversight. The Commission also requests comment whether special protections should attend UIT foreign custody arrangements by, for example, requiring the sponsor, custodian bank, or other party to assume financial responsibility for a foreign custodian's use.[181] Finally, the Commission requests comment whether foreign custody arrangements and the procedures for changing those arrangements should be required to be set forth in UIT trust indentures.

IV. Cost/Benefit Analysis

The amendments would substantially reduce burdens on fund directors and provide funds with greater flexibility to establish and use foreign custody arrangements, consistent with the protection of fund assets. To facilitate evaluations of foreign custody arrangements, the amendments would revise the findings that currently must be made in establishing these arrangements. The amended rule would require findings that foreign custody arrangements will provide reasonable protection for fund assets.

In addition, the amendments would allow fund boards to play a role more consistent with their traditional oversight role in connection with foreign custody arrangements, by permitting boards to delegate their responsibility under the rule to evaluate foreign custody matters. The amendments also would eliminate the current requirement that boards annually approve foreign custody arrangements.

The proposed delegation provisions may impose certain additional costs since delegates would be required to provide fund boards with written reports regarding certain aspects of the arrangements. These costs, however, are not expected to be significant, and are likely to be much less than the costs associated with providing fund boards with information pertaining to their annual review of foreign custody arrangements. In addition, because the reports would facilitate a board's oversight of the delegate's performance, any additional costs associated with the reports would be outweighed by the benefits provided to funds and their shareholders.

The amendments also would expand the class of foreign banks and securities depositories that could serve as fund custodians. Under the amendments, foreign custodians would no longer have to satisfy specific capital standards or other objective requirements. The amended rule instead would require delegates to select foreign custodians based on the custodian's ability to provide reasonable protection for fund assets. While addressing safekeeping considerations, this approach avoids imposing inflexible standards that may unnecessarily limit the use of foreign custodians. In addition, instead of requiring foreign custody contracts to contain specific provisions (as under the current rule), the amendments would require these contracts to reasonably protect fund assets.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding amendments to rule 17f–5. The analysis notes that the amendments are designed to provide funds with greater flexibility in establishing and using foreign custody arrangements, consistent with the protection of their assets. Cost-benefit information reflected in the "Cost/Benefit Analysis" section of this Release also is reflected in the analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Elizabeth R. Krentzman, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–6, Washington, DC 20549.

VI. Statutory Authority

The Commission is proposing to amend rule 17f-5 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 6(c), 37(a)].

Text of Proposed Rule Amendments

List of subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. By revising § 270.17f-5 to read as follows:

§ 270.17f-5 Custody of investment company assets outside the United States.

(a) A registered management investment company, incorporated or organized under the laws of the United States or of a state, may place and maintain in the care of an Eligible Foreign Custodian the company's Foreign Securities, cash and cash equivalents in amounts reasonably necessary to effect the company's Foreign Securities transactions, *provided that:*

(1) The Foreign Custody Manager shall have determined that custody of the company's assets in a particular country can be maintained in a manner that will provide reasonable protection for the company's assets and that custody of the company's assets with any Compulsory Depository in that country will provide reasonable protection for the company's assets, after considering, in each case, all factors relevant to the safekeeping of such assets, including:

(i) The prevailing practices in the country for the custody of the company's assets;

(ii) Whether the country's laws will affect adversely the safekeeping of the company's assets, such as by restricting:

(A) The access of the company's independent public accountants to a custodian's books and records; and

(B) The company's ability to recover its assets in the event of a custodian's bankruptcy or the loss of assets in a custodian's control;

(iii) Whether special arrangements that mitigate the risks of maintaining the company's assets in the country would be used; and

(iv) With respect to any Compulsory Depository, the factors specified in paragraph (a)(2) of this section.

(2) Subject to the decision to place assets in the country and to use any Compulsory Depository in that country under paragraph (a)(1) of this section, the Foreign Custody Manager shall have determined that the foreign custodian will provide reasonable protection for the company's assets, after considering all factors relevant to the safekeeping of such assets, including:

(i) The custodian's financial strength, its general reputation and standing and, additionally, in the case of a securities depository, the depository's operating history and number of participants;

(ii) The custodian's practices, procedures, and internal controls; and

(iii) Whether the company will have jurisdiction over and be able to enforce judgments against the custodian, such as by virtue of the existence of any offices of the custodian in the United States or the custodian's consent to service of process in the United States.

(3) The company's foreign custody arrangements shall be governed by a written contract that the Foreign Custody Manager has determined will provide reasonable protection for the fund's assets, after considering all factors relevant to the safekeeping of such assets.

(4) The Foreign Custody Manager shall have established a system to monitor the appropriateness of maintaining the company's assets in a particular country and using any Compulsory Depository in that country under paragraph (a)(1) of this section, maintaining the company's assets with a particular custodian under paragraph (a)(2) of this section, and the contract governing the company's arrangements under paragraph (a)(3) of this section. If an arrangement no longer meets the requirements of this section, the company shall withdraw its assets from the country or foreign custodian, as the case may be, as soon as reasonably practicable.

(b) The company's board of directors may delegate to the company's investment adviser or officers or to a U.S. bank or to a Qualified Foreign Bank the responsibilities set forth in paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section, *provided that:*

(1) The board shall have determined that it is reasonable to rely on the delegate to perform the delegated responsibilities;

(2) The board shall require the delegate to provide written reports notifying the board of the placement of the company's assets in a country and with a particular custodian (including any Compulsory Depository) and of any material change in the company's arrangements, with such reports to be provided to the board no later than the next regularly scheduled board meeting following such event.

(c) Any management investment company, incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of § 270.7d-1, may place and maintain its Foreign Securities, cash and cash equivalents in the care of an overseas branch of a Qualified U.S. Bank, *provided that:*

(1) Prior to placing any assets with such overseas branch, the company's board of directors shall have determined that custody of the assets in the particular country will provide reasonable protection for those assets;

(2) The company's board of directors shall have established a system to monitor such foreign custody arrangements for their continuing appropriateness under this section and to ensure that the amount of cash and cash equivalents maintained in the care of such overseas branch is limited to an amount reasonably necessary to effect the company's Foreign Securities transactions; and

(3) If an arrangement no longer meets the requirements of this section, the company shall withdraw its assets from the country or such overseas branch, as the case may be, as soon as reasonably practicable.

(d) For purposes of this section:

(1) *Foreign Custody Manager* means the company's board of directors or any person serving as the board's delegate under paragraph (b) of this section.

(2) *Foreign Securities* mean securities issued and sold primarily outside the United States.

(3) *Eligible Foreign Custodian* means an entity that is incorporated or organized under the laws of a country other than the United States and that is:

(i) A banking institution or trust company that is regulated as such by the country's government or an agency thereof or a majority-owned direct or indirect subsidiary of a Qualified U.S. Bank or bank-holding company, *provided* that such foreign custodian is not an affiliated person of the company or an affiliated person of such person;

(ii) A securities depository or clearing agency that operates a system for the central handling of securities or equivalent book-entries in the country that is regulated by a foreign financial regulatory authority as defined under section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(52));

(iii) A securities depository or clearing agency that operates a transnational system for the central handling of securities or equivalent book-entries in the country; or

(iv) A Compulsory Depository.

(4) *Compulsory Depository* means an eligible foreign custodian under paragraph (d)(2)(ii) of this section, the use of which is mandatory:

(i) By law or regulation;

(ii) Because securities cannot be withdrawn from the depository; or

(iii) Because maintaining securities outside the depository is not consistent with prevailing custodial practices.

(5) *Qualified U.S. Bank* means an entity that has an aggregate of capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than $500,000, and that is:

(i) A banking institution organized under the laws of the United States;

(ii) A member bank of the Federal Reserve System;

(iii) Any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this section: or

(iv) a receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (d)(5) (i), (ii), or (iii) of this section.

(6) *Qualified Foreign Bank* means a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency thereof.

Dated: July 27, 1995.

[178] Several exemptive orders permit UITs to maintain their assets in certain foreign transnational securities depositories. *See, e.g.*, Merrill Lynch, Pierce, Fenner & Smith, Investment Company Act Release Nos. 15739 (May 14, 1987), 52 FR 19006 (Notice), and 15813 (June 16, 1987), 38 SEC Docket 891 (Order).

[179] UITs do not have corporate-type management structures. Typically, UITs are created by a sponsor or "depositor" that accumulates a portfolio of securities and deposits them with a U.S. bank or "trustee" under the terms of a trust indenture. A UIT's portfolio generally is unmanaged; thus, UITs do not have investment advisers. A UIT's operations are subject to the terms of the trust indenture, which specifies the ongoing responsibilities of the trustee, the depositor and other third-party service providers. *See generally* Form N–7 for Registration of UITs Under the Securities Act of 1933 and Investment Company Act of 1940, Securities Act Release No. 33–6580 (May 14, 1985), 50 FR 21282.

[180] *See* Letter of Pierre de Saint Phalle, Davis Polk & Wardwell, to Diane C. Blizzard, Assistant Director, SEC (Mar. 14, 1995) (recommending a rule for UIT foreign custody arrangements) (File No. S7–23–95). In addition, certain UITs have sought exemptive relief to use foreign custody arrangements available to management funds. *See* United States Trust Company of New York (*filed July 28, 1992*); Merrill Lynch, Pierce, Fenner & Smith, Inc. (*filed Oct. 27, 1993*) (both seeking exemptive relief from section 26(a)(2)(D) of the Act).

[181] Such financial assurances, for example, could cover the loss of UIT assets attributable to the foreign custodian's failure to exercise reasonable care or bankruptcy or insolvency.

By the Commission.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–18890 Filed 8–1–95; 8:45 am]
BILLING CODE 6016–01–P

VOL 60 SS 148 AG 2 995 UMI

federal register

Wednesday
August 2, 1995

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 172
Hazardous Substances; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket No. HM–145K; Amdt Nos. 171–133; 172–141]

RIN 2137–AC71

Hazardous Substances

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the Hazardous Materials Regulations (HMR) by revising the "List of Hazardous Substances and Reportable Quantities" which appears in an appendix to the Hazardous Materials Table. This action is necessary to comply with the Superfund Amendments and Reauthorization Act (SARA) of 1986, which amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) to mandate that RSPA regulate, under the HMR, all hazardous substances designated by the Environmental Protection Agency (EPA). The intended effect of this action is to enable shippers and carriers to identify CERCLA hazardous substances, thereby enabling them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. No notice of proposed rulemaking has preceded this final rule because, in light of RSPA's lack of discretion concerning the regulation of hazardous substances under the HMR, RSPA finds that under the Administrative Procedure Act notice would serve no purpose and thus is unnecessary.

DATES: This amendment is effective on February 2, 1996. However, immediate compliance with the regulations as amended herein is authorized.

FOR FURTHER INFORMATION CONTACT: John A. Gale (202) 366–8553, Office of Hazardous Materials Standards, or George Cushmac (202) 366–4545, Office of Hazardous Materials Technology, RSPA, 400 7th Street, SW, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA). Call the RCRA/Superfund hotline at (800) 424–9346 or, in Washington, DC, (202) 382–3000.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202 of SARA (Pub. L. 99–499) amended Section 306(a) of CERCLA (Pub. L. 96–510), 42 U.S.C. 9656(a), by requiring the Secretary of Transportation to list and regulate hazardous substances, listed or designated under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5127). RSPA carries out the rulemaking responsibilities of the Secretary of Transportation under the Federal hazardous materials transportation law. 49 CFR 1.53(b). This final rule is necessary to comply with 42 U.S.C. 9656(a) as amended by Section 202 of SARA.

In carrying out that statutory mandate, RSPA has no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. Therefore, under the CERCLA scheme EPA must issue final rules amending the list of CERCLA hazardous substances, including adjusting RQ's, before RSPA can amend its list of hazardous substances. In the preamble to the final rule on this subject issued under Docket HM–145F (51 FR 42174; November 21, 1986), RSPA included the following statement:

> It is RSPA's intention to make changes from time to time to the list of hazardous substances or their RQ's in the Appendix as adjustments are made by EPA.

This document adjusts the "List of Hazardous Substances and Reportable Quantities" that appears in Appendix A to § 172.101, based on a final rule EPA published on June 12, 1995 (60 FR 30926) which added 47 hazardous air pollutants, designated by the 1990 Clean Air Act (CAA) Amendments to the list of hazardous substances, and adjusted the RQ's for 8 hazardous wastes codes.

To keep its "List of Hazardous Substances and Reportable Quantities" consistent with EPA's list of CERCLA hazardous substances and reportable quantities, RSPA is amending the HMR in accordance with EPA's final rule. In addition, RSPA is making one non-substantive editorial change to the definition of "Hazardous substance" in § 171.8 by identifying completely the petroleum exclusion for hazardous substances as defined in 40 CFR 300.5.

This rulemaking will enable shippers and carriers to identify CERCLA hazardous substances and thereby enable them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a discharge of a hazardous substance is subject to EPA reporting requirements at 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard at 33 CFR 153.203.

II. Regulatory Analyses and Notices

In accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), RSPA has determined that a notice of proposed rulemaking and an opportunity for public comment and review are impracticable and unnecessary. SARA mandates that the Department of Transportation list and regulate, as hazardous materials under 49 CFR Parts 171–180, hazardous substances designated by EPA under CERCLA. EPA is the sole agency authorized to designate hazardous substances and their reportable quantities. Therefore, public comment and review are unnecessary because: (1) The public was afforded time to comment when EPA published its notice of proposed rulemaking concerning that agency's change in the subject RQ's; and (2) RSPA does not have the authority to designate hazardous substances or determine their reportable quantities.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous materials that cover certain covered subjects and are substantially the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This final rule concerns the designation of hazardous materials. This final rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. Section 5125(b)(1) of title 49 U.S.C. provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be February 2, 1996. This rule is mandated by CERCLA, and does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous substances, some of which are small entities; however, the economic impact of this rule is minimal.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous wastes, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

Issued in Washington, DC on July 25, 1995, under authority delegated in 49 CFR Part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration .

In consideration of the foregoing, Parts 171 and 172 of Title 49, Code of Federal Regulations, are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.8, in the definition of "Hazardous substance", the concluding text following the table is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Hazardous substance * * *

The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in Appendix A to § 172.101 of this subchapter, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In Appendix A to § 172.101, Table 1 is amended by removing, revising and adding in alphabetical order the following entries to read as follows:

Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities

* * * * *

TABLE 1.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES

Hazardous substance	Synonyms	Reportable quantity (RQ) pounds (kilograms)
[REMOVE]		
Benzene, dimethyl	Xylene (mixed)	1000 (454)
m-Benzene, dimethyl	m-Xylene.	
o-Benzene, dimethyl	o-Xylene.	
p-Benzene, dimethyl	p-Xylene.	
Cresol(s)	Cresylic acid Phenol, methyl-.	1000 (454)
m-Cresol	m-Cresylic acid.	
o-Cresol	o-Cresylic acid.	
p-Cresol	p-Cresylic acid.	
Cresylic acid	Cresols Phenol, methyl-.	1000 (454)
m-Cresol	m-Cresylic acid.	
o-Cresol	o-Cresylic acid.	
p-Cresol	p-Cresylic acid.	
Phenol, methyl	Cresol(s) Cresylic acid.	1000 (454)

TABLE 1.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Synonyms	Reportable quantity (RQ) pounds (kilograms)
m-Cresol	m-Cresylic acid.	
o-Cresol	o-Cresylic acid.	
p-Cresol	p-Cresylic acid.	
Xylene (mixed)	Benzene, dimethyl	1000 (454)
m-Benzene, dimethyl	m-Xylene.	
o-Benzene, dimethyl	o-Xylene.	
p-Benzene, dimethyl	p-Xylene.	
[REVISE]		
. . .	. . .	.
DDE	4,4'-DDE	5000 (2270)
4,4'-DDE	DDE	5000 (2270)
D023 o-Cresol		100 (45.4)
D024 m-Cresol		100 (45.4)
D025 p-Cresol		100 (45.4)
D026 Cresol		100 (45.4)
F004		100 (45.4)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents:		
(a) Cresols/Cresylic acid		1000 (454)
(b) Nitrobenzene		100 (45.4)
K068		10 (4.54)
Spent potliners from primary aluminum reduction.		
K090		10 (4.54)
Emission control dust or sludge from ferrochromiumsilicon production		
K091		10 (4.54)
Emission control dust or sludge from ferrochromium production		
. . .	. . .	.
[ADD]		
. . .	. . .	.
Acetamide		100 (45.4)
4–Aminobiphenyl		1 (0.454)
o-Anisidine		100 (45.4)
Benzene, dimethyl-	Xylene; Xylene (mixed); Xylenes (isomers and mixtures)	100 (45.4)
Benzene, m-dimethyl-	m-Xylene	1000 (454)
Benzene, o-dimethyl-	o-Xylene	1000 (454)
Benzene, p-dimethyl-	p-Xylene	100 (45.4)
Biphenyl		100 (45.4)
1,3–Butadiene		10 (4.54)
Calcium cyanamide		1000 (454)
Caprolactam		5000 (2270)
Carbonyl sulfide		100 (45.4)
Catechol		100 (45.4)
Chloramben		100 (45.4)
Chloroacetic acid		100 (45.4)
2–Chloroacetophenone		100 (45.4)
Chloroprene		100 (45.4)
Cresols (isomers and mixture)	Cresylic acid (isomers and mixture) Phenol, methyl-	100 (45.4)
m-Cresol	m-Cresylic acid	100 (45.4)
o-Cresolo	-Cresylic acid	100 (45.4)
p-Cresol	p-Cresylic acid	100 (45.4)
Cresylic acid (isomers and mixture)	Cresols (isomers and mixture); phenol, methyl-	100 (45.4)
m-Cresylic acid	m-Cresol	100 (45.4)
o-Cresylic acid	o-Cresol	100 (45.4)
p-Cresylic acid	p-Cresol	100 (45.4)
Diazomethane		100 (45.4)
Dibenzofuran		100 (45.4)
Diethanolamine		100 (45.4)
N,N-diethylaniline		1000 (454)
Diethyl sulfate		10 (4.54)
N,N-dimethylaniline		100 (45.4)
Dimethylformamide		100 (45.4)
1,2–Epoxybutane		100 (45.4)
Ethylene glycol		5000 (2270)
Hexamethylene-1,6-diisocyanate		100 (45.4)
Hexamethylphosphoramide		1 (0.454)

TABLE 1.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Synonyms	Reportable quantity (RQ) pounds (kilograms)
Hexane		5000 (2270)
Hydroquinone		100 (45.4)
MDI	Methylene diphenyl diisocyanate	5000 (2270)
4,4'-Methylenedianiline		10 (4.54)
Methylene diphenyl diisocyanate	MDI	5000 (2270)
Methyl tert-butyl ether		1000 (454)
4-nitrobiphenyl		10 (4.54)
n-Nitrosomorpholine		1 (0.454)
Phenol, methyl-	Cresols (isomers and mixture); Cresylic acid (isomers and mixture).	100 (45.4)
p-Phenylenedimine		5000 (2270)
beta-Propioaldehyde		1000 (454)
Propoxur (baygon)		100 (45.4)
Styrene oxide		100 (45.4)
Titanium tetrachloride		1000 (454)
Trifluralin		10 (4.54)
2,2,4–Trimethylpentane		1000 (454)
Vinyl bromide		100 (45.4)
Xylene	Benzene, dimethyl-; Xylene (mixed); Xylenes (isomers and mixture).	100 (45.4)
m-Xylene	Benzene, m-dimethyl-	1000 (454)
o-Xylene	Benzene, o-dimethyl-	1000 (454)
p-Xylene	Benzene, p-dimethyl-	100 (45.4)
Xylene (mixed)	Benzene, dimethyl-; Xylene; Xylenes (isomers and mixture)	100 (45.4)
Xylenes (isomers and mixture)	Benzene, dimethyl-; Xylene; Xylenes (mixed)	100 (45.4)
. . .	. . .	.

[FR Doc. 95–18679 Filed 8–1–95; 8:45 am]
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federal register

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Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 189

Use of Federal Aviation Administration Communications Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 189

[Docket No. 27778; Amendment No. 189–3]

RIN 2120–AE68

Use of Federal Aviation Administration Communications Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Federal Aviation Regulations (FAR) relating to the use of FAA communications systems by removing outdated fee provisions and services. Due to enhanced commercial communications (i.e., telecommunications, satellites, etc.) the FAA has determined that the need to accept messages (and to charge fees for this service) that address such topics as lost baggage, hotel reservations, crew assignments, and other commercial matters (Class B messages) no longer exists. This action does not affect the FAA's transmission of messages relating to flight safety, flight plans, and weather (Class A messages). Also, this rule will not alter the current practice of relaying messages received from an FAA Flight Service Station (FSS) outside of the 48 contiguous States and the District of Columbia, or received from a foreign station of the Aeronautical Fixed Telecommunications Network (AFTN).

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen E. Crum, Air Traffic Rules Branch, ATP–230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The predecessor of part 189 (part 612—Aeronautical Fixed Communications, published in the August 25, 1950, **Federal Register**) became effective on September 1, 1950. Part 612 specified that airlines could send certain messages over specific Government circuits. The specific circuits were established between several Pacific Islands. The United States government made this communications network available, at the users expense, to transmit Class B messages since there were few other communication systems established. Subsequent amendments to part 612 accomplished the following: (1) Expanded the service to any station services by the Integrated International Aeronautical Network (now AFTN); (2) defined the specific messages that would be accepted free of charge and those for which fees would be charged; (3) established the priority given to two categories of messages; and (4) limited the Government's liability in the handling of all messages accepted under these provisions.

Concurrent with the evolution of part 612, similar International Civil Aviation Organization (ICAO) procedures were developed. Beginning in 1951, ICAO procedures were implemented whereby each country would: (1) Accept, free of charge, messages that were meant for "* * * ensuring safety of air navigation and regularity of air traffic between aeronautical fixed stations of the different States * * *;" (2) accept other messages that did not fall in the above category provided there was an "* * * absence of rapid commercial telecommunications * * *;" and (3) determine the acceptability of messages.

Communication systems and the air traffic control system have improved greatly in the last several decades. Consequently, users have elected to transmit Class B messages through communications systems other than the FAA's.

The FAA has previously considered the need for, and removal of, part 189 of the FAR. In 1981, all FAA Regional offices were queried regarding what operational effect, if any, the complete removal of part 189 would have. At that time, only the Alaska region objected to this action. The International Flight Service Station (IFSS) in Anchorage, Alaska, handled a high volume of Class B messages, and the Region felt strongly that complete removal of part 189 would preclude them from continuing this service. In 1992, the Regions were again queried regarding their positions with respect to the proposed amendment to part 189. All of the Regions concurred with this proposal. Since the IFSS in Anchorage, Alaska was decommissioned in 1984, aircraft that had previously utilized its communications services are now using a private communications company; therefore, the prior concerns of the Alaska Region are no longer relevant.

Current Requirements

Part 189 stipulates that domestic FSS's may accept for transmission only messages related to distress and distress traffic, safety of human life, flight safety (including air traffic control messages), weather, aeronautical administration, and Notices to Airmen (NOTAM's) (Class A messages). The acceptance and transmission of these messages is completed without charge. This amendment will not alter that service.

In addition to accepting Class A messages, IFSS's and those FSS's located outside the 48 contiguous States and the District of Columbia, may accept messages originated by and addressed to aircraft operating agencies, or their representatives, that directly bear on the efficient and economic conduct of day to day operations. These messages (Class B messages) include such things as new or revised passenger or cargo rates and train or hotel reservations. The current rule provides for a fee of 25 cents for each group of 10 words. FSS acceptance of these messages is based on the absence of adequate non-USA communication facilities.

In recent years additional means of communication have been developed, including satellites, computer networks, and cellular telephones. Therefore, the need to use the FAA AFTN system for the transmission of Class B messages has been greatly reduced. In January, 1988, a communication network called National Airspace Data Interchange Network (NADIN) was commissioned in the United States. The capability to segregate Class B messages, which required payment from the user, was intentionally omitted from the system because the need for such a capability is negligible. However, part 189 was not amended when NADIN was commissioned; consequently the rule still contains outdated provisions for the collection of fees for the transmission of Class B messages.

Annex 10, an International Civil Aviation Organization (ICAO) document, provides guidance to FSS's for handling the operational aspects of international aeronautical telecommunications. The FAA relays Class A or B messages that were originally accepted for transmission at an FAA FSS outside of the 48 contiguous States and the District of Columbia that were received from a foreign station of the AFTN, and that in normal routing would require transit of the 48 contiguous States or the District of Columbia in order to reach an overseas address.

Discussion of Comments

Interested persons were invited to participate in this rulemaking action by submitting written data, views, or arguments. The comment period closed on September 7, 1994. The FAA received one comment, from the Airline Pilots Association, supporting the proposal. The FAA specifically requested comments and information on the potential use of this service and on any impact from eliminating the acceptance for transmission of Class B messages. No such comment or information was received.

Except for minor editorial changes, this rule is the same as that proposed in the Notice of Proposed Rulemaking published in the **Federal Register** on June 9, 1994 (59 FR 29934).

The Rule

Elimination of Acceptance for Transmission of Class B Messages

Currently, only FAA IFSS's or FSS's located outside the 48 contiguous States and the District of Columbia may accept for transmission Class B messages when adequate commercial communication systems are not available. These facilities have not received any requests to accept Class B messages for transmission in over 5 years.

Communication systems technology has improved and expanded to include private data networks, private line services, telegrams, satellite communications, and cellular telephones. Therefore, the need to use FAA communications systems for transmission of Class B messages has diminished. This rule will not restrict or deny users from utilizing the FAA communications systems for relay of Class B messages when other adequate communications systems are not available. Additionally, this action will align the regulations with current practices by eliminating the authority of FSS's to accept for transmission Class B messages without adversely affecting the users.

Elimination of Charges for Class B Messages

The current rule requires that fees be charged when Class B messages are accepted for transmission over FAA communication systems. However, current communication systems cannot segregate those kinds of messages that require a charge for transmission. In fact, over the last 5 years, there are no records of fees having been collected for transmission of Class B messages, nor does the FAA propose to resume this practice. This change will remove from the regulation all references to the collection of fees and align the regualtion with current practices.

Economic Summary

This rule will be neither a significant regulatory action under Executive Order 12866 nor a significant rule under the Department of Transportation Regulatory Policies and Procedures. The FAA does not expect the amendment to impose a significant cost on society (aviation industry, public, or government). The rule will not cause any diminution of safety.

This action will delete rule language that allows the transfer of certain data. This data includes messages addressing topics such as: lost baggage, hotel reservations, and crew assignments on international or overseas flights (Class B data). At present, only IFSS's and FSS's located outside the 48 contiguous States and the District of Columbia have the authority and capability to accept such information for transmission. In practice, the FAA has not received requests for this service for several years.

The FAA queried FSS's to determine the consequences of this action. The responses indicated that this action would not affect any air carrier operator. Adequate private communications facilities are available to transmit Class B data and, in the past few years, international and overseas carriers have not chosen to avail themselves of the FAA service. However, the FAA recognizes a remote possibility that a future potential user of this service would not have the chance to do so.

International Trade Impact Analysis

This action will have no effect on the sale of foreign products or services in the United States. The action also does not affect the sale of United States products or services in foreign countries. Hence, all foreign and domestic trade will be equally unaffected by this rule.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have "a significant economic impact on a substantial number of small entities."

The amendment deletes rule language that allows the transfer of certain data because users have not requested this service for several years. Hence, the rule will not impose a significant cost on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Federalism Implications

This action will not have substantial effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this action, the FAA has reviewed the SARP of Annex 10. The FAA has determined that this amendment will not present any differences.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This action is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

List of Subjects in 14 CFR Part 189

Air transportation, Telecommunications.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration revises 14 CFR part 189 to read as follows:

PART 189—USE OF FEDERAL AVIATION ADMINISTRATION COMMUNICATIONS SYSTEM

Sec.

189.1 Scope.
189.3 Kinds of messages accepted or relayed.
189.5 Limitation of liability.

Authority: 49 U.S.C. 106(g), 40101, 40104, 40113, 44502, and 45303; sec. 501, 65 Stat. 290; 31 U.S.C. 9701.

§ 189.1 Scope.

This part describes the kinds of messages that may be transmitted or relayed by FAA Flight Service Stations.

§ 189.3 Kinds of messages accepted or relayed.

(a) Flight Service Stations may accept for transmission over FAA communication systems any messages concerning international or overseas aircraft operations described in paragraphs (a)(1) through (6) of this section. In addition, Flight Service Stations may relay any message described in this section that was originally accepted for transmission at an FAA Flight Service Station outside the 48 contiguous States, or was received from a foreign station of the Aeronautical Fixed Telecommunications Network that, in normal routing, would require transit of the United States to reach an overseas address:

(1) Distress messages and distress traffic.

(2) Messages concerning the safety of human life.

(3) Flight safety messages concerning—

(i) Air traffic control, including—

(A) Messages concerning aircraft in flight or about to depart;

(B) Departure messages;

(C) Flight plan departure messages;

(D) Arrival messages;

(E) Flight plan messages;

(F) Flight notification messages;

(G) Messages concerning flight cancellation; and

(H) Messages concerning delayed departure;

(ii) Position reports from aircraft;

(iii) Messages originated by an aircraft operating agency of immediate concern to an aircraft in flight or about to depart; and

(iv) Meteorological advice of immediate concern to an aircraft in flight or about to depart.

(4) Meteorological messages concerning—

(i) Meteorological forecasts;

(ii) Meteorological observations exclusively; or

(iii) Other meteorological information exchanged between meteorological offices.

(5) Aeronautical administrative messages—

(i) Concerning the operation or maintenance of facilities essential to the safety or regulatory of aircraft operation;

(ii) Essential to efficient functioning of aeronautical telecommunications; or

(iii) Between civil aviation authorities concerning aircraft operation.

(6) Notices to airmen.

(b) The following messages may only be relayed through the FAA communications systems:

(1) Flight regularity messages—

(i) Addressed to the point of intended landing and to not more than two other addressees in the general area of the route segment of the flight to which the message refers, containing information required for weight and balance computation and remarks essential to the rapid unloading of the aircraft;

(ii) Concerning changes, taking effect within 72 hours, in aircraft operating schedules;

(iii) Concerning the servicing of aircraft en route or scheduled to depart within 48 hours;

(iv) Concerning changes in the collective requirements for passengers, crew, or cargo of aircraft en route or about to depart, if the changes are caused by unavoidable deviations from normal operating schedules and are necessary for flight regularity;

(v) Concerning non-routine landings to be made by aircraft en route or about to depart;

(vi) Concerning parts or materials urgently needed to operate aircraft en route or scheduled to depart within 48 hours; or

(vii) Concerning pre-flight arrangement of air navigation services and, in the case of non-scheduled or irregular operations, operational servicing of aircraft scheduled to depart within 48 hours.

(2) Messages originated by and addressed to aircraft operating agencies or their representatives that directly bear on the efficient and economic conduct or day to day operations, if adequate non-United States communications facilities are not available and the messages concern—

(i) Matter described in paragraph (b)(1) of this section, but not meeting the time limitations described in paragraph (b)(1) of this section;

(ii) Aircraft parts, equipment, or supplies, air navigation or communications, or essential ground facilities;

(iii) Train or hotel reservations for passengers or employees;

(iv) Lost baggage or personal effects;

(v) Tickets or cargo shipments and payment therefore;

(vi) Location of passengers and cargo;

(vii) New or revised passenger or cargo rates;

(viii) Crew assignments and similar operations personnel matters taking effect within 7 days;

(ix) Post flight reports for record purposes;

(x) Publicity and special handling regarding dignitaries; or

(xi) Reservations, when originated by aircraft operating agencies to secure space required in transport aircraft.

§ 189.5 Limitation of liability.

The United States is not liable for any omission, error, or delay in transmitting or relaying, or for any failure to transmit or relay, any message accepted for transmission or relayed under this part, even if the omission, error, delay, or failure to transmit or relay is caused by the negligence of an employee of the United States.

Issued in Washington, DC on July 11, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–18915 Filed 8–1–95; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
August 2, 1995

Part VIII

Department of Transportation

Federal Transit Administration

49 CFR Parts 653 and 654

Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 653 and 654

[Docket No. 92–H or I]

RIN 2132–AA37; 2132–AA38

Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is amending its drug and alcohol testing rules to exempt volunteers and eliminate the citation requirement in the non-fatal, post-accident testing provision applicable to non-rail vehicles. This rule is intended to ease administrative burdens and clarify certain provisions in the existing rules.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: For program issues, Judy Meade, Office of Safety and Security, Federal Transit Administration, telephone: 202–366–2896. For legal questions, Nancy Zaczek or Kristin O'Grady, Office of Chief Counsel, Federal Transit Administration, telephone: 202–366–4011 (voice); 202–366–2979 (TDD). Copies of the regulation are available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: On February 6, 1995, FTA published a Notice of Proposed Rulemaking (NPRM) proposing to amend its drug and alcohol testing rules to (1) exempt volunteers and (2) eliminate the citation requirement in the non-fatal, post-accident testing provision applicable to non-rail vehicles. FTA also sought comment on whether an "accident" should be defined to include the discharge of a firearm by a transit security officer. FTA received 83 comments over a two-month period.

I. Volunteers

Under FTA's current drug and alcohol rules, 49 CFR Parts 653 and 654, a volunteer who performs a safety-sensitive function generally is subject to testing for prohibited drugs and the misuse of alcohol. Since issuance of the final rules in 1994, however, a number of entities have urged the agency to exempt volunteers from application of the rules.

Comments

On the volunteer issue, FTA received 54 comments from large and small transit operators, one insurance carrier, two U.S. senators, one U.S. representative, and two associations. An overwhelming majority of these commenters (50 of 54) favored exempting volunteers. Only four commenters (two large transit operators, one small transit operator, and one trade organization) opposed exempting volunteers from FTA's drug and alcohol testing rules. The commenters raised a number of key issues:

Volunteers are not likely to be involved in drug or alcohol-caused collisions. Several commenters pointed out that no statistical evidence suggests that volunteer transit drivers have been involved in drug or alcohol-caused collisions. Many small operators stated that they have operated for years without one incident relating to the use of drugs or alcohol. Several operators noted that they already provide a comprehensive screening program that evaluates a volunteer's driving record along with their criminal history. For example, one program requires a medical statement signed by a physician, a vehicle inspection statement signed by a mechanic, proof of insurance, a driver's license print-out, and a code of conduct which includes a statement that the driver will not use mood-altering drugs or alcohol while serving as a volunteer. In addition, this same program requires annual medical and vehicle statements from its existing drivers. Further, commenters claimed that volunteers are generally retired professionals with a heightened level of safety. According to commenters, the majority of volunteers are over 60 years old, community-minded, and not likely to be drug or alcohol users.

People will not volunteer if they must submit to drug and alcohol testing rules. Commenters stated that volunteers consider a drug and alcohol test an invasion of privacy. Since volunteers are not compensated for their services and are not entitled to the benefits that employees receive, volunteers are not likely to submit to drug and alcohol testing requirements. In fact, several commenters stated that some volunteers have indicated that they would not continue to volunteer if they had to submit to a drug or alcohol test. Some commenters claimed that volunteerism is down from last year and argued that required drug and alcohol testing will surely exacerbate this downward trend.

It is costly and impractical for organizations to administer drug and alcohol tests to volunteers. Many volunteers are part-time and serve a variety of functions, e.g. clerical support, in addition to safety-sensitive work. Commenters stated that segregating these functions would cause administrative havoc. According to a number of commenters, volunteers do not perform safety-sensitive work on a regular and consistent basis. As a result, testing would be difficult to administer. Several commenters argued that the cost of administering these tests would be prohibitive. Some claimed that the cost of providing testing would drain operating budgets and drastically reduce the services that are provided. For example, one commenter estimated that the cost of providing drug testing for its volunteers would exceed $43,000 per year. This additional cost would translate into 597 fewer rides per month or 7,164 rides per year. Another dimension of the problem would be the cost of losing the use of volunteers' vehicles. A number of commenters indicated that volunteers often provide transportation with their own vehicles. The potential loss of those drivers would place a tremendous hardship on transit providers in rural areas.

Exempting volunteers compromises rider safety. As mentioned above, four commenters believe that exempting volunteer drivers from drug and alcohol testing is contrary to the spirit of the testing mandates of Congress and in direct conflict with safe practice and common sense. One commenter suggested that the exemption compromises safety and erodes the intent of a drug and alcohol-free workplace.

Discussion

FTA agrees with those commenters that favor exempting volunteers from the drug and alcohol testing requirements. Based on the comments submitted to FTA, the significant cost of subjecting volunteers to drug and alcohol testing far outweighs the safety benefits. Commenters indicated that volunteers often are screened by the operator and are mature citizens with good driving records. Furthermore, the costs related to conducting drug and alcohol testing of volunteers are considerable. First, the operator must divert funds from its transportation functions to pay for drug and alcohol testing. Second, the operator may lose volunteers and their vehicles if drug and alcohol testing is required. Third, the time volunteers are able to donate is always limited and would be further restricted by the time consumed by the testing process. Finally, many of the operators that depend heavily on volunteers are small and cannot easily absorb the extra cost that testing volunteers would involve.

As noted above, a few commenters argued that exempting volunteer drivers from drug and alcohol testing is contrary to the spirit of the testing mandates of Congress in the Omnibus Employee Testing Act of 1991. However, the legislative history of the drug and alcohol testing requirement does not reflect a specific concern about drug and alcohol testing of volunteers. In fact, the tragic accidents that moved Congress to action involved professional transportation employees, not volunteers. See, for example, Conference Report to Accompany H.R. 2942, Department of Transportation and Related Agencies Appropriation Bill, Fiscal Year 1992, in *Congressional Record*, H7672, October 3, 1991.

FTA recognizes that the term "volunteer," as used in the revised definition of "covered employee," could be construed broadly to include any non-employee. FTA's intention in this final rule, however, is to exempt only non-employee volunteers who perform a service as a charitable act without the expectation of receiving a benefit, whether financial or as part of a program established to relieve an obligation. Other non-employees remain covered by the rule, i.e., those who provide charitable service in return for some benefit, for example, in the context of "workfare"-type programs that make public assistance or other benefits contingent on the donation of transportation services or community service programs that confer academic credit or provide an alternative to a criminal sentence. This issue was not raised in the NPRM or in the comments to the docket, but we would consider it in the future if appropriate.

II. Post-Accident Testing

FTA received 20 comments from large and small transit operators on FTA's proposal to eliminate the citation requirement in the non-fatal, post-accident testing provision applicable to non-rail transit vehicles. Currently, 49 CFR sections 653.45(a)(2)(i) and 654.33(a)(2)(i) require a post-accident drug and alcohol test after a non-fatal accident if, among other things, the operator of the mass transit vehicle involved in the accident receives a citation from a State or local law enforcement official. Five large and two small transit operators favored retaining the citation requirement. Eight large and five small transit operators commented that the citation requirement should be eliminated.

Comments

Commenters made the following arguments in favor of eliminating the citation requirement:

Police officers rarely issue citations in time for drug and alcohol testing to be useful. The majority of commenters indicated that law enforcement officials rarely issue citations in non-fatal accidents. When a citation is warranted, often too much time has passed for the testing to be useful. One commenter pointed out that unless an officer witnesses the accident, the officer will want to conduct an investigation before issuing a citation, which means that virtually no post-accident tests are conducted for non-fatal accidents.

Local guidelines sometimes already require testing without a citation. Two large commenters indicated that local guidelines provide for a stricter standard that already requires post-accident testing, even without a citation being issued.

Requiring a citation is inconsistent with the Omnibus Employee Testing Act of 1991. One commenter opined that the Omnibus Transportation Employee Testing Act of 1991 requires that FTA mandate testing, without the citation requirement, to insure that the transit industry is free from employees using illegal drugs and misusing alcohol while performing safety-sensitive functions.

FTA's definition of "accident" should change. Commenters suggested several changes to FTA's definition of "accident" for the purpose of determining when post-accident testing is necessary. It was not FTA's intention to solicit comments on this part of the rule, but rather the part of the rule that currently requires a citation to be issued before post-accident testing occurs.

Commenters made the following arguments in favor of retaining the citation requirement:

The citation requirement is easy to follow. One commenter noted that the citation requirement provides an easily understood benchmark and gives decision-making confidence to supervisors and managers. Another commenter pointed out that the current regulation operates well in that it requires the judgment of law enforcement officials, people who are trained in accident investigation, to assess whether the transit operator's actions contributed to the accident.

The proposed rule would require more testing, which will increase overall costs. One commenter estimated that the proposed rule would require the testing of approximately twenty more individuals a year, adding an additional $3,000 to their estimated $70,000 annual cost of conducting drug and alcohol testing. Another commenter pointed out that elimination of the citation requirement will result in additional unfunded costs that are not in proportion to any expected benefit.

Discussion

FTA agrees with those commenters who favor removing the citation requirement. Because of the delay in issuing a citation in many accidents, the citation requirement renders post-accident alcohol and drug testing virtually ineffective.

Arguments that removing the citation requirement would increase the number of drug and alcohol tests given and increase the cost are not persuasive. The legislative history reveals that Congress intended that post-accident testing of safety-sensitive employees should be required

> In the case of any accident in which occurs a loss of human life, or, as determined by the Secretary, other serious accident involving bodily injury or significant property damage. It is not the Committee's intent that drug and alcohol testing should be required every time there is an accident involving a mass transportation operation. Rather, post-accident testing should be limited to those instances in which there is a loss of human life or other accident of sufficient magnitude in terms of bodily injury or significant property damage for which testing for drugs and alcohol would be warranted. Report of the Senate Committee on Commerce, Science, and Transportation, on S. 676, Omnibus Transportation Employee Testing Act of 1991. 102d Congress, 1st Session, Report 102–54 (1991). (Emphasis added.)

Based upon the comments FTA received, the Agency does not believe that the issuance of a citation is the best measure for whether the accident is of sufficient magnitude to warrant drug and alcohol testing. The issuance of a citation depends on several factors, such as whether the law enforcement officer was physically present at the accident scene. These factors are often completely unrelated to the magnitude of the accident. Moreover, the timing of the issuance of a citation is not driven by the requirements of drug and alcohol testing. As a result, by the time a citation is issued, it is often too late to conduct drug and alcohol testing.

The result of requiring a citation as the trigger for a post-accident drug and alcohol test is that too many accidents have not been properly investigated for drug and alcohol-related causes. This amendment is better tailored to accomplish the Congressional intent that all significant, non-fatal accidents should trigger drug and alcohol testing of appropriate personnel.

III. Definition of Accident—Armed Security Personnel

FTA received only seven responses to our request for comment on whether the

definition of "accident" should include the discharge of a firearm by armed security personnel (who are considered safety-sensitive workers subject to the drug and alcohol testing program). Most commenters opposed an amendment to the definition of "accident" to include the discharge of a firearm by a covered employee while on duty. Most of these commenters were transit operators who noted that they already have internal policies and procedures for dealing with accidental discharges of firearms. A few commenters favored including the discharge of a firearm in the definition of "accident," mostly for safety reasons. Since there seems to be little interest in amending the definition of accident to include the discharge of firearms, FTA will not take any action at this time.

IV. Regulatory Process Matters

A. Executive Order 12688

The FTA evaluated the costs and benefits of the drug and alcohol testing rules when it issued 49 CFR parts 653 and 654 on February 15, 1994, at 59 FR 7531–7611. It is not anticipated that the change to the post-accident testing provision should significantly alter the costs and benefits of either part 653 or 654. On the other hand, the exclusion of volunteers from coverage under the rules should slightly lower the overall cost of the program.

B. Departmental Significance

Neither rule is a "significant regulation" as defined by the Department's Regulatory Policies and Procedures, because it involves only minor changes to parts 653 and 654.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FTA evaluated the effects of parts 653 and 654 on small entities when they were issued in February 1994. These changes will not significantly change that analysis, but should reduce the cost of drug and alcohol testing for small entities.

D. Paperwork Reduction Act

This rules does not include information collection requirements subject to the Paperwork Reduction Act.

E. Executive Order 12612

We reviewed parts 653 and 654 under the requirements of Executive Order 12612 on Federalism. These proposed rules, if adopted, will not change those assessments.

F. National Environmental Policy Act

The agency determined that these regulations had no environmental implications when it issued parts 653 and 654, and there will be none under these amendments.

G. Energy Impact Implications

These amendments do not affect the use of energy.

List of Subjects in 49 CFR Parts 653 and 654

Alcohol testing, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety and Transportation.

For the reasons set forth in the preamble, the FTA is amending Title 49, Code of Federal Regulations, parts 653 and 654 as follows:

Part 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority citation for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

2. The definition of "covered employee" in section 653.7 is revised to read as follows:

§ 653.7 Definitions

* * * * *

Covered employee means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part; however, a volunteer is covered only if operating a vehicle designed to transport sixteen or more passengers, including the driver.

* * * * *

§ 653.45 [Amended]

3. The first sentence of § 653.45(a)(2)(i) is amended by removing "if that employee has received a citation under State or local law for a moving traffic violation arising from the accident" and adding "unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident".

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

4. The authority citation for part 654 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

5. The definition of "covered employee" in section 654.7 is revised to read as follows:

§ 654.7 Definitions

* * * * *

Covered employee means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part; however, a volunteer is covered only if operating a vehicle designed to transport sixteen or more passengers, including the driver.

* * * * *

§ 654.33 [Amended]

6. The first sentence of § 654.33(a)(2)(i) is amended by removing "if that employee has received a citation under State or local law for a moving traffic violation arising from the accident" and adding "unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident".

Issued on: July 28, 1995.

Gordon J. Linton,

Administrator.

[FR Doc. 95–19025 Filed 8–1–95; 8:45 am]

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federal register

Wednesday
August 2, 1995

Part IX

The President

Executive Order 12967—Establishing an Emergency Board To Investigate Disputes Between Metro North Commuter Railroad and Its Employees Represented by Certain Labor Organizations

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Federal Register
Vol. 60, No. 148
Wednesday, August 2, 1995

Presidential Documents

Title 3—

The President

Executive Order 12967 of July 31, 1995

Establishing an Emergency Board To Investigate Disputes Between Metro North Commuter Railroad and Its Employees Represented by Certain Labor Organizations

Disputes exist between Metro North Commuter Railroad and certain employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made a part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*) (the "Act").

Parties empowered by the Act have requested that the President establish a second emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(e) of the Act provides that the President, upon such request, shall appoint a second emergency board to investigate and report on the disputes.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of the Board.* There is established effective July 31, 1995, a board of three members to be appointed by the President to investigate these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after creation of the board, the parties to the disputes shall submit to the board final offers for settlement of the disputes. Within 30 days after submission of final offers for settlement of the disputes, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(h) of the Act, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties in the conditions out of which the disputes arose.

Sec. 4. *Records Maintenance.* The records and files of the board are records of the Office of the President and upon the board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The board shall terminate upon submission of the report provided for in section 2 of this order.

William J. Clinton

THE WHITE HOUSE,
July 31, 1995.

LABOR ORGANIZATIONS

Brotherhood of Locomotive Engineers including the American Train Dispatchers Department
Brotherhood of Railroad Signalmen
International Association of Machinists & Aerospace Workers
International Brotherhood of Boilermakers, Iron Shipbuilders,
Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
International Brotherhood of Teamsters
Sheet Metal Workers International Union
Transport Workers Union of America
Transportation Communications International Union-ARSA Division
United Transportation Union

[FR Doc. 95–19174
Filed 7–31–95; 4:52 pm]
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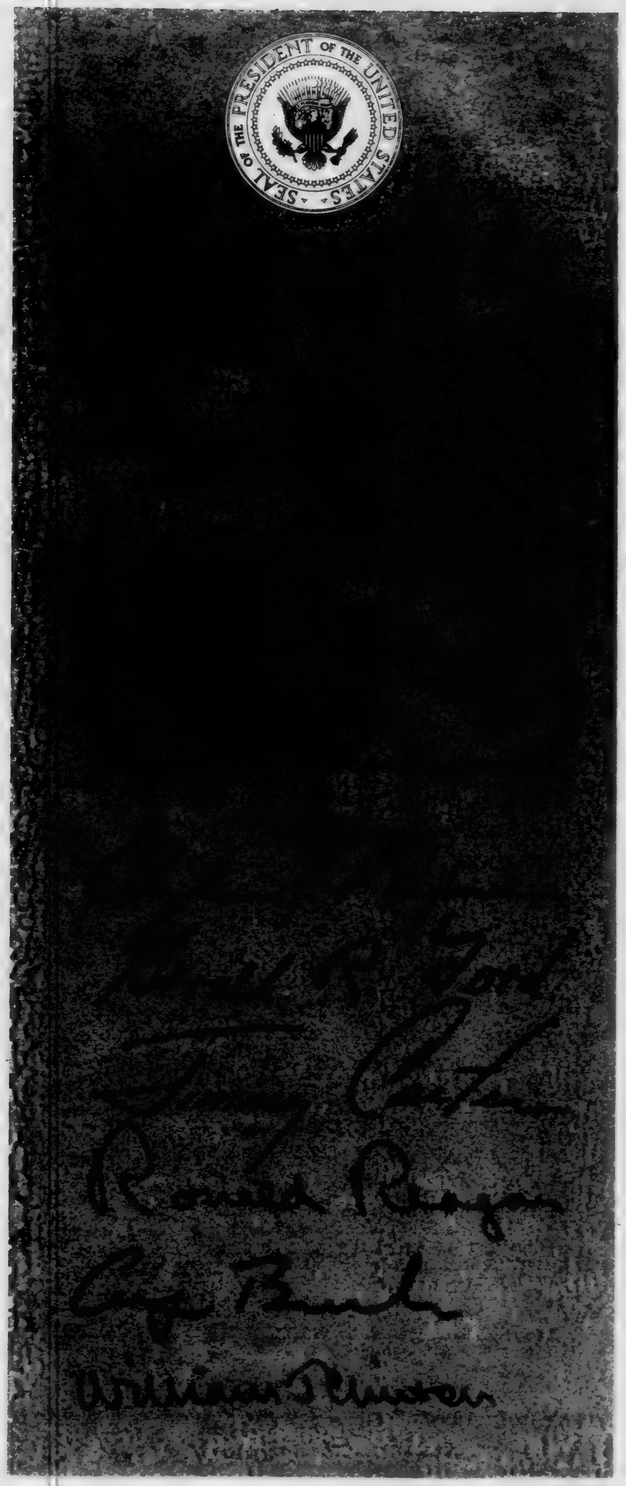
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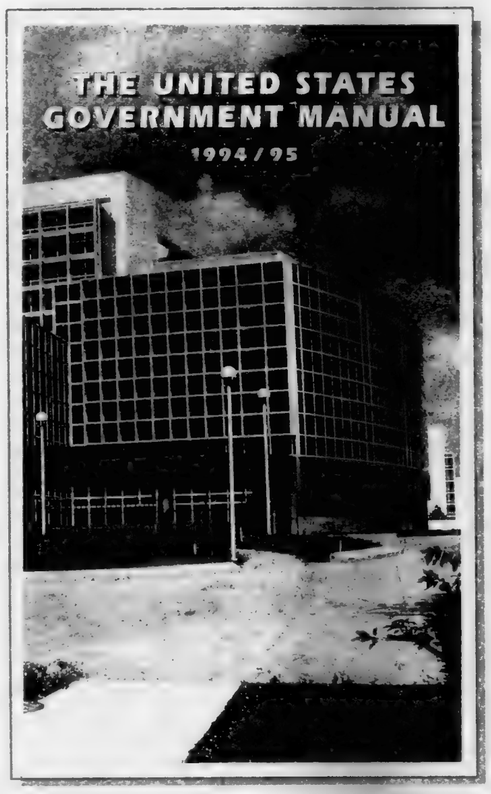
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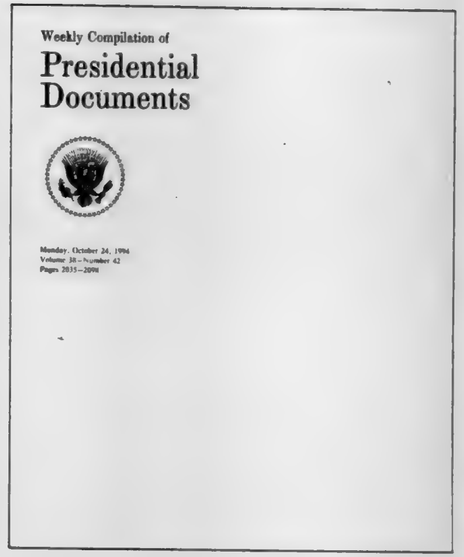
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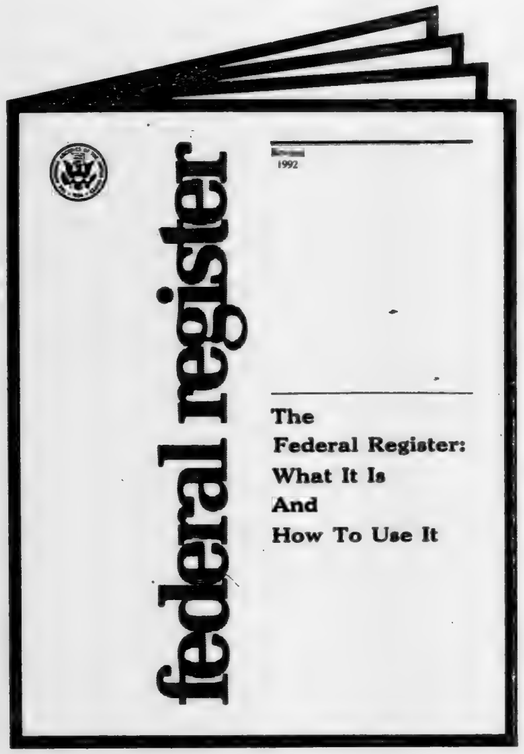
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–115; Special Conditions No. 25–ANM–103]

Special Conditions: Modified Learjet Model 55, 55B and 55C Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Learjet Models 55, 55B, and 55C airplanes modified by Duncan Aviation, Inc., of Lincoln, Nebraska. These models will be equipped with a Flight Visions Corporation, FV–2000 Head-Up Display System (HUD) that will perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the HUD from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by this system are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is July 26, 1995. Comments must be received on or before September 18, 1995.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7) Docket No. NM–115, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–115." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–115." The postcard will be date stamped and returned to the commenter.

Background

On May 2, 1995, Duncan Aviation, Inc., of Lincoln, Nebraska, applied for a supplemental type certificate to modify the Learjet Models 55, 55B, and 55C airplanes. The Learjet Model 55 series airplane is a business jet with two aft-mounted turbofan engines. The airplane can carry two pilots and 8 passengers, depending on the exit and interior configuration, and is capable of operating to an altitude of 51,000 feet. The proposed modification incorporates the installation of a digital avionics system that will present critical functions on the Head-up Display System (HUD), which is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR) Duncan Aviation, Inc., must show that the altered Learjet Model 55 Series airplane continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A10CE include the following for the Learjet Model 55, 55B and 55C airplanes: 14 CFR part 25, dated February 1, 1965, as amended by 25–2 and 25–4.

In addition, for the Models 55 and 55B: Amendments 25–3, 25–7, 25–10, 25–12, 25–18, 25–21 and 25–30, plus § 25.955(b)(2) of Amendment 25–11; § 25.954 of Amendment 25–14; §§ 25.803(e), 25.811(f), 25–853(a), 25.853(b), and 25–855(a) of Amendment 25–15; § 25.1359 of Amendment 25–17; § 25.785(c) of Amendment 25–20; §§ 25.251(c), 25.251(d), 25.251(e), 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303, 25.1307, 25.1331, and 25.1585(c) of Amendment 25–23; § 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6) of Amendment 25–36; §§ 25.815, 25.1322, and 25.1403 of Amendment 25–38; §§ 25.903(e), 25.939, and 25.943 of Amendment 25–40, § 25.255 of Amendment 25–42; § 25.1326 of Amendment 25–43; Part 36 of the FAR effective December 1, 1969, as amended through Amendment 36–10; Special Federal Aviation Regulation (SFAR) 27 effective February 1, 1974, as amended through Amendment SFAR 27–2; and Special Conditions 25–99–CE–14.

For the Model 55 configured per ECR 2377A or modified per AAK 55–83–4: In addition to the basis listed above, Special Conditions 25–ANM–2 dated June 24, 1983.

For the Model 55C: Amendments 25–3, 25–7, 25–10, 25–12, 25–18, 25–21, and 25–30; plus § 25.955(b)(2) of Amend-Amendment 25–11; § 25.954 of Amendment 25–14; § § 25.803(e), 25.811(f), and 25.855(a) of Amendment 25–15; § 25.1359 of Amendment 25–17; § 25.785(c) of Amendment 25–20; § § 25.251(c), 25.251(c), 25.251(e), 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303(a)(1), 25.1303(a)(3), 25.1303(b), 25.1303(c), 25.1307, 25.1331, and 25.1585(c) of Amendment 25–23; § § 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6) of Amendment 25–36; § § 25.815, 25.1303(a)(2), 25.1322, and 25.1403 of Amendment 25–38; § § 25.903(e), 25.939, and 25.943 of Amendment 25–40; §§ 25.255 and 25.703 of Amendment 25–42; § 24.1326 of Amendment 25–43; § 25.853 of Amendment 25–51; § 25.851 of Amendment 25–54; Part 36 of the FAR effective December 1, 1969, as amended through Amendment 36–15; SFAR 27 effective February 1, 1974, as amended through Amendment SFAR 27–6; Special Conditions 25–ANM–2 dated June 24, 1983; and Special Conditions 25–99–CE–14 dated March 10, 1981.

Compliance with structural provisions of § 25.801(b) through (e) and § 25.807(d) has not been shown for Models 55, 55B, and 55C.

For Ice Protection: § 25.1419. When ice protection system is installed per ECR 1906, Model 55, 55B, and 55C.

For Noise Standards: Part 36 of the FAR. Compliance with Noise Standards, Part 36, has been established for Models 55, 55B, and 55C airplanes, when modified according to ECR 1511.

For Equivalent Level of Safety: § 25.201(c)(2) (except Model 55C); § 25.773(b)(2); § 25.1305(r); § 25.1505(b)(1) (except Model 55C).

In addition, under § 21.101(b)(1), the following sections of the FAR apply to the HUD installation: § 25.1309; § 25.1321(a)(b)(d), and (e); § § 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 55 Series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by § § 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Discussion

There is no specific regulation that address protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from-ground-based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified Learjet Model 55 Series airplanes that would require that the HUD be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with the electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the Head-Up Display, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplanes will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated:

Frequency	Peak (V/M)	Average (V/M)
10 KHz—100 KHz	50	50
100 KHz—500 KHz	60	60
500 KHz—2000 KHz	70	70
2 MHz—30 MHz	200	200
30 MHz—100 MHz	30	30
100 MHz—200 MHz	150	33
200 MHz—400 MHz	70	70
400 MHz—700 MHz	4,020	935
700 MHz—1000 MHz	1,700	170
1 GHz–2GHz	5,000	990
2 GHz–4GHz	6,580	840
4 GHz–6GHz	6,850	310
6 GHz–8GHz	3,600	670
8 GHz–12GHz	3,500	1,270
12 GHz–18GHz	3,500	360
18 GHz–40GHz	2,100	750

As discussed above, these special conditions are applicable to the Learjet Model 55 Series airplane, modified by Duncan Aviation. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A10CE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on Learjet Model 55, 55B, and 55C airplanes modified by Duncan Aviation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of this feature on these airplanes.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Learjet Model 55, 55B, and 55C airplanes, as modified by Duncan Aviation:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplanes is exposed to high intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition: *Critical Function.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–19140 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–CE–12–AD; Amendment 39–9318; AD 95–15–12]

Airworthiness Directives; Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream Series 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream series 200 airplanes. This action requires incorporating operating limitations that revise the maximum flap operating speed for DOWN flaps to 120 knots indicated airspeed (KIAS), and prohibit extending the flaps beyond the take-off position if ice is visible on the airplane. An incident where an airplane of similar type design to the affected airplanes experienced sudden pitch down because of the accumulation of over one inch of ice prompted the proposed action. The actions specified by this AD are intended to prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane.

DATES: Effective September 19, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 19, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager, Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P. O. Box 16029, Dulles International Airport, Washington, D.C., 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to JAL HP137 Mk1, and Jetstream series 200 airplanes was published in the **Federal Register** on March 2, 1995 (60 FR 11635). The action proposed to incorporate operating limitations that revise the maximum flap operating speed for DOWN flaps to 120 KIAS, and prohibit extending flaps beyond the take-off position if ice is visible on the airplane. Accomplishment of the proposed action would be in accordance with Jetstream Service Bulletin (SB) 27–A–JA 911044, dated January 31, 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 10 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts (placards fabricated from local resources) cost approximately $30 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $900. This figure is based upon the assumption that no affected airplane owner/operator has accomplished the proposed inspection.

All 10 of the affected airplanes are HP137 Mk1 airplanes; there are no Jetstream series 200 airplanes registered in the United States, but they are type certificated for operation in the United States. According to FAA records, none of these HP137 Mk1 airplanes are in operation. Since there are no airplanes currently in operation, the cost impact of the proposed AD would be narrowed to only those owners/operators returning their airplane to operation.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–15–12 Jetstream Aircraft Limited: Amendment 39–9318; Docket No. 95–CE–12–AD.

Applicability: HP137 Mk1 and Jetstream Series 200 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane, accomplish the following:

(a) Modify the operating limitations placards located on the flight deck in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) No. 27–A–JA 911044, dated January 31, 1992. This modification limits the maximum flap operating speed for DOWN flaps to 120 knots indicated airspeed (KIAS). Insert a copy of this AD into the Limitations section of the applicable airplane flight manual (AFM).

(b) Fabricate a placard with the words "Do not extend the flaps beyond the take-off position if ice is visible on the aircraft. Ensure the landing gear selector is down prior to landing." Install this placard on the airplane's instrument panel within the pilot's clear view. Insert a copy of paragraph "B.Instructions for Aircraft Operations" of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 27–A–JA 911044, dated January 31, 1992, into the Limitations section of the AFM.

Note 2: Parts of the airplane where ice could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety, may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(e) The inspections required by this AD shall be done in accordance with Jetstream Service Bulletin No. 27–A–JA 911044, dated January 31, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager, Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C., 20041– 6029; telephone (703) 406–1161; facsimile (703) 406- 1469. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9318) becomes effective on September 19, 1995.

Issued in Kansas City, Missouri, on July 18, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18123 Filed 8–2–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–126–AD; Amendment 39–9320; AD 95–16–01]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–11 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) that prohibits autoland operation below 100 feet above ground level, and installation of flight control computer software. It also provides for an optional terminating action for the AFM revision. This amendment provides for a new optional terminating action for the AFM revision. This amendment is prompted by reports of erroneous central aural warning system altitude callouts and erroneous radio altimeter indications during autoland approaches due to radio frequency leakage (RF) on airplanes on which the optional terminating action had been accomplished. The actions specified in this AD are intended to prevent radio altimeter antenna/coaxial cable RF leakage, which could result in early and/or abnormal flare (pitch) control during autoland operation and potential degradation of the landing capability of the airplane.

DATES: Effective August 18, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1995.

The incorporation by reference of McDonnell Douglas MD–11 Alert Service Bulletin A34–57, dated December 19, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of February 6, 1995 (60 FR 4076, January 20, 1995).

Comments for inclusion in the Rules Docket must be received on or before October 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5347; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On January 6, 1995, the FAA issued AD 94–26–51, amendment 39–9120 (60 FR 4076, January 20, 1995), applicable to all McDonnell Douglas Model MD–11 series airplanes. It requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit autoland operation below 100 feet above ground level (AGL), and installation of –905 flight control computer (FCC) software. It also provides for an optional terminating action for the AFM revision, consisting of certain inspections and tests. That action was prompted by reports of a loose nut on a coaxial connector on a radio altimeter receiver/transmitter rack, and the transmittal of erroneous altitude data to the FCC while the airplane was below 100 feet AGL, which resulted in abnormal flare (pitch) control during autoland operation. The actions required by that AD are intended to prevent abnormal flare (pitch) control, which could result in degradation of the landing capability of the airplane.

Since the issuance of that AD, the FAA has received several reports of erroneous central aural warning system (CAWS) altitude callouts and erroneous radio altimeter indications during autoland approaches on Model MD–11 series airplanes. Investigation has revealed that these incidents occurred on these airplanes following accomplishment of the optional terminating action (inspections and tests) and the installation of the –905 FCC software, as specified in AD 94–26–51. In light of these incidents, the FAA has determined that those provisions of AD 94–26–51 do not adequately preclude radio frequency (RF) leakage of the radio altimeter antenna/coaxial cable. That condition could result in abnormal flare (pitch) control during autoland operation and potential degradation of the landing capability of the airplane.

Additionally, since the issuance of AD 94–26–51, McDonnell Douglas has developed a new, improved modification to the FCC software for Model MD–11 series airplanes. Further, Allied Signal has developed a new, improved modification to the radio altimeter.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–34–063, dated July 10, 1995, which describes procedures for replacement of the radio altimeters 1 and 2 located in the center accessory compartment with modified radio altimeters, for certain airplanes. The modified radio altimeters are less susceptible to influence by antenna/coaxial system RF leakage.

The FAA has also reviewed and approved McDonnell Douglas Service Bulletin MD11–34–060, Revision 3, dated July 14, 1995, which describes procedures for:

1. Performing an inspection to identify the part number (P/N) of the coaxial cables of the radio altimeter;
2. Installing new clamps, replacing the cables with new cables, performing an inspection to verify if lockwashers having P/N MS51848–45 are installed on the coaxial contacts, and various follow-on actions; and
3. Installing new clamps on certain airplanes, and replacing and relocating the brackets of the terminal grounding block on certain other airplanes, if any cable is identified as P/N AE11919–1, –2, –3, or –4.

These procedures will minimize the possibility of RF signal leakage. The service bulletin specifies that these actions be accomplished within 7 months.

Additionally, the FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–22–015, dated July 3, 1995, which describes procedures for updating the software of two flight control computers (FCC) having part number (P/N) 4059001–904 or –905 and reidentifying them as P/N 4059001–906. This update will minimize the effects of radio altimeter signal leakage. Accomplishment of the update and reidentification constitutes terminating action for the AFM revision.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 94–26–51 to continue to require a revision to the Limitations Section of the FAA-approved AFM to prohibit autoland operation below 100 feet AGL. However, this AD provides for a new optional terminating action, which would constitute terminating action for the AFM revision and the temporary optional terminating action (repetitive inspections and tests, which have been retained from AD 94–26–51). Operators electing to accomplish the new terminating action will be required to perform it in accordance with procedures described in the service bulletins described previously. This AD also requires that operators report results of inspection findings, positive or negative, to the FAA.

Operators who currently are accomplishing the terminating action specified in AD 94–26–51 should note that, although McDonnell Douglas Service Bulletin MD11–34–060 recommends accomplishment of the described procedures within 7 months, this AD requires their accomplishment within 60 days. The FAA finds that continuing to perform the previous terminating actions for a period of 7 months would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the upcoming inclement weather conditions and the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA finds 60 days to be an appropriate compliance time for initiating these new terminating actions.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may

misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–126–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9120 (60 FR 4076, January 20, 1995), and by adding a new airworthiness directive (AD), amendment 39–9320, to read as follows:

95–16–01 McDonnell Douglas: Amendment 39–9320. Docket 95–NM–126–AD. Supersedes AD 94–26–51, Amendment 39–9120.

Applicability: All Model MD–11 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the landing capability of the airplane, accomplish the following:

(a) Within 24 hours after February 6, 1995 (the effective date of AD 94–26–51, amendment 39–9120), revise the Limitations Section of the FAA-approved MD–11 Airplane Flight Manual (AFM), page 5–3, Flight Guidance, Automatic Landing Section, to include the following restriction. This may be accomplished by inserting a copy of this AD in the AFM.

"Autoland operation below 100 feet above ground level (AGL) is prohibited. The autopilot must be disconnected prior to descent below 100 feet AGL."

(b) For airplanes on which the inspections and tests specified in paragraph (b) of AD 94–26–51, amendment 39–9120, (and reiterated below) have been initiated prior to the effective date of this AD: Accomplishment of the inspections and tests specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A34–57, dated December 19, 1994, temporarily terminates the AFM revision required by paragraph (a) of this AD. These inspections and tests must be repeated at intervals not to exceed 500 hours time-in-service. As of 60 days after the effective date of this AD, however, those actions no longer constitute terminating action for paragraph (a) of this AD. As of 60 days after the effective date of this AD, only the actions specified in paragraph (c) of this AD constitute such terminating action.

(1) Perform an inspection to determine if the connector nut of the four coaxial connectors on the back of the radio altimeter receiver/transmitter is loose.

(i) If no loose nut is found, prior to further flight, loosen the nut until finger tight, retorque the nut to 10 to 15 inch pounds, and mark the nut with a torque stripe.

Note 2: Retorque is not necessary during repetitive inspections if the torque stripe is in line, as specified in the alert service bulletin.

(2) Perform a leakage indication test to verify the integrity of the radio altimeter antenna system. Prior to further flight, correct any discrepancy found.

(c) Accomplishment of the actions specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, as applicable, constitutes terminating action for the AFM revision required by paragraph (a) of this AD, and for the repetitive inspections and tests specified in paragraph (b) of this AD. Following accomplishment of the actions specified in this paragraph, the AFM revision may be removed from the AFM.

(1) For airplanes equipped with Allied Signal radio altimeters: Replace radio altimeters 1 and 2 located in the center accessory compartment with modified radio altimeters, in accordance with McDonnell Douglas Service Bulletin MD11–34–063, dated July 10, 1995. The requirements of this paragraph must be accomplished prior to or in conjunction with paragraph (c)(3) of this AD.

(2) For all airplanes: Perform an inspection to identify the part number (P/N) of the coaxial cables of the radio altimeter in accordance with McDonnell Douglas Service Bulletin MD11–34–060, Revision 3, dated July 14, 1995. The requirements of this paragraph must be accomplished prior to or in conjunction with paragraph (c)(3) of this AD.

(i) For Group 1, 2, and 4 airplanes: Prior to further flight, accomplish either paragraph (c)(2)(i)(A) or (c)(2)(i)(B) of this AD, as applicable, in accordance with the service bulletin.

(A) If the cables are identified as P/N AE11532–1, –2, –3, or –4, install new clamps, replace the cables with new cables, and perform an inspection to verify if lockwashers having P/N MS51848–45 are installed on the coaxial contacts.

(1) If no lockwasher is installed, prior to further flight, install a lockwasher having P/N MS51848–45 and install the coaxial contact, in accordance with the service bulletin.

(2) If a lockwasher having P/N MS51848–45 is installed, prior to further flight, install the coaxial contact in accordance with the service bulletin.

(B) If the cables are identified as P/N AE11919–1, –2, –3, or –4, install the new clamps.

(ii) For Group 3 airplanes: Prior to further flight, accomplish either paragraph (c)(2)(ii)(A) or (c)(2)(ii)(B) of this AD, as applicable, in accordance with the service bulletin.

(A) If the cables are identified as P/N AE11532–1, –2, –3 or –4, install the new clamps, replace the cables with new cables, perform an inspection to verify if lockwashers having P/N MS51848–45 are installed on the coaxial contacts, and replace the brackets of the terminal grounding block with a new bracket and relocate them, in accordance with the service bulletin.

(1) If no lockwasher is installed, prior to further flight, install a lockwasher having P/N MS51848–45 and install the coaxial contact, in accordance with the service bulletin.

(2) If a lockwasher having P/N MS51848–45 is installed, prior to further flight, install the coaxial contact in accordance with the service bulletin.

(B) If the cables are identified as P/N AE11919–1, –2, –3, or –4, install the new clamps, and replace the brackets of the terminal ground block with new brackets and relocate them, in accordance with the service bulletin.

(3) For all airplanes: Update the software of the two flight control computers (FCC) having part number (P/N) 4059001–904 or –905, and reidentify them as P/N 4059001–906, in accordance with McDonnell Douglas Service Bulletin MD11–22–015, dated July 3, 1995. The requirements of paragraphs (c)(1) and/or (c)(2), as applicable, must be accomplished prior to or in conjunction with this paragraph.

(d) Within 10 days after accomplishing the inspection required by paragraph (b)(2) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712; fax (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A34–57, dated December 19, 1994; McDonnell Douglas Service Bulletin MD11–34–063, dated July 10, 1995; McDonnell Douglas Service Bulletin MD11–34–060, Revision 3, dated July 14, 1995; and McDonnell Douglas Service Bulletin MD11–22–015, dated July 3, 1995. The incorporation by reference of McDonnell Douglas MD–11 Alert Service Bulletin A34–57, dated December 19, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of February 6, 1995 (60 FR 4076, January 20, 1995). The incorporation by reference of the remainder of the service documents listed above was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 18, 1995.

Issued in Renton, Washington, on July 21, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18434 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–06–AD; Amendment 39–9321; AD 95–16–02]

Airworthiness Directives; Boeing Model 747 SP, SR, –100, –200, and –300 Series Airplanes Equipped with Pratt & Whitney Model JT9D Series Engines (Excluding Model JT9D–70 Engines)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 SP, SR, –100, –200, and –300 series airplanes, that requires repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found. This amendment is prompted by the results of an investigation, which revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The actions specified by this AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Effective September 5, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 5, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules

Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 SP, SR, –100, –200, and –300 series airplanes was published in the **Federal Register** on March 30, 1995 (60 FR 16392). [A correction of the proposal was published in the **Federal Register** on April 5, 1995 (60 FR 17385).] That action proposed to require repetitive operational tests of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, and correction of any discrepancy found during the test.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

One commenter requests an extension of the intervals for repeating the operational tests from 2,000 flight hours to 2,200 flight hours so that the tests can be performed during regularly scheduled maintenance visits. The commenter indicates that it has performed the initial test and one repetitive test on all of its aircraft, and no anomalies have been found. The FAA does not concur. The FAA established the repetitive test interval of 2,000 flight hours to provide an acceptable level of safety and to allow the majority of affected operators to schedule the tests during normal maintenance intervals at a maintenance base where special equipment and trained maintenance personnel will be available, if necessary. In addition, the interval is consistent with the interval recommended by the manufacturer in the alert service bulletin cited in this AD. However, under the provisions of paragraph (d) of the final rule, operators may apply for the approval of an adjustment of the compliance time if sufficient justification is presented to the FAA.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This AD is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

There are approximately 456 Model 747 SP, SR, –100, –200, and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 173 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $166,080, or $960 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–16–02 Boeing: Amendment 39–9321. Docket 95–NM–06–AD.

Applicability: Model 747 SP, SR, –100, –200, and –300 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 engines), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform an operational test of the reversible gearbox pneumatic drive unit (PDU) or the reversing air motor PDU to ensure that the unit can restrain the thrust reverser sleeve, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Repeat the test thereafter at intervals not to exceed 2,000 flight hours.

(b) If any of the tests required by this AD cannot be successfully performed, or if any discrepancy is found during those tests, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

(c) Within 30 days after performing each initial test required by this AD, submit a report of the test results, both positive and negative, to the FAA, Seattle Aircraft Certification Office (ACO), ANM–100S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–78A2131, dated September 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 5, 1995.

Issued in Renton, Washington, on July 21, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18435 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–36–AD; Amendment 39–9322; AD 95–16–03]

Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model DC–9 series airplanes and C–9 (military) airplanes, that requires inspection of the driver links of the thrust reverser door to determine whether the driver links are chamfered, an inspection to detect damage of the overcenter links, and follow-on corrective actions, if necessary; and replacement or rework of the driver links. This amendment is prompted by reports of a thrust reverser door that failed to operate properly due to improperly manufactured (missing chamfers on the) driver links. The actions specified by this AD are intended to prevent damage to the overcenter links due to missing chamfers on the driver links, which may result in uncommanded opening of the thrust reverser door, and subsequently, adversely affecting controllability of the airplane.

DATES: Effective September 5, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 5, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5245; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Model DC–9 series airplanes and C–9 (military) airplanes was published in the **Federal Register** on April 17, 1995 (60 FR 19188). That action proposed to require a one-time visual inspection of the driver links of the thrust reverser door to determine whether the driver links are chamfered, and a one-time visual inspection to detect damage of the overcenter links, and follow-on corrective actions, if necessary; and replacement or rework of the driver links.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests a revision to the proposal to include an option that would allow deactivation of a thrust reverser in accordance with the Minimum Equipment List (MEL). Additionally, the commenter states that if damage limits are required for driver links or overcenter links that are installed on deactivated thrust reversers, then McDonnell Douglas Alert Service Bulletin A78–67 (that is referenced in the proposal as the appropriate source of service information) should be revised to include those limits. The commenter contends that the revised service bulletin should then be referenced in the final rule as the appropriate source of service information. The commenter states that this suggested change would minimize the impact on scheduled service to the public.

The FAA does not concur. The FAA acknowledges that the MEL permits continued operation of an airplane for up to 10 days with a deactivated thrust reverser. However, the FAA's intent in issuing this AD is to remove all defective driver links from the fleet in a timely manner so as to preclude the potential for any further incidents of uncommanded openings of the thrust reverser door after takeoff. Deactivation of the thrust reverser would essentially extend the compliance time of this AD; the FAA considers such extension to be unacceptable since the affected fleet must be purged of the discrepant part in order to ensure safety. Where there are differences between the MEL and the AD, the AD takes precedence; therefore inspection, and any necessary replacement, must be accomplished by affected operators within 3 months, as required by this AD.

Further, the FAA does not concur with the commenter's request that essentially would delay the issuance of this rule until the manufacturer can release a revised service bulletin containing damage limits for driver links and overcenter links that are installed on deactivated thrust reversers. The FAA does not consider that delaying this action until after the release of a revised service bulletin is warranted or appropriate, since, as explained above, the FAA does not concur with the commenter's request to permit flight with a deactivated thrust reverser.

The same commenter also requests a revision to the proposal to include an alternative to the proposed inspections

of the links. The commenter states that if no discrepant parts were received then no inspection should be required. Therefore, the commenter suggests including an alternative to permit operators to check shipping records in lieu of performing the inspections.

The FAA does not concur. Discrepant links have the same part number as those links that have chamfers. Therefore, discrepant links would not be identifiable by checking shipping records.

Two commenters request a revision of the 3-month compliance time proposed in paragraphs (a) and (b). One of these commenters requests that the proposed compliance time be extended to 6 months. The other commenter requests that the inspections be allowed to be accomplished during the time of a normally scheduled "C" check. This commenter states that adoption of a compliance time that coincides with operators' "C" checks would minimize interruptions to the operators' regularly scheduled maintenance.

The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspects of accomplishing the inspections within an interval of time that parallels normally scheduled maintenance for the majority of affected operators.

The FAA notes that the driver link and overcenter link assemblies of the thrust reverser are commonly referred to as "driver link and overcenter link." Therefore, for purposes of clarification, paragraph (d) of the final rule has been revised to delete the phrase "assembly of a thrust reverser" following the terms "driver link or overcenter link."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 892 airplanes of the affected design in the worldwide fleet. The FAA estimates that 557 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspections and 10 work hours per airplane to accomplish the required replacement/rework, and that the average labor rate is $60 per work hour. Required replacement/rework parts will cost approximately $4,100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,651,320, or $4,760 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–16–03 McDonnell Douglas: Amendment 39–9322. Docket 95–NM–36–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, as listed in McDonnell Douglas DC–9 Alert Service Bulletin A78–67, dated February 27, 1995, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded opening of the thrust reverser door, which may adversely affect controllability of the airplane, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform a visual inspection of the actuating mechanisms of the upper and lower doors of the thrust reverser on the left and right engines to determine whether the driver links are chamfered, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A78–67, dated February 27, 1995.

(1) If all the driver links are chamfered, prior to further flight, perform a visual inspection to detect damage of the overcenter links (including the bearings, races, and attaching hardware), in accordance with the alert service bulletin.

(i) If no damage to the overcenter links is detected, no further action is required by this paragraph.

(ii) If any damage to the overcenter links is detected, prior to further flight, replace the damaged overcenter links with new or serviceable overcenter links in accordance with the alert service bulletin.

(iii) If any damage to the bearings, races, or attaching hardware of the overcenter links is detected, prior to further flight, perform a visual inspection to detect damage of the drive mechanism of the thrust reverser, in accordance with the alert service bulletin. If any damage to the drive mechanism is detected, prior to further flight, repair or replace the damaged parts with new or serviceable parts, in accordance with the Chapter 78 of the DC–9 Overhaul Manual.

(2) If any driver link is not chamfered, prior to further flight, remove the driver link and perform dimensional and fluorescent penetrant inspections to determine serviceability of the driver link, in accordance with the alert service bulletin.

(i) If the driver link is serviceable, prior to further flight, machine chamfer the driver link, or replace the driver link with a new or serviceable part, in accordance with the alert service bulletin.

(ii) If the driver link is not serviceable, prior to further flight, replace it with a new or serviceable driver link, in accordance with the alert service bulletin.

(b) Within 3 months after the effective date of this AD, perform a visual inspection to detect damage of the overcenter links (including the bearings, races, and attaching hardware, in accordance with the McDonnell Douglas DC–9 Alert Service Bulletin A78–67, dated February 27, 1995.

(1) If no damage to the overcenter links is detected, no further action is required by this paragraph.

(2) If any damage to the overcenter links is detected, prior to further flight, replace the damaged overcenter links with new or serviceable overcenter links in accordance with the alert service bulletin.

(3) If any damage to the bearings, races, or attaching hardware of the overcenter links is detected, prior to further flight, perform a visual inspection to detect damage of the drive mechanism of the thrust reverser, in accordance with the alert service bulletin. If any damage to the drive mechanism is detected, prior to further flight, repair or replace the damaged parts with new or serviceable parts, in accordance with the Chapter 78 of the DC–9 Overhaul Manual.

(c) Within 10 days after accomplishing the visual inspection of the driver links of the thrust reverser door to determine whether the driver links are chamfered, as required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5245; fax (310) 627–5210; Attention: Robert Baitoo. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) As of the effective date of this AD, no person shall install, on any airplane, a driver link or overcenter link that has not been previously inspected, and replaced or reworked, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A78–67, dated February 27, 1995.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) Certain actions shall be done in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A78–67, dated February 27, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 5, 1995.

Issued in Renton, Washington, on July 21, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18436 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–129–AD; Amendment 39–9329; AD 95–16–09]

Airworthiness Directives; Jetstream Model BAe ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Model BAe ATP airplanes. This action requires modification of the electrical connections at the switches of the scavenge oil filter and pressure oil filter. This amendment is prompted by reports indicating that the electrical connections were miswired at the switches of the scavenge oil filter and pressure oil filter. The actions specified in this AD are intended to prevent the circulation of unfiltered oil through the engine without warning to the flightcrew, due to miswiring of electrical connections. Unfiltered oil containing contaminants could lead to a precautionary shutdown of the engine.

DATES: Effective August 18, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1995.

Comments for inclusion in the Rules Docket must be received on or before October 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–129–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2799; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model BAe ATP airplanes. The CAA advises that it has received reports indicating that the amber light on the central warning panel did not illuminate to warn the flight crew that the engine oil filter would be bypassed. Investigation revealed that the light did not illuminate because the electrical connections were miswired at the switches of the scavenge oil filter of the reduction gearbox (RGB) and of the pressure oil filter. The miswiring configuration was inadvertently included as part of the original wiring design plan for these airplanes and, thus, the miswiring occurred during production. Such miswiring could lead to the circulation of unfiltered oil through the engine without warning to the flightcrew, which could result in a precautionary shutdown of the engine due to contaminants in the unfiltered oil.

Jetstream has issued Service Bulletin ATP–79–25–10382A, Revision 1, dated May 25, 1995, which describes procedures for modification of the electrical connections at the switches of the scavenge oil filter of the RGB and of the pressure oil filter, of the left and right engines. The modification entails rerouting of the 28-volt DC. wiring from pin A to pin C of the switches. The CAA classified this service bulletin as mandatory in order to assure the

continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicabie bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the circulation of unfiltered oil through the engine without warning to the flightcrew, which could lead to a precautionary shutdown of the engine due to contaminants in the unfiltered oil. This AD requires modification of the wiring connections at the switches of the scavenge oil filter of the RGB and of the pressure oil filter, of the left and right engines. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days. Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–129–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–16–09 Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft, Limited.): Amendment 39–9329. Docket 95–NM–129–AD.

Applicability: Model BAe ATP airplanes having constructor's numbers 2002 through 2056 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the flightcrew from being unaware that unfiltered oil is being circulated through the engine, which may result in a precautionary shutdown of the engine due to the circulation of contaminants in unfiltered oil, accomplish the following:

(a) Within 60 days after the effective date of this AD, modify the wiring connections at the switches of the scavenge oil filter of the reduction gearbox (RGB) and of the pressure oil filter, of both the left and right engines, in accordance with Jetstream BAe ATP Service Bulletin ATP–79–25–10382A, Revision 1, dated May 25, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Jetstream Aircraft Limited BAe ATP Service Bulletin ATP–79–25–10382A, Revision 1, dated May 25, 1995, which contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 7	1	May 25, 1995.
2, 4–6, 8–13 .	Original	February 10, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 18, 1995.

Issued in Renton, Washington, on July 27, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18981 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–ANE–64; Amendment 39–9323; AD 95–16–04]

Airworthiness Directives; AlliedSignal, Inc. (Formerly Textron Lycoming) LTS101 Series Turboshaft and LTP101 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. LTS101 series turboshaft and LTP101 series turboprop engines, that requires replacement of cast material axial compressor rotors with wrought material axial compressor rotors that have improved fatigue characteristics and material properties. This amendment is prompted by 36 reports of axial compressor blade failures on cast rotors. The actions specified by this AD are intended to prevent engine power loss and inflight engine shutdown.

DATES: Effective October 2, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 2, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal, Inc., 550 Main Street, Stratford, CT 06497. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7148, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc. (formerly Textron Lycoming) LTS101 series turboshaft and LTP101 series turboprop engines was published in the **Federal Register** on January 4, 1995 (60 FR 393). That action proposed to require replacing cast material axial compressor rotors with wrought material axial compressor rotors that have improved fatigue characteristics and material properties, in accordance with Textron Lycoming Service Bulletin No. LT 101–72–30–0088, Revision 5, dated September 25, 1992.

On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line of Textron Lycoming, and this final rule has been revised to refer to the engine by its new name.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously.

There are approximately 200 engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 50 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,500 per engine, on a prorated cost basis. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $955,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–16–04 AlliedSignal, Inc.: Amendment 39–9323. Docket 94–ANE–64.

Applicability: AlliedSignal, Inc. (formerly Textron Lycoming) LTS101 turboshaft and LTP101 turboprop engines installed on but not limited to Aerospatiale AS 350 and SA366G, Bell 222, and Messerschmitt-Bolkow-Blohm (MBB) BK117 helicopters; Piaggio P166–DL3 and Airtractor AT302 airplanes. NOTE: This AD applies to each

engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power loss and inflight engine shutdown, accomplish the following:

(a) Remove from service Part Numbers (P/N) 4–101–006– 20, –21, –24, –26, –35, –36, and –40 cast material axial compressor rotors, as follows:

(1) For axial compressor rotors P/N 4–101–006–35 with serial number suffix "E," remove in accordance with Textron Lycoming Service Bulletin (SB) No. LT 101–72–30–0088, Revision 5, dated September 25, 1992, within 50 hours time in service (TIS), or 60 days after the effective date of this AD, whichever occurs first.

(2) For axial compressor rotors P/N 4–101–006–35 with serial number suffix other than "E," and all other axial compressor rotors with P/N listed in paragraph (a) of this airworthiness directive (AD), remove in accordance with Textron Lycoming SB No. LT 101–72–30–0088, Revision 5, dated September 25, 1992, as follows:

(i) For axial compressor rotors that have accumulated 600 hours or less TIS since new, remove within 100 hours TIS, or 120 days after the effective date of this AD, whichever occurs first.

(ii) For axial compressor rotors that have accumulated more than 600 but less than or equal to 1,200 hours TIS since new, remove within 300 hours TIS, or 240 days after the effective date of this AD, whichever occurs first.

(iii) For axial compressor rotors that have accumulated more than 1,200 but less than or equal to 2,400 hours TIS since new, remove within 600 hours TIS, or 360 days after the effective date of this AD, whichever occurs first.

(iv) For axial compressor rotors that have accumulated more than 2,400 hours TIS since new, remove within 1,200 hours TIS, or 720 days after the effective date of this AD, whichever occurs first.

(3) Replace with a serviceable wrought material axial compressor rotor P/N 4–101–006–28, –32, –39, or –41, as applicable, in accordance with Textron Lycoming SB No. LT 101–72–30–0088, Revision 5, dated September 25, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following SB:

Document No.	Pages	Revision	Date
Textron Lycoming SB No. LT 101–72–30–0088	1–4	5	September 25, 1992.
Total Pages: 5.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal, Inc., 550 Main Street, Stratford, CT 06497. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 2, 1995.

Issued in Burlington, Massachusetts, on July 20, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–18551 Filed 7–31–95; 10:37 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ASO–15]

Removal of Class D Airspace; Fort Rucker Shell, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment removes Class D airspace at Fort Rucker Shell, AL. The United States Army has altered the operational requirements of Shell Army Heliport (AHP) and transferred the training mission from Shell Army AHP to another location. Therefore, there is no longer a requirement for Class D airspace for the heliport.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley Zylowski, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

The United States Army altered the operational requirements of and transferred the former training mission from Shell AHP to another location. As a result, the United States Army requested the Federal Aviation Administration to remove the Class D airspace for the heliport, as it is no longer needed. There is no instrument flight rules (IFR) activity and visual flight rules (VFR) activity has been significantly reduced. This action will eliminate the impact that Class D airspace has placed on users of the airspace in the vicinity of Shell AHP. This rule will become effective on the date specified in the **DATES** section. Since this action removes the Class D airspace, which eliminates the impact of Class D airspace on users of the airspace in the vicinity of Shell AHP, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class D airspace at Fort Rucker Shell, AL. The United States Army has altered the operational requirements of Shell AHP and transferred the training mission from Shell AHP to another location. Therefore, there is no longer a requirement for Class D airspace for the heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO AL D Fort Rucker Shell, AL [Removed]

* * * * *

Issued in College Park, Georgia, on July 24, 1995.

Stanley Zylowski,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–18918 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Docket No. 95–ANE–28]

Amendment to Class D and Class E Airspace; Hartford, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will modify the Class D and Class E airspace areas established in the vicinity of the Hartford-Brainard Airport, Hartford, CT. Those airspace areas also define controlled airspace to contain aircraft operating to and from the Rentschler Airport, a privately operated airport in East Hartford, CT. The owner of Rentschler Airport has recently closed the control tower. Therefore, this action is necessary to revise the Class D and Class E airspace in the vicinity of the Rentschler and Hartford-Brainard airports.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7536; fax: (617) 238–7596.

SUPPLEMENTARY INFORMATION:

History

On May 24, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class D and Class E airspace areas established in the vicinity of the Hartford-Brainard Airport, Hartford, CT. That action was prompted by the closing of the control tower at the privately operated Rentschler Airport. The proposed action would also provide the necessary controlled airspace to accommodate the Standard Instrument Approach Procedures (SIAP's) that remain at the now closed Rentschler Airport.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. One comment noted a misspelling of the name of the Hartford-Brainard Airport, and a minor correction to the longitude and latitude coordinates for that airport. The FAA has made these minor changes to the rule. Class D and Class E airspace areas are published in FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. Class D areas appear in paragraph 5000 of FAA Order 7400.9B, and Class E areas extending upward from 700 feet or more above the surface of the earth appear in paragraph 6005. The Class D and Class E airspace designations in this document would be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Hartford, CT Class D and the Hartford, CT Class E airspace areas by revising those areas in the vicinity of the Hartford-Brainard and Rentschler Airports, and by providing the necessary controlled airspace to accommodate the SIAP's to the Rentschler Airport.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep the regulations operationally current. It therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ANE CT D Hartford, CT [Revised]

Hartford Brainard Airport, Hartford, CT
(Lat. 41°44'11" N, long. 72°39'01" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within 4.6-mile radius of Hartford-Brainard Airport from the Hartford Brainard Airport 158° bearing clockwise to the Hartford-Brainard Airport 052° bearing, and with a 6.0-mile radius of Hartford-Brainard Airport from the Hartford-Brainard Airport 052° bearing clockwise to the 158° bearing;

excluding that airspace within the Windsor Locks, CT Class C airspace area. This Class D airspace is effective during the specific dates and times established in advance by a Notice of airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE CT E5 Hartford, CT [Revised]

Hartford-Brainard Airport, Hartford, CT
(Lat. 41°44'11" N, long. 72°39'01" W)

That airspace extending upward from 700 feet above the surface within an 11.5-mile radius of Hartford-Brainard Airport; excluding that airspace within the Windsor Locks, CT and Chester, CT Class E airspace areas.

Issed in Burlington, MA, on July 27, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95-19141 Filed 8-2-95; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 3

Administrative Litigation Following the Denial of a Preliminary Injunction

AGENCY: Federal Trade Commission.

ACTION: Final rule, with request for public comment.

SUMMARY: Elsewhere in this issue, the Federal Trade Commission has published statements explaining how, after a court has denied preliminary injunctive relief to the Commission, the Commission decides whether administrative litigation should be commenced or, if it has already been commenced, should be continued. The Commission has also adopted a rule to facilitate such consideration in those cases where administrative litigation has already commenced. While the rule is effective upon publication in the **Federal Register**, the Commission will receive comment for thirty days, and will thereafter take such further action as may be appropriate.

DATES: The rule is effective August 3, 1995. Comments will be receive until September 5, 1995.

ADDRESSES: Comments should be sent to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580. Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 during the hours of 9 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ernest Nagata, Deputy Assistant Director for Policy and Evaluation, Bureau of Competition, (202) 326-2714, or Marc Winerman, Office of the General Counsel, (202) 326-2451.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue, the Commission has published a policy statement that explains the process it follows in deciding whether to pursue administrative merger litigation following denial of a preliminary injunction in a separate proceeding brought, under section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), in aid of the adjudication. The Commission has also determined to adopt a new rule, 16 CFR 3.26, to facilitate the consideration of these issues in matters where the Commission has issued an administrative complaint, and thus begun an adjudicative proceeding, before the court denied the preliminary injunction. Rule 3.26 provides two options for respondents to request such review [1]: (a) Respondents may move to have the administrative case withdrawn from adjudication so that the review may be conducted without the constraints of adjudicative rules, or (b) respondents may argue their case for dismissal within the adjudicative framework by filing a motion for dismissal of the complaint and briefing the matter on the public record.[2]

II. Motion to Withdraw From Adjudication

The first alternative open to respondents is a motion to withdrawn the matter from adjudication. A motion to withdraw a matter from adjudication pursuant to Rule 3.26(c) should be filed directly with the Commission (rather than filed with the Administrative Law Judge and then certified to the Commission), and will result, two days after filing, in automatic withdrawal from adjudication.[3]

In requiring that all respondents make a motion for withdrawal from adjudication, the rule implicitly obtains their unanimous consent to such withdrawal, and to ex parte communications that will be permitted during such time as the litigation is withdrawn.[4] Once a matter is withdrawn from adjudication, complaint counsel and respondents (and even third parties) can communicate informally with Commissioners to discuss the matter. In addition, since such communications will not be on the record of the administrative proceeding, counsel will be able to discuss the case without concern that their statements might compromise their litigation position if the case is returned to adjudication.

III. Motion for Consideration on the Public Record

If one or more respondents do not want the matter withdrawn from adjudication, Rule 3.26(d) permits any respondent or respondents to make a motion for dismissal that will be briefed on the public record. Such motions are similarly filed directly with the Commission rather than the Administrative Law Judge.

Rule 3.26 imposes a fourteen-day time limit for respondents to file a motion under the rule, and fourteen days for complaint counsel to file an answer, and it imposes a limit of thirty printed pages, or forty-five typewritten pages, on respondent's motion (and any accompanying brief) and complaint counsel's answer. The rule also provides that a stay will be automatic, although the Commission could subsequently lift it.[5] Further, the rule provides that

[1] The Commission also reserves the right to consider sua sponte the public interests in continuing administrative litigation.

[2] It should be noted that, under its general rule governing adjudicative motions, 16 CFR § 3.22, the Commission has previously entertained motions to dismiss a complaint as no longer warranted by the public interest. See, e.g., *Boise Cascade Co.*, 101 F.T.C. 17 (1983), *American Home Products Corp.* 90 F.T.C. 148 (1977).

[3] The two-day delay will enable complaint counsel to object (and the Commission to defer or halt the withdrawal from adjudication) if there is a question respecting whether the motion meets the requirements of Rule 3.26(b). For example, the motion may be untimely, or there may be a question as to whether a particular court order constitutes a denial of preliminary injunctive relief. A brief delay in withdrawing a matter from adjudication is preferable to the risk that the matter might be prematurely removed from adjudication and placed back in adjudication shortly afterward.

[4] Various constraints on communications with Commissioners during the pendency of an administrative proceeding arise by virtue of the ex parte rule, 16 CFR 4.7 (which applies to communications with both complaint counsel and outside parties), of the separation of functions provision of the APA, 5 U.S.C. 554(d) (which applies to communications with complaint counsel), of the ex parte provision of the APA, 5 U.S.C. 557(d) (which applies to communications with outside parties), and of due process strictures.

[5] As noted previously, in the context of a motion to withdraw a case from adjudication under proposed Rule 3.26(c), the rule provides that the automatic withdrawal would be deferred to enable some opportunity to consider whether respondent's motion was consistent with the rule. Rule 3.26(d) does not provide for similar deferral of a stay. Withdrawal from litigation has serious consequences, insofar as it permits ex parte communications, and it is appropriate to defer withdrawal briefly rather than risk that a matter would be withdrawn from adjudication and then returned to adjudication shortly thereafter. No similar concerns arise when a matter is stayed and the stay is subsequently lifted.

[6] This will rarely be an issue because the Commission rarely commences administrative litigation before a court rules on a TRO motion. Under section 13(b), the Commission must issue its administrative complaint within twenty days after entry of a preliminary injunction or a TRO. Thus, if a court issues a TRO bureau delays ruling on a preliminary injunction, the Commission may have no choice but to issue its administrative complain the before the preliminary injunction ruling. In contrast, section 13(b) does not compel the Commission to issue an administrative complaint before a TRO ruling. Even if the situation did arise, however, the denial of a TRO in and of itself will not trigger Commission review of the public interest in continued litigation, which will rather await dismissal of the proceeding or other action rejecting preliminary injunctive relief.

[7] In some cases, most likely involving consumer fraud, a court could grant a preliminary injunction as to some defendants but deny such relief as to others. When that occurs, Rule 3.26 would be available to the defendants as to whom relief was denied but not the defendants as to whom relief was granted. (In such a situation, though, the affected respondents would be limited to on-the-record consideration under Rule 3.26(d); the procedure for withdrawal from adjudication under subsection (c), which requires a motion by all the respondents in the adjudication, would not be an option.)

[8] This would not, however, preclude earlier communications by staff, respondents, or even third parties, that are occasioned by and concern whether the Commission will appeal the district court's decision. Such communications are permissible, even if the opposing parties are not given prior notice, because they are "occasioned by and concerning" a non-adjudicative function. See Rule 4.7(f).

[9] After a court of appeals has rejected preliminary injunctive relief, the Commission has ninety days to see certiorari, 28 U.S.C. 2101(c), and forty-five days to seek rehearing, F.R. Appl. Proc. 40(a). (Although the rule permits respondents to seek reconsideration of the public interest in continuing an adjudication immediately after a court of appeals denies a preliminary injunction in aid of that adjudication, it does not preclude the Commission from seeking rehearing or certiorari, whether or not such a motion is filed.)

materials whose confidentiality is protected under a court order or an administrative order shall be treated as if they had been granted in camera treatment by the Commission. Thus, assuming that the protective order does not preclude use in the administrative proceeding, the parties will be able to rely on such materials in nonpublic filings.

IV. Timing

Pursuant to Rule 3.26(b), the procedures under the rule become available if the Commission is denied preliminary injunctive relief in a judicial proceeding brought in aid of an administrative proceeding. Two details are discussed below.

First, these procedures become available following denial of preliminary injunctive relief. A temporary restraining order ("TRO") is not "preliminary injunctive relief," so the procedures will not become available on denial of a TRO.[6]

Second, the procedures become available when a district court denies the Commission preliminary injunctive relief and (a) all opportunity has passed for the Commission to seek reconsideration of the district court's denial or to appeal it to a court of appeals, and the Commission has neither sought reconsideration of the denial nor appealed it, or b) a court of appeals has denied preliminary injunctive relief.[7] Thus, these mechanisms will not be available while the Commission might seek reconsideration by the district court or appeal the denial to a court of appeals.[8] Rule 3.26(b) does not delay motions for reconsideration of the public interest in an administrative proceeding until after time has passed for seeking rehearing by the court of appeals of certiorari by the Supreme Court.[9]

List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Investigations.

Accordingly, the Federal Trade Commission amends title 16, chapter I, subchapter A, part 3 of the CFR as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. The authority for part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 3.22(a) is amended by revising the first full sentence to read as follows:

§ 3.22 Motions.

(a) *Presentation and disposition.* During the time that a proceeding is before an Administrative Law Judge, all motions therein, except those filed under § 3.26, § 3.42(g), or § 4.17, shall be addressed to the Administrative Law Judge, and, if within his authority, shall be ruled upon by him. * * *

3. Section 3.26 is added to subpart C to read as follows:

§ 3.26 Motions following denial of preliminary injunctive relief.

(a) This section sets forth two procedures by which respondents may obtain consideration of whether continuation of an adjudicative proceeding is in the public interest after a court has denied preliminary injunctive relief in a separate proceeding brought, under section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), in aid of the adjudication.

(b) A motion under this section shall be addressed to the Commission and filed with the Secretary of the Commission. Such a motion must be filed within fourteen (14) days after:

(1) A district court has denied preliminary injunctive relief, all opportunity has passed for the Commission to seek reconsideration of the denial or to appeal it, and the Commission has neither sought reconsideration of the denial nor appealed it; or

(2) A court of appeals has denied preliminary injunctive relief.

(c) *Withdrawal from adjudication.* If a court has denied preliminary injunctive relief to the Commission in a section 13(b) proceeding brought in aid of an adjudicative proceeding, respondents may move that the adjudicative proceeding be withdrawn from adjudication in order to consider whether or not the public interest warrants further litigation. Such a motion shall be filed by all of the respondents in the adjudicative proceeding. The Secretary shall issue an order withdrawing the matter from adjudication two days after such a motion is filed, except that, if complaint counsel have objected that the conditions of paragraph (b) of this section have not been met, the Commission shall determine whether to withdraw the matter from adjudication.

(d) *Consideration on the record.* (1) In lieu of a motion to withdraw a matter from adjudication under paragraph (c) of this section, any respondent or respondents may file a motion under this paragraph to dismiss the administrative complaint on the basis that the public interest does not warrant further litigation after a court has denied preliminary injunctive relief to the Commission. Motions filed under this paragraph shall incorporate or be accompanied by a supporting brief or memorandum.

(2) *Stay.* A motion under this paragraph will stay all proceedings before the Administrative Law Judge until such time as the Commission directs otherwise.

(3) *Answer.* Within fourteen (14) days after service of a motion filed under this paragraph, complaint counsel may file an answer.

(4) *Form.* Motions (including any supporting briefs and memoranda) and answers under this paragraph shall not exceed 30 pages if printed, or 45 pages if typewritten, and shall comply with the requirements of § 3.52(e).

(5) *In camera materials.* If any filing includes materials that are subject to

confidentiality protections pursuant to an order entered in either the proceeding under section 13(b) or in the proceeding under this part, such materials shall be treated as *In camera* materials for purposes of this paragraph and the party shall file two versions of the document in accordance with the procedures set forth in § 3.45(e). The time within which complaint counsel may file an answer under this paragraph will begin to run upon service of the *in camera* version of the motion (including any supporting briefs and memoranda).

By direction of the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga, Concerning FTC's Adoption of Rule 3.26, Respecting Administrative Litigation Following Denial of a Preliminary Injunction

On June 26, 1995, the Commission issued a Statement of Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction and an accompanying explanation.[1] These documents reaffirm the Commission's longstanding policy, consistent with section 5 of the FTC Act, 15 U.S.C. 45(b), of reconsidering whether to pursue administrative litigation following the denial of preliminary relief by the courts. Section 5 requires that the Commission premise issuance of an adjudicative complaint on finding reason to believe that the law has been violated and that enforcement would be in the public interest. This obligation continues implicitly throughout the proceeding, requiring the Commission to take all reasonable steps to assure itself that an enforcement action, once begun, remains in the public interest. I joined in that Statement.

The Commission now adopts new Rule 3.26 to govern how the agency will proceed if a court denies a requested preliminary injunction pending completion of an administrative adjudication.[2] A central feature of the new rule is that following the court's action, the respondents may choose to have the administrative matter removed from adjudication to permit the parties to discuss with the Commission privately, off the record and "without the constraints of adjudicative rules,"[3] the public interest in continuing the adjudication in light of the court's action.[4] Strictly speaking, no revision of the rules is necessary because existing provisions of the rules of practice are sufficient to permit the Commission to address any effect the court's action may have on the public interest in continuing the adjudication.[5] Nevertheless, I have no objection to adopting a new rule to provide specific procedures for reconsidering an administrative adjudication following denial of a preliminary injunction. My difference of opinion is this: I believe that a rule adopted to address this situation should provide that the matter be left in adjudication for any reconsideration by the Commission and that any communication between the parties and the Commission take place on the record.[6]

The Commission opines that complaint counsel will be more candid off the record because they "will be able to discuss the case without concern that their statements might compromise their litigation position if the case is returned to adjudication."[7] It also suggests that the *ex parte* procedure will confer similar benefits on "respondents (and even third parties)."[8] It is unclear to me why all this candor cannot and should not take place on the public record.

Traditionally, the Commission acts as a prosecutor up to and including its decision to issue an administrative complaint. As soon as the vote to issue an administrative complaint is complete, the Commission assumes a judicial role with respect to that case, which then is said to be "in adjudication."[9] It should go without saying that the Commission must not allow its prosecutorial role to intrude in any respect in carrying out its deliberative role in an administrative adjudication. Removing a matter from adjudication to chat off the record suggests that there is something that the Commission would prefer that the world not know. It also suggests an unease on the part of the Commission in carrying out its judicial function and an unseemly reluctance to relinquish its prosecutorial role. Although the automatic withdrawal provision may not disadvantage the respondent in any given proceeding, it may well undermine public confidence in the integrity of the Commission's adjudicative process.

Let us consider three scenarios following a court's denial of a preliminary injunction: First, complaint counsel have a strong case, notwithstanding the court's denial of a preliminary injunction. If this is so, complaint counsel can explain why on the record. After the case has been withdrawn from adjudication and reconsidered, presumably the Commission will return the case to adjudicative status. Even if the respondents initiated withdrawing the matter from adjudication, the procedure, in-and-out-and-in adjudication, may create a perception that complaint counsel, speaking off the record, had an unfair advantage. The respondents may believe that had they only known what the staff was saying to the Commission behind closed doors while the case was withdrawn from adjudication, they could have defended more effectively and won a dismissal. After all, the court gave the first round to the respondents on the record.

A second scenario is that the case is weak, and complaint counsel's arguments in support of the complaint are correspondingly weak. The Commission suggests in its **Federal Register** notice that if discussion is held on the record, complaint counsel will be inhibited from pointing to weaknesses in the case for fear that if the Commission disagrees and requires the adjudication to go forward, complaint counsel will be disadvantaged by having conceded the weaknesses of the case on the record. An underlying assumption here is that any weaknesses in the case will remain undiscovered (by the courts, by the respondent and by the administrative law judge), as long as complaint counsel can confide in the Commission off the record. Perhaps more serious, the assumption suggests an abiding lack of confidence in the administrative system of adjudication and the Commission's place in it. Complaint counsel will not be able to avoid the weakness of the case by confiding that fact in secret to the Commission. At most, they might conceal the weakness for a time, a result that ultimately would be wasteful of both government and private resources. Regardless of when during an adjudicative proceeding complaint counsel or the Commission itself discovers a possible weakness in the case, the Commission should base its decision whether to continue the proceeding on publicly available information.

The new rule may lend itself to a public perception that the staff of the Commission has an advantage over targets of enforcement actions because the staff has the secret ear of the Commission. If the staff is permitted secret access to the Commission, a decision to continue an adjudication, particularly one that, based on publicly available information, appears weak, likely would suggest that complaint counsel were able to persuade the commission to proceed only by "hiding the ball" form the respondents. Such a message hardly is consistent with fairness to the respondent or with the role of the Commission as an unbiased decisionmaker.[10]

A third scenario is that the case is weak, respondents move to withdraw the matter from adjudication, and complaint counsel file nothing in support of the complaint.[11] In such an instance, the Commission may agree with the respondents and dismiss the adjudication, or it may disagree and order that the proceeding continue. There seems no good reason not to have this occur on the public record. Again, private discussions between the Commission and its staff can create a public perception of unfairness to the respondents arising from apparent complicity the prosecuting attorneys and the purportedly impartial adjudicators—the very danger the separation of functions requirements of the Administrative Procedure Act and the Commission's *ex parte* rule are designed to avoid.[12]

In addition to undermining the separation of functions at the Commission, the new rule limits the Commission's discretion to decide when individual cases should be in adjudication and remain on the public record. The exercise of discretion in an adjudicative matter is a responsibility of the Commission, not an occasion for apology. This responsibility, which must be carried out consistent with the law and with fundamental fairness, should not be ceded without a reason for doing so. Here, I see none. Both the policy to maintain the separation of deliberative and prosecutorial functions and the appearance of having done so are enhanced when the Commission retains its discretion to determine the appropriate disposition of a motion to withdraw from adjudication. The shifting of a portion of that discretion in favor of the respondents may appear open-minded, but, in the long term, it will disserve the Commission and the public interest.

On balance, the Commission and the public would be better served if the Commission retained its discretion to decide which, if any, cases should be withdrawn from adjudication following denial of a preliminary injunction. The new rule is likely to undermine the integrity of the Commission and its adjudicative process by breaking down the wall between the Commission's prosecutorial and adjudicatory roles in a manner inconsistent with the separation of functions requirement of the Administrative Procedure Act and its own *ex parte* rule.

I dissent.

[FR Doc. 95–19109 Filed 8–2–95; 8:45 am]

BILLING CODE 6750–01–M

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[1] These materials appear again in this volume of the **Federal Register**.

[2] *See* 15 U.S.C. § 53(b).

[3] Notice of Final Rule with Request for Public Comment, 60 FR __, Slip Notice at 2–3.

[4] I do not oppose the alternative procedure included in the new rule, which expressly authorizes a motion by any respondent to dismiss the complaint in the public interest. Although the alternative procedure is redundant in light of existing Rules 3.22 and 3.23, 16 CFR 3.22 and 3.23 (1955), I do not find it objectionable because the arguments would be presented on the record unless the Commission directs otherwise.

[5] *See, e.g.*, Rule 3.22 governing adjudicative motions and Rule 3.23 governing interlocutory appeals. The Commission also, of course, may act *sua sponte* to seek briefing from the parties or to dismiss the complaint.

[6] Confidential communications between the Commission and its staff before a matter enters adjudication and when the Commission is still carrying out its prosecutorial responsibility make sense. In our system of law, investigational and prosecutorial decisions are protected from public scrutiny. *See* 5 U.S.C. 552(b)(5). Such confidential communications after the prosecutorial function has concluded with the issuance of a complaint, however, raise issues concerning the exercise by the Commission of its quasi-judicial function.

[7] 60 FR __, Slip Notice at 4.

[8] *Id.*

[9] At this point, all further communications between the parties (complaint counsel and the respondent[s] are on the record with certain specified exceptions. Rule 4.7, 16 CFR § 4.7.

[10] Off-the-record discussions with the respondents, followed by dismissal of the complaint, also may create misperceptions of unfairness and favoritism, with the implication that nonpublic communications that could not bear the light of day influenced the Commission's decision.

[11] This assumes that complaint counsel find themselves unable to make a principled argument in support of the complaint. *See* Jose Calimlim, M.D., Dkt. No. 9199 (June 24, 1986) ("complaint counsel represent the Commission's prosecutorial decision as embodied in the allegations of the complaint and in the notice of contemplated relief"); *accord* R.J. Reynolds Tobacco Co., Dkt. No. 9206 (interlocutory order, Dec. 1, 1986); *see also* R.J. Reynolds Tobacco Co. (interlocutory order, Dec. 10, 1986) (purpose of adjudication is "to subject the Commission's complaint to an adversarial test").

[12] *See* 5 U.S.C. 552(d); 16 CFR 4.7.

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 200

[Release No. 34–36031]

Establishment of Office and Delegation of Authority to Administer Functions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its Rules of Organization and Program Management to establish the Office of Compliance Inspections and Examinations ("OCIE") and to delegate authority to administer its functions to the Director of OCIE. This reorganization is designed to improve efficiency and allow for an enhanced integration of functions by combining the inspection and examination operations of the Division of Market Regulation and the Division of Investment Management.

EFFECTIVE DATE: September 5, 1995.

FOR FURTHER INFORMATION CONTACT: James A. Chan, 202/942–0742; Matthew O'Toole, 202/942–0694; or Philip H. Oettinger, 202/942–0784.

SUPPLEMENTARY INFORMATION: On March 22, 1995, the Chairman of the Securities and Exchange Commission announced the creation of a new office, OCIE, that would combine the inspections and examinations functions of the Division of Market Regulation and the Division of Investment Management. The goal of OCIE is to increase the efficiency of the inspection and examination process by integrating the functions and personnel of both Divisions. The Commission today is adopting Rules 19c and 30–18 of its Rules of Organization and Program Management to delegate responsibility for the examination and inspection of brokers, dealers, transfer agents, self-regulatory organizations, investment companies, and investment advisers to OCIE, and to establish the administrative and substantive responsibilities of the Office.

The Commission has determined that this addition to its rules relates solely to the agency's organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking and opportunities for public participation,[1] are not applicable. Similarly, the provisions of the Regulatory Flexibility Act,[2] which apply only when notice and comment are required by the APA or other law, are not applicable.

In the rare instances involving close questions or cases that may be potentially controversial, the staff would either consult with the Commission, or seek Commission authorization before acting.[3] The staff believes that its experience with the issues that may arise in this area

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[1] 5 U.S.C. 553.

[2] 5 U.S.C. 601 *et seq.*

[3] Rule 30–18(i) states that "[n]otwithstanding anything in the foregoing [delegations], in any case in which the Director of the Office of Compliance Inspections and Examinations believes it appropriate, the Director may submit the matter to the Commission."

reduces the need for day-to-day review by the Commission.

Effects on Competition

Section 23(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act")[4] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the additions to its rules announced in this release in light of the standards cited in section 23(a)(2) and believes that their adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

Statutory Basis of Rule

The amendments to the Commission's rules are adopted pursuant to the authorities set forth herein.

List of Subjects in 17 CFR Part 200

Administrative practices and procedures, Authority delegations (Government agencies), Organizations and functions (Government agencies).

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A continues, in part, to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.19c is added to read as follows:

§ 200.19c Director of the Office of Compliance Inspections and Examinations.

The Director of the Office of Compliance Inspections and Examinations ("OCIE") is responsible for the compliance inspections and examinations relating to the regulation of exchanges, national securities associations, clearing agencies, securities information processors, the Municipal Securities Rulemaking Board, brokers and dealers, municipal securities dealers, transfer agents, investment companies, and investment advisers, under Sections 15C(d)(1) and 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(d)(1) and 78q(b)), Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)), and Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4).

3. Section 200.30–18 is added to read as follows:

§ 200.30–18 Delegation of authority to Director of the Office of Compliance Inspections and Examinations.

Pursuant to the provisions of Pub. L. 100–181, 101 Stat. 1254, 1255 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following authority to the Director of the Office of Compliance Inspections and Examinations ("OCIE") to be performed by the Director or by such other person or persons as may be designated from time to time by the Chairman of the Commission:

(a) To administer the provisions of § 240.24c–1 of this chapter; provided that access to nonpublic information as defined in such Section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(b) Pursuant to the Securities Exchange Act of 1934 ("the Exchange Act") (15 U.S.C. 78a, *et seq.*):

(1) To grant and deny applications for confidential treatment filed pursuant to Section 24(b) of the Exchange Act (15 U.S.C. 78x(b)) and Rule 24b–2 thereunder (§ 240.24b–2 of this chapter); and

(2) To revoke a grant of confidential treatment for any such application.

(c) Pursuant to Section 17(b) of the Exchange Act (15 U.S.C. 78q(b)), prior to any examination of a registered clearing agency, registered transfer agent, or registered municipal securities dealer whose appropriate regulatory agency is not the Commission, to notify and consult with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer.

(d) Pursuant to Section 17(c)(3) of the Exchange Act (15 U.S.C. 78q(c)(3)), in regard to clearing agencies, transfer agents and municipal securities dealers for which the Commission is not the appropriate regulatory agency:

(1) To notify the appropriate regulatory agency of any examination conducted by the Commission of any such clearing agency, transfer agent, or municipal securities dealer;

(2) To request from the appropriate regulatory agency a copy of the report of any examination of any such clearing agency, transfer agent, or municipal securities dealer conducted by such appropriate regulatory agency and any data supplied to it in connection with such examination; and

(3) To furnish to the appropriate regulatory agency on request a copy of the report of any examination of any such clearing agency, transfer agent, or municipal securities dealer conducted by the Commission and any data supplied to it in connection with such examination.

(e) To administer the provisions of Section 24(d) of the Exchange Act (15 U.S.C. 78x(d)).

(f) To notify the Securities Investor Protection Corporation ("SIPC") of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of Section 5 of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aa, *et seq.*

(g) Pursuant to Section 15(b)(2)(C) of the Exchange Act (15 U.S.C. 78o(b)(2)(C)):

(1) To delay until the second six month period from registration with the Commission the inspection of newly registered broker-dealers that have not commenced actual operations within six months of their registration with the Commission; and

(2) To delay until the second six month period from registration with the Commission the inspection of newly registered broker-dealers to determine whether they are in compliance with applicable provisions of the Exchange Act and rules thereunder, other than financial responsibility rules.

(h) With respect to the Investment Advisers Act of 1940 ("Advisers Act") (15 U.S.C. 80b–1, *et seq.*):

(1) Pursuant to Section 203(h) of the Advisers Act (15 U.S.C.80b–3(h)), to authorize the issuance of orders cancelling registration of investment advisers, or applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers; and

(2) Pursuant to Rule 204–2(j)(3)(ii) (§ 275.204–2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete, and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Advisers Act, or any part of such books and records which may be specified in any such demand.

(i) Notwithstanding anything in the foregoing, in any case in which the Director of the OCIE believes it appropriate, the Director may submit the matter to the Commission.

By the Commission.

Dated: July 28, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19160 Filed 8–2–95; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78w(a)(2).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 94F–0090]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide broadened specifications for congealing point and oil content for synthetic paraffinic waxes produced by the Fischer-Tropsch process so that the specifications for synthetic paraffin waxes more closely resemble specifications for other synthetic waxes permitted for use in food packaging under other regulations. This action is in response to a petition filed by Shell Oil Co.

DATES: Effective August 3, 1995; written objections and requests for a hearing September 5, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 18, 1994 (59 FR 18412), FDA announced that a food additive petition (FAP 4B4416) had been filed by Shell Oil Co., One Shell Plaza, P.O. Box 4320, Houston, TX 77210. The petition proposed to amend the food additive regulations in § 175.250 *Paraffin (synthetic)* (21 CFR 175.250) to incorporate broadened specifications for congealing point and oil content for synthetic paraffinic waxes produced by the Fischer-Tropsch process, so that the specifications for synthetic paraffin waxes more closely resemble specifications for other synthetic paraffin waxes permitted for use in food packaging under other regulations.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that § 175.250 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

§ 175.250 [Amended]

2. Section 175.250 *Paraffin (synthetic)* is amended in paragraph (a) in the third sentence by adding the words "may be" after the word "and", in paragraph (b)(1) in the first sentence by removing "93 °C" and adding in its place "50 °C", and in paragraph (b)(2) in the first sentence by removing "0.5 percent" and adding in its place "2.5 percent."

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19152 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 176

[Docket No. 92F–0504]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide as an oil and water repellant for paper and

paperboard intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective August 3, 1995 written objections and requests for a hearing by September 5, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3080.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 12, 1993 (58 FR 8289), FDA announced that a food additive petition (FAP 3B4353) had been filed by Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide as an oil and water repellant for paper and paperboard intended for use in contact with food.

During review of the petition, it was observed that the perfluoro reactant used in the synthesis of the additive was incorrectly described as 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol. The petitioner was asked to confirm that the correct nomenclature should be 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol. In their submission of July 20, 1994, the petitioner provided their concurrence with the agency's finding. Therefore, this final rule uses the correct nomenclature.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive in paper and paperboard products in contact with non-alcoholic foods is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 176.170 is amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding a new entry under the heading "List of Substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
Perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio) methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide.	For use only as an oil and water repellant at a level not to exceed 0.44 percent perfluoroalkyl actives by weight of the finished paper and paperboard in contact with non-alcoholic foods under condition of use H as described in Table 2 of paragraph (c) of this section

* * * * *

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19094 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 177

[Docket No. 95F–0017]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of diisopropyl xanthogen polysulfide as a component of rubber articles intended for repeated use in contact with food. This action is in response to a petition filed by Robinson Brothers Ltd.

DATES: Effective August 3, 1995; written objections and requests for a hearing by September 5, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 13, 1995 (60 FR 8243), FDA announced that a food additive petition (FAP 5B4437) had been filed by Robinson Brothers Ltd., Phoenix St., West Bromwich, West Midland, B70 OAH, England. The petition proposed to amend the food additive regulations in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of diisopropyl xanthogen polysulfide as a component of rubber articles intended for repeated use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use in repeated use food-contact articles is safe, and the regulation in § 177.2600(c)(4)(ii) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.2600 is amended in paragraphs (c)(4)(ii)(*a*) and (c)(4)(ii)(*b*) by alphabetically adding new entries for "Diisopropyl xanthogen polysulfide" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *
(4) * * *
(ii) * * *
(*a*) * * *

Diisopropyl xanthogen polysulfide (a 1:2:1 mixture of O,O-di(1-methylethyl)trithio-bis-thioformate, O,O-di(1-methylethyl)tetrathio-bis-thioformate, and O,O-di(1-methylethyl)pentathio-bis-thioformate) for use as a cross linking agent in the vulcanization of natural rubber, styrene-butadiene copolymer, acrylonitrile-butadiene copolymer, and ethylene-propylene terpolymers identified under paragraph (c)(4)(i) of this section and limited to use at levels not to exceed 2.4 percent by weight of such copolymers.

* * * * *

(*b*) * * *

Diisopropyl xanthogen polysulfide (a 1:2:1 mixture of O,O-di(1-methylethyl)trithio-bis-thioformate, O,O-di(1-methylethyl)tetrathio-bis-thioformate, and O,O-di(1-methylethyl)pentathio-bis-thioformate).

* * * * *

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19092 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 94F–0423]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4-chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]-5-methylbenzenesulfonic acid, calcium salt (1:1) (C. I. Pigment Yellow 191) as a colorant for all polymers intended for use in contact with food. This action is in response to a petition filed by Hoechst Celanese Corp.

DATES: Effective August 3, 1995; ; written objections and request for a hearing by September 5, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 29, 1994 (59 FR 67301), FDA announced that a food additive petition (FAP 5B4441) had been filed by Hoechst Celanese Corp., 500 Washington St., Coventry, RI 02816. The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of benzenesulfonic acid, 4-chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]-5-methyl-,calcium salt (1:1) (C. I. Pigment Yellow 191) as a colorant in all polymers intended for use in contact with food. In this final rule the agency is using the alternative name 4-chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]-5-methylbenzenesulfonic acid, calcium salt (1:1) (C. I. Pigment Yellow 191).

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3297 Colorants for polymers. (e) * * *

* * * * *

Substances	Limitations
* * * *	* * * *
4-Chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]-5-methylbenzenesulfonic acid,calcium salt (1:1); (C. I. Pigment Yellow 191)(CAS Reg. No. 129423–54–7).	For use at levels not to exceed 0.3 percent by weight of the finished polymers. The finished articles are to contact food only under conditions of use B through H as described in Table 2 of § 176.170(c) of this chapter.
* * * *	* * * *

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19093 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8606]

RIN 1545–AR64

Definition of Qualified Electric Vehicle, and Recapture Rules for Qualified Electric Vehicles, Qualified Clean-fuel Vehicle Property, and Qualified Clean-fuel Vehicle Refueling Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the definition of a qualified electric vehicle, the recapture of any credit allowable for a qualified electric vehicle, and the recapture of any deduction allowable for qualified clean-fuel vehicle property or qualified clean-fuel vehicle refueling property. These regulations reflect changes to the law made by the Energy Policy Act of 1992 and affect taxpayers who are owners of qualified electric vehicles, clean-fuel vehicles, and clean-fuel vehicle refueling property.

DATES: These regulations are effective August 3, 1995.

For dates of applicability of these regulations, see § 1.30–1(c) and § 1.179A–1(h).

FOR FURTHER INFORMATION CONTACT: Joanne E. Johnson at (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 14, 1994, the IRS published in the **Federal Register** a notice of proposed rulemaking providing the definition of a qualified electric vehicle under section 30(c) and the rules for the recapture of the section 30 credit and section 179A deduction under sections 30(d)(2) and 179A(e)(4), respectively (59 FR 52105).

Written comments responding to the notice were received. No public hearing was requested or held. After consideration of all the comments, this Treasury decision adopts the regulations as proposed.

Explanation of Provisions

In General

The final regulations define a qualified electric vehicle for purposes of section 30 of the Internal Revenue Code (Code). Several commentators recommended expanding the definition to include a vehicle converted from a used non-electric vehicle. The final regulations do not adopt this recommendation because section 30(c)(1)(B) provides that the original use of the vehicle must commence with the taxpayer. Moreover, conversion costs are deductible under section 179A.

Some commentators suggested including a hybrid-electric vehicle in the definition of a qualified electric vehicle. This issue will be addressed along with other substantive rules in additional proposed regulations under sections 30 and 179A of the Code.

Effective Date

The final regulations are effective on October 14, 1994. If the recapture date is before the effective date of these regulations, a taxpayer may use any reasonable method to recapture the benefit of any section 30 credit allowable or section 179A deduction allowable consistent with sections 30 and 179A and their legislative history.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Joanne E. Johnson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.30–1 also issued under 26 U.S.C. 30(d)(2) * * *

Section 1.179A–1 also issued under 26 U.S.C. 179A(e)(4) * * *

Par. 2. Section 1.30–1 is added immediately following the undesignated center heading "Credits Allowable" to read as follows:

§ 1.30–1 Definition of qualified electric vehicle and recapture of credit for qualified electric vehicle.

(a) *Definition of qualified electric vehicle.* A qualified electric vehicle is a

motor vehicle that meets the requirements of section 30(c). Accordingly, a qualified electric vehicle does not include any motor vehicle that has ever been used (for either personal or business use) as a non-electric vehicle.

(b) *Recapture of credit for qualified electric vehicle*—(1) *In general*—(i) *Addition to tax.* If a recapture event occurs with respect to a taxpayer's qualified electric vehicle, the taxpayer must add the recapture amount to the amount of tax due in the taxable year in which the recapture event occurs. The recapture amount is not treated as income tax imposed on the taxpayer by chapter 1 of the Internal Revenue Code for purposes of computing the alternative minimum tax or determining the amount of any other allowable credits for the taxable year in which the recapture event occurs.

(ii) *Reduction of carryover.* If a recapture event occurs with respect to a taxpayer's qualified electric vehicle, and if a portion of the section 30 credit for the cost of that vehicle was disallowed under section 30(b)(3)(B) and consequently added to the taxpayer's minimum tax credit pursuant to section 53(d)(1)(B)(iii), the taxpayer must reduce its minimum tax credit carryover by an amount equal to the portion of any minimum tax credit carryover attributable to the disallowed section 30 credit, multiplied by the recapture percentage for the taxable year of recapture. Similarly, the taxpayer must reduce any other credit carryover amounts (such as under section 469) by the portion of the carryover attributable to section 30, multiplied by the recapture percentage.

(2) *Recapture event*—(i) *In general.* A recapture event occurs if, within 3 full years from the date a qualified electric vehicle is placed in service, the vehicle ceases to be a qualified electric vehicle. A vehicle ceases to be a qualified electric vehicle if—

(A) The vehicle is modified so that it is no longer primarily powered by electricity;

(B) The vehicle is used in a manner described in section 50(b); or

(C) The taxpayer receiving the credit under section 30 sells or disposes of the vehicle and knows or has reason to know that the vehicle will be used in a manner described in paragraph (b)(2)(i)(A) or (B) of this section.

(ii) *Exception for disposition.* Except as provided in paragraph (b)(2)(i)(C) of this section, a sale or other disposition (including a disposition by reason of an accident or other casualty) of a qualified electric vehicle is not a recapture event.

(3) *Recapture amount.* The recapture amount is equal to the recapture percentage times the decrease in the credits allowed under section 30 for all prior taxable years that would have resulted solely from reducing to zero the cost taken into account under section 30 with respect to such vehicle, including any credits allowed attributable to section 30 (such as under sections 53 and 469).

(4) *Recapture date.* The recapture date is the actual date of the recapture event unless a recapture event described in paragraph (b)(2)(i)(B) of this section occurs, in which case the recapture date is the first day of the recapture year.

(5) *Recapture percentage.* For purposes of this section, the recapture percentage is—

(i) 100, if the recapture date is within the first full year after the date the vehicle is placed in service;

(ii) 66 ⅔, if the recapture date is within the second full year after the date the vehicle is placed in service; or

(iii) 33 ⅓, if the recapture date is within the third full year after the date the vehicle is placed in service.

(6) *Basis adjustment.* As of the first day of the taxable year in which the recapture event occurs, the basis of the qualified electric vehicle is increased by the recapture amount and the carryover reductions taken into account under paragraphs (b)(1)(i) and (ii) of this section, respectively. For a vehicle that is of a character that is subject to an allowance for depreciation, this increase in basis is recoverable over the remaining recovery period for the vehicle beginning as of the first day of the taxable year of recapture.

(7) *Application of section 1245 for sales and other dispositions.* For purposes of section 1245, the amount of the credit allowable under section 30(a) with respect to any qualified electric vehicle that is (or has been) of a character subject to an allowance for depreciation is treated as a deduction allowed for depreciation under section 167. Therefore, upon a sale or other disposition of a depreciable qualified electric vehicle, section 1245 will apply to any gain recognized to the extent the basis of the depreciable vehicle was reduced under section 30(d)(1) net of any basis increase described in paragraph (b)(6) of this section.

(8) *Examples.* The following examples illustrate the provisions of this section:

Example 1. A, a calendar-year taxpayer, purchases and places in service for personal use on January 1, 1995, a qualified electric vehicle costing $25,000. On A's 1995 federal income tax return, A claims a credit of $2,500. On January 2, 1996, A sells the vehicle to an unrelated third party who subsequently converts the vehicle into a non-electric vehicle on October 15, 1996. There is no recapture upon the sale of the vehicle by A provided A did not know or have reason to know that the purchaser intended to convert the vehicle to non-electric use.

Example 2. B, a calendar-year taxpayer, purchases and places in service for personal use on October 11, 1994, a qualified electric vehicle costing $20,000. On B's 1994 federal income tax return, B claims a credit of $2,000, which reduces B's tax by $2,000. The basis of the vehicle is reduced to $18,000 ($20,000 − $2,000). On March 8, 1996, B sells the vehicle to a tax-exempt entity. Because B knowingly sold the vehicle to a tax-exempt entity described in section 50(b) in the second full year from the date the vehicle was placed in service, B must recapture $1,333 ($2,000×66 ⅔ percent). This recapture amount increases B's tax by $1,333 on B's 1996 federal income tax return and is added to the basis of the vehicle as of January 1, 1996, the beginning of the taxable year in which the recapture event occurred.

Example 3. X, a calendar-year taxpayer, purchases and places in service for business use on January 1, 1994, a qualified electric vehicle costing $30,000. On X's 1994 federal income tax return, X claims a credit of $3,000, which reduces X's tax by $3,000. The basis of the vehicle is reduced to $27,000 ($30,000 − $3,000) prior to any adjustments for depreciation. On March 8, 1995, X converts the qualified electric vehicle into a gasoline-propelled vehicle. Because X modified the vehicle so that it is no longer primarily powered by electricity in the second full year from the date the vehicle was placed in service, X must recapture $2,000 ($3,000 × 66⅔ percent). This recapture amount increases X's tax by $2,000 on X's 1995 federal income tax return. The recapture amount of $2,000 is added to the basis of the vehicle as of January 1, 1995, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 4. The facts are the same as in *Example 3.* In 1996, X sells the vehicle for $31,000, recognizing a gain from this sale. Under paragraph (b)(7) of this section, section 1245 will apply to any gain recognized on the sale of a depreciable vehicle to the extent the basis of the vehicle was reduced by the section 30 credit net of any basis increase from recapture of the section 30 credit. Accordingly, the gain from the sale of the vehicle is subject to section 1245 to the extent of the depreciation allowance for the vehicle plus the credit allowed under section 30 ($3,000), less the previous recapture amount ($2,000). Any remaining amount of gain may be subject to other applicable provisions of the Internal Revenue Code.

(c) *Effective date.* This section is effective on October 14, 1994. If the recapture date is before the effective date of this section, a taxpayer may use any reasonable method to recapture the benefit of any credit allowable under section 30(a) consistent with section 30 and its legislative history. For this purpose, the recapture date is defined in paragraph (b)(4) of this section.

Par. 3. Section 1.179A–1 is added to read as follows:

§ 1.179A–1 Recapture of deduction for qualified clean-fuel vehicle property and qualified clean-fuel vehicle refueling property.

(a) *In general.* If a recapture event occurs with respect to a taxpayer's qualified clean-fuel vehicle property or qualified clean-fuel vehicle refueling property, the taxpayer must include the recapture amount in taxable income for the taxable year in which the recapture event occurs.

(b) *Recapture event*—(1) *Qualified clean-fuel vehicle property*—(i) *In general.* A recapture event occurs if, within 3 full years from the date a vehicle of which qualified clean-fuel vehicle property is a part is placed in service, the property ceases to be qualified clean-fuel vehicle property. Property ceases to be qualified clean-fuel vehicle property if—

(A) The vehicle is modified by the taxpayer so that it may no longer be propelled by a clean-burning fuel;

(B) The vehicle is used by the taxpayer in a manner described in section 50(b);

(C) The vehicle otherwise ceases to qualify as property defined in section 179A(c); or

(D) The taxpayer receiving the deduction under section 179A sells or disposes of the vehicle and knows or has reason to know that the vehicle will be used in a manner described in paragraph (b)(1)(i) (A), (B), or (C) of this section.

(ii) *Exception for disposition.* Except as provided in paragraph (b)(2)(i)(D) of this section, a sale or other disposition (including a disposition by reason of an accident or other casualty) of qualified clean-fuel vehicle property is not a recapture event.

(2) *Qualified clean-fuel vehicle refueling property*—(i) *In general.* A recapture event occurs if, at any time before the end of its recovery period, the property ceases to be qualified clean-fuel vehicle refueling property. Property ceases to be qualified clean-fuel vehicle refueling property if—

(A) The property no longer qualifies as property described in section 179A(d);

(B) The property is no longer predominantly in a trade or business (property will be treated as no longer used predominantly in a trade or business if 50 percent or more of the use of the property in a taxable year is for use other than in a trade or business);

(C) The property is used by the taxpayer in a manner described in section 50(b); or

(D) The taxpayer receiving the deduction under section 179A sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in paragraph (b)(2)(i) (A), (B), or (C) of this section.

(ii) *Exception for disposition.* Except as provided in paragraph (b)(2)(i)(D) of this section, a sale or other disposition (including a disposition by reason of an accident or other casualty) of qualified clean-fuel vehicle refueling property is not a recapture event.

(c) *Recapture date*—(1) *Qualified clean-fuel vehicle property.* The recapture date is the actual date of the recapture event unless an event described in paragraph (b)(1)(i)(B) of this section occurs, in which case the recapture date is the first day of the recapture year.

(2) *Qualified clean-fuel vehicle refueling property.* The recapture date is the actual date of the recapture event unless the recapture occurs as a result of an event described in paragraph (b)(2)(i) (B) or (C) of this section, in which case the recapture date is the first day of the recapture year.

(d) *Recapture amount*—(1) *Qualified clean-fuel vehicle property.* The recapture amount is equal to the benefit of the section 179A deduction allowable multiplied by the recapture percentage. The recapture percentage is—

(i) 100, if the recapture date is within the first full year after the date the vehicle is placed in service;

(ii) 66⅔, if the recapture date is within the second full year after the date the vehicle is placed in service; or

(iii) 33⅓, if the recapture date is within the third full year after the date the vehicle is placed in service.

(2) *Qualified clean-fuel vehicle refueling property.* The recapture amount is equal to the benefit of the section 179A deduction allowable multiplied by the following fraction. The numerator of the fraction equals the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year. The denominator of the fraction equals the total recovery period.

(e) *Basis adjustment.* As of the first day of the taxable year in which the recapture event occurs, the basis of the vehicle of which qualified clean-fuel vehicle property is a part or the basis of qualified clean-fuel vehicle refueling property is increased by the recapture amount. For a vehicle or refueling property that is of a character that is subject to an allowance for depreciation, this increase in basis is recoverable over its remaining recovery period beginning as of the first day of the taxable year in which the recapture event occurs.

(f) *Application of section 1245 for sales and other dispositions.* For purposes of section 1245, the amount of the deduction allowable under section 179A(a) with respect to any property that is (or has been) of a character subject to an allowance for depreciation is treated as a deduction allowed for depreciation under section 167. Therefore, upon a sale or other disposition of depreciable qualified clean-fuel vehicle refueling property or a depreciable vehicle of which qualified clean-fuel vehicle property is a part, section 1245 will apply to any gain recognized to the extent the basis of the depreciable property or vehicle was reduced under section 179A(e)(6) net of any basis increase described in paragraph (e) of this section.

(g) *Examples.* The following examples illustrate the provisions of this section:

Example 1. A, a calendar-year taxpayer, purchases and places in service for personal use on January 1, 1995, a clean-fuel vehicle, a portion of which is qualified clean-fuel vehicle property, costing $25,000. The qualified clean-fuel vehicle property costs $11,000. On A's 1995 federal income tax return, A claims a section 179A deduction of $2,000. On January 2, 1996, A sells the vehicle to an unrelated third party who subsequently converts the vehicle into a gasoline-propelled vehicle on October 15, 1996. There is no recapture upon the sale of the vehicle by A provided A did not know or have reason to know that the purchaser intended to convert the vehicle to a gasoline-propelled vehicle.

Example 2. B, a calendar-year taxpayer, purchases and places in service for personal use on October 11, 1994, a clean-fuel vehicle costing $20,000, a portion of which is qualified clean-fuel vehicle property. The qualified clean-fuel vehicle property costs $10,000. On B's 1994 federal income tax return, B claims a deduction of $2,000, which reduces B's gross income by $2,000. The basis of the vehicle is reduced to $18,000 ($20,000 − $2,000). On January 31, 1996, B sells the vehicle to a tax-exempt entity. Because B knowingly sold the vehicle to a tax-exempt entity described in section 50(b) in the second full year from the date the vehicle was placed in service, B must recapture $1,333 ($2,000 × 66⅔ percent). This recapture amount increases B's gross income by $1,333 on B's 1996 federal income tax return and is added to the basis of the motor vehicle as of January 1, 1996, the beginning of the taxable year of recapture.

Example 3. X, a calendar-year taxpayer, purchases and places in service for its business use on January 1, 1994, qualified clean-fuel vehicle refueling property costing $400,000. Assume this property has a 5-year recovery period. On X's 1994 federal income tax return, X claims a deduction of $100,000, which reduces X's gross income by $100,000.

The basis of the property is reduced to $300,000 ($400,000 − $100,000) prior to any adjustments for depreciation. In 1996, more than 50 percent of the use of the property is other than in X's trade or business.

Because the property is no longer used predominantly in X's business, X must recapture three-fifths of the section 179A deduction or $60,000 ($100,000×(5−2)/5 = $60,000) and include that amount in gross income on its 1996 federal income tax return. The recapture amount of $60,000 is added to the basis of the property as of January 1, 1996, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 4. X, a calendar-year taxpayer, purchases and places in service for business use on January 1, 1994, qualified clean-fuel vehicle refueling property costing $350,000. Assume this property has a 5-year recovery period. On X's 1994 federal income tax return, X claims a deduction of $100,000, which reduces X's gross income by $100,000. The basis of the property is reduced to $250,000 ($350,000 − $100,000) prior to any adjustments for depreciation. In 1995, X converts the property to store and dispense gasoline. Because the property is no longer used as qualified clean-fuel vehicle refueling property in 1995, X must recapture four-fifths of the section 179A deduction or $80,000 ($100,000×(5−1)/5 = $80,000) and include that amount in gross income on its 1995 federal income tax return. The recapture amount of $80,000 is added to the basis of the property as of January 1, 1995, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 5. The facts are the same as in *Example 4*. In 1996, X sells the refueling property for $351,000, recognizing a gain from this sale. Under paragraph (f) of this section, section 1245 will apply to any gain recognized on the sale of depreciable property to the extent the basis of the property was reduced by the section 179A deduction net of any basis increase from recapture of the section 179A deduction. Accordingly, the gain from the sale of the property is subject to section 1245 to the extent of the depreciation allowance for the property plus the deduction allowed under section 179A ($100,000), less the previous recapture amount ($80,000). Any remaining amount of gain may be subject to other applicable provisions of the Internal Revenue Code.

(h) *Effective date.* This section is effective on October 14, 1994. If the recapture date is before the effective date of this section, a taxpayer may use any reasonable method to recapture the benefit of any deduction allowable under section 179A(a) consistent with section 179A and its legislative history. For this purpose, the recapture date is defined in paragraph (c) of this section.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 21, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19028 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 301

[TD 8605]

RIN 1545–AE30

Presumptions Where Owner of Large Amount of Cash is not Identified

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations regarding the presumptions that arise where the owner of a large amount of cash or its equivalent is not identified. The final regulations reflect changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Technical and Miscellaneous Revenue Act of 1988, and incorporate the rules of current § 301.6867–1T, relating to cash, cash equivalents, specific cash equivalents and the value of cash equivalents. In addition, several new items have been added to the list of specific cash equivalents. The final regulations affect individuals who are found in possession of a large amount of cash or its equivalent and the true owners of that cash or its equivalent.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6867 of the Internal Revenue Code of 1986 (Code). The regulations reflect the enactment of section 6867 by section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), and the amendment made by section 1001(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647).

The IRS published a notice of proposed rulemaking in the **Federal Register** on September 29, 1994, (59 FR 49613) providing proposed rules under section 6867 of the Code. No written comments were received. No public hearing was requested or held. In most respects, the final regulations are identical to the proposed regulations. The final regulations, however, do not contain those provisions of the proposed regulations that had permitted a possessor of cash, solely in that person's capacity as possessor of cash, to bring a suit for refund in the district court after the deficiency had been collected.

Explanation of Provisions

Section 330(a) of the Tax Equity and Fiscal Responsibility Act of 1982 amended the Code by adding section 6867, designed to be used in making jeopardy or termination assessments, as appropriate, when there is no known owner of large amounts of cash. Section 6867 provides that if an individual in physical possession of cash in excess of $10,000 does not claim the cash as belonging to that individual or as belonging to another person whose identity is readily ascertainable and who acknowledges ownership of the cash to the IRS, it is presumed that the cash represents gross income of a single individual for the taxable year in which the possession occurs and that the collection of tax will be jeopardized by delay. Section 6867, as originally enacted, made the entire amount of the cash subject to a 50 percent tax rate. Section 1001(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 amended section 6867, effective for taxable years beginning after December 31, 1986, to provide that the tax rate is to be the highest rate of tax for an individual specified in section 1.

Under section 6867, the possessor of cash is treated (solely with respect to the cash) as the taxpayer for the purposes of chapters 63 and 64 of the Code, relating to assessment and collection, and for the purposes of section 7429(a)(1), entitling that individual to a written statement of information concerning the assessment provided for by that section. Because section 6867 does not treat the possessor as the taxpayer for the purposes of sections 7429(a)(2) and 7429(b), relating to administrative and judicial review of termination and jeopardy assessments, the proposed regulations do not permit the possessor of cash to maintain an action under section 7429 for such review. In addition, because section 7422, relating to civil actions for refund, is in chapter 76B and other provisions dealing with refunds are contained in chapter 65 and not chapters 63 or 64 of the Code, a possessor of cash, solely in that person's capacity as possessor of cash, may not institute a suit for refund

in district court after the deficiency has been collected. This in no way diminishes the right of the possessor of cash to petition the United States Tax Court to challenge the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash.

The true owner of cash may maintain an action under section 7429 for administrative and judicial review of the deficiency notice issued to the possessor. However, the true owner may only institute the section 7429 action concerning the notice of deficiency issued to the possessor by making a request for review within 30 days from the date the possessor is given the written statement of information required under section 7429(a)(1). After the deficiency asserted against the possessor of cash has been levied upon, the true owner of cash may bring an action in federal district court, within the time frame specified in section 6532(c), to recover the cash, as provided in section 7426, relating to civil actions by persons other than taxpayers. In addition, the true owner of cash, with the permission of the court, may appear before the United States Tax Court in any proceeding that may be filed by the possessor of the cash challenging the notice of deficiency issued to the possessor as possessor of the cash.

Section 301.6867–1(f) of the final regulations incorporates the definitions contained in § 301.6867–1T, relating to cash, cash equivalents, specific cash equivalents and the value of cash equivalents. In addition, several other items have been identified and added to the list of specific cash equivalents. Section 301.6867–1T will be removed on August 3, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

Lists of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6867–1 is added to read as follows:

§ 301.6867–1 Presumptions where owner of large amount of cash is not identified.

(a) *General rule.* For purposes of section 6851 (relating to termination assessments) and section 6861 (relating to jeopardy assessments), if cash in excess of $10,000 is found in the physical possession of an individual who does not claim either ownership of that cash or ownership by some other person whose identity the Commissioner can readily ascertain and who acknowledges ownership of that cash as of the date the cash was found, then, it shall be presumed that—

(1) The cash represents gross income of an unknown single individual; and

(2) That the collection of tax on that income will be jeopardized by delay.

(b) *Rules for assessment.* The Commissioner may make an assessment pursuant to section 6851 or section 6861, as appropriate, using the rules for assessment specified in this paragraph. In the case of any assessment resulting from the application of paragraph (a) of this section—

(1) The entire amount of cash is treated as taxable income for the taxable year in which the cash is found;

(2) The income is treated as taxable at the highest rate of tax specified in section 1 of the Internal Revenue Code; and

(3) Except as provided in paragraph (c), the possessor of the cash is treated (solely with respect to that cash) as the taxpayer for purposes of chapters 63 and 64 and section 7429(a)(1) of the Internal Revenue Code.

(c) *Effect of later substitution of true owner*—(1) *In general.* If an assessment resulting from the application of paragraph (a) of this section is later abated and replaced by an assessment against the true owner of the cash, the later assessment is treated for purposes of all laws relating to lien, levy, and collection as relating back to the date of the original assessment. Notwithstanding the preceding sentence, any notice and review provided for by section 7429 and the notice of deficiency issued to the true owner relative to the later assessment are to be made within the prescribed time limits, using the actual date of the later assessment against the true owner.

(2) *Example.* The provisions of paragraph (c)(1) of this section may be illustrated by the following example:

Example. On June 5, 1994, A is found in possession of a bag, containing $200,000, which A claims he was holding for a friend whose name A cannot remember. Because A does not claim ownership of the cash and does not provide the name of the true owner so that the Commissioner can identify the true owner and have that person acknowledge ownership of the cash, it is presumed that the cash represents gross income of an individual for calendar year 1994, and that the collection of tax on that gross income will be jeopardized by delay. Accordingly, on June 17, 1994, a termination assessment under section 6851 is made against A, in his capacity as possessor of the cash. On June 21, 1994, the written statement of information provided for by section 7429(a)(1) is given to A. No request for review under section 7429(a)(2) is made by the true owner within 30 days after the day on which A was furnished the written statement provided for in section 7429(a)(1). Subsequently, individual B comes to the Service and states that he is the owner of the cash. On September 2, 1994, the Service determines that B was the true owner of the cash on June 5, 1994. On September 9, 1994, the Service abates the termination assessment made against A solely as possessor of cash and, after determining that jeopardy exists, replaces it with a termination assessment under section 6851 against B. The lien against B that arises under section 6321 is treated as arising on June 17, 1994. However, within 5 days after September 9, 1994, the Service must give B the written statement of information required by section 7429(a)(1) so that B can make a request for review under section 7429(a)(2). In addition, a notice of deficiency must be sent to B within 60 days after the later of the due date or the actual filing of B's tax return for 1994, as required by section 6851(b).

(d) *Rights of possessor of cash*—(1) *Action permitted.* Section 6867 provides that the possessor of cash is treated as the taxpayer for purposes of chapter 63 (relating to assessment) and chapter 64 (relating to collection) of the Internal Revenue Code. Accordingly, the possessor of cash may file a petition with the United States Tax Court, within the applicable time limits,

challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash.

(2) *Actions not permitted.* Section 6867 provides that the possessor of cash is treated as the taxpayer solely for purposes of section 7429(a)(1), and is entitled to the written statement of information provided for by that section. The possessor of cash is not treated as the taxpayer for purposes of sections 7429(a)(2) and 7429(b), relating to administrative and judicial review of termination and jeopardy assessments, and may not maintain an action under section 7429 for such review. The possessor of cash is not treated as the taxpayer for purposes of section 7422, relating to civil actions for refund, or chapter 65 of the Internal Revenue Code, relating to abatements, credits, and refunds, and may not institute a suit for refund in district court after the deficiency has been collected.

(e) *Rights of true owner of cash*—(1) *Actions permitted.* The true owner of cash may request administrative review under section 7429(a)(2) and may maintain a civil action under section 7429(b) for judicial review of an assessment under section 6851 or section 6861 made against the possessor solely in that person's capacity as possessor of cash. Such an action, however, must be preceded by a request for review under section 7429(a)(2) made by the true owner within 30 days after the day on which the possessor is furnished the written statement provided for in section 7429(a)(1). In addition, after the deficiency asserted against the possessor of cash has been levied upon, the true owner of cash may bring an action in federal district court to recover the cash, as provided in section 7426, relating to civil actions by persons other than taxpayers. See, however, section 6532(c), relating to the 9-month statute of limitations for suits under section 7426. In addition, the true owner of cash, with the permission of the court, may appear before the United States Tax Court in any proceeding that may be filed by the possessor of the cash challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of the cash.

(2) *Actions not permitted.* The true owner of cash may not file a petition with the United States Tax Court challenging the notice of deficiency issued to the possessor solely in that person's capacity as possessor of cash. Notwithstanding the preceding sentence, the true owner of cash may file a petition with the United States Tax Court challenging any notice of deficiency issued to the true owner following the abatement of the assessment made against the possessor of cash.

(f) *Definitions.* For the purposes of this section and section 6867—

(1) *Cash.* The term *cash* includes any cash equivalents.

(2) *Cash equivalent*—(i) *In general.* The term *cash* equivalent includes foreign currency, any bearer obligation, and any medium of exchange that is of a type that has been frequently used in illegal activities, as listed in paragraph (f)(2)(ii) of this section.

(ii) *Specific cash equivalents.* For purposes of paragraph (f)(2)(i), the following are also cash equivalents—

(A) Coins;
(B) Precious metals;
(C) Jewelry;
(D) Precious stones;
(E) Postage stamps;
(F) Traveler's checks in any form;
(G) Negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, notes, and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;
(H) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, notes, and money orders) signed but with the payee's name omitted; and
(I) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(iii) *Value of cash equivalents.* A cash equivalent is taken into account at its fair market value except in the case of a bearer obligation, in which case it is taken into account at its face value.

(3) *Possessor of cash.* An individual is considered to be the possessor of cash if the cash is found on that individual's person or in that individual's possession or is found in any object, container, vehicle, or area under that individual's custody or control.

(4) *True owner of the cash.* The true owner of cash is the individual who beneficially owns the cash on the date such cash is found in the physical possession of the individual described in paragraph (f)(3) of this section. An agent, bailee, or other custodian of the cash is not the true owner of cash. A true owner of cash does not include an individual who, subsequent to the date on which the cash is found in the physical possession of the individual described in paragraph (f)(3) of this section, obtains ownership of the cash by purchase, subrogation, descent, or other means.

(g) *Effective date.* This section is effective with respect to cash found in the physical possession of an individual on or after August 3, 1995.

§ 301.6867–1T [Removed]

Par. 3. Section 301.6867–1T is removed.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: June 29, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 95–18888 Filed 8–2–95; 8:45 am]
BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPPTS–82046B; FRL–4970–4]

Toxic Substances; Preliminary Assessment Information Rule Reporting; Response to Comment on the Listing of Isobutyl Alcohol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to 40 CFR 712.30(c) of the Toxic Substances Control Act (TSCA) Section 8(a) Preliminary Assessment Information Rule (PAIR), EPA is revising its decision to add isobutyl alcohol (CAS No. 78–83–1) to the PAIR and is withdrawing it from a final rule published in the **Federal Register** of July 5, 1995.

EFFECTIVE DATE: This rule is effective on August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Office (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of this Action

EPA issued a final rule adding isobutyl alcohol, among other chemical substances, to the TSCA section 8(a) PAIR (40 CFR part 712), which was published in the **Federal Register** of July 5, 1995 (60 FR 34879). The PAIR provides that chemical substances, mixtures, and categories added by the Interagency Testing Committee to the TSCA section 4(e) Priority List, for testing by the Agency, will be added to the PAIR 30 days after EPA publishes in the **Federal Register** a rule amendment listing these chemical substances, mixtures, or categories. The PAIR also provides that EPA may withdraw substances from the rule, for good cause, prior to the effective date of a substance's listing (40 CFR 712.30(c)).

On July 19, 1995, EPA received a letter from the Oxo Process Panel of the Chemical Manufacturers Association requesting that EPA remove isobutyl alcohol from the PAIR. In the letter, several recent and ongoing activities covering isobutyl alcohol were identified as alternate sources for use and exposure data, including a recent TSCA section 4 rulemaking action (Neurotoxicity Test Rule (58 FR 40262, July 27, 1993) and Testing Consent Order Incorporating Enforceable Consent Agreement (60 FR 4516, January 23, 1995)), and the development of a dossier under the Organization for Economic Cooperation and Development's Screening Information Data Set program. The Oxo Process Panel argued that the data generated or collected as part of these other activities make it unnecessary for the Agency to add isobutyl alcohol to the PAIR.

EPA agrees that information on isobutyl alcohol substantially similar to that which would be required under the PAIR is already or will soon be available. For this reason, EPA is revising its decision to add isobutyl alcohol to the PAIR and withdrawing it from the rule.

II. Analyses Under E.O. 12866, the Unfunded Mandates Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

Because this action reduces certain pending requirements, this action is not "significant" within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), and does not impose any Federal mandate on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reasons, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this action will not have a significant economic impact on a significant number of small entities. Additionally, the information collection requirements associated with the PAIR have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, and have been assigned OMB control number 2070–0054. EPA has determined that this rule eliminates certain pending recordkeeping and reporting requirements.

III. Rulemaking Record

The following documents constitute the record for this action (docket control number OPPTS–82046B. These documents are available to the public in the TSCA Nonconfidential Information Center (NCIC), formerly the TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

1. This final rule.
2. The final rule adding isobutyl alcohol to the PAIR (60 FR 34979, July 5, 1995).
3. Letter dated July 19, 1995, from Dr. Langley A. Sperlock, Vice President, CHEMSTAR, Chemical Manufacturers Association, to Susan B. Hazen, Director, Environmental Assistance Division.

List of Subjects in 40 CFR Part 712

Environmental protection, Chemicals, Hazardous substances, Health and safety data, Reporting and recordkeeping requirements.

Dated: August 1, 1995.

Denise M. Keehner,
Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 712 is amended as follows:

1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 712.30 [Amended]

2. As added in the issue of July 5, 1995, page 34879, in § 712.30(e), under the category OSHA Chemicals in Need of Dermal Absorption Testing, the entire CAS No. entry for 78–83–1 is withdrawn.

[FR Doc. 95–19236 Filed 8–2–95; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7149

[CA–940–5700–00; CACA 29517]

Withdrawal of National Forest System Land for the Traverse Creek Botanical Special Interest Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 270 acres of National Forest System land from mining for a period of 50 years to protect the Traverse Creek Botanical Special Interest Area. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Forest Service's Traverse Creek Botanical Special Interest Area:

Mount Diablo Meridian

Eldorado National Forest

T. 12 N., R. 10 E.,
Sec. 24, lot 2, NW¼NW¼, S½NW¼, N½SW¼, E½SW¼SW¼, and SE¼SW¼.

The area described contains 270 acres in El Dorado County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 25, 1995.

Bonnie R. Cohen,
Assistant Secretary of the Interior.

[FR Doc. 95–19043 Filed 8–2–95; 8:45 am]
BILLING CODE 4310–40–P

43 CFR Public Land Order 7150

[AK–932–1410–00; F–14223]

Modification of Public Land Order No. 5150, as Amended, for Conveyance of Land to the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a public land order insofar as it affects approximately 3,840 acres of public land located near Jarvis Creek, which is a portion of an area withdrawn for use as a utility and transportation corridor.

The action allows the State of Alaska's existing application for selection to attach, and classifies the land as suitable for conveyance of the land to the State, if such land is otherwise available. Any land described herein that is not conveyed to the State will continue to be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Sections 17(c), 17(d)(1), and 22(h)(4) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(c), 1616(d)(1), and 1621(h)(4) (1988), and by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 5150, as amended, which withdrew public lands as a utility and transportation corridor, is hereby modified to allow conveyance of the following described land to the State of Alaska:

Fairbanks Meridian

T. 15 S., R. 10 E. (Partly Surveyed),
Sec. 1, 2, 3, 10, 11, and 12.

The area described contains approximately 3,840 acres.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for conveyance to the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), or Section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

3. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. If not conveyed to the State, the land will continue to be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

Dated: July 25, 1995.

Bonnie R. Cohen,

Assistant Secretary of the Interior.

[FR Doc. 95–19045 Filed 8–2–95; 8:45 am]

BILLING CODE 4310–JA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 1

[DA 95–1617]

Interactive Video and Data Service (IVDS) Licenses—Clarification of "Grace Period" Rule for IVDS "Auction" Licensees Paying by Installment Payments

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: The staff of the Wireless Telecommunications Bureau of the Commission has clarified the "grace period" rule concerning installment payments for IVDS licenses won at auction.

EFFECTIVE DATE: June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: The following is the full text of the *Public Notice*, DA 95–1617, which was released June 26, 1995. The text may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Released: June 26, 1995.

Wireless Telecommunications Bureau Staff Clarifies "Grace Period" Rule for IVSD "Auction" Licensees Paying by Installment Payments

Section 1.2110(e) of the Commission's auction rules, 47 CFR 1.2110(e), provides that in the event a licensee defaults on its installment payment obligation, the FCC may cancel the license. In the *Second Report and Order* in PP Docket No. 93–253, 9 FCC Rcd 2348, 2391 ¶ 240 (1994) 59 FR 22980, May 4, 1994, the Commission stated that it would "consider providing a three to six month grace period a delinquent payor's license cancels." Recently, the Wireless Telecommunications Bureau staff clarified this payment rule in the context of Personal Communications Service (PCS) auctions. *See* FCC Public Notice, "Wireless Telecommunications Bureau Staff Responds to Questions About the Broadband PCS C Block Auction," Mimeo 54270, released June 8, 1995. In response to inquiries, the staff now clarifies that this interpretation applies to Interactive Video and Data Service (IVDS) licensees as well. Interested parties should understand that this advice and rule interpretation constitute informal staff opinion, not an official Commission decision or ruling.

IVDS licensees that elect to pay for their licenses in installments will have their licenses conditioned upon full and timely performance of all installment payment obligations. The Commission's rules provide that a licensee will be deemed in default on its installment payments if it is more than 90 days delinquent in making a payment to the government.

Any time prior to the expiration of the 90 days following the payment due date, a licensee may request a grace period. Generally, where a licensee submits a showing, supported by an affidavit, that it in bankruptcy, foreclosure or financial distress, there will be a presumption in favor of granting a three-month grace period (commencing ninety days after the missed payment date). Any request for a grace period based on financial distress must state with particularity the grounds for asserting such financial distress. Such grounds may include the existence of payment defaults on other third party debt, or the general inability to pay debts as they become due in the ordinary course of business. If no grace period is granted, then the FCC may declare a licensee in default and cancel the license any time after 90 days from the missed payment.

Where the Commission grants period and the default is not cured at the conclusion of such a grace period, the FCC may cancel the license. However, the FCC may in its discretion extend or grant additional grace periods where circumstances warrant.

In accordance with § 1.2110, the first IVDS installment payment was due June 30, 1995. IVDS licensees not making their first installment payment with the Commission by September 28, 1995, will be deemed to be in default. Requests for the additional three-month grace period should contain the detailed justification described above, and be sent to the following address: Federal Communications Commission, Wireless Telecommunications Bureau, Private Wireless Division, 2025 M Street NW., Room 8010, Washington, DC 20554, Attention: Stop Code 2000–F.

Wireless Telecommunications Bureau contact: Joy Alford at 418–0680.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18452 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 2

[FCC 95–316]

Fixed-satellite service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By This *Memorandum Opinion and Order (MO&O)*, the Commission amends its Table of Frequency Allocations by adding a footnote and revising a footnote to permit use of the 17.8–20.2 GHz band for military space-to-Earth ("downlink") fixed-satellite transmission. This action is taken at the request of the National Telecommunications and Information Administration ("NTIA") for the purpose of advancing, supporting, and accommodating the national defense.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 776–1620.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *MO&O*, adopted July 28, 1995, and released July 31, 1995. The complete *MO&O* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington D.C. 20037.

Summary of MO&O

1. On July 12, 1995, NTIA requested that the Commission add a United States footnote to the United States Table of Frequency Allocations to permit use of the 17.8–20.2 GHz band for Government downlink fixed-satellite transmissions. NTIA states that the reallocation is essential to fulfill requirements for Government space systems to perform satisfactorily, that current Department of Defense ("DoD") requirements cannot be accommodated in frequency bands currently allocated for Government use, and that due to the likely consideration of this band at 1995 World Radiocommunication Conference, this matter is urgent. NTIA further states that this matter involves military functions, as well as specific sensitive national security interests of the United States. NTIA therefore asks that the Commission forgo notice and comment rulemaking procedure and immediately amend the Table of Frequency Allocations in accordance with its request.

2. During our inter-agency consultations, NTIA stated that these Government satellite systems would comply with the International Telecommunication Union's Radio Regulations. NTIA also stated that, because of the urgent national security interests at stake, the amended rules should be made effective immediately upon publication in the **Federal Register.** In addition, the Commission proposed to revise Government Footnote G117 by adding a reference to the 17.8–20.2 GHz band, thereby limiting Government fixed-satellite use of the band to military systems. The Commission made this proposal in order to preserve as much of the spectrum as possible for commercial systems. NTIA did not object to the proposed revision of G117.

3. Based on the foregoing, the Commission finds that this matter involves the exercise of military functions of the United States and that, because the request is based on urgent national security needs, notice and public procedure are, for good cause shown, impracticable, unnecessary, and contrary to the public interest. *See* 5 U.S.C. § 553(a)(1), (b)(3)(B); *Bendix Aviation Corp* v. *F.C.C.*, 272 F.2d 533 (D.C.Cir. 1959), *cert. denied sub nom. Aeronautical Radio. Inc.* v. *U.S.*, 361 U.S. 965 (1960). Based on the representations of NTIA that the reallocation is essential to fulfill requirements for Government space systems to perform satisfactorily and that current DoD requirements cannot be accommodated in frequency bands currently allocated for Government use, the Commission finds that the public interest will best be served by accommodating the NTIA request and immediately adding United States Footnote US334 to and amending Government Footnote G117 of the Table of Frequency Allocations. In addition, we are ministerially adding non-Government Footnote NG144 to the non-Government table in both the 18.6–18.8 GHz and 18.8–19.7 GHz bands in order to correct their previous inadvertent omission. Because this is a ministerial correction and not a substantive change to the rules, notice and comment are unnecessary.

4. Accordingly, it is ordered that Part 2 of the Commission's Rules, 47 C.F.R. Part 2, is amended as set forth in the amendatory text, effective immediately. Authority for this action is contained in Sections 4(i), 4(j), 303(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 303(c), and 303(r).

List of Subjects in 47 CFR Part 2

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary

Amendatory Text

Part 2 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read as follows:

Authority: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Columns 4 and 5 in the frequency band 17.8–20.2 GHz are revised as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation GHz (1)	Region 2—alloction GHz (2)	Regional 3—allocation GHz (3)	Government allocation GHz (4)	Non-Government allocation GHz (5)	Rule part(s) (6)	Special-use frequencies (7)
7.7–18.1 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.7–18.1 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.7–18.1 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 869 MOBILE	17.8–18.6	17.8–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
18.1–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 870	18.1–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 870	18.1–18.6 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 870	870 US334 G117	870 US334 NG1434		
18.6–18.8 FIXED FIXED-SATELLITE (space-to-Earth) 872 MOBILE except aeronautical mobile Earth Exploration—Satellite (passive) Space Research (passive)	18.6–18.8 EARTH EXPLORATION—SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 872 MOBILE except aeronautical mobile SPACE RESEARCH (passive)	18.6–18.8 FIXED FIXED-SATELLITE (space-to-Earth) 872 MOBILE except aeronautical mobile Earth Exploration—Satellite (passive) Space Research (passive)	18.6–18.8 EARTH EXPLORATION—SATELLITE (passive) SPACE RESEARCH (passive)	18.6–18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile SPACE RESEARCH (passive)	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
871	871	871	US254 US255 US334 G117	US254 US255 US334 NG144		
18.8–19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	18.8–19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	18.8–19.7 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	18.8–19.7	18.8–19.7 FIXED FIXED-SATELLITE (space-to-earth) MOBILE	AUXILIARY BROADCASTING (74) CABLE TELEVISION RELAY (78) DOMESTIC PUBLIC FIXED (21) PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
19.7–20.1 FIXED-SATELLITE (space-to-Earth) Mobile-Satellite (space-to-Earth)	19.7–20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	19.7–20.1	US334 G117 FIXED-SATELLITE (space-to-Earth) Mobile-Satellite (space-to-Earth)	US334 NG144 19.7–20.1	19.7–20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	
873	873 873A 873B 873C 873D 873E	873	US334 G117	873A 873B 873C 873D 873E US334		
20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 873 873A 873B 873C 873D	20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	20.1–20.2 US334 G117	20.1–20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 873A 873B 873C 873D US334		

b. Add the text of new United States footnote US334 to read as follows:

United States (US) Footnotes

* * * * *

US334 In the band 17.8–20.2 GHz, Government space stations and associated earth stations in the fixed-satellite (space-to-Earth) service may be authorized on a primary basis. For a Government geostationary satellite network to operate on a primary basis, the space station shall be located outside the arc measured from East to West, 70° W to 120° W. Coordination between Government fixed-satellite systems and non-Government systems operating in accordance with the United States Table of Frequency Allocations is required.

c. Revise the text of existing Government footnote G117 to read as follows:

Government (G) Footnotes

* * * * *

G117 In the bands 7.25–7.75 GHz, 7.9–8.4 GHz, 17.8–21.2 GHz, 30–31 GHz, 39.5–40.5 GHz, 43.5–45.5 GHz, and 50.4–51.4 GHz the Government fixed-satellite and mobile-satellite services are limited to military systems.

* * * * *

[FR Doc. 95–19164 Fixed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–29; RM–8596 and RM–8637]

Radio Broadcasting Services; Iron Mountain and Negaunee, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 294A to Iron Mountain, Michigan in response to a request from Superior Media Group, Inc. *See* 60 FR 12530, March 7, 1995. The coordinates for Channel 294A at Iron Mountain are 45–49–12 and 88–04–06. In response to a counterproposal filed by Negaunee Miners Radio, we shall allot Channel 258A to Negaunee, Michigan. The coordinates for Channel 258A at Negaunee are 46–30–18 and 87–36–24. Canadian concurrence has been received for the allotment of Channel 294A at Iron Mountain and Channel 258A at Negaunee. With this action, this proceeding is terminated.

DATES: Effective September 14, 1995. The window period for filing applications will open on September 14, 1995, and close on October 16, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 95–29, adopted July 24, 1995, and released July 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 294A at Iron Mountain and by adding Negaunee, Channel 258A.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19098 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 87–417, RM–6108]

Television Broadcasting Services; Lima, OH; Muncie, IN; Rockford, IL; and Grand Rapids, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Chief, Policy and Rules Division dismissed as moot the application for review filed by Lima Communications Corporation in response to the withdrawal by the original proponent of the allotment of its commitment to file an application for authority to construct a television station to operate on Channel 17 at Lima, Ohio. The Chief, Policy and Rules Division, had affirmed, by *Memorandum Opinion and Order*, 7 FCC Rcd 5933 (1992), the *Report and Order* in this proceeding, 52 FR 29,896, published August 9, 1988.. Accordingly, the Commission rescinds the allotments ordered in the communities of Lima, Ohio of Channel 17; Muncie, Indiana of Channel *61; Rockford, Illinois of Channel 17+; and Grand Rapids, Michigan of Channel 17–. The Commission further orders the restoration of Channel *17+ in Muncie, Indiana; Channel 17– in Rockford, Illinois; and Channel 17 in Grand Rapids, Michigan. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 87–417, adopted July 21, 1995 and released July 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,

2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19099 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 90

[DA 95–1669]

Inter-Category Sharing of Private Mobile Radio Services in the 806–821/851–866 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Notice; petitions for reconsideration and clarification.

SUMMARY: The Wireless Telecommunications Bureau has denied reconsideration and/or clarification of the Bureau's Order imposing a freeze on the acceptance of new applications for inter-category sharing of frequencies allocated to the Public Safety, Industrial/ Land Transportation and Business Radio Services. This action was taken because of the need to ensure the continued availability of these frequencies to license applicants eligible in these service categories until the Commission resolves the significant spectrum allocation issues raised in PR Docket No. 93–144 and by the Public Safety community. this action will maintain the integrity of the Commission's licensing process.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Wireless Telecommunications Bureau, (202) 418–0627.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireless Telecommunications Bureau's Memorandum Opinion and Order, DA–1669, adopted July 26, 1995, and released July 28, 1995. The full text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the Private Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, Room 8010, Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, D.C. 20037, telephone (202) 857–3800. This will impose no paperwork burden on the public.

Summary of Memorandum Opinion and Order

1. The Wireless Telecommunications Bureau (Bureau) denied requests for reconsideration and clarification of the Bureau's Order (60 FR 20247 (1995)) imposing a freeze on inter-category sharing of frequencies in the 806–821/851–866 MHz band allocated to the Public Safety, Industrial/Land Transportation (I/LT), and Business Radio (Business) Services. Petitions for Reconsideration were filed by UTC, the Telecommunications Association (UTC) and, in a joint pleading, by Central and South West Corporation, Indianapolis Power and Light Company and Union Electric Company (CIU). Additionally, a Request for Clarification of the Bureau's Order was filed by the Industrial Telecommunications Application (ITA). Oppositions to the reconsideration and clarification requests were filed by the Association of Public-Safety Communications Officials-International, Inc. (APCO) and Replies were filed by both ITA and CIU.

2. Because of pressure placed on the 800 MHz Business and I/LT categories by Specialized Mobile Radio (SMR) applicants seeking to use these channels on an inter-category sharing basis there has been a significant increase in the number of Business and I/LT license applicants filing applications (on an inter-category basis) for 800 MHz Public Safety channels. In response to these developments, the Commission has initiated a rule making proceeding (PR Docket 93–144, 59 FR 60111 (November 22, 1994)) to determine, among other things, the appropriate allocation of this segment of the spectrum. To avoid compromising the resolution of this issue, as well as the spectrum concerns of the Public Safety community, the Bureau imposed a temporary freeze on the acceptance of applications for inter-category sharing of channels allocated to the Public Safety, I/LT and Business Services.

3. In response to UTC's contention that the freeze constituted substantive action, the Bureau indicated that freezes have long been considered by the Commission as procedural in nature and, therefore, this action did not require compliance with the notice and comment provisions of the Administrative Procedure Act. Further, the Bureau stated that providing the public with notice of the action to be taken and an opportunity to comment would undercut the effectiveness of the freeze and, thus, not be in the public interest.

4. The Bureau concluded that neither UTC's nor ITA's suggested modifications to the freeze Order were adequate to preserve the *status quo* until resolution of the spectrum allocation issues raised in PR Docket No. 93–144 and by the Public Safety community. Limiting the freeze to SMR use of the relevant channels, as suggested by UTC, would be an incomplete remedy because of previous encroachment by SMRs in the I/LT pool. Also, ITA's proposal to limit inter-category use to internal communications is inadequate to maintain the *status quo.*

5. Contrary to CIU's assertions, the record supports the conclusion that the communications needs of the Public Safety community are currently at risk of not being met. Further, current problems cannot be addressed—as suggested by CIU—merely by identifying their cause. In any case, the freeze is not a final resolution of the matter, by merely a temporary action to prevent compromising the Commission's resolution of significant spectrum allocation issues.

6. For the foregoing reasons, the Bureau affirms the Order suspending the acceptance of applications for inter-category sharing to the 800 MHz Private Mobile Radio Service Frequencies allocated to the Public Safety, Industrial/land Transportation and Business Radio Services.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure.

Federal Communications Commission.

Reginal M. Keeney,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 95–19138 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 519 and 552

[APD 2800.12A, CHGE 63]

RIN 3090–AF77

General Services Administration Acquisition Regulation; Small Business

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to remove a provision regarding small business concern representation which is a deviation to the Federal Acquisition Regulation (FAR). The deviation is not needed since Federal Acquisition Circular (FAC) 90–23 amended the FAR 48 CFR 52.219–1. Miscellaneous revisions are made in regulations on small business and small disadvantaged business concerns to reflect current GSA organizational changes.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it merely revises the GSAR to conform to the FAR as amended by FAR 90–23, which had already undergone the public comment process.

B. Executive Order 12866

This rule was not submitted to the Office of Management and Budget (OMB) for review because the rule is not a significant regulatory action as defined in Executive Order 12866, Regulatory Planning and Review, and therefore was not required to be submitted.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule is not a significant revision as defined in FAR 1.505–1.

D. Paperwork Reduction Act

This rule does not impose any information collection or recordkeeping requirements that require the approval of OMB under 44 U.S.C. 3501 et seq. Therefore, the requirements of the Paperwork Reduction Act do not apply.

List of Subjects in 48 CFR Parts 519 and 552

Accordingly, 48 CFR Parts 519 and 552 are amended as follows:

1. The authority citation for 48 CFR Parts 519 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 519.001 is revised to read as follows:

§ 519.001 Definitions.

Agency small business technical advisors (SBTAs) as used in this part, means the directors of the Business Service Centers (or designees) in the regions and the individuals in FSS, ITS and PBS who have been designated to serve as SBTAs in the Central Office. In addition to the duties outlined at FAR 19.201(c), the agency small business technical advisors perform the functions of the small and disadvantaged business utilization specialist/representative described in FAR 19.506 (a) and (b) and 19.705–4(d)(5).

3. Section 519.201 is revised to read as follows:

§ 519.201 General policy.

The Associate Administrator for Enterprise Development (E) may make recommendations to the contracting officer as to whether a particular acquisition should be awarded under FAR 19.5 as a set-aside (including those involving labor surplus areas) or under FAR 19.8 as a section 8(a) award directly or through the SBTA.

4. Section 519.202–2(c) is revised to read as follows:

§ 519.202–2 Locating small business sources.

* * * * *

(c) BSC's will keep each other and the Office of Enterprise Development (E) informed on items of mutual interest regarding the small business programs.

§ 519.304 [Removed]

5. Section 519.304 is removed.

§ 552.219 [Removed]

6. Section 552.219–1 is removed.

Dated: June 22, 1995.

Ida M. Ustad,

Associate Administrator, Office of Acquisition Policy.

[FR Doc. 95–19044 Filed 8–2–95; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF STATE

Office of the Procurement Executive

48 CFR Parts 601, 602, 605, 606, 609, 610, 613, 616, 619, 625, 636, 637, and 653

[Public Notice 2231]

Department of State Acquisition Regulation (DOSAR); Simplified Acquisition Threshold

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of State Acquisition Regulation (DOSAR) to reflect changes with respect to the change in the simplified acquisition threshold as outlined in the FAC 90–29. The rule also makes changes in Commerce Business Daily synopsis requirements for overseas contracting activities. Finally, the rule makes several technical corrections.

EFFECTIVE DATE: July 3, 1995.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Senior Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street NW, Suite 603, State Annex Number 6, Washington, DC 20522–0602, telephone (703) 516–1691. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On July 3, 1995, FAC 90–29 became effective. The changes contained therein dealt with implementation of the Federal Acquisition Computer Network (FACNET) and simplified acquisition requirements of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–55. The changes published today focus only on the simplified acquisition threshold revisions of FAC 90–29. They are editorial in nature.

In addition, DOSAR 605.202–70 is being revised to reflect a recently authorized deviation from FAR requirements for certain Commerce Business Daily (CBD) synopses for the Department's foreign acquisitions awarded by overseas contracting activities, other than local guard service contracts.

The Department has determined that this document need not be published as a proposed rule. The rule generally makes only editorial and technical revisions to the current DOSAR. The deviation from CBD notice requirements for overseas contracting activities was approved by the Office of Federal Procurement Policy and the Small Business Administration, as required by FAR 5.202(b).

II. Impact

The Department of State certifies that this regulation will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

III. Paperwork Reduction Act

There are no additional information collection requirements associated with this rule. All information collection requirements associated with acquisition were approved under the Paperwork Reduction Act of 1980 by OMB and were assigned control number 1405–0050.

List of Subjects in 48 CFR Parts 601, 602, 605, 606, 609, 610, 613, 616, 619, 625, 636, 637, and 653

Government procurement, Department of State Acquisition Regulation (DOSAR).

Accordingly, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 48 CFR Parts 601, 602, 605, 606, 609, 610, 613, 616, 619, 625, 636, 637, and 653 continues to reads as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION

Subpart 601.6—Career Management, Contracting Authority, and Responsibilities

2. The title of Subpart 601.6 is revised to read as set forth above.

601.603–70 [Amended]

3. Section 601.603–70 is amended in paragraph (b)(5) by removing the phrase "Bureau of Refugee Programs" and inserting "Bureau of Population, Refugees, and Migration" in its place.

4. Section 601.603–70 is amended in paragraph (b)(6) by removing the phrase "Bureau of International Narcotics Matters" and inserting "Bureau of International Narcotics and Law Enforcement Affairs" in its place.

PART 602—DEFINITIONS OF WORDS AND TERMS

Subpart 602.1—Definitions

602.101–70 [Amended]

5. In section 602.101–70, the definition of "Despatch Agency" is amended in the last sentence by removing the words "San Francisco, California;".

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

Subpart 605.2—Synopsis of Proposed Contract Actions

6. Section 605.202–70 is revised to read as follows:

605.202 Exceptions.

605.202–70 Foreign acquisitions.

(a) *Policy.* In accordance with a Determination and Findings issued by the Assistant Secretary of State for Administration, the requirement for advance CBD notices for the Department's foreign acquisitions awarded by overseas contracting activities is waived. CBD notices may be published for any acquisition where the contracting officer decides that publication would be in the Department's best interests. This waiver shall remain in effect until June 15, 1998.

(b) *Procedures.* Contracting officers at overseas contracting activities are not required to prepare an individual determination and findings to document their decision to waive the CBD notice requirements.

(c) *Competition requirements.* Nothing in this section waives the requirement to obtain competition as required by FAR part 6 and DOSAR (48 CFR) part 606. Competition, including the use of written solicitation, shall be obtained in all cases to the extent feasible. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition.

(d) *Policy exclusion.* CBD waiver authority does not apply to local guard service contracts that exceed $250,000. Local guard service contracts that exceed $250,000 shall be synopsized in the CBD. Option year prices shall be included when computing the applicability of this threshold.

PART 606—COMPETITION REQUIREMENTS

Subpart 606.5—Competition Advocates

7. Section 606.570 is revised to read as follows:

606.570 Solicitation provisions.

The contracting officer shall insert the provision at 652.206–70, Competition Advocacy/Ombudsman, in all solicitations over the threshold for using simplified acquisition procedures.

PART 609—CONTRACTOR QUALIFICATIONS

Subpart 609.4—Debarment, Suspension, and Ineligibility

8. Section 609.405 is amended in paragraph (d)(4)(i) by revising the first sentence to read as follows:

609.405 Effect of listing.

* * * * *

(d) * * *

(4)(i) For procurement actions (both domestic and overseas) that do not exceed the threshold for using simplified acquisition procedures, contracting officers need not consult the "List of Parties Excluded from Procurement Programs" prior to award.

* * *

PART 610—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

610.002–70 [Amended]

9. Section 610.002–70 is amended in paragraph (d)(5)(i) by removing the amount of "$25,000" and inserting "$50,000" in its place.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

613 Heading [Amended]

10. The title of Part 613 is revised to read as set forth above.

Subpart 613.1—General

613.103–70 [Amended]

11. Section 613.103–70 is amended by removing the words "small purchases" and inserting "purchase orders" in their place.

Subpart 613.4—Imprest Fund

613.404 [Amended]

12. Section 613.404 is redesignated as 613.403. Newly designated 613.403 is amended by removing "FAR 13.404(a)" and inserting "FAR 13.403(a)" in its place.

Subpart 613.5—Purchase Orders

13. Section 613.505–1 is revised to read as follows:

613.505 Purchase order and related forms.

613.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(a) The OF–347 and OF–348 shall be mandatory for use by domestic contracting activities for issuing purchase orders and delivery orders, unless ordering against another Federal agency contract which stipulates a different form (e.g., DD–1155, Order for Supplies or Services); or, unless the Procurement Executive has approved another form. The OF–347 may also be used as a voucher.

(b) In lieu of the OF–347 and OF–348, DOS overseas contracting activities may use the Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (illustrated at 653.303–206 and 653.303–206A, respectively). When using the OF–206, contracting activities may use Optional Form (OF) 127, Receiving and Inspection Report (illustrated at 653.303–127), for that purpose.

613.505–2 [Removed]

14. Section 613.505–2 is removed.

15. Section 613.507, consisting of section 613.507–70, is revised to read as follows:

613.507 Provisions and clauses.

613.507–70 DOSAR clauses.

In addition to the FAR provisions and clauses required for or applicable to the particular acquisition, each DOS purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. All such clauses shall be listed on a separate document and attached to each copy of the purchase order. The document shall be identified by the purchase order number and the name and address of the contracting activity. The DOSAR clauses may be incorporated without setting out full text.

Subpart 613.6–70—Governmentwide Commercial Purchase Card Program

16. Section 613.601–70 is amended by revising paragraph (b) to read as follows:

613.601–70 Policy.

(a) * * *

(b) *Policy.* It is the Department's policy that:

(1) The purchase card shall be used in preference to other methods of procurement (particularly BPAs) for individual purchases up to $2,500;

(2) The purchase card shall be issued primarily to personnel outside of the procurement office to purchase products and services up to $2,500 quickly with a minimum of paperwork and without having to send an individual requisition to a procurement office; and,

(3) The purchase card may be used in procurement offices for purchases up to $25,000.

* * * * *

PART 616—TYPES OF CONTRACTS

17. Section 616.000 is added to read as follows:

616.000 Scope of part.

The contracting officer may use any of the contract types described in FAR part 16 for acquisitions made under simplified acquisition procedures. The contracting officer shall document his/her decision to use a contract type in accordance with the requirements of FAR part 16.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 619.1—General

619.20 [Amended]

18. Section 619.201 is amended in paragraph (d)(5) by removing the word "limitation" and inserting the word "threshold" in its place in the second sentence.

Subpart 619.5—Set Asides for Small Business

619.501 [Amended]

19. Section 619.501 is amended in paragraph (c) by removing the words "Small Purchase Limitation" and inserting "Simplified Acquisition Threshold" in their place.

PART 625—FOREIGN ACQUISITION

Subpart 625.7—Restrictions on Certain Foreign Purchases

20. and 21. Section 625.703 is revised to read as follows:

625.703 Exceptions.

The authority to approve exceptions for other contracts in excess of the simplified acquisition threshold is delegated, without power of redelegation, to the head of the contracting activity.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 636.6—Architect-Engineer Services

636.602–5 [Amended]

22. Section 636.602–5 is amended by removing the word "limitation" and inserting the word "threshold" in its place in the heading and the text of the section.

PART 637—SERVICE CONTRACTING

Subpart 637.1—Service Contracts—General

637.104–70 [Amended]

23. Section 637.104–70 is amended in paragraph (b) by removing the words "Bureau for Refugee Programs" and inserting "Bureau of Population, Refugees, and Migration" in their place.

24. Section 637.104–70 is amended in paragraph (c) by removing the words "Bureau for International Narcotics Matters" and inserting "Bureau for International Narcotics and Law Enforcement Affairs" in their place.

SUBCHAPTER H—CLAUSES AND FORMS

PART 653—FORMS

Subpart 653.2—Prescription of Forms

25. Section 653.213 is amended by revising the heading to read as follows:

653.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

26. Section 653.213–70 is amended by revising the heading to read as follows, and by adding the following sentence to the end of paragraph (b):

653.213–70 DOS Forms (OF–206, OF–206A, OF–127, DST–1916, DST–1919, DST–1920).

(a) * * *

(b) * * * The OF–127 may be used as a receiving report in conjunction with other contract forms (e.g., SF–26, SF–33) by both domestic and overseas contracting activities.

* * * * *

27. Section 653.219–70 is amended by revising the heading to read as follows:

653.219–70 DOS form DS–1910, Small Business/Labor Surplus Area Review—Actions Above the Simplified Acquisition Threshold.

Dated: July 17, 1995.

Lloyd W. Pratsch,

Procurement Executive.

[FR Doc. 95–18900 Filed 8–2–95; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 072895A]

Pacific Halibut Fisheries; Area 2A Non-Treaty Commercial Fishery Reopening; Oregon Sport Fishery Reopening

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason actions.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. These actions are intended to enhance the conservation of the Pacific halibut stock

in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: Area 2A: 8:00 a.m. through 6:00 p.m., local time, August 1, 1995; Oregon sport fishery: 8:00 a.m. through 6:00 p.m., local time, August 3, 1995 and August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued these inseason actions pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, these inseason actions are published in the **Federal Register** to provide additional notice of their effectiveness, and to inform persons subject to the inseason actions of the restrictions and requirements established therein.

Inseason Actions

1995 Halibut Landing Report Number 11

Area 2A Non-treaty Commercial Fishery to Reopen

The July 18 fishing period in Area 2A resulted in a catch of 35,000 lb (15.87 metric tons (mt)), leaving approximately 50,000 lb (22.67 mt) yet to be caught from the catch limit.

Area 2A will reopen on August 1 for 10 hours from 8:00 a.m. to 6:00 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, WA (46°53'18" N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (lb)	
Length	Letter	Dressed, head-on	Dressed, head-off [1]
0–25	A	225	200
26–30 ..	B	240	210
31–35 ..	C	380	335
36–40 ..	D	1,050	925
41–45 ..	E	1,130	995
46–50 ..	F	1,350	1,190
51–55 ..	G	1,510	1,330
56+	H	2,275	2,000

[1] Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Oregon Sport Fishery Reopens for Two Days

The Oregon sport fishery from Cape Falcon to the California border will open for 2 days, Thursday, August 3 and Friday, August 4, 1995, rather than for 3 days as indicated in the halibut regulations. Approximately 15,500 lb (7.03 mt) remain for harvest, not enough to assure that harvest from 3 days of fishing will remain under the catch limit. The daily bag limit will be two fish per person, one with a 32-inch (12.59 centimeters (cm)) minimum size limit, and one with a 50-inch (19.68 cm) minimum size limit. If sufficient catch limit remains after August 4, an additional opening may be announced by the IPHC.

Dated: July 28, 1995.

Donald J. Leedy,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19036 Filed 7–28–95; 4:41 pm]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register

Vol. 60, No. 149

Thursday, August 3, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA07

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations Regarding Tribal Gaming

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN") is proposing to amend the regulations implementing the statute generally referred to as the Bank Secrecy Act to include certain gaming establishments operated by or on behalf of Indian tribes within the definition of financial institution subject to those regulations. The amendments would extend the reporting and recordkeeping requirements and anti-money laundering safeguards of the Bank Secrecy Act to such gaming establishments.

DATES: Written comments on all aspects of the proposed regulation are welcome and must be received on or before November 1, 1995.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, *Attention:* NPRM—Tribal Gaming. *Submission of comments.* An original and four copies of any comment must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted. *Inspection of comments.* Comments may be inspected at the Department of Treasury between 10:00 a.m. and 4:00 p.m., in the Treasury Library, which is located in room 5030, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment at the Treasury Library at (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia, Compliance Specialist, Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, (703) 905–3931, or Joseph M. Myers, Attorney-Advisor, Office of Legal Counsel, Financial Crimes Enforcement Network, (703) 905–3557.

SUPPLEMENTARY INFORMATION:

Introduction

This document proposes (i) to amend the definition of "casino" in 31 CFR 103.11(i)(7)(i), (ii) to amend or add other definitions in 31 CFR 103.11, and (iii) to make a conforming change to the specification in 31 CFR 103.36(b)(7) of certain records required to be maintained by casinos. The proposed changes reflect the terms of section 409 of the Money Laundering Suppression Act of 1994 (the "Money Laundering Suppression Act"), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325.

Background

The statute popularly known as the "Bank Secrecy Act," Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to (i) keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, (ii) implement counter-money laundering programs and compliance procedures, and (iii) report potentially suspicious transactions to the federal government. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The range of financial institutions to which the Bank Secrecy Act applies includes not only banks and other depository institutions, but also securities brokers and dealers, money transmitters, and the other non-bank businesses that offer customers one or more financial services. Gambling casinos were made subject to the Bank Secrecy Act as of May 7, 1985, by regulation issued early that year, *see* 50 FR 5065 (February 6, 1985). Treasury has issued three sets of rules relating to the application of the Bank Secrecy Act to casino gaming establishments. *See* 50 FR 5064–5069 (February 6, 1985); 54 FR 1165–1167 (January 12, 1989); and 59 FR 61660–61662 (December 1, 1994) (modifying and putting into final effect the rule originally published at 58 FR 13538–13550 (March 12, 1993)).

Legalized casino gaming in the United States has grown greatly since 1985. An important component of that growth has been the opening of casinos and other gaming establishments on Indian lands, primarily under the procedures established by the Indian Gaming Regulatory Act (Pub. L. 100–497, codified at 18 U.S.C. 1166–1168, and 25 U.S.C. 2701–2721). State gaming regulators and staff members of the National Indian Gaming Commission (the "NIGC"), established pursuant to the Indian Gaming Regulatory Act, have indicated that there were approximately 120 tribal casinos, of various sizes and types, operating during 1994 in a total of 16 states. Industry statistics for 1993 (the last year for which statistics are readily available) indicate that wagering at tribal casinos exceeded $27 billion in that year, a steep rate of increase from prior years' results.

Section 409 of the Money Laundering Suppression Act codified the application of the Bank Secrecy Act to gaming activities by adding casinos and other gaming establishments to the list of financial institutions specified in the Bank Secrecy Act itself.[1] The statutory specification reads:

(2) financial institution means—

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—

(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of

[1] The 1985 action initially making casinos subject to the Bank Secrecy Act had been based on Treasury's statutory authority to designate as financial institutions (i) businesses that engage in activities "similar to" the activities of the businesses listed in the Bank Secrecy Act, as well as (ii) other businesses "whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters." *See* 31 U.S.C. 5312(a)(2)(Y) and (Z) (as renumbered by the Money Laundering Suppression Act).

any State or any political subdivision of any State; or

(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act)

* * *.

31 U.S.C. 5312(a)(2)(X). As discussed more fully below, this notice is part of the broader process of rethinking the application of the Bank Secrecy Act to casinos that began with the issuance of burden-reducing amendments to the Bank Secrecy Act regulations governing casinos in December 1994.

See 59 FR 61660–61662 (December 1, 1994).

Explanation of Provisions

A. *Overview.* The proposed regulations would amend the definition of "casino" to include explicitly casinos operated on Indian lands; make related changes to the regulatory definitions of "person" and "United States" in 31 CFR 103.11(n) and 103.11(s), respectively; and add definitions of the terms "Indian Gaming Regulatory Act", "State", and "Territories and Insular Possessions", as proposed in 31 CFR 103.11 (v), (w), and (x), respectively. A related amendment is proposed to the record retention requirements found in 31 CFR 103.36(b)(7), to reflect the regulatory system contemplated by the Indian Gaming Regulatory Act.

B. *Definition of Casino.* The definition of casino is proposed to be amended to include explicitly casinos operated on Indian lands. Under the proposed amendment, the term casino would include, *inter alia*, any casino or gambling casino duly licensed or authorized to do business under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands. The term would thus include casinos that are doing business on Indian lands on a basis other than that specified in the Indian Gaming Regulatory Act. For example, a casino that operates on Indian lands under a view that compliance with the Indian Gaming Regulatory Act is unnecessary or inconsistent with inherent tribal rights would not for that reason be exempted from the terms of the Bank Secrecy Act, to the extent that those terms would otherwise apply to the casino's operations.[2]

The general need for and appropriateness of treatment of casinos as financial institutions for purposes of the Bank Secrecy Act have been accepted, as indicated above, since the mid-1980s. Treasury made clear in its first formal statements on this subject the need to prevent casinos, which both deal in cash and cash-equivalent chips and can offer a variety of other financial services to customers, from being used to avoid the effect of the Bank Secrecy Act.[3] There is no reason to expect that the potential risk of such activity in casinos on Indian lands, if those casinos were not subject to the Bank Secrecy Act, is any less (or any greater) than for state-licensed casinos. Prior to the enactment of the Money Laundering Suppression Act, the issue whether the Bank Secrecy Act could be applied to gaming operations on Indian lands was unsettled in light of the language of section 20(d) of the Indian Gaming Regulatory Act, 25 U.S.C. 2719(d), and the disinclination to apply general federal legislation to the affairs of Indian tribes without clear Congressional authorization. Section 409 of the Money Laundering Suppression Act grants direct authority to the Secretary of the Treasury to apply the Bank Secrecy Act to most tribal gaming operations and is backed by a strong expression of Congressional intent, in the legislative documents accompanying the statute, "* * * to eliminate confusion about which currency reporting system applies to Indian casinos." *See* H.R. Rep. No. 652, 103d Cong., 2d Sess. 193 (1994). (The other currency reporting system is that created, for trades or businesses not subject to the Bank Secrecy Act, by section 6050I of the Internal Revenue Code of 1986.)

The retention in the proposed regulation of the term "casino", rather than substitution in 31 CFR 103.11(i)(7)(i) of the broader authorizing language of 31 U.S.C. 5312(a)(2)(X), is intentional. The Department of the Treasury has generally sought to apply the Bank Secrecy Act to gaming establishments that provide their customers with a financial product—gaming—and as a corollary offer a broad array of financial services, such as customer deposit or credit accounts, facilities for transmitting and receiving funds transfers directly from other institutions, and check cashing and currency exchange services, that are similar to those offered by depository institutions and other financial firms.

By way of contrast, the Indian Gaming Regulatory Act defines classes of gaming establishments with reference to specific games that may be offered by those establishments. States or the NIGC may authorize and regulate under that Act tribal gaming activities, such as bingo, lotteries, and pari-mutuel betting, that are not generally offered in casino settings. These types of gaming may create different problems for law enforcement, tax compliance, and counter-money laundering programs than do full-scale casino operations. Although the Money Laundering Suppression Act grants the Department of the Treasury authority to extend the Bank Secrecy Act to the full range of gaming establishments in the United States, FinCEN wishes to concentrate at this time on resolving the issues raised by extending the existing Bank Secrecy Act structure to true casino-like establishments operating on Indian lands.

The other changes in the definition of casino are designed simply to list explicitly the three classes of government authorities that can authorize or license casinos subject to the Bank Secrecy Act. The changes are intended neither to expand nor contract the coverage of the Bank Secrecy Act to casinos operating under State authority or under the authority of various United States territories or possessions.

C. *Treatment of Casinos Under the Bank Secrecy Act.* Thus, under the proposed regulations, casinos operating on Indian lands would become subject not simply to the Bank Secrecy Act's currency transaction reporting rules but to the full set of provisions (described by the Congress as "a comprehensive currency reporting and detailed recordkeeping system with numerous anti-money laundering safeguards") to which other casinos in the United States are subject. *See* H.R. Rep. No. 652, *supra*.

The Bank Secrecy Act generally imposes several sets of requirements on casinos. First, each casino is required to file with the Department of the Treasury a report of each receipt or disbursement of more than $10,000 in currency in its gaming operations; aggregation of multiple transactions is required in a number of situations. *See* 31 CFR 103.22(a)(2). In addition, later this year, Treasury will issue regulations to require financial institutions, including casinos, to file reports of suspicious transactions. *See* 31 U.S.C. 5318(g)(1).

Each casino is also required by the Bank Secrecy Act to maintain certain records relating to the casino's operation, including records identifying account holders (*see* 31 CFR 103.36(a)), or showing transactions for or through each customer's account (*see, generally,* 31 CFR 103.36(b)), and transactions involving persons, accounts or places outside the United States, (*see* 31 CFR 103.36(b)(5)); records which are prepared or used by a casino to monitor a customer's gaming activity or records of purchases of more than $3,000 worth of checks or other monetary instruments are also among the types of records that must be maintained (*see* 31 CFR 103.36(b)(8) and (b)(9)). Finally, casinos must institute training and internal control programs to assure and monitor compliance with the Bank Secrecy Act (*see* 31 CFR 103.36(b)(10) and 103.54(a)).

Gaming establishments within the scope of the proposed rule will remain subject to the filing requirements of section 6050I of the Internal Revenue Code, with respect to their gaming and financial services operations, until this proposed rule becomes effective. *See* section 6050I of the Internal Revenue Code, 26 U.S.C. 6050I(a) and (c); Treas. Reg. 1.6050I–1(d)(2). Gaming establishments, whether non-tribal or tribal, that are not included within the definition of casino in the Bank Secrecy Act remain fully subject to the currency reporting rules of section 6050I of the Internal Revenue Code; section 6050I of the Code will also continue to apply to non-gaming and non-financial services operations, for example hotel accommodations, at casinos that are subject to the Bank Secrecy Act.

D. *Request for Comments on Specific Subjects.* FinCEN recognizes that the circumstances of tribal gaming are not uniform throughout the United States, and it is keenly aware of the need to proceed thoughtfully in adopting the rules of the Bank Secrecy Act to the realities of the operation of casinos on Indian lands. FinCEN specifically seeks comment on the following questions:

1. Are there particular parts of the Bank Secrecy Act regulations applicable to casinos generally that do not accurately reflect the way tribal casinos operate?

2. What types of financial services, other than gaming, are offered by tribal casinos or by other financial businesses operating at such casinos?

3. How can compliance with the Bank Secrecy Act by tribal casinos best be examined and enforced?

4. How should compliance by tribal casinos with the Bank Secrecy Act be integrated with the regulatory regimes created by the Indian Gaming Regulatory Act and the tribal-state compacts required by that statute for authorization of Class III gaming?

In seeking guidance on these and other issues raised by this notice of proposed rulemaking, FinCEN is interested in hearing from all parties potentially affected by the proposed rules, including Indian tribes on whose lands gaming is conducted, tribal or non-tribal enterprises that manage casinos on such lands, and officials of state and local governments within whose boundaries such lands are located. FinCEN will consider holding a public hearing on the proposed rule if comments suggest that a public hearing would be productive.

Equalization of the treatment of state-licensed and tribal casinos is necessary as a prelude to the consideration of broader issues affecting the application of the Bank Secrecy Act to the gaming industry. Those issues include whether clarifications should be made in the definition of casino as new types of gaming develop (or whether the term "casino" is sufficiently elastic to encompass such developments,[4]) whether special rules should be applicable to small casinos, and how best to implement the provisions added to the Bank Secrecy Act generally with respect to gaming establishments by the Annunzio-Wylie Anti-Money Laundering Act of 1992, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550, and the Money Laundering Suppression Act.

E. *Other Changes in "Meaning of Terms".* Changes are also proposed to be made to the definitions of "person" and "United States" in 31 CFR 103.11(n) and (s), and definitions of the terms "Indian Gaming Regulatory Act", "State", and "Territories and Insular Possessions" are proposed to be added to § 103.11 as new paragraphs (v), (w), and (x), respectively. As explained immediately above, these definitions are proposed to permit efficient application of 31 CFR Part 103 to tribal casinos. The proposed definitions of terms "State" and "Territories and Insular Possessions" will be repeated in the rules published to implement the provisions of section 402 of the Money Laundering Suppression Act relating to the mandatory exemption of certain transactions with depository institutions from the currency transaction reporting requirements of 31 U.S.C. 5313 and 31 CFR 103.22.[5]

F. *Additions to Record Maintenance Requirements.* The requirement of 31 CFR 103.36(b)(7) that casinos retain all records, documents or manuals required to be maintained under state and local laws or regulations is proposed to be amended to recognize that tribal casinos are required to retain records in many cases either by tribal governing authorities or under the terms of tribal-state compacts authorizing Class III gaming on Indian lands under the Indian Gaming Regulatory Act. The proposed change simply conforms the record retention requirements to reflect the fact that a casino on tribal lands will retain certain documents because tribal rules or tribal-state compacts, rather than state regulation, require their retention.

Proposed Effective Date

The amendments to 31 CFR Part 103 proposed in this notice of proposed rulemaking will become effective 90 days following publication in the **Federal Register** of the final rule to which this notice relates.

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[2] The authority for the application of the Bank Secrecy Act to casinos that are neither licensed by state or local authorities nor operated on Indian Lands pursuant to the Indian Gaming Regulatory Act is found in 31 U.S.C. 5312(a)(2)(Y) and (Z), cited above, which as noted were the basis for application of the Bank Secrecy Act to casinos prior to the enactment of the Money Laundering Suppression Act.

[3] The preamble to the final rule bringing casinos within the Bank Secrecy Act stated that

[i]n recent years Treasury has found that an increasing number of persons are using gambling casinos for money laundering and tax evasion purposes. In a number of instances, narcotics traffickers have used gambling casinos as substitutes for other financial institutions in order to avoid the reporting and recordkeeping requirements of the Bank Secrecy Act.

Inclusion of casinos in the definition of financial institution[s] in 31 CFR Part 103 was among the specific recommendations in the October 1984 report of the President's Commission on Organized Crime, 'The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering'. The problem was also the subject of hearings in 1984 before the House Judiciary Subcommittee on Crime entitled 'The Use of Casinos to Launder the Proceeds of Drug Trafficking and Organized Crime'.

In order to prevent the use of casinos in this fashion, Treasury is amending the regulations in 31 CFR Part 103 to require gambling casinos to file the same types of reports [and maintain the same types of records] that it requires from financial institutions currently covered by the Bank Secrecy Act.

50 FR 5065, 5066, (February 6, 1985); *see also* 49 FR 32861, 32862 (August 17, 1984) (corresponding language in notice of proposed rulemaking).

[4] For example, an establishment that claimed to be a gambling "club" rather than a casino because it simply offered customers an opportunity to gamble with one another, but that in practice funded certain customers so that other customers were in effect gambling against "house" money, and that offered its customers financial services of various kinds, is arguably a casino under present law. Thus, for example, if such a "club" failed to file currency transactions reports or allowed a customer to deposit funds in a player bank account in the name of the customer without requiring the customer to provide identifying information, the club would arguably be operating in violation of the Bank Secrecy Act.

[5] The numbering scheme used in this notice of proposed rulemaking reflects the July 1, 1994 edition of the Code of Federal Regulations; the definitions contained in 31 CFR 103.11 will automatically be renumbered as of January 1, 1996, when the rules relating to funds transfers and transmittals of funds by financial institutions take effect. FinCEN intends to issue in the near future a notice of proposed rulemaking reordering all of the provisions of 31 CFR 103.11 as well as proposing changes in certain of those provisions; the terms dealt with in this notice will appear in that notice of proposed rulemaking without further changes relating to tribal casinos.

Special Analyses

It has been determined that this notice of proposed rulemaking (i) is not subject to the "budgetary impact statement" requirement of section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and (ii) is not a significant regulatory action as defined in Executive Order 12866. It is not anticipated that this proposed rule, if adopted as a final rule, will have an annual effect on the economy of $100 million or more. Nor will it, if so adopted, affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. The proposed rule is neither inconsistent with, nor does it interfere with, actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues.

Because this rule affects Indian gaming establishments with gross annual gaming revenues in excess of $1 million, it is hereby certified that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

Drafting Information

Several individuals in FinCEN's Office of Legal Counsel and its Office of Regulatory Policy and Enforcement participated in the development of these regulations.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the Regulations

Accordingly, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. No. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b, 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5330).

2. Section 103.11 is amended by revising paragraphs (i)(7)(i), (n), and (s), and adding paragraphs (v), (w), and (x) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(i) * * *

(7) (i) *Casino.* A casino or gambling casino that (A) is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands) and that (B) has gross annual gaming revenue in excess of $1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

* * * * *

(n) *Person.* An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

* * * * *

(s) *United States.* The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

* * * * *

(v) *Indian Gaming Regulatory Act.* The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701 *et seq.*

(w) *State.* The States of the United States and, wherever necessary to carry out the provisions of this Part, the District of Columbia.

(x) *Territories and Insular Possessions.* The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

§ 103.36 [Amended]

3. Section 103.36(b)(7) is amended by adding after the words "state and local laws or regulations" the words ", regulations of any governing Indian tribe or tribal government, or terms of (or any regulations issued under) any Tribal-State compacts entered into pursuant to the Indian Gaming Regulatory Act, with respect to the casino in question".

Dated: July 26, 1995.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 95–19137 Filed 7–31–95; 3:30 pm]

BILLING CODE 4820–03–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–5267–9]

Open Market Trading Rule for Ozone Smog Precursors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed policy statement and model rule; Notice of public hearing.

SUMMARY: This notice conveys EPA's strong support for an innovative approach in emissions trading that would bring better, faster, and less expensive progress towards our nation's air quality goals. This innovative approach, known as open market trading, would allow all types of sources to trade emissions of pollutants that cause ground-level ozone and significantly reduce the overall cost of meeting the public health and environmental goals of the national ambient air quality standards (NAAQS) for ozone. An important feature of this approach is that individual trades would not have to be processed as separate State implementation plan (SIP) revisions. Rather, open market trades would provide sources with an alternative means of compliance, and they would be reviewed by State and Federal authorities predominantly during compliance determinations. The EPA believes this open market approach can provide important emissions reduction benefits. It can be put into operation immediately in places where area-wide emissions budgets and source allocations needed to meet the ozone standard have yet to be determined. The unique character of this approach encourages and permits market participation and innovation by smaller stationary sources and mobile sources. It also encourages sources to make reductions early; these reductions can provide immediate public health benefits. By providing a lower cost compliance alternative, the open market approach can make it easier for States to adopt additional control measures where needed to achieve attainment.

The EPA has developed today's proposed open market trading rule (OMTR) as a new approach that would supplement, and would not modify or limit the adoption by States of other emissions trading approaches available under the Clean Air Act (Act) and existing EPA rules and policies. Today's proposal is in the form of a model rule; any State which adopts the final version of this rule could expect its rule to be immediately approved by EPA. This feature would enable States to begin operation of an open market trading program without delay. The EPA continues to encourage States to take advantage of all market-based programs available to them, including emissions budget (cap and trade) programs and emissions offsets, as well as emissions averaging programs.

DATES: *Comments.* Comments must be received on or before October 2, 1995. *Public Hearing.* A public hearing will be held August 31, 1995, beginning at 9 a.m. Persons wishing to present testimony must contact Ms. Shelby Journigan at (919) 541–5543 by August 24, 1995. Persons wishing to attend the hearing should contact Ms. Journigan to obtain the location of the hearing.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to Air and Radiation Docket and Information Center (6102), ATTN: Docket No. A–95–21, Room M1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460; Phone 202–260–7548 or 202–260–7549. Fax 202–260–4400. Docket No. A–95–21, containing information supporting the development of today's proposal, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the address listed below. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: Nancy A. Mayer, U.S. EPA, MD–15, Research Triangle Park, North Carolina 27711, telephone 919–541–5390, fax 919–541–0839; or Scott L. Mathias, U.S. EPA, MD–15, Research Triangle Park, North Carolina 27711, telephone 919–541–5310, fax 919–541–0839.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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2. Open Market Trading
B. Open Market and Emissions Budgets Can Work in Concert
C. Rationale and Principles for Today's Proposal
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C. State Program Election and Submittal
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I. Introduction and Overview

On March 16, 1995, President Clinton and Vice President Gore announced 25 major initiatives for regulatory reinvention at EPA. The number one initiative was an "open market" air emissions trading rule to achieve the public health standard for ozone faster and at lower cost. The Presidential announcement said:

> EPA will issue an emissions trading rule for smog-creating pollutants that will allow States to obtain automatic approval for open market trading of emissions credits with accountability for quantified results. Expanding use of market trading on a local and regional level will give companies broad flexibility to find lowest cost approaches to emissions reductions. The rule will encourage experimentation with new trading options, while enabling States to pursue more quickly allowance-based cap systems, which are already under development in some areas. (Reinventing Environmental Regulations; Clinton/Gore, March 16, 1995)

Today's proposal of a model rule for open market trading fulfills this commitment. It would provide an expedited path by which States, with EPA's cooperation, could quickly implement this new approach.

Together with ongoing initiatives to promote emissions budget (cap and trade) programs, the open market rule signifies a major push to introduce market-based approaches to cleaning up the air: Reducing costs, increasing innovation, enhancing flexibility, and accelerating attainment of health standards.

Ground level ozone, the primary constituent of smog, continues to be one of the most pervasive pollution problems in the United States. Exposure to ozone may cause serious respiratory health problems, such as chest pain, coughing, nausea, and congestion.

Elevated ozone levels have been associated with observed increases of hospital admissions for respiratory diseases such as asthma and decreased lung function of children attending summer camp. It is estimated that ozone damage to crops, forests, natural systems and synthetic materials is significant and exceeds $2 billion per year lost to crops alone. Ozone is not directly emitted into the air, but instead is formed in the atmosphere from reactions of "precursor" pollutants in the presence of sunlight and warm conditions. The major ozone precursor emissions are oxides of nitrogen (NO_X) and volatile organic compounds (VOC).

In the last 25 years great progress has been made toward achieving healthy air quality under the Act. However, over 100 million people still live in areas that do not meet the ozone health standard. Continued reductions in ozone precursor emissions are important to protect public health, and represent a tremendous challenge for our nation's citizens and industries.

The 1990 Amendments to the Act established new deadlines for meeting the health standard for ozone and substantially increased EPA, State and industry attainment efforts. All areas that have not yet attained and maintained the ozone standard are categorized as marginal, moderate, serious, severe, or extreme areas. Each category has a compliance deadline, ranging from 3 years (for marginal areas) to 20 years (for extreme areas; e.g., Los Angeles). All such areas have requirements for reasonably available control technology (RACT) for major stationary sources of VOC and NO_X and with the exception of marginal areas have defined rates of progress (ROP) for reducing ozone precursor emissions.

The smog reduction programs in the U.S. are typically based on traditional forms of environmental regulation: source-specific emissions standards (e.g., RACT) set on a uniform basis for categories of similar sources. Even though set as performance standards, these regulations have a tendency to treat all sources within a category the same and to be oriented toward the lowest common denominator, that is, toward sources within the class that have the greatest difficulty and/or greatest cost of control. Such standards simultaneously miss substantial opportunities for cheap emissions controls by "better" sources, and impose a disproportionately high cost (per ton of pollutant reduced) on a smaller group of sources. Government frequently lacks information on untapped but cost-effective control options, and sources have no incentive to be forthcoming. Government also tends to overlook smaller or unconventional sources.

Recognizing some of these problems in traditional regulations, EPA has developed policies permitting an increasing variety of "emissions trading" approaches since the late 1970's. The EPA "bubble," "netting," and "offset" programs allow certain kinds of trading of emissions reduction obligations within the pre-existing regulatory structure. These programs use the existing command and control regulations as a baseline for trading.

The results of these existing programs have been mixed. Overall, the volume of existing source trading has been small, perhaps due to high transaction costs associated with the bubble policies. New sources have found it possible through netting to avoid both time- and resource-consuming Government review processes. Bubbles, netting and offsets have reduced sources' overall compliance costs. However, there have been significant problems of quality control, reducing the environmental effectiveness of the programs.

A. Emerging Market-Based Approaches for Ozone Control

The 1990 Act Amendments recognized the merit of market-based solutions to pollution control. The Amendments introduced a market-based allowance trading system for sulfur dioxide to control acid rain. The Amendments also included a requirement, in certain cases, for economic incentive programs (EIP's) to be used as part of States' plans to meet the ozone and carbon monoxide standards in designated nonattainment areas. In 1994, EPA issued the EIP rule, which provided rules and guidance for establishing EIP's. Two market-based approaches have emerged that show particular promise for EIP's or other ozone related trading systems: emissions budget programs and, more recently, the open market approach.

1. Emissions Budgets: ("Cap and Trade")

Emissions budget programs have been highly successful where they have been implemented to date and offer the potential for high integrity achievement of environmental goals and considerable cost savings. Emissions budgets programs are predictable, flexible, offer low transaction costs, and in practice have yielded both unexpectedly high rates of innovation and unexpectedly lower costs. The cost of the acid rain program is proving to be considerably lower than expected—in large part because of the flexibility and innovation allowed under an emissions budget program. Estimated national annualized cost of the program at the time of enactment (1990) was $4 billion; the current (December 1994) estimate from the General Accounting Office is $2 billion (Market-Based Pollution Control Programs, ICF Kaiser, Inc. May 11, 1995). Recent scrubber costs are about half of their historic level and their removal efficiency has increased. Prices for low sulfur coal are also lower than expected because of increased production, increased use of low expense coal cleaning, bundling of allowances with fuel sales, and competition in transportation. The Regional Clean Air Incentives Market (RECLAIM) program is expected to cut Southern California NO_X emissions by 80 percent over 10 years while saving about $58 million annually compared to traditional regulations (ICF Kaiser, 1995). Well-designed emissions budget proposals offer the highest degree of certainty for the environment and sources alike, and EPA wants to do everything possible to support and encourage them. The EPA is currently providing strong support for ongoing State development of emissions budget approaches for large-scale regional control of NO_X in the Northeast Ozone Transport Region (OTR), and for VOC emissions in Chicago and Los Angeles.

Notwithstanding their substantial benefits, emissions budget programs are unlikely to capture all of the market-based opportunities to achieve environmental results with reduced cost and greater flexibility. Emissions budget programs have required considerable start-up time and effort. They require agreement on (1) The universe of covered sources, (2) baseline emissions levels, (3) the emissions cap and its rate of decline, (4) the allocation of emissions allowances, and (5) standardized monitoring and measurement techniques for determining each source's emissions. Experience with RECLAIM and the acid rain program shows that obtaining agreement on these points can take several years. As a result, emissions budget programs have been applied to date mostly to well-measured pollutants from relatively uniform industrial sectors, e.g., oxides of sulfur (SO_X) and NO_X from utilities. Start-up time should decline, however, as experience is gained. The RECLAIM program and the Chicago program are making great strides in extending emissions budget programs to some categories of VOC sources.

The EPA is committed to continue providing financial and staff support to emissions budget development projects,

and the Agency will process emissions budget SIP revisions on an expedited basis. Nonetheless, opportunities remain for market-based solutions that emissions budgets are not likely to capture in the near term. The EPA is pursuing the open market approach, in addition to emissions budget approaches, to reach more of these opportunities for cost reduction and flexibility while meeting public health protection standards.

2. Open Market Trading

As stated, the open market approach has the potential to reach market-based opportunities that emissions budgets are not capturing, and to serve in some cases as a transitional stage until full emissions budget programs can be developed. Open market trading programs can begin operating without waiting for agreement on a cap, on allocations, or on pre-established emissions measurement methodologies.[1]

They can be implemented before there is agreement on an area-wide or regional budget or other package of emissions reduction measures fully adequate to demonstrate attainment of the ozone smog health standard. They also have the potential to reach more diverse and numerous types of sources (including mobile sources) than have been covered to date by emissions budget programs.

The OMTR described today builds on the pioneering work done in a major demonstration project overseen by the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid Atlantic Regional Air Management Association (MARAMA) (Emissions Reduction Credit Demonstration Project, Phase II, Volume I Final Report, April 1995). This project was partially funded by EPA's market-based initiative grant program and has involved many State air pollution officials, EPA staff, environmentalists, and representatives of major corporations in the Northeast.

The open market system differs both in concept and execution from the traditional emissions reduction credit (ERC) programs, "bubbles," "netting," and "offsets.— These programs involve trading of contemporaneous emissions rates that extend indefinitely into the future. The open market, on the other hand involves trading of discrete quantities (tons) of emission reductions already made. The discrete reductions are measured from an emissions baseline that is generally defined as the lower of actual or legally allowable emissions at the source. Retrospective quantification of discrete reductions offers the potential for achieving greater certainty and verifiability for all parties regarding reductions already accomplished.

Administration of ERC programs under the 1986 Emissions Trading Policy Statement has required a heavy investment of State, Federal, and public resources in "up-front" review and clearance of specific trades. In the effort to avoid quality control problems ("paper trades") that existed at points in the past, States typically devote substantial resources and take considerable time to review individual trades. High governmental costs and delays for the private sector have kept the volume of emissions trades quite low.

The open market system would shift review and approval of individual trades from the front end as a SIP revision or a permit change, to the time of use as a compliance determination and enforcement matter. Instead of complying with an emissions limitation through control equipment or process changes on site, a source operating under the open market rule may comply by buying and using an appropriate number of tons of discrete emissions reductions (DER's). This system places responsibility for the quality of those DER's on the source that uses them for compliance. These features would reduce front-end costs and delays while harnessing private sector resources to assist government in assuring quality control. Responsibility for compliance would motivate arms-length users to inspect carefully and choose wisely among the DER's offered on the market, and to protect themselves through contract indemnification provisions with sellers of reductions, or with third party auditors, and through purchases of extra reductions as "insurance." Trades can take place before governmental review and approval, increasing flexibility and lowering costs.

The likely benefits of this system would be several. The fact that reductions are accomplished before they are traded and used, encourages earlier achievement of reductions. The private sector would be rewarded for revealing, rather than concealing, cost-effective pollution control opportunities. Lower cost curves would make it easier for States to deny variances and promulgate additional needed rules. The open market system would also expand the participating pool of sources beyond those currently subject to direct regulation.

The practical implementation of an open market trading system gives rise to many significant questions. These questions are identified here and addressed in Section III of the preamble to today's notice. How would open market trading be made consistent with air quality goals and legal requirements? What would be EPA's role in assuring market integrity? To promote certainty in the market as well as quality and enforceability of reductions, what level of EPA support for emissions reduction quantification protocols would be necessary? What would be the appropriate degree of compliance oversight?

B. Open Market and Emissions Budgets Can Work in Concert

The EPA believes open market and emissions budget systems can complement each other and even work together. Open market systems can be put into place more quickly because they do not require consensus-building on a budget, allocation disbursement and related infrastructure. Open market systems can involve different source sectors and smaller, more diverse sources that are not easily captured by budgets. Open market systems can operate in concert with budgets and positively affect areas outside the emissions budget domain.

Emissions budget systems would still offer substantial advantages over open market systems. Under emissions budgets, sources have greater certainty about future allowance allocations and thus greater flexibility and ability to plan operations and trading in the future. Reductions from shutdowns and curtailments, while not compatible with the open market system, can be accommodated under an emissions budget program. Thus, there will be continuing incentives to move from an open market to a budget system, which would allow increased flexibility and cost savings consistent with achieving health and environmental goals.

C. Rationale and Principles for Today's Proposal

The model State rule proposed in today's notice has several features that would clear the way for widespread application of open market trading programs. Today's proposal is designed to eliminate the bottleneck of the single-source SIP revisions for emissions trading. The adoption of the OMTR into the SIP would allow sources to legally substitute DER's for on-site compliance through pollution control equipment. Today's proposal is a model rule for incorporation into the SIP. Once this rule is made final, EPA proposes to automatically approve SIP revisions that adopt this rule.

[1] The name "open market" was coined to reflect the absence of an emissions budget or cap (so-called "closed market" systems).

The model rule would not displace any other trading rule or option currently approved or under development. It would open a new method of trading and a new route for adopting that method. The model rule describes a set of provisions that EPA has concluded are approvable in all circumstances and in any area of the country. Variations that are more expansive (e.g., trading over greater distances than provided in the model rule) may be approvable in specific areas or under the specific circumstances of a particular State. The EPA would evaluate SIP revisions containing variations of this model rule on a case-specific basis. The EPA is committed to working closely with any State interested in pursuing any such variation. The EPA is available to consult with States on the approvability of potential variations and to provide expeditious review and decisions on any such submissions.

In producing this proposed model rule, EPA has observed the following over-arching principles:

1. Do Not Interfere With Ongoing State Market-Based Programs

As mentioned above, one function of the OMTR is to encourage, enable, and support emerging State trading programs, whether they are classified as open market, emissions budget, or another trading approach. The proposed model rule is neither mandatory nor prescriptive. States would be free to tailor their own programs, which may or may not include an open market trading component, and EPA encourages States to harness compliance tools appropriate to their particular circumstances.

2. Reduce Compliance Costs Without Compromising Environmental Integrity

A key test for any market-based strategy, including the OMTR, is to lower the overall cost to the economy of clean air compliance, in a manner that has equivalent or better environmental integrity.

3. Provide for a Long-Term Benefit to the Environment

The open market rule should benefit the environment in a number of ways. Facilities may reduce emissions beyond their current levels in order to sell the reductions, and facilities purchasing the reductions would in turn have more flexibility to meeting their compliance obligations, often obviating the need for source-specific emissions limit modifications and exemptions. The open market program should encourage early reductions through banking. It also should create an incentive to try incremental and innovative emissions reduction strategies, as well as reward accurate emissions measurement procedures. To ensure an environmental benefit, the proposed rule requires 10 percent of every credit used to be retired for environmental benefit.

4. Maximize Flexibility and Minimize Transaction and Regulatory Costs

Reflecting one of the President's concerns with the role and effectiveness of the Government in his reinvention initiative, a major goal in this rule development is to improve upon the burdensome oversight, and reporting and recordkeeping requirements that currently exist in many pollution control programs. In this spirit, the rule proposes requirements that are less burdensome yet consistent with the level of quality necessary to maintain environmental integrity within the open market system.

5. Actively Involve the Public, Industry and States in the Process

The EPA has worked with States, industry, and the public in developing this model rule. This cooperative process will continue as the proposed rule emerges toward its final version.

II. Summary of Proposed Rule

A. Purpose

The purpose of the model open market trading rule is to allow sources to generate and use DER's for compliance with Title I and various Title II VOC and NO_X rules while complying with all other applicable requirements of the Act. The model rule would provide VOC and NO_X sources with a financial incentive to reduce emissions below levels required by applicable Federal and State requirements and below their actual emissions in the recent past. Sources would be permitted to make more economical decisions regarding how to comply with pollution control requirements applicable to them. These sources would be able to supplement or replace traditional compliance strategies with a strategy of purchasing and using DER's.

B. Applicability

Today's notice applies to any State that adopts and submits an identical rule to EPA as a SIP revision. The preamble to the proposed model rule serves as a policy statement on open market emissions trading, and explains how EPA would view specific deviations from the proposed model rule.

C. State Program Election and Submittal

The EPA would automatically and immediately approve any State submittal that revises that State's SIP to incorporate the identical language of the model rule. That does not imply, however, that a State could not develop variations on the model rule tailored to its particular needs. The EPA would review any such rule and judge its approvability in accordance with the adequacy and reasonableness of the justifications for any variations from the model rule. Variations could not be automatically approved, but EPA is committed to reviewing them expeditiously.

D. Rule and Program Summary

This section briefly describes, in nontechnical terms, how the open market trading system would work under the model rule proposed in today's notice. It serves as a brief summary of the steps a source would take to generate and/or use a DER, including any limitations. It also describes what, when and how the source would need to tell the State about their DER activity. A brief description of EPA's enforcement strategy is also included.

1. Generating DER's

Any NO_X or VOC source could generate DER's under the OMTR. In contrast with traditional trading programs, where a source must accept a permanent tightening of applicable emissions reduction requirements in order to generate a continuing stream of emissions reduction credits, in the open market program a generating source would not change its legal emissions limitations. The source could generate DER's by any action that reduces its emissions per unit of production or operation (e.g., install pollution controls, make process changes, switch fuels). Qualifying actions may even be temporary (e.g., a temporary fuel switch); after the discrete period in question, the source would have no obligation to continue emitting below its legal limitations.

To be valid, DER's must meet the requirements of the model rule and of guidance regarding emissions quantification that will be issued by EPA. The DER's must be real, surplus, and verifiably quantified. The DER's must represent real reductions in ozone-forming emissions. In addition, they must be surplus, that is, reductions that were not otherwise required by existing regulatory requirements or accounted for in attainment or maintenance plans. DER's are emission reductions generated over a discrete period of time, measured in units of mass (usually tons). The generating source would be responsible for verifiably documenting the amount of DER's it had produced, and DER's would have to be measured through a valid quantification protocol.

To generate DER's, a source would first determine its baseline, which reflects what the source would have emitted during the generation period absent its DER generation strategy. In general, this would be determined by referring to either the emissions level that would be allowed by current law, or the facility's emissions that would have occurred based on recent actual emissions rates. After the baseline was ascertained, measurements would be taken and calculations would be made to determine the amount of DER's that resulted from the specific action taken to reduce emissions. This process must follow a valid quantification protocol developed in one of several ways as indicated below. The protocol would take into account an individual source's characteristics (e.g., rates of VOC and NO_X production, continuous or batch processes, etc.) and monitoring capabilities. A source could chose to follow a protocol that had been found to be previously acceptable, or it could forge a new protocol following criteria that EPA will issue in protocol guidance.

The generator would quantify its reduction by factoring relevant source-specific information into the quantification protocol to determine the amount of DER's generated. The generator must document DER's in a format that would allow enforcement authorities to verify them, to determine the user's compliance and, where necessary, to enforce in cases of invalid DER's. Once generated, DER's could be used at any later time for compliance with an eligible VOC or NO_X emissions reduction requirement. Like other emissions allowances recognized under the Act, they would not be the holder's property, but instead would be a limited authorization to emit the designated amount of emissions.

After a DER had been generated, the source generating the DER's would submit a Notice and Certification of Generation to the State where the generation had taken place. This notice must contain a certification, made under penalty of law, as to the accuracy of certain information, including:

(a) The name and location of the source that reduced emissions;

(b) The discrete time period over which the emissions reductions occurred;

(c) The amount of emissions reductions that occurred during the ozone season and the amount of reductions that occurred during other parts of the year;

(d) The unique identification number for each ton of DER's created;

(e) The emissions quantification protocols that were used to calculate and document the emissions reductions;

(f) Information on existing requirements, if any, to which the generator source is subject; and

(g) A signature of an authorized individual who is certifying under penalty of law that the above information is accurate and complete.

Certain actions described in the rule would not create DER's, such as:

(a) Facility shutdowns;

(b) Temporary or permanent production curtailments;

(c) Emissions reductions resulting from modifying or discontinuing any activity that is otherwise illegal;

(d) Emissions reductions that occur as the result of any applicable Federal or State requirement including compliance with MACT, BACT, LAER, and NSPS requirements, or emission reductions relied on by the State for meeting the ozone NAAQS; and

(e) Actions that occurred prior to the start of the relevant 1995 ozone season.

2. Using DER's for Compliance

Once DER's were generated, they could be transferred to any party for use to comply with eligible requirements. Anyone could hold, purchase and sell DER's. Intermediaries could act as DER brokers to further facilitate the market process. Any source could use DER's to cover eligible compliance obligations. Common uses for DER's might be: (a) To comply with specified NO_x and VOC emissions limits; (b) to cover emissions increases that currently are commonly legitimized by variances; or (c) as offsets under an EPA-approved major new source review regulation.

A source that desired to use DER's for compliance purposes over a specified period must determine the amount of DER's it would need. Thus, the source must estimate its DER requirement through a valid emission quantification protocol, similar to the process described for DER generation, except that the user source must project its underlying activity rate for the use period. The source must retire 10 percent of the DER's it uses; thus it must purchase a fraction more than it needed for compliance purposes in order to help ensure that the flexibility and economic benefits of the open market trading program would also produce a public health protection gain in each future year.

In order for a user source to use DER's for compliance purposes, that source must own such DER's before the applicable date for compliance. The user must notify its State at least 30 days prior to its first actual use of DER's of its intentions to use such DER's. This notice would not obligate the notifying source to use the specified DER's. The notice would give the State the opportunity, if it wished, to begin inspecting the validity of the DER's before they are used.

The source must "true-up" its original DER need estimate by using the appropriate protocol to determine its DER compliance requirement during or after the period in which DER's would be applied. When a source had actually used specific DER's, it must file a Notice and Certification of Use along with its regular compliance reports to the State no less often than once every year. This notice would become part of the documentation that the State would rely upon to verify that the user had met its compliance obligations.

The model OMTR would prohibit certain DER uses. Such prohibitions include: (a) To avoid penalties or enforcement actions by obtaining DER's after the fact of noncompliance; (b) for netting or other means to avoid NSR/PSD requirements; (c) to meet Act section 111 and 129 NSPS, LAER, BACT or MACT requirements; and (d) to meet requirements for motor vehicle emissions standards, reformulated gasoline, Reid vapor pressure standards, clean fueled fleets, employer trip reduction programs, or vehicle inspection and maintenance programs.

3. Time and Place Use Limitations

By definition, DER's must be used at a time after their generation. This is known as intertemporal trading. Intertemporal trading could occur, within the same ozone season, from one ozone season to a later one, or from the ozone season to a non-ozone season. However, DER's generated during a time outside of the ozone season could not be used to comply with any emission reduction obligations during the ozone season.

User sources must also comply with certain geographic restrictions to ensure that the new geographic distribution of emissions created by trading would not interfere with a State's obligation to maintain air quality or reach attainment of the ozone smog standard in a timely manner. Due to differences in the role of natural emissions and in how VOC and NO_x react to form ozone, the

proposed model rule places different geographic limitations on VOC and NO_x.

Under the model rule as proposed herein, VOC reductions generated outside any ozone nonattainment area may not be used for compliance inside any nonattainment area. NOx emissions generated outside a SIP's modeling domain (as defined by urban airshed modeling) may not be used for compliance inside the modeling domain. These limitations could be relaxed in some but not all State-specific OMTR applications due to an area's unique meteorology. If a State submitted appropriate justification, EPA would consider and expeditiously review any area-specific variations on the model rule's geographic limitations.

Consistent with these geographical limitations, interstate trading and use of DER's would be allowed and encouraged, so long as the relevant States had entered into agreements that allowed such transactions. Participating States must provide for an interstate DER tracking system so the States could protect against DER's being used more than once.

4. Reporting, Recordkeeping, and Public Availability

Sources must keep adequate and accurate records so as to ensure that the DER's are real, quantified, surplus and verifiable. In addition to the records they must create themselves, users would be expected to have pertinent records of DER generation from the generator to prove they held valid DER's. The user source then must hold such records for a minimum of 5 years after the DER's are used.

The notices that are submitted to the State must be made available to the public by the State under the appropriate State law regarding public access to such documentation. This requirement applies equally to both title V and non-title V sources. This will allow the public to monitor specific transactions and contribute to public confidence in the open market system.

5. Market Participants

Both sources that have and do not have title V operating permits could, and are encouraged to, participate in the open market trading program, especially as DER generators. One of the benefits of the open market program is that small stationary sources and mobile sources that are not subject to title V requirements could contribute to reducing overall pollution levels in an area. The Notice of Intent to Use and the Notice and Certification of Use must be filed with any applicable operating permit.

6. Protocol Development and Approval

One key to integrity in the operation of an open market system is accurate quantification of the amount of surplus DER's created, and accurate quantification of the amount of DER's needed to meet compliance obligations. For the program to be adequately enforceable by State and Federal authorities, these measurements or calculations require emissions quantification protocols that could be recognized by the State and the EPA for use in the open market program. All DER generation and use activities must be documented through the use of DER quantification protocols that either have been approved by EPA, or that correspond to EPA guidance on acceptable protocols. Typically, a protocol would specify the measurement methods, monitoring methods, calculation procedures, and documentation requirements for estimating or measuring emissions for both the source's discrete reduction strategy and its baseline. All protocols must include methods that are credible and replicable.

EPA-approved protocols could come into existence in two ways. First, EPA intends to issue EPA-approved protocols for a number of reduction strategies. Second, EPA would work together with States and industries to jointly review and approve quantification protocols for a variety of source types. As a separate action, EPA also plans to issue guidance on the development of an acceptable protocol. This guidance would lay out specific criteria that must be met by a protocol developed by a generator or user which had not already been approved by EPA. The EPA intends to issue this guidance by the time the model rule is finalized.

7. Enforcement

The user source would be responsible for complying with all applicable requirements, and therefore would bear the burden of demonstrating that the DER's it relied on were real, surplus, in sufficient quantity to meet its compliance obligation, came from an appropriate place and season, and met all other applicable requirements of the rule. The user would be subject to enforcement proceedings for insufficient or invalid DER holdings. The DER user, not the State, would bear the burden of proof that the amount of DER's purchased were sufficient to cover its compliance obligation including the environmental discount, and that the DER use met all applicable requirements of this rule.

From a compliance and enforcement standpoint, a lack of adequate and credible recordkeeping would be equivalent to a lack of creditable DER's. As stipulated in the Act, each violation (emissions limit or recordkeeping) would be subject to maximum penalty of $25,000 per day. Criminal sanctions could also apply as allowed under law. In assessing penalties, EPA enforcement policy does take into account the nature and degree of violation when determining what is an appropriate enforcement action.

8. Program Audit

At least once every 3 years, the State would be required to audit their open market trading program to evaluate the program's performance. The audit would include, but would not be limited to, an examination of the program's effects on requirements for rate of progress (ROP) and timely attainment (credits used compared to credits generated in a given year or ozone season), and the effects of reconciliation measures that might have been taken as a result of previous audit findings.

If the audit indicated a problem with implementing this rule, then the State must consider initiating measures to reconcile the problem. Possible reconciliation measures would include, but would not be limited to: (a) Enhancing monitoring requirements; (b) increasing the environmental benefit component of DER use, or limiting the use of DER's to compensate for the difference between actual emissions and the reductions needed to reach attainment; (c) implementing additional technology-specific emissions reductions; (d) increasing penalties, or (e) restricting trading.

The EPA would also perform a national audit based on the compilation of State audit reports and if necessary, would revise the open market program in accord with the audit's findings.

III. Discussion of Issues

This section provides more detail on the provisions of the OMTR and issues surrounding the development of an open market trading system and requests public comment on several issues. This section also discusses elements of the proposed model rule that States could modify to meet their unique needs. The EPA recognizes that States may develop variations on this rule that are better suited to specific local air pollution problems, and EPA will be flexible with respect to approving a variation to the model rule if the State provides an adequate and reasonable justification.

A. Regulatory and Contractual Liability in the Open Market

Currently, most emissions trades between existing sources are made through single-source SIP revisions that must be approved by both States and EPA. Pre-approval scrutiny of each trade is generally effective in ensuring that trading does not interfere with air quality requirements: For example, that the emission reductions and increases involved are calculated from appropriate baselines and are appropriately quantified. However, individual SIP revisions take considerable time and involve substantial costs for both the private sector and State and Federal governments. At least in part because of these transaction costs, the number of emissions trades between existing sources has been relatively low, and significant potential opportunities to meet air quality objectives at lower cost have not been realized.

The EPA's fundamental objectives in this proposal are to free up the market for a higher volume of cost-effective emissions trading while at the same time maintaining the relatively high level of quality assurance that the current system provides. To meet these objectives, EPA has used the following "design criteria" in designing the proposed open market trading rule. The proposed rule should:

(1) Support timely attainment and maintenance of the Clean Air Act's public health protection standards;

(2) Reduce private sector compliance costs, making it possible to better protect the environment at lower cost;

(3) Reduce governmental costs in administering an expanded emissions trading system;

(4) Make maximum use of private sector mechanisms for quality assurance (liability arrangements, contractual guarantees, insurance, third party services, etc.);

(5) Give potential market participants the ability to predict with reasonable certainty which emission reduction actions will be found valid and creditable by governmental authorities; and

(6) Provide the private sector with strong incentives to comply with all requirements while at the same time giving responsible ("good faith") market participants reasonable expectations on potential exposure to civil or criminal penalties.

The proposed rule, as already noted, is derived from the "open market" concept developed by the EPA-supported NESCAUM-MARAMA demonstration project and elaborated in a recent article.[2] This approach avoids the need for single-source SIP revisions by treating emissions trading as a compliance option, that is, as another means of compliance with applicable pollution control requirements contained in the State Implementation Plan (SIP).

At present, most SIP's establish emission limitations directly applicable to specific equipment and operations at facilities. Owners and operators of such facilities must comply with these emission limitations by installing emissions control equipment, making process changes, or changing fuels or other inputs. Failure to comply is a violation of State law and section 113 of the Clean Air Act and exposes the source to enforcement proceedings by the State and EPA. Citizens may also bring actions to enforce these obligations under section 304 of the Act.

Under the open market concept, sources would have the option of complying by purchasing appropriate amounts (tons) of discrete emission reductions (DER's) generated by others. The governmental role in reviewing emissions trades would be transformed from prior approval during SIP revisions to "post-hoc" scrutiny during compliance determinations. Eliminating pre-approval of reductions and shifting to review at the compliance stage would greatly free up the market and increase trading volume, thereby reducing compliance costs and benefitting the environment.

A key issue identified, however, in the NESCAUM-MARAMA demonstration project and in the above-cited article is how to maintain confidence that DER quality will remain high—that reductions will be taken only from appropriate baselines and rigorously quantified—as government involvement moves from prior approval to compliance auditing.

Maintaining confidence in the quality of DER's is critical from all perspectives. Regulatory authorities and the public need to know that pollution will actually be reduced as projected, and the private sector needs to know that the market will reward high quality reductions and reject defective ones. Yet detailed compliance audits are inherently conducted on only a fraction of sources each year, as limited governmental enforcement resources must be targeted at a range of high priority environmental problems.

In the stakeholder and interagency review processes conducted prior to this proposal, a number of options were put forward for maintaining DER quality assurance in an expanded emissions trading market. The proposal made today is a hybrid of these options that EPA has developed using the "design criteria" described above. The EPA believes this hybrid best serves the twin objectives of freeing up the market for a higher volume of emissions trading while maintaining sound quality assurance incentives.

1. Option 1: User Liability

The first option considered was put forth by the original developers of the open market concept. Building directly on the current regulatory structure, they contemplated that liability for deficiencies in DER's under the Clean Air Act and State air pollution laws would remain with the party who purchased and used the DER's as a compliance option, since that party had the original compliance obligation. The key concepts underlying this option are that (1) DER's are compliance products similar to pollution control equipment, and (2) as such the user source is responsible for compliance when using DER's just as it is when complying by use of control equipment.

Like sources using purchased control equipment or services, sources using DER's to meet their emission limits would be able to control their compliance risks by choosing carefully among vendors and by negotiating for appropriate guarantees, insurance, or indemnification provisions. Pollution control equipment and services purchased from vendors generally come with guarantees specified in contracts or implied under commercial law, or with specific insurance policies or indemnification agreements as negotiated by the parties. Pollution sources using purchased control equipment or services, however, remain responsible for their own compliance obligations with State and Federal pollution laws, and remain liable to enforcement authorities in cases of non-compliance, even if the non-compliance was caused by a shortcoming in the products or services purchased from a vendor. In that case, sources have recourse to contractual guarantees, insurance, or indemnification provisions. Through these provisions sources can return to compliance (e.g., obtain satisfactory equipment) and be compensated appropriately for damages.

Liability for compliance with State and Federal pollution laws and the

[2] Emissions Reduction Credit Demonstration Project, Phase II, Volume I Final Report, April 1995. Developing a Market in Emission Credits Incremental: An "Open Market" Paradigm for Market-Based Pollution Control; Richard Ayres, Bureau of National Affairs Environment Reporter, Current Affairs December 2, 1994.

prospect of enforcement for non-compliance encourage each source to pay attention to the quality of goods and services offered by prospective vendors of emission control equipment, fuels, and services. In the competition for sources' business, market forces favor vendors with great expertise, good track records for reliability, or the best guarantees. Less capable vendors, who expose their clients to greater risks of non-compliance, generally command lower prices—if they can get any business at all. Market forces would be expected to operate in the same way for DER's. In order to minimize risk, buyers would look for quality and favor DER's that present low risks of placing users in non-compliance. Users would remain responsible to enforcement authorities in cases of non-compliance, but would be able to use contractual provisions (guarantees, insurance, etc.) to shift the financial consequences to generators or intermediaries that sold them defective goods. The care users would take to reduce their compliance risks would help assure the quality of DER's for the benefit of both governmental authorities and the public.

Many participants in pre-proposal stakeholder discussions expressed support for this option of placing liability for DER validity on the buyer. Some participants, however, expressed concern that this option would not provide appropriate incentives for attention to DER quality if the seller and buyer are not in an independent, arms-length business relationship, such as when DER transactions are internal to a company or between companies that have close ties.

Still other participants expressed concern that buyer liability could create excessive uncertainties and risks for buyers. They predicted that buyer liability would reduce market activity and suggested other options.

2. Option 2: Retaining Pre-Approval Requirement

Several commentors recommended that EPA continue to allow trading only in reductions that have been pre-approved by governmental authorities. They contended that an active market could develop only if buyers have certainty that reductions offered on the market will be accepted by governmental authorities, and that this degree of certainty could be provided only by governmental pre-approval.

These commenters acknowledged, however, that the requirement for a source-specific SIP revision was an expensive and lengthy process for both industry and government and would remain a bottleneck preventing expansion of the market, especially given current governmental budgetary constraints. In response, these commenters suggested process changes such as limiting the time allowed for State review or dispensing with EPA review.

Other commenters, however, expressed concern that these process changes would present too high a risk of approving poor quality DER's. Governmental approval would be given despite reduced scrutiny of DER quality. Neither buyers nor any other party would have incentives to scrutinize the quality of DER's offered on the market once they were governmentally approved. These commenters expressed concern that this would lead to an influx of unsupported DER's, to the disadvantage of generators that were trying to follow the rules, and an increase in actual pollution levels.

3. Option 3: Splitting Regulatory Liability Between User and Generator

Other commenters suggested splitting liability for compliance under State laws and the Clean Air Act among the generators and users of DER's. Under this option, DER generators would bear full liability for the validity of the DER's they sold, and users' liability would be limited to deficiencies in how DER's were used (i.e., inaccurate calculation of a user's compliance "debit"). In other words, users could purchase and use DER's without any legal risk for deficiencies in the generation of those DER's. In a variation of this option, the user would have the limited obligation to make up shortfalls if compliance authorities discovered deficiencies in the DER's it relied on. Commenters stated that one of the advantages of this approach would be that each party would be held responsible for actions under its own control. The transaction costs associated with constructing legal arrangements to give the DER buyer information and certainty about DER generation activities (inspecting potential DER purchases and negotiating for guarantees or insurance) would be avoided, thereby expanding the volume of trading and the cost savings.

Proponents of this option acknowledged that buyers would have fewer incentives to inspect DER's offered to them, compared to the buyer liability option. They contended, however, that it would be possible to increase the frequency of governmental audits, and the size of penalties, enough to maintain DER quality assurance. Other commenters expressed concern that an increase in governmental auditing sufficient to preserve DER quality would be difficult in light of budgetary constraints, and that it would be difficult to convey appropriate market signals about potential penalties through case-by-case enforcement actions. Legal issues were also raised over whether State authorities could obtain jurisdiction over out-of-state generators, and on whether statutes of limitations with respect to generation violations would begin to run before the DER's are used.

4. Option 4: Reliance on Third Party Guarantors

Another suggested option is to allow independent third parties to guarantee the validity of DER generation and assume the compliance liability for invalid DER's. In this option, independent third parties would become subject to penalties under State laws and the Clean Air Act if DER's were deficient. This liability would give such third parties incentives similar to those of the buyer under Option 1 to inspect DER's carefully and choose those that are best supported. The user would remain liable for deficiencies in how DER's were used, as in the split liability option above.

Proponents indicated that this approach could be of special value when dealing with small sources that have the potential to generate cost-effective emission reductions, but that lack the knowledge or capacity to seize the opportunities on their own. Likewise, the availability of such third parties might be valuable to small sources that were potential users of DER's, but that lacked the necessary expertise to purchase high quality DER's on their own or the willingness to assume liability for defective DER's. Other commenters raised questions about the legal means by which such third parties would be made subject to regulatory liability, how to define an independent third party, and how to handle the potential bankruptcy of such a party.

5. Proposed Approach

The proposed open market trading rule adopts a hybrid of these options, as well as other measures to address concerns about incentives and uncertainties. The proposal is based largely on Options 1 and 4, while also requesting comment on the issues raised in Option 3. The EPA believes that the principle of buyer liability will work the best to assure DER quality. The EPA also believes that in addition to their major role through contractual mechanisms, third parties should be allowed to assume regulatory liability in certain circumstances. The proposal also reflects other significant features

intended to promote market activity by reducing the uncertainties associated with buyer liability.

Accordingly, under the proposed open market trading rule, sources may use DER's in lieu of direct pollution control measures to demonstrate compliance with their emission reduction obligations under State and Federal law. Today's rule proposes that the user source would be responsible to enforcement authorities for compliance. The EPA has taken four steps in this proposal to reduce the uncertainties and transaction costs associated with this liability structure. Included in these steps are provisions for third parties, in certain circumstances, to assume the legal responsibilities of a generator. In addition, EPA is considering and asking for comment on whether there are appropriate circumstances in which a third party could take on a portion of the legal liability of certain users, or liability could be divided between user and generator.

a. Generator Certification. First, the proposal would require generator sources to certify, under penalty of law, to the accuracy of the underlying factual information (e.g., the accuracy of monitoring and other data used to calculate the reductions), which supports DER's offered for sale. If subsequent investigation should demonstrate that such information was inaccurate, the generator would be subject to civil and, if appropriate, criminal enforcement. It should be noted that certification is a requirement to which pollution control equipment vendors are not subject, but EPA believes it is an appropriate requirement for DER generators in order to provide a significant added measure of DER quality assurance to prospective users, State and Federal authorities, and the public.

b. Guidance for Emissions Quantification Protocols. Second, EPA proposes to issue guidance containing criteria for emissions quantification protocols. Quantification of the emissions reductions that sources have generated and the amounts that are needed by users would have to meet the criteria in this guidance. In addition, working with the States, industry, and the environmental community, EPA proposes to create a mechanism for approving specific quantification protocols for priority types of generation and use activities. A number of such protocols would be drafted by industries, and others by EPA or States. They would be reviewed by a multi-stakeholder process prior to an EPA approval decision. The EPA believes these protocol guidance and specific protocols would give generators and users, as well as compliance authorities, a predictable "road map" for distinguishing DER's that have a high likelihood of being considered valid, from ones that are suspect or clearly inadequate.

c. Third-Party Relationships. Third, EPA proposes to encourage the emergence of a variety of third-party relationships that could help the market function. Within the context of Option 1, third parties could, through contractual arrangements, assume many important functions that would assist generators and users. Further, as suggested in Option 4 above, EPA proposes to allow third parties to assume the regulatory liability of generators in certain circumstances. Finally, EPA is considering and requesting comment on the possibility of allowing third parties to take on a portion of the regulatory liability of certain users.

(i) Third party contractual roles. Under the proposal, generators and users could enter contractual arrangements with third parties to perform a variety of important functions. For example, generators and users could hire technical and legal experts to improve their ability to create and purchase high quality DER's. Technical experts could help generators develop quantification protocols that conform to EPA guidance, and develop the data that plugs into such protocols. Lawyers could provide expert opinions on the applicable State and Federal requirements that determine a source's baseline. Similar technical and legal services could be performed for the user, both to determine the user's need for DER's and to pick the highest quality.

Third parties could also serve as brokers matching sellers and buyers. Some third parties may acquire their own portfolios of DER's and offer guarantees, insurance, or indemnification services to buyers.

Independent third parties could serve as a trusted source of expert opinions establishing the quality of DER's. Such opinions would not relieve the user of its regulatory liability under State law and the Clean Air Act, but they could serve to reduce uncertainty, distinguish high quality products, and build market confidence. The EPA specifically requests comment on whether an opinion by an independent third party should be required when the generator and the user are not in an "arms-length" relationship.

(ii) Third parties as generators. The EPA also proposes that, under defined circumstances, third parties could directly assume the regulatory liability of generators. Third parties could play an instrumental role when dealing with small batches of cost-effective emission reductions from smaller sources. The EPA recognizes that the requirement for generator certification could discourage participation by small sources with the potential to make highly cost-effective reductions. Buyers may also be reluctant to take on the task of inspecting numerous small DER offerings from such sources. Third parties may be more familiar with the emission reduction methods and the DER calculation protocols than the owners and operators of such generator sources. Third parties could offer the service of taking operational responsibility for performing and documenting emission reducing actions for such sources, thereby capturing inexpensive emission reductions opportunities that smaller sources would otherwise be unaware of, or that they would be unwilling to seize on their own given the requirement for generator certification. The third party could then take ownership or control of the reductions achieved, aggregate many small batches of DER's, and offer them for sale to users.

To promote such actions, EPA is proposing that third party aggregators of DER's from small sources could take on the responsibilities of generators under the rule in certain circumstances. Specifically, this could occur where the third party enters an agreement with the owner of the small source to take actual operational responsibility for performing and documenting the action that generates DER's. Under the rule, the third party would be considered an "operator" of the sources in question, for the purposes of the Clean Air Act. The third party, not the numerous smaller sources, would file the Notice and Certification of Generation and assume the legal risk associated with the generator's certification as to the accuracy of the information underlying its DER; the sources whose emissions the aggregator reduced would have no liability. The user would look to the third party operator, not the actual owners of those sources, for the necessary documentation and certification as to the validity of the DER's, and for appropriate guarantee or insurance provisions.

In order to qualify for this role, the third party also would need to demonstrate financial responsibility, in order to insure that it has an adequate stake in generating bona fide DER's, and that the neither subsequent users nor the environment bear an undue risk in case of fraud or bankruptcy. EPA solicits comment on what specific criteria for a

showing of financial responsibility should be set forth in the final rule, and whether any additional qualifications or requirements on such third parties would be appropriate.

(iii) Third parties as users. EPA is considering and requests comment on whether third parties could play a similar role on the user side. The EPA recognizes that, as on the generation side, some sources with the potential to reduce control costs by using DER's may nonetheless be unwilling to take on the regulatory liability associated with responsibility for the validity of the DER's. It has been suggested that the rule could allow a qualified third party, by agreement with the user source, to assume the user's liability under State law and the Clean Air Act for the validity of the DER's used. Under this suggested approach, the user would retain legal responsibility for the calculation of the amount of DER's needed for compliance, as well as all other aspects of how the user source is operated. The third party, however, would assume legal responsibility for the validity of the DER's acquired and used.

The EPA is considering and requests comment on this approach should be adopted, and if so, with what appropriate conditions. Specifically, EPA is considering and solicits comment on what conditions would be necessary to maintain DER quality assurance incentives and capabilities for compliance determinations and enforcement actions equal to those associated with user liability alone. For example, to ensure that the third party has the same motivation as would the otherwise liable user to review DER offerings with care and choose on the basis of quality, the third party would have to be functionally independent of the generator from which it acquired the DER's. The third party would also have to consent expressly to take on the legal responsibility of the user source for deficiencies in the DER's, and to being considered an "operator" of user source for that purpose. The user and third party would have to file a single, unified Notice of Intended Use. They would have to do likewise for the Notice and Certification of Use, which would have to include certifications under penalty of law by responsible corporate officers of both the user and the third party as well as to the accuracy of the facts underlying their respective portions of the documentation. The third party would have to acknowledge the jurisdiction of the user source's State, and that any statutes of limitations on DER validity run from the time DER's are used, regardless when they were generated. The third party would have to commit to be present and make records available, on the same basis as the user, present with the user itself, for any inspections or related interaction with compliance authorities. As on the generation side, a demonstration of the third party's financial responsibility would assure that it has a sufficient stake to motivate diligence in determining the validity of DER's, and would protect the environment from undue risks of fraud or bankruptcy. As above, EPA solicits comment on what specific criteria should govern a showing of financial responsibility. The EPA is also considering and requests comment on how this approach would affect compliance determinations and enforcement proceedings in terms of complexity, resource demands, and effectiveness.

d. "Good Faith" Purchasers. Fourth, EPA proposes to develop a penalty or enforcement response policy in conjunction with the final open market trading rule that would lay out in greater detail how EPA intends to respond when DER's are determined to be deficient, despite users' "good faith" efforts, and the criteria upon which good faith would be judged. Enforcement of the Clean Air Act has a number of objectives, including remediation of environmental harm and deterrence of further non-compliance. The penalty or enforcement response policy will address the case where a source has fully acted in good faith in the purchase of DER's, including exercising due diligence in the inspection and selection of those DER's, and yet the DER's are subsequently determined to be deficient by compliance authorities. The policy will make clear that EPA's focus would be on remedying the harm to the environment from deficiencies in the DER's (i.e., the harm from excess emissions). This could be accomplished by requiring the user only to purchase and retire a sufficient number of DER's (perhaps with a multiplier) to recoup the deficiencies in the DER's originally used. The EPA requests comments on the steps a purchaser might take to be considered a good faith purchaser and on the appropriate multiplier, if any, should be applied in cases where replacement DER's are to be acquired.

The EPA believes these four features of the proposal would provide generators, users, and government authorities with sufficient guidance and certainty so that an active market in high quality DER's would develop.

After careful consideration, EPA rejected Option 2 (pre-approval requirement). The EPA agrees with concerns expressed by some commenters that retaining prior approval would maintain the bottleneck in the current system, and that proposals to limit State governmental review time or dispense with Federal review would run too high a risk of giving governmental sanction to poor quality DER's.

It should be noted that nothing in the proposed model rule is intended to prevent a State or other authorities from examining the quality of a particular DER prior to the compliance determination phase. Indeed, the Notice and Certification of Generation and the Notice of Intent to Use would give a State the opportunity to review a particular DER at an earlier stage, if it so chooses. The EPA expects also that many sources may seek informal consultations with States or EPA on the appropriateness of an emissions quantification protocol, the correct application of a monitoring method, the applicable baseline requirements, or other issues. The availability of such informal consultations could play an important role in providing certainty and predictability to the market. The EPA intends to continue working with stakeholders to explore mechanisms for informal early review of particular DER's.

With respect to Option 3, eliminating the user's responsibility for the quality of the DER's it purchased would reduce transaction costs and thereby expand the scope of trading leading to economic and environmental benefits. It would also increase the importance of governmental scrutiny during compliance determinations as a check on DER validity and a means of ensuring achievement of the environmental benefits. Only a fraction of sources are subject to detailed compliance inspections each year. If users are responsible for making up deficiencies, they will have some incentive to inspect the DER's offered to them to assure that they are real, surplus, and appropriately quantified. Nevertheless, it is possible that more unsupported or invalid DER's would be sold. This would increase pollution, damage public health, and undermine confidence in the market. The EPA is also concerned that both of these approaches could put the most scrupulous DER generators at a competitive disadvantage as compared with others that may exercise less care in their DER generation activities, unless compliance determinations are an effective check on the supply of defective reductions. The EPA requests comment on these issues. The EPA also requests comment on how, under a split liability approach, States would address jurisdictional issues over out-of-State generators, or issues of responsibility for DER's generated in the past by sources no longer in business.

The EPA requests comments on all aspects of its proposed approach to liability.

B. DER Generation

1. DER Formation and Baseline

Under the proposed OMTR, participating sources may create reductions by reducing their emissions for a specific period of time below levels allowed by the approved SIP, State adopted rules (if more stringent and not yet in the approved SIP), applicable Federal requirements (e.g., NSPS), or historical actual emissions, whichever is more stringent. The source would not be required to remain at that new lower level permanently, but instead could reduce for a discrete time period. During that period, reductions may be calculated by determining the difference between what the source's emissions would have been under the baseline emissions rate (actual or allowable emissions without the DER generation strategy) and the actual emissions for the discrete period of operation at the new lower emissions level, times a measure of the source's operational level. The source would calculate its DER's in one ton units.

The generation baseline establishes a benchmark for what is surplus to all the source's applicable Federal and State requirements, including those contained in the area's SIP. Therefore, for sources located in areas where the attainment or maintenance plan is based on a source's actual emissions, the generation baseline would be the lower of the source's expected actual or allowable emissions. In areas that have fully approved attainment or maintenance plans which are based on sources' allowable emissions, the State has the option to let sources use their allowable emissions as the generation baseline. For sources not subject to any applicable VOC or NO_X requirements, and located in areas that are not required to have attainment or maintenance plans, the baseline would also be based on the source's actual pre-generation strategy emissions.

In some cases, the sources "actual" baseline emissions could be measured directly, for example, as the pre-control device emissions. In other cases, the baseline could be determined by reference to emissions rates for the two years immediately prior to the generation period in question, unless some other time period was deemed to be more representative of the operation of the source. In such cases, the expected actual emissions would be the product of the historical baseline emissions rate per unit production and the actual production during the generation period. The expected allowable emissions would be the product of the allowable emissions rate per unit production and the actual production during the generation period.

Some comments have expressed concern about the establishment of the emissions baseline for sources generating DER's in areas which have failed on a prolonged basis to submit and gain EPA approval of: (a) Measures needed to meet rate of progress (ROP) requirements, (b) attainment demonstrations, or (c) maintenance plans. These commenters have argued that if a State has not yet adopted the additional emissions control measures that would be necessary to rectify such a SIP deficiency, DER generating sources would be operating from an inappropriately high baseline. The commenters have suggested that steps would need to be taken to address such situations, for example, (a) barring further DER accrual by generators until the ROP, attainment demonstration, or maintenance plan deficiency is remedied, or (b) discounting DER generation by an amount proportional to the area's overall reduction deficiency.

Other commenters have argued that while a DER generator's baseline would be inappropriately high in such cases, all sources' baselines would be inappropriately high, whether the sources are participating in the open market program or not. These commenters believe that including in the OMTR a requirement to address such SIP problems by selectively targeting DER generators and users is unwarranted, since all sources reap an economic benefit from not having a lower baseline and tighter control requirements. They also believe that singling out open market participants would act to discourage participation in the open market system by creating undue regulatory uncertainty about the ability to create and use DER's, thereby sacrificing the efficiency gains provided by this regulatory approach. They have argued that States should rectify such attainment problems without singling out open market participants.

The EPA believes that both arguments raise valid concerns, and requests comments on whether the OMTR should require action to address DER generation in cases where States have such attainment problems, and, if so, what those actions should be.

2. Start Date for DER Generation

DER's that may be used for compliance under this model rule must have been generated after the start of the 1995 ozone season (May 1, 1995 in most cases) and must meet all other requirements of the model rule. One of the objectives of this model rule development process has been to make trading possible during the 1995 ozone season. Earlier dates were considered but rejected because of the potential to overwhelm the market with pre-existing reductions that by definition were not motivated by the prospect of creating a tradable product of value. Another objective of the rule is to create an incentive for sources to make additional reductions beyond those they would otherwise have made. It would not be consistent with this objective to give retroactive credit for actions taken before this rule was developed and which were made for other reasons. The EPA is also concerned that crediting earlier reductions could lead to an imbalance in the first years after a State program is in place. Thus, if a large-scale use of pre-1995 reduction stockpiles occurred in that period, before large-scale generation of new DER's had developed, it could lead to elevated ozone levels during the use years, creating human health consequences and jeopardizing an area's compliance with underlying Act requirements.

The EPA acknowledges that some stationary sources in the Northeast have participated in the NESCAUM–MARAMA Demonstration Project, and have made discrete reductions before the 1995 ozone season which they intend to sell as DER's. While EPA has acknowledged and encouraged these potential trades, they cannot fall within this model rule. These facilities may need to proceed through source-specific SIP revisions. The EPA will continue to work with the NESCAUM–MARAMA participants to process revisions expeditiously.

3. Converting ERC Activity Into DER Activity

The EPA recognizes that there are beneficial emissions reductions that will occur in the future under the current ERC program. Emissions reduction activity intended for ERC use would be creditable as DER's, provided that the activity met all applicable requirements of the OMTR. However, the same emissions reduction activity may not be used in both programs; the source would have to choose one program to the exclusion of credit in the other. Reductions made before the 1995 ozone

season by an activity approved as an ERC could not, however, be used as DER's.

4. Prohibited Generation Activities

a. Shutdowns & Production Curtailments. Under the proposed model rule, DER's would be generated by actions that reduce the rate of emissions of a source per unit of production. Typically, these actions would consist of installing control equipment, making process changes, or changing fuels or other inputs so as to reduce emissions per unit of production. The proposed model rule would not allow shutdowns or production curtailments to generate DER's.

Many participants in stakeholder meetings have argued that shutdowns and curtailments would not be undertaken, or hastened, to generate DER's (i.e., they would have happened anyway). The EPA has no evidence at this time that shutdowns and curtailments would occur earlier on account of the economic benefit derived from generating DER's. Shutdowns and curtailments generally occur due to economic conditions, and they do not result in an improved efficiency of emissions per product. In addition, EPA is concerned that for major sources under emissions rate limits, economic-related curtailments could be used to generate DER's with no requirement to offset higher emissions through use of DER's during full production boom periods. Therefore, EPA believes that in general, allowing DER's to be generated from shutdowns and curtailments could lead to increased emissions from sources using DER's without real, additional reductions having been made by DER generators.

As noted previously, a major purpose of this proposed rule would be to promote innovative approaches to controlling and preventing air pollution, involving the full range of major, minor, area, and mobile source sectors. The EPA believes banking of DER's created from shutdowns could provide a massive supply of inexpensive DER's that would inhibit investment by others in measures that actually reduce emissions per unit of production from sources that continue in operation. The EPA believes this glut of DER's from actions that would have otherwise occurred and that produced no additional reductions could also lead to emissions spikes and therefore jeopardize compliance with underlying Act requirements for attainment of the ozone standard.

In addition to concerns about the effect of shutdowns on attainment, EPA is also concerned with load-shifting that could occur when sources shut down. If small sources (e.g. gas stations or print shops) reduce emissions by shutting down, their economic activity will likely be picked up by new or existing sources in the same areas. Since emissions created by increased operating rates by other existing sources are not limited, and since new small sources are not subject to an offset or cap requirement, the net effect of allowing shutdowns to generate DER's would be to increase overall emissions.

The EPA does recognize some situations in which DER's generated from activities that appear to be shutdowns and curtailments might be consistent with an open market system. For example, for mobile sources, reductions in use levels should be allowed to generate DER's if such reductions occur in the context of a formal plan to shorten or obviate trips and are generated with an appropriate emission quantification protocol. Such use level reductions would not be considered curtailments. An example of a program that could reduce motor vehicle use levels is an employee commute option that generates emissions reductions beyond what might be required for an area under section 182(d)(1)(B) of the Act.

Another example would be the early automobile retirement program known as scrappage. The EPA does not consider mobile source scrappage to be a shutdown, and scrappage programs would be allowed to generate DER's under the proposed rule. This would be acceptable because scrappage programs conforming to EPA guidance actually would achieve earlier retirement of old, high-emission vehicles than would otherwise occur.

In the process of developing this rule, a number of industry and State groups offered other examples where shutdowns and curtailments might be consistent with an open market system. One example is the concept of allowing DER's to be generated from shutdowns and curtailments when such reductions can be captured within a "closed-loop" of existing and new sources. Facilities that replace small boilers with a central energy source and thus create fewer emissions might create a net environmental benefit through small boiler shutdowns. This differs from the more common shutdown case, where a facility closes and the production load could shift to another unrelated source. In general, establishing conditions by which closed loop or other potentially beneficial shutdowns could be considered in the open market program would add complexity to the proposed rule and still might be problematic with respect to the intent of the rule as outlined above. The EPA requests comments on language that would allow for acceptable, environmentally benign or beneficial exceptions to the common shutdown circumstances.

The EPA is also interested in public comment on whether a State that has an approved attainment demonstration or maintenance plan that does not rely on emission reductions from shutdowns and curtailments may permit such shutdowns and curtailments to generate DER's. In such cases, EPA believes that the use of DER's generated from shutdowns and curtailments would not jeopardize attainment, since the SIP would already contain enough emission reductions from other sources to satisfy the attainment demonstration requirement of the Act. Thus, it might be appropriate to allow States to credit emission reductions from shutdowns and curtailments.

On the other hand, except where shutdowns are used for new source offsets, air quality improves as sources shut down. Shutdowns are already available as offsets for new sources. In the major new source offset program, Congress decided that encouraging continued economic development in nonattainment areas by allowing emission reductions from shutdowns to offset new source emissions was worth the sacrifice of the natural improvement in air quality that results from sources that shut down. If existing sources are allowed to relax otherwise applicable emission limits by using DER's generated from shutdowns and curtailments, States would be giving up this built-in air quality improvement. The EPA believes that allowing DER's to be generated from shutdowns could be inconsistent with Congress' intent to encourage economic development, since the value of DER's generated from shutdowns would be expected, on the margin, to encourage sources to shutdown. The EPA is interested in comment from the public on this matter.

In the event that shutdowns and curtailments were allowed to generate DER's in areas with approved attainment demonstrations or maintenance plans that do not rely on such reductions, EPA requests comment on the period of time into the future that a shutdown source would be allowed to continue generating credit. The EPA also requests comment on the effect that allowing DER's to be generated from shutdowns and curtailments would have on incentives for owners and operators of existing, ongoing sources to invest in innovative pollution control or prevention measures. The EPA also requests comment on how to treat discrete increases in emissions that result from full production boom periods if discrete decreases due to production curtailments are creditable.

While EPA is proposing that the use of credits from shutdowns be restricted under the proposed open market system, this does not imply that such reductions cannot be used in other programs. Emission reductions from shutdowns remain creditable in the offset program for major new sources discussed previously, and can be used in emissions budget systems. In emissions budget systems, the integrity of the agreed emissions budget cannot be violated by emissions credits from shutdowns and curtailments, since the closed system ensures that the stated emissions target will be attained and maintained.

The Department of Defense (DoD) was especially concerned about the impact of the rule on military base closures and the civilian redevelopment of closure properties, as well as the ability of DoD to use shutdown reductions to support other military installations of other federal activities. In particular, DoD highlighted the fact that most redevelopment of closed bases occurs over a long period of time in a phased process. Credits for shutdown reductions are not only needed at the time of the shutdown, but need to have an extended life to be available to support actions 5, 10, or 15 years in the future.

The EPA believes that its current new source review (NSR) rules and soon-to-be proposed changes to those rules will support base closure redevelopment needs. For areas with approved attainment demonstrations, current NSR regulations allow the use of emission reductions that are contained in the emissions inventory at time of use—including emissions from shutdowns and source curtailment—to be used to comply with the NSR offset requirement.

In areas without approved attainment demonstrations, current EPA regulations restrict the use of shutdown/source curtailments to be used as NSR offsets where the reductions occur prior to submittal of the permit application by the new source (with the exception of replacement facilities). However, EPA is already planning a regulatory change as part of the NSR update package that proposes to relax this restriction in the Federal NSR requirements. This package is scheduled to be proposed this fall. This would mean that under EPA's proposal, emission reductions from shutdowns held by DoD or the local redevelopment authority (LRA) would be available until needed for NSR offset purposes.

The DoD was also concerned about the availability of shutdown reductions to satisfy general conformity requirements. Since the preamble of the general conformity rule references the NSR rules to define offsets, any emission reductions that are consistent with EPA guidance regarding NSR offsets are also available for conformity offsets. This means that any mobile or stationary source emissions increase needing conformity offsets may obtain them from both mobile or stationary source reductions, including reductions resulting from shutdown or curtailments if such sources are contained in the emissions inventory at time of use. The EPA also confirms conformity offsets from shutdown (closure reductions) could be retained by DoD or the LRA indefinitely, freely transferred, and used for conformity purposes when needed. The EPA requests comments on these determinations.

b. Overcompliance With An Alternative Emission Limit. In many States, sources are given flexibility from RACT requirements when the State grants them an alternative emission limit (AEL) that is less stringent than the RACT standard. The OMTR would not allow sources to generate DER's by reducing emissions below levels required by an AEL but still above levels required by the otherwise applicable RACT standard. Sources subject to AEL's could, however, generate DER's by reducing emissions below the levels associated with the otherwise applicable RACT standard.

C. DER Use and Transfer. 1. Potential Uses. One key to a strong DER market and to minimizing compliance costs is enhancing the demand for DER's created by allowing as many and varied uses as possible. One use of DER's would be as a substitute for compliance with an applicable RACT standard. However, EPA expects that there would be many other uses as well. The philosophy of the model OMTR is that any use not prohibited in the rule is a valid use. The EPA encourages States that adopt this OMTR to adopt this approach.

a. Use by Regulated Sources. The EPA believes appropriate use of DER's by sources would include, but not be limited to:

(1) Use for delayed RACT compliance;

(2) Use as compliance insurance margins to cover uncertainties in the value of DER's or variations in process emissions or control device efficiency;

(3) Use as a substitute for reductions to be achieved through certain non-statutory mobile source requirements not otherwise prohibited in the rule;

(4) Use as offsets for new stationary sources used either by a new source or by States as an incentive for economic development;

(5) Use as part of a noncompliance settlement to compensate the environment for past violations.

b. Advantages to States. States could also benefit from the adoption of an open market program because the existence of DER's could give the State more flexibility in attainment planning. For instance, a State could eliminate the granting of alternative emission limits or variances, or regulate emissions from occasional small-scale research and development activities. Sources could comply with applicable requirements through the use of DER's. These measures could increase rule effectiveness.

2. Special New Source Review Requirements. Any proposed major stationary source or major modification applying for a permit to construct in an ozone nonattainment area may employ DER's to satisfy the requirements for offsets. Offsets are governed by EPA and State regulations for new source review (NSR).[3] Nothing in today's notice would alter EPA NSR requirements or exempts owners or operators from compliance with applicable preconstruction permit requirements under section 173 of the Act or regulations contained at 40 CFR 51.165(a).

Today's model rule establishes specific criteria which the State must ensure would be met if DER's were used for offsetting new source emissions. In general, emissions reductions used as offsets must be real, surplus, enforceable, permanent, and quantifiable. In addition, section 173 of the Act sets forth specific requirements for emissions offsets which must be satisfied by a proposed major stationary source or major modification.

Section 173 of the Act requires that the emissions reductions be Federally enforceable before the construction permit may be issued (section 173(a)(1)), and achieved by the time the source or modification commences operation (section 173(c)(1)). In using DER's for offsets, it would be necessary for the new major source or modified source to secure a series of DER's over the life of the source. The EPA believes that it is reasonable to require that sufficient DER's be obtained to offset the source's emissions on at least an annual basis. The first year's DER's should be

[3] 3 States have rules concerning the preconstruction review of major stationary sources and major modifications applying for permits to construct in nonattainment areas. These rules must be consistent with the minimum requirements set forth under Federal regulations at 40 CFR 51.165(a).

submitted to the permitting authority prior to the public notice announcing the proposed construction permit. The determination of the amount of offset needed must take into account the prescribed offset ratio for the nonattainment area of concern. The permit must contain an enforceable condition requiring the source, each year, to have demonstrated to the permitting authority that, at that time, it held sufficient DER's to meet offset needs for at least the next year of operation. Failure to obtain any required offsets in a timely manner would be a violation of the source's permit.

Section 173(c)(2) of the Act prohibits emissions reductions otherwise required by the Act from being used as offsets. For example, reductions required to meet RACT, MACT, acid rain reductions, and the phase-out of chlorofluorocarbons pursuant to statutory requirements are not creditable as emissions offsets.

3. Special DER Use Restrictions. The proposed model OMTR would limit the use of DER's with respect to certain generation and use characteristics of the DER. Relevant characteristics include pollutant type, the modeling domain or nonattainment status of the area where the DER was generated, and the time of generation. The proposed OMTR would provide for these limiting provisions, in part, to assure that in nearly all cases the uses would be helpful toward reducing peak ozone concentrations. That is, the connection between generation and use must be correct, considering the distance between the generator and user sources and the patterns of pollutant transport in the relevant area (direction). States would be encouraged to assess their own unique situations, and devise an OMTR that contains special DER use limitations that are consistent with relevant modeling analyses that are in the SIP.

a. Geographic Restrictions. Ozone smog formation is a difficult problem that has resulted in various approaches aimed at resolving it. Prior to the 1990 amendments to the Act, ozone attainment plans largely focused on emission reductions in nonattainment areas. More recently, attention has been focused on the issue of long-range transport and its contribution to ozone formation and to violation of the ozone standard. Ozone precursor pollutants mix and react together as they travel long distances over several days, thus creating a serious problem. For example, high ozone concentrations in the northeast occur on scales of over 1,000 km and can persist for many days. Our current understanding of ozone formation suggests that the relative importance of VOC and NOx control varies with the location and scale of the ozone problem. In general, VOC control is most likely to be effective in urbanized nonattainment areas, and less effective in the surrounding countryside where local natural VOC emissions can overwhelm those from human activities. On the other hand, NOx control tends to be most beneficial over larger distances. Therefore, the model OMTR would restrict VOC DER use to the same area in which the DER was generated, and would permit NOx DER trades to occur within the larger modeling domain.

While considering the general relationships among VOC, NOx and ozone formation, it is also important to consider unique local effects that might be characterized in a specific SIP modeling analysis. DER uses should be consistent with relevant modeling analyses that are in the SIP to preserve the integrity of the SIP. In these modeling analyses, distance and direction effects are considered by analysis of various episodes, meteorological regimes, and boundary conditions. SIP's may define locations where emission reductions are most helpful, marginal, or even counterproductive.

Some SIP's may have a regional NOx strategy component. A regional strategy means that emission reductions are planned to occur across a large area that may include sources located both within the local urban airshed modeling domain and outside the modeling domain. A modeling domain is the geographic area covered by an air quality model used to support an attainment or maintenance demonstration. The domain can be thought of as a rectangular box which is superimposed over the area being modeled. For the current (1994) revisions to State implementation plans (SIP's) for ozone, 23 modeling domains have been defined for different locations in the United States. Typical domain size ranges from 100 km x 100 km to 350 km x 350 km. Specifications for each of the 23 modeling domains are available through the U.S. EPA's Technology Transfer Network (TTN). In addition, maps should be available from the State agency having lead responsibility for the modeling analysis. Lead State agencies are also identified in the TTN.

In the regional strategy knowing the precise location of each emissions reduction is not as critical as understanding the general distances and directions emission reductions travel from the nonattainment area. In such cases, the modeling analysis shows ozone reductions in the nonattainment area through both local emission reductions within the modeling domain and by reduced regional, boundary concentrations coming in to the area due to emission reductions outside the modeling domain.

The above considerations are reflected in SIP attainment demonstration or other modeling analyses conducted in support of the SIP. Thus, in some cases a SIP's control strategy may simply call for local reductions in a nonattainment area and, in other cases the SIP may be supported by modeling analyses which indicate that both local and regional emission reductions are needed.

In general, EPA would view NO_X DER's used within the same urban airshed modeling domain as they were generated as acceptable as long as they: (1) Are consistent with the regional concept in the SIP strategy, and (2) address distance and direction concerns. The EPA acknowledges that in special cases, NO_X trades within a modeling domain could result in higher NO_X emissions in an urbanized area, and may increase already high ozone levels in that area; in this case, the use of NO_X DER's in that area might not be consistent with attainment demonstration and in such cases should be disallowed.

In addition, EPA believes that DER uses would be generally beneficial where NO_X or VOC DER's generated inside a nonattainment or maintenance area were used by sources not located in a nonattainment area, maintenance area or modeling domain. Trades which crossed or were entirely outside of modeling domain boundaries could be ineffective where the distances are great or the direction of pollutant transport showed little benefit in reducing peak ozone concentrations from such a trade.

Because of the complexity that would be required of EPA to list in the model rule all possible combinations of distance and direction for NO_X and VOC trades in all areas wanting to adopt open market trading programs, the model rule proposes to allow NO_X DER use only if the NO_X DER was generated within the same modeling domain, and VOC DER use only if the VOC DER was generated in the same area. States would be encouraged to assess their own unique situations, and propose an OMTR that allowed NO^{T2X} trades from outside the modeling domain at an appropriate discount, or allowed VOC trades with adjacent nonattainment areas, after taking into account and justifying the distance and direction considerations.

In addition, States could choose to adopt rules which allowed NO_X trades without discount where certain distance and direction criteria were met. For example, EPA would approve a State OMTR that allowed trades without discounting for distance and direction where the rule included the following criteria. Regarding distance, the generator and user sources should be within either 200 km or 2 days transport of each other. The transport criterion should be determined by examining the average wind speed which occurs on days with ozone exceedances near the user source. In all cases, the direction of the prevailing wind near the generator source and the user source should be within a ± 22.5 degree sector of a straight line between the two sources. Average wind speed and prevailing wind direction should be based on data from National Weather Service stations near both the generator and user sources. The prevailing direction and average speed should be calculated over the period 7 a.m. to 7 p.m. This period captures the time of day when emissions are typically highest, as well as to include the portion of the day when surface wind measurements are most representative of overall transport within the mixed layer. In calculating the prevailing wind direction, one could include those days with exceedances near the user source during the years used for classification of the nonattainment area. As an alternative, one could base the direction calculation upon all days in the "ozone season" for any year used for classification purposes in the area of the user source. For distances or directions which extended beyond these criteria, EPA believes that discounting may be necessary.

In general, EPA encourages States to propose their own geographic requirements based on the characteristics of their areas. The model OMTR would contain generic restrictions that States could modify to more appropriately meet their air quality objectives. The EPA is committed to working with States in creating the most beneficial geographic restrictions for their specific areas.

b. Interpollutant Trading. Interpollutant trades are defined as trades that occur between the two classes of ozone precursor pollutants, VOC and NO_X. The available scientific and modeling information suggests both positive aspects and risks with an interpollutant trading program. Certain trades have the potential to be complementary, leading to greater reductions in ozone than would otherwise occur (e.g., a facility sells NO_X DER's to a buyer who operates a VOC source in a rural area within the Northeast Ozone Transport Region). Others, however, may be counterproductive. For example, if a modeling analysis in the SIP identified a specific geographical area as an area where VOC reductions were needed and NO_X reductions were not helpful over a local or regional scale, then a reduction in NO_X emissions in that area should not be exchanged for required reductions in any other area. Since EPA cannot account for all possible site-specific cases where interpollutant trading is beneficial, the proposed model OMTR would not include interpollutant trading.

States are nevertheless encouraged to submit as variations on the model OMTR, rules of their own that would permit interpollutant trading if adequate prior analyses had been performed which indicated that the nature of trades meeting specific criteria was consistent with expected lower ozone concentrations. These prior analyses might be performed by the State(s) or by others in support of one or more SIP's. Although a user could perform modeling analyses to support each proposed use of specific DER's, this would not be required. In general, interpollutant trading rules should encourage excess VOC emission reductions in geographic locations where ozone is limited by available VOC or encourage excess NO_X emission reductions in locations where ozone is limited by available NO_X. In the event a user and generator were in different States, review responsibility should be consistent with the policy on interstate trades. Where such interpollutant trades were permitted by States, the applicable rule should address distance and direction considerations as they applied to allowable interpollutant trades. The EPA would expeditiously review any such variations.

c. Seasonal Restrictions. Whereas DER's generated in the ozone season might be traded to meet emissions requirements either during or outside the ozone season, DER's generated in the non-ozone season could be used only to meet non-ozone season emissions requirements. Using DER's during the ozone season that were generated outside the ozone season should not be allowed since such uses clearly would run counter to programs designed to attain or maintain the ozone standard and to meet ROP requirements. Ozone season reductions are the only ones effective in reducing peak ozone concentrations and are needed then. Thus, the rule would not allow DER's generated during a time outside of the ozone season to be used to comply with any air quality obligations during the ozone season.

The time of year in which areas experience ozone concentrations above the standard varies with location. In general, areas with greater intensity of sunlight will experience longer ozone seasons. Thus, southern areas tend to have longer ozone seasons than northern areas of the country. The EPA has defined the ozone season for each State at 40 CFR part 58, Appendix D. The purpose of this definition is to set the time of year during which States must monitor ozone concentrations. Ozone violations are not expected to occur outside the defined ozone season.

4. Prohibited DER Uses

The proposed model OMTR prohibits several uses of DER's for a variety of statutory and policy reasons. The following sections explain the rationale for each specific prohibition, and where appropriate, seek comment on specific issues relating to the prohibition. In general, EPA requests comment on any DER use that would be expressly prohibited by the proposed model OMTR. Comments that explain in detail how EPA could allow the prohibited uses given the language in the Act and the rationale for current EPA policies would be particularly helpful.

a. Compliance With Certain Mobile Source Requirements. The EPA believes that compliance with national mobile source programs (i.e., national exhaust and evaporative emission standards for cars, trucks, and nonroad equipment under sections 202 and 213 of the Act, plus any national fuel standards under section 211 of the Act) cannot be avoided through the use of DER's generated by other control measures. Some of these national mobile source control programs have internal averaging, banking and trading provisions, and EPA is currently examining whether more flexibility can be built into them. However, the statutory provisions by their terms appear to preclude compliance through DER's generated from other sources. In addition, using DER's generated outside of these programs (e.g., between different mobile source programs) would be inappropriate in instances where reductions associated with these programs occur nationally, and stationary and area source DER's generated in a specific region would be used to increase emissions nationally. The EPA is currently considering whether DER's generated regionally can be credited toward meeting same-source national requirements within a specific program (e.g., a scrapped outboard engine could create a DER in the national marine engine average standard structure).

The EPA also believes the Act would not allow the use of DER's generated from other programs to meet the requirements of certain regional or local mobile source control programs. Many local or regional mobile source control programs, such as vehicle inspection and maintenance under sections 182(b)(4) or (c)(3) of the Act, employer trip reduction programs under section 182(d)(2)(B) of the Act, or clean fuel fleet requirements under section 246 of the Act, have provisions that appear to preclude compliance through DER's generated from other sources. However, unless prohibited by other provisions of the Act, DER's could be used to meet any regional or local mobile source requirements that are in addition to those specifically mandated by the Act. The EPA requests comment on whether the Act would allow the use of DER's to meet Federal mobile source requirements and whether EPA should adopt such an approach.

The EPA believes that emission reductions generated in the context of an existing averaging, banking, and trading (ABT) program specific to a particular mobile source program should not be used to generate DER's. The same rule applies to fuel producers. The reason for this restriction would be to avoid double use of DER's, especially since the State may not be aware of the use of the ABT DER in the context of the relevant program.

The EPA is concerned about quantifying DER's generated for upstream and downstream emissions reductions strategies. An example of an upstream activity is fuel distribution emissions—providers of natural gas may seek to generate a DER to reflect reductions in gasoline distribution emissions that result from sales of natural gas for alternative fuel vehicles. In this case, the use of an additional clean fuel vehicle does not necessarily take a known quantity of gasoline out of the conventional fuel distribution system. However, these kinds of emission reductions may be allowed to generate DER's if an adequate quantification method can be devised and approved by EPA. The EPA solicits comments on whether and under what conditions these emission reduction strategies should be allowed to generate DER's.

b. Compliance With Certain Technology Standards. Today's proposal is consistent with the EIP rule (59 FR 16696 (1994)) in that DER's could not be used to meet Act sections 111 and 129, new source performance standards (NSPS), best available control technology (BACT) standards, or lowest achievable emissions reduction (LAER) standards.

The EPA believes it is important to begin investigating whether compliance flexibility and costs savings can be offered to new sources. In this regard, the Agency has proposed in the model rule that DER's be used for offsets that satisfy new source review requirements. However, EPA questions whether additional flexibility and cost savings can be achieved by allowing sources subject to NSPS, BACT or LAER to utilize the open market program to meet these control technology requirements. In certain cases, the compliance requirements for NSPS, BACT or LAER may inhibit new low-pollution facilities from replacing older, high-pollution facilities as quickly as would have occurred otherwise. If DER's were used to lower the economic hurdle in these cases, both the environment and the economy would be better off in the long run.

The EPA requests comment on how to allow the use of DER's under the open market program to meet NSPS, BACT and LAER requirements.

c. Compliance With Toxics Standards. Today's proposal would not relieve sources participating in the open market trading of the obligation to meet all requirements under section 112 of the Act. Standards promulgated under section 112 require sources to meet maximum achievable control technology (MACT) standards for air toxics. Often, section 112 standards apply to the same emissions point at a facility as RACT requirements. For example, a RACT requirement and a MACT requirement could both require control of an emissions point to a level achieved by a flare. In such a case, the source could not use a DER to meet the RACT control requirement because the MACT standard imposes an independent obligation to achieve the specified level of control. This ensures that trading would not result in higher levels of hazardous air pollutant emissions from a source than are permitted by Federal air toxics control requirements.

d. Avoiding New Source Review. While allowing the use of DER's to satisfy the requirement for offsets, EPA believes that it would be unlawful to allow DER's to be used to avoid new source review requirements altogether. Therefore, the model rule would specifically prohibit the use of DER's to "net out" of review.

In addition, sources that had previously agreed to operational limitations in order to avoid the new source review requirements, could not use DER's to subsequently increase their emissions to major source levels, and thus circumvent the provisions requiring retroactive review as a major source or major modification.

e. Use To Avoid Penalties. The proposed model OMTR would require sources to purchase DER's before using them. A user could not defer purchase until after failing to comply. The EPA believes allowing such a retroactive acquisition of DER's would encourage sources to avoid their compliance obligations until such time as they were determined to be out of compliance. However, as described elsewhere in today's preamble, EPA does not wish to preclude the purchase of DER's as part of a settlement agreement for a violation or as a potential component of EPA's penalty policy.

f. Use To Increase Over 1990 Emissions Levels. The EPA recognizes the possibility that a source may want to use DER's to allow that source to relax current costly compliance obligations. Such use of DER's may, in some cases, allow a facility to emit levels of pollution greater than levels accounted for in the 1990 emissions inventory. The EPA requests comment on whether in order to prevent excessive degradation of air quality near a particular source the OMTR should prohibit sources from using DER's to revert to pre-1990 levels. The EPA acknowledges that it may be difficult to effectively enforce such a provision since the State may not know with certainty the lower of actual or allowable emissions from a particular source prior to 1990.

5. Use for Conformity Offsets

The EPA's General Conformity rule allows the conformity requirements to be met by a Federal agency obtaining emissions offsets (40 CFR 51.858, 93.158). The rule requires the offsets to come from within the same nonattainment or maintenance area.

The definition of emissions offsets in the conformity rule is intended to assure that offsets within the air programs are calculated and credited consistently and that the term is used the same in the conformity rules as in the EPA NSR program. All offsets must therefore be quantifiable, consistent with the applicable SIP attainment and ROP demonstrations, surplus to reductions required by—and credited to—other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the time-frame specified by the program. DER's used in accordance with the OMTR could meet these requirements. Thus, the current conformity rule allows DER's to be used as conformity offsets where they occur

in the same nonattainment or maintenance area.

Since the purpose of conformity is to assure that Federal actions are consistent with SIP's, SIP's which explicitly allow the use of DER's should logically allow the use of DER's as part of their conformity SIP. That is, DER's which meet the SIP requirements should also be considered to be DER's which conform to the SIP. Thus, if a State adopts an OMTR into their SIP, such DER's should be available for conformity offsets.

6. Use in Place of Variances

Many States currently provide for source-specific variances in the form of compliance extensions and alternative emissions limits for circumstances where it would be economically or technically infeasible to install controls. States are encouraged to consider discontinuing variances in areas where open market trading exists. Several States have already included such provisions in their proposed EIP's. Instead of granting variances, the State could achieve universal application of a RACT standard and allow sources that might otherwise be granted variances to comply through use of DER's. Discontinuing variances has the potential to improve "rule effectiveness" by allowing more timely rule compliance. This benefit could be reflected in attainment demonstrations or maintenance plans, if approved by EPA.

7. Holding DER's Before Use

The model OMTR would require that DER's intended to be used by sources for compliance purposes must be held before the intended use period. This means that a particular DER generation activity must be completed prior to the start of the use period. To meet this requirement, a stream of DER's generated from an ongoing generation activity could be broken and parcelled prior to the start of the use period. This approach ensures the benefits of retrospective quantification described elsewhere in today's preamble. Under the OMTR, near-simultaneous trades similar to ERC trades could occur. For example, two facilities could arrange beforehand a series of transactions where one facility made reductions that were creditable to another facility. The EPA believes this type of transaction could facilitate same-season trading.

However, this near-simultaneous transaction must comport with the 30-day advance Notice of Intent to Use requirement. One way to enable this transaction would be to prearrange such transactions 30 days in advance and maintain a 30 day lag-time between the continuous generation and use of the DER's. Another method might be to make an exception for this special transaction, such that steps are taken to assure the benefits of retrospective quantification while allowing near-simultaneous trading. The EPA requests comment on how near-simultaneous trading could occur or be improved in light of the 30-day advance notice requirement.

The EPA recognizes that the near-simultaneous use and generation might increase transactions costs since the Notice and Certification of Generation and the Notice of Intent to Use, as well as the underlying generation and use documentation, would have to accompany each transaction. While these notices could be made routine and could be kept in electronic form, EPA requests comment on procedures that could be used in the open market trading program without compromising the program's enforceability, that maintain the benefits of retrospective quantification, but result in reasonable transactions costs for the sources that wish to engage in near-simultaneous trading.

8. Contribution to the Environment

The final economic incentive program (EIP) rules (59 FR 16690 (1994)) and guidance establish as a goal for all EIP's that they be designed to benefit both the environment and the regulated entities. The rule and guidance requires States to design programs that would meaningfully meet this goal, while providing flexibility to the States in determining how best to accomplish such benefit-sharing in the context of each specific program. Requiring that at least ten percent of the DER's traded be retired would meet this benefit sharing goal.

The EPA believes this ten percent requirement is justified because the OMTR has the ability to greatly reduce costs to regulated industry and it is fair that some of those savings should be used to achieve further emissions reductions. Such a discount is clearly appropriate in the case where intertemporal trading is permitted. Intertemporal trades can increase the risk of emissions spiking, which in extreme circumstances could, in some years, negate the benefits of the early reductions provided by banking. The discount decreases the risk of spiking, and provides additional confidence that a retrospective approach to auditing the effects of the program will be sufficient.

Therefore, EPA would approve the component of a State OMTR that required a user to retire any specific percentage of at least ten percent of the DER's it purchases for compliance use.

9. Potential Market Participants

An active market with a large number of participants helps to promote economic efficiency in air pollution control. Subject to the limits specified by the rule, any source that emits NO_x or VOC in an area that adopts an OMTR could participate in the open market system as a DER generator, and any source subject to a VOC or NO_x emissions reduction requirement could participate as a DER user. The open market system would provide an incentive for VOC and NO_x sources that have traditionally not been regulated to make pollution reductions. Large sources, small sources, area sources, mobile sources and non-title V sources could all participate.

The EPA anticipates that DER's will be handled much like any other tradeable emissions reduction. They could be bought and sold by service-providing intermediaries, brokers, or even speculators. DER's could also be purchased and permanently or temporarily retired solely for environmental benefit by environmentally minded individuals or charitable organizations.

D. Characteristics of DER's

1. DER Life

The maximum length of time between DER generation and use is the DER life. The proposed OMTR places no limit on DER life. The EPA considered a variety of approaches to limiting DER life, and concluded that longer lives promote market stability and diminish the risk of emissions "spiking." Market confidence increases as the life increases, because DER holders are assured that barring unusual circumstances, their DER's will not "die" before they are needed for use. Spiking risks appear to diminish in proportion to longer DER lives because the timing of DER use presumably becomes more random and less tied with anticipated DER expiration. DER's with unlimited lives would also require less recordkeeping and tracking burdens.

In recognizing the value of long DER lives, EPA found no obvious basis for any particular number of years that DER's should last. Any limit to DER life—however long—might encourage DER's being stockpiled for future use, which creates the risk of spiking. Moreover, no procedural or environmental problems have been found to date with the unlimited lives granted for allowances in the acid rain trading program. The EPA is therefore

inclined to adopt the same convention for DER's in the open market program. The EPA requests comments on whether and for what reasons a long finite life might be more appropriate than an unlimited DER life.

2. Limited Authorization to Emit and DER Limitation or Termination

Just as under the Title IV SO2 emissions trading program, the OMTR would not confer property rights to the DER holder. Section 403(f) of the Act states:

> An allowance allocated * * * is a limited authorization to emit sulfur dioxide * * * Such allowance does not constitute a property right. Nothing in this subchapter or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. (42 U.S.C. 7651b)

Congress included this requirement to ensure that allowance holders understood that they were barred from claiming a governmental taking under the 5th Amendment of the U.S. Constitution. Like the acid rain SO2 allowances, DER's would not be property, but would be limited authorizations to emit the regulated pollutant. Property status is unnecessary to secure a stable commercial setting for DER trading and could produce undesired and perverse results, such as requiring a government agency to compensate the owner of a pollution source when its emissions are limited. A tradeable reduction derives its value wholly from the regulation under which it was created. DER holders could exercise a specific license to use DER's in the manner set out under the model OMTR.

Program audit and reconciliation provisions in the model rule would authorize the participating air pollution control agency to limit or terminate DER use in extreme circumstances. States should consider this an option only when other options have failed to provide for meeting the State's underlying Act obligations. Although EPA would not expect this to occur, and would expect that the program will achieve real and cost-effective emissions reductions without having to resort to DER limitation, this contingency measure must be available to provide confidence that States will make continued progress toward their air pollution control goals.

E. Notices, Reporting and Recordkeeping

As with all environmental compliance programs, appropriate reporting and recordkeeping would be necessary to allow for the proper enforcement of all applicable requirements and the tracking of the overall compliance program. In addition, there is a need for the public to obtain access to sufficient information to monitor the performance of industry and government in meeting their obligations. In an emissions trading program of this type, these reports are essential for ensuring the integrity of the system and the confidence of the public that air quality goals are being met.

Each record that must be kept, or report that must be filed, puts a resource burden on the entity required to produce it. Therefore, it is important to reduce the amount of recordkeeping and reporting to the minimum necessary to ensure a high-integrity market. Three notices would be considered necessary: (1) A notice of generation of DER's, (2) a notice of intent to use DER's for compliance purposes, and (3) a notice of use of DER's for compliance.

1. Notice and Certification of DER Generation

A DER generator would be required to file a Notice and Certification of DER Generation with the State containing information on the creation of DER's. This notice must be submitted within 90 days after a generation action is complete, or 1 year after commencement of the generation action, whichever is sooner. A responsible corporate officer must certify under penalty of law that the information in this notice is true, accurate and complete, based upon information and belief formed after reasonably inquiry.

This notice would provide potential buyers, the States (in their role as prospective compliance authorities), and the public the opportunity to review the records concerning the methods (protocols) used to generate reductions, the specific data (emissions rates, production volumes, etc.), and the relevant baseline (lower of actual or allowable) to verify that the DER's are real, surplus, and accurately quantified. Second, this notice, coupled with the user's responsibility to report a DER use, would serve as the necessary "tracking" record to assure that a specific DER was used only once, since the tracking system should uncover the case of multiple use of a ton with the same serial number. Third, the notice would provide pertinent information for audits of the overall emissions trading program by the State.

To provide systematic certainty and integrity to the program, the State would assign a unique serial number to each ton of reduction. This would allow a subsequent Notice and Certification of DER Use to be matched to the exact tons which were generated and ensure that such tons came from a relevant geographic location and were used only once. Each State could establish its own numbering system, or could collaborate with other States to design a regional or national system.

2. Notice of Intent to Use DER's

The Notice of Intent to Use DER's for compliance purposes would be required in order to alert the State and public that a source intended to use DER's. The State and the public would have the opportunity thereby to examine a DER compliance strategy prior to use and prior to the possibility of any environmental harm. The notice must be filed at least 30 days prior to the source's first use of DER's and renewed at least annually in cases of continued or repeated use. This notice would serve to ensure that a prospective user held sufficient DER's prior to use. It also would allow the State to consider the level of inspection oversight to employ with the user. This notice only signals intent to use DER's; a notifying source would not actually have to use them.

As part of their Notice of Intent to Use, States may want to require sources to submit the price paid for each DER. The EPA believes that knowledge of DER price could serve to assist States in determining which DER's were high quality and which were low quality. Therefore, price could serve as a signal to target a State's enforcement resources. For example, a generator would be likely to charge premium prices for DER's they created that were supported with high quality documentation, whereas a generator of a less supportable DER might tend to lower its DER price in order to compete. The lower-priced DER in this context would denote a lower quality, or higher risk product. Of course, in other instances low price may indicate no more than that the generator has found a low-cost control opportunity. Nonetheless, price might serve as a signal to a State to examine specific DER's more carefully during compliance reviews. The EPA requests comment as to whether price should be a required submission in the model rule.

3. Notice and Certification of DER Use

The Notice and Certification of DER Use would be required in order to provide the State with information on the actual amount of DER's used by a particular source for compliance purposes. It would include information on the methods by which both the amount generated and the amount needed for compliance purposes were calculated. A duly authorized corporate officer must certify under penalty of law that the information in this notice was true, accurate and complete, based upon information and belief formed after reasonable inquiry. Based on receipt of this notice, the State could conduct compliance determinations and inspections to ensure that the source had met all of its obligations through the use of DER's. This notice is essential for the purposes of compliance assurance and enforcement.

No action would be required by the State when it received a notice, other than to make it publicly available as discussed below. The Notice and Certification of Generation and the Notice and Certification of Use, however, would be the State and Federal authorities' main compliance and enforcement tools for generators and users of DER's.

To lessen the paperwork burden on sources, the information in each of the proposed notices has been reduced to the minimum necessary. However, the source would be required to keep full records of all of the documentation associated with the generation and/or use of DER's at their facility.

4. Notice of Intent to Generate Rejected

The EPA has considered creating a Notice of Intent to Generate which would be filed before any generation activity, but prefers not to require it in the model OMTR. Proponents advocated the notice so as to provide the State with advance notice of the time period over which DER's would be generated and the method that would be used to generate them ("Emission Reduction Credit Demonstration Project," Phase II, Volume I; Final Report, April 1995). Proponents cited reasonable justifications for such a notice. The notice could provide some preemptive assurances against invalid DER generation, and hopefully could result in a higher level of scrutiny which would lead to a system with enhanced environmental integrity. However, EPA believes this benefit is outweighed by the resource burden required to be placed on each participating source and State, since the notification is, by definition, a non-binding assertion of intent that some facilities may and will ultimately decide not to follow. Although the model OMTR would not require a Notice of Intent to Generate, a State may decide that in its particular case that the benefits of the notice outweigh the burdens. Therefore, EPA would approve specific OMTR's that require this notice.

5. Public Availability of Information

Adopting the model rule into the SIP would replace the need for single-source SIP revisions. Such SIP revisions, however, serve the purpose of providing the public with notification of each proposed trade. Without some other vehicle for public notice, the public would not be aware of DER trades. The EPA believes public confidence is essential to the success of the open market program. Members of the public have a legally recognized role in compliance assurance and enforcement through the citizens suit provisions under section 304 of the Act. The public must have fair access to the information related to DER generation and use activity.

The proposed model rule would require the State to make all of the notices received available to the public. For sources with a title V permit, the information must be filed with or attached to the permit and made available where the permit is available. For non-title V sources, the State would make the notices available in a similar manner to the title V sources. Facility documentation that is not included in, but supports the information in, the notices must be made available through the State's "freedom of information" or other laws, if applicable, relating to the public's access to a source's compliance documentation.

The EPA is concerned that not all States will have laws that allow the documentation underlying the notices to be reasonably accessed by the public if it is not submitted to the State along with the required notices. The Agency considered a range of requirements that would facilitate the public availability of such documentation. At one end of the range, the Agency considered a rule requirement for sources to make the documentation available to the public upon request. At the other end of the range, the Agency considered a rule requirement that all source documentation be submitted to the State along with the required notices so that the State could make the information available. A middle ground option would require sources to submit the underlying documentation to the State, but waive the requirement if the source agreed to make the documentation available to the public upon request. The Agency requests comment on the appropriate way to ensure that the public has reasonable access to a source's compliance documentation without unreasonably burdening either the source or the State.

F. Federally Enforceable Operating Permits

The purpose of the title V program, codified in 40 CFR Part 70, is to ensure effective implementation of all applicable requirements of the Act for those sources subject to a Federally enforceable operating permit. The title V program rules impose various important administrative and procedural provisions (e.g., permit fees, opportunity for public participation). The title V program does impose a limited number of requirements relevant to source operation that supplement the applicable requirements of the Act in order to enhance their implementation. For example, a source's title V permit must specify methods for monitoring and certifying compliance, and must address these if the applicable requirement fails to otherwise provide them. The provisions of the Part 70 rule that provide for individual source emissions trading under permit-specific caps and for trading under a SIP are currently the subject of rulemaking.

If adopted into a State's SIP, the provisions of the OMTR become part of the underlying requirements reflected in a source's operating permit. Therefore, changes in a source's operating permit language are not necessary for the source to participate in the open market program. However, for the benefit of both the source and the public, language that specifically addresses the ability of the source to comply with applicable requirements through emissions trading could appear in the permit. The EPA intends to issue permit writing guidance that would include language on open market trading that could be incorporated into individual permits.

G. DER Registries

Open marketplace participants would require access to information that enabled them to make accurate and informed decisions about the supply, demand, quality and expense of DER's. This information could be efficiently transferred among participants through one or more registries that sent and received relevant DER information. Registries should provide convenient and inexpensive public access, should not interfere with the ability of "small" market players to participate, and should help assure that specific DER's are not used more than once.

Comprehensive, high-quality information should be readily available at reasonable cost to all participants and the public. Such information might include: DER source listings, generator source type, location, contact name of DER holder or holder's agent, DER

generation period, DER price, specific use restrictions if applicable, generator and user nonattainment area classification, and DER user's needs and requirements.

The EPA also believes that small market players, i.e., generator or user sources that generate or use relatively small market quantities, should not be disadvantaged by registry access requirements or the listing fee structure. The EPA does not wish in any way to discourage small sources from taking advantage of the benefits of open market trading.

The EPA has addressed the issue of double-counting of DER uses through the proposed rule's notice requirements. States must ensure that unique identification is assigned to each ton of DER's generated and reported in the Notice and Certification of Generation that each generator source would be required to submit. States could then check that a specific DER was used only once by cross-referencing DER use notices with the DER generation notice. This check would be more complicated in a case where use occurred in a State other than the generator source's State. Therefore, the proposed OMTR would require that States that allow such uses must have a memorandum of understanding (MOU) or similar agreement approved by the EPA, which facilitates checking for double-use of DER's.

While EPA recognizes that this function might best be performed through a national registry, a question remains as to whether EPA, State governments, or the private sector should provide these services. The EPA is inclined to encourage registry development in the private sector. For resource and efficiency reasons, EPA believes the private sector is a more appropriate choice than EPA. Thus EPA requests comment on (1) whether the private sector should provide such services; (2) whether registries should be subject to regulation to assure access and coverage of relevant information; (3) whether EPA or the State should operate registries; and (4) whether a national registry, as opposed to multiple regional or local registries, is necessary for the open market program to function properly.

H. Protocol Development and Approval

A key to integrity in the operation of the open market trading system is accurate quantification of the amount of surplus DER's created and of the amount needed to meet compliance obligations. Emissions quantification is generally divided into two conceptual components. First, emissions quantification protocols specify the type of data needed on emissions rates and operating rates (e.g., monitoring methods, emissions factors, production rate or other activity measures) and address other critical methodological issues (e.g., data quality and statistical considerations). Second, specific data must be developed pursuant to such protocols and used to calculate specific results. Quantification protocols can be defined to varying degrees of specificity in advance of particular emissions reduction actions. The actual data used in particular cases, naturally, can be developed and evaluated only case-by-case.

A number of cross-cutting factors must be considered regarding the development of emissions quantification protocols. On the one hand, both emission sources and compliance authorities have strong interests in certainty. Federal and State authorities want to be sure that methods are technically sound and that sources can be held to follow them. Sources want methods they can use with assurance of predictable outcomes at the time of compliance determinations. Based on these concerns, some State and industry stakeholders have urged that protocols be reviewed and approved by EPA before DER's are introduced into the market. This would give both sources and compliance authorities a common yardstick with which to gauge the validity of DER's and the greatest certainty of outcomes, without requiring redundant resource investment by multiple States.

On the other hand, a protocol pre-approval requirement would greatly strain governmental resources and significantly dampen development of the open market system. Given the variety of source types eligible to participate and the variety of emissions reduction strategies available to them, dozens (possibly hundreds) of specific quantification protocols would be needed. Resource constraints on EPA and States could severely limit the number of such protocols that could be developed and approved in the near future, even with the benefit of partnerships with industry and others. Many DER generation and use actions could be delayed or precluded by the unavailability of pre-approved protocols and the lack of a route for proceeding without such protocols.

In response to these cross-cutting considerations, EPA has tried to develop a middle ground that provides a sufficient measure of certainty and predictability with due regard for governmental resource constraints and the need for flexibility to adapt to new situations. The EPA intends to issue guidance containing criteria for acceptable emissions quantification protocols. The criteria would set forth meaningful standards for the kinds and quality of data required to support the calculation of amounts of emissions reduced by generators or needed by users. DER Generators and users would be able to employ these criteria to develop specific quantification protocols for their applications. Compliance and enforcement authorities would be able to use these criteria to determine whether submitted protocols, and associated data, are sufficient to establish compliance. The guidance would be issued with the final model OMTR and revised and expanded as necessary from time to time. Generators and users would be able to rely on, and would be held to, the guidance in effect at the time they generated DER's or at the time they determined their need for DER's to meet compliance obligations, respectively.

In addition, EPA intends to create a mechanism for working with States, industry, and the environmental community to develop and approve specific quantification protocols for priority types of generation and use activities. It is envisioned that some such protocols would be drafted by industries, and others by EPA or States. They would be reviewed by a multi-stakeholder process prior to an EPA approval decision. The EPA believes that in many cases emissions quantification protocol development may not be a large additional burden. This could be especially true for protocols that determine the amount of DER's needed to be in compliance, since user sources subject to emissions limits may be already familiar with the task of evaluating their emissions levels.

The EPA specifically requests comments on two variations on this basic approach. In both cases, sources would develop their own protocols subject to EPA's protocol guidance criteria where no pre-approved protocol existed. Where EPA-approved protocols existed, however, two options could be followed. In one case, a source would be required to use the pre-approved protocol unless it obtained EPA's approval of an alternative protocol. In the other case, a source would be allowed to use an alternative of its own design in lieu of the pre-approved protocol, so long as the alternative conformed to the criteria in EPA's protocol guidance.

The model rule would allow State OMTR's to incorporate EPA's protocol guidance and specific pre-approved protocols by reference. In this way, a source which generated or used DER's would be on notice that it was legally bound by the protocol guidance or specific protocols (as applicable) that were in effect at the time of their generation or use action. Incorporation by reference would provide fair notice and binding effect while avoiding the need for continual SIP revisions as new specific protocols were adopted and as EPA's protocol guidance was revised. In the interest of assuring enforceability, EPA is also considering whether each EPA-approved protocol and/or the EPA protocol guidance should be incorporated directly into State SIP's and requests comment on the sufficiency of the incorporation by reference approach.

The EPA acknowledges, however, that there are risks for both sources and authorities associated with allowing operation under protocol guidance as proposed. Generators would be allowed to introduce DER's into the market based on specific protocols that they devised pursuant to the guidance, without advance approval. Compliance agencies would have to determine the protocol's consistency with the guidance at the time of the compliance determination, after sources had made use of the reductions. Despite the fact that the proposed rule assigns users the burden of proof of DER validity, it may be more difficult at this stage for compliance authorities to reject DER's based on unsound methodologies. Further, at least a portion of the resource burden associated with evaluating protocols in advance would be shifted to State and Federal compliance authorities later in the process. The EPA requests comment on these issues.

The EPA believes this combination of protocol guidance and specific protocols would give generators and users, as well as compliance authorities, a predictable "road map" for distinguishing DER's that have a high likelihood of being considered valid from ones that are doubtful or clearly inadequate. The EPA requests comment on all aspects of this approach.

I. Meeting Related Federal Requirements

The Act requires SIP's to include provisions to meet specific rate of progress (ROP) requirements applicable to certain ozone nonattainment areas under section 182. The Act also requires SIP's to provide for the attainment and maintenance of the NAAQS. SIP's must include specific emissions limits within a nonattainment area to meet ROP and, in moderate or above nonattainment areas, as well as certain marginal areas, the SIP must require RACT. SIP's may also include modeling analyses which result in emissions limits over an area larger than the nonattainment area—the modeling domain—as needed to attain the NAAQS. Emissions trades between sources far apart could cross multiple nonattainment areas and modeling domains and, thus, impact ROP, RACT and attainment requirements contained in more than one SIP.

As noted above, the proposed rule would limit certain DER uses with respect to pollutant, modeling domain, and nonattainment area. These provisions recognize the regional nature of the ozone nonattainment problem and the specific limitations are intended to help assure consistency with any attainment or maintenance plan and ROP requirements.

In addition, the model rule would require an audit of the trading program to evaluate, among other items, the effect of the program on the attainment demonstration and ROP requirements. The provisions would require a retrospective look at the effects of the trading program at least once every three years. Where an inconsistency with the attainment or maintenance plan or ROP is determined by the State, the State must institute measures to correct the problem.

1. Attainment and Maintenance Plans

The EPA recognizes that the intertemporal use of DER's may, under certain circumstances, place pressure on an area's attainment requirements. If numerous DER's generated prior to the attainment date were used near the attainment date, the additional emissions from sources that avoided otherwise required reductions could lead to violations of the NAAQS and delay attainment.

In addition, emissions trades between sources far apart could cross multiple nonattainment areas, States, and modeling domains and, thus, impact ROP and attainment or maintenance plan requirements contained in the SIP's.

The validity of attainment and maintenance plan modeling analyses could be eroded by trading if the location and amount of emissions significantly changed from the initial plan assumptions. Such shifts would add uncertainty to predictions of the ozone levels expected on peak ozone days. In a worst-case scenario, reductions created during non-episodic conditions could be used during episodic conditions, exacerbating peak ozone levels.

The EPA must evaluate these potential planning concerns in light of section 110(l) of the Act, which provides that EPA—

> shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of this Act.

Whether DER use would interfere with an attainment demonstration depends on numerous factors involving the amount, timing, and location of trades. Limitations in the model rule (e.g., spatial limitations) could reduce the risk of such interference. Based on available information, EPA does not have evidence at this time that would lead it to believe that an overly large number of DER's will be used during the year of an attainment deadline, or at any other time that could precipitate exceedances of the standard. Rather, it seems reasonable to assume that DER's will be generated fairly steadily as opportunities for better controls arise, in response to continuing demand by DER users. Moreover, certain sources may require use of DER's over a long period of time; under these circumstances, it is doubtful that the intertemporal or spatial aspects of the OMTR would interfere with attainment. The EPA acknowledges, however, that generation of DER's could be bunched at particular points in time, such as new control deadlines, by sources that are able to implement controls prior to the required date. Also, use of DER's could be bunched just after such deadlines. If this phenomenon occurs on a large enough scale and at a particular time, attainment could be jeopardized. On balance, EPA has concluded in this proposal that current information does not establish a sufficient risk of this scenario to constitute interference with attainment. Although the open market trading program adds an element of uncertainty to the attainment planning, attainment demonstrations have many other unavoidable uncertainties which may include growth projections, biogenic emissions, mobile source emissions, rule effectiveness, model boundary conditions, and model precision. The EPA invites comments on its analysis and conclusions on this point.

It is possible to imagine trades that could adversely affect a SIP's attainment or maintenance strategy by creating "spikes" over permissible aggregate emissions levels. The mere possibility of such events does not mean that the program would necessarily interfere with attainment planning. It does, however, offer support for the need of periodic trading program audits to monitor trading.

2. Rate of Progress (ROP) Requirements

ROP requirements must be met in nonattainment areas. Section 182(b)(1)(A) of the Act, applicable to ozone nonattainment areas classified as Moderate or higher, provides that the SIP—

shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this Act.

Section 171(l), applicable to all nonattainment areas, contains a similar requirement. Section 182(b)(1)(A) further requires a 15 percent reduction in VOC by the end of 1996. Section 182(c)(2)(B), applicable to areas classified Serious and higher, generally requires a 9 percent reduction in VOC or NO_X for each 3 year period thereafter, until attainment.

An area's success in meeting ROP requirements depends on many factors, including growth rate, rule adoption schedule, and control effectiveness. In many cases, trading would clearly not impact ROP: for example, in areas not covered by ROP programs; in areas trading NO_X emissions and affected by VOC-only ROP programs; for same pollutant trades within a single nonattainment area; and for trades involving emissions reduction from sources in one nonattainment area over one ozone season. In addition, where the SIP's nonattainment area reductions were greater than ROP requirements, VOC trading within that margin would not affect ROP and, thus, would be acceptable. In general, EPA believes that an audit program should be part of a State's ROP planning, because, like attainment planning, it may be affected by trades under an OMTR. The intertemporal aspect of trades, as well as trades across nonattainment areas, raise the possibility that under certain circumstances, trading could jeopardize ROP.

The EPA has made use of a computer model which allows a rough approximation of the impact of intertemporal trades on attainment and ROP plans, under various simplified assumptions about overall market activity and some alternative policy choices. As discussed above with respect to attainment planning, hypothetical circumstances may arise in which large quantities of DER's are generated in year 1 and used in year 2, or generated in one area and used in a neighboring area, to a degree that interferes with reduction targets in year 2 or in the neighboring area.

However, for much the same reasons discussed above with respect to attainment planning, EPA believes it reasonable to assume that intertemporal trading will not be of the magnitude necessary to interfere with the 1996 and subsequent ROP targets. For the same reasons, EPA believes it reasonable to assume that OMTR trading will not cause annual emissions spikes that may interfere with the section 182(b)(1)(A) requirement concerning annual reductions as necessary to attain. In any event, EPA believes that even if annual "spikes" were likely to occur as a result of an OMTR program, this requirement should be interpreted in light of the purpose of the OMTR, which is to encourage early reductions in exchange for an opportunity to trade the DER's so generated. If year 2 emissions are higher than in year 1 because DER generation causes emission reductions to occur a year early, EPA would not conclude that DER use interfered with the section 182(b)(1)(A) requirement. The EPA invites comment on its analysis and conclusions concerning ROP.

3. RACT

Act section 182(b)(2) requires a SIP revision implementing RACT for VOC sources for ozone nonattainment areas classified as "moderate" and higher. Section 182(f)(1) imposes the same requirement on NO_X sources. The Act does not define RACT; instead, EPA defines RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762 (1979)). VOC RACT has traditionally been met on a 24-hour basis unless the State has shown that a longer averaging time is needed because of recordkeeping difficulties or control infeasibility. Many RACT rules adopted by States include emissions rate limits based on daily or 30 day averaging times.

For many years, EPA has interpreted RACT as a performance standard, which normally manifests itself as an emissions limitation based on a particular control technology, as opposed to a requirement for the technology itself. The EPA has applied RACT on an aggregate basis in the EIP rule, so that some sources may meet RACT limits through averaging (59 FR 16706 (1994)). However, under the model OMTR, DER's that were generated before a RACT compliance deadline could be used after the deadline. This raises the possibility that stationary sources subject to RACT requirements, in the aggregate, would not meet their otherwise applicable SIP RACT limits in the period after the RACT compliance deadline.

The EPA believes that it has the discretion to define "reasonable available control technology" to allow intertemporal averaging that may occur around a RACT compliance deadline under the OMTR. In the EIP rule, EPA considered air quality factors in determining whether stationary sources subject to RACT could emit at levels higher than levels otherwise deemed RACT if the excess emissions were more than offset by reductions among non-RACT sources. The EPA concluded that this system was consistent with the definition of RACT because the higher emissions levels of the RACT sources would be considered to be reasonable in light of the exceptional environmental benefits of the additional offsetting reductions.

A comparable analysis applies in the case of the OMTR. The OMTR would encourage early reductions by both RACT and non-RACT sources in year 1. In year 2, DER use might cause higher-than-current RACT levels of emissions. However, because DER generation would have provided early environmental benefits in year 1, and because 10 percent of the DER's used in year 2 would be retired for environmental benefit, EPA could conclude that the emissions levels in year 2 continue to reflect RACT.

J. Enforcement Issues

1. Calculation of Violations

The proposed rule provides for the calculation of violation days as consecutive days with a DER shortfall after first taking into account all valid DER's. This standard is applicable when emissions or emissions rates are measured on a daily basis. For example, if a source exceeds its emissions rate for 10 days and can demonstrate that it held sufficient DER's to cover its emissions overages for only the first 5 days, the source would be subject to penalties for the last 5 days. In circumstances when sources use a longer period of time for measuring emissions (e.g., a 30 day average period), violation days would be calculated based on the number of days of the measurement period for which there is any DER shortfall. For example, if a source measured emissions over a 30 day period and it was determined to have had a shortfall of DER's beginning any day during the measurement period, the enforcement action and penalty calculation would be for 30 days of violations. The EPA believes that this would encourage market participants to develop better, more accurate emissions measurement methods that will enable

sources to measure emissions on a daily basis.

2. State Compliance Determinations

Sources subject to the title I permit requirements would be required to submit compliance certifications annually. States monitor compliance of other stationary sources on a periodic basis. This rule would not impose a particular time period or frequency for States to review the validity of DER uses. However, it is EPA's expectation that States would develop inspection plans which address both generator and user sources in a manner consistent with EPA's Compliance Monitoring Strategy and other applicable guidance. In addition, because the integrity of the open market trading program relies so heavily on retrospective review, it is likely that EPA would identify the OMTR as a national priority in the early years of implementation. As a result, States would be expected to address a wide range of OMTR participants in their inspection planning. In this regard, DER use would be treated exactly the same as other air pollution control programs. The EPA solicits comment on whether a particular time limit within which to review particular DER uses should be imposed, in light of the fact that OMTR is a new program that carries risks concerning, for example, the quantification of DER's.

K. Program Audits and Reconciliation Measures

The OMTR would require States to conduct periodic audits of the open market trading program and implement reconciliation measures if appropriate. The State must evaluate and report on the following program elements:

(1) The amount and timing of emissions reductions (e.g. DER's used compared to DER's generated in a given year or ozone season);

(2) Compliance by generators and users;

(3) The effect of the program on temporal and spatial assumptions in the attainment demonstration and ROP plans;

(4) The effect of trading on emissions of hazardous air pollutants; and

(5) The effects of remedial measures, if applicable, implemented as a result of previous audit findings.

Unlike the EIP requirement (59 FR 16700 (1994)), under the OMTR program, reconciliation measures would not have to be automatically executing, and therefore, an appropriate "trigger" for the automatic execution of reconciliation measures would not be necessary. However, in the event the program audit revealed problems attributable to the trading program that were likely to persist, EPA encourages States to adopt remedial measures.

The following list of contingencies should be considered depending upon the nature of the problem that is uncovered by the audit:

(1) Restrict trading (limit trading so that the difference between DER generation and use is reconciled in a one-year period); increasing the environmental benefit component of DER's or limiting DER's or portions of DER's to compensate for the difference between the projected and actual emissions inventory;

(2) Enhanced monitoring (increase monitoring or quantification requirements for facilities in the OMTR program to better determine impacts on progress and attainment from the participating sources);

(3) Implement specific additional emissions reduction measures; and

(4) Increase enforcement and/or penalties (for use in the case where the discrepancy between actual and projected data is related to non-compliance with the OMTR program).

Audits must occur at least every 3 years, coinciding with a ROP milestone determination, or, if none applies, simply every three years after State adoption of the OMTR.

In conjunction with the triennial audits proposed above, EPA would work cooperatively with States that adopt open market programs to assess on a three-year basis the nationwide performance of open market trading programs. Using the results of State audits, an analysis would be prepared to assess the open market program's effectiveness. In the event that the triennial assessments showed that programs based on the OMTR jeopardized particular areas' ability to attain the NAAQS, to demonstrate required progress, or to meet other Act requirements, then EPA could issue specific SIP calls or, in the extreme case, adjust the OMTR program to compensate for such shortcomings.

The EPA solicits comment on all aspects of the audit requirements, in particular: (1) The frequency of the audits (more or less frequent than every three years); (2) the components of the audit program that should be required; (3) whether a mechanism for triggering reconciliation measures should be required; and (4) which, if any, reconciliation measures should be required.

L. Interstate Trading

The proposed OMTR limits interstate trades to areas which have Memoranda of Understanding (MOU's) to assure the success of the trading program in each State. This provision recognizes the regional and interstate nature of the ozone nonattainment problem and the specific limitation is intended to help assure consistent compliance programs and facilitate information exchange between the States.

After States adopt the model rule, sources might wish to effect trades across State lines. Such VOC trades could occur within interstate nonattainment areas; for NO_X, modeling domains are frequently interstate. A mechanism would be needed to assure that an emissions reduction in one State was recognized in another State and that trades were made consistent with the requirements of the respective State's rules. Further, a trading program needs enforcement provisions that assure proper monitoring and enforcement in all participating States. Therefore, EPA believes that States must sign a MOU or equivalent document. The MOU must include the following provisions:

(a) The State where the generator is located must agree to provide the State where the user is located in a timely manner with all relevant information it possesses concerning the DER's and the generator, including, but not limited to, information on the generator's SIP limits and permit, as well as a copy of the notice of generation proffered by the DER user;

(b) The user State must agree to provide the generator State in a timely manner with all relevant information, including the notice of intent to use and the notice of use;

(c) The State where the generator is located must agree to notify the State where the user is located as to whether the DER has been used previously;

(d) The State where the user is located must agree to enforce its individual State emissions requirements as modified by any valid trades.

The EPA solicits comment on all aspects of the interstate trading issue, including whether States should be permitted to include interstate trading only after EPA approval of its MOU's with other States.

M. Effect of VOC Trading on Emissions of Air Toxics

Many volatile organic compounds (VOC's) are listed as hazardous air pollutants (HAP's) under section 112 of the Act. Emissions of these toxic pollutants are often reduced incidentally by compliance with VOC limitation. Citizens groups have been concerned that by relaxing site-specific VOC limitations, VOC trading programs might lessen public health protection from air toxics at some facilities. The

EPA is considering whether open market trading programs should contain safeguards (beyond the continued requirement to meet section 112 standards) to reduce the chance that a facility using off-site DER's in lieu of meeting otherwise applicable VOC limits, would have higher HAP emissions than if it directly met the VOC limits with on-site controls.

Overall, EPA believes that open market trading programs would encourage quicker reductions of VOC emissions, including HAP's that are VOC's, by reducing the cost of Act control requirements and providing incentives for early reductions. This could reduce aggregate risks from toxic air emissions.

At the facility-specific level, however, results may not be geographically uniform. For example, if a facility emits VOC's that are toxic air pollutants, and buys DER's to satisfy a RACT requirement, the facility's emissions of air toxics would be higher than if the facility had installed controls. Conversely, if the facility chooses to make extra emissions reductions and sell them as DER's, toxic emissions from the facility should be lower than without trading.

The EPA has considered several options for dealing with potential changes in toxics emissions as a result of open market trading. The first option would require all sources participating in the open market system to disclose to the public when DER generation or use would cause HAP increases (or forgone decreases), and that States should retroactively study the effect of open market VOC trading on aggregate and facility-specific hazardous air pollutant emissions.

A second option would be for EPA to prohibit a source from using a DER for RACT compliance if the effect would be to increase hazardous air pollutant emissions.

A third option would require States to include in their programs some mechanism to prevent trades that could pose significant toxics concerns, with the mechanism to be determined by the State. Such mechanisms could include screening assessments to provide an indication of whether health or environmental risks from a facility might increase significantly, or a fuller risk assessment. As a variation of this option, a requirement for sources to notify the public of HAP increases due to trades could be among the options available to a State.

The fourth option would be for EPA to leave to State discretion the issue of whether State programs should include restrictions, disclosure, or other safeguards to ensure that toxic emissions changes are acceptable. The EPA could issue guidance on ways to determine whether a VOC trade should be considered unacceptable due to toxics impacts.

The EPA has decided to propose a disclosure requirement which might serve many purposes. Citizens who live near a facility could use the information to determine whether the trade posed a health concern. In many instances, this information may be reassuring, where perceived HAP emissions were larger than actual amounts. The State could also use disclosed information to help ascertain whether to use State regulatory authorities to curb any HAP increases (or to ensure attainment of expected decreases).

Many facilities already are subject to annual toxic release inventory reporting required by the Emergency Planning and Community Right-to-Know Act of 1986 and Pollution Prevention Act of 1990. These reports include estimates of annual emissions of all but eight of the 189 hazardous air pollutants listed under section 112 of the Act. Using the same methodologies it uses for toxic release inventory (TRI) reporting, the facility could estimate HAP emissions with and without DER generation or use. DER generators would include this information in their generation certification notices submitted to the State. DER users would include the information in their notice of intent to use DER's and in their post-use compliance certifications. As described in other sections of this preamble, the rule would require States to make these notices available to the public.

Some commentors have expressed concern that a toxic pollutant disclosure requirement would stigmatize the use of DER's with the detrimental effect of "chilling" the use of DER's and discourage market participation. These commentors have further argued that plant-specific fluctuations in HAP emissions resulting from the generation and use of DER's are not likely to be significant, and that they will in most cases be below the level of Federal and State regulatory concern. Toxic emissions that do not fall below this level are already (or will be soon) regulated under Section 112 of the Act. The EPA solicits comments as to whether it should balance this concern against the potential lack of knowledge about toxic pollutant emissions changes.

The EPA seeks comment on all aspects of this possible disclosure requirement. The Agency seeks comment on the suitability of TRI emissions estimation methodologies for the purposes of this rule. In addition, EPA seeks comment on alternative ways to estimate the difference in emissions of each HAP that would result from DER use or generation, especially for facilities not subject to TRI.

The EPA is also soliciting comments on the approach that States should take in studying the effects of open market VOC trading on the aggregate level of risk from air toxics, and on such risks from individual facilities. Depending on the results, the study could either allay concerns of significant increases in risk, or suggest a need for changes in open market trading or air toxics programs. One component of this study might be to evaluate the information that would be available as a result of the proposed disclosure requirement.

N. Impact of OMTR on Related Programs and Policies

1. Emission Trading Policy Statement

The final Emission Trading Policy Statement (ETPS), published in the **Federal Register** on December 4, 1986 provides a general framework for EPA-approvable emission trading. This policy requires that all reductions used in trades be enforceable, permanent, surplus and quantifiable. This policy provides guidance for States to develop model trading rules that would allow specific two-source trades without source-specific SIP revisions, as well as approval criteria for trades submitted as source-specific SIP revisions. The OMTR does not change the requirements of the ETPS, or the types of emissions trading that can occur under the ETPS.

2. Economic Incentive Program Rule and Guidance

The EPA's most recent policy on emissions trading is embodied in the Economic Incentive Program (EIP) rules that were promulgated on April 7, 1994. The 1990 Amendments of the Act required EPA to promulgate EIP rules for certain areas that must implement an EIP as part of their ozone and carbon monoxide attainment strategy. These rules also serve as guidance for all other areas that choose to develop and implement EIP's. The types of trading programs envisioned in the EIP are emissions limiting strategies (such as RECLAIM), market-response strategies, and directionally-sound strategies. The model rule proposed here would establish the ground rules for one type of market-response strategy, namely open market emissions trading of ozone precursor emissions. The model rule proposed today in no way limits the use of other strategies.

The open market program would differ from the requirements for EIP programs in many respects, including, among others:

(1) The intertemporal, spatial, and inter-pollutant trading requirements and restrictions;

(2) Requirements for trading between RACT and non-RACT sources;

(3) Notifications by generators and users;

(4) Lack of pre-approval for trades; and

(5) Requirements for program audits and reconciliation measures.

In light of these differences, EPA is considering amendments to the final EIP rules and guidance, so that the model OMTR would meet all the criteria for an EIP mandated under section 182(g). These amendments could affect the final EIP decisions in such areas as the definition of surplus, the averaging time for RACT, and the requirement that protocols be approved by EPA before they are used.

3. Memorandum to Region IX Regarding Surplus Determination

On August 26, 1994 EPA issued a guidance document on the use of pre-1990 ERC's and adjusting for RACT at time of use. In this memo EPA stated that for banked ERC's it was not sufficient to determine surplus at time of generation, but ERC's must be discounted at time of use to account for any new RACT requirements that may have occurred since the ERC was banked.

ERC's are reductions in the rate of emissions (e.g., pound per day or tons per year). When a source creates an ERC it takes an action which reduces the rate of emissions on a continuous basis. The ERC's are used to offset increases (or lack of decreases) in the rate of emissions on a contemporaneous basis. Thus the reduction created by the ERC must be surplus at the time of use. DER's, on the other hand, would be created and documented before they were used. Thus, barring any restrictions at the time of use, DER's would be surplus only at the time of creation.

The Memorandum also ties surplus to the 1990 and other subsequent emissions inventories as well as attainment demonstrations and ROP plans. The EPA believes that this policy is still valid for ERC programs but would only be partially applicable to DER programs. Several aspects of the proposed open market program illustrate this point. First, one purpose of the proposed open market rule would be to encourage early reductions, and this incentive would be reduced or lost if there were not a reasonable expectation that the reductions could be used at a later date because they were no longer surplus. Second, the proposed rule would not allow pre-1995 reductions to qualify for credit, which would reduce the likelihood that a large amount of banked reductions could be used in the future. Finally, the proposed rule would retain the link to emissions inventories, attainment demonstrations and ROP plans for determining surplus at the time of generation, but would rely on retrospective program audits to ensure that DER use would not chronically interfere with progress toward attainment or attainment.

4. Emissions Budget Programs

Since the 1990 amendments to the Act there has been considerable activity in developing emissions budget programs for attaining the ozone standard. These programs determine the quantity of emissions an area can emit and still demonstrate attainment. This emissions budget is then allocated among the sources in the nonattainment area in the form of emissions allowances. Sources are then allowed to trade their allowances. The EPA has proposed conditional approval of the NO_x/SO_x Regional Clean Air Incentives Market (RECLAIM) program in the Los Angeles area, which is the most fully developed ozone program of this kind. Various cap and trade programs are also being developed in Illinois for VOC, and in the Ozone Transport Region for NO_x. The model rule would not inhibit the development and implementation of these programs. The EPA continues to strongly encourage States to develop cap and trade programs as part of their attainment strategies.

The EPA envisions that open market trading programs could be complementary to emissions budget programs. It is typically difficult to include all of an area's VOC and NO_x sources in an emissions budget due to administrative costs or difficulty in quantifying the sources' emissions. For these reasons, smaller stationary sources and mobile sources are omitted. An open market program could offer sources not covered by the emissions budget a cost-reducing compliance option, as well as provide a continuous incentive to those sources to quantify their surplus emissions reductions.

IV. Administrative Requirements

A. Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with Section 307(d)(5) of the Act. Persons wishing to make an oral presentation on the proposed model OMTR should contact the Agency in accordance with the instructions given in the **DATES** Public Hearing section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket section address given in the **ADDRESSES** section of this preamble, and should refer to Docket No. A–95–21.

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A) of the Act).

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and other requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that today's proposed model rule is a significant action because it raises novel policy issues arising out of the President's priorities. This action was submitted to OMB for review in accordance with the Executive Order, and changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prapare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. A "Federal intergovernmental mandate" excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease the Federal Governement's responsibility to provide funding. A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The proposed model OMTR would be a volutary program that State and local governments could adopt. If adopted, the rule would govern the voluntary participation of private sector entities in an emissions trading program. Because the program would be voluntary for State and local governments and private entities, the Agency has not prepared a budgetary impact statement.

E. Paperwork Reduction Act

Today's proposal contains voluntary information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

This collection of information has an estimated reporting burden averaging of 73.5 hours per trade and an estimated annual recordkeeping burden averaging 60 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Director, Regulatory Information Division, EPA, 401 M St., SW (Mail Code 2138), Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

F. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 and applicable EPA guidelines revised in 1992 require Federal agencies to identify potentially adverse impacts of Federal rules upon small entities. Small entities include small businesses, organizations, and governmental jurisdictions. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

Today's proposal does not of itself impose an requirements on small entities, nor require or exclude small entities participation in open market trading in the future. As a result, the EPA has determined that the proposed rule will not have a significant impact on a substantial number of small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5, U.S.C. *601 et seq.*, I certify that this rule does not have a significant impact on a substantial number of small entities.

G. Clean Air Act Section 117

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comment on all aspects of the proposed model rule, including health, economic, technological, and other aspects.

Dated: July 26, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–18869 Filed 8–2–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 10

RIN 3067–AC41

Environmental Considerations/ Categorical Exclusions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise the categories of actions or categorical exclusions that normally would not require an environmental impact statement or environmental assessment. These proposed changes are intended to reduce the administrative processes and decrease the time required for project funding and implementation, while still ensuring that FEMA satisfies environmental concerns and issues. The proposed changes are consistent with Federal directives, regulations and statutes.

DATES: We invite comments on the proposed rule, which must be received on or before September 18, 1995.

ADDRESSES: Please submit written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Rick Shivar, Office of Policy and Assessment, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, or phone (202) 646–3610.

SUPPLEMENTARY INFORMATION: The proposed changes respond to numerous suggestions for additional exclusion categories and for modifications to existing exclusion categories. They reflect several years' experience on the types of actions that generally receive a finding of no significant impact after FEMA makes an environmental assessment. The proposed changes are intended to speed the approval of those projects with no potential for significant environmental effects and to allow attention to be focused on those projects with potential environmental concerns.

In order to produce a complete and effective update of exclusion categories, we conducted a review of the environmental assessments (EA) and the findings of no significant impact (FONSI) that FEMA has issued. In the last few years we have completed over 340 EAs, but there is only one case where an environmental impact statement (EIS) was written. While many EAs identified impacts that were able to be mitigated below the level of significance, we found that the clear majority of actions have no significant impact. Reviewing this last group revealed specific types of projects that historically did not produce significant environmental effects. In conjunction with the review of FEMA's EAs, we conducted a literature review of other Federal documents containing similar types of exclusions to ensure consistency of FEMA's exclusions with other Federal agencies' regulations. The results of these two reviews are the basis for the proposed change to FEMA's list of exclusion categories.

These proposed changes are also in keeping with the Council on Environmental Quality's guidance to

Federal agencies on this subject (48 FR 34263, July 28, 1983). That guidance encourages Federal agencies to add flexibility to implementing procedures to allow new types of actions to be classified as categorical exclusions (CATEXs) with minimal documentation required. This is done by developing more broadly defined categories as well as providing examples of typical CATEXs, rather than a comprehensive list, so that specific actions not previously listed by an agency can be considered for CATEX status on a case-by-case basis.

The proposed exclusion categories would not affect FEMA's responsibility to comply with all other applicable local, state, and Federal laws and regulations relating to health, safety and the environment. This would encompass Federal environmentally oriented statutes including, among others: the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Coastal Zone Management Act, the Coastal Barrier Resources Act, the Endangered Species Act, the National Historic Preservation Act, and the Archaeological and Historic Preservation Act. It would not affect FEMA's responsibilities under Executive Orders 11988, 11990, and 12898. Nor would it affect FEMA's implementing regulatíons at 44 CFR part 9, or FEMA's National Flood Insurance Program rules at 44 CFR parts 59 through 77.

A point of clarification of the term "categorical exclusion" is necessary in the discussion of this proposed rule. Section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub.L. 93–288, as amended, 42 U.S.C. 5159, provides (1) for a statutory exclusion from NEPA requirements for certain actions taken under specific sections of that Act (sections 402, 403, 407 and 502), and (2) for those actions under section 406 of the Stafford Act that have "the effect of restoring a facility substantially to its condition prior to the disaster or emergency." While statutory exclusions are exempted from all NEPA documentation, actions that are categorically excluded from preparation of an EA or an EIS must be documented by FEMA under this part. However, as with actions categorically excluded, an action statutorily excluded from NEPA is not exempt from the requirements of the other environmentally oriented statutes indicated above. To help determine the level of environmental review required and, specifically, when neither an EA nor an EIS is likely to be required for a proposed action, the list of exclusion categories presented by this rule is comprehensive in that it includes both categorical exclusions and those actions that are statutorily excluded (denoted by [SE]).

We present the list of proposed exclusion categories with administrative type actions appearing first followed by emergency and other actions. The administrative actions relate mainly to activities that in and of themselves do not normally impact the environment, such as: planning, design, procurement, acquisition, training, studies and other administrative processes. The emergency and other actions mainly address emergency, disaster-related, or other activities that could impact features of the human and natural environment, such as: construction; maintenance or repair of facilities or vegetation; relocation of structures; floodproofing; emergency response and deployment; physical and other assistance.

Since the proposed revision would republish and redesignate some paragraphs, and modify other paragraphs, the following discussion is directed only at those items that are added, removed, or revised.

44 CFR 10.8 would be revised to redesignate and revise the discussion of statutory exclusions to recognize the difference between the basic nature of the statutory exclusion and of the CATEX. We also updated references to sections of the Stafford Act.

New paragraph (d)(2) modifies the nomenclature "List of categorical exceptions" to "List of exclusion categories" to reflect the categorical nature of the list as opposed to a list of exceptions. This change is also reflected in new paragraph (d)(6). New paragraphs (d)(2)(i),(ii),(iii),(v),(vi), and (vii) make minor wording revisions and clarify the language of existing categories but do not change their general substance.

New paragraph (d)(2)(iv) would address inspection and monitoring processes that are part of the compliance requirements for various programs. These activities are passive as to the environment. Any federally funded action that the inspections or monitoring might recommend is subject to the NEPA process.

Paragraph (d)(2)(viii) would allow for the timely evaluation and acquisition of land in advance of project development to avoid land speculation that could arise with early public disclosure. This categorical exclusion applies only to acquisition of the land. Any subsequent use of the property for a facility or project must be considered as a separate action under this part without regard to ownership of the land.

Paragraph (d)(2)(ix) would address the purchase or leasing of existing facilities when land use requirements allow the proposed use.

Paragraph (d)(2)(x) would allow for interagency exchange of real property.

Paragraph (d)(2)(xi) would cover the acquisition, installation, or operation of utilities, gauges, communication and warning systems when using established rights-of-way, existing systems or facilities.

Paragraph (d)(2)(xiii) would allow for the planting of indigenous vegetation, for example, to reduce erosion or fire hazard.

• Paragraph (d)(2)(xiv) would apply to the removal of structures, improvements or debris to sites permitted for such material. The paragraph also applies to the demolition, as well as removal, of structures to such permitted locations.

Paragraph (d)(2)(xv) would apply to small, individual structures that are to be relocated to a new site, where the new site is developed with substantially completed infrastructure, and existing lots have been previously disturbed, for example, by grading or prior construction activities.

Paragraph (d)(2)(xvi) would exclude the act of granting a community exception for residential basement floodproofing pursuant to the National Flood Insurance Program.

Paragraph (d)(2)(xvii) would provide to actions under the mitigation and other programs the same exclusion available by statute to actions funded pursuant to section 406 of the Stafford Act whereby a facility can be restored to its approximate preexisting design, function and location.

Paragraph (d)(2)(xviii) would allow for improvements or upgrading to current codes or standards an existing facility in an already developed and appropriately zoned area on previously disturbed or graded lots. This would include improvements in the disturbed portion of a lot of an existing building, culverts and berms within the previously disturbed perimeter of a road, storm drainage or utility system or existing facility. New construction of hazard mitigation measures that satisfy the conditions of this section are also covered.

Paragraph (d)(2)(xix) would permit actions within enclosed facilities which comply with local construction, noise, pollution and waste disposal regulations.

Paragraph (d)(2)(xx) and paragraph (d)(2)(xxi) would incorporate some existing statutory exclusions into the CATEX list. Paragraph (d)(2)(xx) would

exclude, in addition to the existing category for the deployment and support of Emergency Support Teams, direct response activities including activation and support of the Catastrophic Disaster Response Group, Regional Operations Centers, Emergency Response Teams, Urban Search and Rescue teams, and situation assessment, reconnaissance and other data gathering efforts in response to and for recovery from a disaster.

Paragraph (d)(2)(xxi) would exclude emergency assistance and relief activities and would rephrase terminology to reflect the amended Stafford Act. This would include general federal and essential assistance (Stafford Act sections 402 and 403), food coupons and commodities (sections 412 and 413), and Federal emergency assistance (section 502). Debris removal (section 407) would become less restrictive. The temporary housing definition (section 408) would be simplified as would the definitions of the individual and family grant (section 411) and community disaster loan (section 417) exclusions.

In paragraph (d)(3) the list of Extraordinary Circumstances, which was section 10.8(e), would be updated to clarify the circumstances that may cause an action that is normally categorically excluded to have the potential for significant environmental impact. The previous paragraph (e)(2) describing "actions in highly populated or congested areas" is replaced in paragraph (d)(3)(ii) with a more workable "actions with a high level of controversy." In paragraph (d)(3)(iv) clarifying language is added to the term "unproven technology." In paragraph (d)(3)(vi) the hazardous substance condition was changed from "use" to "presence." Paragraph (d)(3)(vii), which addresses flood plains or wetlands, would be expanded to include other special or critical resources, i.e., coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers, etc.

Two new categories were added to insure that adverse health and safety effects, paragraph (d)(3)(viii) and the potential violation of Federal, state, local or tribal requirements, paragraph(d)(3)(ix), would be considered as extraordinary circumstances.

Paragraph (d)(5), Revocation, would be added to assure that if the conditions upon which a categorical exclusion was granted have changed or new information is discovered indicating that the action no longer meets the conditions of the categorical exclusion, the responsible official must revoke the exclusion and ask for a full environmental review.

Paragraph (d)(6)(i) and (d)(6)(ii), which addresses changes to the list of exclusion categories, adds "directorates" to "offices and administrations" to more correctly reflect all the organizational entities in FEMA.

National Environmental Policy Act

The requirements of 44 CFR Part 10, Environmental Consideration, would exclude this proposed rule. FEMA has not prepared an environmental impact statement.

Regulatory Flexibility Act

I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The rule adds eight categories to FEMA's categorical exclusions from reviews under the National Environmental Policy Act, and FEMA does not expect the rule (1) would affect adversely the availability of disaster assistance funding to small entities, (2) would have significant secondary or incidental effects on a substantial number of small entities, or (3) would create any additional burden on small entities.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, Regulatory Planning and Review, 3 CFR, 1994 Comp., p. 638. To the extent possible this proposed rule adheres to the regulatory principles set forth in E.O. 12866, but has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This proposed rule does not involve any collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p.252.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p.309.

List of Subjects in 44 CFR Part 10

Environmental impact statements.

Accordingly, 44 CFR part 10 is proposed to be amended as follows:

PART 10—ENVIRONMENTAL CONSIDERATIONS

1. The authority citation for part 10 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; E.O. 11514 of March 7, 1970, 35 FR 4247, as amended by E. O. 11991 of March 24, 1977, 3 CFR, 1977 Comp., p. 123; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended.

2. In § 10.8, paragraphs (c), (d), and (e) are revised to read as follows:

§ 10.8 Determination of requirement for environmental review.

* * * * *

(c) *Statutory exclusions.* The following actions are statutorily excluded from NEPA and the preparation of environmental impact statements and environmental assessments by section 316 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5159 (Stafford Act);

(1) Action taken or assistance provided under sections 403, 407, 502, or 422 of the Stafford Act; and

(2) Action taken or assistance provided under section 406 or 422 of the Stafford Act that has the effect of restoring facilities substantially as they existed before a major disaster or emergency.

(d) *Categorical Exclusions (CATEXs).* CEQ regulations at 40 CFR 1508.4 provide for the categorical exclusion of actions that do not individually or cumulatively have a significant impact on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Full implementation of this concept will help FEMA avoid unnecessary or duplicate effort and concentrate resources on significant environmental issues.

(1) *Criteria.* The criteria used for determination of those categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

(i) Minimal or no effect on environmental quality;

(ii) No significant change to existing environmental conditions; and

(iii) No significant cumulative environmental impact.

(2) *List of exclusion categories.* FEMA has determined that the following categories of actions have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments except where extraordinary circumstances as defined in paragraph (d)(5) of this section exist. If the action is of an emergency nature as described in section 316 of the Stafford Act (42 U.S.C. 5159), it is statutorily excluded and is noted with [SE]. Paragraphs (c)(2)(i) through (x) of this section address administrative actions and paragraphs (c)(2)(xi) through (xxi) of this section relate to emergency and other actions.

(i) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of normal day to day activities and disaster related activities;

(ii) Preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions which qualify for categorical exclusions;

(iii) Studies that involve no commitment of resources other than manpower and associated funding;

(iv) Inspection and monitoring activities, granting of variances, and actions to enforce Federal, state, or local codes, standards or regulations;

(v) Training activities and both training and operational exercises utilizing existing facilities in accordance with established procedures and land use designations;

(vi) Procurement of goods and services for support of day-to-day and emergency operational activities, and the storage of goods other than hazardous materials, so long as storage occurs on previously disturbed land or in existing facilities;

(vii) The acquisition of properties under any applicable authority when the acquisition is from a willing seller, the buyer coordinated acquisition planning with affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetland practices.

(viii) Acquisition of unimproved real property not related to specific facility plans or when necessary to protect the interests of FEMA in advance of final project approval; (This categorical exclusion applies only to the acquisition. Any subsequent use of the property for a facility or project must be considered under this part without regard to ownership of the real property);

(ix) Acquisition or lease of existing facilities where planned uses generally conform to past use or local land use requirements;

(x) Transfer of administrative control of FEMA real property to another Federal agency;

(xi) Acquisition, installation, or operation of utility and communication systems that use existing rights-of-way, distribution systems, or facilities;

(xii) Routine maintenance, repair, and grounds-keeping activities;

(xiii) Planting of indigenous vegetation;

(xiv) Demolition of structures and/or disposal of uncontaminated structures and other improvements for removal to permitted off-site locations;

(xv) Physical relocation of individual structures to previously disturbed or graded lots in existing developed areas with substantially completed infrastructure;

(xvi) Granting of community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6(c) under the National Flood Insurance Program;

(xvii) Repair, reconstruction, restoration, elevation, retrofiting, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location; [SE, in part]

(xviii) Improvements or upgrading to current codes and standards of existing facilities and construction of hazard mitigation measures when those actions are in existing developed areas with substantially completed infrastructure, and when those actions do not alter function, system capacity, or land use; provided the operation of the completed project will not, of itself, have an adverse effect on the quality of the human environment;

(xix) Actions conducted within enclosed facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing Federal, state, and local laws and regulations;

(xx) The following planning and administrative activities in support of emergency and disaster response and recovery:

(A) Activation of the Emergency Support Team and convening of the Catastrophic Disaster Response Group at FEMA headquarters;

(B) Activation of the Regional Operations Center and deployment of the Emergency Response Team, in whole or in part;

(C) Deployment of Urban Search and Rescue teams;

(D) Situation Assessment including ground and aerial reconnaissance;

(E) Information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation; and

(xxi) The following emergency and disaster response, recovery and hazard mitigation activities pursuant to the Stafford Act:

(A) General Federal Assistance (§ 402); [SE]

(B) Essential Assistance (§ 403); [SE]

(C) Debris Removal (§ 407) [SE]

(D) Temporary Housing (§ 408), except locating multiple mobile homes or other readily fabricated dwellings on sites, other than private residences, not previously used for such purposes;

(E) Unemployment Assistance (§ 410);

(F) Individual and Family Grant Programs (§ 411), except to the extent that grants will be used for restoring, repairing or building private bridges, or purchasing mobile homes or other readily fabricated dwellings;

(G) Food Coupons and Distribution (§ 412);

(H) Food Commodities (§ 413);

(I) Legal Services (§ 415);

(J) Crisis Counseling Assistance and Training (§ 416);

(K) Community Disaster Loans (§ 417);

(L) Emergency Communications (§ 418);

(M) Emergency Public Transportation (§ 419);

(N) Fire Suppression Grants (§ 420); and

(O) Federal Emergency Assistance (§ 502) [SE].

(3) *Extraordinary circumstances.* If extraordinary circumstances exist within an area affected by an action, such that an action that is categorically excluded from NEPA compliance may have a significant adverse environmental impact, an environmental assessment shall be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(i) Greater scope or size than normally experienced for a particular category of action;

(ii) Actions with a high level of public controversy;

(iii) Potential for degradation, even though slight, of already existing poor environmental conditions;

(iv) Employment of unproven technology with potential adverse effects or actions involving unique or unknown environmental risks;

(v) Presence of endangered or threatened species or their critical habitat, archaeological remains, or other protected resources;

(vi) Presence of hazardous or toxic substances;

(vii) Actions with the potential to adversely affect special status areas or other critical resources such as

wetlands, coastal zones, wildlife refuge and wilderness areas, wild and scenic rivers, sole or principle drinking water aquifers;

(viii) Potential for adverse effects on health or safety; and

(ix) Potential to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(4) *Documentation.* The Regional Director will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an environmental impact statement or an environmental assessment.

(5) *Revocation.* The Regional Director shall revoke a determination of categorical exclusion and shall require a full environmental review if, subsequent to the granting of an exclusion, the Regional Official determines that due to changes in the proposed action or in light of new findings, the action no longer meets the requirements for a categorical exclusion.

(6) *Changes to the list of exclusion categories.* (i) The FEMA list of exclusion categories will be continually reviewed and refined as additional categories are identified and experience is gained in the categorical exclusion process. An office, directorate, or administration of FEMA may, at any time, recommend additions or changes to the FEMA list of exclusion categories.

(ii) Offices, directorates, and administrations of FEMA are encouraged to develop additional categories of exclusions necessary to meet their unique operational and mission requirements.

(iii) If an office, directorate, or administration of FEMA proposes to change or add to the list of exclusion categories, it shall first:

(A) Obtain the approval of the Environmental Officer and FEMA's Office of the General Counsel; and

(B) Publish notice of such proposed change or addition in the **Federal Register** at least 60 days before the effective date of such change or addition.

(e) *Actions that normally require an environmental assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify as a categorical exclusion, the Regional Director shall prepare an environmental assessment.

Dated: July 28, 1995.

Harvey G. Ryland,

Deputy Director.

[FR Doc. 95–19136 Filed 8–2–95; 8:45 am]

BILLING CODE 6718-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 950725189–5189–01; I.D. 062795A]

RIN 0648–XX24

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Changes in Catch Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes changes in the management regimes for the Atlantic migratory groups of king and Spanish mackerel and the Gulf group of king mackerel, in accordance with the framework procedure for adjusting management measures for the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). For Atlantic group king mackerel, this rule proposes changes in the total allowable catch (TAC), establishment of commercial vessel trip limits, and reduction of the recreational bag limit; for Atlantic group Spanish mackerel, increases in the TAC and allocations; and for Gulf group king mackerel, changes in the commercial vessel trip limits. The intended effect of this rule is to protect king and Spanish mackerel from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on king and Spanish mackerel.

DATES: Written comments must be received on or before August 18, 1995.

ADDRESSES: Comments must be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the environmental assessment and regulatory impact review supporting aspects of this action relating to Gulf group mackerel should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486. Requests for comparable documents relating to Atlantic group mackerel should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642.

In accordance with the framework procedure of the FMP, the Councils appointed a Stock Assessment Panel (Panel) to assess, on an annual basis, the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the Panel's 1995 report and recommendations, advice from the Mackerel Advisory Panels (MAPs) and the Scientific and Statistical Committees (SSCs), and public input, the Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to the TAC and allocations for the Atlantic migratory groups of king and Spanish mackerel, reduction of the recreational bag limit in the northern area and establishment of commercial trip limits for Atlantic group king mackerel, and changes in the commercial trip limits for Gulf group king mackerel in the east and west coast sub-zones of the eastern zone. The recommended changes are within the scope of the management measures that may be adjusted, as specified at 50 CFR 642.29. For the 1995–96 fishing year, the Councils recommended no changes for Gulf group Spanish mackerel or for cobia.

Specifically, the Councils recommended that, effective with the fishing year that began April 1, 1995, the annual TAC for the Atlantic migratory group of Spanish mackerel be increased from 9.20 million lb (4.17 million kg) to 9.40 million lb (4.26 million kg) and the annual TAC for the Atlantic migratory group of king mackerel be decreased from 10.00 million lb (4.54 million kg) to 7.30 million lb (3.31 million kg). These recommended TACs are within the range of the acceptable biological catch chosen by the Councils and represent a conservative approach supported by their SSCs and MAPs. Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of the TAC. Under the established percentages, the proposed TACs for the fishing year that commenced April 1, 1995, would be allocated as follows:

Species	m. lb	m. kg
Atlantic Spanish Mackerel—TAC	9.40	4.26
Recreational allocation (50%)	4.70	2.13
Commercial allocation (50%)	4.70	2.13
Atlantic King Mackerel—TAC	7.30	3.31
Recreational allocation (62.9%)	4.60	2.09
Commercial allocation (37.1%)	2.70	1.22

The commercial sector of the Atlantic group Spanish mackerel fishery is managed under trip limits. In the southern zone, i.e., south of a line extending directly east from the Georgia/Florida boundary, the specific trip limits vary depending on the percentage of catch of the adjusted allocation. The adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by an amount calculated (250.00 lb) (113.40 kg) to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted allocation is reached. Along with the increased commercial allocation, the Councils recommended that the adjusted allocation be increased from 4.35 million lb (1.97 million kg) to 4.45 million lb (2.02 million kg).

The commercial sector of the Gulf group king mackerel fishery in the eastern zone (off Florida) also is managed under trip limits. The proposed trip limit changes are specific for Florida east and west coast sub-zones and respective quotas. For the Florida east coast sub-zone, the Councils proposed that the commercial vessel trip limit of 50 king mackerel per day would not be reduced if 75 percent of the sub-zone's fishing year quota is not harvested before March 1, but would remain at 50 king mackerel per day until the entire quota has been harvested or until March 31, whichever occurs first. Currently, the trip limit is reduced from 50 to 25 fish per day when 75 percent of the quota is taken and remains at that level until the entire quota has been harvested or until March 31, whichever occurs first. Last season's projected harvest did not reach 75 percent of the quota until the end of the season; therefore, the trip limit was not reduced to 25 king mackerel per day. The Florida east coast sub-zone exists November 1 through March 31 and encompasses the waters off the Florida east coast from a line extending directly east from the Dade/Monroe County boundary to a line extending directly east from the Volusia/Flagler County boundary.

For the Florida west coast sub-zone, the Councils recommended daily trip limits for vessels harvesting king mackerel under the hook-and-line quota; no trip limits were in effect last season. The daily possession/landing limit for a vessel using hook-and-line gear, holding a Federal commercial mackerel permit would be 125 fish for the taking of the first 75 percent of the hook-and-line quota, then be reduced to 50 fish until the entire quota has been harvested. From November 1 through March 31, the Florida west coast sub-zone encompasses the waters off the southeast, south, and west coasts of Florida from the Dade/Monroe County boundary to a line extending directly south from the Alabama/Florida boundary. From April 1 through October 31, when the boundary separating the Gulf and Atlantic groups of king mackerel is a line extending directly west from the Monroe/Collier boundary (25°48′ N. lat.), the west coast sub-zone would extend from that boundary to the Alabama/Florida boundary and would exclude the Florida Keys (Monroe County).

For the Atlantic group king mackerel, the Councils recommended daily trip limits for vessels harvesting under the commercial allocation. Previously this segment of the fishery has not had trip limits. The commercial trip limits were proposed to prevent a likely closure, to distribute catch among user groups, and to minimize ongoing user-group conflicts and those that would result if new entrants displaced by Florida's inshore net prohibition would cause a large shift in effort. The daily possession/landing limit for a vessel using non-prohibited gear holding a Federal commercial mackerel permit would be 3,500 lb (1,588 kg) of king mackerel, in or from the exclusive economic zone (EEZ), year-round in the northern area between the New York/Connecticut and Flagler/Volusia County, FL boundaries. Off Volusia County, FL, the daily trip limit would be 3,500 lb (1,588 kg) of king mackerel, in or from the EEZ, from April 1 through October 31. South of there, between the Volusia/Brevard and Monroe/Collier County boundaries, a daily trip limit of 50 king mackerel in or from the EEZ would be effective April 1 through October 31. All trip limits proposed for the Atlantic group king mackerel are daily landing/possession limits that would reduce to zero for that group whenever the annual commercial allocation is reached.

The Regional Director initially concurs that the Councils' recommendations are necessary to protect the king and Spanish mackerel stocks and prevent overfishing and that they are consistent with the objectives of the FMP. Accordingly, the Councils' recommended changes are published for comment. In addition to these changes, § 642.28(b) has been revised and reformatted to improve clarity.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed commercial trip limits for the east coast sub-zone of Gulf king mackerel are expected to result in a slight increase in economic benefits; west coast sub-zone trip limits are expected to have favorable distributional effects but perhaps minor adverse impacts on short-term profitability. Commercial trip limits for Atlantic group king mackerel should result in small increases in long-term benefits to the industry. The proposed reduction in TAC for Atlantic group king mackerel is not expected to affect revenues of small entities, because the reduced level is consistent with catch levels in recent years. The reduction in the recreational bag limit for Atlantic group king mackerel is expected to affect only a small portion of recreational anglers. The minor increase in TAC for Atlantic group Spanish mackerel would increase revenues to the commercial sector slightly. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 27, 1995.

Richard B. Stone,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.7, paragraphs (q) through (u) are revised to read as follows:

§ 642.7 Prohibitions.

* * * * *

(q) Exceed a commercial trip limit for Atlantic group king or Spanish mackerel, as specified in § 642.27(a) or (b).

(r) Transfer at sea from one vessel to another an Atlantic group king or Spanish mackerel subject to a commercial trip limit, as specified in § 642.27(f).

(s) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.28(a), (b)(1), or (b)(2), or transfer at sea such king mackerel, as specified in § 642.28(e).

(t) In the Florida west coast sub-zone, possess or land Gulf group king mackerel in or from the EEZ aboard a vessel that uses or has aboard a run-around gillnet on a trip when such vessel does not have on board a commercial permit for king and Spanish mackerel with a gillnet endorsement, as specified in § 642.28(b)(2)(i).

(u) In the Florida west coast sub-zone, aboard a vessel for which a commercial permit for king and Spanish mackerel with a gillnet endorsement has been issued, retain Gulf group king mackerel in or from the EEZ harvested with gear other than run-around gillnet, as specified in § 642.28(b)(1)(ii)(C).

* * * * *

3. In § 642.24, paragraph (a)(1)(ii)(A) is revised to read as follows:

§ 642.24 Bag and possession limits.

(a) * * *

(1) * * *

(ii) * * *

(A) *Northern area*—five per person through December 31, 1995; three per person thereafter.

* * * * *

§ 642.25 [Amended]

4. In § 642.25, in paragraph (a)(2), the numbers "3.71" and "1.68" are revised to read "2.70" and "1.22", respectively and in paragraph (b)(2), the numbers "4.60" and "2.09" are revised to read "4.70" and "2.13", respectively.

5. In § 642.27, paragraphs (a) through (e) are redesignated as paragraphs (b) through (f), respectively; in newly redesignated paragraphs (c) and (d), the references to "paragraph (a)(2) of this section" are revised to read "paragraph (b)(2) of this section"; in newly redesignated paragraph (c) the numbers "4.35" and "1.97" are revised to read "4.45" and "2.02", respectively; the reference in newly redesignated paragraph (f) introductory text and in newly redesignated paragraph (f)(2), "Spanish mackerel" is revised to read "king or Spanish mackerel"; the section heading is revised; paragraph (a) is added; and a paragraph heading is added to newly redesignated paragraph (b) to read as follows:

§ 642.27 Commercial trip limits for Atlantic group king and Spanish mackerel.

(a) *Atlantic group king mackerel.* (1) North of a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25′ N. lat.) to the outer limit of the EEZ, king mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

(2) In the area between lines extending directly east from the northern and southern boundaries of Volusia County, Florida (29°25′ N. lat. and 28°47.8′ N. lat., respectively) to the outer limit of the EEZ, king mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg) from April 1 through October 31.

(3) In the area between lines extending directly east from the Volusia/Brevard County, Florida boundary (28°47.8′ N. lat.) to the outer limit of the EEZ and directly west from the Monroe/Collier County, Florida boundary (25°48′ N. lat.) to the outer boundary of the EEZ, king mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day in amounts exceeding 50 fish from April 1 through October 31.

(b) *Atlantic group Spanish mackerel.*

* * *

* * * * * *

6. In § 642.28, a sentence is added at the end of paragraph (a)(2), and paragraph (b) and paragraph (e) introductory text, are revised to read as follows:

§ 642.28 Additional limitations for Gulf group king mackerel in the eastern zone.

(a) * * *

(2) * * * However, if 75 percent of the sub-zone's quota has not been harvested by March 1, the vessel limit remains at 50 king mackerel per day until the sub-zone's quota is filled or until March 31, whichever occurs first.

(b) *Florida west coast sub-zone*—(1) *Gillnet gear.* (i) In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a permit with a gillnet endorsement has been issued under § 642.4, from July 1, each fishing year, until a closure of the Florida west coast sub-zone's commercial fishery for vessels fishing with run-around gillnets has been effected under § 642.26—in amounts not exceeding 25,000 lb (11,340 kg) per day.

(ii) In the Florida west coast sub-zone:

(A) King mackerel in or from the EEZ may be possessed aboard or landed from a vessel that uses or has aboard a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement;

(B) King mackerel from the west coast sub-zone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 642.25(a)(1)(i)(B)(*2*); and

(C) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained aboard a vessel for which such commercial permit with endorsement has been issued.

(2) *Hook-and-line gear.* In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel permitted under § 642.4(a)(1) and operating under the commercial hook-and-line gear quota in § 642.25(a)(1)(i)(B)(*1*):

(i) From July 1, each fishing year, until 75 percent of the sub-zone's hook-and-line gear quota has been harvested—in amounts not exceeding 125 king mackerel per day; and

(ii) From the date that 75 percent of the sub-zone's hook-and-line gear quota has been harvested until a closure of the west coast sub-zone's hook-and-line fishery has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

* * * * *

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a), (b)(1)(i), or (b)(2) of this section or a gear limitation specified in paragraph (b)(1)(ii)(A) of this section applies may not transfer at sea from one vessel to another a king mackerel:

* * * * *

[FR Doc. 95–19038 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–22–W

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50 CFR Part 697

[Docket No. 950605148–5148–01; I.D. 060195C]

RIN 0648–AH58

Atlantic Coast Weakfish Fishery; Moratorium in Exclusive Economic Zone; Comment Period Extension

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 20, 1995, NMFS published a proposed rule that would prohibit fishing for and possession of Atlantic coast weakfish in the exclusive economic zone offshore from Maine through Florida. NMFS announces that it is extending the comment period from August 2 to August 15, 1995.

DATES: Written comments must be received on or before August 15, 1995.

ADDRESSES: Written comments on the proposed rule should be sent to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Room 14657, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301-713-2339.

SUPPLEMENTARY INFORMATION: On June 20, 1995, NMFS published a proposed rule in the **Federal Register** (60 FR 32130). As a result of the initial hearings held in July 1995, and requests from the public, NMFS has determined that it is important for commenters to have additional time to submit their comments on this proposed rulemaking. Therefore, NMFS is extending the comment period from August 2, 1995 to August 15, 1995.

Dated: July 28, 1995.

Richard B. Stone,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–19053 Filed 7–28–95; 4:41 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 149
Thursday, August 3, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for and revision to a currently approved information collection in support of the FAS/Cooperator Market Development Program based on re-estimates.

DATES: Comments on this notice must be received by October 2, 1995 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Sharon L. McClure, Director, Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1042, (202) 720–5521.

SUPPLEMENTARY INFORMATION:

Title: FAS/Cooperator Market Development Program.

OMB Number: 0551–0026.

Expiration Date of Approval: December 31, 1995.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The primary objective of the Foreign Market Development Program is to develop, maintain and expand long-term export markets for U.S. agricultural products. Created 40 years ago, the program has developed into a partnership between the FAS, USDA and private agricultural trade organizations (called "Cooperators"). The FAS currently has joint projects with 40 Cooperators working in more than 100 countries.

Prior to initiating program activities, Cooperators must submit detailed marketing plans, or amendments thereof, to FAS which include an assessment of the overseas market potential; the marketing strategy, goals and individual activities; estimated budgets; and performance measurements. Prior years' plans often dictate the content of current year plans because many activities are continuations of previous activities. Each Cooperator is also responsible for submitting: (1) Reimbursement claims for costs incurred as outlined in the marketing plans, (2) an end-of-year contribution report, (3) travel reports, and (4) progress reports/evaluation studies. Cooperators must maintain records on all information submitted to FAS. The information collected is used by FAS to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 22 hours per response.

Respondents: Non-profit institutions and state or local governments.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 91.

Estimated Total Annual Burden on Respondents: 77,180 hours.

Copies of this information collection can be obtained from Pamela Hopkins, the Agency Information Collection Coordinator, at (202) 720–6713.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to:

Sharon L. McClure, Director, Marketing Operations Staff, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 1042, Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C. July 26, 1995.

August Schumacher,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 95–19070 Filed 8–2–95; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Friday, September 1, 1995, at the Holiday Inn, 181 West Broadway, Tucson, Arizona 85701. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Manuel Peña, 602–542–4171, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19064 Filed 8–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Wednesday, September 13, 1995, at the Marriott Biscayne Bay Hotel, 1633 N. Bayshore Drive, Miami, Florida 33132. The purpose of the meeting is to discuss the status of the Commission and

appropriations; to discuss the status of the report, *Racial and Ethnic Tensions in Florida*; to discuss plans for a press conference to release the report; and discuss plans to follow up on the report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rabbi Solomon Agin, 813–433–0018, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19065 Filed 8–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Friday, August 18, 1995, at the Canyon Springs Motel, 1357 Blue Lakes, North, Twin Falls, Idaho 83301. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gladys Esquibel, 208–678–3838, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19066 Filed 8–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Thursday, August 31, 1995, at the Seelbach Hotel, 500 4th Street in downtown Louisville, Kentucky 40202. The meeting will include: (1) A discussion of the status of the Commission; (2) a report on the SAC Chairpersons Conference held in Washington, DC, in June; (3) a discussion of civil rights problems and progress in the State; and (4) a session to review the draft report, Bigotry-Related Violence in Kentucky.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Porter G. Peeples, 606–233–1561, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19067 Filed 8–2–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Friday, August 25, 1995 at the Red Lion-Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon 97232. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Jeannette Pai, 503–510–1694, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19068 Filed 8–2–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: U.S Census – Age Search.

Form Number(s): BC–600, BC–649(L), BC–658(L).

Agency Approval Number: 0607–0117.

Type of Request: Extension of a currently approved collection.

Burden: 2,120 hours.

Number of Respondents: 7,940.

Avg Hours Per Response: 10 minutes.

Needs and Uses: The Census Bureau maintains the 1910–1990 Federal censuses for searching purposes. The purpose of searching is to furnish, upon request, transcripts of personal data from historical population census records. Information relating to age, place of birth, and citizenship is furnished upon payment of the established fee to individuals for their use in qualifying for Social Security, old age benefits, retirement, court litigation, passports, insurance settlements, etc.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 31, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19150 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–428–820]

Notice of Antidumping Duty Order and Amended Final Determination: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–6320 or (202) 482–3853, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 12, 1995, the Department made its final determination that certain small diameter seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Germany is being, or is likely to be, sold in the United States at less than fair value (60 FR 31974, June 19, 1995). After publication of this determination, we received submissions, timely filed pursuant to 19 CFR 353.28(b)(1994), from Mannesmannrohren-Werke AG (MRW) and petitioner, alleging certain ministerial errors in the Department's determination. We determined, in accordance with 19 CFR 353.28(d), that a ministerial error was made with respect to the margin used as uncooperative best information available. We determined that we inadvertently used the highest margin alleged in the original petition, rather than the highest margin alleged in the revised petition. For a detailed discussion of the alleged ministerial error and the Department's analysis, see the Memorandum from the Team to Barbara R. Stafford dated July 13, 1995. In accordance with 19 CFR 353.28(c), we are amending the final result of the antidumping duty investigation of seamless pipe from Germany to correct the above-cited ministerial error. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Original margin percent	Revised margin percent
MRW	58.23	57.72
All Others	58.23	57.72

Scope of Investigation and Order

The scope of this investigation includes small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On July 26, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of seamless pipe from Germany materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of seamless pipe from Germany. These antidumping duties will be assessed on all unliquidated entries of seamless pipe from Germany entered, or withdrawn from warehouse, for consumption on or after January 27, 1995, the date on which the Department published its preliminary determination notice in the **Federal Register** (60 FR 5355).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Mannesmannrohren-Werke AG	57.72
All Others	57.72

This notice constitutes the antidumping duty order with respect to seamless pipe from Germany, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19145 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–814]

Notice of Antidumping Duty Order: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Dolores Peck, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–4929, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Case History

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 12, 1995, the Department made its final determination that certain small diameter seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Italy is being, or is likely to be, sold in the United States at less than fair value (60 FR 31981, June 19, 1995). After publication of this determination, we received a submission, timely filed pursuant to 19 CFR 353.28(b)(1994), from Dalmine S.p.A. (Dalmine), alleging certain ministerial errors in the Department's determination. We also received a timely rebuttal of respondent's ministerial error allegations from the petitioner. We determined, in accordance with 19 CFR 353.28(d), that no ministerial errors were made. For a detailed discussion of the alleged ministerial errors and the Department's analysis, see the Memorandum from the Team to Gary Taverman dated July 17, 1995.

Scope of Investigation and Order

The scope of this investigation includes small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTMA–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable

under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On July 26, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of seamless pipe from Italy materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of seamless pipe from Italy. These antidumping duties will be assessed on all entries of seamless pipe from Italy entered, or withdrawn from warehouse, for consumption on or after June 19, 1995, the date on which the Department published its final determination notice in the **Federal Register** (60 FR 31981).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Dalmine S.p.A.	1.84
All Others	1.84

This notice constitutes the antidumping duty order with respect to seamless pipe from Italy, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19146 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–826]

Notice of Antidumping Duty Order and Amended Final Determination: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3853, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 12, 1995, the Department made its final determination that certain small diameter seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Brazil is being, or is likely to be, sold in the United States at less than fair value (60 FR 31960, June 19, 1995). After publication of this determination, we received a submission, timely filed pursuant to 19 CFR 353.28(b)(1994), from Mannesmann S.A. (MSA), alleging certain ministerial errors in the Department's determination. We also received a timely rebuttal of respondent's ministerial error allegations from the petitioner. We determined, in accordance with 19 CFR 353.28(d), that a ministerial error was made with respect to the figures used as best information available for home market and U.S. packing expenses. We determined that we inadvertently used the highest U.S. and lowest home market packing figures on the record without regard to the month of shipment. We have corrected that error. Consistent with our hyperinflationary methodology, we applied the lowest home market packing expense and the highest U.S. packing expense on the record based on the month of shipment. With respect to those U.S. sales shipped after June 1994, for which we did not have information on packing expenses, we used the highest U.S. packing expense on the record for June 1994. For a detailed discussion of the alleged ministerial errors and the Department's analysis, see the Memorandum from the Team to Gary Taverman dated July 17, 1995. In accordance with 19 CFR 353.28(c), we are amending the final result of the antidumping duty investigation of seamless pipe from Brazil to correct the above-cited ministerial error. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Original margin percent	Revised margin percent
MSA	125.00	124.94
All Others	125.00	124.94

Scope of Investigation and Order

The scope of this investigation includes small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1,000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such

as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On July 26, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of seamless pipe from Brazil materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of seamless pipe from Brazil. These antidumping duties will be assessed on all unliquidated entries of seamless pipes from Brazil entered, or withdrawn from warehouse, for consumption on or after January 27, 1995, the date on which the Department published its preliminary determination notice in the **Federal Register** (60 FR 5351).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Mannesmann S.A	124.94
All Others	124.94

This notice constitutes the antidumping duty order with respect to seamless pipe from Brazil, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19147 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–357–809]

Notice of Antidumping Duty Order: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Fabian Rivelis, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3853, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Investigation and Order

The scope of this investigation includes small diameter seamless carbon and alloy steel standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard; line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On July 26, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of seamless pipe from Argentina materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of seamless pipe from Argentina. These antidumping duties will be assessed on all unliquidated entries of seamless pipe from Argentina entered, or withdrawn from warehouse, for consumption on or after January 27, 1995, the date on which the Department published its preliminary determination notice in the **Federal Register** (60 FR 5348).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Siderca S.A.I.C	108.13
All Others	108.13

This notice constitutes the antidumping duty order with respect to seamless pipe from Argentina, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19148 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 9, 1995, in the case of *Zenith Electronics Corp., et al.* v. *United States*, Slip-Op 95–35, Consol. Court No. 91–07–00515 (*Zenith*), the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) results of redetermination on remand of the final results of the fifth administrative review of the antidumping duty order on color

television receivers, except for video monitors, from Taiwan. The fifth administrative review covered the following companies: Action Electronics, Ltd. (Action); AOC International (AOC); Funai Electric Co. (Funai); Hitachi Television, Ltd. (Hitachi); Kuang Yuan (Kuang Yuan); Nettek Corp., Ltd. (Nettek); Paramount Electronics (Paramount); Philips Electronics Industries (Taiwan), Ltd. (Philips); Proton Electronic Industrial Co., Ltd. (Proton); RCA Taiwan Ltd. (RCA); Sampo Corp. (Sampo); Sanyo Electric (Taiwan) Co., Ltd. (Sanyo); Shinlee Corp. (Shinlee); Shin-Shirasuna Electric Corp. (Shirasuna); Tatung Co. (Tatung); and Teco Electric and Machinery Co., Ltd. (Teco) for the period April 1, 1988, through March 31, 1989. Action, AOC, Proton, and Tatung were the only companies whose weighted-average margins were affected by the remand order. In accordance with the Court's determination, we are hereby amending the final results of this administrative review.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1991, the Department published in the **Federal Register** (56 FR 31378) the final results of the fifth administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan, covering the period April 1, 1988, through March 31, 1989.

Subsequent to the Department's final results, Zenith Electronics Corporation, a domestic producer, alleged before the Court that the Department erred in calculating the value added tax (VAT) for the above-named companies. The Court agreed and remanded the issue to the Department to recalculate the VAT according to the Department's new methodology set out in *Independent Radionic Workers of America* v. *United States*, Slip Op. 94–144 (September 16, 1994). As a result of the recalculation, we have determined that the weighted-average margins for each company are as follows:

Action	2.20 percent.
AOC	1.53 percent.
Funai	4.44 percent.
Hitachi	10.82 percent.
Kuang Yuan	0.0000 percent.
Nettek	10.82 percent.
Paramount	10.82 percent.
Philips	10.82 percent.
Proton	0.60 percent.
RCA	5.74 percent.
Sampo	0.78 percent.
Sanyo	4.66 percent.
Shinlee	10.14 percent.
Shirasuna	10.82 percent.
Tatung	0.0003 percent.
Teco	5.46 percent.

The decision became final on March 9, 1995, when the Court issued its final decision on this administrative review in *Zenith*.

Amended Final Results of Review

Based on our revised calculations, we have amended our final results of review for the period April 1, 1988, through March 31, 1989. The amended weighted-average margins for each company are shown above. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

This notice is in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19151 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–F

University of Hawaii, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–069. *Applicant:* University of Hawaii, Honolulu, HI 96822. *Instrument:* Nitrogen Liquefier, Model MNP 10/1/300. *Manufacturer:* Stirling Cryogenics and Refrigeration, The Netherlands. *Intended Use:* See notice at 59 FR 31208, June 17, 1994. *Advice Received From:* The National Institute of Standards and Technology, April 25, 1955

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides liquid nitrogen at 10 liters/hour with purity beyond 99% for a variety of cryogenic applications. The National Institute of Standards and Technology advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–19158 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–054. *Applicant:* California State University, 1250 Bellflower Blvd., Long Beach, CA 90840. *Instrument:* Real-Time 4 Camera System, Model VICON 370. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended Use:* The instrument will be used for analysis of cyclical motion in human subjects, primarily during walking, balancing, and other functional activities. In addition, the instrument will be used for educational purposes in PT 301 and 302. Anatomy and Kinesiology and PT 475, Research Methods. *Application*

Accepted by Commissioner of Customs: June 29, 1995.

Docket Number: 95–055. *Applicant:* Dartmouth College, Earth Sciences, 6105 Fairchild Science Center, Hanover, NH 03755-3571. *Instrument:* Thermal Ionization Mass Spectrometer, Model MAT 262/RPQ. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to measure isotope ratios of various chemical elements, such as Ca, Sr, Nd, U, Th, Pb, and OS in order to find new information about the evolution of the Earth throughout geologic time. Studies will be used to constrain the processes responsible for mineral weathering and soil formation, rock petrogenesis, meteorite impact, and biogeochemical element cycling in aquatic and terrestrial ecosystems. In addition, the instrument will be used for demonstration purposes, laboratory assignments and student projects in several earth science courses. *Application Accepted by Commissioner of Customs:* June 29, 1995.

Docket Number: 95–056. *Applicant:* Dartmouth College, Earth Sciences, 6105 Fairchild Science Center, Hanover, NH 03755-3571. *Instrument:* MAT 252 Mass Spectrometer Upgrade. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to add ConFlo flow injection and elemental analysis capabilities to an existing gas-source mass spectrometer. With these capabilities, stable isotope ratios of H, C, N, O and S and elemental concentrations of N, C and S will be measured for geological and environmental samples. These measurements will support a wide range of research projects undertaken by faculty and students. In addition, the instrument will be used for demonstration purposes, laboratory assignments and student projects in several earth science courses. *Application Accepted by Commissioner of Customs:* June 29, 1995.

Docket Number: 95–057. *Applicant:* University of Connecticut, Psychology Department U-20, 406 Babbidge Road, Storrs, CT 06269-1020. *Instrument:* Fiber-Electron Manipulator System. *Manufacturer:* Thomas Recording, Germany. *Intended Use:* The instrument will be used for studies of the electrical activity of brain cells (neurons) of the cerebral cortex with the primary goal of understanding the mechanisms whereby individual cortical neurons obtain their unique repertoire of response properties. *Application Accepted by Commissioner of Customs:* June 29, 1995.

Docket Number: 95–058. *Applicant:* University of Maryland, College Park, Institute for Plasma Research, College Park, MD 20742. *Instrument:* Scanning Electron Microscope, Model XL-40. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for studies of the following phenomena: (a) micromachining with focused ion beams, (b) modification of integrated circuits, (c) ion lithography, and (d) ion beam - electron beam interactions in solids. Experiments will be conducted primarily to investigate the interactions of ion beams with solid materials in order to improve the "surface finish" that can be achieved while, e.g., producing optical elements in solid state lasers or preparing materials for observation with electron microscopy. The instrument will also be used for educational purposes in a graduate course in liquid metal ion source technology and in short courses to train people in focused ion beam technology. *Application Accepted by Commissioner of Customs:* July 3, 1995.

Docket Number: 95–059. *Applicant:* Woods Hole Oceanographic Institution, 183 Oyster Pond Road, MS 40, Fenno House, Woods Hole, MA 02543-1522. *Instrument:* Noble Gas Mass Spectrometer, Model MAP 215-50. *Manufacturer:* Mass Analyzer Products, United Kingdom. *Intended Use:* The instrument will be used to measure noble gas concentrations and isotopic compositions within mantle derived rocks and minerals to help to understand the history and structure of the earth's interior, and formation of the earth's atmosphere by outgassing. It will also be used to measure the concentrations of cosmic ray produced nuclides in surficial rocks and minerals. One of the main goals of this research is to determine ages for Antarctic glacial moraines, and thereby to reconstruct the history of the Antarctic ice sheets. *Application Accepted by Commissioner of Customs:* July 5, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–19159 Filed 8–2–95; 8:45 am]

BILLING CODE 3510–DS–F

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 95–00001.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to VINEX International, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*

All products.

2. *Services*

All services.

3. *Technology Rights*

Technology rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. *Export Trade Facilitation Services (as they relate to the Export of Products, Services and Technology Rights)*

Export Trade Facilitation Services include professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities, marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers associations.

Export Markets

The export markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam,

the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.)

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets as an Export Intermediary, VINEX International, Inc. may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among suppliers for the sale or divide Export Markets among suppliers for the sale and/or licensing of products, services, and/or Technology Rights;
6. Allocate export orders among suppliers;
7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping; and
10. Exchange information on a one-on-one basis with individual suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors.

Terms and Conditions of Certificate

1. In engaging in the above Export Trade Activities and Methods of Operation, VINEX International, Inc. will not intentionally disclose directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.
2. VINEX International, Inc. will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.
2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.
3. "Technology Rights: means such things as, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

Protection Provided by the Certificate

This Certificate protects VINEX International, Inc. and his employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits VINEX International, Inc. from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to VINEX International, Inc. by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of VINEX International, Inc. (b) the legality of such business plans of VINEX International, Inc. (other than provided by the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)", 50 FR 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

Effective Date: July 25, 1995.

Dated: July 28, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–19080 Filed 8–2–95; 8:45 am]

BILLING CODE 3510-DR-P

Performance Review Board Membership

This notice announces the appointment by the Department of Commerce Deputy Under Secretary for International Trade, Timothy J. Hauser, of the Performance Review Board (PRB). This is a revised list of membership which includes previous members as listed in the August 26, 1994, **Federal Register** Announcement 58 FR 44130 with additional members added for a two year term. The purpose of the International Trade Administration's PRB is to review and make recommendations to the appointing authority on performance and other issues concerning members of the Senior Executive Service (SES). The members are:

Anne L. Alonzo, Deputy Assistant Secretary for Environmental Technologies Exports Trade Development
Mary Fran Kirchner, Deputy Assistant Secretary for Export Promotion Services U.S. and Foreign Commercial Service
Susan Kuhbach, Director, Office of Countervailing Investigations Import Administration
Eleanor Roberts Lewis, Chief Counsel for International Trade Administration (non-ITA member)
Charles Ludolph, Director, Office of European Union and Regional Affairs International Economic Policy
Jon C. Menes, Director, Office of Trade and Economic Analysis Trade Development
John L. Walker, Deputy Assistant Secretary for Africa and the Near East International Economic Policy

Dated: July 28, 1995.

James T. King, Jr.,

Human Resources Manager, International Trade Administration.

[FR Doc. 95–19163 Filed 8–2–95; 8:45 am]

BILLING CODE 3510-25-P

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038–0026, Gross Margining of Omnibus Accounts, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. A carrying futures commission merchant ("FCM") is required to maintain a written representation from the originating FCM if it allows a person trading through an omnibus account to margin positions in the account at a lower than normal level because a spread or hedge position is involved.

ADDRESSES: Persons wishing to comment on this information collection should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20502, (202) 395–7340. Copies of the submission are available from Joe F. Mink, Agency Clearance Officer, (202) 254–9735.

Title: Gross Margining of Omnibus Accounts

Control Number: 3038–0026

Action: Extension

Respondents: Businesses (excluding small businesses)

Estimated Annual Burden: 500 total hours

Respondents	Regulation (17 CFR)	Estimated number of respondents	Annual responses	Estimated average hours per response
Reporting:				
Businesses	1.58(b)	100	5,000	.04
Recordkeeping:				
Businesses	1.58(b)	300	300	1

Issued in Washington, DC on July 28, 1995.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 95–19100 Filed 8–2–95; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Invention for Licensing

The invention Patent Application Serial No. 08/321,066: BIOLUMINESCENT BIOASSAY SYSTEM, filed October 11, 1994, is assigned to the United States by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of the patent application cited should be directed to the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

For further information contact: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: July 21, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–19114 Filed 8–2–95; 8:45 am]

BILLING CODE 3810-FF-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–395–000]

Williams Natural Gas Company v. Kansas Natural Partnership, et al.; Notice of Complaint

July 28, 1995.

Take notice that on July 21, 1995, Williams Natural Gas Company (Williams) filed with the Commission a complaint pursuant to Rule 206(a) of the Commission's Rules of Practice and Procedure against the above-captioned natural gas pipeline entities, that are owned by the Bishop Group.[1] Williams is an interstate natural gas company that competes with the Bishop Group companies. KansOK Partnership is regulated as an intrastate pipeline in Oklahoma; Kansas Pipeline Partnership and Kansas Natural Partnership are regulated as intrastate pipelines in Kansas; and Riverside Pipeline Company, L.P. is regulated as an interstate pipeline. Kansas Pipeline Operating Company operates these four pipelines.

Williams alleges that the four pipelines owned by the Bishop Group collectively constitute an interstate pipeline system, and should be subject to the Commission's jurisdiction under the Natural Gas Act. Williams requests that the Commission issue an order: (1) Declaring that the Bishop Group constitutes a single interstate pipeline system; (2) requiring respondents to promptly obtain all required Commission certificates and tariff approvals; (3) withdrawing any certificates that were issued to the Bishop Group on the assumption that its pipelines would continue to operate as bona fide intrastate systems; (4) requiring respondents to comply with all Commission regulations, including Order No. 636; (5) requiring the respondents to refrain from constructing new interstate facilities without Commission approval; (6) requiring respondents to refrain from imposing any direct bills or rate increases without Commission approval; and (7) taking such other action as the Commission deems appropriate.

Williams alleges that the Bishop Group plans to construct a pipeline, to be known as "Linchpin 2", which would connect its existing facilities with Panhandle Eastern Pipeline

[1] 19 CFR 385.206(a).

Company at a point south of Kansas City, Kansas. Williams requests that the Commission determine that such construction would be subject to the Commission's jurisdiction, and would thus require Commission approval as a prerequisite.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure.[2] All such motions or protests should be filed on or before August 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before August 21 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18127 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11374–001, IA]

Butler County Conservation Board; Notice of Scoping Pursuant to the National Environmental Policy Act of 1969, Notice Requesting Interventions and Protests, and Notice Not Ready for Environmental Analysis

July 28, 1995

On July 24, 1995, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the Butler County Conservation Board's application for the Greene Milldam Project, located on the Shell Rock River in the Town of Greene, Butler County, Iowa. The application is not ready for environmental analysis at this time. A public notice will be issued in the future indicating its readiness for environmental analysis and soliciting comments, recommendations, terms and conditions, or prescriptions on the application and the applicant's reply comments.

The purpose of this notice is to (1) invite interventions and protests; (2) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (3) advise all parties of their opportunity for comment.

Interventions and Protests

All filings must: (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," OR "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

All filings must be received 60 days from this issuance date of this notice.

Scoping Process

The Commission's scoping objectives are to:

- Identify significant environmental issues;
- Determine the depth of analysis appropriate to each issue;
- Identify the resource issues not requiring detailed analysis; and
- Identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed actions and the continued operation of the hydropower projects in the basin and to determine what issues should be covered in the environmental document pursuant to the National Environmental Policy Act of 1969 (NEPA). The document entitled "Scoping Document I" (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations, and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commenters may submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the test need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1⁄s.2, ASCII, etc). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Greene Milldam Project, FERC No. 11374.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or intercederers (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the scoping process, please contact Mary Golato, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 825 North Capitol Street NE., Washington, D.C. 20426 at (202) 219–2804.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19071 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–349–000]

The Brooklyn Union Gas Company v. CNG Transmission Corporation; Notice of Technical Conference

July 28, 1995.

Take notice that a technical conference will be convened to discuss issues concerning Brooklyn Union Gas Company's complaint requesting the Commission to direct CNG Transmission Corporation to refrain from requiring Brooklyn Union to comply with an operational flow order at Leidy, Pennsylvania. The conference will be held on Tuesday, August 15, 1995, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, D.C. 20426.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19073 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–397–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 28, 1995.

Take notice that on July 25, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing. The proposed effective date of these tariff sheets is August 24, 1995.

Panhandle states that the tariff sheets listed on Appendix A to the filing are being filed to implement Rate Schedule LFT for Limited Firm Transportation Service on Panhandle's system. Panhandle is proposing to make this service available to satisfy the needs of shippers who generally require firm transportation but are able to accommodate periodic service interruptions. Panhandle has gained valuable experience operating its system under Order No. 636 and believes there is a need in the marketplace for this type of service.

Panhandle states that the characteristics of Rate Schedule LFT are substantially similar to those of Rate Schedule EFT with the following exceptions: (1) Under proposed Rate Schedule LFT, transportation service will be available on a firm basis subject to Panhandle's right to interrupt service in whole or in part on any day, but not more than ten (10) days, in each month; (2) a provision has been added concerning the overrun charge for takes during a period when service has been interrupted pursuant to the interruption provisions of Rate Schedule LFT; and (3) if Panhandle receives a request for service under Rate Schedules FT or EFT which can only be provided by reducing the Maximum Daily Contract Quantity under Rate Schedule LFT, Shippers under Rate Schedule LFT may be required to convert part or all of their service to Rate Schedules FT, EFT, IT, EIT or terminate their service.

Panhandle states that copies of this filing have been served on all current shippers and applicable State regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secetary.

[FR Doc. 95–19074 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–88–002 and RP95–112–009]

Tennessee Gas Pipeline Company; Notice of Motion To Place Tariff Sheets Into Effect

July 28, 1995.

Take notice that on July 24, 1995, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a motion to move into effect the tariff sheets listed in Appendix A to the filing, effective August 1, 1995, in accord with Ordering Paragraph (c) of the Commission's June 28, 1995 Order on Rehearing and Following Technical Conference in the above-referenced dockets. *Tennessee Gas Pipeline Company*, 71 FERC ¶61,399 (1995).

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before August 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19075 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER89–672–009, et al.]

PSI Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 26, 1995.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. ER89–672–009]

Take notice that on July 10, 1995, PSI Energy, Inc. (PSI) filed certain information as required by the Commission's order issued on June 28, 1990 [51 FERC 61,367 (1990)], and pursuant to Section T of their Transmission Service Tariff. Copies of PSI's informational filing are on file with the Commission and are available for public inspection.

2. PECO Energy Company

[Docket No. ER95–207–000]

Take notice that on July 14, 1995, PECO Energy Company (PECO) withdrew its request for confidential treatment regarding its November 17, 1994 filing in this proceeding, and submitted copies of an unredacted version of that filing. PECO also renewed its request for expedited treatment and for Commission acceptance of the Agreement for filing at the earliest possible date. In addition, by letter dated December 23, 1994, PECO filed supplemental information (without request for confidential treatment) concerning its November 17, 1994 filing.

Copies of the unredacted version of the November 17, 1994 filing as well as the December 23, 1994 document have been sent to all parties to this proceeding, the Pennsylvania Public Utility Commission and the Maryland Public Service Commission.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Green Mountain Power Corporation

[Docket No. ER95–1320–000]

Take notice that on June 30, 1995, Green Mountain Power Corporation (GMP) tendered for filing an Electric Service Agreement for sale of power to the Northfield (Vt.) Electric Department under its Power Rate W in GMP's FERC Electric Tariff No. 1 beginning September 1, 1995. GMP also submitted a proposed Power Sales Agreement

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[2] 18 CFR 385.214 and 385.211.

pursuant to which it will purchase power and energy available from Northfield's generation resources. GMP has asked that the Electric Service Agreement and, to the extent necessary, the Power Sales Agreement be accepted for filing and made effective as of September 1, 1995.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. ER95–1339–000]

Take notice that on July 3, 1995, Portland General Electric Company (PGE) tendered for filing under FERC Electric Tariff, Original Volume No. 2 (PGE–2) signed Service Agreements between PGE and the City of Anaheim Public Utilities Department, City of Glendale Public Service Department and Public Utility District No. 2 of Grant County.

PGE requests that the Commission grant waiver of the notice requirements to allow the signed Service Agreements to become effective October 9, 1994, sixty (60) days after PGE's original filing (Docket No. ER94–1543–000).

Copies of the filing were served upon the list of entities appearing on the Certificate of Service attached to the filing letter.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER95–1372–000]

Take notice that on July 13, 1995, Northern States Power Company-Minnesota (NSP-M) and Northern States Power Company-Wisconsin (NSP-W) jointly tendered and requested the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to Heartland Energy Services, Inc.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of August 14, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreements may be accepted for filing effective on the date requested.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER95–1222–000]

Take notice that on July 11, 1995, Northern Indiana Public Service Company tendered for filing a letter to clarify provisions of its power sales tariff filed in the above-referenced docket.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Delmarva Power & Light Company

[Docket No. ER95–1362–000]

Take notice that on July 10, 1995, Delmarva Power & Light Company tendered for filing a Notice of Succession regarding contracts, rate schedules and supplements among Conowingo Power Company and its former parent PECO Energy Company and affiliate, Susquehanna Electric Company.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER95–1370–000]

Take notice that on July 13, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and CENERGY. The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows CENERGY to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume 1, Rate Schedule T–1.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on CENERGY, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER95–1371–000]

Take notice that on July 13, 1995, New England Power Company tendered for filing a contract with the Green Mountain Power Corporation for construction of facilities in Vernon, Vermont.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER95–1373–000]

Take notice that on July 14, 1995, Southern California Edison Company (Edison), tendered for filing the following Interruptible Transmission Service Agreement (Agreement) with Coastal Electric Services Company (Coastal) as an initial rate schedule.

Edison-Coastal Interruptible Transmission Service Agreement (Matrix) Between Southern California Edison Company and Coastal Electric Services Company

This Agreement sets forth the terms and conditions under which Edison shall provide Coastal with interruptible transmission service between various points of delivery and receipt for the delivery of power to various customers of Coastal.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. National Fuel Resources, Inc.

[Docket No. ER95–1374–000]

Take notice that on July 14, 1995, National Fuel Resources, Inc. (NFR) petitioned the Commission for acceptance of NFR Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. NFR is a subsidiary of National Fuel Gas Company, an integrated natural gas company.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Power, Inc.

[Docket No. ER95–1375–000]

Take notice that on July 14, 1995, Entergy Power, Inc. (EPI), tendered for filing an Interchange Agreement with Louisiana Energy & Power Authority.

EPI requests an effective date for the Interchange Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the notice requirements specified in § 35.11 of the Commission's Regulations.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies)

[Docket No. ER95–1376–000]

Take notice that on July 14, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a Supplement No. 3 to add five (5) Customers to the Standard Generation Service Rate Schedule under which the APS Companies offer standard generation and emergency service to these Customers on an hourly, daily, weekly, monthly or yearly basis. The following new Customers are added by this filing: Engelhard Power Marketing, Inc., Louis Dreyfus Electric Power Inc., Old Dominion Electric Cooperative, Stand Energy Corporation, and Utility-2000 Energy Corporation. The APS Companies request a waiver of notice requirements to make service available as of July 12, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER95–1386–000]

Take notice that on July 18, 1995, Wisconsin Public Service Corporation (WPSC), tendered for filing an amendment to an existing agreement with Wisconsin Power and Light Company relating to the construction of transmission facilities at WPSC's Aurora Street Substation.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. CINergy Services, Inc.

[Docket No. ER95–1387–000]

Take notice that on July 18, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated July 1, 1995, between CIN, CG&E, PSI and Catex Vitol Electric LLC (CVE).

The Interchange Agreement provides for the following service between CIN and CVE.

1. Exhibit A—Power Sales by CVE
2. Exhibit B—Power Sales by CIN

CIN and CVE have requested an effective date of August 1, 1995.

Copies of the filing were served on Catex Vitol Electric LLC, the Massachusetts Department of Public Utilities, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 9, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19123 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER92–517–006, et al.]

Southern Company Services, Inc., et al. Electric Rate and Corporate Regulation Filings

July 27, 1995.

Take notice that the following filings have been made with the Commission:

1. Southern Company Services, Inc.

[Docket No. ER92–517–006]

Take notice that on June 30, 1995, Southern Company Services, Inc. tendered for filing a refund report in the above-referenced docket.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Catex Vitol Electric, L.L.C.

[Docket No. ER94–155–007]

Take notice that on June 26, 1995, Catex Vitol Electric, L.L.C. filed certain information as required by the Commission's order issued on January 14, 1994. Copies of Catex's informational filing are on file with the Commission and are available for public inspection.

3. NORAM Energy Services, Inc.

[Docket No. ER94–1247–005]

Take notice that on June 17, 1995, NORAM Energy Services, Inc. (NORAM) filed certain information as required by the Commission's order issued on July 25, 1994. Copies of NORAM's informational filing are on file with the Commission and are available for public inspection.

4. J. Aron & Company

[Docket No. ER95–34–004]

Take notice that on June 11, 1995, J. Aron & Company filed certain information as required by the Commission's order issued on March 1, 1995. Copies of J. Aron's informational filing are on file with the Commission and are available for public inspection.

5. Southern Company Services, Inc.

[Docket No. ER95–59–003]

Take notice that on July 3, 1995, Southern Company Services, Inc. tendered for filing supplemental information in the above-referenced docket.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Kimball Power Company

[Docket No. ER95–232–003]

Take notice that on June 17, 1995, Kimball Power Company (Kimball) filed certain information as required by the Commission's order issued on February 1, 1995. Copies of Kimball's informational filing are on file with the Commission and are available for public inspection.

7. El Paso Electric Company

[Docket No. ER95–423–000]

Take notice that El Paso Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER95–507–001]

Take notice that on June 30, 1995, Ohio Edison Company and Pennsylvania Power Company tendered for filing its compliance filing pursuant to the Commission's order dated June 2, 1995.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Amoco Power Marketing Corporation

[Docket No. ER95–1359–000]

Take notice that Amoco Power Marketing Corporation on July 17, 1995, tendered for filing an amendment to its July 11, 1995 filing in the above-referenced docket.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, West Penn Power Company (the APS Companies)

[Docket No. ER95–1377–000]

Take notice that on July 14, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies), filed Standard Transmission Service Agreements to add the following new customers to the APS Companies' Standard Transmission Service Rate Schedule which has been accepted for filing by the Federal Energy Regulatory Commission: Baltimore and Gas Electric Company, CNG Power Services Corporation, Engelhard Power Marketing, Inc., Heartland Energy Services, Old Dominion Electric Cooperative, Stand Energy Corporation, and Utility-2000 Energy Corporation. The proposed effective date under the proposed rate schedule is July 12, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Montaup Electric Company

[Docket No. ER95–1378–000]

Take notice that on July 14, 1995, Montaup Electric Company tendered for filing a proposed supplement to Rate M–14, FERC Electric Tariff, First Revised Volume No. 1. The change is a provision which will allow for Service for Resale to Interruptible Customers and will apply to customers who receive all-requirements service under the tariff. The filing is requested to become effective in 60 days.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Power Company

[Docket No. ER95–1379–000]

Take notice that on July 17, 1995, Consumers Power Company (Consumers), tendered for filing Amendment No. 1 to the Facilities Agreement Between Consumers and the City of Holland (designated Supplement No. 4 to Consumers Power Company Electric Rate Schedule FERC No. 50).

The Amendment provides for the replacement of and addition of certain facilities at the City of Holland's expense with no change in rates. The new facilities are to be owned by the City of Holland.

Copies of the filing were served upon the Holland Board of Public Works and the Michigan Public Service Commission.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Gas and Electric Company

[Docket No. ER95–1380–000]

Take notice that on July 17, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Utility-2000 Energy Corp. under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER95–1383–000]

Take notice that on July 17, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed service agreement between PECO Energy Company and Virginia Power. Under the service agreement Virginia Power agreed to provide services to PECO under Virginia Power's Power Sales Tariff, which was accepted for filing on June 28, 1994 in Docket No. ER94–1022–000. Virginia Power requests waiver of the Commission's sixty-day notice requirement to permit an effective date of January 16, 1995. If this waiver request is denied, Virginia Power requests that the filing be made effective June 17, 1995.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Boston Edison Company

[Docket No. ER95–1385–000]

Take notice that on July 17, 1995, Boston Edison Company (Edison), tendered for filing an executed service agreement between Massachusetts Municipal Wholesale Electric Company (MMWEC) and Edison for the provision of firm transmission service for hydro-power produced by the Niagara and St. Lawrence Projects in the State of New York and purchased by the Massachusetts Department of Public Utilities, which has designated MMWEC as its agent in this matter, under Edison's firm transmission tariff, Original Volume No. 4. Since MMWEC will require the firm transmission service of July 1, 1995, Edison requests that date to be the effective date of the rate schedule change.

Copies of this filing have been served upon MMWEC and the Massachusetts Department of Public Utilities.

Comment date: August 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19124 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11316–001 Alaska]

Iliamna-Newhalen-Nondalton Electric Cooperative; Notice of Availability of Environmental Assessment

July 28, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption for the Tazimina River Hydropower Project, located near the town of Iliamna, Alaska, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protection and enhancement measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19072 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 11544–000, et al.]

Hydroelectric Applications [Richard D. Ely, III, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 11544–000.

c. Date filed: May 30, 1995.

d. Applicant: Richard D. Ely, III.

e. Name of Project: Palermo Water Power Project.

f. Location: On the Feather River and the Palermo Canal, at the Oroville dam, near the town of Oroville, in Butte County, California. Sections 1 and 2 of T19N, R4E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Richard D. Ely, III, 1213 Purdue Drive, Davis, California 95616, (916) 753–8864.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Comment Date: September 28, 1995.

k. Description of Project: The proposed project would utilize the California Department of Water Resources' existing 770-foot-high Oroville dam and 16,000-acre Oroville Lake (Feather River Project No. 2100) and include: (1) A 1,050-foot-long penstock tying into an existing short pressurized conduit that runs through the dam; (2) a powerhouse containing three generating units with a total installed capacity of 481 Kw; (3) a tailrace returning flow to the Palermo Canal; (4) a 1,500-foot-long transmission line interconnecting with an existing Pacific Gas and Electric Company transmission line; and (5) appurtenant facilities.

The entire project is on lands owned by the state of California, within the existing boundary of the Feather River Project. No new access roads will be needed to conduct the studies.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. Type of Application: Minor License.

b. Project No.: 11512–000.

c. Date filed: December 27, 1994.

d. Applicant: John H. Bigelow.

e. Name of Project: Mckenzie.

f. Location: On the Mckenzie River in Lane County, Oregon, Section 10, Township 16S, Range 6E, West Meridian.

g. Filed Pursuant to: Federal Power Act 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Amy Drought, Project Manager, Community Planning Workshop, Hendricks Hall, University of Oregon, Eugene, OR 97403, (503) 346–3653.

i. FERC Contact: Hector M. Perez at (202) 219–2843.

j. The project would consist of: (1) A diversion dam constructed of large rocks at river mile 73.6; (2) a concrete headgate; (3) a power canal about 1,500 feet long; (4) a 32-foot-long and 5-foot-diameter penstock; (5) a powerhouse with an installed capacity of 76 kilowatts; (6) a 30-foot-long tailrace; and (7) other appurtenances.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. Deadline for protests and motions to intervene: September 26, 1995.

m. This notice also consists of the following standard paragraph: B1, and E1.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

3 a. Type of Application: Amendment of License.

b. Project No.: 459–081.

c. Dated Filed: June 12, 1995.

d. Applicant: Union Electric Company.

e. Name of Project: Osage Project.

f. Location: Lake of the Ozarks, Benton County, Eldon, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. Dan Jarvis, Union Electric Company, Route No. 3, P.O. Box 234, Eldon, MO 65026, (314) 621–3222.

i. FERC Contact: Joseph C. Adamson, (202) 219–1040.

j. Comment Date: September 15, 1995.

k. Description of Amendment: Union Electric requests approval of a dredging management plan. The plan is the permitting procedure to be used in accomplishing a significant portion of non-project related dredging activities on the Osage Project. The activities covered under the plan are for dredging or excavation of up to 500 cubic yards (cy) of material from the Lake of the Ozarks. These permits are for the purpose of allowing individuals to gain additional clearance under their boat dock, gain access to their boat dock or other minor dredging activities. Any request which involves removal of more than 500 cy of material will require specific approval from the Commission.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. Type of Application: Surrender of License.

b. Project No: 10818–007.

c. Date Filed: June 23, 1995.

d. Applicant: Greenbrier Electro-Motive, Inc.

e. Name of Project: Kincaid Project.

f. Location: Muddy Creek, Greenbrier County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a) - 825(r).

h. Applicant Contact: Raymond W. Tuckwiller RFD 2, Box 322, Lewisburg, WV 24901, (304) 647–3775.

i. FERC Contact: Hillary Berlin, (202) 219–0038.

j. Comment Date: September 18, 1995.

k. Description of Project: The license states that the project is uneconomical to construct at this time.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely

notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: July 28, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19125 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–636–000, et al.]

Transcontinental Gas Pipe Line Corporation, et al. Natural Gas Certificate Filings

July 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation)

[Docket No. CP95–636–000]

Take notice that on July 24, 1995, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed pursuant to and in accordance with Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's Regulations, an application in the above docket for an order approving the partial abandonment of Transco's Exxon Lateral, located in Mobile County, Alabama, to enable Transco to sell a partial ownership interest in such facility to Florida Gas Transmission Company (FGT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Transco states that pursuant to the authorizations granted by the Commission in Docket No. CP92–182, *et al.*, Transco and FGT jointly own and operate the Mobil Bay Lateral (Also referred to sometimes as the "Onshore Mobil Bay Pipeline"), a 123.4 mile, 30-inch diameter pipeline extending from the Mobil Oil Exploration and Producing Southeast Inc., gas treatment plant near Coden in Mobile County, Alabama, to an interconnection with FGT's main line near Citronelle, Alabama, and on to an interconnection with Transco's main line near Butler, Alabama. Transco further states that in June 1994, it completed construction of a two-mile, 26-inch diameter pipeline, referred to as the "Exxon Lateral", extending from an interconnection with Mobil Bay Lateral to an interconnection with the Exxon Mobil Bay Partnership gas treatment plant (Exxon Plant) located near Coden in Mobile County, Alabama.

Transco states that it has agreed to sell, and FGT has agreed to purchase, a 37.22% undivided ownership interest in the Exxon Lateral. The purchase price to be paid by FGT for such ownership interest will be 37.22% of Transco's net book value of the Exxon Lateral as of the closing of the purchase and sale.

Comment date: August 7, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Iroquois Gas Transmission System, L.P.

[Docket No. CP95–637–000]

Take notice that on July 24, 1995, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, Connecticut 06484, filed in Docket No. CP95–637–000, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate a compressor station to be located near Athens, New York. Iroquois states that the compressor station is necessary to provide natural gas transportation services for three shippers in an aggregate amount of 75,000 Mcf per day (Mcf/d). Iroquois proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

Iroquois proposes to construct and operate a new compressor station to be located near Athens, Greene County, New York. The proposed Athens compressor station will be the third compressor station on Iroquois' system and will be rated as a 9,500 horsepower turbo-compressor unit. Iroquois says that this new compressor station, along with other system design and operational changes, will be required to provide the 75,000 Mcf/d of requested firm service. The estimated cost of the proposed Athens compressor station is approximately $21 million, as detailed in Exhibit K of Iroquois' application. The other system design changes described by Iroquois include aerodynamic assembly changes at Iroquois' Wright compressor station which will increase the capacity made available by that station; and the installation of a new compressor station by TransCanada PipeLines Ltd. at Iroquois, Ontario, which will increase the pressure at which deliveries are made by TransCanada into the Iroquois system at Waddington, New York from 1400 psig to 1440 psig.

In its application Iroquois states that it has entered into Precedent Agreements with CNG Energy Services Corporation for new firm transportation service for 50,000 Mcf/d, with Enron Capital and Trade Resources Corporation for new firm transportation service for 15,000 Mcf/d, and with Coastal Gas Marketing Company for new firm transportation service for 10,000 Mcf/d. Iroquois proposes to provide firm gas transportation service for these three shippers under its Part 284, Subpart G, Blanket Certificate and will be performed pursuant to Iroquois' RTS Rate Schedule and associated General Terms and Conditions of Iroquois' FERC Gas Tariff, First Revised Volume 1. Iroquois will charge its effective Part 284 open-access RTS rates for the new service.

Iroquois proposes to roll-in the costs of the construction and operation of the new Athens compressor station with the costs and rates of its existing system. Consistent with the Commission's recently issued policy statement in Docket No. PL94–4, Iroquois has filed a schedule which details the anticipated annual costs of the Athens compressor station and the increased system revenues associated with the new transportation service. Iroquois says that the schedule clearly shows that construction and installation of the Athens compressor station and a rolling in of the associated costs and revenues will have no detrimental financial impact on Iroquois' existing shippers. Iroquois anticipates that the net effect of such a rolling in will benefit existing shippers by reducing their annual costs by $1.6 million. Iroquois says that the impact of this benefit will be almost immediate, because the new service is proposed to commence on November 1, 1996, and Iroquois is required to file its next rate case on November 29, 1996, with such filing having an anticipated effective date of January 1, 1997.

Iroquois proposes to collect the return of capital for the Athens compressor station through the use of a 10% depreciation rate for this specific facility. Iroquois says that the 10% depreciation rate is consistent with the contractual arrangements supporting installation of the Athens compressor station and will allow Iroquois to recover the costs of the station over a period equal to the ten-year term of those contracts.

Iroquois is a limited partnership organized under the laws of Delaware. The limited partnership consists of eleven general partners and one limited partner, whose names and respective percentage interests are shown in Iroquois' application. The Iroquois pipeline extends from the New York-Canadian border near Iroquois, Ontario, through the states of New York and Connecticut, and terminates near South Commack, New York on Long Island.

Comment date: August 21, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Intermountain Municipal Gas Association

[Docket No. CP95–638–000]

Take notice that on July 21, 1995, InterMountain Municipal Gas Association (IMGA)[1], C/O Wheatley & Ranquist, 34 Defense Street, Annapolis, MD 21401 filed in Docket No. CP95–638–000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order resolving the following jurisdictional issues: (1) Does the Utah Public Service Commission have jurisdiction over transportation of natural gas through Mountain Fuel 's pipeline for delivery to certain members of the IMGA (Cities) and the Cities' request for interconnections with Mountain Fuel; or (2) Does the Commission have sole jurisdiction pursuant to the petition of the Cities of said transportation under the Natural Gas Act?

It is stated that the Cities plan to establish municipally-owned natural gas distribution systems in their communities to serve the residential, commercial and industrial customers

[1] Members of the IMGA consist of the Cities of Blanding, Fayette, Hatch, Hilldale, Kanab, Manille, Panquitch, Utah and Colorado City, Arizona. It is stated that these Cities represent the interests of 32 Cities in the State of Utah who are in the same or similar situation of having the need for a natural gas supply and are unable to obtain that benefit unless access to transportation over Mountain Fuel Supply Company's (Mountain Fuel) pipeline to the points of delivery for the various Cities is obtained. It is stated that Cities outside the State of Utah will receive gas into their transmission facilities at the Utah State line.

located therein desiring such service. It is stated that, at present, there is no natural gas service available in each of the Cities. The Cities contend that they have undertaken preliminary arrangements for such services and are assured that they can purchase the necessary supplies of natural gas in the interstate market from producers or marketers and can obtain the transportation of such natural gas by interstate pipeline companies to subsequent points of interconnection between those pipelines and Mountain Fuel. Cities states that Mountain Fuel has a pipeline system and available capacity to deliver such gas at points close to the Cities, where the Cities would construct lateral line facilities to Mountain Fuel's existing line. It is stated that Cities seek transportation contracts from Mountain Fuel to ensure a supply of gas to their high priority customers.

Cities contends that its petition has become necessary because the Utah Public Service Commission (Utah PSC) has declined to exercise its jurisdiction to order Mountain Fuel to undertake such transportation for Cities until it knows whether such transportation of interstate gas on behalf of a municipality would constitute a "sale for resale" under Section 1(b) of the Natural Gas Act and thereby be controlled by the provisions of Federal law, which vests in the Commission sole jurisdiction concerning sales for resale. It is stated that Mountain Fuel has refused to transport gas on behalf of the Cities under any terms. It is further stated that Mountain Fuel apparently denies that either the Commission or the Utah PSC has jurisdiction over the requested transportation service and has denied that it has any obligation to transport gas for any City, either under the jurisdiction of the Commission or the Utah PSC. IMGA states that it therefore filed its petition for declaratory order in order to resolve the jurisdictional issue or controversy and to remove uncertainty over the proposed interconnections and transportation service. Cities requests that the Commission declare that the Utah PSC has jurisdiction over the proposed transportation service or, in the alternative, that the Commission has jurisdiction over the transportation proposed by the Cities, and in the event the Commission is declared to have jurisdiction, the Cities request that the declaratory order provide that IMGA and its affected Cities may file an application under Section 7(a) of the Natural Gas Act requesting the Commission to order Mountain Fuel to interconnect with the Cities.

Comment date: August 18, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP95–642–000]

Take notice that on July 26, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–642–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate tap facilities for two new delivery points under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to install tap facilities at two locations as well as electronic gas measurement equipment (EGM) at both locations, as described below. Texas Eastern states that the facilities will enable deliveries of natural gas to Mississippi Valley Gas Company (MVG) and that MVG has agreed to reimburse it for 100% of the costs and related expenses. Texas Eastern further states that it would provide transportation services for MVG under its Part 284 blanket certificate issued in Docket No. CP88–136–000, and pursuant to existing service agreements under Rate Schedules SCT and SS–1 of its FERC Gas Tariff, Sixth Revised Volume No. 1.

Details of the proposal follow:

1. Texas Eastern proposes to construct a 4-inch tap valve, a 4-inch check valve, an insulating flange and approximately 25 feet of 4-inch piping between the tap valve, check valve and insulating flange on Texas Eastern's 20-inch Line No. 26 at approximately milepost 107.62 in Yazoo County, Mississippi. Texas Eastern indicates that the daily maximum quantity would be 8,000 Mcf/day, and the costs and expenses are estimated to be $71,400.

2. Texas Eastern would construct a 2-inch tap valve, a 2-inch check valve, an insulating flange and approximately 25 feet of 2-inch piping between the tap valve, check valve and insulating flange on its 30-inch Line No. 18 at approximately milepost 324.44 in Madison County, Mississippi. It is indicated that the daily maximum quantity would be 2,500 Mcf/day, and the costs and expenses would be $56,400.

Comment date: September 11, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19126 Filed 8–2–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5270–1]

Public Water System Supervision Program Revision for the State of Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the provisions of § 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142, the National Primary Drinking Water Regulations Implementation, that the State of Maryland has revised its approved State Public Water System Supervision Primacy Program. Maryland has adopted drinking water regulations for (1) lead and copper that correspond to the National Primary Drinking Water Regulations promulgated by EPA on June 7, 1991 (56 FR 26548); and (2) Volatile Organic Chemicals, Synthetic Organic Chemicals, and Inorganic Chemicals (known as Phase II, IIB, and V) that correspond to the National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266), and July 17, 1992 (57 FR 31776). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by September 5, 1995 to the Acting Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Acting Regional Administrator. However, if a substantial request for a public hearing is made by (insert date, 30 days from day of publication), a public hearing will be held. If no timely and appropriate request for a hearing is received and the Acting Regional Administrator elects not to hold a hearing on his own motion, this determination shall become effective on September 5, 1995.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Acting Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Acting Regional Administrator, U.S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.
- Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Cynthia Yu, U.S. EPA, Region 3, Drinking Water Section (3WM41), at the Philadelphia address given above; telephone (215) 597–8992.

Dated: July 13, 1995.

W.T. Wisniewski,

Acting Regional Administrator, EPA, Region 3.

[FR Doc. 95–18986 Filed 8–2–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

FY 1995 Commercial Wireless Regulatory Fees

August 1, 1995.

The Federal Communications Commission issues this Public Notice in order to provide information concerning the payment of regulatory fees in 1995. If you hold authorizations in any of the commercial wireless services you should carefully review this Public Notice.

Who Must Pay Regulatory Fees in 1995

Most licensees and other entities regulated by the Commission must pay regulatory fees in 1995. This Public Notice concerns only the following commercial wireless regulatees: cellular and public mobile (Part 22) licensees. Personal communications service (PCS) and commercial mobile radio service (CMRS) licensees other than those listed above are exempt from payment of regulatory fees in FY 1995. Governments and nonprofit (exempt under Section 501(c) of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

Why the Commission Must Collect Regulatory Fees

The requirement to collect annual regulatory fees was contained in Public Law 103–66, "The Omnibus Budget Reconciliation Act of 1993. "These regulatory fees, which are likely to change each fiscal year, are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. These fees are in addition to any application processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

Fee payments must be *received* by the Commission by *September 20, 1995* in order to avoid a 25% late penalty.

Type of fee	Regulatory fee payment	Fee code
Cellular radio licensees (Part 22)	$0.15 per unit	CDCN
Public Mobile Radio-Two Way (Part 22)	0.15 per unit	CPMN
Public Mobile Radio-One Way Paging (Part 22)	0.02 per unit	CDWN

FCC Form 159

Regulatory fee payments *must* be accompanied by FCC Form 159 ("FCC Remittance Advice"). A copy of this form, with specific instructions, is attached to this Public Notice. Please see, "Special Instructions for Completing FCC Forms 159 & 159–C" for detailed information on how to correctly complete these Forms.

Where To Send Regulatory Fee Payments

If sending your regulatory fee payment by *mail*, please address your envelope as follows: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

If you prefer to send your regulatory fee payment by *courier* to our lockbox bank, you may do so 24 hours per day (except bank holidays). Please address your envelope and deliver it to the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259–0001, (Attention: FCC Module Supervisor).

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made by wire transfer or by electronic funds transfer (EFT). Instructions for wire transfer payment are provided below.

We encourage arrangements to consolidate a number of regulatory fee payments either by a single entity or by different entities into a single payment instrument. Consolidated fee payments may cover several different service categories. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C ("Advice Continuation Sheets") may do so. There is no limit to the number of payment items.

Wire Transfer Payment Instructions

A wire transfer is a transaction that you initiate via your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. All payments made by wire transfer must be supported by a completed FCC Remittance Advice (FCC Form 159) and Advice Continuation Sheet (FCC Form 159–C), if required. The Form 159 must be faxed to Mellon Bank at (412) 236–5702 at least one hour before the wire transfer on the same business day. Indicate on the top of the FCC Form 159 "Wire Transfer—Regulatory Fee Payment." In the "Reserve Box" located at the upper left hand corner in "358835." Failure to submit the completed Form 159 will result in a delay in crediting your account. Due to Federal Reserve regulations, wire transfers received after 6:00 p.m. (EST) will be credited the next business day.

The following information should be provided to your bank in order to complete the wire transfer:

ABA Routing Number 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ACV—9116106
OBI Field: (Skip one space between each information item)
"REGULATORYPAY"
FCC ACCOUNT NO. (Exactly as on Form 159 Block #1)
PAYOR NAME (Exactly as on Form 159, Block #3)
Phone: (Daytime Phone #, exactly as on Form 159, Block #9)

Compliance

Licensees are solely responsible for accurately accounting for all licenses and paying proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission intends to invoke its authority under the Debt Collection Act against any licensee failing to meet its regulatory fee payment obligations.

Note. The Commission has identified several entities which have not paid the required fee for FY 1994 and has begun taking appropriate steps to secure collection of these fees and penalties due. You are strongly urged to submit your payments on time and accurately in order to avoid a penalty.

Waivers, Reductions and Deferments of Regulatory Fees

The Commission will consider request for waivers, reductions or deferments of regulatory fees, *in extraordinary and compelling circumstances only*, upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany request for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded later if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the licensee), will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be received before *September 20, 1995*, in order to avoid the 25% late-payment penalty.

Additional Information

The Commission has prepared a number of informative Fee Filing Guides for information on *application* fees for wireless radio services, or for information on *application* and *regulatory* fees for mass media, international, cable television, engineering and technology, compliance and information, and wireless radio services. These Guides, applicable Public Notices, and Forms 159 and 159–C are available from the Commission's Public Service Division and can be downloaded from the Internet (ftp@fcc.gov). Forms may also be obtained by contacting the Forms Hotline at (800) 418–3676 outside the Washington, DC area, or (202 418–3676 locally. For additional information, please contact the Fees Hotline at (202) 418–0192, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919 M Street, NW., Washington, DC 20554.

Fee Payment Procedures for Mobile Service Providers

Who Must Pay: Cellular providers (common carriers providing cellular radio service to the public) and mobile service licensees (common carriers authorized, under Part 22 of our Rules, to offer land-based or air-to-ground mobile telephone or paging services to the public).[1] Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) carriers and licensees are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

[1] In addition to cellular telephone service, these services include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio.

Fee Requirement:

Type of fee	Regulatory fee payment	Fee code
Cellular radio licensees (Part 22)	$0.15 per unit	CDCN
Public Mobile Radio-Two Way (Part 22)	0.15 per unit	CPMN
Public Mobile Radio-One Way Paging (Part 22)	0.02 per unit	CDWN

Licensees whose fee payments are based upon a subscriber or unit count should use the number of subscribers or units as of December 31, 1994. Public mobile radio licensees with more than 99 locations that have been given multiple call signs for the same license should list only one call sign on Form 159 and provide a separate listing of all other related call signs. See "Special Instructions for Completing FCC Form 159 and 159–C" for correct Payment Type Codes.

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 ("FCC Remittance Advice") and, as necessary, FCC Form 159–C ("Advice Continuation Sheet") must accompany all regulatory fee payments. Form 159 allows payors to report information on one or more payment items (e.g., cellular subscribers, public mobile subscribers, paging units, or a combination). Use Form 159–C to report additional payments.

An FCC Form 159 and 159–C have been attached to this Public Notice for you to complete and remit with your payment. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form), the following information applies specifically to commercial wireless regulatees:

Block (12)—"FCC CALL SIGN/ OTHER ID":

• Cellular, public mobile two way, and public mobile one way paging[2] licensees should enter their *call sign*.

Block (14)—"PAYMENT TYPE CODES":

Cellular and Public Mobile Licensees

CDCN: Use this when making a regulatory fee payment for a cellular radio license ($0.15 per telephone number/unit).

CPMN: Use this code when making a regulatory fee payment for a public mobile radio license ($0.15 per unit).

CDWN: Use this code when making a regulatory fee payment for a public mobile one way paging license ($0.02 per unit).

Block (15)—"QUANTITY":

Cellular and Public Mobile Licensees

• Cellular radio licensees should enter the number of telephone numbers/ units.

• Public mobile radio licensees should enter the total number of units.

• Public mobile radio one way paging licensees should enter the total number of units.

Block (16)—"AMOUNT DUE":

• For cellular radio licensees (payment type code CDCN), multiply the amount from Block 15 ("Quantity") by $0.15. Round *down* to the nearest whole dollar.

• For public mobile radio licensees (payment type code CPMN), multiply the amount from Block 15 ("Quantity") by $0.15. Round *down* to the nearest whole dollar.

• For public mobile radio one way paging licensees (payment code CDWN), multiply the amount from Block 15 ("Quantity") by $0.02. Round *down* to the nearest whole dollar.

Block (17)—"FCC CODE 1":

• Leave this block blank.

Block (18—"FCC CODE 2":

• Leave this block blank.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19046 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

[2] Public mobile radio licensees with more than 99 locations that have been given multiple call signs for the same license should list only one call sign on Form 159 and provide a separate listing of all other related call signs.

FY 1995 Common Carrier Regulatory Fees

August 1, 1995.

The Federal Communications Commission issues this Public Notice in order to provide information concerning the payment of regulatory fees in 1995. If you hold authorizations in any of the common carrier services, excluding international facilities (space stations, earth stations, bearer circuits, and international public fixed) and commercial wireless facilities (cellular and public mobile), you should carefully review this Public Notice. Separate Public Notices for international licensees and commercial wireless licensees are available.

Who Must Pay Regulatory Fees in 1995

Most licensees and other entities regulated by the Commission must pay regulatory fees in 1995. This Public Notice concerns only the following Common Carrier regulatees: interexchange carriers, local exchange carriers, competitive access providers, operator service providers, resellers (except mobile resellers governed by the commercial wireless radio services) and other interstate providers, and domestic public fixed radio (Part 21) licensees. Governments and nonprofit (exempt under Section 501(c) of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Why the Commission Must Collect Regulatory Fees

The requirement to collect annual regulatory fees from common carriers was contained in Public Law 103–66. "The Omnibus Budget Reconciliation Act of 1993." These regulatory fees, which are likely to change each fiscal year, are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. These fees are in addition to any application processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

Common carriers must pay the following regulatory fees to the Commission by *September 20, 1995*, in order to avoid a 25% late penalty.

Type of fee	Regulatory fee payment	Fee code
Interexchange Carriers	$0.00088 per revenue dollar	CDIN
Local Exchange Carriers	0.00088 per revenue dollar	CDXN
Competitive Access Providers	0.00088 per revenue dollar	CDPN
Operator Service Providers	0.00088 per revenue dollar	CSPN
Resellers	0.00088 per revenue dollar	CRPN
Other Interstate Providers	0.00088 per revenue dollar	CIPN
Domestic Public Fixed (47 CFR Part 21)	140 per call sign	CCDN

FCC Form 159

Regulatory fee payments *must* be accompanied by FCC Form 159 ("FCC Remittance Advice"). A copy of this form, with specific instructions, is attached to this Public Notice. Please see, "Special Instructions for Completing FCC Forms 159 & 159–C" for detailed information on how to correctly complete these Forms.

Where to Send Regulatory Fee Payments

If sending your regulatory fee payment by *mail*, please address your envelope as follows: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

If you prefer to send your regulatory fee payment by *courier* to our lockbox bank, you may do so 24 hours per day (except bank holidays). Please address your envelope and deliver it to the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259–0001, (Attention: FCC Module Supervisor).

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made by wire transfer or by electronic funds transfer (EFT). Instructions for wire transfer payment are provided below.

In its Report and Order the Commission directed that the Managing Director negotiate with NECA to process regulatory fees on behalf of its pooling exchange carriers and to submit their consolidated fees to our lockbox bank in a single instrument of payment. The Commission has no objection to NECA's submission of the fee on behalf of its pooling exchange carriers or others. However, we remind entities subject to the payment of a regulatory fee that the regulatee, not an agent, such as NECA, is responsible for ensuring that the payment is made and that it is subject to penalty for failure to submit the entire fee due in a timely manner.

Note: We encourage arrangements to consolidate a number of regulatory fee payments either by a single entity or by different entities into a single payment instrument. Consolidated fee payments may cover several different service categories. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C ("Advice Continuation Sheets") may do so. There is no limit to the number of payment items.

Wire Transfer Payment Instructions

A wire transfer is a transaction that you initiate via your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. All payments made by wire transfer must be supported by a completed FCC Remittance Advice (FCC Form 159) and Advice Continuation Sheet (FCC Form 159–C), if required. The Form 159 must be faxed to Mellon Bank at (412) 236–5702 at least one hour before the wire transfer on the same business day. Indicate on the top of the FCC Form 159 "Wire Transfer—Regulatory Fee Payment." In the "Reserve Box" located at the upper left hand corner indicate "358835." Failure to submit the completed Form 159 will result in a delay in crediting your account. Due to Federal Reserve regulations, wire transfers received after 6:00 p.m. (EST) will be credited the next business day.

The following information should be provided to your bank in order to complete the wire transfer:

ABA Routing Number 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ACV—9116106
OBI Field: (Skip one space between each information item)
"REGULATORYPAY"
FCC ACCOUNT NO.-(Exactly as on Form 159, Block #1)
PAYOR NAME (Exactly as on Form 159, Block #3)
Phone: (Daytime Phone #, exactly as on Form 159, Block #9)

Compliance

Licensees are solely responsible for accurately accounting for all licenses and for paying proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission intends to invoke its authority under the Debt Collection Act against any licensee failing to meet its regulatory fee payment obligations.

Note: The Commission has identified several entities which have not paid the required fee for FY 1994 and has begun taking appropriate steps to secure collection of these fees and penalties due. You are strongly urged to submit your payment on time and accurately in order to avoid a penalty.

Waivers, Reductions and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, *in extraordinary and compelling circumstances only*, upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded later if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the licensee), will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be received before *September 20, 1995*, in order to avoid the 25% late-payment penalty.

Additional Information

The Commission has prepared a number of informative Fee Filing Guides for information on *application* fees for common carrier services, or for information on *application* and *regulatory* fees for mass media, international, cable television, engineering and technology, compliance and information, and wireless radio services. These Guides, applicable Public Notices, and Forms 159 and 159–C are available from the Commission's Public Service Division and can be downloaded from the Internet (ftp@fcc.gov). Forms may be obtained by contacting the Forms Hotline at (800) 418–3676 outside the Washington, DC area, or (202) 418–3676 locally. For additional information, please contact the Fees Hotline at (202) 418–0192, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919 M Street, NW., Washington, DC 20554.

Payment Procedures for Common Carriers

Who Must Pay: Interexchange carriers (long distance telephone companies), local exchange carriers (local telephone operating companies),[1] competitive access providers (companies other than the traditional local telephone companies that provide interstate access services to long distance carriers and other companies), operator service providers (pay telephone operators), resellers (companies that obtain lines from facilities based carriers and sell service to others), other interstate service providers, and public fixed licensees (common carriers authorized, under Part 22 of our Rules, to offer land-based or air-to-ground mobile telephone services to the public).[2] Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) carriers and licensees are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Filing Procedures for Public Fixed Radio Licensees

Who Must Pay:

Domestic Public Fixed Radio Licensees: Licensees authorized as of October 1, 1994, to use microwave frequencies for video and data distribution communications within the United States. These services, authorized under Part 21 of our Rules, include the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service.

Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) carriers and licensees are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Fee Requirement:

Type of fee	Regulatory fee payment	Fee code
Domestic Public Fixed	$140 per call sign	CCDN

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 ("FCC Remittance Advice") and, as necessary, FCC Form 159–C ("Advice Continuation Sheet") must accompany all regulatory fee payments. Form 159 allows payors to report information on one or more payment items (e.g., revenues, call signs, or a combination of any two). Use Form 159–C to report additional payments.

An FCC Form 159 and 159–C have been attached to this Public Notice for you to complete and remit with your payment. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form), the following information applies specifically to common carrier regulatees:

Block (12)—"FCC CALL SIGN/OTHER ID":

♦ Interexchange, local exchange, competitive access providers, operator service providers, resellers, and other interstate providers should enter their *NECA company identification number.*

♦ Public fixed radio licensees should enter their *call sign.*

Block (14)—"PAYMENT TYPE CODES":

Carriers

CDIN: Use this code when paying for an interexchange carrier regulatory fee ($0.00088 per revenue dollar).

CDXN: Use this code when paying for a local exchange carrier regulatory fee ($0.00088 per revenue dollar).

CDPN: Use this code when paying for a competitive access provider regulatory fee ($0.00088 per revenue dollar).

CSPN: Use this code when paying for an operator service provider regulatory fee ($0.00088 per revenue dollar).

CRPN: Use this code when paying for a reseller regulatory fee ($0.00088 per revenue dollar).

CIPN: Use this code when paying for other interstate provider regulatory fee ($0.00088 per revenue dollar).

Public Fixed Radio Licensees

CCDN: Use this code when making a regulatory fee payment for a *domestic* public fixed radio license ($140 per call sign).

Block (15)—"QUANTITY":

Carriers

♦ Interexchange carriers subtract the amount in Block 18 ("FCC CODE 2") from the amount in Block 17 ("FCC CODE 1") and enter their TRS net interstate revenue.

♦ Local exchange carriers subtract the amount in Block 18 ("FCC CODE 2") from the amount in Block 17 ("FCC CODE 1") and enter their TRS net interstate revenue.

♦ Competitive access providers subtract the amount in Block 18 ("FCC CODE 2") from the amount in Block 17 ("FCC CODE 1") and enter their TRS net interstate revenue.

♦ Operator service providers subtract the amount in Block 18 ("FCC CODE 2") from the amount in Block 17 ("FCC CODE 1") and enter their TRS net interstate revenue.

♦ Resellers subtract the amount in Block 18 ("FCC CODE 2") from the amount in Block 17 ("FCC CODE 1") and enter their TRS net interstate revenue.

♦ Other interstate providers subtract the amount in Block 18 ("FCC CODE 2") from the amount in Block 17 ("FCC

[1] We will permit the holding company of local exchange carriers to aggregate fee payments due by its operating companies and submit a single payment to cover the fee requirements of its subsidiaries.

[2] These services include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio.

CODE 1") and enter their TRS net interstate revenue.

Public Fixed Radio Licensees

◆ All public fixed radio licensees should enter "1".

Block(16)—"AMOUNT DUE":

- For interexchange carrier regulatory fees (payment type code CDIN), multiply the amount in Block 15 ("Quantity") by $0.00088.
- For local exchange carrier regulatory fees (payment type code CDXN), multiply the amount in Block 15 ("Quantity") by $0.00088.
- For competitive access provider regulatory fees (payment type code CDPN), multiply the amount in Block 15 ("Quantity"(by $0.00088.
- For operator service provider regulatory fee (payment type code CSPN), multiply the amount in Block 15 ("Quantity") by $0.00088.
- For reseller regulatory fees (payment type code CRPN), multiply the amount in Block 15 ("Quantity") by $0.00088.
- For other interstate provider regulatory fees (payment type code CIPN), multiply the amount in Block 15 ("Quantity") by $0.00088.
- For *domestic* public fixed radio licensees (payment type code CCDN), enter $140.00.

Block (17)—FCC CODE 1":

- For interexchange carrier regulatory fee (payment type code CDIN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For local exchange carrier regulatory fee (payment type code CDXN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For competitive access provider regulatory fees (payment type code CDPN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For operator service provider regulatory fees (payment type code CSPN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For reseller regulatory fee (payment type code CRPN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For other interstate provider regulatory fees (payment type code CIPN), enter the total interstate revenue as reported to the TRS Fund (line 15 of FCC Form 431).
- For *domestic* public fixed radio licensees (payment type code CCDN), leave blank.

Block (18)—FCC CODE 2":

- For interexchange carrier regulatory fees (payment type code CDIN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For local exchange carrier regulatory fees (payment type code CDXN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For competitive access provider regulatory fees (payment type code CDPN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For operator service provider regulatory fees (payment type code CSPN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For reseller regulatory fees (payment type code CRPN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For other interstate provider regulatory fees (payment type code CIPN), enter the cost of interstate telecommunications facilities taken for resale (including the cost of access services).
- For *domestic* public fixed radio licensees (payment type code CCDN), leave blank.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment

Supplementary Information

A. What is TRS?

Telecommunications Relay Service (TRS) is a telephone transmission service that allows persons with hearing and/or speech impairments to use the telephone. TRS centers use special staff and equipment to relay messages between persons using text telephones and persons using traditional telephones. Under Title IV of the Americans with Disabilities Act of 1990 (ADA),[3] all common carriers providing voice communications services are required to provide TRS throughout the areas they serve. The rates charged for TRS calls must be no higher than those charged for functionally equivalent voice telephone calls of similar duration and distance.

B. What is the TRS Fund?

The TRS Fund is a shared funding mechanism for recovering the costs involved in providing interstate TRS service. All common carriers providing interstate telecommunications service (voice or non-voice) are required to contribute a portion of their gross interstate revenues to the TRS Fund. TRS providers receive payments from the Fund designed to compensate them for the reasonable costs incurred in providing interstate TRS. The TRS Fund is currently administered by the National Exchange Carrier Association (NECA).

C. Which Carriers Must File TRS Fund Worksheets?

All common carriers providing interstate telecommunications services within the United States must file the TRS Fund Worksheet. For this purpose, the United States is defined as the conterminous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

For the purpose of calculating TRS contributions, interstate telecommunications service includes, but is not limited to, the interstate portion of the following types of services: cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including Subscriber Line Charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, international, intraLATA, and resale services. Note that all local exchange carriers provide interstate access services, and therefore must file.

Each legal entity that provides interstate telecommunications service must file a separate TRS Fund Worksheet. Entities may not file worksheets aggregating revenue for more than one carrier. Entities that have distinct articles of incorporation are separate legal entities. All affiliates or subsidiaries must identify the ultimate controlling parent or entity on their TRS Fund Worksheets.

D. Should all Carriers Which File TRS Fund Worksheets Also Pay the Common Carrier Regulatory Fee?

No. Comsat, Mobile service and paging carriers pay different regulatory fees and should not pay the common carrier fee. All other carriers that file TRS Fund Worksheets must pay the common carrier based fee.

[3] Pub. L. No. 101–336, § 401, 104 Stat. 327, 366–69 (codified at 47 U.S.C. § 225).

E. Should a Carrier File the Regulatory Fee If It Has Not Filed a TRS Fund Worksheet?

Yes. If a common carrier provided interstate telecommunications services in 1994, then it should have filed a TRS Fund Worksheet and must also pay the common carrier based regulatory fee. Carriers should have filed their 1995 TRS Fund Worksheet on or before April 26, 1995. These worksheets used calendar year 1994 revenue data to calculate the TRS contribution for April 1995 through March 1996. Any carrier that did not file should contact the TRS Fund Administrator at 201–884–8173 in order to obtain a filing package and to be assigned a 6 digit TRS Fund ID number. This number must be included on the regulatory fee filing. The Mailing address of the TRS Fund Administrator is "NECA, FCC TRS Fund Administration, 100 South Jefferson Rd., Whippany, NJ 07981"

F. What Type of Revenues Are Reported on TRS Fund Worksheets?

The TRS Fund Worksheet requires carriers to report their revenue under ten categories. Four of the revenue categories are for local services: (1) Local exchange service; (2) local private line service; (3) mobile radio, cellular, paging and PCS; and (4) alternative access and other—including services of competitive access providers. Six of the categories are for long distance services: (1) Intrastate access service; (2) interstate access service; (3) operator service and pay telephone; (4) non-operator switched tool service; (5) long distance private line service; and (6) all other long distance services. Carriers report total revenues and interstate revenues for each category. Carriers must include revenues from all of the different types of services listed in section C above.

Gross or total revenues include revenues from regulated, detariffed, and nonregulated telecommunications services. Gross revenues should not include non-telecommunications services, such as the lease of customer premises equipment. Gross revenues consist of total revenues billed to customers with no allowances for uncollectibles. Billed revenues may be distinct from booked revenues. For international services, gross revenues consist of gross revenues billed by U.S. carriers with no allowances for settlement payments. Gross revenues should also include any surcharges on communications services that are billed to the customer and either retained by the carrier or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded as revenue, but which instead are remitted to government bodies.

G. What Kind of Costs can be Deducted From Revenues Reported on TRS Fund Worksheets in Order to Calculate the Common Carrier Regulatory Fee?

Carriers are allowed to deduct interstate access expense that they paid to local exchange carriers in 1994, and they are allowed to deduct the interstate portion of the costs of communications services taken for resale in 1994. Carriers can use the following worksheet to calculate their 1995 regulatory fee.

1994 data (show all amounts in whole dollars)	Total company	Interstate protion
1. Common carrier revenues from Line 15 of FCC Form 431 TRS Fund Worksheet		
2. Access expense paid to local exchange carriers		
3. Cost of facilities taken for resale		
4. Net Interstate Revenues (Line 1 minus Line 2 and minus Line 3)		
5. Common carrier fee factor		.00088
6. 1995 Regulatory Fee (Line 4 times Line 5)		

[FR Doc. 95–19047 Filed 8–2–95; 8:45 am]
BILLING CODE 6712–01–M

FY 1995 Mass Media Regulatory Fees

August 1, 1995.

The Federal Communications Commission issues this Public Notice in order to provide information concerning the payment of regulatory fees in 1995. If you are a licensee in any of the mass media services, you should carefully review this Public Notice.

Who Must Pay Regulatory Fees in 1995

Most licensees and other entities regulated by the Commission must pay regulatory fees in 1995. This Public Notice concerns the following Mass Media licensees: commercial AM & FM radio stations, commercial television stations, Low Power Television and television translator and booster licensees, broadcast auxiliary, FM translators and FM booster licensees, and multipoint distribution service licensees. Non-commercial educational licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency broadcast service (EBS) licenses for auxiliary service facilities are also exempt as are Instructional Television Fixed Service (ITFS) licensees. Governments and nonprofit (exempt under Section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental entity attesting to its exempt status. Direct broadcast satellite (DBS) licensees are exempt from payment of regulatory fees on an individual subscriber basis; however, licensees of operational geosynchronous orbit space stations are subject to payment of the space station regulatory fee (see Public Notice for FY 1995 International Services Regulatory Fees).

Why the Commission Must Collect Regulatory Fees

The requirement to collect annual regulatory fees was contained in Public Law 103–66, "The Omnibus Budget Reconciliation Act of 1993". These regulatory fees, which are likely to change each fiscal year, are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. These fees are in addition to any application processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

Fee payments must be *received* by the Commission by *September 20, 1995* in order to avoid a 25% late penalty.

FCC Form 159

Regulatory fee payments *must* be accompanied by FCC Form 159 ("FCC Remittance Advice"). A copy of this form, with specific instructions, is attached to this Public Notice. Please see, "Special Instructions for Completing FCC Forms 159 & 159–C" for detailed information on how to correctly complete these Forms.

Where to Send Regulatory Fee Payments

If sending your regulatory fee payment by *mail*, please address your envelope as follows: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

If you prefer to send your regulatory fee payment by *courier* to our lockbox bank, you may do so 24 hours per day except bank holidays). Please address your envelope and deliver it to the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259–0001, (Attention: FCC Module Supervisor).

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made by wire transfer or by electronic funds transfer (EFT). Instructions for wire transfer payment are provided below.

We encourage arrangements to consolidate a number of regulatory fee payments either by a single entity or by different entities into a single payment instrument. Consolidated fee payments may cover several different service categories. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C ("Advice Continuation Sheets") may do so. There is no limit to the number of payment items.

Wire Transfer Payment Instructions

A wire transfer is a transaction that you initiate via your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. All payments made by wire transfer must be supported by a completed FCC Remittance Advice (FCC Form 159) and Advice Continuation Sheet (FCC Form 159–C), if required. The Form 159 must be faxed to Mellon Bank at (412) 236–5702 at least one hour before the wire transfer on the same business day. Indicate on the top of the FCC Form 159 "Wire Transfer—Regulatory Fee Payment." In the "Reserve Box" located at the upper left hand corner indicate "358835." Failure to submit the completed Form 159 will result in a delay in crediting your account. Due to Federal Reserve regulations, wire transfers received after 6:00 p.m. (EST) will be credited to the next business day.

The following information should be provided to your bank in order to complete the wire transfer:

ABA Routing Number 043000261
Receiving Bank: Mellon Pittsburgh
FNF: FCC/ACV–9116106
OBI Field: (Skip one space between each information item)
"REGULATORYPAY"
FCC ACCOUNT NO. (Exactly as on Form 159, Block #1)
PAYOR NAME (Exactly as on Form 159, Block #3)
Phone: (Daytime Phone #, exactly as on Form 159, Block #9)

Compliance

Licensees are solely responsible for accurately accounting for all licenses and for paying proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission intends to invoke its authority under the Debt Collection Act against any licensee failing to meet its regulatory fee payment obligations.

Note: The Commission has identified several entities which have not paid the required fee for FY 1994 and has begun taking appropriate steps to secure collection of these fees and penalties due. You are strongly urged to submit your payments on time and accurately in order to avoid a penalty.

Waivers, Reductions and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, *in extraordinary and compelling circumstances only*, upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded later if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the licensee), will the Commission accept a petition to defer payment along with a waiver or reduction request.

Additional Information

The Commission has prepared a number of informative Fee Filing guides for information on *application* fees for mass media services, and for information on *application* and *regulatory* fees for the common carrier, mass media, international, engineering and technology, compliance and information or wireless radio services. These Guides, other Public Notices, and Forms 159 and 159–C are available from the Commission's Public Service Division and can be downloaded from the Internet (ftp@fcc.gov). Forms may also be obtained by contacting the Forms Hotline at (800) 418–3676 outside the Washington, DC area, or (202) 418–3676 locally. For additional information, please contact the Fees Hotline at (202) 418–0192, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919 M Street, NW., Washington, DC 20554.

Fee Payment Procedures for Commercial AM Radio Stations

Who Must Pay: Licensees of Class A, Class B, Class C & Class D AM radio stations and holders of construction permits for new stations in the AM service whose license or permit was granted on or before October 1, 1994. AM radio station licensees who also hold auxiliary broadcast service licenses operated in conjunction with the main AM station (e.g., remote pickup stations, aural broadcast STLs, intercity relay stations and low power auxiliary stations) will also be assessed a regulatory fee for each of these stations. Governments and nonprofit (exempt under Section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental entity attesting to its exempt status.

Conversion Table: For those licensees of AM radio stations who may be unfamiliar with the current station class designations, we provide the following:

Old class	New class
Class I	Class A.
Class II & III	Class B.
Class II.D & II.S	Class D.
Class III.D & III.S	Class D.
Class IV	Class C.

Fee Requirement: Fees are assessed for AM radio station licensees based upon class of station as shown. Determination of class is based upon the station's most recent granted license on or before October 1, 1994:

AM regulatory fee category	Regulatory fee	Payment type code
Class A Station License	$1,120	MLAN
Class B Station License	620	MNAN
Class C Station License	250	MRAN
Class D Station License	310	MPAN
Broadcast Auxiliary Station License	30	MUBN
Construction Permit for New AM Station	125	MTAN

Note that an Am station licensee will be assessed $30 for each auxiliary license it holds. Holders of construction permits (CPs) for new AM stations for which a license to cover the CP had not been granted as of October 1, 1994 will be assessed a $125 fee for each permit held, regardless of station class.

Fee Payment Procedures for Commercial FM Radio Stations

Who Must Pay: Licensees of commercial FM radio stations and holders of construction permits for new stations in the FM service whose license or permit was granted on or before October 1, 1994. FM radio station licensees who also hold auxiliary broadcast service licenses operated in conjunction with the main FM station (e.g., remote pickup stations, aural broadcast STLs, intercity relay stations and low power auxiliary stations) will also be assessed a regulatory fee for each of these stations. Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Fee Requirement: Fees are assessed for commercial FM radio station licensees based upon class of station as shown below. Determination of class is based upon the station's most recent license granted on or before October 1, 1994:

FM regulatory fee category	Regulatory fee	Payment type code
Class C, C1, C2 or B FM License	$1,120	MLFN
Class A, B1 or C3 FM License	745	MMFN
Broadcast Auxiliary License	30	MUBN
Construction Permit for New FM Station	620	MNFN

Note that commercial FM station licensees will be assessed $30 for each auxiliary license it holds. Holders of construction permits (CPs) for new FM stations for which a license to cover the CP had not been granted as of October 1, 1994 will be assessed a $620 fee for each permit held, regardless of station class.

Fee Payment Procedures for Commercial VHF/UHF TV Stations

Who Must Pay: Licensees of commercial VHF and commercial UHF television stations and holders of construction permits for new stations whose license or permit was granted on or before October 1, 1994. A new reduced fee has been established for satellite television stations and holders of new satellite television construction permits. Commercial television station licensees who also hold auxiliary broadcast service licenses operated in conjunction with the main TV station (e.g., remote pickup stations, intercity relay stations) will also be assessed a regulatory fee for each of these stations. Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Fee Requirement: Fees are assessed commercial television stations licensees based upon the size of the Arbitron ADI market in which their stations are listed in the 1994 Edition of the TV & Cable Factbook No. 62 as published by Warren Publishing. Fees will be assessed as follows:

Commercial VHF station	Regulatory fee	Payment type code
Markets 1–1	$22,420	MAVN
Markets 11–25	19,925	MBVN
Markets 26–50	14,950	MEVN
Markets 51–100	9,975	MGVN
Remaining Markets	6,225	MIVN
Broadcast Auxiliary Station	30	MUBN
Construction Permits	4,975	MJVN

Commercial UHF stations	Regulatory fee	Payment type code
Markets 1–10	$17,925	MCUN
Markets 11–25	15,950	MDUN
Markets 26–50	11,950	MFUN
Markets 51–100	7,975	MHUN
Remaining Markets	4,975	MJUN
Broadcast Auxiliary Station	30	MUBN
Construction Permits	3,975	MKUN

Satellite TV stations	Regulatory fee	Payment type code
All Markets	$620	MSSN
Construction Permits	225	MCSN

Note that commercial television station licensees will be assessed $30 for each auxiliary license it holds. Holders of construction permits (CPs) for television stations for which a license to cover the CP had not been granted as of October 1, 1994 will be assessed $4,975 (VHF), $3,975 (UHF), or $225 (Satellite TV) for each permit held.

Fee Payment Procedures for LPTV, TV Translators & TV Boosters, FM Translators & FM Boosters

Who Must Pay: Holders of Low Power Television, TV translator and booster licenses, and FM translator and booster licenses whose license was granted before October 1, 1994. Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status. Also exempted from this fee are non-commercial educational FM and full service television broadcast station licensees that hold low power television, TV translator or TV booster licenses, or FM translator or FM booster licenses issued on or before October 1, 1994, provided those stations operate on a noncommercial educational basis. We will automatically waive the regulatory fee for the licensee of any translator that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from the members of the community served for support. Finally, licensees of low power television, TV translator or TV booster, or FM translator or FM booster stations whose licenses were issued on or before October 1, 1994 and which have obtained a fee refund because of a NTIA facilities grant for their station or a fee waiver because of demonstrated compliance with the eligibility and service requirements of Section 73.621 of the Commissions Rules, are similarly exempt from payment of this regulatory fee. Licensees claiming an exemption based on one of these latter criteria should not submit payment, but may be asked to document their exempt status.

Fee Requirement: Fees are assessed on a per license basis as follows:

Type of license	Regulatory fee	Payment type code
Low Power Television Station, TV Translator/TV Booster	$170	MLPN
Transior/TV Booster	.....	.....
FM Translator/FM Booster	170	MSFN

Fee Payment Procedures for Multipoint Distribution Service

Who Must Pay: Holders of multipoint distribution service licenses whose license was granted on or before October 1, 1994. Governments and nonprofit (exempt under section 501 of the Internal revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting its exempt status.

Fee Requirement: Fees are assessed on a per license basis as follows:

Type of license	Regulatory fee	Payment type code
Multipoint Distribution Service	$140	MDSN

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 ("FCC Remittance Advice") and, as necessary, FCC Form 159–C ("Advice Continuation Sheet") must accompany all regulatory fee payments. Form 159 allows payors to report information on one or more payment items (e.g., multiple FM or TV station licenses). Use Form 159–C to report additional payments.

An FCC Form 159 and a 159–C have been attached to this Public Notice for you to complete and remit with your payment. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form), the following information applies specifically to mass media fee payors.

Block (12)—"FCC Call Sign/Other ID"

• All Mass Media payors must enter in this block the call sign of the station(s) for which the regulatory fee is being paid.

Block (14)—Payment Type Code"

Enter the appropriate payment type code as listed below:

VHF Television Stations

MAVN: Use this code when paying a regulatory fee for a commercial VHF television station in Arbitron markets 1–10 ($22,420).

MBVN: Use this code when paying a regulatory fee for a commercial VHF television station in Arbitron markets 11–25 ($19,925).

MEVN: Use this code when paying a regulatory fee for a commercial VHF television station in Arbitron markets 26–50 ($14,950).

MGVN: Use this code when paying a regulatory fee for a commercial VHF television station in Arbitron markets 51–100 ($9,975).

MIVN: Use this code when paying a regulatory fee for a commercial VHF television station in Arbitron markets ($6,225).

MJVN: Use this code when paying a regulatory fee for a construction permit for a VHF television station ($4,975).

UHF Television Stations

MCUN: Use this Code when paying a regulatory fee for a commercial UHF television station in Arbitron markets 1–10 ($17,925).

MDUN: Use this Code when paying a regulatory fee for a commercial UHF television station in Arbitron markets 11–25 ($15,950).

MFUN: Use this Code when paying a regulatory fee for a commercial UHF television station in Arbitron markets 26–50 ($11,950).

MHUN: Use this Code when paying a regulatory fee for a commercial UHF television station in Arbitron markets 51–100 ($7,975).

MJUN: Use this Code when paying a regulatory fee for a commercial UHF television station in all other Arbitron markets ($4,975).

MKUN: Use this Code when paying a regulatory fee for construction permit for a commercial UHF television station ($3,975).

AM Radio Stations

MLAN: Use this code when paying a regulatory fee for a Class A AM radio Station ($1,120).

MNAN: Use this code when paying a regulatory fee for a Class B AM radio Station ($620).

MRAN: Use this code when paying a regulatory fee for a Class C AM radio Station ($250).

MPAN: Use this code when paying a regulatory fee for a Class D AM radio Station ($310).

MTAN: Use this code when paying a regulatory fee for a construction permit for an AM radio Station ($125).

FM Radio Stations

MLFN: Use this code when paying a regulatory fee for a Class C, C!, C2 or B FM radio station ($1,120).

MMFN: Use this code when paying a regulatory fee for a Class A, B1 or C3 FM radio station ($745).

MNFN: Use this code when paying a regulatory fee for a construction permit for an FM radio station ($620).

Satellite Television Stations

MSSN: Use this code when paying a regulatory fee for a satellite TV station ($620).

MCSN: Use this code when paying a regulatory fee for a construction permit for a satellite TV station ($225).

Low Power Television Station, TV Translator/Booster FM Translator/ Booster

MLPN: Use this code when paying a regulatory fee for a Low Power Television station, or a television translator or television booster ($170).

MSFN: Use this code when paying a regulatory fee for an FM translator or FM booster ($170).

Broadcast Auxiliary Station

MUBN: Use this code when paying a regulatory fee for a broadcast auxiliary station ($30).

Multipoint Distribution Service Station

MDSN: Use this code when paying a regulatory fee for a multipoint distribution service station ($140).

Block (15)—"Quantity":

• All mass media fee payors must enter "1" in this block.

Block (16)—"Amount Due":

• Enter the dollar amount associated with the corresponding Payment Type Code entered in Block (14).

Block (17)—"FCC Code 1":

• If you are paying an AM or FM regulatory fee, enter the authorized frequency shown on your license or permit.

• If you are paying a television or Low Power Television station regulatory fee, enter the applicable channel number.

• If you are paying a TV translator, TV booster, broadcast auxiliary, FM translator, FM booster or a multipoint distribution service station regulatory fee, leave this section blank.

Block (18)—"FCC Code 2":

• If you are paying an AM, FM, TV or Low Power Television regulatory fee, enter the name of the state and community (in that order) of licenses for the station for which the regulatory fee is being paid. Please note that this block is for state and community of license, not mailing address. Please use the appropriate two letter post office abbreviation for the state.

• If you are paying a TV translator, TV booster, broadcast auxiliary, FM translator, FM booster or a multipoint distribution service station regulatory fee, leave this section blank.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19048 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

FY 1995 Cable Television System Regulatory Fee

August 1, 1995.

The Federal Communications Commission issues this Public Notice in order to provide information concerning the payment of regulatory fees in 1995. If you are an operator of a cable television system or a licensee of a cable antenna relay service (CARS) or broadcast auxiliary service, you should carefully review this Public Notice.

Who Must Pay Regulatory Fees in 1995

Cable television systems operating on or before *December 31, 1994* must pay regulatory fees per subscriber in 1995. Governments and nonprofit (exempt under Section 501(c) of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status. All cable television systems must pay regulatory fees of $0.49 per subscriber for each community unit in which it operates. Additionally, each system operating on or before *October 1, 1994* must pay a $290.00 fee for each CARS license held and, if applicable, a $30.00 fee for each Broadcast Auxiliary Service license held. In the event that there has been a change in ownership of a system after the effective dates above, but before the date payment is due, responsibility for payment of the regulatory fees rests upon the new owner.

Why the Commission Must Collect Regulatory Fees

The requirement to collect annual regulatory fees from cable television systems was contained in Public Law

103–66, "The Omnibus Budget Reconciliation Act of 1993." These regulatory fees, which are likely to change each fiscal year, are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. These fees are in addition to any applicable processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

All cable systems must pay the following regulatory fees to the Commission by *September 20, 1995*, in order to avoid a 25% late penalty:

Type of fee	Regulatory fee payment	Fee code
Cable System Subscriber Fee	$0.49 per subscriber	TOCN
CARS License	290 per license	TQCN
Broadcast Auxiliary Services License	30 per license	MUBN

FCC Form 159

Regulatory fee payment *must* be accompanied by FCC Form 159 ("FCC Remittance Advice"). A copy of this form, with specific instructions, is attached to this Public Notice. Please see "Special Instructions for Completing FCC Forms 159 & 159–C" for detailed information on how to correctly complete these Forms.

Where To Send Regulatory Fee Payments

If sending your regulatory fee payment by *mail*, please address you envelope as follows: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

If you prefer to send your regulatory fee payment by *courier* to our lockbox bank, you may do so 24 hours per day (except bank holidays). Please address your envelope and deliver it to the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259–0001, (Attention: FCC Module Supervisor).

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made by wire transfer or by electronic funds transfer (EFT). Instructions for wire transfer payment are provided below.

Note: We encourage arrangements to consolidate regulatory fee payments either by a single entity or by different entities into a single payment instrument. Consolidated fee payments may cover several different service categories. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C ("Advice Continuation Sheets") may do so. There is no limit to the number of payment items.

Wire Transfer Payment Instructions

A wire transfer is a transaction that you initiate via your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. All payments made by wire transfer must be supported by a completed FCC Remittance Advice (FCC Form 159) and Advice Continuation Sheet (FCC For 159–C), if required. The Form 159 must be faxed to Mellon Bank at (412) 236–5702 at least one hour before the wire transfer on the same business day. Indicate on the top of the FCC Form 159 "Wire Transfer—Regulatory Fee Payment." In the "Reserve Box" located at the upper left hand corner indicate "358835." Failure to submit the completed Form 159 will result in a delay in crediting your account. Due to Federal Reserve regulations, wire transfers received after 6:00 p.m. (EST) will be credited the next business day.

The following information should be provided to your bank in order to complete the wire transfer:

ABA Routing Number 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ACV—9116106
OBI Field: (Skip one space between each information item)
"REGULATORYPAY"
FCC ACCOUNT NO. (Exactly as on form 159, Block #1)
PAYOR NAME (Exactly as on Form 159, Block #3)
Phone: (Daytime Phone #, exactly as on Form 159, Block #9

Compliance

Cable television systems are solely responsible for accurately accounting for all CARS and Broadcast Auxiliary Service license, as well as subscribers within each community unit, and for paying the proper regulatory fees. Any omission or payment deficiency may result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission will invoke its authority under the Debt Collection Act against any cable television system failing to meet its regulatory fee payment obligations.

Note: The Commission has identified several entities which have not paid the required fee for FY 1994 and has begun taking appropriate steps to secure collection of these fees and penalties due. You are strongly urged to submit your payment on time and accurately in order to avoid a penalty.

Waivers, Reductions and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, *in extraordinary and compelling circumstances only*, upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid at 25% late-payment penalty if its request is denied. The regulatory fee would be refunded if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the regulate or licensee) will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be received before *September 20, 1995*, in order to avoid the 25% late-payment penalty.

Additional Information

The Commission has prepared a number of informative Fee Filing Guides for information on *application* fees for cable services, and for information on *application* and *regulatory* fees for the common carrier, mass media, international, engineering and technology, compliance and information. and wireless radio services. These Guides, applicable Public Notices, and Forms 159 and 159–C are available from the Commission's Public Service Division and can be downloaded from the Internet (ftp@fcc.gov). Forms may also be obtained by contacting the Forms Hotline at (800) 418–3676 outside the Washington, DC area, or (202) 418–3676 locally. For additional information, please contact the Fees Hotline at (202) 418–0192, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919M Street, NW., Washington, DC 20554.

Payment Procedures for Cable Television Systems

Suscriber Fees

All cable television system are subject to a fee of $0.49 per subscriber.[1] A system's total subscriber fee can be determined by multiplying $0.49 times the number of subscribers within all community units in which it operates (as defined below and at page 2 of the Instructions for FCC Form 325 "Annual Report of Cable Television Systems"). Use the same number of subscribers as reported to the Commission in your 1994 Annual Report of Cable Television Systems—FCC Form 325. You may pay for multiple community units with a single payment instrument as long as the community units are all part of the same cable system or are part of a group of commonly-owned cable systems.

CARS and Broadcast Auxiliary Licenses

Cable systems holding CARS licenses must pay a regulatory fee of $290.00 for *each* CARS license and, if applicable, a regulatory fee of $30.00 for *each* Broadcast Auxiliary Service license held as of *October 1, 1994*.

Note: *One payment* may be submitted for all regulatory fee obligations (*i.e.*, "subscriber fees" and all Cable Antenna Relay Service and Broadcast Auxiliary Service licenses).

Payment Due Date

All regulatory fee payments for cable television systems must be *received* at the Commission by *September 20, 1995*.

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 ("FCC Remittance Advice") and, as necessary, FCC Form 159–C ("Advice Continuation Sheet") must accompany all regulatory fee payments. Form 159 allows payors to report information on one or more payment items (e.g., multiple community units, CARS licenses, Broadcast Auxiliary Service licenses, or any combination). Use Form 159–C to report additional community units or licenses.

FCC Form 159 and 159–C have been attached to this Public Notice for you to complete and remit with your payment. Payors filing electronically must include information equivalent to the items on the FCC Form 159 and 159–C. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form 159), the following information applies specifically to cable television payors:

Block 12—"FCC Call Sign/Other ID":

- Enter your community unit identification number for reporting subscribers in *each community unit* within your system.
- Enter your call sign for CARS or Auxiliary Service licenses.

Block (14)—"Payment Type Code":

TOCN: Use this code when paying a subscriber fee ($0.49 per subscriber). Please note that subscriber information must be provided for *each community unit* in which the system is operated.

TQCN: Use this code when making a regulatory fee payment for a CARS license ($290.00 per license).

MUBN: Use this code when making a regulatory fee payment for a Broadcast Auxiliary Service license ($30.00 per license).

Block (15)—"Quantity":

- For subscriber fees (payment type code TOCN) enter the number of subscribers within each *community unit*. For CARS or Broadcast Auxiliary Service licensees, enter "1" in this block.

Block (16)—"Amount Due":

- For subscriber fees (payment type code TOCN), multiply the amount in Block 15 ("Quantity") by $0.49 and enter the result here. Round *down* to the nearest whole dollar.
- For CARS licenses (payment type code TQCN) enter $290.00.
- For Broadcast Auxiliary Service licenses (payment type code MUBN) enter $30.00.

Block (17)—"FCC Code 1":

- Leave Blank.

Blank (18)—"FCC Code 2":

- For subscriber fees only (i.e., payment type code TOCN): Provide the *name* of the community unit.

[1] Number of Subscribers In a Community Unit=Number of single family dwellings+Number of individual households in multiple dwelling units (e.g., apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate+Number of bulk-rate customers+Number of courtesy and free service. (NOTE: Bulk-Rate Customers=total annual bulk rate charge+basic annual subscription rate for individual households). See also, FCC Form 325 Instructions (page 2).

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–19049 Filed 8–2–95; 8:45 am]
BILLING CODE 6712–01–M

FY 1995 International Services Regulatory Fees

August 1, 1995.

The Federal Communications Commission issues this Public Notice in order to provide valuable information concerning the payment of regulatory fees in 1995. If you are a licensee in any of the services handled by the International Bureau, you should carefully review this Public Notice.

Who Must Pay Regulatory Fees in 1995

The following regulatees must pay fees in 1995: international public fixed (Part 23) licensees, international (HF) broadcast licensees (Part 73), providers of international bearer circuits, earth station regulatees, and space station regulatees. Governments and nonprofit (exempt under Section 501(c) of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status. Direct broadcast satellite (DBS) licensees are exempt from payment of regulatory fees on an individual subscriber basis; however, licensees of operational geosynchronous orbit space stations utilized for DBS are subject to payment of the space station regulatory fee.

Why the Commission Must Collect Regulatory Fees

The requirement to collect annual regulatory fees from international regulatees was contained in Public Law 103–66, "The Omnibus Budget Reconciliation Act of 1993." These regulatory fees, which are likely to change each fiscal year, are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities. These fees are in addition to any application processing fees associated with obtaining a license or other authorization from the Commission.

When Fees Will Be Due

Regulatees must pay the following regulatory fees to the Commission by *September 20, 1995*, in order to avoid a 25% late penalty. For FY95, installment

payments will not be permitted for any service category. All regulatory fees must be paid in full by the September 20, 1995 due date.

Type of fee	Regulatory fee payment	Fee code
International Bearer Circuits	$4.00 per active 64 KB circuit or equivalent.[1]	CICN
International Public Fixed Radio Service	200 per call sign	CFRN
Geosynchronous Orbit Space Stations	75,000 per operational station	CSGN
VSAT and Equivalent C-Band Earth stations	330 per authorization or registration	CAVN
Mobile Satellite Earth Stations	330 per authorization or registration	CARN
Earth Station Antennas: Transmit/Receive or Transmit Only	330 per authorization or registration	CSTN
International (HF) Broadcast Stations	250 per station license	CRIN

[1] Equivalent circuits include the 64 KB circuit equivalent of larger bit stream circuits (e.g., the 64 KB equivalent of a 2.048 MB circuit is 30) and analog circuits such as 3 and 4 KHz circuits used for international services. The number of equivalent 64 KB circuits for analog television channels is given by the following table:

Analog television channel size (MHz)	No. of equivalent 64 KB circuits
36	630
24	288
18	240

Payment Procedures for International Services

International Bearer Circuits

Who Must Pay: Facilities-based common carriers activating international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for international bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Government-licensed and nonprofit (exempt under section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees. Entities claiming exemption based on one of these criteria should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

Fee Calculation: $4.00 per active 64 KB circuit or equivalent. Use fee code "CICN" on FCC Form 159 when making payment for international bearer circuits.

International Public Fixed Radio Licensees

Who Must Pay: Licensees authorized as common carriers to provide radio communications between the United States and a foreign point via microwave, HF or troposcatter systems (other than satellite earth stations). This does not include service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. Government-licensed and nonprofit (exempt under section 501 of the Internal Revenue Code) licensees are exempt from paying regulatory fees. Licensees claiming exemption based on one of these criteria should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a government authority attesting to its exempt status.

Fee Calculation: $200 per call sign. Use fee code "CFRN" on FCC Form 159 when making payment for international public fixed radio service.

International (HF) Broadcast Stations

Who Must Pay: Licensees of international (HF) broadcast stations whose license was granted on or before October 1, 1994. Governments and nonprofit (exempt under section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

Fee Calculation: $250 per call sign. Use fee code "CRIN" on FCC Form 159 when making payment for international (HF) broadcast radio service.

Space Stations

Who Must Pay: Entities authorized to operate space stations in geosynchronous orbit [2] in accordance with section 25.120(d). Government-licensed and nonprofit (exempt under section 501 of the Internal Revenue Code) space stations are exempt from paying regulatory fees. Stations claiming exemption based on one of these criteria should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

Fee Calculation: $75,000 *per operational station* [3] in geosynchronous orbit. Use fee code "CSGN" on FCC Form 159 when making payment for space stations in geosynchronous orbit.

Earth Stations

Who Must Pay:

VSAT and Equivalent C-Band Antennas: Earth station systems comprising very small aperture terminals make up authorized networks operating in the 12 and 14 GHz bands that provide a variety of communications services to other stations in the network. Each system, authorized pursuant to blanket licensing procedures in Part 25 of the Rules, consists of a network of technically-identical small fixed-satellite earth stations which often includes a larger hub station. For FY 1995, entities holding these types of authorizations as of *October 1, 1994*, will be assessed a regulatory fee of $330 per authorization or registration *as well as a separate fee of $330 for each associated Hub Station.*

Mobile Satellite Earth Stations: Under Part 25 of the Rules, mobile satellite service providers operate under blanket licenses for mobile antennas (transceivers), which are smaller than one meter and provide voice or data communications, including position location information, for mobile platforms such as cars, buses or trucks. For FY 1995, entities holding these types of authorizations as of *October 1, 1994*, will be assessed a fee of $330 per authorization or registration.

Earth Station Antennas: Transmit/Receive and Transmit Only Antennas: Persons authorized or registered under Part 25 to operate fixed-satellite earth station antennas that are operated by private carriers and common carriers to provide telephone, television, data, and other forms of communication. This category includes antennas used to transmit and receive and transmit-only. Also included in this category are telemetry, tracking and control (TT&C) earth stations. For FY 1995, holders of these types of authorizations as of *October 1, 1994*, will be assessed a fee of $330 per authorization or registration.

Earth Station Antennas: Receive Only Antennas: Receive only earth stations are *exempt* from payment of regulatory fees.

Government-licensed and nonprofit (exempt under section 501 of the Internal Revenue Code) earth station entities are exempt from paying regulatory fees. Stations claiming exemption based on one of these criteria should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification from a governmental authority attesting to its exempt status.

In instances in which an earth station's license limits its operational authority to a particular satellite system which is not yet operational, the regulatory fee payment for the *earth station* will not be due until the first satellite of the related system becomes operational pursuant to section 25.120(d) of our rules.

Fee Calculation

$330 per authorization or registration or Hub Station. Use fee code "CAVN" on FCC Form 159 when making payment for VSAT and Equivalent C-Band Antennas and associated Hub Stations.

$330 per authorization or registration. Use fee code "CARN" on FCC Form 159 when making payment for Mobile Satellite Earth Stations.

$330 per authorization or registration. Use fee code "CSTN" on FCC Form 159 when making payment for Transmit/Receive and Transmit Only Earth Station Antennas.

FCC Form 159

Regulatory fee payments *must* be accompanied by FCC Form 159 ("FCC Remittance Advice"). A copy of this form, with specific instructions, is attached to this Public Notice. Please see "Special Instructions for Completing FCC Forms 159 & 159–C" for detailed information on how to correctly complete these Forms.

Where To Send Regulatory Fee Payments

If sending your regulatory fee payment by *mail*, please address your envelope as follows: Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251–5835.

If you prefer to send your regulatory fee payment by *courier* to our lockbox bank, you may do so 24 hours per day (except bank holidays). Please address your envelope and deliver it to the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259–0001, (Attention: FCC Module Supervisor).

Method of Payment

Regulatory fee payments may be made by check, money order, or by credit card (Visa or Mastercard only). When paying by credit card, please make sure you sign the appropriate block of Form 159. Payments may also be made by wire transfer or by electronic funds transfer (EFT). Instructions for wire transfer payment are provided below.

Note: We encourage arrangements to consolidate regulatory fee payments either by a single entity or by different entities into a single payment instrument. Consolidated fee payments may cover several different service categories. Multiple fee payments may be made with one check, money order, credit card or electronic payment. Payors who will be making a single payment for a significant number of entities and wish to submit automated data submissions in lieu of a large number of FCC Forms 159–C ("Advice Continuation Sheets") may do so. There is no limit to the number of payment items.

Wire Transfer Payment Instructions

A wire transfer is a transaction that you initiate via your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. All payments made by wire transfer must be supported by a completed FCC Remittance Advice (FCC Form 159) and Advice Continuation Sheet (FCC Form 159–C), if required. The Form 159 must be faxed to Mellon Bank at (412) 236–5702 at least one hour before the wire transfer on the same business day. Indicate on the top of the FCC Form 159 "Wire Transfer—Regulatory Fee Payment." In the "Reserve Box" located at the upper left hand corner indicate "358835." Failure to submit the completed Form 159 will result in a delay in crediting your account. Due to Federal Reserve regulations, wire transfers received after 6:00 p.m. (EST) will be credited the next business day.

The following information should be provided to your bank in order to complete the wire transfer:

ABA Routing Number 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ACV—9116106
OBI Field: (Skip one space between each information item)
"REGULATORYPAY"
FCC ACCOUNT NO. (Exactly as on Form 159, Block #1)
PAYOR NAME (Exactly as on Form 159, Block #3)
Phone: (Daytime Phone #, exactly as on Form 159 Block #9)

Compliance

International regulatees are solely responsible for accurately accounting for all satellites, systems, and authorizations and for paying the proper regulatory fees. Any omission or payment deficiency can result in a 25% monetary penalty, dismissal of pending actions, and/or revocation of any authorization. Additionally, the Commission intends to invoke its authority under the Debt Collection Act against any regulatee failing to meet its regulatory fee payment obligations.

Note: The Commission has identified several entities which have not paid the required fee for FY 1994 and has begun taking appropriate steps to secure collection of these fees and penalties due. You are strongly urged to submit your payments on time and accurately in order to avoid a penalty.

Waivers, Reductions and Deferments of Regulatory Fees

The Commission will consider requests for waivers, reductions or deferments of regulatory fees, *in extraordinary and compelling circumstances only*, upon a showing that such action overrides the public interest in reimbursing the Commission for its regulatory costs. Timely submission of the appropriate regulatory fee must accompany requests for waivers or reductions. This will ensure efficient collection in situations where a waiver or reduction is not warranted and will allow the requestor to avoid a 25% late-payment penalty if its request is denied. The regulatory fee would be refunded later if the request is granted. Only in exceptional or compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in the reduction of service to a community or other financial hardship to the regulatee

[2] Domestic and international satellites, positioned in orbit to remain approximately fixed relative to the earth, authorized to provide communications between satellites and earth stations on a common carrier or private carrier basis in accordance with section 25.120(d). *See* 47 C.F.R. § 25.120(d). Entities authorized to operate these space stations in accordance with section 25.120(d), will be assessed an annual regulatory fee of $75,000 for each operational station in geosynchronous orbit on October 1, 1994.

[3] Stations operating in accordance with section 25.120(d) as of October 1, 1994.

or licensee), will the Commission accept a petition to defer payment along with a waiver or reduction request. All requests for deferments must be filed before *September 20, 1995*, in order to avoid the 25% late-payment penalty.

Additional Information

The Commission has prepared a number of informative Fee Filing Guides for information on *application* fees for international services, and for information on *application* and *regulatory* fees for the common carrier, mass media, international, engineering and technology, compliance and information, and wireless radio services. These Guides, other Public Notices, and Forms 159 and 159–C are available from the Commission's Public Service Division and can be downloaded from the Internet (ftp@fcc.gov). Forms may also be obtained by contacting the Forms Hotline at (800) 418–3676 outside the Washington, DC area, or (202) 418–3676 locally. For additional information, please contact the Fees Hotline at (202) 418–0192, or write to: Federal Communications Commission, ATTN: Public Service Division, 1919 M Street, NW., Washington, DC 20554.

Special Instructions for Completing FCC Forms 159 & 159–C

FCC Form 159 ("FCC Remittance Advice") and, as necessary, FCC Form 159–C ("Advice Continuation Sheet") must accompany all regulatory fee payments. Form 159 allows payors to report information on one or more payment items (e.g., satellites, earth stations, or any combination). Use Form 159–C to report additional payment items (when using Form 159–C, please indicate the page number in the appropriate space on the Form).

An FCC Form 159 and a 159–C have been attached to this Public Notice for you to complete and remit with your payment. You may make additional copies of the forms as required. In addition to the instructions for Form 159 (which are on the reverse side of the Form), the following information applies specifically to international payors:

Block (12)—"FCC Call Sign/Other ID":

- Geostationary space station licensees should leave this block blank.
- International bearer circuit regulatees should leave this block blank.
- Earth station licensees should enter their *call sign*.
- International public fixed radio licensees should enter their *call sign*.
- International (HF) broadcast stations should enter their *call sign*

Block (14)—"Payment Type Codes":

CSGN: Use this code when making a regulatory fee payment for a geostationary satellite space station.

CAVN: Use this code when making a regulatory fee payment for a VSAT or equivalent C–band earth station.

CARN: Use this code when making a regulatory fee payment for a mobile satellite earth station.

CSTN: Use this code when making a regulatory fee payment for fixed-satellite transmit/receive *or* transmit only earth station.

CICN: Use this code when making a regulatory fee payment for a 64 KB or equivalent international bearer circuit.

CFRN: Use this code when making a regulatory fee payment for an *international* public fixed radio license.

CRIN: Use this code when making a regulatory fee payment for an *international* (HF) broadcast station license.

Block (15)—"Quantity":

- Space station licensees (i.e., geosynchronous satellites or low-earth orbiting satellite systems) should enter "1" in this book.
- Fixed-satellite earth station licensees should enter the number of authorizations or registrations.
- All other earth station licensees (e.g., VSATs, mobile satellites and fixed-satellite antennas) should enter the number of authorizations or registrations.
- Entities paying for international bearer circuits should enter the number of 64 KB or equivalent circuits.
- All public fixed licensees should enter "1".
- All public international (HF) broadcast station licensees should enter "1".

Block (16)—"Amount Due":

- For geostationary satellite space station regulatory fees (payment type code CSGN), enter $75,000.
- For international bearer circuit payors (payment type code CICN), multiply the amount from Block 15 ("Quantity") by $4.00.
- For *international* public fixed radio licensees (payment type code CFRN), enter $200.
- For *international* (HF) broadcast stations licensees (payment type code CRIN), enter $250.
- For earth station authorizations or registrations (payment type codes CARN, CAVN and CSTN), enter $330.

Block (17)—"FCC Code 1":

- Leave this block blank.

Block (18)—"FCC Code 2":

- For geosynchronous space station satellites *ONLY*. Enter the *satellite name*.
- For international bearer circuit payors, enter the *company name*.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19050 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2088]

Application for Review of Action in Rulemaking Proceeding

August 1, 1995.

Application for review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed by August 18, 1995. Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Deferral of Licensing of MTA Commercial Broadband PCS. (GN Docket No. 93–253 and ET Docket No. 92–100).

Number of Petition Filed: 1.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 95–19139 Filed 8–2–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–088.

Title: American West Africa Freight Conference.

Parties: Atlantic Bulk Carriers Limited, Delmas AAEL, Inc., Farrell Lines, Inc., Maersk Line, Societe Ivoirienne De Transport Maritime, Sitram, Torm West Africa Line, Wilhelmsen Lines A/S.

Synopsis: The proposed amendment restates and updates the geographic scope of the Agreement, makes conforming changes to the language of various provisions, deletes Societe Ivoirienne de Transport as a member effective July 31, 1995, and makes other non-substantive changes to the Agreement.

Agreement No.: 202–011456–008.

Title: South Europe American Conference.

Parties: Cast Logistics (USA) Limited, Chb Yang Shipping Co., Ltd., Compagnie Maritime d'Affretement, DSR Senator Lines GmbH, Evergreen Marine Corporation (Taiwan) Ltd., "Italia" di Navigazione, S.p.A., Lykes Bros. Steamship Co., Ltd., A.P. Moller Maersk Line, Nedlloyd Lijnen B.V., P&O Containers Limited, Sea-Land Service, Inc., Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment revises Article 8.6—Telephone or Telex Polls to provide that any Member which fails to respond to a telephone or telex poll pertaining to a rate item by the close of the third business day shall be recorded as abstaining from voting on the matter.

Agreement No.: 203–011508.

Title: Mediterranean Discussion Agreement.

Parties. Conship Container Lines Limited, Italia di Navigazione, S.p.A., Transportation Maritime Mexicana, S.A., Tecomar S.A. de C.V.

Synopsis: The proposed Agreement permits the parties to discuss and agree upon charges, conditions, rules and regulations, tariffs, rates, service items, service contracts , and other matter of mutual concern in the trade between U.S. Atlantic and Gulf Coasts ports and points and ports bordering on the Mediterranean Sea, the Black Sea, and the Sea of Marmara and points in Europe and Morocco via such ports. Adherence to any agreement reached is voluntary.

Agreement No.: 232–011509.

Title: Slot Exchange and Rationalization Agreement between A.P. Moller-Maersk Line and Sea-Land Service, Inc., P&O Containers Limited, and Nedlloyd Lijnen, BV.

Parties: A.P. Moller-Maersk Line. VSA Party—Agreement No. 203–011171, Sea-Land Service, Inc., P&O Containers Limited, Nedlloyd Lijnen, BV.

Synopsis: The proposed Agreement permits the parties to cross charter, exchange, or charter slots on their vessels and to rationalize sailings in the trade between U.S. Atlantic and Gulf Coast ports and points and ports and points in Europe.

By Order of the Federal Maritime Commission.

Dated: July 28, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–19079 Filed 8–2–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Cardinal Bancshares, Lexington, Kentucky; Notice to Engage in Certain Nonbanking Activities.

Cardinal Bancshares, Lexington, Kentucky (Applicant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y (12 CFR 225.23), to engage through its thrift subsidiary, Security First Network Bank, FSB, Pineville, Kentucky (SFNB), in certain nonbanking activities related to the provision of electronic banking services over the non-proprietary computer network known as the "Internet." SFNB has received approval from the Office of Thrift Supervision to provide certain electronic banking services to its customers over the Internet, including deposit and bill-paying services.

Applicant proposes to acquire WebTech, Inc., Atlanta, Georgia (WebTech), and thereby market, design, develop, and provide ongoing technical support of data processing software for the electronic transmission of financial, banking, and economic data for financial institutions seeking to provide banking services to their customers over the Internet, pursuant to section 225.25(b)(7) of Regulation Y (12 CFR 225.25(b)(7)). Applicant seeks approval to conduct the proposed activities nationwide.

SFNB will acquire WebTech which will provide data processing and security software to financial institutions seeking to provide banking services to their customers over the Internet. Applicant indicates that this software is designed to enable electronic transmission of banking, financial, and economic data in a secure environment over the Internet. WebTech also will provide financial institutions ongoing technical support related to its software, customization and installation services, and data center operations. Moreover, WebTech expects to develop additional data processing services that will allow customers to provide secure access to accounts across other channels, such as through modems across public telephone lines.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 18, 1995. Any request for a hearing on this proposal must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, July 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–19101 Filed 8–2–95; 8:45 am]

BILLING CODE 6210–01–F

JDOB, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. JDOB, Inc., Sandstone, Minnesota; to engage *de novo* in making loans for its own account, purchasing overlines from its subsidiary bank, investing in loans originated by third parties pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. New York Mills Bancshares, Inc., New York Mills, Minnesota; to engage *de novo* in lending activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the State of Minnesota.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Coronado, Inc., Sterling, Kansas; to engage *de novo* through its subsidiary, Farmers State Agency, Inc., Sterling, Kansas; in acting as a full service securities broker, pursuant to § 225.25(b)(15)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–19102 Filed 8–2–95; 8:45 am]

BILLING CODE 6210–01–F

NBD Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 28, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. NBD Bancorp, Inc., Detroit, Michigan; to acquire 100 percent of the voting shares of NBD Bank, Venice, Florida.

Board of Governors of the Federal Reserve System, July 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–19103 Filed 8–2–95; 8:45 am]

BILLING CODE 6210–01–F

Shawmut National Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Shawmut National Corporation, Hartford, Connecticut and Boston, Massachusetts; to acquire Interpay, Inc., Mansfield, Massachusetts, and thereby engage in payroll processing services and related data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–19104 Filed 8–2–95; 8:45 am]

BILLING CODE 6210–01–F

Notice of Public Meeting

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Meeting

SUMMARY: The Federal Reserve Board is announcing a series of public meeting in connection with the application of Fleet Financial Group Inc., Providence, Rhode Island, to acquire Shawmut National Corporation, Boston, Massachusetts, and Hartford, Connecticut, pursuant to sections 3 and 4 of the Bank Holding Company Act of 1956.

FOR FURTHER INFORMATION CONTACT: Diane A. Koonjy, Senior Attorney, Legal Division (202-452-3274), or Patricia A. Robinson, Attorney, Legal Division (202-452-3005), or Kathleen Conley, Review Examiner, Division of Consumer and Community Affairs (202-452-2389), Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorthea Thompson (202-452-3344), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background and Public Meeting Notice

On July 7, 1995, Fleet Financial Group, Inc., Providence, Rhode Island (Fleet), applied pursuant to sections 3 and 4 of the Bank Holding Company Act (12 U.S.C. §§ 1842, 1843)(BHC Act) to acquire Shawmut National Corporation, Boston, Massachusetts, and Hartford, Connecticut (Shawmut), and thereby acquire the banking and nonbanking subsidiaries of Shawmut. Under authority delegated by the Board of Governors of the Federal Reserve System (Board) in section 265.6(a)(2) of the Board's Rules, the General Counsel of the Board hereby orders that public meetings on the applications be held in Boston, Massachusetts; Hartford, Connecticut, and Albany, New York, beginning August 26, 1995, to collect information on the convenience and needs of the communities to be served by this proposal, including the records of performance of these institutions under the Community Reinvestment Act (CRA).

The public meetings well be held at the following locations:

Boston-Saturday, August 26, 1995, at the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts 02106. The meeting will begin at 9:00 a.m.

Hartford-Monday, August 28, at the Wild Auditorium, Gray Conference Center, University of Hartford, 200 Bloomfield Avenue, West Hartford, Connecticut 06117. The meeting will begin at 12:00 noon, E.D.T.

Albany-Tuesday, August 29, at the New York State Museum, Museum Theater, West Gallery, Cultural Education Center, Empire State Plaza, Madison Avenue, Albany, New York 12230. The meeting will begin at 12:00 noon, E.D.T.

To accommodate interested persons, the public meetings in Hartford, Connecticut, and Albany, New York, will include evening hours scheduled for testimony.

Purpose and Procedures

The purpose of the public meetings is to receive information regarding the convenience and needs of the communities to be served by this proposal, including the records of performance of Fleet and Shawmut under the CRA. The CRA requires the appropriate federal financial supervisory agency to "assess [an] institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of [the] institution." 12 U.S.C. § 2903. The Board, as a federal financial supervisory agency, is required to take this record into account in its evaluation of an application under section 3 of the BHC Act.

The public meetings are convened under the Board's policy statement regarding informal meetings in section 262.25(d) of the Board's Rules (12 C.F.R. 225.25(d)). This policy statement provides that the purpose of a public meeting is to elicit information, to clarify factual issues related to an application, and to provide testimony. In contrast to a formal administrative hearing, the rules for taking evidence in an administrative proceeding will not apply to these public meetings. Testimony at the public meetings will be presented to a panel consisting of a Presiding Officer, Griffith L. Garwood, Director of the Board's Division of Consumer and Community Affairs, or his designee, and other panel members appointed by the Presiding Officer. These panel members may question witnesses, but no cross-examination of witnesses will be permitted.

In conducting each public meeting, the Presiding Officer will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. The public meetings will be transcribed and information regarding procedures for obtaining a copy of the transcripts will be announced at the public meetings.

All persons wishing to testify at the public meetings should submit a written request to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (facsimile: 202-452-3819), not later than August 16, 1995, providing the following information:

(i) identification of which meeting they wish to attend,

(ii) a brief statement of the nature of the expected testimony and the estimated time required for the presentation,

(iii) address and telephone number (and facsimile number, if available), and

(iv) identification of any special needs, such as persons desiring translation services, persons with a physical disability who may need assistance, or persons using visual aids for their presentation. To the extent available, translators will be provided to persons wishing to present their views in a language other than English if they include this information in their request to testify.

Persons interested only in attending a meeting do not need to submit a written request to attend.

On the basis of the requests received, the Presiding Officer will prepare a schedule for persons wishing to testify. Persons not listed on the schedule may be permitted to speak at the public meetings at the discretion of the Presiding Officer if time permits at the conclusion of the schedule of witnesses. Copies of testimony may, but need not, be filed with the Presiding Officer before a person's presentation.

By order of the General Counsel of the Board of Governors, acting pursuant to authority delegated by the Board of Governors, effective, July 27, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19105 Filed 8–2–95; 8:45am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Administrative Litigation Following the Denial of a Preliminary Injunction: Policy Statement

AGENCY: Federal Trade Commission.

ACTION: Policy statement, and accompanying Commission statement, with request for public comment.

SUMMARY: The Federal Trade Commission has adopted policies explaining how, after a court had denied preliminary injunctive relief to the Commission, the Commission decides whether administrative litigation should be commenced or, if it has already been commenced, should be continued. While the policies are already in effect, the Commission will receive comment for thirty days, and will thereafter take

such further action as may be appropriate.

DATES: The policy statement was effective on June 21, 1995. Comments will be received until September 5, 1995.

ADDRESSES: Comments should be sent to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580. Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 during the hours of 9 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: William Baer, Director, Bureau of Competition, (202) 326–2932, or Ernest Nagata, Deputy Assistant Director for Policy and Evaluation, Bureau of Competition, (202) 326–2714.

SUPPLEMENTARY INFORMATION: 1. On June 21, 1995, the Commission issued the following statement to accompany its policy statement:

Commission Statement to Accompany Statement of Federal Trade Commission Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction

Introduction

The Federal Trade Commission is charged with ensuring that U.S. consumers are protected from higher prices, lower quality, and lessened innovation that could result from anticompetitive mergers.[1] Historically, the Commission has resolved merger cases through administrative trials or consent orders. In recent times, most of the Commission's antitrust complaints have been settled through administrative consent orders.[2] For those relatively few merger cases in which the Commission has litigated, the Commission's usual practice in recent years has been first to seek a preliminary injunction in federal district court to prevent the consummation of the proposed transaction.[3] The Commission has won most of its challenges at the federal district court level.[4]

There have been five instances in the last ten years in which a federal district court has refused to grant a preliminary injunction sought by the Commission, and the Commission then proceeded with a challenge to the merger in administrative litigation.[5] In such circumstances, the determination to continue a merger challenge in administrative litigation is not, and cannot be, either automatic or indiscriminate. In any given case, the evidence, arguments, and/or opinion from the preliminary injunction hearing may, or may not, suggest that further proceedings would be in the public interest. The Commission's guiding principle is that the determination whether to proceed in administrative litigation following the denial of a preliminary injunction and the exhaustion or expiration of all avenues of appeal must be made on a case-by-case basis.

The Commission is issuing the attached Statement to clarify the process it follows in deciding whether to pursue administrative litigation following denial of a preliminary injunction. The Statement also notes that, if necessary, the Commission will adopt certain procedures to ensure parties to a transaction the opportunity to have their views heard by the Commission before it makes its determination.

In order to place these issues in context, this Statement begins by addressing the value of administrative litigation and why a preliminary injunction proceeding, regardless of its outcome, may not in and of itself provide a sufficient basis for the resolution of complex merger litigation.

The Value of Administrative Litigation

The Federal Trade Commission was created in part because Congress believed that a special administrative agency would serve the public interest by helping to resolve complex antitrust questions. Congress intended that the Commission would play a "leading role in enforcing the Clayton Act, which was passed at the same time as the statute creating the Commission."[6] It was expected that an administrative agency was especially suited to resolving difficult antitrust questions, and that the FTC should be the principal fact finder in the process: it is "within the Commission's primary responsibility" to draw inferences of competitive consequences from the underlying facts.[7]

The Commission has fulfilled that special role in a number of important merger cases.[8] Administrative cases provide valuable guidance on how the Commission applies the relevant legal standards and analytical principles as they evolve over time. Application of these standards and principles to concrete factual situations, developed in a full record, can provide insight into why certain mergers are likely to harm competition and result in consumer injury, and why others may not. Especially because the Supreme Court has addressed substantive issues of merger law only rarely in recent decades,[9] and because antitrust law during that time has evolved in response to economic learning, the Commission's opinions have been an important vehicle to provide guidance to the business community on how to analyze complex merger issues.

[1] As used herein, the term "merger" includes mergers, acquisitions, joint ventures, and equivalent transactions.

[2] For FY 1990 through FY 1994, the Commission resolved complaints through administrative consent orders, without authorizing either federal court or administrative litigation, in 67% of the merger enforcement actions that the Commission authorized.

[3] For FY 1990 through FY 1994, the Commission authorized preliminary injunction actions in 29% of the merger enforcement actions that it authorized; in 4% of its merger enforcement actions, the Commission authorized administrative trials without first proceeding to federal court for a preliminary injunction.

[4] During the five-year period covered by fiscal years 1990–1994, five out of seven of the Commission's motions for a preliminary injunction were granted. In one case, *FTC v. University Health, Inc.*, 938 F.2d 1206 (11th Cir. 1991), the district court's denial of a preliminary injunction was reversed on appeal. For fiscal years 1985–1989, the Commission was successful in six out of nine motions for a preliminary injunction.

[5] *R.R. Donnelley & Sons*, Dkt. 9243, is currently before the Commission on respondents' appeal from the Initial Decision of the administrative law judge. In *Owens-Illinois, Inc.*, Dkt. No. 9212, the Administrative Law Judge ("ALJ") found liability but the Commission reversed. 1987–1993 Transfer Binder (CCH) ¶ 22,731 (Sept. 11, 1989) (Initial Decision), *rev.d*, 1987–1993 Transfer Binder (CCH) ¶ 23,162 (Feb. 26, 1992). In *Promodes, S.A.*, Dkt. No. 9928, the administrative complaint was settled. 113 F.T.C. 372 (1990). In *Occidental Petroleum Co.*, Dkt. No. 9205, both the ALJ and the Commission found liability. 1987–1993 Transfer Binder (CCH) ¶ 22,603 (Sept. 30, 1988) (Initial Decision), *aff'd*, 5 Trade Reg. Rep. (CCH) ¶ 23,370 (Dec. 22, 1992), *appeal dismissed pursuant to stipulation and modified order*, 5 Trade Reg. Rep. (CCH) ¶ 23,531 (Jan. 14, 1994). In a fifth case, *Lee Memorial Hospital*, Dkt. No. 9265, the administrative proceeding, which was filed prior to the district court's denial of a preliminary injunction, has been stayed pending appeal.

[6] *Hospital Corp. of America* v. *FTC*, 807 F. 2d 1381, 1386 (7th Cir. 1986), *cert. denied*, 481 U.S. 1038 (1987) (*"HCA"*).

[7] *HCA*, 807 F. 2d at 1386.

[8] For example, the Commission's decision in *Occidental Petroleum* provided important guidance on supply side substitution and coordinated interactions in merger analysis. The Commission's decision in *HCA* explained how coordination could occur in an industry with differentiated and non-homogeneous products. Judge Posner, writing for the Seventh Circuit affirming that decision, called it a "model of lucidity." 807 F. 2d at 1385. The Commission's decision in *American Medical International, Inc.*, 104 F.T.C. 1 (1984) examined in detail the dimensions of price and non-price competition in the hospital industry and discussed efficiencies considerations in analyzing a merger.

[9] The Supreme Court's last opinion on substantive merger law was *United States* v. *General Dynamics Corp.*, 415 U.S. 486 (1974).

Why A Preliminary Injunction Proceeding May Not Be A Sufficient Substitute for Administrative Litigation

If the same value could be achieved through a preliminary injunction proceeding as through administrative litigation, then there would be no reason for the Commission ever to proceed past the preliminary injunction phase. The differences between the two types of proceedings, however, mean that one does not equate with the other.

A preliminary injunction hearing has a limited purpose: to determine whether to enjoin the consummation of a proposed transaction pending a full adjudication on the merits. Thus, the district overseeing a preliminary injunction hearing is not charged with making a final ruling on whether the acquisition in unlawful.

Indeed, there may be an inadequate basis for doing so. Because a preliminary injunction proceeding has a limited purpose, the evidentiary record produced is often limited in scope. A court may not hear any witnesses, but instead may rule solely on the basis of the papers filed by the parties. A preliminary injunction proceeding is generally much shorter in duration than a full trial, and, because of its expedited nature, the thoroughness of the evidentiary presentation and analysis may be less than would be expected in a full trial. Since merger analysis can be a highly complex, fact-intensive undertaking, it may be particularly ill-suited for final resolution on the merits in the abbreviated forum of a preliminary injunction proceeding.

Some commentators have suggested that because the Department of Justice lacks the ability to challenge mergers in the administrative process, the Commission's litigation should be confined to the federal courts in order to bring the two agency's enforcement powers in line with one another. The problem with such an approach is that the significant benefits of administrative litigation outlined above would be lost in such a change in enforcement policy. The business community would be denied the guidance provided by merger decisions based on a complete analysis of a full evidentiary record, and Congress' vision of the FTC's central role in merger enforcement would be subverted.

Nonetheless, the Commission recognizes that automatic pursuit of administrative litigation following denial of a preliminary injunction is not required to serve the public interest. The attached Statement of Policy is intended to clarify the process the Commission follows in determining whether to pursue administrative litigation following denial of a preliminary injunction.

2. On June 21, 1995, the Commission issued the following policy statement:

Statement of Federal Trade Commission Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction

The Commission will assess on a case-by-case basis whether to pursue administrative litigation following the denial of a preliminary injunction.[1] If necessary, the Commission will amend its Rules of Practice[2] in order to facilitate the reconsideration of the public interest in continuing with an administrative case when an administrative complaint has already issued.

As discussed in the Commission Statement to Accompany Statement of Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction, the Commission believes that it would not be in the public interest to forego an administrative trial solely because a preliminary injunction has been denied. Nor would it be in the public interest to require an administrative trial in every case in which a preliminary injunction has been denied. Thus, a case-by-case determination is appropriate. This approach gives the Commission the opportunity to assess such matters as (i) the factual findings and legal conclusions of the district court or any appellate court, (ii) any new evidence developed during the course of the preliminary injunction proceeding, (iii) whether the transaction raises important issues of fact, law, or merger policy that need resolution in administrative litigation, (iv) an overall assessment of the costs and benefits of further proceedings, and (v) any other matter that bears on whether it would be in the public interest to proceed with the merger challenge.

If necessary, the Commission will amend Part 3 of the Commission's Rules of Practice to expedite its review of the issues and determination immediately following the denial of a preliminary injuction and the exhaustion or expiration of all avenues of appeal. The issuance of an administrative complaint during the pendency of a preliminary injunction proceeding will affect only the nature of the procedures under which such considerations will be reviewed, not whether they will be reviewed.

If an administrative complaint has not been issued by the time of the district court's ruling on a preliminary injunction and the exhaustion or expiration of all avenues of appeal, the Commission's consideration of whether to issue an administrative complaint will be conducted under its normal procedures for non-adjudicatory matters. If an administrative complaint has already been issued, the Commission will make its determination within the procedural framework for adjudicatory proceedings under Part 3 of the Commission's Rules of Practice.

The policy articulated in this Statement is applicable to any current and future merger enforcement actions initiated by the Commission under Section 13(b) of the Federal Trade Commission Act. The Commission intends, however, to issue within thirty days a Federal Register notice soliciting public comment on the Commission's policy and, if necessary, setting forth any conforming amendments to Part 3 of its Rules of Practice.

3. The Commission has determined to adopt a new rule, 16 CFR § 3.26, to facilitate review of the public interest in continuing an adjudicative proceeding when, after the adjudicative proceeding has begun, a court denies preliminary injunctive relief in a section 13(b) case brought in aid of the adjudication. Under rule 3.26, which is published elsewhere in this issue, respondents can choose to have such review conducted either within the framework for adjudicative proceedings, or following withdrawal of the administrative case from adjudication.

Also, as noted in footnote 1 of the June 21 policy statement, the principles applicable to administrative merger litigation would apply in the context of non-merger competitive litigation. They are also applicable in the context of consumer protection litigation.

By direction of the Commission, Commissioner Azcuenaga concurring in part and dissenting in part.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga Concerning FTC'S Adoption of Rule 3.26 Respecting Administrative Litigation Following Denial of a Preliminary Injunction

On June 26, 1995, the Commission issued a Statement of Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction and an accompanying

[1] Although the focus of this policy statement is merger litigation, similar principles would apply following the denial of a preliminary injunction in the context of non-merger competition litigation.

[2] 16 CFR 3.1 *et seq.*

explanation.[1] These documents reaffirm the Commission's longstanding policy, consistent with Section 5 of the FTC Act, 15 U.S.C. § 45(b), of reconsidering whether to pursue administrative litigation following the denial of preliminary relief by the courts. Section 5 requires that the Commission premise issuance of an adjudicative complaint on finding reason to believe that the law has been violated and that enforcement would be in the public interest. This obligation continues implicitly throughout the proceeding, requiring the Commission to take all reasonable steps to assure itself that an enforcement action, once begun, remains in the public interest. I joined in that Statement.

The Commission now adopts new Rule 3.26 to govern how the agency will proceed if a court denies a requested preliminary injunction pending completion of an administrative adjudication.[2] A central feature of the new rule is that following the court's action, the respondents may choose to have the administrative matter removed from adjudication to permit the parties to discuss with the Commission privately, off the record and "without the constraints of adjudicative rules,"[3] the public interest in continuing the adjudication in light of the court's action.[4] Strictly speaking, no revision of the Rules is necessary because existing provisions of the Rules of Practice are sufficient to permit the Commission to address any effect the court's action may have on the public interest in continuing the adjudication.[5] Nevertheless, I have no objection to adopting a new rule to provide specific procedures for reconsidering an administrative adjudication following denial of a preliminary injunction. My difference of opinion is this: I believe that a rule adopted to address this situation should provide that the matter be left in adjudication for any reconsideration by the Commission and that any communication between the parties and the Commission take place on the record.[6]

The Commission opines that complaint counsel will be more candid off the record because they "will be able to discuss the case without concern that their statements might compromise their litigation position if the case is returned to adjudication."[7] It also suggests that the *ex parte* procedure will confer similar benefits on "respondents (and even third parties)."[8] It is unclear to me why all this candor cannot and should not take place on the public record.

Traditionally, the Commission acts as a prosecutor up to and including its decision to issue an administrative complaint. As soon as the vote to issue an administrative complaint is complete, the Commission assumes a judicial role with respect to that case, which then is said to be "in adjudication."[9] It should go without saying that the Commission must not allow its prosecutorial role to intrude in any respect in carrying out its deliberative role in an administrative adjudication. Removing a matter from adjudication to chat off the record suggests that there is something that the Commission would prefer that the world not know. It also suggests an unease on the part of the Commission in carrying out its judicial function and an unseemly reluctance to relinquish its prosecutorial role. Although the automatic withdrawal provision may not disadvantage the respondent in any given proceeding, it may well undermine public confidence in the integrity of the Commission's adjudicative process.

Let us consider three scenarios following a court's denial of a preliminary injunction: First, complaint counsel have a strong case, notwithstanding the court's denial of a preliminary injunction. If this is so, complaint counsel can explain why on the record. After the case has been withdrawn from adjudication and reconsidered, presumably the Commission will return the case to adjudicative status. Even if the respondents initiated withdrawing the matter from adjudication, the procedure, in-and-out-and-in adjudication, may create a perception that complaint counsel, speaking off the record, had an unfair advantage. The respondents may believe that had they only known what the staff was saying to the Commission behind closed doors while the case was withdrawn from adjudication, they could have defended more effectively and won a dismissal. After all, the court gave the first round to the respondents on the record.

A second scenario is that the case is weak, and complaint counsel's arguments in support of the complaint are correspondingly weak. The Commission suggests in its **Federal Register** notice that if discussion is held on the record, complaint counsel will be inhibited from pointing to weaknesses in the case for fear that if the Commission disagrees and requires the adjudication to go forward, complaint counsel will be disadvantaged by having conceded the weaknesses of the case on the record. An underlying assumption here is that any weaknesses in the case will remain undiscovered (by the courts, by the respondent and by the administrative law judge), as long as complaint counsel can confide in the Commission off the record. Perhaps more serious, the assumption suggests an abiding lack of confidence in the administrative system of adjudication and the Commission's place in it. Complaint counsel will not be able to avoid the weakness of the case by confiding that fact in secret to the Commission. At most, they might conceal the weakness for a time, a result that ultimately would be wasteful of both government and private resources. Regardless of when during an adjudicative proceeding complaint counsel or the Commission itself discovers a possible weakness in the case, the Commission should base its decision whether to continue the proceeding on publicly available information.

The new rule may lend itself to a public perception that the staff of the Commission has an advantage over targets of enforcement actions because the staff has the secret ear of the Commission. If the staff is permitted secret access to the Commission, a decision to continue an adjudication, particularly one that, based on publicly available information, appears weak, likely would suggest that complaint counsel were able to persuade the Commission to proceed only by "hiding the ball" from the respondents. Such a message hardly is consistent with fairness to the respondent or with the role of the Commission as an unbiased decisionmaker.[10]

A third scenario is that the case is weak, respondents move to withdraw the matter from adjudication, and complaint counsel file nothing in support of the complaint.[11] In such an instance, the Commission may agree with the respondents and dismiss the adjudication, or it may disagree and order that the proceeding continue. There seems no good reason not to have this occur on the public record. Again, private discussions between the Commission and its staff can create a public perception of unfairness to the respondents arising from apparent complicity between the prosecuting attorneys and the purportedly impartial adjudicators—the very danger the separation of functions requirements of the Administrative Procedure Act and the Commission's *ex parte* rule are designed to avoid.[12]

In addition to undermining the separation of functions at the Commission, the new rule limits the Commission's discretion to decide when individual cases should be in adjudication and remain on the public record. The exercise of discretion in an adjudicative matter is a responsibility of the Commission, not an occasion for apology. This responsibility, which must be carried out consistent with the law and with fundamental fairness, should not be ceded without a reason for doing so. Here, I see none. Both the policy to maintain the separation of deliberative and prosecutorial functions and the appearance of having done so are enhanced when the Commission retains its discretion to determine the appropriate disposition of a motion to withdraw from adjudication. The shifting of a portion of that discretion in favor of the respondents may appear open-minded, but, in the long term, it will disserve the Commission and the public interest.

On balance, the Commission and the public would be better served if the Commission retained its discretion to decide which, if any, cases should be withdrawn from adjudication following denial of a preliminary injunction. The new rule is likely to undermine the integrity of the Commission and its adjudicative process by breaking down the wall between the Commission's prosecutorial and adjudicatory roles in a manner inconsistent with the separation of functions requirement of the Administrative Procedure Act and its own *ex parte* rule.

I dissent.

[FR Doc. 95–19110 Filed 8–2–95; 8:45 am]

BILLING CODE 6750–01–M

[1] These materials appear again in this volume of the **Federal Register**.

[2] *See* 15 U.S.C. § 53(b).

[3] Notice of Final Rule with Request for Public Comment, 60 Fed. Reg._____, Slip Notice at 2–3.

[4] I do not oppose the alternative procedure included in the new rule, which expressly authorizes a motion by any respondent to dismiss the complaint in the public interest. Although the alternative procedure is redundant in light of existing Rules 3.22 and 3.23, 16 CFR §§ 3.22 and 3.23 (1995), I do not find it objectionable because the arguments would be presented on the record unless the Commission directs otherwise.

[5] *See, e.g.*, Rule 3.22 governing adjudicative motions and Rule 3.23 governing interlocutory appeals. The Commission also, of course, may act *sua sponte* to seek briefing from the parties or to dismiss the complaint.

[6] Confidential communications between the Commission and its staff before a matter enters adjudication and when the Commission is still carrying out its prosecutorial responsibility make sense. In our system of law, investigational and prosecutorial decisions are protected from public scrutiny. *See* 5 U.S.C. § 552(b)(5). Such confidential communications after the prosecutorial function has concluded with the issuance of a complaint, however, raise issues concerning the exercise by the Commission of its quasi-judicial function.

[7] 60 Fed. Reg. _____, Slip Notice at 4.

[8] *Id.*

[9] At this point, all further communications between the parties (complaint counsel and the respondent(s) are on the record with certain specified exemptions. Rule 4.7, 16 CFR § 4.7.

[10] Off-the-record discussions with the respondents, followed by dismissal of the complaint, also may create misperceptions of unfairness and favoritism, with the implication that nonpublic communications that could not bear the light of day influenced the Commission's decision.

[11] This assumes that complaint counsel find themselves unable to make a principled argument in support of the complaint. *See* Jose Calimlin, M.D., Dkt. No. 9199 (June 24, 1986) ("complaint counsel represent the Commission's prosecutorial decision as embodied in the allegations of complaint and in the notice of contemplated relief"); *accord* R.J. Reynolds Tobacco Co., Dkt. No. 9206 (interlocutory order, Dec. 1, 1986); *see also* R.J. Reynolds Tobacco Co. (interlocutory order, Dec. 10, 1986) (purpose of adjudication is "to subject the Commission's complaint to an adversarial test").

[12] *See* 5 U.S.C. § 552(d); 16 C.F.R. § 4.7.

Notice and Request for Comment Regarding Statement of Policy Concerning Prior Approval and Prior Notice Provisions in Merger Cases

AGENCY: Federal Trade Commission.

ACTION: Notice of policy statement and request for public comment.

SUMMARY: The Federal Trade Commission has adopted a policy statement regarding the use of prior approval and prior notice provisions in Commission orders entered in merger cases. Under the policy, the Commission will no longer require prior approval of certain future acquisitions in such orders as a routine matter. The Commission will henceforth rely on the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino (HSR) Act, as the principal means of learning about and reviewing mergers proposed by such companies. Narrow prior notice or approval requirements will be retained for certain limited situations described in the Commission's Statement of Policy. The Commission also stated that it would initiate a process for reviewing the retention or modification of prior approval requirements in existing Commission orders.

Although these policies are already in effect, the Commission is soliciting comment from interested persons.

DATES: The policy statement was effective on June 21, 1995. Comments will be received until September 5, 1995.

ADDRESSES: Comments should be sent to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580. Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 during the hours of 9 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: Daniel P. Ducore, Assistant Director for Compliance, Bureau of Competition, (202) 326–2526.

SUPPLEMENTARY INFORMATION: Under previous Commission policy, Commission orders entered in merger cases generally have required that the respondent obtain the Commission's prior approval for certain future acquisitions in the same market. The Commission has reassessed that policy and has determined that prior approval of future acquisitions by a respondent should no longer be required as a routine matter. The Commission has issued the following Policy Statement as an exercise of its discretion.

The Commission invites comments on the issues discussed in this notice, in the Policy Statement and in the separate statement of Commissioner Azcuenaga.

Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions

Introduction

Under longstanding Commission policy, Commission orders entered in merger cases generally have contained a requirement that the respondent seek the Commission's prior approval for any future acquisition over a de minimis threshold within certain markets for a ten-year period.[1] In a few cases, the Commission also has required prior notice of intended transactions that would not be subject to the premerger notification and waiting period requirements of section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino (HSR) Act.[2] Prior approval and notice requirements are imposed pursuant to the Commission's broad authority to fashion remedies to prevent the recurrence of anticompetitive conduct.

In light of its now extensive experience with the HSR Act, the Commission has reassessed whether it needs to continue regularly to impose prior approval requirements. Although prior approval requirements in some cases may save the Commission the costs of re-litigating issues that already have been resolved, prior approval provisions also may impose costs on a company subject to such a requirement. Moreover, the HSR Act has proven to be an effective means of investigating and challenging most anticompetitive transactions before they occur.

[1] As used herein, the term "merger" includes mergers, acquisitions, joint ventures, and equivalent transactions.

[2] Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

Consequently, the Commission has concluded that a general policy of requiring prior approval is no longer needed. Narrow prior notice or approval requirements will be retained for certain situations, as described below.

Statement of Policy Concerning Future Orders

The Commission will henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger. The Commission believes that in most such situations the availability of HSR premerger notification and waiting period requirements will adequately protect the public interest in effective merger enforcement, without being unduly burdensome. Therefore, as a general matter, Commission orders in such cases will not include prior approval or prior notification requirements.

The Commission reserves its equitable power to fashion remedies needed to protect the public interest, including by ordering limited prior approval and/or notification in certain limited circumstances. Such orders are most likely to be used in two situations:

First, a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger.[3] The prior approval requirement in such cases would typically be limited to the proposed merger or other combination of essentially the same relevant assets that were involved in the challenged transaction.

Second, a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger.[4] The need for this supplemental, HSR-like premerger notification and waiting period requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors (including whether the challenged transaction itself was not reportable).

Statement of Policy for Existing Prior Approval Orders

There are approximately 90 outstanding Commission orders that contain a current prior approval requirement; some of these orders also contain a prior notice requirement. The Commission has determined to initiate a process for reviewing the retention or modification of these existing requirements. The Commission will issue to each person subject to such an order a notice regarding the Commission's prior approval policy as set forth in this Statement and an invitation to submit a request to reopen the order, pursuant to section 5(b) of the Federal Trade Commission Act and Rule 2.51 of the Commission's rules of practice.

The Commission has determined that, when a petition is filed to reopen and modify an order pursuant to this Statement of Policy, the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced in this Statement. No presumption will apply to existing prior notice requirements, which have been adopted on a case-by-case basis and will continue to be considered on a case-by-case basis under the policy announced in this Statement.

Although the policies set forth in this Statement are effective immediately, the Commission will issue within thirty days a **Federal Register** notice soliciting public comment on them.

By direction of the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga on Decision to Abandon Prior Approval Requirements in Merger Orders

The Commission has abandoned its longstanding policy to include prior approval as a remedy in cases involving transactions that are unlawful under section 7 of the Clayton Act.[1] The Commission cites in support of its decision the effectiveness of premerger notification under the Hart-Scott-Rodino Act as a "means of investigating and challenging most anticompetitive transactions before they occur" and the possibility that "prior approval provisions * * * may impose costs on a company subject to such a requirement."[2] In my view, the policy should be retained because the benefits of prior approval requirements easily outweigh the costs.

Our authority to impose prior approval requirements is unquestioned, and the Commission reaffirmed its policy to require prior approval clauses in section 7 orders in 1988[3] and, most recently, in 1994 in its adjudicative opinion in the *Coca Cola* case.[4] The Commission imposes a variety of more costly requirements in its orders every day, ranging from complete bans on engaging in certain businesses and activities[5] to provisions that some might characterize as highly regulatory.[6] Why the Commission would choose now to eliminate this straightforward, modest, fencing-in relief for unlawful mergers is mystifying.

Prior approval clauses benefit the Commission by conserving public law enforcement dollars. A respondent subject to a prior approval requirement must notify the Commission of the proposed transaction and demonstrate that it would not be anticompetitive before consummating the deal. From the Commission's perspective, this process is less costly than a new investigation of a proposed transaction and a second challenge under the law. In the absence of a prior approval requirement, subsequent acquisitions that was challenged and found unlawful, must be

[3] Such a provision is included in some consent judgments in cases brought by the Department of Justice. See, e.g., *United States* v. *Browning-Ferris Indus. Inc.*, Civ. Action No. 1:94CV02588 (proposed final judgment) (D.D.C., filed Nov 1, 1994).

[4] Such prior notice orders would require the company to comply with HSR-like premerger notification and waiting periods. From FY 1990 through FY 1994, the Commission undertook enforcement actions against twelve transactions that were not reportable under HSR. Four were hospital mergers, and the others covered a variety of markets including electrical products, scientific equipment, medical products or devices, security equipment, and food products.

[1] Prior approval provisions require the firm under order to obtain the approval of the Commission before making acquisitions in the same market in which the unlawful acquisition occurred.

Early cases enjoined future acquisitions entirely, often together with a divestiture requirement, to remedy the effects of an unlawful acquisition. Prior approval was introduced as an "escape clause," "[t]o prevent the possibility of the injunction (against acquisitions) having unintended harsh results." Luria Brothers, 62 F.T.C. 243, 638 (1963), *aff'd*, 389 F.2d 847, 865–66 (3d Cir.), *cert. denied*, 393 U.S. 829 (1968). Early prior approval clauses varied in length, ranging from perpetual requirements to those with a duration of 5, 10 or 20 years.

[2] Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions at 4 (June 21, 1995) (hereafter "Prior Approval Statement").

[3] *See* FTC Staff Bulletin 88–01 (May 18, 1988).

[4] The Coca-Cola Co., Docket 9707 (June 13, 1994), Commissioners Azcuenaga & Starek recused; *order modified* (May 17, 1995); *appeal dismissed per stipulation* (D.C. Cir. May 18, 1995).

[5] *See, e.g.*, FTC v. Starlink, Inc., Civ. No. 91–1085 (E.D. Pa. Feb. 10, 1992) (lifetime ban on advertising, marketing or selling information concerning employment opportunities).

[6] Examples of highly regulatory orders are unfortunately plentiful. *See, e.g.*, Dissenting Statement of Commissioner Mary L. Azcuenaga in *Silicon Graphics, Inc.*, File 951–0064 (published for comment June 9, 1995).

investigated and challenged *de nove*.[7] To the extent that the prospect of the prior approval requirement may deter unlawful acquisitions by a respondent, this would appear to be a benefit. To the extent that the prospect of prior approval may deter unlawful acquisitions by firms that are not under order, this, too, would appear to be a benefit.[8]

Despite considerable squawking from a few representatives of firms that are actual, alleged or potential violators of section 7, there is little if anything to suggest that the burden of prior approval requirements is undue. It is important to remember how very limited the Commission's prior approval requirements are. First, and most obviously, the prior approval requirement is imposed only on firms that have attempted unlawful acquisitions.[9] It is limited to proposed acquisitions in the same geographic and product markets in which the Commission has found reason to believe that an acquisition by the respondent would violate the law. It is limited in time, usually to a duration of ten years. And it involves a minute universe of cases. For example, in the past five years, the Commission has issued 58 orders containing prior approval provisions, fewer than twelve per year. In comparison, in fiscal year 1994, 2,305 transactions were reported under the Hart-Scott-Rodino Act. In the first six months of fiscal year 1995, through the end of March 1, 348 transactions were filed.

According to the Commission, the policy should be changed because premerger notification under the Hart-Scott-Rodino Act is an adequate substitute. While the Hart-Scott-Rodino Act enables the Commission to investigate and challenge reported transactions before they occur, the success of the premerger notification program is not a recent discovery. If pre-transaction notice were the only purpose of prior approval clauses in orders, the policy could have been abandoned years ago. Instead, the Commission consistently has concluded (until now) that the Hart-Scott-Rodino Act does not eliminate the need for prior approval clauses in merger orders. *See, e.g., The Coca-Cola Co.*, Docket 9207, Order Denying Motion To Dismiss (August 9, 1988), Chairman Oliver dissenting[10] and Commissioner Azcuenaga recused.[11]

A prior approval requirement is a simple, direct and limited remedy to prevent recurrence of unlawful acquisitions. Even if we assume that prior approval is costly (*i.e.*, more costly than is compliance with the Hart-Scott-Rodino Act—and I am not persuaded that it is), the policy provides important law enforcement benefits. The decision to abandon prior approval in Commission orders relinquishes the benefits for no apparent return.[12]

I am against it.

[FR Doc. 95–19111 Filed 8–2–95; 8:45 am]

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[7] The Antitrust Division of the Department of Justice recently filed a civil antitrust complaint to block a company's second attempt in eight years to acquire its largest competitor. *See* United States v. Engelhard Corp., Civ. Action No. 6:95–CV–454 (M.D. Ga. filed June 12, 1995). Engelhard abandoned its previous acquisition attempt in 1987, after the Department announced that it would challenge the transaction.

[8] If the prior approval requirement is costly in fact or if it is perceived to be costly, then the requirement may have a deterrent effect. Formerly, a firm contemplating an anticompetitive acquisition might have decided that on balance the risk of prosecution combined with the likelihood of becoming subject to a prior approval requirement was sufficient cause not to go forward. Because firms cannot know in advance whether their transaction will be reviewed by the Commission or by the Department of Justice, any deterrent effect from the Commission's policy would apply to all transactions.

[9] Prior approval is a form of fencing-in relief. Fencing-in provisions ordinarily impose a limited ban on otherwise lawful conduct to inhibit repetition of the unlawful conduct. *See* FTC v. Ruberoid Co., 343 U.S. 470, 473 (1952) ("[T]he Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. If the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow land the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.").

[10] Then-Chairman Oliver favored dismissal of the compliant when "the only relief * * * would be an order requiring prior notice or prior approval," but he observed (as did the majority) that Coca-Cola and complaint counsel could "choose to withdraw this matter from adjudication" by negotiating a settlement containing "narrow prior approval provisions . . . [that in his view would] be preferable to the continuance of unwarranted litigation."

[11] *See also* Warner Communications, Inc., 105 F.T.C. 342, 343 (1985) ("nothing in its legislative history suggests that [premerger notification under the Hart-Scott-Rodino Act] was intended to supersede the use of fencing-in provisions imposed after a merger has actually been found improper"); Louisiana-Pacific Corporation, 112 F.T.C. 547, 566 (1989) (Hart-Scott-Rodino "premerger notification program is not coextensive with the order's prior approval requirement").

[12] Determining on a case-by-case basis whether to require prior approval, *see* Prior Approval Statement at 2–3, increases the costs of negotiating and litigating orders in merger cases. Given the benefits of prior approval, this is a waste of government resources.

[File No. 941–0076]

Local Health System, Inc., et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal trade commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the merger of the two largest hospitals in St. Clair County, Michigan and would require the hospitals, for a limited time, to notify the Commission or obtain Commission approval before acquiring certain hospital assets in the Port Huron, Michigan area.

DATES: Comments must be received on or before October 2, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip L. Broyles, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114. (216) 522–4207.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

[File No. 941–0076]

Agreement Containing Consent Order

In the matter of LOCAL HEALTH SYSTEM, INC., a corporation, BLUE WATER HEALTH SERVICES CORP., a corporation, and MERCY HEALTH SERVICES, a corporation.

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Local Health System, Inc. ("Local Health"), of certain assets of Mercy Hospital Port Huron ("Mercy-Port Huron") from Mercy Health Services ("Mercy Health"), and of certain assets of Port Huron Hospital from Blue Water Health Services Corporation ("Blue Water Health"), and

it now appearing that Local Health, Mercy Health and Blue Water Health, hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into an agreement containing an order to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Local Health is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1001 Kearney Street, Port Huron, Michigan 48060.

2. Proposed Respondent Mercy Health is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 34605 Twelve Mile Road, Farmington, Hills, Michigan 48331.

3. Proposed Respondent Blue Water Health is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1001 Kearney Street, Port Huron, Michigan 48060.

4. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint.

5. Proposed Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents' addresses as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to very or contradict the terms of the Order.

9. Proposed Respondents have read the proposed complaint and Order contemplated hereby. Proposed Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. *Local Health* means Local Health System, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Local Health System, Inc.; their directors, officers, employees, agents, and representatives; and their successors and assigns.

B. *Mercy Health* means Mercy Health Services, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Mercy Health Services; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. *Blue Water Health* means Blue Water Health Services Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Blue Water Health Services Corporation; their directors, officers, employees, agents, and representatives; and their successors and assigns.

D. *Respondents* means Local Health, Mercy Health and Blue Water Health, collectively and individually.

E. The *Acquisition* means the proposed acquisition of Port Huron Hospital and Mercy Hospital Port Huron by Local Health pursuant to the Memorandum of Understanding dated January 19, 1994.

F. *Acute care hospital* means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

G. To *operate an acute care hospital* means to own, lease, manage or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

H. *Affiliate* means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

I. *Person* means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

J. *Greater Port Huron* means the area consisting of the cities of Port Huron, Marysville, Kimball Township, Port Huron Township and Fort Gratiot, Michigan.

K. *Commission* means the Federal Trade Commission.

II

It is further ordered that, unless they have already done so, Respondents shall, no later than seven (7) days after the date this Order becomes final: (1) Terminate any agreement that provides for or contemplates the Acquisition; (2) return or destroy all documents containing or recording confidential information provided to Respondents by any other person in connection with negotiations or agreements relating to the Acquisition; and (3) recover from any other person or have such other person destroy all documents containing or recording confidential information provided by Respondents to such other person in connection with negotiations or agreements relating to the Acquisition.

III

It is further ordered that, for a period of three (3) years from the date this Order becomes final, no Respondent shall, without prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships or otherwise:

A. Acquire any majority or other controlling stock, share capital, equity or other interest in any other Respondent that operates any acute care hospital facility in Greater Port Huron;

B. Acquire a majority of any assets of any acute care hospital facility operated by any other Respondent in Greater Port Huron;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management or control of any acute care hospital facility operated by any other Respondent in Greater Port Huron, including but not limited to, a lease of or management contract for any such acute care hospital facility, or an agreement to replace an acute care hospital facility operated by another person with an acute care hospital to be operated by any Respondent;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, a majority of the directors or trustees of any acute care hospital facility operated by any other Respondent in Greater Port Huron; or

E. Permit any acute care hospital it operates in Greater Port Huron to be acquired (by stock acquisition, asset acquisition, lease, management contract, establishment of a replacement facility, right to designate directors or trustees or otherwise) by any other Respondent that operated, or will operate immediately following such acquisition, any other acute care hospital in Greater Port Huron.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, no Respondent shall, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any person who operates any acute care hospital facility in Greater Port Huron;

B. Acquire any assets of any acute care hospital facility in Greater Port Huron;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management or control of any acute care hospital facility or any part thereof in Greater Port Huron, including but not limited to, a lease of or management contract for any such acute care hospital facility, or an agreement to replace an acute care hospital facility operated by another person with an acute care hospital facility to be operated by any Respondent;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any acute care hospital facility in Greater Port Huron; or

E. Permit any acute care hospital it operates in Greater Port Huron to be acquired (in whole or in part, by stock acquisition, asset acquisition, lease, management contract, establishment of a replacement facility, right to designate directors or trustees, or otherwise) by any person who operates, or will operate immediately following such acquisition, any other acute care hospital in Greater Port Huron.

Said notification shall be given on the Notification and Report Form set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, Respondents shall not consummate the acquisition until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

Provided, however, that prior notification shall not be required by this Paragraph IV of this Order for:

1. The establishment by a Respondent of a new acute care hospital facility that is a replacement for that Repondent's existing acute care hospital facility;

2. The establishment by a Respondent of a new acute care hospital that is not a replacement for any other acute care hospital facility in Greater Port Huron;

3. Any transaction otherwise subject to this Paragraph IV of this Order if the fair market value of (or, in the case of a purchase acquisition, the consideration paid for) the acute care hospital facility or part thereof to be acquired does not exceed one million dollars ($1,000,000);

4. Any transaction otherwise subject to this Paragraph IV of this Order if the acquisition is pursuant to a joint venture which is to engage in no activities other than the provision of the following services: Laundry; data processing; joint ownership and management of inventory; materials management; billing and collection; dietary; industrial engineering management; printing; security; records management; laboratory testing; support services for charitable foundations; or personnel education, testing or training; or

5. Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a, or prior approval by the Commission is required, and has been granted pursuant to Paragraph III of this Order.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Respondents shall not permit all or any substantial part of any acute care hospital they operate in Greater Port Huron to be acquired (in whole or in part, stock acquisition, asset acquisition, lease, management contract, establishment of a replacement facility, right to designate directors or trustees or otherwise) by any other person unless the acquiring person fields with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this Order, which agreement Respondents shall require as a condition precedent to the acquisition.

VI

It is further ordered that:

A. Within sixty (60) days of the date this Order becomes final, each Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph II of this order; and

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, each Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs III, IV and V of this Order.

VII

It is further ordered that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents that may affect compliance obligations arising out of the Order, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, upon reasonable notice to Respondents, Respondents shall permit, for a period of ten (10) years from the date this Order becomes final, any duly authorized representative of the Commission:

A. Reasonable access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

B. Upon five days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("the Commission") has accepted, subject to final approval, an agreement containing a proposed consent order from Local Health System, Inc. ("Local Health"), Blue Water Health Services Corp. ("Blue Water Health") and Mercy Health Services ("Mercy Health"). The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerns the acquisition of Port Huron Hospital, a general acute care hospital owned and operated by Blue Water Health, and Mercy Hospital-Port Huron ("Mercy Hospital"), a general acute care hospital owned and operated by Mercy Health, by Local Health. Port Huron Hospital and Mercy Hospital are the only general acute care hospitals in Port Huron, Michigan. In its administrative complaint, the Commission alleges, among other things, that the market for acute care inpatient hospital services in greater Port Huron is highly concentrated and would become substantially more concentrated as a result of the acquisitions. The Commission also alleges that it has reason to believe that the acquisitions would have anticompetitive effects and would violate section 7 of the Clayton Act. The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisitions may substantially lessen competition in the delivery of acute care inpatient hospital services in greater Port Huron.

The order, accepted for public comment, contains provisions requiring Local Health, Blue Water Health and Mercy Health to terminate any and all agreements that provide for the acquisition of Port Huron Hospital and Mercy Hospital by Local Health.

For a period of three years from the date the order becomes final, the order prohibits Local Health, Blue Water Health and Mercy Health from acquiring, without prior Commission approval, a majority or controlling share of stock or other interests in, each other; or a majority of the assets of any acute care hospital facility operated in Greater Port Huron by either of the other companies named in the order.

For a period of ten years from the date the order becomes final, the order prohibits Local Health, Blue Water Health and Mercy Health from acquiring, without providing the Commission prior written notice, stock or assets of, or interests in any general acute care hospital facility in Greater Port Huron. If the Commission requests additional information regarding any acquisition for which prior notice is required, the order prohibits Local Health, Blue Water Health and Mercy Health from completing the acquisition until twenty days after they have provided substantially all of the information requested by the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga in Local Health System, Inc., File 941–0076

Not having found reason to believe that the proposed merger of Port Huron Hospital and Mercy Hospital would be unlawful, I do not support the proposed complaint and consent order.

Concurring Statement of Commissioner Roscoe B. Starek, III

In the Matter of Local Health System, Inc., et al., File No. 941 0076.

In deciding whether to vote for acceptance of the agreement containing consent order negotiated by the staff, I have evaluated with particular care the prior approval and prior notice provisions of the proposed order. The prior approval provisions (¶ III) requires each respondent, for three years, to obtain the Commission's approval before entering into any transaction that in essence would renew the Port Huron Hospital/Mercy Hospital merger that gave rise to this case. Under the prior notice requirement (¶ IV), a respondent must furnish notice to the Commission—largely along the lines of the Hart-Scott-Rodino premerger notification program—in advance of certain acquisitions and other transactions involving acute care hospitals in "Greater Port Huron" (an area consisting of five Michigan cities).

I have previously expressed my serious reservations about imposing a prior approval requirement on parties that have abandoned a challenged transaction.[1] Those reservations rest primarily on two foundations. The first is the moral neutrality of mergers and acquisitions—and therefore the dubious appropriateness of prior approval as a form of "merger probation." The second is the superfluity—if not the downright excessiveness—of imposing a prior approval requirement on parties that will have to observe the notice and waiting requirements of section 7A of the Clayton Act[2] if they wish to undertake the same (or another competitively questionable) transaction in the future. Indeed, even when future acquisitions are likely to be competitively troublesome but not reportable pursuant to Section 7A, I would favor a prior notice-and-wait obligation—rather than a prior approval power—with regard to those transactions.[3]

Despite my general inclination to believe a broad prior approval provision unwarranted when the parties have abandoned their planned transaction (as they did here), acceptance of a narrowly tailored prior approval provision is appropriate in the special circumstances of this case, Paragraph III of the proposed order merely requires respondents to seek prior Commission approval, over a three-year period, for essentially the same transaction that the Commission challenged in the first place. Given that a renewed Port Huron/Mercy consolidation would be likely to raise the same antitrust concerns, this narrow prior approval requirement is neither punitive nor redundant.

I also find acceptable the proposed order's 10-year prior notification requirement. This provision pertains only to (1) transactions in the narrowly defined "Greater Port Huron" that (2) exceed $1 million yet (3) would not be reportable pursuant to Section 7A.[4] Where the Commission finds reason to believe that an acquisition would violate section 7, I consider it appropriate to require the respondent for some period of time to notify the Commission in advance of any proposed significant acquisitions in the relevant market that are not reportable under section 7A. That is all that Paragraph IV provides.

[FR Doc. 95–19112 Filed 8–2–95; 8:45 am]

BILLING CODE 6750–01–M

[1] *See, e.g.*, "Reinventing Antitrust Enforcement? Antitrust at the FTC in 1995 and Beyond," Remarks of Commissioner Roscoe B. Starek, III, Marina del Rey, California (Feb. 24, 1995).

[2] 15 U.S.C. 18a.

[3] "Reinventing Antitrust Enforcement? Antitrust at the FTC in 1995 and Beyond," *supra* note 1, at 21–22.

[4] The third and fifth provisos to Paragraph IV, respectively, set forth the latter two limitations on the prior notification requirement.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Computer Matching Programs—Department of Veterans Affairs

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of a Computer Matching Program to Comply with Public Law (Pub. L.) 100–503, the computer Matching and Privacy Protection Act of 1988.

SUMMARY: In compliance with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988, the Administration for Children and Families (ACF) will conduct a computer matching program on behalf of itself, the Health Care Financing Administration (HCFA), and the Food and Consumer Service (FCS) utilizing Veterans Affairs pension and compensation information. The ACF will also work with the Kansas Department of Social and Rehabilitation Services (KDSRS), the Nebraska Department of Social Services (NDSS), the Pennsylvania Department of Public Welfare (PDPW), and the Texas Department of Human Services (TDHS) using public assistance client records.

ADDRESSES: Interested parties may comment on this notice by writing to the Acting Director, Office of Information Systems Management, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047. All comments received will also be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Acting Director, Office of Information Systems Management, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone Number (202) 401–6960.

DATES: ACF filed a report of the subject matching program with the Senate Committee on Governmental Affairs, the House Committee on Government Reform and Oversight, and the Office of Information and Regulatory Affairs, at the Office of Management and Budget on July 31, 1995.

SUPPLEMENTARY INFORMATION:

A. General

Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State and local government records.

The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;

(2) Provide notification to applicants and beneficiaries that their records are subject to matching;

(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress and OMB; and

(5) Establish a Data Integrity Board that must approve matching agreements.

B. ACF Computer Match Subject to Pub. L. 100–503

Below is a brief description followed by a detailed notice of a computer match that ACF will be conducting as of August 31, 1995 or later.

ACF computer match with the Department of Veterans Affairs (VA). Purpose: To detect and determine the amount of benefit overpayment to public assistance recipients by verifying client VA pension and compensation circumstances using VA automated data files.

Dated: July 31, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Notice of Computer Matching Program

The Kansas Department of Social and Rehabilitation Services (KDSRS), Nebraska Department of Social Services (NDSS), Pennsylvania Department of Public Welfare (PDPW) and Texas Department of Human Services (TDHS) public assistance client record matching with VA compensation and pension records.

A. Participating Agencies

ACF, VA, KDSRS, NDSS, PDPW and TDHS.

B. Purpose of the Matching Program

The purpose of this matching program is to provide KDSRS, NDSS, PDPW and TDHS with data from the VA benefit and compensation file. KDSRS, NDSS, PDPW and TDHS will provide ACF with a file of Medicaid, Aid to Families with Dependent Children (AFDC), general assistance and Food Stamp clients. VA will provide ACF with a file of individuals receiving VA compensation and pension benefits. ACF, on behalf of itself, HCFA, and FCS will match the KDSRS, NDSS, PDPW and TDHS files with the VA file and provide KDSRS, NDSS, PDPW and TDHS with VA pension and compensation benefit information. KDSRS, NDSS, PDPW and TDHS will use the VA information to determine the value of using VA information to verify client circumstances and to initiate adverse action when appropriate.

C. Authority for Conducting the Matching Program

ACF, HCFA, and FCS have an obligation to assist State Public Assistance Agencies in their efforts to verify client circumstances when determining an applicant's eligibility for public assistance benefits. The most cost-effective and efficient way to verify

client declarations of income circumstances is by means of a computer match.

D. Categories of Records and Individuals Covered by the Match

VA will disclose information from the VA Compensation, Pension, and Education and Rehabilitation Records—VA (58 VA 21/22), contained in the Privacy Act Issuances, 1989 compilation, Volume II, Pages 918–922 and as amended in **Federal Register** 56 FR 15667, April 17, 1991.

ACF will match this information with KDSRS, NDSS, PDPW and TDHS Client Eligibility files.

E. Inclusive Dates of the Match

This computer match will begin no sooner than September 5, 1995, or 30 days from the date copies of the approved agreement, and the notice of the matching program are sent to the Congressional committee of jurisdiction under subsections (O)(2)(B) and (r) of the Privacy Act, as amended, or 30 days from the date the approved agreement is sent to OMB, whichever is later, provided no comments are received which result in a contrary determination. This is a one-time match and is not subject to renewal.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments to the Acting Director, Office of Information Systems Management, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW, Washington, DC 20447.

[FR Doc. 95–19113 Filed 8–2–95; 8:45 am]
BILLING CODE 4184–01–M

Agency for Health Care Policy and Research

Public Meeting on Health Service Research: the Interface of Generalist and Specialist Health Care

AGENCY: Agency for Health Care Policy and Research (AHCPR).

ACTION: Notice of public meeting.

SUMMARY: A meeting is being held to discuss future directions of health services research related to the patterns, processes, and outcomes of medical referrals and consultations.

DATES: The meeting will be on Thursday, September 14, 1995, from 8:30 a.m. to 5:30 p.m. and Friday, September 15, from 8:30 a.m. to 12:00 p.m. Registration is required by August 30.

ADDRESSES: The meeting will be at the Madison Hotel, 15th and M Streets, N.W., Washington, D.C. 20005.

SUPPLEMENTARY INFORMATION:

I. Purpose

This meeting will focus on research that investigates patterns, processes, and outcomes of the referral of patients from primary care to specialist providers. The purposes of the meeting are (1) to identify gaps in current knowledge, and (2) to develop an agenda for future research. Of particular interest is the influence of new methods of organizing and financing health care on referral patterns and practices.

II. Agenda

The meeting will begin at 8:30 a.m. on September 14, with a review of the theoretical models and methods used in research that has focused on the referral of patients from primary care to specialist providers. Important problems and clinical issues involved in the care of patients referred from primary care to specialist care will be discussed. Presentations will be made by health services researchers, practicing clinicians, and representatives of managed care organizations and consumers. Questions and comments from the meeting participants will be encouraged.

The meeting participants will be assigned to small working groups which will meet concurrently during the afternoon of September 14. Each group will be asked to identify and discuss the important issues that need to be addressed by future research related to medical referrals and consultations. Reports and recommendations from working groups will be presented on Friday, September 15. A general discussion of a research agenda on medical referrals and consultations will conclude the meeting.

III. Arrangements for the September 14–15, 1995 Meeting

Individuals and representatives of organizations who would like to attend the meeting can obtain registration materials and information by calling 301–594–1369 extension 129, or by facsimile transmission at 301–594–3721. Facsimile cover sheets should be addressed to the attention of Ms. Kelly Morgan, Center for Primary Care Research, AHCPR, and should include the sender's name, organization, address, and telephone and facsimile numbers.

To register, submit the registration form and the required $100 registration fee by August 30 to Moshman Associates, the AHCPR contractor which is coordinating the meeting, at the address listed in the registration materials. Seating is limited to the first 100 registered individuals and will be reserved in the order in which both the registration form and the registration fee are received.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Ms. Kelly Morgan by August 30, at the telephone number listed above.

A brief, written summary of the presentations, discussions, and conclusions of the meeting will be made available in November 1995. To obtain a copy of this summary, please call the telephone number listed above after November 1.

Dated: July 27, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–19055 Filed 8–2–95; 8:45 am]
BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95E–0047]

Determination of Regulatory Review Period for Purposes of Patent Extension; Allergen Patch Test (Thin-layer Rapid Use Epicutaneous (T.R.U.E.) Test™)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Allergen Patch Test (Thin-layer Rapid Use Epicutaneous (T.R.U.E.) Test™) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biologic product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product, Allergen Patch Test (Thin-layer Rapid Use Epicutaneous (T.R.U.E.) Test™) (multiple allergen test). T.R.U.E. Test™ is indicated primarily as an aid in the diagnosis of allergic dermatitis in patients whose histories suggest sensitivity to one or more of substances included on the T.R.U.E. Test™ panels. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for T.R.U.E. Test™ (U.S. Patent No. 4,836,217) from Pharmacia AB, and the Patent and Trademark Office requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated June 21, 1995, FDA advised the Patent and Trademark Office that this human biologic product had undergone a regulatory review period and that the approval of T.R.U.E. Test™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for T.R.U.E. Test™ is 2,966 days. Of this time, 1,601 days occurred during the testing phase of the regulatory review period, while 1,365 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: October 10, 1986. FDA has verified the applicant's claim that the date the investigational new drug application (IND) became effective was on October 10, 1986.

2. *The date application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act*: February 26, 1991. The applicant claims July 16, 1986, as the date the product license application (PLA) for T.R.U.E. Test™ (PLA 91–0118) was initially submitted. However, FDA records indicate that the two-panel test kit for the product that was ultimately approved was submitted on February 26, 1991. Therefore, the PLA was submitted on February 26, 1991.

3. *The date the application was approved*: November 21, 1994. FDA has verified the applicant's claim that PLA 91–0118 was approved on November 21, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, the applicant seeks 898 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 2, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 30, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 26, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–19060 Filed 8–2–95; 8:45 am]
BILLING CODE 4160–01–F

[Docket No. 95F–0187]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-s-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino] hexamethylene [(2,2,6,6-tetramethyl-4-piperidyl)imino]] as a light stabilizer in polymers used as an indirect food additive.

DATES: Written comments on the petitioner's environmental assessment by September 5, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4467) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of poly[[6-[(1,1,3,3-tetramethylbutyl)amino]-s-triazine-2,4-diyl][(2,2,6,6-tetramethyl-4-piperidyl)imino] hexamethylene [(2,2,6,6-tetramethyl-4-piperidyl)imino]] as a light stabilizer in polymers used as an indirect food additive.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the

agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 5, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 21, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19090 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0157]

Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species; Revised Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7108.24, entitled "Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species." Revised CPG 7108.24 lowers the histamine level at which FDA may consider the fish subject to action under the Federal Food, Drug, and Cosmetic Act (the act) and states that the histamine defect action level (DAL) and the histamine action level (AL) now apply to raw, frozen tuna and mahi-mahi in addition to canned tuna. Furthermore, the revised CPG 7108.24 states that the AL also applies to related species of raw, frozen, and canned fish implicated in instances of histamine poisoning, such as bluefish, amberjack, and mackerel, in addition to tuna and mahi-mahi. Additionally, for these related species, levels of histamine less than the AL may be considered as evidence of decomposition on a case-by-case basis when supported by additional scientific data. The title of the revised CPG reflects these changes.

DATES: Written comments by September 5, 1995.

ADDRESSES: Submit written requests for single copies of CPG 7108.24, "Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi and Canned Tuna; and Related Species," and Laboratory Information Bulletin no. 3794 to the Director, Office of Constituent Operations, Industry Activities Staff (HFS–565), Food and Drug Administration, rm. 5827, 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on CPG 7108.24, "Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species," to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of revised CPG 7108.24, "Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species," the *Official Methods of Analysis of the Association of Official Analytical Chemists 15th Ed.* (1990), section 977.13, and Laboratory Information Bulletin no. 3794, and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary I. Snyder, Office of Seafood (HFS–416), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3160.

SUPPLEMENTARY INFORMATION: Histamine is a chemical compound that forms postmortem in the muscle of scombroid fish, such as tuna, and in other species, such as mahi-mahi, by the action of certain bacteria that are common in fish. Bacteria that have the ability to form histamine do so by the decarboxylation of L-histidine, an amino acid found in the fish muscle. The decarboxylation reaction is catalyzed by an enzyme, histidine decarboxylase, produced by the bacteria. Fish species that are particularly vulnerable to the development of histamine are those with high levels of free L-histidine in their muscle tissues. Additional histidine may be released during decomposition and spoilage by proteolysis, whereby the protein structure is degraded, and amino acids are liberated (Ref. 1). The level of histamine produced in scombroid or other histidine-containing fish by these processes serves as an indicator of the decomposition that has occurred. When present at higher levels, histamine represents a health hazard. Therefore, FDA uses histamine to indicate that these fish are adulterated within the meaning of section 402(a)(1) and (a)(3) of the act (21 U.S.C. 342(a)(1) and (a)(3)).

In the fishing industry, decomposition and bacterial histamine production are controlled primarily by the use of low temperature storage (Ref. 2). Significant decomposition and histamine formation can be avoided by good fish handling practices including icing or rapid immersion of the catch in water chilled to -1 °C (30 °F), followed by uninterrupted frozen storage. Under high temperature storage conditions, histamine may form before other indicators of decomposition are evident, especially the odor and appearance of decomposed fish (Ref. 3).

Histamine also may form during low temperature storage conditions. However, in low temperature storage, the rate of histamine formation is slower, and it is usually accompanied by the typical odor of decomposition. Research sponsored by the Department of Health and Human Services has suggested that freezing may be more damaging to histamine-forming bacteria than it is to nonhistamine producing spoilage bacteria (Ref. 4).

Canned fish is frequently prepared from fish preserved by frozen storage before delivery to canneries. These fish are thawed before processing and are subjected to additional handling that may result in histamine levels in canned fish being somewhat higher than the levels observed in raw, freshly caught fish.

Histamine is generally not uniformly distributed in a decomposed fish. A level of less than 50 parts per million (ppm) in one section may accompany a level in excess of 1,000 ppm elsewhere in the same fillet (Ref. 3). The anterior section of an individual fish generally is higher in histamine content than the posterior section, because the intestine, which is located in the forward end, is apparently the major source of the

bacteria responsible for histamine formation. Postmortem disintegration of the intestine releases the microbial contents of the intestine which contaminate the anterior muscle tissue, making these sites particularly vulnerable to an accumulation of the amine (Refs. 5 and 6). The preponderance of scientific evidence demonstrates that the presence of histamine equal to or greater than 50 ppm, in a sample, is evidence that the fish is in a state of decomposition (Refs. 3, 5, and 6).

Defect Action Level for Decomposition

Results of research conducted in the 1970's by FDA in cooperation with major universities, industry research associations, individual canners, and the National Marine Fisheries Service demonstrate that histamine levels in freshly caught tuna and mahi-mahi are less than 1 ppm. Acceptable commercial fish generally contain about 5 ppm and rarely as much as 20 ppm histamine (Ref. 3). In a notice published in the **Federal Register** of September 14, 1982 (47 FR 40487), FDA stated that histamine levels in tuna that are judged to be of acceptable quality, based on organoleptic and physical analyses, are on the order of 10 to 20 ppm. FDA data from 1990 to 1992 show that the average histamine levels in acceptable commercial raw frozen fish (number of samples in parentheses) are 2 ppm for mahi-mahi (4), 4 ppm for albacore tuna (7), 2 ppm for yellowfin tuna (10), and 2 ppm for skipjack tuna (10) (Ref. 3). Other investigators also have reported that raw freshly caught scombroid fish contain very little histamine (Refs. 5 and 6).

FDA conducted workshops in 1974 and 1976 in association with the Tuna Research Foundation. Test packs of canned tuna were prepared by the industry and classified by FDA experts using organoleptic evaluation. The average levels of histamine in the packs of canned tuna (numbers of cans in parentheses) found to be acceptable by organoleptic evaluation were 22 ppm for albacore (36), 12 ppm for skipjack (112), and 11 ppm for yellowfin (82). The average histamine level for all 230 samples was 13 ppm. These tuna packs were not authentic packs but confirmed that commercially canned tuna of acceptable quality does not contain high levels of histamine. Similarly, commercially canned tuna collected from retail stores, in a survey conducted in 1981, was found to contain an average of approximately 6 ppm histamine (Ref. 3).

The provisions of the current CPG 7108.24 announced in the September 14, 1982, notice, established a DAL of 200 ppm histamine for canned albacore, skipjack, and yellowfin tuna. The agency also stated that it would consider regulatory action against any canned tuna found to contain between 100 and 200 ppm histamine when a second indicator of decomposition (e.g., spoilage odors or honeycomb formation) is present.

Since the studies on which the previous histamine DAL was based were conducted, the analytical methodology available for determination of histamine to 5 ppm levels has become standard practice. The official method for histamine detection published in 1977 (Ref. 7) was refined in 1993 (Ref. 8). The 1993 methodology has successfully undergone collaborative evaluation and testing. Refinement in the methodology for histamine determination and experience in using the methodology have made the determination of 50 ppm histamine levels a routine practice.

Given the findings of these studies (Refs. 3, 5, and 6); the research that shows that the histamine levels in freshly caught fish are less than 2 ppm; the fact that commercially canned tuna classified as acceptable by FDA averages 6 ppm histamine; and the fact that levels at or above 50 ppm are only found in samples classified as decomposed by FDA organoleptic expert examination, the presence of 50 ppm histamine is evidence that raw, frozen, or canned tuna, and raw or frozen mahi-mahi, are in a state of decomposition. See *United States* v. *1,200 Cases, Pasteurized Whole Eggs*, 339 F. Supp. 131, 137 (N.D. Ga. 1972). Therefore, when 50 ppm or more histamine is found in these types of fish, the agency may recommend regulatory action against the fish under section 402(a)(3) of the act.

In the past two decades both industry and government have used organoleptic analysis of volatile odors for the detection of decomposition in raw and thermally processed fishery products. This analytical technique is acquired through extensive training and experience on samples and requires the analyst be periodically standardized in the application and performance of the analytical technique. However, organoleptic analysis is not quantifiable, and its application to stored and thermally processed commercial products, such as canned tuna, is difficult because the usual odors of decomposition found in raw product are often removed or altered during thermal processing. Unlike odors of decomposition, nonvolatile spoilage compounds such as histamine remain in the product and can be reliably measured by chemical analysis (Ref. 3). Therefore, confirmatory organoleptic examination for decomposition in regulatory samples would not be necessary when histamine levels at or above 50 ppm are detected by chemical analysis.

Although the agency intends to use this DAL in deciding whether to recommend regulatory action, it does not consider that the fact that a fish or fishery product has a histamine level below 50 ppm establishes that the fish or fishery product is acceptable. Other spoilage mechanisms are possible that do not result in the formation of histamine. Thus a finding of histamine levels between 20 and 50 ppm should be viewed as indicating that the fish or fishery product has deteriorated and should cause a producer to further evaluate or test the product.

Histamine Formation in Species Other Than Tuna and Mahi-Mahi

The agency's use of histamine level as a reliable indicator of decomposition is based primarily on agency experience with tuna and mahi-mahi. However, other species have been implicated in a significant number of incidents of histamine poisoning. These other species also contain high levels of free L-histidine in their muscle tissue and are known to form histamine as they decompose. Therefore, on a case-by-case basis, when these other species contain levels of histamine equal to or greater than 50 ppm, the agency may determine that these fish are decomposed particularly when such a judgment is supported by other scientific data, including the presence of other amines associated with decomposition in these fish.

Action Level for Health Hazard

In addition to being an indicator of decomposition, when ingested at sufficiently high levels histamine causes scombroid poisoning. The term "scombroid fish poisoning" developed because fish of the families Scombridae and Scomberesocidae are commonly implicated in instances of histamine poisoning deriving from advanced stages of decomposition in these fish. Tuna and mackerel are most frequently involved in instances of histamine poisoning, but this fact is attributable, in part, to the large amounts of these species that are consumed worldwide (Ref. 9).

Nonscombroid fish, such as mahi-mahi (*Coryphaena hippurus*), is also involved in histamine poisoning. Bluefish (*Pomatomus saltatrix*) has been responsible for several scombroid poisoning outbreaks in the United States

and has caused at least one outbreak in Australia. Pink salmon, redfish, yellowtail, marlin, and amberjack have also been implicated in scombroid poisoning outbreaks that have occurred in the United States. Outside the United States, pilchards, herring, anchovies, bluefish, and sardines have been involved in a number of cases. Sardines and pilchards have become a major source of histamine poisoning in Great Britain. Japan had an outbreak associated with black marlin, and anchovies have been implicated in single incidents in Japan, the United States, and Great Britain (Ref. 9).

From 1977 to 1981 there were 68 outbreaks of scombroid poisoning involving 461 illnesses (Ref. 10). In March 1980, the Centers for Disease Control and Prevention reported that mahi-mahi accounted for 40 percent of the scombroid poisoning outbreaks reported in the United States. Since 1980, FDA has placed most shipments of mahi-mahi offered for entry into the United States on automatic detention because of the frequent occurrence of histamine levels exceeding 500 ppm (Ref. 11).

Histamine is a poisonous or deleterious substance under section 402 (a)(1) of the act because, when ingested at sufficiently high levels, it is known to cause scombroid poisoning (Ref. 12). In the September 14, 1982, notice, the agency established, on an interim basis, an AL of 500 ppm histamine in canned tuna (47 FR 40487). At this level, the agency considers histamine to present a hazard to public health. The agency is not changing the 500 ppm AL at this time because the threshold toxic dose of histamine is not known. However, the action level for canned tuna of 500 ppm will also apply to other species of raw, frozen, and canned fish, such as mahi-mahi, bluefish, amberjack, and mackerel, all fish that have been implicated in histamine poisoning outbreaks. Furthermore, the presence of other amine decomposition products in fish may have a synergistic effect on histamine toxicity. This synergism may dramatically lower the threshold toxic dose (Refs. 9 and 10).

Therefore, FDA is revising its histamine policy and announcing the availability of revised CPG 7108.24 "Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species," which: (1) Includes a lower histamine DAL for decomposition, 50 ppm histamine rather than 100 ppm; (2) extends the application of the DAL of 50 ppm (5 mg per 100g) histamine for decomposition to raw and frozen tuna and mahi-mahi; (3) eliminates the provision that findings of less than 200 ppm histamine need to be confirmed by organoleptic evaluation; (4) states that, on a case by case basis, histamine levels equal to or greater than 50 ppm, but less than 500 ppm, may be used as evidence of decomposition in other species commonly implicated in instances of histamine poisoning when supported by other scientific data; and (5) states that the AL of 500 ppm histamine now applies to other species of fish that have been implicated in histamine poisoning outbreaks.

Title of Revised CPG 7108.24

The title of CPG 7108.24 "Decomposition and Histamine in Canned Albacore, Skipjack, and Yellowfin Tuna" has been changed to "Decomposition and Histamine—Raw, Frozen Tuna and Mahi-Mahi; Canned Tuna; and Related Species" to more accurately describe the contents of the revised CPG.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Eitenmiller, R. R., and S. C. DeSouza, "Enzymatic Mechanisms for Amine Formation in Fish," in *Seafood Toxins*, edited by E. P. Ragelis, American Chemical Society, Washington, DC, pp. 431–442, 1984.

2. Behling, A. R., and S. L. Taylor, "Bacterial Histamine Production as a Function of Temperature and Time of Incubation," *Journal of Food Science* 47:1311–1314, and 1317, 1982.

3. Memorandum from Division of Science and Applied Technology (HFS–425) to Division of Programs and Enforcement Policy (HFS–415), CFSAN, FDA, dated August 6, 1992.

4. Baranowski, J. D., H. A. Frank, P. A. Brust, M. Chongsiriwatana, and R. J. Premaratne, "Decomposition and Histamine Content in Mahi-Mahi (*Coryphaena Hippurus*)," *Journal of Food Protection* 53:217–222, 1990.

5. Frank, H. A., D. H. Yoshinaga, and W–K. Nip, "Histamine Formation and Honeycombing During Decomposition of Skipjack Tuna, *Katsuwonus pelamis*, at Elevated Temperatures," *Marine Fisheries Review* 43:9–14, 1981.

6. Frank, H. A., and Yoshinaga, "Histamine Formation in Tuna" in *Seafood Toxins*, edited by E.P. Ragelis, American Chemical Society, Washington, DC, pp. 443–451, 1984.

7. Staruszkiewicz, W. F., "Fluorometric determination of Histamine in Tuna: Collaborative Study" in *Journal of the Association of Official Analytical Chemists* 60 (5) pp. 1131–1136, 1977.

8. Rogers, P. R., and W. F. Staruszkiewicz, "Modification of GLC Method for Putrescine and Cadaverine and the Fluorometric Method for Histamine," Laboratory Information Bulletin no. 3794, July 1993.

9. Stratton, J. E., and S. L. Taylor, "Scombroid Poisoning," in *Microbiology of Marine Food Products*, edited by Ward, D. R., and C. Hackney, Van Nostrand Reinhold, New York, pp. 333–344, 1991.

10. Taylor, S. L., "Marine Toxins of Microbial Origin," *Food Technology* 42(3):94–98, 1988.

11. Regulatory Procedure Manual, part 9, Imports, Import Alert 16–05—"Automatic Detention of Mahi-Mahi Because of Histamine and Decomposition," August 14, 1991.

12. Taylor, S. L., J. Y. Hui, and D. E. Lyons, "Toxicology of Scombroid Poisoning," in *Seafood Toxins*, edited by E. P. Ragelis, American Chemical Society, Symposium Series, no. 262, pp. 417–430, 1984.

Interested persons may, on or before September 5, 1995, submit to the Dockets Management Branch (address above) written comments on the revised CPG 7108.24. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The revised CPG 7108.24 and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 26, 1995.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 95–19059 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0238]

Drug Export; Benoquin (Monobenzone U.S.P) Cream 20%

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ICN Pharmaceuticals, Inc., has filed an application requesting approval for the export of the human drug Benoquin (Monobenzone U.S.P) Cream 20% to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that ICN Pharmaceuticals, Inc., 3300 Hyland Ave., Costa Mesa, CA 92626, has filed an application requesting approval for the export of the human drug Benoquin (Monobenzone U.S.P) Cream 20% to Canada. This product is used for the final depigmentation in extensive vitiligo. The application was received and filed in the Center for Drug Evaluation and Research on June 15, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 14, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 21, 1995.

Betty L. Jones,

Acting Director, Office of Compliance, Center for Drug Evaluaiton and Research.

[FR Doc. 95–19153 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

[Docket No. 95D–0162]

Marketing of Condom-like Products: Policy Statement; Notice of Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is making generally available a policy statement issued on February 23, 1994, directly to manufacturers, distributors, and importers of condom products, regarding the marketing of condom-like products. The policy statement is intended to inform manufacturers, distributors, and importers of condoms and condom-like products, including those products labeled or packaged as novelty items, that such products are subject to all of the regulatory requirements for medical devices. This policy statement revises and supersedes the 1989 policy statement regarding the labeling of condoms. FDA is making the policy statement generally available at this time to help ensure that the policy is known and understood by the regulated industry and the public.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the policy statement to the Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6597 (1–800–638–2041 outside MD). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the policy statement to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the policy statement and received comments are available for pubic examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 157.

SUPPLEMENTARY INFORMATION: On February 13, 1989, FDA issued a statement of policy regarding the marketing of condoms. This policy statement was forwarded via certified mail—return receipt requested—to all manufacturers, importers, and repackagers of condoms for contraception or sexually transmitted disease prevention. Subsequently, FDA discovered that some marketers of functional condom-like products may have misinterpreted the 1989 policy statement, and were marketing functional condoms as novelty items without complying with condom leak testing requirements, current good manufacturing practice (CGMP) regulations, manufacturer registration, product listing, and premarket notification and clearance requirements. Such marketing is in violation of the Federal Food, Drug, and Cosmetic Act (the act) and implementing regulations. Therefore, to clarify that such products may only be legally marketed in compliance with these requirements, FDA issued a new policy statement on February 23, 1994.

Products that are capable of covering the penis with a closely fitting membrane and otherwise have the appearance of a condom are considered to be medical devices, regardless of their packaging or labeling. As such, these products must comply with all the above-referenced requirements. However, when condom-like products cannot be used as condoms, they need not meet the above requirements. For example, a product that resembles a condom but which has the closed end removed, the sides shredded, or the roll permanently sealed so that it is incapable of being unrolled would not be subject to the requirements of the act and the regulations. FDA emphasizes that merely labeling the products as a novelty does not remove it from the scope of the act or in any way exempt it from the requirements applicable to condoms.

Copies of this final policy statement, along with previous policy statements, are available for public examination in the Dockets Management Branch (address above).

Interested persons may, at any time, submit written comments on the final policy statement to the Dockets Management Branch (address above). Such comments will be considered when determining whether to amend the current policy statement. Two copies of any comments are to be

submitted, except that individuals may submit one copy.

Dated: June 23, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–19089 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

Grassroots Regulatory Partnership Meeting; Southwest Region Device Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) (Office of External Affairs, Office of Regulatory Affairs, Office of the Southwest Region, and Center for Devices and Radiological Health) is announcing a free public meeting as a followup to a meeting held in April 1995. The FDA office of the Southwest Region will meet with interested persons in the Southwest Region to address specific issues related to the medical device industry, Southwest Region, and FDA. The agency is holding this meeting to promote the President's initiative for a partnership approach with front-line regulators and the people affected by the work of this agency, and to create local partnerships.

DATES: The public meeting will be held on Friday, August 25, 1995, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The public meeting will be held at the Sheraton Denver West Hotel, 360 Union Blvd., Lakewood, CO.

FOR FURTHER INFORMATION CONTACT: Virlie Walker, FDA Denver District, Bldg. 20, Entrance W–10, Denver Federal Center, Sixth and Kipling Sts., Denver, CO 80255–0087, 303–236–3018, FAX 303–236–3099.

SUPPLEMENTARY INFORMATION:

Those persons interested in attending this meeting should FAX their comments and registration by Monday, August 21, 1995, including name, firm name, address, and telephone number to 303–236–3099. There is no registration fee for this meeting, but advance registration is required. Space is limited and all interested parties are encouraged to register early.

Dated: July 27, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–19058 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0226]

Current Issues in AIDS Clinical Trials; Notice of a Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop on current issues in acquired immune deficiency syndrome (AIDS) clinical trials. The workshop will be followed by a joint meeting of subcommittees of the Antiviral Drugs Advisory Committee and the National Task Force on AIDS Drug Development, announced elsewhere in this issue of the **Federal Register**. The workshop will enable experts in the field of AIDS clinical trials, interested representatives of industry, and interested members of the public to exchange ideas regarding clinical trials of drugs for the treatment of AIDS. While the workshop is not intended to result in consensus among participants or to contribute to the formulation of agency policy, discussions regarding current issues in AIDS clinical trials may provide assistance to pharmaceutical sponsors in designing appropriate study protocols and expediting drug development.

DATES: The public workshop will be held on Wednesday and Thursday, September 6 and 7, 1995, from 8:30 a.m. to 5 p.m. Registration must be received by August 18, 1995.

ADDRESSES: The public workshop will be held at the National Institutes of Health, William H. Natcher Conference Center, 45 Center Dr., 2BC–02, Bethesda, MD. Written comments may be submitted at any time to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. A transcript and summary of the workshop will be available from the Docket Management Branch (address above) and from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Heidi C. Marchand or Kimberley M. Miles, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104. Persons interested in attending this meeting should FAX their registration to one of the individuals named above at 301–443–9216, including the participant's name; organization name, if any; address; and telephone number. There is no registration fee for any part of this workshop, but advance registration is required. Interested parties are encouraged to register early because space is limited.

SUPPLEMENTARY INFORMATION:

Current Federal regulations allow for the accelerated approval of drugs intended to treat serious and life-threatening diseases, including AIDS and human immunodeficiency virus (HIV)-related diseases, on the basis of clinical trials showing that the drugs have an effect on surrogate endpoints. Following approval, FDA may require that the drug applicant study the drug further to verify the clinical efficacy of the product by performing clinical trials designed to demonstrate therapeutic benefit by clinical endpoints. In AIDS, the clinical endpoints that have been considered meaningful are survival and disease progression as manifested by the development of AIDS-defining opportunistic infections.

One of the major challenges facing developers of HIV therapeutics is the successful design and conduct of the clinical trials intended to provide the data needed to confirm the clinical benefit of drugs that have received accelerated approval. Study design issues include, but are not limited to, choice of patient population, control groups, treatment modifications on study, and analysis of heterogeneous endpoints. Study conduct issues include efficient recruitment of volunteers and retention of study subjects in trials long enough to gather sufficient endpoint data. These studies are being designed and conducted in the context of a rapidly changing world of new information and treatment strategies and increasing reliance on the use of surrogate markers to make treatment decisions.

The goal of this workshop is to discuss critical issues in the conduct of clinical trials in HIV in accelerated approval matters and to suggest strategies to overcome identified obstacles so that new drugs and information on the best use of these new drugs can be made available more quickly.

A transcript and summary of the workshop will be available from the Freedom of Information Office (address above) approximately 10 business days after the workshop at a cost of 10 cents per page.

Interested persons may submit, at any time, to the Dockets Management Branch (address above) comments on the workshop. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the workshop will remain open until October 31, 1995. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by October 31, 1995.

Dated: July 28, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–19087 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Joint Subcommittee Meeting of the National Task Force on AIDS Drug Development and the Antiviral Drugs Advisory Committee on Clinical Trial Design Issues

Date, time, and place. September 8, 1995, 8:30 a.m., Auditorium, William H. Natcher Conference Center, National Institutes of Health, 45 Center Dr., 2BC.02, Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4 p.m.; Heidi C. Marchand or Kimberley M. Miles, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Task Force on AIDS Drug Development, code 12602, or Antiviral Drugs Advisory Committee, code 12531.

General functions of the committees. The National Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers. The Antiviral Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Those desiring to make formal presentations should notify a contact person before August 25, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open subcommittee discussion. The subcommittee will hear summary presentations from discussions held during the public workshop on current issues in AIDS clinical trials to be held on September 6 and 7, 1995, (announced elsewhere in this issue of the **Federal Register**) and discuss recommendations on the scientific design of AIDS clinical trials.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page.

The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 18, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–19088 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Proposed Data Collections Available for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

1. Reporting Requirements for Ryan White CARE Act of 1990, Title IV—The Maternal and Child Health Bureau (MCHB) proposes to collect aggregated data from 38 grantees and their local service providers that are funded under Section 2671 of the Public Health Service Act (42 USC 300ff-71) about the organizational structures, service delivery approaches, numbers and demographic characteristics of clients served, service utilization, and activities related to outreach, prevention, and education. The Data Collection Strategy includes six tables that the 38 grantees and their local service providers will use to submit information annually about program and client characteristics. The purpose is to document the efforts of grantees to develop comprehensive systems of care for infants, children and families and to provide these patients with access to research. The data collected will be used within and outside MCHB and HRSA to inform the administration and Congress about the Title IV program and will be used by grantees and MCHB for other planning, research, and policy efforts. Burden estimates are as follows:

Type of form	Number of respondents	Responses per respondent	Range* (hours)	Average burden per response (hours)
Designation of Local Reporting Entities	38	1	.1–1.0	.5
Local Network Profile	38	1	.1–2.5	1.0
Service Mix Profile	85	1	1–44	2.5
Demographic and Clinical Status	85	1	4–120	33.0
Service Utilization Summary	85	1	1–70	20.0
Prevention and Education Activities	85	1	1–44	4.0

*Estimates are based on phone conversations with 6 grantees.

2. Health Professions Student Loan Program and Nursing Student Loan Program Debt Management Report—Extension—The Debt Management Report is used by three programs (Health Professions Student Loan (HPSL) Program, Nursing Student Loan (NSL) Program, and Loans for Disadvantaged Students (LDS) Program) to monitor the fiscal activities of participating schools. Data are requested on collection activities, investment income, return of excess cash, compliance with performance standards, and the return of the Federal share of monies collected. The report is submitted electronically once a year. No substantive changes in the data elements are proposed. Burden estimates are as follows:

Type of form	Number of respondents	Responses per respondent	Average burden per response
6-month report.	1,503	1	1 hour.

3. Health Education Assistance Loan (HEAL) Program Physician's Certification of Borrower's Total and Permanent Disability Form—New—This form, completed by the HEAL borrower, the borrower's physician, and the holder of the loan, is used to certify that the HEAL borrower meets the total and permanent disability provisions. The PHS will use this form to obtain precise information about the disability claim which includes the following: 1) the borrower's consent to release medical records to the Department of Health and Human Services and to the holder of the borrower's HEAL loans, 2) pertinent information supplied by the certifying physician, 3) the physician's certification that the borrower is unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death, and 4) information from the lender on the unpaid balance. Failure to submit the required documentation will result in a disability claim not being honored.

Type of form	Number of respondents	Responses per respondent	Average burden per response
Borrower	42	1	0.08 hours.
Physician	42	1	2.75 hours.
Loan Holder.	35	1.2	0.17 hours.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 27, 1995.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 95–19054 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

[0905–ZA93]

Notice of Redesignation of Contract Health Service Delivery Area

AGENCY: Indian Health Service, HHS.

ACTION: Notice with request for comments.

SUMMARY: This notice advises the public that the Indian Health Service (IHS) proposes to redesignate the geographic boundaries of the Contract Health Service Delivery Area (CHSDA) for the Jamestown S'Klallam Tribe ("The Tribe"). The Jamestown S'Klallam CHSDA currently is comprised of Clallam County in the State of Washington. This county was designated as the Tribe's CHSDA when the IHS published its updated list of CHSDA's in the **Federal Register** of January 10, 1984 (49 FR 1291). It is proposed that the redesignated CHSDA be comprised of Clallam County and Jefferson County in the State of Washington. This notice is issued under authority of 43 FR 34654, August 4, 1978.

DATES: Comments must be received on or before September 5, 1995.

ADDRESSES: Comments may be mailed to Betty J. Penn, Regulations Officer, Indian Health Service, Room 450, 12300 Twinbrook Parkway, Rockville, Maryland 20852. Comments will be made available for public inspection at this address from 8:30 a.m. to 5:00 p.m., Monday-Friday, beginning approximately 2 weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Leslie M. Morris, Deputy Director, Division of Legislation and Regulations, Office of Planning, Evaluation and Legislation, Indian Health Service, Room 450, 12300 Twinbrook Parkway, Rockville, MD 20852, telephone 301–443–1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Secretary of the Interior acknowledged the Tribe as an Indian tribe, effective February 10, 1981 (45 FR 81890). The Tribe has entered into a self-governance compact with the IHS under Title III of the Indian Self-Determination Act (Pub. L. 93–638, as amended) to provide direct services at a clinic facility and also to provide, for eligible Indians, services purchased from private sector health care providers. Such purchased services are called "contract health services."

On August 4, 1978, the IHS published regulations establishing eligibility criteria for receipt of contract health services and for the designation of CHSDA's (43 FR 34654, codified at 42 CFR 36.22, last published in the 1986 version of the Code of Federal Regulations). On September 16, 1987, the IHS published new regulations governing eligibility for IHS services. Congress has repeatedly delayed implementation of the new regulations by imposing annual moratoriums. Section 719(a) of the Indian Health Care Amendments of 1988, Pub. L. 100–713, explicitly provides that during the period of the moratorium placed on implementation of the eligibility regulations, the IHS will provide services pursuant to the criteria in effect on September 15, 1987. Thus, the IHS contract health services program continues to be governed by the regulations contained in the 1986 edition of the Code of Federal Regulations in effect on September 15, 1987. See 42 CFR 36.21 *et seq.* (1986).

As applicable to the Tribe, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 36.22(a)(6) (1986)). The regulations also provide that after consultation with the tribal governing body or bodies of those reservations included in the CHSDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a CHSDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

Additionally, the regulations require that any redesignation of a CHSDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, we are publishing this proposal and requesting public comment.

Since approximately 1984, the Tribe has been providing contract health services to 20 of its tribal members residing in Jefferson County, Washington. Under existing regulations, the CHSDA for the Tribe consists of only Clallam County. On December 21, 1992, the Tribe most recently requested the Secretary to redesignate its CHSDA as Clallam County and Jefferson County in the State of Washington. The Tribe based its request on the fact that S'Klallam tribal members are indigenous to Jefferson County, Washington, yet are still ineligible to receive contract health services because they do not reside within the Tribe's existing CHSDA. In addition, the Tribe has developed a land consolidation plan, which has been approved by the Department of the Interior, through the Bureau of Indian Affairs, and which includes tribal trust land in Jefferson County. However, the Jefferson County tribal trust land has not yet been added to the reservation by proclamation of the Secretary of the Interior.

In applying the aforementioned CHSDA redesignation criteria required by operative regulations (43 FR 35654), the following findings are made:

(1) There are 112 Indians residing in Jefferson County, of which 59 are members of the Tribe or have close socioeconomic ties to the Tribe. Of these 59, 20 are already receiving services due to a previous administrative decision. The remaining 53 individuals are not covered by this request as they do not have close social and economic ties to the Tribe and are therefore, not eligible for contract health services under existing law.

(2) The Tribe has determined that contract health services would be available to all of its members and to all federally recognized Indians in Jefferson

County having social and economic affiliation with the Tribe.

(3) Although the Tribe's reservation is in Clallam County, the Tribe has trust land in Jefferson County that is included in an approved land consolidation plan and is pending proclamation to add it to the Tribe's reservation. This tribal trust land is contiguous to the existing reservation and extends into Jefferson County.

(4) It is estimated that the current eligible contract health service population will be increased by 39 individuals, changing the active patient population from 192 to 231, assuming 100 percent utilization for Jefferson County eligibles. Based upon data from the fiscal year 1994 application of the health services priority system and the modified resource requirements methodology, the total clinical work units (CWU's) generated by the user population of 192 was 998.4, or 5.2 per individual. Assuming the same utilization, the 39 new users will generate an additional 202.8 CWU's. The calculated cost per CWU in the inpatient and ambulatory contract health care category was $139.22 for the Tribe. Therefore, potential added costs for contract health services resulting from new users is approximated at $139.22 X 202.8 CWU's = $28,233.82. Total resources available to the program in fiscal year 1994 were $139,000. The addition of new usage would not be expected to result in an increase in funding for the Tribe. The impact on existing contract health services will not be substantial. The current funding level will allow sufficient flexibility to assure that there will be no significant reduction in the level of contract health services to current CHSDA residents, so the designation of the two-county CHSDA is within available resources.

Accordingly, after considering the Tribe's request in light of the criteria specified in the regulations, I am proposing to redesignate the CHSDA of the Tribe to consist of Clallam and Jefferson Counties of the State of Washington.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1930.

Dated: May 23, 1995.

Michel E. Lincoln,

Acting Director.

[FR Doc. 95–19095 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–16–M

Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Patient and Entity Eligibility

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102–585, the "Veterans Health Care Act of 1992," enacted section 340B of the Public Health Service Act (PHS Act), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed that amount determined under a statutory formula.

The purpose of this notice is to inform interested parties of decisions regarding certain issues of program implementation. The notice will discuss the determination of covered entity status (i.e., PHS entity and disproportionate share hospital eligibility) and the administrative program requirements for "covered entity" status. Further, PHS is proposing a definition of eligible covered entity "patient" in section III for public comment.

DATES: The public is invited to submit comments on the proposed definition of "patient" in section III by September 5, 1995. After consideration of the comments submitted, the Secretary will issue the final guidelines.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph., Attn: Drug Pricing Program, Bureau of Primary Health Care, 4350 East West Highway, 10th Floor, Bethesda, MD 20814, Phone (301) 594–4353.

SUPPLEMENTARY INFORMATION: The Office of Drug Pricing has developed the following guidelines to facilitate program implementation and is proposing a definition of "patient" in section III for public comment.

I. Covered Entity Status

PHS Entities

Section 340B(a)(4) of the PHS Act lists the various categories of PHS programs eligible to receive section 340B outpatient drug discount pricing. For each category, there is a Federal program office which oversees the grant program. The respective Federal program offices determine which individual facilities receive the grant funds specified by section 340B or are eligible under other criteria and compile a list of such entities. The Federal program office then submits this list to the Office of Drug Pricing (ODP) for inclusion on the master list of eligible facilities ("covered entities").

Each program office is responsible for maintaining a current data file of eligible entities and submitting all updated information to the ODP. This information may either be submitted on a quarterly or yearly basis, depending upon the number of entity status changes in a given period. Each program office determines how often updates are necessary to maintain current entity information on the ODP master list of covered entities and notifies the ODP of their respective update time periods. The update file data is submitted to ODP in either a dbf or ASCI file, the formats of which are available from the ODP. Program offices submit their updates to the ODP on the following dates: (a) December 1 for the January 1 update, (b) March 1 for the April 1 update, (c) June 1 for the July 1 update, and (d) September 1 for the October 1 update.

The ODP will update the master covered entity file on a quarterly basis. The name of an entity will not be added or deleted at any other time. For example, if an entity becomes an eligible PHS grantee, its name will not appear on the ODP master list until the program office submits the name in its update package and the ODP subsequently updates the ODP master list during the next quarterly cycle. ODP will not directly add to or delete an entity name from the ODP master list. An entity name to be added or deleted must be submitted by the program office during a scheduled update period.

The following is a list of the Federal program offices which oversee the 340B eligible programs and contact persons (except as otherwise indicated, references are to sections of the Public Health Service Act):

1. Federally-qualified health center, as defined in section 1905(1)(2)(B) of the Social Security Act (42 U.S.C. § 1396d(1)(2)(B)), means an entity that:

(a) receives a grant under section 329 (migrant health center), section 330 (community health center), section 340 (health services for the homeless), and section 340A (health services for residents of public housing); or

(b) (i) receives funding from such a grant under a contract with the recipient of the grant, and (ii) meets the requirements to receive a grant under section 329, 330, 340 and 340A; or

(c) based on the recommendation of the Health Resources and Services Administration (HRSA) within the Public Health Service, is determined by the Secretary to meet requirements for receiving such a grant (i.e., "look-alikes"); or

(d) was treated by the Secretary, for purposes of part B of Title XVIII of the Social Security Act, as a comprehensive Federally funded health center as of January 1, 1990; or

(e) an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93–638) or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act for the provision of primary health services. (Norma Campbell, Division of Community and Migrant Health, 301–594–0287), (Marie Garramone, Division of Community and Migrant Health {for look-alikes}, 301–594–4335), (Charles Woodson, Division of Programs for Special Populations, homeless and public housing health centers, 301–594–4430: Laura Visser, {for 340S school based programs}, 301–594–4470), (Elmer Brewster, DCSP, Special Initiatives Branch {for Urban Indian}, 301–443–4680), and (Merry Elrod, Office of Tribal Activities {for P.L. 93–638}, 301–443–1044).

2. Family planning projects receiving grants or contracts under section 1001, 42 U.S.C. 300. (Sophia Lawson, Office of Population Affairs, 301–594–4000).

3. An entity receiving a grant for outpatient early intervention services for HIV infection under subpart II of part C of title XXVI, 42 U.S.C. 300ff–51 *et seq.* (Laverne Green, Office of Programs for Special Populations, HIV, 301–594–4451).

4. A State-operated AIDS drug purchasing assistance program receiving financial assistance under section 2616 of the Act, 42 U.S.C. 300ff–26. (Richard Schulman, Division of HIV Services, 301–443–9091).

5. A black lung clinic receiving funds under section 427(a) of the Black Lung Benefits Act, 30 U.S.C. 937(a). (Norma Campbell, Division of Community and Migrant Health, 301–594–0287).

6. A comprehensive hemophilia diagnostic treatment center receiving a grant under section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2). (Patrick McGuckin, National Hemophilia Program, 301–443–9051).

7. A Native Hawaiian Health Center receiving funds under the Native Hawaiian Health Care Act of 1988, 42 U.S.C. 11701 *et seq.* (Julia Tillman, Division of Programs for Special Populations, 301–594–4460).

8. Certain covered facilities must be certified by the Secretary before they become eligible for the discount drug prices, pursuant to section 340B(a)(7) of the PHS Act. The facilities requiring certification are those that

(a) receive grant funds related to the treatment of sexually transmitted diseases through a state or local government under section 318 of the PHS Act, 42 U.S.C. 247c, or related to the treatment of tuberculosis through a state or local government under section 317 E (a) of the PHS Act, 42 U.S.C. 247b–6, (Carmine Bozzi, Centers for Disease Control and Prevention, National Center for Prevention Services, 404–639–8008), or

(b) receive assistance under title XXVI of the PHS Act, 42 U.S.C. 300ff *et seq.*, other than a State or unit of local government or a grantee for HIV outpatient early intervention services (subpart II of part C of title XXVI of the PHS Act). (Richard Schulman, Division of HIV Services, 301–443–9091).

The criteria for eligibility include State certification that the facility does receive Federal grant funds and is a facility described in (a), or (b) above.

Electronic Data Retrieval System (EDRS) which can be accessed by dialing (301) 594–4992.

Disproportionate Share Hospitals

Certain hospitals are eligible for section 340B discount outpatient drug pricing if they meet the eligibility criteria. First, section 340B(a)(4)(L)(ii) provides that a hospital must be a "disproportionate share" hospital (DSH) as defined in section 1886(d)(1)(B) of the Social Security Act, which (for the most recent cost reporting period that ended before the calendar quarter involved) had a disproportionate share adjustment greater than 11.75 percent. This percentage is determined by the Health Care Financing Administration (HCFA), and a list of DSHs which meet this criteria is provided to the Office of Drug Pricing.

Second, section 340B(a)(4)(L)(i) provides that DSHs eligible for PHS pricing must meet one of the following requirements: (1) is owned or operated by a unit of State or local government, (2) is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or (3) is a private nonprofit hospital which has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII or XIX of the Social Security Act. All DSHs wishing to have access to section 340B discount outpatient drug pricing must provide the ODP a certification of their compliance with one of the three alternative requirements.

Third, a DSH is prohibited from participating in a group purchasing organization or any group purchasing association, pursuant to section 340B(a)(4)(L)(iii). DSHs wishing to access the discount pricing must provide the Office of Drug Pricing with a certification of their compliance with this prohibition.

DSHs must submit all necessary certifications to the Public Health Service DSH contact person—Elizabeth Hickey, Office of Drug Pricing, Bureau of Primary Health Care, West Tower, 10th Floor, 4350 East West Highway, Bethesda, Maryland, 20814, telephone (301) 594–4353.

II. Entity Participation Requirements

Section 340B(a)(4) of the PHS Act defines a "covered entity" as belonging to one or more of the eligible categories of PHS grantees or disproportionate share hospitals listed in subparagraph (4) and meeting the requirements of subparagraph (5). Subparagraph (5)(A) requires HHS to develop a mechanism to prevent a double PHS discount/Medicaid rebate potential; therefore, as part of this mechanism, each eligible entity must provide the ODP with certification of its pharmaceutical Medicaid billing status. Any entity which does not comply with this requirement will not be deemed a "covered entity" and will not be eligible for section 340B drug discounts. Those entities currently listed on the ODP master list which have not certified their Medicaid billing status will be removed from the ODP master list unless they certify their current billing status by the next quarterly update. Entities listed on subsequent program updates will be given one quarter from the date of the program update or until the next ODP update to certify their Medicaid billing status to ODP. Once the entity has certified its Medicaid billing status, its name will be included on the master list as a covered entity on the next ODP update.

A certification of the following information must be provided to the ODP before an entity will be deemed a "covered entity:" First, a covered entity, billing on a cost basis for covered outpatient drugs, must provide the ODP with a pharmaceutical Medicaid number (the number which the entity uses to bill Medicaid for such drugs). Second, a covered entity using an all-inclusive rate (either per encounter or visit) must provide the ODP with certification of this billing status and whether the all-inclusive rate includes covered outpatient drugs. Third, if a covered entity does not bill Medicaid for covered outpatient drugs, the entity

must notify the ODP of this decision. Fourth, a facility which houses many different clinics, only one or several of which are eligible, must obtain a separate Medicaid provider number for the eligible clinics. For those States which cannot generate additional Medicaid provider numbers for entities, the covered entity must discuss and implement an alternative arrangement with the States to prevent the duplicate PHS discount/Medicaid rebate potential. *See* 59 FR 25112 (May 13, 1994). Please note that only covered entities wishing to access the PHS discount pricing should certify their pharmaceutical Medicaid billing status to ODP.

III. Definition of Eligible Entity "Patient"

Section 340B(a)(5)(B) of the PHS Act states that the covered entity must provide drugs, discounted under the statute, only to its patients and not resell or otherwise transfer such drugs to individuals who are not patients of the entity. To address the potential for drug resale or transfer, PHS published final entity guidelines concerning drug diversion. See 59 Fed. Reg. 25112, May 13, 1994. In part, covered entities are required to "develop and institute adequate safeguards to prevent the transfer of discounted outpatient drugs to individuals who are not eligible for the discount." To accomplish this end, entities are encouraged to utilize a separate purchasing account and separate dispensing records. To further address the potential for drug diversion, PHS is now proposing a definition of a covered entity "patient."

An individual is a "patient" of a covered entity (with the exception of State-operated AIDS drug purchasing assistance programs) only if:

1. the covered entity has established a relationship with the individual, such that the covered entity maintains records of the individual's health care; and
2. the individual receives health care services from a health care professional who is either employed by the covered entity or provides health care under contractual or other arrangements (e.g. referral for consultation) such that responsibility for the care provided remains with the covered entity; and
3. the individual receives a health care service or range of services from the covered entity which is consistent with the service or range of services for which grant funding or Federally-qualified health center look-alike status has been provided to the entity. Disproportionate share hospitals are exempt from this requirement.

An individual will not be considered a "patient" of the entity for purposes of 340B if the only health care service received by the individual from the covered entity is the dispensing of a drug or drugs for subsequent self-administration or administration in the home setting.

An individual registered in a State-operated AIDS drug purchasing assistance program receiving financial assistance under title XXVI of the PHS Act will be considered a "patient" of the covered entity for purposes of this definition if so registered as eligible by the State program.

Dated: June 5, 1995.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 95–19061 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab., 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984. (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

CompuChem Laboratories, Inc., Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263. (Formerly: Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, CompuChem Laboratories, Inc.—Special Division)

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath)

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)

CORNING MetPath Clinical Laboratories, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc.)

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650 (formerly: HealthCare/Preferred Laboratories)

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100 (Formerly: National Health Laboratories Incorporated)

Laboratory Corporation of America, d.b.a. LabCorp Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522 (Formerly: National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division)

Laboratory Corporation of America, 21903 68th Ave. South, Kent, WA 98032, 206–395–4000 (Formerly: Regional Toxicology Services)

Laboratory Corporation of America, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894 (Formerly: National Health Laboratories Incorporated)

Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–931–7200 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon)

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)

National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)

Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640

Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800

Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 1737 Airport Way South, Suite 200, Seattle, WA 98134, 206–623–8100

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.),

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

No laboratories withdrew from the Program during July.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–19062 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–20–U

Supplement to Renovate the Alcohol Detention Center, Page, Arizona

AGENCY: Center For Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of intent to provide a supplemental award to renovate a facility to serve the substance abuse needs of the people of Page, Arizona, and the western portion of the Navajo Nation.

SUMMARY: The Center for Substance Abuse Treatment (CSAT), SAMHSA, is publishing this notice to provide information to the public of a planned single source supplemental award to the Navajo Nation Division of Health for renovating a facility (i.e., the Alcohol Detention Center of Page, Arizona, and the western portion of the Navajo Nation). The anticipated project period is one year and the estimated FY 1995 award is $200,000. An award will be made based on the receipt of a satisfactory application that is approved by an initial review group and the CSAT National Advisory Council.

AUTHORITY/JUSTIFICATION: This supplemental award will be made under the authority of section 510(b)(1) of the Public Health Service Act, as amended. An award is being made on a single source basis because the Conference Report to the Treasury/Postal Service and General Appropriations Act of 1995, specified that $200,000 should be reserved for this renovation effort.

The Catalog of Federal Domestic Assistance number for this program is 93.122.

The Navajo Nation Division of Health is a current CSAT Rural, Remote and Culturally Distinct program grantee that is currently providing substance abuse services to the people of Page, Arizona, and the rural remote population in the western portion of the Navajo Nation, by utilizing the resources and existing network of local private and public, social, health and welfare organizations and agencies. It has been selected for a supplemental award for renovations to its Alcohol Detention Center to further address the special substance abuse problems of these populations.

The Navajo Nation has utilized this facility since 1981 for drug and alcohol treatment activities. The facility is currently being used to serve individuals targeted by the CSAT program. However, the facility requires renovations to provide 13 adult residential treatment beds for men and women which can be licensed by the State of Arizona.

The Navajo Nation Division of Health is the local entity with a developed infrastructure and ongoing collaborative arrangements with local officials most able to implement this renovation project with a minimum of start up time.

The Navajo Nation is extremely rural. Lack of transportation and communication are common problems. Further, there is a greater need than availability of basic medical and health care services. In 1992, the Navajo Nation Department of Health reported that approximately 55,000 Navajos participated in various treatment and counseling interventions. Alcohol related deaths, accidents, injuries, illness, violence, and driving while intoxicated are significant problems. For example, five of the nine leading causes of mortality for Navajos are accidents, heart disease, homicide, suicide, and chronic liver disease and cirrhosis. Alcohol can be a major contributing factor to each of these problems.

Based on Indian Health Service (IHS) statistics, Navajo youth aged 12–18 and young adults aged 19–35 (especially male) are the high risk groups for substance abuse, with about one-fourth having abused alcohol, marijuana, and/or inhalants. In any given community on the reservation or border town, substance abuse is highly prevalent. Further, 35% of 8th grade Navajo students off the reservation have used alcohol and/or other drugs of abuse.

The Navajo Nation Department of Health reports a limited residential capacity including only 28 youth drug treatment beds and no adult beds. The number of beds are inadequate to meet the inpatient treatment needs of the Navajo Nation.

FOR FURTHER INFORMATION CONTACT: Clifton D. Mitchell, Chief Special Policy Projects Branch, CSAT/SAMHSA, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone number (301) 443–8804.

Dated: July 31, 1995.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–19154 Filed 8–2–95; 8:45 am]

BILLING CODE 4162–20–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–2473–N–05]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th St. SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 27, 1995.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: HUD Acquisition Regulation—FR–2473.

Office: Administration.

Description of the Need for the Information and its Proposed Use: The HUD Acquisition Regulation was issued to implement and supplement the Federal Acquisition Regulation. The information collection required of the public is solely in connection with the procurement process.

Form Number: HUD–441.1, HUD–66.1, and HUD–770.

Respondents: Business or Other For-Profit and Individuals or Households.

Reporting Burden:

	Number of Respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	900		Varies		Varies		61,502

Total Estimated Burden Hours: 61,502.

Status: Extension with changes.

Contact: Patricia Ann Wash, HUD, (202) 708–0294, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 27, 1995.

[FR Doc. 95–19133 Filed 8–2–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3917–N–13]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposal use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 27, 1995.

David S. Cristy,

Director Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Reporting Requirements for the Auction of Section 221(g)(4) Multifamily Mortgages.

Office: Housing.

Description of the need for the information and its proposed use: This collection consists of project data that will be made available to potential purchasers participating in the auction of Section 221(g)(4) mortgages. The project data will be submitted on a Project Summary Data Sheet to the purchasers. The data will provide project information and will allow purchasers to make informed bids. After the sale, the mortgagee will submit form HUD–93487 monthly to receive interest payments.

Form Number: HUD–93487.

Respondents: Business or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93487	360		12		.25		1,080
Summary Sheet	360		2		1.50		540

Total Estimated Burden Hours: 1.620

Status: Reinstatement with changes.

Contact: Audrey Hinton, HUD, (202) 708–3555, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 27, 1995.

[FR Doc. 95–19132 Filed 8–2–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR-3917-N-12]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 27, 1995.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Solicitation Mailing List Application.

Office: Administration.

Description of the Need for the Information and its Proposed Use: This information will be used by potential sources to indicate their particular field(s) of expertise or interest. HUD will use this information to target the types of solicitations that organizations receive as a result of being placed on the Solicitation Mailing List.

Form Number: HUD–24010 and SF–129.

Respondents: Individuals or Households, State, Local, or Tribal Government, Business or Other For-Profit, and Non-Profit Institutions.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	1,200		1		.17		200

Total Estimated Burden Hours: 200.
Status: Extension, no changes.
Contact: Patricia Ann Wash, HUD, (202) 708–0294, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 27, 1995.

[FR Doc. 95–19131 Filed 8–2–95; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. FR-3917-N-11]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July, 27, 1995.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Loan Servicing of all Coinsurance Programs—Sections 223(f), 221(d), and 232.

Office: Housing.

Description of the Need for the Information and its Proposed use: Information is needed to review and evaluate the financial, physical, and managerial adequacy of multifamily housing, retirement service centers, and nursing homes with coinsured loans. The information will be used to minimize risks and to protect the assets and Government's interest. The respondents are all approved mortgagees, mortgagors, and managing agents.

Form Number: None.

Respondents: Business or Other For-Profit.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	409		1		Varies		19,468

Total Estimated Burden Hours: 19,468.
Status: Extension with changes.
Contact: Richard Pace, HUD, (202) 401–3272, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 27, 1995.

[FR Doc. 95–19130 Filed 8–2–95; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. FR-3776-N-03]

Notice of Request for Comments on Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Request for Comments on Fair Housing Initiatives Program (FHIP).

SUMMARY: This notice invites interested parties to comment on the Department's administration of FHIP funding.

DATES: Comment Due Date: August 15, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Maxine Cunningham, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In anticipation of the next round of funding under the Fair Housing Initiatives Program, the Department held a public meeting on July 21, 1995, to invite and consider comments on the next round of FHIP funding. A notice of this meeting was published on July 14, 1995 (60 FR 36301). The purpose of the present notice is to invite the submission of additional comments from potential applicants, prior grantees and applicants, and any other interested parties, particularly those who may have not been able to attend the public meeting. The Department will consider the comments received in response to the public meeting and this Notice when formulating plans for the disposition of funds appropriated for Fiscal Year 1996.

Dated: July 24, 1995.

Susan Forward,

Deputy Assistant Secretary for Enforcement and Investigations.

[FR Doc. 95–19134 Filed 8–2–95; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-018-1220-00]

Relocation/Change of Address, Taos, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Relocation and change of address for the BLM Taos Resource Area Office, Taos, New Mexico.

SUMMARY: Effective August 14, 1995, the BLM Taos Resource Area Office will move to new quarters. The physical location and mailing address will be: Bureau of Land Management, Taos Resource Area, 226 Cruz Alta Road, Taos, New Mexico 87571.

During the week of August 14–18, the Resource Area Office will be closed. Records will be unavailable for inspection, and phone service will not be operational.

DATES: The office relocation is effective August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Henke, Acting Resource Area Manager, BLM Taos Resource Area Office at (505) 758–8851.

Dated: July 27, 1995.

Sue E. Richardson,

Acting District Manager.

[FR Doc. 95–19116 Filed 8–2–95; 8:45 am]

BILLING CODE 4210-FB-M

[NV-930-4210-05;N-59613]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Shiloh Christian School proposes to use the land for a church school.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. SE¼NE¼SW¼.
Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as

the Secretary of the Interior may prescribe;

And will be subject to:

1. An easement 30.00 feet in width along the north, west, and south boundaries, and an easement 40.00 feet in width along the east boundary in favor of Clark County for roads, public utilities and flood control purposes;

2. Those rights for water main purposes which have been granted to Las Vegas Valley Water District by Permit No. N–55369 the under the Act of October 21, 1976(43 U.S.C. 1761);

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a church school facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church school facility.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated June 21, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–19037 Filed 8–2–95; 8:45 am]

BILLING CODE 4310–HC–P

[AZ–055–05–1430–01; AZA 29158 and AZA 29168]

Arizona: Notice of Realty Action: Noncompetitive Sales of Public Land in La Paz County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, noncompetitive sales.

SUMMARY: The following lands have been found suitable for direct sales under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value. The lands will not be offered for sale until at least 60 days after the date of this notice. The lands are within the Town of Quartzsite boundaries. The lands are being offered by direct sale to the following nonprofit organizations:

AZA 29158—Quartzsite Southern Baptist Church

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,
Sec. 20, N½SE¼SE¼SE¼.
Containing 5.00 acres, more or less.

AZA 29168—Parker Community Hospital

Gila and Salt River Meridian, Arizona

T. 4 N., R. 19 W.,
Sec. 15, SE¼SW¼NW¼, SW¼SE¼NW¼.
Containing 20.00 acres, more or less.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, until conveyance, publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication of this notice in the **Federal Register**, whichever occurs first. If it is determined that the subject parcels contain no known mineral values, the mineral interests may be conveyed simultaneously to the purchaser, upon payment of a $50 nonrefundable filing fee.

The patents, when issued, will contain certain reservations to the United States and will be subject to any valid existing rights.

DATES: On or before September 18, 1995, interested parties may submit comments to the District Manager, Yuma District Office, address below. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sales, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365.

FOR FURTHER INFORMATION CONTACT: Area Manager Joy Gilbert, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (520) 726–6300.

Dated: July 27, 1995.

Clinton R. Oke,

Acting Association District Manager.

[FR Doc. 95–19117 Filed 8–2–95; 8:45 am]

BILLING CODE 4310–32–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received on or before August 17, 1995. If you anticipate commenting on the form but find that the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

OMB Reviewer

Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 3201, Washington, D.C. 20503; 202/395–7340.

Summary of Form Under Review

Type of Request: Revision.
Title: Project Information Report.
Form Number: OPIC 71 (OMB No. 3420–0004).
Frequency of Use: On occasion—a function of the sampling criteria.
Type of Respondents: Business or other institutions (except farms).
Standard Industrial Classification Codes: All .
Description of Affected Public: U.S. companies investing overseas.
Reporting Hours: Seven hours per project.
Number of Responses: 25 per year.
Federal Cost: $1,500 per year.
Authority for Information Collection: Title 22 USC 2191(k)(2) and 2199(h), Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The Project Information Report is necessary to elicit and record the information on the development, environmental and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects, and reporting the results in aggregate form, as required by Congress.

Dated: July 25, 1995.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 95–19039 Filed 8–2–95; 8:45 am]

BILLING CODE 3210–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32659]

Caldwell County Economic Development Commission—Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts Caldwell County Economic Development Commission (CCEDC) from the provisions of 49 U.S.C. Subtitle IV, subject to the conditions that CCEDC: (1) Notify the Commission in advance of any proposed abandonment or discontinuance of service on the line; (2) provide any environmental and historical data that may be required to permit the Commission to conduct an environmental review of the abandonment or discontinuance; and (3) comply with any conditions that might be imposed before abandonment or discontinuance is consummated.

DATES: Petitions to reopen must be filed by August 28, 1995. Petitions for stay must be filed by August 18, 1995. The exemption will be effective September 2, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32659 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423; and (2) Petitioner's representative: Robert A. Wimbish, Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Ave., N.W., Room 2229 Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: July 20, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19129 Filed 8–2–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Chemical Leaman Tank Lines, Inc.*, Civil No. *95–4264* a civil action filed on or about July 10, 1995, was lodged on July 10, 1995, with the United States District Court for the Eastern District of Pennsylvania. As described above, the complaint was filed simultaneously with the lodging of the consent decree.

Under the consent decree, Chemical Leaman Tank Lines, Inc., a generator of hazardous substances disposed of at the site and the only viable responsible party: (1) Will perform the remaining Site remedy (involving the excavation of contaminated soils, thermal desorption of the volatile organic compounds the soils contain, and treatment of the air emissions from the desorption unit) as well as the interim groundwater remedy consisting of a groundwater study and interim pump and treat remedy; (2) pay $1.571 million, over time, towards the costs that EPA has incurred and will incur to implement an alternative water supply to those private houses which draw their drinking and washing water from the aquifer underlying the Site; and (3) reimburse all of EPA's past costs ($420,296) over a two year period. Ultimately, Chemical Leaman will bear about 94% of the total costs of cleaning up the site. Chemical Leaman will also pay a civil penalty of $260,000 for violating an EPA administrative order.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Chemical Leaman Tank Lines, Inc.*, DOJ Ref. *#90–11–2–746.*

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania, 19106–4476; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the proposed decree, please refer to the referenced case, the decree requested, and enclose a check in the amount of $27.00 (25

cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–19040 Filed 8–2–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *ThermalKEM, Inc.*, Civil Action No. 92–2607, was lodged on July 26, 1995, with the United States Court for the District of South Carolina. The amended complaint, brought pursuant to Section 3008 (a) and (g) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6928 (a) and (g), against ThermalKEM, Inc. for violations of RCRA Sections 3004(j) and 3005, 42 U.S.C. 6924(j) and 6925, sought civil penalties and injunctive relief. The amended complaint alleged that ThermalKEM violated the metal feed rate limits and mass feed rate limit contained in its permit for the operation of a commercial hazardous waste incinerator in Rock Hill, South Carolina. The consent decree provides that ThermaKEM will pay a civil penalty of $750,000 and follow a protocol approved by the United States for monitoring and limiting the rate of hazardous wastes that are fed to the incinerator.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *ThermalKEM, Inc.*, DOJ Ref. #90–7–1–669.

The proposed consent decree may be examined at the Office of the United States Attorney, District of South Carolina, 1441 Main Street, Suite 500, Columbia, South Carolina 29202; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–19041 Filed 8–2–95; 8:45 am]

BILLING CODE 4410–01–M

Membership of the 1995 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's 1995 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations to the Deputy Attorney General regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Henry Romero, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530, (202) 514–6788.

Valerie M. Willis,

Executive Secretary, Senior Executive Resources Board.

Department of Justice, 1995 Senior Executive Service, Performance Review Board Members

Antitrust Division

Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section
J. Robert Kramer, Chief, Litigation II Section
Anthony V. Nanni, Chief, Litigation I Section

Civil Division

Eugene M. Thirolf, Director, Office of Consumer Litigation
Joyce R. Branda, Deputy Branch Director, Commercial Litigation Branch
Shiela M. Lieber, Deputy Branch Director, Federal Programs Branch

Civil Rights Division

William Ho-Gonzalez, Special Counsel, Office of Special Counsel
Kay Baldwin, Acting Chief, Employment Litigation Section

Criminal Division

Julie Samuels, Director, Office of Policy and Management Analysis
Joseph Gangloff, Principal Deputy, Public Integrity Section
Maureen Killion, Senior Associate Director, Office of Enforcement Operations

Environment and Natural Resources Division

Ron Sarachan, Chief, Environmental Crimes Section
James Kilbourne, Chief, Wildlife and Marine Resources Section
William Cohen, Chief, General Litigation Section

Justice Management Division

Andrew J. Boots, III, Director, Systems Technology Staff
Michael A. Perez, Director, Asset Forfeiture Management Staff
D. Jerry Rubino, Director, Security and Emergency Planning Staff

Tax Division

J. Randolph Maney, Chief, Criminal Enforcement Section, Southern Region
Jerome H. Fridkin, Chief, Civil Trial Section, Western Region
Stephen J. Csontos, Special Litigation Counsel

Bureau of Prisons

Steven B. Schwalb, Assistant Director, Industrial, Educational and Vocational Training Division
John L. Clark, Assistant Director, Community Corrections and Detention Division
Ronald Waldron, Senior Deputy Assistant Director, Health Services Division
Peter M. Carlson, Assistant Director, Correctional Programs Division

Executive Office for U.S. Attorneys

Richard De Haan, Counsel to the Executive Office for U.S. Attorneys

Executive Office for U.S. Trustees

Jeffrey Miller, Associate Director

Immigration and Naturalization Service

Michael D. Cronin, Assistant Commissioner, Inspections
G.H. Kleinknecht, Associate Commissioner for Enforcement
Joseph Mancias, Jr., Director of Public Affairs
Jeffrey M. Weber, Assistant Commissioner, Budget

Office of Justice Programs

Jack A. Nadol, Senior Counsel to the Assistant Attorney General

Office of Legal Counsel

Paul Colborn, Special Counsel

U.S. Marshals Service

Gary E. Mead, Associate Director for Administration

[FR Doc. 95–19118 Filed 8–2–95; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–069)]

NASA Advisory Council; Life and Microgravity Sciences and Applications Advisory Committee; Life and Biomedical Sciences and Applications Advisory Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee.

DATES: August 22, 1995, 8:30 a.m. to 5:30 p.m.; and August 23, 1995, 8:30 a.m. to 1 p.m.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., NIC 6 A & B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald White, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2530.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Wednesday, August 23, 1995, from 8:30 a.m. to 9:30 a.m. in accordance with 5 U.S.C. 522b (c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Subcommittee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the Office of Life and Microgravity Sciences and Applications Life and Biomedical Sciences and Application Division Status
—Issues Related to Ames Research Center—The Fettman Report
—Institutes and NASA's Intramural activities
—Space Station and Life Sciences
—Results of the 1995 Peer Review of Proposals
—Bioregenerative Life Support—Program Plan
—General Discussion and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 28, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 95–19097 Filed 8–2–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–068]

NASA Advisory Council; Life and Microgravity Sciences and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: August 24, 1995, 8:30 a.m. to 5:30 p.m.; and August 25, 1995, 8:00 a.m. to 12:30 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Arnauld Nicogossian, Code U, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0215.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, August 24, 1995, from 4:30 p.m. to 5:30 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the Office of Life and Microgravity Sciences and Applications Status
—Commercial Activities
—Russian Science
—Human Research Activities
—International Space Station
—Discussion of Committee Findings and Recommendations
—Committee Discussion Regarding Future Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 28, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 95–19096 Filed 8–2–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Presenting Advisory Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting Advisory Panel (Presenting Organizations B Section) to the National Council on the Arts will be held from 9 a.m. to 7 p.m. on August 21–24, 1995 and from 9 a.m. to 5 p.m. on August 25, 1995. This meeting will be held in Room M14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2 p.m. to 5 p.m. on August 25 for a policy discussion.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on August 21–24 and from 9 a.m. to 2 p.m. on August 25 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of Section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the

Arts, Washington, DC 20506, or call 202/682–5433.

Dated: July 28, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–19162 Filed 8–2–95; 8:45 am]

BILLING CODE 7537–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36029; File No. SR–NYSE–95–07]

Self-Regulatory Organization; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Listing Standards for Options on Securities Issued in Certain Corporate Restructuring Transactions

July 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 18, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is approving the proposal, as amended, and soliciting comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its initial listing standards for options as set forth in NYSE Rule 715 in order to permit the listing of options on securities issued by public companies in connection with corporate spin-offs, reorganizations, recapitalizations, restructurings and similar corporate transactions at an earlier time than is presently the case.[4] Similarly, NYSE proposes to amend its options maintenance standards as set forth in Rule 716 in order to give Restructure Securities greater opportunity to meet those standards during the first months after issuance. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The options exchanges currently maintain uniform standards regarding approval of underlying securities for options trading.[5] Specifically, to be options eligible, a security shall meet the following guidelines: (1) Trading volume in all markets of at least 2.4 million shares in the preceding twelve months ("Volume Test"); (2) market price per share of at least $7.50 for the majority of business days during the three calendar month period preceding the date of selection ("Price Test"); (3) a minimum of 7 million shares that are owned by persons other than those required to report their stock holdings under section 16(a) of the Act ("Share Requirement"); and (4) a minimum of 2,000 holders ("Number of Shareholder Requirement").[6] The Exchange must determine that a security satisfies the above requirements, as of the date it is selected for options trading ("selection date"), before the exchange may certify the listing to the Options Clearing Corporation ("OCC"). Depending on interest from other markets, the exchange may begin options trading three or five business days after the selection date.

The options exchanges have adopted corresponding criteria for withdrawal of approval of underlying securities.[7] A security previously approved for options transactions shall be deemed not to meet the guidelines for continued listing if (1) trading volume in all markets is less than 1.8 million shares in the preceding twelve months ("Maintenance Volume Test"); (2) market price per share closes below $5.00 on a majority of business days during the preceding six calendar months ("Maintenance Price Test");[8] (3) fewer than 6.3 million shares owned by persons not required to report their stock holdings under section 16(a) of the Act ("Maintenance Share Requirement"); or (4) there are fewer than 1,600 holders ("Maintenance Number of Shareholder Requirement").[9]

The Exchange proposes to amend NYSE Rule 715 to permit the expedited listing of standardized options in certain restructuring transactions. The proposal will apply to securities ("Restructure Security") issued by a public company to existing shareholders, with existing publicly traded shares subject to options trading, in connection with certain "restructuring transactions."[10]

Under current standards, the Exchange is generally precluded from listing eligible options on newly issued securities for at least three months, given that the guidelines require three months of price history to determine if the underlying security meets the Price Test. Additionally, the Exchange may only list eligible options on newly issued securities, if the underlying security meets the Volume Test which requires trading volume in all markets of at least 2.4 million shares in the preceding twelve months. The proposed rule change, however, would facilitate the earlier listing of options on a Restructure Security by permitting the Exchange to determine whether the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from James E. Buck, Senior Vice President, NYSE, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated July 18, 1995 ("Amendment No. 1").

[4] The Commission notes that substantively identical proposals by the other U.S. options exchanges have been recently approved. See Securities Exchange Act Release No. 36020 (July 24, 1995) (File Nos. SR–CBOE–95–11; SR–PSE–95–04; SR–Phlx–95–12; and SR–Amex–95–07).

[5] See NYSE Rule 715; Amex Rule 915; CBOE Rule 5.3; PSE Rule 3.6; and Phlx Rule 1009.

[6] This proposal addresses price, volume, public ownership, and holder requirements specifically. For a Restructure Security to meet initial listing requirements, however, it must additionally comply with all requirements set forth by the Exchange in its options eligibility rules. For example, the security must be registered, and listed on a national securities exchange, or traded through the facilities of a national securities association and reported as a "national market system" ("NMS") security as set forth in Rule 11Aa3–1 under the Act, and the issuer must be in compliance with any applicable requirements of the Act. See *supra* note 5.

[7] See NYSE Rule 716; Amex Rule 916; CBOE Rule 5.4; PSE Rule 3.7; and Phlx Rule 1010.

[8] Additional criteria permits the underlying security under certain circumstances to trade as low as $3.00 for a temporary period of time. See Id.

[9] This proposal addresses maintenance criteria for market price and trading volume specifically. For a Restructure Security to meet maintenance requirements for an underlying security subject to options trading, however, it must additionally comply with all requirements set forth by the Exchange in its options eligibility rules. See *supra* note 7.

[10] The proposal defines a "restructuring transaction" as a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction.

Restructure Security satisfies the trading volume and market price criteria by reference to the trading volume and market price history of an outstanding equity security ("Original Equity Security") previously issued by the issuer of the Restructure Security, or affiliate thereof. In addition, the Exchange proposes specific criteria for evaluating the distribution of shares of a Restructure Security for the proposes of meeting the Share and Number of Shareholder Requirements. To the extent the initial options listing requirements are satisfied based upon these "lookback" provisions of the Original Equity Security and the other provisions of the proposal, then the Exchange will permit options trading to begin on the ex-date for the transaction.[11]

Before the Exchange may invoke this proposed "lookback" provision and utilize the volume and price of the Original Equity Security for purposes of meeting the options eligibility criteria for the Restructure Security, the Restructure Security must first satisfy one of four alternate conditions. The first three alternate conditions are intended to ensure that the trading volume and market price history of the Original Equity Security represent a reasonable surrogate for determining the likely future trading volume and price data of the Restructure Security. Under these conditions either, (a) the aggregate market value of the Restructure Security, (b) the aggregate book value of the assets attributed to the business represented by the Restructure Security (minimum $50 million) or (c) the revenues attributed to the business represented by the Restructure Security (minimum $50 million) must exceed one of two stated percentages ("Relevant Percentages") of the same measure for the Original Equity Security.[12] The Relevant Percentages will be 25% if the applicable measure determined with respect of the Original Equity Security represents an interest in the combined enterprise prior to the restructuring transaction, and 33⅓% if the applicable measure determined with respect of the Original Equity Security represents an interest in the remainder of the enterprise after the restructuring transaction. The fourth alternate condition is that the aggregate market value represented by the Restructure Security be at least $500 million.

If any of the four alternate conditions set forth above is satisfied, a Restructure Security will qualify for the "lookback" provision. Under the "lookback" provision, a Restructure Security may be eligible for options trading immediately upon its issuance provided the following requirements are satisfied. First, the Restructure Security must satisfy the options Volume and Price Tests. The Exchange may be permitted to determine whether a Restructure Security satisfies the Volume and Price Tests by reference to the trading volume and market price history of the Original Equity Security. Under the proposed rule change, the trading volume and market price history of the Original Equity Security that occurs *prior to the restructuring ex-date* can be used for these calculations (emphasis added). Volume and price data may be derived from "when issued" trading in the Restructure Security. However, once the Exchange first uses "when issued" volume or price for the Restructure Security to satisfy the relevant guidelines, it may not use the Original Equity Security for that purpose on any subsequent trading day. In addition, both the trading volume and market price history of the Original Equity Security must be used, if either is so used.

Additionally, the Exchange must determine whether a Restructure Security will satisfy the Share and Number of Shareholder Requirements. This determination will either be based upon facts and circumstances that the Exchange expects to exist on the intended date for listing the option, or based on assumptions that are permitted under the proposal. Because the shares of the Restructure Security are to be issued or distributed to the shareholders of the issuer of the Original Equity Security, the Exchange proposes that these requirements may be satisfied based upon the Exchange's knowledge of the existing number of outstanding shares and holders of the Original Equity Security.

The Exchange further proposes that if a Restructure Security is to be listed on an exchange or automatic quotation system that has, and subjects the Restructure Security to, an initial listing requirement of no less than 2,000 holders, then the Exchange may assume that the Number of Shareholders Requirement will be satisfied. Similarly, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and subjects the Restructure Security to, an initial listing requirement of no less than 7 million shares, held by persons not required to report their stock holdings under section 16(a) of the Act, then the Exchange may assume that the Share Requirement will be satisfied. Additionally, if the Exchange determines that at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, then it may assume that the Restructure Security will satisfy both the Share and the Number of Shareholder Requirements.

The Exchange, however, may not rely on the above assumptions if, after reasonable investigation, it determines that either the Share or Number of Shareholder Requirement, in fact, will not be satisfied on the intended date for listing the option. In addition, pursuant to the proposal, other exchanges will have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to shares and number of shareholders.

Finally, the proposal will adopt a similar "lookback" provision for the Maintenance Volume Test and the Maintenance Price Test. Specifically, for purposes of satisfying these requirements, the trading volume and market price history of the Original Equity Security, as well as any "when issued" trading in the Restructure Security, can be used for such calculations, provided that they are only used for determining price and volume history for the period prior to commencement of trading in the Restructure Security.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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[11] The Exchange shall not list for trading option contracts that overlie a Restructure Security until the ex-date. The ex-date occurs at such time when shares of the Restructure Security become issued and outstanding and are not the subject of trading on a "when issued" basis or on another basis that is contingent upon the issuance or distribution of shares.

[12] Aggregate market values will be based on share prices that are either (a) the Restructure Security's closing prices in the primary market on the last business day preceding the selection date or (b) the Restructure Security's opening prices in the primary market on the selection date. The aggregate market value of the Restructure Security may be determined from "when issued" prices, if available.

Asset values and revenues will be derived from the later of (a) the most recent annual financial statements or (b) the most recent interim financial statements of the respective issuers covering a period of not less than three months. Such financial statements may be audited or unaudited and may be pro forma.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated effectiveness of the proposed rule change pursuant to section 19(b)(2) of the Act.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, particularly, section 6(b)(5) of the Act,[13] in that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that it is necessary for securities to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security to become options eligible. These standards are imposed to ensure that those issuers upon whose securities options are to be traded are financially sound companies whose trading volume, market price, number of shareholders, and number of shares owned by persons not required to report their stock holdings under section 16(a) of the Act are substantial enough to ensure adequate depth and liquidity to sustain options trading that is not readily susceptible to manipulation. The Commission also recognizes that under current equity options listing criteria, existing shareholders of an issuer that becomes involved in a restructuring transaction, may be precluded for a significant period from employing an adequate hedging strategy involving options on any newly acquired Restructure Security received in connection with such transaction.

Accordingly, to determine whether the earlier listing of options overlying a Restructure Security is reasonable, the Commission must balance the benefits of providing adequate hedging strategies to shareholders of the issuer of the Restructure Security, and the risks of approving certain securities for options trading before such securities actually satisfy the options eligibility criteria, which currently, for newly issued securities, can not occur, at the very least, prior to the three months after the security begins trading. The Commission believes that the proposed limited exception to established equity options listing procedures, as proposed, strikes such a reasonable balance.

As discussed in more detail below, the Commission believes that the conditions of the new rule will help to ensure that only those securities that are most likely to have adequate depth and liquidity will be eligible for options trading prior to the establishment of a recognized trading history. Additionally, by facilitating the earlier listing of options on a Restructure Security, the Commission believes that investors formerly holding the Original Equity Security, upon which options are currently traded, should be able to better hedge the risk of their newly acquired stock position in the Restructure Security.[14]

Despite the benefits of the proposal, the Commission believes that the proposal should only apply to restructuring transactions that involve financially sound and sufficiently large companies. The Commission believes that the Exchange has addressed this concern by adding conditions to the proposal that require the Restructure Security to either satisfy certain comparative tests (comparing the Restructure Security, or its related business with that of the Original Equity Security, or its related business),[15] or meet a very high aggregate market value standard ($500 million).

The Commission believes that if one of the comparative tests is satisfied, the Restructure Security should adequately resemble the Original Equity Security to qualify for the "lookback" provision. Under the "lookback" provision, a Restructure Security will be able to satisfy the Volume and Price Tests if the trading volume and market price history of the Restructure Security, together with the trading volume and market price history of the Original Equity Security occurring prior to the ex-date, meet the existing related requirements. Moreover, the Commission believes that, given the limited scope of the proposal, it is appropriate to conclude that a Restructure Security with an aggregate market value of at least $500 million appropriately qualifies for the "lookback" provision.

The Commission also believes that it is appropriate for the Exchange to count "when issued" trading in the Restructure Security when determining if the Restructure Security will satisfy the Volume and Price Tests set forth in the initial options listing requirements. However, once the Exchange begins to use "when issued" volume or price history for the Restructure Security to satisfy the Volume or Price Tests, it may not use the Original Equity Security for such purposes on any subsequent trading day. In addition, both the trading volume and market price history of the Original Equity Security must be used, if either is so used. For example, if in order to satisfy the Volume Test for a Restructure Security for which the ex-date is expected to be February 1, 1996, an exchange may elect to base its determination on the trading volume of the Original Equity Security from February 1, 1995 through December 27, 1995, and then utilize the trading volume in the when-issued market for the Restructure Security from December 28, 1995 through January 31, 1996, in determining whether options covering the Restructure Security may be listed on the February 1 ex-date. Under this example, after December 28, 1995, only when-issued trading data for the Restructure Security may be used in determining whether it meets the Volume and Price Tests. An exchange, however, would be permitted to use the volume and price history of the Original Equity Security throughout the entire period prior to February 1, 1996, provided that it did not rely on any when-issued trading data during that period.

The Commission notes that the Exchange shall not use trading history relating to the Original Equity Security after the exdate to meet the initial options listing requirements for the option contracts overlying the Restructure Security. Additionally, the condition that option contracts overlying a Restructure Security shall not be initially listed for trading until such time as shares of the Restructure Security are issued and outstanding and are the subject of trading that is not on a "when issued" basis or in any other way contingent on the issuance or distribution of the shares will ensure that options will only be traded on a Restructure Security when it is certain the security is actually issued and outstanding.

In addition to satisfying the Volume and Price Tests, a Restructure Security must also meet certain distribution requirements before the Exchange can deem such security to be options eligible. Specifically, the Restructure Security must have 2,000 holders, and 7 million shares must be owned by persons not required to report their stock holdings under Section 16(a) of the Act to be options eligible. Under the most typical restructuring transaction, a spin-off to existing shareholders of the issuer of the Original Equity Security, the Exchange should be able to determine from publicly available information or otherwise reasonably deduce whether the Restructure Security will satisfy the 2,000 shareholder requirement and the 7 million share requirement. As an example, if Issuer A, having 10 million outstanding shares of common stock owned by persons not required to report their stock holdings under section 16(a) of the Act, and 5,000 shareholders, intends to effect a spin-off of a subsidiary, whereby one share of the subsidiary is issued to existing shareholders of Issuer A for each currently held outstanding share of Issuer A, immediately following the spin-off the former subsidiary will have 10 million shares held by persons not required to report their stock holdings under section 16(a) of the Act, and 5,000 shareholders. As a result, the former subsidiary will satisfy both the Share and Number of Shareholder Requirements.

As an alternative to the above, the proposal provides that the Exchange may make certain limited assumptions based on facts and circumstances that the Exchange expects to exist on the intended date for listing the options in order to determine the Share and Number of Shareholder Requirements. First, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement that the issuer have no less 2,000 shareholders, the Commission believes that it is reasonable for the Exchange to assume that its comparable option listing requirement will be satisfied. Second, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement of no less than 7 million shares owned by persons not required to report their stockholdings under section 16(a) of the Act, the Commission believes that it is reasonable for the Exchange to assume that its comparable option listing requirement will be satisfied.

The Commission notes that currently no exchange or automatic quotation system has a share requirement for initial stock listing purposes that is as stringent as those required under the options eligibility requirements. Moreover, a stock exchange may now be able to list stocks pursuant to alternate listing standards. For example, the Commission has recently approved alternate listing standards for companies listed on the NYSE, including, among other things, the distribution of shares.[16] Under these alternate listing standards, the NYSE is currently allowed to list certain companies with 500 shareholders that meet heightened requirements in other areas in lieu of its 2,200 total shareholder requirement. Therefore, the Exchange should be careful to precisely determine which listing standards are being applied to the listing of the Restructure Security prior to making a determination as to whether the Restructure Security meets the corresponding options listing criteria.

Additionally, the proposal provides that if at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, the Exchange may assume that the Restructive Security will satisfy both the Share and Number of Shareholder Requirements. The Commission believes this is appropriate because it appears unlikely that a Restructure Security with at least 40 million issued and outstanding shares, will have fewer than 2,000 holders or less than 7 million shares owned by persons not required to report their stock holdings under section 16(a) of the Act.

The Commission believes that concerns associated with the ability of the Exchange to make important listing decisions based on assumptions rather than confirmed facts are alleviated by the crucial provision contained in the proposal that the Exchange may not rely on the above assumptions if, after a reasonable investigation, it determines that either the Share or Number of Shareholder Requirements, in fact, will not be satisfied on the intended date for listing the option. At the very least, the Exchange should investigate the basis for its assumptions regarding the ownership of shares and number of shareholders just prior to selecting the option and just prior to trading the option, utilizing a worst case analysis in making its assumptions that the Restructure Security will meet these listing standards upon completion of the restructuring transaction.[17]

In addition, other exchanges will continue to have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to the Share and Number of Shareholder Requirements. The Commission believes that this provision provides an important check and should help to ensure that no unqualified securities are listed for options trading.

The Commission also believes that it is appropriate for the Exchange to apply the "lookback" provision, to determine if a Restructure Security will satisfy the Maintenance Volume and Price Tests. The Commission believes that it is appropriate to use the trading volume and market price history of the Original Equity Security, as well as any "when issued" trading in the Restructure Security for such calculations, provided that they are only used for determining price and volume history for the period prior to commencement of trading in the Restructure Security.

The commission notes that because the Maintenance Volume and Price Tests are calculated on a rolling forward basis, "when issued" trading history for the Restructure Security or trading history for the Original Equity Security prior to the ex-date may be used for maintenance calculations for no more than twelve months after the ex-date for the Restructure Security with respect to the Maintenance Volume Test, and for no more than six months after the ex-date for the Restructure Security with respect to the Maintenance Price Test. For example, if in order to satisfy the Maintenance Volume Test for a Restructure Security on November 1, 1995, for which the ex-date is September 1, 1995, an exchange may elect to base its determination on the trading volume of the Original Equity Security from November 1, 1994 through August 1, 1995, the trading volume in the when-issued market for the Restructure Security from August 2, 1995 through August 31, 1995, but must use the trading volume in the Restructure Security from September 1, 1995 through November 1, 1995. Similarly, in order to satisfy the Maintenance Price Test for the same Restructure Security on November 1, 1995, an exchange may elect to base its determination on the trading price of the Original Equity Security from August 1, 1995 through August 15, 1995, the trading price in the when-issued market for the Restructure Security from August 16, 1995 through August 31, 1995, but must use the trading price in the Restructure Security

[13] 15 U.S.C. 78f(b)(5).

[14] Although not specifically addressed by the proposal, the Commission understands that the application of the proposal is limited to instances where options are listed on the Original Equity Security.

[15] *See supra* note 12 and accompanying text.

[16] *See* Paragraph 102.01 of the NYSE's Listed Company Manual. *See also* Securities Exchange Act Release No. 35571 (April 5, 1995), 60 FR 18649 (April 12, 1995) (order approving proposed rule change relating to domestic listing standards).

[17] *See e.g.*, Letter from Michael Meyer, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, OMS, Market Regulation, dated January 25, 1995 (File No. SR-CBOE-95-11).

from September 1, 1995 through November 1, 1995.

The Commission notes that the Exchange's proposal only permits it to avail itself of the accelerated listing procedures for a traditional restructuring transaction that is limited to the distribution of shares to existing shareholders of the issuer of the Original Equity Security. Accordingly, the Commission notes that this proposal does not address or apply to restructuring transactions that involve a sale of such securities to the general public, including, but not limited to, initial public offerings or secondary offerings. The Commission is approving the current proposal based, in part, on the need for investors and other market participants with combined stock/option positions in an Original Equity Security to be able to maintain their positions immediately following a restructuring transaction. Otherwise, holders of the Original Equity Security might be temporarily prevented (until the Restructure Security independently satisfies the options listing criteria) from adequately hedging their involuntarily received new positions in the Restructure Security.

The Commission also notes that this proposal does not address or apply to restructuring transactions that involve a sale of such securities in a rights offering to existing holders of the Original Equity Security. The Commission believes that the contingencies in the terms of such an offering make it too difficult to determine whether the number of subscribers for such an offering would be adequate to meet the Share and Number of Shareholder Requirements and therefore such an offering does not justify the immediate availability of options for the underlying security.

The Commission believes that if the Exchange proposes to expand the scope of this proposal beyond that of restructuring transactions involving distributions of securities to existing shareholders or expanding the rule to include rights offerings, it must address potential concerns associated with being able to adequately determine the minimum number of publicly owned shares and holders of the Restructure Security that will exist on the intended date for listing the options in order to justify accelerated availability of options trading.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The NYSE's proposed rule change is substantively identical to proposals submitted by the Chicago Board Options Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the American Stock Exchange, which were recently approved by the Commission.[18]

The NYSE rule change proposal raises no unique or novel issues that have not been previously addressed in the other options exchanges' approved proposals.[19] Moreover, the CBOE, PSE, and Phlx proposals were noticed for the full notice and comment period without any comments being received by the Commission.

Amendment No. 1 to the proposed rule change by the NYSE makes certain technical clarifications to make the proposed rule change substantively similar to those filed by the other options exchanges. The Commission does not believe Amendment No. 1 to NYSE's proposed rule change raises any new or unique regulatory issues. Accordingly, the Commission believes that it is consistent with section 6(b)(5) of the Act to approve the proposed rule change and Amendment No. 1 to the proposed rule change, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to SR–NYSE–95–07 and should be submitted by August 24, 1995.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change, as amended, (File NO. SR–NYSE–95–07) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

[FR Doc. 95–19161 Filed 8–2–95; 8:45 am]
BILLING CODE 8010–01–M

[18] *See supra* note 4.

[19] *Id.*

[20] 15 U.S.C. 78s(b)(2).

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 95–6–7 established the currently effective two-month SFFL applicable through July 31, 1995.

In establishing the SFFL for the two-month period beginning August 1, 1995, we have projected non-fuel costs based on the year ended March 31, 1995 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–7–48 fares may be increased by the following adjustment factors over the October 1979 level: Atlantic 1.4505, Latin America 1.4329, Pacific 1.5229.

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: July 28, 1995.

Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–19155 Filed 8–2–95; 8:45 am]
BILLING CODE 4910–62–P

Notice of Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 95–6–8, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning August 1, 1995, we have projected non-fuel costs based on the year ended March 31, 1995 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–7–49 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level: Atlantic 1.1244, Western Hemisphere 1.0382, Pacific 1.2093.

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: July 28, 1995.

Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–19156 Filed 8–2–95; 8:45 am]
BILLING CODE 4910–62–P

[21] 17 CFR 200.30–3(a)(12).

Federal Aviation Administration

[Summary Notice No. PE–95–27]

Petitons for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmtsmail.hq.faa.gov. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB) 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 31, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28255.
Petitioner: United Parcel Service Co.
Sections of the FAR Affected: 14 CFR 43.17(e)(2) and 121.379(b).
Description of Relief Sought: To allow the United Parcel Service Co., to approve any aircraft, airframe, aircraft engine, propeller, or appliance for return to service after a major or major alteration that has been performed by a Canadian Approved Maintenance Organization with technical data approved by Transport Canada instead of the Administrator.

Docket No.: 28256.
Petitioner: Mr. James R. Ainsworth.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Ainsworth to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Dispositions of Petitions

Docket No.: 11366.
Petitioner: United States Customs Service.
Sections of the FAR Affected: 14 CFR 91.117 (a), (b) and (c); 91.119(c); 91.159(a); and 91.209 (a) and (d).
Description of Relief Sought/Disposition: To extend Exemption No. 5504, which allows conduct drug interdiction air support while in noncompliance with the above mentioned FAR sections. *GRANT, June 23, 1995, Exemption No. 5504A.*

Docket No.: 24237.
Petitioner: The Department of the Air Force.
Sections of the FAR Affected: 14 CFR 91.177(a)(2) and 91.177(b)(1).
Description of Relief Sought/Disposition: To extend Exemption No. 4371, as amended, which permits the Military Aircraft Command to conduct operations under certain instrument flight rule (IFR) conditions. *GRANT, June 23, 1995, Exemption No. 4371C.*

Docket No.: 24541.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 91.611.
Description of Relief Sought/Disposition: To extend Exemption No. 4467, as amended, which permits Boeing to conduct ferry flights with one engine inoperative on its Boeing-manufactured 707, 727, and 747 aircraft without obtaining a special flight permit. *GRANT, June 29, 1995, Exemption No. 4467E.*

Docket No.: 26503.
Petitioner: ABX, Inc., d.b.a. Airborne Express.
Sections of the FAR Affected: 14 CFR 121.623 (a) and (d), 121.643, and 121.645(e).
Description of Relief Sought/Disposition: To extend Exemption No. 5307, as amended, which permits Airborne to conduct operations in accordance with the requirements applicable to a domestic air carrier, even though Airborne operates under supplemental air carrier regulations.. *GRANT, May 31, 1995, Exemption No. 5307B.*

Docket No.: 25630.
Petitioner: State of Hawaii, Department of Transportation.
Sections of the FAR Affected: 14 CFR 45.29(h).
Description of Relief Sought/Disposition: To extend Exemption No. 5632, which allows such persons to operate their aircraft without displaying 12-inch nationality and registration marks required by § 45.29(h) when penetrating the inner boundary of the Hawaiian Coastal Air Defense Identification Zone (ADIZ). *GRANT, April 17, 1995, Exemption No. 5632A.*

Docket No.: 26919.
Petitioner: Kalamazoo Aviation History Museum.
Sections of the FAR Affected: 14 CFR 45.25 and 45.29.
Description of Relief Sought/Disposition: To extend Exemption No. 5519, which permits the Kalamazoo Aviation History Museum to operate its

Ford Tri-motor, model number 5–AT–C, serial number 58, with 3-inch-high nationality and registration marks located on each side of the fuselage under the leading edge of the horizontal stabilizer. *GRANT, June 16, 1995, Exemption No. 5519A.*

Docket No.: 26997.

Petitioner: Department of the Air Force.

Sections of the FAR Affected: 14 CFR 45.29(a).

Description of Relief Sought/ Disposition: To extend Exemption No. 5655, which allows the Department of the Air Force to display the smaller aircraft nationality and registration markings in place of the 12-inch high markings required by the regulations. *GRANT, June 19, 1995, Exemption No. 5655A.*

Docket No.: 27157.

Petitioner: Daimler-Benz Aerospace.

Sections of the FAR Affected: 14 CFR 25.562(b)(2).

Description of Relief Sought/ Disposition: To extend Exemption No. 5704, as amended, which exempts Dornier Luftfarht from the floor distortion test requirements of § 25.562(b)(2) for captain's and first officer's set on Dornier Model 328 airplanes (listed with the complete exemption document). *GRANT, June 29, 1995, Exemption No. 5704C.*

Docket No.: 27347.

Petitioner: Houston Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/ Disposition: To extend Exemption No. 5743, which permits appropriately trained and certificated pilots employed by Houston Helicopters, Inc., (HHI) a part 135 certificated operator using aircraft with 9 or fewer seats, to remove and reinstall cabin seats in HHI's Bell Model 206 and 212 helicopters. *GRANT, June 16, 1995, Exemption No. 5743A.*

[FR Doc. 95–19143 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 27, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0074.

Form Number: IRS Form 1040, Schedules A, B, C, C-EZ, D, E, EIC, F, H, R, and SE.

Type of Review: Revision.

Title: U.S. Individual Income Tax Return.

Description: These forms are used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the forms are correct and are also for general statistical use.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 66,244,569.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1040	3 hours, 8 minutes	2 hours, 54 minutes	4 hours, 43 minutes	0 hours, 53 minutes.
Sch. A	2 hours, 32 minutes	0 hours, 26 minutes	1 hour, 10 minutes	0 hours, 27 minutes.
Sch. B	33 minutes	8 minutes	17 minutes	20 minutes.
Sch. C	6 hours, 26 minutes	1 hour, 10 minutes	2 hours, 5 minutes	0 hours, 35 minutes.
Sch. C–EZ	46 minutes	4 minutes	18 minutes	20 minutes.
Sch. D	0 hours, 51 minutes	1 hour, 8 minutes	1 hour, 1 minute	0 hours, 41 minutes.
Sch. E	2 hours, 52 minutes	1 hour, 7 minutes	1 hour, 16 minutes	0 hours, 35 minutes.
Sch. EIC		2 minutes	4 minutes	5 minutes.
Sch. F:				
Cash Method	4 hours, 2 minutes	0 hours, 35 minutes	1 hour, 14 minutes	0 hours, 20 minutes.
Accrual Method	4 hours, 22 minutes	0 hours, 25 minutes	1 hour, 19 minutes	0 hours, 20 minutes.
Sch. H:	0 hours, 46 minutes	0 hours, 43 minutes	1 hour, 3 minutes	0 hours, 35 minutes.
Sch. R	20 minutes	15 minutes	22 minutes	35 minutes.
Sch. SE:				
Short	20 minutes	13 minutes	11 minutes	14 minutes.
Long	26 minutes	22 minutes	34 minutes	20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,128,363,154 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 95–19076 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 27, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0087.

Form Number: IRS Forms 1040–ES, 1040–ES(NR), and 1040–ES(Espanol).

Type of Review: Extension.

Title: Estimated Tax for Individuals (U.S. Citizens and Residents) (1040–ES), For Nonresident Aliens (1040–ES(NR)), For Use in Puerto Rico (In Spanish).

Description: Form 1040–ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax due is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if estimated tax has been properly computed and timely paid.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 14,563,250.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	1040–ES	1040–ES(NR)	1040–Espanol
Recordkeeping	1 hr., 19 min	40 min	7 min.
Learning about the law	18 min	14 min	7 min.
Preparing the worksheets and payment vouchers	49 min	59 min	32 min.
Copying, assembling, and sending the payment voucher to the IRS	10 min	10 min	10 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 106,438,132 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 95–19077 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 27, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the customer satisfaction survey described below in late August, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by August 8, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.

Project Number: SOI–012.

Type of Review: Revision.

Title: 1996 Fiscal Year Fresno Customer Service Center Telephone Survey.

Description: The IRS is continuing to change the way they do business because of the reinvention of government. To accomplish this goal they have changed the function of their Service Center from processing centers to customer service centers. The Fresno Service Center has been serving as a prototype. One of the goals of the new Customer Service Sites is to assist the taxpayer with a telephone call for all their tax questions rather than corresponding with them through the mail.

Respondents: Individuals or households.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 4 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 35 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 95–19078 Filed 8–2–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 20, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0134.

Form Number: IRS Form 1128.

Type of Review: Extension.

Title: Application to Adopt, Change, or Retain a Tax Year.

Description: Form 1128 is needed in order to process taxpayers' requests to change their tax year. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.

Respondents: Business or other for-profit, Individuals or households Not-for-profit institutions, Farms.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
Parts I and II	9 hrs., 20 min	2 hrs., 47 min	3 hrs., 4 min.
Parts I and III	14 hrs., 7 min	4 hrs., 4 min	4 hrs., 29 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 363,440 hours.
Clearance Officer: Garrick Shear, (202) 622–3869 Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 95–19107 Filed 8–2–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 20, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0072.
Form Number: IRS Form 2119.
Type of Review: Extension.
Title: Sale of Your Home.
Description: Taxpayers who sell their main home use Form 2119, even if they had a loss, and whether or not they replace the home. The form is also used by taxpayers age 55 or older who elect to exclude the gain on the sale of their main home. The information is used to determine whether or not the sale has been reported correctly.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,377,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—46 minutes
Learning about the law or the form—19 minutes
Preparing the form—1 hour, 31 minutes
Copying, assembling, and sending the form to the IRS—20 minutes
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 4,034,610 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 95–19106 Filed 8–2–95; 8:45 am]
BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 149
Thursday, August 3, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 10, 1995.
PLACE: 2033 K St., N.W., Washington, DC 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED:
Enforcement matters.
CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202–254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–19298 Filed 8–1–95; 8:45 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 31, 1995.
PLACE: 2033 K St., NW., Washington, DC 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED:
Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202–254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–19299 Filed 8–1–95; 3:40 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 31, 1995.
PLACE: 2033 K St., N.W., Washington, DC 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule Enforcement Review.
CONTACT PERSON FOR MORE INFORMATION:
Jean A. Webb, 202–254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–19300 Filed 8–1–95; 3:40 pm]
BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 8, 1995 at 10:00 a.m.
PLACE: 999 E St. NW., Washington, DC.
STATUS: This Meeting Will Be Closed to the Public.
ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
DATE AND TIME: Thursday, August 10, 1995 at 10:00 a.m.
PLACE: 999 E St. NW., Washington, DC (Ninth Floor).
STATUS: This Meeting Will Be Open to the Public.
ITEMS TO BE DISCUSSED:
Correction and Approval of Minutes.
Any matters continued from meeting of August 3, 1995.
Administrative Matters.
PERSON TO CONTACT FOR INFORMATION:
Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.
Delores Hardy,
Administrative Assistant.
[FR Doc. 95–19276 Filed 8–1–95; 3:29 pm]
BILLING CODE 6715–01–M

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Federal Register

Thursday
August 3, 1995

Part II

Department of the Interior

Bureau of Indian Affairs

Tribal Consultation of Indian Education Topics; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation of Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Johnson O'Malley Program Issues.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) is continuing its consultation effort to obtain written comments concerning proposed methods of determining Johnson O'Malley (JOM) contract funding amounts to be transferred to the Tribal Priority Allocation (TPA) category or the Special Programs and pooled overhead category of the Tribal Budget System.

DATES: Written comments should be mailed, to be received, on or before August 25, 1995.

ADDRESSES: Mail or Handcarry comments to the Bureau of Indian Affairs, Office of Indian Education Programs, Mail Stop 3512–MIB, OIE–21, 1849 C Street NW., Washington, DC 20240, Attention: Dr. John Tippeconnic; or, may be hand delivered to Room 3512 at the same address. Telefax responses may be transmitted to (202) 219–9583.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Geboe or Ms. Loretta Draper at the above address or call (202) 219–1127.

SUPPLEMENTARY INFORMATION: The publication of this notice is a follow-up to consultation meetings conducted by the BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education program. Prior to finalizing the BIA's choice of method to be used in identifying tribal base funding levels for the JOM program, it is requesting final comments and viewpoints on the two methods under consideration.

Both the House and Senate Reports accompanying the BIA's FY 1995 appropriation act transferred the JOM program from the "other recurring programs" account to the "TPA" account in the BIA's budget. Senate Report No. 103–294 stated that a portion of the JOM funds may be transferred to the Special Programs and pooled overhead category where such funding is not under tribal contracts i.e., states and public school districts. House Report No. 103–551 required the BIA to consult with tribes on the development of a method of determining each tribe's portion of the JOM program and to publish such proposed methods in the **Federal Register** prior to finalizing such a distribution method.

During October, 1994, the BIA formally consulted with Indian Country, as required by Pub. Law 95–561, and the FY 1995 House and Senate Report(s) language on the development of such a distribution method. Eleven regional tribal consultation meetings were held across the country with more than 2700 comments received on the various education consultation items. Most of the comments received on the JOM item were in opposition to the movement of the JOM program funds to the TPA budget category and preferred the program to be administered as currently is by formula distribution of funds. The majority of commentors chose not to agree with the Bureau's proposals and proposed another option for the Bureau to consider.

Based on information received from the Congress and through the Tribal Consultation process, the Bureau is seeking input from Indian country on two final proposed distribution methodologies. The following methods are being considered by the BIA for determining each tribe's share of the JOM program funds for allocation to the TPA budget category:

Method A: JOM funds distributed to tribes under the TPA, which are earmarked for supplemental educational activities, according to tribal membership.

Method B: JOM funds distributed to tribes and non-tribal JOM contractors, which are earmarked for supplemental educational activities, according to service population.

Explanation of Method A: The following steps would be initiated for purposes of implementing this method:

1. Identify the number of JOM students by tribal enrollment in Federally recognized tribes.
2. Divide the total amount JOM funds by the number of FY 1995 students to arrive at an equal share per student.
3. Distribute the JOM funds by tribal enrollment times equal share.
4. Establish the base for each tribe under the TPA.

Explanation Method B: The following steps would be initiated for purposes of implementing this method:

1. Identify the number of JOM students served by all JOM contractors.
2. Using the FY 1995 distribution method, identify the amount of JOM funds each tribal JOM contractor receives to establish a base for each tribe.
3. Identify the amount of JOM funds each non-tribal JOM contractor (State and Public School Districts) receives.
4. Add another Line Item in budget, Special Programs and Pooled Overhead category entitled "Non-Tribal JOM Contractors".
5. Place the proportionate share of JOM funds that are provided to tribes, as tribal JOM contractors, for all JOM students served into each tribe's line item under the TPA.
6. Place the proportionate share of JOM funds that are provided to States and public school districts, as JOM contractors, for all JOM students served into the Non-Tribal JOM contractor line item under the TPA category.

Dated: July 20, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–18909 Filed 8–2–95; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
August 3, 1995

Part III

Department of Transportation

Coast Guard

33 CFR Parts 126 and 127
Waterfront Facilities Handling Liquefied Hazardous Gas; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 126 and 127

[CGD 88–049]

RIN 2115–AD06

Waterfront Facilities Handling Liquefied Hazardous Gas

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations for waterfront facilities capable of transferring liquefied hazardous gas, or "LHG", in bulk, to or from vessels. The transfer of LHG prevents hazards similar to those from the transfer of liquefied natural gas, or "LNG", yet facilities capable of transferring LNG in bulk are subject to much more stringent requirements. The amended regulations will strengthen the requirements for the transfer of LHG and move those requirements from part 126 to part 127.

DATES: This rule is effective on January 30, 1996. The Director of the Federal Register approves as of January 30, 1996 the incorporation by reference of certain publications listed in this rule.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 88–049], U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Chappell, Port Safety and Security Division (G–MPS–3), by telephone (202) 267–0491 or fax (202) 267–0506.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Gary W. Chappell, Project Manager, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Regulatory History

On October 5, 1993, the Coast Guard published a notice of proposed rulemaking entitled "Waterfront Facilities Handling Liquefied Hazardous Gas" in the **Federal Register** (58 FR 51906). The Coast Guard received 26 Letters commenting on the proposal. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard has determined that it needs to regulate transfers of LHG, in bulk, to and from vessels at waterfront facilities. Data collected over the last 10 years on deaths, injuries, and property damage resulting from accidents during these transfers indicate that restrictions on equipment and on operating procedures will prevent and mitigate damage and personal injuries. Although the transfer of LHG falls under the existing requirements in 33 CFR part 126, the available data indicate that these requirements are not adequate. LHG presents hazards similar to those of LNG, when transferred in bulk, yet facilities that transfer LNG fall under much stricter regulatory requirements than those that transfer LHG. The Coast Guard is establishing new regulations for waterfront facilities handling LHG in 33 CFR part 127 that expand upon the regulations in part 126 and include requirements similar to those for LNG facilities already in part 127.

This rule is being implemented under the authority of the Ports and Waterways Safety Act (PWSA), as amended (33 U.S.C. 1221 et seq.) There, Congress declared that the safety of vessels and protection of the marine environment are matters of major national concern and that increased supervision of activities in ports is necessary. The PWSA authorized the Secretary of Transportation to take whatever measures are necessary to protect structures or areas of land in or adjacent to the navigable waters of the United States, including measures for the loading, movement, unloading, storage, and other handling of hazardous materials on waterfront facilities. The Coast Guard maintains that the hazards presented by these materials justify the measures in this rule for the handling of LHG.

Discussion of the Comments on and Changes to the NPRM

The Coast Guard received 26 letters commenting on the notice of proposed rulemaking (NPRM) entitled "Waterfront Facilities Handling Liquefied Hazardous Gas" published in the **Federal Register** on October 5, 1993. It considered those comments in developing this final rule.

1. Two comments stated that the regulations duplicate the requirements of both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA). The comments suggested that the Coast Guard work with these two agencies to avoid duplicative requirements and, thereby, reduce the regulatory burden on the industry. The Coast Guard concurs in part. So far as OSHA, EPA, or other agencies of the Federal government have established similar requirements, this rule permits the use of documents, procedures, or training established under those requirements to satisfy requirements of the Coast Guard. For example, this rule allows the substitution of requirements of OSHA (29 CFR 1910.120) and EPA (40 CFR 311.1), on training in hazardous-waste operations and emergency response, to meet the requirements in § 127.1302, so far as such training addresses these requirements.

Representatives of the Coast Guard and OSHA met to resolve potential duplicate requirements, however, and found that they do not exist to the extent suggested by the commenters. Under 29 CFR 1910.5(b), the requirements in 29 CFR part 1910 do not apply within the "marine transfer area for LHG" because the Coast Guard has elected to regulate this area. Requirements of OSHA do apply where the Coast Guard has not established comparable requirements within the marine transfer area. In spite of attempts to harmonize these requirements with those of other agencies, some differences persist because these address the hazards of operations on waterfront facilities transferring LHG in bulk more specifically than do the general standards for industry at large developed by OSHA and EPA. But these are matters of particularity, not outright conflict.

2. Coast Guard regulatory standards now require the primary weights and measures to be specified in metric units. Therefore, though no comment raised this issue, this rule specifies all weights and measures in metric units followed by English equivalents. The conversions of weights and measures ensure that equipment or procedures complying with the English values in the NPRM will also comply with the metric values in this rule. So the conversions should have no impact on compliance with this rule.

3. One comment recommended that the most current edition of the materials incorporated by reference be cited in this rule. The Coast Guard concurs, since the most current edition represents the latest thought and since it is difficult for industry to obtain copies of outdated standards anyway. Section 127.003 of this rule reflects the latest edition of each publication. Because the NPRM cited what are still the latest editions of (1) ANSI S12.13, Part 1, Performance Requirements, Combustible Gas Detectors, (2) API RP 2003, Protection Against Ignitions Arising Out of Static, Lighting and Stray Currents, and (3) ASTM F–1121, International Shore Connections for Marine Applications, this rule cites the same editions. Because ANSI B16.5, Pipe Flanges and Flanged Fittings, has subsumed its standard, ANSI B16.31, Non-Ferrous Pipe Flanges, has dropped from the list of material incorporated by reference.

The Coast Guard compared the older editions of the standards listed in the NPRM that apply to LHG with the latest editions listed in this rule and found no significant changes between them. It did the same with editions that apply to LNG facilities and likewise found no significant changes between them. Consequently, the updating of standards incorporated by reference will have no impact on existing LNG facilities.

4. Three comments asked that existing LHG facilities be grandfathered out of the standards incorporated by reference in § 127.003. The Coast Guard does not concur. These standards are widely accepted and used by industry. They are minimal. To accept less would not achieve the desired level of safety. However, the COTPs may approve alternatives for existing facilities built to different standards if the alternatives yield an equivalent level of safety.

5. Seven comments sought clarification of the definition of the "marine transfer area for LHG" in § 127.005. The Coast Guard believes that it has adequately defined this area. The area encompasses the pier or wharf in its entirety, including the cargo manifold, as well as that part of piping cargo and vapor inland from the pier to the first shutoff valve. Here, "inland" refers to the direction along the piping away from the vessel. Some of the confusion on this issue resulted from a misprint in the NPRM that replaced "LNG" with "LHG" in the definition of "Marine Transfer Area for LNG". This error has been corrected in this rule. Any facility operator uncertain where the area ends should reach a written understanding with the COTP on where the COTP will enforce this rule.

6. Three comments stated that it would be difficult to provide specific vessel-arrival and cargo data in the "Letter of Intent," as required by § 127.007(d)(5). The comments asserted that LHG facilities rarely know in advance the type of vessel or frequency of arrivals. Section 127.007(d)(5) does not require facilities to list specific vessel-arrival or cargo data. The purpose of the "Letter of Intent" is to give the COTP general notice of both the type and estimated number of LHG vessels that may call at the facility and the size of shipments. This information can easily be obtained from the facility-design specifications.

7. Two comments requested a 60-day phase-in period to allow time to prepare the letter of intent required under § 127.007 and a 6-month phase-in period to allow time to prepare the manuals required under § 127.019. The effective date of this rule will occur 180 days after publication of this rule in the **Federal Register**. This delay should provide enough time to comply with the requirements of this rule, including submitting, and if necessary amending, the letter of intent and all manuals.

8. Four comments requested clarification of the length of cargo piping that must be cleared of LHG before a vessel may disconnect. According to the comments, § 127.1101(c) requires the entire length of the piping from the dock to the storage tank to be cleared of LHG. This length of piping can run several hundred feet and take up to four hours to clear, with no significant improvement in safety. Section 127.1101(c) states that hoses and loading arms must be cleared. It does not refer to the piping. This rule does not require any part of the piping to be cleared of LHG before the disconnecting of the vessel.

9. Two comments alleged a conflict between §§ 127.1101 and 127.1321. Section 127.1101(c) requires bleeds and vents to allow LHG or its vapor to discharge to a safe area, while § 127.1321 bans the intentional release of LHG into the environment. This rule defines "release," in § 127.005, to clarify this term. It allows a minor release of LHG or its vapor under certain conditions. But it in no way authorizes releases prohibited by other law. Section 127.110(c) clarifies the term "safe area" by adding the phrase "such as a tank or flare" to the end of the last sentence.

10. Two comments recommended limiting the applicability of § 127.1102(a) to "each hose used in the marine transfer of LHG or its vapors." These requirements are to govern hoses used to transfer LHG or its vapors to or from vessels within the marine transfer area. In some cases hoses not used for the transfer of LHG or its vapors to or from vessels may be in the area, or hoses used for it may be outside the area. To clarify this point this rule revises § 127.1102(a).

11. Three comments asked that continuously manned docks be acceptable as a substitute for alarms on loading arms under § 127.1102(b)(4). While an alarm is the preferred method of alerting personnel that the loading arm is approaching the limits of its extension, personnel carefully watching the arm's extension can perform it, too. This rule amends § 127.1102(b)(4) to allow a personnel watch to substitute for an alarm if the operations manual establishes such a watch.

12. Two comments requested clarification of the term "new construction" in § 127.1103(a). The term "new" is defined in § 127.005. The term "new construction" means any piers, wharves, buildings, or pipelines constructed after the effective date of this rule. It also covers replacement of any existing piers, wharves, buildings, or pipelines. But it does not cover minor repairs or repairs made in kind to these.

Similarly, this rule modifies § 127.1105 to clarify that it applies only to new waterfront facilities handling LHG, and to all new construction in the marine transfer area for LHG of existing facilities. An introductory text, new paragraph (a) of § 127.1105, clarifies this point.

13. Five comments requested clarification of the requirements in § 127.1103. They wanted to know whether the substructure at an existing LHG facility has to comply with the fire-endurance requirements. Because industry standards generally grandfather existing construction, § 127.1103(b) is intended to apply only to new facilities and new construction as defined in § 127.005. To clarify this point, this rule revises § 127.1103(b) to read: "Each substructure on a new waterfront facility handling LHG, and all new construction in the marine transfer area for LHG of each existing facility, * * *."

14. One comment sought amendment of § 127.1107 to allow the use of equipment approved by organizations other than Underwriters Laboratories, Inc., and Factory Mutual Research Corporation, which are the only organizations whose approval NFPA 70 recognizes. While the Coast Guard has reserved the authority to allow approvals by other organizations acceptable to the Commandant in regulating vessels, it will not reserve as much in regulating waterfront facilities. Unlike vessels, waterfront facilities are subject to State and local authorities, who generally apply NFPA standards. If the Coast Guard applied standards different from those applied by State and local authorities, facility operators would have a harder time determining what equipment they could use. Consequently, § 127.1107 remains unchanged. Requests to recognize

approvals by other organizations should go to the appropriate NFPA committee.

15. Two comments requested clarification of § 127.1109 to indicate what surface would be the reference point for measuring illumination and where the requirement of 11-lux illumination applies. This rule revises § 127.1109 to indicate that illumination should be measured 1 meter (3.3 feet) above the walking surface and that the requirement of 11-lux illumination applies to the "remainder of the marine transfer area for LHG".

16. Two comments asked that § 127.1203 allow the use of fixed gas-detectors. The Coast Guard concurs, and § 127.1203 of this rule allows the use of fixed as well as portable gas-detectors.

17. Four comments recommended that § 127.1203(b) exempt facilities handling anhydrous ammonia from its requirement of gas-detectors. The comments asserted that anhydrous ammonia is detectable by smell at 1–2 parts per million (ppm) and is very offensive at 15–20 ppm, both amounts falling well below the Permissible Exposure Limit (PEL) of OSHA. Smell can indeed determine the presence of ammonia, although it cannot determine the concentration. That section does exempt facilities that handle anhydrous ammonia from its requirement of gas detectors. However, such facilities must assume that the PEL of OSHA had been exceeded whenever smell determines the presence of ammonia, unless a gas-detector determines a lower concentration.

18. One comment suggested that gas-detectors are of little value because products such as butane, propane, and propylene quickly evaporate when released. The Coast Guard does not concur. Although LHGs quickly evaporate when exposed to atmospheric temperature and pressure, many LHG vapors are heavier than air. Their vapors may remain at ground level, possibly in explosive concentrations, or may accumulate in sumps or nearby buildings, possible presenting hazardous conditions.

19. Six comments requested clarification of whether pumps or compressors not used in the transfer of LHG from a vessel to the facility or vice versa—for example, those used in the transfer of LHG to rail cars—are subject to the emergency-shutdown requirements in § 127.1205(c). The comments contend that for safety reasons facilities must be free to transfer LHG within the facility. Section 127.1205(c) applies only to those pumps and compressors that transfer LHG, or its vapors, to or from the vessel. It does not apply to other pumps or compressors within the facility. This rule now indicates that, when activated, the actuator must automatically shut down "any terminal pumps or compressors used to transfer LHG, or its vapors, to or from the vessel."

20. Eight comments recommended that the warning alarm proposed by § 127.1207 consist in either a light or a siren, not in both. The alarm required by this rule, like that proposed, consists in both a light capable of being seen, and a siren capable of being heard, at one mile. Three stated that the audibility of a siren may be diminished by engine-room noise aboard approaching vessels. Two stated that the visibility of a light may be limited by hilly terrain, river bends, and other obstructions. One stated that the alarm would cause confusion because without prior notice the public would not understand its significance.

The purpose of the alarms is to warn both persons at the facility and the general public, including passing marine traffic, of a hazard at the facility. The Coast Guard believes that the prescribed alarms, together, are the best means to warn everyone intended. It agrees that under certain circumstances one of the alarms may not be effective, but believes that this fact further validates the need for both alarms, rather than for either. A facility can always ask the COTP for approval of an alternative arrangement under § 127.017. Although alarms are more effective if a community knows what to expect, the Coast Guard believes that the facility operator should determine how to educate the community. Therefore, it has kept § 127.1207 as it proposed it.

21. Seven comments suggested that no facility handling toxic LHGs be responsible for providing respiratory protection under § 127.1209 to personnel other than its own (personnel servicing, delivering to, or belonging to the vessel, or servicing or delivering to the facility) who may have reason to be in the marine transfer area. A facility may not always know who these personnel are or how many of them would be in the area at any given time. One comment recommended that the respiratory protection be required only during transfers. the Coast Guard agrees that it may be difficult and impracticable for a facility to provide a sufficient number of respirators for everyone who may pass through the area. Accordingly, § 127.1209 requires facility operators to provide respiratory protection only for their employees since only those employees are likely to be in the area for any significant amount of time during transfers. That section also clarifies that the respiratory protection needs to be provided only during transfers.

22. Five comments recommended that the Coast Guard delete certain training requirements in § 127.1302 when a facility has fire or medical department of the facility or when such services are readily available from local governmental agencies. The Coast Guard does not concur. In many emergencies, properly trained transfer personnel will be the most effective resource to take immediate corrective action and thereby prevent minor incidents from becoming catastrophes. In some, even fire and medical departments located on the facility, but away from the marine transfer area, may not be able to arrive on scene in time. In others, it may be more effective for the facility to evacuate its transfer personnel and allow others to respond. In any event, properly trained transfer personnel afford the facility greater flexibility in determining how to respond.

To avoid unnecessary duplication, § 127.1302(d) accepts training performed to meet requirements of OSHA (29 CFR 1910.120) and EPA (40 CFR 311.1) on hazardous-waste operations and emergency response, to the extent that this training addresses the subjects in § 127.1302(a).

23. Two comments recommended that training in the "configuration and limitations of LHG vessel cargo systems", required by proposed § 127.1302(a)(7), be deleted. The comments stated that it is difficult for a facility to forecast the types of LHG vessels that will arrive at the terminal. Moreover, personnel of a facility do not board the vessels. This requirement does not mandate training in cargo systems of specific LHG vessels. Rather, it requires transfer personnel to be knowledgeable in the "configuration and limitations" of cargo systems of LHG vessels that may call at the facility. This knowledge is necessary so that these personnel understand the impact that their acts can have upon the vessel. Although changed editorially and renumbered as § 127.1302(a)(6), proposed § 127.1302(a)(7) remains unchanged in substance.

24. Four comments recommended that the requirements in § 127.1311 on movement and control of vehicles not apply to an LHG facility that handles only toxic cargoes since these cargoes do not present a fire hazard. One comment stated that this requirement would leave a large part of the facility inaccessible to vehicular traffic with no appreciable increase in safety.

The Coast Guard does not concur. Approaches to the marine transfer area, as much as the area itself, must stay clear of vehicles to allow adequate escape routes and allow access for emergency vehicles in cases of injury as well as fire. Even if the LHG is not flammable, the pier, its equipment, or the vessel can catch fire and necessitate this access. Furthermore, similar requirements in 33 CFR part 126 already apply to existing LHG facilities. However, for consistency with the requirements for LHG facilities, the distance from storage containers, manifolds, loading arms, or independent mating flanges containing a flammable liquid or vapor has dropped from 30 to 15 meters.

25. Two comments suggested that § 127.1313 not apply to facilities that handle toxic LHGs. The Coast Guard does not concur. It is essential that the amount of hazardous material stored in the marine transfer area be restricted, to limit the risk of catastrophe. This material may still be stored nearby, outside the area.

26. Two comments stated that § 127.1313 prohibits the storage of fuel oil for such equipment as an emergency generator. The Coast Guard does not intend to preclude facilities from storing reasonable amounts of fuel oil for such equipment. Accordingly, § 127.1313(a)(2) of this rule allows facilities to store, in the marine transfer area, fuel "required by * * * emergency equipment" in the area. The term "required by" should limit the amount of fuel stored to the amount necessary in an emergency.

27. Four comments recommended that the Coast Guard delete the requirements in § 127.1315(i) for tests of the emergency shutdown and of the warning alarm before each transfer. The comments asserted that these tests would disrupt facilities with frequent transfers and that repeated tests of the alarm might cause a local community to disregard it altogether. One comment recommended tests of these items every month, two recommended tests of them every two months, and one recommended tests of them every year. The Coast Guard concurs that tests before each transfer would be an excessive burden for some facilities. OSHA (29 CFR 1910.165(d)(2)) requires tests every two months. For the emergency shutdown, tests every two months should be adequate. But, for the warning alarms required under this rule, which can upset a local community, tests every six months would be more appropriate. These tests could be easier to conduct in conjunction with a community-education campaign to increase awareness of their meaning. Sections 127.1315(i) (3) and (4) have been deleted from the final rule. Sections 127.1407 (e) and (f), requiring tests of the emergency shutdown every two months and of the warning alarm every six months, have been added to the final rule. If transfers of LHG occur less often than the designated intervals, these tests may be conducted before each transfer instead of at the designated interval.

28. Nine comments stated that the requirement in § 127.1319(a), that the facility notify the COTP 24 hours before a transfer of LHG, is unrealistic and perhaps unattainable because a facility rarely knows that far in advance the time a vessel will arrive. Frequent changes in the time, due to weather, tides, schedule changes, or other operational constraints, do occur. Two comments suggested that the COTP and the facility should agree on how far in advance the facility should notify the COTP. Three comments recommended a requirement that the facility notify the COTP 4 hours before a transfer. The purpose of any such requirement is to notify the Coast Guard of transfers early enough that its personnel can periodically witness the transfers. Otherwise, the Coast Guard cannot effectively enforce its rules. 33 CFR 126.27 now requires "prior notification" without specifying the amount. The Coast Guard believes that reducing the notice from 24 to 4 hours is reasonable and has modified § 127.1319(a) of this rule accordingly. (The Coast Guard nonetheless encourages facilities to give as much notice as they can so the Coast Guard can deploy its resources as efficiently as it can.)

29. Three comments complained that § 127.1319 does not clearly indicate whether the person in charge (PIC) may supervise more than one transfer at one time. Section 127.1319(b)(1) insists that the PIC have "no other assigned duties during the transfer." Supervising an additional transfer would constitute having another assigned duty. Generally, it is not safe for a single PIC to supervise more than one transfer at one time. However, supervising multiple transfers may be safe because of other trained personnel involved in the transfers or it may become necessary because of an emergency. To clarify this issue, a new § 127.1319(b)(2) indicates that the PIC may not supervise transfers to or from more than one vessel at a time unless authorized by the COTP. Proposed paragraphs (2) and (3) have become (3) and (4) respectively.

30. One comment was concerned that § 127.1319(c)(3)(i) requires a facility to discontinue the transfer of LHG that is not flammable when an electrical storm approaches. Another was concerned that § 127.1319(c)(3)(ii) requires the facility to discontinue the transfer in cases of routine operational releases. The Coast Guard concurs and has amended § 127.1319(c)(3) to clarify both issues.

31. One comment stated that the rule does not clearly require cargo hoses and loading arms to be drained and depressurized before being disconnected from a vessel. Section 127.1101 requires "an isolation valve with a bleed connection, such that transfer hoses and loading arms can be blocked off, drained or pumped out, and depressurized before disconnecting"; however, nothing requires any act. To clarify this point a new § 127.1319(d) requires that hoses and loading arms be drained and depressurized before being disconnected from a vessel. (Two major casualties on waterfront facilities resulted from not carrying out this procedure.)

32. Twelve comments asked that the Coast Guard define "release" as used in § 127.1321. The NPRM would have required that, upon "release" of LHG or its vapor, a facility stop the transfer, notify the COTP, and not resume the transfer until authorized by the COTP. Because it specified no amount of "release", it would have required these measures even if the amount would not cause harm to human health or the environment. The commenters expressed concern that, as a rule, it would disrupt operations for minor releases that typically accompany connections and disconnections of hoses, tank gauging, sampling, and other routine operations. For example, it could prohibit the use of slip tubes (devices for gauging) because using a slip tube releases minor amounts of vapor.

The Coast Guard agrees that a definition of "release" is necessary to determine when a transfer should stop. The Coast Guard has never intended to prohibit minor, routine releases unless they cause harm to human health or the environment. It has defined "release" in § 127.005 of this rule to clarify for which releases the transfers must stop and be reported to the COTP. For the purposes of this part a "release" is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except a minor release of LHG, or its vapor, that may occur during the routine handling of LHG. No release is minor if it creates an atmosphere that exceeds the Lower Flammable Limit (LFL) for a flammable product or any PEL listed in 29 CFR part 1910.1000, Table Z–1 or Z–2, for a toxic product. This definition of "release" is similar to that of

"discharge" in the National Response Plan (40 CFR 300.5) except that it also looks to flammability and exposure. Flammability and exposure make sense as criteria because releases of some LHGs will meet them long before the releases amount to a "reportable quantity" under 40 CFR part 302, and it is difficult to verify the size of a release of liquefied gas after it vaporizes.

To further reduce the potential for frequent activation of the warning alarms, § 127.1321(a)(2) now requires their activation only for releases that "threaten vessels or persons outside the immediate transfer area." This should eliminate the need to activate the warning alarms for releases that, while more than minor, are small in that they do not threaten persons outside the area. Generally, other means will notify persons inside the area.

33. Three comments disliked the requirement in § 127.1325(c) to provide security guards. They argued that facilities cannot identify personnel, check ID cards, escort personnel, or perform other activities normally done by the guards. One suggested that facilities using public docks be exempt because they control neither the docks nor the persons who use them. Two recommended that § 127.1325 apply only during transfers.

The Coast Guard does not concur. Access to the transfer area must be limited to reduce the risk of fire, explosion, or other calamities resulting from vandalism or sabotage. Unless the piping and storage tanks on the facility contain no LHG, and no LHG vapors, the potential for a hazardous release exists even when no transfer is in progress. In many cases, access to critical parts of the area may be effectively restricted by means other than guards. (Unfortunately, these means and where they will be acceptable are too numerous to list within this rulemaking. Section 127.1325(c) lets the COTP approve alternative means such as electronic monitoring or random patrols where the stationing of guards is impracticable.)

34. One comment claimed that, because of the manpower entailed, it was not reasonable to escort each person entering a facility. The Coast Guard acknowledges that there are other good ways to prevent sabotage and vandalism. Ensuring that persons entering the facility have legitimate business on the facility, and display visitors' badges to show they have been identified, should suffice. Badges will help employees distinguish between authorized and unauthorized personnel. Section 127.1325(b) reflects this change.

35. Six comments objected to conducting static liquid-pressure (hydrostatic) tests of the piping, hoses, and loading arms of the LHG-transfer system, as required by § 127.1407(a). Instead, they suggested using alternatives such as pneumatic tests.

Hydrostatic tests of cargo piping and hoses are already the rule of 33 CFR 126.15(o)(7)(iv). No comments indicated that this rule has disrupted facilities. The Coast Guard believes that these tests provide the safest and most effective means of determining the integrity of piping and hoses. Nevertheless, the COTP may allow alternatives under § 127.017, if they provide the same degree of safety. (Authorities have granted waivers for some existing facilities under 33 CFR 126.11, and those waivers should continue.) To ease compliance, § 127.1407(b) reduces the pressure for the test from 1.5 times the maximum allowable working pressure (MAWP) to 1.1 times the MAWP because some LHGs are normally transferred at low working pressures.

36. One comment suggested recasting § 127.1407(a) to clarify which components of the cargo system need tests. Section 127.1407(a) applies only to that part of the system located in the marine transfer area. The section now says as much.

37. Four comments recommended that the firefighting requirements in §§ 127.1501 through 127.1511 not apply to facilities that handle only toxic LHGs. Six comments suggested that the water-systems requirements in § 127.1507 not apply to these facilities. Four comments recommended that the requirements of an international shore-connection in § 127.1511 not apply to these facilities. The Coast Guard concurs with these comments in part.

Section 127.1501 requires a facility to determine the number, kind, and site of equipment for fire detection, protection, control, and extinguishment on the basis of local conditions and hazards within the facility. This lets the facility determine the number, kind, and site of equipment for these purposes on the basis of its design and anticipated risks.

A facility that handles only toxic LHGs must determine whether its design and anticipated risks call for the equipment specified in § 127.1507. Although no water may be needed for fighting fire in LHG when a facility does not handle flammable LHG, it is a prime component of a facility's overall fire-control efforts. It may be necessary to protect the pier, the buildings, or vessels even if not to fight a fire involving LHG. It is an excellent cooling agent; it effectively protects personnel from fire and protects sprayed areas from radiated heat. It can also remove some toxic gases from the air after a release of toxic LHG. Therefore, it is usually essential in mitigating death, injury, damage to equipment, and further spreading of a fire, even if the LHG is not flammable.

The international shore-connection is to protect vessels, not the facility. Therefore, the design and capability of vessels are more important than area features of the facility for one determining whether this equipment is necessary.

If, after careful consideration of its own design and of the anticipated risks, a facility that handles toxic LHGs decides it does not need the water supply required by § 127.1507, then it must justify this decision in the plan required by § 127.1501. The plan must consider pier and vessel fires in addition to cargo fires. Existing facilities may certify their own plans. New facilities, and facilities with any new construction, must have their plans reviewed and approved by the COTP.

An international shore-connection makes it possible for fittings with incompatible threads to connect. One is required on the facility so that vessels moored to the facility have a source of water for firefighting in case an onboard source of firefighting water is nonexistent or inadequate. Incompatible threads generally are not a problem for U.S.-flag vessels, and some facilities do not receive foreign-flag vessels. To account for this, § 127.1511 now requires an international shore-connection only for those facilities that receive foreign-flag vessels.

38. Five comments recommended that a facility with an on-site fire department or with access to a local department be exempt from the requirement in § 127.1505 to provide emergency outfits. The intent of this requirement is to enable rapid response for injured or trapped personnel. An on-site department with appropriate outfits will meet the requirement since the outfits have never had to be located within the marine transfer area. The Coast Guard agrees that in some cases an off-site response unit, if trained and if located close enough to the area, may be able to provide an effective response. To confer greater flexibility, § 127.1505, renamed "Emergency response and rescue", allows the use of either on-site or off-site response to emergencies. An on-site response unit must furnish the appropriate training and equipment, including outfits. Training and equipment that satisfy OSHA [29 CFR 1910.120] will satisfy the Coast Guard. An off-site response unit must enter a written agreement with the facility indicating the services it will perform and the time within which it will perform them to personnel in the area.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 127.003 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

This not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. A Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** A summary follows.

This rule may produce discounted costs of about $17.3 million over the next 25 years. Most of these costs will be borne by the waterfront facilities regulated, with the remainder borne by the Coast Guard. This rule will affect about 137 waterfront facilities. Over half of those facilities also handle products subject to the pollution-prevention regulations in 33 CFR parts 154 and 156, which contain similar requirements. Costs to industry will arise primarily from purchase, replacement, and maintenance of equipment, and secondarily from training personnel and from collecting information. This rule should produce benefits of about $4.8 million in discounted property damages prevented, of 6 deaths prevented, and of 147 injuries prevented over the next 25 years. The cost of achieving these benefits is less than the value of life based on willingness to pay, assumed by most economists; therefore, this rule is cost-beneficial. It may also produce environmental benefits by preventing the release of LHGs into the environment, although those benefits might be slight, over the same span. Further details on the costs and benefits of this rule appear in the Regulatory Evaluation.

No comments concerned this section or the draft Regulatory Evaluation. The changes made in this rule will slightly reduce the economic impact, but should not significantly reduce the benefits, of this rule. The most significant changes are: exempting existing facilities from certain design requirements, allowing an alternative to providing emergency outfits, allowing an alternative to having an alarm on a loading arm, clarifying when transfers must be shut down, shortening the time before transfers for notifying the Coast Guard, extending the frequency of certain tests, allowing fixed gas-detection systems to be used in lieu of portable gas-detectors, and exempting ammonia facilities from gas-detectors entirely.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This rule is not expected to affect any waterfront facilities owned or operated by a small entity. A recent review of the ownership and operation of waterfront facilities handling LHG in bulk did not reveal any owned by small entities as defined under the Regulatory Flexibility Act. No comments concerning small entities were received in response to the NPRM. An entity large or small, could avoid the impact of this rule by originating and receiving shipments of LHG in portable tanks, tank trucks, or rail cars rather than transferring in bulk from a vessel. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], and OMB has approved them. The section numbers and control numbers from OMB are as follows:

Section	Topic
127.007	Letter of intent.
127.015	Appeals.
127.017	Alternatives
127.019, 127.305, 127.1305.	Operations Manual.
127.019, 127.307, 127.1307.	Emergency Manual.
127.301, 127.1301	[Certification of PIC].
127.317, 127.1317	Decelaration of Inspection.
127.409, 127.1409	Records [of maintenance].
127.617, 127.1603	Hotwork [permits].

The estimated annual burden is significantly different from that estimated in the NPRM. That did not reflect the significantly reduced burden in subsequent years after the one-time initial burden of developing manuals. The following particulars apply:

DOT No: 2115.

(1) OMB Control No.: 0052.

Administration: U.S. Coast Guard.

Title: Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas (known to OMB as: Liquefied Natural Gas and Liquefied Hazardous Gas Waterfront Facilities)

Need for Information: To prevent, or mitigate the results of, release of liquefied natural gas and liquefied hazardous gases at waterfront facilities.

Proposed use of Information: To verify compliance with safety regulations and for program management, planning, and evaluation.

Frequency of Response: On occasion.

Burden Estimate: 3,531 hours per year.

Respondents: 137.

Forms: None.

Average Burden Hours Per Respondent: 3.1 hours per year.

(2) OMB Control No.: 0013.

Administration: U.S. Coast Guard.

Title: Welding and Hot-Work Permit

Need for Information: To restrict welding and other hot work on certain waterfront facilities to prevent fires and explosions.

Proposed use of Information: To ensure compliance with safety regulations.

Frequency of Response: On occasion.

Burden Estimate: 2,190 hours per year.

Respondents: 730.

Forms: None.

Average Burden Hours per Respondent: 2.5 hours per year.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. This rule sets minimal safety standards for the operation of waterfront facilities transferring LHG to or from vessels in bulk. Since these are minimal standards, State and local governments are free to set higher standards where necessary for local

conditions. Therefore, this rule preempts State action to set lower safety standards, but does not preempt State action to set higher safety standards, for waterfront facilities transferring LHG.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule will prevent or mitigate releases of LHG and will have no adverse impact on the environment. A Determination of Categorical Exclusion is available in the docket for inspection or copying at the address under **ADDRESS.**

List of Subjects

33 CFR Part 126

Explosives, Harbors, Hazardous substances, Reporting and recordkeeping requirements.

33 CFR Part 127

Harbors, Hazardous substances, Incorporation by reference, Natural gas, Security measures, Vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 126 and 127 as follows:

PART 126—[AMENDED]

1. The authority citation for part 126 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46(n)(4).

§ 126.05 [Amended]

2. Section 126.05(a) is amended by removing the words "other than the cargoes listed in § 126.10(d)".

§ 126.10 [Amended]

3. Section 126.10 is amended by removing paragraph (d).

§ 126.15 [Amended]

4. Section 126.15 is amended by removing paragraph (o).

PART 127—[AMENDED]

5. The authority citation for part 127 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46(n)(4).

6. The heading of part 127 is revised to read as follows:

PART 127—WATERFRONT FACILITIES HANDLING LIQUEFIED NATURAL GAS AND LIQUEFIED HAZARDOUS GAS

7. Section 127.001 is revised to read as follows:

§ 127.001 Applicability.

(a) Subparts A and B of this part apply to the marine transfer area for LNG of each new waterfront facility handling LNG and to new construction in the marine transfer area for LNG of each existing waterfront facility handling LNG.

(b) Subpart A of this part and §§ 127.301 through 127.617 apply to the marine transfer area for LNG of each active existing waterfront facility handling LNG.

(c) Sections 127.007 (c), (d), and (e); 127.019(b); and 127.701 of subparts A and B of this part apply to the marine transfer area for LNG of each inactive existing facility.

(d) Subparts A and C of this part apply to the marine transfer area for LHG of each active waterfront facility handling LHG.

(e) Sections 127.007 (c), (d), and (e); 127.019(b); and 127.1325(c) of subparts A and C of this part apply to the marine transfer area for LHG of each inactive facility.

8. Section 127.003 is revised to read as follows:

§ 127.003 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, Room 700, 800 North Capitol Street NW., Washington, DC 20408, and at the U.S. Coast Guard, (G–MPS), Room 1108, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected, are:

The American National Standards Institute (ANSI)

1430 Broadway, New York, NY 10018:

ANSI B16.5, Pipe Flanges and Flanged Fittings 1988, including 1992 Addenda and Errata	127.1102
ANSI S12.13, Part 1, Performance Requirements, Combustible Gas Detectors, 1986	127.1203

American Petroleum Institute (API)

1220 L Street NW., Washington, DC 20005:

API RP 2003, Protection Against Ignitions Arising Out of Static, Lightning and Stray Currents, 1991	127.1101

American Society of Mechanical Engineers (ASME)

345 East 47th Street, New York, NY 10017:

ASME B31.3, Chemical Plant and Petroleum Refinery Piping, 1993	127.1101

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103:

ASTM F–1121, International Shore Connections for Marine Applications, 1987 (reapproved 1993)	127.1511

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269:

NFPA 10, Portland Fire Extinguishers, 1994	127.603; 127.1503
NFPA 30, Flammable and Combustible Liquids Code, 1993	127.313; 127.1313
NFPA 51B, Fire Prevention in Use of Cutting and Welding Processes, 1994	127.405; 127.1405
NFPA 59A, Production, Storage, and Handling of Liquefied Natural Gas (LNG), 1994	127.101; 127.201; 127.405; 127.603

NFPA 70, National Electrical Code, 1993	127.107; 127.201; 127.1107
NFPA 251, Fire Tests of Building Construction and Materials, 1990	127.005

9. § 127.005 is amended by revising the definitions for the terms "active", "existing", "impounding space", "LNG vessel", and "new"; by removing the definitions for the terms "LNG waterfront facility" and "marine transfer area"; and by adding definitions for the terms "facility", "flammable product", "LHG", "LHG vessel", "liquefied hazardous gas", "LNG", "marine transfer area for LHG", "marine transfer area for LNG", "mating flange", "MAWP", "release", "toxic product", "waterfront facility handling LHG", and "waterfront facility handling LNG", in alphabetical order, to read as follows:

§ 127.005 Definitions.

* * * * *

Active means accomplishing the transfer of LHG or LNG, or scheduling one to occur, within 12 months of the current date.

* * * * *

Existing as applied to a waterfront facility means a facility handling LNG constructed or being constructed under a contract awarded before June 2, 1988, or a facility handling LHG constructed or being constructed under a contract awarded before January 30, 1996.

Facility means either a waterfront facility handling LHG or a waterfront facility handling LNG.

* * * * *

Flammable product means a product indicated by the letter "F" or by the letters "F+T" in Table 1 to this part.

* * * * *

Impounding space means a space formed by dikes and floors that confines a spill of LHG or LNG.

LHG means liquefied hazardous gas.

LHG vessel means a vessel constructed or converted to carry LHG, in bulk.

Liquefied hazardous gas (LHG) means a liquid containing one or more of the products listed in Table 1 to this part.

* * * * *

LNG means liquefied natural gas.

LNG vessel means a vessel constructed or converted to carry LNG, in bulk.

* * * * *

Marine transfer area for LHG means that part of a waterfront facility handling LHG between the vessel, or where the vessel moors, and the first shutoff valve on the pipeline immediately inland of the terminal manifold or loading arm, including the entire part of a pier or wharf used to serve LHG vessels.

Marine transfer area for LNG means that part of a waterfront facility handling LNG between the vessel, or where the vessel moors, and the last manifold or valve immediately before the receiving tanks.

Mating flange means that flange in the product-transfer pipeline on a waterfront facility handling LHG or a waterfront facility handling LNG that connects this pipeline to the pipeline or transfer hose of the vessel.

* * * * *

MAWP means maximum allowable working pressure.

New as applied to a waterfront facility means a facility handling LNG constructed or being constructed under a contract awarded on or after June 2, 1988, or a facility handling LHG constructed or being constructed under a contract awarded on or after January 30, 1996.

* * * * *

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except a minor release of LHG or its vapor, that may occur during the routine handling of LHG. No release is minor if it creates an atmosphere that exceeds the Lower Flammable Limit (LFL) for a flammable product or any Permissible Exposure Limit (PEL) listed in 29 CFR 1910.1000, Table Z–1 or Z–2, for a toxic product.

Toxic product means a product indicated by the letter "T" or by the letters "F+T" in Table 1 to this part.

Waterfront facility handling LHG means any structure on, in, or under the navigable waters of the United States, or any structure on land or any area on shore immediately adjacent to such waters, used or capable of being used to transfer liquefied hazardous gas, in bulk, to or from a vessel.

Waterfront facility handling LNG means any structure on, in, or under the navigable waters of the United States, or any structure on land or any area on shore immediately adjacent to such waters, used or capable of being used to transfer liquefied natural gas, in bulk, to or from a vessel.

§ 127.007 [Amended]

§ 127.009 [Amended]

§ 127.013 [Amended]

§ 127.019 [Amended]

§§ 127.007, 127.009, 127.013, 127.019 [Amended]

10. Part 127 is amended by adding the phrase "LHG or" before the term "LNG" wherever the latter appears in the following:

a. § 127.007(c).
b. § 127.007(d)(5).
c. § 127.007(d)(6).
d. § 127.007(e)(2).
e. The introductory text of § 127.009.
f. The introductory text of § 127.013(a).
g. § 127.019(b).

§ 127.011 [Amended]

11. § 127.011 is amended by revising the heading to read "Inspections of Waterfront Facilities."

§ 127.019 [Amended]

12. § 127.019(c) is amended by removing the words "§ 127.305 and the Emergency Manual meets § 127.307" and adding in their place the words "§ 127.305 or § 127.1305 and that the Emergency Manual meets § 127.307 or § 127.1307".

Subparts B, C, D, E, F, G, and H—[Amended]

13. Subparts C, D, E, F, G, and H of this part are amended by removing their headings and leaving those headings as undesignated text headings, by removing the undesignated text heading "Fire Equipment" before § 127.601, and by removing the undesignated text heading "Fire Protection" before § 127.613; and Subpart B is amended by revising its heading to read as follows:

Subpart B—Waterfront Facilities Handling Liquefied Natural Gas

§§ 127.101, 127.109, 127.111, 127.113, 127.203, 127.207, 127.305, 127.313, 127.315, 127.319, 127.607, 127.609, 127.611, 127.613, 127.615, 127.701, 127.703, 127.705, and 127.711 [Amended]

14. Part 127 is amended by replacing the words "marine transfer area" wherever they appear with the words "marine transfer area for LNG" in the following:

a. The introductory text of § 127.101.
b. § 127.109(a).
c. § 127.111(a).

d. § 127.113(a), introductory text.
e. § 127.203.
f. §§ 127.207 (a) and (b).
g. §§ 127.305 (d) and (e).
h. § 127.313(a) introductory text.
i. § 127.315(g).
j. §§ 127.319 (a)(1) and (b)(3)(i).
k. The introductory text of § 127.603.
l. § 127.607(a).
m. § 127.609(a).
n. § 127.611.
o. § 127.613.
p. § 127.615.
q. The heading of § 127.703.
r. § 127.703(a), introductory text, and (b).
s. The introductory text of § 127.705.
t. § 127.711.

§ 127.105 [Amended]

15. § 127.105 is amended by revising the heading to read "Layout and spacing of marine transfer area for LNG."

§§ 127.103, 127.105, 127.301, 127.303, 127.305, 127.307, 127.309, 127.317, 127.319, 127.321, 127.401, 127.703, and 127.711 [Amended]

16. Part 127 is further amended by replacing the word "facility" with the phrase "waterfront facility handling LNG" wherever it appears in the following:
a. § 127.103(a).
b. § 127.105(a).
c. §§ 127.301(a) introductory text, and (b).
d. § 127.303.
e. § 127.305(d).
f. § 127.307(f).
g. § 127.309(a).
h. §§ 127.317 (b) and (c)(1).
i. § 127.319(a) introductory text.
j. § 127.321(a) introductory text.
k. § 127.401.
l. §§ 127.703 (a)(1) and (b).
m. § 127.711.

§ 127.405 [Amended]

17. § 127.405(a)(1) is amended by replacing the words "subparts B, C, G, and H of this part" with the words "this subpart".

18. A new subpart C, consisting of §§ 127.1101 through 127.1605, is added to read as follows:

Subpart C—Waterfront Facilities Handling Liquefied Hazardous Gas

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Design and Construction

§ 127.1101 Piping systems.

Each piping system within the marine transfer area for LHG used for the transfer of LHG must meet the following criteria:

(a) Each system must be designed and constructed in accordance with ASME B31.3.

(b) Each pipeline on a pier or wharf must be located so that it is not exposed to physical damage from vehicular traffic or cargo-handling equipment. Each pipeline under navigable waters must be covered or protected to meet 49 CFR 195.248.

(c) The transfer manifold of each liquid transfer line and of each vapor return line must have an isolation valve with a bleed connection, such that transfer hoses and loading arms can be blocked off, drained or pumped out, and depressurized before disconnecting. Bleeds or vents must discharge to a safe area such as a tank or flare.

(d) In addition to the isolation valve at the transfer manifold, each liquid-transfer line and each vapor return line must have a readily accessible isolation valve located near the edge of the marine transfer area for LHG.

(e) Each power-operated isolation valve must be timed to close so that it will not produce a hydraulic shock capable of causing failure of the line or equipment. Unless the layout of the piping allows the isolation valve at the transfer manifold to close within 30 seconds without creating excessive stresses on the system, the layout must be reconfigured to reduce the stresses to a safe level.

(f) Each waterfront facility handling LHG that transfers to or from a vessel requiring vapor return during transfer must be equipped with a vapor return line designed to attach to the vessel's vapor connection.

(g) Where two or more LHGs are loaded or unloaded at the same facility, each manifold must be identified or marked to indicate each LHG it handles.

(h) Each pipeline used to transfer flammable liquids or vapors must be provided with precautions against static, lightning, and stray current in accordance with API RP 2003.

§ 127.1102 Transfer hoses and loading arms.

(a) Each hose within the marine transfer area for LHG used for the transfer of LHG or its vapors to or from a vessel must—
(1) Be made of materials resistant to each LHG transferred, in both the liquid and vapor state (if wire braid is used for reinforcement, the wire must be of corrosion-resistant material, such as stainless steel);
(2) Be constructed to withstand the temperature and pressure foreseeable during transfer, with a MAWP not less than the maximum pressure to which it may be subjected and at least 1030 kPa gauge (149.4 psig);
(3) Be designed for a minimum bursting pressure of a least five times the MAWP;
(4) Have—
(i) Full-threaded connections;
(ii) Flanges that meet ANSI B16.5; or
(iii) Quick connect couplings that are acceptable to the Commandant;
(5) Be adequately supported against the weight of its constituent parts, the LHG, and any ice formed on it;
(6) Have no kinks, bulges, soft spots, or other defects that will let it leak or burst under normal working pressure; and
(7) Have a permanently attached nameplate that indicates, or otherwise be permanently marked to indicate—
(i) Each LHG for which it is suitable;
(ii) Its MAWP at the corresponding service temperature; and
(iii) If used for service at other than ambient temperature, its minimum service temperature.

(b) Each loading arm used for the transfer of LHG or its vapor must—
(1) Be made of materials resistant to each LHG transferred, in both the liquid and vapor state;
(2) Be constructed to withstand the temperature and pressure foreseeable during transfer;
(3) Be adequately supported against the weight of its constituent parts, the LHG, and any ice formed on it;
(4) Be provided with an alarm to indicate when it is approaching the limits of its extension, unless the examined Operations Manual requires a person to perform the same function; and
(5) Have a permanently attached nameplate that indicates, or otherwise be permanently marked to indicate—
(i) Each LHG it may handle;
(ii) Its MAWP at the corresponding service temperature; and,
(iii) If it is used for service at other than ambient temperature, its minimum service temperature.

§ 127.1103 Piers and wharves.

(a) Each new waterfront facility handling LHG, and all new construction in the marine transfer area for LHG of each existing facility, must comply with the standards for seismic design and construction in 49 CFR part 41.

(b) Each substructure on a new waterfront facility handling LHG, and all new construction in the marine transfer area for LHG of each existing facility, except moorings and breasting dolphins, that supports or is within 4.5 meters (14.8 feet) of any pipe or equipment containing a flammable LHG, or that is within 15 meters (49.2 feet) of a loading flange used to transfer a flammable LHG, must have a fire-endurance rating of not less than two hours.

§ 127.1105 Layout and spacing of marine transfer area for LHG.

Each new waterfront facility handling LHG, and all new construction in the marine transfer area for LHG of each existing facility, must comply with the following:

(a) Each building, shed, and other structure within each marine transfer area for LHG must be located, constructed, or ventilated to prevent the accumulation of flammable or toxic gases within the structure.

(b) Each impounding space for flammable LHGs located within the area must be designed and located so that the heat flux from a fire over the impounding space does not cause, to a vessel, damage that could prevent the vessel's movement.

(c) Each manifold, loading arm, or independent mating flange must be located at least 60 meters (197 feet) from each of the following structures, if that structure is intended primarily for the use of the general public or of railways:
(1) A bridge crossing a navigable waterway.
(2) The entrance to, or the superstructure of, a tunnel under a navigable waterway.

(d) Each manifold, loading arm, or independent mating flange must be located at least 30 meters (98.5 feet) from each public roadway or railway.

§ 127.1107 Electrical systems.

Electrical equipment and wiring must be of the kind specified by, and must be installed in accordance with, NFPA 70.

§ 127.1109 Lighting systems.

(a) Each waterfront facility handling LHG, at which transfers of LHG take place between sunset and sunrise, must have outdoor lighting that illuminates the marine transfer area for LHG.

(b) All outdoor lighting must be located or shielded so that it cannot be mistaken for any aids to navigation and does not interfere with navigation on the adjacent waterways.

(c) The outdoor lighting must provide a minimum average illumination on a horizontal plane 1 meter (3.3 feet) above the walking surface of the marine transfer area that is—
(1) 54 lux (5 foot-candles) at any loading flange; and
(2) 11 lux (1 foot-candle) for the remainder of the marine transfer area for LHG.

§ 127.1111 Communication systems.

(a) The marine transfer area for LHG must possess a communication system that enables continuous two way voice communication between the person in charge of transfer aboard the vessel and the person in charge of transfer for the facility.

(b) The communication system required by paragraph (a) of this section may consist either of fixed or portable telephones or of portable radios. The system must be usable and effective in all phases of the transfer and all weather at the facility.

(c) Devices used to comply with paragraph (a) of this section during the transfer of a flammable LHG must be listed as intrinsically safe by Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or other independent laboratory recognized by NFPA, for use in the hazardous location in which it is used.

§ 127.113 Warning signs.

(a) The marine transfer area for LHG must have warning signs that—
(1) Meet paragraph (b) of this section;
(2) Can be seen from the shore and the water; and,
(3) Except as provided in paragraph (c) of this section, bear the following text:

Warning
Dangerous Cargo
No visitors
No Smoking
No Open Lights

(b) Each letter on the sign must be—
(1) In block style;
(2) Black on a white background; and
(3) At least 7.6 centimeters (3 inches) high.

(c) The words "No Smoking" and "No Open Lights" may be omitted when the product being transferred is not flammable.

Equipment

§ 127.1203 Gas detection.

(a) Each waterfront facility handling LHG that transfers a flammable LHG must have at least two portable gas detectors, or a fixed gas detector, in the marine transfer area for LHG. Each detector must be capable of indicating whether the concentration of flammable vapors exceeds 30% of the Lower Flammable Limit for each flammable product being transferred and must meet ANSI S12.13, Part 1.

(b) Each waterfront facility handling LHG that transfers a toxic LHG, other than anhydrous ammonia, must have at least two portable gas detectors, or a fixed gas detector, available in the area. The detectors must be capable of showing whether the concentration of each toxic LHG being transferred is above, at, or below any Permissible Exposure Limit listed in 29 CFR 1910.1000, Table Z–1 or Z–2.

(c) Each gas detector required by paragraph (a) or (b) of this section must serve to detect leaks, check structures for gas accumulations, and indicate workers' exposure to toxic gases in the area.

§ 127.1205 Emergency shutdown.

(a) Each piping system used to transfer LHG or its vapors to or from a vessel must have a quick-closing shutoff valve to stop the flow of liquid and vapor from the waterfront facility handling LHG if a transfer hose or loading arm fails. This valve may be the isolation valve with a bleed connection required by § 127.1101(c).

(b) The valve required by paragraph (a) of this section must be located as near as practicable to the terminal manifold or loading-arm connection and must—

(1) Close on loss of power;

(2) Close from the time of activation in 30 seconds or less;

(3) Be capable of local manual closing and remotely controlled closing; and,

(4) If the piping system is used to transfer a flammable LHG, either have fusible elements that melt at less than 105° (C 221°F) and activate the emergency shutdown, or have a sensor that performs the same function.

(c) A remote actuator for each valve must be located in a place accessible in an emergency, at least 15 meters (49.2 feet) from the terminal manifold or loading arm, and conspicuously marked with its designated function. When activated, the actuator must also automatically shut down any terminal pumps or compressors used to transfer LHG, or its vapors, to or from the vessel.

§ 127.1207 Warning alarms.

(a) Each marine transfer area for LHG must have a rotating or flashing amber light that is visible for at least 1,600 meters (1 mile) from the transfer connection in all directions.

(b) Each marine transfer are for LHG must also have a siren that is audible for at least 1,600 meters (1 mile) from the transfer connection in all directions.

(c) Each light and siren required by this section must be located so as to minimize obstructions. If any obstruction will prevent any of these alarms from meeting paragraph (a) or (b) of this section, the operator of the waterfront facility handling LHG shall propose for approval by the local COTP additional or alternative warning devices that provide an equivalent level of safety.

§ 127.1209 Respiratory protection.

Each waterfront facility handling LHG must provide equipment for respiratory protection for each employee of the facility in the marine transfer area for LHG during the transfer of one or more of the following toxic LHGs; anhydrous ammonia, chlorine, dimethylamine, ethylene oxide, methyl bromide, sulphur dioxide, or vinyl chloride. The equipment must protect the wearer from the LHG's vapor for at least 5 minutes.

Operations

§ 127.1301 Persons in charge of transfers for the facility: Qualifications and certification.

(a) No person may serve, or use the services of any person, as a person in charge of transfers for the facility regulated under this subpart, unless that person—

(1) Has at least 48 hours' transfer experience with each LHG being transferred;

(2) Knowing the hazards of each LHG being transferred;

(3) Knows the rules of this subpart; and

(4) Knows the procedures in the examined Operations Manual and the examined Emergency Manual.

(b) Before a person in charge of transfers for a waterfront facility handling LHG supervises a transfer of LHG, the operator of the facility shall certify in writing that that person has met the requirements in paragraph (a) of this section. The operator shall ensure that a copy of each current certification is available for inspection at the facility.

§ 127.1302 Training.

(a) Each operator of a waterfront facility handling LHG shall ensure that each person assigned to act as a person in charge of transfers for the facility has training in the following subjects:

(1) Properties and hazards of each LHG being transferred to or from the facility.

(2) Use of the gas detectors required by § 127.1203.

(3) Use of the equipment for respiratory protection required by § 127.1209.

(4) Basic firefighting procedures, including the use of the portable fire extinguishers required by § 127.1503.

(5) Content and use of the examined Operations Manual and examined Emergency Manual.

(6) The configuration and limitations of cargo systems of LHG vessels.

(7) Procedures for transferring LHG to and from LHG vessels.

(8) Procedures for response to a release of the LHG handled by the facility.

(9) First aid for persons—

(i) With burns;

(ii) Needing cardio-pulmonary resuscitation;

(iii) Exposed to toxic liquid or toxic vapors (if a toxic LHG is handled by the facility); and

(iv) Needing transport to a medical facility.

(10) Restrictions on access to the marine transfer area for LHG.

(b) Each person that receives training under paragraph (a) of this section shall receive refresher training in the same subjects at least once every 5 years.

(c) The operator shall maintain, for each person trained, a record of all training provided under paragraphs (a) and (b) of this section. The operator shall retain these records for the duration of the person's employment on the waterfront facility plus 12 months.

(d) Training conducted to comply with the hazard communication programs required by the Occupational Safety and Health Administration (OSHA) of the Department of Labor [29 CFR 1910.120] or the Environmental Protection Agency (EPA) [40 CFR 311.1] may be used to satisfy the requirements in paragraph (a) of this section, so far as the training addresses the requirements in paragraph (a) of this section.

§ 127.1303 Compliance with suspension order.

If the COTP issues to the owner or operator of a waterfront facility handling LHG an order to suspend a transfer, no transfer may take place at the facility until the COTP withdraws the order.

§ 127.1305 Operations Manual.

Each Operations Manual must contain—

(a) A description of each liquid-transfer system and vapor transfer system, including each mooring area, transfer connection, and (where installed) control room, and a diagram of the piping and electrical systems;

(b) The duties of each person assigned to transfers;

(c) The maximum relief-valve setting or MAWP of the transfer system;

(d) The telephone numbers of supervisors, persons in charge of transfers for the facility, persons on watch in the marine transfer area for LHG, and security personnel of the facility;

(e) A description for each security system provided for the transfer area;

(f) A description of the training programs established under § 127.1302;

(g) The procedures to follow for security violations; and

(h) For each LHG handled, the procedures for transfer that include—

(1) Requirements for each aspect of the transfer (start-up, gauging, cooldown, pumping, venting, and shutdown);

(2) The maximum transfer rate;

(3) The minimum transfer temperature;

(4) Requirements for firefighting equipment; and

(5) Communication procedures.

§ 127.1307 Emergency Manual.

(a) Each Emergency Manual must contain—

(1) For each LHG handled—

(i) A physical description of the LHG;

(ii) A description of the hazards of the LHG;

(iii) First-aid procedures for persons exposed to the LHG or its vapors;

(iv) The procedures for response to a release of the LHG; and,

(v) If the LHG is flammable, the procedures for fighting a fire involving the LHG or its vapors;

(2) A description of the emergency shutdown required by § 127.1205;

(3) The procedures for emergency shutdown;

(4) A description of the number, kind, place, and use of the fire equipment required by § 127.1501(a) and of the portable fire extinguishers required by § 127.1503;

(5) The telephone numbers of local Coast Guard units, hospitals, fire departments, police departments, and other emergency-response organizations;

(6) If the facility has personnel shelters, the place of and provisions in each shelter;

(7) If the facility has first-aid stations, the location of each station;

(8) Emergency procedures for mooring and unmooring a vessel; and,

(9) If an off-site organization is to furnish emergency response, a copy of the written agreement required by § 127.1505(a)(2).

(b) The employee-emergency plan and fire-prevention required by OSHA in 29 CFR 1910.38 may be used to comply with this section to the extent that they address the requirements specified in paragraphs (a) (1) through (9) of this section.

§ 127.1309 Operations Manual and Emergency Manual: Use.

Each operator of a waterfront facility handling LHG shall ensure that—

(a) No transfer is conducted unless the facility has an examined Operations Manual and an examined Emergency Manual;

(b) Each transfer is conducted in accordance with the examined Operations Manual; and

(c) Each emergency response is conducted in accordance with the examined Emergency Manual.

§ 127.1311 Motor vehicles.

(a) When LHG is being transferred or stored in the marine transfer area of a waterfront facility handling LHG, the operator shall ensure that no person—

(1) Stops or parks a motor vehicle in a space other than a designated parking space;

(2) Refuels a motor vehicle within the area; or

(3) Operates a vehicle or other mobile equipment that constitutes a potential source of ignition within 15 meters (49.2 feet) of any storage container, manifold, loading arm, or independent mating flange containing a flammable liquid or vapor.

(b) If motor vehicles are permitted to stop in the marine transfer area for LHG, the operator shall designate and mark parking spaces that—

(1) Do not block fire lanes;

(2) Do not impede any entrances or exits; and

(3) Are not located within 15 meters (49.2 feet) of any storage container, manifold, loading arm, or independent mating flange containing a flammable liquid or vapor.

§ 127.1313 Storage of hazardous materials.

(a) Each operator of a waterfront facility handling LHG shall ensure that no materials listed in the table of hazardous materials under 49 CFR 172.101, except for the following, are stored in the marine transfer area for LHG:

(1) The LHG being transferred.

(2) Fuel required by the vessel, or by emergency equipment in the area.

(3) Oily wastes received from vessels.

(4) Solvents, lubricants, paints and similar materials in the amount required for one day's operations and maintenance.

(b) The operator shall ensure that flammable liquids not stored in bulk are stored in accordance with Chapter 4 of NFPA 30.

§ 127.1315 Preliminary transfer inspection.

Before each transfer, the person in charge of transfer for the facility shall—

(a) Inspect piping and equipment within the marine transfer area for LHG to be used for transfer and ensure that it meets the requirements in this part;

(b) Determine the contents, pressure, temperature, and capacity of each storage tank to or from which LHG will be transferred, to ensure that it is safe for transfer;

(c) Confer with the person in charge of transfer aboard the vessel, to review and agree on—

(1) The sequence of acts required for transfer;

(2) The rate, maximum working pressure, and minimum working temperature of transfer;

(3) The duties, stations, and watches of each person assigned for transfer; and

(4) The emergency procedures in the examined Emergency Manual;

(d) Ensure that the vessel is securely moored and that the transfer connections allow it to move to the limits of its moorings without placing a strain on the piping, hose, or loading arm used for transfer;

(e) Ensure that each part of the transfer system is aligned to allow the flow of LHG to the desired place;

(f) Ensure the display of the warning signs required by § 127.1113;

(g) Ensure that the requirements of this part concerning smoking and fire protection are met;

(h) Ensure that qualified personnel are on duty in accordance with the examined Operations Manual and §§ 127.1301 and 127.1302; and

(i) Test the following to determine that they are operable:

(1) The communication system required by § 127.1111.

(2) The gas detectors required by § 127.1203.

§ 127.1317 Declaration of inspection.

(a) Each person in charge of transfer for the facility shall ensure that no person transfers LHG to or from a vessel until a Declaration of Inspection that meets paragraph (c) of this section is executed and signed by both the person in charge aboard the vessel and the person in charge for the facility.

(b) No person in charge of transfer for the facility may sign the Declaration unless that person has fulfilled the requirements of § 127.1315 and has indicated fulfillment of each requirement by writing his or her initials in the appropriate space on the Declaration.

(c) Each Declaration must contain—

(1) The name of the vessel and that of the facility;

(2) The date and time that the transfer begins;

(3) A list of the requirements in § 127.1315 with the initials of both the person in charge aboard the vessel and the person in charge for the facility after each requirement, indicating the fulfillment of the requirement;

(4) The signatures of both the person in charge aboard the vessel and the person in charge for the facility, and the date and time of signing, indicating that they are both ready to begin transfer; and

(5) The signature of each relief person in charge and the date and time of each relief.

(d) The person in charge of transfer for the facility shall give one signed copy of the Declaration to the person in charge of transfer aboard the vessel and retain the other.

(e) Each operator of a facility shall retain a signed copy of the Declaration at the facility for 30 days after the transfer.

§ 127.1319 Transfer of LHG.

(a) The operator of a waterfront facility handling LHG shall notify the COTP of the time and place of each transfer of LHG in bulk at least 4 hours before it begins.

(b) During transfer, each operator of a waterfront facility handling LHG shall ensure that—

(1) The marine transfer area for LHG is under the supervision of a person in charge certified for transfers of LHG, who has no other assigned duties during the transfer;

(2) The person in charge supervises transfers only to or from one vessel at a time unless authorized by the COTP.

(3) No person transferring fuel or oily waste is involved in the transfer; and

(4) No vessel is moored outboard of any LHG vessel unless allowed by the COTP or the examined Operations Manual of the facility.

(c) During transfer, each person in charge of transfer for the facility shall—

(1) Maintain communication with the person in charge of transfer aboard the LHG vessel;

(2) Ensure that an inspection of the transfer piping and equipment for leaks, frost, defects, and other threats to safety takes place at least once every transfer;

(3) Ensure that—

(i) Transfer of LHG is discontinued as soon as a release or fire is detected in the area or aboard the vessel; and

(ii) Transfer of flammable LHG is discontinued when electrical storms or uncontrolled fires approach near the area; and

(4) Ensure that the outdoor lighting required by § 127.1109 is turned on between sunset and sunrise.

(d) Upon completion of transfer of LHG, each operator of a waterfront facility handling LHG shall ensure that hoses and loading arms used for transfer are drained of LHG residue and depressurized before disconnecting from the vessel.

Note to § 127.1319: Corresponding standards for vessels appear at 46 CFR part 154.

§ 127.1321 Release of LHG.

(a) Each operator of a waterfront facility handling LHG shall ensure that—

(1) No person intentionally releases LHG into the environment; and

(2) If a release of LHG or its vapor threatens vessels or persons outside the marine transfer area for LHG, they are notified by the warning devices.

(b) If LHG or its vapor is released, the person in charge of transfer for the facility shall—

(1) Immediately notify the person in charge of transfer aboard the vessel that transfer must be shut down;

(2) Shut down transfer in coordination with the person aboard the vessel;

(3) Notify the COTP of the release; and

(4) Not resume transfer until authorized by the COTP.

§ 127.1325 Access to marine transfer area for LHG.

Each operator of a waterfront facility handling LHG shall ensure that—

(a) Access to the marine transfer area for LHG from shoreside and waterside is limited to—

(1) Personnel who work in the area, transfer personnel, vessel personnel, and delivery and service personnel in the course of their business;

(2) Federal, State, and local officials; and

(3) Other persons authorized by the operator;

(b) Each person allowed into the area is positively identified as someone authorized to enter and that each person other than an employee of the facility displays an identifying badge;

(c) Guards are stationed, and fences or other devices are installed, to prevent, detect, and respond to unauthorized access, fires, and releases of LHG in the area, except that alternative measures approved by the COTP (such as electronic monitoring or random patrols) will be sufficient where the stationing of guards is impracticable; and

(d) Coast Guard personnel are allowed access to the facility, at any time, to make any examination or to board any vessel moored at the facility.

Maintenance

§ 127.1401 General.

Each operator of a waterfront facility handling LHG shall ensure that all cargo handling equipment is operable, and that no equipment that may cause the release or ignition of LHG is used in the marine transfer area for LHG.

§ 127.1403 Inspections.

(a) Each operator of a waterfront facility handling LHG shall conduct a visual inspection for defects of each pressure relief device not capable of being tested.

(b) The operator shall conduct the inspection required by paragraph (a) of this section at least once each calendar year, with intervals between inspections not exceeding 15 months.

§ 127.1405 Repairs.

Each operator of a waterfront facility handling LHG shall ensure that—

(a) Equipment is repaired so that—

(1) The equipment continues to meet the applicable requirements in this subpart; and

(2) Safety is not compromised; and

(b) Welding and cutting meet NFPA 51B.

§ 127.1407 Tests.

(a) Each operator of a waterfront facility handling LHG shall conduct a static liquid-pressure test of the piping, hoses, and loading arms of the LHG-transfer system located in the marine transfer area for LHG, and shall verify the set pressure of the safety and relief valves—

(1) After the system or the valves are altered;

(2) After major repairs to the system or the valves;

(3) After any increase in the MAWP of the system; and

(4) At least once each calendar year, with intervals between tests not exceeding 15 months.

(b) The pressure for the test under paragraph (a) of this section must be at least 1.1 times the MAWP and last for at least 30 minutes.

(c) The operator shall conduct a test of each pressure gauge, to ensure that the displayed pressure is within 10 percent of the actual pressure, at least once each calendar year, with intervals between tests not exceeding 15 months.

(d) The operator shall conduct a test of each item of remote operating or indicating equipment, such as a remotely operated valve, at least once each calendar year, with intervals between tests not exceeding 15 months.

(e) The operator shall conduct a test of the emergency shutdown required by § 127.1205 at least once every two months, to ensure that it will perform as intended. If transfers of LHG occur less often than every two months, the operator may conduct this test before each transfer instead of every two months.

(f) The operator shall conduct a test of the warning alarm required by § 127.1207 at least once every six months, to ensure that it will perform as intended. If transfers of LHG occur less often than every six months, the operator may conduct this test before each transfer instead of every six months.

§ 127.1409 Records.

(a) Each operator of a waterfront facility handling LHG shall keep on file:

(1) A description of the components inspected or tested under § 127.1403 or 127.1407.

(2) The date and results of each inspection or test under § 127.1403 or 127.1407.

(3) A description of any repair made after the inspection or test.

(4) The date and a description of each alteration or major repair to the LHG transfer system or its valves.

(b) The operator shall keep this information on file for at least 24 months after the inspection, test, alteration, or major repair.

Firefighting Equipment

§ 127.1501 General.

(a) The number, kind, and place of equipment for fire detection, protection, control, and extinguishment must be determined by an evaluation based upon sound principles of fire-protection engineering, analysis of local conditions, hazards within the waterfront facility handling LHG, and exposure to other property. A description of the number, kind, place, and use of fire equipment determined by this evaluation must appear in the Emergency Manual for each facility. The evaluation for each new facility and for all new construction on each existing facility must be submitted to the COTP for review when the emergency manual is submitted under § 127.103.

(b) All fire equipment for each facility must be adequately maintained, and periodically inspected and tested, so it will perform as intended.

(c) The following must be red or some other conspicuous color and be in places that are readily accessible:

(1) Hydrants and standpipes.

(2) Hose stations.

(3) Portable fire extinguishers.

(4) Fire monitors.

(d) Fire equipment must bear the approval, if applicable, of Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or other independent laboratory recognized by NFPA.

§ 127.1503 Portable fire extinguishers.

Each operator of a waterfront facility handling LHG must provide portable fire extinguishers of appropriate, number, size, and kind in the marine transfer area for LHG in accordance with NFPA 10.

§ 127.1505 Emergency response and rescue.

(a) Each waterfront facility handling LHG must arrange for emergency response and rescue pending the arrival of resources for firefighting or pollution control. Response and rescue may be performed by facility personnel or by an off-site organization.

(1) If response and rescue are performed by facility personnel, appropriate training and equipment for personnel protection must be furnished to those personnel. Training and equipment that meets 29 CFR 1910.120, hazardous-waste operations and emergency response, will be appropriate.

(2) If response and rescue are performed by an off-site organization, the organization must enter into a written agreement with the facility indicating the services it will perform and the time within which it will perform them to injured or trapped personnel.

(b) [Reserved]

§ 127.1507 Water systems for fire protection.

(a) Each waterfront facility handling LHG must have a supply of water and a means for distributing and applying the water to protect personnel; to cool storage tanks, equipment, piping, and vessels; and to control unignited leaks and spills in the marine transfer area for LHG except when the evaluation required by § 127.1501(a) indicates otherwise. The evaluation must address fire protection for structures, cargo, and vessels. Each water system must include on the pier or wharf at least one 2½-inch supply line, one 2½-inch fire hydrant, and enough 2½-inch hose to connect the hydrant to the vessel.

(b) Each water system must fully and simultaneously supply, for at least 2 hours, all fixed fire-protection systems, including monitor nozzles, at their designed flow and pressure for the worst single incident foreseeable, plus 63 L/s (1000 gpm) for streams from hand-held hoses.

§ 127.1509 Equipment for controlling and extinguishing fires.

(a) Within each marine transfer area for LHG of each waterfront facility handling LHG that transfers a flammable LHG, portable or wheeled fire extinguishers suitable for gas fires, preferably dry chemical extinguishers, must be available at strategic sites, as determined by the evaluation required by § 127.1501(a).

(b) Fixed systems for extinguishing or controlling fires may be appropriate for protection against particular hazards. The evaluation required by § 127.1501(a) may specify the use of one or more of the following fixed systems:

(1) Low-, medium-, or high-expansion foam.

(2) Dry chemicals.

(3) Water applied as deluge, spray, or sprinkle.

(4) Carbon dioxide.

(5) Other NFPA approved fire extinguishing media.

§ 127.1511 International shore connection.

Each marine transfer area for LHG that receives foreign flag vessels must have an international shore connection meeting the requirements of ASTM F–1121.

Fire Protection

§ 127.1601 Smoking.

Each operator of a waterfront facility handling LHG shall ensure that no person smokes in the marine transfer area for LHG unless—

(a) Neither flammable LHG nor its vapors are present in the area; and

(b) The person is in a place designated and marked in accordance with local law.

§ 127.1603 Hotwork.

Each operator of a waterfront facility handling LHG shall ensure that no person conducts welding, torch cutting, or other hotwork on the facility, or on a vessel moored to the facility, unless—

(a) The COTP has issued a permit for that hotwork; and

(b) The conditions of the permit are met.

§ 127.1605 Other sources of ignition.

Each operator of a waterfront facility handling LHG shall ensure that in the marine transfer are for LHG—

(a) There are no open fires or open flame lamps;

(b) Heating equipment will not ignite combustible material;

(c) Each chimney and appliance has a spark arrestor if it uses solid fuel or is located where sparks may ignite combustible material; and

(d) All rubbish, debris, and waste go into appropriate receptacles.

§ 127.605 Table 1 [Added]

19. A new Table 1 is added after new § 127.1605 to read as follows:

TABLE 1 TO PART 127.—LIST OF PRODUCTS AND HAZARDS

Product	Hazard
Acetaldehyde	F+T
Ammonia, anhydrous	T
Butadiene	F
Butanes	F
Butane and propane (mixtures)	F
Butylenes	F
Chlorine	T
Dimethylamine	F+T
Ethane	F
Ethyl chloride	F+T
Ethylene	F
Ethylene oxide	F+T
Methyl-acetylene and propadiene (mixtures).	F
Methyl bromide	F+T
Methyl chloride	F+T
Propane	F
Propylene	F
Sulphur dioxide	T
Vinyl chloride	F+T

Note: "F" indicates a flammable product. "T" indicates a toxic product. "F&T" indicates a product both flammable and toxic.

Dated: June 23, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–18762 Filed 8–2–95; 8:45 am]

BILLING CODE 4910–14–M

VOL 60 SS 149 AG 3 995 UMI

federal register

Thursday
August 3, 1995

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 990

Natural Resources Damage Assessments; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

RIN 0648–AE13

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 1006(e)(1) the Oil Pollution Act of 1990 (OPA) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to promulgate regulations for the assessment of natural resource damages resulting from a discharge or substantial threat of a discharge of oil. By today's Notice, the National Oceanic and Atmospheric Administration (NOAA) is seeking comments concerning the proposed rule.

The proposed rule is for the use of authorized federal, state, Indian tribal, and foreign officials, referred to in OPA as "trustees." Natural resource damage assessments are not identical to response or remedial actions addressed by the larger statutory scheme of OPA. Assessments are not intended to replace response actions, which have as their primary purpose the protection of human health, but to supplement them, by providing a process for making the public whole for injury to natural resources and/or services.

Reviewers of this proposed rule should be aware that NOAA is subject to a consent decree that requires NOAA to submit a final rule to the **Federal Register** by the end of December 1995 (*Natural Resources Defense Council* v. *United States Coast Guard*, No. CV–94–4892, Order for Partial Settlement (E.D.N.Y. June 26, 1995). Due to the short timeframe for development of a final rule, reviewers should not expect any extensions of the comment period.

DATES: Written comments should be received no later than October 2, 1995.

ADDRESSES: Written comments are to be submitted to Linda Burlington or Eli Reinharz, c/o NOAA/GCNR, 1315 East-West Highway, SSMC #3, Room 15132, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Linda Burlington (telephone (301) 713–1217) or Eli Reinharz (telephone (301) 713–3038, ext. 193), Office of General Counsel Natural Resources, FAX (301) 713–1229.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the prevention of, liability for, removal of, and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone (an incident). Section 1006(b) of OPA provides for the designation of federal, state, Indian tribal, and foreign natural resource trustees to determine if injury to, destruction of, loss of, or loss of use of natural resources and/or services has resulted from an incident, assess natural resource damages, present a claim for damages (including the reasonable costs of assessing damages), recover damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources and/or services under their trusteeship.

Section 1006(e)(1) of OPA requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to promulgate regulations for the assessment of natural resource damages resulting from incidents. By today's Notice, NOAA is seeking comments concerning the proposed rule. The proposed rule is for use by designated trustees.

On January 7, 1994, NOAA published a proposed rule for assessing natural resource damages under OPA (59 FR 1061). NOAA received numerous comments on the January 1994 proposed rule. Based on these comments, NOAA is considering a fundamental restructuring of the rule to provide even greater emphasis upon restoration. To ensure that all interested parties have adequate opportunity to review and comment on this restructuring, NOAA is reproposing the rule.

There are several significant differences between today's proposed rule and the January 1994 proposed rule. First, today's proposed rule eliminates the need for the determination of "compensable values" as a separate component of a natural resource damage claim. However, this approach does not make the value of natural resources irrelevant. Value still plays an important role in designing restoration actions that will truly make the public and environment whole for the types of natural resource injuries and service losses resulting from an incident. Second, the proposed rule emphasizes that trustees will be seeking, on behalf of the public, restoration of what was lost—natural resources and/or services provided, both human and ecological. Third, the proposed rule brings selection of restoration actions clearly into the public planning process. The public process outlined in the proposed rule affords federal agencies compliance with the requirements of the National Environmental Policy Act and accomplishes the goal of public involvement that was sought in the January 1994 proposed rule. Finally, the proposed rule authorizes trustees to determine appropriate assessment methods on an incident-specific basis, from a range of procedures including simplified methods to complex field studies. The proposed rule removes the distinction between categories of approaches termed "expedited" or "comprehensive," and provides guidance for choosing appropriate methods based on the incident and the particular natural resource injuries or service losses of concern. This proposed rule does, however, require that assessment methods be reliable and valid in the particular context, and that the methods be cost-effective.

Prior to issuing a proposed rule, NOAA published eight **Federal Register** Notices requesting information and comments on approaches to developing natural resource damage assessment procedures. 55 FR 53478 (December 28, 1990), 56 FR 8307 (February 28, 1991), 57 FR 8964 (March 13, 1992), 57 FR 14524 (April 21, 1992), 57 FR 23067 (June 1, 1992), 57 FR 44347 (September 25, 1992), 57 FR 56292 (November 27, 1992), and 58 FR 4601 (January 15, 1993). NOAA conducted a public meeting on March 20, 1991, for additional public participation into the process and held four regional workshops during 1991 in Rockville, Maryland; Houston, Texas; San Francisco, California; and Chicago, Illinois, to learn of regional concerns in coastal and inland waters. One workshop held in Alexandria, Virginia, in November, 1991, provided a forum for early discussions of various economic issues likely to be raised during the rulemaking process. In addition, on August 12, 1992, NOAA held a public hearing on the issue of whether constructed market methodologies, including contingent valuation (CV), can be used to calculate reliably passive use values for natural resources, and if so, under what circumstances and under what guidance. On January 15, 1993, NOAA published in full the report of the panel commissioned by NOAA to evaluate the reliability of CV in calculating passive use values for natural resources. 58 FR 4601.

NOAA published the proposed OPA rule on January 7, 1994 (59 FR 1061). The proposed rule contained a statement of issues of interest to

stimulate discussions on some of the more intriguing suggestions considered in developing the proposed rule. Immediately after publishing the proposed rule, NOAA held six regional meetings in January and February of 1994. A seventh workshop was held in March of 1994 in Washington, D.C., to summarize the discussions and results of the six regional meetings. NOAA published an informational notice to summarize the kinds of concerns raised in the discussions and refine some issues on which NOAA was particularly soliciting comments. 59 FR 32148 (June 22, 1994).

NOAA received numerous comments on the January 1994 proposed rule. Based on these comments, NOAA is considering a fundamental restructuring of the rule to provide even greater emphasis upon restoration. To ensure that all interested parties have adequate opportunity to review and comment on this restructuring, NOAA is reproposing the rule.

This preamble is organized in the following manner: the Introduction gives an overview of the proposed rule and is followed by a discussion of each of the subparts of this proposed rule. Subpart A provides a general introduction, subpart B describes trustee authorities, subpart C gives definitions pertinent to this proposed rule, subpart D describes the Preassessment Phase, subpart E describes the Restoration Planning Phase, and subpart F describes the Restoration Implementation Phase. Finally, the preamble provides a general summary of the comments on the January 1994 proposed rule.

INTRODUCTION

I. Goal of OPA: Focus on Restoration

The goal of OPA is to make the public and environment whole for injury to, destruction of, loss of, or loss of use (injury) of natural resources and/or services resulting from an actual or substantial threat of a discharge of oil (OPA sec. 1002(b)(2)(A)). This goal is achieved by planning and implementing appropriate actions to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and/or services (restore). The purpose of this proposed rule is to provide a framework for conducting sound natural resource damage assessments (NRDAs or assessments) that achieve restoration under OPA for incidents.

This proposed rule emphasizes several processes to achieve the goal of restoring injured natural resources and services: (1) Identification and evaluation of injuries to natural resources and/or services; (2) employing assessment methods relevant to the circumstances of a particular incident; (3) identification and evaluation of restoration alternatives; and (4) involvement of the public in the process of selecting restoration actions appropriate for a given incident.

NOAA believes that an NRDA process that meets the essential procedural elements of identifying and evaluating relevant injuries and restoration alternatives, and soliciting public input will accomplish three major goals: (1) Involve the public in the decision of what actions will make them whole; (2) ensure that appropriate scientific procedures and methods for determining restoration actions for a given incident are followed; and (3) reduce transaction costs.

NOAA recognizes that restoration planning by federal trustee agencies is subject to the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), except when a categorical exclusion applies. However, NOAA believes that the process identified in this proposed rule mirrors the decisionmaking process embodied in NEPA, without requiring significantly different steps or products than those envisioned in OPA. Thus, compliance with the procedures set forth in the proposed rule would fulfill the requirements of NEPA. Steps and products that are analogous under OPA and NEPA are identified in a diagram in Appendix A at the end of the preamble.

Finally, NOAA has developed guidance documents on various aspects of the NRDA process. These guidance documents are available in draft on: Preassessment, injury assessment, restoration, compensation formulas, and NEPA compliance (citations for the documents are included in the Bibliography at the end of this preamble). These draft documents are available from the address at the front of this preamble. The guidance documents are being prepared in conjunction with this rulemaking to provide additional technical information to those performing assessments under OPA and other interested members of the public. These documents will not constitute regulatory guidance, nor will they have to be followed for a damage assessment to be conducted in accordance with these regulations. The documents, in their final form, will be made available through a public information distribution service.

II. Overview of the Restoration Planning Process: NRDA Under the Proposed Rule

Regardless of the scope or scale of the incident, the restoration planning process provided in this proposed rule is generally the same. In the Preassessment Phase, trustees must first determine threshold issues that establish their authority to begin the NRDA process, such as: (1) Whether OPA is applicable (e.g., did the incident involve oil?); (2) whether an exclusion from liability under the statute applies (e.g., natural resources were affected by a discharge from a public vessel); and (3) whether natural resources under their trustee authority were potentially affected by the incident. Trustees then assess whether injuries will be adequately addressed through response actions, or whether further action is warranted to consider the need for additional restoration.

If further action is justified, the trustees prepare a "Notice of Intent to Conduct Restoration Planning," or "Notice." Based on information available at this early stage of the assessment process, the Notice may also describe the trustees' proposed strategy for assessing injury and determining appropriate restoration actions. This proposed rule advocates using injury assessment procedures that directly provide information on restoration and are cost effective.

Once the Notice is published, trustees continue with the injury assessment component of the Restoration Planning Phase, in which trustees evaluate natural resource and/or service injuries. Following injury assessment, trustees determine the type and scale of restoration to address the injuries. Restoration under the proposed rule includes two components: (1) Primary restoration—actions taken to return the injured resources and services to baseline, including the natural recovery option, and (2) compensatory restoration—actions to make the environment and public whole for resource services lost from the date of the incident until recovery of the injured resources. The type and scale of compensatory restoration are related to the type and scale of primary restoration selected. Scaling of appropriate compensatory restoration actions is accomplished on a service-to-service comparison to services lost as a result of the incident, or through valuing the loss of the services and gains from compensatory restoration projects where service-based scaling is not feasible.

Trustees develop a Draft Restoration Plan, identifying and evaluating a

reasonable range of alternatives for restoring the injuries, including a no-action alternative, and describing the trustees' tentative preferred alternatives. The Draft Restoration Plan is subject to public review and comment, after which a Final Restoration Plan is developed. The Final Restoration Plan is then implemented during the Restoration Implementation Phase, either through an agreement by the parties responsible for the incident (responsible parties) to implement restoration with trustee oversight, through immediate payment of the demand for restoration costs by the responsible parties, or through litigation to collect restoration costs.

The timing and degree of public involvement in the assessment process, and the type of documents produced at various stages of the process, will be tailored to the scope and scale of the incident. For instance, for small incidents assessed with a model or compensation formula, it may be appropriate to compress the Notice and draft restoration documents into a single document that reports the inputs used and results of the model application, along with the alternate and preferred restoration actions. In contrast, larger incidents that require in-depth site-specific studies to identify and evaluate appropriate restoration may require a series of plans that would benefit from public notice and/or comment. In addition, when trustees propose to implement part of a regional restoration plan for a given incident and that plan has previously been available for public review and comment, trustees may choose only to notify the public of the decision to link a given incident to the regional plan.

III. Issues of Interest

A. Evaluating a Reasonable Range of Restoration Alternatives

Restoration actions under this proposed rule are defined to include activities designed to make the environment and public whole for natural resources and/or services injured as a result of an incident. Restoration is defined to include primary restoration actions that return injured natural resources and services to the conditions that would have existed in the absence of the incident, and compensatory restoration actions that make the public and the environment whole for interim service losses. Thus, throughout this proposed rule, "restoration" refers to any appropriate combination of primary and compensatory restoration actions designed to address natural resource and service injuries.

NOAA proposes that trustees identify a reasonable range of restoration alternatives and then evaluate those alternatives based on such factors as: (1) Extent to which each alternative can return the injured natural resources and services to baseline and make the environment and public whole for the interim service losses; (2) extent to which each alternative improves the rate of recovery; (3) extent to which each alternative will avoid additional injury; (4) level of uncertainty in the success of each alternative; (5) extent to which each alternative benefits more than one natural resource and/or service; (6) cost of each alternative; (7) effects of each alternative on public health and safety, and the environment; and (8) whether any alternative violates any laws or regulations.

Like NEPA, this proposed rule only requires that a reasonable range of restoration alternatives be considered. Under OPA, trustees are directed to return injured natural resources and services to the condition that would have existed in the absence of the incident. Thus, trustees must evaluate possible restoration actions in light of their effectiveness in returning natural resources and services to baseline. The lowest cost restoration alternative may not always represent the preferred alternative. Instead, the costs of restoration alternatives should be evaluated by comparing the costs of alternative actions to the relative effectiveness of each in returning injured natural resources and services to baseline taking interim service losses into account. Also like NEPA, trustees following this proposed rule are required to consider a no-action alternative.

B. Regional Restoration Planning

Regional restoration planning is encouraged under this proposed rule as a mechanism to plan and implement restoration for small incidents resulting in natural resource and/or service injury, where incident-specific restoration is impractical. The regional restoration planning process can pull together proposed or desired projects from numerous public entities, where such projects would be expected to restore the types of natural resource and service injuries anticipated from incidents in particular geographic areas. Regional restoration plans will shorten the assessment schedule and reduce overall costs, especially for small incidents. NOAA proposes the NEPA programmatic environmental impact analysis as a model for evaluating regional restoration plans.

C. Technical Adequacy of Assessment Procedures

Under this proposed rule, the type and scale of technical and scientific analyses should be focused on information requirements for determining restoration given the circumstances of a particular incident. In making the determination of technical adequacy, trustees should be guided by current understanding of best scientific practices. However, when choosing among assessment procedures and methods that could provide greater levels of certainty or precision in assessment variables, trustees should evaluate the costs and time requirements of more in-depth procedures, expected increase in precision, and likelihood that greater precision will result, relative to the expected total damages for the injury being evaluated. Thus, for a given set of circumstances, use of a model or extrapolation from the scientific literature may be more appropriate for determining restoration than generating site-specific field data. This analysis of increased costs associated with expected increases in amount and quality of assessment information provided by different methods will ensure that assessment procedures and methods chosen are reasonable.

D. Public Participation

OPA section 1006(c)(5) requires that the restoration process be open to the public before final decisions are made and actions taken. The restoration planning process should provide an adequate opportunity for public participation and addressing public concerns.

In light of this requirement, NOAA is proposing an open planning process. To prevent delays in the restoration process at the time of an incident, trustees should afford the public an opportunity to be involved in planning activities prior to an incident (i.e., pre-incident planning and regional restoration plan development). If pre-incident public planning is not possible, the public must, at a minimum, be invited to participate in the development of draft and final incident-specific restoration plans. The nature of public participation will depend on the issues and actions being considered; however, common elements include: (1) Notice of the decision to proceed with restoration planning; (2) notice and comment on a Draft Restoration Plan; and (3) notice of a Final Restoration Plan. Public meetings may be appropriate in certain circumstances.

In regard to the development of a restoration plan, NOAA believes that effective public participation enhances the probability that appropriate restoration actions will be implemented. Solicitation of comments from members of the scientific community, including natural resource injury, restoration, and economic experts, as part of a public participation program may supplement expert peer review of trustee strategies, plans, and tentative decisions. This type of public participation would also satisfy NEPA's requirement that the public be involved in assessing the environmental consequences of major federal actions. NOAA also believes that Restoration Plans developed under this proposed rule serve as Environmental Impact Statements (EIS) for purposes of NEPA. Examples of restoration plans that follow the NEPA EIS format are listed in the bibliography at the end of this preamble.

Cooperative participation by responsible parties in the restoration planning process is consistent with the goals of an open process. Thus, NOAA believes that responsible parties should be invited to participate in the NRDA process, where such participation will not impede fulfilling the trustees' mandate to restore expeditiously injured natural resources and services.

DISCUSSION

Subpart A—Introduction

I. Purpose

The purpose of this proposed rule is to promote expeditious restoration of natural resources and services injured as a result of an incident. To fulfill this purpose, this proposed rule provides an administrative process for involving interested parties, a range of assessment procedures for identifying and evaluating injuries to natural resources and/or services, and a process for selecting appropriate restoration actions from a range of alternatives.

II. Scope

This proposed rule is available for use by designated federal, state, Indian tribal, and foreign natural resource trustees to determine appropriate actions to restore natural resources and services injured by a discharge, or substantial threat of a discharge, of oil into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone.

The Secretaries of the Interior, Commerce, Agriculture, Defense, and Energy are the primary federal natural resources trustees. The roles and responsibilities of the various federal departments regarding NRDA vary according to their resource management responsibilities and the susceptibility of these natural resources and/or services to injury. Designation of federal trustees and broad guidelines describing trustee functions are addressed in subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300.600. For state trustees, most governors have delegated trustee responsibilities to specific state agencies, as provided under OPA.

III. Effect of Using These Regulations

Assessments performed by federal, state, or Indian tribal trustees in accordance with these regulations receive the evidentiary status of a rebuttable presumption provided by OPA section 1006(e)(2). In brief, this presumption means that the responsible parties have the burden of proving that the trustees' claim and determinations are incorrect. This presumption applies to all assessment procedures developed under this proposed rule. However, where trustees use procedures that are determined not to be in accordance with this proposed rule, trustees will not obtain a rebuttable presumption for that portion of the assessment. Assessments performed by foreign trustees in accordance with these regulations are not entitled to a rebuttable presumption.

IV. Coordination

A. General

Coordination among all parties affected by an incident is crucial to an efficient and effective assessment. Coordination, from pre-incident planning through joint and cooperative assessment, restoration planning and implementation, can assist in decreasing the time until restoration is implemented, preventing double recovery of damages, and ensuring that assessment costs are reasonable. More detailed discussion of some aspects of coordination appears in Appendix B at the end of this preamble.

B. Coordination Among Trustees

This proposed rule encourages trustees with shared or overlapping natural resource management and protection jurisdiction to coordinate their NRDA activities, including coordination in pre-incident planning. Coordination among trustees will avoid duplicative claims for damages, address shared trust resource concerns, and result in more effective funding of assessment work. Trustees must designate a Lead Administrative Trustee for each joint assessment under this proposed rule and the NCP. This rule encourages trustees to consider cooperation agreements such as memoranda of understanding, to structure both non-incident and incident-specific activities. Trustees may act independently when there is a reasonable basis for dividing NRDA responsibilities, so long as there is no double recovery of damages for the same incident and natural resource. However, independent assessments may not be in the best interests of the trustees, the responsible party, or in achieving prompt restoration of injured resources.

C. Coordination With Response Agencies

Coordination among trustees and response agencies can result in reducing or eliminating natural resource and/or service injuries residual to the cleanup. "Response" or "cleanup" refers to those actions taken under the NCP to protect public health and welfare or the environment when there is a discharge or a substantial threat of a discharge of oil, including actions to contain or remove discharged oil from water and shorelines.

D. Coordination With Responsible Parties

Active and early involvement of responsible parties may eliminate some of the problems trustees have encountered immediately following an incident, such as lack of funding, personnel and equipment. In addition, a joint trustee-responsible party assessment may be more cost-effective and avoid duplicate studies. Therefore, the proposed rule requires the trustees to invite the responsible parties to participate in the NRDA process.

The proposed rule leaves determination of the timing and extent of responsible party participation to the judgment of the trustees on an incident-specific basis. While active responsible party involvement is the preferred method of conducting assessments, it may not be appropriate for trustees to delay assessment activities while negotiating the terms of responsible party involvement.

In making a determination to allow responsible party participation in the assessment, trustees should consider factors including, but not limited to: (1) Whether responsible parties have been identified; (2) the willingness of responsible parties to participate in the assessment; (3) the willingness of responsible parties to fund assessment costs of the trustees; and (4) the willingness and ability of responsible parties to conduct assessment activities in a technically sound and timely manner.

E. Coordination With the Public

A major goal of OPA is to involve the public in the restoration planning process. The proposed rule requires trustees to provide public notice of their intent to conduct restoration planning, and allow for public review and comment on the Draft Restoration Plan. Depending on the nature of the incident and expected assessment activities, comment may be solicited at additional stages to ensure the best information base is available to trustee decisionmakers.

In highly complex incidents, or those incidents that are expected to involve multi-year efforts, trustees may have an opportunity to set up one or a series of public meetings to ensure opportunity for public input. Attendance should be encouraged by all parties that are involved, participating, or interested in the incident.

Trustees may also conduct public outreach on non-incident-specific restoration issues. Trustees are responsible for representing the public's interests in natural resources and/or services affected by incidents. Trustees can better fulfill this trust responsibility by informing the public about NRDA provisions in statutes and the processes trustees undergo in assessing injury and determining restoration actions.

To the fullest extent practicable, trustees should implement public outreach, which will:

(1) Encourage a broad understanding of restoration and build trust, thus allowing for quicker recognition and support of the restoration process overall;

(2) Provide opportunities for joint fact-finding, improving the collection of quality data; and

(3) Incorporate public concern, providing for more effective restoration planning.

V. Considerations for Facilitating Restoration

A. General

Pre-incident planning and regional restoration plan development are tools trustees should consider as means to enhance successful restoration planning and implementation. More extensive discussion on these topics is included in Appendix B at the end of this preamble.

B. Pre-Incident Planning

NOAA believes that commitment of time, funding, and personnel to planning prior to an incident will help ensure that the assessment process results in technically sound and cost-effective plans. Pre-incident plans may: identify natural resource damage assessment teams; establish trustee notification systems; identify support services; identify natural resources and/or services at risk; identify regional and area response agencies and officials; identify available baseline information; establish data management systems; and identify assessment funding issues and options. Potentially responsible parties should be included in the pre-incident planning process to the fullest extent practicable.

C. Regional Restoration Planning

OPA emphasizes making the environment and public whole for natural resource and/or service injuries. Where practicable, incident-specific restoration is the preferred alternative to accomplish this goal. However, for many incidents, including smaller incidents, such incident-specific action may be impractical. Yet, the impact of small incidents may still represent a significant concern for trustees. Thus, to achieve OPA's mandate to restore injured natural resources and services regardless of the type and scale of those injuries, trustees are encouraged to use or modify existing regional restoration plans, or develop new regional restoration plans. Planning in a regional (e.g., ecosystem or watershed) context is appropriate so long as natural resources and/or services comparable to those expected to be injured by an incident are addressed in the plans.

VI. Review of the Regulations

Although OPA does not contain a specific provision for the update of these regulations, NOAA believes that they should be reviewed on a regular basis to keep the procedures current with new developments. Thus, NOAA is proposing that these regulations be reviewed and revised, as appropriate, at least every five years.

Subpart B—Authorities

I. Relationship to Other NRDA Regulations

A. CERCLA Regulations

The Department of the Interior (DOI) has developed regulations for assessing natural resource damages resulting from hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq.), and the Clean Water Act (33 U.S.C. 1321 et seq.). The CERCLA regulations are codified at 43 CFR part 11. The CERCLA regulations originally applied to natural resource damages resulting from oil discharges as well as hazardous substance releases. This proposed rule will supersede 43 CFR part 11 with regard to discharges of oil and substantial threats of a discharge of oil, when final. Assessments commenced under the CERCLA regulations before the effective date of the final OPA rule may be completed in compliance with the CERCLA regulations, and will be deemed conducted in accordance with the OPA regulations.

If natural resources and/or services are injured by a discharge or release of a mixture of oil and hazardous substances, trustees must use 43 CFR part 11 in order to obtain a rebuttable presumption.

B. State, local, and Indian tribal NRDA Procedures

Many states have developed their own NRDA statutes and regulations. When state, local, or Indian tribal NRDA procedures are determined to be in accordance with this proposed rule, use of these procedures will afford the trustees the evidentiary benefit of the rebuttable presumption. Under the proposed rule, state, local, or Indian tribal NRDA procedures are in accordance with the OPA regulations when the procedures:

(1) Require all recovered damages to be spent on restoration, subject to a plan made available for public review and comment, except for those damages recovered to reimburse trustees for past assessment and emergency restoration costs;

(2) Determine compensation based on injury and/or restoration;

(3) Are consistent with the standards for the technical procedures and methods outlined in § 990.51 of this part;

(4) Were developed through a public rulemaking process; and

(5) Do not conflict with OPA or this proposed rule.

II. Relationship to the NCP

The proposed rule would supplement the procedures established under the NCP for the response to an incident, and provide procedures by which trustees may determine appropriate restoration of injured natural resources and services that are not fully addressed by response actions conducted pursuant to the NCP.

III. Prohibition on Double Recovery

The proposed rule requires trustees to consider the actions of other trustees with respect to the same incident and natural resources and the effect of the prohibition on double recovery of damages in OPA section 1006(d)(3).

IV. Compliance With Other Applicable Laws and Regulations

NEPA applies to restoration planning by federal trustees, unless a categorical exclusion applies. NEPA is triggered when federal trustees issue a Notice of Intent to Conduct Restoration Planning, under § 990.43 of the proposed rule. NOAA believes that compliance with the procedures in the proposed rule would fulfill the requirements of NEPA.

When taking actions under this proposed rule, trustees must comply with all worker health and safety considerations specified in the NCP for response actions.

Where an incident implicates trustees' statutory or regulatory requirements in addition to those in OPA and this proposed rule, trustees should comply with those requirements. Compliance with all applicable laws and regulations will help to minimize duplicative and conflicting efforts. When following procedural requirements other than those specified by OPA and this proposed rule, trustees should identify those requirements in the restoration plan. Applicable requirements that may need to be considered include, but are not limited to the: Endangered Species Act; Coastal Zone Management Act; Migratory Bird Treaty Act; National Marine Sanctuaries Act; National Historic Preservation Act; Marine Mammal Protection Act; worker health and safety-related acts; and NCP. To the extent that federal trustees can legally comply with state, local, or Indian tribal procedural requirements, they should do so.

V. Settlement Authority

Trustees may settle claims for natural resource damages at any time, provided that the settlement is adequate in the judgment of the trustees to make the environment and public whole for the injury, destruction, loss of, or loss of use of natural resources and/or services that have or are likely to have occurred; with particular consideration of the adequacy of the compensation to provide for the restoration of such resources. Sums recovered in settlement of such claims may only be expended in accordance with a restoration plan that is made available for public review.

VI. Emergency Restoration

Emergency restoration actions should be considered in situations where immediate action is necessary to minimize continuing or prevent additional injury. Although emergency restoration actions may be considered and implemented by trustees at any time throughout the NRDA process if the above conditions are met, typically trustees begin evaluating the need for emergency restoration during response. If emergency restoration actions have the potential to interfere with the response, trustees must consult and/or coordinate with response agencies prior to implementing emergency restoration. Where emergency restoration actions are not expected to interfere with response activities, trustees must notify response agencies prior to implementation of emergency restoration to inform the latter of the trustees' intended actions and reasoning for believing that no interference with the response will result.

Trustees must provide notice to the responsible parties of any emergency restoration actions and invite their participation in the conduct of those actions within a reasonable timeframe.

Emergency restoration is an exception to the OPA section 1006(c)(5) requirement that actions be subject to prior public review and comment. Because of this exception, this proposed rule allows trustees to take emergency restoration action only if such action is feasible, likely to achieve the goal of minimizing or preventing injury, and is conducted at a cost that is not unreasonable. Notifying the public of the justification for, the nature and extent of, and the results of emergency restoration actions within a reasonable time following the actions is consistent with emergency action guidance under NEPA as well.

The costs associated with evaluating, planning, and implementing emergency restoration may be claimed as part of the damages claim.

Subpart C—Definitions

There are a number of fundamental terms and concepts that are not explicitly defined or described in OPA. Interpretation of these terms and concepts plays a critical role in the NRDA process under OPA.

Relevant definitions in OPA, CERCLA, the Clean Water Act, or other related laws, and associated regulations, are repeated in this proposed rule as a matter of reference. Other terms and concepts found in this proposed rule were developed to be consistent with current usage.

This section concentrates on some of the terms and concepts that are foundational to the NRDA process under this proposed rule, such as "injury," or terms that do not possess a common meaning.

Baseline

As defined in this proposed rule, the term baseline refers to the condition of natural resources and/or services that would have existed had the incident not occurred. Although injury quantification requires comparison to a baseline condition, site-specific baseline information may not be required. In many cases, injuries can be quantified in terms of incremental changes, rather than in terms of absolute changes relative to a known baseline. For example, Type A models do not require site-specific baseline information to quantify injury. Rather, the injury is quantified in terms of incremental adverse changes resulting from the incident. Similarly, counts of oiled bird carcasses can be used as a basis for quantifying incremental bird mortality resulting from an incident.

This proposed rule does not distinguish between baseline, historical, reference or control data in terms of value and utility in determining the degree and spatial/temporal extent of natural resource and/or service injuries. To the extent that baseline data, historical data, reference data or control data can provide valid information on which to base a determination of the projected conditions of the natural resource and/or service in the absence of the incident, these forms of data may effectively serve as baseline information. Trustees are encouraged to collect information from the field, laboratory, literature, models, or any combination thereof.

Types of information that may be useful in determining baseline include:

(1) Information collected on a regular basis and for a period of time;

(2) Information identifying historical patterns or trends;

(3) Information from areas unaffected by the incident, that are judged sufficiently similar to the area of the incident with respect to the variable being measured; or

(4) Information from the area of the incident after the particular variable, e.g., interim lost use, has been judged to have recovered.

Exposure

Exposure documentation is required to determine injury under this proposed rule except when natural resource and/or service injuries are the result of response activities or the substantial threat of a discharge of oil. Exposure can be expressed broadly as direct or indirect contact with the discharged oil. Exposure may be determined, alone or in combination, through: field investigations; laboratory exposure studies; transport and fate modeling; or the literature.

Incident

An incident is any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone. When a discharge of oil occurs, natural resources and/or services may be injured by the actual discharge of oil or response activities related to the discharge. When there is a substantial threat of a discharge of oil, natural resources and/or services may also be injured.

Injury

OPA authorizes trustees to recover damages for "injury to, destruction of, loss of, or loss of use of" natural resources (sec. 1002(b)(2)(A)). Trustees must establish that injury has resulted from an incident. Under this proposed rule, injury is defined as an observable or measurable adverse change in a natural resource or impairment of a natural resource service. Measurable adverse changes may be projected through use of models or extrapolation techniques.

There are two general bases for determining injury under this proposed rule. Trustees must either determine that: (1) The natural resource was exposed, there is a pathway connecting the incident with the resource, and an adverse change to the natural resource and/or service has occurred; or (2) for injuries resulting from response actions or incidents involving a substantial threat of a discharge, an injury to a natural resource or an impairment of use of a natural resource service has occurred as a result of the incident. Thus, under this proposed rule, injury may result from direct or indirect exposure to oil, as well as from response-related activities, and loss of services is explicitly included in the definition of injury.

Oil

Under OPA section 1001(23), "oil" includes:

> Oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of [CERCLA] and which is subject to the provisions of that Act.

If a component of a mixed spill is a hazardous substance under CERCLA, CERCLA and the CERCLA NRDA regulations apply. The definition of "oil" under OPA does not cover all petroleum-related products. For instance, substances whose properties or behavior are substantially different from oil (e.g., natural gas condensates) are excluded under OPA. However, substances that are relatively similar (e.g., non-petroleum oils such as vegetable oils and animal fats) are covered by OPA. Although the U.S. EPA and U.S. Coast Guard have recognized that animal fats and vegetable oils are substantially less harmful to the environment than petroleum-based oils, the preamble to the recent revisions to the NCP states that "oil of any kind or in any form" clearly suggests the inclusion of non-petroleum oils. 59 FR 47386 (Sept. 15, 1994). This conclusion is also consistent with U.S. Department of Transportation guidance, which states that "oil" includes "petroleum, fuel oil, vegetable oil, animal oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include natural gas condensate." 49 CFR 194.5. While the mechanism of injuries by non-petroleum oils may be different than that of petroleum oils, it is evident, based on current literature, the nature of such injuries are similar (i.e., death) for both types of oils.

According to EPA guidance, "oil" covered by OPA includes: (1) Crude oil and fractions of crude oil including the hazardous substances, such as benzene, toluene, and xylene, which are indigenous to petroleum and its refined products; and (2) hazardous substances that are normally mixed with or added to crude oil or crude oil fractions during the refining process, including hazardous substances that have increased in level as a result of the refining process. (U.S. EPA Memorandum on the Petroleum Exclusion Under the Comprehensive Environmental Response, Compensation, and Liability Act, July 31, 1987; BNA, 1988) Hazardous substances added to petroleum that increase in concentration through any process other than refining, or added as a result of contamination of the petroleum during use (including waste oil), would not be excluded from CERCLA. For example, the presence of dioxin in oil used as a dust suppressant on highways would bring a discharge of such a mixture under the jurisdiction of CERCLA, not OPA.

Pathway

Pathways include the medium, mechanism, or route by which the incident has resulted in an injury. For discharges of oil, a pathway is the sequence of events by which: (1) The oil travelled through various components of an ecosystem and contacted the natural resource of concern; or (2) exposure to oil in one part of an ecosystem was transmitted to the natural resource of concern, without the oil directly contacting the natural resource.

Reasonable Assessment Costs

To evaluate the reasonableness of assessment costs, the incremental increase in assessment information must be reasonably related to the action's incremental cost. The scale of assessment efforts must be appropriate in the judgment of the trustees relative to the need for increased information, which is a highly incident-specific determination. The costs of an assessment or assessment actions that are focused on providing information required to determine restoration requirements must also be judged relative to the extent of injury and expected restoration costs for the incident. Reasonable assessment costs also include the administrative, legal, and enforcement costs necessary to carry out this part. Trustees may recover the reasonable assessment costs they incur under this proposed rule even if they ultimately determine not to pursue restoration, provided they establish jurisdiction under OPA during the Preassessment Phase.

Recovery

Recovery is defined in the proposed rule as the return of injured natural resources and services to baseline. This concept encompasses the inherent tendency for natural resource and/or service attributes to vary over space and time.

Projecting recovery involves determining the likelihood and rate at which natural resources and/or services will return to baseline. The availability and quality of baseline information can influence recovery projections. Trustees should use the best available information that can be gathered through field or laboratory studies, models, the literature, and other sources appropriate to the incident or injury to project recovery.

Restoration

Under this proposed rule, restoration is broadly defined as any action or combination of alternatives or actions to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services.

This proposed rule includes the concepts of primary and compensatory restoration. Primary restoration is human intervention or natural recovery that returns injured natural resources and services to baseline. Compensatory restoration is action taken to make the environment and the public whole for service losses that occur from the date of the incident until recovery of the injured natural resource.

Services

Natural resources are valued in terms of the services or functions they provide to other natural resources or the public. Thus, under this proposed rule, services refer to the ecological functions performed by natural resources or the public benefits derived therefrom. Such services can be classified as follows:

(1) Ecological services—the physical, chemical, and biological functions that one natural resource provides for another. Examples include provision of food, protection from predation, nesting habitat, and biodiversity, among others; and

(2) Public services—the functions that natural resources provide for the public. Examples include fishing, hunting, nature photography, education, and access, among others.

Value

An individual's value of a good is represented by the amount of other items that the individual is willing to give up to obtain or is willing to accept to forgo the good. The total value of a natural resource or service includes direct use values (e.g., values individuals derive from consuming or viewing a natural resource) and passive use values (values not linked to direct use, e.g., the value individuals derive from knowing a natural resource exists). In many contexts, particularly in markets, value is represented in terms of units of currency, the commonly accepted form of exchange. However, value can be measured using a variety of possible measures, including units of a resource service. In this proposed rule, value can be measured either in terms of units of resource services or dollar amounts.

Subpart D—Preassessment Phase

I. Purpose

During the Preassessment Phase, trustees make several critical determinations that shape the remainder of the assessment. Trustees must initially determine whether actions under OPA are justified, then proceed to make early estimates about the types of injury assessment and restoration actions that may be warranted, based on the circumstances of a given incident.

II. Determinations

A. Determination of Jurisdiction

In order for trustees to proceed with restoration planning under OPA, certain conditions must be met:

(1) An "incident" under OPA has actually occurred (i.e., there has been a discharge or substantial threat of a discharge of oil);

(2) The incident does not fall within exclusionary conditions set forth in section 1002(c) of OPA (e.g., the discharge was not allowed by federal permit); and

(3) Natural resources under the trusteeship of the trustees have or may be affected as a result of the incident.

Frequently, the first two conditions are determined by the response agency; USCG or EPA may have already made these determinations that OPA applies to the incident before notifying trustees. The third condition, however, is necessarily determined by each trustee. If any of these conditions is not met, the trustees may not take additional action under this proposed rule.

A determination that OPA applies and that a trustee has jurisdiction to act under OPA may trigger initiation of the NRDA process.

B. Determination to Conduct Restoration Planning

1. General

The key determination to be made by trustees in the Preassessment Phase is whether it appears likely that restoration actions should be pursued by the trustees. This determination depends on the following conditions:

(a) Injuries likely have resulted or will result from the incident;

(b) Response actions may not adequately address the potential injuries; and

(c) Feasible restoration actions exist to address the potential injuries.

If any of the above conditions is not met, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to the point when they determined that the conditions were not met. If all of the above conditions are met, the trustees must issue a "Notice of Intent to Conduct Restoration Planning" (Notice). The form and content of this Notice will vary depending on the circumstances of individual incidents, and is discussed below.

Other factors to consider during the Preassessment Phase include: funding, data collection, and opening the administrative record. Trustees may also need to consider the applicability of the defenses to liability provided in OPA section 1003 and the monetary caps on liability provided in OPA section 1004.

2. Identifying Natural Resources and/or Services at Risk

Determining whether natural resources and/or services are, or are likely to be, injured requires that trustees consider the:

(a) Circumstances of the incident. Factors to consider may include geographic location, source, type, time and duration, and volume of the discharge;

(b) Characteristics of the discharge or threatened discharge. Factors to consider may include physical parameters of the oil;

(c) Characteristics of the natural resources. Factors to consider may include the natural resources in the area of the incident, the services they provide, habitat and species types, seasonal implications on sensitive life stages, and unique ecological components; and

(d) Potential for injury. Factors to consider may include potential for exposure, plausible pathways, causal mechanisms, and availability of assessment procedures and data to analyze these factors.

3. Effectiveness of Response Actions in Eliminating Injury

Once trustees ascertain that trust resources and/or services are, or may be expected to be, injured as a result of the incident, trustees can make the determination whether these concerns are likely to be adequately addressed through response actions. If response actions will not alleviate residual natural resource and/or service injuries, trustees must determine whether there is a need and potential for restoration actions to address residual impacts, and begin identifying these actions, to facilitate the Restoration Planning Phase of the NRDA process.

4. Early Identification of Potential Restoration Actions

Whenever practicable, potential restoration actions need to be identified as early in the NRDA process as possible. Such identification is needed to help justify the decision to proceed with an assessment that will lead to restoration actions, and provide focus for designing injury assessment studies that will produce useful information on the type and scale of restoration needed for injured natural resources and services. Some considerations important to the early identification of restoration actions include:

(a) Potential nature, degree, and spatial/temporal extent of injury, with or without restoration;

(b) Need and potential for restoration;

(c) Potential scope and scale of restoration;

(d) Extent to which relevant information is known, or the time and money required to obtain such information; and

(e) Requirements imposed by other laws and regulations that would affect restoration.

If trustees determine that restoration actions are appropriate to the incident, the trustees should proceed to the Restoration Planning Phase.

III. Notice of Intent to Conduct Restoration Planning

If the trustees determine that there is a reasonable likelihood that injury has occurred as a result of the incident and restoration actions that would address these injuries should be pursued, the trustees may proceed with injury assessment. At this point, the trustee must prepare the Notice of Intent to Conduct Restoration Planning documenting the trustees' preassessment activities and the basis for the decision to proceed. Depending on information available at this early stage of the assessment process, the Notice may also include a description of the trustees' proposed strategy to assess injury and determine the scope and scale of restoration. The contents of a Notice may vary, but will typically discuss:

(a) The facts of the incident;

(b) Trustee authority to proceed with assessment;

(c) Natural resources and/or services that are, or are likely to be, injured as a result of the incident;

(d) Potential restoration actions relevant to the expected injuries; and

(e) If determined at the time, potential procedures to assess injuries, and determine the appropriate scope and scale of restoration for the affected natural resources and services.

The Notice must be made publicly available. The means by which it is made publicly available and whether public comments are solicited on the Notice will depend on the scope and scale of the incident, and the need to conduct further investigation to identify likely injury assessment and restoration actions, among other things. Trustees must also provide a copy of the Notice to the known responsible parties and invite their participation in the conduct of restoration planning.

IV. Administrative Record

The administrative record facilitates the restoration process by providing a central repository for all materials relied upon by trustees in making final determinations about restoration actions appropriate for an incident. The administrative record should be opened after trustees determine the need to conduct restoration planning. The Notice will identify a trustee representative to contact with questions regarding the administrative record.

The administrative record must contain sufficient information to support the public's review of the trustees' decisionmaking process. The administrative record must contain documents and other factual information considered by trustees in selecting assessment actions, including documents that support options the trustees ultimately rejected. Pertinent documents submitted in a timely manner by the responsible parties and public, including public comments, must be included in the administrative record.

The administrative record should be limited to final documents when possible. Where no final document is available at the time of selection of restoration actions, the draft may be included in the administrative record if the document contains information not found in other documents in the record, but which is considered by the trustees in selecting a restoration action. Pre-decisional, deliberative internal agency memoranda should be treated like draft documents, i.e., excluded from the record, unless relied upon in choosing restoration actions.

Ordinarily, the administrative record should include: the Notice, draft and final restoration plans, and public comments. Any relevant data, investigation reports, scientific studies, work plans, quality assurance plans, decision documents, and literature may be included in the administrative record. Any agreements among the participating trustees or with the responsible parties should also be included in the administrative record.

Although this proposed rule is silent on the standard of review for NRDA, NOAA expects that assessments and restoration selection based on an open administrative record will be afforded review on the record by the courts.

V. Data Collection During Preassessment

This proposed rule allows trustees to conduct limited data collection and analysis throughout the Preassessment Phase. The purpose of data collection at this stage is to facilitate the determination of whether natural resources and/or services have been injured by the incident and require some form of restoration. Ephemeral information (i.e., information that may be lost if not collected immediately) may also be collected during the Preassessment Phase if the information is necessary for any stage of the restoration planning process. In addition, information needed to design and implement anticipated assessment procedures may be collected during this phase. Data collection during this phase must be coordinated with response actions such that the collection does not interfere with or hinder the response actions.

Subpart E—Restoration Planning Phase

I. Purpose

The purpose of the Restoration Planning Phase is to evaluate information on potential injuries to natural resources and/or services (injury assessment), and use that information to determine the need for and scale of restoration actions (restoration selection). The NRDA process is essentially a restoration scoping exercise, and the various studies and analyses conducted during this phase should be viewed from the restoration perspective.

During the Restoration Planning Phase, trustees should focus on determining which natural resources and services need to be restored, and how to design and scale that restoration. Potential NRDA activities should be scrutinized closely to ensure that the results will be useful and relevant to restoration.

The Restoration Planning Phase integrates and provides the linkage between injury and restoration, through the injury assessment and restoration selection components of the phase. Development of a conceptual linkage between injury and restoration early in the NRDA process (i.e., in the Preassessment Phase) should both expedite the assessment process and minimize costs by assisting the trustees in: focusing on the most relevant injuries to be included in the assessment; designing studies that are relevant to restoration; and designing appropriate restoration projects.

II. General Criteria for Acceptable Procedures

In order to be in accordance with this proposed rule, any procedures for assessing injury and scaling restoration actions must be consistent with the following criteria:

(a) If available, injury determination and quantification procedures that provide information of use in determining the appropriate type and level of restoration appropriate for a particular injury or loss shall be used;

(b) If a range of procedures providing the same type and quality of assessment information are available, the most cost-effective procedure will be used;

(c) The incremental cost of more complex studies must be reasonably related to the expected increase in relevant assessment information provided by the more complex study; and

(d) Procedures selected must be reliable and valid for the particular context.

III. Injury Assessment

A. Purpose

The goal of injury assessment, which includes determination and quantification of injury, is to determine the nature, degree, and spatial/temporal extent of injuries to natural resources and/or services, thus providing a technical basis for evaluating the need for and scale of restoration. While the basic steps discussed below are applicable to all assessments, selection of approaches for demonstrating exposure, pathway, and injury will be incident-specific. Thus, this proposed rule provides a range of possible procedures and methods for injury determination and quantification, including simplified (e.g., models, literature extrapolation) and more detailed procedures (e.g., generation of original data). Trustees are encouraged to use simplified procedures, when appropriate.

Under OPA, trustees must determine whether injuries "resulted from" the incident. Establishing that a specific injury has resulted from a particular incident may be accomplished through a number of procedures, alone or in combination. These include field investigations, laboratory studies, models, and the literature.

To determine injury under this proposed rule, trustees must determine if:

(1) The definition of "injury" is met; and

(2) The injured natural resource has been exposed to the discharged oil and a pathway links the incident and the injured natural resource and/or service, or,

for injuries resulting from response actions or incidents involving a substantial threat of a discharge, an injury or an impairment of use of a natural resource service has occurred as a result of the incident.

If any of the above conditions for determining injury provided in this section is not met, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to the point when they determined that the conditions were not met. If all the conditions are met, trustees may proceed with the assessment. These steps and concepts are described in more detail below.

B. Injury Determination

1. Definition of Injury

Under this proposed rule, trustees must determine if the definition of "injury" has been met. "Injury" is defined as an observable or measurable adverse change in a natural resource or impairment of a service.

Injury includes adverse changes in the chemical or physical quality or viability of a natural resource. The simplest example is death of an organism, but indirect, delayed, or sublethal effects may also be considered. Other potential categories of injuries include adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior; community composition; ecological processes and functions; physical and chemical habitat quality or structure; and services to the public.

Although injury often is thought of in terms of adverse changes in biota, the definition of injury under this rule is broader. Injuries to non-living resources (e.g., removal of oiled sand on a beach) as well as injuries to resource services (e.g., lost use associated with a fisheries closure to prevent harvest of tainted fish, even though the fish themselves may not be injured) may be considered.

This list of potential adverse changes is not intended to be inclusive of all injuries that trustees may evaluate.

2. Exposure

The purpose of the exposure portion of an injury assessment is to determine whether natural resources came into contact with the oil from the incident. Early consideration of exposure (i.e., ideally during the Preassessment Phase) should help to focus the assessment on those natural resources and/or services that are most likely to be affected by an incident.

Trustees must determine whether the natural resource came into contact, either directly or indirectly with the oil discharged from the incident. Under this proposed rule, exposure is broadly defined to include not only direct physical exposure to oil, but also indirect exposure (e.g., injury to a organism as a result of a food web disruption). Documenting exposure is a prerequisite to determining injury, except for response-related injuries and injuries from substantial threats of discharges. However, evidence of exposure alone may not be sufficient to conclude that injury to a natural resource has occurred (e.g., the presence of petroleum hydrocarbons in oyster tissues may not, in itself, constitute an injury).

Exposure can be demonstrated with either quantitative or qualitative methods. As with other elements of the NRDA process, selection of approaches for demonstrating oil exposure will depend on the type and volume of discharged oil, natural resources at risk, and nature of the receiving environment. For example, chemical analysis of oil in sediments, alone, may not be adequate to conclude that a benthic organism was otherwise exposed to the oil. Likewise, the presence of petroleum in fish tissue, alone, may not be adequate to link the exposure to the discharge because metabolism of the oil may blur the chemical characterization. The combination of the two approaches may, however, demonstrate exposure.

Typically, procedures for exposure analysis include: (a) Field observations or measurements; (b) laboratory exposure studies; (c) transport and fate modeling; and (d) the literature. This proposed rule emphasizes that these procedures may be used alone, or in combination, depending on the specific nature of the incident. Trustees must determine the most appropriate approach to evaluating exposure on an incident-specific basis. For example, for some types of incidents, visual observation in the field and/or modeling may be sufficient to evaluate exposure. For other incidents, more involved site-specific sampling, including chemical analysis and biological data collection, may be more appropriate.

3. Pathways

To determine whether an injury resulted from a specific incident, a plausible pathway linking the incident to the injury must be identified. As with exposure, demonstrating a pathway is a prerequisite to determining injury, but evidence of a pathway, alone, is not sufficient to conclude that injury has occurred (e.g., demonstrating that prey species are oiled can be used to document that a plausible pathway to a predator species exists. However, such data do not, in themselves, demonstrate that the predator species is injured).

Pathway determination can include evaluation of either:

(a) The sequence of events by which the discharged oil was transported from the incident and came into direct

physical contact with the exposed natural resource (e.g., oil transported from an incident by ocean currents, wind, and wave action to directly oil shellfish); or

(b) The sequence of events by which the discharged oil was transported from the incident and caused an indirect impact on a natural resource and/or service (e.g., oil transported from an incident by ocean currents, wind, and wave action cause reduced populations of bait fish, which in turn results in starvation of a fish-eating bird; or, oil transported from an incident by currents, wind, and wave action causes the closure of a fishery to prevent potentially tainted fish from being marketed).

Pathway determination does not require that injured natural resources and/or services be directly exposed to oil. In the example provided above, fish-eating birds are injured as a result of decreases in food availability. However, trustees must always determine the existence of a plausible pathway relating the incident to the injured natural resource and/or service, even if the injury is not caused by direct exposure to oil.

Pathways can include, but are not limited to, movement/exposure through the: water surface; water column; sediments, including bottom, bank, beach, floodplain sediments; groundwater; soil; air; direct accumulation; and food-chain uptake.

As with exposure determination, procedures for pathway analysis include field investigations, laboratory studies, modeling, and the literature. As noted above, this proposed rule emphasizes that these procedures may be used alone, or in combination, depending on the specific nature of the incident. Trustees must determine the most appropriate approach to determine whether a plausible pathway exists on an incident-specific basis.

Understanding the potential pathways will also help to narrow the scope of the NRDA investigation, and may be important in deciding which assessment procedures to use. For example, the Type A model does not address injuries that occur via air or terrestrial pathways, thus it would not be appropriate in such cases.

4. Selection of Injuries to Include in the Assessment

During the Preassessment Phase, trustees may collect information on a wide range of potential injuries. As a result, a long inventory of potential injuries resulting from the incident is often developed. Because the collection of information on injury must be directly related to the incident and consistent with restoration planning, developing scientific knowledge for its own sake is not appropriate under this rule.

To compile the inventory of potential injuries, trustees should determine the extent to which the following information is known or can be obtained for each injury:

(a) The natural resource/service of concern;

(b) The adverse change that constitutes injury;

(c) The potential degree, and spatial/temporal extent of the injury;

(d) The evidence indicating injury;

(e) The mechanism by which injury occurred;

(f) The evidence indicating exposure;

(g) The pathway from the incident to the natural resource/service of concern;

(h) The potential natural recovery period;

(i) The kinds of primary and/or compensatory restoration actions that are feasible; and

(j) The kinds of procedures available to evaluate the injury, and the time and money requirements.

The result of the above analysis will be a list of injuries to be evaluated in the assessment.

C. Injury Quantification

Injury quantification is the process by which trustees determine the degree and spatial/temporal extent of injuries. Thus, injury quantification is the means by which appropriate restoration is determined.

1. Conceptual Approaches to Quantification

Trustees may pursue one or more of several different conceptual approaches to injury quantification. Under these approaches, injury may be quantified in terms of: (a) The degree and spatial/temporal extent of injury to a natural resource; (b) the degree and spatial/temporal extent of injury to a natural resource with subsequent translation of that change to a reduction in services provided by the natural resource; or (c) the amount of services lost as a result of the incident. Examples of the first approach include quantifying the number of seabird mortalities caused by a discharge of oil, or measurement of the area of a river in which hydrocarbon concentrations exceed water quality standards. Examples of the second approach include quantifying reductions in fish populations with subsequent estimation of the number of recreational fishing days lost as a result of this injury, or quantifying the amount of lost spawning habitat as a result of oiling with subsequent estimation of the number of fish that would have been produced by that habitat. An example of the third approach includes direct measurement of the number of beach user days lost as a result of a beach closure. Trustees are encouraged to use whichever approach, or combination of approaches, is most appropriate to the circumstances of the incident.

For reasons indicated in subpart C under the definition of baseline in the preamble, site-specific baseline information may not be required.

2. Injury Quantification Information Needs

Because the purpose of injury quantification is to design and scale restoration actions, a large number of quantification measures may be adopted by trustees. In general, injury quantification should be designed to evaluate injury by addressing the following:

(a) Degree of the injury. Degree may be expressed in terms of percent mortality, proportion of a population, species, community, or habitat affected, extent of oiling, and availability of substitute services.

(b) Spatial extent of the injury. Spatial extent may include quantification of the total area or volume of injury.

(c) Temporal extent of the injury. Duration of injury may be expressed as the amount of time that the natural resource and/or service will be injured until natural recovery occurs, including past and interim injury periods.

In order to scale restoration actions, trustees may find it useful to develop an estimate of the total quantity of injury that integrates severity, and spatial and temporal extent of injury. For example, quantification of the total losses of wetland habitat injured by oil could be obtained by estimating the: (a) Total number of acres of severely oiled wetland in which vegetation is totally killed; (b) natural recovery time for severely oiled wetland; (c) total number of acres of moderately oiled wetland in which vegetation is not completely killed but the wetland has lower levels of productivity; and (d) natural recovery time for moderately oiled wetland. This information could be combined to quantify the total number of "acre-years" of wetland injury to scale restoration actions.

D. Analysis of Natural Recovery

Trustees must estimate the time for natural recovery without restoration, but including any response actions. Recovery is defined as a return of injured natural resources and services to baseline. Analysis of recovery times may include evaluation of factors such as: (a) Degree and spatial/temporal extent of injury; (b) sensitivity of the injured natural resource and/or service; (c) reproductive potential; (d) stability and resilience of the affected environment; (e) natural variability; and (f) physical/chemical processes of the affected environment. Approaches to estimating recovery times include literature reviews of recovery at similar sites or for similar species, computer models, and professional judgement.

E. Injury Assessment Procedures and Methods

1. General

Whenever practicable, procedures should be chosen that provide information of use in determining the restoration appropriate for that injury. This proposed rule provides a range of assessment approaches, from simplified to more detailed. The technical and scientific adequacy of approaches will be judged based on the circumstances of the incident and injuries, and the information needed to determine restoration actions. Trustees should, however, first determine whether simplified assessment procedures are appropriate for a given incident. In general, more detailed assessment procedures may include, alone or in any combination, (a) field investigations; (b) laboratory methods; (c) model-based methods; and (d) literature-based methods.

2. Selection of Procedures

Trustees must base their selection of assessment procedures on an evaluation of the following factors:

(a) Potential nature, degree, and spatial/temporal extent of the injury;

(b) Potential restoration actions for the injury;

(c) Range of assessment procedures available, including the applicability of simplified assessment procedures;

(d) Time and cost necessary to implement the assessment procedures; and

(e) Relationship between the information generated by the assessment procedures and the information needed for restoration planning.

When trustees have made a determination that a simplified assessment procedure is the most appropriate procedure for a given incident or injury, the responsible parties may request that trustees use incident-specific assessment procedures instead of a simplified assessment procedure if the responsible parties, in a timeframe acceptable to the trustees:

(a) Identify the incident-specific assessment procedures to be used and the reasons supporting the technical appropriateness of such procedures for the incident or injury;

(b) Advance the costs of using such incident-specific assessment procedures; and

(c) Agree not to challenge the reasonableness of the costs of using such incident-specific assessment procedures.

3. Simplified procedures

a. Type A procedures. Trustees may use the Type A procedures identified in 43 CFR part 11, subpart D, that address oil discharges provided that conditions are sufficiently similar to those listed in 43 CFR 11.33 regarding use of the procedures. For further discussion, see Appendix C to this preamble.

b. Compensation Formulas. In the January 1994 proposed rule, NOAA proposed compensation formulas for use for small incidents in estuarine and marine environments and inland waters. NOAA is now considering temporarily reserving those formulas. For further discussion, see Appendix C to this preamble.

4. Incident-specific procedures

Trustees may also use incident-specific assessment procedures, provided they are cost-effective and relevant to determining the scope and scale of restoration appropriate for that injury. Incident-specific assessment procedures include, alone or in any combination:

(i) Field methods;

(ii) Laboratory methods;

(iii) Model-based methods; and

(iv) Literature-based methods.

IV. Restoration Selection

A. Purpose

Once injury assessment is completed, trustees must develop a plan for restoring the injured natural resources and services. Under the proposed rule, trustees must identify a reasonable range of restoration alternatives, evaluate those alternatives, select an alternative, develop a Draft Restoration Plan for public review, and produce a Final Restoration Plan that addresses public concerns.

B. Development of a Reasonable Range of Alternatives

1. General

Trustees must identify a reasonable range of alternative restoration actions for consideration, except as provided in § 990.58 regarding the use of a Regional Restoration Plan. Generally, trustees will identify a package of actions and/or services. However, if there is a reasonable basis for separately evaluating actions to restore separate natural resources and/or services, then trustees may do so. Acceptable restoration actions include any of the actions authorized under OPA (i.e. restoration, rehabilitation, replacement, or acquisition of the equivalent), any combination of those actions, and natural recovery.

Restoration alternatives may have two components: (a) Primary restoration, which is human intervention or natural recovery that returns injured natural resources and services to baseline; and (b) compensatory restoration, which is action taken to make the environment and the public whole for service losses that occur from the date of the incident until recovery of the injured natural resources.

What constitutes a reasonable range of alternatives will vary from case to case but must always include a no-action alternative. A no-action alternative is not the same as a natural recovery alternative. Under the no-action alternative, no human intervention would be taken for primary or compensatory restoration. In contrast, under a natural recovery alternative, human intervention could be taken for compensatory restoration action. A natural recovery alternative could also include minimal primary restoration actions by trustees to prevent interference with natural recovery (e.g., closing an area to human traffic).

2. Primary Restoration

Alternative primary restoration actions can range from natural recovery with no human intervention, to actions that prevent interference with natural recovery, to more intensive actions expected to return injured natural resources to baseline faster or with greater certainty than natural recovery.

When developing the primary restoration components of the restoration alternatives, trustees must define the desired outcome to be accomplished, and the criteria by which successful recovery will be judged. The goals and objectives should be clear and site-specific. The trustees should define the minimal acceptable criteria for recovery.

When identifying primary restoration alternatives to be considered, trustees should first consider whether activities exist that would limit the effectiveness of restoration actions (e.g., residual sources of contamination). Trustees should also consider whether any primary restoration actions are necessary or feasible to return the physical, chemical, and biological conditions necessary to allow recovery

or restoration of the injured resources (e.g., replacement of sand or vegetation). Trustees should consider whether restoration actions focusing on certain key species or habitats would be an effective approach to achieving baseline conditions.

3. Compensatory Restoration

In addition to primary restoration, trustees have the discretion to include a compensatory restoration action in some or all of the restoration alternatives. The service loss that must be addressed by a particular compensatory restoration action will vary depending on the nature of the primary restoration component of the overall restoration alternative.

a. Developing Types of Alternatives

When identifying the compensatory restoration components of the restoration alternatives, trustees must first consider compensatory restoration actions that provide services of the same type and quality as those lost. This is the preferred approach to identifying compensatory restoration actions. If, however, such actions are infeasible, or too few in number to provide a reasonable range of alternatives, trustees may then include other compensatory restoration actions among the alternatives, so long as the actions will provide services of at least comparable type and quality as those lost, in the judgment of the trustees.

b. Scaling Compensatory Restoration Actions

To ensure that a compensatory restoration action will appropriately compensate for the service loss, trustees must scale the action. The approaches that may be used to assess the appropriate scale of a compensatory restoration action include the service-to-service approach and the valuation approach.

i. Service-to-Service Approach

Under the service-to-service approach to scaling, the appropriate quantity of replacement services is determined by obtaining equivalency between lost and replacement services after discounting appropriately. Trustees must use the service-to-service approach for alternatives that provide services that are of the same type and quality, and are subject to comparable resource scarcity and demand conditions as those lost. The third criterion is being proposed to address situations where the public will no longer have the same level of need for services of the same type and quality as those lost by the time the compensatory restoration alternative could be implemented. In such situations, a strict equivalency between quantities of lost and replacement services may not adequately compensate the public. NOAA solicits comment on the proposed criteria for use of the service-to-service approach.

Under the service-to-service approach, NOAA recommends use of habitat equivalency analysis when lost resource services are primarily of indirect human use, for example, species habitat or biological resources. (See Appendix D at the end of this preamble for a description of habitat equivalency analysis.) If lost services are human uses, for example recreational services, then a behavioral model of human use may be used to determine the scale of project necessary to attract the appropriate level of human uses. For example, if the interim lost services are lost recreational beach days, then the restoration alternative may be designed to provide the requisite number of recreational beach days by, perhaps, improving access to existing public beaches.

NOAA is interested in receiving comments on these suggested methods as well as any additional methods that might be appropriate for use with the service-to-service approach.

ii. Valuation Approach

In situations where trustees must consider alternatives that provide services that are of a different type or quality, or are subject to non-comparable resource scarcity or demand conditions than those services lost, trustees may use the valuation approach to scaling.

The valuation approach requires that trustees determine the amount of services that must be provided to produce the same value lost to the public. The approach relies on the idea that lost value can be determined using one of a variety of possible units of exchange, including units of resource services or dollars. The valuation approach requires that the value of lost services be measured explicitly and that the compensatory restoration alternative provide services of equivalent value to the public. To properly scale the compensatory restoration alternative, the trustee might have to measure the values of varying sizes of the compensatory restoration alternative to determine the size of a project that will replace the value of lost services. For proper comparison, all values lost or provided over time should be converted into present value terms by discounting.

Measuring the value of lost services in terms of units of replacement services rather than dollars may be the most direct approach to scaling the compensatory restoration alternative. Although such procedures are currently not well-defined in the literature, it is likely that the method would use a form of conjoint analysis. Other valuation methods include the travel cost method, factor income approach, hedonic price models, models of market supply and demand, and contingent valuation. (See Appendix D at the end of this preamble for descriptions of these methods.) Trustees are not limited to these methods, and may use any reliable method suitable for calculating interim lost value. Where the circumstances are such that a site-specific application of one of these valuation methods does not meet the reasonable cost criterion, the trustees may consider estimating interim lost value using benefits transfer. The choice of approaches in a particular context will depend upon the types of injuries and the type of services provided by the compensatory restoration alternative.

Trustees should consider using similar methods for measuring the value of the lost services and the value of the services provided by the compensatory restoration alternatives. If different valuation methods are used, then trustees should take steps to ensure that the variation in methods does not introduce bias. NOAA seeks comment on possible approaches for assessing and adjusting for biases that may occur in this situation.

If valuation of the services provided by an alternative could not, in the judgment of the trustees, be performed consistent with the definition of reasonable assessment costs, the trustees may calculate the value of the lost services and then select the scale of a restoration alternative that has a cost equivalent to the lost value. The responsible parties will have the option of requesting that the trustees value the alternative, if the responsible parties, within a timeframe acceptable to the trustees, advance the costs of doing so and agree not to challenge the reasonableness of the costs of performing such valuation.

Because the reformulated unified restoration approach envisions a fundamentally different role for valuation methods from what was contained in the January 1994 proposed rule, NOAA has not included standards for utilization of such methods in today's proposed rule. However, NOAA is still considering, and seeks comment on, whether standards for the use of valuation methods, including contingent valuation, should be included in the final rule (or in accompanying guidance documents),

and, if so, what level of guidance would be appropriate.

c. Treatment of Uncertainty and Discounting

When scaling a compensatory restoration action, trustees should address the uncertainties associated with the predicted consequences of restoration projects and must discount to the present the interim lost services, or the value of interim lost services due to the injury as well as the gain in services or the gain in service value from the restoration project. The reference date for the discounting calculation is the date at which the demand is presented.

The choice of an appropriate discount rate is linked to the treatment of uncertainties associated with the losses due to the injury and the gains from the compensatory restoration alternative.

NOAA recommends that, where feasible, the trustees should use risk-adjusted measures of losses and gains, in conjunction with a riskless rate of discount serving as a proxy for the consumer rate of time preference. Alternatively, if the streams of losses and gains cannot be adequately adjusted for risks, then NOAA recommends use of a discount rate that incorporates a suitable risk adjustment to the riskless rate.

The periods of losses due to injury and, particularly, the period of gains from compensatory restoration projects potentially extend far into the future. Because the rates of return on financial instruments vary substantially through time and future rates can be predicted imperfectly, NOAA recommends use of a long-term average of the rates of return from the selected instrument. The analysis will be conducted either in nominal terms (i.e., in dollars of the year in which the losses or gains are incurred) or in real terms (e.g., in units of services, or in dollars of a specified base year). The nominal U.S. Treasury rate shall be used if the components of the claim are denominated in nominal terms. Otherwise, if components of the claim are denominated in real terms (of the discounting reference year), then real U. S. Treasury rates are to be used. To calculate the real rates, trustees should use an appropriate price index to remove expected inflation from the appropriate nominal U.S. Treasury rate.

NOAA seeks comment on various issues related to discounting the streams of consumer losses and gains. For what uncertainties is it most important for trustees to develop adjustments? What procedures are suitable for adjusting the streams of losses and gains for uncertainty? What is the appropriate price index to employ to adjust nominal discount rates for inflation (e.g., Gross Domestic Product deflator, or Consumer Price Index)? Should the discount rate be an after-tax rate, rather than a pre-tax rate? Is a long-term average of the rates of the selected instrument the best predictor of future rates? If so, over what period should the average be calculated?

U.S. Treasury bill and bond rates may be found in the Federal Reserve Bulletin, issued monthly, or the Treasury Bulletin, issued quarterly. The Gross Domestic Product fixed-weighted price index and the Consumer Price Index may be found in the Survey of Current Business, issued monthly, and the Economic Report of the President, issued annually. The Administration prediction for future Gross Domestic Product deflators is updated twice annually at the time the budget is published in January or February and at the time of the Mid-Session Review of the Budget in July. The current Treasury rates and inflation adjustment assumptions are reported in regular updates of Appendix C of Circular No. A–94, available from the OMB Publications Office (202–395–7332).

C. Restoration Alternatives for Simplified Assessment Procedures

Simplified assessment procedures, described in § 990.54(d) of the proposed rule, provide different types of results or output that can be used in designing and scaling incident-specific restoration actions. For example, when using the Type A model, trustees have several alternative approaches: (1) A restoration plan may be developed to address the injuries predicted by the model; (2) the restoration actions predicted by the Type A model may be implemented; or (3) the lost values resulting from a model run may be used to identify the scale of a project. As discussed below, the proposed rule also allows trustees to consider using a Regional Restoration Plan instead of developing an incident-specific restoration plan when they have used simplified assessment procedures.

D. Evaluation of Restoration Alternatives

1. General

Once trustees have developed the restoration alternatives, they must evaluate those alternatives. This evaluation is based on the:

(a) Extent to which each alternative can return the injured natural resources and services to baseline and make the environment and public whole for interim service losses;

(b) Extent to which each alternative improves the rate of recovery;

(c) Extent to which each alternative will avoid additional injury;

(d) Level of uncertainty in the success of each alternative;

(e) Extent to which each alternative benefits more than one natural resource and/or service;

(f) Cost of each alternative;

(g) Effects of each alternative on public health and safety, and the environment; and

(h) Whether any alternative violates any laws or regulations.

Based on evaluation of the listed factors, trustees select a preferred restoration alternative. If there are two or more preferred alternatives, trustees must select the most cost-effective alternative.

2. Other Considerations

a. Pilot Restoration Studies

If the range of restoration alternatives under consideration is limited or poorly developed, trustees may implement pilot studies.

b. Cost Benefit Analysis

When selecting a restoration alternative, trustees should consider the relationship between costs and benefits. However, reducing the selection process to a strict comparison of restoration costs to monetized natural resource values is not required and may not be appropriate. Instead, the proposed rule would require trustees to evaluate each alternative according to a number of factors, identify a preferred alternative, select the most cost-effective alternative if there is more than one preferred alternative, and provide the public and responsible parties with an opportunity to review and comment on the trustees' selection. NOAA believes this approach provides adequate protection against selection of an inappropriately costly alternative. NOAA seeks comment on alternative approaches to the restoration selection process.

E. Draft Restoration Plan

1. Purpose

After selecting a restoration alternative, trustees must prepare a Draft Restoration Plan. Development of a Draft Restoration Plan provides a vehicle for: (a) Informing the affected and interested public of the results of the trustees' analyses and decisions, and encouraging public comments; and (b) performing expert peer review, when comments are solicited from various professional communities or other knowledgeable persons.

2. Contents

A Draft Restoration Plan should reflect the restoration planning process

as provided above and must, at a minimum, contain: (a) A summary of injury assessment procedures and methods used; (b) a description of the nature, degree, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident; (c) the goals and objectives of restoration; (d) the range of restoration alternatives considered and a discussion of how such alternatives were identified and developed; (e) a discussion of the trustees' evaluation of the restoration alternatives; (f) a description of a monitoring plan for documenting restoration effectiveness and the need for corrective action and performance criteria for judging the success and completion of restoration and the need for corrective action; and (g) a description of the involvement of the responsible parties in the assessment process, and proposed involvement in the restoration process.

The types of parameters that should be addressed in the monitoring plan may include: (1) Duration; (2) frequency of monitoring needed to gauge progress and success; (3) the level of sampling needed to detect success or the need for corrective action; and (4) whether monitoring of a control or reference site is needed to determine progress and success.

Performance criteria include structural, functional, temporal, and other demonstrable goals that the trustees should determine with respect to all restoration actions. For example, an agreement to create new intertidal marsh habitat as compensation for marsh impacted by oil could be described by performance criteria including the number of acres to be created, the location, the elevation of new habitat, the species to be planted and details for planting such as density, and the timeframe in which identifiable stages of the project should be completed.

3. Public Review and Comment

The information provided in the Draft Restoration Plan must be adequate to allow the public to objectively assess the injuries resulting from the incident and restoration actions being considered to remedy those injuries. The Draft Restoration Plan must be made available for at least a thirty (30) calendar day public review and comment period.

The type of notice, review, and comment procedures may vary depending on the nature and scale of restoration actions proposed. For instance, notice may be accomplished through the **Federal Register**, local newspapers, state press releases, etc., and review and comment may be facilitated through written responses, advisory committees, public meetings, etc.

F. Final Restoration Plan

After reviewing public comments on the Draft Restoration Plan, trustees must develop a Final Restoration Plan. As part of the Final Restoration Plan, trustees must consider and respond to all comments on the Draft Restoration Plan. In response to the comments, the trustees may need to: (1) Modify the restoration alternatives being considered; (2) develop and evaluate alternatives that have not been given serious consideration by the trustees; (3) supplement, improve, or modify the analyses; (4) make factual corrections; or (5) explain why the comments do not warrant further trustee response, citing the reasons to support the trustee position, and possibly indicate the circumstances that would trigger reappraisal or further response. In the Final Restoration Plan, trustees indicate the restoration alternatives that will be implemented and include the information in the Draft Restoration Plan. The format of the Final Restoration Plan, which essentially follows that of the Draft Restoration Plan, must clearly indicate any changes to the Draft Restoration Plan.

If trustees plan to make significant changes to the Draft Restoration Plan in response to comments, revisions will be documented for public notice along with issuance of the Final Restoration Plan.

G. Use of Regional Restoration Plans

If trustees used a simplified assessment procedure, the proposed rule allows them to consider using a Regional Restoration Plan instead of developing an incident-specific restoration plan. Under the proposed rule, trustees may use an existing Regional Restoration Plan provided that the Plan:

(i) Was developed subject to public review and comment; and

(ii) Addresses and is currently relevant to the same or comparable natural resources and/or services as those identified during injury assessment as having been injured.

If these conditions are met, trustees may present the responsible parties with a demand for the damages calculated by the simplified assessment procedure and use the recovered sums to implement the Regional Restoration Plan.

If there is not an existing Regional Restoration Plan that meets these conditions and the information provided by the simplified assessment procedure does not support development of an incident-specific restoration plan, trustees may present the responsible parties with a demand for the damages calculated by the simplified assessment procedure and place the recovered funds into an account with other similar recoveries, until such time that sufficient funds to develop plan and implement a new Regional Restoration Plan are collected. Recoveries may only be commingled in this manner where natural resource and/or service injuries were similar for the incidents represented by pooled funds, and where the incidents were within the same region (i.e. ecosystem or watershed). New Regional Restoration Plans would then be developed subject to public review and comment.

Trustees should develop criteria and procedures governing pooling of funds and obligating portions of damages from simplified procedures to planning costs. Such criteria should address: (1) The length of time money should be maintained in an account before developing and implementing Regional Restoration Plans; and (2) suggested maximum percentages of recoveries that may be used for developing Regional Restoration Plans.

NOAA requests comments on the concepts and specific guidelines for pooling recoveries from simplified assessments and use of those monies.

If trustees use a Regional Restoration Plan, they must prepare a Notice of Intent to Use a Regional Restoration Plan. The Notice must include:

(1) A description of the nature, degree, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident;

(2) A description of the existing Regional Restoration Plan and an explanation of how the conditions for use of a Regional Restoration Plan are met; or a description of the anticipated process for developing a new Regional Restoration Plan and an explanation of why the information provided by the simplified assessment procedure does not support development of an incident-specific restoration plan; and

(3) Identification of the damage amount sought and the calculation of that amount.

Trustees must make a copy of the Notice publicly available.

Subpart F—Restoration Implementation Phase

I. Introduction

At the completion of the Restoration Planning Phase, the trustees must: (a) Close the administrative record that incorporates the Restoration Planning Phase and open a new administrative record for the Restoration Implementation Phase; (b) present a demand for restoration costs or implementation to the responsible parties; (c) establish an account to receive any payments of sums to be received from the responsible parties; and (d) implement restoration. Additional actions that could occur during the Restoration Implementation Phase include litigating a claim for damages where the responsible parties refuse to pay for or implement restoration on receipt of the trustees' demand, or presenting a claim for damages to the Oil Spill Liability Trust Fund, so that restoration can be implemented.

II. Administrative Record

Once a Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan has been issued, the administrative record of the Restoration Planning Phase must be closed. Except as noted below, no additional documents will be placed in the record. The closed record will constitute the body of information supporting the trustees' decisions through restoration planning.

Once the record is closed, trustees may only add documents that:

(a) Are offered by an interested party that did not receive actual or constructive notice of the Draft Restoration Plan and the opportunity to comment on the Plan;

(b) Do not duplicate information already contained in the administrative record; and

(c) Raise significant issues regarding the Final Restoration Plan.

For practical reasons, it is likely that trustees will need to open and maintain an additional administrative record to document implementation of restoration. This record should document all Restoration Implementation Phase decisions, actions, and expenditures, including any modifications made to the Final Restoration Plan. This record is necessary to keep the public informed and potentially for use in any enforcement actions, such as seeking additional work from the responsible parties to comply with the restoration plan and implementing agreements.

The administrative record for restoration implementation should follow the same guidance for opening and maintaining the previous record, and for its availability.

III. Presenting a Demand for Damages to the Responsible Parties

If the trustees and responsible parties have successfully implemented a cooperative restoration planning process, the responsible parties will have thorough knowledge of the trustees' preferred restoration actions and associated costs. In the best circumstances, the responsible parties will already have entered into an enforceable agreement to either pay the costs associated with implementing the Final Restoration Plan, or to implement the Plan according to trustee performance criteria and with trustee oversight. Any such agreements with the responsible parties will have been described in the Draft and Final Restoration Plans reviewed by the public.

However, where a cooperative relationship with responsible parties has not been achieved, the trustees must follow some specific statutory requirements to recover natural resource damages, as described below.

After development of a Final Restoration Plan or a Notice of Intent to Use a Regional Restoration Plan, the trustees must present a demand in writing asking the responsible parties either to:

(a) Implement the Final Restoration Plan or portion of a Regional Restoration Plan subject to trustee oversight and reimburse the trustees for their assessment and oversight costs; or

(b) Advance to the trustees a specified sum representing all direct and indirect costs associated with developing and implementing the Final Restoration Plan or some portion of a Regional Restoration Plan.

The demand must also include: (a) Identification of the incident from which the claim arises; (b) identification of the trustees asserting the claim; (c) a brief description of the injuries for which the claim is being brought; (d) the index to the record; (e) the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan; and (f) a request for reimbursement of:

(i) Reasonable assessment costs;

(ii) The cost, if any, of conducting emergency restoration; and

(iii) Interest on the amounts recoverable under OPA section 1005, which provides for prejudgment and post-judgment interest to be paid at a commercial paper rate, starting from 30 calendar days from the date a demand is presented until the date the claim is paid.

IV. Discounting and Compounding the Components of the Claim

A. General

Discounting and compounding are necessary for the trustees to be able to present a claim for a "sum certain." The reference date for the discounting and compounding calculations is the date at which the demand is presented. Trustees must discount, or compound, the two components of the claim: (1) Future restoration costs; and (2) damage assessment and emergency restoration costs already incurred.

NOAA recommends that trustees use the U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis for both calculations, with some qualifications noted below. Alternatively, for state or Indian tribal claims for past damage assessment and restoration costs, the state or Indian tribe may use the state or Indian tribal borrowing rate on marketable securities. The analysis should be conducted either in terms of nominal values (denominated in dollars of the year in which the losses or gains are incurred) or in constant dollars of a specified base year. For compounding forward past emergency restoration and assessment costs, it seems more straightforward to employ the nominal Treasury rate as the discount rate and to represent the costs in nominal terms, since the nominal interest is observed and past costs are likely to be denominated in nominal terms. Future restoration costs can be adjusted for inflation using an appropriate inflation index for the major categories of costs.

B. Estimated Future Restoration Costs

Most restoration projects will be carried out over a period of years. If funds are insufficient to cover the full costs of restoration, including post-construction maintenance and monitoring operations, natural resource recovery will be incomplete, and the public will be deprived of full compensation for the injuries. NOAA recommends that trustees use the nominal U.S. Treasury rate for marketable securities of comparable maturity to the period of analysis, when this rate of return is available to the trustees for investment of settlement monies. To denominate the future restoration costs in nominal terms, the trustees should employ the indices of projected inflation appropriate to the major components of the restoration costs (e.g., construction price indices for construction costs; the federal employee wage index for trustee monitoring costs).

If legal and/or institutional constraints prevent investment of settlement monies yielding the U.S. Treasury rate for marketable securities of comparable maturity to the period of analysis, then it is incumbent upon the trustees to structure the claim to ensure that sufficient funds will be available to fund the entire set of restoration activities. One option is to calculate the discounted value of this component of the claim using an alternative discount rate that represents the yield on settlement monies available to the trustees. An alternative option is to structure a multi-year schedule for claim payments to ensure it provides the cash flow for each year required for planned expenditures.

If the settlement is structured so that the responsible party carries out the restoration projects, the trustee restoration costs to be discounted will be substantially reduced, but not eliminated because trustee monitoring costs will still be included in the claim.

C. Past Assessment and Emergency Restoration Costs

Damage assessment and emergency restoration costs may have been accruing from the time of the incident. To calculate the present value of these costs at the time the demand is presented to the responsible parties, the trustees will compound forward the costs already incurred. Because the rate of interest employed as the discount rate for past costs incurred should reflect the opportunity cost of the money spent, NOAA suggests that the trustees use the actual U.S. Treasury rate for marketable securities of comparable maturity to the period of analysis for compounding this component of the claim. NOAA acknowledges that, at the discretion of the trustees, a state or Indian tribal borrowing rate may be used to compound the state or Indian tribal component of past costs. Where the costs are denominated in dollars of the year in which they were incurred (i.e., in nominal terms), the nominal interest rate should be employed.

D. Sources of Data

U.S. Treasury bill and bond rates may be found in the Federal Reserve Bulletin, issued monthly, or the Treasury Bulletin, issued quarterly. The Gross Domestic Product fixed-weighted price index and the Consumer Price Index may be found in the Survey of Current Business, issued monthly, and the Economic Report of the President, issued annually. The Administration prediction for future Gross Domestic Product deflators is updated twice annually at the time the budget is published in January or February and at the time of the Mid-Session Review of the Budget in July. The current Treasury rates and inflation adjustment assumptions are reported in regular updates of Appendix C of Circular No. A–94, available from the OMB Publications Office (202–395–7332).

V. Uncompensated Claims

If the responsible parties deny all liability for the claim or fail to settle the claim embodied in the demand within ninety (90) calendar days after they are presented with the demand, trustees may elect to commence an action in court against the responsible parties or guarantors, or to present the uncompensated claim to the Oil Spill Liability Trust Fund. Thus, delivery of the demand should be made in a manner that establishes the date of receipt by the responsible parties.

Judicial actions and claims must be filed within three years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan is made publicly available, as provided in the statute of limitations for natural resource damages under OPA (33 U.S.C. 2717(f)(1)(B) and 2712(h)(2)).

VI. Accounts

OPA section 1006(f) requires that damages recovered by trustees be retained, without further appropriation, in a revolving trust account. Sums recovered for past assessment costs and emergency restoration costs may be used to reimburse the trustees. All other sums must be used to implement the Final Restoration Plan, implement an existing Regional Restoration Plan, or develop and implement a new Regional Restoration Plan.

Where multiple trustees are involved in a recovery, trustees may wish to establish a joint account. One acceptable mechanism would be an account under the registry of the applicable federal court when there is a joint recovery involving federal and non-federal trustees. The joint account should be managed by the trustees through an enforceable written agreement that specifies the parties authorized to endorse expenditures out of the account, and the agreed-upon procedures and criteria for such expenditures.

Although a joint trustee account may be the preferred approach, trustees also have the option of dividing the recoveries and depositing their respective amounts in their own separate accounts. These accounts should be interest-bearing, revolving trust accounts. These accounts may be incident-specific or funds that allow deposit of natural resource damages and expenditure in accordance with the limitations set forth in OPA.

Trustees may establish escrow accounts or any other investment accounts unless specifically prohibited by law. Funds in such accounts must only be used as specified in OPA section 1006(f).

Trustees must maintain appropriate accounting and reporting methods to keep track of the use of sums recovered. Brief reports on the status of the sums recovered and expenditures for particular incidents should be reported in the record for the Restoration Implementation Phase.

Any sums remaining in an account established under this section that are not used either to reimburse trustees for past assessment and emergency restoration costs or to implement restoration must be deposited in the Oil Spill Liability Trust Fund.

VII. Implementation of the Restoration Plan

A. General

As discussed throughout this proposed rule, the Final Restoration Plan may be implemented by the trustees, or by the responsible parties with trustee oversight. In either case, several common steps will characterize the Restoration Implementation Phase, including: (1) establishment of a trustee committee and/or MOU; (2) development of more detailed workplans for the conduct of restoration actions; (3) monitoring and oversight; and (4) evaluation of restoration success or need for corrective actions.

B. Trustee Committee and/or MOU

In many instances, it is likely that a trustee committee and/or MOU will have governed trustee involvement through the Restoration Planning Phase. However, it is critical that these agreements extend through the Restoration Implementation Phase, or that new agreements or committees are formed for the restoration implementation. At a minimum, representatives of each participating trustee agency should be appointed to an oversight committee. Functions of such a committee may include: (1) Authorizing expenditures from a joint account; (2) participating in monitoring of restoration actions; (3) evaluating performance criteria for restoration actions; and (4) making the determination that the goals and objectives of the Final Restoration Plan have been achieved or that corrective actions need to be pursued.

C. Detailed Workplans

Depending on the incident, detailed workplans for accomplishing restoration goals and objectives may or may not have been developed during the Restoration Planning Phase. Clearly, as many details to outline the restoration expectations, performance criteria, timelines, criteria for success, etc., should be included in the Final Restoration Plan and in agreements with the responsible parties as are practicable to determine prior to restoration implementation. Performance criteria are essential for meaningful trustee monitoring and oversight of restoration projects.

D. Monitoring and Oversight

Reasonable monitoring costs are included in recoverable damages. A well-designed and executed monitoring plan is required to assess progress toward the stated goals and objectives of a restoration plan. Reasonable monitoring costs cover those activities necessary to gauge the progress, performance, and success of the restoration actions, and not to generate purely scientific information.

E. Restoration Success and Corrective Actions

Restoration plans, particularly those including agreements for responsible parties to implement restoration, must identify criteria against which success and completion of restoration actions will be judged. Thus, trustees should, at a minimum, determine: (a) What criteria will constitute success, such that responsible parties are relieved of responsibility for further restoration actions; and (b) what criteria will necessitate corrective actions in order to comply with the terms of a restoration or settlement agreement. For example, in the intertidal marsh creation example used above, success may be defined as survival of planted marsh grass at a rate of 80% vegetative cover two years after completion of planting.

In some cases, pilot studies will lessen the need for corrective measures. In other cases, settlement agreements can include reopeners to deal with specific points of uncertainty, for instance, for significant injuries that could not be determined and/or quantified at the time of a settlement. Another possibility is for the responsible parties to deposit an agreed-upon amount of money in an escrow account to cover future corrective actions that could not be fully anticipated at the time of the settlement. These funds would then be used for future actions once defined, or revert to the responsible parties if not needed. In most cases, trustees should consider including a mechanism to deliberate the need for and type of corrective actions in a settlement agreement where the types of contingencies that suggest the need for corrective actions cannot be completely foreseen.

In all cases, the scope and scale of corrective actions must be determined relative to the restoration goals and objectives set out in the Final Restoration Plan. In addition, trustees must recognize that circumstances well beyond the control of any of the parties may not be the basis of requiring corrective actions, such as natural occurrences that would meet an "Act of God" standard.

General Summary of and Response to Comments on the January 1994 Proposed Rule

NOAA received numerous comments on the January 1994 proposed rule. NOAA appreciates the time and effort expended by the commenters. Commenters raised many thought-provoking points that have led NOAA to reconsider the overall approach of the rule. The bulk of the comments fell into eight general categories.

First, NOAA received many comments about the need to keep natural resource damage assessments focused on the ultimate goal of expeditious restoration rather than the abstract study of injuries, calculation of monetary damage figures, or time-consuming and expensive litigation. Today's proposed rule is designed to place even greater emphasis on early restoration planning.

Second, many commenters addressed the standards for calculating compensable value in the January 1994 proposed rule. Today's proposed rule eliminates the need for the determination of compensable values as a separate component of a damage claim. The proposed rule does not render the value of natural resources irrelevant; however, it does fundamentally change the role of valuation in assessments. Valuation is now used to determine the scale of appropriate restoration actions rather than a monetary damage figure.

Third, commenters raised concerns about coordination among trustees and with responsible parties and the level of trustee discretion afforded under the proposed January 1994 rule. Today's proposed rule provides for a public planning process designed to ensure that all interested parties have an opportunity for involvement and that the trustees' decisionmaking process is subject to public scrutiny. The proposed rule also redefines "reasonable assessment costs" to provide greater clarification of when trustees' assessment activities are appropriate.

Fourth, NOAA received voluminous comments on the various assessment procedures. In regard to the compensation formulas, as discussed in Appendix C to this preamble, NOAA has decided to reserve the compensation formulas for now. Some commenters expressed confusion over the distinction between expedited and comprehensive damage assessments. The proposed rule no longer categorizes assessments as expedited or comprehensive and instead authorizes trustees to determine appropriate assessment methods on an incident-specific basis from a range of procedures including simplified methods to complex field studies.

Fifth, other commenters raised concerns about use of Regional Restoration Plans. The proposed rule provides additional guidance on when and how Regional Restoration Plans may be used.

Sixth, NOAA received many comments on the standards for determining injury. Under today's proposed rule, the definition of "injury" has been modified to require demonstration of a measurable or observable adverse change. The proposed rule also provides new guidance on determining injury, including guidance on selecting injury studies that provide information that is relevant for restoration planning.

Seventh, NOAA received mixed comments on the provisions in the January 1994 proposed rule concerning administrative record review. This proposed rule continues to require development of an open administrative record containing documents relied upon by trustees in assessing and selecting restoration actions appropriate for particular incidents, including relevant comments and submissions received from responsible parties and other interested persons. Although this proposed rule is silent on the standard of review, NOAA continues to expect that courts will perform review on the administrative record.

Finally, many commenters expressed concern about the volume of guidance on preassessment activities contained in the January 1994 proposed rule. Today's proposed rule includes a streamlined Preassessment Phase.

Due to the extent of the changes in today's proposed rule, many of which render earlier comments inapplicable, NOAA is not providing a detailed treatment of all comments received. Instead, the proposed rule and preamble embody the response to the comments

received. After reviewing today's proposed rule, commenters should resubmit any comments that they think are still applicable, as well as provide any new comments.

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APPENDIX A—COMPARISON OF RELEVANT OPA/NRDA AND NEPA COMPONENTS

OPA/NRDA process	NEPA parallels
Facilitating Restoration	**Facilitating the NEPA Process**
• Pre-incident planning • Regional restoration planning • Cooperation and coordination • Public participation	• Programmatic EIS. • Interagency cooperation. • Public involvement.
Preassessment Phase	**Environmental Assessment**
• Procedural Components —Determine trustee jurisdiction —Determine need for restoration planning —Publish "Notice of Intent to Conduct Restoration Planning" —Open administrative record • Limited data collection • Emergency restoration actions	• Procedural Components. —Need/purpose for restoration. —"Notice of Intent" for NEPA scoping. —Open Analysis File/Planning Record. —Emergency actions.
Restoration Planning Phase	**NEPA Process**
• Procedural Components —Injury Assessment Component (Injury Determination/Quantification) —Restoration Planning Component —Develop Draft Restoration Plan —Public Review/Comment —Develop Final Restoration Plan • Range of injury assessment procedures (simplified to more detailed) • Range of restoration alternatives (primary/compensatory restoration; natural recovery/no action) • Evaluation of restoration alternatives	• Procedural Parallels. —NEPA scoping process begins. —Draft EIS. —Public Review/Comment. —Final EIS. —Affected Environment (before restoration). —Range of restoration alternatives (including proposed/no action) and Environmental Consequences. —Cost-benefit analysis.

APPENDIX A—COMPARISON OF RELEVANT OPA/NRDA AND NEPA COMPONENTS—Continued

OPA/NRDA process	NEPA parallels
Restoration Implementation Phase	**NEPA Process**
• Procedural Components • Close Administrative Record for Restoration Planning Phase • Opening administrative record for Restoration Implementation Phase • Present Demand • Establish account for recoveries • Implement Final Restoration Plan (includes monitoring/corrective actions)	• Procedural Parallels. —Close original Analysis File/Planning Record. —Open second Analysis File. —"Record of Decision". —Implement Final EIS.

EIS = Environmental Impact Statement.

Appendix B—Considerations to Facilitate the Restoration Process

I. Pre-incident Planning

General

NOAA believes that commitment of time, funding, and personnel to up-front planning prior to an incident will help ensure that the NRDA process results in appropriate restoration plans. Thus, trustees are encouraged to develop pre-incident plans.

Pre-incident Plan Contents

NOAA suggests that pre-incident plans:

(a) Identify natural resource assessment teams. The restoration process needs a systematic, interdisciplinary approach to insure the integrated use of science, economics, and law required in planning and implementing restoration. Trustees are encouraged to identify appropriately experienced personnel needed for natural resource assessment teams at the area and regional levels.

Personnel required for natural resource assessment teams should be appropriate to the scope and scale of the incident and natural resources and/or services affected. For instance, for incidents with complicated or long-term ecological impacts, the core team could include a natural resource trustee coordinator, restoration expert, resource biologist, environmental (petroleum) chemist, resource economist, quality assurance specialist, data manager/sample custodian, statistician, resource attorney, and administrative support specialist. If at all possible, the team should not be *ad hoc*; members should be knowledgeable about relevant statutes and regulations, and be able to establish a working relationship with the various parties likely to be involved in incidents.

(b) Establish trustee notification systems. Prompt notification is essential for efficient and effective initiation of the restoration process. Response personnel are required under the NCP to notify trustees whenever natural resources under their jurisdiction or management have been, or are likely to be, injured or lost as a result of an incident involving oil.

Thus, each trustee should establish emergency notification protocols so that the process can be initiated on a 24-hour basis. Notification could be coordinated to minimize the number of calls response personnel must make to the trustees. Notification protocols are also needed within the trustee agencies so that appropriate regional and local personnel can be informed of an incident. Area and Regional Contingency Plans should include contact information for each trustee and clear, unambiguous criteria for trustee notification (e.g., all spills, spills over a certain size, location, etc.).

(c) Identify likely support services. In many circumstances, the trustees may require specialized contractor support. For example, research vessels may be necessary for sample collection, or outside experts may be necessary to design and conduct studies. If, as part of pre-incident planning, the trustees can identify appropriate support services and pursue contracting procedures that will expedite incident-specific hiring of contractors, potentially detrimental delays in the assessment process can be avoided during actual incidents.

The types of support and expertise expected, as well as potential contractor and expert names, should be identified as part of pre-incident planning. Contracts should be established to allow rapid acquisition of contractor services. Identified contractors may even be called on to participate in pre-incident planning so that all parties are familiar with the specific needs of the restoration process.

Backup services should also be identified since the needs of both response and natural resource activities can exceed even regional capabilities.

(d) Identify natural resources and/or services at risk. In the NCP, regional and area planning committees are responsible for the identification of natural resources under their jurisdiction that are potentially vulnerable to oil spill incidents for given geographic areas. The plans may, for example, identify wetland habitats near oil terminals or bird rookeries near shipping routes. If there is an incident, the response teams will focus their efforts on protection of these natural resources and/or services considered most vulnerable.

Trustees should actively participate in such planning committees to identify natural resources and/or services at risk. Further, trustees should identify and evaluate possible assessment procedures for these natural resources and/or services. In addition to participating actively in regional and area planning activities, trustees should develop a working relationship with response agencies and officials.

(e) Identify available baseline and other relevant information. Trustees should identify and catalogue sources of baseline information as part of pre-incident planning, including seeking input on sources of information. Types of information that may be important include: (1) Petroleum hydrocarbon contamination in indicator organisms; (2) species census and inventory; (3) baseline data on species populations; (4) recreational use statistics; (5) values for selected natural resources and/or services; and (6) restoration measures applicable to injured natural resources and services. Familiarity with the types of baseline information and identification of data gaps and needs will allow the trustees to formulate better study designs and restoration approaches;

(f) Establish data management systems. Data management and record keeping are critical throughout the restoration process. Data management systems may best be designed during pre-incident planning to minimize the possibility of losing critical information during an incident. For small incidents, this may be a relatively simple filing system, but for large incidents, a centralized computer-based system may be essential.

Trustees may decide to develop consistent data management formats, such as field, laboratory and quality assurance forms, to facilitate data management. At a minimum, data management should address the: (1) Type and volume of data; (2) uses and users of the data; (3) availability of existing data management structures; (4) quality assurance needs; (5) reporting requirements; and (6) access to the data. Data management should also include provisions for distribution of updates for the trustees and others on a timely basis; and

(g) Identify assessment funding issues and options. Funding of trustee activities should be addressed during pre-incident planning because of the need to initiate actions expeditiously after an incident. Trustees may have several sources of potential funding, the: (1) Responsible parties; (b) Oil Spill Liability Trust Fund; and (c) agency funding. Trustees should consult the most up-to-date guidance available from the U.S. Coast Guard for access to the Fund and incorporate these procedures into pre-incident planning.

II. Regional Restoration Planning

General

OPA emphasizes making the public whole for injuries to natural resource and/or services. Where practicable, incident-specific restoration is the preferred alternative to compensate the public for their losses. However, for many incidents, such incident-

specific planning may be impractical because, for instance, injuries are not extensive or are short-term. For small incidents, incident-specific planning costs may be high compared to the estimated damages.

Thus, to achieve OPA's mandate to restore injured natural resources and services regardless of the scope and scale of those injuries, trustees are strongly encouraged to use or modify existing restoration plans, or develop new regional restoration plans. Such regional planning is appropriate so long as natural resources and/or services comparable to those expected to be affected by an incident are addressed in the plans.

Availability of Regional Restoration Plans

Trustees may rely on or adjust existing regional restoration plans, so long as they have followed or can be modified to meet the planning requirements under this proposed rule. Lacking existing regional plans, trustees should seek to develop such plans. The trustees may organize these plans based on such factors as geography (e.g., ecosystems or watersheds), injuries anticipated from incidents, or restoration alternatives.

Regional restoration plans must be developed or annotated in such a way that trustees are able to justify linking the injuries from a particular incident or set of incidents with a specific restoration project or set of projects within the plan. This may be facilitated by describing the types of injuries anticipated from oil incidents to specific resources within a region, and describing these injuries in terms of the types and importance of functions and services, ecological and human use.

III. Coordination

General

Trustee coordination is crucial to an efficient and effective assessment and restoration planning process because of the need to address shared trustee interests in natural resources and/or services affected by incidents. OPA prohibits double recovery of damages, which strongly suggests that, where multiple trustees are involved in an incident, they actively coordinate their activities from as early in the process as possible, as well as through pre-incident planning activities.

Incentives for Coordination

Incentives for cooperation include:

(a) Access to funding—requests for reimbursement of the costs of initiating natural resource damage assessment from the Fund require that trustees attempt to coordinate their assessments and their funding requests;

(b) Conflict resolution—lack of coordination among the trustees or with the responsible parties will likely produce an adversarial, litigation-charged atmosphere. A joint trustee-responsible party effort will help resolve legal, administrative and technical conflicts; and

(c) Pooling limited resources—a joint trustee-responsible party effort will allow the pooling of financial and human resources for more efficient and effective restoration planning and implementation.

Trustees will benefit greatly if coordination procedures can be established well before an incident occurs. It must be emphasized that all cooperative arrangements are subject to trustee oversight because of their fiduciary responsibility to the public.

Agreements

Trustees should consider Memoranda of Understanding (MOU) to formalize their cotrustee relationships. The MOU or similar agreements may be prepared either in anticipation of an incident or shortly after an incident. It is important that trustee agreements address, at a minimum: the purpose of the agreement; trustee participants; trustee organization; trustee responsibilities; and a decisionmaking process.

Trustee agreements may serve as the foundation for building pre-incident plans for natural resource activities as discussed above. Of special importance is the selection of a Lead Administrative Trustee (LAT).

Lead Administrative Trustee (LAT)

When conducting joint assessments under this rule, trustees must designate a Lead Administrative Trustee (LAT). The LAT serves as the contact for trustee interaction with response agencies, responsible parties and the public, and provides general administrative support to the restoration process.

This proposed rule also does not require that a LAT be a federal agency. However, when more than one federal trustee(s) is involved, the federal trustees must select a federal LAT (FLAT) if the trustees wish to access the Fund to initiate natural resource activities. In such cases, the FLAT will coordinate federal efforts with the selected LAT. In addition, if a federal agency is participating in the NRDA, NEPA is applicable, and a federal trustee must serve as the lead agency for NEPA planning purposes. Where appropriate, the trustees may designate co-LATs, consisting of a federal LAT and the state, tribal, or foreign trustees.

A LAT should be selected by mutual agreement of the trustees. In designating a LAT, trustees may want to consider such factors as: Jurisdictional oversight; capability and willingness to address trust resources; and sequence and duration of involvement in the incident or similar incidents. Selection of a LAT should be made as soon as practicable after notification of an incident.

Cotrustee Responsibilities

Cotrustees should be prepared to participate fully in the restoration process by: Participating in or conducting those studies or analyses for which they have special expertise or management authority; make staff available to participate in other NRDA activities, in particular, to represent the trustee in decisions requiring cotrustee unanimity; and committing financial resources. Each trustee may limit this participation based on the extent of injury to its natural resources as well as legal and financial constraints.

Coordination With Response Agencies

To the fullest extent practicable without interfering with response activities, natural resource concerns should be integrated with response activities before pursuing a NRDA; liability for natural resource damages is limited to damages for injuries or losses residual to the response phase, plus any injuries related to the response. NOAA strongly encourages trustees to coordinate natural resource injury assessment activities, such as gathering ephemeral data related to an oil spill incident, with response actions. Mechanisms to coordinate response and trustee data gathering needs and processes may also be addressed in pre-incident planning.

Coordination With the Responsible Parties

Under OPA, trustees have the responsibility to determine appropriate actions to restore injured natural resources and services. However, NOAA strongly encourages trustees to include the responsible parties as full or partial participants in the restoration process, whenever it can be achieved without compromise of the trustees' statutory obligations to act on behalf of the public trust. In determining whether, when and how to invite the responsible parties to participate, trustees may consider factors including, but not be limited to, the: willingness of the responsible parties to participate; capability of the responsible parties to participate (e.g., knowledge, expertise, and personnel); and (c) willingness of the responsible parties to pay for the restoration process.

Enforceable Agreements

Trustees are encouraged to enter into enforceable agreements with cooperative responsible parties. Enforceable agreements may have several benefits, including keeping trustees and responsible parties dealing openly with each other, and reducing transaction costs associated with separate assessment studies. Enforceable agreements may address any or all parts of the restoration process, but should contain, at a minimum, provisions for: the type and level of participation, joint or independent; deliverables; funding; public review; and termination.

NOAA encourages the trustees and responsible parties to conduct joint assessment activities. For joint activities, enforceable agreements should stipulate that the trustees and responsible parties are: obligated to use jointly-collected data; barred from collecting new or different data that challenges jointly-collected data; obligated to document such jointly-collected data; barred from challenging the scientific or technical adequacy of methods agreed upon under the agreement; and encouraged to develop binding stipulations regarding the interpretation and use of joint study results.

Negotiations with the responsible parties should not prevent the trustees from proceeding with their obligations to develop the restoration plan in a timely fashion.

Coordination Among the Responsible Parties

While it is obviously not as easy to identify the mix of potential responsible parties that will participate in a given incident, there are issues that can be addressed in general terms by the potential responsible parties in advance, that will enable them to enter the cooperative restoration process more

efficiently and effectively. In an incident with a single well-identified responsible party, the ability to assess the situation, identify the appropriate course of action and most effectively implement a cooperative response will be improved by pre-incident planning. In an incident with multiple potential responsible parties, the need for pre-incident planning is more apparent. In this latter situation, the potential responsible parties need to consider the efficacy of a cooperative restoration process, and the terms under which they would consider entering into such a process.

Appendix C—Simplified Injury Assessment Procedures

I. Type A Models

The Department of the Interior (DOI) is responsible for developing simplified "Type A" NRDA procedures under CERCLA. These procedures were originally intended to cover both hazardous substance releases as well as oil discharges. This proposed rule would allow trustees to use any final Type A procedure incorporated into DOI's regulations that addresses oil discharges, so long as the conditions of an incident under OPA are sufficiently similar to the conditions set forth at 43 CFR 11.33 for use of the Type A procedures.

Only one final Type A procedure has been incorporated into DOI's regulations. That procedure is a computer model applicable to minor discharges in coastal and marine environments, known as the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME) Version 1.2.

The NRDAM/CME Version 1.2 is composed of three submodels that predict the physical fate of the spilled substance, the biological effects, and the economic damages caused by the incident. The physical fates submodel database predicts the dispersion, concentration, and eventual fate of the discharged oil. The model accounts for mechanical removal of oil from the environment and the normal weathering, degradation, and evaporation process. The biological effects submodel uses the output from the physical fates submodel, user-supplied information on habitat type and fishing closures, and a regionally and seasonally specific database of marine and estuarine fish, invertebrates, and birds to predict biological injury. The economic damages submodel determines the monetary compensation necessary for the lost use of the injured resources. The economic database includes values for commercially and recreationally harvested species, beach use, and bird watching.

DOI has issued a proposed rule to revise the NRDAM/CME Version 1.2 to comply with the decision in *Colorado* v. *U.S. Department of the Interior*, 880 F.2d 481 (D.C. Cir. 1989) and as part of the statutorily-mandated review and update of DOI's NRDA regulations. 59 FR 63300 (Dec. 8, 1994). The updated version of the model (Version 2.2) includes significantly more detailed data and more sophisticated computer technology. The revised model also includes a fourth submodel focusing on restoration costs. Interior has also proposed a Type A procedure for minor discharges in the Great Lakes, known as the Natural Resource Damage Assessment Model for Great Lakes Environments (NRDAM/GLE) Version 1.31. 59 FR 40319 (August 8, 1994). When final, trustees may use the revised NRDAM/CME and the NRDAM/GLE for assessments under OPA.

II. Compensation Formulas

As part of the proposed regulations, NOAA proposed a compensation formula that could be used for small incidents in both the estuarine and marine environments and the Great Lakes (and other inland waters). The purpose of the formula is to readily estimate impacts based on the amount of oil discharged and several simple data inputs.

To maintain consistency with existing procedures and facilitate public review of the estuarine and marine formula, the NRDAM/CME Version 1.2 was used to estimate damages in a representative range of hypothetical spill scenarios. Those results were the basis of the estuarine and marine compensation formula. The basic algorithms of the physical fates and biological submodels within the NRDAM/CME Version 1.2 were deemed appropriate for this approach. However, to use more recently-developed information, revised databases were substituted for both the current biological and economic databases in the NRDAM/CME Version 1.2. A restoration submodel was also added to allow the use of average restoration costs to the extent possible.

The inland waters compensation formula was proposed before DOI published a proposed rule incorporating the NRDAM/GLE Version 1.31. Therefore, NOAA used an earlier draft of the NRDAM/GLE to develop the formula and provided that earlier version for public review with the January 1994 proposed rule.

DOI is currently scheduled to issue the final revised NRDAM/CME and the final NRDAM/GLE in early 1996. One option NOAA has considered is to wait until those models are final and reissue the compensation formulas. However, to repeat the formula development after the models are final would require an additional three to five months, thereby delaying interested parties' use of the formulas until late 1996. Trustees need some simple method available for at least an order of magnitude estimate of impacts that, "on average," are likely to result from relatively small discharges of oil. Thus, a guidance document has been developed to provide an interim tool for such a purpose.

The compensation formula guidance document is intended to provide instructions on how, using the proposed NRDAM/CME Version 2.2 to recreate the spill scenarios used to develop the 1994 proposed estuarine/marine compensation formulas. This guidance will allow interested parties to recreate the scenarios with the proposed models, which are significantly different in some ways from the draft models used to develop the proposed formulas. This approach also will allow reviewers to comment on the possibility of NOAA recreating the formulas once the NRDAM/CME and the NRDAM/GLE are promulgated as final rules. This approach should allow an evaluation of how the compensation formulas might change from that proposed in January 1994 and provide approximate estimates of damages for hypothetical spills based on the formula if it is developed using the versions of the NRDAM/CME and NRDAM/GLE that are promulgated as final rules in the future.

Using the data in the guidance document, trustees will have a simplified, cost-effective tool to use in estimating expected impacts of most discharges of oil. This information may prove to be useful in early decisionmaking in a NRDA or in settlement discussions. In order to use this guidance, trustees must have the proposed computer models developed by DOI. Computer diskettes containing the NRDAM/CME Version 2.2 and the NRDAM/GLE Version 1.31 can be obtained from the Office of Environmental Policy and Compliance, Room 2340, Department of the Interior, 1849 C Street, NW, Washington, DC 20240, telephone: (202) 208–3301.

Appendix D—Compensatory Restoration Scaling Methods

The following is a list of methods that are mentioned in this preamble as potential approaches to scaling compensatory restoration alternatives. The trustees are not limited to these methods and may use any method that are deemed to be appropriate to the particular situation.

A. Habitat Equivalency Analysis

This method may be used to scale restoration projects that replace entire habitats that support multiple species or that replace individual species that provide a variety of resource services. To ensure that the scale of the compensatory restoration project does not over- or under-compensate the public for injuries incurred, the trustees must establish an equivalency between the present value of the quantity of lost services and the present value of the quantity of services provided by the compensatory restoration project(s) over time.

B. Travel Cost Method

The travel cost method is principally employed to model demand for recreational experiences. This measurement technique evolved from the insight that the travel costs an individual incurs to visit a site are like a price for the site visit. In essence, the travel cost method assesses an individual's willingness to travel further (thereby incurring higher travel costs) in order to recreate at more highly valued sites. It is important to take into account the availability and quality of substitute recreation sites. Multiple-site models of recreational demand, such as the random utility model, focus attention on the recreationist's choice among alternative recreational sites. This version of the travel cost model is particularly appropriate where many substitutes are available to the individual and when the discharge has affected quality at multiple sites. For this reason, multiple-site models of recreational demand are preferred to single-site models, unless it is feasible to include in the single-site model price and quality information

about the relevant substitute sites (or there are no substitute sites). If a single-site model is employed without full accounting for substitutes, an appropriate adjustment should be made to the estimate of trip value.

In cases where the change in resource services to be analyzed is out of the range of data on actual travel behavior, trustees may choose to collect contingent behavior data. Contingent behavior refers to the behavior of users or potential users of a resource service under hypothetical conditions presented to them in the travel cost survey.

C. Factor Income Approach

This approach relies upon the production function model that relates the contribution of inputs to the production of an output. (Inputs are also referred to as factors of production.) Changes in the availability or price of inputs will affect the availability and price of the output and hence the level of income accruing to the producer. Where unpriced natural resources are an input in the production process, producer income will include both economic profit (the amount of profit a producer requires to keep capital in this use in the long run) and economic rent (the income accruing to a producer as a result of access to an unpriced resource). A discharge may decrease the quality and/or quantity of a resource and thereby effectively increase the cost of acquiring the natural resource input. As a result, the injury may reduce the economic rent accruing to the producer from use of the public trust resource. The change in economic rent attributable to a discharge can be evaluated by calculating the change in surplus either in the product market or in the input markets. Where the output price is not affected, the change in economic rent is simply the sum of the change in factor costs (or factor income) for each affected input.

D. Hedonic Price Model

The hedonic price model relates the price of a marketed commodity to its various attributes. In the natural resource damage assessment context, it may be used to determine the change in value of some nonmarket services from public trust resources (for example, environmental amenities such as water or air quality) where they function as attributes of private market goods, such as property. For example, the value of beach front property may be directly related to the quality and accessibility of the adjacent coastline. Reduction in the quality or accessibility, as may occur due to a discharge, will be captured in the value of the property. All else equal, the decrease in property values as a result of a discharge measures the change in use value of the injured coastline resources accruing to local property owners. This measure of the reduction in value of coastline resources will not capture any loss in value of the resources that may accrue to members of the public who own no property in the area.

E. Market Models of Demand and Supply

For those goods and services regularly traded in markets, economists typically rely upon market transactions to reveal the values that individuals place on the goods and services and the costs of producing them. When the quality of the resource directly affects the value individual consumers place on a good or service, the correct measure of damage is the change in consumer surplus, or individuals' willingness-to-accept compensation plus the economic rent component of producer surplus, if any, for the injuries associated with the discharge.

F. Contingent Valuation

The contingent valuation (CV) method determines the value of goods and services based on the results of carefully designed surveys. The CV methodology obtains an estimate of the total value, including both direct and passive use values of a good or service by using a questionnaire designed to objectively collect information about the respondent's willingness to pay for the good or service. A CV survey contains three basic elements: (1) A description of the good/service to be valued and the context in which it will be provided, including the method of payment; (2) questions regarding the respondent's willingness to pay for the good or service; and (3) questions concerning demographics or other characteristics of the respondent to interpret and validate survey responses.

G. Conjoint Analysis

A conjoint analysis is a survey technique that is used to derive the values of particular attributes of goods or services. Information is collected about individuals' choices between different goods that vary in terms of their attributes or service levels. With this information, it is possible to derive values for each particular attribute or service. If price is included as an attribute in the choice scenarios, values can be derived in terms of dollars which can be used with the valuation approach.

Alternatively, it is possible to value attributes in terms of units of replacement services. Survey respondents would be presented with choices between two or more options that may represent resource projects with varying levels of services. The goal is to obtain the value of the injured services in terms of alternative resource services so that restoration projects can be scaled directly using the service-to-service approach.

H. Benefits Transfer Approach

Benefits (or valuation) transfer involves the application of existing value estimates or valuation functions and data that were developed in one context to address a sufficiently similar resource valuation question in a different context.

Where resource values have been developed through an administrative or legislative process and are relevant and reliable under the circumstances, the trustees may use these values, as appropriate, in a benefits transfer context. NOAA solicits comment on the type of administratively and legislatively established values that would be appropriate for this purpose. Other values may be used so long as three basic issues are considered in determining the appropriateness of their use: the comparability of the users and of the natural resource and/or service being valued in the initial studies and the transfer context; the comparability of the change in quality or quantity of resources and/or services in the initial study and in the transfer context (where relevant); and the quality of the studies being transferred.

National Environmental Policy Act, Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

The National Oceanic and Atmospheric Administration has determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) has been prepared. The Assistant General Counsel for Legislation and Regulation, in accordance with the Regulatory Flexibility Act, certifies to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule will not have a significant economic effect on a substantial number of small entities. The proposed rule is intended to make more specific, and easier to apply, the standards set out in OPA and CERCLA for assessing damages for injury to natural resources as a result of actual or threatened discharges of oil. The rule is not intended to change the balance of legal benefits and responsibilities among any parties or groups, large or small. To the extent any are affected by the rule, it is anticipated that all will benefit by increased ease of application of law in this area.

It has been determined that this document is a significant rule under Executive Order 12866. The rule provides optional procedures for the assessment of damages to natural resources. It does not directly impose any additional cost.

It has been determined that this rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 15 CFR part 990

Coastal zone, Endangered and threatened species, Energy, Environmental protection, Estuaries, Fish, Fisheries, Fishing, Gasoline, Historic preservation (archeology), Hunting, Incorporation by reference, Indian lands, Marine pollution, Migratory birds, National forests, National parks, National Wild and Scenic Rivers System, Natural resources, Navigable waters, Oil, Oil pollution, Petroleum, Plants, Public lands, Recreation and recreation areas, Rivers, Seashores, Shipping, Waterways, Water pollution control, Water

resources, Water supply, Water transportation, Wetlands, Wildlife.

Dated: July 28, 1995.

Douglas K. Hall,

Assistant Secretary for Oceans and Atmosphere.

Under the authority of the Oil Pollution Act of 1990, 33 U.S.C. 2706(a), and for the reasons set out in this preamble, title 15 of the Code of Federal Regulations, chapter IX is proposed to be amended to add a new Subchapter E-Oil Pollution Act Regulations and a new part 990 as set forth below.

SUBCHAPTER E—OIL POLLUTION ACT REGULATIONS

PART 990—NATURAL RESOURCE DAMAGE ASSESSMENTS

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Subpart A—Introduction

§ 990.10 Purpose.

The purpose of this part is to promote expeditious restoration of natural resources and services injured as a result of an incident involving the discharge or substantial threat of a discharge of oil. To fulfill this purpose, this part provides a natural resource damage assessment process for developing a plan for the restoration of the injured natural resources and services and pursuing implementation or funding of the plan by responsible parties. This part provides an administrative process for involving interested parties, a range of assessment procedures for identifying and evaluating injuries to natural resources and/or services, and a process for selecting appropriate restoration actions from a range of alternatives.

§ 990.11 Scope.

The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq., provides for the designation of federal, state, Indian tribal, and foreign officials to act on behalf of the public as trustees for natural resources. This part is available for use by these officials in conducting natural resource damage assessments when natural resources and/or services are injured as a result of an incident involving an actual or substantial threat of a discharge of oil.

§ 990.12 Overview.

This part describes three phases of a natural resource damage assessment. The Preassessment Phase, during which trustees determine whether to pursue restoration, is described in subpart D of this part. The Restoration Planning Phase, during which trustees evaluate information on potential injuries and use that information to determine the need for and type of restoration, is described in subpart E of this part. The Restoration Implementation Phase, during which trustees ensure implementation of restoration, is described in subpart F of this part.

§ 990.13 Effect of using this part.

(a) *Rebuttable presumption for claims.* If federal, state, or Indian tribal trustees act in accordance with this part and file a judicial or administrative claim for natural resource damages, then the claim and all determinations made by the trustees during the development of the claim will be presumed correct unless the responsible parties present evidence adequate to rebut the presumption.

(b) *Use of other assessment procedures and methods.* Trustees may use other natural resource damage assessment procedures and methods in lieu of or in addition to the process described in this part. However, any component of a natural resource damage claim based on use of another process will only be given a rebuttable presumption if such process is in accordance with this part.

§ 990.14 Coordination.

(a) *Other trustees.* (1) If an incident affects the interests of multiple trustees, the trustees may act jointly under this part. Trustees must designate a lead administrative trustee to act as coordinator and contact point for joint assessments.

(2) If there is a reasonable basis for dividing the natural resource damage assessment, trustees may act independently under this part, so long as there is no double recovery of damages for the same incident and natural resource.

(3) Trustees may develop pre-incident or incident-specific memoranda of understanding to coordinate their activities.

(b) *Response agencies.* Trustees must coordinate their activities with response agencies consistent with the NCP and any pre-incident plans developed under § 990.15(a) of this part. Trustees may develop pre-incident memoranda of understanding to coordinate their activities with response agencies.

(c) *Responsible parties.* Trustees must invite the responsible parties to participate in the NRDA process, including preassessment and emergency restoration activities, where appropriate and such participation will not interfere with trustees fulfilling their responsibilities under these regulations and OPA.

(d) *Public.* Trustees may provide opportunities for public involvement in addition to those specified in subparts D through F of this part. Such opportunities may include solicitation of public comment at additional stages of the process, public meetings on trustee activities concerning specific incidents, and public outreach on non-incident-specific restoration issues.

§ 990.15 Considerations to facilitate restoration.

In addition to the procedures provided in subparts D through F of this part, trustees may take other actions to further the goal of expeditious restoration of injured natural resources and services, including:

(a) *Pre-incident planning.* Trustees may engage in pre-incident planning activities. Pre-incident plans may: identify natural resource damage assessment teams; establish trustee notification systems; identify support services; identify natural resources and/or services at risk; identify regional and area response agencies and officials; identify available baseline information; establish data management systems; and identify assessment funding issues and options.

(b) *Regional Restoration Plans.* Trustees may develop Regional Restoration Plans. These plans may be used to support a claim as provided in § 990.58 of this part.

§ 990.16 Review and revision of this part.

This part will be reviewed and revised as appropriate as often as necessary, but no less than once every five years.

Subpart B—Authorities

§ 990.20 Relationship to other natural resource damage assessment regulations.

(a) *CERCLA regulations*—(1) *General.* The Department of the Interior has developed regulations for assessing natural resource damages resulting from hazardous substance releases and discharges of oil under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and the Clean Water Act, 33 U.S.C. 1321 et seq. Those regulations are codified at 43 CFR part 11. Those regulations originally applied to natural resource damages resulting from oil discharges as well as hazardous substance releases. This part supersedes 43 CFR part 11 with regard to oil discharges under OPA.

(2) *Assessments commenced before the effective date of this part.* If trustees commenced a natural resource damage assessment for an oil discharge under 43 CFR part 11 prior to the effective date of this part, they may complete the assessment in compliance with 43 CFR part 11 and obtain a rebuttable presumption, or they may elect to use this part.

(3) *Oil and hazardous substance mixtures.* If natural resources are injured by a discharge or release of a mixture of oil and hazardous substances, trustees must use 43 CFR part 11 in order to obtain a rebuttable presumption.

(b) *State, local, or tribal procedures.* Trustees may use state, local, or tribal natural resource damage assessment procedures in lieu of this part and obtain a rebuttable presumption provided that the state, local, or tribal procedures are in accordance with this part. State, local, or tribal procedures are in accordance with this part when the procedures:

(1) Require all recovered damages to be spent on restoration, subject to a plan made available for public review and comment, except for those damages recovered to reimburse trustees for past assessment and emergency restoration costs;

(2) Determine compensation based on injury and/or restoration;

(3) Are consistent with the standards for the technical methods described in § 990.51 of this part;

(4) Were developed through a public rulemaking process; and

(5) Do not conflict with OPA or this part.

§ 990.21 Relationship to the NCP.

This part supplements the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, for the response to an incident. This part provides procedures by which trustees may determine appropriate restoration of injured natural resources and services that are not fully addressed by response actions conducted pursuant to the NCP.

§ 990.22 Prohibition on double recovery.

When taking actions under this part, trustees must consider the actions of other trustees with respect to the same incident and natural resources and the effect of the prohibition on double recovery of damages in 33 U.S.C 2706(d)(3).

§ 990.23 Compliance with other applicable laws and regulations.

(a) *NEPA.* The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., applies to restoration planning by federal trustees, unless a categorical exclusion applies. NEPA is triggered when federal trustees issue a Notice of Intent to Conduct Restoration Planning under § 990.43 of this part. Compliance with the procedures set forth in subparts E and F of this part fulfills the requirements of NEPA.

(b) *Worker health and safety.* When taking action under this part, trustees must comply with all worker health and safety considerations specified in the NCP for response actions.

(c) *Resource protection.* When acting under this part, trustees must ensure compliance with any applicable federal consultation or review requirements, including but not limited to: the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq.; the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 et seq.; the Migratory Bird Treaty Act, 16 U.S.C. 703; the National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq.; the National Historic Preservation Act, 12 USC 470; and the Marine Mammal Protection Act, 16 U.S.C. 1361 et seq.

(d) *State, local, and tribal procedural requirements.* To the extent that federal trustees can legally comply with state, local, and tribal procedural requirements they should do so.

§ 990.24 Settlement.

Trustees may settle claims for natural resource damages at any time, provided that the settlement is adequate in the judgment of the trustees to make the environment and public whole for the injury, destruction, loss of, or loss of use of natural resources and/or services that have or are likely to have occurred; with particular consideration of the adequacy of the compensation to provide for the restoration of such resources. Sums recovered in settlement of such claims may only be expended in accordance with a restoration plan that is made available for public review.

§ 990.25 Emergency restoration.

(a) Trustees may take emergency restoration action before completing the process established under this part, provided that:

(1) The action is needed to minimize continuing injury or prevent additional injury to natural resources and/or services;

(2) The action is feasible and likely to minimize continuing or prevent additional injury; and

(3) The costs of the action are not unreasonable.

(b) If response actions are still underway and emergency restoration actions have the potential to interfere with such response actions, trustees must coordinate with the On-Scene Coordinator (OSC) before taking any emergency restoration actions. Where emergency restoration actions are not expected to interfere with ongoing response actions, trustees must notify the OSC of the their intended actions prior to implementation and explain their reasons for believing that no interference with the response will result.

(c) Trustees must provide notice to the responsible parties of any emergency restoration actions and invite their participation in the conduct of those actions within a reasonable timeframe.

(d) Trustees must provide public notice of any emergency restoration actions within a reasonable timeframe after completion of such actions. The notice must include a description of the justification for, the nature and extent of, and the results of emergency restoration actions.

Subpart C—Definitions

§ 990.30 Definitions.

Baseline means the condition of the natural resource and/or service that would have existed had the incident not occurred. Baseline data include historical data, reference data, control data, and data on incremental changes (e.g., number of dead animals).

Cost-effective means the least costly activity among two or more activities that provide the same or comparable level of benefits.

Discharge means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

Exclusive Economic Zone means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

Exposure means direct or indirect contact with the discharged oil.

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe.

Injury means an observable or measurable adverse change in a natural resource or impairment of a natural resource service. Injury may occur directly or indirectly to a natural resource and/or service. Injury incorporates "destruction," "loss," and "loss of use" as provided in OPA.

National Contingency Plan (NCP) means the National Oil and Hazardous Substances Pollution Contingency Plan codified at 40 CFR part 300, which addresses the identification, investigation, study, and response to incidents.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the Exclusive Economic Zone), any state or local government or Indian tribe, or any foreign government.

Navigable waters means the waters of the United States, including the territorial sea.

Oil means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. However, the term does not include petroleum, including crude oil or any fraction thereof, that is specifically listed or designated as a hazardous substance under 42 U.S.C. 9601(14) (A) through (F).

Oil Spill Liability Trust Fund means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

On-Scene Coordinator or *OSC* means the federal official predesignated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct response actions under the NCP, or the government official designated by the lead response agency to coordinate and direct removal actions under the NCP.

OPA means the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq.

Pathway means a nexus between the incident and a natural resource and/or service.

Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

Public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

Reasonable assessment costs for assessments performed under this part means those costs that:

(1) Are incurred by trustees in accordance with this part;

(2) Are proportionate to the restoration costs, except in cases where assessment costs are incurred but trustees do not pursue restoration, provided that trustees have determined they have jurisdiction under § 990.41 of this part; and

(3) Result from use of procedures for which the incremental cost is reasonably related to the incremental increase in assessment information.

Reasonable assessment costs also include the administrative, legal, and enforcement costs necessary to carry out this part.

Recovery means the return of injured natural resources and/or services to baseline.

Response means actions taken under the NCP to protect public health and welfare, or the environment when there is a discharge or a substantial threat of a discharge of oil, including actions to contain or remove discharged oil from water and shorelines.

Responsible party means:

(1) *Vessels.* In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(2) *Onshore facilities.* In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(3) *Offshore facilities.* In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(4) *Deepwater ports.* In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(5) *Pipelines.* In the case of a pipeline, any person owning or operating the pipeline.

(6) *Abandonment.* In the case of an abandoned vessel, onshore facility,

deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

Restoration means any action, or combination of actions, to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services. Restoration includes:

(1) Primary restoration, which is either human intervention or natural recovery that returns injured natural resources and services to baseline; and

(2) Compensatory restoration, which is action taken to make the environment and the public whole for service losses that occur from the date of the incident until recovery of the injured natural resource.

Services or *natural resource services* means the functions performed by a natural resource for the benefit of another natural resource or the public.

State means any of the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, or any other territory or possession of the United States.

Trustees or *natural resource trustees* means those officials of the federal and state governments, of Indian tribes, and of foreign governments, designated under 33 U.S.C. 2706(b).

Value means the amount of items an individual is willing to give up to obtain a good or is willing to accept to forgo a good. Under this part, value may be measured either in terms of units of natural resource services or dollar amounts. The total value of a natural resource or service is equal to the sum of all individuals' values.

Vessel means every type of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

Subpart D—Preassessment Phase

§ 990.40 Purpose.

The purpose of this subpart is to provide a process by which trustees determine if they have jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so.

§ 990.41 Determination of jurisdiction.

(a) Upon learning of an incident, trustees must determine whether there is jurisdiction to pursue restoration under OPA. To make this determination, trustees must decide if:

(1) An incident as defined in § 990.30 of this part has occurred;

(2) The incident involves a discharge or a substantial threat of a discharge that is neither:

(i) Permitted under a permit issued under federal, state, or local law;

(ii) From a public vessel; nor

(iii) From an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, et seq.; and

(3) Natural resources under the trusteeship of the trustees have or may be affected as a result of the incident.

(b) If any of the conditions listed in paragraph (a) of this section are not met, trustees may not take additional action under this part. If all of these conditions are met, trustees may proceed under this part.

§ 990.42 Determination to conduct restoration planning.

(a) If trustees determine that there is jurisdiction to pursue restoration under OPA, trustees must determine, based on readily available information, if:

(1) Injuries likely have resulted or will result from the incident;

(2) Response actions may not adequately address the potential injuries; and

(3) Feasible restoration actions exist to address the potential injuries.

(b) If any of the conditions listed in paragraph (a) of this section are not met, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to the point when they determined that the conditions were not met. If all the conditions are met, trustees may proceed under this part.

§ 990.43 Notice of Intent to Conduct Restoration Planning.

(a) If trustees determine that all the conditions in § 990.42(a) of this part are met, they must prepare a Notice of Intent to Conduct Restoration Planning. The Notice will include a discussion of the trustees' analysis under §§ 990.41 and 990.42 of this part.

(b) Trustees must make a copy of the Notice publicly available.

(c) Trustees must send a copy of the Notice to the known responsible parties and invite their participation in the conduct of restoration planning.

§ 990.44 Administrative record.

If trustees make a determination to conduct restoration planning, they must open a publicly available administrative record. Trustees must include in the administrative record: the Notice of Intent to Conduct Restoration Planning; documents and other factual information considered by the trustees when assessing injury and selecting a restoration action under subpart E of this part, including studies performed by the trustees; and documents that are submitted in a timely fashion by the responsible parties or other members of the public.

§ 990.45 Data collection.

Trustees may conduct limited data collection during the Preassessment Phase. Data collection during the Preassessment Phase must be coordinated with response actions such that the collection does not interfere with or hinder the response actions. Trustees may collect the following types of data during the Preassessment Phase:

(a) Data reasonably expected to be necessary to make a determination of jurisdiction under § 990.41 of this part or a determination to conduct restoration planning under § 990.42 of this part;

(b) Ephemeral data; and

(c) Information needed to design or implement anticipated assessment procedures under subpart E of this part.

Subpart E—Restoration Planning Phase

§ 990.50 Purpose.

The purpose of this subpart is to provide a process by which trustees evaluate information on potential injuries to natural resources and/or services (injury assessment), and use that information to determine the need for and scale of restoration actions (restoration selection).

§ 990.51 Criteria for acceptable procedures.

In order to be in accordance with this part, any procedures for assessing injury under §§ 990.52 and 990.53 of this part and scaling compensatory restoration actions under § 990.55(c)(3) of this part must meet the following criteria:

(a) If available, injury determination and quantification procedures that provide information of use in determining the type and level of restoration appropriate for a particular injury must be used;

(b) If a range of procedures providing the same type and quality of assessment information is available, the most cost-effective procedure must be used;

(c) The incremental cost of a more complex study must be reasonably related to the expected increase in relevant assessment information provided by the more complex study; and

(d) The procedures used must be reliable and valid for the particular context.

§ 990.52 Injury assessment—injury determination.

(a) *General.* After issuing a Notice of Intent to Conduct Restoration Planning under § 990.43 of this part, trustees must determine if any injuries to natural resources and/or services have resulted from the incident. To make this determination, trustees must determine if:

(1) The definition of "injury" has been met; and

(2) Natural resources have been exposed to the discharged oil, and a pathway links the injured natural resource and/or service to the incident; or, for injuries resulting from response actions or incidents involving a substantial threat of a discharge, an injury to a natural resource or an impairment of use of a natural resource service has occurred as a result of the incident.

(b) *Injury.* Trustees must determine whether an injury, as defined in § 990.30 of this part, has occurred and, if so, identify the nature of the injury. Potential categories of injury include, but are not limited to, adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior; community composition; ecological processes and functions; physical and chemical habitat quality or structure; and public services.

(c) *Exposure and pathway.* Except for injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must determine whether natural resources were exposed, either directly or indirectly, to the discharged oil from the incident, and estimate the amount or concentration and spatial/temporal extent of the exposure. Trustees must also determine whether there is a plausible pathway linking the incident to the injuries. Pathways include, but are not limited to: the sequence of events by which the discharged oil was transported from the incident and came into direct physical contact with a natural resource; or the sequence of events by which the discharged oil was transported from the incident and caused an indirect injury.

(d) *Injuries resulting from response actions or incidents involving a substantial threat of a discharge.* For injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must determine whether an injury or an impairment of use of a natural resource service has occurred as a result of the incident.

(e) *Selection of injuries to include in the assessment.* When selecting potential injuries to assess, trustees must consider:

(1) The natural resource/service of concern;

(2) The adverse change that constitutes injury;

(3) The potential degree, and spatial/temporal extent of the injury;

(4) The evidence indicating injury;

(5) The mechanism by which injury occurred;

(6) The evidence indicating exposure;

(7) The pathway from the incident to the natural resource/service of concern;

(8) The potential natural recovery period;

(9) The kinds of primary and/or compensatory restoration actions that are feasible; and

(10) The kinds of procedures available to evaluate the injury, and the time and money requirements.

(f) *Procedures.*

Trustees perform injury determination using the assessment procedures described in § 990.54 of this part.

(g) *Proceeding with the assessment.* If any of the conditions for determining injury provided in paragraph (a) of this section is not met, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to the point when they determined that the conditions were not met. If all the conditions are met, trustees may proceed under this part.

§ 990.53 Injury assessment—quantification.

(a) *General.* In addition to determining whether injuries have resulted from the incident, trustees must quantify the degree and spatial/temporal extent of such injuries. Trustees perform injury quantification using the assessment procedures described in § 990.54 of this part.

(b) Trustees may quantify injuries in terms of:

(1) The degree and spatial/temporal extent of injury to a natural resource;

(2) The degree and spatial/temporal extent of injury to a natural resource relative to baseline with subsequent translation of that change to a reduction in services provided by the natural resource; or

(3) The amount of services lost as a result of the incident.

(c) Trustees must estimate the time for natural recovery without restoration, but including any response actions. Analysis of recovery times may include evaluation of factors such as:

(1) Degree and spatial/temporal extent of injury;

(2) Sensitivity of the injured natural resource and/or service;

(3) Reproductive potential;

(4) Stability and resilience of the affected environment;

(5) Natural variability; and

(6) Physical/chemical processes of the affected environment.

§ 990.54 Injury assessment—selecting assessment procedures.

(a) *General.* When performing injury assessment, trustees must select appropriate assessment procedures. Trustees may use simplified or incident-specific assessment procedures as described in paragraphs (d) and (e) of this section. Trustees may also use more than one assessment procedure provided there is no double recovery.

(b) *Selection of assessment procedures.* When selecting assessment procedures, trustees must consider:

(1) Potential nature, degree, and spatial/temporal extent of the injury;

(2) Potential restoration actions for the injury;

(3) Range of assessment procedures available, including the applicability of simplified assessment procedures;

(4) Time and cost necessary to implement the assessment procedures; and

(5) Relevance between the information generated by the assessment procedures and the information needed for restoration planning.

(c) *Request for incident-specific assessment procedures.* When trustees have made a determination that a simplified assessment procedure is the most appropriate procedure for a given incident or injury, the responsible parties may request that trustees use incident-specific assessment procedures instead of a simplified assessment procedure if the responsible parties, in a timeframe acceptable to the trustees:

(1) Identify the incident-specific assessment procedures to be used and the reasons supporting the technical appropriateness of such procedures for the incident or injury;

(2) Advance the costs of using such incident-specific assessment procedures; and

(3) Agree not to challenge the reasonableness of the costs of using such incident-specific assessment procedures.

(d) *Simplified assessment procedures.*

(1) *Type A procedures.* Trustees may use type A procedures identified in 43 CFR part 11, subpart D, that address oil discharges provided that conditions are sufficiently similar to those listed in 43 CFR 11.33 regarding use of the procedures.

(2) *Compensation Formulas.* [Reserved]

(e) *Incident-specific assessment procedures.* Trustees may use incident-

specific assessment procedures including, alone or in any combination:

(1) Field methods;

(2) Laboratory methods;

(3) Model-based methods; and

(4) Literature-based methods.

§ 990.55 Restoration selection—development of a reasonable range of alternatives.

(a) *General.* After trustees have determined and quantified injury under §§ 990.52 and 990.53 of this part, they must identify a reasonable range of restoration alternatives for consideration, except as provided in § 990.58 of this part regarding use of a Regional Restoration Plan. Each alternative may identify an overall package of actions for addressing the injured natural resources and/or services of concern, or actions to restore individual injured natural resources and services, where there is reasonable basis for separately evaluating actions to restore separate natural resources and/or services. The range of alternatives must include a no-action alternative under which no human intervention would be taken either for primary restoration or for compensatory restoration.

(b) *Primary restoration.* (1) *General.* Each alternative must include a primary restoration component.

(2) *Types of alternatives.* When identifying primary restoration alternatives to be considered, trustees must consider whether:

(i) Conditions exist that would limit the effectiveness of primary restoration actions (e.g., residual sources of contamination);

(ii) Primary restoration actions are necessary or feasible to return the physical, chemical, and biological conditions necessary to allow recovery or restoration of the injured resources (e.g., replacement of sand or vegetation); and

(iii) Primary restoration actions focusing on certain key species or habitats would be an effective approach to achieving baseline conditions.

(c) *Compensatory restoration.* (1) *General.* In addition to primary restoration, trustees have the discretion to include a compensatory restoration component in some or all of the restoration alternatives.

(2) *Types of alternatives.* When identifying the types of compensatory restoration alternatives to be considered, trustees must first identify compensatory restoration actions that, in the judgment of the trustees, provide services of the same type and quality as those injured. If such actions are infeasible or too few in number to provide a reasonable range of alternatives, trustees may identify other actions provided that those actions provide services of comparable type and quality as those injured.

(3) *Scaling compensatory restoration actions.*

(i) *General.* After trustees have identified the types of compensatory restoration alternatives that will be considered, they must determine the scale of those alternatives that will make the environment and the public whole.

(ii) *Service-to-service scaling approach.* When determining the scale of a compensatory restoration alternative that provides services that are of the same type and quality, and are subject to comparable resource scarcity and demand conditions as those lost, trustees must use the service-to-service scaling approach. Under the service-to-service scaling approach, trustees determine the scale of the compensatory restoration alternative that will produce services equal in quantity to those lost.

(iii) *Valuation scaling approach.* (A) When determining the scale of a compensatory restoration alternative that provides services that are of a different type or quality, or are subject to non-comparable resource scarcity or demand conditions as those lost, trustees may use the valuation scaling approach. Under the valuation scaling approach, trustees determine the amount of services that must be provided to produce the same value lost to the public. Trustees must explicitly measure the value of lost services and then determine which scale of the compensatory restoration alternative will produce services of equivalent value to the public.

(B) If valuation of the services provided by the compensatory restoration alternative cannot, in the judgment of the trustees, be performed at a reasonable assessment cost, as defined in § 990.30 of this part, the trustees may estimate the dollar value of the lost services and select the scale of the alternative that has a cost equivalent to the lost value. The responsible parties may request that trustees value the services provided by the alternative if the responsible parties, within a timeframe acceptable to the trustees, advance the costs of doing so and agree not to challenge the reasonableness of the costs of performing such valuation.

(iv) *Discounting and uncertainty.* When scaling a compensatory restoration alternative, trustees must address the uncertainties associated with the predicted consequences of the alternative and must discount all service quantities and/or values to the date the demand is presented. Where feasible, trustees should use risk-adjusted measures of losses due to injury and gains from the compensatory restoration alternative, in conjunction with a riskless rate of discount. If the streams of losses and gains cannot be adequately adjusted for risks, then trustees may use a discount rate that incorporates a suitable risk adjustment to the riskless rate. When discounting future service quantities or values, trustees may use the appropriate inflation index to adjust nominal rates of discount into real terms.

(d) *Restoration alternatives for simplified assessments.* If trustees used a simplified assessment procedure under § 990.54(d) of this part, they may develop a reasonable range of restoration alternatives for addressing the injuries assessed by that simplified assessment procedure based on consideration of any combination of:

(1) Injury predictions, if any, provided by the simplified assessment procedure;

(2) Restoration recommendations, if any, provided by the simplified assessment procedure; and

(3) Lost values, if any, calculated by the simplified assessment procedure.

§ 990.56 Restoration selection—evaluation of alternatives.

(a) Once trustees have developed a reasonable range of restoration alternatives under § 990.55 of this part, they must evaluate the alternatives based on:

(1) Extent to which each alternative can return the injured natural resources and services to baseline and make the environment and the public whole for interim service losses;

(2) Extent to which each alternative improves the rate of recovery;

(3) Extent to which each alternative will avoid additional injury;

(4) Level of uncertainty in the success of each alternative;

(5) Extent to which each alternative benefits more than one natural resource and/or service;

(6) Cost of each alternative;

(7) Effects of each alternative on public health and safety, and the environment; and

(8) Whether any alternative violates any laws or regulations.

(b) Based on the evaluation of the factors listed in paragraph (a) of this section, trustees must select a preferred restoration alternative. If there are two or more preferred alternatives, trustees must select the most cost-effective alternative.

(c) Where additional information is needed to identify and evaluate the restoration alternatives, trustees may implement pilot studies.

§ 990.57 Restoration selection—preparation of a Draft and Final Restoration Plan.

(a) *Draft Restoration Plan.* After selecting a preferred restoration alternative under § 990.56 of this part, the trustees must prepare a Draft Restoration Plan. The Draft Restoration Plan must include:

(1) A summary of injury assessment procedures and methods used;

(2) A description of the degree, nature, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident;

(3) The goals and objectives of restoration;

(4) The range of restoration alternatives considered and a discussion of how such alternatives were identified and developed under § 990.55 of this part;

(5) A discussion of the trustees' evaluation of the restoration alternatives under § 990.56 of this part;

(6) A description of a monitoring plan for documenting restoration effectiveness and the need for corrective action and performance criteria for judging the success and completion of restoration and the need for corrective action; and

(7) A description of the involvement of the responsible party in the assessment process, and proposed involvement in the restoration process.

(b) *Public review and comment.* The Draft Restoration Plan must be made available for public review and comment for at least 30 calendar days. The type of notice, review, and comment procedures used will depend on the nature of the incident and the restoration actions being proposed.

(c) *Final Restoration Plan.* After reviewing public comments on the Draft Restoration Plan, trustees must develop a Final Restoration Plan. The Final Restoration Plan must include: the information specified in paragraph (a) of this section; a response to public comments; and an indication of any changes made to the Draft Restoration Plan. Trustees must make the Final Restoration Plan publicly available.

§ 990.58 Restoration selection—use of a Regional Restoration Plan.

(a) *General.* If trustees used a simplified assessment procedure under § 990.54(d) of this part, they may consider using a Regional Restoration Plan instead of developing an incident-specific restoration plan.

(b) *Existing Regional Restoration Plan.* (1) Trustees may use an existing Regional Restoration Plan provided that the Plan:

(i) Was developed subject to public review and comment; and

(ii) Addresses and is currently relevant to the same or comparable natural resources or services as those identified during injury assessment as having been injured.

(2) If the conditions set forth in paragraph (b)(1) of this section are met, trustees may present the responsible parties with a demand under § 990.62 of this part for the damages calculated by the simplified assessment procedure and use the recovered sums to implement the Regional Restoration Plan as provided in § 990.65 of this part.

(c) *New Regional Restoration Plan.* (1) If there is not an existing Regional Restoration Plan that meets the conditions of paragraph (b)(1) of this section and the information provided by the simplified assessment procedure does not support development of an incident-specific restoration plan, trustees may present the responsible parties with a demand under § 990.62 of this part for the damages calculated by the simplified assessment procedure and place the recovered funds into an account with other similar recoveries under § 990.65 of this part, until such time that sufficient funds to develop and implement a new Regional Restoration Plan are collected. Recoveries may only be commingled in this manner where injuries to natural resources and/or services were similar for the incidents represented by pooled funds, and where the incidents were within the same region (i.e. ecosystem or watershed).

(2) New Regional Restoration Plans must be developed subject to public review and comment.

(d) *Notice of Intent to Use a Regional Restoration Plan.* If trustees intend to use a Regional Restoration Plan instead of developing an incident-specific restoration plan, they must prepare a Notice of Intent to Use a Regional Restoration Plan. Trustees must make a copy of the Notice publicly available. The Notice must include:

(1) A description of the nature, degree, and spatial/temporal extent of injuries to natural resources and/or services resulting from the incident;

(2) A description of the existing Regional Restoration Plan and an explanation of how the conditions set forth in paragraph (b)(1) of this section are met; or a description of the anticipated process for developing a new Regional Restoration Plan and an explanation of why the information provided by the simplified assessment procedure does not support development of an incident-specific restoration plan; and

(3) Identification of the damage amount sought and the calculation of that amount.

Subpart F—Restoration Implementation Phase

§ 990.60 Purpose.

The purpose of this subpart is to provide a process for implementing restoration.

§ 990.61 Administrative record.

(a) *Closing the administrative record for restoration planning.* After the trustees prepare the Final Restoration Plan or the Notice of Intent to Use a Regional Restoration Plan, they must close the administrative record. Trustees may not add documents to the record once it is closed. However, trustees may add documents relating to a Final Restoration Plan if such documents:

(1) Are offered by an interested party that did not receive actual or constructive notice of the Draft Restoration Plan and the opportunity to comment on the Plan;

(2) Do not duplicate information already contained in the administrative record; and

(3) Raise significant issues regarding the Final Restoration Plan.

(b) *Opening an administrative record for restoration implementation.* Trustees may open an administrative record for implementation of restoration.

§ 990.62 Presenting a demand.

(a) *General.* After closing the administrative record for restoration planning, trustees must present a written demand to the responsible parties. Delivery of the demand should be made in a manner that establishes the date of receipt by the responsible party.

(b) *When a Final Restoration Plan has been developed.* Except as provided in paragraph (c) of this section, the demand must ask the responsible parties to either:

(1) Implement the Final Restoration Plan subject to trustee oversight and reimburse the trustees for their oversight costs; or

(2) Advance to the trustees a specified sum representing all costs associated with implementing the Final Restoration Plan, discounted as provided in § 990.63(a) of this part.

(c) *When a Regional Restoration Plan is used.* If the trustees intend to use a Regional Restoration Plan under § 990.58 of this part, the demand must ask the responsible parties to pay damages in the amount calculated by the simplified assessment procedure under § 990.54(d) of this part. Depending on the circumstances, it may

also be feasible for the responsible parties to implement selected portions of the Regional Restoration Plan.

(d) *Additional contents of demand.* The demand must also include:

(1) Identification of the incident from which the claim arises;

(2) Identification of the trustees asserting the claim;

(3) A brief description of the injuries for which the claim is being brought;

(4) The index to the administrative record;

(5) The Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan; and

(6) A request for reimbursement of:

(i) Reasonable assessment costs, as defined in § 990.30 of this part, compounded as provided in § 990.63(b) of this part;

(ii) The cost, if any, of conducting emergency restoration under § 990.25 of this part, compounded as provided in § 990.63(b) of this part; and

(iii) Interest on the amounts recoverable under 33 U.S.C. 2705, which provides for prejudgment and post-judgment interest to be paid at a commercial paper rate, starting from 30 calendar days from the date a demand is presented until the date the claim is paid.

§ 990.63 Discounting and compounding.

(a) *Estimated future restoration costs.* When determining estimated future costs of implementing a Final Restoration Plan, trustees must discount such future costs back to the date the demand is presented. Trustees may use a discount rate that represents the yield on recoveries available to trustees. The price indices used to project future inflation must reflect the major components of the restoration costs.

(b) *Past assessment and emergency restoration costs.* When calculating the present value of assessment and emergency restoration costs already incurred by trustees, trustees must compound the past costs forward to the date the demand is presented. To perform the compounding, trustees may use the actual U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis. For costs incurred by state or tribal trustees, trustees may compound using parallel state or tribal borrowing rates.

(c) Trustees are referred to Appendices B and C of OMB Circular A–94 for information about nominal and real U.S. Treasury rates of various maturities and for further guidance in calculation procedures. Copies of Appendix C, which is regularly updated, and of the Circular are available from the OMB Publications Office (202–395–7332).

§ 990.64 Uncompensated claims.

(a) If the responsible parties do not agree to the demand within 90 calendar days after trustees present the demand, the trustees may either file a judicial action for damages or file a claim for uncompensated damages with the Oil Spill Liability Trust Fund.

(b) Judicial actions and claims must be filed within three years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan is made publicly available, as provided in 33 U.S.C. 2717(f)(1)(B) and 2712(h)(2).

§ 990.65 Opening an account for recovered damages.

(a) *General.* Sums recovered by trustees in satisfaction of a natural resource damage claim must be placed in a revolving trust account. Sums recovered for past assessment costs and emergency restoration costs may be used to reimburse the trustees. All other sums must be used to implement the Final Restoration Plan, implement an existing Regional Restoration Plan, or develop and implement a new Regional Restoration Plan.

(b) *Joint trustee recoveries.* (1) *General.* Trustees may establish a joint account for damages recovered pursuant to joint assessment activities, such as an account under the registry of the applicable federal court.

(2) *Management.* Trustees may develop enforceable agreements to govern management of joint accounts, including agreed-upon procedures and criteria and personnel for authorizing expenditures out of such joint accounts.

(c) *Interest-bearing accounts.* Trustees may place recoveries in interest-bearing revolving trustee accounts.

(d) *Escrow accounts.* Trustees may establish escrow accounts or other investment accounts unless specifically prohibited by law.

(e) *Records.* Trustees must maintain appropriate accounting and reporting methods to document expenditures from accounts established under this section.

(f) *Oil Spill Liability Trust Fund.* Any sums remaining in an account established under this section that are not used either to reimburse trustees for past assessment and emergency restoration costs or to implement restoration must be deposited in the Oil Spill Liability Trust Fund.

§ 990.66 Additional considerations.

Upon settlement of a claim, trustees should consider the following actions to facilitate implementation of restoration:

(a) Establishment of a trustee committee or memorandum of understanding to coordinate among affected trustees;

(b) Development of more detailed workplans to implement restoration;

(c) Monitoring and oversight of restoration; and

(d) Evaluation of restoration success and the need for corrective action.

[FR Doc. 95–19128 Filed 8–2–95; 8:45 am]
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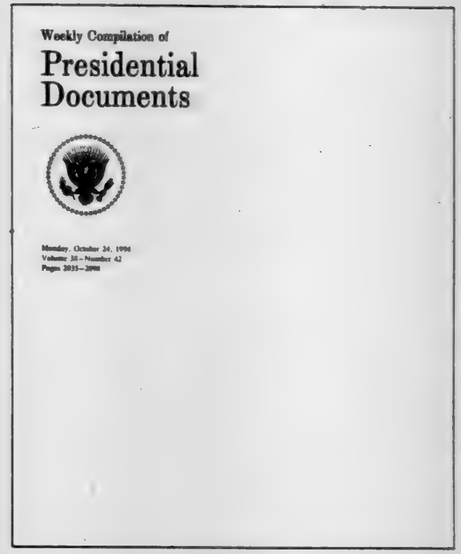
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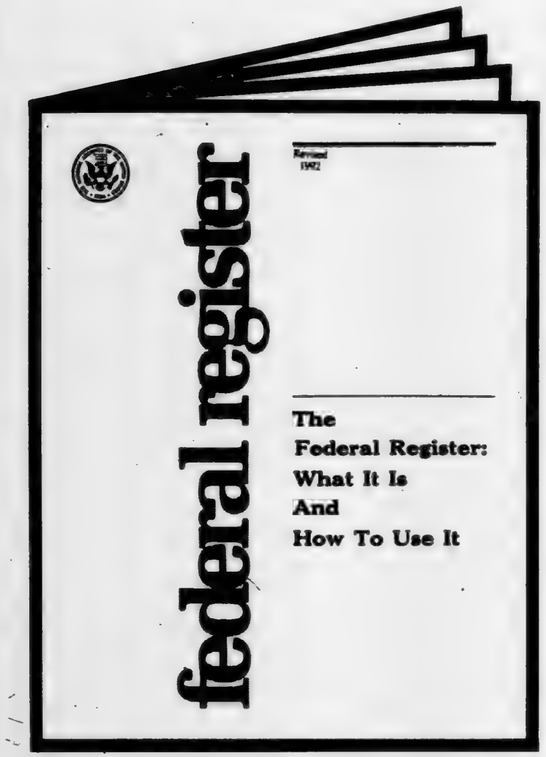
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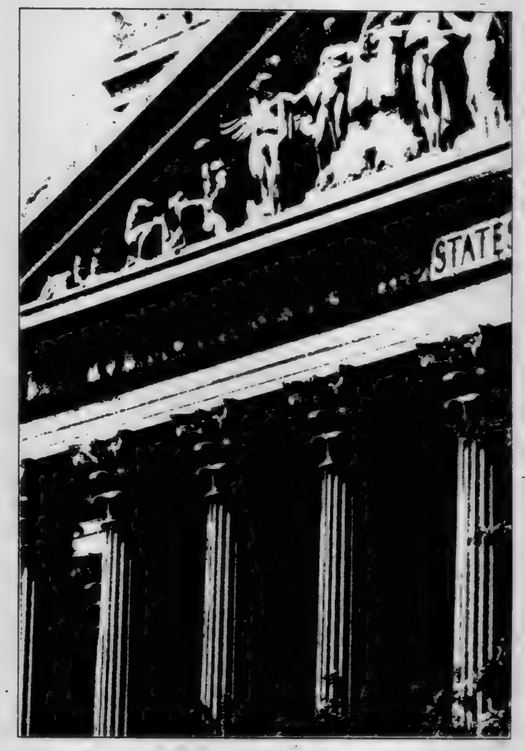
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8–4–95
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95–048–1]

Witchweed; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the list of suppressive areas under the witchweed quarantine and regulations by adding and removing areas in North Carolina and South Carolina. These changes affect 11 counties in North Carolina and 4 counties in South Carolina. These actions are necessary in order to impose certain restrictions and to relieve unnecessary restrictions on the interstate movement of regulated articles to help prevent the spread of witchweed.

DATES: Interim rule effective July 31, 1995. Consideration will be given only to comments received on or before October 3, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–048–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–048–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Rodriguez, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8372.

SUPPLEMENTARY INFORMATION:

Background

Witchweed (*Striga* spp.), a parasitic plant that feeds off the roots of its host, causes degeneration of corn, sorghum, and other grassy crops. It is found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations contained in 7 CFR 301.80 through 301.80–10 (referred to below as the regulations) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts in the quarantined States for the purpose of preventing the spread of witchweed.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in areas designated as suppressive areas. Currently, there are no areas designated as generally infested areas.

Designation of Areas as Suppressive Areas

We are amending § 301.80–2a of the regulations, which lists generally infested and suppressive areas, by adding areas in Greene, Pender, Pitt, Sampson, and Wayne Counties, North Carolina, and areas in Dillon County, South Carolina to the list of suppressive areas.

The rule portion of this document lists the suppressive areas for each county. Nonfarm areas, if any, are listed first; farms are then listed alphabetically.

We are taking this action because surveys conducted by the United States Department of Agriculture (USDA) and State agencies of North Carolina and South Carolina have established that these areas meet one or more of the following conditions specified in § 301.80–2(a) of the regulations:

1. Witchweed has been found in these areas.

2. There is reason to believe that witchweed is present in these areas.

3. It is deemed necessary to regulate these areas because of their proximity to infestation.

4. These areas cannot be separated for quarantine enforcement purposes from infested localities.

Designation of these areas as regulated areas imposes controls on the movement of regulated articles from these areas and prevents the spread of witchweed to noninfested areas.

Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Removal of Areas From List of Regulated Areas

We are also amending § 301.80–2a by removing areas in Cumberland, Duplin, Greene, Harnett, Pender, and Wayne Counties, North Carolina, and Berkeley, Dillon, and Horry Counties, South Carolina from the list of suppressive areas. As a result of this action, there are no longer any regulated areas in Harnett County, North Carolina, or in Berkeley County, South Carolina.

We are taking this action because we have determined that witchweed no longer occurs in these areas; therefore, there is no longer a basis for listing these areas as suppressive areas for the purpose of preventing the spread of witchweed. This action relieves unnecessary restrictions on the interstate movement of regulated articles from these areas.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to control the spread of witchweed to noninfested areas of the United States by adding specified areas to the list of suppressive areas in North Carolina and South Carolina. Also, where witchweed no longer occurs, immediate action is necessary to relieve unnecessary restrictions on the interstate movement of regulated articles.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication

of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Witchweed (*Striga* spp.) is a parasitic plant that feeds off the roots of its host, causing degeneration of corn, sorghum, and other grassy crops. Witchweed is found only in the United States, in parts of North Carolina and South Carolina.

The witchweed regulations quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts in the quarantined States for the purpose of preventing the spread of witchweed into noninfested areas of the United States. We are amending the regulations by adding and removing regulated areas in North Carolina and South Carolina.

This interim rule affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. We have determined that approximately 280,900 small entities move regulated articles interstate from North Carolina and South Carolina. This rule affects only 51 of these entities, however, by removing 41 entities from regulation and by adding 10 new entities to the list of suppressive areas.

We have determined that the 41 deregulated entities will each realize an annual savings of $60 to $70 in regulatory and control costs. We estimate that the rule will cost each of the 10 newly-regulated entities about $60 annually.

In the instances where this interim rule removes specified areas from the list of suppressive areas, this rule will enable freer movement of goods and services across State lines. Consumers will benefit from lower prices and better access to products from the list of suppressive areas that we removed. Overall, we expect that this rule will enhance the ability of small entities to market products interstate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.80–2a [Amended]

2. In § 301.80–2a, the list of suppressive areas is amended by removing the following areas in Cumberland, Duplin, Greene, Harnett, Pender, and Wayne Counties, North Carolina.

a. In Cumberland County, North Carolina, The Elliott, W.H., farm; The Gerald, Rufus, farm; The Jackson, J.T., farm; The Lockamy, Earl, farm; The McLaurin, Greg, farm; The McMillan, Vander, farm; The Melvin, Edith, farm; The Pruitt, K.D., farm; The Roberts, Christine Dawson, farm; The Smith, Larry Don, farm; and The Vann, W.E., farm.

b. In Duplin County, North Carolina, The Hamilton, John, farm.

c. In Greene County, North Carolina, The Carmon, James E., farm; The Edwards, Joe E., farm; The Nethercutt, Lawrence, farm; and The Wilson, Sudie, farm.

d. Harnett County, North Carolina, the entire county.

e. In Pender County, North Carolina, The Flynn, B.S., farm; The Henry, Mary E., farm; The Malloy, Pete, No. 1 farm; The Malloy, Pete, No. 2 farm; The Marshall, Milvin, farm; The Salomon, Gwendolyn S., farm; The Taylor, Bill, farm.

f. In Wayne County, North Carolina, The Sasser, Rosa, farm.

3. In § 301.80–2a, the list of suppressive areas is amended by removing the following areas in Berkeley and Dillon Counties, South Carolina.

a. Berkeley County, South Carolina, the entire county.

b. In Dillon County, South Carolina, The Church, Emerson, farm; The Elvington, James C., farm; The Fore, Ernest, farm; The Fore, John, farm; and The Smith, A.C., farm.

4. In § 301.80–2a, the list of suppressive areas in Horry County, South Carolina, is amended as follows:

a. By revising the second undesignated paragraph of the current description of Horry County, South Carolina, to read as set forth below.

b. By removing the following areas: The Cox, Velma, farm; The Holmes, Marie T., farm; The Inman, Rosetta, farm; The Royals, Lathan, farm; The Stevens, Cora G., farm; The Thomas, James D., farm; The Todd, Mack, farm; and The Vaugh, Ruth, farm.

§ 301.80–2a Regulated areas; generally infested and suppressive areas.

* * * * *

SOUTH CAROLINA

(1) * * *

(2) *Suppressive areas.*

* * * * *

Horry County.

* * * * *

That area bounded by a line beginning at the junction of U.S. Highway 19, State Primary Highway 91, and State Primary Highway 90, then east along highway 90 to its junction with State Secondary Highway 1029, then south along highway 1029 to its junction with a dirt road known as the Telephone Road, then extending northwest along a line to the beginning of the south branch of Jones Big Swamp, then northerly along Jones Big Swamp to its junction with State Primary Highway 90, then east along highway 90 to the south branch of Mills Swamp.

* * * * *

5. In § 301.80–2a, the list of suppressive areas is amended as follows:

a. By adding, in alphabetical order, areas in Greene, Pender, Pitt, Sampson, and Wayne Counties, North Carolina, and Dillon County, South Carolina, as set forth below.

b. By revising the entire descriptions of the infested areas for Sampson County, North Carolina, and Dillon County, South Carolina, as set forth below.

§ 301.80–2a Regulated areas; generally infested and suppressive areas.

* * * * *

NORTH CAROLINA

(1) * * *

(2) *Suppressive areas.*

* * * * *

Greene County.

* * * * *

The Lane, Wilbert, farm located on the east side of State Secondary Road 1419 and 0.3 mile northeast of its junction with State Secondary Road 1418.

* * * * *

Pender County.

* * * * *

The Kea, Leo, farm located 0.3 mile east of State Secondary Road 1105 and 1.2 miles south of its intersection with State Secondary Road 1104.

* * * * *

The McCallister, Mary, farm located 0.2 mile east of State Secondary Road 1105 and 1.1 miles south of its intersection with State Secondary Road 1104.

* * * * *

The Squires, Nelson, farm located on the south side of State Secondary Road 1103 and 1.5 miles south, southeast of the junction of this road with State Secondary Road 1104.

* * * * *

Pitt County.

* * * * *

The Garris, Bruce, farm located 0.1 mile south of the intersection of State Secondary Road 1916 and State Highway 118 and 0.2 mile east of the intersection of State Secondary Road 118 with a field road.

* * * * *

Sampson County. That area bounded by a line beginning at a point where State Secondary Road 1927 intersects the Sampson-Duplin County line, then southerly and easterly along this county line to its junction with the Sampson-Pender County line, then southwesterly along this county line to its junction with the Sampson-Bladen County line, then northwesterly along this county line to its junction with the Sampson-Cumberland County line, then northwesterly, north, and northeast along this county line to its junction with the Sampson-Harnett County line, then easterly along this county line to its junction with the Sampson-Johnston County line, then southeast along this county line to its intersection with North Carolina Highway 242, then south along this highway to its junction with U.S. Highway 421, then southeast along this highway to its intersection with U.S. Highway 701, then north along this highway to its junction with North Carolina Highway 403, then east along this highway to its junction with State Secondary Road 1919, then east along this highway to its intersection with State Secondary Road 1909, then southeast along this road to its intersection with State Secondary Road 1004, then southeast along this road to its junction with State Secondary Road 1911, then southeasterly along this road to its junction with State Secondary Road 1927, then southerly along this road to the point of beginning.

The Hobbs, Ed, farm located 0.7 mile south of State Secondary Road 1736 and 1 mile south of its intersection with State Secondary Road 1731.

The Pate, Ray, farm located on the west side of State Secondary Road 1738 and 0.6 mile southeast of its intersection with State Secondary Road 1940.

The Strickland, Edgebert, farm located on the north side of State Highway 421 and 1 mile east of its intersection with State Secondary Road 1703.

Wayne County. The Dunn, Dale, farm located on the west side of State Secondary Road 1009 and 0.6 mile north of its intersection with State Secondary Road 1101.

* * * * *

SOUTH CAROLINA

(1) * * *

(2) *Suppressive areas.*

Dillon County. That area bounded by a line beginning at a point where State Secondary Highway 22 intersects the South Carolina-North Carolina state line and extending south along said highway 22 to its junction with State Secondary Highway 45, then southwest along said Highway 45 to its intersection with the Little Pee Dee River, then northerly along said river to its intersection with Interstate 95, then southwest along said I–95 to its intersection with Reedy Creek, then northwest along Reedy Creek to its intersection with the Dillon-Marlboro County line, then northeast along said county line to its junction with the South Carolina-North Carolina state line, then southeast along said state line to the point of beginning.

* * * * *

The Wise, Wilbur, farm located on the south side of a field road and 0.15 mile southeast of the junction of the road with State Secondary Road 626 and 0.55 mile southwest of the intersection of State Secondary Road 625 with State Highway 38.

* * * * *

Done in Washington, DC, this 31st day of July 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–19180 Filed 8–3–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV95–989–3FR]

Raisins Produced From Grapes Grown in California; Change of Desirable Carryout Used In Computing Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the desirable carryout levels which are used in computing the yearly trade demand for California raisins. The trade demand is used to help determine the volume regulation percentages for each crop year, if necessary. The desirable carryout is being reduced from the current two and one-half months of shipments to two and one-fourth months of shipments during the 1995–96 crop year and to two months of shipments in subsequent crop years. The Raisin Administrative Committee (Committee), which is responsible for local administration of the Federal marketing order, believes that the current desirable carryout level has contributed to excessive supplies of marketable tonnage early in the crop year. This rule is expected to moderate the oversupply of California raisins early in the crop year, thus stabilizing the market conditions for producers and handlers.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Hessel, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or fax (209) 487–5906; or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2829, or fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will reduce the desirable carryout for the 1995–96 crop year, beginning August 1, 1995, through July 31, 1996, and for subsequent crop years. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the marketing order and approximately 4,500 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers and a majority of producers of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

This final rule changes section 989.154 of the administrative rules and regulations of the raisin marketing order. The Committee recommended by a vote of 31 to 15 at its April 28, 1995, meeting, to adjust the desirable carryout level in section 989.154 from the current two and one-half months of shipments to two and one-fourth months of shipments during the 1995–96 crop year and to two months of shipments in subsequent crop years. The crop year includes the 12-month period August 1 through July 31.

The desirable carryout level is the amount of tonnage from the prior crop year needed during the first part of the succeeding crop year to meet market needs, before new crop raisins are harvested and available for market. Currently, section 989.154 provides that the desirable carryout levels shall be equal to the shipments of free tonnage to all outlets for each varietal type during the months of August, September, and one-half of the total shipments for the month of October of the prior crop year.

The desirable carryout figure is used in marketing policy calculations to determine trade demand. The trade demand is 90 percent of prior year's shipments, adjusted by the carryin and desirable carryout. The trade demand is then used to help determine the volume regulation percentages for each crop year, if necessary.

Beginning in the 1991–92 crop year the desirable carryout was reduced from three months of shipments to two and one-half months of shipments. It was determined that the use of the three month desirable carryout level resulted in excessive supplies of marketable tonnage early in the season.

The Committee has used the two and one-half month desirable carryout figure for four crop years and has determined that the use of this figure has also contributed to an excessive supply of free tonnage at the beginning of the marketing season. A majority of the Committee members believe that this causes unstable market conditions during the early part of the crop year.

To moderate the oversupply of marketable raisin tonnage early in the season, the Committee recommended that the desirable carryout levels be revised from two and one-half months of the prior year's shipments to two and one-fourth months of the prior year's shipments for the 1995–96 crop year and to two months of the prior year's shipments for subsequent crop years.

The change in the desirable carryout levels reduces the trade demand and the free tonnage percentage, and makes less free tonnage available to handlers for immediate use. However, handlers will still be provided an opportunity to increase their inventories, if necessary, by purchasing raisins from the reserve pool under order-mandated 10 plus 10 offers during November and other releases of reserve pool raisins available under the marketing order. The 10 plus 10 offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. Although this final rule tends to tighten the supply of raisins early in the season, handlers will still have the opportunity to obtain additional supplies to increase their carryouts from the 10 plus 10 offers.

This rule is intended to stabilize the early season raisin market. Bringing early season supplies more in line with market needs is expected to stabilize market prices. This price stabilization should make raisin buyers less likely to postpone their purchases. Thus, decreasing the desirable carryout could strengthen the market and increase shipments, which would benefit raisin producers and handlers.

One alternative that was discussed by the Committee prior to recommending the change was to immediately set the desirable carryout level at two months of the prior year's shipments. It was determined that this was too rapid an adjustment and that first setting the desirable carryout levels at two and one-quarter months for the 1995–96 season and two months in subsequent crop years would be a more prudent approach.

Another alternative considered was setting the desirable carryout at a fixed tonnage. However, this alternative does not allow the desirable carryout to fluctuate with changing market conditions from year to year.

Those voting in opposition to the recommendation to reduce the desirable carryout level believed that the marketing order should not further restrict supplies during the early part of the crop year. However, the following table shows that adequate supplies of Natural (sun-dried) Seedless raisins have been available early in the crop year to meet demand. Natural (sun-dried) Seedless raisins represent about 90 percent of all raisins produced in California. The other two varieties which had reserve pools for the 1994–95 crop year, Zante Currant raisins and Other Seedless raisins, had carryins far exceeding the annual trade demand. "Carryin" is synonymous with the "carryout" of the preceding crop year. All figures are in natural condition tons.

[In tons]

Crop year	Desirable carryin (Aug, Sept & ½ Oct shipments)	Physical carryin	Aug/Sept shipments
1994–95	84,671	92,248	64,374
1993–94	81,867	93,752	67,784
1992–93	82,591	115,440	65,495
1991–92	84,541	109,306	65,613

The desirable carryin is set to meet the demand for the early part of the crop year (August and September) before the new crop becomes available. The actual physical carryin has far exceeded the desirable carryin and has resulted in an oversupply of free tonnage during the early part of the crop year. The reduction in desirable carryout contributes to correcting the problem by adjusting the free tonnage market supply, which brings it more in line with demand.

The desirable carryout levels that are established by this rule apply uniformly to all handlers in the industry, whether small or large, and there will be no known additional costs incurred by small handlers. The stabilizing effects of the revised desirable carryout levels impact both small and large handlers positively by helping them maintain and expand markets.

In the event that the prior year's shipments are limited because of crop conditions, a proviso in section 989.154 allows the committee to select the total shipments during the months of August, September and one-half of the total shipments for October during one of the three years preceding the prior crop year. Consistent with the need to reduce early season supplies, this rule makes a corresponding revision to this proviso, by changing the total shipments from August, September, and one-half of the total shipments for October to the total shipments from August and September only.

The proposed rule concerning this action was published in the June 21, 1995, **Federal Register** (60 FR 32280), with a 15-day comment period ending July 6, 1995. Four comments were received, three in favor and the other in opposition to the proposed rule.

The three comments in favor of the proposed rule were submitted by Mr. Vaughn Koligian, General Manager of the Raisin Bargaining Association (RBA) and a raisin grower; Mr. Gerald Chooljian of Del Rey Packing, a raisin handler and grower; and Mr. Ernest A. Bedrosian of National Raisin Company and EKK Bedrosian Farms, a raisin handler and grower. The RBA represents approximately 2,000 raisin growers. Mr. Koligian further stated that 15 raisin packers, including Mr. Chooljian and Mr. Bedrosian, support the change in the desirable carryout level as set forth in the proposed rule. The three comments in favor of implementing the change set forth in the proposed rule reiterate the justification specified in the proposed rule.

The comment in opposition to the proposed rule was submitted by Mr. Barry F. Kriebel, President of Sun-Maid Growers of California (Sun-Maid), an agricultural marketing cooperative comprised of approximately 1,300 growers.

Mr. Kriebel claims that the reduction of the desirable carryout levels would create an artificial shortage and drive up consumer prices. He presents as evidence, a table showing that the field prices for Natural (sun-dried) Seedless raisins increased dramatically from 1984 until the desirable carryout level was changed from 60,000 tons for Natural (sun-dried) Seedless raisins to three months of shipments (103,090 tons) beginning in the 1989–90 crop year. Mr. Kriebel contends that this increase in field prices should not have occurred from 1984 to 1989 because there was a consistent oversupply of raisins.

For example, Mr. Kriebel points out that the field price for Natural (sun-dried) Seedless raisins was $1,300 per ton during the 1983–84 crop year, even though only 37.5 percent of the crop was declared "free." Although this price was historically high, it was caused for the most part by factors other than the desirable carryout level for Natural (sun-dried) Seedless raisins. In the 1983–84 crop year, the industry attempted to market the large raisin supply without decreasing the field price from the prior year. The raisin industry managed to moderately increase shipments over the prior year's shipments, but not in sufficient quantities to account for the drastic increase in raisin supply. An oversupply situation occurred in the 1983–84 crop year partly because the amount of raisin-variety grapes purchased by wineries decreased 57 percent from 1982 to 1983 resulting in unusually high Natural (sun-dried) Seedless raisin inventories at the end of the 1983–84 crop year. The Natural (sun-dried) Seedless raisin field price cannot be adjusted to react to such changes in market conditions because it is established early in the crop year (normally on or before October 5). It was not until the beginning of the 1984–85 crop year that the industry drastically lowered the field price to $700 per ton.

Mr. Kriebel does not provide sufficient evidence that desirable carryout levels are solely responsible for the increase in field prices. The lowering of the desirable carryout levels has its greatest impact on supply during the early part of the crop year, before the new crop is harvested. As stated earlier, the decrease in the desirable carryout levels from two and one-half months to two months adjusts the free market supply during the early part of the crop year and brings it more in line with demand. As for the remaining part of the crop year, handlers are still provided an opportunity to increase their inventories, if necessary, by purchasing raisins from the reserve pool under order-mandated 10 plus 10 offers and other releases of reserve pool raisins available under the marketing order.

The desirable carryout was reduced from three months to two and one-half months of shipments beginning in the 1991–92 crop year. However, the field price has only risen 4 percent from $1115/ton in the 1990–91 crop year to $1160/ton in 1994–95 crop year. In comparison, the consumer price index for food products increased 14.4 percent from 1990 to 1994.

Mr. Kriebel also implies that the reduction in the desirable carryout will result in a greater amount of raisins being "aborted" through the Raisin Diversion Program (RDP). The order allows raisin growers to participate in the RDP by not growing their grape crop when a surplus of raisins exists in the market. Mr. Kriebel does not provide evidence of a correlation between the use of the RDP and the desirable carryout levels. It may be the case that it is more likely consistent surpluses, and thus a need for the RDP, have been caused by the downward trend in sales of raisin-variety grapes, particularly Thompson Seedless, to wineries. This is because wineries have been receiving a greater percentage of their distillation materials from wine-variety grapes or from other sugar sources, such as apples. This may also partially explain

why field prices for Natural (sun-dried) Seedless raisins have increased less during the 1990's. Since competition from wineries for raisin-variety grapes has decreased, there has been less pressure to increase field prices.

The Department does not find evidence that this rule will cause more raisins to be "aborted" in the RDP or that raisin prices will increase significantly. Instead, this rule seems to provide the industry with the means of mitigating the oversupply of raisins early in the crop year, and help stabilize market conditions for producers and handlers. Thus, no change is being made in response to the above comment.

After thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is an appropriate means of solving the marketing problems discussed herein.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1995–96 crop year begins August 1, 1995, and this rule should be effective promptly because the order requires that the committee meet on or before August 15 to compute and announce the trade demand, and the desirable carryout level is a necessary item in that calculation; and (2) growers and handlers are aware of this rule which was discussed and recommended at a public meeting.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.154 is revised to read as follows:

§ 989.154 Desirable carryout levels.

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage of the prior crop year during the months of August and September, for each varietal type, converted to a natural condition basis: *Provided,* That the desirable carryout levels to be used in computing and announcing the 1995–96 crop year's marketing policy shall be equal to the total 1994 shipments of free tonnage for the months of August and September, and one-fourth of the total shipments for the month of October: *Provided further,* That should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August and September during one of the three crop years preceding the prior crop year.

Dated: July 31, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19323 Filed 8–3–95; 8:45 am]

BILLING CODE 3410-02-P

Animal and Plant Health Inspection Service

9 CFR Parts 160 and 161

[Docket No. 94–027–2]

Standards for Accredited Veterinarian Duties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing, under certain conditions, accredited veterinarians to issue official animal health documents up to 30 days after inspection for animals in herds or flocks under regular health maintenance programs. For all other animals, we will allow accredited veterinarians to issue official animal health documents up to 10 days following inspection. Last, we are requiring that all official animal health documents be valid for only 30 days following inspection, regardless of the date of issuance. We will continue to require that accredited veterinarians issue official animal health documents only for animals that they have inspected.

These actions will extend the time period allowed between inspection and the issuance of official animal health documents. We believe these actions will both alleviate the burden placed by the current time requirement on accredited veterinarians and reduce the costs of health inspection for the livestock industry, without significantly increasing animal disease risk.

EFFECTIVE DATE: September 5, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. J. A. Heamon, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 9 CFR parts 160, 161, and 162 (referred to below as the regulations), some veterinarians are accredited by the Federal Government to cooperate with the Animal and Plant Health Inspection Service (APHIS) in controlling and preventing the spread of animal diseases throughout the country and internationally. Accredited veterinarians use their professional training in veterinary medicine to perform certain regulatory tasks.

On March 10, 1995, we published in the **Federal Register** (60 FR 13084–13086, Docket No. 94–027–1) a proposal to amend the regulations to allow, under certain conditions, accredited veterinarians to issue official animal health documents for animals in herds or flocks under regular health maintenance programs for up to 30 days after inspection. For all animals not part of a regular health maintenance program, we proposed to allow accredited veterinarians to issue official animal health documents for up to 10 days following inspection. We further proposed to require that all official animal health documents be valid for only 30 days following the date of inspection, regardless of the date of issuance. Finally, we proposed to add definitions of *issue* and *regular health maintenance program.*

We solicited comments concerning our proposal for 60 days ending May 9, 1995. We received seven comments by that date. They were from a swine breeding stock company, two national veterinary associations, a pork industry association, a Federal veterinarian, and two State agriculture agencies. Four of the commenters supported the proposed rule, although one of those commenters appeared to have some reservations about one aspect of the proposal. The remaining three commenters expressed concerns regarding specific aspects of the proposed rule. The concerns and reservations of those commenters are discussed below.

One commenter supported our proposal to allow an accredited veterinarian to issue an official animal health document up to 10 days after his or her inspection of animals in a herd or flock not under a regular health maintenance program. The commenter acknowledged that the increase from 7 to 10 days would provide some additional time for laboratory results to be received, but stated that even 10 days may not be sufficient time to receive the results of some required tests. The commenter did not, however, cite recurring difficulties with any specific tests. We recognize that laboratory delays beyond an accredited veterinarian's control can occur, but we are unaware of any widespread problems that consistently delay the issuance of animal health documents. The regulations in § 161.3(k) already provide that an accredited veterinarian may issue an origin health certificate for export use without including test results from a laboratory if the APHIS Veterinarian-in-Charge determines that such an action is necessary to save time in order to meet an export schedule and agrees to add the test results to the certificate at a later time. If, in the future, it becomes necessary to address persistent delays in laboratory reporting, similar provisions could be proposed for the issuance of other animal health documents.

One commenter disagreed with our proposal to require that all official animal health documents be valid for only 30 days following the date of inspection, regardless of the date of issuance. The commenter felt that this restriction would place an unfair limitation on certificates made near the end of the 30-day inspection period, noting that a certificate issued on day 28 or 29 would only be valid for a day or two. The commenter envisioned a scenario in which a shipment of animals could be in transit at the time their certificate expired, thus leaving the animals without valid documentation. The commenter suggested that a certificate should be valid for at least 7 days after issuance, provided the certificate was issued during the 30-day inspection period. We believe that the difficulties envisioned by the commenter are not likely to occur due to the time frames associated with inspections and the issuance of animal health documents. Livestock facilities participating in a regular health maintenance program are usually large operations with an established distribution and transportation network in place, which lends a measure of predictability to the facility's shipping activities. We believe that the operator of such a facility would ensure that the health documents for a shipment of animals would be valid for a long enough period of time to complete the movement of those animals. If not, the next scheduled visit by the accredited veterinarian serving the facility would likely be only a few days in the future, and a new set of documents could be secured following that visit, thus allowing adequate time to move the shipment of animals. A document issued by an accredited veterinarian for animals that are not part of a regular health maintenance program would have to be issued no later than 10 days following inspection, so that document would be valid for at least 20 days following its issuance; in such a case, making the document valid for at least 7 days after issuance would be unnecessary.

Another commenter also objected to our proposal to require that all official animal health documents be valid for only 30 days following the date of inspection, regardless of the date of issuance. This commenter's objection was threefold: (1) The requirement would be a negative influence on regional approaches to animal movements within the United States and North America; (2) the requirement constitutes a centralization of regulation at a time when decentralization should be the goal; and (3) the requirement interferes with provisions that most, if not all, States have set concerning the length of time a health document remains valid. The commenter did not, however, provide any explanation or examples to elucidate his objections. We have made no changes in this final rule in response to that comment because the standards for accredited veterinarians contained in the regulations apply only to an accredited veterinarian's work with APHIS, even though it is common for federally accredited veterinarians to work on State programs in addition to their work with APHIS on Federal and cooperative State/Federal programs. Thus, the 30-day post-inspection limit on the validity of a health document would apply to an official certificate or document issued in connection with an APHIS program activity such as pre-export inspection, tuberculosis, brucellosis, or pseudorabies, but not to a State document issued by an accredited veterinarian in connection with a State-level program.

Finally, one commenter was concerned that the proposed definition of *issue* and removal of the words "or sign" from the phrase "issue or sign" would have the effect of creating a loophole that would allow an accredited veterinarian to legally pre-sign a number of blank animal health documents that could be filled out later by someone other than the accredited veterinarian. The commenter stated that an accredited veterinarian should be responsible for reviewing all animal health documents for accuracy before they are signed and then issued. We do not believe that the changes will create the loophole envisioned by the commenter for two reasons: First, the proposed definition of *issue*—"the distribution by an accredited veterinarian of an official animal health document that he or she has signed"—clearly indicates that an accredited veterinarian must sign a document before it is distributed. Our second reason builds on the first, in that proposed § 161.3(b) states that an accredited veterinarian may not issue—i.e., sign and distribute—or allow the use of any certificate, form, record, or report until and unless the document has been accurately and fully completed. We believe, therefore, that these provisions ensure that an accredited veterinarian is responsible for the accuracy of all animal health documents he or she issues.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations to allow, under certain conditions, accredited veterinarians to issue official animal health documents for animals in herds or flocks under regular health maintenance programs for up to 30 days after inspection. For inspection of other animals, we are allowing up to 10 days between the inspection of animals and the issuance of official animal health documents.

Until the effective date of this final rule, the regulations in § 161.3(a) require accredited veterinarians, when issuing or signing a certificate, form, record, or report regarding any animal, to have inspected the animal within 7 days. That requirement places an economic burden on large livestock facilities that sell and ship animals continuously. That is, large livestock facilities are currently required to have their animals inspected frequently, in order for veterinarians to issue, in a timely manner, the health documents required for the frequent sale and shipment of

animals. Such frequent visits can be expensive.

Allowing veterinarians additional time to issue official animal health documents following inspection will enable those veterinarians to inspect animals less frequently. Therefore, this rule will economically benefit large livestock facilities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0032.

List of Subjects

9 CFR Part 160

Veterinarians.

9 CFR Part 161

Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 160 and 161 are amended as follows:

PART 160—DEFINITION OF TERMS

1. The authority citation for part 160 continues to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 160.1 is amended by adding, in alphabetical order, the following definitions:

§ 160.1 Definitions.

* * * * *

Issue. The distribution by an accredited veterinarian of an official animal health document that he or she has signed.

* * * * *

Regular health maintenance program. An arrangement between an accredited veterinarian and a livestock producer whereby the veterinarian inspects every animal on the premises of the producer at least once every 30 days.

* * * * *

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

3. The authority citation for part 161 continues to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 161.3 is amended as follows:

a. By revising paragraphs (a) and (b) to read as set forth below.

b. In paragraph (c), by removing the phrase "or sign" in the first sentence.

c. In paragraph (k), by removing the phrase "or sign" in the first sentence.

§ 161.3 Standards for accredited veterinarian duties.

* * * * *

(a) An accredited veterinarian shall not issue a certificate, form, record or report which reflects the results of any inspection, test, vaccination or treatment performed by him or her with respect to any animal, other than those in regular health maintenance programs, unless he or she has personally inspected that animal within 10 days prior to issuance.

(1) Following the first two inspections of a herd or flock as part of a regular health maintenance program, an accredited veterinarian shall not issue a certificate, form, record or report which reflects the results of any inspection, test, vaccination or treatment performed by him or her with respect to any animal in that program, unless he or she has personally inspected that animal within 10 days prior to issuance.

(2) Following the third and subsequent inspections of a herd or flock in a regular health maintenance program, an accredited veterinarian shall not issue a certificate, form, record or report which reflects the results of any inspection, test, vaccination or treatment performed by him or her with respect to any animal in that program, unless he or she has personally inspected that animal within 30 days prior to issuance.

(b) An accredited veterinarian shall not issue, or allow to be used, any certificate, form, record or report, until, and unless, it has been accurately and fully completed, clearly identifying the animals to which it applies, and showing the dates and results of any inspection, test, vaccination, or treatment the accredited veterinarian has conducted, except as provided in paragraph (c) of this section, and the dates of issuance and expiration of the document. Certificates, forms, records, and reports shall be valid for 30 days following the date of inspection of the animal identified on the document. The accredited veterinarian shall distribute copies of certificates, forms, records, and reports according to instructions issued to him or her by the Veterinarian-in-Charge.

* * * * *

Done in Washington, DC, this 27th day of July 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–19181 Filed 8–3–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–10; Amendment 39–9328; AD 95–16–08]

Airworthiness Directives; AlliedSignal, Inc. TPE331 Series Turboprop and TSE331 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal, Inc. (formerly Allied-Signal, Inc., Garrett Engine Division, Garrett Turbine Engine Company, and AiResearch Manufacturing Co. of Arizona) TPE331 series turboprop and TSE331 series turboshaft engines, that requires a record check of engine records to determine if any repair, assembly, modification, or installation work was performed by Fliteline Maintenance, formerly located in Wharton, Texas, or Mr. Eugene E. Shanks, or Mr. Carl Ramirez (collectively referred to as "Fliteline"). In addition, for engines determined to have repair, assembly, modification, or installation work performed by Fliteline, this action requires verification of all life limited components, inspection of affected components, and verification of compliance with all applicable AD's. This amendment is prompted by the results of a Federal Aviation Administration (FAA) investigation involving engines repaired, assembled, modified, or installed by Fliteline. The actions specified by this AD are intended to prevent uncontained failure of turbine rotors, fire, or loss of aircraft control.

EFFECTIVE DATE: September 5, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (310) 627–5246, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal, Inc. (formerly Allied-Signal, Inc., Garrett Engine Division, Garrett Turbine Engine Company, and AiResearch Manufacturing Co. of Arizona) TPE331 series turboprop and TSE331 series turboshaft engines was published in the **Federal Register** on August 5, 1994 (59 FR 39983). That action proposed to require a record check of engine records to determine if any repair, assembly, modification, or installation work was performed by Fliteline Maintenance, formerly located in Wharton, Texas, or Mr. Eugene E. Shanks, or Mr. Carl Ramirez (collectively referred to as "Fliteline"). In addition, for engines determined to have repair, assembly, modification, or installation work performed by Fliteline, this action requires verification of all life limited components, inspection of affected components, and verification of compliance with all applicable AD's.

The Federal Aviation Administration (FAA) received a report of an aircraft accident involving an Ayres S2R–600 aircraft, with a modified AlliedSignal, Inc. (formerly Allied-Signal, Inc., Garrett Engine Division, Garrett Turbine Engine Company, and AiResearch Manufacturing Co. of Arizona) Model TPE331–1–151A turboprop engine installed. The FAA has determined that the engine installed on the accident aircraft was a configuration not approved for that aircraft and was improperly modified. The unapproved configuration and improper modification on that engine were performed by Mr. Eugene E. Shanks, the owner of Fliteline Maintenance, a domestic repair station, formerly located in Wharton, Texas. Since this accident, the FAA conducted further investigation of other AlliedSignal, Inc. TPE331 series engines repaired or maintained by Mr. Eugene E. Shanks under the name of Fliteline Maintenance. On these engines, the FAA found that the requirements of some applicable AD's had not been performed when the engine records indicated that the work had been performed, the records for life limited turbine components indicated more useful life than the components actually had remaining, parts were installed that are not approved for aircraft use, and modifications that had been performed without approved data. In addition, the FAA has determined that the records maintained by Fliteline Maintenance on the engines it repaired, assembled, or modified do not identify all of the suspect engine models and serial numbers. These conditions, if not corrected, could result in uncontained failure of turbine rotors, fire, or loss of aircraft control.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurs with the rule as proposed.

Two commenters describe their service history of safe operation with aircraft and engines maintained by Fliteline. Therefore the commenters conclude that no AD is necessary. The FAA does not concur. The FAA's investigation has revealed a substantial number of component and AD discrepancies on many engines maintained by Fliteline. These discrepancies constitute an unsafe condition that exists or is likely to develop on engines of the same type design. This AD corrects that unsafe condition.

One commenter states that an AD is not necessary because every operator that has maintenance performed by Fliteline should know exactly the configuration and condition of their engine because that operator pays the bills. The commenter believes that an Advisory Circular (AC) might be in order, not an AD. The FAA does not concur. An AC provides guidance and information for complying with a related Federal Aviation Regulation(s). This AD identifies those products in which the FAA has found an unsafe condition and prescribes the actions each operator must take to correct that unsafe condition.

Three commenters state that the FAA should attempt to identify the engines and life limited components by engine serial number rather than including every TPE331 engine in the applicability. The commenters state that AD applicability is too broad and unnecessary. The FAA does not concur. The FAA has determined that Fliteline performed maintenance on a wide range of engine models and life limited turbine components. In addition, Fliteline did not produce a reliable and comprehensive list of suspect engines and models. Therefore, the applicability of the AD encompasses a number of engine models and requires a records search to determine which life limited components are affected by the AD.

One commenter states that Mr. Ramirez's name should be removed from the AD because he identified a list of TPE331 series engine on which he performed maintenance, including serial numbers: P–06045, P–06460C, P–20050, P–20288, P–20411, P–34004, P–34010, P–34013, P–34015, P–40222, P–40227, P–61041, P–90252C, P–91094C, P–92129, P–92159, and P–92190. The FAA does not concur. The FAA was unable to verify that the list provided by Mr. Ramirez represented a complete list of all the engines maintained by him. Therefore the FAA could not justify removing his name from the AD.

One commenter states that 50% of the engines maintained by Fliteline were single engine restricted category aircraft that were certified under the predecessors to the Federal Aviation Regulations and implied that these engines should not be affected by the AD. The FAA does not concur. Airworthiness Directives issued under part 39 of the Federal Aviation Regulations apply to all identified products when an unsafe condition exists and when that condition is likely to exist and develop in other products of the same type design, regardless of the certification basis.

Two commenters state that the compliance time in paragraph (a) in the NPRM is unreasonably short for airlines with many suspect engines or with high utilization. The FAA concurs in part. The FAA's investigation has shown that it is very unlikely that a single owner would operate a fleet of engines maintained by Fliteline. However, the overall scope of the records review has increased. The records review now encompasses aircraft maintenance records and purchase receipts along with engine maintenance records. In addition, the FAA has determined that the 20 hour compliance time to complete paragraph (a) is not essential to maintain safety and therefore is not necessary. The AD has, therefore, been changed to require accomplishing paragraphs (a) and (b) within 400 cycles

in service after the effective date of this AD.

One commenter indicates that records of maintenance performed by Fliteline are no longer available due to Original Equipment Manufacturer (OEM) log book or life limited part log format changes or due to one-year maintenance records retention requirements. The commenter states that the records review requirements of paragraph (a) should be limited only to the last 12 months. The FAA does not concur. Life limited part logs must be kept for the life of the part regardless of the life limited part log format. In addition, other records may be required to be kept for a period longer than 12 months; therefore, the FAA has determined not to limit the record search to 12 months.

One commenter mentions that "other pertinent data" stated in paragraph (a) of the NPRM needs a better definition. The FAA concurs and has clarified this statement in this final rule by specifying the review of engine life limited part logs, engine repair and maintenance records, maintenance and purchase receipts, and aircraft records.

One commenter asks whether a list of persons or facilities, which performed maintenance on their engines, may be used for the records review requirement in paragraph (a) of the NPRM. The FAA does not concur that a list of persons or facilities constitutes a review of engine records as specified in paragraph (a) of this final rule. However, such a list, with additional assurances, may be adequate. Operators may apply for an alternative method of compliance using the procedures in paragraph (c) of this final rule.

One commenter states that the words, "any repair, assembly, modification, or installation," as stated in paragraph (a) of the NPRM, are over inclusive, because not all of Fliteline's maintenance actions are related to the corrective actions required by this AD. The FAA concurs in part. The FAA has deleted the word "installation" from paragraph (a) of this final rule because installation includes engine installation about which the FAA is not concerned. The FAA has determined, however, to keep the words "any engine repair, assembly, and modification," because the discrepancies noted in engines repaired by Fliteline are related to these actions.

One commenter states that life limited part logs of spare turbine wheels possibly received from Fliteline should be reviewed. The FAA agrees that operators must validate all Fliteline life limited part log entries for all life limited turbine components. This final rule has been revised to also include life limited turbine components received from Fliteline.

One commenter questions the use of engine manufacturer and repair station data to verify the life limited part logs. The commenter suggests that the FAA lacks the authority to require operators to verify the life limited part logs with data from the engine manufacturer or repair stations when those parties are not required to keep that data. The FAA does not concur. The data needed to accomplish the requirements of paragraph (b)(1)(ii) of the AD may be available from manufacturers or repair stations. However, paragraph (b)(1)(iii) provides that if the data is not available the component must be removed from service. The FAA has the authority to require operators to take actions necessary to correct the unsafe condition identified in this AD.

One commenter requests that the AD clarify the method for validating life limited part log entries. This commenter also questions whether documentation was required for compliance. The commenter suggests that paragraph (b)(1)(ii) requires a validation entry on each life limited part log to reflect compliance with this AD. The FAA concurs in part. Each registered owner or operator need only make a single entry in the maintenance records indicating compliance with this AD per Federal Aviation Regulation part 91.417 (a)(2)(v). However, the FAA recommends that documentation validating all Fliteline life limited part log entries be kept in the engine records or attached to the life limited part log.

Several commenters state that paragraph (b) does not have any provisions for relief if another engine entry (i.e., beyond nut removal) was accomplished by a different maintenance organization after maintenance performed by Fliteline. A commenter suggests the AD provide a credit, which will reduce unnecessary AD effort, which clearly addresses the possibility of an earlier entry and validation by an FAA approved maintenance facility or person after maintenance by Fliteline. The FAA concurs. Paragraph (b)(1)(i) of this final rule has been revised to allow credit for engine inspections and overhauls accomplished subsequent to maintenance performed by Fliteline. Paragraph (b)(2) of this final rule has also been revised to allow credit for complete engine overhaul accomplished by the engine manufacturer, FAA certified repair station, or FAA certified mechanic, other than Fliteline.

One commenter recommends that the phrase "disassembled beyond shaft nut removal" referenced in paragraph (b)(1) in the NPRM should be clarified to state "disassembled beyond aft turbine mainshaft nut removal." The FAA concurs and has revised this final rule accordingly.

One commenter states that the FAA offers no comment on the cost of doing the initial record check on each engine referenced by the NPRM's applicability. The commenter recommends that the FAA address the time expended and cost of reviewing records. The FAA concurs and has revised the estimated number of engines, labor and cost involved in the initial record search in accordance with paragraph (a) in this AD.

One commenter questions the FAA's economic analysis stating that it does not include the cost of expendable parts. The FAA concurs. The FAA has re-evaluated the costs to correct improper maintenance as required by paragraph (b) in the compliance section of this AD and has revised the economic analysis section accordingly.

One commenter suggests that the FAA include the business address for Fliteline Maintenance in the AD. The FAA concurs in part. Fliteline Maintenance is no longer doing business as a certified repair station at its former location. The FAA has, however, decided to include the former location of Fliteline in the AD in order to avoid confusion with any other repair facility in the country using that name. The AD has been revised accordingly.

Several commenters take issue with the NPRM's discussion section. Since those comments did not directly suggest that the FAA needed to make changes to the rule as proposed, the FAA does not address them. To the extent those comments could be read to suggest a change to the rule, the FAA has addressed those comments in the preceding paragraphs.

The FAA has changed the compliance time in paragraph (b) of this final rule from 100 hours time in service to 400 cycles in service after the effective date of this AD. This change is based on data received from the engine manufacturer concerning replacement parts availability and a determination that a compliance interval based on engine cycles is more appropriate for the affected components.

In addition, the FAA has clarified the aircraft applicability in this final rule by adding the words "models" and "series." Also, since publication of the NPRM, the Los Angeles Aircraft Certification Office has moved and the contact information has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

The FAA estimates that 7,000 engines installed on aircraft of U.S. registry will be affected by the initial records search described in paragraph (a) of the compliance section. The FAA has estimated that the initial records search will take approximately two hours per engine and that the average labor rate is $60. per work hour. Furthermore, the FAA estimates that 350 engines installed on aircraft of U.S. registry will be affected by paragraph (b) of this AD, that it will take approximately 120 work hours per engine to accomplish the actions required by paragraph (b), and that the average labor rate is $60 per work hour. It will also take an estimated three work hours per engine to accomplish an additional records review, and the FAA estimates that parts will cost approximately $16,000 per engine. Based on these figures, the FAA estimates that total cost impact of the AD on U.S. operators is estimated to be $9,023,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–16–08 AlliedSignal, Inc.: Amendment 39–9328. Docket 94–ANE–10.

Applicability: AlliedSignal, Inc. (formerly Allied-Signal, Inc., Garrett Engine Division, Garrett Turbine Engine Company, and AiResearch Manufacturing Co. of Arizona), TPE331–25, –43, –1, –2, –3, –5, –6, –8, –10, –11, and –12 series, and -55B and -61A Model turboprop engines; and TSE331–3U Model turboshaft engines. These engines are installed on but not limited to Mitsubishi MU–2B series (MU–2 series); Construcciones Aeronauticas, S.A. (CASA) C–212 series; Jetstream 3101 and 3201 series; Fairchild SA226 and SA227 series; Prop-Jets, Inc. Model 400; Cessna Model 441; Twin Commander Aircraft Corp. 680, 690, and 695 series, and Model 681; Rockwell Commander or Ayres Corp. S–2R series; Short Brothers and Harland, Ltd. SC7; Dornier 228 Series; Beech Aircraft Corp. 18 and 45 series and Models JRB–6, 3N, 3NM, 3TM, and B100; Pilatus PC–6 series; DeHavilland DH 104 Dove series; Grumman Model TS–2A; Grumman American Model G–164C; and Schweitzer Aircraft Corp. Model G–164 series aircraft.

Note: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncontained failure of turbine rotors, fire, or loss of aircraft control, accomplish the following:

(a) Within 400 cycles in service (CIS) after the effective date of this AD, review engine life limited part logs, engine repair and maintenance records, maintenance purchase receipts, and aircraft maintenance records (collectively referred to as "records") to identify any engine repair, assembly, or modification that was performed by, or any life limited turbine components received from Fliteline Maintenance, located in Wharton, Texas, domestic repair station certificate number GR2R856K; or Mr. Eugene E. Shanks, mechanic certificate number 1914482; or Mr. Carl Ramirez, mechanic certificate number 466432551 (collectively referred to as "Fliteline").

(b) Within 400 CIS after the effective date of this AD, for engines or components identified in accordance with paragraph (a) of this AD, accomplish the following:

(1) If records or other pertinent information indicate that the engine was disassembled beyond aft turbine mainshaft nut removal from the tie bolt by Fliteline, verify life limited turbine components and take appropriate action by the following methods:

(i) Remove, disassemble the engine, compare, and match each component's part number (P/N) and serial number (S/N) against that engine's issued life limited part logs. Engine hot section inspection or overhaul normally requires comparing and matching of turbine components with the life limited part logs. An engine hot section inspection or overhaul, subsequent to maintenance by Fliteline, and performed by the engine manufacturer, an FAA certified repair station, or an FAA certified mechanic, other than Fliteline, constitutes compliance with paragraph (b)(1)(i) of this AD.

(ii) Validate all Fliteline life limited part log entries by utilizing the component's hourly and cyclic life immediately before the Fliteline entry, as determined by records of the engine manufacturer or FAA certified repair stations other than Fliteline. A life limited part log entry is defined as a removal or installation record. Photocopied life limited part logs may be used provided component history can be established.

Note: Engine manufacturer record and service information referred to in the AD can be attained by calling AlliedSignal Engines Customer Information Center, telephone (800) 338–3378 or (602) 231–5287.

(iii) If the P/N, S/N, hourly and cyclic lives or the life limited part log of each life limited turbine component do not match or can not be validated, remove the component from service prior to further flight and replace with a serviceable component.

(2) Verify that any requirements of AD's signed off by Fliteline were actually accomplished by visual examination or reinspection of the affected components in accordance with the applicable AD. A complete engine overhaul or other maintenance necessary to accomplish applicable AD requirements, subsequent to maintenance by Fliteline, and performed by the engine manufacturer, an FAA certified repair station, or an FAA certified mechanic, other than Fliteline, constitutes compliance with paragraph (b)(2) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then

send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on September 5, 1995.

Issued in Burlington, Massachusetts, on July 26, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–19230 Filed 8–1–95; 2:30 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, and 558

Animal Drugs, Feeds, and Related Products; Piperazine Adipate Powder, Diprenorphine Hydrochloride Injection, Etorphine Hydrochloride Injection, and Certain Nitrofuran and Buquinolate Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of 16 new animal drug applications (NADA's) held by Proctor & Gamble Pharmaceuticals, Inc., Happy Jack, Inc., and Lemmon Co. The NADA's provide for the use of piperazine adipate powder, diprenorphine hydrochloride (diprenorphine HCl) injection, etorphine HCl injection, certain nitrofuran dosage form products, and separately approved Type A medicated articles containing buquinolate or certain other drugs in manufacturing several Type C medicated feeds for chickens. In a notice published in the July 21, 1995, issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: In a notice published in the July 21, 1995, issue of the **Federal Register** (60 FR 37651), FDA is withdrawing approval of the following NADA's:

NADA No.	Drug name	Sponsor name and address
10–158	Furamazone, bismuth subsalicylate bolus	Proctor & Gamble Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815.
10–358	Nitrofurantoin tablets and boluses	Do.
12–291	Nitrofurantoin oral suspension	Do.
12–612	Nitrofurazone, nifuroxime, diperodon HCl ear solution	Do.
34–716	Buquinolate	Do.
35–314	Buquinolate and bacitracin zinc	Do.
35–315	Buquinolate, bacitracin zinc, and penicillin	Do.
35–317	Buquinolate and penicillin	Do.
35–327	Buquinolate, bacitracin methylene disalicylate (bacitracin MD), and penicillin.	Do.
35–329	Buquinolate and bacitracin MD	Do.
38–657	Buquinolate and chlortetracycline	Do.
39–925	Buquinolate and roxarsone combination	Do.
39–926	Buquinolate and roxarsone	Do.
41–744	Nitrofurantoin sodium injection	Do.
95–017	Etorphine HCl injection and diprenorphine HCl injection	Lemmon Co., Sellersville, PA 18960.
115–580	Piperazine adipate powder	Happy Jack, Snow Hill, NC 28580.

The sponsors requested withdrawal of approval of the NADA's. This final rule removes 21 CFR 520.1560, 520.1560a, 520.1560b, 520.1801, 520.1801a, and 522.1563; amends 21 CFR 522.723 and 522.883 to reflect the withdrawal of approval of these NADA's; removes and reserves 21 CFR 524.1580a and 558.105; and amends 21 CFR 558.62, 558.128, 558.325, 558.460, and 558.530.

In addition, 21 CFR 510.600(c) is amended to remove the entries for Proctor & Gamble Pharmaceuticals, Inc., from the list of approved drug sponsors because it no longer holds any approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 524

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Proctor & Gamble Pharmaceuticals, Inc." and in the table in paragraph (c)(2) by removing the entry for "000149".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1560 [Removed]

4. Section 520.1560 *Nitrofurantoin oral dosage forms* is removed.

§ 520.1560a [Removed]

5. Section 520.1560a *Nitrofurantoin oral suspension* is removed.

§ 520.1560b [Removed]

6. Section 520.1560b *Nitrofurantoin tablets and boluses* is removed.

§ 520.1801 [Removed]

7. Section 520.1801 *Piperazine adipate oral dosage forms* is removed.

§ 520.1801a [Removed]

8. Section 520.1801a *Piperazine adipate powder* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

9. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.723 [Amended]

10. Section 522.723 *Diprenorphine hydrochloride injection* is amended in paragraph (c) by removing the phrase "Nos. 010042 and 000693" and adding in its place the phrase "No. 010042".

§ 522.883 [Amended]

11. Section 522.883 *Etorphine hydrochloride injection* is amended in paragraph (c) by removing the phrase "Nos. 010042 and 000693" and adding in its place the phrase "No. 010042".

§ 522.1563 [Removed]

12. Section 522.1563 *Nitrofurantoin sodium injection* is removed.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

13. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.1580a [Removed]

14. Section 524.1580a *Nitrofurazone-nifuroxime-diperodon hydrochloride ear solution* is removed and reserved.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

15. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.62 [Amended]

16. Section 558.62 *Arsanilic acid* is amended by removing paragraph (c)(2)(v) and by redesignating paragraph (c)(2)(vi) as paragraph (c)(2)(v).

§ 558.105 [Removed]

17. Section 558.105 *Buquinolate* is removed and reserved.

§ 558.128 [Amended]

18. Section 558.128 *Chlortetracycline* is amended by removing and reserving paragraph (c)(5)(iii).

§ 558.325 [Amended]

19. Section 558.325 *Lincomycin* is amended by removing and reserving paragraph (c)(3)(iv).

§ 558.460 [Amended]

20. Section 558.460 *Penicillin* is amended by removing and reserving paragraph (c)(2)(v).

§ 558.530 [Amended]

21. Section 558.530 *Roxarsone* is amended by removing and reserving paragraph (d)(3)(vii).

Dated: July 13, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–19091 Filed 8–3–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Ivermectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merck Research Laboratories, Division of Merck & Co., Inc. The original NADA provides for the use of a Type A medicated article containing ivermectin in manufacturing Type C medicated feed for production swine. The supplemental NADA expands use of the feed to breeding swine. The feed is intended for treatment and control of certain endo- and ectoparasites.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, is the sponsor of approved NADA 140–974, which provides for the use of a Type A medicated article containing 0.6 percent ivermectin (2.72 grams per pound (g/lb)) in manufacturing Type C medicated feed containing 1.8 g of ivermectin per ton (t). The feed is indicated for the treatment and control of certain gastrointestinal roundworm, lungworm, kidney worm, lice, and mite infestations of growing swine (up to 220 lb in body weight) as in § 558.300 (21 CFR 558.300). The feed is administered so as to provide 0.1 milligram of ivermectin per kilogram (mg/kg) of body weight per animal per day. Merck has filed a supplemental NADA expanding use of the ivermectin-containing feed to include breeding swine. To achieve the same dosage level (i.e., 0.1 mg of ivermectin per kg of body weight) in the larger animals, the supplemental NADA provides for an ivermectin concentration up to 11.8 g/t of Type C medicated feed.

The supplemental NADA is approved as of August 4, 1995, and the regulations are amended in § 558.300 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Additionally, approval of the supplemental NADA increases the highest concentration of ivermectin permitted in Type C medicated feed from 1.8 to 11.8 g/t. The feed can be manufactured from either a Type A medicated article or a Type B medicated feed. Currently, the Category II table in § 558.4 (21 CFR 558.4) specifies that the maximum concentration of ivermectin permitted in a Type B feed is 182 g/t (i.e., 100 x the 1.8 g/t now approved for Type C feed). However, because the supplemental NADA increases the highest drug concentration permitted in the Type C feed to 11.8 g/t, this justifies a corresponding increase in the maximum ivermectin concentration in the Type B feed to 1,180 g/t (i.e., 100 x the 11.8 g/t). Accordingly, FDA is also amending the Category II table in § 558.4 to reflect this increase.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11 (e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support

approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning August 4, 1995, because the supplemental NADA contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the use for which the supplemental NADA is approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the "Category II" table in the entry for "Ivermectin" under the third column by removing "182 g/ton (0.02%)" and adding in its place "1,180 g/ton (0.13%)".

3. Section 558.300 is amended by revising paragraphs (c)(1)(i) and (iii) to read as follows:

§ 558.300 Ivermectin.

* * * * *

(c) * * *

(1) * * *

(i) *Amount.* For growing-finishing swine feed 1.8 grams of ivermectin per ton (to provide 0.1 milligram per kilogram of body weight per day). For mature and breeding swine feed 1.8 to 11.8 grams of ivermectin per ton (to provide 0.1 milligram per kilogram of body weight per day).

* * * * *

(iii) *Limitations.* Feed as the only feed for 7 consecutive days. For use in swine only. Withdraw 5 days before slaughter.

* * * * *

Dated: July 26, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–19281 Filed 8–3–95; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606 and 2609

RIN 1212–AA72

Debt Collection Procedures—Tax Refund Offset

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is adopting, as a final rule with change, amendments that it previously issued as an interim final rule. The procedures in this rule enable the PBGC to refer past-due, legally enforceable debts to the internal Revenue Service to be offset against federal tax refunds.

EFFECTIVE DATE: This rule is effective August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On December 6, 1994 (59 FR 62571), the Pension Benefit Guaranty Corporation published an interim final rule that amended its administrative review and debt collection regulations (29 CFR parts 2606 and 2609). As amended, the PBGC's regulations include the procedures required for participation in the federal tax refund offset program authorized by 31 U.S.C. 3720A. Section 3720A, and Internal Revenue Service regulations thereunder (26 CFR 301.6402–6), include requirements to ensure that debts referred for offset against amounts otherwise payable as tax refunds are past-due and legally enforceable and that the agency has made reasonable efforts (pursuant to regulations) to obtain payment.

The one comment on the interim final rule expressed concern about its effects on due process of law requirements under the Fifth Amendment to the United States Constitution. The PBGC believes that the commenter's concern is unwarranted. As noted above, the pre-referral procedures required by IRS regulations, which are included in the interim final rule, provide due process protections. Among other things, before the PBGC refers a debt for tax refund offset, the debtor has at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable (§ 2609.33(b)(2)).

This final rule makes no changes in the rules of agency organization and procedure that wee prescribed by the interim final rule and have been in effect since January 5, 1995. Therefore, the Administrative Procedure Act does not require further notice and public procedure or a delayed effective date, and the PBGC for good cause finds that both such actions are unnecessary (5 U.S.C. 553 (b) and (d)).

E.O. 12866

The PBGC previously determined that the interim final rule was not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

List of Subjects

29 CFR Part 2606

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

29 CFR Part 2609

Administrative practice and procedure, Claims.

Accordingly, the interim final rule amending 29 CFR parts 2606 and 2609 that was published at 59 FR 62571 on December 6, 1994, is adopted as a final rule without change.

Issued in Washington, DC this 31st day of July, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–19175 Filed 8–3–95; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

33 CFR Part 137

[Docket 50112]

RIN 2105–AC01

Limit of Liability for Deepwater Ports

AGENCY: Office of Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule establishes a $62 million limit of liability for the Louisiana Offshore Oil Port (LOOP) deepwater port. This limit applies only to those oil spills where LOOP would be entitled to limit its liability in accordance with the Oil Pollution Act of 1990. This action does not alter LOOP's unlimited liability for spills caused by gross negligence, willful misconduct, or violation of certain Federal regulations. LOOP is the only U.S. deepwater port in operation at this time; specific liability limits for other, future deepwater ports will be established through separate rulemakings as appropriate.

EFFECTIVE DATE: August 4, 1995.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying in Docket 50112, Office of Documentary Services (C–55), U.S. Department of Transportation, room PL 401 (Plaza level), 400 Seventh St., SW., Washington, DC. 20590–0001. Certain studies referenced in this notice may be ordered from the National Technical Information Service (NTIS), Springfield, VA 22161; phone orders (703) 487–4650 (Visa, Mastercard and American Express accepted).

FOR FURTHER INFORMATION CONTACT: Mr. Robert I. Stein, Office of Environment, Energy and Safety, at (202) 366–4846, or Mr. Paul B. Larsen, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law, at (202) 366–9161.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 8, 1995, the Department of Transportation published a notice of proposed rulemaking (NPRM) entitled Limit of Liability for Deepwater Ports. The Department received 12 letters commenting on this proposal. No public hearings were requested or held. A request for an extension of the comment period was received, but decided against (this is further discussed in paragraph (5) below).

Statutory Basis and Purpose

The purpose of this regulatory action is to establish an appropriate limit of liability for deepwater ports in accordance with section 1004 of OPA 90 (Public Law 101–380).

Section 1004 originally set the limit of liability for deepwater ports at $350 million. However, it also allows the limit to be adjusted to a lower amount as appropriate (but not less than $50 million), subject to a study of the relative operational and environmental risks of transporting oil to the United States by deepwater ports compared to other ports.

The relative risk study, entitled the "Deepwater Ports Study," has been completed and forwarded to Congress. The study concluded that deepwater ports represent a lower operational and environmental risk for delivering crude oil to the United States than the three other common modes of crude oil delivery (direct vessel deliveries, lightering, and offshore mooring stations). Copies of the Deepwater Port Study may be ordered from NTIS (publication number PB94–124054).

At present, the only deepwater port in operation in the United States is LOOP. However, other deepwater ports may be built in the future. Because there may be significant engineering and environmental differences between different deepwater ports, the Department has determined that it is necessary to review any deepwater port individually before setting its limit of liability within the statutory limits of $50 million and $350 million. Limits for other deepwater ports may be different from LOOP's limit.

Therefore, in accordance with its authority under section 1004(d)(2)(C) of OPA 90 (33 U.S.C. 2704), and for reasons explained in the NPRM and this preamble, the Department is establishing a $62 million limit of liability for the LOOP deepwater port.

Discussion of Comments and Changes

Twelve responses were received which commented on several issues in the NPRM. These comments, and the Department's deliberations, are discussed below.

1. Limit of Liability

Ten comments addressed the limit of liability issue, seven of which supported a $58 million limit and one which supported a $50 million limit. These comments stated that the present $350 million limit of liability is inequitable to deepwater ports, particularly when compared to the limits of liability allowed for tank vessels. The comments pointed out the results of the "Deepwater Ports Study" (which determined that delivery of oil via deepwater ports represented a lower environmental risk than delivery by tankers, lightering, or offshore mooring station) and the Coast Guard's risk analysis of LOOP (which determined the maximum credible pipeline spill to be 5,194 barrels), and argued that the limit of liability should reflect the lower risks and smaller credible spill sizes of deepwater ports.

One comment supported an unspecified limit between $58 million and $150 million. Another comment alternatively suggested that it would be more equitable for the deepwater port limit of liability to be the same as for other offshore facilities: $75 million plus cleanup costs, with a requirement for demonstrated financial responsibility of $150 million.

The Department has determined that it is appropriate national policy that a deepwater port should be liable for the cost of its maximum credible spill (assuming no gross negligence or other acts that would disqualify it from limiting its liability). Further, since Congress has directed that the liability limit should be based on the study of the risk of deepwater ports relative to the risk of other means of transporting oil by vessel, it is inappropriate to base a deepwater port limit of liability on that for other offshore facilities.

The NPRM discussed a worst-case unit spill cost of $11,088 per barrel for crude oil, which was based upon national historical spill costs up to 1992. Although it is appropriate to revise the unit cost to a more-current amount, at this time no new historical cost data is available and the Department has decided to use the Consumer Price Index (CPI) as a basis for revision. The national average CPI for 1992 was 140.3 and the most current CPI (March 1995) is 151.4, an increase of 7.9 percent. Therefore, the new unit spill cost is $11,965 per barrel. Applying this to LOOP's maximum credible spill of 5,194 barrels yields $62,146,210. Accordingly, the Department is setting the limit of liability for LOOP at $62 million.

The CPI does not specifically track oil spill costs in its analysis. However, Section 1004 (d)(4) of OPA 90 requires adjustment of the liability limit reflecting significant increases in the CPI.

2. Periodic Review of Limits of Liability

The NPRM requested comments on whether the Department should reassess limits of liability at fixed time intervals. Two comments addressed this issue.

One comment suggested 3-year intervals (in order to be consistent with other periodic review requirements in OPA 90) and the other comment suggested 10 years. DOT will issue a separate CPI adjustment regulation as required by law.

3. Universal Versus Port-by-Port Limit of Liability

One comment called for a single (universal) limit of liability for all deepwater ports instead of the NPRM's proposed port-by-port limit for each individual deepwater port. The comment argued that, by virtue of the Federal licensing process, all deepwater ports would be designed and operated at the same level of safety. Therefore, it is not necessary to establish individual limits.

The Department disagrees that there is no basis for setting individual limits of liability for different deepwater ports. This is because, although all deepwater ports will be designed and operated to the same high safety standards, the worst-case spill can still differ substantially from port to port. LOOP's maximum credible pipeline spill of 5,194 barrels is directly governed by its distance offshore (18 miles), its design flow rate (100,000 barrels per hour), and the size of its pipeline (48 inches). Even when designed and operated to the same safety standards, these parameters may be significantly different for another deepwater port, resulting in a different maximum credible spill.

The same commenter also discussed some economic issues; these are addressed in the "Assessment" section of this preamble.

4. Consistency Determination

The state of Louisiana requested submittal of a Consistency Determination with respect to its Coastal Zone Management Plan in accordance with 15 CFR part 930 subpart C. Such determinations are required whenever any action by a Federal agency affects land or water uses with a state's coastal zone.

The Department has determined that a Consistency Determination is not necessary because this action is administrative in nature and does not affect either land or water usage.

5. Extension of Comment Period

One commenter has recently acquired an interest in a planned deepwater port project off the coast of Texas and requested an extension of the comment period to respond to the NPRM.

The Department has determined that extending the comment period for this reason would not materially benefit the rulemaking. This is because this final rule only directly affects the LOOP deepwater port; other deepwater ports will be separately and individually evaluated for their own limit of liability when appropriate.

6. Basis for Regulatory Action

One comment disagreed that the findings of the "Deepwater Ports Study" form a sufficient basis for this regulatory action (to reduce the limit of liability for deepwater ports) because the Study did not include relative risks of other onshore and offshore facilities. The comment stated that many onshore facilities pose less risks than deepwater ports and, therefore, adjusting limits of liability for deepwater ports should not be undertaken without also adjusting limits of liability for onshore and offshore facilities.

The "Deepwater Ports Study" did not include relative risk analyses of onshore and offshore facilities because these are not alternative modes for the transportation of oil by vessel to the United States. The Department has determined that the Study's findings are a sufficient basis for this action. Further, although OPA 90 does give the Department discretion to also adjust limits of liability for transportation-related onshore facilities, such action would be a separate rulemaking.

7. Joint Liability Scenarios

The NPRM discussed several scenarios in which LOOP might be liable (solely or jointly) for a tanker spill. LOOP's comment on this issue took exception to these scenarios, stating that OPA 90 does not provide for joint liability: the source of the spill is considered the responsible party except where a third party was solely responsible for the spill. LOOP stated that in cases where responsibility for a spill may be shared, liability under such a spill would not be created by OPA 90 and therefore such scenarios are outside the scope of this rulemaking.

Although OPA 90 does not recognize joint responsible parties other than between the owner, operator, or demise charterer of a vessel, it does recognize (in section 1002(d)(2)(A)) that third parties might cause an incident, and makes them liable up to their limit as if they were the responsible party. In addition, liability under OPA 90 is defined to be the standard of liability which obtains under 33 U.S.C. 1321. As noted in the conference report, this has been construed as joint and several liability. The Department has determined that the existence of potential liability for a tanker spill, under limited circumstances, was not a determinative factor in setting the liability limits in this rule.

8. Unlimited Liability Provisions of OPA 90

The $62 million limit of liability herein applies only to spills at LOOP that are not caused by gross negligence, willful misconduct, or violation of certain Federal regulations in accordance with section 1004 of OPA 90 (33 U.S.C. 2704). The unlimited liability provisions of OPA 90 are not affected by this rulemaking.

Regulatory Analyses and Notice

DOT Regulatory Policies and Procedures

This final rule is considered to be a significant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11040, because of substantial industry interest.

Executive Order 12866

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12866, and it has been determined that it is not an economically significant rulemaking.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Department must consider whether this regulation will have a significant impact on a substantial number of small entities.

The NPRM stated that the proposed action only directly affected a single company, Louisiana Offshore Oil Port (LOOP), Inc., which owns and operates the only deepwater port in the United States at present. The NPRM also stated that neither LOOP specifically, nor deepwater ports in general, qualify as small business concerns. The NPRM specifically requested comments from small companies affected by the proposed action; however, no comments were received.

Therefore, the Department concludes that this action does not affect any small business entities.

Paperwork Reduction Act

This final rule contains no collection of information requirements under the Paperwork Reduction Act.

Assessment

The regulatory evaluation in the NPRM stated that the proposed action might have an economic effect on LOOP (depending upon what final limit of liability was established), but that no effect was anticipated on the general private sector, consumers, or Federal, state or local governments. Only two comments were received that addressed the economic effects of this action.

The first comment was from LOOP, Inc., which stated: "OPA's liability limit plays an important part in LOOP's insurance costs. When the OPA limit is reduced, it will most probably result in a lowering of the total insurance premiums paid by LOOP. These reduced costs will enable LOOP to be more competitive and could be reflected in lower rates for service, thus benefiting oil importers and, ultimately, American consumers of oil products such as gasoline."

The Department recognizes that LOOP's business activity is to receive crude oil cargoes from offshore VLCC and ULCC tankers and transfer those cargoes ashore (via seafloor pipeline), an activity in which it competes with local lightering companies that provide a similar transfer service using small tankers (typically 80,000 deadweight tons or smaller). LOOP's original limit of liability under the Deepwater Ports Act was $50 million; in 1980 the liability limit was established at $150 million. OPA 90's default limit of liability of $350 million raised LOOP's insurance costs. This rulemaking establishes $62 million as the appropriate limit of liability for LOOP. It is noted that the limit of liability of typical lightering vessels (against which LOOP competes) is less than $40 million.

The second comment was from Petroport, Inc., which is planning to develop a deepwater port 35 miles offshore of Freeport, Texas. Petroport's comment discussed the economic effect of establishing limits of liability for deepwater ports on a port-by-port basis rather than a single, universal limit for all deepwater ports. This comment stated: "Petroport is concerned that if the Department establishes a limit only for LOOP at this time and requires separate rulemakings for future deepwater ports, then its own deepwater port, and other such facilities, would be placed at a severe competitive disadvantage. The Department inadvertently would create uncertainty in the market, could possibly discourage, and certainly would delay, other deepwater port ventures through the creation of unnecessary regulatory burdens."

Petroport, Inc., was also concerned that a new deepwater port would have to operate under OPA 90's default $350 million limit of liability until completion of a rulemaking to establish a lower, more-appropriate limit. Petroport, Inc., was further concerned that the port-by-port approach would impede development of other deepwater ports, thereby creating a noncompetitive monopoly for LOOP.

The Department disagrees that the port-by-port approach for setting individual limits of liability would discourage or delay the overall development of a deepwater port. The deepwater port licensing process (found in 33 CFR Part 148) already requires, among other things, submittal of an environmental analysis which, in turn, must evaluate spill sizes and the possibility of pollution incidents resulting from personnel and equipment failures, natural calamities and casualties, etc. The environmental analysis submittal will allow the Department timely development of an appropriate limit of liability concurrently with the overall processing of the license application. Therefore, this action will not delay development of any new deepwater port project nor does it impose any new or undue regulatory burden on an applicant.

The Department also disagrees that any delays in development of a deepwater port foster a noncompetitive monopoly for LOOP. Even though LOOP is the sole deepwater port in the United States, it does not benefit from a monopolistic position in the market: LOOP's primary competition comes from lightering companies, not from the presence (or absence) of other deepwater ports. Other deepwater ports will be in a similar competitive situation with local lightering companies.

The Department concludes that, although this action may improve LOOP's competitiveness as an individual company, the overall competitiveness of oil transfer business activity will not be significantly affected. Therefore, the anticipated impact of this rulemaking does not warrant a full Regulatory Analysis or Evaluation.

National Environmental Policy Act

The Department has determined that this rulemaking is administrative in nature and therefore is categorically excludable from further environmental assessment.

List of Subjects in 33 CFR Part 137

Claims; Harbors; Insurance; Oil pollution.

For the reasons discussed in the preamble, the Department amends 33 CFR part 137 as follows:

SUBCHAPTER M—MARINE POLLUTION FINANCIAL RESPONSIBILITY AND COMPENSATION

PART 137—DEEPWATER PORT LIABILITY FUND

1. The authority citation for 33 CFR part 137 is revised to read as follows:

Authority: 33 U.S.C. 1509(a), 1512(a), 1517(j)(1)), 2704; 49 CFR 1.46.

2. Subpart G is added as follows:

Subpart G—Limits of Liability

Sec.
137.601 Purpose.
137.603 Limits of Liability.

Subpart G—Limits of Liability

This subpart sets forth the limits of liability for U.S. deepwater ports in accordance with section 1004 of the Oil Pollution Act of 1990 (33 U.S.C. 2704).

§ 137.603 Limits of Liability.

(a) The limits of liability for U.S. deepwater ports will be established by the Secretary of Transportation on a port-by-port basis, after review of the maximum credible spill and associated costs for which the port would be liable. The limit for a deepwater port will not be less than $50 million or more than $350 million.

(1) The limit of liability for the LOOP deepwater port licensed and operated by Louisiana Offshore Oil Port, Inc., is $62,000,000.

(2) [Reserved]

(b) [Reserved]

Dated: July 31, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–19212 Filed 8–3–95; 8:45 am]

BILLING CODE 4910–62–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–18–1–6024A; FRL–5263–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document takes final action to approve the State

Implementation Plan (SIP) submitted by the state of Missouri for the purpose of bringing about the attainment of the National Ambient Air Quality Standard (NAAQS) for lead. The SIP was submitted by the state to satisfy certain Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary and secondary lead smelter near Bixby, Missouri (Doe Run-Buick).

DATES: This action will be effective October 3, 1995 unless by September 5, 1995 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION:

I. Background

The Doe Run Company acquired the primary lead facility near Bixby, Missouri (Doe Run-Buick), on November 16, 1986. Doe Run produced primary lead throughout 1987 and part of 1988. Violations of the NAAQS for lead were recorded in the first two calendar quarters of 1988. In the later part of 1988, Doe Run ceased operating the Doe Run-Buick facility as a primary smelter. Subsequent to 1988, various parts of the facility were operated intermittently to support production at Doe Run's Herculaneum, Missouri, primary smelter. Though air quality monitors indicated that ambient concentrations exceeded 1.5 $\mu g/m^3$ for some 24-hour periods, the quarterly lead standard was not violated during this intermittent operating scenario. Doe Run continues to utilize various pieces of equipment associated with the primary operation in conjunction with the company's colocated secondary lead smelting operation which began production in 1991. Although the most recent violations of the lead NAAQS occurred during the first two calendar quarters of 1988, there were no enforceable limitations which precluded the facility from operating in a fashion that had previously contributed to violations of the standard.

On November 5, 1990, the EPA issued a call for a revision to the Missouri SIP in response to the 1988 violations of the NAAQS for lead in the vicinity of Doe Run-Buick. The SIP revision was due by December 31, 1991. On November 6, 1991, EPA promulgated a nonattainment designation for the area surrounding the Doe Run-Buick facility under the authority of sections 107(d)(1) and (5) of the Clean Air Act (CAA). Upon promulgation of the nonattainment designation, a state must prepare a revision to the SIP in accordance with the requirements of section 172 of the CAA, showing how the area will be brought into attainment. As a result of EPA's promulgation of the nonattainment designation, a full Part D SIP revision for Doe Run-Buick became due on July 6, 1993.

On July 2, 1993, the state of Missouri submitted an SIP revision addressing the applicable Part D requirements of the CAA relating to lead for the Doe Run-Buick smelter. The submission provided control measures to be implemented if the primary smelting facility resumed operations. The SIP also provided some restrictions on the use of the primary blast furnace and the refinery facilities used in conjunction with the secondary smelting operations. The July 1993 SIP revision was adopted by the Missouri Air Conservation Commission (MACC), after proper notice and public hearing, on June 29, 1993.

In a letter dated September 30, 1993, EPA informed the state that the proposed Special Provisions amendment to Missouri rule 10 CSR 10–6.120 was not approvable. The proposed amendment would allow the sinter plant to be operated in conjunction with the secondary smelting operation. As the modeling analysis of the current mode of operations did not include emissions from the primary smelter's sinter machine, there was no demonstration of attainment for the proposed operating scenario.

On October 7, 1993, EPA notified the state that the SIP revision lacked several elements necessary to meet EPA's completeness criteria, and that it contained several elements which were not approvable. In an effort to resolve these problems, a meeting was held on October 18 and 19, 1993, among representatives from EPA, MDNR, and the Doe Run Company. In a November 15, 1993, letter, MDNR committed to make the needed corrections to the SIP and amend 10 CSR 10–6.120, and submit them to EPA by April 1994. In December 1993, EPA determined that sufficient progress was not being made in rectifying the deficiencies in the Buick SIP. A finding of incompleteness was sent to the Governor of Missouri on January 4, 1994.

The required changes to the SIP were adopted by the MACC at a public hearing held on March 31, 1994. Final changes to Missouri rule 10 CSR 10–6.120 were adopted by the MACC, after proper notice and public hearing, on April 28, 1994, and became effective on August 28, 1994.

The state submitted supplemental material to EPA on June 30, 1994. This subsequent submittal still lacked the plot plan showing the location of the fencing installed around the Buick facility, which was one deficiency previously noted by EPA. It was also noted that the Consent Order contained an error in the wording of Contingency Measure number 2. The correct wording had been included in a February 23, 1994, letter from EPA, forwarding our comments on the draft Consent Order, during the state's public comment period. The inclusion of the needed language was agreed upon at a meeting between MDNR staff and EPA on March 22, 1994. However, due to clerical error, the language in the March 31, 1994, Consent Order was incorrect. A new Consent Order, which included the correct language, was signed by the MACC on September 29, 1994, and submitted to EPA on November 23, 1994, along with the missing plot plan. EPA deemed the SIP revision complete on December 15, 1994. The finding of completeness stopped the section 179 sanctions clock initiated by EPA's January 4, 1994, finding of incompleteness.

The July 2, 1993, SIP, as revised and adopted in March 1994, and the revised September 29, 1994, Consent Order, satisfy the Part D requirements of the CAA. The revised plan also contains a control strategy to be implemented if the primary smelting facility resumes operation. Dispersion modeling demonstrates that these control measures would result in attainment of the NAAQS for lead. As the area is currently attaining the lead NAAQS, the attainment date is the effective date of the SIP—March 31, 1994. The amendments to Missouri rule 10 CSR 10–6.120 contain emission limits for stack sources and fugitive sources for both the current mode of operation (the secondary smelter), and emission limits effective upon resumption of the smelter's primary production of lead.

II. Criteria for Approval

This SIP revision was reviewed using the criteria established by the CAA. The requirements for all SIPs are contained in section 110(a)(2) of the CAA. Subpart 1 of Part D of Title I of the CAA, and in particular section 172(c), specifies the provisions necessitated by designation of an area as nonattainment for any of the NAAQS. Further guidance and criteria are set forth in Subpart 5 of Part D, the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498), and in the "Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (58 FR 67748).

III. Review of State Submittal

A. Control Strategy

The 1992 emissions inventory (EI) is the baseline EI for this SIP revision. The SIP includes a list of control measures, which are to be installed and implemented before the Buick primary smelter is operated to process lead concentrate and produce primary lead. As an additional control measure, Missouri amended rule 10 CSR 10–6.120 to include emission and throughput limits for the secondary smelting operation. Air dispersion modeling was used to determine that the controls were sufficient to attain the lead NAAQS.

Appendix F of the SIP contains the June 24, 1993, Consent Order which sets forth the administrative requirements for the implementation of the control measures. Appendix G contains amended Missouri rule 10 CSR 10–6.120, which establishes *enforceable* emission and throughput limits for both the primary smelting operation and the secondary smelting operation.

B. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable, but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the area surrounding the Doe Run-Buick facility was effective on January 6, 1992; therefore, the latest attainment date permissible by statute would be January 6, 1997. As the area is currently attaining the lead NAAQS, the attainment date is the effective date of the SIP, March 31, 1994. This meets the statutory requirement.

The Industrial Source Complex Long-Term Model (ISCLT2) was used to demonstrate attainment and maintenance of the lead NAAQS for the two operating scenarios. The procedures recommended in EPA's *Guideline on Air Quality Models (Revised)*, EPA 450/2–78–027R, July 1986, and *Supplement A to the Guideline on Air Quality Models (Revised)*, EPA 450/2–78–027R, July 1987, were followed.

C. EI and Air Quality Data

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.

The 1992 emissions inventory is the baseline EI for this SIP revision. This inventory was quantified through stack testing, worker exposure data, evaluation of equipment and procedures, EPA emission estimation methods, and engineering judgement. The attainment scenario EIs were derived from the baseline inventory.

The state submittal provides a historical summary of the air quality from the third calendar quarter of 1982 through the fourth calendar quarter of 1992. Since the second calendar quarter of 1988, at which time the primary smelting operation ceased, there have been no exceedances of the quarterly lead standard at any of the monitoring locations.

D. Reasonably Available Control Measures (RACM) (Including Reasonably Available Control Technology (RACT))

The submittal must contain provisions to ensure that RACM (including RACT) are implemented (see section 172(c)(1) of the CAA). See 57 FR 13549 and 58 FR 67748 for EPA's interpretation of RACM and RACT requirement.

A 1991 six-volume study conducted by Fluor Daniel, Inc. represents an RACT survey of the Buick facility. The report contains a study of various process technology, and a review of the existing facilities and operating practices. The controls at the Buick smelter were found to be RACT for all stack and process fugitive emission sources.

An RACM survey was conducted in accord with 57 FR 18072, EPA's guidance with respect to the selection of fugitive dust control measures. Three of the five suggested measures were found to be applicable to the Buick facility. The SIP adequately documents the reasons for which each measure was selected or rejected. Each selected measure is included in the Buick Work Practice Manual and, in accord with the June 24, 1993, Consent Order found in Appendix F of the SIP, will be implemented upon the resumption of lead concentrate processing and primary lead production.

E. Reasonable Further Progress (RFP)

The SIP must provide for RFP [see section 172(c)(2) of the Act]. The control measures for the Buick smelter are to be in place and operational before the smelter resumes the primary production of lead as set forth in the July 24, 1993, Consent Order found in Appendix F of the SIP. EPA believes this meets the requirements for RFP for lead SIPs, as discussed in the "Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (58 FR 67748).

F. New Source Review (NSR)

Missouri rule 10 CSR 10–6.020 identifies the current specific descriptions of the lead nonattainment areas in Missouri. These areas include the city of Herculaneum in Jefferson County, and the Dent, Liberty, and Arcadia townships in Iron County. 10 CSR 10–6.020 is utilized in conjunction with 10 CSR 10–6.060 which requires a permit for construction of, or major modification to, an installation with potential to annually emit 100 tons or more of a nonattainment pollutant, or a permit for a modification with potential to annually emit 100 tons or more of a nonattainment pollutant. Because these provisions include requirements for all nonattainment areas and are not limited to lead, EPA is acting on the provisions in a separate rulemaking.

G. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs that demonstrate attainment must include contingency measures. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the state or EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

The contingency measures included in the July 2, 1993, SIP submittal were determined to be inadequate to address possible air quality violations at the Buick facility for both the primary and secondary smelting operations. EPA notified the state, in an October 7, 1993, letter, that the SIP revision did not contain contingency measures which adequately addressed the requirements of section 172(c)(9). EPA requested that contingency measures be developed which would address sources that modeling indicates contribute to maximum predicted concentrations. MDNR and Doe Run agreed to the required changes at meetings held October 18 and 19, 1993. The changes to the SIP were adopted by the MACC, after proper notice and public hearing, on March 31, 1994.

The contingency measures in the SIP will be invoked if, beginning with the calendar quarter following the attainment date, an exceedance of the lead NAAQS is recorded. MDNR will

notify Doe Run-Buick of the exceedance, and implementation of all of the contingency measures will begin within 60 days from Doe Run's receipt of that notification.

H. Enforceability

All measures and other elements in the SIP must be enforceable by the state and EPA (see sections 172(c)(6), 110(a)(2)(A), and 57 FR 13556). The state submittal includes a Consent Order entered into by the state and the Company which contains all of the control and contingency measures, with enforceable dates for implementation.

The submittal also includes an amendment to Missouri rule 10 CSR 10–6.120 which establishes emission limits for all stack emissions and production limits from the lead production processes for each operating scenario. Missouri rule 10 CSR 10–6.120 contains provisions which are applicable to other lead smelters in the state. EPA proposes approval of this rule only as it relates to Doe Run-Buick. Any EPA actions on this rule with regard to other lead smelters will occur through separate **Federal Register** rulemakings.

A Buick Work Practice Manual is also included with the SIP revision. The Work Practice Manual serves as an enforcement document for the state and EPA. These work practices are designed to limit the fugitive emissions at the facility, and are enforced through recordkeeping requirements. Noncompliance with the established work practices is a violation of Missouri rule 10 CSR 10–6.120. EPA approves the Work Practice Manual with the understanding that any change to the Work Practice Manual requires a revision to the Missouri SIP.

IV. Implications of This Action

This SIP revision will significantly impact the current SIP. The modeling performed in support of the SIP revision indicates that the emissions control strategy will result in attainment of the NAAQS for lead upon resumption of primary lead production. The modeling also indicates that, while operating as a secondary smelter, no additional controls are required to ensure that emissions remain below the NAAQS for lead. In addition, Missouri rule 10 CSR 10–6.120 has been amended such that emission limits for all stack sources and production limits for lead production processes have been established for each operating scenario.

EPA ACTION: By this action EPA approves Missouri's July 2, 1993; June 30, 1994; and November 23, 1994, submittals. This SIP revision meets the requirements of section 110 and Part D of the Clean Air Act and 40 CFR Part 51.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. §§ 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP, the state and any affected local governments have elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: July 11, 1995.

Dennis Grams, P.E.,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(89) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(89) In submittals dated July 2, 1993; June 30, 1994; and November 23, 1994, the Missouri Department of Natural Resources (MDNR) submitted a State Implementation Plan (SIP) to satisfy Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary and secondary smelter near Bixby, Missouri (Doe Run-Buick). Although Missouri rule 10 CSR 10–6.120 contains requirements which apply statewide to primary lead smelting operations, EPA takes action on this rule insofar as it pertains to the Doe Run-Buick facility. Plan revisions to address the other lead smelters in the state are under development.

(i) Incorporation by reference.

(A) Revised regulation 10 CSR 10–6.120 (section (2)(C), section (4)) entitled Restriction of Emissions of Lead from Primary Smelter-Refinery Installations, effective August 28, 1994.

(B) Consent Order, entered into between the Doe Run Company and MDNR, dated July 2, 1993.

(C) Consent Order amendment, signed by the Doe Run Company on August 30, 1994, and by MDNR on November 23, 1994.

(ii) Additional material.

(A) The Doe Run-Buick Work Practice Manual submitted on July 2, 1993. EPA approves the Work Practice manual with the understanding that any subsequent changes to the Work Practice Manual will be submitted as SIP revisions.

(B) Revisions to the Doe Run-Buick Work Practice Manual submitted on June 30, 1994.

[FR Doc. 95–19215 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Part 52

[WVA10–1–5918a; FRL–5265–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia—Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision consists of an emission statement program for stationary sources which emit volatile organic compounds (VOCs) and/or nitrogen oxides (NO_X) at or above specified actual emission threshold levels. This program applies to certain stationary sources within the West Virginia counties of Putnam, Kanawha, Cabell, Wayne, Wood, and Greenbrier. The intended effect of this action is to approve a regulation for annual reporting of actual emissions by sources that emit VOC and/or NO_X, within the counties listed above, in accordance with the 1990 Clean Air Act (CAA). This action is being taken under section 110 of the CAA.

DATES: This action will become effective September 18, 1995 unless notice is received on or before September 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be mailed to Marcia L. Spink, Associate Director (3AT00), Air Programs, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Region III, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107; and the West Virginia Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–4713.

SUPPLEMENTARY INFORMATION: On August 10, 1993, the West Virginia Office of Air Quality (WVOAQ) submitted a SIP revision to EPA. This revision would add West Virginia Regulation Title 45, Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions," consisting of Subsections: 1. General; 2. Definitions; 3. Applicability; 4. Compliance Schedule; 5. Emission Statement Requirements; 6. Enforceability; and 7. Severability, effective July 7, 1993 in the State of West Virginia to the West Virginia SIP.

I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of Part D of Title I of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990. EPA published a "General Preamble" describing EPA's preliminary views on how it intends to review SIP's and SIP revisions submitted under Title I of the CAA, including those State submittals for ozone transport areas within the States (see 57 FR 13498 (April 16, 1992) ("SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990"), 57 FR 18070 (April 28, 1992) ("Appendices to the General Preamble"), and 57 FR 55620 (November 25, 1992) ("SIP: NO_X Supplement to the General Preamble")).

EPA also issued a draft guidance document describing the requirements for the emission statement programs discussed in this action, entitled "Guidance on the Implementation of an Emission Statement Program" (July, 1992). The Agency is also conducting a rulemaking process to modify title 40, part 51 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal ozone nonattainment areas, which are also made applicable by section 182 (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program for stationary sources to prepare and submit to the State each year emission statements certifying their actual emissions of VOCs and NO_X. This section of the Act provides that the States are to submit a revision to their SIPs by November 15, 1992 establishing this emission statement program.

If a source emits either VOC or NO_X at or above the designated minimum reporting level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

States may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emissions factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA.

At minimum, the emission statement data should include:

—Certification of data accuracy;

—Source identification information;

—Operating schedule;

—Emissions information (to include annual and typical ozone season day emissions);
—Control equipment information; and
—Process data.

EPA developed emission statements data elements to be consistent with other source and State reporting requirements. This consistency is essential to assist States with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

II. EPA's Evaluation of West Virginia's Submittal

A. Procedural Background

In accordance with the requirements of 40 CFR § 51.102, a public hearing concerning West Virginia's SIP revision was held on June 23, 1993, in Charleston, West Virginia to solicit public comment on the implementation plan for the State. Following the public hearing, the plan was adopted by the State and signed by the Governor's designee on July 7, 1993 and submitted to EPA on August 10, 1993 as a revision to the SIP.

B. Components of West Virginia's Emission Statement Program

There are several key and specific components of an acceptable emission statement program. Specifically, West Virginia must submit a revision to its SIP which consists of an emission statement program which meets the minimum requirements for reporting by the sources and the State. For the emission statement program to be approvable, West Virginia's SIP revision must include, at a minimum, definitions and provisions for applicability, compliance, and specific source reporting requirements and reporting forms.

Subsection 45–29–2. Definitions, includes, among others, definitions for the following terms: Actual emissions; Annual fuel process rate; Control efficiency; Control equipment identification code; Emission factor; Emission statement; Estimated emission method code; Estimated emission units; Facility; Measured emission methods code; Measured emission units; Owner or operator; Oxides of nitrogen; Ozone season; Percentage seasonal throughput; Person; Point; Potential to emit; Typical ozone season day; and Volatile organic compounds.

Subsections 45–29–1. General; 45–29–3. Applicability; 45–29–6. Enforceability; and 45–29–7. Severability require that a person who owns or operates any installation, source, or premises to report the levels of emissions from all stationary sources of VOCs and NO_X. The state may, with EPA's approval, waive the Emission Statements requirements for classes or categories for stationary sources with facility-wide actual emissions of less than 25 tpy of VOC or NO_X, if the class or category is included in the Base Year ozone and Periodic ozone inventories are calculated using EPA approved emission factors or other methods acceptable to EPA. Subsection 45–29–5. Emission Statement Requirements, requires that a certifying official for each facility provide West Virginia with a statement reporting emissions by May 13, in 1993, and by April 15 of every year thereafter for the emissions discharged during the previous calendar year. This subsection of the regulation also delineates specific requirements for the content of these annual emission statements.

C. Enforceability

The State of West Virginia has provisions in its SIP which ensure that the emission statement requirements of West Virginia Regulation Title 45, Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions," are adequately enforced.

EPA has determined that the submittal made by the State of West Virginia satisfies the relevant requirements of the CAA and EPA's guidance document, "Guidance on the Implementation of an Emission Statement Program" (July 1992).

III. Final Action

EPA is approving a revision to the West Virginia SIP to include Regulation Title 45, Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions." This revision was submitted to EPA by the State of West Virginia on August 10, 1993.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will become effective September 18, 1995 unless, within 30 days of publication, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 18, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision of any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities. SIP approvals under section 110 and subchapter I, part D of the clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP Approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410 (a) (2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving West Virginia's Emission Statement Program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Volatile organic compounds, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

Dated: July 14, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraphs (c)(34) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(34) Revisions to the West Virginia State Implementation Plan submitted by the Secretary, West Virginia Department of Commerce, Labor, and Environmental Resources, Office of Air Quality, on August 10, 1993.

(i) Incorporation by reference.

(A) Letter dated August 10, 1993 from the Secretary, West Virginia Department of Commerce, Labor, and Environmental Resources, Office of Air Quality submitting 45 Code of State Regulations (CSR) Series 29 "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions" as a revision to the West Virginia State Implementation Plan. The effective date of this rule, 45CSR29 is July 7, 1993.

(B) West Virginia Regulation Title 45, Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions," consisting of Subsections: 1. General; 2. Definitions; 3. Applicability; 4. Compliance Schedule; 5. Emission Statement Requirements; 6. Enforceability; and 7. Severability, effective July 7, 1993.

(ii) Additional Material.

(A) Remainder of August 10, 1993 State submittal pertaining to 45 CSR Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions."

(B) [Reserved]

[FR Doc. 95–19272 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[WV27–1–7013a, WV27–2–7014a; FRL–5265–9]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Redesignation of the Greenbrier County WV Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a redesignation request and two State Implementation Plan (SIP) revisions submitted by the State of West Virginia. The first SIP revision is the 1990 base year ozone inventory for Greenbrier County. The second SIP revision establishes and requires a maintenance plan for the Greenbrier County area including contingency measures which provide for continued attainment of the ozone National Ambient Air Quality Standard (NAAQS). The intended effect of this action is to approve the 1990 base year ozone inventory, a redesignation request and the maintenance plan for Greenbrier County. On December 22, 1992 the West Virginia Department of Commerce, Labor & Environmental Resources submitted an ozone inventory for 1990. On September 9, 1994, the West Virginia Division of Environmental Protection (WVDEP) submitted a request to redesignate Greenbrier County from nonattainment to attainment. On September 9, 1994, the WVDEP also submitted a maintenance plan for Greenbrier County as a revision to the West Virginia State Implementation Plan. This action is being taken under sections 107 and 110 of the Clean Air Act (the Act).

DATES: This action will become effective September 18, 1995 unless notice is received on or before September 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the West Virginia Division of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 597–0545.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990 the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

Under section 107(d)(1) of the Act, in conjunction with the Governor of West Virginia, EPA was required to designate Greenbrier County as nonattainment because the area violated the ozone standard in 1987–1989.

Air quality data, recorded in the Greenbrier County area, met the ozone NAAQS from 1989–1991 and has subsequently continued to indicate attainment and maintenance through 1994. West Virginia submitted a ozone maintenance SIP and redesignation request on September 9, 1994.

II. Review of West Virginia's Submittal

Following is a brief description of how the State of West Virginia's September 9, 1994 submittal fulfills the five requirements of section 107(d)(3)(E) of the Act. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. Because the base year emissions inventory is an integral element of the maintenance plan, EPA will discuss its evaluation under its analysis of the maintenance plan. A Technical Support Document (TSD) has also been prepared by EPA on these rulemaking actions. The TSD is available for public inspection at the EPA Regional office listed in the **ADDRESSES** section of this notice.

1. Attainment of the Ozone NAAQS

The submittal contains an analysis of ozone air quality data which is relevant to the maintenance plan and to the redesignation request for the Greenbrier County ozone nonattainment area. Ambient ozone monitoring data for 1989 through 1994 show attainment of the ozone NAAQS in Greenbrier County, West Virginia. *See* 40 CFR 50.9 and appendix H. The State of West Virginia's request for redesignation included documentation that the entire area has complete quality assured data showing attainment of the standard over the most recent consecutive three calendar year period. Therefore the area has met the first statutory criterion of attainment of the ozone NAAQS. West Virginia has also met the second statutory criterion by committing to continue monitoring the air quality in this area in accordance with the Act's requirements as prescribed in 40 CFR part 58.

2. Meeting Applicable Requirements of Section 110 and Part D

As previously stated, EPA fully approved the State of West Virginia SIP for Greenbrier County, West Virginia as meeting the requirements of section 110(a)(2) and Part D of the 1977 Act. The Clean Air Act Amendments of 1990, however, modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, EPA has reviewed the SIP and determined that it contains all measures that were due under the Act prior to September 9, 1994, the date the State of West Virginia submitted its redesignation request satisfying the completeness criteria of 40 CFR Part 51 Appendix V.

2.A. Section 110 Requirements

Although section 110 of the 1977 Act was amended in 1990, the Greenbrier County, West Virginia SIP meets the requirements of section 110 (a)(2) of the amended Act. A number of the requirements did not change in substance and, therefore, EPA believes that the preamendment SIP met these requirements. As to those requirements that were amended many duplicate other requirements of the Act (see 57 FR 27936 and 23939, June 23, 1992). EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2) of the Act. The SIP contains enforceable emission limitations adequate to produce attainment, requires monitoring, compiling, and analyzing ambient air quality data. It provides for adequate funding, staff, and associated resources necessary to implement SIP requirements, and requires stationary source emissions monitoring and reporting.

2.B. Part D Requirements

2.B.1. Subpart 1 of Part D—Section 172(c) Plan Provisions

Under section 172(b), the section 172(c) requirements are applicable no later than three years after an area has been designated as nonattainment under the Act. For Greenbrier County which was first designated nonattainment on January 6, 1993, these section 172(c) requirements would have become due January 6, 1995. Therefore, these section 172(c) requirements were not applicable to ozone nonattainment areas on or before September 9, 1994—the date the State of West Virginia submitted a complete redesignation request and maintenance plan for Greenbrier County. The Greenbrier County area currently has a fully approved New Source Review (NSR) program. Upon redesignation of this area to attainment, the prevention of significant deterioration provisions (PSD) contained in part C of title I of the Act are applicable. EPA approved West Virginia's PSD program on April 11, 1986 (51 FR 12517) which, under the approved SIP, applies in all designated attainment areas.

2.B.2. Subpart 1 of Part D—Section 176 Conformity Plan Provisions

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed states that the conformity regulations would establish submittal dates (see 57 FR 13498, 13557 (April 16, 1992)). The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the State of West Virginia is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule November 25, 1994. Similarly, West Virginia is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals had not yet come due before September 9, 1994, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request. West Virginia has adopted transportation and general conformity regulations and submitted these complete regulations as revisions to the West Virginia SIP on November 13, 1994. The West Virginia conformity SIP revisions are the subject of separate rulemaking actions.

2.B.3. Subpart 2 of Part D—Section 182 Provisions for Ozone Nonattainment Areas

The Greenbrier County nonattainment area is classified as marginal and is subject to the requirements of section 182(a) of the Act. As of September 9, 1994, the State was required to meet the emission inventory requirement of section 182(a)(1) and the emissions statement program requirement of section 182(a)(3)(b).

Section 182(a)(1) required an emissions inventory as specified by section 172(c)(3) of actual emissions of carbon monoxide (CO), volatile organic compounds (VOC) and nitrogen oxides (NO_X) from all sources by November 15, 1992. On December 22, 1992, West Virginia submitted an emissions inventory for 1990 (the "base year inventory") which EPA determined to be complete on April 16, 1993. Section 182(a)(3)(B) required a SIP revision by November 15, 1992 to require stationary sources of VOC and NO_X emissions to report the actual emissions of these pollutants annually. On November 12, 1992, West Virginia submitted 45CSR29 "Rule Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions And Oxides of Nitrogen Emissions". EPA is approving the base year inventory as part of this rulemaking action. EPA is approving West Virginia Regulation Title 45, Series 29, "Rule Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions" in a separate rulemaking action also being published in today's **Federal Register**.

3. Fully Approved SIP Under Section 110(k) of the Act

EPA has determined that the State of West Virginia has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D as discussed above. Therefore, the redesignation requirement of section 107(d)(3)(E)(ii) has been met.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the 1977 Act, EPA approved the State of West Virginia SIP control strategy for the Greenbrier County, West Virginia area. EPA determined that the rules and the emission reductions achieved as a result of those rules are enforceable.

Several other enforceable control measures have come into place since the Greenbrier County, West Virginia area violated the ozone NAAQS. Reductions in ozone precursor emissions occurred due to the mandatory lowering of fuel volatility and automobile fleet turnover due to the Federal Motor Vehicle Control Program. The Reid Vapor Pressure (RVP) of gasoline decreased during the years 1990 to 1992 from 9.5 pounds per square inch (psi) to 9.0 psi. Reductions due to these programs were determined using the mobile emission inventory model MOBILE 5.0a and relevant vehicle miles traveled (VMT) data. As a result of these permanent and enforceable reductions, VOC emissions decreased by 0.24 tons/day (1988–1990) and by 0.48 tons/day (1988–1993) in Greenbrier County. Emissions of NO_X were reduced by 0.10 tons/day and 0.19 tons/day during the same periods respectively in this area. The State of West Virginia's maintenance plan requires the continuation of the federal RVP program. The State demonstrated that point source VOC emissions were not artificially low due to local economic downturn during the period in which Greenbrier County air quality came into attainment. Reductions due to decreases in production levels or from other unenforceable scenarios such as voluntary reductions were not included in the determination of the emission reductions.

EPA finds that the combination of measures contained in the SIP and federal measures have resulted in permanent and enforceable reductions in ozone precursors that have allowed Greenbrier County to attain the NAAQS, and therefore, that the redesignation criterion of section 107(d)(3)(E)(iii) has been met.

5. Fully Approved Maintenance Plan Under Section 175A

EPA is approving the West Virginia maintenance plan for the Huntington, West Virginia area because EPA finds that West Virginia's submittal meets the requirements of section 175A of the Act. The Greenbrier County, West Virginia area will have a fully approved maintenance plan in accordance with section 175A of the Act. Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

5.A. Emissions Inventory—Base Year Inventory

On December 22, 1992, the State of West Virginia submitted comprehensive inventories of VOC, CO and NO_X emissions from area, stationary, and mobile sources for 1990. This inventory was used as the basis for calculations to demonstrate maintenance. West Virginia projected their 1990 inventory to 1993 in order to have a base year inventory corresponding to 1993 which was selected as the attainment base year. The 1993 VOC, NO_X, and CO inventory is considered representative of attainment conditions because no violations occurred in 1993, and it reflects the typical inventory for the most recent, as of September 1994, three-year period demonstrating attainment of the ozone NAAQS standard in Greenbrier County.

West Virginia's submittal contains the detailed inventory data and summaries by source category. West Virginia's submittal also contains information related to how it comported with EPA's guidance, which model and emission factors were used (note MOBILE 5.0a was used), how VMT data was generated, what RVP was considered in the base year, and other technical information verifying the validity of the Greenbrier County West Virginia emission inventory. A summary of the base year and projected maintenance year inventories are shown in the following tables in section 5.B.

5.B. Demonstration of Maintenance-Projected Inventories

Below, totals for VOC and NO_X emissions were projected from the 1990 base year out to 2005. These projected inventories were prepared in accordance with EPA guidance. Refer to EPA's TSD for more in-depth details regarding the projected inventory for the nonattainment areas.

GREENBRIER COUNTY—VOC PROJECTION INVENTORY SUMMARY (TONS PER DAY)

	1990 base year	1993 attain base	1996 proj.	1999 proj.	2002 proj.	2005
Point	0.04	0.04	0.05	0.05	0.05	0.05
Area	3.41	3.48	3.59	3.71	3.84	3.99
Mobile	3.83	3.36	3.26	3.22	3.21	3.29
Total	7.28	6.88	6.90	6.98	7.10	7.33

GREENBRIER COUNTY—NO_X PROJECTION INVENTORY SUMMARY (TONS PER DAY)

	1990 base year	1993 attain base	1996 proj.	1999 proj.	2002 proj.	2005 proj.
Point	0.14	0.15	0.16	0.16	0.17	0.17
Area	0.59	0.59	0.59	0.59	0.59	0.59
Mobile	5.00	4.82	4.71	4.62	4.57	4.68
Total	5.73	5.56	5.46	5.37	5.33	5.44

As indicated in the previous tables, a decrease in NO_X emissions is projected in the Greenbrier County nonattainment area throughout the maintenance period. A slight increase in VOC emissions is projected for the Greenbrier County nonattainment area. However, this projected emissions increase of 0.45 tons/day from 1993 to 2005 (of 0.05 tons/day from 1990 to 2005) is not expected to affect maintenance of the ozone NAAQS in this rural area. These projections do not consider the effect of future federal measures that are under a court-ordered promulgation deadline. Such measures include, but are not limited to, those for heavy duty diesel engines (see 59 FR 31306, June 17, 1994), small spark-ignition gasoline engines (see 59 FR 25399, May 16, 1994) and marine engines (see 59 FR 55930, November 9, 1994). These measures are expected to keep the Greenbrier County VOC emissions under the 1990 base year level.

There were no measured exceedances of the ozone NAAQS in 1990. As discussed earlier, Greenbrier County has continued to monitor attainment of the ozone NAAQS through 1994. EPA believes that these emissions projections demonstrate that the nonattainment area will continue to maintain the ozone NAAQS.

EPA does not believe that photochemical modelling would be useful in the case of Greenbrier County for assessing the effects of the projected VOC emissions increase. The natural, biogenic emissions in the Greenbrier County VOC inventory exceed 86 tons per day in 1990 and are projected to remain the same throughout the maintenance period. The increases in the total (biogenic plus anthropogenic) VOC inventory to be modeled are too small.

5.C. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in Greenbrier County depends, in part, on the State of West Virginia's efforts toward tracking indicators of continued attainment during the maintenance period. The State of West Virginia will track the status and effectiveness of the maintenance plan by periodically updating the emissions inventory every three years. West Virginia has committed to perform this tracking on a triennial basis in order to enable the State of West Virginia to implement the contingency measures of its maintenance plan as expeditiously as possible.

The State of West Virginia update will indicate new source growth, as indicated by annual emission statements. The State of West Virginia will continue to monitor ambient ozone levels by operating its ambient ozone air quality monitoring network in accordance with 40 CFR part 58.

5.D. Contingency Plan

The level of VOC and NO_X emissions in Greenbrier County will largely determine its ability to stay in compliance with the ozone NAAQS. Despite the State of West Virginia's best efforts to demonstrate continued compliance with the NAAQS, Greenbrier County may exceed or violate the NAAQS. Therefore, West Virginia has provided contingency measures with a schedule for implementation in the event of future ozone air quality problems. In the event that exceedances of the ozone NAAQS are measured such that nonattainment is indicated at the monitor in Greenbrier County, or in the event that periodic emission inventory updates or major permitting activity reveals that excessive or unanticipated growth in ozone precursor emissions has occurred or will occur, West Virginia will accordingly select and adopt additional measures including one or more of the following to assure continued attainment:

1. Application of VOC/NO_X reasonably available control technology (RACT) requirements or similar emission limitations on stationary sources,

2. A revision to new source permitting requirements requiring more stringent emissions control technology and/or emission offsets.

One or more of these regulatory revisions would be selected and a draft regulation(s) developed by the West Virginia Division of Environmental Protection (WVDEP) for adoption as an emergency rule(s) within three (3) months after verification of a monitored ozone standard violation. WVDEP's adopted emergency rule(s) for the selected control measure(s) will be implemented within six (6) months after adoption and will be filed as legislative rule(s) for permanent authorization by the legislature as required under West Virginia law.

5.E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the State of West Virginia has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

EPA has determined that the maintenance plan adopted by the State of West Virginia and submitted to EPA on September 9, 1994 meets the requirements of section 175A of the Act. Therefore, EPA is approving the maintenance plan.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 18, 1995 unless by September 5, 1995, adverse comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 18, 1995.

Final Action

EPA is approving the ozone maintenance plan for Greenbrier County in West Virginia submitted on September 9, 1994 because it meets the requirements of section 175A. EPA is approving the 1990 base year ozone inventory for Greenbrier County. In addition, the Agency is redesignating the Greenbrier County area to ozone attainment because the Agency has determined that the provisions of section 107(d)(3)(E) of the Act for redesignation have been met.

The Greenbrier County nonattainment area is subject to the Act's requirements for marginal ozone nonattainment areas until and unless it is redesignated to attainment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities. SIP approvals under section 110 and subchapter I, part D of the clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP Approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410 (a) (2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this regulatory action from the requirements of section 6 of Executive Order 12866.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve West Virginia's redesignation request, base year ozone inventory, and maintenance plan for the Greenbrier County ozone nonattainment area must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirement.

Dated: July 14, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(36) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(36) The ten year ozone maintenance plan including emission projections and contingency measures for Greenbrier County, West Virginia effective on September 1, 1994 and submitted by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 9, 1994 from the West Virginia Division of Environmental Quality transmitting the ozone maintenance plan for Greenbrier County.

(B) The ten year ozone maintenance plan including emission projections and contingency measures for Greenbrier County, West Virginia effective on September 1, 1994.

(ii) Additional Material.

(A) Remainder of September 9, 1994 State submittal pertaining to the maintenance plan referenced in paragraph (c)(36)(i) of this section.

(B) [Reserved]

3. Section 52.2531 is added to read as follows:

§ 52.2531 1990 base year emission inventory.

EPA approves as a revision to the West Virginia State Implementation Plan the 1990 base year emission inventories for the Greenbrier county ozone nonattainment area submitted by the Secretary, West Virginia Department of Commerce, Labor & Environmental Resources on December 22, 1992. These submittals consist of the 1990 base year point, area, non-road mobile, biogenic and on-road mobile source emission inventories in Greenbrier County for the following pollutants: Volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_x).

PART 81—[AMENDED]

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671.

Subpart C—Section 107 Attainment Status Designations

4. In § 81.349 the ozone table is amended by revising the entry for Greenbrier County to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA.—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date	Type
Greenbrier Area:				
Greenbrier County	September 18, 1995	Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–19274 Filed 8–3–95; 8:45 am]
BILLING CODE 6560–60–P

40 CFR Part 70

[AD–FRL–5270–3]

Clean Air Act Final Interim Approval of the Operating Permits Program for the Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating interim approval of the title V operating permits program submitted by the Sacramento Metropolitan Air Quality Management District (District) for the purpose of complying with federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. In addition, today's action grants final approval to the District's mechanism for receiving delegation of section 112 standards as promulgated.

EFFECTIVE DATE: September 5, 1995.

ADDRESSES: Copies of the District's submittals and other supporting information used in developing the final approvals are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ed Pike (telephone 415/744–1248), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70, require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

On June 6, 1995, EPA proposed interim approval of the operating permits program for the Sacramento Metropolitan Air Quality Management District. See 60 FR 29809. The **Federal Register** document also proposed approval of the District's interim mechanism for implementing section 112(g) and program for delegation of section 112 standards as promulgated. EPA did not receive any comments on the proposal. In this notice, EPA is promulgating interim approval of the District's operating permits program and approving the section 112(g) and section 112(l) mechanisms.

II. Final Action and Implications

A. Title V Operating Permits Program

The EPA is promulgating interim approval of Sacramento's title V operating permits program as submitted on August 1, 1994. The District's program substantially, but not fully, meets the requirements of part 70 and meets the interim approval requirements under 40 CFR 70.4. The program revisions necessary for full approval are unchanged from the proposal. See 60 FR 29809 (June 6, 1995).

The scope of this approval of the District's part 70 program applies to all part 70 sources (as defined in the approved program) within Sacramento County except any sources of air pollution over which an Indian tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the Act; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until September 4, 1997. During this interim approval period, the District is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If Sacramento fails to submit a complete corrective program for full approval by March 4, 1997, EPA will start an 18-month clock for mandatory sanctions. If the District then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the District has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the District has come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Sacramento's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the District has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Sacramento has not submitted a timely and complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for the District upon interim approval expiration.

B. County Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of Sacramento's preconstruction review program found in the District's preconstruction permitting program (rule 202) and the District's New Source Review Guidelines for Toxics (Appendix B–6 of the submittal) as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and the District's adoption of rules specifically designed to implement section 112(g). This approval is limited to the implementation of the 112(g) rule and is effective only during any transition time between the effective date of the 112(g) rule and the adoption of specific rules by the District to implement 112(g). The final 112(g) rule will determine the deadline for Sacramento to adopt a 112(g) rule.

C. Program for Delegation of Section 112 Standards as Promulgated

Requirements for part 70 program approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR section 63.91 of the District's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. This program for delegations applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of the Sacramento's submittal and other information relied upon for the final interim approval, including the public comment letter received by EPA, are contained in the docket at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's action under section 502 of the Act does not create any new requirements, but simply addresses operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because these actions do not impose any new requirements, they do not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly,

no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: July 21, 1995.

John Wise,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (w) to the entry for California as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

(w) *the Sacramento Metropolitan Air Quality Management District:* (complete submittal received on August 1, 1994); interim approval effective on September 5, 1995; interim approval expires September 4, 1997.

* * * * *

[FR Doc. 95–19001 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

41 CFR Chapter 114

RIN 1090–AA53

Internal Directives and Procedures Governing Property Management Program

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Department of the Interior has amended the internal directives and procedures governing its property management program. The Department of the Interior is now deleting text from the Code of Federal Regulations. This text, which does not affect the public, is being deleted because it duplicates the test in other internal directives. The intended effect is to eliminate duplicate regulations and thereby simplify the regulatory structure.

EFFECTIVE DATE: This rule is effective September 5, 1995.

FOR FURTHER INFORMATION CONTACT: Robert E. Lomax, Office of Acquisition and Property Management, ms 5512–MIB, U.S. Department of the Interior, Washington, DC 20240, Phone: (202) 208–3337.

SUPPLEMENTARY INFORMATION: These property management regulations govern the internal actions of the Department of the Interior and its bureaus. Inasmuch as the content of these regulations is set forth in greater detail in the Department of the Interior's internal Property Management Directives (IPMD), the Department has determined that it is no longer necessary to maintain these regulations in 41 CFR Chapter 114.

This rule was not subject to Office of Management and Budget review under E.O. 12866. Because these procedures govern only internal management actions of the DOI, this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The DOI has further determined that these regulations will not significantly affect the environment.

An environmental impact statement is not required under the National Environmental Policy Act of 1969. Because the Department, by removing these regulations, is simply relying on more comprehensive internal directives which are already in place, the Department for good cause, within the meaning of 5 U.S.C. 553(b)(B), finds that notice and public comment on the rule are not required. Finally, the DOI has determined that the rule has no federalism implications affecting the relationship between the national government and the states as outlined in Executive Order 12612.

This rule does not contain information collection requirements which require approval by the office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Robert E. Lomax, Chief, Division of Property Management, Office of Acquisition and Property Management, U.S. Department of the Interior.

List of Subjects in 41 CFR Chapter 114 (Parts 114–1—114–60)

Administrative practice and procedure, Federal buildings and facilities, Government property management, Handicapped, Housing, Metals, Motor vehicles, Surplus Government property, Transportation, Grant programs, Loan programs, Manufactured homes, Relocation assistance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and under this authority of 5 U.S.C. 301, 41 CFR Chapter 114 is removed as set forth below.

Dated: July 25, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

Part 114–1 [Removed]

1. Part 114–1 is removed.

Part 114–3 [Removed]

2. Part 114–3 is removed.

Part 114–19 [Removed]

3. Part 114–19 is removed.

Part 114–25 [Removed]

4. Part 114–25 is removed.

Part 114–26 [Removed]

5. Part 114–26 is removed.

Part 114–27 [Removed]

6. Part 114–27 is removed.

Part 114–28 [Removed]

7. Part 114–28 is removed.

Part 114–30 [Removed]

8. Part 114–30 is removed.

Part 114–38 [Removed]

9. Part 114–38 is removed.

Part 114–40 [Removed]

10. Part 114–40 is removed.

Part 114–41 [Removed]

11. Part 114–41 is removed.

Part 114–42 [Removed]

12. Part 114–42 is removed.

Part 114–43 [Removed]

13. Part 114–43 is removed.

Part 114–44 [Removed]

14. Part 114–44 is removed.

Part 114–45 [Removed]

15. Part 114–45 is removed.

Part 114–46 [Removed]

16. Part 114–46 is removed.

Part 114–47 [Removed]

17. Part 114–47 is removed.

Part 114–50 [Removed]

18. Part 114–50 is removed.

Subpart 114–51.1 Appendix I [Removed]

19. Subpart 114–51.1 Appendix is removed.

Part 114–60 [Removed]

20. Part 114–60 is removed.

[FR Doc. 95–19081 Filed 8–3–95; 8:45 am]

BILLING CODE 4310–RF–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATE: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Hartford County (FEMA Docket No. 7129).	Town of Berlin	February 6, 1995, February 13, 1995, The Herald.	The Honorable Robert J. Peters, Mayor of the Town of Berlin, 240 Kensington Road, Berlin, Connecticut 06037.	January 30, 1995.	090022 D
Connecticut: New Haven County (FEMA Docket No. 7127).	Town of Madison	January 4, 1995, January 11, 1995, Shoreline Times.	Mr. Thomas Rylander, First Selectman for the Town of Madison, Eight Campus Drive, Madison, Connecticut 06443.	December 22, 1994.	090079 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Orange County (FEMA Docket No. 7127).	Unicorporated Areas	January 18, 1995, January 25, 1995, Orlando Sentinel.	Ms. Jean Bennett, Orange County Administrator, P.O. Box 1393, Orlando, Florida 32802–1393.	January 11, 1995.	120179 F
Georgia: Cobb County (FEMA Docket No. 7127).	Unicorporated Areas	January 17, 1995, December 6, 1994, December 13, 1994, Marietta Daily Journal.	Mr. William J. Byrne, Chairman of the Board of Commissioners, 100 Cherokee Street, Suite 300, Marietta, Georgia 30090–9680.	November 29, 1994.	130052
Georgia: Gwinnett County (FEMA Docket No. 7127).	Unincorporated Areas	January 10, 1995, January 17, 1995, Gwinnett Post Tribune.	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Supervisors, 75 Langley Drive, Lawrenceville, Georgia 30245.	April 17, 1995	130322
Illinois: Unincorporated Areas (FEMA Docket No. 7127).	Cook County	September 2, 1994, September 9, 1994, The Chicago Tribune.	Mr. Richard J. Phelan, President of the Cook County Board of Commissioners, 118 North Clark Street, Suite 537, Chicago, Illinois 60602.	August 26, 1994	170054 B
Indiana: Vigo County (FEMA Docket No. 7127).	Unicorporated Areas	December 30, 1994, January 6, 1995, Tribune-Star.	Mr. John A. Scott, President of the Vigo County Board of Commissioners, Vigo County Security Annex, 201 Cherry Street, Terre Haute, Indiana 47807.	April 5, 1995	180263
North Carolina: Gaston County (FEMA Docket No. 7127).	City of Gastonia	January 17, 1995 January 24, 1995 The Gaston Gazette.	The Honorable James B. Garland, Mayor of the City of Gastonia, P.O. Box 1748, Gastonia, North Carolina 28053–1748.	January 10, 1995.	370100 D
North Carolina: Pitt County (FEMA County No. 7123).	City of Greenville	November 23, 1994, November 30, 1994, Daily Reflector.	The Honorable Nancy M. Jenkins, Mayor of the City of Greenville, P.O. Box 7207, Greenville, North Carolina 27835–7207.	March 1, 1995	370191 B
Ohio: Miami County (FEMA Docket No. 7123).	Unicorporated Areas	November 23, 1994, November 30, 1994, Troy Daily News.	Mr. Richard Adams, President of the Miami County Commissioners, 201 West Main Street, Troy, Ohio 45373.	May 16, 1995	390398 B
Ohio: Franklin and Delaware Counties (FEMA Docket No. 7127).	City of Westerville	January 18, 1995, January 25, 1995, Westerville News and Public Opinion.	Mr. David Lindimore, Manager of the City of Westerville, 21 South State Street, Westerville, Ohio 43081.	April 25, 1995	390179 F
Pennsylvania: Berks County (FEMA Docket No. 7127).	Borough of Wyomissing	December 19, 1994, December 26, 1994, Times-Eagle.	Mr. David Y. Bausher, Manager of the Borough of Wyomissing, 22 Reading Boulevard, Wyomissing, Pennsylvania 19610–2083.	December 12, 1994.	421375 A
South Carolina: Lexington County (FEMA Docket No. 7127).	Unicorporated Areas	December 14, 1994, December 21, 1994, The State.	Mr. Bruce Rucker, Chairman of the Lexington County Council, 212 South Lake Drive, Lexington, South Carolina 29072.	December 7, 1994.	450129

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tennessee: Shelby County (FEMA Docket No. 7129).	Unicorporated Areas	January 27, 1995, February 3, 1995, Daily News.	Mr. James Kelly, Shelby County Chief Administrative officer, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	January 20, 1995.	470214 E
Wisconsin: La Crosse County (FEMA Docket No. 7104).	City of La Crosse	June 8, 1994, June 15, 1994, La Crosse Tribune.	The Honorable Patrick Zielke, Mayor of the City of La Crosse, 400 La Crosse Street, La Crosse, Wisconsin 54601.	June 2, 1994	555562 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–19217 Filed 8–3–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7141]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Orange	Unincorporated Areas of Orange County.	June 23, 1995, June 30, 1995, *The Orlando Sentinel.*	Mr. Ajit Lalchandani, P.E., Acting Director, 4200 South John Young Parkway, Orlando, Florida 32839–9205.	May 22, 1995	120179 D
Illinois: Lake and Cook.	Village of Deerfield .	April 20, 1995, April 27, 1995, *Deerfield Review.*	The Honorable Bernard Forrest, 850 Waukegan Road, Deerfield, Illinois 60015.	April 13, 1995	170361
North Carolina: Dare.	Unincorporated Areas of Dare County.	March 28, 1995, April 4, 1995, *The Coastland Times.*	Mr. Robert V. Owens, Chairman of the Dare County Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954.	March 20, 1995 ..	375348 D
North Carolina: Dare.	Unincorporated Areas.	June 6, 1995, June 13, 1995, *The Coastland Times.*	Mr. Robert V. Owens, Chairman of the Dare County Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954.	May 30, 1995	375348 D
Pennsylvania: Berks	Township of South Heidelberg.	May 31, 1995, June 7, 1995 , Reading Times-Eagle.	Mr. J. Philip Preston, Chairman of the Township of South Heidelberg Board of Supervisors, 68A North Galen Hall Road, Wernersville, Pennsylvania 19656.	May 24, 1995	421107 B
Tennessee: Sevier .	City of Sevierville ...	May 25, 1995, June 1, 1995, The Mountain Press.	The Honorable Bryan Atchley, Mayor of the City of Sevierville, P.O. Box 5500, Sevierville, Tennessee 37864–5500.	May 18, 1995	475444

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–19218 Filed 8–3–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Connecticut	
East Lyme (Town), New London County (FEMA Docket No. 7128)	
Latimer Brook:	
Approximately .3 mile downstream of Rock Fill Dam	*79
Approximately 1,100 feet upstream of Chapman Drive ...	*98
Maps available for inspection at the Office of Zoning Enforcement, Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut.	
Montville (Town), New London County (FEMA Docket No. 7128)	
Latimer Brook:	
Approximately 380 feet upstream of Beckwith Road	*99
Approximately 280 feet downstream of Silver Falls Road .	*150
Trading Cove Brook:	
Approximately 300 feet upstream of confluence of Ford Brook and Great Plain Brook	*30
Approximately 300 feet upstream of the confluence of Goldmine Brook	*71
Maps available for inspection at the Office of Planning and Zoning, 310 Norwich-New London Turnpike, Uncasville, Connecticut.	
Illinois	
Elmhurst (City), DuPage County (FEMA Docket No. 7130)	
Unnamed Ponding Area:	
Located north of Van Buren Street, south of Madison Street, east of Hillside Avenue, and west of Bryan Avenue	*662
Located north of Butterfield Road, south of Harrison Street, east of Spring Avenue, and west of Saylor Avenue	*661
Maps available for inspection at the Public Works Department, Elmhurst City Hall, 209 North York Street, Elmhurst, Illinois.	
MICHIGAN	
Midland (City), Bay and Midland Counties (FEMA Docket No. 7128)	
Chippewa River:	
At corporate limits (approximately 2.58 miles upstream of the confluence with Tittabawasee River)	*617
Approximately 1 mile upstream of corporate limits (approximately 3.53 miles upstream of the confluence with Tittabawasee River)	617
Inman Drain:	
At Dublin Road	*616
Approximately 1,375 feet upstream of Dublin Road	*617
Sturgeon Creek:	
Approximately .4 mile upstream of Cemetary Entrance Road	*616
Approximately .5 mile upstream of Cemetary Entrance Road	*616
Tittabawassee River:	
At Dublin Road	*617
Approximately 1.2 miles upstream of Dublin Road	*617
Maps available for inspection at the Midland City Planning Department, City Hall, 333 West Ellsworth, Midland, Michigan.	
NEW JERSEY	
Cape May Point (Borough) (FEMA Docket No. 7130)	
Atlantic Ocean:	
Approximately 100 feet southwest of the intersection of Harvard and Coral Avenues	*12
Approximately 300 feet southwest of the intersection of Harvard and Coral Avenues	*15
At the intersection of Pearl Avenue and Cape Avenue	*10
Maps available for inspection at the Cape May Point Municipal Building, Cape May Point, New Jersey.	
Delran (Township), Burlington County (FEMA Docket No. 7128)	
Swedes Run:	
Approximately 0.82 mile upstream of Broad Street	*12
Approximately 850 feet upstream of Bridgeboro Road .	*34
Maps available for inspection at the Township Clerk Office, 1050 Chester Avenue, Delran, New Jersey.	
NEW YORK	
Schroon (Town), Essex County (FEMA Docket No. 7128)	
Schroon Lake: Entire shoreline within community	*812
Paradox Lake: Entire shoreline within community	*824
Schroon River:	
At confluence with Schroon Lake	*812
At the upstream side of U.S. Route 9	*833
Paradox Creek:	
At confluence with Schroon River	*823
At downstream side of Fraternaland Road	*846
Maps available for inspection at the Town Hall, South Street, Schroon Lake, New York.	
Wilmington (Town), Essex County (FEMA Docket No. 7128)	
West Branch Ausable River:	

Source of flooding and location	#Depth in feet above ground. • Elevation in feet (NGVD)
Approximately 270 feet downstream of downstream corporate limit	*805
At State Route 86 (upstream crossing)	*1,075
Maps available for inspection at the Community Center, Springfield Road, Wilmington, New York.	
OHIO	
Florida (Village), Henry County (FEMA Docket No. 7130)	
Maumee River:	
Approximately 0.57 mile downstream of the Henry Street bridge	*663
Approximately 1,700 feet upstream of the Henry Street bridge	*665
Maps available for inspection at the Village of Florida Clerk's Office, East High Street, Route 2, Napoleon, Ohio.	
Henry County (Unincorporated Areas) (FEMA Dockat No. 7130)	
Maumee River:	
Approximately 1.9 miles downstream of the confluence of Big Creek	*650
Approximately 2 miles upstream of County Road 2 (Henry Street)	*667
Maps available for inspection at the Henry County Planning Office, 104 East Washington Street, Hahn Center, Suite 301, Napoleon, Ohio.	
Laurelville (Village), Hocking County (FEMA Dockat No. 7124)	
Laurel Run:	
Approximately 960 feet downstream of downstream corporate limits at the confluence with Salt Creek	*742
Approximately 50 feet upstream of upstream corporate limits	*745
Salt Creek:	
Approximately 0.5 mile downstream of the confluence of Laurel Run	*736
At the confluence of Laurel Run	*742
Maps available for inspection at the Office of the Mayor, Laurelville, Ohio.	
Meigs County (Unincorporated Areas) (FEMA Docket No. 7124)	
Ohio River:	
Approximately 5.0 river miles downstream of U.S. Route 33	*574
Approximately 4.5 river miles upstream of Belleville Dam	*603
Maps available for inspection at the Commissioners Office, Courthouse, Second Street, Pomeroy, Ohio.	
PENNSYLVANIA	
Allenport (Borough), Washington County (FEMA Docket No. 7128)	
Monongahela River:	
Approximately 0.4 mile downstream of Tributary 1	*766
Approximately 2.3 miles upstream of confluence of Hooder Run	*768
Maps available for inspection at the Borough Building, Main Street, Allenport, Pennsylvania.	
Belle Vernon (Borough), Fayette County (FEMA Docket No. 7128)	
Monongahela River:	
Approximately 40 feet upstream of bridge (I–70) (at downstream corporate limit)	*764
Approximately 0.88 mile upstream of bridge (I–70) (at upstream corporate limit)	*765
Maps available for inspection at the Borough Hall, 61 Sampson Street, Belle Vernon, Pennsylvania.	
Brownsville (Borough), Fayette County (FEMA Docket No. 7128)	
Monongahela River:	
Approximately 0.38 mile downstream of U.S. Route 40 bridge	*774
Approximately 1.09 miles upstream of Brownsville bridge	*775
Dunlap Creek:	
At confluence with Monongahela River	*775
Approximately 0.85 mile upstream of Brownsville Avenue bridge	*775
Maps available for inspection at the Borough Hall, 2nd and High Street, Brownsville, Pennsylvania.	
Brownsville (Township), Fayette County (FEMA Docket No. 7128)	
Monongahela River:	
Approximately 1,500 feet downstream of CONRAIL bridge	*773
Approximately 0.43 mile upstream of CONRAIL bridge	*774
Dunlap Creek:	
Approximately 750 feet downstream of CONRAIL bridge	*774
Approximately 1,870 feet downstream of CONRAIL bridge	*775
Redstone Creek:	
At the confluence with Monongahela River	*773
Approximately 0.83 mile upstream of CONRAIL bridge	*773
Maps available for inspection at the Tax Collector's Office, Union Street, Brownsville, Pennsylvania.	
Carroll (Township), Washington County (FEMA Docket No. 7128)	
Monongahela River:	
At downstream corporate limits	*756
Approximately 525 feet upstream of upstream corporate limits	*761
Pigeon Creek:	
Approximately 0.9 mile downstream of State Route 481	*756
At State Route 481	*756
Maps available for inspection at the Township Hall, 130 Baird Street, Carroll, Pennsylvania.	
Centerville (Borough), Washington County (FEMA Docket No. 7128)	
Monongahela River:	
Approximately 1.70 miles downstream of confluence of Two Mile Run	*775
Approximately 1.57 miles upstream of Maxwell Locks and Dam	*781
Maps available for inspection at the Borough Building, Route 40, National Pike West, Centerville, Pennsylvania.	
Eulalia (Township), Potter County (FEMA Docket No. 7128)	
Allegheny River:	
Approximately 700 feet downstream of the Township of Eulalia's downstream corporate limits	*1579
Approximately 0.4 mile upstream of the Township of Eulalia's upstream corporate limits	*1632
Maps available for inspection with the Ms. June Bunnell, Township Secretary, RD 3, Coudersport, Pennsylvania.	
Marion Center (Borough), Indiana County (FEMA Docket No. 7120)	
Unnamed Tributary to Pine Run:	
Approximately 1,300 feet downstream of South Manor Street (State Route 403)	*1,257
Approximately 1,240 feet upstream of State Route 1025	*1,324
Tributary to Unnamed Tributary to Pine Run:	
At the confluence with Unnamed Tributary to Pine Run	*1,271
Approximately 0.6 mile upstream of confluence with Unnamed Tributary to Pine Run	*1,317
Maps available for inspection at the Marion Center Milling Company, 101 South Manor, Marion Center, Pennsylvania.	
Newell (Borough), Fayette County (FEMA Docket No. 7128)	
Monongahela River:	
At downstream corporate limits	*425
At upstream corporate limits	*458
Maps available for inspection at the Newell Borough Building, Second Street, Fayette City, Pennsylvania.	
Stroud (Township), Monroe County (FEMA Docket No. 7128)	
McMichaels Creek:	
At downstream corporate limits	*769
At upstream corporate limits	*771
Maps available for inspection with Mr. W. J. Gtretkowski, Chairman of the Township of Stroud, Monroe County, 1211 North 5th Street, Stroudsburg, Pennsylvania.	
TENNESSEE	
Lauderdale County (Unincorporated Areas) (FEMA Docket No. 7128)	
Cane Creek:	
At eastern corporate limits with Town of Ripley	*333
At Illinois Central Gulf Railroad	*335
Maps available for inspection at the Lauderdale County Executive's Office, County Courthouse, 100 Court Square, Ripley, Tennessee.	
WISCONSIN	
Clintonville (City), Waupaca County (FEMA Docket No. 7128)	
Honey Creek:	
Just upstream of South Main Street	*812
Just downstream of West 1st Street	*820
Pigeon River:	
Approximately 50 feet upstream of Klemp Road	*794
Just upstream of Hemlock Street	*808
Maps available for inspection at the City Hall, 50 Tenth Street, Clintonville, Wisconsin.	
Ephraim (Village), Door County (FEMA Docket No. 7128)	
Lake Michigan (Green Bay): Entire shoreline within the community	*585
Maps available for inspection at the Village of Ephraim Administration Office, 10005 Norway Road, Ephraim, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–19219 Filed 8–3–95; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF ENERGY

48 CFR Part 939

RIN 1991–AA81

Acquisition Regulation; Acquisition of Federal Information Processing Resources by Contracting

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today issues a final rule to amend the Department of Energy Acquisition Regulation (DEAR) to add regulations regarding the acquisition of Federal Information Processing Resources by contracting. This rule implements pertinent parts of the Federal Information Resources Management Regulation (FIRMR) to prescribe internal DOE policies relevant to the acquisition of Federal Information Processing (FIP) resources. The rule is necessary to establish policy regarding contracting authority for heads of contracting activities and the responsibilities of the contracting officer to comply with the delegated procurement authority provided by the General Services Administration. Further, the rule sets forth the Department's policy concerning contractor acquisition of FIP resources.

EFFECTIVE DATE: This final rule will be effective September 5, 1995.

FOR FURTHER INFORMATION CONTACT: P. Devers Weaver, Office of Policy (HR–51), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, telephone 202–586–8250.

SUPPLEMENTARY INFORMATION:

I. Background.
A. Discussion
B. Section-by-Section Analysis
II. Public Comments.
III. Procedural Requirements.
A. Regulatory Review
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. National Environmental Policy Act

I. Background

A. Discussion

The FIRMR, codified at 41 CFR Part 201, is the primary Governmentwide regulation for the acquisition, management, and use of FIP resources. The FIRMR is prepared, issued and maintained by the Administrator of the General Services Administration (GSA) under the authority of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486). Subpart 201.39 of the FIRMR prescribes the contracting policies and procedures to be followed by Federal agencies in acquiring FIP resources. The policies and procedures set out in FIRMR 201–39 are unique to the acquisition of FIP resources, and are to

be used in conjunction with the general Federal contracting policies and procedures of the Federal Acquisition Regulation (FAR).

Part 39 of the FAR requires agencies to follow the policies and procedures contained in the FAR when acquiring FIP resources, except in those areas where the FIRMR prescribes special policies, procedures, provisions, or clauses (see FAR 39.001). In addition, FAR 39.002(b) includes FIRMR 201–39 as an appendix to the FAR as an aid to contracting officials when acquisitions are conducted under GSA's exclusive procurement authority.

Section 201–3.301 of the FIRMR permits agencies to issue regulations to implement or supplement the FIRMR in their agency acquisition regulations, where such regulations pertain solely to the acquisition of FIP resources by contracting. These amendments amend the DEAR to add a new Part 939, Acquisition of Federal Information Processing Resources by Contracting and implement pertinent parts of the FIRMR to prescribe internal DOE policies and procedures relevant to the acquisition of FIP resources. The amendments now promulgated in this final rule were previously published in the **Federal Register** in a notice of proposed rulemaking on December 2, 1993 (58 FR 63556).

Many of the proposed amendments contained in the notice of proposed rulemaking concerned process or procedural matters relating to the acquisition of FIP resources. Since the publication of that notice of proposed rulemaking, efforts began throughout the Administration to simplify regulations and streamline the acquisition process. Accordingly, consistent with the intent of the National Performance Review and the Department of Energy's own contract reform initiative, the content of the proposed rule was reviewed subsequent to its publication on December 2, 1993 to determine whether the rule contained unnecessary or process-oriented requirements not suited for regulatory coverage. As a result of that review, it was determined that certain sections of the proposed rule addressed matters of a purely procedural or process nature, and could appropriately be removed from the regulatory coverage without any degradation to the effectiveness of the Department's FIP resources management and acquisition. The Department intends to include, where appropriate, this information in internal guidance documents. Following is a section-by-section summary of the final rule which also indicates which sections in the proposed rule have been deleted and which were retained.

B. Section-by-Section Analysis

The regulations at 48 CFR Part 9 are amended to add a new Part 939, Acquisition of Federal Information Processing Resources by Contracting. This new part consists of 54 subparts.

Section 939.001 is added to prescribe the scope of Part 939. However, language in the original notice of proposed rulemaking permitting contracting activities to establish local procedures that may be needed to further implement the requirements of Part 939 is deleted.

Subpart 939.1 addresses general matters concerning the FIRMR system. Section 939.101–3 of the notice of proposed rulemaking, which provided that the procurement request initiator make the initial assessment of FIRMR applicability to a particular acquisition, is removed from this final rule.

Section 939.101–5 explains the numbering system of Part 939.

Section 939.102, which explained the existing relationship of the FAR, the DEAR, and the FIRMR, is not included in this final rule.

Section 939.104–1 provides policy on the processing of deviations to the FIRMR within DOE. Language in the notice of proposed rulemaking that addressed the nature of the information to be included in a deviation request is not included in this final rule.

Section 939.106–3 addresses the contracting authority of individual Heads of the Contracting Activity and the responsibilities of the contracting officer.

The procedures for processing agency procurement requests originally set out in the notice of proposed rulemaking in Section 939.106–70 is not included in this final rule.

Subpart 939.2 provided definitions for words and terms used in Part 939. This section is being deleted from the final rule.

Section 939.501–70 of the notice of proposed rulemaking is not being included in the final rule. That section permitted the contracting officer to issue a synopsis for a solicitation in advance of receipt of procurement authority from GSA.

Section 939.602–270 of Subpart 939.6 establishes review and approval requirements for solicitations and contracts for, or using, outdated FIP equipment.

Section 939.670 permitted the issuance of draft Statements of Work/specifications or draft solicitations, prior to actual receipt of procurement authority to permit DOE to obtain information from the marketplace. This section is not included in the final rule.

In the notice of proposed rulemaking, Subpart 939.10 established the responsibilities of the procurement request initiator and the contracting officer regarding specifications for security and privacy requirements (Section 939.1001–70) and Federal standards (Section 939.1002–70) applicable to an acquisition for FIP resources. Section 939.1003–70 addressed the requirements of Executive Order 12845, "Purchase of Energy Efficient Computers by Federal Agencies." The only coverage retained from the notice of proposed rulemaking is the language of Section 939.1003–70 authorizing the Head of the Contracting Activity to exempt requirements from the requirements of the Executive Order.

Section 939.1701–470 of Subpart 939.17, as set out in the notice of proposed rulemaking, provided guidance governing the period of performance of contracts for FIP services or support services. This section is removed in the final rule.

Section 939.4470 of Subpart 939.44 prescribes the policies governing contractor acquisitions of FIP resources. A new paragraph (c) has been added to clarify situations where a management and operating contractor may acquire FIP resources for use by another contractor of DOE.

II. Public Comments

DOE invited interested persons to participate in this rulemaking by submitting data, views or arguments with respect to the DEAR amendments set forth in the notice of proposed rulemaking. The public comment period closed on January 31, 1994, a period of 60 days. During that public comment period, no comments were received by DOE.

III. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's final rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will not affect states.

F. National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq*). Pursuant to Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures, the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment. This rule delegates contracting authority under categorical exclusion A6 of Subpart D.

List of Subjects in 48 CFR Part 939

Government Procurement.

Issued in Washington, D.C. on July 26, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, 48 CFR Chapter 9 is amended as set forth below:

1. A new Part 939, Acquisition of Federal Information Processing Resources by Contracting, consisting of Subparts 939.0 through 939.53, is added to read as follows:

PART 939—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES BY CONTRACTING

Subpart 939.0—Scope of Part

Sec.
939.001 Scope.

Subpart 939.1 Federal Information Resources Management Regulation (FIRMR) System

939.101–5 Arrangement of part.
939.104–1 Deviations from the FIRMR.
939.106–3 Contracting authority and responsibilities.

Subparts 939.2 through 939.54 [Reserved]

Subpart 939.6 Competition Requirements

939.602–270 Outdated FIP equipment.

Subparts 939.7 through 939.9 [Reserved]

Subpart 939.10 Specifications, Standards, and Other Purchase Descriptions

939.1003–70 Purchase of Energy Efficient Computers (Energy Star)

Subparts 939.11 through 939.43 [Reserved]

Subpart 939.44 Subcontracting policies and procedures

939.4470 Contractor acquisitions of FIP resources.

Subparts 939.45 through 939.53 [Reserved]

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 939.0 Scope of Part

939.001 Scope.

This part sets forth the policies that apply to the contracting for Federal Information Processing (FIP) resources by the Department of Energy (DOE).

Subpart 939.1 Federal Information Resources Management Regulation (FIRMR) System

939.101–5 Arrangement of part.

For consistency with the FIRMR and the FAR, part 939 is arranged in 54 subparts. Within each subpart, sections and subsections are numbered to correspond to like divisions of the FIRMR where the intent of the part 939 sections and subsections is to implement the FIRMR. Where the specific section or subsection is intended to supplement the FIRMR, or where specific FIRMR coverage does not exist, the section or subsection number is assigned a number of 70 or above.

939.104–1 Deviations from the FIRMR.

(a) Only the General Services Administration (GSA) can authorize class deviations and individual deviations from the FIRMR. Within DOE, contracting officers shall submit requests for deviations from the FIRMR to the Headquarters Office of Clearance and Support for approval and subsequent processing with GSA.

(b) *Approval Requirements.* The Head of the Contracting Activity (HCA), after coordination with local counsel, shall concur in requests for deviations prior to submission to the Office of Clearance and Support. The Procurement Executive shall approve all requests for deviations prior to submission of the request to GSA.

939.106–3 Contracting authority and responsibilities.

(a) In instances where a specific acquisition delegation of procurement authority is not required under (FIRMR) 41 CFR 201–20.305–3, Specific Acquisition Delegations, each HCA may acquire FIP resources up to 50 percent of the regulatory delegation thresholds prescribed in (FIRMR) 41 CFR 201–20.305–1, Regulatory Delegations,

unless different thresholds have been established either in the HCA's delegation of contracting authority, or in a specific agency delegation from GSA under (FIRMR) 41 CFR201–20.305–2, Specific Agency Delegations of Procurement Authority (DPA); or, in internal DOE guidance documents.

(b) The contracting officer is responsible for ensuring compliance with all terms, conditions, and limitations imposed on DOE under a specific acquisition Delegation of Procurement Authority (DPA).

(c) The contracting officer shall not award a contract, or a modification to an existing contract, when the value of the FIP resources portion of the award, including the value of any options, exceeds DOE's delegated FIP procurement authority redelegated to the HCA by the DSO. Where the anticipated award value of the FIP resources portion of the contract, or modification to the contract, exceeds DOE's delegated procurement authority, DOE shall obtain a revised delegation from GSA prior to award. Where the anticipated award value of the FIP resources portion of the contract, or modification to the contract, exceeds the HCA's redelegated procurement authority for that acquisition, the contracting officer shall have the redelegation revised, in accordance with internal DOE guidance documents, prior to award.

Subpart 939.2 through 939.5 [Reserved]

Subpart 939.6 Competition Requirements

939.602–270 Outdated FIP equipment.

Solicitations and contracts for, or using, outdated FIP equipment shall be submitted to the Office of Clearance and Support for review and approval. The Office of Information Management shall review these documents and make the decision whether to allow the acquisition or use of outdated FIP equipment.

Subparts 939.7 through 939.9 [Reserved]

Subpart 939.10 Specifications, Standards, and Other Purchase Descriptions

939.1003–70 Purchase of Energy Efficient Computers (Energy Star).

Executive Order 12845, "Purchase of Energy Efficient Computers by Federal Agencies," requires agencies to acquire microcomputers, including personal computers, monitors, and printers, that meet the "Energy Star" requirements established by the Environmental Protection Agency for energy efficiency. Solicitations for microcomputers and peripheral equipment, issued after October 21, 1993, are required to include a requirement that equipment meet the "Energy Star" standard, unless an exemption has been provided by the Head of the Contracting Activity as authorized under section 1(a) of Executive Order 12845.

Subparts 939.11 through 939.43 [Reserved]

Subpart 939.44 Subcontracting Policies and Procedures

939.4470 Contractor acquisitions of FIP resources.

(a) *Management and operating (M&O) contracts.* Except as provided in paragraph (c) of this section, M&O contractors and their subcontractors shall not be used to acquire FIP resources unrelated to the mission of the M&O contract either for sole use by DOE employees or employees of other DOE contractors, or for use by other Federal agencies or their contractors.

(b) *Other than M&O contracts.* Where it has been determined that a contractor (other than an M&O contractor or its subcontractor) will acquire FIP resources either for sole use by DOE employees or for the furnishing of the FIP resources as government-furnished property under another contract, DOE will obtain any needed procurement authority from GSA prior to having the contractor acquire the FIP resources.

(c) *Consolidated contractor acquisitions.* When common FIP resource requirements in support of DOE programs have been identified and it is anticipated that the consolidation of such requirements will promote cost or other efficiencies, the Designated Senior Official for Information Management may authorize an M&O contractor to acquire FIP resources for use by the following:

(1) One or more other contractor(s) performing on-site at the same DOE-owned or -leased facility as the M&O contractor, or

(2) Other M&O contractors.

Subparts 939.45 through 939.53 [Reserved]

[FR Doc. 95–19010 Filed 8–3–95; 8:45 am]

BILLING CODE 6450–01–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC–100 (Sub–No. 6)]

Single State Insurance Registration

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: The Commission is suspending the effectiveness of its recent revisions to the receipt provisions of its Single State Insurance Registration regulations. The Commission is acting in response to a petition by state interests. The suspension will maintain the status quo while interested parties consider alternatives to the existing registration system.

EFFECTIVE DATES: Effective August 4, 1995, § 1023.5, as revised at 60 FR 30011, June 7, 1995, is suspended from August 4, 1995, until January 1, 1997. Section 1023.5 is reinstated effective August 4, 1995, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz, (202) 927–5299 or Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In a decision in *Single State Insurance Registration*, 9 I.C.C.2d 610 (1993), notice published at 58 FR 28932 on May 18, 1993, the Commission adopted final regulations that replaced a multi-state motor vehicle and operating authority registration system with a simplified, single-state, insurance-based registration system. The Commission acted pursuant to Congressional revisions to 49 U.S.C. 11506—Registration of Motor Carriers by a State. On judicial review, in *Nat'l Ass'n of Regulatory Util. Comm'rs* v. *ICC*, 41 F.3d 721 (D.C. Cir. 1994), the court found that the Commission had improperly balanced conflicting policy goals in adopting regulations giving motor carriers the authority to copy the registration receipts required by law to be kept in each motor vehicle. The court remanded the matter to the Commission for further consideration.

Upon consideration of the court's opinion and the comments filed by interested parties, the Commission adopted final rules revising the receipt provisions of the regulations in a decision served June 6, 1995, and notice published at 60 FR 30011 on June 7, 1995. Under the revised rules at 49 CFR 1023.5, states will issue official copies of registration receipts, and motor carriers will be required to maintain an official copy in each reported motor vehicle. Motor carrier copying of receipts will be prohibited. The new rules took effect July 7, 1995, in order to cover filings relating to the 1996 registration year.

By a petition filed July 11, 1995, the National Conference of State Transportation Specialists (NCSTS) has requested that the Commission postpone the effectiveness of its revised rules for one year. The American Trucking Associations and the American Insurance Association have filed letters supporting the petition. NCSTS indicates that it is working with the motor carrier and insurance industries and the U.S. Department of Transportation to create a new insurance program.

In order to maintain the status quo while interested parties consider alternatives to the existing registration system, the Commission is granting the request. However, as the revised rules went into effect before the NCSTS filed its petition, the Commission is suspending, rather than postponing, the effectiveness of the revised rules and reinstating the rules that previously were in effect.

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. We are continuing the effectiveness of rules that have been in place for 2 years and suspending the effectiveness of recently revised rules found not likely to have a significant economic impact. Thus, the economic impact on small entities, if any, is not likely to be significant within the meaning of the Regulatory Flexibility Act.

Environmental and Energy Considerations

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1023

Insurance, Motor carriers, Surety bonds.

Accordingly, 49 CFR chapter X is amended as set forth below.

PART 1023—STANDARDS FOR REGISTRATION WITH STATES

1. The authority citation for part 1023 continues to read as follows:

Authority: 49 U.S.C. 10321 and 11506; 5 U.S.C. 553.

2. Section 1023.5, which was revised at 60 FR 30011 on June 7, 1995, is suspended from August 4, 1995, until January 1, 1997.

3. Section 1023.5 is reinstated from August 4, 1995, until December 31, 1996, to read as follows:

§ 1023.5 Registration receipts.

(a) On compliance by a motor carrier with the annual or supplemental registration requirements of § 1023.4, the registration State must issue the carrier a receipt reflecting that the carrier has filed the required proof of insurance and paid fees in accordance with the requirements of that section.

(1) The receipt must contain only information identifying the carrier and specifying the States for which fees were paid. Supplemental receipts need contain only information relating to their underlying supplemental registrations.

(b) Receipts issued pursuant to a filing made during the annual registration period specified in § 1023.4(b)(2) must be issued within 30 days. All other receipts must be issued by the 30th day following the date of filing of a fully acceptable supplemental registration application. All receipts shall expire at midnight on the 31st day of December of the registration year for which they were issued.

(c) A carrier is permitted to operate its motor vehicles only in those participating States with respect to which it has paid appropriate fees.

(d) A motor carrier may make copies of receipts to the extent necessary to comply with the provisions of paragraph (e) of this section. However, it may not alter a receipt or a copy of a receipt.

(e) A motor carrier must maintain in each of its motor vehicles a copy(ies) of its receipt(s), indicating that it has filed the required proof of insurance and paid the required fees.

(f) The driver of a motor vehicle must present a copy(ies) of a receipt(s) for inspection by any authorized government personnel on reasonable demand.

(g) No registration State shall require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by a motor carrier.

Decided: July 31, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19225 Filed 8–3–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 941265–4365; I.D. 072595B]

Pacific Coast Groundfish Fishery; Canary Rockfish and Lingcod Trip Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS announces inseason adjustments to the trip limits for canary rockfish and establishes a small trip limit for trawl-caught lingcod smaller than 22 inches (56 cm) total length. These actions are intended to enable the 1995 harvest guideline for canary rockfish to be achieved, and to provide a reasonable tolerance for small lingcod.

DATES: Effective August 1, 1995, until the effective date of the 1996 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted until August 15, 1995.

ADDRESSES: Comments on these actions should be sent to Mr. William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Ms. Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these actions has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson 206–526–6140; or Rodney R. McInnis 310–980–4040.

SUPPLEMENTARY INFORMATION: These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California.

On January 9, 1995, the 1995 Annual Specifications and Management Measures for Pacific Coast Groundfish Fishery were published in the **Federal Register** (60 FR 2331–2344). The management measures were amended

on May 5, 1995 (60 FR 22303), and July 19, 1995 (60 FR 37022). At its June 1995 meeting in Clackamas, OR, the Pacific Fishery Management Council (Council) considered the best available scientific information, comments from its advisory committees, and public testimony before recommending adjustments to the management measures for the groundfish fishery.

Canary Rockfish. Canary rockfish is one of more than 50 species in the *Sebastes* complex of rockfish. Based upon the best available information through May 31, 1995, NMFS projected the total annual catch of canary rockfish to be only 435 mt in 1995, about half the 850–mt harvest guideline for the Vancouver and Columbia subareas. The rate of landings would need to almost double to enable the harvest guideline to be reached by the end of the year. The Council heard testimony that canary rockfish were hard to catch in some areas, and that, therefore, the trip limit should not be increased in case there is a conservation problem. Other fishers reported that the current trip limit was too small, and the surplus catch was being discarded. The Council had no new information to conclude that the harvest guideline for this species was inappropriate. Noting that canary rockfish can have a patchy distribution and may be available to some gear types in some areas but not in others, the Council recommended increasing the monthly cumulative trip limit for canary rockfish from 6,000 lb (2,722 kg) to 9,000 lb (4,082 kg), so that the harvest guideline may be reached in 1995. (A cumulative monthly trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a calendar month, without a limit on the number of landings or trips.) If landings fall short of the increased trip limit, further analysis will be conducted to determine if this is related to markets, fishing gear, or resource availability. NMFS concurs with the Council's recommendation to provide for full achievement of the harvest guideline, and to minimize trip limit induced discards. No change is made to the cumulative monthly trip limit for the *Sebastes* complex.

Lingcod. A 22–inch (56 cm) total length minimum size limit for lingcod was implemented coastwide for the first time in 1995 (60 FR 2343, January 9, 1995). At its June 1995 meeting, the Council heard testimony from trawl fishers that it was unreasonable to be found in violation if only a few fish in the catch were smaller than 22 inches. The Council agreed and recommended that a small trip limit of 100 pounds (45 kg) of trawl-caught sablefish smaller than 22 inches (56 cm) be allowed in each landing. This level is too small to encourage targeting on small juvenile fish, will provide for landing fish that otherwise would be discarded but probably would not survive, and will provide a reasonable level of tolerance to the size limit restriction. (This trip limit does not apply to hook-and-line caught lingcod, which are more likely to survive. Even at this low level, allowing retention of small lingcod with hook-and-line gear could encourage target fishing on them.)

NMFS Actions

NMFS announces the following changes to the 1995 fishery specifications and management measures for the limited entry fishery published at 60 FR 2331–2344, January 9, 1995, as modified. All other provisions remain in effect.

1. In paragraphs IV.C.(2)(a)(i), (ii), and (iii) the measures dealing with canary rockfish are revised as follows:

(i) *North of Cape Lookout.* The cumulative trip limit for the *Sebastes* complex taken and retained north of Cape Lookout is 35,000 lb (15,876 kg) per vessel per month. Within this cumulative trip limit for the *Sebastes* complex, no more than 18,000 lb (8,165 kg) may be yellowtail rockfish taken and retained north of Cape Lookout, and no more than 9,000 lb (4,082 kg) may be canary rockfish.

(ii) *Cape Lookout to Cape Mendocino.* The cumulative trip limit for the *Sebastes* complex taken and retained between Cape Lookout and Cape Mendocino is 50,000 lb (22,680 kg) per vessel per month. Within this cumulative trip limit for the *Sebastes* complex, no more than 40,000 lb (18,144 kg) may be yellowtail rockfish taken and retained between Cape Lookout and Cape Mendocino, and no more than 9,000 lb (4,082 kg) may be canary rockfish.

(iii) *South of Cape Mendocino.* The cumulative trip limit for the *Sebastes* complex taken and retained south of Cape Mendocino is 100,000 lb (45,359 kg) per vessel per month. Within this cumulative trip limit for the *Sebastes* complex, no more than 30,000 lb (13,608 kg) may be bocaccio taken and retained south of Cape Mendocino, and no more than 9,000 lb (4,082 kg) may be canary rockfish.

2. Paragraph IV.G.(1) on the lingcod limited entry fishery is revised as follows:

(1) *Limited entry fishery.* The cumulative trip limit for lingcod is 20,000 lb (9,072 kg) per vessel per month. Within this cumulative trip limit, no more than 100 lb (45 kg) of trawl-caught lingcod smaller than 22 inches (56 cm) total length may be taken and retained, possessed, or landed per vessel per fishing trip. Length measurement is explained at paragraph IV.A.(6).

3. Paragraphs IV.G.(1)(b)(i) and (ii) on lingcod weight conversion are revised as follows:

(i) *Headed and gutted.* The product recovery rate (PRR) for headed and gutted lingcod is 1.5. Therefore, the cumulative trip limit for headed and gutted lingcod is 13,333.3 lb (6,048 kg) processed weight per vessel per month, which corresponds to 20,000 lb (9,072 kg) round weight. Within this cumulative trip limit, no more than 67 lb (30 kg) of trawl-caught lingcod that is headed and gutted, and smaller than 18 inches (46 cm) (measured according to paragraph G.(1)(a)), may be taken and retained, possessed, or landed per vessel per fishing trip. (The State of Washington currently uses a PRR of 1.5.)

(ii) *Gutted, with the head on.* The PRR for lingcod that has only been eviscerated is 1.1. Therefore, the cumulative trip limit for gutted lingcod is 18,182 lb (8,246 kg) processed weight per vessel per month, which corresponds to 20,000 lb (9,072 kg) round weight. Within this cumulative trip limit, no more than 91 lb (41 kg) of trawl-caught lingcod smaller than 22 inches (56 cm) (measured according to paragraph IV.A.(6)) that is gutted (with the head on) may be taken and retained, possessed, or landed per vessel per fishing trip.

Classification

The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Director, Northwest Region, (see **ADDRESSES**) during business hours. At its August and October 1994 meetings, the Council reviewed the analysis for, and subsequently recommended, designating trip and size limits "routine" for canary rockfish, lingcod, and several other species and species groups. However the rulemaking procedures designating these actions routine have not been completed. (A routine designation means that a particular management measure such as trip and size limits may be changed inseason after a single Council meeting.) In its discussions, the Council anticipated the potential need for rapid adjustments to trip and size limits during the season to keep landings within the species' harvest guideline, to minimize disruption of traditional fishing and marketing patterns, and to protect juvenile fish. The public had the opportunity to comment at those meetings. There was an opportunity for additional public comment and review of supporting documents (catch projections) at the June 1995 Council meeting, during which these issues were discussed further. Therefore, these actions may be taken under the abbreviated rulemaking procedures at section III.B.(3) of the appendix to 50 CFR part 663.

The increase to the canary rockfish cumulative trip limit and the 100–lb trip limit for small lingcod both relax restrictions that currently are in effect, and both were contemplated at three Council meetings during which the public had opportunity to comment. Public comments were considered, and are the basis for establishing the trip limit for small lingcod. NMFS therefore finds good cause under 5 U.S.C. 553(b)(B) to waive the requirements for publication of a general notice of proposed rulemaking. For the same reasons, according to 5 U.S.C. 553(d)(1), these actions are not subject to the 30-day delayed effectiveness requirement of the Administrative Procedure Act. This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 1995.

Donald J. Leedy,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19165 Filed 7–31–95; 3:07 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206041–5041–01; I.D. 073195B]

Groundfish of the Bering Sea and Aleutian Islands Area; Rock Sole/Flathead Sole/"Other Flatfish" Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1995 bycatch allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 1, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1995 bycatch allowance of Pacific halibut for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 675.21(b)(1)(iii)(B)(2), was established as 690 metric tons by the final 1995 harvest specifications of groundfish (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the 1995 bycatch allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/"other flatfish" fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19172 Filed 7–31–95; 4:34 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 150
Friday, August 4, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2421 and 2422

Meaning of Terms as Used in This Subchapter; Representation Proceedings

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Federal Labor Relations Authority proposes to revise its regulations regarding the meaning of certain terms used in Subchapter C (Part 2421) and representation proceedings (Part 2422). These proposed revisions will streamline the regulations and make the rules more flexible in addressing the representational concerns of agencies, labor organizations, and individuals.

DATES: Comments must be received on or before September 18, 1995.

ADDRESSES: Mail or deliver written comments to the Office of Case Control, Federal Labor Relations Authority, 607 14th Street NW., Washington, DC. 20424–0001. Copies of all written comments will be available for inspection and photocopying between 8 a.m. and 5 p.m., Monday through Friday, in Suite 415 at the above address.

FOR FURTHER INFORMATION CONTACT: James H. Adams, Office of Case Control, (202) 482–6540.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority established a Task Force to study and evaluate Part 2422 of its regulations—the regulations concerning representation proceedings. To this end, the Task Force conducted focus groups to solicit and consider customers' views prior to proposing these revisions. An additional focus group meeting has been scheduled for August 29, 1995 at the FLRA's Headquarters, 607 14th St. N.W., Washington, D.C. 20424, 2nd Floor Agenda Room, at 10:00 a.m. Persons interested in attending this meeting on this proposed rulemaking should call or write the point of contact listed in the preceding section to confirm attendance.

Sectional analyses of the proposed amendments to Part 2421—Meaning of Terms As Used in This Subchapter and the proposed revisions of Part 2422—Representation Proceedings are as follows:

Part 2421

Section 2421.11—The definition of "party" is clarified to incorporate the statutory definition of the term "person" (an individual, labor organization, activity or agency).

Section 2421.18—The term "petitioner" is not defined in the current regulations. This section now defines "petitioner."

Section 2421.19—The term "eligibility period" is not defined in the current regulations. This section now defines "eligibility period" in connection with elections.

Section 2421.20—The term "election agreement" is not defined in the current regulations. This section now defines "election agreement."

Section 2421.21—A new term, "affected by issues raised," used throughout the proposed regulations, is defined in this section. The term has been added to ensure that all appropriate entities are afforded the opportunity to participate in a proceeding.

Section 2421.22—The term "determinative challenged ballots" is not defined in the current regulations. This section now defines "determinative challenged ballots."

Part 2422

Section 2422.1—In a significant proposed change, this section consolidates in one petition the seven separate petitions (RO, DR, RA, CU, AC, UC, DA) provided for in Part 2422 of the current regulations. This single petition permits resolution of all issues that may be raised concerning the representation of employees by labor organizations covered by the Statute and obtains the same type of results provided for by using the current petitions. All of the current petitions are incorporated into this section.

Combining the current seven petitions into a single petition simplifies the current multiple filing requirements. A single petition avoids the procedural issues that arise when a petitioner "checks the wrong box" and files the wrong petition. A single petition also provides a more flexible approach to complicated representation matters.

Many of the current rights and obligations that flow to parties while a representation petition is being processed are dependent upon the type of petition that has been filed. The proposed regulations contain a substantive rule in section 2422.34 to guide the parties' conduct while the new petition is processed.

Section 2422.2—This section provides that, with one exception, the new petition may be filed by any individual, labor organization, activity or agency, or combination of these. The one exception, consistent with section 7111(b) of the Statute, is that a petition requesting an election to either elect or decertify a labor organization and requiring a showing of interest may be filed only by an individual or a labor organization. A petition may be filed as to matters relating to majority status (if the activity or agency has a good faith doubt, based on objective considerations, that a current recognized or certified labor organization represents a majority of the employees in an existing unit) or other matters relating to representation (e.g., questions concerning whether a current unit continues to be appropriate because of a substantial change in the character and scope of the unit). Current pre-filing requirements applicable to UC petitions are eliminated.

Section 2422.3—The new petition is described in this section. This section also contains, in separate subsections, requirements for: compliance with section 7111(e) of the Statute; submission of a showing of interest to support a request for an election; and certification for a dues allotment.

The parties will be required to name in the petition the activity(ies), agency(ies), labor organizations and bargaining units affected by issues raised in the petition, as well as to state clearly and concisely the issues raised in the petition and the results the petitioner seeks. This section facilitates participation by all labor organizations, agencies and activities that have an interest in the issues raised in the petition.

Section 2422.4—This section consolidates service requirements and applies to all documents unless the regulations specifically provide otherwise. The section includes 2 options concerning the service of supporting documentation. Under Option 1, supporting documentation, with the exception of showings of interest, would be served on all affected parties. Under Option 2, supporting documentation, with the exception of showings of interest, challenges to showings of interest, other challenges, and objections, would be served.

Section 2422.5—This section identifies the method for filing the new petition, including where to file, the number of copies to file, and the date of filing. The petitioner would have to file an original and 2 copies of the petition, rather than the current original and 4 copies.

Section 2422.6—This is a new section that ensures service of the petition on all entities that may have an interest in a proceeding. It provides that a Regional Director will notify interested parties identified in a petition and any other interested parties known to the Regional Director. This section does not alter the petitioner's service requirements contained in section 2422.4.

Section 2422.7—Under this section, as under current regulation, a Regional Director will direct an activity or agency to post a notice for 10 days advising affected employees and interested parties about a petition. However, as discussed in more detail in connection with section 2422.8, the posting of the notice no longer will establish the time period for filing intervention requests, challenges to the showing of interest, or other challenges to the proceeding.

Section 2422.8—This section would significantly change the current requirements for requesting intervention and filing cross-petitions. Timeliness for filing requests for intervention and cross-petitions is no longer subject to the 10-day posting period. Rather, the requests and filings are timely if filed either: (1) prior to the close of a hearing; or (2) if no hearing is held, prior to the approval of an election agreement or issuance of a Decision and Order. The section expands the criteria to qualify as an intervenor to allow all parties who are affected by issues raised in the petition to participate in a proceeding. Similarly, activities and agencies may qualify as intervenors if they employ any employees affected by issues raised in a petition.

Section 2422.9—This section defines the "adequacy of a showing of interest." This term is not defined in the current regulations. The section clarifies that Regional Director decisions holding that a showing of interest is adequate are final and binding.

Section 2422.10—This section clarifies that Regional Director decisions holding that a showing of interest is valid are final and binding decisions. Time limits for filing challenges to the validity of a showing of interest are no longer tied to the 10-day posting period. Rather, challenges are timely if filed: (1) prior to the close of a hearing; or (2) if no hearing is held, prior to the approval of an election agreement or issuance of a Decision and Order.

Section 2422.11—Time limits for filing challenges to the status of a labor organization are no longer tied to the 10-day posting period. Rather, status challenges are timely if filed: (1) prior to the close of a hearing; or (2) if no hearing is held, prior to the approval of an election agreement or issuance of a Decision and Order. The section also clearly states the current requirement that the only basis on which such a status challenge may be made is alleged non-compliance with 5 U.S.C. 7103(a)(4).

Section 2422.12—This section lists the timeliness requirements for filing a petition seeking an election. There are no substantive changes in the election bar in subsection (a), the certification bar in subsection (b) or the bar rules in subsections (d) through (f). A new subsection (c) has been added to track case law concerning the filing of a petition during the time for agency head review under 5 U.S.C. 7114(c). *See Kansas Army National Guard, Topeka, Kansas*, 47 FLRA 937 (1993); *Fort Bragg Association of Teachers and U.S. Department of the Army, Fort Bragg Schools, Fort Bragg, North Carolina*, 44 FLRA 852 (1992); *U.S. Department of Defense, Defense Contract Audit Agency, Central Region and American Federation of Government Employees, Local 3529*, 37 FLRA 1218 (1990). Also, a new subsection (h) has been added to track case law concerning the requirements that a contract must meet to serve as a bar. *See U.S. Department of the Interior, Redwood National Park, Crescent City, California*, 48 FLRA 666 (1993); *U.S. Department of Health and Human Services, Social Security Administration*, 44 FLRA 230 (1992); *Florida (Air) National Guard, St. Augustine, Florida*, 43 FLRA 1475 (1992); *U.S. Department of Housing and Urban Development, Newark Office, Newark, New Jersey*, 37 FLRA 1122 (1990); *Department of the Army, U.S. Army Concord District Recruiting Command, Concord, New Hampshire*, 14 FLRA 73 (1984). These changes place in one section all requirements concerning a contract as a bar to a petition seeking an election.

Section 2422.13—This is a new section highlighting the importance of discussions among the parties to narrow and resolve issues raised in a representation matter and the role of personnel in the Regional Offices in assisting parties in these discussions, both before and after the filing of a petition. Subsection (a) encourages all parties to meet prior to the filing of a petition to discuss and narrow the issues. If requested by all parties, Regional Office personnel also will participate in these meetings. Subsection (b) allows a Regional Director to require all affected parties to meet to attempt to narrow and resolve issues after a petition has been filed.

Section 2422.14—This section states the consequences of a withdrawal or dismissal of a petition seeking an election less than 60 days before the expiration of a contract covering the employees affected or anytime after the expiration of the agreement. The section now applies to all contracts, not just those having a term of 3 years or less. This section makes no substantive changes in the current regulations concerning consequences of withdrawal or dismissal of a petition seeking an election less than 60 days before the expiration of a collective bargaining agreement (subsection (a)); or such consequences when a petition seeking an election is withdrawn by the petitioner less than 3 days prior to a hearing, or after a Regional Director has approved an election agreement or directed an election (subsection (b)). However, in a departure from current regulation, a new subsection (c) bars an incumbent from seeking an election in a unit for which it has disclaimed interest within the previous 6 months.

Section 2422.15—This section requires all parties to furnish information concerning issues raised in a petition and to cooperate fully in an investigation, subject to dismissal of a petition or a request to intervene.

Section 2422.16—This section discusses election agreements and elections directed by a Regional Director. The section does not change the existing requirement that parties will be provided an opportunity for a hearing on other than procedural matters before a Regional Director directs an election.

However, the section reflects a significant change: after a hearing, if there are no questions regarding unit appropriateness, a Regional Director may issue a Direction of Election without issuing a Decision and Order. Thus, elections may be conducted

without delay when the parties agree on, and a Regional Director approves, an appropriate unit even though the parties are unable to agree on such matters as the eligibility of employees that do not affect the appropriateness of the unit. Any party would be permitted to file challenges to the eligibility of any person voting in the election and/or file objections to the election.

Section 2422.17—This section, pertaining to a notice of hearing, provides that parties must participate in a prehearing conference scheduled by the Hearing Officer and must be prepared to discuss, narrow and resolve the issues raised by the petition set forth in the notice of hearing. This section, in conjunction with section 2422.13, emphasizes the resolution of issues at the earliest stage possible during a proceeding.

Sections 2422.18–2422.20—These three sections set forth hearing procedures and rights of the parties at a hearing.

Section 2422.21—This section offers two options. Option 1 follows current regulations. Option 2 would authorize a Hearing Officer to make recommendations on the record on any issue. Other options exist, including limiting the type of recommendations that may be made to certain matters, such as credibility and eligibility issues. Following receipt of comments, consideration will be given to whether, if current regulations are changed, the authority of Hearing Officers to make recommendations should be more limited than that proposed in Option 2.

Section 2422.22—This section addresses objections to the conduct of the hearing.

Section 2422.23—This section clarifies and simplifies the procedure by which elections are conducted or supervised by a Regional Director. This section continues current practices with two exceptions: subsection (e) provides that when the parties agree, the Regional Director may allow an intervenor to remove its name from the ballot even if the request to withdraw is received after the approval of an election agreement or the direction of an election; subsection (f) adds that if an incumbent withdraws from a ballot to decertify the incumbent, any intervenor will be given time, as established by a Regional Director, to proffer a thirty percent (30%) showing of interest in the unit. Subsection (g) describes whether an election will be held when the petitioner requests withdrawal.

Sections 2422.24–2422.29—These six sections discuss challenged ballots, the tally of ballots, objections to the election, the processing of determinative challenged ballots and objections to an election, and runoff and inconclusive elections. These sections make no substantive changes in current practices in these areas, except in one instance: subsection (a) of section 2422.26 provides that objections to an election must be filed and received by a Regional Director within 5 days after the tally of ballots has been furnished to the parties. Current regulations measure the timeliness of objections from the date of service of the objections, which encompasses the date mailed. This change allows certifications following elections to be issued more expeditiously.

Section 2422.30—This section clarifies in subsection (b), consistent with section 2422.16(c), that a Regional Director will issue a notice of hearing when there is either a material issue of fact or reasonable cause to believe a question exists regarding unit appropriateness. The section also clarifies in subsection (e) what constitutes "the record" in a representation proceeding. The section makes no substantive changes in the current practices in these areas. The section states that a Regional Director will resolve matters in dispute and issue a Decision and Order when appropriate but does not list all potential actions a Regional Director may take.

Section 2422.31—Subsection (c) includes two options for when the Authority will grant an application for review of a Regional Director's decision. Option 1 retains the current grounds for review with minor editorial changes. Option 2 specifies that, in addition to satisfying one or more of those grounds, a party seeking review must assert and establish that the Authority's decision will have a substantial impact on labor-management relations law unless the Authority determines, in its discretion, that extraordinary circumstances exist to grant review. Following receipt of comments, the Authority will adopt one of the options or a combination thereof.

Section 2422.32—This is a new section that states when certifications and revocations may be issued. The section allows a Regional Director to issue, as appropriate, revocations of recognitions or certifications, when an exclusive representative no longer represents an appropriate unit, such as when a disclaimer is filed by an incumbent or when there has been a substantial change in the character and scope of a unit. The issuance of revocations will enable parties and the Authority to better track the history of a bargaining unit and provide a definitive declaration of the representational status of the unit. The section also clarifies that a revocation of a certification has no impact on any rights and obligations that may exist under the Statute.

Section 2422.33—This section clarifies that relief which was or could have been obtained in a representation proceeding may not be obtained in an unfair labor practice proceeding.

Section 2422.34—This new substantive rule sets out the obligations and rights of parties during the pendency of a representation petition.

Subsection (a) provides that during the pendency of any representation petition, parties must maintain existing recognitions and adhere to the terms and conditions of existing collective bargaining agreements. These aspects of the section reflect existing case law requirements. *E.g., U.S. Department of the Navy, Naval Air Engineering Center, Lakehurst, New Jersey*, 3 FLRA 568 (1980); *Department of Energy*, 2 FLRA 838 (1980). Subsection (a) also provides that, during such pendency, parties must fulfill all other representational and bargaining responsibilities. In part, this aspect of subsection (a) reflects existing requirements. *See, e.g., Department of the Interior, Bureau of Reclamation, Yuma Projects Office, Yuma Arizona*, 4 FLRC 486, 497 (1976) (during pendency of a representation petition, if an agency "must make changes in otherwise negotiable personnel policies and practices and matters affecting working conditions, then the agency must notify the incumbent union or unions of those proposed changes and, upon request, negotiate on those matters. * * *"). However, subsection (a) would alter existing law by permitting changes after representational and collective bargaining responsibilities under the Statute are satisfied. Additionally, subsection (a) departs from existing law insofar as it would require parties to, among other things, bargain over and execute a term agreement during the pendency of certain petitions. *E.g., Immigration and Naturalization Service*, 16 FLRA 80, 87 (1984) (agency did not violate the Statute by refusing to bargain over changes in negotiated promotion plan during pendency of a question concerning representation because such bargaining "would necessarily have led to changes in conditions of employment * * * which the [r]espondent was required to maintain to the maximum extent possible"). Subsection (b) permits parties to take actions consistent with their position regarding the unit status of individual employees, subject to challenge and review. For example, an agency may refuse to process, under a negotiated grievance procedure, a grievance filed by an employee who it claims is outside a recognized bargaining unit. This refusal to process is subject to challenge by the exclusive representative of the relevant unit. Subsection (b) is consistent with existing case law requirements, which recognize that, in situations such as these, a party acts at its peril in taking actions based on its position regarding an employee's unit status.

List of Subjects in 5 CFR Parts 2421 and 2422

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set forth in the preamble, the Federal Labor Relations Authority proposes to amend Part 2421 and revise Part 2422 of its regulations as follows:

PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

1. The authority citation for Part 2421 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. Section 2421.11 is revised to read as follows:

§ 2421.11 Party.

Party means:

(a) Any labor organization, employing agency or activity or individual

(1) Filing a charge, petition, or request;

(2) Named as

(i) A charged party in a charge,

(ii) A respondent in a complaint, or

(iii) An employing agency or activity or an incumbent labor organization in a petition;

(3) Whose intervention in a proceeding has been permitted or directed by the Authority; or

(4) Who participated as a party

(i) In a matter that was decided by an agency head under 5 U.S.C. 7117, or

(ii) In a matter where the award of an arbitrator was issued; and

(b) The General Counsel, or the General Counsel's designated representative, in appropriate proceedings.

3. Sections 2421.18 through 2421.22 are added to read as follows:

§ 2421.18 Petitioner.

Petitioner means the party filing a petition under Part 2422 of this Subchapter.

§ 2421.19 Eligibility period.

Eligibility period means the payroll period during which an employee must be in an employment status with an activity or agency in order to be eligible to vote in a representation election under Part 2422 of this Subchapter.

§ 2421.20 Election agreement.

Election agreement means an agreement under Part 2422 of this Subchapter signed by all the parties, and approved by the Regional Director, concerning the details and procedures of a representation election in an appropriate unit.

§ 2421.21 Affected by issues raised.

The phrase *affected by issues raised*, as used in Part 2422, should be construed broadly to include parties and other labor organizations, agencies or activities, or bargaining units that have a connection to questions presented in a proceeding.

§ 2421.22 Determinative challenged ballots.

Determinative challenged ballots are challenges that are unresolved prior to the tally and sufficient in number after the tally to affect the results of the election.

4. Part 2422 is revised to read as follows:

PART 2422—REPRESENTATION PROCEEDINGS

Sec.
2422.1 Purposes of a petition.
2422.2 Who may file a petition.
2422.3 Contents of a petition.
2422.4 Service requirements.
2422.5 Filing petitions.
2422.6 Notification of filing.
2422.7 Posting notice of filing of a petition.
2422.8 Intervention and cross petitions.
2422.9 Adequacy of showing of interest.
2422.10 Validity of showing of interest.
2422.11 Challenge to the status of a labor organization.
2422.12 Timeliness of petitions seeking an election.
2422.13 Resolution of issues raised by a petition.
2422.14 Effect of withdrawal/dismissal.
2422.15 Duty to furnish information.
2422.16 Election agreements or directed elections.
2422.17 Notice of Hearing.
2422.18 Hearing Procedures.
2422.19 Motions.
2422.20 Rights of parties at a hearing.
2422.21 Duties and powers of the Hearing Officer.
2422.22 Objections to the conduct of the hearing.
2422.23 Election procedures.
2422.24 Challenged ballots.
2422.25 Tally of ballots.
2422.26 Objections to the election.
2422.27 Determinative challenged ballots and objections.
2422.28 Runoff elections.
2422.29 Inconclusive elections.
2422.30 Regional Director investigations, notices of hearings, actions and Decisions and Orders.
2422.31 Application for review of a Regional Director Decision and Order.
2422.32 Certifications and Revocations.
2422.33 Relief obtainable under Part 2423.
2422.34 Rights and obligations during the pendency of representation proceedings.

Authority: 5 U.S.C. 7134.

§ 2422.1 Purposes of a petition.

A petition may be filed for the following purposes:

(a) *Elections or Eligibility for dues allotment.* To request:

(1) (i) An election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, and/or

(ii) A determination of eligibility for dues allotment in an appropriate unit without an exclusive representative; or

(2) an election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative. Petitions under this subsection must be accompanied by an appropriate showing of interest.

(b) *Clarification or Amendment.* To clarify, and/or amend:

(1) A recognition or certification then in effect; and/or

(2) Any other matter relating to representation.

(c) *Consolidation.* To consolidate two or more units, with or without an election, in an agency and for which a labor organization is the exclusive representative.

§ 2422.2 Who may file a petition.

A representation petition may be filed by: an individual; a labor organization; two or more labor organizations acting as a joint-petitioner; an individual acting on behalf of any employee(s); an activity or an agency; or a combination of the above, Provided, that petitions requiring by a showing of interest may be filed only by an individual or a labor organization.

§ 2422.3 Contents of a petition.

(a) *What to file.* A petition must be filed on a form prescribed by the Authority and contain the following information:

(1) The name and mailing address for each activity or agency affected by issues raised in the petition, including street number, city, state and zip code.

(2) The name, mailing address and work telephone number of the contact person for each activity or agency affected by issues raised in the petition.

(3) The name and mailing address for each labor organization affected by issues raised in the petition, including street number, city, state and zip code. If a labor organization is affiliated with

a national organization, the local designation and the national affiliation should both be included. If a labor organization is an exclusive representative of any of the employees affected by issues raised in the petition, the date of the recognition or certification and the date any collective bargaining agreement covering the unit will expire or when the most recent agreement did expire should be included, if known.

(4) The name, mailing address and work telephone number of the contact person for each labor organization affected by issues raised in the petition.

(5) The name and mailing address for the petitioner, including street number, city, state and zip code. If a labor organization petitioner is affiliated with a national organization, the local designation and the national affiliation should both be included.

(6) A description of the unit(s) affected by issues raised in the petition. The description should generally indicate the geographic locations and the classifications of the employees included (or sought to be included) in, and excluded (or sought to be excluded) from, the unit.

(7) The approximate number of employees in the unit(s) affected by issues raised in the petition.

(8) A clear and concise statement of the issues raised by the petition and the results the petitioner seeks.

(9) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that the contents of the petition are true and correct to the best of the person's knowledge and belief.

(10) The signature, title, mailing address and telephone number of the person filing the petition.

(b) *Compliance with 5 U.S.C. 7111(e).* A labor organization/petitioner complies with 5 U.S.C. 7111(e) by submitting to the agency or activity and to the Department of Labor a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives. By signing the petition form, the labor organization/petitioner certifies that it has submitted these documents to the activity or agency and to the Department of Labor.

(c) *Showing of interest supporting a representation petition.* When filing a petition requiring a showing of interest, the petitioner must:

(1) So indicate on the petition form;

(2) Submit with the petition a showing of interest of not less than thirty percent (30%) of the employees in the unit involved in the petition; and

(3) Include an alphabetical list of the names constituting the showing of interest.

(d) *Petition seeking dues allotment.* When there is no exclusive representative, a petition seeking certification for dues allotment shall be accompanied by a showing of membership in the petitioner of not less than ten percent (10%) of the employees in the unit claimed to be appropriate. An alphabetical list of names constituting the showing of membership must be submitted.

§ 2422.4 Service requirements.

Option 1

Unless otherwise specifically provided, every petition, motion, brief, request, challenge, written objection, or application for review shall be served on all parties affected by issues raised in the filing. The service shall include all documentation in support thereof, with the exception of a showing of interest. The filer must submit a written statement of service to the Regional Director.

Option 2

Unless otherwise specifically provided, every petition, motion, brief, request, challenge, written objection, or application for review shall be served on all parties affected by issues raised in the filing. The service shall include all documentation in support thereof, with the exception of a showing of interest, challenges to a showing of interest, and documentation supporting challenges and objections. The filer must submit a written statement of service to the Regional Director.

§ 2422.5 Filing petitions.

(a) *Where to file.* Petitions must be filed with the Regional Director for the region in which the unit or employee(s) affected by issues raised in the petition are located. If the unit(s) or employees are located in two or more regions of the Authority, the petitions must be filed with the Regional Director for the region in which the headquarters of the agency or activity is located.

(b) *Number of copies.* An original and two (2) copies of the petition and the accompanying material must be filed with the Regional Director.

(c) *Date of filing.* A petition is filed when it is received by the appropriate Regional Director.

§ 2422.6 Notification of filing.

(a) *Notification to interested parties.* After a petition is filed, the Regional Director will notify any labor organization, agency or activity the parties have indicated as being affected by issues raised by the petition, or any other interested party known to the Regional Director, that a petition has been filed with the Regional Director.

(b) *Contents of the notification.* The notification will inform the labor organization, agency or activity of:

(1) The name of the petitioner;

(2) The description of the unit or employees affected by issues raised in the petition; and,

(3) A statement that all affected parties should advise the Regional Director in writing of their interest in the issues raised in the petition.

§ 2422.7 Posting notice of filing of a petition.

(a) *Posting notice of petition.* When appropriate, the Regional Director, after the filing of a representation petition, will direct the agency or activity to post copies of a notice to all employees in places where notices are normally posted for the employees affected by issues raised in the petition and/or in a manner by which notices are normally distributed.

(b) *Contents of notice.* The notice shall advise affected employees and interested parties about the petition.

(c) *Duration of notice.* The notice should be conspicuously posted for a period of ten (10) days and not be altered, defaced, or covered by other material.

§ 2422.8 Intervention and cross-petitions.

(a) *Cross-petitions.* A cross-petition is a petition seeking an election in a unit which includes any employees in a unit covered by a pending representation petition. Cross-petitions must be filed in accordance with this subpart.

(b) *Intervention requests and cross-petitions.* A request to intervene and a cross-petition, accompanied by any necessary showing of interest, must be submitted in writing and/or filed and submitted to the Regional Director prior to a hearing, or to the Hearing Officer after the hearing opens but before it closes. If no hearing is held, a request to intervene and a cross-petition must be filed prior to action being taken pursuant to § 2422.30.

(c) *Labor organization intervention requests.* Except for incumbent intervenors, a labor organization seeking to intervene shall submit a statement that it has complied with 5 U.S.C. 7111(e) and one of the following:

(1) A showing of interest of ten percent (10%) or more of the employees in the unit covered by a petition seeking an election, with an alphabetical list of the names of the employees constituting the showing of interest; or

(2) A current or recently expired collective bargaining agreement covering any of the employees in the unit affected by issues raised in the petition; or

(3) Evidence that it is or was, prior to a reorganization, the recognized or certified exclusive representative of any of the employees affected by issues raised in the petition.

(d) *Incumbent intervention.* An incumbent exclusive representative, without regard to the requirements of paragraph (c) of this section, will be considered an intervenor in any representation proceeding raising issues that affect employees the incumbent represents, unless it serves the Regional Director with a written disclaimer of any representation interest in the claimed unit.

(e) *Agency or activity intervention.* An agency or activity seeking to intervene in any representation proceeding must submit evidence that one or more employees of the agency or activity may be affected by issues raised in the petition.

§ 2422.9 Adequacy of showing of interest.

(a) *Adequacy.* Adequacy of a showing of interest refers to the percentage of employees in the unit involved as required by §§ 2422.3 (c) and (d) and 2422.8(c)(1).

(b) *Regional Director investigation and Decision and Order.* The Regional Director will conduct such investigation as deemed appropriate. A Regional Director's determination that the showing of interest is adequate is final and binding and not subject to collateral attack at a representation hearing or on appeal to the Authority. If the Regional Director determines that a showing of interest is inadequate, the Regional Director will issue a Decision and Order dismissing the petition, or denying a request for intervention.

§ 2422.10 Validity of showing of interest.

(a) *Validity.* Validity questions are raised by challenges to a showing of interest on grounds other than adequacy.

(b) *Validity challenge.* The Regional Director or any party may challenge the validity of a showing of interest.

(c) *When and where validity challenges may be filed.* Party challenges to the validity of a showing of interest must be in writing and submitted to the Regional Director prior to a hearing, or to the Hearing Officer after the hearing opens but before it closes. If no hearing is held, challenges to the validity of a showing of interest must be filed prior to action being taken pursuant to § 2422.30.

(d) *Contents of validity challenges.* Challenges to the validity of a showing of interest must be supported with evidence.

(e) *Regional Director investigation and Decision and Order.* The Regional Director will conduct such investigation as deemed appropriate. The Regional Director's determination that a showing of interest is valid is final and binding and is not subject to collateral attack or appeal to the Authority. If the Regional Director finds that the showing of interest is not valid, the Regional Director will issue a Decision and Order dismissing the petition or denying the request to intervene.

§ 2422.11 Challenge to the status of a labor organization.

(a) *Basis of challenge to labor organization status.* The only basis on which a challenge to the status of a labor organization may be made is compliance with 5 U.S.C. 7103(a)(4).

(b) *Format and time for filing a challenge.* Any party filing a challenge to the status of a labor organization involved in the processing of a petition must do so in writing to the Regional Director prior to a hearing, or to the Hearing Officer after the hearing opens but before it closes. If no hearing is held, challenges must be filed prior to action being taken pursuant to § 2422.30.

§ 2422.12 Timeliness of petitions seeking an election.

(a) *Election bar.* Where there is no certified exclusive representative, a petition seeking an election will not be considered timely if filed within twelve (12) months of a valid election involving the same unit or a subdivision of the same unit.

(b) *Certification bar.* Where there is a certified exclusive representative of employees, a petition seeking an election will not be considered timely if filed within twelve (12) months after the certification of the exclusive representative of the employees in an appropriate unit. If a collective bargaining agreement is signed and dated covering the claimed unit, paragraphs (c), (d), and (e) of this section apply.

(c) *Bar during 5 U.S.C. 7114(c) agency head review.* A petition seeking an election will not be considered timely if filed during the period of agency head review under 5 U.S.C. 7114(c). This bar expires upon either the passage of thirty (30) days absent agency head action, or upon the date of any timely agency head action.

(d) *Contract bar where the contract is for three (3) years or less.* Where a collective bargaining agreement has been signed and dated covering the claimed unit and has a term of three (3) years or less from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) and not less than sixty (60) days prior to the expiration of the agreement.

(e) *Contract bar where the contract is for three (3) years or more.* Where a collective bargaining agreement has been signed and dated covering the claimed unit and has a term of three (3) years or more from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) days and not less than sixty (60) days prior to the expiration of the initial three (3) year period, and any time after the expiration of the initial three (3) year period.

(f) *Unusual circumstances.* A petition seeking an election or a determination relating to representation matters may be filed at any time when unusual circumstances exist that substantially affect the unit or majority representation.

(g) *Premature extension.* Where a collective bargaining agreement with a term of three (3) years or less has been extended and signed more than sixty (60) days before its expiration date, the extension will not serve as a basis for dismissal of a petition seeking an election filed in accordance with this section.

(h) *Contract requirements.* Collective bargaining agreements, including agreements that go into effect under 5 U.S.C. 7114(c) and those that automatically renew without further action by the parties, do not constitute a bar to a petition seeking an election under this section unless a clear and unambiguous effective date, renewal date where applicable, duration, and termination date are ascertainable from the agreement and relevant accompanying documentation.

§ 2422.13 Resolution of issues raised by a petition.

(a) *Meetings prior to filing a representation petition.* All parties affected by the representation issues that may be raised in a petition are encouraged to meet prior to the filing of the petition to discuss their interests and narrow and resolve the issues. If requested by all parties a representative of the appropriate Regional Office will participate in these meetings.

(b) *Meetings to narrow and resolve the issues after the petition is filed.* After a petition is filed, the Regional Director may require all affected parties to meet to narrow and resolve the issues raised in the petition.

§ 2422.14 Effect of withdrawal/dismissal.

(a) *Withdrawal/dismissal less than sixty (60) days before contract expiration.* When a petition seeking an election that has been timely filed is withdrawn by the petitioner or dismissed by the Regional Director less than sixty (60) days prior to the expiration of an existing agreement between the incumbent exclusive representative and the activity or any time after the expiration of the agreement, another petition seeking an election will not be considered timely if filed within a ninety (90) day period from either:

(1) The date the withdrawal is approved; or

(2) The date the petition is dismissed by the Regional Director when no application for review is filed with the Authority; or

(3) The date the Authority rules on an application for review. Other pending petitions that have been timely filed under this Part will continue to be processed.

(b) *Withdrawal less than three (3) days prior to a hearing or after approval of an election agreement.* A petitioner who submits a withdrawal request for a petition seeking an election that is received by the Regional Director will be barred from filing another petition seeking an election for the same unit or any subdivision of the unit for six (6) months from the date of the approval of the withdrawal by the Regional Director if such request is filed:

(1) Within three (3) days before a hearing is scheduled to be held; or

(2) After the approval by the Regional Director of an election agreement or direction of an election by the Regional Director under § 2422.16.

(c) *Withdrawal of incumbent prior to an election.* When an election is not held because the incumbent disclaims any representation interest in a unit, a petition by the incumbent seeking an election involving the same unit or a subdivision of the same unit will not be considered timely if filed within six (6) months of cancellation of the election.

§ 2422.15 Duty to furnish information.

(a) *Relevant information.* After a petition is filed, all parties must, upon request of the Regional Director, furnish the Regional Director and serve all parties affected by issues raised in the petition with information concerning parties, issues, and agreements raised in or affected by the petition.

(b) *Inclusions and exclusions.* After a petition seeking an election is filed, the Regional Director may direct the agency or activity to furnish the Regional Director and all parties affected by issues raised in the petition with a current alphabetized list of employees and job classifications included in and/or excluded from the existing or claimed unit affected by issues raised in the petition.

(c) *Cooperation.* The failure to submit supporting information or to cooperate fully in the investigation of the petition or request to intervene may result in dismissal.

§ 2422.16 Election agreements or directed elections.

(a) *Election agreements.* Parties are encouraged to enter into election agreements.

(b) *Regional Director directed election.* If the parties are unable to agree on procedural matters, specifically, the eligibility period, dates, hours, or locations of the election, the Regional Director will decide election procedures and issue a Direction of an Election, without prejudice to the rights of a party to file objections to the procedural conduct of the election.

(c) *Opportunity for a hearing.* Before directing an election, the Regional Director shall provide affected parties an opportunity for a hearing on other than procedural matters and, thereafter may:

(1) Issue a Decision and Order; or

(2) If there are no questions regarding the unit appropriateness, issue a Direction of Election without a Decision and Order.

(d) *Challenges or objections to a directed election.* A Direction of Election issued under this section will be issued without prejudice to the right of a party to file a challenge to the eligibility of any person participating in the election and/or objections to the election.

§ 2422.17 Notice of hearing.

(a) *Purpose of notice of a hearing.* The Regional Director may issue a notice of hearing involving any issues raised in the petition.

(b) *Contents.* The notice of hearing will be served on all interested parties and will advise affected employees and interested parties about the hearing.

(c) *Prehearing conference.* The Hearing Officer will schedule a prehearing conference, either by meeting or teleconference. All parties must participate in a prehearing conference and be prepared to fully discuss, narrow and resolve the issues set forth in the notice of hearing.

(d) *No appeal of hearing determination.* A Regional Director's determination to issue a notice of hearing is not appealable to the Authority.

§ 2422.18 Hearing procedures.

(a) *Purpose of a hearing.* Representation hearings are considered investigatory and not adversarial. The purpose of the hearing is to develop a full and complete record of relevant and material facts.

(b) *Conduct of hearing.* Hearings will be open to the public unless otherwise ordered by the Hearing Officer. There is no burden of proof, with the exception of proceedings on objections to elections as provided for in § 2422.27(b). Formal rules of evidence do not apply.

(c) *Hearing officer.* Hearings will be conducted by a Hearing Officer appointed by the Regional Director. Another Hearing Officer may be substituted for the presiding Hearing Officer at any time.

(d) *Transcript.* An official reporter will make the official transcript of the hearing. Copies of the official transcript may be examined in the appropriate Regional Office during normal working hours. Requests by parties to purchase copies of the official transcript should be made to the official hearing reporter.

§ 2422.19 Motions.

(a) *Purpose of a motion.* Subsequent to the issuance of a Notice of Hearing in a representation proceeding, a party seeking a ruling, an order, or relief must do so by filing or raising a motion stating the order or relief sought and the grounds therefor. Challenges and other filings referenced in other sections of this subpart may, in the discretion of the Regional Director or Hearing Officer, be treated as a motion.

(b) *Prehearing motions.* Prehearing motions must be filed in writing with the Regional Director. Any response must be filed with the Regional Director within five (5) days after service of the motion. The Regional Director may rule on the motion or refer the motion to the Hearing Officer.

(c) *Motions made at the hearing.* (1) During the hearing, motions will be made to the Hearing Officer and may be oral on the record, unless otherwise required in this subpart to be in writing. Responses may be oral on the record or in writing, but, absent permission of the Hearing Officer, must be provided before the hearing closes. When appropriate, the Hearing Officer will rule on motions made at the hearing or referred to the Hearing Officer by the Regional Director.

(2) When a motion to intervene pursuant to § 2422.8 is made at the hearing, the Hearing Officer will either grant the motion, deny the motion, or conditionally allow participation in the hearing pending the Regional Director's ruling on the motion.

(d) *Posthearing motions.* Motions made after the hearing closes must be filed in writing with the Regional Director. Any response to a posthearing motion must be filed with the Regional Director within five (5) days after service of the motion.

§ 2422.20 Rights of parties at a hearing.

(a) *Rights.* A party at a hearing will have the right:

(1) To appear in person or by a representative;

(2) To examine and cross-examine witnesses; and

(3) To introduce into the record relevant evidence.

(b) *Documentary evidence and stipulations.* Parties must submit two (2) copies of documentary evidence to the Hearing Officer and a copy to all other parties. Stipulations of fact between the parties may be introduced into evidence.

(c) *Oral argument.* Parties will be entitled to a reasonable period prior to the close of the hearing for oral argument. Presentation of a closing oral argument does not preclude a party from filing a brief under paragraph (d) of this section.

(d) *Briefs.* A party will be afforded an opportunity to file a brief with the Regional Director.

(1) An original and two (2) copies of a brief must be filed with the Regional Director within thirty (30) days from the close of the hearing.

(2) A written request for an extension of time to file a brief must be filed with and received by the Regional Director no later than five (5) days before the date the brief is due.

(3) No reply brief may be filed without permission of the Regional Director.

§ 2422.21 Duties and powers of the Hearing Officer.

Option 1

(a) *Duty of the Hearing Officer.* The Hearing Officer will receive evidence and inquire fully into the relevant and material facts concerning the matters that are the subject of the hearing.

Option 2

(a) *Duty of the Hearing Officer.* The Hearing Officer will receive evidence, inquire fully into the relevant and material facts concerning the matters that are the subject of the hearing, and may make recommendations on the record to the Regional Director.

(b) *Powers of the Hearing Officer.* During the period a case is assigned to a Hearing Officer by the Regional Director and prior to the close of the hearing, the Hearing Officer may take any action necessary to schedule, conduct, continue, control, and regulate the hearing, including ruling on motions when appropriate.

§ 2422.22 Objections to the conduct of the hearing.

(a) *Objections.* Objections are oral or written complaints concerning the conduct of a hearing.

(b) *Exceptions to rulings.* There are automatic exceptions to all adverse rulings.

§ 2422.23 Election procedures.

(a) *Regional Director conducts or supervises election.* The election will either be conducted or supervised by the Regional Director.

(b) *Notice of election.* Prior to the election a notice of election, prepared by the Regional Director, will be posted by the activity in places where notices to employees are customarily posted and/or in a manner by which notices are normally distributed. The notice of election will contain the details and procedures of the election, including the appropriate unit, the eligibility period, the date(s), hour(s) and location(s) of the election, a sample ballot, and the effect of the vote.

(c) *Sample ballot.* The reproduction of any document purporting to be a copy of the official ballot that suggests either directly or indirectly to employees that the Authority endorses a particular choice in the election may constitute grounds for setting aside an election if objections are filed under § 2422.26.

(d) *Secret ballot.* All elections will be by secret ballot.

(e) *Intervenor withdrawal from ballot.* When two or more labor organizations are included as choices in an election, an intervening labor organization may, prior to the approval of an election agreement or before the direction of an election procedures, file a written request with the Regional Director to remove its name from the ballot. If the request is not received prior to the approval of an election agreement or before the direction of an election, unless the parties and the Regional Director agree otherwise, the intervening labor organization will remain on the ballot. The Regional Director's decision on the request is final and not subject to the filing of an application for review to the Authority.

(f) *Incumbent withdrawal from ballot in an election to decertify an incumbent representative.* When there is no intervening labor organization, an election to decertify an incumbent exclusive representative will not be held if the incumbent provides the Regional Director with a written disclaimer of any representation interest in the unit. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Regional Director.

(g) *Petitioner withdraws from ballot in an election.* When there is no intervening labor organization, an election will not be held if the petitioner provides the Regional Director with a written request to withdraw the petition. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Regional Director.

(h) *Observers.* All parties are entitled to representation at the polling location(s) by observers of their own selection subject to the Regional Director's approval.

(1) Parties desiring to name observers must file in writing with the Regional Director a request for specifically named observers at least fifteen (15) days prior to an election. The Regional Director may grant an extension of time for filing a request for specifically named observers for good cause where a party requests such an extension or on the Regional Director's own motion. The request must name and identify the observers requested.

(2) An agency or activity may not use as its observer:

(i) Supervisory or managerial personnel;

(ii) Employees eligible to vote in the election;

(iii) Employees who have any official connection with any of the labor organizations involved; or

(iv) Non-employees of the Federal government.

(3) A labor organization may not use as its observer:

(i) Supervisory or managerial personnel;

(ii) Non-employees of the Federal government; or

(iii) Employees on leave without pay status who are working for the labor organization involved.

(4) Objections to a request for specific observers must be filed with the Regional Director stating the reasons in support within five (5) days after service of the request.

(5) The Regional Director's ruling on requests for and objections to observers is final and binding and is not subject to the filing of an application for review with the Authority.

§ 2422.24 Challenged ballots.

(a) *Filing challenges.* A party or the Regional Director may, for good cause,

challenge the eligibility of any person to participate in the election prior to the employee voting.

(b) *Challenged ballot procedure.* An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the Region are unable to resolve the challenged ballot(s) prior to the tally of ballots, the unresolved challenged ballots will be impounded and preserved until a determination can be made, if necessary, by the Regional Director.

§ 2422.25 Tally of ballots.

(a) *Tallying the ballots.* When the election is concluded, the Regional Director will tally the ballots.

(b) *Service of the tally.* When the tally is completed, the Regional Director will serve the tally of ballots to the parties in accordance with the election agreement or direction of election.

(c) *Valid ballots cast.* Representation will be determined by the majority of the valid ballots cast.

§ 2422.26 Objections to the election.

(a) *Filing objections to the election.* Objections to the procedural conduct of the election or to conduct that may have improperly affected the results of the election must be submitted to the Regional Director. Objections must be filed and received by the Regional Director within five (5) days after the tally of ballots has been furnished. Any objections must be timely regardless of whether the challenged ballots are sufficient in number to affect the results of the election. The objections must be supported by clear and concise reasons. An original and two (2) copies of the objections must be received by the Regional Director.

(b) *Supporting evidence.* The objecting party must file with the Regional Director evidence, including signed statements, documents and other materials supporting the objections within ten (10) days after the objections are filed.

§ 2422.27 Determinative challenged ballots and objections.

(a) *Investigation.* The Regional Director will investigate objections and/or determinative challenged ballots that are sufficient in number to affect the results of the election.

(b) *Burden of proof.* A party filing objections to the election bears the burden of proof by a preponderance of the evidence concerning those objections. However, no party bears the burden of proof on challenged ballots.

(c) *Consolidated hearing on objections and/or determinative challenged ballots and an unfair labor practice hearing.* When appropriate, and in accordance with § 2422.33, objections and/or determinative challenged ballots may be consolidated with an unfair labor practice hearing. Such consolidated hearings will be conducted by an Administrative Law Judge. Exceptions and related submissions must be filed with the Authority and the Authority will issue a decision in accordance with Part 2423 of this chapter, except for the following:

(1) Sections 2423.18 and 2423.19(j) of this Subchapter concerning the burden of proof and settlement conferences are not applicable;

(2) The Administrative Law Judge may not recommend remedial action to be taken or notices to be posted as provided by § 2423.26(a) of this Subchapter; and,

(3) References to "charge" and "complaint" in § 2423.26(b) of this chapter will be omitted.

(d) *Regional Director Action.* After investigation, the Regional Director will take appropriate action consistent with § 2422.30.

§ 2422.28 Runoff elections.

(a) *When a runoff may be held.* A runoff election is required in an election involving at least three (3) choices, one of which is "no union" or "neither," when no choice receives a majority of the valid ballots cast. However, a runoff may not be held until the Regional Director has ruled on objections to the election and determinative challenged ballots.

(b) *Eligibility.* Employees who were eligible to vote in the original election and who are also eligible on the date of the runoff election may vote in the runoff election.

(c) *Ballot.* The ballot in the runoff election will provide for a selection between the two choices receiving the largest and second largest number of votes in the election.

§ 2422.29 Inconclusive elections.

(a) *What is an inconclusive election.* An inconclusive election is one where challenged ballots are not sufficient to affect the outcome of the election and one of the following occurs:

(1) The ballot provides for at least three (3) choices, one of which is "no union" or "neither" and the votes are equally divided; or

(2) The ballot provides for at least three (3) choices, the choice receiving the highest number of votes does not receive a majority, and at least two other choices receive the next highest and same number of votes; or

(3) When a runoff ballot provides for a choice between two labor organizations and results in the votes being equally divided; or

(4) When the Regional Director determines that there have been significant procedural irregularities.

(b) *Eligibility to vote in a rerun election.* A current payroll period will be used to determine eligibility to vote in a rerun election.

(c) *Ballot.* If the Regional Director determines that the election is inconclusive, the election will be rerun with all the choices that appeared on the original ballot.

(d) *Number of reruns.* There will be only one rerun of an inconclusive election. If the rerun results in another inconclusive election, the tally of ballots will indicate a majority of valid ballots has not been cast for any choice and a certification of results will be issued. If necessary, a runoff may be held when an original election is rerun.

§ 2422.30 Regional Director investigations, notices of hearings, actions, and Decisions and Orders.

(a) *Regional Director investigation.* The Regional Director will make such investigation of the petition and any other matter as the Regional Director deems necessary.

(b) *Regional Director notice of hearing.* The Regional Director will issue a notice of hearing to inquire into any matter about which a material issue of fact exists, and any time there is reasonable cause to believe a question exists regarding unit appropriateness.

(c) *Regional Director action and Decision and Order.* After investigation and/or hearing, when a hearing has been ordered, the Regional Director will resolve the matter in dispute and, when appropriate, issue a Decision and Order.

(d) *Appeal of Regional Director Decision and Order.* A party may file with the Authority an application for review of a Regional Director Decision and Order.

(e) *Contents of the Record.* When no hearing has been conducted all material submitted to and considered by the Regional Director during the investigation becomes a part of the record. When a hearing has been conducted, the transcript and all material entered into evidence, including any posthearing briefs, become a part of the record.

§ 2422.31 Application for review of a Regional Director Decision and Order.

(a) *Filing an application for review.* A party must file an application for review with the Authority within sixty (60) days of the Regional Director's Decision and Order. The sixty (60) day time limit provided for in 5 U.S.C. 7105(f) may not be extended or waived.

(b) *Contents.* An application for review must be sufficient to enable the Authority to rule on the application without recourse to the record. An application must specify the matters and rulings to which exception(s) is taken, include a summary of evidence relating to any issue raised in the application, and make specific reference to page citations in the transcript if a hearing was held. An application may not raise any issue or rely on any facts not timely presented to the Hearing Officer or Regional Director.

Option 1

(c) *Review.* The Authority may grant an application for review only where it appears that compelling reasons exist therefor. Accordingly, an application for review may be granted only upon one or more of the following grounds:

(1) The decision raises an issue for which there is an absence of precedent or the decision is based upon a clear error in application of law or policy;

(2) The decision is based on law or policy which clearly warrants reconsideration;

(3) The conduct of a hearing or a procedural ruling has resulted in prejudicial error;

(4) The Regional Director's decision regarding a substantial factual issue was clearly erroneous and prejudicially affected the rights of a party;

Option 2

(c) Review. (1) Assertions required for review. The Authority will grant an application for review when a party filing has specifically asserted and established that:

(i) Review of the decision is warranted on one or more of the grounds set forth in paragraph (c)(2) of this section and,

(ii) The Authority's decision will have a substantial impact on labor-management relations law, as set forth in paragraph (c)(3) of this section.

(2) Grounds warranting review. A filing party must assert and establish that review of a Regional Director's decision is warranted on one or more of the following grounds:

(i) The decision raises an issue for which there is an absence of precedence or the decision is based upon a clear error in application of law or policy;

(ii) The decision is based on law or policy which clearly warrants reconsideration;

(iii) The conduct of a hearing or a procedural ruling has resulted in prejudicial error;

(iv) The Regional Director's decision regarding a substantial factual issue was clearly erroneous and prejudicially affected the rights of a party;

(3) Substantial impact on labor-management relations law. In addition to the requirements set forth in subsection (d), a filing party must assert and establish that the Authority's decision will have a substantial impact on labor-management relations law. Such impact may be found, but is not limited to, situations where:

(i) The Regional Director's Decision is likely to have a substantial impact in cases other than the one(s) directly involved in the decision; or

(ii) Review would resolve a question of particular importance to the Federal sector labor-management relations program.

(4) Discretionary determination of Authority to review. Notwithstanding paragraphs (c), (d), and (e) of this section, an application for review may be granted when, in the Authority's discretion, extraordinary circumstances exist for reviewing the Regional Director's Decision and Order.

(d) *Opposition.* A party may file with the Authority an opposition to an application for review within ten (10) days after the party is served with the application. A copy must be served on the Regional Director and all other parties and a statement of service must be filed with the Authority.

(e) *Regional Director Decision and Order becomes the Authority's action.* A Decision and Order of a Regional Director becomes the action of the Authority when:

(1) No application for review is filed with the Authority within sixty (60) days after the date of the Regional Director's Decision and Order; or

(2) A timely application for review is filed with the Authority and the Authority does not undertake to grant review of the Regional Director's Decision and Order within sixty (60) days of the filing of the application; or

(3) The Authority denies an application for review of the Regional Director's Decision and Order.

(f) *Authority grant of review and stay.* The Authority may rule on the issue(s) in an application for review in its order granting the application for review. Neither filing nor granting an application for review does not stay any action ordered by the Regional Director unless specifically ordered by the Authority.

(g) *Briefs if review is granted.* If the Authority does not rule on the issue(s) in the application for review in its order granting review, the Authority may, in its discretion, afford the parties an opportunity to file briefs. The briefs will be limited to the issue(s) referenced in the Authority's order granting review.

§ 2422.32 Certifications and revocations.

(a) *Certifications.* The Regional Director will issue an appropriate certification when:

(1) After an election, runoff, or rerun,

(i) No objections are filed or challenged ballots are not determinative, or

(ii) Objections and determinative challenged ballots are decided and resolved; or

(2) The Regional Director issues a Decision and Order requiring a certification and the Decision and Order becomes the action of the Authority under § 2422.31(h) or the Authority otherwise directs the issuance of a certification.

(c) *Revocations.* Without prejudice to any rights and obligations which may exist under the Statute, the Regional Director will revoke a recognition or certification, as appropriate, and provide a written statement of reasons when:

(1) An incumbent exclusive representative files, during a representation proceeding, a disclaimer of any representational interest in the unit; or

(2) Due to a substantial change in the character and scope of the unit, the unit is no longer appropriate and an election is not warranted.

§ 2422.33 Relief obtainable under Part 2423.

Remedial relief that was or could have been obtained as a result of a motion, objection, or challenge filed or raised under this subpart, may not be the basis for similar relief if filed or raised as an unfair labor practice under Part 2423 of this Chapter, *Provided,* that related matters may be consolidated for hearing as noted in § 2422.27(c) of this subpart.

§ 2422.34 Rights and obligations during the pendency of representation proceedings.

(a) *Existing recognitions, agreements, and obligations under the Statute.* During the pendency of any representation proceeding, parties are obligated to maintain existing recognitions, adhere to the terms and conditions of existing collective bargaining agreements, and fulfill all other representational and bargaining responsibilities under the Statute.

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, *Provided,* that its actions may be challenged, reviewed, and remedied where appropriate.

Dated: August 1, 1995.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

[FR Doc. 95–19214 Filed 8–3–95; 8:45 am]

BILLING CODE 6257–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 95–046–1]

Importation of Fruits and Vegetables; Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is soliciting public comment on a change we are considering making to the fruits and vegetables import regulations. We are considering requiring a phytosanitary certificate to accompany all shipments of imported produce, both commercial shipments and produce brought into the United States by individual travelers. We believe this change would substantially increase our ability to exclude dangerous plant pests associated with produce from the United States, but it would also require substantial changes in the practices of travelers and importers who bring produce into the United States.

DATES: Consideration will be given only to comments received on or before October 3, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–046–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–046–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Levy or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations, PPQ, APHIS, Suite 4A03, 4700 River Road Unit 139, Riverdale, MD 20737–1236; (301) 734–8645.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize the Animal and Plant Health Inspection Service (APHIS) to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products, including fruits and vegetables, to prevent the introduction of plant pests into the United States. "Subpart—Fruits and Vegetables" (7 CFR 319.56 *et seq.*) contains restrictions on the importation into the United States of fruits, vegetables, and plants or portions of plants used as packing material in connection with shipments of fruits and vegetables.

A phytosanitary certificate is a document issued by a plant protection official of a national government that is issued to facilitate the international movement of a plant or plant product article. A phytosanitary certificate certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation into the country of destination pursuant to the current phytosanitary laws and regulations of that country. A phytosanitary certificate may also contain additional declarations regarding the area of origin, conditions of growth, or treatment of the article, when such information is relevant to the eligibility of the article for importation. The form and use of phytosanitary certificates is governed by the International Plant Protection Convention.

Phytosanitary certificates are in wide use in international trade. APHIS issues thousands of phytosanitary certificates each year to facilitate export of United States agricultural products to countries that require phytosanitary certificates to accompany such products. We also require many agricultural products imported into the United States to be accompanied by phytosanitary certificates.

For example, phytosanitary certificates are required for restricted articles under 7 CFR 319.37 *et seq.*, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," and under 7 CFR 319.75 *et seq.*, "Subpart—Khapra Beetle."

Phytosanitary Certificate Requirement for All Imported Produce

We are considering requiring a phytosanitary certificate to accompany all shipments of imported produce, both commercial shipments and produce brought into the United States by individual travelers.

Historically, we have not required a phytosanitary certificate for imports of fresh produce because, given the volume of produce entering the United States, we felt that we could provide adequate protection for U.S. agriculture by having well-trained United States Department of Agriculture (USDA) personnel inspect all imported produce. Port of entry inspection by our officers was, and continues to be, an important safeguard to which all imported produce is subject.

Today, from the standpoint of quarantine control, the picture of produce importations is changing dramatically. The number of foreign travelers continues to increase. The amount of produce they bring with them likewise continues to increase, and the pest risk inherent in such importations may well have increased. Commercial importations also continue to increase in quantity and variety of product.

At the same time, foreign Ministries of Agriculture are increasingly able to provide phytosanitary export inspection and certification. We believe that the availability and overall quality of these activities has improved, partly as a result of our International Services programs abroad.

Imported produce presents a relatively high risk of introducing exotic plant pests. Produce brought by travelers is particularly dangerous because:

- The origin of the produce is often difficult to determine.
- The produce is often grown in dooryards with little or no pest control.
- Travelers bring noncommercial varieties with unknown susceptibility to pests and diseases.
- The fruits are often ripe or overripe and therefore particularly susceptible to infestations.
- Historically, decisions to allow importation of produce were based on an evaluation of the pest risk associated with commercial production, not backyard production.

In addition to the above, we now face increasing restrictions on the number of personnel we can devote to inspecting produce imports. It appears that these restrictions will be of long duration if not permanent. We are finding it increasingly difficult to provide the level of quarantine security we feel is needed. To a significant extent, a phytosanitary certificate requirement is an effective augmentation to inspection.

The phytosanitary certificate requirement would provide a significant measure of protection against the introduction of exotic plant pests. This requirement would represent a significant change from current practice. Therefore, if we make this change we would conduct an intensive public relations campaign to alert importers and travelers to the new requirement and encourage compliance. Compliance with this new phytosanitary certificate requirement should significantly reduce the infestation levels in both commercial and non-commercial importations.

As we see it, these are the positive effects of a phytosanitary certificate requirement:

- The quantity of produce brought by travelers would be curtailed, resulting in far fewer infested lots of produce being imported from dooryard gardens and infested countries, thereby reducing the risk of pest introduction.
- Commercial and noncommercial importations would have the added safeguard of a foreign issued phytosanitary certificate, which would certify that the produce was inspected and found to comply with our requirements. The phytosanitary certificate could also be the focal point of APHIS's feedback to countries that inadvertently certify prohibited or infested produce.
- The requirement would be legally sound, based on the Agency's statutory authority, and be in accord with the International Plant Protection Convention.

The negative effects for which we must plan are:

- Despite a public relations campaign, there would be numerous complaints from travelers about seized produce, especially during the first year of enforcement.
- APHIS would have to prepare for increased smuggling because the phytosanitary certificate requirement would essentially prohibit produce brought by travelers.
- All countries shipping produce to the United States would have to provide phytosanitary certificates for all shipments. These countries might have difficulties dealing with the increased workload, and effects might include increases in the number of errors and improperly issued phytosanitary certificates. Importers might assume that improperly issued phytosanitary certificates authorize them to import prohibited produce.
- APHIS would have to prepare guidelines for enforcement of the new requirements.

The phytosanitary certificate requirement would have a strong effect on movements into the United States from Canada and Mexico. In particular, local residents bring a large quantity of produce across the Mexican border as groceries for local consumption in the United States. Along the border, these groceries are known as "mandado".

If a phytosanitary certificate requirement is imposed, all fruit and vegetable mandado would be subject to it. However, the current systems for issuing phytosanitary certificates in Mexico do not make it feasible for customers in retail stores and fruit and vegetable stands to obtain certificates so that they could legally bring their purchases into the United States. Therefore, unless the system for issuing certificates in Mexico changes significantly, imposition of a phytosanitary certificate requirement would mean that persons would be unable to practically and legally import mandado into the United States. Based on our many years' experience in examining mandado on the Mexican border, we believe that admissible fruits and vegetables in mandado do not present a significant pest risk. We also recognize that the phytosanitary certificate requirement could result in inconvenience and increased costs for thousands of persons who daily bring Mexican fruits and vegetables across the border for consumption in the United States.

A somewhat similar situation might apply with regard to the Canadian border, although there is less traffic of this sort from Canada. We welcome suggestions on how to accommodate movements for local consumption from Canada and Mexico without sacrificing quarantine effectiveness. We also welcome comments on any other issue related to a possible proposal to require phytosanitary certificates to accompany all produce imported into the United States.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 27th day of July 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–19184 Filed 8–3–95; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 319

[Docket No. 94–116–4]

Importation of Fresh Hass Avocado Fruit Grown in Michoacan, Mexico; Public Hearings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public hearings.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting five public hearings on the proposed rule on the importation of fresh Hass avocado fruit grown in Michoacan, Mexico, that we published in the **Federal Register** on July 3, 1995.

DATES: The public hearings will be held in Washington, DC, on August 17 and 18, 1995; in Flushing, NY, on August 22, 1995; in Homestead, FL, on August 23, 1995; in Chicago, IL, on August 28, 1995; and in Escondido, CA, on August 30 and 31, 1995. Each public hearing will begin at 9 a.m. and is scheduled to end at 5 p.m.

ADDRESSES: The public hearings will be held at the following locations:

1. Washington, DC: Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th Street and Independence Avenue SW., Washington, DC.
2. Flushing, NY: Best Western Midway Hotel, 108–25 Horace Harding, Flushing, NY.
3. Homestead, FL: Redland Country Club, 24451 SW. 177th (Crone) Avenue, Homestead, FL.
4. Chicago, IL: Holiday Inn—O'Hare International, 5440 North River Road, Chicago, IL.
5. Escondido, CA: California Center for the Arts, 340 North Escondido Boulevard, Escondido, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236, (301) 734–8645, or FAX (301) 734–5786.

SUPPLEMENTARY INFORMATION: Five public hearings will be held on the notice of proposed rulemaking on the importation of fresh Hass avocado fruit grown in Michoacan, Mexico, published by the Animal and Plant Health Inspection Service (APHIS) in the **Federal Register** on July 3, 1995 (60 FR 34831–34842, Docket No. 94–116–3). The first public hearing will be dedicated exclusively to the scientific basis for that proposed rule. This first hearing will be open to the public, but participation will be limited to experts in the fields of pest risk assessment and pest risk mitigation measures. Four additional hearings will be held to provide a full opportunity to all interested parties to address every aspect of the proposed rule.

The First Public Hearing—Presentations by Experts in Risk Assessment

The first public hearing, on the scientific basis for this proposed rule, is

scheduled to be held in Washington, DC, on August 17 and 18, 1995. This hearing will focus exclusively on the APHIS pest risk assessment documents upon which the proposed rule is based, and will provide an opportunity for experts in relevant disciplines to present their views on those documents and the scientific issues raised by them.

The APHIS pest risk assessment documents upon which the proposed rule is based identify the plant pest risks associated with the importation of Hass avocados grown in approved orchards in approved municipalities in Michoacan, Mexico, discuss the mitigation measures identified as reasonable and necessary to prevent the introduction of plant pests into the United States, and contain a quantitative risk analysis examining the likelihood of plant pest introduction into the United States if Hass avocados are allowed to be imported under the conditions described in the proposed rule.

Participation in the Washington, DC, hearing will be limited to those who register and who identify themselves as having expertise in the areas of pest risk assessment and mitigation measures. Experts wishing to participate will be asked to furnish for the record their educational background and their expertise and qualifications relevant to pest risk assessment and mitigation measures. Such experts include scientists, technical experts, and academicians expert in entomology, plant health, plant pathology, risk assessment, and risk mitigation. Federal, State, and local officials, growers, and handlers who have experience with risk assessment, plant protection, quarantine, or risk mitigation measures will also be welcome to participate in this first public hearing.

Presenters are welcome to register as a panel if they believe a panel of experts from several fields would foster a more complete discussion and evaluation of issues related to the pest risk assessment underlying this proposal.

Additional Public Hearings

Four additional hearings will be held during the period between August 22, 1995, and August 31, 1995, to address all aspects of this proposed rule. These four public hearings are scheduled to be held in Flushing, NY, on August 22, 1995; Homestead, FL, on August 23, 1995; Chicago, IL, on August 28, 1995; and Escondido, CA, on August 30 and 31, 1995.

Any interested party may appear and be heard in person, or through an attorney or other representative. We are interested in obtaining the views of the public on all aspects of the proposed rule, including the APHIS pest risk assessment documents and the conclusions contained therein.

General Information Applicable to All Five Public Hearings

The APHIS pest risk assessment documents upon which the proposed rule is based are available. Parties interested in receiving copies may obtain them by contacting APHIS' Legislative and Public Affairs Staff at (301) 734–3256 or by writing to Legislative and Public Affairs, 4700 River Road Unit 51, Riverdale, Maryland 20737–1232. Copies of the risk assessment documents will be available at each of the scheduled public hearings.

Persons who wish to speak at the hearings will be asked to provide their names and their affiliations. Those who wish to form a panel to present their views will be asked to provide the name of each member of the panel and the organizations the panel members represent. Parties wishing to make oral presentations may register in advance by calling the Regulatory Analysis and Development voice mail at (301) 734–4346 and leaving a message stating their name, telephone number, organization, and location of the hearing at which they wish to speak. If a party is registering for a panel, the party will also be asked to provide the name of each member of the panel and the organization each panel member represents.

The hearings will begin at 9 a.m. and are scheduled to end at 5 p.m. each day. The Washington, DC, and Escondido, CA, hearings may conclude at any time on the second day if all persons who have registered to participate have been heard. Similarly, the other three hearings may conclude earlier than 5 p.m. if all persons who have registered have been heard. The presiding officer may extend the time of any hearing or limit the time for each presentation so that everyone is accommodated and all interested persons appearing on the scheduled dates have an opportunity to participate.

Registration for each hearing may be accomplished in advance in accordance with the above-described instructions, or by registering with the presiding officer between 8:30 a.m. and 9 a.m. on any hearing day.

A representative of APHIS will preside at each public hearing. Written statements are encouraged, but not required. Any written statement submitted will be made part of the record of the public hearing. Anyone who reads a written statement should provide two copies to the presiding officer at the hearing. A transcript will be made of each public hearing and the transcript will be placed in the rulemaking record and will be available for public inspection.

The purpose of these public hearings is to give all interested parties an opportunity to present data, views, and information to the Department concerning this proposed rule. Questions about the content of the proposal may be part of a commenter's oral presentation. However, neither the presiding officer nor any other representative of the Department will respond to the comments at the hearing, except to clarify or explain the proposed rule and the documents upon which the proposal is based.

Done in Washington, DC, this 31st day of July 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–19183 Filed 8–3–95; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 94

[Docket No. 95–050–1]

Uruguay; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Uruguay free of rinderpest and foot-and-mouth disease. As part of this proposed action, we would add Uruguay to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to restrictions on meat and other animal products offered for importation into the United States. Declaring Uruguay free of rinderpest and foot-and-mouth disease appears to be appropriate because the last outbreak of foot-and-mouth disease in Uruguay occurred in 1989, there have been no vaccinations for foot-and-mouth disease in Uruguay since June 1994, and rinderpest has never existed in Uruguay. This proposed rule would remove the prohibition on the importation into the United States, from Uruguay, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations would be subject to certain restrictions. This proposed rule would also relieve certain prohibitions and restrictions on the importation, from Uruguay, of milk and milk products of ruminants.

DATES: Consideration will be given only to comments received on or before October 3, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–050–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–050–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Blackwell, Senior Staff Microbiologist, Import-Export Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–5875.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). Rinderpest and FMD are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which have been declared to be free of both diseases. We will consider declaring a country free of rinderpest and FMD if, among other things, there have been no reported cases of the diseases in that country for at least the previous 1-year period and if no vaccinations for rinderpest or FMD have been administered to ruminants or swine in that country for at least the previous 1-year period.

The last outbreak of FMD in Uruguay occurred in 1989. There have been no vaccinations for FMD in Uruguay since June 1994. Rinderpest has never existed in Uruguay. Based on these considerations, the government of Uruguay has requested that the United States Department of Agriculture (USDA) declare Uruguay free of rinderpest and FMD.

The Animal and Plant Health Inspection Service (APHIS) reviewed the documentation submitted by the government of Uruguay in support of its request, and a team of APHIS officials traveled to Uruguay in 1994 to conduct an on-site evaluation of the country's animal health program with regard to the rinderpest and FMD situation in Uruguay. The evaluation consisted of a review of Uruguay's veterinary services, diagnostic procedures, vaccination practices, and administration of laws and regulations intended to prevent the introduction of rinderpest and FMD into Uruguay through the importation of animals, meat, or animal products. The APHIS officials conducting the on-site evaluation concluded that Uruguay is free of rinderpest and FMD. (Details concerning the on-site evaluation are available, upon written request, from the person listed under **FOR FURTHER INFORMATION CONTACT**.)

Based on the information discussed above, we are proposing to amend § 94.1(a)(2) by adding Uruguay to the list of countries declared to be free of both rinderpest and FMD. This proposed action would remove the prohibition on the importation, from Uruguay, of ruminants and fresh, chilled, and frozen meat of ruminants, and would relieve restrictions on the importation, from Uruguay, of milk and milk products of ruminants. However, because Uruguay has not been declared free of hog cholera, the importation into the United States, from Uruguay, of pork and pork products would continue to be restricted under § 94.9 of the regulations, and the importation of swine from Uruguay would continue to be restricted under § 94.10. Also, for the reasons discussed below, we would make the importation of meat and other animal products of ruminants or swine from Uruguay subject to the restrictions in § 94.11.

We are proposing to amend § 94.11(a) by adding Uruguay to the list of countries that have been declared free of rinderpest and FMD but from which the importation of meat and other animal products is restricted. The countries listed in § 94.11(a) are subject to these restrictions because they: (1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries that are designated in § 94.1(a) as infected with rinderpest or FMD; (2) have a common land border with a country designated as infected with rinderpest or FMD; or (3) import ruminants or swine from countries designated as infected with rinderpest or FMD under conditions less restrictive than would be acceptable for importation into the United States.

Uruguay supplements its national meat supply by importing fresh, chilled and frozen meat of ruminants and swine from countries designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. In addition, Uruguay has common land borders with Brazil and Argentina, which are both designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. As a result, although Uruguay appears to qualify for designation as a country free of rinderpest and FMD, there is the potential that meat or other animal products produced in Uruguay may be commingled with the fresh, chilled, or frozen meat of animals from a country in which rinderpest or FMD exists. This potential for commingling constitutes an undue risk of introducing rinderpest or FMD into the United States.

Therefore, we are proposing that meat and other animal products of ruminants or swine, as well as the ship stores, airplane meals, or baggage containing such meat or other animal products, originating in Uruguay be subject to the restrictions specified in § 94.11 of the regulations and to the applicable requirements contained in the regulations of the USDA's Food Safety and Inspection Service at 9 CFR chapter III. Section 94.11 generally requires that the meat and other animal products of ruminants or swine be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certification from a full-time salaried veterinary official of the national government of the exporting country stating, among other things, that the meat or other animal product has not been commingled with or exposed to meat or other animal products originating in, imported from, or transported through a country infected with rinderpest or FMD.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule, if adopted, would amend the regulations in part 94 by adding Uruguay to the list of countries declared to be free of rinderpest and FMD. This action would remove the prohibition on the importation into the United States, from Uruguay, of ruminants and fresh, chilled, and frozen meat of ruminants, although those

imports would be subject to certain restrictions.

The proposed revision would also relieve restrictions on the importation, from Uruguay, of milk and milk products of ruminants. This action would not relieve certain restrictions on the importation of live swine and fresh, chilled, and frozen meat of swine from Uruguay because Uruguay is still considered to be affected with hog cholera.

The primary effects of the proposed change in the regulations would be to bovine meat and prepared products. Swine and swine products are excluded because of restrictions due to hog cholera, and the United States has not imported any mutton, lamb, or goat meat from Uruguay in the last 2 years. This situation is not expected to change as a result of the proposed rule.

This proposed rule is not expected to affect United States imports of miscellaneous animal products from Uruguay, including embryos, semen, breeding animals, and other products.

The increase in beef imports resulting from the proposed regulation change is expected to have a minimal negative impact on producers, while benefitting consumers.

Uruguayan beef production is made up mostly of grass-fed product. These animals take longer to reach slaughter weights and are lighter at slaughter than grain-fed cattle. As a result, although Uruguayan cattle inventories (10.4 million at the end of 1994) are about 10 percent of United States cattle inventories (103.3 million on January 1, 1995), Uruguayan beef production runs at only 2 to 4 percent of United States production. Uruguay currently exports one third of its beef production. However, Uruguay is not expected to exceed the 20,000 metric ton (MT) tariff-free quota limit for exports of beef into the United States established under the General Agreement on Tariffs and Trade (GATT).

Twenty-two percent of United States beef consumption goes into "non table-cut" applications, such as fast-food hamburgers and other prepared meats; 78 percent of United States beef consumption goes into consumer applications, such as steak and filet mignon, that require beef produced from grain-fed cattle. (Beef produced in the United States comes predominantly from grain-fed cattle and is used for higher-quality table-cuts.) Most of the beef exported from Uruguay is produced from grass-fed cattle and is suitable for lower-quality, non table-cut applications. However, select cuts of beef from grass-fed cattle may be of the same quality as cuts from grain-fed cattle. For the most part, beef exports from Uruguay would affect the market for non table-cut beef in the United States.

Beef and dairy farms and feedlot operators would experience the greatest impact as a result of the proposed rule. According to Small Business Administration (SBA) criteria, beef and dairy farms with annual sales of less than $0.5 million are considered small. In 1992, 801,940 operations with beef cows were considered small. These small farms averaged sales of $20,976 in 1992, as opposed to average sales of $1.3 million on large farms.

Recent USDA data indicated that 152,500 dairy farms were considered small. In addition to the sale of dairy products, the sale of culled dairy cattle and young stock not retained for milking or breeding contributed to dairy farm income. In the worst case scenario, the proposed rule would produce a drop in net farm income of $15 on small beef farms and $83 on small dairy farms when imports were assumed to consist of beef from grass-fed cattle.

With regards to the sale of dairy products, the Department does not anticipate a major increase in exports of milk and milk products from Uruguay into the United States as a result of this proposed rule. Only about 10 percent of Uruguay's cow herd is made up of dairy cows, and it is expected that the increase in beef cattle returns will not significantly alter this situation. In addition, all dairy products imported into the United States are restricted by quotas except for casein, caseinate, and other casein derivatives (hereafter referred to as casein), which are dry milk products. The United States does not produce casein, but does import more than half of the casein produced in the world. Uruguay has not exported casein to the United States in recent years. Declaring Uruguay free of FMD is expected to have a minimal effect on the amount of casein imported into the United States.

According to the SBA, feedlots with sales of less than $1.5 million are considered small. Recent USDA data indicate that 30 percent of feedlots in the United States are considered small. In the worst case scenario, the proposed rule would produce a loss of $30 per year in gross sales for a small feedlot.

The impact of the proposed rule on cattle dealers/haulers and cattle slaughterers/primary processors would be minimal because the reduction in the number of cattle marketed and the number of truck hauls required to move them would be very small in relation to the current numbers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by removing "and Trust Territory of the Pacific Islands." and adding "Trust Territory of the Pacific Islands, and Uruguay." in its place.

§ 94.11 [Amended]

5. In § 94.11, paragraph (a), the first sentence would be amended by removing "and Switzerland," and adding "Switzerland, and Uruguay," in its place.

Done in Washington, DC, this 31st day of July, 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–19182 Filed 8–3–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AGL–8]

Revision of Class E Airspace; Rice Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise Class E airspace to accommodate a Nondirectional Radio Bacon (NDB) for runway 19 approach at Rice Lake Municipal Airport, Rice Lake, WI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before September 11, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–8, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regularly decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AGL–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace to accommodate a Nondirectional Radio Beacon (NDB) for runway 19 approach at Rice Lake Municipal Airport, Rice Lake, WI. Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40102, E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 The Class E Airspace Area Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL WI E5 Rice Lake, WI [Revised]

Rice Lake Municipal Airport, WI
(Lat. 45°28'46" N, long. 91°43'14" W)
Rice Lake NDB
(Lat. 45°28'46" N, long. 91°43'14" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Rice Lake Municipal Airport, excluding that airspace within the Cumberland, WI, and Chetek, WI, Class E airspace area, and within 3.2 miles either side of the Rice Lake NDB 033 radial extending from the 6.6-mile radius to 7 miles northeast of the NDB.

* * * * *

Issued in Des Plaines, Illinois, on July 25, 1995.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 95–19187 Filed 8–3–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AGL–11]

Establishment of Class E Airspace; Shell Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace to accommodate a Very High Frequency Omnidirectional Range (VOR) and Distance Measuring Equipment (DME) for runway 32 approach at Shell Lake Municipal Airport, Shell Lake, WI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before September 11, 1995.

ADDRESSES: Send Comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AGL–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 Eat Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace to accommodate a Very High Frequency Omnidirectional Range (VOR) and Distance Measuring Equipment (DME) for runway 32 approach at Shell Lake Municipal Airport, Shell Lake, WI. Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40102; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 . The Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL WI E5 Shell Lake, WI [New]

Shell Lake Municipal Airport, WI
(Lat. 45°43'53"N, Long. 91°55'14"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Shell Lake Municipal airport and within 2.7 miles either side of the 143-degree bearing from the airport extending from the 6.3-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois, on July 25, 1995.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 95–19186 Filed 8–3–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued July 28, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule; Notice of public conference.

SUMMARY: The Commission has required interstate natural gas pipelines to provide certain information about capacity, including information about released capacity, on Electronic Bulletin Boards. In the final rule in this proceeding, the Commission adopted the recommendation of Working Groups to require downloads of capacity release information through files conforming to standards for Electronic Data Interchange. The Commission is now convening a public conference to consider the current state, and future development, of electronic communication in the natural gas industry.

DATES: Public conference: September 21, 1995; requests to participate: September 1, 1995.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington DC 20426.

Notice of Public Conference

July 28, 1995.

Take notice that a public conference in this proceeding will be held on September 21, 1995, in the Commission Meeting Room, 825 North Capitol Street NE., Washington, DC 20426. The conference is to consider the current state, and future development, of electronic communication in the natural gas industry.

In Order No. 636, the Commission required interstate natural gas pipelines to provide certain information about capacity, including information about released capacity, on Electronic Bulletin Boards (EBBs).[1] The Commission subsequently instituted a process to develop standardized procedures for capacity release information. The standards were developed by Working Groups consisting of representatives from all facets of the natural gas industry and other interested parties such as third-party bulletin board operators and computer and software firms. In Order No. 563, the Commission adopted the recommendation of the Working Groups to require downloads of capacity release information through files conforming to standards for Electronic Data Interchange (EDI).[2]

The Working Group[3] has continued to further refine the capacity release download files. The Working Group also has begun to develop electronic communication standards in other areas. The Working Group's nine highest priority data requirements, in order of priority, are nominations, allocated gas flows, imbalances, gas flow at metered points, transportation invoices, pre-determined allocation methodologies, gas payment remittance statements and gas sales invoices, and uploads of capacity release prearranged deals. Members of the natural gas industry also have formed a Gas Industry Standards Board (GISB), whose purpose is to develop standards for electronic information exchange. The Working Group has transferred ongoing maintenance of the capacity release EDI data sets to GISB.

Members of the Commission intend to participate in the public conference. The Commission is interested in hearing industry views about: the current state of EBB operation and the capacity release downloads, including any third-party services being provided to supplement the pipeline EBBs; whether standards should be developed for EBBs (as opposed to file downloads and uploads); the progress being made in standardizing non-capacity release information, including the time-table for completion of standards; whether

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992), *appeal re-docketed sub nom.*, United Distribution Companies, *et al.* v. FERC, No. 92–1485 (D.C. Cir. Feb. 8, 1995).

[2] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[3] The five initial Working Groups eventually consolidated into one.

additional standardization is necessary to facilitate more robust capacity trading; whether the Working Group priorities are acceptable; and how the Commission should be involved in this process. The Commission also is interested in receiving comment on GISB's current and future role in developing standards and on the structure of the relationship between GISB and the Commission.

Any person who wishes to make a formal presentation to the Commission should submit a request to the Secretary of the Commission no later than September 1, 1995. Each request should include the time anticipated for the presentation and any special equipment requirements. Every effort will be made to accommodate requests to make presentations, but, depending on the number of requests received, the Commission may have to limit participation. To provide a more productive conference, the Commission encourages interested parties to coordinate their efforts and choose one spokesperson to make a statement on behalf of the group. After reviewing the presentation requests, a subsequent notice of the conference presentation schedule will be issued.

If sufficient interest is shown, the Commission will attempt to arrange for broadcast of the conference in the Washington, DC metropolitan area or nationally. Those interested in the local or national television broadcast should call The Capitol Connection at (703) 993–3100 no later than September 7, 1995. Requests from viewers outside of Washington, DC, should be directed to Julia Morelli or Shirley Al-Jarani.

All questions concerning the format of the conference should be directed to: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, Room 4120–B, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2294.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19122 Filed 8–3–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–44–94]

RIN 1545–AS94

Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions in excess of $75. The proposed regulations will affect organizations described in section 170(c) and individuals and entities that make payments to those organizations.

DATES: Written comments must be received by November 2, 1995. Requests to appear and outlines of oral comments to be presented at the public hearing scheduled for November 1, 1995, must be received by October 11, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R(IA–44–94), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R(IA–44–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. The Public Hearing scheduled for November 1, 1995 at 10:00 a.m., will be held in the IRS Auditorium, 7th floor, 1111 Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jefferson K. Fox, 202–622–4930; concerning submissions and the hearing, Christina Vasquez, 202–622–6803. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collections of information are in §§ 1.170A–13(f)(1), (f)(10), (f)(14), and 1.6115–1. This information is required by the IRS to determine the deductibility of certain charitable contributions. The likely respondents are individuals or households, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual recordkeeping burden: 100,000 hours.

Estimated average annual burden per recordkeeper: .10 hour.

Estimated number of recordkeepers: 1,000,000.

Estimated total annual reporting burden: 1,875,000 hours.

Estimated average burden per respondent: 2.5 hours.

Estimated number of respondents: 750,000.

Estimated frequency of responses: On occasion.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that provide guidance under sections 170(a), 170(f)(8), and 6115 of the Internal Revenue Code of 1986.

Sections 170(f)(8) and 6115 were added to the Code by sections 13172 and 13173 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, 107 Stat. 455, 1993–3 C.B. 43. Temporary regulations (TD 8544) and a notice of proposed rulemaking by cross-reference to temporary regulations under section 170(f)(8) were published in the **Federal Register** for May 27, 1994 (52 FR 27458, 27515). The temporary and proposed regulations primarily address contributions made by payroll deduction and a donor's receipt of goods or services with insubstantial value. A public hearing was held on November 10, 1994. On March 22, 1995, the Service released Notice 95–15, which was published in 1995–15 I.R.B., dated April 10, 1995. Notice 95–15 provides transitional relief (for 1994) from the substantiation requirement.

Explanation of Statutory Provisions

Section 170(a) allows a deduction for certain charitable contributions to or for the use of an organization described in section 170(c). Under section 170(f)(8), taxpayers who claim a deduction for a charitable contribution of $250 or more are responsible for obtaining from the donee organization, and maintaining in their records, substantiation of that contribution. See H.R. Conf. Rep. 2264, 103d Cong., 1st Sess. 565 (1993). Specifically, section 170(f)(8) provides that no charitable contribution deduction will be allowed under section 170(a) for a contribution of $250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee organization.

Section 170(f)(8)(B) provides that an acknowledgment meets the requirements of that section if it includes the following information: (1) the amount of cash paid and a description (but not necessarily the value) of any property other than cash transferred to a donee organization; (2) whether or not the donee organization provided any goods or services in consideration for the cash or property; and (3) a description and good faith estimate of the value of any goods or services provided by the donee organization in consideration for the cash or property. A written acknowledgment is contemporaneous, within the meaning of section 170(f)(8)(C), if it is obtained on or before the earlier of: (1) the date the taxpayer files its original return for the taxable year in which the contribution was made, or (2) the due date (including extensions) for filing the taxpayer's original return for that year.

Section 170(f)(8) does not prescribe a format for the written acknowledgment. Any document that contains the required information, including but not limited to a letter, postcard, computer-generated form, or tax form, is an acceptable means of providing a taxpayer with a written acknowledgment. For example, a private foundation may use a copy of its Form 990–PF, Return of Private Foundation, as a written acknowledgment for a taxpayer's charitable contribution of $250 or more if it contains the necessary information. Any documents that are used as a written acknowledgment of a taxpayer's charitable contribution must be contemporaneous within the meaning of section 170(f)(8)(C).

Section 6115 generally requires an organization described in section 170(c) that receives a "quid pro quo contribution" in excess of $75 to provide a written disclosure statement to the donor. The written disclosure statement must contain the following information: (1) a statement that the deductibility of the donor's contribution is limited to the excess of the amount of any money or the value of any property contributed by the donor over the value of the goods or services provided to the donor by the organization, and (2) a good faith estimate of the value of the goods or services provided by the organization. Section 6115(b) defines a quid pro quo contribution as a payment made partly as a contribution and partly in consideration for goods or services provided by the organization.

Explanation of Regulatory Provisions

Deductibility of a Payment in Exchange for Consideration

In *United States* v. *American Bar Endowment*, 477 U.S. 105 (1986), the Supreme Court set forth a two-part test for determining whether a payment that is partly in consideration for goods or services is deductible under section 170(a). First, a payment to an organization described in section 170(c) is deductible only if, and to the extent that, the payment exceeds the fair market value of the benefits received. Second, the excess payment must be made with the intent to make a charitable contribution. See also Rev. Rul. 67–246, 1967–2 C.B. 104.

The proposed regulations adopt this two-part test for determining whether a payment is deductible under section 170(a). Specifically, the regulations provide that, in order for a charitable contribution deduction to be allowed, a taxpayer must intend to make a payment in an amount that exceeds the fair market value of the goods or services received in return, and must actually make a payment in an amount that exceeds that fair market value.

Certain Goods or Services Disregarded

Under current law, a taxpayer who receives membership benefits in return for a payment to an organization described in section 170(c) may not claim a charitable contribution deduction for more than the amount by which the payment exceeds the fair market value of the membership benefits. *United States* v. *American Bar Endowment*, 477 U.S. 105 (1986). *See also* Rev. Rul. 68–432, 1968–2 C.B. 104; Rev. Rul. 67–246, 1967–2 C.B. 104. Accordingly, taxpayers and donee organizations must determine the fair market value of any membership benefits the donee organization provides to its donors.

It is often difficult to value membership benefits, especially rights or privileges that are not limited as to use, such as free or discounted admission or parking, and gift shop discounts. In the course of preparing these proposed regulations, the IRS and the Treasury Department have considered the extent of the difficulty of valuation and have concluded that it is appropriate to provide limited relief with respect to certain types of customary membership benefits while preserving the IRS's ability to administer the law fairly and consistently. Accordingly, the proposed regulations provide that both the donee organization and the donor may disregard certain membership benefits when they are provided in return for a payment to the organization.

Section 1.170A–13T(a) already allows donors and donee organizations to disregard goods or services that are treated as having insubstantial value under existing IRS guidelines. See Rev. Proc. 90–12, 1990–1 C.B. 471, and Rev. Proc. 92–49, 1992–1 C.B. 987. The guidelines cover low cost articles (items costing $6.60 or less for 1995), newsletters that are not commercial quality publications, and benefits worth 2% or less of a payment, up to a maximum of $66 for 1995. The substance of this section has been incorporated into section 1.170A–13(f)(8)(i).

Under the proposed regulations, other benefits may be disregarded only if they are given as part of an annual membership offered in return for a payment of $75 or less and fall into one of two categories. The first category is admission to events that are open only to members and for which the donee organization reasonably projects that the cost per person (excluding allocable overhead) for each event will be less than or equal to the standard for low cost articles under section 513(h)(2)(C) ($6.60 for 1995). An example is a modest reception where light refreshments are served to members of a donee organization before an event. The second category is rights or privileges that members can exercise frequently during the membership period. An example is free admission to a museum.

The items described in the previous two paragraphs may be disregarded for purposes of determining whether the taxpayer has made a charitable contribution, the amount of any charitable contribution that has been made, and whether any goods or services have been provided that must be substantiated under section 170(f)(8) or disclosed under section 6115. Thus, the effect of these provisions is broader than that of the temporary regulations, which provided less comprehensive relief and then only for items of insubstantial value.

Goods or Services Provided to Donor's Employees

The proposed regulations also contain relief where donee organizations provide goods or services to the employees of their donors. Goods or services that may be disregarded for the purposes specified above when provided directly to a donor may also be disregarded for the same purposes when provided to a donor's employees.

Any other goods or services provided to the donor's employees must be taken into account for purposes of calculating any charitable contribution the donor claims as a deduction. If a contemporaneous written acknowledgment of the donor's contribution is required under section 170(f)(8), it must include a description of these goods or services. However, the proposed regulations provide that the contemporaneous written acknowledgment may omit the otherwise required good faith estimate of the value of these goods or services; similarly, the proposed regulations provide that a written disclosure statement required by section 6115 for a payment made in exchange for these goods or services may include a description of them in lieu of the otherwise required good faith estimate of their value.

Good Faith Estimate

For purposes of sections 170 and 6115, the proposed regulations define a good faith estimate of the value of goods or services provided by an organization described in section 170(c) as an estimate of the fair market value of those goods or services. The fair market value of goods or services may differ from their cost to the donee organization. The organization may use any reasonable methodology that it applies in good faith in making the good faith estimate. However, a taxpayer is not required to determine how the donee organization made the estimate.

The proposed regulations further provide that a donee organization may make a good faith estimate of the value of goods or services that are not available in a commercial transaction by reference to the fair market value of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

Reliance on Donee Estimates

The proposed regulations provide that a taxpayer generally may treat an estimate of the value of goods or services as the fair market value for purposes of section 170(a) if the estimate is in a contemporaneous written acknowledgment (as required by section 170(f)(8)) or a written disclosure statement (as required by section 6115). Thus, a taxpayer that makes a payment to an organization described in section 170(c) and receives an item in return generally may rely on the organization's estimate of the value of the item in calculating its charitable contribution deduction if the estimate is included in a contemporaneous written acknowledgment or a written disclosure statement.

However, a taxpayer may not treat an estimate as the fair market value of the goods or services if the taxpayer knows, or has reason to know, that such treatment is unreasonable. For example, if the taxpayer is a dealer in the type of goods or services it receives from an organization described in section 170(c), or if the goods or services are readily valued, it is unreasonable for the taxpayer to treat the donee organization's estimate as the fair market value of the goods or services if that estimate is in error and the taxpayer knows, or has reason to know, the fair market value of the goods or services.

An estimate of the value of goods or services in a contemporaneous written acknowledgment or written disclosure statement is not in error if the estimate is within the typical range of retail prices for the goods or services. For example, if an organization provides a book in exchange for a $100 payment, and the book is sold at retail prices ranging from $18 to $25, the taxpayer may rely on any estimate of the organization that is within the $18 to $25 range.

Substantiation of Contributions to a Split Interest Trust

Section 170(f)(8)(E) provides the Secretary with authority to issue regulations that relieve taxpayers, in appropriate cases, from some or all of the requirements of section 170(f)(8).

The grantor of a charitable lead trust, a charitable remainder annuity trust, or a charitable remainder unitrust is not required to designate a specific organization as the charitable beneficiary at the time the grantor transfers property to the trust. As a result, there is often no designated donee organization available to provide a contemporaneous written acknowledgment to a taxpayer. In addition, even if a specific beneficiary is designated, the designation is often revocable. In contrast, a pooled income fund is created and maintained by one charitable organization to which the remainder interest is contributed.

The IRS and the Treasury Department believe that for these reasons it is appropriate to exempt from the requirements of section 170(f)(8) transfers of property to charitable lead trusts, charitable remainder annuity trusts, or charitable remainder unitrusts while not exempting transfers to pooled income funds.

Substantiation of Out-of-Pocket Expenses

Section 1.170A–1(g) provides that an unreimbursed expenditure made incident to the rendition of services to a donee organization may be a deductible charitable contribution. Some taxpayers may make individual unreimbursed expenditures of $250 or more (such as for a plane ticket) that will require substantiation under section 170(f)(8). The IRS and the Treasury Department recognize that a donee organization typically has no knowledge of the amount of out-of-pocket expenditures incurred by a taxpayer, and therefore, would have difficulty providing taxpayers with substantiation of unreimbursed expenditures.

To address this concern, the proposed regulations provide that where a taxpayer has individual unreimbursed expenditures made incident to the rendition of services and of an amount requiring substantiation, the expenditures may be substantiated by the donor's normal records (see § 1.170A–13(a)) and an abbreviated written acknowledgment provided by the donee organization. This written acknowledgment from the donee organization must contain a description of the services provided by the donor, the date the services were provided, whether or not the donee organization provided any goods or services in return and, if the donee organization provided any goods or services, a description and good faith estimate of the fair market value of those goods or services. This written acknowledgment must be obtained by the taxpayer on or before the earlier of the date the taxpayer files its original return for the taxable year in which the contribution was made, or the due date (including extensions) for filing the taxpayer's original return for that year.

Contributions Made by a Partnership or an S Corporation

The proposed regulations provide that if a partnership or an S corporation makes a charitable contribution of $250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of section 170(f)(8). Therefore, the partnership or S corporation is required to obtain a contemporaneous written acknowledgment for each charitable contribution of $250 or more that it reports on its income tax return (regardless of whether any partner's or shareholder's distributive share of the contribution is less than $250). Because the partnership or S corporation must satisfy the requirements of section 170(f)(8) in order to list charitable contributions of $250 or more on the schedules provided to its partners or shareholders, the partners and shareholders are not required to obtain any additional contemporaneous written acknowledgments before taking a deduction for their allocable shares of the partnership's or S corporation's charitable contribution.

Contributions Made by Payroll Deduction

These proposed regulations reserve two paragraphs so that the balance of the temporary and proposed regulations published in the **Federal Register** for May 27, 1994, may be incorporated into § 1.170A–13(f) upon finalization.

Proposed Effective Date

These regulations are proposed to be effective on the date they are published in the **Federal Register** as final regulations. Taxpayers may, however, rely on the proposed regulations for contributions made on or after January 1, 1994.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 1, 1995, at 10:00 a.m. in the IRS Auditorium, 7th floor, 1111 Constitution Avenue, N.W., Washington, D.C. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing is scheduled to begin.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by November 2, 1995 and submit an outline (a signed original and eight copies) of the topics to be discussed and the time to be devoted to each topic by October 11, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Rosemary DeLeone, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new entry for section 1.170A–1 and revising the entry for section 1.170A–13 to read as follows:

Authority: 26 U.S.C. 7805. Section 1.170A–1 also issued under 26 U.S.C. 170(a). Section 1.170A–13 also issued under 26 U.S.C. 170(f)(8). * * *

Par. 2. Section 1.170A–1 is amended as follows:

1. Paragraph (h) is redesignated as paragraph (j).
2. Paragraph (i) is redesignated as paragraph (k) and is revised.
3. Paragraph (h) is added.
4. Paragraph (i) is added and reserved.

The additions and revisions read as follows:

§ 1.170A–1 Charitable, etc., contributions and gifts; allowance of deduction.

* * * * *

(h) *Payment in exchange for consideration*—(1) *Burden on taxpayer to show that all or part of payment is a charitable contribution or gift.* No part of a payment that a taxpayer makes to or for the use of an organization described in section 170(c) that is in consideration for goods or services (as defined in § 1.170A–13(f)(5)) is a contribution or gift within the meaning of section 170(c) unless the taxpayer—

(i) Intends to make a payment in an amount that exceeds the fair market value of the goods or services; and

(ii) Makes a payment in an amount that exceeds the fair market value of the goods or services.

(2) *Limitation on amount deductible*—(i) *In general.* The charitable contribution deduction under section 170(a) for a payment a taxpayer makes partly in consideration for goods or services may not exceed the excess of—

(A) The amount of any cash paid and the fair market value of any property (other than cash) transferred by the taxpayer to an organization described in section 170(c); over

(B) The fair market value of the goods or services the organization provides in return.

(ii) *Special rules.* For special limits on the deduction for charitable contributions of ordinary income and capital gain property, see section 170(e) and §§ 1.170A–4 and 1.170A–4A.

(3) *Certain goods or services disregarded.* For purposes of section 170(a) and paragraphs (h)(1) and (h)(2) of this section, goods or services described in § 1.170A–13(f)(8)(i) or § 1.170A- 13(f)(9)(i) are disregarded.

(4) *Donee estimates of the value of goods or services may be treated as fair market value*—(i) *In general.* For purposes of section 170(a), a taxpayer may rely on either a contemporaneous written acknowledgment provided under section 170(f)(8) and § 1.170A–13(f) or a written disclosure statement provided under section 6115 for the fair market value of any goods or services provided to the taxpayer by the donee organization.

(ii) *Exception.* A taxpayer may not treat an estimate of the value of goods or services as their fair market value if the taxpayer knows, or has reason to know, that such treatment is unreasonable. For example, if the taxpayer knows, or has reason to know, that there is an error in an estimate provided by an organization described in section 170(c) pertaining to goods or services that have a readily ascertainable value, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services. Similarly, if the taxpayer is a

dealer in the type of goods or services provided in consideration for its payment and knows, or has reason to know, that the estimate is in error, it is unreasonable for the taxpayer to treat the estimate as the fair market value of the goods or services.

(5) *Examples.* The following examples illustrate the rules of this paragraph (h).

Example 1. Certain goods or services disregarded. Taxpayer makes a $50 payment to Charity *B*, an organization described in section 170(c), in exchange for a family membership. The family membership entitles Taxpayer and members of Taxpayer's family to certain benefits. These benefits include free admission to weekly poetry readings, discounts on merchandise sold by *B* in its gift shop or by mail order, and invitations to special events for members only, such as lectures or informal receptions. When *B* first offers its membership package for the year, *B* reasonably projects that each special event for members will have a cost to *B*, excluding any allocable overhead, of $5 or less per person. Because the family membership benefits are disregarded pursuant to § 1.170A–13(f)(8)(i), Taxpayer may treat the $50 payment as a contribution or gift within the meaning of section 170(c), regardless of Taxpayer's intent and whether or not the payment exceeds the fair market value of the goods or services. Furthermore, any charitable contribution deduction available to Taxpayer may be calculated without regard to the membership benefits.

Example 2. Treatment of good faith estimate at auction as the fair market value. Taxpayer attends an auction held by Charity *C*, an organization described in section 170(c). Prior to the auction, *C* publishes a catalog that meets the requirements for a written disclosure statement under section 6115(a) (including *C*'s good faith estimate of the value of items that will be available for bidding). A representative of *C* gives a copy of the catalog to each individual (including Taxpayer) who attends the auction. Taxpayer notes that in the catalog *C*'s estimate of the value of a vase is $100. Taxpayer has no reason to doubt the accuracy of this estimate. Taxpayer successfully bids and pays $500 for the vase. Because Taxpayer knew, prior to making her payment, that the estimate in the catalog was less than the amount of her payment, Taxpayer satisfies the requirement of paragraph (h)(1)(i) of this section. Because Taxpayer makes a payment in an amount that exceeds that estimate, Taxpayer satisfies the requirements of paragraph (h)(1)(ii) of this section. Taxpayer may treat *C*'s estimate of the value of the vase as its fair market value in determining the amount of her charitable contribution deduction.

Example 3. Good faith estimate not in error. Taxpayer makes a $200 payment to Charity *D*, an organization described in section 170(c). In return for Taxpayer's payment, *D* gives Taxpayer a book that Taxpayer could buy at retail prices typically ranging from $18 to $25. *D* provides Taxpayer with a good faith estimate, in a written disclosure statement under section 6115(a), of $20 for the value of the book. Because the estimate is within the range of typical retail prices for the book, the estimate contained in the written disclosure statement is not in error. Although Taxpayer knows that the book is sold for as much as $25, Taxpayer may treat the estimate of $20 as the fair market value of the book in determining the amount of his charitable contribution deduction.

(i) [Reserved]

* * * * *

(k) *Effective date.* In general this section applies to contributions made in taxable years beginning after December 31, 1969. Paragraph (j)(11) of this section, however, applies only to out-of-pocket expenditures made in taxable years beginning after December 31, 1976. In addition, paragraph (h) of this section applies only to payments made on or after the date these regulations are published in the **Federal Register** as final regulations. However, taxpayers may rely on the rules of paragraph (h) of this section for payments made on or after January 1, 1994.

Par. 3. Section 1.170A–13 is amended as follows:

1. Paragraph (e) is added and reserved.

2. Paragraph (f) is added.

The additions read as follows:

§ 1.170A–13 Recordkeeping and return requirements for deductions for charitable contributions.

* * * * *

(e) [Reserved]

(f) *Substantiation of charitable contributions of $250 or more*—(1) *In general.* No deduction is allowed under section 170(a) for all or part of any contribution of $250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from a donee organization. Section 170(f)(8) does not apply to a payment of $250 or more if the amount contributed (as determined under § 1.170A–1(h)) is less than $250.

(2) *Written acknowledgment.* Except as otherwise provided in paragraphs (f)(8) and (f)(9) of this section, a written acknowledgment from a donee organization must provide the following information—

(i) The amount of any cash the taxpayer paid and a description (but not necessarily the value) of any property other than cash the taxpayer transferred to the donee organization;

(ii) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for any of the cash or other property transferred to the donee organization;

(iii) If the donee organization provides any goods or services other than intangible religious benefits (as described in section 170(f)(8)), a description and good faith estimate of the value of those goods or services; and

(iv) If the donee organization provides any intangible religious benefits, a statement to that effect.

(3) *Contemporaneous.* A written acknowledgment is contemporaneous if it is obtained by the taxpayer on or before the earlier of—

(i) The date the taxpayer files its original return for the taxable year in which the contribution was made; or

(ii) The due date (including extensions) for filing the taxpayer's original return for that year.

(4) *Donee organization.* For purposes of this paragraph (f), a donee organization is an organization described in section 170(c).

(5) *Goods or services.* Goods or services means cash, property, services, benefits, and privileges.

(6) *In consideration for.* A donee organization provides goods or services in consideration for a taxpayer's payment if, at the time the taxpayer makes the payment to the donee organization, the taxpayer receives or expects to receive goods or services in exchange for that payment. Goods or services a donee organization provides in consideration for a payment by a taxpayer include goods or services provided in a year other than the year in which the taxpayer makes the payment to the donee organization.

(7) *Good faith estimate.* For purposes of this section, good faith estimate means the donee organization's estimate of the fair market value of any goods or services, without regard to the manner in which the organization in fact made that estimate. See § 1.170A–1(h)(4) for rules regarding when a taxpayer may treat a donee organization's estimate of the value of goods or services as the fair market value.

(8) *Certain goods or services disregarded*—(i) *In general.* For purposes of section 170(f)(8), the following goods or services are disregarded—

(A) Goods or services that have insubstantial value under the guidelines provided in Revenue Procedures 90–12, 1990–1 C.B. 471, 92–49, 1992–1 C.B. 987, and any successor documents. (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.); and

(B) Annual membership benefits offered to a taxpayer for a payment of $75 or less per year that consist of—

(*1*) Any rights or privileges, other than those described in section 170(l), that the taxpayer can exercise frequently during the membership period. Examples of such rights and privileges include, but are not limited to, free or discounted admission to the organization's facilities or events, free or discounted parking, preferred access to goods or services, and discounts on the purchase of goods or services; and

(*2*) Admission to events during the membership period that are open only to members of the donee organization and for which the donee organization reasonably projects that the cost per person (excluding any allocable overhead) for each such event is within the limits established for "low cost articles" under section 513(h)(2). The projected cost to the donee organization is determined at the time the organization first offers its membership package for the year (using section 3.07 of Revenue Procedure 90–12, or any successor documents, to determine the cost if items or services are donated).

(ii) *Examples.* The following examples illustrate the rules of this paragraph (f)(8).

Example 1. Membership benefits disregarded. Performing Arts Center *E* is an organization described in section 170(c). In return for a payment of $75, *E* offers a package of basic membership benefits that includes the right to purchase tickets to performances one week before they go on sale to the general public, free parking in *E*'s garage during evening and weekend performances, and a 10% discount on merchandise sold in *E*'s gift shop. In return for a payment of $150, *E* offers a package of preferred membership benefits that includes all of the benefits in the $75 package as well as a poster that is sold in *E*'s gift shop for $20. The basic membership and the preferred membership are each valid for twelve months, and there are approximately 50 performances of various productions at *E* during a twelve month period. *E*'s gift shop is open for several hours each week and at performance times. *F*, a patron of the arts, is solicited by *E* to make a contribution. *E* offers *F* the preferred membership benefits in return for a payment of $150 or more. *F* makes a payment of $300 to *E*. *F* can satisfy the substantiation requirement of section 170(f)(8) by obtaining a contemporaneous written acknowledgment from *E* that includes a description of the poster and a good faith estimate of its fair market value ($20) and disregards the remaining membership benefits.

Example 2. Rights or privileges that cannot be exercised frequently. Community Theater Group *G* is an organization described in section 170(c). Every summer, *G* performs four different plays. Each play is performed two times. In return for a membership fee of $60, *G* offers its members free admission to any of its performances. Non-members may purchase tickets on a performance by performance basis for $15 a ticket. *H*, an individual who is a sponsor of the theater, is solicited by *G* to make a contribution. *G* tells *H* that the membership benefit will be provided in return for any payment of $60 or more. *H* chooses to make a payment of $350 to *G* and receives in return the membership benefit. *G*'s membership benefit of free admission is not described in paragraph (f)(8)(i)(B) of this section because it is not a privilege that can be exercised frequently (due to the limited number of performances offered by *G*). Therefore, to meet the requirements of section 170(f)(8), a contemporaneous written acknowledgment of *H*'s $350 payment must include a description of the free admission benefit and a good faith estimate of its value.

(9) *Goods or services provided to employees of donors*—(i) *Certain goods or services disregarded.* For purposes of section 170(f)(8), goods or services provided by a donee organization to a taxpayer's employees in return for a payment to the organization may be disregarded to the extent that the goods or services provided to each employee are the same as those described in paragraph (f)(8)(i) of this section.

(ii) *No good faith estimate required for other goods or services.* If a taxpayer makes a contribution of $250 or more to a donee organization and, in return, the donee organization offers the taxpayer's employees goods or services other than those described in paragraph (f)(9)(i) of this section, the contemporaneous written acknowledgment of the taxpayer's contribution is not required to include a good faith estimate of the value of such goods or services but must include a description of those goods or services.

(iii) *Example.* The following example illustrates the rules of this paragraph (f)(9).

Example. Museum *J* is an organization described in section 170(c). For a payment of $40, *J* offers a package of basic membership benefits that includes free admission and a 10% discount on merchandise sold in *J*'s gift shop. *J*'s other membership categories are for supporters who contribute $100 or more. Corporation *K* makes a payment of $50,000 to *J* and in return, *J* offers *K*'s employees free admission, a tee-shirt with *J*'s logo that costs *J* $4.50, and a gift shop discount of 25%. The free admission for *K*'s employees is the same as the benefit made available to holders of the $40 membership and is otherwise described in paragraph (f)(8)(i)(B) of this section. The tee-shirt given to each of *K*'s employees is described in paragraph (f)(8)(i)(A) of this section. Therefore, a contemporaneous written acknowledgment of *K*'s payment is not required to include a description or good faith estimate of the value of the free admission or the tee-shirts. However, because the gift shop discount offered to *K*'s employees is different than that offered to those who purchase the $40 membership, the discount is not described in paragraph (f)(8)(i) of this section. Therefore, the contemporaneous written acknowledgment of *K*'s payment is required to include a description of the 25% discount offered to *K*'s employees.

(10) *Substantiation of out-of-pocket expenses.* A taxpayer that incurs unreimbursed expenditures incident to the rendition of services, within the meaning of § 1.170A–1(g), is treated as having obtained a contemporaneous written acknowledgment of those expenditures if the taxpayer—

(i) Has adequate records under paragraph (a) of this section to substantiate the amount of the expenditures; and

(ii) Obtains by the date prescribed in paragraph (f)(3) of this section a statement prepared by the donee organization containing—

(A) A description of the services provided by the taxpayer;

(B) The date the services were provided;

(C) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for the unreimbursed expenditures; and

(D) The information required by paragraphs (f)(2)(iii) and (iv) of this section.

(11) *Contributions made by payroll deduction.* [Reserved]

(12) *Distributing organizations as donees.* [Reserved]

(13) *Transfers to certain trusts.* Section 170(f)(8) does not apply to a transfer of property to a trust described in section 170(f)(2)(B), a charitable remainder annuity trust (as defined in section 664(d)(1)), or a charitable remainder unitrust (as defined in section 664(d)(2)). Section 170(f)(8) does apply, however, to a transfer to a pooled income fund (as defined in section 642(c)(5)).

(14) *Substantiation of charitable contributions made by a partnership or an S corporation.* If a partnership or an S corporation makes a charitable contribution of $250 or more, the partnership or S corporation will be treated as the taxpayer for purposes of section 170(f)(8). Therefore, the partnership or S corporation must substantiate the contribution with a contemporaneous written acknowledgment from the donee organization before reporting the contribution on its income tax return for the year in which the contribution was made and must maintain the contemporaneous written acknowledgment in its records. A partner of a partnership or a shareholder of an S corporation is not required to obtain any additional substantiation for his or her share of the partnership's or S corporation's charitable contribution.

(15) *Substantiation of matched payments*—(i) *In general.* For purposes of section 170, if a taxpayer's payment to a donee organization is matched, in whole or in part, by another payor, and

the taxpayer receives goods or services in consideration for its payment and some or all of the matching payment, those goods or services will be treated as provided in consideration for the taxpayer's payment and not in consideration for the matching payment.

(ii) *Example.* The following example illustrates the rules of this paragraph (f)(15).

Example. Taxpayer makes a $400 payment to Charity *L*, a donee organization. Pursuant to a matching payment plan, Taxpayer's employer matches Taxpayer's $400 payment with an additional payment of $400. In consideration for the combined payments of $800, *L* gives Taxpayer an item that it estimates has a fair market value of $100. *L* does not give the employer any goods or services in consideration for its contribution. The contemporaneous written acknowledgment provided to the employer must include a statement that no goods or services were provided in consideration for the employer's $400 payment. The contemporaneous written acknowledgment provided to Taxpayer must include the amount of Taxpayer's payment, a description of the item received by Taxpayer, and a statement that *L*'s good faith estimate of the value of the item received by Taxpayer is $100.

(16) *Effective date.* This paragraph (f) applies to contributions made on or after the date that these regulations are published in the **Federal Register** as final regulations. However, taxpayers may rely on the rules of this paragraph (f) for contributions made on or after January 1, 1994.

Par. 4. Section 1.6115–1 is added under the undesignated centerheading "Miscellaneous Provisions" to read as follows:

§ 1.6115–1 Disclosure requirements for quid pro quo contributions.

(a) *Good faith estimate defined*—(1) *In general.* A good faith estimate of the value of goods or services provided by an organization described in section 170(c) in consideration for a taxpayer's payment to that organization is an estimate of the fair market value, within the meaning of § 1.170A–1(c)(2), of the goods or services. The organization may use any reasonable methodology in making a good faith estimate, provided it applies the methodology in good faith. If the organization fails to apply the methodology in good faith, the organization will be treated as not having met the requirements of section 6115. See section 6714 for the penalties that apply for failure to meet the requirements of section 6115.

(2) *Good faith estimate for goods or services that are not commercially available.* A good faith estimate of the value of goods or services that are not generally available in a commercial transaction may be determined by reference to the fair market value of similar or comparable goods or services. Goods or services may be similar or comparable even though they do not have the unique qualities of the goods or services that are being valued.

(3) *Examples.* The following examples illustrate the rules of this paragraph (a).

Example 1. Facility not available on a commercial basis. Museum *M*, an organization described in section 170(c), is located in Community *N*. In return for a payment of $50,000 or more, *M* allows a donor to hold a private event in a room located in *M*. No other private events are permitted to be held in *M*. In Community *N*, there are four hotels, *O*, *P*, *Q*, and *R*, that have ballrooms with the same capacity as the room in *M*. Of these hotels, only *O* and *P* have ballrooms that offer amenities and atmosphere that are similar to the amenities and atmosphere of the room in *M* (although *O* and *P* lack the unique collection of art that is displayed in the room of *M*). Because the capacity, amenities, and atmosphere of ballrooms in *O* and *P* are comparable to the capacity, amenities, and atmosphere of the room in *M*, a good faith estimate of the benefits received from *M* may be determined by reference to the cost of renting either the ballroom in *O* or the ballroom in *P*. The cost of renting the ballroom in *O* is $2500 and, therefore, a good faith estimate of the fair market value of the right to host a private event in the room at *M* is $2500. In this example, the ballrooms in *O* and *P* are considered similar and comparable facilities to the room in *M* for valuation purposes, notwithstanding the fact that the room in *M* displays a unique collection of art.

Example 2. Services available on a commercial basis. Charity *S* is an organization described in section 170(c). *S* offers to provide a one-hour tennis lesson with Tennis Professional *T* in return for the first payment of $500 or more that it receives. *T* provides one-hour tennis lessons on a commercial basis for $100. Taxpayer pays $500 to *S* and in return receives the tennis lesson with *T*. A good faith estimate of the fair market value of the lesson provided in exchange for Taxpayer's payment is $100.

Example 3. Celebrity presence. Charity *U* is an organization described in section 170(c). In return for the first payment of $1000 or more that it receives, *U* will provide a dinner for two followed by an evening tour of Museum *V* conducted by Artist *W*, whose most recent works are on display at *V*. *W* does not provide tours of *V* on a commercial basis. Typically, tours of *V* are free to the public. Taxpayer pays $1000 to *U* and in return receives a dinner valued at $100 and an evening tour of *V* conducted by *W*. Because tours of *V* are typically free to the public, a good faith estimate of the value of the evening tour conducted by *W* is $0. In this example, the fact that Taxpayer's tour of *V* is conducted by *W* rather than *V*'s regular tour guides does not render the tours dissimilar or incomparable for valuation purposes.

(b) *Certain goods or services disregarded.* For purposes of section 6115, an organization described in section 170(c) may disregard goods or services described in § 1.170A–13(f)(8)(i).

(c) *Goods or services provided to employees of donors*—

(1) *Certain goods or services disregarded.* For purposes of section 6115, goods or services provided by an organization described in section 170(c) to a taxpayer's employees in return for a payment to the organization may be disregarded to the extent that the goods or services provided to each employee are the same as those described in § 1.170A–13(f)(8)(i).

(2) *Description permitted in lieu of good faith estimate for other goods or services.* If a taxpayer makes a quid pro quo contribution in excess of $75 to an organization described in section 170(c) and, in return, the organization offers the taxpayer's employees goods or services other than those described in paragraph (c)(1) of this section, the organization's written disclosure statement required by section 6115 may include a description of the goods or services in lieu of a good faith estimate of the value of the goods or services, provided that the statement otherwise satisfies the requirements of section 6115.

(d) *Effective date.* This section applies to contributions made on or after the date that these regulations are published in the **Federal Register** as final regulations. However, taxpayers may rely on the rules of this section for contributions made on or after January 1, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–19063 Filed 8–3–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[IL–65–93]

RIN 1545–AS46

Exceptions to Passive Income Characterization for Certain Foreign Banks and Securities Dealers; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date for public hearing on proposed regulations.

SUMMARY: This document changes the date of the public hearing on proposed regulations concerning the application of the exceptions to passive income contained in section 1296(b) for foreign banks, securities dealers and brokers.

DATES: The public hearing is changed to Monday, September 11, 1995, beginning at 10:00 a.m.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Submit requests to speak and outlines of oral comments to the CC:DOM:CORP:T:R [IL–65–93], room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Friday, April 28, 1995 (60 FR 20922), announced that the Service would hold a public hearing on proposed regulations concerning the application of the exceptions to passive income contained in section 1296(b) for foreign banks, securities dealers and brokers on Thursday, August 31, 1995, beginning at 10:00 a.m. in the IRS Auditorium.

The date of the public hearing has changed. The hearing is scheduled for Monday, September 11, 1995, beginning at 10:00 a.m. The requests to speak and outlines of oral comments must be received by Thursday, August 10, 1995. Because of controlled access restrictions, attenders are not admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

The Service will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–19297 Filed 8–3–95; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Part 301

[PS–54–94]

RIN 1545–AT02

Environmental Settlement Funds—Classification

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the classification of certain organizations as trusts for federal tax purposes. The proposed regulations would provide guidance to taxpayers on the proper classification of trusts formed to collect and disburse amounts for environmental remediation of an existing waste site to discharge taxpayers' liability or potential liability under applicable environmental laws.

DATES: Written comments must be received by October 5, 1995. Requests to speak (with outlines of oral comments) at a public hearing scheduled for October 26, 1995, at 10 a.m. must be submitted by October 5, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–54–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS–54–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing has been scheduled to be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James A. Quinn, (202) 622–3060; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is required by § 301.7701–4(e)(2). This information is required by the IRS to ensure the proper reporting of items of income and expense of an environmental remediation trust in which a portion of the trust is treated as owned by a grantor. This information will be used to ensure compliance with the proposed regulation. The likely respondents are businesses and other for-profit institutions, including small businesses.

Estimated total annual reporting burden: 2,000 hours.

The estimated annual burden per respondent: 4 hours.

Estimated number of respondents: 500.

Estimated annual frequency of responses: 1.

Introduction

This document proposes to add § 301.7701–4(e) to the Procedure and Administration Regulations (26 CFR Part 301) relating to the classification of certain environmental remediation trusts as trusts for federal tax purposes.

Background

Unincorporated organizations may be classified as associations (which are taxable as corporations), partnerships, or trusts for federal tax purposes. The criteria for determining when an organization will be classified as a trust are set forth in § 301.7701–4. The proposed amendment to § 301.7701–4 provides that an environmental remediation trust will be classified as a trust for federal tax purposes.

A trust is an environmental remediation trust if (1) the primary purpose of the trust is collecting and disbursing amounts for environmental remediation of an existing waste site to resolve, satisfy, mitigate, address, or prevent the liability or potential liability of persons imposed by federal, state, or local environmental laws; (2) all contributors to the trust have potential liability or a reasonable expectation of liability under federal, state, or local environmental laws for environmental remediation of the waste site; and (3) the trust is not a qualified settlement fund within the meaning of § 1.468B–1(a). Environmental remediation trusts include trusts formed pursuant to an order of a governmental authority, as well as trusts formed by taxpayers to avoid future liability or potential liability under federal, state, or local environmental laws. An environmental remediation trust is classified as a trust, even though it may differ from the traditional trust in which trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts, because the purpose of an environmental remediation trust is to pay the costs of environmental remediation of an existing waste site as a result of liability or potential liability under federal, state, or local environmental laws, not to carry on a for-profit business.

The proposed regulations provide that each contributor to the trust will be treated as the owner of the portion of the trust contributed by that person, and, therefore, the trust is treated as a grantor trust under subpart E of subchapter J. The proposed regulations also require the trustee to provide information to the participants that will enable them to properly report their share of income, deductions, and credits, including information to properly determine whether a payment satisfies the economic performance rules of section 461(h).

The proposed regulations provide certain rules relating to participants (cash-out grantors) that contribute a fixed amount to the trust and are relieved from making further contributions to the trust, even though the participant still is liable or potentially liable under applicable environmental laws. Under the proposed regulations, all amounts contributed to an environmental remediation trust by a cash-out grantor are considered amounts contributed for remediation. In addition, the trust agreement may direct the trustee to expend amounts contributed by a cash-out grantor (and the earnings thereon) before expending amounts contributed by other grantors (and the earnings thereon). The proposed regulations also provide that a cash-out grantor will cease to be treated as an owner of a portion of the trust when the grantor's portion is treated as fully expended.

Effective Date

The regulations are proposed to apply to trusts that meet the requirements of paragraph (e)(1) of the regulations that are formed on or after the date of publication of these proposed regulations as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 26, 1995, at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by October 5, 1995, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 5, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information. The principal author of these regulations is James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7701–4(e) is added to read as follows:

§ 301.7701–4 Trusts.

* * * * *

(e) *Environmental remediation trusts.* (1) An environmental remediation trust is considered a trust for purposes of the Internal Revenue Code. For purposes of this paragraph (e), an organization is an environmental remediation trust if the organization is organized under state law as a trust; the primary purpose of the trust is collecting and disbursing amounts for environmental remediation of an existing waste site to resolve, satisfy, mitigate, address, or prevent the liability or potential liability of persons imposed by federal, state, or local environmental laws; all contributors to the trust have potential liability or a reasonable expectation of liability under federal, state, or local environmental laws for environmental remediation of the waste site; and the trust is not a qualified settlement fund within the meaning of § 1.468B–1(a) of this chapter. An environmental remediation trust is classified as a trust because its primary purpose is environmental remediation of a waste site and not the carrying on of a profit-making business which normally would be conducted through business organizations classified as corporations or partnerships. However, if the remedial purpose is altered or becomes so obscured by business or investment activities that the declared remedial purpose is no longer controlling, the organization will no longer be classified as a trust. For purposes of this paragraph (e), environmental remediation includes the costs of assessing environmental conditions, remediating environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, and collecting amounts from persons liable or potentially liable for the costs of these activities. For purposes of this paragraph (e), persons have potential liability or a reasonable expectation of liability under federal, state, or local environmental laws for environmental remediation of the waste site if there is authority under a federal, state, or local law that requires such persons to satisfy all or a portion of the costs of the environmental remediation.

(2) Each contributor (grantor) to the trust will be treated as the owner of the portion of the trust contributed by that grantor. See section 677 and § 1.677(a)–1(d) of this chapter for rules regarding the treatment of a grantor as the owner of a portion of a trust applied in discharge of the grantor's legal obligation. Items of income, deduction, and credit attributable to any portion of an environmental remediation trust treated as owned by the grantor should not be reported by the trust on Form 1041, but should be shown on a separate statement to be attached to that form. See § 1.671–4(a) of this chapter. The trustee must also furnish to each grantor a statement that shows all items of income, deduction, and credit of the trust for the taxable year attributable to the portion of the trust treated as owned by the grantor. The statement must provide the grantor with the information necessary to take the items into account in computing the grantor's taxable income, including information necessary to properly take into account items under the economic performance rules of section 461(h) and the regulations thereunder. See § 1.461–4 of this chapter for rules relating to economic performance.

(3) All amounts contributed to an environmental remediation trust by a grantor (cash-out grantor) who, pursuant to an agreement with the other grantors, contributes a fixed amount to the trust and is relieved of any further obligation to make contributions to the trust, but remains liable or potentially liable under the applicable environmental laws, will be considered amounts contributed for remediation. An environmental remediation trust agreement may direct the trustee to expend amounts contributed by a cash-out grantor (and the earnings thereon) before expending amounts contributed by other grantors (and the earnings thereon). A cash-out grantor will cease to be treated as an owner of a portion of the trust when the grantor's portion is fully expended by the trust.

(4) The provisions of this paragraph (e) may be illustrated by the following example:

Example. (a) *X, Y,* and *Z* are calendar year corporations that are liable for the remediation of an existing waste site under applicable federal environmental laws. On June 1, 1996, pursuant to an agreement with the governing federal agency, *X, Y,* and *Z* create an environmental remediation trust within the meaning of paragraph (e)(1) to collect funds contributed to the trust by *X, Y,* and *Z* and to carry out the remediation of the waste site to the satisfaction of the federal agency. *X, Y,* and *Z* are jointly and severally liable under the federal environmental laws for the remediation of the waste site, and the federal agency will not release *X, Y,* or *Z* from liability until the waste site is remediated to the satisfaction of the agency.

(b) The estimated cost of the remediation is $20,000,000. *X, Y,* and *Z* agree that, if *Z* contributes $1,000,000 to the trust, *Z* will not be required to make any additional contributions to the trust, and *X* and *Y* will complete the remediation of the waste site and make additional contributions if necessary.

(c) On June 1, 1996, *X, Y,* and *Z* each contribute $1,000,000 to the trust. The trust agreement directs the trustee to spend *Z*'s contributions to the trust and the income allocable to *Z*'s portion before spending *X*'s and *Y*'s portions. On November 30, 1996, the trustee pays $2,000,000 for remediation work performed from June 1, 1996, through September 30, 1996. As of November 30, 1996, the trust had $75,000 of interest income, which is allocated in equal shares of $25,000 to *X, Y,* and *Z*'s portions of the trust.

(d) Pursuant to the agreement between *X, Y,* and *Z, Z* made no further contributions to the trust. Pursuant to the trust agreement, the trustee expended *Z*'s portion of the trust before expending *X*'s and *Y*'s portion. Therefore, *Z*'s share of the remediation payment made in 1996 is $1,025,000 ($1,000,000 contribution by *Z* plus $25,000 of income allocated to *Z*'s portion of the trust). *Z* must take the $1,025,000 payment into account under the appropriate federal tax accounting rules. In addition, *X*'s share of the remediation payment made in 1996 is $487,500, and *Y*'s share of the remediation payment made in 1996 is $487,500. *X* and *Y* must take their respective shares of the payment into account under the appropriate federal tax accounting rules.

(e) The trustee made no further remediation payments in 1996, and *X* and *Y* made no further contributions in 1996. From December 1, 1996, to December 31, 1996, the trust had $5,000 of interest income, which is allocated $2,500 to *X*'s portion and $2,500 to *Y*'s portion. Accordingly, for 1996, *X* and *Y* each had income of $27,500 from the trust.

(5) This paragraph (e) is applicable to trusts meeting the requirements of paragraph (e)(1) of this section that are formed on or after the date of publication of these proposed regulations as final regulations in the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–19286 Filed 8–3–95; 8:45 am]

BILLING CODE 4830–01–U

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1415

Rules Implementing the Privacy Act

AGENCY: Assassination Records Review Board.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Each Federal agency is required by the Privacy Act of 1974 to promulgate rules that set forth procedures by which individuals can examine and request correction of agency records containing personal information. In this notice the Review Board proposes a rule to satisfy that requirement.

DATES: To be considered, comments must be mailed, delivered in person or faxed to the address listed below by 5 p.m. on September 5, 1995.

ADDRESSES: Comments on these proposed regulations should be mailed, faxed, or delivered to T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530, FAX (202) 724–0457 (Attention: Privacy Act NPRM). All comments will be placed in the Board's public files and will be available for inspection between 10 a.m. and 4:30 p.m., Mondays through Fridays (except legal holidays), in the Board's Public Reading Room at the same address.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: Section(f) of the Privacy Act of 1974, U.S.C. 552a(f), requires each Federal agency to promulgate rules that set forth procedures by which individuals can examine and request correction of agency records containing personal information. The Review Board, established by the President John F. Kennedy Assassination Records Collection Act of 1992, is therefore obligated to publish such regulations.

Because Privacy Act regulations are intended for use by the general public, the Review Board has tried to keep its proposed rule simple and straightforward. Some aspects of the Privacy Act dealing solely with the Review Board's internal procedures and safeguards may be dealt with by directive to the Review Board's staff rather than by rule.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–12, the Review Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared, 5 U.S.C. 605(b).

List of Subjects in 36 CFR Part 1415

Privacy Act.

The Proposed Regulations

Accordingly, the Review Board proposes to amend chapter XIV in title 36 of the Code of Federal Regulations by

adding a new part 1415 to read as follows:

PART 1415—RULES IMPLEMENTING THE PRIVACY ACT

Sec.
1415.5 Scope.
1415.10 Definitions.
1415.15 Systems of records notification.
1415.20 Requests by persons for access to their own records.
1415.25 Processing of requests.
1415.30 Appeals from access denials.
1415.35 Requests for correction of records.
1415.40 Appeals from correction denials.
1415.45 Disclosure of records to third parties.
1415.50 Fees.
1415.55 Exemptions.

Authority: 5 U.S.C. 552a; 44 U.S.C. 2107.

§ 1415.5 Scope.

This part contains the Review Board's regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a.

§ 1415.10 Definitions.

In addition to the definitions provided in the Privacy Act, the following terms are defined as follows:

Assassination records for the purpose of this regulation means records created by Government offices, entities, and individuals that relate to the assassination of President John F. Kennedy as defined in 36 CFR part 1400 that may, from time to time, come into the temporary custody of the Review Board but that are not the legal property of the Review Board.

Executive Director means the principal staff official appointed by the Review Board pursuant to 44 U.S.C. 2107.8(a).

General Counsel means the Review Board's principal legal officer, or an attorney serving as Acting General Counsel.

JFK Act means the President John F. Kennedy Records Collection Act of 1992.

Review Board means the Assassination Records Review Board created pursuant to 44 U.S.C. 2107.7.

System of records means a group of records that is within the possession and control of the Review Board and from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The system of records does not include assassination records as defined above.

§ 1415.15 Systems of records notification.

(a) *Public notice.* The Review Board will publish in the **Federal Register** its system of records. The Office of the Federal Register biannually compiles and publishes all systems of records maintained by Federal agencies, including the Review Board.

(b) *Requests regarding record systems.* Any person who wishes to know whether a system of records contains a record pertaining to him or her may file a request in person or in writing. Written requests should be directed to the General Counsel, Assassination Records Review Board, 600 E Street, NW., Washington, DC 20530. Telephone requests should be made by calling the Review Board at (202) 724–0088, and asking to speak to the General Counsel.

§ 1415.20 Requests by person for access to their own records.

(a) *Requests in writing.* A person may request access to his or her own records in writing by addressing a letter to the General Counsel, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The request should contain the following information:

(1) Full name, address, and telephone number of requester;

(2) Proof of identification, which should be a copy of one of the following: Valid driver's license, valid passport, or other current identification which contains both an address and picture of the requester;

(3) The system of records in which the desired information is contained; and

(4) At the requester's option, authorization for expenses (see § 1415.50 below).

(b) *Requests in person.* Any person may examine his or her own record on the Review Board's premises. To do so, the person should call the Review Board's offices at (202) 724–0088 and ask to speak to the General Counsel. This call should be made at least two weeks prior to the time the requester would like to see the records. During this call, the requester should be prepared to provide the same information as that listed in paragraph (a) of this section except for proof of identification.

§ 1415.25 Processing of requests.

(a) *Requests in writing.* The General Counsel will acknowledge receipt of the request within five working days of its receipt in the Review Board's offices. The acknowledgment will advise the requester if any additional information is needed to process the request. Within fifteen working days of receipt of the request, the General Counsel will provide the requester an explanation as to why additional time, if any, is needed for response.

(b) *Requests in person.* Following the initial call from the requester, the General Counsel will determine: Whether the records identified by the requester exist, and whether they are subject to any exemption under § 1415.55 below. If the records exist and are not subject to exemption, the General Counsel will call the requester and arrange an appointment at a mutually agreeable time when the records can be examined. The requester may be accompanied by one person of his or her own choosing, and should state during this call whether or not a second individual will be present at the appointment. At the appointment, the requester will be asked to present identification as stated in § 1415.20(a)(2).

(c) *Excluded information.* If a request is received for information compiled in reasonable anticipation of litigation, the General Counsel will inform the requester that this information is not subject to release under the Privacy Act (see 5 U.S.C. 552a(d)(5)).

§ 1415.30 Appeals from access denials.

When access to records has been denied by the General Counsel, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The appeal letter must: Specify those denied records which are still sought, and state why the denial by the General Counsel is erroneous. The Executive Director or his representative will respond to such appeals within twenty business days after the appeal letter is received in the Review Board's offices. The appeal determination will explain the basis for continuing to deny access to any requested records.

§ 1415.35 Requests for correction of records.

(a) *Correction requests.* Any person is entitled to request correction of a record pertaining to him or her. This request must be made in writing and should be addressed to the General Counsel, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The letter should clearly identify the corrections desired. An edited copy will usually be acceptable for this purpose.

(b) *Initial response.* Receipt of a correction request will be acknowledged by the General Counsel in writing five working days of receipt of the request. The General Counsel will endeavor to provide a letter to the requester within thirty working days stating whether or not the request for correction has been granted or denied. If the General Counsel decides to deny any portion of the correction request, the reasons for the denial will be provided to the requester.

§ 1415.40 Appeals from correction denials.

(a) When amendment of records has been denied by the General Counsel, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The appeal letter must specify the record subject to the appeal, and state why the denial of amendment by the General Counsel is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days (subject to extension by the Executive Director for good cause) after the appeal letter has been received in the Review Board's offices.

(b) The appeal determination, if adverse to the requester in any respect, will:

(1) Explain the basis for denying amendment of the specified records;

(2) Inform the requester that he or she may file a concise statement setting forth reasons for disagreeing with the Executive Director's determination; and

(3) Inform the requester of his or her right to pursue a judicial remedy under 5 U.S.C. 552a(g)(1)(A).

§ 1415.45 Disclosure of records to third parties.

Records subject to the Privacy Act that are requested by a person other than the individual to whom they pertain will not be made available except in the following circumstances:

(a) Release is required under the Freedom of Information Act in accordance with the Review Board's FOLA regulations, 36 CFR part 1410;

(b) Prior consent for disclosure is obtained in writing from the individual to whom the records pertain; or

(c) Release is authorized by 5 U.S.C. 552a(b) (1) or (3) through (11).

§ 1415.50 Fees.

A fee will not be charged for search or review of requested records, or for correction of records. When a request is made for copies of records, a copying fee will be charged at the same rate established for FOLA requests. *See* 36 CFR 1410.35 However, the first 100 pages will be free of charge.

§ 1415.55 Exemptions.

The following records are exempt from disclosure under this regulation:

(a) Review Board records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and that are in fact properly classified pursuant to such Executive Order;

(b) Review Board records related solely to the internal personnel rules and practices of the Review Board;

(c) Review Board records specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Review Board

Dated: July 31, 1995.

David G. Marwell,

Executive Director, Assassination Records Review Board.

[FR Doc. 95–19173 Filed 8–3–95; 8:45 am]

BILLING CODE 6820–TD–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA–17–1–6983; FRL–5273–2]

Approval and Promulgation of Implementation Plans and Delegation of 112(l) Authority; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa for the purpose of establishing a voluntary operating permit program. This program provides sources an alternative to the Clean Air Act (CAA) Title V program.

This action also proposes to establish a mechanism for creating Federally enforceable limitations under section 112(l). This authorizes Iowa to issue Federally enforceable operating permits that address both criteria pollutants (regulated under section 110 of the CAA) and hazardous air pollutants (HAP) (regulated under section 112).

DATES: Comments on this proposed rule must be received in writing by September 5, 1995.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: On December 8, 1994, the Director of the Iowa Department of Natural Resources (IDNR) submitted a request to revise the Iowa State Implementation Plan (SIP). The EPA sent a letter of completeness to the state on December 22, 1994.

I. Purpose of the Revision

The state has created new regulations in Iowa Administrative Code 567–22.200–208 to create a voluntary operating permit program. This program has been specifically designed to provide an alternative to Title V operating permits for eligible sources throughout the state.

In accordance with 40 CFR part 70, air pollution sources defined as "major" or otherwise subject to the part 70 regulations are required to obtain and adhere to the conditions of a Title V permit. These Title V permits contain numerous requirements as well as a fee on all emissions up to 4,000 tons per year (TPY).

In Federal terminology, sources with potential and actual emissions under the thresholds of major (e.g., less than 100 tons per year of a regulated air pollutant) are considered minor sources. Sources which limit and restrict their potential and actual emissions to levels below the major level are referred to as "synthetic minors," because these sources would not be minor sources without accepting certain limitations to thus be eligible as minor sources.

This voluntary operating permit program proposed by the state of Iowa is designed to enable sources to become minor and thus avoid the administrative requirements and associated fees of a Title V permit.

The term "voluntary" is used to describe this program because sources which do not want to limit their operations may continue to operate at or above "major" levels. However, this will require a Title V permit. For those sources which voluntarily restrict their operations, this program provides an alternative that is administratively and financially beneficial to sources, and promotes maintenance of air quality standards by reducing emissions of air pollution throughout the state.

II. Criteria for Approval

The terms and conditions of the state's voluntary operating permit program may be considered Federally enforceable if the state's submittal meets the criteria outlined in the **Federal Register** notice dated June 28, 1989 (54 FR 27275). The state's request for approval pursuant to section 112(l) must

also fulfill these criteria. The cited notice describes five criteria.

A. The program is submitted to and approved by EPA into the SIP.

The state correctly submitted this revision to the EPA and subsequently received a letter of completeness. Also, the EPA is proposing approval of this revision into the SIP.

B. The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits, including revisions, and provide that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations will be deemed not Federally enforceable.

The state's rules do require terms and conditions to operate; emission limitations and standards that ensure compliance; a certified statement that each emissions unit is in compliance; and monitoring, recordkeeping, and reporting requirements that ensure compliance with the terms and conditions of the permit.

Moreover, pursuant to section 22.206, each permit must contain a statement that the permittee shall comply with all conditions of the permit, and that failure to comply with the permit is grounds for enforcement action. This action may include termination or revocation and immediate requirement to obtain a Title V permit.

The director shall specifically designate as not Federally enforceable any terms and conditions of the permit that are not required under the Act or under any of its applicable requirements.

C. The permit program requires that all emissions limitations, controls, and other requirements will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP. Furthermore, the permit program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise Federally enforceable.

The state rules specifically provide in section 22.206(2)(c) that all emissions limitations, all controls, and all other requirements included in a voluntary permit shall be at least as stringent as any other applicable limitation or requirement in the SIP or enforceable under the SIP. Furthermore, the state rules provide in section 22.206(2)(d) that the director shall not issue a permit that waives any limitation or requirement under the SIP or that is otherwise Federally enforceable.

D. The limitations, controls, and requirements in the permits are permanent, quantifiable, and otherwise enforceable as practical matter. The state rules provide that the limitations, controls, and requirements in a voluntary operating permit shall be permanent, quantifiable, and otherwise enforceable. While the rule does not presently conform to the Federal requirements as set forth in section V, the state has indicated that it will amend this provision.

E. The permits are issued subject to public participation which includes the timely notice of proposal and issuance of these permits. This also includes providing to EPA a copy of each draft and final permit intended to be Federally enforceable. This process must also provide for an opportunity for comment on the permit applications prior to issuance of the final permit.

In rule 22.205(1)b, the state outlines adequate procedures for public participation. These procedures set forth requirements for public notice, including notifying both the public and the Administrator before issuing or renewing a permit. The state will use newspapers with a general circulation, as well as a state publication to provide this notice. The rule requires at least 30 days will be provided for public comment.

In a letter to the EPA dated February 16, 1995, the state has further clarified that it commits to provide EPA with timely notice of proposed and final permits within 60 days of an action by the IDNR.

III. Delegation of 112(l) Authority

In a letter to the EPA dated April 25, 1995, the state of Iowa has also requested approval of the voluntary operating permit program under section 112(l) of the Act. This enables any limitation on potential-to-emit of HAP to be enforceable by EPA. In other words, by incorporating the voluntary operating permit program into the SIP and approving the 112(l) program while requiring that permittees comply with such permits, any violation of such a permit will be enforceable under the Act and will be subject to EPA enforcement.

The criteria for establishing Federally enforceable limitations for criteria pollutants pursuant to section 110 of the Act, are the same criteria the EPA uses in approving state operating permit programs to establish Federally enforceable limitations for HAPs pursuant to section 112 of the Act. As outlined in section II of this notice, the state has satisfied the criteria contained in the June 1989 **Federal Register** notice for creating Federally enforceable limitations on potential to emit.

Moreover, the state must also meet the requirements of section 112(l). In a letter dated March 1, 1995, from Larry Wilson, Director, IDNR, to Dennis Grams, Administrator, EPA Region VII, these requirements have been addressed and met as described in the following paragraphs.

A. Adequate Authority. Section 112(l)(5)(A) of the Act requires adequate authority within the program to ensure compliance with each applicable standard, regulation, or requirement established by the Administrator by all sources in the state. The state's letter of March 1, 1995, cites the state's authority that fulfills this requirement.

B. Adequate Resources. Section 112(l)(5)(B) further requires that adequate resources must be available to implement the program. The state submitted a resource demonstration on November 15, 1993, for the Title V program that also addressed the voluntary permit program. EPA has determined that the state, in that submittal, has demonstrated that adequate resources are available to implement the voluntary permit program. It should be noted, however, that this determination is for the voluntary permit program only. It does not affect EPA's proposed interim approval of the Title V program, or the EPA's finding as to the adequacy of the resources available for implementation of that program.

C. Implementation Schedule. Section 112(l)(5)(C) requires that the state submit an expeditious schedule for implementing the program and ensuring compliance by the affected sources. The state submitted a schedule for implementing section 112 requirements on November 15, 1993, that satisfies this requirement.

D. Ability to Take Enforcement Action. The state's Title V submittal of November 15, 1993, includes an opinion by the Iowa Attorney General that the state has the legal authority to take civil and enforcement action against any source regulated under section 112 of the Act.

Based on the fulfillment of the above criteria, the EPA is therefore proposing approval of the voluntary operating permit program for the control of air toxics that allow sources to limit their potential-to-emit of HAPs.

IV. Additional Program Description

In section II of this notice, the state's rules were only discussed insofar as they generally met the criteria outlined in the cited **Federal Register** notice. In this section, various provisions of the rules are discussed in order to provide a fuller description of the state's regulations that comprise the voluntary operating permit program.

A. Eligibility. In order to qualify for a voluntary permit, a source must successfully demonstrate that:

1. Potential and actual emissions will be less than 100 tons per year of regulated pollutants per 12-month rolling period;

2. Potential and actual emissions of each HAP will be less than 10 tons per 12-month rolling period;

3. Potential and actual emissions of all HAPs will be less than 25 tons per 12-month rolling period.

In other matters concerning eligibility, subrule 22.201(2) lists exceptions for sources seeking a voluntary operating permit. Although a source may meet the criteria cited in a-c above, any affected source subject to Title IV, those required to obtain a Title V permit as a source category pursuant to 70.3, or a solid waste incinerator unit is not eligible for a voluntary permit.

Additionally, sources subject to a New Source Performance Standard, National Emissions Standards for Hazardous Air Pollutants, or section 112 of the Act are only eligible for a voluntary permit until April 20, 1999. Once the deferment period for these sources has expired, these sources will be required to obtain a Title V permit.

B. No source may operate without a properly issued Title V or voluntary operating permit.

C. Although the rules state that sources must apply by March 1, 1995, the state provided public notice and exercised a subsequent rulemaking to rescind this date. The state now intends to establish a new date once this SIP revision approving the voluntary permit program becomes effective.

D. Standard application information is required of all sources seeking a voluntary permit. The rule specifies that the information must be sufficient to evaluate the source and its predicted and actual emissions.

The permit must also contain identifying information about the owner and a description of source processes and products by two digit Standard Industrial Classification Code. Required information includes listing equipment, monitoring devices, limitations on source operations, and the calculations used by the source in providing this information.

E. Sources with a voluntary operating permit shall be exempt from Title V operating permit fees.

F. A voluntary operating permit may be denied if the director determines any of the following conditions: a source is not in compliance with any applicable requirement; an applicant submits false information; or an applicant is unable to certify compliance with applicable requirements.

If a voluntary permit is denied, the source shall apply for a Title V operating permit and shall be subject to enforcement action for operating without a Title V permit. This fulfills part 70 requirements which require all major sources subject to Title V to receive a corresponding permit. If an otherwise major source in Iowa does not have a valid voluntary permit, it is subject to Title V.

G. If a source's application for and receipt of a construction permit renders the source ineligible for a voluntary permit (e.g., increased emissions above the eligibility threshold), the source must then apply for a Title V permit. Once again, the source is subject to enforcement action for operating without a Title V permit.

The terms and conditions of an issued construction permit shall be incorporated into a voluntary permit at the time of renewal for the voluntary permit, assuming that the construction permit did not render the source ineligible as discussed in the paragraph above. Sources are required to provide copies of all construction permits issued during the term of the voluntary operating permit.

V. Approvability Issues

EPA's analysis of the state's rules has revealed four deficiencies which must be corrected before EPA can give final approval to this SIP revision. The state has agreed to these amendments and has developed revised rules that are expected to be adopted by June 1995. These amendments are as follows.

A. The EPA has previously informed the state of the need to revise the definition of "12-month rolling period" in 22.201(1). As currently written, the term in this rule is ambiguous and may not be enforceable as a practical matter. The state has therefore drafted a revised rule that provides the following definition: "* * * a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month."

B. The second item concerns 22.201(1)a–d. As currently written, the rule is not consistent with the requirements for Prevention of Significant Deterioration or for construction permitting. In response to EPA comments, the state has developed an amendment that declares fugitive emissions of each regulated air pollutant from a stationary source shall not be considered in determining the potential-to-emit unless the source belongs to a source category listed in IAC 567–22. Fugitives must be counted for purposes of 112(l).

C. The EPA has requested that 22.201(2)a be revised to read that sources required to obtain a Title V permit under 22.101(1)e (source categories) are not eligible for a voluntary operating permit. This revision is necessary because the EPA is requiring some non-major section 112 sources to obtain a Title V permit with no deferral provisions.

D. The EPA has advised the state that the provisions of 22.206(2)(c) must be revised to provide that permit limitations, controls, and requirements must be enforceable as a practical matter.

VI. EPA Action

The EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

The reader may also request the Technical Support Document (TSD) which examines this revision in more extensive detail. The TSD may be requested in accordance with the information provided in the "Addresses" section.

As addressed in section II of this notice, the EPA has determined that this proposed revision meets the five criteria of the June 28, 1989, **Federal Register** notice for Federal enforceability.

In order for the EPA to take final action on this SIP revision, the state must submit revised rules addressing the approvability issues outlined in section V of this notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5. U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities

with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected.

Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 112 of the CAA. These rules may bind state, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action will impose no new requirements, such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 29, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–19000 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MO–18–1–6024b; FRL–5264–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of bringing about the attainment of the National Ambient Air Quality Standard for lead. The SIP was submitted by the state to satisfy certain Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary and secondary lead smelter near Bixby, Missouri. In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by September 5, 1995.

ADDRESSES: Comments may be mailed to Lisa V. Haugen, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: July 11, 1995.

Dennis Grams, P.E.,

Regional Administrator.

[FR Doc. 95–19216 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WV10–1–5918b; FRL–5265–8]

Approval and Promulgation of Air Quality Implementation Plans; State of West Virginia—Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision consists of an emission statement program for stationary sources which emit volatile organic compounds (VOCs) and/or nitrogen oxides (NO_X) specified actual emission threshold levels. This program applies to stationary sources within the counties of Putnam, Kanawha, Cabell, Wayne, Wood, and Greenbrier. The SIP revision was submitted by the State to satisfy the Clean Air Act's requirements for an emission statement program as part of the ozone SIP for the State of West Virginia. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 5, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the West Virginia Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–3164.

SUPPLEMENTARY INFORMATION: On August 10, 1993, the West Virginia Office of Air Quality (WVOAQ) submitted a SIP revision to EPA. This SIP revision would add West Virginia Regulation Title 45, Series 29,"Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions," consisting of Subsections: 1. General; 2. Definitions; 3. Applicability; 4. Compliance Schedule; 5. Emission Statement Requirements; 6. Enforceability; and 7. Severability, effective July 7, 1993 in the State of West Virginia. In accordance with the requirements of 40 CFR 51.102, a public hearing concerning West Virginia's SIP revision was held on June 23, 1993, in Charleston, West Virginia.

See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

The OMB has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 14, 1995.

Stanley L. Laskowski,

Acting Regional Administrator Region III.

[FR Doc. 95–19273 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[WV27–1–7013b, WV27–2–7014b; FRL–5266–1]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Redesignation of the Greenbrier County, West Virginia Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of West Virginia for the purpose of establishing a 1990 base year ozone inventory and a maintenance plan for the Greenbrier County ozone nonattainment area. EPA is also proposing to approve the request submitted by the State of West Virginia to redesignate the Greenbrier County area to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision and redesignation request as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the Technical Support Document (TSD) that has been prepared by EPA on these rulemaking actions. The TSD is available for public inspection at the EPA Regional office listed in the **ADDRESSES** section of this notice. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 5, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; and the West Virginia Division of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 597–0545.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 14, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95–19275 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[TX–001; FRN–5270–9]

Clean Air Act Interim Approval of Operating Permits Program; Texas Natural Resource Conservation Commission Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published June 7, 1995 (60 FR 30037). On June 7, 1995, EPA proposed interim approval of the operating permits program submitted by the State of Texas. EPA received a letter from the Texas Title V Planning Committee as well as a verbal request from Texas Natural Resource Conservation Commission requesting a 90 day extension of the public comment period. Therefore, EPA is extending the comment period until October 5, 1995.

DATES: Comments must be received in writing on or before October 5, 1995.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: David F. Garcia, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7217.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 26, 1995.

Russell Rhoades,

Acting Regional Administrator (6A).

[FR Doc. 95–19193 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7140]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
PENNSYLVANIA	
Hatfield (borough), Montgomery County	
West Branch Neshaminy Creek:	
Approximately 300 feet downstream of Lakewood Avenue	*300
Approximately 150 feet upstream of Lakewood Avenue	*301
Maps available for inspection at the Borough Hall, 401 South Main Street, Hatfield, Pennsylvania.	
Send comments to Mr. Mark A. Curfman, Manager of the Borough of Hatfield, 401 South Main Street, Hatfield, Pennsylvania 19440–0190.	
Jenkintown (borough), Montgomery County	
Tacony Creek:	
Approximately 200 feet upstream of Greenwood Avenue	*206
At the confluence of Baeder Run	*220
Baeder Run:	
At the confluence with Tacony Creek	*220
Approximately 586 feet upstream of confluence with Tacony Creek	*220
Maps available for inspection at the Jenkintown Borough Offices, 700 Summit Avenue, Jenkintown, Pennsylvania.	
Send comments to Mr. Thomas Oliver, President of the Jenkintown Borough Council, P.O. Box 2178, Jenkintown, Pennsylvania 19046.	
Lower Salford (township), Montgomery County	
Skippack Creek:	
At Quarry Bridge Road	*176
Near Wampole Road approximately 950 feet upstream of State Highway 63	*199
Skippack Creek Tributary No. 2:	
Approximately 150 feet downstream of Wampole Road	*211
Approximately 525 feet upstream of Wampole Road	*212
Maps available for inspection at the Township Office, 474 Main Street, Harleysville, Pennsylvania.	
Send comments to Mr. Richard Prescott, Chairman of the Lower Salford Township Board of Commissioners, 474 Main Street, Harleysville, Pennsylvania 19438.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsburg (borough), Montgomery County	
Macoby Creek:	
Approximately 0.2 mile downstream of Otts Road	*331
Approximately 325 feet downstream of Otts Road	*334
Maps available for inspection at the Pennsburg Borough Building, 76 West 6th Street, Pennsburg, Pennsylvania.	
Send comments to Mr. Larry Raeder, President of the Pennsburg Borough Council, 76 West 6th Street, Pennsburg, Pennsylvania 18073.	
Springfield (township), Montgomery County	
Oreland Run:	
At confluence with Wissahickon Creek	*149
Approximately 650 feet upstream of confluence with Wissahickon Creek	*150
Maps available for inspection at the Springfield Township Municipal Building, 1510 Paper Mill Road, Wyndmoor, Pennsylvania.	
Send comments to Mr. Donald E. Berger, Springfield Township Manager, 1510 Paper Mill Road, Wyndmoor, Pennsylvania 19038.	
Upper Dublin (township), Montgomery County	
Tannery Run (Backwater Area):	
Approximately 150 feet east of intersection of Butler Avenue and West Maple Avenue	*198
Maps available for inspection at the Municipal Building, 801 Loch Alsh Avenue, Fort Washington, Pennsylvania.	
Send comments to Mr. Richard R. Rulon, President of the Upper Dublin Township Board of Commissioners, 801 Loch Alsh Avenue, Fort Washington, Pennsylvania 19034.	
Whitpain (township), Montgomery County	
Wissahickon Creek:	
At a point approximately 320 feet upstream of Swedesford Road	*273
At a point approximately 1,200 feet upstream of Swedesford Road	*274
Maps available for inspection at the Whitpain Township Administration Building, 960 Wentz Road, Blue Bell, Pennsylvania.	
Send comments to Mr. Leigh P. Narducci, Whitpain Township Chairman, P.O. Box 800, Blue Bell, Pennsylvania 19422.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Maryland	Prince George's County (unincorporated areas).	Bald Hill Branch	Approximately 1,300 feet upstream of Brae Brook Drive.	None	*164
			Approximately 475 feet upstream of confluence with Western Branch.	*92	*93

Maps available for inspection at the Department of Environmental Resources, Information and Permits Management Section, Inglewood III Office Building, 9400 Peppercorn Place, Sixth Floor, Landover, Maryland.

Send comments to Ms. Malinda Y. Steward, Prince George's County Government, Department of Environmental Resources, Information and Permits Management Section, Inglewood III Office Building, 9400 Peppercorn Place, Sixth Floor, Landover, Maryland 20785.

Minnesota	Alvarado (city) Marshall County.	Snake River	At downstream corporate limits (State Route 1).	*810	*811
			At upstream corporate limits (approximately 0.6 mile upstream of State Route 1).	*812	*813

Maps available for inspection at the Alvarado City Hall, Marshall Street, Alvarado, Minnesota.

Send comments to The Honorable Lloyd Wilke, Mayor of the City of Alvarado, Box 759, Alvarado, Minnesota 56710.

Pennsylvania	Abington (township) Montgomery County.	Sandy Run	At confluence with Sandy Run.	*232	*236
		Tributary No. 1	Approximately 850 feet upstream of Johnston Avenue.	*237	*238
3		Tacony Creek	Approximately 350 feet upstream of Greenwood Avenue.	None	*206
			Approximately 1,200 feet upstream of Greenwood Avenue.	*211	*210
		Pennypack Creek	A point approximately 1,700 feet downstream of Moredon Road.	*99	*100
			A point approximately 1,300 feet downstream of Moredon Road.	*99	*100

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Township Engineer's Office, 1176 Old York Road, Abington, Pennsylvania. Send comments to Mr. Richard Fluge, President of the Abington Township Board of Commissioners, 1176 Old York Road, Abington, Pennsylvania 19001.					
Pennsylvania	Bridgeport (borough) Montgomery County.	Schuylkill River	Approximately 1.0 mile downstream of Dekalb Street (U.S. Route 202 North).	*75	*72
			Approximately 50 feet upstream of Norristown Dam.	*78	*76
Maps available for inspection at the Borough Hall, 4th and Mill Street, Bridgeport, Pennsylvania. Send comments to The Honorable Thomas Novitski, Mayor of the Borough of Bridgeport, P.O. Box 148, Bridgeport, Pennsylvania 19405.					
Pennsylvania	Cheltenham (township) Montgomery County.	Tacony Creek	At East Cheltenham Avenue.	*80	*79
Maps available for inspection at the Cheltenham Township Administrative Building, 8230 Old York Road, Elkins Park, Pennsylvania. Send comments to Mr. Harvey Portner, President of the Cheltenham Township Board of Commissioners, 8230 Old York Road, Elkins Park, Pennsylvania 19027.					
Pennsylvania	Conewago (township) Adams County.	Plum Creek	Approximately 1 mile upstream of confluence with South Branch Conewago Creek.	none	*519
			At county boundary	None	*560
		Slagle Run	Approximately 150 feet upstream of downstream corporate limits.	None	*522
			At county boundary	None	*539
Maps available for inspection at the Conewago Township Building, 350 Third Street, Hanover, Pennsylvania. Send comments to Mr. Edwin Calvert, Township Manager of Conewago, 350 Third Street, Hanover, Pennsylvania 17331.					
Pennsylvania	Franklin (township) Chester County.	Middle Branch, White Clay Creek.	Approximately 0.4 mile downstream of Avondale-New London Road.	None	*301
			Approximately 1,300 feet downstream of Avondale-New London Road.	None	*306
Maps available for inspection at the Franklin Township Building, Appleton Road, Kemblesville, Pennsylvania. Send comments to Mr. Karl Mehn, Zoning Officer, Township of Franklin, P.O. Box 118, Kemblesville, Pennsylvania 19347.					
Pennsylvania	Hatfield (township) Montgomery County.	West Branch, Neshaminy Creek.	At upstream side of Lexington Road.	*285	*284
			Approximately 110 feet upstream of Lexington Road.	*285	*284
*Maps available for inspection at the Township Building, 1950 School Road, Hatfield, Pennsylvania. Send comments to Ms. Jean Vandegrift, President of the Hatfield Township Board of Commissioners, 1950 School Road, Hatfield, Pennsylvania 19440.					
Pennsylvania	Limerick (township) Montgomery County.	Schuylkill River	Approximately 2.0 mile downstream of Vincent Dam.	*118	113
			Approximately 1.6 mile upstream of Legislative Route 462 (Main Street).	*129	*125
Maps available for inspection at the Code Enforcement Office, 646 West Ridge Pike, Limerick, Pennsylvania. Send comments to Mr. Mark John, Code Enforcement and Zoning Officer for the Township of Limerick, 646 West Ridge Pike, Limerick, Pennsylvania 19468.					
Pennsylvania	London Grove (township) Chester County.	Middle Branch, White Clay Creek.	Approximately 1,300 feet downstream of Avondale-New London Road.	None	*306
			Approximately 0.7 mile upstream of Hilton Road.	None	*487

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the London Grove Township Building, 3 London Way, Avondale, Pennsylvania. Send comments to Mr. Lewis C. Ross, Chairman of the London Grove Township Board of Supervisors, 3 London Way, Avondale, Pennsylvania 19311.					
Pennsylvania	Lower Merion (township) Montgomery County.	Mill Creek	At confluence with the Schuylkill River.	*56	*53
			Approximately 375 feet upstream of confluence with the Schuylkill River.	*56	*55
			At the county boundary (just downstream of U.S. Route 1).	*38	*37
			Approximately 3.7 miles upstream of confluence of Mill Creek.	*65	*63
Maps available for inspection at the Lower Merion Building Department, 75 E. Lancaster Avenue, Ardmore, Pennsylvania. Send comments to Mr. David C. Latshaw, Township Manager, 75 E. Lancaster Avenue, Ardmore, Pennsylvania 19003.					
Pennsylvania	Lower Moreland (township) Montgomery County.	Pennypack Creek	Approximately 0.4 mile downstream of confluence of Huntingdon Valley Creek.	*117	*118
Maps available for inspection at the Lower Moreland Municipal Building, 640 Red Lion Road, Huntingdon Valley, Pennsylvania. Send comments to Mr. Bernard Kanefsky, President of the Lower Moreland Township Board of Commissioners, 640 Red Lion Road, Huntingdon Valley, Pennsylvania 19006.					
Pennsylvania	Lower Pottsgrove (township) Montgomery County.	Sanatoga Creek	At confluence with the Schuylkill River.	*132	*127
			Approximately 150 feet upstream of Green Lane Road.	*132	*131
		Sprogels Run	At confluence with the Schuylkill River.	*145	*130
			At upstream side of Sanatoga Station Road.	*134	*133
		Schuylkill River	Approximately 0.7 mile downstream of Sanatoga Road.	*130	*125
			Approximately 800 feet upstream of U.S. Route 422.	*140	*137
Maps available for inspection at the Lower Pottsgrove Municipal Building, 2199 Buchert Road, Pottstown, Pennsylvania. Send comments to Mr. Gerald G. Richards, President of the Lower Pottsgrove Township Board of Commissioners, 2199 Buchert Road, Pottstown, Pennsylvania 19464.					
Pennsylvania	Lower Providence (township) Montgomery County.	Schuylkill River	Approximately 1,100 feet upstream of U.S. Route 422.	*85	*80
			At confluence of Perkiomen Creek.	*97	*94
		Perkiomen Creek	At confluence with Schuylkill River.	*97	*94
			Approximately 400 feet upstream of the confluence with the Schuylkill River.	*97	*96
Maps available for inspection at the Lower Providence Township Building, 100 Park Lane Drive, Eagleville, Pennsylvania. Send comments to Mr. Richard Brown, Chairman of the Lower Providence Township Board of Supervisors, 100 Park Lane Drive, Eagleville, Pennsylvania 19403.					
Pennsylvania	New Hanover (township) Montgomery County.	Minister Creek	Approximately 0.62 mile upstream of the confluence of Minister Creek Tributary.	*271	*270

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2.74 mile upstream of the confluence of Minister Creek Tributary.	*273	*271
		Swamp Creek	Approximately 900 feet upstream of Colonial Road.	None	*235
			Approximately 1,450 feet upstream of Colonial Road.	None	*236

Maps available for inspection at the New Hanover Township Municipal Building, 2943 North Charlotte Street, Gilbertsville, Pennsylvania.
Send comments to Ms. Anita B. Turner, New Hanover Township Manager, 2943 North Charlotte Street, Gilbertsville, Pennsylvania.

Pennsylvania	Norristown (borough) Montgomery County.	Stony Creek	At confluence with the Schuylkill River.	*79	*76
			Approximately 380 feet upstream of Factory Bridge.	*79	*78
		Schuylkill River	Approximately 0.7 mile downstream of confluence of Sawmill Run.	*75	*72
			Approximately 0.5 mile upstream of Hawes Avenue.	*80	*78

Maps available for inspection at the Borough Hall, 235 East Airy Street, Norristown, Pennsylvania.
Send comments to The Honorable Jack Salamone, Mayor of the Borough of Norristown, 235 East Airy Street, Norristown, Pennsylvania 19401–5048.

Pennsylvania	Penn (township) Chester County.	Middle Branch White Clay Creek.	Approximately 100 feet upstream of Tice Road.	None	*422
			Approximately 1,200 feet upstream of Tice Road.	None	*428

Maps available for inspection at the Penn Township Building, 150 Sunnyside Road, West Grove, Pennsylvania.
Send comments to Mr. Vincent J. Santucci, Chairman of the Penn Township Board of Supervisors, 475 W. Baltimore Pike, West Grove, Pennsylvania 19390.

Pennsylvania	Plymouth (township) Montgomery County.	Schuylkill River	Approximately 0.2 mile downstream of Interstate Route 476 (Mid County Expressway).	*70	*67
			Approximately 1,000 feet upstream of I–276 Pennsylvania Turnpike.	*74	*72

Maps available for inspection at the Office of Public Works, 700 Belvior Road, Norristown, Pennsylvania.
Send comments to Mr. Timothy A. Boyd, P.E., Director of Public Works for the Township of Plymouth, 700 Belvior Road, Norristown, Pennsylvania 19401.

Pennsylvania	Pottstown (borough) Montgomery County.	Manatawny Creek	At confluence with the Schuylkill River.	*145	*142
			Approximately 400 feet upstream of confluence with the Schuylkill River.	*145	*144
		Sprogels Run	Approximately 0.24 mile upstream of U.S. Route 422.	None	*137
			Approximately 0.32 mile upstream of East High Street.	None	*144
		Schuylkill River	Approximately 0.4 mile downstream of South Kiem Street.	*140	*137
			Approximately 100 feet upstream of U.S. Route 422.	*148	*145

Maps available for inspection at the Code Enforcement Office, Borough Hall, 241 King Street, Pottstown, Pennsylvania.
Send comments to Mr. Robert Jones, Pottstown Borough Manager, Borough Hall, 241 King Street, Pottstown, Pennsylvania 19464.

Pennsylvania	Royersford (borough) Montgomery County.	Schuylkill River	Approximately 0.6 mile downstream of State Route 683 (Main Street).	*113	*109

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.6 mile upstream of State Route 683.	*118	*113

Maps available for inspection at the Royersford Borough Hall, 300 Main Street, Royersford, Pennsylvania.
Send comments to The Honorable Ronald Nettles, Mayor of the Borough of Royersford, 300 Main Street, P.O. Box 188, Royersford, Pennsylvania 19468.

Pennsylvania	Salford (township) Montgomery County.	East Branch, Perkiomen Creek.	Approximately 100 feet upstream of Moyer Road.	*221	220
			Approximately 1,400 feet upstream of Moyer Road.	*223	*222

Maps available for inspection at the Zoning Office, 139 Ridge Road, Tylersport, Pennsylvania.
Send comments to Mr. Donald R. Lodge, Jr., Chairman of the Salford Township Board of Supervisors, P.O. Box 54, Tylersport, Pennsylvania 18971.

Pennsylvania	Upper Frederick (township) Montgomery County.	Swamp Creek	Approximately 685 feet upstream of Neiffer Road.	None	*200
			Approximately 1,425 feet upstream of Neiffer Road.	None	*204

Maps available for inspection at the Township Building, 3205 Big Road, Obelisk, Pennsylvania.
Send comments to Mr. Gerald McMahon, Chairman of the Upper Frederick Township Board of Commissioners, 3205 Big Road, Obelisk, Pennsylvania 19492.

Pennsylvania	Upper Merion (township) Montgomery County.	Schuylkill River	Approximately 0.2 mile upstream of Interstate Route 476 (Mid County Expressway).	*71	*68
			At confluence of Valley Creek.	*93	*88
		Valley Creek	Approximately 0.4 mile downstream of the county boundary.	None	*96
			At county boundary	None	*104
		Trout Creek	At the confluence with the Schuylkill River.	*83	*81
			Approximately 450 feet upstream of the confluence with the Schuylkill River.	*83	*81
			Approximately 300 feet upstream Old State Route 363.	None	*107
			Approximately 750 feet upstream Old State Route 363.	None	*108

Maps available for inspection at the Department of Public Works, 175 West Valley Forge Road, King of Prussia, Pennsylvania.
Send comments to Mr. Edward J. Wilkes, Jr., Chairman of the Upper Merion Township Board of Supervisors, 175 West Valley Forge Road, King of Prussia, Pennsylvania 19406.

Pennsylvania	Upper Providence (township) Montgomery County.	Schuylkill River	At confluence of Perkiomen Creek.	*97	*94
			Approximately 0.8 mile upstream of confluence of Mingo Creek.	*113	*109
		Mingo Creek	Approximately 100 feet downstream of Old Mill Road.	None	*149
			Approximately 100 feet upstream of Old Mill Road.	None	*150
		Perkiomen Creek	At the confluence with the Schuylkill River.	*97	*94
			Approximately 400 feet upstream of the confluence with the Schuylkill River.	*97	*96

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Upper Providence Township Administration Office, 1286 Black Rock Road, Box 406, Oaks, Pennsylvania. Send comments to Mr. George W. Waterman III, Upper Providence Township Manager, 1286 Black Rock Road, Box 406, Oaks, Pennsylvania 19456.					
Pennsylvania	West Grove (borough) Chester County.	Middle Branch White Clay Creek.	Approximately 150 feet downstream of Valley Road.	None	*372
			Approximately 50 feet upstream of Valley Road.	None	*373
Maps available for inspection at the West Grove Borough Building, 117 Rose Hill Avenue, West Grove, Pennsylvania. Send comments to Mr. Charles I. Sensenig, West Grove Borough Council President, 245 West Evergreen Street, West Grove, Pennsylvania 19390.					
Pennsylvania	West Norriton (township) Montgomery County.	Schuylkill River	Approximately 0.2 mile downstream of U.S. Route 202 (South).	*78	*76
			Approximately 0.2 mile upstream of U.S. Route 422.	*85	*83
Maps available for inspection at the Township Building, 1630 West Marshall Street, Jeffersonville, Pennsylvania. Send comments to Mr. Joseph Estock, Engineer for the Township of West Norriton, 355 South Henderson Road, King of Prussia, Pennsylvania 19406.					
Pennsylvania	West Pottsgrove (township) Montgomery County.	Schuylkill River	Approximately 100 feet upstream of U.S. Route 422.	*148	*145
			Approximately 1.5 miles upstream of U.S. Route 422 (at the county boundary).	*151	*148
Maps available for inspection at the Municipal Office, 980 Grosstown Road, Stowe, Pennsylvania. Send comments to Mr. Joseph E. Karpinski, President of the West Pottsgrove Township Board of Commissioners, 823 Monroe Avenue, Stowe, Pennsylvania 19464–6124.					
Pennsylvania	Whitemarsh (township) Montgomery County.	Schuylkill River	At the county boundary	*57	*54
			Approximately 0.9 mile upstream of confluence of Andorra Creek.	*64	*62
		Oreland Run	At confluence with Wissahickon Creek.	None	*149
			Approximately 1,700 feet upstream of the confluence with Wissahickon Creek.	None	*154
Maps available for inspection at the Whitemarsh Township Administrative Building, 4021 Joshua Road, Lafayette Hill, Pennsylvania. Send comments to Mr. Lawrence J. Gregan, Whitemarsh Township Manager, 4021 Joshua Road, Lafayette Hill, Pennsylvania 19444.					
West Virginia	Bath (town) Morgan County	Warm Spring Run	Approximately 250 feet upstream of William Street.	*604	*605
			At the upstream side of Coughlan Lane.	*621	*622
		Davis Road Run	At confluence with Warm Spring Run.	*606	*607
		Yellow Spring Run	Approximately 50 feet upstream of confluence with Warm Spring Run.	*619	*620
			Approximately 145 feet upstream of confluence with Warm Spring Run.	*620	*621
Maps available for inspection at the Bath Town Hall, 504 North Washington Street, Berkeley Springs, West Virginia. Send comments to The Honorable Thomas Jackson, Mayor of the Town of Bath, 504 North Washington Street, Berkeley Springs, West Virginia 25411.					
West Virginia	Morgan County (unincorporated areas).	Warm Spring Run	Approximately 125 feet downstream of confluence of Unnamed Tributary.	None	*575

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.3 mile upstream of County Route 522/1.	None	*681
		Potomac River	At the confluence of Cherry Run (downstream county boundary).	None	*407
			At upstream county boundary.	None	*539
Maps available for inspection at the Morgan County Courthouse, Berkeley Springs, West Virginia. Send comments to Mr. Glen R. Stotler, Chairman of the Morgan County Commission, P.O. Box 28, Berkeley Springs, West Virginia 25411.					
West Virginia	Paw Paw (town) Morgan County.	Potomac River	At the Town of Paw Paw corporate limits.	None	*532
			Approximately 1.16 miles upstream of State Route 51.	None	*537
Maps available for inspection at the Paw Paw Town Hall, Paw Paw, West Virginia. Send comments to The Honorable Helena G. Moser, Mayor of the Town of Paw Paw, P.O. Box 35, Paw Paw, West Virginia 25434.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 28, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–19220 Filed 8–3–95; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 5

[Docket No. OST–95–360; Notice 95–9]

RIN 2105–AC11

Use of Direct Final Rule Making

AGENCY: Department of Transportation; Office of the Secretary.

ACTION: Notice of proposed rulemaking

SUMMARY: The Office of the Secretary (OST) is proposing to implement a new rulemaking procedure that would expedite the processing of noncontroversial changes to its regulations. Rules that the Secretary judges to be noncontroversial and unlikely to result in adverse public comment would be published as "direct final" rules. Such direct final rules would advise the public that no adverse comment is anticipated, and that, unless written adverse comment or written notice of intent to submit adverse comment is received within the specified time, the rule will become effective a specified number of days after the date it is published in the **Federal Register**. This new procedure should expedite the promulgation of routine or otherwise noncontroversial rules by reducing the time necessary to develop, review, clear, and publish separate proposed and final rules where OST receives no public comment.

DATES: Comments are requested by October 3, 1995. Late-filed comments will be considered only to the extent practicable.

ADDRESSES: Comments on this proposal should be sent, preferably in triplicate, to Docket Clerk, Docket No. OST–95–360, Department of Transportation, 400 7th Street SW., Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday.

Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Neil Eisner, Assistant General Counsel for Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW., Room 10424, Washington, DC 20590. (202) 366–9307.

SUPPLEMENTARY INFORMATION:

Background

The National Performance Review, a recent presidential initiative to reorganize and streamline the federal government, and the Administrative Conference of the United States identified several methods to improve the efficiency of agency rulemaking procedures. One was the use of "direct final" rulemaking in order to reduce needless double review of noncontroversial rules. The use of direct final rulemaking can eliminate an unnecessary second round of internal review and clearance, as well as public review, that presently exists for all proposed rules when the agency receives no adverse comment. The Environmental Protection Agency has been using this process for a number of years with great success, and other Departments, such as Agriculture, have recently adopted this procedure. In order to streamline the regulatory process and to fulfill Departmental missions, the Office of the Secretary proposes to use the direct final rulemaking procedure to promulgate specified categories of rules that are not expected to be controversial and that are unlikely to result in adverse comments.

The Direct Final Rule Process

The judgment that a particular rulemaking is noncontroversial and unlikely to result in adverse comment will be based upon the Office of the Secretary's experience with similar rules that were proposed and did not receive adverse public comment in the past. By "adverse" comment, we are referring to comments that are critical of the rule, that suggest that the rule should not be adopted, or that suggest a change should be made in the rule. A comment submitted in support of the rule would not be considered adverse. In addition, a comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule would not be considered adverse. The Environmental

Protection Agency has used this process in over two hundred cases, with great success. The U.S. Department of Agriculture has also recently adopted this process and used it in approximately a dozen rulemakings.

When using the direct final rulemaking procedure, the Office of the Secretary will publish the rule in the final rule section of the **Federal Register**. The document will advise the public that no adverse comment is anticipated, and that unless written adverse comment or written notice of intent to submit adverse comment is received within the specified time, the rule will become effective a specified number of days after the date it is published. The Administrative Procedure Act (5 U.S.C. 553) specifically provides that notice and public comment are not required if the agency finds good cause that notice and public procedures are unnecessary or contrary to the public interest. If the agency is mistaken and someone wishes to file adverse comments, this procedure will ensure that the public is given notice of the Secretary's intent to adopt the rule if no adverse comment is received, and an opportunity to participate in the rulemaking by submitting comments.

If no written adverse comment or written notice of intent to submit adverse comment is received in response to the rule, the Office of the Secretary would then publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective a specified number of days after the date that the direct final rule was published. However, if the Office of the Secretary does receive any written adverse comment or written notice of intent to submit adverse comment, then a notice withdrawing the direct final rule would be published in the final rule section of the **Federal Register** and a notice of proposed rulemaking would be issued in the proposed rule section. The proposed rule would provide for a new comment period.

Rules for which the Office of the Secretary believes that the direct final rulemaking procedure may be appropriate are noncontroversial rules that (1) affect internal procedures of the Office of the Secretary, such as filing requirements and rules governing inspection and copying of documents, (2) are nonsubstantive clarifications or corrections to existing rules, (3) update existing forms (4) make minor changes in the substantive rules regarding statistics and reporting requirements, such as a change in the reporting sequence (for example, from monthly to quarterly) or eliminating a type of data that no longer needs to be collected by the Office of the Secretary, (5) make changes to the rules implementing the Privacy Act, and (6) adopt technical standards set by outside organizations, such as those developed by the Architectural Barriers and Compliance Board for determining compliance with the Americans with Disabilities Act. We request comments on whether there are any other areas for which direct final rulemaking may be beneficial. As stated earlier, the direct final rulemaking procedure will only be used in circumstances where previous rulemakings indicate that adverse comment is unlikely. Even if a rulemaking fits into one of the above categories, if adverse comment is anticipated, we would not use the direct final rule process. The additional time and effort necessary to withdraw the rule and issue a Notice of Proposed Rulemaking if there is adverse comment will serve as an incentive for the Office of the Secretary to act conservatively in evaluating whether to use the procedure for a particular rule.

Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no costs associated with this rule. There will be some cost savings in **Federal Register** publication costs and efficiencies for the public and OST personnel in eliminating duplicative reviews. The Department certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Department does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects in 49 CFR Part 5

Administrative practice and procedure. For the reasons set forth in the preamble, the Office of the Secretary proposes to amend 49 CFR Part 5 as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5 continues to read as follows:

Authority: Sec. 9, 80 Stat. 944 (49 U.S.C. 1657).

2. Section 5.21 would be amended by adding paragraph (d), as follows:

§ 5.21 General.

* * * * *

(d) For rules for which the Secretary determines that notice is unnecessary because no adverse public comment is anticipated, the direct final rulemaking procedure described in § 5.35 of this subpart will be followed.

3. A new § 5.35, *Procedure for direct final rulemaking,* would be added to read, as follows:

§ 5.35 Procedures for direct final rulemaking.

(a) Rules that the Secretary judges to be noncontroversial and unlikely to result in adverse public comment will be published in the final rule section of the **Federal Register** as direct final rules. These include noncontroversial rules that:

(1) Affect internal procedures of the Office of the Secretary, such as filing requirements and rules governing inspection and copying of documents,

(2) Are nonsubstantive clarifications or corrections to existing rules,

(3) Update existing forms,

(4) Make minor changes in the substantive rules regarding statistics and reporting requirements, such as a change in the reporting sequence (for example, from monthly to quarterly) or eliminating a type of data that no longer needs to be collected by the Office of the Secretary,

(5) Make changes to the rules implementing the Privacy Act, and

(6) Adopt technical standards set by outside organizations, such as those developed by the Architectural Barriers and Compliance Board for determining compliance with the Americans with Disabilities Act.

(b) The **Federal Register** document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by the Office of the Secretary within the specified time after the date of publication, and that if no written adverse comment or written notice of intent to submit adverse comment is received, the rule will become effective a specified number of days after the date of publication.

(c) If no written adverse comment or written notice of intent to submit adverse comment is received by the Office of the Secretary within the specified time of publication in the **Federal Register**, the Office of the Secretary will publish a notice in the **Federal Register** indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If the Office of the Secretary receives any written adverse comment or written notice of intent to submit adverse comment within the specified time period, a notice withdrawing the direct final rule will be published in the final rule section of the **Federal Register** and a notice of proposed rulemaking will be issued in the proposed rule section of the **Federal Register**.

(e) An "adverse" comment for the purpose of this subpart means any comment that is critical of the rule, that suggests that the rule should not be adopted, or suggests a change that should be made in the rule. A comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse.

Issued in Washington, DC on this 19th day of July, 1995.

Federico Peña,

Secretary.

[FR Doc. 95–19108 Filed 8–3–95; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

50 CFR Part 402

RIN 1018–AD32

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

AGENCIES: Fish and Wildlife Service, Interior; and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: With the concurrence of the U.S. Department of Agriculture, Forest Service (FS) and the Department of the Interior, Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) propose to promulgate counterpart section 7 consultation regulations (50 CFR 402) under the Endangered Species Act of 1973 to establish an alternate consultation process. These regulations supplement the more general consultation regulations in Part 402 to provide for a more effective and efficient process to meet the specific needs of BLM and FS programs.

DATES: Comments on this proposal must be received by October 3, 1995, in order to be considered in the final decision on this proposal.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours in Room 452, 4401 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, at the above address (703/358–2171; facsimile 703/358–1735) or Robert C. Ziobro, Endangered Species Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–1401 facsimile 301/713–0376).

SUPPLEMENTARY INFORMATION:

Background

These proposed joint counterpart Endangered Species Act (ESA) consultations procedures govern ESA section 7(a) consultation for FS and BLM. The procedures differ from the existing procedures in part 402 subparts A and B in that they encourage ESA consultation well before project-level decisions are made and provide a framework for consultation on program-level or ecosystem-level decisions, as opposed to project-level decisions. This early consultation at the program-level facilitates future consultation at the project-level and these procedures describe how that streamlining is accomplished. In addition, while the regulations at part 402 subparts A and B are silent as to whether ongoing actions can continue during consultations, these regulations expressly address that issue and specify the measures the agencies will take regarding ongoing actions once ESA consultation at the project-level becomes mandatory.

Under these procedures, FS and BLM and the appropriate consulting Service (either FWS or NMFS) are required to enter into a consultation agreement, unless they have already done so for that species or decision, when (1) a new species is proposed for listing or is listed; (2) critical habitat is proposed for designation or is designated; (3) a revision or amendment of a land planning document is formally announced; or (4) FS, BLM or one of the Services requests a consultation agreement. In this agreement, the agencies choose how they will conduct program-level and project-level consultation. That is, they decide whether project-level (which the procedures call non-site-specific) consultation and when project-level (which these procedures call site-specific consultation) consultation will occur. The agreement sets a schedule for the chosen manner of consultation and all subsequent actions related to ongoing activities.

The objective of non-site specific consultation is to identify standards and guidelines or parameters that then can be applied to site-specific consultations. Where the parameters are identified as adequate to avoid adverse effects to the listed species in the non-site-specific consultation by the appropriate Service, the parameters are then used to facilitate site-specific consultation. For those actions that are in conformance with adequate parameters, consultations is concluded when FS and BLM notify the appropriate Service of the conforming action and provide the Service with the basis for that decision. Where no adequate parameters have been identified in a non-site-specific consultation, the action agencies are required to conduct consultation/conference pursuant to sections 402.10 and/or 402.14 for any project-level decisions.

The procedures address the measures the agencies are to take with respect to ongoing actions when consultation becomes mandatory under section 402.14. The procedures require the identification of all ongoing actions that may affect the listed species and an initial determination of which actions represent an imminent threat to the listed species. The action agencies are required to take all possible steps to halt or modify these imminent threat actions. The action agencies are required then to identify all actions that are likely to adversely affect the species in question and to review whether to take steps to halt or modify those actions as well. All other ongoing actions that are not halted under these procedures may go forward during consultation. Provisions for counterpart section 7 consultation procedures are set forth in section 402.04. Such regulations supersede consultation regulations at 50 CFR 402, subpart B.

As part of their land management planning processes, the FS prepares Land and Resource Management Plans and the BLM prepares Resource Management Plans. Plans identify general land-use purposes or allocations; future conditions that are desired on specific lands; goals and

objectives for resource conditions on specific lands; and standards, guidelines, or other mechanisms that govern activities conducted on lands managed by these agencies in the future. Plans provide the general framework under which those site specific activities are developed over a period of several years.

Because Plans do not normally prescribe specific land management activities, there is a significant level of uncertainty associated with the environmental consequences of Plans. This uncertainty is a particular problem when the BLM or FS try to fulfill their obligation to consult with the FWS and/or NMFS and assure that their activities are not likely to jeopardize the continued existence of threatened or endangered species since site-specific details are not often known when consultations are initiated. Because Plans are operational for a period covering several years, new species may be added to the list of threatened and endangered species, or significant new information may become available and re-evaluation of the effects of Plans on listed, proposed, or Category 1 species, and proposed or listed critical habitat may be required.

ESA section 7(a)(2) requires that "each Federal agency shall, in consultation with and with the assistance of the Secretary [of the Interior or Commerce] insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species." 16 U.S.C. 1536(a)(2). ESA section 7(a)(4) requires that "[e]ach Federal agency shall confer * * * on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed * * * or result in the destruction or adverse modification of [proposed] critical habitat" for that species. 16 U.S.C. 1536(a)(4). The manner or timing of consultation and conferencing is not prescribed by statute.

The ESA consultation regulations at section 402.14 provide that ESA consultation is required for any Federal action that may affect a listed species or critical habitat. These counterpart regulations encourage consultation before there is an action that may affect a species. Section 402.10 of the regulations provides that conferencing is required for any action that is likely to jeopardize the continued existence of any proposed species or result in the adverse modification of proposed critical habitat. These regulations encourage conferencing before an action is likely to jeopardize a proposed species or result in adverse modification of proposed critical habitat. Thus, the use of the terms "consultation" and "conferencing" in these regulations is not always equivalent to their use in the regulations at part 402 subparts A and B.

Sections 402.22 and 402.23 of these counterpart regulations facilitate and promote early consultation before it is mandatory under the ESA, as determined in the regulations at section 402.14, and establish a framework within which non-site-specific consultation may be conducted. Non-site-specific actions, as defined by these regulations, shall have no direct effect on listed species or critical habitat. Thus, the decision whether to engage in non-site-specific consultation is discretionary, that is, not required under the statute as interpreted by the part 402 subpart A and B regulations. Since non-site-specific actions themselves have no direct effect on the species, the written statement concluding non-site-specific consultation cannot provide definitive findings of effect and "jeopardy" as to the subject of consultation as can be provided in site-specific consultation.

Even though non-site-specific consultation is discretionary and cannot provide the definitive "jeopardy/no-jeopardy" determination that results from site-specific consultation, Federal agencies may elect to engage in non-site-specific consultation or conferencing even when neither consultation nor conferencing are mandatory, as determined by sections 402.10 and 402.14, to facilitate more efficient compliance with their ESA duty. Such non-site-specific consultation may provide an efficient anticipatory step to, or may be an integral part of, mandatory ESA consultation compliance. It can provide an efficient means of reviewing potential impacts to listed species on a broad scale and lead to the identification of parameters that address the needs of species throughout all or a portion of their range or within the geographic scope of the non-site specific consultation. These parameters may then be applied in site-specific consultations and conferences, thereby streamlining the process of complying with the ESA consultation requirements for site-specific actions that may affect listed species or critical habitat or jeopardize proposed species or adversely modify or destroy proposed critical habitat. Section 402.22 of these counterpart regulations provides for a consultation agreement to facilitate this process and section 402.23 provides a framework for this discretionary non-site-specific consultation.

Section 402.24 addresses consultation as it relates to site-specific actions, where consultation is mandatory as defined by the regulations in section 402.14. Section 402.24(a) specifies how mandatory site-specific consultation shall be conducted where relevant parameters have been identified and deemed sufficient pursuant to a relevant non-site-specific consultation and an action is in conformance with those parameters. Where adequate parameters have not been developed or an action is not in conformance with those parameters, section 402.24(a) provides that consultation shall proceed as described in the part 402 subparts A and B regulations.

Once consultation becomes mandatory at the project level, certain ongoing actions may need to be suspended until the conclusion of consultation to insure the integrity of the consultation process. Sections 402.24(b), (c), and (d) provide a process for reviewing, and determining whether to halt, ongoing site-specific actions for which parameters have not been developed, once ESA consultation at the project level becomes mandatory. Since site-specific consultation at the non-site-specific level is discretionary, not mandatory, no similar provision governing review of ongoing actions is required during non-site-specific consultation.

Sections 402.24 (c) and (d) also provide that other actions associated with actions that may cause imminent threats to or are likely to adversely affect listed species or its critical habitat may need to be suspended as well during consultation. ESA consultation on imminent threat and likely to adversely affect actions (unlike ESA consultation on actions that are not likely to adversely affect listed species) have a reasonable potential to result in the identification of reasonable and prudent alternatives to the action in consultation. In such circumstances, section 7(d) of the ESA also prohibits the action agency from undertaking any irreversible and irretrievable commitments of resources associated with such actions that would foreclose the formulation or implementation of reasonable and prudent alternative.

Required Determinations

This rule was reviewed under Executive Order 12866. The Fish and Wildlife Service certifies that the proposed revisions to 50 CFR 402 will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Significant adverse economic impacts are not expected as a result of the proposed rule because: (1) the rule is intended to reduce or eliminate altogether the consultation requirements on numerous Federal actions under the ESA with respect to listed and proposed species; and (2) the rule amends 50 CFR 402, resulting in consultation efficiencies that will effectively reduce potential economic burdens associated with consultation requirements. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are required by this proposed rule beyond those already required by existing 50 CFR 402 regulations, nor does the proposed rule contain any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980. Further, this rule does not require a Federalism assessment under Executive Order 12612 because it would have no significant Federalism effects as described in the order. Finally, the Service has determined that the proposed regulation does not require the preparation of a Takings Implication Assessment under the requirements of Executive Order 12630, "Government Actions and Interference with Constitutionally Protected Property Rights." These counterpart regulations pertain solely to consultation coordination procedures and the procedures have no impact on personal property rights.

Author

The primary authors of this proposal are Jay Slack, Department of the Interior, Fish and Wildlife Service, Division of Endangered Species, Arlington, Virginia 22203 (703/358–2106); Jim Hoff, Department of the Interior, Bureau of Land Management, Washington, D.C. 20240 (202/452–5045); Harv Forsgren, Department of Agriculture, Forest Service, Washington, D.C. 20090 (202/205–0830); Bob Ziobro, Department of commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Silver Spring, Maryland 20910 (301/713–1401).

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly, the FWS and NMFS hereby propose to amend part 402, title 50 of the Code of Federal Regulations, as set forth below:

PART 402—[AMENDED]

1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Revise § 402.04 to read as follows:

§ 402.04 Counterpart regulations.

The consultation procedures set forth in this part may be superseded for a particular Federal agency by joint counterpart regulations issued by, the Fish and Wildlife Service, and the National Marine Fisheries Service with the written concurrence of the action agency published with that counterpart regulation. Such counterpart regulations shall be published in the **Federal Register** in proposed form and shall be subject to public comment for at least 60 days before final rules are published. Counterpart regulations appear in subpart C of this part.

3. Add a new subpart C—Counterpart Regulations and sections 402.20 to 402.29 to read as follows:

§ 402.20 Scope.

The counterpart regulations in this subpart supplement and, where applicable, set forth an alternative to the Endangered Species Act (ESA) consultation regulations found in subparts A and B of this part for the Forest Service (FS), Department of Agriculture and the Bureau of Land Management (BLM), Department of the Interior.

(a) Sections 402.22 and 402.23 of the counterpart regulations in this subpart address consultation agreements and non-site-specific consultations, respectively. Both facilitate ESA consideration and coordination sooner than is required by subpart A and B of this part. Section 402.22 establishes a process by which FS and BLM, in coordination with the Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), determine whether and in what manner to engage in non-site-specific consultations related to their land management planning efforts pursuant to, *inter alia*, the Endangered Species Act, 16 U.S.C. 1531, *et seq.*, the National Forest Management Act of 1976, 16 U.S.C. 1604 and 36 CFR 219, the Federal Land and Policy Management Act of 1976, 43 U.S.C. 1701–1784 and the Oregon and California Lands Act, 43 U.S.C 1181a. Section 402.23 provides a framework for non-site-specific ESA consultation which may result in the identification of protective parameters for listed species and critical habitat.

(b) Section 402.24 addresses site-specific consultations and conferences. Section 403.24(a) provides an alternative to subparts A and B of this part governing how ongoing and proposed site-specific actions shall be conducted where sufficient parameters have been identified in a relevant non-site-specific consultation. Sections 402.24(b), (c), and (d) provide a process for reviewing ongoing site-specific actions when consultation becomes mandatory and no sufficient parameters have been identified.

§ 402.21 Definitions.

Many of the terms used in the regulations in this subpart are defined in section 402.02. In addition, the terms defined in this section are applicable to this subpart.

(a) *Action agency* means either the FS or the BLM.

(b) *Consultation* means all oral and written communications between the Action Agency and the Service designed to facilitate that Action Agency's compliance with the ESA. Consultation includes, but is not limited to, early, informal and formal consultation under the regulations in subpart B of this part, as well as early non-site-specific consultation as provided for in §§ 402.22 and 402.23;

(1) *Site-specific consultation* means any consultation the subject of which is a particular site-specific action or group of site-specific actions that may affect listed species or critical habitat; and

(2) *Non-site-specific consultation* means any consultation undertaken the subject of which is something other than a particular site-specific action or group of site-specific actions.

(c) *Is likely to adversely affect* means the appropriate conclusion if an adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions. In the event the overall effect of the proposed action is beneficial to the listed species or critical habitat, but also likely to cause some adverse effects, then the proposed action "is likely to adversely affect" the listed species or critical habitat. An "is likely to adversely affect" determination requires formal consultation.

(d) *Is not likely to adversely affect* means the appropriate conclusion when effects on the species or critical habitat are expected to be beneficial, discountable, or insignificant. Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact (and should not reach the scale where take occurs, as defined in 16 U.S.C. 1532(19) and 50 CFR 17.3). Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects or expect discountable effects to occur.

(e) *Site-specific action* means any FS or BLM action or group of actions (as defined in § 402.02) that has physical, biological, or chemical effects on the environment;

(1) Any other FS and BLM action is a non-site-specific action;

(2) *ongoing site-specific action* means a site-specific action that is being executed or one for which a project level decision has been made or that otherwise has been authorized by the Action Agency but has not yet been completed at the time consultation is initiated (*e.g.*, actions that were authorized, funded, or initiated prior to the relevant triggering event and in which there is discretionary Federal involvement or control); and

(3) *Proposed site-specific action* means a site-specific action that has not yet been finally authorized by the Action Agency.

§ 402.22 Consultation/conference agreement.

(a) *Commencement of discussions.* (1) Unless the event was contemplated and addressed in a prior consultation/conference agreement in accordance with this section, the Action Agency and Service shall discuss and determine the most efficient method for fulfilling the purposes of the ESA consistent with the regulations in this subpart , as soon as practicable after any of the following events:

(i) Publication of a proposed rule to list a species or to designate critical habitat;

(ii) Listing of a species or designation of critical habitat;

(iii) Formal proposal of a new, or amendment or revision of an existing, BLM or FS land management planning decision, including but not limited to the proposal of a land and resource management plan, resource management plan, or a protective initiative, but not including instructional memoranda, policies, directives or revisions to agency manuals; or

(iv) When, at any time, an Action Agency or the Service requests such discussions.

(2) Where any of these events affects more than one administrative unit of the Action Agency or the Service, these discussions shall be conducted jointly by, or on behalf of, all such units.

(b) *Consultation/conference agreement.* Unless a different time frame is mutually agreed to by the Action Agency and the Service, the results of these discussions shall be embodied in a document (hereinafter "consultation/conference agreement"), to be completed within 45 days of the events listed in paragraph (a) of this section.

(1) The consultation/conference agreement shall:

(i) Identify the land management planning documents relevant to the present or anticipated need for ESA consultation/conference;

(ii) Where a land management planning document incorporates authorization for a relevant site-specific activity, identify the portions of the document that embody land management planning decisions and those that embody the site-specific decisions that must be the subject of site-specific consultation under subparts A and B of this part, as supplemented by § 402.24;

(iii) Determine whether and in what manner non-site-specific consultation will be undertaken, including a list of the species that will be considered and a description of the geographic area that is to be encompassed by the consultation, and set forth a preliminary schedule for and description of each major step required for each selected level of consultation;

(iv) Provide a description of how ESA requirements for applicant participation, if any, will be fulfilled;

(v) Establish any necessary and appropriate timeframes for completing any review of ongoing site-specific actions under § 402.24, and

(vi) If practicable within the period set forth in paragraph (b) of this section, incorporate parameters that will be used in making a determination for listed species of "not likely to adversely affect" or "imminent threat," or for developing any appropriate standards for proposed or other species, in future site-specific consultation and conferences under the regulations in this subpart related to the same species and same geographic areas covered by the consultation/conference agreement.

(2) The consultation agreement may reflect consideration of a number of factors, including the types, impacts, and numbers of ongoing actions; the biology, ecology, distribution, and abundance of the relevant Category 1 candidate, proposed or listed species and proposed or designated critical habitat; human resource consideration; the timing of the consultation; National Environmental Policy Act, 43 U.S.C. 4321–4370(d), requirements for the Action Agency; data collection requirements; and existing and forthcoming protective strategies for the listed species.

(3) If the representatives of the Action Agency and the Service in the discussions required in paragraph (a) of this section cannot agree on the terms of the consultation/conference agreement, agreement shall promptly be reached jointly by the heads of the applicable agencies, or their designees.

(4) The time frames for development of, and the terms of, the consultation/conference agreement may be modified or deviated from upon mutual written agreement of the Action Agency and the Service.

§ 402.23 Non-site-specific consultation/conference.

(a) *Action agency responsibilities.* If the agencies elect to conduct non-site-specific consultation/conference, the Action Agency shall submit to the Service, by the date set forth in the consultation/conference agreement, or the date as modified by mutual agreement, the following information and documents:

(1) A copy of all documents, unless the document is already in the possession of the Service, deemed by the Action Agency to be relevant to the non-site-specific consultation/conference, including but not limited to, scientific documents and data, reports, draft environmental impact statements or assessments, forest plans, and resource management plans, or strategies, including initiatives designed to address the needs of the species identified in the consultation/conference agreement, which shall be the best scientific and commercial data available at the time of submission of the information required in this paragraph;

(2) A written statement of how any non-site-specific level decisions interact, if at all, with decisions at the site-specific level and with the species identified in the consultation/conference agreement and proposed or designated critical habitat of concern;

(3) Identification of any parameters such that site-specific actions consistent with those parameters are not likely to adversely affect listed species and/or are not likely to jeopardize the continued existence of proposed species or adversely modify or destroy critical habitat.

(b) *Service responsibilities.* Within 135 days of receiving the information required under paragraph (a) of this section, the Service shall:

(1) Issue a written statement detailing whether the parameters identified pursuant to paragraph (a)(3) of this section provide appropriate parameters such that site-specific actions consistent with those parameters are not likely to adversely affect listed species or critical habitat and/or are not likely to jeopardize and continued existence of proposed species or adversely modify or destroy proposed critical habitat; or

(2) If either there is no existing or proposed decision document, or the parameters identified in paragraph (a)(3) of this section are determined to be inadequate, provide a description of parameters sufficient under paragraph (a)(3) of this section, to the extent possible and to the degree permitted by the information provided by the Action Agency.

§ 402.24 Site-specific consultation/conference; ongoing site-specific actions during consultation.

(a) *Site-specific consultation/conference.* For site-specific actions that conform with parameters identified as sufficient under § 402.23, the Action Agency will provide, 30 days prior to the decision document for proposed actions, or pursuant to the time frames established in a consultation/conference agreement for ongoing actions, a written notification to the Service of the Action Agency determination and rationale that the action is in conformance with relevant parameters. This notification ends consultation under section 7(a)(2) of the ESA. Completion of consultation fulfills the Action Agency's responsibility to comply with section 7(d) of the ESA. If the Service disagrees with the Action Agency's determination, it may request reinitiation of informal or formal consultation as appropriate, under this part and provide a rationale for its request. Any ongoing or proposed site-specific action that is not in conformance with parameters identified under § 402.23 is subject to the consultation requirements under subparts A and B of this part, as supplemented by this section.

(b) *Identification of ongoing activities.* Pursuant to the timeframes established in the relevant consultation/conference agreement, the Action Agency will provide the Service with a written list of all ongoing site-specific actions relevant to the triggering event that may affect a listed species or its critical habitat. Such ongoing site-specific actions are ones that were authorized, funded, or initiated prior to the relevant triggering event and in which there is discretionary Federal involvement or control. Actions identified on the written list may continue under the regulations in this subpart during consultation without interruption unless suspended pursuant to paragraphs (c) or (d) of this section. The Action Agency should provide notice to affected parties consistent with appropriate agency procedures.

(c) *Imminent threats.* Pursuant to the timeframes establishment in the relevant consultation/conference agreement, the Action Agency and the Service shall review the actions identified pursuant to paragraph (b) of this section. For any action that both the Service and Action Agency agree may present an imminent threat to a listed species or its critical habitat, the Action Agency will, as soon as practicable and consistent with its legal authorities and obligations, initiate the appropriate administrative process to review whether the action needs to be modified, altered, or, if necessary, terminated. The Action Agency also shall initiate formal consultation/conference under §§ 402.10 and 402.14 and suspend any such action and any associated irretrievable or irreversible commitments of resources that would foreclose the formulation or implementation of reasonable and prudent alternatives under section 7(d) of the ESA, until it is determined that the action is not likely to jeopardize the continued existence of a listed species or result in the adverse modification or destruction of its critical habitat.

(d) *Likely to adversely affect actions.* Pursuant to the timeframes established in the relevant consultation/conference agreement, the Action Agency shall review the actions identified pursuant to paragraph (b) of this section, except for those already identified as imminent threats under paragraph (c) of this section, and identify for the Service those activities that are likely to adversely affect listed species or critical habitat. For any action so identified by the Action Agency, or for which the Service provides a written objection to its continuance and the rationale therefore, the Action Agency will, as soon as practicable and consistent with its legal authorities and obligations, initiate the appropriate administrative process to review whether the action, and any associated irretrievable or irreversible commitments of resources that would foreclose the formulation or implementation of reasonable and prudent alternatives under section 7(d) of the ESA, needs to be modified, altered, or, if necessary, terminated. The Action Agency also shall initiate formal consultation/conference under §§ 402.10 and/or 402.14.

§ 402.25 Timeframes.

All timeframes set forth in §§ 402.23 and 402.24 of this subpart may be modified by mutual agreement.

§ 402.26 Applicability.

The regulations in this subpart are applicable to the FS and BLM only where an event identified in § 402.22(a) occurs after [the effective date of the final rule].

§§ 402.27–402.29 [Reserved]

Dated: July 7, 1995.

George Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: June 30, 1995.

James R. Lyons,

Undersecretary, Natural Resources Environment.

Dated: July 3, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: July 6, 1995.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 95–18919 Filed 8–3–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 60, No. 150
Friday, August 4, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 28, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

New

- Economic Research Service
- Adoption of Competitive Practices by U.S. Manufacturers
- Business or other for-profit; 3,500 responses; 1,750 hours
- David McGranahan (202) 219–0533
- Animal and Plan Health Inspection Service
- Foreign quarantine Notices—Logs and Lumber—Addendum 1
- PPQ 585, 588
- Business or other for-profit; 2,002,575 responses; 301,360 hours
- Mary Joyce Burt (301) 734–8393

Extension

- Natural Resources Conservation Service
- Volunteer Program—Earth Team
- NRCS–PER–001, NRCS–PER–002, NRCS–PER–003, NRCS–PER–004
- Individuals or households; 33,150 responses; 1,175 hours
- Paula Jones (202) 720–2847
- Forest Service
- Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record Airplane Data Record, and Helicopter Data Record
- FS–5700–20 and 20a, FS–5700–21 and 21a
- Business or other for-profit; Individuals or households;
- 1185 responses; 296 hours
- Ed Stone (202) 205–1497
- Forest Service
- National Survey on Outdoor Recreation
- Individuals or households; 30,000 responses; 9,900 hours
- Ken Cordell (706) 546–2451
- Food and Nutrition Service
- 7 CFR Part 215—Special Milk Program for Children
- State, Local or Tribal Government; Business or other for-profit;
- Not-for-profit institutions; 145,996 responses; 677,520 hours
- Winnie McQueen (703) 305–2607

Revision

- Food Safety and Inspection Service
- Exportation, Transportation, and Importation of Meat and Poultry
- Products
- FSIS Form 9540–5
- Business or other for-profit; 2,181,328 responses; 168,758 hours
- Lee Puricelli (202) 720–7164
- Food Safety and Inspection Service
- Questionnaire for Hotline Callers
- Individuals or households; 3,200 responses; 287 hours
- Lee Puricelli (202) 720–7163
- Rural Utilities Service

RUS Prepayments and Related Reporting Burdens
RUS Form 606
Business or other for-profit; Individuals or households; Not-for-profit institutions; 115 responses; 2,000 hours
F. Lamont Heppe (202) 720–0736

- Federal Grain Inspection Service

Regulations Governing the National Inspection and Weighing System Under the USGSA and AMA of 46.
Business or other for-profit; Federal Government; State, Local or Tribal Government; 5,800,162 responses; 1,364,228 hours
Roy Bruner (202) 720–7485

- Animal and Plant Health Inspection Service

7 CFR 340—Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which there is Reason to Believe are Plant Pests
APHIS 2000, 2050, 2051, 2052, 2053, and 2054
Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government; 3,273 responses; 4,740 hours
Shirley Ingebritsen (301) 734–5874

- Animal and Plant Health Inspection Service

9 CFR 50 and 77, Tuberculosis
VS 1–24, 1–68, 6–22, 6–22B, 6–22A, 6–22C, 6–22D, 6–35, 6–38
Business or other for-profit; Farms; State, Local or Tribal Government; 53, 165 responses; 18,407 hours
Mitch Essey (301) 734–7927

- Rural Economic and Community Development

7 CFR 1951–T, Disaster Set-Aside Program
Farms; Individuals or households; Business or other for-profit; State, Local or Tribal Government; 14,000 responses; 1,970 hours
Jack Holston (202) 720–9736

- Forest Service

Forest Industries Data Collection System
Business or other for-profit; 2,550 responses; 2,007 hours
Dennis M. May (612) 649–5132

- Agricultural Marketing Service

Dried prunes Produced in California, Marketing Order No. 993
FV–165, FV–166, FV–167 FV–168, FV–169, FV–169A, FV–170, FV–171
Business or other for-profit; Farms; 3,832 responses; 696 hours
Valerie L. Emmer (202) 205–2829

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–19169 Filed 8–3–95; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 95–060–1]

Procedures for Importing Animals Through the Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are giving notice of the date and location of the lottery for authorization of the use of the Harry S Truman Animal Import Center (HSTAIC) in calendar year 1996. We are also giving notice of the period during which applications must reach the Animal and Plant Health Inspection Service in order to be included in the lottery.

DATES: To be included in the lottery for authorization to use HSTAIC in calendar year 1996, applications must be received no earlier than October 1, 1995, and no later than October 15, 1995. Deposits must be received by November 29, 1995. The lottery for authorization to use HSTAIC during 1996 will be held on December 6, 1995.

ADDRESSES: Completed applications and deposits must be sent to the Administrator, c/o Import-Export Animal Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, 4700 River Road Unit 39, Riverdale, MD 20737–1231. Application forms may be obtained by writing to the same address, or by calling the telephone number provided under the heading **FOR FURTHER INFORMATION CONTACT.** The lottery will be held at USDA, APHIS, Conference Room 3B01CN, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Montgomery, Staff Specialist, Import-Export Animals Staff, National Center for Import-Export, VS, APHIS, Suite 3B30, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–8172.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92, §§ 92.430, 92.431, 92.522, and 92.523 (referred to below as the regulations), set forth the conditions under which importers may qualify animals to enter the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, FL.

Because the demand for quarantine space at HSTAIC has traditionally exceeded the space available, the regulations provide that a lottery will be held each year during the first 7 days of December, to determine the priority of applications for the following calendar year. To be included in the December lottery, applications must reach the Import-Export Animals Staff of the Animal and Plant Health Inspection Service (APHIS) no earlier than October 1, and no later than October 15 of the year of the lottery. Additionally, applicants must send a deposit in the form of a certified check or money order in the amount of $32,000, payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service, for each application. APHIS will not consider an application unless we receive this deposit from the applicant on or before November 29, 1995. In the event that the Import-Export Animals Staff receives no more than one application between October 1, 1995, and October 15, 1995, the lottery will not be held, and APHIS will grant exclusive right to use HSTAIC during the calendar year 1996 in the order applications are received.

Applicants should be aware that certain improvements are being made to the HSTAIC facility in order to meet standards set by the Florida Department of Environmental Protection. The availability of HSTAIC for use for 1996 lottery applicants will be dependent upon satisfactory completion of these projects.

Authority: 7 U.S.C. 1622; 19 U.S.C. 136; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 31st day of July 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–19185 Filed 8–3–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Inland Native Fish Strategy

ACTION: Notice of decision on the Inland Native Fish Strategy Environmental Assessment and Finding of No Significant Impact.

SUMMARY: In the March 14, 1995, **Federal Register** (Vol. 60, No. 49, pp. 13697–13698), notice was given that the Forest Service, in cooperation with the Bureau of Land Management and US Fish and Wildlife Service, was gathering information in order to prepare an Environmental Assessment (EA) for a proposal to protect habitat and populations of native inland fish.

On July 28, 1995, the Regional Foresters for the Northern, Intermountain, and Pacific Northwest regions of the Forest Service announced their decision on the Inland Native Fish Strategy. Based on public comment analysis and internal review, they have decided, with the support of the US Fish and Wildlife Service, to select Alternative D as described in the Environmental Assessment for the Inland Native Fish Strategy.

The Inland Native Fish Strategy covers approximately 25 million acres of National Forest System lands in eastern Washington and Oregon, Idaho, western Montana, and portions of Nevada. The Environmental Assessment for the strategy was distributed to the public in June for a 30-day review. A series of public hearings were held to allow ample opportunity for the public to share their concerns. All comments have been considered and incorporated into the decision.

This decision notice reflects the final decision of the Forest Service. The decision may be appealed in accordance with the provisions identified in the Decision Notice. Copies of the Decision Notice and Finding of No Significant Impact are currently being printed, and will be distributed to the public near the end of August. At that time, legal ads will be published in designated newspapers announcing the availability of the document and the start of the appeal period.

In addition to the Inland Native Fish Strategy effort, the Forest Service is pursuing a cooperative effort with the various states to assure a coordinated multi-agency effort to address inland native fish issues. A proposal was sent to the Governors of Idaho and Montana on June 23, 1995 to develop conservation strategies that could be used to replace this interim management direction with longer term direction working through the Upper Columbia River Basin EIS. Similar proposals will be made to the Governors of Oregon and Washington. As part of this cooperative effort, the Forest Service will actively seek participation of local state fish and game personnel in the development of watershed analysis efforts.

Through review of the public comment, the Forest Service recognizes that the selection of Alternative D will concern many people who felt this alternative provided either too much or not enough protection. Both Alternatives C and E have features that are attractive for longer-term reduction of risk to habitat. The Regional Foresters have directed Inland Native Fish Strategy Team Leader David Wright to develop a strategy to apply the concepts and philosophy of those two alternatives on a limited test basis.

Alternative D will be implemented for all of the areas outside the test watersheds. Application of Alternative D will provide the short-term reduction of risk we desire, while this test of Alternatives C and E will allow the Forest Service to develop the information needed to provide better long-term direction.

FOR FURTHER INFORMATION CONTACT: Questions about the Decision Notice, Finding of No Significant Impact, and Environmental Assessment should be directed to David Wright, Team Leader for the Inland Native Fish Strategy, USDA Forest Service, 3815 Schreiber Way, Coeur d'Alene, ID 83814. Phone: *(208) 765–7223.*

Dated: July 28, 1995.

David J. Wright,

Inland Native Fish Team Leader, USDA Forest Service.

[FR Doc. 95–19228 Filed 8–3–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Upper Blue River Watershed: Atoka, Bryan, Johnston, Murray, and Pontotoc Counties, Oklahoma

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969: the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Blue River Watershed; Atoka, Bryan, Johnston, Murray, and Pontotoc Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Robert N. Jones, Acting Executive Director, Natural Resources Conservation Service, 100 USDA Suite 203, Stillwater, Oklahoma 74074–2655, (405) 742–1204.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert N. Jones, Acting Executive Director, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are watershed protection and flood prevention. The planned works of improvement included in this assessment are 42 single-purpose floodwater retarding structures.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert N. Jones.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Robert N. Jones,

Acting Executive Director.

[FR Doc. 95–18353 Filed 8–3–95; 8:45 am]

BILLING CODE 3410–01–M

ASSASSINATION RECORDS REVIEW BOARD

Notice of Formal Determinations

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on July 17 and 18, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act.) By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the Federal Register within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street, NW., Washington, DC 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the *President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2017.9(c)(3) (1992). On July 17 and 18, 1995, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives. For each document, the number of releases of previously redacted information is noted.

REVIEW BOARD DETERMINATIONS

Record No.	Releases	Status of document	Next review date
FBI Documents			
124–10006–10342	4	Open in full	n/a
124–10023–10234	2	Open in full	n/a
124–10023–10235	2	Open in full	n/a
124–10023–10236	2	Open in full	n/a
124–10023–10237	4	Open in full	n/a
124–10023–10238	1	Open in full	n/a
124–10035–10065	4	Open in full	n/a
124–10070–10354	8	Open in full	n/a
124–10108–10142	8	Open in full	n/a
124–10119–10078	5	Open in full	n/a
124–10170–10064	4	Open in full	n/a
124–10184–10256	8	Open in full	n/a
124–10230–10425	2	Open in full	n/a
124–10232–10345	4	Open in full	n/a
124–10243–10367	4	Open in full	n/a

REVIEW BOARD DETERMINATIONS—Continued

Record No.	Releases	Status of document	Next review date
124–10244–10077	4	Open in full	n/a
CIA Documents			
104–10007–10152	11	Open in full	n/a
104–10008–10116	4	Open in full	n/a

Dated: July 31, 1995.

David G. Marwell,

Executive Director.

[FR Doc. 95–19196 Filed 8–3–95; 8:45 am]

BILLING CODE 6820–TD–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On May 15, 1995, the Department of Commerce (the Department) published in the **Federal Register** (60 FR 25886) the notice of initiation of the administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. This review has now been terminated as a result of the withdrawal by the respondent of its request for the review.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4195.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1995, Skaarfish Group A/S requested an administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway for the period April 1, 1994 through March 31, 1995, pursuant to 19 CFR 353.22(a)(2) (1994). On May 15, 1995, the Department published in the **Federal Register** (60 FR 25886) the notice of initiation of that administrative review.

Skaarfish Group AS timely withdrew its request for a review on July 21, 1995, pursuant to 19 CFR 353.22(a)(5). As a result, the Department has terminated the review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22(a)(5).

Dated: July 28, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–19269 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–807]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 8, 1995, the Department of Commerce (the Department) published a notice of preliminary results of its administrative review of the antidumping duty order on industrial belts and components thereof, whether cured or uncured (industrial belts), from Japan. This review covers one manufacturer/exporter during the period June 1, 1993, through May 31, 1994.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have not changed the dumping margin from those presented in our preliminary results.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On May 8, 1995, the Department published in the **Federal Register** (60 FR 22561) the preliminary results of the 1993–94 (fifth) administrative review of the antidumping duty order on industrial belts from Japan (54 FR 25314, June 14, 1989). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Japan. These products include V-belts, synchronous belts, and other industrial belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links. This review excludes conveyor belts and automotive belts, as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the period of review the merchandise was classifiable under Harmonized Tariff Schedule (HTS) subheadings, 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00. These HTS subheadings are provided for convenience and U.S.

Customs Service (Customs Service) purposes. Our written description of the scope of the order remains dispositive.

This review covers one Japanese manufacturer and exporter of industrial belts to the United States, Mitsuboshi Belting Limited (MBL), and the period June 1, 1993 through May 31, 1994.

Analysis of the Comments Received

The Department gave interested parties the opportunity to comment on the preliminary results of this administrative review. We received a case brief from MBL, and case and rebuttal briefs from the petitioner, Gates Rubber Company (Gates). We did not receive a request for a hearing.

Comment: MBL acknowledges that the Department's resort to best information available (BIA) is authorized under section 776(c) of the Tariff act, since MBL did not respond to the Department's questionnaire. MBL argues, however, that the Department should use information obtained in the first administrative review (1989–90) as BIA instead of the rate from the original less-than-fair-value (LTFV) investigation. MBL contends that the Department is required to consider the most recent information available in deciding upon a BIA rate. According to MBL, the information provided by the respondent in the first administrative review is the most probative evidence of the current margin because the LTFV margin was based solely on information provided by the petitioner for the period October 1986 through March 1988 while the first review margin is based on information provided by MBL for the period of February 1, 1989 through May 31, 1990.

Furthermore, MBL points out that in two separate actions before the United States Court of International Trade (CIT), it is challenging the Department's choice of BIA in the second administrative review and in the third and fourth administrative reviews. MBL urges the Department to withhold making a final determination as to the applicable BIA in this fifth administrative review until the ongoing litigation is resolved.

Gates argues that based on MBL's refusal to cooperate in this review, the Department should apply the highest margin determined for any period to MBL's entries. According to Gates, the Department has previously rejected MBL's argument that information obtained in the first administrative review (1989–90) should be used as BIA and has consistently applied the highest margin determined for any period to MBL's entries. Gates states that the basis for this determination is the fact that MBL refused to respond to the questionnaire. As such, Gates contends, it is well-established under Department practice that the highest prior rate should apply.

Department's Position: Section 776(c) of the Tariff Act requires us to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide information requested (19 CFR 353.37(b)). MBL's contention that the Department should use the information obtained in the 1989–90 administrative review is contrary to Department policy. When a respondent refuses to cooperate with the Department, it is our policy to assign a dumping margin to that respondent, as BIA, based on the higher of: (1) The highest rate found for any firm in the original LTFV investigation or previous administrative review, or (2) the highest rate found for any firm in the current review (*Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France et al., Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28379 (June 24, 1992)). The Department's methodology for assigning BIA has been upheld by the Court of Appeals for the Federal Circuit (CAFC) (see *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993), *Krupp Stahl AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993)). Because MBL refused to respond to the Department's questionnaire, it was reasonable for the Department to assign to MBL, as BIA, a rate of 93.16 percent, the highest rate found for any firm in the original LTFV investigation. Further, because the law does not provide for extensions of deadlines pending the outcome of court decisions in other proceedings, we have not delayed our final results. In addition, the CIT has held that the Department may base BIA on a rate established in a prior review that is subject to challenge (see *D & L Supply Co.* v. *United States*, Slip Op. 95–92 at 13 (CIT May 15, 1995), citing *D & L Supply Co.*, 841 F. Supp. 1312, 1314 (CIT 1993)). Furthermore, the CIT has recognized the need for the Department to be able to issue final determinations in a timely fashion based upon the rates available at the time the final determination is due (see *D & L Supply Co., et al.* v. *United States*, Slip Op. 95–92 at 15 (CIT May 15, 1995)).

Final Results of the Review

As a result of this administrative review, the Department determines that a dumping margin of 93.16 percent exists for MBL for the period June 1, 1993 though May 31, 1994.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirement will be effective upon publication of this notice of final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff act: (1) For subject merchandise exported by MBL, a cash deposit of 93.16 percent; (2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate of 93.16 percent established in the LTFV investigation.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19257 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–836]

Notice of Postponement of Preliminary Determination: Antidumping Duty Investigation of Polyvinyl Alcohol From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski or Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3773, (202) 482–0631, or (202) 482–0922, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Postponement of Preliminary Determination

On July 21, 1995, petitioner, Air Products and Chemicals Inc., made a timely request that the Department of Commerce ("the Department") postpone until October 2, 1995, its preliminary determination in this proceeding. Accordingly, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930 ("the Act"), we have done so.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: August 1, 1995.

Barbara R. Stafford.

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 95–19261 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–001]

Potassium Permanganate From the People's Republic of China; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On February 15, 1995, the Department of Commerce (the Department) published in the **Federal Register** (60 FR 8629) the notice of initiation of the administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China. This review has now been terminated as a result of the withdrawal by the petitioner of its request for the review.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 1995, Carus Chemical Company (Carus) requested an administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China for the period January 1, 1994 through December 31, 1994, pursuant to 19 CFR 353.22(a)(1)(1994). On February 15, 1995, the Department published in the **Federal Register** (60 FR 8629) the notice of initiation of that administrative review.

Carus timely withdrew its request for a review on May 16, 1995, pursuant to 19 CFR 353.22(a)(5). As a result, the Department has terminated the review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22(a)(5).

Dated: July 28, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–19270 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–804]

Sparklers From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the petitioners, the Elkton Sparkler Company and the Diamond Sparkler Company, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on sparklers from the People's Republic of China (PRC). The review was requested for one manufacturer, Guangxi Native Produce Import and Export Corporation, Beihai Fireworks and Firecrackers Branch (Guangxi). The review covers the period June 1, 1993 through May 31, 1994.

As a result of this review, we have preliminarily determined to assess an antidumping duty of 93.54 percent on the merchandise subject to the review. Interested parties are invited to comment on these preliminary results of the review.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1991, the Department published in the **Federal Register** the antidumping duty order on sparklers from the PRC (56 FR 27946). On June 7, 1994, the Department published a notice in the **Federal Register** notifying interested parties of the opportunity to request an administrative review of sparklers from the PRC (58 FR 31941). On June 23, 1994, the petitioners requested, in accordance with 19 CFR 353.22(a), that we conduct an administrative review of exports to the United States by Guangxi, for the period June 1, 1993 through May 31, 1994. We published a notice of initiation of the antidumping duty administrative review on July 15, 1994 (58 FR 39007).

The initiation notice indicated that the review would cover Guangxi and would cover conditionally all other exporters of this merchandise. The Department is now conducting a review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this administrative review are sparklers from the PRC. Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classifiable

under the Harmonized Tariff System (HTS) subheading 3604.10.00. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of this proceeding.

Best Information Available

On July 20, 1994, we mailed Guangxi a questionnaire explaining the review procedures. In addition, a short questionnaire was sent to Guangxi, the Guangxi Zhuang Autonomous Region People's Government, the Embassy of the People's Republic of China, the Guangxi Foreign Economic Relations and Trade Commission and the Guangxi People's Government-Beijing Office. This questionnaire sought to ascertain whether Guangxi shall be entitled to a separate rate by demonstrating both *de jure* and *de facto* absence of central government control with respect to exports.

In addition, the questionnaire states:

[b]ecause we consider the PRC to be a non-market economy for the purposes of this review, we will presume that each company that exported the subject merchandise during the period of review (POR) is owned or controlled by the PRC government until evidence is placed on the record that demonstrates otherwise. Absent evidence to the contrary, we will consider a single antidumping duty rate to be appropriate for all exporters. However, if a company can demonstrate an absence of central government control with respect to pricing exports, both in law and in fact, it will be entitled to a rate separate from the rate for other PRC firms.

The questionnaires, which covered exports to the United States for the period of review (POR), were due on August 23, 1994. We did not receive a response from any party by the due date.

Furthermore, we had previously asked Skypak International Express (TNT) to trace the mailing and verify Guangxi's receipt of the document. On August 3, 1994, TNT's delivery office in Hong Kong confirmed that the questionnaire was accepted by a representative of Guangxi on August 2, 1994. Because we received no response and have not been contacted by Guangxi or any other respondent, we preliminarily determine that Guangxi is no longer entitled to a separate rate, as absence of central government control with regard to exports was not demonstrated. Therefore, in accordance with section 776(c) of the Act, we are using the best information available (BIA) as the basis for determining a dumping margin for all entries into the United States of the subject merchandise during the POR.

In determining what to use as BIA, the Department follows a two-tiered methodology whereby the Department normally assigns lower margins to those respondents who cooperate in a review, and margins based on more adverse assumptions for those respondents who do not cooperate in a review.

In accordance with our BIA methodology for uncooperative respondents, we assign as BIA the higher of: (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value (LTFV) investigation or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin (*see Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et. al.* (57 FR 28379, June 24, 1992)).

This methodology has been upheld by the U.S. Court of Appeals for the Federal Circuit (*see Allied-Signal Aerospace Co.* v. *the United States, 996 F.2nd 1185* (CAFC 1993); *see also Krupp Stahl Ag. et. al.* v. *the United States, 822 F. Supp. 789 (CIT 1993)). Given that Guangxi did not respond to the Department's questionnaires, we find that Guangxi has not cooperated in this review.*

In accordance with our methodology we have used as BIA the highest rate established in the remand of the LTFV final determination (58 FR 53708, July 29, 1993), the PRC country-wide rate of 93.54 percent.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the dumping margin to be the following:

Manufacturer/exporter	Time period	Margin (percent)
PRC country-wide rate	6/1/93–5/31/94	93.54

Interested parties to this proceeding may request disclosure within 5 days of publication of this notice and may request a hearing within 10 days of publication. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs or comments.

Upon completion of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of notice of final results of administrative review for all shipments of sparklers from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Guangxi will be the PRC country-wide rate as stated above; (2) for previously reviewed or investigated companies that received separate rates not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be the PRC country-wide rate of 93.54 percent, the rate established on remand of the LTFV final determination; and (4) the cash deposit rate for any non-PRC exporter will be the rate established for that firm; if a non-PRC exporter does not have its own separate rate, the deposit rate for that firm's shipments will be the rate applicable to the PRC supplier of that exporter. In all cases, the rate applicable to a firm normally should change only as a result of a review of that firm, except in instances of change of ownership.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19260 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–406]

Certain Agricultural Tillage Tools From Brazil; Preliminary Results of Countervailing Duty Administrative Review

July 28, 1995.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain agricultural tillage tools from Brazil. We preliminarily determine the net subsidy to be zero for all companies for the period January 1, 1993 through December 31, 1993. If the final results remain the same as these preliminary results; the Department intends to instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright and Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1985, the Department published in the **Federal Register** (50 FR 42743) the countervailing duty order on certain agricultural tillage tools from Brazil. On October 7, 1994, the Department published a notice of "Opportunity to Request an Administrative Review" (59 FR 51166) of this countervailing duty order. We received a timely request for review from Marchesan Implementos Argicolas, S.A. a Brazilian producer of the subject merchandise and a respondent, and Agritech Trading Company, an importer of the subject merchandise.

We initiated the review, covering the period January 1, 1993 to December 31, 1993, on November 14, 1994 (59 FR 56459). The review covers four manufacturers/exporters of the subject merchandise and four programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The merchandise subject to this review (hereinafter "subject merchandise") is certain round shaped agricultural tillage tools (discs) with plain or notched edges, such as colters and furrow-opener blades. The products covered in this review are currently classifiable under the following item numbers of the Harmonized Tariff Schedule of the United States (HTSUS): 8432.21.00, 8432.29.00, 8432.80.00 and 8432.90.00. The HTSUS subheadings are provided for convenience and Customs purpose. The written description remains dispositive.

Analysis of Programs

Programs Preliminarily Found Not to Be Used

We examined the following programs and preliminarily determine that the respondents did not use them during the review period:

A. Preferential Financing under FINEP.

B. Preferential Financing for Industrial Enterprises by the Banco de Brasil (FST and EGF loans).

C. Accelerated Depreciation for Brazilian-made Capital Goods.

D. Preferential Financing under PROEX (Formerly under Resolution 68 and 509 through FINEX).

Preliminary Results of Review

For the period January 1, 1993 through December 31, 1993, we preliminarily determine the net subsidy to be zero for all companies. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U. S. Customs Service to assess the following countervailing duties:

Manufacturer/exporter	Rate
All companies	Zero.

The Department also intends to instruct the U. S. Customs Service to collect zero cash deposits of estimated countervailing duties on all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the date of Publication of the final results of this review.

Parties to the proceeding may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit written arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due under section 355.38(c). The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19259 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–559–802]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof (AFBs) From Singapore; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) is conducting two administrative reviews of the

countervailing duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Singapore. We preliminarily determine the net subsidy to be zero for the Minebea group of companies (Pelmec Industries (Pte.) Ltd. (Pelmec), NMB Singapore Ltd. (NMB), and Minebea Co., Ltd. Singapore Branch (MSB)) and 9.11 percent *ad valorem* for all other companies for the periods January 1, 1992, through December 31, 1992, and January 1, 1993, through December 31, 1993. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Melanie Brown, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1989, the Department published in the **Federal Register** (54 FR 19125) the countervailing duty orders on AFBs from Singapore. On April 28, 1993, and May 4, 1994, the Department published in the **Federal Register** notices of "Opportunity to Request Administrative Review" (58 FR 25802 and 59 FR 23051–52) of these countervailing duty orders. We received a timely request for review for the period January 1, 1992, through December 31, 1992, from the petitioner, the Torrington Company. We also received timely requests for review for the period January 1, 1993, through December 31, 1993, from both the petitioner, the Torrington Company, and the Minebea group of companies, which accounts for most of the exports of subject merchandise from Singapore to the United States (*see* section on *Best Information Available*, below).

We initiated the 1992 and 1993 reviews on June 25, 1993 (58 FR 34414) and June 15, 1994 (59 FR 30770), respectively. We conducted verifications of the questionnaire responses for both the 1992 and 1993 reviews. The 1992 review covers three related manufacturers/exporters of the subject merchandise and 16 programs; the 1993 review covers the same manufacturers/exporters of the subject merchandise and 17 programs.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Reviews

Imports covered by these reviews are shipments of antifriction bearings (other than tapered roller bearings) and parts thereof. The subject merchandise covers five separate classes or kinds of merchandise, each of which is described in detail in Appendix A to this notice. The *Harmonized Tariff Schedule* item numbers listed in Appendix A are provided for convenience and Customs purposes. The written descriptions remain dispositive.

On October 30, 1992, the Department received a request for a scope determination from Sundstrand Pacific (Sundstrand). Specifically, Sundstrand asked the Department to find its part number 742973, an outer-race of the cylindrical roller bearing, not within the scopes of the countervailing duty orders. The request was subsequently evaluated in accordance with section 355.29(i)(1) of the Department's regulations. On February 4, 1993, the Department determined that the product in question was within the scope of the order on cylindrical roller bearings (58 FR 27542, 27543; May 10, 1993). Because the product descriptions detailed in Sundstrand's request for a scope determination were dispositive as to whether part number 742973 was within the scope of the order on cylindrical roller bearings, the Department did not initiate a formal scope inquiry. Accordingly, the U.S. Customs Service has been instructed to continue to suspend liquidation of part 742973 exported by Sundstrand.

Best Information Available

During the investigation, Sundstrand, an exporter of the subject merchandise which was identified by the Government of Singapore (GOS), refused to participate, and consequently received a rate based entirely on best information available (BIA)(*see Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Antifriction Bearings (other than Tapered Roller Bearings) and Parts thereof from Singapore* (54 FR 19125, 19126; May 3, 1989)). Section 776(c) of the Act requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation * * *" *See also* 19 CFR § 355.37. In determining what rate to use as BIA, the Department follows a two-tiered methodology. The Department assigns lower rates to those respondents who cooperate in an administrative review (tier two) and rates based on more adverse assumptions for respondents who do not cooperate in the review, or who significantly impede the proceeding (tier one). *Cf. Allied Signal Aerospace Co.* v. *United States*, 996 F. 2d 1185 (Fed. Cir. 1993), *aff'd*, 28 F. 3d 1188, *cert. denied*, 1995 U.S. Lexis 100 (1995) (*Allied-Signal*).

In these reviews, only the three related Minebea companies, which account for the majority of Singaporean exports to the United States of the subject merchandise, responded to the Department's questionnaires. Sundstrand did not respond to our questionnaires. Furthermore, during the course of the 1992 verification of the GOS questionnaire response, we examined a list of companies which exported subject merchandise to the United States but, for reasons unknown to the Department, did not respond to our questionnaire (*see* the April 8, 1994, Memorandum to Barbara E. Tillman Regarding *Verification of Questionnaire Response in 1992 Administrative Review of CVD Order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore—Covering the Period January 1, 1992 through December 31, 1992*, at 4, which is on file in the Central Records Unit, Room B–099 of the Department of Commerce). The GOS did not provide any information regarding Sundstrand or the other companies' sales or exports of the subject merchandise, or the extent to which Sundstrand or these companies participated in the programs reviewed. During the course of the 1993 verification of the GOS questionnaire response, we again examined a list of companies which exported subject merchandise to the United States but did not respond to our questionnaire (*see* the April 9, 1995, Memorandum to Barbara E. Tillman Regarding *Verification of Questionnaire Responses in the 1993 Administrative Review of Countervailing Duty Order on Antifriction Bearings (Other Than Tapered Roller Bearings) From Singapore*, at 3, which is on file in the Central Records Unit, Room B–099 of the Department of Commerce). Again, the GOS did not provide any information regarding Sundstrand or the other companies' sales or exports of the subject merchandise, or the extent to which they participated in the programs reviewed. Therefore, in accordance with section 776 of the Act and *Allied-Signal*, we are assigning to Sundstrand and all other non-respondent companies a first-tier uncooperative BIA rate for both periods of review. The rate we are applying for the periods January 1, 1992, through December 31, 1992, and January 1, 1993, through December 31, 1993, is 9.11 percent *ad valorem*. This rate is the rate that has been assigned to Sundstrand in each review since the first administrative review (*see Final Results of Countervailing Duty Administrative Review: Antifriction Bearings (other than Tapered Roller Bearings) and Parts thereof from Singapore* (56 FR 26384; June 7, 1991)).

Calculation Methodology for Assessment and Cash Deposit Purposes

In accordance with our standard practice, for both periods of review, we calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each company subject to the administrative review. *See Preliminary Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 60 FR 24833, 24834 (May 10, 1995). We then weight-averaged the rate received by each company using as the weight the company's share of total exports from Singapore to the United States of subject merchandise, including all companies, even those with *de minimis* and zero rates. To determine the value of exports for the Minebea group of companies, we added the reported total exports of subject merchandise to the United States by the two related producers/exporters, NMB and Pelmec, to the total net mark-up on exports of subject merchandise to the United States reported by the related trading company respondent, MSB. To determine the value of exports for Sundstrand and all other non-respondent companies based on BIA (*see Best Information Available*, above), we subtracted the value of the Minebea companies' exports of subject merchandise to the United States from the total value of exports of subject merchandise to the United States, as reported by the GOS.

We then summed the individual weight-averaged rates to determine the subsidy from all programs benefitting Singaporean exports of subject merchandise to the United States. Because the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR § 355.7, for both periods of review, we next examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR § 355.22(d)(3).

For both periods of review, we found that the Minebea companies and the non-respondent companies had significantly different net subsidy rates (zero and 9.11 percent *ad valorem*, respectively); therefore all companies are treated separately for assessment and cash deposit purposes for both periods.

Analysis of Programs

I. Programs Preliminarily Determined Not To Confer Subsidies Investment Allowances Under Part X of the Economic Expansion Incentives Act (EEIA)

Pelmec and NMB received tax deductions under this program during both periods of review, which petitioners have alleged are countervailable. The Investment Allowance program was originally established under Part VIA of the EEIA in 1979 to encourage investment in Singapore. The Department determined in 1985 that the investment allowance program under Part VIA of the EEIA was not countervailable (*see Final Negative Countervailing Duty Determination; Certain Textile Mill Products and Apparel from Singapore*, 50 FR 9840 (March 12, 1985) (*Textiles*)). After the Department's determination in *Textiles*, the EEIA was amended so that the investment allowance program was included under Part X of the EEIA (*see Final Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Singapore* (53 FR 16304; May 6, 1988) (*Wire Rod*)). Because the investment allowance program has not been examined since the EEIA was amended, we are doing so in the 1992 review. (For a more detailed explanation of the Department's decision to examine Part X, see the December 30, 1994, Memorandum to Barbara E. Tillman Regarding *1992 and 1993 Administrative Reviews of Antifriction Bearings (AFBs) from Singapore—Investment Allowance Program, Part X of the Economic Expansion Incentives Act (EEIA)*, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce.)

Under Part X, companies are granted a tax deduction for up to 50 percent of the investment in fixed assets made by the company over the course of a project. The EEIA authorizes allowances for a project in any of the following areas:

a. for the manufacture or increased manufacture of any product;
b. for the provision of specialized engineering or technical services;
c. for research and development;
d. for construction operations;
e. for reducing the consumption of potable water;
f. for services listed under section 16 of the EEIA; or
g. for the promotion of the tourist industry (other than a hotel) in Singapore.

If an investment project falls within one of the above categories, companies will receive an allowance if the investment meets one of the following criteria:

- the investment results in greater efficiency in resource utilization;
- the investment introduces a new technology into an existing industry;
- the project is significantly more efficient in resource utilization than the industry average; or
- the project produces parts and components used by other industries.

We verified that, under each of the eligible project areas, all companies investing in new plant and equipment are eligible to participate in the program and that any such company which meets the above criteria will be approved to receive the investment allowance. Moreover, we found no evidence that the program is regional or that company approval is contingent on export. Finally, we found no evidence that the program is limited to a specific enterprise or industry, or a group of enterprises or industries. There are a large number and wide variety of users of the program. The range of industries that received investment allowances includes, among others, food & beverage, textiles, chemicals, steel, paper, minerals, electronics, plastics, furniture, petroleum/coal, rubber, and numerous service industries, including hotels, air transport, banking, real estate, accounting, information technology, medical/health, and photography. Moreover, the AFBs producers are neither a dominant nor disproportionate recipient of the investment allowances, and there is no evidence that the GOS exercises discretion, in general or across industries, in conferring benefits. Thus, we preliminarily determine that this program is not countervailable within the meaning of section 701(a) of the Act. (A detailed specificity analysis is set forth in the Memorandum dated July 28, 1995, *1992 Administrative Reviews of the Countervailing Duty Orders on Antifriction Bearings and Parts Thereof*

from Singapore: Part X of the EEIA—Investment Allowances which is on file in the Central Records Unit, Room B–099 of the Department of Commerce.)

II. Programs Preliminarily Determined Not To Be Used

We examined the following programs and preliminarily determine that the Minebea group of companies did not apply for or receive benefits under these programs during either the 1992 review period or the 1993 review period:

A. Production for Export under Part VI of the EEIA
B. Monetary Authority of Singapore Rediscount Facility
C. Other Tax Incentives under the EEIA
- Part IV: Expansion of Established Enterprises
- Part VII: International Trade Incentives
- Part VIII: Foreign Loans for Productive Equipment
- Part IX: Royalties, Fees and Development Contributions
- Part XI: Warehousing and Servicing Incentives

D. Incentives Under the Income Tax Act
- Sections 14B and 14C: Double Deduction of Export Promotion Expenses
- Section 14E: Double Deduction for Research and Development
- Section 19B: Write-Offs of Payments for "Know-How", Patents and Manufacturing Licenses

E. Programs Administered by the Economic Development Board
- Capital Assistance Scheme
- Productive Development Assistance Scheme
- Initiatives in New Technology Program

F. Program Administered by the National Science Technology Board: Research & Development Assistance Scheme

In the 1993 review, we received a submission from the Torrington Company, the petitioner in this proceeding, alleging that post-pioneer status under Part IIIA of the EEIA might have been granted to producers of the subject merchandise. We examined that program and preliminarily determine that the producers/exporters of the subject merchandise did not apply for or receive benefits under that program and were not granted post-pioneer status.

Preliminary Results of Reviews

For the periods January 1, 1992, through December 31, 1992, and January 1, 1993, through December 31, 1993, we preliminarily determine the net subsidy to be zero for the Minebea group of companies (Pelmec, NMB, and MSB) and 9.11 percent *ad valorem* for all other companies (*see Calculation Methodology for Assessment and Cash Deposit Purposes*, above).

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess the following countervailing duties for the period January 1, 1992, through December 31, 1993:

Manufacturer/Exporter	Rate (percent)
Minebea companies (Pelmec, NMB, and MSB)	0.00
All Other Companies	9.11

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from the Minebea companies (Pelmec, NMB, and MSB), and 9.11 percent of the f.o.b. invoice price on all shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit written arguments in these proceedings are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR § 355.38(e).

Representatives of parties to these proceedings may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. § 1675(a)(1)) and 19 CFR § 355.22.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Appendix A

Scope of The Reviews

The products covered by these reviews, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) Ball Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ balls as the rolling element. Such merchandise is classifiable under the following *Harmonized Tariff Schedule* (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(2) Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ spherical rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(3) Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(4) Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ needle rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(5) Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof: These products include all spherical plain bearings which do not employ rolling elements and include spherical plain rod ends. Such merchandise is classifiable under the following HTS item numbers: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, and 8708.99.50.

These reviews cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those which will be subject to heat treatment after importation.

[FR Doc. 95–19258 Filed 8–3–95; 8:45 am]
BILLING CODE 3510–DS–P

[C–201–003]

Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On May 18, 1995, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on ceramic tile from Mexico (60 FR 267177) for the period January 1, 1993 through December 31, 1993. We have now completed this review and determine the total bounty or grant to be 0.48 percent *ad valorem* for all companies. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*. We will instruct the U.S. Customs Service to assess countervailing assess countervailing duties as indicated above.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 1995, the Depar**Federal Register** (60 FR 26717) the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico (47 FR 20012; May 10, 1982). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. On June 19, 1995, a case brief was submitted by Ceramica Regiomontana, S.A., a producer of the subject merchandise which exported ceramic tile to the United States during the review period (respondent).

The review period is January 1, 1993, through December 31, 1993. This review involves 40 companies and the following programs:

(1) BANCOMEXT Financing for Exporters;
(2) The Program for Temporary Importation of Products used in the Production of Exports (PITEX);
(3) NAFINSA Long-Term Loans
(4) Other BANCOMEXT preferential financing;
(5) Other Dollar-Denominated Financing Programs;
(6) Fiscal Promotion Certificates (CEPROFI);
(7) Import duty reductions and exemptions;
(8) State tax incentives;
(9) Article 15 Loans;
(10) NAFINSA FONEI-type financing; and
(11) NAFINSA FOGAIN-type financing.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000, and 6908.90.0000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

We calculated the total bounty or grant on a country-wide basis by first calculating the bounty or grant for each company subject to the administrative review. We then weight-averaged the rate received by each company, even those with *de minimis* and zero rates, using as the weight its share of total Mexican exports to the United States of subject merchandise. We then summed the individual companies' weighted-average rates to determine the bounty or grant from all programs benefitting exports of subject merchandise to the United States. Since the country-wide rate calculated using this methodology was *de minimis*, as defined by 19 CFR § 355.7, no further calculations were necessary.

Analysis of Comments

Comment 1: As in past reviews, Ceramica Regiomontana contends that the Department does not have the legal authority to assess countervailing duties on ceramic tile from Mexico and must terminate the review. Effective April 23, 1985, the date of the "Understanding Between the United States and Mexico regarding Subsidies and Countervailing Duties" (the Understanding), Mexico became a "country under the Agreement." Therefore, Ceramica Regiomontana argues that 19 U.S.C. 1671 requires an affirmative injury determination as a prerequisite to the imposition of countervailing duties on any Mexican merchandise imported on or after April 23, 1985. Furthermore, Ceramica Regiomontana argues that the only applicable statutory authority for this review would be 19 U.S.C. 1303; however, because Mexico became a country under the Agreement, the provisions of section 1303 could no longer apply. Therefore, Ceramica Regiomontana maintains the Department has no authority to conduct this review and the review should be terminated.

Department's Position: We fully addressed this issue in a previous administrative review of this countervailing duty order. *See Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review* (55 FR 50744; December 10, 1990). The CIT and the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) have sustained the Department's legal position that Mexican imports subject to an outstanding countervailing duty order already in effect when Mexico entered into the Understanding are not entitled to an injury test pursuant to section 701 of the Act and paragraph 5 of the Understanding (*Ceramica Regiomontana, S.A., et. al v. United States*, Slip Op. 96–78, Court No. 89–06–00323 (May 5, 1994) (*Ceramica Regiomontana*"); *Cementos Anajuac del Golfo, S.A. v. U.S.*, 879 F.2d 847 (Fed. Cir. 1989), cert. denied, 110 S.CT. 1318 (1989)). The countervailing duty order on ceramic tile from Mexico was published prior to Mexico's entering into the Understanding and, therefore, imports of ceramic tile are not entitled

to an injury test pursuant to section 701 of the Act.

Comment 2: As in past administrative reviews, Ceramica Regiomontana contends that the Department incorrectly treated the benefit from the PITEX program as a grant. According to Ceramica Regiomontana, PITEX benefits should be calculated as interest-free loans similar to the Department's treatment of loan duty deferrals under a Peruvian program in *Cotton Sheeting and Sateen from Peru; Final Results of Administrative Review of Countervailing Duty Order* (49 FR 34542).

Ceramica Regiomontana contends that the Department provides no legal justification for refusing to treat PITEX as an interest-free loan rather than a grant in *Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review* (56 FR 50858). Furthermore, Ceramica Regiomontana argues that the Department bases its refusal to calculate PITEX as an interest-free loan on the difficulty of doing the calculation. Ceramica Regiomontana maintains that although there is no certainty whether a company will ultimately be exempt from payment of all or a portion of the duty, the deferral should be treated as a loan rather than a grant in accordance with legal requirements.

Department's Position: We fully addressed this issue in the previous administrative review of this case. *See Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review* (60 FR 19022; April 14, 1995). We stated that, under PITEX, an exporter may temporarily import machinery for five years. At the end of five years, the exporter can renew the temporary stay on an annual basis indefinitely. Since payment of import duties upon conversion to permanent import status is based on the depreciated value of the equipment at the time it is converted to permanent import status, the exporter can on an annual basis continue the temporary import status after the initial five year period until the depreciated value of the equipment is zero and no import duties are owed. Therefore, duty exemptions under PITEX are properly treated as grants, and we expensed them in full at the time of importation, when the exporters otherwise would have paid duties on the imported machinery. Id.; *Final Negative Countervailing Duty Determination; Silicon Metal From Brazil* (56 FR 26988). Ceramica Regiomontana has presented us with no new evidence or arguments on this issue.

Comment 3: Ceramica Regiomontana argues that the calculation of the PITEX net subsidy is incorrect because the Department improperly divided the PITEX benefit by each company's total exports. Ceramica Regiomontana contends that, since the machinery imported under the PITEX program may be used to produce products for both the export and domestic markets, the benefits from the program should be divided by total sales rather than by total exports. Furthermore, Ceramica Regiomontana argues that the program does not limit the use of imported machinery to production for export products only. According to Ceramica Regiomontana, machinery imported by the company is used for production of merchandise for both export and domestic markets.

Ceramica Regiomontana claims that the Department's allocation method in PITEX is incorrect because it does not measure the benefit of the subsidy to the recipient and the proper method of allocation would be based on total sales.

Department's Position: We disagree. In order to meet the eligibility criteria for the PITEX program, a company is required to have a proven export record, and to use the imported merchandise (both raw materials and equipment) in the production of goods for export. Since receipt of benefits under PITEX is tied to the company's exports, thereby making the program an export subsidy, the proper basis for allocation of these benefits is total exports, as opposed to total sales. *See Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review* (56 FR 12175, 12178; March 22, 1991).

Final Results of Review

As a result of our review, we determine the total bounty or grant to be 0.48 percent *ad valorem* for all companies. In accordance with 19 CFR § 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from all companies on or after January 1, 1993, and on or before December 31, 1993.

The Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties at a zero rate, as provided by section 751(a)(1) of the Act, on shipments of this merchandise from all companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR § 355.22 and 19 CFR 355.25.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-19253 Filed 8-3-95; 8:45 am]

BILLING CODE 3510-DS-P

[(C-428-812)]

Certain Lead and Bismuth Carbon Steel Products From Germany; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administration Review (01/01/94-12/31/94).

SUMMARY: The Department of Commerce (the Department) is terminating the countervailing administrative review of certain hot-rolled lead and bismuth carbon steel products from Germany initiated on April 14, 1995 (60 FR 19017).

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Robert Copyak, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: On March 7, 1995, the Department published in the **Federal Register** (60 FR 12540) a notice of "Opportunity to Request Administrative Review" on the countervailing duty order (58 FR 15325; March 22, 1993) on certain lead and bismuth carbon steel products from Germany for the period January 1, 1994 through December 31, 1994. On March 31, 1995, Inland Steel Bar Co. and USS/Kobe Steel Co., domestic producers, requested an administrative review of the subject countervailing duty order. No other interested party requested the review.

On April 14, 1995, the Department published a notice of initiation of a review of the order (60 FR 19017). On May 31, 1995, Inland Steel Bar Co. and USS/Kobe Steel Co. withdrew their requests for an administrative review. Because the requests for withdrawal were timely pursuant to 19 CFR 355.22(a)(3), the Department is terminating this review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: July 26, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95-19254 Filed 8-3-95; 8:45 am]

BILLING CODE 3510-DS-P

[C-533-807]

Sulfanilic Acid From India; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review (01/01/94-12/31/94).

SUMMARY: The Department of Commerce (the Department) is terminating the countervailing duty administrative review of the order on sulfanilic acid from India initiated on April 14, 1995 (60 FR 19017).

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Lorenza Olivas, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: On March 7, 1995 the Department published in the **Federal Register** (60 FR 12540) a notice of "Opportunity to Request Administrative Review" of the countervailing duty order (58 FR 12026; March 2, 1993) on sulfanilic acid from India for the period January 1, 1994 through December 31, 1994. On March 29, 1995, Kokan Synthetics and M/S Kay International From India requested that the Department conduct a review of the subject countervailing duty order. No other interested party requested a review.

On April 14, 1995, the Department published a notice of initiation of a review of the order (60 FR 19017). On June 26, 1995, Kokan Synthetics and M/S Kay International withdrew their request for an administrative review. Because the request for withdrawal was timely pursuant to 19 CFR 355.22(a)(3), the Department is terminating this review.

This notice is published in accordance with 19 CFR 355.22(a)(5).

Dated: July 28, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95-19256 Filed 8-3-95; 8:45 am]

BILLING CODE 3510-DS-P

[C-357-002]

Wool From Argentina; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administration Review (01/01/94-12/31/94).

SUMMARY: The Department of Commerce (the Department) is terminating the countervailing duty administrative review of wool from Argentina initiated on May 15, 1995 (60 FR 25885).

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Lorenza Olivas, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION: On March 31, 1995, the Department published in the **Federal Register** (60 FR 16620) a notice of intent to revoke the countervailing duty order on wool from Argentina (48 FR 14423; April 4, 1983)). On April 4, 1995, the Department published a notice of "Opportunity to Request Administrative Review" (60 FR 17052) of the countervailing duty order on wool from Argentina for the period January 1, 1994 through December 31, 1994. On April 21, 1995, the American Sheep Industry Association (ASIA), petitioner, requested that the Department conduct an administrative review of the countervailing duty order on wool from Argentina in response to the Department's notice of intent to revoke the order pursuant to section 355.25(d)(4)(iii) of the Department regulations. No other interested party requested the review. On May 15, 1995, the Department published a notice of initiation of a review of the order (60 FR 19017). On July 3, 1995, the Department published a notice of "Determination Not to Revoke Countervailing Duty Orders" on wool from Argentina (60 FR 34518).

On June 30, 1995, the ASIA clarified its April 21, 1995 request for an administrative review. ASIA asked that its April 21, 1995 request be considered an objection to the Department's notice of intent to revoke the order, and withdrew its request for an administrative review. For this reason and because the request for withdrawal was timely pursuant to 19 CFR 355.22 (a)(3)(a), the Department is terminating this review.

The notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: July 28, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95-19255 Filed 8-3-95; 8:45 am]

BILLING CODE 3510-DS-P

North American Free-Trade Agreement (NAFTA), Article 1904; Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On July 26, 1995 Tubos de Acero de Mexico, S.A. (TAMSA) filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Determination of Sales at Less Than Fair Value made by the International Trade Administration respecting Oil Country Tubular Goods from Mexico. This determination was published in the **Federal Register** on June 28, 1995 (60 FR 33567). The NAFTA Secretariat has assigned Case Number USA-95-1904-04 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United

States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on July 26, 1995, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 25, 1995);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is September 11, 1995); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 1, 1995.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 95–19268 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[I.D. 072795A]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will meet by teleconference.

DATES: The teleconference will be held on August 17, 1995, beginning at 9:00 a.m. (Alaska Standard Time).

ADDRESSES: Listening stations for the public will be made available in Seattle, Juneau and Anchorage, AK. Please contact the Council office for more information.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: David Witherell, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review the Environmental Assessment/Regulatory Impact Review of the proposed alternatives for trawl closure areas in Bristol Bay to protect red king crabs. An economic analysis has been incorporated into the revised draft document. If acceptable to the SSC, and, if there are only minor changes, the document will be released for public review on August 25, 1995, allowing for a minimum 30-day review period. The Council is scheduled to take final action on this amendment in September.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: July 28, 1995.

Donald J. Leedy,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19166 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–22–F

Technology Administration

Technology Administration Performance Review Board Membership

July 1995.

The Technology Administration Performance Review Board reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and performance-related pay increases for ST–31904 employees, and makes appropriate recommendations to the Appointing Authority concerning such matters in such a manner as will ensure the fair and equitable treatment of these individuals.

Individuals who are newly appointed by the Appointing Authority to membership on the Technology Administration Performance Review Board are listed below:

Andrew W. Fowell, Chief (C)
Chief, Fire Safety Engineering Division
Building and Fire Research Laboratory
National Institute of Standards and Technology
Gaithersburg, MD 20899
Appointment Expires: 12/31/97

Robert J. Mayher (C)
Director, Office of Spectrum Plans and Policies
Office of Spectrum Management
National Telecommunications and Information Administration
Washington, DC 20230
Appointment Expires: 12/31/97

Stanley D. Rasberry (C)
Chief, Office of Measurement Services
Technology Services
National Institute of Standards and Technology
Gaithersburg, MD 20899
Appointment Expires: 12/31/97

The following represents the full membership and expiration dates of the members' appointments to the Technology Administration Performance Review Board General and Limited Groups.

Karl Bell (C)
Deputy Director of Administration
Office of the Director of Administration
National Institute of Standards and Technology
Gaithersburg, MD 20899
Appointment Expires: 12/31/96

Kelly Carnes (NC)
Deputy Assistant Secretary for Technology Policy
Technology Administration
Washington, DC 20230
Appointment Expires: 12/31/96

Andrew W. Fowell, Chief (C)
Chief, Fire Safety Engineering Division
Building and Fire Research Laboratory
National Institute of Standards and Technology
Gaithersburg, MD 20899
Appointment Expires: 12/31/97

William W. Fox (C)
Director, Office of Protected Resources
National Marine Fisheries Service
National Oceanic and Atmospheric
Washington, DC 20233
Appointment Expires: 12/31/96

Frederick Johnson (C)
Associate Director for Computing
Computing and Applied Mathematics Laboratory
National Institute of Standards & Technology
Gaithersburg, MD 20899
Appointment Expires: 12/31/96

Samuel Kramer (C)
Associate Director
Office of the Director
National Institute of Standards and Technology
Gaithersburg, MD 20899
Appointment Expires: 12/31/96

Ronald E. Lawson (C)
Assistant Secretary for Technology Policy
National Technical Information Service
Technology Administration
Springfield, VA 22161
Appointment Expires: 12/31/96

Robert J. Mayher (C)
Director, Office of Spectrum Plans and Policies
Office of Spectrum Management
National Telecommunications and Information Administration
Washington, DC 20230
Appointment Expires: 12/31/97

Harry I. McHenry (C)
Chief, Materials Reliability Division
Materials Science and Engineering Laboratory
National Institute of Standards and Technology
Boulder, CO 80303
Appointment Expires: 12/31/96

Robert Scace (C)
Director, Office of Microelectronics Programs
Electronics and Electrical Engineering Laboratory
National Institute of Standards and Technology
Gaithersburg, MD 20899
Appointment Expires: 12/31/96

Stanley D. Rasberry (C)
Chief, Office of Measurement Services
Technology Services
National Institute of Standards and Technology
Gaithersburg, MD 20899
Appointment Expires: 12/31/97

Kathryn D. Sullivan (PAS)
Chief Scientist
National Oceanic and Atmospheric Administration
Washington, DC 20230
Appointment Expires: 12/31/96

Rance A. Velapoldi (C)
Chief, Surface and Microanalysis Science Division
Chemical Science and Technology Laboratory
National Institute of Standards and Technology
Gaithersburg, MD 20899
Appointment Expires: 12/31/96.

Dated: July 28, 1995.

Mary L. Good,

Under Secretary for Technology, Technology Administration, Department of Commerce.

[FR Doc. 95–19178 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–18–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Rescission of a Request to Consult on Certain Wool Textile Products Produced or Manufactured in the Federative Republic of Brazil

July 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to rescind the request made on April 26, 1995 to consult on imports of men's and boys' wool coats other than suit type in Category 434. Should it become necessary to discuss this category with the Government of the Federative Republic of Brazil at a later date, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 27273, published on May 23, 1995.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19262 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DR–F

Increase of a Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Costa Rica

July 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On request of the Government of Costa Rica, the United States Government has agreed to increase the 1995 Guaranteed Access Level (GAL) for Categories 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62717, published on December 6, 1994; and 55 FR 21047, published on May 22, 1990; and 59 FR 62715, published on December 6, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 31, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 8, 1995, you are directed to increase the current Guaranteed Access Level for the Categories 347/348 to 2,100,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19264 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

July 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and guaranteed access levels.

EFFECTIVE DATE: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On the request of the Government of the Dominican Republic, the Government of the United States agreed to increase the 1995 guaranteed access levels for Categories 339/639 and 433. Also, the current limit for Category 633 is being increased by application of swing, reducing the limit for Categories 342/642.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17321, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 31, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 8, 1995, you are directed to adjust the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
342/642	537,047 dozen.
633	114,117 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The guaranteed access levels (GALs) for Categories 342/642 and 633 remain unchanged. You are directed also to increase the GALs for the following categories:

Category	Guaranteed access level
339/639	1,350,000 dozen.
433	61,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19265 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DR–F

Increase Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Guatemala

July 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On request of the Government of Guatemala, the Government of the United States has agreed to increase the 1995 guaranteed access level (GAL) for Categories 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 14931, published on March 21, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 31, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 15, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 8, 1995, you are directed to increase the guaranteed access level for Categories 347/348 to 1,600,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19263 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

July 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting limits.

EFFECTIVE DATE: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6718. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), the current limits are being amended for textile products, produced or manufactured in Poland and exported during the period beginning on January 1, 1995 and extending through December 31, 1995. These limits are being amended because Poland is now a member of the World Trade Organization (WTO). Also, the limit for Category 443 is being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 62718, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 31, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on August 8, 1995, you are directed, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), to increase the limits for the following categories:

Category	Twelve-month limit [1]
335	157,023 dozen.
338/339	1,691,018 dozen.
410	2,582,128 square meters.
433	18,235 dozen.
434	9,946 dozen.
435	13,014 dozen.
443	204,233 numbers.
611	4,833,291 square meters.
645/646	247,613 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19266 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DR–F

Settlement on an Import Limit and Amendment of Visa Requirements for Certain Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

July 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit and amending visa requirements.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated June 23, 1995, the Governments of the United States and the Democratic Socialist Republic of Sri Lanka agreed, pursuant to Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC), to establish a limit for man-made fiber luggage in Category 670–L for a three year term—June 23, 1995 through December 31, 1995; January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through June 22, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for Category 670–L for the period beginning on June 23, 1995 and extending through December 31, 1995. Also, the visa arrangement is being amended to require a part-category visa for goods in Category 670–L and Category 670–O, produced or manufactured in Sri Lanka and exported from Sri Lanka on and after August 7, 1995. Goods in Category 670 which are exported during the period August 7, 1995 through September 6, 1995 shall be permitted entry if visaed as 670 or the correct part category. Goods exported on and after September 7, 1995 must be accompanied by a 670–L visa or a 670–O visa.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 53 FR 34573, published on September 7, 1988; 60 FR 13410, published on March 13, 1995; and 60 FR 27276, published on May 23, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 31, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on August 7, 1995, you are directed to cancel the directive issued to you on May 12, 1995, by the Chairman, Committee for the Implementation of Textile Agreements (CITA), directing you to count imports of textile products in Category 670–L [1] for the period beginning on April 27, 1995 and extending through April 26, 1996.

This directive amends, but does not cancel, the directive issued to you on March 7, 1995, by the Chairman of CITA. That directive concerns, among other things, imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 7, 1995, you are directed, pursuant to the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC), and a Memorandum of Understanding dated June 23, 1995 between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka, to establish a limit for man-made fiber textile products in Category 670–L for the period beginning on June 23, 1995 and extending through December 31, 1995 at a level of 3,945,206 kilograms [2].

Textile products in Category 670–L which have been exported to the United States prior to June 23, 1995 shall not be subject to this directive.

Textile products in Category 670–L which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

For visa purposes, you are directed to amend further the directive dated September 1, 1988 to require a part-category visa for 670–L and 670–O for goods produced or manufactured in Sri Lanka and exported from Sri Lanka on and after August 7, 1995. Goods in Category 670 which are exported from Sri Lanka during the period August 7, 1995 through September 6, 1995 may be visaed as Category 670 or the correct part-category. Goods in Category 670 which are exported on and after September 7, 1995 must be visaed as Category 670–L or Category 670–O.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19267 Filed 8–3–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[2] The limit has not been adjusted to account for any imports exported after June 22, 1995.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: September 5, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 28, May 26, June 2 and 9, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 FR 15535, 20971, 27968, 30523) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services, General Services Administration, FSS, National Furniture Center, Crystal Mall Building 4, Arlington, Virginia

Microfilming of EEG Records, Department of Veterans Affairs, William S. Middleton Memorial Veterans Hospital, Madison, Wisconsin.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48d) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Candle, Illuminating
6260–00–840–5578

Tape, Red
7510–00–NIB–0069 (1" x 60 yds.)
7510–00–NIB–0070 (2" x 60 yds.)
7510–00–NIB–0068 (3" x 60 yds.)

Wood Container
8115–L1–599–7320
8115–L1–599–7920
8115–L1–465–1020
8115–L1–599–8020
8115–L1–599–7220

Cap, Garrison
8410–01–381–5481
8410–01–381–5507
8410–01–381–5521
8410–01–381–5536
8410–01–381–5544
8410–01–381–5559
8410–01–381–5566
8410–01–381–5612
8410–01–381–5627
8410–01–381–5647
8410–01–381–5504

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–19241 Filed 8–3–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List hardwood flag cases to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 5, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: On June 2, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 28781) of proposed addition to the Procurement List.

Comments were received from the current contractor for the flag cases, both Senators from North Carolina, two other members of the State's Congressional delegation, the State's Department of Commerce and its Small Business & Technology Development Center, a county commissioner for one North Carolina county, and the Chambers of Commerce of two other counties. Many of the commenters expressed concern that loss of sales of the flag cases proposed to be added to the Procurement List could severely affect the current contractor, which is a startup business that has not yet shown a profit from its activities to develop its flag case business and is located in an area classified as "severely economically distressed."

The majority of the current contractor's Government sales of the flag cases are to the Army, Air Force, or exchange system. The Committee proposes to add only the Navy and Marine Corps requirements to the Procurement List. These requirements comprise less than five percent of the contractor's business, and the contractor has been selling the cases to the Navy and Marine Corps for less than a year. The Committee does not normally consider an impact of this size to be severe adverse impact, particularly when the contractor does not have a long-term dependence on sales of the item to the affected customer.

Nevertheless, some of the commenters have indicated that even a sales loss of this lesser size would have a severe impact on the contractor, given its current profitability status, and particularly on its subsidiary which makes the cases and on the county in which the subsidiary is located if the subsidiary is forced to close. They contend that the contractor must continue to expand its business in order to become profitable, so it cannot afford to lose any part of its current sales or prospects, and it would not be fair for it to lose the fruits of its business development efforts.

The contractor is currently selling the flag cases to the Government under the competitive purchasing system. In this system, no contractor is guaranteed that it will continue to receive Government contracts. Any company desiring to do business with the Government thus risks the loss of any expenditure of money or effort it makes in order to obtain this business. In addition, the Government's needs may change so that it would no longer buy the type of flag case that the contractor sells. Until last year, in fact, the Navy and Marine Corps bought a different type of flag case for the same purpose. Addition of the Navy and Marine Corps requirements for the case to the Procurement List is thus not the only way the contractor can lose this business.

The Committee does not believe that the proposed addition will cause the contractor to close its subsidiary and impact the local economy as some of the commenters have indicated. In its initial comment, the contractor indicated that loss of its entire Government flag case business would only cause the loss of two sales positions and a possible closing of the subsidiary. Since the amount being added to the Procurement List is only one-fifth of the contractor's Government flag case business, it appears unlikely that the impact would force the subsidiary's closing. To the extent that the Committee's action causes losses to the contractor or its employees, the Committee believes the losses are outweighed by the creation of jobs for people with severe disabilities, whose overall unemployment rate exceeds 65 percent, well above the rate for nondisabled workers in the contractor's locality.

One commenter expressed a fear that the Committee would expand its share of the Government market for the flag case beyond the Navy and Marine Corps requirements, causing a greater impact on the contractor. The Committee could not do that without conducting a separate rulemaking proceeding to add the additional quantities to the Procurement List. In that proceeding, the Committee would be required to consider the cumulative impact on the contractor caused by both addition actions. Unless the contractor's business fortunes had improved markedly, it is unlikely the Committee would add any further part of the contractor's Government sales of the flag case to the Procurement List.

The same commenter indicated that making flag cases is dangerous work, and questioned the ability of the designated nonprofit agency to produce the flag cases at a competitive price and in sufficient quantity to meet wartime requirements. As the Navy official who conducted the plant inspection noted in finding the nonprofit agency capable of meeting all Navy and Marine Corps supply requirements, the nonprofit agency has a fully equipped commercial woodworking operation, with machines which have been specially designed to allow people with disabilities to operate them safely. The Committee is required to set a fair market price for each item on the Procurement List, and the

nonprofit agency has agreed to produce the flag cases at the price that has been set.

Another commenter indicated that the contractor's firm may have disabled employees. The contractor, however, did not support this contention in its comments either to the Committee or in its letters to Members of Congress. One commenter proposed that the Committee permit the contractor to hire some people with disabilities instead of adopting the proposed addition to the Procurement List. The Committee encourages companies to hire people with disabilities but does not believe this hiring should replace the creation of jobs for people with severe disabilities through additions to the Procurement List, which guarantees employment for these people while commercial businesses are free to terminate workers with disabilities for any reason.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Case, Flag, Hardwood
8345–00–NSH–0013 (18" x 25" Navy)
8345–00–NSH–0014 (18" x 25" Marine Corps)
(Requirements for the Naval Medical Logistics Command, Fort Detrick, Maryland)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 95–19242 Filed 8–3–95; 8:45 am]
BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
COMMENTS MUST BE RECEIVED ON OR BEFORE: September 5, 1995.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.
SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Drawers, Cold Weather
8415–01–227–9542
8415–01–227–9543
8415–01–227–9544
8415–01–227–9545
8415–01–227–9546
(Remaining 50% of the Government's requirement)
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan.

Beverly L. Milkman,
Executive Director.
[FR Doc. 95–19243 Filed 8–3–95; 8:45 am]
BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Proposed additions to procurement list

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
COMMENTS MUST BE RECEIVED ON OR BEFORE: September 5, 1995.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.
FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.
SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial
Department of Veterans Affairs
Franklin D. Roosevelt Hospital
Buildings 17, 18, 29, 39, 52, Paint Shop & Chapel
Montrose, New York
NPA: Community Aid for Retarded Children, Inc., Peekskill, New York
Janitorial/Custodial
U.S. Military Academy, Pershing Center
Buildings 2101, 2104, 2107 and 2113
West Point, New York
NPA: Orange County Rehabilitation Center—Occupations, Inc.
Middletown, New York

Beverly L. Milkman,
Executive Director.
[FR Doc. 95–19244 Filed 8–3–95; 8:45 am]
BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 247, Transportation, and Related Clause at 252.247; OMB Control Number 0704–0245.

Type of Request: Extension.
Number of Respondents: 2,532.
Responses Per Respondent: 1.
Annual Responses: 2,532.
Average Burden Per Response: 11 minutes.
Annual Burden Hours: 460.

Needs and Uses: This requirement provides for the collection of information from contractors who transport supplies by sea. It is used in the application of transportation and traffic management procedures in the acquisition of supplies. It is additionally used by contracting officers to process transportation and related services contracts.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 1, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Ofícer, Department of Defense.
[FR Doc. 95–19287 Filed 8–3–95; 8:45 am]
BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Forms, and OMB Control Number: DoD FAR Supplement, Part 245, Government Property, and Related Clauses at 252.245; DD Forms 1149, 1149C, 1342, 1419, 1637, 1639, 1640, and 1662; OMB Control Number 0704–0246.

Type of Request: Extension.
Number of Respondents: 14,896.
Responses Per Respondent: 3.
Annual Responses: 43,932.
Average Burden Per Response: 1 hours 13 minutes.
Annual Burden Hours: 53,185.

Needs and Uses: This requirement provides for the collection of information pertaining to providing government property to contractors; contractors' use and management of government property; and reporting, redistributing, and disposing of contractor inventory. It is used by contractors, property administrators, and contracting officers to maintain records of Government furnished property.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 1, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 95–19294 Filed 8–3–95; 8:45 am]
BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 236, Construction and Architect-Engineer Contracts, and Related Clauses in 252.236; OMB Control Number 0704–0255

Type of Request: Extension.
Number of Respondents: 2,680.
Responses Per Respondent: 1.
Annual Responses: 2,680.
Average Burden Per Response: 103 hours.
Annual Burden Hours: 276,620.
Needs and Uses: This requirement provides for the collection of information from contractors, pertaining

to construction costs. It is used by the Federal Government to evaluate price proposals for contract modifications, determine whether contractors have removed any obstructions to navigable waterways, and review contractor's requests for payment when mobilization or demobilization costs are included therein.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19288 Filed 8–3–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Subpart 223.370, Safety Precautions for Ammunition and Explosives, and Related Clauses at 252.223–7002 and 252.223–7003, OMB Control Number 0704–0272.

Type of Request: Extension.

Number of Respondents: 1,401.

Responses per Respondent: 1.

Annual Responses: 1,401.

Average Burden per Response: 4 hours.

Annual Burden Hours: 5,451.

Needs and Uses: The information collected hereby, is used by Federal Government personnel to ensure that contractors take reasonable precautions in handling ammunition and explosives in order to minimize the potential for mishaps.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19289 Filed 8–3–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 205, Publicing Contract Actions, and the Clause at 252.205–7000; OMB Control Number 0704–0296.

Type of Request: Extension.

Number of Respondents: 1,800.

Responses per Respondent: .1.

Annual Responses: 1,800.

Average Burden per Response: 1 hour 18 minutes.

Annual Burden Hours: 2,340.

Needs and Uses: This requirement provides for the collection of information from defense contractors awarded contracts exceeding $500,000. It is provided to cooperative agreement holders at their request, and specifies individuals or offices with subcontract authority. This language implements the requirements contained in 10 U.S.C. 2413.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19290 Filed 8–3–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 228, Bonds and Insurance, and Related Clauses at 252.228; OMB Control Number 0704–0216.

Type of Request: Revision.

Number of Respondents: 31.

Responses Per Respondent: 1.

Annual Responses: 31.

Average Burden Per Response: 27 hours 25 minutes.

Annual Burden Hours: 850.

Needs and Uses: This requirement provides for the collection of information from defense contractors pertaining to reimbursement for war-hazard losses, and accident reporting involving aircraft, missiles, and space launch vehicles being manufactured, modified, overhauled, or repaired. It is used in monitoring accident reports, and in the processing of insurance claims relating to these areas.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated. August 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 95–19293 Filed 8–3–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title And OMB Control Number: DoD FAR Supplement, Part 232, Contract Financing, and Related Clause at 252.232–7007; OMB Control Number 0704–0359.

Type of Request: Extension.

Number of Respondents: 800.

Responses Per Respondent: 1.

Annual Responses: 800.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 800.

Needs And Uses: This requirement provides for the collection of information from contractors who are awarded incrementally funded, fixed-price DoD contracts. The information collected hereby, constitutes a notification of the Federal Government by the contractor, when the work under the contract will, within ninety days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will also be used to determine what course of action the Government will take; i.e., allot additional funds for continued performance, terminate the contract, or terminate certain contract line items.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19292 Filed 8–3–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type of Request: Extension.

Number of Respondents: 800.

Responses Per Respondent: 1.

Annual Responses: 800.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 800.

Needs And Uses: This requirement provides for the collection of information from contractors who are awarded incrementally funded, fixed-price DoD contracts. The information collected hereby, constitutes a notification of the Federal Government by the contractor, when the work under the contract will, within ninety days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will also be used to determine what course of action the Government will take; i.e., allot additional funds for continued performance, terminate the contract, or terminate certain contract line items.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19291 Filed 8–3–95; 8:45 am]

BILLING CODE 5000–04–P

Office of the Secretary

Defense Science Board Task Force on Improved Application of Intelligence to the Battlefield

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Improved Application of Intelligence to the Battlefield will meet in closed session on August 8–10, 1995 at the Pentagon, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will determine the optimum posture for the employment and use of intelligence information derived from strategic and other assets and the timely delivery and fusion of same to theater operating forces. Particular emphasis should be placed on air defense and targeting information.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: August 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19247 Filed 8–3–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on US-New Independent States (NIS) Defense Diversification

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on US-New Independent

States (NIS) Defense Diversification will meet in closed session on October 18, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will advise the US Component(s) in efforts to promote the orderly shrinkage and reorientation to peaceful purposes of Russian defense industrial, technological, and scientific facilities and personnel not needed for legitimate defense requirements and to redirect them to satisfy the pressing needs of civil society.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: August 1, 1995.

Patricia L. Topping,

Alterate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19246 Filed 8–3–95; 8:45 am]

BILLING CODE 5000–04–M

Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: On July 25, 1995, FR Doc. 95–18249, the Department of Defense published a notice concerning a Performance Review Board (PRB). The following replaces the identification of PRB members. All other information remains unchanged.

Office of the Secretary of Defense

Chairman

Vincent P. Roske, Jr.

Members

Al Goldberg
Blair Ewing
Claiborne Haughton
Dr. Patricia A. Sanders
Gordon K. Soper
John Mester
John Maddy
John B. Rosamond
Jordan Rizer
Joseph V. Osterman
Judith Daly
Ken C. Scheflen
Mary Susan Chadick
Paul Carew
Robert Snyder
Sallie Wake
Sam Worthington

Alternates

Steve Austin
Tom Bozek
Jennifer C. Buck
Gary Chirstoperson
Richard Dunn
Bob Emmerichs
Walt Freeman
Thomas Garnett
J. Michael Gilmore
Timothy X. Morgan
Robert A. Nemetz
Earl Payne
Theodore M. Prociv
James Q. Roberts
Kirk Griffin Russell
William Douglas Smith
Larry Stotts
Dennis H. Trosch
Craig Wilson

Dated: August 1, 1995.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19248 Filed 8–3–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Finding of No Significant Impact for Operation of the Glass Melter Thermal Treatment Unit at the U.S. Department of Energy's Mound Plant, Miamisburg, Ohio

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The U.S. Department of Energy (DOE) has prepared an environmental assessment (DOE/EA–0821) for the proposed operation of the Glass Melter thermal treatment unit ("Glass Melter") at DOE's Mound Plant in Miamisburg, Ohio. The Glass Melter would thermally treat mixed waste (hazardous waste contaminated with radioactive constituents, largely tritium, plutonium-238, and/or thorium-230), that was generated at the Mound Plant and is now in storage, by stabilizing the waste in glass blocks. Depending upon the radiation level of the waste, the Glass Melter may operate for as short a time as one year, but not longer than six years. DOE considered two onsite alternatives to the proposed action and seven offsite alternatives.

Based on the analysis presented in the environmental assessment, DOE believes that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* Therefore, the preparation of an environmental impact statement is not required and the DOE is issuing this finding of no significant impact.

DATES: Proposed operation of the Mound Plant Glass Melter thermal treatment unit was the subject of a public meeting in Miamisburg, Ohio, on March 10, 1994. No unfavorable written comments from stakeholders were received by the DOE as a result of this meeting. The environmental assessment for the proposed operation of the Glass Melter was approved by DOE on October 27, 1994. A proposed finding of no significant impact (FONSI) was published in the **Federal Register** (FR) on November 3, 1994 (FR 59 55085) for public review and comment. No comments on the proposed FONSI were received, although a small number of individuals requested, and were provided, copies of the environmental assessment (EA).

ADDRESSES: Mail any requests for further information on the Glass Melter project, or the associated EA and FONSI, to: Ms. Sue Smiley, NEPA Compliance Officer, U.S. Department of Energy, Ohio Field Office, P.O. Box 3020, Miamisburg, Ohio 45343–3020, Phone: (513) 865–3987, Facsimile: (513) 865–4402.

FOR FURTHER INFORMATION: For further information on the DOE National Environmental Policy Act process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The proposed action would bring the Mound Plant Glass Melter out of cold shutdown mode and use it for treating mixed waste that was generated at the Mound Plant and is now in storage. The Glass Melter, housed in an annex of the Liquid Waste Disposal Building, consists of a burn chamber of stainless steel (lined with refractory material) with an exhaust (offgas) system connected to a system of pipes and scrubbers ending in a stack (scrubbers are devices that remove small particles, gasses, and airborne radionuclides generated during thermal treatment). Waste in sealed drums would be transported by truck from the Mound Hazardous Waste Storage Building or Radioactive Mixed-Waste Storage Building to the annex, staged on a concrete loading dock adjacent to the annex, and then moved individually to a fume hood in the annex where the contents would be transferred into a feed system for processing in the melter. The waste would be added to molten soda-lime silica glass in the burn chamber of the Glass Melter. Ash from the combustion process would fall to the glass surface, where it would be incorporated into the melt. When the molten glass would reach a prescribed chemical mix (or a prescribed level of radioactivity), it would be discharged from the melter into 19 liter (five gallon) containers. The containers would then be transferred to a storage area in the building using mechanical aids (e.g., hoists and a roller conveyor system) to cool and to await transport by truck to existing onsite storage facilities.

The Glass Melter would have an estimated annual capacity of approximately 48,000 kg (106,000 lb) of wastes, based on an average throughput of 23 kg/hour (51 lb/hr) and a 2,080-hour work year. As originally proposed by the DOE, and as analyzed in the environmental assessment, operating at this capacity would have enabled DOE to eliminate the existing backlog of approximately 43,000 kg (95,000 lb) of mixed waste in approximately six years, while processing hazardous and mixed wastes [approximately 39,000 kg (86,000 lb) annually of nonradioactive solvents and mixed wastes] as generated.

Since the environmental assessment was written, DOE has decided to close the Mound Plant. DOE proposes, therefore, to use the Glass Melter only for the mixed waste backlog. DOE has not yet fully characterized this waste for radioactive contamination levels. The radiation level of the waste feed would be limited by the need to comply with the Environmental Protection Agency's National Emissions Standards for Hazardous Air Pollutants and by internal Mound limitations. If, after characterization, the radiation level of the waste is determined to be low enough that the capacity of the Glass Melter would be the factor controlling the processing rate, then the schedule for treatment of the backlog waste could be as short as one year.

The environmental impacts of the proposed treatment of only the mixed waste backlog are adequately covered, and are bounded by, the analysis in the environmental assessment, because calculations of radiological exposures and impacts were based on assumptions of waste radioactivity content that would exceed the actual content under the current proposed action (according to the environmental assessment, the mixed waste backlog is estimated to have a total activity of 211 curies of tritium and 0.42 curies of plutonium-238; the calculations for Glass Melter operations, however, are based on a total waste activity content of 240 curies/yr of tritium and 0.48 curies/yr of plutonium-238). The discussion below, which is based on the environmental assessment, therefore, would apply equally to the new proposed action. If the DOE later proposes to use the Glass Melter to treat other than mixed waste backlog, it will undertake appropriate further review under the National Environmental Policy Act.

Routine operation of the Glass Melter would generate treated offgas, scrubber sludge, scrubber liquid effluent, and several solid waste streams. The sludge generated by the scrubbing operations [approximately 770 kg (170 lb) per year] would be transferred by pipeline: (1) back to a Glass Melter feed port for reprocessing, (2) to an existing cementation process for immobilization in concrete, or (3) to container storage for any subsequent additional treatment required under the Resource Conservation and Recovery Act (RCRA) land disposal restrictions. Filtered liquid scrubber effluent [approximately 36,000 kg (79,000 lb) per year], depending on its composition, would be: (1) pumped to an existing wastewater treatment facility, (2) pumped to the cementation process for immobilization as concrete (if the waste processed involved significant tritium concentrations), or (3) packaged for any subsequent additional treatment required under RCRA land disposal restrictions. Most liquid effluent would be treated at Mound's existing radioactive wastewater treatment facility and released via an existing outfall permitted under the National Pollutant Discharge Elimination System (NPDES).

The Glass Melter would generate, per year, approximately 3,200 kg (7,000 lb) of glass block (mixed waste); 8,900 kg (20,000 lb) of cementized scrubber effluent and sludge (also mixed waste); and 1,900 kg (4,200 lb) of maintenance wastes (filters, replacement parts, etc.). The maintenance wastes would generally be considered mixed waste, although certain of the replacement parts may have only surface radioactive contamination or may not be hazardous waste. The mixed wastes would be stored onsite until a mixed waste disposal facility is available.

The immediate result of Glass Melter treatment would be the conversion of waste that is primarily liquid and combustible, to a stable, inorganic form that would present very little environmental concern in storage. Most of the waste would eventually require transport to a radioactive mixed waste land disposal facility. Any waste that is not mixed waste would be disposed of with other, similar Mound wastes (e.g., hazardous waste is shipped offsite for disposal).

Environmental Impacts: In a series of test burns conducted in January 1985, the Glass Melter demonstrated the capability to thermally treat hazardous wastes in compliance with regulatory requirements. In June 1987, the Glass Melter was further tested and demonstrated effective treatment of low-level radioactive waste while meeting applicable regulatory requirements. Proposed future treatment of wastes using the Glass Melter would also meet all applicable environmental requirements. The Glass Melter is considered a "thermal treatment unit," not an "incinerator," under the Environmental Protection Agency regulations (40 CFR 260.10). Under the regulations for miscellaneous treatment, storage, and disposal units (40 CFR Part 264, Subpart X), any permit for the glass melter may include appropriate conditions from the incinerator regulations (Subpart O). Thermal treatment is one of the limited options DOE currently has to meet the requirement for site treatment plans under the Federal Facility Compliance Act.

The Environmental Protection Agency issued a Draft Strategy for Combustion of Hazardous Waste in Incinerators and Boilers on May 18, 1993, initiating a reexamination of its existing regulations and policies on waste combustion. In the draft strategy, the Environmental Protection Agency indicates that, "if conducted in compliance with regulatory standards and guidance, combustion can be a safe and effective means of disposing [of] hazardous wastes." To the extent that the Glass Melter would destroy hazardous wastes it would effectively "dispose" of that portion of the mixed waste backlog. Nevertheless, the thermal treatment of mixed wastes would necessitate the disposal of treatment residues as a mixed waste. These residues would be stored, pending final disposal in an approved location.

Emissions of nonradiological pollutants to the air during routine operation of the Glass Melter would include arsenic, cadmium, chromium, lead, carbon monoxide, hydrogen chloride, nitrogen oxides, and particulates. Predicted concentrations of nonradiological pollutants would meet applicable National Ambient Air Quality Standards and the maximum

acceptable ground-level concentrations established by the Ohio Environmental Protection Agency. During routine operation of the Glass Melter, the effective dose equivalent of radiation to the maximally exposed individual at the Mound Plant boundary [approximately 470 meters (510 yd) north-northeast from the Glass Melter stack] would be 0.07 mrem/year (tritium, plutonium-238, and thorium-230) from inhalation and ingestion pathways. These emissions would not cause the Mound Plant to exceed the individual effective dose equivalent limit of 10 mrem/year in the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants. Based on the 1990 population distribution surrounding the Mound Plant, the collective effective dose equivalent to the total population residing within 80 km (50 mi) of the facility would be 2.6 person-rem/year. The environmental assessment shows that the health risk from such exposures would be very small.

Onsite personnel would not be exposed to unique hazards and would be adequately protected from potential exposure to radionuclides or other hazards by the existing health and safety programs. Existing facility design features would reduce direct worker contact with radioactive materials.

The formation of dioxins from Glass Melter operation would be virtually precluded due to specific technological design features of the equipment. For instance, the elevated operating temperatures of the Glass Melter would result in a high destruction and removal efficiency (99.9999% in test burns). In addition, the rapid cooling of the offgases below dioxin-forming temperatures, as recommended by the Environmental Protection Agency for municipal waste incinerators, would also be used to preclude dioxin formation.

The worst reasonably foreseeable accident involving the Glass Melter would be a fire on the loading dock that would result in the complete vaporization of the contents of ten mixed waste storage drums. The estimated frequency of such an accident is once every 100,000 years. The effective dose equivalent to the maximally exposed individual [approximately 200 m (220 yd) downwind] would be 0.2 mrem, well below Environmental Protection Agency standards. The environmental assessment shows that the health risk from such exposures would be very small. Predicted concentrations of nonradiological pollutants would meet the Ohio Environmental Protection Agency's maximum acceptable ground-level concentrations. Taking into account the low probability of such an event, and the small magnitude of the consequences, the health risk posed by the accident would be very small.

No endangered species, critical habitats, floodplains, wetlands, or historical or archaeological resources would be affected by the proposed action.

Alternatives Considered: In the environmental assessment, DOE considered two onsite alternatives to the proposed action and seven offsite alternatives in the context of the original proposed action (i.e., assuming the continuing operation of the Mound Plant). The discussion below, however, while being based on the environmental assessment, reflects the current proposed use of the Glass Melter (based on DOE's decision to close the Mound Plant), which is to treat only mixed waste backlog.

- *No Action:* The present practice of waste storage and disposal would continue and the Glass Melter would not be used. Most of the mixed waste backlog is liquid, and much of it is combustible. Storage of the untreated waste, therefore, could adversely impact human health and the environment, especially in the case of a fire in the storage facility.
- *Administrative Action:* Another alternative would be to rely upon the established Mound Waste Minimization and Pollution Prevention Program to identify, screen, and analyze options to reduce the generation of waste. Waste that is in storage would not be affected by this program. The need for treatment options would persist.
- *Offsite Treatment and Disposal:* These alternatives would involve the transportation of mixed wastes to designated sites. DOE considered seven options for offsite treatment. All of the offsite treatment alternatives, with the exception of the Nevada Test Site, would involve thermal treatment.

—*Quadrex HPS, Inc. (Gainesville, FL):* This commercial facility cannot accept certain of the Mound mixed wastes, so this alternative would not, by itself, address the need to treat such wastes.

—*Diversified Scientific Services, Inc. (Kingston, TN):* This commercial facility could accept most of the mixed waste from Mound. Treatment, however, may be restricted by air permit conditions limiting the type of waste used for fuel and by Environmental Protection Agency regulations for boilers and industrial furnaces (40 CFR 266.100–112 and Appendices I–IX).

—*Idaho National Engineering Laboratory (INEL):* INEL has a permitted incinerator facility, the Waste Experimental Reduction Facility (WERF), capable of burning radioactive material and hazardous waste. WERF is currently shut down, and its operation is contingent upon completion of National Environmental Policy Act review and DOE approval of a Safety Analysis Report. The current waste acceptance criteria for WERF limit the radioactive and chloride content of wastes and prohibit receipt of any free liquids. These criteria would prohibit the acceptance at WERF of almost all of the Mound waste proposed for treatment in the Glass Melter. The criteria could not be changed without substantial upgrades to WERF.

—*Los Alamos National Laboratory:* The proposed Controlled Air Incinerator is currently being permitted and undergoing National Environmental Policy Act review for operation at production capacity. Current operational plans do not include acceptance of offsite wastes, and the draft RCRA permit proposes to prohibit treatment of offsite waste.

—*Savannah River Site:* DOE is currently constructing the Consolidated Incinerator Facility under a construction permit from the State of South Carolina. This facility will not allow out-of-state waste to be treated. DOE is preparing an environmental impact statement on waste management at the Savannah River Site, which will include further analysis of operation of the Consolidated Incinerator Facility and other volume reduction alternatives. Trial burns and operation of the facility are being deferred until the completion of the environmental impact statement process.

—*Oak Ridge Gaseous Diffusion Plant:* The incinerator at the Oak Ridge Gaseous Diffusion Plant currently treats mixed waste. The primary sources of waste treated at this incinerator are the Paducah Gaseous Diffusion Plant, the Portsmouth Gaseous Diffusion Plant, and the Oak Ridge Reservation. A substantial backlog of waste exists that will take several years to treat. Thus, this alternative would not be available to Mound for several years and would not meet Mound's immediate needs.

—*Nevada Test Site:* Disposal of mixed waste at the Nevada Test site is considered a possible alternative to treatment in the Glass Melter. Land disposal restrictions under the Resource Conservation and Recovery Act would require, however, that any mixed waste be treated before disposal. The Nevada Test Site would only, therefore, be a reasonable alternative for Mound waste already treated at another facility. DOE has not yet decided to what extent the Nevada Test Site would be used for future disposal of offsite waste; such decisions will be made after completion of the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement and the Nevada Test Site Sitewide Environmental Impact Statement.

Proposed Determination: Based on the information and the analysis in the environmental assessment, DOE believes the proposed action (i.e., operation of the Glass Melter for treatment of backlog mixed waste only) does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act. Therefore, the preparation of an environmental impact statement is not required and the DOE is issuing this finding of no significant impact.

Issued in Miamisburg, Ohio, on July 26, 1995.

Robert D. Folker,

Acting Manager, Ohio Field Office.

[FR Doc. 95–19235 Filed 8–3–95; 8:45 am]

BILLING CODE 6450–01–P

Reopening of the Public Comment Period for the Draft Programmatic Environmental Impact Statement for the Uranium Mill Tailings Remedial Action Ground Water Project

AGENCY: Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: In response to a request from the Navajo Nation, the Department of Energy has decided to extend the period for public review and comment on the draft Programmatic Environmental Impact Statement for the Uranium Mill Tailings Remedial Action Ground Water Project. Public hearings on the draft document were held in nine communities June 7–28, 1995. The public comment period, originally scheduled to conclude July 14, has been reopened and extended through September 20, 1995. Written comments should be postmarked by that date to ensure consideration in preparation of the final document. Comments received after that date will be considered to the extent practicable. Written comments on the draft Programmatic Environmental Impact Statement should be directed to Mr. Rich Sena, Acting Director, Environmental Restoration Division, Department of Energy, Suite 4000, 2155 Louisiana NE, Albuquerque, New Mexico 87110, Fax number: (505) 845–4239.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the draft programmatic environmental impact statement and requests for further information concerning this document may be directed to Mr. Rich Sena at the address above. Requests may also be made by leaving a message at 1–800–523–6495 (outside New Mexico) and 1–800–423–2539 (within New Mexico). For general information on the procedures followed by the Department of Energy in complying with the National Environmental Policy Act, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone 1–202–586–4600 or leave a message at 1–800–472–2756.

Issued in Washington, D.C. on July 31, 1995.

Ralph G. Lightner,

Director, Office of Southwestern Area Programs, Environmental Restoration.

[FR Doc. 95–19234 Filed 8–3–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER90–168–021, et al.]

National Electric Associates Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

July 28, 1995.

Take notice that the following filings have been made with the Commission:

1. National Electric Associates Limited Partnership

[Docket No. ER90–168–021]

Take notice that on July 6, 1995, National Electric Associates Limited Partnership filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–168–000. Copies of the informatl filing are on file with the Commission and are available for public inspection.

2. Wholesale Power Services, Inc.

[Docket No. ER93–730–000]

Take notice that on July 26, 1995, Wholesale Power Services, Inc. filed an amended application in this proceeding.

Comment date: August 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Howard Energy Company, Inc.

[Docket No. ER94–252–002]

Take notice that on July 24, 1995, Howard Energy Company, Inc., (Howard Energy) filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER94–252–000. Copies of Howard Energy's informational filing are on file with the Commission and are available for public inspection.

4. Cenergy, Inc.

[Docket No. ER94–1402–003]

Take notice that on July 18, 1995, Cenergy, Inc., (Cenergy) filed certain information as required by the Commission's December 7, 1994, order in Docket No. ER94–1402–000. Copies of Cenergy's informational filing are on file with the Commission and are available for public inspection.

5. ACME Power Marketing, Inc.

[Docket No. ER94–1530–004]

Take notice that on July 13, 1995, ACME Power Marketing, Inc. (ACME) filed certain information as required by the Commission's October 18, 1994, order in Docket No. ER94–1530–000. Copies of ACME's informational filing are on file with the Commission and are available for public inspection.

6. AIG Trading Corporation

[Docket No. ER94–1691–006]

Take notice that on July 12, 1995, AIG Trading Corporation (AIG) filed certain information as required by the Commission's January 19, 1995, order in Docket No. ER94–1691–000. Copies of AIG's informational filing are on file with the Commission and are available for public inspection.

7. Petroleum Sources & Systems Group, Inc.

[Docket No. ER95–266–002]

Take notice that on July 11, 1995, Petroleum Source Systems Group, Inc., filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95–266–000. Copies of Petroleum Source Systems Group's informational filing are on file with the Commission and are available for public inspection.

8. Wilson Power & Gas Smart, Inc.

[Docket No. ER95–751–002]

Take notice that on July 17, 1995, Wilson Power & Gas Smart, Inc. filed certain information as required by the Commission's April 25, 1995, order in Docket No. ER95–751–000. Copies of Wilson Power & Gas Smart's informational filing are on file with the

Commission and are available for public inspection.

9. Delhi Energy Services, Inc.

[Docket No. ER95–940–001]

Take notice that on July 19, 1995, Delhi Energy Services, Inc., filed certain information as required by the Commission's June 1, 1995, order in Docket No. ER95–940–000. Copies of Delhi's informational filing are on file with the Commission and are available for public inspection.

10. Stalwart Power Company

[Docket No. ER95–1334–000]

Take notice that on July 21, 1995, Stalwart Power Company (Stalwart) tendered for filing an amendment to its proposed FERC Electric Rate Schedule No. 1 which provides for negotiated rates, terms and conditions and which was filed as part of Stalwart's Application for Blanket Authorizations, Jurisdiction Disclaimer, Certain Waiver and Order Approving Rate Schedule on July 3, 1995 in the above captioned proceeding.

Stalwart states that its Rate Schedule No. 1 is amended to restrict sales of electric power to any parent, affiliate or subsidiary of Stalwart, as has been required of other electric power marketers in Commission precedent and to establish a new effective date of September 2, 1995.

Comment date: August 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19177 Filed 8–3–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC95–17–000, et al.]

Tampa Electric Company, et al.; Electric Rate and Corporate Regulation Filings

July 31, 1995.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Company

[Docket No. EC95–17–000]

Take notice that on July 26, 1995, Tampa Electric Company (Tampa) filed an application for Commission authorization to: (1) Acquire from the Orlando Utilities Commission (OUC) an undivided interest in a 25-mile-long segment of 230 Kv transmission line between the Lake Agnes and Cane Island substations; and (2) convey to OUC undivided interest in certain facilities at the Osceola substation and the 4.4-mile-long, 69 Kv transmission line between the Osceola and Studio substations.

Copies of the application have been served on OUC and the Florida Public Service Commission.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Howell Power Systems, Inc.

[Docket No. ER94–178–006]

Take notice that on July 24, 1995, Howell Power Systems, Inc., filed certain information as required by the Commission's January 14, 1995, Order in Docket No. ER94–178–000. Copies of Howell Power Systems, Inc.'s informational filing are on file with the Commission and are available for public inspection.

3. Maine Public Service Company

[Docket No. ER95–836–001]

Take notice that the Notice of Filing issued on July 19, 1995, in the above-referenced docket should be rescinded.

4. Delmarva Power & Light Company

[Docket No. ER95–1038–000]

Take notice that on July 26, 1995, Delmarva Power & Light Company (Delmarva) of Wilmington, Delaware, filed an amendment to its filing of eight year power supply contracts (the Service Agreements) under which Delmarva will provide requirements service to four Delaware Municipal customers, Lewes, Milford, Newark, and New Castle.

The amendment provides additional cost support for certain of the pricing terms reflected in the Service Agreements and responds to questions raised by FERC Staff with respect to such pricing terms. Also filed is a Transmission Service Agreement between Delmarva and the City of Lewes, to be incorporated and made effective October 1, 1995, as Appendix C of the Electric Service Agreement between Lewes and Delmarva that is before the Commission in this docket. This Transmission Service Agreement is in accordance with Article VII of the Electric Service Agreement and the rates set forth in Appendix C–1 thereto as originally filed. Appendix C of the Electric Service Agreement had been reserved for such Transmission Service Agreement.

The amendment does not modify the proposed effective date of the Service Agreements of February 1, 1995. Delmarva states that the amendment has been posted and has been served upon the affected customers and the Delaware Public Service Commission.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Company

[Docket No. ER95–1131–000]

Take notice that on July 13, 1995, Central Maine Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Western Regional Transmission Association

[Docket No. ER95–1211–002]

Take notice that on July 26, 1995, Western Regional Transmission Association tendered for filing Member Signature Page executed by Deseret Generation & Transmission Co-operative to become a member of the Western Regional Transmission Association.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER95–1317–000]

Take notice that on July 17, 1995, Northeast Utilities Service Company (NU) tendered for filing an amendment in the above-referenced docket.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power and Light Company

[Docket No. ER95–1388–000]

Take notice that on July 18, 1995, Wisconsin Power and Light Company (WPL) tendered for filing a letter agreement and a new Appendix L to the Interconnection Agreement dated January 5, 1966 between Wisconsin Power and Light Company and Wisconsin Public Service Corporation (WPSC). Appendix L establishes the new Dewey 115 kV Interconnection between the parties, located on WPSC's Northpoint-Weston 115 kV transmission line.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER95–1390–000]

Take notice that on July 18, 1995, Northern States Power Company Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept two Transmission Service to MidCon Power Services, Corp.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of August 6, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to 18 CFR Part 35 so the Agreements may be accepted for filing effective on the date requested.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Wickford Energy Marketing, L.C.

[Docket No. ER95–1415–000]

Take notice that on July 21, 1995, Wickford Energy Marketing, L.C. tendered for filing an application for blanket authorizations, certain waivers, and order approving rate schedule.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER95–1416–000]

Take notice that on July 21, 1995, Commonwealth Edison Company (ComEd) submitted two Service Agreements, establishing Tennessee Power Company (TPCO) and Stand Energy Corporation (Stand) as customers under the terms of ComEd's Power Sales Tariff PS–1 (PS-Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of June 30, 1995, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon TPCO, Stand and the Illinois Commerce Commission.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER95–1417–000]

Take notice that on July 21, 1995, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated July 10, 1995, between KCPL and St. Joseph & Light Company (SJLP). KCPL proposes an effective date of July 10, 1995, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and SJLP.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which are under review by the Commission in Docket No. ER94–1045–000 and which are subject to a refund pursuant to the Commission's order in that docket.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Company

[Docket No. ER95–1418–000]

Take notice that on July 21, 1995, Florida Power & Light Company (FPL) tendered for filing a proposed Service Agreement with Catex Vitol Electric, L.L.C. for transmission service under FPL's Transmission Tariff No. 3. FPL requests that the proposed Service Agreements be permitted to become effective on August 1, 1995, or as soon thereafter as practicable.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Central Hudson Gas and Electric Corporation

[Docket No. ER95–1420–000]

Take notice that Central Hudson Gas and Electric Corporation (CHG&E), on July 24, 1995, tendered for filing a Service Agreement between CHG&E and Montaup Electric Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662–000. CHG&E also has requested waiver of the 60-day notice provision.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: August 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19204 Filed 8–3–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11322–000, California]

Tuolumne Utilities District; Notice of Availability of Final Environmental Assessment

July 31, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the Columbia Water Supply Hydroelectric Project, located near the town of Sonora, in Tuolumne County, California, and has prepared a final environmental assessment (EA) for the project.

On March 9, 1995, staff issued and distributed to all parties a draft EA, and requested that comments on the draft EA be filed with the Commission within 30 days. Comments were filed by the applicant and are addressed in the final EA.

In the final EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protection and enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices

at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19176 Filed 8–3–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4725–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed July 24, 1995 Through July 28, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950328, Draft EIS, FHW, HI, Kealakehe Parkway Completion, Queen Kaahumanu Highway and Honokohau Harbor Road Intersection to near the Mamalahoa Highway and Old Mamalahoa Highway Intersection, North Kona District, Hawaii County, HI, Due: September 18, 1995, Contact: Abraham Wong (808) 541–2700.

EIS No. 950329, Final EIS, AFS, MT, Wagner-Atlanta Vegetation Treatment Project, Implementation, Helena National Forest, Townsend Ranger District, Meagher County, MT, Due: September 05, 1995, Contact: George Weldon (406) 266–3425.

EIS No. 950330, Final EIS, BLM, WY, Greater Wamsutter Area II Natural Gas Development Project, Approvals and Permits Issuance, Carbon and Sweetwater Counties, WY, Due: September 05, 1995, Contact: John Spehar (307) 324–4841.

EIS No. 950331, Draft EIS, AFS, MT, Checkerboard Land Exchange, Plan of Approval and Implementation, Kootenai, Lolo and Flathead National Forest, Lincoln, Flathead and Sanders Counties, MT, Due: September 18, 1995, Contact: Ted Andersen (406) 293–6211.

EIS No. 950332, Final EIS, EPA, CA, Humboldt Bay Open Ocean Dredged Material Disposal Site (ODMDs) Designation, Samoa Peninsula, Humboldt County, CA, Due: September 05, 1995, Contact: Allan Ota (415) 744–1980.

EIS No. 950333, Final EIS, AFS, MT, Big Mountain Ski and Summer Resort Expansion Project, Special-Use-Permit, Flathead National Forest, Tally Lake and Glacier View Ranger Districts, Whitefish, Flathead County, MT, Due: September 05, 1995, Contact: Becky Smith (406) 862–2508.

EIS No. 950334, Draft EIS, FHW, OK, Canadian River Bridge Crossing Construction, MT–37 east of Tuttle northward to MT–152 in or near Mustang, Funding, COE Section 404 and EPA NPDES Permits Issuance, Canadian and Counties, MT, Due: September 18, 1995, Contact: James Erickson (405) 945–6011.

EIS No. 950335, Draft EIS, AFS, AK, Lab Bay Project Area Timber Harvest, Implementation, COE Section 404, EPA NPDES and Coast Guard Bridge Permits Issuance, Thorne Bay Ranger District, Ketchikan Administrative Area, Tongass National Forest, Prince of Wales Island, AK, Due: September 18, 1995, Contact: Dave Arrasmith (907) 225–3101.

EIS No. 950336, Final EIS, COE, IL, Sugar Creek Municipal Water Supply Reservoir Construction, COE Section 404 Permit Issuance, City of Marion, Williamson and Johnson Counties, IL, Due: September 05, 1995, Contact: Terry Siemsen (502) 582–5550.

EIS No. 950337, Final EIS, AFS, CA, Mendocino National Forest Land and Resource Management Plan, Implementation, Colusa, Glenn, Lake, Mendocino, Tehama and Trinity Counties, CA, Due: September 05, 1995, Contact: Daniel K. Chisholm (916) 934–3316.

EIS No. 950338, Draft EIS, TVA, TN, KY, MS, AL, GA, NC, VA, Programmatic EIS—Energy Vision 2020, Integrated Resource Plan, Implementation of Long-Term Plan and Short-Term Action, TN, AL, KY, GA, MS, NC and VA, Due: October 15, 1995, Contact: Lynn Maxwell (615) 751–2539.

EIS No. 950339, Draft EIS, AFS, MT, Skyline Ridge Project Area Timber Salvage and Associated Activities, Plan of Approval and Implementation, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT, Due: September 18, 1995, Contact: Steve Prieve (406) 295–4693.

EIS No. 950340, Draft EIS, AFS, WA, First Creek Basin Restoration Project, Implementation, Wenatchee National Forest, Chelan Ranger District, Chelan County, WA, Due: September 18, 1995, Contact: Al Murphy (509) 682–2576.

EIS No. 950341, Draft EIS, SFW, CA, Stephens' Kangaroo Rat (SKR) Authorization for Incidental Take and Implementation of a Long-Term Habitat Conservation Plan, Western Riverside County, CA, Due: September 18, 1995, Contact: Jeff Newman (619) 431–9440.

EIS No. 950342, Draft EIS, FHW, NC, Sunset Beach Bridge No. 198 on Secondary Road NC–1172 Replacement, Over the Atlantic Intracoastal Waterway, Funding, COE Section 10 and 404 Permit, Brunswick County, NC, Due: September 25, 1995, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 950343, Draft EIS, AFS, AK, Eight Fathom Timber Sales, Implementation, COE Section 404 Permit and EPA NPDES, Tongass National Forests, Heonah and Sitka Ranger District, Chatham Area, AK, Due: September 19, 1995, Contact: Michael Weber (907) 747–6671.

EIS No. 950344, Draft EIS, FHW, CO, CO–82 Highway Transportation Project, Improvements to "Entrance to Aspen", Funding and COE Section 404 Permit, City of Aspen, Pitkin County, CO, Due: September 18, 1995, Contact: Ron Speral (303) 969–6737 ex.368

EIS No. 950345, Revised Draft EIS, UAF, ME, Loring Air Force Base (AFB) Disposal and Reuse, Implementation, Updated and Additional Information, Aroostook County, ME, Due: September 18, 1995, Contact: Nancy Speake (210) 536–5630.

EIS No. 950346, Draft EIS, UAF, NY, Griffis Air Force Base (AFB) Disposal and Reuse, Implementation, Oneida County, NY, Due: September 25, 1995, Contact: Jonathan D. Farthing (210) 536–3787.

EIS No. 950347, Final EIS, FAA, NJ, Expanded East Coast Plan, Changes in Aircraft Flight Patterns over the State of New Jersey, Implementation, NJ, Due: September 11, 1995, Contact: William Marx (202) 267–9155.

EIS No. 950348, FINAL EIS, NPS, WA, Elwha River Ecosystem Restoration, Implementation, Olympic National Park, Clallam County, WA, Due: September 05, 1995, Contact: Brian Winter (206) 452–0321.

Amended Notices

EIS No. 950250, Final EIS, FHW, PA, I–81 Interchange Project, Construction, Funding Chambersburg, Franklin County, PA, Due: July 17, 1995, Contact: Manuel Marks (717) 782–3461. Published FR—6–16–95 Correction to Title.

Dated: August 1, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–19271 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–60–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1059–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA–1059–DR), dated July 1, 1995, and related determinations.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 7, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95–19221 Filed 8–3–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1059–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, FEMA–1059–DR), dated July 1, 1995, and related determinations.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia dated July 1, 1995, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 1, 1995:

Roanoke County for Individual Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95–19222 Filed 8–3–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review: Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correction.

SUMMARY: In notice document 95–18314 beginning on page 38339 in the issue of Wednesday, July 26, 1995, make the following corrections:

1. On page 38340 in the first column, the comment period previously was stated to expire on August 21, 1995. DATES: should be changed to read "Comments must be submitted on or before August 25, 1995."

2. On page 38341 in the third column, the annual reporting hours for the third report of those proposed to be extended without revision, OMB Docket Number 7100–0042, Applications for the Issuance and Cancellation of Federal Reserve Stock-National Bank, Nonmember Bank, Member Bank, were incorrectly stated. *Annual reporting hours:* should be changed to read "940 (FR 2030: 43; FR 2030a: 28; FR 2056: 797; FR 2086a: 26; FR 2086b: 24; FR 2087: 22)."

Board of Governors of the Federal Reserve System, July 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19206 Filed 8–3–95; 8:45 am]

BILLING CODE 6210–01–P

Bill J. Horne, Sr.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 18, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bill J. Horne, Sr., Ada, Oklahoma; to retain 27.14 percent, for a total of 27.14 percent, and thereby retain control of the voting shares of First Ada Bancshares, Inc., Ada, Oklahoma, and thereby indirectly acquire The First National Bank & Trust Co., Ada, Oklahoma.

Board of Governors of the Federal Reserve System, July 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19207 Filed 8–3–95; 8:45 am]

BILLING CODE 6210–01–F

Pikeville National Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 28, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Pikeville National Corporation and Whitley Acquisition Corp., both of

Pikeville, Kentucky; to acquire 100 percent of the voting shares of United Whitley Corp., Williamsburg, Kentucky, and thereby indirectly acquire Bank of Williamsburg, Williamsburg, Kentucky.

In connection with this application Whitley Acquisition Corp., Pikeville, Kentucky, has applied to become a bank holding company.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Comerica Inc., Detroit, Michigan, and Comerica Texas, Inc., Dallas, Texas; to acquire 100 percent of the voting shares of QuestStar Bank, NA, Houston, Texas.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Boatmen's Bancshares, Inc., St. Louis, Missouri; to merge with Citizens Bancshares Corporation, Little Rock, Arkansas, and thereby indirectly acquire Citizens Bank of Jonesboro, Jonesboro, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Liberty National Bank, Austin, Texas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Northeast Portland Community Development Trust, Portland, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Albina Community Bancorp, Portland, Oregon, and thereby indirectly acquire Albina Community Bank (in organization), Portland, Oregon.

In connection with this application Albina Community Bancorp also has applied to become a bank holding company by acquiring Albina Community Bank (in organization), Portland, Oregon.

Board of Governors of the Federal Reserve System, July 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19208 Filed 8–3–95; 8:45 am]

BILLING CODE 6210–01–F

Sun Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Sun Bancorp, Inc., Selinsgrove, Pennsylvania; to engage *de novo* through Mifflin Associates, Mifflinburg, Pennsylvania, in community development activities through its investment in Mifflin Associates, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., and Trust Company of Georgia, both of Atlanta, Georgia; to engage *de novo* through Personal Express Loans, Inc., Atlanta, Georgia, in making, acquiring, or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 31, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19209 Filed 8–3–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. 9207]

The Coca-Cola Company; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens a 1994 final order that requires the respondent to obtain Commission approval before acquiring stock or interest in any company that manufactures or sells concentrate, syrup, or carbonated soft drinks in the U.S. This order modifies the final order in settlement of the petitions for review filed by the respondent in the U.S. Court of Appeals.

DATES: Complaint issued June 13, 1994. Modified final order issued May 25, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Naomi Licker or Daniel Ducore, FTC/2115, Washington, DC 20580. (202) 326–2851 or 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of the Coca-Cola Company. The prohibited trade practices and/or corrective actions as set forth at 59 FR 40031, are changed in part.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18))

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–19237 Filed 8–3–95; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–2966]

General Motors Corporation

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to modify consent order.

SUMMARY: General Motors Corporation ("GM"), the respondent in Docket No. C–2966, is subject to an order that prohibits it from displaying the name of any GM car division on any engine or visible attachment to the engine unless that engine is manufactured by that division. GM filed a petition on July 7, 1995, requesting the Commission to reopen and modify the order to allow GM to display a passenger car's nameplate on the engine or visible attachment to the engine if the engine is materially different from other engines in GM cars under other nameplates. This document announces the public comment period on this petition.

DATES: The deadline for filing comments in this matter is August 25, 1995.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Requests for copies of the petition should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2982.

SUPPLEMENTARY INFORMATION: The order in Docket No. C–2966 was issued on May 18, 1979, and reported at 93 F.T.C. 860. GM argues that changed conditions of fact require modifying the order. In 1979, GM passenger car divisions manufactured engines. Passenger car divisions ceased manufacturing engines in 1984. Through a series of organizational changes, the manufacture of passenger car engines is now under the Power Train Group. The Power Train Group produces engines and transmissions for all GM passenger cars except Saturn. As a consequence, the order provision prohibiting the placement of a car divisions's name on the engine unless it was manufactured by that division has prevented GM from placing the name of car division, such as Cadillac, on the engine of any passenger car produced by GM. GM seeks to place the nameplate of a passenger car on the engine only if it is unique to that nameplate because of material differences such as horsepower or displacement from similar engines used in different nameplates.

Donald S. Clark,

Secretary.

[FR Doc. 95–19238 Filed 8–3–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C–3591]

Mattel, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California-based corporation from representing that any aerosol product it sells offers any environmental benefit, unless it can substantiate the claim.

DATES: Complaint and Order issued June 23, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S–4002, Washington, D.C. 20580, (202) 326–3158.

SUPPLEMENTARY INFORMATION: On Friday, April 14, 1995, there was published in the **Federal Register**, 60 FR 19068, a proposed consent agreement with analysis In the Matter of Mattel, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–19239 Filed 8–3–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941–0107]

Santa Clara County Motor Car Dealers Association; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California association from carrying out, participating in, inducing or assisting any boycott or concerted refusal to deal with any newspaper, periodical, television or radio station, and would require the association to amend its by-laws to incorporate the stipulated prohibition, and to distribute the amended by-laws and the final Commission order to each of its members.

DATES: Comments must be received on or before October 3, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ralph Stone, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules and Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rule of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Santa Clara County Motor Car Dealers Association, an unincorporated association; File No. 941–0107.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Santa Clara County Motor Car Dealers Association, an unincorporated association, and it now appearing that the Santa Clara County Motor Car Dealers Association, hereinafter sometimes referred to as the "Association" or "proposed respondent," is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is Hereby Agreed by and between the Association, by its duly authorized

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580

officers, and its attorney, and counsel for the Federal Trade Commission that:

1. The Association is an unincorporated association organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business at 336 East Hamilton Avenue, Campbell, California 95008.

2. The Association admits all the jurisdictional facts set forth in the draft of Complaint.

3. The Association waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act, 5 U.S.C. § 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of Complaint, or that the facts as alleged in the draft of Complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) issue its Complaint corresponding in form and substance with the draft of Complaint and its decision containing the following Order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It Is Ordered that, for the purposes of this Order, "respondent" or "Association" shall mean the Santa Clara County Motor Car Dealers Association, its predecessors, successors and assigns, and its directors, committees, officers, delegates, representatives, agents, and employees.

II

It Is Further Ordered that the Association, directly or indirectly, or through any person or any corporate or other device, in or in connection with its activities as a trade association, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from carrying out, participating in, inducing, suggesting, urging, encouraging, or assisting any boycott of, or concerted refusal to deal with, any newspaper, periodical, television station, or radio station; provided, however, that nothing in this Order shall prohibit the Association or any of its members from establishing, participating in, or maintaining joint advertising programs, so long as such joint advertising programs are not a part of any boycott or concerted refusal to deal and do not otherwise violate this Order.

III

It Is Further Ordered that the Association shall:

A. Within sixty (60) days after the date this Order becomes final, amend its by-laws to incorporate by reference Paragraph II of this Order, and distribute by first-class mail a copy of the amended by-laws to each of its members;

B. Within thirty (30) days after the date this Order becomes final, distribute by first-class mail a copy of this Order and the Complaint to each of its members;

C. For a period of five (5) years after the date this Order become final, provide each new member with a copy of this Order, the complaint, and the amended by-laws within thirty (30) days of the new member's admission to the Association; and

D. Within seventy-five (75) days after the date this Order becomes final, and annually thereafter for a period of five (5) years on the anniversary of the date this Order became final, file with the Secretary of the Commission a verified written report setting forth in detail the manner and form in which the Association has complied with and is complying with this Order.

IV

It Is Further Ordered that the Association shall notify the Commission at least thirty (30) days prior to any change in the Association, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.

V

It Is Further Ordered that, for the purpose of determining or securing compliance with this Order, respondent shall permit any duly authorized representative of the Commission:

A. Upon seven (7) days' notice to respondent, to have access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order; and

B. Upon seven (7) days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

VI

It Is Further Ordered that this Order shall terminate twenty (20) years from the date this Order becomes final.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Santa Clara County Motor Car Dealers Association ("Association").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that the Association and at least some of its members agreed that members would cancel advertising in, and thereafter collectively withhold advertising from, the San Jose Mercury News newspaper in retaliation for a Mercury News article that was intended to educate consumers on how to analyze the manufacturer's factory invoice as part of the automobile-buying process. Armed with this information, the consumer may be better equipped to negotiate a lower price.

The complaint alleges that the purposes or effects of the agreement were to restrain competition among new automobile and truck dealers in Santa Clara County, California, and to deprive consumers of truthful information pertinent to the purchase of new automobiles and trucks. Agreements not to disseminate information through advertising can make it more difficult for consumers to choose among automobile dealers by preventing direct interbrand and intrabrand comparisons of dealers' automobiles and their prices and services, and thus may increase consumer search costs. Moreover, the use of the combined economic power of the automobile dealers to affect a newspaper's editorial content may chill the publication of information that would lower search costs and make readers more effective consumers.

Description of the Proposed Consent Order

The proposed order would prohibit the Association from carrying out, participating in, inducing, suggesting, urging, encouraging, or assisting any boycott of, or concerted refusal to deal with, any newspaper, periodical, television station, or radio station.

The proposed order would permit the Association to establish, participate in, and maintain joint advertising programs, so long as such joint advertising programs are not part of any boycott or concerted refusal to deal.

The proposed order would require the Association to amend its by-laws to incorporate by reference the order. It would also require the Association to distribute a copy of the amended by-laws, the order, and the complaint to each of its members, file compliance reports, and notify the Commission of certain changes in its structure.

Finally, the proposed order contains a twenty year "sunset" provision. Under this provision, the terms of the order shall terminate twenty years after the date the order becomes final.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the Association that the law has been violated as alleged in the complaint.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 95–19240 Filed 8–3–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Uniform Reporting Requirements for IV–A and IV–F Funded Child Care for Non-JOBS Participants, Tribal JOBS Participants, Transitional Child Care and At-Risk Child Care.

OMB No.: 0970–0115.

Description: Title IV–A and IV–F funded child care data collection form ACF–115. States are required to report child care data on a quarterly basis.

Respondents: State governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
ACF–115	54	4	35	7560

Estimated Total Annual Burden Hours: 7,560.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information systems, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: August 1, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–19277 Filed 8–3–95; 8:45 am]

BILLING CODE 4184–01–M

Office of Child Support Enforcement; Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KF, The Office of Child Support Enforcement (OCSE) (56 FR 42341), as last amended, August 27, 1991. This reorganization will establish a new office within the OCSE.

1. Amend KF.10 Organization. Delete in its entirety and replace it with the following:

KF.10 Organization. The Office of Child Support Enforcement is headed by a Director and consists of:

Office of the Director (KFA)
Division of Audit (KFB)
Division of Program Operations (KFC)
Division of Policy and Planning (KFD)
Division of Consumer Services (KFE)

2. Amend KF.20 Functions.

a. Delete paragraph A in its entirety, and replace it with the following:

KF.20 Functions. A. Offices of the Director. The Director is also the Assistant Secretary for Children and Families and is directly responsible to the Secretary for Carrying out OCSE's mission. The Deputy Director has day-to-day operational responsibility for Child Support Enforcement programs. The Associate Deputy Director for information Systems, who is also the Director of the ACF Office of Information Systems/Child Support Systems, has responsibility for day-to-day management of child support information systems. The Deputy Director assists the Director in carrying out responsibilities of the Office and oversees day-to-day operation of OCSE's Audit, Program Operations, Policy and Planning and Consumer Services Divisions. The Associate Deputy Director assists the Deputy Director in carrying out the responsibilities of the Office.

The Office is responsible for developing regulations, guidance and standards for states to observe in locating absent parents; establishing paternity and support obligations and enforcing support obligations; maintaining relationships with Department officials, other federal departments, state and local officials, and private organizations and individuals interested in the CSE program; coordinating and planning child support enforcement activities to maximize program effectiveness; and approving all instructions, policies and publications issued by OCSE staff.

Within the Office of the Director, administrative staff assist the Director, Deputy Director and Associate Deputy Director in managing the formulation and execution of program and salaries and expense budgets; and in providing administrative, personnel and data processing support services.

b. Delete paragraph C in its entirety, and replace it with the following:

C. Division of Program Operations assesses state performance and provides information and assistance on program operations. It monitors implementation of program requirements; coordinates child support enforcement activities with regional offices; develops guides and resource materials for use by states and ACF regional offices; documents specialized program techniques for use by states and local agencies; and ensures transfer of best practices among state and local support enforcement agencies. The Division provides specialized services and operation of the Federal Parent Locator Service, the Federal Tax Refund Offset Program, Project 1099, the IRS Full Collection Project and the Parental Kidnapping Service. It develops and publishes informational materials and operates a training center on child support programs; and monitors contracts with organizations affiliated with child support enforcement programs. It provides liaison services to a variety of special interest populations concerning collections of child support.

c. Add paragraph E. Add the following to establish paragraph E:

E. Division of Consumer Services provides direction and leadership for a variety of consumer affairs activities in support of the nationwide child support enforcement program. Provides advice on strategies and approaches to be used to improve public understanding of and access to OCSE programs and policies. Promotes "best" child support practices to the public through monthly publication of the Child Support Report. Advises the Director, OCSE of the impact of child support enforcement policy and program upon consumers and provides a focal point for consumer relations and consultation.

Dated: July 31, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 95–19278 Filed 8–3–95; 8:45 am]

BILLING CODE 4184–01–M

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: August 9, 1995.

Time: 2:00 p.m.

Place: NIH, Rockledge II, Room 5150, Telephone Conference.

Contact Person: Dr. Zakir Bengali, Scientific Review Administrator, 6701 Rockledge Drive, Room 5150, Bethesda MD 20892, (301) 534–1742.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19397 Filed 8–3–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–48]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 4, 1995.

ADDRESSES: For further information, contact David Pollack, Department of Housing and Urban Development, Room 7254, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 28, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–19135 Filed 8–3–95; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Administration

[Docket No. FR–3876–D–01]

Revocation and Delegation of Procurement Authority

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of revocation and redelegation of procurement authority.

SUMMARY: This notice revokes current redelegations of procurement authority to the Field and Headquarters staff. It implements the final phase of the field reorganization of procurement authority for the Office of Administration. In this phase, procurement authority in the Field is consolidated under three Administrative Service Centers. This document makes no changes to the procurement authority redelegated to the President of the Government National Mortgage Association (GNMA).

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Room 5262, 451 7th Street S.W., Washington, D.C. 20410, (202) 708–0294. A telecommunications device for the hearing impaired (TDD) is available at 202–708–1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's field structure to improve HUD's performance and provide HUD's customers (members of the public and program beneficiaries) more efficient service and less bureaucracy by empowering HUD employees to serve HUD's customers more effectively. In implementing this objective, the Secretary decided to remove the Regional organizational layer and provide officials at lower organizational levels full authority to carry out program functions, with these Field Office officials reporting directly to program officials in Headquarters..

In a delegation of authority, published on April 15, 1994 at 59 FR 18276, the Secretary of Housing and Urban Development revoked all delegations of procurement authority, and issued a new delegation which consolidated into a single document all delegations of procurement authority to the Assistant Secretary for Administration (the Department's Senior Procurement Executive.) On that same day, the Assistant Secretary for Administration published a redelegation of procurement authority, at 59 FR 18277, implementing the initial phase of the field reorganization of procurement authority for the Office of Administration. In that redelegation, the Assistant Secretary for Administration revoked all redelegations of procurement authority, and issued a new redelegation consolidating into one document all redelegations of procurement authority to HUD Headquarters and Field staff.

In this phase of HUD's Field reorganization, Administrative Service Centers (ASCs) will be established to consolidate and expedite contracting, personnel, accounting, facilities, management information, and other common administrative support functions. On October 27, 1994, the Assistant Secretary for Administration announced the selection of three ASCs: New York, Atlanta and Denver. Accordingly, in this notice, the Assistant Secretary for Administration is revoking the redelegation issued on April 15, 1994, including all procurement authority redelegated to Regional and Field Office officials. In this new redelegation reflecting the changed Field organizational structure, authority is redelegated to each ASC Director and ASC Contracting Division Director. In addition, this document gives HUD procurement officials increased flexibility: The Director, Office of Procurement and Contracts (OPC), at the Headquarters Office, has the authority to award and administer contracts which are national in scope or which may cover more than one ASC service area; and ASC contracting officials have the authority to meet changing workload demands by further redelegating certain procurement authority to qualified HUD field personnel, as specified.

Lastly, in this document, the redelegations to the Field staff and to the Director, OPC, at the Headquarters Office, are revised to streamline the Department's management of the Governmentwide Commercial Credit Card Program. However, this redelegation does not address the Government Travel Card Program. American Express or other credit cards issued under the Government Travel Card Program may only be used to pay for authorized travel-related services for which the individual traveler is responsible.

Accordingly, the Assistant Secreatry for Administration revokes and redelegates authority as follows:

Section A. Redelegation of Authority

The Assistant Secretary for Administration, designated as the Department's Senior Procurement Executive, redelegatees the following power and authority:

1. The Director, Office of Procurement and Contracts, designated as the Department's principal Contracting Officer, is authorized to:

a. Enter into and administer all procurement contracts and interagency agreements for property and services required by the Department (including the placement of paid advertisements in newspapers;)

b. Enter into and administer grants and cooperative agreements in support of the Department's discretionary assistance programs;

c. Make determinations and findings regarding the use of advance payments under FAR Subpart 32.4 and HUDAR 2432.402; and,

d. Further redelegate the following authority which has been redelegated in this notice, to the headquarters and field personnel identified below, provided they meet experience, education, and training requirements established by the Senior Procurement Executive:

(i) The authority identified in Sections 1.a. and 1.b., above, to qualified Office of Procurement and Contracts personnel;

(ii) The authority identified in Sections 1.a. and 1.b., above, to the Directors, Administrative Service Center Contracting Divisions for purposes of awarding and adminsitering contracts or other agreements which are national in scope or which cover more than one Administrative Service Center service area;

(iii) To qualified Departmental employees, the authority to engage in the following purchasing procedures:

1. Small purchases (FAR Part 13);

2. Issuance of delivery orders under contracts established by other Government sources (FAR Part 8, e.g., GSA Federal Supply Schedules) or

under pre-priced indefinite-delivery contracts established by the Department; and,

3. Purchases using the Government-wide Commercial Credit Card system in accordance with the Department's directives governing credit card purchasing. Authority redelegated to the Commercial Credit Card Program Administrator may be further redelegated by the Program Administrator to qualified Headquarters employees for purchases within the micro-purchase threshold established in FAR Part 13.

2. The President of the Government National Mortgage Association (GNMA) is authorized to exercise procurement authority with respect to requirements related to GNMA's programmatic functions. The President of GNMA is authorized to redelegate any of the powers or authority redelegated to him or her to qualified GNMA employees.

3. Each Director, Administrative Service Center (ASC), and Director, ASC Contracting Division, is designated as a Contracting Officer and is authorized to, subject to any limitations imposed by the Senior Procurement Executive:

a. Enter into and administer all procurement contracts and interagency agreements for property and services required by the Department (including the placement of paid advertisements in newspapers) with regard to: Activities within his or her ASC service area; or, activities which may be national in scope or which cover more than one ASC service area when specifically delegated by the Director, Office of Procurement and Contracts. However, any purchase of Federal Information Processing (FIP) supplies or services (i.e., ADP-related contract actions) requires the prior approval of the Director, Office of Information Policies and Systems;

b. Order a Limited Denial of Participation sanction, pursuant to HUD regulations at 24 CFR 24.700;

c. Make determinations and findings regarding the use of advance payments under FAR Subpart 32.4 and HUDAR 2432.402;

d. Further redelegate the award and administration of an individual or class of procurement contracts or interagency agreements to another director, ASC Contracting Division, with the concurrence of the Senior Procurement Executive; and,

e. Further redelegate the authority redelegated in paragraph 3.a., above, to any of the following personnel, provided that they meet experience, education, and training requirements established by the Senior Procurement Executive and provided that any other requirements listed below are met:

(i) To ASC Contracting Division personnel;

(ii) To Office of Housing personnel in State or Area Offices within the ASC service area for procurement contracts which concern programmatic functions and which are funded by the FHA Fund. At a minimum, this authority shall be delegated to a specific Office of Housing management official designated by the Assistant Secretary for Housing-Federal Housing Commissioner in each State and Area Office for the following purposes:

1. Emergency procurement authority;

2. Small purchase authority (FAR Part 13) in offices without full-time contracting personnel.

The Office of Housing will be given 30 days advance notice if any of the above authority in paragraph 3.e.(ii) will be withdrawn and subsequently redelegated to ASC personnel.

(iii) To Administration personnel within the ASC service area for the following purposes:

1. Small purchases (FAR Part 13); and,

2. Issuance of delivery orders under contracts established by other Government sources (FAR Part 8, e.g. GSA Federal Supply Schedules) or under pre-priced indefinite-delivery contracts established by the Department.

(iv) To Departmental personnel within the ASC service area, for purchases using the Governmentwide Commercial Credit Card system, in accordance with the Department's directives governing credit card purchasing. Authority redelegated to the Director, Administrative Resources Division may be further redelegated by that Director to qualified field personnel within the service area for purchases within the micro-purchase threshold established in FAR Part 13.

Section B. Authority Revoked

All power and authority redelegated at Section A. of the Notice of Redelegation of Authority, published on April 15, 1994 at 59 FR 18277, is revoked.

Authority: Sec. 7(d), Department of Housing and Urban Development Act [42 U.S.C. 3535(d)].

Dated: July 28, 1995.

Marilynn A. Davis,

Assistant Secretary for Administration.

[FR Doc. 95–19224 Filed 8–3–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) Regarding the Application for Incidental Take and Implementation of a Long-Term Habitat Conservation Plan for the Stephens' Kangaroo Rat, an Endangered Species, in Western Riverside County, CA

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of availability and public meeting.

SUMMARY: This notice advises the public that the draft Joint Environmental Impact Statement/Environmental Impact Report on the application to Incidentally Take Stephens' Kangaroo Rat (SKR) in Riverside County, California, is available for public review. The Riverside County Habitat Conservation Agency (RCHCA) has applied to the U.S. Fish and Wildlife Service (Service) for a 30-year Incidental Take Permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service also advises the public that the application package prepared by the RCHCA, which includes the SKR Long-term Habitat Conservation Plan (HCP), Implementing Agreement (IA), and Incidental Take Permit Application, is available for public review. Comments are requested and a public hearing will be held. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments are requested by September 18, 1995. A public meeting will be conducted on September 6, 1995, in Riverside, California, beginning at 1:00 pm. Agency representatives will be available to answer questions and receive either written or oral comments concerning the draft Joint EIS/EIR.

ADDRESSES: Written comments should be addressed to: Gail C. Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Ave. West, Carlsbad, California 92008. Written comments may also be sent by facsimile to (619) 431–9618. The public meeting will be held at the Board of Supervisors Meeting Room, County Administrative Center, 14th Floor, 4080 Lemon Street, Riverside, CA.

FOR FURTHER INFORMATION CONTACT: Pete Sorensen, Endangered Species Division Chief, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Ave. West, Carlsbad, California 92008.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of this draft Joint EIS/EIR for review should immediately contact the U.S. Fish and Wildlife Service Carlsbad Field Office at the above referenced address, or by telephone at (619) 431–9440. Individuals wishing to review the SKR Long-term HCP and IA should immediately contact the RCHCA at (909) 275–1100. Documents will be available for public inspection by appointment during normal business hours (8 am to 5 pm, Monday through Thursday) at the RCHCA, 4080 Lemon Street, 12th Floor, Riverside, California 92501. Documents will also be available for public inspection by appointment during normal business hours (8 am to 5 pm, Monday through Friday) at the Service's Office at the above referenced address and telephone. Documents will also be available for public inspection at numerous libraries throughout the planning area. The location of specific libraries having copies can be obtained by contacting the Service at the above number. Copies of the draft EIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

Background

The Service listed the SKR as an endangered species, effective October 31, 1988 (53 FR 38485). Because of its listing as an endangered species, the SKR is protected by the Act's prohibition against "take", that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 U.S.C. 1538). The Service, however, may issue permits to conduct activities involving endangered species under certain circumstances, including carrying out scientific purposes, enhancing the propagation or survival of the species, or incidentally taking the species in connection with otherwise lawful activities.

The RCHCA presently has a short-term 10(a)(1)(B) permit (PRT–739678) from the Service to incidentally take SKRs in connection with various proposed public and private projects in the western portion of Riverside County. Under the program established through this interim permit, SKR habitat in public and private ownership is being acquired and managed for the long-term benefit of the species. Acquisition of private lands is funded in part from mitigation fees collected by the RCHCA as developments proceed.

As intended when the interim permit was granted in August 1990, the RCHCA is applying to the Service for a 30-year incidental take permit for the same purposes. The area covered by the proposed 30-year permit will include much of the historical range of the SKR in Riverside County. The procedures for the RCHCA to incidentally take SKRs under the proposed 30-year permit are evaluated in the EIS/EIR.

This draft Joint EIS/EIR has been developed cooperatively by the Service's Carlsbad Field Office (lead agency for the draft EIS), the RCHCA, and California Department of Fish and Game.

In the development of this draft Joint EIS/EIR, the Service has initiated action to assure compliance with the purpose and intent of the National Environmental Policy Act of 1969 (NEPA), as amended. Scoping activities were undertaken preparatory to developing the draft EIS with a variety of Federal, State, and local entities. A Notice of Intent to prepare the EIS was published in the **Federal Register** on March 2, 1993.

The RCHCA's preparation of the long-term HCP has been on-going since the short-term permit was authorized. In March 1993 the Service and the RCHCA initiated a joint scoping process for the preparation of a joint EIS/EIR in anticipation of the Service receiving a permit application for a 30-year Section 10(a) permit for incidental take of SKR. The scoping process was initiated in accordance with NEPA to solicit comments on issues and alternatives to be addressed in the EIS/EIR. Because of the extended 2-year scoping process, a draft Scoping Report was prepared to update public knowledge of the scoping process. That report summarizes the 2-year scoping process, identifies the scoping issues raised by interested parties at public meetings and in written statements, and outlines the issues and alternatives that will be addressed in the draft EIS/EIR. The availability of the draft Scoping Report was published in the **Federal Register** on March 24, 1995.

Key issues addressed in this draft EIS/EIR are identified as the effects that implementation of various alternatives would have upon: (1) The endangered SKR; (2) other wildlife and their habitats; (3) land uses and general plans; (4) provision of public facilities, services and utilities; and (5) social and economic conditions.

More than 10 alternatives were considered before limiting the alternatives to be advanced for further study. Ultimately, 4 alternatives were selected for detailed analysis: (1) Proposed Action/Project (approve and implement the Long-term SKR HCP); (2) Expanded Conservation/Protection (conserve more SKR habitat); (3) Existing Reserves/Public Lands (focus on SKR habitat already protected); and (4) a No Project/No Action Alternative (assume no regional program). The Service will identify its preferred alternative and environmentally preferable alternative as defined in the NEPA in the final EIS/EIR.

Each alternative was evaluated in terms of its potential to result in significant adverse impacts, and the adequacy or inadequacy of the proposed measures to avoid, minimize, and substantially lessen the effects.

Dated: July 27, 1995.

David L. McMullen,

Acting Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–19115 Filed 8–3–95; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[AK–964–1410–00–P; F–14944–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Tozitna, Limited for approximately 330 acres. The lands involved are in the vicinity of Tanana, Alaska, within T. 4 N., R. 22 W., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 5, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart

E, shall be deemed to have waived their rights.

Elizabeth Sherwood,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–19210 Filed 8–3–95; 8:45 am]

BILLING CODE 4310–JA–P

[NV–030–5700–10; Closure Notice No. NV–030–95–05]

Temporary Closure of Public Lands; Washoe County, Nevada

AGENCY: Bureau of Land Management, Nevada.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 1995 Reno National Championship Air Races.

EFFECTIVE DATES: September 11 through September 17, 1995.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Lahontan Resource Area Manager, Carson City District Office, 1535 Hot Springs Road, Carson City, Nevada 89706–0638. Telephone (702) 855–6100.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T.21 N.,R. 19 E.
Sec. 8, N½NE¼, SE¼NE¼ and E½SE¼
Sec. 16, N½ and SW¼
Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of Bureau of Land Management.

Dated: July 25, 1995.

James M. Phillips,

Area Manager, Lahontan Resource Area.

[FR Doc. 95–19229 Filed 8–3–95; 8:45 am]

BILLING CODE 4310–HC–M

[WY–030–05–1310–01]

Notice of Availability of Greater Wamsutter Area II Natural Gas Project Final Environmental Impact Statement

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Greater Wamsutter Area II (GWA II) Natural Gas Project Final Environmental Impact Statement analyzing the environmental consequences of a proposed natural gas exploration, development, and production operation in the Wamsutter Area II of southwestern Carbon and southeastern Sweetwater Counties, Wyoming. The project area encompasses approximately 334,919 acres within portions of Townships 16 through 22 North, Ranges 92 through 95 West.

DATES: Comments on the Final Environmental Impact Statement will be accepted for 30 days following the date the Environmental Protection Agency (EPA) publishes their Notice of Availability in the **Federal Register**. The EPA notice is expected to be published on August 4, 1995. There are no plans to hold a public meeting on the Greater Wamsutter Area II Natural Gas Project. Reviewers are encouraged to visit the local BLM offices in Cheyenne and Rawlins to talk with the managers about any concerns.

ADDRESSES: Comments on the Final Environmental Impact Statement should be sent to Mr. John Spehar, Great Divide Resource Area, Bureau of Land Management, P.O. Box 880, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Mr. John Spehar, Great Divide Resource Area, Bureau of Land Management, P.O. Box 880, Rawlins, Wyoming 82301, phone 307–324–4841.

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement analyzes three project development alternatives and a no action alternative. The proposed project provides a maximum development of 750 wells and 300 locations within the GWA II analysis area in addition to existing operations.

The proposed project would affect 2,416 acres, bringing the total disturbance area within the GWA II area to 14,943 acres of land. The proposed project entails drilling, completion testing, production, abandonment, and reclamation of natural gas operations by Union Pacific Resources Company, Amoco Production Company, and others. Impacts to most resources would be negligible to moderate during the life of the project. The proposed project would have beneficial impacts associated with increased revenues generated by taxes, royalties, and the use of local goods and services. This Final Environmental Impact Statement is in compliance with Section 7(c) of the Endangered Species Act (as amended) and includes a Biological Assessment for the purpose of identifying any endangered or threatened species which are likely to be affected by the proposed action.

Dated: July 24, 1995.

Alan Kesterke,

Acting State Director.

[FR Doc. 95–19211 Filed 8–3–95; 8:45 am]

BILLING CODE 4310–22–P

National Park Service

Notice of Availability of the Final General Management Plan and Final Environmental Impact Statement for Fort Clatsop National Memorial, Oregon

SUMMARY: Pursuant to Section 102(2) (C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared a Final General Management Plan/ Environmental Impact Statement (GMP/ FEIS) that describes and analyzes a proposal and three alternatives to meet immediate and long-term needs at Fort Clatsop National Memorial; these alternatives address visitor use and the preservation of the natural and cultural resources that provide the environment in which the Lewis and Clark story is presented to the public.

A Notice of Availability of the Draft General Management Plan/ Environmental Impact Statement (GMP/ DEIS) was published in the **Federal Register** on 3 November 1993 (58 FR 211), with the public comment period to close on 7 January 1994; responding to a request that additional time be provided for review and comment, the review period was extended until 7 February 1994 through notices in the local media and the 5 January 1994 issue of the **Federal Register** (59 FR 3). During this comment period, three public meetings were held and written comments were also received. The GMP/FEIS contains responses to the comments received and modifications to the document as needed in response to the comments.

The proposal, which was developed in response to public and agency comments on the GMP/DEIS, calls for: (1) Establishment of a trail between the Fort and the Pacific Ocean; (2) addition of approximately 963 acres to the Memorial's boundary; (3) coordination of interpretive activities with other public and private entities throughout the lower Columbia River region; and (4) increasing the Memorial's staffing levels.

Three alternatives were considered, in addition to the proposal. The No-Action Alternative would maintain the existing conditions: no Fort-Ocean trail would be developed; current size of the Memorial would be maintained at 125 acres; no new coordination initiatives would be undertaken; and staffing levels would not be increased. The Minimum Requirements Alternative would add a Fort-Ocean trail and increase the Memorial's boundary to encompass an additional 963 acres; some additional interpretive coordination activities would be undertaken by virtue of slightly increased staff numbers. The fourth alternative would expand the Memorial's natural resource base to enhance the historic setting of the Memorial; it would add approximately 2,315 acres to the park, develop a Fort-Ocean trail with a commensurate increase in staffing to manage the larger land base.

Major impact topics assessed for the proposed action and the alternatives include cultural and natural resources, visitor use, interpretation, regional cooperation, park facilities/staffing/ operations, visual/aural qualities, adjacent land uses and boundary adjustment/land protection.

SUPPLEMENTARY INFORMATION: The no-action period on this final plan and environmental impact statement will end 30 days after the Environmental Protection Agency has published a notice of availability of the GMP/FEIS in the **Federal Register**. For further information, contact: Superintendent, Fort Clatsop National Memorial, Route 3, Box 604–FC, Astoria, OR 97103–9803; telephone (503) 861–2471.

Copies of the GMP/FEIS will be available at Fort Clatsop National Memorial, as well as the following locations: Office of Public Affairs, National Park Service, Department of the Interior, 1849 C Street, NW., Washington, DC; and National Park Service, Columbia Cascades System Support Office, 909 First Ave., Seattle, WA.

Dated: July 25, 1995.

William C. Walters,

Deputy Field Director, Pacific West Area, National Park Service.

[FR Doc. 95–19167 Filed 8–3–95; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

South Bay Water Recycling Project, San Jose, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Correction notice of availability and notice of public hearings on the draft environmental impact statement: INT DES–95–36.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) for the South Bay Water Recycling Project (SBWRP). The DEIS is based on a 1992 environmental impact report (EIR) prepared by the City of San Jose (City). The SBWRP would divert treated freshwater effluent from South San Francisco Bay through a water reclamation program. This would include construction of pump stations and recycled distribution pipelines. Reclamation would provide a grant of up to 25 percent of the total project cost to the City to support the SBWRP. A public hearing will be held to receive written or verbal comments on the DEIS from interested organizations and individuals on the environmental impacts of the proposal. This notice corrects the date of availability of the draft environmental impact statement published in 60 FR 37902, Jul 24, 1995 to August 2, 1995.

DATES: The DEIS will be available on August 2, 1995 for a 60-day public review period.

A public hearing on the DEIS will be held on August 23, 1995 at 4:00 p.m. at the San Jose Convention Center, First Floor, Room L, 150 West San Carlos Street, San Jose, CA 95113.

ADDRESSES: Written comments on the DEIS and requests for copies of the DEIS should be addressed to Mona Jefferies-Soniea, Bureau of Reclamation, Division of Resources Management Planning, 2800 Cottage Way, Sacramento, CA 95825; telephone: (916) 979–2297.

Copies of the DEIS are also available for public inspection and review at the following locations:

- Bureau of Reclamation, Mid-Pacific Regional Liaison, 1849 C Street NW., Washington, DC 20240; telephone: (202) 208–6274.
- Bureau of Reclamation, Regional Director, Attn: MP–720, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 979–2297.
- Bureau of Reclamation, Mid-Pacific Regional Library, 2800 Cottage Way, Sacramento, CA. 95825–1898; telephone: (916) 979–2462.
- City of San Jose, Environmental Services Department, Tech. Support Division, 700 Los Esteros Road, San Jose, CA 95134; telephone: (408) 945–5300.

Libraries

Copies will also be available for inspection at public libraries located in San Jose (Main, Alviso, Berryessa, East San Jose, Carnegie, and Empire Branches).

FOR FURTHER INFORMATION CONTACT: Ms. Jefferies-Soniea at the above address and telephone.

SUPPLEMENTARY INFORMATION: The SBWRP, formerly known as the San Jose Nonpotable Reclamation Project, was developed in response to an order from the Environmental Protection Agency (EPA) and San Francisco Regional Water Quality Control Board in order to re-establish salinity levels of the salt water marsh in the southern tip of San Francisco Bay. In addition to protecting the South Bay habitat, the program also develops nonpotable water supply for the Santa Clara Valley, which can be used in place of potable water for appropriate purposes. Funding will come from loans from the State Water Resources Control Board and EPA, a grant from Reclamation, and local funding.

The SBWRP would be implemented in two phases: Phase I would consist of installing facilities to supply up to 9,000 acre-feet/year of nonpotable water for landscape irrigation, agriculture and industrial uses. Phase II would consist of installing facilities to supply an additional up to 27,000 acre-feet/year for either nonpotable or potable use.

The City completed a final EIR for the SBWRP in November 1992. At that time, Reclamation had not been involved and therefore no compliance with NEPA was needed. The EIS will be based on this final EIR. The EIR analyzed Phase I in detail and analyzed Phase II programmatically.

The proposed action (Phase I) is to construct pump stations, storage tanks, 48.5 miles of 6 to 54-inch diameter pipeline and appurtenant facilities in the cities of San Jose, Santa Clara, and Milpitas. There would also be minor modifications of the existing San Jose/ Santa Clara Water Pollution Control Plant to provide additional chlorination.

Alternatives to the proposed action include:

- Pipeline Alignment Alternative, to avoid construction of pipelines near residences.
- Flow Allocation Alternative, which would allocate most of the reclaimed water for potable uses. The water would be used for groundwater recharge, mainly using percolation basins.
- Habitat Enhancement Alternative, to also supply water to riparian restoration areas along creeks and rivers in the study area, as well as for potable and other nonpotable purposes.
- No Action.

Hearing Process Information

Written comments, for inclusion in the hearing record, from those unable to attend the hearing or wishing to supplement their oral presentation should be received at the Bureau of Reclamation by September 6, 1995.

Note: If special assistance is required, contact Mona Jefferies-Soniea at (916) 979–2297. Please notify Ms. Jefferies-Soniea as far in advance of the hearings as possible and not later than 1 week prior to the hearing date to enable Reclamation to secure the needed services. If a request cannot be honored, the requester will be notified.

Dated: July 28, 1995.

Dan M. Fults,

Acting Regional Director.

[FR Doc. 95–19213 Filed 8–3–95; 8:45 am]

BILLING CODE 4310–94–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 366X]

Burlington Northern Railroad Company; Abandonment Exemption; in Buchanan County, MO

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments to abandon 0.85 miles of rail line between milepost 142.19 and milepost 143.04 in the City of St. Joseph, in Buchanan County, MO.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 3, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by August 14, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 24, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Assistant General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5348.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 9, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 28, 1995.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19226 Filed 8–3–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–449 (Sub-No. 1X)]

Western Kentucky Railway, L.L.C.—Abandonment Exemption—In Union County, KY

Western Kentucky Railway, L.L.C. (WKR), has filed a notice of exemption under 49 CFR Part 1152 Subpart F—Exempt Abandonments to abandon 20 miles of its line between milepost JE48.0 north of Dekoven, and milepost JE28.0 at Waverly, in Union County, KY.

WKR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic that could move over the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 2, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by August 14, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 23, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Kelvin J. Dowd, Esq., Slover & Loftus, 1224 17th St., N.W., Washington, D.C. 20036.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

WKR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 8, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 28, 1995.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19227 Filed 8–3–95; 8:45 am]

BILLING CODE FR–7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–16]

Barnett J.W. Grier, Jr., M.D., Revocation of Registration

On November 1, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Barnett J.W. Grier, Jr., M.D. of Beverly Hills, California (Respondent), proposing to revoke his DEA Certificate of Registration, BG2764226, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that the continued registration of Respondent was inconsistent with the public interest and that Respondent was no longer authorized to handle controlled substances in the State of California. 21 U.S.C. 823(f) and 824(a) (3) and (4).

On December 9, 1993, Respondent requested a hearing and the proceeding was docketed before Administrative Law Judge Mary Ellen Bittner. Following filing of prehearing statements by both parties, the Government filed a motion for summary disposition on November 30, 1994. No response was filed by Respondent. No evidentiary hearing was held as there were no factual issues involved, only a question of law. The administrative law judge issued her opinion and recommended decision on December 23, 1994. No exception were filed by either party.

On January 23, 1995, the administrative law judge transmitted the record of the proceeding to the Deputy Administrator. After careful consideration of the record in its entirety, the Deputy Administrator enters his final order in this matter, in accordance with 21 CFR 1316.67, based on conclusions of law and facts contained in the record which were not disputed, as set forth herein.

On October 24, 1987, the California Medical Board suspended Respondent's state medical license for ninety days and placed him on probation for eight years upon a finding that Respondent failed to supervise a physician's assistant and that such failure constituted an extreme departure from the Standard of medical practice in Southern California. On May 13, 1991, Respondent falsified an application for a new DEA Certificate of Registration by answering "no" to the liability question concerning revocation, suspension, denial, restriction, or probation of state professional license or controlled substance registration.

On October 2, 1992, the California Medical Board petitioned to revoke Respondent's probation because he had violated the terms of his probation by issuing numerous prescriptions for controlled substances, including Promethazine with codeine, Emperin with codeine, Tylenol #3 with codeine, and Phenergan with codeine for other than a legitimate medical purpose. The California Medical Board also found that Respondent had prescribed, dispensed or furnished dangerous drugs without a good faith prior medical examination; and submitted Quarterly Reports, executed under penalty of perjury, falsely reporting compliance with both Federal and State laws. On February 29, 1993, Respondent pled *nolo contendere* in absentia to six counts of state criminal charges involving controlled substances. On August 3, 1993, the California Medical Board revoked Respondent's license to practice medicine in the State of California effective September 3, 1993.

On October 14, 1992, Respondent requested a modification of his DEA registration from California to Georgia. On November 3, 1994, the Georgia Composite State Board of Medical Examiners revoked Respondent's license to practice medicine in the State of Georgia. Respondent does not deny that he is not licensed in California or Georgia.

DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to dispense controlled substances by the state in which he proposes to practice. *See Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Robert F. Witek, D.D.S.*, 52 FR 4770 (1987). In such cases, a motion for summary disposition is properly entertained. There is no need for a plenary evidentiary hearing since there are no questions of fact to be resolved by such a hearing. *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), aff'd sub nom, *Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *Floyd A. Santner, M.D.*, 47 FR 51831 (1982). Therefore, because Respondent is no longer authorized to handle controlled substances in the State of California or the State of Georgia, the states in which Respondent proposes to practice, the Deputy Administrator cannot permit him to maintain a DEA Certificate of Registration in either state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BG2764226, previously issued to Barnett J.W. Grier, Jr., M.D., be, and it is hereby, revoked, and any pending application for renewal of such registration be, and they hereby are, denied, and that any request for modification be, and it hereby is, denied. This order is effective September 5, 1995.

Dated: July 28, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–19168 Filed 8–3–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Iowa State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667; hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa Plan and the adoption of subpart J of part 1952 containing the decision. Iowa was granted final approval under Section 18(e) of the Act on July 2, 1985. The Iowa Plan provides for the adoption of Federal standards by reference after comments and public hearing). By a letter dated June 13, 1994, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted State standards comparable to: Electric Power Generation Transmission and Distribution; Electrical Protective Equipment; as published in the **Federal Register** (59 FR 4435, dated January 31, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested March 16, 1994; hearing scheduled for April 7, 1994; (no comments were received). The standard was effective May 11, 1994; and notice of its adoption was published by the State on May 11, 1994.

In the June 13, 1994 letter, the State also submitted State standards comparable to: Hazard Communication; as published in the **Federal Register** (59 FR 6169, dated February 9, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested March 16, 1994; hearing scheduled for April 7, 1994; (no comments were received). The standard was effective May 11, 1994; and notice of its adoption was published by the State on May 11, 1994.

In the June 13, 1994 letter, the State also submitted State standards comparable to: Hazard Communication; as published in the **Federal Register** (59 FR 6170, dated February 9, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested March 16, 1994; hearing scheduled for April 7, 1994; (no comments were received). The standard was effective May 11, 1994; and notice of its adoption was published by the State on May 11, 1994.

By letter dated July 29, 1994, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted State standards comparable to: Personal Protective Equipment for General Industry; as published in the **Federal Register** (59 FR 16360, dated April 6, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested May 11, 1994; hearing scheduled for June 1994; (no comments were received). The standard was effective July 6, 1994; and notice of its adoption was published by the State on July 6, 1994.

By letter dated October 19, 1994, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted State standards comparable to: Permit-Required Confined Spaces, technical amendment; as published in the **Federal Register** (59 FR 26115, dated May 19, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested July 20, 1994; hearing scheduled for August 11, 1994; (no comments were received). The standard was effective September 14, 1994; and notice of its adoption was published by the State on September 14, 1994.

In the October 19, 1994 letter, the State also submitted State standards comparable to: Electric Power Generation, Transmission, and distribution; electrical protective equipment, correction; as published in the **Federal Register** (59 FR 33661, dated June 30, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested August 3, 1994; hearing scheduled for August 25, 1994; (no comments were received). The standard was effective September 28, 1994; and notice of its adoption was published by the State on September 28, 1994.

In the October 19, 1994 letter, the State also submitted State standards comparable to: Personal Protective Equipment for General Industry, correction; as published in the **Federal Register** (59 FR 33910, dated July 1, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested August 3, 1994; hearing scheduled for August 25, 1994; (no comments were received). The standard was effective September 28, 1994; and notice of its adoption was published by the State on September 28, 1994.

In the October 19, 1994 letter, the State also submitted State standards comparable to: Retention of DOT Markings, Placards, and Labels; as published in the **Federal Register** (59 FR 36699, dated July 19, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested July 20, 1994; hearing scheduled for August 11, 1994; (no comments were received). The standard was effective September 14, 1994; and notice of its adoption was published by the State on September 14, 1994.

By letter dated February 21, 1995, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted State standards comparable to: Safety Standards for Fall Protection in the Construction industry; as published in the **Federal Register** (59 FR 40729, dated August 9, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested September 14, 1994; hearing scheduled for October 6, 1994; (no comments were received). The standard was effective November 9, 1994; and notice of its adoption was published by the State on November 9, 1994.

In the February 21, 1995 letter, the State also submitted State standards comparable to: Occupational Exposure to Asbestos; as published in the **Federal Register** (59 FR 41057, dated August 10, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested September 14, 1994; hearing scheduled for October 6, 1994; (no comments were received). The standard was effective November 9, 1994; and notice of its adoption was published by the State on November 9, 1994.

In the February 21, 1995 letter, the State also submitted State standards comparable to: Hazardous Waste Operations and Emergency Response; as published in the **Federal Register** (59 FR 43270, dated August 12, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested September 28, 1994; hearing scheduled for October 20, 1994; (no comments were received). The standard was effective November 23, 1994; and notice of its adoption was published by the State on November 23, 1994.

In the February 21, 1995 letter, the State also submitted State standards comparable to: Logging Operations; as published in the **Federal Register** (59 FR 51741, dated October 12, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested November 9, 1994; hearing scheduled for December 1, 1994; (no comments were received). The standard was effective February 1, 1995; and notice of its adoption was published by the State on February 1, 1995.

In the February 21, 1995 letter, the State also submitted State standards comparable to: Safety Standards for Fall Protection in the Construction Industry; as published in the **Federal Register** (59 FR 40729, dated August 9, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested September 14, 1994; hearing scheduled for October 6, 1994; (no comments were received). The standard was effective November 9, 1994; and notice of its adoption was published by the State on November 9, 1994.

In the February 21, 1995 letter, the State also submitted State standards comparable to: Occupational Exposure to Asbestos; as published in the **Federal Register** (59 FR 41131, dated August 10, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested September 14, 1994; hearing scheduled for October 6, 1994; (no comments were received). The standard was effective November 9, 1994; and notice of its adoption was published by the State on November 9, 1994.

In the February 21, 1995 letter, the State also submitted State standards comparable to: Hazardous Waste Operations and Emergency Response; as published in the **Federal Register** (59 FR 43275, dated August 22, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested September 28, 1994; hearing scheduled for October 20, 1994; (no comments were received). The standard was effective November 23, 1994; and notice of its adoption was published by the State on November 23, 1994.

In the February 21, 1995 letter, the State also submitted State standards comparable to: Logging Operations; as published in the **Federal Register** (59 FR 51748, dated October 12, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comments requested November 9, 1994; hearing scheduled for December 1, 1994; (no comments were received). The standard was effective February 1, 1995; and notice of its adoption was published by the State on February 1, 1995.

By letter dated November 8, 1994, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted State standards comparable to: Reporting of fatality or multiple hospitalization incidents; as published in the **Federal Register** (59 FR 15594, dated April 1, 1994). This standard, which is contained in Chapter 88 of the Code of Iowa (1993), was promulgated after public comments requested July 26, 1994; hearing scheduled for July 28, 1994; (no comments were received). The standard was effective October 26, 1994; and notice of its adoption was published by the State on October 26, 1994.

2. *Decision.* All of the above State submissions have been compared to federal standards and it has been determined that they are identical to the comparable federal standard and should therefore be approved. Having reviewed the State submission, in comparison with the Federal standards, it has been determined that the State standards, with the exception of 1904.8, are identical to the comparable Federal standards and should therefore be approved.

OSHA has determined that the State standard for 347–4.8(88) is at least as effective as the comparable Federal standard, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA therefore approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, Room N3700, 200 Constitution Avenue, NW, Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

4. *Public Participation.* Under 29 CFR 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State Plan as a proposed change and for making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards, with the exception of 1904.8, and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective August 4, 1995.

(Section 18, Public Law 91–596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Kansas City, Missouri, this 11th day of July, 1995.

Marcia Drumm,

Acting Regional Administrator.

[FR Doc. 95–19202 Filed 8–3–95; 8:45 am]

BILLING CODE 4510–26–M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective data as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. OK950016, OK950018 and OK950024 dated February 10, 1994.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting an SF–308. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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WA950027 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 28th day of July 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–18982 Filed 8–3–95; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company; Comanche Peak Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89, issued to Texas Utilities Electric Company (TU Electric, the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of revisions to 10 CFR part 20 references to recognize the new section numbers, revise definitions to ensure consistency with 10 CFR part 20, and change administrative controls for reporting and recordkeeping to maintain compliance with the new 10 CFR part 20. The changes would revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents and reflect the relocation of the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the licensee's application for amendment dated August 12, 1994, implementing the new 10 CFR part 20.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action, in regard to the actual release rates as referenced in the Technical Specifications as a dose rate to the maximally exposed member of the public, and concludes that the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the CPSES, Units 1 and 2, dated October 1989.

Agencies and Persons Consulted

In accordance with its stated policy, on July 20, 1995, the staff consulted with the Texas State official, Mr. Arthur Tate of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application for amendment dated August 12, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/ Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated Rockville, Maryland, this 27th day of July 1995.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19197 Filed 8–3–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–456 and STN 50–457]

Commonwealth Edison Company (Braidwood Station, Units 1 and 2); Exemption

I

The Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. NPF–72 and NPF–77, which authorize operation of Braidwood Station, Units 1 and 2 (the facilities). The licenses provide, among other things, that the facilities are subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are pressurized water reactors located at the licensee's site in Will County, Illinois.

II

In 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," paragraph (a), in part, states that "the licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

In 10 CFR 73.55(d), "Access Requirements," paragraph (1), it specifies that "the licensee shall control all points of personnel and vehicle access into a protected area." Also, 10 CFR 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without escort provided that the individual, "receives a picture badge upon entrance into a protected area which must be returned upon exit from the protected area * * *."

The licensee proposes to implement an alternative unescorted access system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area and would allow all individuals, including contractors, to keep their picture badges in their possession when departing the Braidwood site.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. According to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have the same "high assurance" objective, that the proposed measures meet the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Currently, unescorted access into the protected area for both employee and contractor personnel into the Braidwood Station, Units 1 and 2, is controlled through the use of picture badges. Positive identification of personnel which are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site.

The proposed system will require that all individuals with authorized unescorted access have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badge to gain access to the protected area, but must also have their hand geometry confirmed. All individuals, including contractors, who have authorized unescorted access into the protected area will be allowed to keep their picture badges in their possession when departing the Braidwood site.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. It should also be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing which demonstrated that the hand geometry equipment possesses strong performance characteristics. Details of the testing performed are in the Sandia report, "A Performance Evaluation of Biometric Identification Devices," SAND91—0276 UC—906 Unlimited Release, June 1991. Based on the Sandia report and the licensee's experience using the current photo picture identification system, the false acceptance rate for the proposed hand geometry system would be at least equivalent to that of the current system. To assure that the proposed system will continue to meet the general performance requirements of 10 CFR 73.55(d)(5), the licensee will implement a process for testing the system. The site security plans will also be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the Braidwood site.

IV

For the foregoing reasons, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed systems's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

The requirement of 10 CFR 73.55(d)(5) that individuals who have been granted unescorted access and are not employed by the licensee are to return their picture badges upon exit from the protected area is no longer necessary. Thus, these individuals may keep their picture badges in their possession upon leaving the Braidwood site.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 38855).

Dated at Rockville, Maryland, this 28th day of July 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19198 Filed 8–3–95; 8:45 am]

BILLING CODE 7590–01–F

[Docket Nos. 50–334 and 50–412]

Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company (Beaver Valley Power Station, Units 1 and 2); Exemption

I

Duquesne Light Company, et al. (the licensee), is the holder of Operating License Nos. DPR–66 and NPF–73, which authorize operation of the Beaver Valley Power Station, Units Nos. 1 and 2, at steady state reactor core power levels not in excess of 2652 megawatts thermal (per unit). The licenses provide, among other things, that the licensee is subject to all rules, regulations and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are two pressurized water reactors located at the licensee's site in Beaver County, Pennsylvania

II

Section 50.54(o) of 10 CFR part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of appendix J to 10 CFR part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity for the primary reactor containment and systems and components which penetrate the containment.

Section III.D.2(b)(ii) of appendix J to 10 CFR part 50 requires that an overall air lock Type B test shall be performed on air locks opened during periods when containment integrity is not required by the plant's Technical Specifications at the end of such periods at not less than P_a (the calculated peak containment internal pressure related to the design basis accident and specified either in the technical specification or associated bases). The overall air lock Type B tests are intended to detect local leaks and measure leakage across each pressure-containing or leakage-limiting boundary of the air locks.

III

By letter dated February 4, 1994, the licensee requested an exemption to the requirements of Section III.D.2(b)(ii) of 10 CFR part 50, appendix J. The proposed exemption would permit local leak rate testing to be substituted for an overall air lock leakage test where the design permits. The exemption would be applicable to only those air lock components which are designed to be local leakage rate tested at a pressure of at least P_a. The leakage rate of each component would then be measured and verified to be within acceptable limits (i.e., containment leakage would be limited such that offsite radiation exposures will not exceed the guidelines of 10 CFR part 100 in the event of a design basis accident).

IV

The licensee presented information in support of its request for an exemption from the requirements of section III.D.2(b)(ii) of appendix J to 10 CFR part 50. The proposed exemption would allow maintenance to be performed on the air lock that could affect its sealing capability without requiring performance of the overall air lock leakage test. The licensee indicated that performance of the overall air lock test is very time consuming and results in additional occupational radiation exposure. The proposed exemption would allow local leakage testing to be substituted for the overall air lock leakage test when the design of the components permits local leakage rate testing at a pressure of at least P_a. A leakage rate would then be measured in accordance with the requirements of appendix J. The typical air lock components which could be tested in this manner are components such as the o-ring seals on the personnel air lock door(s), the mechanical penetrations for the 18-inch escape hatches, and the equalizing valves located on each of the air lock doors. Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. * * *" The underlying purpose of the airlock Type B testing is to ensure that each containment air lock will perform its safety function as part of the containment to control offsite radiation exposure resulting from a design basis accident. The proposed local leakage testing is sufficient to achieve the underlying purpose of the requirements of 10 CFR part 50, appendix J, section III.D.2(b)(ii) because it provides adequate assurance of the continued leak-tight integrity of the air lock(s). As a result, the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

With respect to the requirements of 10 CFR 50.12(a)(1), the NRC staff has concluded that the requested action is authorized by law in that no prohibition of law exists which would preclude the activities which would be authorized by the exemption. In addition, for the reasons discussed above, the NRC staff has determined that the requested exemption does not present an undue risk to the public health and safety, is

consistent with the common defense and security and that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii).

V

Based on the above, the NRC staff finds the requested exemption, to allow local leak rate testing to be substituted for an overall air lock leakage test where the design permits, acceptable. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission finds that the special circumstances as required by 10 CFR 50.12(a)(2)(ii) are present.

An exemption is hereby granted from the requirements of section III.D.2(b)(ii) of appendix J to 10 CFR part 50, which requires an overall leakage test of air locks opened during periods when containment integrity is not required by the plant's Technical Specifications at the end of such periods at a pressure of not less than P_a. Local leak rate testing shall be substituted for the overall leakage test whenever this exemption is utilized.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the quality of the human environment (60 FR 30611).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 26th day of July 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19199 Filed 8–3–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–32 and DPR–37 issued to the Virginia Electric and Power Company (the licensee) for operation of the Surry Power Station, Units 1 and 2 located in Surry County, Virginia.

The proposed amendment would incorporate revised pressure/temperature (P/T) limits and an associated Low Temperature Overpressure System (LTOPS) setpoint that will be valid to the end-of-license (28.8 and 29.4 effective full power years for Units 1 and 2, respectively). The proposed change also incorporates analytical and operational features into the Surry design basis on the P/T operating margin. The request also updates the unirradiated reactor vessel material toughness data presented in the Technical Specifications to reflect the data previously provided to the NRC in the licensee's response to Generic Letter 92–01, Revision 1, "Reactor Vessel Structural Integrity."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station in accordance with the Technical Specification changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The safety analysis demonstrates that the proposed reactor vessel protection philosophy, and the associated pressure/temperature limits, LTOPS setpoint, and component operability requirements, ensure that reactor vessel integrity will be maintained during normal operation and design basis accident conditions. Specifically, adherence to the heatup/cooldown rate-dependent pressure/temperature operating limits ensures that the assumed design basis flaw will not propagate during normal operation. Below the LTOPS enabling temperature, automatic actuation of the PORVs ensures that the assumed design basis flaw will not propagate under design basis low-temperature overpressurization accident conditions. Above the enabling temperature, two pressurizer safety valves are sufficient to relieve the overpressurization due to the inadvertent startup of two charging pumps at water solid conditions without propagation of the assumed design basis flaw.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed Technical Specifications modify pressure/temperature operating limits, LTOPS setpoint and enabling temperature, and component operability requirements. The revised pressure/temperature operating limits and LTOPS setpoint are only slightly different than those currently in the Technical Specifications. The LTOPS enabling temperature remains unchanged. No operating limits or setpoints are added or deleted by the proposed changes. Therefore, it may be concluded that the operating limits and setpoint changes do not create the possibility of a new or different kind of accident. With regard to component operability requirements, restrictions on the number of charging pumps which may be operable, the number of PORVs which must be operable, and the allowable temperature difference between the steam generator primary and secondary remain unchanged. Only the setpoint temperature at which these restrictions apply have been modified. The proposed changes are entirely consistent with the reactor vessel integrity protection philosophy which ensures that the design basis reactor vessel flaw will not propagate under normal operation or postulated accident conditions. Further, the proposed changes do not invalidate . . . any component design criteria or the assumptions of any UFSAR Chapter 14 accident analysis.

3. Involve a significant reduction in a margin of safety. As described above, the reactor vessel integrity protection philosophy ensures that the design basis assumed flaw will not propagate under normal operation or design basis accident conditions. Adherence to the Technical Specification pressure/temperature operating limits ensures that the margin to vessel fracture provided by the ASME Section XI methodology is maintained. With regard to LTOPS protection, the safety analysis demonstrates that the proposed LTOPS design ensures margins consistent with those provided by ASME Section XI Appendix G methods as amended by ASME Code Case N–514. Utilization of ASME Code Case N–514 technically results in a reduction in the margin of safety, since a less restrictive LTOPS analysis design limit (i.e., 110% of the isothermal limit curve) is employed. However, the proposed design has been demonstrated to provide an acceptable margin of safety. Both industry experience and engineering evaluation support the conclusion that LTOPS design basis events may be expected to occur at essentially isothermal conditions. An engineering evaluation demonstrates that any reduction in allowable pressure due to thermal stresses which may be expected to exist during an LTOPS design basis event is insignificant when compared to margins provided by the ASME Section XI Appendix G methods for calculating pressure/temperature operating limits. This design maximizes the operating margin above the minimum RCS pressure for reactor coolant pump (RCP) operation, thereby minimizing the probability of undesired PORV lifts during RCP startup.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 5, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding;

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of a law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David

B. Matthews: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 8, 1995, which is available for public inspection at the commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 27th day of July 1995.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–I, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19200 Filed 8–3–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26344]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 28, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 21, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ohio Power Company (70–5862)

Ohio Power Company ("OPCo"), 301 Cleveland Avenue, SW., Canton, Ohio 44702, a public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company has filed a post-effective amendment to its application-declaration under section 13 of the Act and rules 86, 87, 90 and 91 thereunder.

In accordance with the recommendation of the Commission's staff, resulting from its field audit of OPCo's Cook Coal Terminal, OPCo proposes that it adjust the cost of capital rate authorized in Commission order dated June 17, 1983 (HCAR No. 22977) to conform the rate to the current market. OPCo proposes that the overall rate of return on its investment in the Cook Coal Terminal would be subject to annual adjustment of the first day of April in each succeeding year based on changes in the rate of return on common equity most recently allowed by either (1) the Federal Energy Regulatory Commission in the last wholesale rate proceeding involving OPCo or (2) The Public Utilities Commission of Ohio in OPCo's most recent retail rate proceeding.

OPCo proposes to charge a cost-of-capital component on its investment in the Transcisco railcar maintenance facility, in which OPCo has an investment of approximately $350,000. OPCo proposes to use this same methodology to calculate the cost-of-capital rate associated with its railcar maintenance facility located at the Cool Coal Terminal and the Transcisco maintenance facility.

OPCo proposes to adjust the capitalization ratio on an annual basis, using OPCo's financial information as reported at December 31 of the preceding year. Similarly, the cost of debt and preferred stock would be updated to reflect the overall cost of debt and preferred stock at December 31 of the preceding year.

The rate changes resulting from this methodology would be applied for billing purposes to the 12-month period commencing on the April 1 subsequent to the applicable December 31 calculation. By adjusting the provision for the cost of capital, the cost of capital rate will be reduced from the 12.3% currently authorized to 10.12%, thus reducing the fees charged by OPCo. However, in the event the cost of debt or preferred stock or the return on common equity increases, the capital rate will likewise increase.

AEP Generating Company, et al. (70–7167)

AEP Generating Company, 1 Riverside Plaza, Columbus, Ohio 43215; Appalachian Power Company, 40 Franklin Road, Roanoke, Virginia 24022; Columbus Southern Power Company, 215 North Front Street, Columbus, Ohio 43215; Indiana Michigan Power Company, One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46802; Kentucky Power Company, 1701 Central Avenue, P.O. Box 1428, Ashland, Kentucky 41101; Ohio Power Company, 301 Cleveland Avenue, SW., Canton, Ohio 44702, all public-utility subsidiary companies of American Electric Power Company, Inc., a registered holding company have filed a post-effective amendment to their application-declaration under section 12(f) and 13(b) of the Act and rules 43 and 80 through 95 thereunder.

In accordance with the recommendation of the Commission's staff, resulting from its field audit of Indiana Michigan Power Company's "(I&M") River Transportation Division, I&M proposes to adjust the cost of capital rate authorized in Commission order dated March 4, 1986 (HCAR No. 24039) to conform the rate to the current market. I&M proposes that the overall rate of return on I&M's investment in the River Transportation Division would be subject to annual adjustment on the first day of April in each succeeding year based on changes in the rate of return on common equity most recently allowed by either (i) The Federal Energy Regulatory Commission ("FERC") in the last wholesale rate proceeding involving I&M or (ii) the Indiana Utility Regulatory Commission in I&M's most recent retail rate proceeding. Furthermore, I&M proposes to change the way in which the working capital base is calculated in determining the cost-of-capital rate. Specifically, I&M proposes to include one-eighth of the sum of the River Transportation Division's annual expenditures, year-end undercollection, prepayments, materials and supplies inventories balances, less year-end current liabilities and accrual balances.

I&M proposes to adjust the capitalization ratio on an annual basis, using I&M's financial information as reported at December 31 of the preceding year. Similarly, the cost of debt and preferred stock would be updated to reflect the overall cost of debt and preferred stock at December 31 of the preceding year.

The rate changes resulting from this methodology would be applied for billing purposes to the 12-month period commencing on the April 1 subsequent to the applicable December 31 calculation. By adjusting the provision for the cost of capital, the cost of capital rate will be increased from the 8.82% currently authorized to 9.69%, thus increasing the fees charged by I&M. However, in the event the cost of debt or preferred stock or the return on common equity decreases, the capital rate will likewise decrease.

Northeast Utilities et al. (70–8080)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, and its subsidiary service company, Northeast Utilities Service Company ("NUSCO"), Seldom Street, Berlin, Connecticut 06037, have filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 54 thereunder to their application-declaration previously filed under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 42 and 50(a)(5) thereunder.

By order dated June 30, 1993 (HCAR No. 25842), NU was authorized to acquire, through NUSCO acting on behalf of NU from time-to-time prior to May 1, 2002, up to a total of 15,000 shares of NU's common stock, $5.00 par value ("Common") on the open market. NU may transfer annually the Common to the non-employee trustees on NU's Board of Trustees as a portion of their compensation. Share compensation would be paid in addition to cash retainers and fees, and would be at a rate of 100 shares per year per outside trustee for 1993, subject to change in the future by Board of Trustees.

Because of changes to the trustee compensation program, NU now proposes to increase the number of shares of Common that it may issue and sell for non-employee trustee compensation, from time-to-time through April 30, 2005, from 15,000 shares to 50,000 shares. NUSCO will continue to acquire the Common on the open market on NU's behalf. However, because of revisions in rule 42(b) Nusco's acquisitions do not require the Commission's prior approval, under the circumstances of this matter (HCAR No. 26031, April 19, 1994).

Louisiana Power & Light Company (70–8487)

Louisiana Power & Light Company ("LP&L"), 639 Loyola Avenue, New Orleans, Louisiana 70113, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a) and 10 the Act and rule and 54 thereunder.

LP&L seeks authorization to issue and sell, directly or indirectly through a subsidiary, not more than $610 million principal amount of its first mortgage bonds ("Bonds"), debentures ("Debentures") and securities of a subsidiary of LP&L ("Entity Interests") to be issued in one or more new series from time to time no later than December 31, 1997.

LP&L proposes to organize either a special purpose limited partnership or a statutory business trust for the sole purpose of issuing the Entity Interests ("Issuing Entity"). LP&L will directly or indirectly make an equity contribution to the Issuing Entity at the time the Entity Interests are issued and thereby directly or indirectly acquire all of the general partnership interest or common securities in such Issuing Entity. LP&L's equity contribution to the Issuing Entity will at all times constitute at least 3% of the aggregate equity contributions by all securityholders to such Issuing Entity.

LP&L will issue, from time to time in one or more series, subordinated debentures ("Entity Subordinated Debentures") to the Issuing Entity. The Issuing Entity will use the proceeds from the sale of its Entity Interests, plus the equity contributions made to it by either, (1) Its general partner (in the case of a limited partnership) or (2) LP&L (in the case of a business trust), to purchase the Entity Subordinated Debentures. The distribution rates, payment dates, redemption, maturity, and other similar provisions of each series of Entity Interests will be substantially identical to such terms and conditions of the Entity Subordinated Debentures relating thereto, and will be determined by the Issuing Entity at the time of issuance. Each series of Entity Interests will have a $25 per share stated liquidation preference.

LP&L may also enter into a guaranty pursuant to which it will unconditionally guarantee, (1) payment of distributions on the Entity Interests, if the Leasing Entity has funds available, (2) payments to the holders of Entity Interests of amounts due upon liquidation of the Issuing Entity or redemption of the Entity Interest, and (3) certain additional amounts that may be payable in respect of the Entity Interests.

Each series of Bonds and/or each series of Debentures will be sold at such price, will bear interest at such rate, either fixed or adjustable, and will mature on such date as will be determined at the time of sale. LP&L may determine to provide an insurance policy for the payment of the principal of and/or interest and/or premium on one or more series of Bonds and/or one or more series of Debentures. The Bonds and/or Debentures and/or Entity Interests may include provisions for redemption or retirement prior to maturity, including restrictions on optional redemption for a given number of years.

LP&L further proposes to issue and sell, from time to time not later than December 31, 1997, one or more new series of its preferred stock, cumulative, of either $25 par value or $100 par value (collectively "Preferred"). The total aggregate par value of shares of Preferred may not exceed $123.5 million. The price exclusive of accumulated dividends, and the dividend rate for each series of Preferred will be determined at the time of sale. LP&L may determine that the terms of the Preferred should provide for an adjustable dividend rate thereon to be determined on a periodic basis, subject to specified maximum and minimum rates, rather than a fixed dividend rate. The terms of the Preferred may include provisions for redemption, including restrictions on optional redemption, and/or a sinking fund designed to redeem all outstanding shares of a series not later than thirty years after the date of original issuance.

LP&L proposes to use the net proceeds derived from the issuance and sale of Bonds, Debentures, Entity Interests and/or the Preferred for general corporate purposes, including, but not limited to, the possible acquisition of certain outstanding securities.

LP&L states that it presently contemplates selling the Bonds, the Debentures, the Entity Interests and the Preferred either by competitive bidding, negotiated public offering or private placement.

LP&L also proposes to enter into arrangements to finance on a tax-exempt

basis certain solid waste, sewage disposal and/or pollution control facilities ("Facilities") at any of (i) Unit No. 3 of its Waterford Steam Electric Generating Station in the Parish of St. Charles, Louisiana, (ii) Units Nos. 6 and 7 of the LP&L's Sterlington Gas Generating Station in the Parish of Ouachita, Louisiana, or (iii) Units Nos. 1–5 of LP&L's Ninemile Point Gas Generating Station in the Parish of Jefferson, Louisiana (collectively, "Parish"). LP&L proposes, from time to time through December 31, 1997, to enter into one or more installment sale agreements and supplements ("Agreement"), pursuant to which the Parish may issue one or more series of tax-exempt revenue bonds ("Revenue Bonds") in an aggregate principal amount not to exceed $65 million. The net proceeds from the sale of Revenue Bonds will be deposited by the Parish with the trustee ("Trustee") under one or more indentures ("Indenture") and will be applied by the Trustee to reimburse the Company for, or to permanently finance on a tax-exempt basis, the costs of the acquisition, construction, installation or equipping of the Facilities.

LP&L further proposes, under the Agreement, to sell the Facilities to the Parish for cash and simultaneously repurchase the Facilities from the Parish for a purchase price, payable on an installment basis over a period or years, sufficient to pay the principal of, purchase price of, the premium, if any, and the interest on Revenue Bonds as the same become due and payable. Under the Agreement, LP&L will also be obligated to pay certain fees incurred in the transactions.

The price to be paid to the Parish for each series of Revenue Bonds and the interest rate applicable thereto will be determined at the time of sale. The Agreement and the Indenture will provide for either a fixed interest rate or an adjustable interest rate for each series of Revenue Bonds. Each series may be subject to optional and mandatory redemption and/or a mandatory cash sinking fund under which stated portions of such series would be retired at stated times.

In order to obtain a more favorable rating and thereby improve the marketability of the Revenue Bonds, LP&L may: (1) Arrange for a letter of credit from a bank ("Bank") in favor of the Trustee (in connection therewith, LP&L may enter into a Reimbursement Agreement pursuant to which LP&L would agree to reimburse the Bank for amounts drawn under the letter of credit and to pay commitment and/or letter of credit fees); (2) provide an insurance policy for the payment of the principal of and/or interest and/or premium on one or more series of Revenue Bonds; and/or (3) obtain authentication of one or more new series of first mortgage bonds ("Collateral Bonds"), to be issued up to an aggregate principal amount of $75 million, under LP&L's mortgage on the basis of unfunded net property additions and/or previously retired first mortgage bonds and delivered and pledged to the Trustee and/or the Bank to evidence and secure LP&L's obligations under the Agreement and/or the Reimbursement Agreement.

LP&L also proposes to acquire, through tender offers or otherwise, certain of its outstanding securities, including its outstanding first mortgage bonds, its outstanding preferred stock and/or outstanding pollution control revenue bonds and industrial development revenue bonds issued for LP&L's benefit, at any time, prior to December 31, 1997.

National Fuel Gas Company (70–8657)

National Fuel Gas Company ("National"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act.

By order dated December 18, 1990 (HCAR No. 25216) ("Order"), National was authorized, among other things, to issue and sell from time-to-time through October 31, 1995, up to 1 million shares of its authorized but unissued common stock, no par value, to such bank or trust company as National may designate as agent for the participants in National's Customer Stock Purchase Plan ("Plan"). All material aspects of the Plan as authorized by the Order remain unchanged.

From December 18, 1990 to January 15, 1995, National issued and sold 609,156 shares of common stock under the Plan. No shares of common stock have been issued under the Plan since January 15, 1995. Rather, as provided in the Order, cash dividends on all shares of common stock received from, or optional cash payments made by customers participating in the Plan have been reinvested by using open market purchases of National's common stock. From January 16, 1995 to April 15, 1995, 47,522 shares of common stock have been purchased on the open market for distribution under the Plan.

National now proposes to issue and sell, in addition to those shares authorized to be distributed under the Plan by the Order, from time-to-time through October 31, 2000, up to an additional one million shares or its authorized but unissued common stock, $1.00 par value ("Additional Common Stock"), to Chemical Bank, or such other bank or trust company as National may designate, as agent for the participants in the Plan. National also proposes to invest the cash and dividends of shareholders participating in the Plan through open market purchases of National's common stock. National will make such a decision from time-to-time based upon its needs for common stock, and the price and availability of its common stock on the market.

National intends to use the proceeds from the sale of the Additional Common Stock to repay existing short-term and long-term debt, to pay interest and dividends, and for other corporate purposes. In addition, National will, from time-to-time, use the proceeds to make additional capital contributions to its wholly owned subsidiaries.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19170 Filed 8–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21282; No. 812–9462]

Security Equity Life Insurance Company, et al.

July 28, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Security Equity Life Insurance Company ("Security Equity"), Security Equity Life Insurance Company Separate Account 13 ("Separate Account"), and Walnut Street Securities, Inc. ("Walnut Street").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 27(a)(3) and 27(c)(2) of the 1940 Act and Rules 63–2(c)(4)(v), 6e–3(T)(b)(13)(ii), and 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: This order will permit: (1) The Separate Account to issue certain flexible premium variable life insurance policies ("Policies") in which the sales charge deducted from premiums up to one target premium paid during any year exceeds the sales charge payable on any excess premium payments made in any prior year; and (2) the Separate Count and any future separate accounts established by Security Equity, to issue Policies, as well as other flexible premium, single premium, or scheduled premium variable life insurance policies, in which a deduction is made from premium payments of an amount that is reasonably related to Security Equity's increased federal tax burden resulting from the receipt of such premium payments pursuant to the application of Section 848 of the Internal Revenue Code of 1986, as amended.

FILING DATE: The application was filed on February 2, 1995, and amended on July 17, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 22, 1995, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Juanita M. Thomas, Esq., Security Equity Life Insurance Company, c/o General American Life Insurance Company, 700 Market Street, St. Louis, MO 63101.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Security Equity, a New York stock life insurance company, offers life insurance in thirty-eight states and the District of Columbia. Security Equity is a wholly-owned subsidiary of General American Life Insurance Company ("General American").

2. The Separate Account is a separate account established by Security Equity to fund the Policies. The Separate Account is registered with the Commission under the 1940 Act as a unit investment trust, and interests in the Policies are registered with the Commission as securities under the Securities Act of 1933. The Separate Account presently is comprised of ten sub-accounts ("Sub-Accounts"), which invest exclusively in certain open-end management investment companies or series of such companies ("Funds").

3. Walnut Street, a wholly-owned subsidiary of General American Holding Company (which, in turn, is a wholly-owned subsidiary of General American), is the distributor for the Policies. Walnut Street is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

4. The Policies are flexible premium variable life insurance contracts that provide for allocation of premium payments to the Sub-Accounts or to a fixed fund. The cash value and the death benefit under the Policies may fluctuate depending on the investment experience of the Sub-Accounts. There are three Death Benefit Options: (a) Face amount; (b) face amount plus account value; or (c) face amount plus a return of premiums. The minimum death benefit is equal to the account value multiplied by a specified percentage, which varies according to certain conditions. The Policies will not lapse if the net cash value is sufficient to cover monthly fees and charges deducted from the account value.[1] The Policies also offer Policy owners the opportunity to obtain a loan.

5. Certain fees and charges are deducted under the Policies. Each Sub-Account is assessed a daily mortality and expense risk charge, as well as monthly administrative charges, cost of insurance charges, charges for optional rider benefits, and charges for special insurance class rating, if any. If the Policy is issued on a medically underwritten basis,[2] a $100 underwriting charge will be deducted from the account value on the issue date, and the first day of the Policy month following a medically underwritten increase in the face amount [3] of the Policy.[4]

6. In addition, applicants propose to deduct from premium payments a premium load charge consists of a distribution charge, a premium tax charge, and a charge equal to 1.0% of each premium payment to cover the estimated cost of the federal income tax treatment under Section 848 of the Code, commonly referred to as the "DAC Tax." Premium load is expressed as a percentage of premium, and depends upon the amount of the premium paid in relation to the target premium,[5] the Policy year in which the premium is paid, and the issue age of the insured.

a. Distribution Charge

Applicants assert that the distribution charge compensates Security Equity for its Policy sales expenses, and is comprised of a premium expense load and a commission charge. The percentage premium expense load deducted from each premium payment will be based on the sum of the initial premiums of all Policies in a case,[6] in accordance with the following table.

Sum of the initial premiums of all policies in a case	Premium expense load (percent)
Less than $250,000	2.00
$250,000–$999,999	1.50
$1 million and more	1.25

The commission charge will be deducted from premiums paid in each Policy year up to a target premium amount. There is no commission charge on any premium amount paid during a Policy year in excess of the target premium ("Excess Premium"). The commission charge on premiums paid in a Policy year up to the target premium amount is based upon the issue age of the insured and the Policy year as follows:

Issue ages	Policy year		
	1 (percent)	2–10 (percent)	11–15 (percent)
20–51	28.00	5.00	5.00
52–59	28.00	5.33	4.00
60–67	28.00	4.66	4.00
68–80	19.00	4.00	4.00
81–85	13.00	4.00	4.00

[1] Net cash value is defined as the account value less any outstanding Policy loan and accrued and unpaid loan interest.

[2] Medically underwritten contracts, for the purposes of this underwriting charge, are all Policies other than those issued on a guaranteed issue or simplified issue basis. Security Equity may reduce or waive the underwriting charge in connection with the purchase of Policies sold by licensed agents of Security Equity that are also registered representatives of selected broker-dealers or banks that have entered into written sales agreements with Walnut Street.

[3] The face amount of the Policy is defined as the amount of insurance under the Policy.

[4] The underwriting charge is modified if the Policy is issued with a joint and last survivor rider.

[5] The target premium is a percentage of the level annual premium payment necessary to provide future benefits under the Policy through maturity.

[6] A case is a grouping of one or more Policies connected by a non-arbitrary factor such as common employer of each insured under the Policy. Every Policy is part of a case.

For all issue ages the commission charge will be 2.0% for Policy years 16 and beyond.

b. State Premium Tax Charge

Security Equity also deducts from each premium a premium tax charge, equal to the taxes that are imposed on Security Equity by the state in which the Policy owner resides or by the state in which the insured resides, and that are based on such premiums received under the Policy.

c. Section 848 "DAC Tax" Charge

Applicants state that the 1.0% charge deducted from each Premium Payment is designed to reimburse Security Equity for its increased federal tax burden resulting from the application of Section 848 of the Code to the receipt of those premiums. Section 848, as amended, requires life insurance companies to capitalize and amortize over ten years certain general expenses for the current year rather than deduct these expenses in full from the current year's gross income, as allowed under prior law. Section 848 effectively accelerates the realization of income from specified contracts and, consequently, the payment of taxes on that income. Taking into account the time value of money, Section 848 increases that insurance company's tax burden because the amount of general deductions that must be capitalized and amortized is measured by the premiums received under the Policies.

a. Deductions subject to Section 848 equal a percentage of the current year's net premiums received (*i.e.*, gross premiums minus return premiums and reinsurance premiums) under life insurance or other contracts categorized under this Section. The Policies will be categorized as specific contracts under Section 848 requiring 7.7% of the net premiums received to be capitalized and amortized under the schedule set forth in Section 848(c)(1).

b. The increased tax burden on every $10,000 of net premiums received under the Policies is quantified by applicants as follows. For each $10,000 of net premiums received in a given year, Security Equity's general deductions are reduced by $731.50 *i.e.*, an amount equal to (a) $770 (7.7% of $10,000) minus (b) $38.50 (one-half year's portion of the ten year amortization which may be deducted in the current year). Using a 35% corporate tax rate, applicants assert that Security Equity's taxes would increase for the current year by $256.03. However, the current tax increase will be offset partially by deductions allowed during the next ten years, which result from amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

c. In calculating the present value of these increased future deductions, Security Equity determined that, in its business judgment, it is appropriate to use a discount rate of 10% for the following reasons. To the extent that capital must be used by Security Equity to pay the increased federal tax burden under Section 848, such surplus will be unavailable for investment. Thus, the cost of capital used to satisfy this increased tax burden under Section 848 is Security Equity's targeted rate of return (*i.e.*, return sought on surplus), which is in excess of 10%. Accordingly, applicants submit that the targeted rate of return on surplus is appropriate for use in this present value calculation.

d. Applicants also submit that, to the extent that the 10% discount rate is lower than Security Equity's actual targeted rate of return on surplus, the calculation of this increased tax burden will continue to be reasonable over time, even if the applicable corporate tax rate is reduced, or Security Equity's targeted rate of return on surplus is lowered.

e. Security Equity has computed its cost of capital as the after tax rate of return that it seeks to earn on its surplus. Security Equity's rate of return is based on a number of factors including market interest rates, the anticipated long-term growth rates for Security Equity and its parent company, General American, acceptable level of risks for both Security Equity and General American, inflation, and available information about the rates of return obtained by other mutual life insurance companies and their subsidiaries. Security Equity represents that these factors are appropriate to consider in determining its cost of capital. Security Equity seeks to maintain a ratio of surplus to assets that is established based on judgment of the risks represented by various components of assets and liabilities.

f. Using a federal corporate tax rate of 35%, and applying a discount rate of 10%, the present value of the tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased tax burden, equals $160.40. The effect of Section 848 on the Policy, therefore, is and increased tax burden with a present value of $95.63 for each $10,000 of net premiums (*i.e.*, $256.03 less $160.40).

g. Applicants state that Security Equity does not incur incremental federal income tax when it passes on state premium taxes to Policy owners because state premium taxes are deductible in computing Security Equity's federal income taxes. Conversely, federal income taxes are not deductible in computing Security Equity's federal income taxes. To compensate Security Equity fully for the impact of Section 848, an additional charge must be imposed to make security Equity whole for the $95.63 additional tax burden attributable to Section 848, as well as the tax on the additional $95.63 itself. This additional charge can be determined by dividing $95.63 by the complement of 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47%.

h. Based on prior experience, Security Equity reasonably expects to take almost all future deductions. It is the judgment of Security Equity that a charge of 1.0% would reimburse it for the increased federal income tax liabilities under Section 848 of the Code, and will be reasonably related to such increased federal income tax burden. This representation takes into account the benefit to Security Equity of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to Security Equity's targeted rate of return on surplus) in computing the future deductions resulting from such amortization. Applicants assert that it is appropriate to deduct this charge, and to exclude the deduction of this charge from sales load, because it is a legitimate expense of Security Equity and not for sales and distribution expenses.

Applicants' Legal Analysis

A. Exemptive Relief Under Section 27(a)(3) of the 1940 Act and Rule 6e-3(T)(b)(13)(ii) Thereunder

1. Section 27(a)(3) of the 1940 Act provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment. Section 27(a)(3) further provides that the sales charge deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment.

2. Rule 6e-3(T)(b)(13)(ii) provides a partial exception from the prohibitions of Section 27(a)(3). Exemptive relief from the prohibitions of Section 27(a)(3) provided by Rule 6e-3(T)(b)(13)(ii) is available if the proportionate amount of sales charge deducted from any premium payment does not exceed the proportionate amount deducted from any prior premium payment, unless an

increase is caused by reductions in the annual cost of insurance or in sales charge for amount transferred to a variable life insurance contract from another plan of insurance. Rule 6e-3(T)(b)(13)(ii) thus permits a decrease in sales load for any subsequent premium payment but not an increase.

3. Under the Policies' sales load structure, a Policy owner could pay a premium in any given Policy year from which a 2.0% front-end sales load deduction (the premium expense load) is made, because at the time such premium was paid, cumulative premiums paid during the Policy year exceeded the target premium amount. Premiums paid in a subsequent Policy year up to a target premium would be subject to a front-end sales load deduction of more than 2.0% (the applicable commission charge plus the premium expense load). Applicants thus request an exemption from the requirements of Section 27(a)(3) and Rule 6e3(T)(13)(ii) because the Policies' sales load structure would appear to violate the "stair-step" provisions in Section 27(a)(3) and because the exemption from Section 27(a)(3) provided by Rule 6e-3(T)(b)(13)(ii) does not seem to apply to the Policies' sales load structure.

4. Applicants state that, had they chosen to impose the higher front-end sales load equally on all premium payments, the Policies would qualify for exemptive relief under Rule 6e-3(T)(b)(13)(ii), subject to the maximum limits permissible under subparagraph (b)(13)(i) or the Rule. Applicants assert, however, that such a front-end charge, would be less favorable to Policy owners than provided under the Policies; under such a sales charge structure, sales load would be recovered by Security Equity earlier than is the case under the Policies' sales load structure. The sales charge structure under the Policies benefits Policy owners by spreading Security Equity's recovery of sales load over a longer period of time, and thereby permitting a greater portion of a Policy owner's excess premiums to be credited to account value.

5. In addition, applicants represent that the sales load structure has been designed based on Security Equity's operating expenses for the sale of the Policies and, thus, reflects in part the lower overall distribution costs that are associated with Excess Premiums paid over the life of a Policy. Applicants submit that it would not be in the best interest of a Policy owner to require the imposition of a higher sales load structure than applicants deem necessary to adequately defray their expenses.

6. Applicants argue that Section 27(a)(3) was designed to address the abuse of periodic payment plan certificates under which large amounts of front-end sales loads were deducted so early in the life of the plan that an investor redeeming in the early periods would recoup little of his or her investment since only a small portion of the investor's early payments were actually invested. Applicants submit that the deduction of a reduced front-end sales load on Excess Premiums paid in any Policy year does not have the detrimental effect that Section 27(a)(3) was designed to prevent because a greater proportion of the Policies' sales loads are deducted later than otherwise would be the case.

7. Applicants state that under the Policy, premiums up to the target premium amount have higher levels of actual sales expenses (*i.e.*, commissions) associated with them than premiums in excess of such target premium amounts. Because the excess premiums have a lower level of sales expenses, applicants argue that it is appropriate to analyze separately the sales load structures for the two types of payments. Applicant submit that, when analyzed separately, both types of sales load comply with Rule 6e-3(T)(b)(13)(ii).

B. Exemptive Request With Respect to Section 27(c)(2) of the 1940 Act and Rules 6e-2(c)(4)(v) and 6e-3(T)(c)(4)(v) Thereunder in Connection With Deduction of a Charge for Code Section 848's Deferred Acquisition Costs

1. Section 27(c)(2) prohibits a registered investment company or its depositor or underwriter from making any deduction from premium payments made under periodic payment plan certificates other than a deduction for sales load. Section 2(a)(35)[7] defines sales load as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment, less amounts deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees that are not properly chargeable to sales load.

2. The Separate Accounts are, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, the Separate Accounts, the Other Accounts, Security Equity (as depositor), and Walnut Street (as principal distributor) are deemed to be subject to Section 27 of the 1940 Act. Applicants thus request an order under Section 6(c) of the 1940 Act granting exemptions from Sections 27(c)(2) of the 1940 Act to allow the deduction of a charge from premium payments to compensate Security Equity for their increased federal tax burden resulting from the receipt of such premium payments under the Policies.

3. Certain provisions of Rules 6e–2 and 6e–3(T) provide exemptive relief from Section 27(c)(2) if the separate account issues variable life insurance contracts, or flexible premium variable life insurance contracts, respectively. Rule 6e–2(b)(13)(iii) provides an exemption from Section 27(c)(2) of the 1940 Act to permit an insurer to deduct certain charges, other than sales load, including administrative expenses. Similarly, Rule 6e–3(T)(b)(13)(iii) provides exemptive relief from Section 27(c)(2) to permit an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by governmental entity.

Rule 6e–2(b)(1), together with Rule 6e–2(c)(4), provides an exemption from the Section 2(a)(35) definition of sales load by the substitution of a new definition to be used for the purposes of Rule 6e–2. Rule 6e–2(c)(4) defines sales load charged on any payment as the excess of the payment over certain specified charges and adjustments, including a deduction approximately equal to state premium taxes. Rule 6e–3(T)(b)(1), together with Rule 6e–3(T)(c)(4), also provides an exemption from the Section 2(a)(35) definition to be used for the purposes of Rule 6e–3(T). Rule 6e–3(T)(c)(4) defines sales load during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for and approximately equal to state premium taxes.

4. Applicants request exemptions from Rules 6e–2(c)(4)(v) and 6e–3(T)(c)(4)(v) under the 1940 Act to permit the proposed deduction with respect to Section 848 of the Code to be treated as other than sales load, as defined under Section 2(a)(35) of the 1940 Act, for purposes of Section 27 and the exemptions from various provisions

[7] Sales loads, as defined under Section 2(a)(35), are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments on periodic payment plan certificates. The proceeds of all payments (except amounts deducted for sales load) must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of unit investment trusts and held under an indenture or agreement that conforms with the provisions of Section 26(a)(2) and Section 26(a)(3) of the 1940 Act.

of that Section found implicitly in Rule 6e–2 and explicitly in Rule 6e–3(T).

5. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by Rules 6e–2(b)(13)(iii) and 6e–3(T)(b)(13)(iii) and should be treated as other than sales load. Applicants note, however, that under a literal reading of Rules 6e–2(c)(4) and 6e–3(T)(c)(4), a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the deduction to be treated as part of sales load.

6. Applicants state that they have found no public policy reason for including a deduction for an insurer's increased federal tax burden in sales load. Applicants assert that the public policy that underlies paragraph (b)(13)(i) of Rules 6e–2 and 6e–3(T), like that which underlies paragraphs (a)(1) and (h)(1) of Section 27, is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants submit that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in Rules 6e–2(c)(4) and 6e–3(T)(c)(4).

7. Applicants submit that the source for the definition of sales load found in Rules 6e–2(c)(4) and 6e–3(T)(c)(4) supports this analysis. Applicants believe that, in adopting paragraph (c)(4) of the Rules, the Commission intended to tailor the general terms of Section 2(a)(35) to variable life insurance contracts to ease verification by the Commission of compliance with the sales load limits of subparagraph (b)(13)(i) of the Rules.

8. Applicants submit that the exclusion from the definition of sales load under Section 2(a)(35) of deductions from premiums for issue taxes suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of sales load in Rule 6e–2 and 6e–3(T) deductions made to pay an insurer's costs attributable to its federal tax obligations. Additionally, the exclusion of administrative expenses or fees that are "not properly chargeable to sales or promotional activities" also suggests that the only deductions intended to fall within the definition of sales load are those that are properly chargeable to sales or promotional activities. Applicants represent that the proposed deductions will be used to compensate Security Equity for its increased federal tax burden attributable to the receipt of premiums and not for sales or promotional activities. Applicants, therefore, believe the language in Section 2(a)(35) further indicates that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

9. Finally, applicants submit that it is probably an historical accident that the exclusion of premium tax in subparagraph (c)(4)(v) of Rules 6e 2 and 6e–3(T) from the definition of sales load is limited to state premium taxes. Applicants note that, when Rules 6e–2 and 6e–3(T) were adopted, and later amended, the additional Section 848 tax burden attributable to the receipt of premiums did not yet exist.

10. Applicants further submit that the terms of the relief requested with respect to Future Policies to be issued through Other Accounts are also consistent with the standards of Section 6(c). Without the requested relief, applicants would have to request and obtain such exemptive relief for each Future Contract to be issued through an Other Account. Such additional requests for exemptive relief would present no issues under the 1940 Act that have not already been addressed in this application.

11. The requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for applicants to file redundant exemptive applications regarding the federal tax charge, thereby reducing their administrative expenses and maximizing the efficient use of their resources. Applicants represent that the delay and expense involved in having to repeatedly seek exemptive relief would impair their ability to effectively take advantage of business opportunities as they arise.

12. Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If applicants were required to repeatedly seek exemptive relief with respect to the same issues regarding the federal tax charge addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of applicants' increased overhead expenses.

Conditions for Relief

Applicants agree to the following conditions:

a. Security Equity will monitor the reasonableness of the charge to be deducted pursuant to the requested exemptive relief.

b. The registration statement for each Policy and Future Policy under which the above-referenced federal tax charge is deducted will: (1) disclose the charge; (2) explain the purpose of the charge; and (3) state that the charge is reasonable in relation to Security Equity's increased federal tax burden under Section 848 of the Code resulting from the receipt of premium payments.

c. The registration statement for each Policy and Future Policy under which the above-referenced federal tax charge is deducted will contain as an exhibit an actuarial opinion as to: (1) The reasonableness of the charge in relation to Security Equity's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (2) the reasonableness of the rate of return on surplus that is used in calculating such charge; and (3) the appropriateness of the factors taken into account by Security Equity in determining such rate of return.

Conclusion

1. Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the contract and provisions of the 1940 Act.

2. For the reasons and upon the facts set forth above, applicants submit that the requested exemptions from Sections 27(a)(3) and 27(c)(2) of the 1940 Act and Rules 6e–2(c)(4)(v), 6e–3(T)(b)(13)(ii), and 6e–3(T)(c)(4)(v) thereunder, are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the contract and provisions of the 1940 Act. Therefore, the standards set forth in Section 6(c) of the 1940 Act are satisfied.

For the Commission, by the Division of investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19171 Filed 8–3–95; 8:45 am]

BILLING CODE 8016–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, as amended (P.L. 104–13 effective October 1, 1995), The Paperwork Reduction Act. Since the last list was published in the **Federal Register** on July 28, 1995, the following information collections have been proposed or will require extension of the current OMB approvals:

A copy of each (the) collection instrument is included at the end of this notice. Call Reports Clearance Officer on (410) 965–4142 for copies of clearance package.

SSA Reports Clearance Officer: Charlotte S. Whitenight.

1. Notice Regarding Substitution of Party Upon Death of Claimant—Reconsideration of Disability Cessation—OMB Control No. 0960–0351. The information on form SSA–770 is used by the Social Security Administration to obtain information from substitute parties regarding their intention to pursue the appeals process on behalf of an individual who died. The respondents are such parties.

Number of Respondents: 1,200.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 100 hours.

2. Disability Determination and Transmittal—OMB Control No. 0960–0437. The information on form SSA–831 will be used by the State disability determination services to document whether an individual who applies for disability benefits is eligible for those benefits based on his or her alleged disability. It is also used by SSA for program management and evaluation. The respondents are state agency employees who make disability determinations for SSA.

Number of Respondents: 3,525,600.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 881,400.

3. Cessation or Continuance of Disability or Blindness Determination and Transmittal—Title XVI—OMB Control No. 0960–0443. The information on form SSA–832 is used by State disability determination services to document determinations as to whether an individual's disability benefits should be terminated or continued on the basis of his/her impairment. The respondents are State disability determination services adjudicating Title XVI disability claims.

Number of Respondents: 53,700.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 26,850 hours.

4. Cessation or Continuance of Disability or Blindness Determination and Transmittal—Title II—OMB Control No. 0960–0442. The information on form SSA–833 is used by State disability determination services to prepare determinations of whether individuals receiving Title II disability or blindness benefits continue to be unable to engage in substantial gainful work by reason of their impairments and are still eligible for benefit payments. It is also used to collect data for program evaluation and program management.

Number of Respondents: 268,700.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 134,350 hours.

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the Agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Date: July 31, 1995.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration,

[FR Doc. 95–19205 Filed 8–3–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC 20–62D]

Draft Advisory Circular on Eligibility, Quality, and Identification of Aeronautical Replacement Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of draft Advisory Circular (AC) 20–62D and request for comments.

SUMMARY: This notice announces the availability of and request comments on a draft AC pertaining to guidance for use in the determination of quality, eligibility, and traceability of aeronautical replacement parts intended for installation on type-certificated products. This notice is necessary to give all interested persons the opportunity to present their views on the draft AC.

DATES: Comments must be received on or before October 3, 1995.

ADDRESSES: Send all comments on the draft AC to: Federal Aviation Administration, General Aviation and Commercial Branch, AFS–340, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Al Michaels, AFS–340, at the address above, or telephone (202) 267–7501.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. The draft AC may also be downloaded from the FedWorld BBS by dialing (703) 321–8020, ANSI 8, 1, N, 9600 baud, or through the Internet at the following Uniform Resource Location (URL): ftp://fwux.fedworld.gov/pub/faa/faa.htm. The file name is "AC20–62D.TXT." Interested persons are invited to comment on the draft AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 20–62D, Eligibility, Quality, and Identification of Aeronautical Replacement Parts, and submit comments, in duplicate, to the address specified above. All comments will be considered by the General Aviation and Commercial Branch, AFS–340, before issuing the final AC.

Background

The FAA continues to receive reports of replacement parts being offered for sales as aircraft quality and where the origin of the parts are unknown or questionable. Such parts may be advertised or presented as "unused," "like new," or "remanufactured." Purchasers of these parts may not be aware of the potential hazards involved with replacement parts for which acceptability for installation on a type-certificated product has not been established. In determining whether installation of a part conforms with all applicable regulations, the installer can establish that the part was manufactured under a production approval pursuant to part 21 of the Federal Aviation Regulations (FAR), that an originally acceptable part has been maintained in accordance with part 43 of the FAR, or that the part is otherwise acceptable for installation, e.g., has been found to conform to data approved by the FAA. This AC would address means to help the installer make the required determinations.

Issued in Washington, D.C., on July 31, 1995.

William J. White,

Deputy Director, Flight Standards Service.

[FR Doc. 95–19188 Filed 8–3–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at the Huntsville International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 5, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., Director of Finance/Administration, Huntsville-Madison County Airport Authority at the following address: 1000 Glenn Hearn Blvd, Box 20008, Huntsville, AL 35824.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Huntsville-Madison County Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Principal Engineer, FAA Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 27, 1995, the FAA determined that the application to use the revenue from a PFC submitted by Huntsville-Madison County Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 23, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.
Actual charge effective date: June 1, 1992.
Estimated charge expiration date: October 31, 2008.
Total estimated net PFC revenue: $19,125,142.
Estimated PFC revenues to be used on projects in this application: $1,563,128.
Brief description of proposed project(s): Land acquisition (23 acres), Air cargo apron expansion, and runway 18R–36L rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators, certified air carriers, and certified route air carriers having fewer than 500 annual operations.

Any person may inspect the application in person at the FAA office listed above the **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Huntsville-Madison County Airport Authority.

Issued in Jackson, Mississippi on July 27, 1995.

Elton E. Jay,

Acting Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 95–19189 Filed 8–3–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Philadelphia International Airport, Philadelphia, Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 5, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mary Rose Loney, Director of Aviation for the City of Philadelphia at the following address: Philadelphia International Airport, Terminal E, Philadelphia, Pennsylvania 19153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Philadelphia under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011, (717) 730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 11, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the City of Philadelphia was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 24, 1995.

The following is a brief overview of the application. Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1992.

Proposed charge expiration date: August 31, 1997.

Total estimated PFC revenue: $116,700,000.

Brief description of proposed project: This project provides for a boat launching and storage facility on the Delaware River immediately south of the airport. This will provide water rescue capability which will greatly enhance safety at the airport.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ACTO) Filing FAA From 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Philadelphia International Airport.

Issued in Jamaica, New York on July 28, 1995.

Anthony P. Spera,

Manager, Airports Division, Eastern Region.

[FR Doc. 95–19190 Filed 8–3–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–58; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1980 Sprite Musketeer Trailers Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1980 Sprite Musketeer trailers are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1980 Sprite Musketeer trailer that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is September 5, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. § 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. § 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Northern California Diagnostic Laboratories, Inc. of Napa, California (Registered Importer R–92–011) has petitioned NHTSA to decide whether 1980 Sprite Musketeer trailers are eligible for importation into the United States. The petitioner contends that this vehicle, which it describes as an eighteen-foot, single axle, towable trailer manufactured in England, is eligible for importation under 49 U.S.C. § 30141 (a)(1)(B) because it has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1980 Sprite Musketeer trailer complies with the following standards: Standard Nos. 106 *Brake Hoses,* 115 *Vehicle Identification Number,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars,* and 121 *Air Brake Systems.*

The petitioner also contends that the vehicle is capable of being readily altered to meet Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment,* through the installation of the equipment required by this standard.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. § 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 1, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19279 Filed 8–3–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–26; Notice 2]

Uniform Data Collection and Reporting Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: This notice reopens the comment period on Uniform Data Collection and Reporting Program published June 20, 1995. The comment period closed on July 20, 1995.

SUMMARY: This notice reopens the comment period on a notice inviting comments, suggestions and recommendations from individuals and organizations with an interest in data support for highway and traffic safety problem identification and countermeasure activities. NHTSA received two requests asking that the comment period be extended because of related activity occurring in a committee conducted by the National Safety Council. NHTSA believes that a reopening of the comment period would satisfy the identified concerns of the two petitioners and allow time for those attending the Joint Conference on Traffic Records and Highway Safety Data to submit additional comments after the August conference. Comments should address the specific questions listed in the notice and any data-related concerns applicable to the concept of a national uniform data system or to the ISTEA requirement. Accordingly, the comment period for Docket 95–26; Notice 1 is reopened so that it closes September 20, 1995.

DATES: The comment period for Docket 95–26; Notice 1 is reopened so that it closes September 20, 1995.

ADDRESSES: Written comments should refer to Docket No. 95–26; Notice 2 and should be submitted to: Docket Section, NHTSA, Room 5109, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours are 9:30 A.M. to 4:00 P.M.)

FOR FURTHER INFORMATION CONTACT: Janet Johnson, Office of Strategic Planning and Evaluation, NPP–11, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590; telephone 202/366–2571.

SUPPLEMENTARY INFORMATION: NHTSA published a notice and request for comments, suggestions and recommendations from individuals and organizations with an interest in data support for highway and traffic safety problem identification and countermeasure activities. In particular, it solicited participation from the traffic safety community regarding a uniform data collection methodology and process pursuant to the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. ISTEA required that the Secretary establish a highway safety program for the collection and reporting of data on traffic related deaths and injuries by the States. The comment period closed on July 20, 1995.

NHTSA received two requests that the comment period be extended for sixty (60) days. The first request, filed by Advocates for Highway and Auto Safety, asked that the comment period be extended due to the variety of topics included in the request for comments and because the National Safety Council is due to publish a committee report on traffic records and the report has not yet been completed.

The second request, filed by the National Safety Council (NSC), asked that the comment period be extended to allow for their solicitation of views from the traffic records professionals who will be attending their August meeting on analysis of highway safety data. This conference is being cosponsored by NHTSA. NSC also mentions the report that is being prepared by the committee examining traffic needs and states that it would like the opportunity to submit it to the docket as a comment to the notice.

NHTSA has carefully considered these requests and believes that reopening the comment period will be beneficial to our acquiring the maximum input from the highway safety community for use in our report to Congress.

Issued on: July 31, 1995.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 95–19280 Filed 8–3–95; 8:45 am]

BILLING CODE 4910–59–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 150

Friday, August 4, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES ENRICHMENT CORPORATION

Board of Directors

TIME AND DATE: 8:00 a.m., Tuesday, August 8, 1995.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial issues of the Corporation.
- Procedural matters.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: August 1, 1995.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 95–19419 Filed 8–2–95; 3:06 pm]

BILLING CODE 8720–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 9, 1995.

PLACE: William McChesney Martin, Jr., Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

Note: Until further notice, open meetings will be held in the Martin Building, not the Eccles Building.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposal to establish a firm closing time for the Fedwire securities transfer service (proposed earlier for public comment; Docket No. R–0866).
2. Proposed modifications to the Fedwire third-party access policy.
3. Publication for comment of a proposal to control third-party and respondent institution access to the Federal Reserve Banks' automated clearing house (ACH) service.
4. Any items carried forward from a previously announced meeting.

Discussion Agenda

Please Note That No Discussion Items Are Scheduled For This Meeting.

Note: If an item is moved from the Summary Agenda to the Discussion Agenda, discussion of the item will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19373 Filed 8–2–95; 11:11 am]

BILLING CODE 6210–01–P–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:15 a.m., Wednesday, August 9, 1995, following a recess at the conclusion of the open meeting.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19374 Filed 8–2–95; 11:11 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., August 21, 1995.

PLACE: National Finance Center, First Floor, Conference Room 6, USDA/NFC Building No. 350, NASA Space Facility, 13800 Old Gentilly Road, New Orleans, Louisiana.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the July 17, 1995, Board meeting
2. Thrift Savings Plan activity report by the Executive Director
3. Review of investment policy
4. Review of Arthur Andersen's semiannual review
5. Briefings by National Finance Center and Board staff on:
   a. Update on Recordkeeper organization and activity
   b. Recordkeeper costs
   c. Thrift Savings Plan system issues
   d. Implementation of audit recommendations
   e. Participant services

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 1, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–19375 Filed 8–2–95; 3:06 pm]

BILLING CODE 6760–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, August 8, 1995, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and

by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: Mid-Year Budget Review Summary Report.

Memorandum re: Quarterly Budget Variance Summary Report.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which (1) establish a new assessment rate schedule for institutions whose deposits are subject to assessment by the Bank Insurance Fund, (2) amend the assessment risk classification matrix to widen the existing assessment rate spread, and (3) establish a procedure for adjusting the rate schedule semiannually as necessary to meet statutory requirements.

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which would adopt an assessment rate schedule applicable to members of the Savings Association Insurance Fund.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 1, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–19450 Filed 8–2–95; 3:57 pm]

BILLING CODE 6714–0–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–95–023]

TIME AND DATE: August 14, 1995 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–736–737 (Preliminary) (Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan)—briefing and vote.
5. Outstanding action jackets:
   1. ID–95–024, Report on Inv. No. 332–357 (Lamb Meat: Competitive Conditions Affecting the U.S. and Foreign Lamb Industries).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: August 2, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–19438 Filed 8–02–95; 3:18 pm]

BILLING CODE 7020–02–P

Corrections

Federal Register

Vol. 60, No. 150

Friday, August 4, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 950426116–5116–01; I.D. 071095B]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure

Correction

Final rule document 95–17686 was inadvertently published in the Proposed Rules section of the issue of Wednesday, July 19, 1995, beginning on page 37045. It should have appeared in the Rules and Regulations section.

BILLING CODE 1505–01–D

LEGAL SERVICES CORPORATION

Grant Award for the Provision of Civil Legal Services to Hawaii Migrant Farmworkers

Correction

In notice document 95–18032 beginning on page 37690 in the issue of Friday, July 21, 1995, make the following correction:

On page 37691, in the first column, under **DATES:**, in the third line, "August 12, 1995." should read "August 21, 1995."

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research amd Special Programs Administration

49 CFR Part 172

[Docket No. HM–215A; Amdt Nos. 171–131, 172–139, 173–241, 175–52, 176–38, 177–84, 178–106]

RIN 2137–aC42

Implementation of the United Nations Recommendations, International Maritime Danagerous Goods Code, and International Civil Aviation Organization's Technical Instructions

Correction

In rule document 94–31175 beginning on page 67390 in the issue of Thursday, December 29, 1994, make the following correction:

§ 172.101 [Corrected]

On page 67419, in § 172.101, in the table, in the first column, in the last entry, "+" should appear before "Bromine trifluoride".

BILLING CODE 1505–01–D

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federal register

Friday
August 4, 1995

Part II

Environmental Protection Agency

Fiscal Year 1996 Environmental Education Grants Program; Solicitation Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5268-2]

Fiscal Year 1996 Environmental Education Grants Program; Solicitation Notice

Section I. Important Pre-Application Information

A. What is the purpose of this solicitation notice?

This notice solicits grant pre-applications from education institutions, public agencies, and non-profit organizations to support environmental education projects as defined in this notice.

B. What is the Environmental Education Grants Program? How much money is available for this program?

The Environmental Education Grants Program provides financial support for projects which design, demonstrate, or disseminate environmental education practices, methods, or techniques. This program is authorized under Section 6 of the National Environmental Education Act of 1990 (the Act) (P.L. 101–619). Congress has appropriated approximately $11 million for this grants program over the past four years (between $2.5 and $2.9 million per year from FY 1992 through FY 1995). EPA headquarters awards approximately $1 million in grant funds per year and each of EPA's ten regional offices award approximately $150,000 to $180,000 per year. EPA expects funding in FY 1996 to be about the same as in the past and will award grants subject to the amount of funds appropriated by Congress.

C. What is environmental education?

The goal of environmental education is to increase public awareness and knowledge about environmental issues, and to provide the public with the skills needed to make informed decisions and to take responsible actions. Environmental education enhances critical-thinking, problem-solving, and effective decision-making skills. It also teaches individuals to weigh various sides of an environmental issue to make informed and responsible decisions.

D. When is my pre-application due to EPA and when will EPA announce the grant awards?

Pre-applications (a signed original plus two copies) must be mailed to EPA postmarked no later than Friday, October 13, 1995. Pre-applications which are postmarked after October 13, 1995 will not be considered for funding. EPA expects to announce the 1996 grant awards in the Spring of 1996.

E. Do I mail my pre-application to EPA headquarters or an EPA regional office? Is there a difference between the type of project that is funded by EPA headquarters as opposed to EPA's regional offices?

Pre-applications requesting between $25,001 and $250,000 in federal environmental education grant funds must be mailed to EPA headquarters in Washington, DC; pre-applications requesting $25,000 or less must be mailed to the EPA regional office where the project takes place (rather than to the regional office where the applicant is located, if these locations are different). A list of addresses is included at the end of this notice. The EPA headquarters and regional grants will be evaluated using the same criteria as defined in this solicitation. The only difference between grants that are awarded by EPA headquarters and by EPA's regional offices is the amount of money awarded.

F. Where do I get the information and forms needed to prepare my pre-application?

Please read this solicitation notice carefully; it contains all the information and forms necessary to prepare a pre-application. If your project is selected as a finalist after the evaluation process is concluded, EPA will provide you with additional forms needed to process your pre-application.

G. How much money can I request for my grant project? How does the dollar amount requested affect my chance of being funded?

Applicants may request up to $250,000 in environmental education grant funds for any one grant. *However, pre-applications which request relatively small amounts of funding, especially for $5,000 or less, have a much better chance of being funded because EPA awards a much greater number of grants at lower funding levels. In fact, your chance of being funded increases dramatically as the amount of money you request decreases.* A significant number of smaller awards are made for the following reasons. First, EPA is required, under Section 6(i) of the Act, to award 25% of the total amount of our grant funds for projects which request $5,000 or less. For each EPA region, this means that 50% of the regional grant funds each year are designated for grants of $5,000 or less. Second, EPA chooses to award only a few large grants (e.g., those submitted to headquarters which request over $100,000) to enable EPA to support more projects.

EPA has awarded grants under the Environmental Education Grants Program from FY 1992 through FY 1995. Individual awards have ranged from less than $5,000 up to $250,000. Since FY 1992, EPA has funded only about 10 proposals annually for projects requesting between $25,001 and $250,000, and only 1 proposal each year has been funded at or near the $250,000 level. By contrast, EPA has funded about 30 proposals annually for projects requesting between $5,001 and $25,000, and about 200 proposals annually for projects requesting $5,000 or less. EPA has received between 1,200 and 3,000 pre-applications each year. *To increase your chance of obtaining funding in FY 1996, EPA strongly encourages applicants to request regional grants of $5,000 or less. If larger sums are needed, EPA strongly encourages applicants to request a headquarters grant closer to $25,000 rather than the maximum of $250,000.*

Section II. Eligible Applicants

H. Who is eligible to submit pre-applications?

Any local or tribal government education agency, state government education or environmental agency, college or university, not-for-profit organization, or noncommercial educational broadcasting entity may submit a pre-application. These terms are defined in Section 3 of the Act and 40 CFR Part 47.105.

I. May an organization submit more than one pre-application in FY 1996?

Yes, an organization may submit more than one pre-application, *but only if the pre-applications are for different projects.* No organization will be awarded more than one grant for the same project during the same fiscal year.

J. May I submit a pre-application for Fiscal Year 1996 even if I have been awarded funding under this program in the past four years?

Yes, applicants who were awarded funding previously may submit a pre-application for FY 1996. The FY 1996 pre-application may or may not have any relationship to the project funded in a previous year. Each pre-application for FY 1996 will be evaluated based upon the specific criteria set forth in this solicitation and in relation to the other pre-applications.

K. May a teacher, educator, or faculty member apply?

A teacher's school district, an educator's nonprofit organization, or a faculty member's college or university may apply, but an individual teacher, educator, or faculty member cannot. Only agencies, organizations, and institutions—not individuals—are eligible to apply for grants.

Section III. Eligible Activities and Funding Priorities

L. What general activities are eligible for funding under this program?

As specified under the Act, the *environmental education* activities that are eligible for funding under this program *must include, but are not limited to,* at least one of the following:

1. designing, demonstrating, or disseminating environmental curricula;
2. assessing environmental and ecological conditions or specific environmental issues or problems;
3. training or educating teachers, faculty, or related personnel; or
4. fostering international cooperation in addressing environmental issues and problems in the United States, Canada, and/or Mexico.

Under Section III.L.1. above, *EPA strongly encourages applicants to demonstrate or disseminate existing environmental curricula rather than designing new curricula* because experts indicate that a significant amount of quality curricula have already been developed and are under-utilized. EPA will consider funding new curricula only where the applicant demonstrates that there is a need (e.g., that the new curriculum has not been designed for a certain audience, existing curricula cannot be adapted well to a particular local environmental concern, or existing curricula are not otherwise accessible). The applicant must specify what steps they have taken to determine this need (e.g., you may cite a conference where this need was discussed, the results of inquiries made within your community or with various educational institutions, or a research or other published document).

M. What activities are *NOT* eligible for funding under this program?

Funds cannot be used for:

1. construction projects;
2. technical training of environmental management professionals;
3. non-educational research and development; and/or
4. environmental information projects.

Under Section III.M.4. above, EPA will not fund construction activities such as the acquisition of real property (e.g., buildings) or the construction or modification of any building. EPA may, however, fund activities such as creating a nature trail or building a bird watching station as long as these items are an integral part of the environmental education project, and the cost is a relatively small percentage of the total amount of federal funds requested.

Under Section III.M.4. above, EPA will fund only *environmental education* projects, *NOT* projects that are solely designed to develop or disseminate *environmental information.* As discussed under Section I.C. above, *environmental education* teaches critical-thinking, problem-solving skills, and decision-making skills. By contrast, *environmental information* provides facts or opinions about environmental issues or problems, but does not enhance critical-thinking, problem-solving, or effective decision-making skills. Although information is an essential element of any educational effort, environmental information is not, by itself, environmental education. In other words, environmental education teaches people how to think, not what to think.

N. What specific type of projects will EPA fund?

EPA will fund only those proposals which meet the criteria specified under #1 and #2 below. Proposals which do not meet these criteria will not be funded.

1. As specified under the Act, all proposals *MUST discuss how the proposed project:*

a. is new or significantly improved;
b. has the potential for wide application; *AND*
c. addresses a high priority environmental issue.

Applicants must define "new or significantly improved," "wide application," and "high priority environmental issue" as they relate to each individual project. For example, a project may be *new or significantly improved* if it reaches a specific community for the first time, develops a new or improved teaching strategy, or uses a new or improved method of applying existing materials. Similarly, a project may have *wide application* if it targets a large and diverse audience in terms of numbers or demographics or if it can serve as a model program elsewhere. Finally, a project may address a *high priority environmental issue* if the applicant demonstrates its importance to the community, state, or region being targeted by the project (e.g., one community may have significant air pollution problems which makes teaching about human health affects from and solutions to air pollution important, while rapid development in another community may threaten a nearby wildlife habitat, thus, making habitat or ecosystem protection a high priority issue).

2. *All proposals MUST also focus on ONE of the following:*

a. improving environmental education teaching skills for teachers, faculty, and other nonformal educators (e.g., through workshops);
b. educating teachers, students, or the public about human health problems from environmental pollution;
c. building state, local, or tribal capacity to develop and deliver environmental education programs;
d. promoting environmental careers among students;
e. educating members of a community through a community-based organization; *OR*
f. educating the general public to be more environmentally conscious in making informed decisions and taking responsible actions through print, film, broadcast, or other media.

All proposals MUST clearly identify which of the above the proposal will focus on. You will NOT increase your chances of being funded by focusing on more than one of the above. The terms used under Section III.N.2.a–f. are defined below.

The term *workshop* refers to training activities that prepare educators to utilize environmental education materials. Workshops may be directed toward young people and/or adults in formal and/or informal settings. (A formal setting is a school, college, university, or other similar institution devoted to learning; an informal setting may include a museum, nature center, park, or community center which may not be devoted to learning but often includes such activities). Workshops should emphasize a process, problem-solving, and investigative approach to learning, and use a "hands-on" approach to learning that leads to the development of problem-solving and critical-thinking skills.

The term *building state, local, or tribal capacity* refers to the development and implementation of plans designed to improve the coordinated delivery of environmental education at the state, local, or tribal level. This should involve a coordinated effort by the primary environmental education providers from the respective state, local, or tribal government in the planning and implementation of the project (e.g., State Departments of Education or Natural Resources, local school districts, and state, local, and tribal environmental education coordinating councils). Examples of how to build state, local, or tribal capacity include the development of plans for:

- identifying and assessing needs as well as setting priorities;
- creating grant programs or identifying funding sources for environmental education providers; and/or
- identifying environmental education teacher training needs.

The term *community-based organization* refers to organizations in which local problems are addressed by individuals who reside in the community being served.

Section IV. The Pre-Application

O. What is a pre-application?

The pre-application contains three parts: (1) The "Application for Federal Assistance" (Standard Form 424 (or SF 424, attached)), (2) the "Budget Information: Non-Construction Programs" (Standard Form 424A (or SF 424A, attached)), and (3) a work plan (described below). To ensure your pre-application is completed properly, carefully follow the instructions on the SF 424, SF 424A, and those provided below. *The SF 424, SF 424A, and completed work plan contain all the information EPA will use to evaluate the merits of your pre-application.* Only finalists will be asked to submit additional forms needed to process your pre-application.

P. Are matching funds required?

Yes, non-federal matching funds of *at least 25% of the total cost of the project* are required, although EPA encourages matching funds of greater than 25%. Federal funds to support the project must not exceed 75% of the total cost of the project. The 25% match may be provided by the applicant or any another organization or institution, except that no portion of the 25% match can include federal funds (unless specifically authorized by statute). The 25% match may be provided in cash or by in-kind contributions and other non-cash support. In-kind contributions often include salaries or other verifiable costs. In the case of salaries, applicants may use either minimum wage or fair market value. The proposed match, including the value of in-kind contributions, is subject to negotiation with EPA. The value of in-kind contributions must be carefully documented. All grants are subject to audit.

The matching non-federal share is a percentage of the entire cost of the project. For example, if the 75% federal portion is $5,000, then the entire project should, at a minimum, have a budget of $6,667, with the recipient providing a contribution of $1,667. The amount of non-federal funds, including in-kind contributions, must be itemized in Block 15 of the SF 424.

Q. Can I use federal funds in addition to those provided by this program to support the same project?

Yes, you may use federal funds in addition to those provided by this program, but only for different activities. However, you may not use any federal funds to meet all or any part of the required 25% match as stated in Section IV.P. above. If you have already been *awarded* federal funds for a project in which you are seeking additional support from this program, you must indicate in the budget section of the work plan that you have been awarded other federal support for this project. You must also identify the project officer, agency, office, address, phone number, and the amount of the award.

R. Can I request funding for any budget category on the SF 424A (i.e., personnel/salaries, fringe benefits, travel, equipment, supplies, contractual, and indirect charges)?

Yes, you may request funding for any or all of the budget categories identified above with the following exceptions. First, as indicated under Section III.M.1. above, EPA will not fund the acquisition of real property (including buildings) or the construction or modification of any building.

Second, you may request funds to pay for salaries and fringe benefits, but only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. EPA strongly encourages applicants to request *reasonable* amounts of funding for salaries and fringe benefits. Third, you may include a request for indirect costs if your organization has already negotiated and received an indirect cost rate from the federal government.

S. What must be included in the pre-application?

The pre-application must contain an SF 424, SF 424A, and work plan as described below:

1. *Application for Federal Assistance and Budget Information (SF 424 and SF 424A).* The SF 424 and SF 424A are required for all federal grants. A completed SF 424 and SF 424A must be submitted as part of your pre-application. These forms, along with instructions and samples, are included at the end of this notice. Please carefully review the instructions and the sample. Refer to Section IV.R. above for information on what types of budget categories can and cannot be funded under this program.

2. *Work Plan.* A work plan describes your proposed project. *The total number of points possible for each proposal is 100.* These points will be distributed as follows. First, each of the following four sections of the work plan are assigned points which add up to 90. (Certain sections are given more points than others reflecting the relative importance of each section). Second, reviewers will be given the flexibility to provide up to 10 additional points for exceptional projects based upon the overall quality of the proposal. All criteria used to provide these 10 additional points will be consistent with the criteria established in the solicitation.

All work plans must include and be formatted according all four sections (a–d) below:

a. *Project Summary:* Provide EPA with an overview of your entire project. The summary must be *no more than one page* and must briefly include *all seven* of the following:

(1) Describe your organization (and your key partners);

(2) State the goals and specific objectives of your project;

(3) Identify what type of project you will focus on as described under Section III.N.2.a–f. (e.g., teacher training or community-based education);

(4) Describe the demographics of your target audience (including the total number of direct participants, ethnic composition, and type of individuals reached such as teachers, students, or the general public).

(5) Indicate how you will reach your target audience;

(6) Describe the expected results of your project and how you will evaluate it; *and*

(7) Indicate what types of activities the EPA funds will be used for.

The project summary will be scored on how well you provide an overview of your entire project based upon the seven subsections identified above.

Project Summary Maximum Score: 5 points

b. *Project Description*: Provide EPA with an explanation of how your proposed project meets #1 and #2 below.

(1) Explain how the proposed project (a) is new or significantly improved, (b) has wide application, *AND* (c) addresses a priority issue as described under Section III.N.1.a, b, and c.

This subsection will be scored on how well you explain how your proposal meets the three elements identified above. Subsection maximum score: 15 points (5 points for each of the three elements identified above).

(2) Explain how the proposed project (a) improves teaching skills; (b) educates about human health problems from pollution; (c) builds state, local, or tribal capacity; (d) promotes environmental careers; (e) educates a community through a community-based organization; *OR* (f) educates the general public as described under Section III.N.2.a–f.

This subsection will be scored on how clearly and effectively your project (a) establishes realistic goals and objectives, (b) identifies its target audience and demonstrates an understanding of the needs of that audience, (c) uses an effective means or delivery system for reaching the target audience/implementing the project, and (d) demonstrates that it uses or produces quality educational products or methods which teach critical-thinking, problem-solving, and decision-making skills.

Subsection maximum score: 40 points (10 points for each of the four elements identified in this paragraph)

Project Description Maximum Score: 55 points

c. *Project Evaluation:* Provide EPA with an explanation of how you will determine or measure whether you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, surveys, observation, or outside consultation.

The project evaluation will be scored on the extent to which (a) your evaluation plan will measure the project's effectiveness and (b) you plan to apply data gathered from your evaluation to strengthen your project.

Project Evaluation Maximum Score: 10 points (5 points for each of the two elements identified above)

d. *Appendices*: Provide EPA with a detailed budget, resumes of key personnel, and letters of commitment. *No other appendices or attachments such as video tapes or sample curricula may be submitted.*

(1) Budget: Describe how you will use the funds for personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. You must also include a table which lists each major proposed activity as well as the month and year it will be completed and the amount of EPA funds that will be spent on each activity. For smaller grants, your table may list only one or two activities.

This subsection will be scored on (a) how well the budget information clearly and accurately shows how funds will be used, and (b) whether the funding request is reasonable given the activities proposed. Subsection maximum score: 10 points (5 points for each of the two elements identified in this paragraph).

(2) Key Personnel and Letters of Commitment: Attach one or two page resumes for up to three key personnel implementing the project. Also, include one page letters of commitment from partners (if there are partners) with a significant role in the proposed project. *Do not include letters of support; they will not be considered in evaluating pre-applications.*

This subsection will be scored based upon whether resumes of key personnel are included and whether the key personnel are qualified to implement the proposed project. In addition, the score will reflect whether letters of commitment are included (if partners are used) and the extent to which a firm commitment is made. Subsection maximum score: 10 points.

Appendices Maximum Score: 20 points

T. What are the page limits for the work plan?

Your work plan may include the following number of pages for requests in federal funds of:

1. *$5,000 or less*—EPA prefers a work plan of 3 pages, but will accept up to 5 pages.

2. *$5,001 up to $250,000*—a work plan of up to 10 pages.

These page limits apply *only to the work plan* (i.e., the "summary," "project description," and "project evaluation"), *not the appendices.* "One page" refers to one side of a single-spaced typed page. The pages *must* be letter sized (8½ X 11 inches), with normal type size (10 or 12 cpi) and at least 1 inch margins. *To conserve paper, please provide double-sided copies of the pre-application.*

U. How must the pre-application be submitted?

The applicant must submit one original and two copies of the pre-application (a signed SF 424, an SF 424A, and a work plan). Please submit *ONLY* the SF 424, the SF 424A, and the work plan. Do not include other attachments such as cover letters, tables of contents, or appendices other than those required (budget, resumes, letters of commitment). The SF 424 should be the first page of your pre-application and must be signed by a person authorized to receive funds. Pre-applications must be reproducible; they should not be bound. They should be stapled or clipped once in the upper left hand corner, on white paper, and with page numbers in the upper right hand corner.

V. What regulations must I comply with in submitting my proposal?

The Environmental Education Grant Program Regulations, published in the **Federal Register** on March 9, 1992, provides some additional information on EPA's administration this program (57 **Federal Register** 8390; Title 40 CFR, Part 47 or 40 CFR Part 47). Also, EPA's general assistance regulations at 40 CFR Part 31 applies to state, local, and Indian tribal governments and 40 CFR Part 30 applies to all other applicants such as nonprofit organizations.

Section V. Review and Selection Process

W. How will pre-applications be reviewed and who will conduct the reviews?

Pre-applications will be reviewed in two phases—the screening phase and the evaluation phase. During the screening phase, pre-applications will be reviewed to determine whether they meet the basic requirements of this notice, especially as described under Sections II and III. Only those pre-applications which meet all of the basic requirements will enter the evaluation phase of the review process. During the evaluation phase, pre-applications will be evaluated based upon the quality of their work plans, especially the degree to which the work plan meets the requirements set forth in Section III.N.1 and 2. Reviewers conducting the screening and evaluation phases of the review process will include EPA officials and external environmental educators approved by EPA. At the conclusion of the evaluation phase, the reviewers will score each applicant's work plan based upon the scoring system identified in Section IV.S.2.

X. How will the final selections be made?

After individual projects are evaluated and scored by the reviewers as described under Section V.W. above, *EPA officials in the regions and at headquarters will identify finalists among the highest ranking pre-applications. In making final selections, EPA's goal is to fund diverse types of projects that take into account, but are not limited to, the following:*

1. the geographic location of the project;

2. the type of environmental problem or issue addressed;

3. the type of target audience and their socioeconomic status;

4. the methods used to reach the target audience;

5. the type of organization submitting the proposal and/or whether the proposal makes effective use of partnerships; *and*

6. the cost.

In reference to *socioeconomic status*, under Section V.X.1. above, EPA's goal is to encourage applicants to submit proposals that promote *environmental justice* for culturally-diverse and low-income populations. EPA hopes to fund many proposals which score high in the evaluation process and which promote *environmental justice.* The term environmental justice refers to the fair treatment of people of all races, cultures, and income with respect to the development, implementation and

enforcement of environmental laws, regulations, and policies. Fair treatment means that no racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises and from the execution of federal, state, local, and tribal programs and policies.

Efforts to address environmental justice through environmental education may include educational programs that provide culturally-diverse and low-income populations with critical-thinking, problem-solving, and decision-making skills to identify, assess, and address an environmental problem that has a disproportionately high and adverse human health or environmental impact in their community.

In reference to the *effective use of partnerships*, under Section V.X.3. above, EPA's goal is to encourage applicants to submit proposals which form partnerships, where possible. EPA hopes to fund many proposals which score high in the evaluation process and which promotes the effective use of partnerships between organizations. The term partnerships refers to forming a collaborative working relationship between two or more organizations such as governmental agencies, non-profit organizations, educational institutions, and/or the private sector.

In reference to the *type of environmental issue*, under Section V.X.4. above, EPA's goal is to encourage applicants to submit proposals which use pollution prevention concepts or techniques to address a high priority environmental issue (as discussed under Section III.N.1.c.). EPA hopes to fund many proposals which score high in the evaluation process and which convey the importance of pollution prevention. The term pollution prevention refers to reducing or eliminating waste or pollution at the source. It means not creating waste or pollution in the first place, instead of deciding how to recycle, treat, or dispose of waste and pollution that has already been created. Pollution prevention may include increasing energy efficiency and resource conservation efforts, as well as finding non-polluting substitutes for existing products and activities.

Pollution prevention is EPA's preferred approach to reduce risk to public health and the environment. Efforts to promote pollution prevention through environmental education may include projects that educate the public about the value of preventive approaches to environmental problems and the choices they can make in their everyday lives to minimize adverse effects of human activities on the environment (e.g., in the home, work place, market place, and/or community).

EPA Regional Administrators will select grant recipients for projects with federal environmental education grant funding of $25,000 or less, taking into account the recommendations of the regional environmental education coordinators who will base their recommendations on the factors discussed above. The Associate Administrator for Communications, Education, and Public Affairs at EPA headquarters will select the grant recipients for projects with federal environmental education grant funding of more than $25,000 and up to $250,000, taking into account the recommendations of the Environmental Education Division Director who will base the recommendations on the factors discussed above.

Y. How and when will I be notified about the status of my proposal?

Applicants will receive a confirmation that EPA has received their pre-application once EPA has received all pre-applications and entered them into a computerized data base (in the winter of 1995–1996). EPA will notify applicants again after awards have been announced (in the spring of 1996). To the extent possible, this notification will include feedback on those proposals which were screened out of the process early and on how proposals were evaluated. The degree to which EPA can provide such feedback will vary among EPA offices depending upon the availability of resources to conduct these activities.

Z. Where may I obtain more information on possible sources of funding other than this program?

The large number of pre-applications EPA received in the past four years demonstrates the strong demand for funding environmental education projects. Unfortunately, EPA alone cannot meet this demand. In cooperation with EPA, the North American Association for Environmental Education (NAAEE) has developed a publication called "Grant Funding For Your Environmental Education Program" which provides strategies for identifying potential sources of funding. This publication can be purchased for a $5.00 fee by writing to NAAEE, Publications and Member Services, P.O. Box 400, Troy, Ohio, 45373.

Section VI. Grant Recipient Activities

AA. When can I begin incurring costs?

Grant recipients may begin incurring costs on the start date identified in your EPA grant agreement. Since EPA plans to announce awards in the spring of 1996, EPA recommends that you do not plan to begin incurring costs until June of 1996.

BB. May an applicant request Fiscal Year 1996 funds for a project that extends beyond a one-year budget period?

Pre-applications submitted to EPA regional offices for up to $5,000 may request funds for only a one-year budget period. Pre-applications submitted to EPA regional offices or headquarters requesting funds of more than $5,000 may request funds for up to a two-year budget period, although EPA strongly encourages applicants to request funds for only a one-year budget period.

CC. Who will perform projects and activities?

The Act requires that projects be performed by the applicant or by a person satisfactory to the applicant and EPA. All pre-applications must identify any person other than the applicant that will assist in carrying out the project.

DD. What reports and work products must grant recipients submit to EPA and when are they due?

All grant recipients must submit two copies of their final report and two copies of all work products to the EPA project officer within 30 days after the expiration of the budget period. This report will be accepted as the final report unless the EPA project officer notifies you that changes must be made. Grant recipients with projects that have a two-year budget period must also submit a progress report at the end of the first year. Grant recipients with a federal environmental education grant share greater than $5,000 may also be required to submit a semi-annual progress report. Specific report requirements will be identified in the EPA award agreement.

EE. What does EPA plan to do with the grant recipients' final reports and final work products?

EPA hopes to assemble a central library of all final reports and work products at headquarters in Washington, D.C. EPA plans to evaluate these final reports and work products and may disseminate them to others to serve as model programs.

Section VII. Additional Information on Preparing Pre-Applications and for the FY 1997 Program

FF. Where can I get additional information in preparing my pre-application?

EPA strongly encourages applicants to carefully read the solicitation notice. Many questions, such as when is the deadline for submitting pre-applications and what activities can be funded under this program, are answered in this solicitation. *Applicants who need more information about this grant program or clarification about specific requirements in this solicitation notice, may contact the EPA Environmental Education Division in Washington, D.C. for grant requests of more than $25,000 or your EPA regional office for grant requests of $25,000 or less. A list of the names and telephone numbers of EPA representatives are listed at the end of this notice.* Information about the grants program is also available on the Internet. You can view and download this solicitation notice, a list of EPA environmental education contacts, and descriptions of past projects funded under this program from:

Gopher: "nceet.snre.umich.edu" (in the "Grants" directory") or from
World Wide Web: "http://www.nceet.snre.umich.edu/grant.html"

In addition, may contact the National Consortium for Environmental Education and Training (NCEET) at the University of Michigan for *general information* on current environmental education activities and recent developments in the field (e.g., information about current in-service teacher education needs and opportunities as well as resources that identify environmental education organizations, curricula, and research). NCEET can also provide you with a list of all environmental education grants awarded by EPA during the past four years. *NCEET will not provide sample curricula nor will they evaluate products or funding proposals.* NCEET was established in 1992 with financial support from EPA to facilitate teacher training opportunities. You may contact NCEET by writing to NCEET, School of Natural Resources, University of Michigan, Dana Building, Ann Arbor, Michigan, 48109–1115 or by calling 313–998–6726.

GG. How can I get information on the Fiscal Year 1997 EPA Environmental Education Grants Program?

EPA develops an entirely new mailing list for the grants program each year. The Fiscal Year 1997 mailing list will include all applicants who submitted pre-applications for Fiscal Year 1996 as well as anyone else who specifically requests to be placed on the mailing list. If you did not submit a pre-application for Fiscal Year 1996 and you wish to be added to our mailing list to receive information on the Fiscal Year 1997 Environmental Education Grants Program, you must mail your request—please do not telephone—along with your name, organization, address, and phone number to: U.S. Environmental Protection Agency, Environmental Education Division (1707), Environmental Education Grants Program (FY 1997), 401 M Street, S.W., Washington, D.C. 20460.

Approved By:

Denise Graveline,

Acting Associate Administrator, Office of Communications, Education, and Public Affairs.

U.S. EPA Representatives and Mailing Addresses

U.S. EPA Headquarters—For Grants Over $25,000

Mail pre-applications to: U.S. EPA, Env Ed Grants, Environmental Education Division (1707), Office of Communications, Education, and Public Affairs, 401 M Street, S.W., Washington, D.C. 20460
Information: George Walker or Kathleen MacKinnon, Environmental Education Specialists, 202–260–8619

U.S. EPA Regional Offices—For Grants of $25,000 or less

EPA Region I—CT, ME, MA, NH, RI, VT

Mail pre-applications to: U.S. EPA, Region I, Env Ed Grants, Henry Burrell, Chief, Grants Information and Mgnt Section, JFK Federal Building (PGI), Boston, MA 02203
Hand-deliver to: One Congress Street, 11th Floor, Mail Room, Boston, MA 02114 (8am–4pm)
Information: Maria Pirie, EE Coordinator, 617–565–9447

EPA Region II—NJ, NY, PR, VI

Mail pre-applications to: U.S. EPA, Region II, Env Ed Grants, Grants Administration Branch, 290 Broadway, 27th Floor, New York, NY 10007–1866
Information: Teresa Ippolito, EE Coordinator, 212–637–3671

EPA Region III—DC, DE, MD, PA, VA, WV

Mail pre-applications to: U.S. EPA, Region III, Env Ed Grants, Grants Management Section (3PM71), 841 Chestnut Street, Philadelphia, PA 19107
Information: EE Coordinator, 215–597–9076

EPA Region IV—AL, FL, GA, KY, MS, NC, SC, TN

Mail pre-applications to: U.S. EPA, Region IV, Env Ed Grants, Office of Public Affairs (E2), 345 Courtland Street, NE, Atlanta, GA 30365
Information: Fred Thornburg, Environmental Education Office, 404–347–3004

EPA Region V—IL, IN, MI, MN, OH, WI

Mail pre-applications to: U.S. EPA, Region V, Env Ed Grants, Grants Management Section (MC–10J), 77 West Jackson Boulevard, Chicago, IL 60604
Information: Suzanne Saric, EE Coordinator, 312–353–3209

Region VI—AR, LA, NM, OK, TX

Mail pre-applications to: U.S. EPA, Region VI, Env Ed Grants, Environmental Education Coordinator (6X), 1445 Ross Avenué, Dallas, TX 75202
Information: Sandy Sevier, EE Coordinator, 214–665–2204

Region VII—IA, KS, MO, NE

Mail pre-applications to: U.S. EPA, Region VII, Env Ed Grants, Grants Administration Division, 726 Minnesota Avenue, Kansas City, KS 66101
Information: Rowena Michaels, EE Coordinator, 913–551–7003

Region VIII—CO, MT, ND, SD, UT, WY

Mail pre-applications to: U.S. EPA, Region VIII, Env Ed Grants, 999 18th Street (80EA), Denver, CO 80202–2466
Information: Cece Forget, EE Coordinator, 303–294–1113

Region IX—AZ, CA, HI, NV, American Somoa, Guam, Northern Marianas

Mail pre-applications to: U.S. EPA, Region IX, Env Ed Grants, Office of Public Affairs (E2), 75 Hawthorne Street, San Francisco, CA 94105
Information: Matt Gaffney, Office of Public Affairs, 415–744–1582

Region X—AK, ID, OR, WA

Mail pre-applications to: U.S. EPA, Region X, Env Ed Grants, Public Information Center (SO–143), 1200 Sixth Avenue, Seattle, WA 98101
Information: Sally Hanft, EE Coordinator, 206–553–1207

BILLING CODE 6560-50-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ■ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify)

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 6 6 . 9 5 1
TITLE: Environmental Educational Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. PROPOSED PROJECT: Start Date / Ending Date

13. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

14. CONGRESSIONAL DISTRICTS OF: a. Applicant / b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (Rev. 4-88)
Prescribed by OMB Circular A-102

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BUDGET INFORMATION — Non-Construction Programs

Section A- Budget Summary

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						$
5. Totals		$	$	$	$	$

Section B-Budget Categories

6. Object Class Categories	Grant Program, Function or Activity (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. Totals (sum of 61 and 61)	$	$	$	$	$
Program Income	$	$	$	$	$

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

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BILLING CODE 6560-50-C

Instructions for the SF–424

This is a standard form used by applicants as a required factsheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue to revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Additional Instructions for the SF–424

Block #6: You can obtain this number from your payroll office. It is the same Federal Identification Number which appears on W–2 forms. If your organization does not have a number, you may obtain one by calling the Taxpayer Services number for the IRS.

Block #14: If your project covers many areas, several congressional districts will be listed. If it covers the entire state, simply put in statewide. If your are not sure about the congressional district, call the County Voter Registration Department.

Block #15: Line a is for the amount of money you are requesting from EPA. Lines b–e are for the amounts either you or another organization are providing for this project. Line f is for any program income which you expect will be generated by this project. Program income can be fees for services performed, income generated from the sale of a brochure which was produced with the grant funds, or admission fees to a conference financed by the grant funds. The total of lines b–e must be at least 25% of line g, as this grant has a match requirement of 25% of the TOTAL ALLOWABLE PROJECT COSTS.

Block #16: Check b, (NO) since your application does not have to be sent through the state clearinghouse for review.

Block #18: The authorized representative is the person who is able to contact or obligate your agency to the terms and conditions of the grant. (Please sign with blue ink.)

Instructions for the SF–424A

Do not fill in Section A—Budget Summary.

Section B Budget Categories

All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B. Include both Federal and non-Federal (matching) funds combined.

For each major program, function or activity, fill in the total requirements for funds by object class categories. Most applications will only have one program, function, or activity.

Line 6i—Show the totals of lines 6a through 6h in each column.

Line 6j—Show the amount of indirect cost (if applicable).

Line 6k—Enter the total of amounts on Lines 6i and 6j.

Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income.

BILLING CODE 6560–50–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED: 10/10/95 — Applicant Identifier:

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

3. DATE RECEIVED BY STATE — State Application Identifier:

4. DATE RECEIVED BY FEDERAL AGENCY — Federal Identifier:

5. APPLICANT INFORMATION

Legal Name: Clean-Up School

Organizational Unit: Environmental Office

Address (give city, county, state, and zip code): 100 State Street, Belle View, Green County, Any State 12345

Name and telephone number of the person to be contacted on matters involving this application (give area code): Willie Doitt (123)456-7890

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 12-3456789

7. TYPE OF APPLICANT: (enter appropriate letter in box) H

A. State; B. County; C. Municipal; D. Special District; H. Independent School Dist; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify)

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify)

SAMPLE

9. NAME OF FEDERAL AGENCY: U.S. EPA

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 66.951

TITLE: Environmental Educational Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Teacher enviromental workshop: behavioral changes in setting positive influences on students

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Green and Surrounding Counties

13. PROPOSED PROJECT: Start Date: 06/01/96; Ending Date: 05/31/97

14. CONGRESSIONAL DISTRICTS OF: a. Applicant: 02; b. Project: 01, 02, 03

15. ESTIMATED FUNDING:

a. Federal	$ 5,000.00
b. Applicant	$ 1,667.00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 6,667.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative: Gertrude Smith

b. Title: Superintendent

c. Telephone number: 123-456-0987

d. Signature of Authorized Representative: Gertrude Smith

e. Date Signed: 10/10/95

Previous Editions Not Usable

Standard Form 424 (REV 10-92) Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BUDGET INFORMATION — Non-Construction Programs

Section A- Budget Summary

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

Section B-Budget Categories

6. Object Class Categories	Grant Program, Function or Activity (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ 2,000	$	$	$	$ 2,000
b. Fringe Benefits	500				500
c. Travel	2,000				2,000
d. Equipment	0				0
e. Supplies	667				667
f. Contractual	1,000				1,000
g. Construction	xxxxxxx				xxxxxxx
h. Other	500				500
i. Total Direct Charges	6,667				6,667
j. Indirect Charges					
k. Totals (sum of 6i and 6j)	$ 6,667	$	$	$	$ 6,667
Program Income	$	$	$	$	$

SAMPLE

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[FR Doc. 95-18991 Filed 8-3-95; 8:45 am]

BILLING CODE 6560-50-C

federal register

Friday
August 4, 1995

Part III

Environmental Protection Agency

40 CFR Part 80

Reformulated and Conventional Gasoline Standards; Final and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5267–5]

Regulation of Fuels and Fuel Additives: Administrative Stay of Certain Standards for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative stay.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is issuing a three-month administrative stay of certain portions of the anti-dumping regulations for conventional gasoline (gasoline not certified as reformulated gasoline) which were promulgated in December 1993. Specifically, today's action stays criteria of the existing requirements for obtaining an individual refinery baseline adjustment due to the production of JP–4 jet fuel in 1990 and criteria of the conventional gasoline provisions concerning refiners that are no longer able to obtain extremely sweet crude which was available in 1990 and was used to develop the 1990 individual baseline. In a related Notice of Proposed Rulemaking, which is published elsewhere in this issue of the **Federal Register**, EPA is proposing new baseline adjustment criteria for these two cases. In both of these cases, the stay only applies to those refiners that meet the new proposed criteria for a baseline adjustment.

EFFECTIVE DATE: This final rule is effective August 4, 1995.

ADDRESSES: Materials relevant to the reformulated gasoline Final Rule are contained in Public Dockets A–91–02 and A–92–12. Materials relevant to the Notice of Proposed Rule on baseline adjustments are contained in Public Docket A–95–03. These dockets are located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:00 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Carol Menninga, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Rd., Ann Arbor, MI 48105. Telephone (313) 668–4480. To request copies of this document, contact Delores Frank, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Rd., Ann Arbor, MI 48105. Telephone (313) 668–4295.

SUPPLEMENTARY INFORMATION:

I. Electronic Copies of Rulemaking Documents Through the Technology Transfer Network Bulletin Board System (TTNBBS)

A copy of this document is available electronically on the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). The service is free of charge, except for the cost of the phone call. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem per the following information:

TTN BBS: 919–541–5742
(1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Help-line: 919–541–5384
Accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov
Off-line: Mondays from 8:00 AM to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<3> Fuels
<9> File Area #9 . . . Reformulated gasoline

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. These files are compressed (i.e., ZIPed). Today's notice can be identified by the following title: JP4STAY.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. After getting the files you want onto your computer, you can quit the TTNBBS with the <G>oodbye command. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

II. Administrative Stay

The administrative stay of the provisions concerning JP–4 and certain changes in sweet crude oil are being undertaken pursuant to section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B). That provision authorizes the Administrator to stay the effectiveness of a rule for three months if the grounds for an objection arose after the period for public comment and if the objection is of central relevance to the outcome of the rule. In a separate Notice of Proposed Rulemaking, which is published elsewhere in this issue of the **Federal Register**, EPA is proposing to extend the stay for the duration of a rulemaking proposing these changes to the criteria for a baseline adjustment.

The grounds for an objection to the criteria for an individual baseline adjustment based on production of JP–4 jet fuel arose after the end of the public comment period for the Final Rule, "Regulation of Fuels and Fuel Additives; Standards for Reformulated and Conventional Gasoline," (59 FR 7716, February 16, 1994) and before the time allowed for seeking judicial review. New information has since been submitted to EPA concerning the number of parties potentially affected by the criteria adopted, and the ability of parties with more than one refinery to aggregate baselines and thereby avoid the adverse impacts of a failure to obtain an individual baseline adjustment. This information became available to EPA after the final criteria were adopted by EPA, and are directly relevant to the basic rationale for those criteria. Because this information concerns the impact of the final criteria adopted by EPA, it was not available at the proposal stage.

Similarly, the grounds for an objection to a lack of a baseline adjustment based on changes in the sulfur level of available crude oil arose after expiration of the period for public comment. It appears that the sulfur levels of crude have changed significantly since 1990 for certain areas of the country. Until EPA issued its final rules in December 1993, and more information was obtained on the sulfur levels of crude that would be available for use in 1995 and later, refiners that have historically relied on the availability of low sulfur crude could not identify for EPA the full impact of the final conventional gasoline requirements on their ability to continue marketing conventional gasoline.

Based on the above, and the Agency's interest in reconsidering these provisions (discussed in the separate Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**), EPA hereby issues a three-month administrative stay of the effectiveness of the following rules, with certain conditions keyed to the requirements proposed elsewhere in this issue of the **Federal Register**. The stay is structured such that it will only affect those persons who meet the proposed requirements for a baseline adjustment.

First, 40 CFR 80.91(e)(7)(i)(A) through (C) is stayed for three months for all persons that meet the requirements of section 80.91(e)(7) as proposed in a separate Notice of Proposed Rulemaking. In effect, persons who meet the proposed requirements would be able to receive a baseline adjustment under 80.91(e)(7) if they also met the requirements of 80.91(e)(7) (ii) and (iii). If a person does meet these conditions, then the Agency may approve a baseline adjustment under the terms of this stay, or under the terms of any stay issued through rulemaking.

Second, 40 CFR 80.101(b)(1)(ii) is stayed for three months for all persons that meet the requirements proposed elsewhere in this issue of the **Federal Register** as of a new proposed section 80.91(e)(8), and that comply with an annual average sulfur level of 125% of the compliance baseline that would apply under the new proposed section 80.91(e)(8). In effect, the stay would only affect those persons who meet the proposed requirements for a baseline adjustment and who also meet the annual average sulfur level for conventional gasoline that would apply if they received a baseline adjustment under the related Notice of Proposed Rulemaking.

The terms of the three-month administrative stay apply to all gasoline produced from January 1, 1995 through to the end of any such stay.

III. Environmental and Economic Impacts

The environmental impacts of today's action are minimal, as discussed above. Additionally, economic impacts are generally beneficial to affected refiners due to the additional flexibility afforded by the stay in combination with the baseline adjustments in a related Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**. Minimal anti-competitive effects are expected. The environmental and economic impacts of the reformulated gasoline program are described in the Regulatory Impact Analysis supporting the December 1993 rule, which is available in Public Docket A–92–12 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

IV. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of their regulations and to identify any significant adverse impacts of those regulations on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. In fact, today's action is designed to promote successful implementation of the anti-dumping requirements of the reformulated gasoline program for all affected parties.

V. Administrative Designation

Pursuant to Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the executive order. The Order defines "significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rulemaking is not a "significant regulatory action".

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

VII. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the reformulated gasoline program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

XIII. Statutory Authority

The statutory authority for the administrative stay granted today is Section 307(d) and 301 of the Clean Air Act as amended; 42 U.S.C. 7414, 7545(c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: July 21, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.91 is amended by adding a new paragraph (e)(7)(iv) to read as follows:

§ 80.91 Individual baseline determination.

* * * * *

(e) * * *

(7) * * *

(iv) The provisions of § 80.91(e)(7)(i)(A) through (C) are stayed until October 19, 1995, for all refiners which meet the following requirements:

(A) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery produced JP–4 jet fuel in 1990 and all of the following requirements are also met:

(*1*) The type of refinery must be described as one of the following:

(*i*) The refinery is the only refinery of a refiner such that it cannot form an aggregate baseline with another refinery (per paragraph (f) of this section); or

(*ii*) The refinery is one refinery of a multi-refinery refiner for which all of its refineries produced JP–4 in 1990 and each of the refineries also meets the requirements specified in paragraphs (e)(7)(iv)(A)(*2*) and (*3*); or

(*iii*) The refinery is one refinery of a multi-refinery refiner for which not all of the refiner's refineries produced JP–4 in 1990.

(*2*) No refinery of the refiner produces reformulated gasoline. If any refinery of the refiner produces reformulated gasoline at any time in a calendar year, the compliance baseline of all its refineries receiving a baseline adjustment per this paragraph (e)(7)(A) shall revert to each refinery's unadjusted baseline for that year and all subsequent years.

(*3*) 1990 JP–4 to gasoline ratio.

(*i*) For a refiner per paragraph (e)(7)(iv)(A)(*1*)(*i*) of this section, the ratio of its refinery's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.15.

(*ii*) For a refiner per paragraph (e)(7)(iv)(A)(*1*)(*ii*) of this section, the ratio of each of its refinery's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.15.

(*iii*) For a refiner per paragraph (e)(7)(iv)(A)(*1*)(*iii*) of this section, the ratio of the refiner's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.15, when determined across all of its refineries.

(B) [Reserved]

* * * * *

3. Section 80.101 is amended by adding a new paragraph (b)(1)(v) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(b) * * *

(1) * * *

(v) The provisions of § 80.101 (b)(1)(ii) are stayed until October 19, 1995, for all refiners that meet the following requirements:

(A)(*1*) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery meets all of the following requirements:

(*i*) The refinery does not produce reformulated gasoline. If the refinery produces reformulated gasoline at any time in a calendar year, its compliance baseline shall revert to its unadjusted baseline values for that year and all subsequent years;

(*ii*) Has an unadjusted baseline sulfur value of not more than 50 ppm;

(*iii*) Is not aggregated with one or more other refineries per § 80.91(f). If a refinery which received an adjustment per this paragraph (b)(1)(v) subsequently is included in an aggregate baseline, its compliance baseline shall revert to its unadjusted baseline values for that year and all subsequent years;

(*iv*) Would require refinery improvements of at least $10 million or 10 percent of the depreciated value of the refinery to comply with its unadjusted baseline;

(*v*) Can show that it could not reasonably or economically obtain crude oil from an alternative source that would permit it to produce conventional gasoline which would comply with its unadjusted baseline;

(*vi*) Has experienced at least a 25% increase in the average sulfur content of the crude oil used in the production of gasoline in the refinery since 1990, calculated as follows:

$$\frac{(CSHI - CS90}{CS90} \times 100 = CS\%CHG$$

Where:

CSHI=highest annual average crude slate per paragraph (b)(1)(v)(A)(*2*)(*ii*) of this section

CS90=1990 annual average crude slate sulfur per paragraph (b)(1)(v)(A)(*2*)(*i*) of this section

CS%CHG=percent change in average sulfur content of crude slate; and

(*vii*) Can show that gasoline sulfur changes are directly and solely attributable to the crude sulfur change, and not due to alterations in refinery operation nor choice of products.

(*2*) The adjusted baseline sulfur value shall be calculated as follows:

(*i*) Determine the average sulfur content (ppm) of the crude slate utilized in the production of gasoline in the refinery in 1990;

(*ii*) Determine the highest crude sulfur level (ppm) of the crude slate utilized in the production of gasoline in the refinery in 1994; and

(*iii*) Determine the adjusted baseline sulfur value as follows:

$$ASULF = \frac{CSHI}{CS90} \times BSULF$$

Where:

ASULF=adjusted baseline sulfur value, ppm

BSULF=actual baseline sulfur value, ppm

CSHI=highest crude sulfur (ppm) per paragraph (b)(1)(v)(A)(*2*)(*ii*) of this section

CS90=1990 annual average crude slate sulfur per paragraph (b)(1)(v)(A)(*2*)(*i*) of this section

(*3*) In no case can the adjusted baseline sulfur value determined per paragraph (b)(1)(v)(A)(*2*) of this section exceed the sulfur value specified in § 80.91(c)(5)(iii).

(*4*) All adjustments made pursuant to this paragraph (b)(1)(v) must be accompanied by:

(*i*) Unadjusted and adjusted fuel parameters and emissions; and

(*ii*) A narrative describing the situation, the types of calculations, and the reasoning supporting the types of calculations done to determine the adjusted values.

(B) Annual average levels of sulfur shall not exceed 125% of the refiner's compliance baseline of sulfur, using the adjusted baseline determined under paragraph (b)(1)(v)(A) of this section.

* * * * *

[FR Doc. 95–18992 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–5214–7]

Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Under the Clean Air Act, as amended in 1990 (CAA or the Act), the Environmental Protection Agency (EPA or the Agency) promulgated anti-dumping regulations for conventional gasoline (gasoline not certified as reformulated gasoline (RFG)). These regulations require that conventional gasoline not be more polluting than it was in 1990. The regulations for conventional gasoline include provisions for the development of individual refinery baselines and other compliance provisions. This proposal would modify the requirements for obtaining a baseline adjustment due to the production of JP–4 jet fuel in 1990. Additionally, EPA is proposing to allow a baseline adjustment due to the inability to acquire extremely sweet crude that had been available in 1990 and from which the gasoline used to develop the 1990 individual baseline was obtained. With regard to both of these baseline adjustment proposals, EPA is issuing a three-month administrative stay (which is published elsewhere in this issue of the **Federal Register**) of the applicable portions of the December 1993 final rule and proposes to extend such stay by rule pending the outcome of this rulemaking. EPA is also proposing a baseline adjustment for refiners which have both extremely low baseline sulfur and olefin levels. A refiner is severely limited in its ability to comply with its individual baseline when the baseline values of both of these parameters are very low. For refiners which qualify for one or more of the baseline adjustments proposed today, EPA proposes to apply the adjustments to gasoline produced in 1995. Finally, EPA is also proposing to revise its regulations concerning the publication and confidentiality of individual baselines and information submitted to obtain an individual baseline.

DATES: EPA will conduct a hearing (date and location to be announced) if a request for such is received by September 5, 1995. The comment period on this document will close September 5, 1995 unless a hearing is requested, in which case the comment period will close 30 days after the close of the public hearing.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–95–03 at Air Docket Section, U.S. Environmental Protection Agency, Waterside Mall, Room M–1500, 401 M Street S.W., Washington, D.C. 20460. The Agency requests that commenters also send a copy of any comments to Christine M. Brunner at the address listed below in the "Further Information" section.

The support document containing detailed discussion of today's proposal is contained in Public Docket A–95–03. Materials relevant to the reformulated gasoline final rule are contained in Public Dockets A–91–02 and A–92–12. These dockets are located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The docket may be inspected from 8:00 a.m. until 5:00 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4287.

SUPPLEMENTARY INFORMATION: *To Request Copies of This Document Contact:* Delores Frank, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4295.

A copy of this document is also available electronically on the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). The service is free of charge, except for the cost of the phone call. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem per the following information:

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(1200–14400 bps, no parity, 8 data bits, 1 stop bit)
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Accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00 AM to 12:00 Noon ET.

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<3> Fuels
<9> File Area #9 * * * Reformulated gasoline

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. These files are compressed (i.e., ZIPed). Today's notice can be identified by the following title: JP4NPRM.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. After getting the files you want onto your computer, you can quit the TTNBBS with the <G>oodbye command. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Introduction

Compliance with certain aspects of the reformulated and conventional gasoline regulations depends on the individual baseline of the refinery or refiner.[1] The individual baseline is the set of fuel parameter values, emissions and volumes which represent the quality and quantity of the refiner's 1990 gasoline. See 40 CFR 80.91. EPA's regulations establish requirements for developing an individual baseline. For specific situations, the Agency allowed the baseline fuel parameters, volumes and emissions values to be adjusted to reflect certain limited unique instances. Allowable circumstances under the regulations include unforeseen downtime of a gasoline blendstock producing unit, nonannual maintenance, work-in-progress and

[1] In general, the anti-dumping provisions apply to refiners or importers of conventional gasoline. The baseline adjustment provisions proposed in today's notice, however, are applicable only to refiners and their refineries.

production of JP–4 jet fuel. In such cases, EPA has "case-by-case discretion" to grant variances or even dispensation from a rule where imposition of the requirement would result in minimal environmental benefit but would extremely burden a regulated party.[2]

This notice of proposed rulemaking (NPRM) proposes to allow baseline adjustments for three situations where parties would be extremely burdened by the current regulations were relief not granted. Specifically, today's notice proposes to revise the requirements for a baseline adjustment due to JP–4 jet fuel production in 1990, to add a provision addressing the use of extremely sweet crude in 1990 which is no longer available, and to add a provision addressing compliance difficulties arising from a baseline which is very low in both sulfur and olefins. EPA is also issuing a three-month administrative stay, which is published elsewhere in this issue of the **Federal Register**, with regard to the first two baseline adjustment issues above pending reconsideration of the applicable provisions by the Agency. In addition, EPA proposes to extend the stay until final action is taken on the regulatory changes proposed herein. For refiners which qualify for one or more of the baseline adjustments proposed today, EPA proposes to apply the adjustments to gasoline produced in 1995. This notice also proposes to revise the regulations concerning the publication and confidentiality of individual baselines and the information submitted to receive such a baseline. Comments and supporting data are requested on any aspect of today's document.

II. JP–4 Baseline Adjustment

A. Introduction

JP–4 jet fuel, the use of which is being phased out by the Defense Department, was produced by many refiners under contract with the Defense Department in 1990. Because the JP–4 blendstock is now likely to be used in gasoline, most of that blendstock cannot be used in gasoline without first going through a reformer to increase its octane to suitable gasoline levels. Due to the high aromatic content of streams after reforming, the toxic emissions of the current gasoline of a refiner which produced JP–4 in 1990 will likely increase relative to its 1990 values. In addition, it is possible that gasoline production would increase (relative to 1990 production) due to movement of blendstocks directly and indirectly from JP–4 to gasoline. The impact of the increase in aromatic content and/or additional volume due to JP–4 phaseout will, of course, affect certain refiners more extremely than others.

The current regulations provide for an adjustment to a refiner's individual baseline due to production of JP–4 in 1990 if three criteria are met. The criteria were fashioned to ensure that the requirements of *Alabama Power* were met. First, JP–4 baseline adjustments will be allowed only for a refiner which will not produce reformulated gasoline. If a refiner granted such an adjustment subsequently produces reformulated gasoline, its conventional gasoline compliance would be subject to its original unadjusted baseline during the current averaging period and all subsequent years. For multi-refinery refiners, this provision applies on a refiner-wide basis. Second, a JP–4 baseline adjustment is available primarily to qualifying single-refinery refiners. A multi-refinery refiner could also receive an adjustment if each of its refineries produced JP–4 in 1990 and each refinery also met the other requirements for obtaining the adjustment. Third, the refiner is required to show that a significant burden would exist if no baseline adjustment was allowed. The current regulations require that the ratio of a refinery's 1990 JP–4 production to its 1990 gasoline production equal or exceed 0.5 in order to qualify as a significant burden.

EPA expected minimal negative environmental affects from allowing baseline adjustments under the criteria specified in the current regulations because (1) the number of refineries meeting the criteria for a baseline adjustment is expected to be quite small, and (2) the total production of all such refineries is also small.

B. Proposal

In today's notice, EPA proposes provisions related to JP–4 baseline adjustments which are essentially as contained in the direct final rule (DFRM), published July 20, 1994 (59 FR 36944).[3] The provisions are discussed below. For detailed discussion of the provisions proposed today, refer to the support document for this rule, "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–95–03.

1. Multiple-Refinery Requirement

EPA proposes that the following conditions would have to be met by a multi-refinery refiner in order for that refiner to qualify for a baseline adjustment for 1990 JP–4 production at one or more of its refineries:

(1) *Produced JP–4 at one or more of its refineries in 1990.*

The current JP–4 baseline adjustment provisions for multi-refinery refiners require each refinery to have produced JP–4 in 1990. EPA believes it may use its discretion to provide relief because the requirements of *Alabama Power* are satisfied. If a multi-refinery refiner qualifies for a baseline adjustment under this criterion, it would (1) determine the adjusted baseline of the refinery(ies) which actually produced JP–4 in 1990 and (2) determine its anti-dumping compliance on an aggregate basis.

(2) *Has a 1990 JP–4 to gasoline ratio of at least 0.15 (see discussion below regarding JP–4 baseline adjustment ratio).*

(a) For each individual refinery, if all of its refineries produced JP–4 in 1990, in which case the refiner may comply with the anti-dumping requirements on an individual or aggregate basis; or

(b) On a refiner-wide basis, in which case the refiner must determine an individual baseline for each of its refineries but must comply with the anti-dumping requirements on an aggregate basis; and

(3) *Will not produce RFG at any of its refineries.*

EPA requests comments on this change to the current JP–4 baseline adjustment provisions concerning multi-refinery refiners.

2. JP–4 Baseline Adjustment Ratio

The current regulations for a baseline adjustment require that the ratio of the refinery's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.5. Based on responses from affected refiners, very few refiners under contract to produce JP–4 would have the relief intended by the provision. Further, EPA has evaluated data it received subsequent to December 1993 concerning 1990 JP–4 and gasoline production for refiners (both multi- and single refinery refiners)[4] and is hereby proposing that the ratio be reduced to 0.15. EPA believes this ratio will allow three to four refiners which dedicated a substantial amount of 1990 production to JP–4 production and for which converting the associated feedstock for use in gasoline would be a severe economic burden. This value is in line with the ratio options that were suggested by commenters during the original rulemaking. At a ratio of less than 0.15, EPA believes the impact on benzene and aromatics may make it more costly for refiners to comply with the regulations, though it is unlikely that such refiners will be forced out of business or experience extreme burden.

EPA expects minimal negative environmental affects due to the reduction of the ratio requirement to 0.15 because the expanded provision will still apply to a very limited number of refiners producing a limited amount of conventional gasoline. EPA requests comments on the proposal discussed above.

3. Comments Received on the DFRM

For a discussion of comments received on the DFRM, please see the support document for this rule ("Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–95–03).

III. Crude Quality Baseline Adjustment

A. Introduction

Crude sulfur content is increasing nationwide[5] and, while for most refiners increases in crude sulfur content should be considered manageable, such increases might be devastating for certain refiners. EPA has also been informed that the quality of the crude oil (with regard to sulfur content) available to refiners in PADD IV has been deteriorating faster than the rest of the U.S. since 1990.[6] Additionally, refiners in this region do not have access to imports of foreign crudes other than those from Canada. Thus, the quality of crude oil reasonably and economically available to these refiners, from traditional or alternative sources, is quite limited. Prior to promulgation of the December 1993 rules, EPA did not know that the deterioration of crude oil available to certain refiners (with regard to increasing sulfur content) might in some cases force them to cease operation in order to avoid noncompliance as compliance options for such a refiner might be prohibitively expensive.

The current regulations generally do not allow baseline adjustments for changing crude quality or availability. However, as discussed in the preamble to the December 1993 final rule, EPA recognized that a refiner's ability to comply with its individual baseline can be extremely burdensome due to certain factors, such as changes in crudes, markets, and fuel specifications. As with the work-in-progress baseline adjustment and the JP–4 baseline adjustment which is discussed above, EPA believes it has the authority to provide limited relief in the form of a baseline adjustment in those situations where the anti-dumping regulatory burden is extremely onerous and where requiring compliance would yield little or no environmental gain. Thus, EPA is proposing such a baseline adjustment where a dramatic increase in crude sulfur content has occurred which could severely affect the anti-dumping compliance of refiners with extremely low baseline sulfur values. EPA requests comments on the discussion and proposed criteria presented today. EPA also requests data which supports or refutes the information presented in this notice.

B. Proposal

EPA proposes to allow a baseline adjustment only for the deterioration of crude sulfur levels as it is unaware of other inherent crude properties which strongly and directly affect baseline fuel parameters. Comments are requested on other inherent crude properties which have significantly deteriorated since 1990 and which directly and significantly affect the values of any of the fuel parameters for which an individual baseline value must be determined. Comments concerning crude quality changes since 1990, as well as future trends (including identifying whether crude sulfur content increases will flatten off or continue to increase), especially on a regional or PADD basis, are also requested.

As with other baseline adjustments such as work-in-progress, the proposed criteria for obtaining an adjustment are necessarily stringent so as to provide relief only in cases of extreme burden and to maintain the environmental benefits of the (anti-dumping) program. EPA does not intend to allow adjustments for all refiners who have experienced increasing crude sulfur levels in the time period since 1990 or will experience such increases in the future. Thus, the existing provisions in section 80.91 of the regulations still apply, i.e., no adjustments for crude quality or availability changes are allowed unless the proposed criteria are met.

If a refiner meets the following proposed criteria, it would be able to petition for a baseline adjustment to account for crude sulfur changes:

(1) *The refinery produces no reformulated gasoline.* While the anti-dumping requirements, in general, apply to all conventional gasoline whether or not reformulated gasoline is also produced, in these specific cases no dumping will occur due to reformulated gasoline production. If a refinery granted such an adjustment subsequently produces reformulated gasoline, its conventional gasoline compliance would be subject to its original unadjusted baseline during the current averaging period and in all subsequent years.

(2) *A refiner has an unadjusted baseline value of not more than 50 ppm.* EPA believes that requiring a threshold value of 50 ppm is appropriate because higher baseline values would indicate that the refiner's 1990 crude slate was not extremely low in sulfur. Additionally, a refiner with a higher baseline sulfur value should have sufficient leeway, e.g., types of crudes utilized and processing flexibility, to comply with its individual baseline. EPA requests comments on the appropriateness of requiring a threshold value, and on the suitability of 50 ppm or another value as a threshold value.

(3) *The affected refinery of a multi-refinery refiner may not be aggregated with the refiner's other refineries for compliance purposes.* Since both the unadjusted and adjusted baselines must be determined, if a refinery granted such an adjustment subsequently is included in an aggregate baseline, its conventional gasoline compliance would be subject to its original unadjusted baseline during the current averaging period and in all subsequent years.

(4) *The installation of the refinery units necessary to process higher sulfur crudes to comply with the refinery's actual (i.e., unadjusted) baseline would cost $10 million or be at least 10 percent of the depreciated book value of the refinery as of January 1, 1995.* The purpose of this provision would be to ensure that an adjustment be limited to cases of extreme burden or economic hardship and de minimis environmental impact, and is the same economic burden requirement which must be met

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[2] *Alabama Power Company* v. *Costle*, 636 F.2d 323.357 (D.C. Cir 1979).

[3] Since EPA received adverse comments on the changes specified in the DFRM with regard to JP–4 baseline adjustments, EPA withdrew this DFRM based on EPA's determination, announced in the DFRM, that such provisions would take effect only if no persons submitted adverse comments or requested an opportunity to comment. For more discussion, see the support document, "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–95–03.

[4] Petition for Adjustment to Anti-Dumping Baseline, Atlas Processing Company, Penzoil Products Company, Attachments B and C, March 29, 1994.

[5] E.J. Swain, "U.S. crude slate continues to get heavier, higher in sulfur," *Oil & Gas Journal*, p. 37, January 9, 1995.

[6] Oil & Gas Journal, January 9, 1995.

by a refiner seeking a work-in-progress baseline adjustment.[7] EPA requests comments on this criterion and whether the specified values are adequate given the type of unit (e.g., hydrotreater) that a refiner would have to install in order to comply. EPA also requests comments on (1) the economic burden, if any, of producing and selling gasoline blendstocks in lieu of finished gasoline, and (2) the economic burden of complying with an unadjusted baseline under the circumstances described above by modifying refinery operations in ways other than installing major refinery units. For instance, the principal source of sulfur in gasoline is the catalytic gasoline blendstock. An option for lowering sulfur would be to lower the catalytic gasoline end point and shift the back (heavy, high boiling) portion of the gasoline into the distillate stream. While this would move barrels of crude oil into distillates and out of gasoline and shift the refinery product mix[8], it would lower the sulfur content of the catalytic gasoline. EPA also requests information on the effect of crude sulfur levels on gasoline sulfur.

(5) *The refiner has access to a geographically-limited crude supply.* The refiner must show that it could not reasonably or economically obtain crude oil from an alternative source that would permit it to produce conventional gasoline which would comply with its unadjusted baseline. EPA requests comment on this proposed provision and on which criteria that should be used to evaluate "reasonably and economically available".

(6) *The refiner has experienced an average crude sulfur increase of at least 25 percent since 1990.* EPA proposes that the highest annual average crude sulfur slate utilized during the period 1991–1994, inclusive, be used for comparison to 1990 to determine if the "25 percent" criterion is met. Comments are requested concerning the level of difference between 1990 and post-1990 crude sulfur contents that should exist in order to obtain an adjustment, and whether 1991–1994 is an appropriate comparison period or whether some other comparison should be established. Comments are also requested as to whether it is appropriate, and feasible, to distinguish crudes used solely for gasoline production from crudes used to produce other refinery products. If such distinction is possible, EPA believes it would be appropriate to base all calculations pertaining to this proposed baseline adjustment only on those volumes of each crude used to produce gasoline.

(7) *Gasoline sulfur changes are directly and solely attributable to the crude sulfur change, and not due to alterations in refinery operation nor choice of products.*

(8) *A baseline adjustment is available to both single-refinery and multi-refinery refiners.*

(9) *The eligibility of a refinery of a multi-refinery refiner for this proposed baseline adjustment is not dependent on the RFG production of the other refineries of the refiner.*

EPA is proposing several options for determining the adjusted baseline sulfur value if a refiner meets the above criteria and is approved for a baseline adjustment. EPA will finalize only one option; certain portions of the other proposed options could also be incorporated. For this reason, EPA requests comments on all aspects of the options proposed. For brevity, only OPTION 1 is included in the proposed regulatory language. EPA proposes that, regardless of which option is finalized, the adjusted baseline sulfur value may not exceed 338 ppm, the annual average value specified in 40 CFR 80.91(c)(5)(iii). See the support document for this rule for more discussion related to the various options presented ("Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–95–03.)

Option 1: EPA proposes that the adjusted baseline sulfur value be related to the ratio of the sulfur value of the highest sulfur crude utilized in 1994 to the average sulfur content of the crude slate utilized in 1990. Under this option, if a refiner utilized two crudes in its gasoline production in 1994 with sulfur levels of 1000 ppm and 2100 ppm, the higher sulfur crude would be utilized in the determination of the adjusted baseline sulfur value. If, for example, the 1990 average crude sulfur content was 500 ppm (resulting, say, in a 20 ppm baseline), the adjusted baseline sulfur value would be 84 ppm 20 ppm × (2100/500). EPA requests comments on this proposed option, including whether the highest sulfur crude from 1991–1994 should be used rather than just considering 1994.

Option 2: EPA proposes that the adjusted baseline sulfur value be related to the ratio of the highest average sulfur content of the crude slate utilized in 1991, 1992, 1993 or 1994 to the average sulfur content of the crude slate utilized in 1990. Using the 1990 baseline and crude sulfur values from Option 1, and average crude sulfur contents of 1000, 1100, 1400, and 1300 ppm for years 1991, 1992, 1993 and 1994, respectively, the adjusted baseline sulfur value would be 56 ppm, i.e., 20 ppm × [1400/500]. EPA requests comments on this proposed methodology and solicits alternative methods of determining the adjusted baseline sulfur value.

Option 3: EPA proposes that an adjusted baseline sulfur value be determined for each year through 1999. Beginning January 1, 2000, the adjusted baseline sulfur value would be the same as it was in 1999. EPA proposes that the annual adjusted value be determined over the four years prior to the year before the new value takes effect, except for 1995 and 1996 which would be determined as specified in OPTION 1 above (and for which the adjusted baseline sulfur value would be the same). EPA also proposes that if less than a 25 percent difference occurs between the 1990 average crude sulfur level and the average crude sulfur level over a four-year time period, the refiner would receive no additional adjustments, and its most recent adjusted baseline sulfur value would become its permanent baseline sulfur value at that point. For example, the standard for 1997 would be based on the ratio of the average sulfur content of the crude slate utilized in 1992, 1993, 1994 or 1995 to the average sulfur content of the crude slate utilized in 1990. EPA proposes that the resulting adjusted baseline sulfur value be submitted to the Agency for evaluation and approval by June 1 of the year preceding the year for which it would be the standard. In the example given, the adjusted baseline value (and all supporting information) would have to be submitted by June 1, 1996.

EPA requests comments on a refiner's ability, given the other requirements of this proposed option and the proposed requirements used to qualify for an adjusted baseline sulfur value, to choose to process higher sulfur crudes.

Option 4: EPA proposes requirements similar to those presented for option 3 except that adjustments will only be allowed through 1997, i.e., the duration of the simple model years. Beginning in 1998, the adjusted baseline sulfur value would be the value in 1997.

Option 5: EPA proposes that the adjusted baseline sulfur value be the unadjusted baseline sulfur value plus 50 ppm. EPA requests comments on this proposed option, including whether 50 ppm is an appropriate value. EPA specifically seeks comment on the appropriateness of using 100 ppm or 150 ppm instead of 50 ppm.

These five proposed options all result in an adjusted baseline sulfur value which is known prior to the period of production, thus treating the affected refiner like all other refiners. If one of OPTIONS 1–5 becomes final, a refiner might have to modify refinery operations in the future to accommodate increasing crude sulfur levels. However, future refinery operation modifications will likely be required of most refiners, without benefit of a baseline adjustment, in order to deal with the increasing crude sulfur levels. The purpose of this proposed baseline adjustment is to provide relief in certain cases where increasing crude sulfur levels could make compliance with the anti-dumping requirements extremely difficult. However, baseline adjustments are intended to reduce, not eliminate, the burden associated with complying with the anti-dumping regulations in situations where the burden is onerous and the environmental impact is minimal. If the burden were totally eliminated, then this criteria would no longer be met.

EPA received a suggested option proposing that a refiner would be able to produce conventional gasoline which does not meet, on average, the requirements of its individual baseline if it could show that deviation from its baseline was directly and solely attributable to crude sulfur change, and not due to alterations in refinery operation or choice of products. The suggested option also contained other requirements a refiner would have to meet which are essentially those proposed today by EPA in order to qualify for this proposed baseline adjustment.

EPA has many concerns about the concept and detail of this suggested option. This option basically exempts a qualifying refiner from complying with its anti-dumping compliance baseline if the refiner can show, at the end of the compliance period, that deviation from its baseline was directly and solely attributable to crude sulfur change. Thus, unlike all other refiners, a qualifying refiner would have no clearly defined standard prior to year of production. Additionally, if EPA was not satisfied that deviation from its baseline was directly and solely attributable to crude sulfur change, the refiner would have to determine compliance relative to its unadjusted baseline and would likely be out of compliance.

EPA requests comments as to whether, in order to show that increased gasoline sulfur is due solely to the increased crude sulfur, no changes in refinery configuration or refinery operation would be allowed. Or is it possible to "back out" the effects of such changes? If it is not possible to "back out" the effects of refinery changes to determine just the effect of crude sulfur on gasoline sulfur, then a refiner which would use this option could potentially not make any refinery changes in order to qualify for a baseline adjustment. Alternatively, if refinery changes were made under this suggested option, it would seem that the refiner's compliance baseline would revert back to its unadjusted baseline. EPA requests comments on this suggested option, particularly addressing its enforceability and competitive concerns.

Since today's proposed baseline adjustment focuses on sulfur (unless commenters suggest other baseline fuel parameters which are directly affected by crude oil quality), if the suggested approach (which is not part of OPTIONS 1 through 5) were adopted, EPA believes it would be more appropriate, under the suggested option, that a refiner be exempt only from complying with its anti-dumping compliance baseline for sulfur under the simple model and NO_x emissions under the complex model, to the extent that increased sulfur affects NO_x emissions. The refiner would have to comply with NO_x emissions once the effect of increased sulfur is factored out. Basically, the refiner would (1) determine its baseline NO_x emissions after substituting its annual average sulfur for the compliance period for its unadjusted baseline sulfur value, (2) determine its annual average NO_x emissions for the compliance period, and (3) compare the values in (1) and (2) for the purposes of determining compliance. EPA does not believe that a refiner should be exempt from its other anti-dumping compliance baselines, i.e., all other simple model requirements as well as exhaust benzene and exhaust toxics emissions under the complex model since those emissions are only minimally affected by sulfur. Comments are requested on these details of this suggested option.

EPA expects minimal negative environmental affects from allowing baseline adjustments under the criteria proposed today due to the small number of refineries expected to qualify for a baseline adjustment and the relatively small total production volume of all such refineries.

IV. Baseline Adjustment for Very Low Baseline Sulfur and Olefins

A. Introduction

In addition to compliance difficulties resulting from crude quality changes, the Agency also recognizes that very clean individual baselines can make compliance extremely difficult or impossible due to limited maneuverability about the clean baseline and limited flexibility with regard to annual averaging when certain baseline fuel parameter values are very low. During the review and approval of individual baselines, EPA was informed that extremely low baseline sulfur and olefin values (e.g., below 30 ppm sulfur and 1.0 volume percent olefins) could force a refiner to cease gasoline production. This was not EPA's intention when it developed the reformulated gasoline and anti-dumping requirements. Refiners with very clean baselines will presumably produce the least polluting gasoline of all refiners. (For more discussion on these proposed baseline adjustment provisions, see the support document, "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–95–03.)

EPA believes it has the authority to provide limited relief in the form of a baseline adjustment in those few cases where the regulatory burden is extremely onerous and where requiring compliance would yield little or no environmental gain. EPA is proposing such a baseline adjustment in cases where both the baseline sulfur and baseline olefins values are very low and certain other conditions are met. EPA requests comments on the discussion and proposed criteria presented today.

B. Proposal

EPA proposes several criteria a refiner must meet in order to petition for a baseline adjustment to account for restricted maneuverability due to very low baseline sulfur and olefin values. EPA does not necessarily intend to allow adjustments for all refiners who foresee restricted maneuverability due to a clean individual baseline. EPA requests comments on the appropriate level of stringency to apply to the minimum criteria that must be met in order to receive an adjustment.

(1) *EPA proposes to allow an adjustment for individual baselines when the sulfur and olefin contents are extremely low, defined as values below 30 ppm sulfur and 1.0 vol% olefins.* These values are identical to the minimum levels given in the negligible quantity provision (see 40 CFR 80.91(d)(3)). Comments are requested on other fuel components which, when they are found to be extremely low in an individual baseline, can restrict the refiner's compliance maneuverability to the point of severe economic burden.

(2) *EPA proposes that a refiner seeking a baseline adjustment for low*

[7] 40 CFR 80.91(e)(5)(v).

[8] Because sulfur content of petroleum products increases with the boiling range of the material.

baseline levels of sulfur and olefins must show that the installation of the refinery units necessary to comply with its actual (i.e., unadjusted) baseline would cost $10 million or be at least 10 percent of the depreciated book value of the refinery as of January 1, 1995. EPA requests comments on this criterion and specifically whether such amounts are adequate given the type of unit (e.g., hydrotreater) that a refiner would have to install in order to comply. EPA also requests comments on (1) the economic burden, if any, of producing and selling gasoline blendstocks in lieu of finished gasoline, and (2) the economic burden of complying with an unadjusted baseline under the circumstances described above by modifying refinery operations in ways other than installing major refinery units.

(3) *EPA proposes that such an adjustment be available to both single-refinery and multi-refinery refiners and that the affected refinery of a multi-refinery refiner may not be aggregated with the refiner's other refineries for compliance purposes.*

(4) *If a refiner meets the above criteria and is approved for a baseline adjustment, EPA proposes that the baseline adjustment simply amount to setting the annual average sulfur and olefin values to 30 ppm and 1.0 volume percent, respectively.* If at any time the refinery's baseline is aggregated with another refiner's baseline for compliance purposes, the applicable individual baseline would revert to the unadjusted baseline. The summer and winter values would each also be set to 30 ppm for sulfur and 1.0 volume percent for olefins. Comments are requested on the methodology of setting the adjusted baseline sulfur and olefin values. An alternative approach to setting seasonal values for sulfur and olefins would be to maintain the actual (i.e., unadjusted) proportion of summer to winter sulfur and olefin values.

As with the baseline adjustment proposals described earlier, EPA expects minimal negative environmental effects from allowing baseline adjustments under the criteria proposed in this section due to the small number of refiners which might qualify for such an adjustment and the small amount of additional gasoline that would be affected by the proposed baseline adjustments.

V. Stay and Reconsideration of the Regulations

A. Authority for Stay and Reconsideration

The administrative stay (which is published elsewhere in this issue of the **Federal Register**) of the provisions concerning JP–4 and certain changes in sweet crude oil are being undertaken pursuant to section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B). That provision authorizes the Administrator to stay the effectiveness of a rule for three months if the grounds for an objection arose after the period for public comment and if the objection is of central relevance to the outcome of the rule.

The grounds for an objection to the criteria for an individual baseline adjustment based on production of JP–4 jet fuel arose after the end of the public comment period, and before the time allowed for seeking judicial review. Basically, new information has been submitted to EPA concerning the number of parties potentially affected by the criteria adopted, and the ability of parties with more than one refinery to aggregate baselines and thereby avoid the adverse impacts of a failure to obtain an individual baseline adjustment. This information became available to EPA after the final criteria were adopted by EPA, and are directly relevant to the basic rationale for those criteria. This information was not available before that time, because it relates to the impact of the final criteria adopted by EPA as compared to the proposed criteria.

Similarly, the grounds for an objection to a lack of a baseline adjustment based on changes in the sulfur level of available crude oil arose after expiration of the period for public comment. It appears that the sulfur levels of crude have changed significantly since 1990 for certain areas of the country. Until EPA issued its final rules in December 1993, and more information was obtained on the sulfur levels of crude that would be available for use in 1995 and later, refiners that have historically relied on the availability of low sulfur crude could not identify for EPA the full impact of the final conventional gasoline requirements on their ability to continue marketing conventional gasoline.

Based on the above, and the Agency's interest in reconsidering these provisions through rulemaking, EPA is issuing a three-month administrative stay (which is published elsewhere in this issue of the **Federal Register**) of the effectiveness of the following rules, with certain conditions keyed to the requirements proposed today. The stay is structured such that it will only affect those persons who meet the requirements proposed today.

First, 40 CFR 80.91(e)(7)(i)(A) through (C) is being stayed for three months for all persons that meet the requirements proposed today regarding § 80.91(e)(7). In effect, persons who meet the proposed requirements would be able to receive a baseline adjustment under § 80.91(e)(7) if they also met the requirements of § 80.91(e)(7)(ii) and (iii). If a person does meet these conditions, then the Agency may approve a baseline adjustment under the terms of this stay, or under the terms of any stay issued through rulemaking.

Second, 40 CFR 80.101(b)(1)(ii) is being stayed for three months for all persons that meet the requirements proposed today as a new § 80.91(e)(8), and that comply with an annual average sulfur level of 125% of the compliance baseline that would apply under the new § 80.91(e)(8) proposed today. (See the Option 1 discussion in Section III.B. above.) In effect, the stay would only affect those persons who meet the proposed requirements for a baseline adjustment and who also meet the annual average sulfur level for conventional gasoline that would apply if they received a baseline adjustment under this proposal.

EPA is also proposing to stay these provisions by rule, pending completion of this rulemaking. If EPA does not finalize the changes proposed today, then EPA would revise any such baseline established during the stay to conform with the final action taken by the Agency. An appropriate time period would be allowed before a revised baseline would become effective. The terms of the 3 month administrative stay and any stay issued through rulemaking would apply to all gasoline produced from January 1, 1995 through to the end of any such stay.

B. Proposal for a Stay Pending Rulemaking

As described earlier, EPA is issuing a three month administrative stay of certain provisions pending reconsideration by the Agency. The authority for this three month administrative stay is section 307(d)(7)(B) of the Act. Since EPA may not be able to complete its reconsideration and this rulemaking during this time period, EPA proposes to extend the stay until final action is taken on the regulatory changes proposed herein. EPA requests public comment on this extension of the stay during reconsideration and rulemaking.

VI. Confidentiality of Information Submitted for Individual Baselines

A. Introduction

The final regulations issued by EPA in December 1993 determined that certain information submitted by refiners or importers would not be considered confidential. In addition, EPA stated that it would publish a portion of this information. This information concerns the individual baseline assigned to refiners and importers for use in the conventional and reformulated gasoline program, as well as information submitted by these parties in their petition for a baseline. See 40 CFR 80.93(b)(6).

Persons affected by this provision sought judicial review, objecting to the release of this information on grounds of business confidentiality. *American Petroleum Institute* v. *U.S. Environmental Protection Agency*, No. 94–1138 (D.C. Cir.), and consolidated case *Texaco, Inc. and Star Enterprises* v. *U.S. Environmental Protection Agency*, No. 94–1143 (D.C. Cir.). Based on discussions with these parties, EPA has decided to reconsider this provision and is proposing to revise it. Under the proposal, only a portion of this information would be published, the exhaust emissions values assigned as an individual baseline. Issues concerning claims of business confidentiality for the remaining information would be resolved under EPA's regulations on "Confidentiality of Business Information," 40 CFR Part 2 subpart B.

B. Background

The conventional gasoline regulations are based in large part on the use of individual baselines for refiners and importers, while their use in the reformulated gasoline program is limited to the first three years of the program. The individual baseline reflects the average quality of a refiner's or importer's gasoline for the year 1990. The standards for conventional gasoline are generally expressed in terms of a refiner's or importer's individual baseline, so that compliance with the standards is measured by comparing current production of conventional gasoline against the individual baseline, on an annual basis. For example, under the simple model for conventional gasoline, a refiner's annual average for exhaust benzene emissions may not exceed their compliance baseline, and the annual averages for sulfur, olefins and T–90 may not exceed 125 percent of their compliance baseline value for these parameters. 40 CFR 80.101(b)(1). In most cases, the compliance baseline is the same as the individual baseline. 40 CFR 80.101(*f*). For reformulated gasoline, certain standards applicable during 1995 through 1997 are also expressed in terms of a refiner's or importer's individual baseline. 40 CFR 80.41(H)(2).

EPA assigns an individual baseline after reviewing the individual baseline values for various fuel parameters, the motor vehicle exhaust emissions levels calculated from such parameters, individual 1990 baseline gasoline volumes, and the blendstock to gasoline ratios for 1990 through 1993, all submitted by the refiner or importer. This information would be deemed not confidential under EPA's current regulations. In addition, under the current regulations, EPA would publish the individual emissions standard for each refiner or importer, as well as the sulfur, olefins and T–90 standard noted above. 40 CFR 80.93(b)(6).

C. Proposal

EPA remains concerned that the emissions standards for refiners and importers should continue to be public. Therefore, EPA is proposing to publish the individual baseline values for exhaust emissions that comprise a refiner or importer's standards. EPA is proposing that the standards for sulfur, olefins and T–90 applicable during 1995 through 1997 not be published, and that the reporting requirements be revised so a refiner or importer would have to note whether and how much their annual average for these values exceeded their individual baseline value. This latter information would be considered non-confidential. This would effectively provide the same benefits as publishing the baseline values for these three parameters as it would clearly show whether a refiner or importer violated the standards applicable for these fuel parameters. In addition, requests for release of other baseline information would be governed by the regulations on the confidentiality of business information at 40 CFR Part 2 subpart B. EPA is proposing this change so that the factual and legal issues concerning disclosure of this information may be resolved on a case-by-case basis under EPA's CBI rules.

For a discussion of industry concerns regarding this issue and EPA's rationale behind its proposal, see the support document for this rule, "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–95–03.

VII. Environmental and Economic Impacts

The environmental impacts of today's proposal are minimal, as discussed above. Additionally, economic impacts are generally beneficial to affected refiners due to the additional flexibility proposed in today's notice. Minimal anti-competitive effects are expected. The environmental and economic impacts of the reformulated gasoline program are described in the Regulatory Impact Analysis supporting the December 1993 rule, which is available in Public Docket A–92–12 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

VIII. Public Participation

EPA desires full public participation in arriving at its final decisions and solicits comments on all aspects of this proposal. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed, by [30 days after publication] to the EPA Air Docket, Docket A–95–03 (See **ADDRESSES**).

Any proprietary information being submitted for the Agency's consideration should be markedly distinguished from other submittal information and clearly labelled "Confidential Business Information." Proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that it is not inadvertently placed in the docket. Information thus labeled and directed shall be covered by a claim of confidentiality and will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

IX. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of their regulations and to identify any significant adverse impacts of those regulations on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. In fact, today's proposals are designed to promote successful implementation of the anti-dumping requirements of the reformulated gasoline program for all affected parties and to minimize any adverse competitive impacts by virtue of the proposal to report individual baseline emissions and not fuel parameters.

X. Administrative Designation

Pursuant to Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the executive order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this notice of proposed rulemaking is not a "significant regulatory action".

XI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

XII. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the reformulated gasoline program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

XIII. Statutory Authority

The statutory authority for the actions proposed today is granted to EPA by Sections 114, 211 (c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 25, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.75 is amended by removing "and" at the end of paragraph (b)(2)(ii)(F), by adding a semi-colon in place of the period at the end of paragraph (b)(2)(ii)(G), and adding paragraphs (b)(2)(ii) (H), (I), and (J) to read as follows:

§ 80.75 Reporting requirements.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(H) The difference between the applicable sulfur content standard under § 80.41(h)(2)(i) in parts per million and the average sulfur content in parts per million, indicating whether the average is greater or lesser than the applicable standard;

(I) The difference between the applicable olefin content standard under § 80.41(h)(2)(i) in volume percent and the average olefin content in volume percent, indicating whether the average is greater or lesser than the applicable standard; and

(J) The difference between the applicable T90 distillation point standard under § 80.41(h)(2)(i) in degrees Fahrenheit and the average T90 distillation point in degrees Fahrenheit, indicating whether the average is greater or lesser than the applicable standard.

* * * * *

3. Section 80.91 is amended by revising paragraph (e)(7)(i) and adding paragraphs (e)(8) and (e)(9) to read as follows:

§ 80.91 Individual baseline determination.

* * * * *

(e) * * *

(7) * * *

(i) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery produced JP–4 jet fuel in 1990 and all of the following requirements are also met:

(A) Refinery type.

(*1*) The refinery is the only refinery of a refiner such that it cannot form an aggregate baseline with another refinery (per paragraph (f) of this section); or

(*2*) The refinery is one refinery of a multi-refinery refiner for which all of its refineries produced JP–4 in 1990 and each of the refineries also meets the requirements specified in paragraphs (e)(7)(i) (B) and (C) of this section; or

(*3*) The refinery is one refinery of a multi-refinery refiner for which not all of the refiner's refineries produced JP–4 in 1990.

(B) No refinery of the refiner produces reformulated gasoline. If any refinery of the refiner produces reformulated gasoline at any time in a calendar year, the compliance baseline of all its refineries receiving a baseline adjustment per this paragraph (e)(7) shall revert to each refinery's unadjusted baseline for that year and all subsequent years.

(C) 1990 JP–4 to gasoline ratio.

(*1*) For a refiner per paragraph (e)(7)(i)(A)(*1*) of this section, the ratio of its refinery's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.15.

(*2*) For a refiner per paragraph (e)(7)(i)(A)(*2*) of this section, the ratio of each of its refinery's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.15.

(*3*) For a refiner per paragraph (e)(7)(i)(A)(*3*) of this section, the ratio of the refiner's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.15, when determined across all of its refineries.

* * * * *

(8) Baseline adjustments due to increasing crude sulfur content.

(i) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery meets all of the following requirements:

(A) The refinery does not produce reformulated gasoline. If the refinery produces reformulated gasoline at any time in a calendar year, its compliance baseline shall revert to its unadjusted baseline values for that year and all subsequent years;

(B) Has an unadjusted baseline sulfur value of not more than 50 ppm;

(C) Is not aggregated with one or more other refineries per paragraph (f) of this section. If a refinery which received an adjustment per this paragraph (e)(8) subsequently is included in an aggregate baseline, its compliance baseline shall revert to its unadjusted baseline values for that year and all subsequent years;

(D) Would require refinery improvements of at least $10 million or 10 percent of the depreciated value of the refinery to comply with its unadjusted baseline;

(E) Can show that it could not reasonably or economically obtain crude oil from an alternative source that would permit it to produce conventional gasoline which would comply with its unadjusted baseline;

(F) Has experienced at least a 25% increase in the average sulfur content of the crude oil used in the production of gasoline in the refinery since 1990, calculated as follows:

$$\frac{(CSHI - CS90)}{CS90} \times 100 = CS\%CHG$$

Where:

CSHI=highest annual average crude slate per paragraph (e)(8)(ii)(B) of this section

CS90=1990 annual average crude slate sulfur per paragraph (e)(8)(ii)(A) of this section.

CS%CHG=percent change in average sulfur content of crude slate;

(G) Can show that gasoline sulfur changes are directly and solely attributable to the crude sulfur change, and not due to alterations in refinery operation nor choice of products.

(ii) The adjusted baseline sulfur value shall be calculated as follows:

(A) Determine the average sulfur content (ppm) of the crude slate utilized in the production of gasoline in the refinery in 1990;

(B) Determine the highest crude sulfur level (ppm) of the crude slate utilized in the production of gasoline in the refinery in 1994;

(C) Determine the adjusted baseline sulfur value as follows:

$$ASULF = \frac{CSHI}{CS90} \times BSULF$$

Where

ASULF=adjusted baseline sulfur value, ppm

BSULF=actual baseline sulfur value, ppm

CSHI=highest crude sulfur (ppm) per paragraph (e)(8)(ii)(B) of this section

CS90=1990 annual average crude slate sulfur per paragraph (e)(8)(ii)(A) of this section

(iii) In no case can the adjusted baseline sulfur value determined per paragraph (e)(8)(ii) of this section exceed the sulfur value specified in paragraph (c)(5)(iii) of this section.

(iv) All adjustments made pursuant to this paragraph (e)(8) must be accompanied by:

(A) Unadjusted and adjusted fuel parameters and emissions; and

(B) A narrative describing the situation, the types of calculations, and the reasoning supporting the types of calculations done to determine the adjusted values.

(9) Baseline adjustment for low sulfur and olefins.

(i) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery meets all of the following requirements:

(A) The unadjusted annual average baseline sulfur value is less than 30 ppm;

(B) The unadjusted annual average baseline olefin value is less than 1.0 vol%;

(C) Would require refinery improvements of at least $10 million or 10 percent of the depreciated value of the refinery to comply with its unadjusted baseline.

(ii) If a refinery is aggregated with one or more other refineries per paragraph (f) of this section, then no adjustment per this paragraph (e)(9) shall be allowed, and the unadjusted baseline shall be used in the aggregated baseline.

(iii) (A) The adjusted baseline shall have an annual average sulfur value of 30 ppm, and an annual average olefin value of 1.0 vol%.

(B) The adjusted baseline shall have a summer sulfur value of 30 ppm, and a summer olefin value of 1.0 vol%.

(C) The adjusted baseline shall have a winter sulfur value of 30 ppm, and a winter olefin value of 1.0 vol%.

* * * * *

4. Section 80.93 is amended by revising paragraph (b)(6) to read as follows:

§ 80.93 Individual baseline submission and approval.

* * * * *

(b) * * *

(6) Confidential business information.

(i) Upon approval of an individual baseline, EPA will publish the individual annualized baseline exhaust emissions, on an annual average basis, specified in paragraph (b)(5)(ii) of this section. Such individual baseline exhaust emissions shall not be considered confidential. In addition, the reporting information required under § 80.75(b)(2)(ii) (H), (I) and (J), and § 80.105(a)(4) (ii), (iii) and (iv) shall not be considered confidential.

(ii) Information in the baseline submission which the submitter desires to be considered confidential business information (per 40 CFR part 2, subpart B) must be clearly identified. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the submitter pursuant to the provisions of 40 CFR part 2, subpart B.

* * * * *

5. Section 80.105 is amended by redesignating paragraph (a)(4) as paragraph (a)(4)(i) and adding paragraphs (a)(4) (ii), (iii), and (iv) to read as follows:

§ 80.105 Reporting requirements.

(a) * * *

(4)(i) * * *

(ii) If using the simple model, the difference between the applicable sulfur content standard under § 80.101(b)(1)(ii) in parts per million and the average sulfur content in parts per million, indicating whether the average is greater or lesser than the applicable standard;

(iii) If using the simple model, the difference between the applicable olefin content standard under § 80.101(b)(1)(iii) in volume percent and the average olefin content in volume percent, indicating whether the average is greater or lesser than the applicable standard; and

(iv) If using the simple model, the difference between the applicable T90 distillation point standard under § 80.101(b)(1)(iv) in degrees Fahrenheit and the average T90 distillation point in degrees Fahrenheit, indicating whether the average is greater or lesser than the applicable standard.

* * * * *

[FR Doc. 95–14429 Filed 8–3–95; 8:45 am]

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Federal Register

Friday
August 4, 1995

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Modification of the Salt Lake City (SLC) Class B Airspace Area, Salt Lake City, UT; Proposed Rule

VOL
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–11]

RIN 2120–AF56

Proposed Modification of the Salt Lake City (SLC) Class B Airspace Area, Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to modify the Salt Lake City (SLC) Class B airspace area, Salt Lake City, Utah. This proposal would maintain the ceiling of the SLC Class B airspace area at 10,000 feet mean sea level (MSL); subdivide and redefine existing subareas by altering their floors and boundaries except for Area B; and create additional areas E, F, G, H, I, J, K, L, and M. This proposal would improve the flow of aviation traffic and enhance safety in the Salt Lake City area, while accommodating the concerns of the airspace users.

DATES: Comments must be received on or before September 5, 1995.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Airspace Docket No. 93–AWA–11, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov.

The official docket may be examined in the Rules Docket, Office of Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWA–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

Any persons may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment 91–78 to part 91 of the Federal Aviation Regulations (35 FR 7782) which provided for the establishment of Terminal Control Areas (TCA's).

On June 21, 1988, the FAA published a final rule that requires aircraft to have Mode C equipment when operating within 30 nautical miles of any designated TCA primary airport from the surface up to 10,000 feet MSL, except aircraft not originally certificated with an engine-driven electrical system, or which had not subsequently been certified with such a system installed (53 FR 23356).

On October 14, 1988, the FAA published a final rule that revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Established a single-class TCA; (b) required the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminated the helicopter exception from the minimum navigational equipment requirements.

On December 17, 1991, the FAA published a final rule on airspace reclassification (56 FR 65655). This airspace reclassification, which became effective September 16, 1993, discontinued the use of the term "Terminal Control Area" (TCA) and replaced it with the designation "Class B airspace." This change in terminology is reflected in this proposed rule.

Background

The Class B airspace (formerly TCA) program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to provide aircraft separation service; this minimizes the mix of controlled and uncontrolled aircraft. To date, the FAA has established a total of 29 Class B airspace areas; the SLC Class B airspace area was established on November 16, 1989 (54 FR 43786). The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in Paragraph 3000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

The standard configuration of a Class B airspace area is three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles, respectively. The standard vertical limits of the Class B airspace area normally should not exceed 12,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Pre-NPRM Public Input

As announced in the **Federal Register** on September 2, 1992, 57 FR 40202, a pre-NPRM airspace meeting was held on October 28, 1992, in the Salt Lake City area to provide local interested airspace users an opportunity to present input on the design of the proposed modification of the SLC Class B airspace area. Comments were received from local government agencies, private pilots, user groups, and local airport authorities. Pilot groups were concerned with three primary aviation aspects of the proposal: flight congestion, flights over water (Great Salt Lake), and flights in close proximity to nonparticipating aircraft (hang gliders). All comments were considered in the formulation of this proposed modification, and recommendations were incorporated, in part, in this proposed modification.

Both the verbal and written comments along with the FAA's findings are summarized as follows:

1. One commenter suggested deleting a portion of the 9,000 to 10,000 foot MSL shelf of the Class B airspace area east of Salt Lake City International Airport, from due east of Skypark Airport south, to 3 miles south of Interstate 80 (I–80), from approximately lat. 40°53′00″ N., long. 111°53′30″ W., due east to long. 111°45′00″ W., then due south to lat. 40°42′30″ N., then due west to long. 111°54′00″ W., then north along the present Class B airspace area boundary to the point of origin. The FAA determined that the Salt Lake City Terminal Radar Approach Control (TRACON) does not utilize the middle portion of that 9,000 to 10,000 foot MSL shelf to contain slow climbing eastbound commercial aircraft and deleting that area would permit easier and safer access to both the Salt Lake Valley and airports to the east of the Wasatch Range by VFR aircraft.

2. Several commenters suggested raising the base altitude of the Class B airspace area from the surface to 7,600 feet MSL west of Farmington from Interstate Highway 15 (I–15) to the power line along the shore of Farmington Bay. These commenters believe this would permit VFR traffic to transit through a wider corridor and greatly lessen the chance of a midair collision. This proposal would retain the present eastern boundary of the Class B airspace area but would raise the base altitude to 7,600 feet MSL east of the power line and would require subdividing this sector along the power line from its intersection with the Salt Lake City International Instrument Landing System/Distance Measuring Equipment (I–BNT) 13-mile arc southward along the power line to the Skypark Airport "notch," (hereafter referred to as exclusion area) then northeastward along the exclusion area to I–15, then north along I–15 to the I–BNT 13-mile arc, then along the arc to the point of origin. The suggestion to raise the base altitude to 7,600 feet was not adopted, because the FAA is altering the exclusion area in the vicinity of the Skypark Airport by raising the base altitude from 5,300 feet to 7,000 feet MSL and extending the boundary to the north and west. This would provide more airspace for VFR traffic transiting north and south, thus further reducing the potential for midair collisions.

3. Several commenters suggested raising the altitude of Area C of the Class B airspace in the vicinity of Riverton from 6,000 to 7,000 feet MSL, subdividing this area along 12600 Street south, and raising the Class B airspace Area C south of 12600 Street south to 7,000 feet MSL. It was also recommended that the floor of the Class B airspace Area D in the southwest area be raised from 7,000 to 8,000 feet MSL and this area subdivided from the intersection of the Salt Lake City 167° radial and 12600 Street south due west along long. 112°05′00″ W., then due north to the I–BNT 11-mile arc, then southeast along the arc to long. 112°09′00″ W., to the present boundary of the Area C then due south to lat. 40°27′30″ N., south to the Class B airspace present boundary, then north along the Salt Lake City 167° radial to the Class B airspace boundary to the point of origin. These suggested altitude and subdivision changes are adopted. The FAA is proposing to subdivide Area C, forming Area D with a base altitude of 6,000 feet MSL and Area F with a base altitude of 7,000 feet MSL.

4. Several commenters recommended that the floor of Area C be raised from 6,000 to 7,000 feet MSL in the area south and west of Magna to the Garfield Stacks to eliminate possible compression caused by VFR traffic transiting in this area along the shore line. The commenters claim that most aircraft do not have flotation equipment to fly off shore over the Great Salt Lake thus making this area congested with opposite direction traffic. The FAA is proposing to subdivide this area and to raise the base altitude from 6,000 to 6,500 feet MSL. This would allow more vertical separation with recommended altitudes and transition routes that are now being used in designated areas within the SLC Class B airspace area. This would greatly assist with VFR pilots who normally fly the coastline of the Great Salt Lake because the aircraft may not be equipped with necessary flotation equipment to fly over the Great Salt Lake. This not only would enhance safety within this congested area, but would also relieve any potential traffic compression around the Tooele Valley Airport.

5. One commenter suggested raising the altitude one mile east of the Antelope Island in Area A, from the surface to 6,000 feet MSL, thus helping to relieve any compression of VFR traffic off shore along the main coastline. The FAA is proposing to raise the base altitude of Area A from the surface to 6,000 feet MSL. Area A would become a portion of Area K. This would provide that portion of airspace along the shoreline to allow VFR traffic to traverse Antelope Island and remain over land for most of this route. This is particularly important for single-engine aircraft without flotation equipment.

6. One pilot suggested that more uncontrolled airspace is required in Area C, near the Point of the Mountain, to allow aircraft below 6,000 feet MSL to clear the hang glider area. This pilot asserts that departing aircraft are frequently instructed to remain below 6,000 feet MSL east of I–15, keeping aircraft in an area of hang gliding activity.

Under this proposal, the airspace would be subdivided into two separate areas. The floor of one area, proposed

Area F, would be raised from 6,000 to 7,000 feet MSL, thus allowing for more vertical airspace for the transversing VFR aircraft traversing the constriction at Point of the Mountain. The floor of the other area, proposed Area G, would be raised from 7,000 to 8,000 feet MSL, providing more vertical airspace for traversing VFR aircraft in this mountainous area. Additionally, this change would greatly enhance the utility of area for flight instruction and other users.

7. Several commenters suggested eliminating a portion of Area E east of I–15 between 9,000 and 10,000 feet MSL because there is no need to compress VFR aircraft in this area of the Wasatch Mountains. The commenters stated that 9,000 feet MSL is too restrictive and forces traffic to fly the canyons in order to get over the Wasatch range. The commenters further stated that the minimum altitude over the mountains should be raised to 10,000 feet MSL, establishing a VFR traffic flow (such as Immigration Canyon for eastbound traffic and Parleys Canyon for westbound traffic).

The FAA determined that commercial traffic is not heavy in this area of Area E and that deleting the middle segment of Area I would permit VFR aircraft easier and safer access to Salt Lake Valley and airports to the east of the Wasatch Range.

The Proposal

The FAA proposes to amend 14 Code of Federal Regulations (CFR) parts 71 and 91 and modify the Salt Lake City (SLC), UT, Class B airspace area. The decision to pursue modifications to the existing Class B airspace area was based on aviation safety and operational efficiencies. The proposed alteration, depicted in the attached chart, considers the current Class B airspace area flight operations and terrain. Specific areas would be modified as follows:

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at a point where the 13-mile arc of the Salt Lake City International Airport Runway 17 Instrument Landing System (ILS) I–BNT ILS/DME antenna intercepts Interstate 15 (I–15), extending south on I–15 until intercepting the 4.3-mile arc from the Salt Lake City International Airport, extending south along the 4.3-mile arc from the Salt Lake City International Airport until intercepting I–15, extending south on I–15 until intercepting the 11-mile arc of the I–BNT ILS/DME antenna clockwise until intercepting the Union Pacific railroad tracks, extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–BNT ILS/DME antenna clockwise until the point of beginning, excluding Areas C, D, K, and L described hereinafter.

This airspace is necessary to accommodate high performance traffic within the Salt Lake City International Airport and to provide for ingress/egress to secondary airports. Reducing the area to the north would provide sufficient airspace for VFR traffic transiting over the Skypark Airport area. The exclusion area to the northeast of the Salt Lake City Airport in the vicinity of the Skypark Airport would be modified by expanding the boundary west and northwest. The floor would be raised from 5,300 to 7,000 feet MSL to provide transiting VFR traffic sufficient airspace to reduce the potential for midair collisions between northbound and southbound traffic.

Area B. That airspace extending upward from 7,600 feet MSL to and including 10,000 feet MSL between the 13-mile radius and the 25-mile radius of the I–BNT ILS/DME antenna, excluding that airspace south of the Union Pacific railroad tracks and that airspace east of where the 25-mile arc intercepts the Ogden-Hinckley Airport, UT, Airspace Class D airspace area and the Ogden, Hill AFB, UT, Class D airspace area until intercepting U.S. Highway 89, extending south on U.S. Highway 89 until intercepting the 11-mile arc of the I–BNT ILS/DME antenna. This segment of airspace provides sufficient room for aircraft climbing and descending into the Salt Lake City International Airport.

Area C. That airspace extending upward from 6,500 feet to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I–BNT ILS/DME antenna intercepts the Union Pacific railroad tracks extending southwest of the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–BNT ILS/DME antenna clockwise until a point at lat. 40°46′30″ N, long. 112°14′50″ W, extending east to a bend on I–80 at lat. 40°46′30″ N, long. 112°08′48″ W, then southeast to the drive-in theater north of the city of Magna at lat. 40°43′00″ N, long. 112°04′48″ W, then southeast to the water tank at lat. 40°40′00″ N, long. 112°03′33″ W, extending southeast to a point at lat. 40°39′20″ N, long. 112°02′33″ W, extending south along long. 112°02′33″ W, until intercepting the 11-mile arc of the I–BNT ILS/DME antenna then northwest on the 11-mile arc of the I–BNT ILS/DME antenna clockwise to the point of beginning.

This area would provide more transition routes for VFR operations, particularly for aircraft not equipped with the required flotation equipment to fly over the Great Salt Lake. Additionally, this area would relieve the potential for traffic congestion around the Tooele Valley Airport.

Area D. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point at lat. 40°39′20″ N, long. 112°02′33″ W, extending east to a point at lat. 40°39′20″ N, long. 111°58′13″ W, extending south along long. 111°58′13″ W, until intercepting the 11-mile arc of the I–BNT ILS/DME antenna, then counterclockwise until intercepting I–15, extending south on I–15 until intercepting a line at lat. 40°31′05″ N, extending west on lat. 40°31′05″ N, until a point at lat. 40°31′05″ N, long. 112°00′33″ W, then north along long. 112°00′33″ W, to intercept the 11-mile arc of the I–BNT ILS/DME antenna at lat. 40°35′22″ N, long. 112°00′33″ W, then clockwise on the 11-mile arc of I–BNT ILS/DME antenna to long. 112°02′33″ N, then to the point of beginning.

This area is currently a portion of Area C and would be redesignated by this proposal.

Area E. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I–BNT ILS/DME antenna intercepts a line at long. 112°09′03″ W, bounded on the west by long. 112°09′03″ W, on the south by a line at lat. 40°31′05″ N, to a point at lat. 40°31′05″ N, long. 112°00′33″ W, extending north to lat. 40°35′22″ N, long. 112°00′33″ W, then clockwise on the 11-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

This area is currently a portion of Area D and would be redesignated by this proposal.

Area F. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at lat. 40°31′05″ N intercepts I–15 extending west on lat. 40°31′05″ N, to long. 112°00′33″ W, then south on long. 112°00′33″ W, to lat. 40°27′30″ N, then east along lat. 40°27′30″ N, to I–15, then north to the point of beginning.

This area is currently a portion of Area D and would be redesignated by this proposal. Additionally, the floor of this area would be raised from 6,000 to 7,000 feet MSL to provide more airspace for the VFR aircraft transiting the area of Point of the Mountain.

Area G. That airspace extending upward form 8,000 feet MSL to and including 10,000 feet MSL beginning at the Bingham Copper Mine at lat. 40°31′05″ N, long. 112°09′03″ W, extending south to lat. 40°27′30″ N, long. 112°09′03″ W, then east to lat. 40°27′30″ N, long. 112°00′33″ W, then north to lat. 40°31′05″ N, extending west to the point of beginning. This is a subdivision of the former Area D, Salt Lake City Class B airspace area. The base altitude was raised from 7,000 feet MSL to 8,000 feet MSL.

This area is a portion of the current Area D and would be redesignated by this proposal. Additionally, the floor of this area would be raised from 7,000 to 8,000 feet MSL to provide more airspace for the VFR aircraft transiting this mountainous area and to allow space for flight instruction activity in this area.

Area H. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at lat. 40°27′30″ N, intercepts the I–15 freeway, extending south along I–15 to lat. 40°23′30″ N, extending west along lat. 40°23′30″ N to long. 111°54′00″ W thence south along long. 111°54′00″W until intercepting the 30-mile arc of the I–BNT ILS/DME, then clockwise along the 30-mile arc until intercepting long. 112°06′00″ W, until intercepting lat. 40°23′30″ N, extending west along lat. 40°23′30″ N until long. 112°09′06″ W, then north along long. 112°09′06″ W until intercepting 40°27′30″ N, extending east to the point of beginning, excluding that airspace contained in restricted areas R–6412A and R–6412B when active.

This area is currently area F and would be redesignated as Area H under this proposal.

Area I. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at long. 111°45′03″ W intercepts Interstate 84 (I–84), extending south on long. 111°45′03″ W, until intercepting lat. 40°31′05″ N, extending west until intercepting I–15, then north along I–15 until intercepting the Salt Lake City International Airport 4.3-mile arc, extending north along the Salt Lake City International Airport 4.3-mile arc until intercepting I–15, then north along I–15 until intercepting U.S. Highway 89, extending north along U.S. Highway 89 until intercepting the Ogden, Hill AFB, UT, Class D airspace area, then north along the Ogden, Hill AFB, UT, Class D airspace area until intercepting I–84, extending east along I–84 until the point of beginning, excluding that block of airspace east of Salt Lake City International Airport between lat. 40°52′16″ N, and lat. 40°42′00″ N. This area is currently Area E and would be redesignated as Area I under this proposal.

Area J. That airspace extending upward from 7,800 feet MSL to and including 10,000 feet MSL beginning at a point where the 25-mile arc of the I–BNT ILS/DME antenna intercepts the Ogden-Hinckley Airport, UT, Class D airspace area counterclockwise along the Ogden-Hinckley Airport, UT, Class D airspace area and the Ogden, Hill AFB, UT, Class D airspace area until intercepting the 25-mile arc of the I–BNT ILS/DME antenna to the point to beginning. This area currently is Area G and would be redesignated as Area J under this proposal.

Area K. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point on the 13-mile arc of the I–BNT ILS/DME antenna at lat. 40°46′30″ N., long. 111°14′50″ W., extending east to the bend on I–80 at lat. 40°46′30″ N., long. 112°08′48″ W., then north along long. 112°08′48″ W., until intercepting the 13-mile arc of the I–BNT ILS/DME antenna, then counterclockwise along the 13-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

This area would provide more airspace for nonparticipating aircraft, particularly for aircraft not equipped with the required flotation equipment to fly over the Great Salt Lake. This would assist the VFR pilot who normally flies the coastline of the Great Salt Lake because the aircraft may not be equipped with flotation equipment to fly over the Great Salt Lake.

Area L. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL west of I–15 bounded on the south by Cudahy Lane, on the west by Redwood Road until intercepting the Utah Power Transmission lines, extending northeast along the power transmission lines until intercepting the 13-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

This area would be expanded to maintain safety for north and southbound VFR traffic.

Area M. That airspace extending upward from 9,000 MSL to and including 10,000 feet MSL beginning at a point where the 25-mile arc of the I–BNT ILS/DME intersects the I–15 freeway south of the Ogden Municipal Airport extending north along the I–15 freeway to the 30-mile arc of the I–BNT ILS/DME, thence counterclockwise along the 30-mile are to long. 112°10′00″ W, then south along long. 112°10′00″ W to the 25-mile arc of the I–BNT ILS/DME, then clockwise along the 25-mile arc to the point of beginning.

This proposal would provide additional controlled airspace for new instrument approach procedures to the new parallel instrument runway, 16 Right—34 Left at the Salt Lake City International Airport.

Regulatory Evaluation Summary

The FAA has determined that this rulemaking is not a "significant regulatory action" as defined by Executive Order 12866, and therefore no Regulatory Impact Analysis is required. Nevertheless, in accordance with the Department of Transportation policies and procedures, the FAA has evaluated the anticipated costs and benefits, which are summarized below. For more detailed economic information, see the full regulatory evaluation contained in the docket.

Benefit-Cost Analysis

This regulatory evaluation analyzes the potential costs and benefits of proposed modifications to the Salt Lake City International Airport, Utah, Class B airspace area. These proposed modifications would raise the floor of the Class B airspace in areas A, C, and D and reduce the lateral boundaries east of the airport in area E to enhance safe and efficient VFR traffic operations. The new floor altitudes would be raised by as much as 500 to 6,000 feet MSL in areas A, C, and D without changing the original lateral boundaries. The original areas of the Class B airspace would be subdivided and renamed as A, K, and L (from A); C, D, and F (from C); E and G (from D); H (from F); and I (from E). These modifications would provide additional airspace for VFR traffic operations. Also, an area of controlled airspace (area M) would be added to the north, and the lateral boundaries of area H would be expanded to the south with floor and ceiling altitudes of 9,000 and 10,000 feet MSL respectively. These two proposed modifications are designed to provide additional controlled airspace for new instrument flight rules (IFR) procedures to the new parallel instrument runway that is scheduled to open in the latter part of 1995. The Salt Lake City Tower/Tracon (SLC ATCT) has determined that the above modifications would not adversely impact their ability to monitor and control IFR and VFR traffic in the Class B airspace.

The NPRM would enhance aviation safety and operational efficiency by lowering the risk of midair collisions, while accommodating the legitimate concerns of system users. The proposed modifications to the Salt Lake City Class B airspace would provide VFR traffic with more operating room, aid controllers vectoring IFR traffic to and from the new parallel instrument runway, and improve the SLC ATCT's ability to separate controlled and uncontrolled aircraft near the floor and lateral boundaries of the airspace. The

FAA determined that implementing these proposed modifications would not impose any additional costs on either the agency or aircraft operators.

Cost

The FAA has determined that the implementation of the NPRM would not impose any additional cost on either the agency or aircraft operators for the reasons discussed below.

In terms of the FAA, the NPRM would not impose any additional administrative costs for personnel, facilities, or equipment. This assessment is based on the fact that the proposed modification would not increase the volume of air traffic using the SLC Class B airspace. The simultaneous contraction and expansion of the Class B airspace would not dramatically change the overall size of the airspace and would not impose additional workloads on current personnel and equipment resources. Required revisions to aeronautical charts would be accomplished during normal charting cycles. Therefore, no additional costs beyond routine operating expenses would be imposed.

Costs to Aircraft Operators

The proposed modifications should impose little if any, additional cost such as required avionics equipment, installation, or circumnavigation. Many affected GA aircraft operators are assumed to already have the types of avionic equipment (such as an operable two-way radio and VOR) required for entering a Class B airspace area. The only aircraft without Mode C transponders would be aircraft not originally certified with an engine-driven electrical system or not subsequently certified with such a system installed. These potential costs to aircraft operators without Mode C transponders have already been accounted for by the Mode C rule.

Additionally, the proposed modifications should not adversely impact aircraft operators who routinely operate under IFR, primarily large air carriers, business jets, commuters and air taxis, nor should the proposed modifications impose substantial cost to VFR users.

Benefits

The proposed modifications are expected to generate benefits primarily in the form of safety enhancements to the aviation community and the flying public. Such benefits include reduced aviation fatalities and property damages as a result of a lowered risk of midair collisions. The proposed changes would enable VFR aircraft to circumnavigate the SLC Class B airspace area operations, thereby enhancing operational efficiency.

Conclusion

In view of the negligible cost of compliance and the benefits of enhanced aviation safety and increased operational efficiency, the FAA has determined that the proposed modifications would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if an NPRM would have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. A substantial number of small entities is defined as a number that is 11 or more and which is more than one-third of the small entities subject to the NPRM. The only potentially affected small entities would be unscheduled air taxis owning nine or fewer aircraft and flight training schools around the Oquirrh Mountains. The NPRM would maintain aviation safety and operational efficiency for VFR traffic while imposing negligible additional costs or requirements. Therefore, the NPRM would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor the sale of United States products or services in foreign countries. The proposed rule would impose negligible costs on aircraft operators or aircraft manufacturers (United States or foreign).

Federalism Implications

This proposed rule would not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41695; October 30, 1987), it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This proposed rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations (JAR)

The FAA has determined that this proposal, if adopted, would not conflict with any international agreements of the United States.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this proposed regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this proposed regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposed regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis and Review of Regulations. A final regulatory evaluation of the proposed regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective

September 16, 1994, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ANM UT B Salt Lake City, UT [Revised]

Salt Lake City International Airport
(Lat. 40°47'12" N, long. 111°58'08" W)
Salt Lake City International Airport Runway 17 ILS (I–BNT) ILS/DME Antenna
(Lat. 40°46'10" N, long. 111°57'44" W)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at a point where the 13-mile arc of the Salt Lake City International Airport Runway 17 ILS (I–BNT) instrument landing system/distance measuring equipment (ILS/DME) antenna intercepts Interstate 15 (I–15), extending south on I–15 until intercepting a 4.3-mile arc from the Salt Lake City International Airport, extending south along the 4.3-mile arc from the Salt Lake City International Airport until intercepting I–15, extending south on I–15 until intercepting the 11-mile arc of the I–BNT ILS/DME antenna clockwise until intercepting the Union Pacific railroad tracks, extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–BNT ILS/DME antenna clockwise until the point of beginning, excluding Areas C, D, K, and L described hereinafter.

Area B. That airspace extending upward from 7,600 feet MSL to and including 10,000 feet MSL between the 13-mile radius and the 25-mile radius of the I–BNT ILS/DME antenna, excluding that airspace south of the Union Pacific railroad tracks and that airspace east of where the 25-mile arc intercepts the Ogden-Hinckley Airport, UT, Class D airspace area and the Ogden, Hill AFB, UT, Class D airspace area until intercepting U.S. Highway 89, extending south on U.S. Highway 89 until intercepting the 11-mile arc of the I–BNT ILS/DME antenna.

Area C. That airspace extending upward from 6,500 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I–BNT ILS/DME antenna intercepts the Union Pacific railroad tracks extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–BNT ILS/DME antenna clockwise until a point at lat. 40°46'30" N, long. 112°14'50" W, extending east to a bend on Interstate 80 (I–80) at lat. 40°46'30" N, long. 112°08'48" W, then southeast to the drive-in theater north of the city of Magna at lat. 40°43'00" N, long. 112°04'48" W, then southeast to the water tank at lat. 40°40'00" N, long. 112°03'33" W, extending southeast to a point at lat. 40°39'20" N, long. 112°02'33" W, extending south along long. 112°02'33" W, until intercepting the 11-mile arc of the I–BNT ILS/DME antenna then northwest on the 11-mile arc of the I–BNT ILS/DME antenna clockwise to the point of beginning.

Area D. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point at lat. 40°39'20" N, long. 112°02'33" W, extending east to a point at lat. 40°39'20" N, long. 111°58'13" W, extending south along long. 111°58'13" W, until intercepting the 11-mile arc of the I–BNT ILS/DME antenna, then counterclockwise until intercepting I-15, extending south on I–15 until intercepting a line at lat. 40°31'05" N, extending west on lat. 40°31'05" N, until a point at lat. 40°31'05" N. long. 112°00'33" W, then north along long. 112°00'33" W, to intercept the 11-mile arc of the I–BNT ILS/DME antenna at lat. 40°35'22" N, long. 112°00'33" W, then clockwise on the 11-mile arc of I-BNT ILS/DME antenna to long. 112°02'33" N, then to the point of beginning.

Area E. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I–BNT ILS/DME antenna intercepts a line at long. 112°09'03" W, bounded on the west by long. 112°09'03" W, on the south by a line at lat. 40°31'05" N, to a point at lat. 40°31'05" N, long. 112°00'33" W, extending north to lat. 40°35'22" N, long. 112°00'33" W, then clockwise on the 11-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area F. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at lat. 40°31'05" N, intercepts I–15 extending west on lat. 40°31'05" N, to long. 112°00'33" W, then south on long. 112°00'33" W, to lat. 40°27'30" N, then east along lat. 40°27'30" N, to I–15, then north to the point of beginning.

Area G. That airspace extending upward from 8,000 to MSL to and including 10,000 feet MSL beginning at the Bingham Copper Mine at lat. 40°31'05" N, long. 112°09'03" W, extending south to lat. 40°27'30" N, long. 112°09'03" W, then east to lat. 40°27'30" N, long. 112°00'33" W, then north to lat. 40°31'05" N, extending west to the point of beginning.

Area H. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at lat. 40°27'30" N intercepts the I–15 freeway, extending south along I–15 to lat. 40°23'30" N, extending west along lat. 40°23'30" N to long. 111°54'00" W thence south along long. 111°54'00" W, until intercepting the 30-mile arc of the I–BNT ILS/DME, then clockwise along the 30-mile arc until intercepting long. 112°06'00" W then north along long. 112°06'00" W until intercepting lat. 40°23'30" N, extending west along lat. 40°23'30" N, until along long. 112°09'06" W, then north along long. 112°09'06" W until intercepting lat. 40°27'30" N extending east to the point of beginning, excluding that airspace contained in Restricted Areas R–6412A and R–6412B when active.

Area I. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at long. 111°45'03" W, intercepts Interstate 84 (I–84), extending south on long. 111°45'03" W, until intercepting lat. 40°31'05" N, extending west until intercepting I–15, then north along I–15 until intercepting the Salt Lake City International Airport 4.3-mile arc, extending north along the Salt Lake City International Airport 4.3-mile arc until intercepting I–15, then north along I–15 until intercepting U.S. Highway 89, extending north along U.S. Highway 89 until intercepting the Ogden, Hill AFB, UT, Class D airspace area, then north along the Ogden, Hill AFB, UT, Class D airspace area until intercepting I–84, extending east along I–84 until the point of beginning, excluding that block of airspace east of Salt Lake City International Airport between lat. 40°52'16" N, and lat. 40°42'00" N.

Area J. That airspace extending upward from 7,800 feet MSL to and including 10,000 feet MSL beginning at a point where the 25-mile arc of the I–BNT ILS/DME antenna intercepts the Ogden-Hinckley Airport, UT, Class D airspace area counterclockwise along the Ogden-Hinckley Airport, UT, Class D airspace area and the Ogden, Hill AFB, UT, Class D airspace area until intercepting the 25-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area K. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point on the 13-mile arc of the I–BNT ILS/DME antenna at lat. 40°46'30" N, long. 111°14'50" W, extending east to the bend on I–80 at lat. 40°46'30" N, long. 112°08'48" W, then north along long. 112°08'48" W, until intercepting the 13-mile arc of the I–BNT ILS/DME antenna, then counterclockwise along the 13-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area L. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL west of I–15 bounded on the south by Cudahy Lane, on the west by Redwood Road until intercepting the Utah Power Transmission lines, extending northeast along the power transmission lines until intercepting the 13-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area M. That airspace extending upward from 9,000 MSL to and including 10,000 feet MSL beginning at a point where the 25-mile arc of the I–BNT ILS/DME intersects the I–15 freeway south of the Ogden Municipal Airport extending north along the I–15 freeway to the 30-mile arc of the I–BNT ILS/DME, thence counterclockwise along the 30-mile arc to long. 112°10'00" W, then south along long. 112°10'00" W to the 25-mile arc of the I–BNT ILS/DME, then clockwise along the 25-mile arc to the point of beginning.

Issued in Washington, DC, on July 31, 1995.

Nancy B. Kalinowski,

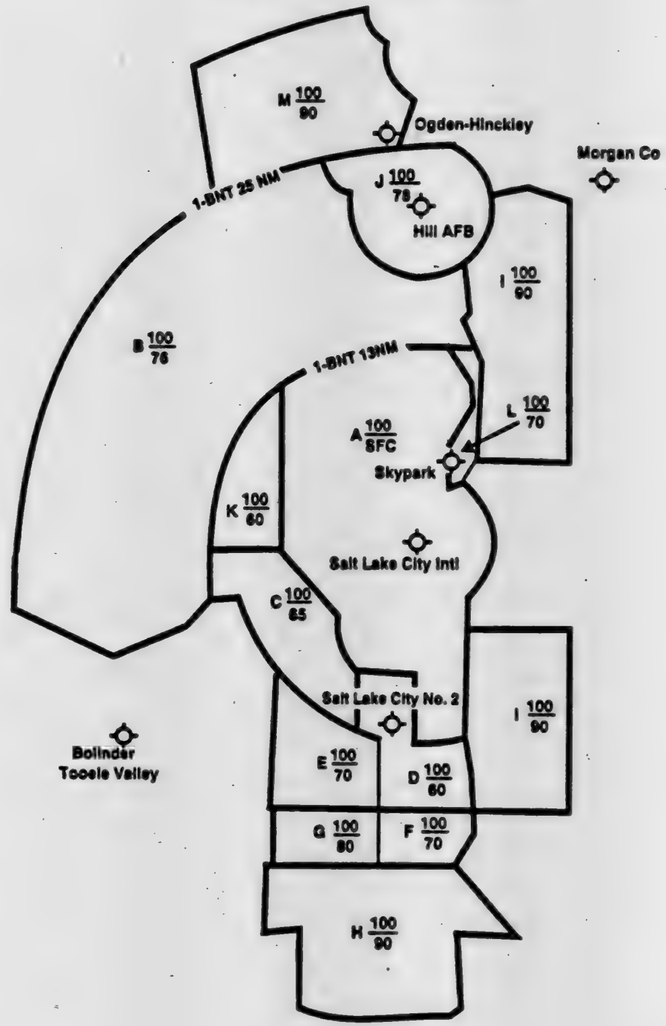
Acting Manager, Airspace-Rules and Aeronautical Information Division.

Appendix—Salt Lake City International Airport Class B Airspace Areas

Note: This appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4910–13–M

SALT LAKE CITY INTERNATIONAL AIRPORT
CLASS B AIRSPACE AREA
Field Elevation - 4227 feet
(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Publications Branch
ATP-210

[FR Doc. 95–19179 Filed 8–1–95; 11:12 am]
BILLING CODE 4910–13–C

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Friday
August 4, 1995

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, and 178
Intermediate Bulk Containers for Hazardous Materials; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173 and 178

[Docket No. HM–181E; Amdt. Nos. 171–134, 172–142, 173–243, 178–108]

RIN 2137–AC23

Intermediate Bulk Containers for Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; revisions and response to petitions for reconsideration.

SUMMARY: This amendment makes revisions to a final rule published in the **Federal Register** under Docket HM–181E (59 FR 38040, July 26, 1994) in response to a number of petitions for reconsideration. This document also clarifies and makes corrections to the final rule. That final rule established requirements for the construction, maintenance and use of intermediate bulk containers (IBCs) for the transportation of hazardous materials. These changes respond to petitions for reconsideration regarding IBC authorizations, design, construction and use, and align requirements for IBCs with revisions in the 8th edition of the U.N. Recommendations on the Transport of Dangerous Goods and the 27th revision of the International Maritime Organization's International Maritime Dangerous Goods (IMDG) Code.

DATES: This amendment is effective on October 1, 1995. However, immediate compliance with the regulations as amended herein is authorized.

Incorporation by reference: The incorporation by reference listed in this final rule is approved by the Director of the Office of the Federal Register as of October 1, 1995.

FOR FURTHER INFORMATION CONTACT: John Potter, Office of Hazardous Materials Standards, (202) 366–8553 or William Gramer, Office of Hazardous Materials Technology, (202) 366–4545, RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION: On July 26, 1994, the Research and Special Programs Administration published a final rule under Docket HM–181E (59 FR 38040) that revised the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) by incorporating requirements for the construction, maintenance and use of IBCs for the transportation of hazardous materials. In response to 29 petitions for reconsideration, this document revises, clarifies and makes corrections to the final rule. Petitioners recommended revisions to: (1) The policy stated in the preamble at 59 FR 38040 addressing exemption packagings affected by this final rule; (2) the special provisions for IBCs contained in § 172.102; (3) the provision for the manufacture and use of DOT specification 56 and 57 portable tanks provided in § 173.32(d); (4) operational requirements for reuse of IBCs in § 173.35(b); (5) generic authorizations for use of IBCs in §§ 173.240, 173.241, 173.242, and 173.243; (6) standards for rigid plastic and composite IBCs in §§ 178.706 and 178.707; (7) responsibility for the performance of UN-certified IBCs in § 178.801(b); (8) testing and certification of IBCs in § 178.803; and (9) application of the IBC vibration test in § 178.819.

Several petitions relating to IBC commodity authorizations, such as hydrogen peroxide aqueous solutions, were addressed in a final rule published under Docket HM–215A (59 FR 67390–67522, December 29, 1994).

Petitions Granted

In response to petitions, authorizations for use of IBCs for a number of materials are added to the § 172.101 Hazardous Materials Table. Some of these changes are consistent with many of the latest revised IBC authorizations in the International Maritime Organization's International Maritime Dangerous Goods (IMDG) Code. Others reflect prior safe hazardous materials shipping experience in DOT exemption bulk packagings. For example, IBC authorizations are revised for a number of Division 4.3 DANGEROUS WHEN WET materials in Packing Groups II and III, which were previously forbidden for transportation in IBCs. Many of these materials now are permitted in all sift-proof and water-resistant IBCs. In addition, certain Division 4.3 Packing Group I solid materials are authorized for transportation in IBCs, consistent with the IMDG Code. Prohibitions against use of IBCs are removed from "Cyclohexylamine" and "Hafnium powder, dry." A wider range of IBCs is permitted for "Toxic, liquids, organic, n.o.s.," and "Toxic liquid, inorganic, n.o.s.," Packing Group II.

One petitioner asked RSPA to add filling limit provisions to the IBC operational requirements in § 173.35 similar to those provided in § 173.24a(b) for non-bulk packagings. For example, the gross mass (or net mass in the case of flexible IBCs) marked on the IBC can be exceeded when the IBC is tested and certified for a Packing Group II liquid and filled with a Packing Group III solid; or an IBC is tested and certified for a Packing Group I solid and filled with a Packing Group II or Packing Group III solid. RSPA concurs and, accordingly, is adding a paragraph (l) to provide for this flexibility in IBC use. RSPA notes that the amount by which the gross mass of IBCs can be exceeded in these cases is based on the ratios between drop heights specified for Packing Groups I and III (2.25) and Packing Groups I and II, and II and III (1.5). IBCs certified for liquids may also be used for solids.

In response to a petition, a maximum net mass capacity standard of not less than 400 kilograms (882 pounds) is added in § 178.700(c)(1) for consistency with similar standards for non-bulk packagings in subpart L. To reduce the need for IBC retesting, RSPA grants a petition from the Rigid Intermediate Bulk Container Association by adding Note 6 to the table of IBC tests in § 178.803 to permit any desired sequencing of the vibration test for dual-marked, exemption IBCs and non-DOT specification portable tanks intended for export that were tested before October 1, 1994.

Several petitioners requested removal of the word "rotate" from the vibration test method prescribed for IBCs in § 178.819(b)(2). They contend that allowing an IBC to rotate would involve a "major redesign of all known testing platforms and restraining members." Section 178.608(b)(2) requires that non-bulk packagings be left free to rotate, a standard that may be inappropriate for IBCs which are unlikely to experience the same vibration stresses in transportation. RSPA further acknowledges that the vibration test requirement for DOT 56 and 57 portable tanks in §§ 178.252–3 and 178.253–5 allows only vertical motion. Therefore, the word "rotate" is removed from the test method stated in § 178.819(b)(2). However, RSPA will not restrict rotation if it is included in an established vibration test protocol.

One petitioner stated that general requirements in § 178.801(b) for assuring that each IBC is capable of meeting Part 178 performance standards are inconsistent with other provisions in the HMR. As written, the petitioner said, paragraph (b) makes the shipper "responsible for every aspect of [IBC] fabrication and testing, including those aspects that were not performed by the shipper." The petitioner suggested that paragraph (b) conform with final rules published under HM–215A clarifying §§ 173.22, 178.2 and 178.601(b) requiring shippers to be responsible for only the manufacturing functions they perform. RSPA concurs and paragraph (b) is revised accordingly.

Petitions Denied

A petitioner claimed that RSPA's exemption policy for IBCs established in the final rule (59 FR 38040) is unworkable for every exemption IBC considered to be "equivalent" to IBCs already meeting UN standards. The petitioner said no exemption IBC could meet terms in option 2 permitting exemption IBCs to be certified as UN standard packagings if they already conform with subpart N and O requirements. The petitioner said, "A builder of existing exemption tanks would have had to predict the tests and their order in testing that DOT prescribes." The petitioner observed that the proposed testing differed from tests prescribed in the final rule. The petitioner asked RSPA to add a note to the table of IBC tests in § 178.803 allowing exemption IBCs to be marked to indicate compliance with subparts N and O but that they need not "be tested as prescribed in this section." However, the petitioner said such IBCs "must be capable of passing all the applicable tests."

This request is denied. Exemption IBCs that meet new construction and performance testing standards in subparts N and O, under option 2, "may be remarked and certified as UN standard packagings." Under option 3, existing exemption IBCs developed under standards different from those adopted under subparts N and O "may be approved as a UN standard packaging" under the approval process provided in § 178.801(i) if they are shown to be equally effective and testing methods used are equivalent to UN standards. With respect to the petitioner's request, under option 3, manufacturers or users of IBCs differing from subpart O requirements in the way they were tested, including test sequences differing from the order of tests established in § 178.803, may demonstrate that IBCs developed under exemption are equally effective, including test methods.

Several petitioners requested indefinite use of exemption IBCs as long as they meet applicable periodic retest requirements. These requests are denied. Under the exemption policy stated at 59 FR 38040, an equivalent packaging may be approved by RSPA as a UN standard packaging under the provision in § 178.801(i).

A petitioner's request to revise § 173.35(b) to permit reuse of flexible IBCs is denied. As RSPA pointed out in the preamble to the final rule in HM–181E (59 FR 38042), there is a lack of sufficient evidence "that fiberboard, wooden or flexible IBCs are designed to be, or are suitable for, reuse in hazardous materials service."

Two petitioners asked RSPA to amend paragraph (c) of §§ 173.240 and 173.241 by adding the phrase "rigid intermediate bulk containers " to the titles of these paragraphs. They requested revisions to § 173.240(c) to authorize "sift-proof non-DOT specification portable tanks, closed bulk bins and rigid intermediate bulk containers suitable for transport of liquids," and to § 173.241(c) to authorize "non-DOT specification portable tanks and intermediate bulk containers suitable for transport of liquids." The petitions are denied since a non-specification bulk packaging fitting this description currently is permitted by paragraph (c) of these sections. In effect, any rigid enclosed packaging that is strong and tight (but not a flexible IBC), and constructed so that its contents will not leak under conditions normally incident to transportation meets requirements for a "closed bulk bin" in § 173.240(c), a "sift-proof non-DOT specification portable tank" in § 173.240(c), or a "non-DOT specification portable tank suitable for transport of liquids" in § 173.241(c).

Petitioners asked RSPA to authorize, under § 173.242, rigid plastic and composite IBCs for "Oxidizing substances, liquid, corrosive, n.o.s.," Packing Group II, and "Corrosive liquids, oxidizing, n.o.s.," Packing Group II. In the final rule, these materials are authorized in metal-only IBCs under § 173.243. The petitions are denied. RSPA believes there is an insufficient shipment history of these materials in a wide range of IBC design types to warrant broader IBC authorization.

RSPA is denying a petition to restore DOT 56 and 57 portable tank design and construction requirements in §§ 178.251 through 178.251–7, 178.252 and 178.253. The petitioner claimed that removal of these sections would lead to "unnecessary confusion and uncertainty" since new construction of these tanks is authorized through September 30, 1996. Removal of construction requirements for DOT Specification 56 and 57 portable tanks is consistent with removal of pre-HM–181 non-bulk packaging specifications four years prior to the date on which they were no longer permitted to be manufactured. For reference to DOT 56 and 57 specifications, manufacturers and users can retain the 1993 edition of 49 CFR Parts 100–199, as amended. However, RSPA encourages them to convert to the new standards as soon as practicable. A petitioner asked RSPA to add a "fusible" device to the pressure relief devices specified for metal, rigid plastic and composite IBCs in §§ 178.705(c)(2)(i), 178.706(c)(4) and 178.707(c)(3)(iv). This petition is denied as unnecessary. Fusible devices are currently permitted by the provision in each section that states pressure relief may be achieved by "other means of construction."

Petitions requesting revisions to §§ 178.706(c)(3) and 178.707(c)(3)(iii) to permit use of recycled materials for the construction of plastic and composite IBCs are denied. Although RSPA recognizes the benefits of recycling plastic waste, RSPA has not been provided with sufficient information to justify use of recycled plastic materials in the construction of IBCs.

Petitions to allow use of the "USA" mark on IBCs manufactured in other countries and intended for sale and use in the U.S. are denied. As clarified in § 178.3(b)(3) under Docket HM–215A (59 FR 67519, December 29, 1994), "the letters 'USA' may only be used to indicate that the IBC was manufactured in the United States." IBCs manufactured in a foreign country should conform to requirements of the competent authority of that country.

Clarifications and Corrections

In other revisions to this final rule, RSPA corrects U.S. standard conversions relating to the upper capacity for IBCs authorized for Packing Group I solids in § 173.242(d)(2)(i) to read "53 cubic feet" and "106 cubic feet," respectively. Also in § 173.242(d)(2), "flexible" and "fiberboard" IBCs (inadvertently omitted in the final rule) are authorized. In § 173.243(d)(2)(i), Packing Group I solids are authorized for transportation in metal IBCs with capacities up to three cubic meters (106 cubic feet). In § 178.700(c)(1)(i), the volumetric capacity for the body of a receptacle is specified as not more than three cubic meters (3,000 liters, 793 gallons, or 106 cubic feet) and not less than 0.45 meters (450 liters, 119 gallons, or 15.9 cubic feet).

RSPA is correcting § 173.243(d)(2) by removing references to IBCs other than metal. Section 178.705(c)(2)(ii) is clarified to show that the pressure relief requirement for metal IBCs is measured in gauge pressure and not absolute pressure. Thus, reference to the subtraction of atmospheric pressure is removed and reference to measurement of gauge pressure of the hazardous

material measured in the IBC is added in its place:

RSPA is aligning the table of IBC tests in § 178.803 with new provisions in the 8th revision of the UN Recommendations on the Transport of Dangerous Goods for the bottom lift and stacking tests. Therefore, in this final rule, rigid plastic and composite IBCs are required to be bottom lift-tested without qualification. References to Note 2 in the table specifying that test only if IBCs are "designed to be handled" this way are removed from rigid plastic and composite IBC design types. RSPA also is changing Note 2 to require metal IBCs to withstand either the top lift test or the bottom lift test. Note 7 is added to except metal, rigid plastic, composite, fiberboard and wooden IBCs from the stacking test if the IBC is not designed to be stacked.

In this final rule, RSPA also is making an editorial correction to § 173.306(e) by updating a reference to a national consensus standard for refrigerating machines. Section 173.306(e) is amended to replace the reference to ANSI B9.1 with a reference to ANSI/ASHRAE 15–1994, which has superseded ANSI B9.1.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous materials that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This final rule addresses covered subjects, under items (ii) and (v) above and, therefore, preempts State, local, or Indian tribe requirements not meeting the "substantively the same" standard. The Federal hazardous materials transportation law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and no later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of the July 26, 1994 final rule was January 13, 1995. RSPA has determined that the effective date of Federal preemption for this final rule will be November 1, 1995. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. Although this rule applies to certain shippers and carriers of hazardous materials in intermediate bulk containers, some of whom may be small entities, its economic impacts are minimal.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and assigned control number 2137–0510.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packagings and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Parts 171, 172, 173 and 178 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

§ 171.7 [Amended]

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the table in paragraph (a)(3), under "American National Standards Institute, Inc.", in column 1, the entry "ANSI B9.1–89, Safety Code for Mechanical Refrigeration" is revised to read "ANSI/ASHRAE 15–94, Safety Code for Mechanical Refrigeration".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In § 172.101, the following entries in the Hazardous Materials Table are revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§173.***) (8)			Quantity limitations (9)		Vessel stowage requirements (10)	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Alkali metal amides	4.3	UN1390	II	Dangerous when wet	A6, A7, A8, A19, A20, B106.	None	212	241	15 kg	50 kg	E	40
	Alkaline earth metal alloys, n.o.s.	4.3	UN1393	II	Dangerous when wet	A19, B101, B106.	None	212	241	15 kg	50 kg	E	
	Alkaline earth metal amalgams.	4.3	UN1392	I	Dangerous when wet	A19, B101, B106, N34, N40.	None	211	242	Forbidden.	15 kg	D	
	Aluminum ferrosilicon powder.	4.3	UN1395	II	Dangerous when wet, poison.	A19, B106, B108.	None	212	242	15 kg	50 kg	A	40, 85, 103
				III	Dangerous when wet, keep away from food.	A20, B106, B108.	None	213	241	25 kg	100kg	A	40, 85, 103
	Aluminum powder, uncoated.	4.3	UN1396	II	Dangerous when wet	A19, A20, B106, B108.	None	212	242	15 kg	50 kg	A	39
				III	Dangerous when wet	A20, B106, B108.	None	213	241	25 kg	100 kg	A	39
	Aluminum processing by-products.	4.3	UN3170	II	Dangerous when wet	B106	None	212	242	15 kg	50 kg	B	85, 103
	Aluminum solieon powder, uncoated.	4.3	UN1398	III	Dangerous when wet	B106	None	213	241	25 kg	100 kg	B	85, 103
				III	Dangerous when wet	A1, A19, B108.	None	213	241	25 kg	100 kg	A	40, 85, 103
	Barium	4.3	UN1400	II	Dangerous when wet	A19, B101, B106.	None	212	241	15 kg	50 kg	E	
	Calcium	4.3	UN1401	II	Dangerous when wet	B101, B106.	None	212	241	15 kg	50 kg	E	
	Calcium carbide	4.3	UN1402	I	Dangerous when wet	A1, A8, B55, B101, B106, N34.	None	211	242	Forbidden.	15 kg	B	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§173.***) (8)			Quantity limitations (9)		Vessel stowage requirements (10)	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				II	Dangerous when wet	A1, A8, B55, B101, B106, N34.	None	212	241	15 kg	50 kg	B	
	Calcium silicide	4.3	UN1405	II	Dangerous when wet	A19, B105, B106.	None	212	241	15 kg	50 kg	B	85, 103
				III	Dangerous when wet	A1, A19, B106, B108.	None	213	241	25 kg	100 kg	B	85, 103
	Cerium, *turnings or gritty powder.*	4.3	UN3078	II	Dangerous when wet	A1, B106, B109.	None	212	242	15 kg	50 kg	E	
	Cresylic acid	6.1	UN2022	II	Poison, corrosive	B110, T8.	None	202	243	1 L	30 L	B	
	Cyclohexylamine	8	UN2357	II	Corrosive, flammable liquid	B101, T8, T26.	None	202	243	1 L	30 L	A	40
	Hafnium powder, dry	4.2	UN2545	I	Spontaneously combustible	B100	None	211	242	Forbidden.	Forbidden.	D	
				II	Spontaneously combustible	A19, A20, B101, B106, N34.	None	212	241	15 kg	50 kg	D	
				III	Spontaneously combustible	B105, B106.	None	213	241	25 kg	100 kg	D	
	Lithium borohydride	4.3	UN1413	I	Dangerous when wet	A19, B100, N40.	None	211	242	Forbidden.	15 kg	E	
	Lithium nitride	4.3	UN2806	I	Dangerous when wet	A19, B101, B106, N40.	None	211	242	Forbidden.	15 kg	E	
	Lithium silicon	4.3	UN1417	II	Dangerous when wet	A19, A20, B105, B106.	None	212	241	15 kg	50 kg	A	85, 103
	Magnesium, powder *or* Magnesium alloys, powder.	4.3	UN1418	I	Dangerous when wet, spontaneously combustible.	A19, B56.	None	211	244	Forbidden.	15 kg	A	39
				II	Dangerous when wet, spontaneously combustible.	A19, B56, B101, B106.	None	212	241	15 kg	50 kg	A	39

				III	Dangerous when wet, spontaneously combustible.	A19, B56, B106, B108.	None	213	241	25 kg	100 kg	A	39
	Maneb stabilized *or* Maneb preparations, stabilized *against self-heating.*	4.3	UN2968	III	Dangerous when wet	54, A1, A19, B108.	None	213	242	25 kg	100 kg	B	34
	Metal hydrides, water reactive, n.o.s.	4.3	UN1409	I	Dangerous when wet	A19, B100, N34, N40.	None	211	242	Forbidden.	15 kg	D	
				II	Dangerous when wet	A19, B101, B106, N34, N40.	None	212	242	15 kg	50 kg	D	
	Metallic substance, water reactive, n.o.s.	4.3	UN3208	I	Dangerous when wet	B101, B106.	None	211	242	Forbidden.	15 kg	E	40
				II	Dangerous when wet	B101, B106.	None	212	242	15 kg	50 kg	E	40
				III	Dangerous when wet	B105, B108.	None	213	241	25 kg	100 kg	E	40
	Metallic substance, water reactive, self-heating, n.o.s.	4.3	UN3209	I	Dangerous when wet, spontaneously combustible.	B100	None	211	242	Forbidden.	15 kg	E	40
				II	Dangerous when wet, spontaneously combustible.	B101, B105.	None	212	242	15 kg	50 kg	E	40
				III	Dangerous when wet, spontaneously combustible.	B101, B105.	None	213	242	25 kg	100 kg	E	40
	Organometallic compound *or* Compound solution *or* Compound dispersion, water-reactive, flammable, n.o.s.	4.3	UN3207	I	Dangerous when wet, flammable liquid.		None	201	244	Forbidden.	1 L	E	40
				II	Dangerous when wet, flammable liquid.	B101, B106.	None	202	243	1 L	5 L	E	40
				III	Dangerous when wet, flammable liquid.	B106	None	203	242	5L	60 L	E	40
	Phosphorus pentasulfide, *free from yellow or white phosphorus.*	4.3	UN1340	II	Dangerous when wet, flammable solid.	A20, B59, B101, B106.	None	212	242	15 kg	50 kg	B	74
	Potassium borohydride	4.3	UN1870	I	Dangerous when wet	A19, B100, N40.	None	211	242	Forbidden.	15k	E	
	Sodium borohydride	4.3	UN1426	I	Dangerous when wet	B100, N40.	None	211	242	Forbidden.	15 kg	E	
	Toxic liquid, inorganic, n.o.s.	6.1	UN3287	I	Poison	T42	None	201	243	1 L	30L	A	
				II	Poison	T14, B110.	None	202	243	5 L	60L	A	
				III	Keep away from food	T7	153	203	241	60 L	220 L	A	
	Toxic, liquids, organic, n.o.s.	6.1	UN2810	I	Poison	T42	None	201	243	1L	30L	B	40
				II	Poison	B110, T14.	None	202	243	5 L	60L	B	40

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173.***) (8)			Quantity limitations (9)		Vessel stowage requirements (10)	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	Keep away from food	T7	153	203	241	60 L	220 L	A	40
	Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	I	Dangerous when wet, corrosive.		None	201	243	Forbidden.	1 L	D	
				II	Dangerous when wet, corrosive.	B106	None	202	243	1 L	5 L	E	85
				III	Dangerous when wet, corrosive.	B106	None	203	242	5 L	60 L	E	
	Water-reactive liquid, n.o.s	4.3	UN3148	I	Dangerous when wet		None	201	244	Forbidden.	1 L	E	40
				II	Dangerous when wet	B106	None	202	243	1 L	5 L	E	40
				III	Dangerous when wet	B106	None	203	242	5 L	60 L	E	40
	Water-reactive liquid, toxic, n.o.s.	4.3	UN3130	I	Dangerous when wet, poison.	A4	None	201	243	Forbidden.	1 L	D	
				II	Dangerous when wet, poison.	B106	None	202	243	1 L	5 L	E	85
				III	Dangerous when wet, keep away from food.	B106	None	203	242	5 L	60 L	E	85
	Water-reactive solid, corrosive, n.o.s.	4.3	UN3131	I	Dangerous when wet, corrosive.	B101, B106, N40.	None	211	242	Forbidden.	15 kg	D	
				II	Dangerous when wet, corrosive.	B101, B106.	None	212	242	15 kg	50 kg	E	85
				III	Dangerous when wet, corrosive.	B105, B106.	None	213	241	25 kg	100 kg	E	85
	Water-reactive solid, flammable, n.o.s.	4.3	UN3132	I	Dangerous when wet, flammable solid.	B101, B106, N40.	None	211	242	Forbidden.	15 kg	E	
				II	Dangerous when wet, flammable solid.	B101, B106.	None	212	242	15 kg	50 kg	E	
				III	Dangerous when wet, flammable solid.	B105, B106.	None	213	241	25 kg	100 kg	E	
	Water-reactive solid, n.o.s	4.3	UN2813	I	Dangerous when wet	B101, B106, N40.	None	211	242	Forbidden.	15 kg	E	40
				II	Dangerous when wet	B101, B106.	None	212	242	15 kg	50 kg	E	40
				III	Dangerous when wet	B105, B106.	None	213	241	25 kg	100 kg	E	40
	Water-reactive solid, self-heating, n.o.s.	4.3	UN3135	I	Dangerous when wet, spontaneously combustible.	B100, N40.	None	211	242	Forbidden.	15 kg	E	
				II	Dangerous when wet, spontaneously combustible.	B101, B106.	None	212	242	15 kg	50 kg	E	
				III	Dangerous when wet, spontaneously combustible.	B101, B106.	None	213	241	25 kg	100 kg	E	
	Water-reactive solid, toxic, n.o.s.	4.3	UN3134	I	Dangerous when wet, poison.	A8, B101, B106, N40.	None	211	242	Forbidden.	15 kg	D	
				II	Dangerous when wet, poison.	B105, B106.	None	212	242	15 kg	50 kg	E	85
				III	Dangerous when wet, keep away from food.	B105, B106.	None	213	241	25 kg	100 kg	E	85
	Zinc powder *or* Zinc dust	4.3	UN1436	I	Dangerous when wet, spontaneously combustible.	A19, B109, N40.	None	211	242	Forbidden.	15 kg	A	
				II	Dangerous when wet, spontaneously combustible.	A19, B109.	None	212	242	15 kg	50 kg	A	
				III	Dangerous when wet, spontaneously combustible.	B108	None	213	242	25 kg	100 kg	A	

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

5. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

6. In § 173.24b, paragraph (d)(2) is revised to read as follows:

§ 173.24b Additional general requirements for bulk packagings.

* * * * *

(d) * * *

(1) * * *

(2) Except as otherwise provided in this subchapter, exceeds the maximum weight of lading marked on the specification plate.

7. In § 173.35, paragraph l is added to read as follows:

§ 173.35 Hazardous materials in intermediate bulk containers

* * * * *

(l) *Intermediate bulk container filling limits.*

(1) Except as provided in this section, an intermediate bulk container may not be filled with a hazardous material in excess of the maximum gross mass marked on that container.

(2) An intermediate bulk container which is tested and marked for Packing Group II liquid materials may be filled with a Packing Group III liquid material to a gross mass not exceeding 1.5 times the maximum gross mass marked on that container, if all the performance criteria can still be met at the higher gross mass.

(3) An intermediate bulk container which is tested and marked for liquid hazardous materials may be filled with a solid hazardous material to a gross mass not exceeding the maximum gross mass marked on that container. In addition, an intermediate bulk container intended for the transport of liquids which is tested and marked for Packing Group II liquid materials may be filled with a Packing Group III solid hazardous material to a gross mass not exceeding the marked maximum gross mass multiplied by 1.5 if all the performance criteria can still be met at the higher gross mass.

(4) An intermediate bulk container which is tested and marked for Packing Group I solid materials may be filled with a Packing Group II solid material to a gross mass not exceeding the maximum gross mass marked on that container, multiplied by 1.5, if all the performance criteria can be met at the higher gross mass; or a Packing Group III solid material to a gross mass not exceeding the maximum gross mass marked on the intermediate bulk container, multiplied by 2.25, if all the performance criteria can be met at the higher gross mass. An intermediate bulk container which is tested and marked for Packing Group II solid materials may be filled with a Packing Group III solid material to a gross mass not exceeding the maximum gross mass marked on the intermediate bulk container, multiplied by 1.5.

§ 173.35 [Amended]

8. In addition, in § 173.35, in paragraph (j), the references to "35.3 cubic feet" and "17.7 cubic feet" are amended to read "106 cubic feet" and "53 cubic feet" respectively.

§ 173.242 [Amended]

9. In paragraph (d)(2)(i) of § 173.242, the following changes are made:

a. The references to "35.4 cubic feet" and "17.7 cubic feet" are amended to read "106 cubic feet" and "53 cubic feet" respectively.

b. After the word "composite", the words "flexible, fiberboard" are added.

10. In § 173.243, paragraph (d)(2) is revised as follows:

§ 173.243 Bulk packaging for certain high hazard liquids and dual hazard materials which pose a moderate hazard.

* * * * *

(d) * * *

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) No Packing Group I liquids or materials classified as Division 4.2 Packing Group I are authorized in intermediate bulk containers.

(ii) Packing Group I solids are authorized only in metal intermediate bulk containers with capacities up to three cubic meters (106 cubic feet); and

(iii) Liquids with a vapor pressure greater than 110 kPa (16 psig) at 50 °C (122 °F), or 130 kPa (18.9 psig) at 55 °C (131 °F), are not authorized in metal intermediate bulk containers.

* * * * *

11. In § 173.306, paragraph (e)(1)(i) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(e) * * *

(1) * * *

(i) Each pressure vessel may not contain more than 5,000 pounds of Group A1 refrigerant as classified in ANSI/ASHRAE Standard 15 or not more than 50 pounds of refrigerant other than Group A1.

* * * * *

§ 173.306 [Amended]

12. In addition, in § 173.306, paragraphs (e)(1)(iii), (e)(1)(v) and (e)(1)(vi) are amended by removing the phrase "American National Standard B9.1." and replacing it with the phrase "ANSI/ASHRAE 15".

PART 178—SPECIFICATIONS FOR PACKAGINGS

13. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 178.700, paragraph (c)(1) is revised to read as follows:

§ 178.700 Purpose, scope and definitions

* * * * *

(c) * * *

(1) *Body* means the receptacle proper (including openings and their closures, but not including service equipment), that has a volumetric capacity of not more than three cubic meters (3,000 liters, 793 gallons, or 106 cubic feet) and not less than 0.45 cubic meters (450 liters, 119 gallons, or 15.9 cubic feet) or a maximum net mass of not less than 400 kilograms (882) pounds.

* * * * *

§ 178.705 [Amended]

15. In § 178.705, in paragraph (c)(2)(ii), the words "minus 100 kPa (14.5 psig)" are removed and the words "measured in the intermediate bulk container" are added in their place.

§ 178.710 [Amended]

16. In § 178.710, in paragraph (c)(5), the words "throughout the life of the inner receptacle" are removed and the words "throughout the life of the container" are added in their place.

17. In § 178.801, paragraph (b) is revised to read as follows:

§ 178.801 General requirements

* * * * *

(a) * * *

(b) *Responsibility.* It is the responsibility of the intermediate bulk container manufacturer to assure that each intermediate bulk container is capable of passing the prescribed tests. To the extent that an intermediate bulk container assembly function, including final closure, is performed by the person who offers a hazardous material for transportation, that person is responsible for performing the function in accordance with §§ 173.22 and 178.2 of this subchapter.

* * * * *

18. Section 178.803 is revised to read as follows:

§ 178.803 Testing and certification of intermediate bulk containers.

Tests required for the certification of each intermediate bulk container design type are specified in the following table. The letter X indicates that one intermediate bulk container (except where noted) of each design type must be subjected to the tests in the order presented:

Performance test	Intermediate Bulk Container (IBC) type					
	Metal IBCs	Rigid plastic IBCs	Composite IBCs	Fiberboard IBCs	Wooden IBCs	Flexible IBCs
Vibration	[6]X	[6]X	[6]X	[6]X	[6]X	[1,5]↓
Bottom lift	[2]X	X	X	X	X	
Top lift	[2]X	[2]X	[2]X			[2,5]X
Stacking	[7]X	[7]X	[7]X	[7]X	[7]X	[5]X
Leakproofness	[3]X	[3]X	[3]X			
Hydrostatic	[4]X	[3]X	[3]X			
Drop	[4]X	[4]X	[4]X	[4]X	[4]X	[5]X
Topple						[5]X
Righting						[2,5]X
Tear						[5]X

[1] Flexible intermediate bulk containers must be capable of withstanding the vibration test.
[2] This test must be performed only if intermediate bulk containers are designed to be handled this way. For metal intermediate bulk containers, at least one of the bottom lift or top lift tests must be performed.
[3] The leakproofness and hydrostatic pressure tests are required only for intermediate bulk containers intended to contain liquids or intended to contain solids loaded or discharged under pressure.
[4] Another intermediate bulk container of the same design type may be used for the drop test set forth in § 178.810 of this subchapter.
[5] Another different flexible intermediate bulk container of the same design type may be used for each test.
[6] The vibration test may be performed in another order for intermediate bulk containers manufactured and tested under provisions of an exemption before October 1, 1994 and for non-DOT specification portable tanks tested before October 1, 1994, intended for export.
[7] This test must be performed only if the intermediate bulk container is designed to be stacked.

§ 178.819 [Amended]

19. In § 178.819, in paragraph (b)(2), the word "rotate" is removed and the words "and bounce" are added in its place.

Issued in Washington, DC on July 31, 1995, under authority delegated in 49 CFR Part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–19157 Filed 8–3–95; 8:45 am]

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August 4, 1995

Part VI

Environmental Protection Agency

40 CFR Parts 302 and 355

Administrative Reporting Exemptions for Certain Radionuclide Releases; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[FRL–5268–9]

Administrative Reporting Exemptions for Certain Radionuclide Releases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking requests comments on broader administrative exemptions from the release reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Emergency Planning and Community Right-to-Know Act. In particular, the Environmental Protection Agency (EPA) is proposing to grant reporting exemptions for releases of naturally occurring radionuclides associated with land disturbance incidental to extraction activities at certain kinds of mines, and coal and coal ash piles at all kinds of sites. EPA also is requesting comments on two alternatives to these exemptions.

These reporting exemptions are being proposed in response to comments on a November 30, 1992 proposed rule on administrative reporting exemptions (57 FR 56726).

EPA thoroughly evaluated the radionuclide concentrations in various mining materials, coal, and coal ash relative to background levels to determine the scope of the proposed reporting exemptions; thus, this document reflects a sound, scientific approach. The exemptions would be consistent with the Agency's common sense goals in that they would eliminate unnecessary reporting burdens and allow EPA to focus its resources on the most serious releases. The reporting exemptions would result in an estimated net cost savings to industry of approximately $455,000 annually.

DATES: Comments must be submitted on or before October 3, 1995.

ADDRESSES: *Submittal of Comments:* Comments should be submitted in triplicate (no facsimiles or tapes) to: Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–8917. Please note that this is the mailing address only. Documents are available for viewing, by appointment only, at the address provided below in the "Document Viewing" section.

Document Viewing: Copies of materials relevant to this rulemaking are contained in Docket Number 102RQ–RN–2 at EPA Headquarters at the following address: U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. The docket is available for viewing, by appointment only, after the appearance of this rule. An appointment to view the docket can be made by calling the Docket Coordinator at 703/603–8917. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please note that this is the visiting address only. Mail comments to the address listed above in the "Submittal of Comments" section.

The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, an administrative fee of $25 and a charge of $0.15 per page for each page after page 266 will be incurred. The docket will mail copies of materials to requestors who are outside the Washington, DC metropolitan area.

Release Notification: The toll-free telephone number of the National Response Center is 800/424–8802; in the Washington, DC metropolitan area, the number is 202/267–2675. The facsimile number for the National Response Center is 202/267–2165 and the telex number is 892427.

FOR FURTHER INFORMATION CONTACT: The RCRA/UST, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810); the Telecommunications Device for the Deaf (TDD) Hotline at 800/553–7672 (in the Washington, DC metropolitan area, contact 703/486–3323); or Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or at 703/603–8760.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of this Rulemaking
  C. Consultation and Outreach Activities
II. Regulatory Reporting Exemptions
  A. Proposed Exemptions
  B. Alternative Exemptions
III. Regulatory Analyses
  A. Executive Order 12866
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. Unfunded Mandates

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510), 42 U.S.C. 9601 et seq., as amended, established broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. Section 101(14) of CERCLA defines the term "hazardous substance" primarily by reference to various Federal environmental statutes.

Under section 103(a) of CERCLA, the person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in an amount equal to or greater than its reportable quantity (RQ) must immediately notify the National Response Center (see 40 CFR 302.6). In addition, the person in charge of a facility from which a CERCLA hazardous substance has been released in an amount equal to or greater than its RQ must immediately notify State and local response authorities, as required by section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (Pub. L. 99–499), 42 U.S.C. 11001 et seq. (see 40 CFR 355.40). As established by EPA in an earlier RQ rulemaking (50 FR 13463, April 4, 1985), a 24-hour period is used for measuring whether an RQ or more of a hazardous substance has been released (i.e., only releases of an RQ or more within 24 hours need to be reported) (see 40 CFR 302.6(a)).

Section 102(b) of CERCLA establishes RQs at one pound for releases of hazardous substances, except for those substances for which RQs were established pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust the RQs for all hazardous substances by regulation.

A major purpose of the section 103(a) notification requirements is to alert the appropriate government officials to releases of hazardous substances that may require a response to protect public health or welfare or the environment. EPA emphasizes that an RQ is merely a trigger for informing the government of a release so that the appropriate government personnel can evaluate the need for a response action and can undertake any necessary response action in a timely fashion. Federal personnel evaluate all reported releases, but in some cases will not initiate a response because the release of an RQ does not pose a hazard in all circumstances. Government personnel assess each reported release on a case-by-case basis to determine the appropriate response action, if any.

CERCLA sections 102(a), 103, and 115 (the general rulemaking authority under CERCLA) together provide EPA with authority to grant administrative reporting exemptions. Such exemptions may be granted for releases of hazardous substances that pose little or no risk or to which a Federal response is infeasible or inappropriate. Requiring reports of such releases serves little or no useful purpose and could, instead, impose a significant burden on the Federal response system and on the persons responsible for notifying the Federal government of the release. Through such reporting exemptions, therefore, the Federal response system is able to more efficiently implement CERCLA and EPCRA and more effectively focus on reports of releases that are more likely to pose a significant hazard to human health and the environment.

B. Background of This Rulemaking

Radionuclides are CERCLA hazardous substances because they are listed as hazardous air pollutants under section 112 of the Clean Air Act. Radionuclides initially had a one-pound RQ as established by CERCLA section 102(b). EPA recognized that an RQ of one pound for radionuclides was not appropriate because radionuclides are not generally measured in units of pounds, and releases of much less than one pound of radionuclides may present a substantial threat to public health or welfare or the environment. On March 16, 1987, EPA published a Notice of Proposed Rulemaking (NPRM) to adjust the RQ for radionuclide releases (52 FR 8172), with the comment period ending on May 15, 1987. A total of 28 comment letters, totaling about 150 pages, were received. The comments received, together with the Agency's responses, are contained in "Responses to Comments on the Notice of Proposed Rulemaking on the Adjustment of Reportable Quantities for Radionuclides" (Responses to Comments), which is available for inspection in Docket Number 102RQ–RN located at the U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

The Agency promulgated a final rule (54 FR 22524; May 24, 1989) to adjust the RQs for all (approximately 1,500) radionuclides. In preparing the final rule, EPA considered carefully all of the public comments submitted on the proposals made in the March 16, 1987 NPRM. The final rule granted four administrative exemptions from CERCLA section 103 and EPCRA section 304 reporting requirements based on those comments. In particular, the Agency exempted: (1) Releases of naturally occurring radionuclides from large generally undisturbed land holdings, such as golf courses and parks; (2) releases of radionuclides naturally occurring from the disturbance of large areas of land for purposes other than mining, such as farming or building construction; (3) releases of radionuclides from the dumping of coal and coal ash at utility and industrial facilities with coal-fired boilers; and (4) radionuclide releases to all media from coal and coal ash piles at utility and industrial facilities with coal-fired boilers.

Following the final rulemaking, the American Mining Congress (AMC), The Fertilizer Institute (TFI), and others challenged the rule in the United States Court of Appeals for the District of Columbia in *TFI* v. *EPA* (935 F2d 1303). In the litigation, AMC and TFI argued that EPA violated the Administrative Procedure Act (APA) by failing to provide notice and opportunity to comment on the proposed exemptions. The petitioners also argued that it was arbitrary and capricious for EPA to discriminate against mining by excluding it from the land disturbance exemption.

The Court found that the administrative reporting exemptions were improperly promulgated because EPA failed to provide adequate notice of, and opportunity for public comment on, those exemptions. The Court, however, left the four exemptions in place while the Agency undertakes a new round of notice and comment rulemaking.

In a proposed rule published on November 30, 1992 (57 FR 56726), the Agency complied with the Court's decision by providing notice of, and requesting comment on, the same four exemptions from CERCLA section 103 and EPCRA section 304 notification requirements that were promulgated in the 1989 final radionuclide RQ adjustment regulation. EPA requested that public comments on the November 30, 1992 proposal be submitted by January 29, 1993. In response to several requests for an extension to the comment period, and in the interest of allowing the public greater opportunity to evaluate the issues raised in the November 30, 1992 NPRM, EPA re-opened the public comment period for an additional 60 days beginning on March 5, 1993 (58 FR 12876). All background materials and public comments related to the November 30, 1992 proposal are available for inspection in Docket Number 102RQ–RN–1 located at the U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

A total of 27 comment letters, totalling more than 750 pages, were received on the November 30, 1992 NPRM, including two after the initial deadline and one after the close of the second comment period. These comments raised a number of issues that the Agency cannot resolve without additional information and analysis. Chief among these issues are:

—Do radionuclide releases from land disturbance incidental to extraction activities at mines pose a greater risk than such releases from farming and construction?

—Do coal and coal ash piles at sites without coal-fired boilers (e.g., coal piles at mines, railroad stockyards, and steel mills, and coal ash disposed of in off-site landfills) pose a greater radiological threat than such piles at boiler sites?

—Is the government likely to respond to radionuclide releases from land disturbance incidental to extraction activities or coal and coal ash piles at non-boiler sites, and if so, what response realistically can be taken?

After reviewing the public comment letters and evaluating these issues, the Agency has decided to issue this supplemental proposal requesting information and comment on expanded reporting exemptions for certain radionuclide releases.

C. Consultation and Outreach Activities

EPA has undertaken a number of activities to involve interested stakeholders in considering and developing this supplemental proposal. The November 30, 1992 NPRM served as a basis for informing and soliciting comments from all parties on the original reporting exemptions for four categories of radionuclide releases. Comment letters from mining trade organizations, individual mining companies, electric power generators and trade organizations, railroads, steel manufacturers, private citizens, States, and others were received and served as the prime impetus for considering broader exemptions. At their request, EPA met with representatives of AMC and TFI on January 22, 1993 to hear their issues and concerns regarding the November 30, 1992 NPRM. Following this meeting and the receipt of requests submitted by commenters, EPA re-opened the public comment period for an additional 60 days to give

stakeholders ample opportunity to fully address their concerns. EPA then met again with representatives of AMC and TFI, at their request, on February 25, 1994 to receive further information and hear their views on the matter.

This supplemental proposal was developed based on careful consideration of all information and comments received since the reporting exemptions for certain radionuclide releases were originally promulgated. EPA will develop a final rule on this matter based on combined information and comments received on both the November 30, 1992, NPRM and this supplemental proposal.

II. Regulatory Reporting Exemptions

A. Proposed Exemptions

EPA is proposing to broaden the present reporting exemption for land disturbance activities to include land disturbance incidental to extraction activities at all mines except certain categories of mines that are likely to handle raw materials with "elevated" radionuclide concentrations. The particular types of mines that would *not* be within the scope of the reporting exemption would be uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines. For the purpose of this preamble and proposed rule, mines that extract monazite (a particular kind of rare earth mineral) for its thorium content are considered rare earth mines. Releases of naturally occurring radionuclides from land disturbance at all other types of mines would be exempted from CERCLA section 103 and EPCRA section 304 reporting requirements. For the purpose of this proposal, land disturbance incidental to extraction activities would include land clearing, overburden removal and stockpiling, and excavating, handling, transporting, and storing ores and other raw materials. Beneficiation and mineral processing activities, including the associated handling, transporting, and storing of bulk materials, would not be included within the scope of the exemption because such operations may tend to (1) concentrate radionuclides in waste streams or other materials well above natural background levels, and/or (2) result in substantially greater releases than associated with land disturbance incidental to extraction (e.g., smokestack emissions from smelters may far exceed fugitive releases from mining). Additionally, this broader exemption would exempt radionuclide releases from the subject land disturbance activities only from CERCLA section 103 and EPCRA section 304 reporting requirements, not from CERCLA response or liability provisions.

EPA also is proposing to broaden the existing exemptions for coal and coal ash piles to include radionuclide releases to and from coal and coal ash piles at all kinds of sites, not just sites where there is a coal-fired boiler. As with the broader land disturbance exemption, this exemption for coal and coal ash piles would apply only to CERCLA section 103 and EPCRA section 304 reporting requirements, not to the related response or liability provisions. In the 1989 final radionuclide RQ adjustment rulemaking, the reporting exemptions for radionuclide releases to and from coal and coal ash piles at boiler sites were granted based both upon the risks posed and the appropriateness of a federal response to such releases under CERCLA (54 FR 22529, May 24, 1989). The exemptions were limited to only boiler sites because there was sufficient information available to quantify the radiological risks of coal and coal ash piles at boiler sites, but not other kinds of sites. As discussed in more detail below, EPA is proposing today that a quantitative risk assessment is not necessary to support a CERCLA and EPCRA reporting exemption, if threshold questions about the appropriateness and feasibility of a federal response can be answered by a simple determination that radionuclide releases are at or near natural background levels. While this approach would be a departure from the detailed risk analysis performed for coal and coal ash piles at boiler sites, it would in fact be consistent with the original exemptions granted for undisturbed land holdings and land disturbance activities such as farming and construction, which were based on a qualitative review of radionuclide releases relative to background rather than a quantitative risk assessment.

EPA is proposing these broader exemptions for three primary reasons, which apply equally to both land disturbance at certain mines and to coal and coal ash piles at non-boiler sites. First, the concentrations of naturally occurring radionuclides in the different materials that would be subject to the exemption (e.g., overburden and ores in the subject mining sectors, coal, and coal ash) are generally within the range of "typical" background concentrations in surficial rocks and soils in the U.S. Second, EPA believes that a CERCLA response, to the release otherwise reportable, would be very unlikely and possibly infeasible or inappropriate, because (1) the concentrations of materials being handled are at or near background, and (2) the resulting radionuclide releases are expected to be continuously low, spread over large areas, and widely dispersed in the environment. Third, the submission of individual notifications of these releases does not appear necessary for the government to assess whether a response action is needed, since the releases should be similarly low across all sites subject to the broader exemptions. As a result, the broader reporting exemptions are intended to allow EPA to focus its resources on the most serious releases and to protect public health and welfare and the environment more effectively and efficiently. At the same time, the exemptions would eliminate unnecessary reporting burdens on persons responsible for land disturbance at certain mine sites and any sites where coal or coal ash is stored or disposed.

With respect to radionuclide concentrations, EPA reviewed available data on the concentrations of naturally occurring radionuclides in surficial rocks and soils, as well as in various ores, coal, and coal ash. These data are presented in a Technical Background Document ("Technical Background Document Supporting Proposed Administrative Reporting Exemptions for Certain Releases of Radionuclides") available for inspection in the U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. As discussed in more detail in this document, typical concentrations of uranium-238, thorium-232, and their respective decay products in surficial rocks and soils in the U.S. hover around 1 picocurie per gram (pCi/g), although data developed by Myrick et al.[1] and other researchers show that uranium-238 concentrations may range from 0.12 to 3.8 pCi/g and thorium-232 concentrations may range from 0.10 to 3.4 pCi/g. Concentrations well above these typical values, however, are known to occur in certain hot spot areas of the country. For example, elevated radioactivity has been observed in association with certain faults and shear zones in the Reading Prong region of Pennsylvania, New York, and New Jersey, with uranium-238 concentrations as high as 27 pCi/g being reported in one "profound case."[2] Similarly, uranium-238 concentrations

[1] Myrick, T.E., B.A. Berven, and F.F. Haywood, "Determination of Concentrations of Selected Radionuclides in Surface Soil in the U.S.," *Health Physics*, Vol. 45, No. 3 (September), pp. 631–642, 1983.

[2] Smith et al., "Radon: A Profound Case," Pennsylvania Geology, Volume 18, No. 2, p. 1–7, 1987.

of 20 pCi/g or more have been observed in isolated spots in central Florida where phosphate deposits are exposed or near the land surface.

Available data indicate that the radionuclide concentrations in many mining materials, coal, and coal ash are generally within the range reported for typical background. For example, as shown in the Technical Background Document supporting this proposed rule, all available data on the uranium-238 and thorium-232 concentrations in iron ore, zinc ore, limestone, clay, and fluorspar are within the range reported by Myrick et al. for background surface soils. Ninety-eight percent of all coal samples analyzed in support of EPA's 1989 final airborne emission standards for radionuclides were also within the typical background range; concentrations significantly above this range (between 20 and 43 pCi/g of uranium-238) were observed in only two out of more than 3,700 coal samples analyzed. The radioactivity of coal ash is usually higher than that of coal (estimated to be about ten times higher). However, typical coal ashes are expected to contain 4.3 pCi/g of uranium-238 and 3.5 pCi/g of thorium-232, which are only slightly higher than the background range reported by Myrick et al. Bauxite (aluminum) ore also can contain radionuclide concentrations that are slightly elevated compared to normal background (around 6 pCi/g of thorium-232 and 7 pCi/g of uranium-238), but still relatively low compared to the levels that naturally exist in surface rocks and soils in some areas of the country.

Most data indicate that radionuclide concentrations in copper ores are at or near typical background levels. For example, a 1982 EPA study[3] reports that the uranium-238 concentration in copper ore ranges from 0.79 pCi/g at an underground mine to 2.2 pCi/g at a surface mine. The concentration of thorium-232 is reported to range from 0.62 pCi/g at an underground mine to 3.1 pCi/g at a surface mine. These levels fall within the background ranges for surficial soils as reported by Myrick et al. Elevated levels, however, have been observed in certain copper ores from Arizona, Utah, and New Mexico (see the Technical Background Document for more information). Based on current information and understanding, EPA believes that many of these elevated readings are probably reflective of a biased sampling program, and that large site averages are likely to be lower and approaching typical background levels. EPA requests more reliable and current data on the radionuclide concentrations in copper ores along with comments on how these ores should be treated for the purpose of the final reporting exemption rule. If found to be necessary based on data and other information submitted during the comment period, land disturbance incidental to copper mining could be grouped with those mining sectors that would not be granted a reporting exemption in the final rule.

[3] U.S. EPA, "Emissions of Naturally Occurring Radioactivity from Aluminum and Copper Facilities," Office of Radiation Programs, Las Vegas Facility, NV, EPA–520/6–82–018, 1982.

The relatively low radionuclide concentrations reported for these different materials do not necessarily mean that the risks associated with radionuclide releases from many types of extraction sites and coal and coal ash piles are low or representative of undisturbed background. Indeed, many factors associated with the nature of the materials, management practices, and environmental and population characteristics at these sites would need to be studied in substantially more detail before it could be demonstrated that such risks are low in all or most cases. However, based on the relatively low radionuclide concentrations and the generally low-level, diffuse releases associated with the activities involved (land disturbance incidental to mining extraction; transporting, dumping, and storing coal; and transporting, dumping, storing, and disposing of coal ash), EPA believes that a CERCLA removal or remedial response to such radionuclide releases would very rarely, if ever, be necessary. Moreover, it is not clear that it would be feasible or practical to mount a CERCLA response at these types of sites, since the materials in question already have radionuclide concentrations that are likely to be at or near background and CERCLA responses would not normally clean up to below background levels. Any effort to remove the subject extraction materials, coal, or coal ash or cover these materials with soil, for example, would leave exposed soils that would have comparable concentrations of naturally occurring radionuclides. Therefore, EPA believes that reporting exemptions are warranted because continued evaluation and reporting of such radionuclide releases serves no useful purpose and, in fact, places an unnecessary burden on society. CERCLA response and liability provisions, however, would remain intact, enabling a response if a serious radiation threat is ever discovered by other means (e.g., Regional and State inspections) at an exempted mine or coal or coal ash pile.

This same logic does not necessarily hold for other types of extraction sites that handle ores and other raw materials that routinely have radionuclide concentrations well above background levels. As discussed in more detail in the Technical Background Document supporting this proposed rule ("Technical Background Document Supporting Proposed Administrative Reporting Exemptions for Certain Releases of Radionuclides," available for inspection in the Superfund Docket), the materials extracted at uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines can have elevated concentrations of uranium-238 and/or thorium-232, along with their respective decay products. For example:

- Uranium ore has a uranium-238 concentration on the order of 280–560 pCi/g, although concentrations as high as 760 pCi/g are reported in the literature.
- Uranium-238 concentrations in phosphate rock range from 3–4 pCi/g in Tennessee to 20–60 pCi/g in other States (Florida, North Carolina, Idaho, Montana, Wyoming, and Utah). Concentrations as high as 270 pCi/g of uranium-238 have been reported.
- No data are available on the radionuclide concentrations in domestically mined tin ores. However, available data show that tin slag (produced from tin ore processing) contains 17–34 pCi/g of uranium-238. In addition, concentrated processed ores from Malaysia have been shown to contain 1,160 to 8,830 pCi/g of thorium-238.
- Some titanium ores (rutile and leucoxene) are reported to contain 12–14 pCi/g of uranium-238 and 1–10 pCi/g of thorium-232.
- Zircon (zirconium and hafnium ore) has been measured to contain 13 pCi/g of radium-226, a decay product of uranium-238 (which would be expected to be present at about the same concentration as radium-226). Measurements of radium-226 concentrations in processed ore concentrates from South Africa are as high as 200 pCi/g.
- Vanadium-bearing ores are commonly the same as uranium ores, because vanadium is often recovered as a coproduct from uranium ore. Ores recovered primarily for their vanadium content contain lower radionuclide concentrations than uranium ore, but still appear to contain uranium at levels higher than typical background (in the 30 to 58 pCi/g range).
- Monazite, an ore mined for its rare earth and thorium content, typically

contains 3,900 pCi/g of thorium and 1,800 pCi/g of uranium. Another rare earth ore, bastnasite, typically contains less than 97 pCi/g of thorium.

These concentrations generally are far above typical background concentrations expected in surface soils across most of the U.S. (i.e., uranium-238 ranging from 0.12 to 3.8 pCi/g, with an average of 1 pCi/g, and thorium-232 ranging from 0.10 to 3.4 pCi/g, with an average of 1 pCi/g). The concentrations in uranium ore, phosphate rock, and rare earth ores (including monazite mined for its thorium content) also are above the elevated background concentrations known to exist at or near the land surface in certain hot spot regions of the country, such as the Reading Prong region.

Just as the relatively low concentrations in iron, zinc, limestone, copper, and other mining sectors proposed to be exempted do not necessarily mean that the radiation risks are low, the relatively high concentrations encountered during uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mining do not necessarily mean that the radiation risks at these sites are high. To the contrary, EPA's risk analysis[4] supporting the National Emission Standards for Hazardous Air Pollutants (NESHAPs) shows that airborne emissions of radionuclides from surface uranium mines result in a maximally exposed individual risk of fatal cancer of 5×10^{-5}. Furthermore, U.S. Nuclear Regulatory Commission licenses control radionuclide releases to all media from in-situ uranium mines and an EPA NESHAP limits radon emissions to the air from underground uranium mines (40 CFR part 61, subpart B); as a consequence, releases in compliance with these limits may be federally permitted under CERCLA and thus excluded from CERCLA reporting and liability requirements.

EPA believes, however, that the elevated radionuclide concentrations in raw materials handled at uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines distinguish such materials from the soil and rock disturbed at the vast majority of farming and construction sites across the U.S. When these elevated radionuclide concentrations are coupled with other factors that tend to distinguish mining from farming and construction—generally much larger sites, larger quantities of earthen materials moved and stockpiled, longer-term and more frequent land disturbances at a given site, and frequently substantially greater depths uncovered (see the Technical Background Document for more detail)—EPA believes there is a reasonable basis for not including uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mining in the reporting exemption for land disturbance activities. Again, this does not mean that the radiation risks at such mines are necessarily high, but only that, in EPA's judgment, further evaluation would be required before it can be concluded with a sufficient degree of confidence that such risks are indeed low and that a government response would be unwarranted or infeasible.

Commenters wishing to support exemptions for uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mining and wishing to obtain a reporting exemption are requested to submit particular kinds of information along with their comments on this proposal. Data and analyses regarding the radionuclide concentrations in ores and other raw materials handled in these mining sectors relative to the undisturbed, naturally occurring levels at or near the land surface around the mine sites would be especially helpful. If such data and analyses can demonstrate that the radionuclide concentrations in the ores and raw materials being handled are generally within the normal background range for surficial rocks and soils in the same area, a basis for broadening the reporting exemptions further to include these mining sectors may exist. If such a demonstration cannot be made, EPA requests information on special circumstances that would make a CERCLA response to radionuclide releases at these mine sites very unlikely, infeasible, and/or inappropriate.

These special circumstances could include a demonstration that the radiation exposures and risks, for all radionuclides and all possible exposure pathways (not just radon and not just the air pathway), are low (e.g., 10^{-4} or lower lifetime cancer risk) for reasonably maximally exposed individuals, including closest offsite residents and onsite workers. Any analysis of risks should focus either on all sites within a given mining sector or on a model site that is demonstrated to conservatively represent other sites. Anecdotal information or basic assertions regarding independent factors that might influence risk, such as generalized statements that mines are commonly located in remote areas or that radon released from mines disperses rapidly and causes no incremental exposure above natural background radiation, are not convincing unless supported by data and an integrated risk analysis. Moreover, EPA believes that broad comparisons of the cumulative amount of soil moved or the cumulative amount of radon released at all mines versus all farming and construction sites are immaterial, since the need for a CERCLA response hinges on the particular conditions at any individual site, not all like sites in aggregate.

Other special circumstances that might argue for additional reporting exemptions include a demonstration that a CERCLA response is infeasible or inappropriate at a particular type of mine. With respect to this issue, the Agency wishes to point out that appropriate CERCLA responses at mines can fall well short of covering the entire site with soil or water, which would defeat the very purpose of extraction. For example, it may be feasible or appropriate to cover certain waste piles or inactive mine areas with soil or water. Many other types of response actions have actually been taken at mine sites on the National Priorities List, although not in response to releases of radionuclides. These actions have included measures to control and treat mine water, diverting and controlling stormwater runoff, dumping materials in areas engineered for waste disposal, isolating contaminated areas with fences and signs, providing nearby communities with alternate sources of drinking water, excavating and removing contaminated soil, and injecting concrete into inactive underground mine workings. If these or other responses to radionuclide releases at mines would be infeasible or inappropriate, EPA requests information explaining why.

B. Alternative Exemptions

As outlined below, EPA is considering two alternative approaches for broadening the existing reporting exemptions for certain radionuclide releases. EPA solicits comments and data to assist in consideration of these alternatives with regard to differences in protection of public health and welfare and the environment. All comments on these alternatives, together with comments on the proposed approach described above, will be considered in developing the final rule.

[4] U.S. EPA, "Risk Assessments, Environmental Impact Statement, NESHAPS for Radionuclides, Background Information Document—Volume 2," Office of Radiation Programs, EPA/520/1–89–006–1, Chapter 12, 1989.

1. Alternative 1: Exempt All Extraction and Coal and Coal Ash Piles

Under one alternative, EPA would exempt from CERCLA section 103 and EPCRA section 304 reporting requirements radionuclide releases from land disturbance incidental to extraction activities at all mines, as well as coal and coal ash piles at all kinds of sites. As in the proposed exemptions, this alternative would not exempt radionuclide releases associated with beneficiation or processing operations that may be located at mine sites, nor would it exempt the disposal of high concentration materials, for example, in inactive mines.

This alternative recognizes that reporting may not serve a useful purpose if a CERCLA response would be infeasible or inappropriate and if a response would rarely be undertaken. A broad exemption would allow the Agency to focus its resources on the most serious releases, and this alternative could result in a greater reduction in reporting burden for both industry and government and a greater cost savings compared to the proposed exemptions.

Another factor possibly in favor of this approach is that individual release reports and responses under CERCLA may not be the most appropriate Federal regulatory response to radionuclide releases from mines. EPA and other government agencies are already aware that all mines in the U.S. are continuously releasing radionuclides to the environment, usually in relatively low concentrations. Rather than requiring release reports and evaluating the need for response on a facility-by-facility basis, it may be more effective for the Agency to study radiation threats at mines categorically and, if found to be necessary, develop more stringent regulations under other statutes. Such investigations focusing primarily on mining and mineral processing wastes are already underway within EPA, including the Office of Radiation and Indoor Air's study of diffuse naturally occurring radioactive material (NORM) wastes and the Office of Solid Waste's evaluation of extraction and beneficiation wastes under the Resource Conservation and Recovery Act. Under this alternative, CERCLA response and liability provisions would remain intact to respond to any serious radiation threats at mine sites that are not being adequately controlled under the existing network of regulations, but release reporting requirements would be eliminated in deference to these or other studies designed to address radiation threats at mines more categorically.

Compared to the proposed exemptions, this alternative may be less successful in contributing to CERCLA's overall goal of protecting public health and welfare and the environment. This could be particularly true at the few categories of mines discussed above that are believed to handle materials with elevated concentrations of radionuclides.

To assist in the evaluation of this alternative, EPA specifically requests information and comment on the need to obtain reports of radionuclide releases from uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines (including monazite mined for its thorium content), which would have to be submitted under the proposed exemptions but would not be required under this alternative. Data and analyses regarding the magnitude and extent of radiation threats (if any) at these types of mines, as well as the feasibility and appropriateness of a CERCLA response, would be particularly helpful in this regard. Information and comment on the degree to which other existing regulations and programs adequately control any radiation threats at these types of mines also would assist in evaluating the need for CERCLA section 103 and EPCRA section 304 reporting.

2. Alternative 2: Exempt All Land Disturbance Incidental to Extraction During Mining Activities and All Piles of Diffuse Naturally Occurring Radioactive Material Below a Concentration Cutoff

Under another alternative, EPA would eliminate the requirement to report releases of radionuclides from land disturbance incidental to extraction and releases of radionuclides to and from all piles of diffuse naturally occurring radioactive material (including extraction, beneficiation, and mineral processing materials and wastes as well as coal and coal ash piles at any kind of site), as long as the concentration of naturally occurring radionuclides was below a certain concentration threshold. Persons in charge of sites where such materials are disturbed and/or stockpiled would have to determine the radionuclide concentration of the material that they move or handle. If the concentration fell below the pre-established threshold, it would not be necessary to determine total quantities of radionuclides released for comparison with the RQs (i.e., no release report would be required, regardless of the total quantity released). However, if the concentration exceeded the threshold, it then would be necessary to determine quantities released and to submit a report if the RQs were met or exceeded.

EPA is considering a concentration cutoff because there may be very little benefit in requiring reports when more than an RQ of naturally occurring radionuclides is released from diffuse sources (such as land clearing, overburden removal and stockpiling, and excavating, handling, transporting, dumping, and storing ores, beneficiation or mineral processing materials and wastes, coal, and coal ash) that continuously emit radionuclides in low concentrations spread over large areas. In developing the adjusted radionuclide RQs, the Agency determined quantities that may result in unacceptable human exposures under a conservative hypothetical scenario in which radionuclides are released from a ground-level, point source (54 FR 22524, May 24, 1989). In essence, this assumes that radionuclides are released in a concentrated form and unable to undergo substantial dilution as they migrate to a point where a person might be exposed. This conservative approach was taken to develop adjusted RQs that would ensure timely reporting in most circumstances. EPA recognizes, however, that the RQs based on this scenario may be unnecessarily low when radionuclides are actually released in more dilute form from a large area source.

In the radionuclide RQ adjustment NPRM (52 FR 8182, March 16, 1987), EPA requested comments on such a concentration cutoff concept in general and, in particular, on the use of 0.002 microcuries per gram (or 2,000 pCi/g) established by the Department of Transportation (DOT) for the purpose of defining radioactive material in hazardous material transport regulations (49 CFR parts 171–177). All commenters who addressed this issue (slightly over half of all commenters) favored a concentration cutoff. However, EPA decided not to pursue the issue further through the radionuclide RQ adjustment rulemaking primarily because: (1) There was not a pre-existing concentration threshold that was widely believed to be acceptable for all possible radionuclide release scenarios (the DOT level of 2,000 pCi/g was generally regarded as too high for many release and exposure situations); (2) EPA did not have a sufficient technical basis at that time for determining an appropriate concentration cutoff; and (3) an RQ adjustment regulation was not viewed as the appropriate forum for conducting the complex analysis needed to determine such a level (54 FR 22528, May 24, 1989).

Nevertheless, after reviewing public comments on the November 30, 1992, NPRM on administrative reporting exemptions, EPA would like to revisit the idea of a concentration cutoff to be applied specifically to land disturbance and piles of diffuse naturally occurring radioactive material (rather than all possible radionuclide releases, as originally envisioned in the radionuclide RQ adjustment NPRM). In particular, EPA requests information and comment on two major issues associated with such an approach. First, what would be an appropriate concentration cutoff level (or levels)? EPA believes that such a level would best be expressed as some increment to natural background. Second, what would be the best way to determine natural background levels?

With regard to the question of an appropriate level, 5 pCi/g of radium-226 above background is one possibility. This is EPA's standard in 40 CFR part 192 for the cleanup of surface soil contaminated with residual radioactive material from inactive uranium processing sites (i.e., uranium mill tailings). As stated in 40 CFR 192.12, remedial actions at such sites shall be conducted to provide reasonable assurance that the concentration of radium-226 in land averaged over any area of 100 square meters shall not exceed the background level by more than 5 pCi/g, averaged over the first 15 centimeters of soil below the surface. In promulgating this cleanup standard, the Agency stated:

> The purpose of this standard is to limit the risk from inhalation of radon decay products in houses built on land contaminated with tailings, and to limit gamma radiation exposure of people using contaminated land. * * * Because the risks from soils contaminated with radium-226 are potentially so great, the proposed standard was set at a level as close to background as we believed reasonable, taking into consideration the difficulties in measuring this level and distinguishing it from natural background. (48 FR 600, January 5, 1983)

EPA believes this underlying purpose and rationale make the 5 pCi/g standard a candidate for possible use as a lower-bound concentration cutoff for the purpose of reporting exemptions for land disturbance and piles of diffuse naturally occurring radioactive material, such as extraction, beneficiation, and mineral processing materials and wastes, as well as coal and coal ash.

EPA recognizes, however, that this number would have some limitations if applied in this context. Most notably, the standard was developed based on conditions that represent an inactive uranium mill tailings site, which would not necessarily represent the conditions at other kinds of sites where naturally occurring radioactive materials are disturbed and handled (e.g., there may be differences in the physical properties and radionuclide concentrations of the materials being handled, as well as in potential human exposure scenarios). In addition, the 40 CFR part 192 standard was developed using risk assessment techniques and standards in place during the early 1980s. More recently, EPA has established guidelines for determining remediation goals for radioactively contaminated soils at Superfund sites.[5] Depending on the particular conditions at a site, use of these more recent guidelines may result in a cleanup target that differs from 5 pCi/g of radium-226 above background.

Nevertheless, these potential limitations may not seriously undermine the utility of 5 pCi/g above background as an administrative cutoff level for the purpose of establishing CERCLA section 103 and EPCRA section 304 reporting exemptions. If this approach is adopted, EPA could establish this level as an interim cutoff pending the development of a better value or set of values. As part of a separate rulemaking, the Agency is presently developing new cleanup levels for radioactively contaminated soil and ground water. Once these or other levels are finalized, and if they are considered appropriate for the purpose of CERCLA and EPCRA reporting exemptions, they could be adopted as updated concentration cutoffs.

The Agency specifically requests information and comment on the appropriateness of using 5 pCi/g of radium-226 above background as a concentration cutoff for the purpose of establishing CERCLA section 103 and EPCRA section 304 reporting exemptions for land disturbance and piles of diffuse naturally occurring radioactive material. EPA also requests proposals and supporting rationale for any alternative values. Major issues of interest that have a bearing on the appropriateness of any candidate value include its level of protectiveness, the ability to detect the value and distinguish it from natural background, and consistency with other existing regulations and controls.

With regard to the question of determining background, EPA believes that it would be appropriate to use a concentration that represents undisturbed background radioactivity in surface rocks and soils (to which the public is already exposed). EPA presently is considering three alternatives, but invites information and comment on the practicality and appropriateness of any other possibilities. The three alternatives presently being considered are: (1) Using site-specific values; (2) establishing a single value for the nation as a whole to be used when site-specific data are not available, or (3) establishing regional or State-specific values to be used when site-specific data are not available.

The first alternative, using site-specific values, recognizes the variability in background radioactivity that exists across different sites and the difficulties in determining representative, undisturbed background values. Under this alternative, reporting would depend on site-specific background levels of radionuclides in surface soils. Existing and emerging EPA guidance for determining background concentrations of radionuclides could be used to establish these levels. For example, EPA's Guidance for Data Useability in Risk Assessment[6] provides general guidance on how to discriminate radioactive site contamination from background. Chapter 10 of the Agency's Risk Assessment Guidance for Superfund[7] also discusses general issues concerning the determination of background concentrations of radionuclides. In cooperation with the Department of Energy, Department of Defense, and Nuclear Regulatory Commission, EPA is in the process of developing more specific guidelines for surveying radioactively contaminated sites and determining radiological background levels (as part of the Multi-Agency Manual for Environmental Radiological Surveys). Once completed, these guidelines could be adopted for use in determining background levels under the RQ program.

Under the second and third alternatives, EPA would establish default values that site owners or operators would use in the absence of reliable site-specific data. If either of these alternatives were adopted, the Agency could use the background concentrations of radium-226 developed by Myrick et al. (1983), shown in Table 1. If a single default value were adopted for the nation as a whole, EPA could adopt either a central value (the arithmetic or geometric mean of approximately 1 pCi/g of radium-226) or the maximum value reported for all samples analyzed (4.2 pCi/g). Adding a 5 pCi/g concentration cutoff to these background values would result in an overall threshold for reporting purposes of either 6 pCi/g or 9.2 pCi/g of radium-226. Alternatively, site owners or operators could use the background values for their specific State (again, central or upper end values are candidates). If a site were located in a State not covered by the Myrick et al. data, background values could be estimated by averaging values reported for adjacent States.

Compared to the proposal and the first alternative discussed above, this alternative would result in more uniform treatment of diffuse naturally occurring radioactive material. The distinction created above between land disturbance incidental to extraction and other activities that may occur at extraction, beneficiation, and/or mineral processing sites would be lost. Instead, the excavation, movement, dumping, stockpiling, and disposal of any kind of diffuse naturally occurring radioactive material handled at any kind of site would qualify for a reporting exemption if it was below the concentration cutoff.

[5] U.S. EPA, "Risk Assessment Guidance for Superfund: Volume I—Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals)," Interim, Office of Emergency and Remedial Response, Publication 9285.7–01B, December 1991.

[6] U.S. EPA, "Guidance for Data Useability in Risk Assessment," Part A (Publication 9285.7–09A, April 1992) and Part B (Publication 9285.7–09B, May 1992), Office of Emergency and Remedial Response. For example, see Section 6.2 of Part B.

[7] U.S. EPA, "Risk Assessment Guidance for Superfund, Volume I—Human Health Evaluation Manual (Part A), Interim Final," Office of Emergency and Remedial Response, EPA/540/1–89/002, December 1989. For example, see Sections 10.3.4 and 10.3.7.

TABLE 1.—STATE BACKGROUND CONCENTRATIONS OF RADIUM-226 IN SURFACE SOIL

State	# of Samples analyzed	Range of values (pCi/g)	Arithmetic mean (pCi/g)	Geometric mean (pCi/g)
Alabama	5	0.47–1.4	0.82	0.77
Alaska	5	0.43–0.92	0.65	0.64
Arizona	6	0.23–2.0	0.95	0.70
California	3	0.24–1.3	0.77	0.62
Colorado	32	0.48–3.4	1.4	1.3
Delaware	2	1.1–1.2	1.2	1.2
Florida	11	0.25–2.3	0.84	0.67
Georgia	9	0.46–1.6	0.88	0.81
Idaho	12	0.64–1.6	1.1	1.1
Illinois	7	0.65–1.2	0.97	0.95
Indiana	2	1.0–1.1	1.1	1.1
Kansas	6	0.34–1.4	0.97	0.86
Kentucky	13	0.81–4.2	1.5	1.4
Louisiana	2	0.58–0.84	0.71	0.70
Maryland	6	0.49–1.2	0.72	0.69
Michigan	10	0.46–2.0	1.1	0.95
Mississippi	3	0.77–1.6	1.2	1.2
Missouri	10	0.31–1.4	1.1	1.0
Nevada	6	0.89–2.0	1.5	1.5
New Jersey	24	0.24–1.4	0.87	0.78
New Mexico	13	0.72–2.7	1.5	1.5
New York	5	0.48–1.2	0.85	0.81
North Carolina	8	0.48–1.2	0.78	0.74
Ohio	12	0.81–2.5	1.5	1.4
Oregon	8	0.24–2.1	0.82	0.68
Pennsylvania	33	0.46–2.4	1.2	1.1
Tennessee	10	0.65–1.4	1.1	1.0
Texas	10	0.54–1.4	0.89	0.85
Utah	32	0.53–1.9	1.3	1.2
Virginia	13	0.60–1.1	0.85	0.83
West Virginia	11	0.78–1.6	1.3	1.2
Wyoming	13	0.65–1.7	1.0	1.0
U.S. Average	327	0.23–4.2	1.1	1.0

Source: Myrick, T.E., B.A. Berven, and F.F. Haywood, "Determination of Concentrations of Selected Radionuclides in Surface Soil in the U.S.," *Health Physics*, Vol. 45, No. 3 (September), pp. 631–642, 1983.

EPA also believes that the use of such a concentration cutoff would be more protective than the proposed exemptions. Under this approach, all sites excavating and/or handling diffuse naturally occurring radioactive materials (e.g., all mining, beneficiation, and mineral processing sites and all sites that handle coal and coal ash) would be required to evaluate the radionuclide concentration of those materials. Release reports then could be required not only from those sites in mining sectors that commonly extract and handle materials with elevated radionuclide concentrations, as in the proposed exemptions, but also other types of mining sites that happen to be extracting and handling raw materials with unusually high concentrations of radionuclides. At the same time, EPA recognizes that there may be instances when continued releases below some concentration cutoff (and thus exempt from CERCLA section 103 and EPCRA section 304 reporting requirements) could pose a threat, by resulting in the long-term build up of elevated levels of radioactivity in the environment.

Finally, the Agency recognizes that this approach would impose a greater burden on individual site owners or operators than the proposed approach, since facilities would have to determine concentrations relative to background, as well as releases relative to the RQs if the concentration cutoff is exceeded. However, determining radionuclide concentrations of the materials being extracted and/or handled at a site should be much simpler than estimating total releases into the environment (concentrations likely would be determined anyway when estimating releases relative to the RQs), and burdens associated with determining background levels can be reduced

substantially through the use of national or regional default values.

III. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

These proposed exemptions will result in an estimated net cost savings to the regulated community of $455,000 annually, as demonstrated by an economic analysis (Estimated Economic Effects of Administrative Reporting Exemptions for Certain Releases of Radionuclides) performed by the Agency, available for inspection in the U.S. EPA CERCLA Docket Office (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." Because this proposed rule would grant reporting relief to certain sources of radionuclide releases, the rule would not result in a significant impact on a substantial number of small entities. EPA certifies that this proposed rule is not likely to have a significant impact on a substantial number of small entities and, therefore, that a Regulatory Flexibility Analysis is not necessary.

C. Paperwork Reduction Act

Because this rule provides an exemption from CERCLA section 103 and EPCRA section 304 reporting requirements for certain radionuclide releases, there are no unique reporting or recordkeeping provisions that require approval from OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*

Approval has previously been granted by OMB for other release reporting requirements referenced in this rule: collection of information pursuant to CERCLA section 103 for releases of hazardous substances equal to or greater than their RQs (OMB control # 2050–0046).

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule in which the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under section 205 of this Act, EPA must select the most cost-effective and least-burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 of the Act requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Threshold planning quantity, Water pollution control, Water supply.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. Section 302.6 is amended by revising paragraph (c) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(c) The following categories of releases are exempt from the notification requirements of this section:

(1) Releases of those radionuclides that occur naturally in the soil from land holdings such as parks, golf courses, or other large tracts of land;

(2) Releases of naturally occurring radionuclides from land disturbance activities, including farming, construction, and land disturbance incidental to extraction activities, except that which occurs at uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines (including monazite mined for its thorium content);

(3) Releases of radionuclides from the dumping of coal and coal ash; and

(4) Releases of radionuclides from coal and coal ash piles.

* * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

3. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

4. Section 355.40 is amended by revising paragraph (a)(2)(vi) to read as follows:

§ 355.40 Emergency release notification.

(a) * * *

(2) * * *

(vi) Any radionuclide release which occurs:

(A) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land;

(B) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction activities, except that which occurs at uranium, phosphate, tin, titanium, zirconium, hafnium, vanadium, and rare earth mines (including monazite mined for its thorium content);

(C) From the dumping of coal and coal ash; and

(D) From coal and coal ash piles.

* * * * *

[FR Doc. 95–19194 Filed 8–3–95; 8:45 am]

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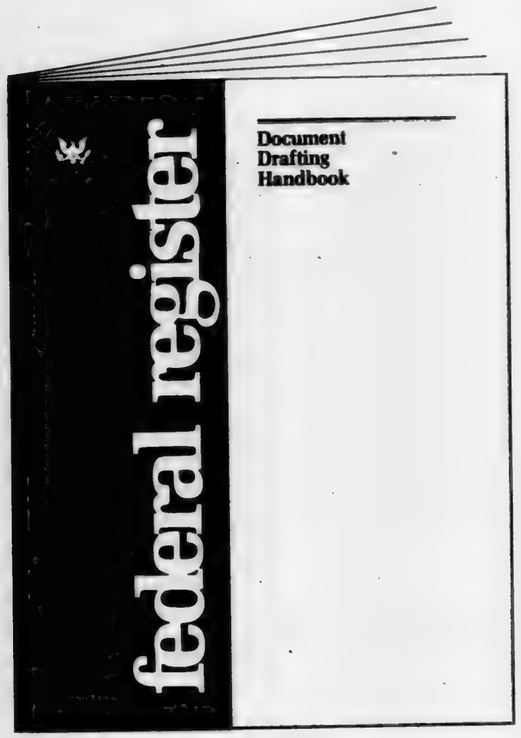
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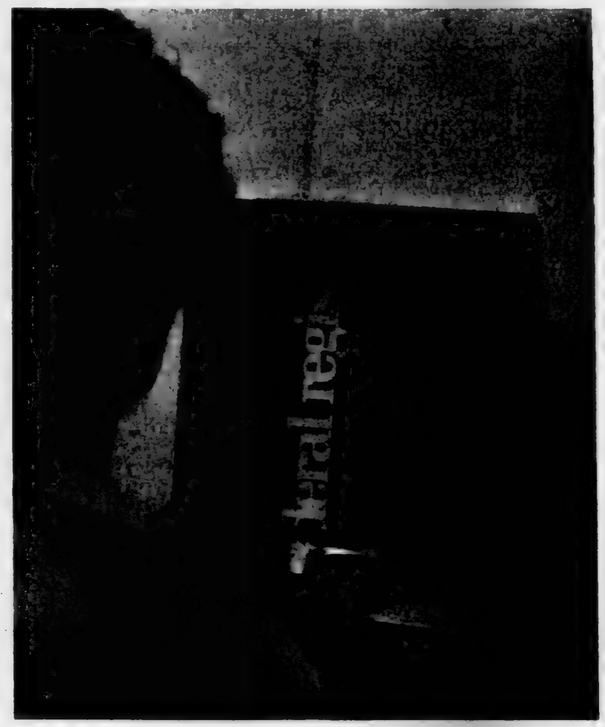
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 60, No. 151
Monday, August 7, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–17]

Mediterranean Fruit Fly; Removal From the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Ventura County, CA, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: Interim rule effective August 1, 1995. Consideration will be given only to comments received on or before October 6, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 91–155–17, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 91–155–17. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding to or removing from the list of quarantined areas certain portions of Los Angeles, Santa Clara, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, CA. Amendments affecting the quarantined areas in California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 15, October 8, November 22, and December 16, 1993; and on January 10, February 14, March 4, July 7, August 2, and October 12, 1994 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6; 58 FR 49186–49190, Docket No. 91–155–7; 58 FR 53105–53109, Docket No. 91–155–8; 58 FR 63027–63031, Docket No. 91–155–9; 58 FR 67627–67630, Docket No. 91–155–10; 59 FR 2281–2283, Docket No. 91–155–11; 59 FR 7895–7896, Docket No. 91–155–12; 59 FR 11177–11180, Docket No. 91–155–13; 59 FR 35611–35612, Docket No. 91–155–14; 59 FR 40207–40208, Docket No. 91–155–15; and 59 FR 52405–52407, Docket No. 91–155–16).

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and California State and county agency inspectors, that the Medfly has been eradicated from the quarantined area in Ventura County, CA. The last finding of the Medfly thought to be associated with the infestation in this area was made on November 21, 1994. Since then, no evidence of infestation has been found in this area. We have determined that the Medfly no longer exists in this area, and we are therefore removing it from the list of areas in § 301.78–3(c) quarantined because of the Mediterranean fruit fly. As a result of this action, there are no longer any quarantined areas in Ventura County. Portions of Los Angeles, Orange, and San Bernardino Counties remain quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The area in California affected by this document was quarantined due to the possibility that the Medfly could spread to noninfested areas of the United States. Because this situation no longer exists, and because the continued quarantined status of this area would impose unnecessary regulatory restrictions on the public, immediate action is warranted to remove restrictions from the noninfested area.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. For this

action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from the Camarillo area of Ventura County, CA. There are approximately 74 small entities that could be affected, including 12 fruit markets, 1 farmers market, 25 nurseries, 35 fruit sellers, and 1 packer. In addition, there are growers raising approximately 35,000 acres of avocados, lemons, oranges, tomatoes, and peppers.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the sale of these articles would not be affected by this interim regulation.

Therefore, termination of the quarantine in the Ventura County area should have a minimal economic effect on the few small entities operating there. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in subpart 301.78 have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.78–3 [Amended]

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas is amended by removing the entry for Ventura County.

Done in Washington, DC, this 1st day of August 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–19434 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AA91

General Administrative Regulations; Late Planting Agreement Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby amends its General Administrative Regulations, 7 CFR part 400, by revising the applicability to crops insured provision, located at section 400.4. The intended effect of this rule is to add a crop to which the Late Planting Agreement Option will apply.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this rule for notice and comment is not required because the rule relates solely to internal agency management to update FCIC's regulations by adding the popcorn crop insurance regulations to this subpart.

This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1998.

This rule has been determined to be "not significant" for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget ("OMB").

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this rule have been approved by OMB and assigned OMB No. 0563–0023.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering this optional policy and the procedures therein will not increase from the amount of work currently required to deliver previous policies to which this regulation applies. This rule does not have any greater or lesser impact on the insured farmer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections (2)(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals

Division, whichever is applicable, must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On December 10, 1993, FCIC published a final rule in the **Federal Register** at 58 FR 64872 setting out the specific crop insurance regulations to which the Late Planting Agreement Option would apply. Based on FCIC's review of this regulation, it became evident that the provisions of this subpart should be updated to include the Popcorn crop insurance regulations.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends 7 CFR part 400, subpart A, effective for the 1995 and succeeding crop years, to read as follows:

PART 400—[AMENDED]

1. The authority citation for 7 CFR part 400, subpart A, is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

2. Section 400.4 is amended by adding the following entry in numerical order by CFR part number to read as follows:

§ 400.4 Applicability to crops insured.

* * * * *

7 CFR part 447, Popcorn

Done in Washington, D.C., on July 31, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–19250 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–08–P

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7 CFR Parts 400, 402, and 404

Request for Comments on the New Catastrophic Risk Protection Endorsement, Federal Crop Insurance Reform Act of 1994; Regulations for Implementation, Noninsured Crop Disaster Assistance Program and Reinsurance Agreement-Standards for Approval

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rules; reopening and extension of comment periods.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this document to advise all interested parties that it is extending the time allowed for public comment and suggestions on the new Catastrophic Risk Protection Endorsement (CAT), Federal Crop Insurance Reform Act of 1994; Regulations for Implementation, Noninsured Crop Disaster Assistance Program (NAP), and the informal reconsideration process available under the Reinsurance Agreement-Standards for Approval issued for the 1995 and succeeding crop years.

On Friday, January 6, 1995, FCIC published an Interim Rule in the **Federal Register** at 60 FR 2000, with a request for public comment on the new CAT program regulations. Written comments, data, and opinions were required to have been submitted not later than March 7, 1995, in order to be assured of consideration.

On Friday, January 6, 1995, FCIC also published an Interim Rule in the **Federal Register** at 60 FR 1996, with a request for public comment on implementation regulations for the new Federal Crop Insurance Reform Act of 1994. Written comments, data, and opinions were required to have been submitted not later than March 7, 1995, in order to be assured of consideration.

On Thursday, May 18, 1995, FCIC published an Interim Rule in the **Federal Register** at 60 FR 26669, with a request for public comment on the NAP. Written comments, data, and opinions were required to have been submitted not later than July 17, 1995, in order to be assured of consideration.

On Monday, May 1, 1995, FCIC published an Interim Rule in the **Federal Register** at 60 FR 21035, with a request for public comment on the new informal reconsideration process available to reinsured companies under the Standard Reinsurance Agreement; Standards for Approval. Written comments, data, and opinions were required to have been submitted not later than June 30, 1995.

FCIC is seeking additional public comment on the regulations published with respect to the new CAT program, Reform Act Implementation Regulations, NAP, and the informal reconsideration process available under the Standard Reinsurance Agreement; Standards for Approval Regulations from all interested parties.

DATES: Written comments, data, and opinions on these interim rules should be submitted not later than August 18, 1995, in order to be assured of consideration.

ADDRESSES: Written comments, data, and opinion on these interim rules should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery should be made to 2101 L Street, N.W., suite 500, Washington, D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, N.W., 5th Floor, Washington, D.C., during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Telephone (202) 254–8314.

Done in Washington, DC, on August 2, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–19479 Filed 8–3–95; 11:35 am]

BILLING CODE 3410–08–P

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7 CFR Part 401

RIN 0563–AA84

General Crop Insurance Regulations; Late Planting Agreement Option

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby amends its General Crop Insurance Regulations, 7 CFR part 401, by revising the late planting agreement option provision, located at § 401.107. The intended effect of this rule is to revise the crops to which the Late Planting Agreement Option will apply.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this rule for notice and comment is not required because the rule relates solely to internal agency management to update FCIC's regulations by revising the crops to which this part applies.

This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1997.

This rule has been determined to be "not significant" for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget ("OMB").

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this rule have been approved by OMB and assigned OMB No. 0563–0023.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering this policy option and the procedures therein will not increase from the amount of work currently required to deliver previous policies to which this regulation applies. This rule does not have any greater or lesser impact on the insured farmer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections (2)(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals Division, whichever is applicable, must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On May 17, 1989, FCIC published a final rule in the **Federal Register** at 54 FR 21195 setting out the specific crop insurance endorsements to which the Late Planting Agreement Option would apply. Upon review of this regulation, FCIC determined that the provisions of this section should be updated to remove the wheat, barley, oat, rye and flaxseed endorsements because they are now located in the small grains crop insurance provisions under part 457 and the sunflower seed endorsement because it is now located under part 457 and to add the Tobacco (guaranteed plan) endorsement. Therefore, FCIC clarifies the availability of the Late Planting Agreement Option by amending § 401.107(e) for this purpose.

List of Subjects in 7 CFR Part 401

Crop insurance.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends 7 CFR part 401, effective for the 1995 and succeeding crop years, to read as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 is continues to read as follows:

Authority: 7 U.S.C. 1506(l).

2. Section 401.107 is amended by revising paragraph (e) to read as follows:

§ 401.107 Late planting agreement option.

* * * * *

(e) *Applicability to crops insured.* (1) The provisions of this section for insuring crops for the 1995 and subsequent crop years will be applicable only under the following endorsements:

401.114 Canning and Processing Tomato Endorsement.
401.118 Canning and Processing Bean Endorsement.
401.123 Safflower Seed Endorsement.
401.126 Onion Endorsement.
401.129 Tobacco (guaranteed plan) Endorsement.

(2) The Late Planting Agreement Option will be available in all counties in which the Corporation offers insurance on these crops unless limited by the actuarial table, crop endorsement, or crop endorsement option.

Done in Washington, D.C., on July 31, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–19249 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–08–P

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV95–905–2FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Expenses and Assessment Rate for 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, this provisions of the interim final rule which authorized expenses and established an assessment rate for the 1994–95 fiscal year under Marketing Order No. 905. Authorization of this budget enables the Citrus Administration Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: Effective August 1, 1995, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch. Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or William Pimenthal, Southeast Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, and tangelos grown in Florida are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable citrus fruit during the 1995–96 fiscal year, beginning August 1, 1995, through July 31, 1996. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and approximately 10,200 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable citrus fruit handled from the beginning of such period. An annual budget of expenses and assessment rate is prepared by the Committee and submitted to the Department for approval. The Committee members are handlers and producers of Florida citrus. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The annual budget and assessment rate are usually recommended by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met May 23, 1995, and unanimously recommended expenses of $215,000 for the 1995–96 fiscal year, with an assessment rate of $0.00325 per ⅘ bushel carton of fresh fruit shipped.

In comparison, 1994–95 budget expenses were $210,000 with an approved assessment of $0.003. Thus, for the 1995–96 fiscal year, expenses are being increased $5,000 and the assessment rate is being increased $0.00025 from the levels established in 1994–95.

The assessment rate, when applied to anticipated shipments of 66,000,000 cartons of assessable fruit, will yield a total of $214,500 in assessment income. Interest income for 1995–96 is estimated at $3,500. Income will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1995–96 fiscal year, estimated at $100,000, will be within the maximum permitted by the order of approximately one-half of one fiscal year's expenses.

Major expense categories for the 1995–96 fiscal year include $101,740 for salaries, $36,000 for the Manifest Department, and $13,350 for insurance and bonds.

The Committee budget was authorized by an interim final rule issued on June 22, 1995, and published in the **Federal Register** [60 FR 33329, June 28, 1995]. A 30-day comment period was provided for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year begins on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges, grapefruit, tangerines, and tangelos handled during the fiscal year; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule that revised 7 CFR part 905 which was published at 60 FR 33329 on June 28, 1995, is adopted as a final rule without change.

Dated: July 31, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19328 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 931

[Docket No. FV95–931–1IFR]

Fresh Bartlett Pears Grown in Oregon and Washington; Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

DATES: Effective July 1, 1995, through June 30, 1996. Comments received by September 6, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, or by FAX: 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Karen T. Chaney, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: 202–720–5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, Room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone: 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Marketing Order No. 931, both as amended [7 CFR Part 931], regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Bartlett pears grown in Oregon and Washington are subject to assessments. Funds to administer the Bartlett pear marketing order are derived from such assessments. It is intended that the assessment rate as specified herein will be applicable to all assessable pears handled during the 1995–96 fiscal year which began July 1, 1995, and ends June 30, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers regulated under the marketing order each year and approximately 1,800 producers of Bartlett pears. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Bartlett pear handlers and producers in Oregon and Washington may be classified as small entities.

The budget of expenses for the 1994–95 fiscal year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on June 1, 1995, and unanimously recommended total expenses of $92,254 with an assessment rate of $0.02 per standard box or equivalent for the 1995–96 fiscal year. In comparison, 1994–95 budgeted expenses were $96,410, with an approved assessment rate of $0.02 per standard box or equivalent. This

represents a $4,156 decrease in expenses, and no change in the assessment rate from the amounts recommended for the current fiscal year.

The assessment rate, when applied to anticipated pear shipments of 3,152,300 standard boxes or equivalent, will yield $63,046 in assessment income. Assessment income, combined with $4,000 from other income sources, and $25,208 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The withdrawal of $25,208 from the Committee's authorized reserve fund will result in no reserve remaining at the end of the 1995–96 fiscal year.

Major expense categories for the 1995–96 fiscal year include $44,135 for salaries, $9,195 for unshared contingency, and $4,989 in employee health benefits.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year began on July 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Bartlett pears handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. A new § 931.230 is added to read as follows:

§ 931.230 Expenses and assessment rate.

Expenses of $92,254 by the Northwest Fresh Bartlett Pear Marketing Committee, are authorized, and an assessment rate of $0.02 per standard box or equivalent of assessable pears is established for the fiscal year ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: July 31, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19329 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 981

[FV94–981–3FIR]

Almonds Grown in California; Release of the Reserve Established for the 1994–95 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule relaxing volume regulations imposed on California almond handlers for the 1994–95 crop year by releasing reserve almonds into salable channels. Volume regulations were imposed under the authority of the Federal marketing order which regulates the handling of almonds grown in California and is locally administered by the Almond Board of California (Board). During the 1994–95 season, handlers were required to withhold as a reserve, from normal competitive markets, 10 percent of the almonds which they received from growers. The remaining 90 percent of the crop could be sold by handlers to any market at any time. The interim final rule relaxed these regulations on handlers by releasing the reserve percentage to the salable category and was necessary to provide a sufficient quantity of almonds to meet anticipated trade demand and carryover needs.

DATES: Effective on September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, or fax (202) 720–5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or fax (209) 487–5906.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in accordance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable and reserve percentages may be established for almonds during any crop year. This rule revises the salable and reserve percentages for marketable California almonds during the 1994–95 crop year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This rule finalizes the relaxation of volume regulations imposed on California almond handlers for the 1994–95 crop year (July 1 through June 30). During the 1994–95 season, handlers were required to withhold, from normal domestic and export markets, 10 percent of the merchantable almonds which they received from growers (reserve percentage). The remaining 90 percent of almonds received by handlers could be sold to any market at any time (salable percentage). Volume regulations were recommended by the Board and imposed on handlers to lessen the impact of a large almond supply for the 1994–95 season. Salable and reserve percentages were established through publication of a final rule in the **Federal Register** on December 9, 1994 [59 FR 63693]. On May 12, 1995, the Board determined that volume regulations on almond handlers were no longer necessary and recommended that the entire reserve be released to provide a sufficient quantity of almonds to meet anticipated trade demand and carryover needs.

The interim final rule was issued on May 25, 1995, and published in the **Federal Register** (60 FR 28520, June 1, 1995), with an effective date of May 25, 1995. That rule provided a 30-day comment period which ended July 3, 1995. No comments were received.

Section 981.47 of the almond marketing order provides authority for the Secretary, based on recommendations by the Board and the analysis of other available information, to establish salable and reserve percentages for almonds during a crop year. To aid the Secretary in fixing the salable and reserve percentages, section 981.49 of the order requires the Board to submit information to the Department on estimates of the marketable production of almonds, combined domestic and export trade demand for the year, carryin inventory at the beginning of the year, and the desirable carryover inventory at the end of the year. Authority for the Board to recommend revisions in the volume regulation percentages is provided in section 981.48 of the order. Such revisions must be recommended by May 15.

The Board met in July of 1994 to review projected crop estimates and marketing conditions for the 1994–95 almond season. A very large crop of 640 million kernelweight pounds was projected for the season. Estimated shipments for the two prior seasons were 535.9 million pounds for 1992 crop almonds and 497.7 million pounds for 1993 crop almonds.

Variations in production from season-to-season can cause wide fluctuations in prices. For example, the Board estimated that grower prices increased from $1.26 per pound for 1992 crop almonds to $2.00 per pound for the smaller, 1993 crop almonds. The large 1994 California almond crop estimate caused early speculation of grower prices in the $1.15 per pound range. Such swings in supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers, and consumers. The long term goal of the almond industry is to increase almond consumption and demand, and the Board believes this is best achieved in the presence of stable and orderly market conditions. Thus, the Board recommended that the volume regulation provisions of the order be utilized for the 1994–95 season as a supply management tool, with 10 percent of the 1994 crop almonds being held by handlers as a reserve.

On May 12, 1995, the Board met in Modesto, California, and unanimously recommended releasing the reserve established for the 1994–95 crop year. Thus, the salable percentage will increase from 90 to 100 percent and the reserve percentage will decrease from 10 to 0 percent. The Board considered a number of factors in arriving at its recommendation to release the reserve. The 1994–95 almond crop is now estimated at 727 million pounds, far above the initial 640 million pound estimate. Shipments for the year are expected to exceed 600 million pounds. Further, it appears that production in the rest of the world is well below normal. Production in Spain, the world's second largest producer of almonds, fell well below usual and is estimated to have been about 75 million pounds. Spain, California's biggest competitor in the world almond markets, became the United States' fourth largest export market.

At the meeting, the Board also considered a crop estimate for California almonds for the 1995–96 season provided by the California Agricultural Statistics Service (CASS). That forecast is based on a survey of 200 growers. CASS released its crop estimate of 430 million kernelweight pounds on May 11. The estimate is relatively small compared with normal almond production for a year. An extremely wet spring that prohibited successful pollination of almond trees during the critical bloom period as well as crop losses due to trees having been blown over by high winds have resulted in the predicted small yield in California. Very short carryin inventories of 1993 crop almonds into the current season combined with reduced production from California competitors resulted in higher than anticipated demand for California almonds.

On June 28, 1995, CASS released another forecast, which is based on actual almond counts from across the State. This forecast for the 1995–96 crop year is 310 million kernelweight pounds of almonds, 120 million pounds less than estimated in the previous estimate. Although this forecast was not available when the Board recommended releasing the reserve, this estimate further supports releasing the reserve.

As required under the order, the Board revised a number of estimates that had been considered when volume regulation was first recommended in July 1994. The Board's current estimates of marketable supply, combined domestic and export trade demand for 1994–95, and desirable carryover to be available for the 1995–96 crop year are shown below. The Board considered these revised estimates in arriving at its recommendation to release the 1994–95 reserve. The estimates used by the Board to establish the original volume regulations for the year are shown for comparison.

MARKETING POLICY ESTIMATES—1994 CROP

[Kernelweight basis in millions of pounds]

	12/9/94 Initial estimates	5/12/95 Revised estimates
Estimated Production:		
1. 1994 Production	640.0	727.1
2. Loss and Exempt—3.0%	19.2	21.8
3. Marketable Production	620.8	705.3
Estimated Trade Demand:		
4. Domestic	175.0	152.8
5. Export	381.4	449.0
6. Total	556.4	601.8
Inventory Adjustment:		
7. Carryin 7/1/94	99.6	102.6
8. Desirable Carryover 6/30/95	100.0	206.1
9. Adjustment (Item 8 minus item 7)	0.4	103.5
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9)	556.8	705.3
11. Reserve (Item 3 minus item 10)	54.0	0
12. Salable % (Item 10 divided by item 3x100)	[1] 90	100.0
13. Reserve % (100% minus item 12)	[1] 10	0

[1] Percent.

As previously mentioned and reflected in the table, estimated almond crop production for the 1994–95 season increased from 640 to 727.1 million kernelweight pounds. Estimated weight losses resulting from the removal of inedible kernels by handlers and losses during manufacturing also increased from 19.2 to 21.8 million kernelweight pounds. Therefore, marketable production is expected at 705.3 million kernelweight pounds.

The Board's estimated trade demand (or shipments) also increased from 556.5 million kernelweight pounds to a total of 601.8 kernelweight pounds. If the estimates are achieved, this would set a new record for the California almond industry. Although estimated domestic trade demand decreased from 175 to 152.8 million kernelweight pounds, estimated export trade demand increased sharply from 381.4 to 449 million kernelweight pounds. Almond production in the rest of the world was well below normal, contributing to a significant increase in the amount of California almonds shipped into export markets.

The Board also revised its inventory estimates. The carryin figure—supplies of salable almonds carried in from the 1993–94 crop year—was slightly revised from 99.6 to 102.6 million kernelweight pounds. The desirable carryout figure—supplies of salable almonds to be carried out on June 30 for early season shipment during the 1995–96 crop year—was revised from 100 to 206.1 million kernelweight pounds. With the projected short crop for the upcoming season, the carryout figure was significantly increased to provide a more adequate supply of almonds available to meet early market needs. After taking into account the carryin and desirable carryover figures, the adjusted trade demand was increased from 556.8 to 705.3 million kernelweight pounds, an amount equal to the Board's estimate of marketable production.

The order also permits the Board to recommend the establishment of a percentage of reserve almonds that can be exported. However, export is currently the largest market for California almonds and is not considered a secondary or noncompetitive outlet. For the 1994–95 crop year, exports were included in the trade demand and the export market was not an authorized reserve outlet. The percentage of reserve almonds available for export was established at 0 percent in the final rule previously cited that established volume regulation for the 1994–95 crop. The export percentage is not changed as a result of this action.

The Board believed that immediate release of the reserve will positively impact market stability by increasing the amount of almonds available to the market prior to the harvest of the 1995 crop, and by augmenting the overall supply available for the upcoming season. The interim final rule is expected to facilitate a smooth transition into the 1995–96 season. Since market stability is of paramount importance in achieving long-term industry health, the Board concluded that there are no viable alternatives to its recommendation.

This rule is not expected to impose any additional costs on handlers or producers because release of the reserve will eliminate the need for handlers to store almonds and will allow the product to enter an eager market in a smooth fashion. Therefore, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented, including the Board's recommendation, and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (60 FR 28520, June 1, 1995) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 981 which was published at 60 FR 28520 on June 1, 1995, is adopted as a final rule without change.

Dated: July 31, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19326 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 982

[Docket No. FV95–982–1IFR]

Filberts/Hazelnuts Grown in Oregon and Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 982 for the 1995–96 marketing year. Authorization of this budget enables the Filbert/Hazelnut Marketing Board (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1995, through June 30, 1996. Comments received by September 6, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982, both as amended (7 CFR part 982), regulating the handling of filberts/hazelnuts grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Oregon-Washington filberts/hazelnuts are subject to assessments. Funds to administer the Oregon-Washington filbert/hazelnut order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable filberts/hazelnuts during the 1995–96 marketing year which began July 1, 1995, and ends June 30, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of Oregon and Washington filberts/hazelnuts under this marketing order, and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon and Washington filbert/hazelnut producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 marketing year was prepared by the Filbert/Hazelnut Marketing Board, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by the expected quantity of assessable filberts/hazelnuts handled. Because that rate will be applied to the actual quantity of filberts/hazelnuts, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

The Board, in a mail vote, unanimously recommended a 1995–96 budget of $483,685, $23,325 less than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Personal services (salaries), $50,735 ($48,000), postage, $3,000 ($1,800), communications, $1,200 ($1,100), printing and publishing, $2,400 ($2,300), insurance, $700 ($650), rent, $5,650 ($5,560), utilities, $850 ($800), equipment maintenance and rental, $1,500 ($1,400), and office supplies, $2,000 ($1,500). Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Computer services, $750 ($1,500), furniture, $250 ($1,500), equipment, $250 ($1,500), and research ($25,000) for which no funding was recommended this year. All other items are budgeted at last year's amounts, including $250,000 for promotion.

The Board also unanimously recommended an assessment rate of $0.007 per pound, the same as last year. This rate, when applied to anticipated shipments of 60,000,000 pounds, will yield $420,000 in assessment income. This, along with $5,000 in interest income, $2,572 from the Nut Growers Society in payment for services performed by the Board under an agreement with the Society, and $56,113 from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1995–96 marketing year, estimated at $235,691, were within the maximum permitted by the order of one marketing year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the marketing year began on July 1, 1995, and the marketing order requires that the rate of assessment for the marketing year apply to all assessable filberts/hazelnuts handled during the marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board in a mail vote and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. A new § 982.339 is added to read as follows:

§ 982.339 Expenses and assessment rate.

Expenses of $483,685 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate of $0.007 per pound of assessable filberts/hazelnuts is established for the marketing year ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: July 31, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19327 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 984

[Docket No. FV95–984–1FR]

Walnuts Grown In California; Suspension of Deadline for Relaxing Reserve Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension order.

SUMMARY: This document suspends the deadline by which the Walnut Marketing Board (Board) may recommend a relaxation in reserve requirements established for a marketing year under the walnut marketing order. Suspension of the deadline will allow the Board, which locally administers the order, to make such a decision based on more current supply and shipment information. This suspension will provide the walnut industry an opportunity for more orderly marketing.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Hessel, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or FAX (209) 487–5906; or Mark Kreaggor, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2526–S, P.O. Box 96456, Washington, D.C. 20050–6456; telephone: (202) 720–3610, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This suspension order is issued under Marketing Agreement and Order No. 984 (7 CFR part 984), regulating the handling of walnuts grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this action in conformance with Executive Order 12866.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This suspension is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of California walnuts who are subject to regulation under the walnut marketing order, and approximately 5,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of California walnut handlers and producers may be classified as small entities.

The walnut marketing order provides authority for volume control in the form of free, reserve, and export percentages. The free percentage is the percentage of certified merchantable walnuts that may be shipped freely to any market during the marketing year. The reserve percentage is the amount of certified merchantable walnuts that may be shipped to export markets, government agencies, charitable institutions, poultry or animal feed, walnut oil, or other markets noncompetitive with markets for certified merchantable free walnuts. The export percentage is the percentage of reserve walnuts that may be shipped to export markets. Certified merchantable walnuts are walnuts which have been inspected and certified by the Dried Fruit Association of California as meeting the minimum grade and size requirements specified under the order.

The marketing order also provides that handlers may meet their reserve requirements by either delivering reserve walnuts to the Board for disposition by the Board or by selling or disposing of their own walnuts, as agents of the Board, in specified reserve outlets. Any reserve walnuts the Board receives would be pooled and sold by the Board in markets specified for reserve walnuts at the highest returns available. The proceeds from the sale of pooled walnuts, minus all expenses incurred by the Board in receiving, holding, and disposing of the walnuts, would be distributed to handlers who delivered walnuts to the pool in proportion to each handler's contribution.

In a marketing year (August 1–July 31) that a reserve program is implemented,

the Board recommends the initial percentages in September and has the option of recommending an increase in the free and export percentages and a decrease in the reserve percentage later in the marketing year. If the Department concurs with the Board's recommendation, the recommended percentages may be established or modified.

Section 984.49(b)(1) establishes a deadline of February 15 for the Board to recommend to the Secretary an increase in the free percentage and a decrease in the reserve percentage. On February 10, 1995, the Board unanimously recommended suspension of that deadline. This action will suspend the phrase "On or before February 15 of the marketing year," in section 984.49(b)(1) and will authorize the Board to recommend an increase in the free percentage and a decrease in the reserve percentage at any time during the marketing year, which ends on July 31.

In the past, many export markets were undeveloped and the domestic market provided better returns than export markets. The reserve percentage was used as a tool to keep the domestic walnut market from being oversupplied and the export percentage was used as a tool to place an orderly flow of California walnuts into the export market at prices that were competitive with foreign walnuts. Even though the free walnuts were allowed to be shipped to export markets, free walnuts were not price competitive with walnuts from other countries and consequently were not diverted to export markets. Under former marketing conditions, sufficient information relating to the domestic market was available prior to February 15 so that the Board could make an appropriate recommendation for final free and reserve percentages.

Under present marketing conditions, walnut export markets are well established and have returns equal to or higher than those received in the domestic market. As a result, the Board can recommend setting an export percentage of 0 percent which will preclude the shipment of reserve walnuts to export markets. The export market will then be supplied with only free walnuts. By setting a reserve percentage and keeping the export percentage at 0 percent, the Board can remove a quantity of walnuts in excess of domestic and export market demands.

When large shipments of reserve walnuts were exported, the February 15 deadline for recommending a decrease in the reserve gave handlers approximately five months to export the remainder of their reserve after the final reserve percentage was known. Since exports have now become a viable market for free walnuts, the Board may need more flexibility to consider later data on free shipments to revise its estimate of trade demand. The Board may also need more flexibility to consider the July forecast of the next crop to decide if the desirable carryout should be increased to supplement a short crop.

In addition, the order requires handlers to file monthly shipment reports that are due on the fifth day of the following month. Each additional monthly report the Board receives from handlers after the February 15 deadline, gives the Board a more accurate picture of the levels of shipments of walnuts for the current marketing year. More information is also available at that time on the foreign walnut crop, the pecan supply which directly, competes with walnuts, exchange rates, and foreign and domestic economic conditions. This information will allow the Board to better estimate the current and prospective domestic and export demand and supply conditions for California walnuts. Finally, later in the marketing year, the Board can better estimate the amount of the current crop of walnuts that should be carried over to the next marketing year. By allowing decisions to be made later in the season on a reserve program, the industry can better evaluate marketing conditions.

The Board estimates that sufficient information will be available by early June, but marketing conditions may cause the Board to wait longer before making a final recommendation on the free and reserve percentages. The suspension of the February 15 deadline will allow the Board more flexibility in dealing with the dynamic marketing conditions of the California walnut industry and in turn provide for more orderly marketing of walnuts.

A proposed suspension order was published in the **Federal Register** on June 2, 1995, (60 FR 28744). That action provided a 30-day comment period which ended on July 3, 1995. No comments were received.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, it is determined that, under the conditions presently existing in the walnut industry, the February 15 deadline in section 984.49(b)(1) does not tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 533) because: (1) The Board will meet September 1995 to consider the need for volume control during the 1995–96 marketing year; (2) preliminary industry discussions on the need for volume control during 1995–96 are expected to begin soon and prompt implementation of the suspension will foster more meaningful discussions; (3) the industry is aware of this action, which was unanimously recommended by the Board at a public meeting and all interested persons in attendance were given the opportunity to provide input; and (4) interested persons were given the opportunity to submit written comments on the suspension of the February 15 deadline and none were received.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 984.49 [Suspended in part]

2. In § 984.49 paragraph (b)(1), the words "On or before February 15 of the marketing year," are suspended.

Dated: July 31, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–19330 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 217, 235, 264, 286

[INS No. 1603–93]

RIN 1115–AD30

Charging of Fees for Services at Land Border Ports-of-Entry

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations to allow the Immigration and Naturalization Service (the Service) to charge a fee for the processing and issuance of specified documents at land border Ports-of-Entry (POEs). The fees are necessary to cover the costs of providing these services which benefit certain applicants at land border POEs. The revenue generated by the collection of fees for these application-processing services will enable the Service to improve service to the public at land border POEs.

EFFECTIVE DATE: October 9, 1995.

FOR FURTHER INFORMATION CONTACT: Marie De Soto, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, telephone (202) 514–1798.

SUPPLEMENTARY INFORMATION:

General

The Service published a proposed rule on April 12, 1994, at 59 FR 17283, to amend the regulations to allow the Service to charge a fee for processing and issuing specified documents at land border Ports-or-Entry (POEs). Consistent with 31 U.S.C. 9701 and OMB Circular A–25, User Charges, the proposed rule identified application services that currently are provided free-of-charge and for which it would be appropriate to impose a fee. The services identified are tasks commonly performed in secondary inspection such as examining documents, conducting record checks, and interviewing applicants in order to issue permits for extended stays in the United States. In addition, the services provides to applicants-for-admission at POEs, border crossing cards and boating permits; documents that may require extensive interviews, record checks, document production, and other time-consuming paperwork. Specifically, the proposed rule included fees for the processing of Form I–94, Arrival/Departure Record; Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form; Form I–444, Mexican Border Visitors Permit; Form I–68, Canadian Border Boat Landing Permit; Form I–175, Application for Nonresident Alien Canadian Border Crossing Card for issuance of Form I–185, Nonresident Alien Canadian Border Crossing Card (CBCC); and Form I–190, Application for Nonresident Alien Mexican Border Crossing Card, to replace a lost, stolen, or mutilated Nonresident Alien Border Crossing Card (BCC), Form I–586.

All interested parties were invited to submit comments on the proposed rule by June 13, 1994. The Service received 22 comments and considered each of the comments in preparing the final rule. Commenters included private individuals, Chambers of Commerce, local government representatives, small business owners, members of Congress, and Service employees. Since most discussed several issues, the total number of comments exceeds the number of persons who commented.

Discussion of Comments

Support for Fees

Eight of the commenters expressed general support for fees for services, with recommendations that the revenues be used to address the illegal immigration problem in the United States. The fees were set to recover only the costs associated with providing the document-processing services and related benefits to certain land border crossing applicants. The revenues generated by these fees are to be used for the purpose of funding the costs incurred to provide these application processing services. It is anticipated that the implementation of the fees-for-services charge will enable the Service to improve inspection services at the land border. Once the fee revenues are available, appropriated resources formerly allocated to fund these document-processing services may be redirected to augment staffing of vehicle and pedestrian traffic lanes at land border Ports-of-Entry. The resulting benefit would be improved facilitation of traffic through the POEs.

One commenter proposed that in addition to charging for the Form I–190 to replace a lost, stolen, or mutilated Form I–586, a $4.00 fee be imposed for a temporary border crossing card pending issuance of the Form I–586. Another commenter suggested that the fee for the Form I–68 should be higher and that a $25.00 charge was more appropriate and comparable with a Canadian fee for inspecting United States boats. While the Service recognizes the concerns of the commenters, any additional fees beyond those that were in the proposed rule would have to be the subject of a separate rule. Increasing the fee for the Form I–68 from $16.00 to $25.00 would not be consistent with Federal user fee statutes and regulations which require that the fee be set to recover the full costs of providing the services. A cost analysis of the services provided, including the indirect costs associated with these services, resulted in the fees, as established. The Service will conduct periodic reviews of the fees, changes to issuance procedures, and methods used in determining fees and, when warranted, adjustments to the fees will be made.

Justification for Fees

Two commenters suggested that the Government should be required to provide service to the public, and that to charge individuals for that service is not necessary or warranted. On the contrary, the Federal user fee statute (31 U.S.C. 9701) and regulations require that recipients of special benefits bear the costs of providing those services. The Office of Management and Budget (OMB) Circular A–25, User Charges, states as a general policy that reasonable charges should be imposed to recover the full cost to the Federal Government of rendering such services. In July 1993, the Office of the Inspector General completed an audit of services performed and special benefits provided by the Service. This audit disclosed a number of services currently being provided free-of-charge by the Service for which it would be appropriate to impose a fee including the Canadian Border Boat Landing Permit, Form I–68, and applications for Border Crossing Cards, Forms I–190 and I–175. The audit concluded that the Service was not in compliance with OMB directives with regard to these services, and that failure to collect fees for services resulted in the cost being paid by the general public out of the general fund appropriation. In an effort to comply with federal directives, the Service determined which services and benefits are currently provided without charge to certain beneficiaries and for which it would be appropriate to impose a fee, culminating in this rule.

Two commenters, objecting to the fee for Form I–68, stated that, if boaters refuse to obtain Form I–68 because of the fee, the Service will be forced to provide additional personnel and facilities where none exist to inspect boaters upon arrival in the United States. However, pursuant to 8 CFR 100.4, persons entering the United States may only present themselves to an immigration officer at those ports designated as Class A Ports-of-Entry at a time when the port is open for inspection.

The I–68 provision is the only exception to this reporting requirement. The provision extends to boaters the opportunity of recreational boating without reporting for inspection during each outing. A boater who refuses to obtain Form I–68 is otherwise required to expend the time, expense, and effort to report to an open, staffed POE.

The I–68 is clearly a specific benefit that the Service provides to an identifiable recipient, as defined by

Federal user fee statute and OMB Circular A–25, User Charges. It is a benefit for which the Service is required to charge a fee. However, participation in the I–68 program is voluntary.

Each boating season, in order to make this benefit easily available, inspectors travel to boat shows, marinas, and other gatherings to issue the Form I–68. The Service's districts mount publicity campaigns to educate boaters about these requirements. The purpose of the Form I–68 fee is to recover the costs of providing these services and this special benefit to boaters, since funding is insufficient for additional personnel and new facilities, and there are no other resources available to support port expansion.

Use of Revenues

One commenter expressed concern that there was no guarantee that the money generated from these collections would be applied to efforts to deal with illegal immigration. The Service recognizes the concern of the commenter; however, consistent with the mission of the Service, inspectors at POEs have a very important dual role: that of facilitating the entry of bona fide applicants-for-admission, and that of enforcing the immigration laws by detecting inadmissible applicants and those attempting entry by fraud. The Service will use the revenue generated from the fees contained in this rule to fund the costs incurred to improve the secondary application-processing services provided at land border POEs. Consequently, the Service intends to devote appropriated resources formerly expended for secondary application-processing services to staffing of vehicle and pedestrian traffic lanes at land border Ports-of-Entry. This overall increase in resources will allow the Service to better meet its mission of facilitating the entry of bona fide applicants-for-admission, providing better service to the traveling public at land border POEs, and enforcing the immigration laws by detecting inadmissible applicants and those attempting entry fraud.

Another commenter stated that the income should return to the port where it was generated. The fees have been set, to recover not only costs incurred directly at ports, but also costs—both direct and indirect—incurred by the Service for services provided to applicants-for-admission at land border POEs in connection with the six application forms described in this rule. Among the costs identified are a portion of the salaries and expenses of the port inspectors, the cost of training the inspectors, data processing, production of forms and documents, safeguarding and accounting for the fees collected, and performing record and background checks. Consequently, the fees collected pursuant to this rule are to be used to offset the cost to all Service components, including ports, of providing these application-processing service at all land border POEs. The Service has developed a comprehensive staffing model geared to the unique requirements of land border facilities which incorporates data from each land border POE on vehicle and pedestrian traffic, projected growth, facility expansion, and other items affecting inspection service. Using the model, the Service will be able to properly allocate resources.

Northern and Southern Border Disparities

One commenter wondered why fees are only being charged to those who cross the United States-Mexico border, and not to those who cross from Canada or travel by air from other countries. The fees described in this rule affect land border crossers at both the northern and southern borders. Two of the six forms for which fees are charged, the Form I–94 and the Form I–94W, are alien control documents issued to nonimmigrant aliens of any nationality who seek admission to the United States at either the northern or southern border. Fees for the two border crossing documents are the Form I–190, Application for Nonresident Alien Mexican Border Crossing Card, and the Form I–175, Application for Nonresident Alien Canadian Border Crossing Card. The remaining two fees are for the issuance of permits which, in the case of the Form I–444, Mexican Border Visitors Permit, is beneficial only to Mexican nationals, and in the case of the Form I–68, Canadian Border Boat Landing Permit, benefits Canadians, United States citizens, and other qualified applicants. This rule applies only to land border crossers; however, air travelers arriving at air POEs currently pay a fee.

Two commenters questioned the inequity of requiring the issuance of BCCs for Mexican nationals but not for Canadians. The differences in documentary requirements between Mexican and Canadian nationals are complex, far-reaching, and beyond the scope of this rule. Generally, nonimmigrant visa requirements imposed upon aliens of certain countries are based on treaties and the corresponding regulations of both the Department of State and the Service. Under the existing provisions, Canadian nationals are, for most nonimmigrant categories, visa-exempt while Mexican nationals are not exempt. A BCC is an acceptable form of documentation, but it is not a required document. When entering the United States across a land border, the BCC generally provides a greater convenience to the holder than a regular nonimmigrant visa because a passport is not necessary. The issuance of BCC's is a benefit that the Service elects to provide to nonimmigrants who routinely cross the border. The Form I–586, Nonresident Alien Mexican Border Crossing Card, offers the same privileges as the nonimmigrant visa for a Mexican national seeking entry as a visitor for business (B–1) or pleasure (B–2). Alternatively, a Mexican national may apply, without charge, to an American Consulate in Mexico for a nonimmigrant visa.

Four commenters stated that implementation of a fee for Form I–68 will have an adverse impact on relations with our Canadian neighbors; however, none of the commenters explained in exactly what way this would interfere with good relations. Since the Canadian Government also plans to implement fees for many of the services it provides, an element of reciprocity exists, and there is no clear, disparate treatment on either side of the border.

Economic Impact of Fees

One commenter stated that user fees are inconsistent with the intent of the North American Free-Trade Agreement (NAFTA) to eliminate barriers to trade, and two commenters stated that fees would have a negative impact on the economies of the communities along the southern border. Facilitation of travel between NAFTA countries is of great concern to the Service. Traffic congestion at POEs, where vehicles sometimes wait hours to cross the border, costs local economies tremendous amounts of revenue in lost time and productivity, as well as severely impacting the environment. One way that this congestion can be alleviated is though additional personnel and the implementation of automated technology to expedite the services provided. Individuals traveling within 25 miles of the southern border area for short periods of time will not be affected by the fees. Only those traveling more than 25 miles or staying for longer than 72 hours will require issuance of an entry permit and payment of a fee. The revenues collected will allow the Service to recover the costs for providing the services. Article 1603.4 of the NAFTA states that each party shall limit any fees for processing applications for temporary entry of business persons to

the approximate costs of services rendered. Therefore, the Service believes that these fees are not inconsistent with the terms of the NAFTA.

Three commenters felt that imposition of a fee for Form I–68 would cause economic hardship to the communities along the United States/Canada border. The Service does not agree with the comment and believes that the annual fee is nominal for the benefit that is derived. The Service is required to recover the costs of providing this benefit inasmuch as the Federal user fee statute and regulations require that recipients of special benefits bear the costs associated with providing the specific services. The Service does not expect the fee to significantly deter boaters from obtaining a permit so they may land and enjoy the amenities offered in nearby communities.

Reasonableness of Fee

Two commenters stated that the fee for Form I–68 will impose an economic burden on the individuals requiring the form, who already pay many other taxes and fees, and one commenter felt the fee was unreasonable. The fees included in this rule are not excessive, and are considerably lower than many similar fees charged by Federal, state, and local governments for similar services.

Most of the fees, once paid, allow the applicant to avail him or herself of the benefit for an extended period of time. The CBCC, at $30, is currently valid indefinitely, and the replacement BCC, at $26, is valid for 10 years. The Form I–68, at $16, allows entry for 1 year, and the Form I–94W at $6, is issued for a period of 90 days. The Form I–94, depending on the nonimmigrant classification under which the applicant is entering, may be valid for years, with the normal visitor for pleasure being granted a minimum of 6 months for a fee of $6. The Form I–444, with a fee of $4, may be issued for a period not to exceed 30 days.

In addition, the Service has adopted a family cap. Formerly, Forms I–444 and I–68 allowed multiple family members, and unrelated individuals traveling in a group, to apply on one form. The family cap essentially allows children the benefit without a fee so as not to impose an undue burden on families traveling across the southern border for short periods of time, and on families enjoying recreational boating along the northern border.

As stated previously, the fees were determined by an analysis of document-processing services and associated costs, and are calculated to recover the direct and indirect costs to the Service of providing these special services and benefits.

One commenter stated that there is no reason for a United States citizen to pay to obtain Form I–68, since there is no penalty for failure to report for immigration purposes, and that those who do obtain Form I–68 do so only to appear to comply with a non-existent immigration inspection requirement. Although United States citizens are not subject to the immigration laws, the regulations at 8 CFR 235.1 require that application to enter the United States must be made in person to an immigration officer at a United States POE at a time when the port is open for inspection. This section also states that a person claiming United States citizenship must establish that fact to the examining immigration officer. That is why United States citizens are specifically included in the I–68 regulations. While criminal prosecution, loss of citizenship, or deportation will not apply to a United States citizen who has not complied with inspection requirements, the potential inconvenience in establishing that he or she is not subject to the immigration laws if encountered by Service enforcement officers may prove to be significant to most law-abiding boaters and render obtaining the I–68 worthwhile.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The fees proposed in this rule, calculated to cover only the costs of providing the service, are nominal, and will apply only to individuals, not small entities.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under E.O. 12866, section 3(f), Regulatory Planning and Review. Although this rule requires user fees, the fees are necessary to recover the cost to the Federal Government for processing and issuing specified documents at United States land border Ports-of-Entry for business and pleasure. Title 31 U.S.C. and OMB Circular A–25 require that recipients bear the cost of receiving special benefits. As such, a cost analysis of the INS services provided and associated indirect cost resulted in the fees established herein, which are consistent with Federal user fee statutes and regulations and do not exceed the full cost that may be recovered by the Service.

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections(s) are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Aliens, Authority delegation (Government agencies), Fees, Forms.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas.

8 CFR Part 217

Aliens, Passports and visas.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Port-of-entry.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 286

Fees, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding, in proper numerical sequence, the following forms to the list of forms, to read as follows:

§ 103.7 Fees.

(b) * * *

(1) * * *

Form I–68. For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act—$16.00. The maximum amount payable by a family (husband, wife, unmarried children under 21 years of age, parents of either husband or wife) shall be $32.00.

* * * * *

Form I–94. For issuance of Arrival/Departure Record at a land border Port-of-Entry—$6.00.

Form I–94W. For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border Port-of-Entry under section 217 of the Act—$6.00.

* * * * *

Form I–175. For issuance of Nonresident Alien Canadian Border Crossing Card (Form I–185)—$30.00.

Form I–190. For issuance of replacement Nonresident Alien Mexican Border Crossing Card (Form I–586) in lieu of one lost, stolen, or mutilated—$26.00.

* * * * *

Form I–444. For issuance of a Mexican Border Visitors Permit issued in conjunction with presentation of a Mexican Border Crossing Card or multiple-entry B–1/B–2 nonimmigrant visa to proceed for a period of more than 72 hours but not more than 30 days and to travel more than 25 miles from the Mexican border but within the 5-state area of Arizona, California, Nevada, New Mexico, or Texas—$4.00. The maximum amount payable by a family (husband, wife, children under 21 years of age, and parents of either husband or wife) shall be $8.00.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

4. Section 212.6 is amended by revising paragraph (e) to read as follows:

§ 212.6 Nonresident alien border crossing cards.

* * * * *

(e) *Replacement.* If a nonresident alien border crossing card has been lost, stolen, mutilated, or destroyed, the person to show the card was issued may apply for a new card as provided for in this section. A fee as prescribed in § 103.7(b)(1) of this chapter must be submitted at time of application for the replacement card. The holder of a Form I–185, I–186, or I–586 which is in poor condition because of improper production may be issued a new form without submitting fee or application upon surrendering the original card.

* * * * *

PART 217—VISA WAIVER PILOT PROGRAM

5. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

6. Section 217.2 is amended by revising paragraph (c) to read as follows:

§ 217.2 Eligibility.

* * * * *

(c) *Applicants arriving at land border Ports-of-Entry.* Any applicant arriving at a land border Port-of-Entry must provide evidence to the immigration officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land border Port-of-Entry will be charged a fee as prescribed in § 103.7(b)(1) of this chapter for issuance of Form I–94W, nonimmigrant Visa Waiver Arrival/Departure Form.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

7. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, and 1252.

§ 235.1 [Amended]

8. In § 235.1, paragraph (e) is amended by revising the phrase "without application or fee," in the first sentence to read: "upon application and payment of a fee prescribed under § 103.7(b)(1) of this chapter,".

9. In § 235.1, paragraph (f)(1) introductory text, paragraph (f)(2), and paragraph (g)(1) are revised to read as follows:

§ 235.1 Scope of examination.

* * * * *

(f) * * *

(1) *Nonimmigrants.* Each nonimmigrant alien, except as indicated below, who is admitted to the United States shall be issued a completely executed Form I–94 which must be endorsed to show: Date and place of admission, period of admission, and nonimmigrant classification. A nonimmigrant alien who will be making frequent entries into the United States over its land borders may be issued a Form I–94 which is valid for any number of entries during the validity of the form. A nonimmigrant alien entering the United States at a land border Port-of-Entry who is issued Form I–94 will be charged a fee as prescribed under § 103.7(b)(1) of this chapter. In the case of a nonimmigrant alien admitted with the classification TN (Trade, North American Free Trade Agreement (NAFTA)), the specific occupation of such alien as set forth in Appendix 1603.D.1 of the NAFTA shall be recorded in item number 18 on the reverse side of the arrival portion of Form I–94, and the name of the employer shall be noted on the reverse side of both the arrival and departure portions of Form I–94. The departure portion of Form I–94 shall bear the legend "multiple entry." A Form I–94 is not required by:

* * * * *

(2) *Paroled aliens.* Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, shall be issued a completely executed Form I–94 which must include:

(i) Date and place of parole;

(ii) Period of parole; and

(iii) Conditions under which the alien is paroled into the United States. A fee shall not be required for Form I–94 when it is issued for the purpose of paroling an alien into the United States.

(g) *Mexican Border Visitors Permit, Form I–444.* (1) Any Mexican national exempt from issuance of a Form I–94 under paragraph (f)(1) (iii) or (iv) of this section shall be issued a Mexican Border Visitor's Permit, Form I–444, whenever:

(i) The period of admission sought is more than 72 hours but not more than 30 days; or

(ii) The applicant desires to travel more than 25 miles from the Mexican border but within the 5-state area of Arizona, California, Nevada, New Mexico, or Texas. A separate Form I–444 will be issued for each applicant for admission and a fee as prescribed under § 103.7(b)(1) of this chapter shall be charged for each applicant, or until the family cap is reached.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

10. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

11. A new § 264.4 is revised to read as follows:

§ 264.4 Application to replace a Nonresident Alien Border Crossing Card.

An application for a replacement Nonresident Alien Border Crossing Card must be filed pursuant to § 212.6(e) of this chapter. An application for a replacement Form I–185, Nonresident Alien Canadian Border Crossing Card, must be filed on Form I–175. A fee as prescribed in § 103.7(b)(1) of this chapter must be submitted at time of application. An application for a replacement Form I–586, Nonresident Alien Border Crossing Card, must be filed on Form I–190. A fee as prescribed in § 103.7(b)(1) of this chapter must be submitted at time of application to replace a lost, stolen, or mutilated card.

* * * * *

PART 286—IMMIGRATION USER FEE

12. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

13. A new § 286.9 is added to read as follows:

§ 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

(a) *General.* A fee may be charged and collected by the Commissioner for the processing and issuance of specified Service documents at land border Ports-of-Entry. These fees, as specified in § 103.7(b)(1) of this chapter, shall be dedicated to funding the cost of providing application-processing services at land border ports.

(b) *Forms for which a fee may be charged.* (1) A nonimmigrant alien who is required to be issued, or requests to be issued, Form I–94, Arrival/Departure Record, for admission at a land border Port-of-Entry must remit the required fee for issuance of Form I–94 upon determination of admissibility.

(2) A nonimmigrant alien applying for admission at a land border Port-of-Entry as a Visa Waiver Pilot Program applicant pursuant to § 217.2(c) or § 217.3(c) of this chapter must remit the required fee for issuance of Form I–94W upon determination of admissibility.

(3) A Mexican national in possession of a valid nonresident alien border crossing card or nonimmigrant B–1/B–2 visa who is required to be issued Form I–444, Mexican Border Visitors Permit, pursuant to § 235.1(g) of this chapter, must remit the required fee for issuance of Form I–444 upon determination of admissibility.

(4) A citizen or lawful permanent resident alien of the United States, Canadian national, or lawful permanent resident of Canada having a common nationality with Canadians, who requests Form I–68, Canadian Border Boat Landing Permit, pursuant to § 235.1(e) of this chapter, for entry to the United States from Canada as an eligible pleasure boater on a designated body of water, must remit the required fee at time of application for Form I–68.

(5) A Canadian national or a lawful permanent resident of Canada having a common nationality with nationals of Canada, who submits Form I–175, Application for Nonresident Alien Canadian Border Crossing Card, must remit the required fee at time of application for Form I–185.

(6) A Mexican national who submits Form I–190, Application for Nonresident Alien Mexican Border Crossing Card, for replacement of a lost, stolen, or mutilated Form I–586, Nonresident Alien Border Crossing Card, must remit the required fee at time of application for a replacement Form I–586.

Dated: May 23, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–19303 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–9]

Revocation of Class D Airspace Area at Miramar Naval Air Station (NAS), CA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace area at Miramar NAS, CA. This airspace is presently contained within the San Diego, CA, Class B surface area, and is no longer required.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Register, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On June 9, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by revoking the Class D airspace area at Miramar NAS, CA (60 FR 30481). This airspace is presently located within the San Diego, CA, Class B surface area, and is no longer required.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class D airspace area at Miramar NAS, CA. This airspace is presently located within the San Diego, CA, Class B surface area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Miramar NAS, CA [Removed]

* * * * *

Issued in Los Angeles, California, on July 18, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–19421 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28286; Amdt. No. 1677]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The application FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on July 28, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective September 14, 1995*

Koyuk, AK, Koyuk, NDB RWY 36, Orig
Jacksonville, FL, Craig Muni, VOR/DME or GPS RWY 32, Orig
Jacksonville, FL, Craig Muni, VOR RWY 32, Amdt 2, CANCELLED
Jacksonville, FL, Craig Muni, ILS RWY 32, Amdt 3
Iowa City, IA, Iowa City Muni, GPS RWY 24, Orig
Iowa City, IA, Iowa City Muni, GPS RWY 30, Amdt 1
Benton, KS, Benton, GPS RWY 16, Orig
Hutchinson, KS Hutchinson Muni, GPS RWY 31, Orig
Kingman, KS, Kingman Muni, GPS RWY 18, Orig
Danville, KY, Stuart Powell Field, LOC/DME RWY 30, Amdt 1
Danville, KY, Stuart Powell Field, NDB or GPS–A, Amdt 7
Kearney, NE, Kearney Muni, GPS RWY 36, Orig
McCook, NE, McCook Muni, GPS RWY 12, Orig
Jefferson, NC, Ashe County, GSP RWY 28, Orig
Pottstown, PA, Pottstown-Limerick, VOR/DME–A, Amdt 2
Mitchell, SD, Mitchell Muni, VOR RWY 30, Amdt 4
Mitchell, SD, Mitchell Muni, VOR or GPS RWY 12, Amdt 10
Mitchell, SD, Mitchell Muni, ILS/DME RWY 30, Amdt 2
Dickson, TN, Dickson Muni, VOR/DME or GPS RWY 17, Amdt 4
Dickson, TN, Dickson Muni, NDB RWY 17, Amdt 2
Lawrenchburg, TN, Lawrenceburg Muni, NDB RWY 17, Amdt 4
Lebanon, TN, Lebanon Muni, VOR/DME or GPS–A, Amdt 9
Livingston, TN, Livingston Muni, VOR/DME or GPS RWY 21, Amdt 4
Springfield, TN, Springfield Robertson County, NDB or GPS RWY 22, Amdt 4
Houston, TX, William R. Hobby, VOR/DME RWY 17, Orig

[FR Doc. 95–19420 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28287; Amdt. No. 1678]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designated to provide safe and efficient use of the navigable airspace and to provide safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPS. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMS for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs

by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 28, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME; ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
07/13/95 ...	OK	Ada	Ada Muni	FDC 5/3344	VOR/DME Rwy 17, Amdt 1...
07/14/95 ...	WI	Mosinee	Central Wisconsin	FDC 5/3355	ILS Rwy 8 Amdt 11...
07/17/95 ...	NC	Winston-Salem	Smith Reynolds	FDC 5/3400	ILS Rwy 33, Amdt 27...
07/17/95 ...	NM	Silver City	Silver City/Grant County	FDC 5/3396	LOC/DME Rwy 26, Amdt 4...
07/17/95 ...	NM	Silver City	Silver City/Grant County	FDC 5/3397	VOR/DME or GPS–B, Amdt 3...
07/17/95 ...	NM	Silver City	Silver City/Grant County	FDC 5/3398	VOR or GPS–A, Amdt 7...
07/17/95 ...	NM	Silver City	Silver City/Grant County	FDC 5/3399	NDB or GPS Rwy 26, Amdt 3...
07/17/95 ...	WI	Mosinee	Central Wisconsin	FDC 5/3390	LOC BC Rwy 26, Amdt 10...
07/20/95 ...	OH	Middletown	Hook Field Muni	FDC 5/3455	LOC Rwy 23, Amdt 7A...
07/20/95 ...	OH	Middletown	Hook Field Muni	FDC 5/3457	NDB or GPS Rwy 23, Amdt 8...
07/20/95 ...	OH	Wilmington	Wilmington Airborne Airpark	FDC 5/3452	VOR or GPS Rwy 4, Amdt 5...
07/20/95 ...	WA	Kelso	Kelso-Longview	FDC 5/3469	TKOF MNMS/IFR DEP PROC...
07/20/95 ...	WA	Kelso	Kelso-Longview	FDC 5/3470	NDB or GPS–A, Amdt 5A...
07/21/95 ...	AL	Andalusia-Opp	Andalusia-Opp	FDC 5/3509	NDB or GPS–A, Amdt 2...
07/21/95 ...	AR	Almyra	Almyra Muni	FDC 5/3521	VOR/DME or GPS–A, Amdt 4A...
07/25/95 ...	FL	Panama City	Panama City-Bay County	FDC 5/3588	ILS Rwy 14, Amdt 15...
07/25/95 ...	ME	Presque Isle	Presque Isle/Northern Maine Regional Arpt at Presque Isle.	FDC 5/3603	VOR/DME or GPS Rwy 1, Amdt 11A...
07/25/95 ...	ME	Presque Isle	Presque Isle/Northern Maine Regional Arpt at Presque Isle.	FDC 5/3607	VOR or GPS Rwy 19, Amdt 8A...
07/26/95 ...	ME	Presque Isle	Presque Isle/Northern Maine Regional Arpt at Presque Isle.	FDC 5/3624	ILS Rwy 1, Amdt 4A...
07/26/95 ...	MT	Butte	Bert Mooney	FDC 5/3626	LOC/DME Rwy 15, Amdt 6A...
07/26/95 ...	MT	Butte	Bert Mooney	FDC 5/3629	VOR or GPS–B, Amdt 1A...

FDC date	State	City	Airport	FDC No.	SIAP
07/26/95 ...	MT	Butte	Bert Mooney	FDC 5/3631	ILS Rwy 15, Amdt 4A.
07/26/95 ...	MT	Butte	Bert Mooney	FDC 5/3632	VOR/DME or GPS–A, Amdt 3A...
07/26/95 ...	OH	Wilmington	Wilmington Airborne Airpark	FDC 5/3641	NDB Rwy 4, Amdt 2...
07/26/95 ...	TN	Waverly	Humphreys County	FDC 5/3642	NDB or GPS Rwy 22, Amdt 3...
07/26/95 ...	TN	Waverly	Humphreys County	FDC 5/3643	VOR/DME or GPS–A, Amdt 2B...

[FR Doc. 95–19418 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 335

RIN 3220–AB11

Sickness Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations under the Railroad Unemployment Insurance Act (RUIA) to permit a "physician assistant-certified" and an "accredited Christian Science practitioner" to execute a statement of sickness in support of payments of sickness benefits under the RUIA. The rule would also eliminate certain obsolete language.

EFFECTIVE DATE: August 7, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701, TDD (FTS (312) 386–4701).

SUPPLEMENTARY INFORMATION: Section 335.2(a)(2) provides that in order to be entitled to sickness benefits under the RUIA, a claimant must provide a "statement of sickness". Section 335.3(a) of the Board's regulations lists the individuals from whom the Board will accept a statement of sickness. That list does not currently include physicians assistants. In many parts of the country, physicians assistants are more accessible (and their services less expensive) than licensed medical doctors (MD's). Under previous regulations, the Board will not accept a statement of sickness or supplemental statement of sickness from a physician assistant unless there is some follow-up verification that the physician assistant completed the statement under the supervision of a medical doctor. This is administratively costly and in many cases unnecessarily delays payment of sickness benefits. Thus, the Board adds "physician assistant-certified" to the list of individuals from who it will accept a statement of sickness. In addition, under present practice the Board recognizes an accredited Christian Science practitioner as qualified to execute a statement of sickness. Thus, the regulation also adds this category to its list of qualified individuals.

The Board also amends § 335.4(d)(5) of its regulations by deleting the first sentence of paragraph (d)(5), which relates to the filing of a statement of sickness by a female employee whose claim for sickness benefits is based upon pregnancy, miscarriage, or childbirth. The special form required by paragraph (d)(5) is no longer used, since, for purposes of filing for sickness benefits, a distinction is no longer made between pregnancy, miscarriage or childbirth, and other illnesses.

On March 16, 1995, the Board published this rule as a proposed rule (60 FR 14241) inviting comments on or before April 17, 1995. No comments were received. The only change that has been made to the proposed rule is the addition of "accredited Christian Science practitioner", discussed above, which merely conforms the regulation to current practice. The Board has determined that this is not a major rule for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. The information collections contemplated by this part have been approved by the Office of Management and Budget under control number 3220–0039.

List of Subjects in 20 CFR Part 335

Railroad employees, Railroad sickness benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 335—SICKNESS BENEFITS

1. The authority citation for part 335 continues to read as follows:

Authority: 45 U.S.C. 362(i) and 362(l).

2. Section 335.3(a) is amended by removing "or" at the end of paragraph (a)(6), by replacing the period at the end of paragraph (a)(7) with ";", and by adding new paragraphs (a)(8) and (a)(9) to read as follows:

§ 335.3 Execution of statement of sickness and supplemental doctor's statement.

(a) *Who may execute.* * * *

(8) A physician assistant-certified (PAC); or

(9) An accredited Christian Science Practitioner.

* * * * *

§ 335.4 [Amended]

3. Section 335.4(d)(5) is amended by removing the first sentence.

Dated: July 31, 1995.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–19392 Filed 8–4–95; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 93F–0247]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene/hexene-1 copolymers containing a maximum of 20 percent by weight of polymer units derived from hexene-1 as components of articles intended for use in contact with food. This action is in response to a petition filed by Exxon Chemical Co.

DATES: Effective August 7, 1995; written objections and requests for a hearing by September 6, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration,

rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 12, 1993 (58 FR 42976), FDA announced that a petition (FAP 3B4379) had been filed by Exxon Chemical Co., P.O. Box 1607, Baton Rouge, LA 70821–1607. The petition proposed that the food additive regulations be amended in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of ethylene/hexene-1 copolymers containing a maximum of 20 percent by weight of polymer units derived from hexene-1 as components of articles intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 177.1520 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 6, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1520 is amended by redesignating paragraph (a)(3)(i)(*a*) as (a)(3)(i)(*a*)(*1*) and by adding a new paragraph (a)(3)(i)(*a*)(*2*), and in the table in paragraph (c) by revising item 3.2a under the heading "Olefin polymers" to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(*a*)* * *

(*2*) Olefin basic copolymers manufactured by the catalytic copolymerization of ethylene and hexene-1 shall contain not less than 80 but not more than 90 weight percent of polymer units derived from ethylene.

* * * * *

(c) Specifications:

Olefin polymers	Density	Melting point (MP) or softening point (SP) (*Degrees Centigrade*)	Maximum extractable fraction (expressed as percent by weight of polymer) in *N*-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
3.2a Olefin copolymers described in paragraph (a)(3)(i) of this section for use in articles used for packing or holding food during cooking; except olefin copolymers described in paragraph (a)(3)(i)(*c*)(*2*) of this section and listed in item 3.2b of this table; except that olefin copolymers containing 89 to 95 percent ethylene with the remainder being 4-methyl-pentene-1 contacting food Types III, IVA, V, VIIA, and IX identified in § 176.170(c) of this chapter, Table 1, shall not exceed 0.051 millimeter (mm) (0.002 inch (in)) in thickness when used under conditions of use A and shall not exceed 0.102 mm (0.004 in) in thickness when used under conditions of use B, C, D, E, and H described in § 176.170(c) of this chapter, Table 2. Additionally, olefin copolymers described in (a)(3)(i)(*a*)(*2*) of this section may be used only under conditions of use B, C, D, E, F, G, and H described in § 176.170(c) of this chapter, Table 2, in contact with all food types identified in § 176.170(c) of this chapter, Table 1.	0.85–1.00		2.6 percent at 50 °C	Do.

* * * * *

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19424 Filed 8–4–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8607]

RIN 1545–AS98

Allowances Received by Members of the Armed Forces in Connection With Moves to New Permanent Duty Stations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the exclusion from gross income under section 61 of the Internal Revenue Code of 1986 (Code) of certain allowances received by members of the uniformed services in connection with a change of permanent duty station. The final regulations are required because of amendments to the law made by section 13213(a)(1) of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), 107 Stat. 473 (1993), which redefined the term *moving expenses* under section 217(b) of the Code. Persons affected by the final regulations are members of the uniformed services (the Armed Forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service).

DATES: These regulations are effective August 7, 1995. For dates of applicability, see "Effective date" portion under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Marilyn E. Brookens, (202) 622- 1585 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 61 and 217 of the Internal Revenue Code (Code) that are required because of the amendment of section 217(b) by OBRA 1993. In Notice 94–59, 1994- 1 C.B. 371, the IRS announced its intention to issue guidance to clarify that certain allowances received by members of the Armed Forces continue to be excludable from gross income notwithstanding the amendment of section 217(b).

On December 21, 1994, temporary regulations (TD 8575) relating to military expense allowances under sections 61 and 217 (relating to definitions of gross income and of moving expenses) were published in the **Federal Register** (59 FR 65711). A notice of proposed rulemaking (IA–50–94) relating to the same subjects was published in the **Federal Register** for the same day (59 FR 65739). No public hearing was requested or held.

Written comments regarding the regulations were received. After consideration of all the comments, the regulations proposed by IA–50–94 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are withdrawn. The comments are discussed below.

Explanation of Provisions

I. General Background

Section 217(g) of the Code provides that a member of the Armed Forces on active duty who moves pursuant to a military order and incident to a permanent change of station does not include in income reimbursements or allowances for moving or storage expenses, or the value of moving and storage services furnished in kind. For purposes of section 217(g), moving expenses are defined in section 217(b). OBRA 1993 amended section 217(b) by narrowing the definition of deductible moving expenses.

As a result of this amendment, questions arose concerning the federal tax treatment of certain allowances provided by the Department of Defense and by the Department of Transportation under title 37 of the United States Code to members of the Armed Forces in connection with a transfer to a new permanent duty station. Those allowances include: (1) a dislocation allowance, intended to partially reimburse expenses (e.g., lease forfeitures, temporary living charges in hotels, and breakage of household goods in transit) incurred in relocating a household; (2) a temporary lodging expense, intended to partially offset the added living expenses of temporary lodging (up to 10 days) within the United States (other than Hawaii or Alaska); (3) a temporary lodging allowance, intended to help defray higher than normal living costs (for up to 60 days) outside the United States or in Hawaii or Alaska; and (4) a move-in housing allowance, intended to defray costs (e.g., rental agent fees, home-security improvements, and supplemental heating equipment) associated with occupying leased quarters outside the United States.

Section 1.61–2(b) of the Income Tax Regulations provides, in part, that subsistence and uniform allowances granted to members of the Armed Forces, Coast and Geodetic Survey (now known as the National Oceanic and Atmospheric Administration), and Public Health Service, and amounts received by them as commutation of quarters, are to be excluded from gross income. Similarly, the value of quarters or subsistence furnished to such persons is excluded from gross income. These exclusions from gross income of quarters and subsistence allowances paid to members of the uniformed services are ones of long standing, dating back to 1925. See *Jones* v. *United States*, 60 Ct. Cl. 552 (1925).

The Treasury Department and the IRS have determined that the four above-referenced allowances, to the extent not excluded under other provisions of the Code (such as section 217(g) or section 132(g)), are to be treated as quarters or subsistence allowances. Section 1.61–2(b) is revised to provide that these allowances are excluded from the gross income of members of the uniformed services. Section 1.61–2(b)(2) and section 1.217–2(g)(6) clarify that no deduction is allowed for any expenses incurred in connection with a transfer to a new permanent duty station to the extent the expenses are reimbursed by an excluded allowance. However, any expense that meets the definition of a *moving expense* as defined in section 217(b) and is not reimbursed continues to be deductible under current law.

II. Public Comments

The National Oceanic and Atmospheric Administration (NOAA) requested that the regulations provide active duty officers of the NOAA Corps with an exclusion for the allowances covered by these regulations. The commissioned corps of NOAA, the commissioned corps of the Public Health Service (PHS), and the Armed Forces collectively comprise the uniformed services. 10 U.S.C. 101(a)(5) (Supp. IV 1992). The Armed Forces consist of the Army, Navy, Air Force, Marine Corps, and Coast Guard. 10 U.S.C. 101(a)(4) (1988).

The pay and allowance provisions of title 37 apply to all members of the uniformed services. In particular, the allowances that are the subject of these regulations are the same for the NOAA commissioned corps and the PHS commissioned corps as for the Armed Forces. The Department of Treasury historically has extended the holdings of *Jones* v. *United States* to all members of the uniformed services. I.T. 2232, IV–2 C.B. 144 (1925); Mim. 3413, V–1 C.B. 29 (1926). Accordingly, the final regulations under section 1.61–2(b) provide that the four earlier-referenced allowances are quarters or subsistence allowances and are excluded from gross income for members of the uniformed services.

III. Effective Date

The final regulations are effective with respect to allowances for expenses incurred after December 31, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Marilyn E. Brookens of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.61–2 is amended by:

1. Removing the language "Coast and Geodetic Survey" from the second sentence of paragraph (a)(1) and adding in its place the language "National Oceanic and Atmospheric Administration".

2. Revising paragraph (b) to read as follows:

§ 1.61–2 Compensation for services, including fees, commissions, and similar items.

* * * * *

(b) *Members of the Armed Forces, National Oceanic and Atmospheric Administration, and Public Health Service.* (1) Subsistence and uniform allowances granted commissioned officers, chief warrant officers, warrant officers, and enlisted personnel of the Armed Forces, National Oceanic and Atmospheric Administration, and Public Health Service of the United States, and amounts received by them as commutation of quarters, are excluded from gross income. Similarly, the value of quarters or subsistence furnished to such persons is excluded from gross income.

(2) For purposes of this section, quarters or subsistence includes the following allowances for expenses incurred after December 31, 1993, by members of the Armed Forces, members of the commissioned corps of the National Oceanic and Atmospheric Administration, and members of the commissioned corps of the Public Health Service, to the extent that the allowances are not otherwise excluded from gross income under another provision of the Internal Revenue Code: a dislocation allowance, authorized by 37 U.S.C. 407; a temporary lodging allowance, authorized by 37 U.S.C. 405; a temporary lodging expense, authorized by 37 U.S.C. 404a; and a move-in housing allowance, authorized by 37 U.S.C. 405. No deduction is allowed under this chapter for any expenses reimbursed by such excluded allowances. For the exclusion from gross income of—

(i) Disability pensions, see section 104(a)(4) and the regulations thereunder;

(ii) Miscellaneous items, see section 122.

(3) The per diem or actual expense allowance, the monetary allowance in lieu of transportation, and the mileage allowance received by members of the Armed Forces, National Oceanic and Atmospheric Administration, and the Public Health Service, while in a travel status or on temporary duty away from their permanent stations, are included in their gross income except to the extent excluded under the accountable plan provisions of § 1.62–2.

* * * * *

§ 1.61–22T [Removed]

Par. 3. Section 1.61–22T is removed.

Par. 4. Section 1.217–2 is amended by adding paragraph (g)(6) to read as follows:

§ 1.217–2 Deduction for moving expenses paid or incurred in taxable years beginning after December 31, 1969.

* * * * *

(g) * * *

(6) *Disallowance of deduction.* No deduction is allowed under this section for any moving or storage expense reimbursed by an allowance that is excluded from gross income.

§ 1.217–2T [Removed]

Par. 5. Section 1.217–2T is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 27, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19282 Filed 8–4–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[TD 8608]

RIN 1545–AS93

Adjustments Required by Changes in Method of Accounting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the requirements for changes in method of accounting. These regulations clarify the Commissioner's authority to prescribe terms and conditions for effecting a change in method of accounting. The regulations affect taxpayers changing a method of accounting for federal income tax purposes.

DATES: These regulations are effective August 4, 1995. For dates of applicability see §§ 1.446–1(e)(3)(iii) and 1.481–5.

FOR FURTHER INFORMATION CONTACT: Cheryl Oseekey, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994, the IRS published a notice of proposed rulemaking in the **Federal Register** (59 FR 66825), relating to the requirements for changes in method of accounting. That document proposed clarifying amendments to the regulations under sections 446 and 481. No public hearing was requested or held.

Two comments responding to this notice were received. After consideration of the comments, the amendments proposed by IA–42–93 are adopted with minor editorial revisions by this Treasury decision.

Summary of Comments

The notice of proposed rulemaking proposes to conform the existing regulations under sections 446(e) and 481(c) to long-standing IRS administrative practices regarding the use of adjustment periods under section 481(a) and the use of a cut-off method. Under the general rule of the proposed regulations, any section 481(a) adjustment attributable to a voluntary or an involuntary change in method of accounting is taken into account in the taxable year of change, whether the adjustment increases or decreases taxable income. However, the regulations also propose to amend §§ 1.446–1(e)(3) and 1.481–5 to clarify the Commissioner's authority to prescribe the terms and conditions for effecting a change in method of accounting. Under the regulations, the terms and conditions that may be prescribed by the Commissioner include the taxable year or years in which a section 481(a) adjustment is taken into account and the use of a cut-off method to effect a change in method of accounting.

Two comments were received in response to the notice. The comments questioned IRS authority to require the use of a cut-off method, and whether to require it is sound administrative practice. After considering the comments, the IRS and the Treasury Department continue to believe that the IRS has the authority under section 446(e) to impose a cut-off method, and that it is consistent with section 481(a). Furthermore, the IRS and the Treasury Department believe that requiring a change in method of accounting on a cut-off basis in appropriate circumstances is administratively sound. For example, the application of a cut-off method to effect a change within the last-in, first-out (LIFO) inventory method is justified on the basis of simplicity because it eliminates the need to revalue LIFO increments.

The amendments proposed by IA–42–93 are adopted by this Treasury decision.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Rosemary DeLeone, Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for section 1.446–1 and by adding the following citations in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.446–1 also issued under 26 U.S.C. 446 and 461(h). * * *

Section 1.481–1 also issued under 26 U.S.C. 481.

Section 1.481–2 also issued under 26 U.S.C. 481.

Section 1.481–3 also issued under 26 U.S.C. 481.

Section 1.481–4 also issued under 26 U.S.C. 481.

Section 1.481–5 also issued under 26 U.S.C. 481. * * *

Par. 2. Section 1.446–1 is amended by revising paragraph (e)(3) to read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(e) * * *

(3)(i) Except as otherwise provided under the authority of paragraph (e)(3)(ii) of this section, to secure the Commissioner's consent to a taxpayer's change in method of accounting the taxpayer must file an application on Form 3115 with the Commissioner within 180 days after the beginning of the taxable year in which the taxpayer desires to make the change in method of accounting. To the extent applicable, the taxpayer must furnish all information requested on the Form 3115. This information includes all classes of items that will be treated differently under the new method of accounting, any amounts that will be duplicated or omitted as a result of the proposed change, and the taxpayer's computation of any adjustments necessary to prevent such duplications or omissions. The Commissioner may require such other information as may be necessary to determine whether the proposed change will be permitted. Permission to change a taxpayer's method of accounting will not be granted unless the taxpayer agrees to the Commissioner's prescribed terms and conditions for effecting the change, including the taxable year or years in which any adjustment necessary to prevent amounts from being duplicated or omitted is to be taken into account. See section 481 and the regulations thereunder, relating to certain adjustments resulting from accounting method changes, and section 472 and the regulations thereunder, relating to adjustments for changes to and from the last-in, first-out inventory method.

(ii) Notwithstanding the provisions of paragraph (e)(3)(i) of this section, the Commissioner may prescribe administrative procedures under which taxpayers will be permitted to change their method of accounting. The administrative procedures shall prescribe those terms and conditions necessary to obtain the Commissioner's consent to effect the change and to prevent amounts from being duplicated or omitted. The terms and conditions that may be prescribed by the Commissioner may include terms and conditions that require the change in method of accounting to be effected on a cut-off basis or by an adjustment under section 481(a) to be taken into account in the taxable year or years prescribed by the Commissioner.

(iii) This paragraph (e)(3) is effective for Consent Agreements signed on or after December 27, 1994. For Consent Agreements signed before December 27, 1994, see § 1.446–1(e)(3) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

Par. 3. Section 1.481–1 is amended as follows:

1. Paragraph (a)(2) is amended by adding the phrase "(hereinafter referred to as pre-1954 years)" to the end of the paragraph.

2. The third sentence of paragraph (c)(1) is amended by removing "pre-1954 Code years" and replacing it with "pre-1954 years".

3. Paragraphs (c) (2), (3), and (4) are revised.

4. Paragraphs (c) (6) and (7) are removed.

5. Paragraph (d) is revised.

6. Paragraph (e) is removed.

The revised paragraphs read as follows:

§ 1.481–1 Adjustments in general.

* * * * *

(c) * * *

(2) If a change in method of accounting is voluntary (i.e., initiated by the taxpayer), the entire amount of the adjustments required by section 481(a) is generally taken into account in computing taxable income in the taxable year of the change, regardless of whether the adjustments increase or decrease taxable income. See, however, §§ 1.446–1(e)(3) and 1.481–4 which provide that the Commissioner may prescribe the taxable year or years in which the adjustments are taken into account.

(3) If the change in method of accounting is involuntary (i.e., not initiated by the taxpayer), then only the amount of the adjustments required by section 481(a) that is attributable to taxable years beginning after December 31, 1953, and ending after August 16, 1954, (hereinafter referred to as post-1953 years) is taken into account. This amount is generally taken into account in computing taxable income in the taxable year of the change, regardless of whether the adjustments increase or decrease taxable income. See, however, §§ 1.446–1(e)(3) and 1.481–4 which provide that the Commissioner may prescribe the taxable year or years in which the adjustments are taken into account. See also § 1.481–3 for rules relating to adjustments attributable to pre-1954 years.

(4) For any adjustments attributable to post-1953 years that are taken into account entirely in the year of change and that increase taxable income by more than $3,000, the limitations on tax provided in section 481(b) (1) or (2) apply. See § 1.481–2 for rules relating to the limitations on tax provided by sections 481(b) (1) and (2).

* * * * *

(d) Any adjustments required under section 481(a) that are taken into account during a taxable year must be properly taken into account for purposes of computing gross income, adjusted gross income, or taxable income in determining the amount of any item of gain, loss, deduction, or credit that depends on gross income, adjusted gross income, or taxable income.

Par. 4. Section 1.481–2 is amended as follows:

1. The first and second sentences of paragraph (a) are revised.

2. The first sentence of paragraph (b) introductory text is revised.

3. The first sentence of paragraph (c)(1) is revised.

4. The first sentence of paragraph (c)(2) is amended by removing "subparagraph (1) of this paragraph" and replacing it with "paragraph (c)(1) of this section".

5. Paragraph (c)(3) introductory text is amended by removing "subparagraph (1) of this paragraph" and replacing it with "paragraph (c)(1) of this section".

6. Paragraph (c)(4) is revised.

7. Paragraph (c)(6) is amended by removing "Internal Revenue Code of 1954" and replacing it with "Internal Revenue Code of 1986".

8. The second sentence of paragraph (d) is amended by removing "Internal Revenue Code of 1954" and replacing it with "Internal Revenue Code of 1986".

9. *Example (1)* of paragraph (d) is amended by removing "pre-1954 Code years" and replacing it with "pre-1954 years" in each place that it appears.

The revised paragraphs read as follows:

§ 1.481–2 Limitation on tax.

(a) *Three-year allocation.* Section 481(b)(1) provides a limitation on the tax under chapter 1 of the Internal Revenue Code for the taxable year of change that is attributable to the adjustments required under section 481(a) and § 1.481–1 if the entire amount of the adjustments is taken into account in the year of change. If such adjustments increase the taxpayer's taxable income for the taxable year of the change by more than $3,000, then the tax for such taxable year that is attributable to the adjustments shall not exceed the lesser of the tax attributable to taking such adjustments into account in computing taxable income for the taxable year of the change under section 481(a) and § 1.481–1, or the aggregate of the increases in tax that would result if the adjustments were included ratably in the taxable year of the change and the two preceding taxable years. * * *

(b) *Allocation under new method of accounting.* Section 481(b)(2) provides a second alternative limitation on the tax for the taxable year of change under chapter 1 of the Internal Revenue Code that is attributable to the adjustments required under section 481(a) and § 1.481–1 where such adjustments increase taxable income for the taxable year of change by more than $3,000.

* * *

(c) *Rules for computation of tax.* (1) The first step in determining whether either of the limitations described in section 481(b) (1) or (2) applies is to compute the increase in tax for the taxable year of the change that is attributable to the increase in taxable income for such year resulting solely from the adjustments required under section 481(a) and § 1.481–1.

* * * * *

(4) The tax for the taxable year of the change shall be the tax for such year, computed without taking any of the adjustments referred to in paragraph (c)(1) of this section into account, increased by the smallest of the following amounts—

(i) The amount of tax for the taxable year of the change attributable solely to taking into account the entire amount of the adjustments required by section 481(a) and § 1.481–1;

(ii) The sum of the increases in tax liability for the taxable year of the change and the two immediately preceding taxable years that would have resulted solely from taking into account one-third of the amount of such adjustments required for each of such years as though such amounts had been properly attributable to such years (computed in accordance with paragraph (c)(2) of this section); or

(iii) The net increase in tax attributable to allocating such adjustments under the new method of accounting (computed in accordance with paragraph (c)(3) of this section).

* * * * *

§ 1.481–3 [Amended]

Par. 5. Section 1.481–3 is amended as follows:

1. The language "pre-1954 Code years" is removed and the language "pre-1954 years" is added in its place in the section heading and the first, second and third sentences of the section.

2. Remove the last sentence of the section.

§ 1.481–4 [Removed]

Par. 6. Section 1.481–4 is removed.

§ 1.481–5 [Redesignated as § 1.481–4]

Par. 7. Section 1.481–5 is redesignated as § 1.481–4 and is revised to read as follows:

§ 1.481–4 Adjustments taken into account with consent.

(a) In addition to the terms and conditions prescribed by the Commissioner under § 1.446–1(e)(3) for effecting a change in method of accounting, including the taxable year or years in which the amount of the adjustments required by section 481(a) is to be taken into account, or the methods of allocation described in section 481(b), a taxpayer may request approval of an alternative method of allocating the amount of the adjustments under section 481. See section 481(c). Requests for approval of an alternative method of allocation shall set forth in detail the facts and circumstances upon which the taxpayer bases its request. Permission will be granted only if the taxpayer and the Commissioner agree to the terms and conditions under which the allocation is to be effected. See § 1.446–1(e) for the rules regarding how to secure the Commissioner's consent to a change in method of accounting.

(b) An agreement to the terms and conditions of a change in method of accounting under § 1.446–1(e)(3), including the taxable year or years prescribed by the Commissioner under that section (or an alternative method described in paragraph (a) of this section) for taking the amount of the adjustments under section 481(a) into account, shall be in writing and shall be signed by the Commissioner and the taxpayer. It shall set forth the items to be adjusted, the amount of the adjustments, the taxable year or years for which the adjustments are to be taken into account, and the amount of the adjustments allocable to each year. The agreement shall be binding on the parties except upon a showing of fraud, malfeasance, or misrepresentation of material fact.

Par. 8. Section 1.481–5 is added to read as follows:

§ 1.481–5 Effective dates.

Sections 1.481–1, 1.481–2, 1.481–3, and 1.481–4 are effective for Consent Agreements signed on or after December 27, 1994. For Consent Agreements signed before December 27, 1994, see §§ 1.481–1, 1.481–2, 1.481–3, 1.481–4, and 1.481–5 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

§ 1.481–6 [Removed]

Par. 9. Section 1.481–6 is removed.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: July 26, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 95–19283 Filed 8–4–95; 8:45 am]
BILLING CODE 4830–01–U

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26 CFR Parts 40, 48, and 602

[TD 8609]

RIN 1545–AS10

Gasohol; Compressed Natural Gas

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to gasohol blending and the tax on compressed natural gas (CNG). The regulations reflect and implement certain changes made by the Energy Policy Act of 1992 (the Energy Act) and the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act). The regulations relating to gasohol blending affect certain blenders, enterers, refiners, and throughputters. The regulations relating to CNG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat.

EFFECTIVE DATE: These regulations are effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1270. The estimated average annual reporting burden per respondent is .2 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On October 19, 1994, the IRS published in the **Federal Register** (59 FR 52735) proposed regulations (PS–66–93) that generally consolidate the rules relating to the gasoline tax and the diesel fuel tax into a single set of rules applicable to both fuels. These regulations also proposed rules relating to gasohol and CNG.

Written comments regarding these regulations were received and a public hearing was held on January 11, 1995. After consideration of the comments relating to gasohol and CNG, the proposed regulations on these topics are adopted as revised by this Treasury decision. Final regulations relating to the consolidation provisions contained in the proposed regulations will be issued later.

Explanation of Provisions

CNG; Treatment of Liquefied Natural Gas (LNG)

Section 4041(a)(2) imposes a special motor fuels tax on any liquid (other than kerosene, gas oil, fuel oil, gasoline, or diesel fuel) that is sold for use or used as a fuel in a motor vehicle or motorboat. The rate of this tax is 18.4 cents per gallon (18.3 cents per gallon in the case of liquefied petroleum gas).

Effective October 1, 1993, section 4041(a)(3) (as added by the 1993 Act) imposes a tax of 48.54 cents per MCF (thousand cubic feet) on CNG that is sold for use or used in a motor vehicle or motorboat.

CNG is a gas at the time it is delivered into the fuel supply tank of a motor vehicle or motorboat and when it is actually combusted in the engine. LNG, which is produced by compressing pipeline natural gas and cooling it to −260 degrees Fahrenheit, is a liquid when it is delivered into the fuel supply tank of a motor vehicle or motorboat, but is vaporized into a gas when it is actually combusted in the engine.

Several commentators suggested that the CNG rate, rather than the rate on special motor fuels, should apply to LNG because (1) Both products have the same chemical composition, (2) both products are gases when they are actually combusted in an engine, and (3) LNG would be at a competitive disadvantage if taxed at the liquid rate.

The final regulations do not adopt this suggestion. Before the 1993 Act, the section 4041 special fuels tax applied to liquids sold for use or used as a fuel in motor vehicles or motorboats. Thus, LNG was subject to tax at the special fuels rate of 18.4 cents per gallon when the 1993 Act imposed a tax at a lower rate on CNG. The 1993 Act contained no provision that would change the treatment of LNG, nor is there any suggestion in the legislative history that Congress intended to do so.

CNG; Gasoline Gallon Equivalent

The CNG industry has recently begun to sell CNG on the basis of CNG's Gasoline Gallon Equivalent (GGE). Generally, a GGE represents a particular fuel's energy content relative to the energy content of gasoline; thus, vehicles can travel approximately the same distance with a GGE of CNG as with a gallon of gasoline.

Several commentators suggested that the final regulations should express the CNG tax rate in terms of GGE instead of in terms of MCF as provided in the Code. The final regulations do not adopt this suggestion. However, there is no restriction on taxpayers engaging in sales on the basis of GGE provided that the tax is actually paid at the rate of 48.54 cents per MCF.

Gasohol; Tolerance Rule

The gasoline tax rate on most removals and entries is 18.4 cents per gallon (the regular tax rate). However, a reduction from the regular tax rate is allowed for gasohol (a gasoline/alcohol mixture containing a specified amount of alcohol) and gasoline removed or entered for the production of gasohol.

Prior to its amendment by the Energy Act, section 4081(c) treated a mixture of gasoline and alcohol as gasohol only if at least 10 percent of the mixture was alcohol. Regulations allow a tolerance for mixtures that contain less than 10 percent alcohol but at least 9.8 percent alcohol. Under the tolerance rule, a portion of the mixture equal to the number of gallons of alcohol in the mixture multiplied by 10 is considered to be gasohol. Any excess liquid in the mixture is taxed at the regular rate.

This tolerance rule accommodates operational problems associated with the blending of gasohol. For example, blenders may fail to attain the required 10-percent alcohol level because the device used to meter the amount of gasoline or alcohol delivered into a tank truck is imprecise or because the high-speed gasoline or alcohol pump used does not shut off at the proper moment. As noted in the preamble to an earlier regulation relating to gasohol tolerances (published in the **Federal Register** on August 21, 1987 (52 FR 31614)), this 2 percent tolerance is based upon a standard industry tolerance specification for wholesale measuring devices.

Effective January 1, 1993, section 4081(c) was amended to allow a reduction from the regular rate for mixtures containing at least 5.7 percent alcohol but less than 7.7 percent alcohol (5.7 percent gasohol) and mixtures containing at least 7.7 percent alcohol but less than 10 percent alcohol (7.7 percent gasohol).

The proposed regulations did not extend the tolerance rule to mixtures that contain less than 7.7 or 5.7 percent alcohol. Several commentators suggested that the tolerance rule be so extended. They noted that the same operational problems that occur with the blending of 10 percent gasohol also occur with the blending of 7.7 or 5.7 percent gasohol.

The final regulations adopt this suggestion and allow a tolerance for 7.7 and 5.7 percent gasohol in approximately the same percentage as that allowed for 10 percent gasohol. Any excess liquid in a mixture that qualifies as 5.7 percent gasohol or 7.7 percent gasohol because of the tolerance rule is taxed at the regular rate.

Gasohol; Alcohol-Based Ethers

The proposed regulations provide that alcohol (that is, alcohol that is not produced from petroleum, natural gas, or coal (including peat)) used to produce ethers such as ethyl tertiary butyl ether (ETBE) or methyl tertiary butyl ether (MTBE) is treated as alcohol for purposes of the reduced tax rates for gasohol. Some commentators suggested that, with respect to gasohol produced by blending gasoline made with alcohol-based ether at a refinery, the regulations should also provide (1) An allocation rule and (2) guidance regarding the application of the income tax credit allowable by section 40.

Allocation rule. Traditionally, gasohol has been produced by delivering the requisite amount of alcohol into a transport trailer that contains gasoline while the trailer is at a terminal rack. The two components are blended together by the motion of the trailer as it moves on the highway.

Now, however, gasohol may be produced at the refinery with alcohol-based ether. This type of gasohol does not absorb water, which means it can be transported through a pipeline. However, after shipment from the refinery and before its removal at the terminal rack, much of this gasohol may have been diluted with non-qualifying blends because of the use of common-carrier pipelines, barges, and non-segregated storage facilities. As a result, the blend removed at the terminal rack may not qualify for the reduction from the regular rate due to commingling between the refinery and terminal rack. To address this issue, several commentators suggested an allocation system for gasohol that is produced before it reaches the terminal that would not depend on the actual existence of a qualified mixture at the taxing point. For example, a refiner that removes one million gallons of gasohol from its refinery for bulk shipment to a terminal could designate any one million gallons of gasoline that is removed at the terminal rack as gasohol, regardless of the actual alcohol-based ether content of the gasoline.

Other commentators, by contrast, opposed expanding the benefit for gasohol made with ether-based alcohol by allowing such an allocation rule. Rather, these commentators argued that a batch of mixture should not be taxed at the reduced rate unless the mixture actually contains the requisite amount of alcohol at the taxing point.

The final regulations do not adopt the suggested allocation rule. Under section 4081(c), a reduction from the regular tax rate is allowable in the case of a taxable removal or entry of gasohol. Thus, a taxable removal or entry of gasoline that does not contain the requisite amount of alcohol at the time of the taxable removal or entry is not a removal of gasohol and is subject to tax at the regular rate.

However, the final regulations do address concerns arising from this relatively recent development of producing gasohol at the refinery rather than at the terminal rack. Specifically, section 4101 provides that every person required to be registered with respect to the gasoline tax must register at such time, in such form and manner, and subject to such terms and conditions as the Secretary may prescribe by regulations. Pursuant to that provision, the final regulations provide that a refiner registered by the IRS that produces a batch of gasohol may treat itself as not registered with respect to a bulk removal of that gasohol. If the refiner treats itself in this manner, the removal would not be exempt from the tax under section 4081(a)(1)(B), which provides that the bulk removal by a registered refiner for delivery to a terminal operated by a registered terminal operator is not subject to the tax. However, because the mixture would qualify as gasohol at the time of removal from the refinery, it would be subject to tax at the reduced rate. The final regulations also provide that the refiner is not required to deposit this tax before filing the return relating to that tax.

If a refiner chooses this option, tax also will be imposed under § 48.4081–2(b) at the full rate when the fuel is removed at the terminal rack, but a refund of this second tax may then be allowable to the position holder under section 4081(e).

Application of section 40. Section 40 allows an income tax credit to the producer of certain mixtures of alcohol and gasoline. Under section 40(c), the amount of this credit with respect to any alcohol is reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of section 4081(c).

One commentator suggested that the final regulations provide that a refiner that produces a mixture of gasoline with an alcohol-based ether always is eligible for the section 40 credit, without reduction under section 40(c).

The final regulations do not adopt this suggestion because it is inconsistent with section 40(c), which requires a reduction in the credit whenever a mixture is taxed at a reduced rate for gasohol under section 4081(c).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 40 and 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40, 48, and 602 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 40.6302(c)–0 [Removed]

Par. 2. Section 40.6302(c)–0 is removed.

Par. 3. In § 40.6302(c)–1, paragraph (e)(4) is added to read as follows:

§ 40.6302(c)–1 Use of Government depositaries.

* * * * *

(e) * * *

(4) *Taxes excluded; certain removals of gasohol from refineries.* No deposit is required in the case of the tax imposed under § 48.4081–3(b)(1)(iii) of this chapter.

* * * * *

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 4. The authority citation for part 48 is amended by removing the entries for Sections 48.4041.21 and 48.4081–2 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. In § 48.4041–8, paragraph (f) is amended by:

1. Revising the introductory text of paragraph (f)(1).
2. Revising paragraph (f)(1)(i).
3. Redesignating paragraph (f)(1)(ii) as paragraph (f)(1)(iii) and adding a new paragraph (f)(1)(ii).
4. Removing from paragraph (f)(2) the language "diesel fuel or".

The revisions and additions read as follows:

§ 48.4041–8 Definitions.

* * * * *

(f) *Special motor fuel.* (1) Except as provided in paragraph (f)(2) of this section, *special motor fuel* means any liquid fuel, including—

(i) Any liquefied petroleum gas (such as propane, butane, pentane, or mixtures of the same);

(ii) Liquefied natural gas; or

* * * * *

Par. 6. Section 48.4041–21 is revised to read as follows:

§ 48.4041–21 Compressed natural gas (CNG).

(a) *Delivery of CNG into the fuel supply tank of a motor vehicle or motorboat*—(1) *Imposition of tax.* Tax is imposed on the delivery of compressed natural gas (CNG) into the fuel supply tank of the propulsion engine of a motor vehicle or motorboat unless tax was previously imposed on the CNG under paragraph (b) of this section.

(2) *Liability for tax.* If the delivery of the CNG is in connection with a sale, the seller of the CNG is liable for the tax imposed under paragraph (a)(1) of this section. If the delivery of the CNG is not in connection with a sale, the operator of the motor vehicle or motorboat, as the case may be, is liable for the tax imposed under paragraph (a)(1) of this section.

(b) *Bulk sales of CNG*—(1) *In general.* Tax is imposed on the sale of CNG that is not in connection with the delivery of the CNG into the fuel supply tank of the propulsion engine of a motor vehicle or motorboat if, by the time of the sale—

(i) The buyer has given the seller a written statement stating that the entire quantity of the CNG covered by the statement is for use as a fuel in a motor vehicle or motorboat; and

(ii) The seller has given the buyer a written acknowledgement of receipt of the statement described in paragraph (b)(1)(i) of this section.

(2) *Liability for tax.* The seller of the CNG is liable for the tax imposed under this paragraph (b).

(c) *Exemptions*—(1) *In general.* The taxes imposed under this section do not apply to a delivery or sale of CNG for a use described in § 48.4082–4T(c)(1) through (5)(A) or (c)(6) through (11). However, if the person otherwise liable for tax under this section is the seller of the CNG, the exemption under this section applies only if, by the time of sale, the seller receives an unexpired certificate (as described in this paragraph (c)) from the buyer and has no reason to believe any information in the certificate is false.

(2) *Certificate; in general.* The certificate to be provided by a buyer of CNG is to consist of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, should be in substantially the same form as the model certificate provided in paragraph (c)(4) of this section, and should contain all information necessary to complete the model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date a new certificate is provided to the seller.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's right to provide a certificate has been withdrawn.

(3) *Withdrawal of the right to provide a certificate.* The Internal Revenue Service may withdraw the right of a buyer of CNG to provide a certificate under this paragraph (c) if the buyer uses CNG to which a certificate applies in a taxable use. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(4) *Model certificate.*

Certificate of Person Buying Compressed Natural Gas (CNG) for a Nontaxable Use

(To support tax-free sales of CNG under section 4041 of the Internal Revenue Code.)

_____

_____

Name, address, and employer identification number of seller

_____ "Buyer") certifies the following under penalties of perjury:

The CNG to which this certificate relates will be used in a nontaxable use.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Invoice or delivery ticket number

_____

2. _____ (number of MCFs) _____

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____

2. Expiration date _____ (period not to exceed 1 year after the effective date)

3. Buyer account or order number

_____

Buyer will not claim a credit or refund under section 6427 of the Internal Revenue Code for any CNG to which this certificate relates.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

Buyer understands that if Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Buyer that the right to provide a certificate has been withdrawn from a purchaser to which Buyer sells CNG tax free.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(d) *Rate of tax.* The rate of the tax imposed under this section is the rate prescribed by section 4041(a)(3).

(e) *Effective date.* This section is effective October 1, 1995.

§ 48.4081–0 [Removed]

Par. 7. Section 48.4081–0 is removed.

Par. 8. In § 48.4081–3, paragraph (b)(1) is revised to read as follows:

§ 48.4081–3 Gasoline tax; taxable events other than removal at the terminal rack.

* * * * *

(b) * * * (1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and paragraph (b)(2) of this section (relating to an exception for certain refineries), tax is imposed on the following removals of gasoline from a refinery:

(i) The removal is by bulk transfer and the refiner or the owner of the gasoline immediately before the removal is not a gasoline registrant.

(ii) The removal is at the rack.

(iii) After September 30, 1995, the removal is of a batch of gasohol from an approved refinery by bulk transfer and the refiner treats itself with respect to the removal as a person that is not registered under section 4101. See § 48.4101–3. For the rule providing that no deposit is required in the case of the tax imposed under this paragraph (b)(1)(iii), see § 40.6302(c)-1(e)(4) of this chapter. For the rule allowing inspections of facilities where gasohol is produced, see section 4083.

Par. 9. Section 48.4081–6 is revised to read as follows:

§ 48.4081–6 Gasoline tax; gasohol.

(a) *Overview.* This section provides rules for determining the applicability of reduced rates of tax on a removal or entry of gasohol or of gasoline used to produce gasohol. Rules are also provided for the imposition of tax on the separation of gasoline from gasohol and the failure to use gasoline that has been taxed at a reduced rate to produce gasohol.

(b) *Explanation of terms*—(1) *Alcohol*—(i) *In general; source of the alcohol.* Except as provided in paragraph (b)(1)(ii) of this section, alcohol means any alcohol that is not a derivative product of petroleum, natural gas, or coal (including peat). Thus, the term includes methanol and ethanol that are not derived from petroleum, natural gas, or coal (including peat). The term also includes alcohol produced either within or outside the United States.

(ii) *Proof and denaturants.* Alcohol does not include alcohol with a proof of less than 190 degrees (determined without regard to added denaturants). If the alcohol added to a fuel/alcohol mixture (the added alcohol) includes impurities or denaturants, the volume of alcohol in the mixture is determined under the following rules:

(A) The volume of alcohol in the mixture includes the volume of any impurities (other than added denaturants and any fuel with which the alcohol is mixed) that reduce the purity of the added alcohol to not less than 190 proof (determined without regard to added denaturants).

(B) The volume of alcohol in the mixture includes the volume of any approved denaturants that reduce the purity of the added alcohol, but only to the extent that the volume of the approved denaturants does not exceed five percent of the volume of the added alcohol (including the approved denaturants). If the volume of the approved denaturants exceeds five percent of the volume of the added alcohol, the excess over five percent is considered part of the nonalcohol content of the mixture.

(C) For purposes of this paragraph (b)(1)(ii), approved denaturants are any denaturants (including gasoline and nonalcohol fuel denaturants) that reduce the purity of the added alcohol and are added to such alcohol under a formula approved by the Secretary.

(iii) *Products derived from alcohol.* If alcohol described in paragraphs (b)(1)(i) and (ii) of this section has been chemically transformed in producing another product (that is, the alcohol is no longer present as a separate chemical in the other product) and there is no significant loss in the energy content of the alcohol, any mixture containing the product includes the volume of alcohol used to produce the product. Thus, for example, a mixture of gasoline and ethyl tertiary butyl ether (ETBE), or of gasoline and methyl tertiary butyl ether (MTBE), includes any alcohol described in paragraphs (b)(1)(i) and (ii) of this section that is used to produce the ETBE or MTBE, respectively, in a chemical reaction in which there is no significant loss in the energy content of the alcohol.

(2) *Gasohol*—(i) *In general*—(A) Gasohol is a mixture of gasoline and alcohol that is 10 percent gasohol, 7.7 percent gasohol, or 5.7 percent gasohol. The determination of whether a particular mixture is 10 percent gasohol, 7.7 percent gasohol, or 5.7 percent gasohol is made on a batch-by-batch basis. A batch of gasohol is a discrete mixture of gasoline and alcohol.

(B) If a particular mixture is produced within the bulk transfer/terminal system (for example, at a refinery), the determination of whether the mixture is gasohol is made at the time of the taxable removal or entry of the mixture.

(C) If a particular mixture is produced outside of the bulk transfer/terminal system (for example, by splash blending after the gasoline has been removed from the terminal at the rack), the determination of whether the mixture is gasohol is made immediately after the mixture is produced. In such a case, the contents of the batch typically correspond to a gasoline meter delivery ticket and an alcohol meter delivery ticket, each of which shows the number of gallons of liquid delivered into the mixture. The volume of each component in a batch (without adjustment for temperature) ordinarily is determined by the number of metered gallons shown on the delivery tickets for the gasoline and alcohol delivered. However, if metered gallons of gasoline and alcohol are added to a tank already containing more than a minor amount of liquid, the determination of whether a batch satisfies the alcohol-content requirement will be made by taking into account the amount of alcohol and non-alcohol fuel contained in the liquid already in the tank. Ordinarily, any amount in excess of 0.5 percent of the capacity of the tank will not be considered minor.

(ii) *10 percent gasohol*—(A) *In general.* A batch of gasoline/alcohol mixture is 10 percent gasohol if it contains at least 9.8 percent alcohol by volume, without rounding.

(B) *Batches containing less than 10 percent but at least 9.8 percent alcohol.* If a batch of mixture contains less than 10 percent alcohol but at least 9.8 percent alcohol, without rounding, only a portion of the batch is considered to be 10 percent gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 10. Any remaining liquid in the mixture is excess liquid.

(iii) *7.7 percent gasohol*—(A) *In general.* A batch of gasoline/alcohol mixture is 7.7 percent gasohol if it contains less than 9.8 percent alcohol but at least 7.55 percent alcohol by volume, without rounding.

(B) *Batches containing less than 7.7 percent but at least 7.55 percent alcohol.* If a batch of mixture contains less than 7.7 percent alcohol but at least 7.55 percent alcohol, without rounding, only a portion of the batch is considered to be 7.7 percent gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 12.987. Any remaining liquid in the mixture is excess liquid.

(iv) *5.7 percent gasohol*—(A) *In general.* A batch of gasoline/alcohol mixture is 5.7 percent gasohol if it contains less than 7.55 percent alcohol but at least 5.59 percent alcohol by volume, without rounding.

(B) *Batches containing less than 5.7 percent but at least 5.59 percent alcohol.* If a batch of mixture contains less than 5.7 percent alcohol but at least 5.59 percent alcohol, without rounding, only a portion of the batch is considered to be 5.7 percent gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 17.544. Any remaining liquid in the mixture is excess liquid.

(v) *Tax on excess liquid.* If tax was imposed on the excess liquid in any gasohol at the gasohol production tax rate (as defined in paragraph (e)(1) of this section), the excess liquid in the batch is considered to be gasoline with respect to which there is a failure to blend into gasohol for purposes of paragraph (f) of this section. If tax was imposed on the excess liquid at the rate of tax described in section 4081(a), a credit or refund under section 6427(f) is not allowed with respect to the excess liquid.

(vi) *Examples.* The following examples illustrate this paragraph (b)(2). In these examples, a gasohol blender creates a gasoline/alcohol mixture by pumping a specified amount of gasoline into an empty tank and then adding a specified amount of alcohol.

Example 1. Mixtures containing exactly 10 percent alcohol. The applicable delivery tickets show that the mixture is made with 7200 metered gallons of gasoline and 800 metered gallons of alcohol. Accordingly, the mixture contains 10 percent alcohol (as determined based on the delivery tickets provided to the blender) and qualifies as 10 percent gasohol.

Example 2. Mixtures containing less than 10 percent alcohol but at least 9.8 percent

alcohol. The applicable delivery tickets show that the mixture is made with 7205 metered gallons of gasoline and 795 metered gallons of alcohol. Because the mixture contains less than 10 percent alcohol, but more than 9.8 percent alcohol (as determined based on the delivery tickets provided to the blender), 7950 gallons of the mixture qualify as 10 percent gasohol. If tax was imposed on the gasoline in the mixture at the gasohol production rate applicable to 10 percent gasohol, the remaining 50 gallons of the mixture (the excess liquid) are treated as gasoline with respect to which there was a failure to blend into gasohol for purposes of paragraph (f) of this section. If tax was imposed on the gasoline in the mixture at the rate of tax described in section 4081(a), a credit or refund under section 6427(f) is allowed only with respect to 7155 gallons of gasoline.

Example 3. Mixtures containing less than 5.59 percent alcohol. The applicable delivery tickets show that the mixture is made with 7568 metered gallons of gasoline and 436 metered gallons of alcohol. Because the mixture contains only 5.45 percent alcohol (as determined based on the delivery tickets provided to the blender), the mixture does not qualify as gasohol.

(3) *Gasohol blender. Gasohol blender* means any person that regularly buys gasoline and alcohol and produces gasohol for use in its trade or business or for resale.

(4) *Registered gasohol blender. Registered gasohol blender* means a person that is registered under section 4101 as a gasohol blender.

(c) *Rate of tax on gasoline removed or entered for gasohol production*—(1) *In general.* The rate of tax imposed on gasoline under § 48.4081–2(b) (relating to tax imposed at the terminal rack), § 48.4081–3(b)(1) (relating to tax imposed at the refinery), or § 48.4081–3(c)(1) (relating to tax imposed on entries) is the gasohol production tax rate if—

(i) The person liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(3) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a taxable fuel registrant and a registered gasohol blender, and such person produces gasohol with the gasoline within 24 hours after removing or entering the gasoline; or

(ii) The gasoline is sold in connection with the removal or entry, the person liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(3) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a taxable fuel registrant and the person, at the time of the sale,—

(A) Has an unexpired certificate (as described in paragraph (c)(2) of this section) from the buyer; and

(B) Has no reason to believe that any information in the certificate is false.

(2) *Certificate*—(i) *In general.* The certificate referred to in paragraph (c)(1)(ii)(A) of this section is a statement that is to be provided by a registered gasohol blender that is signed under penalties of perjury by a person with authority to bind the registered gasohol blender, is in substantially the same form as the model certificate provided in paragraph (c)(2)(ii) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(A) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(B) The date the registered gasohol blender provides a new certificate to the seller.

(C) The date the seller is notified by the Internal Revenue Service or the gasohol blender that the gasohol blender's registration has been revoked or suspended.

(ii) *Model certificate.*

Certificate of Registered Gasohol Blender

(To support sales of gasoline at the gasohol production tax rate under section 4081(c) of the Internal Revenue Code)

_____
Name, address, and employer identification number of seller

_____ (Buyer) certifies the following under penalties of perjury:

Buyer is registered as a gasohol blender with registration number _____. Buyer's registration has not been suspended or revoked by the Internal Revenue Service.

The gasoline bought under this certificate will be used by Buyer to produce gasohol (as defined in § 48.4081–6(b) of the Manufacturers and Retailers Excise Tax Regulations) within 24 hours after buying the gasoline.

Type of gasohol Buyer will produce (check one only):

_____ 10% gasohol
_____ 7.7% gasohol
_____ 5.7% gasohol

If the gasohol the Buyer will produce will contain ethanol, check here: _____

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Account number _____
2. Number of gallons _____

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____
2. Expiration date _____

(period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will not claim a credit or refund under section 6427(f) of the Internal Revenue Code for any gasoline covered by this certificate.

Buyer agrees to provide seller with a new certificate if any information on this certificate changes.

Buyer understands that Buyer's registration may be revoked if the gasoline covered by this certificate is resold or is used other than in Buyer's production of the type of gasohol identified above.

Buyer will reduce any alcohol mixture credit under section 40(b) by an amount equal to the benefit of the gasohol production tax rate under section 4081(c) for the gasohol to which this certificate relates.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____
Printed or typed name of person signing

_____
Title of person signing

_____
Employer identification number

_____
Address of Buyer

_____
Signature and date signed

(iii) *Use of Form 637 or letter of registration as a gasohol blender's certificate prohibited.* A copy of the certificate of registry (Form 637) or letter of registration issued to a gasohol blender by the Internal Revenue Service is not a gasohol blender's certificate described in paragraph (c)(2)(ii) of this section.

(d) *Rate of tax on gasohol removed or entered.* The rate of tax imposed on removals or entries of any gasohol under §§ 48.4081–2(b), 48.4081–3(b)(1), and 48.4081–3(c)(1) is the gasohol tax rate. The rate of tax imposed on removals and entries of excess liquid described in paragraph (b)(2) of this section is the rate of tax applicable to gasoline under section 4081(a).

(e) *Tax rates*—(1) *Gasohol production tax rate.* The gasohol production tax rate is the applicable rate of tax determined under section 4081(c)(2)(A).

(2) *Gasohol tax rate.* The gasohol tax rate is the applicable alcohol mixture rate determined under section 4081(c)(4)(A).

(f) *Later separation and failure to blend*—(1) *Later separation*—(i) *Imposition of tax.* A tax is imposed on the removal or sale of gasoline separated from gasohol with respect to which tax was imposed at a rate described in paragraph (e) of this section or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1).

(ii) *Liability for tax.* The person that owns the gasohol at the time gasoline is separated from the gasohol is liable for the tax imposed under paragraph (f)(1)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed under paragraph (f)(1)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(2) *Failure to blend*—(i) *Imposition of tax.* Tax is imposed on the entry, removal, or sale of gasoline (including excess liquid described in paragraph (b)(2) of this section) with respect to which tax was imposed at a gasohol production tax rate if—

(A) The gasoline was not blended into gasohol; or

(B) The gasoline was blended into gasohol but the gasohol production tax rate applicable to the type of gasohol produced is greater than the rate of tax originally imposed on the gasoline.

(ii) *Liability for tax.* (A) In the case of gasoline with respect to which tax was imposed at the gasohol production tax rate under paragraph (c)(1)(i) of this section, the person liable for the tax imposed by paragraph (f)(2)(i) of this section is the person that was liable for tax on the entry or removal.

(B) In the case of gasoline with respect to which tax was imposed at the gasohol production tax rate under paragraph (c)(1)(ii) of this section, the person that bought the gasoline in connection with the entry or removal is liable for the tax imposed under paragraph (f)(2)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed on gasoline described in paragraph (f)(2)(i)(A) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the rate of tax previously imposed on the gasoline. The rate of tax imposed on gasoline described in paragraph (f)(2)(i)(B) of this section is the difference between the gasohol production tax rate applicable to the type of gasohol produced and the rate of tax previously imposed on the gasoline.

(iv) *Example.* The following example illustrates this paragraph (f)(2):

Example. (i) A registered gasohol blender bought gasoline in connection with a removal described in paragraph (c)(1)(ii) of this section. Based on the blender's certification (described in paragraph (c)(2) of this section) that the blender would produce 10 percent gasohol with the gasoline, tax at the gasohol production tax rate applicable to 10 percent gasohol was imposed on the removal.

(ii) The blender then produced a mixture by splash blending in a tank holding approximately 8000 gallons of mixture. The applicable delivery tickets show that the mixture was blended by first pumping 7220 metered gallons of gasoline into the empty tank, and then pumping 780 metered gallons of alcohol into the tank. Because the mixture contains 9.75 percent alcohol (as determined based on the delivery tickets provided to the blender) the entire mixture qualifies as 7.7 percent gasohol, rather than 10 percent gasohol.

(iii) Because the 7220 gallons of gasoline were taxed at the gasohol production tax rate applicable to 10 percent gasohol but the gasoline was blended into 7.7 percent gasohol, a failure to blend has occurred with respect to the gasoline. As the person that bought the gasoline in connection with the taxable removal, the blender is liable for the tax imposed under paragraph (f)(2)(i) of this section. The amount of tax imposed is the difference between—

(A) 7220 gallons times the gasohol production tax rate applicable to 7.7 percent gasohol; and

(B) 7220 gallons times the gasohol production tax rate applicable to 10 percent gasohol.

(iv) Because the gasohol does not contain exactly 7.7 percent alcohol, the benefit of the gasohol production tax rate with respect to the alcohol is less than the amount of the alcohol mixture credit under section 40(b) (determined before the application of section 40(c)). Accordingly, the blender may be entitled to claim an alcohol mixture credit for the alcohol used in the gasohol. Under section 40(c), however, the amount of the alcohol mixture credit must be reduced to take into account the benefit provided with respect to the alcohol by the gasohol production tax rate.

(g) Effective date. This section is effective August 7, 1995.

Par. 10. Section 48.4081–7 is amended as follows:

1. The heading for § 48.4081–7 is revised.

2. In paragraphs (a) and (b), the language "gasoline" is removed each place it appears and "taxable fuel" is added in its place.

3. Paragraphs (b)(4) and (c)(1) are revised.

4. In paragraph (c)(2), the language "gasoline" is removed each place it appears and "taxable fuel" is added in its place.

5. Paragraph (c)(3) is revised.

6. In paragraphs (c)(4)(i)(A) and (B), (ii)(A) and (B), and (iii), the language "gasoline" is removed each place it appears and "taxable fuel" is added in its place.

7. In paragraph (c)(4)(iv)(A), the language "(or such other model statement as the Commissioner may prescribe)" is added immediately after "paragraph (c)(4)(iv)(B) of this section".

8. In paragraph (c)(4)(iv)(B):

a. The description of line 4 is revised to read: "Volume and type of taxable fuel sold".

b. In the first paragraph following line 4 the language "gasoline" is removed and "taxable fuel" is added in its place.

9. Paragraph (c)(5) is removed.

10. Paragraph (d) is revised.

11. Paragraph (f), *Example 1*, paragraph (i), is amended by:

a. Removing the language "1993" in the first and fourth sentences and adding "1996" in its place.

b. Removing the language "paragraph (c)(2)" and adding "paragraph (c)" in its place.

12. Paragraph (f), *Example 1*, paragraph (ii), is amended by removing the language "1993" in the first and second sentences and adding "1996" in its place.

13. Paragraph (g) is revised.

The revisions read as follows:

§ 48.4081–7 Taxable fuel; conditions for refunds of taxable fuel tax under section 4081(e).

* * * * *

(b) * * *

(4) The person that paid the first tax to the government has met the reporting requirements of paragraph (c) of this section.

(c) * * * (1) *Reporting by persons paying the first tax.* Except as provided in paragraph (c)(3) of this section, the person that paid the first tax under § 48.4081–3 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in paragraph (c)(2) of this section (or such other model report as the Commissioner may prescribe) and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be filed with the return to which the report relates (or at such other time, or in such other manner, as prescribed by the Commissioner).

* * * * *

(3) *Optional reporting for certain taxable events.* Paragraph (c)(1) of this section does not apply with respect to a tax imposed under § 48.4081–2 (removal at a terminal rack), § 48.4081–3(c)(1)(ii) (nonbulk entries into the United States), or § 48.4081–3(g) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under section 4081 with respect to the taxable fuel, that person should (but is not required to) file a first taxpayer's report.

* * * * *

(d) *Form and content of claim*—(1) *In general.* The following rules apply to claims for refund under section 4081(e):

(i) The claim must be made by the person that paid the second tax to the government and must include all the information described in paragraph (d)(2) of this section.

(ii) The claim must be made on Form 8849 (or such other form as the Commissioner may designate) in accordance with the instructions on the form. The form should be marked *Section 4081(e) Claim* at the top. Section 4081(e) claims must not be included with a claim for a refund under any other provision of the Internal Revenue Code.

(2) *Information to be included in the claim.* Each claim for a refund under section 4081(e) must contain the following information with respect to the taxable fuel covered by the claim:

(i) Volume and type of taxable fuel.

(ii) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).

(iii) Amount of second tax that claimant paid to the government and a statement that claimant has not included the amount of this tax in the sales price of the taxable fuel to which this claim relates and has not collected that amount from the person that bought the taxable fuel from claimant.

(iv) Name, address, and employer identification number of the person that paid the first tax to the government.

(v) A copy of the first taxpayer's report that relates to the taxable fuel covered by the claim.

(vi) If the taxable fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that taxable fuel.

* * * * *

(g) *Effective date.* This section is effective in the case of taxable fuel with respect to which the first tax is imposed after September 30, 1995.

Par. 11. Section 48.4101–3 is added to read as follows:

§ 48.4101–3 Registration.

(a) A refiner that is registered under section 4101 may treat itself with respect to the bulk removal of any batch of gasohol from its refinery as a person that is not registered under section 4101. See § 48.4081–3(b)(1)(iii).

(b) This section is effective October 1, 1995.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 13. In § 602.101, paragraph (c) is amended by removing the entry for 48.4041–21 from the table and adding the entry "48.4041–21.....1545–1270" in numerical order to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 25, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19284 Filed 8–4–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 301

[TD 8610]

RIN 1545–AP98

Taxable Mortgage Pools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to taxable mortgage pools. This action is necessary because of changes made to the law by the Tax Reform Act of 1986. The final regulations provide guidance to entities for determining whether they are subject to the taxable mortgage pool rules.

EFFECTIVE DATE: These regulations are effective September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Arnold P. Golub or Marshall D. Feiring, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking (FI–55–91) under section 7701(i) of the Internal Revenue Code was published in the **Federal Register** on December 23, 1992 (57 FR 61029). Written comments relating to this notice were received, but no public hearing was requested or held. After consideration of the comments, the proposed regulations under section 7701(i) are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 301.7701(i)–1(c)(1)—Basis Used To Determine the Composition of an Entity's Assets

Among other requirements, to be classified as a taxable mortgage pool, substantially all of an entity's assets must consist of debt obligations, and more than 50 percent of those debt obligations must consist of real estate mortgages (or interests therein). Under the proposed regulations, an entity must apply these tests using the tax bases of its assets. One commentator, however, suggested that the entity should have the choice of using either the tax bases of its assets or the fair market value of its assets. The IRS and Treasury believe that using fair market value for the asset composition tests creates uncertainty and administrative difficulties. The final regulations, therefore, retain the rule in the proposed regulations.

Section 301.7701(i)–1(c)(5)—Seriously Impaired Real Estate Mortgages Not Treated as Debt Obligations

Under the proposed regulations, real estate mortgages that are seriously impaired are not treated as debt obligations for purposes of the asset composition tests. Whether real estate mortgages are seriously impaired generally depends on all the facts and circumstances. The proposed regulations, however, provide two safe harbors. Under those provisions, whether mortgages are seriously impaired depends only on the number of days the payments on the mortgages are delinquent (more than 89 days for single family residential real estate mortgages and more than 59 days for multi-family residential and commercial real estate mortgages). The safe harbors are not available, however, if an entity is receiving or anticipates receiving certain payments on the mortgages such as payments of principal and interest that are substantial and relatively certain as to amount.

Several commentators have asked for additional safe harbors based on factors other than the number of days a mortgage is delinquent. For example, one suggested a safe harbor for mortgages having excessively high loan to value ratios. Others suggested a safe harbor for mortgages that are purchased at a substantial discount.

The final regulations retain, unchanged, the safe harbors of the proposed regulations. The IRS and Treasury believe that no single factor is as clear an indication that a mortgage is seriously impaired as days delinquent. For example, a mortgage may be purchased at a discount for a variety of reasons, some of which bear no relation to the quality of the mortgage. To provide further guidance, however, the final regulations list some of the facts and circumstances that should be considered in determining whether a mortgage is seriously impaired.

Another commentator has criticized the safe harbors because they are unavailable if an entity anticipates receiving certain payments on a delinquent mortgage. The commentator is concerned that a test based on whether an entity anticipates receiving payments on a mortgage is both subjective and open-ended. To address this concern, the final regulations create a new rule, under which if an entity makes reasonable efforts to resolve a

mortgage and fails to do so within a designated time, then the entity is treated as not having anticipated receiving payments on the mortgage.

Section 301.7701(i)–1(d)(3)(ii)—Obligations Secured by Other Obligations Treated as Principally Secured by Real Property

Under the proposed regulations, an obligation is treated as a real estate mortgage if it is principally secured by an interest in real property. Whether an obligation is principally secured by an interest in real property ordinarily depends on the value of the real property relative to the amount of the obligation. The proposed regulations also provide that an obligation secured by real estate mortgages is treated as an obligation secured by an interest in real property. That obligation, therefore, may itself qualify as a real estate mortgage.

The final regulations retain these rules and clarify how they are applied if an obligation is secured by both real estate mortgages and other property. Under the final regulations, such an obligation is treated as secured by real property, but only to the extent of the combined value of the real estate mortgages and any real property that secures the obligation.

Section 301.7701(i)–1(f)(3)—Certain Liquidating Entities Not Treated as Taxable Mortgage Pools

The proposed regulations provide that an entity formed to liquidate real estate mortgages is not treated as a taxable mortgage pool if the entity meets four conditions. One condition is that the entity must liquidate within three years of acquiring its first asset. If the entity fails to liquidate within that time, then the payments the entity receives on its assets must be paid through to the holders of the entity's liabilities in proportion to the adjusted issue prices of the liabilities.

One commentator has asked that this condition be modified. The commentator suggested that either the three- year liquidation period should be extended to four years or an entity should have to liquidate only a certain percentage of its assets within the three-year period. The commentator alternatively suggested that an entity should be treated as meeting the condition if it satisfies fifty percent of the issue price of each of its liabilities using liquidation proceeds.

The final regulations retain the three-year liquidation rule. The IRS and Treasury believe that performing mortgages that conform to current underwriting standards may easily be disposed of within that time. Further, the market has developed to the point where three years is also ample time to dispose of non-performing mortgages. Mortgages that require more than three years for disposal are more likely to be seriously impaired, and a taxpayer who holds a sufficient quantity can avoid taxable mortgage pool classification by other means. The final regulations, therefore, do not change the basic rules in the proposed regulations.

Section 301.7701–1(g)—Anti-Avoidance Rules

An anti-avoidance rule in the proposed regulations authorizes the Commissioner to disregard or make other adjustments to any transaction if the transaction is entered into with a view to achieving the same economic effect as that of an arrangement subject to section 7701(i) while avoiding the application of that section. This authority is flexible, and among other things, includes the ability to override any safe harbor otherwise available under the regulations. The final regulations retain the anti-avoidance rule and provide two additional examples illustrating its exercise.

Section 301.7701(i)–4—Certain Governmental Entities Not Treated as Taxable Mortgage Pools

The proposed regulations provide that an entity is not classified as a taxable mortgage pool if: (1) The entity issuing the debt obligations is a State, the District of Columbia, or a political subdivision within the meaning of § 1.103–1(b), or is empowered to issue obligations on behalf of one of the foregoing; (2) the entity issues the debt obligations in the performance of a governmental purpose; and (3) the entity holds the remaining interest in any asset that supports the outstanding debt obligations until those obligations are satisfied.

Two commentators have asked that the third requirement be dropped because it prevents a governmental entity from reselling a package of mortgages. The IRS and Treasury believe, however, that dropping the requirement is inappropriate. Typically, when a mortgage pool is used to create multiple class debt, tax gains in excess of economic gains are generated during the early part of the pool's life and tax losses in excess of economic losses are generated during the latter part of the pool's life. Without the third requirement, a governmental entity can hold an interest in the pool during the early period and then convey that interest to a taxable entity during the latter period. Moreover, requiring a governmental entity to maintain an interest in pool assets is consistent with the second requirement that debt obligations supported by the pool are issued in performance of a governmental purpose.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Marshall D. Feiring and Arnold P. Golub, Office of Assistant Chief Counsel (Financial Institutions and Products), and Carol E. Schultze, formerly of that office. However, other personnel from the IRS and Treasury Department participated in their development.

The Office of Assistant Chief Counsel (Financial Institutions and Products) notes with sadness the passing of Susan E. Overlander, who contributed significantly to this project.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the following citations in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.7701(i)–1(g)(1) also issued under 26 U.S.C. 7701(i)(2)(D).

Section 301.7701(i)–4(b) also issued under 26 U.S.C. 7701(i)(3). * * *

Par. 2. Sections 301.7701(i)–0 through 301.7701(i)–4 are added to read as follows:

§ 301.7701(i)–0 Outline of taxable mortgage pool provisions.

This section lists the major paragraphs contained in §§ 301.7701(i)–1 through 301.7701(i)–4.

§ 301.7701(i)–1 Definition of a taxable mortgage pool.

(a) Purpose.
(b) In general.
(c) Asset composition tests.
(1) Determination of amount of assets.
(2) Substantially all.
(i) In general.
(ii) Safe harbor.
(3) Equity interests in pass-through arrangements.
(4) Treatment of certain credit enhancement contracts.
(i) In general.
(ii) Credit enhancement contract defined.
(5) Certain assets not treated as debt obligations.
(i) In general.
(ii) Safe harbor.
(A) In general.
(B) Payments with respect to a mortgage defined.
(C) Entity treated as not anticipating payments.
(d) Real estate mortgages or interests therein defined.
(1) In general.
(2) Interests in real property and real property defined.
(i) In general.
(ii) Manufactured housing.
(3) Principally secured by an interest in real property.
(i) Tests for determining whether an obligation is principally secured.
(A) The 80 percent test.
(B) Alternative test.
(ii) Obligations secured by real estate mortgages (or interests therein), or by combinations of real estate mortgages (or interests therein) and other assets.
(A) In general.
(B) Example.
(e) Two or more maturities.
(1) In general.
(2) Obligations that are allocated credit risk unequally.
(3) Examples.
(f) Relationship test.
(1) In general.
(2) Payments on asset obligations defined.
(3) Safe harbor for entities formed to liquidate assets.
(g) Anti-avoidance rules.
(1) In general.
(2) Certain investment trusts.
(3) Examples.

§ 301.7701(i)–2 Special rules for portions of entities.

(a) Portion defined.
(b) Certain assets and rights to assets disregarded.
(1) Credit enhancement assets.
(2) Assets unlikely to service obligations.
(3) Recourse.
(c) Portion as obligor.
(1) In general.
(2) Example.

§ 301.7701(i)–3 Effective dates and duration of taxable mortgage pool classification.

(a) Effective dates.
(b) Entities in existence on December 31, 1991.
(1) In general.
(2) Special rule for certain transfers.
(3) Related debt obligation.
(4) Example.
(c) Duration of taxable mortgage pool classification.
(1) Commencement and duration.
(2) Testing day defined.

§ 301.7701(i)–4 Special rules for certain entities.

(a) States and municipalities.
(1) In general.
(2) Governmental purpose.
(3) Determinations by the Commissioner.
(b) REITs. [Reserved]
(c) Subchapter S corporations.
(1) In general.
(2) Portion of an S corporation treated as a separate corporation.

§ 301.7701(i)–1 Definition of a taxable mortgage pool.

(a) *Purpose.* This section provides rules for applying section 7701(i), which defines taxable mortgage pools. The purpose of section 7701(i) is to prevent income generated by a pool of real estate mortgages from escaping Federal income taxation when the pool is used to issue multiple class mortgage-backed securities. The regulations in this section and in §§ 301.7701(i)–2 through 301.7701(i)–4 are to be applied in accordance with this purpose. The taxable mortgage pool provisions apply to entities or portions of entities that qualify for REMIC status but do not elect to be taxed as REMICs as well as to certain entities or portions of entities that do not qualify for REMIC status.

(b) *In general.* (1) A taxable mortgage pool is any entity or portion of an entity (as defined in § 301.7701(i)–2) that satisfies the requirements of section 7701(i)(2)(A) and this section as of any testing day (as defined in § 301.7701(i)–3(c)(2)). An entity or portion of an entity satisfies the requirements of section 7701(i)(2)(A) and this section if substantially all of its assets are debt obligations, more than 50 percent of those debt obligations are real estate mortgages, the entity is the obligor under debt obligations with two or more maturities, and payments on the debt obligations under which the entity is obligor bear a relationship to payments on the debt obligations that the entity holds as assets.

(2) Paragraph (c) of this section provides the tests for determining whether substantially all of an entity's assets are debt obligations and for determining whether more than 50 percent of its debt obligations are real estate mortgages. Paragraph (d) of this section defines real estate mortgages for purposes of the 50 percent test. Paragraph (e) of this section defines two or more maturities and paragraph (f) of this section provides rules for determining whether debt obligations bear a relationship to the assets held by an entity. Paragraph (g) of this section provides anti-avoidance rules. Section 301.7701(i)–2 provides rules for applying section 7701(i) to portions of entities and § 301.7701(i)–3 provides effective dates. Section 301.7701(i)–4 provides special rules for certain entities. For purposes of the regulations under section 7701(i), the term entity includes a portion of an entity (within the meaning of section 7701(i)(2)(B)), unless the context clearly indicates otherwise.

(c) *Asset composition tests*—(1) *Determination of amount of assets.* An entity must use the Federal income tax basis of an asset for purposes of determining whether substantially all of its assets consist of debt obligations (or interests therein) and whether more than 50 percent of those debt obligations (or interests) consist of real estate mortgages (or interests therein). For purposes of this paragraph, an entity determines the basis of an asset with the assumption that the entity is not a taxable mortgage pool.

(2) *Substantially all*—(i) *In general.* Whether substantially all of the assets of an entity consist of debt obligations (or interests therein) is based on all the facts and circumstances.

(ii) *Safe harbor.* Notwithstanding paragraph (c)(2)(i) of this section, if less than 80 percent of the assets of an entity consist of debt obligations (or interests therein), then less than substantially all of the assets of the entity consist of debt obligations (or interests therein).

(3) *Equity interests in pass-through arrangements.* The equity interest of an entity in a partnership, S corporation, trust, REIT, or other pass-through arrangement is deemed to have the same composition as the entity's share of the assets of the pass-through arrangement. For example, if an entity's stock interest in a REIT has an adjusted basis of $20,000, and the assets of the REIT consist of equal portions of real estate mortgages and other real estate assets, then the entity is treated as holding $10,000 of real estate mortgages and $10,000 of other real estate assets.

(4) *Treatment of certain credit enhancement contracts*—(i) *In general.* A credit enhancement contract (as defined in paragraph (c)(4)(ii) of this section) is not treated as a separate asset of an entity for purposes of the asset composition tests set forth in section 7701(i)(2)(A)(i), but instead is treated as part of the asset to which it relates. Furthermore, any collateral supporting a credit enhancement contract is not treated as an asset of an entity solely because it supports the guarantee represented by that contract.

(ii) *Credit enhancement contract defined.* For purposes of this section, a credit enhancement contract is any arrangement whereby a person agrees to guarantee full or partial payment of the principal or interest payable on a debt obligation (or interest therein) or on a pool of such obligations (or interests), or full or partial payment on one or more classes of debt obligations under which an entity is the obligor, in the event of defaults or delinquencies on debt obligations, unanticipated losses or expenses incurred by the entity, or lower than expected returns on investments. Types of credit enhancement contracts may include, but are not limited to, pool insurance contracts, certificate guarantee insurance contracts, letters of credit, guarantees, or agreements whereby an entity, a mortgage servicer, or other third party agrees to make advances (regardless of whether, under the terms of the agreement, the payor is obligated, or merely permitted, to make those advances). An agreement by a debt servicer to advance to an entity out of its own funds an amount to make up for delinquent payments on debt obligations is a credit enhancement contract. An agreement by a debt servicer to pay taxes and hazard insurance premiums on property securing a debt obligation, or other expenses incurred to protect an entity's security interests in the collateral in the event that the debtor fails to pay such taxes, insurance premium, or other expenses, is a credit enhancement contract.

(5) *Certain assets not treated as debt obligations*—(i) *In general.* For purposes of section 7701(i)(2)(A), real estate mortgages that are seriously impaired are not treated as debt obligations. Whether a mortgage is seriously impaired is based on all the facts and circumstances including, but not limited to: the number of days delinquent, the loan-to-value ratio, the debt service coverage (based upon the operating income from the property), and the debtor's financial position and stake in the property. However, except as provided in paragraph (c)(5)(ii) of this section, no single factor in and of itself is determinative of whether a loan is seriously impaired.

(ii) *Safe harbor*—(A) *In general.* Unless an entity is receiving or anticipates receiving payments with respect to a mortgage, a single family residential real estate mortgage is seriously impaired if payments on the mortgage are more than 89 days delinquent, and a multi-family residential or commercial real estate mortgage is seriously impaired if payments on the mortgage are more than 59 days delinquent. Whether an entity anticipates receiving payments with respect to a mortgage is based on all the facts and circumstances.

(B) *Payments with respect to a mortgage defined.* For purposes of paragraph (c)(5)(ii)(A) of this section, payments with respect to a mortgage mean any payments on the mortgage as defined in paragraph (f)(2)(i) of this section if those payments are substantial and relatively certain as to amount and any payments on the mortgage as defined in paragraph (f)(2) (ii) or (iii) of this section.

(C) *Entity treated as not anticipating payments.* With respect to any testing day (as defined in § 301.7701(i)–3(c)(2)), an entity is treated as not having anticipated receiving payments on the mortgage as defined in paragraph (f)(2)(i) of this section if 180 days after the testing day, and despite making reasonable efforts to resolve the mortgage, the entity is not receiving such payments and has not entered into any agreement to receive such payments.

(d) *Real estate mortgages or interests therein defined*—(1) *In general.* For purposes of section 7701(i)(2)(A)(i), the term real estate mortgages (or interests therein) includes all—

(i) Obligations (including participations or certificates of beneficial ownership therein) that are principally secured by an interest in real property (as defined in paragraph (d)(3) of this section);

(ii) Regular and residual interests in a REMIC; and

(iii) Stripped bonds and stripped coupons (as defined in section 1286(e)(2) and (3)) if the bonds (as defined in section 1286(e)(1)) from which such stripped bonds or stripped coupons arose would have qualified as real estate mortgages or interests therein.

(2) *Interests in real property and real property defined*—(i) *In general.* The definition of interests in real property set forth in § 1.856–3(c) of this chapter and the definition of real property set forth in § 1.856–3(d) of this chapter apply to define those terms for purposes of paragraph (d) of this section.

(ii) *Manufactured housing.* For purposes of this section, the definition of real property includes manufactured housing, provided the properties qualify as single family residences under section 25(e)(10) and without regard to the treatment of the properties under state law.

(3) *Principally secured by an interest in real property*—(i) *Tests for determining whether an obligation is principally secured.* For purposes of paragraph (d)(1) of this section, an obligation is principally secured by an interest in real property only if it satisfies either the test set out in paragraph (d)(3)(i)(A) of this section or the test set out in paragraph (d)(3)(i)(B) of this section.

(A) *The 80 percent test.* An obligation is principally secured by an interest in real property if the fair market value of the interest in real property (as defined in paragraph (d)(2) of this section) securing the obligation was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated (that is, the issue date). For purposes of this test, the fair market value of the real property interest is first reduced by the amount of any lien on the real property interest that is senior to the obligation being tested, and is reduced further by a proportionate amount of any lien that is in parity with the obligation being tested.

(B) *Alternative test.* An obligation is principally secured by an interest in real property if substantially all of the proceeds of the obligation were used to acquire, improve, or protect an interest in real property that, at the origination date, is the only security for the obligation. For purposes of this test, loan guarantees made by Federal, state, local governments or agencies, or other third party credit enhancement, are not viewed as additional security for a loan. An obligation is not considered to be secured by property other than real property solely because the obligor is personally liable on the obligation.

(ii) *Obligations secured by real estate mortgages (or interests therein), or by combinations of real estate mortgages (or interests therein) and other assets*—(A) *In general.* An obligation secured only by real estate mortgages (or interests therein), as defined in paragraph (d)(1) of this section, is treated as an obligation secured by an interest in real property to the extent of the value of the real estate mortgages (or interests therein). An obligation secured by both real estate mortgages (or interests therein) and other assets is treated as an obligation secured by an interest in real property to the extent of both the value of the real estate mortgages (or interests therein) and the value of so much of the other assets that constitute real property. Thus, under this paragraph, a collateralized mortgage

obligation may be an obligation principally secured by an interest in real property. This section is applicable only to obligations issued after December 31, 1991.

(B) *Example.* The following example illustrates the principles of this paragraph (d)(3)(ii):

Example. At the time it is originated, an obligation has an adjusted issue price of $300,000 and is secured by a $70,000 loan principally secured by an interest in a single family home, a fifty percent co-ownership interest in a $400,000 parcel of land, and $80,000 of stock. Under paragraph (d)(3)(ii)(A) of this section, the obligation is treated as secured by interests in real property and under paragraph (d)(3)(i)(A) of this section, the obligation is treated as principally secured by interests in real property.

(e) *Two or more maturities*—(1) *In general.* For purposes of section 7701(i)(2)(A)(ii), debt obligations have two or more maturities if they have different stated maturities or if the holders of the obligations possess different rights concerning the acceleration of or delay in the maturities of the obligations.

(2) *Obligations that are allocated credit risk unequally.* Debt obligations that are allocated credit risk unequally do not have, by that reason alone, two or more maturities. Credit risk is the risk that payments of principal or interest will be reduced or delayed because of a default on an asset that supports the debt obligations.

(3) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. (i) Corporation M transfers a pool of real estate mortgages to a trustee in exchange for Class A bonds and a certificate representing the residual beneficial ownership of the pool. All Class A bonds have a stated maturity of March 1, 2002, but if cash flows from the real estate mortgages and investments are sufficient, the trustee may select one or more bonds at random and redeem them earlier.

(ii) The Class A bonds do not have different maturities. Each outstanding Class A bond has an equal chance of being redeemed because the selection process is random. The holders of the Class A bonds, therefore, have identical rights concerning the maturities of their obligations.

Example 2. (i) Corporation N transfers a pool of real estate mortgages to a trustee in exchange for Class C bonds, Class D bonds, and a certificate representing the residual beneficial ownership of the pool. The Class D bonds are subordinate to the Class C bonds so that cash flow shortfalls due to defaults or delinquencies on the real estate mortgages are borne first by the Class D bond holders. The terms of the bonds are otherwise identical in all relevant aspects except that the Class D bonds carry a higher coupon rate because of the subordination feature.

(ii) The Class C bonds and the Class D bonds share credit risk unequally because of the subordination feature. However, neither this difference, nor the difference in interest rates, causes the bonds to have different maturities. The result is the same if, in addition to the other terms described in paragraph (i) of this *Example 2*, the Class C bonds are accelerated as a result of the issuer becoming unable to make payments on the Class C bonds as they become due.

(f) *Relationship test*—(1) *In general.* For purposes of section 7701(i)(2)(A)(iii), payments on debt obligations under which an entity is the obligor (liability obligations) bear a relationship to payments (as defined in paragraph (f)(2) of this section) on debt obligations an entity holds as assets (asset obligations) if under the terms of the liability obligations (or underlying arrangement) the timing and amount of payments on the liability obligations are in large part determined by the timing and amount of payments or projected payments on the asset obligations. For purposes of the relationship test, any payment arrangement, including a swap or other hedge, that achieves a substantially similar result is treated as satisfying the test. For example, any arrangement where the timing and amount of payments on liability obligations are determined by reference to a group of assets (or an index or other type of model) that has an expected payment experience similar to that of the asset obligations is treated as satisfying the relationship test.

(2) *Payments on asset obligations defined.* For purposes of section 7701(i)(2)(A)(iii) and this section, payments on asset obligations include—

(i) A payment of principal or interest on an asset obligation, including a prepayment of principal, a payment under a credit enhancement contract (as defined in paragraph (c)(4)(ii) of this section) and a payment from a settlement at a discount (other than a substantial discount);

(ii) A payment from a settlement at a substantial discount, but only if the settlement is arranged, whether in writing or otherwise, prior to the issuance of the liability obligations; and

(iii) A payment from the foreclosure on or sale of an asset obligation, but only if the foreclosure or sale is arranged, whether in writing or otherwise, prior to the issuance of the liability obligations.

(3) *Safe harbor for entities formed to liquidate assets.* Payments on liability obligations of an entity do not bear a relationship to payments on asset obligations of the entity if—

(i) The entity's organizational documents manifest clearly that the entity is formed for the primary purpose of liquidating its assets and distributing proceeds of liquidation;

(ii) The entity's activities are all reasonably necessary to and consistent with the accomplishment of liquidating assets;

(iii) The entity plans to satisfy at least 50 percent of the total issue price of each of its liability obligations having a different maturity with proceeds from liquidation and not with scheduled payments on its asset obligations; and

(iv) The terms of the entity's liability obligations (or underlying arrangement) provide that within three years of the time it first acquires assets to be liquidated the entity either—

(A) Liquidates; or

(B) Begins to pass through without delay all payments it receives on its asset obligations (less reasonable allowances for expenses) as principal payments on its liability obligations in proportion to the adjusted issue prices of the liability obligations.

(g) *Anti-avoidance rules*—(1) *In general.* For purposes of determining whether an entity meets the definition of a taxable mortgage pool, the Commissioner can disregard or make other adjustments to a transaction (or series of transactions) if the transaction (or series) is entered into with a view to achieving the same economic effect as that of an arrangement subject to section 7701(i) while avoiding the application of that section. The Commissioner's authority includes treating equity interests issued by a non-REMIC as debt if the entity issues equity interests that correspond to maturity classes of debt.

(2) *Certain investment trusts.* Notwithstanding paragraph (g)(1) of this section, an ownership interest in an entity that is classified as a trust under § 301.7701–4(c) will not be treated as a debt obligation of the trust.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. (i) Partnership P, in addition to its other investments, owns $10,000,000 of mortgage pass-through certificates guaranteed by FNMA (FNMA Certificates). On May 15, 1997, Partnership P transfers the FNMA Certificates to Trust 1 in exchange for 100 Class A bonds and Certificate 1. The Class A bonds, under which Trust 1 is the obligor, have a stated principal amount of $5,000,000 and bear a relationship to the FNMA Certificates (within the meaning of § 301.7701(i)–1(f)). Certificate 1 represents the residual beneficial ownership of the FNMA Certificates.

(ii) On July 5, 1997, with a view to avoiding the application of section 7701(i), Partnership P transfers Certificate 1 to Trust 2 in exchange for 100 Class B bonds and Certificate 2. The Class B bonds, under which Trust 2 is the obligor, have a stated principal amount of $5,000,000, bear a relationship to the FNMA Certificates (within the meaning of § 301.7701(i)-1(f)), and have a different maturity than the Class A bonds (within the meaning of § 301.7701(i)-1(e)). Certificate 2 represents the residual beneficial ownership of Certificate 1.

(iii) For purposes of determining whether Trust 1 is classified as a taxable mortgage pool, the Commissioner can disregard the separate existence of Trust 2 and treat Trust 1 and Trust 2 as a single trust.

Example 2. (i) Corporation Q files a consolidated return with its two wholly-owned subsidiaries, Corporation R and Corporation S. Corporation R is in the business of building and selling single family homes. Corporation S is in the business of financing sales of those homes.

(ii) On August 10, 1998, Corporation S transfers a pool of its real estate mortgages to Trust 3, taking back Certificate 3 which represents beneficial ownership of the pool. On September 25, 1998, with a view to avoiding the application of section 7701(i), Corporation R issues bonds that have different maturities (within the meaning of § 301.7701(i)–1(e)) and that bear a relationship (within the meaning of § 301.7701(i)-1(f)) to the real estate mortgages in Trust 3. The holders of the bonds have an interest in a credit enhancement contract that is written by Corporation S and collateralized with Certificate 3.

(iii) For purposes of determining whether Trust 3 is classified as a taxable mortgage pool, the Commissioner can treat Trust 3 as the obligor of the bonds issued by Corporation R.

Example 3. (i) Corporation X, in addition to its other assets, owns $110,000,000 in Treasury securities. From time to time, Corporation X acquires pools of real estate mortgages, which it immediately uses to issue multiple-class debt obligations.

(ii) On October 1, 1996, Corporation X transfers $20,000,000 in Treasury securities to Trust 4 in exchange for Class C bonds, Class D bonds, Class E bonds, and Certificate 4. Trust 4 is the obligor of the bonds. The different classes of bonds have the same stated maturity date, but if cash flows from the Trust 4 assets exceed the amounts needed to make interest payments, the trustee uses the excess to retire the classes of bonds in alphabetical order. Certificate 4 represents the residual beneficial ownership of the Treasury securities.

(iii) With a view to avoiding the application of section 7701(i), Corporation X reserves the right to replace any Trust 4 asset with real estate mortgages or guaranteed mortgage pass-through certificates. In the event the right is exercised, cash flows on the real estate mortgages and guaranteed pass-through certificates will be used in the same manner as cash flows on the Treasury securities. Corporation X exercises this right of replacement on February 1, 1997.

(iv) For purposes of determining whether Trust 4 is classified as a taxable mortgage pool, the Commissioner can treat February 1, 1997, as a testing day (within the meaning of § 301.7701(i)-3(c)(2)). The result is the same if Corporation X has an obligation, rather than a right, to replace the Trust 4 assets with real estate mortgages and guaranteed pass-through certificates.

Example 4. (i) Corporation Y, in addition to its other assets, owns $1,900,000 in obligations secured by personal property. On November 1, 1995, Corporation Y begins negotiating a $2,000,000 loan to individual A. As security for the loan, A offers a first deed of trust on land worth $1,700,000.

(ii) With a view to avoiding the application of section 7701(i), Corporation Y induces A to place the land in a partnership in which A will have a 95 percent interest and agrees to accept the partnership interest as security for the $2,000,000 loan. Thereafter, the loan to A, together with the $1,900,000 in obligations secured by personal property, are transferred to Trust 5 and used to issue bonds that have different maturities (within the meaning of § 301.7701(i)-1(e)) and that bear a relationship (within the meaning of § 301.7701(i)-1(f)) to the $1,900,000 in obligations secured by personal property and the loan to A.

(iii) For purposes of determining whether Trust 5 is a taxable mortgage pool, the Commissioner can treat the loan to A as an obligation secured by an interest in real property rather than as an obligation secured by an interest in a partnership.

Example 5. (i) Corporation Z, in addition to its other assets, owns $3,000,000 in notes secured by interests in retail shopping centers. Partnership L, in addition to its other assets, owns $20,000,000 in notes that are principally secured by interests in single family homes and $3,500,000 in notes that are principally secured by interests in personal property.

(ii) On December 1, 1995, Partnership L asks Corporation Z for two separate loans, one in the amount of $9,375,000 and another in the amount of $625,000. Partnership L offers to collateralize the $9,375,000 loan with $10,312,500 of notes secured by interests in single family homes and the $625,000 loan with $750,000 of notes secured by interests in personal property. Corporation Z has made similar loans to Partnership L in the past.

(iii) With a view to avoiding the application of section 7701(i), Corporation Z induces Partnership L to accept a single $10,000,000 loan and to post as collateral $7,500,000 of the notes secured by interests in single family homes and all $3,500,000 of the notes secured by interests in personal property. Ordinarily, Corporation Z would not make a loan on these terms. Thereafter, the loan to Partnership L, together with the $3,000,000 in notes secured by interests in retail shopping centers, are transferred to Trust 6 and used to issue bonds that have different maturities (within the meaning of § 301.7701(i)–1(e)) and that bear a relationship (within the meaning of § 301.7701(i)–1(f)) to the loans secured by interests in retail shopping centers and the loan to Partnership L.

(iv) For purposes of determining whether Trust 6 is a taxable mortgage pool, the Commissioner can treat the $10,000,000 loan to Partnership L as consisting of a $9,375,000 obligation secured by interests in real property and a $625,000 obligation secured by interests in personal property. Under § 301.7701(i)–1(d)(3)(ii)(A), the notes secured by single family homes are treated as $7,500,000 of interests in real property. Under § 301.7701(i)–1(d)(3)(i)(A), $7,500,000 of interests in real property are sufficient to treat the $9,375,000 obligation as principally secured by an interest in real property ($7,500,000 equals 80 percent of $9,375,000).

§ 301.7701(i)–2 Special rules for portions of entities.

(a) *Portion defined.* Except as provided in paragraph (b) of this section and § 301.7701(i)–1, a portion of an entity includes all assets that support one or more of the same issues of debt obligations. For this purpose, an asset supports a debt obligation if, under the terms of the debt obligation (or underlying arrangement), the timing and amount of payments on the debt obligation are in large part determined, either directly or indirectly, by the timing and amount of payments or projected payments on the asset or a group of assets that includes the asset. Indirect payment arrangements include, for example, a swap or other hedge, or arrangements where the timing and amount of payments on the debt obligations are determined by reference to a group of assets (or an index or other type of model) that has an expected payment experience similar to that of the assets. For purposes of this paragraph, the term payments includes all proceeds and receipts from an asset.

(b) *Certain assets and rights to assets disregarded*—(1) *Credit enhancement assets.* An asset that qualifies as a credit enhancement contract (as defined in § 301.7701(i)–1(c)(4)(ii)) is not included in a portion as a separate asset, but is treated as part of the assets in the portion to which it relates under § 301.7701(i)–1(c)(4)(i). An asset that does not qualify as a credit enhancement contract (as defined in § 301.7701(i)–1(c)(4)(ii)), but that nevertheless serves the same function as a credit enhancement contract, is not included in a portion as a separate asset or otherwise.

(2) *Assets unlikely to service obligations.* A portion does not include assets that are unlikely to produce any significant cash flows for the holders of the debt obligations. This paragraph applies even if the holders of the debt obligations are legally entitled to cash flows from the assets. Thus, for example, even if the sale of a building would cause a series of debt obligations to be redeemed, the building is not included in a portion if it is not likely to be sold.

(3) *Recourse.* An asset is not included in a portion solely because the holders

of the debt obligations have recourse to the holder of that asset.

(c) *Portion as obligor*—(1) *In general.* For purposes of section 7701(i)(2)(A)(ii), a portion of an entity is treated as the obligor of all debt obligations supported by the assets in that portion.

(2) *Example.* The following example illustrates the principles of this section:

Example. (i) Corporation Z owns $1,000,000,000 in assets including an office complex and $90,000,000 of real estate mortgages.

(ii) On November 30, 1998, Corporation Z issues eight classes of bonds, Class A through Class H. Each class is secured by a separate letter of credit and by a lien on the office complex. One group of the real estate mortgages supports Class A through Class D, another group supports Class E through Class G, and a third group supports Class H. It is anticipated that the cash flows from each group of mortgages will service its related bonds.

(iii) Each of the following constitutes a separate portion of Corporation Z: the group of mortgages supporting Class A through Class D; the group of mortgages supporting Class E through Class G; and the group of mortgages supporting Class H. No other asset is included in any of the three portions notwithstanding the lien of the bonds on the office complex and the fact that Corporation Z is the issuer of the bonds. The letters of credit are treated as incidents of the mortgages to which they relate.

(iv) For purposes of section 7701(i)(2)(A)(ii), each portion described above is treated as the obligor of the bonds of that portion, notwithstanding the fact that Corporation Z is the legal obligor with respect to the bonds.

§ 301.7701(i)–3 Effective dates and duration of taxable mortgage pool classification.

(a) *Effective dates.* Except as otherwise provided, the regulations under section 7701(i) are effective and applicable September 6, 1995.

(b) *Entities in existence on December 31, 1991*—(1) *In general.* For transitional rules concerning the application of section 7701(i) to entities in existence on December 31, 1991, see section 675(c) of the Tax Reform Act of 1986.

(2) *Special rule for certain transfers.* A transfer made to an entity on or after September 6, 1995, is a substantial transfer for purposes of section 675(c)(2) of the Tax Reform Act of 1986 only if—

(i) The transfer is significant in amount; and

(ii) The transfer is connected to the entity's issuance of related debt obligations (as defined in paragraph (b)(3) of this section) that have different maturities (within the meaning of § 301.7701–1(e)).

(3) *Related debt obligation.* A related debt obligation is a debt obligation whose payments bear a relationship (within the meaning of § 301.7701–1(f)) to payments on debt obligations that the entity holds as assets.

(4) *Example.* The following example illustrates the principles of this paragraph (b):

Example. On December 31, 1991, Partnership Q holds a pool of real estate mortgages that it acquired through retail sales of single family homes. Partnership Q raises $10,000,000 on October 25, 1996, by using this pool to issue related debt obligations with multiple maturities. The transfer of the $10,000,000 to Partnership Q is a substantial transfer (within the meaning of § 301.7701(i)–3(b)(2)).

(c) *Duration of taxable mortgage pool classification*—(1) *Commencement and duration.* An entity is classified as a taxable mortgage pool on the first testing day that it meets the definition of a taxable mortgage pool. Once an entity is classified as a taxable mortgage pool, that classification continues through the day the entity retires its last related debt obligation.

(2) *Testing day defined.* A testing day is any day on or after September 6, 1995, on which an entity issues a related debt obligation (as defined in paragraph (b)(3) of this section) that is significant in amount.

§ 301.7701(i)–4 Special rules for certain entities.

(a) *States and municipalities*—(1) *In general.* Regardless of whether an entity satisfies any of the requirements of section 7701(i)(2)(A), an entity is not classified as a taxable mortgage pool if—

(i) The entity is a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof (within the meaning of § 1.103–1(b) of this chapter), or is empowered to issue obligations on behalf of one of the foregoing;

(ii) The entity issues the debt obligations in the performance of a governmental purpose; and

(iii) The entity holds the remaining interests in all assets that support those debt obligations until the debt obligations issued by the entity are retired.

(2) *Governmental purpose.* The term governmental purpose means an essential governmental function within the meaning of section 115. A governmental purpose does not include the mere packaging of debt obligations for re-sale on the secondary market even if any profits from the sale are used in the performance of an essential governmental function.

(3) *Determinations by the Commissioner.* If an entity is not described in paragraph (a)(1) of this section, but has a similar purpose, then the Commissioner may determine that the entity is not classified as a taxable mortgage pool.

(b) *REITs.* [Reserved]

(c) *Subchapter S corporations*—(1) *In general.* An entity that is classified as a taxable mortgage pool may not elect to be an S corporation under section 1362(a) or maintain S corporation status.

(2) *Portion of an S corporation treated as a separate corporation.* An S corporation is not treated as a member of an affiliated group under section 1361(b)(2)(A) solely because a portion of the S corporation is treated as a separate corporation under section 7701(i).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 17, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19285 Filed 8–4–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Revision of the Salient Factor Score

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is revising the salient factor score at 28 CFR 2.20. The salient factor score is an actuarial device which the Commission uses to measure the risk that a prisoner will violate parole. The revised Salient Factor Score will improve the accuracy of the Commission's recidivism predictions in the case of older prisoners. Under the revised score (to be known as SFS–95), the Commission will add one point to the prisoner's total score if the prisoner was 41 years of age or more at the commencement of the current offense (or parole violation), provided the prisoner does not already have the highest possible total score (10). The revision is made appropriate by the fact that the Parole Commission has jurisdiction over an aging population of prisoners and parolees whose crimes were committed prior to November 1, 1987.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking appeared in the **Federal Register** for Tuesday, April 11, 1995 (60 FR 18378). Public comment received with regard to the proposal was generally favorable. The comment pointed out that the Commission was properly attempting to capture the results of the agency's own research on recidivism and "burnout" among criminal offenders. In response to a comment that suggested that the proposal was ambiguous concerning the date the current offense was "committed", the Commission has revised the final rule by specifying that the relevant date is the commencement of the offense. Thus, a parolee who initiates an illegal narcotics distribution conspiracy at age 39, and who continues that offense behavior after reaching 41 years of age, is not to be given the additional point required by the revised salient factor score. However, a parolee who committed his original offense at age 35, and who is returned to prison for a parole violation commenced after age 41, receives the additional point when his score is recalculated at his revocation hearing under 28 CFR 2.21(b).

The public comment also pointed out that the Commission's original research focused on age at release as opposed to the age at which the offense was committed, and suggested that the age of release should be used in the revised score. This suggestion is not practical. Using age at last release from prison would be too restrictive, and "age at release" on the current period of imprisonment is the result of applying the guidelines in the first instance.

Moreover, the Bureau of Prisons recently validated SFS–95 on a 1987 releasee sample (n=1205), using age at commencement of the instant offense. Using this criterion, the revised salient factor score was consistent with the original research, and displayed a high degree of predictive accuracy. (The original research was done in 1984 with research samples from 1970–72 (n=3,954) and 1978 (n=2,333).) The Mean Cost Rating in the new study increased from .54 to .56 (the highest recorded for a recidivism prediction device that has been subjected to validation) and the point biserial correlation coefficient increased from .47 to .48. Approximately 5% of the prisoners in this sample received an improved parole prognosis category placement as compared with the existing version of the salient factor score (SFS–81). The Commission expects that these results will be reflected in future parole decisionmaking.

Moreover, the revised salient factor score improves upon the existing score by giving the Commission the equivalent of a "rate" of criminality over a prisoner's entire career. This permits an assessment of the current momentum of the prisoner's criminal career, leading to a better prediction of the prisoner's future behavior if released on parole. For example, the Parole Commission is enabled to determine that a 50 year old defendant with 3 prior convictions and commitments over a 26-year career may be a better parole risk than a 25 year old defendant who has 2 prior convictions and commitments over a 6-year career. Both age and the rate of criminal conduct (over the length of his career) are factors that work in the older offender's favor, despite his more serious record. The Commission thus avoids the waste of taxpayer dollars that can result when imprisonment decisions fail to account for the probability that the current offense will turn out to be the last in an aging offender's lifetime.

In sum, the revised salient factor score permits the Commission to account for the affect of the aging process on each prisoner's prospects for committing further crimes after release from prison. At the present time, the average age of prisoners under the Commission's jurisdiction is 43, a reflection of the fact that the Parole Commission's jurisdiction is limited to offenders whose crimes were committed prior to November 1, 1987. (See Section 235 of the Sentencing Reform Act of 1984, which appears as an Editorial Note to 18 U.S.C. 3551.) Thus, it is increasingly appropriate for the Commission to revise the salient factor score at this time. This decision accords with the intent of Congress that the Parole Commission should "* * * continue to refine both the criteria which are used (to judge the probability that an offender will commit a new offense) and the means for obtaining the information used therein." 2 U.S. Code Cong. & Admin. News at 359 (1976).

Implementation

The revised salient factor score (SFS–95) will be applied at initial parole hearings and revocation hearings held on or after October 2, 1995. It will be applied retroactively to prisoners who have already been considered for parole, or reparole, at the next scheduled statutory interim hearing under 28 CFR 2.14. If the prisoner's guideline range is reduced through application of SFS–95, the Commission will render a new parole decision. In some cases, individual factors may warrant a decision to depart upward from the reduced guideline range on the ground that the prisoner is a poorer parole risk than SFS–95 indicates. For example, certain types of organized crime members may be expected to continue their criminal careers despite advancing age. The Commission will also apply SFS–95 in any other type of hearing wherein the length of the prisoner's incarceration is a function of the prisoner's current parole prognosis. This would not be the case, for example, at a hearing under 28 CFR 2.34, wherein the length of the prisoner's incarceration is determined by the need to sanction institutional misconduct.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant rule within the meaning of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

Accordingly, the U.S. Parole Commission adopts the following amendment to 28 CFR part 2:

PART 2—[AMENDED]

The Amendment

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR part 2, § 2.20 is amended by adding a new Item G to the Salient Factor Scoring Manual, to read as follows:

§ 2.20 Paroling Policy Guidelines: Statement of general policy.

* * * * *

Salient Factor Scoring Manual

* * * * *

Item G. Older Offenders

G.1 Score 1 if the offender was 41 years of age or more at the commencement of the current offense and the total score from Items A–F is 9 or less.

G.2 Score 0 if the offender was less than 41 years of age at the commencement of the

current offense or if the total score from Items A–F is 10.

* * * * *

Special Instructions—Federal Probation Violators

Item G Use the age at commencement of the probation violation, not the original offense.

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Special Instructions—Federal Parole Violators

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Item G Use the age at commencement of the new criminal/parole violation behavior.

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Special Instructions—Federal Confinement/Escape Status Violators With New Criminal Behavior in the Community

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Item G Use the age at commencement of the confinement/escape status violation.

* * * * *

Dated: July 26, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95–19312 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–P

28 CFR Part 2

Designation of a Commissioner To Act as a Hearing Examiner

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending 28 CFR § 2.59 by replacing it with a regulation which allows the Chairman of the Parole Commission to designate any Commissioner to serve as a hearing examiner. The deleted regulation concerned the authority of a Regional Commissioner to exercise the functions of a hearing examiner in the absence of a hearing examiner. Designation of a Commissioner to serve as a hearing examiner will be made with the Commissioner's consent for specified hearing dockets. A Commissioner who serves as a hearing examiner will not vote in the same proceeding as a Commissioner. This amendment replaces an obsolete rule with a regulation that permits the agency to use more of its resources to accomplish its mission.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: This new rule provides explicit authority in the Commission's regulations for the Parole Commission's Chairman to designate a Parole Commissioner to act as a hearing examiner and thereby assist the Commission in balancing its workload as the Commission nears the end of its existence on November 1, 1997. See 18 U.S.C. 4204(a)(3) (authorizing the Chairman to assign duties among agency staff and Commissioners so as to balance the workload and provide for orderly administration). Such designations will be made for specified hearing dockets, and only with the designated Commissioner's consent.

If a Commissioner acts as a hearing examiner in a parole proceeding, the rule provides that the Commissioner will be disqualified from voting in the case as a Commissioner during the course of the same proceeding. This includes voting on an appeal filed by the prisoner or parolee to the National Appeals Board under 28 CFR 2.26, or the full Commission under 28 CFR 2.27. This important limitation preserves the distinction in function between the hearing examiner and the Parole Commissioner in making release and revocation decisions, and ensures that appropriate checks and balances are maintained in the agency's decisionmaking.

The Commission has decided to place this regulation at 28 CFR 2.59, which has been occupied by a rule which allows a Regional Commissioner to exercise the authority of a hearing examiner only in the absence of an examiner. This regulation has been rarely used by the Commission, and the agency determined that it should be removed as obsolete.

Implementation

This rule may be utilized for any hearings scheduled on or after October 2, 1995.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this final rule is not a significant rule within the meaning of Executive Order 12866, and the rule, has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Amendment

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.59 is revised to read as follows:

§ 2.59 Designation of a Commissioner to act as a hearing examiner.

The Chairman may designate a Commissioner, with the Commissioner's consent, to serve as a hearing examiner on specified hearing dockets. The Commissioner who serves as a hearing examiner may not vote in the same proceeding as a Commissioner.

Dated: July 27, 1995.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 95–19313 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–P

28 CFR Part 2

Parole Date Advancements for Subetance Abuse Treatment Program Completion

AGENCY: Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending 28 CFR 2.60 to permit a prisoner to be considered for a special advancement of his presumptive release date, by up to twelve months, if the prisoner is a non-violent offender who has completed a treatment program for a recognized problem of substance abuse. Although 28 CFR 2.60 already sets forth a schedule of permissible advancements for superior program achievement, the Commission is adding the above-described provision in order to provide to parole-eligible prisoners an incentive to complete the treatment program that is comparable to the incentive under 18 U.S.C. 3621(e)(2) that will be available from the Bureau of Prisons for federal prisoners serving sentences for crimes committed after November 1, 1987.

DATES: *Effective Date:* October 2, 1995. Comments must be submitted by October 31, 1995.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The rationale for this amendment of the Commission's policy of rewarding superior program achievement is described in the supplementary information for the proposed rule. 60 FR 26010–11. The interim rule permits the advancement of a prisoner's presumptive release date by up to twelve months for successfully completing a residential substance abuse treatment program. This provision comports with the permissible prison term reduction identified by the Bureau of Prisons in its own interim rule on the subject. 60 FR 27695. The existing schedule of permissible reductions in paragraph (e) of § 2.60 will not limit the reward which may be granted under the interim rule for completing the residential drug abuse treatment program. Any reduction under the new policy will be in addition to any other advancement for superior program achievement in areas unrelated to participation in substance abuse treatment programs. The proposed rule included a provision that stated the Commission's intent that the normal reduction under the policy would be twelve months, with certain exceptions. The Commission decided that a precise definition of its policy should be postponed until both the Bureau of Prisons and the Commission obtain experience in the implementation of the agencies' respective rules, and therefore is publishing this rule on an interim basis, with request for further public comment. For the Parole Commission, the need is to determine whether the interim rule can be implemented consistently with the statutory criteria for parole at 18 U.S.C. 4206 (1976). If this does not appear feasible, the Commission may amend or withdraw the interim regulation.

A comment favoring adoption of the proposed rule was received from a representative of the National Association of Criminal Defense Lawyers. This comment encouraged the Commission to revise its proposal to allow the advancement of the prisoner's presumptive release date even if the prisoner had a prior history of violent offenses. The representative noted that the Commission's practice would otherwise diverge from that proposed by the Bureau of Prisons, which would be limited to the prisoner's offense of conviction as a basis for deciding whether the prisoner should be eligible for early release. The Commission did not adopt the recommended revision since the criteria it must follow in making parole decisions require it to consider the "history and characteristics" of the eligible prisoner and whether his release would jeopardize the public welfare. See 18 U.S.C. 4206(a)(2). The Commission must consider relevant information as to the prisoner's capacity for violence which the Bureau of Prisons may not be required to consider in granting prison term reductions under 18 U.S.C. 3621(e). In addition, the Commission notes that the Bureau has determined that it will not consider the prisoner for early release if his prior criminal record includes a conviction for homicide, forcible rape, robbery, or aggravated assault. 60 FR 27692, 27695.

Implementation

Prisoners will be considered for advancements under the interim rule at any hearing or pre-release record review that is conducted on or after October 2, 1995. The Commission will not reopen cases for prisoners who have a release date with no further hearing or review scheduled. For prisoners who are given hearings or reviews on or after October 2, 1995, the Commission may consider an advancement of the prisoner's presumptive release date under the interim rule even if completion of a residential substance abuse treatment program occurred prior to the effective date of the rule.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this interim rule is not a significant rule within the meaning of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Amendment

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR part 2.

PART 2—[AMENDED]

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.60 is amended by adding new paragraphs (g) and (h), to read as follows:

§ 2.60 Superior program achievement.

* * * * *

(g) Upon notification by the Bureau of Prisons that a prisoner who has a recognized problem with substance abuse, has successfully completed residential substance abuse treatment (in conformity with the criteria set forth for non-parolable prisoners in 18 U.S.C. 3621(e)), the Commission will consider such prisoner for a special advancement, by up to twelve months, of the presumptive release date previously set. Such advancement may be made even though the Schedule of Permissible Reductions in paragraph (e) of this section provides a permissible reduction of less than twelve months, and shall be in addition to any other advancement granted under this section. However, if the prisoner has already received an advancement of his presumptive parole date (or, in the case of a prisoner who has been continued to expiration, has received extra good time credit) for participation in a residential substance abuse treatment program, and the advancement (or good time credit) equals or exceeds the advancement that would be granted under this paragraph, no further advancement shall be granted.

(h) Any advancement under this section (including a special advancement for completion of residential substance abuse treatment) is subject to forfeiture, in whole or in part, whenever a presumptive parole date is rescinded pursuant to § 2.34. In the case of a special advancement under paragraph (g) of this section, the entire advancement shall be forfeited if the Commission finds that the prisoner has engaged in usage, possession, or distribution of any controlled substances subsequent to program completion.

Dated: July 27, 1995.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 95–19314 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–95–016]

RIN 2115–AE46

Special Local Regulation; We Love Erie Days Festival Fireworks Display, Lake Erie, Erie Harbor, PA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: A special local regulation is being adopted for the We Love Erie Days Festival Fireworks Display. This event will be held on Lake Erie, Erie Harbor, PA on August 20, 1995. This regulation will restrict general navigation on Erie Harbor, PA. Due to the large number of spectator vessels and the falling ash and debris from the fireworks display, this regulation is needed to provide for the safety of life, limb, and property on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective from 9 p.m. through 11 p.m. on August 20, 1995, unless extended or terminated sooner by the Coast Guard Group Commander, Buffalo, NY.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until May 22, 1995, and there was not sufficient time remaining to publish a proposed final rule in advance of the event. The Coast Guard has decided to proceed with a temporary rule for this year's event and publish a NPRM, as part of the Great Lakes annual marine events list, prior to next year's event.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, and Lieutenant Charles D. Dahill, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The We Love Erie Days Festival Fireworks Display will be conducted on Lake Erie, Erie Harbor, PA on August 20, 1995. This regulation will restrict general navigation on Erie Harbor, PA within a 300 foot radius of the Erie Sand and Gravel Pier, the fireworks launching site. This event will have an unusually large concentration of spectator vessels and falling ash and debris, which could pose hazards to navigation in the area. This regulation is necessary to ensure the protection of life, limb, and property on navigable waters during this event. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commanding Officer, U.S. Coast Guard Station, Erie, PA.)

This regulation is issued pursuant to 33 U.S.C. 1233 as set out in the authority citation for all of Part 100.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is conducting an environmental analysis for this event pursuant to section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at (59 FR 38654; July 29, 1995).

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirement, Waterways.

Temporary Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T09–016 is added to read as follows:

§ 100.35—T09–016 We Love Erie Days Festival Fireworks Display, Lake Erie, Erie Harbor, PA.

(a) *Regulated Area:* That portion of the Lake Erie, Erie Harbor, PA within a 300 ft. radius of the fireworks launching site, located on the Erie Sand and Gravel Pier, in approximate position 42°08′16″ N, 080°05′40″ W. Datum: NAD 1983.

(b) *Special Local Regulation:* This regulation restricts general navigation in the regulated area for the safety of spectators and participants. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander.

(c) *Patrol Commander:*

(1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Erie, PA). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander."

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective Date:* This section is effective from 9 p.m. through 11 p.m. on August 20, 1995, unless extended or terminated sooner by the Coast Guard Group Commander, Buffalo, NY.

Dated: July 12, 1995.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95–19347 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD05–94–118]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway—Alternate Route, Elizabeth City, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Albemarle and Chesapeake Railroad Company, the Coast Guard is changing the regulations that govern the operation of the drawbridge across the Pasquotank River, Atlantic Intracoastal Waterway—Alternate Route, mile 47.7, at Elizabeth City, North Carolina, to allow leaving the draw in the open position except for the passage of trains. This change to these regulations is, to the extent practical and feasible, intended to relieve the bridgeowners of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and CAPT R.A. Knee, Project Counsel, Fifth Coast Guard District Legal Office.

Regulatory History

On March 13, 1995, the Coast Guard published a Notice of Proposed Rulemaking entitled Atlantic Intracoastal Waterway—Alternate Route, Elizabeth City, North Carolina, in the **Federal Register** (60 FR 13393). The comment period ended May 12, 1995. The Coast Guard received one comment on the Notice of Proposed Rulemaking objecting to the Coast Guard's proposed change to the regulations. The one objector stated that the proposed change at first glance sounded reasonable, but after further review, felt the city and the boating community should pay for the privilege of increased waterway accessibility just as the Albemarle and Chesapeake Railroad Company must pay for the usage of the tracks and the services of a bridgetender. The Coast Guard is without authority to assess such fees and the suggestion is inconsistent with burden placed on owners and operators of drawbridges by 33 U.S.C. 499. On April 5, 1995, the Coast Guard issued Public Notice 5–851 requesting comments on the Notice of Proposed Rulemaking. The comment period ended May 12, 1995. One comment was received on the Public Notice in favor of the Coast Guard's proposed change to the regulations. A public hearing was not requested and one was not held.

Background and Purpose

The Albemarle and Chesapeake Railroad Company has requested that the regulations governing the operation of the drawbridge across the Pasquotank River, Atlantic Intracoastal Waterway—Alternate Route, mile 47.7, at Elizabeth City, North Carolina, be changed to allow leaving the bridge in the open position, except when a train is passing over it and for maintenance. A bridgetender would be available only during the times of train crossings to close the bridge and, after the train had cleared or completion of any maintenance work, to reopen the bridge to navigation. There would not be a full-time bridgetender employed at the bridge.

Currently, the bridge remains in the open position from 3:30 p.m. to 11:30 p.m. At all other times, the draw opens on signal. This final rule will require the bridge to be maintained in the open position except for passage of trains and, when necessary, during maintenance work. A bridgetender will be available to reopen the bridge after trains have cleared the bridge and after completion of any maintenance work.

In developing this schedule, the Coast Guard considered all views, and believes this final rule will not unduly restrict commercial and recreational traffic, since the bridge will be left in the open position, except for the passage of trains.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principals and criteria contained in Executive Order 12612, and it has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist have been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.833 is revised to read as follows:

§ 117.833 Pasquotank River.

The draw of the Albemarle & Chesapeake railroad bridge, mile 47.7, at Elizabeth City, North Carolina, shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed, a bridgetender shall be present to reopen the draw after the train has cleared the bridge.

Dated: July 12, 1995.

N.V. Scurria, Jr.,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 95–19346 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–5273–8]

Transportation Conformity Rule Amendments: Transition to the Control Strategy Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action permanently aligns the timing of certain consequences of state air quality planning failures under EPA's transportation conformity rule with the imposition of Clean Air Act highway sanctions. For ozone nonattainment areas with an incomplete 15% emissions-reduction state implementation plan with a protective finding; incomplete ozone attainment/3% rate-of-progress plan; or finding of failure to submit an ozone attainment/3% rate-of-progress plan; and areas whose control strategy implementation plan for ozone, carbon monoxide, particulate matter, or nitrogen dioxide is disapproved with a protective finding, the conformity status of the transportation plan and program will not lapse as a result of such failure until highway sanctions for such failure are effective under other Clean Air Act sections.

This action makes permanent the interim final rule issued on February 8, 1995 (60 FR 7449), which was effective for only six months. The lapse in conformity status which this action delays for some areas would otherwise prevent approval of new highway and transit projects.

EFFECTIVE DATE: This final rule is effective August 8, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–95–02. The docket is located in room M–1500 Waterside Mall (ground floor) at the Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The docket may be inspected from 8 a.m. to 4 p.m., Monday through Friday, including all non-government holidays.

FOR FURTHER INFORMATION CONTACT: Kathryn Sargeant, Emission Control Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 668–4441.

SUPPLEMENTARY INFORMATION:

I. Background

On February 8, 1995, EPA issued an interim final rule entitled, "Transportation Conformity Rule Amendments: Transition to the Control Strategy Period," which was effective from February 8, 1995, until August 8, 1995 (60 FR 7449). Because the interim final rule took effect without prior notice and comment, EPA limited its effectiveness to a six-month period, during which full notice and comment was to occur.

EPA also issued on February 8, 1995, a proposed rule to apply the provisions of the interim final rule permanently (60 FR 7508). The public comment period on the proposed rule lasted until March 10, 1995, and a public hearing was held on February 22, 1995.

The February 8, 1995, interim final rule delayed the conformity lapse imposed as a result of the following: an incomplete 15% rate-of-progress SIP with a "protective finding" (described below); a failure to submit or submission of an incomplete ozone attainment/3% rate-of-progress SIP; and a disapproval of any control strategy SIP (i.e., 15% rate-of-progress SIP, reasonable further progress SIP, or attainment demonstration) with a protective finding.

The interim final rule did not affect the timing of the conformity lapse which results from failure to determine conformity by the deadlines established in 40 CFR 51.400 (93.104) and 51.448(a) (93.128(a)), including deadlines to redetermine conformity with respect to submitted SIPs, following promulgation of the November 1993 rule, and following control strategy SIP approvals.

When the conformity status of the transportation plan and transportation improvement program (TIP) lapses, no new project-level conformity determinations may be made, and the only federal highway and transit projects which may proceed are exempt or grandfathered projects. Non-federal highway or transit projects may be adopted or approved by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act only if they are not regionally significant.

EPA is delaying the conformity lapse resulting from the specific SIP deficiencies listed above because EPA has recognized that in practice, the twelve-month time period which the November 24, 1993, transportation conformity rule allowed for areas to correct those SIP deficiencies is too short to be reasonable for purposes of determining when transportation plans and TIPs should lapse following SIP development failures.

Today's final rule amends the transportation conformity rule, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act" (58 FR 62188, November 24, 1993). Required under section 176(c) of the Clean Air Act, as amended in 1990, the transportation conformity rule established the criteria and procedures by which the Federal Highway Administration, the Federal Transit Administration, and metropolitan planning organizations (MPOs) determine the conformity of federally funded or approved highway and transit plans, programs, and projects to state implementation plans (SIPs). According to the Clean Air Act, federally supported activities must conform to the implementation plan's purpose of attaining and maintaining the national ambient air quality standards.

II. Description of Final Rule

This final rule makes no substantive changes from the proposed rule. This final rule permanently applies the provisions of the February 8, 1995, interim final rule by eliminating the six-month limit to the interim final rule's applicability. The regulatory language is somewhat modified from the interim final rule's language as a result of the elimination of the six-month limit on applicability of certain provisions.

Like the interim final rule and proposed rule, this final rule affects areas with a 15% SIP which EPA found incomplete but noted in the finding (according to 40 CFR 51.448(c)(1)(iii)) that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A) (i.e., incomplete with a "protective finding"); ozone nonattainment areas which fail to submit an ozone attainment SIP and/or a 3% rate-of-progress SIP revision; ozone nonattainment areas with an incomplete ozone attainment SIP and/or an incomplete 3% rate-of-progress SIP; and areas with a disapproved control strategy SIP with a "protective finding" as described in 40 CFR 51.448 (a)(3) and (d)(3). Conformity lapse as a result of these SIP failures is delayed until Clean Air Act section 179(b) highway sanctions for these failures are applied. If the interim final rule expired on August 8, 1995, without today's final rule, conformity would lapse immediately in approximately twenty areas without complete 15% SIPs.

Like the interim final rule and proposed rule, this final rule does not change the timing of conformity lapse for disapproval of any control strategy SIP without a protective finding; for failure to submit or submission of incomplete carbon monoxide (CO), particulate matter (PM–10), or nitrogen dioxide (NO_2) attainment demonstrations; for failure to submit 15% SIPs; or for submission of incomplete 15% SIPs without protective findings.

Like the interim final rule and the proposed rule, this final rule does not affect the timing of the conformity lapse which results from failure to determine conformity by the deadlines established in 40 CFR 51.400 (93.104) and 51.448(a) (93.128(a)), including deadlines to redetermine conformity with respect to submitted SIPs, following promulgation of the November 1993 rule, and following control strategy SIP approvals.

This final rule deletes paragraphs (g)(1) and (g)(2) in 51.448(g) (93.128(g)), because these provisions are no longer relevant given the other changes of this final rule.

Today's final rule will be effective August 8, 1995. Today's final rule will prevent the conformity status of certain plans and TIPs from lapsing immediately upon expiration of the interim final rule on August 8, 1995, in approximately twenty ozone nonattainment areas currently without complete 15% SIPs. This conformity lapse would be contrary to the public interest because EPA believes that halting of transportation plan, program, and project implementation in these cases is not necessary at this time for the lawful and effective implementation of Clean Air Act section 176(c). If EPA did not make this rule effective August 8, 1995, conformity lapse which is contrary to the public interest could occur in some areas during the 30-day period between publication and the effective date which is ordinarily provided under the Administrative Procedures Act (APA), 5 U.S.C. 553(d). EPA therefore finds good cause to make this final rule effective August 8, 1995. In addition, this rule relieves a restriction and therefore qualifies for an exception from the APA's 30-day advance-notice period under 5 U.S.C. 553(d)(1).

III. Response to Comments

Fourteen comments on the proposed rule were submitted, including comments from MPOs and state and local air and transportation agencies. The majority of the comments supported the proposed rule. A complete response to comments document is in the docket.

One commenter opposed the proposed rule for a number of reasons, including the concern that the proposed rule would encourage further delays in development and submission of control strategy SIPs. EPA agrees that the submission of control strategy SIPs (and thus motor vehicle emissions budgets) is of critical importance for conformity purposes. However, EPA believes that Clean Air Act section 179(b) sanctions continue to provide appropriate incentive to submit complete and approvable control strategy SIPs.

The commenter also suggested that EPA consider options such as retaining the lapsing provisions but allowing extensions in certain circumstances, or retaining the conformity lapse but allowing a longer grace period (such as 18 or 24 months) following an EPA finding of a SIP failure. In fact, because Clean Air Act highway sanctions apply 24 months following an EPA finding of a SIP failure, today's amendments aligning conformity lapse with Clean Air Act highway sanctions implement the commenter's latter suggestion. Although the commenter was also concerned that tying conformity to sanctions would make EPA more hesitant to apply sanctions, section 179(b) sanctions are mandatory within the prescribed periods following EPA's findings of State failures, under the Clean Air Act and EPA's regulations.

Other commenters suggested that EPA should align all conformity lapses due to SIP failures with Clean Air Act sanctions. Alignment for more cases than originally proposed would require another rulemaking. EPA currently intends to issue in the future a proposal to align with Clean Air Act highway sanctions the conformity lapse which results from failure to submit a 15% SIP; an incomplete 15% SIP without a protective finding; and failure to submit or incomplete CO, PM–10, or NO_2 attainment demonstrations. This change would also dramatically decrease the complexity of the regulatory language in section 51.448 (93.128) of the conformity rule, which was a concern expressed by some commenters. EPA will be considering comments advocating alignment of the lapse which follows SIP disapprovals without protective findings, but the agency has not yet decided whether to propose amending that provision.

Some commenters suggested that every conformity lapse for any reason, including failure to demonstrate conformity to a submitted SIP, should be delayed. These suggestions are beyond the scope of the proposed rule and would also require another proposed rule. Again, EPA will be considering these comments in the context of future conformity rule amendments.

Several commenters also raised concerns about aspects of the conformity rule which are not relevant to this action, including transportation control measures and non-federal projects. These comments do not affect whether EPA should proceed with today's action, but EPA will be considering them in the context of future conformity rule amendments.

IV. Administrative Requirements

A. Administrative Designation

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the

environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements from EPA which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation affects moderate and above ozone nonattainment areas, which are almost exclusively urban areas of substantial population, and affects federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., I certify that this regulation does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Because this action will delay conformity lapses that would otherwise occur under existing regulations, EPA has determined that to the extent this rule imposes any mandate within the meaning of the Unfunded Mandates Act, this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. Therefore, EPA has not prepared a statement with respect to budgetary impacts.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Volatile organic compounds.

40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone.

Dated: August 1, 1995.

Carol M. Browner,

Administrator.

40 CFR parts 51 and 93 are amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 is amended to read as follows:

Authority: 42 U.S.C. 7401–7671q.

PART 93—[AMENDED]

2. The authority citation for part 93 is amended to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§§ 51.448 and 93.128 [Amended]

3. The identical texts of §§ 51.448 and 93.128 are amended as follows:

a. By redesignating paragraphs (b)(2) and (c)(2) as (b)(3) and (c)(3);

b. By removing paragraphs (g)(1) and (g)(2) and redesignating paragraph (g)(3) as (g)(1) and reserving paragraph (g)(2); and

c. By revising paragraphs (a)(3), (b)(1) introductory text, and (d)(3), and adding new paragraphs (b)(2) and (c)(2).

The identical text of additions and revisions reads as follows:

§ _____. ___ Transition from the interim period to the control strategy period.

(a) * * *

(3) Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(b) *Areas which have not submitted a control strategy implementation plan revision.*

(1) For CO, PM_{10} and NO_2 areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(i) * * *

(ii) * * *

(2) For ozone nonattainment areas where EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision required by Clean Air Act sections 182(c)(2)(A) and/or 182(c)(2)(B), failure to submit an attainment demonstration for an intrastate moderate ozone nonattainment area that chose to use the Urban Airshed Model for such demonstration, or failure to submit an attainment demonstration for a multistate moderate ozone nonattainment area, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Clean Air Act.

* * * * *

(c) * * *

(2) In lieu of the provisions of paragraph (c)(1) of this section, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act as a result of incompleteness, in ozone nonattainment areas where EPA notifies the State, MPO, and DOT that the following control strategy implementation plan revisions are incomplete:

(i) The implementation plan revision due November 15, 1994, as required by Clean Air Act sections 182(c)(2)(A), and/or 182(c)(2)(B);

(ii) The attainment demonstration required for moderate intrastate ozone nonattainment areas which chose to use the Urban Airshed Model for such demonstration and for multistate moderate ozone nonattainment areas; or

(iii) The VOC reasonable further progress demonstration due November 15, 1993, as required by Clean Air Act section 182(b)(1), if EPA notes in its incompleteness finding as described in paragraph (c)(1)(iii) of this section that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A).

(iv) The consequences described in paragraph (c)(1) of this section shall be nullified if such provisions have been applied as a result of a failure described in paragraph (c)(2) of this section, and paragraph (c)(2) of this section shall henceforth apply with respect to any such failure.

* * * * *

(d) * * *

(3) Notwithstanding paragraph (d)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

* * * * *

[FR Doc. 95–19400 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[FRL–5274–3]

Determination of Attainment of Ozone Standard by Ashland, Kentucky, Northern Kentucky (Cincinnati area), Charlotte, North Carolina, and Nashville, Tennessee, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements: Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: On June 22, 1995, the EPA published a proposed rule (60 FR 32477) and a direct final rule (60 FR 32466) determining that the Ashland, Kentucky, Northern Kentucky (Cincinnati Area), Charlotte, North Carolina, and Nashville, Tennessee, ozone nonattainment areas were attaining the National Ambient Air Quality Standard (NAAQS) for ozone. Based on that determination, the EPA also determined that requirements of section 182(b)(1) of the Clean Air Act (Act) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) of the Act concerning contingency measures are not applicable to the areas so long as the areas do not violate the ozone standard. The EPA is removing the final rule due to adverse comments regarding the Northern Kentucky (Cincinnati) area and will summarize and address all public comments received in a subsequent final rule (based upon the proposed rule cited above). Additionally, since publication of the original determination on June 22, 1995, the Ashland, Kentucky, and Charlotte, North Carolina, areas were redesignated to attainment on June 29, 1995 (60 FR 33748), and July 5, 1995 (60 FR 34859), respectively, making this finding for those areas no longer necessary. A final rule will be published regarding the Nashville area for which no adverse comments were received.

EFFECTIVE DATE: The direct final rule published at 60 FR 32466, June 22, 1995, is withdrawn effective August 7, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Regulatory Planning & Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is (404) 347–3555, extension 4221.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 1995.

R.F. McGhee,

Acting Regional Administrator.

[FR Doc. 95–19487 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5274–2]

Title V Clean Air Act Final Interim Approval of Operating Permits Program; District of Columbia

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by the District of Columbia for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: September 6, 1995.

ADDRESSES: Copies of the District's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–2923.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the CAA")), and

implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states seeking to administer a Title V operating permits program develop and submit a program to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval of an operating permits program submittal. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the expiration of the interim approval period, it must establish and implement a federal program.

On March 21, 1995, EPA proposed interim approval of the operating permits program for the District of Columbia. (See 60 FR 14921). EPA compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for the District of Columbia.

II. Analysis of State Submission

On January 13, 1994, the District of Columbia submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR part 70. The submittal was supplemented by additional materials on March 11, 1994 and was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). EPA reviewed the program against the criteria for approval in section 502 of the CAA and the part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of the District's operating permits program (see 60 FR 14921 (March 21, 1995)) and the TSD for this action, that the District's operating permits program substantially meets the requirements of the CAA and part 70.

III. Response to Public Comments

EPA received comments from one organization. EPA's response to these comments are summarized in this section. Comments supporting EPA's proposal are not addressed in this notice. All comments are contained in the docket at the address noted in the **ADDRESSES** section above.

Title I Modifications

Comment: EPA has no authority to deny approval of the District's operating permits program based on its definition of "Title I modification or modification under any provision of Title I of the Act". The District's definition of the term "Title I Modification" which does not expressly include changes reviewed under a minor source preconstruction review program is consistent with the relatively narrow definition of "Title I Modifications" in the current part 70 rules.

EPA Response: As stated in the proposed rule, EPA does not believe that the District's definition of "Title I modification or modification under any provision of Title I of the Act" is necessary grounds for either interim approval or disapproval. Accordingly, EPA has not identified the District's definition of this term to be a program deficiency.

EPA is currently in the process of determining the proper definition of the term "Title I modification or modification under any provision of Title I of the Act". (See 59 FR 44572). If EPA establishes in its rulemaking that the definition of "Title I modifications" can be interpreted to exclude changes reviewed under a minor source preconstruction review (NSR) program, the District's definition of "Title I modification or modification under any provision of Title I of the Act" would be fully consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition must include changes reviewed under minor NSR, the District's definition of "Title I modification or modification under any provision of Title I of the Act" would not fully meet the 40 CFR 70.2 requirements for definitions.

The primary purpose of EPA's discussion of this issue in the proposed rule was to notify the District and regulated community about how the definition of "Title I modification or modification under any provision of Title I of the Act" may impact the approval status of the District's Title V operating permits program. Until the definition of "Title I modification or modification under any provision of Title I of the Act" is established through rulemaking to include changes reviewed under minor NSR, EPA does not consider the District's definition of this term to be either an interim or disapproval issue.

Implementation of Section 112(g) Upon Program Approval

Comment: EPA's proposed approval of the District's Chapter 3 operating permits program for the purpose of implementing 112(g) during the transition period between federal promulgation of a section 112(g) rule and District adoption of section 112(g) regulations is objectionable for the following reasons: (1) the District's program may not conform to the section 112(g) requirements once they have been issued by EPA, and (2) EPA is proposing to approve the program without clarifying whether the District's program addresses the critical threshold questions of how a source is to determine if an emissions increase is or is not greater than *de minimis*, and whether or not it has been offset satisfactorily. EPA has no legal basis for allowing the District to implement section 112(g) until the agency completes its rulemaking under 112(g).

EPA Response: Title V of the CAA and the part 70 regulations require states seeking to obtain and retain approval of Title V operating permit programs to have authority to issue permits and assure compliance with all applicable requirements. (Section 502(b)(5)(A) and 40 CFR 70.4(b)(3)(i)). Section 112(g)(2) of the CAA, an applicable requirement, provides that no person may modify, construct or reconstruct a major source of HAP, unless the Administrator (or the state) determines that maximum achievable control technology (MACT) limitations have been met or that sufficient offsets have been provided. Accordingly, as discussed in the preamble to the proposed section 112(g) rule, EPA interprets the statute to require states to implement section 112(g) including the development of case-by-case MACT determinations, in order to obtain and retain approval of Title V operating permits programs (See 59 FR 15565).

In the proposed interim approval of the District's operating permits program, EPA proposed to approve the District's Chapter 3 operating permits program for the purpose of implementing section 112(g) during the transition period between federal promulgation of a section 112(g) rule and District adoption of 112(g) implementing regulations. (See 60 FR 14925–6). This proposal was based in part on EPA's revised interpretation of the CAA discussed in a **Federal Register** notice published on February 14, 1995 which postponed the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. (See 60 FR 8333).

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the District must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption by the District of implementing regulations.

As described in the proposed rule, EPA believes that, although the District currently lacks a program designed specifically to implement section 112(g), the District's Chapter 3 operating permits program will serve as an adequate implementation vehicle during a transition period because it will allow the District to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into federally enforceable source-specific permits for major sources of hazardous air pollutants (HAP).

A consequence of the fact that the District lacks a program designed specifically to implement section 112(g) is that the timing requirements for submitting permit applications to establish case-by-case MACT determinations will differ from those in the section 112(g) rule. However, EPA expects the District to be able to require sources to submit applications to obtain operating permits or permit revisions to establish case-by-case MACT determinations prior to construction where necessary for purposes of section 112(g) even if its own operating permits program does not require such permit applications to be submitted until twelve (12) months after commencing operations.

Although the Chapter 3 operating permits program does not at this time address critical 112(g) threshold questions with respect to *de minimis* levels and offsets, EPA believes that the District can adequately implement 112(g) prior to adoption of EPA's final promulgated 112(g) rule by relying on the authority established in the Chapter 3 operating permits program and using EPA's final 112(g) rule as guidance. Pursuant to the District's commitment "to adopt and implement expeditiously any additional regulations that might be needed to incorporate such [future section 112] requirements into operating permits", the District will be expected to establish additional authorities with respect to 112(g) *de minimis* levels and/or offsets, if necessary, consistent with the 112(g) rule once EPA promulgates a rule addressing those provisions.

Final Action

EPA is promulgating interim approval of the operating permits program submitted by the District of Columbia on January 13, 1994, and supplemented on March 11, 1994. The District must make the changes identified in the proposed rule in order to fully meet the requirements of the July 21, 1992 version of part 70. (See 60 FR 14926). The District must also have acid rain regulations and adequate forms in place by November 15, 1995 consistent with the commitment made in a February 3, 1995 letter to EPA.

The scope of the District's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the District of Columbia, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until September 8, 1997. During this interim approval period, the District is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the District fails to submit a complete corrective program for full approval by March 7, 1997, EPA will start an 18-month clock for mandatory sanctions. If the District then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the District has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the District's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the District has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the District has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for the District of Columbia upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the District's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

Additionally, EPA is promulgating approval of Chapter 3 of Subtitle I of Title 20 of the District of Columbia Municipal Regulations (20 DCMR),

under the authority of Title V and Part 70 for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the federal section 112(g) rule and adoption of any necessary District rules to implement EPA's section 112(g) regulations. However, since this approval is for the purpose of providing a mechanism to implement section 112(g) during the transition period, the approval of the Chapter 3 operating permits program for this purpose will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. Although section 112(l) generally provides the authority for approval of state air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide the District with adequate time to adopt regulations consistent with federal requirements.

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

EPA has determined that this proposed interim approval action does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

EPA has determined that this final interim approval action, promulgating interim approval of the District of Columbia's operating permits program, does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: July 20, 1995.

W.T. Wisniewski,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding the entry for the District of Columbia in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

District of Columbia

(a) Environmental Regulation Administration: submitted on January 13, 1994 and March 11, 1994; interim approval effective on September 6, 1995; interim approval expires September 8, 1997.

(b) [Reserved]

* * * * *

[FR Doc. 95–19399 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 258

[EPA/OSW–FR–95; FRL–5271–8]

Financial Assurance Criteria for Owners and Operators of Municipal Solid Waste Landfill Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: This rule corrects typographical errors in the Financial Assurance Criteria (40 CFR part 258, subpart G) for owners and operators of municipal solid waste landfills (MSWLFs).

EFFECTIVE DATE: These technical corrections are effective August 7, 1995. The effective date for subpart G of 40 CFR part 258 was recently extended from April 9, 1995 until April 9, 1997 (see the April 7, 1995 **Federal Register**, 60 FR 17649).

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920–9810, TDD (703) 486–3323.

For more detailed information on specific aspects of this document, contact Allen J. Geswein (703–308–7261), Office of Solid Waste (5306W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: This rule corrects typographical errors included in the Financial Assurance Criteria issued on October 9, 1991 as part of the Criteria for Municipal Solid Waste Landfills (see 56 FR 50978). The cross-references in the provisions that relate to a trust fund (§ 258.74(a) (3) and (4)), a letter of credit (§ 258.74(c)(3)) and an insurance policy (§ 258.74(d)(3)) are being changed to reference the correct section that provides for the use of multiple financial mechanisms ("§ 258.74(k)" or "paragraph k") instead of the current (incorrect) reference to the section that addresses a state's assumption of responsibility for compliance with financial assurance requirements ("§ 258.74(j)" or "paragraph j"); the surety bond provisions at § 258.74(b)(2) already correctly reference § 258.74(k). Another change eliminates an incorrect reference to § 270.74(a) in the trust fund provisions at § 258.74(a)(6) and substitutes the correct reference to § 258.74(a). A final change corrects a grammatical error in the trust fund provisions at § 258.74(a)(4) by substituting "in the pay-in period" for "on the pay-in period" in the last sentence of that subsection.

There is good cause pursuant to section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to issue today's technical corrections without prior notice and comment, because notice and comment is unnecessary when, as in this case, the changes only correct prior typographical errors and do not materially change the regulatory requirements.

List of Subjects in 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: June 20, 1995.

Elliott Laws,

Assistant Administrator for Solid Waste and Emergency Response.

40 CFR part 258 is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority section for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949a(c); 33 U.S.C. 1345 (d) and (e).

2. Section 258.74 is amended by revising paragraphs (a)(3), (a)(4), (a)(6), (c)(3), and (d)(3) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(a) * * *

(3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (k) of this section, divided by the number of years in the pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

Next Payment = [CE − CV]/Y

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (k) of this section, divided by the number of years in the corrective action pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

Next Payment = [RB − CV]/Y

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

* * * * *

(6) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph and paragraph (a) of this section, as applicable.

* * * * *

(c) * * *

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in paragraph (k) of this section. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the owner or operator must obtain alternate financial assurance.

* * * * *

(d) * * *

(3) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in paragraph (k) of this section. The term *face amount* means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

* * * * *

[FR Doc. 95–19251 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–121; RM–8220]

Radio Broadcasting Services; Buena Vista, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 281C3 for Channel 281A at Buena Vista, Colorado, and modifies the Class A authorization for Station KBVC(FM) to specify operation on the higher powered channel, as requested by Riley M. Murphy. *See* 58 FR 31183, June 1, 1993. Coordinates used for Channel 281C3 at Buena Vista are 38–39–49 and 106–12–50. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–121, adopted July 27, 1995, and released August 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by removing Channel 281A and adding Channel 281C3 at Buena Vista.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19362 Filed 8–4–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement (DFARS); Revision of Authority Citation

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulations (DAR) Council is revising the authority citations for 48 CFR Chapter 2 to update the authority for issuance of the Defense FAR Supplement. In addition, the DAR Council is adding the new authority citation to Appendix G as an authority citation was previously inadvertently omitted.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Lucile Martin, (703) 602–0131.

List of Subjects for 48 CFR Chapter 2

Goverment procurement.

Accordingly, under the authority of 41 U.S.C. 421 et seq., the Defense FAR Supplement authority citation for 48 CFR Parts 201 through 253 and Appendices A through I of Chapter 2 is revised and a new authority citation for Appendix G is added to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–19315 Filed 8–14–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Parts 206, 207, 215, 219, and 252

[DFARS Case 95–D701]

Defense Federal Acquisition Regulation Supplement; Contract Award (Interim)

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 ("the Act"). The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement concerning acquisition planning, contracting by negotiation, and competition requirements as a result of changes to Title 10 U.S.C. by Sections 1506, 3065, 3066, and 7101(b) of the Act.

DATES: *Effective Date:* August 7, 1995.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 6, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR),IMD 3D139,3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D701 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Mellissa D. Rider, DFARS FASTA Implementation Secretariat, at (703) 614–1634. Please Cite DFARS case 95–D701.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 ("the Act"), dated October 13, 1994, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

DFARS Case 95–D701 addresses six defense-unique sections of the Act that were given immediate effectivity by Section 10001(c) of the Act: Section 1506, Repeal of Requirement Relating to Production Special Tooling and Production Special Test Equipment; Section 1507, Regulations for Bids; Section 3063, DoD Acquisition of Intellectual Property Rights; Section 3065, Codification and Revision of Limitation on Lease of Vessels, Aircraft, and Vehicles; Section 3066, Soft Drink Supplies; and Section 7101(b), Repeal of Certain Requirements. Following is a discussion of the changes associated with each section:

Section 1506, Repeal of Requirement Relating to Production Special Tooling and Production Special Test Equipment—This section repeals 10 U.S.C. 2329, which contained requirements relating to production special tooling and production special test equipment. The requirements of 10 U.S.C. 2329 had been implemented at DFARS 215.871 and was the sole reason that section was created. The interim rule removes and reserves DFARS 215.871.

Section 1507, Regulations for Bids—This section amends 10 U.S.C. 2381(a) to vest the Secretary of Defense with the authority to prescribe regulations covering the preparation, submission, and opening of bids. Existing FAR coverage at Subpart 1.3 already vests the Secretary of Defense with this authority, especially when one considers that 5 U.S.C. allows agency heads, such as the Secretary of Defense, to structure the internal administrative procedures of his/her agency to support, among other things, the procurement process. Therefore, DFARS was not amended to implement this Section of the Act.

Section 3063, DoD Acquisition of Intellectual Property Rights—This section of the Act rewords the listing of the types of copyrights, designs, patents, processes, etc., in which DoD may obtain rights in data, to include technical data and computer software and releases of past infringements or unauthorized use of technical data and computer software. Since the existing guidance at DFARS Part 227 already covers these types of situations, no change has been made to DFARS.

Section 3065, Codification and Revision of Limitation on Lease of Vessels, Aircraft, and Vehicles—This section of the Act adds a new section at 10 U.S.C. 2401a, which requires DoD to consider all costs and make a written determination prior to entering into any contract with a term of 18 months or more, or extending or renewing any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement. A new section is added at DFARS 207.470 to implement this section of the Act.

Section 3066, Soft Drink Supplies—This section of the Act amends 10 U.S.C. 2424, which authorizes noncompetitive procurement of supplies and services from exchange stores outside the United States, to make the limitations of 10 U.S.C. 2424(b) (1) and (2) inapplicable to the purchase of U.S. manufactured soft drinks. Those limitations (i.e., contract dollar value not to exceed $50,000 and the requirement that supplies be on hand at the exchange store on the contract award date) created purchasing problems for the Defense Personnel Support Center (DPSC), the DLA activity currently responsible for commissary supplies of soft drinks. This interim rule amends the DFARS at 206.302–5(b), to specify that U.S. manufactured soft drinks are not subject to the limitation of 10 U.S.C. 2424(b) (1) and (2).

Section 7101(b), Repeal of Certain Requirements—This section repeals Section 804 of Public Law 102–484, Certificate of Competency Requirements. This statute was implemented at DFARS 219.602–1(a), 219.602–70, and 252.219–7009. As the statutory requirement has been deleted, the interim rule deletes these DFARS sections.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because: the amendment at DFARS 206.302–5 pertains only to purchases made outside the United States for use by armed forces outside the United States; the amendment at DFARS Supbart 207.4 pertains to internal Government considerations regarding leasing; the section deleted at DFARS 215.871 applied only to production contracts where special tooling/special test equipment costs exceeded $1,000,000; and the language deleted at DFARS 219.602 and 252.219–7009 pertained only to administrative procedures for processing a request for a certificate of competency. An initial regulatory flexibility analysis has therefore not been performed. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D701 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule will not impose any additional reporting or record keeping requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement Sections 1506, 3065, 3066, and 7101(b) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), which became effective on October 13, 1995. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 206, 207, 215, 219, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 206, 207, 215, 219, and 252 are amended as follows:

PART 206—COMPETITION REQUIREMENTS

1. The authority citation for 48 CFR Parts 206, 207, 215, 219, and 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 206.302–5 is amended by revising paragraph (b)(i) to read as follows:

206.302–5 Authorized or required by statute.

(b) * * *

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b). The limitations of 10 U.S.C. 2424(b) (1) and (2) do not apply to the purchase of soft drinks that are manufactured in the United States. For the purposes of 10 U.S.C. 2424, soft drinks manufactured in the United States are brand name carbonated sodas, manufactured in the United States, as evidenced by product markings.

* * * * *

PART 207—ACQUISITION PLANNING

3. Section 207.470 is added to read as follows:

207.470 Statutory requirement.

As required by 10 U.S.C. 2401a, the contracting officer shall not enter into any contract for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement with a term of 18 months or more, or extend or renew any such contract for a term of 18 months or more, unless the head of the contracting activity has—

(a) Considered all costs of such a contract (including estimated termination liability); and

(b) Determined in writing that the contract is in the best interest of the Government.

PART 215—CONTRACTING BY NEGOTIATION

215.871 [Removed and reserved]

4. Section 215.871 is removed and reserved.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.602–1 [Amended]

5. Section 219.602–1 is amended by removing paragraph (a).

219.602–70 [Amended]

6. Section 219.602–70 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.219–7009 [Removed]

7. Section 252.219–7009 is removed.

[FR Doc. 95–19317 Filed 8–4–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 235

Defense Federal Acquisition Regulation Supplement; Federally Funded Research and Development Centers

AGENCY: Department of Defense (DoD).

ACTION: Correction to interim regulation.

SUMMARY: The Department of Defense published miscellaneous amendments (DAC 91–7) to acquisition regulations on June 5, 1995, (60 FR 29491). Coverage concerning Federally funded research and development centers that was added as an interim rule published on March 10, 1995 was inadvertently added again on June 5, 1995. This correction removes the duplicate coverage.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Lucile Martin at (703) 602–0131.

SUPPLEMENTARY INFORMATION: The Director of Defense Procurement issued an interim rule adding coverage at 235.017–1 on March 10, 1995 at 60 FR 13076. The same addition was inadvertently included in the miscellaneous amendments (DAC 91–7) published on June 5, 1995 at 60 FR 29491 and should be withdrawn.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

The following correction is made to the rule published on June 5, 1995:

1. At page 29500, in the second column, amendatory instruction No. 42 is removed.

[FR Doc. 95–19316 Filed 8–4–95; 8:45 am]

BILLING CODE 5000–04–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 501

[APD 2800.12A, CHGE 64]

RIN 3090–AF78

General Services Administration Acquisition Regulation; Contracting Officer Warrant Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise section 501.601 and to remove sections 501.602–1, 501.603, 501.603–1, 501.603–3, 501.603–4, and 501.603–70. The material contained in these sections

dealing with the selection, appointment, and termination of contracting officers has been determined to be non-regulatory material and is being relocated to an internal GSA directive. In addition, GSA Forms 3409 and 3410 have been removed from the GSAR and relocated to an internal directive.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Teresa Elbin, Office of GSA Acquisition Policy, (202) 501–4765.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it is not a significant revision as defined in FAR 1.501–1.

B. Executive Order 12866

This rule was not submitted to the Office of Management and Budget for review because it is not a significant rule as defined in Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule is not a significant revision as defined in FAR 1.501–1.

D. Paperwork Reduction Act

This rule does not impose any information collection or recordkeeping requirements that require the approval of OMB under 44 U.S.C. 3501, et seq. Therefore, the requirements of the Paperwork Reduction Act do not apply.

List of Subjects in 48 CFR Part 501

Government procurement.

Accordingly, 48 CFR Part 501 is amended as follows:

1. The authority citation for 48 CFR Part 501 continues to read as follows:

Authority: 40 U.S.C. 486(c).

Subpart 501.6—Contracting Authority and Responsibilities

2. Section 501.601 is revised to read as follows:

501.601 General.

Heads of contracting activities (see 502.1) are contracting officers by virtue of their position. Other contracting officers are appointed under FAR 1.603 and GSA's contracting officer warrant program.

501.602–1, 501.603, 501.603–3, 501.603–4, 501.603–70 [Removed]

3. Sections 501.602–1, 501.603, 501.603–3, 501.603–4, and 501.603–70 are removed.

Dated: July 31, 1995.

C. Allen Olson,

Acting Associate Administrator, Office of Acquisition Policy.

[FR Doc. 95–19223 Filed 8–4–95; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2802, 2804, 2805, 2807, 2808, 2809, 2810, 2812, 2813, 2814, 2815, 1816, 2817, 2828, 2829, 2830, 2832, 2833, 2835, 2845, 2852 and 2870

[Justice Acquisition Circular 95–2]

Amendments to the Justice Acquisition Regulations (JAR) Regarding: Department of Justice (DOJ) Acquisition Regulation System, Administrative Matters, Publicizing Contract Actions, Contract Delivery or Performance, Contracting by Negotiation and Types of Contracts

AGENCY: Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the JAR by revising policies and procedures regarding: the Department's acquisition regulation system; administrative matters; publicizing contract actions; contract deliveries and performance; contracting by negotiation; and, types of contracts in response to a review of existing procurement regulations by the DOJ's Procurement Employee Innovation Team.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Janis Sposato, Procurement Executive, Justice Management Division (202) 514–3103.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291, except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612) because the amendment sets forth, wholly, internal departmental procedures. No additional time or cost burden will be placed on contractors by the promulgation of this regulation.

List of Subjects in 48 CFR Parts 2801, 2802, 2804, 2805, 2807, 2808, 2809, 2810, 2812, 2813, 2814, 2815, 2816, 2817, 2828, 2829, 2830, 2832, 2833, 2835, 2845, 2852 and 2870

Government procurement.

Dated: July 19, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority citation for 48 CFR Parts 2801, 2802, 2804, 2805, 2807, 2808, 2809, 2810, 2812, 2813, 2814, 2815, 2816, 2817, 2828, 2829, 2830, 2832, 2833, 2835, 2845, 2852 and 2870 continues to read as follows:

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

2801.000 [Removed]

2. Section 2801.000 is removed.

Subpart 2801.2—Administration

2801.270–2 [Removed]

3. Section 2801.270–2 is removed.

4. Section 2801.270–4 is revised to read as follows:

2801.270–4 Numbering.

Justice Acquisition Circulars will be consecutively numbered beginning with the number 1, after each rewrite and publication of the Justice Acquisition Regulations.

Subpart 2801.3—Agency Acquisition Regulations

5. Section 2801.304 is amended by revising paragraph (b) to read as follows:

2801.304 Agency control and compliance procedures.

* * * * *

(b) The Procurement Executive will review all bureau unpublished internal acquisition policies and provide comments prior to their implementation.

Subpart 2801.4—Deviations From the Federal Acquisition Regulation and the Justice Acquisition Regulations

6. Section 2801.403 is revised as follows:

2801.403 Individual deviations.

Individual deviations from the FAR or the JAR shall be approved by the head of the contracting activity (HCA). A copy of the deviation shall be included in the contract file. Copies of all deviations will be provided to the Procurement Executive.

7–8. Section 2801.470 is revised as follows:

2801.470 Requests for class deviations.

Requests for approval of class deviations to the FAR of the JAR shall be forwarded to the Procurement Executive. Such requests will be signed by the bureau procurement chief. Requests for class deviations shall be submitted as far in advance as the exigencies of the situation permit and shall contain sufficient written justification to evaluate the request.

Subpart 2801.6—Contracting Authority and Responsibilities

9. Section 2801.602–3 is revised as follows:

2801.602–3 Ratification of unauthorized commitments.

The HCA may delegate the authority to ratify unauthorized commitments to the chief of the contracting office, except for those actions effected by his or her office. Dollar thresholds for delegations made under this section will be determined by the HCA. Copies of all ratifications are to be provided to the Procurement Executive.

§ 2801.602–70 [Amended]

10. Section 2801.602–70 is amended by removing paragraph (f).

Subpart 2801.7—Contracting Officer's Technical Representative (COTR's)

11. Section 2801.7001–702 is amended by revising paragraphs (d)(1) and (g) as follows:

2801.7001–702 Selection, appointment, limitation of authority.

* * * * *

(d) *Certification and appointment.* (1) In accordance with bureau procedures, the individual must provide the contracting activity with evidence of completion of the COTR course, procurement ethics training, and with the certification required by the Procurement Integrity Act. Upon determination that the required standards have been met, the chief of the contracting office will issue a one-time Certificate of COTR Appointment.

* * * * *

(g) *Implementation schedule and waivers.* No individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event that there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the bureau procurement chief may waive the training requirements and authorize the individual to perform the COTR duties, for a period of time not to exceed 120 days. The waiver may be granted in accordance with bureau procedures.

PART 2802—DEFINITIONS OF WORDS AND TERMS

2802.000 [Removed]

12. Section 2802.000 is removed.

Subpart 2802.1—Definitions

13. Section 2802.102 is amended by redesignating paragraphs (f) through (m) as paragraphs (g) through (n), adding a new paragraph (f) and revising the redesignated paragraph (g), as follows:

2802.102 Definitions

* * * * *

(f) *Bureau procurement chief* means that supervisory official who is directly responsible for supervising, managing and directing all contracting offices of the bureau.

(g) *Chief of the contracting office* means that supervisory official who is directly responsible for supervising, managing and directing the contracting office.

* * * * *

PART 2804—ADMINISTRATIVE MATTERS

2804.000 [Removed]

14. Section 2804.000 is removed.

Subpart 2804.8—Contract Files [Removed]

15. Subpart 2804.8 is removed.

Subpart 2804.9—Information Reporting to the Internal Revenue Service

2804.900 [Removed]

16. Section 2804.900 is removed.

Subpart 2804.70—Procurement Requisitions [Removed]

17. Subpart 2804.70 is removed.

PART 2805—PUBLICIZING CONTRACT ACTIONS

Subpart 2805.1—Dissemination of Information [Removed]

18. Subpart 2805.1 is removed.

Subpart 2805.5—Paid Advertisements

19. Section 2805.502 is amended by revising paragraph (a) as follows:

2805.502 Authority.

(a) Authorization for paid advertising is required for newspapers only. Pursuant to 28 CFR 0.140, the authority to approve publication of paid advertisements in newspapers has been delegated to the officials listed in 2801.601(a). This authority may be redelegated as appropriate.

* * * * *

PART 2807—ACQUISITION PLANNING

Subpart 2807.70—End-of-Year Procurements

2807.700 [Removed]

20. Section 2807.700 is removed.

PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2808.000 [Removed]

21. Section 2808.000 is removed.

Subpart 2808.1—Excess Personal Property [Removed]

22. Subpart 2808.1 is removed.

PART 2809—CONTRACTOR QUALIFICATIONS

Subpart 2809.4—Debarment, Suspension and Ineligibility

2809.400 [Removed]

23. Section 2809.400 is removed.

2809.403 [Removed]

24. Section 2809.403 is removed.

2809.405–2 [Removed]

25. Section 2809.405–2 is removed.

2809.471 [Removed]

26. Section 2809.471 is removed.

PART 2810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

2810.000 [Removed]

27. Section 2810.000 is removed.

PART 2812—CONTRACT DELIVERY OR PERFORMANCE

2812.000 [Removed]

28. Section 2812.000 is removed.

Subpart 2812.1—Extension of Delivery or Performance Schedules

29. Section 2812.170 is revised as follows:

2812.170 Policy.

It is the policy of DOJ to ensure that contract delivery schedules are reasonable, realistic and meet the requirements of the acquisition. However, in some instances when the contractor fails to deliver in a timely manner, it may be necessary for the

Government to allow the contractor to continue performance. Under these circumstances, if the delay is caused by conditions which would not be considered "excusable delays" (as defined in FAR clause 52.249–14, Excusable Delays) the contracting officer should secure consideration for the Government's forbearance in extending the delivery schedule.

PART 2813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2813.5—Purchase Orders

2813.570 [Removed]

30. Section 2813.570 is removed.

Subpart 2813.70—Certified Invoice Procedure

31. Section 2813.7002 is amended by revising paragraph (c) as follows:

2813.7002 Procedure.

* * * * *

(c) The Chief of the Contracting Office, as defined in (JAR) 48 CFR 2802.102(g), shall delegate the authority to the use the certified invoice procedure. Each delegation must specify any limitation placed on the individual's use of these procedures, such as limits on the amount of each purchase, or limits on the commodities, or services which can be procured.

* * * * *

PART 2814—SEALED BIDDING

2814.000 [Removed]

32. Section 2814.000 is removed.

Subpart 2814.4—Opening of Bids and Award of Contract

2814.401 [Removed]

33. Section 2814.401 is removed.

2814.402 [Removed]

34. Section 2814.402 is removed.

PART 2815—CONTRACTING BY NEGOTIATION

Subpart 2815.4—Solicitation and Receipt of Proposals and Quotations

35. Section 2815.405 is revised as follows:

2815.405 Solicitations for informational and planning purposes.

When a solicitation for informational or planning purposes is to be issued, the contracting officer shall make a written determination that such solicitation is justified. This determination shall be approved at one level above the contracting officer.

Subpart 2815.8—Price Negotiation

36. Section 2815.804–370 is revised as follows:

2815.804–370 Waiver of submission of certified cost or pricing data.

In exceptional cases, the requirement for submission of certified cost or pricing data may be waived. The authorization to waive the requirement shall be in writing and shall set forth the relevant circumstances, including the reasons for granting the waiver and the contracting officer's recommendation. The waiver shall be approved by the appropriate bureau official listed in 2801.601(a) or his/her designee in accordance with bureau procedures.

PART 2816—TYPES OF CONTRACTS

2816.000 [Removed]

37. Section 2816.000 is removed.

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

38. Section 2816.601 is added to read as follows:

2816.601 Time-and-materials contracts.

A time-and-materials type contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the contracting office, the approval to use a time-and-materials type contract will be made at a level above the contracting officer.

39. Section 2816.602 is added to read as follows:

2816.602 Labor-hour contracts.

A labor-hour type contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the contracting office, the approval to use a labor-hour type contract will be made at a level above the contracting officer.

40. Section 2816.603–370 is added to read as follows:

2816.603–370 Limitations.

Copies of all approved determinations authorizing the use of letter contracts shall be provided to the Procurement Executive.

PART 2817—SPECIAL CONTRACTING METHODS

Subpart 2817.2—Options [Removed]

41. Subpart 2817.2 is removed.

PART 2828—BONDS AND INSURANCE

Subpart 2828.1—Bonds

2828.105 [Removed]

42. Section 2828.105 is removed.

PART 2829—TAXES

2829.000 [Removed]

43. Section 2829.000 is removed.

PART 2830—COST ACCOUNTING STANDARDS

Subpart 2830.2—CAS Program Requirements

44. Section 2830.201–270 is revised as follows:

2830.201–270 Impracticality of submission.

When the contracting officer has determined that it is impractical to secure a Disclosure Statement, as required by FAR 30.202, he/she will document the reasons and rationale for such impracticality and forward the determination, and an explanatory cover letter which sets forth the pertinent circumstances and details the solicitation contracting officer's attempts to secure the Disclosure Statement, to the Procurement Executive for review of the documentation prior to forwarding it to the AAG/A for approval.

PART 2832—CONTRACT FINANCING

2832.000 [Removed]

45. Section 2832.000 is removed.

Subpart 2832.4—Advance Payments

2832.400 [Removed]

46. Section 2832.400 is removed.

Subpart 2832.70—Prompt Payment

2832.7000 [Removed]

47. Section 2832.7000 is removed.

PART 2833—PROTESTS, DISPUTES AND APPEALS

2833.000 [Removed]

48. Section 2833.000 is removed.

PART 2835—RESEARCH AND DEVELOPMENT CONTRACTING

2835.000 [Removed]

49. Section 2835.000 is removed.

PART 2845—GOVERNMENT PROPERTY

2845.000 [Removed]

50. Section 2845.000 is removed.

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2852.000 [Removed]

51. Section 2852.000 is removed.

Subpart 2852.1—Instructions for Using Provisions and Clauses

2852.100 [Removed]

52. Section 2852.100 is removed.

Subpart 2852.2—Texts and Provisions of Clauses

2852.200 [Removed]

53. Section 2852.200 is removed.

PART 2870—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

2870.000 [Removed]

54. Section 2870.000 is removed.

[FR Doc. 95–19042 Filed 8–4–95; 8:45 am]
BILLING CODE 4410–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 800, 830, and 831

Reporting of Public Aircraft Accidents

AGENCY: National Transportation Safety Board.

ACTION: Final rules.

SUMMARY: Following review of the comments received, the NTSB is adopting revisions to its rules to implement Public Law 103–411, which expands the scope of its jurisdiction to include investigations of certain public aircraft accidents.

DATES: The rules are effective September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382–6540.

SUPPLEMENTARY INFORMATION: On October 25, 1994, President Clinton signed H.R. 2440, the Independent Safety Board Act Amendments of 1994. Codified as Public Law 103–411 (the Act), it was effective on April 23, 1995, and directly affects aircraft operated by and for Federal, State and local governments. In addition to expanding the Federal Aviation Administration's (FAA) safety regulation to previously exempt "public" aircraft, the Act expanded the jurisdiction of the National Transportation Safety Board (NTSB or Safety Board) to encompass the investigation of all public aircraft other than those operated by the Armed Forces or by a United States intelligence agency.

By notice of proposed rulemaking (NPR) published in the **Federal Register** March 15, 1995 (60 FR 13948), we proposed and sought comment on rules to implement this new authority. We received 14 comments.[1] The States welcome the Board's investigation, in the unfortunate event that a State aircraft is involved in an accident, and either support or have no comment on the proposed rules themselves. ALPA favors this expansion of the Board's authority, but urges that funding levels be adequate for the Board to continue to investigate thoroughly public and civil aircraft accidents.

The Forest Service and Helicopter Association International are concerned that the exception for aircraft operated by the Armed Forces and U.S. intelligence agency aircraft not be read too broadly. The Forest Service's letter notes:

> The Forest Service supplements its aerial firefighting resources during times of extreme fire activity with aircraft and flight crews from the Armed Forces. These resources are furnished to us by active military, Reserve, and National Guard units. The Forest Service pays the Armed Forces an hourly rate for this service, has operational control over their movement; and uses them for the same missions as civil and other public aircraft which includes the transportation of passengers. In the case of Reserve and National Guard units, the flight crews are often pilots that normally fly commercial aircraft, including airliners, and fly the Armed Forces aircraft on a part-time basis.

The Forest Service considers these flights to be under its auspices and control and therefore "public" for investigation purposes. It objects to the proposal in the NPR to define "operated by the Armed Forces" only with reference to the actual, physical manipulation of the controls. The Forest Service requests that we reconsider this approach and interpret the Armed Forces exception narrowly and exclude aircraft from Reserve and National Guard units that are under the operational control of non-defense agencies (that is, to define control not in a physical sense but in a sense of directing the use to which the aircraft is put).

Mr. Kuchta argues that the Armed Forces/intelligence agency exception, as we have proposed to interpret it, is too narrow. He cites the Federal Aviation Act's definition of "operation of aircraft,"

> "operate aircraft" and "operation of aircraft" mean using aircraft for the purposes of air navigation, including—
> (A) the navigation of aircraft; and
> (B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.[2]

Thus, the definition includes both types of control we have discussed. Mr. Kuchta also notes that, in its adjudication of FAA-instituted certificate actions (the so-called enforcement docket), the Board interprets the term "operation" expansively to include other than actual physical manipulation of the controls.

The comments of the parties should demonstrate, and have convinced us, that defining our jurisdiction with regard to the exception is not as straightforward as we had hoped. At the same time, however, FA Act definitions, while they may inform the process, do not control the interpretation of language in our enabling statute, nor does Board precedent from other contexts. The critical consideration is to ensure that the exception is not so broad as to unduly limit our investigatory role, and not so narrow as to intrude improperly in military concerns that have little or no implication for civilian air safety.

On review of the comments, we will revise our future approach. We will consider both the physical manipulation of the controls and the broader operational control concept in determining whether an aircraft is operated by the Armed Forces or an intelligence agency so as to remove it from our investigatory responsibility. Using this approach, we would find, for example, that a cloud-seeding flight using a National Guard pilot and aircraft, but arranged and contracted for by the Forest Service, is not a flight "operated by" the Armed Forces. Indeed, such a flight, because cloud seeding is also conducted by civilian aircraft, has implications for civilian aircraft safety and, therefore, prompts exercise of our statutory role to promote air safety. On the other hand, investigations of accidents involving combat aircraft, combat maneuvers, or military surveillance or air navigational control are clearly on the other side of the equation and we believe that it is examples such as these that prompted Congress' exception.

There may be instances where analysis under the standards of (A) and (B) above produces opposite conclusions. For example, if the Army

[1] We received comments from 10 States (Alaska, Connecticut, Hawaii, Iowa, Maine, Maryland, Mississippi, Montana, Pennsylvania, and Wisconsin), three associations (the Air Line Pilots Association (ALPA), the Helicopter Association International, and the National Business Aircraft Association, Inc.), one government agency (the Department of Agriculture, Forest Service), and one individual (Joseph D. Kuchta).

[2] 49 U.S.C. 40102(a)(32), as recodified.

uses a civilian aircraft and crew to transport troops, application of (A) would produce a conclusion that the aircraft was a civil aircraft, not "operated by" the Armed Forces, but consideration under (B) would lead to the conclusion that, because the Army "caused" the operation, it involved aircraft operated by the Armed Forces and not subject to our investigation jurisdiction. Again, we would resolve the question by analyzing the circumstances with special reference to our statutory responsibility: With a civilian aircraft and crew, there are such implications for civilian air safety that the exception should not apply. This result is consistent with our discussion in the NPR to assert jurisdiction in the event that such an aircraft was involved in an accident.[3]

We received no comment on the other issues we raised. Therefore, we adopt our proposal to consider the National Guard, and the Coast Guard within the definition of Armed Forces and to construe the term "intelligence agency" only to apply to those Federal agencies that are so named or categorized (for example, in their enabling statutes).

We remind all those now required to report accidents and incidents to us immediately that the scope of reportable events is quite broad and that all personnel involved in aviation matters should be familiar with Title 49 of the Code of Federal Regulations, part 800, which identifies all the instances we investigate and sets forth rules (at part 830) for notifying us of what are termed "accidents or incidents."

This amendment of our interpretation does not translate into any change in the rules we proposed. Those rules will be adopted, with one minor editorial change.[4] Accordingly, 49 CFR parts 800, 830, and 831 are amended as set forth below.[5]

[3] We are confident that, with experience, we will develop a mutually agreeable understanding with the Armed Forces and Federal intelligence agencies regarding investigatory roles. We note in this context that, in the past, interagency agreements and other more informal processes have led to our participation, despite any argument that we lacked jurisdiction, in Armed Forces aircraft investigations, whether because the Armed Forces sought our assistance in an aspect of the investigation or because we believed our participation would contribute to furthering our statutory role. We expect this spirit of cooperation will continue and that jurisdictional disputes will be rare.

[4] In § 831.2(a)(1), the phrase "where the accident involves civil aircraft and certain public aircraft" is, for clarity, changed to read "where the accident involves any civil aircraft or certain public aircraft."

[5] As we noted in the NPR, various rules in these parts require changes to reflect current organization at the Safety Board or recent legislative change. Other rulemakings will shortly be conducted to update these provisions. This proceeding proposes only the changes needed to implement Pub. L. No. 103–411.

List of Subjects

49 CFR part 800

Authority delegations—Government agencies, Organization and functions—Government agencies.

49 CFR Part 830

Aviation safety, Reporting and recordkeeping requirements.

49 CFR Part 831

Aviation safety, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

PART 800—ORGANIZATION AND FUNCTIONS OF THE BOARD AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 800 is revised to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*); Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*).

2. Section 800.3 is amended by revising paragraph (a) to read as follows:

§ 800.3 Functions.

(a) The primary function of the Safety Board is to promote safety in transportation. The Safety Board is responsible for the investigation, determination of facts, conditions, and circumstances and the cause or probable cause or causes of: all accidents involving civil aircraft, and certain public aircraft; highway accidents including railroad grade-crossing accidents, the investigation of which is selected in cooperation with the States; railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train; pipeline accidents in which there is a fatality or substantial property damage; and major marine casualties and marine accidents involving a public and non-public vessel or involving Coast Guard functions. The Safety Board makes transportation safety recommendations to Federal, State, and local agencies and private organizations to reduce the likelihood of recurrence of transportation accidents. It initiates and conducts safety studies and special investigations on matters pertaining to safety in transportation, assesses techniques and methods of accident investigation, evaluates the effectiveness of transportation safety consciousness and efficacy in preventing accidents of other Government agencies, and evaluates the adequacy of safeguards and procedures concerning the transportation of hazardous materials.

* * * * *

PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

3. The authority citation for part 830 is revised to read as follows:

Authority: Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*), and the Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*).

4. Section 830.1 is revised to read as follows:

§ 830.1 Applicability.

This part contains rules pertaining to:

(a) Initial notification and later reporting of aircraft incidents and accidents and certain other occurrences in the operation of aircraft, wherever they occur, when they involve civil aircraft of the United States; when they involve certain public aircraft, as specified in this part, wherever they occur; and when they involve foreign civil aircraft where the events occur in the United States, its territories, or its possessions.

(b) Preservation of aircraft wreckage, mail, cargo, and records involving all civil and certain public aircraft accidents, as specified in this Part, in the United States and its territories or possessions.

* * * * *

5. Section 830.2 is amended by revising the definition of "public aircraft" to read as follows:

§ 830.2 Definitions.

* * * * *

Public aircraft means an aircraft used only for the United States Government, or an aircraft owned and operated (except for commercial purposes) or exclusively leased for at least 90 continuous days by a government other than the United States Government, including a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of that government. "Public aircraft" does not include a government-owned aircraft transporting property for commercial purposes and does not include a government-owned aircraft transporting passengers other than: transporting (for other than commercial purposes) crewmembers or other persons aboard the aircraft whose presence is required to perform, or is associated with the performance of, a governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management; or transporting (for other than commercial purposes) persons aboard the aircraft if the aircraft is operated by the Armed Forces or an intelligence agency of the United States. Notwithstanding any limitation relating to use of the aircraft for commercial purposes, an aircraft shall be considered to be a public aircraft without regard to whether it is operated by a unit of government on behalf of another unit of government pursuant to a cost reimbursement agreement, if the unit of government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation was necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator was reasonably available to meet the threat.

* * * * *

6. Section 830.5 is amended by revising the introductory text to read as follows:

§ 830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (Board) field office [1] when:

* * * * *

7. Section 830.15 is amended by revising paragraph (a) to read as follows:

§ 830.15 Reports and statements to be filed.

(a) *Reports.* The operator of a civil, public (as specified in § 830.5), or foreign aircraft shall file a report on Board Form 6120.½ (OMB No. 3147–0001) [2] within 10 days after an accident, or after 7 days if an overdue aircraft is still missing. A report on an incident for which immediate notification is required by § 830.5(a) shall be filed only as requested by an authorized representative of the Board.

* * * * *

[1] The Board field offices are listed under U.S. Government in the telephone directories of the following cities: Anchorage, AK, Atlanta, GA, West Chicago, IL, Denver, CO, Arlington, TX, Gardena (Los Angeles), CA, Miami, FL, Parsippany, NJ (metropolitan New York, NY), Seattle, WA, and Washington, DC.

[2] Forms are available from the Board field offices (see footnote 1), from Board headquarters in Washington, DC, and from the Federal Aviation Administration Flight Standards District Offices.

§ 830.20 (Subpart E)—[Removed]

8. Subpart E consisting of § 830.20 of Part 830 is removed.

PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

9. The Authority citation for part 831 is revised to read as follows:

Authority: Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*), and the Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*).

10. Section 831.2 is amended by revising paragraph (a)(1) to read as follows:

§ 831.2 Responsibility of Board.

(a) *Aviation.* (1) The Board is responsible for the organization, conduct and control of all accident investigations within the United States, its territories and possessions, where the accident involves any civil aircraft or certain public aircraft (as specified in § 830.5 of this chapter), including an accident investigation involving civil or public aircraft (as specified in § 830.5) on the one hand and an Armed Forces or intelligence agency aircraft on the other hand. It is also responsible for investigating accidents that occur outside the United States, and which involve civil aircraft and certain public aircraft, when the accident is not in the territory of another state (*i.e.*, in international waters).

* * * * *

11. Section 831.9 is amended to revise paragraph (b) to read as follows:

§ 831.9 Authority of Board Representatives.

* * * * *

(b) *Aviation.* Any employee of the Board, upon presenting appropriate credentials, is authorized to examine and test to the extent necessary any civil or public aircraft (as specified in § 830.5), aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident in air commerce.

* * * * *

Issued in Washington, DC, on this 1st day of August, 1995.

Jim Hall,

Chairman.

[FR Doc. 95–19356 Filed 8–4–95; 8:45 am]

BILLING CODE 7533-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950522140–5192–02; I.D. 050595E]

RIN 0648–XX22

Summer Flounder Fishery; 1995 Recreational Fishery Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues the final specifications for the 1995 summer flounder recreational fishery, which include no seasonal closure, a possession limit, and a minimum fish size. The intent of this rule is to comply with implementing regulations for the fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of the resource.

EFFECTIVE DATE: August 2, 1995, except for an amendment to § 625.25(a) which will be effective August 14, 1995.

ADDRESSES: Copies of the Environmental Assessment and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border.

Section 625.20 outlines the process for determining annual commercial and recreational catch quotas and other restrictions for the summer flounder fishery. Pursuant to § 625.20, the Director, Northeast Region, NMFS, implements measures for the fishing year to ensure achievement of the fishing mortality rate specified in the FMP. This rule announces the following

measures pertaining to the recreational fishery, which are unchanged from the proposed measures that were published in the **Federal Register** on May 30, 1995 (60 FR 28082): (1) Elimination of the closed season, (2) an individual possession limit of 6 fish per person, and (3) a minimum fish size of 14 inches (35.6 cm).

Comments and Responses

Two comments were received during the comment period concerning the proposed measures: One from the New Jersey Marine Fisheries Council (NJMFC) and the other from the Virginia Marine Resources Commission. Eight comments were also submitted prior to the Council/ASMFC meeting at which the recreational measures were initially discussed (March, 1995) and those comments are also responded to in this rule.

Comment: The eight individuals who submitted comments prior to the March 1995 Council meeting wrote to state their opposition to imposing any closed season for the recreational fishery. All argued that past closures prior to May 1 and after October 31 have had a disproportionate negative impact on the recreational fishery on the Eastern Shore of Virginia.

Response: This final rule eliminates the closed season.

Comment: The NJMFC opposes the individual possession limit of six fish per person. In March, the Council and ASMFC recommended elimination of the closed season, an eight-fish possession limit, and a 14-inch (35.6-cm) minimum fish size. The State of New Jersey adopted those measures following that meeting. The recommendation was disapproved by NMFS in April. The NJMFC states that it would be impossible administratively for the State to change the possession limit now, and that the charter/party boats possessing Federal permits would be subject to the Federal possession limit, even if fishing exclusively in State waters.

Response: Although consistency between state and Federal regulations is preferred, the State of New Jersey does not need to alter its rules governing State waters. NMFS expects to continue to work with the ASMFC to make State and Federal regulations as consistent as practicable. Until state and Federal rules are consistent, New Jersey charter and party boat owners and operators who fish exclusively in State waters may elect not to fish in Federal waters and cancel their Federal permits.

NMFS recognizes New Jersey's potential difficulty in changing the State possession limit. NMFS must base its decisions on what it believes is necessary to protect the resource in Federal waters, regardless of the fact that Federal and state rules may differ.

Comment: The NJMFC believes that establishing an individual possession limit of six fish per person creates an impression that NMFS is restricting the recreational fishery in order to compensate for the court-ordered increase in the 1995 commercial quota. They note that the court-ordered increase altered the 60 percent-40 percent commercial-recreational catch allocation ratio specified in the FMP.

Response: The court-ordered increase to the commercial sector was specific to the commercial sector. While the court-ordered increase may have changed the commercial-recreational allocation ratio specified in the FMP, no reduction in the recreational allocation was made to compensate for the increase in the commercial sector. The recreational sector is receiving the same amount of fish as it would have received before the court-ordered increase.

Comment: The Virginia Marine Resources Commission endorses the management measures and states that they represent an acceptable conservation regime.

Response: NMFS agrees with this commenter and has implemented the management measures.

Classification

This action is authorized by 50 CFR part 625.

These final specifications are exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, finds that the elimination of the closed season relieves a restriction and thus, under 5 U.S.C. 553(d)(1), that measure is not subject to a delay in the effective date. The AA also finds that a 30-day delay in effective date of the possession limit would adversely impact the resource because the fishing season has already opened and the more restrictive possession limit is necessary to keep the recreational fishery within its coastwide allocation for 1995. Therefore, the AA finds for good cause under 5 U.S.C. 553(d)(3) that the 30-day delay in effective date for the possession limit should be waived, in part; a 7-day delay in effective date is appropriate in order to provide notice to the fishermen of the change, while still implementing the new possession limit as soon as practicable.

List of Subjects in 50 CFR Part 625

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801, *et seq.*

2. Section 625.22 is revised to read as follows:

§ 625.22 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 625.4 and fishermen subject to the possession limit may fish for summer flounder during the period January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 625.20.

3. In § 625.25, paragraph (a) is revised to read as follows:

§ 625.25 Possession limit.

(a) No person shall possess more than six summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a moratorium permit under § 625.4. Persons aboard a commercial vessel that is not eligible for a moratorium permit under § 625.4 are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a moratorium permit under § 625.4(b) are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

* * * * *

[FR Doc. 95–19324 Filed 8–2–95; 10:20 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register

Vol. 60, No. 151

Monday, August 7, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–95–17]

RIN 0581–AB40

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Increase in Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposes to increase the fees charged for services provided under the dairy inspection and grading program. The program is a voluntary, user-fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The proposed increases would result in a fee of $43.00 per hour for continuous resident services and $48.00 per hour for nonresident services between the hours of 6:00 a.m. and 6:00 p.m. The fee for nonresident services between the hours of 6:00 p.m. and 6:00 a.m. would be $52.80 per hour. These proposed fees represent an increase of 80 cents per hour.

The fees are being increased to cover the costs of recent salary increases and locality adjustments, the full funding for standardization activities, and normal inflationary pressures.

DATES: Comments should be mailed by September 6, 1995.

ADDRESSES: Comments should be sent to: Office of the Director, USDA/AMS/Dairy Division, Room 2968–S, P.O. Box 96456, Washington, D.C. 20090–6456. Comments received will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Branch, Room 2750–South Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202)720–9381.

SUPPLEMENTARY INFORMATION: This rule has been determined not significant for purposes of Executive Order 12866, and has been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The proposed changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service estimates that overall this rule will yield an additional $87,000 during fiscal year 1996. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of maintaining the program.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased when necessary to cover the cost of maintaining a financially self-supporting program. The last fee increase under this program became effective on February 9, 1994. Since that time, Congress increased the salaries of Federal employees by 2.6 percent as of January 8, 1995, which included locality pay. Also, there have been normal increases in other operating costs. In addition, recent congressional action may result in additional salary increases of 2.4 percent in 1996. Although the program's operating reserves were adequate to cover the January 8, 1995, salary increase, this will not be the case for 1996 salary increases, and a fee increase is needed.

The grading program fees also need to be increased to cover the remaining costs related to the development of dairy product standards and other activities now performed by the Dairy Division's Standardization Branch. In FY 1994 Congress appropriated money for the development of standards by the Agricultural Marketing Service but at the same time stipulated that the program costs be recovered through user fees, with the fees being turned over to the U.S. Treasury. The fee increase which took effect on February 9, 1994, provided for ⅔ of the cost of that program. Since the dairy standardization program is an essential part of the dairy grading program, it is appropriate that all of the standardization program costs be recovered through the fees charged the users of the grading program. The projected cost of the dairy standardization program for FY 1996 is $440,000.

Proposed Changes

This rule proposes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increase the hourly fee for nonresident services from $47.20 to $48.00 for services performed between 6:00 a.m. and 6:00 p.m. The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel plus travel costs.

2. Increase the hourly fee for continuous resident services from $42.20 to $43.00. The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round resident basis.

Timing of Fee Increase

It is contemplated that the proposed fee increases would be implemented on

an expedited basis in order to minimize the period of revenue shortfall. Accordingly, it is anticipated that the fee increases, if adopted, would become effective upon publication, or very soon after publication, of the final rule in the **Federal Register** and that delaying the effective date of the final rule until 30 days after publication in the **Federal Register** would not occur. An approximate effective date would be October 1, 1996.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58 be amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for part 58 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

2. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $48.00 for service performed between 6:00 a.m. and 6:00 p.m. and $52.80 for service performed between 6:00 p.m. and 6:00 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident services.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $43.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: July 31, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–19331 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 987

[Docket No. FV95–987–1PR]

Domestic Dates Produced or Packed in Riverside County, California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 987 for the 1995–96 crop year. Authorization of this budget would enable the California Date Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by September 6, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Maureen Pello, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of dates produced or packed in Riverside County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, California dates are subject to assessments. Funds to administer the California date marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates during the 1995–96 crop year which begins October 1, 1995, and ends September 30, 1996. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf.

Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 producers of California dates under the marketing order and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California date producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 crop year was prepared by the California Date Administrative Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are, thus, in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California dates. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on May 18, 1995, and by votes of 6 to 3 recommended a 1995–96 assessment rate and operating expenses and increased market promotion expenses to fund the Committee's marketing plan. The two handlers voting against the funding for the marketing plan believe individual handlers should do more advertising on their own; the other no vote came from a producer who expressed concerns about the outstanding assessments owed the Committee. However, the majority of Committee members expressed the need for the industry to work together to promote California dates and help reduce current inventories.

The 1995–96 budget of $774,218 is $208,218 more than the previous year. Included in the budgeted expenditures is an operating budget of $160,000, $24,865 more than last year, with a 26.25 percent surplus account allocation, for a net operating budget of $118,000, or $18,000 more than last year. Also included is $656,218 allocated for market promotion, $206,218 more than last year.

Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Executive Director's salary, $66,000 ($57,500), Marketing Assistant's Salary, $24,000 ($18,500), health and welfare benefits, $10,500 ($8,500), payroll taxes, $8,000 ($5,814), rent, $7,500 ($7,000), professional services—accounting, $3,000 ($2,000), contingency, $5,200 ($221), consumer public relations, $151,500 ($60,000), consumer media, $336,218 ($265,000), industrial promotion, $115,000 ($30,000), and $13,000 for a secretary/receptionist and $6,000 for export promotion, for which no funding was recommended last year. Items which have decreased compared to the amount budgeted for 1994–95 (in parentheses) are: Copier lease and maintenance, $2,100 ($2,400), retail trade promotion, $35,000 ($45,000), and ($4,000) for equipment for marketing efforts, for which no funding was recommended this year. All other items are budgeted at last year's amounts.

The assessment rate of $2.25 per hundredweight is $0.75 more than last season. This rate, when applied to anticipated date shipments of 36,000,000 pounds (360,000 hundredweight), would yield $810,000 in assessable income. This, along with $1,000 in interest income, would result in $36,782 in excess income which would be allocated to the Committee's reserve. Funds in the reserve as of September 30, 1996, which the Committee estimates would be $235,782, should be within the maximum amount permitted by the order. Funds held by the Committee at the end of the crop year, including the reserve, which are in excess of the crop year's expenses may be used to defray expenses for four months and thereafter the Committee shall refund or credit the excess funds to the handlers.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is proposed to be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 987.338 is added to read as follows:

§ 987.338 Expenses and assessment rate.

Expenses of $774,218 by the California Date Administrative Committee are authorized, and an assessment rate of $2.25 per hundredweight of assessable dates is established for the crop year ending September 30, 1996. Unexpended funds may be carried over as a reserve within the limitations specified in § 987.72(c) and (d).

Dated: July 31, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19332 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 40, 50, 51, 70, and 72

RIN 3150–AD65

Radiological Criteria for Decommissioning

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; Announcement of extension in schedule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing an extension in the schedule for the final rule on radiological criteria for decommissioning. The reason for the extension is to allow the NRC to more fully consider public comments received on the technical information base supporting the proposed rule and to develop the implementing regulatory guidance to be issued with the final rule. It is expected that the final rule will be issued in early 1996.

FOR FURTHER INFORMATION CONTACT: John E. Glenn, (301) 415–6187, or Frank

Cardile, (301) 415–6185, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION: On August 22, 1994, the Commission issued a **Federal Register** notice (FRN) (59 FR 43200) requesting public comment on a proposed amendment to its regulations which would provide specific radiological criteria for the decommissioning of lands and structures at NRC-licensed nuclear facilities. The FRN announced that the public comment period was to close on December 20, 1994. Subsequently, the public comment period was extended to January 22, 1995. To date, 101 comment letters have been received. The comments contained in these letters are being characterized and considered in the development of a final rule.

The preliminary schedule of the final rule anticipated issuance of a final rule in the summer of 1995. However, the NRC has decided to extend the date for issuance of this rule to allow it to more fully consider public comments received on the technical information base supporting the proposed rule and to develop the implementing regulatory guidance to be issued with the final rule. The rationale for the extension is discussed more fully below.

Characterization of the comments on the proposed rule and the supporting technical basis has indicated that a number of comments were received regarding the adequacy of the risk and cost analysis supporting the proposed criteria in the rule. One particular area questioned was whether the reference facilities used in the Draft Generic Environmental Impact Statement DGEIS (NUREG–1496) as a basis for the analyses adequately model the complex contamination situations occurring at nuclear facilities. The intent of the analysis in the DGEIS was to employ reference sites and to perform screening analyses. In support of this effort, the NRC staff used site data, where available, supplemented by engineering judgment and theoretical analyses.

However, the NRC staff believes that the supporting information bases for the final rule will be significantly improved by including an evaluation of additional data from site characterizations and decommissionings. Although the real world data are not as complete as might be wished, there are data on total costs, volumes of waste, survey costs and concentrations left at release that the staff believes can be useful. The information generated through this evaluation will be used in considering how to resolve public comments on the proposed rule including the appropriateness of the 15 mrem/yr limit for release of a site for unrestricted use contained in 10 CFR 20.1404(a) and the criteria for allowing restricted release contained in 10 CFR 20.1405.

In addition to its further analysis of public comments, the NRC staff has decided that, prior to release of a final rule, it would assess its planned regulatory guide implementation model to provide assurance that the model is an adequately conservative screening tool and is capable of incorporating more realistic scenarios than those in the basic screening version. In particular, this assessment would include a sensitivity analysis of the NUREG/CR–5512 modeling methodology to determine the acceptable range of parameters for screening analyses. The NRC staff is considering holding a public meeting in September 1995 to address specific issues associated with development of regulatory guidance implementing the final rule. More detailed information about that meeting will be provided in the near future.

Based on the activities discussed above with regard to the assessment of the supporting analysis, and the further development of the regulatory guidance, the staff expects to provide a final rule to the Commission during December 1995, and to issue a final rule in early 1996.

Separate Views of Commissioner de Planque: I agree with the Commission's decision to allow staff additional time to consider public comments on the proposed final rule on radiological criteria for decommissioning. I have read virtually all of the public comments and conclude that two major issues not specifically identified in this FRN need to be carefully considered by the staff before proceeding to finalize the rule. These are: (1) Is there an adequate technical basis for selecting a dose criterion of 15 mrem in contrast to a 25 or 30 mrem value that would be consistent with the recommendations of international and national organizations for radiation protection? Staff's examination of this issue should consider the cost/benefit basis for selecting a value. (2) Are the fundamental, underlying assumptions used in the models, in particular, the assumption of a 70-year residence and significant subsistence farming on a decommissioned site, realistic and appropriate to apply to decommissioned sites in the U.S.? Unnecessarily conservative assumptions will lead to cleanup of radioactivity to levels so low that it will be difficult, if not impossible, to determine compliance and the effort will be extremely expensive for licensees.

Dated at Rockville, Maryland, this 19 day of July, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–19358 Filed 8–4–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–25–AD]

Airworthiness Directives; Fairchild Aircraft SA226 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Fairchild Aircraft SA226 series airplanes equipped with a part number (P/N) 27–5500–229 actuator assembly. The proposed action would require replacing the main landing gear door actuator tang and associated hardware with parts of improved design. Reports of the main landing gear doors hanging up and locking the landing gear links on the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent the inability to extend the main landing gear because of the main landing gear door actuation roller contacting the lower edge of the tang and causing the linkage to lock over-center.

DATES: Comments must be received on or before September 29, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5133; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–25–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of three incidents where the main landing gear door actuation roller on Fairchild Aircraft SA226 series airplanes contacted the lower edge of the main landing gear door lower tang. This caused the main landing gear linkage to go over-center during retraction, which locked the linkage and prevented main landing gear extension.

Fairchild Service Bulletin (SB) 226–32–059, Issued: February 14, 1991, specifies procedures for replacing the main landing gear door tangs and associated hardware on Fairchild Aircraft SA226 series airplanes with parts of improved design, part numbers 27–55001–299 and 27–55001–301.

After examining the circumstances and reviewing all available information related to the incidents described above including the service information, the FAA has determined that AD action should be taken to prevent the inability to extend the main landing gear because of the main landing gear door actuation roller contacting the lower edge of the tang and causing the linkage to lock over-center.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 series airplanes of the same type design that are equipped with a P/N 27–5500–229 actuator assembly, the proposed AD would require replacing the main landing gear door tangs and associated hardware with parts of improved design. Accomplishment of the proposed action would be in accordance with Fairchild Aircraft SB 226–32–059, Issued: February 14, 1991.

The FAA estimates that 307 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $114 (two main landing gear door actuator tang kits per airplane at $57 each) per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $108,678.

Fairchild Aircraft has informed the FAA that enough main landing gear door actuator tang kits have been distributed to equip 11 of the affected airplanes (22 kits). Assuming each of these kits is installed on an affected airplane, the cost impact upon U.S. operators of the affected airplanes would be reduced $3,894 from $108,678 to $104,784.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Fairchild Aircraft: Docket No. 95–CE–25–AD.

Applicability: The following airplane models and serial numbers that are equipped with a part number (P/N) 27–5500–229 actuator assembly, certificated in any category:

Model	Serial Nos.
SA226–T	T201 through T275 and T277 through T291.
SA226–T(B)	T(B) 276 and T(B) 292 through T(B) 417.
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or

repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the inability to extend the main landing gear because of the main landing gear door actuation roller contacting the lower edge of the tang and causing the linkage to lock over-center, accomplish the following:

(a) Replace the main landing gear door actuator tangs and associated hardware, part numbers 27–55001–249 and 27–55001–250, with new tangs and hardware of improved design, part numbers 27–55001–299 and 27–55001–301. Accomplish this replacement in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin 226–32–059, Issued: February 14, 1991.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(d) All persons affected by this directive may obtain copies of the service bulletin referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine this service bulletin at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 25, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18713 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC00

Revision of Valuation Regulations Governing Coal Washing and Transportation Allowances

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) proposes to amend its Royalty Management Program (RMP) valuation regulations governing coal washing and transportation allowances regarding the timely filing of required forms.

DATES: Comments must be submitted on or before October 6, 1995.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado, 80225–0165.

FOR FURTHER INFORMATION CONTACT: David Guzy, Chief, Rules and Procedures Staff, Telephone (303) 231–3432, Fax (303) 231–3194.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Harry Corley, Valuation and Standards Division, MMS, RMP.

I. Background

On January 13, 1989, MMS published a final rule in the **Federal Register** governing the valuation of coal for royalty computation purposes (54 FR 1492). The rulemaking provided comprehensive procedures for valuation of minerals produced from Federal and Indian lands, including regulations governing certain allowances considered in calculating and reporting royalties. The regulations provided for certain washing allowances (30 CFR §§ 206.258 and 206.259) and transportation allowances (30 CFR §§ 206.261 and 206.262) for coal.

The rulemaking distinctly changed the historical administrative practice of MMS and its predecessor agency, the U.S. Geological Survey, regarding allowances. Prior to the 1988 rule, MMS required royalty payors to obtain the agency's written approval before taking an allowance deduction in reporting and paying royalties. With the new rule, MMS adopted a self-implementing concept for allowances. Instead of requiring agency preapproval, the regulations provided for the royalty payor to file timely certain required forms as a condition for the taking of an allowance on the Report of Sales and Royalty Remittance (Form MMS–2014).

The allowance forms filing requirements of the current coal valuation regulations provide for an annual cycle for providing information to the MMS. Before the beginning of each calendar year, or during the year but before the taking of an allowance on the Form MMS–2014, payors must submit the required form for any coal washing and coal transportation allowances that they expect to take during the year. The forms ask for information sufficient to identify the payor, the lease/revenue source/product code/selling arrangement, and an estimate of the allowance rate per unit that is anticipated for the year.

By the end of March following the allowance year, the payor must submit the same forms as before but with additional data fields completed to indicate the actual costs experienced and the allowances actually taken on Forms MMS–2014 during the year. Also, several supplementary schedules representing details of actual costs must be submitted for non-arm's-length allowances.

The filing of the actual cost forms serves several purposes for MMS and the payor. The forms provide the actual costs incurred in transporting and/or processing (washing) production for the allowance year, together with the actual allowance deductions taken on the Form MMS–2014. The forms also satisfy the regulatory requirement to have an estimated cost allowance form on file for the succeeding allowance year.

The consequences of a payor's noncompliance with the forms filing requirements of the regulations are monetarily significant. Simply stated, if a payor takes an allowance deduction against royalty value on the Form MMS–2014 without a required form on file, the payor is subject to loss of allowance and to late-payment interest charges. The concept of the regulations is that a required form must be on file before the taking of an allowance; if a payor does not meet this requirement MMS considers the allowance to be lost by the payor. Consequently, the payor is directed to pay back the allowance and, after payback, is charged a late payment interest amount associated with the lost allowance. The current regulations provide for a "grace period" of three months that gives payors a window of time to comply with the forms filing requirements of the regulations without losing an allowance. The grace period permits lessees to retain allowances reported on a Form MMS–2014 for up to three months prior to the month that a required allowance form is filed with MMS. Although a payor will not experience a loss of allowance for the grace period, MMS will assess the payor a late payment interest charge from the date of the taking of the allowance on Form MMS–2014 to the receipt date of the filing of the required allowance form. By regulation, MMS may approve a grace period longer than three months upon a showing of good cause by the lessee.

In evaluating the effectiveness of its rules, particularly as they related to product valuation, MMS published in the June 17, 1992, **Federal Register**, a "Request for Information for Improvements to Regulations" (57 FR 27008). MMS' request stated that the rules for product valuation were substantially modified in 1988 based on an effort started in January 1985 with the creation of the Royalty Management Advisory Committee. The request further stated that it had been several years since most of the regulations in 30 CFR Parts 201 through 243 were published, and public comments were requested to help MMS assess where improvements to rules could be made. The comment period closed August 17, 1992.

Many commenters felt that the allowance form filing requirements of the valuation regulations needed improvement. They expressed concerns about both the allowance form filing requirements and the regulatory sanctions for failure to comply with the allowance reporting requirements. Suggested recommendations ranged from refinements of existing forms to a wholesale elimination of allowance form filings because they serve no useful purpose. Regarding sanctions for failure to timely file required allowance forms, commenters stated that the existing penalties were unduly harsh and that the "punishment" is not reflective of the "crime."

II. Allowance Study Group

Based on public comments and the over four years of experience MMS gained in administering the allowance requirement of the valuation regulations, MMS formed a study group in April 1993 to evaluate the existing regulatory requirements for oil and gas allowances and formulate recommendations for improvement. The study group was comprised of participants from the Council of Petroleum Accounting Societies, the State and Tribal Royalty Audit Committee, and MMS. The study group's findings, conclusions, recommendations, and alternative approach for allowances are presented in the preamble to the proposed rule titled, "Revision of Valuation Regulations Governing Oil and Gas Transportation and Processing Allowances." This proposed rule is published separately in the **Federal Register**.

III. Additional Changes by MMS

The majority of the changes reflected in this proposed rulemaking are contained in the study group report. Additionally, MMS included several clarifications and additional changes based on MMS' experiences in administering allowances.

a. Failure To File Assessment

The study group did not specify in its alternative approach a fixed percentage assessment for payors' failure to timely file actual cost forms. For purposes of this rulemaking, MMS included a percentage rate of 10 percent. MMS specifically requests comments on this rate or an alternative rate. MMS also requests specific comments on whether or not an upper limit, or cap, should be established for such assessments, and how the upper limit should be constructed; e.g., absolute dollar amount per occurrence, etc.

b. Improper Netting Assessment

Another change involves the introduction of an assessment for the "improper netting" of allowances against royalty value when reporting royalties on Form MMS–2014. "Improper netting" is a circumstance where two arm's-length transactions, one representing a sale and the other representing transportation, supported by two separate invoices, are improperly reported on the payor's Form MMS–2014 as a one-line transaction. The proposed assessment is 20 percent or twice the assessment (10 percent) that is proposed for failure to timely file required allowance forms. MMS has determined that improper netting should carry an increased assessment because the practice represents, in effect, concealment of information with adverse impacts on MMS' efforts to monitor the accuracy of royalty payments. MMS specifically requests comments on the 20 percentage rate proposed and whether an upper limit or cap should be established and how it should be constructed.

c. Erroneous Reporting Assessment

MMS also proposes an assessment for reporting erroneous information on required allowance forms. MMS continues to experience significant additional workload caused by erroneously reported information on allowance forms. MMS seeks to establish an erroneous reporting assessment to encourage more accurate reporting. This proposed assessment authority currently exists for monthly production and royalty reports. An assessment has proven to be an effective tool to improve the accuracy of reported information.

d. Technical Corrections

MMS proposes several technical corrections and clarifications.

IV. Proposed Amendments

Although the study group recommendations addressed oil and gas allowances, MMS has determined that they also apply to coal because the regulatory approach to forms filing requirements and sanctions applies to both categories of minerals.

Therefore, MMS is proposing to amend its valuation regulations to change the allowance forms filing requirements for coal. Furthermore, MMS is amending its valuation regulations to change the existing sanctions for not timely filing required allowance forms. MMS is also introducing new assessments and sanctions for (1) failure to properly report allowances as separate lines on Form MMS–2014, a practice commonly referred by MMS as "netting"; and (2) reporting erroneous information on required allowance forms. Lastly, MMS is proposing several minor technical corrections and clarifications.

a. Coal Washing Allowances

MMS proposes to amend § 206.259 by deleting the third and fourth sentences of paragraph (a)(1) that state:

However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the deleted sentences with the following two sentences:

Before any washing allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section.

By implementing these changes, MMS would be adopting the recommendations of the study group's report. These changes allow MMS to: (1) Focus its allowance administration efforts on actual data reported annually to MMS rather than on estimated allowance rates reported at the beginning of the allowance year; (2) eliminate the retroactive three-month

filing limitation; and (3) simplify allowance reporting procedures by incorporating the new reporting form for coal washing allowances.

MMS proposes to amend § 206.259(b)(1) by deleting the fourth and fifth sentences that state:

However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4292 in accordance with paragraph (c)(2) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the following two sentences:

Before any washing allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4292 in accordance with (c)(2) of this section.

MMS is proposing these changes to keep in line with the recommendations of the study group. These changes allow MMS to: (1) Focus its allowance administrative efforts on actual cost data rather than on estimated cost data; (2) eliminate the three-month filing limitation for coal washing allowances; and (3) simplify allowance reporting requirements.

MMS proposes to further amend § 206.259(b)(1) by deleting from the seventh sentence the phrase "* * * estimated or * * *" The seventh sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual washing allowance.

MMS is proposing this change to simplify its coal washing allowance reporting requirements and to comply with the study group's report.

MMS proposes to amend § 206.259 (c)(1) by deleting existing paragraphs (i), (ii), and (iii) and add new paragraphs (i), (ii), and (iii) that read:

(i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4402 for washing allowances for each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one of Form MMS–4292 for washing allowances within 3 months after the end of the reporting period, unless MMS approves a longer period.

MMS proposes these changes to implement the study group's recommendations. These changes would: (1) Simplify coal washing allowance reporting procedures; (2) implement a new allowance form to show the payor's intent to take washing allowances for the current year; and (3) provide greater administrative focus on actual data rather than on estimated data submitted by the payor.

MMS proposes to amend § 206.259(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and replacing them with new paragraphs (i), (ii), and (iii), to read as follows:

(i) With the exception of those washing allowances specified in paragraph (c)(2)(iv) and (vi) of this section, the lessee must file a Form MMS–4402 for washing allowances for each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one and all supporting schedules of Form MMS–4292 for the actual washing allowance calculated for the reporting period. Form MMS–4292 is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

These changes would address the study group's recommendations concerning MMS' administration of allowances and the need to focus on actual data reported annually rather than focus on estimated allowance rates reported at the beginning of each allowance year. Accordingly, MMS would continue to require the submission on an annual form which notifies MMS of the payor's intent to take allowance deductions from the royalty value.

Consistent with this amendment, paragraphs (v), (vi) and (vii), would be redesignated (iv), (v), and (vi).

MMS is proposing technical corrections to this section as a result of adopting changes recommended by the study group.

MMS proposes to amend § 206.259(c) by adding paragraph (5) to read:

A lessee is required to file a new Form MMS–4292 if adjustments are made to actual non-arm's-length washing allowances on Form MMS–2014.

MMS is proposing this change to comply with the study group's report. This change emphasizes MMS' focus on collecting actual data as opposed to estimated data and allows adjustments to allowance data previously submitted to MMS.

MMS proposes to amend § 206.259(d) by changing the title to read:

(d) Interest charges and assessments for incorrect or late reports and failure to report.

This change would better define and clarify the purpose of this section.

MMS proposes to amend § 206.259(d) by deleting paragraphs (1), (2), and (3) and replacing them with the following schedule:

(d) *Interest charges and assessments for incorrect or late reports and failure to report.* MMS may levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4402	$10 per allowance line required on Form MMS–4402.	
Deducts a washing allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4292.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4292 was due until the date that the form was received.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Takes a washing allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the coal instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.		Payment of interest on the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity of allowance payback and late-payment interest charges for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommended that payors failing to timely file required forms would be assessed an amount equal to a fixed percent of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

b. Coal Transportation Allowances

MMS proposes to amend § 206.262 by deleting the third and fourth sentences of paragraph (a)(1) that state:

However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes adding in place of the two deleted sentences the following two sentences:

Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

By implementing these changes, MMS would adopt the recommendations of the study group's report. These changes allow MMS to: (1) Focus its allowance administration efforts on actual data reported annually to MMS rather than on estimated allowance rates reported at the beginning of the allowance year; (2) eliminate the retroactive three-month filing limitation, and (3) simplify allowance reporting procedures by incorporating the new reporting form for coal transportation allowances.

MMS proposes to amend § 206.262(b)(1) by deleting the fourth and fifth sentences that state:

However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4293 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than three months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes adding in place of the two deleted sentences the two following sentences:

Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4293 in accordance with paragraph (c)(2) of this section.

MMS is proposing these changes to keep in line with the recommendations of the study group. These changes would allow MMS to: (1) Focus its allowance administrative efforts on actual cost data rather than on estimated cost data; (2) eliminate the three-month filing limitation for coal transportation allowance; and (3) simplify allowance reporting requirements.

MMS proposes to further amend § 206.262(b)(1) by deleting from the seventh sentence the phrase "* * * estimated or * * *" The seventh sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

This change would simplify MMS' coal transportation allowance reporting requirements in accordance with the study group's report.

MMS proposes to amend § 206.262(c)(1) by deleting existing paragraphs (i), (ii), (iii), and (iv) and replacing them with new paragraphs (i), (ii), (iii), and (iv) that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4402 for transportation allowances each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one of Form MMS–4293 for the actual transportation allowances calculated for the reporting period. Form MMS–4293 is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents will be submitted within a reasonable time, as determined by MMS.

MMS proposes these changes to implement the study group's recommendations. These changes would: (1) simplify coal transportation allowance reporting procedures; (2) implement a new allowance form to show the payor's intent to take transportation allowances for the current year; and (3) provide greater administrative focus on actual data rather than on estimated data submitted by the payor.

MMS proposes to amend § 206.262(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and replacing them with new paragraphs (i), (ii), and (iii) that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(2)(iv) and (vi), of this section, the lessee must file a Form MMS–4402 for transportation allowance estimates for each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct

a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file a page one and all supporting schedules of Form MMS–4293 for the actual transportation allowance calculated for the reporting period. The Form MMS–4293 is due within three months after the end of the reporting period, unless MMS approves a longer period.

These changes would address the study group's recommendations concerning MMS' administration of allowances and the need to focus on actual data reported annually rather than the current focus on estimated allowance rates reported at the beginning of each allowance year. Accordingly, MMS would continue to require the submission of an annual form which notifies MMS of the payor's intent to take allowance deductions from the royalty value.

Consistent with this amendment, paragraph (iv) of § 206.262(c)(2) would be removed and existing paragraphs (v), (vi), (vii), and (viii) would be redesignated (c)(2)(iv), (v), (vi), and (vii).

MMS would also make technical corrections to this section as a result of adopting changes recommended by the study group.

MMS proposes to amend § 206.262(c) by adding paragraph (5) that reads:

A lessee is required to file a new Form MMS–4293 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

MMS is proposing this change to comply with the study group's report. This change emphasizes MMS' focus on collecting actual data as opposed to estimated data and allows adjustments to allowance data previously submitted to MMS.

MMS proposes to amend § 206.262(d) and revise the title that would read:

(d) *Interest charges and assessments for incorrect or late reports and failure to report*

MMS is making corrections to the regulations by adding language that would further define and clarify the purpose of this section.

MMS proposes to amend § 206.262(d) by deleting paragraphs (1), (2) and (3) replacing them with the following schedule:

(d) Interest charges and assessments for incorrect or late reports and failure to report. MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4402	$10 per allowance line required on Form MMS–4402.	
Deducts a transportation allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4293.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4293 was due until the date that the form was received.
Takes a transportation allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the coal instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.		Payment of interest on the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity of allowance payback and late-payment interest charges for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommended that payors failing to timely file required forms would be assessed an amount equivalent to a fixed percent of the total allowance amount deducted during the year plus an amount calculated as equivalent to late-payment interest from the date the actual cost information was due until the date the form was actually received.

The public is invited to participate in this rulemaking action by submitting data, views, or arguments with respect to this notice. All comments must be received by 4:00 p.m. of the day specified in the **DATE** Section and at the location in the **ADDRESSES** section of this preamble.

V. Other Matters

Separate regulations concerning valuation of natural gas for royalty purposes are currently being developed for Federal leases and for Indian leases through two separate negotiated rulemaking committees. These committees are addressing both natural gas valuation and transportation and processing allowance issues.

The committee addressing natural gas valuation for Federal leases recommended in its March 1995 report that transportation and processing allowance forms no longer be required. This recommendation is one of numerous recommendations for broad changes to existing regulations governing the valuation of natural gas produced from Federal leases. The future rulemaking to be prepared considering the recommendations of the Federal negotiated rulemaking committee will include the proposal for eliminating the requirement for allowance forms.

The amendments to the coal valuation regulations related to allowances being proposed today mirror changes being proposed by separate rulemaking to the oil and gas valuation regulations related to allowances. The changes being proposed to the coal and the oil and gas allowance rules may ultimately be reconsidered depending on the outcome of the future gas valuation rulemaking developed from the recommendations of the Federal negotiated rulemaking committee.

MMS also would like comment on the effective date for the final rule. One option is to make any final rule effective as of January 1, 1995, the beginning of the current allowance year. Another option is to make the rule effective as of the date of publication of this proposed rule since royalty payors are on notice of the possible rule change on that date. Commenters should address this issue in their comments.

VI. Procedural Matters

The Regulatory Flexibility Act

The Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule will streamline and improve existing regulatory reporting requirements related to allowances that are used to calculate royalty payments on coal produced from Federal and Indian lands.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned Clearance Numbers 1010–0022, 1010–0074, and 1010–0099.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: May 19, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is proposed to be amended as set forth below:

PART 206—PRODUCT VALUATION

Subpart F—Coal

1. The authority citation for Part 206 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Section 206.259 is amended by revising paragraphs (a)(1), (b)(1), (c)(1)(i) through (iii), (c)(2)(i) through (iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v) through (vii) as paragraphs (c)(2)(iv) through (vi), revising newly designated paragraphs (c)(2)(iv) through (vi), adding paragraph (c)(5) and revising paragraph (d) to read as follows:

§ 206.259 Determination of washing allowances.

(a) * * *

(1) For washing costs incurred by a lessee pursuant to an arm's-length contract, the washing allowance will be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. Before any washing allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of washing allowances is not required for non-arm's-length or no contract situations. Before any washing allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4292 in accordance with (c)(2) of this section. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual washing allowance.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4402 for washing allowances each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one of Form MMS–4292 for washing allowances within 3 months after the end of the reporting period, unless MMS approves a longer period.

* * * * *

(2) * * *

(i) With the exception of those washing allowances specified in paragraph (c)(2)(iv) and (vi) of this section, the lessee must file a Form MMS–4402 for washing allowances each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one and all supporting schedules of Form MMS–4292 for actual washing allowances calculated for the reporting period. Form MMS–4292 is due within three months after the end of the reporting period, unless MMS approves a longer period.

(iv) Washing allowances based on non-arm's-length or no-contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(v) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Forms MMS–4292. The data shall be provided within a reasonable period of time, as determined by MMS.

(vi) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(3) * * *

(4) * * *

(5) A lessee is required to file a new Form MMS–4292 if adjustments are made to actual non-arm's-length washing allowances on Form MMS–2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4402	$10 per allowance line required on Form MMS–4402.	
Deducts a washing allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4292.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4292 was due until the date that the form was received.
Takes a washing allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the coal instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a washing allowance that results in an underpayment of royalties.	.....	On the amount of the underpayment.

* * * * *

3. Section 206.262 is amended by revising paragraphs (a)(1), (b)(1), (c)(1)(i) through (iv), (c)(2)(i) through (iii), removing paragraph (iv), redesignating paragraphs (c)(2)(v) through (viii) to paragraphs (c)(2)(iv) through (vii), revising newly designated paragraphs (c)(2)(iv) through (vii), adding paragraph (c)(5) and revising paragraph (d) to read as follows:

§ 206.262 Determination of transportation allowances.

(a) * * *

(1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance shall be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of transportation allowances is not required for non-arm's-length or no-contract situations. Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4293 in accordance with paragraph (c)(2) of this section. MMS shall monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4402 for transportation allowances each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due shall be considered timely received.

(ii) The Form MMS–4402 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one of Form MMS–4293 for the actual transportation allowances calculated for the reporting period. Form MMS–4293 is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

* * * * *

(2) * * *

(i) With the exception of those transportation allowances specified in paragraph (c)(2)(iv) and (vi) of this section, the lessee must file a Form MMS–4402 for transportation allowances each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due shall be considered timely received.

(ii) The Form MMS–4402 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file a page one and all supporting schedules of Form MMS–4293 for the actual transportation allowance calculated for the reporting period. The Form MMS–4293 is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) Non-arm's-length contract or no-contract-based transportation allowances that are in effect at the time these regulations become effective shall be allowed to continue until such allowances terminate. For purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(v) Upon request by MMS, the lessee must submit all data used to prepare its Form MMS–4293. The lessee must provide requested data within a reasonable period of time, as determined by MMS.

(vi) MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(vii) If the lessee is authorized to use its Federal or State agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(5) A lessee is required to file a new Form MMS–4293 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4402	$10 per allowance line required on Form MMS–4402.	
Deducts a transportation allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4293.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4293 was due until the date that the form was received.
Takes a transportation allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the coal instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.	.....	On the amount of the underpayment.

[FR Doc. 95–19296 Filed 8–4–95; 8:45 am]
BILLING CODE 4310–MR–P

30 CFR Part 206

RIN 1010–AB94

Revision of Valuation Regulations Governing Oil and Gas Transportation and Processing Allowances

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) proposes to amend its Royalty Management Program (RMP) valuation regulations governing oil and gas transportation and processing allowances regarding the timely filing of required forms.

DATES: Comments must be submitted on or before October 6, 1995.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado, 80225–0165.

FOR FURTHER INFORMATION CONTACT: David Guzy, Chief, Rules and Procedures Staff, Telephone (303) 231–3432, Fax (303) 231–3194.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Janet Chichester, Compliance Verification Division, MMS, RMP.

I. Background

On January 15, 1988, MMS published a final rule in the **Federal Register** amending and clarifying regulations governing the valuation of oil and gas for royalty computation purposes (53 FR 1184). The rulemaking provided comprehensive procedures for valuation of minerals produced from Federal and Indian lands including regulations governing certain allowances considered in calculating and reporting royalties. The regulations provided for transportation allowances for oil (30 CFR §§ 206.104 and 206.105); transportation allowances for gas (30 CFR §§ 206.156 and 206.157); and processing allowances for gas (30 CFR §§ 206.158 and 206.159).

The rulemaking distinctly changed the historical administrative practice of MMS and its predecessor agency, the U.S. Geological Survey, regarding allowances. Prior to the 1988 rule, MMS required royalty payors to obtain the agency's written approval before taking an allowance deduction in reporting and paying royalties. With the new rule, MMS adopted a self-implementing concept for allowances. Instead of requiring agency preapproval, the regulations provided for the royalty payor to file timely certain required forms as a condition for the taking of an allowance on the Report of Sales and Royalty Remittance (Form MMS–2014).

The allowance forms filing requirements of the current oil and gas valuation regulations provide for an annual cycle for providing information to MMS. Before the beginning of each calendar year, or during the year but before the taking of an allowance on the Form MMS–2014, payors must submit the required form for any oil transportation, gas transportation, or gas processing allowances that they expect to take during the year. The forms ask for information sufficient to identify the payor, the lease/revenue source/product

code/selling arrangement, and an estimate of the allowance rate per unit that is anticipated for the year.

By the end of March following the allowance year, the payor must to submit the same forms as before but with additional data fields completed to indicate the actual costs experienced and the allowances actually taken on Forms MMS–2014 during the year. Also, several supplementary schedules representing details of actual costs must be submitted for non-arm's-length allowances.

The filing of the actual cost forms serves several purposes for MMS and the payor. The forms provide the actual costs incurred in transporting and/or processing production for the allowance year, together with the actual allowance deductions taken on the Form MMS–2014. The forms also satisfy the regulatory requirement to have an estimated cost allowance form on file for the succeeding allowance year.

The consequences of a payor's noncompliance with the forms filing requirements of the regulations are monetarily significant. Simply stated, if a payor takes an allowance deduction against royalty value on the Form MMS–2014 without a required allowance form on file, the payor is subject to loss of allowance and to late payment interest charges. The concept of the regulations is that a required form must be on file before the taking of an allowance; if a payor does not meet this requirement MMS considers the allowance to be lost by the payor. Consequently, the payor is directed to pay back the allowance and, after payback, is charged late payment interest associated with the lost allowance.

The current regulations provide for a grace period of three months that gives payors a window of time to comply with the forms filing requirements of the regulations without losing an allowance. The grace period permits lessees to retain allowances reported on a Form MMS–2014 for up to three months prior to the month that a required allowance form is filed with MMS. Though a payor will not experience a loss of allowance for the grace period, MMS will assess the payor a late payment interest charge from the Form MMS–2014 receipt date or due date (whichever is later) to the allowance form receipt date. By regulation, MMS may approve a grace period longer than three months upon a showing of good cause by the lessee.

In evaluating the effectiveness of its rules, particularly as they related to product valuation, MMS published in the June 17, 1992, **Federal Register**, a "Request for Information for Improvements to Regulation" (57 FR 27008). MMS' request stated that the rules for product valuation were substantially modified in 1988 based on an effort started in January 1985 with the creation of the Royalty Management Advisory Committee. The request further stated that it had been several years since most of the regulations in 30 CFR Parts 201 through 243 were published, and public comments were requested to help MMS assess where improvements to rules could be made. The comment period closed August 17, 1992.

Many commenters felt that the allowance form filing requirements of the valuation regulations needed significant commentary as being in need of improvement. They expressed concerns about both the allowance form filing requirements and the regulatory sanctions for failure to comply with the allowance reporting requirements. Suggested recommendations ranged from refinements of existing forms to a wholesale elimination of allowance form filings because they serve no useful purpose. Regarding penalties for failure to timely file required allowance forms, commenters stated that the existing penalties were unduly harsh and that the "punishment" is not reflective of the "crime."

II. Findings and Conclusions of Allowance Study Group

Based on public comments and the over four years of experience MMS gained in administering the allowance requirement of the oil and gas valuation regulations, MMS formed a study group in April 1993, to evaluate the existing regulatory requirements for oil and gas allowances and formulate recommendations for improvement. The study group was comprised of participants from the Council of Petroleum Accounting Societies, the State and Tribal Royalty Audit Committee, and MMS. Consistent with its charter, the study group addressed the current regulatory requirements and practices of MMS related to oil and gas transportation and processing allowances. More specifically, the study group addressed the following topics as key aspects of the review:

- The need for and usefulness of the current regulatory requirements for allowance forms submission, including the information required on each form.
- The need for and equity of allowance payback and late payment interest charges for untimely filed forms.
- The need for regulatory approval thresholds; e.g., 50 percent (transportation) and 66⅔ percent (processing).
- Alternative approaches to administering allowances. The study group report was issued December 3, 1993. The report was subsequently endorsed by the Royalty Management Advisory Committee at its December 14, 1993, public meeting in Lakewood, Colorado. A copy of the study group report may be obtained by contacting the person identified in the "For Further Information Contact" section of this Notice.

The principal "Findings and Conclusions" of the study group are, by topic, as follows:

a. The Need for and Usefulness of the Current Regulatory Requirement for Allowance Forms Submission, Including the Information on Each Form

The study group found that the concept of requiring the filing of forms that contain information supplementary to that presented on the Form MMS–2014 was reasonable. However, the study group also found that the current approach to information filings is flawed in terms of the information on which the regulatory requirements focus. Although the current approach places substantial focus on "estimated" allowance filings that payors are required to submit to MMS prior to taking an allowance deduction on the Form MMS–2014, the most useful and accurate information is the actual cost information payors provide on required forms after the end of the allowance year. The study group concluded that MMS should maintain allowance information filing requirements to the extent that MMS, States, and Tribes use the information.

Furthermore, the study group concluded that MMS' administration of allowances should focus on actual data reported annually to MMS rather than the current focus on estimated allowance rates reported at the beginning of the allowance year. The study group concluded that it was necessary for MMS to continue its practice under current regulations of requiring the submission of an annual form notifying the agency of the payor's intent to take an allowance deduction from royalty value but that estimated allowance rates should not be required as a part of the information filing.

b. The Need for and Equity of Allowance Payback and Late Payment Interest Charges for Failure To File Forms

The study group found that while substantial compliance with forms filing requirements does exist, the penalty of a complete loss of allowance due to the untimely filing of required forms "was not consistent with the crime." The study group addressed several alternatives to a payback penalty under the current concept of requiring a form to be on file prior to the taking of an allowance. The group observed that the payback penalty was rooted in the concept that qualification for an allowance deduction was subject to the filing of a form. While the study group did not reject this concept, it concluded that the penalty of a loss of allowance was not necessarily consistent with the agency's objectives.

The group observed that the agency's primary interest is effectively administering allowances through a regulatory information gathering and notice process. The objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions as opposed to generating a revenue stream by focusing sanctions on the filing dates of forms containing estimated cost information. The group was able to reach agreement that the current payback sanction was excessive after considering a number of alternatives. The study group reached an agreement on the option of "Federal Oil and Gas Royalty Management Act (FOGRMA) Late Payment Interest plus a Fixed Percentage of the Amount of the Allowance" as the preferred alternative to the payback. However, the group was not able to reach agreement on the specific fixed percentage of the allowance amount.

c. The Need for Regulatory Approval Thresholds

The study group concluded that the current thresholds should remain in place. Their conclusion was based on the relatively low activity level of requests to exceed the current thresholds of 50 percent for transportation allowances and 66⅔ percent for processing allowances. It also was based on the reasonableness of providing increased agency scrutiny to those instances involving allowance costs that consume an unusually large amount of the royalty value.

d. Alternative Approaches to Administer Allowances

The study group formulated a proposed alternative approach to information gathering for allowance administration. This approach is further discussed later in the preamble.

III. Recommendations of the Study Group

The study group recommended that MMS:

a. On a prospective basis, pursue changing its current regulatory reporting requirements in several respects. These changes should reduce the focus on the submittal of estimated allowance information that has little value to the agency and increase the focus on the actual information that has substantive value to the agency. Complete implementation of this recommendation could involve changes in regulations, forms, and systems software over a period of several years. In the near term, MMS should expedite those changes that do not require regulatory action; e.g., changes to the current allowance forms.

b. On a prospective basis, pursue changing, consistent with the first recommendation, the current regulatory sanctions for failure to timely file required allowance forms. Sanctions should be changed to create meaningful incentives for payors to file actual cost allowance forms. Existing sanctions in the form of allowance payback and late payment interest for the "estimated" cost information should be changed consistent with the proposed alternative approach to administering allowances.

c. Retain the existing regulatory requirements that payors receive annual agency approval prior to taking transportation and processing allowances that exceed 50 percent and 66⅔ percent, respectively, of the royalty value of the product subject to the allowance deduction.

d. Publish the results of the public commentary received in response to the **Federal Register** Notice dated November 28, 1988, regarding extraordinary cost allowances. Further comment should also be solicited to identify circumstances that may have developed in the interim that MMS should consider.

e. Pursue establishing automated data bases to capture the detailed actual allowance cost information payors submit and develop and implement edits and exception processing routines to monitor actual allowance costs reported on allowance forms and the Form MMS–2014.

IV. Alternative Approach Suggested by Study Group

The study group's report provided an alternative approach to administering allowances based on its conclusions that:

- MMS should continue to focus on the administration of allowances through information gathering methods that supplement the Form MMS–2014.
- MMS should focus its allowance administration efforts on actual costs instead of estimated costs.
- The current penalty structure for failing to file required forms not only places undue focus on estimated allowance information but also results in penalties "inappropriate for the crime."

The study group believed that the alternative approach would provide MMS with the necessary notice and information that it needs to properly administer allowances, reduce current information reporting requirements, and possess sufficient incentives for payors to comply with the reporting requirements of the regulations. Prototype forms were also developed that could be used in the process of implementing the alternative approach.

The framework of the alternative approach the study group developed is described below:

a. Royalty payors would continue to be required to submit a Notice of Intent to Take Transportation and Processing Allowances prior to the beginning of each allowance year or within the allowance year. One form, instead of three, would be used for all allowance types and would be filed at the payor code/lease level rather than the payor code/lease number/revenue source/product code/selling arrangement level. The report would not include an estimated rate. Failure to file this notice would constitute a missing report with the payor being assessed $10 per allowance line required on the Notice of Intent To Take Transportation and Processing Allowances.

b. Three months following the end of each allowance year, the payor would continue to file an actual cost allowance report. For arm's-length allowances, the report would show the payor code/lease number/revenue source/product code/selling arrangement on which allowances were taken. MMS would gather actual cost data from the AFS as needed. For non-arm's-length allowances, the detailed cost breakouts currently required would continue to be provided. MMS would continue to grant, upon request, extensions of up to three months to file actual cost reports.

Payors failing to timely file required forms would be assessed an amount equal to a fixed percent, to be determined through rulemaking, of the total allowance amount deducted on Forms MMS–2014 during the year plus an amount calculated as equal to late payment interest from the date the actual cost form was due until the date the form is actually received.

MMS concludes that the recommendations of the study group will serve to improve its administration of oil and gas allowances, particularly as related to forms filing requirements and

associated sanctions. Therefore, MMS proposes to change its current regulatory requirements consistent with the substance of the alternative approach the study group presented.

V. Additional Changes by MMS

The majority of the changes reflected in this proposed rulemaking are contained in the study group report. Aditionally, MMS included several clarifications and additional changes based on MMS' experiences in administering allowances.

a. Failure To File Assessment

The study group did not specify in its alternative approach a fixed percentage assessment for payors' failure to timely file actual cost forms. For purposes of this rulemaking, MMS included a percentage rate of 10 percent. MMS specifically requests comments on this rate or an alternative rate. MMS also requests specific comments on whether or not an upper limit, or cap, should be established for such assessments, and how the upper limit should be constructed; e.g., absolute dollar amount per occurrence, etc.

b. Improper Netting Assessment

One of several changes involves the introduction of an assessment for the "improper netting" of allowances against royalty value when reporting royalties on the Form MMS–2014. "Improper netting" is a circumstance where two arm's-length transactions, one representing a sale and the other representing transportation and/or processing, supported by two separate invoices, are improperly reported on the payor's Form MMS–2014 as a one-line transaction. The proposed assessment is 20 percent, or twice the assessment (10 percent) that is proposed for failure to timely file required allowance forms. MMS believes that improper netting should carry an increased assessment because the practice represents, in effect, concealment of information with adverse impacts on MMS' efforts to monitor the accuracy of royalty payments. MMS specifically requests comments on the 20 percent rate proposed and whether an upper limit or cap should be established and how it should be constructed.

c. Unauthorized Allowance Assessment and Interest Requirement

Another change involves the introduction of an assessment and an interest requirement for certain circumstances where an oil or gas transportation or processing allowance in excess of regulatory thresholds is taken on Form MMS–2014 without the required prior MMS approval. Specifically, the current oil and gas regulations require prior MMS approval before a transportation or processing allowance that is in excess of 50 percent or 66⅔ percent, respectively, of the value of production may be taken on Form MMS–2014. An assessment of $10 per line is proposed for each reported allowance line taken in excess of the regulatory thresholds without obtaining the required prior approval from MMS.

Furthermore, an interest-based additional assessment is proposed for the period of time that the royalty payor has had the monetary benefit of the allowance in excess of the administrative threshold without having received MMS approval. MMS considered requiring the royalty payor to pay back an allowance taken in excess of the threshold but determined that an interest charge approach based on the amount in excess of the threshold would be a reasonable deterrent. MMS requests specific comment on the construction of this proposal and alternative approaches that should be considered.

d. Erroneous Reporting Assessment

MMS also proposes an assessment for reporting erroneous information on required allowance forms. MMS continues to experience significant additional workload caused by erroneously reported information on allowance forms. MMS seeks to establish an erroneous reporting assessment to encourage more accurate reporting. This proposed assessment authority currently exists for monthly production and royalty reports. An assessment has proven to be an effective tool to improve the accuracy of reported information.

e. Transportation Factors

MMS is considering the elimination of the current treatment of transportation factors in arm's-length contracts as reductions in value. Instead, MMS would treat such costs as transportation allowances. In the March 1988 valuation rulemaking, the concept of the transportation factor was adopted to reduce administrative burden for MMS and the industry. MMS has found through experience that transportation factors have created some confusion between MMS and the industry. Numerous instances have been encountered where disagreement existed between MMS and industry as to whether a transportation element of a sales arrangement was an allowance or a transportation factor under the regulations. In many of these cases, it was determined that the transportation cost should be treated as an allowance rather than a factor. In these cases, the payor had not filed required allowance forms and, consequently, was subject to substantial sanctions. Rather than proposing the elimination of transportation factors in the rulemaking, MMS is seeking specific comments on the extent to which royalty payors are now using transportation factors and what impacts would be caused if transportation factors were eliminated from the current regulations.

f. Technical Corrections

MMS proposes several technical corrections and clarifications including a lessee's option to use a depreciation or a return on depreciable capital investment basis in calculating actual allowance costs.

VI. Proposed Amendments

For the reasons discussed above, MMS proposes to amend its valuation regulations to change the allowance forms filing requirements for oil and gas. Furthermore, MMS is amending its valuation regulations to change the existing sanctions for not timely filing required allowance forms. MMS is also introducing new assessments for (1) failure to properly report allowances as separate lines on the Form MMS–2014, a practice commonly referred to as "netting"; (2) noncompliance with regulatory requirements to obtain prior approval from MMS before taking oil and gas transportation allowances that exceed 50 percent of the value of the production, or gas processing allowances that exceed 66⅔ percent of the value of gas plant products; and (3) reporting erroneous information on required allowance forms. MMS also proposes several minor technical corrections and clarifications.

MMS is also proposing similar amendments to coal allowance regulations at 30 CFR 206 which are being published separately.

a. Oil Transportation Allowances

MMS proposes to amend § 206.105 by deleting the fourth and fifth sentences of paragraph (a)(1)(i) that state:

Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the deleted sentences with the following sentences:

Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. For the actual transportation allowance calculated for the reporting period, the lessee must file a Form MMS–4110, Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

MMS proposes to amend § 206.105(b)(1) by deleting the third and fourth sentences of paragraph (b)(1) that state:

Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than three months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the deleted sentences with the two following sentences:

Before any transportation allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4110 in accordance with paragraph (c)(2) of this section.

These changes remove the retroactive three-month limit for oil transportation allowances and incorporate the new reporting form. The Form MMS–4398 would be a new form that implements the recommendations of the study team report. A Notice of Proposed Information Collection will be published separately in the **Federal Register** for this form.

MMS proposes to further amend § 206.105(b)(1) by deleting from the sixth sentence the phrase "* * * estimated or * * *" The sixth sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

These changes would be technical corrections that improve the clarity of the language.

MMS proposes to amend § 206.105(c)(1) by deleting existing paragraphs (i), (ii), (iii), and (iv) and replacing them with new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year. The lessee must file the Form MMS–4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4110 for the actual transportation allowance calculated. This form is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents must be submitted within a reasonable period of time, as determined by MMS.

These changes would incorporate the new reporting form for oil transportation allowances, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, Form MMS–4398.

MMS proposes to amend § 206.105(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and replacing them with new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(2)(iv), (vi) and (vii) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year. The lessee must file the Form MMS–4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file a page one and all supporting schedules of Form MMS–4110 which show actual transportation costs within three months after the end of the reporting period, unless MMS approves a longer period.

Consistent with this amendment, paragraphs (c)(2)(v), (vi), (vii), and (viii) would be redesignated (c)(2)(iv), (v), (vi), and (vii).

These changes would incorporate the new reporting form for oil transportation allowances, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, Form MMS–4398.

MMS proposes to amend § 206.105(c) by adding paragraph (5) stating:

A lessee is required to file a new Form MMS–4110 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

MMS proposes to amend § 206.105(d) and revise the title to read:

b. Interest Charges and Assessments for Incorrect or Late Reports and Failure To Report

This change to the title would be necessary to reflect the changes in the content of the section.

MMS proposes to further amend § 206.105(d) by deleting paragraphs (1), (2), and (3) and replacing them with the following schedule:

(d) *Interest charges and assessments for incorrect or late reports and failure to report* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4398	$10 per allowance line required on Form MMS–4398.	
Deducts a transportation allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4295.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4398 was due until the date that the form was received.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Takes a transportation allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the coal oil instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.	.....	Payment of interest on the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommend that payors failing to timely file required forms would be assessed an amount equal to a fixed paercent of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

These changes would add specific language for assessments for incorrect or late reports and for failure to report. These changes implement the recommendation of the study group report on sanctions.

c. Gas Transportation Allowances

MMS proposes to amend § 206.157 by deleting the fourth and fifth sentences of paragraph (a)(1)(i) that state:

Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4295 (and Schedule 1), Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes adding in place of the deleted sentences the following sentences:

Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4295, Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

These changes would remove the retroactive three-month limit for gas transportation and incorporate the new reporting form, Notice of Intent to Take Oil and Gas Transportation and Processing Allowance, Form MMS–4398. MMS further proposes to remove § 206.157(a)(5) as follows:

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

MMS proposes to amend § 206.157(b)(1) by deleting the third and fourth sentences that state:

Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4295 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the following sentences:

Before any transportation deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. For the actual transportation allowance incurred after the Form MMS–4398 reporting period, the lessee must file a Form MMS–4295 in accordance with paragraph (c)(2) of this section.

These changes would remove the retroactive 3-month limit for gas transportation and incorporate the new reporting form, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, Form MMS–4398.

MMS proposes to further amend § 206.157(b)(1) by deleting from the sixth sentence the phrase "* * * estimated or * * *"

The sixth sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

These changes would be technical corrections that improve the clarity of the language.

MMS proposes to amend § 206.157(c)(1) by deleting existing paragraphs (i), (ii), (iii), and (iv) and replacing them with new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(1) (v) and (vi) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4295 for transportation allowance actuals within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents will be submitted within a reasonable period of time, as determined by MMS.

These changes incorporate the new reporting form for gas transportation allowances, Form MMS–4398.

MMS proposes to amend § 206.157(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and adding new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraphs (c)(2) (iv), (vi) and (vii) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file a page one and all supporting schedules of Form MMS–4295 which show actual transportation costs within three months after the end of the reporting period, unless MMS approves a longer period.

Consistent with this amendment, paragraphs (c)(2) (v), (vi), (vii), and (viii) of § 206.157 are redesignated (c)(2) (iv), (v), and (vi), and (vii).

These changes would incorporate the new reporting form for gas transportation allowances, Form MMS–4398.

MMS proposes to amend § 206.157(c) by adding paragraph (5) stating:

A lessee is required to file a new Form MMS–4295 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

MMS proposes to amend § 206.157(d) and add the words "* * * charges and * * *" to the title that will read:

d. *Interest charges and assessments for incorrect or late reports and failure to report.*

This change to the title would be necessary to reflect the changes in the content of the section.

MMS proposes to amend § 206.157(d) by deleting paragraphs (1), (2) and (3) and replacing them with the following schedule:

(d) *Interest charges and assessments for incorrect or late reports and failure to report* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4398	$10 per allowance line required on Form MMS–4402.	
Deducts a transportation allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4295.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4295 was due until the date that the form was received.
Takes a transportation allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the gas instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.	.....	Payment of interest on the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity of allowance payback and late-payment interest charges for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommended that payors failing to timely file required forms would be assessed an amount equal to a fixed percent of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

These changes would add specific language for interest and assessments for incorrect or late reports and for failure to report. These changes would implement recommendations of the study group report on sanctions."

e. Gas Processing Allowances

MMS proposes to amend § 206.159 by deleting the third and fourth sentences of paragraph (a)(1)(i) that state:

Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section. A processing allowance may be claimed retroactively for a period of not more than three months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the two following sentences:

Before any processing allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section.

MMS proposes amending § 206.159(b)(1) by deleting the third and fourth sentences that state:

Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4109 in accordance with paragraph (c)(2) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the two following sentences:

Before any processing allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent To Take Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4109 in accordance with paragraph (c)(2) of this section.

These changes would remove the retroactive three-month limit for gas processing and incorporate the new reporting form, Form MMS–4398.

MMS proposes to further amend § 206.159(b)(1) by deleting from the seventh sentence the phrase "* * * estimated or * * *" The revised seventh sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual processing allowance.

These changes would be technical corrections and language clarification.

MMS proposes to amend § 206.159(c)(1) by deleting existing paragraphs (i), (ii), and (iii) and replacing them with new paragraphs that read:

(i) With the exception of those processing allowances specified in paragraph (c)(1)(v) of this section, the lessee must file a Form MMS–4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4109 for processing allowances within three months after the end of the reporting period, unless MMS approves a longer period.

MMS proposes to amend § 206.159(c)(2) by deleting existing paragraphs (i), (ii), (iii), (iv), and (vi) and replacing them with new paragraphs that read:

(i) With the exception of those processing allowances specified in paragraph (c)(2) (v) and (vi) of this section, the lessee must file a Form MMS–4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one and all supporting schedules of Form MMS–4109 which show actual processing costs within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit all data used by the lessee to prepare the actual costs submitted on its Form MMS–4109. The data must be provided within a reasonable period of time, as determined by MMS.

Consistent with this change, paragraphs (vii) and (viii) would be redesignated paragraphs (vi) and (vii).

These changes would incorporate the new reporting form for gas processing allowances, Form MMS–4398.

MMS proposes to amend § 206.159(c) by adding paragraph (5) to state:

A lessee is required to file a new Form MMS–4109 if adjustments are made to actual non-arm's-length processing allowances on Form MMS–2014.

MMS proposes to amend § 206.159(d) and add the words "* * * charges and * * *" to the title so it reads:

f. Interest charges and assessments for incorrect or late reports and failure to report

This change to the title would be necessary to reflect the changes in the content of the section.

MMS proposes to further amend § 206.159(d) by deleting paragraph (1), (2) and (3) and replacing them with the following schedule:

(d) *Interest charges and assessments for incorrect or late reports and failure to report* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4398	$10 per allowance line required on Form MMS–4398.	
Deducts a processing allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4109.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4109 was due until the date that the form was received.
Takes a processing allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the gas instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a processing allowance that results in an underpayment of royalties.		On the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity of allowance payback and late-payment interest charges for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommended that payors failing to timely file required froms would be assessed an amount equal to a fixed percent of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

These changes would add specific language for interest charges and assessments for incorrect or late reports and for failure to report. These changes would implement the recommendations in the study group report for sanctions.

VII. Other Matters

Separate regulations concerning valuation of natural gas for royalty purposes are currently being developed for Federal leases and for Indian leases through two separate negotiated rulemaking committees. These committees are addressing both natural gas valuation and transportation and processing allowance issues.

The committee addressing natural gas valuation for Federal leases recommended in its March 1995 report that transportation and processing allowance forms no longer be required. This recommendation is one of numerous recommendations for broad changes to existing regulations governing the valuation of natural gas produced from Federal leases. The future rulemaking to be prepared considering the recommendations of the Federal negotiated rulemaking committee will include the proposal for eliminating the requirement for allowance forms. Thus the amendments being proposed today to change the oil and gas valuation regulations governing transportation and processing allowances may be impacted by the results of the future rulemaking. Similar impacts may occur for natural gas produced from Indian leases depending on the outcome of the negotiated rulemaking committee addressing the valuation of natural gas production from Indian lands.

MMS also would like comment on the effective date for the final rule. One option is to make any final rule effective as of January 1, 1995, the beginning of the current allowance year. Another option is to make the rule effective as of the date of publication of this proposed rule since royalty payors are on notice of the possible rule change on that date. Commenters should address this issue in their comments.

VIII. Procedural Matters

The Regulatory Flexibility Act

The Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule will streamline and improve existing regulatory reporting requirements related to allowances that are used to calculate royalty payments on oil and gas produced from Federal and Indian lands.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned Clearance Numbers 1010–0022, 1010–0061, and 1010–0075. Form MMS–4398 has been submitted to OMB for approval.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: May 19, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is proposed to be amended as set forth below:

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart C—Federal and Indian Oil

2. Section 206.105 is proposed to be amended by revising paragraphs (a)(1)(i), (b)(1), (c)(1)(i) through (iv), (c)(2)(i) through (iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v), (vi), (vii), and (viii) as paragraphs (c)(2)(iv), (v), (vi), and (vii), revising newly redesignated paragraphs (c)(2)(iv) through (vii) adding new paragraph (c)(5) and revising paragraph (d) to read as follows:

§ 206.105 Determination of transportation allowances.

(a) * * *

(1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting oil under that contract, except as provided in paragraphs (a)(1) (ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. For the actual transportation allowance calculated for the reporting period, the lessee must file a Form MMS–4110, Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable, actual costs as provided in this paragraph. All transportation allowances deducted under a non-arms-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any transportation allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4110 in accordance with paragraph (c)(2) of this section. MMS will monitor the allowance deductions to determine whether lessees are taking deductions that are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year. The lessee must file the Form MMS–4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that the Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4110 for the actual transportation allowance calculated. This Form is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents must be submitted within a reasonable period of time, as determined by MMS.

* * * * *

(2) * * *

(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(iv), (vi) and (vii) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year. The lessee must file the Form MMS–4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file a page one and all supporting schedules of Form MMS–4110 which show actual transportation costs within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) Non-arm's-length contract or no-contract transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(v) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by MMS.

(vi) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(vii) If the lessee is authorized to use its FERC-approved or State regulatory agency-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

* * * * *

(5) A lessee is required to file a new Form MMS–4110 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance wit 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4398	$10 per allowance line required on Form MMS–4398.	
Deducts a transportation allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4292.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4398 was due until the date that the form was received.
Takes a transportation allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the product instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.		On the amount of the underpayment.

* * * * *

Subpart D—Federal and Indian Gas

3. Section 206.157 is proposed to be amended by revising paragraphs (a)(1)(i), removing paragraph (a)(5), revising paragraphs (b)(1), (c)(1)(i) through (iv), (c)(2)(i), (ii), and (iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v) through (viii) as paragraphs (c)(2)(iv) through (vii), revising newly designated paragraphs (c)(2) (iv) through (vii), adding paragraph (c)(5) and revising paragraph (d) to read as follows:

§ 206.157 Determination of transportation allowances.

(a) * * *

(1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant products under that contract, except as provided in paragraphs (a)(1)(ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee will have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4295, Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any transportation deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. For the actual transportation allowance incurred after the Form MMS–4398 reporting period, the lessee must file a Form MMS–4295 in accordance with paragraph (c)(2) of this section. MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4295 for transportation allowance actuals within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents will submitted within a reasonable period of time, as determined by MMS.

* * * * *

(2) * * *

(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(iv), (vi) and (vii) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After Form MMS–4398 reporting period, lessees must file a page one and all supporting schedules of Form MMS–4295 which show actual transportation costs within three months after the end of the reporting period, unless MMS approves a longer period.

(iv) Non-arm's-length contract or no-contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(v) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4295. The data shall be provided within a reasonable period of time, as determined by MMS.

(vi) MMS may establish in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(vii) If the lessee is authorized to use its FERC-approved or State regulatory agency-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

* * * * *

(5) A lessee is required to file a new Form MMS–4295 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.*

(5) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

* * * * *

4. Section 206.159 is proposed to be amended by revising paragraphs (a)(1)(i), (b)(1), (b)(2)(iv), (c)(1)(i), (ii), (iii), (c)(2)(i),(ii),(iii) and (iv), removing paragraph (c)(2)(vi), redesignating paragraphs (c)(2)(vii) and (viii) as paragraphs (c)(2)(vi) and (vii), revising newly redesignated paragraphs (c)(2)(vi) and (c)(2)(vii) adding paragraph (c)(5), and revising paragraphs (d) to read as follows:

§ 206.159 Determination of processing allowances.

(a) * * *

(1)(i) For processing costs incurred by a lessee pursuant to an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, except as provided in paragraphs (a)(1) (ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Before any processing allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any processing allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent to take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4109 in accordance with paragraph (c)(2) of this section. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual processing allowance.

(2) * * *

(iv) A lessee may use either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial capital investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the other alternative without approval of MMS.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those processing allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4109 for processing allowances within 3 months after the end of the reporting period, unless MMS approves a longer period.

* * * * *

(2) * * *

(i) With the exception of those processing allowances specified in paragraphs (c)(2)(v) and (vi) of this section, the lessee must file a Form MMS–4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that

Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one and all supporting schedules of Form MMS–4109 which show actual processing costs within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit all data used by the lessee to prepare the actual costs submitted on its Form MMS–4109. The data must be provided within a reasonable period of time, as determined by MMS.

(v) * * *

(vi) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(vii) If the lessee is authorized to use the volume weighted average prices charged other persons as its processing allowance in accordance with paragraph (b)(4) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

* * * * *

(5) A lessee is required to file a new Form MMS–4109 if adjustments are made to actual non-arm's-length processing allowances on Form MMS–2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.*

(1) If a lessee fails to timely or accurately file a Form MMS–4398 for processing allowances, the lessee may be assessed $10 per allowance line required on Form MMS–4398.

(2) If a lessee deducts a processing allowance on its Form MMS–2014 without complying with the requirements of this section for Form MMS–4109 actual cost reporting, the lessee may be assessed an amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year plus interest calculated from the date the actual cost Form MMS–4109 was due until the date the form was received.

(3) If a lessee takes a processing allowance on its Form MMS–2014 by improperly netting the allowance against the value of the gas instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section, the lessee may be assessed an amount equal to 20 percent of the total allowance amount netted on Form MMS–2014 plus interest calculated from the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.

(4) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(5) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

* * * * *

[FR Doc. 95–19295 Filed 8–4–95; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–95–011]

RIN 2115–AE47

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the vertical lift span drawbridge across the Gulf Intracoastal Waterway, mile 35.6, at Larose, Lafourche Parish, Louisiana. The proposed regulation would require that from 7 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw of the bridge would remain closed to navigation for passage of vehicular traffic during peak traffic periods. At all other times the draw would open on signal for passage of vessels. Presently, the draw is required to open on signal at all times. This action would relieve traffic congestion on the bridge during these periods, and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before October 6, 1995.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to Room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

The Louisiana Department of Transportation and Development has requested the new regulation because vehicular traffic crossing the bridge during the proposed closure periods has increased dramatically during recent years and severe congestion occurs during peak traffic hours. The proposed regulation would allow for the uninterrupted flow of vehicular traffic, while still providing for the reasonable needs of navigation.

Discussion of Proposed Rules

The Louisiana State Route 1 vertical lift span bridge across the Guild Intracoastal Waterway, mile 35.6, at Larose, Lafourche Parish, Louisiana, has 35 feet vertical clearance above mean high water in the closed to navigation position and 73 feet vertical clearance above mean high water in the open to navigation position. The horizontal clearance is 125 feet. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, oil field work boats and recreational craft. Data provided by LDOTD show that from June 1993 through May 1994, the number of vessels that passed the bridge during the proposed closure period from 7 a.m. to 9 a.m. averaged 1.6 vessels per day. The number of vessels that passed the bridge during the proposed 4:30 p.m. to 6 p.m. closure averaged 1.4 vessels per day.

Data show that approximately 689 vehicles crossed the bridge during the proposed 7 a.m. to 9 a.m. closure period and approximately 1247 vehicles crossed the bridge during the proposed 4:30 p.m. to 6 p.m. closure period.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.451 paragraphs (c) through (f) are redesignated (d) through (g) and a new paragraph (c) is added to read as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(c) The draw of the SR1 bridge, mile 35.6, at Larose, shall open on signal; except that, from 7 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

* * * * *

Dated: June 22, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–19348 Filed 8–4–95; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI53–02–7129; FRL–5273–4]

Public Hearing on the Proposed Redesignation of the Forest County Potawatomi Community to a PSD Class I Area; State of Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1995 USEPA proposed to approve a request from the Forest County Potawatomi Community to redesignate portions of its reservation lands to Class I for Prevention of Significant Deterioration (PSD) purposes (60 FR 33779). In this proposal, USEPA established a public comment period and scheduled a public hearing. Notice is hereby given that USEPA is postponing the public hearing. The hearing was to be held at the Indian Springs Lodge on Highway 32 in Carter, Wisconsin at 2:00 pm CDT on August 2, 1995. USEPA is extending the public comment period indefinitely. The original public comment period was intended to close on September 5, 1995.

The hearing is postponed because the Governors of the States of Wisconsin and Michigan have requested "dispute resolution". Under Section 164(e) of the Clean Air Act, dispute resolution may be requested if a governor disagrees with a proposed redesignation. The Governors' request means that USEPA will enter into negotiations to try to resolve the differences concerning the proposed redesignation between the Forest County Potawatomi Community and the States of Wisconsin and Michigan. If mediation is unsuccessful, USEPA will make a final decision.

After the dispute resolution process concludes, one or more public hearings will be rescheduled, and USEPA will set a new deadline for submittal of public comments. The dates and location(s) of these will be provided in a future **Federal Register** document.

DATES: The public comment period is extended until further notice.

ADDRESSES: Written comments should be addressed to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch, United States Environmental Protection Agency, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, USEPA Region 5 (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 27, 1995.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 95–19401 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD-FRL–5273–9]

Clean Air Act Proposed Interim Approval of the Operating Permits Program; Nevada Division of Environmental Protection; Nevada

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the Nevada Division of Environmental Protection ("NDEP" or "State") for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by September 6, 1995.

ADDRESSES: Comments should be addressed to Celia Bloomfield, Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of NDEP's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone: 415/744–1249), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("Act")), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70 ("part 70"). Title V requires states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit title V programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

This proposed interim approval applies to the NDEP title V operating permits program and sources under NDEP's jurisdiction. NDEP has jurisdiction over all sources in the State outside of Washoe County, Clark County and tribal lands, as well as all fossil fuel fired steam generating power plants inside Washoe and Clark Counties. Washoe County District Health Department received interim approval on January 5, 1995 (60 FR 1741), and interim approval was proposed for Clark County Health District on March 14, 1995 (60 FR 13683).

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval and could not be renewed. During the interim approval period, NDEP would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a federal permits program in Nevada. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

Following final interim approval, if NDEP failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If NDEP then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that NDEP had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of NDEP, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that NDEP had come into compliance. In any case, if, six months after application of the first sanction, NDEP still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove NDEP's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date NDEP had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of NDEP, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that NDEP had come into compliance. In all cases, if, six months after EPA applied the first sanction, NDEP had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to NDEP—s program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for NDEP upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of NDEP's title V operating permits program that must be corrected to meet the minimum requirements part 70. The full program submittal; the Technical Support Document ("TSD"), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket (NV–DEP–95–1–OPS). The docket may be viewed during regular business hours at the address listed above.

1. Title V Program Support Materials

NDEP's initial title V program was submitted on November 22, 1993. The submittal was found to be complete on January 13, 1994. In a letter dated July 20, 1994, NDEP submitted to EPA revised title V implementing regulations. The revised regulations constituted a material change to the State's title V program, and hence, extended EPA's review period pursuant to section 70.4(e)(2). On February 8, 1995, EPA received an amended title V submittal from NDEP ("amended submittal") and a letter from the Governor's designee requesting that the amended submittal be reviewed and acted on in lieu of the initial November 22, 1993 submittal. EPA agreed, sent a second program completeness letter to NDEP on February 27, 1995, and is taking action on the February 8, 1995 amended submittal in this notice.

NDEP's February 8, 1995 submission contains a complete program description, enabling legislation, State implementing and supporting regulations, and all other program documentation required by section 70.4. The amended submittal also contains a list of the changes made from the November 22, 1993 version, such as a revised fee demonstration and the removal of enacted bills that have since been codified into the Nevada Revised Statutes ("NRS"). The February 8, 1995 submittal does not, however, include an updated Attorney General's opinion; it includes the original version signed November 15, 1993. Consequently, the citations for several rules and legislation are expressed in a precodification format. EPA is therefore relying on elements of the initial submittal as supporting documentation for this rulemaking. The TSD, located in the docket, specifically identifies when EPA's evaluation of the program relies on supporting documentation contained in the initial program submittal.

2. Title V Operating Permit Regulations and Program Implementation

NDEP relied on additions and amendments to its existing air quality regulations (NAC 445.430–445.846) to satisfy the requirements of part 70 and title V. The first "title V" revisions to NAC 445.430–846 were adopted on November 3, 1993. On March 3, 1994, the Nevada State Environmental Commission made additional changes to the title V portions of NAC 445.430–846. The February 8, 1995 amended submittal contains the March 3, 1994 version of NAC 445.430–445.846; a May 26, 1994 amendment to NAC 445.7135 (fees); a February 16, 1995 amendment to NAC 445B.221 (part 72, acid rain); and a February 16, 1995 amendment to NAC 445B.327 (fees).[1] In a letter sent to EPA dated July 12, 1995, NDEP identified the provisions in NAC 445.430–846 relevant to title V implementation and requested that EPA take action only on those provisions identified. Therefore, in this proposed interim approval notice, EPA is acting on the following provisions of Nevada State law: NAC 445.430, 445.432, 445.433, 445.4343, 445.4346, 445.438, 445.4395, 445.4415, 445.4425, 445.4615, 445.4625, 445.4635, 445.4645, 445.477, 445.4915, 445.4955, 445.500, 445.5008, 445.504, 445.506, 445.5095, 445.5105, 445.521, 445.5275, 445.5305, 445.5405, 445.5431, 445.548, 445.550, 445.559, 445.5695, 445.571, 445.5855, 445.5905, 445.5915, 445.5925, 445.5935, 445.613, 445.628, 445.630, 445.649, 445.662, 445.664, 445.696, 445.697, 445.699, 445.704, 445.7042, 445.7044, 445.705, 445.7052, 445.7054, 445.7056, 445.7058, 445.706, 445.707, 445.7073, 445.7075, 445.7077, 445.7112, 445.7114, 445.7122, 445.7124, 445.7126, 445.7128, 445.713, 445.7131, 445.7133, 445.7135, 445.7145, 445.7155, 445.717, 445.7191, 445.7193, 445.7195, 445B.221, 445B.327. Provisions not included in the July 12, 1995 letter from NDEP may still be considered supporting documentation for the State's title V operating permit program.

NDEP's title V implementing regulations substantially meet the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and minor permit modifications; section 70.5 for criteria that define insignificant activities; section 70.5 for complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are several deficiencies in the program that are outlined under section II.B.1. below as interim approval issues and further described in the TSD.

a. Applicability

NDEP stated in its amended submittal that it will take advantage of EPA's March 8, 1994 policy regarding fugitive emissions. NDEP will not require fugitives to be considered in determining the major source status of sources subject to post-1980 New Source Performance Standards ("NSPS") and National Emissions Standards for Hazardous Air Pollutants ("NESHAP"). In accordance with that policy, NDEP's title V program is eligible only for interim approval. (See March 8, 1994 memorandum entitled, "Consideration of Fugitive Emissions in Major Source Determinations," signed by Lydia Wegman.)

The program description, submitted as part of NDEP's title V program, indicates the State's intention to permit only major sources, phase II acid rain sources, and solid waste incinerators subject to section 129(e) of the Act (program submittal, Section VI, pp.2–4). The program description further states that NDEP's title V program does not cover nonmajor sources ("area sources") subject to a section 111 or 112 standard or in a category designated by the Administrator. While the coverage is not consistent with section 70.3(b)(2), which states that section 111 and 112 standards promulgated after July 21, 1992 will specify whether a nonmajor source must obtain a title V permit, it is acceptable for the following two reasons: 1) EPA is deferring title V permit requirements for nonmajor sources subject to recently promulgated MACT standards (See May 16, 1995 guidance document entitled, "Title V Permitting for Nonmajor Sources in Recent Section 112 Maximum Achievable Control Technology (MACT) Standards," by John Seitz, Director of the Office of Air Quality Planning and Standards); and 2) NDEP committed to expeditiously revise its title V program to reflect any action by EPA to require title V permitting for nonmajor sources (program submittal, section VI, pp.3–4).

Although NDEP's program description clearly indicates NDEP's intent to exclude nonmajor sources from its title V (i.e., Class I) permitting requirements, NDEP's regulations require any new source subject to a section 111 or section 112 standard or any new source in a category of sources designated by the Administrator of EPA to apply for a Class I–B permit (NAC 445.7044.3 and .4). In other words, by omitting the word "major" when specifying new source applicability, the regulations could be interpreted to require certain nonmajor sources to obtain title V permits. EPA views this applicability distinction as an inconsistency in the State's program. Prior to final rulemaking, EPA requests that NDEP provide a letter to resolve this apparent inconsistency and

[1] The citation format varies because NDEP revised its citation system after most of the implementing regulations were adopted and submitted to EPA. A citation translation key can be found in the docket at EPA Region IX.

describe under which reading the State desires EPA to act on its program.

b. Integrated Permit

NDEP's program combines the requirements for operating permits and construction permits ("integrated program"). All title V sources are identified as Class I sources and must obtain Class I operating permits that meet the requirements of title V and part 70. Sources subject to State requirements only (i.e., not subject to the requirements of title V or part 70) are identified as Class II sources and are outside the scope of this proposed approval. Existing Class I sources will be subject to Class I–A requirements, and new or modified Class I sources will be subject to Class I–B requirements.

The regulations that implement the integrated program are contained in the Nevada Administrative Code ("NAC") sections 445.430–445.846. This interim approval addresses only those elements that pertain to operating permit program requirements for title V sources as identified above. The proposed approval is not being made under EPA's title I authority, and hence, is not amending Nevada's new source review program.

c. Insignificant Activities

Section 70.5(c) states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Section 70.5(c) also states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Under part 70, a State must request and EPA may approve as part of that State's program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

NDEP's list of insignificant activities is set out in NAC 445.705.3 and referred to as permit "exemptions." Despite being called "exemptions," NAC 445.705.3 ensures that potential emissions from these activities will be included in all Class I applicability determinations. In addition, NAC 445.7054.2(b) requires Class I permit applications to describe all points of emissions and all activities "in sufficient detail to establish the basis for the applicability of standards and fees," thus ensuring that the application will not omit information needed to determine whether or how a requirement of the Act applies at a source. EPA interprets the terms "all points of emissions" and "all activities which may generate emissions of [the] air pollutants" in NAC 445.7054.2(b) to include those from NDEP's list of insignificant activities at NAC 445.705.3.

NDEP's insignificant activities are defined by source or activity type in combination with a given size or rate. Activities without a specified size or rate cut-off qualify as insignificant if they are below the major source threshold. This high cut-off, when viewed in conjunction with the listed activities like "agricultural land use" and "equipment or contrivances used exclusively for the processing of food" would almost certainly result in necessary information being left off of the permit application. In order to be fully approvable, NDEP must provide additional criteria that will limit insignificant activities to activities that are unnecessary for evaluating the applicability of requirements at a facility.

For other State and district programs, EPA has proposed to accept, as sufficient criteria for full approval, emission levels defining insignificant activities of two tons per year for criteria pollutants and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for hazardous air pollutants ("HAP") and other toxics (40 CFR section 52.21(b)(23)(i)). EPA believes that these levels are sufficiently below the applicability thresholds of many applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a title V application. EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in Nevada. This request for comment is not intended to restrict the ability of other States and districts to propose, and EPA to approve, different emission levels if the state or district demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements.

d. Variances

NDEP has authority under State law to issue a variance from State requirements. Sections 445.506, 445.511, 445.516, and 445.521 of the NRS allow the State to grant relief from enforcement action for permit violations. EPA regards these provisions as wholly external to the program submitted for approval under part 70, and consequently, is proposing to take no action on these provisions of State law.

The EPA has no authority to approve provisions of State or local law, such as the variance provisions referred to, that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

e. Reporting of Permit Deviations

Part 70 requires prompt reporting of deviations from permit requirements, and NDEP has not defined "prompt" in its program. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviations likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (adjusted annually based on the Consumer Price Index ("CPI"), relative to 1989 CPI). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum," (40 CFR 70.9(b)(2)(i)).

NDEP elected to collect fees below the presumptive minimum and to submit a detailed fee demonstration of fee adequacy. Nevada's fee regulation, NAC 445B.327, was amended on February 16, 1995 to cap fees at the 1995 level, thus charging $3.36 per ton of emissions of regulated pollutants. In addition, facilities must pay annual maintenance fees per permitted source. Given the amount of fees collected from title V sources for fiscal year 1995, NDEP estimated the total annual fee revenue from title V sources to be about $599,893 during the first three years of the program.

In order to determine whether the title V fees would be adequate to cover the direct and indirect costs of the program, NDEP did a detailed workload analysis which incorporated all the activities involved in title V implementation. Based on this analysis, NDEP determined that four additional staff would have to be hired. Incorporating the cost of the four staff persons, a phased schedule for permitting sources, and other direct and indirect costs, NDEP estimated the total title V program costs to be approximately $457,079 each year during the first three years of the program.

NDEP's fee analysis demonstrates that title V fees are expected to be sufficient to cover the costs of the title V program. In order to ensure continued fee adequacy, NDEP will keep an accounting system that details expenditures associated with direct title V activities and ensures that the State's air quality management fund has adequate fee revenue to cover indirect program costs.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation

NDEP has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Nevada's enabling legislation and in regulatory provisions defining federal "applicable requirements" and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. NDEP's submittal also contains a commitment to implement and enforce section 112 requirements and to adopt additional regulations as needed to issue permits that implement and enforce the requirements of section 112. The EPA has determined that the legal authority and commitments are sufficient to allow NDEP to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying this action and the April 13, 1993 guidance memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Authority for Title IV Implementation

NDEP incorporated by reference part 72, the federal acid rain permitting regulations, on February 16, 1995. The incorporation by reference was codified in NAC 445B.221 and submitted to EPA on February 27, 1995 to be added to the State's title V operating permit program.

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is proposing to grant interim approval to the operating permits program submitted by the Nevada Division of Environmental Protection, Bureau of Air Quality on November 22, 1993 and revised by the amended submittal made on February 8, 1995. If promulgated, NDEP must make the following changes to receive full approval:

(1) Revise NAC 445.7054.2(h)(2) to clearly require that compliance certifications submitted as part of the permit applications include the compliance status of all applicable requirements and the methods used for determining compliance with all applicable requirements. As NDEP's rule is currently written, a compliance certification is part of the source's compliance plan, and the elements of the compliance plan are required to address all applicable requirements (NAC 445.7054.2(h)). However, the compliance certification provision, within the compliance plan framework, can be read, inappropriately, to narrow the scope of certifications to those applicable requirements that become effective during the term of the permit. Nonetheless, because NAC 445.7054.2(h)(1) requires a narrative description of the source's compliance status with respect to all applicable requirements, EPA believes part 70's compliance certification requirements will be substantially met for the interim approval period. (section 70.5(c)(9))

(2) Revise the definition of "regulated air pollutant" to include, in addition to those pollutants listed under NAC 445.5905: 1) any pollutant subject to requirements established under section 112 of the Act, including sections 112(g), (j), and (r); and 2) any Class I or Class II substance subject to a standard established by title VI of the Act. (Section 70.2, definition of "regulated air pollutant")

(3) NDEP's rule does not contain a title V permit application trigger for existing sources that become subject to the program after the program's effective date. NAC 445.7052.1 must be revised to include an application requirement for such sources. (section 70.5(a)(1)(i))

(4) NDEP's permit shield provisions in NAC 445.7114.1(j) are not fully consistent with part 70 and must be revised as follows: 1) clearly indicate that NAC 445.7114.1(j) provides for permit shields; 2) require the permit to expressly state that a permit shield exists or the permit is presumed not to provide such a shield (section 70.6(f)(2)); and 3) add a statement that the permit shield may not be extended to minor permit modifications (section 70.7(e)(2)(vi)).

(5) Add emissions trading provisions consistent with section 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

(6) A schedule of compliance contained in a title V permit must be consistent with that required in the permit application (section 70.6(c)(3)). While NDEP application provisions require all the necessary elements of a schedule of compliance, the permit requirements in NAC 445.7114.1(h) must be revised either by referencing the application requirements in NAC 445.7054.2(h)(3) or by adding that the schedule of compliance will contain a

schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance and that the schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order. In addition, the schedule of compliance must address requirements that become applicable during the term of the permit pursuant to section 70.5(c)(8)(iii)(B).

(7) The progress report requirement in NAC 445.7114.1(h)(1) is vague and must be revised to more clearly meet the requirements of section 70.6(c)(4). EPA suggests adding the following language to NAC 445.7114.1(h)(1): *"Requirements for [s]emiannual progress reports with dates for achieving milestones and dates when such milestones were achieved."*

(8) NDEP indicated in its program description that Class I permits may be issued to portable sources (program submittal, Section II, p.8). In order to satisfy the part 70 requirements for temporary sources, NDEP must add a requirement that the owner or operator of a Class I "portable source" (as defined in NAC 445.5695) notify NDEP at least 10 days in advance of each change in location. (section 70.6(e)(2))

(9) Revise NAC 445.7114.1(g) to ensure that any trade under a federally enforceable emissions cap is preceded by a written notification to NDEP at least 7 days in advance of the trade. The notification must specify when the change will occur and include a description of the change in emissions that will result and how the increases and decreases will comply with the terms and conditions of the permit. (sections 70.4(b)(12) and 70.4(b)(12)(iii)(A))

(10) Remove the phrase "Except as otherwise provided in subsection 2" from NAC 445.705.1, as it inaccurately suggests that major sources subject to either the New Source Performance Standard for new residential wood heaters or the National Emissions Standard for Hazardous Air Pollutants for asbestos demolition are not required to obtain title V operating permits.

(11) Provide additional defining criteria that will ensure that NDEP's insignificant activities (i.e., activities exempt from part 70 permitting) are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, NDEP may restrict the exemptions to activities that are not likely to be subject to an applicable requirement or emit less than State-established emission levels. NDEP should demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, NDEP is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of NDEP's part 70 program that EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the approved program) within NDEP's jurisdiction. The approved program would not apply to any part 70 sources over which an Indian tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. State Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), NDEP must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing State regulations.

Implementation of section 112(g) during this transition period requires states to have an available mechanism for establishing federally enforceable HAP emission limits or other conditions from the effective date of the section 112(g) rule until they can adopt rules specifically designed to implement section 112(g). NDEP requires any source that constructs or modifies to obtain a permit or permit revision prior to commencing construction. As noted earlier, NDEP's program is an integrated program; that is, the permit that is issued to a new or modifying source prior to its construction will contain all preconstruction review requirements and all operating requirements. Integrated preconstruction/operating permits issued to major sources must meet all procedural requirements of part 70, including public and EPA review, and are therefore part 70 permits. In Nevada, sources subject to section 112(g) (new or modified major sources of hazardous air pollutants) will be issued a part 70 permit (i.e., a Class I permit) prior to construction. The State has authority to establish a MACT requirement for the source pursuant to NAC 445.7191 and 445.7193. The source will then have federally enforceable limits on HAP emissions in compliance with section 112(g). Once EPA promulgates a final section 112(g) rule, NDEP will act expeditiously to revise its hazardous air pollutant regulations to be consistent with the section 112(g) regulations.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR section 63.91 of NDEP's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated.

In a letter dated July 12, 1995, NDEP requested that EPA approve, in conjunction with the title V approval action, NDEP's program for receiving delegation of unchanged section 112 standards as they apply to nonmajor sources. Therefore, today's proposed approval under section 112(l)(5) and 40 CFR section 63.91 of NDEP's program for delegation extends to non-part 70 sources as well as part 70 sources. (See July 12, 1995 letter from Jolaine Johnson, Chief, Bureau of Air Quality, NDEP to Debbie Jordan, Chief, Operating Permits Section, EPA Region IX.)

NDEP has informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of section 112 standards (existing and future) by incorporating section 112 standards into the Nevada Administrative Code by reference to the federal regulations. The details of this delegation mechanism will be set forth in an Implementation Agreement between NDEP and EPA.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of NDEP's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by September 6, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 28, 1995.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 95–19402 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 433, 438 and 464

[FRL–5271–9]

RIN 2040–AB79

Comment Period Extension on Proposed Rulemaking for the Metal Products and Machinery Phase I Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Notice of comment period extension.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an extension of the comment period for the proposed regulations. The proposed pretreatment standards and effluent limitations guidelines were published in the **Federal Register** on May 30, 1995 (60 FR 28210).

DATES: The original date for submission of written comments on the proposed regulations was August 28, 1995. This date is being changed to October 27, 1995.

ADDRESSES: Comments should be submitted to Mr. Steven Geil at U.S. Environmental Protection Agency by mail at U.S. EPA, Engineering and Analysis Division (Mail Code 4303), Office of Science and Technology, 401 M. Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven Geil, (202) 260–9817.

SUPPLEMENTARY INFORMATION: The extended comment period for the proposed rulemaking now ends on October 27, 1995. All written comments submitted in accordance with the instructions in the Notice of Proposed Rulemaking will be incorporated into the Record and considered before promulgation of the final rule.

Dated: July 28, 1995.

Robert Perciasepe,

Assistant Administrator, Office of Water.

[FR Doc. 95–19252 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 12 and 16

[CGD 93–051]

Proof of Commitment To Employ Aboard U.S. Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard is scheduling a public meeting to discuss proof of commitment to employ aboard U.S. merchant vessels. The purpose of the meeting is to receive feedback on how the elimination of the letter of commitment is affecting the maritime industry. Until June 1994, a letter of commitment (proof of commitment) for employment aboard a U.S. merchant vessel was required for an applicant to receive an original, entry level merchant mariner's document to ensure that the applicant intended to work in the maritime industry. With no other criteria to obtain a merchant mariner's document, the Coast Guard determined in 1937 that the letter of commitment was necessary to deter persons from obtaining the card for identification purposes only. In recent years the Coast Guard recognized that the letter of commitment placed the mariner in the awkward situation of being told by a company or union that they could not work without a merchant mariner's document, sending the applicant to the Coast Guard for the document, and the Coast Guard could not issue the document without the company or union issuing a letter of commitment. With the advent of user fees and chemical testing requirements to obtain a merchant mariner's document, the

Coast Guard determined that the letter of commitment was no longer a valid requirement.

DATES: The meeting will be held September 5, 1995 from 10 a.m. to 12 p.m. Written material must be received not later than September 30, 1995.

ADDRESSES: The meeting will be held in room 2415, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine Bunnell, Marine Personnel Division (NMC–4), National Maritime Center, 4200 Wilson Blvd., Suite 510, Arlington, VA 22203–1804, telephone (703) 235–1951.

SUPPLEMENTARY INFORMATION: On December 6, 1993, the Coast Guard published a Notice of Proposed Rulemaking entitled "Proof of Commitment to Employ Aboard U.S. Merchant Vessels" in the **Federal Register** (58 FR 64278), to amend the regulations covering applicants for merchant mariner's documents to eliminate the requirement that the applicant provide proof of a commitment of employment as a member of a crew of a United States merchant vessel. The comment period ended on February 4, 1994. The Coast Guard received four favorable comments and no unfavorable comments. It published a final rule on June 8, 1994, (59 FR 28791), which became effective on July 5, 1994. The Coast Guard is interested in how the elimination of the requirement for a letter of commitment to employ is affecting the maritime industry, shipping companies and mariners. To determine the impact, the Coast Guard invites comments on the positive or negative effects of the elimination of a letter of commitment. The Coast Guard will evaluate all comments to determine if the regulation will remain in effect or if it is appropriate to reinstitute the requirement for a letter of commitment to employ. Maritime unions, shipping companies, and mariners or mariners' representatives are encouraged to attend the public meeting.

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

Dated: July 28, 1995.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19349 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–127, RM–8676]

Radio Broadcasting Services; Oro Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Rita Bonilla, seeking the allotment of Channel 277A to Oro Valley, Arizona, as that community's second local FM service. Coordinates for this proposal are 32–26–45 and 111–02–54. Oro Valley is located within 320 kilometers (199 miles) of the United States-Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government to this proposal.

DATES: Comments must be filed on or before September 25, 1995, and reply comments on or before October 10, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Esq., Taylor, Thiemann & Aitken, 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–127, adopted July 27, 1995, and released August 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19364 Filed 8–4–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 209, 216, 217, 246, and 252

[DFARS Case 95–D702]

Defense Federal Acquisition Regulation Supplement; Contract Award (Proposed)

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 ("the Act"). The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement concerning contractor qualifications, special contracting methods, and quality assurance as a result of changes made to Title 10 U.S.C. by Sections 1505, 2401, and 2402 of the Act.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 6, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D702 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa D.Rider, DFARS FASTA Implementation Secretariat, at (703) 614–1634. Please cite DFARS case 95–D702.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 ("the Act"), dated October 13, 1994, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

DFARS Case 95–D702 addresses five defense-unique sections of the Act: Section 1505, Restrictions on Undefinitized Contractual Actions; Section 2401, Clarification of Provision Relating to Quality Control of Certain Spare Parts; Section 2402, Contractor Guarantees Regarding Weapons Systems; Section 3061, Regulations on Procurement, Production, Warehousing, and Supply Distribution Functions; and Section 10004, Data Collection Through the Federal Procurement Data System. A discussion of the changes associated with each section follows:

Section 1505, Restrictions on Undefinitized Contractual Actions—Subsection 1505(a) of the Act requires that the limitation on expenditures be changed to reflect limitations on obligations, for underfinitized contractual actions (UCAs). This was done because the Government cannot control when funds are expended by the contractor but can control when funds are obligated on a contract. Subsection 1505(b) of the Act allows the head of agency to waive the UCA restrictions, if necessary to support a contingency operation. DFARS changes resulting from Subsections 1505 (a) and (b) were published as Item IX of Defense Acquisition Circular 91–7 (60 FR 29491) on June 5, 1995. Therefore, this proposed rule contains no DFARS changes to implement Subsections 1505 (a) and (b), Subsection 1505(c) of the Act exempts contracts within the simplified acquisition threshold from UCA restrictions. This proposed rule implements Subsection 1505(c) at DFARS 217.7402(b). The proposed rule also changes other portions of DFARS Parts 216 and 217 to consolidate requirements involving UCAs. A new DFARS clause, modeled on the clause at FAR 52.216–25, Contract Definitization, is proposed to provide a standard clause for DoD use in all UCAs.

Section 2401, Clarification of Provision Relating to Qualify Control of Certain Spare Parts—This Section of the Act requires that the DoD qualification requirements that were used to qualify an original production part be used on all subsequent acquisitions of that part unless the Secretary determines in writing that other sufficiently similar requirements exist that should be used instead, or that the original requirements were unnecessary. The proposed rule amends DFARS Subpart 209.2, Qualification Requirements, to add this requirement, but allows the requiring activity to make the determination. This is consistent with the approval levels cited in other on-going FAR cases on specifications and standards and qualification requirements (QPL/QSL) and supports, in general, the empowerment of lower echelons of the acquisition workforce, when and where appropriate (in this case the requiring activity).

Section 2402, Contractor Guarantees Regarding Weapons Systems—This Section of the Act requires that acquisition regulations be modified to include guidelines for negotiating reasonable, cost effective contractor guarantees,procedures for administering such guarantees, and guidelines for determining when waivers of requirements for warranties are appropriate. The proposed rule adds language at DFARS 246.770–2(b) that discusses the logical process of constructing a rational warranty for a weapon system. The coverage provides the reader with a good source of detailed information—the DSMC Warranty Guidebook. The proposed rule balances the need for specific guidance with the need to minimize DFARS coverage. This Section of the Act also eliminated Congressional reporting requirements for other than major weapon systems. Therefore, minor changes have been made at DFARS 246.770–8 to delete language pertaining to reporting requirements. The title of the Under Secretary of Defense (Acquisition and Technology) has been corrected at DFARS 246.770–8(a).

Section 3061, Regulations on Procurement, Production, Warehousing, and Supply Distribution Functions—This section of the Act amends 10 U.S.C. 2202 to vest the Secretary of Defense with the authority to prescribe regulations governing the performance within DoD of procurement, production, warehousing, and supply distribution, and related functions. Given that existing FAR coverage of Subpart 1.3 already vests the Secretary of Defense with this authority, especially when one considers that 5 U.S.C. allows agency heads, such as the Secretary of Defense, to structure the internal administrative procedures of his/her agency to support, among other things, the procurement process, no DFARS change has been made to implement this Section of the Act.

Section 10004, Data Collection Through the Federal Procurement Data System. No changes are proposed to implement this Section of the Act in the DFARS. FAR changes associated with this Section were included in FAR Case 94–701, which was published as a proposed rule on January 9, 1995 (60 FR 2472).

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because: the new section at DFARS 209.206–70 pertains to internal Government procedures for determining qualification requirements; the revisions to DFARS Parts 216 and 217 and the new contract clause merely consolidate and standardize existing requirements pertaining to underfinitized contract actions; and the revisions to DFARS 246.770 pertain to internal Government considerations regarding to use of warranties. An initial regulatory flexibility analysis has therefore not been performed. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D702 in correspondence.

C. The Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule will not impose any additional reporting or record keeping requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209, 216, 217, 246, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR 209, 216, 217, 246, and 252 are proposed to be amended as follows:

PART 209—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR Parts 209, 216, 217, 246, and 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 209.206–70 is added to read as follows:

209.206–70 Quality control of critical aircraft and ship spare parts.

In accordance with 10 U.S.C. 2383, a contractor supplying any spare or repair part, that is critical to the operation of an aircraft or ship, is required to provide a part that meets all appropriate qualification and quality requirements as may be specified in the solicitation and made available to prospective offerors. The qualification requirements shall be identical to the DoD qualification requirements that were used to qualify the original production part, unless it is determined by the head of the requiring activity, in writing, that—

(a) There are other requirements sufficiently similar to those requirements that should be used instead; or

(b) Any or all such requirements are unnecessary.

PART 216—TYPES OF CONTRACTS

3. Section 216.603–4 is revised to read as follows:

216.603–4 Contract clauses.

(b)(2) See 217.7405(a) for additional guidance regarding use of the clause at FAR 52.216–24, Limitation of Government Liability.

(3) Use the clause at 252.217–XXXX, Contract Definitization, in accordance with its prescription at 217.7405(b), instead of the clause at FAR 52.216–25, Contract Definitization.

4. Section 216.703 is amended by revising paragraph (c) to read as follows:

216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed three years. The contracting officer, with the approval of the chief of the contracting office, may grant extensions for up to two years. No single extension shall exceed one year. See subpart 217.74 for additional limitations on the use of undefinitized orders under basic ordering agreements.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

5. Section 217.202 is amended by adding paragraph (3) to read as follows:

217.202 Use of options.

* * * * *

(3) See subpart 217.74 for limitations on the use of undefinitized options.

6. Section 217.7402 is amended by revising paragraph (b) to read as follows:

217.7402 Exceptions.

* * * * *

(b) Purchases at or below the simplified acquisition threshold;

* * * * *

217.7404–3 [Amended]

7. Section 217.7404–3 is amended in the introductory text of paragraph (a) by revising the word "earliest" to read "earlier."

8. Section 217.7405 is revised to read as follows:

§ 217.7405 Contract clauses.

(a) Use the clause at FAR 52.216–24, Limitation of Government Liability, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs.

(b) Use the clause at DFARS 252.217–XXXX, Contract Definitization, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs. Insert the applicable information in paragraphs (a), (b), and (d) of the clause. If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will be based on adequate price competition or otherwise will meet the criteria of FAR 15.804–3 for not requiring submission of cost or pricing data, the words "and cost or pricing data" may be deleted from paragraph (a) of the clause.

PART 246—QUALITY ASSURANCE

9. Section 246.770–2 is amended by redesignating paragraphs (b) and (c) as (c) and (d), respectively, by adding a new paragraph (b), and by revising newly designated paragraph (c) to read as follows:

246.770–2 Policy.

* * * * *

(b) Contracting officers and program managers shall consider the following when developing and negotiating weapon system warranty provisions:

(1) Warranties may not be appropriate in all situations, and a waiver should be sought if a warranty would not be cost-effective or would otherwise be inconsistent with the national defense. In drafting warranty provisions, the drafters must ensure they understand the planned operational, maintenance, and supply concepts of the weapon system to be fielded, and must structure a warranty that matches those concepts. A warranty plan should be prepared in consonance with development of the warranty provisions early in the weapon system's life cycle. The plan should contain program warranty strategy, terms of the warranty, administration and enforcement requirements, and should be coordinated with the user and support activities.

(2) A cost/benefit analysis must be accomplished in support of each warranty (see 246.770–7). The cost/benefit analysis compares all costs associated with the warranty to the expected benefits. An estimate shall be made of the likelihood of defects and the estimated cost of correcting such defects. Also, if substantive changes are required to the planned operational, maintenance, or supply concepts, any increased costs should be weighed against the expected benefits in deciding whether a warranty is cost-effective.

(3) The Warranty Guidebook prepared by the Defense Systems Management College, Fort Belvoir, VA 22060–5426, is a valuable reference that can assist in the development, negotiation, and administration of an effective weapon system warranty.

(c) Contracting officers may require warranties that provide greater coverage and remedies than specified in paragraph (a) of this subsection.

10. Section 246.770–8 is amended by removing paragraph (b)(2), redesignating paragraph (b)(3) as (b)(2), and revising the introductory texts of paragraphs (a), (c), and (c)(2) to read as follows:

246.770–8 Waiver and notification procedures.

(a) The Secretary of Defense has delegated waiver authority within the limits specified in 10 U.S.C. 2403. The waiving authority for the defense agencies is the Under Secretary of Defense (Acquisition and Technology). Submit defense agency waiver requests to the Director, Defense Procurement, for processing. The waiving authority for the military department is the Secretary of the department with authority to redelegate no lower than an Assistant Secretary. The waiving authority may waive one or more of the weapons system warranties required by 246.770–2 if—

* * * * *

(c) Departments and agencies shall issue procedures for processing waivers and notifications to Congress.

* * * * *

(2) Notifications shall include—

* * * * *

PART 252—CONTRACT CLAUSES

252.217–7027 [Removed]

11. Section 252.217–7027 is removed.

12. Section 252.217–XXXX is added to read as follows:

252.217–XXXX Contract Definitization.

As prescribed in 217.7405(b), use the following clause:

Contract Definitization (XXX XXXX)

(a) A (*insert specific type of contract action*) is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the undefinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a (*insert type of proposal; e.g., fixed-priced or cost-and-fee*) proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract action is as follows (*insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and cost or pricing data*):

_____

_____

_____

_____

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.8 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) of this clause, all clauses, terms, and conditions including included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract resulting from this undefinitized contract action will include a negotiated (*insert "cost/price ceiling" or "firm-fixed price"*) in no event to exceed (*insert the not-to-exceed amount*).

(End of Clause)

[FR Doc. 95–19318 Filed 8–4–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Eagle Lake Rainbow Trout and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces the 90-day finding on a petition to list the Eagle Lake rainbow trout (*Oncorhynchus mykiss aquilarum*) under the Endangered Species Act (Act) of 1973, as amended. The Service finds that the petition did not present substantial information indicating that the petitioned actions may be warranted.

DATES: The finding announced in this document was made on July 25, 1995.

ADDRESSES: Information, data, comments, or questions concerning this finding should be submitted to the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. The petition, petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Windham, staff biologist, at the above address or telephone 916–979–2725.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to commence a review of the status of the species.

The Service has made a 90-day finding on a petition to list the Eagle Lake rainbow trout (*Oncorhynchus mykiss aquilarum*). The petition, dated April 25, 1994, was submitted by John F. Bosta, of Susanville, California, and was received by the Service on April 28, 1994. The petition requested the Eagle Lake rainbow trout be listed as threatened or endangered, that critical habitat be designated, and that a recovery plan be developed. The petitioner provided some life history information for the Eagle Lake rainbow trout and material related to the fish passage problems, habitat degradation, and lack of natural reproduction. Recommendations for correcting habitat problems were included with the petition.

The Eagle Lake rainbow trout is a species of concern to the Service (November 15, 1994; 59 FR 58982). Such taxa are typically those for which some information indicates threats to the species exit but sufficient information on biological vulnerability and threats is not currently available indicating that listing as endangered or threatened is warranted.

Eagle Lake rainbow trout are endemic to Eagle Lake, Lassen County, California. Although they have been planted in numerous waters, no known self-sustaining populations of genetically pure Eagle Lake rainbow trout in waters exist outside of its native habitat. With the annual stocking of 200,000 Eagle Lake trout, the subspecies has been sustained almost entirely by California Department of Fish and Game's hatchery production since 1950. The petition and referenced literature

describe the lack of natural reproduction as the most serious concern for the long-term survival of Eagle Lake rainbow trout. Due to passage barriers and habitat degradation in Pine Creek (the only major tributary for spawning), no significant natural reproduction of Eagle Lake rainbow trout has occurred for over 40 years. Though efforts by the Forest Service to improve fish passage and riparian habitat may not be completed for 5 years, these efforts to restore natural spawning in Pine Creek are now underway.

In making a finding as to whether a petition presents substantial commercial and scientific information to indicate the petitioned action may be warranted, the Service must consider whether the petition is accompanied by a detailed narrative justification [50 CFR § 424.14 (b)(2)(ii)]. The regulations require the Service to "consider whether such petition * * * [p]rovides information regarding the status of the species over all or a significant portion of its range" [50 CFR § 424.14 (b)(2)(iii)], including current distributional and threat information. Furthermore, the Service is required to "consider whether such petition * * * [i]s accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps" [50 CFR § 424.14 (b)(2)(iv)].

Despite the limited distribution of the Eagle Lake trout, the petition included insufficient information regarding present fish population numbers and trends. In addition, the petition failed to provide substantial threat data concerning projected and ongoing management considerations with respect to the existing popular sport fishery and the stocking program for the trout. The petition also did not address the extent to which threats have been lessened by the significant recovery efforts now underway. More importantly, the future status of the subspecies may improve because of the significant recovery efforts now underway and the ongoing stocking program. Therefore, the Service finds that the petition does not present substantial information indicating that the listing of the Eagle Lake rainbow trout may be warranted.

The Service has reviewed the petition, literature cited in the petition, and other literature and information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information indicating that the petitioned actions may be warranted. The Eagle Lake rainbow trout will remain a species of concern to the Service, and the Service will continue to seek information regarding the status or threats to the subspecies. If additional information becomes available in the future, the Service may reassess the listing priority for this subspecies or the need for listing.

The petitioner also requested that critical habitat be designated and a recovery plan be developed. If the Service decides in the future to propose the fish for listing, the Service will determine whether designation of critical habitat is prudent at the time a species is listed under the Act. Recovery planning efforts begin once a species is listed.

Author

The primary author of this document is Kevin Stubbs, Sacramento Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 25, 1995.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 95–19353 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 950725190–5190–10; I.D. 062695A]

RIN 0648–AH71

Coral and Coral Reefs of the Gulf of Mexico; Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico (FMP). Amendment 3 would prohibit the taking of wild live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) off Florida north and west of the Levy/Dixie County line; remove the prohibition on taking wild live rock in the EEZ by chipping between the Pasco/Hernando County and Levy/Dixie County, Florida lines; establish annual quotas for wild live rock harvesting for 1995 and 1996 in the Gulf EEZ; and reduce the amount of substrate that may be taken with allowable octocorals in the Gulf EEZ. The intended effect is to protect the live rock resource and fishery habitat in the Gulf EEZ and to simplify the regulations implementing the FMP.

DATES: Written comments must be received on or before September 18, 1995.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 3, which includes a regulatory impact review and an environmental assessment, or for copies of a minority report on Amendment 3 by two Council members, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486, FAX 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

Under Amendment 2 to the FMP, the harvest of wild live rock in the Gulf EEZ off Florida north of Monroe County is being phased out and the taking of wild live rock elsewhere in the Gulf is prohibited. Effective January 1, 1997, all wild live rock harvests are prohibited in the Gulf EEZ. Amendment 2 also established certain restrictions on wild live rock harvesting and possession, required permits and reporting during the phase-out period, and established an aquacultured live rock permit system. The intent of Amendment 2 was to protect an essentially nonrenewable resource and prevent a net loss of fishery habitat. Florida has the only reported live rock landings from the EEZ; live rock harvesting is banned in Florida waters. The final rule to implement Amendment 2 was published December 28, 1994 (59 FR 66776).

During development of Amendment 2, the Council was concerned about the continuing effects of wild live rock harvesting in the northern Gulf, especially the Florida Panhandle area, because live rock is relatively scarce in these areas. Accordingly, Amendment 2 included a prohibition on taking of wild live rock by chipping north of the Pasco/Hernando County, Florida line, but allowed harvest of loose, rubble rock in the EEZ north of that line.

Subsequent testimony by local governments, recreational divers, and environmental groups indicated that the measures of Amendment 2 were insufficient to protect hard bottom resources, especially north and west of the Levy/Dixie County line, where the abundance of hard bottom resources declines sharply.

Amendment 3

Amendment 3 proposes the following measures: Prohibit the taking of wild live rock in the Gulf EEZ off Florida north and west of the Levy/Dixie County line—the Panhandle area; remove the prohibition on taking wild live rock by chipping between the Pasco/Hernando County and Levy/Dixie County, Florida lines; establish a 500,000 lb (226,796 kg) annual quota for 1995 and 1996 in the Gulf EEZ off Florida north of Monroe County to the Levy/Dixie County line, which is the only area that would remain open to live rock harvesting in the Gulf EEZ; and reduce the amount of substrate that may be taken at the base of an allowable octocoral in the Gulf EEZ from 3 inches (7.6 cm) to 1 inch (2.5 cm). These measures constitute minor changes to the management regime established for live rock in Amendment 2.

Prohibiting the harvest of wild live rock off the Panhandle area would address the concerns discussed above regarding relative scarcity of the resource in that area. According to testimony received by the Council, this measure would benefit reef fish fishermen and recreational divers who depend on the fishery habitat provided by live rock resources in this area.

A total of 5 individuals in the Panhandle area are eligible for vessel permits to take wild live rock until 1997. Closure of the Panhandle area to commercial harvesting is not expected to have a significant adverse impact on the live rock industry because: (1) This area accounts for a relatively small percentage of total harvest; (2) eligible participants can relocate operations to areas unaffected by this closure; and (3) all current participants will have to cease wild harvest operations by 1997, whether or not Amendment 3 is implemented.

The Council proposes removal of the prohibition on chipping of wild live rock between the Pasco/Hernando County and Levy/Dixie County, Florida lines because this 3-county area most closely resembles the southern counties, in terms of availability of live rock and the characteristics of the fishery, than the Panhandle area to the north. Leaving the prohibition in place would result in three different kinds of management regimes during the phase out—no taking of live rock in the Panhandle area, taking of loose rubble rock only in the adjoining 3-county area, and taking by chipping in the area to the south. Thus, the removal of the prohibition on chipping for the 3-county area would simplify the regulations and enhance enforcement by standardizing the harvesting restrictions throughout the range of allowable wild live rock harvesting, i.e., from the Collier/Monroe County line to the Levy/Dixie County line.

Amendment 3 proposes a cap on the allowable harvest of wild live rock from the Gulf EEZ at the approximate current harvest level of 500,000 lb (226,796 kg) for 1995 and 1996. This quota would prevent increases in harvest levels during the phaseout due to increased demand and possible effort shifts from the Florida Keys to the Gulf EEZ. The live rock fishery in the Atlantic EEZ off the Florida Keys will close when the quota for that area is reached in 1995 and will not reopen in 1996 because the quota for 1996 and subsequent years is zero. Some permitted vessels are expected to move into the Gulf and continue harvesting during 1996.

Harvest and sale of wild live rock taken on or after the effective date of the closure would be prohibited. But the prohibition on sale of wild live rock after the effective date of the closure would not apply to wild live rock harvested and landed prior to that date—wild live rock is frequently maintained by harvesters for weeks or months before sale. This would be consistent with the current rule for a closure of the EEZ off the southern Atlantic states (§ 638.25(c)(2)).

During the development of Amendment 2, some individuals who harvest octocorals in the EEZ off Florida for sale to the aquarium industry testified that attached substrate is needed to anchor the octocoral in the aquarium. Such substrate could include live rock, possibly in violation of the restrictions on the harvest of live rock. Accordingly, Amendment 2 defined allowable octocorals to include the substrate within 1 inch (2.5 cm) of the octocoral in the EEZ off the southern Atlantic states and the substrate within 3 inches (7.6 cm) in the Gulf. However, in accordance with 50 CFR 638.3(c), if a state has a landing regulation that is more restrictive than a Federal landing restriction for octocorals, a person landing in that state must comply with the more restrictive state regulation.

Florida recently implemented a rule allowing only 1 inch (2.5 cm) of substrate from the attachment of the octocoral. Therefore, an individual harvesting octocoral from the Gulf EEZ and landing in Florida must comply with the more restrictive 1-inch (2.5-cm) rule. There are no reported landings of octocorals outside Florida. The Council and NMFS agree with Florida's finding that a 3-inch (7.6 cm) rule would allow the continued taking of excessive amounts of live rock as bycatch under the octocoral quota. Therefore, Amendment 3 would redefine allowable octocorals taken in the Gulf EEZ to include only the substrate within 1 inch (2.5 cm) of an allowable octocoral. This FMP change would result in an octocoral substrate measure for the Gulf of Mexico that is consistent with the provision for the EEZ off the southern Atlantic states and with the Florida rule. This change would have negligible effects on industry practices and income. Taking of an octocoral with more than 1 inch (2.5 cm) of attached substrate would constitute taking of live rock.

Additional background and rationale for the measures discussed above are contained in Amendment 3, the availability of which was announced in the **Federal Register** on July 13, 1995 (60 FR 36093).

Minority Report

A minority report signed by two Council members raises objections to Amendment 3's closure of the Panhandle area to live rock harvesting before the 1997 closure of the Gulf EEZ established under Amendment 2. These members believe that this measure is a reversal of the Council's earlier commitment to allow Panhandle fishermen sufficient time to convert to live rock aquaculture. Copies of the minority report are available (see **ADDRESSES**). The final rule for Amendment 3 will include responses to comments received on the proposed rule, including the issue raised in the minority report.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires the regulations proposed by a council to be published within 15 days of receipt of an amendment and regulations. At this time, the Assistant Administrator for Fisheries, NOAA, (AA) has not determined that Amendment 3 is consistent with the National Standards, other provisions of the Magnuson Act, and other applicable laws. The AA, in making that

determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Under a previous rulemaking all current participants in the wild live rock fishery must cease business by 1997. This proposed rule merely accelerates the phaseout of wild live rock harvesting off the Panhandle area and is expected to affect up to 5 small businesses, which may relocate their operations from the closed area and continue operations until 1997. The measures in Amendment 3 would not: (1) Reduce annual gross revenues in excess of 5 percent; (2) significantly increase compliance or production costs of participants; (3) require capital investment to comply with the rule; or (4) require current participants to cease business. All entities involved are small entities. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 31, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is proposed to be amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 638 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 638.2, the definition for "Allowable octocoral" is revised to read as follows:

§ 638.2 Definitions.

* * * * *

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral.

* * * * *

3. In § 638.7, paragraphs (m), (n), and (p) are revised to read as follows:

§ 638.7 Prohibitions.

* * * * *

(m) Harvest or possess wild live rock in the EEZ off the southern Atlantic states north of 25°58.5′ N. lat., as specified in § 638.25(a), or in the Gulf of Mexico EEZ north and west of a line extending in a direction of 235° from true north from the Levy/Dixie County, Florida boundary or south of 25°20.4′ N. lat., as specified in § 638.26(a).

(n) Harvest wild live rock by chipping or possess wild live rock taken by chipping in the EEZ off the southern Atlantic states south of 25°58.5′ N. lat., as specified in § 638.25(b).

* * * * *

(p) Harvest or possess in the Gulf of Mexico EEZ from a line extending in a direction of 235° from true north from the Levy/Dixie County, Florida boundary to 25°20.4′ N. lat. wild live rock taken other than by hand or by chipping with a nonpower-assisted, hand-held hammer and chisel, as specified in § 638.26(b).

* * * * *

4. Section 638.26, is revised to read as follows:

§ 638.26 Wild live rock in the Gulf of Mexico.

(a) *Closed areas.* No person may harvest or possess wild live rock in the Gulf of Mexico EEZ—

(1) North and west of a line extending in a direction of 235° from true north from the Levy/Dixie County, Florida boundary, that is, from a point at the mouth of the Suwannee River at 29°17.25′ N. lat., 83°09.9′ W. long.; or

(2) South of 25°20.4′ N. lat. (extension of the Monroe/Collier County, Florida boundary).

(b) *Gear limitations.* In the Gulf of Mexico EEZ from the line described in paragraph (a)(1) of this section to 25°20.4′ N. lat., wild live rock may be harvested only by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel, and no person may possess in that area wild live rock taken other than by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel.

(c) *Harvest and possession limits.* Through December 31, 1996, a daily vessel limit of twenty-five 5-gallon (19–L) buckets, or volume equivalent (16.88 ft^3 (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf of Mexico EEZ from the line described in paragraph (a)(1) of this section south to 25°20.4′ N. lat., regardless of the number or duration of trips. Commencing January 1, 1997, the daily vessel limit is zero.

(d) *Quota and closure.*

(1) The annual quota for wild live rock from the EEZ from the line described in paragraph (a)(1) of this section south to 25°20.4′ N. lat. is 500,000 lb (226,796 kg) for the fishing years that begin January 1, 1995, and January 1, 1996. Commencing with the fishing year that begins January 1, 1997, the quota is zero.

(2) When the quota specified in paragraph (d)(1) of this section is reached, or is projected to be reached, the Assistant Administrator will file notification to that effect with the Office of the **Federal Register**. Harvest and purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale of wild live rock taken on or after the effective date of such notification would be prohibited. But the prohibition on purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale, of wild live rock in or from the EEZ of the Gulf of Mexico, after the effective date of the closure, would not apply to wild live rock harvested and landed prior to that date.

[FR Doc. 95–19325 Filed 8–2–95; 10:20 am]

BILLING CODE 3510-22-W

Notices

Federal Register

Vol. 60, No. 151

Monday, August 7, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–95–00–2]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB) to assist in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of the Act. The NOSB was originally established on January 24, 1992, with individual members appointed for staggered appointments of 3, 4, and 5 years. The terms of five members will expire in January 1996. The Secretary seeks nominations of individuals to be considered for selection as NOSB members.

DATES: Written nominations, with resumes, must be postmarked on or before August 31, 1995.

ADDRESSES: Nominations should be sent to Dr. Harold S. Ricker, Assistant Director, Transportation and Marketing Division, Room 4006 South Building, Agricultural Marketing Service, U.S. Department of Agriculture (USDA), P. O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202) 720–2704.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Secretary seeks nominations of individuals to be considered for selection as NOSB members.

A member of the NOSB shall serve for a term of 5 years, except that initial appointments were for staggered terms of 3, 4, and 5 years. The terms of five members of the current NOSB will expire on January 24, 1996. A member may serve consecutive terms if such member served an original term that was less than 5 years. However a member of the NOSB, with 4 years of service, seeking reappointment may only be reappointed in accordance with 7 U.S.C. 2283 (c) which states, "No person other than an officer or employee of the Department of Agriculture may serve more than six consecutive years on an advisory committee, unless authorized by the Secretary."

Nominations are sought for the positions of representatives of farmers/growers (2), consumer/public interest groups (2), and environmentalist. Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic farming operation, an individual who represents public interest or consumer interest groups, or an expert in the area of environmental protection and resource conservation.

Selection criteria will include such factors as: demonstrated experience and interest in organics; commodity and geographic representation; endorsed support of consumer and public interest organizations; demonstrated experience with environmental concerns; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical forms. The biographical information must be completed and returned to USDA within 10 working days of its receipt, to expedite the clearance process that required by the Secretary.

7 U.S.C. 6501 et seq.

Dated: July 31, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–19333 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Upper Columbia River Basin Ecosystem Management Strategy, Northern and Intermountain Regions; Upper Columbia River Basin Ecosystem Management Strategy, States of Idaho, Montana, Wyoming, Utah, and Nevada

AGENCY: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Revised notice of intent to prepare and environmental impact statement (EIS) and conduct planning activity which may amend Forest Service Regional Guides and will amend Forest Service and Bureau of Land Management land use plans.

SUMMARY: The Forest Service and Bureau of Land Management published a notice of intent to prepare an EIS and conduct planning activity in the **Federal Register** (Vol. 59, No. 234, pages 63071–63073) on December 7, 1994. That notice of intent stated that the EIS will consider alternative strategies for management of National Forest System and BLM-administered lands and their effects in the entire Upper Columbia River Basin (UCRB). It is now necessary to revise that notice of intent in order to reflect a change in the scope of the EIS and planning.

FOR FURTHER INFORMATION CONTACT: Gary Wyke or Cindy Deacon Williams, EIS team coleaders, 304 North 8th Street, Room 350, Boise, ID 83702, phone (208) 334–1770.

SUPPLEMENTARY INFORMATION: A portion of the UCRB is within the Greater Yellowstone Ecosystem (GYE). The GYE is an area of common climatic, physical, biological, social, and economic factors that needs to be considered in its entirety. The Forest Service intends to provide direction for National Forest Service System lands within the GYE in an ecosystem context. Therefore, the Targhee National Forest and those portions of the Bridger-Teton and Caribou National Forests within the GYE will not be included in the alternate strategies for management nor in the record of decision for the UCRB.

Dated: July 24, 1995.

James Caswell,

Acting Deputy Regional Forester, Northern Region, USDA Forest Service.

Dated: July 24, 1995.

Jack Blackwell,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

Dated: July 24, 1995.

Martha Hahn,

State Director, Idaho, USDI Bureau of Land Management.

Dated: July 24, 1995.

Larry Hamilton,

State Director, Montana, USDI Bureau of Land Management.

[FR Doc. 95–19376 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–11–M; 4310–84–M

North Powder Wild and Scenic River Management Plan Environmental Assessment, Wallowa-Whitman National Forest, Baker County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: On July 13, 1995, Wallowa-Whitman Forest Supervisor, R.M. Richmond, signed a Decision Notice which adopted into the Forest Plan the North Powder Wild and Scenic River Management Plan which required an amendment to the Wallowa-Whitman Forest Plan.

This management plan outlines use levels, development levels, resource protection measures, and outlines a general management direction for the river corridor. This amendment is necessary to implement the Wild and Scenic Rivers Act which required the Forest Service to develop a management plan for the North Powder River. Interim direction was identified in the Forest Plan as Management Area 7 (Wild and Scenic Rivers). The environmental assessment documents the analysis of alternatives to managing the North Powder Wild and Scenic River in accordance with the Wild and Scenic Rivers Act.

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR Part 217. Appeals must be filed within 45 days from the date of publication in the Baker City Herald. Notices of Appeals must meet the requirement of 36 CFR 217.9.

The environmental assessment for the North Powder River Wild and Scenic River Management Plan is available for the public review at the Wallowa-Whitman National Forest Supervisor's Office in Baker City, Oregon.

EFFECTIVE DATE: Implementation of this decision shall not occur within 30 days following publication of the legal notice of the decision in the Baker City Herald.

FOR FURTHER INFORMATION CONTACT: For further information, contact Steve Davis, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814 or phone (503) 523–1316.

Dated: July 13, 1995.

R.M. Richmond,

Forest Supervisor.

[FR Doc. 95–19377 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–11–M

Augusta Timber Sale, Willamette National Forest, Lane County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to harvest trees and build roads in the Augusta drainage of the Blue River Ranger District. Approximately 200 acres of trees will be harvested and approximately 0.5 miles of road will be constructed. The proposal results from an extensive landscape design and watershed analysis conducted in the Augusta area. The dominant theme for that design was to base landscape and watershed objectives, designs, and prescriptions on an interpreted range of "natural" variability of disturbance processes.

DATES: Comments concerning the scope of the analysis should be received in writing by September 10, 1995.

ADDRESSES: Send written comments to Lynn Burditt, District Ranger, Blue River Range Station, P.O. Box 199, Blue River, Oregon, 97413.

FOR FURTHER INFORMATION CONTACT: Karen Geary, Resource Planning Assistant, (503) 822–3317.

SUPPLEMENTARY INFORMATION: The Augusta Creek timber sale proposal is one result of the Augusta Creek Project, a natural disturbance-based landscape "design" for a managed forest. The landscape design was projected for 200 years into the future using 20 year time steps. This specific timber sale proposal includes writing prescriptions for the nine blocks that would be in early seral conditions at the end of the first 20-year time step. This will result in harvesting approximately 200 acres of trees in the first timber sale entry and building approximately 0.5 miles of roads to access the trees. The nine blocks are located in T19S, R5E, Section 1; T19S, R51/2E, Sections 9 and 16; T18S, R5E, Sections 35 and 36; T18S, R51/2E, Sections 31, 32, and 33 (Lat 43°56′00″, Long 122°7′30″).

Detailed ground review and alternative development will be concentrated on these nine landscape blocks. Decisions will include identification of the timing and location of timber harvests, silvicultural prescriptions, levels of green and dead tree retention, and the spatial patterns of retention trees.

The Augusta Creek Landscape Design Project was initiated to establish and integrate landscape and watershed objectives into a landscape design to guide management activities within a 19,000 acre planning area in western Oregon. The objectives were to maintain native species, ecosystem processes and structures, and long-term ecosystem productivity in a Federally owned and managed landscape with substantial acreage allocated to timber harvest. A dominant theme has been to base landscape and watershed objectives, designs, and prescriptions on an interpreted range of "natural" variability of disturbance processes. A fire history study characterized fire patterns and regimes over the last 500 years. Changes in the existing and surrounding landscape due to past intensive human uses were also factored into the landscape design. Landscape prescriptions include a small-watershed based aquatic reserve system and major valley bottom corridor reserves. Where timber harvest is allocated, four landscape management areas prescribe varying rotation ages (100–300 years), green tree retention levels (15–50%), and spatial patterns as derived from interpretations of fire regimes. These prescriptions were linked to specific blocks of land, which provides an efficient transition to site-level planning and project implementation.

The EIS will tier to the Willamette National Forest Land and Resource Management Plan (1990) as amended by the Record of Decision and Standards and Guidelines for Management of Habitat For Late Successional and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl (1994).

Scoping will include public meetings and potentially visits to the site. The first public meeting is scheduled for August 3, 1995 and will be held at the Lane Transit District office in Eugene, Oregon. Additional public meetings will be held in August and September.

Preliminary scoping identified a few issues. One of the issues is the location of some of the units and possible road construction in the Chucksney inventoried roadless area. This is the reason the Forest Service is preparing an EIS. Other issues identified at this point include water quality in Augusta Creek and in the South Fork of the McKenzie River and the Wild and Scenic Study River values of the South Fork McKenzie river.

The lead agency for this proposal is the Forest Service. The responsible official is Lynn Burditt, District Ranger. The Forest Service invites your comments or ideas on this proposal and asks that they please be sent in writing to the above address.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1995. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* versus *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* versus *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by December 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision and rationale for the decisions in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR 217).

Dated: July 27, 1995.

Marsha Scutvick,

Acting Forest Supervisor.

[FR Doc. 95–19378 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Seminole Electric Cooperative, Inc.; Final Supplemental Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of final supplemental environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing a Final Supplemental Environmental Impact Statement (FSEIS) related to Seminole Electric Cooperative, Inc.'s, (Seminole) proposed Hardee Unit 3. The FSEIS is a supplement to the Final Environmental Impact Statement issued in January 1991 by the Rural Electrification Administration (predecessor of RUS).

A Draft Supplemental Environmental Impact Statement was issued for Hardee Unit 3 in May of 1995. The availability of the draft appeared in the **Federal Register** and in newspapers with a general circulation in Polk and Hardee Counties, Florida. There was a 45-day comment period on the draft which ended on July 17, 1995. Comments received during this comment period have been included in the FSEIS and have been addressed therein as appropriate.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, Rural Utilities Service, Ag. Box 1569, Washington, DC 20250, Telephone (202) 720–1784, Fax (202) 720–7491.

SUPPLEMENTARY INFORMATION: The FSEIS for Hardee Unit 3 covers the construction and operation of 440 MW of additional generating capacity to be installed at the existing 1,300-acre Hardee Power Station site. The Hardee Power Station site is located in Hardee and Polk counties approximately 9 miles northwest of Wauchula, 16 miles south-southwest of Bartow, and 40 miles east of Tampa Bay. The site is bordered on the east by Hardee County Road 663, a CSX Railroad right-of-way, and CF Industries' Hardee Complex. IMC-Agrico properties surround the remaining portions of the site. Payne Creek flows along the southern and western boundary of the Hardee Power Station site. The proposed Hardee Unit 3 would occupy approximately 50 acres of this site.

As proposed in the Final Environmental Impact Statement for the Hardee Power Station, Hardee Power Partners has constructed and operates 295 MW of generation capacity at the Hardee Power Station and proposes an additional 145 MW of generation capacity there by the year 2003 for use by Seminole or TECO Power Services, Corp. Seminole originally proposed to construct and operate an additional 220 MW at the Hardee Power Station at a future date that was to be determined. That addition, along with Hardee Power Partners' 145 MW addition, would have increased the existing 295 MW Hardee Power Station capacity to 660 MW. Seminole now proposes in the FSEIS to construct 440 MW of additional capacity at the Hardee Power Station at a specified date, 1999, instead of the originally proposed 220 MW addition at an unspecified date. As now proposed, the Hardee Power Station Site would be made up of a total of 880 MW of capacity when completed.

The proposed Hardee Unit 3 would consist of natural gas fired combustion turbines utilizing heat recovery steam generators that will operate efficiently by recovering heat from the combustion turbines. Fuel oil would be used as a backup source of fuel. These are the same type of generators already installed at the Hardee Power Station (295 MW) and the same type proposed for future installation (145 MW) at the site by Hardee Power Partners. The natural gas would be transported via an existing 18 inch diameter, underground gas pipeline connected to the Florida Gas Transmission System to the Hardee Power Station. Three existing 230 kilovolt transmission lines would be utilized to connect Hardee Unit 3 into the Florida transmission grid.

Alternatives to the project as proposed included no action, design alternatives, alternative fuels, and conservation.

Seminole has provided RUS with a Site Certification Application/ Environmental Analysis for Hardee Unit 3 which is the primary support document used by RUS to develop its FSEIS. RUS has concluded that the Site Certification Application/ Environmental Analysis for Hardee Unit 3 represents an accurate assessment of the potential environmental impacts related to the proposed project. The Hardee Unit 3 Site Certification Application/Environmental Analysis has been incorporated by reference into the FSEIS and is available for inspection by interested parties at RUS or Seminole at the addresses provided in this notice. That document, along with the FSEIS, will also be available for review at the following libraries:

Bartow Public Library, 315 E. Parker Street, Bartow, Florida 33830.
Hardee County Library, 315 N. 6th Avenue, Suite 114, Wauchula, Florida 33837.

Notice of availability of the FSEIS and the 30-day comment period is being published in the **Federal Register** by RUS and EPA. Seminole will have a notice similar to this one published in newspapers of general circulation in Polk and Hardee Counties. As it is possible that RUS, EPA, and Seminole's notices will not appear on the same date, the 30-day comment period will begin on the date the latest notice (RUS, EPA or Seminole's) is published. In no case would the 30-day comment period end prior to 30 days from the publication date of this notice. Questions concerning the closing date of the 30-day comment period can be referred to Mr. Lawrence Wolfe at (202) 720–1784.

Anyone wishing to comment on the FSEIS should do so in writing within the 30-day comment period to RUS at the address provided in this notice. All comments received during the comment period will be given consideration in the formulation of final determinations regarding RUS's action related to the Hardee Unit 3. Prior to taking its final action related to the Hardee Unit 3, RUS will prepare a Record of Decision. The availability of the Record of Decision will not be announced nor circulated as have the Draft Supplemental Environmental Impact Statement and the FSEIS. Anyone wishing a copy of RUS's Record of Decision for the project should notify RUS at the address provided in this notice.

Dated: July 28, 1995.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 95–19334 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–15–P

Yazoo Valley Electric Power Association; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request by Yazoo Valley Electric Power Association to use its general funds to construct a headquarters facility in Yazoo County, Mississippi.

The FONSI is based on a Borrower's Environmental Report (BER) submitted to RUS by Yazoo Valley Electric Power Association. RUS conducted an independent evaluation of the report and concurs with its scope and content. In accordance with RUS Environmental Policies and Procedures, 7 CFR 1794.33, RUS prepared an environmental assessment for the project based on the information provided in the BER.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, RUS, Ag. Box 1569, Washington, DC 20250–1569, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The headquarters facility is proposed to be located in Yazoo City, Mississippi, on Gordon Avenue adjacent to the National Guard Armory. The size of the proposed site for the headquarters facility is approximately 25 acres of which 15 acres would be developed. The headquarters facility will consist of a 12,823 square foot building to be used for assembly, operations, administration, and engineering office space, a 10,800 square foot warehouse, a 9,000 square foot shop, approximately 90 parking spaces, a fuel service island, a transformer storage area, and a pole storage yard.

RUS considered the alternatives of no action and alternative site locations for a new headquarters facility.

Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Yazoo Valley Electric Power Association, 1408 Grand Avenue, Yazoo City, Mississippi 39194–0008, telephone (601) 746–4251.

Dated: July 31, 1995.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 95–19335 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–15–M

BOARD FOR INTERNATIONAL BROADCASTING

Notice of Agency Termination

Please be advised that, consistent with the U.S. International Broadcasting Act of 1994, (Public Law 103–236, sec. 310(e)), the Board for International Broadcasting Act of 1973, as amended, is repealed effective September 30, 1995, or the date on which all members of the new Broadcasting Board of Governors are confirmed, whichever is earlier.

The primary functions of the BIB will be consolidated under the new Board, with expanded responsibilities, within USIA. Confirmation of the new Board appears imminent, triggering the abolition of the BIB. The following address is provided for any future contact after the date of transfer: Broadcasting Board of Governors, 330 Independence Avenue, SW., Suite 3300, Washington, DC 20547, Phone—202–619–3375.

Richard W. McBride,

Executive Director.

[FR Doc. 95–19367 Filed 8–4–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Office of Acquisition Management.
Title: Revision to the Commerce Acquisition Regulation (CAR) Clause at 1352.217–109 Entitled "Insurance Requirements."
Form Number(s): 1352.217–109.
Agency Approval Number: 0690–0010.
Type of Request: Extension of a currently approved collection.
Burden: 33 hours.
Number of Respondents: 33.
Avg Hours Per Response: 1 hour.
Needs and Uses: In its contracts for construction, alteration and repair of ships, the Department of Commerce requires each selected contractor to procure and maintain insurance as specified in the CAR Clause 1352.217–109, "Insurance Requirements." The clause also requires the contractor to submit proof of this insurance to the contracting officer before the work under the contract is authorized to start.

Affected Public: Businesses or other for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Office of Acquisition Management.
Title: Department of Commerce Solicitations: Requests for Proposals (RFPs) or Invitations for Bids (IFBs).
Form Number(s): None.
Agency Approval Number: 0690–0008.
Type of Request: Extension of a currently approved collection.
Burden: 108,000 hours.
Number of Respondents: 2,700.
Avg Hours Per Response: 40 hours.
Needs and Uses: The Commerce Department is required by the Competition in Contracting Act to seek maximum competition when issuing contracts for supplies and services. The Department is required to issue solicitations which require prospective contractors to prepare and submit technical and cost proposals as part of the Federal acquisition process for awarding these contracts.
Affected Public: Business or other–for–profit and Not–for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Office of Acquisition Management.
Title: Department of Commerce Partners in Quality Contracts (PQC) Program.
Form Number(s): None.
Agency Approval Number: 0690–0012.
Type of Request: Extension of a currently approved collection.
Burden: 4,400 hours.
Number of Respondents: 100.
Avg Hours Per Response: 44 hours.
Needs and Uses: The National Performance Review (NPR) conducted by Vice President Gore outlined several objectives, including improving the Federal acquisition process. The Department of Commerce (DOC) has developed a program that is philosophically consistent with NPR, known as the Partners in Quality Contracting (PQC) Program. PQC is a creative nonmonetary recognition program that showcases the importance of quality in the government acquisition process.
Affected Public: Business or other–for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Institute of Standards and Technology (NIST).
Title: NIST Manufacturing Extension Partnership.
Form Number(s): None.
Agency Approval Number: 0693–0005.
Type of Request: Extension of a currently approved collection.
Burden: 10,000 hours.
Number of Respondents: 250.
Avg Hours Per Response: 40 hours.
Needs and Uses: In accordance with the Omnibus Trade and Competitiveness Act of 1988, 15 U.S.C. 278k and 2781, NIST seeks to announce the availability of funds for planning and implementation of manufacturing extension center and related projects. The purpose of the information collection is to obtain proposals submitted to specific solicitations. Respondents are affiliated with not–for–profit organizations which operate these centers or deliver supporting services.
Affected Public: Not–for–profit institutions and State, Local or Tribal Government.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Virginia Huth, (202) 395–6929.

Agency: National Institute of Standards and Technology (NIST).
Title: Accreditation Body Evaluation Program under the Fastener Quality Act P.L. 101–592.
Form Number(s): None.
Agency Approval Number: 0693–0015.
Type of Request: Revision of a currently approved collection.
Burden: 20 hours.
Number of Respondents: 5.
Avg Hours Per Response: 4 hours.
Needs and Uses: NIST needs the information to evaluate accreditation bodies which are applying for approval to accredit testing laboratories under the scope of the Fastener Quality Act P.L. 101–592.
Affected Public: Business or other–for–profit and Not–for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Virginia Huth, (202) 395–6929.

Agency: National Institute of Standards and Technology (NIST).
Title: National Voluntary Conformity Assessment System Evaluation Program (NVCASE).
Form Number(s): None.
Agency Approval Number: 0693–0019.
Type of Request: Extension of a currently approved collection.
Burden: 20 hours.
Number of Respondents: 10
Avg Hours Per Response: 2 hours.
Needs and Uses: NIST needs the information to evaluate conformity assessment bodies which are applying for recognition to provide needed services to manufacturers whose products must satisfy mandatory foreign regulations prior to import.
Affected Public: Business or other–for–profit and Not–for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Virginia Huth, (202) 395–6929.

Agency: International Trade Administration/US&FCS/EPS.
Title: User Satisfaction Surveys Evaluation Program.
Form Number(s): ITA–4108P–A1, ITA–4110P et al.
Agency Approval Number: ITA–41018P–A1, ITA–4110P et al.
Type of Request: Revision of a currently approved collection.
Burden: 5,444 hours.
Number of Respondents: 31,572.
Avg Hours Per Response: 10 minutes.
Needs and Uses: ITA provides products and services to help U.S. exporters operate in international markets. ITA units must have a tool that provides feedback on their customers' satisfaction with their products and services. This information will be used by individual offices to improve their ability to deliver services or enhance products.
Affected Public: Business or other–for–profit institutions and State, Local or Tribal Government.
Frequency: Annual.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration.
Title: Certified Trade Mission: Application for Status.
Form Number(s): ITA–4127P.
Agency Approval Number: 0625–0215.
Type of Request: Extension of a currently approved collection.
Burden: 60 hours.
Number of Respondents: 60.
Avg Hours Per Response: 1 hour.

Needs and Uses: The Certified Trade Mission Program offers trade mission guidance and assistance to Federal, state and local government developmental agencies, chambers of commerce, industry trade associations and other export groups.

Affected Public: Individuals or households, Business or other–for–profit, Not–for–profit institutions, Federal Government and State, Local or Tribal Government.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/US&FCS/DO.

Title: Export Assistance Request.

Form Number(s): ITA–736P.

Agency Approval Number: 0625–0205.

Type of Request: Extension of a currently approved collection.

Burden: 1,250 hours.

Number of Respondents: 25,000.

Avg Hours Per Response: 3 minutes.

Needs and Uses: As a result of an internal management study, ITA adopted a management strategy to target export assistance efforts to the infrequent exporter. ITA district offices must have a vehicle upon which to screen unsolicited calls for assistance and a vehicle upon which to make appropriate referrals to supporting organizations and agencies.

Frequency: Annual.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Office of the Inspector General.

Title: Applicant for Funding Assistance.

Form Number(s): CD–346.

Agency Approval Number: 0605–0001.

Type of Request: Extension of a currently approved collection.

Burden: 240 hours.

Number of Respondents: 960.

Avg Hours Per Response: 4 hours.

Needs and Uses: This survey obtains information that is used to establish the good character of principal officers and employees of organizations, firms, or recipients or beneficiaries of grants, loans, or loan guarantee programs that may receive grants, loans or loan guarantees from the Department of Commerce.

Affected Public: Businesses or other for–profit organizations, not–for–profit institutions.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Economic Development Administration.

Title: Proposal for Federal Assistance and Application for Federal Assistance.

Form Number(s): ED–900P and ED–900A (formerly ED–101P and ED–101A).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 72,000 hours.

Number of Respondents: 2,500.

Avg Hours Per Response: 28 hours.

Needs and Uses: This survey obtains information that is used to establish the good character of principal officers and employees of organizations, firms, or recipients or beneficiaries of grants, loans, or loan guarantee programs that may receive grants, loans or loan guarantees from the Department of Commerce.

Affected Public: Businesses or other for–profit organizations, not–for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to the respective desk officer.

Dated: August 1, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19361 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–427–801]

Antifriction Bearings From France; Notice of United States Court of International Trade Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 5, 1995, in *SKF USA Inc. and SKF France, S.A.*, v. *United States*, Slip Op. 95–123 (*SKF-France*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the second administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al.*, 57 FR 28360 (June 24, 1992) (*AFBs II*). The CIT had previously remanded the final results to the Department for the reconsideration of a number of issues for *SKF-France*. The CIT has now entered final judgment on all issues. The results covered the period May 1, 1990 through April 30, 1991.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1995, the CIT in *SKF-France*, Slip Op. 95–123, remanded *AFBs II* to the Department to (1) include in the Department's circumstance-of-sale adjustment "first level" indirect selling expenses (these are expenses incurred by the SKF manufacturers on sales to SOS, a related distributor, that relate to SOS's sales of subject merchandise to unrelated customers) incurred by SKF affiliated manufacturers Sarma, ADR, and SKF France, S.A. (collectively known as "SKF"); (2) reduce the amount of the home market indirect selling expense adjustment only for expenses incurred by SKF which do not relate to SOS's sales of subject merchandise to unrelated customers; and (3) apply the U.S. inland insurance rate to inventory value instead of to unit price. The Department submitted its results of redetermination pursuant to this remand order on April 25, 1995. On July 5, 1995, in *SKF-France*, the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision on July 5, 1995, constitutes a decision not in harmony with the Department's final results. Publication of this notice fulfulls this obligation.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of entries pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of *AFBs II* to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19433 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–801]

Antifriction Bearings From Germany; Notice of United States Court of International Trade Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 5, 1995, in *SKF USA Inc. and SKF GmbH* v. *United States*, Slip Op. 95–121 (*SKF-Germany*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the second administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al.*, 57 FR 28360 (June 24, 1992) (*AFBs II*). The CIT had previously remanded the final results to the Department for the reconsideration of one issue for *SKF-Germany*. The CIT has now entered final judgment on all issues. The results covered the period May 1, 1990 through April 30, 1991.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1995, the CIT in *SKF-Germany*, Slip Op. 95–121, remanded *AFBs II* to the Department to apply the U.S. inland insurance rate to inventory value instead of to unit price. The Department submitted its results of redetermination pursuant to this remand order on April 25, 1995. On July 5, 1995, in *SKF-Germany*, the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision on July 5, 1995, constitutes a decision not in harmony with the Department's final results. Publication of this notice fulfulls this obligation.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of entries pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of *AFBs II* to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19432 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–801]

Antifriction Bearings From Italy; Notice of United States Court of International Trade Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 5, 1995, in *SKF USA Inc. and SKF Industrie S.p.A.* v. *United States*, Slip Op. 95–120 (*SKF-Italy*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the second administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al.*, 57 FR 28360 (June 24, 1992) (*AFBs II*). The CIT had previously remanded the final results to the Department for the reconsideration of one issue for *SKF-Italy*. The CIT has now entered final judgment on all issues. The results covered the period May 1, 1990 through April 30, 1991.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1995, the CIT in *SKF-Italy*, Slip Op. 95–120, remanded *AFBs II* to the Department to apply the U.S. inland insurance rate to inventory value instead of to unit price. The Department submitted its results of redetermination pursuant to this remand order on April 25, 1995. On July 5, 1995, in *SKF-Italy*, the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision on July 5, 1995, constitutes a decision not in harmony with the Department's final results. Publication of this notice fulfulls this obligation.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of entries pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of *AFBs II* to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19431 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–401–801]

Antifriction Bearings From Sweden; Notice of United States Court of International Trade Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 5, 1995, in *SKF USA Inc. and SKF Sverige AB* v. *United*

States, Slip Op. 95–124 (*SKF-Sweden*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the second administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al.*, 57 FR 28360 (June 24, 1992) (*AFBs II*). The CIT had previously remanded the final results to the Department for the reconsideration of one issue for *SKF-Sweden*. The CIT has now entered final judgment on all issues. The results covered the period May 1, 1990 through April 30, 1991.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1995, the CIT in *SKF-Sweden*, Slip Op. 95–124, remanded *AFBs II* to the Department to apply the U.S. inland insurance rate to inventory value instead of to unit price. The Department submitted its results of redetermination pursuant to this remand order on April 25, 1995. On July 5, 1995, in *SKF-Sweden*, the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision on July 5, 1995, constitutes a decision not in harmony with the Department's final results. Publication of this notice fulfills this obligation.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of entries pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of *AFBs II* to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19430 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–801]

Antifriction Bearings From the United Kingdom; Notice of United States Court of International Trade Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 5, 1995, in *SKF USA Inc. and SKF (U.K.) Limited* v. *United States*, Slip Op. 95–122 (*SKF–UK*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the second administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al.*, 57 FR 28360 (June 24, 1992) (*AFBs II*). The CIT had previously remanded the final results to the Department for the reconsideration of one issue for *SKF–UK*. The CIT has now entered final judgment on all issues. The results covered the period May 1, 1990 through April 30, 1991.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1995, the CIT in *SKF–UK*, Slip Op. 95–122, remanded *AFBs II* to the Department to apply the U.S. inland insurance rate to inventory value instead of to unit price. The Department submitted its results of redetermination pursuant to this remand order on April 25, 1995. On July 5, 1995, in *SKF–UK*, the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision on July 5, 1995, constitutes a decision not in harmony with the Department's final results. Publication of this notice fulfills this obligation.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of entries pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of *AFBs II* to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19429 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Notice of the National Ocean Service's Discontinuation of the Printing and Distribution of Book-Form Tide and Tidal Current Prediction Tables as a Standard Nautical Product

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration's National Ocean Service is announcing that, beginning with the 1996 edition, NOS will no longer print and distribute book-form Tide and Tidal Current Prediction Tables as a standard nautical product.

FOR FURTHER INFORMATION CONTACT: Richard Sillcox, (301) 713–2812, or (202) 482–2152.

SUPPLEMENTARY INFORMATION: Under 33 U.S.C. 883a–883j, NOS is authorized to conduct tide and current observations, prepare analyses and predictions of the tide and current data, and disseminate to the public such data and information resulting from the observations and analyses. Consistent with this authority, NOS had annually printed and distributed book-form Tide and Tidal Current Prediction Tables (Tables) as a standard nautical product.

NOS is experiencing a shortage of funds to print and distribute the Tables. In addition, the role of the NOS with regard to the publication of the Tables is redefined to be that of maintaining and updating the tidal prediction database from domestic and international sources and generating the annual predictions and associated information. Therefore, beginning with the 1996 edition of those Tables, NOS will no longer print and distribute book-form Tables as a standard nautical product.

The titles of the NOS publications affected are:

"Tide Tables 1996—East Coast of North and South America including Greenland";

"Tide Tables 1996—West Coast of North and South America including the Hawaiian Islands";

"Tide Tables 1996—Central and Western Pacific Ocean and Indian Ocean";

"Tide Tables 1996—Europe and West Coast of Africa including the Mediterranean Sea";

"Tidal Current Tables 1996—Atlantic Coast of North America";

"Tidal Current Tables 1996—Pacific Coast of North America and Asia";

"Regional Tide and Tidal Current Tables 1996—New York Harbor to Chesapeake Bay"; and

"Supplemental Tidal Predictions—Anchorage, Nikiski, Seldovia, and Valdez, Alaska—1996".

Although NOS will no longer print and distribute the Tables in a book format, a complete set of Tables will be made available to all who request it as a special compilation of prediction information on CD–ROM. The CD–ROM will contain camera-ready PostScript page-images. There will be a fee charged for production and distribution of any requested special compilation. Although available to all who request it, the CD–ROM vehicle may also be used by private printers who wish to print in book-form the full set of Tables for distribution to retailers and the general public. The annual predictions and associated information will be made available on the same schedule as followed in previous years.

In addition to the CD–ROM, two new vehicles will be provided for obtaining predictions. First, for the approximately 3700 domestic tide stations, a 3-day window of predictions for any date in 1995 and 1996 will be offered on the NOS, Coastal and Estuarine Oceanography Branch, Tidal Information Distribution and Education System (TIDES) electronic bulletin board which is accessible by telephone modem (301–713–4492, N–8–1, up to 9600 baud). Second, for domestic tidal reference stations, predictions covering a 4-day period beginning on the day of inquiry will be available on the NOS, Coastal and Estuarine Oceanography Branch, Mosaic Homepage on the Internet (http://www–ceob.nos.noaa.gov). These two new communication pathways will also be used to continuously inform customers when prediction products become available or finalized during the year. Further, NOS will continue to provide tide and tidal current prediction and associated information on the media and in the time-frames with which customers have been familiar from past experience with NOS.

Thus, all requests for prediction and associated information continue to be welcome. Beginning immediately, NOS is accepting prediction data requests via two new communication pathways. The first is the TIDES electronic bulletin board. The second is the NOS, Coastal and Estuarine Oceanography Branch, World Wide Web Homepage.

As NOS is no longer printing and distributing the Tables in book-form, the NOS Nautical Chart Sales Agents will no longer obtain the Tables in book-form from the NOS Distribution Branch. Instead, they may obtain quantities of the Tables for resale to the public from various private printers and distributors. NOS is aware of a small number of vendors who have shown interest in printing and distributing the Tables in book-form. NOS requests any and all parties who may be interested in printing and distributing the Tables in book-form to contact NOS.

NOS has been in contact with the U.S. Coast Guard concerning 33 CFR Part 164 (Navigation and Safety Rules). Questions concerning that regulation should be addressed to Chief, Navigation Rules Branch, G–NVT–3, United States Coast Guard, Washington, DC 20593, telephone 202–267–0416.

NOS is publishing this notice consistent with section 8a(6)(j) of Office of Management and Budget Circular A–130. Anyone with questions or comments regarding the above subject or private printers and distributors wishing more information should write, fax or e-mail to: NOAA, National Ocean Service Attn: Tidal Predictions, N/OES33, 1305 East-West Highway, Silver Spring, MD 20910, fax 301–713–4501, (http://www–ceob.nos.noaa.gov).

Dated: July 31, 1995.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–19302 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–08–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona, California, New Mexico and Texas Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Chairpersons of the Arizona, California, New Mexico and Texas Advisory Committees to the Commission will convene at 10:00 a.m. and adjourn 12:00 p.m. on Saturday, August 26, 1995, at the Doubletree Hotel, 201 Marquette N.W., Albuquerque, New Mexico 87102. The purpose of the meeting is to discuss a draft report and follow-up activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Thomas Pilla, Acting Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 27, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19389 Filed 8–4–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:00 p.m. on Friday, September 8, 1995, at the Los Angeles Airport Marriott, 5844 West Century, Los Angeles, California 90045. The purpose of the meeting is to discuss the Chairpersons' conference and a draft report on immigration law enforcement.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael C. Carney, 213–580–7903, or Thomas V. Pilla, Acting Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working

days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19390 Filed 8–4–95; 8:45 am]

BILLING CODE 6335–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Settlement on Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

August 2, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and announcing Guaranteed Access Levels.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated July 6, 1995, the Governments of the United States and El Salvador agreed, pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), to establish limits for Categories 351/651 and 352/652 for a three-year term—March 27, 1995 through December 31, 1995; January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through March 26, 1998. The governments also agreed to establish Guaranteed Access Levels (GALs) for Categories 351/651 and 352/652 for the periods January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through March 26, 1998.

Beginning on August 9, 1995, the U.S. Customs Service will start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 351/651 and 352/652 that are destined for El Salvador and subject to the GAL established for Categories 351/651 and 352/652 for the period beginning on January 1, 1996 and extending through December 31, 1996. These products are governed by Harmonized Tariff item number 9802.00.8015 and chapter 61 Statistical Note 5 and chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule. Interested parties should be aware that shipments of cut parts in Categories 351/651 and 352/652 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in El Salvador in order to qualify for entry under the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period for Categories 351/651 and 352/652 to end on December 31, 1995 at increased levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 32654, published on June 23, 1995; and 60 FR 19892, published on April 21, 1995.

Requirements for participation in the Special Access Program are provided in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 60 FR 2740, published on January 11, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 16, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the twelve-month period beginning on March 27, 1995 and extending through March 26, 1996.

Effective on August 9, 1995, you are directed, pursuant to the Memorandum of Understanding dated July 6, 1995 between the Governments of the United States and El Salvador, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, to amend the current restraint period to end on December 31, 1995 and increase the limits for Categories 351/651 and 352/652 as follows:

Category	Restraint period [1]
351/651	500,000 dozen.
352/652	8,000,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 26, 1995.

Beginning on August 9, 1995, the U.S. Customs Service is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 351/651 and 352/652 that are destined for El Salvador and re-exported to the United States on and after January 1, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19427 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

August 2, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17334, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on August 9, 1995, you are directed to adjust the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Levels in Group I	
237	1,121,432 dozen.
239	10,962,326 kilograms.
331/631	4,974,169 dozen pairs.
333/334	229,986 dozen of which not more than 32,166 dozen shall be in Category 333.
335	134,745 dozen.
336	705,875 dozen.
338/339	2,436,881 dozen.
340/640	983,118 dozen.
341/641	823,900 dozen.
342/642	541,688 dozen.
345	161,313 dozen.
347/348	1,968,385 dozen.
350	84,523 dozen.
351/651	615,853 dozen.
352/652	2,202,316 dozen.
359–C/659–C [2]	755,095 kilograms.
361	665,830 numbers.
369–S [3]	47,853 kilograms.
431	182,387 dozen pairs.
433	3,269 dozen.
443	39,541 numbers.
445/446	31,530 dozen.
447	7,950 dozen.
611	5,413,520 square meters.
633	44,608 dozen.
634	408,802 dozen.
635	326,008 dozen.
636	1,525,939 dozen.
638/639	2,022,195 dozen.
643	642,936 numbers.
645/646	638,694 dozen.
647/648	915,277 dozen.
649	7,041,781 dozen.
650	92,682 dozen.
659–H [4]	1,155,522 kilograms.
847	678,250 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [5], 360, 362, 363, 369–O [6], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [7], 665, 666, 669–O [8], 670–O [9], 831–846 and 550–859, as a group.	112,952,469 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[5] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C).

[6] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[7] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H).

[8] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[9] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19428 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Postponement of Public Hearing and Extension of the Comment Period for the Draft Environmental Impact Statement for Construction and Operation of a Relocatable Over the Horizon Radar, Puerto Rico

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the Commonwealth of Puerto Rico Public Law Number Nine, Section 4(c), the Department of Navy, has prepared and filed with the US Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the construction and operation of a Relocatable Over the Horizon Radar (ROTHR) system in Puerto Rico.

On July 24, 1995, the Navy announced in the **Federal Register** that public hearings would be held on August 8, 1995 in Lajas, PR and on

August 10, 1995 in Vieques, PR to solicit public comment on the DEIS for ROTHR. In order to allow additional time for public review, the public hearings have been postponed and the public comment period has been extended to September 29, 1995. Notice of the revised hearing dates will be published in local newspapers at least 15 days prior to the hearings.

The DEIS has been distributed to various federal, Commonwealth, and local agencies, elected officials, special interest groups, and libraries. The DEIS is available for review at the following locations: Town Hall, Municipality of Vieques, Vieques Island, PR; Public Library, Municipality of Lajas, PR; and Mayor's Office, Lajas, PR. A limited number of copies of the DEIS are available by contacting Ms. Linda Blount, (804) 322–4892 or Sr. Jose Negron, Commander Fleet Air, Caribbean, (809) 965–4429.

Written statements and/or comments regarding the DEIS should be mailed to: Department of the Navy, Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, VA 23511–2699 (Attn. Ms. Linda Blount, Code 2032LB). Questions may be directed to Ms. Linda Blount, (804) 322–4892 or Sr. Jose Negron, Commander Fleet Air, Caribbean, (809) 865–4429. All comments must be postmarked no later than September 29, 1995 to become part of the official record.

Dated: August 19, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–19322 Filed 8–4–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Preparation of an Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) for a geologic repository at Yucca Mountain, Nye County, Nevada, for the disposal of spent nuclear fuel and high-level radioactive waste, in accordance with the Nuclear Waste Policy Act of 1982, as amended (NWPA) (42 U.S.C. § 10101 *et seq.*), the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. § 4321 *et seq.*), the Council on Environmental Quality regulations that implement the procedural provisions of NEPA (40 CFR Parts 1500–1508), and the DOE procedures for implementing NEPA (10 CFR Part 1021). DOE invites Federal, State, and local agencies, Native American tribal organizations, and other interested parties to participate in determining the scope and content of the EIS.

The NWPA directs DOE to evaluate the suitability of the Yucca Mountain site in southern Nevada as a potential site for a geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste. If the Secretary of Energy determines that the Yucca Mountain site is suitable, the Secretary may then recommend that the President approve the site for development of a repository. Under the NWPA, any such recommendation shall be considered a major Federal action and must be accompanied by a final environmental impact statement. Accordingly, DOE is preparing this EIS in conjunction with any potential DOE recommendation regarding the development of a repository at Yucca Mountain.

The NWPA provides that the environmental impact statement need not consider the need for a repository, the alternatives to geologic disposal, or alternative sites to the Yucca Mountain site. Therefore, this environmental impact statement will evaluate a proposal to construct, operate, and eventually close a repository at Yucca Mountain. The EIS will evaluate reasonable alternatives for implementing such a proposal in accordance with the NWPA.

The NWPA also provides that the Nuclear Regulatory Commission shall, to the extent practicable, adopt DOE's EIS in connection with any subsequent construction authorization and license that the Commission issues to DOE for a repository. The EIS process is scheduled to be completed in September 2000 and is separate from the licensing process that would be initiated by any submission of a license application by DOE to the Commission in June 2001.

The EIS will be prepared over a five-year period in conjunction with DOE's separate but parallel site suitability evaluation and potential license application. DOE is beginning the EIS process early to ensure that the appropriate data gathering and tests are performed to adequately assess potential environmental impacts, and to allow the public sufficient time to consider this complex program and to provide input.

DATES: DOE invites and encourages comments and suggestions on the scope of the EIS to ensure that all relevant environmental issues and reasonable alternatives are addressed. Public scoping meetings are discussed below in the **SUPPLEMENTARY INFORMATION** section. DOE will carefully consider all comments and suggestions received during the 120-day public scoping period that ends on December 5, 1995. Comments and suggestions received after the close of the public scoping period will be considered to the extent practicable.

ADDRESSES: Written comments on the scope of this EIS, requests to pre-register to speak at any of the public scoping meetings, questions concerning the proposed action and EIS, or requests for additional information on the EIS, should be directed to: Wendy R. Dixon, EIS Project Manager, Yucca Mountain Site Characterization Office, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 101 Convention Center Drive Suite P–110, MS 010, Las Vegas, NV 89109, Telephone: 1–800–967–3477, Facsimile: 1–800–967–0739.

FOR FURTHER INFORMATION CONTACT: For more information about this EIS, please contact Wendy R. Dixon at the address, above. For information on DOE's NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 1–202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Public Participation

All interested persons, including Federal agencies, Native American tribal organizations, State and local government agencies, public interest groups, transportation interests, industry and utility organizations, regulators, and the general public are encouraged to take part in the EIS scoping process. Because of the anticipated public interest and national scope of the program, DOE will provide several methods for people to express their views and provide comments, request additional information and copies of the EIS, or pre-register to speak at the scoping meetings. Comments submitted by any of these means will become part of the official record for scoping.

Written Comments and Toll-Free Facsimile Number

Written comments and requests may be mailed or sent by facsimile to Wendy R. Dixon at the address or toll-free facsimile number listed above

Toll-Free Telephone Line

All interested parties are invited to record their comments or request information on the scope of the EIS by calling a toll-free telephone number, 1–800–967–3477. Throughout the public scoping period, this number will be staffed between the hours of 9 a.m. to 9 p.m. Eastern Standard Time, Monday through Friday. During other hours, calls will be forwarded to an answering machine.

Electronic Mail

Comments and information requests may be submitted by electronic mail to the following Internet electronic mail address: ymp—eisr@notes.ymp.gov.

Internet

The public may access the Notice of Intent, request information, and provide comments via the World Wide Web at the following Uniform Resource Locator address: http://www.ymp.gov, under the listing *Environmental Impact Statement (EIS)* on the Yucca Mountain Project Home Page. When available, the EIS and other selected technical documents may also be accessed at this Uniform Resource Locator address.

Scoping Meetings

DOE will hold 15 public scoping meetings in cities throughout the United States to provide and discuss information and to receive comments on the scope of this EIS. Table 1 at the end of this Notice lists the specific locations, dates, and times for each scoping meeting. Persons wishing to speak at any of these meetings can pre-register up to two days before the meeting by: (1) Calling the toll-free telephone number 1–800–967–3477, (2) writing to Wendy R. Dixon at the address listed above, or (3) sending their request to pre-register by facsimile or electronic mail, as identified above.

Persons wishing to speak who have not registered in advance can register at each meeting. These "walk-in registrants" will be accommodated to the extent practicable, following those persons who have pre-registered. Only one spokesperson per organization, group, or agency may present comments on its behalf. Oral statements will be limited to ten minutes; however, written comments can be of any length and submitted any time during the scoping period.

Each of the 15 public scoping meetings will have either a morning or afternoon session, and an evening session. Morning sessions will begin at 8:30 a.m. and end at 12:30 p.m., and afternoon sessions will begin at 12:00 p.m. and end at 4:00 p.m. Evening sessions will begin at 6:00 p.m. and end about 10:00 p.m. If additional time is required in order to accommodate all speakers wishing to present oral comments, the meeting facilitator will consult with the audience and DOE staff and determine whether to continue the meeting past the scheduled ending time. A court reporter will record all portions of the scoping meetings, and transcripts will be prepared and made a part of the official record of the scoping process.

Each session will have an introductory presentation, a question and answer period, and a public comment segment. A facilitator will begin the introductory presentation of each session by explaining the scoping meeting format. DOE staff will provide a brief description (lasting approximately 30–45 minutes) of the repository program, the EIS, and the scoping process. The question and answer period (lasting approximately 45 minutes) will provide members of the public an opportunity to ask questions and discuss various aspects of the repository and to obtain additional information that may be useful in formulating opinions and comments. Each member of the public will be allowed five minutes to ask questions. The meeting facilitator may allow extra time for additional questions depending on the number of people present who have indicated their desire to participate during the question and answer period. The meeting facilitator will begin the public comment portion of the scoping meeting after the question and answer period. At this time, members of the public will provide their comments on the scope of the EIS.

Each public scoping meeting also will have a separate information room containing exhibits and informational handouts about the repository program and the EIS. DOE and contractor staff will be available throughout the day to answer questions in an informal setting. A table with blank comment cards will also be available for people to privately prepare and submit written comments on the scope of the EIS. These comment cards will be included in the formal record of each scoping meeting.

Subsequent Document Preparation

Results of scoping, including the transcripts from the question and answer periods and public comment segments, and all other oral and written comments received by DOE, will be summarized in the EIS Implementation Plan. This Plan will guide the preparation of the EIS, and will describe the planned scope and content of the EIS, record the results of the scoping process, and contain EIS activity schedules. As a "living document," the Implementation Plan may be amended as needed to incorporate changes in schedules, alternatives, or EIS content.

The Implementation Plan will be available to the public for information purposes as soon as possible after the close of the public scoping process, and before issuing the Draft EIS. The Implementation Plan and the transcripts from the public scoping meetings will be available for inspection at major DOE facilities and public reading rooms in Nevada and across the country, as identified at the end of this Notice. Copies of the Implementation Plan, as well as the Draft and Final EIS and related comments, will be provided to anyone requesting copies of these documents.

Availability of the Draft EIS for public review, and the locations and times of public hearings on the Draft EIS, will be announced in the **Federal Register** and through local media (approximately in the Fall of 1998). After considering all public comments received on the Draft EIS, DOE will prepare and issue a Final EIS, followed thereafter by a Record of Decision (approximately in the Fall of 2000).

Background

Spent nuclear fuel [1] has been and is being generated and stored in the United States as part of commercial power generation. The accumulation of spent nuclear fuel from commercial power reactor operations in the United States probably will continue for several decades. There are 109 operating commercial facilities at 75 sites in 34 States where spent nuclear fuel is stored. By the year 2035, total spent nuclear fuel from power reactors will amount to about 85,000 metric tons of heavy metal (i.e., metric tons of heavy metal, typically uranium, without materials such as cladding, alloy and structural materials) (MTHM).

Spent nuclear fuel and high-level radioactive waste [2], generated from

[1] Spent nuclear fuel is fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

[2] High-level radioactive waste is the highly radioactive material resulting from reprocessing of spent nuclear fuel. It includes liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient

Continued

DOE's national atomic energy defense and research activities, are primarily located at DOE's Hanford Reservation, the Savannah River Site, and the Idaho National Engineering Laboratory. Other spent nuclear fuel, either currently in DOE possession or which may come under DOE possession, includes material from foreign research reactors, approximately 29 domestic university reactors, 5 non-DOE research reactors, and 4 "special case" reactors at non-DOE locations.

In 1982, in response to the continued accumulation of spent nuclear fuel and high-level radioactive waste, Congress passed the NWPA. The purpose of the NWPA was to establish geologic repositories that would provide reasonable assurance that the public and the environment would be adequately protected from the hazards posed by these materials. In 1987, Congress amended the NWPA and directed DOE to evaluate the suitability of only the Yucca Mountain site in southern Nevada as a potential site for the first repository. If, based on this evaluation, the Secretary of Energy determines that the Yucca Mountain site is suitable, the Secretary may then recommend that the President approve the site for development of a repository.

Under the NWPA, DOE is prohibited from emplacing more than 70,000 MTHM of spent nuclear fuel and high-level radioactive waste in the first repository until such time as a second repository is in operation. The current planning basis calls for 63,000 MTHM of commercial spent nuclear fuel to be disposed of in the first repository, proposed to be located at the Yucca Mountain site. The planning basis also calls for the disposal of 7,000 MTHM equivalent of DOE-owned spent nuclear fuel and high-level radioactive waste in this first repository.

Proposed Action

If the site were found to be suitable, the proposed action would be to construct, operate, and eventually close a repository at Yucca Mountain for the geologic disposal of up to 70,000 MTHM of commercial and DOE-owned spent nuclear fuel and high-level radioactive waste. Spent nuclear fuel and high-level radioactive waste would be disposed of in the repository in a subsurface configuration that would ensure its long-term isolation from the human environment. Repository construction, operation, and closure would be governed by the Nuclear Regulatory Commission's licensing process.

Construction would begin if the Nuclear Regulatory Commission authorizes construction of the repository. Surface facilities would be designed and constructed to receive, and prepare for disposal, spent nuclear fuel and high-level radioactive waste that would arrive in transportation casks by highway and by rail. Capability to treat or package the secondary wastes generated during disposal operations would also be provided. Subsurface facilities would be designed and constructed for emplacement of spent nuclear fuel and high-level radioactive waste in disposal drifts. Subsurface facilities would primarily include access ramps, ventilation systems, disposal drifts, and equipment alcoves.

Disposal operations would begin once the Nuclear Regulatory Commission issues a license allowing receipt of spent nuclear fuel and high-level radioactive waste. Disposal operations would be expected to last up to 40 years, depending on shipment schedules. Disposal drifts would continue to be constructed during this time period as necessary. Spent nuclear fuel assemblies,[3] and canisters containing assemblies[4] or vitrified (i.e., solidified) high-level radioactive waste[5] would be shipped to the repository in transportation casks that meet the Nuclear Regulatory Commission and U.S. Department of Transportation requirements for shipping by truck or rail[6]. The assemblies would be removed from the transportation casks, which would be placed back into service after decontamination and maintenance or after necessary repairs were completed. Canisters and assemblies would be transferred to a "hot" cell—a room where remotely-controlled equipment would be used to place the material in disposal containers. These "waste packages" (i.e., assemblies and canisters in disposal containers) would be transported underground in a transportation vehicle having radiation shielding for worker protection. Monitoring equipment, which would either be placed in selected drifts or would be mobile remote-sensing devices, would monitor performance of waste packages and aspects of the local repository geology.

The closure/post-closure period would begin after the Nuclear Regulatory Commission amends the license to authorize permanent closure. Underground equipment would be removed, repository openings would be backfilled and sealed, and the surface facilities would be decontaminated, decommissioned, and dismantled or converted to other uses. Institutional controls, such as permanent markers and monuments, would be designed and constructed to last thousands of years and discourage human activities that could compromise the waste isolation capabilities of the repository.

The disposal and closure/post-closure activities would be designed and implemented so that the combination of engineered (i.e., waste package and any backfill) and natural (geologic system) barriers would isolate the spent nuclear fuel and high-level radioactive waste. The combination of barriers would meet a standard to be specified by the Environmental Protection Agency, which has been entrusted to develop a radiation release standard pursuant to Section 801 of the Energy Policy Act of 1992 (42 U.S.C. § 10141 note); individual barriers would perform according to Nuclear Regulatory Commission requirements, including its performance objectives at 10 CFR 60.113. The engineered barrier must provide substantially complete containment of spent nuclear fuel and high-level radioactive waste for between 300 and 1,000 years by using corrosion resistant materials in the waste package.

Beyond 1,000 years, continued isolation would be assisted by features that would limit the rate at which radioactive components of the waste would be released. The rate of release would be substantially affected by natural conditions, the heat generation rate of spent nuclear fuel and high-level radioactive waste (i.e., thermal load), and its rate of heat dissipation. First, different thermal loads would affect directly the internal and external waste package temperatures, thereby affecting the corrosion rate and integrity of the waste package. Second, the heat would affect the geochemistry, hydrology, and mechanical stability of the disposal drifts, which in turn would influence the flow of groundwater and the transport of radionuclides from the engineered and natural barrier systems to the environment. Therefore, the long-term performance of the repository would be managed by appropriately spacing the waste packages within disposal drifts and the distances between disposal drifts, and by selectively placing spent nuclear fuel and high-level radioactive waste packages to account for their individual heat generation rates.

concentrations and other highly radioactive material that the Nuclear Regulatory Commission, consistent with existing law, determines by rule requires permanent isolation.

[3] A fuel assembly is made up of fuel elements held together by plates and separated by spacers attached to the fuel cladding.

[4] Under one scenario, spent nuclear fuel assemblies would be sealed in a multi-purpose canister that would then be inserted into separate casks/containers for storage, transportation, and disposal. Other canisters are available and include single-purpose systems, which require transferring of individual assemblies from one cask/container to another for storage, transport, and disposal. Another alternative would be dual-purpose systems which require storing and transporting individual assemblies in one cask and disposing of them in another container.

[5] Vitrified high-level radioactive waste would be sealed in canisters suitable for transport in a truck or train cask.

[6] Barges may also be used for intermodal shipments of spent nuclear fuel and high-level radioactive waste from generator sites to nearby locations for transfer to truck and rail.

Alternatives

DOE has preliminarily identified for analysis in the EIS a full range of reasonable implementation alternatives for the construction, operation, and closure/post-closure of a repository at Yucca Mountain. These implementation alternatives are based on thermal load objectives and include High Thermal Load, Intermediate Thermal Load, and Low Thermal Load alternatives.

Under each implementation alternative, DOE will evaluate different spent nuclear fuel and high-level radioactive waste packaging and transportation options. DOE anticipates that these options would produce the broadest range of potential configurations for both surface facilities and possible operational and disposal conditions at the repository. Evaluation of these options will identify the full range of reasonably foreseeable impacts to human health and the environment associated with each implementation alternative.

High Thermal Load Alternative

Under the High Thermal Load implementation alternative, spent nuclear fuel and high-level radioactive waste would be disposed in an underground configuration that would generate the upper range of repository temperatures while meeting performance objectives to isolate the material in compliance with Environmental Protection Agency standards and Nuclear Regulatory Commission requirements. Under this alternative, the emplacement density would likely be greater than 80 MTHM per acre. This alternative would represent the highest repository thermal loading based on available information and expected test results.

Intermediate Thermal Load Alternative

Under the Intermediate Thermal Load implementation alternative, spent nuclear fuel and high-level radioactive waste would be disposed in an underground configuration that would generate an intermediate range of repository temperatures (compared to the High and Low Thermal Load alternatives) while meeting performance objectives to isolate the material in compliance with Environmental Protection Agency standards and Nuclear Regulatory Commission requirements. Under this alternative, the disposal density would likely range between 40 to 80 MTHM per acre.

Low Thermal Load Alternative

Under the Low Thermal Load implementation alternative, spent nuclear fuel and high-level radioactive waste would be disposed in an underground configuration that would provide the lowest potential repository thermal loading (based on available information and expected test results) while meeting performance objectives to isolate the material in compliance with Environmental Protection Agency standards and Nuclear Regulatory Commission requirements. Under this alternative, the disposal density would likely be less than 40 MTHM per acre.

Packaging Options

As part of each implementation alternative, two packaging options would be evaluated. Under Option 1, spent nuclear fuel assemblies would be packaged and sealed in multi-purpose canisters at the generator sites prior to being transported to the repository in Nuclear Regulatory Commission-certified casks. High-level radioactive waste also would be packaged and sealed in canisters prior to shipment in similar casks. Under Option 2, spent nuclear fuel assemblies (without canisters) and sealed canisters of high-level radioactive waste would be transported to the repository in Nuclear Regulatory Commission-certified casks. Under both options, assemblies and canisters with intact seals would be removed from the casks and placed in disposal containers at the repository.

DOE recognizes that it is likely that a mix of spent nuclear fuel assemblies and canisters (and canister systems) of spent nuclear fuel and vitrified high-level radioactive waste would arrive at the repository during disposal operations. However, since the specific mix is speculative, the above packaging options were chosen to produce the broadest range of potential configurations for both surface facilities and possible operational and disposal conditions at the repository. These options were also selected to reflect the potential range of exposures to workers and the public at the generator sites, along transportation routes, and at the repository from the packaging, transport, and disposal of spent nuclear fuel and high-level radioactive waste.

Transportation

As part of each implementation alternative, two national transportation options and three regional (i.e., within the State of Nevada) transportation options would be evaluated. These options would be expected to result in the broadest range of operating conditions relevant to potential impacts to human health and the environment.

In a national context, the first option would consist of shipping all spent nuclear fuel and high-level radioactive waste by truck, from the generator site to the repository.

The second national option would consist of shipment by rail, except from those generator sites (as many as 19) that may not have existing capabilities to load and ship rail casks. For such sites, the spent nuclear fuel would be transported by truck to the repository, or to a facility near the nuclear power plant where it would be transferred to rail cars for shipment to the repository.

In a regional context, there are three transportation options: two of these options apply to shipments that would arrive in Nevada by rail, and the third applies to shipments that would arrive in Nevada by legal weight truck.[7]

The first regional transportation option would consist of several rail corridors to the repository. The rail corridor option would involve identifying and applying siting criteria, based on engineering considerations (e.g., topography and soils), potential land use restrictions (e.g., wilderness areas and existing conflicting uses), and any other factors identified from the scoping process.

The second regional transportation option would involve the use of heavy haul truck[8] routes to the repository. The heavy haul option would include the construction and use of an intermodal transfer facility to receive shipments that would arrive in Nevada by rail; the intermodal transfer facility would be located at the beginning of the heavy haul route. The heavy haul option would include any need to improve the local transportation infrastructure.

The third regional transportation option would involve legal weight truck shipments directly to the repository. Under this option, a transfer facility would not be required.

No Action

The No Action alternative would evaluate termination of site

[7] A legal weight truck consists of a tractor, semi-trailer, and loaded cask, with a maximum gross weight of 80,000 pounds.

[8] A heavy haul truck consists of a tractor, semi-trailer, and loaded cask, with a gross weight in excess of 129,000 pounds.

characterization activities at Yucca Mountain and the continued accumulation of spent nuclear fuel and high-level radioactive waste at commercial storage sites and DOE facilities. Spent nuclear fuel and high-level radioactive waste would continue to be managed for the foreseeable future at existing commercial storage sites and DOE facilities located in 34 States. The No Action alternative, although contrary to the Congressional desire to provide a permanent solution for isolation of the Nation's spent nuclear fuel and high-level radioactive waste, provides a baseline against which the implementation alternatives can be compared.

At the Yucca Mountain site, the surface facilities, excavation equipment, and other support facilities would be dismantled and removed for reuse or recycling, or would be disposed of in solid waste landfills. Disturbed surface areas would be reclaimed and excavated openings to the subsurface would be sealed and backfilled.

At commercial reactors, spent nuclear fuel would continue to be generated and stored in either water pools or in canisters, until storage space at individual reactors becomes inadequate, at which time reactor operations would cease. DOE-owned spent nuclear fuel and high-level radioactive waste would continue to be managed at three primary sites—the Hanford Reservation, Savannah River Site, and the Idaho National Engineering Laboratory.

Environmental Issues To Be Examined in the EIS

This EIS will examine the site-specific environmental impacts from construction, operation, and eventual closure of a repository for spent nuclear fuel and high-level radioactive waste disposal at Yucca Mountain, Nevada. Transportation-related impacts of the alternatives will also be analyzed. Through internal discussion and outreach programs with the public, DOE is aware of many environmental issues related to the construction, operation, and closure/post-closure phases of such a repository. The issues identified here are intended to facilitate public scoping. The list is not intended to be all-inclusive or to predetermine the scope of the EIS, but should be used as a starting point from which the public can help DOE define the scope of the EIS.

- Radiological and non-radiological releases. The potential effects to the public and on-site workers from radiological and nonradiological releases;
- Public and Worker Safety and Health. Potential health and safety impacts (e.g., injuries) to on-site workers during the unloading, temporary surface storage, and underground emplacement of waste packages at Yucca Mountain;
- Transportation. The potential impacts associated with national and regional shipments of spent nuclear fuel and high-level radioactive waste from reactor sites and DOE facilities to the Yucca Mountain site will be assessed. Regional transportation issues include: (a) technical feasibility, (b) socioeconomic impacts, (c) land use and access impacts, and (d) impacts of constructing and operating a rail spur, a heavy haul route, and/or a transfer facility;
- Accidents. The potential impacts from reasonably foreseeable accidents, including any accidents with low probability but high potential consequences;
- Criticality. The likelihood that a self-sustaining nuclear chain reaction could occur and its potential consequences;
- Waste Isolation. Potential impacts associated with the long-term performance of the repository;
- Socioeconomic Conditions. Potential regional (i.e., in Nevada) socioeconomic impacts to the surrounding communities, including impacts on employment, tax base, and public services;
- Environmental Justice. Potential for disproportionately high and adverse impacts on minority or low-income populations;
- Pollution Prevention. Appropriate and innovative pollution prevention, waste minimization, and energy and water use reduction technologies to eliminate or significantly reduce use of energy, water, hazardous substances, and to minimize environmental impacts;
- Soil, Water, and Air Resources. Potential impacts to soil, water quality, and air quality;
- Biological Resources. Potential impacts to plants, animals, and habitat, including impacts to wetlands, and threatened and endangered species;
- Cultural Resources. Potential impacts to archaeological/historical sites, Native American resources, and other cultural resources;
- Cumulative impacts from the proposed action and implementing alternatives and other past, present, and reasonably foreseeable future actions;
- Potential irreversible and irretrievable commitment of resources.

Under the No Action alternative, potential environmental effects associated with the shutdown of site characterization activities at Yucca Mountain will be estimated. Potential environmental effects from the continued accumulation of spent nuclear fuel and high-level radioactive waste at commercial reactors and DOE sites will be addressed by summarizing previous relevant environmental analyses and by performing new analyses of representative sites, as appropriate. At the Yucca Mountain site, the potential environmental consequences from the reclamation of disturbed surface areas, and the sealing of excavated openings following the dismantlement and removal of facilities and equipment, will be quantified. These analyses would be similar in level of detail to the analyses of the implementing alternatives. At the commercial reactor and DOE sites, the potential environmental consequences will be addressed in terms of risk to the environment and the public from long-term management of spent nuclear fuel and high-level radioactive waste. In addition, the loss of storage capacity, the need for additional capacity, and their potential consequences to continued reactor operations, will be described.

Consultations With Other Agencies

The NWPA requires DOE to solicit comments on the EIS from the Department of the Interior, the Council on Environmental Quality, the Environmental Protection Agency, and the Nuclear Regulatory Commission (42 U.S.C. § 10134(a)(1)(D)). DOE also intends to consult with the Departments of the Navy and Air Force and will solicit comments from other agencies, the State of Nevada, affected units of local government, and Native American tribal organizations, regarding the environmental issues to be addressed by the EIS.

Relationship to Other DOE NEPA Reviews

DOE is preparing or has completed other NEPA documents that may be relevant to the Office of Civilian Radioactive Waste Management Program and this EIS. If appropriate, this EIS will incorporate by reference and update information taken from these other NEPA documents. These documents (described below) are available for inspection by the public at the DOE Freedom of Information Reading Room (1E–190), Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C. and will be made available in Nevada at locations to be announced at the public scoping meetings. These documents include the following:

- *Environmental Assessment, Yucca Mountain Site,* Nevada Research and Development Area, Nevada, DOE/RW–0073, 1986.
- *Environmental Assessment for a Monitored Retrievable Storage Facility,* DOE/RW–0035, 1986.
- *Environmental Impact Statement for a Multi-Purpose Canister System for the Management of Civilian and Naval Spent Nuclear Fuel.* The Notice of Intent was published on October 24, 1994 (59 FR 53442). The scoping process for this EIS has been completed and an Implementation Plan is being prepared. The Draft EIS is scheduled to be issued for public review in late 1995.
- *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement* [Final EIS issued April 1995 (DOE/EIS–0203–F); Record of Decision (60 FR 28680–96, June 1, 1995)]. This EIS analyzes the potential environmental consequences of managing DOE's inventory of spent nuclear fuel over the next 40 years. The Nevada Test Site was considered but was not selected as a DOE spent nuclear fuel management site.
- *Waste Management Programmatic Environmental Impact Statement* (formerly Environmental Management Programmatic EIS). A revised Notice of Intent was published January 24, 1995 (60 FR 4607). This Programmatic EIS will address impacts of potential DOE waste management actions for the treatment, storage, and disposal of waste. The Draft EIS is scheduled to be issued for public review in September 1995.
- *Environmental Impact Statement for a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel* [Notice of Intent published October 21, 1993 (58 FR 54336)]. The draft EIS was issued for public review in March 1995 (DOE/EIS–0218D). This EIS addresses the potential environmental impacts of the proposed policy's implementation. Under the proposed policy, the United States could accept up to 22,700 foreign research reactor spent nuclear fuel elements over a 10–15 year period.
- *Environmental Impact Statement on the Transfer and Disposition of Surplus Highly Enriched Uranium* (formerly part of the Programmatic Environmental Impact Statement for Long-Term Storage and Disposition of Weapons-Usable Fissile Materials). The Notice of Intent was issued April 5, 1995 (60 FR 17344). This EIS will address disposition of DOE's surplus highly enriched uranium to support the President's Nonproliferation Policy. The Draft EIS is scheduled to be issued in September 1995.
- *Programmatic Environmental Impact Statement for Storage and Disposition of Weapons-Usable Fissile Materials* [Notice of Intent published June 21, 1994 (59 FR 31985)]. This Programmatic EIS will evaluate alternatives for long-term storage of all weapons-usable fissile materials (primarily plutonium and highly enriched uranium retained for strategic purposes—not surplus) and disposition of surplus weapons-usable fissile materials (excluding highly enriched uranium), so that risk of proliferation is minimized. The Nevada Test Site is a candidate storage site.
- *Tritium Supply and Recycling Programmatic Environmental Impact Statement.* A revised Notice of Intent was published October 28, 1994 (59 FR 54175), and the Draft Programmatic EIS was issued in March 1995 (60 FR 14433, March 17, 1995). Public hearings on the Draft Programmatic EIS were held in April 1995, and a Final Programmatic EIS is scheduled for October 1995. This EIS addresses how to best assure an adequate tritium supply and recycling capability. The Nevada Test Site is an alternative site for new tritium supply and recycling facilities.
- *Stockpile Stewardship and Management Programmatic Environmental Impact Statement.* A Notice of Intent was published June 14, 1995 (60 FR 31291). A prescoping workshop was held on May 19, 1995, and scoping meetings are scheduled to be held during July and August 1995. This Programmatic EIS will evaluate proposed future missions of the Stockpile Stewardship and Management Program and potential configuration (facility locations) of the nuclear weapons complex to accomplish the Stockpile Stewardship and Management Program missions. The Nevada Test Site is an alternative site for potential location of new or upgraded Stockpile Stewardship and Management Program facilities.
- *Site-Wide Environmental Impact Statement for the Nevada Test Site* [Notice of Intent published August 10, 1994 (59 FR 40897)]. This EIS will address resource management alternatives for the Nevada Test Site to support current and potential future missions involving defense programs, research and development, waste management, environmental restoration, infrastructure maintenance, transportation of wastes, and facility upgrades and alternative uses. The public scoping process has been completed, and the Implementation Plan was issued in July 1995. The Draft EIS is scheduled to be issued for public review in September 1995.
- *Environmental Impact Statement for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components* [Notice of Intent published May 23, 1994 (59 FR 26635); an amended Notice of Intent published June 23, 1995 (60 FR 32661)]. This EIS will address the potential environmental impacts of the continued operation of the Pantex Plant, which includes near- to mid-term foreseeable activities and the nuclear component storage activities at other DOE sites associated with nuclear weapon disassembly operations at the Pantex Plant. The Nevada Test Site is being considered as an alternative site for relocation of interim plutonium pit storage.

Public Reading Rooms

Copies of the Implementation Plan, and the Draft and Final EISs, will be available for inspection during normal business hours at the following public reading rooms. DOE may establish additional information locations and will provide an updated list at the public scoping meetings.

Albuquerque Operations Office, National Atomic Museum, Bldg. 20358, Wyoming Blvd., S.E., Kirtland Air Force Base, Albuquerque, NM 87117. Attn: Diane Leute (505) 845–4378

Atlanta Support Office, U.S. Dept. of Energy, Public Reading Room, 730 Peachtree Street, Suite 876, Atlanta, GA 30308–1212. Attn: Nancy Mays/Laura Nicholas (404) 347–2420

Bartlesville Project Office/National Institute for Petroleum and Energy Research, Library, U.S. Dept. of Energy, 220 Virginia Avenue, Bartlesville, OK 74003. Attn: Josh Stroman (918) 337–4371

Bonneville Power Administration, U.S. Dept. of Energy, BPA–C–KPS–1, 905 N.E. 11th Street, Portland, OR 97208. Attn: Sue Ludeman (503) 230–7334

Chicago Operations Office, Document Dept., University of Illinois at Chicago, 801 South Morgan Street, Chicago, IL 60607. Attn: Seth Nasatir (312) 996–2738

Dallas Support Office, U.S. Dept. of Energy, Public Reading Room, 1420 Mockingbird Lane, Suite 400, Dallas, TX 75247. Attn: Gailene Reinhold (214) 767–7040

Fernald Area Office, U.S. Dept. of Energy, Public Information Room, FERMCO, 7400 Willey Road, Cincinnati, OH 45239. Attn: Gary Stegner (513) 648–3153

Headquarters Office, U.S. Dept. of Energy, Room 1E–190, Forrestal Bldg.,

1000 Independence Avenue, S.W., Washington, D.C. 20585. Attn: Gayla Sessoms (202) 586–5955
Idaho Operations Office, Idaho Public Reading Room, 1776 Science Center Dr., Idaho Falls, ID 83402. Attn: Brent Jacobson (208) 526–1144
Kansas City Support Office, U.S. Dept. of Energy, Public Reading Room, 911 Walnut Street, 14th Floor, Kansas City, MO 64106. Attn: Anne Scheer (816) 426–4777
Office of Civilian Radioactive Waste Management National Information Center, 600 Maryland Avenue, S.W., Suite 760, Washington, D.C. 20024. Attn: Paul D'Anjou (202) 488–6720
Oak Ridge Operations Office, U.S. Dept. of Energy, Public Reading Room, 55 South Jefferson Circle, Room 112, Oak Ridge, TN 37831–8510. Attn: Amy Rothrock (615) 576–1216
Oakland Operations Office, U.S. Dept. of Energy, Public Reading Room, EIC, 8th Floor, 1301 Clay Street, Room 700N, Oakland, CA 94612–5208. Attn: Laura Noble (510) 637–1762
Pittsburgh Energy Technology Center, U.S. Dept. of Energy, Bldg. 922/M210, Receiving Department, Building 166, Cochrans Mill Road, Pittsburgh, PA 15236–0940. Attn: Ann C. Dunlap (412) 892–6167
Richland Operations Office, U.S. Dept. of Energy, Public Reading Room, 100 Sprout Rd., Room 130 West, Mailstop H2–53, Richland, WA 99352. Attn: Terri Traub (509) 376–8583
Rocky Flats Field Office, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030. Attn: Nancy Ben (303) 469–4435
Savannah River Operations Office, Gregg-Graniteville Library, University of S. Carolina-Aiken, 171 University Parkway, Aiken, SC 29801. Attn: James M. Gaver (803) 725–2889
Southeastern Power Administration, U.S. Dept. of Energy, Legal Library, Samuel Elbert Bldg., 2 South Public Square, Elberton, GA 30635–2496. Attn: Joel W. Seymour/Carol M. Franklin (706) 213–3800
Southwestern Power Administration, U.S. Dept. of Energy, Public Reading Room, 1 West 3rd, Suite 1600, Tulsa, OK 74103. Attn: Marti Ayers (918) 581–7426
Strategic Petroleum Reserve Project Management Office, U.S. Dept. of Energy, SPRPMO/SEB Reading Room, 900 Commerce Road East, New Orleans, LA 70123. Attn: Ulysess Washington (504) 734–4243
Yucca Mountain Science Centers
Yucca Mountain Science Center, U.S. 95—Star Route 374, Beatty, NV 89003. Attn: Marina Anderson (702) 553–2130
Yucca Mountain Science Center, 4101–B Meadows Lane, Las Vegas, NV 89107. Attn: Melinda D'ouville (702) 295–1312
Yucca Mountain Science Center, 1141 South Hwy. 160, Pahrump, NV 89041. Attn: Lee Krumm (702) 727–0896

TABLE 1.—SCOPING MEETINGS

Location of scoping meeting	Dates/times [1]
Pahrump Community Center, 400 N. Hwy. 160, Pahrump, NV 89048	Tuesday, August 29, 1995, morning/evening sessions.
Boise Centre on the Grove, 850 W. Front St., Boise, ID 83702	Wednesday, September 6, 1995, morning/evening sessions.
Lawlor Events Center, University of Nevada-Reno Campus, Reno, NV 89667.	Friday, September 8, 1995, morning/evening sessions.
University of Chicago, Downtown MBA Center, 450 N. Cityfront Plaza Drive, Chicago, IL 60611.	Tuesday, September 12, 1995, morning/evening sessions.
Cashman Field, 850 Las Vegas Blvd. North, Las Vegas, NV 89101	Friday, September 15, 1995, morning/evening sessions .
Denver Convention Complex, 700 14th Street, Denver, CO 80202	Tuesday, September 19, 1995, afternoon/evening sessions.
Sacramento Public Library, 828 I Street, Sacramento, CA 95814	Thursday, September 21, 1995, afternoon/evening sessions.
Arlington Community Center, 2800 South Center Street, Dallas, TX 76004.	Tuesday, September 26, 1995, afternoon/evening sessions.
Caliente Youth Center, Highway 93, Caliente, NV 89008	Thursday, September 28, 1995, morning/evening sessions.
Hilton Inn, 150 West 500 South, Salt Lake City, UT 84111	Thursday, October 5, 1995, afternoon/evening sessions.
Maritime Institute of Technology and Graduate Studies, 5700 Hammonds Ferry Rd., Linthicum (near Baltimore), MD 21090.	Wednesday, October 11, 1995, morning/evening sessions.
Russell Sage Conference Center, 45 Ferry St., Troy (Albany), NY 12180.	Friday, October 13, 1995, afternoon/evening sessions.
Georgia International Convention Center, 1902 Sullivan Road, College Park (Atlanta), GA 30337.	Tuesday, October 17, 1995, morning/evening sessions.
Penn Valley Community College, 3201 S.W. Trafficway, Kansas City, MO 64111.	Friday, October 20, 1995, afternoon/evening sessions.
Tonopah Convention Center, 301 Brougher, Tonopah, NV 89049	Tuesday, October 24, 1995, morning/evening sessions.

[1] Session times are as follows: Morning (8:30 a.m.–12:30 p.m.), Afternoon (12:00 a.m.–4:00 p.m.), Evening (6:00 p.m.–10:00 p.m.).

Issued in Washington, D.C., this 1st day of August, 1995.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 95–19396 Filed 8–4–95; 8:45 am]

BILLING CODE 6450–01–P

Floodplain/Wetland Involvement Notification and Statement of Findings for a Proposed Removal Action at the Weldon Spring Site, St. Charles Co., Missouri

AGENCY: Office of Environmental Management, Department of Energy (DOE).

ACTION: Notice of floodplain/wetland involvement and statement of findings.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to conduct a removal action at the Weldon Spring site to remove radiologically contaminated soil from a vicinity property within a floodplain and wetland located within the heavily used State of Missouri Weldon Spring Conservation Area. The proposed action will eliminate any potential risk to the health of recreational users of the conservation area. In accordance with 10 CFR Part 1022, DOE has prepared a floodplain and wetlands assessment. The proposed action will be performed in a manner so as to avoid or minimize potential harm to or within the floodplain and wetland. Because of the location of the contaminated soil, there is no practicable alternative to the location of this action within the floodplain and wetlands. Because of the potential risk to human health and the environment, the DOE has combined the Notice of Involvement with the Statement of Findings in this **Federal Register** Notice.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION OR TO COMMENT ON THE ACTION CONTACT: Mr. Steve McCracken, U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304, (314) 441–8978.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The DOE is conducting response actions at its Weldon Spring Site under the direction of the DOE Office of Environmental Management. The Weldon Spring site is located in St. Charles County, Missouri, approximately 48 km (30 miles) west of St. Louis. As part of the overall cleanup of the Weldon Spring Site, the DOE is proposing to conduct a removal action at an area referred to as Vicinity Property 9 (VP 9). VP 9, which contains a small wetland area no larger than 1.5 acres, occurs within the 100-yr floodplain of the Missouri River, and is located within the heavily used State of Missouri Weldon Spring Conservation Area.

The proposed action is necessary to remove radioactively contaminated soils within VP 9 that poses a potential risk to the health of recreational users of the conservation area. Because of the urgency to conduct this removal and in order to optimize resources that are immediately available (i.e., equipment and crew currently are conducting bulk waste removal in the immediate vicinity) in the nearby quarry area, the DOE has waived the 15-day public comment period for this notice of involvement, as permitted under Section 1022.18c of 10 CFR 1022. Further information is available from the DOE at the address shown below.

In accordance with the DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR 1022), the DOE has prepared a floodplain and wetland assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the floodplain and wetland, and has determined that the proposed removal action will not impact floodplain storage. Impacts to the wetland will be temporary and will not affect long term wetland function. Further information on the floodplain and wetland assessments is available from the DOE at the address shown below.

The DOE proposes to remove radiologically contaminated soils from VP 9 by excavating soils to a depth of approximately 1 ft from an area of approximately 180 ft × 380 ft (1.5 acres) in size. Prior to excavation, vegetation at the area would be cleared by grubbing, and a temporary excavation equipment access ramp to VP 9 would be installed. Good engineering practices such as hay bales and silt fences would be employed to control sedimentation and erosion to nearby surface waters and adjacent floodplain areas. Excavation would be accomplished using standard excavation equipment (e.g., backhoe), and the contaminated soils would be transported to the Weldon Spring chemical plant area for treatment and subsequent disposal. Following completion of the proposed action, the equipment access ramp would be removed and all excavated areas would be backfilled with clean fill, graded to original contours, and revegetated with native species previously occurring at the site.

The no-action alternative with institutional controls was also evaluated. The no-action alternative is not acceptable because (1) The potential risk to human health from the contaminated soils would return in the event of loss of institutional control, (2) recreational activities at the conservation area would be disrupted, (3) potential risk to the environment would be largely unaffected by institutional controls, and (4) natural flood events could transport the contaminated soils to other portions of the floodplain and conservation area. Because of the potential risk to human health and to the environment, the DOE finds that there is no practicable alternative to the location of the removal action in the floodplain and wetland, and wishes to expedite the proposed removal of the contaminated soil and complete the removal action in as timely a manner as possible.

The proposed action would conform to applicable federal, state, and local floodplain and wetland protection standards. Impacts to the floodplain and wetland would be minimized by the avoidance (to the extent practicable) of adjacent floodplain and wetland areas, and through the use of good engineering practices for sediment and erosion control. No impacts are anticipated to the 100-yr floodplain of the Missouri River. The removal of contaminated soils from VP 9 would not impact the storage capacity of the Missouri River floodplain. No permanent structures that could displace flood storage capacity would be constructed as part of the proposed action. Potential impact to the wetland would be restricted to removal of hydrophytic vegetation species that would be replaced following completion of the removal action. Upon completion of the action, the equipment access ramp would be removed and the excavated area would be backfilled and graded to original contours to restore the pre-excavation flood-storage capacity of the area.

Robert W. Poe,

Assistant Manager for Environment, Safety, and Quality.

[FR Doc. 95–19395 Filed 8–4–95; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award Intent to Award Cooperative Agreement to Florida International University

AGENCY: Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: The U.S. Department of Energy announces that it is making a noncompetitive discretionary financial assistance award to Florida International University (FIU). The proposed cooperative agreement will provide funding in the estimated amount of $33,681,844, of which $22,000,000 will be contributed by DOE, over a 5-year period, to further develop and expand the Hemispheric Center for Environmental Technology (HCET). This proposed expansion will ultimately result in an increase to the scientific knowledge base in the area of environmental research (especially innovative environmental technology research and development), as well as provide increased opportunities for minority and other students to pursue advanced education in the environmental arena to help meet the challenges associated with solving current and future environmental related problems.

DATES: The anticipated project period of the proposed cooperative agreement is 60 months from the effective date of award which is proposed to be August 18, 1995. Any comments or inquiries should be submitted on or before August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration Attn: Phyllis Morgan, HR–561.22 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(A) and (B), that the application submitted by FIU is for an activity which is necessary to the satisfactory completion of, and is a continuation of an activity presently being funded by DOE for which competition for support would have a significant adverse effect on continuity or completion of the activity; the activity is being conducted by FIU using its own resources and DOE support of this activity will enhance the public benefits to be derived; and DOE knows of no other entity which is conducting or planning to conduct such an activity. The proposed effort is to: (1) Further develop and expand the environmental research and education capabilities at FIU's HCET; (2) initiate new, as well as continue to develop already existing, cooperative research efforts with other major universities (including a number of Historically Black Colleges and Universities); (3) increase the number of minority students pursuing undergraduate and graduate degrees in environmental related disciplines; and (4) increase the scientific knowledge base in the environmental arena, with particular emphasis on energy related environmental restoration and waste management technology research and development.

John M. Albers,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–19394 Filed 8–4–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board, formerly Utilized Site Remedial Action Program Committee.

Date and Times: Tuesday, August 22, 1995 from 11:30 a.m. to 8 p.m. Wednesday, August 23, 1995 from 8 a.m. to 5 p.m.

Place: Holiday Inn Grand Island Resort & Conference Center, 100 Whitehaven Road, Grand Island, NY 14072, (716) 773–1111.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director, Environmental Management Advisory Board, EM–5, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program including the Formerly Utilized Site Remedial Action Program.

Tentative Agenda

Tuesday, August 22, 1995

11:30 a.m. Chairman Opens Public Meeting
Overview of Activities and Findings from the June 20–21, 1995 Committee meeting in St.Louis, MO and Discussion of Remaining Issues
12:30 p.m.—Lunch
1:30 p.m.—Presentation on Applicability of Ore Recovery Methods as Potential Treatment Technology
2:00 p.m.—Presentation of Issue Papers —Residues; Land Use; Community Options on Land Use and EPA Standards Coordination
4:15 p.m.—Committee/ Public Discussion of Issues
5:00 p.m.—Break for Dinner
7:00 p.m.—Public Comment Session
8:00 p.m.—Meeting Adjourns

Wednesday, August 23, 1995

8:00 a.m.—Chairman Reconvenes Public Meeting
8:05 a.m.—Continued Discussion on Treatment and Land Use Issues
12:00 p.m.—Lunch
1:00 p.m.—Discussion of Potential Guiding Principles
3:30 p.m.—Committee Business
5:00 p.m.—Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Committee during the public comment session should call (800) 736–3282 and leave a message. Individuals may also register on August 22, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak to the Committee, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Chairman is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

Meeting minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 2, 1995

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–19393 Filed 8–4–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. RM95–8–000, RM 94–7–001]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities; Notice of Public Scoping Meeting

August 1, 1995.

The Commission staff will hold a public meeting in this proceeding on September 8, 1995, to discuss the scope of the proposed environmental impact statement (EIS) as described in the Notice of Intent to Prepare an Environmental Impact Statement for the Notice of Proposed Rulemaking (NOPR) and Request for Comments on Environmental Issues (NOI) issued July 12, 1995. The meeting will begin at 10:00 a.m., in Hearing Room 1, at 810 First Street NE., Washington, D.C.

Any person who wishes to make a formal presentation should submit a request to the Secretary of the Commission no later than September 5, 1995. The presentation is to be limited to the environmental issues associated with the NOPR, and is not to be used as a forum to address the merits of the NOPR. Each request should include the time anticipated for the presentation and any special equipment requirements. Every effort will be made to accommodate requests to make presentations, but, depending on the number of requests received, each presentation may have to be limited to 5 minutes. To provide a more productive conference, those with similar views are encouraged to coordinate their efforts and choose one spokesperson to make a statement on behalf of the group. Also, speakers are encouraged to prepare written "Executive Summaries" for presentation at the September 8, 1995 meeting. An official transcript will be made of the public meeting to accurately record all comments.

Please take notice that all written scoping comments and relevant studies or reports on the proposed EIS still need to be filed with the Commission on or before August 11, 1995, as directed in the NOI. In addition, commenters are asked to submit their written comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (*i.e.*, MS Word, WordPerfect, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines.

Send all written comments, diskettes, and requests to speak at the meeting to:

- Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426; and
- Refer to Docket Nos. RM95–8–000 and RM94–7–001.

Also send a copy of the written scoping comments to:

- Leon Lowery, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, Telephone: (202) 208–0919, Fax: (202) 208–0180.

All written comments will be available for public inspection or copying in the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C 20426, or call (202) 208–1371. All comments filed on diskettes will be available on the Commission Issuance Posting System (CIPS). CIPS is an electronic bulletin board service which provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19337 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–647–000]

Crossroads Pipeline Company; Notice of Application for a Blanket Certificate

August 1, 1995.

Take notice that on July 28, 1995, Crossroads Pipeline Company (Crossroads), 801 East 86th Avenue, Merrillville, Indiana 46410, filed in Docket No. CP95–647–000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Crossroads states that it was granted certificate authority to operate as a natural gas company subject to the Commission's Regulations pursuant to the Natural Gas Act in Docket No. CP94–342–000. Crossroads further states that as a natural gas company providing the interstate transportation of natural gas subject to regulation by the Commission, it will be required to engage in the routine activities of Subpart F. In addition, Crossroads states that it does not hold any outstanding budget-type certificates issued under § 157.7, it will comply with the terms, conditions, and procedures specified in subpart F, § § 157.201–257.218, there are currently no effective rate schedules which would apply to any interstate service authorized by § 157.210 or § 157.213, and there are no on-going storage field tests commenced under a budget-type certificate issued under § 157.7(d).

Any person desiring to be heard or to make any protest with reference to said application should on or before August 22, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Crossroads to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19338 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–400–000]

Distrigas of Massachusetts Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1995.

Take notice that on July 27, 1995, Distrigas of Massachusetts Corporation (DOMAC), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective September 1, 1995.

Second Revised Sheet No. 75
First Revised Sheet No. 75–A
First Revised Sheet No. 76
Original Sheet No. 76–A
First Revised Sheet No. 79
First Revised Sheet No. 80
Original Sheet No. 80–A

First Revised Sheet No. 83
First Revised Sheet No. 87
First Revised Sheet No. 92
First Revised Sheet No. 102
First Revised Sheet No. 105
First Revised Sheet No. 114
First Revised Sheet No. 122

DOMAC states that the purpose of this filing is to modify DOMAC's current rate caps to reflect the changed structure of the pipeline industry. Specifically, DOMAC proposes to replace the commodity rate caps in Rate Schedules FVSS, FLSS, FCSS and ISS with new commodity rate caps that reflect (i) the price of gas in the U.S. Gulf Coast supply region; (ii) the commodity cost of transporting that gas to New England; and (iii) the unused portion of the call payment rate cap. DOMAC also states that it proposes to replace the call payment rate cap in Rate Schedule FLSS with the identical call payment rate cap in Rate Schedule FVSS and to replace the commodity rate cap in Rate Schedule ISS with a new rate cap to reflect the 100% load factor equivalent of the rate caps in Rate Schedule FVSS and FLSS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such notices or protests should be filed on or before August 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19339 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–28–001]

K N Interstate Gas Transmission Co.; Notice of Second Refund Report Filing

August 1, 1995.

Take notice that on July 24, 1995, K N Interstate Gas Transmission Co. (KNI) filed its second refund report in the referenced docket. It is stated that the reported amounts were paid on July 21, 1995. KNI states that the refund report shows the Kansas ad valorem tax refund amounts refunded by first sellers subsequent to the First Refund Report and the allocation of those refund amounts to former jurisdictional customers.

KNI states that copies of the filing were served upon former jurisdictional customers of K N Energy, Inc. and pertinent state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19340 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–398–000]

Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1995.

Take notice that on July 27, 1995, Paiute Pipeline Company (Paiute) tendered for filing and acceptance as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets with a proposed effective date of July 10, 1995:

Second Revised Sheet No. 103
Second Revised Sheet No. 110

Paiute states that the purpose of this filing is to propose changes to Sections 14.1(g) and 14.3(a) of the Capacity Release provisions contained in the General Terms and Conditions of Paiute's FERC Gas Tariff. Paiute states that the changes are necessary to conform Paiute's tariff with the changes made in Order No. 577–A to the Commission's regulations governing pipeline capacity release mechanisms.

Paiute states that copies of the filing were served upon all of Paiute's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19341 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM94–5–49–002 TM 95–4–49–002 (Not Consolidated)]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 1, 1995.

Take notice that on July 28, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets listed on Appendix A to the filing.

Williston Basin states that, in compliance with the Commission's June 18, 1995 Letter Order in Docket No. TM94–5–49–001 and the Commission's June 30, 1995, Order in Docket No. TM95–4–49–000, the revised tariff sheets reflect revised gas supply realignment surcharges based upon separate true-up mechanisms for Rate Schedules FT–1 and ST–1, respectfully. In addition, Williston Basin has revised the base rate unit cost for Rate Schedule IT–1 based on a throughput level of 7,354,757 Dth.

The proposed effective dates of the tariff sheets included in the filing are November 1, 1993, December 1, 1993, January 1, 1994, February 1, 1994, July 1, 1994, August 1, 1994, October 1, 1994, November 1, 1994, February 1, 1995 and July 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19342 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1357–000]

Wisconsin Electric Power Company, et al. Notice of Extension of Time

July 27, 1995.

Take notice that the time for filing responses to the notice issued July 25, 1995 (60 FR 39163, August 1, 1995), in this proceeding has been extended to and including August 28, 1995.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19372 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–39–021]

Wyoming Interstate Company, Ltd.; Notice of Filing of Refund Report

August 1, 1995.

Take notice that on July 25, 1995, Wyoming Interstate Company, Ltd. (WIC) filed a refund report in Docket No. RP85–39. WIC states that the refunds were made to comply with Article IV of the Stipulation and Agreement filed in Docket No. RP85–39 on February 6, 1990 and as amended on November 13, 1990, the Federal Energy Regulatory Commission Order of May 21, 1991 and the Exit Fee Stipulation and Agreement entered into by Columbia Gas Transmission Company and WIC in Docket No. RP94–315.

WIC states that the refund report summarizes transportation refund amounts due Columbia for Period I (June 1, 1985 through June 30, 1987), Period II (July 1, 1987 through December 31, 1987) and Period III (January 1, 1988 through December 31, 1989) as agreed upon in the Docket No. RP85–39 Stipulation and Agreement. WIC further states that the refund report further details transportation refund amounts for Period IIIA (January 1, 1990 through August 31, 1991) calculated in accordance with the amended Docket No. RP85–39 Stipulation and Agreement.

WIC states that said refunds were paid to Columbia on June 26, 1995 in accordance with the Exit Fee Stipulation and Agreement in Docket No. RP94–315 as approved by the Commission Order dated February 10, 1995.

WIC states that copies of this filing were served on each person designated on the Commission's official service in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NW., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19343 Filed 8–4 –95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5273–3]

Public Water System Supervision Program Revision for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142 that the State of West Virginia is revising its approved State Public Water System Supervision Primacy Program. West Virginia has adopted drinking water regulations for lead and copper that correspond to the National Primary Drinking Water regulations promulgated by EPA on June 7, 1991 (56 FR 26460–26564), July 15, 1991 (56 FR 32112–32113), June 29, 1992 (57 FR 28785–28789), and June 30, 1994 (59 FR 33860–33864). EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by September 6, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 6, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on September 6, 1995.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.
West Virginia Office of Environmental Health Services, 815 Quarrier Street, Suite 418, Charleston, West Virginia 25301.

FOR FURTHER INFORMATION CONTACT: Ghassan M. Khaled, U.S. EPA, Region III, Drinking Water Section (3WM41), at the Philadelphia address given above; telephone (215) 597–8992.

Dated: July 20, 1995.

W. Michael McCabe,

Regional Administrator, EPA, Region III.

[FR Doc. 95–19404 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5273–7]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") proposes to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). Notice is being published to inform the public of the proposed settlement and of

the opportunity to comment. The settlement is intended to resolve a portion of the liability of Commercial Decal, Inc. for costs incurred by EPA at the Commercial Decal, Inc. Site in Mount Vernon, New York.

DATES: Comments must be provided on or before Sepember 6, 1995.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866 and should refer to: In the Matter of: The Commercial Decal, Inc. Site, Mount Vernon, New York, U.S. EPA Index No. II–CERCLA–95–0202.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866, (212) 637–3181, Attention: Carl Garvey.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed Administrative Cost Recovery Agreement ("Agreement") concerning the Commercial Decal, Inc. Site (the "Site"), Mount Vernon, New York. Section 122(h)(1) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

This Agreement is a settlement regarding payment for response costs incurred by EPA at the Site. Under the terms of the Agreement, Commercial Decal, Inc. will reimburse $350,000 of the United States' response costs. The United States Bankruptcy Court for the Southern District of New York (Hon. John J. Connelly) approved the Agreement by Order dated November 17, 1994.

A copy of the proposed Agreement may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866, Attention: Carl Garvey.

Dated: July 17, 1995.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 95–19405 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5274–2]

Pike County Drum; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered approximately 12 parties at the Pike County Drum Site (the Site) in Osyka, Mississippi an opportunity to enter into a Cost Recovery Agreement to settle claims for past and future response cost at the Site. EPA will consider public comments on the proposed settlement for thirty (30) calendar days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement and a list of settling parties are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347–5059 x6169.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: July 27, 1995.

H. Kirk Lucius,

Chief, Waste Programs Branch, Waste Management Division.

[FR Doc. 95–19403 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[IC Docket No. 94–31; FCC 95–256]

Preparation for International ITU World Radiocommunication Conferences

AGENCY: Federal Communications Commission.

ACTION: Report.

SUMMARY: The Report contains the Federal Communications Commission's recommended United States Proposals to the 1995 World Radiocommunication Conference to be convened by the International Telecommunication Union from October 23 to November 17, 1995, in Geneva, Switzerland. The Commission's recommended proposals address the introduction of the global mobile-satellite service, the simplification of the international Radio Regulations, and other items on the conference agenda.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Audrey L. Allison, International Bureau, (202) 739–0557, or Damon C. Ladson, International Bureau, (202) 739–0510.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report, IC Docket No. 94–31, FCC 95–256, adopted and released June 15, 1995. The full text of this Report is available for inspection during normal business hours in the Records Room of the Federal Communications Commission, Room 239, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Report

1. This Report provides the Federal Communications Commission's recommended United States Proposals for the 1995 World Radiocommunication Conference (WRC–95). These recommended proposals seek to improve the international spectrum allocations and related measures necessary for the successful introduction of innovative global non-geostationary orbit communications satellite systems. These proposed actions will foster the implementation of Mobile-Satellite Service (MSS) networks and their inauguration of cost-efficient voice and data mobile communications services to all corners of the globe. These new satellite networks promise to spur multi-billion dollar U.S. industries and to form an integral segment of the Global Information Infrastructure. The Commission's recommended proposals are being transmitted to the Department of State for development of final United States Proposals.

2. WRC–95 will be the first conference under the International Telecommunication Union's new accelerated conference cycle to discuss substantive spectrum allocation and regulatory matters. This conference represents a significant opportunity to build a foundation for advancing near and long-term United States telecommunications goals. In particular, WRC–95 is critical to new commercial telecommunications industries—including the low-Earth orbit (LEO) MSS systems already licensed by the Commission.

3. To accomplish these aims, the Commission's primary recommended proposals for WRC–95 seek: (1) To designate spectrum for feeder links necessary to support MSS systems; (2) to reduce technical constraints on current global MSS spectrum allocations to make them usable for MSS operations; and (3) to obtain additional global spectrum allocations for MSS service links—including 6 MHz below 1 GHz to support non-voice systems known as Little LEOs and an adjustment to the existing 2 GHz allocation necessary to accommodate multiple competing global MSS systems, including those known as Big LEOs. The Report also addresses the simplification of the international Radio Regulations and other issues on the WRC–95 agenda, including space services, international satellite orbit allotment plans, high frequency broadcasting and future conference agendas.

4. The Commission's recommended proposals are based on the work of the WRC–95 Industry Advisory Committee, comments received from the public in response to two Notices of Inquiry, and participation in international preparatory activities for WRC–95, including the 1995 Conference Preparatory Meeting (CPM–95).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19195 Filed 8–4–95; 8:45 am]

BILLING CODE 6712–01–M

[GN Docket No. 93–252, DA 95–1303]

Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services; Foreign Ownership Waiver Petitions

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: As a result of legislation which reclassified certain licensees, waivers were filed to request retention of existing foreign ownership that would otherwise not be permitted. This order resolves those requests for waiver of the foreign ownership rules filed pursuant to the Omnibus Budget Reconciliation Act of 1993 and the First Report and Order in this docket.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Sue McNeil, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in GN Docket No. 93–252, DA 95–1303, adopted June 12, 1995 and released June 12, 1995. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Summary of the Order

Introduction

1. This order resolves thirty-three requests for waiver of the foreign ownership rules filed pursuant to the Omnibus Budget Reconciliation Act of 1993 (Budget Act) and the First Report and Order in this docket (CMRS First and Order) 59 Fed. Reg. 1285 (Jan. 10, 1994). As discussed herein, we (1) grant the petitions filed by MAP Mobile Communications, Geotek Corporation, Nextel Corporation, Pittencrieff Communications, RACOM, and Uniden; (2) dismiss the waiver petition filed by Comcast Corporation as moot; and (3) deny the remaining petitions.

Background

2. Prior to the enactment of the Budget Act, petitioners were regulated as private land mobile radio service providers and therefore were not subject to the foreign ownership restrictions contained in Section 310(b) of the Communications Act (the Act). In the Budget Act, Congress reclassified certain categories of private land mobile radio providers as commercial mobile radio service (CMRS) providers, and provided that they would be treated as common carriers under the Act. As a result of this statutory change, reclassified CMRS providers will become subject to the foreign ownership restrictions applicable to common carriers.

3. To alleviate the potential burden on reclassified licensees of complying with the foreign ownership restrictions, the Budget Act provided for limited grandfathering of existing foreign interests in such licensees. Specifically, Congress provided that any private land mobile service licensee subject to reclassification as a CMRS provider could petition the Commission by February 10, 1994 for waiver of the application of Section 310(b) to any foreign ownership that lawfully existed as of May 24, 1993. The statute further stated that the Commission could grant such waivers to eligible petitioner only upon certain conditions: (a) the extent of foreign ownership interest could not be increased beyond May 24, 1993 levels; and (b) the waiver could not allow any subsequent transfers in violation of Section 310(b).[1] In the CMRS First Report and Order, we indicated that we also would apply the waiver provisions to foreign officers and directors.

4. In the CMRS First Report and Order, the Commission established a petition procedure for affected licensees to request waiver of the foreign ownership restrictions. The Commission acknowledged that because of the February 10, 1994 filing deadline, petitioners might be required to file their waiver requests prior to a final determination of whether they were subject to reclassification. Accordingly, the Commission stated that the filing of a petition would not prejudice a licensee's right at a later date to assert that it should not be reclassified as a CMRS provider. Thirty-three timely-filed requests were received by the February 10 statutory deadline.

5. Following the filing of the petitions, the Commission adopted the Second Report and Order in this docket (CMRS Second Report and Order) 59 Fed. Reg. 18,493 (Apr. 19, 1995), which specified those services that would be regulated as CMRS (and thereby subject to the foreign ownership restrictions). In that Order, the Commission defined CMRS as a mobile service that is: (a) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain; (b) an interconnected service; and (c) available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. A mobile service that does not meet that definition is presumed to be PMRS.

6. On May 24, 1994, the Land Mobil and Microwave Division of the Private Radio Bureau asked all petitioners to provide supplemental information regarding their waiver requests. In particular, the Division asked each petitioner to certify whether, in light of the guidelines set forth in the CMRS Second Report and Order, it was subject to reclassification as a CMRS provider and would therefore qualify for statutory relief from the restrictions contained Section 210(b).

Discussion

A. Waiver Requests of Geotek, MAP Mobile, RACOM, and Uniden

7. In their initial and follow-up filings, petitioners Geotek, MAP Mobile, RACOM and Uniden indicate that they are subject to reclassification as CMRS providers and accordingly request waiver of the foreign ownership restrictions. No opposition to any of these petitions were filed.

[1] The legislative history accompanying the Budget Act provides that a waiver can extend only to the particular person or entity who holds the foreign ownership on May 24, 1993 and does not transfer to any future foreign owners. H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 495 (1993), reprinted in 1993 U.S. Code Cong. & Admin. News 1184.

8. We conclude that the petitions filed by Geotek, MAP Mobile, RACOM, and Uniden meet the statutory requirements for grant of the requested waivers. Each of these petitioners has satisfied the informational showings and certifications required by the Budget Act, the CMRS First Report and Order, and our May 24 request for information. Moreover, allowing these petitioners to retain foreign ownership that existed as of May 23, 1993, will help ensure a smooth transition as these entities and/or their subsidiaries become subject to CMRS regulation.

9. We therefore exercise our authority to grandfather all foreign ownership that lawfully existed in each of these petitioners as of May 24, 1993. Consistent with the Budget Act, we also impose the following conditions on each waiver: (a) The extent of foreign ownership interest cannot be increased beyond May 24, 1993 levels; and (b) any subsequent transfers in violation of Section 310(b) are prohibited. Licensees operating in violation of the terms of these waivers will be subject to appropriate enforcement action.

10. We also clarify that, while petitioners may not increase their level of foreign ownership above May 24, 1993 levels, the waivers granted by this Order do apply to additional licenses granted to petitioners in the same service after May 24, 1993 and prior to August 10, 1996, provided the same ownership structure is maintained. We believe that this is consistent with Congressional intent in grandfathering the foreign ownership interests of reclassified licensees. In the CMRS Second Report and Order 59 FR 18,493 (Apr. 19, 1995), we provided that grandfathered licensees who acquired new licenses in the same service during the 3-year statutory transition period could extend grandfathered PMRS status to such new licenses until August 10, 1996. We believe the same flexibility should be extended to petitioners with respect to the waivers granted by this *Order*. Accordingly, until August 10, 1996, petitioners may acquire additional licenses in the same service using the ownership structure approved by this waiver. The requirements of Section 310(b) will apply, however, to any licenses awarded to petitioners after August 10, 1996.

B. Waiver Request of Pittencrieff

11. In its initial petition and May 24 supplemental filing, Pittencrieff stated that as of May 24, 1993, it was 100 percent foreign owned, but that its level of foreign ownership had declined to 54.4 percent as of the date of the petition. Subsequently, in a September 26, 1994 letter, Pittencrieff stated that after the initial petition was filed, it had undergone a corporate reorganization involving the *pro forma* transfer of its licenses to a newly-created wholly-owned subsidiary. Pittencrieff indicated that while the formal chain of ownership of the licenses had been altered by the transaction, the identity of the foreign interest holders did not change. Pittencrieff also noted that it has further reduced its foreign ownership level to 23.8 percent.

12. The Bureau concludes that Pittencrieff is entitled to a waiver applicable to any foreign individual or entity who held an interest in Pittencrieff's licenses as of May 24, 1993. Pittencrieff's September 26, 1994 letter indicates that as a result of its corporate reorganization, such foreign interest holders now hold their interests through a new entity created since the petition was filed. Nevertheless, we believe that the waiver policy established by Congress extends to such interests, provided that the petitioner certifies that (1) the identify of the foreign interest holders has not changed, and (2) the percentage interest in the licensees held by such interest holders has not increased since May 24, 1993. We therefore grant Pittencrieff's waiver request provided that it certifies to the above conditions within 60 days after publication of this Order in the **Federal Register**. As discussed in paragraph 10, *supra*, we also extend this waiver to additional licenses acquired by Pittencrieff through August 10, 1996, in services where it held licenses as of May 24, 1993, so long as its ownership structure remains in place.

C. Waiver Request of Nextel

13. Nextel states in its petition and follow-up filings that it is subject to reclassification as a CMRS provider and accordingly requests waiver of the foreign ownership restrictions. Nextel explains that a waiver is needed because Matsushita, a Japanese corporation, acquired a 1.38 percent equity interest in Nextel in 1992 and has the right to designate one member of Nextel's nine person Board of Directors. Nextel also notes that the identity of the board member designated by Matsushita has changed since May 24, 1993. Nextel maintains that in the case of a corporate directorship interest, the Budget Act grandfathers the interest itself, not the individual representing the corporate interest. Therefore, Nextel argues, the Commission should grandfather Matsushita's corporate directorship interest and grant the waiver.

14. In addition, Nextel notes that it has executed an agreement with another Japanese corporation, Nippon Telephone and Telegraph Company (NTT), which will permit NTT to acquire a 0.7 percent interest in Nextel and to be represented by a director on Nextel's Board. Nextel states that in connection with the transaction, it has undertaken a corporate restructuring and has filed applications for the *pro forma* assignment of all licenses held by Nextel to its wholly-owned subsidiaries. Once these *pro forma* applications are granted, Nextel states that the Matsushita and NTT interests in Nextel will be within the limitations of Section 310(b)(4) and the waiver requested here no longer will be necessary.

15. Nextel's waiver request is opposed by Kevin Lausman, who filed an Opposition and a number of related documents. In his Opposition, Lausman alleges that Nextel mischaracterized the nature of the Matsushita's interest in Nextel. Specifically, Lausman maintains that Nextel's representation that Matsushita's right to "designate" one member of the board is inconsistent with an SEC filing showing that Matsushita could "nominate" a board member, provided its ownership remained at a certain level. Lausman also alleges that Nextel attempted to mislead the Commission when its petition only identified licenses held by Nextel and not those of its subsidiaries. Moreover, Lausman maintains that Nextel is ineligible for the relief it requests on the grounds that it improperly executed an agreement to increase its level of foreign ownership and permitted Matsushita to change its representative on the Board of Directors. Finally, Lausman argues that granting Nextel's waiver is inconsistent with public policy in view of Japan's unfair trade practices.

16. We are not persuaded by Lausman's arguments.[2] At the outset, we observe that Lausman's opposition was not timely filed and thereby is procedurally defective. Pursuant to Section 1.45(a) of the Commission's Rules, Lausman should have filed his opposition by February 18, 1994, but did not in fact file with the Commission until March 11. Moreover, Lausman did not provide any basis why the Commission should accept its opposition out-of-time.

17. While we have sufficient reason to dismiss Lausman's opposition as untimely on its face, we also find Lausman's substantive allegations to be without merit. We disagree with Lausman's allegation that Nextel misrepresented or failed to disclose information material to our consideration of the waiver requested in Nextel's petition. Nextel's petition and supplemental filings fully comply with the informational requirements set forth in the CMRS First Report and Order. In its petition, Nextel states that Matsushita is a foreign entity that holds an equity interest in Nextel that does not exceed the Section 310(b)(3) benchmark. Nextel also disclosed that, based on that interest, Matsushita has the right to designate one member of Nextel's Board of Directors. Nextel also explains that, due to personnel changes in Matsushita, the individual serving as Matsushita's representative on Nextel's Board has changed subsequent to May 24, 1993. Lausman has failed to show how any of these disclosures are incomplete or misleading. The purported discrepancy between Nextel's waiver petition and its SEC filing is a minor difference in terminology that has not substantive significance.

18. In addition, we find that Nextel did not act improperly in identifying only those licenses held by Nextel (and not by its subsidiaries) for purposes of its waiver request. Nextel's waiver request is expressly limited to those licenses that it holds directly and which otherwise would be subject to Section 310(b)(3). Nextel was not required to identify its indirect interest in other licenses for which no waiver either was required or sought.

19. Finally, we do not believe the agreement with NTT makes Nextel ineligible for the relief it requested. While Lausman correctly observes that the statute prohibits increases in foreign ownership subsequent to May 24, 1993, we note that Nextel has not requested such relief with respect to NTT's prospective interest. Instead, Nextel properly has taken separate steps to comply with the Section 310(b)(4) foreign ownership restrictions.

20. Accordingly, we grandfather all foreign ownership in Nextel that lawfully existed as of May 24, 1993, subject to the following conditions: (a) The extent of foreign ownership interest cannot be increased beyond May 24, 1993 levels; and (b) any subsequent transfers in violation of Section 310(b) are prohibited. As discussed *supra*, we construe the statute to extend the waiver to the acquisition of new licenses in services that Nextel provided as of May 24, 1993, so long as the same ownership structure remains in place.

21. We also grandfather Matsushita's designee on the Nextel Board of Directors, regardless of the fact that the identity of the individual serving as Matsushita's representative changed after May 24, 1993. While the statute prohibits changes in the identity of foreign owners of grandfathered licensees, it does not expressly address the issue of directors. We further note that individual or corporate shareholders commonly seek to protect their investment by obtaining the right to nominate representatives to the board of directors. We conclude that in allowing foreign entities who held ownership interests in reclassified licensees prior to May 24, 1993 to retain those interests, Congress did not intend to deprive such entities of pre-existing rights to nominate members of the board of directors based on such ownership. So long as the entity controlling the directorship remains unchanged, we believe a change in the identity of the individual director is permissible. Accordingly, we conclude that Matsushita's corporate directorship interest should be grandfathered along with its ownership interest, and that the change in the identity of the individual serving as Matsushita's representative does not vitiate the waiver.

D. Waiver Request of Comcast

22. Comcast notes that the Commission previously has granted it a waiver of the foreign ownership restrictions to permit an Australian citizen to serve as an officer of the corporation. Nevertheless, Comcast requests a waiver to the extent necessary to allow this officer to remain once certain of its private land mobile subsidiaries are reclassified as CMRS providers.

23. The Bureau agrees with Comcast that the Commission's prior order allowing Comcast to have a foreign corporate officer under Section 310(b)(4) of the Act obviates the need for a separate, statutory waiver. In that Order, the Commission determined that the appointment of John Alchin, an Australian citizen, to the corporate officer of senior Vice President and Treasurer of Comcast would not adversely affect the public interest. The Commission subsequently has extended the scope of this waiver to permit Alchin to serve as an officer of any subsidiary of Comcast that directly or indirectly controls common carrier licensees but is not itself a common carrier licensee. Because the Commission has determined that Alchin's service as a corporate officer is in the public interest, and thereby has granted Comcast a waiver pursuant to Section 310(b)(4), the Bureau concludes that the additional waiver relief requested is unnecessary. Accordingly, Comcast's petition is dismissed as moot.

E. Other Waiver Requests

24. In responses to the Land Mobile and Microwave Division's May 24 supplemental information request, the remaining petitioners stated that, based on the Commission's rules, they would not be reclassified and thereby declined to certify that they would become CMRS licensees. Noting that the Commission has stated that "the filing of a [Section 310(b)] petition would not prejudice a licensee's future arguments as to whether it should be reclassified," these petitioners stated that, based on their current understanding of the Commission's rules, their radio operations are private. The petitioners nevertheless requested waiver of the foreign ownership restriction in the event that future Commission interpretations suggested they would be reclassified as CMRS providers. The petitioners otherwise failed to provide the information requested in the May 24 letters.

25. The Bureau declines to grant waivers to petitioners who have stated they will remain private mobile radio service providers. Under the Budget Act, waiver of the foreign ownership restrictions is only available to licensees that will be reclassified as CMRS. Because petitioners maintain that their radio operations remain private under the criteria set forth in the CMRS Second Report and Order, the relief requested neither is available nor required. Petitioners' argument that the CMRS First Report and Order affords the flexibility to obtain waiver relief in the future should the Commission clarify its CMRS definition is erroneous. Rather, the language cited by petitioners was intended to protect licensees that could not determine whether they would be reclassified until the CMRS Second Report and Order was released. Based on the standards set forth in the CMRS Second Report and Order, petitioners had sufficient information to determine whether they would be reclassified.

Ordering Clauses

26. Pursuant to our authority under 47 U.S.C. §§ 155(c)(1) and 332(c)(6), *it is ordered* that the requests for waiver filed by Geotek, MAP Mobile, Nextel, RACOM, and Uniden are hereby granted subject to the conditions described above.

27. *It is further ordered* That the waiver request filed by Pittencrieff *is granted*, provided that Pittencrieff certifies within 60 days after this Order is published in the **Federal Register** that (1) The identity of the foreign interest holders has not changed, and (2) the

[2] For the reasons set forth below, we also dismiss all subsequently-filed pleadings related to Lausman's Opposition.

percentage interest in the licenses held by such interest holders has not increased since May 24, 1993.

28. *It is further ordered* That the waiver request filed by Comcast IS DISMISSED as moot.

29. *It is further ordered* That the waiver requests filed by ADT, ADT Mid-South, ADT Mountain West, ADT Northeast, ADT Southwest, ADT West, Amerchol, Big Sky, BP Chemicals, Eastern Associated, Hanson, North Antelope, NuEast, Peabody, Praxair, Rhone-Poulenc, Rochelle, Seadrift, Timken, UCAR, UCAR Carbon, UCAR Resinas, UCC&P, UMETCO, Union Carbide, and Union Carbide Caribe are denied.

30. *It is further ordered* That the Opposition, Petition, for an Order to Cease and Desist, Motion for Summary Judgment, Petition for an Order to Show Cause Why All Radio Station Licenses Held or Controlled by Nextel Communications, Inc. Should Not Be Revoked, Supplement to Opposition, Motion for Deferral of Action, and Motion to Accept Unauthorized Pleading filed by Kevin Lausman are dismissed.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–19301 Filed 8–4–95; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

YachtShip CruiseLine, Inc. (d/b/a American West Steamboat Company) and Sternwheeler Boat Company, 520 Pike Street, Suite 1610, Seattle, Washington 98101.
Vessel: QUEEN OF THE WEST
Dated: July 31, 1995.

Joseph C. Polking,
Secretary.
[FR Doc. 95–19409 Filed 8–4–95; 8:45 am]
BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessels: CELEBRATION, ECSTASY, FANTASY, FASCINATION, FESTIVALE, HOLIDAY, IMAGINATION, INSPIRATION, JUBILEE, SENSATION and TROPICALE
Dated: July 31, 1995.

Joseph C. Polking,
Secretary.
[FR Doc. 95–19304 Filed 8–4–95; 8:45 am]
BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessels: ECSTASY, FANTASY, FASCINATION and SENSATION

Carnival Corporation and Celebration Cruises, Inc., 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessel: CELEBRATION

Carnival Corporation and Festivale Maritime Limited, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessel: FESTIVALE

Carnival Corporation and Sunbury Assets Limited, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessel: HOLIDAY

Carnival Corporation and Tropicale Cruises, Inc., 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessel:TROPICALE

Carnival Corporation and Jubilee Cruises, Inc., 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessel: JUBILEE.
Dated: July 31, 1995.

Joseph C. Polking,
Secretary.
[FR Doc. 95–19305 Filed 8–4–95; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Century South Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 31, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Century South Banks, Inc., Dahlonega, Georgia; to acquire 100 percent of the voting shares of Peoples Bank, Lavonia, Georgia.

2. First Commerce Corporation, New Orleans, Louisiana; to acquire 9 percent of the voting shares of First United Bank of Farmerville, Farmerville, Louisiana.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Madison Holdings Limited Partnership, Madison Heights, Michigan; to become a bank holding company by acquiring 49.23 percent of the voting shares of Madison Bancorp, Inc., Madison Heights, Michigan, and thereby indirectly acquire Madison National Bank, Madison Heights, Michigan.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Bancorp Shares, Inc., San Antonio, Texas; to acquire 100 percent of the voting shares of Camino Real Bancshares, Inc., San Antonio, Texas, and thereby indirectly acquire Camino Real Delaware, Wilmington, Delaware, and Camino Real Bank, N.A., Eagle Pass, Texas.

In connection with this application, TBSI Merging Company, Inc., San Antonio, Texas, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Camino Real Bancshares, Inc., San Antonio, Texas, and thereby indirectly acquire Camino Real Delaware, Wilmington, Delaware, and Camino Real Bank, N.A., Eagle Pass, Texas.

Board of Governors of the Federal Reserve System, August 1, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95–19369 Filed 8–4–95; 8:45 am]
BILLING CODE 6210–01–F

MBNA Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. MBNA Corporation, Newark, Delaware; to engage *de novo* through its subsidiary, MBNA Consumer Services, Inc., Newark, Delaware, in making, acquiring, and servicing consumer loans and credit card loans, pursuant to §§ 225.25(b)(1)(i) and (b)(1)(ii) of the Board's Regulation Y; in acquiring and servicing mortgage loans, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y; and in offering credit insurance (life, disability, and involuntary unemployment), pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 1, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95–19370 Filed 8–4–95; 8:45 am]
BILLING CODE 6210–01–F

Swiss Bank Corporation; Notice to Engage in Certain Nonbanking Activities

Swiss Bank Corporation, Basel, Switzerland (Applicant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23 of the Board's Regulation Y (12 CFR 225.23) to retain control of all the voting shares of certain United States subsidiaries (United States Subsidiaries) of S.G. Warburg Overseas Ltd., London, England, and the assets and liabilities of the branch of S.G. Warburg Forex Ltd., London, England, that is located in New York, New York (New York Forex), and thereby engage in the following nonbanking activities:

(1) Providing various types of investment and financial advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y;

(2) Providing discount and full-service brokerage services, and activities incidental thereto, pursuant to § 225.25(b)(15) of the Board's Regulation Y;

(3) Dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, pursuant to § 225.25(b)(16) of the Board's Regulation Y;

(4) Acting as agent in the private placement of all types of securities, and providing related advisory services;

(5) Underwriting and dealing in, to a limited extent, all types of debt and equity securities (other than securities issued by open-end investment companies);

(6) Trading for its own account in the option contracts as listed below:
American Stock Exchange
(i) Major Market Index options
Chicago Board Options Exchange
(ii) Standard & Poor's 100 Stock Index options
(iii) Standard & Poor's 500 Stock Index options
(vi) Long-Term Interest Rate options

(7) Trading for its own account in the futures and options on futures contracts listed as listed below:
Chicago Board of Trade
(i) Options on The Bond Buyer Municipal Bond Index futures
Chicago Mercantile Exchange
(ii) Standard & Poor's 100 Stock Price Index futures
(ii) Standard & Poor's 500 Stock Price Index futures
(iii) Options on Standard & Poor's 500 Stock Price Index futures
(vi) Eurodollar futures
Marche a Terme International de France (Paris)
(v) Cotation Assiste en Contenue (CAC) 40 Stock Index futures

(8) Trading for its own account in foreign exchange spot, forward, and futures transactions.

On June 26, 1995, Applicant received temporary authority to acquire the United States Subsidiaries and New York Forex pursuant to section 4(c)(9) of the BHC Act (12 U.S.C. 1843(c)(9)). This authority was granted in reliance upon certain commitments and conditions, including Applicant's commitment to file this notice.

The United States Subsidiaries include S.G. Warburg & Co., Inc., New York, New York (SGWC), S.G. Warburg Options Inc., Chicago, Illinois (SGWO), and S.G. Warburg OTC USA, Inc., Chicago, Illinois (SGWOTC). Applicant intends to merge SGWC with and into

SBC Capital Markets Inc., New York, New York (CMI), a subsidiary of Applicant that engages in a wide range of securities- and derivatives-related activities, including underwriting and dealing in all types of debt and equity securities on a limited basis. *See Swiss Bank Corporation*, 81 Federal Reserve Bulletin 185 (1995) (*Swiss Bank Order*). SGWO and SGWOTC will either be merged with and into CMI at the same time or liquidated promptly thereafter.

Applicant seeks approval to conduct the proposed activities throughout the United States, and plans to conduct the activities on a world-wide basis.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Applicant states that the Board previously has determined by regulation or order that all of the activities conducted by the United States Subsidiaries or New York Forex, when conducted within the limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act, and, where applicable, are consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See* 12 CFR 225.25(b)(4), (b)(15), and (b)(16); *Swiss Bank Order*. *See also J.P. Morgan & Co. Incorporated*, 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990), *Order Approving Modifications to the Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989), *Canadian Imperial Bank of Commerce*, 76 Federal Reserve Bulletin 158 (1990), *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 226 (1993), and *Supplement to Order Approving Modifications to Section 20 Orders*, 79 Federal Reserve Bulletin 360 (1993) (Section 20 Orders).

Applicant maintains that these activities will be conducted in conformity with the conditions and limitations established by the Board in prior cases.

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that the proposal "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance CMI's ability to compete with other financial institutions engaged in the investment banking business at the international level, by providing it with access to the customer base of the United States Subsidiaries and New York Forex, thereby enhancing its ability to compete in customer-oriented businesses such as underwriting and private placements in the United States. Applicant also asserts that the proposal will enable CMI to offer a broader range of products and services to its customers, and will make CMI a more effective competitor in the United States capital and securities markets. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or other applicable laws.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 22, 1995. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, August 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19371 Filed 8–4–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0239]

Drug Export; Neupogen® Recombinant Methionyl Granulocyte Colony Stimulating Factor (r-metHuG-CSF) With Sorbitol

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Amgen, Inc., has filed an application requesting approval for the export of the human biological product Neupogen® Recombinant Methionyl Granulocyte Colony Stimulating Factor (r-metHuG-CSF) with sorbitol in vials, pre-filled syringes, and purified bulk, to Australia, Austria, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Amgen, Inc., 1840 Dehavilland Dr., Thousand Oaks, CA 91320–1789, has filed an application requesting approval for the export of the human biological product Neupogen® Recombinant Methionyl Granulocyte Colony Stimulating Factor (r-metHuG-CSF) with sorbitol in vials, pre-filled syringes, and purified bulk, to Australia, Austria, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Neupogen® is indicated for the reduction in the duration of neutropenia and its clinical sequelae in patients undergoing myeloblative therapy followed by autologous or allogeneic bone marrow transplantation and the reduction in the incidence of febrile neutropenia in patients treated with established cytotoxic chemotherapy for non-myeloid malignancy. Neupogen® is used in patients, children or adults, with severe chronic neutropenia (severe congenital neutropenia, cyclic neutropenia, and idiopathic neutropenia) induces a sustained increase in absolute neutrophil counts in peripheral blood and a reduction of infection and related events. The application was received and filed in the Center for Biologics Evaluation and Research on June 15, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 17, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 24, 1995.

James C. Simmons,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 95–19426 Filed 8–4–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0147]

Determination of Regulatory Review Period for Purposes of Patent Extension; Excimed™ UV200LA/SVS APEX Excimer Laser Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Excimed™ UV200LA/SVS APEX Excimer Laser Systems and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Excimed™ UV200LA/SVS APEX Excimer Laser Systems. Excimed™ UV200LA/SVS APEX Excimer Laser Systems are indicated for phototherapeutic keratectomy (PTK) procedures which treat superficial pathology located in the anterior 100 microns of the cornea. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Excimed™ UV 200LA/SVS APEX Excimer Laser Systems (U.S. Patent No. 4,941,093) from Summit Technology, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 21, 1995, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Excimed™ UV200LA/SVS APEX Excimer Laser Systems represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Excimed™ UV200LA/SVS APEX Excimer Laser Systems is 2,271 days. Of this time, 1,156 days occurred during the testing phase of the regulatory review period, while 1,115 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* December 22, 1988. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act for human tests to begin became effective on December 22, 1988.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e)*: February 20, 1992. The applicant claims November 19, 1991, as the date the premarket approval application (PMA) for Excimed™ UV200LA/SVS APEX Excimer Laser Systems was initially submitted. However, FDA records indicate that PMA P910067 submitted on November 19, 1991, was incomplete. FDA refused this application and notified the applicant of this fact by letter dated February 7, 1992. The completed PMA was then submitted on February 20, 1992, which is considered to be the PMA initially submitted date.

3. *The date the application was approved*: March 10, 1995. FDA has verified the applicant's claim that PMA P910067 was approved on March 10, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 609 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 6, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 15, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 28, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–19425 Filed 8–4–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), is publishing the following summaries of proposed collections for public comment.

1. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Alternative Quality Assessment Survey; *Form No.:* HCFA–667; *Use:* This survey is used in lieu of an onsite survey for those Clinical Laboratory Improvement Amendments of 1988 (CLIA) laboratories with good performance determined by their last onsite survey, and is designed to screen laboratories and alert HCFA to where an onsite inspection is vital. The survey has been revised to reflect CLIA's streamlined inspection process, to reduce burden and improve the CLIA system by rewarding good performance. *Frequency:* Annually; *Affected Public:* Business or other for profit, not for profit, Federal Government, State, local, or tribal government; *Number of Respondents:* 4,000; *Total Annual Hours:* 6,000.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Data Collection and Analysis for Generating Procedure Specific Cost Estimates; *Form No.:* HCFA R–181; *Use:* The Survey of Practice Costs is a survey of provider practices whose services are covered by the Medicare Fee Schedule (MFS). The data collected from this survey will enable HCFA to meet its congressional mandate to develop resource-based practice expense relative value unit estimates for the MFS by 1998; *Frequency:* Annually; *Affected Public:* Individuals or households, business or other for profit; *Number of Respondents:* 3,500; *Total Annual Hours:* 10,500.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 31, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–19391 Filed 8–4–95; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Center for Research Resources; Notice of Meeting of the Board of Scientific Counselors, NCRR

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Research Resources, August 30, 1995, in Building 45, Room A, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 8:00 a.m. to 12 noon for the review of the Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on August 30 from 1:00 p.m. to adjournment for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Sonja Shorts, Assistant to the Executive Secretary, NCRR, Building 12, Room 12A, National Institutes of Health, Bethesda, Maryland, 20894–2425, Area Code 301, 496–6023, will provide a summary of the meeting and a roster of the Board members and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Shorts in advance of the meeting.

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19406 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 11–12, 1995. Meetings of the Council, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be held at the National Institutes of Health, Building 31C, Bethesda, Maryland. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

The meeting of the full Council will be open to the public on September 11 in Conference Room 10 from approximately 1 p.m. until 4 p.m. for opening remarks of the Institute Director, discussion of procedural matters. Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include an update on AIDS vaccine research, an overview of clinical research core curriculum, a review of the Office of AIDS Research, and the annual report of the Division of Intramural Research.

On September 12 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. The subcommittee will meet in conference rooms 9 and 10 respectively. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 8 a.m. until adjournment on September 12. The subcommittee will meet at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on September 11, in conference rooms 7, 9 and 10 respectively. The meeting of the full Council will be closed from 4 p.m. until recess on September 11 for review, discussion, and evaluation of individual grant applications. These applications and the discussions would reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19410 Filed 8–4 –95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on September 12, 1995, in the Versailles Ballroom of the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

The entire meeting will be open to the public from 8 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress, and provide concept clearance for proposed research initiatives. Attendance by the public will be limited to space available.

Ms. Anne P. Claysmith, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2B06, telephone 301–402–0755, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Claysmith in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; (93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19407 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 20–21, 1995. The meeting of the full Council will be open to the public September 20, from 8 a.m. to noon and again on September 21, from 10 a.m. to noon in Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland, to discuss administrative issues relating to Council business and special reports. The following subcommittee meetings will be open to the public September 20 from 1 p.m. to 2 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee meeting will be held in Conference Room 10, Building 31C; Digestive

Diseases and Nutrition Subcommittee meeting will be held in Conference Room 7, Building 31C; and Kidney, Urologic and Hematologic Diseases Subcommittee meeting will be held in Conference Room 8, Building 31C. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meetings of the subcommittees and full Council will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 20, from 2 p.m. to 5 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee; Digestive Diseases and Nutrition Subcommittee; and Kidney, Urologic and Hematologic Diseases Subcommittee. The Full Council meeting will be closed from 8:30 a.m. to 10 a.m. on September 21. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Natcher Building, Room 6AS–25C, Bethesda, Maryland 20892, (301) 594–8834, at least two weeks prior to the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A07, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6623.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19411 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meetings of the Board of Regents and the Extramural Programs Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on September 26–27, 1995, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on September 25 in Conference Room B, Building 38A, from 2 p.m. to approximately 3:30 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 4:30 p.m. on September 26 and from 9 a.m. to adjournment on September 27 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Mrs. Karin Colton at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on September 25 will be closed to the public from 2 p.m. to approximately 3:30 p.m., and the regular Board meeting on September 26 will be closed from approximately 4:30 p.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19412 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on September 11–12, 1995. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on September 11, 1995, at approximately 9 a.m., and will recess at approximately 6 p.m. The meeting will reconvene on September 12, 1995, at approximately 8:30 a.m. and will adjourn at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, National Institute of Health.

[FR Doc. 95–19413 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

Ad Hoc Review Committee for the Recombinant DNA Advisory Committee; Meeting

Notice is hereby given of a meeting of the Ad Hoc Review Committee for the Recombinant DNA Advisory Committee on August 28, 1995, at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public to discuss three major topics for review: (1) Domain and mandate of the Recombinant DNA Advisory Committee; (2) composition of the Recombinant DNA Advisory Committee; and (3) Recombinant DNA Advisory Committee's review of human gene transfer protocols. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, National Institutes of Health, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: July 28, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–19415 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health Division of Research Grants; Closed Meetings:

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: August 15, 1995.

Time: 8 a.m.

Place: American Inn of Bethesda.

Contact Person: Dr. Joe Marwah, Scientific Review Administrator, 6701 Rockledge Drive, Room 45188, Bethesda, MD 20892, (301) 435–1253.

Name of SEP: Clinical Sciences.

Date: August 16, 1995.

Time: 1 p.m.

Place: NIH, Rockledge II, Room 4218, Telephone Conference.

Contact Person: Dr. Shirley A. Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, (301) 435–1198.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 15, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge II, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, MD 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 17, 1995.

Time: 10:00 a.m.

Place: NIH, Rockledge II, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, MD 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 18, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge II, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, MD 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 17, 1995.

Time: 1 p.m.

Place: NIH, Rockledge II, Room 4200, Telephone Conference.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, MD 20892, (301) 435–1219.

Name of SEP: Multidisciplinary Sciences.

Date: September 18, 1995.

Time: 8:30 a.m.

Place: Washington Dulles Airport Marriott, VA.

Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, MD 20892, (301) 435–1169.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393, 93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 31, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–19414 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: August 16, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 6152, Telephone Conference.
Contact Person: Dr. Jerry Roberts, Scientific Review Administrator, 6701 Rockledge Drive, Room 6152, Bethesda MD 20892, (301) 435–1037.

Name of SEP: Biological and Physiological Sciences.
Date: August 21, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 6152, Telephone Conference.
Contact Person: Dr. Jerry Roberts, Scientific Review Administrator, 6701 Rockledge Drive, Room 6152, Bethesda MD 20892, (301) 435–1037.

Name of SEP: Biological and Physiological Sciences.
Date: August 23, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 6152, Telephone Conference.
Contact Person: Dr. Jerry Roberts, Scientific Review Administrator, 6701 Rockledge Drive, Room 6152, Bethesda MD 20892, (301) 435–1037.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–19416 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Novel Neutrophil Chemotactic Factor, Cloned cDNA and Monoclonal Antibodies Thereto

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in a U.S. Patent Application 07/169,033 and corresponding foreign patent applications entitled, "Novel Neutrophil Chemotactic Factor, Cloned cDNA and Monoclonal Antibodies Thereto" to Chugai Pharmaceutical Company, Limited of Tokyo, Japan. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Activated monocytes/macrophages produce various mediators that cause inflammation. Among them are chemotactic factors which cause white blood cells to migrate into inflammatory sites where factors are released. Neutrophils, the dominant leukocytes attracted by the chemotactic factors play a critical role in inflammatory reactions. Rheumatoid arthritis, idiopathic pulmonary fibrosis and pathological inflammatory changes in a variety of other diseases are believed to be caused by neutrophils and/or their products. The present invention covers neutrophil chemotactic factor (interleukin-8, IL–8), a molecular clone containing the complete coding sequence for IL–8 and monoclonal antibodies to IL–8.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 247; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in any field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by NIH on or before October 6, 1995, will be considered. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 21, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–19417 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3855–N–04]

NOFA for the John Heinz Neighborhood Development Program (NDP); Announcement of Funding Awards—FY 1995

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of competition winners.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for the John Heinz Neighborhood Development Program (NDP) for fiscal year 1995. The announcement contains the names and addresses of the competition winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Gene Hix, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7220, Washington, DC 20410. Telephone Number (202) 708–2186; TDD Number: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On February 24, 1995, HUD published a NOFA for the John Heinz Neighborhood Development Program (60 FR 10438). On June 26, 1995 an amendment was published in the **Federal Register** (60 FR 32557). The June 26, 1995 NOFA announced the availability of $4.8 to $4.95 million in funding for eligible neighborhood development organizations. The NOFA stated that the purpose of the program is to support eligible neighborhood development activities using cooperative efforts and monetary incentive funds to promote the development of this concept and encourage neighborhood organizations to become more self-sufficient in their development activities. Funds would be used to plan and carry out specific projects which create permanent jobs in the neighborhood; establish or expand businesses; develop new housing, rehabilitate existing housing or manage housing stock; develop essential services; or provide neighborhood improvement efforts.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names and addresses of the nonprofit organizations which received funding under this NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: July 31, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

APPENDIX A.—JOHN HEINZ NEIGHBORHOOD DEVELOPMENT PROGRAM (NDP) FY 1995 GRANTS

1. Ahkenaton Community Development Corporation	Chicago	IL	75,000
2. All Citizens Taking Initiatives on Needs, Inc.	Suffolk	VA	75,000
3. Allston Brighton Community Development Corp.	Boston	MA	56,920
4. Anacostia Economic Dev. Corp	Washington.	DC	75,000
5. Bayfront NATO, Inc	Erie	PA	65,250
6. Behind the Rocks Neighborhood Association, Inc	Hartford	CT	40,000
7. Bethel New Life, Inc	Chicago	IL	75,000
8. Better Community Housing of Trenton, Inc	Trenton	NJ	75,000
9. Black Veterans for Social Justice, Inc	Brooklyn	NY	75,000
10. Brazos Neighborhood Association	Waco	TX	50,000
11. Camp Washington Community Board, Inc	Cincinnati	OH	75,000
12. Charity Cultural Services Center	San Francisco.	CA	75,000
13. Chelsea's Commission on Hispanic Affairs, Inc	Chelsea	MA	75,000
14. City Heights Community Development Corporation	San Diego	CA	75,000
15. Claretian Associates Neighborhood Development	Chicago	IL	75,000
16. Community Action Development Corporation of the Lehigh Valley	Allentown	PA	75,000
17. Cooperative Workshops, Inc	Sedalia	MO	75,000
18. Cross Community Coalition	Denver	CO	50,150
19. Cypress Hills Local Dev. Corp., Inc	Brooklyn	NY	45,000
20. Dunbar-Abrams Foundation, Inc	Bessemer	AL	75,000
21. East Akron Neighborhood Development Corporation	Akron	OH	50,000
22. East Pittsburgh Economic Development Corporation	Pittsburgh	PA	75,000
23. Elliot Park Neighborhood Inc	Minneapolis.	MN	75,000
24. Esperanza Community Housing Corporation	Los Angeles.	CA	75,000
25. Franciscan Enterprise	Portland	OR	50,000
26. Garrett Square Economic Development Corporation	Cleveland	OH	30,000
27. Holy Name Housing Corp	Omaha	NE	25,000
28. Interim Community Development Association	Seattle	WA	55,750
29. Kendall-Whittier Neighborhood Assn	Tulsa	OK	75,000
30. Liberation Community, Inc	Fort Worth	TX	75,000
31. Little Haiti Housing Association Inc	Miami	FL	75,000
32. Lopez Community Land Trust	Lopez	WA	75,000
33. Martin Street Plaza Incorporated	Atlanta	GA	75,000
34. Mechanicsville Historic CDC, Inc	Knoxville	TN	25,000
35. Minority Task Force on AIDS, Inc	New York	NY	50,000
36. Near West Side Multi Service/May Dugan Center	Cleveland	OH	74,963
37. Neighborhood Action Coalition	Portland	ME	75,000
38. Neighborhood Housing Services of Bedford-Stuyvesant	Brooklyn	NY	65,000
39. North River Development Corporation	Toledo	OH	75,000
40. Northside Development Corporation	Columbus	OH	75,000
41. Northside Neighborhood Assn., Inc	Lexington	KY	11,250
42. Northwest Bronx Community & Clergy Coalition	Bronx	NY	35,000
43. Ohio City Near West Development Corp	Cleveland	OH	75,000
44. Olde Huntersville Development Corporation	Norfolk	VA	30,800
45. Operation Pride-West End	Birmingham.	AL	75,000
46. Parramore Heritage Renovation Foundation	Orlando	FL	75,000
47. People of Phillips	Minneapolis.	MN	75,000
48. Peoples Emergency Center CDC	Philadelphia.	PA	75,000
49. Peoples Involvement Corporation	Washington.	DC	75,000
50. Philadelphia Chinatown Development Corp	Philadelphia.	PA	75,000
51. Phillips Community Development Corporation	Minneapolis.	MN	50,400

APPENDIX A.—JOHN HEINZ NEIGHBORHOOD DEVELOPMENT PROGRAM (NDP) FY 1995 GRANTS—Continued

52. Phoenix Revitalization Corporation	Phoenix	AZ	75,000
53. Portland Community Reinvestment Initiatives, Inc	Portland	OR	75,000
54. Pratt Area Community Council	Brooklyn	NY	46,000
55. Reach Community Development, Inc	Portland	OR	69,700
56. Richmond Neighborhood Housing Services	Richmond	VA	75,000
57. Rockford Neighborhood Redevelopment Corp	Rockford	IL	75,000
58. S. Cumminsville Community United For Better Hsg	Cincinnati	OH	75,000
59. Sabin Community Development	Portland	OR	26,562
60. Sandtown Habitat For Humanity, Inc	Baltimore	MD	75,000
61. South Brooklyn Local Development Corporation	Brooklyn	NY	75,000
62. South East Economic Development, Inc	Grand Rapids.	MI	75,000
63. Southside Community Development & Housing Corp.	Richmond	VA	75,000
64. St. James Community Dev. Corp	Newark	NJ	75,000
65. St. Margaret of Scotland Housing Corp	St. Louis	MO	75,000
66. Syracuse United Neighborhoods, Inc	Syracuse	NY	28,500
67. Tenants' and Workers' Support Committee	Alexandria	VA	62,000
68. The East Muskegon Neighborhood Alliance	Muskegon	MI	75,000
69. The Village of Arts and Humanities	Philadelphia.	PA	75,000
70. Universal Community Homes, Inc	Philadelphia.	PA	40,000
71. W. Center City Neigh Plng. Advisory Comm., Inc	Wilmington	DE	75,000
72. Washington Heights & Inwood Development Corporation	New York	NY	45,000
73. West Angeles Community Development Corp	Los Angeles.	CA	75,000
74. West Jackson Community Development Corporation	Jackson	MS	75,000
75. West Side Planning & Development	Chicago	IL	75,000

[FR Doc. 95–19336 Filed 8–4–95; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Office of Acquisition and Property Management; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Department's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Department's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1084–0018), Washington, DC 20503, telephone (202) 395–7340.

Title: Use of Foreign Construction Materials—Department of the Interior.

OMB Approval Number: 1084–0018.

Abstract: The provision, an agency supplement to the Federal Acquisition Regulation FAR 52.225–5, requires bidders to provide information regarding the type and cost of foreign materials proposed for use in Government construction contracts. The information provided will be used to determine the reasonableness of the cost of domestic materials.

Bureau Form Number: None.

Frequency: One time, with bid.

Description of Respondents: Prospective contractors bidding on construction contracts subject to the Buy American Act.

Estimated Completion Time: 1 hour.

Annual Responses: 250.

Annual Burden Hours: 250.

Department Clearance Officer: Craig Leff 202–208–4979.

Paul A. Denett,

Director, Office of Acquisition and Property Management.

[FR Doc. 95–19435 Filed 8–4–95; 8:45 am]
BILLING CODE 4310–RF–M

Office of Acquisition and Property Management; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Department's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Department's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1084–0017), Washington, DC 20503, telephone (202) 395–7340.

Title: "Brand Name or Equal"—Department of the Interior.

OMB approval number: 1084–0017.

Abstract: This provision, which is agency implementation of the requirements stated in Federal Acquisition Regulation (FAR) 10.004(b)(3), requires bidders to provide supplementary descriptive information regarding any "or equal" products offered in response to a "brand name or equal" solicitation. The information provided will be used to determine whether the offered product meets the Department's requirements.

Bureau form number: None.

Frequency: One time, with bid.

Description of respondents: Prospective contractors offering "or equal" products in response to "brand name or equal" solicitations.

Estimated completion time: 3 hours.

Annual responses: 100.

Annual burden hours: 300.

Department Clearance Officer: Craig Leff 202–208–4979.

Paul A. Denett,

Director, Office of Acquisition and Property Management.

[FR Doc. 95–19437 Filed 8–4–95; 8:45 am]
BILLING CODE 4310–RF–M

Office of Acquisition and Property Management; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Department's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Department's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1084–0019), Washington, DC 20503, telephone (202) 395–7340.

Title: Indian Preference Program—Department of the Interior.

OMB Approval Number: 1084–0019.

Abstract: The clause requires contractors who have been awarded contracts in excess of $50,000 under Public Law 93–638, to establish and conduct an Indian preference program. Part of the program requires the maintenance of records concerning contractor efforts to employ Indians and to use Indian subcontractors. A second requirement of the program is the semi-annual report by the contractor to the contracting officer which summarizes the contractor's preference program efforts and indicates (a) the number, and; (b) types of available positions filled and dollar amounts of all subcontracts awarded to Indian organizations, Indian-owned economic enterprises, and all other firms.

Bureau Form Number: None.

Frequency: Semiannually.

Description of Respondents: Contractors who have been awarded contracts in excess of $50,000 pursuant to Public Law 93–638; contractors with contract awards of less than $50,000 whose contracts present substantial opportunities for Indian employment, training or subcontracting.

Estimated Completion Time: 2 hours.

Annual Responses: 2,500.

Annual Burden Hours: 5,000.

Department Clearance Officer: Craig Leff, 202–208–4979.

Paul A. Denett,

Director, Office of Acquisition and Property Management.

[FR Doc. 95–19436 Filed 8–4–95; 8:45 am]
BILLING CODE 4310–RF–M

Office of the Secretary

Colorado; Front Range Resource Advisory Council, Northwest Resource Advisory Council, Southwest Resource Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils—Notice of Establishment, Notice of Meeting.

SUMMARY: This notice announces the establishment of three Resource Advisory Councils for the State of Colorado by the Secretary of the Interior in accordance with the provisions of the Federal Advisory Committee Act of 1972 (FACA) 5 U.S.C. App. The Secretary has determined that the Councils are necessary and in the public interest. Copies of the Council charters will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA. The 3 Colorado Resource Advisory Councils are: the Front Range Resource Advisory Council, the Northwest Resource Advisory Council, and the Southwest Resource Advisory Council.

The Federal Land Policy and Management Act, as amended, requires the Secretary of the Interior to establish advisory councils to provide advice concerning the problems relating to land use planning and the management of public lands within the area for which the advisory councils are established. The Resource Advisory Councils will provide representative counsel and advice to BLM on the planning and management of the public lands as well as advice on other public land resource issues. Council members will be residents of the State in which the council has jurisdiction and will be appointed by the Secretary of the Interior.

A joint meeting of the Front Range Resource Advisory Council, the Northwest Resource Advisory Council, and the Southwest Resource Advisory Council will be held on August 22, 1995, in Grand Junction, Colorado. The time and location of the meeting will be announced in the local media and **Federal Register** prior to the meeting. The purpose of the meeting is to discuss the operation, organization, and general goals of the Councils. The meeting will be open to the public. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Sheri Bell, Colorado BLM, (303) 239–3670, at least 5 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Chris Wood, Policy Analyst, Office of the Assistant Director for Resource Assessment and Planning, Bureau of Land Management, Room 5558, U.S. Department of the Interior, Washington, D.C. 20240, telephone (202) 208–7013, or Tim Salt, Western Rangelands Lead, Bureau of Land Management, Room 5546, U.S. Department of the Interior, Washington, D.C. 20240, telephone (202) 208–4256.

SUPPLEMENTARY INFORMATION: The purpose of the Colorado Resource Advisory Councils is to advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with the management of the public lands. The councils' responsibilities include: providing advice to BLM regarding the preparation, amendment, and implementation of land use plans; providing advice on long-range planning and establishing resource management priorities; and assisting the BLM to identify State or regional standards for ecological health and guidelines for grazing.

Council members will be representative of various industries and interests concerned with the management, protection, and utilization of the public lands. These include: (a) holders of Federal grazing permits and representatives of energy and mining development, the timber industry, off-road vehicle use, and developed recreation; (b) representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups; and (c) representatives of State and local government, Native American tribes, academia involved in the natural sciences, and the public at large.

Membership will include individuals who have expertise, education, training, or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the respective Councils.

Certification

I hereby certify that the Front Range Resource Advisory Council, the Northwest Resource Advisory Council, and the Southwest Resource Advisory Council are in the public interest in connection with the Secretary of the Interior's statutory responsibilities to manage the lands and resources administered by the Bureau of Land Management.

Date signed: August 3, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–19533 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[AK–963–1410–00–P]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Mary's Igloo Native Corporation for approximately 11,529 acres. The lands involved are in the vicinity of Mary's Igloo, Alaska.

Serial No.	Approximate land description	Acreage
F–14893–A2	T. 3 S., R. 30 W., K.R.M.	3,093
	T. 4 S., R. 30 W., K.R.M.	2,510
F–14893–B2	T. 2 S., R. 29 W., K.R.M.	2,770
	T. 5 S., R. 30 W., K.R.M.	3,156

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 6, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Katherine L. Flippen,

Acting Chief, Branch of Southwest Adjudication.

[FR Doc. 95–19380 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–JA–P

[CA–068–01–7123–00–6592]

Emergency Closure of Public Lands; California

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: This notice shall amend the original closure order, for the Ord Mountain area, to optimize public opportunity for outdoor recreation, hunting and camping purposes. This amendment also clarifies and further defines the areas within the closure area available for public camping and parking.

SUMMARY: In accordance with title 43, Code of Federal Regulations 8341.2, notice is hereby given that all lands described below, administered by the Bureau of Land Management (BLM) have been closed to all motorized vehicle use, as amended herein; except for BLM operation and maintenance vehicles, law enforcement vehicles and other vehicles specifically authorized by an authorized officer of the Bureau of Land Management; and except for the authorized routes, as amended herein, administered by the BLM which are identified below, which will be signed open. This closure affects ALL of the public lands, from the powerline road southeast of Barstow (south of the Nebo Marine Base), east to Camprock road, south to Northside road (Lucerne Valley), bordered by State route 247 to the west.

Routes

The open routes of travel have been modified to optimize opportunity for outdoor recreation purposes. A map of the open route network is available from the Bureau of Land Management, 150 Coolwater Lane, Barstow, CA 92311, (619) 255–8760.

Signing

Within the closure area, segments of the authorized route network will be signed as OPEN ROUTES. To reduce public confusion, routes closed by this order which appear on the current Desert Access Guides as open routes will be signed as CLOSED ROUTES where they intersect with segments of the authorized route network. CLOSED ROUTE signs may also be used at locations where use patterns show considerable public confusion. All routes not signed are to be considered closed. Visitors to this area must restrict their motor vehicle use to the authorized route network.

Private Lands

This order is in no way intended to affect the rights of private land owners, or their interests within the closure area, with respect to private lands. Further, this order does not infer any Bureau of Land Management jurisdiction over private lands, within the closure area.

Camping

Camping, staging and parking is prohibited within the Cinnamon Hills habitat restoration area. This area has been identified for intensive biological restoration. The no camping zone is clearly marked on the official map, and is located within the area bounded by Northside Road, Camprock Road, and portions of route OM–10, route OM–30 and route OM–7.

In the remainder of the closure area, camping, parking and staging may occur in a previously disturbed area within fifty feet of the edge, of any portion of the authorized route network, upon lands managed by the Bureau of Land Management. Use of private lands for this purpose requires land owner permission.

SUPPLEMENTARY INFORMATION: This closure, as modified herein, is required to mitigate the impacts of unregulated street-legal and non-street legal motorized use in a class "L" limited use area as designated in the California Desert District Conservation Area Plan (1980), as amended. This area is important to wildlife including upland game birds, desert tortoise habitat, and the desert tortoise, a threatened species (listed in 1989 as endangered, downgraded to threatened in 1990). This area is impacted by the neighboring Stoddard Valley Off-Highway Vehicle Area and Johnson Valley Off-Highway Vehicle Area. Route proliferation is occurring within the area and is impacting the habitat of the desert tortoise. This closure will allow for permitted use, including but not limited to grazing, recreation and mining. This closure does not affect public access by non-motorized means.

PENALTIES: Failure to comply with this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Area Manager Barstow (619 255–8700). Maps of the closure will be posted at Daggett, Barstow and Lucerne Valley Post Offices and may also be obtained from the Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311.

Dated: July 31,1995.

Michael DeKeyrel,

Acting Area Manager.

[FR Doc. 95–19381 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–40–P

[CO–933–95–1320–01; COC 57831]

Notice of Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 57831; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by Cyprus Empire Corporation requesting the Bureau of Land Management offer for competitive lease 2,495.09 acres of federal coal in Moffatt County, Colorado.

DATES: The public hearing will be held at 7 p.m., August 24, 1995. Written comments should be received no later than September 11, 1995.

ADDRESSES: The public hearing will be held in the Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado 81625. Written comments should be addressed to the Bureau of Land Management, Little Snake Resource Area Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: John Husband, Area Manager, Little Snake Resource Area Office at the address above, or by telephone at (303) 824–4441.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on August 24, 1995, at 7 p.m., in the Little Snake Resource Area Office at the address given above.

An application for coal lease was filed by Cyprus Empire Corporation requesting the Bureau of Land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 6 N., R. 91 W., 6th P.M.
Sec. 19, lots 6, and 7;
Sec. 30, 5, 6, and 8;
Sec. 31, lot 9.
T. 6 N., R. 92 W., 6th P.M.
Sec. 23, all;
Sec. 24, all;
Sec. 25, lots 1, and 2 and N½;
Sec. 26, N½, SW¼, and N½SE¼.

containing 2,495.09 acres.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the August 24, 1995, public hearing should be received at the Little Snake Resource Area Office prior to the close of business August 24, 1995. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The cost of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the Little Snake Resource Area Office at the above address prior to close of business on August 24, 1995.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the Little Snake Resource Area Office upon request.

A copy of the Draft Environmental Assessment and Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215.

Dated: August 1, 1995.

Karen A. Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 95–19382 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–1430–05; GP174; OR–52098]

Receipt of Application for the Conveyance of Federally-Owned Mineral Interests; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the receipt of an application from the surface estate owner for the conveyance of Federally-owned minerals.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6170.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Harold Nippert and Patricia Nippert, surface owners, of Sandy, Oregon, have applied to purchase the mineral estate described as follows:

Willamette Meridian, Oregon

T. 20 S., R. 16 E.,
Sec. 26, SW¼;
Sec. 30, lots 3 and 4, E½SW¼ and SE¼;
Sec. 35, NE¼NE¼, W½NE¼ and NE¼NW¼.
T. 21 S., R. 16 E.,

Sec. 1, lots 1, 2, 3, and 4, N½SE¼ and NE¼SW¼;
Sec. 2, lot 1.
T. 21 S., R. 17 E.,
Sec. 6, lots 4 and 5.

The areas described aggregate 955.81 acres in Deschutes County, Oregon.

Upon publication of this notice in the **Federal Register**, the mineral interest described above will be segregated to the extent that it will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, or upon rejection of the application, or two years from the date of filing of the application, June 15, 1995, whichever occurs first.

Dated: July 19, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–19306 Filed 8–4–95; 8:45 am]

BILLING CODE 4310-33-P

[CO–956–95–1420–00]

Colorado: Filing of Plats of Survey

July 27, 1995.

The plats of survey of the following described land are officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m. on July 27, 1995.

The plat representing the dependent resurvey of a portion of the north boundary of the Southern Ute Indian Reservation (south boundary of the Ute Ceded Lands), through Township 34 North, Range 9 West (South of the Ute Line), New Mexico Principal Meridian, Group 849, Colorado, was accepted June 6, 1995.

This survey was executed to meet certain administrative needs of the Southern Ute Indian Reservation.

The plat representing the dependent resurvey of portions of the south and west boundaries, and a portion of the subdivisional lines of Township 33 South, Range 59 West, Sixth Principal Meridian, Group 1086, Colorado, was accepted June 8, 1995.

The plat representing the dependent resurvey of a portion of the subdivisional lines of Township 33 South, Range 60 West, Sixth Principal Meridian, Group 1086, Colorado, was accepted June 6, 1995.

These surveys were executed to meet certain administrative needs of the Colorado Department of Transportation and of this Bureau.

The plat representing the dependent resurvey of a portion of Survey No. 261, Townsite of the City of Central, portions of certain mineral claims, and the metes-and-bounds survey of an irregular lot line, in section 12, Township 3 South, Range 73 West, Sixth Principal Meridian, Group 1040, Colorado, was accepted June 13, 1995.

This survey was executed to meet certain administrative needs of this Bureau.

The supplemental plat depicting the aliquot part E½ of the E½ of the NW¼ of the NW¼ and creating new lots 3 and 4 in the NW¼ of the NW¼ of section 33, Township 3 North, Range 76 West, Sixth Principal Meridian, Colorado, was approved June 5, 1995.

This plat was created to meet certain administrative needs of this Bureau.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 95–19307 Filed 8–4–95; 8:45 am]

BILLING CODE 4310-JB-P

National Park Service

Estate of William G. Helis, a Partnership, Jean Lafitte National Historical Park and Preserve, Barataria Preserve Unit, Jefferson Parish, Louisiana; Availability of Plan of Operations and Environmental Assessment, Pipeline Removal and Reclamation and Abandonment of Pipeline Easement

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Estate of William G. Helis, A Partnership a Plan of Operations for plugging and abandonment of Canal Bank and Trust Co. No. 1 Well within the Barataria Preserve Unit of Jean Lafitte National Historical Park and Preserve, located within Jefferson Parish Louisiana.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the office of the Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana and will be sent upon request.

Dated: July 31, 1995.

Robert Belous,

Superintendent. Jean Lafitte, National Historical Park and Preserve.

[FR Doc. 95–19310 Filed 8–4–95; 8:45 am]

BILLING CODE 4310-70-M

Revision of Commercial Use License Program to Incidental Business Permit Program

AGENCY: National Park Service, Interior.

ACTION: Notice and public comment on change from Commercial Use License Program to Incidental Business Permit Program.

SUMMARY: The National Park Service has revised and updated the Commercial Use License Program that permits certain business operators to utilize National Park Service land. This program has been renamed "Incidental Business Permit Program" and is incorporated under the Special Use Permitting system. These operators are not concessioners and are not under the purview of Pub. L. 89–249. The new procedures will rescind Chapter 13 of NPS–48 ("The Concessions Guideline") and corresponding sections of NPS–53 ("Special Park Uses Guideline") effective as of the date of this publication.

The Commercial Use License Program in effect since 1981 has been used to license certain business operators utilizing areas of the National Park System. Established criteria insured that these operators did not fall under the purview of Pub. L. 89–249 and did not enjoy the privileges granted to concessioners authorized to operate on park land.

The National Park Service established a workgroup to study and evaluate the Commercial Use License program in the national parks. As a result of the findings of that workgroup, it was determined that following revisions were necessary to insure consistency in the program.

1. Incidental Business operations will be evaluated by specific criteria, and authorized under the proper authorizing document.

2. Incidental Business operators will be required as a condition of the permit to provide visitor and revenue information to the parks.

3. Provisions of the permit will insure better resource and visitor protection.

4. Parks will be permitted to utilize cost recovery procedures in monitoring and administering the program.

5. The program will be evaluated annually by a peer board of critique to provide consistency in the program and insure that the program remains functional.

The procedures will function as an internal staff manual and notice of this revision is not required to be published in the **Federal Register** nor is public comment on it required to be sought. However, to assure that the view of all interested parties is considered, public comment is requested, and the National Park Service will consider all comments received and make appropriate amendments if public comments so warrant.

DATES: Comments must be received on or before September 6, 1995.

ADDRESSES: Comments should be directed to Robert K. Yearout, Chief, Concessions Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Laurie Shaffer, Contract Analyst, Contract Branch, Concessions Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Copies of the proposed guidelines are available on request.

Roger G. Kennedy,

Director.

[FR Doc. 95–19309 Filed 8–4–95; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32433]

Chicago and North Western Transportation Company—Construction and Operation Exemption—City of Superior, Douglas County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10901 Chicago and North Western Railway Company's (CNW) construction and operation of a 2,900-foot line of railroad, subject to conditions to mitigate environmental effects. The proposed line, located in the City of Superior, Douglas County, WI, will connect CNW's Superior rail yard to a transloading coal dock owned by Midwest Energy Resources Company on Lake Superior. By decision served May 11, 1994 (published May 12, 1994, at 59 FR 24710), the Commission conditionally exempted only construction of the line, subject to completion of environmental review and a further decision. The environmental analysis is now completed.

DATES: This exemption is effective on August 7, 1995, subject to the condition that CNW comply with the environmental mitigation measures adopted in the decision regarding construction and operation of the involved rail line. Petitions to reopen must be filed by August 28, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32433 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioner's representative: Stuart F. Gassner, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4537/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: July 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19368 Filed 8–4–95; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Interstate Bakeries Corp. and Continental Baking Co.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Consent Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois, Eastern Division in a civil antitrust case, *United States* v. *Interstate Bakeries Corp. and Continental Baking Co.*, Civ. No. 95 C 4194.

On July 20, 1995, the United States filed a Complaint seeking to enjoin a transaction by which Interstate agreed to acquire Continental. Continental and Interstate are the country's first and third largest wholesale commercial bakers and producers of white pan bread ("plain old white bread"). The Complaint alleged that the proposed acquisition would substantially lessen competition in the sale of white pan bread in five markets (Chicago, Milwaukee, central Illinois (Springfield, Peoria, Champaign/Urbana), San Diego, and Los Angeles) in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment requires defendants to divest such brand names and possibly other assets as are necessary to create a new competitor in the sale of white pan bread in each of the five markets. If the required divestitures are not accomplished within nine months, the Court will appoint a trustee to complete the sales. The Hold Separate Stipulation and Order is intended to facilitate the divestitures by requiring defendants to hold separate and maintain certain products and plans as economically viable assets pending possible divestiture. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

The public is invited to comment to the Justice Department and to the Court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Room 4000, Washington, DC 20530 (telephone: (202) 307–0207). Comments must be received within sixty days.

Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 207 of the U.S.Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 514–2841), and at the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn, 20th Floor, Chicago, Illinois, 60604. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

Civil Action No.: 95C 4194
Filed: 7/20/95
Judge Manning

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Stipulation and Order:

A. "Associated Assets" means:

(1) All labels used on White Pan Bread in the Relevant Territories;

(2) All land, buildings, fixtures, machinery and equipment related to the plant;

(3) All trucks and other vehicles, depots or warehouses, and thrift stores utilized by defendants in the distribution of White Pan Bread in the Relevant Territories; and

(4) All route books, customer lists, and other records used in the defendants' day-to-distribution of White Pan Bread in the Relevant Terrorities.

B. "Label" means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress, the brand's trade secrets; the brand's production knowhow, including, but not limited to, recipes and formulas used to produce bread sold under the label; and packagaging, marketing and distribution knowhow and documentation, such as customer lists and route maps, associated with the brand.

C. "Continental" means Continental Baking Company, each division or subsidiary thereof, and each officer, director, employee, attorney, agent, successor or assignee, or other person acting for or on behalf of any of them.

D. "Interstate" means Interstate Bakeries Corporation, each division or subsidiary thereof, and each officer, director, employee, attorney, agent, successor or assignee, or other person acting for or on behalf of any of them.

E. "Interstate's Chicago Plant" means the Interstate bread production facility located in Chicago, Illinois and its Associated Assets.

F. "Interstate's Southern California Plant" means the Interstate bread production facility located in Glendale, California and its Associated Assets.

G. "Interstate's Central Illinois Plants" means the Interstate bread production facility located in Decatur, Illinois and the Interstate bread production facility located in Peoria, Illinois and their Associated Assets.

H. "Continental's Chicago Plant" means the Continental bread production facility located in Hodgkins, Illinois and its Associated Assets.

I. "Continental's Southern California Plant" means the Continental bread production facility located in Pomona, California and its Associated Assets.

J. "Eastern Wisconsin Territory" means Adams, Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Forest, Florence, Green, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties in the state of Wisconsin.

K. "Chicago Territory" means Boone, Cook, DeKalb, Du Page, Grundy, JoDaviess, Kane, Kankakee, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago counties in the state of Illinois, and Lake and Porter counties in the state of Indiana.

L. "Central Illinois Territory" means Adams, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Jasper, Jersey, Knox, La Salle, Lawrence, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McLean, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Richland, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Wabash, Warren, Wayne, Whiteside, and Woodford counties in the state of Illinois.

M. "Southern California Territory" means Imperial, Los Angeles, Orange, Riverside, San Bernadino, and San Diego counties in the state of California.

N. "Relevant Territories" means the Chicago, Eastern Wisconsin, Southern California, and Central Illinois Territories.

O. "White Pan Bread" means white bread baked in a pan but shall not include hamburger and hot dog buns, or variety breads such as French bread and Italian bread.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestitures for the purpose of establishing viable competitors in the sale of White Pan Bread to remedy the anticompetitive effects that the United States alleges would otherwise result from the acquisition of Continental by Interstate. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that certain Interstate and Continental labels, plants and marketing and sales operations that compete in the Relevant Territories are maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestitures.

III. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate Continental's Chicago and Southern California Plants as independent competitors with management and operations held entirely separate, distinct and apart from those of Interstate. Defendants shall not coordinate the production, marketing or terms of sale of Continental's bread products with Interstate's bread products in the Relevant Territories. Within thirty (30) days of the entering of this Order, defendants shall inform plaintiff of steps taken to comply with this provision.

B. Defendants shall take all steps necessary to ensure that Interstate's Chicago, Southern California and Central Illinois Plants and Continental's Chicago and Southern California Plants will be maintained as economically viable, ongoing business concerns. Defendants shall use all reasonable efforts to maintain and increase the sales of Interstate's and Continental's White Pan Bread and other bread products in the Relevant Territories and otherwise maintain these businesses as active competitors in the Relevant Territories.

C. Defendants shall provide capital and provide and maintain sufficient working capital to maintain Interstate's Chicago, Southern California, and Central Illinois Plants and Continental's Chicago and Southern California Plants as economically viable, ongoing businesses, consistent with the requirements of Sections III(A) and (B).

D. Defendants shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the Final Judgment.

E. Defendants shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Hold Separate Stipulation and Order, ordinary wear and tear excepted.

F. Defendant shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as every four weeks or every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of Interstate's Chicago, Southern California and Central Illinois Plants and Continental's Chicago and Southern California Plants.

G. The production, pricing and promotional plans specific to Interstate's Chicago, Southern California, or Central Illinois Plants will not be transferred or otherwise made available to persons having direct sales or marketing responsibility for Continental's marketing and sales of White Pan Bread in any Relevant Territory; and the production, pricing and promotional plans specific to Continental's Chicago or Southern California Plants, or to Continental's marketing and sales of White Pan Bread in any Relevant Territory, will not be transferred or otherwise made available to persons having direct sales or marketing responsibility for Interstate's marketing and sales of White Pan Bread in any Relevant Territory, unless needed to comply with other provisions of this Order.

H. Except in the ordinary course of business, or as is otherwise consistent with the requirements of Sections III(A) and (B), defendants shall not transfer or terminate, or alter any current employment or salary agreements for, any executive-level management, sales, marketing, or engineering personnel of Interstate's Chicago, Southern California, or Central Illinois Plants or Continental's Chicago or Southern California Plants.

I. Defendants shall not in anyway inhibit the ability of any licensee or purchaser under the Final Judgment from hiring any person currently an employee of defendants' at any plant that may be divested pursuant to the Final Judgment.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divesture pursuant to the Final Judgment to a suitable purchaser or purchasers.

K. This Hold Separate Stipulation and Order shall remain in effect as to each Relevant Territory pending consummation of the divestitures contemplated by the proposed Final Judgment as to that Relevant Territory, or until further Order of the Court.

Respectfully submitted,

Dated:

For Plaintiff United States of America:
Anne K. Bingaman,
Assistant Attorney General.
Arnold C. Celnicker
Lawrence R. Fullerton
Charles R. Schwidde
Charles Biggio
Anthony Harris
Illinois Bar #01133713
Constance K. Robinson
Evangelina Almirantearena
Anthony V. Nanni
Maurice Stucke
Willie L. Hudgins
Attorneys, U.S. Department of Justice Antitrust Division.
James B. Burns,
U.S. Attorney, N.D. Illinois.

For Defendant Interstate Bakeries Corporation
Terry M. Grimm

For Defendant Continental Baking Company
Jay W. Brown

It is so ordered this 20th day of July, 1995.
Blanche M. Manning,
United States District Court Judge.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Northern District of Illinois.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. The parties shall abide by and comply with the provisions of the Hold Separate Stipulation and Order pending entry of the Hold Separate Stipulation and Order, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

5. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

Respectfully submitted.

For Plaintiff United States of America
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James B. Burns,
U.S. Attorney, N.D. Illinois.

For Defendant Interstate Bakeries Corporation
Terry M. Grimm

For Defendant Continental Baking Company
Jay W. Brown

So Ordered.

United States District Judge

Final Judgment

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on July 20, 1995, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture of certain rights or assets and prompt implementation of the Hold Separate Stipulation And Order to assure that competition is not substantially lessened are the essence of this agreement;

AND WHEREAS, the parties intend to require defendants to make certain

divestitures for the purpose of establishing viable competitors in the sale of White Pan Bread;

AND WHEREAS, defendants have represented to plaintiff that the divestitures required below can and will be made and that defendants will later raise no claims of hardship or difficulty as ground for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Interstate" means defendant Interstate Bakeries Corporation, a Delaware corporation with its headquarters in Kansas City, Missouri, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

B. "Continental" means defendant Continental Baking Company, a Delaware corporation with its headquarters in St. Louis, Missouri, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

C. "Bread Assets" means:

(1) Either the Mrs. Karl's Label or the Wonder Label for all bread products except White Pan Bread in the Eastern Wisconsin Territory;

(2) Either the Butternut Label or the Wonder Label for all bread products except White Pan Bread in the Chicago Territory;

(3) Either the Butternut Label or the Sunbeam Label or the Wonder Label for all bread products except White Pan Bread in the Central Illinois Territory;

(4) Either the Weber's Label or the Wonder Label for all bread products except White Pan Bread in the Southern California Territory;

(5) Either the Interstate plant located in Chicago, Illinois or the Continental plant located in Hodgkins, Illinois;

(6) Either the Interstate plant located in Glendale, California or the Continental plant located in Pomona, California;

(7) Either the Interstate plant located in Decatur, Illinois or the Interstate plant located in Peoria, Illinois;

(8) All land, buildings, fixtures, machinery and equipment related to the above plants;

(9) All trucks and other vehicles, depots or warehouses, and thrift stores utilized by defendants in the distribution of bread products under the Relevant Labels in the Relevant Territories; and

(10) All route books, customer lists, and other records used in the defendants' day-to-day distribution of bread products under the Relevant Labels in the Relevant Territories.

D. "Label" means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress; the brand's trade secrets; the brand's production knowhow, including, but not limited to, recipes and formulas used to produce bread sold under the brand; and packaging, marketing and distribution know how and documentation, such as customer lists and route maps, associated with the brand.

E. "Eastern Wisconsin Territory" means Adams, Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Forest, Florence, Green, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties in the state of Wisconsin.

F. "Chicago Territory" means Boone, Cook, DeKalb, Du Page, Grundy, JoDaviess, Kane, Kankakee, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago counties in the state of Illinois, and Lake and Porter counties in the state of Indiana.

G. "Central Illinois Territory" means Adams, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Jasper, Jersey, Knox, La Salle, Lawrence, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McLean, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Richland, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Wabash, Warren, Wayne, Whiteside, and Woodford counties in the state of Illinois.

H. "Southern California Territory" means Imperial, Los Angeles, Orange, Riverside, San Bernadino, and San Diego counties in the state of California.

I. "Relevant Labels" means:

(1) Either the Mrs. Karl's Label or the Wonder Label for White Pan Bread in the Eastern Wisconsin Territory;

(2) Either the Butternut Label or the Wonder Label for White Pan Bread in the Chicago Territory;

(3) Either the Butternut Label or the Sunbeam Label or the Wonder Label for White Pan Bread in the Central Illinois Territory; and

(4) Either the Weber's Label or the Wonder Label for White Pan Bread in the Southern California Territory.

J. "Relevant Territories" means the Chicago Territory, the Eastern Wisconsin Territory, the Central Illinois Territory and the Southern California Territory.

K. "White Pan Bread" means white bread baked in a pan but shall not include hamburger and hot dog buns, or variety breads such as French bread and Italian bread.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the Relevant Labels and the Bread Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

D. The provisions of Section IV through VIII of this Final Judgment shall not be effective until the consummation of the acquisition of Continental by Interstate.

IV. Divestiture

A. Defendants are hereby ordered and directed, within nine (9) months of entry of this Final Judgment, to grant to one or more purchasers a perpetual, royalty-free, assignable, transferable, exclusive license to use the Relevant Labels to produce (or have produced for it) and sell White Pan Bread in the Relevant Territories, together with such Bread Assets as are reasonably necessary in order for the acquirer of each Relevant Label to sell White Pan Bread under each respective Relevant Label at a level substantially equivalent to the average level of White Pan Bread sales of each respective Relevant Label in each Relevant Territory over the preceding year, and otherwise to remain a viable competitor in the White Pan Bread market in each Relevant Territory. Defendants shall cease using a Relevant Label within five (5) days of when a purchaser commences its use.

B. Defendants agree to take all reasonable steps to accomplish quickly said divestiture. Plaintiff may, in its sole discretion, extend the time period for divestiture for an additional period of time not to exceed two months.

C. In accomplishing the divestiture ordered by this Final Judgment, the defendants promptly shall make known, by usual and customary means, the availability of the Relevant Labels. The defendants shall provide any person making an inquiry regarding a possible purchase with a copy of the Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all reasonably necessary information regarding the Relevant Labels, except such information subject to attorney-client privilege or attorney work product privilege. Defendants shall provide such information to the plaintiff at the same time that such information is made available to any other person. Defendants shall permit prospective purchasers of the Relevant Labels to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment.

D. Unless the plaintiff otherwise consents, divestiture under Section IV(A), or by the trustee appointed pursuant to Section V, shall include such Bread Assets and be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Relevant Labels can and will be used by the purchaser or purchasers as part of viable, ongoing businesses engaged in the selling of White Pan Bread at wholesale to retail grocery stores and other customers. Divestiture shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase or purchases are for the purpose of competing effectively in the selling of White Pan Bread at wholesale to retail grocery stores and other customers; and (2) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the selling of White Pan Bread at wholesale to retail grocery stores and other customers; and (3) none of the terms of any agreements between the purchaser or purchasers and defendants give defendants the ability artificially to raise the purchaser's or purchasers' costs, lower the purchaser's or purchasers' efficiency, or otherwise interfere in the ability of the purchaser or purchasers to compete effectively.

V. Appointment of Trustee

A. If defendants have not accomplished the divestiture required by Section IV within the time specified therein, defendants shall notify plaintiff of that fact in writing. Within ten (10) calendar days of that date, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendants shall notify plaintiff within five (5) calendar days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to defendants, they shall furnish to plaintiff, within ten (10) calendar days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to plaintiff, plaintiff shall furnish the Court the names and qualifications of its and defendants' proposed nominees. The Court may hear the parties as to the nominees' qualifications and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished the divestiture required by Section IV of this Final Judgment at the expiration of the time period specified therein, subject to the selection process described in Section V(A), the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture as specified in Section IV(A). The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested any or all of the Bread Assets in addition to the Relevant Labels.

C. After the trustee's appointment has become effective, only the trustee shall have the right to license the Relevant Labels and to sell the Bread Assets. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to plaintiff at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, subject to the provisions of Section IV of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the licensing of the Relevant Labels or the sale of the Bread Assets by the trustee on any ground other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) calendar days after the trustee has notified defendants of the proposed licensing and sale in accordance with Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Labels or the Bread Assets and shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities of defendants' overall businesses, and defendants shall develop such financial or other information necessary to the divestiture of the Relevant Labels and the Bread Assets.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the Relevant Labels and the Bread Assets as contemplated under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in

acquiring, entered into negotiations to acquire, or was contracted or made an inquiry about acquiring, any interest in the Relevant Labels or the Bread Assets, and shall describe in details each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include augmenting the assets to be divested, and extending the trust and the terms of the trustee's appointment.

VI. Notification

Within two (2) calendar days following execution of a contract, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the business that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested within twenty (20) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under the provisions in Section V(C). Absent written notice that the plaintiff does not object to the proposed purchaser, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

Within ten (10) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Labels or in the Bread Assets, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest these operations.

VIII. Financing

With prior written consent of the plaintiff, defendants may finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation And Order entered by this Court. Defendants shall take no action that would jeopardize the licensing of the Relevant Labels or the sale of the Bread Assets.

X. Compliance Inspection

Only for the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to its principal office, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to enforcement of this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants' principal office, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in this Section X shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of security compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public Interest.

Dated: _____

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on July 20, 1995, alleging that the proposed acquisition of Continental Baking Company ("Continental") by Interstate Bakeries Corporation ("Interstate") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. Continental and Interstate are the nation's first and third largest producers of white pan bread.

The Complaint alleges that the combination of these major competitors would substantially lessen competition in the production and sale of white pan bread in five geographic markets: the Chicago area; the Milwaukee area; central Illinois (i.e., Peoria, Springfield, Champaign/Urbana); the Los Angeles area and the San Diego area. The prayer for relief seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Interstate from acquiring control of Continental's assets or otherwise combining them with its own business in these five geographic markets.

At the same time that the suit was filed, a proposed settlement was filed that would permit Interstate to complete its acquisition of Continental's assets in other parts of the country, yet preserve competition in the markets in which the transaction would raise significant competitive concerns. Also filed were a Hold Separate Stipulation and Order, a Stipulation, and a proposed Final Judgment.

The Hold Separate Stipulation and Order would, in essence, require Interstate to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, Continental's bread production and distribution facilities and ancillary assets located in the affected markets will be held separate and apart from, and operated independently of, other Interstate assets and businesses. Moreover, because the Final Judgment may require Interstate to divest either its or Continental's plants and ancillary assets in these geographic markets, until the divestitures are accomplished, Interstate must preserve and maintain both sets of assets as saleable and economically viable, ongoing concerns.

The proposed Final Judgment orders defendants to divest to one or more purchasers certain white pan bread labels in each market. Additional assets to be divested may include bread production and distribution facilities and ancillary assets currently used by Interstate or Continental in each market, as may be required by the purchaser to be able to sell branded white pan bread at levels substantially equivalent to the levels existing before the acquisition. Defendants must complete these divestitures within nine months after entry of the Final Judgment. If they do not, the Court may appoint a trustee to sell the assets.

The United States, Interstate, and Continental have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Interstate, based in Kansas City, Missouri, is the third largest wholesale baker in the United States. In 1994, it reported total sales of $1.1 billion. Interstate has 14,000 employees, operates 31 commercial bakeries, and transacts business in 39 states.

Continental, a subsidiary of St. Louis-based Ralston Purina Company, is the nation's largest wholesale baker. In 1994, Continental reported total sales of $1.95 billion. It employs 22,000 and operates 35 commercial bakeries that service 80% of the nation's population.

On January 8, 1995, Interstate and Continental announced an agreement by which Interstate would acquire Continental from its parent, Ralston Purina Corporation, for cash and stock. This $450 million transaction, which would combine Interstate and Continental, precipitated the government's suit.

B. The White Pan Bread Industry

White pan bread describes the ubiquitous, white, sliced, soft loaf known to most consumers as "plain old white bread." An American household staple, white pan bread is sold in the commercial bread aisle of every grocery store, convenience store, and mass merchandiser. White pan bread differs significantly in product attributes from other types of bread, such as variety bread (e.g., wheat, rye or French) and freshly baked in-store breads, in taste, texture, uses, perceived nutritional value, keeping qualities, and appeal to various groups of consumers. These differing attributes give rise to distinct consumer preferences for each type of bread. Many children, for instance, strongly prefer to eat white pan bread, and hence, a primary use of this bread is for sandwiches in school lunches.

Because of its unique appeal and its distinguishing attributes, a small but significant increase in the price of white pan bread by all producers would not be rendered unprofitable by consumers substituting other breads. White pan bread is, therefore, an appropriate product market in which to assess the competitive effects of the acquisition.

White pan bread is mass produced on high speed production lines by wholesale commercial bakers,[1] who package and sell it to retailers under either their own brand or a private label (i.e., a brand controlled by a grocery chain or buying cooperative). Though physically similar to private label, branded white pan bread is perceived by consumers as fresher, better tasting, and higher quality bread; consequently, consumers often pay a premium of twice as much or more for branded white pan bread. Competition in the white pan bread market takes place on two levels, between different brands of

[1] The bread is also made by so-called "captive" bakers, i.e., wholesale commercial bakers which are owned by, and bake bread exclusively for, a grocery chain or wholesale grocery buying cooperative.

white breads and between branded and private label white bread.

C. Competition Between Interstate and Continental

Interstate and Continental compete directly in producing, promoting, and selling both private label and branded white pan bread to grocery retailers, who in turn sell it to consumers. Interstate's popular Butternut, Sunbeam, Mrs. Karl's and Weber's regional brands and Continental's powerhouse national Wonder brand are regarded by consumers as particularly close substitutes, for they are very comparable in appearance, price, taste, perceived quality and freshness.

Interstate and Continental recognize the rivalry between their products in the relevant geographic markets. To avoid losing sales to the other, each has engaged in extensive promotional, couponing, and advertising campaigns that reduce the prices charged for their branded white pan breads to the benefit of consumers. Through these activities, Interstate and Continental have each operated as a significant competitive constraint on the other's prices for white pan bread.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that Interstate's acquisition of Continental would remove the competitive constraint and create (or facilitate Interstate's exercise of) market power (i.e., the ability to increase process to consumers) in five relevant geographic markets: the Chicago area; the Milwaukee area; central Illinois (i.e., Peoria, Springfield, Champaign/Urbana); the Los Angeles area and the San Diego area.

Specifically, the Complaint alleges that the acquisition would increase concentration significantly in these already highly concentrated, difficult-to-enter markets.[2] Post-acquisition, Interstate would dominate each market. It would control 41% of all sales of white pan bread in the Chicago market; 33% in the Milwaukee market; 62% in the central Illinois market; 64% in the Los Angeles market; and 50% in the San Diego market.

The Complaint alleges that Interstate's acquisition of Continental would likely lead to an increase in prices charged to consumers for white pan bread. Following the acquisition, Interstate likely would unilaterally raise the price of its own brands, Continental's Wonder, or both. Because Interstate and Continental's brands are perceived by consumers as close substitutes, Interstate could pursue such a pricing strategy without losing so much in sales to competing white pan bread brands or to private labels that the price increase would be unprofitable. Interstate could, for instance, profitably impose a significant increase in the price of the Wonder white pan bread, since a substantial portion of any sales lost for that product would be recaptured by increased sales of Interstate's other brands. Similarly, Interstate could increase the prices of any one of its other popular brands of white pan bread, such as Butternut, and much of the sales lost by that brand would be picked up by Interstate's Wonder white bread brand.

Since many consumers consider Interstate and Continental brands to be closer substitutes than most other branded or private label white breads, the competitive discipline provided by rivals after the acquisition would be insufficient to prevent Interstate from significantly increasing the prices now being charged for Interstate and Continental branded white pan bread. Moreover, in response to Interstate's price increases, competing bakers would likely increase their prices of white pan bread.

The Complaint alleges that new entry by other wholesale commercial bakers, or brand repositioning by existing competitors, in any of the five adversely affected geographic markets is unlikely to counteract these anticompetitive effects.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of white pan bread in each of the five relevant geographic markets. Within nine months after entry of the Final Judgment, defendants will divest certain white pan bread labels, and other assets if necessary, to make an economically viable competitor in the sale of white pan bread in each geographic market. It may well be that all that is required to accomplish this goal is the sale to an existing wholesale baker of the exclusive rights to make and sell white pan bread under either Continental or Interstate's most popular brand. Depending on the purchasers' requirements, however, effective divestiture could also require a sale of Interstate or Continental's production and distribution facilities. Defendants must take all reasonable steps necessary to accomplish the divestitures, and shall cooperate with the prospective purchaser or with the trustee. If defendants do not accomplish the ordered divestitures within that nine-month time period, the Final Judgment provides that the Court will appoint a trustee to complete the divestitures.

If a trustee is appointed, the proposed Final Judgment provides that Interstate will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate.

The relief sought in the various markets alleged in the Complaint has been tailored to ensure that consumers of white pan bread will not experience unreasonably high prices as a consequence of the acquisition.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent.

[2] The Hirfindahl-Hirschman Index ("HHI") is a widely-used measure of market concentration. Following the acquisition, the approximate post-merger HHIs, calculated from 1994 dollar sales, would be over: 2250 with a change of 766 for Chicago; 1800 with a change of 548 for Milwaukee; 4000 with a change of 974 for cantral Illinois; 4200 with a change of 2035 for Los Angeles; and 2900 with a change of 1265 for San Diego. Under the *Merger Guidelines*, the Antitrust Division is likely to challenge any acquisition that increases the HHI by 50 points or more in a market in which the post-merger HHI will exceed 1800 points.

The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants Interstate and Continental. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the Final Judgment will establish viable white pan bread competitors in the geographic markets that would otherwise be adversely affected by the acquisition. Thus, the Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment, "is in the public interest." In making that determination, the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 1995–1 Trade Cas. (CCH) p 71,027, at____(Slip op. 26) (D.C. Cir. June 16,. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[3] Rather,

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 1995–1 Trade Cas. at ____ (Slip. op. 22). Precedent requires that

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[5]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 21, 1995.

Respectfully submitted,

Arnold C. Celnicker,

Attorney, Antitrust Division, U.S. Department of Justice.

Certificate of Service

I hereby certify that on July 21, 1995, I caused a copy of the Competitive Impact Statement filed in *U.S.* v. *Interstate Bakeries Corporation and Continental Baking Company*, Civil No. 95 C 4194, to be served, by first class

[3] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[4] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also Microsoft*, 1995–1 Trade Cas. at____(Slip op. 23) (whether "the remedies (obtained in the decree are) so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'") (citations omitted).

[5] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) *quoting United States* v. *Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

mail, postage prepaid on counsel for defendants Interstate Bakeries Corporation and Continental Baking Company, respectively: Terry Grimm, Winston & Strawn, 35 West Wacker Drive, Chicago, IL 60604; and Donald Hibner, Sheppard, Mullin, Richter & Hampton, 48th Floor, 333 South Hope Street, Los Angeles, CA 90071–1448.

Dated: July 21, 1995.

Arnold C. Celnicker,

Attorney, U.S. Department of Justice, Antitrust Division.

[FR Doc. 95–19308 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB, and solicitation of public comment.

SUMMARY: NRC is preparing a submittal to OMB for review and continued approval of information collection requirements currently approved by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Title of the information collection:* 10 CFR 35.32 and 35.33, "Quality Management Program and Misadministrations".

2. *Current OMB approval number:* 3150–0171.

3. *How often the collection is required:* One time submittal of a quality management program (QMP) for each existing and new licensee, when the QMP is modified, or when new modalities (uses) are added to an existing license. Misadministrations are reported as they occur. Records of written directives, administered dose or dosage, an annual review of the QMP, and recordable events must be maintained in auditable form for 3 years and misadministrations for 5 years.

4. *Who will be required to report:* 10 CFR Part 35 licensees and equivalent Agreement State licensees who use byproduct material in limited diagnostic and therapeutic ranges.

5. *An estimate of the annual number of respondents:* 10 CFR 35.32: 6300 licensees, 10 CFR 35.33: 75 licensees.

6. *An estimate of the total number of hours needed to complete the requirements or request:* Approximately 41,821 hours (Reporting: 35,035 hrs/yr, and Recordkeeping: 6,786 hrs/yr). The Commission is currently reviewing the compatibility requirements for the Agreement States. Relief from certain of these requirements would significantly reduce the burden associated with 10 CFR 35.32. If relief is granted to the Agreement States, the staff will submit a modification of the burden estimate that reflects the changes.

7. *Abstract:* In the medical use of byproduct material, there have been instances where byproduct material was not administered as intended or administered to a wrong individual which resulted in unnecessary exposures or inadequate or incorrect diagnostic or therapeutic procedures. The most frequent causes of these incidents were: insufficient supervision, deficient procedures, failure to follow procedures, and inattention to detail. To reduce the frequency of such events, the NRC requires licensees to implement a quality management program (10 CFR 35.32) to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by an authorized user physician.

Records and reports to NRC are required for certain errors in the administration of limited diagnostic and therapeutic quantities of byproduct material by medical use licensees. Section 35.33 clarifies these requirements to avoid confusion over whether certain events should be reported to NRC and to help ensure that the licensee is in compliance with the requirements. NRC has a responsibility to inform the medical community of generic issues identified in the NRC review of misadministrations.

NRC has revised the definition for "misadministration" in 10 CFR 35.2, "Definitions." The revision considerably reduces the number of "errors" that must be reported to the NRC or an Agreement State.

Collection of this information will enable the NRC to ascertain whether misadministrations are investigated by the licensee and that corrective action is taken.

Specific comments requested within 60 days:

1. Is the proposed renewal of the collection of information necessary for NRC to properly perform its functions, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Members of the public may obtain, free of charge, a copy of the DRAFT OMB clearance submittal. This information can be obtained by Internet: SLM2@nrc.gov or by calling Sally L. Merchant at (301) 415–7874. The NRC anticipates that the OMB clearance submittal will be available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC, on August 18, 1995.

Comments and questions should be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F 33, Washington, D.C., 20555–0001, (301) 415–7233.

Dated at Rockville, Maryland, this 2nd day of August 1995.

For the U.S. Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–19500 Filed 8–4–95; 8:45 am]

BILLING CODE 7590–01–P

Joint Nuclear Regulatory Commission/ Environmental Protection Agency Guidance on the Storage of Mixed Radioactive and Hazardous Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of joint guidance and request for public comment.

SUMMARY: The Nuclear Regulatory Commission and Environmental Protection Agency (EPA) are jointly publishing herein a draft guidance document on the storage of mixed radioactive and hazardous waste (mixed waste). The Agencies are developing this guidance to assist mixed waste generators forced to store their mixed waste, pending the development of adequate treatment and disposal capacity for commercially generated mixed waste. The guidance points out areas of flexibility within NRC and EPA regulations that relate to the storage of mixed waste. Further, the guidance is consistent with the general approach EPA is undertaking as it reviews its current regulatory program. The Agencies are soliciting comments from members of the regulated community, the States, and the public. Interested individuals may provide the Agencies with their comments on the proposed guidance by forwarding their written comments to NRC at the address listed in the **ADDRESSES** section.

DATES: The comment period expires November 6, 1995. Comments received after this date may be considered, if it is practical to do so, but the Agencies are only able to assure consideration for comments received on or before this date.

ADDRESSES: Interested individuals should send their written comments to: David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publication Service, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or hand deliver comments to the Commission's offices at 11545 Rockville Pike (Room T6–D59), Rockville, MD 20555.

BACKGROUND: Mixed waste is defined in the Federal Facility Compliance Act (FFCA) as "waste that contains both hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954." Persons who generate, treat, store or dispose of mixed wastes are subject to the requirements of the Atomic Energy Act of 1954, as amended (AEA) and the Solid Waste Disposal Act (SWDA) as amended by the Resource Conservation and Recovery Act (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA). The Federal Agencies responsible for ensuring compliance with the implementing regulations of these two statutes are the NRC and EPA.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) established a series of milestones, penalties and incentives to ensure that States or regional compacts provide for the disposal of radioactive waste. Although mixed waste was not specifically addressed in the LLRWPAA, States must ensure adequate disposal capacity for most types of commercially generated low-level radioactive wastes, including mixed wastes. To date, progress in meeting the milestones in the LLRWPAA has been limited. In addition, uncertainties about the amounts and types of mixed waste, along with the complexities in complying with the regulations for these wastes, have hindered development of treatment and disposal facilities for mixed waste. As a result, licensees may be required to store mixed waste on-site until adequate treatment and disposal capacity has been established.

NRC and EPA have developed the draft guidance to assist persons currently storing mixed waste to meet the regulatory requirements of both the AEA and RCRA. The guidance describes procedures that are generally acceptable to both NRC and EPA and that resolve issues of concern that have been identified to the Agencies by licensees. It also addresses similar storage issues identified by the Department of Energy (DOE). The guidance first summarizes the general requirements that licensees must meet to store mixed waste in accordance with NRC and EPA regulations, then addresses specific storage issues that have been brought to the Agencies' attention by mixed waste generators. Finally, the guidance discusses EPA's RCRA enforcement policy for mixed waste in storage. NRC and EPA will review all comments submitted by interested individuals and incorporate appropriate comments into the final guidance document.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6749, or Newman Smith, Permits and State Programs Division, Office of Solid Waste, U.S. Environmental Protection Agency, Washington DC 20460, telephone (703) 308–8757.

Dated at Rockville, MD, this 28th day of July, 1995.

For the U.S. Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

Appendix A—Note to Readers

The information contained in this guidance is intended for use by Nuclear Regulatory Commission licensees who may not be familiar with the hazardous waste storage requirements that apply to mixed waste. However, much of the document may also be useful for Federal facilities that generate mixed waste. The guidance assumes that the reader already possesses a valid NRC or Agreement State radioactive materials license, but may not possess an Environmental Protection Agency or authorized State storage permit.

EPA and NRC recognize that the radioactive component of mixed waste may pose hazards from external radiation and from potential internal exposures. Individuals that may be exposed to radiological and non-radiological hazards from mixed waste should be trained in radiation and chemical safety. In addition, mixed waste generators should ensure that the hazards associated with the mixed waste are fully evaluated prior to generating the waste.

This guidance presumes that both radiological and industrial hygiene safety programs are in place and will be followed by the reader. The Agencies did not consult with the Occupational Safety and Health Administration or States agencies responsible for workplace safety in developing this guidance. However, nothing in this guidance supersedes the OSHA safety requirements. NRC licensees are expected to comply with OSHA requirements, as well as all other applicable regulations.

Appendix B—Disclaimer

The policies discussed herein are not final agency actions, but are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. Environmental Protection Agency or Nuclear Regulatory Commission officials may decide to follow the policies provided in this guidance or to act at variance with the policies, based on an analysis of specific site circumstances. The Agencies also reserve the right to change these policies at any time without public notice.

Appendix C—Joint Guidance on the Storage of Mixed Low-Level Radioactive and Hazardous Waste

August 1995.

I. Introduction

Mixed low-level radioactive and hazardous waste (mixed waste) is waste that satisfies the definition of low-level radioactive waste in the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA)[1] and contains hazardous waste that either: (1) Is listed as a hazardous waste in Subpart D of 40 CFR Part 261; or (2) causes the waste to exhibit any of the hazardous waste characteristics identified in Subpart C of 40 CFR Part 261. Persons who generate, treat, store or dispose of mixed wastes are subject to the requirements of the Atomic Energy Act of 1954, as amended (AEA) and the Solid Waste Disposal Act (SWDA) as amended by the Resource Conservation and Recovery Act (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA). The Federal agencies responsible for ensuring compliance with the implementing regulations of these two statutes are the Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA).[2] In October 1992, Congress enacted the Federal Facilities Compliance Act (FFCA) which, among other things, added a definition of mixed waste to RCRA. Mixed waste is defined in the FFCA as "waste that contains both hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954" (RCRA Section 1004(41), 42 USC 6903(41)).

The LLRWPAA established a series of milestones, penalties and incentives to ensure that States or Regional Compacts provide for the disposal of radioactive waste. Although mixed waste was not specifically

[1] The LLRWPAA defines low-level radioactive waste as "radioactive material that (A) is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in section 11e.2 of the Atomic Energy Act of 1954 and; (B) the Nuclear Regulatory Commission, consistent with existing law and in accordance with paragraph (A), classifies as low-level radioactive waste."

[2] Note that most radioactive material under the control of the Department of Energy is not regulated by NRC.

addressed in the LLRWPAA, States must ensure adequate disposal capacity for all low-level radioactive wastes, including mixed wastes. To date, progress in meeting the milestones in the LLRWPAA has been limited. In addition, uncertainties about the amounts and types of mixed waste, along with the complexities in complying with the regulations for these wastes, have hindered development of treatment and disposal facilities for mixed waste. As a result, licensees may be required to store mixed waste on-site until adequate treatment and disposal capacity has been established.

This guidance is designed to assist persons currently storing mixed waste to meet the regulatory requirements of both the AEA and RCRA. However, many of the requirements and procedures discussed in this guidance may not be applicable to nuclear power reactor facilities. The guidance describes procedures that are generally acceptable to both NRC and EPA that resolve issues of concern which have been identified to the agencies by licensees. It also addresses similar storage issues identified by the Department of Energy (DOE). The guidance first summarizes the general requirements that licensees must meet to store mixed waste in accordance with NRC and EPA regulations, then addresses specific storage issues that have been brought to the Agencies' attention by mixed waste generators. Finally, the guidance discusses EPA's RCRA enforcement policy for mixed waste in storage.

II. Background

a. Regulatory Authority

In general, NRC or Agreement State licensed facilities that manage mixed waste are subject to the RCRA Subtitle C requirements for hazardous waste in 40 CFR part 124 and parts 260–270 implemented by EPA, or to comparable regulations implemented by States or Territories that are authorized to implement RCRA mixed waste authority. EPA asserted its regulatory authority over the hazardous portion of mixed waste in **Federal Register** Notices on July 3, 1986 and September 23, 1988 (see 51 FR 24504 and 53 FR 37045).

The RCRA Subtitle C program was primarily developed for implementation by the States, and oversight by EPA. As of April 1995, EPA regulates mixed waste in Alaska, Hawaii, Iowa, Wyoming and all U.S. Trust Territories except Guam. Thirty-eight states and one territory (Guam) have been authorized to implement the base RCRA hazardous waste program (i.e., authorized States), and to regulate mixed waste activities (see 51 FR 24504, July 3, 1986). Nine states are authorized for the RCRA base hazardous waste program, but have not been authorized to regulate mixed waste.[3] In these 9 States mixed waste is not regulated by EPA but may be regulated by States under the authority of State law. To understand the roles of EPA and the States in regulating the hazardous portion of mixed waste, the following categories of States or Territories are discussed below:

- States and Territories whose hazardous waste program has not been authorized under RCRA to act "in lieu of" the federal RCRA program; these are called "unauthorized States or Territories";
- States and Territories with RCRA authorization that have adopted mixed waste authority; and
- States and Territories with RCRA authorization that have *not* adopted mixed waste authority.

As a subset of hazardous waste, mixed waste is regulated by EPA in unauthorized States and Territories (i.e., States and Territories that have not been authorized to implement the RCRA Subtitle C program). Where States and Territories are RCRA authorized and have adopted mixed waste authority, mixed waste is subject to the State's or Territory's authorized hazardous waste program (which may contain regulations more stringent than those in the Federal RCRA program). See Table 1 for a list of States with mixed waste authority as of June 30, 1995. In States or Territories with RCRA authorization that have not yet adopted mixed waste as part of the base RCRA program, mixed waste may be regulated under State or Territorial regulation, but not as a hazardous waste under an authorized RCRA program.

Facilities in RCRA authorized States (whether the State has mixed waste authority or not) should contact their respective State agency to ascertain what State regulations may apply to mixed waste. In addition, facilities in RCRA authorized States should be aware that EPA Regions may share responsibility for implementing the RCRA program with the State, particularly with respect to certain requirements promulgated under the Hazardous and Solid Waste Amendments of 1984 (e.g., corrective action and land disposal restriction requirements), for which the State may not yet be authorized to implement.[4]

Twenty-nine States have signed agreements with NRC enabling the various "Agreement States" to regulate source, byproduct, and small quantities of special nuclear material within their boundaries. (see Table 2). Most facilities located in Agreement States are subject to regulatory requirements for radioactive material under State law. This applies to all source, special nuclear, and byproduct material except that from nuclear utilities and fuel cycle facilities, which are subject to NRC's requirements and DOE facilities, which are subject to DOE Orders. While States are required to adopt programs that are comparable with the NRC program, States may have requirements that are more stringent, or are in addition to those from the Federal program. Facility managers should determine whether their State is an NRC Agreement State and determine the scope of the program that has been relinquished by NRC to the State.

In addition to NRC regulated facilities, many DOE facilities may store mixed waste. These facilities are subject to the RCRA Subtitle C requirements or comparable State regulations. DOE Order 5820.2A, "Radioactive Waste Management," and DOE Order 5400.3, "Hazardous and Radioactive Mixed Waste Program," establish policies, guidelines, and minimum requirements under which DOE facilities must manage their radioactive and mixed waste and contaminated facilities. DOE Order 5400.3 excludes byproduct material unless it is mixed with RCRA hazardous waste. Because the storage issues discussed in this document may arise at either NRC-licensed or DOE facilities, this guidance may be useful in addressing mixed waste storage at DOE facilities. However, the primary focus of this guidance is a discussion of the requirements for the storage of mixed waste at NRC-licensed and RCRA-regulated facilities. As summarized in Table 3, regulation of mixed waste may be the responsibility of the State in which a facility is located. To ensure compliance, licensees and permittees should contact their State agencies in RCRA authorized or NRC Agreement States to determine if this or other guidance is applicable.

b. Applicability of RCRA Storage Requirements

NRC licensees who store mixed waste must comply with the requirements of RCRA. Under RCRA regulations, storage is defined as "the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of, or stored elsewhere". The specific RCRA storage requirements that apply to licensees are determined by the quantity of hazardous waste generated, how long the licensee stores hazardous waste (including mixed waste) on-site,[5] and the type of unit in which the waste is stored. Licensed facilities are considered RCRA storage facilities that require a RCRA permit[6] (40 CFR 262.34) if they store the waste for:

- More than 90 days, and if the facility's generation rate (both hazardous and mixed waste) is greater than 1000 kilograms per month (or greater than 1 kilogram of acutely hazardous waste/month; [7] or
- More than 180 days, and if the facility's waste generation rate (both hazardous and mixed waste) is between 100 and 1000 kilograms/month (in addition, the on-site waste accumulation can not exceed 6000 kilograms); or
- Longer than 270 days, if the facility's waste generation rate (both hazardous and mixed waste) is between 100 and 1000 kilograms/month, and if the hazardous waste management facility to which the waste must be shipped is over 200 miles from the licensee's facility.

Licensees have asked questions about the applicability of RCRA regulated quantities. If a facility generates a quantity of low-level mixed waste that, combined with on-site RCRA non-mixed hazardous waste generation, does not exceed 100 kg/mo (or one kilogram of acutely hazardous waste as defined in 40 CFR 261.11(a)(2) and listed in 40 CFR 261.31–33), it qualifies as a conditionally exempt small quantity generator (SQG). As a result, it can dispose of the low-level mixed waste as low-level radioactive waste, if these materials meet the disposal site's waste acceptance criteria (40 CFR 261.5).

RCRA permit requirements are unit-specific and are described in 40 CFR part 264 for permitted facilities and 40 CFR part 265 for interim status facilities. Interim status requirements are self-implementing waste management requirements which are limited to facilities that were already in existence on the date that a new regulation or statutory requirement took effect and which subjected the facility to RCRA. For mixed waste facilities in authorized States, this date generally corresponds to the date that the State received authorization for a mixed waste program, although State requirements may differ.

Under RCRA, persons who store the prescribed quantities of hazardous wastes for less than the times outlined above are considered generators only and need not obtain a storage permit. However, such generators are still subject to the storage requirements of 40 CFR 262.34 (a) or (d),[8] unless they qualify for the conditionally exempt small quantity generator (SQG) exemption in 40 CFR 261.5. A generator qualifies for this exemption if he generates no more than 100 kilograms of hazardous waste (including mixed waste) per month or 1 kilogram of acutely hazardous waste/month. Conditionally exempt SQGs are generally not subject to RCRA regulation as long as they meet the generation and accumulation limits, properly characterize their waste and ensure its proper management. If a SQG accumulates more than 1000 kilograms on-site or if its generation rate exceeds 100 kilograms in any given month, that SQG is no longer conditionally exempt and is subject to RCRA.[9]

Generators may also store up to 55 gallons of hazardous waste (or 1 quart of acutely hazardous waste) in containers at or near the site of generation without a RCRA permit and without regard to the storage time limits. This is known as "satellite accumulation" and is governed by 40 CFR 262.34(c)(1). However, any waste in excess of the 55 gallons (or 1 quart of acutely hazardous waste) must be removed from this area within three days of the date that these volumes were exceeded to a central storage area at which time the accumulation times mentioned above take effect. For example, a facility that generates over 1000 kg of hazardous waste per month has up to three days to remove any waste that exceeds the satellite accumulation limit of 55 gallons from the satellite accumulation container and, following that three day period (or after waste is moved to the generator storage area), may store the waste for up to 90 days in accordance with the generator storage provisions of 40 CFR Part 262.34(a). If the waste is stored longer than 90 days, RCRA interim status or a RCRA storage permit is required.

Secondary materials that are stored or accumulated prior to being recycled (used, reused, or reclaimed) may be considered "accumulated speculatively" (see 40 CFR sections 261.1(c)(7), 261.1(c)(8), and 261.2(c) and (e)) and thus may be identified as hazardous waste unless the generator or facility accumulating the material can demonstrate that:

- The material is potentially recyclable;
- The material has a feasible means of being recycled; and
- At least 75 percent by weight or volume is recycled or transferred to a different site for recycling during the calendar year.

The EPA Regional Administrator or State Director has authority to approve accumulation that does not meet these limits, upon request for a variance (see 40 CFR 260.31(a)).

These restrictions on speculative accumulation may bring materials into the hazardous waste universe that have in the past been considered recyclable (see 40 CFR 261.2(d) and 261.2(e)). The intent of having such a requirement is to prevent the long term storage and mismanagement of hazardous materials under the guise that they may have some potential for being reused or recycled. Readers are encouraged to review 40 CFR 261.2 and 261.6 for further information on accumulation.

c. Storage Time Limitations Under the Land Disposal Restrictions and Variances

EPA's Land Disposal Restriction (LDR) regulations (i.e., the requirements in 40 CFR 268.50 that prohibit the land disposal of hazardous wastes without prior treatment) prohibit the storage of LDR restricted hazardous wastes (including mixed wastes) except when storage is "solely for the purpose of accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal". Wastes that satisfy this accumulation requirement, may be stored in tanks, containers, or containment buildings on-site.[10] Waste may be stored without regard to the storage prohibition if it has been treated to meet EPA treatment standards or if the waste is not subject to, or is exempt from, the LDRs because of an extension or a specific exemption from the LDRs (e.g., conditionally exempt small quantity generator wastes). In addition, wastes that have been placed into storage prior to an applicable LDR effective date are not subject to the prohibitions on storage. However, once such wastes are removed from storage, these wastes are subject to treatment standards and other applicable LDR requirements (51 FR 40577, November 7, 1986).

The storage prohibition also is not in effect for waste subject to a variance from the Land Disposal Restrictions. EPA grants three general types of variances from the LDRs: (1) variances that delay the effective date of a prohibition (e.g., a variance based on the lack of capacity to treat, recover or dispose hazardous waste); (2) variances from the prohibition based on a "no-migration" determination; and (3) a treatability variance from a specific treatment standard. For more information on these variances, please consult the EPA guidance document entitled "Guidance on the Land Disposal Restrictions' Effects on Storage and Disposal of Commercial Mixed Waste" (OSWER Directive 9555.00–01, September 28, 1990) available from NRC or EPA.

d. RCRA Permits and NRC License Amendments

Storage of all radioactive waste, including mixed waste, should be carried out in such a manner that ensures that the stored waste does not create a radiological hazard to surrounding areas, increase the potential for a release of radioactive materials to unrestricted areas, or pose an increased hazard to facility personnel. The physical, chemical, and radiological characteristics of the waste, as well as any other characteristics that could pose a potential health and safety problem in the storage area should be identified and evaluated by the licensee prior to developing the NRC license application or amendment request. Provisions for material security and inventory, fire protection, effluent controls, effluent monitoring, shielding and area radiological controls should be included in the NRC license application or amendment request. This application or request should include written procedures for radiological surveys, periodic audits, and inspections, as well as an effective contingency plan to address the repackaging of damaged or deteriorating containers. The elements of the plan should take into account the isotopes, waste forms, and quantities to be stored.

In order to remain in compliance with all regulatory requirements for mixed waste storage, some licensees may need to obtain an EPA (or authorized State) storage permit and/or amend their NRC (or Agreement State)

[3] The RCRA base hazardous waste program is the RCRA program initially made available for final authorization, and includes Federal regulations up to July 26, 1982. Authorized States revise their programs to keep pace with Federal program changes that have taken place after 1982 as required by 40 CFR 271.21(e).

[4] For more information on RCRA State authorization and the authorization status of particular States, contact the RCRA/Superfund Hotline at 1–800–424–9346.

[5] "On-site" defined by RCRA means "the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property." 40 CFR 260.10

[6] Note that facility generation rates must be made on a per month basis for all hazardous wastes generated on-site. Waste averaging (i.e., determining the total amount of waste generated in a year and dividing by 12) is not permitted in calculating monthly generation rates. Likewise, mixed waste cannot be treated separately from other hazardous waste in terms of the generation and accumulation limits.

[7] Acutely hazardous wastes are defined in 40 CFR 261.11(a)(2) and listed in 40 CFR 261.31–33).

[8] 40 CFR 262.34(a) addresses the accumulation time and the containment of wastes in containers, tanks, or on drip pads as well as the labelling of these units. 40 CFR 262.34(d) discusses storage requirements for persons generating between 100 and 1000 kilograms of hazardous waste per month.

[9] State regulations pertaining to small quantity generators may vary. Generators should contact the appropriate State hazardous waste regulatory authority to determine the status of SQGs in their State.

[10] Containment buildings (defined as hazardous waste management units where waste is stored or treated) are not considered land disposal units and wastes may be stored in containment buildings without first meeting a treatment standard. Please see 57 FR 37194, August 18, 1992 for more detailed information.

licenses. Examples of instances where an NRC license amendment may be needed include:

- If the total activity of the radioactive material at the facility (both in use, storage, or in waste) would exceed the activity authorized by the facility license;
- If the licensee intends to store the waste in a portion of the facility not authorized by the license;
- If the chemical or physical form of the waste is not authorized by the license; or
- If the storage program is not specifically included within the scope of the authorization.

If a licensee is required to amend its radioactive materials license, NRC will require the licensee to provide sufficient information to evaluate the request and determine if the proposed amendment impacts on the level of protection afforded by the existing license.

NRC License Amendments

While EPA regulations concerning the storage of hazardous waste (40 CFR Part 264, Subpart I and J) are fairly prescriptive, NRC regulations regarding the storage of radioactive waste, other than spent fuel, are more performance based. NRC licenses incorporate conditions specific to a facility or licensee that prescribe acceptable practices for the storage of radioactive material. Typically, licensees propose materials management practices to NRC and an evaluation of the proposed practice is performed by NRC prior to approving (or disapproving) the request. These license conditions are then enforceable conditions under which the licensee must conduct his operations.

Those facilities already possessing a radioactive materials license may need to amend their license to store mixed waste. Currently, NRC guidance on LLW storage is contained in several Generic Letters and Information Notices. Appendix A lists these Generic Letters and Information Notices. Licensees contemplating storing mixed waste should review the NRC guidance and contact NRC to determine the information that should be included in a request to store mixed waste at their facility.

[In a memorandum to the Commission dated August 1, 1994 (SECY 94–198), NRC staff provided the Commission with revisions to the existing guidance for on-site storage of low-level radioactive waste. NRC staff expects to finalize the guidance in late 1995. Until the revised guidance is finalized licensees should refer to the guidance discussed in Appendix A. NRC staff expects to include the revised LLW storage guidance in the final joint guidance on mixed waste storage].

If licensees store mixed waste containing special nuclear material, they must address the special properties of the fissile radioisotopes in this waste. Their mixed-waste storage program must address the spatial distribution, geometry, volume, and the concentration of this waste at the storage facility. Strict controls are to be implemented and documented that assure the safe storage of mixed waste containing special nuclear material. Appropriate security measures are to be taken, and documented, to ensure the physical security of special nuclear material at the storage facility. The licensee must comply with all requirements stipulated in their license and with the requirements in 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material."

RCRA Permits

Licensees who require a RCRA permit for storage must submit an EPA permit application. The application, which is described in 40 CFR Part 270, consists of two parts (Parts A and B). Part A consists of pages 1 and 3 of the Consolidated Permit Applications Form. There is no form for a Part B application. Rather, the Part B application is submitted in narrative form and should contain the information set forth in the applicable sections of 40 CFR 270.14 through 270.29. For new facilities, Parts A and B of the permit must be submitted at least 180 days before physical construction of any new facility is expected to commence.

For existing facilities (i.e., existing on the date that RCRA applicability is established), timely submission of the Notification of Hazardous Materials Activity and a Part A application qualifies the facility for interim status under RCRA section 3005(e). Facilities with interim status are treated as having been issued a RCRA permit until EPA, or a State, makes a final determination on the permit application.

Facilities with interim status still must comply with the interim status regulations set forth in 40 CFR Part 265 or with their State's regulations if it is an EPA authorized State. For such existing facilities the EPA Regional Administrator shall set a date, giving the facility at least six months notice, for submission of the Part B application.

III. Specific Storage Issues

Most mixed waste at operating facilities will be stored in containers or, less frequently, in tanks. EPA requirements for waste stored in tanks and containers are outlined in RCRA Subparts J and I, respectively. In addition, 40 CFR 268.50 addresses the storage of hazardous wastes restricted from land disposal under Subpart C of RCRA. Unlike EPA regulations, NRC's requirements for waste storage are not specific with respect to the type of storage unit (i.e., container, tank, waste pile, etc.), except for tanks at nuclear power reactors, but are based on the type of waste (i.e, wet or dry) and are outlined in 10 CFR Parts 20, 30, 40, 50, 70, and 73. Licensees will be required to comply with container and tank requirements of both EPA and NRC.

Licensees have identified a variety of issues associated with the storage of mixed waste that have caused them concern. Licensees have indicated to both NRC and EPA that they believe strict adherence to the regulations of both agencies may not be possible because of perceived inconsistencies between the two sets of regulatory requirements.[1] Where radioactive wastes (or wastes suspected of being radioactive) are involved in storage, it has been suggested that the NRC's storage requirements may run counter to the aims of RCRA. Neither EPA nor NRC is aware of any specific instances where RCRA compliance has been inconsistent with the AEA. However, both agencies acknowledge that an inconsistency may occur. A licensee or applicant who suspects that an inconsistency may exist should contact both NRC, EPA, or any other AEA and RCRA regulatory agencies. These regulatory agencies should deliberate and consult on whether there is an unresolvable inconsistency and, if one exists, they should attempt to fashion the necessary relief from the particular RCRA provision that gives rise to the inconsistency. However, all other RCRA regulatory requirements would apply. That is, a finding by the regulatory agencies that an inconsistency exists does not relieve a hazardous waste facility owner/operator of the responsibility to ensure that the mixed waste is managed in accordance with all other applicable RCRA regulatory requirements. Owners/operators of mixed waste facilities are encouraged to address and document this potential situation and its resolution in the RCRA facility waste analysis plan which must be submitted with the Part B permit application, or addressed in a permit modification.

Licensees have identified four issues where compliance with both agencies' regulations has caused concern or confusion. These issues are:

(1) Decay-in-storage of mixed waste;
(2) Inspection/surveillance requirements for mixed waste in storage;
(3) Allowable storage practices for stored mixed waste; and
(4) Waste compatibility, segregation and spacing requirements.

Decay-in-Storage of Mixed Waste

A large portion of the radioactive waste (and mixed waste) generated by medical and biomedical research institutions contains radionuclides with relatively short half-lives. These short lived radionuclides are especially prevalent in the combustible dry waste, aqueous wastes, and animal carcass wastes generated by medical and academic institutions. NRC generally allows medical facilities to store waste containing radionuclides with half-lives of less than 65 days until 10 half-lives have elapsed and the radiation emitted from the unshielded surface of the waste, as measured with an appropriate survey instrument, is indistinguishable from background levels. The waste may then be disposed of as non-radioactive waste after ensuring that all radioactive material labels are rendered unrecognizable (see 10 CFR 35.92). Radioactive waste may also be stored for decay under certain circumstances in accordance with 10 CFR 20.2001. For mixed waste, storage for decay is particularly advantageous, since the waste may be managed solely as a hazardous waste after the radionuclides decay to background levels. Thus, the management and regulation of these mixed wastes are greatly simplified by the availability of storage for decay.

Before disposing of the waste after decay, the licensee must survey the waste using an appropriate survey instrument, and

[1] The Agencies consider an inconsistency to occur when compliance with one statute or set of implementing regulations would necessarily cause non-compliance with the other.

technique, and demonstrate that the radiation emitted from the waste is indistinguishable from representative background levels. Licensees, not already authorized to hold wastes for decay-in-storage, that wish to hold mixed waste for decay-in-storage may need to obtain a license amendment from NRC prior to storing the mixed waste. Many licensees in possession of mixed waste and who use decay-in-storage will be required to obtain an amendment to store the mixed waste for decay prior to disposal as hazardous waste. The following should be included in a license amendment request to NRC:

- A description of the survey procedures to be used during storage and prior to release of the waste to a hazardous waste-only facility,
- A description of the procedures for segregating and tracking waste from placement in storage to release to a hazardous waste-only facility,
- A commitment that waste will be held for a minimum of ten half-lives prior to performing the final radiation survey before release to a hazardous waste-only facility and
- A statement that the decayed radioactive waste will not be released to a hazardous waste-only facility unless the radiation emitted from the waste is indistinguishable from background radiation.

While NRC licensing amendments address the management of the radioactive component of these wastes, they generally have no effect on the applicable RCRA storage provisions. Storage requirements under RCRA should ideally be implemented in a manner that provides appropriate protection of health and the environment, without setting up undue impediments to well conducted decay programs.

Under RCRA, a storage permit (or interim status) is generally required to manage the wastes during the decay period if this storage period exceeds 90 days. However, even with such a permit, a question has been raised as to whether accumulation of mixed wastes during the decay period violates the Land Disposal Restrictions (LDR) storage prohibition in RCRA section 3004(j). This latter provision, and regulations at 40 CFR 268.50, generally prohibit generators and owner/operators of hazardous waste treatment, storage, or disposal facilities from storing hazardous wastes that are restricted from land disposal under the LDR program, except when storage is "solely for the purpose of accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal". Exceptions are recognized for hazardous wastes that have been treated to LDR treatment specifications, and for wastes exempted by virtue of one of the LDR variance authorities, i.e., a capacity variance, a no migration variance, or a case-by-case extension. In addition, RCRA and regulations at 40 CFR 268.50(a) define a conditional exception for on-site storage in tanks or containers, where the generator complies with the regulations at 40 CFR 262.34 requirements, and the storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

EPA believes that the limited periods of approved decay-in-storage of mixed waste do not violate the RCRA section 3004(j) storage prohibition. EPA believes this interpretation is supported by the following consideration.

EPA considers decay-in-storage a necessary and useful part of the best demonstrated available technology (BDAT) treatment process. "Decay-in-storage" meets the definition of "treatment" in 40 CFR 260.10, insofar as it is a method or technique designed to change the physical character or composition (amount of radioactivity) in the mixed wastes. Decay-in-storage subsequently makes the treatment of the hazardous constituents safer, and renders them safer for transport.

As a result, the LDR storage prohibition does not apply to mixed waste held pursuant to an NRC approved decay-in-storage program during the period of decay. EPA emphasizes that the inapplicability of the storage prohibition is coincident with the period of decay; once the waste has decayed to levels that are indistinguishable from background levels, the RCRA 3004(j) and 40 CFR 268.50 provisions apply fully to any additional storage that occurs prior to completing the required BDAT treatment.

Inspection/Surveillance Requirements for Stored Mixed Waste

Under RCRA, waste storage containers must be inspected on a weekly basis (40 CFR 264.174) and certain above-ground portions of waste storage tanks on a daily basis (40 CFR 264.195(b)(1)). The purpose of these inspections is to detect leakage from or deterioration of containers. NRC recommends that waste in storage be inspected on at least a quarterly basis. Licensees have expressed concerns that daily or weekly "walk-through" inspections of high-activity mixed waste may result in increased exposures to workers at their facilities and thus violate their As Low as Reasonably Achievable (ALARA) programs.

The RCRA regulations and permit guidance do not require that inspections of mixed waste in storage must be "walk-through" inspections. NRC and EPA recognize that increased exposures to workers may result from daily or weekly "walk through" inspections and suggest that licensees consider using methods other than walk-through inspections as a means to inspect high-activity mixed waste in storage. Alternative methods for inspection could include the use of remote monitoring devices to determine if a waste container is leaking or television monitors, or other means that are capable of detecting leakage or deterioration. Such alternative methods would comply with the RCRA regulation and would avoid the additional exposures of walk-through inspections. However, these measures should be coupled with a means to promptly locate and segregate or remediate leaking containers.

Flexibility does exist in the RCRA regulations to allow use of such alternative inspection procedures at frequencies specified in the hazardous waste regulations and in the facility's waste analysis plan. Once a facility receives a RCRA permit, these procedures and frequencies are included in the permit. Facilities with existing RCRA permits may have to request a permit modification to change stated inspection procedures (40 CFR 270.42).

NRC licensees that have incorporated specific inspection procedures in their radioactive materials licenses or procedures referred to in license conditions should contact the appropriate NRC or State office to determine if the alternative inspection procedure will require the license to be amended.

Allowable Storage Practices—Dense Packing Practices

NRC currently allows containers with low exposure rates to be used to provide radiation shielding for containers with higher exposure rates. Licensees have expressed concerns that RCRA inspection requirements (40 CFR 264.174, 264.195(b)(1), 265.174, and 265.195(a)(1)) may restrict this use of low exposure rate containers and that such a restriction could cause an increase in worker exposures.

The agencies agree that using low-exposure rate containers for radiation shielding is a reasonable practice. However, concerns about the potential consequences of a container leaking liquid high-activity mixed waste must also be addressed. Containers may be used for radiation shielding, so long as a licensee is capable of detecting, locating the source, and responding to a release within 24 hours of detection to mitigate any significant release. An example of such a capability might include a remote monitoring capability coupled with a means for promptly locating and responding to such a release. So long as the container configuration does not compromise the ability to detect or respond to container leakage or deterioration, the configuration complies with RCRA requirements.

Waste Compatibility, Segregation and Spacing Requirements

In general, any facility that treats, stores or disposes of RCRA hazardous wastes (including mixed waste) must take special measures in handling ignitable, reactive, and potentially incompatible wastes. These measures are outlined in 40 CFR 264.17, including placing "No smoking" signs in areas where ignitable or reactive wastes present hazards, separating or protecting wastes from sources of ignition or reaction, and taking special precautions to avoid explosive, heat or gas generating reactions. Facilities must document their compliance with these measures (40 CFR 264.17(c)).

Additional requirements for ignitable, reactive, and incompatible wastes managed in tanks and containers are found in Subparts I and J of 40 CFR Parts 264 and 265. For example, 40 CFR 264.177 and 265.177 require that wastes managed in containers that are stored close to incompatible wastes or other materials "must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device" to prevent ignition or reaction. This separation, however, can occur in the same storage facility and does not necessitate the construction of an entirely separate storage unit. Hazardous wastes also may not be placed in unwashed or contaminated units that previously contained incompatible

wastes or materials (40 CFR 264.177(b)). Appendix V of 40 CFR Part 264 contains examples of potentially incompatible wastes.

RCRA storage facilities must also maintain sufficient aisle space in waste storage areas "to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in an emergency, unless it can be demonstrated to the EPA Regional Administrator that aisle space is not needed for these purposes" (40 CFR 264.35). In situations where high activity mixed wastes are monitored by remote means and/or stored using dense packing, a new facility has the flexibility to make such a demonstration to the Regional Administrator based (or authorized State) on the need to control the radiation hazard (40 CFR 264.35). Facilities with interim status have the same opportunity to justify why aisle space is not required (40 CFR 265.35). In either case, alternative systems or plans to contain spills, prevent fire and decontaminate equipment may be required by the Regional Administrator. The determination to waive or alter the aisle space requirement will be made on a case-by-case basis and be incorporated into the facility's RCRA permit.

IV. EPA RCRA Enforcement Policy for Mixed Waste in Storage

EPA has recognized that a shortage of adequate treatment and disposal capacity for mixed waste has existed for some time, and that the LDRs present a problem for generators that are unable to treat or dispose of this waste. Accordingly, on August 29, 1991 EPA announced, in the **Federal Register** (56 FR 42730) a policy of giving a reduced priority to civil enforcement of the storage prohibition in section 3004 (j) of RCRA at facilities which generate mixed waste. The policy was limited to civil enforcement and administrative actions resulting solely from the act of storing mixed waste in violation of RCRA section 3004 (j) and to those waste streams for which adequate treatment is not available. The policy was limited in duration and expired on December 31, 1993. On April 20, 1994, EPA announced a two year extension of this policy (59 FR 18813).

This policy applies to facilities which generate less than 1,000 cubic feet per year of land disposal restricted mixed waste and are operated in an environmentally responsible manner. EPA will consider a variety of factors in determining if a facility is conducting its operations in an environmentally responsible manner including:

- Whether the facility can demonstrate that its mixed waste storage areas are in compliance with all applicable RCRA storage facility standards found in 40 CFR 264.73/265.73 and inspection standards found in 40 CFR 264.15/265.15;
- Whether the facility has identified and kept records of its mixed wastes in accordance with 40 CFR 264.73(b)/265.73(b), including sources, waste codes, generation rates and volumes in storage;
- Whether the facility has developed a mixed waste minimization plan (see 58 FR 31114, May 28, 1993) and;
- Whether the facility is prepared to demonstrate the good faith efforts it has undertaken to ascertain the availability of treatment capacity for its wastes.

Licensees are encouraged to review this policy as presented in the **Federal Register** to determine if the flexibility contained in the policy may be appropriate for the operations at their facilities.

V. Conclusion

NRC and EPA recognize that until adequate treatment and disposal capacity is developed, mixed waste generators will face difficulties when storing their mixed waste. Compliance with both agencies' regulatory requirements will require that mixed waste generators become familiar with and take advantage of the flexibility in the existing regulations. Methods to ensure compliance with these regulations may include the use of remote monitoring equipment and shielding high exposure rate containers with low exposure rate containers. Generators that manage land disposal restricted waste and that are unable to find treatment and disposal capacity are likely to meet the conditions for the lower enforcement priority policy described above. If a generator locates adequate treatment and disposal capacity, this capacity should be used rather than engaging in unnecessary storage.

Generators should make every effort to determine if treatment or disposal capacity currently exists for their mixed waste. In order to provide mixed waste generators with information on commercial treatment and disposal capacity, the agencies published NUREG/CR–5938, the National Profile on Commercially Generated Low-Level Radioactive Mixed Waste in December 1992. This NUREG presents information on the volumes, characteristics, and treatability of commercially generated mixed waste and provides valuable information on facilities that currently offer treatment services for mixed waste. Finally, generators should minimize, to the maximum extent practicable, the amount of mixed waste being generated at their facilities. EPA's Risk Reduction Engineering Laboratory (RREL), in coordination with DOE, is currently conducting research in waste minimization techniques that should provide generators with general strategies to minimize their hazardous and mixed waste generation. Mixed waste generators should contact RREL at (513) 569–7391 to obtain information on these general waste minimization techniques. (For additional guidance, refer to 58 FR 31114, May 28, 1993, Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program, or NRC Information Notice 94–23, Guidance to Hazardous, Radioactive and Mixed Waste Generators on the Elements of a Waste Minimization Program, March 25, 1994).

NRC and EPA believe that through cooperation with the regulatory authorities, the use of innovative storage practices, minimizing mixed waste generation, and treating mixed waste to the maximum extent possible, mixed waste generators will be able to manage their mixed waste in a manner that protects the public and the environment until adequate disposal capacity is developed.

TABLE 1.—STATES WITH MIXED WASTE AUTHORITY AS OF JUNE 30, 1995

Alabama	Illinois	Nebraska	Oregon.
Arizona	Indiana	Nevada	South Carolina.
Arkansas	Kansas	New Hampshire	South Dakota.
California	Kentucky	New Mexico	Tennessee.
Colorado	Louisiana	New York	Texas.
Connecticut	Michigan	North Carolina	Utah.
Florida	Minnesota	North Dakota	Vermont.
Georgia	Mississippi	Ohio	Washington.
Guam	Missouri	Oklahoma	Wisconsin.
Idaho	Montana		

TABLE 2.—NRC AGREEMENT STATES, AS OF JUNE 30, 1995

Alabama	Kansas	New York.
Arizona	Kentucky	North Carolina.
Arkansas	Louisiana	North Dakota.
California	Maine	Oregon.
Colorado	Maryland	Rhode Island.
Florida	Mississippi	South Carolina.
Georgia	Nebraska	Tennessee.

TABLE 2.—NRC AGREEMENT STATES, AS OF JUNE 30, 1995—Continued

Illinois	Nevada	Texas.
Iowa	New Hampshire	Utah.
	New Mexico	Washington.

TABLE 3.—RCRA REGULATORY REQUIREMENTS FOR MIXED WASTE

Facility located in	Applicable requirements
State not authorized for base RCRA Program ..	Mixed waste is subject to Federal RCRA Subtitle C requirements. State may impose additional requirements.
State authorized for base RCRA program but not for mixed waste.	Mixed waste is not subject to RCRA Subtitle C requirements. State may impose non-RCRA mixed waste requirements.
State authorized for base RCRA program and mixed waste (mixed waste authorized State).	Mixed waste is subject to authorized State RCRA requirements.*

* Under § 3008(a)(2) of the SWDA, EPA retains enforcement authority in authorized States.

References

40 CFR Part 260, Hazardous Waste Management System: General Title 40, Code of Federal Regulations, § 260.10.

U.S. Environmental Protection Agency and U.S. Nuclear Regulatory Commission, 1989, "Guidance on the Definition and Identification of Commercial Mixed Low-Level Radioactive and Hazardous Waste and Answers to Anticipated Questions."

National Profile on Commercially Generated Low-level Radioactive Mixed Waste, NUREG/CR–5938, December 1992.

List of Regulations

Environmental Protection Agency General Regulations for Hazardous Waste Management, 40 CFR Part 260.

Environmental Protection Agency Regulations for Identifying Hazardous Waste, 40 CFR Part 261.

Environmental Protection Agency Regulations for Hazardous Waste Generators, 40 CFR Part 262.

Environmental Protection Agency Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, 40 CFR Part 264.

Environmental Protection Agency Interim Status Standards for Owners and Operators of Hazardous Waste Facilities, 40 CFR Part 265.

Environmental Protection Agency Regulations on Land Disposal Restrictions, 40 CFR Part 268.

Nuclear Regulatory Commission Regulations—Standards for Protection Against Radiation, 10 CFR Part 20.

Nuclear Regulatory Commission Regulations—Rules of General Applicability to Domestic Licensing of Byproduct Material, 10 CFR Part 30.

Nuclear Regulatory Commission Regulation—Domestic Licensing of Source Material, 10 CFR Part 40.

Nuclear Regulatory Commission Regulations—Domestic Licensing of Production and Utilization Facilities, 10 CFR Part 50.

Nuclear Regulatory Commission Regulations—Licensing Requirements for Land Disposal of Radioactive Waste, 10 CFR Part 61.

Appendix A

NRC Guidance Documents on the Storage of Radioactive Waste

1. NRC Generic Letter 81–38, Storage of Low-Level Radioactive Wastes at Power Reactor Sites.

2. NRC Generic Letter 85–14, Commercial Storage at Power Reactor Sites of Low-Level Radioactive Waste Not Generated by the Utility.

3. NRC Information Notice No. 89–13, Alternative Waste Management Procedures in Case of Denial of Access to Low-Level Waste Disposal Sites.

4. NRC Information Notice 90–09, Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees.

[FR Doc. 95–19359 Filed 8–4–95; 8:45 am]

BILLING CODE 7590–01–P

Membership on the Executive Resources Board

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to the Executive Resources Board for the Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Executive Resources Board.

The following individuals are appointed as members of the NRC Executive Resources Board responsible for providing institutional continuity in executive personnel management by overseeing NRC's Senior Executive Service (SES) and Senior Level System (SLS) merit staffing, succession planning, and position management activities.

New Appointees

Leonard J. Callan, Regional Administrator, Region IV

David L. Morrison, Director, Office of Nuclear Regulatory Research

Carl J. Paperiello, Director, Office of Nuclear Material Safety & Safeguards

In addition to the above new appointments, the following members are continuing on the ERB:

James M. Taylor, Executive Director for Operations

James L. Milhoan, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations & Research, Office of the Executive Director for Operations

Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations

Karen D. Cyr, General Counsel, Office of General Counsel

William T. Russell, Director, Office of Nuclear Reactor Regulation

Patricia G. Norry, Director, Office of Administration

Paul E. Bird, Director, Office of Personnel

Stuart D. Ebneter, Regional Administrator, Region II

Edward L. Jordan, Director, Office for Analysis and Evaluation of Operational Data

Carlton R. Stoiber, Director, Office of International Programs

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: James F. McDermott, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301) 415–7516.

Dated at Rockville, Maryland, this 1st day of August, 1995.

For the U.S. Nuclear Regulatory Commission.

James F. McDermott,

Secretary, Executive Resources Board, U.S. Nuclear Regulatory Company.

[FR Doc. 95–19360 Filed 8–4–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–7202; 34–36044; International Series Release No. 833]

Exemptions From Rules 10b–6 and 10b–13 for New York Stock Exchange Specialists

August 1, 1995.

Pursuant to delegated authority, on July 31, 1995, the Division of Market Regulation issued a letter ("NYSE Specialist Letter") granting exemptions from Rules 10b–6 and 10b–13 under the Securities Exchange Act of 1934 to allow New York Stock Exchange specialists to continue to act in their specialist capacity during a distribution of or a tender offer for specialty securities when they otherwise would be subject to those rules because of their affiliates' participation in such a distribution or tender offer. The NYSE Specialist Letter has been issued in the context of a continuing review of Rule 10b–6, and is published to provide notice of the availability of these exemptions.

Margaret H. McFarland,

Deputy Secretary.

April 28, 1995.

Mr. Jonathan G. Katz,
Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549

Dear Mr. Katz: The New York Stock Exchange, Inc. (the "Exchange" or "NYSE") is writing to request relief from the restrictions of Rule 10b–6 for certain specialist organizations that are affiliated with an organization engaged in a fixed price, firm commitment underwriting (hereafter referred to as a "distribution") of a security in which the specialist organization makes a market (a "specialty stock") where the two organizations are conducting their respective operations pursuant to NYSE Rule 98.

The Exchange is also requesting relief from the restrictions of Rule 10b–6 and Rule 10b–13 for such specialist organizations that are affiliated with the dealer-manager of an exchange or tender offer of a specialty stock, to the extent the specialist organization is bidding for or purchasing the security in the course of market making activities and not for the purpose of participating in the exchange or tender offer.

The Exchange believes that exemptive relief is appropriate in that (i) NYSE specialist organizations are subject to strict affirmative and negative obligations that restrict the specialist's ability to influence the price of, or condition the market for, a specialty stock; (ii) the Exchange's Rule 98 procedures mandate information barriers that preclude the flow of material non-public market information between a specialist organization and its affiliates; and (iii) the Exchange has appropriate surveillance capability and will conduct detailed surveillances and reviews of trading in conjunction with activities subject to Rule 10b–6 and Rule 10b–13. The Exchange proposes that the exemptive relief sought herein be subject to the conditions specified below. The Exchange undertakes to submit such monitoring reports as the Commission deems appropriate.

Under separate cover, the Exchange is submitting, pursuant to the Commission's Rule 19b–4, a filing to amend NYSE Rule 460.20 to delete references to "giving up the book" by an Exchange specialist associated with a broker dealer that has obtained exemptive relief from specified NYSE rules pursuant to NYSE Rule 98.

Current Application of Rule 10b–6 to NYSE Specialists Affiliated With a Participant in a Distribution

NYSE Rule 460.10 prohibits Exchange specialist organizations and their affiliates from engaging in any "business transaction" with any company in whose stock the specialist organization is registered. The term "business transaction" is interpreted to include, among other matters, participating in a distribution of a security issued by such company.

Exchange Rule 98 provides an exemption from Rule 460.10 for affiliates of a specialist organization that conduct their operations pursuant to the Rule's requirements. The Rule 98 exemption is available only to the *affiliate;* under no circumstances may the specialist organization itself participate in any distribution of a security issued by a company in whose stock the specialist organization is registered.

Today, when an affiliated entity is participating in a distribution of a security stock, the specialist organization is required to withdraw from the market commencing with the applicable Rule 10b–6, "cooling off" period until the affiliate has completed its participation in the distribution. NYSE Rule 460.20 provides that the specialist organization must "give up the book" (i.e., cease to function as market maker) to an unaffiliated specialist organization, which then assumes all market making responsibilities under NYSE rules, until the approved person (affiliate) has completed its participation in the distribution, at which time the regular specialist organization regains the "book" and resumes its market making activities.

Current Application of Rule 10b–3 to NYSE Specialists Affiliated With a Dealer-Manager of an Exchange or Tender Offer

Rule 10b–13 generally prohibits any person making a tender offer from purchasing or making arrangements to purchase the security that is the subject of a tender offer from the time of the public announcement of the tender offer until its expiration. The Exchange understands that the Commission staff appears to have taken the interpretive position the Rule 10b–13 applies generally to the dealer-manager in connection with a tender offer. Thus, under Rule 10b–13, absent exemptive relief, a specialist organization affiliated with such dealer-manager would be prohibited from purchasing any such security that was a specialty stock during an exchange or tender offer.

In September 1992, the Division of Market Regulation granted the Exchange's request that a specialist organization be exempt from Rules 10b–6 and 10b–13, under specified conditions, where an affiliate that had obtained an exemption pursuant to Rule 98 was participating in a distribution or acting as dealer-manager of a tender or exchange offer.[1] The exemption permits the specialist organization to continue to function in its market capacity up until the period commencing five business days before the scheduled termination of the subject offer. The Exchange is seeking herein to broaden the exemption to permit the specialist organization to continue to function in its market making capacity during the entire offer period.

Disparities in Regulation

The Exchange wishes to note that currently there is a disparity between regulatory treatment of over-the-counter market makers and Exchange specialists. Market makers for over-the-counter issuers need not withdraw from the market if they are participating in a distribution of an issuer's securities, as they can continue to make markets subject to the passive market making tests. An NYSE specialist affiliated with a participant in a distribution of specialty security must, however, withdraw from the market, with the market making function then being assumed by a relief specialist. An over-the-counter issuer may view this disparate treatment of market makers as a possible reason to remain listed in the over-the-counter market, as it may perceive less potential disruption of the market making function in the over-the-counter market. Thus, the current regulatory scheme may have a negative impact on the Exchange's ability to attract new listings.

The current disparity in regulation may also operate as a disincentive for large, diversified NYSE member firms to enter, and commit capital to, the specialist business. Such firms may have to weight investment banking opportunities against the potential negative impact, both in terms of issuer relations and operational efficiencies, that may result when an affiliated Specialist is required to cease all market making activity in a specialty security subject to distribution. Such a potential negative impact may make specializing on the NYSE appear to be less attractive as a business proposition.

Affirmative and Negative Obligations of Specialists Under Exchange Rules

Exchange specialists are subject to affirmative and negative obligations with respect to their responsibilities to maintain fair and orderly markets. The negative obligation is codified in Exchange Rule 104, which provides that a specialist shall not effect a proprietary transaction in a specialty stock "unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer in such security." The affirmative obligation is codified in Rule 104.10(2), which provides that, "In connection with the maintenance of a fair and orderly market, it is commonly desirable that a member acting as specialist engage to a reasonable degree under existing circumstances in dealings for his own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated."

The affirmative and negative obligations constitute the foundation of the NYSE's regulation of specialists. They preclude a specialist from trading when there is sufficient buying and selling interest to maintain a fair and orderly market, and require the specialist to trade to minimize short-term disparities in supply and demand. In the context of trading by a specialist while an affiliate is engaged in a distribution of a specialty stock, the negative obligation would bar trading by a specialist to influence the price of the stock when the market is otherwise fair and orderly; the affirmative obligation similarly restricts the ability of a specialist to influence a stock's price by requiring the specialist to react to short-term imbalances in supply and demand, and trade on whichever side of the market will be contra to the overall market trend. Thus, the affirmative and negative obligations significantly inhibit the specialist's ability to effect transactions for market conditioning purposes, which is the type of transaction Rule 10b–6 is intended to prohibit.

We are enclosing as an attachment several pages from the Exchange's Floor Official Manual which discuss the affirmative and negative obligations in detail, and which cross-reference these obligations to specific restrictions on specialist's trading as codified in various provisions of Rule 104.

Rule 98 Information Barriers

As noted above, this request for exemptive relief requires the specialist and affiliated organization to have Exchange approval under NYSE Rule 98 and its Guidelines. NYSE Rule 98 affords exemptive relief for entities in a control relationship with a specialist organization from restrictions in NYSE Rule 104, 104.13, 105, 113.20 and 460.10 that would otherwise be applicable to such entities' transactions in securities in which the specialist organization is registered, or to business transaction with the issuers of such securities. Pursuant to Rule 98 and the implementing guidelines promulgated thereunder, the specialist organization and the affiliated entity must be operated as separate and distinct organizations, and information barriers must be established that place substantial limits on access to, and communication of, trading information, including positions and strategies, between the two organizations. Rule 98 exemptive relief is conditioned on the organizations' receiving prior written approval from the Exchange. The functional separation procedures that must be implemented pursuant to Rule 98 preclude the transfer of market-sensitive information between a specialist organization and an affiliate, and minimize potential conflicts of interest whereby one entity might otherwise be inclined to take market action for the purpose of benefiting the other entity.

The Exchange notes that the procedures specified in Rule 98 are consistent with procedures pertaining to the establishment of information barriers, monitoring of such barriers, and notice (in the case of Rule 98, to the Exchange) as described in the Commission's recent exemptive letter to CS Holding (TP File No. 94–267).

Through Exchange Rule 342 (Supervision), each member organization afforded exemptive relief under Rule 98 is required to monitor the procedures adopted to comply with the Guidelines. The Exchange inspects its member organizations afforded such relief on an annual basis for adherence to these supervisory requirements.

Exchange Surveillance

Since the adoption of Rule 10b–6 in 1955, the Exchange has made substantial investments in sophisticated surveillance procedures, including comprehensive audit trail submissions by member firms, and extensive use of software analytics designed to assist in reviewing this and other data available for such surveillance. For example, the Market Analysis and Reconstruction System (MARS) enables Exchange analysts to retrieve and review trading information dynamically and, utilizing information in the Exchange's existing data base, enables these analysts to review trading for anomalies using many combinations of analytical criteria.

The Exchange will conduct surveillance and reviews of specialist trading activity when an affiliated organization is involved in trading activities in a specialty stock subject to Rule 10b–6 or Rule 10b–13 that are specifically designed to highlight such trading for any possible manipulative intent.

Conditions for Exemptive Relief From Rule 10b–6 and Rule 10b–13

The Exchange believes that exemptive relief for a specialist organization affiliated with a participant in a distribution that has obtained exemptive relief pursuant to Rule 98 (an "Affiliated Specialist" and an "Affiliated Broker-Dealer") would be appropriate under the following conditions:

1. *Issuer Qualification Standards.* The security being distributed, or any security of the same class or series as those securities, or any right to purchase such security, or any security that is the subject of a transaction to which Rule 10b–13 is applicable ("Subject Security") must qualify for the two business day cooling-off period specified in paragraphs (a)(4) (v), (xi) and (xii)(A) of Rule 10b–6.

2. *Establishment of Information Barriers.* The Affiliated Specialist and the Affiliated Broker-Dealer must have, and implement effectively, written policies and procedures designed to segregate the flow of confidential market-sensitive information, including distribution information, between the Affiliated Specialist and the Affiliated Broker-Dealer. The policies and procedures must have been approved by the NYSE as conforming to the requirements of NYSE Rule 98.

3. *Monitoring of Information Barriers.* During the timeframe commencing with the two business day cooling-off period until the distribution participant has completed its participation in the distribution ("Rule 10b–6 Covered Period"), the Affiliated Specialist and the Affiliated Broker-Dealer must conduct a daily review of transactions in the Subject Securities effected by the Affiliated Specialist and the Affiliated Broker-Dealer, respectively, and by Affiliated Purchasers, as that term is defined in Rule 10b–6(c)(i). Any irregular trades by the Affiliated Specialist, the Affiliated Broker-Dealer, and any Affiliated Purchaser, or suspected breaches of the Information Barriers, must be reported immediately to the NYSE.

4. *Notice of Breach.* Should any Affiliated Specialist or Affiliated Broker-Dealer discover that there was a breach of the Information Barriers during the Rule 10b–6 Covered Period, it must provide immediate notice to the NYSE of such occurrence. Upon request of the SEC Division of market Regulation (the "Division"), the Affiliated Specialist and/or Affiliated Broker-Dealer shall provide the Division with a written analysis of the circumstances surrounding that breach.

5. *Annual Compliance Review.* a. As part of the annual review specified in Exchange Rule 342.30, each Affiliated Specialist and each Affiliated Broker-Dealer must include a review, conducted by a person independent of the business line being reviewed, of its compliance during the calendar year with the terms of this exemption, including its operation and any breaches of information barriers, and report on such review to its management; or (ii) prepare a statement ("Statement") that it did not participate in any distributions of a Subject Security during the calendar year if such is the case. Upon a request from the Division, such reviews, management reports, and statements must be supplied to the Division within 15 days of the request.

b. Prior to relying on this exemption, each Affiliated Broker-Dealer and Affiliated Specialist must submit to the Division a written explanation of how it will comply with the review noted in paragraph (a) above. The explanation of the review must describe, among other things, the review plan, the scope of the review, how the review will be conducted, and the title of the person or group who will conduct the review.

6. *NYSE Surveillance.* The NYSE shall establish and implement special surveillance procedures to review all trading by the Affiliated Specialist and Affiliated Broker-Dealers in Subject Securities during the Rule 10b–6 Covered Period, including on-line surveillance of trading by the Affiliated Specialist and off-line surveillance of trading by Affiliated Broker-Dealers. The NYSE also will review trading in Subject Securities by the Affiliated Specialist and Affiliated Broker-Dealers for a ten business day period prior to the commencement of the Rule 10b–6 Covered Period and for two business days thereafter. With respect to transactions subject to Rule 10b–13 (the "Subject Offer"), the NYSE will review all trading by the Affiliated Specialist for the period commencing with public announcement of the Subject Offer, and reconstruct all Affiliated Specialist trading on a daily basis

[1] See letter from William Heyman, Director, Division of Market Regulation, Securities and Exchange Commission to Robert McSweeney, Senior Vice President, Market Surveillance Division, New York Stock Exchange, dated September 15, 1992.

from the period two business days prior to the commencement of the Subject Offer until the conclusion of the Subject Offer, to detect possible market manipulation and to monitor compliance by the Affiliated Specialist with its obligations under NYSE rules.

7. *Notice of Participation.* Affiliated Broker-Dealer must notify the NYSE of their participation in any distribution during which the Affiliated Specialist will continue its specialist activities in Subject Securities pursuant to the exemption granted herein. At a minimum, the Affiliated Broker-Dealer must provide the NYSE advance notice, on the business days prior to commencement of the Rule 10b–6 cooling-off period, of the dates of the Rule 10b–6 Covered Period and notice of the completion of the distribution.

8. *Recordkeeping.* A. All documents required under this Exemption shall be kept for a period of not less than two years. Reports of annual compliance reviews must be retained for a period of three years.

b. None of the requirements of these exemptions shall have any effect upon the obligations of any Affiliated Specialist or Affiliated Broker-Dealer to make, preserve, or produce records pursuant to any other provision of the federal securities laws, or the rules of the Exchange.

9. *Disclosure.* The Affiliated Broker-Dealer shall include in the "Plan of Distribution" section of the prospectus, pursuant to Rule 408 under the Securities Act of 1933, a brief description of the activities of the Affiliated Specialist and the exemption granted herein. When an Affiliated Broker-Dealer is participating in a distribution as a managing or co-managing underwriter, the inside front cover page of the prospectus shall display prominently a statement to the effect that the Affiliated Specialist will act in its specialist capacity in the Subject Security pursuant to the exemption granted herein.

10. *Analysis.* The NYSE will provide the Division with a written analysis of the operation of the exemption granted herein for the 18-month period commencing from the date exemptive relief is granted.

In all other respects, the Affiliated Specialist and its Affiliated Broker-Dealer must comply with the provisions of Rules 10b–6 and 10b–13. No bids or purchases of Subject Securities by the Affiliated Specialist or Affiliated Broker-Dealers may be effected for the purpose of creating actual, or apparent, active trading in a Subject Security or raising the price of a Subject Security. In addition, Affiliated Specialists and Affiliated Broker-Dealers availing themselves of the exemption herein must comply with the anti-fraud and anti-manipulation provisions of the Securities Exchange Act of 1934, particularly Section 9(a), Section 10(b), and Rule 10b–5 thereunder.

We have enclosed a description of surveillance of specialist trading activity when an affiliate is engaged in a distribution of a specialty security. Confidential treatment is requested pursuant to the Freedom to Information Act and the applicable SEC rules thereunder. Such treatment is requested on the grounds, among others, that the information submitted may contain confidential financial data of private parties as well as sensitive surveillance data, disclosure of which may significantly impair the effectiveness of the Exchange's self-regulatory mechanism. Accordingly, should any request be made for disclosure of these materials, or their contents, we ask that you notify us of this fact immediately, giving us an opportunity to interpose our objections.

Sincerely,

James E. Buck,

Senior Vice President and Secretary.

July 31, 1995.

Mr. James E. Buck,
Senior Vice President and Secretary,
New York Stock Exchange, Inc.,
11 Wall Street,
New York, N.Y. 10005.

Re: Application of Rules 10b–6 and 10b–13 to New York Stock Exchange Specialists File No. TP 94–293

Dear Mr. Buck: In regard to your letter dated April 28, 1995, as supplemented by conversations with the staff, this response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter. Each defined term in this letter has the same meaning as defined in your letter unless otherwise noted herein.[1]

Response:

Subject to certain exceptions, Rule 10b–6 under the Securities Exchange Act of 1934 ("Exchange Act") prohibits persons participating in a distribution of securities and their "affiliated purchasers," as defined in paragraph (c)(6)(i) of Rule 10b–6 ("Affiliated Purchaser"), from bidding for or purchasing, or inducing others to bid for or purchase, such securities, or any security of the same class and series as those securities, or any right to purchase any such security ("Subject Securities"), until they have completed their participating in the distribution. Paragraph (a)(4)(xi) ("exception ix") of Rule 10b–6 excepts from this prohibition bids for or purchases of the Subject Securities effected by an underwriter, prospective underwriter, or dealer, and their affiliated purchasers, prior to two or nine business days before the commencement of offers or sales of the security to be distributed ("cooling-off period"). Once the cooling-off period commences, Rule 10b–6 requires the distribution participant and its affiliated purchasers to cease bidding for or purchasing the Subject Securities until the distribution participant has completed its participation in the distribution ("Rule 10b–6 Covered Period"), as set forth in paragraph (c)(3) of Rule 10b–6.

Because a New York Stock Exchange, Inc. ("NYSE") specialist organization ("Affiliated Specialist") affiliated with a distribution participant would be an Affiliated Purchaser, such Affiliated Specialist would be required to suspend its specialist activities in a Subject Security during the applicable cooling-off period until any affiliated broker-dealer ("Affiliated Broker-Dealer") has completed its participation in the distribution.

Rule 10b–13, among other things, prohibits a person making a cash tender offer or exchange offer for an equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security or any security which is immediately convertible into or exchangeable for such security, otherwise than pursuant to the offer, from the time the offer is publicly announced until its expiration ("Rule 10b–13 Covered Period"). Rule 10b–13 applies to the dealer-manager of the offer (and affiliates of the dealer-manager, including an Affiliated Specialist) because the dealer-manager acts as the agent of the bidder to facilitate the bidder's objectives.

Currently, to ensure compliance with Rule 10b–6(a)(4)(xi), the NYSE requires the Affiliated Specialist to suspend its specialist activities in a Subject Security during the applicable cooling-off period specified in Rule 10b–6, until the Affiliated Broker-Dealer has completed its participation in the distribution. Specifically, NYSE Rule 460.20 provides that the Affiliated Specialist must "give up the book" (*i.e.*, suspend its specialist activities) to a specialist organization unaffiliated with any distribution participant, which then assumes all specialist responsibilities under NYSE rules. When the Affiliated Broker-Dealer has completed its participation in the distribution, the Affiliated Specialist may regain the "book" and resume its specialist activities in the Subject Security.

On the basis of your representations and the facts presented, particularly the affirmative and negative obligations that govern specialist trading under NYSE Rule 104; the provisions of NYSE Rule 98 that require information barrier policies and procedures that segment information between the Affiliated Specialist and its Affiliated Broker-Dealer; and NYSE surveillance procedures designed to detect specialist activity that may condition the market for a Subject Security during a distribution, and without necessarily concurring in the analysis in your letters, the Commission hereby grants exemptions from Rules 10b–6 and 10b–13 to Affiliated Specialists and their Affiliated Broker-Dealers to permit the Affiliated Specialists to continue to bid for and purchase Subject Securities as a specialist during the Rule 10b–6 Covered Period and the Rule 10b–13 Covered Period, as applicable, subject to the following conditions:

1. *Scope of the Exemptions.* These exemptions apply to mergers, exchange offers, and firm commitment, fixed price offerings that are distributions for purposes of Rule 10b–6, and tender and exchange offers subject to Rule 10b–13. The Subject Securities must have a minimum price of five dollars per share and a minimum public float of 400,000 shares, as computed in accordance with Rule 10b–6(c)(7).

2. *Establishment of Information Barriers.* The Affiliated Specialist and the Affiliated Broker-Dealer must have, and implement effectively, written policies and procedures designed to segregate the flow of confidential market-sensitive information, including distribution information, between the Affiliated Specialist and the Affiliated Broker-Dealer ("Information Barriers"). The policies and procedures must have been approved by the NYSE as conforming to the requirements of NYSE Rule 98.

3. *Monitoring of Information Barriers.* During the Rule 10b–6 Covered Period or Rule 10b–13 Covered Period, as applicable, the Affiliated Specialist and Affiliated Broker-Dealer reasonably must monitor for compliance with, and must inquire into possible breaches of, Information Barriers. Any inquiries must be documented, and the underlying records, including any analyses, inter-office memoranda, and employee statements, must be made available promptly to the Division of Market Regulation ("Division") upon request.

4. *Notice of Breach.* Should any Affiliated Specialist or Affiliated Broker-Dealer discover that there was a breach of the Information Barriers during the Rule 10b–6 Covered Period and Rule 10b–13 Covered Period, as applicable, it must provide immediate notice to the NYSE of such occurrence. Upon request of the Division, the Affiliated Specialist or Affiliated Broker-Dealer shall provide the Division with a written analysis of the circumstances surrounding the breach.

5. *Annual Compliance Review.* a. Each Affiliated Specialist and each Affiliated Broker-Dealer must annually: (i) conduct an independent review ("Annual Compliance Review") of its compliance during the calendar year with the terms of these exemptions, including their operation and any breaches of information barriers, and report on such review to its management; or (ii) prepare a statement ("Statement") that it did not participate in any distribution or tender offer involving a Subject Security during the calendar year if such is the case. The Annual Compliance Review must be conducted by an independent person acceptable to the Division, and may be conducted in conjunction with the annual review specified in NYSE Rule 342.30. Upon a request from the Division, such reviews, management reports, and statements shall be supplied to the Division within 15 days of the request.

b. Prior to relying on these exemptions, each Affiliated Broker-Dealer and Affiliated Specialist must submit to the Division a written explanation of how it will comply with the Annual Compliance Review. The explanation of the Annual Compliance Review. The explanation of the Annual Compliance Review must describe, among other things, the review plan, the scope of the review, how the review will be conducted, and the independent person, who will conduct the review.

6. *NYSE Surveillance.* The NYSE shall establish and implement special surveillance procedures to review all trading by the Affiliated Specialist and Affiliated Broker-Dealers in Subject Securities during the Rule 10b–6 Covered Period, including on-line surveillance of trading by the Affiliated Specialist and off-line surveillance of trading by Affiliated Broker-Dealers. The NYSE also will review trading in Subject Securities by the Affiliated Specialist and Affiliated Broker-Dealers for a ten business day period prior to the commencement of the Rule 10b–6 covered Period and for two business days thereafter. With respect to tender offers subject to Rule 10b–13, the NYSE will review all trading by the Affiliated Specialist for the period commencing with a public announcement of the tender offer, and reconstruct all Affiliated Specialist trading on a daily basis from the period as of two business days prior to the commencement of the tender offer until the offer's expiration.

7. *Notice of Participation.* Affiliated Broker-Dealers shall give timely notice to the NYSE of their participation in any distribution or tender offer during which the Affiliated Specialist will continue its specialist activities in Subject Securities pursuant to the exemptions granted herein. The Affiliated Broker-Dealer must provide the NYSE advance notice prior to the commencement of the Rule 10b–6 Covered Period and Rule 10b–13 Covered Period, as applicable, and notice of the completion of the distribution and tender offer, as applicable.

8. *Recordkeeping.* a. All documents required under these exemptions shall be kept for a period of not less than two years. Reports of Annual Compliance Reviews must be retained for a period of three years.

b. None of the requirements of these exemptions shall have any effect upon the obligations of any Affiliated Specialist or Affiliated Broker-Dealer to make, preserve, or produce records pursuant to any other provision of the federal securities laws or other regulatory requirements.

9. *Disclosure.* a. The Affiliated Broker-Dealer shall include in the "Plan of Distribution" section of the prospectus, pursuant to Rule 408 under the Securities Act of 1933, a brief description of the activities of the Affiliated Specialist and the exemptions granted herein, as applicable. When an Affiliated Broker-Dealer is participating in a distribution as a managing or co-managing underwriter, the inside front cover page of the prospectus shall display prominently a statement to the effect that the Affiliated Specialist will act in its specialist capacity in the Subject Security pursuant to the exemptions granted herein.

b. At the commencement of the distribution or tender offer, the Affiliated Broker-Dealer shall disclose to the market the fact of the distribution or tender offer and of the Affiliated Specialist's continuation as a specialist in the Subject Security, pursuant to the exemptions granted herein.

10. *Rule 10b–13 Condition.* The Affiliated Specialist may tender only those Subject Securities into an exchange offer that it has acquired in a manner consistent with its specialist obligations under NYSE Rule 104.

11. *Analysis.* The NYSE will provide the Division with a written analysis of the operation of the exemptions granted herein for the 18 month period beginning on the date of this letter. On or before April 30, 1997, the Division will notify the NYSE whether the exemptions should be extended, modified or terminated. Unless otherwise extended, these exemptions will expire on July 31, 1997.

The foregoing exemptions from Rules 10b–6 and 10b–13 are strictly limited to the application of those rules to activities by Affiliated Specialists, acting in their specialist capacity, as described above, and are subject to compliance with the conditions set forth above. These exemptions are subject to modification or revocation if at any time the Commission or Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.[2]

No bids or purchases of Subject Securities by the Affiliated Specialist or Affiliated Broker-Dealers shall be made for the purpose of creating actual, or apparent, active trading in a Subject Security or raising the price of a Subject Security. In addition, Affiliated Specialists and Affiliated Broker-Dealers availing themselves of this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Section 9(a), (10)(b), 14(e) and Rules 10b–5 and 14e–3 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the Affiliated Specialist, the Affiliated Broker-Dealer, and their Affiliated Purchasers. The Commission expresses no view with respect to any other questions that the proposed transaction may raise, including, but not limited to, the applicability of any other federal or state laws.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Brandon Becker,

Director.

[FR Doc. 95–19384 Filed 8–4–95; 8:45 am]

BILLING CODE 8010–01–M

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[1] The letter supersedes our letter dated September 15, 1992, which granted exemptions from Rules 10b–6 and 10b–13 under the Securities Exchange Act of 1934 ("Exchange Act") to permit specialists affiliated with member broker-dealer organizations to continue to function as specialists in their respective speciality securities in connection with certain mergers and tender or exchange offers in which the affiliated broker-dealer participates in a distribution or acts as dealer-manager of a tender or exchange offer.

[2] In 1994, the Commission published a concept release regarding the anti-manipulation regulation of securities distributions, which sought comment on, among other things, the application of Rule 10b–6 to affiliated purchasers. *See* Securities Exchange Act Release No. 33924 (April 19, 1994), 59 FR 21681. In light of the comments received in response to that release, the Commission may determine to undertake rulemaking or other action that may supersede these exemptions.

[Release No. 34–36040; File No. SR–NYSE–95–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1, Amendment No. 2, and Amendment No. 3 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Use of an Automated Telephone Voting System by Member Organizations or Their Agents

July 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On May 10, 1995, the NYSE submitted to the Commission Amendment No. 1[3] and on June 2, 1995, the NYSE submitted Amendment No. 2[4] to the proposed rule change. The NYSE submitted Amendment No. 3 to the Commission on July 21, 1995.[5] The NYSE has requested accelerated approval of the proposal. The Commission is approving the proposal and soliciting comments.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to permit the use of automated telephone voting systems by member organizations or their proxy agents. The proposed rule would amend NYSE Rule 452.16 and the Listed Company Manual Section 402.08(G) by adding the following test:

> Instructions from beneficial owners may also be accepted by member organizations or their agents through the use of an automated telephone voting system, which has been approved by the Exchange. Such a system shall utilize an identification code for beneficial owners and provide an opportunity for beneficial owners to validate votes to ensure that they were received correctly. Records of voting including the date of receipt of instructions and the name of the recipient must be retained by the member organization of their agent.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules in order to permit member organizations or their proxy agents to accept the use of automated telephone voting systems to receive voting instructions from beneficial owners. The voting process that is presently used by member organizations or their agents provides for the transmission of a proxy statement and a voting authorization form to beneficial owners. The appropriate voting selections are indicated on the form by the beneficial owner and it is mailed back to the member organization or its agent.

The automated telephone voting system permits the beneficial owner to give voting instructions on appropriate corporate proposals through a touch tone telephone.[6] The system utilizes identification codes and provides a validation opportunity in order for the beneficial owner to confirm that voting instructions were received correctly.[7] Beneficial holders will be informed of this new option by specific language at the top of the voting form.[8]

The system is deemed to be less prone to tabulation error than the current system, in addition to being more efficient and cost effective.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–15 and should be submitted by August 28, 1995.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 C.F.R. 240.19b–4.

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE to Greg Corso, Office of Tender Offers, SEC, dated May 10, 1995. Amendment No. 1 made non-substantive, clarifying changes to the proposal. Amendment No. 1 is further described at note 6, *infra*.

[4] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, SEC, dated May 25, 1995. Amendment No. 2 is further described at note 7, *infra*.

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE to Sharon Lawson, Assistant Director, SEC, dated July 21, 1995. Amendment No. 3 is further described at note 8, *infra*.

[6] Amendment No. 1 clarified that beneficial owners still have the option to vote in writing using the voting authorization form. The use of the automated telephone voting system is an alternative to the current system.

[7] Under the NYSE rule, only those automated telephone systems which have been approved by the Exchange may be accepted by member organizations. Amendment No. 2 clarifies that the Exchange will consult with the Commission staff to determine whether the proposed system operates in a manner consistent with Section 14(a) of the Act and the rules and regulations thereunder, prior to the Exchange approving any automated system. Currently, Automatic Data Processing Brokerage Information Services Group provides the only approved system.

[8] Amendment No. 3 provides the specific language that will be added to the voting form for the purpose of informing beneficial owners of their option to vote through an automated telephone voting system. If this language is changed in any manner, the Exchange will contact the Commission and receive approval before using the new language.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to permit the use of automated telephone voting systems by member organizations or their proxy agents is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that the use of automated telephone voting systems by member organizations or their proxy agents is consistent with Sections 6[9] and 14[10] of the Act. In particular, the proposal is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest and Section 14 of the Act which sets forth the requirements for the solicitation of proxies.

The NYSE, consistent with Section 14 of the Act, has rules governing the forwarding of proxy materials to beneficial holders. Pursuant to these rules, member firms are required to forward to beneficial holders a proxy statement and a voting authorization form on which the holder would indicate his voting selections and mail the form back to the member firm. The NYSE is now proposing to adopt rules that would permit member firms or their proxy agents to use an Exchange approved automated telephone voting system that operates in a manner consistent with Section 14(a) of the Act as an alternative to written voting instructions.[12] Under the proposed rules, the automated system must at a minimum provide an identification code for beneficial owners and provide an opportunity for beneficial owners to validate instructions to ensure that they were received correctly. In addition, the automated system must provide beneficial owners with the same power and authority to issue, revoke, or otherwise change voting instructions as currently exists for instructions communicated in written form. Further, member organizations or their agents utilizing this method must maintain records of voting which include information sufficient to evidence validity of voting instructions, including the name of the beneficial owner, the date of receipt of the instructions, and the voting instructions as transmitted.

The Commission believes that the proposal will be beneficial to both shareholders and member organizations in fulfilling the proxy requirements under the Act and NYSE rules for several reasons.

First, the use of an automated telephone voting system is a simpler and more efficient means of communicating voting instructions than the current method, which requires a beneficial owner to mail a voting authorization form to the member organization, who would vote the proxy. In this regard, the Commission notes that the proposed rule change will permit beneficial owners to make more timely decisions on corporate matters. For these reasons, the Commission believes that the proposed rule change appropriately gives beneficial owners the ability to use a more convenient and efficient means of providing voting instructions. Second, the use of an automated telephone voting system should prove to be more efficient and accurate than the current system in communicating voting instructions. As the NYSE has indicated, the automated telephone voting system is deemed less prone to tabulation errors than the scanners that are currently used to calculate the votes from the written voting authorization forms.[13] In addition, the automated telephone voting system utilizes identification codes and provides a validation opportunity for the beneficial owner to confirm that voting instructions were received correctly. Finally, the automated telephone voting system is generally viewed as more cost efficient for member organizations because this system can handle a higher volume of voting instructions than the scanners that are currently used to calculate voting instructions from the voting authorization forms.[14]

In summary, the Commission believes that the use of identification codes, the opportunity to confirm that voting instructions were received correctly, and the purported improved accuracy in the new system will be beneficial to shareholders and member organizations and is consistent with the public interest and the protection of investors. Despite these benefits, the Commission notes that the automated voting system is an alternative to the current method of communicating voting instructions by mail. Shareholders will still have the option to choose their preferred method of communicating their voting instructions. In addition, the NYSE rules will continue to ensure that an adequate record is kept of all voting, including voting done through the automated telephone voting system.

The Commission finds good cause for approving the proposed rule change, including Amendments No. 1, 2, and 3, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the use of automated telephone voting systems by member organizations or their proxy agent should provide an immediate benefit to investors by affording them a more convenient means of communicating their voting instructions, as well as a more efficient method of transmitting voting instructions. In addition, the Commission notes that the rule change continues to permit investors who wish to communicate their voting instructions by mailing the voting authorization form to the member organization to do so. The use of the automated telephone voting system is merely an alternative to the current system. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule changes as amended.

It is therefore ordered, pursuant to Section 19(b)(2)[15] that the proposed rule change, including Amendments No. 1, 2, and 3, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19385 Filed 8–4–95; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78n.

[11] 15 U.S.C. 78f(b)(5).

[12] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, SEC, dated May 25, 1995. As described above, Amendment No. 2 clarifies that the Exchange will consult with the Commission staff to determine whether the proposed system operates in a manner consistent with Section 14(a) of the Act and the rules and regulations thereunder, prior to the Exchange approving any automated system.

[13] Telephone conversation between Gary Tuttle, Director of Securities Operation Department, NYSE, and Elisa Metzger, Senior Counsel, SEC, on June 16, 1995.

[14] *Id.*

[15] 15 U.S.C. 78s(b)(2).

[16] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–36043; File No. SR–NYSE–95–21]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Amendments to 460.20

August 1, 1995.

I. Introduction

On May 26, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 460.20 to require an associated specialist of an approved person acting as an underwriter in a distribution of a security in which the associated specialist is registered to "give up the book" if the associated specialist and approved person do not have an exemption from Rule 10b–6 or Rule 10b–13.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35929 (June 30, 1995), 60 FR 35759 (July 11, 1995). No comments were received on the proposal. On July 27, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] This order approves the proposed rule change, including Amendment No. 1, on an accelerated basis.

II. Description of Proposal

Rule 10b–6 under the Act requires a specialist organization to withdraw from the market when an affiliated entity is participating in a distribution of a security in which the specialist organization is registered commencing with the applicable cooling off period specified in Rule 10b–6 until the affiliate has completed its participation in the distribution.[4] Currently, to ensure compliance with Rule 10b–6, NYSE Rule 460.20 requires a specialist organization to "give up the book" (*i.e.* suspend its specialist activities) to a specialist organization unaffiliated with any distribution participant, which then assumes all specialist responsibilities under NYSE rules until the approved person (affiliate) has completed its participating in the distribution.[5] At the conclusion of the approved person's participation, the regular specialist organization regains the "book" and resumes its specialist activities.

The Exchange has filed a request with the Division of Market Regulation ("Division"), separately from this proposed rule change, for exemptive relief from certain provisions of Rules 10b–6 and 10b–13[6] ("Petition for Exemptive Relief").[7] This request was based on competitive concerns in light of the amendments to Rule 10b–6 and new Rule 10b–6A that permit NASD market makers to continue to make markets in a stock while participating in an underwriting of that stock, subject to several restrictions on their level of market making activity ("passive market making").[8] In this regard, the Exchange believed that the failure to provide some type of exemptive relief from Rule 10b–6 for NYSE specialist units affiliated with underwriting firms may have a detrimental effect on the Exchange's ability to compete for issuer listings and on the willingness of large firms to invest capital in the specialist business. The Exchange further believed that the Commissions's passive market making restrictions could not be extended appropriately to Exchange specialists, who are subject to an affirmative obligation to deal when necessary to maintain a fair and orderly market. The Exchange believed, however, that exemptive relief was appropriate in light of the restrictions on the flow of information between the affiliated specialists and its approved person contained in Exchange Rule 98[9] along with the additional safeguards specified in its Petition for Exemptive Relief.

Under this proposal, the Exchange proposes to replace the current "give up the book" provision with one that would make NYSE Rule 460.20 compatible with the Exchange's Petition for Exemptive Relief. The proposed rule change would allow an affiliated specialist to continue to make a market in the securities in which the affiliated specialist was registered during distribution, provided that it has obtained an Exchange exemption from Rule 460.10 pursuant to Rule 98 and a Commission exemption from Rule 10b–6 or Rule 10b–13.[10] Under the new provision, an associated specialist would still be required to "give up the book" in the subject security to another specialist member organization satisfactory to the Exchange, in situations where the associated specialist and approved person do not have an exemption from Rule 10b–6 or Rule 10b–13, until the book may be reacquired by the associated specialist in accordance with Rule 10b–6 or Rule 10b–13.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[11] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the rule change is consistent with the requirements of the Act in that the proposal will allow the NYSE rules to reflect accurately the current state of the law. In response to the NYSE's Petition for Relief, the Division has granted exemptions from Rules 10b–6 and 10b–13 to permit NYSE specialists ("Affiliated Specialists") affiliated with a NYSE member firm ("Affiliated Broker-Dealer") to remain in the market and to continue their normal specialist activities during the period when the Affiliated Broker-Dealer is engaged in a distribution of a specialty security or is acting as a dealer manager in a tender or exchange offer for a specialty security.[12]

In providing the requested relief to the NYSE specialists, the Division has placed certain terms and conditions on the exemptions as well as limitations on their scope. As conditions to the exemptions, the Affiliated Specialist and the Affiliated Broker-Dealer must comply with the terms of, and the enumerated obligations imposed by, the exemptive letter. Moreover, the NYSE also has certain responsibilities to conduct surveillance of Affiliated Specialists and Affiliated Broker-Dealers for compliance with the conditions of the exemptions, to guard against manipulative conduct, and to provide an analysis of the operation of the exemptions to the Division.

The amendment to Rule 460.20 would require the NYSE specialists to "give up the book" during a distribution in which an approved person participates if the associated specialist and approved person do not have an exemption from Rule 10b–6 or Rule 10b–13. The Commission, therefore, believes that Exchange Rule 460.20 is consistent with Rules 10b–6 and 10b–13 and any exemption as granted by the Division. The proposed rule change would also reaffirm, through an exchange rule, the obligations under Rules 10b–6 and 10b–13 of an associated specialist to "give up the book" where such specialist does not have an exemption from such rules.

The Commission notes that the exemptions as provided by the Division are subject to modification or revocation at any time the Commission or the Division determines that such action is necessary or appropriate in furtherance of the purposes of the Act. Therefore, it is the responsibility of the associated specialist and the approved person to become aware of any changes in the exemptions and to determine whether an exemption continues to apply to their activities. Moreover, the Exchange should notify its members of any modifications or revocation of the exemptions granted by the Division.

Moreover, the Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange's original proposal was published in the **Federal Register** for comment and no comments were received.[13] Amendment No. 1 merely codifies the intention of, and what necessarily must be implied from, the proposed rule change: that associated specialists do not have to give up the book if the associated specialists and approved persons have an exemption from Rule 10b–6 or Rule 10b–13. Amendment No. 1 does not alter the substance of the NYSE's original proposal as previously published. Moreover, the proposed rule change, as amended, merely makes Exchange Rule 460.20 compatible with the exemptions granted by the Division; the rule change does not independently create any rights or obligations for NYSE specialists. Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of the amended proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–95–21 and should be submitted by August 28, 1995.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–95–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19386 Filed 8–4–95; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Glen Barrentine, Senior Counsel, SEC, dated July 26, 1995. In Amendment No. 1, the Exchange amended the NYSE rule to reflect more accurately the requirements under Rules 10b–6 and 10b–13 for specialists to give up the book if the specialists and their approved persons do not have an exemption from such rules. *See infra* note 10 and accompanying text.

[4] Rule 10b–6 is an anti-manipulation rule that, subject to certain exceptions, prohibits persons engaged in a distribution of securities from bidding for or purchasing, or inducing others to purchase, such securities, any security of the same class and series as those securities, or any right to purchase any such security ("related securities") until they have completed their participation in a distribution. The provisions of Rule 10b–6 apply to issuers, selling shareholders, underwriters, prospective underwriters, dealers, brokers, and other persons who have agreed to participate or are participating in the distribution, as defined in Rule 10b–6(c)(5), and their "affiliated purchasers," as defined in Rule 10b–6(c)(6), including broker-dealer affiliates. The applicable cooling off period is described in (xi) and (xii) of Rule 10b–6(a)(4). *See* 17 CFR 240.10b–6.

[5] Exchange Rule 460.10 prohibits an approved person of a specialist organization from engaging in any business transaction with any company whose stock the specialist is registered or accept a finder's fee from such company. *See* NYSE Rule 460. NYSE Rule 98, however, affords exemptive relief for approved persons of a specialist organization from restrictions found in various NYSE rules, including certain provisions of rule 460, that would otherwise be applicable to such approved persons' transactions in NYSE securities in which the specialist organization is registered or to business transactions with the issuers of such securities. *See* NYSE Rule 98, *infra* note 9. Therefore, an approved person of a specialist organization must be entitled to an exemption from Rule 460.10 pursuant to Rule 98 to act as an underwriter in any capacity for a distribution of securities in which an associated specialist is registered.

[6] Rule 10b–13 under the Act, among other things, prohibits a person making a tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase any such security (or any security that is immediately convertible or exchangeable for such security), otherwise than pursuant to the offer, from the time the offer is publicly announced until its expiration, including any extension thereof. Rule 10b–13 also applies to the dealer-manager of a tender offer because the dealer-manager acts as the agent of the bidder to facilitate the bidder's objectives. *See* 17 CFR 240.10b–13.

The Exchange is seeking relief from Rule 10b–13 to allow affiliated specialists to continue their market making functions in their respective specialty securities in connection with certain mergers or tender or exchange offers in which an affiliated broker-dealer is participating.

[7] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated April 28, 1995.

[8] *See* Securities Exchange Act Release No. 32117 (Apr. 8, 1993), 58 FR 19528. In general, Rule 10b–6A permits "passive market making" in connection with the distributions of certain securities quoted on the Nasdaq Stock Market during the Rule 10b–6 cooling-off period, the period when the rule's provisions otherwise would prohibit such transactions. A passive market maker's bids and purchases, however, are limited to the highest current independent bid *i.e.*, a bid of a market maker who is not participating in the distribution and is not an affiliated purchaser of a participating market maker. Furthermore, Rule 10b–6A contains certain eligibility criteria, volume limitations on purchases, and notification and disclosure requirements. See Rule 10b–6A(c)(2) (Level of Bid), (c)(3) (Requirements to Lower the Bid), (c)(4) (Purchase Limitation), (c)(5) (Limitation on Displayed Size), (c)(6) (Identification of a Passive Market Making Bid), (c)(7) (Notification and Reporting to the NASD). *See* 17 CFR 240.10b–6A(c)(2) through (c)(6).

[9] Pursuant to Rule 98 and the guidelines promulgated thereunder, the specialist organization and affiliated entities must be operated as separate and distinct organizations, and "information barriers" must be established that place substantial limits on access to, and communications of, trading information, including positions and strategies, between the two organizations. Rule 98 exemptive relief is conditioned on the organizations receiving prior written approval from the NYSE, which conducts an annual review of each firm to ensure that all conditions for the exemption are being met.

[10] Absent an exemption from or exception to Rule 10b–6, Exchange specialists that are affiliated with a person participating in a distribution of securities would be precluded from bidding for or purchasing such securities or any related securities.

[11] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[12] *See Letter regarding Application of Rules 10b–6 and 10b–13 to New York Stock Exchange Specialists* (File No. TP94–293) (July 31, 1995). The exemptions provided in this letter will expire in two years from the effective date of the exemptions unless otherwise extended. This sunset provision is consistent with the NYSE's proposed rule change, which would require an associated specialist of an approved person acting as an underwriter in a distribution to "give up the book" if the associated specialist and approved person do not have an exemption from Rule 10b–6 or Rule 10b–13.

[13] *See* Securities Exchange Act Release No. 35929 (June 30, 1995), 60 FR 35759 (July 11, 1995).

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1994).

[File No. 1–11922]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (MedicalControl, Inc., Common Stock, $0.01 Par Value, Warrants Expiring May 13, 1996)

August 1, 1995.

MedicalControl, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Pacific Stock Exchange, Incorporated ("PSE").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the primary reason for this action relates to the lack of trading volume on the PSE. The Board of Directors is unaware of any benefit based on its evaluation of the listing. The Company also is listed on the Nasdaq National Market System where the stock primarily trades.

Any interested person may, on or before August 22, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–19387 Filed 8–4–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–12992]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (NuMed Home Health Care, Inc., Common Stock, $0.001 Par Value, Redeemable Common Stock Purchase Warrants Expiring February 7, 2000)

August 1, 1995.

NuMed Home Health Care, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the Securities are currently listed on the BSE under the symbols "NUH" and "NUHW" respectively. The Securities also currently trade on the Nasdaq Small Cap under the Symbols "NUMD" and "NUMDW". It is the Company's intention to continue to have the Securities listed on the Nasdaq. The Company is seeking to delist from the BSE because there has been no trading activity in the Securities on the BSE since the Company's original listing in February 1995. The Company does not wish to continue any expenses associated with the BSE listing. All trading in the Securities occurs on the Nasdaq.

Any interested person may, on or before August 22, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–19388 Filed 8–4–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2783]

Missouri; Declaration of Disaster Loan Area (Amendment #3)

The above-numbered Declaration is hereby amended, effective July 21, 1995, to include Mercer County in the State of Missouri as a disaster area due to damages caused by severe storms, hail, tornadoes, and flooding beginning on May 13, 1995 and continuing through June 23, 1995.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Decatur and Wayne in the State of Iowa may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 11, 1995, and for loans for economic injury the deadline is March 12, 1996.

The economic injury number for Missouri is 853400 and for Iowa the number is 853900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 28, 1995.

James W. Hammersley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95–19319 Filed 8–4–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2801]

New York; Declaration of Disaster Loan Area

Jefferson County and the contiguous counties of Lewis, Oswego, and St. Lawrence in the State of New York constitute a disaster area as a result of damages caused by severe thunderstorms which occurred on July 15, 1995. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on September 28, 1995, and for economic injury until the close of business on April 29, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, New York 14303, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economics injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 280111 and for economic injury the number is 860200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 28, 1995.

Philip Lader,

Administration.

[FR Doc. 95–19320 Filed 8–4–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2793]

Virginia; Declaration of Disaster Loan Area (Amendment #1)

The above-numbered Declaration is hereby amended, in accordance with notices from the Federal Emergency Management Agency dated July 10 and 12, 1995, to include the City of Bedford and Amherst, Bedford, and Franklin Counties in the Commonwealth of Virginia as a disaster area due to damages caused by severe storms and flooding beginning on June 22, 1995 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Floyd and Patrick in the Commonwealth of Virginia may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 29, 1995, and for loans for economic injury the deadline is April 3, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 27, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–19321 Filed 8–4–95; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling SSR 95–3p.; Title II: Transactions Involving Noncash Transfers for Agricultural Labor

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 95–3p. This Policy Interpretation Ruling explains when certain transactions involving noncash transfers for agricultural labor may be considered wages under Section 209(a) of the Social Security Act. The Internal Revenue Service (IRS) issued guidelines for evaluating whether such transactions are, in economic reality, payments in cash and therefore wages for purposes of the Federal Insurance Contributions Act tax. Since the Social Security Administration (SSA) does not have such guidelines, these transactions have not been treated by SSA as wage payments for Social Security coverage and annual earnings test purposes. The purpose of this Ruling is to achieve consistent treatment between SSA and the IRS of transactions involving noncash transfers for agricultural labor.

EFFECTIVE DATE: August 7,1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners)

Dated: July 27,1995.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Title II: Transactions Involving Noncash Transfers for Agricultural Labor

Purpose: This Ruling explains when certain transactions involving noncash transfers for agricultural labor may be considered wages under section 209(a) of the Social Security Act. The purpose of this Ruling is to provide that the treatment afforded by the Social Security Administration (SSA) of such transactions will be the same as the treatment afforded by the Internal Revenue Service (IRS).

Citation (Authority): Sections 209(a), 210(f), and 210(j)(2) of the Social Security Act (the Act); Regulations No. 4, sections 404.1005, 404.1007, 404.1010, 404.1016, 404.1017, 404.1041(e), 404.1055, 404.1056, 404.1068(c), and 404.1074.

Background: Section 209(a)(7)(A) of the Act and section 3121(a)(8)(A) of the Internal Revenue Code (IRC) provide that, for purposes of Social Security coverage and Federal Insurance Contributions Act (FICA) taxation, respectively, the term "wages" does not include "remuneration paid in any medium other than cash for agricultural labor" (as defined in section 210(f) of the Act and section 3121(g) of the IRC). Any medium other than cash (generally referred to as "in-kind" payments) includes, for example, lodging, food, clothing, or agricultural commodities. Some farmers have attempted to use commodity payments as remuneration for agricultural services to avoid paying FICA tax. This practice can prevent farm workers from accumulating the quarters of coverage needed to qualify for Social Security benefits. However, the IRS clarified in Revenue Ruling 79–207 and in subsequent guidelines that a transfer of an in-kind item which is immediately converted to cash is, in economic reality, a payment in cash not subject to the wage exclusion. The effect of the ruling is that certain transactions involving in-kind transfers for agricultural labor have been considered cash payments and therefore wages subject to tax under FICA. SSA policy has been not to treat such in-kind transfers as wages under the Act when evaluating them for Social Security coverage purposes.

To achieve consistent treatment between SSA and the IRS of transactions involving in-kind transfers for agricultural labor, SSA is adopting

the policy position in IRS Revenue Ruling 79–207.

Policy Interpretation: To determine whether certain transactions involving in-kind transfers for agricultural labor are wages within the meaning of section 209(a) of the Act, and thus creditable as wages for Social Security benefit purposes, SSA will consider the following:

1. Does an employer-employee relationship exist? Only noncash payments to an employee qualify for the section 209(a)(7)(A) exception. In-kind payments received by a self-employed individual engaged in farming are not subject to this exception and may be considered in determining self-employment income which is credited for Social Security coverage purposes. Section 210(j)(2) of the Act defines "employee" as "any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee." SSA's rules for evaluating whether an individual is a common-law employee are found in 20 CFR 404.1007.

When a farmer's spouse (or child 18 or older) performs agricultural labor for the farmer, the individual may be an employee. Generally, an employer-employee relationship exists when the person for whom the labor is performed has the right to control and direct the person who performs the services. Special coverage rules with respect to farm crew leaders, foreign agricultural workers, and sharefarmers are found in 20 CFR 404.1010, 404.1016, 404.1017, 404.1068(c), and 404.1074.

2. Is the in-kind transfer, in economic reality, equivalent to a payment in cash? Although section 209(a)(7)(A) of the Act excludes from the definition of covered wages remuneration paid in any medium other than cash for agricultural labor, if a bona fide transfer of the noncash medium from the employer to the employee has not occurred and the transaction is, in economic reality, equivalent to a payment in cash, the wage exclusion will not apply.

In determining whether a transaction involving a noncash medium is, in economic reality, a payment in cash, SSA will consider the extent to which the employee exercised dominion and control over the noncash item. Many factors may be relevant including, among other things: (1) Whether the employer has transferred a readily identifiable portion of an item; (2) whether there is documentation of the transfer; (3) the length of time between the employee's receipt and sale of the item; (4) whether the employee negotiates the subsequent sale of the item; (5) whether the risk of gain or loss shifted to the employee; and (6) whether the employee bears the costs incident to ownership of the item, for example, storage, feeding, or maintenance costs.

Example 1: A farm operator agrees to give an employee 30 head of cattle for services performed on the farm. The farm operator sells 100 head of cattle to a commodity purchaser. The commodity purchaser gives the farm operator a check for 70 head of cattle and the employee a check for 30 head of cattle. These facts indicate that the cash proceeds from the sale are wages because the employee did not exercise dominion and control over the cattle.

Example 2: A farm operator pays an employee $50 a month plus 10 head of cattle per month for services performed on the farm. The employee pays the farm operator rent to maintain the cattle on the farm property in an area separate from the farm operator's livestock. The employee assumes the costs of feeding, maintaining, and transferring the cattle to the market for sale. The employee is paid directly by the commodity purchaser for the cattle. These facts indicate that the commodity payments are not wages because the employee exercises dominion and control over the cattle subsequent to receipt and bears the costs incident to ownership of the cattle.

Example 3: An employment agreement provides that a farmer will compensate his wife in cash wages of $100 per month and transfer 100 head of cattle each year. The wife's cattle are raised and maintained with the husband's cattle. Under the employment agreement, the farmer delivers the cattle to a market location agreed upon by the wife and at the market transfers ownership to the wife. The wife's cattle were not distinguishable or readily identifiable from the other cattle taken to market. The wife receives a check directly from the market for the cattle. Since the sale of the cattle occurs almost simultaneously with their delivery to the wife, these facts indicate that the in-kind transfer is, in substance, equivalent to a cash payment and therefore wages for Social Security purposes.

Documentation: Evidence documenting the existence of an employment relationship, the terms of the agreement, and the transfer of commodities should be obtained. There is a presumption that an individual's earnings record as maintained by SSA is correct as posted. SSA determines whether the evidence is sufficient to overcome that presumption of correctness.

Effective Date: This policy is effective upon publication of this Ruling in the **Federal Register**.

Cross-References: Program Operations Manual System, Part 3, Chapter 021, Subchapter 01; and Chapter 014, Subchapter 02, Section RS 01402.020.

[FR Doc. 95–19365 Filed 8–4–95; 8:45 am]
BILLING CODE 4190–29–P

[Social Security Ruling SSR 95–4c]

Supplemental Security Income—Termination of Benefits Due to Excess Resources

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 95–4c. This Ruling is based on a decision by the U.S. Court of Appeals for the Third Circuit in *Chalmers* v. *Shalala*, 23 F.3d 752 (3rd Cir. 1994), which upheld the Secretary's decision and found that the claimant's equitable interest in real property was a countable resource as set out in the Social Security regulations. Despite her mental impairment, the Court of Appeals found that the claimant had the power to liquidate her equitable interest and apply the proceeds toward her support. Consequently, because her equitable interest in the real property was valued above the resources limit set by the supplemental security income program, the claimant's benefits were properly terminated.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program 96.006 Supplemental Security Income)

Dated: July 27, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Sections 1611(a)(3)(B) and 1613 of the Social Security Act (42 U.S.C. 1382(a)(3)(B) and 1382b) Supplemental Security Income—Termination of Benefits Due to Excess Resources

Chalmers v. Shalala, 23 F.3d 752 (3rd Cir. 1994)

20 CFR 416.1201(a)–(c)

The claimant had been receiving supplemental security income (SSI) benefits based on disability because of schizophrenia since April 1978. In September 1980, she jointly inherited property with her siblings and subsequently formed a partnership with them to manage the property, valued above the countable resources limit allowed by the SSI program.

In November 1989, the Secretary of Health and Human Services notified the claimant that her SSI benefits were being terminated because she owned countable resources in excess of the $2,000 limit applicable to an individual.

The claimant requested a hearing and the administrative law judge (ALJ) found that the claimant's interest in the property was not a resource because she was not its sole owner and, therefore, could not convert the property to cash for her own support and maintenance. However, the ALJ held that the claimant's interest in the partnership was a resource because she had the power to dispose of her interest in the partnership and apply the proceeds toward her support. On review, the Appeals Council concluded that the claimant "has not shown that the power to partition is forfeited based on the mental capacity to exercise the right to partition. Therefore, the claimant's share of the land or partnership is countable."

The claimant filed a civil action challenging the Secretary's termination of benefits. The district court, without reaching the question of whether Chalmers' equitable interest in the property was a resource, held that her interest in the partnership was a resource under the Secretary's regulations because she had the legal right to liquidate it. On appeal, the U.S. Court of Appeals for the Third Circuit, agreeing with the Secretary, held that the regulatory requirement contained in 20 CFR 416.1201(a) that an individual have the "power" to liquidate property in order for it to be considered a resource, means the legal authority to do so. Thus, the claimant's alleged mental impairment that purportedly would result in a lack of actual power to make decisions regarding the liquidation of the property she owned was irrelevant to the determination whether that property was her resource. Further, because the claimant could dissolve the partnership and regain her equitable interest in the real property, which could thereafter be liquidated and applied to her support, her interest in the real property was a resource.

Sloviter, Chief Judge

I

This is an appeal from an order of the district court affirming a decision of the Secretary of Health and Human Services to terminate the Supplemental Security Income (SSI) benefits that appellant Fannie Chalmers had been receiving since April, 1978. Because Chalmers is schizophrenic, she has been unable to care for herself and lives with her sister. In September, 1980, Chalmers's father died intestate, and she and her three siblings jointly inherited four houses on contiguous parcels of land in Eden, North Carolina, appraised at $47,000, which were encumbered by a lien in the amount of $23,000.[1] They also inherited a 7.5 acre parcel of unimproved land in a different county in North Carolina worth $3,000.

Chalmers's three siblings desire to keep the Eden properties because they wish to retire there ultimately. Chalmers's brief contends that because of her illness it is impossible to ascribe to her any intentions with respect to the property. At the suggestion of their North Carolina counsel, Chalmers and her siblings formed a partnership, C & P Land Company, to manage the properties and pay the mortgage from the rents collected. In order not to trigger the outstanding debt, they did not change the title to the properties which is in the name of Chalmers's father.

Each of the four siblings, including Chalmers, signed an agreement conveying his or her one-quarter equitable interest in the properties to the partnership in return for a legal interest in the partnership. The agreement provides that all four partners will share equally in the profits and losses and, significant for the issue on appeal, that the partnership may be dissolved at any time by any of the partners, which shall result in the liquidation of the partnership.

C & P Land Company depreciates the rental properties for income tax purposes, and, pursuant to the partnership agreement, these deductions are allocated to each partner. A 1981 letter from the attorney to Chalmers's sister states: "I doubt * * * that you will receive much as income from the property. The major advantage to you will be the depreciation for tax purposes. The property is a tax shelter for you."

[1] The Administrative Law Judge and the Appeals Council refer to the value as $49,000. The difference is not significant for our purpose. The estate also contained personal property but it was "of nominal value."

II

Subchapter [2] XVI of the Social Security Act provides for payments to disabled persons of limited income and resources, subject to certain eligibility requirements. *Cannuni* v. *Schweiker*, 740 F.2d 260, 263 (3d Cir.1984) (citing 42 U.S.C. § 1382b(a)). The limit applicable to Chalmers's resources is $2,000. 42 U.S.C. § 1382(a)(3)(B) (1988). The statute does not define "resources," but the Secretary has promulgated regulations providing that:

(a) Resources; defined. For purposes of this subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

(1) If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).

* * * * *

(b) Liquid resources. Liquid resources are cash or other property which can be converted to cash within 20 days * * *

(c) Nonliquid resources. (1) Nonliquid resources are property which is not cash and which cannot be converted to cash within 20 days. * * * Examples of resources that are ordinarily nonliquid are * * * buildings and land.

20 C.F.R. 416.1201(a)–(c) (1993) (emphasis added).

Chalmers was notified by the Secretary in November 1989 that her SSI benefits were being terminated because she owned resources in excess of the limit of $2,000, i.e, the property she had inherited from her father. Chalmers requested a hearing and the matter came before an administrative law judge (ALJ). The ALJ found that Chalmers's interest in the property was not a resource because she was not its sole owner and therefore could not convert the property to cash for her own support and maintenance. However, the ALJ held that Chalmers's interest in the C & P partnership was a resource because she had the power to dispose of her interest in the partnership. On review, the Appeals Council concluded that Chalmers "has not shown that the power to partition is forfeited based on the mental capacity to exercise the right to partition. Therefore the claimant's share of the land or partnership is countable."

[2] The court is referring to Title XVI of the Social Security Act. [Ed. Note.]

Chalmers filed an action in district court for review of the Secretary's decision. The court held that Chalmers's interest in the C & P partnership was a resource under the regulations because she had the legal right to liquidate it. The district court did not reach the question whether Chalmer's equitable interest in the property was a resource, although it said that "it would appear that [it], too, is a 'nonliquid resource' under the Secretary's regulation." *Chalmers* v. *Sullivan*, 818 F.Supp. 98, 102–103 (D.N.J.1993). Chalmers appeals.

We accord considerable deference to the Secretary's interpretation of the SSI statute and its regulations. *Beatty* v. *Schweiker*, 678 F.2d 359, 360 (3d Cir.1982). "Indeed, we will uphold the Secretary's interpretation of the regulations 'unless it is plainly erroneous or inconsistent with the regulation[s].'" Id. (quoting *Bowles* v. *Seminole Rock & Sand Co.*, 325 U.S. 410, 414, 65 S.Ct. 1215, 1217, 89 L.Ed. 1700 (1945)).

Chalmers concedes on appeal, as indeed she must under the facts, that: "She had the right to terminate the partnership, C & P Land Company. She could have legally sold or otherwise conveyed her ¼ interest in the real estate, subject to the rights of her siblings, as cotenants. She even had the legal right to bring an action to partition the property as suggested by the Social Security Appeals Council."

She argues, however, that although she has the "right" to liquidate her interests, her disability renders her without the requisite "power" to do so. This argument misconstrues the meaning of the word "power" as used in the regulations. It means not only "a mental or physical ability or aptitude," as Chalmers argues, but also "legal authority," as the Secretary implicitly uses the word. See Webster's Third New International Dictionary 1778–79 (1964). We do not believe that the word "power" was used in the regulations as limited to "mental or physical ability." Moreover, it is likely that many disabled individuals receiving SSI benefits lack the mental or physical ability to manage their own resources, and such an interpretation would render the provision meaningless. Thus, we cannot say that the Secretary's interpretation of "power" as "legal authority" is plainly erroneous, for it is indeed the more sensible construction.

Chalmers argues further that we should interpret the regulatory language "right, authority or power" in the conjunctive instead of the disjunctive. We see no basis to construe the disjunctive "or" in any way other than its plain meaning, see *Herron* v. *Heckler*, 576 F.Supp. 218, 222–23 n.–2 (N.D.Cal.1983) (declining to construe "and" as "or" in other SSI regulations), which is the construction adopted by HHS. The cases relied upon by appellant's counsel are simply inapposite.[3]

We turn next to the question whether Chalmers's interest in the property is a resource for SSI purposes. The principal definition section of the regulation explicitly states that "resources means * * * real * * * property." 20 C.F.R. § 416.1201(a) (1993). Similarly, 20 C.F.R. 416.1201(a)(1) also refers to property, providing that "[i]f the individual has the right, authority or power to liquidate the property, or his share of the property," it is defined as a resource. Chalmers concedes that she can sell "her ¼ interest in the real estate" and can also "bring an action to partition the property." We therefore conclude that the fact that Chalmers had the legal right to liquidate her interest in the inherited property qualifies it as a resource under the Secretary's regulations.[4]

In essence Chalmers argues that it is not "sensible" or "advantageous" to partition the property because lawyer's fees and costs will consume its net worth. Although that is not an unreasonable position, it is not one that finds support in the regulation. Thus, we are not free to read into the statute or the regulation a requirement that is not there.

Our conclusion is buttressed by legislative history regarding the definition of resources. The House Report to the Social Security Act provides that:

> Property not used in the operations of a trade or business and which does not provide a reasonable return should clearly be included as resources. Assets such as buildings or land not used as the individual's abode (which is excluded as described above) which are not readily convertible to cash must be disposed of within a time limit prescribed by the Secretary of Health, Education, and Welfare.

H.R.Rep. No. 231, 92nd Cong., 2d Sess., reprinted in 1972 U.S.C.C.A.N. 4989, 5140. We find this history dispositive. The property at issue is not used in the operations of a trade or business or as the individual's abode, and it does not provide a reasonable return. On the contrary, its "major advantage" is "as a tax shelter." Congress clearly intended that such "buildings and land" "must be disposed of" "if they were not readily convertible to cash."

Although we are sympathetic to Chalmers's disability, the record does not establish unequivocally that she cannot effectuate her legal rights. An affidavit filed by her psychiatrist states that it would be "impossible for Ms. Chalmers to retain one attorney and participate in and discuss legal matters," but it is also a matter of record that Chalmers has been represented by an attorney at each stage of these proceedings and that she signed the partnership agreement to form the C & P Land Company.

Finally, Chalmers's reliance on *Cannuni* v. *Schweiker*, 740 F.2d at 264 (3d Cir.1984), is misplaced. In *Cannuni*, we were asked whether a multiple-party bank account and certificates of deposit were resources sufficient to disqualify a disabled son for SSI benefits. Because we determined that the claimant did not have the legal right to withdraw the funds for his own support, we held that the property could not be considered resources for SSI purposes. Unlike the claimant in *Cannuni*, Chalmers has the right to liquidate her interest in order to apply the proceeds toward her support. While we recognize the difficulty she may have in exercising her rights, we cannot accept her argument that she need not do so because "there are many situations in which the exercise of all of one's legal rights is not the most sensible and advantageous course." For all of the foregoing reasons, the order of the district court will be affirmed.

[FR Doc. 95–19366 Filed 8–4–95; 8:45 am]
BILLING CODE 4190–29–P

[3] For example, in *De Sylva* v. *Ballentine*, 351 U.S. 570, 573–74, 76 S.Ct. 974, 976, 100 L.Ed. 1415 (1956), the Court read the "or" in the conjunctive, but the statute in question, the 1909 Copyright Act, was "hardly unambiguous" and the legislative history of the statute suggested that the use of "or" may have been a matter of "careless usage."

[4] Also, the definition of nonliquid resources explicitly refers to "property" and, as the district court noted, offers "buildings and land" as examples of such resources. 20 C.F.R. § 416.1201(c) (1993). See *Chalmers*, 818 F.Supp. at 102.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–95–012]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Advisory Committee will meet to discuss various navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 9 a.m. to approximately 11 a.m. on Tuesday, September 12, 1995.

ADDRESSES: The meeting will be held in the 11th floor conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

(1) Presentation of the minutes from the June 13, 1995 full Committee meeting.
(2) Subcommittee Reports.
(3) Industrial Lock Replacement.
(4) Towboat Horsepower/Tonnage ratios.

Dated: June 22, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–19350 Filed 8–4–95; 8:45 am]
BILLING CODE 4910–14–M

[CGD08–95–013]

Lower Mississippi River Waterway Safety Advisory Committee Vessel Traffic Service Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee's Vessel Traffic Service Subcommittee will meet to discuss navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 10 a.m. to approximately 11 a.m. on Wednesday, August 23, 1995.

ADDRESSES: The meeting will be held at the Crescent Pilots' Belle Chasse office, located at 8712 Highway 23, Belle Chasse, Louisiana 70037.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

(1) Introduction of new members.
(2) Discussion on the plans for a Vessel Traffic Service on the Lower Mississippi River.
(3) Presentation of any additional new items for consideration of the Committee.

Dated: June 30, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–19351 Filed 8–4–95; 8:45 am]
BILLING CODE 4910–14–M

[CGD08–95–014]

Lower Mississippi River Waterway Safety Advisory Committee Gaming Vessel Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee's Gaming Vessel Subcommittee will meet to discuss navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 10 a.m. to approximately 11 a.m. on Thursday, September 7, 1995.

ADDRESSES: The meeting will be held in room 1830 of the World Trade Center, 2 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

(1) Introduction of new members.
(2) Discussion on the present and future operation of Gaming Vessels on the Lower Mississippi River.
(3) Presentation of any additional new items for consideration of the Committee.

Dated: June 22, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eight Coast Guard District.

[FR Doc. 95–19352 Filed 8–4–95; 8:45 am]
BILLING CODE 4910–14–M

Federal Aviation Administration

Change 1, Advisory Circular (AC) 25–7, Flight Test Guide for Certification of Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of change to advisory circular.

SUMMARY: This notice announces the issuance of Change 1 to Advisory Circular (AC) 25–7, Flight Test Guide for Certification of Transport Category Airplanes. This change to the basic advisory circular provides updated guidance to ensure consistent application of certain airworthiness requirements recently adopted by Amendment 25–84.

DATES: Change 1 to AC 25–7 was issued on June 6, 1995, by the Acting Manager of the Transport Airplane Directorate, Aircraft Certification Service, in Renton, Washington.

HOW TO OBTAIN COPIES: A copy of Change 1 may be obtained by writing to the U.S. Department of Transportation, Utilization and Storage Section, M–443.2, Washington, DC 20590.

Issued in Renton, Washington, on July 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–19422 Filed 8–4–95; 8:45 am]
BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 151
Monday, August 7, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409)

[5 U.S.C. Section 552b]

TIME AND DATE: 9:00 a.m., Thursday, August 17, 1995.

PLACE: 5550 Friendship Boulevard, Suite 420, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Proposal to continue the delegation of decision-making authority to Regional Commissioners along the present geographical lines following the closure on April 1, 1996, of the North Central Regional Office, and the centralization of all Commissioners and remaining staff in the Commission's Chevy Chase, Maryland, headquarters office.
2. Proposal to amend 28 C.F.R. § 2.23 to substitute the title "Administrative Hearing Examiner" for "Regional Administrator."
3. Proposal to continue the jurisdiction of the Regional Commissioner for the Eastern Region over revocation hearings held at the Federal Transfer Center, Oklahoma City, Oklahoma, if that Commissioner originally issued the warrant.
4. Proposal to amend 28 C.F.R. § 2.40 to reflect the Commission's authority at 18 U.S.C. § 4209 to waive the ten-day comment period when emergencies require an immediate change to parole conditions.
5. Proposal to amend 28 C.F.R. § 2.1, § 2.14, and § 2.29 and the Procedures Manual to allow conversion of presumptive to effective dates up to nine months prior to release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5952.

Dated: August 1, 1995.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 95–19561 Filed 8–3–95; 3:52 pm]

BILLING CODE 4410–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on July 31, 1995, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for September 11, 1995, in Washington, D.C. The members will consider the acquisition of leased postal facilities.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dvhrkopp, Fineman, Mackie, Rider, and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate a proposed procurement action.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code; and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–19556 Filed 8–3–95; 3:41 pm]

BILLING CODE 7710–12–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, August 1, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's corporate activities.

Application of Trenton Savings Bank FSB, Lawrenceville, New Jersey, a proposed new federally chartered stock savings bank, for Federal deposit insurance.

Recommendation regarding an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: August 2, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–19498 Filed 8–3–95; 11:35 am]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 60, No. 151
Monday, August 7, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003-5070-02; I.D. 072695A]

Pacific Halibut Fisheries; Area 2A Non-treaty Commercial Fishery Reopening

Correction

Final rule document 95-18850 was inadvertently published in the Notices section of the issue of Tuesday, August 1, 1995, beginning on page 39153. It should have appeared in the Rules section.

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[GEN Docket No. 90–56; FCC 95–267]

Mobile-Satellite Service and Aeronautical Telemetry

Correction

In rule document 95–17509 beginning on page 37828 in the issue of Monday, July 24, 1995, make the following correction:

§ 87.187 [Corrected]

On page 37829, in the second column, in § 87.187(p), in the first line, "1435.1525" should read "1435–1525".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35985; File No. SR–GSCC–95–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying GSCC's Fee Structure to Reduce the Clearance Fee, to Implement a New Discount Policy, and to Clarify the Fee Structure

July 18, 1995.

Correction

In notice document 95–18096 beginning on page 37911 in the issue of Monday, July 24, 1995, in the second column, the date was omitted and should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30 and 150

[CGD 95-900]
RIN 2115-AF07

Bulk Hazardous Materials; Correction

Correction

In rule document 95–18764 beginning on page 39267 in the issue of Wednesday, August 2, 1995, make the following corrections:

1. On page 39267, in the second column, in paragraph 6., in the correction to paragraph s., in the second line, "Ethylene glycol" should read "Diethylene glycol".
2. On the same page, in the third column:
   a. In the seventh line from the top, "GILT" should read "GLT".
   b. In paragraph 11., in the third line, "DAN" should read "DAH"; and in the seventh line, "LEO/" should read "VEO/".
   c. In paragraph 14., in the fourth entry, the first line should read "N-(2-Methoxy-1-methyl ethyl)-2-ethyl-6-".
   d. In paragraph 14., in the sixth entry, in the first line, "aide" should read "fide"; and in the third line, "polysulfide" was misspelled.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-ASW-01]

Proposed Establishment of Class E Airspace; Seymour, TX

Correction

In proposed rule document 95–15722 beginning on page 33162 in the issue of Tuesday, June 27, 1995, make the following correction:

§ 71.1 [Corrected]

On page 33163, in the first column, in the amendment to § 71.1, before the last line of stars insert "That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Seymour Municipal Airport.".

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federal register

Monday
August 7, 1995

Part II

Environmental Protection Agency

40 CFR Parts 122 and 124
Storm Water Discharges; Amendment to Requirements for National Pollutant Discharge Elimination System Permits; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 124

[FRL–5271–7]

Amendment to Requirements for National Pollutant Discharge Elimination System (NPDES) Permits for Storm Water Discharges Under Section 402(p)(6) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; withdrawal of direct final rule.

SUMMARY: Today, EPA is withdrawing the storm water phase II direct final rule published on April 7, 1995 (60 FR 17950) and promulgating a final rule in its place based on an identical proposal published that same day (60 FR 17958). By today's action, EPA is promulgating changes to the National Pollutant Discharge Elimination System (NPDES) storm water permit application regulations under the Clean Water Act (CWA) for phase II dischargers. Phase II dischargers generally include all point source discharges of storm water from commercial, retail and institutional facilities and from municipal separate storm sewer systems serving populations of less than 100,000.

Today's rule establishes a sequential application process in two tiers for all phase II storm water discharges. The first tier provides the NPDES permitting authority flexibility to require permits for those phase II dischargers that are determined to be contributing to a water quality impairment or are a significant contributor of pollutants to waters of the United States. ("Permitting authority" refers to EPA or States and Indian Tribes with approved NPDES programs.) EPA expects this group to be small because most of these types of dischargers have already been included under phase I of the storm water program. The second tier includes all other phase II dischargers. This larger group will be required to apply for permits by the end of six years, but only if the phase II regulatory program in place at that time requires permits. As discussed in more detail below, EPA is open to, and committed to, exploring a number of non-permit control strategies for the phase II program that will allow efficient and effective targeting of real environmental problems. As part of this commitment, EPA has initiated a process to include stakeholders in the development of a supplemental phase II rule under the Federal Advisory Committee Act (FACA). This rule will be finalized by March 1, 1999 and will determine the nature and extent of requirements, if any, that will apply to the various types of phase II facilities prior to the end of the six-year application period defined by today's rule.

DATES: The direct final rule published on April 7, 1995 at 60 FR 17950 and corrected on April 18, 1995 at 60 FR 19464 is withdrawn and this final rule is effective on August 7, 1995. In accordance with 40 CFR 23.2, EPA is explicitly providing that this rule shall be considered final for purposes of judicial review at 1 p.m. (Eastern time) on August 7, 1995.

ADDRESSES: The docket for this rulemaking is available for public inspection at EPA's Water Docket, Room L–102, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. (Eastern time) for an appointment. Please indicate that the docket to be accessed is for the April 7, 1995 **Federal Register** notice on the storm water phase II regulations. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Nancy Cunningham, Office of Wastewater Management, Permits Division (4203), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–9535.

SUPPLEMENTARY INFORMATION:

I. Overview of Today's Action

Today, EPA is promulgating the phase II storm water application regulations as proposed on April 7, 1995 (60 FR 17958). EPA also is withdrawing the direct final rule published on that same date (60 FR 17950); corrected at 60 FR 19464, April 18, 1995. The direct final and proposed rules contained identical requirements. By today's rule, EPA promulgates changes to the NPDES storm water permit application regulations under the CWA to establish a common sense approach for all phase II storm water dischargers. Phase II storm water dischargers include those storm water discharges not addressed under phase I of the storm water program.[1]. Generally, phase II dischargers are point source discharges of storm water from commercial, retail, light industrial and institutional facilities, construction activities under five acres, and from municipal separate storm sewer systems serving populations of less than 100,000.

Today's rulemaking will promote the public interest by relieving most phase II dischargers of the immediate requirement to apply for permits. Consequently, this rule relieves most phase II dischargers from citizen suit liability for failure to have an NPDES permit over the next six years. If a phase II discharger complies with the application deadlines established by today's rule, the facility will not be subject to enforcement action for discharge without a permit or for failure to submit a permit application.

Under today's rule, application deadlines are in two tiers. The first tier allows the permitting authority to focus current efforts on those facilities that will produce the greatest environmental benefit. The first tier is for those phase II dischargers that the NPDES permitting authority determines are contributing to a water quality impairment or are a significant contributor of pollutants to waters of the U.S. Those dischargers that have been so designated are required to obtain a permit and must submit permit applications to the permitting authority within 180 days of being notified that such an application is required. The permitting authority has the flexibility to extend this deadline. Under the second tier, all remaining phase II facilities must apply for permits by August 7, 2001, but only if the phase II regulatory program in place at that time requires permits. EPA is actively exploring alternative control strategies with broad stakeholder involvement. EPA is also establishing application requirements for phase II dischargers, as well as making other conforming changes to other portions of the NPDES regulations in today's rule.

EPA is subject to a court order to propose supplemental rules for phase II sources by September 1, 1997, and finalize them by March 1, 1999. *Natural Resources Defense Council, Inc.* v. *Browner*, Civ. No. 95–634 PLF (D.D.C., April 6, 1995). However, if the CWA is amended prior to these dates to address some of these storm water issues, EPA will, of course, move to expeditiously implement the statutory changes.

II. Background

EPA provided an extensive discussion of the statutory and regulatory background of the storm water program in the direct final rule published in the April 7, 1995, **Federal Register** notice (60 FR 17950). For the sake of brevity, EPA refers the reader to that notice and only briefly repeats the background necessary to explain the need for today's final rule.

As explained in CWA section 101, Congress enacted the CWA "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" through reduction and eventual elimination of the discharge of pollutants into those waters. CWA section 301 prohibits the discharge of pollutants from a point source except in compliance with certain other sections of the Act. One of those sections, section 402, established the National Pollutant Discharge Elimination System (NPDES), the permitting program for control of point source discharges including storm water.

In the 1987 amendments to the CWA, Congress enacted section 402(p). Section 402(p)(1) relieved certain storm water dischargers (commonly referred to as phase II dischargers) from the requirement to obtain a permit until October 1, 1992. Section 402(p)(6) provided that EPA was to publish regulations by October 1, 1992. Congress later extended the date for the permitting moratorium until October 1, 1994, and the date for publication of phase II regulations until October 1, 1993. See Water Resources Development Act of 1992, Public Law No. 102–580, section 364, 106 Stat. 4797, 4862 (1992).

Though the relief from the permit requirement lapsed on October 1, 1994, EPA had not published phase II storm water regulations. On October 18, 1994, EPA issued guidance explaining that regulations had not yet been promulgated for the phase II storm water program, and that the Agency was unable to waive the statutory prohibition against unpermitted discharges of pollutants to waters of the United States in the absence of such regulations. EPA is not attempting to extend the CWA deadlines in today's rule, but rather is establishing the phase II storm water program under section 402(p)(6). (See Response to Comment section below for further discussion of this issue.)

III. Regulation Changes

In today's rule, EPA is designating under section 402(p)(6) all phase II sources as being part of the phase II program. EPA is establishing permit application deadlines for these dischargers in two tiers in today's rule. To obtain real environmental results early, the first tier applies to those phase II dischargers that the NPDES permitting authority determines are contributing to a water quality impairment or are a significant contributor of pollutants. Those dischargers that have been so designated by the permitting authority are required to obtain a permit and must submit a permit application within 180 days of being notified that such an application is required. The permitting authority has the flexibility to extend this deadline. Under the second tier, all other phase II facilities must apply for permits by August 7, 2001, but only if the phase II regulatory program in place at that time requires permits.

EPA also is establishing application requirements for phase II dischargers, as well as making other conforming changes to other portions of its NPDES regulations in today's rule. For example, EPA is providing flexibility to the permitting authority to modify the specific application requirements for phase II dischargers. Again EPA believes this is a common sense approach to alleviate unnecessary burden on phase II dischargers. The specifics of the application requirements and other conforming changes are explained in the April 7, 1995, notice published at 60 FR 17950. EPA has not changed the regulatory text in today's final rule from that notice.

IV. Responses to Public Comment

A comprehensive "response to comment" document is available in the administrative record for this rulemaking. Many significant comments, and EPA's responses, are summarized below.

Many commenters disagreed with EPA's interpretation of section 402(p) of the CWA in which EPA determined that section 402(p) sets a statutory deadline for the issuance of permits to phase II storm water dischargers. The commenters argued that 402(p) does not require permits for all discharges of storm water after October 1, 1994, rather it prohibits the need for such permits before this date.

EPA disagrees. CWA section 301(a) states that it is illegal to discharge pollutants to waters of the U.S. except in compliance with Section 402. The current regulations under section 402 establish a permit program for point source discharges. In the 1987 amendments to the CWA, Congress added Section 402(p) to ensure the orderly evolution of the NPDES storm water program. Section 402(p)(1) did not alter the basic underlying prohibition in Section 301(a) as it applied to storm water discharges. Section 402(p)(1) did, however, establish temporary relief from permitting requirements for certain storm water discharges for a specified period of time. Section 402(p)(6) provided EPA with the authority to consider alternative control strategies for the phase II program. Because EPA had not established alternatives under section 402(p)(6), the existing permitting requirements under section 402 applied to phase II dischargers after October 1, 1994.

The legislative history behind 402(p) supports EPA's position that when the date lapsed, phase II sources became subject to the pre-existing statutory requirement to obtain a NPDES permit. The Congressional Record from October 15, 1986 includes the following statements from the House of Representatives:

> The relief afforded by this provision extends only to October 1, 1992. After that date, all municipal separate storm sewers are subject to the requirements of 301 and 402.
>
> After October 1, 1992, the permit requirements of the Clean Water Act are restored for municipal separate storm sewer systems serving a population of fewer than 100,000.

132 Cong. Rec. H10532 (Oct. 15, 1986)

More recent Congressional actions provide even clearer support for EPA's interpretation of Section 402(p). The original deadline for permits for phase II storm water discharges was October 1, 1992. At the time of this original deadline, the Agency was not ready to issue regulations for implementation of the phase II program. When Congress recognized the severe liability problem this would create for phase II discharges, Congress decided to extend the relief deadline in section 402(p)(1) to October 1, 1994. At the same time, Congress extended the deadline for phase II regulations in section 402(p)(6) to October 1, 1993, to allow EPA more time to develop phase II regulations. If phase II dischargers were not subject to enforcement for violations of section 301(a) until EPA promulgated the phase II regulations, Congress would not have extended sections 402(p)(1) and 402(p)(6) with differing deadlines. If Congress had not intended unregulated phase II sources to be liable for violations of section 301(a) on October 1, 1992, there would have been no need to amend section 402(p)(1) at all.

In related comments, concern was expressed that if such statutory deadlines are valid, EPA does not have the authority to extend statutory permit deadlines. In response, EPA disagrees that this regulation extends statutory deadlines. The statutory deadline lapsed on October 1, 1994. EPA recognized that fact, as well as the consequences thereof, when it issued the October 18, 1994, guidance. The Agency's authority to act under these circumstances arises from the clear text of section 402(p)(6). That section directs EPA to issue regulations which (1) designate storm

[1] Phase I dischargers include: dischargers issued a permit before February 4, 1987; discharges associated with industrial activity; discharges from a municipal separate storm sewer system serving a population of 100,000 or more; and discharges that the permitting authority determines to be contributing to a violation of a water quality standard or a significant contributor of pollutants to the waters of the United States.

water discharges to be regulated to protect water quality and (2) establish a comprehensive program to regulate those sources, including, among other things, expeditious deadlines. In today's rule, EPA relies on section 402(p)(6) to designate all phase II discharges for regulation under a comprehensive program which, for most of those dischargers, does not require permits for 6 years. During the six-year period, EPA will investigate alternative control strategies for the phase II program and will develop supplemental regulations through the FACA process.

Commenters also raised concern regarding the potential for citizen suits. As explained above, today's final rule effectively protects most phase II dischargers from citizen suit liability for failure to have an NPDES permit for up to six years.

A few commenters criticized EPA for the delay in publishing a Report to Congress on storm water discharges not covered under phase I. Further, they did not believe that President Clinton's Clean Water Initiative adequately addressed procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. The Agency believes that the Storm Water Report to Congress, which incorporates the President's Initiative, fulfills the requirements of section 402(p)(5). The Report to Congress cites to data confirming the continuing threat to surface waters caused, in significant part, by unregulated storm water discharges. The Administration's Clean Water Initiative proposed a variety of procedures and methods through which permitting authorities could most flexibly address remaining unregulated discharges of storm water to the extent necessary to mitigate impacts on water quality.

Several commenters questioned whether State and local officials had been consulted in developing the proposed rule as directed by CWA section 402(p)(6). In a September 9, 1992, **Federal Register** notice, EPA invited public comment on reasonable, alternative approaches for the phase II storm water program. Prior to publication of the direct final and proposed rules on April 7, 1995, EPA met with representatives of key municipal organizations to discuss the content of the rule and to gather feedback and input. EPA will continue its outreach efforts by seeking additional public input through FACA subcommittee participation, and other means, in developing supplemental regulations for the phase II program.

Commenters expressed their opinion that the proposed rule should be considered an unfunded mandate as described under the Unfunded Mandate Reform Act of 1995. That is, the commenters believed that the estimated cost of the regulation to State, local, or tribal governments, or to the private sector, will be $100 million or more in any one year. EPA disagrees. This rulemaking actually reduces the immediate regulatory burden imposed on phase II facilities. EPA believes that the cost to phase II dischargers that are immediately designated under tier 1 will be small due to the extremely few designations that are anticipated. Furthermore, EPA has the authority to modify permit application requirements to require less information and alleviate unnecessary burden on all phase II facilities. Because of these reasons, costs are expected to be well below $100 million for each of the next six years. EPA believes that any costs that might be imposed after the sixth year will still be below $100 million because of the application flexibility, but in any event, those costs will not exceed existing costs (multiplied by the rate of inflation) because of the current statutory requirement that phase II dischargers apply for permits immediately, absent promulgation of today's rule.

The costs of a "comprehensive" phase II program after the sixth year will be more fully characterized through additional rulemaking as a result of the FACA process. Under a judicial consent order in *Natural Resources Defense Council, Inc.* v. *EPA*, Civ. No. 95–0634 PLF (D.D.C. April 6, 1995), EPA is required to propose by September 1, 1997, and take final action by March 1, 1999, supplemental rules which clarify the scope of coverage and control mechanisms for the phase II program. The cost to potential dischargers of this action will be identified in the subsequent rulemaking and cannot be accurately predicted in today's final rule. However, EPA does not expect that regulation to cost over $100 million in any one year.

Commenters questioned EPA's justification to designate all phase II dischargers to protect water quality. Many commenters argued that construction sites that disturb less than 5 acres should not be so designated because they do not present significant water quality concerns. In response, EPA relies on the Report to Congress to conclude that unregulated storm water discharges remain a significant threat to the health of surface water quality. While EPA recognizes that individual facilities within the total phase II universe may not represent equal threats, EPA believes that there is sufficient information concerning water quality problems to designate the entire class of phase II dischargers as an interim matter pending further study in the context of the rulemaking described above. EPA will make more specific designations in the context of that rulemaking. In response to comments about small construction sites, EPA notes that these commenters did not present any data to support a conclusion that small construction presents only negligible water quality concerns. As explained in the earlier notice, the FACA subcommittee will explore the appropriate scope of the phase II program.

Today's rule states that permit applications are required within 180 days from receipt of notice for those phase II discharges that the NPDES permitting authority determines are contributing to a water quality impairment or are a significant contributor of pollutants. Commenters requested and suggested further clarification on both of these determinations. EPA purposefully did not provide explicit definitions of these phrases in order to provide flexibility to permitting authorities. Interpretive flexibility is warranted due to climatic and geographic differences across the United States. EPA published guidance for designations under phase I of the storm water program. Such guidance is also applicable for the phase II program designations and is included in the record of this rulemaking.

One commenter took issue with the 180-day deadline for permit applications, particularly for municipal separate storm sewer systems that are designated under tier 1. The commenter felt that such a short period of time would not be sufficient to prepare and submit a municipal application. In response, EPA reminds the commenter that the Director has the authority to grant permission to submit the application at a later date. Some municipalities may not need more time because they may be able to simply reference information already submitted for an adjacent or nearby large or medium municipality under phase I. Additionally, the permitting authority is able to modify the permit application requirements and may require much less information than what was required for phase I dischargers.

Another commenter asked that the period during which a permitting authority may designate a facility be limited to one year. EPA is not limiting the time frame for designations because the permitting authority will need to account for changing conditions and new information that becomes available over time.

Some commenters stated that the "direct final rule" is not specifically provided for in the Administrative Procedure Act (APA) nor has EPA demonstrated "good cause" to issue a "direct final rule" under 5 U.S.C. section 553. This comment is no longer relevant because EPA is withdrawing the direct final rule and instead issuing a final rule that responds to comments received.

One commenter disputed the assertion that urban storm water runoff is a cause of real water quality use impairment in the United States. The commenter also believed that it is inappropriate to base the implementation of phase II requirements on exceedance of water quality standards associated with urban storm water runoff. The commenter believed that water quality criteria were not developed to regulate many of the chemical constituents in urban storm water runoff. EPA disagrees. The fact that urban runoff is a real cause of water quality use impairment is very well supported throughout the literature and is summarized by EPA in the Water Quality Inventory: Reports to Congress prepared on a biannual basis under section 305(b) of the CWA. EPA believes that basing the implementation of phase II requirements on exceedance of water quality standards is appropriate because attainment of water quality standards is one of the explicit goals of the NPDES program. EPA further disagrees that water quality criteria have not been developed for many of the chemical constituents in urban storm water. To the contrary, water quality criteria exist for many such constituents, particularly heavy metals and oil and grease.

A few commenters argued that comments received on the rule are unrepresentative of the groups affected because small cities and commercial establishments were unaware of the direct final and proposed rules. In response, EPA believes that the 60-day comment period was sufficient for small entities to formulate their comments and/or review those drafted by their representative associations. Many of the comments received were from national organizations representing such small cities and businesses, including, National Association of Counties, National Association of Convenience Stores, Society of Independent Gasoline Marketers of America, National Association of Flood and Stormwater Management Agencies, American Petroleum Institute, National Association of Home Builders, and American Car Rental Association.

One commenter disagreed that this rulemaking significantly reduces the immediate regulatory burden imposed on phase II facilities because phase II municipalities would have the same burden imposed on phase I municipalities. In response, EPA points out that today's rule provides the Director with discretion to modify the application requirements for phase II dischargers. EPA expects Directors to exercise this discretion to reduce the application burden to both municipalities and individual facilities.

Several commenters questioned the types of permits that will be available to dischargers in 2001. Currently, the permitting authority has the option of individual or general permits. However, EPA does not anticipate that permits will be necessary for all phase II dischargers in 2001. The Agency is committed to promulgate supplemental rules that further consider the scope of the phase II program as well as alternative control mechanisms.

Many commenters made suggestions for the second tier of the phase II regulations such as to allow and encourage phase II municipalities to join phase I municipalities in the same watershed, standardize procedures across the United States, and delegate construction permitting to local governments. Such suggestions will be provided to the FACA subcommittee and will be taken into consideration when developing the subsequent phase II regulations. Commenters also made suggestions for representation on the FACA subcommittee. Such suggestions are being considered in formulating the subcommittee.

Supporting Documentation

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether the regulatory action is "significant," and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations, of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rulemaking significantly reduces the current regulatory burden imposed on phase II facilities. The proposed rule was submitted to OMB for review. OMB cleared the proposed rule with minor changes. Review of this final rule was waived by OMB under the provisions of Executive Order 12866.

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing the Intergovernmental Partnership", issued by the President on October 26, 1993, the Agency is required to develop an effective process to allow elected officials and other representatives of State and Tribal governments to provide meaningful and timely input in the development of regulatory proposals.

EPA fully supports this objective and has initiated a consultation process with both States and Tribes which will be continued through the development of additional phase II rules. Specifically, EPA has discussed this action with the representatives of the States, local governments, the Agency's American Indian Environmental Office (AIEO), and parts of the regulated community.

The reaction of the States is positive. The States and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) support the approach that is being taken under existing law; the States and ASIWPCA also support concurrent changes to the law. ASIWPCA has submitted a letter to the Agency dated March 3, 1995, which is included in the record for this matter. EPA has responded to many of ASIWPCA's comments in this preamble.

The reaction of many municipalities is that they prefer a statutory change now to clarify the issue once and for all. Municipalities' representatives (National Association of Counties, National League of Cities, U.S. Conference of Mayors, and the National Association of Flood and Stormwater Management Agencies) have raised many issues to the Agency and have submitted a letter dated February 16, 1995, which is contained in the record for this matter. The municipalities believe that it is inappropriate for EPA to act now when Congress may act on this matter, that the action taken by EPA is not in conformance with the law, and that EPA did not consult with local officials on this matter. EPA has responded to many of the municipalities' concerns in this preamble. EPA did consult with various

representatives of local governments early in the development of this regulation as well as more comprehensively in February 1995.

This rule was also coordinated with EPA's American Indian Environment Office (AIEO). The Office of Water will work through the AIEO to provide for a Tribal representative to participate in the FACA process.

EPA believes that it has developed an effective process to obtain input from State, Tribal and local governments before issuing this rule, as well as receiving comments on the direct final rule and accompanying proposed rulemaking, and has met the consultation requirements for States, federally recognized Tribes and localities under the terms of Executive Order 12875.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget.

EPA's existing information collection request (ICR) entitled "Application for NPDES Discharge Permit and Sewage Sludge Management Permit" (OMB Number 2040–0086) contains information that responds to this issue for all storm water discharges, including those facilities designated into the program under this regulation as causing water quality problems. The burden of similar water quality designations, utilized under the phase I storm water program, were accounted for in the ICR and remain applicable to the designations that may be made under this rule. EPA will review and revise the estimates contained in this ICR, as appropriate, in its renewal process.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities, and defines them as follows:

(1) Small governmental jurisdictions—any government of a district with a population of less than 50,000.

(2) Small business—any business which is independently owned and operated and not dominant in its field, as defined by the Small Business Administration regulations under the Small Business Act.

(3) Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

EPA has determined that today's rule would not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis therefore is unnecessary. Through today's action EPA is benefiting small entities by (1) adopting a common sense approach to deal with the issue of storm water phase II requirements, (2) providing the ability for the permitting authority to manage for results by providing flexibility to deal with storm water phase II permitting at this time based on water quality violations or significant contribution of pollutants, and (3) clarifying and reducing applicable burdens for those facilities currently subject to phase II requirements. The rule provides additional time for EPA to work with all stakeholders, including small entities, to develop additional phase II regulations under a FACA process. The Agency is committed to issue these supplemental phase II regulations by March 1, 1999; in that rulemaking EPA will reconsider its Regulatory Flexibility Act analysis.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a written statement to accompany proposed rules where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by any rule.

EPA estimates that the costs to State, local, or tribal governments, or the private sector, from this rule will be less than $100 million. This rulemaking significantly reduces the immediate regulatory burden imposed on phase II facilities. EPA has determined that an unfunded mandates statement therefore is unnecessary.

Although not required to make a finding under section 206, EPA concludes that this rule is cost-effective and a significant reduction in burden for State and local governments. In a September 9, 1992, **Federal Register** notice, EPA invited public consideration of and comment on reasonable alternative approaches for the phase II storm water program. Today's rule provides for the first step for many of those alternatives by providing for an orderly process for developing supplemental regulations. By establishing regulatory relief until development of those alternative approaches, today's rulemaking itself provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule at this stage, consistent with statutory requirements.

As discussed previously, EPA initiated consultation with representative organizations of small governments under Executive Order 12875. In doing so, EPA provided notice to potentially affected small governments to enable them to provide meaningful and timely input. EPA plans to inform, educate, and advise small governments on compliance with any requirements that may arise in further development of the storm water phase II rules.

F. Procedural Requirements and Effective Date

Today's rule is effective on August 7, 1995. Section 553 of the APA provides that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date except, as relevant here, (1) for a substantive rule which grants or recognizes an exemption or relieves a restriction or (2) when the agency finds and publishes good cause for foregoing delayed effectiveness. Today's rule relieves phase II dischargers from the immediate requirement to obtain a permit. Additionally, the Agency has determined that good cause exists for making this regulation effective immediately because today's final rule does not differ from the withdrawn direct final rule which would have become effective on August 7, 1995.

List of Subjects

40 CFR Part 122

Enviromental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indian lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, parts 122 and 124 of Title 40 of the Code of Federal Regulations are amended as follows:

PART 122—[AMENDED]

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.21 is amended by adding a sentence to the end of paragraph (c)(1) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see 123.25).

* * * * *

(c) *Time to apply.*

(1) * * * New discharges composed entirely of storm water, other than those dischargers identified by § 122.26(a)(1), shall apply for and obtain a permit according to the application requirements in § 122.26(g).

3. Section 122.26(a)(1) is amended as follows:

a. In paragraph (a)(1) the introductory text is amended by revising the date "October 1, 1992" to read "October 1, 1994";

b. By adding paragraph (a)(9) as set forth below;

c. By revising the title of paragraph (e) as set forth below;

d. In paragraph (e)(1)(ii), by revising the phrase "permit application requirements are reserved" to read "permit application requirements are contained in paragraph (g) of this section"; and

e. By adding paragraph (g) as set forth below.

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) * * *

(9) On and after October 1, 1994, dischargers composed entirely of storm water, that are not otherwise already required by paragraph (a)(1) of this section to obtain a permit, shall be required to apply for and obtain a permit according to the application requirements in paragraph (g) of this section. The Director may not require a permit for discharges of storm water as provided in paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at §§ 122.2 and 122.3.

* * * * *

(e) *Application deadlines under paragraph (a)(1).* * * *

* * * * *

(g) *Application requirements for discharges composed entirely of storm water under Clean Water Act section 402(p)(6).* Any operator of a point source required to obtain a permit under paragraph (a)(9) of this section shall submit an application in accordance with the following requirements.

(1) *Application deadlines.* The operator shall submit an application in accordance with the following deadlines:

(i) A discharger which the Director determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States shall apply for a permit to the Director within 180 days of receipt of notice, unless permission for a later date is granted by the Director (*see* 40 CFR 124.52(c)); or

(ii) All other dischargers shall apply to the Director no later than August 7, 2001.

(2) *Application requirements.* The operator shall submit an application in accordance with the following requirements, unless otherwise modified by the Director:

(i) *Individual application for non-municipal discharges.* The requirements contained in paragraph (c)(1) of this section.

(ii) *Application requirements for municipal separate storm sewer discharges.* The requirements contained in paragraph (d) of this section.

(iii) *Notice of intent to be covered by a general permit issued by the Director.* The requirements contained in 40 CFR 122.28(b)(2).

PART 124—[AMENDED]

4. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 3901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

5. Section 124.52(c) is amended by revising the parenthetical statement and the next to the last sentence to read as follows:

§ 124.52 Permits required on a case-by-case basis.

* * * * *

(c) * * * (*see* 40 CFR 122.26 (a)(1)(v), (c)(1)(v), and (g)(1)(i)) * * * The discharger must apply for a permit under 40 CFR 122.26 (a)(1)(v) and (c)(1)(v) within 60 days of notice or under 40 CFR 122.26(g)(1)(i) within 180 days of notice, unless permission for a later date is granted by the Regional Administrator. * * *

[FR Doc. 95–19191 Filed 8–4–95; 8:45 am]

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Monday
August 7, 1995

Part III

Department of Transportation

Coast Guard

46 CFR Part 67

Facsimile Filing of Instruments; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 94–070]

RIN 2115–AE98

Facsimile Filing of Instruments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its vessel documentation regulations to provide for optional filing of commercial instruments by facsimile, and to establish a filing and recording handling fee for filing instruments by facsimile. The option of filing commercial instruments by facsimile complements the centralization of Coast Guard vessel documentation services. Facsimile filing of commercial instruments will assist the centralized vessel documentation center to deliver timely services to distant vessel documentation customers and is responsive to time sensitive matters. Filing commercial instruments by facsimile will further streamline the vessel documentation process.

EFFECTIVE DATE: This rule is effective on October 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Williams, National Vessel Documentation Center; (800) 799–8362.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Don M. Wrye, Project Manager, National Vessel Documentation Center and C. G. Green, Project Counsel, Office of Chief Counsel.

Regulatory History

On March 6, 1995, the Coast Guard published a notice of proposed rulemaking titled "Facsimile Filing of Instruments" in the **Federal Register** (60 FR 12188). The Coast Guard received 11 letters commenting on the proposal. No public hearing was requested and none was held.

Background and Purpose

Significant changes to the vessel documentation program were made in 1988 by Pub. L. 100–710 (the "statute"). Among other things, the statute added chapter 313 to title 46, U.S. Code, to revise, consolidate, and codify into positive law the ship mortgage laws administered by the Department of Transportation. The statute made certain substantive changes to then-existing law to modernize ship mortgages and the filing and recording process.

The legislative history for the statute is contained in House Report No. 100–918. That report noted that one of the primary purposes of chapter 313 of title 46, U.S. Code, is to provide third parties with notice of the existence of mortgages and liens. This rule implements one aspect of the suggestions the report made concerning office automation.

On November 15, 1993, the Coast Guard published a final rule (58 FR 60266) revising 46 CFR Part 67 implementing the substantive changes made by the statute. That rule became effective on January 1, 1994. On June 15, 1995, the Coast Guard published a final rule (60 FR 31602) consolidating all vessel documentation functions in the National Vessel Documentation Center (NVDC) in Martinsburg, WV. That rule became effective on August 1, 1995. In accordance with that final rule, after August 1, 1995, all documents related to vessel documentation functions must be submitted to the NVDC. However, to assist the public in adjusting to the consolidation, all of the previous 14 regional vessel documentation offices will have someone present to receive documents relating to vessel documentation functions on behalf of the NVDC until September 30, 1995. After September 30, 1995, only the office in New Orleans, LA, will have persons attached to receive such documents.

Under subpart O of 46 CFR part 67, instruments to be filed and recorded with the Coast Guard are submitted to the National Vessel Documentation Center. Any instrument submitted for filing and recording must be a completed, executed instrument at the time it is submitted. Upon receipt of the instrument at or on behalf of the NVDC, it is stamped with a date and time received. If the instrument submitted meets the minimal requirements for filing, it is marked "Filed" and the stamped date and time received is noted as the date and time filed. If the instrument submitted does not meet the minimal requirements for filing, it is rejected and returned to the submitter. Under the terms of 46 U.S.C. 31321(a)(2), filing the instrument with the Coast Guard is the legally significant act which makes it valid against third parties. If all of the necessary elements for recording the instrument are present when it is filed, it can be promptly recorded. Recording the instrument consists of indexing the filed instrument with a book and page number, which serves as a locator for the document, and placing it in the appropriate "book" according to its sequential page number(s). If an instrument is filed but cannot be recorded because of an error or omission, the instrument is deemed "filed subject to termination" and a 90-day period is provided for correction. If corrected within the 90-day period, the instrument may then be recorded and will retain the date and time originally filed. If the instrument is not corrected within the 90-day period, the filing is terminated and the instrument is returned. To preserve the notice purpose of the statute, any instrument filed with the Coast Guard, even if the filing is terminated and the instrument not recorded, is indexed on the vessel's General Index or Abstract of Title (form CG–1332). Allowing for the submission of an instrument by facsimile for filing would not change any of the procedural steps provided in the regulations. However, the submission of an instrument by facsimile for filing will start the process earlier and will result in an earlier date and time of filing.

Discussion of Comments and Changes

Many of the comments addressed concerns beyond the scope of the proposed rule. For example, some comments wanted information regarding how to directly access the Coast Guard's vessel documentation data base and what kind of computer hardware and software were needed for that purpose. Other comments expressed concerns about the impact that consolidation of the Coast Guard's vessel documentation field offices would have on services and suggested that certain functions be privatized. These concerns will not be addressed in this rulemaking. Only those comments that pertain to the proposed rule will be addressed in this document.

One comment requested an extension of the comment period. The person submitting the comment represented an organization scheduled to meet late in the comment period to discuss the proposed rule. It is noted that the individual who requested the extension to the comment period did submit a comment, on behalf of the organization represented, within the original comment period. The Coast Guard has consolidated its vessel documentation function to the NVDC in Martinsburg, WV. In order to better serve its vessel documentation customers, the Coast Guard decided that it would be in the public interest to make facsimile submission of instruments for filing available at the earliest feasible date. Therefore, the comment period was not extended.

Three comments questioned the legal authority of the Coast Guard to accept instruments submitted by facsimile for filing. The Coast Guard anticipated this comment in the early stages of this rulemaking and conducted research into this matter. At issue is language in 46 U.S.C. 31321(b) that to be filed an instrument must "be signed and acknowledged." The comments opined that this language means that only the original of an instrument may be accepted for filing. One of the comments stated that acceptance of a reproduced instrument, whether reproduced by photocopy or facsimile, would constitute an impermissible attempt to amend the statute.

The filing and recording system administered by the Coast Guard is an informational system intended to provide to interested parties public notice regarding the existence of security interests or maritime liens on a vessel. In this regard, it is similar to the notice filing system employed by Article 9 of the Uniform Commercial Code (UCC). Under both Article 9 of the UCC and 46 U.S.C. 31321, the critical element in determining whether the filing will be effective against third parties is the adequacy of the information contained in the instrument filed to alert potential searchers of the records to preexisting security interests. Another purpose of the filing and recording system of 46 U.S.C. 31321 is to establish the priority of a preferred ship mortgage over various other maritime liens enforceable in Federal courts under admiralty jurisdiction. For this purpose, it is important that the instrument filed not only contain adequate information for a notice filing system, but that the instrument also be a valid document.

The requirements of 46 U.S.C. 31321 that to be filed the instrument must contain all of the informational elements necessary for notice and that it be "signed and acknowledged", are designed to meet both purposes. The purpose of the signature and acknowledgment on the instrument is to demonstrate that the instrument is genuine, that it is what it purports to be, and that it is a validly executed and completed instrument. Further, the statute requires that the parties "shall use diligence to ensure that the parts of the instrument * * * for which they are responsible are in substantial compliance with the filing and documentation requirements." This placement of the burden of accuracy and completeness on the parties to the instrument was designed to remove the burden from the Coast Guard to carefully check each element of an instrument presented for filing to ensure that it was authentic. Therefore, the scope of the Coast Guard's responsibility regarding the acceptance of an instrument for filing is more of a ministerial function than a quality assurance function.

The primary premise to acceptance of an instrument submitted by facsimile for filing is that it is a completed and executed instrument that has been signed and properly acknowledged, and that has been submitted for filing by use of a reliable medium that accurately reproduces the original instrument. The safeguard to the system is that the filing accomplished by initial facsimile submission is temporary; unless the original is received by the Coast Guard within 10 days of submission by facsimile, the filing is terminated. In addition, a comparison between the original instrument and the duplicate received by facsimile will be made to ensure that the instrument submitted by facsimile was an accurate reproduction of the original. If the original instrument bears any alteration from the duplicate received by facsimile, the filing accomplished by facsimile submission will be terminated. Therefore, the Coast Guard's position is that acceptance of an instrument submitted by facsimile for filing fosters the purposes of the filing and recording system of 46 U.S.C. 31321, and that such acceptance complies with the requirements of the statute.

The comments further noted that language proposed for inclusion in the 1995 Coast Guard Authorization Act (H.R. 1361) renders the rulemaking moot. The Coast Guard disagrees. The proposed language, if enacted, is not self-effecting; implementing regulations would be required. In addition, the proposed language would authorize filing instruments "electronically." Electronic filing is far broader in scope than the submission of instruments by facsimile. The Coast Guard's view of the proposed language is that it would authorize a paperless filing system. This rule permitting the submission of instruments by facsimile for filing purposes does not authorize electronic filing.

Two of the comments requested that the time period for receipt of the original and duplicate of the instrument submitted by facsimile for filing be increased from 10 days to 15 days. The Coast Guard intends the primary use of facsimile submission of instruments for filing to be for those situations where time is of the essence. In such cases, the original and duplicate of the instrument should be mailed in such a manner that prompt receipt by the Coast Guard is ensured. Extending the receipt period could encourage batch processing of routine matters for facsimile submission. The Coast Guard does not want to encourage such use of the facsimile submission option. After the Coast Guard and the public have gained some experience with the facsimile submission option, the Coast Guard will examine whether expansion is warranted. Further, it is noted that the proposed language in the 1995 Coast Guard Authorization Act also requires receipt of the original within 10 days of facsimile submission. Therefore, the period within which the original and duplicate of any instrument submitted by facsimile for filing and the original of any accompanying forms must be received by the NVDC will remain 10 calendar days.

One comment suggested that the original and duplicate of the instrument submitted by facsimile for filing should be received by the NVDC within the 10-day period rather than merely be submitted to the NVDC within the time period. The Coast Guard agrees with the comment and the language in paragraph (b) of § 67.219 has been changed accordingly.

Three comments objected to the paper size limitation of 8½ by 11 inches for the original instrument which may be submitted by facsimile. Over the years, the standard paper size for pleadings and other documents in the Federal Courts has become 8½ by 11 inches. The Coast Guard has followed the lead of the Federal Courts in the vessel documentation program and has reformatted all of its forms, certificates, and other documents to 8½ by 11 inches. This effort has been well received by the courts and attorneys who often submit vessel documentation related documents as exhibits to pleadings. The NVDC has acquired plain paper sheet-by-sheet type facsimile machines. The Coast Guard's experience is that this type of facsimile machine produces a high quality reproduction that is durable and easy to maintain. Although the machines have the capability to receive instruments larger than 8½ by 11 inches the Coast Guard has decided to maintain the 8½

by 11 inch size limitation. This decision is based on the need to ensure that the facsimile transmission reproduces the instrument page-for-page to reduce the risk of error and to facilitate comparison of the instrument submitted by facsimile with the original instrument. Therefore, original instruments on other than 8½-inch by 11-inch paper may not be submitted by facsimile for filing.

Four comments objected to the 10-point type size requirement for instruments submitted by facsimile for filing. The principal complaint was that the application for documentation (CG–1258) is not in 10-point size and yet for a vessel not currently documented, an application must accompany the instrument submitted by facsimile. The 10-point type size limitation applies only to the instrument submitted by facsimile for filing, not additional documents accompanying the instrument. The purpose of the 10-point size requirement is to ensure that instruments submitted by facsimile are easily readable and capable of ready comparison with the original when received. Therefore, the 10-point type size limitation is not changed.

Three comments addressed the contents of the facsimile cover sheet. While the comments agreed with the need for the cover sheet, they suggested that the cover sheet also contain the name of the vessel, either the official number or hull identification number of the vessel, and the name(s) of the vessel owner(s). The Coast Guard agrees with these comments and the change has been made in § 67.219(e).

One comment requested that some sort of confirmation of receipt of the facsimile submission be included. The Coast Guard has decided as a matter of policy that it will provide facsimile confirmation within 24 hours of receipt of an instrument sumbitted for filing by facsimile. No change to the regulation is required by this policy determination.

One comment suggested that the word "instrument" in paragraphs (e) through (g) of § 67.219 be changed to the word "document" since applications for documentation can be submitted in certain situations. This suggestion appears to be based on the page and type size limitations previously discussed. These requirements are intended to assist in the accurate reproduction and readability of instruments submitted by facsimile for filing. The application form is already on 8½-inch by 11-inch paper, and the type size limitation does not apply. Therefore, the suggestion is not accepted. The language in the rule carefully distinguishes between instruments and other documents which may also be submitted by facsimile.

Two comments expressed concern about the language in paragraph (f)(3) of § 67.219 that the filing of an instrument submitted by facsimile will be terminated if there is "any variance" between the instrument submitted by facsimile and the original. The comments expressed concern that a transmission error of the instrument by facsimile could cause the filing to be terminated. The Coast Guard's intent is to discourage the use of the facsimile submission option to submit an instrument that is incomplete or subject to change for the purpose of reserving an early filing date and time. An instrument submitted by facsimile for filing must be a completed, executed, and acknowledged instrument to meet the requirements for filing of 46 U.S.C. 31321. However, the Coast Guard understands the concern over the term "any variance" with regard to possible facsimile transmission errors. Therefore, the term has been changed to read "any alteration" to preserve the prohibition against any intentional change of the original instrument after submission by facsimile. As explained earlier in this preamble, the Coast Guard will compare the instrument submitted by facsimile to the original instrument and will terminate the filing of an instrument submitted by facsimile if the original bears any alteration. The filing of an instrument submitted by facsimile will not be terminated for errors that are determined by comparison with the original to have been caused by transmission problems. If the filing of an instrument submitted by facsimile is terminated, the person submitting the original instrument would also be liable for the fees associated with submission of the instrument by facsimile.

Three comments addressed the proposed fee associated with submitting an instrument by facsimile for filing. One of the comments opined that the fee was too low to cover the costs to the Coast Guard. The Coast Guard has been charging user fees for vessel documentation services since January 1, 1995, when the revision to Part 67 became effective. The fee proposed for the submission of instruments by facsimile was determined by using established personnel costs and projected equipment costs, and projecting the handling time and costs for each instrument. The Coast Guard realizes that the $2.00 per page fee may not reflect the exact cost of the program. However, the Coast Guard periodically reviews its user fees and the basis for those fees, and will make necessary adjustments as experience requires. The $2.00 per page fee applies only to the instrument(s) submitted by facsimile for filing and does not apply to any additional documents submitted that will not themselves be filed and recorded. Therefore, the $2.00 per page fee does not apply to any application required by paragraph (a), or to the facsimile cover sheet required by paragraph (d).

Two of the comments regarding fees stated that the Coast Guard should provide for payment of fees by credit card and should establish payment accounts for frequent customers. While the Coast Guard does not currently permit payment of vessel documentation user fees by charge or credit card or the use of credit/debit accounts, it is exploring those options. Any change to fee payment procedures would be published in the **Federal Register**.

An amendment to the definition of the NVDC in § 67.3 has been included in this rule. This amendment adds a telephone number for the NVDC.

An amendment to § 67.13 has been included in this rule. That amendment merely changes the address of the location in the Coast Guard where material incorporated by reference in part 67 may be inspected.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard anticipates that optional filing by facsimile will be used only in a limited number of cases. For example, when additional financing is being negotiated; when an assignment or assumption of an existing mortgage is pending; when financing at favorable rates is time critical; or when a vessel owner desires to meet a specific sailing date and filing an instrument is critical to that date, are situations when filing by facsimile could be advantageous. Nevertheless, submission by facsimile is an optional method of presenting instruments for filing. A party may always use regular mail or personal delivery if desired. Therefore, any additional costs to the public associated with this regulation would be due to an election to use the optional method.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

As explained earlier in this preamble, this regulation merely adds an optional method of submitting certain forms and instruments to the Coast Guard for filing and recording. Since filing by facsimile is optional, any additional costs borne by any users would be at their election. Current methods of submitting instruments for filing, at no increase in costs, remain available. In addition, it is anticipated that the option of filing by facsimile would be used only in limited situations where time is of the essence. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This regulation merely describes an additional method which may be used as an option to submit vessel documentation related instruments to the Coast Guard for filing and recording.

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.lB, it is categorically excluded from further environmental documentation. This regulation has been determined to be categorically excluded because the changes made are administrative and procedural in nature, relate solely to the documentation of vessels, and clearly have no environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

§ 67.3 [Amended]

2. In § 67.3, the definition of "National Vessel Documentation Center" is amended by adding at the end the words "Telephone: (800) 799–VDOC (8362)".

§ 67.13 [Amended]

3. In § 67.13, paragraph (a) is amended by removing the words "Merchant Vessel Inspection and Documentation Division, 2100 Second Street SW., Washington, DC 20593–0001" and adding in their place the words "National Vessel Documentation Center, 2039 Stonewall Jackson Drive, Falling Waters, WV 25419".

4. Section 67.219 is added to read as follows:

§ 67.219 Optional filing of instruments by facsimile.

(a) Any instrument identified as eligible for filing and recording under § 67.200 may be submitted by facsimile for filing to the National Vessel Documentation Center at (304) 271–2400. If the instrument submitted by facsimile for filing pertains to a vessel that is not a currently documented vessel, a properly completed Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258); or a letter application for deletion from documentation must already be on file with the National Vessel Documentation Center or must be submitted by facsimile with the instrument being submitted by facsimile for filing.

(b) Within 10 days of submission by facsimile for filing, the original and one copy of any instrument submitted by facsimile for filing must be received by the National Vessel Documentation Center. If not already on file, the original of any application required by paragraph (a) of this section must also be received by the National Vessel Documentation Center within 10 days of submission of the instrument by facsimile for filing.

(c) Upon receipt of the original instrument and copy in accordance with paragraph (b) of this section, the instrument may be recorded provided it complies with the requirements of this part.

(d) All instruments submitted by facsimile for filing must be clearly legible, be submitted from 8½-inch by 11-inch paper in not less than 10-point type size, and be accompanied by a cover sheet.

(e) The facsimile cover sheet required by paragraph (d) of this section should indicate:

(1) The name, address, telephone number, and facsimile telephone number of the person submitting the instrument by facsimile;

(2) The number of pages submitted by facsimile; and

(3) The name of the vessel, official number or hull identification number of the vessel, and the name(s) of the owner(s) of the vessel to which the instrument relates.

(f) The filing of any instrument submitted by facsimile is terminated and the instrument will be returned to the submitter if:

(1) The instrument is subject to termination for any cause under § 67.217(a);

(2) The original instrument and copy required to be submitted in accordance with paragraph (b) of this section is not received within the 10-day period; or

(3) There is any alteration between the instrument submitted by facsimile for filing and the original instrument and copy received in accordance with paragraph (b) of this section.

(g) When the filing of an instrument submitted by facsimile is terminated for an alteration in accordance with paragraph (f)(3) of this section, the original instrument and copy received in accordance with paragraph (b) of this section will be deemed to be an original filing under this subpart subject to termination. The procedures for written notification of the termination of the filing and for the disposition of instruments described in paragraphs (b) and (c) of § 67.217 will apply.

5. In § 67.500, paragraph (a) is revised to read as follows:

§ 67.500 Applicability.

(a) This subpart specifies documentation services provided for vessels for which fees are applicable. No documentation service for which a fee is applicable will be performed until the

appropriate fee has been paid. Fees are contained in Table 67.550.

* * * * *

6. Section 67.540 is added to read as follows:

§ 67.540 Facsimile handling fee.

A handling fee is charged for processing an instrument submitted by facsimile for filing in accordance with subpart O of this part.

7. In § 67.550, Table 67.550 is amended by adding "Facsimile submission handling" as an entry following the entry "Notice of claim of lien and related instruments" under the category "Filing and recording:" to read as follows:

§ 67.550 Fee table.

* * * * *

TABLE 67.550.—FEES

Activity	Reference	Fee
. . . . .		
Facsimile submission handling	Subpart O	[1] 2.00
. . . . .		

[1] Per page.

* * * * *

Dated: July 27, 1995.

J.D. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19345 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–P

federal register

Monday
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Part IV

The President

Executive Order 12968—Access to Classified Information

Presidential Determination No. 95–32 of July 28, 1995

Presidential Determination No. 95–33 of July 31, 1995

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Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 12968 of August 2, 1995

Access to Classified Information

The national interest requires that certain information be maintained in confidence through a system of classification in order to protect our citizens, our democratic institutions, and our participation within the community of nations. The unauthorized disclosure of information classified in the national interest can cause irreparable damage to the national security and loss of human life.

Security policies designed to protect classified information must ensure consistent, cost effective, and efficient protection of our Nation's classified information, while providing fair and equitable treatment to those Americans upon whom we rely to guard our national security.

This order establishes a uniform Federal personnel security program for employees who will be considered for initial or continued access to classified information.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

PART 1—DEFINITIONS, ACCESS TO CLASSIFIED INFORMATION, FINANCIAL DISCLOSURE, AND OTHER ITEMS

Section 1.1. *Definitions.* For the purposes of this order: (a) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105, the "military departments," as defined in 5 U.S.C. 102, and any other entity within the executive branch that comes into the possession of classified information, including the Defense Intelligence Agency, National Security Agency, and the National Reconnaissance Office.

(b) "Applicant" means a person other than an employee who has received an authorized conditional offer of employment for a position that requires access to classified information.

(c) "Authorized investigative agency" means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(d) "Classified information" means information that has been determined pursuant to Executive Order No. 12958, or any successor order, Executive Order No. 12951, or any successor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011), to require protection against unauthorized disclosure.

(e) "Employee" means a person, other than the President and Vice President, employed by, detailed or assigned to, an agency, including members of the Armed Forces; an expert or consultant to an agency; an industrial or commercial contractor, licensee, certificate holder, or grantee of an agency, including all subcontractors; a personal services contractor; or any other category of person who acts for or on behalf of an agency as determined by the appropriate agency head.

(f) "Foreign power" and "agent of a foreign power" have the meaning provided in 50 U.S.C. 1801.

(g) "Need for access" means a determination that an employee requires access to a particular level of classified information in order to perform or assist in a lawful and authorized governmental function.

(h) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(i) "Overseas Security Policy Board" means the Board established by the President to consider, develop, coordinate and promote policies, standards and agreements on overseas security operations, programs and projects that affect all United States Government agencies under the authority of a Chief of Mission.

(j) "Security Policy Board" means the Board established by the President to consider, coordinate, and recommend policy directives for U.S. security policies, procedures, and practices.

(k) "Special access program" has the meaning provided in section 4.1 of Executive Order No. 12958, or any successor order.

Sec. 1.2. *Access to Classified Information.* (a) No employee shall be granted access to classified information unless that employee has been determined to be eligible in accordance with this order and to possess a need-to-know.

(b) Agency heads shall be responsible for establishing and maintaining an effective program to ensure that access to classified information by each employee is clearly consistent with the interests of the national security.

(c) Employees shall not be granted access to classified information unless they:

(1) have been determined to be eligible for access under section 3.1 of this order by agency heads or designated officials based upon a favorable adjudication of an appropriate investigation of the employee's background;

(2) have a demonstrated need-to-know; and

(3) have signed an approved nondisclosure agreement.

(d) All employees shall be subject to investigation by an appropriate government authority prior to being granted access to classified information and at any time during the period of access to ascertain whether they continue to meet the requirements for access.

(e)(1) All employees granted access to classified information shall be required as a condition of such access to provide to the employing agency written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of 3 years thereafter, to:

(A) relevant financial records that are maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401);

(B) consumer reports pertaining to the employee under the Fair Credit Reporting Act (15 U.S.C. 1681a); and

(C) records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(2) Information may be requested pursuant to employee consent under this section where:

(A) there are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(B) information the employing agency deems credible indicates the employee or former employee has incurred excessive indebtedness or has acquired a level of affluence that cannot be explained by other information; or

(C) circumstances indicate the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power.

(3) Nothing in this section shall be construed to affect the authority of an investigating agency to obtain information pursuant to the Right to Financial Privacy Act, the Fair Credit Reporting Act or any other applicable law.

Sec. 1.3. *Financial Disclosure.* (a) Not later than 180 days after the effective date of this order, the head of each agency that originates, handles, transmits, or possesses classified information shall designate each employee, by position or category where possible, who has a regular need for access to classified information that, in the discretion of the agency head, would reveal:

(1) the identity of covert agents as defined in the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421);

(2) technical or specialized national intelligence collection and processing systems that, if disclosed in an unauthorized manner, would substantially negate or impair the effectiveness of the system;

(3) the details of:

(A) the nature, contents, algorithm, preparation, or use of any code, cipher, or cryptographic system or;

(B) the design, construction, functioning, maintenance, or repair of any cryptographic equipment; but not including information concerning the use of cryptographic equipment and services;

(4) particularly sensitive special access programs, the disclosure of which would substantially negate or impair the effectiveness of the information or activity involved; or

(5) especially sensitive nuclear weapons design information (but only for those positions that have been certified as being of a high degree of importance or sensitivity, as described in section 145(f) of the Atomic Energy Act of 1954, as amended).

(b) An employee may not be granted access, or hold a position designated as requiring access, to information described in subsection (a) unless, as a condition of access to such information, the employee:

(1) files with the head of the agency a financial disclosure report, including information with respect to the spouse and dependent children of the employee, as part of all background investigations or reinvestigations;

(2) is subject to annual financial disclosure requirements, if selected by the agency head; and

(3) files relevant information concerning foreign travel, as determined by the Security Policy Board.

(c) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop procedures for the implementation of this section, including a standard financial disclosure form for use by employees under subsection (b) of this section, and agency heads shall identify certain employees, by position or category, who are subject to annual financial disclosure.

Sec. 1.4. *Use of Automated Financial Record Data Bases.* As part of all investigations and reinvestigations described in section 1.2(d) of this order, agencies may request the Department of the Treasury, under terms and conditions prescribed by the Secretary of the Treasury, to search automated data bases consisting of reports of currency transactions by financial institutions, international transportation of currency or monetary instruments, foreign bank and financial accounts, transactions under $10,000 that are reported as possible money laundering violations, and records of foreign travel.

Sec. 1.5. *Employee Education and Assistance.* The head of each agency that grants access to classified information shall establish a program for employees with access to classified information to: (a) educate employees about individual responsibilities under this order; and

(b) inform employees about guidance and assistance available concerning issues that may affect their eligibility for access to classified information, including sources of assistance for employees who have questions or concerns about financial matters, mental health, or substance abuse.

PART 2—ACCESS ELIGIBILITY POLICY AND PROCEDURE

Sec. 2.1. *Eligibility Determinations.* (a) Determinations of eligibility for access to classified information shall be based on criteria established under this order. Such determinations are separate from suitability determinations with respect to the hiring or retention of persons for employment by the government or any other personnel actions.

(b) The number of employees that each agency determines are eligible for access to classified information shall be kept to the minimum required for the conduct of agency functions.

(1) Eligibility for access to classified information shall not be requested or granted solely to permit entry to, or ease of movement within, controlled areas when the employee has no need for access and access to classified information may reasonably be prevented. Where circumstances indicate employees may be inadvertently exposed to classified information in the course of their duties, agencies are authorized to grant or deny, in their discretion, facility access approvals to such employees based on an appropriate level of investigation as determined by each agency.

(2) Except in agencies where eligibility for access is a mandatory condition of employment, eligibility for access to classified information shall only be requested or granted based on a demonstrated, foreseeable need for access. Requesting or approving eligibility in excess of actual requirements is prohibited.

(3) Eligibility for access to classified information may be granted where there is a temporary need for access, such as one-time participation in a classified project, provided the investigative standards established under this order have been satisfied. In such cases, a fixed date or event for expiration shall be identified and access to classified information shall be limited to information related to the particular project or assignment.

(4) Access to classified information shall be terminated when an employee no longer has a need for access.

Sec. 2.2. *Level of Access Approval.* (a) The level at which an access approval is granted for an employee shall be limited, and relate directly, to the level of classified information for which there is a need for access. Eligibility for access to a higher level of classified information includes eligibility for access to information classified at a lower level.

(b) Access to classified information relating to a special access program shall be granted in accordance with procedures established by the head of the agency that created the program or, for programs pertaining to intelligence activities (including special activities but not including military operational, strategic, and tactical programs) or intelligence sources and methods, by the Director of Central Intelligence. To the extent possible and consistent with the national security interests of the United States, such procedures shall be consistent with the standards and procedures established by and under this order.

Sec. 2.3 *Temporary Access to Higher Levels.* (a) An employee who has been determined to be eligible for access to classified information based on favorable adjudication of a completed investigation may be granted temporary access to a higher level where security personnel authorized by the agency head to make access eligibility determinations find that such access:

(1) is necessary to meet operational or contractual exigencies not expected to be of a recurring nature;

(2) will not exceed 180 days; and

(3) is limited to specific, identifiable information that is made the subject of a written access record.

(b) Where the access granted under subsection (a) of this section involves another agency's classified information, that agency must concur before access to its information is granted.

Sec. 2.4. *Reciprocal Acceptance of Access Eligibility Determinations.* (a) Except when an agency has substantial information indicating that an employee may not satisfy the standards in section 3.1 of this order, background investi-gations and eligibility determinations conducted under this order shall be mutually and reciprocally accepted by all agencies.

(b) Except where there is substantial information indicating that the employee may not satisfy the standards in section 3.1 of this order, an employee with existing access to a special access program shall not be denied eligibility for access to another special access program at the same sensitivity level as determined personally by the agency head or deputy agency head, or have an existing access eligibility readjudicated, so long as the employee has a need for access to the information involved.

(c) This section shall not preclude agency heads from establishing additional, but not duplicative, investigative or adjudicative procedures for a special access program or for candidates for detail or assignment to their agencies, where such procedures are required in exceptional circumstances to protect the national security.

(d) Where temporary eligibility for access is granted under sections 2.3 or 3.3 of this order or where the determination of eligibility for access is conditional, the fact of such temporary or conditional access shall be conveyed to any other agency that considers affording the employee access to its information.

Sec. 2.5. *Specific Access Requirement.* (a) Employees who have been determined to be eligible for access to classified information shall be given access to classified information only where there is a need-to-know that information.

(b) It is the responsibility of employees who are authorized holders of classified information to verify that a prospective recipient's eligibility for access has been granted by an authorized agency official and to ensure that a need-to-know exists prior to allowing such access, and to challenge requests for access that do not appear well-founded.

Sec. 2.6. *Access by Non-United States Citizens.* (a) Where there are compelling reasons in furtherance of an agency mission, immigrant alien and foreign national employees who possess a special expertise may, in the discretion of the agency, be granted limited access to classified information only for specific programs, projects, contracts, licenses, certificates, or grants for which there is a need for access. Such individuals shall not be eligible for access to any greater level of classified information than the United States Govern-ment has determined may be releasable to the country of which the subject is currently a citizen, and such limited access may be approved only if the prior 10 years of the subject's life can be appropriately investigated. If there are any doubts concerning granting access, additional lawful investigative procedures shall be fully pursued.

(b) Exceptions to these requirements may be permitted only by the agency head or the senior agency official designated under section 6.1 of this order to further substantial national security interests.

PART 3—ACCESS ELIGIBILITY STANDARDS

Sec. 3.1. *Standards.* (a) No employee shall be deemed to be eligible for access to classified information merely by reason of Federal service or con-

tracting, licensee, certificate holder, or grantee status, or as a matter of right or privilege, or as a result of any particular title, rank, position, or affiliation.

(b) Except as provided in sections 2.6 and 3.3 of this order, eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

(c) The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information.

(d) In determining eligibility for access under this order, agencies may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No inference concerning the standards in this section may be raised solely on the basis of the sexual orientation of the employee.

(e) No negative inference concerning the standards in this section may be raised solely on the basis of mental health counseling. Such counseling can be a positive factor in eligibility determinations. However, mental health counseling, where relevant to the adjudication of access to classified information, may justify further inquiry to determine whether the standards of subsection (b) of this section are satisfied, and mental health may be considered where it directly relates to those standards.

(f) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of adjudicative guidelines for determining eligibility for access to classified information, including access to special access programs.

Sec. 3.2. *Basis for Eligibility Approval.* (a) Eligibility determinations for access to classified information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this order or otherwise available to security officials and shall be made part of the applicant's or employee's security record. Applicants or employees shall be required to provide relevant information pertaining to their background and character for use in investigating and adjudicating their eligibility for access.

(b) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of investigative standards for background investigations for access to classified information. These standards may vary for the various levels of access.

(c) Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order and its implementing regulations to resolve issues that may arise during the course of a background investigation or reinvestigation.

Sec. 3.3. *Special Circumstances.* (a) In exceptional circumstances where official functions must be performed prior to the completion of the investigative and adjudication process, temporary eligibility for access to classified information may be granted to an employee while the initial investigation is underway. When such eligibility is granted, the initial investigation shall be expedited.

(1) Temporary eligibility for access under this section shall include a justification, and the employee must be notified in writing that further access is expressly conditioned on the favorable completion of the investigation and issuance of an access eligibility approval. Access will be immediately terminated, along with any assignment requiring an access eligibility approval, if such approval is not granted.

(2) Temporary eligibility for access may be granted only by security personnel authorized by the agency head to make access eligibility determinations and shall be based on minimum investigative standards developed by the Security Policy Board not later than 180 days after the effective date of this order.

(3) Temporary eligibility for access may be granted only to particular, identified categories of classified information necessary to perform the lawful and authorized functions that are the basis for the granting of temporary access.

(b) Nothing in subsection (a) shall be construed as altering the authority of an agency head to waive requirements for granting access to classified information pursuant to statutory authority.

(c) Where access has been terminated under section 2.1(b)(4) of this order and a new need for access arises, access eligibility up to the same level shall be reapproved without further investigation as to employees who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years, provided they have remained employed by the same employer during the period in question, the employee certifies in writing that there has been no change in the relevant information provided by the employee for the last background investigation, and there is no information that would tend to indicate the employee may no longer satisfy the standards established by this order for access to classified information.

(d) Access eligibility shall be reapproved for individuals who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years and who have been retired or otherwise separated from United States Government employment for not more than 2 years; provided there is no indication the individual may no longer satisfy the standards of this order, the individual certifies in writing that there has been no change in the relevant information provided by the individual for the last background investigation, and an appropriate record check reveals no unfavorable information.

Sec. 3.4. *Reinvestigation Requirements.* (a) Because circumstances and characteristics may change dramatically over time and thereby alter the eligibility of employees for continued access to classified information, reinvestigations shall be conducted with the same priority and care as initial investigations.

(b) Employees who are eligible for access to classified information shall be the subject of periodic reinvestigations and may also be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access established in this order.

(c) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of reinvestigative standards, including the frequency of reinvestigations.

PART 4—INVESTIGATIONS FOR FOREIGN GOVERNMENTS

Sec. 4. *Authority.* Agencies that conduct background investigations, including the Federal Bureau of Investigation and the Department of State, are authorized to conduct personnel security investigations in the United States when requested by a foreign government as part of its own personnel security program and with the consent of the individual.

PART 5—REVIEW OF ACCESS DETERMINATIONS

Sec. 5.1. *Determinations of Need for Access.* A determination under section 2.1(b)(4) of this order that an employee does not have, or no longer has, a need for access is a discretionary determination and shall be conclusive.

Sec. 5.2. *Review Proceedings for Denials or Revocations of Eligibility for Access.* (a) Applicants and employees who are determined to not meet the standards for access to classified information established in section 3.1 of this order shall be:

(1) provided as comprehensive and detailed a written explanation of the basis for that conclusion as the national security interests of the United States and other applicable law permit;

(2) provided within 30 days, upon request and to the extent the documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (3 U.S.C. 552a), as applicable, any documents, records, and reports upon which a denial or revocation is based;

(3) informed of their right to be represented by counsel or other representative at their own expense; to request any documents, records, and reports as described in section 5.2(a)(2) upon which a denial or revocation is based; and to request the entire investigative file, as permitted by the national security and other applicable law, which, if requested, shall be promptly provided prior to the time set for a written reply;

(4) provided a reasonable opportunity to reply in writing to, and to request a review of, the determination;

(5) provided written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal;

(6) provided an opportunity to appeal in writing to a high level panel, appointed by the agency head, which shall be comprised of at least three members, two of whom shall be selected from outside the security field. Decisions of the panel shall be in writing, and final except as provided in subsection (b) of this section; and

(7) provided an opportunity to appear personally and to present relevant documents, materials, and information at some point in the process before an adjudicative or other authority, other than the investigating entity, as determined by the agency head. A written summary or recording of such appearance shall be made part of the applicant's or employee's security record, unless such appearance occurs in the presence of the appeals panel described in subsection (a)(6) of this section.

(b) Nothing in this section shall prohibit an agency head from personally exercising the appeal authority in subsection (a)(6) of this section based upon recommendations from an appeals panel. In such case, the decision of the agency head shall be final.

(c) Agency heads shall promulgate regulations to implement this section and, at their sole discretion and as resources and national security considerations permit, may provide additional review proceedings beyond those required by subsection (a) of this section. This section does not require additional proceedings, however, and creates no procedural or substantive rights.

(d) When the head of an agency or principal deputy personally certifies that a procedure set forth in this section cannot be made available in a particular case without damaging the national security interests of the United States by revealing classified information, the particular procedure shall not be made available. This certification shall be conclusive.

(e) This section shall not be deemed to limit or affect the responsibility and power of an agency head pursuant to any law or other Executive order to deny or terminate access to classified information in the interests of national security. The power and responsibility to deny or terminate access to classified information pursuant to any law or other Executive order may be exercised only where the agency head determines that the procedures prescribed in subsection (a) of this section cannot be invoked in a manner that is consistent with national security. This determination shall be conclusive.

(f)(1) This section shall not be deemed to limit or affect the responsibility and power of an agency head to make determinations of suitability for employment.

(2) Nothing in this section shall require that an agency provide the procedures prescribed in subsection (a) of this section to an applicant where a conditional offer of employment is withdrawn for reasons of suitability or any other reason other than denial of eligibility for access to classified information.

(3) A suitability determination shall not be used for the purpose of denying an applicant or employee the review proceedings of this section where there has been a denial or revocation of eligibility for access to classified information.

PART 6—IMPLEMENTATION

Sec. 6.1. *Agency Implementing Responsibilities.* Heads of agencies that grant employees access to classified information shall: (a) designate a senior agency official to direct and administer the agency's personnel security program established by this order. All such programs shall include active oversight and continuing security education and awareness programs to ensure effective implementation of this order;

(b) cooperate, under the guidance of the Security Policy Board, with other agencies to achieve practical, consistent, and effective adjudicative training and guidelines; and

(c) conduct periodic evaluations of the agency's implementation and administration of this order, including the implementation of section 1.3(a) of this order. Copies of each report shall be provided to the Security Policy Board.

Sec. 6.2. *Employee Responsibilities.* (a) Employees who are granted eligibility for access to classified information shall:

(1) protect classified information in their custody from unauthorized disclosure;

(2) report all contacts with persons, including foreign nationals, who seek in any way to obtain unauthorized access to classified information;

(3) report all violations of security regulations to the appropriate security officials; and

(4) comply with all other security requirements set forth in this order and its implementing regulations.

(b) Employees are encouraged and expected to report any information that raises doubts as to whether another employee's continued eligibility for access to classified information is clearly consistent with the national security.

Sec. 6.3. *Security Policy Board Responsibilities and Implementation.* (a) With respect to actions taken by the Security Policy Board pursuant to sections 1.3(c), 3.1(f), 3.2(b), 3.3(a)(2), and 3.4(c) of this order, the Security Policy Board shall make recommendations to the President through the Assistant to the President for National Security Affairs for implementation.

(b) Any guidelines, standards, or procedures developed by the Security Policy Board pursuant to this order shall be consistent with those guidelines issued by the Federal Bureau of Investigation in March 1994 on Background Investigations Policy/Guidelines Regarding Sexual Orientation.

(c) In carrying out its responsibilities under this order, the Security Policy Board shall consult where appropriate with the Overseas Security Policy Board. In carrying out its responsibilities under section 1.3(c) of this order, the Security Policy Board shall obtain the concurrence of the Director of the Office of Management and Budget.

Sec. 6.4. *Sanctions.* Employees shall be subject to appropriate sanctions if they knowingly and willfully grant eligibility for, or allow access to, classified information in violation of this order or its implementing regulations. Sanctions may include reprimand, suspension without pay, removal, and other actions in accordance with applicable law and agency regulations.

PART 7—GENERAL PROVISIONS

Sec. 7.1. *Classified Information Procedures Act.* Nothing in this order is intended to alter the procedures established under the Classified Information Procedures Act (18 U.S.C. App. 1).

Sec. 7.2. *General.* (a) Information obtained by an agency under sections 1.2(e) or 1.3 of this order may not be disseminated outside the agency, except to:

(1) the agency employing the employee who is the subject of the records or information;

(2) the Department of Justice for law enforcement or counterintelligence purposes; or

(3) any agency if such information is clearly relevant to the authorized responsibilities of such agency.

(b) The Attorney General, at the request of the head of an agency, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control, except that this order shall not diminish or otherwise affect the requirements of Executive Order No. 10450, the denial and revocation procedures provided to individuals covered by Executive Order No. 10865, as amended, or access by historical researchers and former presidential appointees under Executive Order No. 12958 or any successor order.

(d) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.

(e) This Executive order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(f) This order is effective immediately.

William J. Clinton

THE WHITE HOUSE,
August 2, 1995.

[FR Doc. 95–19654
Filed 8–4–95; 12:18 pm]
Billing code 3195–01–P

Presidential Documents

Presidential Determination No. 95–32 of July 28, 1995

Eligibility of Angola To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Government of the Republic of Angola will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 28, 1995.

JUSTIFICATION FOR PRESIDENTIAL DETERMINATION OF ELIGIBILITY OF ANGOLA TO BE FURNISHED MILITARY ASSISTANCE UNDER THE FOREIGN ASSISTANCE ACT OF 1961 AND THE ARMS EXPORT CONTROL ACT

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishing of such articles and services to the country concerned will "strengthen the security of the United States and promote world peace."

The search for peace in Angola, the source of seven percent of U.S. oil imports, has been a central security concern of U.S. policy in Africa since Angola's independence in 1975. As the last nation in southern Africa to make the transition to peace, democracy, and stability, Angola will complete the regional transition already effected by its neighbors, including Namibia, South Africa, and Mozambique.

The United States played a key role in the UN-sponsored negotiations which produced the Lusaka Protocol and the current cease-fire. The difficult process of national reconciliation in Angola will be hampered by the destruction caused by three decades of civil war. Among the most devastating legacies is the estimated 10 million landmines throughout the country. These landmines, both anti-tank and anti-personnel, seriously hinder the UN's efforts to deploy peacekeeping troops and they prevent Angola from reconstructing its shattered economy.

Angola has been designated as a priority country for USG demining assistance by the Interagency Working Group on Demining and Landmine Control. The Department believes that Angola is an appropriate country to receive

USG demining assistance both because of the recent need and because of a combination of favorable factors.

- Both the GRA and UNITA recognize the gravity of the landmine situation. Both support international, particularly, U.S., involvement in the demining program.
- Both the Angolan government and UNITA, through the UN, have requested demining equipment to allow indigenous deminers to begin the process of opening roads and returning agricultural fields to productivity. Angolan government and UNITA soldiers are actively demining without adequate equipment and are suffering casualties.
- A coordinated, effective demining program will be the key to the efficient deployment of UN peacekeepers, the provision of humanitarian assistance, and the free flow of people and goods.

Providing non-lethal defense articles and services to Angola pursuant to the Foreign Assistance Act and Arms Export Control Act authorities will further our long-term goals of promoting stability both in Angola and throughout southern Africa, thereby strengthening the security of the United States and promoting world peace.

[FR Doc. 95–19645
Filed 8–4–95; 11:20 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 95–33 of July 31, 1995

Determination To Authorize the Furnishing of Emergency Military Assistance to the United Nations for Purposes of Supporting the Rapid Reaction Force in Bosnia Under Section 506(a)(1) of the Foreign Assistance Act

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists, which requires immediate military assistance to an international organization; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $3,000,000 in defense articles and defense services from the Department of Defense to the United Nations for purposes of supporting the Rapid Reaction Force in Bosnia.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 31, 1995.

[FR Doc. 95–19646
Filed 8–4–95; 11:21 am]
Billing code 4710–10–M

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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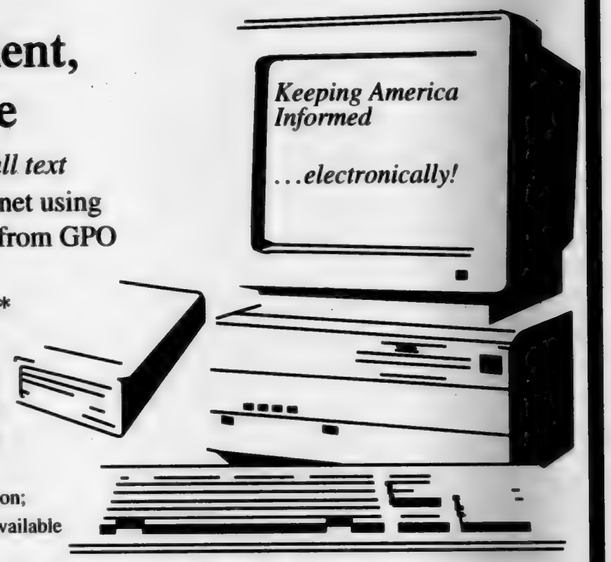
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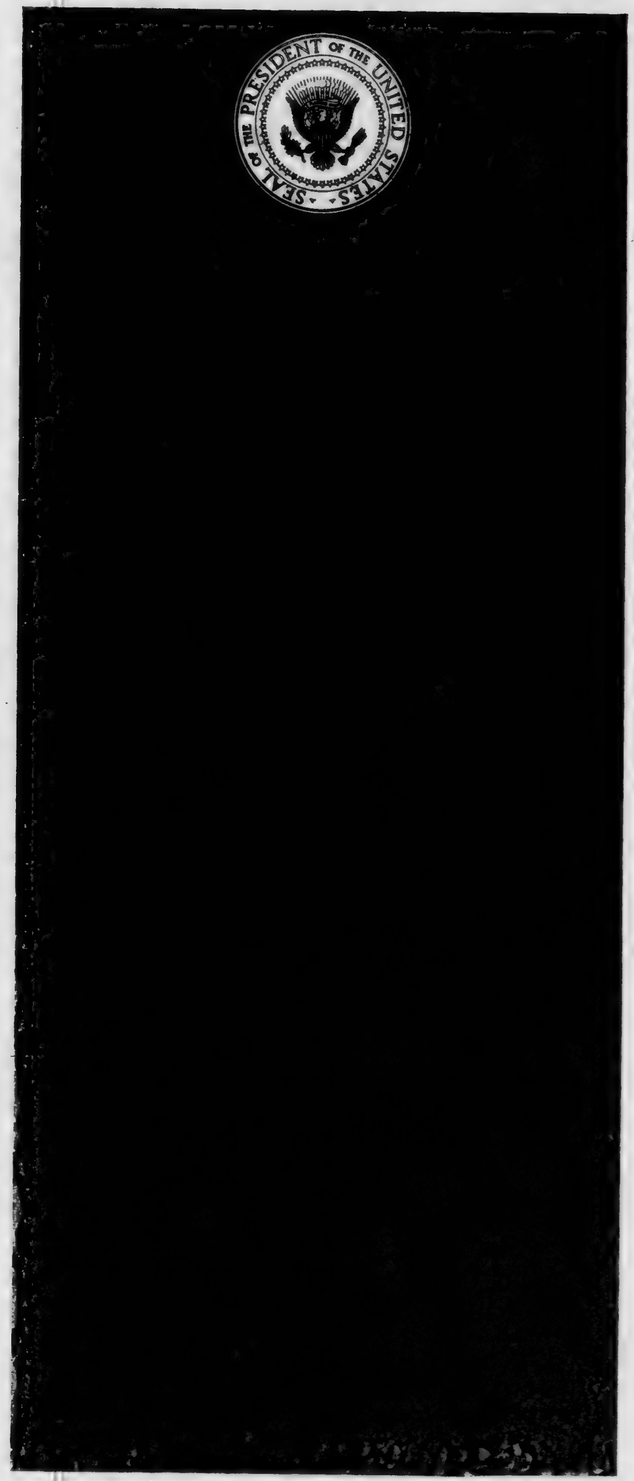
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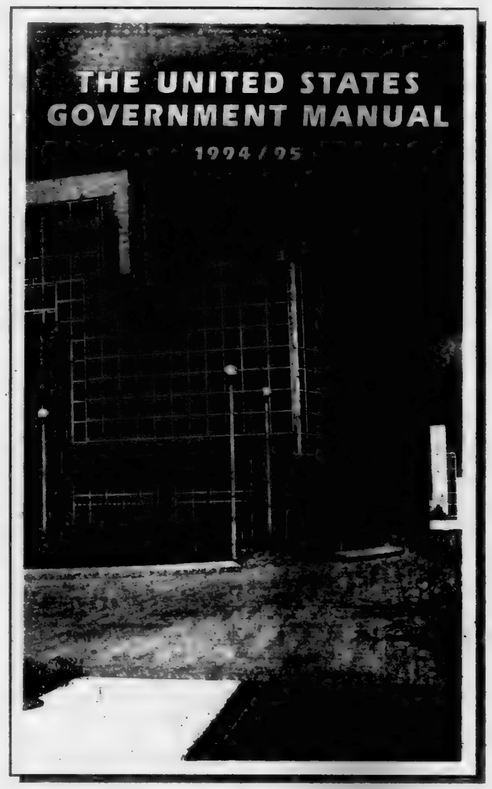
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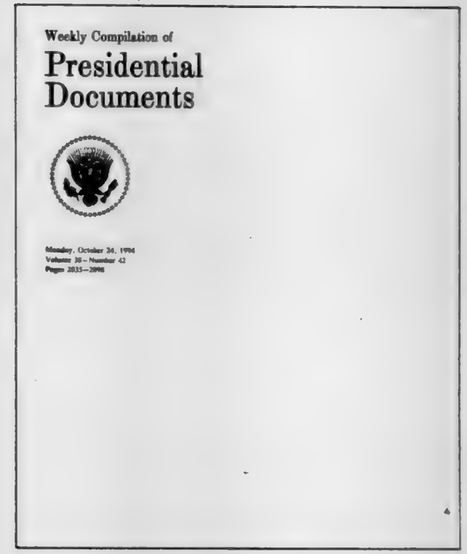
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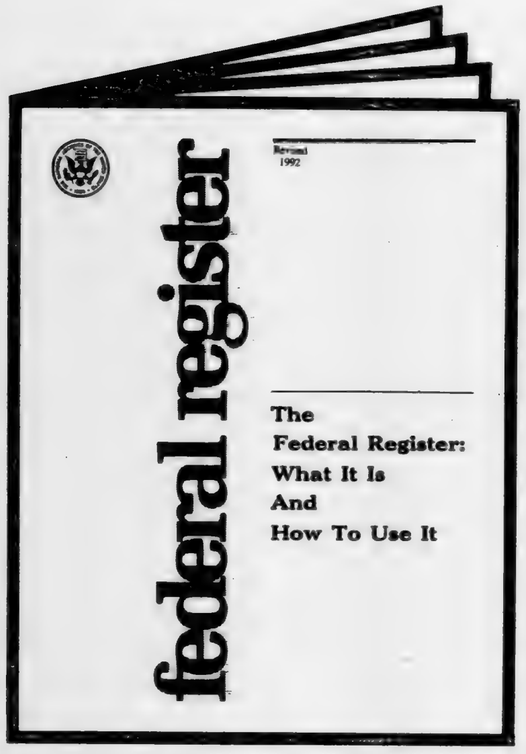
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Rules and Regulations

Federal Register
Vol. 60, No. 152
Tuesday, August 8, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV95–948–2FIR]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 1, 1995, through August 31, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Colorado potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995–96 fiscal period, which begins September 1, 1995, and ends August 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 285 producers of Colorado Area II potatoes under the marketing order and approximately 118 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on May 18, 1995, and unanimously recommended a 1995–96 budget of $62,328, which is $3,596 less than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Audit fee, $975 ($900), other office, $625 ($500), and utilities, $3,000 ($2,000). Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Assistant's salary, $8,256 ($10,320), part-time salary,

$3,640 ($3,822), major purchase, $2,125 ($2,250), and ($2,425) for property tax, for which no funding was recommended this year. All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.0030 per hundredweight, $0.0006 less than last season. This rate, when applied to anticipated potato shipments of 16,500,000 hundredweight, will yield $49,500 in assessment income. This, along with $12,828 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds of $101,064 in the Committee's authorized reserve at the beginning of the 1994–95 fiscal period were within the maximum permitted by the order of two fiscal periods' expenses.

An interim final rule was published in the **Federal Register** on June 21, 1995 (60 FR 32260). That interim final rule added § 948.214 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 21, 1995. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period begins on September 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Note: This section will not appear in the Code of Federal Regulations.

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim final rule amending 7 CFR part 948, which was published at 60 FR 32260 on June 21, 1995, is adopted as a final rule without change.

Dated: August 1, 1995.

Martha B. Ransom,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 95–19460 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1126

[DA–95–16]

Milk in the Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document continues the suspension of segments of the pool plant and producer milk definitions of the Texas order for a two-year period. Associated Milk Producers, Inc., a cooperative association that represents producers who supply milk to the market, requested continuation of the suspension. Continuation of this suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order without incurring costly and inefficient movements of milk.

EFFECTIVE DATE: August 1, 1995, through July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 26, 1995; published June 2, 1995 (60 FR 28745).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this rule in conformance with Executive Order 12866.

This suspension of rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Act, as amended, and the rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Notice of proposed rulemaking was published in the **Federal Register** (60 FR 28745) on June 2, 1995, concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of August 1, 1995, through July 31, 1997, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In section 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In section 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In section 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In section 1126.13, paragraph (e)(2).

5. In section 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

Statement of Consideration

This rule continues the suspension of segments of the pool plant and producer milk provisions under the Texas order. This suspension will be in effect from August 1, 1995, through July 31, 1997. The current suspension will expire July 31, 1995. This rule continues the suspension of: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the diversion limitation applicable to cooperative associations; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. This suspension continues to inactivate the 60 percent delivery standard for plants operated by a cooperative association and removes the diversion limitations applicable to a cooperative association and to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. This suspension continues the current suspension of these performance standards for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. This rule continues to suspend these requirements.

Renewal of the suspension was requested by Associated Milk Producers, Inc., a cooperative association that represents a substantial number of dairy farmers who supply the Texas market. The cooperative stated that marketing conditions have not changed since the provisions were suspended in 1993 or since March 1995 when the suspension was expanded to include all of paragraph (e)(2), and therefore should be continued until restructuring of the order can be achieved through the formal rulemaking process.

Continuation of the current suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. In addition, the suspension will continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, part 1126, are amended as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1126.7 [Suspended in part]

2. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section" are suspended.

3. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested" are suspended.

§ 1126.13 [Suspended in part]

4. In § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant" are suspended.

5. In § 1126.13, paragraph (e)(2) is suspended.

6. In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;" is suspended.

Dated: August 1, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–19461 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL TRADE COMMISSION

16 CFR Part 234

Guides for the Mail Order Insurance Industry

AGENCY: Federal Trade Commission.

ACTION: Elimination of guides.

SUMMARY: The Guides for the Mail Order Insurance Industry were adopted in 1964 to prevent deception of purchasers of insurance and maintenance of fair competition by out-of-state mail order sellers of insurance. Since issuance of the Guides, state insurance laws have changed significantly. The states, through their licensing powers, now regulate out-of-state mail order sellers of insurance. Those regulations cover most, if not all, of the substantive areas addressed by the Guides. These facts appear to make the Guides unnecessary. Because of these changed circumstances, the Commission has determined that it is in the public interest to eliminate the Guides for the Mail Order Insurance Industry. The Commission further has determined that, because the reasons to revoke the Guides are ample and not in controversy, it is unnecessary to seek comment. This action is not to be understood as a statement that the principles announced in the Guides do not reflect the requirements of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard or Walter Gross, Division of Service Industry Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3291 or (202) 326–3319.

SUPPLEMENTARY INFORMATION: The Guides for the Mail Order Insurance Industry were issued on May 15, 1964.[1] Designed to prevent deception and the maintenance of fair competition in the out-of-state mail order insurance industry, the Guides prohibit several forms of potential misrepresentation in advertising concerning the benefits, conditions, terms, identity, and claims paid for any insurance policy; the identity, standing in the industry, or financial condition of the insurer, and the disparagement of competitors or competitors' policies, services, or business methods.

As a part of its periodic review of the regulatory and economic impact of the Commission's rules and guides, the Commission reviewed the current status of state laws regulating mail order insurance sellers to determine whether there was a need to retain or remove the Guides. That review indicates that state insurance laws have changed substantially since the Guides were adopted in 1964.

All states have enacted some version of the model Unfair Trade Practices Act for insurance (National Ass'n of Insurance Commissioners). Those laws cover most, if not all, of the substantive areas covered by the Guides. In addition, at least 49 states have adopted the Nonadmitted Insurance Act (1983) (National Ass'n of Insurance Commissioners), or similar legislation, which: (1) Provides that no insurer shall transact business in the state, whether by mail or otherwise, without first obtaining a license; and (2) authorizes the state regulatory authority to require compliance with all state insurance laws as a condition of licensing. If licensing requirements, including compliance with the state's Unfair Trade Practices Act, are not met, the state can suspend or revoke the license.

These changes in state insurance laws appear to make the Guides' provisions unnecessary. Accordingly, the Commission has determined that it is in the public interest to eliminate the Guides.

List of Subjects in 16 CFR Part 234

Advertising, Insurance, Postal Service, Trade practices.

[1] 29 FR 6381 (1964).

PART 234—[REMOVED]

The Commission, under authority of sections 5 (a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 234.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in 16 CFR Part 14, Matter No. P954215; Repeal of Mail Order Insurance Guides, Matter No. P954903; Repeal of Guides Re: Debt Collection, Matter No. P954809; and Free Film Guide Review, Matter No. P959101

In a flurry of deregulation, the Commission today repeals or substantially revises several Commission guides and other interpretive rules.[1] The Commission does so without seeking public comment. I have long supported the general goal of repealing or revising unnecessary, outdated, or unduly burdensome legislative and interpretive rules, and I agree that the repeal or revision of these particular guides and interpretive rules appears reasonable. Nevertheless, I cannot agree with the Commission's decision not to seek public comment before making these changes.

Although it is not required to do so under the Administrative Procedure Act, 5 U.S.C. 553(b)(A), the Commission traditionally has sought public comment before issuing, revising, or repealing its guides and other interpretive rules. More specifically, the Commission adopted a policy in 1992 of reviewing each of its guides at least once every ten years and issuing a request for public comment as part of this review. *See* FTC Operating Manual ch. 8.3.8. The Commission decided to seek public comment on issues such as:

(1) The economic impact of and continuing need for the guide; (2) changes that should be made in the guide to minimize any adverse economic effect; (3) any possible conflict between the guide and any federal, state, or local laws; and (4) the effect on the guide of technological, economic, or other industry changes, if any, since the guide was promulgated.

Id. The Commission has sought public comment and has posed these questions concerning a number of guides since adopting its procedures for regulatory review in 1992.[2]

Notwithstanding its long-standing, general practice of seeking public comment and its specific policy of seeking public comment as part of its regulatory review process, the Commission has chosen not to seek public comment before repealing or revising these guides and interpretive rules. Why not? Has the Commission changed its view about the potential value of public comment? Perhaps the Commission knows all the answers, but then again, perhaps not. Although reasonable arguments can be made for repeal or revision of these guides and interpretive rules, public comment still might prove to be beneficial.

In addition, the relatively short period of time that would be required for public comment should not be problematic. The Commission has not addressed any of these guides or interpretive rules in the last ten years. Indeed, it has not addressed some of them for thirty years or more. For example, the Commission apparently has not addressed the interpretive rule concerning the use of the word "tile" in designation of non-ceramic products since it was issued in 1950.[3] The continued existence of these guides and interpretive rules during a brief public comment period surely would cause no harm because they are not binding and because, arguably, they are obsolete. I seriously question the need to act so precipitously as to preclude the opportunity for public comment.[4]

In 1992, the Commission announced a careful, measured approach for reviewing its guides and interpretive rules, and public comment has been an important part of that process. Incorporating public comment into the review is appropriate and sensible. Although I have voted in favor of repealing or revising these guides and interpretive rules, I strongly would have preferred that the Commission seek public comment before doing so.

[FR Doc. 95–19541 Filed 8–7–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 C.F.R. Part 14; Guides for the Mail Order Insurance Industry, 16 C.F.R. Part 234; Guides Against Debt Collection Deception, 16 C.F.R. Part 237; and Guide Against Deceptive Use of the Word "Free" In Connection With the Sale of Photographic Film and Film Processing Services, 16 C.F.R. Part 242.

[2] *See, e.g.*, Request for Comments Concerning Guides for the Hosiery Industry, 59 FR 18004 (Apr. 15, 1994); Request for Comment Concerning Guides for the Feather and Down Products Industry, 59 FR 18006 (Apr. 15, 1994).

[3] 16 C.F.R. 14.2.

[4] Unfortunately, seeking public comment would not permit the Commission to count the repeal and revision of these guides and interpretive rules in its tally of completed actions in the Regulatory Reinvention Initiative Report that will be sent to the President on August 1, 1995, but perhaps that harm could be mitigated by reporting to the President that the Commission is seeking public comment concerning repeal or revision.

16 CFR Part 237

Guides Against Debt Collection Deception

AGENCY: Federal Trade Commission.

ACTION: Elimination of guides.

SUMMARY: Because the Commission's Guides Against Debt Collection Deception have been superseded by, and submitted in, the Fair Debt Collection Practices Act (FDCPA), the Commission has determined that it is in the public interest to eliminate them.

The Guides were adopted in 1967 to codify the results of many debt collection cases brought by the Commission against debt collectors and creditors under Section 5(a)(1) of the Federal Trade Commission Act (FTCA). Although the Guides covered creditors and the FDCPA generally does not, proceedings still may be brought against creditors under Section 5 of the FTCA for engaging in unfair or deceptive debt collection practices, many of which are addressed in the FDCPA. Thus, the Commission would expect creditors and other parties whose collection activities are not covered by the FDCPA to look to the FDCPA for guidance in this regard.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John F. LeFevre, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3209.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued its Guides Against Debt Collection Deception in 1967.[1] The Guides reflect principles enunciated in a number of prior debt collection cases brought by the Commission against debt collectors and creditors under Section 5 of the Federal Trade Commission Act.[2] Among other things, the Commission found that various misrepresentations made in connection with debt collection were Section 5 violations, including false claims that (1) Accounts had been referred to independent debt collection agencies and/or consumer reporting agencies; (2) debtors' credit ratings would be adversely affected if their debts remained unpaid; (3) legal action would be taken; (4) collection agencies had legal divisions; and (5) dunning letters were genuine legal documents, telegrams, or other "official" forms. The Guides served to inform the collection industry and the general public of the Commission's position on a number of "deception" issues in debt collection that were regarded as particularly pertinent at the time. However, they were never used as a basis for instituting formal action against a debt collector for violation of Section 5. On September 20, 1977, Congress enacted the FDCPA, which became effective on March 20, 1978. Since that time, all Commission debt collection cases against debt collectors have been based upon violations of the FDCPA.[3] Under the FDCPA, the Commission can obtain, not only an injunction and affirmative relief, but also a civil penalty, which is not obtainable under Section 5. The Guides have not been useful to the Commission's debt collection enforcement program since the enactment of the FDCPA.

II. Comparison of the Guides to the FDCPA

With few exceptions, the provisions of the FDCPA duplicate or expand upon the Guides, as demonstrated by the following comparisons:

A. Definitions [Section 237.0]

1. Industry Member [Section 237.0(a)]

The standards of conduct in the Guides are directed at "industry members," which include all entities that collect debts or help others in collecting debts, including creditors and skip-tracers.[4]

The comparable provision in the FDCPA is the definition of the "debt collector" [Section 803(6)], which focuses mainly on the third-party debt collection industry. Generally, creditors are not included in the definition unless they (1) use a false name in their collection activities to convey the impression that third parties are involved in collecting debts or (2) sell deceptive forms. Congress also determined that a number of other entities should not be included within the scope of the definition, including government employees, non-profit organizations, mortgage servicers and other designated groups.

Although the coverage of the Guides is greater than coverage under the FDCPA, particularly with respect to creditors, it has been the Commission's experience in enforcing the FDCPA that creditors look not to the Guides but to

[1] 32 FR 15539 (Nov. 8, 1967), as amended at 33 FR 8661 (Apr. 12, 1968).

[2] Testimony before the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing and Urban Affairs, on S. 918, a proposed Fair Debt Collection Practices Act, May 13, 1977. *See also Parents Magazine Enterprises, Inc.*, 66 F.T.C. 980 (1965); *State Credit Control Board*, 70 F.T.C. 1318 (1966).

[3] The Commission has also initiated a few debt collection cases against creditors as Section 5 matters since the FDCPA generally does not cover creditors. *Aldens, Inc.*, 98 F.T.C. 790 (1981); *J.C. Penney Co., Inc.*, 109 F.T.C. 54 (1987); *American Family Publishers*, Docket No. 9240 (1991). If a creditor uses a deceptive third-party name or furnishes deceptive forms in collecting debts, however, it is covered by the FDCPA.

[4] "Industry Member shall mean any person, firm, partnership, corporation, organization, association and any other legal entity engaged in the practice of collecting or attempting to collect any and all kinds of money debts for itself or others, or any person, firm, partnership, corporation, organization, association, or any other legal entity."

the FDCPA for appropriate criteria to use in collecting their own debts. In addition, the Commission's jurisdiction under Section 5 has been sufficient to regulate the collection activities of creditors when necessary. Also, to the extent that the Commission has proceeded against creditors for violations of Section 5 in their debt collection activities, it has used the FDCPA as a model for appropriate standards of conduct—not the Guides. Thus, the Guides have not been useful to the Commission's debt collection enforcement program against either creditors or debt collectors.

2. Debt [Section 237.0(b)]

The Guides' definition of "debt" is similar to that in the FDCPA [Section 803(5)] except that it includes "commercial" as well as "consumer" debts.[5] Congress determined in enacting the FDCPA that there was no need to cover "commercial" debts. The Commission's experience in enforcing the FDCPA supports this decision. The Commission has received few complaints from commercial enterprises about debt collection abuse. If the Commission finds that there is a problem with the collection of "commercial" debts, the problem can be addressed adequately under Section 5.

3. Debtor [Section 237.0(c)]

The Guides define a "debtor" as one who owes or allegedly owes a money debt. The FDCPA's definition of "consumer" as "any natural person obligated or allegedly obligated to pay any debt" is analogous. From the Commissions standpoint, they are substantively identical. The absence of the Guides will have no effect upon who is considered a "debtor."

4. Creditor [Section 237.0(d)]

The Guides' definition of "creditor" includes all parties to whom money is owned or allegedly owed. Since creditors can also be "industry members" under the Guides, the definition does not affect the scope of the Guides' coverage. The FDCPA's definition of "creditor" is similar except that it excludes those who receive or are assigned debts in default for purposes of collection.

5. Credit Bureau [Section 237.0(e)]

There is no provision in the FDCPA that is analogous to the Guides' definition of "credit bureau."[6] Sections 806(3) and 807(16) of the FDCPA, however, make two references to the definition of a "consumer reporting agency" (credit bureau) contained in Section 603(f) of the Fair Credit Reporting Act (FCRA).[7] The FCRA definition of "consumer reporting agency" has rendered the Guides' definition of "credit bureau" obsolete; the FCRA definition is keyed to the concept of a "consumer report" in the FCRA and was obviously drafted in a credit reporting context. The FCRA definition governs insofar as the Commission's law enforcement activities are concerned.

6. Collection Agency [Section 237.0(f)]

The Guides define a "collection agency" as any entity that collects money debts for others. This is essentially the focus of the FDCPA's definition of "debt collector" in Section 803(6) as one "who regularly collects or attempts to collect, directly or indirectly, debts owed * * * another." Thus, the Guides' definition has been subsumed by the FDCPA.

B. Deception (general), Guide 1 [Section 237.1]

Section 807(10) of the FDCPA is virtually identical to Guide 1.[8] Thus, elimination of Guide 1 will have no effect on the Commission's debt collection enforcement policy.

C. Disclosure of Purpose, Guide 2 [Section 237.2]

Section 807(11) of the FDCPA[9] paraphrases Guide 2(a) of the Guides,[10] requiring that all communications made to collect a debt contain a disclosure that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. Guide 2(b) prohibits placing communications in the hands of others that do not contain the required disclosure. Similarly, knowingly placing communications in the hands of others that violate the FDCPA is a violation of Section 807(10) as well as the preamble to Section 807 of the FDCPA with respect to "debt collectors" covered by the Act. Thus, Guide 2(b) is also subsumed by Section 807 of the FDCPA.

D. Government Affiliation, Guide 3 [Section 237.3]

Guide 3 prohibits false representations of government affiliation.[11] Section 807(1) of the FDCPA is virtually identical.[12] Thus, elimination of Guide 3 will have no effect on the Commission's debt collection enforcement policy.

E. Organizational Titles, Guide 4 [Section 237.4]

Guide 4 prohibits conveying a false impression that an "industry member" is a "credit bureau."[13] The analogous provision in the FDCPA is Section 807(16), which prohibits the same practice.[14] As a result, elimination of Guide 4 will have no effect on the Commission's debt collection enforcement policy.

F. Trade Status, Guide 5 [Section 237.5]

Guide 5 prohibits an "industry member" from creating the false impression that it is a collection agency.[15] Since the FDCPA principally regulates the activities of genuine collection agencies, it has no analogous provision. To the extent that it regulates the activities of "creditors," Section 803(6) prohibits creditors from using names other than their own that would create the false impression that a third party (presumably a collection agency) is involved. This addresses the problem highlighted by Guide 5. Section 812 of the FDCPA also prohibits furnishing forms creating a false impression of third-party collection agency involvement. In the main, the practices addressed by Guide 5 are addressed by the FDCPA.

G. Services, Guide 6 [Section 237.6]

Guide 6 prohibits an "industry member" from misrepresenting the services it renders in soliciting accounts.[16] Similarly, Section 807(2) of the FDCPA prohibits the false representation of "any services rendered or compensation received by any debt collector for the collection of a debt." Thus, elimination of Guide 6 will have no effect on the Commission's debt collection enforcement policies.

III. Conclusion

The Commission's Guides Against Debt Collection Deception have been superseded by the FDCPA and are no longer needed. Few in the debt collection industry are even aware that the Guides exist. The Commission has never taken any enforcement action alleging violation of Section 5 because the conduct at issue violated the Guides. Since they are superfluous, the Commission has determined that it is in the public interest to eliminate the Guides.

List of Subjects in 16 CFR Part 237

Credit, Trade practices.

PART 237—[REMOVED]

The Commission, under authority of Sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of Title 16 of the Code of Federal Regulations by removing Part 237.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in 16 CFR Part 14, Matter No. P954215; Repeal of Mail Order Insurance Guides, Matter No. P954903; Repeal of Guides Re: Debt Collection, Matter No. P954809; and Free Film Guide Review, Matter No. P959101

In a flurry of deregulation, the Commission today repeals or substantially revises several Commission guides and other interpretive rules.[1] The Commission does so without seeking public comment. I have long supported the general goal of repealing or revising unnecessary, outdated, or unduly burdensome legislative and interpretive rules, and I agree that the repeal or revision of these particular guides and interpretive rules appears reasonable. Nevertheless, I cannot agree with the Commission's decision not to seek public comment before making these changes.

Although it is not required to do so under the Administrative Procedure Act, 5 U.S.C. 553(b)(A), the Commission traditionally has sought public comment before issuing, revising, or repealing its guides and other interpretive rules. More specifically, the Commission adopted a policy in 1992 of reviewing each of its guides at least once every ten years and issuing a request for public comment as part of this review. *See* FTC Operating Manual ch. 8.3.8. The Commission decided to seek public comment on issues such as:

(1) The economic impact of and continuing need for the guide; (2) changes that should be made in the guide to minimize any adverse economic effect; (3) any possible conflict between the guide and any federal, state, or local laws; and (4) the effect on the guide of technological, economic, or other industry changes, if any, since the guide was promulgated.

Id. The Commission has sought public comment and has posed these questions concerning a number of guides since adopting its procedures for regulatory review in 1992.[2]

Notwithstanding its long-standing, general practice of seeking public comment and its specific policy of seeking public comment as part of its regulatory review process, the Commission has chosen not to seek public comment before repealing or revising these guides and interpretive rules. Why not? Has the Commission changed its view about the potential value of public comment? Perhaps the Commission knows all the answers, but then again, perhaps not. Although reasonable arguments can be made for repeal or revision of these guides and interpretive rules, public comment still might prove to be beneficial.

In addition, the relatively short period of time that would be required for public comment should not be problematic. The Commission has not addressed any of these guides or interpretive rules in the last ten years. Indeed, it has not addressed some of them for thirty years or more. For example, the Commission apparently has not addressed the interpretive rule concerning the use of the word "title" in designation of non-ceramic products since it was issued in 1950.[3] The continued existence of these guides and interpretive rules during a brief public comment period surely would cause no harm because they are not binding and because, arguably, they are obsolete. I seriously question the need to act so precipitously as to preclude the opportunity for public comment.[4]

In 1992, the Commission announced a careful, measured approach for reviewing its guides and interpretive rules, and public comment has been an important part of that process. Incorporating public comment into the review is appropriate and sensible. Although I have voted in favor of repealing or revising these guides and interpretive rules, I strongly would have preferred that the Commission seek public comment before doing so.

[FR Doc. 95–19542 Filed 8–7–95; 8:45 am]
BILLING CODE 6750–01–M

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16 CFR Part 242

Guide Against Deceptive Use of the Word "Free" In Connection With the Sale of Photographic Film and Film Processing Service

AGENCY: Federal Trade Commission.

ACTION: Elimination of guide.

SUMMARY: The Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service ("Free Film Guide") sets forth industry guidance concerning offers of "free" film in connection with the sale of photographic processing services. The Commission's Guide Concerning Use of the Word "Free" and Similar Representations, which was adopted after the Free Film Guide and which applies to all industries, sets forth essentially the same guidance concerning offers of "free" merchandise or service in connection with the sale of some other merchandise or service. The Free Film Guide has thus been supplanted by the Guide Concerning Use of the Word "Free" and Similar Representations and is no longer needed. Accordingly, the Commission has determined that it is in the public interest to eliminate the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service.

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[5] "Debt shall mean money which is due or alleged to be due from one to another."

[6] "Credit Bureau is any * * * legal entity engaged in gathering, recording, and disseminating favorable as well as unfavorable information relative to the credit worthiness, financial responsibility, paying habits and character of * * * any other legal entity being considered for credit extension, so that (the) prospective creditor may be able to make a sound decision in the extension of credit."

[7] Consumer reporting agency is "any person which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages * * * in the practice of assembling or evaluating consumer credit information on consumers for the purpose of furnishing consumer reports to third parties. * * *"

[8] Guide 1 states that an industry member "shall not use any deceptive representation or deceptive means to collect or attempt to collect debts or to obtain information concerning debtors." Section 807(10) states that a debt collector shall not "use any false representation or deceptive means to collect or attempt to collect any debt or to obtain information about a consumer."

[9] Section 807(11) requires that a debt collector "disclose clearly in all communications made to collect a debt or to obtain information about a consumer that the debt collector is attempting to collect a debt and that any information will be used for that purpose."

[10] "An industry member shall not use or cause to be used in connection with the collection of or the attempt to collect a debt or * * * obtaining or attempting to obtain information concerning a debtor any * * * material printed or written which does not * * * disclose * * * the purpose of collecting or attempting to collect a debt or to obtain or attempt to obtain information concerning a debtor."

[11] "An industry member shall not use any trade name, address, insignia, picture, emblem or any other means which creates a false impression that such industry member is connected with or is an agency of government."

[12] A debt collector may not falsely represent or imply that it is "vouched for, bonded by or affiliated with the United States or any State, including the use of any badge, uniform or facsimile thereof."

[13] "An industry member which is not in fact a "Credit Bureau * * * shall not use the term * * * in its corporate or trade name; nor shall it use any other term of similar import or meaning * * * as to create the false impression that such industry member is a credit bureau."

[14] A debt collector may not falsely represent or imply that it "operates or is employed by a consumer reporting agency. * * *"

[15] "In collecting debts * * * an industry member shall not, through the use of any designation or by other means, create the impression that he is a collection agency, unless he is such as defined in this part."

[16] "In the solicitation of accounts for collection or for ascertainment of credit status, an industry member shall not directly, or by implication, misrepresent the services he renders."

[1] Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 C.F.R. Part 14; Guides for the Mail Order Insurance Industry, 16 C.F.R. Part 234; Guides Against Debt Collection Deception, 16 C.F.R. Part 237; and Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Services, 16 C.F.R. Part 242.

[2] *See, e.g.*, Request for Comments Concerning Guides for the Hosiery Industry, 59 FR 18004 (Apr. 15, 1994); Request for Comment Concerning Guides for the Feather and Down Products Industry, 59 Fed. Reg. 18006 (Apr. 15, 1994).

[3] 16 C.F.R. 14.2.

[4] Unfortunately, seeking public comment would not permit the Commission to count the repeal and revision of these guides and interpretive rules in its tally of completed actions in the Regulatory Reinvention Initiative Report that will be sent to the President on August 1, 1995, but perhaps that harm could be mitigated by reporting to the President that the Commission is seeking public comment concerning repeal or revision.

Although the Commission is eliminating the Free Film Guide, proceedings still may be brought against businesses under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), for engaging in unfair or deceptive acts or practices in or affecting commerce in the advertising and sale of these products and services.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert J. Schroeder, Seattle Regional Office, Federal Trade Commission, 915 Second Avenue, Suite 2806, Seattle, Washington, 98174, (206) 220–6350.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of its ongoing project to review all rules and guides, the Commission has evaluated the continued need for the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service. The same deceptive practices described in the Free Film Guide and the same industry guidance on how to avoid them in this specific industry also appear in the more general Guide Concerning Use of the Word "Free" and Similar Representations, 16 CFR part 251. Accordingly, the Commission has determined to repeal the Free Film Guide.

Because the industry guidance in the Free Film Guide is duplicated in the Guide Concerning Use of the Word "Free" and Similar Representations, the Commission has further determined that public comment is not necessary at this time.[1] Public comment on the issues raised by offers of "free" merchandise or services may be sought at a later date during regulatory review of the Guide Concerning Use of the Word "Free" and Similar Representations.

II. Background

On June 5, 1968, the Commission adopted the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service.[2] The Free Film Guide describes various deceptive practices that may be associated with offers of "free" film in connection with the sale of photographic processing services, and provides industry guidance on how to avoid these types of deception. On November 10, 1971, the Commission adopted the Guide Concerning Use of the Word "Free" and Similar Representations.[3] This guide describes various deceptive practices that may be associated with offers of "free" merchandise or services of any kind, and provides industry guidance on how to avoid these types of deception. The **Federal Register** Notice announcing it specifically states that "provisions of all existing guides and trade practice rules that include coverage of use of the term "Free" or similar representations will be construed in the light hereof."[4] The two guides describe essentially the same deceptive practices and give essentially the same guidance.

III. Review of the Guide

The content of the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service is repeated, in slightly different language but to the same effect, in the Guide Concerning Use of the Word "Free" and Similar Representations. Thus the Free Film Guide has been supplanted and is no longer needed.

The Free Film Guide generally proscribes representing that film is provided free with the purchase of processing service when that is not the case. The guide states:

> Film processors should avoid representing film as "free" [in connection with the purchase of processing service] when their quoted price for processing is not their regular price for such service. * * * A regular price is the price at which an article or service is openly and actively sold by the advertiser to the public on a regular basis for a reasonably substantial period of time in the recent and regular course of business.[5]

The Guide Concerning Use of the Word "Free" and Similar Representations contains the same general proscription in slightly different language:

> [W]hen the purchaser is told that an article is "Free" to him if another article is purchased, the word "Free" indicates that he is paying nothing for that article and no more than the regular price for the other. * * * The term "regular" when used with the term "price", means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service * * * in the most recent and regular course of business, for a reasonably substantial period of time, i.e., a 30-day period.[6]

Both guides expound that consumers understand "free" offers to mean that the price of the processing, or other article that must be purchased, has not been increased to cover the cost of the "free" film or other article.[7] Both guides counsel that introductory offers should not include a representation of "free" film or other article unless the offeror expects, in good faith, to discontinue the offer after a limited time and commence selling the processing service, or other article that must be purchased, separately at the same price at which it was promoted with the "free" offer.[8] Both guides further provide that "free" offers should not be continuous or frequent.[9]

Two provisions of the Free Film Guide, while not having specific counterparts in the Guide Concerning Use of the Word "Free" and Similar Representations, are implicitly contained in the more general language of that guide. The first is the statement that a processor has no basis for a "free" film representation where it has not established a regular price for processing service by itself (except in the case of introductory offers).[10] This is implicit in the discussion of the regular price requirement in both guides. The second is the caveat that the Free Film Guide is not intended to preclude the use of nondeceptive "combination" offers of film and processing where there is no representation that one of the items is "free".[11] There is nothing in either guide to suggest that such offers would be precluded because the guides, by their terms, apply only to use of the word "free" and similar terms.

The Free Film Guide has been supplanted by the Guide Concerning Use of the Word "Free" and Similar Representations. Accordingly, the Commission has determined that it is in the public interest to eliminate the Free Film Guide.

List of Subjects in 16 CFR Part 242

Advertising, Photographic industry, Trade practices.

[1] The Administrative Procedure Act requires that interpretive rules, such as guides, be published in their final form in the Federal Register. 5 U.S.C. 552(a)(1)(D). It does not require the opportunity for public participation in the issuance or repeal of interpretive rules. 5 U.S.C. 553(b). As a matter of discretion, however, the Commission generally seeks public comment on proposed actions involving industry guides. In this case, the Commission has determined such comment is unnecessary.

[2] 33 FR 8336.

[3] 36 FR 21517.

[4] Id.

[5] 16 CFR 242.1(b).

[6] 16 CFR 251.1(b)(1)–(b)(2).

[7] 16 CFR 242.1(c); 16 CFR 251.1(b)(1).

[8] 16 CFR 242.1(f); 16 CFR 251.1(f).

[9] 16 CFR 242.1(e); 16 CFR 251.1(h).

[10] 16 CFR 242.1(d).

[11] 16 CFR 242.1(g).

PART 242—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 242.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in 16 CFR Part 14, Matter No. P954215; Repeal of Mail Order Insurance Guides, Matter No. P954903; Repeal of Guides Re: Debt Collection, Matter No. P954809; and Free Film Guide Review, Matter No. P959101

In a flurry of deregulation, the Commission today repeals or substantially revises several Commission guides and other interpretive rules.[1] The Commission does so without seeking public comment. I have long supported the general goal of repealing or revising unnecessary, outdated, or unduly burdensome legislative and interpretive rules, and I agree that the repeal or revision of these particular guides and interpretive rules appears reasonable. Nevertheless, I cannot agree with the Commission's decision not to seek public comment before making these changes.

Although it is not required to do so under the Administrative Procedure Act, 5 U.S.C. § 553(b)(A), the Commission traditionally has sought public comment before issuing, revising, or repealing its guides and other interpretive rules. More specifically, the Commission adopted a policy in 1992 of reviewing each of its guides at least once every ten years and issuing a request for public comment as part of this review. *See* FTC Operating Manual ch. 8.3.8. The Commission decided to seek public comment on issues such as:

(1) The economic impact of and continuing need for the guide; (2) changes that should be made in the guide to minimize any adverse economic effect; (3) any possible conflict between the guide and any federal, state, or local laws; and (4) the effect on the guide of technological, economic, or other industry changes, if any, since the guide was promulgated.

Id. The Commission has sought public comment and has posed these questions concerning a number of guides since adopting its procedures for regulatory review in 1992.[2]

Notwithstanding its long-standing, general practice of seeking public comment and its specific policy of seeking public comment as part of its regulatory review process, the Commission has chosen not to seek public comment before repealing or revising these guides and interpretive rules. Why not? Has the Commission changed its view about the potential value of public comment? Perhaps the Commission knows all the answers, but then again, perhaps not. Although reasonable arguments can be made for repeal or revision of these guides and interpretive rules, public comment still might prove to be beneficial.

In addition, the relatively short period of time that would be required for public comment should not be problematic. The Commission has not addressed any of these guides or interpretive rules in the last ten years. Indeed, it has not addressed some of them for thirty years or more. For example, the Commission apparently has not addressed the interpretive rule concerning the use of the word "tile" in designation of non-ceramic products since it was issued in 1950.[3] The continued existence of these guides and interpretive rules during a brief public comment period surely would cause no harm because they are not binding and because, arguably, they are obsolete. I seriously question the need to act so precipitously as to preclude the opportunity for public comment.[4]

In 1992, the Commission announced a careful, measured approach for reviewing its guides and interpretive rules, and public comment has been an important part of that process. Incorporating public comment into the review is appropriate and sensible. Although I have voted in favor of repealing or revising these guides and interpretive rules, I strongly would have preferred that the Commission seek public comment before doing so.

[FR Doc. 95–19543 Filed 8–7–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 C.F.R. Part 14; Guides for the Mail Order Insurance Industry, 16 C.F.R. Part 234; Guides Against Debt Collection Deception, 16 C.F.R. Part 237; and Guide Against Deceptive use of the Word "Free" In Connection With the Sale of Photographic Film and Film Processing Services, 16 C.F.R. Part 242.

[2] *See, e.g.*, Request for Comments Concerning Guides for the Hosiery Industry, 59 Fed. Reg. 18004 (Apr. 15, 1994); Request for Comment Concerning Guides for the Feather and Down Products Industry, 59 Fed. Reg. 18006 (Apr. 15, 1994).

[3] 16 C.F.R. 14.2.

[4] Unfortunately, seeking public comment would not permit the Commission to count the repeal and revision of these guides and interpretive rules in its tally of completed actions in the Regulatory Reinvention Initiative Report that will be sent to the President on August 1, 1995, but perhaps that harm could be mitigated by reporting to the President that the Commission is seeking public comment concerning repeal or revision.

16 CFR Part 248

Guides for the Beauty and Barber Equipment and Supplies Industry

AGENCY: Federal Trade Commission.

ACTION: Elimination of guides.

SUMMARY: The Guides for the Beauty and Barber Equipment and Supplies Industry (the "Beauty/Barber Guides" or the "Guides") designate as unacceptable certain advertising and trade practices relating to the sale of products used by, and/or marketed through, "industry members" (as defined in Section 248.0 of the Guides) such as barber shops, barber schools, beauty parlors, beauty salons, beauty clinics, and organizations or corporations engaging in the manufacture or distribution of industry products. Such products embrace a wide range of beauty and barber preparations, as well as articles or items of equipment, furnishings, and supplies for such establishments.

The Commission believes that the Beauty/Barber Guides do not provide guidance substantially specific to the beauty and barber equipment and supply industry. In addition, the Commission believes that, in some instances, the Guides no longer accurately represent current Commission policy, and would require extensive revision to be made up-to date. Although such a revision and reissuance might be warranted if there were evidence of widespread marketing abuses of the type addressed by the Guides, the Commission has no such evidence. In addition, the Commission believes that likely abuses, if any, are adequately addressed under applicable antitrust, consumer protection, and commercial tort laws, which are matters of public record. Consequently, the Commission believes that there is no continuing need for the Guides, and that they should be repealed in their entirety.

Although the Commission is eliminating the Guides, proceedings still may be brought against businesses under Section 5(a)(1) of the Federal Trade Commission Act (the "FTC Act"), 15 U.S.C. 45(a)(1), for engaging in unfair or deceptive acts or practices in or affecting commerce in the advertising and sale of beauty and barber equipment and supplies. Proceedings also may be brought under Section 5(a)(1) of the FTC Act against businesses engaging in unfair methods of competition.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this document should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Douglas J. Goglia, Attorney, Federal Trade Commission, New York Regional Office, 150 William Street, 13th Floor, New York, NY 10038, (212) 264–1229.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of its ongoing project to review all rules and guides, the Commission invited comment on its Guides for the Beauty and Barber Equipment and Supplies Industry, 16

CFR Part 248, on April 4, 1995.[1] The notice contained, with minor modification, the standard regulatory review questions relating to the economic impact and continuing relevance of the Guides; burdens or costs related to adherence to the Guides; benefits conferred on industry members by the Guides; changes needed to minimize the economic impact of the Guides; their relation to other federal, state, or local laws or regulations; changes in relevant technology or economic conditions since the Guides were issued; and the effects of those changes on the Guides. The comment period ended on June 4, 1995, and only one comment was received before that date.[2] One additional comment was received on June 16, 1995, after the comment period expired.[3]

II. Background

The Beauty/Barber Guides were first published on August 23, 1968 under the authority of Sections 5(a)(1) and 6(g) of the FTC Act, 5 U.S.C. 45(a)(1) and 46(g). They were intended by the Commission to supersede trade practice rules for the Beauty and Barber Equipment and Supplies Industry, which had been promulgated on August 9, 1941. They designate as unacceptable certain advertising and trade practices relating to the sale of products used by, and/or marketed through, "industry members" (as defined in Section 248.0 of the Guides) such as barber shops, barber schools, beauty parlors, beauty salons, and beauty clinics. Such products embrace a wide range of beauty and barber preparations, as well as articles or items of equipment, furnishings, and supplies for such establishments.

Like other Commission guides, the Beauty/Barber Guides were "intended to encourage voluntary compliance with the law by those whose practices are subject to the jurisdiction of the Commission, and were published in the belief that a businessman who is fully informed of the legal pitfalls he may encounter can conduct his affairs so as to avoid such difficulties."[4] The Guides provide instruction regarding the use of trade names, symbols, and depictions; the defamation of competitors or the false disparagement of their products; false invoicing; push money; discriminatory advertising or promotional allowances, or services or facilities; commercial bribery; enticing away employees of competitors as a means of restraining competition; inducing breach of contract; exclusive dealing arrangements; and price discrimination.

III. Discussion

The Commission has concluded that the Beauty/Barber Guides do not provide guidance substantially specific to the beauty and barber equipment and supply industry. In general, the Guides merely restate basic principles of consumer protection and commercial tort law. In addition, certain sections describe conduct that may be proscribed by Section 2 or 3 of the Clayton Act, as amended by the Robinson-Patman Act, and certain conduct that may, in limited circumstances, violate Section 5 of the FTC Act or Section 2 of the Sherman Act. However, in some instances, the Guides no longer accurately reflect Commission policy and enforcement standards. Consequently, the Commission believes that there is no continuing need for the Guides, and that they should be repealed.

Sections 248.1–248.4 and 248.6

Sections 248.1 of the Guides prohibits industry members from using, or causing or promoting the use of statements, representations, guarantees,[5] testimonials, or endorsements "which ha[ve] a capacity and tendency or effect of misleading or deceiving purchasers. * * *" Likewise, § 248.2 prohibits industry members from misrepresenting, directly or indirectly, the character of their businesses or the types of services they offer; § 248.3 prohibits the use of deceptive plaques and certificates in connection with the "distribution, promotion or sale (including utilization in connection with services) of industry products"; § 248.4 proscribes deceptive pricing; an § 248.6 prohibits industry members from "withhold[ing] from, or insert[ing] in, invoices or sales slips, any statements, or information by reason of which omission or insertion a false record is made * * * of the transactions represented on the face of such invoices or sales slips, with the capacity and tendency or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public in any material respect." Each of these Guide sections addresses trade practices which are actionable under Section 5 of the FTC Act pursuant to the Commission's general Policy Statement on Deception ("Deception Statement"), set forth in the appendix to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984) (Letter from FTC Chairman James C. Miller III to the Honorable John D. Dingell (October 14, 1993)), or the Commission's Unfairness Statement set forth in the appendix to *International Harvester, Inc.*, 104 F.T.C. 949, 1061, 1073–74 (1984) (Letter from Commission Chairman Michael Pertschuk and Commissioners Paul Rand Dixon, David A. Clanton, Robert Pitofsky, and Patricia P. Bailey to the Honorable Wendell H. Ford and the Honorable John C. Danforth (December 17, 1980)). Moreover, the conduct proscribed by the aforementioned Guide sections may be actionable under Section 43(a) of the Lanham Act,[6] applicable state unfair competition statutes, and the commonlaw of commercial torts.[7]

In addition, Sections 248.1, 248.6, and other sections of the Guides specifically refer to the Commission's former "capacity and tendency or effect of misleading or deceiving" standard for deception, which was superseded by the Commission's Deception Statement. Accordingly, these sections fall to reflect the Commission's current policy regarding deception.

Section 248.5

Section 248.5 of the Guides prohibits industry members from using or imitating a competitor's trade or corporate name, trademarks, or other trade designations, where such use "has the tendency or effect of misleading purchasers or prospective purchasers as to the character, name, nature, or origin of any product of the industry or is false or misleading in any other material respect." The conduct proscribed by Section 248.5—"passing off"—has been held to violate Section 5 of the FTC Act,[8] and Commission policy regarding such conduct is a matter of public record. Accordingly, there is no need for Section 248.5, which merely restates that policy and does not provide instruction specifically relevant to the beauty and barber equipment and supply industry. Moreover, the conduct prohibited by Section 248.5 is addressed by Section 43(a) of the Lanham Act, applicable state unfair trade statutes, and common law theories of trademark infringement.[9]

Section 248.7

Section 248.7 of the Guides proscribes the defamation of competitors and the disparagement of their products. This section prohibits conduct which may be addressed under Section 43(a) of the Lanham Act and common law theories of commercial tort.[10] There is no need for this section of the Guides, because it does not supplement this general authority with instruction specifically relevant to the beauty and barber equipment and supply industry.

Section 248.8

Section 248.8 of the Beauty/Barber Guides proscribes the payment by industry members of so-called "push money." This section prohibits industry members from providing anything of value to a salesperson employed by a customer of the industry member as inducement to obtain greater effort in promoting the resale of the industry member's products when: (i) the agreement or payment is made "without the knowledge and consent of the salesperson's employer"; (ii) the benefit to the salesperson or customer is dependent on lottery; (iii) "any provision of the agreement or understanding requires or contemplates practices or a course of conduct unduly and intentionally hampering the sales of products of competitors * * *"; (iv) "the effect may be to substantially lessen competition or tend to create a monopoly"; or (v) "similar payments are not accorded to salespersons of competing customers on proportionally equal terms in compliance with Sections 2 (d) and (e) of the Clayton Act."

To the extent that Section 248.8 prohibits industry members from surreptitiously compensating employees of their customers in exchange for greater effort on the part of those employees, it addresses commercial bribery, which may be prohibited under Section 2(c) of the Clayton Act[11] and is proscribed by many state criminal statutes.[12] To the extent that § 248.8 prohibits bonus plans dependent on lottery, it addresses business conduct which may be proscribed by Section 5 of the FTC Act and by state statutes relating to lotteries and similar promotions.[13] To the extent that it requires payments to salespersons of competing customers to be on proportionally equal terms, it restates general principles of competition law which are set forth in Section 2 of the Clayton Act and the Fred Meyer Guides. *See* Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR Part 240.

Section 248.9

Section 248.9 of the Guides prohibits industry members from "willfully" enticing away the employees of competitors "with the intent and effect of thereby hampering or injuring competitors in their business or destroying or substantially lessening competition."[14] Such conduct may constitute a commercial tort.[15] The Guides do not add substantial industry-specific analysis to this general authority.

Section 248.10

Section 248.10 of the Guides prohibits industry members from "knowingly inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers. * * *" The conduct described in this section may be a commercial tort.[16] There is no need for this section of the Guides, because it does not supplement this general authority with instruction specifically relevant to the beauty and barber equipment and supply industry.

Section 248.11

Section 248.11 proscribes exclusive dealing arrangements where the effect on such arrangements "may be substantially to lessen competition or tend to create a monopoly in any line of commerce." This section recapitulates language contained in Section 3 of the Clayton Act and sets out a general principle of Sherman Act Section 2 jurisprudence—namely, that exclusive dealing may constitute an antitrust violation where it constitutes an attempt to monopolize or results in an actual monopolization of a relevant market.

Section 248.12

Section 248.12 prohibits commercial bribery. This conduct may be prohibited by Section 2(c) of the Clayton Act, and by many state criminal statutes.[17] There is no need for this section of the Guides, because it does not supplement this general authority with instruction specifically relevant to the beauty and barber equipment and supply industry.

Section 248.13–248.15

Sections 248.13, 248.14 and 248.15 of the Beauty/Barber Guides respectively proscribe discriminatory pricing, the provision of discriminatory promotional allowances, and inducing price discrimination. Section 248.13 and 248.15 recite almost verbatim language contained in Sections 2 (a), (b) and (f) of the Clayton Act. Section 248.14 is duplicative of the Fred Meyer Guides, which interpret Sections 2 (d) and (e) of the Clayton Act and Section 5 of the Federal Trade Commission Act. *See* Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR part 240.

IV. Conclusion

The Commission thus believes that the Beauty/Barber Guides do not provide guidance substantially specific to the beauty and barber equipment and supply industry. The Guides merely restate principles of consumer protection and commercial tort law found in statutes, case law, and other

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[1] Request for Comments Concerning Guides for the Beauty and Barber Equipment and Supplies Industry, 60 FR 17032, (April 4, 1995). The record in this proceeding has been designated P 958603 in the Commission's Public Reference Branch.

[2] The National Cosmetology Association ("NCA"), a national association of cosmetologists, barbers, estheticians, nail technicians, and owners of independent salons, stated that (1) the Guides have been effective in protecting industry members from problematic conduct, and (2) "[m]ost industry members do not have resources available to hire attorneys to counsel them with respect to [trade regulation] laws. Thus the Guides are *the* principal means by which the industry is continuously reminded of how those laws apply to the industry." Comment of Messrs. William W. Scott, J. Keith Ausbrook and Brian R. Henry, Counsel for the National Cosmetology Association (June 2, 1995).

[3] The Beauty and Barber Supply Institute, Inc. ("BBSI") stated that: " we have no objection to the recommendation that Part 248—Guides For The Beauty And Barber Equipment And Supplies Industry, be deleted in its entirety from the Code of Federal Regulations." Letter from Douglas A. Kash, Esq. to Douglas Goglia, Esq., June 22, 1995 (regarding Amendments to the Code of Federal Regulations).

[4] Statement by the Commission, 33 FR 11987 (August 23, 1968).

[5] The Commission has adopted Guides for the Advertising of Warranties and Guarantees which provide detailed guidance with respect to guarantee and warranty representations. *See* 16 CFR Part 239. Accordingly, to the extent Section 248.1 of the Beauty/Barber Guides relates to Guarantees, it is no longer necessary.

[6] 15 U.S.C. 1125(a).

[7] *See generally*, Restatement (Third) of Unfair Competition, Chapter 2 (1995) (hereinafter "*Restatement*").

[8] *See, e.g., Waltham Watch Co.* v. *FTC*, 318 F.2d 28 (7th Cir.), *cert. denied*, 375 U.S. 944 (1963) ("passing off" products as those of a competitor violates Section 5); *Parke, Austin & Lipscomb, Inc.* v. *FTC*, 142 F.2d 437 (2d Cir.), *cert. denied*, 323 U.S. 753 (1944) (false claims of association with a better known company violate Section 5); *J. Merrell Redding*, 14 F.T.C. 32 (1930) (simulation of a competitor's advertising violates Section 5); *Lighthouse Rug Co.* v. *FTC*, 35 F.2d 163 (7th Cir. 1929) (imitation of a competitor's corporate name and trademark violates Section 5).

[9] *See generally, Restatement, supra* note 7, Chapter 3.

[10] *See generally, Restatement, supra* note 7, § 2, Comment C. *See also*, J.D. Lee, Modern Tort Law, § 36.09 (4th ed. 1990) (hereinafter "*Lee*").

[11] 15 U.S.C. 13(c).

[12] *See e.g.*, Cal. Penal Code § 641.3 *et seq.* (Deering 1995); Ill. Rev. Stat., Ch. 38, para. 29A–1 (1995); N.Y. Penal Law § 180.00 (McKinney 1976).

[13] *See e.g.*, Tex. Penal Code § 32.42 (West 1995); Cal. Bus. & Prof. Code § 17539.1 (Deering 1995); Cal. Penal Code § 319 *et seq.* (Deering 1995).

[14] As a caveat, section 248.9 provides:

> nothing in this section shall be construed as precluding such persons from seeking more favorable employment, or as precluding employers from hiring or offering employment to employees of a competitor in good faith and not for the purpose of inflicting competitive injury.

[15] *See generally, Lee, supra* note 10, Ch. 45; William L. Prosser, *Prosser on Torts* § 129 (4th ed. 1971) (hereinafter "*Prosser*").

[16] *Lee, supra* note 10, at 45; *Prosser, supra* note 15, at § 129.

[17] *See supra* note 12.

regulations. The Guides also describe certain conduct that may, in some instances, violate Sections 2 (a), (b), (c) and (d) of the Clayton Act. In addition, to the extent that certain conduct described by the Guides may substantially lessen competition in a properly defined antitrust market, it may violate Section 5 of the FTC Act. To the extent such conduct may tend to create a monopoly, it may also violate Section 2 of the Sherman Act. The conduct described by the Guides must be examined on a case-by-case basis to determine whether an applicable provision of law has been violated. Furthermore, in some instances, the Guides do not accurately represent current Commission policy and enforcement standards. Accordingly, the Commission has determined to repeal the Guides.

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 248

Advertising, Cosmetics, Trade practices.

PART 248—[REMOVED]

The Commission, under authority of Sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 248.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–19544 Filed 8–7–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Fraud Offenses That Involve Multiple Millions of Dollars in Losses

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is establishing a dollar amount range of $1 million to $5 million for Category Six fraud offenses in the paroling policy guidelines at 28 CFR 2.20. Frauds that cause losses of over $5 million will be rated Category Seven. At the present time, the Category Six offense severity rating is assigned to all frauds exceeding $1 million. In some cases, decisions above the Category Six guidelines are found warranted because the dollar losses greatly exceed those associated with ordinary cases of theft/forgery/fraud that are rated Category Six. The conversion of the open-ended dollar criterion for Category Six offenses into a range of $1 million to $5 million will provide the Commission with an appropriate benchmark to determine when dollar amount losses are so excessive as to require the offender to serve more prison time than indicated by the guidelines. This will permit increased consistency in the Commission's decisionmaking.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, 5550 Friendship Blvd., Chevy Chase, Maryland 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Public comment was solicited by publication of a proposed rule at 60 FR 18379 (April 11, 1995). Some public comment argued that the guidelines of the U.S. Sentencing Commission are significantly less severe for theft, forgery, and fraud offenses committed on or after November 1, 1987. (The U.S. Parole Commission's jurisdiction is limited to offenders whose crimes were committed prior to November 1, 1987, See Section 235 of the Sentencing Reform Act of 1984, which appears as an Editorial Note to 18 U.S.C. 3551.) According to this comment, the revision of the guidelines is a step in the right direction, but has the effect of creating two classes of accountability from the same government, because significantly larger dollar amounts would be required for the sentencing guidelines to match those of the U.S. Parole Commission.

The Commission has compared the operation of its guidelines for theft, forgery, and fraud cases with those of the U.S. Sentencing Commission, as applied in actual practice. The conclusion is that the guideline ranges are, contrary to the public comment, roughly equivalent. This is because the parole guideline ranges are determined solely by reference to the dollar amount, whereas the sentencing guidelines begin with dollar amount but require upward adjustments for such typical aggravating factors (in large-scale white collar crimes) as "organizer or leader", multiple victims, multiple counts, and refusal to accept responsibility. Frauds that cause losses of $1 million or more usually involve some degree of organizational leadership, multiplicity of schemes and victims, efforts to deny responsibility, etc., sufficient to produce several upward adjustments. In this manner, the total offense level produces a guideline range, in most cases, equal to or greater than the parole guidelines. For example, a conviction-offense fraud of $750,000 with upward adjustments reflecting persistent fraudulent investment schemes by an unrepentant first offender can produce a sentencing guideline range of 46–57 months, which is greater than the corresponding parole guideline, even if the Parole Commission includes additional losses exceeding $1 million (40–52 months).

Accordingly, the Commission decided to adopt its original proposal to set a range of $1 million to $5 million for Category Six offenses, and to rate fraud offenses exceeding $5 million in Category Seven.

The Commission intends that the practical effect of this guideline revision will be to preclude decisions above the Category Six guidelines when the relevant dollar amount does not exceed $5 million, except when non-monetary factors in aggravation (*e.g.*, unusually vulnerable victims) warrant a decision above the guideline range in individual cases. The Category Seven rating will, for the most part, include cases in which above-guideline decisions would otherwise have been expected.

Finally, the Commission decided to adopt conforming amendments to the other offense examples listed in the guidelines that are rated by dollar amount (i.e., property destruction, counterfeit currency, antitrust offenses, insider trading, tax evasion, and currency offenses).

Implementation

The revised guidelines will be applied at any initial parole hearing or revocation hearing conducted on or after the effective date set forth above. The revised guideline will also be applied retroactively to prisoners who were given parole or reparole decisions prior to that effective date, at the next statutory interim hearing conducted pursuant to 28 CFR 2.14, provided that application of the revised guideline results in a decision more favorable to the prisoner. For example, at a statutory interim hearing, a prisoner who was continued above the Category Six guidelines for a $4 million fraud offense could argue for a release date within the Category Six guidelines if he can show that no other factor continues to justify a departure from the guideline range.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the regulatory flexibility act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, probation and parole, prisoners.

The Final Rule

Accordingly, the Parole Commission adopts the following amendments to 28 CFR part 2:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR part 2, § 2.20, Chapter 3, Subchapter A, Paragraph 303 (Property Destruction Other Than as Listed Above) is amended by deleting subparagraph (b); redesignating subparagraphs (c) through (g) as subparagraphs (d) through (h) respectively; and by adding new subparagraphs (b) and (c) to read as follows:

* * * * *

(b) if damage of more than $5,000,000 is caused, grade as Category Seven;

(c) if damage of more than $1,000,000 but not more than $5,000,000 is caused, grade as Category Six;

* * * * *

3. 28 CFR part 2, § 2.20, Chapter 3, Subchapter D, Paragraph 331 (Theft, Forgery, Fraud, Trafficking in Stolen Property, Interstate Transportation of Stolen Property, Receiving Stolen Property,* Embezzlement, and Related Offenses) is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (g) as subparagraphs (c) through (h) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If the value of the property * is more than $5,000,000, grade as Category Seven;

(b) If the value of the property * is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

4. 28 CFR part 2, § 2.20, Chapter 3, Subchapter E, Paragraph 341 (Passing or Possession of Counterfeit Currency or Other Medium of Exchange*), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (e) as subparagraphs (c) through (f) respectively; and to add new subparagraphs (a) and (b) as follows:

* * * * *

(a) If the face value of the currency or other medium of exchange is more than $5,000,000, grade as Category Seven;

(b) If the face value of the currency or other medium of exchange is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

5. 28 CFR part 2, § 2.20, Chapter 3, Subchapter F, Paragraph 363 (Insider Trading), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (f) as subparagraphs (c) through (g) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If the estimated economic impact is more than $5,000,000, grade as Category Seven;

(b) If the estimated economic impact is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

6. 28 CFR part 2, § 2.20, Chapter 5, Subchapter A, Paragraph 501 (Tax Evasion), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (f) as subparagraphs (c) through (g) respectively; and to add new subparagraphs (a) and (b) as follows:

* * * * *

(a) If the amount of tax evaded or evasion attempted is more than $5,000,000, grade as Category Seven;

(b) If the amount of tax evaded or evasion attempted is more than $1,000,000 but not more than $5,000,000, grade as Category Six;

* * * * *

7. 28 CFR part 2, § 2.20, Chapter 11, Subchapter G, Paragraph 1161 (Reports on Monetary Instrument Transactions), is amended to delete subparagraph (a); to redesignate subparagraphs (b) through (d) as subparagraphs (c) through (e) respectively; and to add new subparagraphs (a) and (b) to read as follows:

* * * * *

(a) If extremely large scale (e.g., the estimated gross amount of currency involved is more than $5,000,000), grade as Category Seven;

(b) If very large scale (e.g., the estimated gross amount of currency involved is more than $1,000,000 but not more than $5,000,000), grade as Category Six;

* * * * *

Dated: July 26, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95–19311 Filed 8–7–95; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–103–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment includes changes to sections 480–03–19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas. The amendment is intended to clarify what provisions of the coal mine waste disposal regulations apply when disposal of coal processing waste or underground development waste occurs in mined-out areas for the purpose of backfilling a disturbed area.

EFFECTIVE DATES: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated October 31, 1994 (Administrative Record No. VA–839), Virginia submitted a proposed amendment to its program pursuant to SMCRA. Virginia proposes to amend sections 480–03–19.816/817.102(e) to clarify the Virginia regulations that are applicable when coal processing waste and underground development waste is used as backfill material for mined-out areas. The proposed amendment is intended to settle interpretational differences between Virginia and OSM relative to how the coal mine waste regulations apply to waste materials placed in backfills.

The proposed amendment was published in the November 16, 1994, **Federal Register** (59 FR 59187), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 16, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Virginia program.

VR 480–03–19.816/817.102(e), Backfilling and Grading: General Requirements

Virginia is amending subsections 102(e) to provide that the disposal of coal processing waste and underground development waste in the mined-out areas shall be in accordance with new subsections 102(e) (1) and (2).

a. New paragraphs 480–03–19.816/817.102(e)(1) provide that disposal of coal processing waste and underground development waste in the mined-out area to backfill disturbed areas shall be in accordance with 480–03–19.816/817.81 (coal mine waste: general requirements). This provision differs from the counterpart Federal regulations at 30 CFR 816/817.102(e) in that the Federal regulations require that the disposal of coal processing waste and underground development waste placed in the mined-out area shall be in accordance with both 30 CFR 816/817.81 and 816/817.83. In effect, the proposed amendment will eliminate compliance with section 480–03–19.816/817.83, the Virginia counterpart to 30 CFR 816/817.83, the performance standards for refuse piles, when refuse is used for backfill. Therefore, the Virginia program must assure the stability of the backfill material, and the prevention of acid or toxic drainage from the backfill.

In its submittal of this amendment, Virginia provided the following explanation of how the regulatory authority will interpret and implement Virginia Regulations (VR) 480–03–19.816/817.102(e) (1) to be as effective as the counterpart Federal regulations in providing environmental safeguards:

[i] As proposed, VR 480–03–19.816/817.102(e) (1), would apply when coal mine waste is placed in a mined-out area as part of the backfilling process to restore the approximate original contour (AOC) without a change in premining surface elevations. It clarifies that compliance with VR 480–03–19.816/817.81, but not VR 480–03–19.816/817.83, is required.

[ii] The Virginia proposed regulation distinguishes between those standards that are appropriate for a conventional refuse pile and those appropriate for areas conventionally backfilled with refuse. This is analogues to the way the Virginia program distinguishes between excess spoil fills and areas backfilled to AOC.

[iii] Section 480–03–19.816/817.102(f) requires that "acid and toxic-forming material shall not be buried or stored in proximity to any drainage course." The Virginia Division of Mined Land Reclamation (DMLR) interprets this standard to be applicable to acid and toxi-forming refuse as well as acid and toxic-forming overburden/mine spoil.

[iv] Pursuant to 480–03–19.816/817.81(c) such backfill design is required to be certified by a qualified registered professional engineer (RPE) using prudent engineering practices and any criteria established by the Division. DMLR considers the determination of seeps, springs, or other discharges necessary in the designating of a backfill consistent with 480–0319.816/817.81. Thus, coal mine waste that is acid or toxic-forming could not be considered as suitable for backfill pursuant to proposed 816/817.102(e) unless the permittee is able to demonstrate that the material is isolated and hydrologically separated from a drainage course.

[v] The proposed regulation is intended to include the hydrologic protection standards of 480–03–19.816/817.41 and 480–03–19.816/817.102. Through DMLR's hydrologic impact assessment and the application of 480–03–19.816/817.102(a)(4), (c), (f), and (g), DMLR has ample authority to limit coal mine waste to suitable areas and to ensure that appropriate measures are taken to prevent erosion, acid/toxic drainage and adverse effects to the hydrologic balance. This standard is reinforced by 480–03–19.816/817.81(a)(1) which requires, "Coal mine wastes shall be placed in a controlled manner to (1) minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity."

[vi] The Virginia program permits only "suitable coal mine waste materials" to be used as backfill. Other coal mine waste must be placed in a conventional "refuse pile" subject to the standards of 480–03–19.816/817.102(e), 480–03–19.816/817.81, and 480–03–19.816/817.83.

[vii] DMLR finds authority at 480–03–19.816/817.22(b) and (c) to require a demonstration of the suitability of coal mine waste both during and subsequent to the permitting process. DMLR has always been concerned that the characteristics of coal mine waste may change when produced over a large aerial extent, from different seams, or at different locations. DMLR interprets 480–03–19.816/817.22(c) as authority to require periodic testing as necessary to ensure compliance with the hydrologic protection and other performance standards. DMLR finds further support for its interpretation at 480–03–19.816/817.102(f). DMLR assures periodic testing by imposing a permit condition pursuant to 480–03–19.733.17 requiring a quarterly analysis of appropriate coal mine waste as it is placed in a refuse pile or in the area being backfilled. DMLR has regulations, policies, and procedures in place which require applicable operations to periodically analyze waste.

[viii] Since some coal mine waste is not suitable for the backfill of pre-existing benches or other mined-out areas, DMLR's proposed regulation can only be read to be consistent with the defined term "reasonably available spoil" which includes the use of "suitable coal mine/waste," as backfill material. DMLR interprets suitable to be a measure of both chemical and physical characteristics. DMLR requires analyses for the chemical characteristics during the permitting process before it will determine that the material is suitable. DMLR also requires a design certified by a qualified RPE demonstrating that the material is suitable to achieve a static safety factor of 1.3.

[ix] DMLR finds authority to require the demonstration of suitability at 480–03–19.816/817.102(a)(3), 480–03–19.816/817.102(f), and 480–03–19.816/817.81(c).

[x] The proposed regulation still requires compliance with the general requirements of coal mine waste handling set forth by 480–03–19.816.81. These general requirements require among other things that waste be placed in a controlled manner to minimize adverse effects of leachate and surface water runoff on surface and ground water quality and quantity, and ensure mass stability and prevent mass movement during and after construction.

[xi] The regulation as proposed and read in context with the entire Virginia program also contains sufficient specificity appropriate for "suitable coal mine waste." The material sampling, the hydrologic protection standards, and the design and stability standards give DMLR ample authority to ensure that backfilling operations use suitable material and meet the standards of the Virginia program.

Virginia's construction of the requirements of the Virginia program regulations and the explanation of the regulatory authority's interpretation of those regulations indicates that the stability of the backfill will be ensured. Only coal mine waste that is physically suitable for placement will be used in the backfill. The physical properties of the material will be determined upon the judgement of a qualified RPE. Quality control of these materials will be ensured by periodic testing. All backfill must be certified by the RPE as obtaining a minimum safety factor of 1.3.

While the specifics of the sampling and analyzing program have not been described in detail, Virginia has reasonably explained its authority and procedures for ensuring that only non-toxic forming material will be placed in the backfill areas, or that the permittee must demonstrate that the placement of these materials will not result in toxic/acid mine drainage. In addition, Virginia also explained that the regulatory authority has ample authority to ensure that appropriate measures are taken to prevent acid and toxic drainage and adverse effects to the hydrologic balance. Such measures could reasonably include the addition of limestone or other alkaline materials to the backfill when the regulatory authority determined it necessary to provide an appropriate measure of safety.

b. Virginia is proposing to amend paragraph 480–03–19.816/817(e)(2) to provide that the disposal of coal processing waste and underground development waste in the mined-out area as a refuse pile and not to backfill disturbed areas to AOC shall be in accordance with 480–03–19,816/817.81 and 480–03–19.816/817.83. The Division, may approve a variance to 490–03–19.816/817.83(a)(2), concerning drainage controls, if the applicant demonstrates that the area above the refuse pile is small and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

The proposed language differs from the Federal regulations at 30 CFR 816/817.102(e) in that the Federal regulations do not provide for a variance from the requirements at 30 CFR 816/817.83(a)(2) concerning drainage controls. In effect, the proposed variance could eliminate an additional safeguard against erosion of the fill.

In its submittal of this amendment, Virginia provided the following explanation of how the regulatory authority will interpret and implement 480–0319.816/817.102(e)(2).

[i] Proposed 480–03–19.816/817.102(e)(2) requires compliance with 480–03–19.816/817.81, and 480–03–19.816/817.83 when a refuse pile is to be constructed in the mined-out area. In this respect, it is identical to the Federal requirements. However, this rule also provides for a variance from the surface runoff diversion requirements of 480–03–19.816/817.83(a)(2) under certain conditions.

[ii] The proposed rule at 480–03–19.816/817.102(e)(2) is applicable only to coal mine waste piles built in mined-out areas. Usually, when a permittee has "suitable coal mine waste" and the permit area includes previously mined benches, an opportunity exists to achieve two separate objectives of the Act. The suitable coal mine waste can be used to achieve AOC on the existing benches, thus reclaiming AML [abandoned mine lands] that would likely never be reclaimed otherwise. Also, by using the suitable coal mine waste on the pre-existing benches, the disturbance of off-site areas and construction of a conventional refuse pile becomes unnecessary. Thus, DMLR is able to minimize areas disturbed or affected by the mining operation.

[iii] It is DMLR's practice to require the placement of suitable coal mine waste on pre-existing benches as backfill when sufficient and suitable benches are available. However, when the volume of coal mine waste will exceed the AOC configuration of the available bench, DMLR still prefers placement of the coal mine waste on the bench rather than on undisturbed areas. In such cases, DMLR will require the construction of the refuse pile to be consistent with both 480–03–19.816/817.81 and 83.

[iv] DMLR proposes to grant the variance contained at proposed 480–03–19.817.102(e)(2) in such case, but only when certain conditions are met. DMLR will consider the area above the refuse pile as small if there are no channeled flows and if during storm events there is only sheet flow. However, DMLR will not grant the variance if the drainage area above the pile on any point excess 500 feet, measured along the slope.

[v] DMLR will accept only those appropriate measures that can be shown, using standard engineering practices to convey the flow across the pile safely and prevent erosion. Such practices may include sufficient vegetation to prevent erosion or the use of terrances that direct runoff from the areas above the refuse pile and runoff from the surface of the refuse pile into stabilized channels designed to safely pass runoff from the 100-year, 6-hour precipitation event.

As detailed above, Virginia has clarified those instances where a variance could be granted. In addition, Virginia has limited the size of areas which could qualify for an exemption to "small" areas. Virginia has defined "small" quantitatively as slopes less than 500 feet in length, and functionally, as zones where runoff during storm events is only sheet flow. Virginia has also reasonably explained how the Virginia program would safeguard refuse piles in mined-out areas from erosion despite an authorization of the proposed variance.

The Federal regulations at 30 CFR 732.15(a) require that the State's laws and rules, collectively, be in accordance with SMCRA and consistent with the Federal regulations. That is, the State's statutes, rules, policy statements, and similar materials are compared, collectively, with the Federal statute and rules, collectively, to ensure that the State's program, as a whole, meets the Federal requirements. Therefore, while Virginia's proposed provisions are not identical to the counterpart Federal regulations, OSM has reviewed the Virginia program, collectively, to determine consistency with the Federal regulations. The detailed explanation and scope of the proposed amendments which were submitted by Virginia on October 31, 1994, provide a clear explanation of Virginia's assertion that the Virginia program, with the proposed amendments, remains no less effective than the Federal regulations.

The Director concurs that the Virginia program will not be rendered less effective than the Federal regulations in controlling erosion, preventing acid and toxic drainage, and providing for the stability of fills of coal processing waste and underground development waste in mined-out areas if the program is implemented as discussed in the October 31, 1994, submittal, provided that the required amendments discussed below are added to the program.

The Federal regulations at 30 CFR 816/817.83(a) provide for drainage control at refuse piles. Specifically, the regulations require diversions and underdrains to control erosion, prevent water infiltration into the disposal facility, and to ensure stability if the area contains springs, natural or manmade watercourses, or wet weather seeps. These provisions pertain most appropriately to piles or deposits which, when placed, would interfere with the natural, preexisting drainage patterns. Directing drainage away from those refuse piles would help prevent the creation of impoundments and would help prevent excessive infiltration into the pile that could weaken the structure. Diversions and underdrains do not serve those purposes, however, when the refuse is used for backfill to return to AOC. That is because the AOC complements and assists the area's natural surface drainage patterns. Therefore, returning a site to AOC should itself prevent the creation of impoundments and other interferences with natural drainage patterns. Virginia will not require these diversions and underdrains for coal refuse disposals on benches that are only being returned to AOC. For the above stated reasons, the Director agrees that Virginia need not require placement of underdrains and diversions in coal refuse sites returned to AOC.

The Federal regulations at 30 CFR 816/817.83(b) provide for the stabilization and revegetation of surface areas at refuse piles in order to minimize surface erosion. The Virginia

rules at 480–03–19.816/817.111–116 require the revegetation of all disturbed areas following backfilling. In addition, 480–03–19.816/817.102(a)(4) require that backfilling and grading be performed in a manner to minimize erosion and water pollution. These requirements serve as counterparts to and are no less effective than the Federal requirements at 30 CFR 816/817.83(b) concerning surface area stabilization of refuse piles.

The Federal regulations at 30 CFR 816/817.83(c)(1) require that all vegetation and organic materials be removed from the disposal area prior to placement of coal mine waste. Where coal mine waste will be placed on pre-existing mine benches, the Director is requiring that Virginia comply with the Virginia rules at 480–03–19.816/817.74 concerning placement of excess spoil on pre-existing mine benches. Those rules specifically require, at subsection (a), that all vegetative and organic materials be removed from the disposal area prior to placement. Where coal mine waste will be placed on recently mined-out benches, the Director expects that all vegetation and organic materials will already have been removed by the mining operations. Therefore, Virginia's rules (with the required amendment mentioned above) will provide counterparts to and will be no less effective than the Federal requirements at 30 CFR 816/817.83(c)(1).

The Federal regulations at 816/817.83(c)(2) provide that the final configuration of the pile shall be suitable for the approved post-mining land use. Terraces are permitted, but the grade of the outslope between terraces shall not be steeper than 2h:1v (50 percent). The Virginia rules at 480–03–19.816/817.102(a)(5) provide that disturbed areas shall be backfilled and graded to support the approved postmining land use. Virginia's rules at 480–03–19.816/817.102(g) allow the use of cut-and-fill terraces without imposing any grade limits on the outslope between the terraces. However, restricting outslopes to 2h:1v as the Federal rule requires for refuse piles may conflict with the requirement to return a site to AOC, since premining slopes might have exceeded 2h:1v. Furthermore, Virginia requires, at 480–03–19.816/817.102(a)(3), that postmining slopes not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides. Therefore, the Director concludes that the Virginia program contains adequate provisions to ensure the slope stability of any cut-and-fill terraces on a site returned to AOC without imposition of an unduly restrictive slope standard.

The Federal regulations at 30 CFR 816/817.83(c)(3) provide that no permanent impoundments shall be allowed on the completed refuse pile. Virginia has a counterpart to this Federal provision for coal waste which is piled to rise above AOC. However, this Federal provision doesn't appropriately apply in situations where the backfilled material doesn't exceed AOC. In such instances (AOC) the Federal regulations at 30 CFR 816/817.102(i) do allow the creation of permanent impoundments on backfilled areas. Therefore, where coal mine waste is used only to return a mined out area to AOC, Virginia need not require compliance with its counterparts to 30 CFR 816/817.83(c)(3).

The Federal regulations at 30 CFR 816/817.83(c)(4) provide for the covering of coal mine waste with four feet of the best available, nontoxic and noncumbustible material. Virginia has a counterpart to these requirements at 480–03–19.816/817.102(f), the general provisions for backfilling and grading. Virginia's provision pertains to all backfilling operations, and this would include backfilling with coal mine waste as Virginia proposes to do. Therefore, the Virginia program contains the requirements of 30 CFR 816/817.83(c)(4) and is, therefore, no less effective than those regulations.

The Federal regulations at 30 CFR 816/817.83(d) provide that refuse piles shall be inspected during construction by a qualified registered professional engineer. These Federal requirements pertain to critical periods during the construction of refuse piles. Virginia's use of coal refuse to achieve AOC will not result in a refuse pile to which the Federal regulations at 30 CFR 816/817.83(d) appropriately apply, since there will be no such critical construction periods. Therefore, the lack of an inspection requirement for coal refuse being used to achieve AOC does not render the Virginia program less effective.

However, OSM is concerned that key points of Virginia's explanation may not be enforceable because they are not currently part of the approved Virginia program. For example, Virginia stated that some coal mine waste is not "suitable" for the backfill of pre-existing benches or other mined-out areas. The term "suitable" is used several times in Virginia's explanation of the proposed amendments, but the term is not defined. The State did say, however, that the DMLR interprets "suitable" to be a measure of both chemical and physical characteristics. The term "suitable" needs to be defined. Such a definition should clarify "suitable" so that the regulatory authority can consistently apply the term appropriately. The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas.

Virginia stated that the DMLR considers the determination of seeps, springs, or other discharges necessary in the designing of a backfill consistent with 480–03–19.816/817.81. Such a determination would be crucial to efforts to successfully prevent acid or toxic drainage. A requirement to provide this crucial information is not explicitly required by the Virginia program, but should be.

Virginia stated that the DMLR assures periodic testing by imposing a permit condition pursuant to 480–03–19.773.17 requiring a quarterly analysis of appropriate coal mine waste as it is placed in a refuse pile or in the area being backfilled. 480–03–19.773.17 does not, however, specifically require the imposition of such a permit condition. This important permit condition should be added to the Virginia program at 480–03–19.773.17.

In its discussion of the proposed amendment at 480–03–19.816/817.102(e)(2), Virginia stated that the proposed variance from the requirement to direct water around the refuse pile would only be granted if the area above the refuse pile is "small." The term "small" was explained to mean that there are no channeled flows and that during storm events, there is only sheet flow. Additionally, the DMLR would not grant the variance if the drainage area above the pile on any point exceeds 500 feet, measured along the slope. These important criteria should be added to the Virginia program as a definition.

Both the Federal regulations at 30 CFR 816/817.83(a)(2) and the Virginia rules at 480–03–19.816/817.83(a)(2) prohibit the flow of uncontrolled surface drainage over the outslope of a refuse pile. Virginia will not grant a variance to the diversion requirements contained in this same subdivision, unless the operator can demonstrate that drainage over the outslope of the refuse pile will be controlled.

Further, the Director finds that runoff above the refuse pile need not be diverted around the surface of the pile so long as that runoff is not channeled flow (either natural or constructed) but is restricted to sheet flow only. Virginia has assured OSM that it will inspect these areas above the refuse piles until final bond release to ensure that channeled flows do not form in those areas. Should such channeled flows subsequently develop, Virginia must require the operators to repair and revegetate the area to return to sheet flow, or construct diversions of that flow so that it goes around the pile rather than over the pile in channeled flow. The Director notes that limiting the area above the pile to 500 feet along the slope provides an additional restriction to approval of the variance.

Therefore, the Director finds, to the extent that the proposed amendments will be implemented as explained by Virginia in its October 31, 1994, submittal to OSM, that the proposed amendments at 480–03–19.816/817.102(e) (1) and (2) can be approved. However, in addition, the Director is requiring that Virginia further clarify the implementation of these amendments by amending the Virginia program as follows: (1) Define the term "suitable." The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas; (2) add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill; (3) add to 480–03–19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled; and (4) add a definition of "small" to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope.

Finally, the Director finds that where coal refuse will be placed on pre-existing benches (for the purpose of returning benches to OAC), Virginia must require compliance with its performance standards at 480–03–19.816/817.74 concerning the placement of excess spoil on pre-existing benches. Compliance with these performance standards is necessary because coal refuse presents at least as many stability problems as does the placement of excess spoil on pre-existing benches. While Virginia recognizes this need and currently requires that the placement of coal refuse on pre-existing benches (for the purpose of returning to AOC) meet the standards concerning the placement of excess spoil on pre-existing benches, those requirements are not codified in the Virginia program. Therefore, the Director is requiring that the State amend the Virginia program by adding a requirement that whenever coal refuse is placed on pre-existing benches for the purposes of returning the benches to AOC, the performance standards for the placement of excess spoil on pre-existing benches will be followed. This requirement can be in the form of either a regulation or an official policy statement.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The Fish and Wildlife Service (FWS) of the U.S. Department of the Interior expressed concern that the proposed amendments may negatively affect water quality, and thus potentially affect Federal listed threatened and endangered aquatic species in southwestern Virginia (Administrative Record Number VA–848). FWS further stated that on December 12, 1994, FWS met with DMLR to discuss the proposed amendments and visit active mine sites with ongoing backfill activities. FWS learned that despite the proposed amendments, all downgradient surface water runoff controls for all disturbed areas are still required by the Virginia program. Additionally, the "suitability" of the material for purposes of backfilling or disposing as a refuse pile must be demonstrated by tests for acidity, and the Virginia program continues to prohibit the burial or storage of acid- and toxic-forming materials in proximity to any drainage course. It is clear, FWS stated, that all current regulations will continue in force that require treatment of surface water runoff from the entire disturbed area. The FWS concluded that the proposed amendments are not likely to adversely affect listed species or critical habitat.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the November 16, 1994, **Federal Register** (59 FR 59187). The comment period closed on December 16, 1994. No comments were received and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA. EPA responded on December 6, 1994 (Administrative Record Number VA–845), and on January 19, 1995 (Administrative Record Number VA–849). The EPA expressed concerns with potential pollution from the proposed coal refuse disposal on abandoned steep mining areas. In particular, EPA was concerned that the proposed allowance of hillside runoff from "small" drainage areas over the refuse pile could result in acid and toxic seepage and runoff.

Virginia indicated to EPA that construction of ditches along the top of the steep mined areas to divert the runoff around the disposal sites would be impractical due to the unstable nature of abandoned highwalls. Virginia also stated that acid and toxic refuse would not be regarded as suitable for such disposal unless isolated and hydrologically separated from drainage courses. Virginia also indicated to the EPA that refuse would be tested in the permitting stage for suitability as well assuring the placement stage.

The EPA stated that disposal of coal refuse on abandoned mine sites, such as proposed by Virginia or in any other manner, is subject to effluent guideline limits as described in 40 CFR 434 subpart B for Coal Preparation Plant Associated Areas during the active and reclamation stages. However, even if treatment during these stages results in compliance with effluent guideline limits and water quality standards, a major concern is the potential of perpetual acid and toxic drainage after closure. EPA stated that it is important to emphasize that any refuse disposal sites which will be exposed to any runoff or infiltration should be free of acid or toxic forming substances. Even where no such substances are initially evident, EPA said, diversion of runoff to the extent possible should be provided and limestone or other alkaline materials should be added to the refuse for added safety. The Director notes that Virginia explained in its October 31, 1994, submittal that the State regulatory authority has ample authority to ensure that appropriate measures are taken to prevent acid and toxic drainage and adverse affects to the hydrologic balance. Virginia also continues to

prohibit the burial or storage of acid- and toxic-forming materials in proximity to any drainage course.

V. Director's Decision

Based on the findings above, the Director is approving Virginia's amendment concerning coal refuse disposal as submitted by Virginia on October 31, 1994, to the extent that the proposed amendments will be implemented as explained by Virginia in its October 31, 1994, submittal to OSM.

In addition, the Director is requiring that Virginia further clarify the implementation of these amendments by amending the Virginia program as follows: (1) Define the term "suitable." The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas; (2) add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill; (3) add to 480–03–19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled; (4) add a definition of "small" to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope; and (5) add a requirement that whenever coal refuse is placed on pre-existing benches for the purpose of returning the benches to AOC, the performance standards for the placement of excess spoil on pre-existing benches will be followed.

The Federal regulations at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Virginia of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 27, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 946.15, paragraph (ii) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(ii) The following amendment to the Virginia program at 480–03–19.816/817.102(e) (1) and (2) concerning coal refuse disposal as submitted to OSM on October 31, 1994, is approved to the extent that the proposed amendments will be implemented as explained by Virginia in its October 31, 1994, submittal to OSM, effective August 8, 1995.

3. In section 946.16, paragraph (a) is added to read as follows:

§ 946.16 Required regulatory program amendments.

* * * * *

(a) By September 1, 1995, or another date approved by the Office of Surface Mining Reclamation and Enforcement, Virginia shall further clarify the implementation of 480–03–19.816/817.102(e) (1) and (2) by amending the Virginia program as follows:

(1) Define the term "suitable." The definition should clarify the criteria, both physical and chemical, to be used to distinguish between materials which can and cannot be used for the backfilling of pre-existing benches or mined-out areas;

(2) Add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill;

(3) Add to 480–03–19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled;

(4) Add a definition of "small" to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope; and

(5) Add a requirement that whenever coal refuse is placed on pre-existing benches for the purpose of returning the benches to AOC, the performance standards for the placement of excess spoil on pre-existing benches will be followed.

* * * * *

[FR Doc. 95–19509 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 92

RIN 0790–AG18

Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance

AGENCY: Office of the Assistant Secretary of Defense for Economic Security, DoD.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule promulgates policies and procedures, developed by both the Departments of Defense and Housing and Urban Development, for implementing the Base Closure Community Redevelopment and Homeless Assistance Act (the "Redevelopment Act"). The Department of Housing and urban Development will be making a similar publication in 24 CFR part 586.

DATES: This part is effective August 8, 1995. Comments must be received by October 10, 1995.

ADDRESSES: Comments must be forwarded to the Office of the Assistant Secretary of Defense (Economic Security), 3300 Defense Pentagon, Room 1D760, Washington, DC 20301–3300. This rule was written jointly by the Department of Defense and the Department of Housing and Urban Development. All public comments will be reviewed by both Departments and subsequent amendments will be drafted together.

FOR FURTHER INFORMATION CONTACT: Robert Hertzfeld, Office of Assistant Secretary of Defense (Economic Security), Department of Defense, 3300 Defense Pentagon, Room 1D–760, Washington, DC 20301–3300, (703) 695–1470 or Thelma Moore, Deputy Assistant Secretary for Planning/Community Viability, Office of Community Planning and Development, Room 7204, Department of Housing and urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708–2484 or, TDD number for hearing and speech-impaired, (202) 708–0738 (these telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: The Redevelopment Act amends the Base Closure and Realignment Act of 1988 and the Defense Base Closure and Realignment Act of 1990, both as amended by the National Defense Authorization Act for Fiscal Year 1994.

I. Certification

It has been determined that this interim rule is not a significant regulatory action. This part is not subject to the Regulatory Flexibility Act because it would not have a significant economic impact on a substantial number of small entities. This interim rule doe not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

II. Other Matters

A. Justification for Interim Rulemaking

Although rulemaking procedures generally require the publication of a proposed rule before regulations are made final and effective, there exists good cause to publish this rule for effect without first soliciting public comment. Forty-five military installations from the 1988, 1991, or 1993 base closure/realignment rounds have elected to be included under this new process. HUD anticipates the receipt of applications in the very near future from the LRAs representing these closure/realignment sites. Moreover, a fourth round of military base closures and realignments was initiated with the Secretary of Defense submitting a list of proposed closures/realignments to the Defense Base Closure and Realignment Commission on February 28, 1995. The Commission submitted its recommendations to the President on June 30, 1995. Upon approval by the President and Congress, this rule will apply immediately to the installations on this 1995 closure/realignment list.

To delay the implementation of this law until publication of a final rule would mean that base reuse would be delayed until a final rule is published. LRAs are awaiting the guidance contained in this rule, necessitating implementation through this interim rule.

DoD and HUD invite public comment on this interim rule within the 60-day comment period. All comments will be considered during the development of the final rule.

B. Impact on the Environment

HUD has made a Finding of No Significant Impact with respect to the environment in accordance with HUD regulations in 24 CFR part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Department of Housing and Urban Development, Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

C. Impact on the Family

The General Counsel of HUD, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule would not have a potentially significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

III. Background

A. Legislative Summary

This interim rule promulgates policy and procedures for implementing the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 ("Redevelopment Act") (Pub. L. 103–421). The Redevelopment Act amends the Base Closure and Realignment Act of 1988 (Pub. L. 100–526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510) (both at 10 U.S.C. § 2687, note), both as amended by the National Defense

Authorization Act for Fiscal Year 1994 (Pub. L. 103–160).

B. Circumstances That Led to This New Law

Title V of the Stewart B. McKinney Homeless Assistance Act of 1987, as amended, 42 U.S.C. 11411 ("Title V"), granted first priority on use of all surplus federally-owned real and personal property, including former military installations, to the homeless. The Title V provisions have worked reasonably well for small parcels, however, in the base closure and realignment environment the processes for reuse planning and homeless use were independent and the timing incompatible. On October 25, 1994, the President signed the Redevelopment Act, which exempts base closure and realignment property from Title V and substitutes a new community-based process wherein representatives of the homeless will work directly with Local Redevelopment Authorities (LRAs) on the reuse of former military installations.

The Redevelopment Act provides a process which aims to balance the needs of the homeless with other development interests in the community in the vicinity of the installation. Congress recognized that in order to achieve this balance, all interests must be "put on the table" at the same time. Accordingly, the Redevelopment Act requires the LRA to accept notices of interest simultaneously from state and local governments and other interests that include development and public purpose uses, including public benefit uses pursuant to the federal surplus property disposal authorities.

C. Applicability

The Redevelopment Act applies to all bases that are approved for closure/realignment under Pub. L. 101–510 after October 25, 1994 as well as those installations approved for closure/realignment prior to October 25, 1994 under either Pub. L. 100–526 or Pub. L. 101–510 that have elected to come under the new process prior to December 24, 1994. All other installations approved for closure/realignment prior to October 25, 1994 that have not elected to come under the new process, are covered by the Title V process as amended by Pub. L. 103–160. The Title V process continues to apply to all other unutilized, underutilized, excess, or surplus property owned by the Federal government, including military properties that are not part of a base closure or realignment.

LRAs which have elected to come under the Redevelopment Act should pay particular attention to § 92.20(c)(1) of this part which extends the permissible time period within which an LRA can set its date for receipt of notices of interest. For LRAs which have adequately complied with the statutory time limitation prior to publication of this interim rule, HUD will not expect them to reopen their notice period; however, those which have not yet so complied will be expected to follow this requirement. For all installations selected for closure or realignment prior to 1995 that have elected this process, the LRA must complete the period for receiving notices of interest no later than 90 days from the later of the publication of this interim rule or HUD's publication of 24 CFR part 586.

The Redevelopment Act recognizes that installations approved for closure or realignment before enactment of this law are well into the planning process and should therefore be treated differently than installations approved for closure/realignment subsequent to enactment. As a result, § 92.20(c) of this part allows for greater flexibility concerning the commencement and requirements of the outreach efforts to representatives of the homeless, state and local governments, and other interested parties in those communities.

The Redevelopment Act includes special considerations for providers who had applications pending on closure or realignment and disposal properties under Title V at the time of enactment of the Redevelopment Act. LRAs must consider and specifically address any applications that were pending as of the date of enactment. In the case of providers whose applications have been approved (but the property applied for has not been transferred or leased), the LRA must accommodate the provider with substantially equivalent property on or off the installation, sufficient funding to acquire such equivalent property, services and activities that meet the needs identified in the application, or a combination of such property, funding, services, and activities.

D. Roles of DoD and HUD

DoD is responsible, through the Military Departments, for closing and disposing of the installations approved for closure or realignment. On July 20, 1995 (60 FR 37337), DoD published a final rule implementing other activities associated with the closure, realignment and disposal of military installations including the process whereby properties at an installation are screened for reuse by the Federal government. The actions undertaken by the Military Departments under that regulation precede the actions to be taken under this part. Interested parties should obtain copies of both.

DoD, through the Office of Economic Adjustment is responsible for recognizing the LRA. The LRA must, in accordance with § 92.30 of this part, submit to both HUD and DoD an application, which includes the redevelopment plan and the homeless assistance submission. HUD will review the application and notify DoD and the LRA of its findings. HUD's standards of review are described at § 92.35(b) of this part. Throughout its review, HUD will be in contact with the LRA for any clarifications or additional information it needs to complete the review.

Pursuant to § 92.25 of this part, representatives of HUD will be available to provide assistance to LRAs throughout the planning process. LRAs are encouraged to contact their HUD field office for technical assistance including lists of homeless providers operating in the vicinity of the installation. Representatives of HUD will be available to attend workshops held under § 92.20(c)(3)(ii) of this part and other meetings as requested by the LRA. The planning process created by The Redevelopment Act is community-based. HUD neither anticipates nor desires to mandate results, but will seek to expedite and assist all parties in arriving at an equitable balance between economic redevelopment and homeless needs. DoD and HUD anticipate that the reuse plans will be general land use plans for which HUD will be reviewing the balance made between homeless assistance and economic development needs rather than the suitability of a specific site for use by the homeless.

Although certain sites may be identified for use for the homeless, DoD and HUD recognizes that the environmental review process may show that certain properties are not suitable for the designated use. If such a finding is made, the LRA and the representative of the homeless should negotiate for alternate arrangements that would enable the same balance of interests that was made originally. If, because of the environmental condition, less property is available for reuse, it is possible that less property would be made available for homeless use. The frequency of this problem should be limited because of the extensive environmental review throughout the process, and with dialogue between the LRA and the Military Department and the Base Realignment and Closure Environmental Coordinator.

E. HUD's Approach

1. Need: Continuum of Care

In its review, HUD will consider whether the redevelopment plan promotes projects and activities that address the expressed needs within the current homeless service system. The homeless assistance submission should assess the current homeless service system in the vicinity of the installation and the extent to which the redevelopment plan may support those notices of interest that propose to address the critical gaps in the system.

A comprehensive homeless service system is called a continuum of care. The continuum of care model is predicated on the understanding that homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs—physical, economic, and social. Dealing effectively with the problems of homelessness requires a comprehensive system of housing and necessary services for each stage—from emergency shelter to housing with no established limitation on the amount of time of residence, as well as a strong prevention strategy.

A continuum of care system includes:

(a) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless.

(b) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(c) Transitional housing with appropriate supportive services to help those homeless individuals and families that are not prepared to make the transition to independent living;

(d) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and,

(e) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

Supportive services are critical to all components of the continuum of care. These services include, but are not limited to case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing, family violence services, education services, moving services, assistance in obtaining entitlements and referral to veterans services and legal services. These services enable homeless persons and families to move through the continuum of care toward independent living.

2. Impact: Consolidated Plan and Other Local Plans

HUD will consider whether the homeless assistance submission is consistent with the Consolidated Plan or with any other existing economic, community and housing plans adopted by the jurisdictions in the vicinity of the installation and whether it furthers the overall goals and objectives of these plans.

The Consolidated Plan encompasses the planning, application, and reporting requirements of four formula grant programs administered by HUD's Office of Community Planning and Development: Community Development Block Grant, HOME Investment Partnerships, Housing Opportunities for Persons with AIDS, and Emergency Shelter Grants. The requirements of the Consolidated Plan can be found in the final rule published in the Federal Register on January 5, 1995 at 60 FR 1878 and codified at 24 CFR Part 91. Some communities in the vicinity of an installation are eligible for some or all of these programs, and if eligible, are required to submit to HUD a Consolidated Plan. LRA's that encompass non-entitlement areas, or those without a Consolidated Plan should refer to other long-range plans or alternative resources that exist and have been developed within the jurisdiction(s) they represent. LRAs should use the information in these plans in evaluating the notices of interest received from representatives of the homeless.

3. Balance in the Community Between the Need for Homeless Housing and Services, Economic Redevelopment and Other Development

HUD will consider how the LRA balances the community's homeless needs with the need for economic and other development. LRAs are encouraged to propose activities that advance economic and other development objectives which also address the needs of homeless persons and families.

For example, an LRA may propose that a large warehouse facility be targeted for use as a light manufacturing facility. The LRA estimates that this facility will employ many semi-skilled employees. In its redevelopment plan, the LRA proposes that prospective users of this property will be asked to notify the homeless job search agency, an organization being supported with property in the LRA's homeless assistance submission, of any available positions at the facility. The prospective users of the facility will be asked by the LRA to interview applicants referred by the agency and use its best efforts to hire qualified persons. Under this scenario, addressing the economic development needs of a community also addresses some of the needs of persons that are homeless. Solutions to diverse community problems need not be mutually exclusive.

4. Outreach to Representatives of the Homeless

HUD will examine efforts made by the LRA to both advertise the availability of property to representatives of the homeless and to help representatives of the homeless find a match between their needs and local resources, including the facilities at the installation. HUD will consider whether the advertisement requirements of § 92.20(c) of this part were met, but more importantly, HUD will focus on the quality of the contact. LRAs should design their submissions. While LRAs can emphasize particular needs, outreach efforts should not limit the possible range of expressions of interest.

5. Properties: Uniqueness of each Installation

The application requirements described at § 92.30 of this part apply to installations of any size, type or configuration. Although the regulation makes no distinction between small and large installations, HUD will work closely with the LRA for each installation to help it develop an application that makes sense for that particular installation. All LRAs must submit a complete application. HUD will then judge the application on its individual merits.

HUD recognizes that redevelopment plans and homeless assistance submissions developed by LRAs for major installations, which may encompass thousands of acres, will be more lengthy and complicated than those of 3 and 4 acre reserve facilities that contain few buildings. Moreover, an installation located in a small rural

community with a small homeless population will not be held to the same level of detail as will a large metropolitan area with a large homeless population.

F. Eligible Activities

The intent of the Redevelopment Act is to focus on a community-based process to address local homeless needs within the context of the base reuse and other community and economic needs. LRAs and representatives of the homeless are encouraged to be creative. Eligible activities may include:

1. Outreach services and assessment services;
2. Emergency shelter;
3. Transitional housing, social services tied to transitional housing or services located apart from housing units;
4. Housing that has no established limitation on the amount of time of residence; and,
5. Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

LRAs and representatives of the homeless are cautioned, however, that under the Redevelopment Act, no-cost transfers of former military properties are limited to transfers to representatives of the homeless. Redevelopment are limited to transfers to representatives of the homeless. Redevelopment plans proposing transfers of property from the Military Department to homeless individuals or families for free will not be accepted.

List of Subjects in 32 CFR Part 92

Community development, Government employees, Military personnel, Surplus government property.

Accordingly, title 32, chapter I, subchapter C, is amended by adding Part 92 to read as follows:

PART 92—REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE—COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

Sec.

92.1 Purpose.
92.5 Definitions.
92.10 Applicability.
92.15 Waivers and extensions of deadlines.
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92.25 HUD's negotiations and consultations with the LRA.
92.30 LRA application.
92.35 HUD's review of the application.
92.40 Adverse determinations.
92.45 Disposal of buildings and property.

Authority: 10 U.S.C. 2687 note.

§ 92.1 Purpose.

This part implements the Base Closure Community Redevelopment and Homeless Assistance Act (Pub. L. 103–421, approved October 25, 1994). It describes the roles and responsibilities of the Department of Defense (DoD), the Department of Housing and Urban Development (HUD), Local redevelopment Authorities (LRAs), and representatives of the homeless in planning and implementing the reuse of domestic military installations that are approved for closure or realignment. Specifically, this part describes the guidance DoD and HUD provide to the LRA, the planning documents the LRA develops and submits to DoD and HUD in planning the reuse of these installations, and the standards of review that HUD observes when reviewing the documents submitted by the LRA. Pub. L. 103–421 authorizes HUD to determine whether the plan for the reuse of the installation proposed by LRA balances the community development, economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities.

§ 92.5 Definitions.

As used in this part:

CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq*).

Communities in the vicinity of the installation. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the LRA for the installation.

Consolidated Plan. The plan prepared in accordance with the requirements of 24 CFR part 91.

Continuum of care system. (1) Comprehensive homeless assistance system that includes:

(i) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless;

(ii) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(iii) Transitional housing with appropriate supportive services to help those homeless individuals and families that are not prepared to make the transition to independent living;

(iv) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and

(v) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

(2) Supportive services enable homeless persons and families to move through the continuum of care toward independent living. These services include, but are not limited to case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing, family violence services, education services, moving services, assistance in obtaining entitlements, and referral to veterans services and legal services.

Day. One calendar day including weekends and holidays.

DoD. Department of Defense.

HHS. Department of Health and Human Services.

Homeless person.

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD. Department of Housing and Urban Development.

Installation. A base, camp, post, station, yard, center, homeport facility for any ship or other activity under the jurisdiction of DoD which is approved for closure or realignment under the Base Closure and Realignment Act of 1988 (Pub. L. 100–526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510) (both at 10 U.S.C. 2687, note), both as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160, 107 Stat. 1909).

Local redevelopment authority (LRA). Any authority or instrumentality established by state or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

NEPA. National Environmental Policy Act of 1969 (42 U.S.C. 4320).

OEA. Office of Economic Adjustment, U.S. Department of Defense.

Private nonprofit organization. An organization no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designed an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Redevelopment plan. A conceptual land use plan prepared by the recognized LRA to guide local reuse of the former military installation.

Representative(s) of the homeless. A State or local government agency or private nonprofit organization, including a homeless assistance planning board, that provides or proposes to provide services to the homeless.

Substantially equivalent. Property that is functionally suitable for the approved Title V application. For example, if the representative of the homeless had an approved Title V application for a building that would accommodate 100 homeless persons in an emergency shelter, the replacement facility would also have to accommodate 100 at a comparable cost for renovation.

Substantially equivalent funding. Sufficient funding to acquire a substantially equivalent facility.

Surplus property. Any property not required for the needs and the discharge of the responsibilities of any Federal land holding agency as determined by the Secretary of Defense.

Title V. Title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (42 U.S.C. 11411) as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160).

Urban county. A county within a metropolitan area as defined at 24 CFR 570.3.

§ 92.10 Applicability.

(a) *General.* This part applies to all installations that are approved for closure/realignment by the President and Congress under Pub. L. 101–510 after October 25, 1994.

(b) *Request for inclusion under this process.* This part also applies to installations that were approved for closure/realignment under either Pub. L. 100–526 or Pub. L. 101–510 prior to October 25, 1994 and for which an LRA submitted a request for inclusion under this part to DoD by December 24, 1994. A list of such requests was published in the **Federal Register** on May 30, 1995 (60 FR 28089–28091).

(1) *Installations with pending but not approved Title V applications as of October 25, 1994.* The LRA shall consider and specifically address any application for use of buildings and property to assist the homeless that were received by HHS prior to October 25, 1994 and were pending with the Secretary of HHS on that date. These pending requests shall be addressed in the LRA's homeless assistance submission.

(2) *Installations with approved Title V applications.* Where property has an approved Title V application, yet has not been assigned or otherwise disposed of by the Military Department, the LRA must insure that its homeless assistance submission provides the Title V applicant with:

(i) The property requested;

(ii) Properties, on or off the installation, that are substantially equivalent to those requested;

(iii) Sufficient funding to acquire such substantially equivalent properties;

(iv) Services and activities that meet the needs identified in the application; or

(v) A combination of the properties, funding and services and activities described previously.

(c) *Revised Title V process.* All other installations approved for closure or realignment under either Pub. L. 100–526 or Pub. L. 101–510 prior to October 25, 1994 for which there has been no request for consideration under this part, are covered by the process stipulated under Title V. Buildings or property that were transferred or leased for homeless use under Title V prior to October 25, 1994 may not be reconsidered under this part.

§ 92.15 Waivers and extensions of deadlines.

(a) After consultation with the LRA and HUD, DoD, through the Assistant Secretary of Defense (Economic Security), upon a finding that it is in the interest of the communities affected by the closure/realignment of the installation, may extend or postpone any deadline contained in this part.

(b) Upon completion of a determination and finding of good cause, and except for deadlines and actions required on the part of DoD, HUD may waive any provision of §§ 92.20 through 92.45 in any particular case, subject only to statutory limitations.

§ 92.20 Overview of the process.

(a) *Responsibilities of the Military Department.* The Military Department shall make installation properties available to other DoD components and Federal agencies pursuant to 32 CFR part 91. The Military Department will keep the LRA informed of other Federal interest in the property during this process. Upon completion of this process the Military Department will notify HUD and will notify either the LRA, or the Chief Executive Officer of the state, as appropriate, and publish a list of surplus property on the installation that will be available for reuse in the **Federal Register** and a newspaper of general circulation in the communities in the vicinity of the installation.

(b) *Recognition of the LRA.* As soon as practicable after the list of installations recommended for closure or realignment is approved, DoD, through OEA, will recognize an LRA for the installation. Upon recognition, DoD shall publish the name, address, and point of contact for the LRA in the **Federal Register** and in a newspaper of general circulation in the communities in the vicinity of the installation.

(c) *Responsibilities of the LRA.* The LRA should begin to conduct outreach efforts with respect to the installation as soon as is practicable after the date of approval of closure/realignment of the installation. Although the process may begin at any time after this date of approval, the local reuse planning process must begin no later than the completion of Federal screening procedures which is deemed to be the date of the DoD **Federal Register** publication of available property described at § 92.20(a). For those installations that have begun the process described in this part prior to publication of this rule, HUD will, on a case by case basis, determine whether the statutory requirements have been fulfilled and whether any additional requirements listed in this part should be required. Upon the **Federal Register** publication described in § 92.20(a), the LRA shall:

(1) Publish, within 30 days, in a newspaper of general circulation in the communities in the vicinity of the installation, the time period during which the LRA will receive notices of interest from state and local governments, representatives of the homeless, and other interested parties.

This publication shall include the name, address, telephone numbers and the point of contact for the LRA and information on the prescribed form and contents of the notice of interest. The LRA shall notify DoD of the deadline specified for receipt of notices of interest.

(i) For all installations selected for closure or realignment prior to 1995 that have elected to proceed under Pub. L. 103–421 and which have begun receiving notices of interest prior to publication of this rule, the LRA shall have accepted notices of interest for not less than 30 days and not more than 180 days from the date the LRA submitted a request for inclusion under this process as described at § 92.10(b). For installations selected for closure or realignment prior to 1995 for which the LRA has not begun or has not completed the acceptance of notices of interest prior to publication of this part, the LRA shall accept notices of interest for not less than 30 days and not more than 90 days from the later of the date of publication of this part or the date of HUD's publication of 24 CFR part 586.

(ii) For installations selected for closure or realignment in 1995 or thereafter, notices of interest shall be accepted for a minimum of 90 days and not more than 180 days.

(2) Prescribe the form and contents of notices of interest.

(i) The LRA may not release to the public any information submitted under this part without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the state and communities in which the installation concerned is located.

(ii) The notices of interest from representatives of the homeless must include:

(A) A description of the homeless assistance program proposed, including the purposes to which the property or facility will be put, which may include uses such as supportive services, job and skills training, employment programs, shelters, transitional housing or housing with no established limitation on the amount of time of residence, food and clothing banks, treatment facilities, or any other activity which clearly meets an identified need of the homeless and fills a gap in the continuum of care;

(B) A description of the need for the program;

(C) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation;

(D) Information about the physical requirements necessary to carry out the program including a description of the buildings and property at the installation that are necessary to carry out the program;

(E) A description of the representative of the homeless which is submitting the notice, its capacity to carry out the program and its financial plan for implementing the program; and

(F) An assessment of the time required in order to commence carrying out the program.

(iii) The notices of interest from entities other than representatives of the homeless should specify the name of the entity and specific interest in property or facilities, along with a description of the planned use.

(3) Undertake outreach efforts to representatives of the homeless by contacting local government officials and other persons or entities that may be interested in assisting the homeless within the vicinity of the installation.

(i) The LRA may invite persons and organizations identified on the HUD list of representatives of the homeless and any other representatives of the homeless with which the LRA is familiar, operating in the vicinity of the installation, to the workshop described in § 92.20(c)(3)(ii).

(ii) The LRA in coordination with the Military Department and HUD shall conduct at least one workshop where representatives of the homeless have an opportunity to:

(A) Learn about the closure/realignment and disposal process;

(B) Tour the buildings and properties available either on or off the installation;

(C) Learn about the LRA's process and schedule for receiving notices of interest as guided by § 92.20(c)(2); and

(D) Learn about any known land use constraints affecting the available property and buildings.

(iii) The LRA should meet with representatives of the homeless that express interest in discussing possible uses for these properties to alleviate gaps in the continuum of care.

(4) Consider various properties in response to the notices of interest. The LRA may consider property that is located off the installation.

(5) Develop an application, which includes the redevelopment plan and the homeless assistance submission. This application shall consider the notices of interest received from state and local governments, representatives of the homeless, and other interested parties. This shall include, but not be limited to, entities eligible for public benefit transfers under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 472); representatives of the homeless; commercial, industrial, and residential development interests; and, other interests. From the deadline date for receipt of notices of interest described at § 92.20(c)(1), the LRA shall have 270 days to complete and submit the LRA application to DoD and HUD. The application requirements are described at § 92.30.

(6) Make the draft application available to the public for review and comment throughout the process of developing the application. The LRA must conduct at least one public hearing on the application prior to its submittal to HUD and DoD, and a summary of these public comments shall be included in the application when it is submitted.

(d) *State, local, and public benefit screening.* The LRA should, while conducting its outreach efforts, work with the federal agencies that sponsor public benefit transfers under the Federal Property and Administrative Services Act of 1949. Those agencies can provide a list of parties in the vicinity of the installation that might be interested in and eligible for public benefit transfers. The LRA should make a reasonable effort to inform such parties of the availability of the property and incorporate their interests within the planning process. These requests are not required to be met, but must be considered.

§ 92.25 HUD's negotiations and consultations with the LRA.

HUD may negotiate and consult with the LRA before or during the course of preparation of the LRA application and during HUD's review thereof with a view toward avoiding any preliminary determination that the application does not meet any requirement of this part. HUD will provide the LRA with a list of persons and organizations that are representatives of the homeless operating in the vicinity of the installation.

§ 92.30 LRA application.

(a) *Redevelopment plan.* A copy of the redevelopment plan shall be part of the application.

(b) *Homeless assistance submission.* This component of the application shall include the following:

(1) *Information about homelessness in the communities in the vicinity of the installation.*

(i) A list of all the jurisdictions which comprise the LRA.

(ii) A description of the unmet need in the continuum of care system within each jurisdiction, which should include information about any gaps that exist in the continuum of care for particular homeless subpopulations The source for this information shall depend upon the size and nature of the jurisdiction(s) that comprise the LRA. LRAs representing:

(A) Jurisdictions that are required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table, Priority Homeless Needs Assessment Table, and narrative description thereof from that Consolidated Plan including the inventory of facilities and services that assist the homeless in the jurisdiction.

(B) Jurisdictions that are part of an urban county that is required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table, Priority Homeless Needs Assessment Table, and narrative description thereof from that Consolidated Plan including the inventory of facilities and services that assist the homeless in the jurisdiction. In addition, the LRA shall explain what portion of the homeless population and subpopulations described in the Consolidated Plan are attributable to the jurisdiction it represents.

(C) Jurisdictions not described by paragraph (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section shall submit a narrative description of what it perceives to be the homeless population within the jurisdiction(s) it represents and a brief inventory of the facilities and services that assist homeless persons and families within each jurisdiction. LRAs that represent these jurisdictions are not required to conduct surveys of the homeless population.

(2) *Proposed assistance to homeless persons and families.* (i) A description of the proposed activities to be carried out on or off the installation and a discussion of how these activities meet the needs of the homeless by addressing the gaps in the continuum of care. The activities need not be limited to expressions of interest in property, but may also include discussion of how economic redevelopment may benefit the homeless;

(ii) A copy of each notice of interest from representatives of the homeless for use of building and property and a description of the manner in which the LRA application addresses the need expressed in each notice of interest. If the LRA determines that a particular notice of interest should not be awarded property, an explanation of why the LRA determined not to support that notice of interest, the reasons for which may include the impact of the program contained in the notice of interest on the community as described in paragraph (b)(2)(iii) of this section; and

(iii) A description of the impact that the implemented redevelopment plan will have on the community. This shall include information on how the LRA's redevelopment plan might impact the character of existing neighborhoods adjacent to the properties proposed to be used to assist the homeless and should discuss alternative plans. Impact on schools, social services, transportation, infrastructure, concentration of minorities and/or low income persons also shall be discussed.

(3) *Buildings and properties.* (i) A copy of the legally binding agreements that the LRA proposes to enter into with the representative(s) of the homeless selected by the LRA to implement homeless programs that fill gaps in the existing continuum of care. The legally binding agreements shall provide for a process for negotiating alternative arrangements that would enable the same balance of interests made originally in the event that an environmental review conducted under § 92.45(a) subsequent to HUD approval indicates that any property identified for transfer in the agreement is not suitable for the intended purpose. Legally binding agreements must also provide for the reversion or transfer, either to the LRA or to another entity or entities of the buildings and property in the event they cease to be used for the homeless;

(ii) A description of how buildings and properties either on or off the installation will be used to fill some of the gaps in the current continuum of care system and an explanation of the suitability of the buildings and property for that use; and

(iii) Information on the availability of general services such as transportation, police, fire, and a discussion of infrastructure such as water, sewer, and electricity in the vicinity of the proposed homeless activities.

(4) *Balance with economic and other development needs.* (i) An assessment of the manner in which the application balances the expressed needs of the homeless and the needs of the communities comprising the LRA for economic redevelopment and other development; and

(ii) An explanation of how the LRA application is consistent with the appropriate Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(5) *Outreach.* The LRA shall explain how the outreach requirements described at § 92.20(c)(3) have been fulfilled. This explanation shall include a list of the representatives of the homeless with which the LRA consulted in preparing the application.

(c) *Public comments.* The LRA application shall include the materials described at § 92.20(c)(6). These materials shall be prefaced with an overview of the citizen participation process observed in preparing the application.

§ 92.35 HUD's review of the application.

(a) *Timing.* HUD shall complete a review of each application no later than 60 days after its receipt by HUD.

(b) *Standards of review.* The purpose of the review is to determine whether the application is complete and, with respect to the expressed interest and requests of representatives of the homeless, whether the redevelopment plan:

(1) *Need.* Takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the application for use and needs of the homeless in such communities.

(2) *Impact.* Takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation, including:

(i) Whether the plan is feasible in light of demands that would be placed on available social services, police and fire protection, and infrastructure in the community; and

(ii) Whether the application is consistent with the Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(3) *Balance.* Balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities.

(4) *Outreach.* Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation.

(i) HUD will examine whether the outreach requirements described at § 92.20(c)(3) have been fulfilled by the

LRA. HUD will carefully review the outreach process to insure that the LRA advertised the availability of installation properties to representatives of the homeless.

(ii) HUD will compare the list of homeless representatives contacted by the LRA against contacts maintained by the local HUD Field Office.

(5) *Properties.* Specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes. HUD will be mindful of the uniqueness of each installation. HUD will review this process so that it is confident that the LRA will make these buildings and properties available to representatives of the homeless in a timely fashion.

(c) *Notice of determination.* (1) HUD shall, no later than the 60th day after its receipt of the application, unless such deadline is extended pursuant to § 92.15(a), send written notification both to DoD and the LRA of its preliminary determination that the application meets or fails to meet the requirements of paragraph (b) of this section. If the application fails to meet the requirements, HUD will send the LRA:

(i) A summary of the deficiencies in the application;

(ii) An explanation of the determination; and

(iii) A statement of how the LRA must address the determinations.

(2) In the event that no application is submitted and no extension is requested as of the deadline specified in § 92.20(c)(5), and the state turns down a DoD written request to become recognized as the LRA, the absence of such application will trigger an adverse determination by HUD effective on the date of the lapsed deadline. Under these conditions, HUD will follow the process described at § 92.40.

(d) *Opportunity to cure.* (1) The LRA shall have 90 days from its receipt of the notice of preliminary determination under paragraph (c)(1) of this section within which to submit to HUD a revised application which addresses the determinations listed in the notice. Failure to submit a revised application shall result in a final determination that the redevelopment plan fails to meet the requirements of paragraph (b) of this section.

(2) HUD shall, within 30 days of its receipt of the LRA's resubmission, send written notification of its final determination to both DOD and the LRA.

§ 92.40 Adverse determinations.

(a) *Solicitation of proposals.* If HUD determines that the LRA's resubmission fails to meet the requirements of § 92.35(b) or if no resubmission is received, HUD:

(1) Shall review the original application including the notices of interest submitted by representatives of the homeless;

(2) Shall consult with the representatives of the homeless, if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless; and

(3) May request that each homeless representative submit a proposal for use of buildings or property at the installation to assist the homeless, including:

(i) A description of the program of such representative to assist the homeless;

(ii) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless;

(iii) Such information as HUD requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination; and

(iv) A certification from the local community that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

(b) *Review of proposals.* HUD shall review the proposal in accordance with the following criteria:

(1) The degree to which the proposal submitted by the representatives meets each of the four criteria listed in paragraph (a)(3) of this section.

(2) The extent to which the proposal fills a gap in the community's continuum of care system.

(3) The extent to which the proposal balances in an appropriate manner the needs for the communities in the vicinity of the installation for economic development and other development with the needs of the homeless.

(4) How the proposal specifies the manner in which buildings and property and resources and assistance on and off the installation will be made available for the homeless.

(c) *Environmental review.* HUD, in cooperation with DoD, shall complete an environmental review under NEPA and other applicable environmental laws and authorities listed in 24 CFR 50.4 before accepting a proposal under this part.

(d) *Notice of decision.* HUD shall notify DOD and the LRA, within 90 days of its receipt of the revised application, of its acceptance of a proposal and shall identify the buildings and property to be disposed of and the entities to which they should be transferred.

§ 92.45 Disposal of buildings and property.

(a) *Public benefit transfer screening.* After the local redevelopment plan is accepted for planning purposes by the Military Department and accepted by HUD, the Military Department will conduct an official public benefit transfer screening in accordance with the Federal Property Management Regulations (41 CFR 101–47.303–2) based upon the uses identified in the redevelopment plan. Federal sponsoring agencies shall notify eligible applicants that any request for property must be consistent with the uses identified in the redevelopment plan. At the request of the LRA, the Military Department may conduct the official state and local public benefit screening before the completion of the redevelopment plan.

(b) *Environmental review.* The Military Department shall complete an environmental review of the installation in compliance with NEPA and CERCLA prior to disposal of the property. The Military Department may adopt an environmental review completed under § 92.40(c).

(c) *Disposal.* Upon receipt of a notice of approval of an application from HUD under § 92.35(c) and § 92.40(d), DOD shall, without consideration, dispose of the subject buildings and property in compliance with the approved application, either to the LRA or directly to the representative(s) of the homeless.

(d) *LRA's responsibility.* The LRA shall be responsible for the implementation of and compliance with legally binding agreements under the application.

(e) *Reversions to the LRA.* If a building or property reverts to the LRA under a legally binding agreement under the application, the LRA shall take appropriate actions to secure, to the maximum extent practicable the utilization of the building or property by other homeless representatives to assist the homeless. An LRA may not be required to utilize the building or property to assist the homeless.

Dated: August 1, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19245 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 144–4–7041; FRL–5264–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control District, South Coast Air Quality Management District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on March 28, 1995 and April 19, 1995. The revisions concern rules from the following districts: San Diego County Air Pollution Control District (SDCAPCD); South Coast Air Quality Management District (SCAQMD); and Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). This final action serves as a final determination that the deficiencies in the rules that started sanction clocks have been corrected and that any sanctions or Federal Implementation Plan (FIP) obligations triggered by those deficiencies are permanently stopped. The rules control VOC emissions from fixed and floating roof tanks at bulk plants and terminals; bakery ovens; and the coating of metal parts and products. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on September 7, 1995.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Ventura County Air Pollution Control District, 669 County Square Drive, Second Floor, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1995 in 60 FR 15891, EPA proposed to approve SDCAPCD's Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals into the California SIP. On April 19, 1995 in 60 FR 19554, EPA proposed to approve the following rules into the California SIP: SCAQMD's Rule 1153, Commercial Bakery Ovens; and VCAPCD's Rule 74.12, Surface Coating of Metal Parts and Products. Rule 61.1 was adopted by SDCAPCD on January 10, 1995; Rule 1153 was adopted by SCAQMD on January 13, 1995; and Rule 74.12 was adopted by VCAPCD on January 10, 1995. These rules were submitted by the California Air Resources Board (CARB) to EPA on January 24, 1995 (SDCAPCD 61.1) and February 24, 1995 (SCAQMD 1153 and VCAPCD 74.12). These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A), which required that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amended Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRMs cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and with EPA's regulations and interpretations of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRMs cited above. EPA has found that the rules meet the applicable requirements. A detailed discussion of the rule provisions and evaluations has been provided in 60 FR 15875 and 60 FR 19554 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated March 7, 1995—Rule 61.1; and March 27, 1995—Rules 1153 and 74.12).

Response to Public Comments

A 30-day public comment period was provided in 60 FR 15891 and 60 FR 19554. No comments were received.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

The OMB has exempted this action from review under Executive Order 12866.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to

State, local, or tribal governments or to the private sector result from this action.

EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 14, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (214)(i)(B) and (215)(i)(A)(*2*) and (215)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(214) * * *

(i) * * *

(B) San Diego County Air Pollution Control District.

(*1*) Rule 61.1 adopted on January 10, 1995.

* * * * *

(215) * * *

(i) * * *

(A) * * *

(*2*) Rule 1153 adopted on January 13, 1995.

(B) Ventura County Air Pollution Control District.

(*1*) Rule 74.12 adopted on January 10, 1995.

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[FR Doc. 95–19504 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FRL–5274–1]

Transportation Conformity; Approval of Petition for Exemption From Nitrogen Oxides Provisions, Transitional Ozone Nonattainment Area, Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a petition from the Denver Regional Council of Governments (DRCOG) requesting that the Denver metropolitan area, an ozone nonattainment area classified as transitional, be exempted from the requirements regarding the control of oxides of nitrogen (NO_X) imposed by the Federal conformity rules. The initial petition for exemption was submitted by DRCOG on May 25, 1994. Supporting documentation for the initial petition was submitted August 1, 1994.

EFFECTIVE DATE: This action is effective as of July 28, 1995.

ADDRESSES: Copies of the documents relevant to these actions are available for public inspection during normal business hours at the following location. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. U.S. Environmental Protection Agency, Region 8, Air Quality Branch (8ART–AP), 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Aundrey C. Wilkins, SIP Section (8ART–AP), Air Programs Branch, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, telephone (303) 294–1379. Fax: 303–293–1229.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X as are applied to major stationary sources of VOC. The new NO_X requirements are reasonably available control technology (RACT) and new source review (NSR). Section 182(f) also specifies circumstances under which the NO_X requirements would be limited or would not apply.

EPA's general and transportation conformity rules, as well as the Inspection and Maintenance (I/M) regulations, reference the section 182(f) exemption process as a means for exempting affected areas from certain NO_X conformity requirements. See 58 FR 62197, November 24, 1993, Transportation Conformity; and 58 FR 63240, November 30, 1993, General Conformity; and 57 FR 52989, I/M.

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of NO_X would not contribute to attainment" of the ozone NAAQS in those areas. EPA has indicated that in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data, without having implemented the section 182(f) NO_X provisions, it is clear that this test is met since "additional reductions of NO_X would not contribute to attainment" of the NAAQS in that area.

This interpretation is discussed in a May 27, 1994 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), entitled "Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria." This memorandum revised relevant portions of previously-issued OAQPS guidance dated December, 1993, entitled "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)." Both documents address EPA's policy regarding NO_X exemptions for areas outside an ozone transport region that have air quality monitoring data showing attainment. The Enhanced I/M regulations, the section 182(f) NO_X RACT and NSR requirements and the guidance cited above apply only to marginal and above ozone nonattainment areas, but not nonclassifiable ozone nonattainment areas (i.e., submarginal, transitional, and incomplete/no data). However, a June 17, 1994, EPA document entitled "Conformity; General Preamble for Exemption from Nitrogen Oxides Provisions" (59 FR 31238) ("General Preamble"), among other things, provides guidance on the exemption of nonclassifiable ozone nonattainment areas, outside an ozone transport region, from the conformity rule's NO_X requirements based on air quality monitoring data showing attainment. As a transitional ozone nonattainment area, the Denver metropolitan area falls within the "nonclassifiable" category.

Under the general conformity rule, NO_X emissions that are caused by federal actions that exceed applicable threshold levels are required to demonstrate conformity to the applicable SIP. The transportation conformity rule requires regional emissions analysis of motor vehicle NO_X emissions for ozone nonattainment and maintenance areas in order to determine the conformity of transportation plans and programs to implementation plan requirements. This analysis must demonstrate that the NO_X emissions which would result from the transportation system if the proposed transportation plan were implemented are within the total allowable level of NO_X emissions from highway and transit motor vehicles ("the emission budget") as identified in a submitted (or approved) attainment demonstration or maintenance plan. Until an attainment demonstration (or for nonclassifiable areas a maintenance plan) is approved by the EPA, the regional emissions analysis of the transportation system must also satisfy the "build/no-build" test. That is, the analysis must demonstrate that emissions from the transportation system, if the proposed transportation plan and program were implemented, would be less than the emissions from the transportation system if only the previous applicable transportation plan and program were implemented. Furthermore, the regional emissions analysis must show that emissions from the transportation system, if the transportation plan or program were implemented, would be lower than 1990 levels.

With respect to the NO_X requirements of the conformity rules, DRCOG submitted a NO_X exemption petition on May 25, 1994 and submitted supporting documentation via a letter dated August 1, 1994. Ambient air quality data provided with the DRCOG petition showed no violations of the ozone NAAQS during the three-year period from 1991 through 1993. Further, the Colorado Air Pollution Control Division (APCD) provided additional air quality data for the same time period supporting DRCOG's position that there were no violations.

On March 23, 1995, EPA announced its proposed approval of the NO_X exemption request for the nonclassifiable ozone nonattainment area of the Denver metropolitan area (56 FR 15269). In that proposed rulemaking action, EPA described in detail its rationale for approving this NO_X exemption request, considering the specific factual issues presented. Rather than repeating that entire discussion in this document, it is incorporated by reference here. Thus, the public should review the notice of proposed rulemaking for relevant background on this final rulemaking action.

II. Response to Comments

The EPA requested public comments on all aspects of the proposed action to approve the section 182(f) petition for the Denver metropolitan area. The EPA received six letters of support.

The EPA received four adverse comment letters and one letter requesting a clarification. One of the adverse letters was signed by three environmental groups and contained comments objecting to the EPA's general policy on section 182(f) exemptions. This group of three requested that their letter be included in each EPA rulemaking action for section 182(f) petitions. One of the four adverse comment letters was received on August 5, 1994, prior to publication of the EPA proposed approval rulemaking. EPA also received one letter that was not adverse but asked that the impact of granting an ozone NO_X exemption be made clearer. EPA is responding to all of these comments in the final rulemaking.

Comment 1

Certain commenters argued that NO_X exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c)(3)(A)(iii), the CAA's conformity provisions.

EPA Response

Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which section 302(e) of the CAA defines to include States) may petition for NO_X exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that "person[s]" [1] may petition for a NO_X determination "at any time" after the ozone precursor study required under section 185B of the Act is finalized,[2] and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) "at any time", this must include times when there is no plan revision from the State pending at EPA.

In regard to the comment concerning the appropriate Act authority for granting transportation-related NO_X waivers, the EPA agrees, with certain exceptions, that section 182(b)(1) is the appropriate authority under the Act for waiving the transportation conformity rule's NO_X "build/no build" and "less-than-1990" tests, and is in the process of amending the rule to be consistent with the statute. However, the EPA believes that this authority is only applicable with respect to those areas that are subject to section 182(b)(1).

[1] Section 302(e) of the Act defines the term "person" to include States.

[2] The final section 185B report was issued July 30, 1993.

Marginal and below ozone nonattainment areas (which includes nonclassifiable areas like Denver) are not subject to section 176(c)(3)(A)(iii) because they are not subject to section 182(b)(1). These areas, however, are still subject to the requirements of section 176(c)(1), which sets out criteria that, if met, will assure consistency with the SIP. The EPA believes it is reasonable and consistent with the Act to provide relief under section 176(c)(1) from the interim-period NO_X transportation conformity requirements where the Agency has determined that NO_X reductions would not be beneficial, and to rely, in doing so, on the NO_X exemption tests provided in section 182(f).

The basic approach of the Act is that NO_X reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach, but also includes specific substantive tests which provide a basis for EPA to determine when NO_X requirements should not apply. Whether under section 182(b)(1) or section 182(f), where EPA has determined that NO_X reductions will not benefit attainment or would be counterproductive in an area, the EPA believes it would be unreasonable to insist on NO_X reductions for purposes of meeting RFP or other milestone requirements. Moreover, there is no substantive difference between the technical analysis required to make an assessment of NO_X impacts on attainment in a particular area, whether undertaken with respect to mobile source or stationary source NO_X emissions. Consequently, the EPA believes that granting relief from the NO_X conformity requirements of section 176(c)(1) under section 182(f) in these cases is appropriate.

Comment 2

Three years of "clean" data fail to demonstrate that NO_X reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one three-year period with "attainment."

EPA Response

The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of [NO_X] would not contribute to attainment" of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since "additional reductions of [NO_X] would not contribute to attainment" of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

Comment 3

Some commenters argued that in Denver's case, the EPA has previously determined that the ozone monitoring network was insufficient and an ambient air station for the measurement of ozone in the southwest metropolitan area has not yet been established. Thus, approval of the NO_X exemption is based on an inadequate monitoring network and the health of Colorado residents will not be protected if a NO_X exemption is granted.

EPA Response

EPA disagrees with the commenter that approval of this NO_X exemption is based upon an inadequate monitoring network and that the health of Colorado residents will not be protected if an exemption is granted. Also, as explained below, an ambient air station has been established in the southwest metropolitan area. No exceedances have been recorded in 1994 at either the old or newer ozone ambient air monitoring stations. Although the commenter is correct in saying that there have been concerns expressed in the past about the monitoring network by EPA, as the proposal made clear, EPA believes that the major concerns have been corrected and any remaining concerns do not provide a significant enough basis to deny the NO_X exemption request. EPA's concerns about the network—conveyed initially to the APCD in 1989—primarily involved the adequacy of the system to monitor the maximum concentration areas, as required by 40 CFR part 58. Various actions have since been undertaken by the APCD to address EPA's primary concerns, and efforts are ongoing to address other, more general concerns. There are ten sites currently on the Denver ozone ambient monitoring network. These include two sites added in 1993 in the northwest portion of the nonattainment area at NREL (National Renewable Energy Lab site) and South Boulder Creek. One new site was recently added this year at the Chatfield Reservoir by Campground in the southwest. There have been no violations recorded by the Denver ozone ambient air monitoring network during the three years in review (1991, 1992, 1993) nor during 1994. Data in AIRS show only one exceedance (of 127 ppb) during this time, which occurred in 1993 at the South Boulder Creek site. Despite the lack of violations, additional analyses of the ozone ambient air monitoring network were undertaken, in part at EPA's urging, to ensure that future ozone pollution would continue to be adequately monitored. The commenter expressed concern about the adequacy of monitoring in the southwest, but the 1993 Denver Summer Ozone Study determined that higher ozone values—and perhaps the true maximum concentration sites—were appearing in the northwest, rather than the southwest, portion of the nonattainment area. And, thus, priority was given to placing new sites in the northwest. EPA believes the continued relatively higher values at the NREL and South Boulder Creek sites, as well as the exceedance at the latter site in 1993, tend to support that determination. The APCD has committed to continue reviewing the network and making necessary adjustments as promptly as feasible. In accord with these commitments, the APCD submitted to EPA in June, 1994 a summary of an ozone monitoring plan, showing a phased set of modifications to the network to be accomplished over the next five years. EPA believes, based on its evaluation of all the available information and analyses presented in support of this exemption request, that the data satisfactorily demonstrates that the Denver area's air quality has been "clean" for the requisite three years. Finally, an added precaution is built into EPA's policy in that approval of NO_X exemptions are granted on a contingent basis (i.e., the exemption lasts for only as long as the area's monitoring data continue to demonstrate attainment); if a violation occurs, the exemption would no longer be applicable.

Comment 4

Comments were received regarding the scope of exemption of areas from the NO_X requirements of the conformity rules. Commenters argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_X emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_X emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_X, but want EPA in actions on NO_X exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_X increases is in place.

EPA Response

With respect to conformity, EPA's conformity rules[3][4] provide a NO_X waiver if an area receives a section 182(f) exemption. In its **Federal Register** Notice entitled "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that, in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO_X, even where a conformity NO_X waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. EPA has begun the process to do so. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_X motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_X motor vehicle emissions budget. The commenter suggests that EPA should delay action on the NO_X exemption request until the rulemaking that amends this portion of the transportation conformity rule has been finalized. However, EPA believes that, despite the error in the rule, it has consistently made it clear that the intent of the statute and of the rule requires the transportation plan and TIP to demonstrate consistency with the NO_X motor vehicle emissions budget, even where a waiver has been granted. Moreover, this exemption is being processed under section 182(f)(3), which requires EPA to act within 6 months on the petition. EPA does not believe it is appropriate to delay acting on petitions to wait for the rule to be amended, especially given the short timeframe within which that action is expected to occur.

Comment 5

Comments were received saying the CAA does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response

EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f)), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA "shall consider" the 185B report, taken together with the timeframe the Act provides both for completion of the report and for acting on NO_X exemption petitions, clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await "conclusive evidence", as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that *any one* of the following tests is met:

(1) in any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) in nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) in nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption.

Only the first test listed above is based on a showing that NO_X reductions are "counter-productive." If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

Comment 6

Commenters raised specific issues about the adequacy of the DRCOG 2015 Interim Regional Transportation Plan to ensure health standards when considered in relation to approval of the NO_X waiver. They further stated that

[3] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act," November 24, 1993 (58 FR 62188).

granting an exemption would apparently last for the length of the transportation plan.

EPA Response

EPA disagrees with the commenters that the NO_X exemption would automatically last for the length of the transportation plan. EPA has already stated that it is amending the conformity rule to require that transportation plans and TIPs are consistent with the approved maintenance plan's and attainment demonstration's NO_X motor vehicle emissions budget, even where a conformity NO_X exemption has been granted. In addition, the exemption is being granted on a contingent basis (i.e. the exemption will last for only as long as the area's monitoring data continue to demonstrate attainment).

The specific arguments about what the 2015 Interim Regional Transportation Plan as a whole will or will not do in relation to the various air pollutants are beyond the scope of the EPA guidance for granting ozone NO_X exemptions. The effect of a NO_X exemption for Denver is limited solely to the issue of whether it may be exempted from meeting the applicable ozone NO_X requirements of the transportation and general conformity rules.

Comment 7

One commenter asked that EPA make clear the impact of granting a NO_X exemption from the conformity requirements. The commenter noted that the proposed rulemaking for this NO_X exemption request stated in Section V: "As currently written, none of the transportation conformity rule's NO_X requirements would ever apply to an area once such an area had received a NO_X transportation conformity exemption". The commenter believes that the rule should make it clear that transportation conformity NO_X requirements will continue to apply in Denver for wintertime NO_X emissions because the Denver metropolitan Nonattainment Area Element of the Colorado State Implementation Plan for Particulate Matter (PM–10) establishes emissions budgets for NO_X.

EPA Response

EPA agrees with the commenter that the impact of the ozone NO_X exemption is only whether the Denver area may be exempted from meeting the applicable ozone NO_X requirements. Applicable PM–10 NO_X requirements will still have to be met. Specifically, the transportation conformity rule's NO_X requirements will continue to apply in Denver for wintertime NO_X emissions for PM–10. In addition, EPA has already noted that it intends to amend the transportation conformity rule to ensure that areas are consistent with motor vehicle emissions budgets for ozone and PM–10 NO_X, even if an ozone NO_X exemption has been granted.

III. Effective Date

This rulemaking is effective as of July 28, 1995. The Administrative Procedure Act (APA) 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication of the rule if the rule "relieves a restriction." Since the approval of the section 182(f) exemptions for the Denver metropolitan area is a substantive rule that relieves the restrictions associated with the CAA title I requirements to control NO_X emissions, the NO_X exemption approval may be made effective upon signature by the Regional Administrator.

IV. Final Action

The EPA has evaluated the DRCOG's exemption request for consistency with the CAA, EPA regulations, and EPA policy. The EPA believes that the exemption request and monitoring data qualifies the Denver metropolitan area as a "clean data area". Therefore, the EPA is granting Denver's section 182(f) exemption petition. The EPA has determined that the exemption petition, monitoring data, and other supporting data, meet the requirements and policy set forth in the General Preamble for Exemptions from the Transportation and General Conformity Nitrogen Oxides Provisions. The effect of this NO_X transportation and general conformity exemption is that Denver is relieved of the conformity rule's requirements for regional analysis for ozone NO_X emissions, as described earlier in section II, comment 7, of this notice. However, it should be noted that EPA's approval of the exemption is granted on a contingent basis, i.e., the exemption will last for only as long as the area's monitoring data continues to show no violations. If subsequently it is determined that the area has violated the standard, the exemption, as of the date of the determination, would no longer apply. EPA would notify the State that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**. Existing transportation plans and TIPs and past conformity determinations will not be affected by the determination that the NO_X exemption no longer applies, but new conformity determinations would have to observe the NO_X requirements of the conformity rule. The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This proposal does not create any new requirements. Therefore, I certify that it does not have a significant impact on any small entities affected.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1995. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action relieves requirements otherwise imposed under the CAA and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 28, 1995.

Kerrigan Clough,

Acting Regional Administrator.

PART 52—[AMENDED]

40 CFR part 52 is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.326 is added to read as follows:

§ 52.326 Area-wide nitrogen oxides (NO_X) exemptions.

The Denver Regional Council of Governments (DRCOG) submitted a NO_X exemption petition to the EPA on May 25, 1994 and submitted supporting documentation via a letter dated August 1, 1994. This petition requested that the Denver metropolitan area, a transitional ozone nonattainment area, be exempted from the requirement to meet the NO_X provisions of the Federal transportation and general conformity rule with respect to ozone. The exemption request was based on monitoring data which demonstrated that the National Ambient Air Quality Standard for ozone had been attained in this area for the 3 years prior to the petition. The EPA approved this exemption request on July 28, 1995.

[FR Doc. 95–19480 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–60–P

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40 CFR Part 52

[FRL–5274–4]

Determination of Attainment of Ozone Standard by Nashville, Tennessee, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 22, 1995, the EPA published a proposed rule (60 FR 32477) and a direct final rule (60 FR 32466) determining that the Ashland, Kentucky, Northern Kentucky (Cincinnati Area), Charlotte, North Carolina, and Nashville, Tennessee, ozone nonattainment areas were attaining the National Ambient Air Quality Standard (NAAQS) for ozone. Based on this determination, the EPA also determined that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of part D of Title 1 of the Clean Air Act (Act) are not applicable to the areas so long as the areas continue to attain the ozone NAAQS. The 30-day comment period concluded on July 24, 1995. During this comment period, the EPA received one comment letter in response to the June 22, 1995, rulemaking. That comment addressed only the Northern Kentucky (Cincinnati) area. Response to that comment and final action on the Northern Kentucky area will be addressed in a subsequent notice if warranted. Additionally, since publication of the original determination on June 22, 1995, the Ashland, Kentucky, and Charlotte, North Carolina, areas were redesignated to attainment on June 29, 1995 (60 FR 33748), and July 5, 1995 (60 FR 34859), respectively, making this finding for those areas no longer necessary. This rule finalizes the EPA's determination that the Nashville, Tennessee, area has attained the ozone standard and that certain reasonable further progress and attainment demonstration requirements as well as other related requirements of part D of the Act are not applicable to this area as long as the area continues to attain the ozone NAAQS.

EFFECTIVE DATE: This action will be effective August 8, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Regulatory Planning & Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is (404) 347–3555, extension 4221.

SUPPLEMENTARY INFORMATION:

I. Background Information

On June 22, 1995, the EPA published a direct final rulemaking (60 FR 32466) determining that the Ashland, Kentucky, Charlotte, North Carolina, and Nashville, Tennessee, moderate ozone nonattainment areas have attained the NAAQS for ozone. In that rulemaking, the EPA also determined that the requirements of section 182(b)(1) concerning the submission of a 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to these areas so long as the areas do not violate the ozone standard. In addition, the EPA determined that the sanctions clocks started on January 28, 1994, for the Ashland, Kentucky, and Charlotte, North Carolina, areas for failure to submit the section 182(b)(1) 15 percent plan and attainment demonstration, and on April 1, 1994, for the Nashville, Tennessee, area for submittal of an incomplete 15 percent plan would be stopped since the deficiencies on which they are based no longer exist. The clocks started on January 28, 1994, for the Ashland, Kentucky, and Charlotte, North Carolina areas were subsequently stopped by the aforementioned redesignation actions.

At the same time that the EPA published the direct final rule, a separate notice of proposed rulemaking was published in the **Federal Register** (60 FR 32477). This proposed rulemaking specified that EPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking. The EPA received one letter containing adverse comments regarding the direct final rule for Northern Kentucky within 30 days of publication of the proposed rule and withdrew the direct final rule on [insert date of withdrawal notice]. Any further action deemed necessary for the Northern Kentucky area will be taken in a separate notice.

The specific rationale and air quality analysis the EPA used to determine that the Nashville, Tennessee, moderate ozone nonattainment area has attained the ozone NAAQS and is not required to submit SIP revisions for reasonable further progress, attainment demonstration and related requirements are explained in the direct final rule and will not be restated here.

II. Final Rulemaking Action

The EPA is making a final determination that the Nashville, Tennessee, moderate ozone nonattainment area has attained the ozone standard and continues to attain the standard at this time. No comments were received regarding the proposal as it concerned Nashville. As a

consequence of this determination, the requirements of section 182(b)(1) concerning the submission of the 15 percent reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard.

The EPA emphasizes that this determination is contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. When and if a violation of the ozone NAAQS is monitored in the Nashville, Tennessee, nonattainment area (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), the EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determination that the Nashville area has attained the NAAQS and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and contingency measure requirement of section 172(c)(9) do not presently apply, these are no longer requirements within the meaning of 40 CFR 52.31(c)(1). Consequently, the sanctions clock started by EPA on April 1, 1994, for submittal of an incomplete 15 percent plan, is hereby stopped.

The EPA finds that there is good cause for this action to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of this action, which is a determination that certain Act requirements do not apply for so long as the areas continue to attain the standard. The immediate effective date for this action is authorized under both 5 U.S.C. Section 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and Section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

Under section 307(b)(1) of the Act, petitions for judicial review of this final action determining that the Nashville, Tennessee, ozone nonattainment area has attained the NAAQS for ozone and that certain reasonable further progress and attainment demonstration requirements of sections 182(b)(1) and 172(c)(9) no longer apply must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this notice does not impose any new requirements, I certify that it does not have a significant impact on small entities affected.

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rulemaking that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements.

The EPA has determined that today's final action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: July 31, 1995.

R.F. McGhee,

Acting Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2235 is added to read as follows:

§ 52.2235 Control strategy: Ozone.

(a) Determination—EPA is determining that, as of August 8, 1995, the Nashville ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Nashville ozone nonattainment area, these determinations shall no longer apply.

(b) [Reserved]

[FR Doc. 95–19503 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[PA 54–1–6941a; FRL–5256–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NO_x RACT and Synthetic Minor Permit Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on eight major sources and establishes permit conditions to limit one source's emissions to below major source levels. The intended effect of this action is to approve source-specific plan approvals and operating permits, which establish the above-mentioned requirements in accordance with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective October 10, 1995 unless adverse comments are received on or before September 7, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, EPA Region III, (215) 597–9337.

SUPPLEMENTARY INFORMATION: On January 6, 1995, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a group of plan approvals and operating permits for individual sources of volatile organic compounds and/or nitrogen oxides located in Pennsylvania. This rulemaking addresses those plan approvals and operating permits pertaining to the following sources: ESSROC Materials, Inc., Pennsylvania Power and Light—Brunner Island SES, PPG Industries, Inc., Stroehmann Bakeries, Inc., General Electric Transportation Systems—Erie, J.E. Baker/DBCA Refractory facility, Lafarge Corporation, West Penn Power Company—Armstrong Power Station, and Plain n' Fancy Kitchens, Inc. The other plan approvals and operating permits submitted with this group will be addressed in another rulemaking notice.

Pursuant to section 182(b)(2) and (182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_x sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in section 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The January 6, 1995 Pennsylvania submittal that is the subject of this notice, is meant to satisfy the RACT requirements for eight sources in Pennsylvania and to limit the potential VOC emissions at a source to below the major source size threshold in order to avoid RACT.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals and operating permits can be found in the docket and accompanying technical support document and will not be reiterated in this notice. Briefly, EPA is approving seven plan approvals and four operating permits as RACT and one plan approval as a revision to the Pennsylvania SIP to limit a source's emissions to below the major source threshold. Several of the plan approvals and operating permits contain conditions irrelevant to the determination of VOC or NO_x RACT. Consequently, these provisions are not being included in this approval for VOC or NO_x RACT. In addition, several of the plan approvals and operating permits contain a provision that would allow compliance date extensions at the request of the source and approval by Pennsylvania without EPA approval. While EPA does not automatically rule out the possibility of compliance date extensions, EPA cannot pre-approve compliance date extensions through a general provision such as that which occurs in those plan approvals and operating permits.

RACT

EPA is approving the plan approval (PA 48–0004A) for ESSROC Materials, Inc., located in Northampton County. ESSROC Materials, Inc. is a portland cement manufacturing facility and is considered a major source of NO_x emissions. EPA is approving the plan approval (PA 67–2005) for Pennsylvania Power and Light—Brunner Island Steam Electric Station, located in York County. PP&L—Brunner Island is a steam electric station and is considered a major source of VOC and NO_x emissions. EPA is approving the operating permit (OP 21–2002) for PPG Industries, Inc., located in Cumberland County. PPG Industries, Inc. is a flat glass manufacturing facility and is considered a major source of NO_x emissions. EPA is approving the plan approval (PA 22–2003) for Stroehmann Bakeries, Inc., located in Dauphin County. Stroehmann Bakeries, Inc. is a bread and roll bakery with some small miscellaneous printing operations and is considered a major source of VOC emissions. EPA is approving the operating permit (OP 25–025) for General Electric Transportation Systems, located in Erie County. GE Transportation Systems is a coal-fired power generating station and is considered a major source of VOC and NO_x emissions. EPA is approving the operating permit (OP 67–2001) for J.E. Baker/DBCA Refractory Facility located in York County. J.E. Baker/DBCA Refractory Facility is a dolomitic refractory facility, producing specialty refractory products, agricultural limestone, mineral fillers, etc. and is considered a major source of NO_x emissions. EPA is approving the plan approval (PA 39–0011A) and the operating permit (OP 39–0011) for Lafarge Corporation, located in Lehigh County. Lafarge Corporation is a cement manufacturing facility and is considered a major source of NO_x emissions. EPA is approving three plan approvals (PA 03–000–023, PA 03–306–004, PA 03–306–006) for West Penn Power Company—Armstrong Power Station, located in Armstrong County. West Penn Power Company is an electric generating station with two coal-fired boilers and is considered a major source of NO_x emissions and a minor source of VOC emissions. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available from the EPA Region III office. Several of the plan approvals/operating permits contain a provision that allows for future changes to the emission limitations based on CEM or other monitoring data. Since EPA cannot approve emission limitations that are not currently before it, any changes to the emission limitations as submitted on January 6, 1995 to EPA must be resubmitted to and approved by EPA in order for these changes to be incorporated into the Pennsylvania SIP. Consequently, the source-specific RACT

emission limitations that are being approved into the Pennsylvania SIP are those that were submitted on January 6, 1995. These emission limitations will remain unless and until they are replaced pursuant to 40 C.F.R. part 51 and approved by the U.S. EPA.

Synthetic Minor Source Permit

EPA is approving the plan approval (PA 38–318–019C) for Plain n' Fancy Kitchens, Inc., located in Lebanon County. Plain n' Fancy Kitchens, Inc. is a kitchen cabinet surface coating facility and had potential VOC emissions greater than 50 TPY. The approval of these conditions will limit the emissions at this facility to less than 50 TPY and would allow Plain n' Fancy Kitchens, Inc. to avoid being considered a major VOC source, subject to the major source RACT requirements of the Clean Air Act and the Pennsylvania regulation.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 10, 1995 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 10, 1995.

Final Action

EPA is approving the seven plan approvals and four operating permits as RACT and one plan approval to limit emissions at Plain n' Fancy Kitchens to below major source levels.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section (insert) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The sources affected by the rules being approved by this action are already subject to these regulations under State law; therefore, this rulemaking action does not impose any new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the RACT approval of eight sources and the synthetic minor permit conditions for Plain n' Fancy Kitchens, Inc., must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 23, 1995.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart NN of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(98) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(98) Revisions to the Pennsylvania Regulations Chapter 129.91 submitted on January 6, 1995 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Two letters both dated January 6, 1995 from the Pennsylvania Department of Environmental Resources transmitting source-specific VOC and/or NOx RACT determinations in the form of plan approvals and/or operating permits for the following sources: ESSROC Materials, Inc. (Northampton Co.)—cement manufacturer; Pennsylvania Power & Light—Brunner Island SES (York Co.)—utility, PPG Industries, Inc. (Cumberland Co.)—glass manufacturer; Stroehmann Bakeries, Inc. (Dauphin Co.)—bakery; GE Transportation Systems (Erie Co.)—utility; J.E. Baker/DBCA Refractory Facility (York Co.)—dolomitic refractory facility; Lafarge Corp. (Lehigh Co.)—cement manufacturer; West Penn Power Company—Armstrong Power Station (Armstrong Co.), utility. In addition, the plan approval for Plain n' Fancy Kitchens, Inc. (Lebanon Co., kitchen cabinet surface coating) containing provisions limiting this source as a synthetic minor source (below RACT threshold level of 50 TPY potential VOC emissions) is being approved.

(B) Plan approvals (PA), Operating permits (OP):

(*1*) ESSROC Materials, Inc.—PA 48–0004A, effective December 20, 1994, except conditions (7)(a), (7)(b), (7)(d), (8)(a), (8)(b), (8)(d), (10), (16) through (19) pertaining to particulate matter or SO_2 requirements and condition (25)(d) and (e) pertaining to compliance date extensions, and the expiration date of the plan approval.

(*2*) Pennsylvania Power & Light—Brunner Island SES—PA 67–2005, effective December 22, 1994, except condition 2.d. and e. pertaining to compliance date extensions, and the expiration date of the plan approval.

(*3*) PPG Industries, Inc.—OP 21–2002, effective December 22, 1994, except the expiration date of the operating permit.

(*4*) Stroehmann Bakeries, Inc.—PA 22–2003, effective December 22, 1994, except condition 9.d. and e. pertaining to compliance date extensions and the expiration date of the plan approval.

(*5*) GE Transportation Systems—Erie—OP 25–025, effective December 21, 1994, except for condition 9 pertaining to pollutants other than VOC and NO_X.

(*6*) J.E. Baker/DBCA Refractory Facility—OP 67–2001, effective December 22, 1994, except the expiration date of the operating permit.

(*7*) Lafarge Corp.—PA 39–0011A, effective December 23, 1994, except for condition (4)(d) and (e) pertaining to compliance date extensions, condition (8) pertaining to sulfur in fuel requirements, those in condition (9) not pertaining to VOC or NO_X, and the expiration date of the plan approval, and OP 39–0011, effective December 23, 1994, except conditions (8), (9), and (13) through (15), pertaining to sulfur in fuel requirements, and the expiration date of the operating permit.

(*8*) West Penn Power Company—Armstrong Power Station—PA 03–000–023, effective December 29, 1994, except for the expiration date of the plan approval and condition 5. pertaining to VOC and condition 9. pertaining to a facility-wide NO_X cap, PA 03–306–004 (for unit 2), effective March 28, 1994, except for condition 12. (d) and (e), pertaining to compliance date extensions, and the expiration date of the plan approval, and PA 03–306–006 (for unit 1), effective November 22, 1994, except for condition 13. (d) and (e), pertaining to compliance date extensions, and the expiration date of the plan approval.

(*9*) Plain n' Fancy Kitchens, Inc.—PA 38–318–019C, effective December 23, 1994, except for condition 2.d. and e., pertaining to compliance date extensions, and the expiration date of the plan approval.

[FR Doc. 95–19505 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 75

[FRL–5274–5]

Acid Rain Program: Continuous Emission Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of removal of provisions of direct final rule and extended public comment period.

SUMMARY: On May 17, 1995, EPA published direct final amendments to the Continuous Emission Monitoring (CEM) rule in the Acid Rain Program for the purpose of making implementation of the program simpler, streamlined, and more efficient. The amendments to the original January 11, 1993 rule became final and effective on July 17, 1995. During the public comment period on the direct final rule and its companion proposed rule, EPA received significant, adverse comments on those amended provisions that related to alternative monitoring systems and opacity monitoring for a bypass stack. EPA is removing those amended provisions in the direct final rule and republishing the corresponding provisions from the original January 11, 1993 rule. EPA will address the removed, amended provisions in a future final rule. EPA is also extending the public comment period on the removed, amended provisions for 15 days to allow the public to respond to the significant, adverse comments. All other provisions of the direct final rule remain final.

DATES: *Comment date:* Comments in response to the significant, adverse comments on the direct final rule must be received on or before August 23, 1995.

Effective date: The effective date of the republished provisions from the original January 11, 1993 rule is September 7, 1995.

ADDRESSES: Any written comments in response to the significant, adverse comments on the direct final rule must be identified as being in response to such comments in Docket No. A–94–16 and must be submitted in duplicate to: EPA Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the above address. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 233–9180.

SUPPLEMENTARY INFORMATION: EPA received significant, adverse comments on certain provisions of the direct final rule amending part 75 from Pavilion Technologies, Inc. The comments are found in Docket No. A–94–16, item V–D–03. Pavilion Technologies, Inc. made significant, adverse comments on the following amended provisions: 75.20(f); 75.41(a)(1), (b)(1)(i), (b)(2)(iv)(A) and (C), (c)(1)(i) and (ii), and (c)(2)(ii); 75.47; and 75.48(a) introductory text, (a)(1), (b), and (c). Therefore, those amended provisions in the direct final rule are being removed and the corresponding provisions in the original January 11, 1993 rule will be effective until EPA addresses the comments in a future final rule.

The Agency notes that, although the commenter requested withdrawal of all direct final amendments pertaining to alternative monitoring systems, the commenter also indicated that it supported the amendment of § 72.20(f)(2) providing for provisional certification of an alternative monitoring system after the system has been approved by the Administrator. However, the commenter objected to the public notice and comment procedure that the direct final rule requires prior to such approval. The direct final rule allows for provisional certification because the alternative monitoring system has already undergone public notice and comment and EPA review. See Docket No. A–94–16, item II–F–2. Consequently, EPA is removing all of the interrelated direct final provisions.

EPA also received one significant, adverse comment on the direct final rule provision, § 75.18(b)(3), from Monitor Labs, Inc. The comment is found in Docket No. A–94–16, item V–D–18 (comment 4). Monitor Labs, Inc. objected to the provision allowing the use of a noncontinuous monitoring method (i.e., Method 9 of appendix A of part 60), in lieu of a continuous opacity monitoring system, for bypass stacks. EPA is therefore removing the direct final provision at § 75.18(b)(3). The

remaining provisions in the direct final § 75.18(b) remain in effect.

No other significant, adverse comments were received by EPA on the direct final rule. Thus, all other provisions of the direct final rule became final on July 17, 1995 and remain in effect.

EPA is merely reinstating a few provisions of the original January 11, 1993 rule pending response to adverse comments on proposed amendments of those provisions. The requirements of Executive Orders 12866 and 12875, the Regulatory Flexibility Act, the Unfunded Mandates Act, and the Paperwork Reduction Act are therefore not applicable to this notice. All applicable administrative requirements will be met when the proposed amendments are addressed in a future final rule.

For additional information, see the direct final rule. 60 FR 26510 (May 17, 1995).

List of Subjects in 40 CFR Part 75

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitors, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: August 2, 1995.

Brian J. McLean,

Director, Acid Rain Division.

1. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 75.18 is amended by removing paragraph (b)(3) and by revising paragraph (b)(2) to read as follows:

§ 75.18 Specific provisions for monitoring emissions from common and by-pass stacks for opacity.

* * * * *

(b) * * *

(2) A continuous opacity monitoring system is already installed and certified at the inlet of the add-on emissions controls.

3. Section 75.20 is amended by revising paragraph (f) to read as follows:

§ 75.20 Certification and recertification procedures.

* * * * *

(f) Certification/recertification procedures for alternative monitoring systems. The designated representative representing the owner or operator of each alternative monitoring system approved by the Administrator as equivalent to or better than a continuous emission monitoring system according to the criteria in subpart E of this part shall apply for certification to the Administrator prior to use of the system under the Acid Rain Program, and shall apply for recertification to the Administrator following a replacement, modification, or change according to the procedures in paragraph (c) of this section. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification or recertification according to the procedures specified in paragraphs (a) and (b) of this section.

(1) The Administrator will publish each request for initial certification of an alternative monitoring system in the **Federal Register** and, following a public comment period of 60 days, will issue a notice of approval or disapproval.

(2) No alternative monitoring system shall be authorized by the Administrator in a permit issued pursuant to part 72 of this chapter unless approved by the Administrator in accordance with this part.

4. Section 75.41 is amended by revising paragraphs (a)(1), (b)(1)(i), (b)(2)(iv)(A), (b)(2)(iv)(C), (c)(1)(i), (c)(1)(ii), and (c)(2)(ii) to read as follows:

§ 75.41 Precision criteria.

(a) * * *

(1) Data from the alternative monitoring system and the continuous emission monitoring system shall be collected and paired in a manner that ensures each pair of values applies to hourly average emissions during the same hour.

* * * * *

(b) * * *

(1) * * *

(i) Apply the log transformation to each measured value of either the certified continuous emissions monitoring system or certified flow monitor, using the following equation:

$l_v = \ln e_v$

(Eq. 11)

where,

e_v=Hourly value generated by the certified continuous emissions monitoring system or certified flow monitoring system

l_v=Hourly lognormalized data values for the certified monitoring system

and to each measured value, e_p, of the proposed alternative monitoring system, using the following equation to obtain the lognormalized data values, l_p:

$l_p = \ln e_p$

(Eq. 12)

where,

e_p=Hourly value generated by the proposed alternative monitoring system.

l_p=Hourly lognormalized data values for the proposed alternative monitoring system.

* * * * *

(2) * * *

(iv) * * *

(A) The set of measured hourly values, e_v, generated by the certified continuous emissions monitoring system or certified flow monitoring system.

* * * * *

(C) The set of hourly differences, $e_v - e_p$, between the hourly values, e_v, generated by the certified continuous emissions monitoring system or certified flow monitoring system and the hourly values, e_p, generated by the proposed alternative monitoring system.

* * * * *

(c) * * *

(1) * * *

(i) Calculate the variance of the certified continuous emission monitoring system or certified flow monitor as applicable, S_v^2, and the proposed method, S_p^2, using the following equation.

$$S^2 = \frac{\sum_{i=1}^{n} (e_i - e_m)^2}{n-1}$$

(Eq. 23)

where,

e_i=Measured values of either the certified continuous emission monitoring system or certified flow monitor, as applicable, or proposed method.

e_m=Mean of either the certified continuous emission monitoring system or certified flow monitor, as applicable, or proposed method values.

n=Total number of paired samples.

(ii) Determine if the variance of the proposed method is significantly different from that of the certified continuous emission monitoring system or certified flow monitor, as applicable, by calculating the F-value using the following equation.

$$F = \frac{S_p^2}{S_v^2}$$

(Eq. 24)

Compare the experimental F-value with the critical value of F at the 95-percent confidence level with n–1 degrees of freedom. The critical value is obtained from a table for F-distribution. If the calculated F-value is greater than the critical value, the proposed method is unacceptable.

(2) * * *

(ii) Use the following equation to calculate the coefficient of correlation, r, between the emissions data from the alternative monitoring system and the continuous emission monitoring system using all hourly data for which paired values were available from both monitoring systems.

$$r = \frac{\sum e_p e_v - \left(\sum e_p\right)\left(\sum e_v\right)/n}{\left(\left[\sum e_p^2 - \left(\sum e_p\right)^2/n\right]\left[\sum e_p^2 - \left(\sum e_v\right)^2/n\right]\right)^{(1/2)}}$$

(Eq. 27)

* * * * *

5. Section 75.47 is revised to read as follows:

§ 75.47 Criteria for a class of affected units.

(a) The owner or operator of an affected unit may represent a class of affected units for the purpose of applying to the Administrator for a class-approved alternative monitoring system.

(b) The owner or operator of an affected unit representing a class of affected units shall provide the following information:

(1) A description of the affected unit and how it appropriately represents the class of affected units;

(2) A description of the class of affected units, including data describing all the affected units which will comprise the class; and

(3) A demonstration that the magnitude of emissions of all units which will comprise the class of affected units are *de minimis*.

(c) If the Administrator determines that the emissions from all affected units which will comprise the class of units are *de minimis*, then the Administrator shall publish notice in the **Federal Register**, providing a 30-day period for public comment, prior to granting a class-approved alternative monitoring system.

6. Section 75.48 is revised to read as follows:

§ 75.48 Petition for an alternative monitoring system.

(a) The designated representative shall submit the following information in the application for certification or recertification of an alternative monitoring system.

(1) Source identification information.

(2) A description of the alternative monitoring system.

(3) Data, calculations, and results of the statistical tests, specified in § 75.41(c) of this part, including:

(i) Date and hour.

(ii) Hourly test data for the alternative monitoring system at each required operating level and fuel type.

(iii) Hourly test data for the continuous emissions monitoring system at each required operating level and fuel type.

(iv) Arithmetic mean of the alternative monitoring system measurement values, as specified in Equation 24 in § 75.41(c) of this part, of the continuous emission monitoring system values, as specified on Equation 25 in § 75.41(c) of this part, and of their differences.

(v) Standard deviation of the difference, as specified in Equation A–8 in appendix A of this part.

(vi) Confidence coefficient, as specified in Equation A–9 in appendix A of this part.

(vii) The bias test results as specified in § 7.6.4 in appendix A of this part.

(viii) Variance of the measured values for the alternative monitoring system and of the measured values for the continuous emissions monitoring system, as specified in Equation 22 in § 75.41(c) of this part.

(ix) F-statistic, as specified in Equation 23 in § 75.41(c) of this part.

(x) Critical value of F at the 95-percent confidence level with n–1 degrees of freedom.

(xi) Coefficient of correlation, r, as specified in Equation 26 in § 75.41(c) of this part.

(4) Data plots, specified in §§ 75.41(a)(9) and 75.41(c)(2)(i) of this part.

(5) Results of monitor reliability analysis.

(6) Results of monitor accessibility analysis.

(7) Results of monitor timeliness analysis.

(8) A detailed description of the process used to collect data, including location and method of ensuring an accurate assessment of operating hourly conditions on a real-time basis.

(9) A detailed description of the operation, maintenance, and quality assurance procedures for the alternative monitoring system as required in appendix B of this part.

(10) A description of methods used to calculate heat input or diluent gas concentration, if applicable.

(11) Results of tests and measurements (including the results of all reference method field test sheets, charts, laboratory analyses, example calculations, or other data as appropriate) necessary to substantiate that the alternative monitoring system is equivalent in performance to an appropriate, certified operating continuous emission monitoring system.

[FR Doc. 95–19527 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[MI39–01–6921a; FRL–5272–9]

Designation of Areas for Air Quality Planning Purposes; Correction of Designation of Nonclassified Ozone Nonattainment Areas; State of Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: This action announces the USEPA decision to correct erroneous ozone designations made in 1980 for the Allegan County (Allegan County), Barry County (Barry County), Battle Creek (Calhoun County), Benton Harbor (Berrien County), Branch County (Branch County), Cass County (Cass County), Gratiot County (Gratiot County), Hillsdale County (Hillsdale County), Huron County (Huron County), Ionia County (Ionia County), Jackson (Jackson County), Kalamazoo (Kalamazoo County), Lapeer County (Lapeer County), Lenawee County (Lenawee County), Montcalm (Montcalm County), Sanilac County (Sanilac County), Shiawassee County (Shiawassee County), St. Joseph County (St. Joseph County), Tuscola County (Tuscola County), and Van Buren County (Van Buren County) nonattainment nonclassified/incomplete data areas and the Lansing-East Lansing (Clinton County, Eaton County, and Ingham County) nonattainment nonclassified/transitional area. Pursuant to section 110(k)(6) of the Act, which allows the USEPA to correct its actions, the USEPA is publishing the designation correction of these areas to attainment/unclassifiable for ozone. The

rationale for this approval is set forth in this final rule; additional information is available at the address indicated below. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this action. If adverse comments are received on this direct final rule, USEPA will withdraw this direct final rule and address the comments received in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn no further rulemaking will occur on this action.

DATES: This action will be effective October 10, 1995 unless notice is received by September 7, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the USEPA's analysis are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 Office.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886–6081.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the 1977 amendments to the Clean Air Act (Act), the States identified and the USEPA designated nonattainment areas with respect to the 0.08 parts per million (ppm) photochemical oxidant National Ambient Air Quality Standard (NAAQS). For such areas, States submitted State Implementation Plans (SIP) to control emissions and achieve attainment of the NAAQS. On December 30, 1977, Michigan submitted an analysis which included, pursuant to section 107(d) of the 1977 Act, designations of areas for photochemical oxidants as nonattainment, attainment, or unclassifiable. The State concluded that the 37 county area in southern Michigan, which was designated by the State to be the target area for the photochemical oxidants SIP revision and implementation of the Federal Emission Offset Policy (December 21, 1976), should be designated as nonattainment for photochemical oxidants. The nonattainment designations were based on sparse monitoring data from 1974, 1975, and 1976 (monitoring in the Bay, Kent, Genesee, Oakland, Port Huron and Wayne Counties) showing violations of the 0.08 ppm photochemical oxidant NAAQS in those counties, the States' knowledge of volatile organic compound emission sources in the areas and comparison of the areas with other similar monitored areas. These areas were originally designated as nonattainment for photochemical oxidants on March 3, 1978 (43 FR 8962).

On February 8, 1979 (44 FR 8202), the USEPA revised the NAAQS from 0.08 ppm to 0.12 ppm and the regulated pollutant from photochemical oxidants to ozone. On November 8, 1979, Michigan submitted a revised analysis which considered the change in the NAAQS and its affect on designations. The State concluded that changes to the status of the designated nonattainment areas were not warranted and noted that this position would be re-evaluated as more data on rural ozone levels became available. Monitoring data recorded in Bay, Genesee, Kent, Macomb, Muskegon, Oakland, St. Clair and Wayne Counties for 1975–1978 showed violations of the 0.12 ppm NAAQS. The State retained the nonattainment designation for these areas based on the available monitoring data and the remainder of the southern Michigan counties on the basis of their proximity to urban nonattainment areas. The revised analysis and conclusion to retain the prior designations were approved by the USEPA on June 2, 1980 (45 FR 37188).

Under the 1990 amendments to the Act, these areas retained their designation of nonattainment by operation of law pursuant to section 107(d) upon the date of enactment of the Act. Nonattainment areas were further classified based on their monitored design value, pursuant to section 181(a), as marginal, moderate, serious or severe. The nonattainment areas in Michigan were classified as follows: the Detroit-Ann Arbor area, Muskegon area and Grand Rapids area were classified as moderate; the Flint area and Lansing-East Lansing area were classified as nonclassifiable/transitional pursuant to section 185B of the Act, since they had 3 complete years of air quality data demonstrating attainment of the ozone NAAQS for the period 1987–1989; and, the remainder of the nonattainment areas were classified as nonclassifiable/incomplete data, since ozone monitoring data for these areas was either not available or incomplete. 56 FR 56694 (November 6, 1991).

II. Summary of This Action

Section 110(k)(6) of the Act provides the USEPA with the authority to correct designation determinations that it determines were in error. It states:

> Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Twenty-three counties were designated nonclassifiable/transitional or nonclassifiable/incomplete data. They are: Allegan County (Allegan County), Barry County (Barry County), Battle Creek (Calhoun County), Benton Harbor (Berrien County), Branch County (Branch County), Cass County (Cass County), Gratiot County (Gratiot County), Hillsdale County (Hillsdale County), Huron County (Huron County), Ionia County (Ionia County), Jackson (Jackson County), Kalamazoo (Kalamazoo County), Lapeer County (Lapeer County), Lenawee County (Lenawee County), Montcalm (Montcalm County), Saginaw-Bay City-Midland (Bay County, Midland County, and Saginaw County), Sanilac County (Sanilac County), Shiawassee County (Shiawassee County), St. Joseph County (St. Joseph County), Tuscola County (Tuscola County), and Van Buren County (Van Buren County) as nonattainment nonclassified/incomplete data areas and Flint (Genesee County), and Lansing-East Lansing (Clinton County, Eaton County, and Ingham County) as nonattainment nonclassified/transitional areas.

The USEPA's June 2, 1980 action approving the retention of the nonattainment designations for 21 of the 23 nonclassifiable areas was in error. That action was based on the State's November 9, 1979 submittal. The USEPA believes that the information submitted by Michigan was inappropriately used to designate 21 of the 23 nonclassifiable areas nonattainment for ozone due to the lack of in-county ozone monitoring data showing violations of the 0.12 ppm NAAQS. Accordingly, in this action, the USEPA is correcting this error by correcting the designations for these areas to attainment/unclassifiable.

In order to demonstrate a violation of the ozone NAAQS, the average annual number of expected exceedances of the NAAQS must be greater than 1.0 per calendar year, pursuant to 40 CFR § 50.9. The USEPA reviewed the basis of the original ozone designation for these areas. Ambient air quality monitoring data for ozone was retrieved from the Aerometric Information Retrieval System (AIRS) as well as the docket containing Michigan's 1977 SIP. The USEPA found that of the 23 nonattainment nonclassifiable areas in Michigan, only Ingham, Bay and Genesee Counties had established ambient photochemical oxidant monitors in the mid-1970's. Of these three counties, only Ingham did not record levels of photochemical oxidants above 0.12 ppm to constitute a violation of the NAAQS. The AIRS ozone data report for Michigan is located in the docket for this rulemaking. Therefore, 21 of the nonclassified areas did not violate the 0.12 ppm NAAQS during the years pertinent to the June 2, 1980 final rulemaking. In fact, none of these areas had in-county ozone monitors during these timeframes except for those discussed above.

Furthermore, available in-county monitoring data for some of these areas since 1978 demonstrates that violations of the 0.12 ppm NAAQS have not been recorded in these areas with the exceptions of Allegan and possibly Lenawee counties. Allegan County recorded a violation of the ozone NAAQS in 1990–1991 at a monitor established as a special purpose monitor for the Lake Michigan Ozone Study. Monitoring data collected during 1992–1994 in Allegan County demonstrated attainment of the ozone NAAQS. More recently, preliminary data for 1995 (which has not yet been quality assured) indicates that violations of the ozone NAAQS in Allegan and Lenawee counties have probably occurred in the period 1993–1995. The USEPA believes, however, that this data does not alter the conclusion regarding the erroneous retention of the nonattainment designation for these counties in 1980. If these two areas had been correctly designated as attainment/unclassifiable at that time they would be treated, today, as would any other attainment area that violates the ozone NAAQS. The USEPA is including these two areas in this designation correction and will decide what appropriate actions, if necessary, should be taken once this preliminary data is quality assured. The USEPA may utilize its authority under section 110 of the Act to require the State to correct the inadequacy of the SIP, or designate such areas to nonattainment pursuant to section 107 to address violations of the ozone NAAQS in areas designated as attainment.

III. Rulemaking Action

In this action, the USEPA is promulgating a correction to the designation status of the Allegan County (Allegan County), Barry County (Barry County), Battle Creek (Calhoun County), Benton Harbor (Berrien County), Branch County (Branch County), Cass County (Cass County), Gratiot County (Gratiot County), Hillsdale County (Hillsdale County), Huron County (Huron County), Ionia County (Ionia County), Jackson (Jackson County), Kalamazoo (Kalamazoo County), Lapeer County (Lapeer County), Lenawee County (Lenawee County), Montcalm (Montcalm County), Sanilac County (Sanilac County), Shiawassee County (Shiawassee County), St. Joseph County (St. Joseph County), Tuscola County (Tuscola County), and Van Buren County (Van Buren County) nonattainment nonclassified/incomplete data and the Lansing-East Lansing (Clinton County, Eaton County, and Ingham County) nonattainment nonclassified/transitional area to attainment/unclassifiable pursuant to section 110(k)(6). The public should be advised that this action will be effective 60 days from the date of this final rule. However, if notice is received within 30 days that someone submits adverse or critical comments, this action will be withdrawn, and a subsequent final notice will be published that addresses the comments received.

The USEPA is publishing a separate document in today's issue of the **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revisions and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on October 10, 1995, unless the USEPA receives adverse or critical comments by September 7, 1995.

If the USEPA receives comments adverse to or critical of the approval discussed above, the USEPA will withdraw this approval before its effective date by publishing a subsequent **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the USEPA hereby advises the public that this action will be effective on October 10, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1995. Filing a petition for reconsideration by the Administrator of this final rule neither affects the finality of this rule for the purposes of judicial review nor extends the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).

Under Executive Order (EO) 12291, the USEPA is required to judge whether an action is "major" and therefore subject to the requirements of a regulatory impact analysis. The Agency has determined that the correction would result in none of the significant adverse economic effects set forth in section 1(b) of the EO as grounds for a finding that an action is "major." The Agency has, therefore, concluded that this action is not a "major" action under EO 12291.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Correction of designation status of these nonattainment areas to attainment under section 110(k)(6) of the Act does not create any new requirements and therefore will not have a significant impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from

and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, National parks, Ozone, Volatile organic compounds, Wilderness areas.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES

1. The authority citation of part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.323 the ozone table is amended by revising the entries for the Allegan County Area, Barry County Area, Battle Creek Area, Benton Harbor Area, Branch County Area, Cass County Area, Gratiot County Area, Hillsdale County Area, Huron County Area, Ionia County Area, Jackson Area, Kalamazoo Area, Lapeer County Area, Lenawee County Area, Montcalm Area, Sanilac County Area, Shiawassee County Area, St. Joseph County Area, Tuscola County Area, Van Buren County Area and Lansing-East Lansing Area to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—OZONE

Designated Areas	Designation		Classification	
	Date [1]	Type	Date	Type
Allegan County:				
Allegan County	October 10, 1995	Unclassifiable/Attainment.		
Barry County Area:				
Barry County	October 10, 1995	Unclassifiable/Attainment.		
Battle Creek Area:				
Calhoun County	October 10, 1995	Unclassifiable/Attainment.		
Benton Harbor Area:				
Berrien County	October 10, 1995	Unclassifiable/Attainment.		
Branch County Area:				
Branch County	October 10, 1995	Unclassifiable/Attainment.		
Cass County Area:				
Cass County	October 10, 1995	Unclassifiable/Attainment.		
Gratiot County Area:				
Gratiot County	October 10, 1995	Unclassifiable/Attainment.		
Hillsdale County Area:				
Hillsdale County	October 10, 1995	Unclassifiable/Attainment.		
Huron County Area:				
Huron County	October 10, 1995	Unclassifiable/Attainment.		
Ionia County Area:				
Ionia County	October 10, 1995	Unclassifiable/Attainment.		
Jackson Area:				
Jackson County	October 10, 1995	Unclassifiable/Attainment.		
Kalamazoo Area:				
Kalamazoo County	October 10, 1995	Unclassifiable/Attainment.		
Lansing-East Lansing Area:				
Clinton County	October 10, 1995	Unclassifiable/Attainment.		
Eaton County	October 10, 1995	Unclassifiable/Attainment.		
Ingham County	October 10, 1995	Unclassifiable/Attainment.		
Lapeer County Area:				
Lapeer County	October 10, 1995	Unclassifiable/Attainment.		
Lenawee County Area:				
Lenawee County	October 10, 1995	Unclassifiable/Attainment.		
Montcalm Area:				
Montcalm County	October 10, 1995	Unclassifiable/Attainment.		
Sanilac County Area:				
Sanilac County	October 10, 1995	Unclassifiable/Attainment.		

MICHIGAN—OZONE—Continued

Designated Areas	Designation		Classification	
	Date [1]	Type	Date	Type
Shiawassee County Area:				
Shiawassee County	October 10, 1995	Unclassifiable/Attainment.		
St. Joseph County Area:				
St. Joseph County	October 10, 1995	Unclassifiable/Attainment.		
Tuscola County Area:				
Tuscola County	October 10, 1995	Unclassifiable/Attainment.		
Van Buren County Area:				
Van Buren County	October 10, 1995	Unclassifiable/Attainment.		

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–19507 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–259; RM–8341 and RM–8421]

Radio Broadcasting Services; Earle, Pocohantas and Wilson, AR, and Como and New Albany, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: After the *Notice of Proposed Rule Making*, 58 Fed. Reg. 52735, published October 12, 1993, the Commission grants the counterproposal of Broadcasters & Publishers, Inc., licensee of station WWKZ(FM), Channel 278C, New Albany, Mississippi, requesting a change of community to Como, Mississippi, as that community's first local aural transmission service (coordinates N 34, 32, 56 and W 89, 17, and 04. To accommodate this reallotment, it substitutes Channel 234A for Channel 279A at Wilson, Arkansas (coordinates N 35, 29, 46 and W 90, 10, 04). The Commission also allots Channel 280C3 to Earle as that community's first local aural transmission service (coordinates N 35, 15, 20 and W 90, 38, 52, and, to accommodate this allotment, substitutes Channel 281A for Channel 280A at Pocohantas, Arkansas (coordinates N 36, 18, 02 and W 90, 53, 55).

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, (202) 776–1653.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 93–259, adopted July 28, 1995, and released August 3, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 278C at New Albany and adding Como, Channel 278C.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Earle, Channel 280C3; removing Channel 279A and adding Channel 234A at Wilson; and removing Channel 280A and adding Channel 281A at Pocohantas.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19492 Filed 8–7–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR 2

RIN 1018–AD40

Update of Regional Office Addresses

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) amends the Field Organization regulations. The Service's Boston regional office has relocated to Hadley, Massachusetts, the Atlanta regional office moved from Spring Street to Century Boulevard in Atlanta, and the Portland regional office moved from Multnomah Street to 11th Avenue in Portland.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: James E. Pinkerton, Policy and Directives Management Staff, 4401 North Fairfax Drive, Room 224, Arlington, Virginia 22203 at (703) 358–1943.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to update three Service regional office addresses. The Service relocated its regional office from Boston to Hadley, Massachusetts in December, 1993. The Service's regional offices in Portland and Atlanta also relocated within these cities in May, 1989 and December, 1993 respectively.

This document was not subject to Office of Management and Budget Review under Executive Order 12866. It has no potential takings implications for private property as defined in Executive Order 12630. This action does not contain any federalism impacts as described in Executive Order 12612. This rule does not contain any information collection requirements which require approval by the Office of Management and Budget under the

Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* Since this rule merely reflects changes made to regional office addresses, impacts on small business entities is nominal, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This is an agency organization matter that reflects the physical and mailing addresses of our administrative offices in the regions, therefore, proposed rulemaking is not necessary as provided for in 5 U.S.C. 553(b).

List of Subjects in 50 CFR Part 2

Organization and functions (Government agencies).

For the reasons set forth in the preamble, part 2 of chapter I, of title 50 of the Code of Federal Regulations is amended to read as follows:

PART 2—FIELD ORGANIZATION

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301.

2. Section 2.2 is amended by revising paragraphs (a), (d), and (e) to read as follows:

§ 2.2 Locations of regional offices.

* * * * *

(a) Portland Regional Office (Region 1—comprising the States of California, Hawaii, Idaho, Nevada, Oregon, Washington, America Samoa, and Guam), Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

* * * * *

(d) Atlanta Regional Office (Region 4—comprising the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and Puerto Rico and the Virgin Islands), 1875 Century Boulevard, Atlanta, Georgia 30345.

(e) Hadley Regional Office (Region 5—comprising the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia; and the District of Columbia), 300 West Gate Center Drive, Hadley, Massachusetts 01035.

* * * * *

Dated July 25, 1995.

George T. Frampton, Jr.

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 95–19481 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 950426116–5116–01; I.D. 060295A]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Adjustment of Coho Salmon Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment of quotas.

SUMMARY: NMFS announces inseason increases to the non-treaty and treaty Indian coho salmon ocean fishery quotas north of Cape Falcon, OR. The increase to the non-treaty quota is apportioned between the commercial troll and recreational fisheries and among recreational subareas according to the coho salmon allocation provisions contained in the Fishery Management Plan for the Ocean Salmon Fisheries off Washington, Oregon, and California (FMP).

DATES: Effective at 2400 hours local time, August 3, 1995. Comments must be submitted by August 23, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Regional, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at section III.B. of the appendix to 50 CFR part 661, the standards and procedures for inseason changes to annual management measures. Specifically, the Regional Director may adjust management measures inseason provided that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the FMP. In addition, all inseason adjustments must be based on consideration of the following factors: (a) Predicted sizes of salmon runs; (b) harvest quota and hooking mortality limits for the area and total allowable impact limitations if applicable; (c) amount of the recreational, commercial, and treaty Indian catch for each species in the area to date; (d) Amount of recreational, commercial, and treaty Indian fishing effort in the area to date; (e) Estimated average daily catch per fisherman; (f) Predicted fishing effort for the area to the end of the scheduled season; and (g) other factors as appropriate.

The annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), that NMFS may make inseason adjustments to fisheries north of Cape Falcon that are consistent with and complementary to Pacific Fishery Management Council (Council) spawner escapement objectives in the event that management agreements or understandings with Canada warrant reevaluation of the Council's assumptions about prior interceptions (60 FR 21753, 21756).

Annual management measures for the ocean salmon fisheries are recommended to NMFS by the Council under the authority of the framework FMP. During development of the 1995 annual management measures, the Council made certain assumptions regarding the harvest of coho salmon in Canadian fisheries off the West Coast of Vancouver Island (WCVI). These assumptions regarding Canadian harvest are an important factor in developing U.S. harvest quotas, since over one-half of the coho salmon harvested off Canada are of U.S. origin, and, absent interception, would return to U.S. waters. The Council's recommendations for U.S. ocean fisheries for coho salmon north of Cape Falcon were based, in part, on the assumption that Canada would harvest 1.78 million coho off WCVI, consistent with recent years' harvest levels.

Subsequent to the implementation of the U.S. 1995 annual management measures, the Government of Canada announced that it will reduce the Canadian harvest off WCVI to 1.2 million coho salmon for 1995. This reduction in Canadian harvest is expected to return several hundred thousand additional coho salmon to U.S. waters, most of which will return as spawning escapement to U.S. rivers and hatcheries, and some of which will be available for harvest.

The Council provided for the inseason adjustment of the annual management measures, based on revised assumptions for Canadian interceptions, in anticipation of providing some economic relief to ocean salmon fishermen who have been severely restricted (no fishing in 1994) during the last few years. At the same time, the Council assumed that the majority of benefits would accrue to spawning escapements, especially for wild coho salmon stocks.

Before taking any action, the Regional Director consulted, as required by the implementing regulations, with the Council Chairman, the States of Washington and Oregon, and most of the affected northwest treaty Indian tribes. Under the authority of 50 CFR part 661, NMFS is increasing the non-treaty coho salmon ocean quota north of Cape Falcon, OR, by 25,000 fish, from 75,000 to 100,000 fish, and the treaty Indian coho salmon ocean quota by 5,000 fish, from 25,000 to 30,000 fish. The overall non-treaty increase is distributed between the commercial troll and recreational fisheries, with the troll fishery quota increasing from 18,750 to 25,000 fish, and the recreational fishery quota increasing from 56,250 to 75,000 fish. The recreational quota increases are further distributed between the four subareas north of Cape Falcon, with the quota in the subarea from Cape Falcon, OR, to Leadbetter Point, WA, increasing from 28,125 to 37,500 fish; the quota in the subarea from Leadbetter Point to the Queets River, WA, increasing from 20,800 to 28,600 fish; the quota in the subarea from the Queets River to Cape Alava, WA, increasing from 1,460 to 1,800 fish; and the quota in the subarea from Cape Alava to the U.S.-Canadian border increasing from 5,850 to 7,100 fish.

The best available analysis of impacts on wild coho salmon escapements in Puget Sound and Washington coastal rivers indicated that, compared with assumptions and predictions made when the annual management measures were approved, wild coho salmon spawning escapements will increase significantly in all major streams, and all escapement floors for Washington coastal streams will be exceeded, even with these and other modest increases to U.S. fisheries in State waters. In addition, overall harvest impacts on Oregon coastal natural coho salmon, which have been proposed for listing as "threatened" under the Endangered Species Act and which make up a small portion of the harvest north of Cape Falcon, have decreased slightly.

The States of Oregon and Washington will manage the fisheries in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action.

Because of the need for immediate action to relieve a restriction, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment and without a delayed effectiveness period. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 2, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19524 Filed 8–3–95; 3:49 pm]

BILLING CODE 3510–22–F

50 CFR Part 662

[Docket No. 950801198–5198–01; I.D. 072795B]

RIN 0648–XX25

Northern Anchovy Fishery; Quotas for the 1995–96 Fishing Year

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final quotas.

SUMMARY: NMFS announces the estimated spawning biomass and final harvest quotas for the northern anchovy fishery in the exclusive economic zone south of Point Reyes, CA, for the 1995–96 fishing season. These quotas may only be adjusted if inaccurate data were used or if errors were made in the calculations. Comments on these two points are invited. The intended effect of this action is to establish allowable harvest levels of Pacific anchovy.

DATES: Effective on August 1, 1995. Comments will be accepted until September 5, 1995.

ADDRESSES: Submit comments on the final quotas to Ms. Hilda Diaz-Soltero, Regional Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Administrative Report LJ–95–11 is available from this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (310) 980–4036.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Science Center, the Director of the Southwest Region, NMFS, (Regional Director) has estimated that the 1995–96 spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, is 388,000 mt. The biomass estimate is derived from a stock assessment model using spawning biomass estimated by five indices of abundance. Documentation of the spawning biomass is contained in Administrative Report LJ–95–11, published by the Southwest Fisheries Science Center, NMFS (see ADDRESSES). This report and the determination of harvest quotas were provided to the Pacific Fishery Management Council (Council).

According to the formula in the Fishery Management Plan for the Northern Anchovy Fishery (FMP), the U.S. optimum yield (OY) is 61,600 mt (70 percent of the biomass above 300,000), which is allocated to reduction fisheries, plus 4,900 mt for non-reduction fisheries. There is no agreement with Mexico on the management of northern anchovy; a portion of the biomass (30 percent) above 300,000 mt is designated as the amount to account for this unregulated harvest. Any portion of the U.S. OY not used by U.S. fishermen is identified as total allowable level of foreign fishing (TALFF) and available to foreign fishing.

Estimates for the amount of anchovy that will be used by the U.S. fishing industry is based, usually, on the largest amount of reduction and non-reduction processing in the previous 3 years; however, the spawning biomass has been below 300,000 mt for the last 3 years and no reduction fishing has been permitted by the FMP. At a meeting of the Council's Coastal Pelagics Planning Team and Advisory Subpanel held in Long Beach, CA, on June 21, 1995, NMFS requested estimates of domestic processing needs from the fishing industry so that a basis could be established for setting annual quotas. Comments also were received at the June 26–29 meeting of the Council. From the information available, NMFS estimates that approximately 13,000 mt will be used by the U.S. reduction fishery in the 1995–96 season. Future estimates of domestic processing will be based on performance during the 1995–96 season.

The TALFF depends on that portion of the U.S. OY that will not be used by U.S. fishermen, minus the amount of harvest by Mexican vessels that is in excess of the average Mexican harvest (calculated according to the formula in the FMP), like the estimates of U.S. harvest. The estimates of Mexican excess harvest is based, generally, on the largest harvest in the last 3 years; however, the biomass has been so low

during this time that there has been no significant fishery off Mexico. Historically, the Mexican fishery has been based on availability and not on abundance. When the biomass was of a similar level in 1987, Mexico harvested 124,475 mt. The biomass dropped approximately 45 percent the next year and another 26 percent the following year, yet Mexico harvested approximately 80,000 mt in each of those 2 years. Recent harvests are not a reliable predictor of Mexican harvest under conditions of sudden increased abundance. The issue of uncertainty about the performance of the domestic industry and the intent of Mexican harvesters was discussed by the Council, which recommended that the portion allocated to TALFF be held in reserve. This action would have protected the domestic industry and helped assure that OY will not be exceeded; however, the FMP does not allow for a deviation from the designated formula.

The Regional Director has made the following determinations for the 1995–96 fishing season by applying the formulas in the FMP and in 50 CFR Part 662.20.

1. The total U.S. OY for northern anchovy is 66,500 mt, plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 13,000 mt.

a. Of the total reduction harvest quota, 1,300 mt is reserved for the reduction fishery in Subarea A (north of Pt. Buchon). The FMP requires that 10 percent of the U.S. reduction quota or 9,072 mt, whichever is less, be reserved for the northern fishery. This is not a special quota, but only a reduction in the amount allocated to the southern fishery south of Pt. Buchon (Subarea B). After the northern fishery has harvested 1,300 mt, any unused portion of the Subarea B allocation may also be harvested north of Pt. Buchon.

b. The reduction quota for subarea B (south of Pt. Buchon) is 11,700 mt.

3. The U.S. harvest quota for non-reduction fishing (i.e., fishing for anchovy for use as dead bait or human consumption) is 4,900 mt (as set by § 662.20).

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing capacity (DAP) is 13,000 mt.

6. The amount allocated to joint venture processing (JVP) is zero, because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 13,000 mt. DAH is the sum of DAP and JVP.

8. The TALFF is 48,600 mt.

The fishery will be monitored during the year and evaluated with respect to the OY and the estimated needs of the fishing industry. Adjustments may be made to comply with the requirements of the FMP and its implementing regulations.

This action is authorized by 50 CFR part 662 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 2, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–19499 Filed 8–3–95; 3:49 pm]

BILLING CODE 3510–22–F

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50 CFR Parts 672, 675, and 676

[Docket No. 950414104–5183–02; I.D. 110194B]

RIN 0648–AF53

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Maximum Retainable Bycatch Amounts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule and correcting amendments.

SUMMARY: NMFS is revising the regulations setting forth the standards for determining when a fishing vessel operator is engaged in directed fishing in the groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI). This rule replaces the existing species-, gear-, and management-goal specific standards with specific retainable percentages for deriving the maximum amount of fish species or species group that may be retained as bycatch in fisheries that are closed to directed fishing. Retention of more than this amount constitutes directed fishing. The changes made by this rule are expected to promote compliance with groundfish regulations and to facilitate enforcement efforts. This action is intended to further the objectives of the fishery management plans (FMPs) for the groundfish fisheries of Alaska.

EFFECTIVE DATE: August 2, 1995.

ADDRESSES: Individual copies of the environmental assessment/regulatory impact review prepared for this action may be obtained from Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by NMFS in accordance with the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations that appear at 50 CFR parts 672, 675, and 676. General regulations that also govern the groundfish fisheries appear at 50 CFR part 620.

This rule revises regulations at 50 CFR 672.20(g) and 675.20(h), which specify a large number of species-, area-, gear-, and management goal-specific standards for the GOA and BSAI, respectively, for determining when a vessel operator is engaged in directed fishing in the groundfish fisheries of GOA and BSAI. These directed fishing standards were intended to reduce harvest rates of groundfish species when their total allowable catch (TAC) limits are being approached, while, at the same time, reducing waste and minimizing the need to discard fish at sea by allowing retention of incidental groundfish bycatch, after closure of the directed fishery until the TAC limit is achieved.

In spite of increased specificity, the directed fishing standards often failed to prevent overharvest or underharvest of groundfish. Furthermore, the standards have not resulted in eliminating undesirable fishing practices, such as covert targeting on high value species after fishery closures or wasteful discarding.

A proposed rule addressing these concerns was published in the **Federal Register** on April 28, 1995 (60 FR 20952). Public comment was invited through May 30, 1995. Three letters of comments supporting the proposed rule, with some modifications, were received within the comment period and are summarized and responded to below in the "Response to Comments" section.

The final rule implements the following modifications to the directed fishing standards:

1. Usage of the term directed fishing standards is eliminated. Instead, "directed fishing" is defined as any fishing activity that results in the retention of an amount of fish species or species subgroup on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under the regulations as modified. The maximum retainable bycatch amount is the amount, in round-weight equivalents, of a species or species group that a vessel may retain on board at any time during a fishing trip. For purposes of calculating the maximum retainable bycatch amount, the regulations as modified specify, in tabular form, retainable percentages for each bycatch species/basis species combination.

2. A single, retainable percentage for each bycatch species/basis species combination is set forth, regardless of gear type or management area. Thus, the same retainable percentages are established for trawl, hook-and-line, pot, and other gear types. Similar retainable percentages are specified for the GOA and BSAI by separate tables reflecting differences in species groupings in the two areas.

3. Directed fishing standards based on groupings of fishery categories are eliminated (except for rockfish). Retainable percentages are established that are species-specific, except for rockfish. Consistent with existing regulations at §§ 672.20(g)(2) and 675.20(h)(3)(iii), rockfish, except demersal shelf rockfish, continues to be aggregated to prevent "topping off" of individual rockfish species that are closed to directed fishing.

4. The separate directed fishing standard for vessels using pelagic trawl gear is eliminated.

5. Closures are eliminated for fisheries for species in the aggregate under § 675.21 (c) and (d) when a prohibited species bycatch allowance is reached.

6. Retainable percentages for some species are specified that represent a more accurate estimation of the observed bycatch rates than the previous standards.

Details of the specific changes to the directed fishing standards are outlined in the preamble to the proposed rule.

Response to Comments

Comment 1: Pacific ocean perch (POP) should be separated from the aggregated rockfish group and a retainable percentage of 10 percent should be established for POP against other deep-water species in the GOA.

Response: Separating POP from an aggregation of other rockfish species could reduce the incentive for retaining some of the more valuable species and permit more POP to be taken; however, much of the discard associated with the POP fishery is due to a lack of market for this species. If the discard of POP is market-driven, separating POP would not likely reduce discards.

Establishing a different percentage for POP than is established for the other rockfish and making that percentage applicable only to the GOA would not conform to the Council's intent for consistency of the retainable percentages among species and between management areas.

Comment 2: The proposed rule perpetuates the current method of calculating bycatch of rockfish in the aggregate. This results in vessel operators discarding lower-valued rockfish species when they have bycatch of higher-valued rockfish species. Rockfish need to be separated into target fishery management groups to solve this problem.

Response: NMFS recognizes that aggregating rockfish could lead to discarding of lower-valued rockfish; however, separating the various rockfish management groups would allow an increase in the total amount of all rockfishes to be taken through "topping off" activities for the more valuable species. Of particular concern is the potential for some rockfish groups to reach overfishing status resulting in other fisheries being closed. If the rockfish were separated into distinct groups, the likelihood of reaching overfishing would increase.

Separating the rockfish groups could further reduce rockfish directed fisheries as greater amounts of the total allowable bycatch would have to be reserved to support bycatch needs. It could also result in more prohibited species closures for rockfish, forcing discard of additional catch.

Comment 3: The proposed rule is supported, including the proposed treatment of rockfish. Retainable percentages based on separate rockfish species would most likely result in an increase in the amount of "topping off," because fishermen would be allowed to target and retain the allowable percentage of each marketable rockfish species.

Response: NMFS agrees.

Upon reviewing the reasons for, and the comments on, this action, no substantive changes are made to the final rule from the proposed rule. Two editorial changes are made. In Table 2 to § 672.20, a spelling error is corrected in the second footnote and the management of demersal shelf rockfish is clarified. The corrected footnote reads "Aggregated rockfish of the genera *Sebastes* and *Sebastolobus*, except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category".

The final rule makes a minor correction to a final regulation that was published in the **Federal Register** on May 17, 1993 (58 FR 28799). That regulation established mandatory careful release procedures for Pacific halibut taken incidental to the hook-and-line gear fisheries for groundfish in the BSAI and GOA. These procedures prohibited the release of halibut caught on groundfish hook-and-line gear outboard of the vessel's rails by one of three methods, one of which included "cutting the gangion". However, in § 672.7(l)(2)(i) and § 675.7(m)(2)(i), the phrase "cutting and gangion" was used instead of the phrase "cutting the gangion." This document corrects the phrase.

Classification

The Director, Alaska Region, NMFS, determined that the regulatory amendment is necessary for the conservation and management of the GOA and BSAI management area fisheries and that it is consistent with the Magnuson Act and other applicable laws.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the notice of proposed rule (60 FR 20952, April 28, 1995). As a result a regulatory flexibility analysis was not prepared.

This rule has been determined to be not significant for purposes of E.O. 12866.

This action relieves a restriction on the flatfish fishery, the most-active groundfish fishing during the next 30 days. Immediate effectiveness of the rule would allow the flatfish fishery to retain more of the bycatch of certain groundfish species in fisheries that will be conducted in early August. This action confers a benefit to the flatfish fishery and reduce the overall groundfish waste. The revised retainable percentages will have no adverse effect on other groundfish fisheries operating during this period. Accordingly, as a rule relieving a restriction, under U.S.C. 553(d)(1), this final rule is made effectively immediately.

List of Subjects

50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 676

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672, 675, and 676 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the definition of "Directed fishing" is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Directed fishing means any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 672.20 (g) and (h).

* * * * *

3. In § 672.7, paragraph (l)(2)(i) is revised to read as follows:

§ 672.7 Prohibition.

* * * * *

(l) * * *

(2) * * *

(i) Cutting the gangion;

* * * * *

4. In § 672.20, the last sentence of paragraphs (c)(2)(i) and (c)(2)(ii), and paragraph (g) are revised, and new Table 2 is added at the end of this section to read as follows:

§ 672.20 General limitations.

* * * * *

(c) * * *

(2) * * *

(i) * * * If directed fishing for a species or species group is prohibited, any amount of that species or species group greater than the maximum retainable bycatch amount, as calculated under paragraph (g) of this section, may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

(ii) * * * If directed fishing for a species or species group is prohibited, any amount of that species or species group greater than the maximum retainable bycatch amount, as calculated under paragraph (g) of this section, may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

* * * * *

(g) *Maximum retainable bycatch amounts.* (1) The maximum retainable bycatch amount for a bycatch species or species group is calculated as a proportion of the basis species retained on board the vessel using the retainable percentages in Table 2 to this section. As used in this paragraph (g), "bycatch species" means any species or species group for which a maximum retainable bycatch amount is being calculated. As used in this paragraph (g), "basis species" means any species or species group that is open to directed fishing that the vessel is authorized to harvest.

(2) If a fishery is closed to directed fishing, a vessel may not retain a bycatch species in an amount that exceeds that maximum retainable bycatch amount, as calculated under this paragraph (g), at any time during a fishing trip.

(3) To calculate the maximum retainable bycatch amount for a specific bycatch species, an individual retainable bycatch amount must be calculated with respect to each basis species that is retained on board that vessel. To obtain these individual retainable bycatch amounts, the appropriate retainable percentage for the bycatch species/basis species combination, set forth in Table 2 to this section, is multiplied by the amount of that basis species, in round-weight equivalents. The maximum retainable bycatch amount for that specific bycatch species consists of the sum of the individual retainable bycatch amounts.

* * * * *

TABLE 2 TO § 672.20—GULF OF ALASKA RETAINABLE PERCENTAGES

Basic species[1]	Bycatch species[1]					
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish
Pollock	[3]na	20	20	20	20	20
Pacific cod	20	[3]na	20	20	20	20
Deep-water flatfish	20	20	[3]na	20	20	20
Rex sole	20	20	20	[3]na	20	20
Flathead sole	20	20	20	20	[3]na	20
Shallow-water flatfish	20	20	20	20	20	[3]na
Arrowtooth	0	0	0	0	0	0
Sablefish	20	20	20	20	20	20
Pacific Ocean Perch	20	20	20	20	20	20
Shortraker/rougheye	20	20	20	20	20	20
Other rockfish	20	20	20	20	20	20
Northern rockfish	20	20	20	20	20	20
Pelagic rockfish	20	20	20	20	20	20
DSR-Southeast Outside	20	20	20	20	20	20
Thornyhead	20	20	20	20	20	20
Atka mackerel	20	20	20	20	20	20
Other species	20	20	20	20	20	20
Aggregated amount non-groundfish species	20	20	20	20	20	20

TABLE 2 to § 672.20—GULF OF ALASKA RETAINABLE PERCENTAGES

Basis species[1]	Bycatch species[1]					
	Arrowtooth	Sablefish	Aggregated rockfish[2]	DSR southeast outside	Atka mackerel	Other species
Pollock	35	1	5	10	20	20
Pacific cod	35	1	5	10	20	20
Deep-water flatfish	35	15	15	1	20	20
Rex sole	35	15	15	1	20	20
Flathead sole	35	15	15	1	20	20
Shalow-water flatfish	35	1	5	10	20	20
Arrowtooth	[3]NA	0	0	0	0	0
Sablefish	35	[3]NA	15	1	20	20
Pacific Ocean Perch	35	15	15	1	20	20
Shortraker/rougheye	35	15	15	1	20	20
Other rockfish	35	15	15	1	20	20
Northern rockfish	35	15	15	1	20	20
Pelagic rockfish	35	15	15	1	20	20
DSR-Southeast Outside	35	15	15	[3]NA	20	20
Thornyhead	35	15	15	1	20	20
Atka mackerel	35	1	5	10	[3]NA	20
Other species	35	1	5	10	20	[3]NA
Aggregated amount non-groundfish species	35	1	5	10	20	20

[1] For definition of species see Table 1 of the Gulf of Alaska groundfish specifications.
[2] Aggregated rockfish means rockfish of the genera Sebastes and Sebastolobus except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category.
[3] NA = not applicable.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 675.2, the definition of "Directed fishing" is revised to read as follows:

§ 675.2 Definitions.

* * * * *

Directed fishing means any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under § 675.20 (h) and (i).

* * * * *

7. In § 675.7, paragraph (m)(2)(i) is revised to read as follows:

§ 675.7 Prohibition.

* * * * *

(m) * * *

(2) * * *

(i) Cutting the gangion;

* * * * *

8. In § 675.20, the last sentence of paragraph (a)(8) and paragraph (h) are revised, and new Table 1 is added at the end of the section to read as follows:

§ 675.20 General limitations.

(a) * * *

(8) * * * If directed fishing for a species or species group is prohibited, any amount of that species or species group greater than the maximum retainable bycatch amount, as calculated under paragraph (h) of this section, may not be retained and must be treated as a prohibited species under paragraph (c) of this section.

* * * * *

(h) *Maximum retainable bycatch amounts.* (1) The maximum retainable bycatch amount for a bycatch species or species group is calculated as a proportion of the basis species retained on board the vessel using the retainable percentages in Table 1 to this section. As used in this paragraph (h), "bycatch species" means any species or species group for which a maximum retainable bycatch amount is being calculated. As used in this paragraph (h), "basis species" means any species or species group that is open to directed fishing that the vessel is authorized to harvest.

(2) If a fishery is closed to directed fishing, a vessel may not retain a bycatch species in an amount that exceeds that maximum retainable bycatch amount, as calculated under this paragraph (h), at any time during a fishing trip.

(3) To calculate the maximum retainable bycatch amount for a specific bycatch species, an individual retainable bycatch amount must be calculated with respect to each basis species that is retained on board the vessel. To obtain these individual amounts, the appropriate retainable percentage for the bycatch species/basis species combination, set forth in Table 1 to this section, is multiplied by the amount of that basis species, in round-weight equivalents. The maximum retainable bycatch amount for that specific bycatch species consists of the sum of the individual retainable bycatch amounts.

* * * * *

TABLE 1 to § 670.20—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

Basis species[1]	Bycatch species[1]					
	Pollock	P. cod	Atka mack	Arrowtooth	Yellowfin sole	Other flatfish
Pollock	[3]NA	20	20	35	20	20
Pacific cod	20	[3]NA	20	35	20	20
Atka mackerel	20	20	[3]NA	35	20	20
Arrowtooth	0	0	0	[3]NA	0	0
Yellowfin sole	20	20	20	35	[3]NA	35
Other flatfish	20	20	20	35	35	[3]NA
Rocksole	20	20	20	35	35	35
Flathead sole	20	20	20	35	35	35
Greenland turbot	20	20	20	35	20	20
Sablefish	20	20	20	35	20	20
Other rockfish	20	20	20	35	20	20
Other red rockfish—BS	20	20	20	35	20	20
Pacific Ocean Perch	20	20	20	35	20	20
Sharpchin/ Northern—AI	20	20	20	35	20	20
Shortraker/ Rougheye—AI	20	20	20	35	20	20
Squid	20	20	20	35	20	20
Other species	20	20	20	35	20	20
Aggregated amount nongroundfish species	20	20	20	35	20	20

[1] For definition of species see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the general Sebastes and Sebastolobus.
[3] NA=not applicable.

TABLE 1 TO § 675.20—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

Basis species[1]	Bycatch species[1]			
	Rocksole	Flathead sole	Grid turbot	Sablefish
Pollock	20	20	1	1
Pacific cod	20	20	1	1
Atka mackerel	20	20	1	1
Arrowtooth	0	0	0	0
Yellowfin sole	35	35	1	1
Other flatfish	35	35	1	1
Rocksole	[3]NA	35	1	1
Flathead sole	35	[3]NA	35	15
Greenland turbot	20	20	[3]NA	15
Sablefish	20	20	35	[3]NA
Other rockfish	20	20	35	15
Other red rockfish—BS	20	20	35	15
Pacific Ocean Perch	20	20	35	15
Sharpchin/Northern—AI	20	20	35	15
Shortraker/Rougheye—AI	20	20	35	15
Squid	20	20	1	1
Other species	20	20	1	1
Aggregated amount non-groundfish species	20	20	1	1

[1] For definition of species see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera Sebastes and Sebastolobus.
[3] NA=not applicable.

TABLE 1 to § 675.20.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

Basis species[1]	Aggregated rockfish[2]	Squid	Other species
Pollock	5	20	20
Pacific cod	5	20	20
Atka mackerel	5	20	20
Arrowtooth	0	0	0
Yellowfin sole	5	20	20
Other flatfish	5	20	20
Rocksole	5	20	20
Flathead sole	15	20	20
Greenland turbot	15	20	20
Sablefish	15	20	20
Other rockfish	15	20	20
Other red rockfish—BS	15	20	20

TABLE 1 to § 675.20.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES—Continued

Basis species[1]	Aggregated rockfish[2]	Squid	Other species
Pacific Ocean Perch	15	20	20
Sharpchin/Northern—AI	15	20	20
Shortraker/Rougheye—AI	15	20	20
Squid	5	[3]NA	20
Other species	5	20	[3]NA
Aggregated amount non-groundfish species	5	20	20

[1] For definition of species see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera Sebastes and Sebastolobus.
[3] NA=not applicable.

9. In § 675.21, paragraphs (c)(1)(i) through (c)(1)(iii), (c)(2) introductory text, and paragraph (d) are revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(c) * * *

(1) * * *

(i) *Zone 1 red king crab or C. bairdi Tanner crab bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(1)(iii) (B) through (F) of this section will catch the Zone 1 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of Zone 1 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

(ii) *Zone 2 red king crab or C. bairdi Tanner crab bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(1)(iii) (B) through (F) of this section will catch the Zone 2 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of Zone 2 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

(iii) *Halibut bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(1)(iii) (B) through (F) of this section in the Bering Sea and Aleutian Islands management area will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the entire Bering Sea and Aleutian Islands management area to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using nonpelagic trawl gear.

(2) *Attainment of a trawl bycatch allowance for Pacific herring.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (b)(1)(iii) (A) through (F) of this section in the Bering Sea and Aleutian Islands management area will catch the herring bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the Herring Savings Area to directed fishing for each species and/or species group in that fishery category, except that:

* * * * *

(d) *Attainment of a Pacific halibut nontrawl fishery bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the nontrawl fishery categories listed in paragraphs (b)(2)(ii) (A) through (C) of this section will catch the Pacific halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the entire Bering Sea and Aleutian Islands management area to directed fishing with the relevant gear type for each species and/or species group in that fishery category.

10. In § 675.22, paragraph (g) introductory text is revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) Catcher vessel operational area (applicable through December 31, 1995). Processor vessels in the "offshore component," defined at § 675.2, may not catch pollock in excess of the maximum retainable bycatch amount for pollock during the second seasonal allowance of pollock, defined at § 675.20(a)(2)(ii), in the Bering Sea subarea south of 56°00′ N. lat., and between 163°00′ and 168°00′ W. long.

* * * * *

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

11. The authority citation for part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

12. In § 676.23, paragraph (b) is revised to read as follows:

§ 676.23 IFQ fishing season.

* * * * *

(b) Directed fishing for sablefish using fixed gear in any IFQ regulatory area may be conducted in any fishing year during the period specified by the Regional Director through notification published in the **Federal Register**. The Regional Director will take into account the opening date of the Pacific halibut

season when determining the opening date for sablefish for the purposes of reducing bycatch and regulatory discards between the two fisheries. Catches of sablefish by fixed gear during other periods may be retained up to and including the maximum retainable bycatch amount specified at §§ 672.20(g) and 675.20(h) of this chapter if an individual is aboard when the catch is made who has a valid IFQ card and unused IFQ in the account on which the card was issued. Catches of sablefish in excess of the maximum retainable bycatch amounts and catches made without IFQ must be treated in the same manner as prohibited species.

[FR Doc. 95–19439 Filed 8–2–95; 3:59 pm]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 60, No. 152
Tuesday, August 8, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 273

[Amendment No. 389]

RIN: 0584–AC06

Food Stamp Program: Failure to Comply With Federal, State, or Local Welfare Assistance Program Requirements

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend Food Stamp Program regulations to prohibit an increase in food stamp benefits when a household's Federal, State or local welfare assistance payment decreases as a result of a penalty for failure to comply with a Federal, State or local welfare program requirement. The revision is necessary to more fully implement congressional intent that the Food Stamp Program should reinforce, not mitigate, another program's penalties.

DATES: Comments must be received on or before September 22, 1995, to be assured of consideration.

ADDRESSES: Comments should be submitted to Margaret Thiel, Acting Supervisor, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Mrs. Thiel at (703) 305–2454. All written comments will be open to public inspection at the offices of the Food and Consumer Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Mrs. Thiel at the above address or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-Quality Control liabilities) or Part 283 (for rules related to Quality Control ljabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service (FCS), has certified that this proposal would not have a significant economic impact on a substantial number of small entities. The changes would affect food stamp applicants and recipients who intentionally fail to comply with other Federal, State or local welfare assistance program requirements. The proposal would also affect State and local welfare agencies which administer the Food Stamp Program. State welfare agencies are reimbursed at a 50/50 matching rate for Food Stamp Program administrative costs.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

The Food Stamp Act Amendments of 1982 (Pub. L. 97–2253, Subtitle E, Sec. 164, Sept. 8, 1982) amended the Food Stamp Act of 1977, as amended, (Act) to add a new provision (Section 8(d)) which prohibits increases in food stamp benefits which are due to decreases in household income resulting from a penalty levied by a Federal, State, or local welfare assistance program for intentional failure to comply with the other program's requirements. 7 U.S.C. 2017(d). As currently written in the Food Stamp Program regulations at 7 CFR 273.11(k), the prohibition only applies to penalty situations in which overissued benefits resulting from such intentional noncompliance are being recouped from the household's public assistance benefits which would otherwise result in a reduction in countable income for Food Stamp Program purposes.

The Department is proposing to expand the current regulations to include all situations in which a decrease in public assistance income occurs as a result of a penalty being imposed for intentional failure to comply with a Federal, State, or local welfare program requirement. This proposal stems from several incidents in recent years when States, working with the Department in developing welfare reform proposals, have asked that we not allow food stamp benefits to rise

when work sanctions are imposed on recipients of other benefits for failure to comply with work requirements. Also, any other sanctions for an intentional failure to comply with welfare program requirements could not be used to allow food stamp benefits to rise.

When a recipient of the Aid to Families with Dependent Children (AFDC) Program, for example, fails to comply with a Jobs Opportunity and Basic Skills (JOBS) program requirement, the assistance unit is sanctioned by excluding the individual's needs in determining the unit's need for AFDC benefits and the amount of the payment. Unless the JOBS requirement is "comparable" to a Food Stamp Employment and Training (E&T) requirement, the household's food stamp allotment will increase as a result of the decrease in income it sustains because of the JOBS sanction. Raising the food stamp benefit level lessens the impact of the penalty imposed by AFDC. If a comparable E&T requirement exists, failure to comply with JOBS is treated the same as if the individual failed to comply with an E&T requirement, and the individual (or household) is ineligible for food stamp benefits for 60 days.

Because the Department does not have the authority to waive the current restrictive provision at 7 CFR 273.11(k), the Department has had to deny State requests to hold food stamp benefits constant when sanctioning a person for noncompliance with another program's requirements. The Department believes the current policy should be broadened to more fully reflect Congressional intent which indicates that the Food Stamp Program should reinforce, not mitigate, another program's penalties (Sen. Rpt. No. 97–504, July 26, 1982, p. 44).

Accordingly, the Department proposes to amend 7 CFR 273.11(k) to provide that when a recipient's benefit under a Federal, State, or local means-tested welfare assistance program (such as but not limited to Supplemental Security Income, Aid to Families with Dependent Children, General Assistance) is decreased due to a penalty for intentional noncompliance with a requirement under such program, food stamp allotments will not increase as a result. This proposal more fully reflects the Food Stamp Amendments of 1982. A penalty for purposes of this provision is the amount by which a welfare assistance payment has been decreased. The Department intends that the term decrease for the purposes of this rule means a reduction, suspension or termination. The language of the Food Stamp Act specifically addresses a penalty which results in a decrease in income (termination or reduction of benefits) as a result of a penalty.

It is important to note that some State welfare reform projects have policies that cause the benefits of other programs to be held constant even though changes in household circumstances occur that would otherwise cause a rise in benefits. The Department is clarifying in this proposed rulemaking that situations which result in a freeze on the other program's current benefit level do not constitute a penalty subject to the provisions of this proposal. Also, changes in household circumstances which are not related to the penalty and result in an increase in food stamp benefits shall likewise not be affected by the provisions of this paragraph. For example, a household may be receiving a reduced level of general assistance benefits for a 6-month period as the result of a penalty imposed because one of its members refused to comply with a work requirement of that program. The household's food stamp benefits would not go up as a result of the decreased benefits. However, if during the 6-month period another member of the household suffered a reduction in nonassistance income, the food stamp benefits could go up even though the penalty was still in effect. This is because the factors resulting in the increase in food stamp benefits were unrelated to the penalty.

This proposal does not imply that Food Stamp Program administrators take a role in determining whether an individual's failure to comply with another programs' requirements was intentional or not. That determination is left to those responsible for administering those other programs. Under this proposal, Food Stamp Program administrators would only determine if a decrease in public assistance benefits is the result of a penalty being levied for intentional noncompliance. If so, Food Stamp Program eligibility workers would calculate food stamp benefits in such situations by using the assistance payment which would have been issued by the other assistance program if no penalty had been imposed for the violation.

Implementation

The provisions of this rulemaking are proposed to be effective and to be implemented by State welfare agencies on the first day of the month following 120 days from the publication date of the final rule.

List of Subjects in 7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation of part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 273.11, paragraph (k) is revised to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(k) *Failure to comply with another assistance program's requirements.* The State agency shall ensure that there is no increase in food stamp benefits to a household as the result of a penalty imposed for intentional failure to comply with a Federal, State, or local means-tested welfare program which distributes publicly funded benefits. When a recipient's current benefit level under a Federal, State, or local means-tested welfare assistance program (such as but not limited to SSI, AFDC, GA) is decreased (by reduction, suspension or termination) due to a penalty for intentional noncompliance with a requirement under such program, the State agency shall identify that portion of the decrease which is the penalty. The penalty for purposes of this provision shall be that portion of the decrease attributed to the repayment of benefits overissued as a result of the household's intentional noncompliance or the amount by which the other program's benefits have been otherwise decreased as the result of the intentional noncompliance. The State agency shall calculate the food stamp benefits using the benefit amount which would be issued by that program if no penalty had been applied against the benefit amount. A situation which results in the benefits of the other program being frozen at the current level shall not constitute a penalty subject to the provisions of this paragraph. Changes in household circumstances which are not related to the penalty and result in an increase in food stamp benefits shall likewise not be affected by the provisions of this paragraph.

Dated: August 2, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95–19525 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 1280

[No. LS–95–008]

Sheep Promotion, Research, and Information Program: Procedures for the Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Sheep Promotion, Research, and Information Act of 1994 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Sheep and Wool Promotion, Research, Education, and Information Order (Order). The Act requires that after the issuance of the final Order, the Secretary shall conduct an initial referendum among sheep producers, sheep feeders, and importers of sheep and sheep products to determine whether the Order will go into effect. For the program to become operational, the final Order must be approved by sheep producers, sheep feeders, and importers of sheep and sheep products voting in the initial referendum. Importers who only import raw wool are not eligible to participate in the referendum. This proposed rule sets forth the procedures for conducting the initial referendum to determine if producers, feeders, and importers approve the final Order. These rules would also apply to any additional referendum conducted pursuant to the Act.

DATES: Written comments must be received by September 7, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. Comments hours at the above address in room 2606 South Agriculture Building, 14th and Independence Avenue SW., Washington, D.C. Comments on the information collection requirements contained in the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Attention: Desk Officer for the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION: This proposed rule is authorized under the Act (7 U.S.C. 7101–7111).

Regulatory Impact Analysis

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This proposal has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision. The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceedings in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

According to the January 27, 1995, issue of "Sheep and Goats," published by the U.S. Department of Agriculture's (Department) National Agricultural Statistics Service, there are approximately 87,350 operations with sheep in the United States that may be eligible to vote in the referendum. To obtain the estimated number of importers of sheep and sheep products who would be subject to an assessment and who may be eligible to vote in the referendum, the Department consulted with major importer organizations whose members import sheep and sheep products into the United States. Based on its consultations with these organizations, the Department estimates that the number of sheep and sheep product importers in the United States who would be subject to these rules and regulations is approximately 9,000. Nearly all of the sheep operations in the United States and nearly all of the importers of sheep and sheep products would be classified as small entities by the Small Business Administration (13 CFR 121.601).

This action has also been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This proposed rule would establish procedures for the conduct of a referendum to determine whether an Order promulgated under the Act becomes operational. Such procedures would permit all eligible sheep producers, sheep feeders, and importers of sheep and sheep products, excluding importers who import only raw wool, who have been engaged in sheep production, sheep feeding, or the importation of sheep and sheep products to vote in the referendum. Participation in the referendum is voluntary. Votes may be cast either by mail ballots or in-person at polling places. Casting votes by mail or in-person would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), we have submitted the information collection requirements contained in this proposed rule to OMB for approval. OMB has assigned OMB control number 0581–0093. The information collection requirements in this proposed rule include the following:

(a) For in-person voting:

(1) Each sheep producer, sheep feeder, or importer of sheep and sheep products, except an importer who imports only raw wool, who vote in person in the referendum, must sign the Voter Registration List (Form LS–61–3) and complete a Ballot (Form LS–61) at the county Cooperative Extension Service (CES) office of the Department. The voter must complete the ballot and insert the ballot into the SHEEP BALLOT envelope (Form LS–61–1).

(2) Each producer, feeder, and importer must complete the Certification and Registration Form that

is printed on the SHEEP REFERENDUM envelope (Form LS–61–2), and insert the SHEEP BALLOT envelope, with the enclosed ballot, in the SHEEP REFERENDUM envelope (Form LS–61–2). The estimated average time burden for completing the forms for in-person voting is 6 minutes per voter.

(b) For absentee voting: Each sheep producer, sheep feeder, and importer of sheep and sheep products, except an importer who imports only raw wool, who wants to cast an absentee vote instead of an in-person vote, must complete, in a legible manner, a combined registration and absentee ballot form (Form LS–62). The voting producer, feeder, or importer must complete the form and insert the ballot portion in a SHEEP BALLOT envelope (Form LS–61–1) (same as for in-person voting) and then insert the sealed SHEEP BALLOT envelope and the registration form in the SHEEP REFERENDUM envelope (Form LS–62–1). The estimated average time burden for completing this procedure is 6 minutes per voter.

(c) The proposed rule requires each sheep producer, sheep feeder, or importer of sheep and sheep products who votes in person to record on the Voter Registration List (Form LS–61–3) his or her name and the name of the entity he or she represents. The estimated average time burden for registering to vote in person is 0.5 minutes per voter. For absentee voters, the county CES agent shall enter on the Absentee Voter Request List (Form LS–62–2) the date the ballot was requested, the name, the address, the name of the represented entity, if any, and the date the ballot was mailed from the county CES office. This information may be used to validate ballots and to challenge potentially ineligible voters. Each county CES agent will fill out one or more of the Absentee Voter Request Lists (Form LS–62–2) per referendum. Because only county CES agents will complete the Absentee Voter Request List, the estimated average reporting burden would not apply to the producer, feeder or importer voting in the referendum.

The estimated number of producers, feeders, and importers who will vote in the referendum is 25,000, with each voting once.

Please send comments concerning the information collection requirements contained in this proposed rule to the Office of Information and Regulatory Affairs, Office Management and Budget, Washington, DC 20503. Attention: Desk Officer for the Agricultural Marketing Service, USDA.

Background

The Act (7 U.S.C. 7101–7111) provides for the establishment of a coordinated program of promotion, research, education, consumer information, industry information, and producer information designed to strengthen the sheep industry's position in the marketplace, maintain and expand existing markets, and develop new markets and uses for sheep and sheep products.

The program will be funded by a mandatory assessment on domestic producers, feeders, and exporters of live sheep and greasy wool of 1-cent-per-pound on live sheep sold and 2-cents-per-pound on greasy wool sold. Importers will be assessed 1-cent-per-pound on live sheep, the equivalent of 1-cent-per-pound of live sheep for sheep products as well as 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool would be exempt from assessments. Each person who processes or causes to be processed sheep and sheep products of that person's own production, and who markets the processed products, would be assessed the equivalent of 1-cent-per-pound of live sheep sold or 2-cents-per-pound of greasy wool sold. All assessments may be adjusted in accordance with the applicable provisions of the Act.

The Act requires that a referendum be conducted after the issuance of the final Order to determine whether the Order will go into effect. The referendum would be conducted among persons who were sheep producers, sheep feeders, or importers of sheep and sheep products, during a representative period specified by the Secretary. Importers who import only raw wool are not eligible to participate in the referendum because raw wool is exempt from assessments under the act. The Order would become operational only if it is approved by a majority of the producers, feeders, and importers voting in the referendum or by producers, feeders, and importers voting in the referendum who account for at least two-thirds of the production represented by persons voting in the referendum. If the final Order is not approved by persons voting in the referendum, the program will not become operational.

To vote in the referendum, eligible persons will be required to complete the combined registration form, mark their ballots and record their volume of production on the ballot. The volume of production will be recorded as the number of live sheep or live sheep equivalents a person owned or imported during the representative period. As in past sheep or wool referendums conducted by the Department, the domestic volume of production includes the largest number of head of domestic sheep 6 months old or older owned for any single consecutive 30-day period during the representative period. The number of live sheep equivalents for imported sheep products will be calculated using published data on the amount of such products imported during the representative period. Producers, feeders and importers will be required to determine their volume of production before they register and vote in the referendum.

The Act specifies that the Secretary shall determine a method of allocating, by a pro rate percentage of annual projected or actual assessments from importers, the volume of production represented by importers in a referendum conducted pursuant to this subpart. Because an Order implementing the provisions of the Act has not been in effect, imported sheep and sheep products have not been subject to the assessments described in the proposed Order (60 FR 28747). Consequently, there are no projected or actual annual assessments available to use in calculating the volume of production for importers during the representative period. In the absence of that information on annual assessments, the Department proposes that importers of sheep and sheep products determine their volume of production by converting the volume of those imported products that would have been subject to assessment if an Order had been in effect during the representative period. Imported sheep, sheep meat and wool and wool products that would have been subject to assessment during the representative period are identified by the Harmonized Tariff Schedule (HTS) classification numbers listed in Table 1—HTS Classification Numbers and Conversion Factors for Imported Sheep and Sheep Products—contained herein, which includes sheep, sheep meat and wool and wool products. Because the Act exempts imported raw wool from assessments, HTS numbers and corresponding conversion factors are not included for imported raw wool. For the purpose of this initial referendum, the Department proposes that importers use the 1994 HTS classification numbers and conversion factors in Table 1. These HTS numbers for imported sheep and sheep products are published in the Harmonized Tariff Schedule of the United States. To enable importers to convert sheep meat and wool and wool products identified by the HTS numbers for 1994 listed in Table 1, the Department proposes to use the conversion factors listed in the same table that correspond to each listed HTS number. The Department's Economic Research Service (ERS) has developed these conversion factors and maintains them in an import library. For sheep meat, these conversion factors take into account removal of bone, weight lost in processing or cooking, and nonsheep components of the sheep products. The conversion factors for wool products are used to determine the raw fiber content of imported wool products, and take into account fiber loss during processing, fabric trim loss, and cutting loss for wool.

Factors in determining the number of live sheep equivalents include (1) The weight of the imported sheep meat, the weight of imported wool and wool product and the corresponding conversion factors, (2) the average carcass weight of 57 pounds for domestic mature sheep as published by the Department's National Agricultural Statistics Service in the March 1995 edition of the 1994 Livestock Slaughter Summary, (3) a dressing percentage of 50 percent, and (4) an equivalent live weight of 114 pounds for domestic mature sheep (57 lbs. ÷ 50% = 114 lbs.). The dressing percentage of 50 percent is widely recognized as the average dressing percentage for sheep in the United States. The formula for calculating importer volume of production for imported wool and wool products will use the listed conversion factors and a clean wool yield of 52.8 percent, as published by ERS in the 1992 Weight, Measures, and Conversion Factors for Agricultural Commodities and Their Products, to convert clean wool to a greasy wool basis. In the absence of official data for carcass weights, live weights, dressing percentage and wool yield percentages of sheep from importing countries, the Department believes that the proposed carcass weight, the dressing percentage, the live weight, and the percentage of clean wool yield will, on the average, be most representative of carcass weights, dressing percentages, live weights and clean wool yield percentages of sheep from which imported sheep products are derived.

Imported live sheep require no conversion and each head of imported live sheep would be counted in determining total volume of production for importers. Calculation procedures for both imported sheep meat and imported wool and wool products follow:

Imported Sheep Meat

To calculate the live sheep equivalents of imported sheep meat, an importer would first multiply the total weight of imported sheep meat for each applicable HTS number by the specified conversion factor to determine the total carcass weight equivalent. The importer would then divide the total carcass weight equivalent by the average carcass weight of 57 pounds to determine the equivalent number of live sheep. Because the carcass weight of 57 pounds represents the equivalent live weight of 114 pounds (57 lbs. ÷ 50% = 114 lbs.), it is not necessary to convert the carcass weight to a live weight equivalent. The Department proposes that the number of live animal equivalents be rounded to the nearest whole number. If the decimal is less than 0.5, or greater, the number of head of sheep would be rounded upward i.e., 7.5 = 8.0). If the decimal is less than 0.5, the number of head of sheep would be rounded downward (i.e. 7.49 = 7.0). The following examples illustrate two typical calculations:

Example I

Sheep Meat (Bone-in)
HTS Classification Number: 0204100000
Item Name: Carcasses and half carcasses of lamb, fresh or chilled
Assume: Company X imports 1,000 pounds of bone-in sheep meat
Conversion factor: 1.00
Average carcass weight: 57 pounds
1,000 pounds × 1.00 = 1,000 pounds of carcass weight equivalent.
1,000 pounds carcass weight equivalent ÷ 57 pounds per carcass = 17.5 or 18 live sheep equivalents.

Example II

Sheep Meat (Boneless)
HTS Classification Number: 0204232000
Item Name: Other meat of sheep, fresh or chilled: Boneless: lamb
Assume: Company X imports 1,000 pounds of boneless sheep meat
Conversion factor: 1.52
Average carcass weight: 57 pounds
1,000 pounds × 1.52 = 1,520 pounds of carcass weight equivalent.
1,520 pounds carcass weight equivalent ÷ 57 pounds per carcass = 26.6 or 27 live sheep equivalents.

Imported Wool and Wool Products

To calculate the number of live sheep equivalents of imported wool products, the imported would first multiply the total weight of imported wool products for each applicable HTS number by the corresponding conversion factor to determine the total weight of clean wool. The importer would then divide the total weight of the clean wool equivalent by 52.8 percent, to convert the clean wool to a greasy wool basis. Finally, the importer would divide the total pounds of greasy wool by the calculated average live weight of 114 pounds to determine the number of live sheep equivalents. The Department proposes that the number of live animal equivalents be rounded to the nearest whole number. If the decimal is 0.5 greater, the number of head of sheep would be rounded upward (i.e., 7.5 = 8.0). If the decimal is less than 0.5, the number of head of sheep would be rounded downward (i.e., 7.49 = 7.0). The following example illustrates a typical calculation:

Example

Wool and Wool Products
HTS No. 6201110010
—Item Name: Mens or boys overcoats of wool or fine animal hair
Assume: Company X imports 1,000 overcoats weighing 2,000 pounds into the United States.
Conversion factor: 0.9774
2,000 pounds × 0.9774 = 1954.8 pounds clean wool content
1954.8 pounds of clean wool content ÷ 52.8 percent = 3702.3 pounds of greasy wool.
3702.3 pounds of greasy wool ÷ 114 pounds = 32.5 or 33 live sheep equivalents.

The HTS numbers, the conversion factors, and other information used to calculate number of live sheep equivalents apply only to the initial referendum described herein.

The 1994 HTS classification numbers and conversion factors for imported sheep and sheep products and wool and wool products are as follow:

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS

HTS	CF
Live Sheep	
0104100000	1.00
Sheep Meat	
0204100000	1.00
0204210000	1.00
0204222000	1.00
0204224000	1.00
0204232000	1.52
0204234000	1.52
0204300000	1.00
0204410000	1.00
0204422000	1.00
0204424000	1.00
0204432000	1.52
0204434000	1.52

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
Wool and Wool Products	
5107106030	0.5315
5007906030	0.5315
5103100000	1.0417
5103200000	1.0417
5105100000	1.0309
5105210000	1.1111
5105290000	1.1111
5106100010	1.0417
5106100090	1.0417
5106200000	0.5208
5107100000	1.0417
5107200000	0.5208
5109102000	1.0417
5109902000	1.0417
5111112000	1.0629
5111113000	1.0629
5111117030	1.0629
5111117060	1.0629
5111191000	1.0629
5111192000	1.0629
5111196020	0.5315
5111196040	0.5315
5111196060	1.0629
5111196080	1.0629
5111200500	0.5315
5111201000	0.5315
5111209000	0.5315
5111300500	0.5315
5111301000	0.5315
5111309000	0.5315
5111903000	0.5315
5111904000	0.7972
5111905000	0.5315
5111906000	0.7972
5111909000	0.7972
5112110030	0.5315
5112110060	0.9566
5112111000	0.9566
5112112030	1.0629
5112112060	0.9566
5112192000	1.0629
5112199010	1.0629
5112199020	1.0629
5112199030	1.0629
5112199040	1.0629
5112199050	1.0629
5112199060	1.0629
5112201000	0.5315
5112202000	0.5315
5112203000	0.5315
5112301000	0.5315
5112302000	0.5315
5112303000	0.5315
5112903000	0.6378
5112904000	0.7972
5112905000	0.7972
5112909010	0.5315
5112909090	0.5315
5212111010	0.4783
5212111020	0.4783
5212116010	0.2126
5212121010	0.4783
5212121020	0.4783
5212126010	0.2126
5212131010	0.4783
5212131020	0.4783
5212136010	0.2126
5212141010	0.4783
5212141020	0.4783
5212146010	0.2126
5212151010	0.4783
5212151020	0.4783
5212156010	0.2126
5212211010	0.4783
5212211020	0.4783
5212216010	0.2126
5212221010	0.4783
5212221020	0.4783
5212226010	0.2126
5212231010	0.4783
5212231020	0.4783
5212236010	0.2126
5212241010	0.4783
5212241020	0.4783
5212246010	0.2126
5212251010	0.4783
5212251020	0.4783
5212256010	0.2126
5309212000	0.5315
5309292000	0.5315
5311002000	0.2126
5407910510	0.4783
5407910520	0.4783
5407911000	0.2126
5407920510	0.4783
5407920520	0.4783
5407921010	0.2126
4307921020	0.2126
5407930510	0.4783
5407930520	0.4783
5407931000	0.2126
5407940510	0.4783
5407940520	0.4783
5407941000	0.2126
5408310510	0.4783
5408310520	0.4783
5408311000	0.2126
5408320510	0.4783
5408320520	0.4783
5408321000	0.2126
5408330510	0.4783
5408330520	0.4783
5408331000	0.2126
5408340510	0.4783
5408340520	0.4783
5408341000	0.2126
5509520000	0.3646
5509610000	0.1563
5509910000	0.3646
5510200000	0.3646
5515130510	0.4783
5515130520	0.4783
5515131010	0.2126
5515131020	0.2126
5515220510	0.4783
5515220520	0.4783
5515221000	0.2126
5515920510	0.4783
5515220520	0.4783
5515921010	0.2126
5515921020	0.2126
5516310510	0.4783
5516310520	0.4783
5516311000	0.2126
5516320510	0.4783
5516320520	0.4783
5516321000	0.2126
5516330510	0.4783
5516330520	0.4783
5516331000	0.2126
5516340510	0.4783
5516340520	0.4783
5516340520	0.4783
5516341000	0.2126
5601290020	0.9035
5602109010	1.0629
5602109010	1.0629
5602109090	0.5315
5602210000	1.0629
5602903000	0.2657
5603001010	1.0629
5701101300	0.9479
5701101600	0.9479
5702101000	1.0156
5702109010	1.0156
5702311000	0.7708
5702311000	0.7708
5702312000	0.6563
5702411000	0.6979
5702412000	0.5729
5702512000	0.9531
5702514000	0.9010
5702912000	0.9531
5702913000	0.9531
5702914000	0.9010
5703100000	0.6313
5704100010	0.2630
5704900010	0.2630
5705002010	0.6313
5801100000	1.0629
5810990010	1.0629
5811001000	1.0629
5903203010	0.5315
5903903010	0.5315
6001290000	1.0629
6002209000	1.0851
6002410000	1.0851
6002490000	1.0851
6002910000	1.0851
6101100000	1.0094
6101301500	0.5047
6101900020	0.5678
6102100000	1.0094
6102301000	0.5047
6102900010	0.5678
6103110000	0.8439
6103121000	0.4823
6103122000	0.1808
6103191000	0.4823
6103191500	0.2411
6103194010	0.1206
6103194020	0.1206
6103194030	0.1206
6103194040	0.4823
6103194050	0.1206
6103194060	0.0603
6103194080	0.2411
6103210010	0.9645
6103210020	0.8439
6103210030	0.9645
6103210050	0.9645
6103210060	0.9645
6103210070	0.9645
6103230005	0.4823
6103230007	0.4823
6103230010	0.4823
6103230025	0.3167

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6103230030	0.4823
6103230035	0.4823
6103292060	0.5425
6103292066	0.1206
6103292068	0.1206
6103310000	0.9864
6103331000	0.4932
6103332000	0.1233
6103391000	0.4932
6103392020	0.5549
6103411010	0.8256
6103411020	0.8256
6103412000	0.8256
6103431010	0.4718
6103431020	0.4718
6103432010	0.4718
6103491010	0.4823
6103493012	0.5425
6103493036	0.5425
6103493060	0.6028
6104110000	0.8631
6104131000	0.4932
6104132000	0.1233
6104191000	0.4932
6104191500	0.1233
6104192050	0.5549
6104210010	0.8439
6104210030	0.8439
6104210040	0.9645
6104210060	0.9645
6104210070	0.8439
6104210080	0.9645
6104230010	0.4823
6104230014	0.4823
6104230016	0.4823
6104230020	0.4823
6104230022	0.4823
6104230024	0.4823
6104230026	0.1206
6104230030	0.1206
6104230040	0.1206
6104230042	0.1206
6104291010	0.1206
6104291020	0.1206
6104291060	0.1206
6104291070	0.1206
6104292012	0.5425
6104292024	0.5425
6104292036	0.5425
6104292051	0.5425
6104292067	0.5425
6104292073	0.1206
6104292075	0.1206
6104292083	0.5425
6104310000	0.8631
6104331000	0.4932
6104332000	0.1233
6104391000	0.1233
6104392020	0.5549
6104410010	0.9645
6104410020	0.9645
6104431010	0.4823
6104431020	0.4823
6104432010	0.1206
6104432020	0.1206
6104441000	0.4823
6104442010	0.1206
6104442020	0.1206
6104490020	0.5425
6104510000	0.9978
6104531000	0.4989
6104532010	0.1247
6104532020	0.1247
6104591005	0.4989
6104591030	0.1247
6104591060	0.1247
6104592020	0.5612
6104610010	0.8256
6104610020	0.8256
6104610030	0.8256
6104631510	0.4718
6104631520	0.4718
6104692005	0.4823
6104693012	0.5425
6104693024	0.5425
6105201000	0.4617
6105901000	0.8080
6105903020	0.5194
6106201010	0.4617
6106201020	0.4617
6106901010	0.8080
6106901020	0.8080
6106902020	0.4040
6106903020	0.4040
6107190020	0.7077
6107292000	0.8256
6107992000	0.8256
6108391000	0.8167
6108992000	0.8167
6109901510	0.8080
6109901520	0.8080
6109901530	0.8080
6109901540	0.8080
6109902035	0.5772
6110101010	1.2330
6110101020	1.2330
6110101030	1.2330
6110101040	1.2330
6110101050	1.2330
6110101060	1.2330
6110102010	0.8631
6110102020	0.8631
6110102030	0.8631
6110102040	0.8631
6110102050	0.8631
6110102060	0.8631
6110102070	0.8631
6110102080	0.8631
6110301510	0.4932
6110301520	0.4932
6110301530	0.4932
6110301540	0.4932
6110301550	0.4932
6110301560	0.4932
6110303005	0.1850
6110303010	0.1850
6110303015	0.1850
6110303020	0.1850
6110303025	0.1850
6110303030	0.1850
6110303035	0.1850
6110303040	0.1850
6110303045	0.1850
6110303050	0.1850
6110303055	0.1850
6110900012	0.5549
6110900028	0.5549
6110900048	0.5549
6110900050	0.5549
6110900072	0.5549
6110900074	0.5549
6111100010	1.0615
6111100030	1.0615
6112202020	0.8631
6114100020	0.8439
6114100040	0.8439
6114100050	0.8439
6114100060	0.8439
6114100070	0.8439
6114302030	0.4823
6114303012	0.6028
6114303042	0.4823
6114303052	0.4823
6114900050	0.5425
6115190020	1.0851
6115910000	0.8681
6115931010	0.4340
6115932010	0.4340
6115991410	0.4340
6115991810	0.4340
6116109040	0.0800
6116910000	0.9137
6116936400	0.4569
6116937400	0.4569
6116938800	0.1713
6116939400	0.1713
6116998020	0.4569
6116998030	0.3427
6117101000	1.0280
6117102010	0.4569
6117106020	0.2284
6117200019	1.1422
6117200070	0.1713
6117800019	0.9747
6117800025	0.5711
6117800070	0.1713
6117900013	1.1422
6117900023	1.1422
6117900033	1.1422
6117900043	1.1422
6117900055	1.1422
6201110010	0.9774
6201110020	0.9774
6201122010	0.0611
6201122020	0.0611
6201133010	0.4398
6201133020	0.4398
6201134015	0.0489
6201134020	0.0489
6201134030	0.0977
6201134040	0.0977
6201190020	0.5498
6201911000	0.9554
6201912011	0.9554
6201912021	0.9554
6201932511	0.5374
6201932521	0.5374
6201990021	0.5374
6202110010	0.8455
6202110020	0.8455
6202122010	0.0604
6202122020	0.0604
6202133010	0.5562
6202133020	0.5562
6202134005	0.0618
6202134010	0.0618
6202134020	0.1236
6202134030	0.1236
6202190020	0.5562
6202911000	0.9663

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6202912011	0.9663
6202912021	0.9663
6202934011	0.5435
6202934021	0.5435
6202990021	0.5435
6203111000	0.6039
6203112000	0.6039
6203121000	0.5435
6203192000	0.5435
6203194040	0.5435
6203210010	0.8455
6203210015	0.8455
6203210020	0.8455
6203210030	0.8455
6203210060	0.8455
6203230010	0.5435
6203230015	0.5435
6203230020	0.5435
6203230030	0.5435
6203230040	0.5435
6203310000	1.0267
6203331010	0.5435
6203331020	0.5435
6203391000	0.4831
6203394020	0.5435
6203411010	0.9448
6203411020	0.9448
6203411030	0.8858
6203412000	1.1810
6203433010	0.5199
6203433020	0.5199
6203433030	0.5199
6203493025	0.5199
6204110000	0.9059
6204131000	0.5435
6204132010	0.1812
6204132020	0.1812
6204191000	0.5435
6204192000	0.1812
6204193050	0.5435
6204210010	0.8455
6204210030	0.8455
6204210040	0.8455
6204210060	0.8455
6204210070	0.8455
6204230015	0.5435
6204230020	0.5435
6204230025	0.5435
6204294012	0.5435
6204294024	0.5435
6204294036	0.5435
6204294072	0.5435
6204294084	0.5435
6204312010	1.0267
6204312020	1.0267
6204332000	0.0604
6204334010	0.4831
6204334020	0.4831
6204335010	0.0604
6204335020	0.0604
6204392010	0.4831
6204392020	0.4831
6204393010	0.0604
6204393020	0.0604
6204398020	0.5549
6204398030	0.1850
6204411000	0.8496
6204412010	1.0039
6204412020	1.0039
6204433010	0.4724

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6204433020	0.4724
6204434010	0.4724
6204434020	0.4724
6204434030	0.2953
6204434040	0.2953
6204443010	0.4831
6204443020	0.4831
6204444010	0.4831
6204444020	0.4831
6204495020	0.5435
6204495030	0.1812
6204510010	0.9888
6204510020	0.9888
6204532010	0.4944
6204532020	0.4944
6204592010	0.4944
6204592020	0.4944
6204593010	0.4944
6204593020	0.4944
6204594020	0.5562
6204594030	0.1845
6204610010	0.9243
6204610020	0.9243
6204610030	0.9243
6204610040	0.9243
6204632510	0.4621
6204632520	0.4621
6204692010	0.4621
6204692020	0.4621
6204692030	0.4621
6204693020	0.5199
6204699020	0.5199
6204699030	0.1733
6204699050	0.1733
6205101000	1.1554
6205102010	0.9243
6205102020	0.9243
6205301510	0.4621
6205301520	0.4621
6205902020	0.5777
6205902050	0.0578
6205904020	0.5777
6205904040	0.1155
6206100020	0.5777
6206100050	0.0578
6206201000	1.1554
6206202010	0.6932
6206202020	0.6932
6206203010	0.9243
6206203020	0.9243
6206402510	0.5199
6206402520	0.5199
6206900020	0.5199
6206900030	0.1733
6207290010	0.8572
6207922010	0.5315
6207992000	0.8267
6207994000	0.8267
6208290012	0.9243
6208920010	0.0591
6208920020	0.0591
6208920030	0.0591
6208920040	0.0591
6208992010	0.9448
6208992020	0.9448
6209100000	0.7915
6211202020	0.8455
6211203020	0.8455
6211204030	0.8455
6211205020	0.8455

TABLE I.—HTS AND CONVERSION FACTORS FOR IMPORTED SHEEP AND SHEEP PRODUCTS—Continued

HTS	CF
6211205020	0.8455
6211207030	0.8455
6211310010	0.9059
6211310020	0.9059
6211310030	0.9059
6211310040	0.9059
6211310045	0.9059
6211310051	0.9059
6211330052	0.6039
6211410010	0.9663
6211410020	0.9663
6211410030	0.9663
6211410040	0.9059
6211410050	0.9663
6211410055	0.9663
6211410061	0.9663
6211430064	0.6039
6211430074	0.6039
6212900020	0.7161
6214102000	0.3357
6214200000	0.8951
6214300000	0.1119
6214400000	0.1119
6214900010	0.5559
6215900010	1.1189
6216005410	0.5035
6216005810	0.5035
6216008000	1.1189
6217100020	0.8267
6217100030	0.1181
6217900005	0.8267
6217900010	0.1181
6217900030	0.8267
6217900035	0.1181
6217900055	0.8267
6217900060	0.1181
6217900080	0.8267
6217900085	0.1181
6301200010	0.9219
6301200020	0.9219
6301900030	0.1085
6302390010	0.9219
6304193040	0.8677
6304910050	0.7592
6304991000	1.0846
6304991500	1.0846
6304994000	1.0846
6304996010	1.0846
6501009000	1.3424
6503009000	1.3424
6505903030	0.9965
6505903045	0.5530
6505903090	0.8470
6505904030	0.8297
6505904045	0.4881
6505904090	0.8297
6505906040	0.4429

The Act also requires the Secretary to hold additional referendums if so requested by a representative group comprised of 10 percent or more of the producers, feeders, and importers who, during a representative period as determined by the Secretary, have been engaged in the production, feeding, importation, or processing of sheep or sheep products. In any such referendum, if the continuation of the Order is not approved by a majority of producers, feeders, and importers voting in the referendum, or by producers, feeders, and importers voting in the referendum who account for at least two-thirds of the production represented by the persons voting in the referendum, the Order will be suspended or terminated. These rules would also apply to any additional referendum conducted pursuant to the Act.

The Act specifies that the initial referendum and any subsequent referendum be conducted on a date and location established by the Secretary, under a procedure by which sheep producers, sheep feeders, and importers of sheep and sheep products intending to vote in the referendum shall certify that they were engaged in sheep production, sheep feeding, or the importation of sheep and sheep products during the representative period and, on the same day, would have an opportunity to vote in the referendum. In addition, the Act provides that the Secretary must provide absentee ballots on request made either in-person or by mail. The Department proposes that the initial referendum be conducted at county Cooperative Extension Service (CES) offices. The CES of the U.S. Department of Agriculture will coordinate with State and County CES offices concerning their roles in conducting the initial referendum.

The proposed rule sets forth procedures to be followed in conducting the referendum under the Act, including definitions, supervision of the referendum, registration, voting procedures, reporting referendum results, and disposition of the ballots and records. The Department proposes that the Consolidated Farm Service Agency (CFSA) of the Department assist in the conduct of the referendum by;

(1) counting ballots;

(2) determining the eligibility of challenged voters; and

(3) reporting referendum results.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1280 as proposed to be added at 60 FR 28751 (June 2, 1995), be amended as follows:

PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR Part 1280 continues to read as follows:

Authority: 7 U.S.C. 7101–7111.

2. Part 1280 as proposed to be added at 60 FR 28751 (June 2, 1995), is amended by adding Subpart E to read as follows:

Subpart E—Procedures for the Conduct of Referendum

Definitions

Sec.

1280.601 Act.
1280.602 Administrator.
1280.603 Carbonized wool.
1280.604 Consolidated Farm Service Agency.
1280.605 Consolidated Farm Service Agency County Committee.
1280.606 Consolidated Farm Service Agency County Executive Director.
1280.607 Cooperative Extension Service.
1280.608 Cooperative Extension Service agent.
1280.609 Cooperative Extension Service of the U.S. Department of Agriculture.
1280.610 Degreased wool.
1280.611 Department.
1280.612 Deputy Administrator.
1280.613 Feeder.
1280.614 Greasy wool.
1280.615 Importer.
1280.616 Order.
1280.617 Person.
1280.618 Producer.
1280.619 Public notice.
1280.620 Pulled wool.
1280.621 Raw wool.
1280.622 Referendum.
1280.623 Registration period.
1280.624 Representative period.
1280.625 Secretary.
1280.626 Sheep.
1280.627 Sheep products.
1280.628 State.
1280.629 Unit.
1280.630 United States.
1280.631 Volume of production.
1280.632 Voting period.
1280.633 Wool.
1280.634 Wool products.

Referendum

1280.650 General.
1280.651 Supervision of referendum.
1280.652 Eligibility.
1280.653 Time and place of registration and voting.
1280.654 Facilities for registering and voting.
1280.655 Registration form and ballot.
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1280.657 List of registered voters.
1280.658 Challenge of voters.
1280.659 Receiving ballots.
1280.660 Canvassing ballots.
1280.661 CFSA county office report.
1280.662 CFSA State office report.
1280.663 Results of the referendum
1280.664 Disposition of ballots and records.
1280.665 Instructions and forms.

Subpart E—Procedures for the Conduct of Referendum

Definitions

§ 1280.601 Act.

The term "Act" means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111; Public Law 103–407; 108 Statute 4210; as approved October 22, 1994, and any amendments thereto.

§ 1280.602 Administrator.

The term "Administrator" means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1280.603 Carbonized wool.

The term "Carbonized wool" means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

§ 1280.604 Consolidated Farm Service Agency.

The term "Consolidated Farm Service Agency"—formerly Agricultural Stabilization Conservation Service (ASCS)—also referred to as "CFSA," means the Consolidated Farm Service Agency of the Department.

§ 1280.605 Consolidated Farm Service Agency County Committee.

The term "Consolidated Farm Service Agency County Committee," also referred to as the "CFSA County Committee or COC," means the group of persons within a county elected to act as the Consolidated Farm Service Agency County Committee.

§ 1280.606 Consolidated Farm Service Agency County Executive Director.

The term "Consolidated Farm Service Agency County Executive Director" also referred to as the "CFSA County Executive Director," means the person employed by the CFSA County Committee to execute the policies of the CFSA county committee and be responsible for the day-to-day operations of the county CFSA office, or the person acting in such capacity.

§ 1280.607 Cooperative Extension Service.

The term "Cooperative Extension Service," also referred to as "CES" means the State partner in the Cooperative Extension Service system.

§ 1280.608 Cooperative Extension Service Agent.

The term "Cooperative Extension Service Agent," also referred to as the

"CES Agent," means an employee of the Cooperative Extension Service.

§ 1280.609 Cooperative Extension Service of the U.S. Department of Agriculture.

The term "Cooperative Extension Service of the U.S. Department of Agriculture," also referred to as "CES," means the Federal component of the Cooperative Extension Service.

§ 1280.610 Degreased wool.

The term "Degreased wool" means wool from which the bulk of impurities has been removed by processing.

§ 1280.611 Department.

The term "Department" means the U.S. Department of Agriculture.

§ 1280.612 Deputy Administrator.

The term "Deputy Administrator" means the Deputy Administrator for Program Delivery and Field Operations, CFSA, U.S. Department of Agriculture or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Deputy Administrator's stead.

§ 1280.613 Feeder.

The term "Feeder" means a person who feeds lambs until the lambs reach slaughter weight.

§ 1280.614 Greasy wool.

The term "Greasy wool" means wool that has not been washed or otherwise cleaned.

§ 1280.615 Importer.

The term "Importer" means any person who imports sheep and sheep products into the United States.

§ 1280.616 Order.

The term "Order" means the Sheep and Wool Promotion, Research, Education, and Information Order.

§ 1280.617 Person.

The term "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1280.618 Producer.

The term "Producer" means any person, other than a feeder, who owns or acquires ownership of sheep.

§ 1280.619 Public notice.

The term "Public notice" means information regarding a referendum which shall be provided by the Secretary, without advertising expenses, through press releases and by State and county CES offices and county CFSA offices, by means of newspapers, electronic media, county newsletters, and the like. Such notice shall contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1280.620 Pulled wool.

The term "Pulled wool" means wool that is pulled from the skin of slaughtered sheep.

§ 1280.621 Raw wool.

The term "Raw wool" means greasy wool, pulled wool, degreased wool, or other carbonized wool.

§ 1280.622 Referendum.

The term "Referendum" means any referendum to be conducted by the Secretary pursuant to the Act where producers, feeders, and importers of sheep and sheep products, except an importer of only raw wool, shall be given the opportunity to vote.

§ 1280.623 Registration period.

The term "Registration period" means a 1 day period to be announced by the Secretary for registration of producers, feeders, and importers desiring to vote in a referendum. The registration period shall be the same day as the voting period.

§ 1280.624 Representative period.

The term "Representative Period" means 12 consecutive month of calendar year 1994.

§ 1280.625 Secretary.

The term "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom authority may hereafter be delegated to act in the Secretary's stead.

§ 1280.626 Sheep.

The term "Sheep" means ovine animals of any age, including lambs.

§ 1280.627 Sheep products.

The term "Sheep products" means products produced, in whole or in part, from sheep, including wool and products containing wool fiber.

§ 1280.628 State.

The term "State" means each of the 50 States.

§ 1280.629 Unit.

The term "Unit" means each State, group of States, or class designation that is represented on the Board.

§ 1280.630 United States.

The term "United States" means the 50 States and the District of Columbia.

§ 1280.631 Volume of production.

The term "Volume of production" means the largest number of head of domestic sheep at least 6 months old or older that a domestic sheep producer or sheep feeder entity continuously owned and that were located in the United States during any single consecutive 30-day period during the representative period. The term "volume of production" also means the number of head of imported live sheep or the number of live sheep equivalents that an importer imported into the United States during the representative period, excluding imported raw wool.

§ 1280.632 Voting period.

The term "Voting period" means a 1-day period to be announced by the Secretary for voting in the referendum.

§ 1280.633 Wool.

The term "Wool" means the fiber from the fleece of a sheep.

§ 1280.634 Wool products.

The term "Wool products" means products produced, in whole or in part, from wool and products containing wool fiber.

Referendum

§ 1280.650 General.

(a) A referendum to determine whether eligible sheep producers, sheep feeders, and importers of sheep and sheep products approve the Order. Importers who only import raw wool are not eligible to vote in the referendum.

(b) The Order shall become operational only if the Secretary determines that the Order is approved by a majority of sheep producers, sheep feeders, and importers of sheep and sheep products voting in the referendum or by sheep producers, sheep feeders, and importers of sheep and sheep products voting in the referendum who account for at least two-thirds of the production represented by those voting in the referendum.

(c) The initial referendum shall be conducted at the county CES offices.

(d) The CFSA of the Department shall assist in the conduct of the initial referendum.

§ 1280.651 Supervision of referendum.

The Administrator shall be responsible for conducting the referendum in accordance with this subpart.

§ 1280.652 Eligibility.

(a) Eligibility producers, feeders, and importers. Each person who was a sheep producer, sheep feeder, or importer of sheep and sheep products during the representative period is entitled to register and vote in the referendum. Each producer, feeder, and importer entity shall be entitled to cast only one ballot in the referendum. Importers who only import raw wood are not eligible to register and vote in the referendum.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer, feeder or importer, or any guardian, administrator, executor, or trustee of a producers, feeder's, or importer's estate, or an authorized representative of any eligible producer, feeder, or importer entity (other than an individual producer, feeder, or importer), such as a corporation or partnership, may register and cast a ballot on behalf of that entity. Any individual who registers to vote in the referendum on behalf of any producer, feeder, or importer entity shall certify that he or she is authorized by such entity to take such action.

(c) Joint and group interest. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in sheep production, sheep feeding or the importation of sheep and sheep products as a producer, feeder, or importer, entity, shall be entitled to only one vote, provided, however, that any member of a group may register to vote as a producer, feeder, or importer if he or she is an eligible producer, feeder, or importer separate from the group.

§ 1280.653 Time and place of registration and voting.

The referendum shall be held for one day on a date to be determined by the Secretary. Eligible persons shall register and vote following the procedures in § 1280.656 of this Subpart. Except for absentee ballots, registration and voting shall take place during the normal business hours of each county CES office.

§ 1280.654 Facilities for registering and voting.

Each county CES office shall provide:

(1) adequate facilities and space to permit producers, feeders, and importers to register and to mark their ballots in secret,

(2) a sealed box or other suitable receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times, and

(3) copies of the Order for review.

§ 1280.655 Registration form and ballot.

A ballot (Form LS–61) and combined registration form (Form LS–61–2) shall be used for voting in person. The information required on the registration form includes name, address, county of voter residence, and volume of production. The form also contains the certification statement referenced in § 1280.656(a)(1) of this Subpart. The ballot requires producers, feeders and importers to check a "yes" or "no" and record their volume of production. A combined registration and voting form (Form LS–62) shall be used for absentee voting. The information required on the combined registration and voting form includes name, address, telephone number, and county of voter residence, and volume of production. The form also contains the certification statement referenced in § 1280.656(b)(1) of this Subpart. The ballot requires producers, feeders and importers to check "yes" or "no" and record their volume of production

§ 1280.656 Registration and voting procedures.

(a) Registering and voting in-person.

(1) Each producer, feeder, and importer, except importers who import only raw wool, who wants to vote in a referendum shall register on the day of voting at the county CES office in which the producer's, feeder's, or importer's residence is located, or at the county CES office that serves the county in which the producer's, feeder's, or importer's residence is located. Producer, feeder, or importer entities other than individuals shall register at the county CES office in the county in which their headquarters office or business is located, or at the county CES office that serves the county in which the entities' headquarters office or business is located. Producers, feeders, and importers will be required to record on the voter registration list (Form LS–61–3) their names and, if applicable, the name of the entity they can represent before they receive a registration form and ballot. To register, producers, feeders, or importers shall complete the registration form (Form LS–61–2) and certify that:

(i) they or the entity they represent were producers, feeders, or importers during the specified representative period;

(ii) the person voting on behalf of an entity referred to in § 1280.652 is authorized to do so; and

(iii) the volume of production listed is a true and accurate representation.

(2) Each eligible producer, feeder, or importer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in § 1280.653 of this Subpart and on a date to be announced by the Secretary. Eligible persons who record their name and the entity they represent on the voter registration list (Form LS–61–3) will receive a registration form/envelope (Form LS–61–2) and a ballot (Form LS–61). Voting shall be conducted under the supervision of the local county CES agent or designee. Voters would enter the information requested on the registration form (Form LS–61–2) as indicated above. Producers, feeders, and importers would then mark their ballots to indicate "yes" or "no" and record their volume of production in the space provided on the ballot. Voters shall place their completed ballots in an envelope marked SHEEP BALLOT," (Form LS–61–1) seal and place it in the completed and signed registration form/envelope marked "SHEEP REFERENDUM," (Form LS–61–2) seal that envelope and personally place it in a box marked "Ballot Box" or other suitable receptacle. A copy of the applicable voter registration list (Form LS–61–3) prepared by the county CES office shall be provided to each CFSA county office for in-person voter verification.

(b) Absentee voting.

(1) Eligible producers, feeders, and importers who are unable to vote in person may request a combined registration and absentee ballot form (Form LS–62) and two envelopes—one marked "SHEEP BALLOT" (Form LS–61–1) and the other marked "SHEEP REFERENDUM"(LS–62–1), by mail or in person from the county CES office in the county in which they reside or the county CES office that serves the county in which they reside, if individuals, or in which their main office is located, if a corporation or other entity. These forms and envelopes will be mailed by the county CES agent or designee to the address provided by the prospective voter. Only one absentee registration form and absentee ballot will be provided to each eligible producer, feeder, or importer. The forms must be requested during a specified time period which will be announced by the Secretary. The county CES office shall enter on the absentee voter request list (Form LS–62–2) the name, address and entity requesting an absentee ballot and the date the forms were requested. A copy of the applicable absentee voter request list (Form LS–62–2) prepared by the county CES office shall be provided to each CFSA county office for absentee voter verification.

(2) To register, eligible producers, feeders, and importers must complete and sign the combined registration form

and absentee ballot (Form LS–62) and certify that:

(i) they or the entity they represent were producers, feeders, or importers during the specified representative period,

(ii) if voting on behalf of an entity referred to in subsection § 1280.652, they are authorized to do so; and

(iii) the volume of production listed is a true and accurate representation.

(3) A producer, feeder, or importer, after completing the absentee voter registration form and the ballot, shall remove the ballot portion of the combined registration and absentee ballot form (Form LS–62) and seal the completed ballot in a separate envelope marked "SHEEP BALLOT" (Form LS–61–1) and place the sealed envelope in a second envelope marked "SHEEP REFERENDUM" (Form LS–62–1) along with the signed registration form.

Producers, feeders, and importers shall legibly print their names on the envelope marked "SHEEP REFERENDUM" (Form LS–62–1), and mail or hand deliver it to the local county CES office of the county in which they reside or the county CES office serving the county in which they reside. In the case of a partnership, corporation, estate, or other entity, the registration form and ballot must be mailed or hand delivered to the county CES office in the county in which its main office is located or the county CES office in the county serving the county in which its main office is located.

(4) Absentee ballots must be received in the county CES office by the close of business, 2 business days before the date of the referendum. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the "SHEEP REFERENDUM" envelope containing the registration form and ballot, the county CES agent or designee shall place it, unopened, in a secure ballot box. The county CES agent or designee shall record receipt of the absentee vote on the absentee voter request list (Form LS–62–2).

(5) A person who casts an absentee ballot that is not recorded as being received or that is received after the deadline specified in this section may vote in person at the appropriate county CES office on the day of the referendum.

§ 1280.657 List of registered voters.

The voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) shall be available for inspection on the day of the referendum at the county CES office and subsequently at the CFSA county office. They shall be posted during regular office hours in a conspicuous public location at the CFSA county office on the second business day following the date of the referendum.

§ 1280.658 Challenge of voters.

(a) Challenge period. On the day of the referendum, the names of voters challenged shall be reported to the CES county agent, who will refer them to the CFSA county office. After that, the names of the challenged voters shall be referred directly to the CFSA county office. A challenge may be made no later than the close of business on the second business day after the date of the referendum.

(b) Who may challenge. Any person may challenge a voter. Any person who wants to challenge must do so in writing and must include the full name of the individual or other entity being challenged. Each challenge of a voter must be made separately and each challenge must be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

(c) Determination of challenges. The CFSA County Committee or its representative, acting on behalf of the Administrator, shall make a determination concerning the challenge and shall notify challenged producers, feeders, or importers as soon as practicable, but no later than five business days after the date of the referendum. If the CFSA County Committee or its representative, acting on behalf of the Administrator, is unable to determine whether a person was a producer, feeder, or importer during the representative period, or verify a voter's recorded volume of production, it may require the person to submit records such as sales documents, import documents or other similar documents to prove that the person was a producer, feeder, or importer for the representative period and to verify that the recorded volume of production was accurately stated.

(d) Challenged ballot. The registration form/envelope (Form LS–61–2) containing the ballots cast by producers, feeders, or importers voting in person who are challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. The SHEEP REFERENDUM envelopes (Form LS–62–1) containing absentee voter registration forms and absentee ballots of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers, feeders, and importers. A challenge to a ballot shall be deemed to have been resolved if the determination of the CFSA County Committee or its representative is not appealed within the time allowed for appeal or there has been a determination by CFSA after an appeal.

(e) Appeal. A person declared to be ineligible to register and vote or whose recorded volume of production has been questioned by the CFSA County Committee or its representative, acting on behalf of the Administrator, may file an appeal at the CFSA county office within three business days after notification of such decision. Such person may be required to provide documentation such as sales documents, import documents, or similar documents in order to demonstrate his or her eligibility or verify the recorded volume of production. An appeal shall be determined by the CFSA County Committee as soon as practicable, but in all cases not later than the ninth business day after the date of the referendum. The CFSA County Committee's determination on an appeal is final.

§ 1280.659 Receiving ballots.

A ballot shall be considered to have been received during the voting period if:

(a) it was cast in person in the county CES office prior to the close of business on the day of the referendum; or

(b) it was cast as an absentee ballot, and was received in the county CES office not later than the close of business within two business days before the date of the referendum.

§ 1280.660 Canvassing ballots.

(a) Counting the ballots. The county CES agent or designee shall deliver the sealed ballot box, the voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) to the CFSA county office by the close of business on the first business day following the date of the referendum. CFSA county Executive Director and the county CES agent or designee shall check the registration forms and ballots for all voters against the voter registration list (Form LS–61–3) and the absentee voter request list (Form LS–62–2) to determine properly registered voters. The ballots of producers, feeders, and importers voting in person whose names are not on the voter registration list (Form LS–61–3), shall be declared invalid. Likewise, the ballots of producers, feeders, and importers voting absentee whose names are not on the absentee voter request list (Form LS–62–2) shall be declared invalid. All ballots of challenged voters declared ineligible or invalid shall be kept separate from the other ballots and the envelopes containing these ballots shall not be opened. The valid ballots shall be counted on the tenth business day after the referendum date. CFSA county office employees shall remove the sealed "SHEEP BALLOT" envelope from the registration form/envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. After removing all "Sheep Ballot" envelopes, CFSA county employees shall open them and count the ballots. The ballots shall be counted as follows:

(1) Number of eligible producers, feeders, and importers casting valid ballots;

(2) number of producers, feeders and importers favoring the Order;

(3) number of producers, feeders and importers not approving the Order;

(4) volume of production recorded by producers, feeders and importers approving the Order;

(5) volume of production of producers, feeders and importers not approving the Order;

(6) number of challenged ballots;

(7) number of challenged ballots deemed ineligible;

(8) number of invalid ballots; and

(9) number of spoiled ballots.

(b) Invalid Ballots. Ballots shall be declared invalid if a producer, feeder, or importer voting in-person has failed to sign the voter registration list (Form LS–61–3) or an absentee voter's name is not recorded on the absentee voter request list (Form LS–62–2), or the registration form or ballot was incomplete or incorrectly completed.

(c) Spoiled Ballots. Ballots shall be considered spoiled if they are mutilated or marked in such a way that either the voter's volume of production or the "yes" or "no" vote is illegible. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) Confidentiality. All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

§ 1280.661 CFSA county office report.

The CFSA county office shall notify the CFSA State office of the results of the referendum. Each CFSA county office shall transmit the results of the referendum in its county to the CFSA State office. Such report shall include the information listed in § 1280.660(a) of this Subpart. The results of the referendum in each county may be made available to the public. A copy of the report of results shall be posted for thirty days in the CFSA county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the CFSA county office for a period of at least twelve months after the referendum.

§ 1280.662 CFSA State office report.

Each CFSA State office shall transmit to the Deputy Administrator, CFSA, a written summary of the results of the referendum received from all the CFSA county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State, and shall be certified by the CFSA State Executive Director. The CFSA State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months.

§ 1280.663 Results of the referendum.

(a) The Deputy Administrator, CFSA, shall submit the results of the referendum to the Administrator. The Administrator shall prepare and submit to the Secretary a report of the results of the referendum. The results of any referendum shall be issued by the Department in an official press release and published in the **Federal Register**. State reports and related papers shall be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, Room 2606, South Agriculture Building, 14th and Independence Avenue, SW., Washington, D.C.

(b) If the Secretary deems it necessary, the report of any State or county shall be re-examined and checked by such persons as may be designated by the Deputy Administrator, CFSA, or the Secretary.

§ 1280.664 Disposition of ballots and records.

Each CFSA county Executive Director shall place in sealed containers marked with the identification of the referendum the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the CFSA county Executive Director for a period of not less than twelve months after the referendum. If no notice to the contrary is received from the Deputy Administrator, CFSA, by the end of such time, the records shall be destroyed.

§ 1280.665 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Dated: August 3, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–19605 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991AB23

Financial Assistance Rules; Regulatory Reduction

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) today is proposing to amend its Financial Assistance Rules (Rules) to streamline, simplify, and improve the DOE financial assistance process. The rules have been rewritten to eliminate coverage that is unnecessary, to present clear coverage, and to retain only that coverage that is considered suitable for a regulation. The proposed changes primarily affect internal DOE procedures and will give greater authorities to program and field contracting offices in soliciting, reviewing, and processing applications and making awards. The patent, data and copyright provisions have been streamlined and updated to reflect the recent changes in the Department of Energy Acquisition Regulations. The Governmentwide uniform administrative requirements for grants and cooperative agreements to higher education institutions, hospitals, and other nonprofits and to governmental recipients are not changed by this proposed rulemaking. The Governmentwide requirements pertaining to audits of State and local governments remain unchanged.

DATES: Comments should be submitted on or before September 7, 1995.

ADDRESSES: Comments should be addressed to: Cherlyn Seckinger, Business and Financial Policy Division (HR–51), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8192.

SUPPLEMENTARY INFORMATION:

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I. Introduction and Purpose

The Department of Energy is proposing to amend Subpart A of its Financial Assistance Rules to simplify and streamline the financial assistance process in keeping with Departmental and Governmentwide initiatives to improve the way the Department does business. The proposed changes primarily affect DOE internal procedures contained in Subpart A pertaining to the solicitation, evaluation, and award processes, and will have little or no impact on requirements applicable to recipients of DOE financial assistance. In most instances, the proposed rule will not contain detailed internal procedures for DOE officials, but instead establish standards or basic requirements. For example, the section on objective merit review for financial assistance applications would be reduced to the essential elements required for an adequate merit review system. In other sections, decision making would be delegated to the lowest appropriate level which in many cases is at the contracting activity where the financial assistance awards are made and administered. One new section has been added to give DOE the flexibility in appropriate circumstances to make small dollar awards on a fixed obligation basis. In a fixed obligation award, a fixed amount of funds are issued in support of a project without a requirement for Federal monitoring of actual costs subsequently incurred. These awards are intended for use in support of projects where there is certainty about the costs and project accomplishments.

In DOE's implementation of the uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations on October 21, 1994 (59 FR 53260), DOE chose to continue to extend the administrative requirements for grants and agreements to commercial entities. In doing this streamlining review of the rule, we found the patent and data provisions of the uniform administrative requirements in Section 600.136 on Intangible Property needed modifications to clarify how Section 600.136 applied to commercial organizations with respect to patent, data, and copyright coverage and to cross-reference the specific DOE patent, data, and copyright coverage of the existing Section 600.33. This proposed rule attempts to make clear DOE patent and data provisions for all recipients including large businesses and foreign entities. The appropriate changes to the uniform administrative requirements of Section 600.136 to the new Section 600.27 are included in this proposed rule.

II. Overview of Organization of DOE Financial Assistance Rules

When DOE implemented the uniform administrative requirements of OMB Circular A–110 for Grants and Cooperative Agreements With Institutions of Higher Education, Hospital, Other Non-Profit Organizations and Commercial Organizations in October, 1994, DOE also reordered the subparts of the Financial Assistance Rules.

The rules as changed in October of 1994 consist of five subparts: Subpart A, General; Subpart B, Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit Organizations and Commercial Organizations; Subpart C, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Subpart D, Cooperative Agreements; and Subpart E, Audits of State and Local Governments. As part of our streamlining efforts, we decided we no longer needed a separate subpart for Cooperative Agreements because many of the requirements pertinent to cooperative agreements such as the application, funding, and administrative requirements were the same as for grants. The few areas that were different (such as the substantial involvement and patent and data provisions) we decided to integrate into the general coverage in Subpart A.

III. Changes to 10 CFR Part 600

Section 600.2 *Applicability* would be rewritten in simpler language to state that the DOE financial assistance rules apply to financial assistance applications and new, continuation and renewal awards.

Section 600.3 *Definitions* would be reduced to cover only those terms which are not defined elsewhere in the rule; therefore, the definitions sections in Subparts B and C, are still needed.

Section 600.4 *Deviations* would be changed to update citations only.

Sections 600.5 *Selection of award instrument* would be expanded to cover in greater detail what DOE means by substantial involvement under cooperative agreements. This definition of substantial involvement is consistent with the existing coverage in Subpart D and the Federal Grant and Cooperative Agreement Act.

Section 600.6 *Discretionary awards* would be eliminated since it is primarily internal guidance. Special solicitation instruments called Program Opportunity Notices and Program Research and Development Announcements would be eliminated. In keeping with the simplification objective, it was decided these special instruments are no longer necessary and the general coverage under solicitations would meet our needs. The policy statement regarding competition in financial assistance has been retained, but would be moved to the new Section 600.6 Eligibility.

Section 600.7 *Eligibility* would be renumbered 600.6 and changed to increase the threshold requiring Assistant Secretary or designee approval of restricted eligibility and noncompetitive determinations from $250,000 to $1,000,000. This would provide for greater decision-making authority at the local level where the financial assistance awards are being made and administered.

The requirement of the existing rule for a **Federal Register** notice for noncompetitive awards which has been waived by a class deviation would be eliminated by this rulemaking.

Section 600.8 *Small and disadvantaged business participation* would be renumbered 600.7 and rewritten as a policy statement to encourage the participation of small and disadvantaged businesses in DOE financial assistance and contracts awarded under financial assistance and to include in the policy women-owned businesses and historically black colleges and universities.

Section 600.9 *Solicitation* would be renumbered 600.8 and changed to give program offices the authority to issue solicitations. The current rule requires solicitations to be issued by a contracting officer unless the solicitation is issued under a program rule. To ensure uniformity and compliance with the fundamental requirements of the solicitation process, any solicitation would have to meet the requirements contained in this section regardless of who issues it. Any solicitation issued by a program office would require coordination with the contracting office prior to issuance.

Section 600.10 *Form and content of applications* would be amended to eliminate the requirements pertaining to preapplication content because DOE programs rarely require preapplication submissions. If needed by DOE, the solicitation itself would describe to potential applicants the information required in a preapplication based on specific program needs.

Section 600.11 *Intergovernmental review* would be remain the same.

Section 600.12 *Generally applicable requirements* would be revised for simplicity and clarity.

Section 600.13 *Application deadlines* would be deleted as being too rigid as a general rule covering all financial assistance applications. Instead, the simplified requirement covered in 600.8 under solicitations specifies that a solicitation must include information specifying due dates and a statement describing the consequences of late submission.

Section 600.14 *Unsolicited applications* would be deleted and the procedures for noncompetitive financial assistance covered in Section 600.6 procedures will be used. The criteria for acceptance of an unsolicited application would not be changed.

Section 600.15 *Notice of program interest* would be renumbered 600.10 and the coverage revised to eliminate the requirement that a notice contain all the information included in a solicitation.

Section 600.16 *Objective merit review* would be renumbered 600.13 and revised to allow more program office discretion in setting up a system provided the basic standards of a merit review system are met.

Section 600.17 *Conflict of interest* would be renumbered 600.14.

Section 600.18 *Authorized uses of information* would be renumbered 600.15 and the definitions section deleted as unnecessary.

Section 600.19 *Application evaluation and selection* would be eliminated since the process is covered under objective merit review.

Section 600.20 *Legal authority and effect of an award* would be renumbered 600.16 and paragraph (b) eliminated since it is an internal administrative material and not a regulatory requirement.

Section 600.21 *Contents of award* would be renumbered 600.17 and the essential parts of an award document summarized in a short paragraph.

Section 600.22 *Recipient acknowledgement of award* would be renumbered 600.18 and reduced to the basic requirements.

Section 600.23 *Notification to unsuccessful applicants* would be renumbered 600.19 and the requirement stated more concisely.

Section 600.24 *Maximum DOE obligation* would be renumbered 600.20.

Section 600.25 *Access to records* would be renumbered 600.21 and changed to cross-reference the Governmentwide coverage contained in Subparts B and C.

Section 600.26 *Disputes and appeals* would be renumbered 600.22 and language added to cover alternative dispute resolution.

Section 600.27 *Debarment and suspension* would be renumbered 600.23.

Section 600.28 *Noncompliance* would be renumbered 600.24.

Section 600.29 *Suspension and termination* would be renumbered 600.25.

Section 600.30 *Responsible applicant* would be deleted since it doesn't add requirements that are not covered elsewhere.

Section 600.31 *Funding* would be renumbered 600.26 and the limitations related to 12-month budget periods removed so that budget periods can be more easily tied to meaningful performance phases or activities. Also, provisions regarding retroactive extensions would be deleted since they establish an unnecessary restriction on actions which are within a contracting officer's authority to approve or disapprove on a case-by-case basis.

Section 600.32 *Calculation of award* would be eliminated since it provides instructions to DOE contracting officials which do not need to be in a regulation. Provisions of interest to recipients pertaining to excess funds notifications and unobligated balances are already covered under the Governmentwide requirements in Subparts B and C.

Section 600.33 *Patents, data and copyrights* would be renamed "Patent and Data Provisions" and renumbered as 600.27. The patent, data and copyrights requirements for grant and cooperative agreement awards have been streamlined and have been revised to be consistent with the Department's recent updating of patent regulations for contracts (60 *FR* 11812).

Section 600.34 *New restrictions on lobbying* would be renumbered 600.28, renamed, and cross-reference the lobbying rules at 10 CFR 601.

A new Section 600.29 *Fixed obligation awards* would be added to give DOE the flexibility to make small dollar ($100,000 or less) financial assistance awards on a fixed amount basis where there is certainty about the costs and the project accomplishments are readily discernable such as, conferences, workshops, equipment, and travel. This type of award would reduce the administrative requirements placed on recipients and reduce the administrative burden for both DOE and recipients. Fixed obligation awards have been previously authorized by a class deviation from 10 CFR Part 600 which is now being superseded by these provisions.

In Section 600.112 *Forms for applying for Federal assistance* of Subpart B, paragraph (c) would be revised by changing the cross-references in the parenthetical phrase "(See Section 600.31 (b) and (c))" to read "(See Section 600.26 (b) and (c))."

Section 600.136 *Intangible property* of Subpart B would be revised to cross-reference the new Section 600.27 and to clarify the coverage for commercial organizations.

Section 600.306 *Cost sharing* of Subpart D would be renumbered 600.30 and applied to grants as well as cooperative agreements since choice of financial assistance instrument is irrelevant to the basic policy of requiring cost sharing for research, development, and demonstration projects.

Subpart D *Cooperative Agreements* would be removed and Subpart E *Audits of State and Local Governments* would be redesignated as Subpart D.

Sections 600.402, 600.403, 600.405, and 600.415 of Subpart E would be amended to correct the references resulting from the proposed streamlining changes.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's proposed rule would revise certain policy and procedural requirements. However, DOE has determined that this rulemaking will not have a substantial direct effect on the institutional interests or traditional functions of States.

V. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

VI. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub.L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the proposed rule would only affect small entities as they apply for and receive financial assistance, and does not create additional economic impact on small entities as a whole. DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VII. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 USC 3501, et. seq., or OMB implementing regulations at 5 CFR Part 1320.

VIII. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions (categorical exclusions A5) that are categorically excluded from National Environmental Policy Act (NEPA) review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

IX. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any revisions for the exhaustion of such administrative proceedings, and defines the terms. DOE certifies that today's rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

X. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date given in the **DATES** section will be fully considered. Any information considered to be confidential must be so identified and submitted in writing, one copy only. The DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

XI. Public Hearing Determination

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 10 CFR Part 600

Accounting; Administrative practice and procedure; Government contracts; Grant programs, Indians, Intergovernmental relations; Loan programs, Lobbying; Penalties; Reporting and recordkeeping requirements.

Issued in Washington, D.C., on July 31, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308), unless otherwise noted.

Subparts D and E—[Amended]

2. The existing Subpart D "Cooperative Agreements" is removed and Subpart E "Audits of State and Local Governments" is redesignated as Subpart D, and §§ 600.400 through 600.417 are redesignated as §§ 600.300 through 600.317.

§ 600.112 [Amended]

3. Section 600.112(c) is amended by revising the parenthetical phrase "(See Section 600.31(b) and (c))" to read "(See Section 600.26(b) and (c))."

4. Section 600.136 is revised to read as follows:

§ 600.136 Intangible property.

(a) Recipients that are institutions of higher education, hospitals, and other non-profit organizations are subject to the following:

(1) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(2) Recipients are subject to applicable regulations governing patents and inventions. (See 10 CFR 600.27)

(3) DOE has the right to:

(i) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(ii) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(4) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of DOE. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of Section 600.134(g).

(b) Recipients that are commercial entities shall follow the provisions set forth at 10 CFR 600.27.

§ 600.302 [Amended]

5. Newly redesignated § 600.302 is amended in paragraph (d) by revising "Sections 600.25, 600.153, 600.242, and 600.305" to read "Sections 600.21, 600.153, and 600.242".

§ 600.303 [Amended]

6. In paragraph (c), of newly redesignated § 600.303 revise "Sections 600.126, 600.226, and 600.305" to read "Sections 600.126 and 600.226".

§ 600.305 [Amended]

7. In newly redesignated § 600.305(b)(2)(ii)(C), revise "Section 600.424 of subpart E" to read "Section 600.324 of subpart D".

§ 600.315 [Amended]

8. Newly redesignated § 600.315 is amended, in the first sentence, by revising "Section 600.436 of subpart E" to read "Section 600.336 of subpart D".

9. Subpart A is revised to read as follows:

Subpart A—General

Sec.

600.1 Purpose.
600.2 Applicability.
600.3 Definitions.
600.4 Deviations.
600.5 Selection of award instrument.
600.6 Eligibility.
600.7 Small and disadvantaged and women-owned business participation.
600.8 Solicitation.
600.9 Notice of program interest.
600.10 Form and content of applications.
600.11 Intergovernmental review.
600.12 Generally applicable requirements.
600.13 Objective merit review.
600.14 Conflict of interest.
600.15 Authorized uses of information.
600.16 Legal authority and effect of an award.
600.17 Contents of award.
600.18 Recipient acknowledgement of award.
600.19 Notification to unsuccessful applicants.
600.20 Maximum DOE obligation.
600.21 Access to records.
600.22 Disputes and appeals.
600.23 Debarment and suspension.
600.24 Noncompliance.
600.25 Suspension and termination.
600.26 Funding.
600.27 Patent and data provisions.
600.28 New restrictions on lobbying.
600.29 Fixed obligation awards.
600.30 Cost sharing.

Subpart A—General

§ 600.1 Purpose.

This part implements the Federal Grant and Cooperative Agreement Act, Pub. L. 95–224, as amended by Public Law 97–258 (31 U.S.C. 6301–6308), and establishes uniform policies and procedures for the award and administration of DOE grants and cooperative agreements. This subpart (Subpart A) sets forth the policies and procedures applicable to the award and administration of grants and cooperative agreements.

§ 600.2 Applicability.

(a) Except as otherwise provided by Federal statute or program rule, this part applies to applications, solicitations, and new, continuation, and renewal awards (and any subsequent subawards).

(b) Any new, continuation, or renewal award (and any subsequent subaward) shall comply with any applicable Federal statute, Federal rule, Office of Management and Budget (OMB) Circular and Governmentwide guidance in effect as of the date of such award.

(c) Financial assistance to foreign entities is governed by this part and by the administrative requirements and cost principles applicable to their respective recipient type, e.g, governmental, non-profit, commercial, to the extent appropriate.

§ 600.3 Definitions.

Amendment means the written document executed by a DOE contracting officer that changes one or more terms or conditions of an existing financial assistance award.

Assistance means the transfer of money, property, services or anything of value to a recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, as differentiated from financial assistance which covers the transfer of money or property only. Financial assistance instruments are grants and cooperative agreements and subawards.

Award means the written document executed by a DOE Contracting Officer, after an application is approved, which contains the terms and conditions for providing financial assistance to the recipient.

Budget period means the interval of time, specified in the award, into which a project is divided for budgeting and funding purposes.

Continuation award means an award for a succeeding or subsequent budget period after the initial budget period of either an approved project period or renewal thereof.

Contract means a written procurement contract executed by a recipient or subrecipient for the acquisition of property or services under a financial assistance award.

Contracting Officer means the DOE official authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

DOE Patent Counsel means the Department of Energy Patent Counsel assisting the Contracting Officer in the review and coordination of patents and data related items.

Nonprofit organization means any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual (except that the definition of "nonprofit organization" at 48 CFR 27.301 shall apply to the use of the patent clause at Section 600.27).

Objective merit review means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested.

Program rule means a rule issued by a DOE program office for the award and administration of financial assistance which may describe the program's purpose or objectives, eligibility requirements for applicants, types of program activities or areas to be supported, evaluation and selection process, cost sharing requirements, etc. These rules usually supplement the generic policies and procedures for financial assistance contained in this part.

Project period means the total period of time indicated in an award during which DOE expects to provide financial assistance. A project period may consist of one or more budget periods and may be extended by DOE.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Renewal award means an award which adds one or more additional budget periods to an existing project period.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities,

colleges, and other non-profit institutions and commercial organizations. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

§ 600.4 Deviations.

(a) General. (1) A deviation is the use of any policy, procedure, form, standard, term, or condition which varies from a requirement of this part, or the waiver of any such requirement, unless such use or waiver is authorized or precluded by Federal statute. The use of optional or discretionary provisions of this part, including special restrictive conditions used in accordance with Sections 600.114 and 600.212, are not deviations. The waiver provisions of the patent requirements of Section 600.27 and awards to foreign entities are not subject to the requirements of this section.

(2) A single-case deviation is a deviation which applies to one financial assistance transaction and one applicant, recipient, or subrecipient only.

(3) A class deviation is a deviation which applies to more than one financial assistance transaction, applicant, recipient, or subrecipient.

(b) The DOE officials specified in paragraph (c) of this section may authorize a deviation only upon a written determination that the deviation is—

(1) Necessary to achieve program objectives;

(2) Necessary to conserve public funds;

(3) Otherwise essential to the public interest; or

(4) Necessary to achieve equity.

(c) Approval procedures. (1) A deviation request must be in writing and must be submitted to the responsible DOE Contracting Officer. An applicant for a subaward or a subrecipient shall submit any such request through the recipient.

(2) Except as provided in paragraph (c)(3) of this section—

(i) A single-case deviation may be authorized by the responsible Head of Contracting Activity (HCA). Any proposed single-case deviation from the requirements of Section 600.27 concerning patents or data shall be referred to the DOE Patent Counsel for review and concurrence prior to submission to the HCA.

(ii) A class deviation may be authorized by the Deputy Assistant Secretary for Procurement and Assistance Management or his or her designee.

(3) Whenever the approval of OMB, other Federal agency, or other DOE office is required to authorize a deviation, the proposed deviation must be submitted to the Deputy Assistant Secretary for Procurement and Assistance Management or designee for concurrence prior to submission to the authorizing official. Any proposed class deviation from the requirements of Section 600.27 concerning patents or data shall be forwarded through the Assistant General Counsel for Technology Transfer and Intellectual Property or designee.

(d) Notice. Whenever a request for a class deviation is approved, DOE shall publish a notice in the **Federal Register** at least 15 days before the class deviation becomes effective. Whenever a class deviation is contained in a proposed program rule, the preamble to the proposed rule shall describe the purpose and scope of the deviation.

(e) Subawards. A recipient may use a deviation in a subaward only with the prior written approval of a DOE Contracting Officer.

§ 600.5 Selection of award instrument.

(a) If DOE has administrative discretion in the selection of the award instrument, the DOE decision as to whether the relationship is principally one of procurement or assistance shall be made pursuant to the Federal Grant and Cooperative Agreement Act as codified at 31 U.S.C. 6301–6306. A grant or cooperative agreement shall be the appropriate instrument, in accordance with this part, when the principal purpose of the relationship is the transfer of money or property to accomplish a public purpose of support or stimulation authorized by Federal statute. DOE shall limit involvement between itself and the recipient in the performance of a project to the minimum necessary to achieve DOE program objectives.

(b) When it is anticipated that substantial involvement will be necessary between DOE and the recipient during performance of the contemplated activity, the award instrument shall be a cooperative agreement rather than a grant. Substantial involvement exists if:

(1) Responsibility for the management, control, or direction of the project is shared by DOE and the recipient, or

(2) Responsibility for the performance of the project is shared by DOE and the recipient, or

(3) DOE has the right to intervene in the conduct or performance of project activities for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities. Suspension or termination of the cooperative agreement under Sections 600.162 and 600.243 does not constitute intervention in the conduct or performance of project activities.

(4) Providing technical assistance or guidance of a programmatic nature to a recipient does not constitute substantial involvement if the recipient is not required to follow such guidance or if the technical assistance or guidance is not expected to result in continuing DOE involvement in the performance of the project.

(5) Technical assistance or guidance which pertains to the administrative requirements of the award does not constitute substantial involvement.

(c) Every cooperative agreement shall explicitly state the substantial involvement anticipated between DOE and the recipient during performance of the project.

§ 600.6 Eligibility.

(a) General. DOE shall solicit applications for financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) Restricted eligibility. If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the solicitation, program rule, or published notice. If the aggregate amount of DOE funds available for award under such a solicitation or published notice is $1,000,000 or more such restriction of eligibility shall be supported by a written determination initiated by the program office and approved by an official no less than two levels above the initiating program official and concurred in by the Contracting Officer and legal counsel. If the amount of DOE funds is less than $1,000,000, the cognizant HCA and the Contracting Officer may approve the determination.

(c) DOE may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the following selection criteria.

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and if, as determined by DOE, a competitive solicitation would not be appropriate.

(8) The responsible program Assistant Secretary (or official of equivalent authority), with the approval of the Deputy Assistant Secretary for Procurement and Assistance Management, determines that a noncompetitive award is in the public interest. This authority may not be delegated.

(d) Documentation requirements. A determination of noncompetitive financial assistance (normally prepared by the responsible program official (project officer)) is required to explain the basis for the proposed noncompetitive award and shall be placed in the award file.

(e) Approval requirements. Determinations of noncompetitive awards shall be approved, prior to award, by the initiating program official, by the responsible program Assistant Secretary (or official of equivalent authority) or designee, who shall be not less than two organizational levels above that of the project officer, by the Contracting Officer and shall be concurred in by local legal counsel. Where the amount of DOE funds is less than $1,000,000 for a noncompetitive financial assistance award, the determination shall be approved by the cognizant HCA and the Contracting Officer. Concurrence may be waived by local legal counsel.

§ 600.7 Small and disadvantaged and women-owned business participation.

(a) DOE encourages the participation in financial assistance awards of small businesses, including those owned by socially and economically disadvantaged individuals and women, of historically black colleges, and of colleges and universities with substantial minority enrollments.

(b) For definitions of the terms in paragraph (a) of this section, see the Higher Education Act of 1965, and 15 U.S.C. 644, as amended by the Federal Acquisition Streamlining Act, and implementing regulations under FASA issued by the Office of Federal Procurement Policy.

(c) DOE shall require recipients and subrecipients to take affirmative action with respect to such entities in contracts under financial assistance awards and subawards as required under Sections 600.144 and 600.236.

§ 600.8 Solicitation.

(a) General. A solicitation for financial assistance applications shall be in the form of a program rule or other publicly available document which invites the submission of applications by a common due date or within a prescribed period of time.

(1) A Program Assistant Secretary (or official of equivalent authority) may annually issue a program notice describing research areas in which financial assistance is being made available. Such notice shall also state whether the research areas covered by the notice are to be added to those listed in a previously issued program rule. If they are to be included, then applications received as a result of the notice may be treated as having been in response to that previously published program rule. If they are not to be included, then applications received in response to the notice are to be treated as unsolicited applications. Solicitations may be issued by a DOE Contracting Officer or program office with prior concurrence of the contracting office.

(2) DOE shall publish either a copy or a notice of the availability of a financial assistance solicitation in the **Federal Register**. DOE shall publish solicitations or notices in the Commerce Business Daily when potential applicants include for-profit organizations or when there is the potential for significant contracting opportunities under the resulting financial assistance awards.

(b) Subawards. In accordance with the provisions of the applicable statute and program rules, if a DOE financial assistance program involves the award of financial assistance by a recipient to a subrecipient, the recipient shall provide sufficient advance notice so that potential subrecipients may prepare timely applications and secure prerequisite reviews and approvals.

(c) Contents of solicitation. Each solicitation shall include the following types of information and such other information as may be necessary to allow potential applicants to decide whether to submit an application, to understand how applications will be evaluated, and to know what the obligations of a recipient would be.

(1) A control number assigned by the issuing DOE office;

(2) The amount of money available for award and, if appropriate, the expected size of individual awards broken down by areas of priority or emphasis, and the expected number of awards;

(3) The type of award instrument or instruments to be used;

(4) Catalog of Federal Domestic Assistance number for the program;

(5) Who is eligible to apply;

(6) The expected duration of DOE support or the period of performance;

(7) Application form or format to be used, location for application submission, and number of copies required;

(8) The name of the responsible DOE Contracting Officer (or, for program notices or solicitations issued by the program office, the program office contact) to contact for additional information, and, as appropriate, an address where application forms may be obtained;

(9) Whether loans are available under the DOE Minority Economic Impact (MEI) loan program, 10 CFR part 800, to finance the cost of preparing a financial assistance application, and, if MEI loans are available, a general description of the eligibility requirements for such a loan, a reference to Catalog of Federal Domestic Assistance Number 81.063, and the name and address of the DOE office from which additional information and loan application forms can be obtained;

(10) Appropriate periods or due dates for submission of applications and a statement describing the consequences

of late submission. If programs have established a series of due dates to allow for the comparison of applications against each other, these dates shall be indicated in the solicitation;

(11) The types of projects or activities eligible for support;

(12) Evaluation criteria and the weight or relative importance of each, which may include one or more of the following or other criteria, as appropriate:

(i) Qualifications of the applicant's personnel who will be working on the project;

(ii) Adequacy of the applicant's facilities and resources;

(iii) Cost-effectiveness of the project;

(iv) Adequacy of the project plan or methodology;

(v) Management capability of the applicant;

(vi) Sources of financing available to the project. Any expectation concerning cost sharing shall be clearly stated. While cost sharing is generally encouraged, it shall not be considered in the evaluation process and shall be considered only at the time the award is negotiated, unless the cost sharing expectation is addressed in the solicitation.

(vii) Relationship of the proposed project to the objectives of the solicitation;

(13) A listing of program policy factors, if any, indicating the relative importance of each, if appropriate. Examples of program policy factors are:

(i) Geographic distribution;

(ii) Diverse types and sizes of applicant entities;

(iii) A diversity of methods, approaches, or kinds of work; and

(iv) Projects which are complementary to other DOE programs or projects;

(14) References to or copies of:

(i) Statutory authority for the program;

(ii) Applicable rules, including the appropriate subparts of this part;

(iii) Other terms and conditions applicable to awards to be made under the solicitation, including allowable and unallowable costs and reporting requirements;

(iv) Policies and procedures for patents, data, copyrights, audiovisual productions and exhibits;

(v) Any required assurances not included in the application form;

(15) The deadline for submission of required or optional preapplications;

(16) Date, time, and location of any briefing for applicants;

(17) Required presubmission reviews and clearances, including a statement as to whether review under E.O. 12372, "Intergovernmental Review of Federal Programs", is required.

(18) Dates by which selections and awards are expected to be made and whether unsuccessful applications will be returned to the applicant or be retained by DOE and for what period of time;

(19) A statement that DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles (See Sections 600.127 and 600.222);

(20) A statement that DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to the solicitation; and

(21) Any other relevant information, including explanatory information or factual basis for justifications required by this part.

§ 600.9 Notice of program interest.

(a) General. (1) DOE may publish periodic Notices of Program Interest in the **Federal Register** and other media, as appropriate, which describes broad, general, technical problems and areas of investigation for which DOE may award grants or cooperative agreements.

(2) DOE shall evaluate any application submitted under a Notice of Program Interest as an unsolicited application.

(b) Contents. The notice shall include the following:

(1) A brief description of the areas of interest for which DOE may provide financial assistance.

(2) A statement about how resulting applications will be evaluated and the criteria for selection and funding.

(3) An expiration date with an explanation that such a date does not represent a common deadline for applications but rather that applications may be submitted at any time before the notice expires.

(4) The location for application submission.

§ 600.10 Form and content of applications.

(a) General. Applications shall be required for all financial assistance projects or programs.

(b) Forms. Applications shall be on the form or in the format and in the number of copies specified by DOE. (See Sections 600.112 and 600.210)

(c) Contents of an application. In general, a financial assistance application shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF) 424;

(2) A detailed narrative description of the proposed project, including the objectives of the project and the applicant's plan for carrying it out;

(3) A budget with supporting justification

(4) Any required preaward assurances.

(d) Incomplete applications. DOE may return an application which is not signed by an authorized official and does not include all information and documentation required by statute, program rule, and the solicitation, if the nature of the omission precludes review of the application.

(e) Supplemental information. During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

§ 600.11 Intergovernmental review.

Intergovernmental review of DOE financial assistance shall be conducted in accordance with 10 CFR part 1005.

§ 600.12 Generally applicable requirements.

(a) Generally applicable requirements means Federal policies or administrative requirements that apply to more than one DOE financial assistance award, or a DOE financial assistance program and one or more other Federal assistance programs. Generally applicable requirements include, but are not limited to, the requirements of this part, Federal statutes, the OMB Circulars and other Governmentwide guidance implemented by this part, Executive Orders, and the requirements identified in appendix A of this subpart.

(b) Except as expressly exempted by Federal statute or program rule, recipients and subrecipients of DOE financial assistance shall comply with all generally applicable requirements to which, by the terms of such requirements, they are subject.

(c) Provisions shall be made to design and construct all buildings, in which DOE funds are used, to meet appropriate seismic design and construction standards. Seismic codes and standards meeting or exceeding the provisions of each of the model codes listed in this paragraph are considered to be appropriate for purposes of this part. The model codes are as follows:

(1) 1991 Uniform Building Code, of the International Council of Building Officials,

(2) 1992 Supplement to the National Building Code, of the Building Official and Code Administrators International.

(3) 1992 Amendments to the Standard Building Code, of the Southern Building Code Congress International.

These codes provide a level of seismic safety that is substantially equivalent to the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings, 1988 Edition (Federal Emergency Management Administration 222 and 223). Revisions of these model codes that are substantially equivalent to or exceed the then current or immediately preceding edition of the NEHRP Recommended Provisions (which are updated triennially) shall be considered to be appropriate standards.

§ 600.13 Objective merit review.

(a) General. (1) It is the policy of DOE that any financial assistance be awarded through a merit-based selection process. Objective merit review means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested.

(2) Each program office must establish an objective merit review system covering the financial assistance programs it administers. Objective merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the program official with responsibility for deciding whether an award will be made. It is expected that the cognizant project/program officer who normally also reviews the proposals for technical/scientific merit, will review it from a program policy perspective. The objective merit review system must set forth the relationship between the reviewing individuals, or the review committees or groups, and the official who has the final decision-making authority. In defining this relationship, the system must set out, as a minimum, the decision-making and documentation processes to be followed by the authorized official responsible for selection when an adverse recommendation has been received through the objective merit review process.

(b) Each formal review system must contain the elements listed below.

(1) Basic review standards. Each application may be assessed from a policy/programmatic perspective prior to undergoing merit review. Those that meet policy and programmatic considerations shall generally be reviewed by at least three qualified persons in addition to the official responsible for selection.

(ii) The reviewers of any particular application may be any mixture of federal or non-federal experts, including individuals from within the cognizant program office, except those involved in approving/disapproving the application. The DOE shall select external (non-DOE Federal or non-federal) reviewers on the basis of their professional qualifications and expertise.

(c) Review summary. Upon request, applicants are to be provided with a written summary of the evaluation of their application.

(d) Reviewers with interest in application being reviewed. Reviewers must comply with the requirements for the avoidance of conflict of interest established in Section 600.14.

(e) Outside reviewers. An outside reviewer shall be required to sign a written statement agreeing to use the application information only for review and to treat it in confidence except to the extent that the information is available to the general public without restriction as to its use from any source, including the applicant. Further, the reviewer shall be required to agree to comply with any notice or restriction placed on the application. Upon completion of the review the reviewer shall return all copies of the application (or abstracts, if any) to DOE; and unless authorized by DOE, the reviewer shall not contact the applicant concerning any aspect of the application.

§ 600.14 Conflict of interest.

Any person who participates in the review of applications for DOE financial assistance or in the administration of DOE financial assistance shall comply with 1010.101(a) and 1010.302(a)(1) of the DOE rules on the conduct of employees and special employees (consultants) at 10 CFR part 1010. Current and former DOE employees who participate in any aspect of the financial assistance process shall comply with all applicable requirements of 10 CFR part 1010.

§ 600.15 Authorized uses of information.

(a) General. Information contained in applications shall be used only for evaluation purposes unless such information is generally available to the public or is already the property of the Government. DOE employees may not disclose confidential information under the provisions of 18 U.S.C. 1905 including trade secrets, technical data, and or privileged or confidential commercial or financial information.

(b) Treatment of application information. (1) An application may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than application evaluation. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies.

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

(2) Unless a solicitation specifies otherwise, DOE shall not refuse to consider an application solely on the basis that the application is restrictively marked.

(3) Data (or abstracts of data) marked with the Notice under paragraph (b)(1) of this section shall be retained in confidence and used by DOE or its designated representatives as specified in Section 600.13 solely for the purpose of evaluating the proposal. The data so marked shall not be disclosed or used for any other purpose except to the extent provided in any resulting award, or to the extent required by law, including the Freedom of Information Act (5 U.S.C. 552) (10 CFR part 1004). The Government shall not be liable for disclosure or use of unmarked data and may use or disclose such data for any purpose.

(4) The Government shall obtain unlimited rights in the technical data contained in any application which results in an award except those portions of the technical data which the applicant asserts and properly marks as proprietary data, or which are not directly related to or will not be utilized in the project and are deleted from the application with the concurrence of DOE.

(5) The clause at 48 CFR 52.227–23, which applies only to technical data and not to other data such as privileged or confidential commercial or financial information shall apply to every award.

§ 600.16 Legal authority and effect of an award.

(a) A DOE financial assistance award is valid only if it is in writing and is signed by a DOE Contracting Officer.

(b) DOE funds awarded under a grant or cooperative agreement shall be

obligated as of the date the DOE Contracting Officer signs the award; however, the recipient is not authorized to incur costs under an award prior to the beginning date of the budget period shown in the award except as may be authorized in accordance with Sections 600.125(e) or 600.230 of this part. The duration of the DOE financial obligation shall not extend beyond the expiration date of the budget period shown in the award unless authorized by a DOE Contracting Officer by means of a continuation or renewal award or other extension of the budget period.

§ 600.17 Contents of award.

Each financial assistance award shall be made on a Notice of Financial Assistance Award (DOE F 4600.1) which contains basic identifying and funding information together with attachments including a budget, any special terms and conditions, and any other provisions necessary to establish the respective right, duties, obligation, and responsibilities of DOE and the recipient, consistent with the requirements of this part.

§ 600.18 Recipient acknowledgement of award.

(a) After signature by the DOE Contracting Officer, the award shall be sent to the applicant. The applicant shall be required to return a signed copy of the award acknowledging acceptance. No DOE funds shall be disbursed until the award document signed by the recipient is received by DOE.

(b) In the event an applicant declines an award or fails to acknowledge acceptance of an award, DOE shall deobligate the funds obligated by the award after providing the applicant with at least two weeks written notice of DOE's intention to deobligate.

(c) After the recipient acknowledges the award, the terms and conditions of the award may be amended only upon the written request or with the written concurrence of the recipient unless the amendment is one which DOE may make unilaterally in accordance with a program rule or this part.

§ 600.19 Notification to unsuccessful applicants.

DOE shall promptly notify in writing each applicant whose application has not been selected for award or whose application cannot be funded because of the unavailability of appropriated funds. If the application was not selected, the written notice shall briefly explain why the application was not selected and, if for grounds other than unavailability of funds, shall offer the unsuccessful applicant the opportunity for a more detailed explanation upon request.

§ 600.20 Maximum DOE obligation.

The maximum DOE obligation to the recipient is—

(a) For monetary awards, the amount shown in the award as the amount of DOE funds obligated, and

(b) Any designated property.

(c) DOE shall not be obligated to make any additional, supplemental, continuation, renewal, or other award for the same or any other purpose.

§ 600.21 Access to records.

(a) In addition to recipient and subrecipient responsibilities relative to access to records specified in Sections 600.153 and 600.242, for any negotiated contract or subcontract in excess of $10,000 under a grant or cooperative agreement, DOE, the Comptroller General of the United States, the recipient and the subrecipient (if the contract was awarded under a financial assistance subaward), or any of their authorized representatives shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to that contract or subcontract, in order to make audit, examination, excerpts, and copies.

(b) The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor.

§ 600.22 Disputes and appeals.

(a) Informal dispute resolution. Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures available 10 CFR Part 1024, to the extent practicable.

(b) Alternative dispute resolution (ADR). Before issuing a final disposition in any dispute in which informal resolution has not been achieved, the Contracting Officer shall suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(c) Final determination. Whenever a dispute is not resolved informally or through an alternative dispute resolution process, DOE shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth DOE's final disposition of such dispute. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by the Department and the party or parties to the dispute; and

(2) The factual, legal and policy reasons for DOE's disposition of the dispute.

(d) Right of appeal. (1) Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the Financial Assistance Appeals Board (the Board) in accordance with the procedures set forth in 10 CFR part 1024.

(2) If the final determination under paragraph (c) of this section involves a dispute over which the Board has jurisdiction as provided in paragraph (f)(2) of this section, the Contracting Officer's determination shall state that, with respect to such dispute, the determination shall be the final decision of the Department unless, within 60 days, a written notice of appeal is filed.

(3) If the final determination under paragraph (c) of this section involves a dispute over which the Board has no jurisdiction as provided in paragraph (f)(1) of this section, the Contracting Officer's determination shall state that, effective immediately or on a later date specified therein, the determination shall, with respect to such dispute, be the final decision of the Department.

(e) Effect of appeal. The filing of an appeal with the Board shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the Board, or to preserve its ability to provide relief in the event the Board decides in favor of the appellant.

(f) Review on appeal. (1) The Board shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to Sections 600.114 or 600.212;

(ii) DOE denial of a request for a deviation under Sections 600.4, 600.103, or 600.205 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under Sections 600.125, 600.127, 600.222, or 600.230 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under Sections 600.162(a) (1), (2), (3) or (5); or Sections 600.243 (a)(1), (a)(3) for suspensions only; or Sections 600.162 (a)(4) or Section 600.243(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under Section 600.144, or Section 600.236 of this part or under another term or condition of the award;

(vi) A DOE decision not to make a continuation award, which decision is based on the insufficiency of available appropriations;

(vii) Any matter which is under the jurisdiction of the Patent Compensation Board (10 CFR 780.3);

(viii) Any matter which may be heard by the Invention Licensing Appeals Board (10 CFR 781.65 and 781.66); or

(ix) Any other dispute not described in paragraph (f)(2) of this section.

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (f)(1) of this section) of an award, the Board shall have jurisdiction to review:

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (f)(2)(i) of this section;

(iii) Termination of an award for cause, in whole or in part, by DOE;

(iv) A DOE determination that an award is void or invalid;

(v) The application by DOE of an indirect cost rate; and

(vi) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (f)(2) of this section, the Board shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the Board shall be the final decision of the Department.

§ 600.23 Debarment and suspension.

Applicants, recipients, subrecipients, and contractors under financial assistance awards may be debarred and suspended for the causes and in accordance with the procedures set forth in 10 CFR part 1036.

§ 600.24 Noncompliance.

(a) Except for noncompliance determinations under 10 CFR part 1040, whenever DOE determines that a recipient has not complied with the applicable requirements of this part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the recipient (by certified mail, return receipt requested) a written notice setting forth:

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.

(3) Which of the actions authorized under Section 600.122(n), Section 600.162(a) or Section 600.243(a) of this part DOE may take if the recipient does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) DOE may take any of the actions set forth in Section 600.121(n,), Section 600.162(a), or Section 600.243(a) of this part concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the recipient whenever:

(1) There is evidence the award was obtained by fraud;

(2) The recipient ceases to exist or becomes legally incapable of performing its responsibilities under the financial assistance award; or

(3) There is a serious mismanagement or misuse of financial assistance award funds necessitating immediate action.

§ 600.25 Suspension and termination.

(a) Suspension and termination for cause. DOE may suspend or terminate an award for cause on the basis of—

(1) a noncompliance determination under Section 600.24, Section 600.122(n), Section 600.162(a), or Section 600.243(a);

(2) an immediate debarment or debarment of the awardee under Section 600.23.

(b) Notification requirements. Except as provided in Section 600.24, Section 600.162(a), or Section 600.243(a) before suspending or terminating a award for cause, DOE shall mail to the awardee (by certified mail, return receipt requested) a separate written notice in addition to that required by Section 600.24(a), Section 600.162(a), or Section 600.243(a) at least ten days prior to the effective date of the suspension or termination. Such notice shall include, as appropriate—

(1) The factual and legal bases for the suspension or termination;

(2) The effective date or dates of the DOE action;

(3) If the action does not apply to the entire award, a description of the activities affected by the action;

(4) Instructions concerning which costs shall be allowable during the period of suspension, or instructions concerning allowable termination costs, including in either case, instructions concerning any subgrants or contracts;

(5) Instructions concerning required final reports and other closeout actions for terminated awards (see Sections 600.170 through 600.173 and Sections 600.250 through 600.252);

(6) A statement of the awardee's right to appeal a termination for cause pursuant to Section 600.22; and

(7) The dated signature of a DOE Contracting Officer.

(c) Suspension. (1) Unless DOE and the awardee agree otherwise, no period of suspension shall exceed 90 days.

(2) DOE may cancel the suspension at any time, up to and including the date of expiration of the period of suspension, if the awardee takes satisfactory corrective action before the expiration date of the suspension or gives DOE satisfactory evidence that such corrective action will be taken.

(3) If the suspension has not been cancelled by the expiration date of the period of suspension, the awardee shall resume the suspended activities or project unless, prior to the expiration date, DOE notifies the awardee in writing that the period of suspension shall be extended consistent with paragraph (c)(1) of this section or that the award shall be terminated.

(4) As of the effective date of the suspension, DOE shall withhold further payments and shall allow new obligations incurred by the awardee during the period of suspension only if such costs were authorized in the notice of suspension or in a subsequent letter.

(5) If the suspension is cancelled or expires and the award is not terminated, DOE shall reimburse the awardee for any authorized allowable costs incurred during the suspension and, if necessary, may amend the award to extend the period of performance.

(d) Termination by mutual agreement. In addition to any situation where a termination for cause pursuant to Section 600.24, Sections 600.160 through 600.162 or Sections 600.243 through 600.244 is appropriate, either DOE or the awardee may initiate a termination of a award (or portion thereof) as described in this paragraph. If the awardee initiates a termination, the awardee must notify DOE in writing and specify the awardee's reasons for requesting the termination, the proposed effective date of the termination, and, in the case of a partial

termination, a description of the activities to be terminated, and an appropriate budget revision. DOE shall terminate a award or portion thereof under this paragraph only if both parties agree to the termination and the conditions under which it shall occur. If DOE determines that the remaining activities under a partially terminated award would not accomplish the purpose for which the award was originally awarded, DOE may terminate the entire award.

(e) Effect of termination. The awardee shall incur no new obligations after the effective date of the termination of a award (or portion thereof), and shall cancel as many outstanding obligations as possible. DOE shall allow full credit to the awardee for the DOE share of noncancellable obligations properly incurred by the awardee prior to the effective date of the termination.

(f) Subgrants. Awardees shall follow the policies and procedures in this section and in Section 600.24, Sections 600.160 through 600.162 or Sections 600.243 through 600.244 for suspending and terminating subgrants.

§ 600.26 Funding.

(a) General. The project period during which DOE expects to provide award support for an approved project shall be specified on the Notice of Financial Assistance Award (DOE Form 4600.1).

(b) Budget period and continuation awards. If the project period is 12 months or less, the budget period and the project period shall be coextensive. Except as provided in paragraph (e) of this section, multiyear awards, including formula awards, shall be funded annually within the approved project period. Funding for each budget period within the project period shall be contingent on DOE approval of a continuation application submitted in accordance with a schedule specified by DOE. A continuation application shall include—

(1) A statement of technical progress or status of the project to date.

(2) A detailed description of the awardee's plans for the conduct of the project during the coming year; and

(3) A detailed budget for the upcoming budget period, including an estimate of unobligated balances. A detailed budget need not be submitted if the new or renewal application contained future-year budgets sufficiently detailed to allow DOE to review and approve the categories and elements of cost. Should the award have a change in scope or significant change in the budget, DOE may request a detailed budget. DOE shall review a continuation application for the adequacy of the awardee's progress and planned conduct of the project in the subsequent budget period. DOE shall not require a continuation application to compete against any other application. The amount and award of continuation funding is subject to the availability of appropriations.

(c) Renewal awards. Discretionary renewal awards may be made either on the basis of a solicitation or on a noncompetitive basis. If DOE proposes to restrict eligibility for a discretionary renewal award to the incumbent grantee, the noncompetitive award must be justified in accordance with 600.6(b)(2). Renewal applications must be submitted no later than 6 months prior to the scheduled expiration of the project period unless a program rule or other published instruction establishes a different application deadline.

(d) Extensions. Unless otherwise specified in the award terms and conditions, recipients of financial assistance awards, except recipients of SBIR awards (See Section 600.181), may extend the expiration date of the final budget period of the project (thereby extending the project period) if additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of making the extension.

§ 600.27 Patent and data provisions.

(a) General. Financial assistance shall be awarded and administered by DOE in compliance with the patent and data provisions of this section. (See also Sections 600.136 and 600.234.) To the extent not otherwise provided in this part, the policies, procedures and clauses referenced for contracts in 48 CFR part 927 and 41 CFR part 9–9 shall normally be applicable to the award and administration of Departmental grants and cooperative agreements. Copies of 41 CFR part 9–9 are available by contacting the DOE Patent Counsel.

(b) Required clauses. In all solicitations and awards both for the support of research, development, and demonstration and for other efforts, the DOE Contracting Officer shall consult the DOE Patent Counsel for applicable patent and data clauses from those listed below and/or for modifications thereto. In reading each 48 CFR part 27 and 48 CFR part 952 patent and data clause selected for inclusion in a solicitation or award, the term "contract" when referring to a prime contract shall be read as "award." The term "contractor" shall be read as referring to the "awardee." The term "subcontract" shall be read as "subaward or a procurement contract under an award or subaward and/or a procurement subcontract under an awardee's or subawardee's contract." The term "Acquisition" with respect to the Long Form Patent Rights Clause shall be read as "Retention." The terms "offerors" and "quoters" shall be read as "applicants," and "proposal" and "quotation" shall be read as "application."

(1) Patent clauses.

(i) (Short Form Patent Clause). Incorporate the clause at 48 CFR 952.227–11 for awards to a domestic small business firm or nonprofit organization as defined at 48 CFR 27.301. In accordance with 35 USC 202(a)(ii), the DOE may issue an exceptional circumstances determination. To implement any exceptional circumstances determination, DOE will modify 48 CFR 952.227–11 to retain greater rights in subject inventions. Such modifications will be only to the extent necessary to implement the exceptional circumstances determination.

(ii) (Long Form Patent Clause). For awards to a large business firm or other organization, other than a domestic small business firm or nonprofit organization as set forth in 48 CFR 27.301, incorporate the clause at 48 CFR 952.227–13.

(iii) The notice of Right to Request Patent Waiver at 48 CFR 952.227–84 shall also be inserted in all solicitations to advise applicants of their rights to request in advance of, or within 30 days after the award is signed, a waiver of all or any part of the rights of the United States with respect to subject inventions. For unsolicited applications, DOE shall provide this notice to the applicant prior to award.

(2) Data Clauses (includes copyright provisions)

(i) Rights in Data—General. (A) Incorporate 48 CFR 52.227–14 with Alternates I and V. Solicitations shall also include the Representation of Limited Rights Data and Restricted Computer Software clause at 48 CFR 52.227–15.

(B) In awards for grants and cooperative agreements with institutions of higher education, hospitals, and other non-profit organizations, the following paragraph (c) will be used in lieu of the provisions in 48 CFR 52.227–14(c):

(c) Copyright. (1) Data first produced in the performance of the award. Except as otherwise specifically provided in this award, the recipient may establish claim to copyright subsisting in any data first produced in the performance of this award. When claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including award number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The recipient grants to the Government a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The right to publish includes the right to publicly distribute. The right to use the work for Federal purposes includes the right to prepare derivative works.

(C) For grants and cooperative agreements with commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations, the provisions the following paragraph (d)(3) shall be used in addition to the provisions in 48 CFR 52.227–14:

(d)(3) The Recipient agrees not to establish claim to copyright in computer software first produced in the performance of this award without prior written permission of the Contracting Officer. When such permission is granted, the Contracting Officer shall specify appropriate terms to assure dissemination of the software. The recipient shall promptly deliver to the Contracting Officer or to the DOE Patent Counsel designated by the Contracting Officer a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and other terms pertaining to the computer software to which claim to copyright is made.

(D) If programmatic needs on a particular award require the delivery to the Government of limited rights data or restricted computer software, Alternates II or III of 48 CFR 52.227–14 shall also be added.

(ii) Restriction on Disclosure and Use of Data. Insert the Notice at 600.15(b)(1) in all solicitations.

(iii) Rights to Application Data. As discussed at 600.15(b)(5), incorporate 48 CFR 52.227–23.

(iv) Additional data requirements. Incorporate 48 CFR 52.227–16. In the event all technical data requirements are known in advance of and are set forth in the agreement or, the award is for the performance of basic or applied research and is to be performed solely by a university or college as discussed in 48 CFR 27.406(b), 48 CFR 52.227–16 does not need to be incorporated.

(3) Authorization and consent. Incorporate 48 CFR 52.227–1 or Alternates I or II, as appropriate, in accordance with the guidance in 48 CFR 927.201–1 and 48 CFR 27.201.

(4) Patent indemnity. Incorporate the clause set forth in 48 CFR 52.227–3, as appropriate, in accordance with the guidance in 48 CFR 27.203–1 and 48 CFR 27.203–3.

(5) Filing of Patent Applications-Classified Subject Matter. Incorporate the following paragraph in any solicitation or award which covers, or is likely to cover, classified subject matter:

Classified Inventions

(a) The recipient shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this award in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Contracting Officer.

(b) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this award, the subject matter of which is classified for reasons of security, the awardee shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the awardee shall, by separate letter, identify by agency and agreement number the award(s) which require security classification markings to be placed on the application.

(6) Notice and Assistance Regarding Patent and Copyright Infringement. Incorporate the clause at 48 CFR 52.227–2, in accordance with the guidance in 48 CFR 27.202, in all awards in excess of $100,000 for construction, research, development, and demonstration work which is to be performed within the United States, its possessions, or Puerto Rico.

(7) Royalty Information. Incorporate 10 CFR 52.227–6.

(8) Refund of Royalties. As discussed in 48 CFR 927.206, incorporate the clause at 48 CFR 952.227–9 in solicitations and awards where the Contracting Officer believes royalties will have to be paid by the awardees or subawardee or contractor at any tier.

(9) Subawards and contracts under award. The recipient shall include the applicable clauses of this section in any subaward or contract awarded under the award and assure that the applicable clauses are also included by subrecipients in contracts.

§ 600.28 New restrictions on lobbying.

Procedures regarding restrictions on lobbying activities of applicants and recipients are contained in 10 CFR 601.110.

§ 600.29 Fixed obligation awards.

(a) General. This section contains provisions applicable to the award of financial assistance instruments on a fixed amount basis. Under a fixed obligation award, funds are issued in support of a project without a requirement for Federal monitoring or actual costs subsequently incurred.

(b) Provisions applicable to fixed obligation awards. Financial assistance awards may be made on a fixed obligation basis subject to the following requirements:

(1) Each fixed obligation award may not exceed $100,000 or exceed one year in length.

(2) Programs which require mandatory cost sharing are not eligible.

(3) Proposed costs must be analyzed in detail to ensure consistency with applicable cost principles;

(4) Although budgets are submitted by an applicant and reviewed for purposes of establishing the amount to be awarded, budget categories are not stipulated in making an award;

(5) Payments will be made in the same manner as other financial assistance awards, except that when determined appropriated by the cognizant program official and contracting officer a lump sum payment may be made;

(6) Recipients must certify in writing to the contracting officer at the end of the project that the activity was completed or the level of effort was expended, however should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements;

(7) Requirements for periodic reports may be established for each award so long as they are not more frequently than quarterly;

(8) Changes in principal investigator or project leader, scope of effort, or institution, require the prior approval of the Department.

§ 600.30 Cost sharing.

In addition to the requirements of Section 600.123 or Section 600.224, the following requirements apply to research, development, and demonstration projects:

(a) When DOE awards financial assistance for research, development, and demonstration projects where the primary purpose of the project is the ultimate commercialization and utilization of technology by the private sector and when there are reasonable expectations that the participant will receive significant present or future economic benefits beyond the instant award as a result of the performance of the project, cost sharing shall be

required unless waived by the cognizant Program Assistant Secretary or designee.

(b) Except as provided in statute such as the Energy Policy Act, 42 U.S.C. 13525, DOE will decide, on a case-by-case basis, the amount of cost sharing required for a particular project.

(c) Factors in addition to those specified in Section 600.123 or Section 600.224, which may be considered when negotiating cost sharing for research, development, and demonstration projects include the potential benefits to a participant resulting from the project and the length of time before a project is likely to be commercially successful.

[FR Doc. 95–19149 Filed 8–7–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 950710174–5174–01]

RIN 0691–AA26

International Services Surveys: BE–82 Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed rules relating to international services surveys to institute a new mandatory survey, the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, to be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. The survey will update information collected on the quinquennial BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, which was first conducted for 1994. Together, the two surveys will produce continuous annual time series of data on financial services that are out of scope of other international services surveys. The information is needed, among other purposes, to support trade policy initiatives, including trade negotiations, on financial services and to compile the U.S. balance of payments and national income and product accounts.

The survey will be conducted under the International Investment and Trade in Services Survey Act and the Omnibus Trade and Competitiveness Act of 1988.The first survey will cover 1995.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before September 22, 1995.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room M–100, 1441 L Street, N.W., Washington, DC 20005. Comments will be available for public inspection in Room 7006, 1441 L Street, N.W., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9805.

SUPPLEMENTARY INFORMATION: These proposed rules will amend existing 15 CFR 801.9 to set forth reporting requirements for the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. The survey will be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (P.L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended) and the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418, 15 U.S.C. 4908). Section 3103(a) of the International Investment and Trade in Services Survey Act provides that "The President shall, to the extent he deems necessary and feasible— . . . (1) conduct a regular data collection program to secure current information . . . related to international investment and trade in services . . .; and (5) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection * * *" In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA. The Omnibus Trade and Competitiveness Act of 1988 directs that "The Secretary (of Commerce) shall ensure that * * * there is included in the Data Bank information on service sector activity that is as complete and timely as information on economic activity in the merchandise sector. The Secretary shall undertake a new benchmark survey of services transactions, including transactions with respect to * * * banking services; (and) brokerage services. * * * The Secretary shall (also) provide, not less than once a year, comprehensive information on the service sector of the economy."

The major purposes of the survey are to provide the information on financial services needed in monitoring U.S. services trade, analyzing its effects on the U.S. economy, formulating U.S. international trade policy, supporting bilateral and multilateral trade negotiations, compiling the U.S. balance of payments and national income and product accounts, developing U.S. international price indexes for services, assessing U.S. competitiveness in international trade in services, and improving the ability of U.S. businesses to identify and evaluate foreign market opportunities.

As proposed, the BE–82 survey will be conducted in years in which a BE–80 benchmark survey, or census, is not conducted; the first BE–80 survey was for 1994 and the first BE–82 survey would be for 1995. The BE–82 survey will update the data provided on the universe of financial services transactions between U.S. financial services providers and unaffiliated foreign persons derived from the BE–80 survey. It covers the same types of financial services that are covered by the BE–80 survey, but the exemption level below which reporting is not required has been raised to $5 million compared with $1 million in the BE–80 survey. Reporting in the BE–82 is required from U.S. financial services providers who have sales to or purchases from unaffiliated foreign persons in all covered financial services combined in excess of $5 million during the reporting year. Those financial services providers meeting this criteria must supply data on the amount of their sales or purchases of each covered type of service, disaggregated by country. U.S. financial services providers that have covered transactions of less than $5 million during the reporting year are asked to provide, on a voluntary basis, estimates only of their total sales or purchases of each type of financial service.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request for review of the forms has been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act.

Public reporting burden for this collection of information is estimated to vary from 4 to 150 hours, with an overall average burden of 7.5 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total sales or total purchases transactions in financial services with unaffiliated foreign persons by U.S. persons who are financial services providers, or by U.S. persons whose consolidated enterprise includes a separately organized subsidiary or part that is a financial services provider, exceed $5 million during the year. In addition, international business tends to be conducted mainly by the larger companies in a given industry; in the financial services industry, this is particularly true, because of the high degree of consolidation that has occurred in that industry in the United States during the past several years. In any event, small businesses tend to have specialized operations and activities, so those with reportable transactions will likely not have significant amounts of data to report; therefore, the burden on them will be relatively small.

List of Subjects in 15 CFR Part 801

Economic statistics, Balance of payments, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: July 3, 1995.

J. Steven Landefeld,

Acting Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801, as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR part 801 is revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, (3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by adding paragraph (b)(7) to read as follows:

§ 801.9 Reports required.

* * * * *

(b) *Annual surveys.* * * *

(7) BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering companies' 1995 fiscal year and every year thereafter except when a BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Service Providers and Unaffiliated Foreign Persons, is conducted (see § 801.11). All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.8 are applicable to this survey. Additional rules and regulations for the BE–82 survey are given in paragraphs (b) (7)(i) (A) through (D) of this section. More detailed instructions are given on the report form itself.

(A) *Who must report.* (*1*) *Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and who had transactions (either sales or purchases) directly with unaffiliated foreign persons in all financial services combined in excess of $5,000,000 during its fiscal year covered by the survey. The $5,000,000 threshold should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the $5,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(*i*) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(*ii*) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(*2*) *Voluntary reporting.* If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries or parts combined that are financial services providers or intermediaries, are $5,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. Because the $5,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(B) *BE–82 definition of financial services provider.* The definition of a financial services provider used for this survey is the same as that used for the BE–80 benchmark survey, as defined in § 801.11(b).

(C) *Covered types of services.* The BE–82 survey covers the same types of financial services transactions that are covered by the BE–80 benchmark survey, as listed in § 801.11(c).

(D) *What to file.* (*i*) The BE–82 survey consists of Forms BE–82(A) and BE–82(B). Before completing a Form BE–82(B), a consolidated U.S. enterprise (including the top parent and all of its subsidiaries and parts combined) must complete Form BE–82(A) to determine its reporting status. If the enterprise is

subject to the mandatory reporting requirement, or if it is exempt from the mandatory reporting requirement but chooses to report data voluntarily, either a separate Form BE–82(B) may be filed for each separately organized financial services subsidiary or part of the consolidated U.S. enterprise, or a single BE–82(B) may be filed, representing the sum of covered transactions by all financial services subsidiaries or parts of the enterprise combined.

(*ii*) Reporters that receive the BE–82 survey from BEA, but that are not reporting data in either the mandatory or voluntary section of any Form BE–82(B), must return the Exemption Claim, attached to Form BE–82(A), to BEA.

(ii) [Reserved].

* * * * *

[FR Doc. 95–18803 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 54–1–6941b; FRL–5256–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NO_x RACT and Synthetic Minor Permit Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on eight major sources and establishes permit conditions to limit one source's emissions to below major source levels. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 7, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 23, 1995.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 95–19506 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[MI39–01–6921b; FRL–5273–1]

Designation of Areas for Air Quality Planning Purposes; Correction of Designation of Nonclassified Ozone Nonattainment Areas; State of Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to correct erroneous ozone designations made in 1980 for the Allegan County (Allegan County), Barry County (Barry County), Battle Creek (Calhoun County), Benton Harbor (Berrien County), Branch County (Branch County), Cass County (Cass County), Gratiot County (Gratiot County), Hillsdale County (Hillsdale County), Huron County (Huron County), Ionia County (Ionia County), Jackson (Jackson County), Kalamazoo (Kalamazoo County), Lapeer County (Lapeer County), Lenawee County (Lenawee County), Montcalm (Montcalm County), Sanilac County (Sanilac County), Shiawassee County (Shiawassee County), St. Joseph County (St. Joseph County), Tuscola County (Tuscola County), and Van Buren County (Van Buren County) nonattainment nonclassified/incomplete data areas and the Lansing-East Lansing (Clinton County, Eaton County, and Ingham County) nonattainment nonclassified/transitional area. Pursuant to section 110(k)(6) of the Act, which allows the USEPA to correct its actions, the USEPA is proposing to correct their designations to attainment/unclassifiable for ozone.

In the Final Rules Section of this **Federal Register**, the USEPA is correcting the designations in a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the correction is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. Please be aware that the USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to the direct final rule. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed action must be received in writing by September 7, 1995. Public comments on this document are requested and will be considered before taking final action on this reclassification.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886–6081.

SUPPLEMENTARY INFORMATION: For additional information, see the information provided in the Direct Final notice which is located in the Rules Section of this **Federal Register**. Copies of the USEPA's analysis are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 Office.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–19508 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90–Day Finding for a Petition to List the Kootenai River Population of the Interior Redband Trout as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Kootenai River population of the interior redband trout (*Oncorhynchus mykiss gairdneri*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information indicating that the petitioned actions may be warranted, because it fails to substantiate that the interior redband trout of the Kootenai River are a distinct population segment.

DATES: The finding announced in this document was made on July 11, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho, 83705. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia Klahr, staff biologist (refer to ADDRESSES section or telephone 208–334–1931).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U. S. C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**.

The Service has made a 90-day finding on a petition to list the Kootenai River population of the interior redband trout (*Oncorhynchus mykiss gairdneri*). The petition, dated April 4, 1994, was submitted by Brendan M. McManus of the Biodiversity Legal Foundation of Boulder, Colorado, and Donald Kern of Kalispell, Montana, and was received by the Service on April 8, 1994. The petitioner requested the Service list the Kootenai River drainage population of interior redband trout within the contiguous United States as threatened or endangered and designate critical habitat concurrently with the listing. The petitioners state that the best scientific data available indicates that interior redband trout residing in the Kootenai River drainage of Montana, and possibly Idaho, constitutes a separate and distinct vertebrate population segment, appropriate for listing as threatened or endangered according to the Act. The petitioners submitted information about threats to the Kootenai River interior redband trout, including hybridization and competition with non-native trout species, loss of habitat from land and water use practices, and inadequacy of existing regulatory mechanisms. The petitioners state that hybridization with non-native or introduced trout may be the most serious threat to the long-term persistence of the interior redband trout in the Kootenai River drainage.

The interior redband trout is currently classified as a category 2 candidate species by the Service (59 FR 58982; November 15, 1994). Category 2 includes taxa for which information in the Service's possession indicates that listing is possibly appropriate but for which the Service lacks substantial information upon which to base a proposal to list as endangered or threatened.

The Service has reviewed the petition, the literature cited in the petition, and other literature and information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information indicating that the petitioned action may be warranted because information is lacking to show that the interior redband trout of the Kootenai River are a distinct population segment under the Act.

There has been confusion regarding the taxonomic classification of interior redband trout (Behnke 1986, Behnke 1992). This confusion may be a result of similar morphological and meristic characteristics with other rainbow and cutthroat trout species (Berg 1987). It is further complicated by their diversity and adaptability, as "redband trout" are found in high mountain streams as well as in hot, arid desert drainages. Behnke (1992) refers to the interior redband trout as the Columbia River redband trout and describes their distribution as the Columbia River basin east of the Cascades to barrier falls on Kootenai, Pend Oreille, Spokane, and Snake Rivers; the upper Fraser River basin above Hell's Gate; and Athabasca River headwaters of the Mackenzie River basin.

The subspecies *gairdneri* includes resident stream populations, populations adapted to lakes (kamloops trout), and anadromous steelhead populations. Resident populations of Columbia River redband trout are found throughout the Columbia River basin east of the Cascades. The native trout of the Oregon and southern Idaho desert basins are considered to be a primitive form of redband trout derived from the Columbia River basin. Kamloops trout occur in lakes in the upper Columbia and upper Fraser basins. Anadromous steelhead populations ascending the Columbia River east of the Cascade Range and into the Salmon and Clearwater River drainages are also currently classified with redband trout (Behnke 1992).

The interior redband trout of the Kootenai River drainage exhibits two distinct life histories, a resident stream form of generally smaller fish and the larger lake dwelling kamloops form (Huston 1994; Behnke 1986; Behnke 1992). The Kootenai River drainage interior redband trout is on the northeastern periphery of the subspecies' range and is believed to be important as a potential source of diversity and adaptability (Doug

Perkinson, Kootenai National Forest, *in litt.* 1993).

The petitioners state that based on genetic analysis of trout samples from 60 sites in the Kootenai River drainage, researchers have identified five remaining pure strain populations of interior redband trout in Montana. These five stream populations presently occupy approximately 56 kilometers (35 miles) of stream (Doug Perkinson, Kootenai National Forest, *in litt.* 1994). The petitioners assert that these populations have a high likelihood of being the only native populations remaining in Montana. The petitioners also state there are no documented stream populations of interior redband trout in the State of Idaho.

Any species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act (50 CFR 424.02(e)). The term "species" is defined in 50 CFR 424.02(k) as "any species or subspecies * * * and any distinct population segment of any vertebrate species that interbreeds when mature." Thus the first deliberation is whether the Kootenai River population of interior redband trout is a recognized subspecies or distinct population that interbreeds.

Following receipt of the petition the Service found additional evidence of native redband trout, both pure populations and the presence of genetic material, in other tributaries in the Kootenai drainage. These data indicate that interior redband trout in the Kootenai drainage may be more widely distributed than previously assumed (Perkinson 1994A). The Idaho Conservation Data Center, *in litt.* 1994, cites populations of interior redband trout in the following drainages in Idaho—Weiser, Payette, Boise, Bruneau, Owyhee, and Wood, and numerous tributaries to the Snake River. The Service examined evidence of additional pure redband trout populations above Kootenai Falls, a presumed isolating barrier for the Kootenai River redband trout (Leary 1994). This evidence indicates nearly pure populations of redband trout outside the subspecies presumed home-range (Perkinson 1994C). The literature also indicates interior rainbow trout genetic material in numerous fish populations upstream from Kootenai Falls in the Kootenai River drainage (Huston 1994, Perkinson 1994A). A Service review of the literature and discussions with regional fisheries biologists reveals an ongoing debate about the definition of interior redband trout. Presently there appears to be general agreement that the interior rainbow trout "complex" includes redband trout of the Columbia basin east of the Cascade Range up to barrier falls, and including anadromous steelhead, making the distribution of this subspecies wide and diverse.

The petitioners did not provide supporting data or literature to substantiate the claim that the interior redband trout residing in the Kootenai River drainage of Montana, and possibly Idaho, constitute a separate and distinct vertebrate population segment that is genetically, physically, or is othewise distinct from other redband trout populations, or that these fish are significant to the survival of redband trout populations that occupy hundreds of miles of habitat in the inland northwest. In addition these fish do not constitue a significant portion of the range of the interior redband trout.

The Service concludes that the data contained in the petition, referenced in the petition, and otherwise available to the Service does not present substantial information that the petitioned actions may be warranted. The Service will retain the interior redband trout as a category 2 candidate, and will continue to seek information regarding the status or threats to the subspecies. If additional data becomes available in the future, the Service may reassess the listing priority for this subspecies or the need for listing.

References cited: A complete list of all references cited herein are available upon request from the Boise Field Office (see **ADDRESSES** section).

Author: The primary author of this document is Patricia Klahr, U.S. Fish and Wildlife Service, (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 11, 1995.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–19550 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[I.D. 073195A]

Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan; and request for comments.

SUMMARY: NMFS announces that the Caribbean Fishery Management Council has submitted a Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (FMP) for review by NMFS. Written comments are requested form the public.

DATES: Written comments must be received on or before October 10, 1995.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the FMP, which includes an environmental impact statement and a regulatory impact review, should be sent to the Caribbean Fishery Management Council, 268 Mũnoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577, 809–766–5926.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan be submitted to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving a fishery management plan, immediately publish a notice that it is unavailable for public review and comment.

This FMP proposes to (1) Prohibit the use of chemicals, plants, plant-derived toxins, and explosives to take coral reef resources in the exclusive economic zone (EEZ) around Puerto Rico and the U.S. Virgin Islands; (2) limit allowable harvest in the EEZ to dip nets and slurp guns or by hand; and (3) prohibit the possession or sale of stony corals, gorgonians, and live rock (prohibited species) taken in the EEZ.

The Director, Southeast Region, NMFS, based on a preliminary evaluation of the FMP, has disapproved the proposed adoption of certain state permit systems for harvesters and dealers of coral reef resources and for the taking of prohibited species for scientific, educational, or restoration purposes. His action was based on a determination that the state permit systems for coral reef resources are not yet fully developed and that state regulations authorizing such permits, where they exist, do not satisfy the Administrative Procedure Act, the Magnuson Act, and other applicable laws.

Proposed regulations to implement those measures of the FMP that were not disapproved based on the preliminary evaluation are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 3, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19523 Filed 8–3–95;3:49 pm]

BILLING CODE 3510–22–M

50 CFR Parts 649, 650, and 651

[I.D. 072695B]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Thursday, August 10, 1995, at 9:30 a.m. and on Friday, August 11, 1995, at 8:30 a.m.

ADDRESSES: The meeting will be held at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA 01923; telephone: (508) 774–6800. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01096–1097; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231–0422.

SUPPLEMENTARY INFORMATION:

August 10, 1995

The August 10, 1995, session will begin with a report from the Northeast Fisheries Science Center on the scallop and haddock assessments developed at the 20th Stock Assessment Workshop. During the afternoon session, the Council will discuss the projected timetable for development of Amendment 7 to the Fishery Management Plan for the Northeast Multispecies Fishery (Multispecies FMP), a proposed change (Framework Adjustment 12) in the multispecies regulations relating to harbor porpoise mitigation and the status of work on Amendment 5 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery. There will also be Monkfish Subcommittee reports on gear conflict issues and discussion on progress toward development of a fishery management plan for monkfish.

Abbreviated Rulemaking Action—Northeast Multispecies

The Council will consider initial action to adjust the Multispecies FMP under the framework for abbreviated rulemaking contained in 50 CFR 651.40. The Council will accept comments on the framework adjustment that would reconfigure the midcoast time/area closure to reduce harbor porpoise bycatch in the sink gillnet fishery. The Council is considering a change in area and duration of the closure and the possibility of incorporating the use of acoustic alarms to reduce harbor porpoise mortality. This will be the first Council meeting under the process for framework adjustments. A second discussion will occur at a subsequent meeting, as yet, unspecified. If the Director, Northeast Region NMFS (Regional Director), concurs with the Council's recommendation, he will publish the changes as a proposed or final rule in the **Federal Register**.

August 11, 1995

At 8:30 a.m., the Council will convene to elect officers for 1995–96. Following elections, the Council's State Department member will report on international issues, including Northwest Atlantic Fisheries Organization implementing legislation (Senate bill #267). The Council will then address the contents of a public hearing document on a proposed amendment to the Fishery Management Plan for the American Lobster Fishery, which contains goals for reducing fishing effort, preventing and eliminating overfishing, and rebuilding the lobster stocks. The Council may approve the substance of the public hearing document at this meeting.

The Council will then hear reports from the Chairman, Council Executive Director, Regional Director, Northeast Fisheries Science Center liaison, Mid-Atlantic Fishery Management Council liaison, and representatives from the Coast Guard, the Atlantic States Marine Fisheries Commission, and the State Department. Other items of business may be added to the agenda as necessary.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 2, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19552 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 152
Tuesday, August 8, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee to Review the Government in the Sunshine Act

ACTION: Notice of public hearing regarding the Government in the Sunshine Act.

SUMMARY: The ACUS Special Committee to Review the Government in the Sunshine Act will conduct a public hearing to take testimony and statements from agency officials and members of the public concerning the effectiveness of the Government in the Sunshine Act, as it is now implemented by federal boards and commissions. This notice is pursuant to the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: September 12, 1995, 9 a.m.

LOCATION: Washington, DC (venue to be announced).

FOR FURTHER INFORMATION: Jeffrey Lubbers, (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Chair of the Administrative Conference of the US (ACUS) was asked by letter, signed by over one dozen current and former commissioners of multi-member agencies and several private organizations, to review the effectiveness of the Government in the Sunshine Act. The signatories of the letter stated strong support for the Act's underlying goal of enhancing public understanding of agency decisionmaking, but expressed concern as to whether the Act is, in fact, meeting this goal as well as it might. They also suggested that the Act may have a detrimental effect on collegial deliberation among agency members, thereby reducing the overall quality of decisionmaking at multi-member agencies. The Chair established the Special Committee to study issues raised by the letter.

The Committee, in its open meetings, has heard from some agency officials and reviewed articles written for ACUS and others to the effect that public meetings under the Act often lack substantive exchange of ideas and collective deliberation on issues being decided. In addition, the Committee has been informed that the restrictions imposed by the Act make spontaneous collegial discussions difficult or impossible as a general matter, adversely affecting the establishment of agency agendas and promoting inefficient practices within agencies. As a result, the Committee is concerned that the public does not receive the information or access to the governmental decisionmaking process that the Act was intended to provide. The Committee has determined that a public hearing is warranted to address proposed suggestions for changes in the Act (or in agency behavior) that will increase collegial decisionmaking among the members of multi-member agencies, and at the same time improve the public's access to the agency's deliberative process.

Toward that end, the Special Committee hereby provides notice of the public hearing and invites the participation of agency officials and other interested persons. It would be helpful if participants would be prepared to discuss or suggest specific proposals for improving public access to agency decisionmaking processes and the quality of agency decisionmaking in agencies subject to the Sunshine Act.

The following proposals are under preliminary consideration by the Committee and are suggested for the purpose of framing the discussion at the public hearing. It should be noted that the order of the proposals is of no particular significance. It may be appropriate to consider some proposals in combination or partial combination with others, or to consider recommending some or all of them on a pilot basis.

(1) The Act could be amended to cover only meetings of the full board or commission.

(2) The Act could be amended to allow subgroups of the full membership of the board or commission to discuss matters in closed session, provided that these matters would later be the subject of open meetings.

(3) The Act could be amended by (1) expanding the current definition of "meeting" to include all get-togethers of a quorum of agency members to discuss any agency business, (i.e., without regard to whether they "determine" agency business) while also (2) permitting any such meeting to be held in closed session if minutes of the meeting were released to the public shortly after the meeting. (However, decisions by the members of an agency would either have to be voted on in public meetings or pursuant to seriatim or notation voting.)

(4) The Act could be amended to allow the closing of additional categories of meetings without notice (or with shorter notice), provided that minutes or transcripts of closed meetings are released soon thereafter.

(5) The Act could be amended to include additional exemptions, such as for agency consideration of legislative and/or budgetary matters—or where the agency certifies that such matters involve especially sensitive issues.

(6) The Act could be amended so that the open meeting requirements do not apply to discussions of agency actions that will be later embodied in a published opinion and order or similar form of agency determination in which the agency members set forth their individual votes and the rationale and basis for their determination (collectively and/or individually to the extent that individual views may differ from the collective determination).

(7) The Act could be amended to remove from coverage any discussion of a proposed rulemaking proceeding so long as the discussion occurs before the publication of a notice of proposed rulemaking [with or without release of minutes or summaries soon thereafter].

(8) The Act could be amended to allow closed meetings (if no votes are taken) on pending rulemaking proceedings, so long as the discussions occur during the comment period, or only up to some specified time before the proposed rule is subject to a vote [with or without release of minutes or summaries soon thereafter].

(9) The Act could be amended to require that any votes taken through notation voting, that would otherwise be required to be taken at an open meeting, be subject to discussion, upon the request of an agency member, in a subsequent open meeting.

(10) Agencies could be encouraged to develop regulations (or policies) that maximize the amount of information provided before, during and after agency meetings. Meeting notices could be published further in advance of the meetings where feasible; such notices could provide more complete summaries of upcoming agenda items; relevant non-privileged documents could be provided before or during meetings; closed circuit television coverage of meetings could be provided; and minutes, summaries, and decisional opinions could be provided as soon as feasible after meetings.

The above list of possible recommendations is only tentative and your creative ideas are encouraged.

If you are interested in participating in this public hearing, please send your written request to Jeffrey Lubbers, ACUS, 2120 L Street NW., Suite 500, Washington, DC 20037. You should indicate why you are interested, what organization, if any, you represent, and give a very brief summary of the points to be covered in your testimony. Please also indicate whether you have any special needs. Requests should be submitted by August 25, 1995.

ACUS reserves the right to limit participation to a feasible number of participants, to group participants on panels, to ask participants with similar views to select a group representative, and to limit the time for participation. Generally, participants should expect to limit their prepared remarks to no more than 10 minutes. Shortly after August 25, ACUS will notify requesters of the proposed hearing schedule and of the list of participants.

Written submission from participants and others are welcomed. Unless it is a financial hardship, participants should provide 20 copies of such submissions to Jeffrey Lubbers at the above address by September 5, 1995. Others wishing to provide written comments should provide a single copy to Mr. Lubbers by September 12. Attendance at the public hearing is open to the public.

Dated: August 2, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–19478 Filed 8–7–95; 8:45 am]

BILLING CODE 6110–01–W

Special Committee to Review the Government in the Sunshine Act

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Special Committee to Review the Government in the Sunshine Act, of the Administrative Conference of the United States.

DATES: Wednesday, September 20, 1995, 2:00 PM.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street, NW., Suite 500 (Library, 5th Floor), Washington, DC.

FOR FURTHER INFORMATION: Jeffrey S. Lubbers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Special Committee to Review the Government in the Sunshine Act will meet to consider the results of the public hearing to be held on September 12, 1995.

Attendance at the meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of the committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: August 2, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–19477 Filed 8–7–95; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–95–009]

Sheep Promotion, Research, and Information: Certification of Organizations for Eligibility to Make Nominations to the Proposed National Sheep Promotion, Research, and Information Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State sheep producer organizations, national sheep feeder organizations, as well as organizations representing importers of sheep or sheep products who desire to be certified as eligible to nominate sheep producers, sheep feeders, or importers of sheep or sheep products for appointment to the proposed National Sheep Promotion, Research, and Information Board (Board). Importer organizations representing importers of only raw wool are not eligible for certification. To nominate a sheep producer or alternate producer member, a sheep feeder or importer member to the Board, organizations must first be certified by the Secretary of Agriculture (Secretary). Each eligible organization must submit an official application form to AMS. Notice is also given that upcoming appointments are anticipated and that during a period to be established, nominations will be accepted from eligible organizations.

DATES: Applications for certification must be received by close of business September 7, 1995.

ADDRESSES: Certification forms as well as copies of the certification procedures may be requested from Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS, USDA; Room 2606–S; P.O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp on 202/720–1115.

SUPPLEMENTARY INFORMATION: The Sheep Promotion, Research, and Information Act of 1994 (Act), (7 U.S.C. 7101 *et seq.*), approved October 22, 1994, authorizes the establishment of a sheep and wool promotion, research, education, and information program. The Act provides for the establishment of a Board. The 120-member Board will consist of 85 sheep producers, 10 sheep feeders, and 25 importers of sheep and sheep products appointed by the Secretary. The duties and responsibilities of the Board are provided for under the Act.

The Secretary shall certify any State sheep producer, national sheep feeder, or importer organization that meets the eligibility criteria established under the Act. Those organizations that meet the eligibility criteria specified under the Act will be certified as eligible to nominate members for appointment to the Board to ensure that nominees represent the interests of sheep producers, feeders, and importers.

The Act provides that the members of the Board shall serve for terms of 3 years, except that appointments to the initially established Board shall be proportionately for 1-, 2-, and 3-year terms. No person may serve more than two consecutive 3 year terms, except that an elected officer of the Board shall not be subject to term limits while they hold office. USDA will announce when nominations will be due from eligible

organizations and when any subsequent nominations are due when a vacancy does or will exist. The Board positions to be filled are as follows:

State or unit vacancies	Number of representatives
Alabama	1
Alaska	1
Arizona	1
Arkansas	1
California	5
Colorado	4
Connecticut	1
Delaware	1
Florida	1
Georgia	1
Hawaii	1
Idaho	2
Illinois	1
Indiana	1
Iowa	2
Kansas	1
Kentucky	1
Louisiana	1
Maine	1
Maryland	1
Massachusetts	1
Michigan	1
Minnesota	2
Mississippi	1
Missouri	1
Montana	5
Nebraska	1
Nevada	1
New Hampshire	1
New Jersey	1
New Mexico	2
New York	1
North Carolina	1
North Dakota	2
Ohio	1
Oklahoma	1
Oregon	2
Pennsylvania	1
Rhode Island	1
South Carolina	1
South Dakota	4
Tennessee	1
Texas	10
Utah	3
Vermont	1
Virginia	1
Washington	1
West Virginia	1
Wisconsin	1
Wyoming	5
Feeders	10
Importers	25

In addition, each State with only one producer Board member is authorized to have an alternate producer member so that the State may have representation at Board meetings when the producer member cannot attend.

Any eligible State sheep producer, national feeder, or importer organization that is interested in being certified to nominate producers, feeders, or importers for appointment to the Board, must complete and submit an official "Application for Certification of Organization," form which must be received by close of business September 7, 1995.

Only those organizations that meet the criteria for certification of eligibility specified under section 5(c)(1)(B) and section 5(c)(3) (B) and (C) under the Act are eligible for certification. Those criteria are:

(a) Feeder and Importer Organizations. Requirements for certification.

(1) The active membership of the organization includes a significant number of feeders or importers in relation to the total membership of the organization;

(2) There is evidence of stability and permanency of the organization; and

(3) The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(b) For State sheep producer organizations:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the aims and objectives of the Act.

A primary consideration in determining the eligibility of a State producer organization shall be whether;

(1) The membership of the organization consists primarily of producers who own a substantial quantity of sheep; and

(2) An interest of the organization is in the production of sheep.

All certified organizations will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required forms.

The names of qualified nominees received by the established due date will be submitted to the Secretary for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been submitted to by the Office of Management and Budget (OMB) for approval under the provisions of 44 U.S.C., chapter 35 and have been assigned OMB No. 0581–0093.

Authority: 7 U.S.C. 7101 *et seq.*

Dated: August 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–19462 Filed 8–7–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080195A]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Bering Sea/Aleutian Islands Crab Plan Team will meet by teleconference.

DATES: The teleconference will be held on August 30, 1995, beginning at 9:00 a.m. (Alaska Standard Time).

ADDRESSES: Listening stations for the public will be made available in Seattle, Juneau and Anchorage, AK. Please contact the Council office for more information.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and approve the crab Annual Area Management Report (also called the SAFE) and other developments with regard to crab management.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: August 1, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19443 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 072895C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification 1 to permit 844 (P503I), an amendment of permit 908 (P503K), and a denial of modification 1 to permit 908 (P503K).

SUMMARY: Notice is hereby given that NMFS has issued a modification and an amendment to permits authorizing takes of listed species incidental to sport-fishing and fish-stocking activities, subject to certain conditions set forth therein, to the Idaho Department of Fish and Game (IDFG) and has denied a permit modification request from IDFG.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, F/NWO3, NMFS, 525 NE Oregon Street, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: Modification 1 to permit 844 and the amendment of permit 908 were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

On July 14, 1995, modification 1 to permit 844 was issued to IDFG (P503I). Permit 844 authorizes an incidental take of adult and juvenile, listed, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and adult, listed, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with the State of Idaho's sport-fishing activities.

For modification 1, IDFG is authorized for an incidental take of residual, listed, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with a kokanee fishery in Redfish Lake in July 1995 only. The fishery is being allowed as a kokanee control measure. Although kokanee are not part of the Snake River sockeye salmon Evolutionarily Significant Unit, angler retention of Redfish Lake kokanee has not been allowed since 1992 because of the potential incidental harvest of listed residual sockeye, visually indistinguishable from kokanee. Possibly due to the lack of harvest and competition with juvenile sockeye salmon, the Redfish Lake kokanee population is estimated to have approximately doubled since 1991.

A reduction of the kokanee population in Redfish Lake is desirable, because kokanee compete directly with listed sockeye salmon for food and habitat. The abundant kokanee population in Redfish Lake threatens IDFG's effort to re-establish the listed sockeye salmon's productivity in the lake. Re-opening the kokanee fishery was determined to be the most effective and the only feasible way to reduce the kokanee population in 1995. Juvenile, listed, Snake River sockeye salmon produced from IDFG's captive broodstock program are not expected to be taken as a result of the kokanee fishery, because they are too small to be captured by angling. Modification 1 is valid in 1995 only. Permit 844 expires on April 30, 1998.

On July 26, 1995, an amendment of Permit 908 was issued to IDFG (P503K). Permit 908 authorizes an incidental take of listed Snake River salmon associated with IDFG's fish-stocking activities to support recreational fisheries in Idaho.

For the amendment, a condition in the permit was revised to describe the procedure that IDFG must follow when trout-stocking is proposed in a Stanley Basin lake where listed sockeye salmon are being reintroduced. The condition was revised in response to the issuance of modification 6 to permit 795 on June 23, 1995, which authorized releases of juvenile, listed, artificially-propagated, Snake River sockeye salmon (*Oncorhynchus nerka*) into Pettit Lake in Idaho in 1995 approximately 3 weeks after the last rainbow trout have been stocked in the lake. The revised condition also describes the monitoring requirements of any dual fish-stocking scenario of this kind. The amendment is valid for the duration of the permit. Permit 908 expires on December 31, 1998.

Notice was published on March 9, 1995 (60 FR 12913) that an application had been filed by IDFG for modification 1 to permit 908. IDFG requested authorization to stock Redfish Lake with hatchery rainbow trout in 1995 and beyond to provide a recreational fishing opportunity in the lake. With the modification request, IDFG submitted data that support the assertion that hatchery rainbow trout releases in Redfish Lake would not undermine endangered sockeye salmon recovery efforts.

On July 26, 1995, NMFS denied the modification request of permit 908, because, given the importance of Redfish Lake in listed sockeye salmon recovery efforts, and given the existing data gaps regarding interactions between stocked trout and listed sockeye salmon (i.e. predation and competition), the potential risk of planting catchable trout in Redfish Lake is too great.

Issuance of these permit actions, as required by the ESA, was based on the finding that such actions: (1) Were applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing listed species permits.

Dated: July 28, 1995.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–19554 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 073195F]

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Permit No. 841 (P129J).

SUMMARY: Notice is hereby given that a request for modification of Permit No. 841 submitted by Bruce R. Mate, Oregon State University, Newport, OR 97365–5296 has been granted.

ADDRESSES: Documents submitted in connection with this permit are available for review in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, WA 98115 (206/526–6150);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4015); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: On June 21, 1995, notice was published in the **Federal Register** (60 FR 32304) that a modification of Permit No. 841 issued on June 24, 1993, had been requested by the above-named individual. The modification has been granted under authority of the Marine Mammal

Protection Act of 1972 (MMPA) (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered fish and wildlife (50 CFR part 217–222).

The Permit authorized the harassment of up to 200 each of blue whales (*Balaenoptera musculus*), fin whales (*B. physalus*), humpback whales (*Megaptera novaeangliae*), and gray whales (*Eschrichtius robustus*) of which 50 would be tagged with an Argos satellite-monitored radio transmitter and biopsy sampled over a 5-year period. No more than 15 whales of each species will be tagged in a single year.

The modification authorized up to 55 blue whales to be tagged over a 5-year period and the restriction to limit the number of whales to be tagged in any one year was removed.

Issuance of this Permit, as required by the ESA of 1973, is based on a finding that the Permit: (1) Was applied for in good faith; (2) does not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA of 1973.

Dated: July 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–19553 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 073195G]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification no. 1 to permit no. 934 (P281C).

SUMMARY: Notice is hereby given that the request for modification submitted by Mr. S. Jonathan Stern, of the Marine Mammal Research Program, Texas A&M University, Galveston, TX, has been granted.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Director, Northwest Region, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150); and,

Director, Alaska Region, P.O. Box 21688, Juneau, AK; 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On June 21, 1995, notice was published in the **Federal Register** (60 FR 32304) that a request to modify scientific research permit no. 934 had been received. The modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered species permits 50 CFR parts 217–222).

The Permit authorized the Holder to photo-identify and biopsy dart minke whales (*Balaenoptera acutorostrata*), blue whales (*B. musculus*), fin whales (B. *physalus*), sei whales (*B. borealis*), humpback whales (*Megaptera novaeangliae*), gray whales (*Eschrictius robustus*), and killer whales (*Orcinus orca*).

The Permit, as modified, authorized additional harassment and biopsy darting of killer whales (*Orcinus orca*) in the inland waters of Washington State for purposes of scientific research.

Dated: July 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–19441 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 072895F]

Marine Mammals and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P523A).

SUMMARY: Notice is hereby given that Dr. Adam Frankel, Bioacoustics Research Program, 159 Sapsucker Woods Rd., Ithaca, NY 14850 has applied in due form for a permit to take several species of marine mammals and sea turtles for purposes of scientific research.

DATES: Written comments must be received on or before September 7, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (301/980–4016).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Gary Barone, Permits Division, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–222).

The permit application requests authorization to harass marine mammals and sea turtles by a low frequency sound source which would be located near Kohala, HI, at a depth of 20 m. The proposed research would be conducted over a 5-year period.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–19442 Filed 8–7–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 215, Contracting by Negotiation, and Related Clauses at 252.215–7001 and 252.215–7002; OMB Control Number 0704–0232.

Type of Request: Extension.

Number of Respondents: 199,440.

Responses Per Respondent: 1.

Annual Responses: 199,515.

Average Burden Per Response: 5 hours.

Annual Burden Hours: 910,500.

Needs and Uses: This requirement provides for the collection of information necessary for the negotiation of contracts, and to perform cost estimating system surveys.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19534 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Forms, and OMB Control Number: DoD FAR Supplement, Part 242, Contract Administration, and Related Clauses at 252.242–7003 and 252.242–7004; DD Forms 375, 375C, and 1659; OMB Control Number 0704–0250.

Type of Request: Extension.

Number of Respondents: 154,550.

Responses per Respondent: 1.

Annual Responses: 199,500.

Average Burden per Response: 3 hours.

Annual Burden Hours (Including Recordkeeping): 676,500.

Needs and Uses: This requirement provides for the collection of information necessary in the support of the administration of contracts. It is used by contract administration personnel to determine contractor progress and to identify factors that may delay performance, to provide Government bills of lading to contractors, to determine the reasonableness of insurance and pension costs in Government contracts, and to determine the standard of contractors' material management and accounting systems.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19535 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 251, Use of Government Sources by Contractors, and Related Clauses at 252.251–7000 and 252.251–7001; OMB Control Number 0704–0252.

Type of Request: Expedited Processing—Approval date requested: Thirty days following publication in the **Federal Register**.

Number of Respondents: 655.

Responses Per Respondent: 1.

Annual Responses: 655.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 655.

Needs and Uses: Executive Order 12919 delegates to DoD the authority to require certain contracts and orders relating to approved Defense program to be accepted and performed on a preferential basis. This program assists contractors in more expeditiously acquiring industrial equipment, thereby providing vital weapons systems to the Government with a shorter time frame.

Submission of DD Form 691 provides contractors the means to apply for the necessary rating.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19536 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–P

Type of Request: Reinstatement, without change.
Number of Respondents: 3,500.
Responses Per Respondent: 3.
Annual Responses: 10,500.
Average Burden Per Response: 30 minutes.
Annual Burden Hours: 5,250.
Needs and Uses: This requirement provides for the collection of necessary information from contractors relating to contractor authorization to order under Federal Supply Schedules, and contractor requests for use of Government vehicles. It is used by contracting officers to verify that contractors are authorized to place such orders and to use such vehicles.
Affected Public: Business or other for-profit; not-for-profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Peter N. Weiss.
Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DoD Clearance Officer: Mr. William Pearce.
Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19537 Filed 8–7–95; 8:45 am]
BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Title, Applicable Forms, and OMB Control Number: DoD FAR Supplement, Part 235, Research and Development Contracting, and Related Clauses in Part 252; DD Forms 2222, and 2222–2; OMB Control Number 0704–0262.
Type of Request: Extension.
Number of Respondents: 751.
Responses Per Respondent: 1.
Annual Responses: 751.
Average Burden Per Response: 1 hour 56 minutes.
Annual Burden Hours: 1,451.
Needs and Uses: This requirement provides for the collection of necessary information relating to Research and Development (R&D) contracting, to include short form R&D contracting. It is used by the contracting officer to determine the amount of indemnification under fixed-price and cost-type R&D contracts, to keep track of radio frequency authorizations required under R&D contracts when electronic equipment is being used, and to identify property exceeding $1,000 dollars acquired under R&D contracts, when title does not vest in the contractor.
Affected Public: Business or other for-profit; not-for-profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Peter N. Weiss.
Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DoD Clearance Officer: Mr. William Pearce.
Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19538 Filed 8–7–95; 8:45 am]
BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Title and OMB Control Number: DoD FAR Supplement, Part 237, Service Contracting, and Related Clause at 252.237–7019; OMB Control Number 0704–0331.
Type of Request: Expedited Processing—Approval date requested: Thirty days following publication in the **Federal Register**.
Number of Respondents: 15,925.
Responses Per Respondent: 1.
Annual Responses: 15,925.
Average Burden Per Response: 30 minutes.
Annual Burden Hours: 7,963
Needs and Uses: This requirement provides for the collection of necessary information from offerors pertaining to uncompensated overtime. Offerors submitting proposals in response to solicitations of $100,000 or higher, for services being acquired on the basis of the number of hours to be provided, must identify uncompensated overtime hours, as well as the uncompensated overtime rate for direct charge Fair Labor Standards Act—exempt personnel included in their proposals, and in subcontractor proposals. The information collected hereby, will be utilized by the Government to ascertain cost realism of proposed labor rates for professional employees.
Affected Public: Business or other for-profit; not-for-profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Peter N. Weiss.
Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DoD Clearance Officer: Mr. William Pearce.
Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 3, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19539 Filed 8–7–95; 8:45 am]
BILLING CODE 5000–04–P

Office of the Secretary

Privacy Act of 1974; Notice to Amend a Record System

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice to amend a record system.

SUMMARY: Due to the administrative transfer of the Defense Prisoner of War/Missing in Action Office from the Defense Intelligence Agency to the Office of the Secretary of Defense, the system of records notice LDIA 1728, entitled Southeast Asia Operational Casualty Records will become the responsibility of the Under Secretary of Defense for Policy.

The Office of the Secretary of Defense proposes to amend its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, by adding this transferred system of records notice. The transferred system notice is being amended to reflect the change of responsibility and address. The system identifier will be DUSDP 11, Southeast Asia Operational Casualty Records.

DATES: The amendment will be effective on September 7, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Directives and Records Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

Due to the administrative transfer of the Defense Prisoner of War/Missing in Action Office from the Defense Intelligence Agency to the Office of the Secretary of Defense, the system of records notice LDIA 1728, entitled Southeast Asia Operational Casualty Records will become the responsibility of the Under Secretary of Defense for Policy.

The Office of the Secretary of Defense proposes to amend its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, by adding this transferred system of records notice. The transferred system notice is being amended to reflect the change of responsibility and address. The system identifier will be DUSDP 11, Southeast Asia Operational Casualty Records.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: July 31, 1995.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 1728

SYSTEM NAME:

Southeast Asia Operational Casualty Records *(February 22, 1993, 58 FR 10630).*

CHANGES

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with 'DUSDP 11'.

SYSTEM LOCATION:

Delete entry and replace with 'Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals having knowledge of persons identified as casualties during the period of United States military involvement in Vietnam and Southeast Asia. These include, but are not limited to, returnees, confidential sources, representatives of concerned organizations, resident aliens, and foreign sources.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records included in the system are operational and information reports, biographic records, personal statements and correspondence, returnee debriefings, interviews and media reports, and other relevant materials.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 135, 'Assistant Secretaries of Defense', and E.O. 9397.'

PURPOSE:

Following 'detailed' delete remainder of the paragraph and replace with 'and comprehensive body of information concerning Southeast Asian casualties. Data is used to produce studies and analytical reports furnished as background material to offices and agencies that enunciate and promulgate National policy with respect to casualties in past wars in which the United States has become involved.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDINGCATEGORIES OF USERS AND THE PURPOSES OF EACH SUCH USE:

Following 'beginning of the' substitute 'OSD's' for 'DIA's'.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with 'Paper files in folders maintained in filing cabinets and automated files on magnetic media.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by any or a combination of individual's name, Social Security Number, or source reference number (in the case of a classified source).'

SAFEGUARDS:

Delete 'restricted access building protected by security guards' and replace with 'controlled access office'.

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records in this system will be retained for one year after the President and/or the Secretary of Defense announces that the accounting for the missing in Southeast Asia has been satisfactorily completed and the POW/MIA issue is resolved. Following classification review, case files will be retired to the National Archives.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.'

NOTIFICATION PROCEDURE:

Delete 'Freedom of Information Office' and remainder of paragraph and replace with 'Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.'
Replace second paragraph with 'Individual should provide full name, Social Security Number, and date of birth.'

RECORD ACCESS PROCEDURES:

Delete 'Freedom of Information Office' and remainder of paragraph and replace with 'Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.'
Replace second paragraph with 'Requesting individual must submit full

name, Social Security Number, date of birth, branch of military service, if applicable, as well as the requester's current address, and telephone number.'

CONTESTING RECORD PROCEDURES:

Replace with 'The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.'

RECORD SOURCE CATEGORIES:

Replace with 'Sources for the information are the DoD and other Federal agencies, interviews and debriefings of returnees, confidential sources and other individuals; representatives of concerned organizations; resident aliens; foreign sources; and open publications.'

* * * * *

DUSDP 11

SYSTEM NAME:

Southeast Asia Operational Casualty Records.

SYSTEM LOCATION:

Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having knowledge of persons identified as casualties during the period of United States military involvement in Vietnam and Southeast Asia. These include, but are not limited to, returnees, confidential sources, representatives of concerned organizations, resident aliens, and foreign sources.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records included in the system are operational and information reports, biographic records, personal statements and correspondence, returnee debriefings, interviews and media reports, and other relevant materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 135, Assistant Secretaries of Defense and E.O. 9397.

PURPOSE(S):

Information is collected to develop a detailed and comprehensive body of information concerning Southeast Asian casualties. Data is used to produce studies and analytical reports furnished as background material to offices and agencies that enunciate and promulgate National policy with respect to casualties in past wars in which the United States has become involved.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files in folders maintained in filing cabinets and automated files on magnetic media.

RETRIEVABILITY:

Retrieved by any or a combination of: individual's name, Social Security Number, or source reference number (in the case of a classified source).

SAFEGUARDS:

Records are maintained in a controlled access office and are stored in a secured vaulted work area. Records are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

RETENTION AND DISPOSAL:

Records in this system will be retained for one year after the President and/or the Secretary of Defense announces that the accounting for the missing in Southeast Asia has been satisfactorily completed and the POW/MIA issue is resolved. Following classification review, case files will be retired to the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

Individual should provide full name, Social Security Number, and date of birth.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Prisoner of War/Missing in Action Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

Requesting individual must submit full name, Social Security Number, date of birth, branch of military service, if applicable, as well as the requester's current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources for the information are the DoD and other Federal agencies, interviews and debriefings of returnees, confidential sources and other individuals; representatives of concerned organizations; resident aliens; foreign sources; and open publications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–19548 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–F

Department of the Air Force

Privacy Act of 1974; Amend and Delete Systems of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Amend and delete systems of records.

SUMMARY: The Department of the Air Force proposes to delete one and amend five systems of records notices in its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion is effective August 8, 1995. The amendments will be effective on September 7, 1995 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Assistant Air Force Access Programs Officer, SAF/AAIQ, 1610 Air Force Pentagon, Washington, DC 20330–1610.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Gibson at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: The complete inventory of Department of the Air Force system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the systems of records notices are set forth below followed by the systems notices, as amended, published in their entirety.

Dated: July 27, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

F075 AA A

SYSTEM NAME:

Secretary of the Air Force Travel Files *(February 22, 1993, 58 FR 10417).*

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system have been destroyed.

AMENDMENTS

F030 AF LE A

SYSTEM NAME:

Equal Opportunity in Off-Base Housing *(February 22, 1993, 58 FR 10298).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete last sentence.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Housing, Office of The Civil Engineer, Headquarters United States Air Force, 1260 Air Force Pentagon, Washington DC 20330–1260.'

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'None.'

* * * * *

F030 AF LE A

SYSTEM NAME:

Equal Opportunity in Off-Base Housing.

SYSTEM LOCATION:

Each base level Housing Referral Office; Major Command (MAJCOM)/ Assistant for Family Housing Management. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military member, Department of Defense (DOD) civilian employee, and adult dependent acting for military member submitting a housing discrimination complaint.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of Complaint in Discrimination of off base housing and supporting documents submitted to the base level housing referral office alleging a housing discrimination complaint, case files, reports of investigation, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; 42 U.S.C. 1982, Property rights of citizens; and 10 U.S.C. 133, Secretary of Defense: Appointment; powers and duties; delegation by.

PURPOSE(S):

Information copies held at base, MAJCOM, and Headquarters United States Air Force (HQ USAF) as a historical record of all actions taken in response to each housing discrimination complaint. Information used by Air Force officials, at all levels, to respond to Congressional, HUD, Department of Justice (DOJ), or related inquiries pertaining to the housing discrimination complaint.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets.

RETRIEVABILITY:

By installation and name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Housing, Office of the Civil Engineer, Headquarters United States Air Force, 1260 Air Force Pentagon, Washington, DC 20330–1260.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director of Housing, Office of the Civil Engineer, Headquarters United States Air Force, 1260 Air Force Pentagon, Washington, DC 20330–1260.

Individuals may contact agency officials at the respective base level housing referral office in order to exercise their rights under the Act.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Director of Housing, Office of the Civil Engineer, Headquarters United States Air Force, 1260 Air Force Pentagon, Washington, DC 20330–1260.

Individuals may contact agency officials at the respective base level housing referral office in order to exercise their rights under the Act.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's voluntary application, witnesses of alleged incident, and other sources pertinent to alleged incident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF MP H

SYSTEM NAME:

Air Force Enlistment/Commissioning Records System *(May 25, 1993, 58 FR 30030).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703; Headquarters United States Air Force Recruiting Service, 550 D Street W, Randolph Air Force Base, TX 78150–4527; recruiting offices; Military Entrance Processing Stations, and Liaison Noncommissioned Officer offices in all states. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 31, Enlistments, implemented by Air Force Instruction 36–2002, Regular Air Force and Special Category Accessions; 10 U.S.C. 34, Appointment as reserve officers; 10 U.S.C. 103, Senior reserve officer's training corps; 10 U.S.C. 8358, Commissioned officers; original appointment; service credit, and 10 U.S.C. 904, Schools and camps, as implemented by Air Force Instruction 36–2005, Appointment in Commissioned Grades and designation and Assignment in Professional Categories – Reserve of the Air Force and United States Air Force (temporary); Air Force Instruction 36–2013, Officer Training School (OTS) and Airman Commissioning Program, and E.O. 9397.'

PURPOSE(S):

Add 'or commissioning' to end of third sentence.

* * * * *

RETENTION AND DISPOSAL:

Delete first sentence and replace with 'Commissioning records at Headquarters Air Force Military Personnel Center and Headquarters United States Air Force Recruiting Service (USAFRS/RS) are maintained for one year.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Headquarters Air Force Military Personnel Center; 550 C Street W, Randolph Air Force Base, TX 78150–4703; and Commander, Headquarters United States Air Force Recruiting Service, 550 D Street W, Randolph Air Force Base, TX 78150–4527.

* * * * *

F035 AF MP H

SYSTEM NAME:

Air Force Enlistment/Commissioning Records System.

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703; Headquarters United States Air Force Recruiting Service, 550 D Street W, Randolph Air Force Base, TX 78150–4527; recruiting offices; Military Entrance Processing Stations, and Liaison Noncommissioned Officer offices in all states. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for enlistment or commissioning programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application, personal interview record (PIR) and supporting documents containing name, Social Security Number, finger prints, historical background, education, medical history, physical status, employment, religious preferences (optional), marital and dependency status, linguistic abilities, aptitude test results, parental consent for minors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 31, Enlistments, implemented by Air Force Instruction 36–2002, Regular Air Force and Special Category Accessions; 10 U.S.C. 34, Appointment as reserve officers; 10 U.S.C. 103, Senior reserve officer's training corps; 10 U.S.C. 8358, Commissioned officers; original appointment; service credit, and 10 U.S.C. 904, Schools and camps, as implemented by Air Force Instruction 36–2005, Appointment in Commissioned Grades and designation and Assignment in Professional Categories – Reserve of the Air Force and United States Air Force (temporary); Air Force Instruction 36–2013, Officer Training School (OTS) and Airman Commissioning Program, and E.O. 9397.

PURPOSE(S):

Information is collected by recruiters to determine enlistment/commissioning eligibility, and process qualified applicants. Personnel managers use a hard copy documentation of data entered in Personnel Data Systems (PDS). Personnel managers also use certain documents to determine classification and assignment actions after enlistment or commissioning. All documents are source documents in determining benefits/entitlement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Commissioning records at Headquarters United States Air Force Recruiting Service (USAFRS/RS) are maintained for one year. Files of applicants not enlisted are retained in the local recruiting office and destroyed after two years. Records of commissioned officers and enlistees that are not forwarded to Master and Unit Personnel Records files are destroyed after two years. Records are destroyed by tearing into pieces, burning, shredding, macerating or pulping.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Force Military Personnel Center; 550 C Street W, Randolph Air Force Base, TX 78150–4703; and Commander, Headquarters United States Air Force Recruiting Service, 550 D Street W, Randolph Air Force Base, TX 78150–4527

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the system manager or contact recruiting officials at respective recruiting office location. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or contact recruiting officials at respective recruiting office location. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual provides through written application or personal interview.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F205 AFSCO A

SYSTEM NAME:

Special Security Case Files *(February 22, 1993, 58 FR 10505).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330. Decentralized segments at the Washington National Records Center, Washington, DC 20409.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.'

* * * * *

F205 AFSCO A

SYSTEM NAME:

Special Security Case Files.

SYSTEM LOCATION:

Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330. Decentralized segments at the Washington National Records Center, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force civilian employees and applicants, and Air Force military members and prospective members, including Air Force Reserve and Air National Guard, Air Force contractor employees requiring unescorted access, Air Force Academy and ROTC Cadets and applicants, overseas educators involved in the education and orientation of military personnel, Nonappropriated Fund Instrumentality personnel and applicants for sensitive positions, personnel requiring DOD building passes, whose personnel security investigations contain significant unfavorable information, whose cases were previously processed or adjudicated under the Air Force Military or Civilian Security Programs, or who are the subject of Special Security Files initiated by commanders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files may include (1) requests for clearance, investigation, or waiver of investigative requirements, (2) determinations of eligibility for assignment to sensitive or nonsensitive positions, (3) medical records checks and evaluations, (4) personnel records information, (5) personnel security questionnaires, (6) correspondence between the Air Force Security Clearance individual, the individual, office of assignment, commanders, medical facilities and installations, personnel offices, investigative agencies, Air Staff offices, or offices of the Secretary of the Air Force, (7) clearance records, and (8) summaries, evaluations, recommendations and records of adjudication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7531, Definitions; 7532, Suspension and removal; 7533, Effect on other statutes; 10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; E.O. 10450, Security requirements for government employment; implemented by Department of Defense Regulation 5200–2R, DOD Personnel Security Program.

PURPOSE(S):

Files are established to evaluate the security acceptability of Air Force military and civilian and contractor personnel, applicants, enlistees and nominees for appointment, assignment or retention in sensitive positions with access to classified defense information or to restricted areas and locations in the interest of national security.

Files are used to record clearance adjudicative actions, eligibility determinations and investigative data.

Investigative case file information may be reviewed by Air Force installation commanders, supervisors, personnel officers, medical, security, and investigative personnel, personnel of Air Staff offices and offices of the Secretary of the Air Force.

Case files and cards are also used to answer inquiries from other Air Force offices and agencies, and from investigative, security and personnel representatives of other Federal agencies concerning the clearance status of individuals.

Case records are maintained to prepare statistical accounting and to measure the effectiveness of the adjudicative programs and procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and microfiche maintained in file folders, card files, visible file binders/cabinets and notebooks/binders.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Records are stored in vaults, safes and security file containers/cabinets. All records are stored, processed, transmitted and protected as the equivalent of classified information. Records are accessed by the custodian of the records system, by persons responsible for servicing the system in the performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Case files which result in a final, favorable adjudicative determination are retained in the office files for one year after annual cut-off then are destroyed by tearing into pieces, shredding, pulping, or burning. Case files resulting in an adverse adjudicative determination are retained in office files for two years after annual cut-off, then are retired to the Washington National Records Center, Washington, DC 20409.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Detachment 1, 11 Security Police Squadron, 1330 Air

Force Pentagon, Washington DC 20330–1330.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington DC 20330–1330.

Individual should provide full name, including any former names, grade, date of birth and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington DC 20330–1330.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from investigative reports from federal investigative agencies, personnel and medical records, board reports, correspondence from offices and organizations of assignment, and from commanders, supervisors, witnesses and individuals, from security, and investigative personnel and from Air Staff offices, offices of the Secretary of the Air Force.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt from section 552a(k)(5). For additional information, contact the system manager.

F205 AFSCO B

SYSTEM NAME:

Presidential Support Files *(February 22, 1993, 58 FR 10506).*

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.

Decentralized locations: Security police offices for units having a Presidential Support mission and those units from which personnel are nominated or assigned to Presidential support duties. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.'

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F205 AFSCO B

SYSTEM NAME:

Presidential Support Files.

SYSTEM LOCATION:

Primary location: Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.

Decentralized locations: Security police offices for units having a Presidential Support mission and those units from which personnel are nominated or assigned to Presidential support duties. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those Air Force military and civilian personnel who are nominated or assigned to authorized, designated positions involving Presidential Support duties on either a full or part-time basis.

CATEGORIES OF RECORDS IN THE SYSTEM:

Nomination Files include reports of investigation by the Defense Investigative Service and by other Federal investigative agencies; correspondence between the Air Force Security Clearance Office and units, installations, contractors and major commands, investigative agencies, security offices, Air Staff offices and offices of the Secretary of the Air Force, the office of the Military Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense, the Office of the Director, White House Military Office, medical evaluations, statements by nominees, summaries and evaluations of investigative information. Assignment Record Files include letters of notification of selection and quarterly rosters of all assigned personnel listed alphabetically by organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; implementing Department of Defense Directive 5210.55, Selection of DOD Military and Civilian Personnel and Contractor Employees for Assignment duties; and Department of Defense Regulation 5200–2R, DOD Personnel Security Program.

PURPOSE(S):

Nomination files are temporary files used to evaluate the background, character, suitability and qualifications of nominees being considered for selection to positions requiring regular or frequent contact with the President or access to Presidential facilities or modes of transportation.

Files are reviewed and evaluated by staff members at each level in the selection process, by medical facility staff members, by the Air Force Security Clearance Office, and other appropriate Air Staff office, by the Office of the Administrative Assistant to the Secretary of the Air Force, and by the Office of the Military Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense.

Files are reviewed by the Office of the Director, White House Military Office and contractor personnel files may be reviewed by the contractor and by the U.S. Secret Service.

Assignment Record Files are originated from data in the Nomination Files to locate, identify, control, manage, and administer individuals selected for assignment to Presidential Support duties, to initiate assignment actions after final selection, to notify medical facilities, and to prepare the quarterly listing of individuals assigned to the program for submission to the Office of the Military Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense, to major command and units and Security Police offices having a Presidential support mission, and submission to the Office of the Director, White House Military Office and to contractors. Presidential Support mission. Assignment Record Files at locations other than the Air Force Security Clearance Office are merely duplicate copies of the file copy. File copies are retained at the Air Force Security Clearance Office to permit record access and to record the accountability of disclosures of the Nomination Files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders and on computer paper output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets, in safes and vaults.

RETENTION AND DISPOSAL:

Upon completion of final favorable determination of selection, Nomination Files are destroyed by tearing into pieces, shredding, pulping, or burning and are replaced by Assignment Record Files. Assignment Record Files for individuals are retained during the period of assignment or for five years, whichever is longer, as the disclosure accountability record, then are destroyed by tearing into pieces, shredding, pulping, or burning except for the file copy which is kept by the system manager for five years for disclosure accounting. Assignment Record Files in quarterly roster listing form are destroyed when superseded by the next quarterly roster by tearing into pieces, shredding, pulping, or burning. Nomination Files for personnel not selected are retained in the office of nonselection or at the Air Force Security Clearance Office for one year after the date of nonselection, at which time they are destroyed by tearing into pieces, shredding, pulping, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Presidential Support Security Specialist, Air Force Security Clearance Office, Washington, DC 20330.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Presidential Support Security Specialist, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington DC 20330–1330.

Request should contain the full name, military or civilian grade, date of birth, position in unit or contracting firm, the date of nomination or nonselection, or the unit or organization to which assigned, location and period of assignment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Presidential Support Security Specialist, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington DC 20330–1330.

Request should contain the full name, military or civilian grade, date of birth, position in unit or contracting firm, the date of nomination or nonselection, or the unit or organization to which assigned, location and period of assignment.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from the individual, from reports from Federal investigative agencies, military and civilian contractor personnel records, and military medical records, correspondence from military and civilian law enforcement and Security Police offices, major command staff offices, Air Staff offices, offices of the Secretary of the Air Force, the Office of the Military Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense, Office of the Director, White House Military Office and other Federal agencies and office of the Executive and Legislative Branches.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F205 AFSCO C

SYSTEM NAME:

Personnel Security Clearance and Investigation Records *(February 22, 1993, 58 FR 10507).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330;

Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703;

United States Air Force Academy, 2304 Cadet Drive, Suite 233, USAF Academy CO 80840–5035; and

Air Force Reserve Officer Training Corps (AFROTC), 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110.

Air Force units, personnel offices, Security Police elements at all Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.'

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F205 AFSCO C

SYSTEM NAME:

Personnel Security Clearance and Investigation Records.

SYSTEM LOCATION:

Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330;

Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703;

United States Air Force Academy, 2304 Cadet Drive, Suite 233, USAF Academy CO 80840–5035; and

Air Force Reserve Officer Training Corps (AFROTC), 20 North Pine Street, Maxwell Air Force Base, AL 36112–6110.

Air Force units, personnel offices, Security Police elements at all Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force military and civilian personnel and applicants including Air Force Reserve and Air National Guard personnel, Air Force Academy and Air Force ROTC Cadets, Air Force contractors requiring unescorted entry or special access, Nonappropriated Fund Instrumentality personnel at Air Force installations and overseas educators at Air Force installations.

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes clearance status and eligibility records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O.s 9838; 10450; and 11652; 10 U.S.C. 8013 Secretary of the Air Force:

Powers and duties; delegation by; as implemented by DOD Regulation 5200–2R, DOD Personnel Security Program.

PURPOSE(S):

Records are used to grant access to classified information or unescorted entry to restricted areas; to record completion of investigative requirements for enlistment, induction, appointment, commissioning, assignment to sensitive positions, duty or training; to grant special access for special programs or projects; to determine investigative requirements needed for assignment; to record status of investigative actions; to record date of separation; to record adjudicative determinations of ineligibility for enlistment, induction, commissioning, retention, appointment, assignment, clearance or access.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer and computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms or in security file containers/cabinets or vaults, and controlled by computer system software and personnel screening.

RETENTION AND DISPOSAL:

Records are retained in computer systems for two years after separation, deleted. A Reserve commitment are retained until commitment is fulfilled, then Computer printouts are temporary records and are destroyed when replaced by more recent listing. Paper records are destroyed by tearing into pieces, shredding, pulping or burning. Computer storage devices are overwritten or erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.

Provide full name, including maiden name if applicable, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Commander, Detachment 1, 11 Security Police Squadron, 1330 Air Force Pentagon, Washington, DC 20330–1330.

Provide full name, including maiden name if applicable, and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, investigative reports, medical facilities, police and law enforcement offices, personnel documents, Air Force Special Security Files and Special Security Case Files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–18819 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–F

Defense Intelligence Agency

Privacy Act of 1974; Notice to Delete a Record System

AGENCY: Defense Intelligence Agency, DOD.

ACTION: Notice to delete a record system.

SUMMARY: Due to the administrative transfer of the Defense Prisoner of War/Missing in Action Office from the Defense Intelligence Agency (DIA) to the Office of the Secretary of Defense, DIA is deleting the system of records notice LDIA 1728, entitled Southeast Asia Operational Casualty Records. This notice has been transferred to the Office of the Secretary of Defense inventory of system of records notices under the system identifier DUSDP 11, entitled Southeast Asia Operational Casualty Records.

DATES: The deletion will be effective on September 7, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Ms. Melissa L. Folz, Privacy Act Officer, ATTN: DA-A, Defense Intelligence Agency, Washington, DC 20340. Telephone (202) 373–4291 or DSN 243–4291.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Richardson, PA/FOIA Office, at (202) 373–3916.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

Dated: July 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 1728

SYSTEM NAME:

Southeast Asia Operational Casualty Records *(February 22, 1993, 58 FR 10630).*

REASON: System was transfered to the Office of the Secretary of Defense. System of records notice DUSDP 11, Southeast Asia Operational Casualty Records.

[FR Doc. 95–19532 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–F

Defense Logistics Agency

Privacy Act of 1974; Notice to Amend a Record System

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on September 7, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Defense Logistics Agency, DASC-RP, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Christensen at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: July 31, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.01 DMDC

SYSTEM NAME:

Defense Outreach Referral System (DORS) *(April 28, 1993, 58 FR 25819).*

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

After 'former Defense' insert 'and U.S. Coast Guard'. After 'Pub. L. 102–484' insert 'and 103–337,'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

After 'Pub. L. 102–484' insert 'and 103–337;'.

PURPOSE(S):

After 'civilian Defense' insert 'and U.S. Coast Guard'; after 'downsizing of the Department of Defense' insert 'and the Department of Transportation'; after 'Pub. L. 102–484' insert 'and Pub. L. 103–337,'; after 'for DOD' insert 'and DoT'.

* * * * *

RECORD SOURCE CATEGORIES:

After DOD Components insert 'the U.S. Coast Guard'.

* * * * *

S322.01 DMDC

SYSTEM NAME:

Defense Outreach Referral System (DORS).

SYSTEM LOCATION:

W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93940–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Defense and U.S Coast Guard military and civilian personnel and their spouses, who have applied for participation in the job placement program.

Individuals covered under Pub. L. 102–484 and 103–337, who have applied for public employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records consisting of name, Social Security Number, correspondence address, branch of service, date of birth, separation status, travel availability, U.S. citizenship, occupational interests, geographic location work preferences, pay grade, rank, last unit of assignment, educational levels, dates of military or civilian service, language skills, flying status, security clearances, civilian and military occupation codes, and self reported personal comments for the purpose of providing prospective employers with a centralized system for locating potential employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, 1143, 1144, 2358; Pub. L. 102–484 and 103–337; and E.O. 9397.

PURPOSE(S):

The purpose of this system is to facilitate the transition of military and civilian Defense and U.S. Coast Guard personnel, and their spouses, to private industry and public employment in the event of a downsizing of the Department of Defense and the Department of Transportation.

For former military members covered under Pub. L. 102–484 and Pub. L. 103–337, the information will be used to track the participants public employment and to verify the participant's public employment history for DOD and DoT retirement and pay eligibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage.

RETRIEVABILITY:

Retrieved by Social Security Number or occupational or geographic preference of the individual.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, administrative procedures (e.g., fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subject of the record or their authorized representative. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Records are maintained on-line for five years and then are archived as an historical data base.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this record system should address written inquiries to the Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

Written requests for information should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license, or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.

RECORD SOURCE CATEGORIES:

The Military Services, DOD Components, the U.S. Coast Guard, and from the subject individual via application into the program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–19549 Filed 8–7–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of NORDYNE's Application for Interim Waiver from the Department of Energy's Central Air Conditioner and Central Air Conditioning Heat Pump Test Procedure and Publication of the Petition for Waiver. (Case No. CAC–007)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to NORDYNE from the existing Department of Energy central air conditioner and central air conditioning heat pump test procedure for the company's Powermiser line of heat pumps with integrated domestic water heating.

Today's notice also publishes a "Petition for Waiver" from NORDYNE. The Petition for Waiver requests the Department to modify the heat pump test procedure for the NORDYNE Powermiser line of heat pumps which include special design characteristics to incorporate domestic water heating. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: The Department will accept comments, data, and information not later than September 7, 1995.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. CAC–007, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7574.

FOR FURTHER INFORMATION CONTACT:

Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9611

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPACT), Public Law 102–486, 106 Stat. 2776, which requires the Department to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including heat pumps. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. The test procedures for central air conditioners and central air conditioning heat pumps appear at 10 CFR Part 430, Subpart B, Appendix M.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. The Department further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to temporarily waive test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days, or until the Department issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On January 24, 1995, NORDYNE filed a Petition for Waiver and an Application for Interim Waiver regarding the heat pump tests. NORDYNE's Petition seeks a Waiver from the Department's test procedure because, using the test procedure, the company cannot account for the energy savings associated with integrated water heating. NORDYNE has submitted a modified test procedure to be used for rating its Powermiser heat pumps. NORDYNE proposes to calculate, in addition to the standard SEER and HSPF, a Combined Cooling Performance Factor (CCPF) and a Combined Heating Performance Factor (CHPF). These performance factors reflect the energy efficiency of the heat pump when providing both space conditioning and domestic water heating. The heating and cooling mode test procedures are essentially the same as the current Department central air conditioner test procedures found in 10 CFR Part 430, Subpart B, Appendix M. The NORDYNE test procedures for the heating and cooling modes differ from the Department's in their use of a bin analysis for SEER, and the use of seasonal hours rather than fractional hours for HSPF. NORDYNE states in its Petition that the modified test procedure for SEER and HSPF "yields a nearly identical result and provides a directly comparable base for use in determining energy savings associated with water heating." In addition, NORDYNE submitted tests and a rating procedure to determine the performance of the heat pump when it heats domestic water (whether or not space heating or cooling is also being provided).

NORDYNE also applied for an Interim Waiver, stating:

- The current test procedure does not account for the total energy savings of the Powermiser;
- Carrier Corporation has been granted a similar waiver for its Hydrotech product;
- For public policy reasons, the widespread use of this type of integrated appliance would be in direct support of the President's Climate Change Action Plan, which lists heating and cooling and home appliances as key targets for improvement; and
- Absent a favorable determination on the Application for Interim Waiver, NORDYNE would experience an economic hardship, as discussed in the confidential statement filed simultaneously.

The Department agrees that the current test procedure does not account for the total energy savings of the Powermiser. A previous waiver for this type of equipment was granted by the Department to Carrier Corporation for its HydroTech 2000, 55 FR 13607, April 11, 1990. Thus, it appears likely that the Petition for Waiver will be granted.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon the Department having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Further, NORDYNE has supplied evidence of economic hardship if the Interim Waiver is not granted. NORDYNE's confidential statement claims a substantial investment in the Powermiser for research and development, tooling, production, sales and marketing. The Powermiser investment represents a large fraction of NORDYNE's annual income. Until the Interim Waiver is granted, NORDYNE is not able to realize any return on its investment.

Based on the statements above, the Department is granting an Interim Waiver to NORDYNE for its Powermiser series integrated heat pumps. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to NORDYNE was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, the Department is hereby publishing the "Petition for Waiver." The Petition contains confidential company information; thus, the confidential attachment submitted by NORDYNE is not being published. Due to its length (39 pages), NORDYNE's proposed alternate test procedure is not being published in the **Federal Register**. It is, however, available upon request at the address provided at the beginning of today's notice. NORDYNE has sent a copy of the Petition for Waiver and a copy of the Application for Interim Waiver to all known manufacturers of domestically marketed units of the same product type . A summary of the NORDYNE alternate test procedure is included in the letter to NORDYNE granting the Application for Interim Waiver, which is published with this **Federal Register** Notice.

The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC., July 10, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

July 10, 1995.

Mr. Wayne R. Reedy, Vice President—Engineering

NORDYNE, 1801 Park 270 Drive, P.O. Box 46911, St. Louis, MO 63146–6911.

Dear Mr. Reedy: This is in response to your letter of January 24, 1995, submitting an Application for Interim Waiver and Petition for Waiver from the Department of Energy's central air conditioner and central air conditioning heat pump test procedure for NORDYNE's Powermiser line of heat pumps, which include special design characteristics to incorporate domestic water heating.

The current test procedure does not account for the energy savings associated with integrated water heating. A previous waiver for this type of equipment has been granted to Carrier Corporation, 55 FR 13607, April 11, 1990. Thus, it appears likely that the Petition for Waiver will be granted.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon the Department having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Further, NORDYNE's Application for Interim Waiver provides sufficient information to determine that NORDYNE has and will continue to experience a severe negative economic impact absent a favorable determination on its Application. NORDYNE's confidential statement claims a substantial investment in the Powermiser for research and development, tooling, production, sales and marketing. The Powermiser investment represents a large fraction of NORDYNE's annual income, and NORDYNE is not able to realize any return on this investment until the Interim Waiver is granted.

Therefore, based on the above, NORDYNE's Application for an Interim Waiver to modify the Department's test procedure for its Powermiser line of heat pumps with integrated domestic water heating is granted.

NORDYNE shall be required to test its Powermiser line of heat pumps on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix M, as modified by additional tests and ratings described in its proposed alternate test procedure, to determine the performance of the heat pump when it operates for the heating of domestic water, either concurrently with or separate from the space heating and cooling modes.

The alternate test procedure is summarized in Attachment A, attached hereto.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days, or until the Department acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Best regards,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Attachment A

Type of Equipment To Be Covered

The test procedure described herein applies to electrically-driven, single-speed compressor air-to-air heat pumps having a nominal cooling capacity of 65,000 BTU/Hr or less that include an integral heat exchanger and water pump for the heating of domestic water, either concurrent with or separate from the space heating and cooling modes.

Test Points and Procedures

Standard ratings shall be established in accordance with 10 CFR Part 430, Subpart B, Appendix M, "Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners." Procedures will also be compatible with "Methods of Testing for Efficiency of Space-Conditioning Water Heating Appliances that include a Desuperheater Water Heater" ASHRAE Standards Project Committee 137P (under development).

In addition to the standard ratings, tests and a rating procedure are described to determine the performance of the heat pump when it operates for the heating of domestic water, either concurrently with or separate from the space heating and cooling modes.

Table 1 specifies the operating conditions for all of the tests covered by

the present test plan, along with their operating and water draw schedules as Tables 2, 3 and 4. These tests are summarized as follows:

Space Cooling Mode, Tests 1, 5, 6 and 7

Test 1 (required) is identical to the Department Test A, Test 5 (required) is identical to Department Test B, Test 6 (optional) is identical to Department Test C, and Test 7 (optional) is identical to Department Test D, except for the following: The refrigerant-to-water heat exchanger is filled with water. In order to not have the water pump cycle on during tests 1 and 5, it may be necessary to disable the water pump. If natural convection within the water system proves significant, it will be necessary to close an isolation valve between the heat pump and the water heater tank.

Space Heating Mode, Tests 11, 12, 13 and 15

Test 11 (required) is identical to the Department High Temperature Test, Test 12 (optional) is identical to the Department Cyclic Test, Test 13 (required) is identical to Department Frost Accumulation Test, and Test 15 (required) is identical to the Department Low Temperature Test, except for the following: the refrigerant-to-water heat exchanger is filled with water. In order to not have the water pump cycle on during tests 11, 13 and 15, it may be necessary to disable the water pump. If natural convection within the water system proves significant, it will be necessary to close an isolation valve between the heat pump and the water heater tank.

Space Cooling/Domestic Water Heating Mode, Tests 2 and 4

Test 2 is the Department Test A, combined with water heating. Air side conditions are held constant and the system runs continuously, while a series of water draws are imposed as outlined in Table 2.

Test 4 is the Department Test D, which involves cyclic operation of the heat pump, with a series of water draws imposed as outlined in Table 3.

The system cyclic schedule is for energizing of the compressor and indoor blower control terminal. Actual system operation will be controlled by the system internal controls. Depending on internal controls, the compressor and one of the system fans may start or continue to run irrespective of the compressor terminal being energized. There shall be no air flow through the coil with the idle fan. When the indoor blower is off, the duct shall be blocked.

Space Heating/Domestic Water Heating Mode, Tests 10 and 14

Test 10 is the Department Cyclic Test with a series of water draws imposed, as outlined in Table 3.

Test 14 is the Department Low Temperature Test combined with water heating. Air side conditions are held constant and the system runs continuously, while a series of water draws are imposed, as outlined in Table 2.

The system cyclic schedule is for energizing of the compressor and indoor blower control terminal. Actual system operation will be controlled by the system internal controls. Depending on internal controls, the compressor and one of the system fans may start or continue to run irrespective of the compressor terminal being energized. There shall be no air flow through the coil with the idle fan. When the indoor blower is off, the duct shall be blocked.

Domestic Water Heating Modes, Tests 3, 8 and 9

Tests 3, 8 and 9 involve cyclic operation of the heat pump in self-controlled response to a series of water draws, as outlined in Table 4.

Test 3 (required) uses the same conditions as the Department Test D, and will result in a cooling effect on the indoor room.

The conditions of Tests 8 and 9 (both required) are specified in Table 1. Their temperatures do not correspond to any Department tests, but, with the exception of the temperatures specified in Table 1, they shall follow the requirements of Department Test D.

Tests 8 and 9 will result in a cooling effect on the outdoor room ("O" terminal de-energized). When the indoor blower is off, the ductwork shall be blocked.

In addition to the normal components required for indoor space heating and cooling, the unit shall be connected, as specified by the heat pump manufacturer, to a conventional electric domestic hot water storage tank. The hot water storage tank shall have a nominal rated volume of 52 gallons, with an actual internal volume of 47±1 gallons. The hot water storage tank shall have an Energy Factor (EF) rating that is within ±.02 of the EF specified as the Federal Energy Conservation Standard for 52 gallon electric water heaters, (presently 0.87), as determined by the Department test and rating standards, contain two electric heater elements each rated at nominal 4500 Watts and be connected to a source of supply water having a temperature of 58±2 °F. The electrical voltage supplied to the water heater shall be adjusted such that the measured electrical power input is 4275±75W when the lower resistive element is heating water. The water heater instrumentation: six internal thermocouples plus entering and leaving water temperature measurements and energy use, is to be installed according to the standard Department test and rating procedure. The water heater thermostats are to be replaced with manual controls operated to turn off the upper element at 135 °F and on at 115 °F based on the internal thermocouple located closest to the upper thermostat location. The lower element shall be operated, as specified by the heat pump manufacturer, but to turn off and on at not lower than 110 °F and 100 °F respectively (unless a new thermostat is supplied specifically for the purpose) based on the internal thermocouple located closest to the lower thermostat. The lower element shall also be controlled to not operate coincident with the upper element. The purpose of the manual controls is to simulate the normal thermostats, but with improved repeatability. The heat pump system shall be installed per the manufacturers installation instructions. Unless otherwise specified by the manufacturer, the water heater is to be installed in the indoor room, as is the compressor section, if it is separate from the outdoor unit. The water heater is to be connected to the compressor section with 15 feet of interconnecting tubing (30 feet total for two lines), insulated (both) with R4 insulation. The refrigerant sections are to be connected with a total of 25 feet of ¾" insulated vapor line and 25 feet of ⅜" uninsulated liquid line. The line lengths between the compressor section and the indoor coil shall be between 5 and 10 feet, with the balance of the 25 feet connected between the compressor section and the outdoor unit, with 10 feet located in the outdoor room.

Calculation of Seasonal Performance Factors

The overall performance of the integrated heat pump system shall be expressed in terms of seasonal performances. In addition to the Seasonal Energy Efficiency Ratio (SEER) and Heating Seasonal Performance Factor (HSPF) currently required by the Department, a Combined Cooling Performance Factor (CCPF) shall be calculated for the cooling season and a Combined Heating Performance Factor (CHPF) shall be calculated for the heating season. These two combined performance factors reflect the energy efficiency of the heat pump when providing both space conditioning and domestic water heating. The CCPF reflects the system's performance during the portion of the year that the outdoor air temperature is above 65 °F and the system will be providing space cooling and/or water heating. CHPF deals with the other portion of the year when the outdoor air temperature is below 65 °F and the system will be providing space heating and/or water heating. Both combined performance factors shall be calculated by means of a bin analysis as used for calculating the Heating Seasonal Performance Factor as described in 10 CFR Part 430, Subpart B, Appendix M, ¶ 5.2. The only changes to the actual referenced bin analysis are to extend it to account for the water heating functions, and to have it reflect calendar hours in addition to cooling and heating load hours, so that the water heating load can be fully accounted for.

The Seasonal Energy Efficiency Ratio (SEER) shall also be calculated by means of the bin analysis used for the Heating Seasonal Performance Factor, the CCPF and the CHPF. This is a slight departure from the referenced procedures method for calculating a SEER for units with single-speed compressors, but yields a nearly identical result and provides a directly comparable base for use in determining energy savings associated with water heating.

The Heating Seasonal Performance Factor (HSPF) shall also be calculated in the manner referenced above, with the exception that it is based on seasonal hours as opposed to fractional hours.

The Combined Cooling Performance Factor (CCPF) shall be calculated using the same general approach as presented in the Department/ARI/ASHRAE standards for non-water-heating equipment. The procedure relates the space cooling and water heating loads and the performance of the heat pump to outdoor air temperature. The output of the heat pump is balanced against the building and water heating load at each outdoor temperature bin above 65 °F to determine: (a) The fractional heat pump operating time spent in each temperature bin performing space cooling only; (b) the fractional heat pump operating time spent in each temperature bin performing combined space cooling and water heating; (c) the fractional heat pump operating time spent in each temperature bin performing dedicated water heating; and (d) the heat pump energy consumption rate for each mode of operation for each temperature bin.

The energy input to the domestic water is assumed to be distributed by temperature bin in proportion to the total hours of occurrence per bin. The performance of the heat pump by bin, and by mode of operation, is based on interpolation of test data taken at representative operating conditions. The total energy consumption of the heat pump will be increased as a result of the domestic water heating load. There will, however, be a net energy savings, which is expressed in terms of a Combined Cooling Performance Factor for space cooling and water heating, designated CCPF. CCPF is the sum of the total space cooling load and the total domestic water heating load during the cooling season, divided by the sum of the total energy consumption used for space cooling and water heating over the same period, expressed in Btu/Wh.

The Combined Cooling Performance Factor for space cooling and water heating shall be calculated similarly to the SEER:

$$CCPF = \frac{\sum_{j=1}^{8} Q(T_j)}{\sum_{j=1}^{8} E(T_j)}$$

The terms *Q(Tj)* and *E(Tj)* are the system energy outputs and inputs respectively for the jth outdoor temperature bin as defined in the cited Department regulations, and are composed of the various building and water heating loads and system energy inputs as follows:

$$Q(T_j) = BL(T_j) \times n_j + \dot{Q}_{kw}(T_j) \times n_j + \dot{Q}_{kw}(T_j) \times n_{dwcj}$$

Where *BL(Tj)* is the building space cooling load at the jth outdoor bin temperature. $\dot{Q}_{hw}(T_j)$ is the water heating load in Btu/hr at the jth outdoor bin temperature and is calculated from the hot water drawn from the water heater tank. It does not include the tank standby losses. The term n_{dwcj} is the number of extra hours for dedicated water heating with the outdoor temperature above 65 °F, distributed among the first three outdoor temperature bins inversely proportional to the building load. In equation form:

$$n_{dwcj,j=1,3} = N_{dwc} \times \frac{BL(T_{j,j=3,1})}{\sum_{j=1}^{3} BL(T_j)}$$

where N_{dwc} is the number of extra hours for dedicated water heating with the outdoor temperature above 65 °F. *E(Tj)* is the total system energy input for the jth outdoor bin temperature, and is made up of the individual energy inputs for the applicable operating modes as follows:

$$E(T_j) = \frac{\left(X_1(T_j) \times \dot{E}_c(T_j) + X_2(T_j) \times \dot{E}_{ccw}(T_j) + X_3(T_j) \times \dot{E}_{wdc}(T_j)\right) \times n_j}{PLF(T_j)} + E_{auxw} - E_{sav} + E_{dwehc}$$

where:

$\dot{E}_c(T_j)$ = Heat pump steady-state power input in the space cooling only mode for outdoor temperature bin j.
$\dot{E}_{ccw}(T_j)$ = Heat pump steady-state power input in the combined cooling and water heating mode for outdoor temperature bin j.
$\dot{E}_{wdc}(T_j)$ = Heat pump steady-state power input in the dedicated water heating mode during the cooling season for outdoor temperature bin j.
E_{auxw} = Auxiliary energy input for water heating.
E_{sav} = Energy saved due to cooling effect during dedicated water heating.
E_{dwehc} = Energy input for water heating during the dedicated water heating extra hours period above 65 °F.
$X_1(Tj)$ = Load factor for space conditioning only mode for outdoor temperature bin j.
$X_2(Tj)$ = Load factor for combined space conditioning/water heating mode for outdoor temperature bin j.
$X_3(Tj)$ = Load factor for dedicated water heating mode for outdoor temperature bin j.
$PLF(T_j) = 1 - C_d \times (1 - X_1(T_j) \times X_2(T_j) - X_3(T_j))$ = the overall part-load factor for outdoor temperature bin j.
Cd = the coefficient of cyclic degradation for cooling.
n_j = the number of hours in the jth outdoor temperature bin.

The steady-state electrical power input to the heat pump in the space cooling only mode is determined according to:

$$\dot{E}_c(T_j) = \dot{E}_c(82°F) + \frac{\dot{E}_c(95°F) - \dot{E}_c(82°F)}{(95-82)°F} \times (T_j - 82°F)$$

The steady-state heat pump space cooling capacity in the space cooling only mode is determined according to:

$$\dot{Q}_c(T_j) = \dot{Q}_c(82°F) + \frac{\dot{Q}_c(95°F) - \dot{Q}_c(82°F)}{(95-82)°F} \times (T_j - 82°F)$$

The steady-state heat pump space cooling capacity and water heating capacity in the combined cooling/water heating mode is determined according to:

$$\dot{Q}_{ccw}(T_j) = \dot{Q}_{ccw}(82°F) + \frac{\dot{Q}_{ccw}(95°F) - \dot{Q}_{ccw}(82°F)}{(95-82)°F} \times (T_j - 82°F)$$

$$\dot{Q}_{wcc}(T_j) = \dot{Q}_{wcc}(82°F) + \frac{\dot{Q}_{wcc}(95°F) - \dot{Q}_{wcc}(82°F)}{(95-82)°F} \times (T_j - 82°F)$$

The total steady-state electrical power input to the heat pump in the combined cooling/water heating mode is determined according to:

$$\dot{E}_{ccw}(T_j) = \dot{E}_{ccw}(82°F) \times PLF(Test4) + \frac{\dot{E}_{ccw}(95°F) - \dot{E}_{ccw}(82°F) \times PLF(Test4)}{(95-82)°F} \times (T_j - 82°F)$$

where:

$$PLF(Test4) = 1 - C_d \times (1 - LF(Test4))$$

with:

C_d = the cooling season coefficient of cyclic degradation.

LF(Test 4) = 0.5 = the load factor during the 82 °F combined cooling/water heating cyclic test.

The electrical power input to the heat pump at the 82°F cyclic test point is corrected (decreased) by the actual test part load factor (PLF) in order to make it consistent with the 95°F test point which is steady-state. Later bin analysis of energy use will interpolate between the 82°F and 95°F points and have the energy use for each bin increased by that bins' calculated PLF. This approach of the 95°F test being continuous compressor operation and the 82°F test being cyclic is most representative of actual field operation and provides the most representative water side conditions.

The steady-state heat pump water heating capacity in the dedicated water heating mode during the cooling season is determined according to:

$$\dot{Q}_{wdc} = \dot{Q}_{wdc}(82°F)$$

The steady-state electrical power input to the heat pump in the dedicated water heating mode during the cooling season is determined according to:

$$\dot{E}_{wdc}(T_j) = \dot{E}_{wdc}(82°F) \times PLF(Test3)$$

The performance of the heat pump in dedicated water heating during the cooling season is assumed constant because the heat source is the constant temperature indoor air. Because the test is cyclic, the actual test results are again corrected from the PLF of the test to the PLF of each temperature bin in the analysis.

$$PLF(Test3) = 1 - C_d \times \left(1 - \frac{t_{on}82°F}{t_{total}82°F}\right)$$

with:

C_d=the cooling season coefficient of cyclic degradation.

$t_{on}82°F$=the total compressor on time during the 82°F dedicated water heating cyclic test.

$t_{total}82°F$=the total time to conclusion of the 82°F dedicated water heating cyclic test.

The load factors for each mode of operation are determined as follows:

$$X_2(T_j) = \left\{ \begin{array}{c} \dfrac{BL(T_j)}{\dot{Q}_{ccw}(T_j)} \\ \text{or} \\ \dfrac{WL(T_j)}{\dot{Q}_{wcc}(T_j)} \end{array} \right\} \text{whichever is least.}$$

Following determination of $X_2(Tj)$,$X_1(Tj)$ and $X_3(Tj)$ are determined as follows:

$$X_1(T_j) = \left\{ \begin{array}{c} \dfrac{BL(T_j) - X_2(T_j) \times \dot{Q}_{ccw}(T_j)}{\dot{Q}_c(T_j)} \\ \text{or} \\ 1 - X_2(T_j) \end{array} \right\} \text{whichever is least.}$$

$$X_3(T_j) = \left\{ \begin{array}{c} \dfrac{WL(T_j) - X_2(T_j) \times \dot{Q}_{wcc}(T_j)}{\dot{Q}_{wdc}(T_j)} \\ \text{or} \\ 1 - X_2(T_j) \end{array} \right\} \text{whichever is least.}$$

The auxiliary energy input for water heating is then determined from:

$$E_{auxw} = \frac{WL(T_j) - X_2(T_j) \times \dot{Q}_{wcc}(T_j) - X_3(T_j) \times \dot{Q}_{wdc}(T_j)}{3.413 \times 0.98} \times n_j$$

Because the dedicated water heating mode during the cooling season removes heat from the space, there is a beneficial cooling effect. The energy saved by this cooling is calculated as:

$$E_{sav} = X_3(T_j) \times \dot{Q}_{cdw}(T_j) \times n_j \times \frac{\dot{E}_c(T_j)}{\dot{Q}_c(T_j)}$$

Lastly, the energy input for water heating during the dedicated water heating extra hours period above 65°F is calculated as:

$$E_{dwehc} = \frac{X_4(T_j) \times \dot{E}_{wdc}(T_j)}{PLF(T_j)} \times n_{dwcj} + E_{auxwehc}$$

where:

$$X_4(T_j) = \frac{WL(T_j)}{\dot{Q}_{wdc}(T_j)}$$

=Load factor for dedicated water heating mode for outdoor temperature bin j.
$\dot{E}_{wdc}(T_j)$=heat pump steady-state power input in the dedicated water heating mode during the cooling season for outdoor temperature bin j.
n_{dwcj}=the number of hours in the jth outdoor temperature bin for the dedicated water heating extra hours period above 65°F.
$PLF(T_j)=1-C_d\times(1-X_4(T_j))$=the part-load factor for outdoor temperature bin j.
C_d=the coefficient of cyclic degradation for cooling.

$$E_{auxwehc} = \frac{WL(T_j) - X_4(T_j) \times \dot{Q}_{wdc}(T_j)}{3.413 \times 0.98} \times n_{dwcj}$$

=the auxiliary energy input for water heating during the extra hours period above 65°F.
$\dot{Q}_{wdc}(T_j)$=the cyclic heat pump water heating capacity in the dedicated water heating mode during the cooling season.

The Combined Heating Performance Factor (CHPF) shall be calculated utilizing the same approach as for the CCPF. For the CHPF the building and water heating loads and heat pump performance are evaluated at each outdoor temperature bin below 65°F. CHPF is the sum of the total space heating load and the domestic water heating load during the heating season, divided by the sum of the total energy consumption used for space heating and water heating over the same period, expressed in Btu/Wh.

The Combined Heating Performance Factor for space heating and water heating is calculated as follows:

$$CHPF = \frac{\sum_{j=1}^{15} Q(T_j)}{\sum_{j=1}^{15} E(T_j)}$$

The terms $Q(T_j)$ and $E(T_j)$ are the system energy outputs and inputs, respectively, for the jth outdoor temperature bin as defined in the cited Department regulations and are composed of the various building and water heating loads and system energy inputs as follows:

$$Q(T_j) = BL(T_j) \times n_j + \dot{Q}_{kw}(T_j) \times n_j + \dot{Q}_{kw}(T_j) \times n_{dwhj}$$

where $BL(Tj)$ is the building space heating load at the jth outdoor bin temperature and evaluated for each heating temperature bin Tj, as described in subsection 10.2.2 of ASHRAE Standard 116–83.
$\dot{Q}_{kw}(T_j)$ is the water heating load for the jth outdoor bin temperature.
$E(Tj)$ is the total system energy input for the jth outdoor bin temperature and is made up of the individual energy inputs for the applicable operating modes as follows:

$$E(T_j) = \frac{\left(X_1(T_j) \times \dot{E}_h(T_j) + X_2(T_j) \times \dot{E}_{hcw}(T_j) + X_3(T_j) \times \dot{E}_{wdh}(T_j)\right) \times n_j}{PLF(T_j)} + E_{auxw} + E_{auxs} + E_{dweh}$$

where:
$\dot{E}_h(T_j)$ = Heat pump steady-state power input in the space heating only mode for outdoor temperature bin j.
$\dot{E}_{hcw}(T_j)$ = Heat pump steady-state power input in the combined space heating and water heating mode for outdoor temperature bin j.
$\dot{E}_{wdh}(T_j)$ = Heat pump steady-state power input in the dedicated water heating mode during the heating season for outdoor temperature bin j.
E_{auxw} = Auxiliary energy input for water heating.
E_{auxs} = Auxiliary energy input for space heating.
E_{dwehh} = Energy input for water heating during the dedicated water heating extra hours period below 65 °F
$X_1(Tj)$ = Load factor for space conditioning only mode for outdoor temperature bin j.
$X_2(Tj)$ = Load factor for combined space conditioning/water heating mode for outdoor temperature bin j.
$X_3(Tj)$ = Load factor for dedicated water heating mode for outdoor temperature bin j.

$PLF(T_j) = 1 - C_d \times (1 - X_1(T_j) - X_2(T_j) - X_3(T_j))$ = the overall part-load factor for outdoor temperature bin j.
Cd = the coefficient of cyclic degradation for heating.
n_j = the number of hours in the jth outdoor temperature bin.

The steady-state heat pump space heating capacity in the space heating only mode is determined according to:

$$\dot{Q}_h(T_j) = \begin{cases} \dot{Q}_h(17°F) + \frac{\dot{Q}_h(47°F) - \dot{Q}_h(17°F)}{(47-17)°F} \times (T_j - 17°F), \text{ for } T_j \geq 45°F \text{ or } T_j \leq 17°F \\ \text{or} \\ \dot{Q}_h(17°F) + \frac{\dot{Q}_h(35°F) - \dot{Q}_h(17°F)}{(35-17)°F} \times (T_j - 17°F), \text{ for } 17°F < T_j < 45°F \end{cases}$$

The steady-state electrical power input to the heat pump in the space heating only mode is determined according to:

$$\dot{E}_h(T_j) = \begin{cases} \dot{E}_h(17°F) + \frac{\dot{E}_h(47°F) - \dot{E}_h(17°F)}{(47-17)°F} \times (T_j - 17°F), \text{ for } T_j \geq 45°F \text{ or } T_j \leq 17°F \\ \text{or} \\ \dot{E}_h(17°F) + \frac{\dot{E}_h(35°F) - \dot{E}_h(17°F)}{(35-17)°F} \times (T_j - 17°F), \text{ for } 17°F < T_j < 45°F \end{cases}$$

The steady-state heat pump space heating capacity and water heating capacity in the combined heating/water heating mode is determined according to:

$$\dot{Q}_{hcw}(T_j) = \begin{cases} \dot{Q}_{hcw}(17°F) + \frac{\dot{Q}_{hcw}(47°F) - \dot{Q}_{hcw}(17°F)}{(47-17)°F} \times (T_j - 17°F), \text{ for } T_j \geq 45°F \text{ or } T_j \leq 17°F \\ \text{or} \\ \dot{Q}_{hcw}(17°F) + \frac{\dot{Q}_{hcw}(35°F) - \dot{Q}_{hcw}(17°F)}{(35-17)°F} \times (T_j - 17°F), \text{ for } 17°F < T_j < 45°F \end{cases}$$

$$\dot{Q}_{wch}(T_j) = \begin{cases} \dot{Q}_{wch}(17°F) + \frac{\dot{Q}_{wch}(47°F) - \dot{Q}_{wch}(17°F)}{(47-17)°F} \times (T_j - 17°F), \text{ for } T_j \geq 45°F \text{ or } T_j \leq 17°F \\ \text{or} \\ \dot{Q}_{wch}(17°F) + \frac{\dot{Q}_{wch}(35°F) - \dot{Q}_{wch}(17°F)}{(35-17)°F} \times (T_j - 17°F), \text{ for } 17°F < T_j < 45°F \end{cases}$$

Where:

$$\dot{Q}_{hcw}(35°F) = \left[\dot{Q}_{hcw}(17°F) + \frac{\dot{Q}_{hcw}(47°F) - \dot{Q}_{hcw}(17°F)}{(47-17)°F} \times (35-17)°F\right] \times \frac{\dot{Q}_h(35°F)}{\dot{Q}_h(17°F) + \frac{\dot{Q}_h(47°F) - \dot{Q}_h(17°F)}{(47-17)°F} \times (35-17)°F}$$

and:

$$\dot{Q}_{wch}(35°F) = \left[\dot{Q}_{wch}(17°F) + \frac{\dot{Q}_{wch}(47°F) - \dot{Q}_{wch}(17°F)}{(47-17)°F} \times (35-17)°F\right] \times \frac{\dot{Q}_h(35°F)}{\dot{Q}_h(17°F) + \frac{\dot{Q}_h(47°F) - \dot{Q}_h(17°F)}{(47-17)°F} \times (35-17)°F}$$

The total steady-state electrical power input to the heat pump in the combined heating/waterheating mode is determined according to:

$$\dot{E}_{hcw}(T_j) = \begin{cases} \dot{E}_{hcw}(17°F) + \frac{\dot{E}_{hcw}(47°F) \times PLF(Test10) - \dot{E}_{hcw}(17°F)}{(47-17)°F} \times (T_j - 17°F), \text{ for } T_j \geq 45°F \text{ or } T_j \leq 17°F \\ \text{or} \\ \dot{E}_{hcw}(17°F) + \frac{\dot{E}_{hcw}(35°F) - \dot{E}_{hcw}(17°F)}{(35-17)°F} \times (T_j - 17°F), \text{ for } 17°F < T_j < 45°F \end{cases}$$

where:

$$\dot{E}_{hcw}(35°F)=\left[\dot{E}_{hcw}(17°F)+\frac{\dot{E}_{hcw}(47°F)-\dot{E}_{hcw}(17°F)}{(47-17)°F}\times(35-17)°F\right]\times\frac{\dot{E}_{h}(35°F)}{\dot{E}_{h}(17°F)+\frac{\dot{E}_{h}(47°F)-\dot{E}_{h}(17°F)}{(47-17)°F}\times(35-17)°F}$$

and:

PLF (Test10) = 1 − (Cd × (1 − LF (Test10)))

With:

C_d = the heating season cyclic degradation coefficient.

LF (Test 10) = 0.5 = the load factor during the 47 °F combined heating/water heating cyclic test.

The electrical power input to the heat pump at the 47 °F cyclic test point is corrected (decreased) by the actual test part load factor (PLF) in order to make it consistent with the 17 °F test point which is steady-state.

Later bin analysis of energy use will interpolate between the 17 °F and 47 °F points and have the energy use for each bin increased by that bins calculated PLF. This approach of the 17 °F test being continuous compressor operation and the 47 °F test being cyclic is most representative of actual field operation and provides the most representative water side conditions.

The cyclic heat pump water heating capacity in the dedicated water heating mode during the heating season is determined according to:

$$\dot{Q}_{wdh}(T_j)=\dot{Q}_{wdh}(47°F)+\frac{\dot{Q}_{wdh}(67°F)-\dot{Q}_{wdh}(47°F)}{(67-47)°F}\times(T_j-47°F)$$

The steady-state electrical power input to the heat pump in the dedicated water heating mode during the heating season is determined according to:

$$\dot{E}_{wdh}(T_j)=\dot{E}_{wdh}(47°F)\times PLF(Test9)+\left[\frac{\dot{E}_{wdh}(67°F)\times PLF(Test8)-\dot{E}_{wdh}(47°F)\times PLF(Test9)}{(67-47)°F}\times(T_j-47°F)\right]$$

Because the tests are cyclic, the actual test results are again corrected from the PLF of the specific test to the PLF of each temperature bin in the analysis, where:

$$PLF(Test9)=1-C_d\times\left(1-\frac{t_{on}47°F}{t_{total}47°F}\right)$$

$$PLF(Test8)=1-C_d\times\left(1-\frac{t_{on}67°F}{t_{total}67°F}\right)$$

with:

C_d = the heating season cyclic degradation coefficient.

$t_{on}47$ °F = the total compressor on time during the 47 °F dedicated water heating cyclic test.

$t_{total}47$ °F = the total time to conclusion of the 47 °F dedicated water heating cyclic test.

$t_{on}67$ °F = the total compressor on time during the 67 °F dedicated water heating cyclic test.

$t_{total}67$ °F = the total time to conclusion of the 67 °F dedicated water heating cyclic test.

The load factors for each mode of operation are determined as follows:

$$X_2(T_j)=\left\{\begin{array}{c}\frac{BL(T_j)}{\dot{Q}_{hcw}(T_j)}\\ \text{or}\\ \frac{WL(T_j)}{\dot{Q}_{wch}(T_j)}\end{array}\right\}\text{whichever is least.}$$

or

$$X_2(T_j)=0 \text{ if } \frac{BL(T_j)}{\dot{Q}_h(T_j)}>1.0$$

Following determination of $X_2(T_j)$, $X_1(T_j)$ and $X_3(T_j)$ are determined as follows:

$$X_1(T_j)=\left\{\begin{array}{c}\frac{BL(T_j)-X_2(T_j)\times\dot{Q}_{hcw}(T_j)}{\dot{Q}_h(T_j)}\\ \text{or}\\ 1-X_2(T_j)\end{array}\right\}\text{whichever is least.}$$

$$X_3(T_j)=\left\{\begin{array}{c}\frac{WL(T_j)-X_2(T_j)\times\dot{Q}_{wch}(T_j)}{\dot{Q}_{wdh}(T_j)}\\ \text{or}\\ 1-X_2(T_j)\end{array}\right\}\text{whichever is least.}$$

The auxiliary energy input for water heating is then determined from:

$$E_{auxw}=\frac{WL(T_j)-X_2(T_j)\times\dot{Q}_{wch}(T_j)-X_3(T_j)\times\dot{Q}_{wdh}(T_j)}{3.413\times0.98}\times n_j$$

The auxiliary energy input for space heating is then determined from:

$$E_{auxs}=\frac{BL(T_j)-X_1(T_j)\times\dot{Q}_h(T_j)-X_2(T_j)\times\dot{Q}_{hcw}(T_j)}{3.413}\times n_j$$

Lastly, the energy input for water heating during the dedicated water heating extra hours period below 65 °F is calculated as:

$$E_{dwehh}=\frac{X_4(T_j)\times\dot{E}_{wdh}(T_j)}{PLF(T_j)}\times n_{dwhj}+E_{auxwehh}$$

where:

$$X_4(T_j)=\frac{WL(T_j)}{\dot{Q}_{wdh}(T_j)}$$

= Load factor for dedicated water heating mode for outdoor temperature bin j.

$\dot{E}_{wdh}(T_j)$ = heat pump steady-state power input in the dedicated water heating mode during the heating season for outdoor temperature bin j.

n_{dwhj} = the number of hours in the jth outdoor temperature bin for the dedicated water heating extra hours period below 65 °F.

$PLF(T) = 1 - C_d \times (1 - X_4(T_j))$ = the part-load factor for outdoor temperature bin j.

C_d = the heating season cyclic degradation coefficient.

$$E_{auxwehh}=\frac{WL(T_j)-X_4(T_j)\times\dot{Q}_{wdh}(T_j)}{3.413\times0.98}\times n_{dwhj}$$

= the auxiliary energy input for water heating during the extra hours period below 65 °F.
$\tilde{Q}_{wch}(T_j)$ = the cyclic heat pump water heating capacity in the dedicated water heating mode during the heating season.

TABLE 1.—TEST SUMMARY—INTEGRATED HEAT PUMP SYSTEM TESTS

Test	Description	Test type		Air temperatures (F)				Water draw	Data reduction notes
				ODDB	ODWB	IDDB	IDWB		
1	COOLING	STEADY-STATE.	REQUIRED	95		80	67		1
2	COOLING + WH.	STEADY-STATE.	REQUIRED	95		80	67	TABLE 2	1,2,3,6
3	WH (COOLING)	CYCLIC	REQUIRED	82		80	67	TABLE 4	1,2,5,6
4	COOLING + WH.	CYCLIC	REQUIRED	82		80	67	TABLE 3	1,2,4,6
5	COOLING	STEADY-STATE.	REQUIRED	82		80	67		1
6	COOLING	STEADY-STATE.	OPTIONAL	82		80	57		1
7	COOLING CYCLIC.	CYCLIC	OPTIONAL	82		80	57		1
8	WH (HEATING)	CYCLIC	REQUIRED	67	61	70		TABLE 4	1,2,7
9	WH (HEATING)	CYCLIC	REQUIRED	47	43	70		TABLE 4	1,2,7
10	HEATING + WH	CYCLIC	REQUIRED	47	43	70		TABLE 3	1,2,4,6
11	HEATING	STEADY-STATE.	REQUIRED	47	43	70			1
12	HEATING CYCLIC.	CYCLIC	OPTIONAL	47	43	70			
13	HEATING DEFROST.	STEADY-STATE.	REQUIRED	35	33	70			1
14	HEATING + WH	STEADY-STATE.	REQUIRED	17	15	70		TABLE 2	1,2,3,6
15	HEATING	STEADY-STATE.	REQUIRED	17	15	70			1

Data Reduction Notes for Table 1

1. Data recorded per ASHRAE Standard 116–83.

2. Water heating capacity is calculated as the net water energy withdrawn plus the tank standby loss during the test duration, divided by the length of time that the water pump and/or auxiliary water heater elements operate and expressed as BTU/hr. Test duration is defined as starting at t=0 and ending at the conclusion of water heating from all sources. Makeup and supply water temperatures are to be recorded every 5 seconds during water draws.

3. The steady-state cooling or heating capacity coincident with water heating is calculated as the total air side capacity delivered during the period of time that the water pump and/or auxiliary water heater elements operate, divided by the length of time that the water pump and/or auxiliary water heater elements operate and expressed as BTU/hr.

4. The cyclic cooling or heating capacity coincident with water heating is calculated as the air side capacity delivered during the period of time that both the water pump and indoor blower and/or both the auxiliary water heater elements and indoor blower operate, divided by the length of time that both the water pump and indoor blower and/or both the auxiliary water heater elements and indoor blower operate and expressed as Btu/hr.

5. The cyclic cooling capacity associated with dedicated water heating is calculated as the air side capacity delivered during the period of time that the indoor blower operates, divided by the length of time that the indoor blower operates, and expressed as Btu/hr.

6. The power used with the cooling or heating capacity associated with water heating is calculated as the total energy consumed by all components, including the heat pump, water pump, and auxiliary water heater elements, etc., during the length of time that the air side capacity is integrated, divided by the same length of time, and expressed as Watts.

7. The power used with the dedicated water heating capacity is calculated as the total energy consumed by all components, including the heat pump, water pump, and auxiliary water heater elements, etc., during the duration of the test, divided by the period of time used in determining the associated water heating capacity determination.

TABLE 2.—STEADY-STATE COMBINED OPERATION & WATER DRAW SCHEDULE

Sequence	
1	FILL WATER HEATER (or draw until both upper and lower thermostat water temperatures are below their turn on points).
2	RESISTIVE OPERATION TO CONCLUSION.
3	HEAT PUMP OPERATION TO CONCLUSION OF WATER HEATING (heat pump continues to operate in space conditioning mode).
4	CONDITION WITH 11 GALLON DRAW.
5	HEAT PUMP AND/OR RESISTIVE OPERATION TO CONCLUSION OF WATER HEATING.
6	HEAT PUMP CONTINUES TO OPERATE IN SPACE CONDITIONING MODE FOR 10 MINUTES.
7	t=0 , DRAW 5.4 GALLONS.

TABLE 2.—STEADY-STATE COMBINED OPERATION & WATER DRAW SCHEDULE—Continued

Sequence	
8	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS (heat pump continues to operate in space conditioning mode).
9	t=68 MINUTES, DRAW 16.1 GALLONS.
10	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS (heat pump continues to operate in space conditioning mode).
11	t=118 MINUTES, DRAW 10.7 GALLONS.
12	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS TO CONCLUSION OF WATER HEATING.

TABLE 3.—CYCLIC COMBINED OPERATION & WATER DRAW SCHEDULE

Sequence	
1	FILL WATER HEATER (or draw until both upper and lower thermostat water temperatures are below their turn on points).
2	RESISTIVE OPERATION TO CONCLUSION.
3	HEAT PUMP OPERATION TO CONCLUSION OF WATER HEATING.
4	CONDITION WITH 11 GALLON DRAW.
5	HEAT PUMP AND/OR RESISTIVE OPERATION TO CONCLUSION OF WATER HEATING.
6	COMPRESSOR OFF FOR 10 MINUTES.
7	t=0 , DRAW 5.4 GALLONS.
8	t=10 MINUTES, Tstat ON; @ t=20 MINUTES, Tstat OFF.
9	t=30 MINUTES, Tstat ON; @ t=40 MINUTES, Tstat OFF.
10	t=50 MINUTES, Tstat ON; @ t=60 MINUTES, Tstat OFF.
11	t=68 MINUTES, DRAW 16.1 GALLONS.
12	t=70 MINUTES, Tstat ON; @ t=80 MINUTES, Tstat OFF.
13	t=90 MINUTES, Tstat ON; @ t=100 MINUTES, Tstat OFF.
14	t=110 MINUTES, Tstat ON.
15	t=118 MINUTES, DRAW 10.7 GALLONS.
16	t=120 MINUTES, Tstat OFF.
17	t=130 MINUTES, Tstat ON; @ t=140 MINUTES, Tstat OFF.
18	t=150 MINUTES, Tstat ON; @ t=160 MINUTES, Tstat OFF.
19	t=170 MINUTES, Tstat ON TO CONCLUSION OF WATER HEATING.

Note: Tstat refers to indoor space thermostat.

TABLE 4.—DEDICATED WATER HEATING OPERATION & WATER DRAW SCHEDULE

Sequence	
1	FILL WATER HEATER (or draw until both upper and lower thermostat water temperatures are below their turn on points).
2	RESISTIVE OPERATION TO CONCLUSION.
3	HEAT PUMP OPERATION TO CONCLUSION OF WATER HEATING.
4	CONDITION WITH 11 GALLON DRAW.
5	HEAT PUMP AND/OR RESISTIVE OPERATION TO CONCLUSION OF WATER HEATING.
6	COMPRESSOR OFF FOR 10 MINUTES.
7	t=0 , DRAW 5.4 GALLONS.
8	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS.
9	t=68 MINUTES, DRAW 16.1 GALLONS.
10	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS.
11	t=118 MINUTES, DRAW 10.7 GALLONS.
12	HEAT PUMP AND RESISTIVE OPERATE ON INTERNAL CONTROLS TO CONCLUSION OF WATER HEATING.

January 24, 1995.

The Assistant Secretary for Conservation and Renewable Energy,
United States Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

Subject: Petition For Waiver and Application for Interim Waiver.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27, as amended November 14, 1986. Waiver is requested from the existing Test Method for Measuring the Energy Consumption of Central Air Conditioners, including heat pumps as found in Appendix M to Subpart B of Part 430.

Under the existing Test Procedure, heat pump energy consumption is measured relative only to space heating and cooling. NORDYNE requests a waiver to the existing test procedure as detailed in the attached "Requested Test and Rating Procedure Modifications for Electrically Driven, Single-Speed Compressor, Air-to-Air Heat Pumps With Integrated Water Heating", for use in the testing and rating of its Powermiser line of heat pumps which include special design characteristics to incorporate domestic water heating.

The current test procedure clearly cannot account for the energy savings associated with integrated water heating.

NORDYNE is confident that a waiver will be granted and requests that an interim waiver be granted. NORDYNE's confidence is based on:

(1) The current test procedure does not account for the total energy savings of the Powermiser.

(2) Carrier Corporation has been granted a similar waiver for its Hydrotech product.

(3) For public policy, the widespread use of this type of integrated appliance would be in direct support of the President's Climate Change Action Plan, which lists heating and cooling and home appliances as key targets for improvement.

(4) Absent a favorable determination on the Application for Interim Waiver, NORDYNE would experience an economic hardship, as discussed in the confidential attachment.

Known manufacturers of domestically marketed units of the same product type are being notified in writing of this Petition for Waiver and Application for Interim Waiver. A list of the names and addresses of each person to whom a notice is being sent is attached.

Sincerely,

Wayne Reedy,

Vice President Engineering.

WRR:pdr
Enclosure

[FR Doc. 95–19203 Filed 8–7–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EF95–2011–000, et al.]

United States Department of Energy—Bonneville Power Administration, et al.; Electric Rate and Corporate Regulation Filings

August 2, 1995.

Take notice that the following filings have been made with the Commission:

1. United States Department of Energy—Bonneville Power Administration

[Docket Nos. EF95–2011–000, EF95–2101–001, EF95–2021–000 and EF95–2041–000]

Take notice that on August 1, 1995, the Bonneville Power Administration of the United States Department of Energy (BPA) tendered for filing proposed rate adjustments for its wholesale power and transmission rates pursuant to Section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2). BPA seeks interim approval of its proposed rates effective October 1, 1995, pursuant to Commission Regulation, 18 CFR 300.20. BPA further states that pursuant to Commission Regulation, 18 CFR 300.21, BPA seeks final confirmation of the proposed rates for the periods set forth in this notice.

According to BPA, its wholesale power and transmission rates are proposed to be increased, with BPA's wholesale power rates designed to increase revenues over the 1-year test period by approximately $61.0 million (excluding the residential exchange), which represents an increase of approximately 3.2 percent. BPA further states that its transmission rates are designed to increase revenues by approximately $19 million, or 3.45 percent. BPA states that with these increases its total test period revenues (excluding the residential exchange) will be approximately $2.5 billion. BPA states that these revenue increases are achieved through a 4 percent increase in its current, adjustable power and transmission rates.

BPA requests approval effective October 1, 1995 through September 30, 1996 for the following proposed wholesale power rates and their associated General Rate Schedule Provisions: PF–95 Priority Firm Power Rate; IP–95 Industrial Firm Power Rate; SI–95 Special Industrial Firm Power Rate; CE–95 Emergency Capacity Rate; NR–95 New Resource Firm Power Rate; NF–95 Nonfirm Energy Rate; SS–95 Share-the-Savings Energy Rate; RP–95 Reserve Power Rate; PS–95 Power Shortage Rate; and VI–95 Variable Industrial Rate. BPA requests final approval for amended Pacific Northwest Coordination Agreement charges granted interim approval by the Commission on July 21, 1995 in Docket No. EF95–2101–000.

BPA requests approval October 1, 1995 through September 30, 1996 for the following proposed transmission rate schedules and their associated General Transmission Rate Schedule Provisions: FPT–95.1 Formula Power Transmission; IR–95 Integration of Resources; IS–95 Southern Intertie Transmission; IN–95 Northern Intertie Transmission; IE–95 Eastern Intertie Transmission; ET–95 Energy Transmission; MT–95 Market Transmission; FPT–95.3 Formula Power Transmission; UFT–95 Use-of-Facilities Transmission; TGT–95 Townsend-Garrison Transmission. BPA requests approval for the AC–95 Southern Intertie Annual Costs rate for the term of the contracts which is life of facilities.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Empresa Guaracachi S.A.

[Docket No. EG95–61–000]

On July 28, 1995, Empresa Guaracachi S.A. ("Applicant") filed with the Federal Energy Regulatory Commission (the "Commission") an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations. Applicant states that its sole business purpose is to own and operate one or more electric generating facilities in the Republic of Bolivia. Fifty (50) percent of the capital stock of Applicant is owned by Guaracachi America, Inc., an indirect wholly-owned subsidiary of General Public Utilities Corporation, a registered holding company as defined in Section 2(a)(7) of the Public Utility Holding Company Act of 1935.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. PMDC Energia Ltd.

[Docket No. EG95–66–000]

PMDC Energia Ltd. ("Energia") (c/o Richard F. Allen, PMDC Energia Ltd. 11350 Random Hills Road, Suite 800 Fairfax, VA 22030) filed with the Federal Energy Regulatory Commission an application on July 28, 1995, for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

Energia is a Cayman Islands company formed to develop, own, and/or operate eligible facilities. Energia will own an interest in two electric generating facilities in Bolivia. Energia states that is also may engage in project development activities associated with its development or acquisition of operating or ownership interests in additional as-yet unidentified eligible facilities and/or exempt wholesale generators that meet the criteria in Section 32 of the Public Utility Holding Company Act.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. OPDB, Ltd.

[Docket No. EG95–67–000]

On July 28, 1995, OPDB, Ltd. ("OPDB"), with its address at 40 Lane Road, Fairfield, NJ 07007–2615 filed with the Federal Energy Regulatory Commission ("FERC" or the "Commission") an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

OPDB is a Cayman Island limited liability company that will be engaged indirectly through one or more affiliates as defined in Section 2(a)(11)(b) of the Public Utility Holding Company Act of 1935, as amended ("PUHCA") and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities located in Bolivia. The eligible facilities consist of approximately 87.2 MW of existing gas fired generation units and related interconnection facilities and approximately 126 MW of gas fired electric generation units and related interconnection facilities that are currently under construction. The output of the eligible facilities is, or will be, sold at wholesale except that to the extent permitted by Bolivian law retail power sales will be made to consumers located in Bolivia.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Ogden Power Development of Bolivia, Inc.

[Docket No. EG95–68–000]

On July 28, 1995, Ogden Power Development of Bolivia, Inc. ("Ogden Bolivia"), with its address at 40 Lane Road, Fairfield, New Jersey 07007–2615, filed with the Federal Energy Regulatory Commission ("FERC" or the "Commission") an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations. Ogden Bolivia is a Delaware corporation that will be engaged indirectly, through one or more affiliates as defined in Section 2(a)(11)(b) of the Public Utility Holding Company Act of 1935, as amended ("PUHCA"), and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities located in Bolivia. The eligible facilities consist of approximately 87.2 MW of existing gas fired generation units and related interconnection facilities and approximately 126 MW of gas fired electric generation units and related interconnection facilities that are currently under construction. The output of the eligible facilities is, or will be, sold at wholesale except that to the extent permitted by Bolivian law retail power sales will be made to consumers located in Bolivia.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Bolivian Generating Group, L.L.C.

[Docket No. EG95–69–000]

On July 28, 1995, The Bolivian Generating Group, L.L.C. ("BGG"), with its address c/o Constellation Energy International Investment, Ltd., 250 West Pratt Street, 23rd Floor, Baltimore, MD 21201–2324, filed with the Federal Energy Regulatory Commission ("FERC" or the "Commission") an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

BGG is a Cayman Island limited life company that will be engaged indirectly, through one or more affiliates as defined in Section 2(a)(11)(b) of the Public Utility Holding Company Act of 1935, as amended ("PUHCA"), and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities located in Bolivia. The eligible facilities consist of approximately 87.2 MW of existing gas fired generation units and related interconnection facilities and approximately 126 MW of gas fired electric generation units and related interconnection facilities that are currently under construction. The output of the eligible facilities is, or will be, sold at wholesale except that to the extent permitted by Bolivian law retail power sales will be made to consumers located in Bolivia.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. C&O Bolivia

[Docket No. EG95–70–000]

On July 28, 1995, C&O Bolivia ("C&O"), with its address c/o OPDB, Ltd., 40 Lane Road, Fairfield, NJ 07007–2615, filed with the Federal Energy Regulatory Commission ("FERC" or the "Commission") an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

C&O is a Cayman Island limited life company that will be engaged indirectly, through one or more affiliates as defined in Section 2(a)(11)(b) of the Public Utility Holding Company Act of 1935, as amended ("PUHCA"), and exclusively in the business of owning and or operating, or both owning and operating, all or part of one or more eligible facilities located in Bolivia. The eligible facilities consist of approximately 87.2 MW of existing gas fired generation units and related interconnection facilities and approximately 126 MW of gas fired electric generation units and related interconnection facilities that are currently under construction. The output of the eligible facilities is, or will be, sold at wholesale except that to the extent permitted by Bolivian law retail power sales will be made to consumers located in Bolivia.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER84–560–038]

Take notice that on July 17, 1995, Union Electric Company tendered for filing its refund report in the above-referenced docket.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Citizens Power & Light Corporation

[Docket No. ER89–401–023]

Take notice that on July 27, 1995, Citizens Power & Light Corporation, filed certain information as required by the Commission's August 8, 1989, order in Docket No. ER89–401–000. Copies of Citizens Power & Light Corporation's informational filing are on file with the Commission and are available for public inspection.

10. Louis Dreyfus Electric Power, Inc.

[Docket No. ER92–850–012]

Take notice that on July 27, 1995, Louis Dreyfus Electric Power, Inc., filed certain information as required by the Commission's December 2, 1992, order in Docket No. ER92–850–000. Copies of Louis Dreyfus Electric Power, Inc.'s informational filing are on file with the Commission and are available for public inspection.

11. Illinova Power Marketing, Inc.

[Docket No. ER94–1475–001]

Take notice that on July 27, 1995, Illinova Power Marketing Inc., filed certain information as required by the Commission's May 18, 1995, order in Docket No. ER94–1475–000. Copies of Illinova Power Marketing Inc.'s informational filing are on file with the Commission and are available for public inspection.

12. Destec Power Services, Inc.

[Docket No. ER94–1612–004]

Take notice that on July 27, 1995, Destec Power Services, Inc. tendered for filing certain information as required by the Commission's letter order dated January 20, 1995. Copies of Destec's informational filing are on file with the Commission and are available for public inspection.

13. Imprimis Corporation

[Docket No. ER94–1672–002]

Take notice that on July 21, 1995, Imprimis Corporation filed certain information as required by the Commission's December 14, 1994, order in Docket No. ER94–1672–000. Copies of Imprimis Corporation's informational filing are on file with the Commission and are available for public inspection.

14. Tenneco Energy Marketing Company

[Docket No. ER95–428–002]

Take notice that on July 21, 1995, Tenneco Energy Marketing Company (Tenneco) filed certain information as required by the Commission's order issued March 30, 1995, order in Docket No. ER95–428–000. Copies of Tenneco's informational filing are on file with the Commission and are available for public inspection.

15. Phibro Division of Salomon Inc.

[Docket No. ER95–430–001]

Take notice that on July 20, 1995, Phibro Division of Salomon Inc. (Phibro) filed certain information as required by the Commission's order issued June 9, 1995, order in Docket No. ER95–430–000. Copies of Phibro's informational filing are on file with the Commission and are available for public inspection.

16. Central Illinois Public Service Company

[Docket No. ER95–502–000]

Take notice that on July 14, 1995, Central Illinois Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. CNB/Olympic Gas Services

[Docket No. ER95–964–001]

Take notice that on July 18, 1995, CNB/Olympic Gas Services (CNB/Olympic) filed certain information as required by the Commission's July 10, 1995, order in Docket No. ER95–964–000. Copies of CNB/Olympic's informational filing are on file with the Commission and are available for public inspection.

18. Niagara Mohawk Power Corporation

[Docket No. ER95–1230–000]

Take notice that on July 31, 1995, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Alliance Strategies

[Docket No. ER95–1381–000]

Take notice that on July 17, 1995, Alliance Strategies tendered for filing an application, including a rate schedule, for certain waivers and authorizations under the Federal Power Act and the Commission's Regulations to enable Alliance Strategies to make wholesale sales of electric power at market based rates.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Utility Trade Corporation

[Docket No. ER95–1382–000]

Take notice that on July 17, 1995, Utility Trade Corporation tendered for filing an application for certain waivers and authorizations under the Federal Power Act and the Commission's Regulations to enable Utility-Trade Corporation to make wholesale sales of electric power at market based rates.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Orange and Rockland Utilities, Inc.

[Docket No. ER95–1412–000]

Take notice that on July 19, 1995, Orange and Rockland Utilities, Inc. (O&R), tendered for filing an amendment to its agreement with the New York Power Authority (NYPA) executed June 28, 1985, whereby O&R provides for the transmission of NYPA hydropower and related energy to Public Service Electric and Gas for transmission to the New Jersey Board of Public Utilities' agents in New Jersey.

By this amendment, the parties hereby revise Article V replacing the words "until June 30, 1995" with the words "unless terminated by either party on 90 days notice, through provision of written notice to the other party by first class mail."

O&R states that a copy of this filing has been served by mail upon NYPA.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Central Power and Light Company; West Texas Utilities Company

[Docket No. ER95–1413–000]

Take notice that on July 21, 1995, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) submitted for filing an executed Transmission Service Agreement between CPL and Brazos Electric Power Cooperative (Brazos) and an executed Transmission Service Agreement between WTU and Brazos (Service Agreements). Under the Service Agreements, CPL and WTU will transmit power and energy purchased by Brazos from the Lower Colorado River Authority. CPL and WTU request that the Service Agreements be accepted to become effective as of June 1, 1995.

Copies of the filing were served on Brazos and the Public Utility Commission of Texas.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Maine Public Service Company

[Docket No. ER95–1414–000]

Take notice that on July 21, 1995, Maine Public Service Company submitted an agreement under its Umbrella Power Sales tariff.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Arizona Public Service Company

[Docket No. ER95–1419–000]

Take notice that on July 21, 1995, Arizona Public Service Company (APS) tendered for filing an amendment to Service Schedule D to the existing Power Sale Agreement between APS and Citizens Utilities Company (Citizens).

Copies of this filing have been served on the Arizona Corporation Commission and Citizens Utilities Company.

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Norman Robertson

[Docket No. ID–2199–001]

Take notice that on July 6, 1995, Norman Robertson tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions: Director, Pennsylvania Power & Light Company; Director, Mellon Bank (MD).

Comment date: August 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19519 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1393–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

August 1, 1995.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER95–1393–000]

Take notice that on July 18, 1995, PECO Energy Company (PECO), filed a Service Agreement dated June 19, 1995 with Carolina Power & Light Company (CP&L) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement with CP&L as a customer under the Tariff.

PECO requests an effective date of June 19, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to CP&L and to the Pennsylvania Public Utility Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–1391–000]

Take notice that on July 18, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept a Transmission Service Agreement which provides for 10 MW of Reserved Transmission Service to Wisconsin Power and Light Company. The source party is Basin Electric Power Cooperative and the recipient party is Wisconsin Power and Light Company.

NSP requests that the Commission accept for filing the Transmission Service Agreement effective as of June 1, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to 18 CFR Part 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–1392–000]

Take notice that on July 18, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to NorAm Energy Services, Inc.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of August 16, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to 18 CFR Part 35 of the Agreements may be accepted for filing effective on the date requested. Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER95–1395–000]

Take notice that on July 19, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Marguette Board of Light and Power (MBLP). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff (CST).

Wisconsin Electric requests waiver of the Commission's notice requirements and requests an effective date of June 30, 1995 in order to facilitate economic transactions under the CST. Copies of the filing have been served on MBLP, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. San Diego Gas & Electric Company

[Docket No. ER95–1396–000]

Take notice that on July 19, 1995, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Koch Power Services Inc. (KPSI).

SDG&E requests that the Commission allow the Agreement to become effective on the 29th day of September, 1995 or at the earliest possible date.

Copies of the filing were served upon the Public Utilities Commission of the State of California and KPSI.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER95–1397–000]

Take notice that on July 19, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and National Electric Associates, LP, date July 14, 1995. This Service Agreement specifies that National Electric Associates, LP has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume NO. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and National Electric Associates, LP to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 14, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER95–1398–000]

Take notice that on July 19, 1995, Florida Power Corporation (FPC), tendered for filing a service agreement for transmission service resale with Tennessee Valley Authority (TVA), under Florida Power's existing T–1 Transmission Tariff. This allows transmission service to be provided to TVA at all existing and future interconnections of FPC.

FPC requests a waiver of the Commission's 60 day notice requirement to allow FPC and TVA's Agreement to become effective July 20, 1995. FPC submits that waiver is appropriate because this filing does not change the rates under the T–1 Transmission Tariff, which has already been accepted for filing.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. ElecTech, Inc.

[Docket No. ER95–1399–000]

Take notice that on July 19, 1995, ElecTech, Inc. tendered for filing pursuant to Rule 205, 18 CFR 385.205, a position for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the date of the order.

ElecTech, Inc. intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where ElecTech, Inc. sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. ElecTech, Inc. is not in the business of generating, transmitting, or distributing electric power.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–1401–000]

Take notice that on July 20, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to Madison Gas and Electric Company.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of August 21, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to 18 CFR Part 35 of the Agreements may be accepted for filing effective on the date requested.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER95–1406–000]

Take notice that on July 20, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Electric Clearinghouse, Inc. and Virginia Power, dated August 31, 1994, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Electric Clearinghouse, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER95–1407–000]

Take notice that on July 20, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between LG&E Power Marketing Inc. and Virginia Power, dated December 31, 1994 under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services LG&E Power Marketing Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER95–1408–000]

Take notice that on July 20, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between City of Tallahassee, Florida and Virginia Power, dated April 28, 1995 under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services City of Tallahassee, Florida under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER95–1409–000]

Take notice that on July 20, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), filed amendments to two wholesale power sales agreements. Specifically, Niagara Mohawk seeks to amend the Capacity and Energy Sales Agreement between Niagara Mohawk and Vermont Public Power Supply Authority, the Town of Hardwick Electric Department, the Village of Hyde Park Electric Department, the Village Ludlow Electric Light Department, the Village of Stowe Water & Light Department dated July 28, 1993 and the System Energy Sales Agreement between Niagara Mohawk and Pennsylvania Power & Light Company dated December 6, 1983. The purpose of this abbreviated filing and these amendments is to provide an explanation of the treatment of the cost of emission allowances.

Niagara Mohawk has served copies of the filing on the New York Public Service Commission and affected customers.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER95–1410–000]

Take notice that on July 20, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk) filed the First Supplemental Agreement with New England Power Company (NEPCO). The purpose of this abbreviated filing is to amend an existing sales agreement dated October 4, 1983 in order to provide an explanation of the treatment of the cost of emission allowances.

Niagara Mohawk has served copies of the filing on the New York Public Service Commission and NEPCO.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER95–1411–000]

Take notice that on July 21, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with New York Power Authority (NYPA) under the NU System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to NYPA.

NYPA also filed a Certificate of Concurrence as it relates to exchange transactions under the Tariff.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19465 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1051–008 Alaska]

Alaska Power & Telephone Co.; Notice of Availability of Environmental Assessment

August 2, 1995.

An environmental assessment (EA) is available for public review. The EA reviews an application to amend the Skagway Dewey Lakes Hydroelectric Project. The project's description would be amended to show current project features. The EA also reviews plans to repair Dewey Reservoir Dam which requires lowering Dewey Reservoir Lake for about one month. The EA finds that approving the application would not constitute a major Federal action significantly affecting the quality of the human environment.The Skagway Dewey Lakes Hydroelectric Project is located on Reid Falls, Dewey Creek, Icy Creek, and Snyder Creek near the City of Skagway, Alaska.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19464 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed With the Commission

August 2, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

Notice of Filing (Tendering) of Application

a. *Type of Application:* Major License (Notice of Tendering).

b. *Project No.:* 11554–000.

c. *Date filed:* July 25, 1995.

d. *Applicant:* Nez Perce Tribe.

e. *Name of Project:* Dworshak Small Hydro.

f. *Location:* On the existing water conveyance system providing water from Dworshak Dam to two fish hatcheries. North Fork Clearwater River, Clearwater County, Idaho. Section 34, Township 37 North, Range 1 East, Boise Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)-825(r).

h. *Applicant Contact:* Rebecca Craven, Deputy Counsel, Nez Perce Tribal Executive Committee, Office of Legal Counsel, P.O. Box 305, Lapwai, ID 83540–0305, (208) 843–7355.

i. *FERC Contact:* James Hunter, (202) 219–2839

j. *Brief Description of Project:* The proposed project will consist of one 2.5-megawatt and one 0.4-megawatt generating unit connected to existing water lines at the system's distribution tank and a transmission line connecting to an existing Clearwater Power Company distribution line. The project would occupy lands of the United States under the jurisdiction of the Corps of Engineers and the Bureau of Land Management.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

l. In accordance with section 4.32(b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19466 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1995.

Take notice that on August 1, 1995, Columbia Gas Transmission Corporation (Columbia), pursuant to Section 4 of the Natural Gas Act (NGA) and Section 154.63 of the Commission's Rules and Regulations thereunder, tendered for filing revised tariff sheets containing proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 as set forth on Appendices A, B, and C, attached to the filing, to be effective as discussed below. Columbia states that the proposed changes in the Appendix A tariff sheets would increase revenues by approximately $147 million based on the 12-month period ending April 30, 1995, adjusted for known and measurable changes anticipated to occur on or before January 31, 1996.

Columbia states that the tariff sheets identified in Appendix A bear an issue date of August 1, 1995, and a proposed effective date of September 1, 1995. Columbia anticipates that the Appendix A tariff sheets will be suspended by the Commission for the full 12 months permitted by the NGA and moved into effect as of February 1, 1996. These tariff sheets reflect a general increase in rates based upon an updated cost of service and billing determinants. This cost of service reflects increases in operation and maintenance costs, revised depreciation rates, and additions to rate base since Columbia's last general rate case. Columbia is also proposing an electric power costs tracking mechanism, a mechanism for recovery of its stranded investment in gathering and products extraction facilities, and has developed unbundled gathering and products extraction rates.

Columbia states that the tariff sheets identified in Appendix B also bear an issue date of August 1, 1995, and a proposed effective date of September 1, 1995. With regard to the Appendix B tariff sheets, however, Columbia is requesting the Commission grant any necessary waivers so that they may become effective on September 1, 1995. These tariff sheets contain clarifications and corrections as well as changes intended to address inadequacies in certain provisions in Columbia's Rate Schedules and General Terms and Conditions including Sections 4, 6, 7, 14, 16, 18, 19, 35 and 36 of the General Terms and Conditions, and the FSS, IPP and SIT Rate Schedules. Columbia is also proposing a new emergency

interruption provision to provide relief from interruption for customers with high-priority needs in emergency situations.

Columbia also states that the Appendix C tariff sheets are pro forma tariff sheets that propose market-based rates for short-term firm transportation services, interruptible transportation and storage services, and temporary capacity release transactions.

Columbia requests that the Commission set these tariff sheets for hearing along with the other issues that may be set for hearing as a result of this filing. Unless otherwise resolved as part of this proceeding, Columbia will not propose to move these tariff sheets into effect prior to the date of a final Commission order in Docket No. RM95–6.

Columbia states that its proposals are more fully described in the filing and supported by Statement P testimony to be filed.

Columbia states that a copy of the filing is being served on all of its firm customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19467 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–045]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

Editorial Note: This document was inadvertently omitted from the issue of July 25, 1995. It is published at the request of the agency.

July 19, 1995.

Take notice that on July 13, 1995, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Avenue NW., Suite 800, Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of 100,000 MMBtu of frontier's gas storage inventory on an "in place" basis to The Western Sugar Company.

Under Subpart (b) of Ordering Paragraph (G) of the Commission's February 13, 1985, Order, Frontier is "authorized to consummate the proposed sale in place unless the Commission issues an order within 20 days after expiration of such notice period either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter. Deliveries of gas sold in place shall be made pursuant to a schedule to be set forth in an exhibit to the executed service agreement."

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (825 North Capitol Street NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–19644 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–406–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Change in FERC Gas Tariff

August 2, 1995.

Take notice that on July 31, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1 the following revised tariff sheets:

First Original Sheet No. 86 Original Sheet No. 86A

The proposed effective date for the tariff revision is July 31, 1995.

Iroquois states that the proposed tariff revision would obligate Iroquois to refund demand charges collected from firm shippers on days in which service is interrupted, if and to the extent Iroquois is reimbursed through insurance proceeds and the shipper is not recompensed through other primary insurance. Iroquois states that the revised tariff provision reflects an extension of its insurance coverage as contemplated by Article 5.3 of the March 30, 1995 Stipulation and Agreement approved in Iroquois' Docket Nos. RP94–72–000, et al.

Iroquois states that copies of its filing were served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19468 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–399–000]

Koch Gateway Pipeline Company; Notice of Petition for Waiver of Regulations

August 2, 1995.

Take notice that on July 27, 1995, Koch Gateway Pipeline Company, (Koch Gateway) tendered for filing a petition for a limited waiver of Section 154.16 of the Commission's Regulations and Rule 2010 of the Commission's Rules of Practice and Procedure so as to permit Koch Gateway to serve an abbreviated copy of future tariff filings made by Koch Gateway on customers that so elect.

Koch Gateway states that many customers find the exhaustive detail and voluminous paperwork, which accompanies such filings, burdensome and of limited interest to them. As a result, so that customers can more effectively manage the inflow of filings and reduce the volume of undesired paper received, Koch Gateway requests this limited waiver of the Commission's service regulations to send abbreviated copies of Koch Gateway's future tariff filings.

Koch Gateway states that those customers that select the abbreviated version of its tariff filings, Koch Gateway proposes to serve only the transmittal letter, the proposed tariff sheets, and the statement of nature, reason and basis (if not included in the transmittal letter).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such notices or protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19469 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–401–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Tariff

August 2, 1995.

Take notice that on July 28, 1995, Mississippi River Transmission Corporation (MRT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Twelfth Revised Sheet No. 5
Twelfth Revised Sheet No. 6

MRT states that the purpose of this filing is to adjust its rates to reflect additional Gas Supply Realignment Costs (GSRC) of $1,200,000, plus applicable interest, pursuant to Section 16.3 of the General Terms and Conditions of MRT's Tariff. MRT states that its filing includes the GSRC Buyout/Buydown costs incurred during the period June 15, 1995 through July 21, 1995.

MRT requests an effective date of August 1, 1995, for these tariff sheets.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 C*FR 385.211 and 385.214). All such motions and protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19470 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–407–000]

Questar Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1995.

Take notice that on July 31, 1995, Questar Pipeline Company (Questar), tendered for filing and acceptance tariff sheets to First Revised Volume No. 1 and Original Volume No. 3 of its FERC Gas Tariff to implement revised base rates for jurisdictional transportation and storage services, to become effective September 1, 1995.

Questar states that the proposed changes would increase revenues from jurisdictional transportation and storage service by $23.3 million based on the 12-month period ended March 31, 1995, as adjusted. Questar tendered for filing and acceptance the following tariff sheets:

Primary Tariff Sheets

First Revised Volume No. 1

Original Sheet Nos. 98A, 98B and 99
First Revised Sheet Nos. 7, 13, 92A and 98
Second Revised Sheet Nos. 14 and 92
Third Revised Sheet Nos. 6A and 40
Fifth Revised Sheet Nos. 5 and 6

Original Volume No. 3

Fifteenth Revised Sheet No. 8
Alternate Tariff Sheets
Alternate Fifth Revised Sheet No. 5
Fifth Revised Sheet No. 5A

Concurrent with this filing to increase rates for transmission and storage services, Questar has filed a request with the Commission to "spin down" its current gathering operations to a wholly owned subsidiary, Questar Gas Management Company (QGM), effective January 1, 1996. This would be effected by a transfer of the facilities that Questar currently uses to provide gathering services and the corresponding termination of any gathering service obligation of Questar. In addition, QGM is requesting a declaratory order from the Commission declaring that the facilities to be transferred to QGM are non-jurisdictional gathering facilities and that QGM is not subject to FERC jurisdiction.

The proposed tariff sheets in this filing do not contain any stated rates for gathering, as Questar will not be providing gathering service after December 31, 1995, if the Commission approves the gathering-transfer requests sought by Questar and QGM. For this reason, it is important that rates in this proceeding be made effective no later than January 1, 1996.

Questar states that the primary reasons for the proposed change is to incorporate into base rates (1) the transition costs associated with its Order No. 636 restructuring in Docket No. RS92–9, (2) the elimination of Questar's 90/10 interruptible transportation revenue-crediting provision, (3) a rate of return on equity that more appropriately measures the cost of equity funds for a pipeline that faces the business risks attendant to today's competitive markets, (4) increased accruals associated with changes in financial accounting standards, (5) increased gas plant in service, (6) depreciation rates that better reflect the economic life of electronic flow measurement and computer equipment, (7) increased labor costs, (8) the reclassification of gathering and transmission facilities associated with the transfer of gathering facilities to QGM and (9) costs associated with certain certificated facilities that have been placed "at risk" by the Commission.

Questar states that copies of the proposed tariff sheets and the application letter describing the nature of the application were served upon the Company's jurisdictional customers (including customers receiving service under a capacity-release arrangement) and upon the Utah and Wyoming Public Service Commissions. The Company has offered to provide a complete set of supporting schedules, tables and testimony to such parties upon request.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules

211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19471 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–402–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

August 2, 1995.

Take notice that on July 31, 1995, Southern Natural Gas Company (Southern) submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a decrease in its FT/FT–NN GSR Surcharge effective August 1, 1995 due to a revision in the contract level for Mississippi Valley Gas Company:

Twentieth Revised Sheet No. 15
Twentieth Revised Sheet No. 17
Fourteenth Revised Sheet No. 29
Fourteenth Revised Sheet No. 30
Fourteenth Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19472 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–403–000]

Southern Natural Gas Company; Notice of Revised Tariff Sheets for Transition Cost Recovery

August 2, 1995.

Take notice that on July 31, 1995, Southern Natural Gas Company (Southern) submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a decrease in its T & C Surcharge effective August 1, 1995, due to a revision in the contract level for Mississippi Valley Gas Company:

Twenty-first Revised Sheet No. 15
Twenty-first Revised Sheet No. 17

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19473 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–404–000]

Southern Natural Gas Company; Notice of Filing

August 2, 1995.

Take notice that on July 31, 1995, Southern Natural Gas Company (Southern) submitted a filing pursuant to Section 31.4 of the General Terms and Conditions of its FERC Gas Tariff, Seventh Revised Volume No. 1. Section 31.4 of the Tariff provides that Southern shall file not later than three months prior to the second anniversary of the effective date of its Order No. 636 restructuring to support continuation of its pricing differential mechanism (PDM) for recovery of gas supply realignment costs. The second anniversary of Southern's Order No. 636 restructuring will be November 1, 1995, and Southern anticipates that it will be unable to obtain reformation of all of its gas supply contracts prior to that date. Accordingly, Southern made this filing in support of a two-year continuation of its PDM.

Southern states that copies of the filing were served upon Southern's shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19474 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–405–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 2, 1995.

Take notice that on July 31, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Tenth Revised Sheet No. 10
Seventh Revised Sheet No. 11
Second Revised Sheet No. 11A
Twelfth Revised Sheet No. 12

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 33.3 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to recover ninety percent (90%) of its Gas Supply Realignment costs incurred March–May 1995 from its firm transportation customers and ten percent (10%) of its Gas Supply Realignment Costs from its IT customers. The GSR costs, including applicable interest, proposed to be recovered by Texas Gas's seventh GSR recovery filing total $1,994,681.

Texas Gas requests an effective date of September 1, 1995, for the proposed tariff sheets.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers, those appearing on the applicable service lists, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19475 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QT95–11–001]

Williams Natural Gas Company; Notice of Refund Report

August 2, 1995.

Take notice that on July 28, 1995, Williams Natural Gas Company (WNG) tendered for filing a report of additional refunds of Kansas ad valorem taxes made to customers, pursuant to Commission Order on Court Remand in Docket Nos. GP83–11–002 and RI83–9–003. Colorado Interstate Gas Company, 65 FERC ¶ 61,292 (1993).

WNG states that a copy of its filing was served on all customers receiving a refund, all participants listed on the service lists maintained by the Commission in the docket referenced above, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19476 Filed 8–7–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5274–7]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Black and Veatch Waste Science (BVWS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice request for comments.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) for authorization to disclose to its contractor, BVWS, Kansas City, Missouri, cost recovery support documentation for the Des Moines TCE Superfund Site. This disclosure includes Confidential Business Information (CBI) which has been submitted to EPA Region VII, Superfund Division. BVWS's principal office is at 6601 College Blvd., Overland Park, Kansas 66211.

FOR FURTHER INFORMATION CONTACT: Glenn Curtis, Superfund Division, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7726.

Notice of Required Determinations, Contract Provisions and Opportunity to Comment: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (commonly known as "Superfund"), requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records. EPA has entered into ARCS Contract No. 68–W8–0064 for management of those records. EPA Region VII has determined that disclosure of CBI to BVWS is necessary in order that the contractor may carry out the work requested under the above contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). EPA Region VII will require that each BVWS employee working on cost recovery work sign a written agreement that he or she:

(1) Shall use the information only for the purpose of carrying out the work required by the contract;

(2) Shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA regional office; and

(3) Shall return to EPA all copies of the information and any contracts or extracts therefrom (a) upon completion of the contract, (b) upon request of the EPA, or (c) whenever the information is no longer required by BVWS for performance of work requested under the contract. These non-disclosure statements shall be maintained on file with the EPA Region VII Project Officer for BVWS. BVWS employees will be provided technical direction from their respective EPA contract management staff.

EPA hereby advises affected parties that they have ten (10) working days to comment pursuant to 40 CFR 2.301(h)(2)(ii) and 40 CFR 2.310(h). Comments should be sent to: Glenn Curtis, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Dated: July 26, 1995.

William Rice,

Acting Regional Administrator.

[FR Doc. 95–19489 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5274–8]

Availability of Draft Department of Energy Petition to Grant the Waste Isolation Pilot Plant (WIPP) a Variance From the Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency announces the availability for public comment of a draft no-migration variance petition submitted to the Agency by the Department of Energy (DOE) for its Waste Isolation Pilot Plant (WIPP) on May 31, 1995. The WIPP is a geological repository intended for the disposal of transuranic mixed hazardous and radioactive wastes generated by DOE in the production and decommissioning of nuclear weapons. The hazardous portion of the waste is subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA), as codified at 40 CFR Part 268. DOE's no-migration petition is intended to show that the WIPP will comply with the land

disposal restrictions by demonstrating that hazardous constituents will not migrate out of the WIPP disposal unit for as long as the wastes remain hazardous (a regulatory period of up to 10,000 years).

DATES: Public comments on the draft no-migration petition should be submitted on or before October 10, 1995.

ADDRESSES: Copies of the draft petition are available to the public at the following address: U.S. Environmental Protection Agency, RCRA Docket (5305) 401 M Street SW., Washington, DC 20460. Comments on the petition also should be sent to this address. One original and two copies should be submitted and should be identified by the regulatory docket reference number F–95–WIPA–FFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260–9327. Up to 100 pages of material from the docket may be copied at no cost. Additional copies are $0.15 per page.

Copies of the draft petition also are available to the public at RCRA dockets that EPA has opened in New Mexico. These dockets are in the same locations as the currently existing dockets for the EPA Office of Radiation and Indoor Air (ORIA). ORIA is responsible for regulating the radioactive portion of the WIPP waste through 40 CFR Part 191. Petition locations are: (1) EPA's docket in the Governmental Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (2) EPA's docket in the Fogelson Library of the College of Santa Fe in Santa Fe, New Mexico, at 1600 St. Michaels Drive (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); and (3) EPA's docket in the Municipal Library of Carlsbad, New Mexico, 101 South Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). Up to 100 pages of material from the docket may be copied at no cost. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information about the no-migration and RCRA permitting process, contact the RCRA/Superfund Hotline, U.S Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (800) 424–9346 (toll-free) or (703) 412–9810 in the Washington, DC metropolitan area. The TDD number for hearing-impaired callers is (800) 553–7672. For information on the specific aspects of the petition, and issues discussed in this notice, contact Reid Rosnick (703–308–8758) or Chris Rhyne (703–308–8658), Office of Solid Waste (5303W) U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 40 CFR 268.6, EPA granted a conditional no-migration variance to DOE on November 14, 1990 (55 *FR* 47709). This variance allowed DOE to place hazardous waste subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA) in the WIPP for the limited purposes of below-ground testing and experimentation over a ten year period. In 1993, DOE cancelled the proposed test period, after a determination that the tests and experiments could be done faster and more cheaply above ground. As a result, the 1990 determination was made moot, and DOE was informed that a new petition for a long-term demonstration would need to be submitted and approved before any waste could be accepted at the facility. The draft petition made available today is the first step in that approval process.

EPA is aware that this draft petition is not complete, in that all of the required information for a long-term demonstration is not contained in the document. This petition covers only the disposal phase of the project (the first twenty five years of operation of the facility), and does not address the long-term post-closure performance of the repository. DOE has noted that it intends to submit the portion of the petition that addresses the long-term migration potential in June, 1996. EPA has provided guidance to DOE on the requirements for submitting a complete petition through the Agency's guidance document entitled "No-Migration Variance to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners," and by encouraging pre-submission discussions with DOE. The Agency will also provide comments on DOE's submitted draft petition to provide early guidance to DOE. By today's **Federal Register** notice, the EPA encourages the public to provide comments that will inform its review of DOE's draft petition.

EPA also emphasizes that after the June, 1996 submission, EPA will review the full petition and determine, through a formal rulemaking, whether to issue the variance or deny the no-migration petition. Interested members of the public will have a full opportunity to comment on the petition and EPA's review as part of the rulemaking process.

Dated: July 26, 1995.

Elliott P. Laws,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 95–19490 Filed 8–7–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 1622
Name: Carlos Martinez and Company, Inc.
Address: 44 South Second St., Philadelphia, PA 19106
Date Revoked: July 15, 1995
Reason: Failed to furnish a valid surety bond.

License Number: 2361
Name: ISC Transport, Ltd.
Address: 71–08 51st Ave., Woodside, NY 11377
Date Revoked: July 22, 1995
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 95–19485 Filed 8–7–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Roger Berglund, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 22, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Roger Berglund*, Bowman, North Dakota; to acquire an additional 8.40 percent, for a total of 27.80 percent, and Susan Berglund, Bowman, North Dakota; to acquire an additional 9 percent, for a total of 30 percent, of the voting shares of Dakota Western Bankshares, Inc., Bowman, North Dakota, and thereby indirectly acquire Dakota Western Bank, Bowman, North Dakota.

2. *Hershell R. Page*, Plankinton, South Dakota; to acquire an additional 10.94 percent, for a total of 59.50 percent; Thomas R. Page, Plankinton, South Dakota; to acquire an additional 6.87 percent, for a total of 64.69 percent; both serving as cotrustees for the Ruth Ann Page Trust, Plankinton, South Dakota; which will acquire 28.82 percent of the voting shares of Page Holding Company, Plankinton, South Dakota, and thereby indirectly acquire Farmers & Merchants State Bank, Plankinton, South Dakota.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lenard C. Briscoe*, Kingfisher, Oklahoma; to acquire 100 percent of the voting shares of Dewey County Bancorporation, Inc., Taloga, Oklahoma, and thereby indirectly acquire Dewey County State Bank, Taloga, Oklahoma.

2. *Ward H. Reesman*, Falls City, Nebraska; to acquire an additional 30.18 percent, for a total of 54.18 percent, of the voting shares of Admire Bancshares, Inc., Emporia, Kansas, and thereby indirectly acquire Admire Bank and Trust, Emporia, Kansas. This transaction represents the acquisition of shares and a redemption.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Homer Lee Bryce*, Henderson, Texas; to acquire an additional .68 percent, for a total of 10.65 percent, of the voting shares of Fredonia Bancshares, Inc., Nacogdoches, Texas, and thereby indirectly acquire Fredonia State Bank, Nacogdoches, Texas.

Board of Governors of the Federal Reserve System, August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19493 Filed 8–7–95; 8:45 am]

BILLING CODE 6210–01–F

First Union Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire First Union Corporation of New Jersey, Newark, New Jersey, which will become a bank holding company by merging with First Fidelity Bancorporation, Newark, New Jersey, and Philadelphia, Pennsylvania, and thereby indirectly acquire First Fidelity Bank, N.A., Elkton, Maryland; First Fidelity Bank, Stamford, Connecticut; First Fidelity Bank, Delaware, Wilmington, Delaware; First Executive Bank, Philadelphia, Pennsylvania (24.4 percent of the voting shares).

In connection with this application, Applicant also has applied to acquire Broad & Lombardy Associates, Inc., Newark, New Jersey, and thereby engage in acting as insurance agent or broker for credit life and health insurance in conjunction with credit transactions; acting as an insurance agent or broker for the sale of credit-related property and casualty insurance protecting real and personal property which serves as collateral for a credit transaction and liability coverage as part of a package on home, automobile and business policies; and acting as an insurance agent or broker for insurance for affiliates, pursuant to § 225.25(b)(8)(i) and (iv) of the Board's Regulation Y.

In connection with this application, Applicant also has applied to acquire First Fidelity Community Development Corp., Newark, New Jersey, and thereby engage in community development activities, including: debt and equity investments in residential, commercial and industrial projects; the acquisition, ownership, renovation, development, leasing, managing or exchanging, selling or promoting of real and/or personal property; financial counseling to all sectors of the community, especially the small business sector; and coordination and arrangement of joint ventures or participations to provide financial assistance to low and moderate income areas of the States of New Jersey and Pennsylvania, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

In connection with this application, Applicant also has applied to acquire Fidelcor Life Insurance Company, Phoenix, Arizona, and thereby engage in reinsurance of credit life, disability and health insurance written by an outside insurance carrier in connection with loans extended by bank affiliates,

pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

In connection with this application, Applicant also has applied to acquire Waller House Corporation, Philadelphia, Pennsylvania, and thereby engage in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y. Comments on this application must be received not later than Septmber 1, 1995.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The Berens Corporation, Houston, Texas; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Berens Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire First National Bank of Dayton, Dayton, Texas.

In connection with this application, Berens Delaware, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Dayton, Dayton, Texas.

Also, in connection with this application, Applicant has applied to engage *de novo*, through its subsidiary, Berens Credit Corporation, Houston, Texas, and engage *de novo* in mortgage leasing, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y; commercial finance, pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y; and leasing, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19494 Filed 8–7–95; 8:45 am]

BILLING CODE 6210–01–F

NBD Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., Detroit, Michigan; to expand the geographic scope of its subsidiary, NBD Real Estate Services, Inc., Indianapolis, Indiana, and thereby engage in mortgage lending and servicing, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y; real property leasing, pursuant to § 225.25(b)(5) of the Board's Regulation Y; credit insurance, pursuant to § 225.25(b)(8) of the Board's Regulation Y; management consulting, pursuant to § 225.25(b)(11) of the Board's Regulation Y; and real estate appraising, pursuant to § 225.25(b)(13) of the Board's Regulation Y. NBD Real Estate Services, Inc. seeks to expand the current geographic scope from Indiana, Ohio and Kentucky, to nationwide.

Board of Governors of the Federal Reserve System, August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19495 Filed 8–7–95; 8:45 am]

BILLING CODE 6210–01–F

Norwood Associates II, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Norwood Associates II, Hackensack, New Jersey (Norwood II), to acquire all of the outstanding shares of Adwildon Corporation, Hackensack, New Jersey (Adwildon); and (2) Midland Bancorporation, Inc., Paramus, New Jersey (Midland), to merge Adwildon with and into Midland (Norwood II and Adwildon together, the "Applicants"). Midland is a bank holding company with respect to Midland Bank and Trust Company, Paramus, New Jersey (Bank). Norwood II and Adwildon are bank holding companies with respect to their ownership of 30.8 and 23.5 percent, respectively, of Midland.The applications are made in the context of a corporate reorganization in which Adwildon will be dissolved and its 23.5 percent interest in Midland will be acquired by Norwood II, thereby increasing Norwood II's interest in Midland to 54.3 percent.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Farmers Bancshares, Inc., Cheneyville, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Bank & Trust of Cheneyville, Cheneyville, Louisiana.

2. Hibernia Corporation, New Orleans, Louisiana; to merge with FNB Bancshares, Inc., Lake Providence, Louisiana, and thereby indirectly acquire The First National Bank of Lake Providence, Lake Providence, Louisiana.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Kensington Bancorp, Inc., Kensington, Minnesota; to become a bank holding company by acquiring 87.60 percent of the voting shares of First State Bank of Kensington, Kensington, Minnesota.

Board of Governors of the Federal Reserve System, August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19496 Filed 8–7–95; 8:45 am]

BILLING CODE 6210–01–F

Withee Bank Shares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Withee Bank Shares, Inc., Withee, Wisconsin; proposes to form a community development corporation, tentatively named The Hometown Development Corporation, Withee, Wisconsin; and thereby engage *de novo* in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; proposes to establish through its wholly-owned indirect subsidiary, Norwest Ventures, Inc., Des Moines, Iowa, a joint venture named subsidiary, Southeastern Residential Mortgage, Raleigh, North Carolina, and thereby engage *de novo* in residential mortgage lending business, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The joint venture partner is Howard Perry & Walston Realty, Inc., Raleigh, North Carolina.

Board of Governors of the Federal Reserve System, August 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19497 Filed 8–7–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071795 AND 072895

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
James P. McCready, Brenlin Corporation, McCready Brenlin-Holdco, Inc	95–2130	07/17/95
Trilon Financial Corporation, Harry T. Dozer, PBL Corporation	95–1933	07/18/95
Glenn R. Jones, Benchmark/Manassas Investors Corp., Benchmark/Manassas Cable Fund Limited Partnership	95–2014	07/18/95
Charterhouse Equity Partners II, L.P., Masada Cable Partners II, L.P., Masada Cable Partners II, L.P	95–2040	07/18/95
Sumner M. Redstone, David J. Harris, Broadcast Corporation of Georgia	95–2058	07/18/95
Marcus Cable Company, L.P., Cencom of Alabama, L.P., Cemcom of Alabama, L.P	95–2116	07/18/95
CenConn Health Corporation, B.M.H. Corporation, B.M.H. Corporation	95–2152	07/18/95
Peter J. Callahan, T/SF Communications Corporation, BMT Communications, Inc	95–1978	07/20/95
De La Rue plc, Brandt, Inc., Brandt, Inc	95–2067	07/20/95
Sybron International Corporation, BTR plc, a UK company, Nunc, Inc	95–2098	07/20/95
Castle Harlan Partners II, L.P., Euclid Services Corporation, Euclid Services Corporation	95–2105	07/20/95
Team Rental Group, Inc., The Mirkin Partnership, BRAC–OPCO, Inc	95–1803	07/21/95
Enserch Corporation, Jonathan Carroll, DGS Holdings Corp	95–2079	07/21/95
Wendy's International, Inc., Wendy's of Greater Pittsburgh, Inc., Wendy's of Greater Pittsburgh, Inc	95–2094	07/21/95
Wolseley plc, Inter-State Lumber Company 1989 Restated ESOP and Trust, Inter-State Lumber Company 1989 Restated ESOP and Trust	95–2118	07/21/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071795 AND 072895—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
CRH plc, Val Staker, Staker Paving and Construction Company, Inc	95-2120	07/21/95
Northwestern Healthcare Network, Midwest Community Health Service, Inc., Midwest Community Health Service, Inc	95-2123	07/21/95
US Province of the Congregation of Bon Secours of Paris, Gulf Area Medical Programs, inc., Venice Hospital, Inc	95-2127	07/21/95
Morgan Stanley Capital Partners III, L.P., Enron Corp., Transwestern Gathering Company	95-2136	07/21/95
American International Group, Inc., Burlington Resources Inc., Meridian Oil Production Inc. and Southland Royalty Co	95-2137	07/21/95
Bergen Brunswig Corporation, Colonial Healthcare Supply Co., Colonial Healthcare Supply Co	95-2139	07/21/95
Allergan, Inc., Equilease Holding Corp., Herald Pharmacal, Inc	95-2142	07/21/95
Community Health Systems, Inc., David M. Wilds, Kentucky River Company	95-2143	07/21/95
Community Health System, Samuel W. Owen, Kentucky River Company	95-2144	07/21/95
Phoenix Home Life Mutual Insurance Company, First Spring Financial Associates, Kalvin-Miller Holdings Ltd	95-2145	07/21/95
Mitsubishi Chemical Corporation, Kamilche Company, Pacific Western Extruded Plastics Company	95-2146	07/21/95
Apollo Real Estate Investment Fund, L.P., Insignia Financial Group, Inc., Insignia Financial Group, Inc	95-2150	07/21/95
The Goldman Sachs Group, L.P., ITT Corporation, ITT Federal Savings Bank, FSB	95-2151	07/21/95
Valmont Industries, Inc., Microflect Company, Inc., Microflect Company, Inc	95-2154	07/21/95
Dort A. Cameron, III, Random Access, Inc., Random Access, Inc	95-2155	07/21/95
Alan B. Miller, Baptist Hospitals and Health Systems, Inc., Manatee Hospitals and Health Systems, Inc	95-2156	07/21/95
Kemper Corporation, Starmanager Investment, L.P., Dreman Value Management, L.P	95-2159	07/21/95
SunAmerica Inc., The Mutual Life Insurance Company of New York, Hilton Pavilion Hotel—Mesa, Arizona	95-2165	07/21/95
Deposit Guaranty Corp., Del K. Bowden, First Mortgage Corp	95-2166	07/21/95
Finanziaria De Agostini s.r.l., K-III Communications Corporation, Newfield Publications, Inc	95-2179	07/21/95
Deposit Guaranty Corp., Larry J. Richling, First Mortgage Corp	95-2198	07/21/95
Kelso Investment Associates V, L.P., Harris Specialty Chemicals, Inc., Harris Specialty Chemicals, Inc	95-2081	07/25/95
Zapata Corporation, Envirodyne Industries, Inc., Envirodyne Industries, Inc	95-2135	07/25/95
Saratoga Partners III, L.P., Thomas E. Wood, Inc., Thomas E. Wood, Inc	95-2157	07/25/95
Ben Weider, c/o Weider Health and Fitness, Bernard Sherman, National Institute of Nutrition, Inc	95-2163	07/25/95
The Chase Manhattan Corporation, J.P. Morgan & Co., Incorporated, Morgan Guaranty Trust Company of New York	95-2172	07/25/95
George P. Mitchell, Mobil Corporation, Mobil Producing Texas & New Mexico, Inc	95-2176	07/25/95
Western Gas Resources, Inc., Enron Corp., Transwestern Gathering Company	95-2185	07/25/95
First Chicago Corporation, Seagull Energy Corporation, Seagull Energy E&P Inc	95-2188	07/25/95
Casino America, Inc., Edward J. DeBartolo, Jr., Louisiana Riverboat Gaming Partnership	95-2195	07/25/95
Casino America, Inc., Casino America, Inc., Louisiana Riverboat Gaming Partnership	95-2196	07/25/95
Triarc Companies, Inc., Joseph Umbach, Joseph Victori Wines, Inc	95-2107	07/26/95
Welsh, Carson, Anderson & Stowe VI, L.P., EJV Partners, L.P., EJV Partners, L.P	95-2173	07/26/95
NEXTEL Communications, Inc., Tele-Communications, Inc., American Mobile Systems Incorporated	93-1828	07/27/95
NEXTEL Communications, Inc., PowerFone Holdings, Inc., PowerFone Holdings, Inc	94-0496	07/27/95
Newco c/o CenCall Communications Corp., NEXTEL, Inc., NEXTEL, Inc	94-0574	07/27/95
NEXTEL Communications, Inc., Newco c/o CenCall Communications Corp., Newco c/o CenCall Communications Corp	94-0575	07/27/95
CenCall Communications Corp., Motorola, Inc., Motorola, Inc	94-0623	07/27/95
Motorola, Inc., CenCall Communications Corp., CenCall Communications Corp	94-0624	07/27/95
Nextel Communications, Inc., Motorola, Inc., Motorola, Inc	94-0714	07/27/95
Motorola, Inc., Nextel Communications, Inc., Nextel Communications, Inc	94-0715	07/27/95
Dean Foods Company, John Hancock Capital Growth Fund III, Limited Partners, Norcal Crosetti Foods, Inc	95-2042	07/27/95
The Coca-Cola Company, Barq's, Inc., Barq's, Inc	95-0866	07/28/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95-19547 Filed 8-7-95; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F-0244]

Union Carbide, Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Union Carbide, Corp. has filed a petition proposing that the food additive regulations be amended to redefine the limitations for *n*-butoxypolyoxy-ethylenepolyoxypro- pylene glycol intended for use as a defoaming agent in sugar beet processing by viscosity.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3083.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5A4473) has been filed by Union Carbide, Corp., P.O. Box 670, Bound Brook, NJ 08805. The petition proposes to amend the food additive regulations in § 173.340 *Defoaming agents* (21 CFR 173.340) to redefine limitations for *n*-butoxypolyoxyethylenepolyoxypropylene glycol intended for use as a defoaming agent in sugar beet processing by viscosity.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: July 24, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95-19540 Filed 8-7-95; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-050-95-1230-00; SRP NV050-95-001]

Temporary Closure of Public Lands; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of certain public lands and/or roads during the 1995 ACERBIS Nevada Rally.

SUMMARY: Certain public lands within the State of Nevada will be temporarily closed during the 1995 ACERBIS Nevada Rally for the protection of participants, resources, and the public. Certain roads will be closed to public access during August 13 to August 20, 1995.

EFFECTIVE DATES: August 12 to 20, 1995.

SUPPLEMENTARY INFORMATION: Certain public lands, roads, and trails utilized for the 1995 ACERBIS Nevada Rally in Clark, Lincoln, Esmeralda, Nye, Mineral, Churchill, Pershing, Lander, Humboldt, Eureka, Elko, and White Pine Counties of Nevada, will be temporarily closed, during the Rally, to public access for up to 12 hours, from 6 a.m. until 6 p.m. to protect persons, property, and public lands resources. The public lands to be closed are those lands within 50 feet of the centerline of roads and trails of the proposed course. Maps of the rally are available for inspection at the Bureau of Land Management Offices in Las Vegas, Elko, Ely, Tonopah, Winnemucca, Battle Mountain, and Carson City in Nevada. Specific roads used for the rally will only be closed the date of that stage of the Rally.

This closure does not apply to Federal or State highways but does apply to County maintained roads on public lands.

The authority for this action is 43 CFR 8364.1. Persons who violate or fail to comply with this closure order are subject to penalties provided in 43 CFR 8360.7.

Dated: August 2, 1995.

Gary Ryan,

Acting District Manager, Las Vegas.

[FR Doc. 95-19555 Filed 8-7-95; 8:45 am]

BILLING CODE 1236-HC-M

[NV-930-5700-10; N-60068]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following land in Elko County, Nevada is being considered for disposal by direct sale, including the mineral estate with no known value, under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 47 N., R. 64 E.,
Sec. 12, NE¼NE¼SW¼, NW¼NE¼SW¼, NE¼NW¼SW¼.

Comprising of 30 acres, more or less.

The above described land is being offered as a direct sale to Elko County. Final determination on disposal will be made after completion of an environmental analysis. Another Notice of Realty Action will be issued at that time.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Wells Resource Area, 3900 E. Idaho Street, Elko, Nevada.

Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a Notice of Termination of Segregation, or 270 days from date of this publication, which ever occurs first.

Interested parties may submit comments to the Elko District Office, Bureau of Land Management, P.O. Box 831, Elko, NV 89803. Comments shall be submitted by September 22, 1995.

Dated: July 28, 1995.

Nancy Phelps,

Acting District Manager.

[FR Doc. 95-19440 Filed 8-7-95; 8:45 am]

BILLING CODE 4310-HC-P

[CO-930-1920-00-4357; COC-59514]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy proposes to withdraw approximately 322 acres of public lands for 5 years to protect lands needed for the construction process for the Maybelle Disposal Site. This order closes these lands to operation of the public land laws and to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing subject to approval by Secretary of Energy, the Secretary of the Interior, and the Atomic Energy Commission.

DATES: Comments on this proposed withdrawal or requests for public meetings must be received on or before November 6, 1995.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303-239-3706.

SUPPLEMENTARY INFORMATION: On August 31, 1995, the Department of Energy filed an application to withdraw the following described public lands from operation of the public land laws, including location and entry under the United States mining laws (30 U.S.C. Ch 2) to protect construction operations for the Maybelle Disposal Site:

Sixth Principal Meridian

T. 7 N., R. 94 W.,
Sec. 18, lot 8 and SE¼SW¼;
Sec. 19, lots 9, 11, 13, and 15, E½NE¼¼, E½E½NE¼SW¼NE¼, E½SE¼SW¼NE¼, E½NE¼NW¼SE¼, E½W½NE¼NW¼SE¼, and SE¼NW¼SE¼;
Sec. 30, a corridor 1,000 feet wide along Johnson Wash in the E½NE¼ and the SE¼.

The areas described aggregate approximately 322 acres of public lands in Moffat County.

The purpose of this withdrawal is to protect the construction process for the

Maybelle Uranium Mill Tailings construction site. For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated from operation of the public land laws, including the mining laws, as specified above, unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management, in conjunction with the Department of Energy, will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 95–19445 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Notice of Availability of the Final Sharon Steel Damage Settlement: A Conceptual Restoration Plan and Request for Project Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for project proposals.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the Final Conceptual Restoration Plan for restoration of migratory bird resources injured by the release of hazardous materials from the Sharon Steel and Midvale Slag Superfund sites, along the Jordan River in Salt Lake County, Utah. The Conceptual Restoration Plan outlines a process for preparing, identifying and selecting cooperative riparian habitat restoration projects and includes application requirements. Project proposals are due by November 1, 1995.

DATES: Cooperative project proposals will be accepted until November 1, 1995.

ADDRESSES: Requests for copies of the Final Conceptual Restoration Plan and submission of project proposals or materials may be made to: U.S. Fish and Wildlife Service, Salt Lake City Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Assistant Field Supervisor, or Brandt Gutermuth, environmental contaminants program, Salt Lake City Field Office (see **ADDRESSES** section) telephone 801–524–5001 ext. 139.

SUPPLEMENTARY INFORMATION: In 1991, the Department of the Interior and the Fish and Wildlife Service received a $2.3 million damage settlement in compensation for injuries to migratory birds and endangered species along the Jordan River, Utah, caused by the release of hazardous substances from the Sharon Steel and Midvale Slag Superfund sites. Under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) guidelines, the Service must use this money to restore, replace, or acquire the equivalent of the trust resources injured on site and/or by contaminants released from the site.

The Final Conceptual Restoration Plan was developed in cooperation and coordination with the State of Utah under authority of a 1991 Memorandum of Understanding and was developed in accordance with Natural Resource Damage Assessment regulations promulgated by the Department and codified at 43 CFR part 11.

Announcement of the Draft Conceptual Restoration Plan was published in the **Federal Register** on January 24, 1995, and a public review period extended from that date to March 31, 1995. The Final Conceptual Restoration Plan has been revised to reflect comments received during this review period.

The Conceptual Restoration Plan for the Sharon Steel and Midvale Slag Superfund sites in Salt Lake County proposes natural resource restoration through Service partnerships with Federal, State, and local governments, as well as the environmental community. The Plan provides background on injuries to trust resources in the Jordan River system, identifies priority restoration activities, and presents a process for preparing, identifying, and selecting specific cooperative restoration projects. Once specific projects have been selected, a draft Restoration Plan will be prepared and made available for public review and comment. Project implementation will begin after this Restoration Plan is finalized and National Environmental Policy Act (NEPA) requirements are met.

Interested members of the public and potential project applicants are invited to review the Final Conceptual Restoration Plan and to submit proposals. In Utah, copies are available at the Service's Ecological Services Office in Salt Lake City (see **ADDRESSES** section), the Utah Department of Environmental Quality, Division of Environmental Response and Remediation (168 North 1950 West, Salt Lake City, 84116), and the Salt Lake City Library.

Dated: August 1, 1995.

Terry T. Terrell,

Acting Regional Director, Region 6, Denver, Colorado.

[FR Doc. 95–19444 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Final Environmental Impact Statement for Elwha River Ecosystem Restoration, Olympic National Park, WA

ACTION: Notice of availability on the final environmental impact statement.

SUMMARY: This notice announces the availability of a final environmental impact statement (FEIS) for the restoration of the Elwha River Ecosystem in Olympic National Park, Washington.

LOCATIONS: Public reading copies of the FEIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: 202–208–6843.

Olympic National Park, National Park Service, 600 E. Park Avenue, Port Angeles, WA 98362, Telephone: 206–452–4501.

North Olympic Library System, Port Angeles Branch, 207 S. Lincoln Street, Port Angeles, WA, Telephone: 206–452–9253.

Government Documents, Seattle Public Library, 1000 4th Avenue, Seattle, WA 98104–1193, Telephone: 206–386–4686.

Government Publications, Suzzallo Library, University of Washington, Seattle, WA 98195, Telephone: 206–543–1937.

Pacific West Field Office, Columbia/Cascades Systems Support Office, 909 First Avenue, Seattle, WA 98104–1060, Telephone: 206–220–4070.

FOR FURTHER INFORMATION CONTACT: Brian Winter, Elwha River Restoration Coordinator, Olympic National Park, 600 E. Park Avenue, Port Angeles, WA 98362, Telephone: 206–452–0302. A limited number of copies of the FEIS are available on request. All who submitted substantive comments on the Draft EIS will receive a copy of the FEIS.

SUPPLEMENTARY INFORMATION: The National Park Service has prepared a Final Environmental Impact Statement, Elwha River Ecosystem Restoration, Olympic National Park, Washington. The FEIS presents the proposed action and alternatives for restoration of the Elwha River Ecosystem and its native anadromous fish runs. The proposed action calls for the removal of the Elwha and Glines Canyon Dams to accomplish the Secretary of the Interior's objectives, as directed by Public Law 102–495, the Elwha River Ecosystem and Fisheries Restoration Act of 1992, to restore the river's ecosystem and its native anadromous fish runs.

The draft environmental impact statement (DEIS) for this action was released for public review in October 1994 **Federal Register** Vol. 59, No. 213), and the public comment period closed on December 23, 1994. Both the DEIS and FEIS analyze the proposed action and four alternatives for restoring the Elwha River ecosystem. The four alternatives include no action—continuing to operate the dams without anadromous fish mitigation; dam retention—operating the dams with addition of mitigation; remove only Elwha Dam; and remove only Glines Canyon Dam.

The FEIS contains all letters received during the public comment period and responses to substantive comments are contained in a question and answer format. A summary of comments received during public workshops on the DEIS is also contained in the FEIS.

The no action period on the FEIS will expire 30 days after the Notice of Availability of this FEIS. This programmatic FEIS is connected to a second, implementation EIS currently being prepared which will analyze site-specific alternatives for removal of the dams and the management of sediment.

The DEIS and FEIS have been completed by the National Park Service in cooperation with the U.S. Fish and Wildlife Service, Bureau of Reclamation, Bureau of Indian Affairs, and the Lower Elwha S'Klallam Tribe.

Dated: July 26, 1955.

Kenneth Naser,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 95–19451 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Realty Action; Proposed Exchange of Federal Property for Private Property, Chattahoochee River National Recreation Area

FOR FURTHER INFORMATION CONTACT: Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Dunwoody, Georgia 30350.

SUPPLEMENTARY INFORMATION: Public comments will be accepted for a period of 45 days from the date of this notice.

I. The following described Federally-owned lands which were acquired by the National Park Service have been determined to be suitable for disposal by exchange. The authority of this exchange is the Act of August 15, 1978 (16 U.S.C. 460ii, et. seq.) which established Chattahoochee River National Recreation Area (CRNRA).

The selected Federal lands lie within the boundaries of the Gold Branch unit of the CRNRA and are generally described as follows:

A parcel of land containing 26.65 acres of land located on Lower Roswell Road and Surrey Trail, Cobb County, Georgia.

The lands have been surveyed for cultural resources and endangered and threatened species. An Environmental Assessment has been prepared that indicates this property be exchanged as the preferred alternative.

Both the surface and the mineral estates are to be exchanged. There are no leases or permits affecting these lands.

II. In exchange for the lands identified in Paragraph I the United States of America will acquire two parcels lying within the boundary of CRNRA. Acquisition of these lands will consolidate three non-contiguous tracts in the Gold Branch Unit and will facilitate access to the Chattahoochee River and property already owned by the United States in the Holcomb Bridge Unit. Both the surface and mineral estates are to be exchanges and these lands will be administered by the National Park Service as a part of the CRNRA upon completion of the exchange. The lands are being acquired in fee simple subject only to rights-of-way and easements of records.

The lands to be acquired by the United States of America are generally described as follows: A parcel containing 4.45 acres located on Lower Roswell Road, Cobb County, Georgia identified as Tract 105–11 and a parcel containing 2.63 acres located on Holcomb Bridge Road, Gwinnett County, Georgia identified as Trace 108–16.

The value of the properties to be exchanged shall be determined by a current fair market value appraisal and if they are not approximately equal, the values shall be equalized by payment of cash and/or donation as circumstances require.

Detailed information concerning this exchange including precise legal description, Land Protection Plan, environmental assessment, and cultural reports are available at the address identified above.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: July 20, 1995.

Frank Catroppa,

Field Director, Southeast Area.

[FR Doc. 95–19452 Filed 8–7–95; 8:45 am]

BILLING CODE 4310–10–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32036 (Sub-No. 2)]

Wisconsin Central Transportation Corporation, et al.—Continuance in Control—Fox Valley and Western Ltd.

By decision served February 11, 1993, we presented an oversight plan which allowed us to monitor effectively the competitive results of Wisconsin Central Transportation Corporation's (WCTC) continuance in control of Fox Valley and Western Ltd. (FV&W).[1] As detailed in the decision, the oversight covers 5 years and contains five elements: notification of shippers, reporting by applicants, discussion with selected parties, a proceeding, and a staff report. We have been actively monitoring the transaction since its consummation on August 28, 1993.

This notice initiates one element of the oversight function—the proceeding. In our February 1993 decision, we stated that a proceeding would be conducted annually during which applicants, shippers, and other interested parties may express their views on the competitive impacts of the transaction and on appropriate conditions to remedy any substantial

[1] This transaction was approved by decision served December 10, 1992, which was corrected by a decision served December 22, 1992. *See Wisc. Central Transportation Corporation, et al.*, 9 I.C.C.2d 233 (1992).

anticompetitive effects. This proceeding is a fact-finding mechanism and will not necessarily result in a formal ruling.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Applicants, shippers, and other interested parties may file written comments with the Commission regarding the competitive impacts of WCTC's continuance in control of FV&W. Participants are asked to address: (1) whether substantial competitive harm has resulted from the transaction; and (2) if so, whether appropriate and workable conditions can be formulated.

2. Comments will be accepted no later than September 7, 1995. An original and 10 copies of the comments, referencing Finance Docket No. 32036 (Sub-No. 2), must be mailed to: Office of the Secretary, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Comments need not be served on other persons.[2]

3. This decision is being simultaneously published in the **Federal Register**.

4. This decision is being served on all persons appearing on the service list in Finance Docket No. 32036.

5. This decision is effective on August 8, 1995.

Decided: July 28, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19513 Filed 8–7–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–414 (Sub-No. 1X)]

Iowa Interstate Railroad, Ltd.—Abandonment Exemption—in Cass and Audubon Counties, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by the Iowa Interstate Railroad, Ltd., of the line of railroad between milepost 445 near Atlantic, IA, and milepost 465.20 near Audubon, IA, subject to standard employee protective, interim trail use, public use and environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 7, 1995. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 18, 1995, petitions for stay must be filed by August 23, 1995, and petitions to reopen must be filed by September 5, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–414 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioner's representative: T. Scott Bannister, 1300 Des Moines Building, 6th and Locust, Des Moines, IA 50309.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: July 28, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19515 Filed 8–7–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–57 (Sub-No. 39X)]

Soo Line Railroad Company—Abandonment Exemption—in St. Louis County, MN

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a .5-mile portion of its line of railroad, known as the Rice's Point Trackage, from milepost 288.17+/− to milepost 288.70+/−, at Duluth, in St. Louis County, MN.

Soo has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic previously routed over this line has been rerouted to alternative lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 7, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by August 18, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 28, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Larry D. Starns, Office of the U.S. Regional Counsel, 1000 Soo Line Building, 105 South 5th Street, Minneapolis, MN 55402.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Soo filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 11, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 28, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19516 Filed 8–7–95; 8:45 am]

BILLING CODE 7035–01–P

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[2] For further information contact Thomas McNamara of the Commission's Office of Economic and Environmental Analysis at (202) 927–6201. TDD for the hearing impaired is (202) 927–5721.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

LEGAL SERVICES CORPORATION

Grant Award for the Analysis & Study of Legal Needs of Low Income Native Americans

AGENCY: Legal Services Corporation.

ACTION: Announcement of intent to award grant.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award a one-time, nonrecurring grant to Michigan Indian Legal Services for the purpose of conducting an analysis of the population, characteristics and legal needs of low income Native Americans. The Corporation plans to award a grant in the amount of $47,730.

This grant is being made pursuant to authority conferred by section 1006(a)(1)(B) and 1006(a)(3) of the LSC Act of 1974, as amended.

This public notice is issued pursuant to section 1007(f) of the LSC Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. This grant award will not become effective, and grant funds will not be distributed prior to the expiration of this 30-day public comment period.

DATES: All comments and recommendations must be received by 5 p.m. on or before September 7, 1995.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street N.E., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Merceria L. Ludgood, Director, Office of Program Services, (202) 336–8800.

Date issued: August 2, 1995.

Merceria L. Ludgood,

Director, Office of Program Services.

[FR Doc. 95–19423 Filed 8–7–95; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–070)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Alan Neuman Productions, Inc. of 8170 Laurel View Drive, Los Angeles, California 90069, has applied for an exclusive license to practice the invention described and claimed in: U.S. Patent Application 08/247,187 entitled "Method and Apparatus for Collection, Storage, and Analysis of Blood and Other Bodily Fluids," which was filed on May 19, 1994, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Alan Neuman Productions, Inc. should be sent to Mr. Hardie R. Barr, NASA Johnson Space Center.

DATES: Responses to this Notice must be received by October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, NASA Johnson Space Center, Mail Code HA, Houston, Texas 77058–3696; (713) 483–1003.

Dated: July 3, 1995.

Edward A. Frankie,

General Counsel.

[FR Doc. 95–19551 Filed 8–7–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Media Arts Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers/Services to the Field Section) to the National Council on the Arts will be held on August 22–24, 1995. The panel will meet from 9 a.m. to 6:30 p.m. on August 22, 23 and from 9 a.m. to 5:30 p.m. on August 24. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m. to 5:30 p.m. on August 24 for a policy discussion.

The remaining portions of this meeting from 9 a.m. to 6:30 p.m. on August 22–23 and from 9 a.m. to 4 p.m. on August 24 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1995, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5788.

Dated: August 3, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–19517 Filed 8–7–95; 8:45 am]

BILLING CODE 7537–01–M

Presenting Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting Advisory Panel (Overview

Section) to the National Council on the Arts will be held on August 28–29, 1995 from 9 a.m. to 5 p.m. This meeting will be held in Room 730, at the Navy Hanks Center, 1100 Pennsylvania Avenue NW. Washington, DC 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY/TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 3, 1995.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 95–19518 Filed 8–7–95; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–160]

Georgia Institute of Technology (Georgia Tech) Georgia Tech Research Reactor; Issuance of Partial Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC) has issued a Partial Director's Decision Under 10 CFR 2.206 regarding the Georgia Tech Research Reactor in response to a Petition received from Ms. Pamela Blockey-O'Brien (Petitioner), dated October 23, 1994. The Partial Director's Decision also considered subsequent letters from the Petitioner dated November 12, and December 4, 1994, February 21, February 23, March 6, March 28, April 19, May 18, June 27, and July 18, 1995.

On October 23, 1994, the Petitioner requested (1) the shutdown and decontamination of the Georgia Institute of Technology (Georgia Tech) Research Reactor, (2) the revocation of liquid radioactive material release authority to all licensees, (3) the revocation of licenses that use the principle of as low as reasonably achievable, (4) the termination of transportation of radioactive material by mail, and (5) the modification to posting requirements for radioactive material. With regard to request (1), the enclosed Partial Director's Decision addressed the Petitioner's issues which are not currently being considered as part of a license renewal proceeding. The remaining Petitioner's issues relating to request (1) will be addressed under separate cover upon completion of the ongoing adjudicatory proceedings and NRC staff review. The Partial Director's Decision also addresses requests (2) through (5). The Director of the Office of Nuclear Reactor Regulation found that the Petitioner's concerns, addressed to date, do not raise a substantial health and safety concern warranting the requested actions. The reasons for this denial are explained in the "Partial Director's Decision Under 10 CFR 2.206" (DD–95–15), the complete text of which follows this notice, and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

A copy of this Partial Director's Decision will be filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c). As provided in that regulation, the Decision will constitute the final action of the Commission 25 days after the date of the issuance of the Decision, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 31st day of July 1995.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

Appendix

Partial Director's Decision Under 10 CFR 2.206

I. Introduction

On October 23, 1994, Ms. Pamela Blockey-O'Brien (the Petitioner) filed a Petition with the U.S. Nuclear Regulatory Commission (NRC) staff pursuant to 10 CFR 2.206, that requested that the NRC staff revoke the license of the Georgia Institute of Technology (Georgia Tech) Research Reactor, shut down this research reactor and its support facilities, and remove all radioactive material and contamination offsite to a government created "National Sacrifice [A]rea" such as the Savannah River or Oak Ridge facilities. In addition, the Petitioner requested that the NRC staff withdraw all license authority nationwide involving the discharging or dumping of any quantity of radioactive material to all the sewers or waters in the United States or oceans of the world, and withdraw all licenses to all nuclear facilities, including nuclear power plants (NPPs), which operate under as low as reasonably achievable (ALARA) principles. Finally, the Petitioner requested both that the NRC staff modify every license issued to transporters of radioactive materials and builders of NPPs so that these parties must put two foot high letters on everything transported or built stating "DANGER–RADIOACTIVE" and in smaller letters "there is no safe level of radiation, any exposure can [a]ffect health," and prohibit the transportation of radioactive material by mail. The NRC staff received additional letters dated November 12, December 4, 1994, February 21, February 23, March 6, March 28, April 19, May 18, June 27, and July 18, 1995, from the Petitioner and also considered these letters in this Partial Director's Decision. All letters related to this Petition have been placed in the Public Document Room and docketed under the Georgia Tech Research Reactor Docket No. 50–160, in accordance with NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions."

As bases for the request to shut down and decontaminate the Georgia Tech Research Reactor, the Petitioner asserted that (1) a water flume comes out of the ground "destabilizing the reactor and the ground in some way;" (2) "(r)adiation levels in soil and vegetation climb markedly in GA EPD documents" around the Georgia Tech Research Reactor; (3) there is no record of air monitoring ever having been done; (4) heavy rainfall causes water to back up in the sewer and drainage lines causing flooding of the reactor parking lot and campus, as well as causing sinkholes, "puff-ups" on campus ground, and welded-shut manhole covers to be blown off; (5) radioactive contaminants have been routinely discharged into the sanitary sewer from the Georgia Tech Research Reactor's waste water holding tank and contamination spread by backup of the sewage system; (6) should the Georgia Tech Research Reactor be further destabilized, the reactor and the tank holding cobalt-60 could "break apart," causing radioactive contaminants to "drain into groundwater/down sewers/into the runoff ditch;" (7) the Georgia Tech Research Reactor is in an earthquake zone; (8) there is absolutely no reason to keep the Georgia Tech Research Reactor operating; (9) security at the Georgia Tech Research Reactor is extremely lax; and (10) in case of an accident or terrorist attack, evacuation of the campus and downtown Atlanta would be impossible both now and during the Olympics.[1]

As the bases for the request to withdraw all license authority nationwide involving the discharging or dumping of any quantity of radioactive material to all the sewers or waters in the United States, to withdraw all licenses for all nuclear facilities, including NPPs, which operate under ALARA principles, and to change labeling requirements for radioactive material, the Petitioner asserted that there is no safe level of radiation, that storage and disposal of radioactive waste is inadequate, and that the NRC's new sewage dumping guidelines are totally inadequate. The Petitioner also asserted that the request to restrict mailing of radioactive materials relates to the occurrence of transportation accidents.

II. Discussion

A. Revocation of Georgia Tech Research Reactor License

The following discussion relates to the request that the NRC staff revoke the license of the Georgia Tech Research Reactor, shut down this research reactor and its support facilities, and remove all radioactive materials and contamination offsite. This Partial Director's Decision addresses NRC licensed activities.[2]

(1) A water flume comes out of the ground "destabilizing the reactor and the ground in some way." The Petitioner stated that "(d)etailed maps show that a water flume comes out of the ground directly next to and west of the reactor." On request, the Petitioner identified the "detailed maps" as City of Atlanta, Department of Public Works (DPW) Sheets I–11 and H–11, which show "flumes" or "storm drain inventory."

The NRC staff reviewed these drawings. Drawing I–11 did not show a flume indication. Drawing H–11 does indicate a "flume" to the west of the Georgia Tech Research Reactor. The NRC staff discussed this drawing and indication of a "flume" with DPW, the agency responsible for the sewer system and the drawings. The DPW indicated that the word "flume" in the drawing means a surface drainage path. Physical onsite examination of this location showed a surface drainage path consisting of a concrete lined channel extending along the back retaining wall of the Georgia Tech Research Reactor facility site, approximately where the "flume" was indicated on the drawing.

Furthermore, physical examination of the Georgia Tech Research Reactor facility and site have found no evidence of an underground water flume or destabilization of the Georgia Tech Research Reactor facility or ground. Additional factors related to stability of the Georgia Tech Research Reactor are addressed under issues (4), (6), and (7).

The NRC staff finds no reason to conclude that there is an underground water flume destabilizing the Georgia Tech Research Reactor and surrounding ground. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that the Petitioner's concerns do not present a substantial health or safety issue warranting the action requested by the Petitioner.

(2) "Radiation levels in soil and vegetation climb markedly in GA EPD documents" around the reactor. The State of Georgia (GA) Environmental Protection Division (EPD) provided the NRC staff with its environmental radiation monitoring results as compiled on November 23, 1994. These results included data from environmental monitoring for radioactivity with thermoluminescent dosimeters (TLDs), and from soil and vegetation sampling around the Georgia Tech Research Reactor.

The NRC staff discussed the results with EPD. EPD stated that its monitoring found no evidence of release of radioactive material from the Georgia Tech Research Reactor. EPD further indicated that the values and variations in monitored radiation exposures and concentrations were typical of environmental monitoring results and showed no increasing trend.

The NRC staff has concluded based on the types, quantities and relative concentrations of the isotopes measured by EPD that they are not from the Georgia Tech Research Reactor. Some of the isotopes measured by EPD are naturally occurring. Specifically, beryllium-7 is from reactions of cosmic rays with air, potassium-40 is from primordial sources, radium-226 is from the decay of naturally occurring uranium-238, and radium-228 is from decay of naturally occurring thorium-232.[3] Additionally, radiation monitoring of effluents from the Georgia Tech Research Reactor and of areas within the research reactor containment by Georgia Tech, as required by the Technical Specifications 3.2.a and 3.5.b, provided further evidence that the measurements by EPD of other isotopes (i.e., cesium-137, cerium-141, cerium-144, ruthenium-103, zirconium-95, and niobium-95) were not from the Georgia Tech Research Reactor. Rather, EPD indicated that the radioisotopes were from other sources, such as fallout from nuclear weapons testing around the world. Furthermore, as measured by EPD, there is no indication of other radioisotopes, which would be expected if the radioactivity were from the Georgia Tech Research Reactor.

The conclusion, that there is no evidence that the release of radioactive material from the Georgia Tech Research Reactor has contributed to the monitored radiation levels in the soil and vegetation, is also corroborated by the Georgia Tech environmental monitoring program. This environmental monitoring program has used film badges, and currently uses TLDs, at various locations around the Georgia Tech Research Reactor. The film badges were provided by a National Voluntary Laboratory Accreditation Program certified vendor. The TLDs meet American National Standards Institute Standards. One monitored location in the Georgia Tech Research Reactor stack measured the direct radiation for airborne releases from operation of the Georgia Tech Research Reactor. This monitor has indicated airborne effluent releases generally below detectable levels and always well below the limits of 10 CFR part 20, "Standards for Protection Against Radiation," as verified most recently in NRC staff Inspection Report Nos. 50–160/95–01, 50–160/94–02, and 50–160/93–02[4]. These results are consistent with the EPD data and further confirmed the conclusions of the State of Georgia EPD that its monitoring

[1] Issue (8) includes concerns that substantial management deficiencies persist. Issue (9) involves concerns on general security and, particularly, security during the period of the 1996 Olympics. Issue (10) includes concerns on evacuation in case of a terrorist attack. Since these concerns are the subject of an ongoing license renewal proceeding before an Atomic Safety and Licensing Board, these concerns will be addressed in a Final Director's Decision at an appropriate time after considering the decisions reached in the license renewal process. All other issues related to this 2.206 Petition were considered in this Partial Director's Decision.

[2] The 10 CFR 2.206 Petition included some mention of the cobalt-60 irradiation facility which is not licensed by the NRC and is, therefore, not covered in this discussion except as it may affect research reactor safety. The 2.206 Petition and this Partial Director's Decision have been transmitted to the State of Georgia, the licensing authority for the cobalt-60 facility and for other state licensed material also mentioned in the Petition.

[3] Kathren, R. L., "Radioactivity in the Environment: Sources, Distribution, and Surveillance."

[4] These, and the other inspection reports referenced in this Partial Director's Decision are available from the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037.

found no evidence of release of radioactive material from the Georgia Tech Research Reactor which has contributed to the monitored radiation levels in soil and vegetation.

The NRC staff evaluation of the data confirmed the EPD conclusion that the EPD data showed no increasing trend in radiation levels around the Georgia Tech Research Reactor. The values and variations of all monitored locations around the Georgia Tech Research Reactor were typical of environmental monitoring results at other locations, were attributable to non-reactor sources, and showed no record of an increasing trend. Further corroboration of this conclusion was provided in the discussion addressing issues (3) and (5) in this Partial Director's Decision in that releases of radioactive isotopes from the Georgia Tech Research Reactor are well within NRC regulatory limits and do not correspond to the radioisotopes found in the soil or vegetation samples.

The NRC staff finds no reason to conclude that the Georgia Tech Research Reactor is contributing to radiation levels in soil or vegetation. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that the Petitioner's concern does not present a substantial health or safety issue warranting the action requested by the Petitioner.

(3) There is no record of air monitoring ever having been done. The Petitioner asserted that monitoring for airborne radioactive releases from the Georgia Tech Research Reactor is inadequate. However, in addition to the environmental monitoring programs previously discussed, the Georgia Tech Research Reactor is required by its Technical Specifications 3.2.a and 3.5.b to monitor and restrict radioactive releases, including airborne releases. The monitoring system includes instruments to monitor gaseous and particulate radioactivity and to initiate safety related functions (e.g., containment isolation). All radioactive releases are required to be within the limits established in 10 CFR Part 20. NRC staff inspections, as documented most recently in Inspection Report Nos. 50–160/95–01, 50–160/94–02, and 50–160/93–02 related to the Georgia Tech Research Reactor, have found that the effluent releases have been within 10 CFR Part 20 limits. Therefore, there is neither a technical need nor a regulatory requirement for additional monitoring of air samples outside the Georgia Tech Research Reactor, since all releases are controlled, as required by Technical Specifications and in accordance with NRC regulations.

The Petitioner also raised a concern related to the storage of waste at the Georgia Tech Research Reactor. The concern is that there is a large amount of waste material stored at the facility and this storage is generally unsafe. Inspection Report Nos. 50–160/95–01, 50–160/94–02, and 50–160/93–02 have verified that storage of radioactive waste has been maintained in accordance with applicable regulatory requirements (10 CFR part 20) at the Georgia Tech Research Reactor.

The Petitioner also raised concerns about various health effects around the Atlanta area and in other localities (e.g., around the Three Mile Island nuclear power plant near Harrisburg, Pennsylvania), but did not provide correlation to conditions related to the Georgia Tech Research Reactor. Therefore, the Petitioner did not provide bases for further action based on these concerns. Further, the data and information from EPD, the licensee, the Oak Ridge Institute for Science and Education (ORISE) and the Idaho National Engineering Laboratory (INEL), as evaluated by the NRC staff in this issue and on issues (2) and (5), indicate little potential for the Georgia Tech Research Reactor to have contributed to such health effects.

The NRC staff finds no reason to conclude that the Georgia Tech Research Reactor radiation monitoring program is unacceptable. The Petitioner provided no facts to conclude otherwise or bases to conclude that additional monitoring should be required. Therefore, the NRC staff concludes that the Petitioner's concern does not present a substantial health or safety issue warranting the action requested by the Petitioner.

(4) Heavy rainfall causes water to back up in the sewer and drainage lines causing flooding of the reactor parking lot and campus, as well as causing sinkholes, "puff-ups" on campus ground, and welded-shut manhole covers to be blown off. The Petitioner indicated that a major sinkhole of the Orme Street line (a major sewer line in the area) caused a backup and flooding in 1993 on the Georgia Tech Campus at the North parking lot at the Georgia Tech Research Reactor facility site. This flooding had no effect on the Georgia Tech Research Reactor, since the research reactor structures, systems and components are isolated from the sewer by a series of valves. Further, the containment steel-reinforced concrete floor is approximately 8 feet thick.[5] This structure supports containment internals and provides weight to protect against the buoyancy of ground water. The structure is designed to withstand the effects of buoyancy due to ground water which has been found on test borings at levels ranging from 11 to 40 feet.[6] Further, DPW stated that the work that is being done on the Orme Street line and related construction activities minimize the potential for such future flooding or other problems associated to that line.

As also indicated by the Petitioner, there is a 72 inch diameter storm drain/sanitary sewer line that could be a potential source of flooding or a sinkhole near the Georgia Tech Research Reactor. This sewer line is approximately 100 feet from the containment.[7] By letter,[8] DPW confirmed that the line had been inspected to ensure integrity and was found in "very good condition" on a May 24, 1994, walk-through. The DPW was "not aware of any problems with this storm sewer" and did not "anticipate any problem with the maintenance or operation of this sewer in the foreseeable future." This conclusion was reverified with DPW, including consideration of the construction (e.g., blocks and concrete pipe) and configuration (e.g., on old drainage paths) of the sewer. DPW also indicated that this drain line is considered to be a private sewer and is not part of the City system, although DPW also indicated that they have been involved in the inspection and maintenance of such lines and there is no plan to discontinue that practice.

The Petitioner raised related issues on the structural capability of the foundation bearing material and water intrusion around the containment foundation potentially causing destabilization of the structure. This concern referenced three Georgia Geologic Survey documents.[9] The Georgia Geologic Survey was requested to evaluate the Petitioner's references to these reports with respect to the geology and seismology related to the Georgia

[5] "Safety Analysis Report for the 5 MW Georgia Tech Research Reactor," Georgia Institute of Technology, Atlanta, Georgia 30332–0425, April 1994 (hereinafter SAR), Section 4.3, *Description of Reactor Containment Building*, page 43.

[6] SAR, Section 2.3, *Hydrology and Geology*, page 23.

[7] SAR, Figure 4.3, page 30.

[8] Letter dated January 9, 1995, from L. Chambers of the Department of Public Works for the City of Atlanta to R. Karam of Georgia Tech.

[9] "Geology of the Greater Atlanta Area" McConnell and Abrams, Georgia Geologic Survey Bulletin 96, "Groundwater in the Greater Atlanta Region" by Cressler, Thurmond and Hester, Georgia Geologic Survey, Bulletin Information Circular 63 and "Geology and Groundwater Resources of the Atlanta Area, Georgia," Herrick and Legrand, Georgia Geological Survey Bulletin 55.

Tech Research Reactor. By letter dated May 11, 1995, the State Geologist responded to the NRC staff.[10] The letter stated, in part, that:

> I have reviewed the letters from a petition to shut down the Georgia Tech Research Reactor. The letters suggest (1) that the reactor overlies the Wahoo Creek Formation, which is not a suitable nor a stable foundation material; (2) that there is an earthquake risk, particularly from the Brevard Zone; (3) that unique geologic fractures, particularly horizontal fractures, might cause large quantities of ground water to seep into the reactor and cause problems. My review indicates that the petition's suggestions are specious.
>
> The Wahoo Creek formation is one of many geologic formations of the Piedmont Physiographic Province. The fact that the Wahoo Creek Formation weathers into "slabs" is not relevant; in situ, it is a competent rock adequate to provide suitable foundation for the reactor. Comparison of the foundation characteristics of weathered and in situ rock material is not reasonable nor appropriate.
>
> Georgia is a relatively aseismic state and earthquakes are rare. The Brevard Zone should not be considered as an "earthquake fault".
>
> The proximity of the Brevard Zone to the reactor is not relevant. Fractured rock, which is ubiquitous to the Piedmont, underlies the reactor. There are no data to suggest that horizontal fractures having high water yielding characteristics underlie or are even near the reactor. From a hydrogeological point of view, there are no known unique features of the reactor site to suggest that ground water would affect reactor safety.
>
> The Piedmont extends from Alabama to New Jersey and occupies many tens of thousands of square miles. The comments made in the petition would apply at virtually any location in the Piedmont. In addition, the petition cites several reports published by the Geologic Survey Branch of The Georgia Environmental Protection Division. The reports cited were prepared under my direction; I personally reviewed and approved them. There are no data in these reports that indicate the reactor at Georgia Tech is not safe or poses an environmental threat.

These findings confirm the NRC staff geologic and seismic conclusions presented in issue (7), and further support the related data and design for the Georgia Tech Research Reactor as discussed under this issue. These findings confirm that further analysis or testing is not needed for hydrogeological conditions at the Georgia Tech Research Reactor.

The Petitioner also indicated that "* * * a sinkhole appeared next to the reactor years ago and was filled in. A [w]itness to that is still very much alive." The Petitioner provided the NRC staff with information to contact the witness. This individual said that while he and two other individuals were walking from the facility, one of the individuals fell into a sinkhole to the armpits or so, and the two other individuals helped him get out. This individual also stated that the sinkhole was near the waste storage tank facility and that the time frame was somewhere between the late 1960s and middle 1970s. The area near the waste storage tank facility was physically examined while going over the area on foot at about 3 feet intervals. No sinkhole was observed.

In addition, the NRC staff questioned several members of the Georgia Tech Research Reactor staff. One of these Georgia Tech Research Reactor staff members recalled the sinkhole referred to by the Petitioner. However, none of the questioned Georgia Tech staff members recalled any other sinkholes at the research reactor facility. This was further confirmed by discussions with selected NRC staff members with experience related to the Georgia Tech Research Reactor. These NRC staff members were not aware of any sinkholes at the facility other than the one of concern to the Petitioner.

Additionally, drawings of the research reactor site[11] and physical examination of the research reactor facility and site showed no major drainage paths (other than the 72 inch storm drain line previously discussed) that could impact the Georgia Tech Research Reactor.

Construction drawings and records[12] were also reviewed and selected portions of the installation examined by the NRC staff to determine the vulnerability of the foundation structure for the Georgia Tech Research Reactor to the phenomena that were raised in the Petition. The drawings showed the bottom of the Georgia Tech Research Reactor containment building steel shell about 25 feet below finished grade. The drawings indicated that the Georgia Tech Research Reactor containment building is anchored by bolts to a steel-reinforced concrete pad about 1 foot thick and to a ring foundation that extends approximately another 12 feet down under the concrete pad. Further, examination of selected portions of the foundation and containment structure found the structure consistent with the construction and drawing details. Construction test boring records also showed that the pad and ring foundation rest on material that meets or exceeds construction specifications for safe bearing capacity. The construction test boring records showed the material at the bottom of the foundation ring to be moderately hard to hard gray gneiss. As previously discussed in issue (4) and in this issue, no information has been provided by the Petitioner or is known to the NRC staff to suggest that this foundation and support structure are not as designed or are not acceptable.

Sinkholes develop in soils or in limestone as solution cavities. Although sinkholes could develop in the soil fill material surrounding the Georgia Tech Research Reactor facility, there is no credible source for sinkhole development. Sinkholes cannot develop in or significantly affect gneiss such as that on which the Georgia Tech Research Reactor foundation is built. Therefore, the development of sinkholes near or underneath the Georgia Tech Research Reactor is not a credible event.

Even in the unlikely event of failures of the 72 inch storm drain line or the Orme Street line previously mentioned, erosion or sinkhole effects could not be expected to affect the Georgia Tech Research Reactor, since the lines are far from the research reactor containment relative to these potential effects, and the design of the reactor facility is such that it would not be impacted by such phenomena. The 72 inch storm drain is about 100 feet from the reactor containment and passes below the northwest corner of the laboratory and office building which is adjacent to the containment building. The footings for the office building, which measures approximately 90 by 130 feet, were founded on the partially weathered rock. Assuming the 72 inch line did collapse where it passes under the building, approximately a 20 feet square section of the northwest corner of the building could be affected. This section of the building houses laboratories, offices, and storage areas. Radioactive materials are not stored in this area. The remaining portion of the facility, particularly the research reactor containment building, would not be affected because of the design characteristics of the foundation and support material as previously discussed.

DPW verified that the Orme Street line is 10 to 12 feet in diameter and is about 1200 feet from the Georgia Tech Research Reactor. The sinkhole that resulted from the failure of the Orme Street line was a sinkhole approximately 50 feet in radius, which is at the upper limit of sinkhole size in the Atlanta area based on DPW experience. Based on this experience

[10] Letter from William H. McLemore, State Geologist, Georgia Department of Natural Resources, to Marvin M. Mendonca, NRC Staff, May 11, 1995.

[11] SAR, Figures 4.2 and 4.3, pages 29 and 30.

[12] Letter from R. A. Karam, Georgia Tech, to D. M. Collins, U.S.N.R.C., dated October 22, 1993.

(which is consistent with NRC staff information on such phenomena) it is not credible to consider that a sinkhole from the Orme Street line, at a distance of 1200 feet, could affect the Georgia Tech Research Reactor.

The containment foundation for the Georgia Tech Research Reactor is considered to be impervious to the effects of sinkholes as the foundation rests on relatively hard material to depths and distances well beyond the credible influence of any potential source for a sinkhole.

Puff-ups are heaves, or upward expansion, which occur when locked-in stress in soil, usually clay, exceeds the load above it. The most common occurrence of puff-ups is in regions that were overlain by glaciers and the soils beneath (till, lake beds, etc.) were over-consolidated. When the glaciers melted there was still enough material over these clays to lock-in the stress. Removal of some of this overlying material, either by erosion or excavation, allows the clays to expand. Puff-ups can occur in unglaciated regions generally soon after either erosion or excavation removes the overlying material. Research reactor construction was completed in the 1960s, and considering this time interval, occurrence of a puff-up at the facility is highly unlikely. Further, puff-ups are near surface, soil deformation phenomena. As discussed above, the relatively hard, relatively deep foundation structure and gray gneiss bearing material of the Georgia Tech Research Reactor could not be expected to be affected by the geologic phenomenon of puff-ups.

With regard to the welded manhole covers that were thrown up to 8 feet as alleged by the Petitioner by sewer backup problems, the distance from the containment to the nearest manhole cover has been verified by physical examination of the site to be greater than 50 feet. This physical examination found no other potential impact point related to the Georgia Tech Research Reactor that was closer than 50 feet. The Petitioner has neither provided nor does the NRC staff possess any information or experience which would suggest that a manhole cover could be thrown the distance and have the force necessary to damage the Georgia Tech Research Reactor. Therefore, the potential for damage to the Georgia Tech Research Reactor due to this asserted phenomenon is not credible.

Based on the above, these design features and conditions provide assurance that the Georgia Tech Research Reactor would not be adversely affected by flooding, sinkholes, "puff-ups" or thrown welded manhole covers. These phenomena could not be expected to affect the Georgia Tech Research Reactor given the design and configuration of the facility. Therefore, the NRC staff concludes that the Petitioner's concern does not present a substantial health or safety issue warranting the action requested by the Petitioner.

(5) Radioactive contaminants have been routinely discharged into the sanitary sewer from the Georgia Tech Research Reactor's waste water holding tank and contamination spread by backup of the sewage system.

Radioactive materials can be released to the sanitary sewer system from the Georgia Tech Research Reactor in accordance with 10 CFR 20.2003.[13] The Georgia Tech Research Reactor licensee monitors releases to the sewage system, and NRC staff inspections (e.g., Inspection Report Nos. 50–160/95–01, 50–160/94–02, and 50–160/93–02) have confirmed that the radioactive releases (primarily cobalt-60 and tritium) to the sanitary sewer have met NRC discharge limits.[14]

The Petitioner expressed a concern that the release to the sanitary sewer system could expose individuals, including sewer workers, to radiation. The releases from the Georgia Tech Research Reactor to the sanitary sewer have generally been several orders of magnitude less than NRC regulatory limits. Further, the assumption in the regulation of ingestion directly at the point of release from the campus provides considerable conservatism to ensure that individuals, such as sewer workers or other individuals, would be exposed to a lesser degree even in the event of a potential backup of the sewer system with large quantities of water.

Furthermore, in response to a request from the State of Georgia, the NRC staff had ORISE perform an independent analysis for radioisotopes in process sludge and ash samples from the City of Atlanta's R. M. Clayton sewer treatment facility. The samples were taken from the sewer treatment facility on March 13, 1995. This analysis detected naturally occurring and accelerator produced radioisotopes (used primarily for medical diagnostic and therapeutic treatments). There were no detected radioisotopes from the Georgia Tech Research Reactor. Similarly, the NRC staff had an independent analysis performed by INEL of liquid waste samples from the Georgia Tech Research Reactor. This analysis found no indication of the contamination suggested by the Petitioner (e.g., plutonium or uranium).

Georgia EPD and Georgia Tech analysis on waste water are consistent with these results. This sampling and analysis verified that a relatively small amount of radioactive material has been released from the Georgia Tech Research Reactor facility to the sanitary sewer system, and any material that has been released is well within NRC regulatory limits. These facts, and the regulatory conservatism and monitoring results, as previously discussed, establish that no further sampling of the sewer releases or system is necessary to ensure that the health and safety of the public is protected.

An issue was also raised by the Petitioner regarding the need for the Georgia Tech Research Reactor to have a sewer discharge permit from the City of Atlanta. The City of Atlanta does not deal with radiological health and safety issues over which NRC has regulatory authority (See 10 CFR 8.4). The City of Atlanta is responsible for the release of materials to the sanitary sewer system for other than radiological health and safety reasons. With regard to the concern about compliance with city ordinances, the City of Atlanta is the appropriate regulatory body to deal with the implementation of its requirements.

Since there is no evidence of the spread of unacceptable contamination from the Georgia Tech Research Reactor effluents to the sewage system, the NRC staff finds no reason to conclude that unacceptable radioactive contamination was released or could be spread by the backup of the sewage system. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that the Petitioner's concern does not present a substantial health or safety issue warranting the action requested by the Petitioner.

(6) Should the Georgia Tech Research Reactor be further destabilized, the reactor and the tank holding cobalt-60 could "break apart," causing radioactive contaminants to "drain into groundwater/down sewers/into the runoff ditch."[15] From the evaluations and inspections to date, there is no evidence that the Georgia Tech Research Reactor has been "destabilized" in any manner. The Georgia Tech Research Reactor is designed to reduce the likelihood and mitigate the consequences of uncontrolled releases of radiation. For example, the design and configuration features as discussed for issue (4) provides considerable assurance that the Georgia Tech Research Reactor has not and will not be "destabilized" due to the previously postulated concerns expressed by the Petitioner.

A recent safety evaluation of the Georgia Tech Research Reactor by the NRC staff is associated with the Order to Convert from High Enriched Uranium (HEU) to Low Enriched Uranium (LEU).[16] The associated safety evaluation considered all potential safety analyses that are effected by the change out of the fuel, including potential design basis accident scenarios. This safety evaluation was issued on the bases that the pertinent reactor design features (1) continue to acceptably ensure that the health and safety of the public is protected for the HEU fuel and (2) have also been demonstrated to be acceptable for the LEU fuel.

The Petitioner raised concerns on various structures, systems and components at the research reactor. First, the ability of the containment building steel structure at the Georgia Tech Research Reactor to control releases of radioactive material was questioned. In this regard, the containment leak rate is tested, in accordance with Technical Specification 4.3.b, for at least 2.0 pounds per square inch gauge (psig), which is the design basis pressure. Technical Specification 4.3.b requires that leakage from the containment building shall not exceed 1.0 percent of the building air volume in 24 hours at 2.0 psig over-pressure. Actual test results show that leakage is about one-half of that value. Containment building structural requirements based on expected external pressures have been estimated capable of withstanding internal pressures of at least 7.5 psig.[17] This leakage integrity, and the testing and design margin, provide assurance that radioactive materials will not be released in an uncontrolled manner from the Georgia Tech Research Reactor containment.

The design function of the shield and crane support wall to mitigate potential radiation exposures was also questioned by the Petitioner. The steel-reinforced concrete wall inside the containment extends about 34 feet above the outside ground level. A safety function of the steel-reinforced concrete wall is shielding during potential design basis accident conditions.[18] The design calculations for this shielding function have been reviewed and independently verified. This review finds that the calculations conservatively modeled radioactive source terms and containment configuration.

The Petitioner also raised an issue of a potential "runaway chain reaction." The Georgia Tech Research Reactor is designed with two independent and diverse shut down systems: the reactor scram system and the top reflector drain system. These systems have significant shut down capability and have been shown, both analytically and experimentally, capable of withstanding any excess reactivity condition.[19] These analyses show that the Georgia Tech Research Reactor can meet (with substantial margin) the Technical Specification 3.1.a requirements to be shut down (i.e., subcritical by at least 1.0 percent delta k/k with both the highest reactivity worth shim-safety blade and the regulating rod fully withdrawn). Further, specific design features of the Georgia Tech Research Reactor prevent or mitigate reactivity and power increase conditions. Analyses[20] show that both the HEU and LEU fuels are designed to withstand maximum credible reactivity worth/power excursion conditions without damage, including maximum reactivity addition conditions. As indicated in SAR, this analysis technique has been verified by test data.[21] This degree of shut down capability and provisions for mitigation of design basis accidents is consistent with other U.S. research reactor designs, has been verified by data and NRC staff review, and provides assurance that the Georgia Tech Research Reactor can be safely shut down for any credible condition, including analyzed accident conditions.

The Petitioner also raised concern that a previous accident analysis assumed a fuel loading accident that was considered "incredible" and no analysis of this scenario was performed in the current SAR.[22] The SAR states: During refueling operations, all control elements are required to be fully inserted and the top D_2O reflector drained to storage. Following the refueling operation, the reactor startup will be accomplished with standard practice. Under these conditions, a sudden introduction of reactivity is impossible."[23] Although the NRC staff agrees with the licensee that this accident is not credible, the NRC staff did verify that the results would be acceptable in the unlikely event of such an accident. Specifically, in the safety evaluation for the Order to Convert from HEU to LEU,[24] the NRC staff found that (1) the previous safety evaluation[25] remained valid in that the HEU fuel would not be damaged by the fuel loading accident and (2) the reactivity characteristics of the LEU compared to the HEU fuel are such that the maximum fuel temperatures of the LEU fuel would be less than the temperature for the HEU fuel during the potential fuel loading accident. Therefore, the NRC staff finds that, although the fuel loading accident analysis was not and need not be performed in the current SAR for the Georgia Tech Research Reactor, the potential results, if the analysis were to be performed in the current SAR, would remain acceptable for both fuel types.

The Petitioner also raised a concern regarding the emergency cooling capabilities at the Georgia Tech Research Reactor. The research reactor is designed with an emergency cooling system.[26] The system, as required by Technical Specification 3.7, consists of a passive tank capable of providing cooling for 30 minutes, and two separate long term supplies, only one of which is required for a total of 12 hours of cooling. (It should be noted that in the SAR the licensee assumed that (1) the long term cooling supply connections are prevented or interrupted, (2) a complete core meltdown and conservative fission product release occurred, and (3) conservative radiological exposure conditions existed. These assumptions were used in a calculation to demonstrate

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[13] Radioactive releases to the sanitary sewer was previously permitted in accordance with 10 CFR 20.303, which was superseded by 10 CFR 20.2003 on January 1, 1994.

[14] It should also be noted that revisions to the NRC's regulations with regard to release to sewage systems are under consideration (Advanced Notice of Proposed Rulemaking, "Disposal of Radioactive Material by Release Into Sanitary Sewer Systems," 59 FR 9146, February 25, 1994).

[15] "Destabilized" in the context of this Petition issue has been defined as some condition that would result in the uncontrolled release of radioactive material.

[16] "Georgia Institute of Technology, (Georgia Tech Research Reactor); Order Modifying Facility Operating License No. R–97," 60 FR 32516, June 22, 1995.

[17] SAR, Section 4.3.2, *Provisions for Insuring Leak-Tightness*, page 49.

[18] SAR, Section 4.3 *Description of Reactor Containment Building*, Section 4.3.1 *General Layout*, pages 42–9.

[19] SAR, Section 5.6, *Shutdown Margins*.

[20] SAR, Section 5.10, *Accident Analyses*, page 139–144.

[21] SAR, Section 5.9.1 *Comparison of Calculations with SPERT–II Experiments*, pages 137–8.

[22] SAR, Section 5.10.3 *Fuel Loading Accident*.

[23] SAR, Section 8.4.2 *Fuel Loading Accidents*.

[24] Letter from Marvin M. Mendonca, NRC, to Dr. Ratib A. Karam, Georgia Institute of Technology, "Issuance of Order Modifying License No. R–97 to Convert from High- to Low-Enriched Uranium—Georgia Institute of Technology (TAC No. M85896)," Enclosure 3 Safety Evaluation, Section 2.14.5 Fuel Loading Accident.

[25] U.S. Atomic Energy Commission, Safety Evaluation by the Directorate of Licensing, Docket No. 50–160, Georgia Institute of Technology, Section 6.0 *Accident Analysis*, page 12, dated December 19, 1972.

[26] SAR, Section 4.4.8.3, *Emergency Cooling System*, pages 87–90.

acceptable design bases for the Georgia Tech Research Reactor containment, that is leakage rate and shielding functions, as previously discussed.) The Petitioner's concern relates to the time required to make the manual connections to the backup water supplies and potential radiation exposures during this process. These connections are made outside the containment structure. The 30 minutes cooling period flow is designed to be provided by gravity flow from the previously mentioned passive tank through two redundant fast acting, fail safe valves. This cooling ensures no fuel damage or radiation release effect in the event of the loss of coolant accident in that 30 minute time period. The NRC staff concludes, based on a walk through with the licensee, that 30 minutes continues to be an acceptable time to make the connections. The long term emergency cooling connections could be accomplished within the 30 minute time period and there would be no increased radiation exposure while making these connections. Therefore, the previous NRC staff conclusion in licensing the Georgia Tech Research Reactor remains valid, that is, there will be acceptable emergency cooling of the core in the event of the loss of coolant accident.

The Petitioner also raised a concern on the reduction in shielding for the cobalt-60 storage pool, caused by the use of water from this storage pool to provide one of the two alternate long term water supplies for emergency cooling of the research reactor. The emergency cooling function effect on radiation levels from the cobalt-60 pool was reviewed and independently verified. This evaluation has found that the reduction in water above the cobalt-60 sources for the long term reactor emergency cooling function would not significantly affect the shielding of the cobalt-60 source, i.e., there will remain sufficient water for shielding. This was confirmed with the Georgia EPD, the licensing authority for the cobalt-60 source, and the Georgia Tech Research Reactor licensee. Therefore, the use of the cobalt-60 pool for emergency cooling of the Georgia Tech Research Reactor would not adversely impact that function or radiation safety.

The Petitioner raised a concern regarding the use of hot channel factors and engineering uncertainty factors. The SAR analyzed the fuel design to establish safety limits considering power peaking conditions (hot channel factors) and conservative fuel manufacturing tolerance (engineering uncertainty factors). Consistent with research reactor regulatory policy, the SAR verified that these safety limits would not be exceeded or even approached, so that no fuel damage would occur.[27] The NRC staff finds that these conclusions remain valid for both the current HEU fuel and for the LEU fuel as documented in the Order to convert from HEU fuel.[28]

The Petitioner also had a concern related to the reasonableness of assuming a scram after pump failures in the SAR. The SAR paragraph in question states: "The loss of the primary D_2O pump or the secondary cooling water pump can result in undesirable reactor operating conditions. These systems are therefore provided with high temperature and low flow interlocks with the reactor scram circuitry. Of the two pump failures, the loss of the D_2O pump is the more serious. Two independent low D_2O flow scram interlocks, and loss of electrical power interlocks have been provided in the reactor safety instrumentation. It is therefore acceptable to assume that the reactor will scram because of low flow shortly after an electrical power failure or the more serious case of pump seizure."[29] These interlocks provide redundant and diverse scram functions for the Georgia Tech Research Reactor. The NRC staff concludes that in the unlikely event that one of the independent low D_2O flow scram interlocks were to fail or be inoperable, the other low D_2O flow scram interlock would scram the reactor. These redundant scram interlocks are required by Technical Specification 3.2.a. Additionally, the high D_2O temperature and loss of electrical power scram interlocks provide additional assurance that the reactor will scram on potential pump failure events. Based on the redundancy of the low D_2O flow scram interlocks and the additional redundancy from diverse scram interlocks such as the high D_2O temperature scram interlocks, the NRC staff concludes that it is acceptable to assume that the reactor will scram for the potential pump failure analysis.

The Petitioner also asserted that plutonium and cesium-137 were not included in the core burnout analysis. For the core burnout analysis, data show that the assumed release fractions from the fuel of isotopes in the SAR are conservative and that plutonium, cesium, or other particulate isotopes would not be released.[30] Furthermore, page 196 of the SAR states that the source term includes daughter products of the released volatile fission products, which would include cesium-137 as a daughter product of released isotopes. Based on the above quoted data and consideration of volatile fission product decay daughters, the release assumptions are acceptable.

The Petitioner also indicated that there were errors in the Georgia Tech Research Reactor SAR. These alleged errors include the following: That the half-life of iodine-131 was incorrectly specified; that the geologic data are inadequate; that population data are outdated; that the radiation exposure calculational technique and data used to estimate design basis accident radiological doses are outdated; that incorrect names were used for State of Georgia organizations; and that a 30 year wind rose was needed.

Regarding the half-life of iodine-131, there was a typographical error where 1.92 hours was typed instead of 192 hours. This has been corrected by the licensee in a January 1995 SAR revision.

The geologic data presented by the licensee in the SAR, along with other data and information that were provided by the Petitioner, DPW, the Georgia Geologic Survey and the licensee, have been evaluated and discussed by the NRC staff in issues (4) and (7) of this Partial Director's Decision. Based on these evaluations by the NRC staff, the geologic data do not change the previous staff conclusions in licensing the Georgia Tech Research Reactor and the NRC staff does not possess any information which would suggest that the geologic information for the research reactor is not acceptable.

The population data presented by the licensee were from the 1990 census rather than from current City of Atlanta or other estimates on population as stated by the Petitioner. The use of the 1990 census data are acceptable because it is the latest official U.S. census data. The use of such data as implemented in the Georgia Tech Research Reactor SAR and the Technical Specifications is consistent with reactor licensing practices for restricted area, exclusion area and low population zones.

The radiation exposure calculational technique and data used to estimate design basis accident radiological doses (SAR Appendices B and C) were reviewed and found to be conservative and therefore acceptable for use.

Regarding the use of incorrect names for State of Georgia organizations, this was a failure of the licensee to

[27] SAR, Section 5.7, *Thermal—Hydraulic Safety Parameters*, pages 127–135.

[28] Letter from Marvin M. Mendonca, NRC, to Dr. Ratib A. Karam, Georgia Institute of Technology, Enclosure 3 Safety Evaluation, Section 2.11 *Thermal-Hydraulics*.

[29] SAR, Section 8.2.2 *Pump Failures*

[30] SAR, page 196 and Reference B.1.

completely update its SAR and will be corrected in the license renewal process.

Finally, the use of a 5 year wind rose, rather than a 30 year wind rose, is not significant to the Georgia Tech Research Reactor safety analysis or emergency planning because, conservative assumptions, which are independent of the wind rose data, are used for dose assessments in the SAR.[31] In addition, the Georgia Tech emergency preparedness plan uses actual measurements, rather than wind rose assumptions, to determine necessary protective actions.[32] Also, as previously discussed in issues (2) and (3), the environmental, effluent, and area radiation monitoring for the Georgia Tech Research Reactor, provides acceptable verification of compliance to Technical Specification and 10 CFR Part 20 requirements, and further wind direction data or wind rose accuracy for environmental monitoring is not required.

The design and analysis features, as documented in the SAR and appropriately required and verified in the Technical Specifications for the Georgia Tech Research Reactor, reduce the potential for or mitigate the consequences of design basis accidents and provide acceptable assurance that there will be no uncontrolled release of radioactive material. Therefore, the NRC staff finds no reason to conclude that the radioactive contaminants would be spread by any credible event or condition at the Georgia Tech Research Reactor. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that the Petitioner's concern does not raise a substantial health or safety issue warranting the action requested by the Petitioner.

(7) *The Georgia Tech Research Reactor is in an earthquake zone.* The NRC staff has continued to closely follow the seismic and geologic developments in the tectonic province in which the Georgia Tech Research Reactor is located. The site is located in the southeastern Piedmont, which, along with the Blue Ridge, comprises the southern portion of the broad region designated by the NRC staff as the "New England-Piedmont Tectonic Province." The New England-Piedmont Province is bounded on the northwest by the Southern Valley and Ridge Tectonic Province and on the southeast by the Coastal Plain Tectonic Province.

The NRC staff has extensively reviewed the geology and seismology of this region (e.g., the Safety Analysis Reports for McGuire, Catawba, North Anna, Shearon Harris, Vogtle, and Summer Nuclear Power Plants). These studies include considerations of the New Madrid, Charleston, east Tennessee, and Brevard seismic zones that were mentioned in the Petition. These evaluations by the NRC staff, as documented in the safety evaluations for the McGuire, Catawba, North Anna, Shearon Harris, Vogtle, and Summer Nuclear Power Plants, and other, nuclear and non-nuclear-related evaluations during the last two decades, have identified no capable faults[33] in this region.

The NRC also has supported regional seismic networks in the southeast.[34] In 1990, the NRC began to transfer support from these regional networks to the National Seismic Network operated by the United States Geological Survey. The NRC staff continues to review the results from these networks, and finds no new information which would change previous conclusions on the seismicity of the southeastern Piedmont (i.e., there are no capable faults and the potential for a damaging earthquake is very remote).

Seismology has been considered in the licensing of the Georgia Tech Research Reactor. The New Madrid, Missouri and the Charleston, South Carolina earthquakes (that were mentioned in this Petition issue) were considered, as were lesser magnitude earthquakes in and near Georgia. The Petitioner has presented no new seismic information for the region. The NRC staff evaluation continues to support the conclusion that the seismology for the Georgia Tech Research Reactor has been acceptably considered in the licensing of this facility.

A study of seismic hazards has been performed for Georgia Tech and referenced in the Petition.[35] This study reviewed seismic history, performed probabilistic and deterministic seismic ground motion studies, and made estimates of potential ground motion. The report validated Standard Building Code seismic coefficient requirements for the Georgia Tech campus, and did not change the conclusion on the acceptability of the Georgia Tech Research Reactor.

The above conclusions, as previously discussed in issue (4), are further supported by the Georgia State Geologist in a letter dated May 11, 1995.

The NRC staff finds no reason to conclude that the seismic characteristics for the site are unacceptable for the Georgia Tech Research Reactor. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that the Petitioner's concern does not raise a substantial health or safety issue warranting the action requested by the Petitioner.

(8) *There is absolutely no reason to keep the Georgia Tech Research Reactor operating.* The license for the Georgia Tech Research Reactor was issued in accordance with all applicable requirements. The licensee programs in education, research and development are consistent with the Georgia Tech Research Reactor license. Specifically, the Georgia Tech license renewal request dated April 19, 1994, discussed activities at the research reactor, including nuclear education in nuclear engineering and health physics. It also discussed contributions to the community, such as plant irradiation experiments for high school science classes and use by the Boy Scouts of America for nuclear merit badges at the Georgia Tech Research Reactor. The Georgia Tech Research Reactor has capability for bio-medical irradiation research and development, isotope production, neutron diffraction, and activation analysis. The license renewal request specified programs evaluating radiation decomposition of chemicals, characterizing neutron absorbing materials, and characterizing soil samples.

The Petitioner also raised concerns on the monitoring and calibration of neutron beams for medical therapy. At this time, the Georgia Tech Research Reactor is not authorized to conduct medical therapy,[36] so the specific concern is not applicable.

[31] SAR, Appendix B.

[32] Letter from R. A. Karam, Georgia Tech, to U.S. Nuclear Regulatory Commission, dated April 19, 1994, Attachment 6, Emergency Preparedness Plan.

[33] Capable faults are defined in 10 CFR Part 100, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," Appendix A, Section III "Definitions."

[34] These Networks include, the Charleston network, first operated in 1973 by the U.S. Geological Survey (USGS). Others were added during the mid and late 1970's and early 1980's, which were operated by Virginia Polytechnic and State University (Central Virginia and Giles County Seismic Zones), the University of Memphis (Southern Appalachians and New Madrid Seismic Zones), Georgia Institute of Technology (Georgia and Alabama), and St. Louis University (New Madrid Seismic Zone).

[35] "Seismic Hazard Study for the Georgia Institute of Technology Campus, Atlanta, Georgia," Law Engineering Project No. 57704495.01, March 16, 1993.

[36] The Georgia Tech Research Reactor cannot perform medical therapy without specific authorization under the provisions of the Atomic Energy Act Section 104(e). Georgia Tech may perform experiments, such as the characterization of irradiation conditions for potential, future medical therapy as long as the experiments and research reactor are within the provisions of the

Continued

The Petitioner has asserted that substantial management deficiencies persist, including concerns on the problems related to the 1987/1988 time frame. This concern on the persistence of substantial management deficiencies may be addressed in the pending license renewal proceeding. As previously outlined in the Introduction to this Partial Director's Decision, the Final Director's Decision will take into account any relevant findings from this license renewal proceeding at an appropriate time after completion of the NRC staff review.

The NRC staff finds no reason at this time to conclude that the Georgia Tech Research Reactor is not continuing to conduct research and development activities in accordance with the Atomic Energy Act and NRC regulations. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that no information has been provided on this issue to conclude that a substantial health or safety issue exists warranting the action requested by the Petitioner.

(9) *Security at the Georgia Tech Research Reactor is extremely lax.* The concerns on security issues, as previously outlined in the Introduction to this Partial Director's Decision, may be addressed in a pending license renewal proceeding. These issues will be addressed in a Final Director's Decision at an appropriate time after taking into account any relevant findings from this license renewal proceeding and after completion of the NRC staff reviews.

(10) *In case of an accident or terrorist attack, evacuation of the campus and downtown Atlanta would be impossible both now and during the Olympics.*[37] With respect to potential accident conditions for the Georgia Tech Research Reactor, the Emergency Planning Zone (EPZ), the area within which predetermined protective actions are established, is a 100 meters radius from the facility. This EPZ is in accordance with NRC emergency preparedness guidance applicable to research reactors.[38] The Georgia Tech Research Reactor accident analyses[39] demonstrates that this 100 meter EPZ is conservative for the Georgia Tech Research Reactor. These analyses have been found acceptable most recently in the safety evaluation for the Order to convert from HEU fuel.[40] These analyses demonstrate that the potential need for protective actions outside the EPZ is highly unlikely. The specification of emergency classifications (e.g., no general emergency classification) for the Georgia Tech Research Reactor has also been reviewed by the NRC staff and found to be consistent with the NUREG–0849 guidance. The Georgia Tech Research Reactor emergency plan has been previously verified by the NRC staff to be acceptable in accordance with this regulatory guidance and applicable regulations.

The Georgia Tech Research Reactor has conducted emergency response drills in accordance with its emergency plan (the last three drills were on October 19, 1994, November 4, 1993, and November 9, 1992). The drills have included involvement of onsite or offsite agencies, such as the Georgia Tech Police Department, the Atlanta Fire Department, the Atlanta/Fulton County Emergency Management Agency, the Georgia Emergency Management Agency, the Georgia Environmental Protection Division, and the Grady Memorial Hospital. Training, equipment, and contingency planning for onsite and offsite personnel have been acceptably in accordance with emergency plan requirements, as verified most recently in NRC staff Inspection Reports 50–160/94–04, 50–160/93–03, and 50–160/92–04. Police, fire, and medical personnel have been observed by NRC staff to acceptably perform their responsibilities. Other recent discussions with these emergency response organizations demonstrate that they acceptably understand and feel capable of discharging their responsibilities under emergency conditions at the Georgia Tech Research Reactor.

With regard to emergency preparedness during the Olympics,[41] the NRC staff and the licensee have been discussing the necessary steps to take for reactor safety during this event for some time before this Petition was raised. The licensee has decided to not operate the research reactor during the 1996 Olympics and to remove the spent fuel from the facility prior to the Olympics.[42] This would eliminate the potential for radiological releases during the Olympics related to the presence of such fuel onsite, and would reduce the potential for any emergency response to be taken due to radiological conditions for the Georgia Tech Research Reactor during the Olympics.

Georgia Tech has indicated that there are no events or additional resident population that are planned to be within the EPZ, and that the entire campus is to be controlled for access such that increased transient population through the EPZ is not expected. Further, supplemental emergency provisions for the Olympics are being planned by Georgia Tech in coordination with the Atlanta Committee for the Olympic Games, the U.S. Department of Defense, the Federal Bureau of Investigation, the Georgia State Patrol, Georgia Department of Transportation, City of Atlanta Police, and City of Atlanta Fire Department.

Additionally, the Petitioner in her July 18, 1995 letter, raised a concern on emergency preparedness for power reactor licenses, including emergency preparedness during the Olympics. NRC regulations require the development of emergency preparedness plans for all reactor licenses. The Petitioner presented no information and the NRC staff does not know of any information which would suggest that reactor emergency preparedness is not acceptable, including emergency preparedness during the Olympics.

The Petitioner also raised an issue addressing the location of the emergency command center within the Georgia Tech Research Reactor building. However, the emergency command center is outside the containment structure in which the Georgia Tech Research Reactor is housed. The emergency command center is isolated from the containment structure, which, as previously discussed on issue (6), is capable of withstanding pressures greater than would result from any analyzed accident. The discussions on the preceding issues also demonstrate that there is little likelihood that the emergency command center could be affected by a radiological event related to the Georgia Tech Research Reactor. The emergency command center is monitored for radiation so that in the unlikely event of an indication of unacceptable radiation in the emergency command center, or if it were to otherwise become unavailable, alternative actions could be taken (e.g., relocation of emergency response personnel). The above is consistent with the Georgia Tech Research Reactor emergency plan and previous NRC acceptance of the emergency plan, continues to acceptably implement the requirements of NUREG–0849, and, therefore, provides acceptable emergency preparedness for the Georgia Tech Research Reactor.

Based on the above, the 100 meter EPZ at the Georgia Tech Research Reactor is acceptable as a planning basis to ensure the protection of the public health and safety both now and during the Olympics, and the likelihood of evacuation or other protective action beyond the EPZ is acceptably low. During the Olympics, Georgia Tech's plans to not operate and to remove spent fuel ensure that there will be minimal potential of radiological related emergencies arising in connection with the NRC license for the Georgia Tech Research Reactor. Further, during the Olympics, the conditions around the research reactor, access controls to the campus, and planning for supplementary emergency provisions ensure that the provisions of the emergency plan will not be adversely affected by the Olympics.

The NRC staff finds no reason to conclude that the emergency planning zone for the Georgia Tech Research Reactor is not acceptable, including during the time period of the Olympics. The Petitioner provided no facts to conclude otherwise. Therefore, the NRC staff concludes that no information has been presented to conclude that a substantial health or safety issue exists warranting the action requested by the Petitioner.

B. Revocation of Liquid Radioactive Material Release Authority; Revocation of Licenses Using the Principle of As Low As Reasonably Achievable; Prohibition of Transportation of Radioactive Material by Mail; and Modification to Posting Requirements for Radioactive Material

The following are general requests by the Petitioner for actions related to various categories of licenses:

1. The request to withdraw all license authority nationwide involving the discharging or dumping of any quantity of radioactive material to all the sewers or waters in the United States;

2. The request to withdraw all licenses to all nuclear facilities, including nuclear power plants, which operate under as low as reasonably achievable (ALARA) principles;

3. The request that the NRC staff prohibit the transportation of radioactive material by mail; and

4. The request that the NRC staff modify every license issued to transporters of radioactive materials and builders of nuclear power plants so that these parties must put two-foot high letters on everything transported or built stating "DANGER–RADIOACTIVE" and in slightly smaller letters "there is no safe level of radiation, any exposure can [a]ffect health."

The bases for these requests are that there is no safe level of radiation, that storage and disposal of radioactive waste is inadequate, and that the NRC sewage discharge guidelines are totally inadequate. The Petitioner has also indicated that the basis for the request related to transportation by mail is that accidents have occurred while transporting radioactive materials. The issues enumerated by the Petitioner are broadly framed requests to take actions to prohibit discharging all radioactive material into sewers and waters of the U.S., to create a zero release limit of radioactive material, and to modify the transportation regulations under 10 CFR part 71.[43] The Petitioner also raises concerns over the adequacy of current NRC regulations related to radiation protection.[44] Finally, the Petitioner questions the adequacy of NRC and Environmental Protection Agency (EPA) regulations on allowed radioisotopes in the environment.

For each of the Petitioner's concerns cited directly above, the Petitioner has provided no specific information or basis which would support taking action on the Petitioner's four requests cited in this section. The Petitioner's request to withdraw all license authority for the discharging of any quantity of radioactive materials to all sewers and waters is based on a general assertion that the NRC's sewer dumping guidelines are totally inadequate. The Petitioner offers no support for this assertion. In addition, the Petitioner's stated bases for the request to withdraw all licenses which operate under ALARA principles (i.e., there is no safe level of radiation and the storage and disposal of radioactive materials, as well as the regulations, are inadequate) have not been substantiated by any data or references in the Petition. Finally, no information was provided that transportation accidents had not been evaluated and issues resolved under the provision of current regulations or that present regulations regarding the use of mail to transport radioactive material is not acceptable. Because these stated concerns are general and are not supported by additional information in the Petition, these concerns do not provide the basis for taking enforcement action under 10 CFR 2.206.

No specific information was provided to support the Petitioner's general statements on the inadequacy of NRC regulations. The Petitioner has provided no information that would lead to a conclusion that the packaging and transportation regulations in 10 CFR part 71, the radiation protection regulations in 10 CFR part 20, and the NRC's and EPA's environmental protection regulations, are not providing acceptable protection to the public health and safety, as well as to the environment. Since the Petitioner has not submitted any relevant technical, scientific or other data to support any of the general requests for the actions enumerated in this section, or raised a substantial health and safety concern based on these issues, the Petitioner's general requests for such actions are denied. However, should this Petitioner, or anyone, wish to provide relevant technical, scientific or other data and grounds to support any change to NRC regulations, a Petition for Rulemaking can be submitted in accordance with 10 CFR 2.802.

III. Conclusion

The institution of proceedings pursuant to Section 2.206 is appropriate only if substantial health and safety issues have been raised. See Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), CLI–75–8, 2 NRC 173, 175 (1975); Washington Public Power Supply

current licenses and other NRC regulatory requirements. In order to perform medical therapy at the Georgia Tech Research Reactor, an associated license under the provisions of 10 CFR 50.21(a) would be required, as well as associated modifications to the Technical Specifications from the NRC.

[37] That portion of the issue that deals with potential terrorist attacks will be included in issue (8) on security.

[38] "Standard Review Plan for Review and Evaluation of Emergency Plans for Research and Test Reactors," NUREG–0849, Appendix B.

[39] SAR, Section 5.10 *Accident Analyses*, pages 139–144 and Section 8, *Reactor Hazards Evaluation*, and Appendices A, B, and C, pages 176–214.

[40] Letter from Marvin M. Mendonca, NRC, to Dr. Ratib A. Karam, Georgia Institute of Technology, Enclosure 3 Safety Evaluation, Section 2.14 *Potential Accident Scenarios*.

[41] As previously noted, the implications of terrorist acts during the Olympics relative to emergency preparedness may be addressed in a pending license renewal proceeding. These issues will be addressed in a Final Director's Decision at an appropriate time after taking into account any relevant findings from this license renewal proceeding and after completion of the NRC staff reviews.

[42] Georgia Institute of Technology's Response to Commission's Order Issuing Housekeeping Stay, dated June 21, 1995, and letter from Patricia Guilday, Assistant Attorney General, State of Georgia, Department of Law, to the Secretary of the NRC dated July 25, 1995.

[43] The NRC's packaging and transportation regulations in 10 CFR part 71 are part of a broad regulatory scheme for the packaging and transportation of radioactive materials. The packaging and transportation of radioactive materials are also subject to the regulations of the U.S. Department of Transportation and the U.S. Postal Service. See 10 CFR 71.0(b).

[44] These concerns include that the release limits to the sewer systems is established as a monthly concentration and allows release of soluble material, that the brain and ovaries are not specifically mentioned in the organ dose weighting factors, that an individual is not considered a member of the public any time in which the individual receives an occupational dose, that special exposures should not be allowed, that no dose be allowed to the embryo/fetus whether the woman is declared pregnant or not, and that radiological release limits are established assuming a "Reference Man."

System (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 924 (1984). This is the standard that has been applied to the concerns raised by the Petitioner to determine whether the action requested by the Petitioner is warranted.

With regard to the requests made by the Petitioner discussed herein, the NRC staff finds no basis for taking such actions. Rather, as explained above, the NRC staff concludes that no substantial health and safety issues have been raised by the Petitioner. Accordingly, the Petitioner's requests for action, pursuant to Section 2.206 on the Georgia Tech Research Reactor, are denied on issues A(1) through A(8) and A(10), insofar as the issues on A(8) do not relate to the Petitioner's concerns on the persistence of substantial management deficiencies and the issues on A(10) do not relate to the Petitioner's security issues. As previously noted in the Introduction and Discussion to this Partial Director's Decision, the issue related to the persistence of management problems [part of A(8)] and the issue related to security [A(9) and part of A(10)] will be decided after taking into account the results of the licensing proceeding on the license renewal application. In addition, the Petitioner's requests on general license and authority revocation, as discussed in Section B of this Partial Director's Decision, are denied.

A copy of this Decision will be filed with the Secretary for the Commission as provided by 10 CFR 2.206(c) of the Commission's regulations. The Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 31st day of July 1995.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19510 Filed 8–7–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–254 and 50–265]

Exemption

In the Matter of: Commonwealth Edison Company (Quad Cities, Units 1 and 2)

I

The Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. DPR–29 and DPR–30, which authorizes operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (the facilities). The licenses provide, among other things, that the facilities are subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are boiling water reactors located at the licensee's site in Rock Island County, Illinois.

II

In 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," paragraph (a), in part, states that "the licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

In 10 CFR 73.55(d), "Access Requirements," paragraph (1), it specifies that "the licensee shall control all points of personnel and vehicle access into a protected area." Also, 10 CFR 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without escort provided that the individual, "receives a picture badge upon entrance into a protected area which must be returned upon exit from the protected area. * * *"

The licensee proposes to implement an alternative unescorted access system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area and would allow all individuals, including contractors, to keep their picture badges in their possession when departing the Quad Cities site.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. According to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have the same "high assurance" objective, that the proposed measures meet the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Currently, unescorted access into the protected area for both employee and contractor personnel into Quad Cities, Units 1 and 2, is controlled through the use of picture badges. Positive identification of personnel which are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site.

The proposed system will require that all individuals with authorized unescorted access have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badge to gain access to the protected area, but must also have their hand geometry confirmed. All individuals, including contractors, who have authorized unescorted access into the protected area will be allowed to keep their picture badges in their possession when departing the Quad Cities site.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. It should also be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing which demonstrated that the hand geometry equipment possesses strong performance characteristics. Details of the testing performed are in the Sandia report, "A Performance Evaluation of Biometric Identification Devices," SAND91—0276 UC—906 Unlimited Release, June 1991. Based on the Sandia report and the licensee's experience using the current photo picture identification system, the false acceptance rate for the proposed hand geometry system would be at least

equivalent to that of the current system. To assure that the proposed system will continue to meet the general performance requirements of 10 CFR 73.55(d)(5), the licensee will implement a process for testing the system. The site security plans will also be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession which leaving the Quad Cities site.

IV

For the foregoing reasons, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed system's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest.

Therefore, the Commission hereby grants the following exemption:

The requirement of 10 CFR 73.55(d)(5) that individuals who have been granted unescorted access and are not employed by the licensee are to return their picture badges upon exit from the protected area is no longer necessary. Thus, these individuals may keep their picture badges in their possession upon leaving the Quad Cities site.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 39464).

Dated at Rockville, Maryland, this 26th day of July 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19511 Filed 8–7–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

[File No. 270–259]

Proposed Amendments

Rule 17f–5

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission (the "Commission") has submitted for OMB approval amendments to Rule 17f–5.

Rule 17f–5 currently permits management investment companies ("funds") to place their asserts with certain foreign banks and securities depositories, subject to numerous and highly detailed conditions. The amended rule would revise these conditions. The amended rule would require findings that the fund's foreign custody arrangements will provide reasonable protection for fund assets. Although foreign custodians would not have satisfy specific capital or other requirements, the custodian's ability to provide reasonable protection for the fund's asserts would have to be evaluated based on all relevant factors, including the custodian's financial strength. The amended rule would require the fund's foreign custody arrangements to be governed by a written contract, although it would not specify particular provisions that must be included in the contract. The amended rule also would require the fund's arrangements to be monitored for continuing appropriateness. If an arrangement no longer complies with the amended rule's requirements, a fund would have to withdraw its assets from the country or custodian as soon as reasonably practicable.

In addition, the amended rule would allow fund directors to delegate their responsibilities under the current rule to the fund's adviser or officers or a U.S. or foreign bank. In selecting particular delegates for foreign custody decisions, the board would need to find that it is reasonable to rely on the delegate to perform the delegated responsibilities. The amended rule would require the delegate to provide the board with written reports notifying the board of the placement of the fund's assets in a particular country and with a particular custodian. The delegate also would be required to provide written reports of any material changes in the fund's arrangements. These reports would be provided to the board no later than the next regularly scheduled board meeting following the delegate's actions.

It is estimated that 3,214 total respondents (2,600 fund portfolios and 614 delegates (representing 600 investment advisers and 14 U.S. bank custodians)) may expend an estimated 8,740 total burden hours in connection with the board's delegation of its responsibility for foreign custody matters, the delegate's monitoring of the arrangements, and the amended rule's periodic reporting requirements. The amendments may eliminate the need for the estimated 14 U.S. bank custodians to file exemptive applications with the Commission to maintain custody of fund assets with certain foreign custodians, resulting in savings estimated at 840 total burden hours.

Direct general comments to the OMB Clearance Officer for the SEC at the address stated below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and OMB Clearance Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Act Project No. 3235–0269), Room 3208 New Executive Office Building, Washington, DC 20543.

Dated: July 27, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19520 Filed 8–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36049; International Series Release No. 834 File No. SR–CBOE–95–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Maintenance Criteria for Options on American Depository Receipts

August 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 1995, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rules 5.3 and 5.4 relating the listing and trading of options on American Depository Receipts ("ADRs"). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise certain of the Exchange's rules relating to the listing and maintenance criteria for options on ADRs, as set forth in two separate Interpretation and Policies, one under CBOE Rule 5.3 and one under CBOE Rule 5.4.

Listing Criteria for Options on ADRs

The first set of changes concern Interpretation .03 under Rule 5.3. Currently, the Exchange may list options on ADRs that meet the criteria and guidelines set forth in Rule 5.3 and the interpretations thereunder if any of the following conditions are satisfied: (i) The Exchange has in place an effective surveillance agreement [3] with the primary exchange in the home country in which the security underlying the ADR is traded; (ii) the combined trading volume of the ADR, the security underlying the ADR, other classes of common stock related to the security underlying the ADR, and ADRs overlying such other classes of common stock (collectively "other related ADRs and securities") occurring in the U.S. ADR market represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the ADR and other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading ("50% Test"); or (iii) the Commission otherwise authorizes the listing.

The proposed rule change would amend CBOE Rule 5.3, Interpretation .03 in two ways. First, the manner by which the applicable percentage of worldwide trading volume is calculated would be revised. Second, a new set of criteria for the listing of options on ADRs, based on daily trading in the U.S., would be added.

The 50% Test will be revised so that trading in ADRs and other related ADRs and securities in any market with which the Exchange has in place an effective surveillance sharing agreement will be added to U.S. ADR market volume. Currently, only trading in the U.S. ADR market counts towards satisfying the 50% Test. The Exchange believes it is legitimate to add the trading volume in the markets with which the Exchange has in place comprehensive surveillance sharing agreements to U.S. market trading volume because the Exchange is able to monitor trading activity in these other markets.

Interpretation .03 to Rule 5.3 would also be revised by adding a fourth set of criteria under which the Exchange could list options on ADRs. This new standard ("Daily Trading Volume Standard") will permit the Exchange to list options on ADRs if each of the following three conditions is met: (1) The combined trading volume for the ADR and other related ADRs and securities occurring in the U.S. ADR market or in any market with which the Exchange has in place an effective surveillance agreement represents (on a share equivalent basis) at least 20% of the combined worldwide trading volume in the ADR and other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading, (2) the average trading volume for the ADR in the U.S. ADR market over the three months preceding the date of selection of the ADR for options trading is at least 100,000 shares per day, and (3) the trading volume for the ADR in the U.S. ADR market is at least 60,000 shares per day for a majority of the trading days for the three months preceding the date of selection of the ADR for options trading.

This new standard, like the 50% Test, will allow the listing of options on ADRs in the absence of a surveillance sharing agreement between the Exchange and the home country where the security underlying the ADR is traded. The Exchange notes that the Daily Trading Volume Standard differs from the 50% Test in three respects. First, the percentage trading requirement is lowered to 20% from 50%. Countervailing this reduced percentage, which by itself would tend to relax the listing standards, are two numerical U.S. trading volume requirements—one that would require a high average daily U.S. trading volume and the other that would require a certain level of trading on a majority of days in the preceding three months. The existing criteria for listing options on ADRs do not have similar trading volume requirements.

The Exchange believes that the Daily Trading Volume Standard is justified because it will enable the Exchange to list options on ADRs that are widely followed by U.S. investors but that do not meet the 50% Test. At the same time, however, these ADRs must have high trading volume in the U.S. ADR market. The Exchange believes that this requirement of observable, high trading volumes, should ameliorate any regulatory concerns regarding investor protection.

Maintenance Criteria for Options on ADRs

The proposed rule change would also establish new maintenance criteria corresponding to the new listing criteria discussed above. Currently, Interpretation .09 to Rule 5.4 prohibits the Exchange from opening trading on any additional series of options on an ADR that was initially listed under the 50% Test if the U.S. trading volume over a subsequent three month period is less than 30% of worldwide trading volume, unless either (1) the Exchange has in place an effective surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded, or (2) the Commission has otherwise authorized the listing.

The proposed new maintenance criteria would prohibit the Exchange from opening trading on any additional series of options on an ADR that was initially listed pursuant to the proposed Daily Trading Volume Standard unless (A) the percentage of worldwide trading volume in the ADR and other related ADRs and securities that takes place in the U.S. ADR market or in markets with which the Exchange has in place surveillance sharing agreements for any consecutive three month period is either (i) at least 30% without regard to the average trading volume in the ADR, or (ii) at least 15% when the average U.S. daily trading volume in the ADR for the previous three months is at least 70,000 shares, or (B) the Exchange then has in place an effective surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded or (C) the Commission has otherwise authorized the listing. The Exchange believes that the slight decrease in the trading volume percentage (*i.e.*, from 20% to 15%) and the significant average daily trading volume requirement (70,000 shares) should be adequate to address any concerns regarding possible manipulation without being so high as to unduly interfere with the continued trading of option products that have become established on the Exchange.

This second revision merely establishes a maintenance criteria for the 50% Test that is consistent with the newly proposed listing criteria. Specifically, for purposes of applying the 30% maintenance standard, the Exchange will add to U.S. ADR market volume the volume in the ADR and other related ADRs and securities occurring in markets with which the CBOE has in place effective surveillance agreements.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by enabling the Exchange to list options on widely followed ADRs without compromising investor protection concerns.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consent, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–32 and should be submitted by August 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19521 Filed 8–7–95; 8:45 am]

BILLING CODE 8010–01–M

[3] The Commission defines an effective (*i.e.*, comprehensive surveillance agreement as one pursuant to which the Exchange can obtain not only information regarding the identity of exchange members executing trades, but also the information regarding the identity of the ultimate customer.

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36032; International Series Release No. 832; File No. SR–NYSE–95–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Listing of Investment Company Units

July 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 7, 1995, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to adopt ¶ 703.16 of its Listed Company Manual ("Manual"), consisting of listing standards for units of trading ("Units") that represent an interest in a registered investment company ("Investment Company") that could be organized as a unit investment trust ("UNIT"), an open-end management investment company, or a similar entity. The investment company would hold securities comprising, or otherwise based on or representing an investment in, an index or portfolio of securities. The investment company either could hold the securities directly or could hold another security representing the index or portfolio securities (such as in a UIT that holds shares of an open-end investment company). The Exchange also proposes to amend Exchange Rule 460 to permit specialists to whom Units have been allocated to purchase and redeem Units, or securities that can be subdivided or converted into Units, through a distributor, from the issuer of such securities.

The Exchange initially seeks to list up to nine series of Units, in the form of "CountryBaskets."[1] These CountryBaskets will be structured in one of two ways. First, in the "Fund-only structure," they could be structured as series of an open-end management investment company investing in a portfolio of securities ("Index Securities") included in the corresponding component of the FT–Actuaries World Index "FT–AWI").[2] Alternatively, in the "Fund/UIT structure," they could be structured as UITs that have as their assets shares of an open-end investment company holding the underlying Index Securities. If, in the future, the Exchange seeks to list Units with respect to other indices, it will make an appropriate filing with the Commission to provide the authorization to effect such listings.

[1] "CountryBasket," "CountryBaskets" and "CB" are trademarks of Deutsche Bank Securities Corporation ("DBSC").

[2] "FT-Actuaries World Indices," "FT-Actuaries World Index," and "FT-AWI" are trade and service marks of The Finacial Times Limited, and are used under license by Goldman, Sachs & Co. and NatWest Securities Limited.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to list up to nine CountryBasket securities ("Securities"). The Securities will be issued either by an open-end management investment company or by UITs or similar entities that invest in individual series of an index fund.[3] Each series of such an investment company (each a "Fund") is designed to provide investment results that substantially correspond to the price and yield performance of a specific component of the FT-Actuaries World Index. The initial nine series of Funds will be based on the following FT-Actuaries World Indices: Australia; France; Germany; Hong Kong; Italy; Japan; South Africa; United Kingdom; and the United States.[4]

The FT-Actuaries World Indices

DBSC, the adviser to the Funds, has provided the Exchange with the following description of the FT-Actuaries World Indices.

Establishing an Index

The FT–AWI are jointly compiled by The Financial Times Limited, Goldman, Sachs & Co., and NatWest Securities Limited, in conjunction with the Institute of Actuaries (together, the "Consortium"). The aim of the Consortium is to create and maintain a series of high quality equity indices for use by the global investment community. Specifically, the Consortium seeks to establish and maintain the FT–AWI so that with respect to their corresponding markets, they are comprehensive, consistent, flexible, accurate, investible, and representative.

The World Index Policy Committee ("WIPC") makes all policy decisions concerning the FT–AWI, including: objectives; selection criteria; liquidity requirements; calculation methodologies; and the timing and disclosure of additions and deletions. The WIPC makes those decisions in a manner that is consistent with the stated aims and objectives of the Consortium. In general, the WIPC aims for a minimum of 70 percent coverage of the aggregate value of all domestic exchange-listed stocks in every country, region and sector in which it maintains an index.

The WIPC consists of: One representative of each Consortium member; one member nominated by each of the parties as representing an actual or prospective main user group of the World Indices; a Chairman and additional member who are members of the Institute of Actuaries or the Facility of Actuaries.

A country must satisfy the following criteria for the WIPC to include it in the FT-Actuaries World Indices: (1) Direct equity investment by non-nationals must be permitted; (2) accurate and timely data must be available; (3) no significant exchange controls should exist that would prevent the timely repatriation of capital or dividends; (4) significant international investor interest in the local equity market must have been demonstrated; and (5) adequate liquidity must exist.

Securities in the FT–AWI are subject to the following "investibility screens": (1) Securities comprising the bottom five percent of any market's capitalization are excluded; (2) securities must be eligible to be owned by foreign investors; (3) 25 percent or more of the full capitalization of eligible securities must be publicly available for investment and not in the hands of a single party or parties "acting in concert"; and (4) securities that fail to trade for more than 15 business days within each of two consecutive quarters are excluded.

The WIPC seeks to select constituent stocks that capture 85 percent of the equity that remains available in any market (known as the "investible universe") after applying the investibility screens. Securities are selected with regard to economic sector and market capitalization to make the FT–AWI component highly representative of the overall economic sector make-up and market capitalization distribution of the investible universe of a market.

Maintaining an Index

The WIPC may add securities to the FT–AWI for any of the following reasons: (1) The addition would make the economic sector make-up and market capitalization distribution of the FT–AWI component more representative of its investible universe; (2) a non-constituent security has gained in importance and replaces an existing constituent security under the rules of review established by the WIPC; (3) the FT–AWI component represents less than its targeted percentage of the capitalization of its investible universe (usually in cases where the investible universe has grown faster than the corresponding FT–AWI component); (4) a new, eligible security becomes available whose total capitalization is one percent or more of the current capitalization of the relevant FT–AWI component; (5) an existing constituent "spin off" a part of its business and issues new equity to the existing shareholders; or (6) changes in investibility factors lead to a stock becoming eligible for inclusion and that stock now qualifies on other grounds.

The WIPC may adjust the FT–AWI for any of the following reasons: (1) The component comprises too high a percentage of its representative universe; (2) a review by the WIPC shows that a constituent security has declined in importance and should be replaced by a non-constituent security; (3) the deletion of a security that has declined in importance would make the FT–AWI component more representative of the economic make-up of its investible universe; (4) circumstances regarding investibility and free float change, causing the constituent security to fail the FT–AWI screening criteria; (5) an existing constituent security is acquired by another entity; or (6) the stock has been suspended from trading for a period of more than ten working days. Generally, but not in all cases, changes resulting from review by the WIPC occur at the end of a calendar quarter. Changes resulting from merger or "spin-off" activity will be effectuated as soon as practicable.

[3] The specific character or structure of the Securities will be determined based on, among other things, the types of exemptive relief the product sponsors receive from the Commission with respect to issues arising under the Investment Company Act of 1940. The manner in which the Securities will be listed and traded on the Exchange will be the same regardless of the structure chosen. For ease of reference throughout this filing the term "Fund" will refer either to each series of the open end management investment company that will be trading on the Exchange (in a fund-only structure) or to each series of the open end management investment company that will be underlying a UIT (in a dual Fund/UIT structure).

[4] The actual components, component capitalization, and component weightings for each series were submitted as part of a Form N–1A registration statement of The CountryBaskets Index Fund, Inc. under the Securities Act of 1933 and the Investment Company Act of 1940. Registration Nos. 33–85710; 811–8734.

Calculation and Dissemination of an Index

The FT–AWI are calculated through widely accepted mathematical formulae, with the effect that the indices are weighted arithmetic averages of the price relatives of the constituents—as produced solely by changes in the marketplace—adjusted for intervening capital changes. The FT–AWI are base-weighted aggregates of the initial market capitalization, the price of each issue being weighted by the number of shares outstanding, modified to reflect only those shares outstanding that are eligible to be owned by foreign investors.

For each constituent security, the implied annual dividend is divided by 260 (an accepted approximation for the number of business days in a calendar year). This dividend is then reinvested daily according to standard actuarial calculations. Distributions affect adjustments to the base capital or the price per share in accordance with prescribed FT–AWI standards. The indices' values and related performance figures for various periods of time are calculated daily and are disseminated to the public.[5]

The FT–AWI are valued in the terms of local currency, U.S. dollars, and U.K. pounds sterling, thereby allowing the effect of currency value on the index value to be measured. Changes to the indices are announced as soon as possible, and on Mondays the Financial Times publishes a list of changes to each index implemented during the previous week, if any. The FT–AWI are calculated once a day on weekdays when one or more of the constituent markets are open; the indices are syndicated and published in the financial sections of several newspapers worldwide. FT–AWI data also may be purchased electronically.

Distribution of the Securities

The Securities will be distributed in transactions with the Fund through "Creation Transactions." To effect a Creation Transaction in the Fund-only structure, a person would buy Fund shares from the Fund at their net asset value ("NAV") next computed. The sales will be in "Creation Unit" size aggregations in exchange for a deposit ("Deposit") of Index Securities (a "Fund Basket") and a specified amount of cash sufficient to equal the NAV of such shares.

Securities in Creation Unit size aggregations only may be redeemed, at NAV, generally for an in-kind distribution of Index Securities comprising the Fund shares, plus a cash payment. A Creation Unit size of Fund shares will represent securities with approximately $2 to $5 million in market value. The Creation Unit would be disaggregated into the individual Securities that would trade on the Exchange. For the nine initial CountryBasket Securities, there would be the following number of Securities per Creation Unit:

Australia	75,000
France	100,000
Germany	100,000
Hong Kong	75,000
Italy	75,000
Japan	100,000
South Africa	75,000
United Kingdom	100,000
United States	100,000

To effect a Creation Transaction in the Fund/UIT structure, a person would buy a Fund Share (or fractional share) in exchange for the Deposit. Each UIT would invest solely in shares of a specified series of the Fund, and would offer one "redeemable unit of beneficial interest" (a "Redeemable Unit") in exchange for each Fund share or fractional share. The Redeemable Unit would be the functional equivalent of the Creation Unit in the Fund-only structure.

The owner of a Redeemable Unit could separate that unit into a specific number of identical fractional non-redeemable subunits that would constitute the Securities traded on the Exchange. As with the Fund-only structure, for example, in the case of the Germany CountryBasket Trust there would be 100,000 Securities per Redeemable Unit. These Securities could be recombined into Redeemable Units and then redeemed, at NAV, for the appropriate number of Fund shares. In turn, the Fund shares could be redeemed for the Index Securities and cash. The Securities would not be redeemable other than in Creation Unit aggregations.

Regardless of the structure used, there may be an initial distribution period of Fund shares lasting from one to a few weeks. During this period, the principal underwriter or distributor ("Distributor") directly or through soliciting dealers would accept subscriptions to purchase Fund shares. In the dual Fund/UIT structure, orders also would be accepted to exchange Fund shares for Redeemable Units and to separate such units into tradeable Securities. Therefore, the offering would be continuous.

Exchange Trading of Units

The proposed listing criteria provide flexible standards for the listing of Units. Before commencing trading, the Exchange will require that there be at least 300,000 tradeable Units outstanding, representing, for the nine series encompassed by this filing, at least three or four Creation Units. The Exchange will consider the suspension of trading and the delisting of a series of Units if:

- After the first year of trading, there are fewer than 50 record or beneficial holders of the Units for 30 or more consecutive trading days;
- The value of the underlying index or portfolio of securities is no longer calculated or available; or
- There occurs another event that makes further dealings in the Units on the Exchange inadvisable.

Dealing in Units on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules would apply, including its rules on clearance and settlement of securities transactions (see NYSE Rules 45 through 296). Other Exchange equity rules and procedures, such as the Exchange's equity margin rules, would apply.[6] Unless the prospectus for a specific Security states otherwise, the Units trading on the Exchange will have one vote per share; however, as with other securities issued by registered investment companies, there will not be a "passthrough" of the voting rights on the actual index securities held by a fund or directly or indirectly by a trust.

With respect to specialist dealings, Exchange Rule 460 precludes certain business relationships between an issuer and the specialist in the issuer's securities. This could be interpreted to prevent a specialist from entering into Creation Transactions or redeeming Securities or Redeemable Units from the issuer. However, such market activities could enhance liquidity in the Units and facilitate the specialist's market-making responsibilities. In addition, since the specialist will be able to engage in Creation Transactions and redemptions only according to the same terms and conditions as every other investor (and only at NAV), the Exchange believes that there is no potential for abuse.

[5] The responsibility for collecting, calculating, and transmitting the index data is split between Goldman Sachs and NatWest Securities.

[6] With respect to margin, the Exchange will be requesting that the Commission's Division of Market Regulation grant "no action" relief with respect to section 11(d)(1) of the Act, as amended, and Rules 11d1–1 and 11d1–2 thereunder with respect to the extension of credit to customers on a security that is part of a new issue.

The Exchange is thus proposing amendments to Rule 460 to permit specialists to engage in these types of transactions if such transactions would facilitate the maintenance of a fair and orderly market in the Security. However, any Creation Transactions in which the specialist engages will have to be effected through the Distributor, and not directly with the issuer. This requirement will make clear that the specialist is purchasing Units in Creation Unit size only to facilitate normal specialist trading activity.

With respect to investor disclosure, the Exchange notes that, pursuant to the requirements of the Securities Act of 1933, as amended ("1933 Act"), all investors in CountryBaskets will receive a prospectus regarding the Securities. Because the Securities will be in continuous distribution, the prospectus delivery requirements of the 1933 Act will apply to all investors in CountryBaskets. However, it is possible that an exemption from the prospectus delivery requirement may be obtained at some point in the future, either with respect to these Securities or other Units listed on the Exchange. In the event of such an exemption, the Exchange will discuss with the Commission staff the appropriate level of disclosure that should be required with respect to the Units being listed, and will file any necessary rule change to provide for such disclosure.

Upon the initial listing of any class of Units, the Exchange will also issue a circular to its membership explaining the unique characteristics and risks of this type of security. That circular, among other things, will inform member organizations of their responsibilities under Exchange Rule 405 ("know your customer rule") with respect to transactions in the Securities. The circular also will inform member organizations of their responsibility to deliver a prospectus to investors.

With respect to trading halts, the trading of Units would be halted, along with the trading of all other listed stocks, in the event the "circuit breaker" thresholds of Exchange Rule 80B are reached. In addition, the Exchange will consider halting the trading in any series of Units if necessary to maintain a fair and orderly market in the Units. For example, the Exchange would consider halting the trading in a series of Units if trading has been halted or suspended in the primary market for stocks representing a significant percentage (such as 20 percent) of the value of the underlying stock index or portfolio.

Finally, while equity securities traded on the Exchange must be certificated, the Exchange is proposing that Units trade either in certificated form or solely through the use of a global certificate. The use of the global certificate would have to be consistent with ¶ 501.02(B) of the Manual, which imposes conditions on the use of global certificates for bonds. Permitting the use of global certificates would be consistent with expediting the processing of transactions in Units and would minimize the costs of engaging in transactions in these securities.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act. Specifically, the Exchange believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–95–23 and should be submitted by August 29, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19522 Filed 8–7–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 1, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0222.

Form Number: ATF F 5640.2.

Type of Review: Extension.

Title: Offer in Compromise of Liability Incurred Under the Federal Alcohol Administration Act.

Description: Persons who have committed violations of the Federal Alcohol Administration (FAA) Act may submit an offer in compromise. The offer is a request by the party in violation to compromise penalties for the violation in lieu of civil or criminal action. ATF F 5640.2 identifies the violation(s) to be compromised by the person committing them, and the amount of the offer, plus a justification for acceptance of the offer.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 12.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 24 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W.,Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19455 Filed 8–7–95; 8:45 am]

BILLING CODE 4810–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 31, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/Disclosure Services

OMB Number: 1505–0065.

Form Number: None.

Type of Review: Extension.

Title: Privacy Act—Form of Request for Notification of Whether a Record Exists, Form of Request to Amend Records, Form of Request for Appeal of Refusal to Amend Records

Description: This collection pertains to requests for records pursuant to the Privacy Act. The Privacy Act provides that a U.S. citizen or resident alien may seek access or amendment to their records or any information pertaining to them maintained in a system of records and referenced by name or personal identifier.

Respondents: Individuals or households.

Estimated Number of Respondents: 4,821.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Voluntarily as required.

Estimated Total Reporting Burden: 4,821 hours.

OMB Number: 1505–0066.

Form Number: None.

Type of Review: Extension.

Title: FOIA—Form of Request for Information and Appeal of Denial, Waiver of Fees.

Description: This collection requests information pursuit to the Freedom of Information Act (FOIA). The public submits FOIA requests in writing, signed by requester, which reasonably describes records, agrees to pay for search, review and duplication or states up to what amount will be paid, states whether copies are requested or inspection of records is preferred.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents: 61,013.

Estimated Burden Hours Per Response: 45 minutes.

Frequency of Response: Voluntarily as required.

Estimated Total Reporting Burden: 45,760 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W.,Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19453 Filed 8–7–95; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

August 1, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0004.

Form Number: FMS 285–A.

Type of Review: Extension.

Title: Schedule of Excess Risks.

Description: Listing of excess risks written or assumed by Treasury certified companies showing compliance with Treasury Regulations to assist Treasury in determining solvency of certified companies for the benefit of writing Federal surety bonds.

Respondents: Business or other for-profit.

Estimated Number of Respondents: Applications—40; Renewals—312.

Estimated Burden Hours Per Response: 20 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 25,760 hours.

OMB Number: 1510–0047.

Form Number: TfS 2211.

Type of Review: Extension.

Title: List of Data.

Description: Information is collected from insurance companies to provide Treasury with a basis for determining acceptability of insurance companies applying for a Certificate of Authority to write or reinsure Federal surety bonds.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Response: 18 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 450 hours.

OMB Number: 1510–0061.

Form Number: None.

Type of Review: Extension.

Title: Cash Management Improvement Act (CMIA) Annual Report and Direct Cost Claim Report.

Description: States and territories must report interest owed to and from

the Federal Government for major Federal assistance programs on an annual basis. The data is used by Treasury and other Federal agencies to verify State interest claims, to assess Federal and State cash management practices and to exchange amounts of interest owed.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 56.

Estimated Burden Hours Per Response: 500 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 28,000 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19454 Filed 8–7–95; 8:45 am]

BILLING CODE 4810–35–P

Public Information Collection Requirements Submitted to OMB for Review

July 20, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0162.

Form Number: IRS Form 4136.

Type of Review: Revision.

Title: Credit for Federal Tax Paid on Fuels.

Description: Internal Revenue Code (IRC) Section 34 allows a credit for Federal excise tax for certain fuel uses. This form is used to figure the amount of income tax credit. The data is used to verify the validity of the claim for the type of nontaxable or exempt use.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 831,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Preparing and sending the form to the IRS
4136	43 min	1 hr.
4136 (Line 1)	29 min	1 hr.
4136 (Line 2)	29 min	1 hr.
4136 (Line 3)	14 min	0 hr.
4136 (Line 4)	1 hr., 26 min	1 hr.
4136 (Line 5)	1 hr., 55 min	2 hr.
4136 (Line 6)	1 hr., 55 min	2 hr.
4136 (Line 7)	2 hr., 23 min	2 hr.
4136 (Line 8)	58 min	1 hr.
4136 (Line 9)	58 min	1 hr.
4136 (Line 10)	1 hr., 12 min	1 hr.
4136 (Line 11)	58 min	1 hr.
4136 (Line 12)	14 min	0 hr.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 2,886,100 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19457 Filed 8–7–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 31, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0191.

Form Number: IRS Form 4952.

Type of Review: Extension.

Title: Investment Interest Expense Deduction.

Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 800,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 min.
Learning about the law or the form—15 min.
Preparing the form—21 min.
Copying, assembling, and sending the form to the IRS—10 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 792,000 hours.

OMB Number: 1545–0790.

Form Number: IRS Form 8082.

Type of Review: Extension.

Title: Notice of Inconsistent Treatment or Amended Return (Administrative Adjustment Return (AAR)).

Description: IRC sections 6222 and 6227 require partners to notify IRS by filing Form 8082 when they (1) treat partnership items inconsistent with the partnership's treatment (6222), and (2) change previously reported partnership items (6227). Sections 6244 and 860F extend this requirement to shareholders of S corporations and residuals of REMICs.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents: 10,600.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hours, 18 minutes.
Learning about the law or the form—24 minutes.
Preparing and sending the form to the IRS—29 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 55,014 hours.

OMB Number: 1545–0798.

Regulation ID Number: 26 CFR 31.6001–1, 26 CFR 31.6001–2, 26 CFR 31.6001–3, 26 CFR 31.6001–5, and 26 CFR 31.6001–6.

Type of Review: Extension.

Title: 26 CFR 31.6001–1 *Records in General*, 26 CFR 31.6001–2 *Additional Records under FICA*; 26 CFR 31.6001–3, *Additional Records Under Railroad Retirement Tax Act*; 26 CFR 31.6001–5 *Additional Records in Connection with Collection of Income Tax at Source on Wages*; 26 CFR 31.6001–6 *Notice by District Director Requiring Returns, Statements, or the Keeping of Records.*

Description: Internal Revenue Code (IRC) section 6001 requires, in part, that every person liable for tax, or for the collection of that tax keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. 26 CFR 31.6001 has special application to employment taxes. These records are needed to ensure compliance with the Code.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 5,676,263.

Estimated Burden Hours Per Recordkeeper:

For domestic employers—1 hour, 44 minutes.
For agricultural employers—1 hour, 48 minutes.
For railroad employers—12 hours, 20 minutes.
For all other employers—6 hours, 5 minutes.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 30,273,950 hours.

OMB Number: 1545–0810.

Regulation ID Number: LR–2013 (T.D. 7533) Final.

Type of Review: Extension.

Title: Time for Filing Returns and Other Documents.

Description: This regulation tells a taxpayer where in the regulations the dates for filing returns and other documents may be found if the dates are not specified by statute. The information is used to avoid or establish the existence of a failure to file penalty.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents: 12,417.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (as required).

Estimated Total Reporting Burden: 3,104 hours.

OMB Number: 1545–1043.

Form Number: IRS Notice 88–30 and IRS Notice 88–132.

Type of Review: Revision.

Title: Diesel Fuel and Aviation Fuel Taxes Imposed at Wholesale Level (Notice 88–30), Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89 (Notice 88–132).

Description: Producers of aviation fuel must be registered by the IRS to sell the fuel tax free. Producers must also obtain certifications from their tax-free buyers.

Respondents: Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 3,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 6 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 3,850 hours.

OMB Number: 1545–1205.

Form Number: IRS Form 8826.

Type of Review: Revision.

Title: Disabled Access Credit.

Description: Code section 44 allows eligible small businesses to claim a nonrefundable income tax credit of 50% of the amount of eligible access expenditures for any tax year that exceed $250 but do not exceed $10,250. Form 8826 figures the credit and the tax limit.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/ Recordkeepers: 50,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hours, 18 minutes.
Learning about the law or the form—47 minutes.
Preparing and sending the form to the IRS—54 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 299,500 hours.

OMB Number: 1545–1292.

Regulation ID Number: PS–101–90 and PS–97–91 (Final).

Type of Review: Extension.

Title: Enhanced Oil Recovery Credit.

Description: The regulation provides guidance concerning the costs subject to the enhanced oil recovery credit, the circumstances under which the credit is available, and procedures for certifying to the Internal Revenue Service that a project meets the requirements of section 43(c) of the Internal Revenue Code.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,460 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19458 Filed 8–7–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 31, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0099.
Form Number: IRS Form 1065, Schedule D, Schedule K–1, Schedule L, Schedule M–1, and Schedule M–2.

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, Assembling, and sending the form to the IRS
1065	38 hr., 53 min	19 hr., 47 min	35 hr., 24 min	4 hr., 1 min.
Sch. D	5 hr., 30 min	1 hr., 41 min	1 hr., 51 min.	
Sch. K–1	25 hr., 7 min	9 hr., 2 min	9 hr., 51 min.	
Sch. L	15 hr., 32 min	6 min	22 min.	
Sch. M–1	3 hr., 21 min	12 min	16 min.	
Sch. M–2	2 hr., 52 min	6 min	9 min.	

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 872,366,670 hours.

OMB Number: 1545–0865.
Form Number: IRS Form 8264.
Type of Review: Extension.
Title: Application for Registration of a Tax Shelter.
Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. (Other persons may have to register the tax shelter if the organizer doesn't.) We use the information to give the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number of investors who report the number on their tax returns.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—33 hr., 14 min.
Learning about the law or the form—2 hr., 35 min.
Preparing, copying, assembling, and sending the form to the IRS—3 hr., 14 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 39,060 hours.

OMB Number: 1545–1051.
Regulation ID Number: INTL–29–91 Final.
Type of Review: Extension.
Title: Computation and Characterization of Income and Earnings and Profits under the Dollar Approximate Separate Transactions Method of Accounting (DASTM).
Description: For taxable years after the final regulations are effective, taxpayers operating in hyperinflationary currencies must use the U.S. as their functional currency and compute income using the dollar approximate separate transactions method (DASTM). Small taxpayers may elect an alternate method by which to compute income or loss. For prior taxable years in which income was computed using the profit and loss method, taxpayers may elect to recompute their income using DASTM.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 700.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other (One time election).
Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1156.
Regulation ID Number: 26 CFR 1.6001–1.
Type of Review: Extension.
Title: Records.
Description: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax, keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. These records are needed to ensure proper compliance with the Code.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 1.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1545–1349.
Form Number: None.
Type of Review: Extension.
Title: Cognitive and Psychological Research.
Description: The proposed research will improve the quality and data collection by examining the psychological and cognitive aspects of methods and procedures such as: interviewing processes, forms redesign, survey and tax collection technology and operating procedures (internal and external in nature).
Respondents: Individuals or households, Business or other for-profit, Federal Government.
Estimated Number of Respondents: 9,000.
Estimated Burden Hours Per Respondent:
FY 1996—1 hour.
FY 1997—1 hour.
FY 1998—1 hour.
Frequency of Response: Other.
Estimated Total Reporting Burden: 9,000 hours.

OMB Number: 1545–1351.
Form Number: None.
Type of Review: Revision.
Title: SOI Corporate Survey.
Description: This is a request to conduct a yearly survey on a small portion of the very largest U.S. corporations. The data will be used to improve the quality of the Statistics of Income's (SOI) advance tax data. The survey will allow SOI to collect existing tax information earlier than regular IRS processing currently allows. Advance tax data has been requested by the Bureau of Economic Analysis, the Office of Tax Analysis and the Joint Committee on Taxation for tax analysis purposes.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Single.
Estimated Total Reporting Burden: 50 hours.

OMB Number: 1545–1420.
Form Number: IRS Form 8849.
Type of Review: Revision.
Title: Claim for Refund of Excise Taxes.
Description: Internal Revenue Code (IRC) sections 6402 and 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents/Recordkeepers: 122,577.
Estimated Burden Hours Per Respondent/Recordkeeper:

[In minutes]

Form	Record-keeping	Learning	Preparing	Copying
8849 (Lines 1 & 2)	13	7	7	20
8849 (Line 3)	26	1	10	10
8849 (Line 4)	20	1	7	10
8849 (Line 5)	20	1	7	10
8849 (Line 6)	20	1	11	10
8849 (Line 7)	25	1	8	10
8849 (Line 8)	13	1	7	10
8849 (Line 9)	13	1	5	10
8849 (Line 10)	20	1	10	10
8849 (Line 11)	13	1	5	10
8849 (Line 12)	0	1	1	10

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 183,952 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–19459 Filed 8–7–95; 8:45 am]
BILLING CODE 4830–01–P

U.S. Customs Service (CUS)

OMB Number: 1515–0090.
Form Number: None.
Type of Review: Extension.
Title: Exporter's Summary of Exportations.
Description: Under the Exporter's Summary Procedures, the drawback claim shall be supported by a chronological list of exports and other required documentation to establish the fact of exportation. This permits the consolidation of claims which substantially reduces the paperwork involved.
Respondents: Business or other for-profit, Federal Government.
Estimated Number of Respondents: 3,500.
Estimated Burden Hours Per Respondent: 6 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 63,000 hours.

OMB Number: 1515–0094.
Form Number: None.
Type of Review: Extension.
Title: Recordkeeping Requirements for Drawback Claims.
Description: The drawback regulations provide specific procedures as to what type of records and forms are needed for compliance with the law. 19 CFR 191.22 and 191.32 detail the records which must be maintained for 3 years after payment of drawback.
Respondents: Business or other for-profit, Federal Government.
Estimated Number of Recordkeepers: 7,000.
Estimated Burden Hours Per Recordkeeper: 12 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 84,000 hours.

OMB Number: 1515–0100.
Form Number: None.
Type of Review: Extension.
Title: Customhouse Brokers.
Description: 19 CFR Part 111 requires various types of information from Customhouse Brokers to ensure statutory and regulatory compliance. The information is used for audit and investigations of interstate theft, narcotics smuggling, and prevents persons connected with organized crime syndicates from penetrating the industry.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 7,800.
Estimated Burden Hours Per Respondent: 45 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 2,015,050 hours.

OMB Number: 1515–0104.
Form Number: None.

Public Information Collection Requirements Submitted to OMB for Review

July 31, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the

Type of Review: Extension.

Title: Declaration of the Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes.

Description: The information in the declaration is needed to insure duty free entry of scientific or educational materials which have been exported for scientific or educational purposes.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 55.

Estimated Burden Hours Per Recordkeeper: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 41 hours.

Clearance Officer: Norman Waits (202) 927–1551, U.S. Customs Service, Printing and Records Management Branch, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19456 Filed 8–7–95; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 152

Tuesday, August 8, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, August 14, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 4, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19699 Filed 8–4–95; 3:04 pm]

BILLING CODE 6210–01–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, August 15, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 30965 (Sub-No. 4), *Delaware and Hudson Company—Lease and Trackage Rights—Springfield Terminal Railway Company.*

Docket No. AB–440X, *Wisconsin & Michigan Railway Ashland and Iron Counties, WI and Gogbic County, MI.* Finance Docket No. 32204, *Ozark Mountain Railroad—Construction Exemption.*

Finance Docket No. 41012, *Kwik-Way Corporation—Petition for Declaratory Order—Certain Rates and Practices of Country Wide Truck Service, Inc.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19678 Filed 8–4–95; 2:37 pm]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 7, 14, 21, and 28, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of August 7

There are no meetings scheduled for the Week of August 7.

Week of August 14—Tentative

There are no meetings scheduled for the Week of August 14.

Week of August 21—Tentative

Tuesday, August 22

10:00 a.m.
Briefing on Changes to the Performance Indicator Program (Public Meeting) (Contact: Steve Mays, 301–415–7496)

11:30 a.m.
Affirmation Session (Public Meeting)
*(PLEASE NOTE: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Amendment to 10 CFR Part 50, Appendix J, "Containment Leakage Testing," to Adopt Performance-Oriented and Risk-Based Approaches (Tentative)
b. Curators of the University of Missouri Licensee's Petition for Reconsideration (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of August 28—Tentative

There are no meetings scheduled for the Week of August 28.

Note: The Nuclear Regulatory Commission is operating under a deregulation of authority to Chairman Shirley A. Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: August 4, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–19700 Filed 8–4–95; 3:04 pm]

BILLING CODE 7590–01–M

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federal register

Tuesday
August 8, 1995

Part II

National Archives and Records Administration

36 CFR Part 1253
Location of Records and Hours of Use; Suitland Research Room; Interim Final Rule

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AA64

Location of Records and Hours of Use; Suitland Research Room

AGENCY: National Archives and Records Administration.

ACTION: Interim final rule.

SUMMARY: The National Archives and Records Administration is revising its regulations on location of records and hours of use to modify the hours that the Suitland Research Room at the Washington National Records Center is open for archival research. Beginning the Saturday after Labor Day, the Suitland Research Room will be closed on Saturdays. Weekday hours are not affected. NARA is taking this action because Saturday use of the research room has diminished to the point that it is not cost effective to operate the research room on Saturdays. This action will allow staff resources to be reallocated to better serve the public. Additionally, NARA is updating information on its facilities outside the Washington, DC, area to add the Federal Records Center and Regional Archives at Pittsfield, MA, to correct other addresses and, in some instances, make minor adjustments to the hours of use.

DATES: The effective date of this rule is September 9, 1995. Comments on the interim rule must be received by October 10, 1995.

ADDRESSES: Submit comments to Director, Policy and Planning Division (PIRM–POL), National Archives at College Park Room 3200, 8601 Adelphi Road, College Park, MD 20740–6001. Comments may also be faxed to (301) 713–7270.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on (301) 713–6730.

SUPPLEMENTARY INFORMATION: Beginning September 9, 1995, the research room at the Washington National Records Center, in Suitland, Maryland will no longer be open for archival research on Saturdays. NARA is taking this action because Saturday use of the research room has diminished to the point that it is not cost-effective to operate the research room on Saturdays. Within the next year when all archival records currently at the Washington National Records Center have been relocated to the National Archives Building in Washington, DC, or to the National Archives at College Park facility, NARA will close the Suitland Research Room as an archival research room.

A significant number of records have been or are in the process of being moved from Suitland to College Park. These records include the Records of Foreign Service Posts; Records of the Army Staff; Records of the Office of Military Government of Germany, United States; Records of the War Relocation Authority; Records of the US Air Force; and Records of the Bureau of Land Management. Between April 29, 1995 and July 1, 1995, Saturday use of the Suitland Research Room ranged from 1 to 8 archival researchers, with an average of 6 researchers. The summer time period is traditionally peak use of the research room. As more of the heavily used records are moved from Suitland and the peak use period ends, even this level of use will not be sustained. When the Suitland Research Room closes on Saturdays, NARA staff will be reassigned from Suitland to either the College Park or the Washington, DC facility, where there is heavier Saturday research use.

Addresses of Presidential libraries, the National Personnel Records Centers, Federal Records Centers, and Regional Archives also have been updated. For some Presidential libraries and Federal Records Centers, the hours of use have been corrected to reflect current hours of operation.

This rule is being issued as an interim final rule without prior notice of proposed rulemaking as permitted by the Administrative Procedures Act (5 U.S.C. 553(b)(3)(B)) when the agency for good cause finds that notice and public comment thereon are impractical, unnecessary, or contrary to the public interest. Because this rule will have only a minor impact on the researchers using archival records in NARA's Washington, DC, area research rooms and early reprogramming of the resources will better serve the public, NARA finds good cause to make this rule effective without prior notice of proposed rulemaking.

NARA will issue a final rule confirming or amending this interim rule at the close of the comment period.

This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36, Code of Federal Regulations, is amended as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. In § 1253.3, a new introductory paragraph is added and paragraphs (a) through (f) and (h) through (j) are revised to read as follows:

§ 1253.3 Presidential libraries.

Some of the Presidential Libraries may offer extended research room hours on selected evenings and Saturdays; museums within the Libraries offer Saturday and Sunday hours. More specific information on extended hours is available from each Presidential Library. The hours listed in this section are the minimum hours that each Presidential Library is normally open.

(a) Herbert Hoover Library, 210 Parkside Dr., West Branch, IA. Mailing address: PO Box 488, West Branch, IA 52358–0488. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(b) Franklin D. Roosevelt Library, 511 Albany Post Rd., Hyde Park, NY 12538–1999. Hours: 8:45 a.m. to 5 p.m., Monday through Friday.

(c) Harry S. Truman Library, 500 W. US Hwy 24, Independence, MO 64050–1798. Hours: 8:45 a.m. to 4:45 p.m., Monday through Friday.

(d) Dwight D. Eisenhower Library, 200 SE Fourth Street, Abilene, KS 67410–9904. Hours: 9 a.m. to 4:45 p.m., Monday through Friday.

(e) John Fitzgerald Kennedy Library, Columbia Point, Boston, MA 02125. Hours: 8 a.m. to 4:30 p.m., Monday through Friday.

(f) Lyndon Baines Johnson Library, 2313 Red River St., Austin, TX 78705–5702. Hours: 9 a.m. to 5 p.m., Monday through Friday.

* * * * *

(h) Gerald R. Ford Museum, 303 Pearl St. NW, Grand Rapids MI 49504–5353. Hours: 9 a.m. to 4:45 p.m., Sunday through Saturday.

(i) Jimmy Carter Library, 1 Copenhill Ave NE, Atlanta, GA 30307–1406. Hours: 9 a.m. to 4:45 p.m., Monday through Friday.

(j) Ronald Reagan Library, 40 Presidential Dr, Simi Valley, CA 93065–0666. Hours: 9 a.m. to 4:30 p.m., Monday through Friday.

3. Section 1253.4 is revised to read:

§ 1253.4 Washington National Records Center.

Washington National Records Center, 4205 Suitland Road, Suitland, MD. Mailing address: Washington National Records Center, 4205 Suitland Road, Washington, DC 20409–0002. Hours: 8 a.m. to 4:30 p.m., Monday through Friday; for the Suitland Research Room, 8 a.m. to 4:30 p.m., Monday through Friday.

4. Section 1253.5 is revised to read:

§ 1253.5 National Personnel Records Center.

(a) Military Personnel Records, National Personnel Records Center, 9700 Page Ave., St. Louis, MO 63132–5100. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(b) Civilian Personnel Records, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118–4199. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

5. Section 1253.6 is revised to read:

§ 1253.6 Federal Records Centers.

(a) 380 Trapelo Rd., Waltham, MA 02154–6399. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(b) 100 Dan Fox Dr., Pittsfield, MA 01201–8230. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(c) Military Ocean Terminal Bldg. 22, Bayonne, NJ 07002–5388. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(d) 14700 Townsend Rd., Philadelphia, PA 19154. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(e) 1557 St. Joseph Ave., East Point, GA 30344–2593. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(f) 3150 Springboro Rd., Dayton, OH 45439–1883. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(g) 7358 S. Pulaski Rd., Chicago, IL 60629–5898. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(h) 2312 E. Bannister Rd., Kansas City, MO 64131–3011. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(i) 501 W. Felix St., Fort Worth, TX. Mailing Address: PO Box 6216, Fort Worth, TX 76115–3405. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(j) Denver Federal Center Bldg. 48, Denver, CO. Mailing Address: PO Box 25307, Denver, CO 80225–0307. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(k) 1000 Commodore Dr., San Bruno, CA 94066–2350. Hours: 7:30 a.m. to 3:30 p.m., Monday through Friday.

(l) 2400 Avila Rd., 1st Floor East, Laguna Niguel, CA. Mailing Address: PO Box 6719, Laguna Niguel, CA 92607–6719. Hours: 8 a.m. to 4:30 p.m., Monday through Friday.

(m) 6125 Sand Point Way NE, Seattle, WA 98115–7433. Hours: 8 a.m. to 4 p.m., Monday through Friday.

6. Section 1253.7 is revised to read:

§ 1253.7 Regional Archives System.

Some of the Regional Archives may offer extended research room hours on selected evenings and Saturdays. More specific information on extended hours is available from each Regional Archives. The hours listed in this section are the minimum hours that each Regional Archives is normally open.

(a) National Archives—New England Region, 380 Trapelo Rd., Waltham, MA 02154–6399. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (617) 647–8100.

(b) National Archives—Pittsfield Region, 100 Dan Fox Dr., Pittsfield, MA 01201–8230. Hours: 9 a.m. to 3:30 p.m., Monday through Friday. Telephone: (413) 445–8458.

(c) National Archives—Northeast Region, 201 Varick St., New York, NY 10014–4811. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (212) 337–1300.

(d) National Archives—Mid-Atlantic Region, 900 Market St. Room 1350, Philadelphia, PA 19107–4292. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (215) 597–3000.

(e) National Archives—Southeast Region, 1557 St. Joseph Ave., East Point, GA 30344–2593. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (404) 763–7477.

(f) National Archives—Great Lakes Region, 7358 S. Pulaski Rd., Chicago, IL 60629–5898. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (312) 353–0162.

(g) National Archives—Central Plains Region, 2312 E. Bannister Rd., Kansas City, MO 64131–3011. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (816) 926–6934.

(h) National Archives—Southwest Region, 501 West Felix St., Bldg. 1, Fort Worth, TX. Mailing address: PO Box 6216, Fort Worth, TX 76115–3405. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (817) 334–5525.

(i) National Archives—Rocky Mountain Region, Denver Federal Center, Bldg. 48, Denver, CO. Mailing address: PO Box 25307, Denver, CO 80225–0307. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (303) 236–0817.

(j) National Archives—Pacific Southwest Region, 2400 Avila Rd., 1st Floor East, Laguna Niguel, CA. Mailing address: PO Box 6719, Laguna Niguel, CA 92607–6719. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (714) 643–4241.

(k) National Archives—Pacific Sierra Region, 1000 Commodore Dr., San Bruno, CA 94066–2350. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (415) 876–9009.

(l) National Archives—Pacific Northwest Region, 6125 Sand Point Way NE, Seattle, WA 98115–7433. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (206) 526–6507.

(m) National Archives—Alaska Region, 654 W. 3rd Ave., Anchorage, AK 99501–2145. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (907) 271–2441.

Dated: August 1, 1995

John W. Carlin,

Archivist of the United States

[FR Doc. 95–19568 Filed 8–7–95; 8:45 am]

BILLING CODE 7515–01–P

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federal register

Tuesday
August 8, 1995

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Supplemental Rule to Amend Leak Repair Provisions Under Section 608 of the Clean Air Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-5267-3]

RIN 2060-AE82

Protection of Stratospheric Ozone: Supplemental Rule to Amend Leak Repair Provisions Under Section 608 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Through this action EPA is amending the Refrigerant Recycling Regulations promulgated under section 608 of the Clean Air Act Amendments of 1990. This action is being undertaken to address specific concerns regarding the leak repair requirements for industrial process refrigeration systems, pursuant to a settlement agreement with the Chemical Manufacturers Association (CMA). This action will affect the owners and operators of industrial process refrigeration with regard to leak repair provisions. Certain aspects of this action will also affect federal owners and operators of commercial and comfort-cooling refrigeration with charges of 50 pounds of refrigerant or greater. This action provides greater flexibility to owners and operators of industrial process sources and to some federally-owned commercial and comfort-cooling refrigerant sources with regard to leak repair provisions. EPA is providing this flexibility without compromising the goals of protecting public health and the environment.

EFFECTIVE DATE: September 7, 1995.

ADDRESSES: Comments on this action are contained in the Air Docket Office, Public Docket No. A–92–01 VHD, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500. Additional comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Regulatory Development Section, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202) 233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

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I. Refrigerant Recycling Regulations

Final regulations promulgated by the U.S. Environmental Protection Agency (EPA) under section 608 of the Clean Air Act Amendments of 1990 (the Act), published on May 14, 1993 (58 FR 28660), establish a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. Together with the prohibition on venting during the maintenance, service, repair and disposal of class I and class II substances (see the listing notice January 22, 1991; 56 FR 2420) that took effect on July 1, 1992, these regulations are intended to substantially reduce the emissions of ozone-depleting refrigerants. These regulations were subsequently revised in the final regulations published August 19, 1994 (59 FR 42950), November 9, 1994 (59 FR 55912), and March 17, 1995 (60 FR 14607).

The current regulations require that persons servicing air-conditioning and refrigeration equipment observe certain service practices to reduce emissions, establish equipment and reclamation certification requirements, and comply with a technician certification requirement. The regulations also require that ozone-depleting compounds contained in appliances be removed prior to disposal of the appliances, and that all air-conditioning and refrigeration equipment, except for small appliances, be provided with a servicing aperture that will facilitate recovery of refrigerant.

The May 14, 1993 regulations establish leak repair requirements to further minimize emissions of class I and class II substances. The rule states that appliances that normally hold a refrigerant charge of fifty pounds or more are subject to the leak repair requirements. An annual leak rate of 35 percent was established for industrial process sources and commercial chillers, while an annual leak rate of 15 percent was established for comfort-cooling. Where the leak rate is exceeded, the appliance must be repaired within 30 days. An alternative is to develop a retrofit or replacement plan within 30 days, outlining action to retrofit or replace the appliance within one year from the exceedance.

The NPRM proposed revisions to the leak repair provisions in response to a settlement agreement reached by the Agency and the Chemical Manufacturers Association (CMA) specifically for industrial process refrigerant equipment. In that settlement, EPA agreed to propose changes to the leak repair requirements that would provide additional time to repair and/or retrofit industrial process refrigeration equipment based on the uniqueness of the industrial process sector and on new information provided by CMA. EPA also agreed to propose revising the evacuation requirements for oil changes to permit for slight positive pressure, not to exceed 5 PSIG. Finally, EPA agreed to clarify that purged emissions that have been captured and destroyed should be excluded from the leak rate calculations.

The information received from CMA after the completion of the initial rulemaking indicated that under certain circumstances the timelines for repairing leaky industrial process refrigeration equipment or to retrofit such equipment are not achievable. The proposed rulemaking was developed to respond to those circumstances by proposing the shortest timeframes achievable for this sector and to relax the requirements for oil changes as well as to permit for the exclusion of destroyed purged refrigerants.

The NPRM also proposed several other changes to the regulations, including an exemption for federally-owned chillers under certain circumstances. The NPRM is discussed in further detail in the following section.

The recycling rule, 40 CFR, part 82, subpart F, was only re-opened for purposes of reconsidering the specific provisions outlined in the NPRM and discussed in this final action. EPA did not invite comments on any other provisions of the recycling rule. However, in separate actions EPA has recently addressed a stay on the sales restriction for split systems (60 FR 24676), and an extension of the reclamation requirements (60 FR 14607). In addition, EPA plans in the future to consider additional changes to the requirements under 40 CFR, part 82, subpart F, including:

- Reconsideration of the sales restriction for split systems and pre-charged parts;
- The adoption of an industry off-site recycling standard; and
- Requirements for recovering alternative substances to class I and class II refrigerants unless the Administrator determines that venting, releasing or disposing of the substitute refrigerants do not pose a threat to the environment.

These issues will be addressed in separate rulemakings that will follow appropriate notice and comment procedures.

II. This Rule

This final rule affects the owners and operators of industrial process refrigeration equipment that normally contain a charge of 50 pounds or more of a class I or class II refrigerant. Today's action will provide the owners and operators with greater flexibility in repairing leaks and retrofitting leaky appliances. EPA will permit the owner or operator to have more than 30 days to complete repairs and more than one year to retrofit appliances where the conditions described in this final rule apply.

Through this final action EPA is also clarifying that the owners and operators of all appliances subject to the leak repair provisions must only reduce leak rates to below the allowable leaks.

In addition, this action will permit additional time beyond the 30-day leak repair period for federally-owned chillers where the chillers are located in areas subject to radiological contamination. EPA will also permit additional time beyond the one-year retrofit period if appropriations and procurement requirements limit the feasibility of completing the retrofit activities within one year.

Finally, this rule will permit the owners or operators to evacuate appliances to slightly above atmospheric pressure, specifically to a pressure not exceeding 5 psig, to perform oil changes. Alternatively, EPA will permit the owner or operator to recover the oil to a system receiver where the receiver will be evacuated to atmospheric pressure.

This statement in conjunction with the NPRM, serves as the statement of basis and purpose under § 307 of the Act.

III. Notice of Proposed Rulemaking

On January 19, 1995, EPA published a notice of proposed rulemaking (NPRM) (60 FR 3992) concerning proposed revisions to the leak repair requirements promulgated under section 608. Below is a summary of the NPRM.

EPA proposed to permit the owners and operators of industrial process refrigeration equipment more than 30 days to repair leaks when the necessary parts are unavailable, or if requirements of other federal, state or local regulations make a repair within 30 days impossible. Only the time necessary to receive delivery of any necessary parts or comply with any applicable regulations would be permitted. The NPRM specified that the owner or operator of the industrial process refrigeration equipment would have to exert best efforts to repair leaks within the 30-day time period. If the equipment could not be repaired within the 30-day requirement, the owner or operator would have to document repair efforts, notify EPA of the inability to comply, provide appropriate information concerning the reason for the inability to complete the repairs and develop to EPA a one-year retrofit, replacement, or retirement plan for the leaky appliance. The NPRM stated that the owners or operators of the industrial process refrigeration equipment would be required to maintain records concerning their actions and submit specific information to EPA that details the need for additional time to complete the repair work. These records are discussed in further detail in the NPRM (60 FR 3994).

In order to complete many types of repairs, industrial process refrigeration equipment may need to be shut down. EPA proposed a 120-day repair period, rather than a 30-day repair period, where an industrial process shutdown is necessary to repair a leak or leaks from industrial process refrigeration equipment.

EPA proposed three methods for owners and operators of industrial process refrigeration equipment to determine the full charge of refrigerant in the appliance and therefore, be able to calculate the leak rate. Two additional methods for these calculations were also discussed but were not proposed. The methods EPA proposed were: (1) To rely on the manufacturers' determinations, (2) to require the owner or operator to do calculations based on component sizes, flow rates, pressures, and other considerations, and/or (3) to rely on actual measurements of the amount of refrigerant added or evacuated from industrial process refrigeration equipment. These and other methods are discussed in greater detail in the NPRM (60 FR 3995).

EPA proposed that the repair efforts required for industrial process refrigeration equipment be those that sound engineering judgment indicates will be sufficient to bring the leak rate below a 35 percent annual rate, that a static test be conducted at the conclusion of the repairs to determine whether the repairs undertaken were successfully completed, and that a dynamic test be conducted within 30 days of bringing the system back on-line (if taken off-line) or within 30 days of completing the actual repairs, but no sooner than when the system has achieved steady-state operating characteristics. If the dynamic test indicates that the repairs have not been successfully completed, EPA proposed that the owner would be subject to a requirement to retrofit or replace the appliance within one year of the failure to verify that the repairs had been successfully completed or such longer time period as may be granted. Furthermore, EPA proposed that the owner or operator notify EPA of the failure within 30 days of the failed dynamic verification test. Proposed definitions of static and dynamic tests and examples of these tests are discussed in the NPRM (60 FR 3996).

Industrial process refrigeration systems have many potential sources of leaks. The NPRM stated that if a sufficient number of other leaks can be repaired creating a situation where the originally identified leak or leaks remain, but the overall leak rate has been successfully reduced to below 35 percent per year, the owner or operator has still in effect met its obligation under the rule. Therefore, EPA proposed that the owner or operator of an industrial process refrigeration unit be relieved of the obligation to retrofit or replace the appliance if, within 180 days of the failed dynamic verification

test, the owner or operator establishes that the appliance's annual leak rate does not exceed 35 percent. If the equipment owner or operator establishes that the appliance's annual leak rate does not exceed 35 percent, the owner or operator would be required to notify EPA within 30 days of that determination and the owner or operator would no longer be subject to the obligation to retrofit or replace the appliance that arose as a consequence of the initial failure to repair the leak or leaks successfully. The determination of whether the appliance's annual leak rate exceeds 35 percent would be determined in accordance with parameters identified by the owner or operator in its notice to EPA regarding the failure of the initial dynamic verification test.

EPA proposed to clarify that for industrial process and commercial sources, leaks need to be repaired such that the leak rate is brought back to a level below the 35 percent annual rate. A parallel clarification for comfort-cooling and commercial sources also was proposed. Therefore, rather than requiring that "all" leaks be repaired, EPA proposed revising the requirements to reduce leaks to a rate below the acceptable thresholds. EPA would permit leaky appliances to operate as long as the leak rate does not exceed that amount.

In the NPRM, EPA stated that it may be reasonable to permit additional time beyond the one-year established by the current regulations for the retrofitting of certain industrial process refrigeration equipment. EPA believes there are specific concerns relating to the need for special design, engineering, ordering and installation difficulties for some industrial process refrigeration equipment. EPA proposed to allow more than one year to complete the retrofit of industrial process refrigeration equipment in certain circumstances. The NPRM describes scenarios that may justify more than one year to retrofit an appliance; however, EPA does not believe additional time is always necessary. Therefore, EPA intended to permit additional time only when the owners or operators of the industrial process refrigeration equipment can provide information detailing the need for additional time in accordance with the proposed requirements described below.

EPA proposed that additional time, to the extent reasonably necessary, would be allowed due to delays occasioned by the requirements of other applicable federal, state, or local regulations, or due to the unavailability of a suitable replacement refrigerant with a lower ozone depletion potential. The suitability of a replacement refrigerant is discussed in the NPRM (60 FR 4000). The owner or operator of the facility would have to notify EPA within six months after the 30-day period following the discovery of an exceedance of the 35 percent leak rate. Records that would provide evidence that other regulations or the unavailability of a suitable alternative refrigerant prevent retrofit or replacement within one year must be submitted to EPA to allow EPA to determine that these provisions apply and assess the length of time necessary to complete the work. EPA proposed that it notify the owner or operator of its determination within 60 days of submittal. The limited recordkeeping requirements are discussed in the NPRM (60 FR 4000). EPA proposed that such records be maintained by the owner or operator and kept on-site.

EPA proposed that an additional one-year period beyond the initial one-year retrofit period be allowed for industrial process refrigeration equipment if four criteria are met: (1) The new or retrofitted refrigeration system is custom-built (meaning if it or any of its critical components cannot be purchased and/or installed without being specifically designed), fabricated and/or assembled to satisfy a specific set of industrial process conditions; (2) the supplier of the system of one or more of its critical components has quoted a delivery time of more than 30 weeks from when the order is placed; (3) the owner or operator notifies EPA within six months of the expiration of the 30-day period following the discovery of an exceedance of the 35 percent leak rate to identify the owner or operator, describe the appliance involved, explain why more than one year is needed, and demonstrate that the first two criteria are met; and (4) the owner or operator maintains records adequate to allow a determination that the criteria are met. The criteria are further discussed in the NPRM (60 FR 4000).

EPA proposed that if more than one additional year is needed, the owner may request to extend the deadline for completing all retrofit or replacement action. EPA proposed that such a request be submitted to EPA before the end of the ninth month of the additional year that was granted to retrofit, replace, or retire the appliance. The request would be required to include revisions to that information submitted for the first additional year as proposed under § 82.166(o). Unless EPA objects to the request within 30 days of receipt, it would be deemed approved. EPA stated that this extension would be granted only in cases where the actual nature of the retrofit or replacement activities is such that the additional time beyond the one year is crucial. The submittal of revised information is discussed in the NPRM (60 FR 4002).

EPA proposed to allow owners or operators to evacuate the appliance to slightly above atmospheric pressure, specifically to a pressure not exceeding 5 psig, to perform oil changes. Reasons for this approach are described in the NPRM (60 FR 4002).

The NPRM stated that EPA would like to clarify that the Agency interprets the 35 percent leak rate in the regulations as not including emissions of purged refrigerant that are destroyed, if their destruction is accounted for and can be verified by records maintained by the owners or operators of the industrial process refrigeration equipment. If purged refrigerant is destroyed using one of the five destruction technologies approved by the Parties to the Montreal Protocol, EPA can consider that refrigerant to have been destroyed and therefore, not part of the leak rate for the system. A description of the methods for destroying refrigerant and the how industrial process refrigeration systems could measure purged refrigerants is contained in the NPRM (60 FR 4003).

In the NPRM (60 FR 4003), EPA described temporarily mothballing equipment. If a facility is temporarily mothballed, EPA believes it is appropriate to suspend the time-relevant repair and/or retrofit requirements while the facility is effectively inoperative. In the same subsection, EPA described how temporarily mothballing is not equivalent to having an appliance taken off-line or to an industrial process shutdown. EPA proposed that while temporarily mothballed, the time-relevant repair and/or retrofit requirements would be suspended.

EPA proposed that owners or operators of a federally-owned refrigerant appliance be able to submit a request for extensions parallel to those outlined for industrial process refrigeration equipment, based on the hindrance of federal procurement requirements. If additional time is granted, EPA proposed that testing and documentation should occur, parallel to those for industrial process refrigeration equipment. The reasons for this proposed extension are discussed in detail in the NPRM (60 FR 4004).

IV. Summary of Major Comments Received

During the public comment period EPA received fourteen sets of comments that are addressed in this action. In addition, EPA received and considered additional comments submitted to the Agency after the 30-day public comment period ended. All comments considered in this final action are contained in Air Docket A–92–01 VIIID.

All the commenters agreed that EPA should revise the leak repair requirements. Most of the commenters agreed with the general paradigm EPA proposed for repairing leaks in industrial process refrigeration equipment. Commenters raised specific concerns regarding various aspects of the proposed rule.

EPA received comments concerning the inclusion of specific types of appliances in the definition of industrial process refrigeration equipment. One commenter was concerned with whether the economic impact of an industrial process shutdown of a nuclear power reactor used in the generation of electricity was considered by the Agency.

Many commenters were concerned with the use and definitions of static and dynamic tests. In particular, several commenters suggested that the tests should be described as "first verification test" and "follow-up verification test," thus avoiding any confusion stemming from the common associations of static and dynamic with a state of motion. Some commenters stated that dynamic tests in certain circumstances should be performed before the affected appliance is operating at steady-state.

A few commenters were concerned with the methods EPA proposed to determine the full charge of an appliance. These commenters believe that the fourth option described in the NPRM (60 FR 3996) should be considered an acceptable methodology.

Several commenters believe that EPA should broaden the proposed conditions under which mothballing an appliance would suspend the time-relevant leak repair requirements.

A few commenters suggested changes to the recordkeeping and reporting requirements.

EPA received several comments regarding the proposed requirements for federally-owned chillers. Some commenters supported EPA's proposal, some opposed it, and one commenter suggested that EPA re-propose the changes under a separate rulemaking.

EPA received comments on the requirement to exert best efforts to repair leaks. Commenters were concerned that since the settlement agreement between EPA and CMA was reached, the interpretation of best efforts and sound engineering judgment has changed.

All the comments received by EPA are discussed in greater detail below.

V. Response to Comments

EPA received fourteen sets of comments during the comment period on the proposed changes to the leak repair requirements published January 19, 1995 (60 FR 3992). Individual comments are specifically addressed in this section.

A. Legal Authority

EPA requested comment on the legal authority under which EPA was proposing and today is promulgating revisions to the leak repair requirements. A few commenters addressed this issue and agreed with EPA's legal basis for proposing these changes.

B. Contracted Employees

Two commenters requested that EPA clarify that actual work to be performed on affected appliances may be provided by contracted personnel. One commenter stated that although the owner or operator remains responsible for compliance, the work need not be performed by the owner or operator. EPA agrees with these commenters. The Agency recognizes that often repair and maintenance services are performed under contractual arrangements. Moreover, contracted personnel will be acting as agents of the owner or operator with respect to performance of service and maintenance of the appliances. Therefore, the owner or operator remains responsible to ensure that compliance with the requirements promulgated under section 608 occurs.

C. Nuclear Power

One comment received by EPA discusses the consideration of the leak repair requirements specifically for generation of electricity by a nuclear power reactor. The commenter does not believe the NPRM takes into account the technological and economic factors specific to the operation of these facilities in the context of the statutory standard in section 608(a)(3)(A) of the Act. For example, the commenter states that the shutdown of a nuclear power reactor within 120 days of discovering that the leak rate exceeds 35 percent is costly. The commenter stated that planned outages are typically scheduled on an 18-month cycle.

EPA understands under this rule, that an industrial process shutdown will often occur without regard to the planned outages for nuclear power stations, as well as for other industrial process refrigeration equipment in order to repair leaks. During the settlement agreement negotiations, discussions were held considering the possibility of waiting for the next scheduled shutdown. However, since these scheduled shutdowns often do not occur frequently, it was determined that undertaking a separate industrial process shutdown would be necessary to limit the emissions of refrigerant. EPA does not believe that the owners or operators of nuclear power stations incur costs that are dissimilar to those incurred by the chemical, pharmaceutical, petrochemical, and manufacturing industries when an industrial process shutdown occurs. Other commenters from these fields expressed concerns about the costs associated with an industrial process shutdown, but agreed with EPA that such an undertaking would be necessary to limit releases of ozone-depleting substances.

Prior to this rulemaking it was unclear whether the use of chillers in the generation of electricity actually met the definition of industrial process refrigeration equipment. Therefore, it is true that EPA did not base the NPRM on any specific consideration of the nuclear power industry. However, EPA does not believe that the commenter has demonstrated how the generation of electricity from a nuclear power reactor would face technological or economic factors not experienced by other owners or operators of industrial process refrigeration equipment. Furthermore, today's action lessens the burden for all industrial process refrigeration equipment, regardless of its use. If significant distinctions exist between refrigeration appliances used in the generation of electricity and other refrigeration appliances, EPA may need to reconsider whether the use of appliances in the generation of electricity is truly consistent with industrial process refrigeration equipment. If not, these appliances would be subject to the 15 percent leak rate and all associated requirements.

D. Definition of Industrial Process Refrigeration Equipment and the Need for Separate Leak Repair Requirements

The NPRM stated that three main refrigeration sectors are affected by the leak repair provisions promulgated under section 608 of the Act: commercial refrigeration, comfort-cooling, and industrial process refrigeration. While many different commercial refrigeration and comfort-cooling appliances are similar in design and function, EPA received information from CMA illustrating the uniqueness of industrial process refrigeration equipment. Industrial process

refrigeration equipment is custom-designed and assembled in-place at a process location. Thus, each of these industrial units has unique operating characteristics. Industrial process refrigeration has been defined in § 82.152 as:

* * * complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. This sector also includes industrial ice machines and ice rinks.

EPA requested comment on the appropriateness of establishing separate repair provisions for industrial process refrigeration. EPA received several comments concerning the need for separate provisions. These comments agreed with the NPRM. Specifically, commenters referred to the uniqueness of industrial process refrigeration equipment used in pharmaceutical, petrochemical, and manufacturing industries. Commenters stated that there are several apparent differences between industrial process refrigeration equipment and other types of equipment affected by the leak repair provisions. Industrial process refrigeration equipment is larger and more complex than hermetically-sealed consumer units. Most comfort-cooling appliances have hermetically-sealed or semi-hermetically-sealed refrigerant loops. Complexity of the industrial process refrigeration equipment makes leak detection and leak rate calculations more difficult than for other sectors affected by the leak repair provisions. Commenters agreed with EPA's assessment that the replacement parts for this sector often must be specifically fabricated for the leaking equipment. Commenters believe that shutting down industrial process refrigeration equipment often takes several days and that the owners and operators of this equipment must avoid any unwanted chemical reactions that could lead to fires, explosions, or other immediate hazards. Based on the discussion in the NPRM and the comments received, EPA is establishing separate leak repair requirements for industrial process refrigeration equipment.

One commenter suggested EPA clarify the definition of industrial process refrigeration equipment with respect to the appliance's relationship to the manufacturing process. The commenter stated that the terms: "complex;" "used in the manufacturing industry;" "custom designed;" and "assembled in place" are subjective and could be applied to many of the appliances used for cooling large buildings or processes. Industrial process refrigeration equipment in the manufacturing sector is used to cool processes directly related to a broad range of manufacturing activities. The commenter suggests that the differentiating factor between industrial process and commercial refrigeration is that industrial process refrigeration equipment tends to be directly linked to a manufacturing activity. EPA agrees with this commenter's concerns. EPA distinguishes between commercial refrigeration and industrial process refrigeration equipment for the purposes of § 608 in part by considering how the appliance is used. EPA did not intend to include in the definition of industrial process refrigeration equipment appliances not involved in the industrial process. Therefore, through this action EPA will amend the definition of industrial process refrigeration to clarify that use is a factor in determining if an appliance is industrial process refrigeration equipment.

EPA received comments concerning whether the generation of electricity, particularly where a nuclear reactor is used, is included in the definition of industrial process refrigeration equipment. One commenter stated that EPA does not specifically identify electric generating stations as industrial processes, as the rule does for the chemical and pharmaceutical industries. The commenter states that large, custom refrigeration appliances to cool the production process are essential to the manufacturing of electricity and are prevalent at nuclear generating stations.

Fundamental to the classification of these appliances is whether or not the system is used directly in the production of electricity. The commenter states that shutting down the refrigeration appliances could result in the shutdown of the generating station, where the two are integrally linked. Another commenter stated that chillers used in safety-related equipment are critical to the safe shutdown of nuclear power stations in the event of an accident. EPA believes that current definition of industrial process refrigeration equipment needs to be clarified to specifically state that the generation of electricity is included. EPA believes that under the current definition it is not apparent that the generation of electricity is considered manufacturing. Therefore, through this action, EPA will add the generation of electricity to the definition of industrial process refrigeration. EPA would like to clarify that the definition will only include appliances directly linked to the generation of electricity. Appliances used to cool control rooms or offices are not considered industrial process refrigeration equipment.

The amended definition will be:

* * * complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. These appliances are directly linked to the process. This sector also includes industrial ice machines, appliances used directly in the generation of electricity, and ice rinks * * *

EPA received one comment concerned with the potential for ambiguities in the definition of industrial process refrigeration equipment and commercial refrigeration. The commenter notes that by default, all appliances with more than 50 pounds of refrigerant that do not come under the definition of commercial or industrial process refrigeration equipment must have leaks repaired when the leak rate exceeds 15 percent leak rate. EPA agrees that all appliances with 50 pounds of refrigerant or more, that do not meet these definitions are subject to the 15 percent leak rate.

Three comments asserted that other types of appliances should also be included in the leak repair requirements for industrial process refrigeration equipment. These commenters proposed expanding the definition of industrial process refrigeration equipment to incorporate specialized comfort cooling appliances and specialized commercial refrigeration. One commenter stated that since industrial comfort-cooling equipment such as the air conditioners mounted on cranes in a smelter are "custom built," EPA should allow additional time for repairs to be made. While EPA understands that these appliances are customized to be located on cranes, often above molten metal, EPA does not believe these appliances are consistent with either the original or amended definition of industrial process refrigeration equipment. EPA believes that the parts used in these types of comfort-cooling appliances are not unique and are therefore relatively easy to replace. Furthermore, the appliances do not function as part of the process. Customizing the appliances in this scenario refers predominantly to modifying the system to fit in its intended location. Therefore, EPA does not consider industrial comfort-cooling appliances to be industrial process refrigeration equipment.

Another commenter stated that the definition of industrial process refrigeration should be expanded. The commenter uses specialized refrigeration equipment in confined spaces and other industrial-setting applications, refrigeration as cooling equipment in laboratories for meeting specific testing requirements, and cooling areas containing a bank of computers to ensure a controlled environment. Another commenter stated that the definition should specify that appliances used for regulating temperatures in the control panel buildings should also be considered industrial process. The commenter believes that this is an integral part of the process and that since these appliances are vital to the proper functioning of the instruments in the control panel they do not constitute "comfort-cooling." While EPA understands that these cooling appliances are designed to meet specific cooling needs and fit in specific settings, these appliances do not meet the definition of industrial process refrigeration. EPA does not believe it is appropriate to expand the definition of industrial process refrigeration equipment to include specialized comfort-cooling appliances. If appropriate in the future, EPA could consider creating a separate category of specialized comfort-cooling appliances and/or specialized commercial appliances and permitting additional time to repair leaks. However, at this time EPA does not believe this is necessary. If EPA receives compelling information, then EPA would consider proceeding with appropriate notice and comment.

Amending the requirements to create new sub-sectors for appliances not considered in the NPRM, particularly where such determinations would likely have wide-ranging consequences where proper notice has not been given, would be inappropriate as part of today's final action. Therefore, EPA will not expand the definition of industrial process refrigeration equipment to include specialized comfort-cooling or specialized commercial appliances. EPA may reconsider this issue through proper notice and comment procedures, at a later date.

EPA received several comments regarding the amount of refrigerant contained in appliances subject to the leak repair requirements. Commenters asked that EPA clarify that leak repair is required only for appliances that normally contain more than 50 pounds of refrigerant. On August 19, 1994 (59 FR 42953), EPA addressed this concern. The notice states that "although EPA did not explicitly restrict the scope of its leak repair requirement for commercial and industrial process refrigeration to equipment containing more than 50 pounds of refrigerant, EPA intended this requirement (§ 82.156(i)) to cover only equipment containing at least 50 pounds" (59 FR 42953). Accordingly, EPA amended § 82.156(i) to specify the 50-pound cut-off (59 FR 42957). Inadvertently, EPA neglected to carry over that amended language in the January 19, 1995 NPRM. Therefore, through this action, EPA will amend the proposed requirements of § 82.156(i) to specify the 50-pound cut-off.

One commenter requests that EPA clarify that 50 pounds refers to the refrigerant in one refrigerant circuit. The commenter states that where two separate, wholly independent refrigeration circuits that are not interconnected, each having a normal refrigerant capacity of no more than 50 pounds, the leak repair provisions should not apply. EPA agrees with this commenter. Through this action, EPA would like to clarify that if the refrigerant circuits do not interconnect, and if each wholly independent circuit has a capacity of no more than 50 pounds of refrigerant, the leak repair provisions promulgated under § 82.156(i) do not apply. However, if the refrigerant circuits are connected, and the combined circuits have a normal capacity of more than 50 pounds of refrigerant, the leak repair provisions do apply.

EPA received several comments regarding appliances used as both industrial process refrigeration equipment and comfort-cooling. The commenters were concerned with whether they need to use the 15 percent leak rate or the 35 percent leak rate under these circumstances. One example would be a chiller used directly in the generation of electricity and used to cool the control room. EPA believes that where 50 percent or more of an appliance's capacity is being used as industrial process refrigeration equipment, that appliance should be treated as industrial process refrigeration equipment and therefore subject to the 35 leak rate. Where less than 50 percent of an appliance's capacity is being used as industrial process refrigeration equipment, then the appliance will not be considered industrial process refrigeration equipment and will therefore be subject to the 15 percent leak rate. EPA believes this demonstrates an equitable approach and is consistent with determinations made by the Agency's Office of Compliance.[1]

EPA received one comment regarding the definition of on-site. The commenter believes EPA should specify that on-site means within a contiguous geographic area, under common ownership or control, that includes the location of the appliance. For the purposes of these regulations, EPA agrees with this interpretation of the term on-site.

[1] Applicability Determination #51 made under the § 608 rulemakings.

E. Repairing Appliances

1. Repair Attempts

EPA received several comments seeking clarification concerning how EPA will interpret the first repair attempt. Commenters stated that EPA should clarify that repairs can be iterative and therefore an owner or operator should be allowed to make as many repair attempts within the initial 30-day or 120-day timeframe as possible, as long as the results of conducting the verification tests indicate that the repairs were successful. One commenter explained that repairs may be checked several times before being considered complete. The commenter feared that there may be confusion that one unsuccessful attempt to tighten a bolt or replace a gasket might trigger the requirements as when a dynamic test fails.

EPA agrees with these concerns. EPA believes that during the initial 30-day or 120-day repair time, all attempts should be made to repair the leaks. Therefore, through this action EPA will replace the proposed language "first attempt" with "initial repair efforts," thus including all the efforts made during the initial 30 or 120 days.

EPA also received comments concerning the interpretation of "second attempt" to repair leaks. The commenters are concerned that second attempt implies a singular event rather than a series of events to repair a leak within a finite period of time. One commenter suggested that "efforts" be used instead. The commenter believes a limited timeframe instead of a limited event should be acceptable. EPA received comments indicating that the Agency should modify the rule to include a timeframe for completing the second attempt to repair leaks, particularly since a timeframe was included in the settlement agreement.

EPA agrees with the comments. A timeframe of 30 days (or 120 days in the case of an industrial process shutdown) was specified in the settlement agreement and inadvertently not included in the NPRM under § 82.156(i)(3)(iv). As discussed above in reference to a first repair attempt, EPA understands that repairs may be iterative and that a singular effort should not be described. Another comment suggested EPA use the language, "any subsequent repair attempt." EPA does not believe that this language is appropriate because it is too open-ended and could potentially cause

confusion. Therefore, through this action EPA will modify the proposed § 82.156(i)(3)(iv) to include a reference to 30 days and 120 days for completing "second repair efforts."

2. Timeframes for Repairing Leaks

EPA received many comments supporting the proposed timeframes for repairing leaks in industrial process equipment. These commenters recognized that while many types of leaks can be repaired within 30 days, in particular circumstances, such as when an industrial process shutdown is required, additional time is necessary. EPA received one comment stating that in all cases 120 days should be provided to repair all leaks. The commenter further stated that if the leaks could not be repaired within 120 days, additional time should be provided if the parts are unavailable, there are complications due to other regulations, or the potential need for the system to be taken off line to effect the repair exists. The commenter believes that this will reduce the amount of delays experienced by waiting for approvals from the Agency and it would decrease the burden placed upon the industry by reducing the number of submittals. The commenter further believes that by reducing wasted time spent in performing bureaucratic functions, and waiting for approvals, the repairs may be more quickly and efficiently made.

EPA does not believe it is necessary to always permit 120 days to repair leaks. In negotiating the settlement agreement with CMA and in subsequent discussions with industry representatives, numerous examples of routine repairs that can easily be made within 30 days have been identified. These types of repairs include leaks caused by a ruptured tube and a leaking gasket between the flanges. These and other types of repairs normally completed in less than 30 days are discussed in the NPRM (60 FR 3994). Limiting repair times to the most reasonable amount of time ensures that the repairs are completed responsibly and consistent with the spirit and intent of section 608 and the initial regulations promulgated in May 1993. EPA sees no reason to provide additional time to repair leaks that many commenters agree can easily be repaired within 30 days. Part of EPA's rationale for proposing changes to the leak repair provisions is based on the need to provide flexibility where the leaks are such that repairs cannot be made within 30 days. Allowing 120 days for repairs where an industrial process shutdown is necessary recognizes the need to first complete the actual shutdown before attempting to fix the leaks. Since under most circumstances, owners or operators are expected to proceed with their repair or retrofit operations without receipt of prior approval, EPA does not believe waiting for approval constitutes a reason for the owners or operators to delay action. Thus extending the leak repair timeframe to 120 days to ensure adequate time to receive EPA approval is not necessary. Therefore, EPA is requiring that where appropriate, leaks are to be repaired within 30 days.

EPA received one comment regarding the course of action when the 30-day repair requirement cannot be met. The commenter notes that the NPRM's preamble states that when the 30-day repair requirement cannot be met, the owner or operator must notify EPA and include "a one-year retrofit, replacement or retirement plan for the leaky equipment" (60 FR 3994). However, the regulatory language does not state that requirement. Instead, the regulatory language states that the owners or operators must provide the reason(s) why more than 30 days are needed and an estimate of when the repair work will be completed. The commenter believes the regulatory text is correct. EPA agrees that the regulatory language properly reflects the notification requirement. Provisions proposed under § 82.156(i) allows for other alternatives besides automatically retrofitting or replacing the equipment.

3. Determining the Full Charge of Refrigerant

EPA received several comments concerning establishment of the amount of refrigerant contained in industrial process refrigeration equipment and therefore determining the leak rate for the affected appliance. One commenter suggested that EPA should specify a methodology for determining the percentage of refrigerant lost during a 12-month period. Another commenter stated that large facilities that have in-house staff for servicing refrigeration equipment may not have had any regulatory requirement or internal justification for maintaining records of refrigerant charges prior to June 14, 1993 (the effective date of the initial regulations promulgated under section 608). The commenter requests that EPA clarify that leak rate calculations are required to be performed by taking into consideration the additions of refrigerant that occur after the original promulgation of section 608. Furthermore, the commenter requests clarification about prorating refrigerant added over more than a 12-month period. For example, if 20% is added every 24 months, does that constitute a 10% per year leak rate? The commenter believes that since there were no regulatory requirements prior to May 1993, owners or operators should not be subject to enforcement based on imprecise calculations. Alternatively, the commenter believes that EPA should permit the first recharge to occur without regard to the leak rate in order to establish a full charge baseline.

EPA understands that prior to June 1993, records regarding the addition of refrigerant may not have been maintained. However, at this point such information should have been maintained for over two years. Therefore, EPA believes it is reasonable to assume a baseline can be established. EPA agrees that refrigerant recharges should be appropriately prorated to establish a yearly leak rate; however, EPA does not believe it is necessary or appropriate to permit the first recharge to occur without making an effort to assess the leak rate.

Several commenters requested that EPA permit the use of the fourth option discussed in the NPRM (60 FR 3996) for determining the full charge of refrigerant. This method allows one to choose a number from within an established range based on the best data currently available. Once a number is selected, it would be considered the full charge; however, over time the owner or operator of the appliance may adjust the number based on new or revised information concerning the performance of the system. EPA expressed concerns that there is no clarity regarding circumstances under which a change in the number could be justified. In the NPRM, EPA stated that an everchanging estimate of the full charge defeats the purpose of creating a baseline.

Several commenters stated that EPA's concerns can be overcome. One commenter stated that in its experience it is difficult to accurately estimate the full charge of particular appliances. The commenter believes that often only trial and error will derive an accurate number. The commenter believes it is essential to allow an owner or operator to be able to draw from experience and use a range in estimating the full charge. The commenter believes that as long as the method used is documented, an inspector can determine if the approach was reasonable. Another commenter stated that EPA should not reject any legitimate technique for calculating the full charge. Several commenters stated that every method for determining the full charge has its strengths and weaknesses. Moreover, expressed or not, all methods will develop a range. The commenters believed that EPA's concerns are that the owners or operators might frequently change the determination of full charge and that EPA would lack the criteria to evaluate whether the changes were justified. The commenters suggested a way to address these concerns:

- Any downward revision of the full charge should be acceptable without a need for EPA to challenge it;
- EPA could specify that the midpoint of the established range constitutes the full charge for determining a leak rate;
- EPA could require the owners or operators to maintain records of the basis for their original determinations of the full charges and any data behind any changes to those determinations; and
- EPA could require the owners or operators to submit a report to EPA when a number is revised after discovering refrigerant losses, when a number is revised resulting in a leak rate below 35 percent, and when the owners or operators do not intend to fix the leaks.

Another commenter stated that if EPA does not revise the proposed regulations to permit this method for determining the full charge, the Agency should provide at least six months for the owners or operators to determine the full charge of affected appliances using acceptable methods.

EPA has considered these comments very carefully. EPA's concerns relate to the accuracy of the fourth method for determining the full charge of a system and the potential to adjust the estimate to reduce leak rates below the applicable thresholds. However, EPA believes that the commenters have suggested ways to alleviate EPA's concerns. EPA understands that while ranges may need to be adjusted several times for a new appliance, over time the frequency of such adjustments would likely decrease, unless substantial modifications were made to the appliance. Moreover, in most cases, ranges would not need to be adjusted more than once every few years after an appliance has been in operation long enough for the owner or operator to become comfortable with the range. Furthermore, EPA understands that a range may actually represent seasonal variations.

EPA agrees with the commenters that any downward revision of the full charge should be acceptable without any need for EPA to challenge the revision. EPA further agrees that the midpoint of the established range shall represent the full charge for determining a leak rate. This mitigates the possibility of receiving any unfair advantage by adjusting the range, since the midpoint would not vary as much.

EPA agrees with the comments that records should be maintained concerning the determination of the range and any adjustments to it. If the owners or operators of an appliance choose to establish a range, it is critical to understand the methodology for the establishment of the range and the methodology for any adjustments that would result in a larger number for the midpoint. EPA believes that such records would be beneficial in any compliance determinations. Moreover, EPA believes that while ranges many need to be adjusted several times during the first year, the ranges will soon become stabilized. It will not be necessary to adjust the ranges unless a major change was made to the industrial process refrigeration equipment. Therefore, the records would not need to be modified often. Commenters suggested data elements to be contained in the records, including the original full charge and any revisions. EPA agrees with these commenters. Therefore, the records required for using the fourth option will include: the identification of the owner or operator of the appliance; the location of the appliance; the original full charge of the appliance and how it was determined; any revision of the full charge number and how it was determined; and the date such revisions occurred. Since the owner or operator need not use the fourth methodology, EPA does not believe this recordkeeping provision constitutes an unreasonable burden for the owners or operators.

While commenters suggested limited reporting requirements to accompany this recordkeeping provision, EPA does not believe it is necessary or appropriate to require reports to be submitted detailing the methodology for establishing or changing the full charge determination. EPA believes maintaining records is necessary for the Agency to understand the methodologies used if an issue of compliance arises. EPA also believes that in all likelihood, such records will benefit the owner or operator of the appliance by providing a historic record of how the current leak rate was developed. However, routinely providing that information to EPA, particularly where no potential violation is suspected, is not necessary or appropriate. Therefore, EPA will require that records be maintained if the fourth method for establishing the full charge is used; however, EPA will not require any periodic reporting.

Commenters stated that if the Agency adopts any recordkeeping or reporting options for the fourth methodology, such provisions should not be extended for use with the other three methodologies. EPA agrees with these commenters. EPA did not propose and today is not adopting any recordkeeping options for these three methodologies.

Through this action EPA will allow any one of the three proposed methods and the fourth method discussed in the NPRM, or a combination of these methods to be used for determining the full charge of appliances. If the fourth method is chosen or used in combination with any of the other acceptable methods, the midpoint of the range will constitute the full charge for purposes of determining the leak rate. The owners and operators of the affected industrial process refrigeration equipment must keep records in accordance with § 82.166(q), detailing the methodology used for determining and adjusting the range.

Two commenters stated that the calculations required for determining the normal charge of industrial process refrigeration equipment should apply to the commercial and comfort-cooling sectors as well. One commenter believes that these other appliances have field-installed interconnecting piping and there may not be any information available from the manufacturer indicating the normal refrigerant charge. Furthermore, the commenter requests that EPA publish guidance, including formulas, tables and sample calculations with enough detail that most owners affected by the leak repair provisions will be able to perform the necessary calculations. EPA does not agree with this commenter. In cases where a comfort-cooling or commercial refrigeration appliance is "customized," EPA believes it is still relatively easy to derive the charge of the system. Field-installed piping can be measured and the refrigerant charge can, therefore, be calculated. Moreover, the owners or operators of such systems often hire contractors to service and maintain their appliances. These contractors should be able either to determine the full charge or to provide guidance on establishing leak rates. EPA believes that in most instances, these contractors will be better able to advise the owners or operators. Therefore, EPA does not believe it is necessary to specify how the full charge will be established for these sectors, nor to publish specific guidance.

One commenter believes that EPA should exclude from any calculation of refrigerant leak rates the loss of refrigerant through a one-time accidental release, such as breaking pipes, a ruptured disc, or operator error.

EPA disagrees with this commenter. While EPA understands that accidents do occur, EPA believes that if the events are such that the leak rate surpasses the 15 percent or 35 percent thresholds, the necessary repairs should be made to ensure that the owners or operators of the appliances are in compliance. Such repairs would include replacement of the broken pipe or rupture disk that led to the accidental release. Such repairs would also include correcting any condition that repeatedly led to an accidental release (e.g. over pressurization). Moreover, since many leaks occur because of one-time events, such as ruptured pipe, it would be impossible to draw clear distinctions of what would be included in leak repair calculations.

One commenter stated that EPA should clarify that the owners or operators may hire contractors to determine the full charge. The commenter further believes that throughout the rule EPA should recognize the role of contractors who service refrigeration appliances. As stated earlier in this preamble, EPA recognizes that the owners or operators may have contractual arrangements with contractors or technicians who actually perform maintenance and repair work on the appliances subject to the leak repair provisions. While the work may be performed under such arrangements, the personnel are in effect acting as an agent of the owners or operators.

One commenter stated that EPA should clarify how to determine the full charge for appliances with multiple independent compressors and refrigerant loops. As EPA has stated elsewhere in this notice, the charge of an appliance is based on the charge of an individual refrigerant loop/circuit where that loop/circuit is not interconnected and that contains a normal charge of 50 pounds of refrigerant or more. EPA distinguishes between those that are independent and those that are interconnected, perhaps employing multiple compressors (e.g. parallel systems).

4. Best Efforts

EPA received several comments concerning the term "best efforts," as used in § 82.156(i)(2). Several commenters agreed with the Agency's interpretations. These commenters stated that it was appropriate to exclude formal protocols from the interpretation of best efforts because of wide variations in the regulated community. One commenter stated that each leak is unique and best efforts to repair a small leak will differ from those taken to repair larger leaks. A formal definition would either be too complex or ineffective at capturing all the scenarios.

One commenter requested that EPA include a formal definition of best efforts in the final rule. The commenter stated that the lack of a formal definition could create uncertainty as to what the rule requires. The commenter recognized that the description of best efforts discussed in the NPRM originated with industry. The commenter provided two possible ways to better characterize a best efforts approach. The approach includes providing more description in § 82.156(i)(2) and/or creating a specific definition in § 82.152. The commenter suggested the following definitions:

> best efforts means a repair method is used that is reasonably expected to be effective on the particular type of leak, based on past experience;
>
> or
>
> best efforts means that, during an extension of the 30-day period for repairs, the owner or operator repairs significant leaks to the extent practical during the 30 days, by using a repair method that is reasonably expected to be effective based on past experience, on those leaks that do not require an extension of time.

While EPA understands the benefits of having a formal definition for any term used in regulations, EPA does not believe these definitions solve the problem discussed in the NPRM. In the NPRM, EPA states that its concerns are the lack of formal protocols in the best efforts approach described by EPA. EPA characterizes a best efforts approach in the NPRM as implying that a methodology for repair that is reasonably expected to be effective based on past experience and potentially may include consultation (60 FR 3994). EPA does not believe the commenter's suggested language incorporates all of the concepts described in the NPRM. Adopting an inadequate definition does not benefit EPA or the regulated community. EPA requested comments on a definition hoping that perhaps an industry standard could be cited. Throughout the regulations promulgated under section 608, EPA refers to industry standards. Without the existence of such standards, EPA believes that a formal definition is not the best approach.

Several commenters stated that EPA should modify the proposed regulatory language in § 82.156 (i)(2) and (i)(2)(ii) to distinguish best efforts from sound engineering/professional judgment. The commenters are concerned that EPA erroneously included sound engineering/professional judgment in the definition of best efforts. The commenters stated that the intention behind best efforts was that the owners or operators should do what is necessary within reason to repair leaks within 30 days in situations where longer extensions beyond 30 days are necessary to conduct repairs due to the unavailability of spare parts or compliance with other federal, state, or local regulations. In further discussions with the commenters, it appears that over time any initial distinction that EPA and CMA made in the settlement agreement between best efforts and sound engineering/professional judgment has become convoluted. EPA believes that the rationale for using the term best efforts for repairing leaks that required an extension beyond the initial 30 days was to ensure that where there are multiple leaks or where a leak can be partially repaired, the owners or operators will complete all reasonable actions during the initial 30 days. The result will be to reduce the leak rate as much as possible during the initial 30 days where additional time is necessary to complete all repair activities. Additional comments submitted by CMA confirm this interpretation. Therefore, EPA is amending § 82.156(i)(2) to remove the references to best efforts. Instead, EPA will state that the owners or operators must conduct all necessary leak repairs that do not require additional time beyond the initial 30 or 120 days. EPA believes that this change in language more adequately conveys the intent of this provision, which is to allow additional time, while ensuring that all that can be done has been done.

5. Static and Dynamic Tests

EPA received many comments supporting the use of static and dynamic tests. While these commenters agreed with the need for these tests, several suggestions for when the tests should be used and alternative terminologies were suggested. These comments will be discussed in greater detail later in this subsection. EPA received one comment opposing the use of static and dynamic tests. The commenter stated that static and dynamic tests are not precisely reliable methods on which to base a requirement to retrofit a piece of equipment. The commenter stated that it had documented cases where the results of such tests have been inconclusive. The commenter further believes that the tests are overly burdensome and unnecessary. The commenter believes that the tax and cost of refrigerants should provide the necessary incentives.

EPA agrees that the expense of ozone-depleting refrigerants will influence the decisions made by many organizations. However, considering the size of the refrigerant charges for some of the appliances subject to the leak repair provisions, ensuring that appliances brought back on-line are no longer leaking above the threshold, is important. Also, often appliances may use an HCFC, which is not subject to federal tax. In the settlement agreement, EPA and CMA agreed to propose this verification approach. Since these tests are regularly performed to ensure that a leak has been repaired, EPA believes these requirements are not overly burdensome. Furthermore, EPA believes that performing such tests provides the owners or operators with a strong measure of insurance. Moreover, since EPA has proposed options other than retrofitting or retiring the leaky equipment, such as reducing other leak sources, EPA does not believe a retrofit or replacement decision would be based solely on one failed static or dynamic test. Therefore, EPA will require that the tests be performed.

EPA received several comments regarding the use of the terms "static" and "dynamic." Commenters stated that uses of the terms "first verification test" or "initial verification test" and "follow-up verification test" would be more appropriate. Among the reasons suggested for this change is a concern that the terms static and dynamic have commonly understood meanings. Static generally means a system is at rest and dynamic generally means a system is operating. One commenter stated that during the settlement discussions the terms were crafted to discuss repairs, using the widely understood meaning. However, later it was realized that industrial process refrigeration equipment that was not shut down during repairs was neglected. The terms were then broadened to mean a first verification and a second verification test. After discussions with employees, the commenter now believes that the broadened definitions would likely cause confusion. Another commenter agreed that while the broadened definition captures the situations faced by the owners or operators, the language would be confusing. Several commenters suggested that the terms "first" or "initial verification test" and "follow-up verification test" would be more accurate.

EPA agrees with these commenters. The definitions of static and dynamic were broadened to capture real world situations. Since the settlement agreement bound the Agency to a proposal that included those terms, EPA did not consider the use of other language to describe the tests. However, EPA agrees that "initial verification test" and "follow-up verification test" more accurately describe the tests, particularly since often the same types of tests qualify as both static and dynamic, depending on when they are performed. EPA believes changing the language would further clarify that the state of motion is not necessarily a criterion. Therefore, through this action, EPA will replace the proposed terms "static" and "dynamic" with the terms "initial verification test" and "follow-up verification."

Commenters suggested that EPA streamline the definition of initial verification test (static verification test) by removing illogical or redundant statements. The commenters state that there is no need to say that the test will be performed before the appliance or portion of the appliance has reached operation at normal working conditions of temperature and pressure because it would not be possible for an appliance or portion of an appliance to do so without a full refrigerant charge. EPA understands the commenters' concerns. Clearly, without a full charge of refrigerant, normal working conditions of temperature and pressure cannot be reached. However, to limit the potential for misinterpretations, EPA would rather be overly explicit.

One commenter requested that EPA distinguish between the terms steady-state operating conditions, steady-state operating characteristics, normal working conditions and normal operating conditions. The commenter stated that in engineering terms, these terms are not always equivalent. For example, if the values of all the variables in a process (e.g. all temperatures, pressures, volumes, flow rates, etc.) do not change with time, except for possibly minor fluctuations, the process is said to be operating at steady state. However, if any of the process variables change with time, transient or unsteady-state operating is said to exist. Depending upon the industrial process that the industrial process refrigeration equipment is supporting, its normal operation in strict engineering terms may be characterized as steady-state or unsteady-state. The commenter therefore believes it is more appropriate when referencing the operation state of the refrigeration equipment, for purposes of indicating when either verification test should be conducted, for the Agency to adopt the terminology "normal operating characteristics and conditions." Furthermore, the commenter believes that normal operating characteristics and conditions has an understood definition equivalent to how the NPRM defines and refers to steady-state operations.

While EPA received other comments supporting the use of the term steady-state, EPA agrees with the concerns regarding the potential for confusion. The use of the term steady-state in this context originated with the settlement agreement. While the proposed definition for steady-state appears acceptable to most of the affected industry, EPA is concerned that someone familiar with the engineering distinctions between steady-state and unsteady-state would be confused. Therefore, EPA believes it is appropriate to replace "steady-state" with "normal operating characteristics and conditions." EPA will not be revising the definition in any substantive manner; therefore, the definition itself will be consistent with the spirit of the settlement agreement.

Several commenters raised concerns on when a follow-up verification test is performed. The commenters are concerned that the NPRM does not properly consider occasions where a verification test at normal operating characteristics and conditions is impractical or less meaningful. Commenters stated that there are repair situations where the repair sites will not be accessible to perform a meaningful verification test after the industrial process refrigeration equipment is returned to normal operating characteristics and conditions. One example would be a verification test for leaks inside a heat exchanger. The tests can be performed while the exchanger is open. A test performed after the exchanger is reassembled would not be as meaningful. Other examples provided by the commenters include: compressor internals, locations that must be re-insulated prior to start-up, and locations in close proximity to dangerous hot equipment or moving parts where access is not possible after reassembly. EPA did discuss whether it would be appropriate to permit follow-up verification tests prior to returning to normal operating characteristics and conditions; however, EPA did not propose to allow these alternative tests. Commenters stated that since there are situations where the tests prior to a return to normal operating characteristics and conditions will be more meaningful and reliable, EPA should permit sound engineering/professional judgment to be used to determine what the appropriate operational state of industrial process refrigeration equipment should be when the follow-up verification tests are

conducted. One commenter stated that EPA should take confidence in the fact that leak detection and repair of appliances did not originate with section 608; it has been an integral part of maintenance practice for many years.

EPA agrees that in certain circumstances, performing a follow-up verification test prior to normal operating characteristics and conditions may be more meaningful and reliable. Performing multiple verification tests may be appropriate under many conditions. One of the Agency's concerns, however, was that until normal operating characteristics and conditions are achieved, it may be unclear if the leak repair work was truly successful. EPA was concerned that at less than true operational state, a particular fix may not hold. The Agency understands that leak detection and repair has been part of this sector's practices before the development of these regulations. Furthermore, EPA believes that as class I and class II refrigerants become less readily available, leak detection and repair efforts may increase. Moreover, EPA believes that in most cases the owners or operators rely on personnel with appropriate professional judgment in determining the best way to repair and verify the repair of a leak source. Therefore, through this action EPA will amend the proposed requirements for performing follow-up verification tests. EPA will require that the test be performed at normal operating characteristics and conditions unless sound professional judgment determines that a follow-up test should be performed prior to returning to normal operating characteristics and conditions.

EPA received several comments requesting that the Agency clarify that initial and follow-up verification tests are to be performed even when repairs are made within 30 days. One commenter stated that the NPRM was unclear. The commenter believes that as a practical matter, and to minimize confusing plant operations, it would be preferable to treat all repairs equally, and to require documentation that tests should be done to verify a successful repair. Another commenter stated that these tests are a measure of compliance. Another commenter stated that the settlement agreement makes no mention that these requirements must be met only in cases where the owners or operators are granted additional time. Furthermore, the settlement agreement does not limit these tests to situations where an industrial process shutdown has occurred, or where the repairs were made while an appliance was mothballed. This commenter believes that, with regards, to the performance of these tests, the regulatory language should be in full agreement with the settlement agreement.

EPA agrees that the tests demonstrate whether a leak repair effort was successful or not, though the tests do not necessarily mean that the leak rate has been sufficiently reduced. In addition, EPA understands that often these tests have been routinely performed regardless of any regulatory requirement. EPA believes that many organizations have internal policies requiring that verification tests be performed. EPA agrees that having a consistent requirement that can easily be paraphrased for technicians is useful. Moreover, EPA does not believe requiring these tests in all circumstances equates to any substantial burden to industry. Therefore, EPA will require that initial and follow-up verification tests be performed when repairing leaks on industrial process refrigeration equipment where such leakage has surpassed the 35 percent annual leak rate.

One commenter requested that EPA clarify that the verification tests demonstrate the success of a leak repair, not that the leak rate has been reduced below the threshold. EPA agrees with this commenter. It was not EPA's intention to imply that the verification test shows what the leak rate is. However, EPA believes that where the verification test shows that the repairs have been successful, in most cases this will mean that there has been a reduction in the leak rate. If more than one leak exists, it is possible that the leak rate could remain above acceptable levels. In such cases the owners or operators would be expected to take reasonable actions.

Two commenters stated that where an industrial process shutdown is not required, the initial and follow-up verification tests will be identical; therefore, a follow-up verification test is unnecessary. EPA disagrees with these commenters. While the same test might be performed, the fact that the tests are performed at different times is important. If a repair consists of tightening flange bolts, for example, it may appear that a repair is successful during an initial verification test. However, it may not be immediately obvious that the repair was unsuccessful. A bolt may appear to have been tightened sufficiently; however, if the threading is damaged, it may loosen in a short period of time. Performing a follow-up verification test will demonstrate that a problem still exists. EPA believes that even when an industrial process shutdown is not necessary, initial and follow-up verification tests will play vital roles. Therefore, EPA is requiring that both initial and follow-up verification tests be performed when repairs are made even if an industrial process shutdown is not required.

EPA received one comment requesting that more than one follow-up verification test be permitted before an owner or operator must notify EPA of a failure. The commenter is concerned that situations could arise in which a follow-up verification test may indicate a failure even though in reality the leak has been fixed. The commenter suggested that it would be more reliable in the event that the test was inconsistent with the expected results, that subsequent tests be permitted to be performed during the 30-day period. EPA understands this commenter's concerns. Since repairs are often interrelated, tests may demonstrate a need to continue repair efforts. EPA proposed to permit the follow-up verification test to occur within 30 days. However, since the Agency is revising the terminology used in the NPRM to first repair efforts and second repair efforts, EPA believes the issue has been resolved. Tests will be completed after the repair efforts are complete.

EPA received comments concerning the interpretation and use of sound engineering/professional judgment. Commenters stated that EPA should not incorporate sound engineering/professional judgment into the interpretation of best efforts. Sound engineering/professional judgment should only be discussed in relation to verification tests. EPA has already addressed the commenters' concerns about the NPRM's incorporation of sound engineering/professional judgment with the use of best efforts.

A few commenters stated that since the decision-making process may not be performed by an engineer, the use of the term engineering is inappropriate. In the NPRM, EPA states that sound engineering or professional judgment means a "combination of the use of logic and operational experience, with methods of calculation that are practical, based on training, experience and education" (60 FR 3997). EPA agrees that in many cases the professional making the decision may not be an engineer. Therefore, EPA will use the term, "sound professional judgement."

One commenter stated that sound professional judgement should be employed to determine where and which initial and follow-up verification tests should be performed, whenever leaks that are subject to the leak repair requirements for industrial process refrigeration equipment must be repaired. EPA agrees with this commenter.

Another commenter stated that fluorescent dye combined with a leak monitoring UV light source should be considered an acceptable initial or follow-up verification test. In the NPRM, EPA discussed three types of verification tests. EPA states that the three discussed represent examples that EPA believes would be considered acceptable forms of verification tests. EPA states that other types of tests may exist (60 FR 3997). EPA believes that sound professional judgement should be employed when determining the type of verification test that is appropriate for the particular leak. Therefore, it is not necessary for EPA to state which tests are acceptable. However, EPA would like to clarify that any verification test must be acceptable under all other regulatory requirements. For example, if fluorescent dye was combined with an ozone-depleting substance, where that ozone-depleting substance is used to propel the dye from a pressurized dispenser into the appliance, that application would be banned under the nonessential products ban promulgated under section 610 of the Act.

EPA received one comment regarding the need to perform verification tests if the owner or operator determines that the industrial process refrigeration equipment should be retrofitted. For example, if the leaky equipment is shut down to perform repairs on the heat exchanger, and as the repair work begins, it is determined that the compressor is about worn out, the owner or operator may choose to retrofit or replace the system rather than complete repairs. The commenter believes that under these circumstances the obligation to perform the verification tests should be lifted. EPA agrees with this commenter. If the owner or operator is switching to a retrofit, replace, or retire mode, the obligation to bring the leak rate below 35 percent is suspended. Therefore, it is not necessary to perform tests to verify the success of individual leak repair efforts.

EPA received an additional comment concerning the use of verification tests when the owners and operators are retrofitting or replacing the appliance. The commenter was concerned that the proposed language would obligate owners or operators to perform verification tests on replaced or retrofitted equipment. EPA agrees that these tests are not necessary for replaced or retrofitted equipment.

6. Fixing Other Leaks

EPA received one comment regarding what happens if EPA disapproves the parameters for fixing leaks. In § 82.156(i)(4), EPA stated that if repairs fail a follow-up verification test, the owner or operator could choose the option of doing whatever it takes to get the rate below the threshold within 180 days. It is anticipated that the owner or operator will follow parameters from earlier notifications. EPA may disapprove of those parameters; however, the parameters are deemed approved if EPA does not object within 30 days after receiving notice. The commenter supports this approach, but is concerned about what happens if EPA disapproves. In such cases the commenter suggests that the owner or operator and EPA should reach agreement on what parameters will be used. EPA agrees with the need to specify what will occur if the EPA objects to the parameters. If this situation occurs, in all likelihood, EPA will consult with the owner or operator. However, EPA and the owner or operator may not necessarily "reach agreement." Through this action, EPA will specify that where EPA objects to the submitted parameters for bringing the overall leak rate below the applicable threshold, EPA will select appropriate parameters. In all likelihood, this selection will be made expeditiously since the applicable timelines will remain in effect. If such disapproval significantly limits the ability of the owners or operators to comply with appropriate timelines, EPA may consider granting an extension. If no agreement can be reached, it is anticipated that the course of action may be to retrofit or replace the affected industrial process refrigeration equipment. Under such circumstances, EPA may need to consider providing additional time for the owners or operators of the affected industrial process refrigeration equipment to complete retrofit or replacement activities.

EPA received several comments supporting the provision relieving the owner or operator of the obligation to retrofit or retire industrial process refrigeration equipment where, within 180 days, the owner or operator has reduced the leak rate to below 35 percent by completing other repairs and tightening the operation of the appliance. These commenters believe that by reducing the amount of refrigerant being released, the owner or operator has met the goals of the leak repair provisions although the original leak remains.

EPA received one comment suggesting that the Agency should permit one year instead of 180 days. The commenter believes that providing additional time will not detract from the requirement to retrofit or replace the appliance. EPA disagrees with this commenter. EPA believes that to complete retrofit or replacement activities within one year, it would be necessary to perform preparatory work on the same appliance. The lack of clear direction between retrofitting and repairing the appliance that late in the year may influence the ability of the owner or operator to complete retrofit activities. Furthermore, EPA believes that where the leak rate can be reduced to below the applicable threshold, 180 days should be sufficient time. The leak repair provisions being promulgated through this action are designed to provide greater flexibility without compromising the goals of reducing emissions. To achieve this goal EPA proposed the shortest amount of additional time necessary to complete repairs. Therefore, EPA does not believe it is necessary to further extend this provision.

EPA received one comment requesting that the Agency specify that § 82.156(i)(3)(v) only apply where repairs have failed a follow-up verification test and the owners or operators have chosen to do whatever it takes to bring the leak rate below the applicable threshold. EPA agrees that there are other options available to the owners or operators. Therefore, through this action, EPA will clarify that the owner or operator may choose this option, but that other options, such as retrofitting the appliance, also exist.

EPA received several comments supporting the need to switch to the retrofit or replacement mode after discovering that successful leak repairs cannot be made in accordance with the necessary timelines. EPA received one comment suggesting that when a switch is made from a repair mode to a retrofit/replacement mode, the owner or operator of that industrial process refrigeration equipment should be held to the normal deadlines for retrofitting or retiring the appliance. The commenter stated that if the owner or operator has spent a month trying to fix the leaks, the owner or operator would have eleven months left for retrofitting, replacing, or retiring the equipment. EPA agrees with this commenter.

EPA received several comments supporting the need for additional time to complete the retrofit or retirement of industrial process refrigeration equipment beyond one year. One commenter stated that EPA should

clarify however, that additional time should be permitted under § 82.156(i)(7)(i), not one additional year. In some cases, more or less than one year is appropriate. One commenter stated that additional time, up to one additional year, should be permitted under § 82.156(i)(7)(ii). The commenter also stated that where additional time beyond the initial additional "year" is permitted in § 82.156(i)(7)(iii), EPA should explicitly state that additional time beyond the one year is permitted, not an additional year. EPA agrees with these commenters.

F. Industrial Process Shutdown

EPA received several comments supporting the extension to complete repairs when an industrial process shutdown is required. One commenter suggested that the term process shutdown should not be used interchangeably with the term industrial process shutdown. To provide clarity and consistency, the commenter believes the Agency should use and define the term industrial process shutdown exclusively. EPA agrees with this commenter. Therefore, EPA will define and use the term industrial process shutdown, instead of process shutdown.

EPA received one comment stating that the need for additional time beyond the 120 days permitted for an industrial process shutdown may not be evident within the initial 30-day repair period. The commenter is concerned that an initial determination that no other federal, state, or local regulations apply may be made by the owners or operators. It is also possible that within the initial 30 days the owners or operators may not realize that the appliance requires parts that are unavailable. After the industrial process shutdown is complete, possibly as late as day 115, such a determination may be made. Under those circumstances, the commenter is concerned that additional time beyond the 120 days would no longer be available. EPA understands these concerns. While the Agency believes that in most cases the owner or operator will know that other regulations will delay repairs or that the parts are not readily available within 30 days, it is possible that such a determination will not be known in advance of completing the industrial process shutdown. Therefore, through this action, EPA will specify that additional time is available beyond the 30-day or 120-day repair period where other federal, state or local regulations are applicable or where the necessary parts are unavailable. Only the additional time needed to receive delivery of the necessary parts or comply with the pertinent regulations will be permitted.

G. Retrofitting or Replacing Equipment

EPA received several comments concerning retrofitting or replacing equipment. Commenters supported the proposal to permit additional time where specific circumstances exist. Comments about specific aspects of the proposal are discussed below.

EPA received one comment asking for clarification regarding the process of notification to EPA if repairs done in good faith are not successful and retrofitting must be pursued. The concern is that there may be cases where a repair requires an industrial process shutdown. If the "clock" for notifying EPA begins the date the leak rates are discovered, there may be cases where six months has passed. Therefore, the commenter suggested that EPA permit six months from the date the decision to retrofit is made. EPA disagrees with this commenter. EPA believes six months provides enough time both when the 30-day timeline and 120-day timeline apply. The owners or operators would have acceptable time to make repairs, to determine that retrofitting is appropriate, and to submit any required information.

EPA received a few comments concerning returning equipment to operation after the decision to retrofit, replace, or retire the appliance has been made. One commenter stated that EPA should allow an owner or operator to start up and operate appliances that the owner or operator determines, after attempting to repair leaks, cannot pass an initial verification test, if the owner or operator plans to retrofit or replace the appliance in accordance with § 82.156(i)(6) or such longer time as may apply in accordance with § 82.156(i)(7)(i), (ii) and (iii) or § 82.156(i)(8) (i) and (ii). EPA agrees with these commenters. If the owners or operators of affected industrial process refrigeration equipment attempt to repair leaks, but determine the need to retrofit or replace the equipment in accordance with the provisions promulgated through this action, the affected industrial process refrigeration equipment may be brought back on line without an initial or follow-up verification test.

EPA received related comments concerning the ability of the owners or operators to switch from the repair to the retrofit mode, and from the retrofit to the repair mode. One commenter stated that as long as all applicable deadlines are met, the owners or operators should have the flexibility to change their initial determination of retrofitting or repairing the industrial process refrigeration equipment. EPA agrees that as long as all applicable deadlines are met, the owners or operators may change their initial decision to retrofit, replace, or repair leaky industrial process refrigeration equipment.

One commenter stated that the proposed requirement to develop retrofit plans within 30 days would be difficult for large industrial process refrigeration equipment. It may take time for the owners or operators to determine the cause of the leak and whether the best course of action is to repair or retrofit the appliance. The commenter requests that EPA permit 90 days for the owner or operator to obtain all the appropriate information to complete a valid retrofit or retirement plan. The commenter believes this is consistent with EPA's recognition that it may take time for the owners or operators to evaluate the available options. EPA agrees that it may take time to evaluate the available options; however, EPA does not believe it is necessary to permit 90 days to develop retrofit or retirement plans. EPA believes that system mothballing and the ability to switch from a repair mode to a retrofit mode provide the owner or operator of the affected appliance with sufficient time to develop such plans. EPA believes that particularly where the type of leak is unknown, most owners or operators will attempt to identify and repair the leak first. Therefore, EPA does not believe it is necessary to require additional time to develop retrofit or retirement plans.

EPA received one comment regarding when the clock starts for retrofitting a system. The commenter is concerned that § 82.156(i)(3)(ii) permits the owner or operator of industrial process refrigeration equipment to determine the need to retrofit industrial process refrigeration equipment after a failed follow-up verification test; however, § 82.156(i)(6) states that all work under the plan must be completed within one year of the plan's date and the plan must be developed within 30 days of discovering the leak. The commenter is concerned with this apparent inconsistency. EPA agrees with this commenter's concern. While in general, plans are to be developed within 30 days of discovering the leak, this final action provides opportunities for the owners or operators to switch to a retrofit mode. EPA will modify the language in § 82.156(i)(6) to reflect these scenarios.

EPA received one comment requesting, that if the owner or operator intended to retrofit or replace an appliance, and developed an appropriate plan, and if the owner or operator later determines that the normal charge of the appliance was not correctly calculated, the owner or operator should be relieved of the obligation to retrofit or replace the appliance and therefore, be able to withdraw the plan. The commenter states that if the appliance was overcharged, the calculations would be incorrect. EPA understands these commenters concerns. As discussed above, EPA realizes that owners or operators may not have kept records of refrigerant charges prior to the promulgation of regulations under section 608. Therefore, EPA will permit the owner or operator to withdraw a retrofit or retirement plan if the calculations of the full charge used to determine the leak rate were incorrect. However, the owner or operator retracting such a plan will need to demonstrate clearly that the original determination was incorrect and why. EPA will be particularly concerned where the fourth methodology for determining the full charge was used. Where a range is used to establish the full charge and that range is altered, EPA is requiring that records be maintained and be made available to EPA upon request.

H. Recordkeeping and Reporting Requirements

EPA received several favorable comments regarding the proposed recordkeeping and reporting requirements. One commenter stated that although the recordkeeping and reporting requirements are more detailed than those promulgated in May 1993 and that they do constitute an additional burden, the commenter supports the requirements. The commenter believes the requirements are necessary to allow EPA the opportunity to verify that best efforts were expended to find and repair leaks. Another commenter stated that the provisions mostly appear necessary and appropriate, in order to assure compliance. This commenter did offer minor suggestions for the requirements that are discussed below. EPA received two negative comments on recordkeeping and reporting comments. One commenter stated that the provisions appear to be extremely burdensome and time consuming. This commenter feels that more flexibility should be provided and that incentives to expeditiously fix leaks and even retrofit will be derived from the cost of refrigerant. The commenter further stated that the NPRM contains 12 separate reporting items subject to noncompliance enforcement actions and strict deadlines while providing no environmental benefit. The second commenter stated while most of the requirements for recordkeeping and reporting seem justified, § 82.166(n) should not include recordkeeping or reporting requirements for § 82.156(i) (3) (iii), (iv), and (iv) because they are too burdensome. EPA disagrees with these commenters. This rulemaking, in its entirety, is designed to provide greater flexibility to the industry. The rule will alleviate stringent repair and retrofitting timelines and allows for more flexible approaches for lowering the overall leak rate of affected appliances. EPA has proposed and today is adopting reporting and recordkeeping requirements in conjunction with the more flexible approach to ensure compliance with this less stringent scheme. EPA recognizes that the reports themselves do not constitute an environmental benefit. However, ensuring compliance with this new leak repair scheme does provide a benefit. The three specific provisions cited by the second commenter are pertinent to EPA. One provision reports the results of a failed follow-up verification test. This failure is a trigger for the owner or operator to choose a new course of action. Notification to EPA of the failure is important and would accompany other required information. The other two provisions communicate the results of either successful second repair efforts or tightening other aspects of the appliance to reduce the leak rate below the threshold. Since these events result in relieving the owner or operator of having to retrofit or replace the appliance, it is essential for the owner or operator to notify EPA. These recordkeeping and reporting requirements are not always required. If the owner or operator of the industrial process refrigeration equipment can complete repairs successfully during the initial 30 days, there are no applicable recordkeeping or reporting requirements.

One commenter suggested that EPA clarify that only the information listed in § 82.166 (n),(o) and (p) must be maintained. The commenter suggested several other language changes to ensure an understanding of the terminology used. Particularly, the commenter suggested and EPA clarified through the terms, "fix all other outstanding leaks," "on-site," "refrigeration facility," and "time changes." Another commenter suggested that EPA clarify under what circumstances specific data elements should be included. EPA has changed the language in § 82.166 (n), (o), (p), and in the newly added (q) so that these sections clearly reflects EPA's intent.

EPA received comments regarding notification to EPA of changes from the original estimates concerning repair work. One commenter stated that it was unclear and confusing in both the preamble and the regulatory language regarding time changes for completion of work from the original estimates. The commenter believes that EPA should require notification only if the estimated date of completion of work changes and results in moving the completion date forward. Other commenters noted that if EPA reviewed every adjustment in the affected repair schedules, EPA would receive many unnecessary notices and companies would face additional compliance burdens. EPA agrees with these commenters. EPA is only concerned when the estimated date of completing work results in extending the date of completion, thus increasing the potential for refrigerant releases. Through this action EPA will change the proposed regulatory language to state that when the repair schedule results in extending the date of completion, the reasons for these changes must be documented and submitted to EPA within 30 days of discovery of the change in timing.

EPA received comments concerning the potential for the owners or operators of industrial process refrigeration equipment to be placed in a situation where they will not be able to comply with their original schedules because the vendor is unable to meet the delivery schedule previously supplied to the owner or operator. For example, if a vendor quotes 20 weeks for delivery and in week 18 changes that estimate to 36 weeks, the owners or operators of the affected appliances will be forced to reconfigure their installation schedules. EPA understands the concerns raised by these commenters. If a critical component is delayed, this might influence whether the owner or operator can meet their schedule. EPA is aware that often a retrofit will involve several vendors. In some cases non-critical components may be delayed. It may be possible to rearrange the schedules to install delayed parts later. Where these parts must be on hand for work to proceed, delays in delivery by the vendors could result in missed deadlines by the owners or operators. Therefore, through this action, EPA will permit an extension of the original deadlines where delays by vendors limit the ability of the owners and operators to proceed with their retrofit or replacement activities. Extensions will be based on the delivery date for the necessary components.

EPA received one comment requesting that instead of filing for additional time beyond the initial one-year period six months after the expiration of the 30-day period following the exceedance of the 35 percent leak rate, the owner or operator of the industrial process refrigeration equipment should submit information requesting additional time 10 months from the expiration of the 30-day period. The commenter argues that since the materials involved in construction of custom-built equipment may not normally be used by a refrigeration vendor, it is common for delivery dates to slip. The commenter believes that an owner or operator may request additional time even where it is unclear that such time is actually necessary. However, if the owner or operator must make the decision to request additional time at 10 months instead of six months, the owner or operator may be more realistic in his/her evaluation. While EPA understands these concerns EPA does not believe it is appropriate to postpone the date. EPA believes that in most cases it will be clear at six months if additional time will be necessary. Furthermore, EPA would prefer that those who are unsure if an extension will be necessary still notify the Agency. If EPA believes the request is unjustified, EPA can notify the owner or operator of such a determination. It would be inappropriate for the owners or operators to make such requests at the 10-month mark where EPA has 60 days to notify the owner or operator if the request was rejected.

EPA received comments concerning the need to clarify that in particular circumstances, all the information listed in § 82.166(n) would not need to be included in a report submitted to EPA. EPA agrees with this commenter. In the NPRM (60 FR 3995) EPA indicates that under certain circumstances particular items listed in § 82.166(n) would not be expected. However, EPA did not include this information in the regulatory text. Moreover, EPA understands that while combining the recordkeeping information list appears to simplify the provisions, misinterpretations could arise. Therefore, EPA has clarified the recordkeeping provisions in this final action by stating under what circumstances specific data elements are or are not required.

EPA received one comment regarding the need to modify the language in § 82.166(n) and (o). In the NPRM these provisions used the language, "industrial process refrigeration equipment," while the requirements are also applicable to the federally-owned commercial and comfort-cooling appliances. EPA agrees with these comments and has made the necessary changes.

One commenter stated that EPA should revise § 82.156(i)(7)(i). The NPRM states that information, in accordance with § 82.166(o), will be submitted to EPA and within 60 days EPA will notify the owner or operator of its determination. The commenter suggests that instead, the request for additional time should be deemed acceptable unless the Agency notifies the commenter within 60 days. EPA disagrees with this commenter. EPA has permitted for an automatic process of granting up to one year where the conditions of § 82.156(i)(7)(ii) apply. EPA distinguished between these two provisions because if the conditions of § 82.156(i)(7)(i) apply, the Agency can grant as much time as necessary. This provision is far more open-ended than § 82.156(i)(7)(ii). Therefore, EPA continues to believe it is necessary for the Agency to review the request for additional time, agree that time to the extent reasonably necessary can be granted, and notify the owner or operator of EPA's decision.

EPA received one comment requesting notification of the proper address for submitting reports to the Agency. EPA will cross reference the address listed in § 82.160: Section 608 Recycling Program Manager, Stratospheric Protection Division, 6205J, 401 M Street, SW., Washington, DC 20460.

I. Purged Refrigerants

EPA received several comments regarding the treatment of purged refrigerants that are destroyed. The commenters agreed that if the refrigerant is not vented to the atmosphere, but is instead destroyed, the material did not leak and should not be included in any leak rate calculations. Several commenters suggested that records be kept on-site by the owners or operators and be made available to EPA upon request. One commenter stated that a requirement to notify EPA will prove to be a resource drain for EPA and will only provide a minimum environmental benefit. EPA agrees with these commenters and will require that records indicating the amount of purged and destroyed refrigerant be maintained and made available to EPA upon request.

One commenter requested that EPA exempt from leak detection determinations any refrigerant purged and destroyed where the destruction can be verified, regardless of the technology utilized. The commenter stated that refrigerant that is leaked into a system, then converted to elemental compounds or other non-ozone-depleting substances, by a process reactor or a hydrochloric acid burner should qualify for this exemption. In discussions with the Agency, commenters indicated that where an owner or operator decides to take credit for destroying purged refrigerant, it will be possible to find an appropriate method for verifying how and how much refrigerant was destroyed, if the refrigerant is "completely destroyed" for purposes of the phaseout regulations promulgated under sections 604 and 606 of the Act. EPA agrees with these commenters. While effective destruction of purged refrigerants can take place in a number of technologies, EPA does wish to ensure high efficiency. Therefore, so that purged refrigerant is not counted as part of the leak rate, today's rule will require purged refrigerant to be destroyed at a destruction efficiency of 98 percent or greater, consistent with both the phaseout and the labeling rules. Any destruction technology may be used for the purposes of destroying purged refrigerants under this rule, as long as the destruction efficiency is at least 98 percent.

J. Federally-Owned Chillers

EPA received several comments regarding the proposed requirements for federally-owned chillers. Several commenters supported the proposed language with only minor changes. A few commenters stated that EPA should broaden the requirements to allow additional time for non-federally-owned appliances to repair leaks. The commenters were concerned with manufacturing backlogs. One commenter stated that the Federal government should abide by the same rules as industry, noting that if federal entities are having trouble meeting timelines, large private companies may also be having the same problems. One commenter stated that if federal facilities cannot meet the time frames, then state and local governments may have similar difficulties. The commenter believes that giving an extension of time only to federal facilities could be viewed by the states and local governments as a mandate to them and an excuse for the federal government. One commenter stated that since the federal procurement process is governed by federal regulations a specific exemption was not necessary.

Several commenters stated that they are troubled that EPA has proposed to extend the sound professional judgment and verification testing requirements to the owners and operators of federally-owned commercial refrigeration appliances for three reasons. First, because the owners or operators were not part of the settlement agreement between EPA and CMA. Second, because the commenters believe that EPA incorrectly stated that minor aspects of this rulemaking affect federally-owned chillers. Finally, because the commenters believe that this rulemaking constitutes an additional burden and that further legal action may be taken by the owners or operators of federally-owned chillers.

EPA understands all the concerns submitted by the commenters. In the NPRM, EPA states that the Agency received information from the Department of Energy (DOE) indicating a need for the proposed extension. EPA discussed with DOE the proposed language, including the use of verification tests. DOE understood and agreed with the requirements. Comments received during the public comment period from DOE suggest clarifications to the proposed regulatory language. DOE is the only federal entity to submit comments specific to this requirement.[2] EPA believes that in most cases federal entities should be able to repair appliances within 30 days or retrofit/replace equipment within one year, and that only under limited circumstances will this extension apply to federally-owned appliances.

EPA did not receive any comments during the public comment period from state or local governments regarding this proposal. Also, EPA received no information regarding the need for extensions for state and local governments prior to issuing the NPRM. Since EPA often receives formal and informal comments from state and local entities, EPA can only conclude that state and local entities do not believe an extension is necessary. The only comments regarding such an extension for state and local entities came from private-sector organizations.

One commenter stated that since the federal procurement process is governed by federal regulations, a de facto exemption exists without EPA specifying an exemption. EPA disagrees with this commenter. EPA is today providing additional time based on compliance with other federal, state, and local regulations for industrial process refrigeration equipment. This provision is applicable for both private and publicly owned or operated industrial process refrigeration equipment. However, it is not applicable to for comfort-cooling or commercial appliances. An additional exemption for federally-owned chillers not used for industrial process refrigeration equipment is necessary. Without such a provision, additional time based on federal, state, and local regulations would not apply.

EPA understands that often large private-sector organizations may have complicated procurement requirements. However, private-sector organizations do not need to go through public notice and comment to amend procurement practices.

Private-sector organizations can effect changes in order to ensure compliance. EPA proposed this extension because federal government officials are bound to follow federal regulations regarding the purchasing. There are only limited circumstances for expediting a specific purchase or changing the procedures quickly. EPA recognizes that the federal government is addressing the needs to provide more flexibility for contract and procurement officers to expedite the purchasing of the most cost-effective services and supplies. These changes, however, have not yet alleviated all the hurdles faced by those procuring appliances subject to this rulemaking.

In the NPRM, EPA focused on the procurement side of the issue. Based on additional comments from DOE, EPA understands that, in reality, the concerns raised by DOE also address how funding is appropriated, as well as environmental and health concerns associated with specific appliances owned or operated by DOE.

EPA recognizes that most of the appliances DOE is concerned with are unique, even amongst the appliances owned or operated by the federal government. DOE believes that in most cases it will be able to comply with the 30-day and one-year requirement. However, appliances used in the production of nuclear weapons and appliances located in areas subject to radiological contamination must comply with a unique set of environmental and public safety activities. It may be necessary to confront specific radiological concerns prior to beginning the process of locating and repairing leaks.

In the NPRM, EPA stated that the Agency intended for this exception to only be used in limited cases. EPA continues to believe that an extension for federally-owned appliances is appropriate; however, EPA recognizes that the proposed extension was overly broad. For example, DOE uses hot cells at a number of its facilities to process radioactive and radioactively-contaminated materials for research laboratories and medical isotope production. Refrigeration appliances serving hot cells may be standard chillers that are used for safe operation by the maintenance of specific temperatures. Hot cells use shielding windows for viewing manipulator operations. These windows are filled with mineral oil or zinc bromide fluids, that also act as radiation shields. If temperatures rise, the window gaskets could leak, the shielding fluid levels could fall, and the hot cell contaminants might be released, thus, posing a potentially serious safety hazard to the operators. If a refrigeration appliance serving a hot cell fails or leaks excessively, it may take several weeks for the radioactive materials in the cell to be placed in a stable condition, such that the materials can be handled safely. The use of temporary cooling appliances in these circumstances is not a viable option due to nuclear safety requirements. Thus, similar to industrial process equipment, the hot cell operations must be shut down to minimize safety hazards, and such a shutdown may take several weeks to be accomplished. In these situations, repair work may not be able to be completed within 30 days, since that work must be performed under safe conditions. EPA believes that there are a limited number of appliances that are confronted with this or similar situations. Therefore, the extension of the 30-day repair requirement would be limited. In most cases, similar to where an industrial process shutdown is required, 120 days will permit for the safe shutdown of the hot cells and for repair work to occur.

EPA estimates that even where radiological contamination exists, extensions will be used only to a limited degree. Moreover, EPA does not believe it is appropriate to broaden this extension to appliances owned by state and local governments since EPA is not aware of any state or local government faced with an analogous scenario. Therefore, federally-owned commercial and comfort-cooling refrigeration appliances will be permitted 120 days for repairs to be completed if the appliance is operating in, or sustaining activities and located in, radiologically contaminated areas.

EPA continues to believe that federal procurement and appropriations requirements influence the ability of the federal government to retrofit/replace/retire an appliance within one year. As stated above, while the federal government is attempting to streamline many procurement practices, the types

[2] Additional comments were received by the Tennessee Valley Authority concerning electricity generated by a nuclear power reactor, not the exemption for federally-owned chillers.

of appliances and their associated costs currently limits the ability of the federal government to comply with a one-year timeframe. In particular, securing funds to retrofit an appliance subject to radiological contamination may require a lengthy process. In most cases, the owners or operators would wait for notification that the funds have been allocated before requesting proposals. Therefore, EPA will provide additional time beyond the initial one year, to the extent necessary, where procurement or appropriations requirements interfere with the ability of a federal entity to retrofit/retire/replace an appliance within one year.

K. Mothballing

EPA proposed suspending the time-relevant leak repair requirements promulgated under § 82.156(i) for appliances that are temporarily or permanently mothballed. In the NPRM, EPA states that it may be possible for the owner or operator of the appliance to discontinue use temporarily, perhaps on a seasonal basis. For example, it may be reasonable to shut down or mothball a comfort-cooling appliance for a period of time.

The NPRM further states that this type of system mothballing would not be the same as an industrial process shutdown undertaken to repair particular leaks found in industrial process refrigeration equipment or perform other maintenance activities. Also, this type of shutdown or mothballing would not be the same as being taken off-line due to a power outage or event. The NPRM defines system mothballing as an intentional shutting down of the refrigerant appliance undertaken for an extended period of time by the owners or operators of that facility—not for the purposes of servicing or repairing the appliance—where the refrigerant has been evacuated. The NPRM further states that if the appliance is temporarily mothballed, EPA believes it is appropriate to suspend the time-relevant repair and/or retrofit requirements while the appliance is effectively inoperative. For example, if a comfort-cooling appliance with over 50 pounds of refrigerant has a leak rate of more than 15 percent per year, the leak or leaks must be repaired or the appliance must be retrofitted within one year. However, if after discovery of the exceedance of the leak rate, the owner or operator voluntarily mothballs the appliance for a period of several months or years, EPA believes it would be appropriate to suspend the need to repair leaks or retrofit the appliance during the same time period. Therefore, if the appliance operated for five days after discovery of the exceedance of the leak rate, then shut down for 2 months, when the appliance returned to operating, the owner or operator will still have 25 days to repair the leaks. The applicable verification tests would need to be employed.

EPA received several comments supporting the suspension of time-relevant repair or retrofit requirements if the owner or operator temporarily mothballs the affected appliance. However, several commenters suggested that the time-relevant requirements should also be suspended while repair or retrofit work is occurring. One commenter stated that refrigeration systems are designed to provide maximum cooling; however, if the weather cools or the processes needing refrigeration are not operating at full production, or if there are several refrigeration systems supporting a facility, it may be possible to mothball a leaky appliance. This commenter and several others recommend that EPA suspend the "clock" whether the appliance is mothballed for the purposes of repair or not. The commenters stated that the basis for their concern is that if the appliance or an isolated section of an appliance has been evacuated to at least atmospheric pressure, only a limited amount of refrigerant is likely to be released. The commenters further stated that the intent of the rulemaking is to reduce the emissions of ozone-depleting refrigerants. The commenters believe that while mothballed, there would essentially be no emission of ozone-depleting refrigerants. Another commenter stated that EPA should focus on the amount of time that an appliance actually operates at an excessive leak rate and not the amount of time that a repair takes. Another commenter stated that it may take some time to determine that the leak rate is above the threshold. After that determination is made, it may take time for a part to be ordered. The commenter is concerned that if the system mothballing definition excludes appliances shut down for the purposes of completing repairs, the owner or operator facing the above scenario would be forced into a retrofit/replacement mode. One commenter suggested that recordkeeping and reporting requirements could be used to monitor the appropriateness of using this provision.

EPA understands the concerns raised by these commenters. The intention of Section 608 is to limit refrigerant emissions, not to determine how long it should take to repair an appliance.

EPA intended to permit system mothballing because the risk of releases from evacuated appliances is minimal. EPA did not intend to preclude repair work from occurring while an appliance has been mothballed. Instead, EPA was attempting to distinguish between system mothballing and other types of shutdowns, for different purposes, particularly industrial process shutdowns. In most cases, EPA believes that system mothballing may constitute extensive shutdowns. In many cases, the appliance could be mothballed for a season.

EPA received comments describing scenarios where mothballing appliances and simultaneously completing repairs would be a practical solution. Examples include manufacturing processes that produce material that have only a seasonal demand, where a spare or backup appliance can be brought on line, and where there is excess capacity in another refrigerant appliance that can be used to replace the capacity lost by mothballing an appliance. Commenters believe that evacuating the appliance to at least atmospheric pressure, and allowing the repair activities to occur, will limit emissions. Commenters further recognize the need to complete verification tests regardless of the conditions under which the repair work was conducted.

EPA agrees that completing repairs while the appliance is evacuated equates to almost no risk of emissions. Therefore, through this action, EPA is modifying the proposed definition of system mothballing. EPA will delete the language "not for purposes of servicing or repairing the appliance" from the definition of system mothballing. However, to ensure that for industrial process refrigeration equipment, verification tests still occur, EPA will include language stating that an initial verification test be completed prior to returning these appliances to normal operating conditions and that a follow-up verification test will be required within 30 days.

L. Grandfathering

EPA received one comment regarding the treatment of industrial process refrigeration equipment that began retrofit or replacement activities prior to the promulgation of this rulemaking. A company that discovered a leak in early 1994 that exceeded 35 percent developed a retrofit plan under the existing requirements. It now has become apparent that the company will require additional time beyond the one year and if these regulations were already promulgated, the company most likely would have qualified for additional time. Since today's action was not already effective, and therefore no extensions could be applied for, the commenter is concerned with how this appliance will be treated. EPA believes that in this case good faith efforts were made by the owner or operator of industrial process refrigeration equipment to meet the existing requirements prior to the stay. In cases where the owners or operators have developed plans and made good faith efforts to retrofit or retire appliances prior to the promulgation of today's action, and where these efforts are not yet complete, the owners or operators must develop a plan and complete all retrofit or retirement actions by August 8, 1996. The owners or operators are permitted to provide for extensions beyond August 8, 1996, in accordance with § 82.156 (i)(7) and (i)(8).

M. Terminology

EPA received comments asking the Agency to clarify, modify, and/or ensure consistency with EPA's use of certain terms, including but not limited to "facility," "system," and "appliance." EPA has reviewed the regulatory text and the preamble to incorporate appropriate changes. EPA anticipates that these changes should lessen any confusion in distinguishing between a facility, a system, and an appliance. EPA also has considered all other comments concerning grammar and language and believes they have been appropriately addressed in the preamble and regulatory text.

EPA received one comment suggesting that where the regulatory text states that a leak rate should be reduced to 35 or 15 percent, the language should be amended to state 35 or 15 percent and below in order to include all universe of allowable leak rates. EPA agreed with this commenter and has made the necessary changes.

EPA received comments requesting additional cross-referencing in the regulatory text. One commenter suggested that particular cross-references should be added, deleted, or modified to more accurately indicate the Agency's intent. EPA believes it has addressed all these concerns.

N. Regulatory Impact Analysis

It has been determined by OMB and EPA that the proposed amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order. EPA received one comment disagreeing with this determination. The commenter stated that though the rule provides for extensions for leak repair, the recordkeeping burdens make this option essentially useless. The commenter further states that if other leaks cannot be located within 180 days, the rule has a net effect of mandating retrofits. The commenter believes retrofitting one plant alone could exceed $10 million. That multiplied over an entire group of affected industries would deem the rule significant.

EPA strongly disagrees with this commenter's view that this rule is significant. EPA did perform a Regulatory Impact Analysis (RIA) when the original regulations regarding section 608 were promulgated in May 1993. This RIA is contained in Air Docket A–92–01. At that time, the costs associated with repairing and retrofitting appliances were considered. Today's action only lessens the impact of the original requirements by providing flexibility. The owners or operators of affected equipment have many options. One failed verification test does not immediately mean that retrofitting or replacing the appliance is the only option available as the only avenue. Furthermore, the provision permitting 180 days to decrease the overall leak rate of the industrial process refrigeration equipment was not contained in the original rulemaking. The owners or operators of a leaky appliance would have had to repair the leaks within 30 days or develop a retrofit or retirement plan. Any new recordkeeping or reporting requirements are necessary as a result of the more flexible approach. Most commenters agreed that these provisions were necessary. Moreover, as comments in the docket suggest, many of the data elements contained in the recordkeeping and reporting requirements were suggested by CMA and its members.

EPA does not believe that this rulemaking substantially increases the burden on the regulated community. Moreover, EPA believes that is the impact of this rulemaking a more flexible less costly means for handling leaks.

O. Allowing Appliances To Be Pressurized To Slightly Above 0 PSIG

EPA proposed to allow appliances to be pressurized up to 5 psig in order to change oil in industrial process refrigeration equipment. The NPRM (60 FR 4002) states that a small positive pressure is needed during oil changes to force the oil from its reservoir. Oil will not flow from a reservoir that is under vacuum. EPA stated that this approach will reduce emissions and thus will have an overall positive impact on the environment.

EPA received comments regarding this issue. One commenter asked for EPA to reopen and extend the comment period. Since this provision is part of a settlement agreement with a court-ordered final signature date of July 31, 1995, EPA is unable to reopen the comment period at this time. Furthermore, EPA did provide a thirty-day comment period with the option of holding a public hearing if one had been requested, in accordance with the Administrative Procedures Act. Moreover, to the extent practicable, EPA has responded to all comments including those received after the close of the comment period.[3]

Several commenters agreed with EPA's proposed approach, stating that permitting evacuation or pressurization to slightly above 0 psig would facilitate the removal of oil. One commenter stated that only a small amount of positive pressure is necessary because technicians would not let oil out at full system pressure since the oil would immediately turn into a large volume of froth.

EPA also received comments disagreeing with the need to reduce pressure. One commenter stated that § 82.156 and § 82.158 should not apply to oil changes. The commenter stated that any unit that requires that the oil be changed is provided with proper valves for oil change. The only refrigerant that is vented is the refrigerant contained in the oil. The commenter believes that the oil will be heated using the system oil heaters to bring the oil up to the manufacturer's design temperature. The hot oil will contain the least amount of refrigerant possible for the system stand-by pressure. The commenter believes that any requirement to reduce the pressure of the system to 5 psig would add major costs to the preventive maintenance of the unit. A job that may take a few hours would become a two-day job in cases where the unit does not have a system receiver. A refrigerant recovery unit and tanks would have to be brought to and removed from the job site. The commenter believes that the rules as written allow for oil removal without changing the system pressure since no evacuation is necessary after the oil change and results in only a "de minimis" release of refrigerant. Another commenter stated that refrigerant entrained in oil is not subject to the regulations.

EPA disagrees with these commenters' interpretations of the

[3] This particular comment was received the evening of June 15, 1995. The comment period closed February 21, 1995.

regulations. Under the initial regulations promulgated under section 608 and published May 14, 1993 (58 FR 28660), oil removal is considered a minor repair. Consistent with the requirements for all minor repairs the appliance must be brought to at least atmospheric pressure for oil removal.

The settlement agreement between EPA and CMA was based on the need to provide greater flexibility to the regulated community. The inclusion of a proposed provision to allow a slight positive pressure was viewed as a relaxation of the current regulations. This implies that a significant part of the regulated community agreed with EPA's interpretation that under the May 14 rule, oil removal required evacuation to atmospheric pressure.

Two commenters stated that EPA should not consider removing oil to be opening the appliance. One commenter stated that when the oil has been removed the valve is closed and the oil container is removed. The second commenter stated that the oil remaining in the sump is a barrier that will keep the refrigerant in the appliance. The impeller is a labyrinth seal with only .002–.003 inch clearance, and the valve through which the oil is drained is a small orifice. This commenter believes that if extreme precautionary measures are taken the appliance is not truly opened.

EPA disagrees with these commenters. EPA believes that changing oil does constitute opening the appliance. Opening an appliance is defined as "any service, maintenance, or repair on an appliance that would release class I or class II refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance * * *" (59 FR 55926). EPA believes that refrigerant would be released during an oil change, unless the refrigerant were recovered previously. One commenter recognized that such a risk exists by stating that there is a need for "extreme precautionary measures * * * during oil changes" and that only under those circumstances is the "system not truly 'opened' and there is little risk that refrigerant in the system will be vented to the atmosphere." EPA believes that the need to take "extreme precautionary measures" to prevent a release demonstrates that without such precautions a release is likely. Furthermore, EPA believes there is no way to assure that refrigerant is not released except to evacuate the appliance to 5 psig or below. Therefore, EPA continues to believe that removing oil constitutes opening the appliance.

EPA is concerned not only with the bulk of the refrigerant charge, but also with the refrigerant entrained in the oil. EPA has stated in applicability determination #23 and in the preamble to the initial regulations (58 FR 28677) that *after an appliance is reduced to atmospheric pressure*, the refrigerant entrained in the oil is not subject to those regulations. EPA would like to clarify that where the refrigerant and oil have not been drawn to at least atmospheric pressure, section 608(c), the venting provision, would apply. Therefore, recovery of the refrigerant from that oil would still be required.

During the settlement negotiations with CMA, CMA supplied information stating that the percentage of refrigerant entrained in oil for an appliance at 80 degrees fahrenheit could be 50 percent of the total volume of oil for HCFC–22. If the pressure is reduced to 5 psig the percentage of refrigerant is less than 5 percent for HCFC–22. EPA believes that this demonstrates that without a requirement to reduce the pressure or to recover that refrigerant in some other way, significant quantities of refrigerant will be released.

One commenter suggested an approach that would recover the refrigerant in the oil through a less time-consuming method. The commenter suggested that instead of evacuating the refrigerant EPA should permit the oil to be drained into a secondary vessel that can be isolated from the chiller and evacuated to recover the refrigerant in the oil. EPA received another comment stating that this method would still be time-consuming and costly. After reviewing the comments, EPA believes that this method actually will be less time-consuming and costly than the current requirements. Those concerned with the time and cost involved with this procedure should consider whether their current practices are actually in violation of the regulations.

EPA is concerned with preventing the release of the refrigerant through the opening of the appliance. Therefore, EPA believes that if the oil can be drained into a system receiver, where the system receiver can be isolated and evacuated to a pressure no greater than 5 psig, the goal would be achieved. EPA believes this a reasonable alternative to the requirements currently in effect. Therefore, through this action, EPA will revise the regulations to permit appliances to be pressurized to slightly above 0 psig (but not to exceed 5 psig) during oil changes and/or to permit the oil to be drained into a system receiver where the technician will then recover the oil entrained in the refrigerant to 0 psig.

VI. Judicial Review

Under Section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**. Under Section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

VII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this final action to amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rulemaking has the net effect of reducing the burden of part 82 subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities by providing greater flexibility.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted to by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and will be assigned control number 2060–0256.

The current collection of information has an estimated reporting and recordkeeping burden averaging 564,807 hours per respondent; however, this final action will decrease that burden by 108 hours. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Director, Regulatory Information Division; EPA; 401 M Street SW., (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under section 608. An examination of the impacts on small entities was discussed in the final rule (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis was developed. That impact analysis accompanied the final rule and is contained in Docket A–92–01.

I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemical Manufacturers Association, Industrial process refrigeration, Leak repair, Mothballing, Radiological contamination, Reporting and recordkeeping requirements, Retrofit, Verification test.

Part 82, chapter I, title 40, of the Code of Federal Regulations, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.152 is amended by removing the paragraph designations and placing the definitions in alphabetical order; by revising the definition for "Industrial process refrigeration"; and by adding new definitions in alphabetical order to read as follows:

§ 82.152 Definitions.

* * * * *

Critical component means, for the purposes of § 82.156(i), a component without which industrial process refrigeration equipment will not function, will be unsafe in its intended environment, and/or will be subject to failures that would cause the industrial process served by the refrigeration appliance to be unsafe.

Custom-built means, for the purposes of § 82.156(i), that the equipment or any of its critical components cannot be purchased and/or installed without being uniquely designed, fabricated and/or assembled to satisfy a specific set of industrial process conditions.

Follow-up verification test means, for the purposes of § 82.156(i), those tests that involve checking the repairs within 30 days of the appliance's returning to normal operating characteristics and conditions. Follow-up verification tests for appliances from which the refrigerant charge has been evacuated means a test conducted after the appliance or portion of the appliance has resumed operation at normal operating characteristics and conditions of temperature and pressure, except in cases where sound professional judgment dictates that these tests will be more meaningful if performed prior to the return to normal operating characteristics and conditions. A follow-up verification test with respect to repairs conducted without evacuation of the refrigerant charge means a reverification test conducted after the initial verification test and usually within 30 days of normal operating conditions. Where an appliance is not evacuated, it is only necessary to conclude any required changes in pressure, temperature or other conditions to return the appliance to normal operating characteristics and conditions.

Full charge means, for the purposes of § 82.156(i), the amount of refrigerant required for normal operating characteristics and conditions of the appliance as determined by using one of the following four methods or a combination of one of the following four methods:

(1) The equipment manufacturers' determination of the correct full charge for the equipment;

(2) Determining the full charge by appropriate calculations based on component sizes, density of refrigerant, volume of piping, and all other relevant considerations;

(3) The use of actual measurements of the amount of refrigerant added or evacuated from the appliance; and/or

(4) The use of an established range based on the best available data, regarding the normal operating characteristics and conditions for the appliance, where the mid-point of the range will serve as the full charge, and where records are maintained in accordance with § 82.166(q).

* * * * * * *

Industrial process refrigeration means, for the purposes of § 82.156(i), complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries. These appliances are directly linked to the industrial process. This sector also includes industrial ice machines, appliances used directly in the generation of electricity, and ice rinks. Where one appliance is used for both industrial process refrigeration and other applications, it will be considered industrial process refrigeration equipment if 50 percent or more of its operating capacity is used for industrial process refrigeration.

Industrial process shutdown means, for the purposes of § 82.156(i), that an industrial process or facility temporarily ceases to operate or manufacture whatever is being produced at that facility.

Initial verification test means, for the purposes of § 82.156(i), those leak tests that are conducted as soon as practicable after the repair is completed. An initial verification test, with regard to the leak repairs that require the evacuation of the appliance or portion of the appliance, means a test conducted prior to the replacement of the full refrigerant charge and before the appliance or portion of the appliance has reached operation at normal operating characteristics and conditions of temperature and pressure. An initial verification test with regard to repairs conducted without the evacuation of the refrigerant charge means a test conducted as soon as practicable after the conclusion of the repair work.

* * * * * * *

Normal operating characteristics or conditions means, for the purposes of § 82.156(i), temperatures, pressures, fluid flows, speeds and other characteristics that would normally be expected for a given process load and ambient condition during operation. Normal operating characteristics and conditions are marked by the absence of atypical conditions affecting the operation of the refrigeration appliance.

* * * * * * *

Suitable replacement refrigerant means, for the purposes of § 82.156(i)(7)(i), a refrigerant that is acceptable under section 612(c) of the Clean Air Act Amendments of 1990 and all regulations promulgated under that section, compatible with other materials with which it may come into contact, and able to achieve the temperatures required for the affected industrial process in a technically feasible manner.

* * * * * * *

System mothballing means the intentional shutting down of a refrigeration appliance undertaken for an extended period of time by the owners or operators of that facility, where the refrigerant has been evacuated from the appliance or the affected isolated section of the appliance, at least to atmospheric pressure.

* * * * * * *

3. Section 82.156 is amended by revising paragraphs (a)(2)(i)(A) and (a)(2)(i)(B), adding a new paragraph (a)(2)(i)(C), and revising paragraph (i) to read as follows:

§ 82.156 Required practices.

* * * * * * *

(a) * * *

(2)(i) * * *

(A) Be evacuated to a pressure no higher than 0 psig before it is opened if it is a high- or very high-pressure appliance;

(B) Be pressurized to 0 psig before it is opened if it is a low-pressure appliance. Persons pressurizing low-pressure appliances that use refrigerants with boiling points at or below 85 degrees Fahrenheit at 29.9 inches of mercury (standard atmospheric pressure), (e.g., CFC–11 and HCFC–123), must not use methods such as nitrogen, that require subsequent purging. Persons pressurizing low-pressure appliances that use refrigerants with boiling points above 85 degrees Fahrenheit at 29.9 inches of mercury, e.g., CFC–113, must use heat to raise the internal pressure of the appliance as much as possible, but may use nitrogen to raise the internal pressure of the appliance from the level attainable through use of heat to atmospheric pressure; or

(C) For the purposes of oil changes, be evacuated or pressurized to a pressure no higher than 5 psig, before it is opened; or drain the oil into a system receiver to be evacuated or pressurized to a pressure no higher than 5 psig.

* * * * * * *

(i)(1) Owners or operators of commercial refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks repaired in accordance with paragraph (i)(9) of this section, if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period, except as described in paragraphs (i)(6), (i)(8), and (i)(10) of this section and paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this section. Repairs must bring the annual leak rate to below 35 percent.

(i) If the owners or operators of the federally-owned commercial refrigerant appliances determine that the leaks cannot be repaired in accordance with paragraph (i)(9) of this section and that an extension in accordance with the requirements discussed in this paragraph (i)(1)(i) of this section apply, they must document all repair efforts, and notify EPA of their inability to comply within the 30-day repair requirement, and the reason for the inability must be submitted to EPA in accordance with § 82.166(n). Such notification must be made within 30 days of discovering the leaks. EPA will determine if the extension requested in accordance with the requirements discussed in paragraph (i)(1)(i) of this section is justified. If the extension is not justified, EPA will notify the owner/operator within 30 days of receipt of the notification.

(ii) Owners or operators of federally-owned commercial refrigeration equipment may have more than 30 days to repair leaks if the refrigeration appliance is located in an area subject to radiological contamination or where the shutting down of the appliance will directly lead to radiological contamination. Only the additional time needed to conduct and complete repairs in a safe working environment will be permitted.

(iii) Owners or operators of federally-owned commercial refrigeration equipment requesting or who are granted time extensions under this paragraph must comply with paragraphs (i)(3) and (i)(4) of this section.

(2) The owners or operators of industrial process refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks repaired if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period in accordance with paragraph (i)(9) of this section, except as described in paragraphs (i)(6), (i)(7) and (i)(10) of this section, and paragraphs (i)(2)(i) and (i)(2)(ii) of this section. Repairs must bring annual leak rates to below 35 percent during a 12-month period. If the owners or operators of the industrial process refrigeration equipment determine that the leak rate cannot be brought to below 35 percent during a 12-month period within 30 days (or 120 days, where an industrial process shutdown in accordance with paragraph (i)(2)(ii) of this section is required,) and in accordance with paragraph (i)(9) of this section, and that an extension in accordance with the requirements discussed in this paragraph apply, the owners or operators of the appliance must document all repair efforts, and notify EPA of the reason for the inability in accordance with § 82.166(n) within 30 days of making this determination. Owners or operators who obtain an extension pursuant to this section or elect to utilize the additional time provided in paragraph (i)(2)(i) of this section, must conduct all necessary leak repairs, if any, that do not require any additional time beyond the initial 30 or 120 days.

(i) The owners or operators of industrial process refrigeration equipment are permitted more than 30 days (or 120 days where an industrial process shutdown in accordance with paragraph (i)(2)(ii) of this section is required) to repair leaks, if the necessary parts are unavailable or if requirements of other applicable federal, state, or local regulations make a repair within 30 or 120 days impossible. Only the additional time needed to receive delivery of the necessary parts or to comply with the pertinent regulations will be permitted.

(ii) Owners or operators of industrial process refrigeration equipment will have a 120-day repair period, rather than a 30-day repair period, to repair leaks in instances where an industrial process shutdown is needed to repair a leak or leaks from industrial process refrigeration equipment.

(3) The owners or operators of industrial process refrigeration equipment who are granted additional time under paragraphs (i)(1), (i)(2), and (i)(5) of this section must ensure that the repair efforts performed be those that sound professional judgment indicate will be sufficient to bring the leak rates below the applicable allowable annual rate. When an industrial process shutdown has occurred or when repairs have been made while an appliance is mothballed, an initial verification test shall be conducted at the conclusion of the repairs and a follow-up verification test shall be conducted within 30 days of completing the repairs or within 30 days of bringing the appliance back on-line, if taken off-line, but no sooner than when the system has achieved normal operating characteristics and conditions. When repairs have been conducted without an industrial process shutdown or system mothballing, an initial verification test shall be conducted at the conclusion of the repair efforts and a follow-up verification test shall be conducted within 30 days after the initial follow-up verification test. In all cases, the follow-up verification test shall be conducted at normal operating characteristics and conditions unless sound professional judgment indicates that tests performed at normal operating characteristics and conditions will produce less reliable results, in which case the follow-up verification test shall be conducted at or near the normal operating pressure where practicable, and at or near the normal operating temperature if practicable, and within 30 days of completing the repair efforts.

(i) If industrial process refrigeration equipment is taken off line, it can not be brought back on-line until an initial verification test indicates that the repairs undertaken in accordance with paragraphs (i)(1) (i), (ii), and (iii), or (i)(2) (i) and (ii), or (5) (i), (ii) and (iii) of this section, have been successfully completed, demonstrating the leak or leaks are repaired or where the owners or operators of the industrial process refrigeration equipment will retrofit/replace/retire the industrial process refrigeration equipment in accordance with paragraph (i)(6) of this section.

(ii) If the follow-up verification test indicates that the repairs to industrial process refrigeration equipment have not been successfully completed, the owner must retrofit or replace the equipment in accordance with paragraph (i)(6) of this section within one year after the failure to verify that the repairs had been successfully completed or such longer time period as may apply in accordance with paragraphs (i)(7) (i), (ii) and (iii) or (i)(8)(i) and (ii) of this section. The owners and operators of industrial process refrigeration equipment are relieved of this requirement if the conditions of paragraphs (i)(3)(iv) and/or (i)(3)(v) of this section are met.

(iii) The owner or operator of industrial process refrigeration equipment that fails a follow-up verification test must notify EPA within 30 days of the failed follow-up verification test in accordance with § 82.166(n).

(iv) The owner or operator is relieved of the obligation to retrofit or replace the industrial process refrigeration equipment as discussed in paragraph (i)(6) of this section if second repair efforts to fix the same leaks that were the subject of the first repair efforts are successfully completed within 30 days or 120 days where an industrial process shutdown is required, after the initial failed follow-up verification test. The second repair efforts are subject to the same verification requirements of paragraphs (i)(3), (i)(3) (i) and (ii) of this section. The owner or operator is required to notify EPA within 30 days of the successful follow-up verification test in accordance with § 82.166(n) and the owner or operator is no longer subject to the obligation to retrofit or replace the appliance that arose as a consequence of the initial failure to verify that the leak repair efforts were successful.

(v) The owner or operator of industrial process refrigeration equipment is relieved of the obligation to retrofit or replace the equipment in accordance with paragraph (i)(6) of this section if within 180 days of the initial failed follow-up verification test, the owner or operator establishes that the appliance's annual leak rate does not exceed the applicable allowable annual leak rate, in accordance with paragraph (i)(4) of this section. If the appliance's owner or operator establishes that the appliance's annual leak rate does not exceed the applicable allowable annual leak rate, the owner or operator is required to notify EPA within 30 days of that determination in accordance with § 82.166(n) and the owner or operator would no longer be subject to the obligation to retrofit or replace the equipment that arose as a consequence of the initial failure to verify that the leak repair efforts were successful.

(4) In the case of a failed follow-up verification test subject to paragraph (i)(3)(v) of this section, the determination of whether industrial process refrigeration equipment has an annual leak rate that exceeds the applicable allowable annual leak rate will be made in accordance with parameters identified by the owner or operator in its notice to EPA regarding the failure of the initial follow-up verification test, if those parameters are acceptable to EPA; otherwise by parameters selected by EPA. The determination must be based on the full charge for the affected industrial process refrigeration equipment. The leak rate determination parameters in the owner's or operator's notice will be considered acceptable unless EPA notifies the owners or operators within 30 days of receipt of the notice. Where EPA does not accept the parameters identified by the owner or operator in its notice, EPA will not provide additional time beyond the additional time permitted in paragraph (i)(3)(v) of this section unless specifically stated in the parameters selected by EPA.

(5) Owners or operators of appliances normally containing more than 50 pounds of refrigerant and not covered by paragraph (i)(1) or (i)(2) of this section must have leaks repaired in

accordance with paragraph (i)(9) of this section if the appliance is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period, except as described in paragraphs (i)(6), (i)(8) and (i)(10) of this section and paragraphs (i)(5)(i), (i)(5)(ii) and (i)(5)(iii) of this section. Repairs must bring the annual leak rate to below 15 percent.

(i) If the owners or operators of federally-owned comfort-cooling appliances determine that the leaks cannot be repaired in accordance with paragraph (i)(9) of this section and that an extension in accordance with the requirements discussed in paragraph (i)(5) of this section apply, they must document all repair efforts, and notify EPA of their inability to comply within the 30-day repair requirement, and the reason for the inability must be submitted to EPA in accordance with § 82.166(n). Such notification must be made within 30 days of discovering that leak repair efforts cannot be completed within 30 days.

(ii) Owners or operators of federally-owned comfort-cooling appliances may have more than 30 days to repair leaks where the refrigeration appliance is located in an area subject to radiological contamination or where the shutting down of the appliance will directly lead to radiological contamination. Only the additional time needed to conduct and complete work in a safe environment will be permitted.

(iii) Owners or operators of federally-owned comfort-cooling appliances requesting, or who are granted, time extensions under this paragraph must comply with paragraphs (i)(3) and (i)(4) of this section.

(6) Owners or operators are not required to repair the leaks defined in paragraphs (i)(1), (i)(2) and (i)(5) of this section if, within 30 days of discovering the exceedance of the applicable leak rate or within 30 days of a failed follow-up verification test in accordance with paragraph (i)(3)(ii) of this section, they develop a one-year retrofit or retirement plan for the leaking appliance. This plan (or a legible copy) must be kept at the site of the appliance. The original must be made available for EPA inspection upon request. The plan must be dated and all work under the plan must be completed within one year of the plan's date, except as described in paragraphs (i)(7) and (i)(8) of this section. Owners are temporarily relieved of this obligation if the appliance has undergone system mothballing as defined in § 82.152.

(i) If the owner or operator has made good faith efforts to repair leaks in accordance with paragraphs (i)(1), (i)(2), or (i)(5) of this section, and has determined to proceed with a plan to retrofit or retire the appliance in accordance with paragraph (i)(6) of this section, the owner or operator must develop a retrofit or retirement plan within 30 days of the determination to retrofit or retire the appliance, to be completed within one year of when the owner or operator discovered that the leak rate exceeded the applicable allowable leak rate, except as provided in paragraphs (i)(7) and (i)(8) of this section.

(ii) In all cases, subject to paragraph (i)(6)(i) of this section, the written plan shall be prepared no later than 30 days after the owner or operator has determined to proceed with retrofitting or retiring the appliance. All reports required under § 82.166(o) shall be due at the time specified in the paragraph imposing the specific reporting requirement, or no later than 30 days after the decision to retrofit or retire the appliance, whichever is later.

(iii) In cases where the owner or operator of industrial process refrigeration equipment has made good faith efforts to retrofit or retire industrial process refrigeration equipment prior to August 8, 1995, and where these efforts are not complete, the owner or operator must develop a retrofit or retirement plan that will complete the retrofit or retirement of the affected appliance by August 8, 1996. This plan (or a legible copy) must be kept at the site of the appliance. The original must be made available for EPA inspection upon request. Where the conditions of paragraphs (i)(7) and (i)(8) of this section apply, and where the length of time necessary to complete the work is beyond August 8, 1996, all records must be submitted to EPA in accordance with § 82.166(o), as well as maintained on-site.

(7) The owners or operators of industrial process refrigeration equipment will be allowed additional time to complete the retrofit or retirement of industrial process refrigeration equipment if the conditions described in paragraphs (i)(7)(i) or (i)(7)(ii) of this section are met. The owners or operators of industrial process refrigeration equipment will be allowed additional time beyond the additional time provided in paragraph (i)(7)(ii) of this section if the conditions described in paragraph (i)(7)(iii) of this section are met.

(i) Additional time, to the extent reasonably necessary will be allowed for retrofitting or retiring industrial process refrigeration equipment due to delays occasioned by the requirements of other applicable federal, state, or local laws or regulations, or due to the unavailability of a suitable replacement refrigerant with a lower ozone depletion potential. If these circumstances apply, the owner or operator of the facility must notify EPA within six months after the 30-day period following the discovery of an exceedance of the 35 percent leak rate. Records necessary to allow EPA to determine that these provisions apply and the length of time necessary to complete the work must be submitted to EPA in accordance with § 82.166(o), as well as maintained on-site. EPA will notify the owner or operator of its determination within 60 days of receipt the submittal.

(ii) An additional one-year period beyond the initial one-year retrofit period is allowed for industrial process refrigeration equipment where the following criteria are met:

(A) The new or the retrofitted industrial process refrigerant equipment is custom-built;

(B) The supplier of the appliance or one or more of its critical components has quoted a delivery time of more than 30 weeks from when the order is placed;

(C) The owner or operator notifies EPA within six months of the expiration of the 30-day period following the discovery of an exceedance of the 35 percent leak rate to identify the owner or operator, describe the appliance involved, explain why more than one year is needed, and demonstrate that the first two criteria are met in accordance with § 82.166(o); and

(D) The owner or operator maintains records that are adequate to allow a determination that the criteria are met.

(iii) The owners or operators of industrial process refrigeration equipment may request additional time to complete retrofitting or retiring industrial process refrigeration equipment beyond the additional one-year period if needed and where the initial additional one year was granted in accordance with paragraph (i)(7)(ii) of this section. The request shall be submitted to EPA before the end of the ninth month of the first additional year and shall include revisions of information required under 82.166(o). Unless EPA objects to this request submitted in accordance with § 82.166(o) within 30 days of receipt, it shall be deemed approved.

(8) Owners or operators of federally-owned commercial or comfort-cooling appliances will be allowed an additional year to complete the retrofit or retirement of the appliances if the conditions described in paragraph (i)(8)(i) of this section are met, and will be allowed one year beyond the additional year if the conditions in paragraph (i)(8)(ii) of this section are met.

(i) Up to one additional one-year period beyond the initial one-year retrofit period is allowed for such equipment where the following criteria are met:

(A) Due to complications presented by the federal agency appropriations and/or procurement process, a delivery time of more than 30 weeks from the beginning of the official procurement process is quoted, or where the appliance is located in an area subject to radiological contamination and creating a safe working environment will require more than 30 weeks;

(B) The operator notifies EPA within six months of the expiration of the 30-day period following the discovery of an exceedance of the applicable allowable annual leak rate to identify the operator, describe the appliance involved, explain why more than one year is needed, and demonstrate that the first criterion is met in accordance with § 82.166(o); and

(C) The operator maintains records adequate to allow a determination that the criteria are met.

(ii) The owners or operators of federally-owned commercial or comfort-cooling appliances may request additional time to complete retrofitting, replacement or retiring such appliances beyond the additional one-year period if needed and where the initial additional one year was granted in accordance with paragraph (i)(8)(i) of this section. The request shall be submitted to EPA before the end of the ninth month of the first additional year and shall include revisions of information earlier submitted as required under § 82.166(o). Unless EPA objects to this request submitted in accordance with § 82.166(o) within 30 days of receipt, it shall be deemed approved.

(9) Owners or operators must repair leaks pursuant to paragraphs (i)(1), (i)(2) and (i)(5) of this section within 30 days after discovery, or within 30 days after when the leaks should have been discovered if the owners intentionally shielded themselves from information which would have revealed a leak, unless granted additional time pursuant to § 82.156(i).

(10) The amount of time for owners and operators to complete repairs, retrofit plans or retrofits/replacements/retirements under paragraphs (i)(1), (i)(2), (i)(5), (i)(6), (i)(7), (i)(8), and (i)(9) of this section is temporarily suspended at the time an appliance is mothballed as defined in § 82.152. The time for owners and operators to complete repairs, retrofit plans, or retrofits/replacements will resume on the day the appliance is brought back on-line and is no longer considered mothballed. All initial and follow-up verification tests must be performed in accordance with paragraphs (i)(3), (i)(3)(i), and (i)(3)(ii) of this section.

(11) In calculating annual leak rates, purged refrigerant that is destroyed at a verifiable destruction efficiency of 98 percent or greater will not be counted toward the leak rate. Owners or operators destroying purged refrigerants must maintain information as set forth in § 82.166(p)(1) and submit to EPA, within 60 days after the first time such exclusion is used by that facility, information set forth in § 82.166(p)(2).

* * * * *

4. § 82.166 is amended by adding paragraphs (n), (o), (p), and (q) to read as follows:

§ 82.166 Reporting and recordkeeping requirements.

* * * * *

(n) The owners or operators of appliances must maintain on-site and report to EPA at the address listed in § 82.160 the following information, where such reporting and recordkeeping is required and within the timelines specified under § 82.156 (i)(1), (i)(2), (i)(3) and (i)(5). This information must be relevant to the affected appliance and must include: identification of the facility; the leak rate; the method used to determine the leak rate and full charge; the date a leak rate of greater than the allowable annual leak rate was discovered; the location of leaks(s) to the extent determined to date; and any repair work that has been completed thus far and the date that work was completed.

(1) The reasons why more than 30 days are needed to complete the work and an estimate of when repair work will be completed must be submitted with the initial information submitted with the information listed in paragraph (n) of this section. If changes from the original estimate of when work will be completed result in moving the completion date forward from the date submitted to EPA, the reasons for these changes must be documented and submitted to EPA within 30 days of discovering the need for such a change.

(2) If the owners or operators intend to establish that the appliance's annual leak rate does not exceed the applicable allowable annual leak rate in accordance with § 82.156(i)(3)(v), the owner or operator is required to submit a plan to fix other outstanding leaks for which repairs are planned but not yet completed to achieve a rate below the applicable allowable leak rate with the information listed in paragraph (n) of this section. Identification of the facility and date the original information regarding additional time beyond the initial 30 days was filed, and notification of the determination that the leak rate no longer exceeds the allowable annual leak rate must be included within 30 days of making such determination.

(3) The dates and types of all initial and follow-up verification tests performed and the test results for all initial and follow-up verification tests must be maintained and submitted to EPA within 30 days after conducting each test where recordkeeping and reporting is required within the timelines specified under § 82.156 (i)(1), (i)(2), (i)(3) and (i)(5).

(o) The owners or operators of appliances must maintain on-site and report to EPA at the address specified in § 82.160 the following information where such reporting and recordkeeping is required and in the timelines specified in § 82.156 (i)(7) and (i)(8), in accordance with § 82.156 (i)(7) and (i)(8). This information must be relevant to the affected appliance and must include:

(1) The identification of the industrial process facility;

(2) The leak rate;

(3) The method used to determine the leak rate and full charge;

(4) The date a leak rate of 35 percent or greater was discovered;

(5) The location of leaks(s) to the extent determined to date;

(6) Any repair work that has been completed thus far and the date that work was completed;

(7) A plan to complete the retrofit or replacement of the system;

(8) The reasons why more than one year is necessary to retrofit to replace the system;

(9) The date of notification to EPA; and

(10) An estimate of when retrofit or replacement work will be completed.

(i) If the estimated date of completion changes from the original estimate and results in moving the date of completion forward, documentation of the reason for these changes must be submitted within 30 days of occurring.

(ii) If the estimated date of completion changes from the original estimate and results in moving the date of completion forward, the date of notification to EPA regarding this change and the estimate of when the work will be completed must be maintained and submitted.

(p) (1) Owners or operators who wish to exclude purged refrigerants that are destroyed from annual leak rate calculations must maintain records on-site to support the amount of refrigerant

claimed as sent for destruction. Records shall be based on a monitoring strategy that provides reliable data to demonstrate that the amount of refrigerant claimed to have been destroyed is not greater than the amount of refrigerant actually purged and destroyed and that the 98 percent or greater destruction efficiency is met. Records shall include flow rate, quantity or concentration of the refrigerant in the vent stream, and periods of purge flow.

(2) Owners or operators who wish to exclude purged refrigerants that are destroyed from annual leak rate calculations must maintain on-site and make available to EPA upon request the following information after the first time the exclusion is utilized by the facility:

(i) The identification of the facility and a contact person, including the address and telephone number;

(ii) A general description of the refrigerant appliance, focusing on aspects of the appliance relevant to the purging of refrigerant and subsequent destruction;

(iii) A description of the methods used to determine the quantity of refrigerant sent for destruction and type of records that are being kept by the owners or operators where the appliance is located;

(iv) The frequency of monitoring and data-recording; and

(v) A description of the control device, and its destruction efficiency. This information must also be included, where applicable, in any reporting requirements required for compliance with the leak repair and retrofit requirements for industrial process refrigeration equipment, as set forth in paragraphs (n) and (o) of this section.

(q) Owners or operators choosing to determine the full charge as defined in § 82.152 of an affected appliance by using an established range or using that methodology in combination with other methods for determining the full charge defined in the following information:

(1) The identification of the owner or operator of the appliance;

(2) The location of the appliance;

(3) The original range for the full charge of the appliance, its midpoint, and how the range was determined;

(4) Any and all revisions of the full charge range and how they were determined; and

(5) The dates such revisions occurred.

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[FR Doc. 95–18999 Filed 8–7–95; 8:45 am]
BILLING CODE 6560–50–P

federal register

Tuesday
August 8, 1995

Part IV

Department of Education

Federal Student Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended; Notice

DEPARTMENT OF EDUCATION

Federal Student Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Notice inviting applications for participation in the Quality Assurance Program.

SUMMARY: The Secretary invites institutions of higher education that are not currently participating in the Quality Assurance (QA) Program under section 487A of the Higher Education Act to submit applications to participate beginning with the 1995–1996 award year.

DATES: Applications may be submitted any time after August 8, 1995.

ADDRESSES: Barbara Mroz, U.S. Department of Education, 600 Independence Avenue, SW., (Room 3925, ROB–3), Washington, DC 20202–5232.

FOR FURTHER INFORMATION CONTACT: Jacqulyn Bannister, telephone: (202) 260–4788. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Department of Education is undertaking a series of initiatives to simplify regulations and administrative processes for the Federal student assistance programs authorized by Title IV of the Higher Education Act (HEA). By notice published on April 25, 1995, 60 FR 20326, the Secretary invited QA Program participants and other institutions to submit proposals to reinvent the administration of those programs through the use of the experimental sites authority in section 487A(d) of the HEA. At the direction of the President, the Secretary has conducted a page-by-page review of all student financial assistance regulations to identify those that should be eliminated or improved. The Secretary will also consider developing proposals for statutory amendments to eliminate unnecessary administrative burden.

As a part of this student aid reform effort, the Secretary intends to expand the QA Program. Begun on a pilot basis in 1985, the QA Program currently permits participating institutions to develop and implement their own comprehensive systems to verify student financial aid application data. Participation in the program is entirely voluntary. The Secretary is authorized to exempt participating institutions from the reporting and verification requirements that would otherwise apply and to substitute other necessary quality assurance reporting.

Presently, ninety schools participate in the program, and the Secretary has exempted these schools from several provisions of the Student Assistance General Provisions regulations relating to verification.

Beginning with the upcoming award year, the Secretary intends to expand the QA Program by increasing the number of schools that participate in the program and by employing the experimental sites authority in section 487A(d) of the HEA to facilitate the development of innovative management approaches on a broader scale. If participating QA schools, acting alone or together, develop an innovative approach to the management of student aid programs and the Secretary approves the approach, the Secretary is authorized to exempt the schools from any Title IV statutory or regulatory requirement that would bias the results of their experiments.

Invitation for Applications

The Secretary invites institutions of higher education that administer one or more Title IV programs to submit applications to participate in the QA Program beginning with the 1995–1996 award year. Institutions that currently participate in the program may continue to do so without submitting new applications. Because training workshops will be scheduled for early fall, institutions are encouraged to apply as soon as possible. The Secretary anticipates that the review of applications will begin within 45 days of the date of this notice; however, applications that are received later will also be considered.

An institution that wishes to apply may do so by mailing a letter of application to Barbara Mroz at the address provided at the beginning of this notice or by faxing it to her at (202) 708–9485. The Secretary will review applications on the basis of demonstrated institutional performance, as indicated by information currently on file that pertains to the institution and information in the letter of application that addresses the institution's commitment to the Secretary's current quality assurance goals. Those goals are the following:

(1) To improve the accuracy of Title IV student aid awards;

(2) To increase institutional flexibility in managing student aid funds while maintaining accountability for the proper use of those funds;

(3) To encourage the development of innovative management approaches;

(4) To emphasize results rather than process, up-front correction rather than after-the-fact inspection; and

(5) To place responsibility for quality control and quality improvement at the point where funds and services are delivered—the institution.

Features of the Program

The Secretary encourages institutions participating in the QA Program to employ a continuous cycle of assessment and improvement as they develop and implement their systems to verify student aid application data. Institutions evaluate their verification procedures, adopt improvements in those procedures, test the effects of those improvements, and adopt further improvements.

The Secretary will adopt no regulations for the QA Program. Institutions that participate in the program will be free to develop and implement their own comprehensive verification systems and to request exemptions from reporting and verification requirements that would otherwise apply. It is the Secretary's intention to exempt all participating institutions from the requirements in the following provisions of 34 CFR part 668, subpart E—Verification of Student Aid Application Information:

- Section 668.53(a) (1)–(4);
- Section 668.54(a) (1), (2), and (4);
- Section 668.56;
- Section 668.57; and
- Section 668.60(a).

In addition, a participating institution may request an exemption from any other student financial assistance program reporting or verification requirement. As provided by section 487A(b) of the HEA, the Secretary may substitute such quality assurance reporting as he deems necessary to ensure accountability and compliance with the purposes of the Title IV programs.

Participating institutions may also take advantage of their improved administrative capabilities to propose their own individual or collective innovative approaches to the administration of Title IV programs under the experimental sites authority and to seek exemptions from Title IV requirements that stand in the way of those experiments. Further information on experimental sites may be found in the **Federal Register** document referred to earlier in this notice.

The Secretary believes that the process of continuous improvement in verification systems fostered by the QA Program has enhanced the integrity of those systems at participating institutions. By expanding the program to include other management areas, the Secretary believes that it can serve to promote improvements not only in the accuracy of student aid awards and payments, but in the management of student aid offices and the delivery of services to students as well.

Dated: August 2, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–19463 Filed 8–7–95; 8:45 am]

BILLING CODE 4000–01–P

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Part V

The President

Proclamation 6814—National Child Support Awareness Month, 1995

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Tuesday, August 8, 1995

Presidential Documents

Title 3—

The President

Proclamation 6814 of August 5, 1995

National Child Support Awareness Month, 1995

By the President of the United States of America

A Proclamation

Providing for our children is one of humanity's worthiest and most fundamental endeavors. Children are the best part of ourselves—the sum of our past and the promise of our future, the guarantee that our lives and values and dreams will flourish long after we are gone. Sadly, however, many parents in our country today deny the instinct to care for their children, failing to provide even the most basic economic support. Millions of America's children have no legally identified father. Millions do not receive the financial support they need to lead secure and healthy lives.

Because of these harsh realities, I have made the reform of our Nation's child support system one of the top priorities of my Administration. The welfare reform plan that I proposed to the Congress last year contains the toughest child support enforcement measures in America's history—measures that would improve the effectiveness of procedures for establishing paternity, make it easier to enter and update child support awards, and dramatically strengthen our ability to enforce payment of those awards. My proposals would also give us the ability to track deadbeat parents across State lines, suspend their driver's licenses if necessary, and make them work off what they owe.

As the Nation's largest single employer, the Federal Government must take a leadership role in the effort to ensure that all of America's children are properly supported. In February of this year, I signed an Executive order requiring Federal agencies to cooperate fully with measures to establish and enforce child support orders and to inform employees of how they can meet their support obligations. Additionally, we are encouraging State and local governments to develop innovative approaches to helping families cope with child support issues, and the Department of Health and Human Services (HHS) has begun to restructure and strengthen its partnerships with State child support agencies.

This month we celebrate the 20th anniversary of the Child Support Enforcement Program at HHS. This program—at the Federal, State, and local levels—has been instrumental in giving hope and support to America's children while fostering strong families and responsible parenting. Through their efforts, over 5.1 million children now have a legally recognized father; more than 11.7 million children with a parent living outside of their homes have a legal right to the financial support of that parent; and over $72.5 billion has been provided for children by their noncustodial parents.

But for all that we have accomplished, we still have much to do. By ensuring the enactment and implementation of my Administration's strong child support enforcement proposals, we will send a clear signal to our citizens that they should not have children until they are prepared to care for them. Those who do bring children into the world must bear the responsibility of supporting them. We must rededicate ourselves to the task of putting these youngest and most vulnerable of our citizens first.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 1995, as "National Child Support Awareness Month." I call upon the citizens of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of August, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95-19783
Filed 8-7-95; 12:09 pm]
Billing code 3195-01-P

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Federal Register
Vol. 60, No. 152
Tuesday, August 8, 1995

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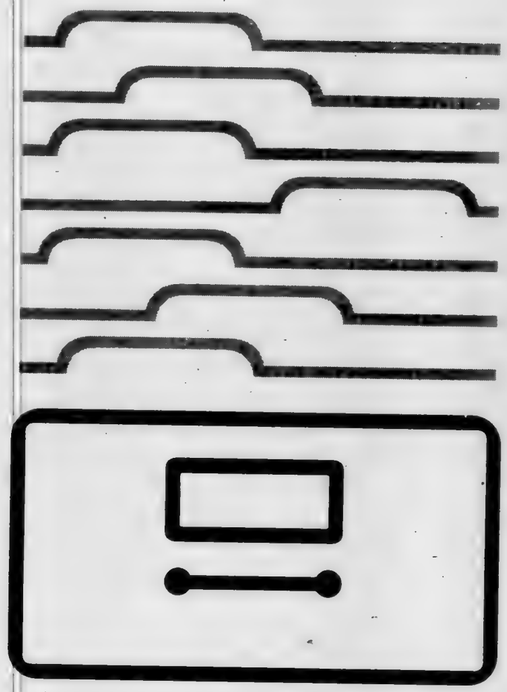
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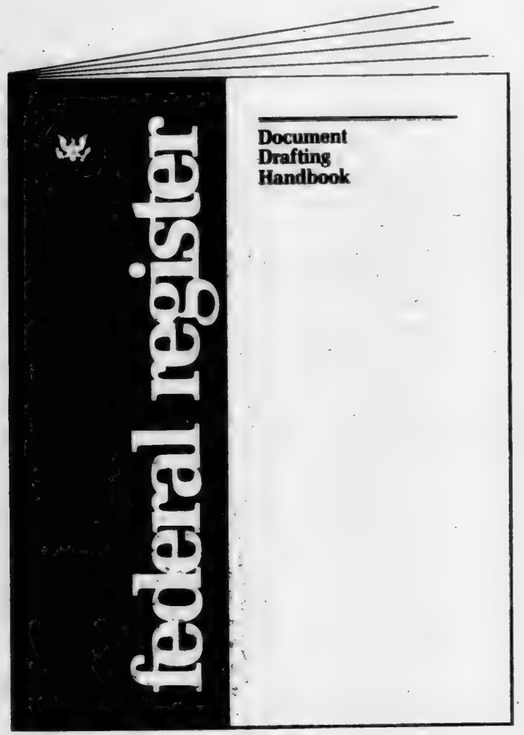
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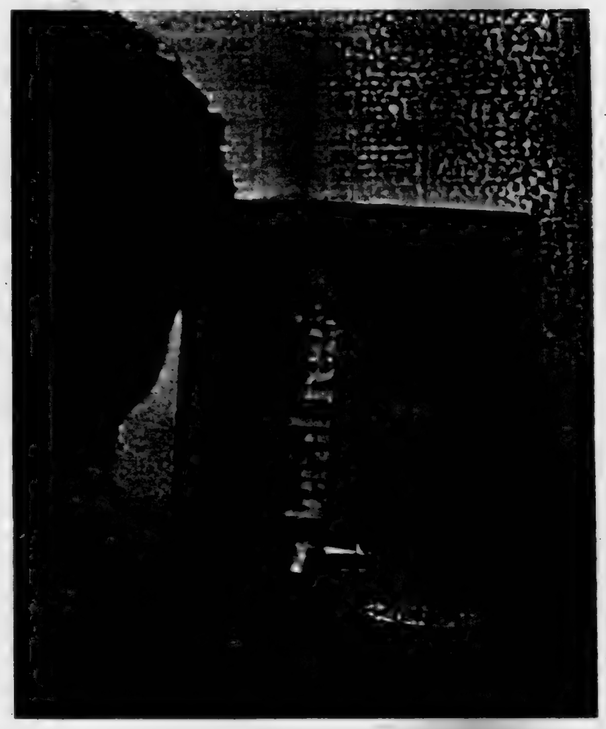
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL TRADE COMMISSION

16 CFR Part 252

Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces

AGENCY: Federal Trade Commission.

ACTION: Rescission of the Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces.

SUMMARY: The Federal Trade Commission (the "Commission"), as part of its periodic review of all its guides and rules, announces that it has concluded a review of its Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces ("Guides" or "Wig Guides"). The Commission has decided to rescind the Guides.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Ann Stahl Guler, Investigator, Federal Trade Commission, Los Angeles Regional Office, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 235–7890.

SUPPLEMENTARY INFORMATION:

I. Background

The Wig Guides were issued by the Commission in 1970.[1] The Guides concerned representations and disclosures in the advertising and labeling of hairpieces for women and men, including wigs, falls, chignons, and toupees. On April 15, 1994, the Commission published a Notice in the **Federal Register** soliciting comment on the Guides.[2] Specifically, the Commission solicited comments on the costs and benefits of the Guides and their regulatory and economic effect. The comment period closed June 14, 1994. The Commission received two comments in response to the Notice. They are discussed in Part II below.

II. Comments Received

The Commission received comments from one organization, the American Hair Loss Council (AHLC), and one individual, Johanna Ehmann, RN. Ms. Ehmann's comment did not refer to the Guides, but provided copies of a booklet entitled *Hair Loss and Cancer Therapy* to aid the Commission in its review of the Guides.

The AHLC supported retention of the Guides. It also proposed expanding the Guides to encompass "Hair Addition System," such as hair implants.

III. Conclusion

The Commission has concluded its regulatory review of the Guides for Labeling, Advertising, and Sale of Wigs and Other Hairpieces by rescinding the Guides. The Commission based its decision on the fact that existing statutes adequately address the consumer protection issues that originally gave rise to the Guides.

Section 252.3 of the Guides stated that the foreign origin of all imported industry products must be disclosed on labels and in advertising. The Tariff Act requires that all wigs and other hairpieces, whether made from human, animal, or synthetic hair, be labeled as to country of origin.[3]

Section 252.4 of the Guides, providing that highly flammable wigs and related products should not be sold in the United States, has been superseded by statutory changes. Two years after the Wig Guides were issued, Congress transferred enforcement of the Flammable Fabrics Act to the newly-created Consumer Product Safety Commission.[4]

Section 252.2 stated that labels and advertising should disclose whether hair is composed of human or artificial hair (or a combination of both); Section 252.6 said that used industry products should be labeled as such. The remaining sections of the Guides delineated specific misrepresentations as to styling characteristics,[5] as well as general misrepresentations;[6] limited designations of hair such as "natural" and "genuine" to human hair;[7] and provided definitions of "handmade,"[8] "custom-made" and similar terms,[9] "custom-colored" and related terms,[10] and "virgin" hair.[11]

The United States now imports nearly all wigs sold domestically, except for those produced by a few custom wig makers. The Commission is not aware of any unique consumer protection issues currently associated with the advertising or labeling of wigs and other hairpieces. The comments submitted to the Commission demonstrated no continuing need by the wig industry for special Commission guidance. If, in the future, practices in the sale of wigs are determined to be materially misleading and to cause consumer harm, the Commission can address such practices under Section 5 of the Federal Trade Commission Act.[12]

List of Subjects in 16 CFR Part 252

Advertising, Cosmetics, Labeling, Trade practices, Wigs and Hairpieces.

By direction of the Commission.

Donald S. Clark,

Secretary.

PART 252—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 252.

[FR Doc. 95–19545 Filed 8–8–95; 8:45 am]
BILLING CODE 6750–01–M

[1] Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. 16 CFR 1.5.

[2] 59 FR 18005.

[3] 19 U.S.C. § 1304; Tariffs 6703, 6704, *Harmonized Tariff Schedule of the United States* (1995).

[4] 15 U.S.C. § 2079(b).

[5] 16 CFR § 252.10.

[6] 16 CFR § 252.1.

[7] 16 CFR § 252.5.

[8] 16 CFR § 252.7.

[9] 16 CFR § 252.8.

[10] 16 CFR § 252.9.

[11] 16 CFR § 252.11.

[12] Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1), prohibits unfair or deceptive acts or practices in or affecting commerce.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Rhone Merieux Canada, Inc. The ANADA provides for the use of a generic oxytetracycline hydrochloride soluble powder administered orally in drinking water for the control of certain diseases of chickens and turkeys and the treatment and control of certain diseases of swine, all susceptible to oxytetracycline.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Rhone Merieux Canada, Inc., 345 Boul. Labbe Blvd., North Victoriaville, QC, G6P 1B1, Canada, filed ANADA 200–144 which provides for use of oxytetracycline hydrochloride soluble powder in drinking water of chickens, turkeys, and swine. The medicated drinking water is used as follows: (1) Chickens for control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to oxytetracycline; control of chronic respiratory disease (CRD) and air sac infections caused by *M. gallisepticum* and *Escherichia coli* susceptible to oxytetracycline; control of fowl cholera caused by *Pasteurella multocida* susceptible to oxytetracycline; (2) turkeys for control of hexamitiasis caused by *Hexamita meleagridis* susceptible to oxytetracycline; infectious synovitis caused by *M. synoviae* susceptible to oxytetracycline; and control of complicating bacterial organisms associated with blue comb (transmissible enteritis; coronaviral enteritis) susceptible to oxytetracycline; (3) swine for control and treatment of bacterial enteritis caused by *E. coli* and *Salmonella choleraesuis* and bacterial pneumonia caused by *P. multocida* susceptible to oxytetracycline; and (4) breeding swine for control and treatment of leptospirosis (reducing the incidence of abortions and shedding of leptospira) caused by *Leptospira pomona* susceptible to oxytetracycline.

Approval of ANADA 200–144 for oxytetracycline soluble powder is a generic copy of I. D. Russell's NADA 130–435 (Oxytet Soluble). The ANADA is approved as of June 26, 1995, and the regulations in § 520.1660d (21 CFR 520.1660d) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Also, Rhone Merieux Canada, Inc., has not been previously listed in 21 CFR 510.600(c) as sponsor of an approved application. That section is amended to add entries for the firm.

In addition, the regulation contains an outdated paragraph citing the National Academy of Sciences/National Research Council (NAS/NRC) status of these products. The Generic Animal Drug and Patent Term Restoration Act of 1988 changed that status, therefore, § 520.1660d(c)(2) is removed and reserved.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drug, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Rhone Merieux Canada, Inc.," and in the table in paragraph (c)(2) by numerically adding a new entry for "047015" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Rhone Merieux Canada, Inc., 345 Boul. Labbe Blvd., North, Victoriaville, QC, G6P 1B1 Canada	047015

(2) * * *

Drug labeler code	Firm name and address
047015	Rhone Merieux Canada, Inc., 345 Boul. Labbe Blvd., North, Victoriaville, QC G6P 1B1 Canada.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1660d [Amended]

2. Section 520.1660d *Oxytetracycline hydrochloride soluble powder* is amended in paragraph (b)(2) by adding the phrase "and 047015" after "017144," and by removing and reserving paragraph (c).

Dated: July 31, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–19634 Filed 8–8–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 510 and 529

Animal Drugs, Feeds, and Related Products; Isoflurane

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Halocarbon Laboratories, Division of Halocarbon Products Corp. The ANADA provides for use of isoflurane as an inhalant for induction and maintenance of general anesthesia in horses and dogs.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center For Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1616.

SUPPLEMENTARY INFORMATION: Halocarbon Laboratories, Division of Halocarbon Products Corp., 887 Kinderkamack Rd., P.O. Box 661, River Ridge, NJ 07661, filed ANADA 200–129 which provides for inhalant use of isoflurane for induction and maintenance of general anesthesia in horses and dogs. The drug is limited to use by or on the order of a licensed veterinarian.

Approval of ANADA 200–129 for Halocarbon Laboratories' isoflurane is as a generic copy of Anaquest's NADA 135–773 for AErrane® (isoflurane). The ANADA is approved as of June 29, 1995, and the regulations are amended by revising 21 CFR 529.1186(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary. In addition, Halocarbon Laboratories has not been previously listed in 21 CFR 510.600(c) as sponsor of an approved application. That section is amended to add entries for the firm.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Halocarbon Laboratories" and in the table in paragraph (c)(2) by numerically adding a new entry for "012164" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Halocarbon Laboratories, Division of Halocarbon Products Corp., 887 Kinderkamack Rd., P.O. Box 661, River Ridge, NJ 07661.	012164

(2) * * *

Drug labeler code	Firm name and address
* * *	* * *
012164	Halocarbon Laboratories, Division of Halocarbon Products Corp., 887 Kinderkamack Rd., P.O. Box 661, River Ridge, NJ 07661.
* * *	* * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 529.1186 is amended by revising paragraph (b) to read as follows:

§ 529.1186 Isoflurane.

* * * * *

(b) *Sponsors.* See Nos. 000074, 010019, and 012164 in § 510.600(c) of this chapter.

* * * * *

Dated: July 31, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–19684 Filed 8–8–95; 8:45 am]

BILLING CODE 4160–01–F

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 213

RIN 0422–AA25

Collection of Debts by Tax Refund Offset

AGENCY: Agency for International Development.

ACTION: Final rule.

SUMMARY: The Agency for International Development is amending its debt collection regulations to implement the tax refund offset provisions of 31 U.S.C. 3720A.

DATES: Effective August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Jan W. Miller, Office of the General Counsel, Room 6881, N.S., Agency for International Development, Washington, DC 20523; (202) 647–6380.

SUPPLEMENTARY INFORMATION: A proposal to amend 22 CFR part 213 to allow the agency to recover delinquent debts owed the United States Government through the offset of tax refunds was published in the **Federal Register** on January 12, 1995, (60 FR 2911). No comments were received.

Regulatory Impact

This rule is not a "significant regulatory action" under Executive Order No. 12866.

Environmental Impact

This action does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 22 CFR Part 213

Claims, salary offset.

Accordingly, 22 CFR part 213 is amended as follows:

1. The authority citation for part 213 is revised to read as follows:

Authority: Sec. 621 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2381; subpart B also issued under 5 U.S.C. 5514; 5 CFR 550, subpart K. Subpart C also issued under 31 U.S.C. 3720A.

2. Part 213 is amended to add a new subpart C as follows:

PART 213—COLLECTION OF CLAIMS

* * * * *

Subpart C—Collection of Debts by Tax Refund Offset

213.21 Purpose.
213.22 Applicability and scope.
213.23 Administrative charges.
213.24 Pre-offset notice.
213.25 Reasonable attempt to notify and clear and concise notification.
213.26 Consideration of evidence and notification of decision.
213.27 Change in conditions after submission to IRS.

Subpart C—Collection of Debts by Tax Refund Offset

§ 213.21 Purpose.

This subpart establishes procedures for AID to refer past due debts to the Internal Revenue Service (IRS) for offset against income tax refunds of taxpayers owing debts to AID.

§ 213.22 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past due and legally enforceable debt owed to the United States.

(b) A past due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except for judgement debt or other debts specifically exempt from this requirement, is referred within 10 years after AID's right of action accrues;

(2) In the case of individuals, is at least $25.00.

(3) In the case of business debtors is at least $100.00;

(4) In the case of individual debtors, cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a).

(5) Is ineligible for or cannot be currently collected pursuant to the administrative offset provisions of 31 U.S.C. 3716;

(6) Is the debt of a debtor (or in the case of an individual debtor, his or her spouse) for whom AID records do not show debtor has filed for bankruptcy under title 11 of the United States Code or for whom AID can clearly establish at the time of the referral that an automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect;

(7) Has been disclosed by AID to a consumer reporting agency as authorized by 31 U.S.C. 3711(f); and

(8) For which AID has given notice, considered any evidence, and determined that the debt is past-due and legally enforceable under the provisions of this subpart.

§ 213.23 Administrative charges.

All administrative charges incurred in connection with the referral of debts to the IRS will be added to the debt, thus increasing the amount of the offset.

§ 213.24 Pre-Offset Notice.

(a) Before AID refers a debt to the IRS, it will notify or make a reasonable attempt to notify the debtor that:

(1) The debt is past due;

(2) Unless repaid within 60 calendar days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(3) The debtor has at least 60 days from the date of the notice to present evidence that all or part of such debt is not past-due or not legally enforceable; and

(4) AID will consider any evidence presented by the debtor and determine whether any part of such debt is past-due and legally enforceable.

(b) The notice will explain to the debtor the manner in which the debtor may present such evidence to AID.

§ 213.25 Reasonable attempt to notify and clear and concise notification.

(a) *Reasonable attempt to notify.* AID will have made a reasonable attempt to notify the debtor under § 213.24(a) it is used a mailing address for the debtor obtained from the IRS pursuant to the Internal Revenue Code, 26 U.S.C. 6103 (m)(2) or (m)(4), unless AID receives clear and concise notification from the debtor that notices are to be sent to an address different from the address obtained from the IRS.

(b) *Clear and concise notification.* Clear and concise notification means that the debtor has provided AID with written notification containing the debtor's name and identifying number (as defined in the Internal Revenue Code, 26 U.S.C. 6109), the debtor's new address, and the debtor's intent to have the notices sent to the new address.

§ 213.26 Consideration of evidence and notification of decision.

(a) AID will give the debtor at least 60 days from the date of the pre-offset notice to present evidence. Evidence that collection of the debt is affected by a bankruptcy proceeding involving the debtor shall bar referral of the debt.

(b) If the evidence presented is not considered by an employee of AID but by an entity or person acting for AID, the debtor will have at least 30 days from the date the entity or person notifies the debtor that all or part of the debt is past-due and legally enforceable to request review by an employee of AID of any unresolved dispute.

(c) AID will provide the debtor with its decision and the decision of any entity or person acting for AID on to whether all or part of the debt is past-due and legally enforceable. The decision will include a statement of the basis or principal bases for the decision.

§ 213.27 Change in conditions after submission to IRS.

AID will promptly notify the IRS if, after submission of a debt to the IRS for offset, AID:

(a) Determines that an error has been made with respect to the information submitted to the IRS;

(b) Receives a payment or credits a payment, other than an IRS offset, to the account of the debtor;

(c) Receives notice that the debtor has filed for bankruptcy under title 11 of the United States Code or the debt has been discharged in bankruptcy;

(d) Receives notice that an offset was made at the time when the automatic stay provisions of 11 U.S.C. 362 were in effect;

(e) Receives notice that the debt has been extinguished by death; or

(f) Refunds all or part of the offset amount to the debtor.

Dated: March 21, 1995.

Donald K. Charney,

Chief Financial Officer.

[FR Doc. 95–19588 Filed 8–8–95; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–048]

Logging Operations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Extension of partial stay.

SUMMARY: on October 12, 1994, OSHA published a final logging standard providing protection for workers in logging operations (59 FR 51672). The final rule (29 CFR 1910.266) had an effective date of February 9, 1995. On February 8, 1995, OSHA published a notice of a partial stay for six-months, until August 9, 1995, of 12 provisions of the final rule (60 FR 7447). This notice extends the partial stay of those 12 provisions for 30-days, until September 8, 1995.

EFFECTIVE DATE: The partial stay of enforcement will continue to be effective until September 8, 1995. The remaining requirements of § 1910.266, which became effective on February 9, 1995, are unaffected by this document.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Liblong, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202)–219–8148.

SUPPLEMENTARY INFORMATION:

Background

On October 12, 1994, OSHA published a final logging standard providing protection for workers in logging operations (59 FR 51672). The final rule (29 CFR 1910.266) had an effective date of February 9, 1995.

After the final rule was published, the Equipment Manufacturers Institute (EMI), the Portable Power Equipment Manufacturers Association (PPEMA), and Homelite, a manufacturer of chain saws, filed timely petitions under section 6(f) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) seeking judicial review of the standard. After the deadline for filing such petitions had passed, the Associated California Loggers, the Associated Oregon Loggers, Inc., the Montana Logging Association, and the Washington Contract Loggers Association also filed objections to the final rule with OSHA.

These parties and organizations raised questions about certain provisions of the final rule. After consideration of their questions, OSHA published a **Federal Register** notice (60 FR 7447, Feb. 8, 1995) staying 12 provisions of the standard for six-months, until August 9, 1995. The provisions OSHA stayed were: (d)(1)(v)—insofar as it requires foot protection to be chain-saw resistant; (d)(1)(vii)—insofar as it required face protection; (d)(2)(iii)—annual review and approval of first-aid kits by a health care provider; (f)(2)(iv)—machine operation on slopes; (f)(2)(xi)—machine shutdown procedures; (f)(3)(ii)—ROPS specifications; (f)(3)(vii) and (viii)—machine cab enclosures; (f)(7)(ii)—insofar as it requires machine parking brakes to be able to stop a moving machine; (g)(1) and (2)—maintenance and inspection requirements insofar as they apply to employee-owned vehicles; (h)(2)(vii)—the backcut requirement insofar as it applies to Humboldt cutting. The remaining requirements of 1910.266 were unaffected by the partial stay and went into effect on February 9, 1995.

In the notice announcing the partial stay, OSHA said the six-month delay of the 12 provisions would give the Agency time to clarify language in the regulatory text and preamble so it most accurately expressed the Agency's intent with respect to the provisions in question and to provide additional information with regard to some of the provisions. OSHA is extending the partial stay on the above listed provisions for a 30-days, until September 8, 1995, in order to complete its reconsideration of the issues, complete corrections and clarifications in the regulatory text and preamble, and revise its compliance directive to reflect those changes.

List of Subjects

29 CFR Part 1910

Chain saw, Forestry, Harvesting, Incorporation by reference, Logging, Occupational safety and health, Pulpwood timber, Training

29 CFR Part 1928

Agriculture, Migrant labor, Occupational safety and health

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC, this 4th day of August, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

For the reasons set forth above, 29 CFR 1910 is hereby amended as follows:

PART 1910—[AMENDED]

1. The authority citation for subpart R of part 1910 continues to read as follows:

AUTHORITY: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.269, 1910.272, 1910.274 and 1910.275 also issued under 29 CFR Part 1911.

Section 1910.272 also issued under 5 U.S.C. 553.

2. The note at the end of § 1910.266, is revised to read as follows:

§ 1910.266 Logging operations.

* * * * *

Note: In the **Federal Register** of August 9, 1995, OSHA extended the stay of the following paragraphs of § 1910.266 until September 8, 1995. The remaining requirements of § 1910.266, which became effective on February 9, 1995, are unaffected by the extension of the partial stay:

1. (d)(1)(v)—insofar as it requires foot protection to be chain-saw resistant.
2. (d)(1)(vii)—insofar as it required face protection.
3. (d)(2)(iii).
4. (f)(2)(iv).
5. (f)(2)(xi).
6. (f)(3)(ii).
7. (f)(3)(vii).
8. (f)(3)(viii).
9. (f)(7)(ii)—insofar as it requires parking brakes to be able to stop a moving machine.
10. (g)(1) and (g)(2) insofar as they require inspection and maintenance of employee-owned vehicles.
11. (h)(2)(vii)—insofar as it precludes backcuts at the level of the horizontal cut of the undercut when the Humboldt cutting method is used.

[FR Doc. 95–19649 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–064]

RIN 2115–AA97

Safety Zone: Belmar Power Boat Race, Shark River, Belmar, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Belmar Power Boat Race located in the Shark River, Belmar, New Jersy, on Sunday, August 20, 1995, from 11 a.m. until 5 p.m. This rectangular safety zone closes all waters of the Shark River ranging from 100 to 350 yards off the northern shoreline of Maclearie Park, Belmar, New Jersey, from the Municipal Boat Basin western entrance, extending westerly approximately 750 yards.

EFFECTIVE DATE: This rule is effective on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group, New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG K. Messenger, Project Manager, Coast Guard Group New York and CDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On June 30, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 34192). Interested persons were requested to submit comments on or before July 31, 1995. No comments were received. A public hearing was not requested and one was not held. The Coast Guard is promulgating this temporary final rule as proposed. Good cause exists for making this regulation effective less than 30 days after **Federal Register** publication. Due to the NPRM comment period deemed necessary to give adequate public notice, there was insufficient time to publish this temporary final rule 30 days prior to the event. The delay that would be encountered to allow for a 30 day delayed effective date would cause the cancellation of this event. Cancellation of this event is contrary to the public interest. Adequate measures are being taken to ensure mariners are made aware of this regulation. This rule will be locally published in the First Coast Guard District's Local Notice to Mariners, and announced via Safety Marine Information Broadcasts.

Background and Purpose

The East Coast Boat Racing Club of New Jersey submitted an Application for Approval of Marine Event for a power boat race in Shark River, New Jersey. This regulation establishes a rectangular safety zone in the waters of the Shark River ranging from 100 to 350 yards off the northern shoreline of Maclearie Park, Belmar, New Jersey, from the Municipal Boat Basin western entrance, extending westerly approximately 750 yards, and bounded by the lines of latitude 40°10′48″N and 40°10′55″N, and the lines of longitude 074°01′58″W and 074°02′26″W (NAD 1983). This regulation is in effect on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or termianted sooner by the Captain of the Port New York. This safety zone prevents vessels not participating in this event from transiting this portion of the Shark River, Belmar, New Jersey. Vessels participating in this event include race participants and race committee craft. All other vessels, swimmers, and personal watercraft of any nature are precluded from entering or moving within the safety zone. This regulation is needed to protect the boating public, as well as the participants, from the hazards associated with high speed power boat racing in confined waters.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not

significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the Shark River to nonparticipating vessel traffic on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation prevents traffic from transiting a small portion of Shark River off of Maclearie Park north of the charted navigation channel, the effect of this regulation will not be significant for several reasons: the limited duration of the event; mariners can transit to the south of the zone via the charted navigation channel; the safety zone does not impact any charted navigation channel; the affected portion of Shark River is charted as having only 2 feet of water; there is approximately 300 yards of open water, with minimum water depths, between the north boundary of the safety zone and the closest point of land; and the extensive, advance advisories that will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the power boat race under the National Environmental Policy Act will be conducted in conjunction with the marine event permitting process.

Lists of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For reasons set our in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–064, is added to read as follows:

§ 165.T01–064 Safety Zone; Belmar Power Boat Race, Shark River, Belmar, New Jersey.

(a) *Location.* This rectangular safety zone includes all waters of the Shark River ranging from 100 to 350 yards off the northern shoreline of Maclearie Park, Belmar, New Jersey, from the Municipal Boat Basin western entrance, extending westerly approximately 750 yards, and bounded by the lines of latitude 40°10′48″N and 40°10′55″N, and the line of longitude 074°01′58″W and 074°02′26″W (NAD 1983).

(b) *Effective period.* This section is in effect on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or terminated sooner by the Captain of the Port of New York.

(c) *Regulation.* (1) Vessels not participating in this event, swimmers, and personal watercraft of any nature and precluded from entering or moving within the safety zone.

(2) The general regulations contained in 33 CFR 165.23 apply.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 31, 1995.

J. Rutkovsky,

Commander, U.S. Coast Guard, Captain of the Port, New York Acting.

[FR Doc. 95–19674 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

[4310–55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Federal Public Lands in Alaska, Customary and Traditional Use Determinations; Review Policies

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Review Policies.

SUMMARY: Pursuant to the regulatory authority at 36 CFR 242.10(a), 242.18(b) and 50 CFR 100.10(a) and 100.18(b), the Federal Subsistence Board (Board) provides notice of a revised procedure for reviewing customary and traditional use determinations, and details the associated administrative process, under the Federal Subsistence Management Program. This document also rescinds the previous policy published in the **Federal Register** on July 15, 1994.

EFECTIVE DATE: The Federal Subsistence Board policies contained in this document shall be effective August 9, 1995.

ADDRESSES: Any comments concerning this document may be sent to the Chair, Federal Subsistence Board, c/o Richard S. Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road,

Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628; telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION:

Background

In 1990, the Board assumed subsistence management responsibilities on Federal public lands and adopted the existing State of Alaska customary and traditional use determinations (55 FR 27125). Such determinations identified customary and traditional subsistence uses of certain fish and wildlife resources by specific communities and areas in Alaska. Due to changes in the rural status of some communities, public comments on the draft environmental impact statement "Subsistence Management for Federal Public Lands in Alaska" (October 7, 1991), comments received on temporary and implementing subsistence regulations, and customary and traditional use determination appeals submitted under the temporary subsistence regulations, the Board recognized the need for new assessments of existing customary and traditional use determinations. However, the Board deferred action on customary and traditional use until after July 1, 1992 (the effective date of final implementing rules for the Federal subsistence program) and indicated that a customary and traditional use determination process and schedule would be developed and published (57 FR 22948–22949). Customary and traditional use determination assessments were begun in regard to the Kenai Peninsula and Upper Tanana areas in 1992, and the Copper River Basin more recently. These areas were prioritized based upon public comments received during the environmental impact statement process and subsequent Board meetings. On July 15, 1994, a notice set forth an initial customary and traditional use determination schedule to be updated on a routine basis dependent upon input from the public and Federal Subsistence Regional Advisory Councils (Regional Councils). Details of the administrative process involved in customary and traditional assessments, public and advisory council input opportunities, and decision making steps, were also set forth. During a meeting of the Chairs of the Regional Councils and the Staff Committee of the Board on February 13, 1995, a consensus was reached that prompted Board revision of the customary and traditional use determination process.

Revised Customary and Traditional Use Determination Procedures

Based on the recommendation of the Regional Council Chairs, the Board is implementing a revised process for dealing with customary and traditional use determinations. The Board will entertain proposals to revise the customary and traditional use determinations at the same time as it accepts proposals for changes to the seasons and harvest limits. This period normally occurs from mid-August/early September to late October/early November each year. Because of the backlog of customary and traditional use determination proposals that have been held over from previous years and staff limitations, the Regional Councils may be asked to prioritize which of the proposals should be reviewed each year. The Regional Councils may focus their attention on community or area uses of large mammals (ungulates and bears) where there are specific problems that preclude local users from harvesting a resource rather than clarifying areas where a "no determination" situation exists.

The Board retains the authority to initiate assessments and make determinations related to the customary and traditional use of any species taking into consideration recommendations of any appropriate Regional Council(s).

Existing regulations at 36 CFR 242.16(b) and 50 CFR 100.16(b) identify eight factors that exemplify customary and traditional subsistence uses of a community or area. Although the customary and traditional use of a resource may be self evident to local users, the Board will base its determination of customary and traditional use on substantial information of a reasonable and defensible nature. The extent to which a community, group of communities, or area meet the characteristics of customary and traditional use are exemplified by eight factors, as follows:

1. A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

2. A pattern of use recurring in specific seasons for many years;

3. A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

4. The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

5. A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

6. A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

7. A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

8. A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social and nutritional elements to the community or area.

All participating Federal agencies and the Regional Councils have substantial roles in the revision of customary and traditional use determinations. All proposals received in a timely manner will be circulated to the pertinent Regional Council(s) and the public for comment at the same time as proposed changes in the subsistence harvest regulations. A staff analysis will also be prepared for consideration during the late Winter/Spring Regional Council meetings, along with the public comments received. The extent of the staff analysis may vary with the complexity of the proposal. The Regional Councils will have an opportunity to review the analyses, deliberate, and forward their recommendations to the Board for action.

The Board may not be able to address all customary and traditional use determination proposals during this year's regulatory cycle. Consequently, the Board may need to establish priorities. These priorities will be based on public requests, recommendations of Regional Councils and Federal land management agencies, and the availability of personnel and financial resources to conduct the work.

Drafting Information: This policy was drafted under the guidance of Richard S. Pospahala, U.S. Fish and Wildlife Service, Alaska Regional Office, Office of Subsistence Management, Anchorage, Alaska. The primary authors were Taylor Brelsford and William Knauer of the same office; Sandy Rabinowitch of the National Park Service, Alaska Regional Office; Tom Boyd, Bureau of Land Management, Alaska State Office; and Ken Thompson, USDA-Forest Service, Alaska Regional Office.

Dated: July 27, 1995. Dated: July 28, 1995.

Richard S. Pospahala,

Acting Chair, Federal Subsistence Board.

Robert W. Williams,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 95–19482 Filed 8–8–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AC82

Subsistence Management Regulations for Public Lands in Alaska, Subparts C and D—1995–1996 Subsistence Taking of Fish and Wildlife Regulations for the Kenai Peninsula

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule establishes customary and traditional use determinations and seasons and harvest limits related to the taking of moose for subsistence uses on Federal lands on the Kenai Peninsula during the 1995–1996 regulatory year.

EFFECTIVE DATES: The amendments to § ____.24 are effective August 10, 1995. The amendments to § ____.25 are effective August 10, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau Alaska 99802–1628, telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION:

Customary and Traditional Use Determinations

The Federal Subsistence Board (Board) implemented a systematic program for review of customary and traditional use determinations as provided for in 36 CFR 242 and 50 CFR 100. As a priority consideration, the Board focused its determinations on community or area uses of large mammals (ungulates and bears), examining uses of species of large mammals by communities or areas rather than focusing on individual herds or populations. The Board recognized that subsistence resource use patterns of neighboring communities are often interrelated and should be analyzed concurrently.

Existing regulations at 36 CFR 242.16(b) and 50 CFR 100.16(b) identify eight factors that a community or area shall generally exhibit which exemplify customary and traditional subsistence uses. The eight factors are as follows:

1. A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

2. A pattern of use recurring in specific seasons for many years;

3. A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditional by local characteristics;

4. The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

5. A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations including consideration of alteration of past practices due to recent technological advances, where appropriate;

6. A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

7. A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

8. A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social and nutritional elements to the community or area.

Each Federal Subsistence Regional Advisory Council (Regional Council) has a substantial role in reviewing and developing information on which to base a recommendation to the Board concerning customary and traditional use determinations. The Southcentral Regional Council had available for consideraton an extensive compilation of existing information on historic and contemporary large mammal resource use patterns by rural Kenai Peninsula communities. A draft report, dated December 8, 1993, incorporated information from historic ethnographic sources; census data; community surveys conducted by the Alaska Department of Fish and Game, Division of Subsistence; and harvest ticket and sealing records compiled by the Alaska Department of Fish and Game.

During its public meeting of February 28–March 2, 1995, the Southcentral Regional Council reviewed and discussed written information and oral testimony on resource use patterns as related to the eight factors for the Kenai Peninsula rural communities of Whittier, Hope, Cooper Landing, Ninilchik, the Homer rural area, Nanwalek (formerly known as English Bay), Port Graham and Seldovia. Based on this review and discussion, the Southcentral Regional Council developed and submitted to the Board recommendations for customary and traditional use determinations for rural communities in Units 7 and 15. The Board adopted these recommendations, and subsequently issued a proposed rule announcing its action. Following the public comment period for the proposed rule, the Southcentral Regional Council convened in a public session on July 12, 1995, and re-evaluated the recommendations reflected in the proposed rule, revising its recommendation to the Board. The revised recommendations called for positive customary and traditional use determinations for moose in Unit 15 by the communities of Ninilchik, Seldovia, Nanwalek, and Port Graham. The revised recommendations also called for deferral of customary and traditional use findings for species other than moose, and for communities other than Ninilchik, Seldovia, Nanwalek, and Port Graham.

At its July 13, 1995, public meeting, the Board amended the proposed rule in response to several considerations. A primary consideration was the revised recommendations submitted by the Southcentral Regional Council. An additional consideration was compelling public testimony calling into question the factual basis for the proposed customary and traditional use determinations. A related concern was that the customary and traditional use determinations in the proposed rule may not have been supported by substantial evidence reflecting the eight factors used to access customary and traditional uses, particularly with regard to the factors concerning long-term consistent pattern of local resource use and the community's pattern of reliance upon a wide diversity of local resources for cultural, economic, social and nutritional needs.

The Board adopted the Southcentral Regional Council's revised

recommendation to defer action on customary and traditional use determinations for species other than moose, and for communities other than Ninilchik, Seldovia, Nanwalek, and Port Graham. The Board also adopted the Southcentral Regional Council's revised recommendation that the communities of Ninilchik, Seldovia, Nanwalek, and Port Graham have customary and traditional use of moose in Units 15(B) and 15(C). The Board deferred the Southcentral Regional Council's recommendation calling for positive customary and traditional use determinations for moose in Unit 15(A) for the communities of Ninilchik and Seldovia because use of this subunit by residents of Ninilchik and Seldovia is extremely low. The aforementioned customary and use determinations are found in the changes delineated for section ____.24.

Changes for the 1995–1996 Seasons and Bag Limit Regulations

The Regional Council also proposed Federal subsistence seasons for the taking of moose on public lands in Unit 15. The Regional Council recommendation was for an any-bull harvest season beginning August 10, 1995 and ending September 20, 1995. The Board, however, was persuaded by the biological data concluding that recognized principles of fish and wildlife conservation would be violated in that adverse impacts would result to the moose population from any significant harvest of bulls in the middle age categories. Since 1987, antler restrictions have been a key part of the management efforts to rectify alarmingly low bull:cow ratios in the Kenai Peninsula moose population. This management regime has had positive effects, resulting in a dramatic improvement in the moose population composition, allowing for longer hunting seasons, larger animals being taken, and a larger overall harvest. However, the gains could be reversed and conservation of a healthy moose population jeopardized under an any-bull subsistence harvest opportunity. The adverse impacts of an any-bull harvest could also be detrimental to the satisfaction of subsistence opportunities over the longer term. In addition, local wildlife biologists report that the high snow fall of the 1994–95 winter has resulted in high natural mortality, with virtually no recruitment into the spike-fork age class of bull moose anticipated this coming year. The Board therefore retained the antler restriction previously in effect as a part of the subsistence seasons in Unit 15 to avoid adverse biological consequences. The seasons and harvest limits are found in the changes to section ____.25.

Regulations contained in this final rule will take effect on August 10, 1995. The Departments waived the 30-day effective date time period for the final rule in order to provide the maximum opportunity for public participation during the comment period following publication of the proposed rule, while simultaneously allowing the hunting season to start on August 10, 1995.

Applicability of Subparts A, B, and C

Subparts A, B, and C of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR §§ 100.1 to 100.24 and 36 CFR §§ 242.1 to 242.24, remain effective and apply to this proposed rule. Therefore, all definitions located at 50 CFR § 100.4 and 36 CFR § 242.4 apply to regulations found in these subparts. The identified sections include definitions for the following terms:

"*Federal lands* means lands and waters and interests therein title to which is in the United States"; and "*public land* or *public lands* means lands situated in Alaska which are Federal lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal Law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act."

Public Review Process—Public Meetings and Analysis of Comments

Following publication of the proposed rule on May 9, 1995 (60 FR 24601), public meetings were held in Seldovia, Port Graham, Hope, Cooper Landing, Soldotna, Homer, Ninilchik, and Anchorage. The Southcentral Regional Council met in a public session on July 12, 1995, to review the proposed rule and public comments and to develop a final recommendation to the Board. The Board also met in a public session on July 13, 1995, to review the comments and reach a final decision on the proposed rule. During the 60-day comment period and in the months preceding it, the Board received 183 written comments, numerous phone calls, and one petition, in addition to oral testimony presented at the various meetings which were attended by over 500 people. The comments and testimony were overwhelmingly opposed to the proposed rule and the rural designations on the Kenai Peninsula. Following is an analysis of public comments:

A number of commentors indicated that their community's proposed customary and traditional use determinations were in error, particularly for some communities in Unit 15. As discussed above, the Regional Council and Board have reexamined those determinations. The final rule reflects revised customary and traditional use determinations that comport with the best information available relative to customary and traditional uses.

Some commentors felt that the moose season is being set too early in the year. The weather is too warm and the meat will spoil before it can be taken care of. This concern is not without merit, but the State has used early seasons on a regular basis and, if harvested wildlife are dressed immediately and kept cool, the meat can be prevented from spoiling. A later season would expose rutting bulls to possible overharvest and the meat of bulls in rut is not as palatable.

Two commentors suggested eliminating hunting seasons and initiating a family harvest quota. If seasons were eliminated, hunting during the summer could significantly increase the harvest of prime breeding animals because of incomplete antler development; hunting during the spring could put unwanted stress on the pregnant cows, possibly reducing the calving rate. Existing regulations do allow the Board to establish a family quota, community harvest system, or other alternative harvest systems consistent with historic harvest patterns. A family quota system was not part of the recommendation before the Board in the current rulemaking. However, a proposal requesting this type of system could be submitted this fall for Board consideration in the next regulatory cycle.

Some commentors believed that the antler restrictions are not a customary and traditional harvest practice and are a restriction on the subsistence user. The Board recognizes that harvesting animals based on antler restrictions is not a customary or traditional practice. However, antler restrictions have been demonstrably effective in improving the health of the Kenai Peninsula moose population, which suffered from very low bull:cow ratios as recently as 1986.

These antler restrictions protect the continued opportunity for the satisfaction of subsistence needs over the long term and provide more meat for the subsistence user.

Some commentors believed that ANILCA requires that Federal lands be closed to harvest by non-subsistence users before any restriction, such as the antler restriction, is imposed on subsistence hunters. The Board recognizes the responsibility to provide a meaningful priority for subsistence uses over non-subsistence uses on the Federal public lands, and that non-subsistence uses must be reduced or proscribed before subsistence uses are limited. The Board determined that after a decade and a half with no subsistence seasons, the Federal subsistence moose season for Unit 15(B) and 15(C) on the Kenai Peninsula represents a major advance in providing for subsistence uses. The subsistence moose season adopted by the Board implements a subsistence priority in that during the first ten days of the season, subsistence users exercise an exclusive harvest opportunity on Federal public lands. This will result in a significant reallocation of harvest toward subsistence users. Non-Federally qualified subsistence users are restricted to entering Federal lands to hunt moose ten days later under the State season starting on August 20. The Federal and State seasons both end of September 20, and both include the antler restriction, which is at the center of management efforts to conserve a healthy moose population on the Kenai Peninsula.

Many commentors believed that the rural priority unfairly discriminates against non-rural residents. Sections 801(5), 802(1), and 803 of ANILCA confine the eligibility for qualifying for a subsistence priority to rural Alaska residents. The Board is obligated to implement the rural priority as mandated by Congress in ANILCA.

A large number of commentors believe that the communities of Hope, Cooper Landing, Ninilchik, and other areas on the Peninsula with the exception of Port Graham, Nanwalek, and possibly Seldovia are non-rural. The issue of whether or not a community is rural or nonrural for the purposes of Title VIII is beyond the scope of this rulemaking. The Board will, however, in the future, reexamine these communities to determine if their status should be changed. That effort will be widely publicized and comments solicited from the public.

Two commentors indicated that they believed an economic analysis should be completed for this rule. The economic impacts of this rule are minimal, because there is no closure of Federal public lands to non-Federally qualified users. Should it be necessary to close the Federal lands to non-Federally qualified users, a more detailed examination of the economic impacts will be completed.

A number of commentors were concerned about non-residents and part-time summer residents, as well as new residents hunting under the Federal Subsistence Management regulations. Federal regulations prohibit anyone except Federally-qualified subsistence users from hunting under the Federal Subsistence Management regulations. The regulations define resident as "any person who has his or her primary, permanent home within Alaska and whenever absent . . . has the intention of returning to it." These regulations automatically disqualify nonresidents and part-time residents. They do provide the opportunity for new residents moving permanently into a rural community to adopt the practices of that community, including the subsistence taking of fish and wildlife resources.

A few commentors felt that non-rural residents were discriminated against because they had no representation on the Southcentral Regional Council. The only requirement for membership on the Regional Council is residency within the region. Applications are solicited annually with the most qualified individuals, based on their knowledge of subsistence uses and needs and their knowledge of other uses of fish and wildlife resources, being recommended to the Secretaries for appointment. Members of the Regional Councils represent their entire region. Currently two members of the Southcentral Regional Council are from the Kenai Peninsula.

A few individuals stated that there was inadequate opportunity for public input. Recognizing the level of public concern and the importance of this issue, the Board set a comment period that exceeded 60 days and held public hearings in 7 communities on the Kenai Peninsula plus Anchorage. The hearings were held during the day and in the evening, during the week and on the weekend to provide ample opportunity for public comment.

Some commentors felt that the proposed regulations ignore the purposes for which the Kenai National Wildlife Refuge was established and that subsistence is not consistent with those purposes. The purposes of the refuge as stated in Section 303 of ANILCA and the Section 804 subsistence priority are not mutually exclusive. Implementation of the subsistence priority does not prevent the Fish and Wildlife Service from fulfilling its responsibility to manage the Kenai Refuge according to the Section 303 purposes.

Many commentors indicated that the Federal government should not be involved in management of fish and wildlife resources in Alaska. The Secretaries and the Board agree that it is preferable for the State of Alaska to manage the subsistence taking and use of fish and wildlife. However, until such time as the State comes into compliance with Title VIII, the Federal government must provide implementation of Title VIII as directed by Congress.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (EIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement a modified Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulation for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–

22964) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which found that the Federal Subsistence Management Program, under a modified Alternative IV with an annual process for setting hunting and fishing regulations, had no significant possibility of a significant restriction of subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for the permit(s) required by this document is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, DC 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

This rule was not subject to OMB review under Executive Order 12866.

Economic Effects

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted by William Knauer under the guidance of Richard S. Pospahala, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA–Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

PART ___—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Section ___.24(a)(1) is amended in the table under "Area," "Species," and "Determination" by removing the entry for "Unit 15 (A) and (B)," and two entries for "Unit 15(C)" for "Moose" and adding the following new entries in their place to read as follows:

§ ___.24 Customary and traditional use determinations.

(a) * * *

(1) * * *

Area	Species	Determination
*	*	*
Unit 15(A)	Moose	No subsistence.
Unit 15 (B) and (C)	Moose	Residents of Ninilchik, Seldovia, Nanwalek, and Port Graham.
*	*	*

3. Section ___.25(k)(15)(iii)(D) is amended in the table under "Hunting" by adding an entry for "Moose" after the entry for "Black Bear" to read as follows:

§ ___.25 Subsistence taking of wildlife.

(k) * * *

(15) * * *

(iii) * * *

(D) * * *

Harvest limits	Open season
HUNTING:	
*	*
Moose:	
Unit 15 (B) and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug.10–Sept. 20.
Remainder of Unit 15	No open season.
*	*

Dated: July 27, 1995.

Richard S. Pospahala,

Acting Chair, Federal Subsistence Board.

Dated: July 28, 1995.

Robert W. Williams,

Regional Forester, USDA—Forest Service.

[FR Doc. 95–19483 Filed 8–8–95; 8:45 am]

BILLING CODE 3410–11–M; 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH–FRL–5268–8; Docket No. A–92–65]

RIN 2060–AG04

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The "Guideline on Air Quality Models (Revised)" (hereinafter, the "Guideline"), as modified by supplement A (1987) and supplement B (1993), sets forth air quality models and guidance for estimating the air quality impacts of sources and for specifying emission limits for them. The Guideline, codified as appendix W to 40 CFR part 51, is referenced in the PSD (Prevention of Significant Deterioration) regulations and is applied to SIP revisions for existing sources and to all new source reviews. On November 28, 1994 EPA issued a Notice of Proposed Rulemaking to augment the final rule that was published on July 20, 1993. Today EPA takes final action that makes several additions and changes as supplement C to the Guideline. Supplement C does the following: incorporates improved algorithms for treatment of area sources and dry deposition in the Industrial Source Complex (ISC) model, adopts a solar radiation/delta-T (SRDT) method for estimating atmospheric stability categories, adopts a new screening approach for assessing annual NO_2 impacts, and adds SLAB and HGSYSTEM as alternative models. This action is responsive to public comments received. Adoption of these new and refined modeling techniques and associated guidance should significantly improve the technical basis for impact assessment of air pollution sources.

EFFECTIVE DATE: This rule is effective September 8, 1995.

ADDRESSES: Docket Statement: All documents relevant to this rule have been placed in Docket No. A–92–65, located in the Air Docket (6102), Room M–1500, Waterside Mall, Attention: Docket A–92–65, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the address above.

Document Availability: Copies of supplement C to the Guideline may be obtained by downloading a text file from the SCRAM (Support Center for Regulatory Air Models) electronic bulletin board system by dialing in on (919) 541–5742. Supplement C may also be obtained upon written request from the Air Quality Modeling Group, U.S. Environmental Protection Agency (MD–14), Research Triangle Park, NC 27711. The "Guideline on Air Quality Models (Revised)" (1986), supplement A (1987), supplement B (1993), and supplement C (1995) are for sale from the U.S. Department of Commerce, Technical Information Service (NTIS), 5825 Port Royal Road, Springfield, VA 22161. These documents are also available for inspection at each of the ten EPA Regional Offices and at the EPA library at 401 M Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Leader, Air Quality Modeling Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5561 or C. Thomas Coulter, telephone (919) 541–0832.

SUPPLEMENTARY INFORMATION:

Background [1]

The purpose of the Guideline [2] is to promote consistency in the use of modeling within the air management process. The Guideline provides model users with a common basis for estimating pollution concentrations, assessing control strategies and specifying emission limits; these activities are regulated at 40 CFR 51.46, 51.63, 51.112, 51.117, 51.150, 51.160, 51.166, and 51.21. The Guideline was originally published in April 1978. It was incorporated by reference in the regulations for the Prevention of Significant Deterioration of Air Quality

[1] In reviewing this preamble, note the distinction between the terms "supplement" and "appendix". Supplements A, B and C contain the replacement pages to effect Guideline revisions; appendix A to the Guideline is the repository for preferred models, while appendix B is the repository for alternate models justified for use on a case-by-case basis.

[2] Guideline on Air Quality Models "(Revised)"(1986)[EPA–450/2–78–027R], with supplement A (1987) and supplement B (1993), hereinafter, the "Guideline". The Guideline is published as appendix W of 40 CFR part 51. The text of appendix W will be appropriately modified to effect the revisions incorporated as supplement C.

in June 1978 (43 FR 26380). The Guideline was subsequently revised in 1986 (51 FR 32176), and later updated with the addition of supplement A in 1987 (53 FR 393). The last such revision was supplement B, issued on July 20, 1993 (58 FR 38816). The revisions in supplement B included techniques and guidance for situations where specific procedures had not previously been available, and also improved several previously adopted techniques.

During the public comment period for supplement B, EPA received requests to consider several additional new modeling techniques and suggestions for enhanced technical guidance. However, because there was not sufficient time for the public to review the new techniques and technical guidance before promulgation of supplement B, the new models and enhanced technical guidance could not be included in the supplement B rulemaking. Thus, in a subsequent regulatory proposal, EPA proposed to revise the Guideline and sought public comment on the following four items: incorporation of improved algorithms for treatment of area sources and dry deposition in the Industrial Source Complex (ISC) model, adoption of a solar radiation/delta-T (SRDT) method for estimating atmospheric stability categories, adoption of a new screening approach for assessing annual NO_2 impacts, and addition of SLAB and HGSYSTEM as alternative models.

Final Action

Today's action amends appendix W of 40 CFR part 51 to effect the revisions known as supplement C, slightly modified in form since proposal. All significant comments have been considered, and whenever they revealed any new information or suggested any alternative solutions, such were considered in EPA's final action.

As proposed, EPA is replacing the area source algorithm in the Industrial Source Complex model with a new one based on a double integration of the Gaussian plume kernel for area sources. This replacement includes that of the finite line segment approximation employed by the short term version of ISC and of the virtual point source technique used in the long term version of ISC.

As proposed, EPA is replacing the dry deposition algorithm in ISC with an improved technique that is more accurate for estimating deposition for small (i.e., < 20μm diameter) particles. Use the deposition algorithm in modeling analyses in which particle settling is considered important will remain optional.

EPA will adopt the solar radiation/delta-T (SRDT) method for Pasquill-Gifford (P–G) stability classification discussed in section 9 of appendix W. However, instead of adopting the SRDT method as a replacement for the currently accepted turbulence-based methods (i.e., σ_A and σ_θ), as proposed, SRDT will join them as an ensemble of acceptable methods. Furthermore, while the current hierarchy of acceptable methods is eliminated, the Turner method using on-site wind speed and representative cloud cover observations, remains the preferred classification method.

As proposed, EPA revises the annual NO_2 screening technique described in section 6 of appendix W. The new technique, known as the Ambient Ratio Method (ARM), is simpler and less conservative than the Ozone Limiting Method (OLM) it replaces.

As proposed, EPA adds two new models, namely SLAB and HGSYSTEM, as alternative models for use on a case-by-case basis.

Discussion of Public Comments and Issues

All comments submitted to Docket No. A–92–65 are filed in Docket Category IV–D. EPA has summarized these comments, developed detailed responses, and drawn conclusions on appropriate actions for this Notice of Final Rulemaking in an external Agency document.[3] In this document, all significant comments have been considered and discussed. Whenever the comments revealed any new information or suggested any alternative solutions, such were considered in EPA's final action.

Major issues raised by the commenters, along with EPA responses, are summarized below. Guidance and editorial changes associated with the resolution of these issues are adopted in the appropriate sections of the Guideline and are promulgated as supplement C (1995) to the "Guideline on Air Quality Models (Revised)" (1986) (Docket Item V–B–1). See the ADDRESSES section of this Notice (above) for general availability.

Although a more detailed summary of the comments and EPA's responses are contained in the aforementioned response-to-comments document (Docket Item V–C–1), the remainder of this preamble section overviews the primary issues encountered by the Agency during the public comment period. This overview also serves to explain the changes to the Guideline from today's action, and the main technical and policy concerns addressed by the Agency. In our view, all of the changes being made reasonably implement the mandates of the Clean Air Act, and are in fact beneficial to both EPA and the regulated community. While modeling by its nature involves approximation based on scientific methodology, and entails utilization of advanced technology as it evolves, EPA believes these changes respond to recent advances in the area so that the Guideline continues to be comprised of the best and most proven of the available models and analytical techniques, as well as reflect reasonable policy choices.

1. Enhancements to the Industrial Source Complex (ISC2) Model

While for clarification these enhancements are discussed separately, EPA will integrate these enhancements into one model for actual use. Several conforming Guideline revisions will be made: (a) the latest version of ISC that integrates the revised algorithms will be called ISC3, and will hereafter be specified only in main references (section 12) and in its description in appendix A; (b) the term "ISC2" (the version of ISC currently in use) in all but appendix A (i.e., in sections 7.1, 7.2.2, 7.2.5, 7.2.8, 8.2.5 and 8.2.7) will be revised to the more generic "ISC" to make future Guideline revisions more manageable; and (c) section 4.2.1 will be amended to say that the latest version of SCREEN (i.e., SCREEN3), a screening model that uses ISC algorithms, will be specified in the main references, and "SCREEN2" in section 4.2.1 and 5.2.1.1 will be changed to "SCREEN".

A. Area Source Algorithm

There was general public support for adoption of the proposed area source algorithm. Some concern, however, was expressed over the evaluation of the algorithm's performance being based on wind tunnel simulations. A commenter urged the Agency to evaluate the algorithm using a particular "available field data" set. EPA had been aware of the value of such data for evaluation purposes generally but the use of the specific data set cited by the commenter was recommended against by EPA's contractor. And since other such data sets were unavailable, EPA feels that the wind tunnel evaluation was the best possible. EPA will therefore adopt the algorithm, as proposed.

[3] "Summary of Public Comments and EPA Responses on the Proposal for Supplement C to the Guideline of Air Quality Models (Revised)"; August 1995 (Air Docket A–92–65, Item V–C–1).

B. Dry Deposition Algorithm

No comments were received about the proposed algorithm's performance in ISCST. Regarding ISCLT, however, concern was expressed over the algorithm's 50-fold increase in deposition estimates for small particles from near-surface releases compared with the current algorithm. As explained in the response-to- comments document, EPA investigated the commenter's perception and explained the apparent disparity in performance is explicable in terms of a series of independent effects related to the improvements made in the new algorithm. EPA will adopt the algorithm, as proposed.

In the proposal, EPA solicited public comment on whether it would be appropriate to require that the new dry deposition algorithm be used for all ISC analyses involving particulate matter in any of the programs for which Guideline usage is required under 40 CFR parts 51 and 52. No comments were received. EPA will continue to allow optional use of the algorithm on a case-by-case basis, depending on the application and on the availability of source specific, fractionated emissions data.

2. Enhancements to On-Site Stability Classification

Much of the expressed public concern was based on a perception of substantial added costs the SRDT method would add to meteorological monitoring programs. As stated in the response-to-comments document, investigation of the cost factors associated with instrumenting a meteorological tower to implement the SRDT method (i.e., ΔT and insolation) showed that such would add approximately $2500–$3500. Relative to the cost of all the monitoring equipment, including data acquisition systems, tower, etc., the added instrumentation costs for implementing the SRDT method are approximately 25 to 45 percent of the total costs (depending on tower height). Thus, as was pointed out in public comment, there is a capital cost associated with implementation of the SRDT method, but EPA believes that cost is not excessive, particularly in relation to the total monitoring program.

While no analyses were offered to directly refute the viability of the SRDT method on a technical basis, there was general concern over the SRDT method's proposed replacement of the currently acceptable turbulence based methods (i.e., σ_A or σ_θ), particularly given that the evaluation report for the SRDT method did not demonstrate its superiority over the latter methods.

Therefore, in an effort to balance an array of concerns, consistent with the intent and motivation for the proposal, EPA will adopt the SRDT method but revise the current hierarchical system of stability classification in Guideline section 9.3.3.2. Specifically, the Turner method using site-specific wind speed and representative cloud cover and ceiling height will be preferred for estimating P–G stability categories. This preference is founded in the fundamental radiation basis for P–G categories. In the absence of requisite data to implement the Turner method, however, the SRDT method or one of the turbulence based methods may be used. Regarding the collection of requisite representative cloud cover data for implementing the preferred Turner method, it should be noted that the operative word is representative. The previous distinction made for "off-site", associated with the last choice in the current hierarchy, is semantic. "On-site" is a preferable ideal; what is important is representativeness. As aptly pointed out in public comments, when representative off-site" cloud cover data are judiciously used, there can be good P–G category correspondence with what would have been obtained using strictly on-site observations. The emphasis on representativeness, inherent in EPA's final action, should obviate the historical contention over this semantic issue. As stated in the proposal, the on-site guidance [4] will be revised by addendum to reflect the new stability classification system, including the SRDT methodology. The document will also be revised to add some additional guidance on considerations of representativeness with respect to the Turner method.

3. Screening Approaches for Assessing Annual NO_2 Impact

Public comments were generally supportive of the proposed NO_2 screening approach: the ARM. Some, however, recommended the retention of OLM that ARM was proposed to replace. As stated in EPA's response, this recommendation would imply that OLM, applied on an hourly basis as a tertiary screening method, would yield a better estimation of annual NO_2 impact. EPA believes, however that application of OLM in this manner is affected by several technical and logistical problems. Because the oversimplified OLM approach does not necessarily result in more accurate estimates, adding OLM as a third tier screening method to be implemented on a hourly basis for screening is unnecessary. Therefore, EPA will adopt the Ambient Ratio Method, as proposed.

4. Modeling Techniques for Toxic Air Pollutants

There was support for EPA's proposal to adopt two new models for treating dense gas releases. Therefore, as proposed, EPA will add these models, SLAB and HGSYSTEM Version 3.0, to the Guideline where they will accompany DEGADIS, another appendix B model for treating dense gas releases for use on a case-by-case basis.

Administrative Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of E.O. 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act on 1980, 44 U.S.C. 3501 et seq.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of regulations on small "entities". The final action taken today is a supplement to the notice of final rulemaking that was published on July 20, 1993 (58 FR 38816). As described earlier in this

[4] Environmental Protection Agency, 1987. On-Site Meteorological Program Guidance for Regulatory Modeling Applications. EPA Publication No. EPA–450/4–87–013. U.S. Environmental Protection Agency, Research Triangle Park, NC.

preamble, the revisions here promulgated as supplement C to the Guideline encompass the use of new model algorithms and techniques for using those models. This rule merely updates existing technical requirements for air quality modeling analyses mandated by various Clean Air Act programs (e.g., prevention of significant deterioration, new source review, SIP revisions) and imposes no new regulatory burdens. As such, there will be no additional impact on small entities regarding reporting, recordkeeping, compliance requirements, as stated in the notice of final rulemaking (aforementioned). Furthermore, this final rule does not duplicate, overlap, or conflict with other federal rules. Thus, pursuant to the provisions of 5 U.S.C. 605(b), EPA hereby certifies that the attached final rule will not have a significant impact on a substantial number of such entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead.

Authority: This rule is issued under the authority granted by sections 110(a)(2), 165(e), 172 (a) & (c), 173, 301(a)(1) and 320 of the 1990 Clean Air Act Amendments, 42 U.S.C. 7410(a)(2), 7475(e), 7502 (a) & (c), 7503, 7601(a)(1) and 7620, respectively.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

Parts 51 and 52, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1) and 7620.

§ 51.112 [Amended]

2. In § 51.112, paragraphs (a)(1) and (a)(2) are amended by revising "and supplement B (1993)" to read ", supplement B (1993) and supplement C (1995)".

§ 51.160 [Amended]

3. In § 51.160, paragraphs (f)(1) and (f)(2) are amended by revising "and supplement B (1993)" to read ", supplement B (1993) and supplement C (1995)".

§ 51.166 [Amended]

4. In § 51.166, paragraphs (l)(1) and (l)(2) are amended by revising "and supplement B (1993)" to read ", supplement B (1993) and supplement C (1995)".

5. Appendix W to part 51, section 4.2.1 is amended by removing "SCREEN2, is available.[19, 20]" in the last sentence of the first paragraph and adding "SCREEN2, is available.[19, 20] For the current version of SCREEN, see reference 20."

6. Appendix W to part 51, section 4.2.2 is amended by revising Table 4–1 to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

* * * * *

TABLE 4–1.—PREFERRED MODELS FOR SELECTED APPLICATIONS IN SIMPLE TERRAIN

	Land use	Model[1]
Short Term (i.e., 1–24 hours):		
Single Source	Rural	CRSTER
	Urban	RAM
Multiple Source	Rural	MPTER
	Urban	RAM
Complicated Sources[2].	Rural/ Urban.	ISCST[3]
Buoyant Industrial Line Sources.	Rural	BLP
Long Term (i.e., monthly, seasonal or annual):		
Single Source	Rural	CRSTER
	Urban	RAM
Multiple Source	Rural	MPTER
	Urban	CDM 2.0 or RAM[4]
Complicated Sources[2].	Rural/ Urban.	ISCLT[3]
Buoyant Industrial Line Sources.	Rural	BLP

[1] The models as listed here reflect the applications for which they were originally intended. Several of these models have been adapted to contain options which allow them to be interchanged. For example, ISCST could be substituted for ISCLT. Similarly, for a point source application, ISCST with urban option can be substituted for RAM. Where a substitution is convenient to the user and equivalent estimates are assured, it may be made.

[2] Complicated sources are those with special problems such as aerodynamic downwash, particle deposition, volume and area sources, etc.

[3] For the current version of ISC, see reference 58 and note the model description provided in Appendix A of this document.

[4] If only a few sources in an urban area are to be modeled, RAM should be used.

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7. Appendix W to Part 51, section 5.2.1.1 is amended by removing "SCREEN2" in the third paragraph and by adding "SCREEN".

8. Appendix W to Part 51, section 6.2.3 is revised to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

* * * * *

6.2.3 Models for Nitrogen Dioxide (Annual Average)

a. A tiered screening approach is recommended to obtain annual average estimates of NO_2 from point sources for New Source Review analysis, including PSD, and for SIP planning purposes. This multi-tiered approach is conceptually shown in Figure 6–1 below:

Figure 6–1.—Multi-Tiered Screening Approach for Estimating Annual NO_2 Concentrations From Point Sources

Tier 1:
Assume Total Conversion of NO to NO_2

Tier 2:
Multiply Annual NO_X Estimate by Empirically Derived NO_2 / NO_X Ratio

b. For Tier 1 (the initial screen), use an appropriate Gaussian model from appendix A to estimate the maximum annual average concentration and assume a total conversion of NO to NO_2. If the concentration exceeds the NAAQS and/or PSD increments for NO_2, proceed to the 2nd level screen.

c. For Tier 2 (2nd level) screening analysis, multiply the Tier 1 estimate(s) by an empirically derived NO_2 / NO_X value of 0.75 (annual national default).[36] An annual NO_2 / NO_X ratio differing from 0.75 may be used if it can be shown that such a ratio is based on data likely to be representative of the location(s) where maximum annual impact from the individual source under review occurs. In the case where several sources contribute to consumption of a PSD increment, a locally derived annual NO_2 / NO_X ratio should also be shown to be representative of the location where the maximum collective impact from the new plus existing sources occurs.

d. In urban areas, a proportional model may be used as a preliminary assessment to evaluate control strategies to meet the NAAQS for multiple minor sources, i.e. minor point, area and mobile sources of NO_X; concentrations resulting from major point sources should be estimated separately as discussed above, then added to the impact of the minor sources. An acceptable screening technique for urban complexes is to assume that all NO_X is emitted in the form of NO_2 and to use a model from appendix A for nonreactive pollutants to estimate NO_2 concentrations. A more accurate estimate can be obtained by: (1) calculating the annual average concentrations of NO_X with an urban model, and (2) converting these estimates to NO_2 concentrations using an empirically derived annual NO_2 / NO_X ratio. A value of 0.75 is recommended for this ratio. However, a spatially averaged annual NO_2 / NO_X ratio may be determined from an existing air quality monitoring network and used in lieu of the 0.75 value if it is determined to be representative of prevailing ratios in the urban area by the reviewing agency. To ensure use of appropriate locally derived annual NO_2 / NO_X ratios, monitoring data under consideration should be limited to those collected at monitors meeting siting criteria defined in 40 CFR part 58, appendix D as representative of "neighborhood", "urban", or "regional" scales.

Furthermore, the highest annual spatially averaged NO_2 / NO_X ratio from the most recent 3 years of complete data should be used to foster conservatism in estimated impacts.

e. To demonstrate compliance with NO_2 PSD increments in urban areas, emissions from major and minor sources should be included in the modeling analysis. Point and area source emissions should be modeled as discussed above. If mobile source emissions do not contribute to localized areas of high ambient NO_2 concentrations, they should be modeled as area sources. When modeled as area sources, mobile source emissions should be assumed uniform over the entire highway link and allocated to each area source grid square based on the portion of highway link within each grid square. If localized areas of high concentrations are likely, then mobile sources should be modeled as line sources with the preferred model ISCLT2.

f. More refined techniques to handle special circumstances may be considered on a case-by-case basis and agreement with the reviewing authority should be obtained. Such techniques should consider individual quantities of NO and NO_2 emissions, atmospheric transport and dispersion, and atmospheric transformation of NO to NO_2. Where they are available, site-specific data on the conversion of NO to NO_2 may be used. Photochemical dispersion models, if used for other pollutants in the area, may also be applied to the NO_X problem.

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9. Appendix W to part 51, section 7.1 is amended by removing "ISC2" in the fourth paragraph and by adding "ISC".

10. Appendix W to part 51, section 7.2.2 is amended by removing "ISC2" in the third paragraph and by adding "ISC".

11. Appendix W to part 51, section 7.2.5 is amended by removing "ISC2" in the second paragraph and by adding "ISC".

12. Appendix W to part 51, section 7.2.8 is amended by removing "ISC2" in the second paragraph and by adding "ISC".

13. Appendix W to part 51, section 8.2.5 is amended by removing "ISC2" in the second paragraph and by adding "ISC".

14. Appendix W to part 51, section 8.2.7 is amended by removing "total suspended particulate" in the first paragraph and by adding "particle".

15. Appendix W to part 51, section 8.2.7 is amended by removing "At least one" in the second paragraph and by adding "One".

16. Appendix W to part 51, section 9.3.3.2, is revised to read as follows:

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9.3.3.2 *Recommendations.*

a. *Site-specific Data Collection.* The document "On-Site Meteorological Program Guidance for Regulatory Modeling Applications"[66] provides recommendations on the collection and use of on-site meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness requirements, reporting, and archiving are also included. This publication should be used as a supplement to the limited guidance on these subjects now found in the "Ambient Monitoring Guidelines for Prevention of Significant Deterioration".[63] Detailed information on quality assurance is provided in the "Quality Assurance Handbook for Air Pollution Measurement Systems: Volume IV".[67] As a minimum, site-specific measurements of ambient air temperature, transport wind speed and direction, and the parameters to determine Pasquill-Gifford (P–G) stability categories should be available in meteorological data sets to be used in modeling. Care should be taken to ensure that meteorological instruments are located to provide representative characterization of pollutant transport between sources and receptors of interest. The Regional Office will determine the appropriateness of the measurement locations.

b. All site-specific data should be reduced to hourly averages. Table 9–3 lists the wind related parameters and the averaging time requirements.

c. *Solar Radiation Measurements.* Total solar radiation should be measured with a reliable pyranometer, sited and operated in accordance with established on-site meteorological guidance.[66]

d. *Temperature Measurements.* Temperature measurements should be made at standard shelter height (2m) in accordance with established on-site meteorological guidance.[66]

e. *Temperature Difference Measurements.* Temperature difference (ΔT) measurements for use in estimating P–G stability categories using the SRDT methodology (see Stability Categories) should be obtained using two matched

thermometers or a reliable thermocouple system to achieve adequate accuracy.

f. Siting, probe placement, and operation of ΔT systems should be based on guidance found in Chapter 3 of reference 66, and such guidance should be followed when obtaining vertical temperature gradient data for use in plume rise estimates or in determining the critical dividing streamline height.

g. *Wind Measurements.* For refined modeling applications in simple terrain situations, if a source has a stack below 100m, select the stack top height as the wind measurement height for characterization of plume dilution and transport. For sources with stacks extending above 100m, a 100m tower is suggested unless the stack top is significantly above 100m (i.e., ≥200m). In cases with stack tops ≥200m, remote sensing may be a feasible alternative. In some cases, collection of stack top wind speed may be impractical or incompatible with the input requirements of the model to be used. In such cases, the Regional Office should be consulted to determine the appropriate measurement height.

h. For refined modeling applications in complex terrain, multiple level (typically three or more) measurements of wind speed and direction, temperature and turbulence (wind fluctuation statistics) are required. Such measurements should be obtained up to the representative plume height(s) of interest (i.e., the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (e.g., CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR if the representative plume height(s) of interest exceed 100m. The meteorological tower need not exceed the lesser of the representative plume height of interest (the highest plume height if there is more than one plume height of interest) or 100m.

i. In general, the wind speed used in determining plume height is defined as the wind speed at stack top.

j. Specifications for wind measuring instruments and systems are contained in the "On-Site Meteorological Program Guidance for Regulatory Modeling Applications".[86]

k. *Stability Categories.* The P–G stability categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling height observations. The wind speed measurements are made at or near 10m. The insolation rate is typically assessed using observations of cloud cover and ceiling height based on criteria outlined by Turner.[50] It is recommended that the P–G stability category be estimated using the Turner method with site-specific wind speed measured at or near 10m and representative cloud cover and ceiling height. Implementation of the Turner method, as well as considerations in determining representativeness of cloud cover and ceiling height in cases for which site-specific cloud observations are unavailable, may be found in section 6 of reference 66. In the absence of requisite data to implement the Turner method, the SRDT method or wind fluctuation statistics (i.e., the σ_E and σ_A methods) may be used.

l. The SRDT method, described in section 6.4.4.2 of reference 66, is modified slightly from that published by Bowen et al. (1983)[136] and has been evaluated with three on-site data bases.[137] The two methods of stability classification which use wind fluctuation statistics, the σ_E and σ_A methods, are also described in detail in section 6.4.4 of reference 66 (note applicable tables in section 6). For additional information on the wind fluctuation methods, see references 68–72.

m. Hours in the record having missing data should be treated according to an established data substitution protocol and after valid data retrieval requirements have been met. Such protocols are usually part of the approved monitoring program plan. Data substitution guidance is provided in section 5.3 of reference 66.

n. *Meteorological Data Processors.* The following meteorological preprocessors are recommended by EPA: RAMMET, PCRAMMET, STAR, PCSTAR, MPRM,[135] and METPRO.[24] RAMMET is the recommended meteorological preprocessor for use in applications employing hourly NWS data. The RAMMET format is the standard data input format used in sequential Gaussian models recommended by EPA. PCRAMMET [138] is the PC equivalent of the mainframe version (RAMMET). STAR is the recommended preprocessor for use in applications employing joint frequency distributions (wind direction and wind speed by stability class) based on NWS data. PCSTAR is the PC equivalent of the mainframe version (STAR). MPRM is the recommended preprocessor for use in applications employing on-site meteorological data. The latest version (MPRM 1.3) has been configured to implement the SRDT method for estimating P–G stability categories. MPRM is a general purpose meteorological data preprocessor which supports regulatory models requiring RAMMET formatted data and STAR formatted data. In addition to on-site data, MPRM provides equivalent processing of NWS data. METPRO is the required meteorological data preprocessor for use with CTDMPLUS. All of the above mentioned data preprocessors are available for downloading from the SCRAM BBS.[19]

* * * * *

17. Appendix W to Part 51, section 12.0, is amended by:

a. Revising references 20, 36, 58 and 90; and

b. Adding references 136 through 138.

The revisions and additions read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

* * * * *

12.0 * * *

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20. Environmental Protection Agency, 1995. SCREEN3 User's Guide. EPA Publication No. EPA–454/B–95–004. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 95–222766)

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36. Chu, S. H. and E. L.Meyer, 1991. Use of Ambient Ratios to Estimate Impact of NO_X Sources on Annual NO_2 Concentrations. Proceedings, 84th Annual Meeting & Exhibition of the Air & Waste Management Association, Vancouver, B.C.; 16–21 June 1991. (16 pp.) (Docket No. A–92–65, II–A–7)

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58. Environmental Protection Agency, 1995. User's Guide for the Industrial Source Complex (ISC3) Dispersion Models, Volumes 1 and 2. EPA Publication Nos. EPA–454/B–95–003a & b. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS Nos. PB–95–222741 and PB 95–222758, respectively)

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90. Environmental Research and Technology, 1987. User's Guide to the Rough Terrain Diffusion Model (RTDM), Rev. 3.20. ERT document No. PD535–585. Environmental Research and Technology, Inc., Concord, MA (NTIS No. PB 88–171467)

* * * * *

136. Bowen, B.M., J.M. Dewart and A.I. Chen, 1983. Stability Class Determination: A Comparison for One Site. Proceedings, Sixth Symposium on Turbulence and Diffusion. American Meteorological Society, Boston, MA; pp. 211–214. (Docket No. A–92–65, II–A–5)

137. Environmental Protection Agency, 1993. An Evaluation of a Solar Radiation/Delta-T (SRDT) Method for Estimating Pasquill-Gifford (P–G) Stability Categories. EPA Publication No. EPA–454/R–93–055. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 94–113958)

138. Environmental Protection Agency, 1993. PCRAMMET User's Guide. EPA Publication No. EPA–454/B–93–009. U.S. Environmental Protection Agency, Research Triangle Park, NC.

18. Appendix A to Appendix W of Part 51, is amended:

a. The Table of Contents is revised by removing "ISC2" and by adding "ISC3";

b. Section A.5 is amended by revising the Heading and Reference;

c. Section A.5 Abstract is amended by removing "ISC2" and by adding "ISC3";

d. Section A.5.a is amended by removing "ISC2" in the first line and by adding "ISC3";

e. Section A.5.b is amended by removing "ISCST2" and "ISCLT2 in the second paragraph and by adding "ISCST3";

f. Section A.5.d is revised;

g. Section A.5.e is amended by removing "ISC2" in the first line and by adding "ISC3";

h. Section A.5.f is amended by removing "ISC2" in the first line and by adding "ISC3";

i. Section A.5.g is amended by removing "ISC2" in the first line and by adding "ISC3";

j. Section A.5.m is revised;

k. Section A.5.n is amended by adding four references in alphabetical order; and

l. Section A.REF is amended by adding a reference at the end.

The revisions and additions read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

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Appendix A to Appendix W of Part 51—Summaries of Preferred Air Quality Models

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A.5 INDUSTRIAL SOURCE COMPLEX MODEL (ISC3)

Reference

Environmental Protection Agency, 1995. User's Guide for the Industrial Source Complex (ISC3) Dispersion Models, Volumes 1 and 2. EPA Publication Nos. EPA–454/B–95–003a & b. Environmental Protection Agency, Research Triangle Park, NC. (NTIS Nos. PB–95–222741 and PB 95–222758, respectively)

* * * * *

d. Type of Model

ISC3 is a Gaussian plume model. It has been revised to perform a double integration of the Gaussian plume kernel for area sources.

* * * * *

m. Physical Removal

Dry deposition effects for particles are treated using a resistance formulation in which the deposition velocity is the sum of the resistances to pollutant transfer within the surface layer of the atmosphere, plus a gravitational settling term (EPA, 1994), based on the modified surface depletion scheme of Horst (1983).

* * * * *

n. Evaluation Studies

* * * * *

Environmental Protection Agency, 1992. Comparison of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model and Wind Tunnel Data. EPA Publication No. EPA–454/R–92–014. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226751)

Environmental Protection Agency, 1992. Sensitivity Analysis of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model. EPA Publication No. EPA–454/R–92–015. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226769)

Environmental Protection Agency, 1992. Development and Evaluation of a Revised Area Source Algorithm for the Industrial Source Complex Long Term Model. EPA Publication No. EPA–454/R–92–016. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226777)

Environmental Protection Agency, 1994. Development and Testing of a Dry Deposition Algorithm (Revised). EPA Publication No. EPA–454/R–94–015. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 94–183100)

* * * * *

A.REF (REFERENCES)

* * * * *

Horst, T. W., 1983. A Correction to the Gaussian Source-depletion Model. In *Precipitation Scavenging, Dry Deposition and Resuspension.* H. R. Pruppacher, R. G. Semonin, and W. G. N. Slinn, eds., Elsevier, NY.

19. Appendix B to appendix W of part 51 is amended by:

a. Adding two entries to the Table of Contents in numerical order; and

b. Adding sections B.32 and B.33 immediately following section B.31.

The additions read as follows:

Appendix B to Appendix W of Part 51—Summaries of Alternative Air Quality Models

Table of Contents

* * * * *

B.32 HGSYSTEM

B.33 SLAB

* * * * *

B.32 HGSYSTEM: Dispersion Models for Ideal Gases and Hydrogen Fluoride

References

Post, L. (ed.), 1994. HGSYSTEM 3.0 Technical Reference Manual. Shell Research Limited, Thornton Research Centre, Chester, United Kingdom. (TNER 94.059)

Post, L., 1994. HGSYSTEM 3.0 User's Manual. Shell Research Limited, Thornton Research Centre, Chester, United Kingdom. (TNER 94.058)

Availability

The PC-DOS version of the HGSYSTEM software (HGSYSTEM: Version 3.0, Programs for modeling the dispersion of ideal gas and hydrogen fluoride releases, executable programs and source code can be installed from floppy diskettes. These diskettes and all documentation are available as a package from API [(202) 682–8340] or NTIS (see Section B.0).

Technical Contacts

Doug N. Blewitt, AMOCO Corporation, 1670 Broadway / MC 2018, Denver, CO 80201, (303) 830–5312

Howard J. Feldman, American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005, (202) 682–8340

Abstract

HGSYSTEM is a PC-based software package consisting of mathematical models for estimating of one or more consecutive phases between spillage and near-field and far-field dispersion of a pollutant. The pollutant can be either

a two-phase, multi-compound mixture of non-reactive compounds or hydrogen fluoride (HF) with chemical reactions. The individual models are:

Database program:
- DATAPROP generates physical properties used in other HGSYSTEM models

Source term models:
- SPILL transient liquid release from a pressurized vessel
- HFSPILL SPILL version specifically for HF
- LPOOL evaporating multi-compound liquid pool model

Near-field dispersion models:
- AEROPLUME high-momentum jet dispersion model
- HFPLUME AEROPLUME version specifically for HF
- HEGABOX dispersion of instantaneous heavy gas releases

Far-field dispersion models:
- HEGADAS(S,T) heavy gas dispersion (steady-state and transient version)
- PGPLUME passive Gaussian dispersion

Utility programs:
- HFFLASH flashing of HF from pressurized vessel
- POSTHS/POSTHT post-processing of HEGADAS(S,T) results
- PROFILE post-processor for concentration contours of airborne plumes
- GET2COL utility for data retrieval

The models assume flat, unobstructed terrain. HGSYSTEM can be used to model steady-state, finite-duration, instantaneous and time dependent releases, depending on the individual model used. The models can be run consecutively, with relevant data being passed on from one model to the next using link files. The models can be run in batch mode or using an iterative utility program.

a. Recommendations for Regulatory Use

HGSYSTEM can be used as a refined model to estimate short-term ambient concentrations. For toxic chemical releases (non-reactive chemicals or hydrogen fluoride; 1-hour or less averaging times) the expected area of exposure to concentrations above specified threshold values can be determined. For flammable non-reactive gases it can be used to determine the area in which the cloud may ignite.

b. Input Requirements

1. HFSPILL input data: reservoir data (temperature, pressure, volume, HF mass, mass-fraction water), pipe-exit diameter and ambient pressure.

2. EVAP input data: spill rate, liquid properties, and evaporation rate (boiling pool) or ambient data (non-boiling pool).

3. HFPLUME and PLUME input data: reservoir characteristics, pollutant parameters, pipe/release data, ambient conditions, surface roughness and stability class.

4. HEGADAS input data: ambient conditions, pollutant parameters, pool data or data at transition point, surface roughness, stability class and averaging time.

5. PGPLUME input data: link data provided by HFPLUME and the averaging time.

c. Output

1. The HGSYSTEM models contain three post-processor programs which can be used to extract modeling results for graphical display by external software packages. GET2COL can be used to extract data from the model output files. HSPOST can be used to develop isopleths, extract any 2 parameters for plotting and correct for finite release duration. HTPOST can be used to produce time history plots.

2. HFSPILL output data: reservoir mass, spill rate, and other reservoir variables as a function of time. For HF liquid, HFSPILL generates link data to HFPLUME for the initial phase of choked liquid flow (flashing jet), and link data to EVAP for the subsequent phase of unchoked liquid flow (evaporating liquid pool).

3. EVAP output data: pool dimensions, pool evaporation rate, pool mass and other pool variables for steady state conditions or as a function of time. EVAP generates link data to the dispersion model HEGADAS (pool dimensions and pool evaporation rate).

4. HFPLUME and PLUME output data: plume variables (concentration, width, centroid height, temperature, velocity, etc.) as a function of downwind distance.

5. HEGADAS output data: concentration variables and temperature as a function of downwind distance and (for transient case) time.

6. PGPLUME output data: concentration as a function of downwind distance, cross-wind distance and height.

d. Type of Model

HGSYSTEM is made up of four types of dispersion models. HFPLUME and PLUME simulate the near-field dispersion and PGPLUME simulates the passive-gas dispersion downwind of a transition point. HEGADAS simulates the ground-level heavy-gas dispersion.

e. Pollutant Types

HGSYSTEM may be used to model non-reactive chemicals or hydrogen fluoride.

f. Source-Receptor Relationships

HGSYSTEM estimates the expected area of exposure to concentrations above user-specified threshold values. By imposing conservation of mass, momentum and energy the concentration, density, speed and temperature are evaluated as a function of downwind distance.

g. Plume Behavior

1. HFPLUME and PLUME: (1) are steady-state models assuming a top-hat profile with cross-section averaged plume variables; and (2) the momentum equation is taken into account for horizontal ambient shear, gravity, ground collision, gravity-slumping pressure forces and ground-surface drag.

2. HEGADAS: assumes the heavy cloud to move with the ambient wind speed, and adopts a power-law fit of the ambient wind speed for the velocity profile.

3. PGPLUME: simulates the passive-gas dispersion downwind of a transition point from HFPLUME or PLUME for steady-state and finite duration releases.

h. Horizontal Winds

A power law fit of the ambient wind speed is used.

i. Vertical Wind Speed

Not treated.

j. Horizontal Dispersion

1. HFPLUME and PLUME: Plume dilution is caused by air entrainment resulting from high plume speeds, trailing vortices in wake of falling plume (before touchdown), ambient turbulence and density stratification. Plume dispersion is assumed to be steady and momentum-dominated, and effects of downwind diffusion and wind meander (averaging time) are not taken into account.

2. HEGADAS: This model adopts a concentration similarity profile expressed in terms of an unknown center-line ground-level concentration and unknown vertical/cross-wind dispersion parameters. These quantities are determined from a number of basic equations describing gas-mass conservation, air entrainment (empirical law describing vertical top-entrainment in terms of global Richardson number), cross-wind gravity spreading (initial gravity spreading followed by gravity-current collapse) and cross-wind diffusion (Briggs formula).

3. PGPLUME: It assumes a Gaussian concentration profile in which the cross-wind and vertical dispersion coefficients are determined by empirical expressions. All unknown parameters in this profile are determined by imposing appropriate matching criteria at the transition point.

k. Vertical Dispersion

See description above.

l. Chemical Transformation

Not treated.

m. Physical Removal

Not treated.

n. Evaluation Studies

1. PLUME has been validated against field data for releases of liquified propane, and wind tunnel data for buoyant and vertically-released dense plumes. HFPLUME and PLUME have been validated against field data for releases of HF (Goldfish experiments) and propane releases. In addition, the plume rise algorithms have been tested against Hoot, Meroney, and Peterka, Ooms and Petersen databases. HEGADAS has been validated against steady and transient releases of liquid propane and LNG over water (Maplin Sands field data), steady and finite-duration pressurized releases of HF (Goldfish experiments; linked with HFPLUME), instantaneous release of Freon (Thorney Island field data; linked with the box model HEGABOX) and wind tunnel data for steady, isothermal dispersion.

2. Validation studies are contained in the following references:

McFarlane, K., Prothero, A., Puttock, J.S., Roberts, P.T. and Witlox, H.W.M., 1990. Development and validation of atmospheric dispersion models for ideal gases and hydrogen fluoride, Part I: Technical Reference Manual. Report TNER.90.015. Thornton Research Centre, Shell Research, Chester, England. [EGG 1067–1151] (NTIS No. DE 93–000953)

Witlox, H.W.M., McFarlane, K., Rees, F.J., and Puttock, J.S., 1990. Development and validation of atmospheric dispersion models for ideal gases and hydrogen fluoride, Part II: HGSYSTEM Program User's Manual. Report TNER.90.016. Thornton Research Centre, Shell Research, Chester, England. [EGG 1067–1152] (NTIS No. DE 93–000954)

B.33 SLAB

Reference

Ermak, D.L., 1990. User's Manual for SLAB: An Atmospheric Dispersion Model for Denser-than-Air Releases (UCRL-MA–105607), Lawrence Livermore National Laboratory.

Availability

1. The computer code is available on the Support Center for Regulatory Air Models Bulletin Board System (Upload/Download Area; see page B–1), and can also be obtained from: Energy Science and Technology Center, P.O. Box 1020, Oak Ridge, TN 37830, (615) 576–2606.

2. The User's Manual (NTIS No. DE 91–008443) can be obtained from: Computer Products, National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, (703) 487–4650.

Abstract

The SLAB model is a computer model, PC-based, that simulates the atmospheric dispersion of denser-than-air releases. The types of releases treated by the model include a ground-level evaporating pool, an elevated horizontal jet, a stack or elevated vertical jet and an instantaneous volume source. All sources except the evaporating pool may be characterized as aerosols. Only one type of release can be processed in any individual simulation. Also, the model simulates only one set of meteorological conditions; therefore direct application of the model over time periods longer than one or two hours is not recommended.

a. Recommendations for Use

The SLAB model should be used as a refined model to estimate spatial and temporal distribution of short-term ambient concentration (e.g., 1-hour or less averaging times) and the expected area of exposure to concentrations above specified threshold values for toxic chemical releases where the release is suspected to be denser than the ambient air.

b. Input Requirements

1. The SLAB model is executed in the batch mode. Data are input directly from an external input file. There are 29 input parameters required to run each simulation. These parameters are divided into 5 categories by the user's guide: source type, source properties, spill properties, field properties, and meteorological parameters. The model is not designed to accept real-time meteorological data or convert units of input values. Chemical property data are not available within the model and must be input by the user. Some chemical and physical property data are available in the user's guide.

2. Source type is chosen as one of the following: evaporating pool release, horizontal jet release, vertical jet or stack release, or instantaneous or short duration evaporating pool release.

3. Source property data requirements are physical and chemical properties (molecular weight, vapor heat capacity at constant pressure; boiling point; latent heat of vaporization; liquid heat capacity; liquid density; saturation pressure constants), and initial liquid mass fraction in the release.

4. Spill properties include: source temperature, emission rate, source dimensions, instantaneous source mass, release duration, and elevation above ground level.

5. Required field properties are: desired concentration averaging time, maximum downwind distance (to stop the calculation), and four separate heights at which the concentration calculations are to be made.

6. Meteorological parameter requirements are: ambient measurement height, ambient wind speed at designated ambient measurement height, ambient temperature, surface roughness, relative humidity, atmospheric stability class, and inverse Monin-Obukhov length (optional, only used as an input parameter when stability class is unknown).

c. Output

1. No graphical output is generated by the current version of this program. The output print file is automatically saved and must be sent to the appropriate printer by the user after program execution. Printed output includes in tabular form:

2. Listing of model input data;

3. Instantaneous spatially-averaged cloud parameters—time, downwind distance, magnitude of peak concentration, cloud dimensions (including length for puff-type simulations), volume (or mole) and mass fractions, downwind velocity, vapor mass fraction, density, temperature, cloud velocity, vapor fraction, water content, gravity flow velocities, and entrainment velocities;

4. Time-averaged cloud parameters—parameters which may be used externally to calculate time-averaged concentrations at any location within the simulation domain (tabulated as functions of downwind distance);

5. Time-averaged concentration values at plume centerline and at five off-centerline distances (off-centerline distances are multiples of the effective cloud half-width, which varies as a function of downwind distance) at four user-specified heights and at the height of the plume centerline.

d. Type of Model

As described by Ermak (1989), transport and dispersion are calculated by solving the conservation equations for mass, species, energy, and momentum, with the cloud being modeled as either a steady-state plume, a transient puff, or a combination of both, depending on the duration of the release. In the steady-state plume mode, the crosswind-averaged conservation equations are solved and all variables depend only on the downwind distance. In the transient puff mode, the volume-averaged conservation equations are solved, and all variables depend only on the downwind travel time of the puff center of mass. Time is related to downwind distance by the height-averaged ambient wind speed. The basic conservation equations are solved via a numerical integration scheme in space and time.

e. Pollutant Types

Pollutants are assumed to be non-reactive and non-depositing dense gases or liquid-vapor mixtures (aerosols). Surface heat transfer and water vapor flux are also included in the model.

f. Source-Receptor Relationships

1. Only one source can be modeled at a time.

2. There is no limitation to the number of receptors; the downwind receptor distances are internally-calculated by the model. The SLAB calculation is carried out up to the user-specified maximum downwind distance.

3. The model contains submodels for the source characterization of evaporating pools, elevated vertical or horizontal jets, and instantaneous volume sources.

g. Plume Behavior

Plume trajectory and dispersion is based on crosswind-averaged mass, species, energy, and momentum balance equations. Surrounding terrain is assumed to be flat and of uniform surface roughness. No obstacle or building effects are taken into account.

h. Horizontal Winds

A power law approximation of the logarithmic velocity profile which accounts for stability and surface roughness is used.

i. Vertical Wind Speed

Not treated.

j. Vertical Dispersion

The crosswind dispersion parameters are calculated from formulas reported by Morgan et al. (1983), which are based on experimental data from several sources. The formulas account for entrainment due to atmospheric turbulence, surface friction, thermal convection due to ground heating, differential motion between the air and the cloud, and damping due to stable density stratification within the cloud.

k. Horizontal Dispersion

The horizontal dispersion parameters are calculated from formulas similar to those described for vertical dispersion, also from the work of Morgan, et al. (1983).

l. Chemical Transformation

The thermodynamics of the mixing of the dense gas or aerosol with ambient air (including water vapor) are treated. The relationship between the vapor and liquid fractions within the cloud is treated using the local thermodynamic equilibrium approximation. Reactions of released chemicals with water or ambient air are not treated.

m. Physical Removal

Not treated.

n. Evaluation Studies

Blewitt, D.N., J.F. Yohn, and D.L. Ermak, 1987. An Evaluation of SLAB and DEGADIS Heavy Gas Dispersion Models Using the HF Spill Test Data, Proceedings, AIChE International Conference on Vapor Cloud Modeling, Boston, MA, November, pp. 56–80.

Ermak, D.L., S.T. Chan, D.L. Morgan, and L.K. Morris, 1982. A Comparison of Dense Gas Dispersion Model Simulations with Burro Series LNG Spill Test Results, *J. Haz. Matls.*, 6: 129–160.

Zapert, J.G., R.J. Londergan, and H. Thistle, 1991. Evaluation of Dense Gas Simulation Models. EPA Publication No. EPA–450/4–90–018. U.S. Environmental Protection Agency, Research Triangle Park, NC.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 52.21 [Amended]

2. In § 52.21, paragraphs (l)(1) and (l)(2) are amended by revising "and supplement B (1993)" to read ", supplement B (1993) and supplement C (1994)".

[FR Doc. 95–19057 Filed 8–8–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 9 and 86

[AMS–FRL–5268–1]

RIN 2060–AE93

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Regulations Requiring Availability of Information for Use of On-Board Diagnostic Systems and Emission-Related Repairs on 1994 and later Model Year Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes requirements for the availability of emission-related service information for all light-duty vehicles (LDVs) and light-duty trucks (LDTs) beginning with the 1994 model year (MY). Section 202(m)(5) of the Clean Air Act (CAA or Act) requires EPA to promulgate rules mandating the availability of emission-related service information for such vehicles. This rulemaking requires vehicle manufacturers to provide to the service and repair industry information necessary to service on-board diagnostic (OBD) systems and to perform other emission-related diagnosis and repair.

EFFECTIVE DATE: This final rule is effective December 7, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–90–35. The docket is located at The Air Docket, 401 M Street, S.W., Washington, D.C. 20460, and may be viewed in Room M–1500 from 8:30 a.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Cheryl Adelman, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone (313) 668–4434

SUPPLEMENTARY INFORMATION:

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I. Background and Development

Section 202(m)(5) of the CAA, as amended by the Clean Air Act Amendments of 1990 (CAAA), directs EPA to promulgate regulations requiring vehicle manufacturers to provide to:

> any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, * * * any and all information needed to make use of the [vehicle's] emission control diagnostic system * * * and such other information including instructions for making emission-related diagnoses and repairs.

Such requirements are subject to the requirements of section 208(c) regarding protection of trade secrets; however, no such information may be withheld under section 208(c) if that information is provided (directly or indirectly) by the manufacturer to its franchised dealers or other persons engaged in the repair, diagnosing or servicing of motor vehicles.

On September 24, 1991, EPA published a notice of proposed rulemaking [1] (NPRM) outlining the Agency's proposed service information requirements. EPA subsequently reopened the comment and held public workshops to further review aspects of these requirements.[2] Today's document promulgates these regulations.

As of August 1990, 96 urban areas were in violation of the National Ambient Air Quality Standard (NAAQS) for ozone and 41 areas could not attain the NAAQS for carbon monoxide (CO). EPA estimates that currently 60% of the total tailpipe HC emissions from LDVs and LDTs are caused by the 20% of vehicles with serious emission control system malfunctions or degradation.[3] The more stringent new vehicle emission standards mandated by the Act are likely to increase further the proportion of total LDV emissions from malfunctioning vehicles.

The purpose of the OBD system and emission-control systems is to reduce emission levels of various pollutants. For such systems to achieve projected levels of emission reductions, it will be essential that they be adequately maintained and repaired. This will require automotive technicians to possess the knowledge necessary to identify and repair improperly operating emission-related systems and components. This knowledge is acquired, in part, by having access to information on the operation and repair of such systems and related components.[4]

To date, automotive technicians employed by manufacturer franchisees have had access, through their employer, to needed emission-related service and repair information. The same is not always true for other individuals who repair and service vehicles. Some manufacturers do not make available to the public all the information needed to adequately service and repair motor vehicles. Further, when information is made available, it may be difficult to locate and time consuming to obtain.

It is especially important for independent technicians to have access to needed emission-related service and repair information, including training instructions. It has been estimated that independent technicians are responsible for conducting up to 80% of all repairs.[5] In addition, independent technicians are more likely to repair the vehicles which are the most likely to violate emission standards (older vehicles, in general). This conclusion is the result of a recent study which demonstrated that (1) the level of excess emissions increases as a vehicle's mileage increases, and (2) the percentage of nondealer repairs increased and dealer repairs decreased as a vehicle's mileage increased.[6] Considering the large number of vehicles being serviced by independent technicians, it is essential that such individuals have access to adequate emission-related repair and service information.

Today's regulations are intended to preserve freedom of choice by consumers in where they obtain service and repair of emission-related systems. This can only be achieved by ensuring that all sectors of the automotive service industry have access to the information needed to perform such service and repairs.

II. Requirements of the OBD Final Rule

A. Availability of Service Information

Today's regulations require that manufacturers provide to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines all information necessary to make use of the OBD system and any information for making emission-related diagnosis and repairs, including any emission-related information that is provided by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing or servicing of motor vehicle engines.

B. Required Information and Emission-Related Information

Manufacturers are required to make available to the aftermarket "any and all" information needed to make use of the OBD system and such other information, including instructions for making emission-related repairs, excluding trade secrets. The scope of the information that must be provided includes the direct and indirect service and repair information that a manufacturer provides to its authorized dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Examples of direct information are service manuals, technical service bulletins (TSBs), training materials or information, diagnostic information, wiring diagrams, and any written memoranda or guidance provided to dealers. Indirect information is information provided to dealers through indirect means. Examples of indirect information include, but are not limited to, information made available through tools and equipment, such as emission-related reprogramming events, data stream information, and bi-directional control. Manufacturers are required to provide such information (or allow such information to be provided by others) to persons engaged in the repair and service of vehicles in the same or similar manner such information is provided to their dealers. Manufacturers are not required to provide such information directly without regard for protection of trade secrets.

Information for making emission-related diagnosis and repairs does not include information used to design and manufacture parts, but may include

[1] 56 FR 48272 (September 24, 1991).

[2] 57 FR 24457 (June 9, 1992); 58 FR 34013 (June 23, 1993).

[3] Regulatory Impact Analysis: On-Board Diagnostics, Appendix I; Air Docket No. A–90–35.

[4] To properly service and repair vehicles, automotive technicians require both access to needed information and training. Direct training is beyond the scope of this rulemaking; however, the availability of manufacturer training information and materials is covered by these proposed regulations.

[5] "Service Job Analysis," Hunter Publishing Co., 1984.

[6] "Survey of Vehicle Owners in the On-Board Diagnostics Program," Westat, Inc., July 18, 1990.

manufacturer changes to internal computer calibrations. However, a manufacturer need only provide internal calibrations to the service and repair industry to the extent it has provided such information to its dealerships.

Emission-related information includes, but is not limited to, information regarding any system, component or part of a vehicle that controls emissions and any system, component and/or part associated with the powertrain system, including, but not limited to, the engine, the fuel system and ignition system. Information must also be provided for any system, component, or part that is likely to impact emissions, such as transmission systems. In addition, EPA will monitor the results of inspection and maintenance (I/M) programs for failures resulting from systems, components or parts other than those described here. If EPA determines that a substantial number of I/M failures are occurring due to systems, components or parts other than those described here, the extent of emission-related service information will be expanded to include such items. EPA will notify any affected manufacturer(s) of its concerns and will allow such manufacturers to reply to these concerns prior to making any such determinations. Affected manufacturers will be notified of any such EPA determinations.

C. Cost of Service Information

Emission-related service information is to be made available at a reasonable price. This means the fair market price taking into consideration factors such as the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size of the manufacturer), the quantity of material contained in a publication, the detail of the information, the cost of the information prior to publication of this final rule, volume discounts, and inflation. EPA is not requiring that manufacturers sell information to aftermarket service providers at the lowest price charged to their dealerships.

D. Distribution of Service Information and Timeliness

Today's rule allows each manufacturer to distribute emission-related service and repair information through the distribution mechanism it determines to be the most efficient and cost-effective. There is no requirement that manufacturers use the same distribution mechanism for dealers and aftermarket service providers. However, each manufacturer will be responsible for up-loading a complete index of required information to NTIS' (National Technical Information Service) FedWorld.[7] Manufacturers are required to make available on FedWorld an index of all information that falls within the definition of emission-related service, diagnosis and repair information.[8] This includes, but is not limited to, manuals, TSBs, all training materials, and videos. Each manufacturer title listed in the index must adequately describe the contents of the document to which it refers. If a title does not adequately describe the contents, the manufacturer shall provide a brief description that enables the user to determine whether an item contains the information being sought. If requested to do so, FedWorld will accept orders for service information and transmit them to the manufacturer's designated information distributor. The party identified in FedWorld by a manufacturer as the distributor of the manufacturer's emission-related service information can be the manufacturer itself, a publisher/distributor, or other entity that can provide the information as required.

In addition to the index, manufacturers are required to list a phone number and address where aftermarket service providers can call or write to obtain the desired information. Manufacturers must also provide the price of each item listed, as well as the price of items ordered on a subscription basis.

Manufacturers are required to update the FedWorld index on the first and third Monday of each month or as otherwise specified by the Agency. A manufacturer may opt to update its FedWorld index more frequently. In addition, each manufacturer is responsible for paying its share of the annual cost of FedWorld. Such costs are to be paid by each manufacturer; however, payments can be made through various arrangements, e.g., a group of manufacturers can elect to determine what they would owe if paid individually and then divide that amount based on sales or other factors. The annual cost of maintaining the FedWorld database is approximately $70,000 to $75,000. To determine the cost to each manufacturer, FedWorld will divide the total cost by the number of participating manufacturers.

Manufacturers are responsible for ensuring that the party shipping the information does so within a specified time period, i.e., within one regular business day of receiving an order. Distributors are encouraged to provide by fax items which, in their entirety, are less than 20 printed pages, such as TSBs. Also, the distributor is required to send the information by overnight delivery if the ordering party requests it and assumes the cost of delivery.

The search format to be used by FedWorld, e.g., manufacturer, MY, vehicle make, and so forth, will be determined by FedWorld shortly after publication of this rule and, to the extent possible, will take into consideration suggestions from EPA, manufacturers, and aftermarket service providers.

Each manufacturer has 120 days following publication of this rule to upload its index and meet the above requirements for providing all required service information to aftermarket service providers, facilities, and others for 1994 and later MY vehicles which have been offered for sale by that date. For vehicle models introduced more than 120 days after promulgation of these regulations, manufacturers are responsible for providing service information to aftermarket service providers, facilities, and others, at the same time it is made available to dealerships. Thereafter, to the extent there are changes, emission-related service information for MY 1994 and later vehicles which becomes available shall be added to the index at the next scheduled mandated update period, i.e., first or third Monday of each month.

Since independent technicians often work on many makes of vehicles, it is important for them to have access to condensed versions of service information. Therefore, EPA encourages the manufacturers to enter into agreements with information intermediaries in a manner which ensures that condensed information is available to aftermarket service providers in a timely manner and at a reasonable cost. Since information is available in its entirety from sources identified in FedWorld, manufacturers are not responsible for condensed information published by intermediaries or other third parties. Manufacturers are, however, responsible for errors in their own materials.

EPA is not issuing any regulations in this rule that specifically require manufacturers to provide information to intermediaries (e.g., publishers of non-manufacturer service manuals) with emission-related information. However, EPA anticipates that manufacturers will continue to provide such intermediaries with information as they have in the past.

FedWorld will make available a telephone number that aftermarket service providers can call to obtain a printed copy of the index. Since information can be downloaded without charge, EPA expects that some trade publications and associations may offer subscribers or members a printed copy if they provide a self-addressed stamped envelope.

No waivers will be granted for any of the requirements related to FedWorld. Since EPA believes that FedWorld provides an adequate means of monitoring the information being made available, manufacturers are not required to submit a plan for distributing information as part of their certification requirements.

E. Enhanced Diagnostic Information

All emission-related data stream information made available to manufacturer franchised dealers (or others in the service industry) is required to be made available to equipment and tool manufacturers. Vehicle manufacturers can, in the alternative, make such information available to independent technicians through provision of vehicle manufacturer equipment and tools. Beginning on January 1,1997, a manufacturer can only provide bi-directional control to its dealerships if it has provided equipment and tool manufacturers with information to make diagnostic equipment with the same bi-directional control capabilities available to the dealerships, or provided such capabilities directly to independent technicians through provision of their own tools. Manufacturers are required to make bi-directional control information available for all MYs beginning with MY 1994, if such information is provided to their dealerships. However, for MYs 1994–1996, where a manufacturer can prove that safeguards for bi-directional controls are only installed in tools, not in vehicle on-board computers, then that manufacturer may receive a waiver from producing bi-directional controls for vehicles prior to the 1997 MY. However, no such waiver is available for other types of data stream information.

This rulemaking does not require a manufacturer to supply any emission-related information to aftermarket service providers that it does not make available to its authorized dealerships or other third parties. For example, functional control strategies and waveform information are not required to be made available to aftermarket service providers except to the extent they are made available to authorized dealerships.

F. Enhanced Diagnostic Tools

Manufacturers are required to either make available to aftermarket tool and equipment companies any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by independent technicians to diagnose, service and repair emission-related parts, components and systems or they may sell their own diagnostic tools and equipment to independent technicians if the price of such tools is reasonable (e.g., competitively priced with aftermarket tools that would perform the same functions).

As to emission-related diagnostic and service information utilized by aftermarket tool and equipment companies that make generic tools which perform the same or similar functions as those provided by manufacturers to their dealerships, the Agency is requiring that such information be provided at the time of model introduction. This should allow adequate time for its incorporation into tools and equipment by aftermarket tool and equipment companies.

G. Recalibration/Reprogramming

Effective December 1, 1997, manufacturers are required to:

(1) make available to independent technicians all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that were issued prior to December 1, 1997 by manufacturers and made available to dealerships for MYs 1994 through 1997; and

(2) for reprogramming events that are issued on or after December 1, 1997, make available to independent technicians all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) issued by manufacturers for 1994 and later MY vehicles at the same time they are made available to dealerships.

For all vehicles, reprogramming need not be provided for any recalibrations performed prior to vehicles entering the stream of commerce (i.e., sale to first purchaser).

If a manufacturer can demonstrate, to the satisfaction of the Administrator, that hardware would have to be retroactively installed on vehicles to meet security measures implemented by the manufacturer, the manufacturer may request a waiver from the reprogramming requirements for MYs 1994 through 1996.

EPA is providing manufacturers until December 1, 1997, to adopt and implement security measures, such as encryption or other measures, that address tampering concerns and concerns regarding proprietary information. This leadtime also provides manufacturers an opportunity to work out logistical issues related to making reprogramming available to the potentially large numbers of independent facilities that may be interested in receiving this capability. Though EPA is allowing security measures to be implemented by manufacturers, such measures are not being required by these regulations. EPA believes that manufacturers are best able to determine the extent to which the release of this information will endanger the proprietary nature of the underlying information and/or potentially lead to tampering.

Manufacturers are required to either offer for sale at a competitive market price a reprogramming tool that interfaces with the vast majority of generic portable computers or make available to aftermarket tool and equipment companies information that would enable them to manufacture such a tool. In addition, manufacturers are responsible for assuring that those independent service providers who elect not to purchase reprogramming services have access to reprogramming services at a reasonable cost and in a timely manner.

Any method adopted by a manufacturer by which reprogramming is made available to independent technicians cannot impose a significant burden on independent technicians beyond that experienced by dealerships. For example, manufacturers can sell reprogramming tools directly to independent technicians or enter into agreements with aftermarket tool companies whereby the manufacturers provide the tool companies with the information necessary to build reprogramming tools. In conjunction with one of these options, manufacturers could transmit reprogramming events directly to independent technicians by modem from a main frame computer or provide them with CD ROMs. In formulating its method of making reprogramming available to independent technicians, a manufacturer may request to meet with EPA to discuss whether the method comports with the requirements of this rule.

[7] NTIS operates FedWorld, an online computer system that allows public access to government and other documents. FedWorld can be accessed for up to three hours a day at no charge by using a modem to dial (703) 321–3339 or by using the Internet telnet command to connect to fedworld.gov.

[8] This requirement does not apply to indirect information, which is discussed below.

Manufacturers are also responsible for ensuring that aftermarket service providers have an efficient and cost-effective method for identifying whether the calibrations on a vehicle are the latest to be issued.

III. Public Participation

On September 24, 1991, EPA published a NPRM which set forth proposed requirements for emission-related service information for LDVs and LDTs. The period for submission of comments on the NPRM was scheduled to close on December 9, 1991.

On November 6 and 7, 1991, a public hearing was held. The original comment period was then extended to January 10, 1992, for comments regarding the availability of service information. In addition, workshops were held on June 30, 1992, and July 14, 1993. The comment periods for these two workshops closed on July 31, 1992, and August 13, 1993, respectively.

The CAA requirements regarding the availability of service and repair industry information necessary to perform repair and maintenance service on OBD systems and other emission-related vehicle components elicited extensive comments. Comments were received from manufacturers and their associations, mechanics and their trade associations, motor vehicle dealerships, state agencies, and private individuals. Because of the scope of the issues involved and raised by these comments, the following sections only briefly summarize comments on the major issues. For the complete response to comments, see the *Response to Comments on the Regulations Requiring the Availability of Service Information on 1994 and Later MY Light-Duty Vehicles and Light-Duty Trucks* contained in the public docket for this rule.

IV. Discussion of Comments and Issues

Comments on a wide range of issues concerning the proposed service information requirements were received. Summarized here are the comments concerning the major or controversial issues and the rationale behind EPA's final decisions. These issues are considered in more detail in the supplemental Response to Comments document prepared for this final rule and included in the docket noted earlier. Also in the Response to Comments document is consideration of other issues whose resolution is reflected in this final rule.

A. Definition of "Emission-Related" Information

Summary of Proposal: The proposed regulations required that "all information" needed to make emission-related repairs be made available to the automotive service industry. The scope of "all information" would include, but not be limited to, any emission-related service and repair information that a manufacturer provides to its authorized dealerships.

Based on the comments received in response to the NPRM and the June 30, 1992 workshop, EPA believed that clarification was warranted as to the systems, components and parts for which emission-related service, diagnostic and repair information must be provided by the manufacturers to aftermarket service providers. For purposes of this rule, EPA proposed that emission-related service, diagnostic and repair information would include, but not be limited to, any system, component or part of a vehicle that controls emissions and any system, components and/or part associated with the powertrain system, including, but not limited to, the fuel system and ignition system. Information would also have to be provided for any system, component, or part that could have a reasonably foreseeable impact on emissions, such as transmission systems.

In addition, EPA proposed to monitor the results of I/M programs for failures resulting from systems, components, or parts other than those described here. If EPA determines that a substantial number of I/M failures are occurring due to systems, components, or parts other than those described here, the extent of emission-related service information would be expanded in a subsequent rulemaking to include such items.

Summary of Comments: Most manufacturers recommended that the extent of service information that they must make available be limited to all service information that is required to diagnose and repair emission-related malfunctions that will cause an OBD code to be set and illuminate the "check engine" light. They stated that each manufacturer will determine which malfunctions will cause a significant impact on emissions, and thus, which malfunctions will store an emission-related fault code and illuminate the malfunction indicator light (MIL).

Some manufacturers commented that the proposed language is deficient in defining the information that must be included in the provision for service information. They believe this could lead to subjective interpretations, resulting in manufacturers providing distinctly different levels of information. Saab asserted that EPA's proposal to use the I/M program to later expand the definition of emission-related systems and components unnecessarily burdens manufacturers with an ever-changing, and ever-expanding, set of rules.

Generally, the aftermarket commenters endorsed the definitions of emission-related information proposed by EPA. Some aftermarket commenters responded that any attempt to distinguish between emissions-related and non-emissions-related vehicle systems and devices is nonproductive and accomplishes nothing more than to direct attention away from the important issues. According to one commenter, a valid argument can be made that virtually every component of today's vehicles can affect the performance of the vehicle's emissions system. ASIA suggested that it may be more efficient for EPA to require manufacturers to release all vehicle-related service information.

Analysis of Comments: EPA disagrees with the position that emission-related information is defined by and limited to information required to diagnose and repair malfunctions that will result in illumination of the MIL. Illumination of the MIL will not necessarily be triggered by every malfunction of emission-related parts, components and systems. To maintain air quality it is important that service and repair information on all such parts, components and systems be provided. In addition, the diagnostics requirements for OBD are limited to the engine and drivetrain, because they have the most direct impact on emissions. However, this does not alter the fact that malfunctions of other parts and components could impact emissions. Further, MIL illumination is only necessary when a single source of malfunction causes emissions to increase above the MIL threshold. As the OBD requirements and the MIL thresholds are generally designed to detect severe malfunctions, more limited malfunctions, which may still have an effect on emissions, may not trigger the MIL. Moreover, multiple malfunctions, when combined, can cause exceedance of emission thresholds even though each one individually may be insufficient to cause an emission problem severe enough to illuminate the MIL. Also, OBD only needs to flag that a problem exists and indicate the general cause (e.g., misfire)—it does not identify the precise cause of the problem which could be due to a myriad of factors, such as lean fuel/air ratio, bad wiring or sparkplugs.

Moreover, EPA believes that the language of section 202(m)(5) requiring manufacturers to provide "all information needed to make use of the emission control diagnostic system * * * *and* such *other* information including instructions for making emission-related diagnosis and repairs" [emphasis added] makes it clear that other information pertinent to making emission-related repairs, in addition to information needed to make OBD-related repairs, must be provided to aftermarket service providers. Had Congress wished to limit the information availability requirement only to those repairs necessary to make full use of the OBD system, it need not have included the second phrase of the requirement, relating to other information for making emission-related repairs, or could have limited the second phrase to those repairs necessary to make repairs related to MIL illumination. Instead the second phrase broadly refers to "emission-related diagnosis and repairs." Therefore, EPA believes it is reasonable to require manufacturers to provide information required for any emission-related repairs to be made available.

EPA has adopted a description of emission-related information that is consistent with previous definitions of emission-related maintenance, as set forth in EPA's "allowable maintenance" regulations. *See* 40 CFR § 86.088–2. Those regulations specify maintenance which may be performed on certification vehicles and establish an interpretation of "properly maintained vehicle" for use in the recall program. EPA made clear in those regulations that any maintenance that is likely to affect emissions would be considered emission-related:

> Emission-related maintenance means that maintenance which does substantially affect emissions or which is likely to affect the emissions deterioration of the vehicle or engine during normal in-use operation, even if the maintenance is performed at some time other than that which is recommended. 40 CFR § 86.088–2

Contrary to the suggestion of some manufacturers, EPA is not providing a specific or suggested list of parts, components or systems for which information must be provided. Such lists may be interpreted by some manufacturers as the maximum emission-related information that must be made available. In addition, continually evolving vehicle technology will result in ongoing changes as to what constitutes emission-related information. Therefore, it would not be reasonable to select a point in time and say that emission-related information is defined by what exists at that point.

Contrary to comments from some aftermarket commenters, the Agency only has the authority to require manufacturers to provide emission-related information. As previously indicated, this includes anything that is likely to affect emissions. If the Agency initially determines that a part, component or systems impacts emissions, it will notify the manufacturers who will be provided an opportunity to demonstrate otherwise if it disagrees.

EPA Decision: Emission-related information includes, but is not limited to, information regarding any system, component or part of a vehicle that controls emissions and any system, components and/or parts associated with the powertrain system, including, but not limited to, the fuel system and ignition system. Information must also be provided for any system, component, or part that is likely to impact emissions, such as transmission systems. In addition, EPA will monitor the results of I/M programs for failures resulting from systems, components or parts other than those described here. If EPA determines that a substantial number of I/M failures are occurring due to systems, components or parts other than those described here, the extent of emission-related service information will be expanded to include such items. EPA will notify any affected manufacturer(s) of its concerns and will allow such manufacturers to reply to these concerns prior to making any such determinations. Affected manufacturers will be notified of any such EPA determinations.

B. Information Used To Manufacture Aftermarket Parts

Summary of Proposal: EPA did not propose that vehicle manufacturers provide aftermarket parts manufacturers with information to design and manufacture parts.

Summary of Comments: A group of aftermarket associations commented on the importance of information used to design and manufacture parts. According to these commenters, competition in the service industry would be threatened if parts manufacturers are not provided sufficient information to produce quality aftermarket parts which work with emissions control systems, OBD systems, and computers. They stated that independent service and repair facilities depend on the availability of affordably priced quality aftermarket parts to compete with dealers for service and repair. Without such competition, the associations believe that the only source of parts becomes the manufacturers which then have the ability to increase prices and limit availability. According to the commenters, in Japan, where an independently produced supply of replacement parts does not exist, repair prices are two and one half times more than what the U.S. car owner pays. The commenters believe that a failure to assure that parts producers can design and manufacture aftermarket parts will import the Japanese system to America and have a staggering effect on the ability of American motorists to properly maintain their vehicles.

These commenters also argued that parts producers need access to information used to design and manufacture parts, including functional control strategies and component calibrations, to produce emissions-related components that work within sophisticated emissions and diagnostic systems. The commenters indicated that engine calibration information also is required both to produce certain critical aftermarket parts and to test that the replacement parts will not cause failure of the emissions system or improperly trigger the MIL.

Analysis of Comments: Information used to manufacture and design parts does not constitute information needed to make emission-related diagnosis and repairs as defined in section 202(m)(5). Therefore, such information is not addressed in this rulemaking. The purpose of section 202(m)(5) is to ensure that independent technicians have access to information needed to service and repair vehicles, thereby ensuring consumers with freedom of choice in where to take their vehicles for repairs. Manufacturers are only required to provide information in order for persons to service and repair vehicles. They are not required to provide recalibration information that is not needed to make emissions-related diagnosis and repairs, even if such information may be useful for the manufacture of aftermarket parts. Nothing in the language of the statute itself or in the legislative history indicates that Congress intended section 202(m)(5) to assure access and information for the manufacture of aftermarket parts. On the contrary, the legislative history speaks only of the need to ensure equal access for vehicle *repair* facilities.

It is important to note that Congress limited the manufacturers' information requirement such that trade secrets protected by section 208(c) need not be made available. It is clear from the

comments that much of the information requested for the manufacture of aftermarket parts is in fact information of a more proprietary nature than the information necessary to make diagnoses and repairs. Where information is not needed by repair personnel to repair vehicles and has not been disclosed to dealers, section 202(m)(5) does not require its disclosure.

Aftermarket parts manufacturers have been making such parts for many years, even as cars have become more and more complicated. Though the introduction of new emission requirements, including OBD, will continue the trend of making cars more complex, parts manufacturers' speculation regarding the effects of such requirements on their ability to make aftermarket parts is contradicted by other statements that parts manufacturers will continue to make parts as they have in the past. In any case, parts manufacturers have not shown that Congress intended section 202(m)(5) to require disclosure of information required to make aftermarket parts.

EPA Decision: Information for making emission-related diagnosis and repairs does not include information used to design and manufacture parts.

C. Guidelines

Summary of Proposal: In the NPRM, EPA proposed that "all information needed to make emission-related repairs" be made available to the automotive service industry. EPA did not provide guidelines or specify the types of information that this would encompass. In the June 1992 workshop notice, EPA indicated that interested parties would have an opportunity to present ideas regarding specific types of, or guidelines for determining the information that should be encompassed by the phrase "all information needed to make emission-related repairs."

Summary of Comments: Several commenters responded that EPA should define or provide guidelines as to the information that must be provided. They asserted that failure to do so could result in manufacturers providing different levels of information due to different interpretations of the phrase "all information."

Ford Motor Corporation (Ford) expressed concern that EPA may require more information than is necessary for utilizing the emissions diagnostic system and to perform effective diagnostics and repairs.

Chrysler Motor Corporation (Chrysler) commented that it has and will continue to provide to the aftermarket the following type of service information related to the repair of emission-related failures: (1) diagnostic information relating to I/M exhaust and evaporative test failures; (2) service repair information for emissions components; (3) wiring diagrams; (4) specifications; and, (5) TSBs. Chrysler believes this information meets the requirements of the CAA.

One manufacturer stated that if manufacturers demonstrate that the same information provided to dealers is made available to the aftermarket (excluding recalibration information), they have satisfied the intent of the law.

Aftermarket commenters argued that EPA's regulations must not permit a closed-ended or specifically limited definition of information that would be available to the entire industry. The aftermarket industry asserted it does not have adequate technical information on future vehicle designs and systems to allow for limitations or restrictions through rules or definitions on the information that will be necessary to effectuate adequate repairs. The Automotive Parts and Accessories Association (APAA) commented that rapidly changing vehicle technology would force EPA to revisit the guidelines on a semi-annual or yearly basis to determine if the proper information is being provided.

APAA indicated it might support guidelines that determine the types of information which must be provided to independent technicians. APAA assumed these guidelines would cover items, such as functional control strategies and wave diagrams, which are necessary elements if manufacturers are to provide all information needed for repair of emissions systems. APAA commented that its major concern is that any regulations regarding guidelines should direct that they be as comprehensive as possible and must explicitly state that such guidelines establish a minimum standard for information.

Analysis of Comments: EPA believes that the concerns of manufacturers are unwarranted under the requirements of the final rule. The requirement to submit a certification plan has been deleted. Therefore, concerns regarding delays in the certification process are no longer pertinent.

Ford stated that without guidelines, EPA could require proprietary and confidential information be made available to the public. EPA does not believe this is a problem. Subsection 202(m)(5) specifies that any information provided to authorized dealerships or others engaged in the service, repair or diagnosis of vehicles is not proprietary. EPA is not requiring that undisclosed proprietary emission-related information be made available as part of this rule.

Regarding Chrysler's comment, other types of emission related information, such as data stream and bi-directional control, are not on Chrysler's list and are required as part of this rule. Contrary to Chrysler's assertion, EPA believes, as discussed elsewhere, it has the authority to require the dissemination of such information.

EPA agrees with aftermarket comments that the regulations must be structured so as to carry out Congress' intent that all information needed to make emission-related diagnosis and repairs be provided, excluding trade secrets, to ensure that there are efficient and effective repairs of emission-related problems. However, EPA is not requiring at this time that manufacturers provide information to independent technicians that is not also supplied to authorized dealers, or other persons engaged in the diagnosis, repair, or servicing of motor vehicles or motor vehicle engines. Depending on the manufacturer, such information might include functional control strategies and wave diagrams, as discussed in section H below.

EPA is concerned that the use of specific guidelines may be incorrectly interpreted as a limitation on the emission-related information that is required to be provided. The Agency is also concerned that such guidelines would require continual updating to ensure they reflect rapidly changing vehicle technology. EPA believes this would be a time-consuming and unnecessary process. At this time, EPA generally agrees with the commenter who stated that if manufacturers provide the same emission-related information to dealers and the aftermarket they will meet the requirements of this rule. The evidence presented did not indicate that any manufacturers withhold necessary information (excluding more complex and high level information, like functional control strategies) regarding emision-related diagnosis and repair from their own dealers. If, through review of this program, it becomes apparent to EPA or others that a particular manufacturer is not providing nonproprietary information necessary to make emission-related diagnosis and repair to the service community (including its own dealers), EPA may take action against such manufacturer through these regulations.

EPA Decision: Manufacturers are required to make available to the aftermarket "any and all information" needed to make use of the OBD system and to make emission-related repairs, excluding trade secrets. The scope of information that must be provided includes any direct and indirect service and repair information that a manufacturer provides to its authorized dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Examples of direct information are service manuals; TSBs; training material or information; diagnostic information; wiring diagrams; and any written memoranda or guidance provided to dealers. Examples of indirect information are emission-related reprogramming events; data stream information; and bi-directional control. (Indirect information is discussed below.)

At this time, manufacturers are not required to supply any emission-related information to the aftermarket that they do not make available to their authorized dealerships or other third parties, subject to the requirements regarding specific types of information, like data stream information, that must be provided under these regulations. For example, if a manufacturer does not supply functional control strategies to its dealers, directly or indirectly, it is not required to supply them to the aftermarket service industry.

D. Cost of Service Information

Summary of Proposal: The proposed rule required that emission-related information be made available at a reasonable price (i.e., what would be expected if the suppliers of information were acting as competitors). In determining whether the price of information is reasonable, EPA indicated it would consider all relevant factors, including, but not limited to, the cost to a manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, and the price charged by other manufacturers for similar information.

The proposed regulations further required that when manufacturers provide the same information to independent technicians and dealerships, the price to independent technicians for such information would not exceed the lowest price charged to any of a manufacturer's authorized dealerships.

Summary of Comments: Comments from manufacturers focused primarily on the authority of EPA to regulate the cost of emission-related information, determination of the "reasonable" cost of service information, and the proposed requirement that the cost of service information sold by manufacturers to the aftermarket "shall not exceed the lowest price at which it is provided to any authorized dealerships."

Analysis of Comments: Section 202(m)(5) of the CAA requires that vehicle manufacturers make emission-related information available. Available is defined as "that which can be got, had or reached or that one can avail oneself of."[9] A prerequisite to getting an item is having the ability to afford it. The Agency is concerned that if emission-related service information is priced in a manner that precludes its purchase and subsequent use then it is unavailable as that term is commonly defined. Further, the cost of service information was of concern to Congress as evidenced by the statement of then Senator Gore, the Senator that introduced the "information availability" provision of the CAAA.[10]

Thus, cost is an integral part of availability and, therefore, within the purview of the Agency to consider in determining whether manufacturers make information available as required to the aftermarket.

The Agency believes that establishing factors to serve as reference points to evaluate whether the cost of information is reasonable, will serve as guidance for manufacturers, and help reduce the possibility that inappropriate pricing would occur in an effort to prevent the purchase of information and, thereby ensure that information is available at a reasonable cost. Manufacturers commented on several factors they believe should also serve as reference points for evaluating the cost of information. EPA agrees with some of the factors suggested and has incorporated them into the regulations. For a discussion of each factor, see the Response to Comments document.

EPA also believes that the burden of proof to demonstrate that the price of manufacturer service and repair information is unreasonable should be on the purchaser of that information.

As to the "lowest cost" requirement, EPA agrees with some of the commenters that such a provision could have unanticipated effects on direct aftermarket sales and on dealerships that distribute information. Therefore, this requirement has been deleted.

EPA Decision: On the basis of the comments and further EPA analysis, emission-related service information is to be made available at a reasonable price. This means the fair market price taking into consideration factors, such as the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size of the manufacturer), the quantity of material contained in a publication, the detail of the information, the cost of the information prior to publication of this final rule, volume discounts, and inflation. EPA is not requiring that manufacturers sell information to aftermarket technicians at the lowest price charged to their dealerships.

E. Distribution of Service Information

Summary of Proposal: EPA proposed that emission-related service and repair information, whether distributed by the manufacturer or an intermediary, be reasonably accessible to all persons who service and repair motor vehicles. To qualify as reasonably accessible, the information must be available to independent technicians upon request without substantial delay. Further, manufacturers would be required to utilize reasonable means to make independent technicians aware that the information is available. Also, manufacturers would need to provide intermediaries with emission-related information in a timely manner in order that their products or services be available to independent technicians when needed. In all cases, manufacturers would retain full responsibility for compliance with section 202(m)(5). Failure to an intermediary to properly provide information does not relieve the manufacturer from responsibility to provide the information.

EPA subsequently suggested the use of the NTIS as a clearinghouse for service information. Manufacturers would be required to provide initial service, repair, diagnostic and parts information to the NTIS within thirty days of providing it to their franchised dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Service, repair, diagnostic and parts information, such as TSBs and troubleshooting manuals, issued to dealerships during any subsequent

[9] Webster's New World Dictionary, 3rd ed., p 94, 1988.

[10] The Senator stated that "when we require [manufacturers] to promptly provide information needed, we recognize that we do not want to require somebody to provide a lot of expensive manuals absolutely for free, but we do not want the kind of charges that make this a profit center. We want them to provide the information which will allow competition in the aftermarket and allow small business operators to get in the repair business. Otherwise, you force vehicle owners to go only to the major automobile manufacturers' places of business." 36 *Cong. Rec.* 3272 (1990).

thirty day period would be sent to the NTIS at the end of each such thirty day period.

EPA suggested that each manufacturer provide the required information to the NTIS free of charge pursuant to a copyright release or other agreement. The NTIS would reproduce information in the form in which it was received and distribute it upon request. Manufacturers would receive royalties from the distribution of the information by the NTIS based on prearranged agreements. To determine what information the NTIS has available, purchasers could either access the NTIS' on-line bulletin board or request a printed list.

By using the NTIS as a clearinghouse, several requirements which were proposed to be the responsibility of the manufacturers would be deleted or amended. First, manufacturers would not be responsible for information distributed by intermediaries or other parties. Second, manufacturers would not be required to continually inform the aftermarket about the availability of their service information through advertisements or other efforts. Third, by using the NTIS as a clearinghouse, manufacturers would not be required to submit a detailed certification plan. Fourth, the requirement that manufacturers provide information in a timely manner would be satisfied by providing information to the NTIS on a designated schedule. Last, the requirement that information be provided at a reasonable cost could, at least in part, be addressed by the NTIS' sale of information. Whether the cost requirement would be satisfied would depend on whether and to what extent royalties are paid to manufacturers and the ability of the NTIS to provide its services at an affordable price.

Summary of Comments: EPA received numerous comments, particularly on distribution of information by intermediaries and the use of NTIS as a clearinghouse for information. As to the use of intermediaries to distribute information, a few manufacturers and MVMA commented that it is illogical, unreasonable and unfair to hold manufacturers liable for the failure of intermediaries to disseminate information. They asserted that past experience has shown that independent parties contracted to prepare written service information for manufacturers do not always comply with deadlines established by the manufacturer. They stated that EPA should not hold manufacturers liable for the actions of third parties over which they have no control. One commenter indicated that even though a manufacturer contracts with an intermediary to distribute information and the method of such distribution is satisfactory to EPA, a third party which has no contractual agreement with the manufacturer could repackage and resell the information in a manner that does not meet EPA requirements. Manufacturers suggested that the regulations be amended to hold a manufacturer responsible for an intermediary only when information is provided solely through an intermediary.

General Motors (GM) argued that EPA does not have the authority to require manufacturers to provide information to intermediaries. Chrysler objected to any regulation that would require it to deal directly with entities outside its normal chain of distribution of goods and services. The National Automobile Dealer's Association (NADA) commented that different manufacturers have a substantial investment in a variety of different distribution mechanisms, all of which are well understood by the entire vehicle maintenance industry. So long as necessary information is provided through one or more of these mechanisms, NADA believes a manufacturer's obligation should be satisfied.

Several aftermarket associations commented that manufacturers should be responsible for the distribution of emission-related repair information. Alldata Corporation (Alldata), however, commented that holding manufacturers responsible for the content and accuracy of information would add substantial delays to the distribution process and reduce the accuracy and usefulness of information.

Responses to the use of a clearinghouse to distribute emission-related service information were mixed. However, representatives of manufacturers and aftermarket associations raised several substantial issues regarding the use of a clearinghouse, and EPA's particular plan for using NTIS as a clearinghouse. In addition, information intermediaries and hotline services generally opposed the use of NTIS as a clearinghouse.

Analysis of Comments: EPA recognizes that the effectiveness of information distribution mechanisms may be affected by various factors, including manufacturer size, the amount and format of a manufacturer's service information, established distribution mechanisms, and the demand for information. Based on the differences that may occur as a result of these factors, EPA agrees with the comments that manufacturers should be afforded flexibility in determining the most appropriate method of distributing information.

Therefore, EPA is allowing each manufacturer to fulfill its regulatory responsibility to distribute emission-related service and repair information through the distribution mechanism it determines to be the most efficient and cost-effective. Further, there is no requirement that manufacturers use the same distribution mechanism for dealers and the aftermarket. However, each manufacturer is responsible for up-loading a complete index of required information on NTIS' FedWorld, as discussed above in section III.C. Since EPA believes that FedWorld provides an adequate means of monitoring the information being made available, manufacturers are not required to submit a plan for distributing information as part of their certification requirements.

Regarding use of intermediaries for distribution, EPA's position is that manufacturers are responsible for making sure that information is provided to the aftermarket as required by the regulations. If a manufacturer chooses to allow an intermediary to be its contractor, the manufacturer must ensure that the contractor meets the manufacturer's obligations. Transferring obligations to a third party does not remove a manufacturer's own legal requirements, though manufacturers may require intermediaries to be responsible for any damages a manufacturer incurs as a result of the intermediary's error. EPA agrees with manufacturers that where a manufacturer provides its own information directly to independent technicians, or contracts with a specific intermediary to distribute the manufacturer's information, the manufacturer is not responsible for the availability or accuracy of information provided by any other intermediaries to independent technicians.

EPA is not issuing any regulations specifically requiring manufacturers to provide intermediaries with emission-related information. However, EPA encourages manufacturers to continue providing such intermediaries with information as they have in the past. EPA agrees that manufacturers should not be held responsible for information published by independent intermediaries over which they have no control. However, manufacturers are responsible for the correctness of their own materials, as identified in FedWorld.

Manufacturers could, in the future, meet the distribution requirements by providing the required information in its entirety to a clearinghouse. Since no such clearinghouse currently exists, this is not a viable option for manufacturers at this time. Whether a clearinghouse is economically and practically feasible in the future will be up to the industry to determine. Although EPA supports the concept of a clearinghouse, EPA has no plans to sponsor a clearinghouse or to be involved in resolving issues necessary to establish a clearinghouse.

For a more detailed review of the comments and EPA's response to these comments, please refer to the Response to Comments document.

EPA Decision: See section III.C. above.

F. Timeliness

Summary of Proposal: In the NPRM, EPA stated that to be effective, information must be provided in a timely manner. The proposed regulations established specific times within which manufacturers would be required to make available enhanced [11] and generic [12] service information and training information. The proposed regulations required enhanced service information to be made available to independent technicians within one month immediately following model introduction. Generic service information would have to be made available within 8 months immediately following model introduction or no later than the release of information to a manufacturer's franchised dealerships. The proposed regulations also required that during the period between model introduction and the time the required information becomes accessible to independent technicians, each manufacturer, through an expeditious means available to its franchised dealers (e.g., hotline, regional service centers), make available to all independent technicians needed emission-related repair and service information.

Summary of Comments: Some manufacturers commented that it is not appropriate for EPA to prescribe a time schedule for the availability of information. They stated that their time schedule for publishing information has never met EPA schedules and they could not estimate how many years would be needed to meet the proposed requirements.

One manufacturer commented that the timing requirements are unnecessarily severe and unneeded. A few manufacturers suggested that instead of specified times, EPA should specify "without substantial delay."

Some manufacturers asserted that information should be available when cars are offered for sale (i.e., made available to dealers), not before. These commenters stated that OBD systems will be built to a standardized format and, as a result, it is not necessary to know the specifics of the information beyond that format, unless trying to repair a specific car. They believe the aftermarket doesn't need it earlier to integrate it into their publications, since the majority of customers return exclusively to manufacturer dealers for warranty work. According to these manufacturers, providing the aftermarket with the required information within 3–6 months after vehicle introduction should be sufficient.

Several manufacturers commented that independent technicians generally do not require warranty information since owners will not be reimbursed under a manufacturer's emissions warranties for any non-emergency repair.

The Automotive Warehouse Distributor's Association (AWDA) and APAA commented that the proposed regulations generally establish appropriate times. The Automotive Service Association (ASA) believes that all information should be available at the same time it is provided to franchised dealers. ASA also stated that responses to specific requests should be provided within 24 hours, as a customer's vehicle can't be fixed until the information is retrieved. ASIA stated that this "same time" requirement would provide intermediaries with the appropriate leadtime necessary to review, digest, condense, alter, and publish this information for use by the general public and the aftermarket in a timely fashion.

Alldata argued that aftermarket information providers should receive repair information thirty days prior to the dealerships or, as an alternative, at the same time as dealerships.

Analysis of Comments: Manufacturers have argued that since their vehicles seldom have emission-related service performed at an independent service facility during the first two years of customer use (during the 24,000 mile warranty period), the aftermarket service industry does not need service information during that time period. Warranty coverage makes this most economic for customers. However, aftermarket service providers have, at least, a limited need for service information even for new vehicles, since dealer service is not always available when service is needed by the customer, e.g., when a vehicle needs repairs during the evening or weekends. Further, the Act directs that aftermarket service providers are to receive emission-related service information without regard to whether aftermarket technicians are the persons most likely to repair a vehicle during a certain portion of the vehicle's life. There is no reason to restrict a consumer from obtaining aftermarket service even during a warranty period if the consumer determines it is in her/his best interest to do so. However, the limited need of aftermarket service providers for service information on new model vehicles when the vehicles are first introduced should be reflected in the burden placed on manufacturers, for example, in determining whether manufacturers must finalize service information earlier than they would otherwise do so. Manufacturer comments support delaying the availability of emission-related service information to the aftermarket, most often citing the burden on manufacturers as one of the major reasons. Manufacturers make the case that the proposal may cause them to provide information earlier than is their current practice. However, their comments provide only limited information on any adverse impact of supplying the aftermarket with such information in the time frames proposed.

Some suggested that, prior to some date, the independent service provider can obtain any necessary service information through a dealership. These suggestions would allow dealerships to determine whether the independent service provider is provided the required information in a reasonably timely manner. Placing such an intermediary in control of the dissemination of information is not consistent with the Act which designates manufacturers as being responsible for the availability of emission-related service information.

EPA understands that many of the independent service providers have traditionally relied on aftermarket consolidations of service information. One book or set of books will then provide coverage for a number of manufacturer vehicles. Purchasing these consolidated service information books is less expensive and perhaps more convenient than purchasing the more extensive manufacturer service books. However, with consolidation comes some loss in detail and usefulness. Availability of service information to these republishers is, therefore, also an issue.

Given that the majority of aftermarket emission-related repairs of a vehicle

[11] Enhanced service and repair information is specific for an original equipment manufacturer's (OEM) brand of tools and equipment.

[12] Generic service and repair information is not specific for an OEM's brand of tools and equipment.

will not begin until after the two year warranty has expired, there does not seem to be an urgent need of aftermarket republishers to have access to the manufacturer service information abnormally early. Consequently, the aftermarket republishers should be able to continue relying upon their existing mechanisms for use of manufacturer service information or, within legal constraints of copywrite law, etc., make use of the manufacturer service information when it becomes publicly available.

It is reasonable to provide some leadtime after adoption of these regulations to allow each manufacturer the ability to assemble the necessary information and put information dissemination procedures in place. However, since the information to be made available for MYs introduced prior to the finalization of these regulations (beginning with the 1994 MY) has been in the hands of the manufacturer's dealerships for some time, the information is clearly readily available to the manufacturer and, to a certain extent, has already entered the distribution network. Consequently, with regard to generic information, the time necessary to set up a distribution system for models already introduced is not driven by the availability of the information, only by the establishment of the distribution system itself. As described under the distribution section (on what information a manufacturer needs to provide for prior MYs), aside from setting up a distribution system (including the use of FedWorld), a manufacturer need only duplicate the information it has already supplied its dealerships and, in many cases, already made available to the aftermarket industry through distribution channels in place prior to these regulations. Thus, a manufacturer should require no more than 120 days after these rules are promulgated to have in place a distribution system making 1994 and later service information available to the independent service provider.

For vehicle models introduced beginning on or after 120 days following the promulgation of these regulations, manufacturers will have established a distribution system for getting the information into the hands of the aftermarket service provider by the time these vehicles are introduced. Therefore, no additional time is necessary for a manufacturer to make available to the independent service provider the generic information it is otherwise providing to its dealerships. (Timeliness for enhanced indirect information is discussed below in section H).

The subject of timeliness also reflects the need for a manufacturer to respond in a timely fashion to requests for emission-related service information. As discussed above, manufacturers must ensure that once an order is received by its designated distributor, the distributor must send the information within one business day after receiving it. This time frame for filling orders is reasonable. An exception to the one business day shipping requirement is available in those circumstances where orders exceed supply (based on projected demand) and, as a result, distributors need to reproduce a document. Manufacturers will not be required to respond to special, unique requests for service information; for example, manufacturers will not need to search through their shop manual for a specific section or page and fax just that page or section to a customer. Rather, they will be responsible for distributing information in a predetermined form and format, e.g., the same service bulletin sent to their dealership would also be sent to the independent service technician. Since the form and format of the information can be determined ahead of time, the burden on a manufacturer is to have a sufficient quantity of information available to meet demand and then have a mechanism in place to receive and process requests for information. Neither of these tasks require special skills and are akin to phone order merchandise distribution common in the retail sales industry. These other retail sales outlets commonly fill orders within 24 hours. A similarly timely response to requests for emission-related service information should be possible.

EPA Decision: Beginning four months after promulgation of these regulations, manufacturers are to have in place a service information distribution mechanism which will allow service information orders to be processed and mailed out within one business day of receipt of an order. As described above, manufacturers are required to provide more rapid service to their customers, i.e., priority mailing. At that time, manufacturers will be responsible for providing all required direct service information for 1994 and later MY vehicles which have been offered for sale. For vehicle models introduced more than four months after promulgation of these regulations, manufacturers will be responsible for providing direct service information to independent service technicians, facilities and others, at the same time it is made available to dealerships.

G. Media/Format

Summary of Proposal: In the NPRM, EPA established different format requirements for different time periods. These format requirements were based on SAE documents, some of which were not finalized at the time the NPRM was published, e.g., "Recommended Organization of Service Information" (J2008).

Summary of Comments: Extensive comments were received on the proposed formats. Some comments objected to any EPA requirements for formats, claiming that EPA lacked authority to require a specific format. Several commenters stated that the regulations would force them to completely rewrite and restructure their service literature, which would be a substantial and unnecessary burden. Some of these comments objected to any reference of SAE's draft recommended practices J2008 and "Remote Diagnostic/Service Communications" (J2187). NADA indicated that if SAE should finalize and adopt J2008 and/or J2187 at some later date, it would then be appropriate for EPA to reconsider their incorporation into the OBD regulation. The aftermarket generally supported use of standardized formats, saying that such standardization would help independent technicians locate and use diagnostic information.

Analysis of Comments: EPA believes that a standardized format should make accessing the volumes of available service information easier and enhance the ability of independent technicians to utilize information. EPA believes the benefits of an industry-accepted format will outweigh any initial costs in redesigning service literature. To ensure this goal is achieved, the Agency would like to provide adequate opportunity for the industry to develop a format which it believes most appropriately fulfills the needs of all interested parties. The Agency hopes that the industry will adopt SAE J2008 by mid-1995. However, if the industry is unable to agree on a standardized format, the Agency may develop a format for the industry.

This rule contains no requirements regarding the media or format of emission-related information, including "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms" (J1930) and J2187. EPA believes that further discussions in the industry to develop appropriate formats will be useful prior to final regulations requiring any specific media or format. The Agency does not believe it is necessary at this time to address the comments received

regarding these issues, but will address them if and when it adopts such requirements.

EPA Decision: Due to various factors, SAE did not adopt J2008 in time to be incorporated into this final action. EPA had anticipated that SAE would adopt J2008 by mid-1994. If SAE finally adopts J2008 in a form that meets the needs of EPA, EPA would likely propose to incorporate J2008 into the service information regulations after further notice and comment. If J2008 is not finally adopted by SAE, or if the final version of J2008 does not meet the needs of EPA, EPA may propose to adopt its own format that manufacturers would be required to follow. EPA believes that adoption of an EPA-designed format may be necessary to prevent delays in the conversion of service information to an electronic format.

This rule contains no requirements regarding the media or format of emission-related information, including J1930 and J2187. EPA believes media and format issues should be addressed at the same time J2008 (or an EPA-adopted format) is required. This will allow an opportunity for changes, as may be necessary, to be made in any of these documents, as J2008 is being finalized. EPA may address the media and format requirements of emission-related service information in a future proposed rulemaking.

H. Enhanced Diagnostic Information

EPA Proposal: To eliminate confusion that existed in the industry regarding the definitions of certain key terms (data stream information, functional control strategies, bi-directional control, and indirect information) and whether such information must be provided under section 202(m)(5), EPA held a workshop in July 1993, to provide an opportunity for comment on proposed descriptions and/or definitions for these terms to ensure that there is a uniform understanding throughout the automotive industry as to the information that manufacturers will be required to make available. The definitions proposed by EPA were as follows:

Data stream information are messages transmitted between a network of modules and/or intelligent sensors (i.e., a sensor that contains and is controlled by its own module) connected in parallel with either one or two communication wires. Messages on the communication wires can be broadcast by any module or intelligent sensor. Such information generally consists of messages and parameters originated within the vehicle by a module or intelligent sensors. The information is broadcast over the communication wires for use by other modules (e.g., chassis, transmission, etc.) to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration-related information.

Functional control strategies are descriptions of how and when various engine systems operate. Typically, they are written explanations or flow diagrams that describe the interaction of the module and the various sensors and actuators as proscribed by the engine calibration. An example of a functional control strategy would be that for a particular fuel system. For example, the fuel system may not go into closed-loop operation until: (1) The engine coolant temperature has reached 180 °F; (2) the module observes an active oxygen sensor signal; and (3) 30 seconds has elapsed after reaching that temperature.

Bi-directional control is the capability of a diagnostic tool to send messages on the data bus that temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. An example of bi-directional control is the ability to increase or decrease the idle speed by using the diagnostic tool to vary the idle by-pass motor. This allows a technician to quickly verify that the idle by-pass motor responds to commands from the module. Bi-directional controls do not create permanent changes to engine or component calibrations.

Indirect information is any information that is not specifically contained in the service literature, but is contained in items such as parts or other equipment provided to franchised dealers (or others).

In addition, the NPRM discussed providing service technicians with the information needed to determine that a component or system is correctly operating. EPA proposed that manufacturers include information on the normal operating conditions for properly functioning emission-related components or systems. EPA requested comment on the need to adopt this requirement as part of these rules, the best way to accomplish this, and any difficulties (for example, significant burden to the manufacturer) that could arise.

Summary of Comments: Manufacturers commented that the release of information needed to perform bi-directional control is restricted since product damage could result if control is improperly applied. GM asserted that if required to release this information, it would need to redesign systems to include safeguards to prevent damage from improper use of control messages, or diagnose components using some other method.

Regarding the definition of data stream information, several manufacturers suggested that EPA's definition be modified, such that data stream information (1) include only emission-related information, (2) include only emission-related diagnostic information rather than information to conduct diagnosis and repair of normal vehicle operation, and (3) not include any recalibration or reprogramming information. GM commented that if data stream information is defined to include reprogramming software, it will be easy for aftermarket performance companies to build equipment to install unauthorized calibrations.

As to functional control strategies, Ford commented that it considers them to be proprietary information, because they are part of the engine calibration. Other manufacturers stated that such strategies are proprietary and they are not provided to dealers. GM asserted that any attempt by EPA to require manufacturers to divulge control strategies would exceed EPA's authority under section 202(m)(5) of the Act. The American Automobile Manufacturer's Association (AAMA) stated that numerous manufacturers already provide functional control strategies to the extent necessary for allowing effective repair of vehicles without divulging proprietary information. AAMA and Ford commented that since there are so many different engine configurations and vehicle models, it would be confusing for independent technicians to try and understand the multitude of control strategies and that this could lead to incorrect diagnosis and repair.

Regarding the proposed definition of indirect information, Ford recommended that it be modified to include only indirect information necessary to make emission-related diagnosis and repair. Other manufacturers commented that EPA's definition of indirect information should be modified to delete the phrase "contained in items such as parts or other equipment" and to read as follows: "Indirect information is any information that is not specifically contained in the service literature, but is provided to franchised dealers (or others) as a requirement for emission-related diagnosis and repair. It shall not include calibration, recalibration or reprogramming related information which is neither visible to the technician nor consciously used in diagnosis and repair of vehicles."

Saab commented that EPA's definition of indirect information is too broad to protect manufacturers and franchised dealers from unfair competition by aftermarket tool and equipment manufacturers and independent service providers, respectively. Saab does not agree that parts and equipment supplied to dealers contain supplementary information which is necessary to repair the emission control systems of a vehicle.

The aftermarket commenters asserted that functional control strategies, waveforms and bi-directional control are critical in the repair of emission-related problems. The commenters argued that many times there is no cause and effect relationship between a symptom and a failed part. According to the commenters, technicians rely on this type of information or the tools that utilize such information as the best method of pinpointing parts that have either failed or require adjustment. Independent technicians commented that having tools that perform bi-directional control would reduce diagnostic and repair times, as well as repair costs. The commenters asserted that unlike dealers with enhanced tools, independent technicians with generic tools only receive malfunction codes which are insufficient to diagnose the fault.

Analysis of Comments: Regarding the definition of data stream information, EPA agrees that for purposes of this rule, data stream information should include only emission-related information, since this rule is not intended to cover all vehicle operations. However, EPA's definition of emission-related (as discussed above) is broader than that requested by the manufacturers.

EPA also agrees that data stream information does not include recalibration and reprogramming information. However, as discussed below, recalibration and reprogramming information is subject to certain disclosure requirements. Manufacturers are required to provide reprogramming capabilities, but they are not required to make directly available actual calibration information, such as algorithms or values. Data steam information will obviously need to be provided indirectly to the aftermarket (as it is provided to dealers) in order to provide reprogramming capabilities, among other reasons.

If data stream information is made available to dealers, whether directly or indirectly, and is emission-related, then it must be made available to the aftermarket service industry, regardless of whether a manufacturer believes it is of any value to a technician. Data stream information will probably be utilized by the aftermarket diagnostic tool industry to build generic diagnostic tools. If the aftermarket tool manufacturers determine that certain information is of no value, they won't have any incentive to use it. Manufacturers may provide such information to the aftermarket in the same indirect fashion they provide it to their dealers via the sale of tools so long as these tools are available at a reasonable cost, or they may provide it to aftermarket tool companies so that these companies can make tools.

Regarding bi-directional diagnostic control strategies, EPA agrees that safeguards which protect against potential damage or safety problems from bi-directional control are important and encourages all manufacturers to implement them into their diagnostic systems. EPA believes that requiring manufacturers to supply bi-directional control information to the aftermarket, including Equipment and Tool Institute (ETI) members, without adequate safeguards could create liability concerns for manufacturers regarding the safety of consumers and technicians who would be responsible for the diagnosing and repair of vehicles.

The liability issues are a concern because there is no requirement that an ETI member company must add safeguards to the tools that they build. Manufacturers also have no reasonable means by which they can ensure that safeguards would be correctly incorporated into aftermarket tools. EPA believes that manufacturers have an incentive to ensure that safeguards are properly incorporated and are perhaps better equipped to verify the functionality of these safeguards.

Since bi-directional control is an important part of vehicle diagnosis and repair, it is imperative that this capability be made available to the independent service industry as soon as possible. This means providing bi-directional information to ETI members so that they can make generic tools for the aftermarket.

Manufacturers assert that most bi-directional control safeguards exist in manufacturer diagnostic tools rather than in vehicle on-board computers. The manufacturers claim that by 1999, all vehicles will have safeguards designed into the on-board computer, thus eliminating any concerns regarding safety and liability issues that could arise from the use of aftermarket diagnostic tools with bi-directional capability. EPA agrees with the manufacturers that it is preferable to have safeguards in the on-board computer, rather than in the diagnostic tool, especially if there is no requirement that generic tool manufacturers incorporate such safeguards in their tools. However, EPA does not believe it is reasonable or necessary to delay this requirement until 1999. Several manufacturers have indicated that they will have safeguards designed into their vehicles' on-board computers by 1997. EPA believes it is providing sufficient leadtime for other manufacturers to make any hardware changes that may be necessary. Therefore, beginning on January 1, 1997, a manufacturer can only provide bi-directional control to its dealerships if it has provided aftermarket companies with information to make tools that have the same bi-directional capabilities available to dealerships, or provided such capabilities directly to aftermarket technicians through provision of their own tools. Manufacturers will be required to make bi-directional information available for all model years beginning with 1994. However, for model years 1994–1996, where a manufacturer can prove that safeguards for bi-directional controls were only installed in tools, not in vehicle on-board computers, then that manufacturer may receive a waiver from producing bi-directional controls prior to the 1997 model year. However, no such waiver is available for other data stream information. If a manufacturer does not use bi-directional control or has certain bi-directional control capabilities that it does not supply to its dealers, the manufacturer will not be required to provide this capability to the aftermarket.

Regarding GM's comments that release of information needed to perform bi-directional control should be restricted since product damage could result if the control is improperly applied, such concerns should be equally true for providing such information to dealerships. If manufacturers are not concerned regarding possible damage by dealership technicians, they should not be concerned regarding damage from aftermarket technicians.

EPA disagrees with manufacturer comments that "indirect information" should not include calibration, recalibration or reprogramming information and that the definition should be modified by deleting the phrase "contained in items such as parts or other equipment." Section 202(m)(5) makes clear that any relevant information that is provided *directly or indirectly* to a dealership cannot be shielded from disclosure under section 208. Even if recalibration related

information is not provided directly to technicians nor consciously used in diagnosis and repair, such information, if contained in or made available through manufacturer tools, is a crucial element in the emission-related diagnosis and repair information provided by that tool. Therefore, it is indirect information which *must* be provided, either directly or indirectly, to the aftermarket, if it is emission-related.

Moreover, manufacturers may use changes to computer calibrations to fix mechanical malfunctions or to revise prior calibrations. In such cases, it is necessary for such information to be known to subsequent repair personnel in order to prevent subsequent repairs from causing increases in emissions.

EPA believes that much of the manufacturer equipment that a dealer uses for emission-related diagnosis and repairs possesses certain capabilities, such as being able to read fault codes, perform reprogramming or allow bi-directional control. The information that allows the manufacturer tools to perform such functions is indirect information that must be made available to the independent service industry.

As to Saab's comment that parts do not contain any supplementary information necessary to make emission-related repairs, EPA agrees. EPA has determined the language in subsection 202(m)(5) does not apply to information used to manufacture parts. Therefore, the references to parts will be removed from the definition.

EPA agrees with the commenters that there would be many functional control strategies with which independent technicians should familiarize themselves, and while this could be overwhelming, there is no evidence that the independent service industry wouldn't be up to the challenge. EPA believes that disclosure of functional control strategies would be beneficial in helping technicians to better understand the interactions of the on-board computer with the numerous sensors and actuators that comprise the varied emission control systems and thereby, help promote better and quicker diagnoses and repair of emission-related problems. However, at this time, EPA is only requiring manufacturers to supply functional control strategies directly to independent technicians if such strategies are supplied directly to their dealerships. To the extent such strategies are incorporated into a manufacturer's enhanced diagnostic tools, they must be made available to the aftermarket either through availability of manufacturer tools (at a reasonable price), or with appropriate agreements to protect proprietary information, through generic tools.

As discussed in the Response to Comments document, EPA does not believe that this information has been shown to be needed for emission-related repairs and diagnosis at this time and release of at least some of this information may raise trade secrets concerns. It is EPA's position that if manufacturers believe this information is necessary to perform emission-related service they will provide this information to their dealerships and independent technicians. EPA will continue to review whether certain types of information should be made available to the repair community even if such information is not currently made available to authorized dealers.

EPA Decision: All emission-related data stream information made available to manufacture franchised dealers (or others in the service industry) will be made available to the aftermarket, either through provision of manufacturer equipment and tools or through information provided to generic equipment and tool manufacturers with appropriate agreements to protect proprietary information. Beginning on January 1,1997, a manufacturer can only provide bi-directional control to its dealerships if it has provided equipment and tool manufacturers with information to make diagnostic equipment with the same bi-directional control capabilities available to the dealerships, or provided such capabilities directly to independent technicians through provision of their own tools. Manufacturers are required to make bi-directional control information available for all model years beginning with model year 1994. However, for model years 1994–1996, where a manufacturer can prove that safeguards for bi-directional controls are only installed in tools not in vehicle on-board computers, then that manufacturer may receive a waiver from producing bi-directional controls for vehicles prior to the 1997 model year. However, no such waiver is available for other types of data stream information.

Functional control strategies will not be required to be made available to the aftermarket, except to the extent they are made available to authorized dealerships.

The reference to parts is deleted from the definition of indirect information. The definition of indirect information will now be "any information that is not specifically contained in the service literature, but is contained in items such as tools or equipment provided to franchised dealers (or others)."

I. Enhanced Diagnostic Tools

Summary of Proposal: In the 1993 workshop notice, EPA indicated that according to section 202(m)(5) of the CAA, emission-related information provided by manufacturers indirectly to franchised dealers must also be provided to any person engaged in the repairing or servicing of motor vehicles. EPA stated that some manufacturers are or will be providing their dealers the ability to diagnose malfunctions and/or reprogram vehicle modules via enhanced diagnostic equipment. This equipment will not allow dealers to view the underlying computer codes, but will allow them to reprogram vehicles and use enhanced diagnostic information using the underlying code.

EPA believes that the enhanced diagnostic equipment provides franchised dealers indirectly with information that is needed to make emission-related diagnosis and repairs. EPA proposed to require that manufacturers offer their enhanced diagnostic equipment for sale to the aftermarket. This would enable manufacturers to comply with the requirements of section 202(m)(5) that information be made available to the aftermarket if it is made available to dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines while simultaneously protecting the proprietary interest of the manufacturers. It would also provide the aftermarket with the same capabilities as dealerships without divulging proprietary engine calibrations or recalibrations.

EPA proposed that manufacturers' enhanced diagnostic equipment be made available to the aftermarket at the same price at which it is sold to authorized dealerships. EPA believed that a reasonable price to charge the aftermarket is the same price at which the equipment is offered to franchised dealerships. Based on previous comments provided to EPA, EPA believed that manufacturers' enhanced diagnostic equipment are sold to dealerships independent of their franchise agreements. Therefore, the cost of such equipment can be readily determined or manufacturers could provide suggestions for determining the price of their equipment. EPA proposed to give manufacturers a one-year leadtime to prepare for aftermarket sales of enhanced equipment. EPA proposed that manufacturers must provide preliminary enhanced data stream information three months preceding model introduction, with final data

stream information to be released three months after model introduction.

Summary of Comments: Some manufacturers argued that EPA lacks the authority to mandate that they provide enhanced equipment or information to the entire vehicle maintenance industry concerning "special" or "enhanced" data streams or tools. Several manufacturers commented that the statute requires information be made available, not enhanced diagnostic tools. They stated that although such information may be provided by manufacturers to their franchised dealers, it isn't necessary to make use of OBD systems or to effectuate emissions control system diagnostics or repair. The manufacturers and NADA stated that a majority of franchised dealers make substantial monetary investments to purchase and train their technicians to use enhanced diagnostic equipment. They argued that EPA must not promulgate a regulation which would undermine these investments and in doing so place dealers at a competitive disadvantage with other segments of the vehicle maintenance industry.

According to Chrysler, the initiative for the company to invest in creating enhanced equipment is to ensure the economic viability of its dealerships. Without this incentive, Chrysler believes that such equipment will likely not be developed.

Several manufacturers asserted that reprogramming capability and proprietary non-emission-related information are an integral part of their enhanced diagnostic equipment. They argued that the design, development and distribution of a separate tool with only emission-related capabilities would be an unnecessary and costly burden for manufacturers.

They also noted that service information contained in manufacturer tools is similar to that which is contained in its service manuals, TSBs, recall notices, and other information which will be made available to the public through the various mechanisms proposed in the NPRM regarding service information availability.

Ford noted that nearly half of all its dealers do not have its Service Bay Diagnostic System (SBDS). Therefore, Ford believes dealers have no advantage in this area.

Ford expressed several concerns over any regulation that would require their SBDS to be made available to the aftermarket: (1) higher likelihood that improper calibrations could be installed on vehicles since manufacturers have no control over independent facilities; (2) the reprogramming capabilities of this equipment would provide a powerful tool for aftermarket performance companies and competitors to reverse engineer the emissions control system which could result in tampering; (3) unauthorized or incorrect calibrations would increase manufacturer liabilities in failing government in-use compliance programs and customers failing I/M programs; and, (4) providing a tool which has the capability to reprogram the control module may make it impossible for manufacturers to meet EPA's tampering prevention provisions. (These issues are addressed in the recalibration/reprogramming section below.)

Several manufacturers stated that generic scan tools will provide the means by which the aftermarket industry can get very specific support for diagnosis and repair of emission-related systems and components. While Ford indicated it understands the need for generic tools in the aftermarket arena, it expressed concern that they provide adequate and accurate information and repair capabilities. Manufacturers asserted they cannot be held either directly or indirectly liable if such generic tools incorporate diagnostic protocols which could potentially result in misdiagnosis and/or unnecessary repairs. Further, they believe it would not be reasonable to require manufacturers to review and approve aftermarket diagnostic tools. Ford suggested that the manufacturers of aftermarket generic diagnostic tools assume full responsibility for the accuracy and completeness of their equipment and software, and that EPA enforce necessary sanctions if deficiencies are identified which result in improper diagnostics or repairs.

Toyota Motor Corporation (Toyota) commented that manufacturers should sell enhanced diagnostic tools to all persons who want to purchase them. However, Toyota indicated that contrary to EPA's proposal, such tools could not be sold to the aftermarket at the same price they are provided to franchised dealers, since the cost of establishing new trading routes and a handling system would increase the price of equipment to independent technicians. As a result, Toyota commented that if the Agency decides that the selling price from manufacturers to dealers must be the same as that to independent facilities, it would have to greatly increase the price to its franchised dealers.

The Automotive Service Industry Association (ASIA) commented that while EPA's proposal that manufacturers' enhanced diagnostic equipment be made available to the aftermarket at the same price it is made available to franchised dealers has merit, limiting access to such manufacturer equipment alone will prove too costly and cumbersome for small repair facilities. ASIA asserted that under EPA's scenario, a small business currently servicing three lines of motor vehicles would be required to purchase three separate hardware/software systems if that business wishes to continue servicing its current customer base. According to ASIA, the cost of purchasing three individual systems (at a minimum estimated cost of $40,000 per unit) would force that repair facility to either significantly increase prices or limit the types of vehicles serviced.

ASIA stated that this impact runs contrary to the intent of section 202(m)(5) as envisioned by Senator John Chafee, who stated during the floor debate that "the purpose of the amendment is to make sure the diagnostic equipment, the manuals, the techniques are available to, in effect, the local gas stations so they they will be more convenient for the automobile owner * * *" Cong. Rec. S3272 (March 27, 1990). ASIA noted that then Senator Gore later added "we want the [manufacturers] to provide information which will allow competition in the aftermarket and allow small business operators to get in the repair business. Otherwise, you force vehicle owners to go only to the major automobile manufacturers' place of business. Consumers get frustrated; they have long waits; they have to pay high prices." Cong. Rec. S3272 (March 27, 1990). Therefore, ASIA asserted that to ensure independent facilities have the ability to service a range of vehicle makes, EPA should require that all diagnostic information provided to manufacturers of tools for vehicle manufacturers should be made available to the aftermarket. In doing so, ASIA believes that EPA would provide small businesses with the option of purchasing individual manufacturer diagnostic tooling systems or a single aftermarket system that possesses diagnostic capabilities for a variety of vehicle models.

One independent technician acknowledged that manufacturers deserve protections that may assist them in securing a return on their investment in equipment. To remedy concerns of the manufacturers, the commenter suggested that the manufacturers make known all of the information that is on the data stream to the aftermarket equipment manufacturers. These manufacturers could, through their own research, determine what diagnostic routines warrant investment to develop

and market. The commenter also expressed concern over the cost of enhanced equipment. According to the commenter, any such equipment that costs more than $3,000 should be considered unavailable to independent technicians.

APAA commented that manufacturers will be correcting emission and driveability problems through the use of reprogramming tools. Without access to generic tools that perform the same function, APAA believes independent technicians will be unable to purchase manufacturer enhanced tools due to their high cost and will be in the unenviable position of being dependent on their biggest competitor, i.e., dealerships, for reprogramming services which are critical to emission repairs. APAA further noted that some manufacturers could not guarantee that their franchised dealers would provide reprogramming services to independent technicians in a timely manner.

One commenter noted that unlike dealers with enhanced tools, independent technicians with generic tools only receive malfunction codes which are insufficient to diagnose a fault. According to the commenter, this increases the time it takes to make a repair and the cost.

Aftermarket commenters indicated that independent technicians need access to diagnostic tools and equipment at the same time such tools and equipment are provided to dealerships.

Analysis of Comments: Contrary to manufacturer assertions, EPA believes it has the authority to require manufacturers to provide their enhanced diagnostic tools, because such tools contain important information that may be necessary for making emission-related repairs. Section 202(m)(5) of the Act is clear that if such information is provided either directly or indirectly to dealers, it is not covered by the confidentiality protection of section 208 and, therefore, must be provided to aftermarket technicians if it is information for making or diagnosing emission-related repairs. There is little question that the information provided by these tools is likely to increase the ability of a technician to diagnose and make appropriate repairs to vehicles and to make such diagnosis and repairs in considerably less time than it would take without such information. The legislative history clearly indicates that availability of diagnositc equipment was considered by Congress. Moreover, the legislative history clearly shows an intent that if dealerships have access to information that would allow relatively quick and low-cost diagnosis and repair of vehicles, then the aftermarket should have access to the same information. Moreover, to the extent these advanced diagnostic tools may contain considerable information for making emission-related diagnoses and repairs that are not contained in written performance manuals and updates, the information contained in these tools is clearly covered by this rule.

Regarding Chrysler's argument that enhanced diagnostic tools have been developed to assist the economic viability of dealerships, it must be noted that a major reason for developing these tools has been to increase the ease and decrease the cost and time of repair for manufacturers' vehicles, which increases customer satisfaction. To the extent the wider availability of this information further increases ease of repair, then customer satisfaction is likely to increase further. Moreover, to the extent manufacturers wish to assist the economic viability of dealerships by preventing access by aftermarket technicians to emission-related information, that is exactly the type of behavior that section 202(m)(5) was designed to prevent.

To the extent manufacturers comment that this regulation will force them to either build different types of enhanced diagnostic equipment or to divulge certain information not otherwise required, EPA believes that manufacturers will have to make cost-related determinations regarding how to meet this requirement. If any costs are necessary to ensure that emission-related information is provided to the aftermarket to the extent it is provided to dealerships, then section 202(m)(5) requires that such costs be incurred. Moreover, Ford's statement that some of its dealers do not have access to its SBDS system, and that therefore the aftermarket should not have access to the information in that system, is not consistent with section 202(m)(5). The fact that Ford dealerships could choose to avail themselves of this information dictates that aftermarket technicians must have such a choice.

In general, statements of manufacturers regarding the complexity of control strategies and diagnostic information support the need for this information to be made available. The aftermarket must have access to this type of information precisely because vehicle repair has become such a complex and intricate procedure. Without such information, aftermarket technicians would be operating under a significant disadvantage compared to dealerships.

Providing such tools to the aftermarket should not unfairly jeopardize the economic viability of dealerships. Dealerships already have access to these tools and to manufacturer training and other opportunities not provided to the aftermarket.

Nevertheless, EPA is not requiring manufacturers to make their enhanced diagnostic equipment available to the aftermarket. The primary reason being that the cost of purchasing such equipment for more than twenty manufacturers would be cost-prohibitive for most, if not all, independent technicians. The total cost would likely make the equipment practically unavailable to independent technicians.

However, manufacturers are required to ensure that the underlying emission-related information contained in their enhanced diagnostic equipment is provided to the aftermarket in a reasonable manner. Manufacturers are, therefore, required either to make their advanced diagnostic tools and equipment available at a reasonable cost to independent technicians or to make available to aftermarket tool and equipment companies any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by independent technicians to diagnose, service and repair emission-related parts, components and systems.

Section 202(m)(5) states that information for making emission-related diagnosis and repair that is made available either directly or indirectly to dealerships must also be made available to the aftermarket. Any such information provided to dealerships is not proprietary as defined in the CAA. Much of the service and repair information made available to dealerships is done so by its incorporation into diagnostic tools and equipment. To ensure that independent technicians have the same or similar capabilities, manufacturers are required to either provide the information necessary to make such tools and equipment to tool and equipment companies or to make manufacturer tools and equipment available at a reasonable cost (i.e., sold competitively in the marketplace). The reasonable cost requirement is necessary to ensure that the tools and equipment are "available" to the aftermarket.

EPA is not requiring that information provided indirectly to dealerships be provided directly to aftermarket technicians. Where such information contains proprietary materials, EPA is only requiring that such information be provided to aftermarket technicians in the same manner that it is provided to

dealerships. Manufacturers may require that tool and equipment manufacturers to whom such information is provided agree to ensure that such information remains proprietary.

EPA recognizes that manufacturers cannot exert sufficient control over tool and equipment manufacturers to ensure that generic tools and equipment properly incorporate diagnostic information. Therefore, the Agency will not hold manufacturers responsible for the tools and equipment produced by other companies.

As discussed in the section on reprogramming, manufacturers may sell their own reprogramming tools to independent technicians, rather than having such information provided by aftermarket tool and equipment companies, if the price of such tools is reasonable.

Manufacturers may, if they wish, also sell their enhanced diagnostic equipment and/or provide the information necessary to build reprogramming tools to aftermarket tool and equipment companies. The sale of manufacturer enhanced diagnostic equipment for a reasonable cost would be sufficient to comply with the requirements for enhanced diagnostic information under these regulations.

Vehicle manufacturers are required to make emission-related diagnostic and service information utilized by aftermarket tool and equipment companies available to such companies no later than the date of model introduction. This will allow adequate time for such companies to incorporate the information into generic tools and make it available to independent technicians in a timely manner. Revised information is required to be provided to aftermarket tool and equipment companies as it becomes available.

EPA Decision: Manufacturers are required to make available to aftermarket tool and equipment companies any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by independent technicians to diagnose, service and repair emission-related parts, components and systems.

In the alternative, manufacturers may sell their enhanced diagnostic equipment to aftermarket technicians for a reasonable price. The sale of manufacturer enhanced diagnostic equipment for a reasonable cost would be sufficient to comply with the requirements for enhanced diagnostic information under these regulations.

As to emission-related diagnostic and service information utilized by aftermarket tool and equipment companies that make generic tools which perform the same or similar functions as those provided by manufacturers to their dealerships, the Agency believes that such information should be provided at the time of model introduction. This will allow adequate time for its incorporation into tools and equipment.

J. Recalibration/Reprogramming

Statement of Proposal: EPA proposed that, consistent with the Act, "all information" needed to make emission-related repairs be made available to the automotive service industry, including recalibration information. An engine calibration is the set of instructions the computer module uses for operating many of the engine systems (e.g., fuel and ignition). These instructions are made up of preset values and algorithms that are located in a computer chip. Recalibration is the act of revising the preset values and/or algorithms for an existing engine calibration in a particular vehicle model/engine configuration. Reprogramming is the act of installing a "new" engine calibration (i.e., a recalibration) into the module of a specific vehicle.

Summary of Comments: Manufacturers asserted several reasons why they should not be required to make available recalibration information or reprogramming capability: (1) Recalibrations are saleable parts and not "information" within the meaning of section 202(m)(5) of the CAA; (2) reprogramming is not a repair action; (3) reprogramming is not "necessary" information; (4) reprogramming is not "emission-related"; (5) recalibration and reprogramming information are proprietary information protected under section 208; (6) the CAA does not require manufacturers to make available engine calibration information for aftermarket parts manufacturers to effectively design emission-related parts; (7) providing reprogramming capabilities to independent technicians would impair the manufacturer's ability to maintain tamper resistant systems; (8) independent technicians would be unable to understand the intracacies of each of the different manufacturer systems; and (9) the potential for problems, such as increased emissions, poor vehicle performance, and warranty and recall liability that could result from the release of recalibration information. Manufacturers asserted that aftermarket service providers could take vehicles to franchised dealerships to have them reprogrammed.

In contrast, the automotive aftermarket unanimously cited the need for independent technicians to have the capability to perform reprogramming. They commented that any procedure that has the effect of limiting the ability of independent technicians to make repairs is contrary to the CAA and Congressional intent. They further questioned EPA's authority to allow recalibration information to be within the exclusive province of dealers on the basis that that was not the intent of Congress. According to the commenters, if the aftermarket is not allowed to perform reprogrammings, the aftermarket will gradually be removed from performing emission-related repairs, including driveability repairs.

Some commenters stated that the only useful information to aftermarket parts manufacturers would be access to underlying recalibration information. APAA commented that engine calibration information is required for the effective production and testing of replacement parts. The Specialty Equipment Manufacturer's Association (SEMA) asserted that although aftermarket parts manufacturers would not necessarily need direct access to manufacturer proprietary information, some type of secure access to manipulate calibrations in developing and testing aftermarket parts will be essential to the survival of the independent parts and service industry. They argued that by not allowing such access, EPA would put some people out of business by eliminating the ability to make modifications to vehicles.

Aftermarket comments asserted that the marginal risk of tampering could be addressed by various methods, including restricting how recalibrations are performed (e.g., using a modem link to receive recalibration information) or specifying qualifications which all technicians must meet to obtain recalibration data.

Analysis of Comments: EPA disagrees with the commenters that recalibration information is a part. There are several reasons for the Agency's position on this issue. First, service people do the reprogramming, not parts departments. Second, one doesn't need to order the "part," it is in the diagnostic machine and just needs to be downloaded. Third, there are no parts cost for "installation," only service costs. Fourth, entering a recalibration does not physically change a vehicle, only the data (information) on the computer. Fifth, in their comments, manufacturers refer to recalibrations as "information."[13] Sixth, parts can be sent to a mechanic via, e.g., UPS, as they

[13] For example, Chrysler Corporation Response to EPA Request for Supplemental Comments on OBD Systems, June 28, 1992, and Ford Motor Company Written Comments, July 31, 1992.

are sent to a dealer by a manufacturer, or as a dealer can send to a mechanic. However, reprogramming can only occur at a dealership or other facility which has the necessary equipment to perform a reprogramming event. In addition, the change made to a vehicle by reprogramming is a change to "data" within the vehicle. In effect, the tool is communicating with the computer in the vehicle, telling it to do something different. This appears to be information.

Finally, though parties may argue whether the data being downloaded into the vehicle is a "part" or "information" or both, it is clear to EPA that the current situation, in which dealerships can make manufacturer-suggested repairs to vehicles using data provided by manufacturers to dealerships, but not to independent technicians, is exactly the type of situation that Congress intended to be rectified by section 202(m)(5).

EPA believes that reprogramming is a repair action. The entire purpose of reprogramming vehicle computers is to "repair" certain problems discovered in the vehicles. EPA believes that the key issue is whether independent service providers are being prevented from doing what dealerships are allowed to do due, in part, to lack of information. EPA believes that reprogramming events should be considered repairs under the statute, especially since such reprogramming is being done as a result of recommendations offered by a manufacturer in order to change some aspect of the vehicle that the manufacturer believes was initially incorrectly produced.

Both Ford and Chrysler state that reprogramming information is not "needed" as that word is used in section 202(m)(5).[14] Yet, even presuming, for the sake of argument, that EPA should only mandate disclosure of emission-related information that is "necessary,"[15] no manufacturer makes clear how such information is not necessary to accomplish the reprogramming of the vehicle. Whether the vehicle is reprogrammed by a dealer or an aftermarket technician, the repair person must have the information to make the repair. EPA does not believe that the "instructions" for making emission-related diagnosis and repairs is limited to "go see your local dealer." The information necessary to make the repair must be in the possession of the aftermarket to the same extent it is in the possession of dealers.

Moreover, as EPA is only requiring information to be produced regarding recalibrations offered by a manufacturer, it is hard to understand how such reprogramming events would not be "necessary" events to repair the vehicle. A manufacturer would presumedly not offer such recalibrations unless it found a feature of the vehicle that it felt needed to be changed.

The Agency disagrees with statements that reprogramming is not "emission-related." Though certain reprogramming events may have no emission-related effects, EPA believes that numerous reprogramming events will have such effects. First, the docket indicates that certain calibrations are directly intended to fix problems related to the emissions of the vehicles. Though these calibrations may be covered in a manufacturer's warranty, there is no assurance that a proper recalibration will occur during the warranty period. Thus, providing independent technicians with the ability to provide such reprogramming would not be an unnecessary endeavor.

In addition, recalibrations to fix driveability problems will also have emission-related effects. As discussed elsewhere, "emission-related" repairs are not limited to repairs of the emission control system or repairs necessary to make use of the OBD system.

As EPA discusses above in the section on the definition of "emission-related," the correction of driveability problems can often have an emissions impact. This potential for increased emissions is heightened when cumulative recalibrations occur within an engine family. Therefore, EPA is requiring that all reprogramming events that are emission-related, as that term is defined above, including reprogramming actions occurring for primarily reasons of drivability, must be made available to independent technicians.

Contrary to comments made regarding recalibration information being proprietary, the Agency believes that where a manufacturer provides such information to some or all of its dealers, such information cannot be considered proprietary under section 202(m)(5). The Act specifically requires that any information provided directly *or indirectly* to dealerships must also be provided to anyone who services or repairs vehicles.

Contrary to manufacturer arguments that dealership employees don't receive recalibration data because they can't see it due to the form in which it is provided to them, EPA believes that where a manufacturer provides dealerships with machines that hold such information or can disseminate such information and where these machines allow dealerships to use such information to repair vehicles, such information is being provided indirectly to dealerships, and thus must be made available to independent technicians in a similar manner.

In response to Ford's comment that it opposes any requirements which mandate that it make available all detailed emissions recalibrations, EPA is only requiring that reprogramming capability be made available, not direct calibration codes. As discussed below, EPA does believe that the internal computer codes within the vehicle control modules are proprietary, as such material is not released to dealerships. EPA, therefore, is not requiring direct disclosure of the recalibration data itself. EPA does not believe that manufacturers should be forced to provide unprotected proprietary information directly to aftermarket technicians merely because it has provided such material indirectly to its dealers, especially where such information is provided to dealers in a protected fashion, such that even the dealers could not assess the underlying information. Some manufacturers have gone to considerable lengths to prevent direct disclosure of this information even to its dealers; therefore, EPA will not require such information be provided directly to the aftermarket.

Rather, EPA is allowing the manufacturers to indirectly provide this data to independent technicians in the same or similar fashion as they provide this data to dealership technicians by offering independent technicians reprogramming capabilities to the same extent manufacturers offer such capabilities to their own dealers. This will help ensure that independent technicians remain competitive with dealerships as intended by section 202(m)(5).

EPA agrees with comments from the aftermarket that, based on the language of section 202(m)(5) of the CAA and its legislative history, Congress intended independent technicians to have all the information necessary to make emission-related repairs, including reprogramming capabilities, that are available to dealerships or others. Congress wanted to ensure the continuation of a competitive marketplace, thereby providing consumers with an option as to where to have their vehicles serviced. In addition to the reprogramming capability, manufacturers will also be required to publish information as to

[14] One reason they give is that such information is not emission-related. We discuss this issue below.

[15] The term "needed" does not modify the clause referring to "such other information including instructions for making emission related diagnosis and repairs."

when recalibrations are issued, since such information can impact other repairs. Also, EPA expects that some independent technicians will not want to obtain reprogramming capability, but will want to know when such service is necessary so that they can take vehicles to the dealerships for such service or refer customers to seek dealership service on their own.

EPA also agrees with comments indicating that there are significant practical competitive disadvantages to the aftermarket if only dealers can reprogram and that, in the future, many vehicle functions may be controlled through recalibration data. Also, unless a secure means for the aftermarket to obtain reprogramming is found, a substantial amount of maintenance and repairs could be channeled to dealerships who would have a significant information advantage.

The Agency agrees that manufacturers that do not provide reprogramming capabilities to their dealers through the use of electronically eraseable computer chips and do not provide recalibration information to other parties do not have to provide recalibration information or reprogramming capability to independent technicians.

The Agency agrees with the manufacturers that section 202(m)(5) does not require manufacturers to provide calibration, recalibration or design information to aftermarket parts manufacturers. The purpose of this provision is to ensure that independent technicians have access to information needed to service and repair vehicles, thereby ensuring consumers with freedom of choice in where to take their vehicles for repairs. *See* Statement of Senator Gore, 136 Cong. Rec. S3271–2 (March 27, 1990) ("If we are going to mandate a new onboard diagnostic system, we must give consumers the freedom to choose where they will go to have these systems *maintained and repaired*." [emphasis added]) Manufacturers are only required to provide reprogramming capabilities to persons who service and repair vehicles, i.e., independent technicians. They are not required to provide recalibration information to other parties.

EPA disagrees with the assertion from aftermarket commenters that section 202(m)(5) is intended to provide for the release of calibration or parts specification information to parts manufacturers. Nothing in the language of the statute itself or in the legislative history indicates that Congress was interested in assuring access and information for the manufacture of aftermarket parts. On the contrary, the legislative history speaks only of the need to ensure equal access for vehicle *repair* facilities. The language was clearly meant to ensure that such repair facilities have equal information to make emission-related diagnosis and repairs as have the manufacturers' dealerships.

This is why the Congress limited the coverage of section 208(c) (providing that trade secrets need not be made available) to information not provided to dealerships. There is no information indicating that underlying computer data is provided to dealerships. In fact, as discussed above, manufacturers have attempted to protect such information from disclosure. Though the language of section 202(m)(5) does refer to any information provided directly or indirectly to dealers, EPA does not believe that Congress intended to require that information provided to dealers only indirectly, and using secure methods, must be provided directly, without protection, to aftermarket parts dealers. The legislative history clearly shows that Congress had no intention of requiring the release of proprietary information. In fact, the House Report specifically gives as its reason for the trade secrets language the fact that "the computer software can include very sensitive data." House Report at 306. In short, section 202(m)(5) was designed to ensure information already in the public domain was given to all repair providers; it was not designed to expose manufacturers to the divulgence of their most sensitive proprietary information.

Further, EPA has received no information that this information is needed by repair personnel to repair vehicles. There has been no information showing that repair personnel need to see underlying computer codes in order to fix vehicles. This is evidenced by the fact that there have been many comments indicating that service people have no use for such underlying information and would likely not know how to use it if they had access to it.

Aftermarket parts manufacturers commented that engine calibration information is required for the effective production and testing of replacement parts to ensure that they will meet the exacting needs of both current and future engines. Even presuming that this allegation is true, this regulation does not prevent parts manufacturers from obtaining such information. Parts manufacturers can enter into any number of special arrangements with the manufacturers to obtain the desired information. Further, parts manufacturers will be able to make parts in the same manner as they always have.

Parts manufacturers have been making such parts for many years, even as vehicles have become more and more complicated. Though the introduction of OBD will continue the trend of making cars more complex and, therefore, require manufacturers and aftermarket parts manufacturers to meet more exacting standards, it does not require a new regime for providing information for the manufacture of replacement parts. Nor does section 202(m)(5) require such a new regime.

Vehicle manufacturers expend substantial resources to develop these intricate programs. Manufacturers may be justified in their hesitance to allow such information to be freely distributed, especially without proper arrangements. Congress could have extended the reach of section 202(m)(5) to include parts manufacturers. It did not. Given the fact that aftermarket parts manufacturers appear to need information of a more proprietary nature than that of aftermarket repair personnel, it appears that EPA would be going beyond Congressional intent in requiring that such information be provided.

Moreover, SEMA states that the aftermarket industry needs underlying recalibration information to be capable of modifying existing programs on vehicle computer chips. It is just these changes to computer calibrations that trouble manufacturers and also trouble EPA. Where a single entity, the manufacturer, is responsible for programming and updating the vehicle computer, it is relatively easy to determine which computer calibration is on, or should be on, a vehicle. Manufacturers go through a rigorous mandatory certification process to assure EPA of emission compliance of their various calibrations over the useful life of their vehicles. When various part manufacturers are changing calibrations to meet the needs of their parts, then it is more difficult to determine what the proper calibration of the vehicle should be. Moreover, if a subsequent repair person repairs the same vehicle using the instructions generally appropriate for such a vehicle, such a subsequent repair may result in unintended consequences that could impair the emissions (or drivability) performance of the vehicle, especially if the new aftermarket calibration is not made obvious to the subsequent repair person. Also, such aftermarket recalibrations may prevent the manufacturer from instituting later recalibrations on the vehicle, because the newest manufacturer recalibration may be inconsistent with the aftermarket part. Finally, such aftermarket recalibrations could possibly constitute tampering, depending on the emissions result of the recalibration. (This is also true for manufacturer recalibrations; however, if manufacturers are the only parties issuing recalibrations, such problems are easier to enforce.) This is not to say that EPA intends on preventing such aftermarket recalibrations or even manufacturer recalibrations. However, if EPA's concerns regarding the emissions result of such recalibrations increase as it receives further data on the subject, EPA may determine that certain steps must be taken (possibly in the form of a mandatory certification program) to ensure that recalibrations are consistent with the Act and to preserve emission performance of vehicles.

One of the more frequently cited comments by the manufacturers was that reprogramming should be restricted to dealerships for reasons of security. However, EPA received no evidence that tampering is necessarily less likely to occur if reprogramming is limited to dealership employees, which according to NADA constitute more than one million individuals (including one-third of all technicians) at over 23,000 dealerships nationwide.

The Agency believes that if the appropriate security measures are instituted for reprogramming, the risk of tampering would be virtually the same for independent technicians and dealership employees.

EPA questions manufacturer comments to the effect that they can ensure the security of recalibration information as long as it is provided only to dealerships. The manufacturers failed to provide any data from prior actions against dealerships to substantiate the assertion that manufacturers can prevent their dealerships from engaging in undesired activities. Also, EPA is not forbidding manufacturers from using contractual and other arrangements to protect against inappropriate use of the reprogramming equipment.

EPA is encouraged that the aftermarket industry recognizes that as a result of providing independent technicians with reprogramming capabilities there is some concern over the potential for tampering. EPA also appreciates the many suggestions made by the aftermarket to reduce the potential for tampering. However, EPA believes that manufacturers should be allowed to develop and implement the systems which they believe are most secure, such as encryption systems, taking into consideration the amount of reprogramming they perform and available technology. If EPA subsequently determines that security and tampering concerns develop into a problem due to the release of this information, EPA may require other measures to limit tampering and to prevent emissions increases.

EPA disagrees with comments regarding the inability of independent technicians to correctly perform reprogramming. First, the new electronic systems are too complex for independent or any other technicians to indiscriminately alter. Second, based on EPA observations, reprogramming according to manufacturer instructions is not a difficult task. Procedures could be easily detailed in manufacturer repair manuals as they typically are for other repairs. Therefore, any training need to perform reprogramming should be minimal. If manufacturers believe that extra training is necessary prior to technicians performing reprogramming, then they should make available whatever training materials they believe are necessary to ensure that independent technicians can properly perform reprogramming.

EPA believes that manufacturer concerns over warranty and recall responsibilities for vehicles that might be recalibrated improperly by independent technicians are unfounded. Manufacturers will be in control of the process by which reprogramming is provided. In addition, as discussed earlier, the task of reprogramming is not difficult.

EPA believes that any increasing danger of undetectable tampering would be more a result of the proliferation of reprogrammable computer chips than it is a result of who repairs vehicles. The proliferation of reprogrammable computer chips is in the control of the manufacturers who can elect not to use reprogramable chips or who can provide many other safeguards short of a permanent bar against reprogramming by aftermarket technicians. This possibility of increased tampering may also provide an incentive for manufacturers to minimize the amount of manufacturer-ordered reprogramming that occurs.

In addition, EPA never indicated that manufacturers would be responsible for reimbursing owners or independent technicians for reprogramming performed outside a dealership. EPA also has a difficult time understanding how allowing independent technicians to perform reprogramming recommended by the manufacturer would be a disincentive for owners to seek future emission-related repairs, since almost all manufacturer commenters indicated that such repairs occur during the warranty period and are, therefore, likely to be performed by dealerships.

EPA believes that GM's comments mis-state the competitiveness concerns of a level playing field expressed by Congress. With the advent of eraseable computer chips, dealers can perform reprogramming in minutes, while independent technicians, if forced to return a vehicle or its module to a dealer for reprogramming, would be at a significant time and cost disadvantage. According to one manufacturer, it is difficult to predict how long an independent technician would have to wait at a dealership to have a reprogramming event performed on a vehicle brought in by the independent technician. The manufacturer indicated that an independent technician might have to wait four to five days.

EPA agrees with the aftermarket commenters that forcing independent technicians to return computers to dealers for reprogramming requires excessive manpower, would result in loss of income due to delays, is onerous and unnecessary. In addition, the Agency believes that requiring independent technicians to do so does not constitute access to repair information as conceived by Congress in section 202(m)(5) of the CAA.

EPA agrees with the example provided by an aftermarket commenter regarding one of the differences to independent technicians as to the difference between replaceable computer chips and eraseable computer chips and any requirement that independent technicians return an electronic control module (ECM) to a dealer for reprogramming. Where an independent facility buys a computer chip from a dealer, the vehicle remains operable while the repair facility searches for the part, orders the part, and transports the part. However, if an independent facility would have to remove the computer from a vehicle and take it to an authorized dealer to have it reprogrammed, the affected vehicle is not operable. Even ignoring the potential for lack of cooperation by a dealership to provide reprogramming, the cost to independent technicians and the inconvenience to their customers could be substantial.

There is also concern, as expressed by ETI and others about the damage that could result from transporting exposed electronic parts, which are very sensitive to static electricity, physical damage, and fluids, including water. As ETI noted, a computer module that starts out needing only a reprogramming service may need replacement simply because it was transported to a dealer and damaged along the way.

EPA Decision: EPA has determined that recalibrations are information covered under section 202(m)(5) if they are provided to dealerships to reprogram vehicles. EPA recognizes that this information is not visible to the dealerships and is provided for the purpose of allowing dealers to perform reprogramming. EPA believes that allowing manufacturers to provide similar reprogramming capabilities to independent technicians (and not the recalibrations themselves) comports with the language and intent of section 202(m)(5).

Effective December 1, 1997, manufacturers are required to:

(1) make available to independent technicians all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that were issued prior to December 1, 1997, by manufacturers and made available to dealerships for MYs 1994 through 1997; and

(2) for reprogramming events that are issued on or after December 1, 1997, make available to independent technicians all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) issued by manufacturers for 1994 and later MY vehicles at the same time they are made available to dealerships.

For each MY, reprogramming need not be provided for recalibrations performed prior to vehicles entering the stream of commerce (i.e., sale to first purchaser).

If a manufacturer can demonstrate, to the satisfaction of the Administrator, that hardware would have to be retroactively installed on vehicles to meet security measures implemented by the manufacturer, the manufacturer may request a waiver from the reprogramming requirements for model years 1994 through 1996.

EPA is providing manufacturers until December 1, 1997, to adopt and implement security measures, such as encryption or other measures, that address tampering concerns and concerns regarding proprietary information. This leadtime will also allow manufacturers to work out logistical issues related to making reprogramming available to the potentially large numbers of independent facilities that may be interested in receiving this capability. Though EPA is allowing security measures to be implemented by manufacturers, such measures are not being required by these regulations. EPA believes that manufacturers are best able to determine the extent to which the release of this information will endanger the proprietary nature of the underlying information and/or potentially lead to tampering.

Any method adopted by a manufacturer by which reprogramming will be made available to independent technicians cannot impose a significant burden on independent technicians beyond that experienced by dealerships. For example, manufacturers can sell reprogramming tools directly to independent technicians or enter into agreements with aftermarket tool companies whereby the manufacturers provide the tool companies with the information necessary to build reprogramming tools. In conjunction with one of these options, manufacturers could transmit reprogramming events directly to independent technicians by modem from a main frame or provide them with CD ROMs. The use of a main frame to make reprogramming available would enable manufacturers to monitor certain data, such as who is performing reprogramming and the type of reprogramming that is being requested. In formulating its method of making reprogramming available to independent technicians, a manufacturer may request to meet with EPA to discuss whether the method comports with the requirements of this rule. In the context of avoiding a significant burden on independent technicians, EPA notes that a manufacturer reprogramming-only tool should be compatible with generic portable computers (PCs), or other technology in widespread use in the future, so that independent technicians are not required to purchase numerous types of PCs to access each manufacturer's reprogramming tools.

EPA is concerned that there may be a risk of increased tampering with the OBD system once it is integrated with the I/M test. However, EPA believes that the manufacturers have sufficient incentives to adopt measures that maximize security and protect the OBD system from tampering. At this time, therefore, EPA is not requiring that manufacturers adopt security measures. If there is evidence of tampering that can't be prevented through EPA's enforcement authority, EPA may find it necessary to promulgate more stringent regulations to ensure that the integrity of OBD systems is maintained. Such regulations could include various options, such as mandatory aftermarket parts certification, banning eraseable computer chips, or security measures.

K. Regulatory Flexibility Analysis

Summary of Proposal: The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Analysis. EPA has determined that the regulations finalized today will not have a significant impact on a substantial number of small entities. This regulation will primarily affect manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities.

Summary of Comments: Chrysler commented that EPA's conclusion that an RIA is not required is fatally flawed. Chrysler asserted that the proposed regulations will impact over twenty thousand small businesses, i.e., dealers, through major effects on their future business and profitability. Chrysler stated that dealerships carry costs and overhead which are not faced by aftermarket repair shops. Chrysler believes that any regulation which diminishes the ability of dealerships to effectively compete, by lessening their ability to meet costs imposed by the nature of the business, clearly constitutes a significant impact on those businesses, required to be assessed by the Administrator by law.

NADA also commented that EPA's regulatory impact analysis appears to have failed to take into account the significant potential impact its proposed regulations will have on franchised dealership service operations. NADA asserted that several provisions in the proposed rule will result in potentially costly anti-competitive impacts on dealerships. NADA stated its member dealerships are very concerned that the EPA proposal will serve to undermine the franchise relationship that exists between dealers and manufacturers. The proposal as written threatens the huge investments NADA dealerships have made in equipment, technician training, and information systems by putting dealers at a competitive disadvantage with those segments of the vehicle maintenance industry who have not made similar investments. As required by the Regulatory Flexibility Act, NADA argued it is incumbent upon EPA to consider these impacts during the development of its final OBD rule. NADA submitted that this is of particular importance considering the currently dire economic condition of a large number of franchised dealerships across the country.

Analysis of Comments: This rulemaking directly affects only vehicle manufacturers, which are not small businesses. Therefore, no regulatory flexibility analysis is necessary. The secondary effects that these regulations may have on particular smaller businesses (i.e., dealerships), which would not be increases in burden, but loss of sole access to information, should be minor. Moreover, these regulations generally maintains the status quo that currently exists between dealerships and independent technicians. Today's regulations should not greatly affect dealerships or independent technicians, since the vast majority of the emission-related information required by this rule has, according to commenters, long been provided voluntarily by the manufacturers. In its comments submitted August 13, 1993, Association of International Automobile Manufacturers, Inc. (AIAM), for example, stated that in spite of the fact that there have been no requirements mandating the availability of service information, nearly all manufacturers have made information readily available. According to AIAM, the aftermarket asserts such information is not available, because they are unwilling to pay the fair cost of the information.

Other small businesses (i.e., independent technicians) are also not directly regulated by this rulemaking. Moreover, according to the statements of many commenters, any secondary effects from these regulations are likely to be minor, as much of the information required to be made available under this rulemaking is, according to the commenters, already available to the aftermarket.

Aftermarket parts manufacturers, whose products are not covered by the information availability requirements of section 202(m)(5), will be in the same position following the effective date of this rule as they were before the effective date. They will be able to design, develop and manufacture parts as before or they can enter into agreements with the manufacturers to purchase design specifications.

EPA Decision: A regulatory flexibility analysis is not required, since there is no significant impact on affected entities.

V. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866, [58 **Federal Register** 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis. EPA has determined that the regulations finalized today will not have a significant impact on a substantial number of small entities. This regulation will also positively affect independent repair shops and mechanics. The standardization requirements contained in these regulations will enhance the ability of independent mechanics to diagnosis and repair malfunctions.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* I certify that this regulation does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

D. Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this direct final rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the relevant files are described below.

TTNBBS can be accessed using a dial-in telephone line (919) 541–5742 and a 1200, 2400, or 9600 bps modem (equipment up to 14.4 Kbps can be accommodated). The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

(T) Gateway to TTN Technical Areas (Bulletin Boards)
(M) OMS
(K) Rulemaking and Reporting

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. File information can be obtained from the "READ.ME" file. To download a file, the user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 Eastern Time, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at

(919) 541–5384 in Research Triangle Park, North Carolina, during normal business hours Eastern Time.

E. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2060–0104.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., S.W. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

F. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

VI. Authority

Statutory authority for the proposed emission standards is provided by sections 202(a), 202(m), 208(c), 301(a), and 307(d) of the Clean Air Act, as amended, 42 U.S.C. 7521(a), 7521(m), 7542(c), 7601(a), and 7607(d).

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Motor vehicle pollution, Motor vehicles, Reporting and recordkeeping requirements.

Dated: July 25, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR chapter I is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures	
* * * * *	
86.094–38	2060–0104
* * * * *	

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

3. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

4. Section 86.094–2 is amended by adding definitions for "Bi-directional control", "Data stream information", "Enhanced service and repair information", "Generic service and repair information," "Indirect information", and "Intermediary", in alphabetical order, to read as follows:

§ 86.094–2 Definitions.

* * * * *

Bi-directional control means the capability of a diagnostic tool to send messages on the data bus that temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.

Data stream information means information (i.e., messages and parameters) originated within the vehicle by a module or intelligent sensors (i.e., a sensor that contains and is controlled by its own module) and transmitted between a network of modules and/or intelligent sensors connected in parallel with either one or two communication wires. The information is broadcast over the communication wires for use by other modules (e.g., chassis, transmission, etc.) to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration related information.

* * * * *

Enhanced service and repair information means information which is specific for an original equipment manufacturer's brand of tools and equipment.

* * * * *

Generic service and repair information means information which is not specific for an original equipment manufacturer's brand of tools and equipment.

* * * * *

Indirect information means any information that is not specifically contained in the service literature, but is contained in items such as tools or equipment provided to franchised dealers (or others).

Intermediary means any individual or entity, other than an original equipment manufacturer, which provides service or equipment to automotive technicians.

* * * * *

5. A new § 86.094–38 is added to read as follows:

§ 86.094–38 Maintenance instructions.

(a)–(f) [Reserved]

(g) Emission control diagnostic service information:

(1) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, or the Administrator upon request, any and all information needed to make use of the on-board diagnostic system and such other information, including

instructions for making emission-related diagnosis and repairs, including, but not limited to, service manuals, technical service bulletins, recall service information, data stream information, bi-directional control information, and training information, unless such information is protected by section 208(c) as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(2) Emission-related information includes, but is not limited to:

(i) Information regarding any system, component or part of a vehicle that controls emissions and any system, components and/or parts associated with the powertrain system, including, but not limited to, the fuel system and ignition system;

(ii) Information for any system, component, or part that is likely to impact emissions, such as transmission systems; and

(iii) Any other information specified by the Administrator to be relevant for the diagnosis and repair of an emission failure found through the Inspection and Maintenance program, after such finding has been communicated to the affected manufacturer(s).

(3) All information required to be made available by this section shall be made available to persons referred to in this section at a fair and reasonable price, as determined by the Administrator. In reaching a decision, the Administrator shall consider all relevant factors, including, but not limited to, the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size of the manufacturer), the quantity of material contained in a publication, the detail of the information, the cost of the information prior to the effective date of this section, volume discounts, and inflation.

(4) Any information which is not provided at a fair and reasonable price shall be considered unavailable.

(5) By December 7, 1995, each manufacturer shall provide in a manner specified in paragraph (g)(9) of this section an index of the information required to be made available by this section for 1994 and later model year vehicles which have been offered for sale; this requirement does not apply to indirect information, including the information specified in paragraph (g)(10) of this section. This index shall:

(i) Be updated on the first and third Monday of each month;

(ii) Provide titles that either adequately describes the contents of the document to which it refers or provides a brief description of the information contained in that document; and

(iii) Provide the cost of information and where it can be obtained.

(6) For vehicle models introduced more than four months after the effective date of this section, manufacturers shall make the information required under this section available to persons specified in paragraph (g)(1) of this section at the same time it is made available to dealerships, except as otherwise specified in this section.

(7) Each manufacturer shall maintain the index of information specified in paragraph (g)(5) of this section on FedWorld or other database designated by the Administrator. Manufacturers shall inform persons specified in paragraph (g)(1) of this section about the availability of the index in a manner prescribed by the Administrator.

(8) Each manufacturer shall be responsible for paying its pro rata share of any costs associated with establishing and maintaining the index of emission-related service and repair information provided for in paragraphs (g)(5) and (g)(7) of this section.

(9) Manufacturers or their designated distributors must mail requested information within one business day of receiving an order, and shall provide overnight delivery if the ordering party requests it and assumes the cost of delivery.

(10) All emission-related data stream information made available to manufacturers' franchised dealerships (or others in the service industry) shall be made available to the persons indicated in paragraph (g)(1) of this section either through provision of manufacturer equipment and tools or through provision of such information to equipment and tool manufacturers.

(11) Effective January 1,1997, a manufacturer shall only provide bi-directional control to its franchised dealerships if it provides equipment and tool manufacturers with information to make diagnostic equipment with the same bi-directional control capabilities available to the dealerships, or if it provides such capabilities directly to persons specified in paragraph (g)(1) of this section by offering for sale at a reasonable cost through manufacturer tools.

(12) Manufacturers shall make data stream information and bi-directional control information available for all model years beginning with model year 1994 as specified in paragraphs (g)(10) and (g)(11) of this section. If a manufacturer can demonstrate, to the satisfaction of the Administrator, that safeguards for bi-directional controls are only installed in tools, not in vehicle on-board computers, then that manufacturer may receive a waiver from producing bi-directional controls for vehicles prior to the 1997 model year.

(13) Effective December 1, 1997, manufacturers shall make available in the manner described in paragraph (g)(16) of this section to persons specified in paragraph (g)(1) of this section reprogramming capability for all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that were issued prior to December 1, 1997 by manufacturers and that were made available to any manufacturer dealerships for model years 1994 through 1997; and manufacturers shall make available to persons indicated in paragraph (g)(1) of this section in the manner described in paragraph (g)(16) of this section reprogramming capability for all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that are issued by manufacturers on or after December 1, 1997, for 1994 and later model years at the same time they are made available to dealerships.

(14) For all vehicles, reprogramming need not be provided for any recalibrations performed prior to vehicles entering the stream of commerce (i.e., sale to first purchaser).

(15) If a manufacturer can demonstrate, to the satisfaction of the Administrator, that hardware would have to be retroactively installed on vehicles to meet security measures implemented by the manufacturer, the manufacturer may receive a waiver from the requirements of paragraph (g)(13) of this section for model years 1994 through 1996.

(16) Manufacturers shall either offer for sale at a competitive market price a reprogramming tool that interfaces with a substantial majority of generic portable computers or make available to aftermarket tool and equipment companies information that would enable them to manufacture such a tool. Any method adopted by a manufacturer by which reprogramming is made available to persons specified in paragraph (g)(1) of this section shall not impose a significant burden on such

providers beyond that experienced by dealerships.

(17) Manufacturers shall be responsible for ensuring that persons specified in paragraph (g)(1) of this section shall have access to reprogramming services at a reasonable cost and in a timely manner.

(18) Manufacturers shall provide persons specified in paragraph (g)(1) of this section with an efficient and cost-effective method for identifying whether the calibrations on vehicles are the latest to be issued.

(19) Manufacturers shall either make available to aftermarket tool and equipment companies no later than the date of model introduction any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by persons specified in paragraph (g)(1) of this section to diagnose, service and repair emission-related parts, components and systems or manufacturers may sell their own diagnostic tools and equipment to persons specified in paragraph (g)(1) of this section if the price of such tools is reasonable.

(20) A manufacturer is subject to a penalty of up to $25,000 per day per violation for failure to make available the information required by this section.

[FR Doc. 95–18867 Filed 8–8–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[PP 9F3818/R2153; FRL–4970–3]

RIN 2070–AB78

Tebuconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) for seed treatment in or on the raw agricultural commodities barley grain, forage, hay, and straw at 0.05, 0.10, 0.10, 0.10 parts per million (ppm), respectively; oat grain, forage, hay, and straw at 0.05, 0.10, 0.10, and 0.10 ppm, respectively; and wheat grain, forage, hay, and straw at 0.05, 0.10, 0.10, 0.10 ppm, respectively. Miles, Inc. (formerly Mobay Corp., Agricultural Chemicals Division, now Bayer Corp.) submitted a petition pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA) for the regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: This regulation becomes effective August 9, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 9F3818/R2153], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of any objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the document number [PP 9F3818/R2153]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6226; e-mail: welch.connie@.epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 15, 1995 (60 FR 31465), which announced that Miles, Inc., Agricultural Division (formerly Mobay Corp., Agricultural Chemicals Division, now Bayer Corp.), P.O. Box 4913, Kansas City, MO 64120-0013, had submitted pesticide petition (PP) 9F3818 to EPA requesting that the Administrator, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), establish a tolerance for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) for seed treatment in or on the raw agricultural commodities barley grain, forage, hay, and straw at 0.05, 0.10, 0.10, 0.10 ppm, respectively; oat grain, forage, hay, and straw at 0.05, 0.10, 0.10, and 0.10 ppm, respectively; and wheat grain, forage, hay, and straw at 0.05, 0.10, 0.10, and 0.10 ppm, respectively.

There were no comments received in response to the notice of filing.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 34.8 milligrams per kilogram of body weight per day (mg/kg bw/day) (400 ppm) and a lowest-effect-level (LEL) of 171.7 mg/kg bw/day (1,600 ppm) in males, based on decreased body weight gains and histological changes in the adrenals. For females, the NOEL was 10.8 mg/kg bw/day (100 ppm), and the LEL was 46.5 mg/kg bw/day (400 ppm) based on decreased body weights, decreased body weight gains, and histological changes in the adrenals.

2. A 90-day dog feeding study with a NOEL of 200 ppm (73.7 mg/kg bw/day in males and 73.4 mg/kg bw/day in females) and an LEL of 1,000 ppm (368.3 mg/kg bw/day in males and 351.8 mg/kg bw/day in females). The LEL was based on decreases in mean body weights, body weight gains, and food consumption, and an increase in liver *N*-demethylase activity.

3. A 1-year dog feeding study with a NOEL of 1 mg/kg bw/day (40 ppm) and an LEL of 5 mg/kg bw/day (200 ppm), based on lenticular and corneal opacity and hepatic toxicity in either sex (the current Reference Dose was determined based on this study). A subsequent 1-year dog feeding study, using lower doses to further define the NOEL for tebuconazole, defines a systemic LOEL of 150 ppm (based on adrenal effects in both sexes) and a systemic NOEL of 100 ppm.

4. A 2-year rat chronic feeding study defined, a NOEL of 7.4 mg/kg bw/day (100 ppm) and a LEL of 22.8 mg/kg bw/day (300 ppm) based on body weight depression, decreased hemoglobin, hematocrit, MCV and MCHC, and increased liver microsomal enzymes in females. Tebuconazole was not oncogenic at the dose levels tested (0, 100, 300, and 1,000 ppm).

5. A rat oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day based on elevation of absolute and relative liver weights. For developmental toxicity, a NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day was determined, based on delayed ossification of thoracic, cervical, and sacral vertebrae, sternum, fore and hind limbs and increase in supernumerary ribs.

6. A rabbit oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day based on depression of body weight gains and food consumption. A developmental NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day were based on increased postimplantation losses, from both early and late resorptions and frank malformations in eight fetuses of five litters.

7. A mouse oral developmental toxicity study with a maternal NOEL of 10 mg/kg bw/day and an LEL of 20 mg/kg bw/day based on a supplementary study indicating reduction in hematocrit and histological changes in liver. A developmental NOEL of 10 mg/kg bw/day and an LEL of 30 mg/kg bw/day based on dose-dependent increases in runts/dam at 30 and 100 mg/kg bw/day.

8. A mouse dermal developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and a LEL of 60 mg/kg bw/day based on a supplementary study indicating increased liver microsomal enzymes and histological changes in liver. The NOEL for developmental toxicity in the dermal study in the mouse is 1,000 mg/kg bw/day, the highest dose tested (HDT).

9. A two-generation rat reproduction study with a dietary maternal NOEL of 15 mg/kg bw/day (300 ppm) and a LEL of 50 mg/kg bw/day (1,000 ppm) based on depressed body weights, increased spleen hemosiderosis, and decreased liver and kidney weights. A reproductive NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) were based on neonatal birth weight depression.

10. An Ames mutagenesis study in *Salmonella* that showed no mutagenicity with or without metabolic activation.

11. A micronucleus mutagenesis assay study in mice that showed no genotoxicity.

12. A sister chromatid exchange mutagenesis study using CHO cells that was negative at dose levels 4 to 30 ug/mL without activation or 15 to 120 ug/mL with activation.

13. An unscheduled DNA synthesis (UDS) study that was negative for UDS in rat hepatocytes.

Additionally, a mouse oncogenicity study at dietary levels of 0, 20, 60, and 80 ppm for 21 months did not reveal any oncogenic effect for tebuconazole at any dose tested. Because the Maximum Tolerated Dose (MTD) was not reached in this study, the study was classified as supplementary. A followup mouse study at higher doses (0, 500, 1,500 ppm in the diet), with an MTD at 500 ppm, revealed statistically significant incidences of hepatocellular adenomas and carcinomas in males and carcinomas in females. The initial and followup studies, together with supplementary data submitted by Miles, Inc., were classified as core minimum.

The Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified tebuconazole as a Group C carcinogen (possible human carcinogen). This classification is based on the Agency's "Guidelines for Carcinogen Risk Assessment" published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations to estimate human dietary risk from tebuconazole residues. The decision supporting classification of tebuconazole as a possible carcinogen (Group C) rather than a probable carcinogen (Group B) was primarily based on the statistically significant increase in the incidence of hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in both sexes of NMRI mice both by positive trend and pairwise comparison at the HDT, and the structural correlation with at least six other related triazole pesticides that produce liver tumors.

The Reference Dose (RfD) is established at 0.01 mg/kg of body weight (bwt)/day, based on a no-observed-effect level (NOEL) of 1.00 mg/kg bwt/day and an uncertainty factor of 100. The NOEL is based on a 1-year dog feeding study that demonstrated lenticular and corneal opacity and hepatic toxicity as an endpoint effect. A chronic exposure analysis was performed using tolerance level residues and 100 percent crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. The Theoretical Maximum Residue Contribution (TMRC) from the current action is estimated at 0.000078 mg/kg bwt/day and utilizes 0.78% of the RfD for the general population of the 48 States. The TMRC for the most highly exposed subgroup, nonnursing infants (less than 1 year old), is estimated at 0.000097 mg/kg/day and utilizes less than 1% of the RfD.

The nature of the residue in barley, oats, and wheat is adequately understood. An adequate analytical method using high-performance liquid chromatography is available for enforcement purposes.

The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Tolerances for tebuconazole in or on animal commodities are not currently required.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the

requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number, [PP 9F3818/R2153] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Written objections and hearing requests, identified by the document control number, [PP 9F3818/R2153], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests can be sent directly to EPA at:

opp-docket@epamail.epa.gov.

A copy of electronic objections and hearing requests may be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.474, by revising the table therein, to read as follows:

§ 180.474 Tebuconazole (alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol); tolerances for residues.

* * * * *

Commodity	Parts per million
Bananas	0.05
Barley, forage	0.10
Barley, grain	0.05
Barley, hay	0.10
Barley, straw	0.10
Oat, forage	0.10
Oat, grain	0.05
Oat, hay	0.10
Oat, straw	0.10
Peanuts	0.1
Peanut, hulls	4.0
Wheat, forage	0.10
Wheat, grain	0.05
Wheat, hay	0.10
Wheat, straw	0.10

[FR Doc. 95–19528 Filed 8–8–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 0F3876/R2155; FRL–4967–8]

RIN 2070–AB78

Myclobutanil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide myclobutanil and a metabolite in or on the raw agricultural commodities almond nutmeat at 0.1 part per million (ppm) and almond hulls at 2.0 ppm, and increases the tolerances established for milk to 0.2 ppm and meat to 0.1 ppm, meat byproducts (except liver) to 0.2 ppm and liver to 1.0 ppm for cattle, goats, hogs, horses, and sheep. Rohm & Haas Co. requested in a petition submitted pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) the regulation to establish a maximum permissible level for residues of myclobutanil on almond nuts and almond hulls. EPA initiated the increased tolerances for milk, meat, meat byproducts, and liver based on the additional residues in or on almond nuts and almond hulls.

EFFECTIVE DATE: This regulation became effective on July 27, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0F3876/R2155], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of the objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number, [PP 0F3876/R2155]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of January 16, 1991 (56 FR 1631), which announced that the Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, had submitted pesticide petition (PP) 0F3876 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for the combined residues of the fungicide myclobutanil, [*alpha*-butyl-*alpha*-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile], and both the free and bound forms of its metabolite, *alpha*-(3-hydroxybutyl)-*alpha*-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile, in or on the raw agricultural commodities almond nuts at 0.1 ppm and almond hulls at 2.0 ppm.

There were no comments received in response to the notice of filing of the petition.

The data submitted in support of the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the tolerances include the following:

1. A 1-year dog feeding study using doses of 0, 10, 100, 400, and 1,600 ppm (equivalent to doses of 0, 0.34, 3.09, 14.28, and 54.22 milligrams/kilogram (mg/kg) body weight (bwt)/day in males and 0, 0.40, 3.83, 15.68, and 58.20 mg/kg bwt/day in females). The no-observed-effect (NOEL) is 100 ppm (3.09 mg/kg/day for males and 3.83 mg/kg/day for females) based upon hepatocellular hypertrophy, increases in liver weights, "ballooned" hepatocytes, and increases in alkaline phosphatase, SGPT and GGT, and possible slight hematological effects. The lowest-observed-effect level (LOEL) is 400 ppm (14.28 mg/kg/day for males and 15.68 mg/kg/day for females).

2. A 2-year chronic feeding/carcinogenicity study in rats using dietary concentrations of 0, 50, 200, and 800 ppm (equivalent to doses of 0, 2.49, 9.84 and 39.21 mg/kg bwt/day in males and 0, 3.23, 12.86, and 52.34 mg/kg bwt/day in females). The NOEL for chronic effects other than carcinogenicity is 2.49 mg/kg/day, and the LOEL is 9.84 mg/kg/day based on testicular atrophy in males. No other significant effects were observed in either sex at the stated dose levels over a 2-year period. In addition, no carcinogenic effects were observed in either sex at any of the dose levels tested. Based on the toxicological findings, the maximum tolerated dose (MTD) selected for testing (based on the 90-day feeding study) was not high enough to fully characterize the compound's carcinogenic potential.

The study was repeated at dose levels of 0 and 2,500 ppm (125 mg/kg/day) in the diet, which approaches the MTD, in order to characterize the carcinogenic potential. At 2,500 ppm, the observed effects included: decreases in absolute and relative testes weights, increases in the incidences of centrilobular to midzonal hepatocellular enlargement and vacuolation in the liver of both sexes, increases in bilateral aspermatogenesis in the testes, increases in the incidence of hypospermia and cellular debris in the epididymides, and increased incidence of arteritis/periarteritis in the testes. In this study, a NOEL could not be established because there were effects at the only dose level tested. Myclobutanil was not oncogenic when tested under the conditions of the study.

3. A 2-year carcinogenicity study in mice using dietary concentrations of 0, 20, 100, and 500 ppm (equivalent to 0, 2.7, 13.7, and 70.2 mg/kg/day in males and 0, 3.2, 16.5 and, 85.2 mg/kg/day in females). The NOEL for chronic effects other than carcinogenicity was 20 ppm (2.7 mg/kg/day in males and 3.2 mg/kg/day in females). The LOEL was 100 ppm (13.7 mg/kg/day in males and 16.5 mg/kg/day in females) based on a slight increase in liver mixed-function oxidase (MFO). Microscopic changes in the liver were evident in both sexes at 500 ppm (70.2 mg/kg/day in males and 85.2 mg/kg/day in females). There were no carcinogenic effects in either sex at any dose level tested. The highest selected dose was satisfactory for evaluating carcinogenic potential in male mice, but was lower than the MTD in females.

The above study was reevaluated since the increase in the MFO at 3 months in females was not considered to be significant enough to establish an LOEL. The LOEL was raised to 500 ppm (70.2 mg/kg/day for males and 85.2 mg/kg/day for females) based on increases in MFO in both sexes, increases in SGPT values in females and in absolute and relative liver weights in both sexes at 3 months, increased incidences and severity of centrilobular hepatocytic hypertrophy, Kupffer cell pigmentation, periportal punctate vacuolation and individual hepatocellular necrosis in males, and increased incidences of focal hepatocellular alteration and multifocal hepatocellular vacuolation in both sexes. The NOEL has been raised to 100 ppm (13.7 mg/kg/day for males and 16.5 mg/kg/day for females).

An 18-month study was conducted with female mice using a dose level of 2,000 ppm, which approaches the MTD, to evaluate the carcinogenic potential in female mice. In this study, a NOEL could not be established because there were effects at the only dose level tested. These effects included: decreases in body weight and body weight gain, increases in liver weights, hepatocellular hypertrophy, hepatocellular vacuolation, necrosis of single hypertrophied hepatocytes, yellow-brown pigment in the Kupffer cells and cytoplasmic eosinophilia and hypertrophy of the cells of the zona

fasciculata area of the adrenal cortex. Myclobutanil was not oncogenic when tested under the conditions of the study.

4. A rabbit developmental toxicity study at dosages of 0, 20, 60, and 200 mg/kg/day administered by oral gavage. The LOEL for maternal toxicity was 200 mg/kg/day, and the maternal toxicity NOEL was 60 mg/kg/day based on reduced body weight and body weight gain during the dosing period, clinical signs of toxicity, and possibly abortions. THE LOEL for developmental toxicity is 200 mg/kg/day and NOEL for developmental toxicity is 60 mg/kg/day based on increases in resorptions, decreases in litter size, and a decrease in the viability index.

5. A developmental toxicity study on rats treated with dosages of 0, 31.26, 93.77, 312.58 and 468.87 mg/kg/day. The maternal toxicity LOEL was 312.6 mg/kg/day and maternal toxicity NOEL was 93.8 mg/kg/day based on clinical signs of toxicity. The developmental toxicity LOEL was 312.6 mg/kg/day and the developmental toxicity NOEL was 93.8 mg/kg/day based on increased incidences of 14th rudimentary and 7th cervical ribs.

6. A two-generation rat reproduction study with dosage rates of 0, 50, 200, and 1,000 ppm (equivalent to 0, 2.5, 10 and 50 mg/kg/day). The parental (systemic) toxicity LOEL was 200 ppm (10 mg/kg/day) and the parental (systemic) toxicity NOEL was 50 ppm (2.5 mg/kg/day) based on hepatocellular hypertrophy and increases in liver weights. The reproductive toxicity LOEL was 1,000 ppm (50 mg/kg/day) and reproductive toxicity NOEL was 200 ppm (10 mg/kg/day) based on an increased incidence in the number of stillborns and atrophy of the testes and prostate. The developmental toxicity LOEL was 1,000 ppm (50 mg/kg/day) and the developmental toxicity NOEL was 200 ppm (10 mg/kg/day) based on a decrease in pup body weight gain during lactation.

7. A reverse mutation assay (Ames), point mutation in CHO/HGPRT cells, in vitro and in vivo (mouse) cytogenetic assays, unscheduled DNA synthesis and a dominant-lethal study in rats, all of which were negative for mutagenic effects.

The Reference Dose (RfD) based on the 2-year rat chronic feeding study (NOEL of 2.49 mg/kg bwt/day) and using a hundredfold uncertainty factor, is calculated to be 0.025 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from previously established tolerances and tolerances established here is 0.004153 mg/kg bwt/day for the general population and utilizes 16% of the RfD. The percentage of the RfD for the most highly exposed subgroup, nonnursing infants (less than 1 year old), is 98%. The TMRC was calculated based on the assumption that myclobutanil occurs at the maximum legal limit in all of the dietary commodities for which tolerances are proposed. Even with this probable large overestimate of exposure/risk, the TMRC is below the RfD for the population as a whole and for each of the 22 subgroups considered. Dietary risk from exposure to myclobutanil on almond nuts and hulls, including increases in the meat and milk tolerances because almond hulls are a feed item, contributes 7% of the RfD for the U.S. population and 40% of the RfD for the nonnursing infants less than 1-year old. Considering that the risk estimates are based on tolerance levels, the actual risk is probably lower.

The nature of the residues is adequately understood and adequate analytical methods, gas liquid chromatography using nitrogen/phosphorus and electron-capture detectors, are available for enforcement. Prior to its publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703)-305-5937.

There are currently no actions pending against the continued registration of this chemical. The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below. By way of public reminder, this notice also reiterates the registrant's responsibility under section 6(a)(2) of FIFRA, to submit additional factual information regarding adverse effects on the environment and to human health by these pesticides.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33 (i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 0F3876/R2155] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written objections and hearing requests, identified by the document control number [PP 0F3876/R2155], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-docket@epamail.epa.gov. A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objection and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.443, by amending paragraphs (a), (b), and (c) by revising the tables therein, to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond hulls	2.0
Almond nutmeat	0.1
Apples	0.5
Cherries (sweet and sour)	5.0
Cotton seed	0.02
Grapes	1.0
Stone fruits (except cherries)	2.0

(b) * * *

Commodity	Parts per million
Milk	0.2

(c) * * *

Commodity	Parts per million
Cattle, fat	0.05
Cattle, liver	1.0
Cattle, meat	0.1
Cattle, mbyp (except liver)	0.2
Eggs	0.02
Goats, fat	0.05
Goats, liver	1.0
Goats, meat	0.1
Goats, mbyp (except liver)	0.2
Hogs, fat	0.05
Hogs, liver	1.0
Hogs, meat	0.1
Hogs, mbyp (except liver)	0.2
Horses, fat	0.05
Horses, liver	1.0
Horses, meat	0.1
Horses, mbyp (except liver)	0.2
Poultry, fat	0.02
Poultry, meat	0.02
Poultry, mbyp	0.02
Sheep, fat	0.05
Sheep, liver	1.0
Sheep, meat	0.1
Sheep, mbyp (except liver)	0.2

[FR Doc. 95–19530 Filed 8–8–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 180 and 185

[OPP–300391A; FRL–4967–5]

RIN 2070–AB78

Clethodim; Pesticide Tolerance and Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an import tolerance and a food additive regulation, respectively, for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the raw agricultural commodity potatoes and the food additive commodities potato flakes and granules. EPA is issuing this rule on its own initiative pursuant to a project to harmonize certain tolerances and food additive regulations with those established by the Canadian government.

EFFECTIVE DATE: This regulation becomes effective August 9, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300391A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file

format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300391A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 259, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 23, 1995 (60 FR 32643), EPA issued a proposed rule giving notice that on its own inititative and pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a, it was issuing a proposal to amend 40 CFR 180.458 by establishing an import tolerance for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on the raw agricultural commodity potatoes at 0.5 part per million (ppm); and to add new § 185.1075 (40 CFR 185.1075) by establishing a food additive regulation for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on the food additive commodity potato granules and potato flakes at 1 part per million (ppm). Clethodim residues on potatoes grown in Canada and imported into the United States have been identified as a Canadian-United States Trade Agreement (CUSTA) irritant. EPA has reviewed Canadian crop field trial residue data and determined that they are adequate to support an import tolerance.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance and food additive regulation are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [OPP-300391A] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [OPP-300391A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov.

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 1995.

Daniel M. Barolo,
Director, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 185 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By amending § 180.458 in the table therein by adding and alphabetically inserting the commodity potatoes, to read as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Potatoes	0.5
* * * * *	

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By adding new § 185.1075, to read as follows:

§ 185.1075 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one).

Food additive tolerances are established for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following processed foods:

Food	Parts per million
Potato flakes[1]	1.0
Potato granules[1]	1.0

[1]There are no U.S. registrations as of August 9, 1995.

[FR Doc. 95–19529 Filed 8–8–95; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 11

Removal of Committee Management

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule; removal of interim rule.

SUMMARY: The Department of Health and Human Services is amending the Code of Federal Regulations (CFR) by removing unnecessary and obsolete regulations. In accordance with the President's regulatory reinvention initiative the Department has determined that the regulations are no longer needed.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT:
Ellen W. Washington, Department Committee Management Officer, at (202) 690–8113.

SUPPLEMENTARY INFORMATION: In a memorandum dated March 4, 1995, subject "Regulatory Reinvention Initiative" the President directed heads of departments and agencies to focus on four steps which are an integral part of the ongoing Regulatory Reform Initiative. The Department has reviewed this regulation and identified it for removal by this document as obsolete and unnecessary. The regulation being removed is no longer necessary to administer the program.

Assessment of Direct Effect

The Department has determined that removal of the regulations will have no substantial direct effect.

List of Subjects in 45 CFR Part 11

Committee management.

Accordingly, under the authority of 5 U.S.C. Sec. 301, subtitle A of title 45 of the Code of Federal Regulations is amended by removing part 11.

Dated: August 3, 1995.

Eugene Kinlow,
Deputy Assistant Secretary for Personnel Administration.

[FR Doc. 95–19643 Filed 8–8–95; 8:45 am]
BILLING CODE 4150-04-M

Administration for Children and Families

45 CFR Part 1355

RIN 0979–AB58

Title IV–B and Title IV–E of the Social Security Act: Data Collection for Foster Care and Adoption

AGENCY: Administration on Children, Youth and Families (ACYF) Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is adding a financial data element to the Appendices of the regulation for data collection for foster care and adoption. In addition, we are adding the Office of Management and Budget's (OMB) control number for the data collection section of the regulation. All States that administer State plans under title IV–B and IV–E of the Social Security Act are subject to this addition to the Appendices of the regulation.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT:
Daniel H. Lewis, Deputy Associate Commissioner, Children's Bureau, Administration on Children, Youth and Families, (202) 205–8618.

SUPPLEMENTARY INFORMATION:

I. Background

The Administration on Children, Youth and Families published a final rule on December 22, 1993 (58 FR 67912) that implements the requirements of section 479 of the Social Security Act. This section requires the Secretary to publish regulations that implement a system for the collection of adoption and foster care data in the United States. All States that administer State plans under titles IV–B and IV–E of the Society Security Act are subject to this regulation.

II. General

This regulation, 45 CFR part 1355, generally known as the Adoption and Foster Care Analysis and Reporting System (AFCARS), is designed to collect uniform, reliable information on children who are under the responsibility of the State title IV–B/IV–E agency for placement and care. The collection of adoption and foster care data is mandated by section 479 of the Social Security Act. In order to adequately meet the intent of the law and the requirements of this regulation, the States' data collection systems for AFCARS must be computerized.

The Department of Health and Human Services (DHHS) will use this information to respond to Congressional requests for current data on children in foster care or who have been adopted, and to respond to questions and requests from other Departments and agencies, including the General Accounting Office, the Office of Management and Budget (OMB), the DHHS Office of Inspector General, national advocacy organizations, States and other interested organizations.

III. Program Description

Title IV–B, Subpart 1, of the Social Security Act (the Act), the Child Welfare Services program, is a formula grant program. Each State receives grants during the year representing its allotment. The grants provide States with Federal support for a wide variety of State child welfare services including: Preplacement preventive services to strengthen families and avoid placement of children; services to prevent abuse and neglect; foster care and adoption services; and certain protections for children in foster care. Title IV–B, Subpart 2, Family Preservation and Support Services, is an entitlement program which encourages and enables each State to develop and establish or expand, and to operate a program of family preservation services and community based family support services. Funds under both subparts of title IV–B can be used to provide services regardless of the income of the families and children who are in need of such services.

Title IV–E of the Act is an entitlement program which authorizes Federal financial participation (FFP) in the costs of State foster care maintenance and adoption assistance payments. Federal matching of State foster care maintenance payments is available for children in foster care who meet certain eligibility criteria that are based, in part, on the child's eligibility under the Aid to Families With Dependent Children (AFDC) program. The adotpion assistance program under title IV–E is designed to assist States in placing "special needs" children with adoptive families through the provision of an adoption assistance payment. In order to be eligible for this program, a child must be eligible for AFDC, title IV–E foster care or Supplemental Security Income for the Blind and Disabled (SSI) and must meet the statutory definition of "a child with special needs" according to section 473(c) of the Act. Title IV–E of the Act is the major single source of Federal support for foster care and adoption assistance payments. However, over half the funds for adoption and foster care and half the children are supported by State and local governments and private sector.

According to State agency information gathered by the American Public Welfare Association (APWA) under the Voluntary Cooperative Information System (VICS), there were approximately 444,000 children in foster care on the last day of 1993.

In 1990, the most recent year for which data have been analyzed, approximately 407,000 children were in foster care. Of these children, approximately 69,000 had a plan for adoption and approximately 20,000 had parental rights terminated or relinquished and were waiting for adoptive homes.

IV. Legislation Establishing New Data Collection Requirements

Section 9943 of the Omnibus Budget Reconciliation Act (OBRA) of 1986 (Pub. L. 99–509) amended title IV–E of the Social Security Act by adding section 479. This section directs the Secretary to promulgate regulations for the implementation of a system to collect data relating to adoption and foster care in the United States. On December 22, 1993, the Department published the AFCARS final rule which requires that State agencies administering or supervising the administration of titles IV–B and IV–E of the Act implement data collection systems and report semi-annually on data elements set forth in the final rule.

Page 67917 of the preamble to the AFCARS final rule, announced the Department's intention to add a foster care financial data element to the appendices of the AFCARS regulation. This data element will indicate the total monthly amount of foster care benefit paid on behalf of each child in foster care. At that time the Department urged interested parties to comment on this intention so that expressed concerns and comments could be taken into account in the development of the data element. Two letters (both from State agencies) were received in response to the final rule's request for comments on this matter.

States should begin submitting the monthly foster care payment information with their submittal for the fourth AFCARS reporting period, April 1, 1996–September 30, 1996.

V. Discussion of Comments and the Development's Response Part 1355—General

Section 1355.40 Foster care and adoption data collection. The letters from the State agencies related primarily to the usefulness of the financial information and how States are to report it.

Comment: One comment was that the request for such information appears duplicative in light of the information submitted by the States in accordance with the ACYF–PI–92–11, issued on August 21, 1992.

Response: Although the data is similar, the Program Instruction requires States submittal of quarterly financial data with a submitted monthly average number of children for the quarter. The AFCARS financial data element will, for the first time, allow for the analysis of a payment per child in foster care, unlike the current average dollars per child based on an average monthly number of children. The result is the opportunity to develop demographic profiles of children and the specific payments each receives. This information can result in more comprehensive cost projections for children meeting particular demographic profiles during their foster care episodes.

Comment: Given that AFCARS' reporting frequency is semi-annual, how would monthly amounts be reflected?

Response: Monthly amounts would be reflected in the most recent full monthly payment made on behalf of the child during the report period.

Comment: Why is this information necessary on a per child basis, since the information can be calculated using the Federal Medical Assistance Percentage (FMAP) rate?

Response: The information is being requested on title IV–E and non IV–E children; therefore the FMAP is not always applicable. The information on a per child basis can be useful in a number of ways, such as:

- Examining costs per placement setting type; and
- Examining costs per child based on a child's demographic profile, more specifically, number of disabilities versus costs, age vs. costs, etc.

The understanding of costs as identified above are necessary for accurate cost projections.

Comment: Did you intend that this question would include the administrative and training dollars expended?

Response: No, only the maintenance dollars.

Comment: Is the data necessary for non-title IV–E children?

Response: Yes, all children as defined by the AFCARS reporting population.

Comment: For which classes of title IV–E children will the information be required?

Response: The information is required for all children in foster care (title IV–E and non IV–E) which meet the AFCARS reporting population definition.

Purpose of the Amendment to § 1355.40

Page 67924 of the preamble of the AFCARS final rule in the "Paperwork Reduction Act" section, identifies the need for and approval of a control number by OMB. Paragraphs (a) and (b) of 45 CFR 1355.40 of the regulation, contain information collection requirements for which an OMB approval number is required. In addition, OMB requires the approval number to be displayed in the regulation. OMB approved and assigned a number to the information collection requirements in § 1355.40 on August 22, 1994. This amendment adds that number at the end of the section.

VI. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule which adds a financial data element to the appendices and additionally publishes the required OMB control number is consistent with these priorities and principles. As assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. ch 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule, with a "significant economic impact on a substantial number of small entities" an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Regulatory Flexibility Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of this rule is on the States which are not "small entities" within the meaning of the Act. For this reason, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed or final rule. The addition of a financial data element in several of the Appendices and the OMB control number will not make an appreciable change in the burden to the States. Therefore no submission to OMB is required.

List of Subjects in 45 CFR CFR Part 1355

Adoption and foster care, Child welfare, Data collection, Definitions, Grant Programs—Social Programs.

(Catalog of Federal Domestic Assistance Program Nos. 93.658, Foster Care Maintenance, 93.659, Adoption Assistance and 93.645, Child Welfare Services-State Grants)

Dated: July 18, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, 45 CFR part 1355 is amended as follows:

1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 1302.

2. Section 1355.40 is amended by adding the OMB Control Number at the end of the section to read as follows:

§ 1355.40 Foster care and adoption data collection.

* * * * *

(Information collection requirements contained in paragraphs (a) and (b) of this section were approved on August 22, 1994, by the Office of Management and Budget under Control Number 0980–0267).

Appendix A—[Amended]

3. Appendix A to Part 1355, Sections I and II are amended by adding elements XII to each section to read as follows:

Section I—Foster Care Data Elements

* * * * *

XIII. Amount of the monthly foster care payment (regardless of sources).

* * * * *

Section II—Definition of and Instructions for Foster Care Data Elements

* * * * *

XII. Amount of the monthly foster care payment (regardless of sources)—Enter the monthly payment paid on behalf of the child regardless of source (i.e., Federal, State, county, municipality, tribal, and private payments). If title IV–E is paid on behalf of the child the amount indicated should be the total computable amount. If the payment made on behalf of the child is not the same each month, indicate the amount of the last full monthly payment made during the reporting period. If no monthly payment has been made during the period, enter all zeros.

Appendix C—[Amended]

4. In Appendix C to part 1355, under Section number 4., paragraph (3) is revised to read as follows:

4. Personal Computer to Personal Computer * * *

(3) All records must be a fixed length. The Foster Care Detailed Data Elements Record is 150 characters long and the Adoption Detailed Data Elements Record is 72 characters long. The Foster Care Summary Data Elements Record and the Adoption Summary Data Elements Record are each 172 characters long.

* * * * *

Appendix D—[Amended]

5. In Appendix D to part 1355, Section A, Foster Care, subsection 1., is amended by revising paragraph a. and adding to paragraph c. the following elements at the end of the table and revising the number of "Total Characters" to read as follows:

1. Foster Care Semi-Annual Detailed Data Elements Record

a. The record will consist of 66 data elements.

* * * * *

c. * * *

Element No.	Appendix A data element	Data element description	No. of numeric characters
* * * * * * *			
66	XII	Amount of monthly foster care payment (regardless of source).	5
Total characters			150

* * * * *

Appendix E—[Amended]

6. In Appendix E to part 1355, in Section A., subsection 3., paragraph b.(2) is amended by adding the following elements to the end of the table to read as follows:

3. Missing Data Standards

* * * * *

b. * * *

(2) Less Than Ten Percent Missing Data

* * *

Element No.	Element description
	* * * * *
66	Amount of monthly foster care payment (regardless of source).
	* * * * *

[FR Doc. 95–19679 Filed 8–8–95; 8:45 am]

BILLING CODE 4184–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803, 1804, 1805, 1808, 1809, 1810, 1812, 1814, 1815, 1819, 1822, 1825, 1827, 1829, 1831, 1833, 1835, 1837, 1839, 1846, 1849, 1850, 1852, 1853 and 1870

[NASA FAR Supplement Directive 89–19]

RIN 2700–AB84

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal and administrative matters, such as the NASA FAR Supplement rewrite and reassignment of duties in the Office of Procurement.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 512–1800. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Rewrite of NASA FAR Supplement

NASA is reviewing and rewriting 48 CFR chapter 18, the NASA FAR Supplement, in its entirety in order to implement recommendations of the National Performance Review. During this review, NASA is eliminating reporting requirements and making other changes in order to reduce and simplify the regulation. This rule is part of the effort to simplify NASA's regulations.

Summary of Changes

Part 1801—Federal Acquisition Regulations System—Unnecessary words and sections in subparts 1801.1 to 1801.4 are eliminated. Section 1831.101 on deviations from cost principles is moved to 1804.471(c)

Part 1810—Specifications, Standards, and Other Purchase Descriptions—Unnecessary words and duplicative policy are removed.

Part 1814—Sealed Bidding—Unnecessary words, sentences and section are eliminated.

Subpart 1815.1—General Requirements for Negotiation—Subpart is eliminated because it is unnecessary guidance.

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations—Unnecessary paragraphs, sentence and words are eliminated.

Subpart 1815.5—Unsolicited Proposals—Section 1815.502 is revised to emphasize that NASA encourages unsolicited proposals that are unique and innovative. Sections 1815.503, 1815.504–70, and 1815.506 are revised to remove unnecessary words.

Subpart 1815.6—Source Selection—Unnecessary paragraphs, sentence and words are eliminated.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes—Unnecessary words are eliminated.

Part 1827—Patents, Data, and Copyrights—Unnecessary words are removed.

Part 1833—Protests, Disputes, and Appeals—Paragraphs 1833.104(a) and (d) are revised in order to correct references to FAR sections.

Part 1835—Research and Development Contracting—Unnecessary words are removed. The following paragraphs and sections are removed because they are covered elsewhere: 1835.003(b) (covered by FAR 35.003(b)), 1835.003–70 (covered by 1835.070(a) and 1852.235–70), 1835.003–71(a) (covered by 1827.373(b)), 1835.003–71(b) (covered by 1835.070(c)), and 1835.071 (covered by 1846.270(a)).

Part 1837—Service Contracting—Section 1837.000 is eliminated because it is unnecessary.

Part 1839—Acquisition of Information Resources—Unnecessary words are removed. Revises thresholds based on current delegations from GSA.

Part 1846—Quality Assurance—Unnecessary words are removed. Section 1846.670–2(a) and paragraph (a) of the clause at 1852.246–72 are revised to clarify that the clause applies only to deliveries to the Government.

Part 1849—Termination—Dollar thresholds in 1849.111–71 are revised in order to eliminate the requirement for a Board to review and approve a Termination Contracting Officer's actions involving amounts up to $1 million and, under complete terminations, fee up to $100,000. 1849.102–70, 1849.111–72, and 1849.111–74 are clarified. In order to conform to FAR 49.110(a), detailed instructions in 1849.603–70(d)(1) and (2) are replaced with references to FAR 15.808(a).

Part 1852—Solicitation Provisions and Contract Clauses—A clause is revised as discussed under part 1846.

Part 1853—Forms—Unnecessary words in 1853.101, 1853.103, 1853.104, and 1853.105 are eliminated. The requirement in 1853.105 to obtain approval from NASA Headquarters prior to using computer generated forms is eliminated. Sections 1853.204, 1853.216–70 and 1853.242–70 through 1853.242–72 are revised to eliminate redundant words. A reference in 1853.249(b) is corrected.

Subpart 1870.1—NASA Acquisition of Investigations System—Unnecessary words are removed.

Subpart 1870.2—NASA Research Announcement System—Unnecessary words are removed. In paragraph 16 about canceling NRA's, the reference to the Commerce Business Daily (CBD) is removed because the CBD does not publish cancellation notices.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1801, 1803, 1804, 1805, 1808, 1809, 1810, 1812, 1814, 1815, 1819, 1822, 1825, 1827, 1829, 1831, 1833, 1835, 1837, 1839, 1846, 1849, 1850, 1852, 1853 and 1870

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1803, 1804, 1805, 1808, 1809, 1810, 1812, 1814, 1815, 1819, 1822, 1825, 1827, 1829, 1831, 1833, 1835, 1837, 1839, 1846, 1849, 1850, 1852, 1853 and 1870 are amended as follows.

1. The authority citation for 48 CFR parts 1801, 1803, 1804, 1805, 1808, 1809, 1810, 1812, 1814, 1815, 1819, 1822, 1825, 1827, 1829, 1831, 1833, 1835, 1837, 1839, 1846, 1849, 1850, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1801.000 is revised to read as follows:

1801.000 Scope of part.

This part sets forth general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation (FAR) Supplement.

Subpart 1801.1—Purpose, Authority, Issuance

1801.101 [Removed]

3. Section 1801.101 is removed.

4. Paragraphs (a) and (b) of section 1801.102 are revised to read as follows:

1801.102 Authority.

* * * * *

(a) The National Aeronautics and Space Act of 1958 (Pub. L. 85–568; 42 U.S.C. 2451 et seq.).

(b) 10 U.S.C. chapter 137.

* * * * *

5. Paragraph (a)(3) of section 1801.104–1 is revised to read as follows:

1801.104–1 Publication and code arrangement.

(a) * * *

(3) A separate loose-leaf edition.

* * * * *

6. Section 1801.104–2 is revised to read as follows:

1801.104–2 Arrangement of regulations.

(a) Unless otherwise stated, cross references are to parts or subdivisions of the regulations in this chapter.

(b) The regulations in this chapter may be referred to as the NASA FAR Supplement or the NFS.

(c) A NFS "version" is the basic loose-leaf edition NFS with all NFS Directive (NFSD) change pages filed up to and including the NFSD number that corresponds to the "version" number. For example, for the 1989 edition of the NFS, Version 89.3 consists of pages from NFSD 89–0 (basic NFS), with change pages filed from NFSD's 89–1, 89–2, and 89–3.

7. Section 1801.104–3 is revised to read as follows:

1801.104–3 Copies.

Subscriptions to the following publications may be obtained by writing to Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, or by calling (202) 512–1800. Telephone orders may be charged to Visa, Mastercard, or a GPO Deposit Account. A subscription consists of the basic edition, plus all changes issued for an indefinite period. The prices and periods of subscriptions are set by GPO.

NASA FAR SUPPLEMENT (NFS)
GPO Subscription (Subscript.) Stock No. 933–003–00000–1

FEDERAL ACQUISITION REGULATION (FAR)
GPO Subscript. Stock No. 922–006–00000–8 (Note: The FAR is not a NASA publication.)

Public libraries that possess title 48, Code of Federal Regulations (CFR) are also a source of information, but this source is updated only once each year.

8. Section 1801.104–370 is revised to read as follows:

1801.104–370 Internal dissemination.

The Office of Procurement, NASA Headquarters (Code HK), distributes the Federal Acquisition Regulation (FAR), Federal Acquisition Regulation Circulars (FAC), NASA FAR Supplement (NFS), NFS Directives (NFSD), Procurement Notices (PN), and Procurement Information Circulars (PIC) directly to NASA Headquarters offices and to installation distribution points. Mrs. Cynthia O'Bryant (202–358–1248) is the contact point for Headquarters personnel and the installation distribution points. NASA center personnel may be placed on the distribution list or may obtain extra copies by contacting the designated distribution point for their installation. (Do not order these documents on a NASA Form 2 from the Goddard Space Flight Center.)

9. Section 1801.105 is revised to read as follows:

1801.105 OMB approval under the Paperwork Reduction Act.

(a) *NASA FAR Supplement requirements.* The following OMB control numbers apply:

NASA FAR Supplement segment	OMB control No.
1815.406–70(b)(5)(iii)	2700–0082
1815.608–72	2700–0080
1819	2700–0073
1819.72	2700–0078
1827	2700–0052
1843	2700–0054
NF 533	2700–0003
NF 667	2700–0004
NF 1018	2700–0017

(b) *Solicitations and contracts.* Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (a) of this section, yet require information collection or recordkeeping. The following OMB control numbers apply to these requirements: 2700–0086 (small purchases), 2700–0087 (solicitations that may result in bids or proposals not exceeding $500,000), 2700–0085 (solicitations that may result in bids or proposals exceeding $500,000), 2700–0088 (contracts not exceeding $500,000), and 2700–0089 (contracts not exceeding $500,000). These OMB control numbers, as applicable, shall be displayed in the upper right hand corner of the cover page of each solicitation/contract. Overprinting is authorized by 1853.104.

10. Subpart 1801.2 is revised to read as follows:

Subpart	1801.2 Administration
1801.270	Amendment of regulation.
1801.270–1	Revisions.
1801.270–2	Procurement notices.
1801.270–3	Effective date.
1801.270–4	Numbering.
1801.271	NASA procedures for FAR and NFS changes.
1801.272	Procurement information circulars.

Subpart 1801.2—Administration

1801.270 Amendment of regulation.

1801.270–1 Revisions.

The regulations in this chapter are amended by publishing amendments in the Federal Register and by issuing NFSD's containing loose-leaf replacement pages revising various segments of it (also see 1801.270–2). Each replacement page bears the NFSD number and page number at the top. A vertical bar at the side of a line indicates that a change has been made within that line.

1801.270–2 Procurement notices.

(a) The regulations in this chapter are amended by publishing amendments in the Federal Register and by issuing Procurement Notices (PN's) when it is necessary or advisable to promulgate as rapidly as possible selected material revising this regulation in advance of an NFSD.

(b) Unless otherwise indicated, each PN remains in effect until the effective date of the subsequent NFSD incorporating the PN or until specifically canceled.

1801.270–3 Effective date.

(a) Compliance with a revision to the regulations in this chapter shall be in accordance with the NFSD or PN containing the revision. Procurements initiated after receipt of new or revised clauses should, to the maximum practicable extent, include such clauses.

(b) Unless otherwise stated, solicitations that have been issued, and bilateral agreements for which negotiations have been completed, before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the procurement.

1801.270–4 Numbering.

NFSD's and PN's are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NASA FAR Supplement.

1801.271 NASA procedures for FAR and NFS changes.

(a) Informal suggestions for improving the regulations in this chapter, including correction of errors, should be directed to the Contract Management Division (Code HK).

(b)(1) Formal requests for changes to the FAR or the NFS should be written and contain,

(i) A description of the problem the suggested revision is designed to cure,

(ii) The revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language,

(iii) The consequences of making no change and the benefits to be expected from a change, and

(iv) Any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes should be sent to the Associate Administrator for Procurement (Code HK). Requests from Headquarters offices should originate at the division level or higher, while installation requests should be signed at the procurement officer or higher level.

1801.272 Procurement Information Circulars.

(a) The Procurement Information Circular (PIC) is used for internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. The Contract Management Division (Code HK) is responsible for issuing PIC's.

(b) PIC's are numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year. To ensure periodic review, PIC's normally will automatically expire on December 31 of the year of issuance.

Subpart 1801.3—Agency Acquisition Regulations

11. Paragraphs (b) introductory text, (b)(1) introductory text, and (b)(2)(i) of section 1801.301 are revised to read as follows:

1801.301 Policy.

* * * * *

(b) All procurement policies, regulations, procedures, and forms requiring publication for public comment in accordance with 41 U.S.C. 418b. This statute requires publication where there will be a significant effect beyond the internal operating procedures of the agency or a significant cost or administrative impact on contractors or offerors.

(1) The statute does not define "significant effect beyond the internal operating procedures" or "significant cost or administrative impact." Examples of policies or procedures that fall in either of these categories are given in paragraphs (b)(1) (i) through (iv) of this section.

* * * * *

(2) * * *

(i) Security procedures for identifying and badging contractor personnel to obtain access at a NASA installation.

* * * * *

12. Section 1801.303 is revised to read as follows:

1801.303 Publication and codification.

Part, subpart, and section numbers 70 through 89 are reserved for NASA FAR Supplement use.

Subpart 1801.4—Deviation from the FAR

13. Section 1801.400 is revised to read as follows:

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the NASA FAR Supplement and the FAR.

1801.401, 1801.402, 1801.403, 1801.404, 1801.405, 1801.470 [Removed]

14. Sections 1801.401, 1801.402, 1801.403, 1801.404, 1801.405, and 1801.470 are removed.

1801.471 [Amended]

15. and 16. In section 1801.471, paragraphs (a) and (b)(2) are revised and paragraph (c) is added to read as follows:

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the FAR or the regulations in this chapter shall be:

(1) Submitted to the Director, Program Operations Division, Office of Procurement, NASA Headquarters (Code HS); and

(2) Signed by the procurement officer.

(b) * * *

(2) A full description of the deviation, the circumstances in which it will be used, and the specific contract action(s) to which it applies;

* * * * *

(c) Requests for individual deviations from FAR cost principles under FAR 31.101 should provide the following information:

(1) The name and phone number of the contracting officer;

(2) A copy of the contractor's request for cost allowance;

(3) The rationale for granting the deviation and supporting information, including the benefit to the Government;

(4) The dollar amount involved; and

(5) Any other information considered relevant to the request.

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1803.104–11 [Amended]

17. In paragraphs (b) and (c) of section 1803.104–11, "(Attn: Code HP)" is revised to read "(Attn: Code HS)".

1803.303 [Amended]

18. In paragraph (a) introductory text of section 1803.303, "(Code HP)" is revised to read "(Code HS)".

19. In paragraph (c) of section 1803.303, "(Code HP)" is revised to read "(Code HS)", and "Code HP" is revised to read "Code HS".

1803.806 [Amended]

20. In section 1803.806, "(Code HP)" is revised to read "(Code HK)".

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1808.6—Acquisition from Federal Prison Industries, Inc.

1808.605 [Amended]

21. In paragraph (c) of section 1808.605, "(Code HP)" is revised to read "(Code HS)".

PART 1809—CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

1809.104–70 [Removed]

22. Section 1809.104–70 is removed.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.404 [Amended]

23. In paragraphs (a) and (c) of section 1809.404, "Code HP" is revised to read "Code HS" in each occurrence.

1809.405 [Amended]

24. In section 1809.405, "(Code HP)" is revised to read "(Code HS)".

1809.405–1 [Amended]

25. In paragraph (b) of section 1809.405–1, "(Code HP)" is revised to read "(Code HS)".

1809.405–2 [Amended]

26. In section 1809.405–2, "(Code HP)" is revised to read "(Code HS)".

1809.406–3 [Amended]

27. In section 1809.406–3, "(Code HP)" is revised to read "(Code HS)".

1809.407–3 [Amended]

28. In section 1809.407–3, "(Code HP)" is revised to read "(Code HS)".

1809.408 [Amended]

29. In paragraph (d) of section 1809.408, "(Attn: Code HP)" is revised to read "(Attn: Code HS)".

30. In paragraph (e) of section 1809.408, "(Code HP)" is revised to read "(Code HS)".

1809.470–1 [Amended]

31. In the introductory text of section 1809.470–1, "(Code HP)" is revised to read "(Code HS)".

1809.470–3 [Amended]

32. In section 1809.470–3, "(Code HP)" is revised to read "(Code HS)".

33. Part 1810 is revised to read as follows:

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

1810.001 Definitions.
1810.002 Policy.
1810.002–70 NASA policy.
1810.002–71 Performance-based contracting.
1810.004 Selecting specifications or descriptions for use.
1810.004–70 Additional requirements.
1810.004–71 Brand-name-or-equal purchase description.
1810.007 Deviations.
1810.008 Identification and availability of specifications.
1810.008–70 Brand-name-or-equal awards.
1810.011 Solicitation provisions and contract clauses.
1810.011–70 NASA solicitation provisions and contract clauses.

Authority: 42 U.S.C. 2473(c)(1).

1810.001 Definitions.

Brand-name product means a commercial product described by brand name and make or model number or other nomenclature by which it is offered for sale to the public by the manufacturer, producer, or distributor.

1810.002 Policy.

Implementation of the Metric Conversion Act of 1975, as amended, and FAR 10.002(c), shall be in accordance with the policy section of NMI 8010.2, Use of the Metric System of Measurements in NASA Programs.

1810.002–70 NASA policy.

Whenever a specification is deemed inadequate, the contracting officer shall initiate action to recommend that the activity responsible for the specification amend or revise it to obviate the necessity for repeated departures from the specification.

1810.002–71 Performance-based contracting.

Use of performance-based specifications, where feasible, is the preferred method for establishing contract requirements. Requiring activities shall, to the maximum extent practicable, use performance-based specifications, purchase descriptions and statements of work to give contractors freedom to innovate and economize, and to hold contractors accountable for the end results.

1810.004 Selecting specifications or descriptions for use.

(a) As required by FAR 10.004(e), contracts will include appropriate preservation, packaging, packing, and marking requirements. The services of packaging technicians shall be used to—

(1) Develop preservation, packaging, packing, and marking requirements; and

(2) Assist in evaluating contractors' packaging, packing, and marking cost estimates or charges.

(b) Unrealistic preservation, packaging, packing, and marking requirements should be reported and changes recommended to the activity originating the requirement and to the contracting officer.

1810.004–70 Additional requirements.

Many specifications cover several grades or types and provide for options in methods of inspection. When such specifications are used, the solicitation shall state specifically the grade, type, or method of inspection on which offers are to be based.

1810.004–71 Brand-name-or-equal purchase description.

(a) Purchase descriptions containing references to one or more brand-name products followed by "or equal" may be used only when authorized by FAR 10.004(b)(3) and in accordance with this part 1810 (see 1810.008–70, 1810.011, and 1852.210–70).

(b) "Or equal" should not be added if it is determined under paragraph (a) of this section that only a particular product meets the essential requirements of the Government (e.g., when the required supplies can be obtained only from one source (see FAR 6.302–1)).

(c) To the extent feasible, all acceptable brand-name products should be referenced. If "brand-name-or-equal" is used, offerors must be given the opportunity to offer products other than those referenced by brand name if those products will meet the needs of the Government in essentially the same manner.

(d) "Brand-name-or-equal" purchase descriptions should set forth the salient physical, functional, or other characteristics essential to the needs of the Government. Purchase descriptions should contain the following characteristics, in addition to those at FAR 10.004(b)(1), to the extent available, and include other information necessary to describe the item:

(1) Complete common generic identification of the item.

(2) Model, make, or catalog number for each brand-name product, and identity of the commercial catalog in which it appears.

(3) Name of manufacturer, producer, or distributor of each brand-name product referenced (and address if company is not well known).

(e) When it is needed to describe the item required, a commercial catalog

description, or pertinent extracts, may be used if the description is identified in the solicitation as being that of the manufacturer, producer, or distributor. The contracting officer shall ensure that a copy of any catalog referenced (except parts catalogs) is available on request for review by offerors at the contracting office.

(f) Offerors offering brand-name products shall not be required to furnish samples; however, solicitations may require the submission of samples from offerors proposing "or equal" products.

(g) Proposals offering products differing from brand-name products referenced in a "brand-name-or-equal" purchase description shall be considered for award if the contracting officer determines under the provision at 1852.210–70 that the offered products meet the salient characteristics required by the solicitation. Offers shall not be rejected because of minor differences in design, construction, or features that do not affect the suitability of the products for their intended use.

(h) Except as provided in paragraph (i)(1) of this section, when a "brand-name-or-equal" purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation for completion by the offeror:

Offering:

_____

Manufacturer's Name

_____

Brand No.

(i)(1) Where components of an end item are described in the solicitation by a "brand-name-or-equal" purchase description and the contracting officer determines that applying the provision at 1852.210–70 to them would be impracticable, the requirements of paragraph (h) of this section shall not apply. In such cases, if the provision is included in the solicitation for other reasons, a statement substantially as follows shall be included:

The provision entitled Brand Name or Equal does not apply to the following components:

(List the components to which the provision does not apply.)

(2) If the contracting officer determines that the provision at 1852.210–70 should apply only to certain components, the requirements of paragraph (h) of this section shall apply to them, and a statement substantially as follows shall be included:

The provision entitled Brand Name or Equal applies to the following components:

(List the components to which the provision applies.)

(j) The policies and procedures prescribed in paragraphs (a) through (i) of this section apply to sealed-bid and negotiated procurements. If use of the provision is not practicable (as may be the case, for example, in exigency purchases), suppliers shall be informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that they are equal in all significant and material respects to the products referenced.

1810.007 Deviations.

If an exception or deviation from a Federal or military specification is required—

(a) The contracting officer shall, before issuing the solicitation, submit a fully documented and justified request for the deviation to the procurement officer; and

(b) The procurement officer shall comply with FAR 10.007(a).

1810.008 Identification and availability of specifications.

Each solicitation shall include the applicable specifications, standards, plans, drawings, and other pertinent documents, or shall state where they can be obtained or examined.

1810.008–70 Brand-name-or-equal awards.

Award documents shall identify or incorporate by reference an identification of the specific products the contractor is to furnish. This identification shall include any brand name and make or model number, descriptive material, and any modifications of brand-name products specified in the solicitation. Included in this requirement are those instances in which (a) the description of the end item contains "brand-name-or-equal" purchase descriptions of components or of accessories related to the end item and (b) the solicitation includes the provision at 1852.210–70 as applicable to such components or accessories (see 1810.004–70(i)).

1810.011 Solicitation provisions and contract clauses.

1810.011–70 NASA solicitation provisions and contract clauses.

(a) When a "brand-name-or-equal" purchase description is used, the contracting officer shall insert in the solicitation the provision at 1852.210–70, Brand Name or Equal.

(b) The contracting officer shall insert the provision at 1852.210–71, Descriptive Literature for Used Material, in solicitations containing FAR provision 52.210–6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property. Insert the information needed to make a determination that the items to be furnished can reasonably be expected to conform to the requirements of the solicitation.

(c) The contracting officer may insert a clause substantially as stated in 1852.210–72, Supplies and/or Services to be Furnished, in all solicitations and contracts to indicate the items to be delivered. Insert the item number, description of the supplies (see FAR 2.101 for definition) and/or services to be furnished, quantities to be furnished, unit and unit price (if applicable), and total dollar amount. The column headings may be modified for what is being acquired and the type of contract.

(d) The contracting officer shall insert a clause substantially as stated at 1852.210–75, Packaging and Marking, in solicitations and contracts where the packaging and marking requirements of NASA Handbook (NHB) 6000.1 and/or MIL–STD–2073–1 and MIL–STD–2073–2 are appropriate. Insert the applicable information for the particular procurement. Substitute Alternate I for paragraphs (a), (b), (c), and (d) of the basic clause if commercial packing and marking practices are to be used. Add Alternate II if space flight item(s) are to be delivered.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1812.3—Priorities and Allocations

1812.302 [Amended]

34. In section 1812.302(a), the phrase "Headquarters Acquisition Liaison Division, Code HP" is revised to read "Headquarters Program Operations Division, Code HS".

1812.303–70 [Amended]

35. In paragraph (e) of section 1812.303–70, the phrase "The Headquarters Acquisition Liaison Division (Code HP)" is revised to read "The Headquarters Program Operations Division (Code HS)", and at the end of the paragraph, "Code HP" is revised to read "Code HS".

PART 1814—SEALED BIDDING

Subpart 1814.2—Solicitation of Bids

1814.201–2 [Removed]

36. Section 1814.201–2 is removed.

37. and 38. In section 1814.201–5, paragraph (a) is revised, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b) to read as follows:

1814.201–5 Part IV—Representations and instructions.

Section M—Evaluation factors for award.

(a) The contracting officer shall state if award is to be made in the aggregate (all-or-none basis) or by specified groups of items.

(b) * * *

1814.201–670 [Amended]

39. In section 1814.201–670, paragraph (b), a period is added after "1814.201–5(a)", and the phrase "and (b) and FAR 52.214–10 and 52.215–16." is removed.

40. In section 1814.201–670, paragraph (c), the last sentence is removed.

41. Paragraph (d) of section 1814.201–670 is revised to read as follows:

1814.201–670 NASA solicitation provisions.

* * * * *

(d) If a pre-bid conference is planned, the contracting officer shall insert the provision at 1852.215–77, Preproposal/Prebid Conference. See 1815.407–70(f).

Subpart 1814.4—Opening of Bids and Award of Contract

42. Section 1814.404–1 is revised to read as follows:

1814.404–1 Cancellation of invitations after opening.

(a) The authority to make the determination at FAR 14.404–1(c) is delegated to the contracting officer, except as provided in paragraph (b)(2) of this section.

(b) A determination under FAR 14.404–1(c)(6) or (7) that includes an authorization to complete the acquisition through negotiation (see FAR 14.404–1(e)(1)) shall be approved by the procurement officer, who shall obtain the advice of the Chief Counsel before making this determination.

1814.404–170 [Removed]

43. Section 1814.404–170 is removed.

44. Paragraph (a) of section 1814.406–3 is revised to read as follows:

1814.406–3 Other mistakes disclosed before award.

(a) The Associate Administrator for Procurement is authorized to permit the correction of bids under FAR 14.406–3(a) and (b) and the award of a contract under FAR 14.406–3(d). Procurement officers are authorized to permit withdrawal of bids when the conditions in FAR 14.406–3(c) are met.

* * * * *

45. In paragraph (b) of section 1814.406–3 the comma after the word "and" is removed and the phrase "as an alternative," is removed.

1814.406–4 [Amended]

46. In the introductory text of section 1814.406–4, the phrase "installation's Office of" is removed and paragraph (c) of section 1814.406–4 is removed.

47. Paragraph (a) of section 1814.407–1 is revised to read as follows:

1814.407–1 General.

(a) A notice of award as a specific document is used when the contracting officer needs to inform a responsible bidder that its offer was determined to be the most advantageous to the Government (considering only price and price-related factors) and that the formal award will be made upon satisfaction of specified pre-performance conditions.

* * * * *

1814.407–1 [Amended]

48. In paragraph (b) of section 1814.407–1, in the first sentence, the phrase "in sealed bidding" is removed.

49. In paragraph (c) of section 1814.407–1, in the first sentence, the phrase "in sealed bidding" is removed, and in the third sentence, the phrase " for use in sealed bidding" is removed.

50. In paragraph (d) of section 1814.407–1, in the first sentence, the phrase "in sealed bidding" is removed.

51. In paragraph (e) of section 1814.407–1, in the second sentence, the phrase "a reasonable date certain," is removed.

52. In section 1814.407–1, paragraph (f) is revised to read as follows:

1814.407–1 General.

* * * * *

(f) The notice of award can be issued by any formal written means such as a letter, telegram or electronic means. The notice should be substantially the same as the following format.

FORMAT * * *

* * * * *

53. In section 1814.407–1, under NOTES at the end of FORMAT, in paragraph (g), the phrase "a reasonable date certain," is removed.

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.1 [Removed]

54. Subpart 1815.1 is removed.

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

55. Section 1815.405–1 is revised to read as follows:

1815.405–1 General.

(a) Solicitations for information or planning purposes are particularly useful when a procurement can be properly negotiated only after potential offerors have had an opportunity to become familiar with a large quantity of data, or when it would be desirable to have industry participation in formulating and reviewing complex specifications or requirements.

(b) Solicitations for information or planning purposes may not be used as a means for prequalifying offerors.

(c) Requirements for automatic data processing equipment or support services to perform specified operations or achieve certain results may be suitable for advance review and comment by the private sector when diverse approaches to accomplishing mission objectives may be feasible. The material made available in advance may vary from a comprehensive draft of a proposed requirement to a partial draft; e.g., statement of work and/or specifications or reports.

1815.405–70 [Removed]

56. Section 1815.405–70 is removed.

1815.405–71 [Amended]

57. In section 1815.405–71, paragraph (b) introductory text, the first sentence is removed.

58. In section 1815.406, paragraph (b) is revised to read as follows:

1815.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

(a) * * *

(b) When advisable, particularly in the case of research and development, proposals shall be requested in two parts:

(1) An unpriced technical proposal, and

(2) A cost proposal cross-referenced to the technical proposal (see 1815.406–70).

* * * * *

59. In section 1815.406–5, paragraph (b)(1) is removed, the existing paragraphs (b)(2) through (b)(8) are redesignated as paragraphs (b)(1) through (b)(7), and paragraph (b)(8) is added to read as follows:

1815.406–5 Part IV—Representations and instructions.

* * * * *

(b) * * *

(8) See 1846.470.

60. The introductory text of section 1815.412 is revised to read as follows:

1815.412 Late proposals and modifications.

For broad agency announcements listed in 1835.016 and SBIR Phase I and Phase II solicitations—

* * * * *

Subpart 1815.5—Unsolicited Proposals

1815.502 [Amended]

61. In section 1815.502, the phrase "of unsolicited proposals" is revised to read "of unique and innovative unsolicited proposals".

1815.503 [Amended]

62. In section 1815.503, paragraph (a), the last sentence is removed.

63. In section 1815.503, paragraph (b), in the first sentence the phrase "to agencies in addition to NASA," is revised to read "to other agencies or to JPL in addition to NASA," and in the last sentence, the phrase "to another agency for action" is revised to read "to another agency or JPL for action".

64. In paragraph (c) of section 1815.503, the first sentence is removed.

1815.504–70 [Amended]

65. In section 1815.504–70, "(Code HP)" is revised to read "(Code HK)", the phrase "The Headquarters Office of Small and Disadvantaged Business Utilization (Code K)" is revised to read "The Headquarters Office of Procurement (Code HK)", and the last sentence is removed.

1815.506 [Amended]

66. In section 1815.506, paragraph (a)(3) is removed.

Subpart 1815.6—Source selection

67. Section 1815.611 is revised to read as follows:

1815.611 Best and final offers.

For competitive procurements of $25 million or more, approval of the Associate Administrator for Procurement (Code HS) is required before reopening discussions and requesting additional best and final offers. For competitive procurements with values less than $25 million, approval of the Procurement Officer is required.

1815.613–71 [Amended]

68. In section 1815.613–71, paragraph (a) designation and heading is removed and paragraph (b) is removed.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Matters

69. In section 1815.1003–2, paragraph (a) introductory text is revised to read as follows:

1815.1003–2 Policy.

(a) NASA shall debrief an unsuccessful competitor in accordance with FAR 15.1003. Debriefings shall be consistent with—

* * * * *

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.406–13 [Amended]

70. In section 1822.406–13, "(Attn: Code HP)" is revised to read "(Attn: Code HK)", and the phrase "The Acquisition Liaison Division (Code HP)" is revised to read "The Contract Management Division (Code HK)".

Subpart 1822.8—Equal Employment Opportunity

1822.804–2 [Amended]

71. In section 1822.804–2, "(Code HP)" is revised to read "(Code HK)".

1822.807 [Amended]

72. In section 1822.807, the phrase "the Headquarters Acquisition Liaison Division (Code HP)" is revised to read "the Headquarters Contract Management Division (Code HK)".

PART 1825—FOREIGN ACQUISITION

Subpart 1825.72—Limitation on Strategic Defense Initiative (SDI) Contracting

1825.7200 [Amended]

73. In section 1825.7200, the phrase "the Acquisition Liaison Division (HP)" is revised to read "the Program Operations Division (HS)".

PART 1827—PATENTS, DATA, AND COPYRIGHTS

Subpart 1827.3—Patent Rights Under Government Contracts

1827.372 [Amended]

74. In paragraph (a)(2) of section 1827.372, the phrase "The objectives of NASA policy with" is revised to read "The objectives with" and the phrase "to provide their widest" is revised to read "to provide widest".

75. In paragraph (a)(3) of section 1827.372, the phrase "the objectives of NASA policy with" is revised to read "the objectives with", and the phrase "used in a manner to promote" is revised to read "used to promote".

76. In paragraph (b)(1) of section 1827.372, the phrase "will be served by this action." is revised to read "will be served." and the phrase "request for such waiver" is revised to read "request for waiver".

77. In paragraph (i)(1) of section 1827.372, the phrase "structure of which the contractor is a part, and includes" is revised to read "structure, and includes".

78. In paragraph (i)(2) of section 1827.372, the citation "14 CFR part 1245, subpart 2, Licensing of NASA Inventions" is revised to read "37 CFR part 404, Licensing Government Owned Inventions", and the citation "14 CFR 1245.211" is revised to read "37 CFR 404.10".

1827.373 [Amended]

79. In paragraph (a)(1) to section 1827.373, the phrase "exceptions set forth in paragraph" is revised to read "exceptions in paragraph"

80. In paragraph (b) introductory text of section 1827.373, the phrase "in any NASA contract (and solicitation therefor) with" is revised to read "in all NASA solicitations and contracts with".

81. In paragraph (c) introductory text of section 1827.373, the phrase "under the circumstances set forth in paragraphs (c)(1) through (3) of this section" is revised to read "under the following circumstances:".

82. In paragraph (c)(1) of section 1827.373, the phrase "For the purpose of this paragraph (c)(1)" is revised to read "For this purpose".

83. In paragraph (c)(2) of section 1827.373, the phrase "agency for which the contract is to be placed does" is revised to read "agency does".

84. In paragraph (d) of section 1827.373, the phrase "to advise prospective contractors" is revised to read "to advise offerors".

85. Paragraph (f) of section 1827.373 is removed and paragraph (g) is redesignated as paragraph (f) and amended by adding a period after the word "organization" and removing the phrase "but the matter is uncertain at the time of solicitation (e.g, the procurement is not a set-aside and is not sole source to a large business)."

1827.374–1 [Amended]

86. In paragraphs (a) and (b) of section 1827.374–1, the phrase "In any NASA contract" is revised to read "In any contract".

87. In paragraph (c) of section 1827.374–1, the phrase "subpart 1, shall apply" is revised to read "subpart 1, apply" and the phrase "under any NASA contract" is revised to read "under any contract".

88. In section 1827.374–1, paragraph (f) is revised to read as follows:

1827.374–1 General.

* * * * *

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.372(i)(2)) shall be in accordance with 37 CFR 404.10, for subject inventions made and reported under any contract with other than a small business firm or a nonprofit organization, and in accordance with FAR 27.304–1(f) for subject inventions made and reported under any contract with a small business firm or a nonprofit organization. The contractor's right to appeal a determination to revoke or modify any such license shall be in accordance with 37 CFR part 404, Licensing of Government Owned Inventions.

* * * * *

89. In paragraph (g) to section 1827.374–1, the phrase "under any NASA contract" is revised to read "under any contract".

1827.374–3 [Amended]

90. In paragraph (a) of section 1827.374–3, the phrase "If a NASA contract" is revised to read "If a contract".

1827.375–1 [Amended]

91. In paragraph (b)(1) of section 1827.375–1, the phrase "for the NASA installation" is revised to read "for the installation" and the phrase "made by use of the clause" is revised to read "made in the clause".

92. In paragraph (b)(2)(ii) of section 1827.375–1, the word "NASA" is removed.

93. In paragraph (b)(4) of section 1827.375–1, the phrase "at the request of the contractor or on their own initiative," is removed.

1827.375–2 [Amended]

94. In paragraphs (a)(1) introductory text and (a)(2) of section 1827.375–2, the word "NASA" is removed.

1827.375–3 [Amended]

95. In paragraph (a) introductory text of section 1827.375–3, the phrase "review, as necessary, the" is revised to read "review the" and the word "their" is removed.

96. In paragraph (e)(3) of section 1827.375–3, the phrase "obligations imposed upon the contractor by" is removed.

97. In paragraph (f) of section 1827.375–3, the word "ordinarily" is removed.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 [Amended]

98. In paragraph (e)(1) of section 1827.404, the phrase "accordance with NASA policy" is revised to read "accordance with policy".

99. In paragraph (e)(3) of section 1827.404, the word "itself" is removed.

100. In paragraph (g) of section 1827.404, the phrase "correct, or adding or correcting, any" is revised to read "correct any".

1827.405 [Amended]

101. In paragraph (a)(1) of section 1827.405, the phrase "the NASA contracting officer or the NASA contract" is revised to read "the contracting officer or the contract".

102. In paragraph (a)(3) of section 1827.405, the word "NASA" is removed.

1827.406 [Amended]

103. In paragraph (a) of section 1827.406, the phrase "for most needs" is removed.

104. In paragraph (b)(1) introductory text of section 1827.406, the phrase "that may be" is removed, and the word "NASA" is removed.

105. In paragraph (b)(1)(i) of section 1827.406, the word "overall" is removed.

106. In paragraph (b)(1)(ii) of section 1827.406, the phrase "of the contract work" is revised to read "of the contract".

107. In paragraph (b)(1)(iii) of section 1827.406, the word "work" is removed.

108. In paragraph (b)(1)(v) of section 1827.406, the phrase "of the contract" is removed.

109. In paragraph (b)(2) of section 1827.406, the word "entire" is removed, the phrase "under the contract" is removed, and the phrase "ensure appropriate distribution of the required reports" is revised to read "ensure distribution of the reports".

1827.409 [Amended]

110. In paragraph (a) of section 1827.409, the last sentence is removed.

111. In paragraph (b) of section 1827.409, the phrase "in the notice" is removed, and the word "installation" is removed.

112. In paragraphs (e), (f), and (g) of section 1827.409, the word "as" is removed.

113. In paragraph (h) of section 1827.409, the phrase "the clause at" is removed.

114. In paragraph (i) of section 1827.409, the word "at" is removed.

Subpart 1827.6—Foreign License and Technical Assistance Agreements

1827.670–1 [Amended]

115. In section 1827.670–1, the phrase "by the NASA contracting officer" is revised to read "by the contracting officer".

PART 1829—TAXES

Subpart 1829.2—Federal Excise Taxes

1829.203 [Amended]

116. In paragraph (a) of section 1829.203, the phrase "the Acquisition Liaison Division (Code HP)" is revised to read "the Contract Management Division (Code HK)".

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.1—[Removed]

117. Subpart 1831.1 is removed.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1833.103 [Amended]

118. In paragraph (c) of section 1833.103, the phrase "the Acquisition Liaison Division (Code HP)" is revised to read "the Program Operations Division (Code HS)".

119. In section 1833.104 paragraph (a) is revised to read as follows:

1833.104 Protests to GAO.

(a) *General procedures.* (1) NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this part.

(2) The notices required by FAR 33.104(a)(2) shall be made by the contracting officer.

(3) Upon receiving any communication from a protester or the GAO regarding a protest, the cognizant procurement officer shall immediately contact Code HS for guidance. Conversely, upon Headquarters receipt of notice from GAO of the filing of a protest, Code HS shall immediately notify the cognizant procurement officer. This is usually done via telephone and constitutes the official notice to the installation that a protest has been filed.

(4) Within 3 work days of being notified, the contracting officer shall forward to Headquarters (Code HS) a copy of the procurement file including all documents referred to in FAR 33.104(a)(3)(ii) (A) through (G) and any others requested by Code HS. The contracting officer's statement (FAR 33.104(a)(3)(ii)(H)) shall be forwarded

no later than ten work days after the contracting officer has been notified. The contracting officer's statement shall receive the concurrence of the installation Chief Counsel. If more time is needed, requests for extension may be made by telephone to Headquarters, Code HS.

(5) When the GAO elects to use its express option procedure, the contracting officer's statement shall be forwarded to Code HS within six work days after the contracting officer has been notified. If that is not possible, a report to Code HS shall be made by telephone.

(6) In consultation with the Office of General Counsel, Headquarters (Code HS) shall provide the information required by FAR 33.104(a) to the GAO.

* * * * *

120. In paragraph (b)(1) of section 1833.104, "(Code HP)" is revised to read "(Code HS)" and "Code HP" is revised to read "Code HS".

121. In paragraphs (c) (1) and (2) of section 1833.104, "(Code HP)" is revised to read "(Code HS)" and "Code HP" is revised to read "Code HS".

122. In section 1833.104, the first sentence of paragraph (d) is revised to read as follows, and in the last sentence, "(Code HP)" is revised to read "(Code HS)":

"If the protester in its protest statement or later in the process requests documents, the contracting officer shall forward them to Code HS with the documents required by FAR 33.104(a)(3), within three work days of receipt of the request."

123. In paragraph (e) of section 1833.104, "Code HP" is revised to read "Code HS".

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

1835.003 [Amended]

124. In section 1835.003, paragraph (b) is removed and the existing paragraph (c) is redesignated as paragraph (b), and in the newly designated paragraph (b), the phrase "for NASA policy" is revised to read "for policy".

1835.003–70, 1835.003–71 [Removed]

125. Sections 1835.003–70 and 1835.003–71 are removed.

1835.015 [Amended]

126. In section 1835.015, paragraph (b), the phrase "For NASA policy" is revised to read "For policy".

127. Section 1835.016–70 is revised to read as follows:

1835.016–70 NASA Research Announcements.

(a) *Scope.* This subsection 1835.016–70 prescribes regulations and procedures for the use of a NASA Research Announcement (NRA), a form of broad agency announcement (see FAR 6.102(d)(2)). An NRA is used to announce research interests and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest to NASA. The NRA is intended to be used for those research procurements for which it would be impossible to draft an adequate RFP in sufficient detail without restraining the technical response and thus hindering the competition of ideas. An NRA shall not be used in place of an RFP when the procurement requirement is narrowly defined and it is necessary to use a detailed description or specification.

(b) *Issuance.* (1) Each NRA shall be assigned a unique number in accordance with 1804.7102–1.

(2) NRAs may remain open for proposal submission for a maximum of one year. They may not be amended or modified once issued, but may be reissued by assigning a new number and resynopsizing. (See also paragraph (g) of this section.) NRAs should remain open for at least 90 days.

(3) Before issuance, each field-generated NRA shall be concurred in by the procurement officer and approved by the installation's director or a designee, who shall serve as or designate a selecting official. Before issuance, each Headquarters-generated NRA shall be concurred in by General Counsel (Code GK) and the Director, Headquarters Acquisition Division (Code HW) and approved by the cognizant Program Associate Administrator or a designee, who shall serve as or designate a selecting official. If a Headquarters-generated NRA may result in awards by a NASA field installation, the concurrence of that installation's procurement officer may be sought in place of or in addition to Code HW's concurrence.

(4) The contracting officer shall assure that the NRA is synopsized in the Commerce Business Daily (CBD). The synopsis required by FAR 35.016(c) satisfies the synopsis requirement at FAR 5.201; the synopsis contemplated by FAR 5.205 is not required. The synopsis shall be brief and provide the address for obtaining a copy of the NRA. The technical part of the synopsis is to describe an area of interest and should not exceed 50 words.

(5) The NRA shall be prepared, printed, and distributed by or under the direction of the selecting official. Distribution shall not begin until the concurrence of the procurement officer has been obtained and the contracting officer has confirmed that the synopsis requirements have been met. The NRA shall be distributed to each office responsible for receipt of unsolicited proposals and to the Office of Procurement (Code HS).

(c) *Content.* The NRA shall consist of the following items in the order shown. This entire package shall be provided in response to requests.

(1) *Cover.* The cover shall display:

(i) "OMB Approval Number 2700–0087" in the upper right corner.

(ii) Title (centered, in uppercase).

(iii) "NASA Research Announcement Soliciting Research Proposals for the Period Ending _____" (centered, on three lines, two inches below the title; insert closing date).

(iv) NRA number (centered, two inches below closing date).

(v) Official address for office issuing NRA (centered, at bottom of cover).

(2) *Summary and Supplemental Information.*

(i) The Summary and Supplemental Information shall not exceed two pages and shall include:

(A) Title (centered, in uppercase).

(B) Introductory paragraphs describing the purpose of the NRA and the period for receipt of proposals. When proposals received during this period may be grouped for evaluation at separate times, the introductory paragraphs shall indicate when evaluations are planned and shall include the following remark:

> A proposal that is scientifically and programmatically meritorious, but that cannot be accepted during its initial review under an NRA because of funding uncertainties, may be included in subsequent reviews unless the offeror requests otherwise.

(C) NRA number.

(D) Address for submitting proposals, including "ATTN: NRA _____." (Insert NRA number.)

(E) Copies required.

(F) Selecting official's title.

(G) Name, address, and telephone number for additional technical information.

(H) Name and telephone number of contracting office point of contact for administrative and contractual information.

(I) Additional instructions supplementing the Instructions for Responding to NASA Research Announcements for Solicited Research Proposals (see subpart 1870.2). Such information shall be kept to the minimum necessary and shall cite specific "Instructions" paragraphs supplemented.

(J) When awards will be chargeable to funds of the new fiscal year and the NRA is to be issued before funds are available, the NRA shall contain a statement as follows:

> Funds are not presently available for awards under this NRA. The Government's obligation to make awards is contingent upon the availability of appropriated funds from which payment can be made and the receipt of proposals that NASA determines are acceptable for award under this NRA.

(ii) The Summary and Supplemental Information may include estimates of the amount of funds that will be available and the number of anticipated awards. A breakdown of the estimates by research area may also be shown.

(iii) The Summary and Supplemental Information may indicate that proposals submitted under an earlier NRA and held for subsequent reviews will be considered and need not be resubmitted. The earlier NRA shall be identified by number in the following statement:

> Proposals for which no selection decision was made under NRA _____ and held for subsequent reviews will be considered under this NRA and need not be resubmitted. (Insert NRA number).

(3) *Technical Description.* The first page shall contain the NRA number and title at the top. A brief description not exceeding two pages is preferable, but it should be detailed enough to enable ready comprehension of the research areas of interest. Specifications containing detailed statements of work should be avoided. Any program management information included must be limited to matters that are essential for proposal preparation.

(4) *Instructions for Responding to NASA Research Announcements.* The NRA shall contain instructions in accordance with 1870.203.

(d) *Unsolicited proposals.* (1) Unsolicited proposals for new efforts that are within the scope of an open NRA shall be evaluated in accordance with 1815.506(b).

(2) Unsolicited proposals for renewal of ongoing efforts that are within the scope of an open NRA shall be evaluated in accordance with 1815.505–70.

(3) A broad agency announcement is not an "acquisition requirement" as the term is used in FAR 15.507(a)(2).

(e) *Receipt of proposals, evaluation, and selection.* (1) Proposals shall be protected as provided in 1815.508–70 and 1815.509–70.

(2) Evaluation, selection, and award may occur during or after the period established for receipt of proposals. Late proposals and modifications shall be treated in accordance with 1815.412 (a) and (b).

(3) When more than one time is established in the NRA for evaluating proposals, proposals received prior to the time established will be considered as part of the initial group to be evaluated. Subsequent groups of proposals to be evaluated shall be formed from those proposals received after the time established for the earlier evaluation groups and prior to the time established for a subsequent group, along with those proposals, if any, held over under paragraph (e)(8) of this section.

(4) The selection decision shall be made following peer or scientific review of a proposal. Peer or scientific review shall involve (i) evaluation, outside NASA, by a discipline specialist in the area of the proposal, (ii) evaluation by an in-house specialist, or (iii) both. Evaluation by specialists outside NASA shall be conducted subject to the conditions in FAR 15.413–2(f) and NFS 1815.413 and 1815.413–2. In particular, the selecting official shall ensure compliance with FAR 15.413–2(f)(5) regarding the designation of outside evaluators and avoidance of conflicts of interest. After receipt of a proposal and before selection, scientific or engineering personnel shall communicate with an offeror, regarding the proposal, only for the purpose of clarification, as defined in FAR 15.601, or in order to understand the meaning of some aspect of the proposal that is not clear, or in order to obtain confirmation or substantiation of a proposed approach, solution, or cost estimate.

(5) Competitive range determinations shall not be made, and best and final offers shall not be requested.

(6) Part of a proposal may be selected unless the offeror requests otherwise. In addition, changes to a selected proposal may be sought if (i) the ideas or other aspects of the proposal on which selection is based are contained in the proposal as originally submitted, and are not introduced by the changes; and (ii) the changes sought would not involve a material alteration to the requirements stated in the NRA. Changes that would affect a proposal's selection shall not be sought. When changes are desired, they may be described to the contracting officer under paragraph (e)(10)(ii) of this section, or the selecting official may request revisions from the offeror. The changes shall not transfer information from one offeror's proposal to another offeror (see FAR 15.610(d)(2)). When collaboration between offerors would improve proposed research programs, collaboration may be suggested to the offerors.

(7) The basis for selection of a proposal shall be documented in a selection statement applying the evaluation factors in the NRA. The selection statement represents the conclusions of the selecting official and must be self-contained. It shall not incorporate by reference the evaluations of the reviewers.

(8) A proposal that is scientifically and programmatically meritorious, but that is not selected during its initial review under an NRA, may be included in subsequent reviews unless the offeror requests otherwise. If the proposal is not to be held over for subsequent reviews, the offeror shall be notified that the proposal was not selected for award.

(9) The selecting official shall notify each offeror whose proposal was not selected for award and explain generally why the proposal was not selected. If requested, the selecting official shall arrange a debriefing under 1815.1003, with the participation of a contracting officer.

(10) The selecting official shall forward to the contracting officer—

(i) The results of the technical evaluation, including the total number of proposals received under the NRA by the time of selection, the selection statement, and the proposal(s) selected for funding;

(ii) A description of any changes desired in any offeror's statement of work, including the reasons for the changes and any effect on level of funding;

(iii) If a contract will be used to fund the proposal, a description of deliverables, including technical reports, and delivery dates, consistent with the requirements of the NRA;

(iv) A procurement request;

(v) Comments on the offeror's cost proposal (either the selecting official's comments, which may be based on the reviewers' comments, or copies of the reviewers' comments with any different conclusions of the selecting official); these comments shall address the need for and reasonableness of travel, computer time, materials, equipment, subcontracted items, publication costs, labor hours, labor mix, and other costs; and

(vi) A copy of the selected proposal as originally submitted, any revisions, and any correspondence from the successful offeror.

(11) The selecting official may provide to the contracting officer copies of the reviewers' evaluations. Reviewers' names and institutions may be omitted.

(12) The selecting official may notify each offeror whose proposal was selected for negotiation.

(i) The notification shall state that—

(A) The proposal has been selected for negotiation;

(B) The offeror's business office will be contacted by a contracting officer, who is the only official authorized to obligate the Government; and

(C) Any costs incurred by the offeror in anticipation of an award are at the offeror's risk.

(ii) The notification may identify which award instrument has been recommended.

(f) *Award.* If a contract is selected as the award instrument (see FAR 35.003(a) and 1835.003(a)), the contracting officer shall—

(1) Advise the offeror that the Government contemplates entering into negotiations; the type of contract contemplated; and the estimated award date, level of effort, and delivery schedule;

(2) Send the offeror a model contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions (the contract statement of work may summarize the proposed research, state that the research shall be conducted in accordance with certain technical sections of the proposal (which shall be identified by incorporating them into the contract by reference), and identify any changes to the proposed research);

(3) Request the offeror to complete and return certifications and representations and Standard Form 33, Solicitation, Offer, and Award, or other appropriate forms;

(4) Conduct negotiations in accordance with FAR subparts 15.8 and 15.9, as applicable;

(5) Award a contract by transmitting written notice of the award; and

(6) Comply with FAR subparts 4.6 and 5.3 on contract reporting and synopses of contract awards.

(g) *Cancellation of an NRA.* When program changes, program funding, or any other reasons require cancellation of an NRA, the office issuing the NRA shall notify potential offerors by using the mailing list for the NRA.

1835.070 [Amended]

128. In paragraph (b) to section 1835.070, the word "either" is removed.

1835.071 [Removed]

129. Section 1835.071 is removed.

PART 1837—SERVICE CONTRACTING

1837.000 [Removed]

130. Section 1837.000 is removed.

PART 1839—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES

131. In section 1839.7001, in paragraph (a), "2410.1E" is revised to read "2410.1", and paragraph (b) is revised to read as follows:

1839.7001 Policy.

(a) * * *

(b) The Designated Senior Official (DSO), the Chief Information Officer (Code A), has responsibility and accountability for interpreting, applying, and overseeing the implementation of the Federal Information Resources Management Regulations (FIRMR) (41 CFR chapter 201) within NASA.

132. In section 1839.7003–1, paragraphs (a)(2) and (c) are revised to read as follows:

1839.7003–1 Responsibility.

* * * * *

(a) * * *

(2) Timely submission of APRs to Headquarters Code JTD in accordance with 1839.7003–5.

* * * * *

(c) The Senior Installation IRM Official (SIIO) is responsible for formally concurring on all APRs.

133. In section 1839.7003–2, paragraph (b) introductory text is revised to read as follows:

1839.7003–2 FIRMR applicability and procurement authority certification.

* * * * *

(a) * * *

(b) Determine if the agency has authority to acquire the FIP resources by virtue of a specific agency or regulatory delegation, or if a specific acquisition delegation must be obtained. This requires comparing the total estimated dollar value of all the FIP resources to be acquired to the criteria and thresholds specified in FIRMR 41 CFR 201–20.305. NASA may contract for FIP resources without obtaining a specific acquisition delegation when the total dollar value of FIP resources, including all optional quantities and periods over the life of the contract, does not exceed the authority delegated from GSA; except that the dollar value for a specific make and model specification or for requirements available from only one responsible source may not exceed the authority delegated from GSA.

* * * * *

134. In section 1839.7003–2, paragraphs (b)(1) through (b)(4) are removed and paragraphs (b)(5) through (b)(7) are redesignated as paragraphs (b)(1) through (b)(3).

135. In the certification format of the newly designated paragraph (b)(1) to section 1839.7003–2, "NHB 2410.1E" is revised to read "NHB 2410.1". 136. In section 1839.7003–3, paragraph (e) is revised to read as follows:

1839.7003–3 GSA nonmandatory MAS contracts.

* * * * *

(e) Use the competitive threshold authority delegated from GSA for obtaining a DPA when use of a GSA nonmandatory MAS contract is a competitive procedure relative to FAR part 6. Use the noncompetitive threshold authority delegated from GSA when use of a GSA nonmandatory MAS contract is a noncompetitive procedure relative to FAR part 6.

* * * * *

137. In section 1839.7003–4, paragraph (a) introductory text is revised to read as follows:

1839.7003–4 APR format.

(a) (FIRMR) 41 CFR 201–20.305–3 requires NASA to prepare APRs as indicated by instructions in the FIRMR Bulletin series. APRs under the Trail Boss Program will be submitted in the format provided in FIRMR Bulletin C–7, entitled "Trail Boss Program," as modified by Enclosure C–5B of NHB 2410.1. APRs for all other FIP resources, will be submitted in the format provided in FIRMR Bulletin C–5, entitled "Instructions for Preparing an Agency Procurement Request (APR)," as modified by Enclosure C–4B of NHB 2410.1.

* * * * *

138. In section 1839.7003–4, paragraphs (a)(1) through (a)(5) are removed, paragraph (b) is redesignated as paragraph (c), and paragraph (a)(6) is redesignated as paragraph (b).

139. Section 1839.7003–5 is revised to read as follows:

1839.7003–5 APR submission.

(a) The contracting officer shall forward the original of the APR submittal (the APR and all required documentation) to Headquarters Code JTD, with a transmittal letter (see NHB 2410.1, Enclosures C–4A and C–5A) signed by the procurement officer. Include a 5¼" or 3½" diskette, formatted for use on a DOS 3.3, or higher compatible, personal computer, that contains a WordPerfect 5.0 or 5.1 or ASCII format of the APR.

(b) APR's should be submitted as soon as, but not before, the FRDD and other documentation (waivers, JOFOCs, procurement plans, or ASM minutes, as appropriate) have been completed and approved in final form within the Agency.

140. In section 1839.7003–6, paragraphs (b) and (c) are revised to read as follows:

1839.7003–6 DPA amendments.

(a) * * *

(b) Amendments to a previously submitted or approved specific acquisition DPA should follow the same procedures and employ the same format as that required by the current FIRMR and (NFS) 48 CFR part 1839. For such an APR, see NHB 2410.1, Enclosure C–3, paragraph 2. The existing documentation supporting the acquisition should be reviewed and certified by the procurement officer as to its timeliness. If this documentation is either not current or affected by the amendment, the documentation shall be revised. If an original document was submitted or requested by Headquarters or GSA, its revision shall be resubmitted with the APR.

(c) The following are reasons for submitting an APR to seek an amended DPA:

(1) A substantive revision in the technical requirements.

(2) A change in acquisition strategy.

(3) Slippages in the planned contract award date that exceed 12 months. (Slippages less than 12 months should be identified to GSA during routine status reporting.)

(4) A change in contract life.

(5) A change in the position title or organizational identity of the official authorized to conduct the acquisition.

(6) An increase in anticipated contract costs.

* * * * *

1839.7004 [Amended]

141. In section 1839.7004, "NHB 2410.1E" is revised to read "NHB 2410.1".

142. In section 1839.7006, the last sentence in paragraph (a) is revised to read as follows:

1839.7006 DPA transmittal.

(a) * * * Delegation of regulatory and specific agency procurement authority will be handled as directed by the Chief Information Officer.

143. In paragraph (b) to section 1839.7006, "Code J" is revised to read "Code A".

144. In section 1839.7006, paragraph (d) is removed, paragraphs (e) through (g) are redesignated as paragraph (d) through (f), and the newly designated paragraphs (d) and (e) are revised to read as follows:

1839.7006 DPA transmittal.

* * * * *

(d) Pre-award and post-award reports include 6–Month Status Reports and Contract Award Reports.

(1) GSA requires a 6–Month Status Report on all specific acquisition DPA's for which a contract or modification has not been awarded. The contracting officer shall submit status reports to Code JT not later than May 15 and November 15 of each year. The contents of these reports are specified in the DPA.

(2) GSA requires a Contract Award Report within 30 days after award of a contract or modification issued pursuant to a specific acquisition DPA. The contracting officer shall submit Contract Award Reports to Code JT not later than 25 days after the award of a contract or modification.

(e) Code JTD requires an Annual Status Report on all extant contracts with specific acquisition DPA's. The contracting officer shall submit an Annual Status Report to Code JT not later than November 15 of each year. The reports are in lieu of (and not in addition to) GSA's annual reporting requirement.

* * * * *

PART 1842—CONTRACT ADMINISTRATION

1842.101 [Amended]

145. In section 1842.101, "Acquisition Liaison Division (Code HP)" is revised to read "Analysis Division (Code HC)".

PART 1846—QUALITY ASSURANCE

146. In section 1846.470–1, the last sentence is revised to read as follows:

1846.470–1 Solicitation provision.

* * * Fee associated with a Q/PI plan shall not be considered an amount over the total fee negotiated for the contract and shall not, when combined with fee considerations, exceed the limitations prescribed in FAR 15.903(d)(1).

1846.470–2 [Amended]

147. In paragraph (b) to section 1846.470–2, the phrase "and in contracts resulting therefrom." is revised to read "and in resulting contracts."

148. In section 1846.670–1, paragraphs (a), (b)(1), and (c) are revised to read as follows:

1846.670–1 General.

(a) This subpart contains procedures and instructions for use of the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and suppliers' commercial shipping/packing lists used to evidence Government procurement quality assurance (PQA).

(b) * * *

(1) Shipments by subcontractors not made to the Government;

* * * * *

(c) To preclude delays in shipments or payments and avoid multiple corrections, contractors are encouraged to consult the Government representative regarding implementation of this subpart.

149. In section 1846.670–2, paragraph (a)(4) is removed, and paragraph (a)(3) is revised to read as follows:

1846.670–2 Applicability.

(a) * * *

(1) * * *

(2) * * *

(3) Contracts for which the end item is a technical or scientific report.

* * * * *

150. In section 1846.670–4, paragraph (c) is revised to read as follows:

1846.670–4 Application.

(a) * * *

(b) * * *

(c) The DD Form 250 may be used for imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against indefinite-delivery contracts, or delivery orders placed against blanket purchase agreements, or when the purchasing, requisitioning, or ordering document provides for inspection and/or acceptance.

151. Section 1846.670–5 is revised to read as follows:

1846.670–5 Forms.

(a) Contractors may obtain from the contracting office at no cost MIRR forms required on Government contracts.

(b) Contractors may print forms, provided

(1) Their format and dimensions are identical to the MIRR forms printed by the Government and

(2) The forms provide for 78 characters per printed image horizontally and 62 lines vertically border-to-border for the DD Form 250 and 61 lines vertically border-to-border for the DD Form 250c.

152. In section 1846.671, paragraph (a) is revised to read as follows:

1846.671 Procurement quality assurance on shipments between contractors.

(a) The supplier's commercial shipping document/packing list shall indicate performance of required PQA actions at subcontract level. The following entries shall be made on the document/packing list:

Required PQA of items has been performed.
Date: (Signature of Authorized Government Representative) (Typed Name and Office)

* * * * *

153. In paragraph (a)(1) to section 1846.672–1, the date "67AUG07" is removed, and paragraph (a)(4) is revised to read as follows:

1846.672–1 Preparation instructions.

* * * * *

(a) * * *

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with block cross reference. Additional DD Form 250c sheets solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

* * * * *

154. In section 1846.672–1, paragraphs (b), (c), (d)(1) and (d)(1)(ii) are revised to read as follows:

(b) *Classified information.* Classified information shall not appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1—PROC. INSTRUMENT IDEN. (CONTRACT).*

(1) Enter the contract number as contained in the contractual document, including any call/order number.

(2) Enter the name of the contracting office immediately below the contract number. This requirement may be satisfied by including the prefix in the contract number to identify the contracting office.

(d) *Block 2—SHIPMENT NO.*

(1) The shipment number is a three-alpha-character prefix and a four-character numeric or alpha-numeric serial number.

(i) * * *

(ii) The first shipment under a prime contract from each "shipped from" address shall be numbered 0001; subsequent shipments under that prime contract shall be consecutively numbered.

* * * * *

1846.672–1 [Amended]

155. In section 1846.672–1, paragraphs (g)(1) and (h)(1) are revised to read as follows:

(g) *Block 5—DISCOUNT TERMS.*

* * *

(1) The contractor may enter the discount terms on all copies of the MIRR.

(2) * * *

(h) *Block 6—INVOICE.* * * *

(1) The contractor may enter the invoice number and date on all copies of the MIRR.

* * * * *

156. In paragraph (r)(1)(i) to section 1846.672–1, the phrase "or 'Vacuum Tube'" is removed.

157. In paragraph (r)(2) introductory text to section 1846.672–1, the phrase "enter such data only once," is revised to read "enter data only once,".

158. In paragraph (r)(2)(ii) to section 1846.672–1, the phrase "shipment may be made without it at the direction of the contracting officer." is revised to read "shipment may be made at the direction of the contracting officer."

159. In paragraph (w) introductory text to section 1846.672–1, the last sentence is revised to read as follows:

(w) *Block 21—PROCUREMENT QUALITY ASSURANCE.* * * * Notes taking exception shall be entered in Block 16 or on attached supporting documents with block cross reference.

* * * * *

160. The introductory text to section 1846.672–3 is revised to read as follows:

1846.672–3 Correction instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

* * * * *

161. Section 1846.672–5 is revised to read as follows:

1846.672–5 Packing-list instructions.

Copies of the MIRR may be used as a packing list. The packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked "PACKING LIST".

162. Paragraphs (b) and (c) to section 1846.703–70 are revised to read as follows:

1846.703–70 Additional criteria.

* * * * *

(a) * * *

(b) The warranty as a deterrent against the furnishing of defective or nonconforming supplies.

(c) Whether the contractor's quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective quality program.

* * * * *

PART 1849—TERMINATION OF CONTRACTS

163. In section 1849.102–70, paragraph (a) is revised to read as follows:

1849.102–70 Prior clearance of significant contract terminations.

(a) Any information on contract termination involving a reduction in employment of 100 or more contractor employees must have prior NASA Headquarters clearance before it is released. Release of information to Congress or the public is the responsibility of the NASA Headquarters Office of Legislative Affairs (Code LB). A reduction of fewer than 100 may be significant and, if so, should be similarly cleared.

164. In paragraph (b) introductory text to section 1849.102–70, the phrase "the Office of Legislative Affairs, NASA Headquarters (Code LB)" is revised to read "Code LB".

165. In paragraph (c) to section 1849.102–70, the phrase "the Office of Legislative Affairs, NASA Headquarters, (Code LB)" is revised to read "Code LB":

166. In paragraph (d) to section 1849.102–70, the phrase "The Office of Legislative Affairs, NASA Headquarters, (Code LB)" is revised to read "Code LB".

1849.111–71 [Amended]

167. In section 1849.111–71, paragraph (a)(1), the dollar amount "$100,000" is revised to read "$1,000,000" and in paragraph (a)(2)(i), paragraph (a)(1), the dollar amount "$100,000" is revised to read "$1,000,000" and in paragraph (a)(2)(i), the dollar amount "$50,000" is revised to read "$100,000".

1849.111–72 [Amended]

168. In section 1849.111–72, the word "judge" is revised to read "review".

1849.111–74 [Amended]

169. In section 1849.111–74, the phrase "of an upper-tier" is revised to read "of a lower tier", and in the last sentence, the phrase "may be used only for specified contracts and" is removed and the word "immediate" is revised to read "first tier".

170. In section 1849.603–70, paragraph (d) introductory text and paragraphs (d)(1) and (d)(2) are revised to read as follows:

1849.603–70 Termination contracting officer's settlement memorandum.

* * * * *

(d) *Settlement summary.* The TCO shall address the settlements reached on the following items:

(1) *Contractor's cost.* See FAR 15.808(a) for format.

(2) *Profit/Fee.* See FAR 15.808(a)(10).

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.227–70 [Amended]

171. In section 1852.227–70, the date of the clause "APR 1988" is revised to read "(JULY 1995)".

172. In paragraph (d)(2) of the clause at section 1852.227–70, the citation "14 CFR part 1245, subpart 2, Licensing of NASA Inventions" is revised to read "37 CFR part 404, Licensing of Government Owned Inventions."

173. In paragraph (d)(3) of the clause at section 1852.227–70, remove the comma after the word "appeal" and the phrase "in accordance with 14 CFR 1245.211," is revised to read "to the Administrator".

174. In the clause heading to section 1852.246–72, the date "(OCT 1988)" is revised to read "(JUNE 1995)" and paragraph (a) to the clause is revised to read as follows:

1852.246–72 Material inspection and receiving report.

* * * * *

(a) At the time of each delivery to the Government under this contract, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series) prepared in ____ [Insert number of copies, including original] copies, an original and ____ copies [Insert number of copies].

* * * * *

PART 1853—FORMS

175. In section 1853.101 the first sentence is revised to read as follows:

1853.101 Requirements for use of forms.

The requirements for use of the forms in this part are contained in parts 1801 through 1851 of this chapter, where the subject matter applicable to each form is addressed. * * *

176. In section 1853.103 the first sentence is revised to read as follows and "Acquisition Liaison Division, Code HP" is revised to read "Contract Management Division, Code HK".

1853.103 Exceptions.

Alteration of any form prescribed by the regulations in this chapter is prohibited unless prior approval has been obtained from the NASA Forms Officer (Code JTD) (through the Installation Forms Manager), who will coordinate the request with the Office of Procurement, Code H. * * *

177. In section 1853.104, the first sentence is revised to read as follows:

1853.104 Overprinting.

Forms may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any other way. * * *

178. Section 1853.105 is revised to read as follows:

1853.105 Computer generation.

Forms prescribed by the regulations in this chapter may be adapted for computer preparation providing there is no change to the name, content, or sequence of the data elements, and the form carries the form number and edition date.

1853.108 [Amended]

179. In section 1853.108, "the Acquisition Liaison Division, Code HP" is revised to read "the Contract Management Division, Code HK".

180. Section 1853.204–70 is revised to read as follows:

1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 531, 533M, 533P, 533Q, 667, 1098, 1356, 1611, 1612; DD Form 1593; FBI Form FD–258; and SF 85P).

(a) The following forms shall be used as prescribed at 1804.671–4:

(1) NASA Form 507, Individual Procurement Action Report (New Awards).

(2) NASA Form 507A, Individual Procurement Action Report (New Awards) Supplement A.

(3) NASA Form 507B, Individual Procurement Action Report Supplement B.

(4) NASA Form 507G, Individual Procurement Action Report (Grants/Orders).

(5) NASA Form 507M, Individual Procurement Action Report (Modifications).

(b) *NASA Form 531, Name Check Request.* NASA Form 531, prescribed in 1804.470 and 1852.204–76, shall be used for National Agency Check (NAC) investigations.

(c) The following forms shall be used as prescribed at 1804.675:

(1) NASA Form 533M, Monthly Contractor Financial Management Report.

(2) NASA Form 533P, Monthly Contractor Financial Management Performance Analysis Report.

(3) NASA Form 533Q, Quarterly Contractor Financial Management Report.

(d) *NASA Form 667, Report on NASA Subcontracts.* NASA Form 667, prescribed at 1804.672, shall be used by contractors to submit information to NASA on each subcontract or subcontract modification over $25,000.

(e) *NASA Form 1098, Checklist for Contract Award File Content.* NASA Form 1098, prescribed at 1804.803–71, shall be used as a guide in compiling contract files and shall accompany contracts and supplemental agreements submitted to Headquarters for approval. In Item 19 (Jul 90 edition), line out the entry "D&F: Other Than Full and Open Competition in the Public Interest (FAR/NFS 6.302–7)," and write in "JOFOC (FAR/NFS 6.3)."

(f) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* NASA Form 1356, prescribed at 1804.7202, shall be used to report information applicable to colleges and universities.

(g) *NASA Form 1611, Contract Completion Statement.* As prescribed at 1804.804–2 and 1804.804–5, NASA Form 1611 shall be used for closeout of all contracts above the small purchase threshold.

(h) The following forms shall be used as prescribed at 1804.804–5:

(1) NASA Form 1612, Contract Closeout Checklist.

(2) DOD Form 1593, Contract Administration Completion Record.

181. Section 1853.216–70 is revised to read as follows:

1853.216–70 Assignees under cost-reimbursement contracts (NASA Forms 778, 779, 780, 781).

The following forms shall be used as prescribed at 1816.370:

(a) NASA Form 778, Contractor's Release.

(b) NASA Form 779, Assignee's Release.

(c) NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.

(d) NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

182. In section 1853.242–70, the section heading is revised and paragraph (g) is added to read as follows:

1853.242–70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433) and service request (NASA Form 1434).

* * * * *

(g) *NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services.* NASA Form 1434, prescribed at 1842.202–70(e)(1), shall be used to request contract administration and audit services incident to preaward of a contract but exclusive of preaward surveys.

1853.242–71 [Removed]

183. Section 1853.242–71 is removed.

1853.242–72 [Redesignated as Section 1853.242–71]

184. Section 1853.242–72 is redesignated as section 1853.242–71.

185. In section 1853.249, paragraph (b) is revised to read as follows:

1853.249 Termination of contracts (NASA Forms 1412, 1413).

* * * * *

(b) *NASA Form 1413, Termination Docket Checklist.* NASA Form 1413, prescribed at 1849.105–70, shall be used to ensure adequacy of termination records.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Subpart 1870.1—[Amended]

186. Section 1870.000 and subpart 1870.1 are revised to read as follows:

1870.000 Scope of part.

This part contains NASA-unique regulations which—

(a) Constitute a system of regulations such that presentation in a unified format is essential;

(b) Relate to numerous FAR subparts;

(c) Have, as a whole, no clearly identifiable FAR counterpart; and

(d) May include non-regulatory material necessary to complete coverage of the instant subject.

Subpart 1870.1—NASA Acquisition of Investigations System

1870.101 System content.

(a) The regulations governing the NASA Acquisition of Investigations set forth the system in a single document, covering the roles of individuals with procurement and programmatic responsibilities both within NASA and the private sector. Therefore, the regulation provides guidance to all NASA personnel engaged in the solicitation, evaluation and selection of investigations. It emphasizes the responsibilities of line management and, as appropriate, the selected investigators in the acquisition of equipment necessary for the investigation. It provides for uniform procedures and equitable treatment in the evaluation and selection of investigators and acquisition of investigative equipment consistent with the FAR and NFS.

(b) The system regulation contains policy and procedures applicable to the solicitation of investigations with "Announcements of Opportunity," a form of broad agency announcement authorized at FAR 6.102(d)(2)(i).

1870.102 NASA acquisition of investigations.

(a) The NASA Acquisition of Investigations System is prescribed by Appendix I to this section 1870.102.

(b) NASA may reprint this Appendix I as a separate Handbook for sale and/or distribution provided the following two conditions are met:

(1) With the exception of availability and distribution information, any subsequent modification in the text shall be preceded by a change to the NASA FAR Supplement 1870.102.

(2) The following information shall be included as a part of the prefatory material in the NASA Handbook:

Important Notice

This Handbook is a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.102) Section 1870.102, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.102, Appendix I without issuing a new edition of this Handbook. Any such changes will be published in the **Federal Register**; however, it is anticipated that such changes will be rare, unless mandated by statute or unusual circumstances. In the event of apparent conflict between this Handbook and the NFS, the NFS shall govern.

APPENDIX I TO 1870.102—GUIDELINES FOR ACQUISITION OF INVESTIGATIONS

Preface

NASA has always provided opportunities for qualified people in NASA, other Government agencies, colleges and universities, private industry, and foreign countries to participate in developing and carrying out its responsibilities in aeronautical and space activities. NASA has treated itself as a part of the scientific and technical community and has encouraged this community to bring to bear its expertise in developing investigatory objectives, selecting the investigations to carry out, participating in the resulting missions, analyzing the data obtained, and publishing the results.

The acquisition of investigations process covered by this Handbook allows the continuation of our successful cooperative endeavors with the scientific, technological, and applications user communities and provides standards requiring greater attention to the planning and management of investigations. Also, this Handbook emphasizes the responsibilities of line management and, as appropriate, the selected investigators in the acquisition of equipment necessary for the investigation.

Guidelines for Acquisition of Investigations

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Chapter 1—The Investigation Acquisition System

100 General

The best space research results when space research investigators participate in the selection of investigations. The investigation acquisition system encourages the participation of investigators and the selection of investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate from the acquisition process, but requiring the same management and discipline to assure compliance with statutory requirements and considerations of equity. "NASA Acquisition of Investigations" is the name under which this system is incorporated into the NASA FAR Supplement.

101 Key Features of the System

1. Use of the system commences with a Program Associate Administrator's determination that the investigation acquisition process is appropriate for a program. An Announcement of Opportunity (AO) is disseminated to the interested community. This solicitation does not specify the investigations to be proposed but solicits investigative ideas which contribute to broad objectives. In order to determine which of the proposals should be selected, a formal competitive evaluation process is utilized. The evaluation for merit is normally made by experts in the fields represented by the proposals. Care should be taken to avoid conflicts of interest. These evaluators may be from NASA, other Government agencies, universities, or the commercial sector. Along with or subsequent to the evaluation for merit, the other factors of the proposals, such as engineering, cost, and integration aspects, are reviewed by specialists in those areas. The evaluation conclusions as well as considerations of budget and other factors are used to formulate a complement of recommended investigations. A steering committee serving as staff to the Program Associate Administrator (Program AA) reviews the proposed payload or program of investigation, the iterative process, and the selection recommendations. The steering committee serves as a forum where different interests, such as flight program, discipline management, and administration, can be weighed.

The Program AA selects the proposals that will participate in the program. Once selected, an investigator is assigned appropriate responsibilities relating to the investigation through a contract with the institution. For foreign investigators, these responsibilities will usually be outlined in an agreement between NASA and the sponsoring governmental agency in the investigator's country.

2. The AO process provides a disciplined approach to investigation acquisition. The following major steps must be followed in each case:

a. The AO shall be signed by the Program AA and shall be widely distributed to the scientific, technological, and applications user communities, as appropriate.

b. An evaluation team shall be formed including recognized peers of the investigators.

c. A project office will be assigned to assess the engineering, cost, integration, and management aspects of the proposals.

d. A program office will be responsible to formulate a complement of investigations consistent with the objectives stated in the AO, cost, and schedule constraints.

e. A steering committee appointed by the appropriate Program AA shall review the proposed investigations for relevance and merit, will assure compliance with the system as described in this Handbook, and make selection recommendations.

f. Selections shall be made by the Program AA.

3. Payloads will be formulated consisting of investigations selected through the AO process and/or other authorized methods.

4. When the need is determined by the Program AA, payload specialists will be selected in accordance with NMI 7100.16, Payload Specialists for Space Transportation Systems (STS) Missions.

102 Management Responsibilities

1. Program AA are responsible for overseeing the process and for making key decisions essential to the process including:

a. Determination to use the investigation acquisition system.

b. Appointment of the steering committee members.

c. Designation of a staff to assure uniformity in the issuance of the AO and conformity with the required procedures in the evaluation and selection.

d. Reuse, to the maximum extent practicable, of space hardware and support equipment.

e. Determination to use advisory subcommittees, contractor, or full-time Government employees only in the evaluation process.

f. Issuance of the AO.

g. Selection of investigations and investigators, determination of need of a definition phase, determination of the role of the investigator with regard to providing essential investigation hardware and services, and determination of the need for payload specialists.

h. Assure consideration is given to minorities in the establishment of peer groups, distribution of the AO and in the selection of investigations.

i. Provide a framework for cooperative foreign participation in Space Shuttle, Spacelab, and Space Station missions.

2. The Program AA should call upon any required experts throughout the process. The remaining chapters of this Handbook will discuss the exercise of the foregoing responsibilities in greater detail.

Chapter 2—Applicability of the Process

200 General

The system used for acquisition of investigations is separate from the agency procedures for procurement of known requirements. A decision to use this special acquisition process will be based on a determination that it is the most suitable to meet program needs. The decision-making official will consider the criteria for use of the system. The project plan or other documentation should discuss the proposed mode of investigations selection.

201 Criteria for Determining Applicability

1. The decision to utilize the investigations acquisition process as an alternative to the normal planning and acquisition process can only be made after consideration of the conditions which are requisite to its use. All of the following conditions should exist before deciding that the system is applicable:

a. NASA has a general objective which can be furthered through novel experimental approaches. To develop such approaches, NASA wishes to draw upon the broadest reservoir of ideas that can be made available.

b. Choices must be made among competing ideas in expanding knowledge.

c. Individual participation of an investigator is essential to exploitation of the opportunity.

2. The investigations acquisition process shall not be used when any of the following characteristics are present:

a. The requiring office can define a requirement sufficiently to allow for normal procurement.

b. The program is extremely complex, requiring specialized integration, coordination, or other special handling, or extending over a lengthy period wherein individual participation is not essential.

c. It is not possible or considered essential to the program to follow the steps of the investigations acquisition process.

202 Programs and Activities Where Use May be Considered

1. General—The investigation acquisition process is most suitable for investigations aimed at exploration requiring several unique sensors or instruments, but it has been used successfully in several types of opportunity. A discussion of several types of programs, the opportunities they offer, and comment on the suitability of the special process follows.

2. Exploration and Space Research Flights

a. Examples—Space Transportation System (STS) flights with attached payloads, generally Spacelab payloads; and free-flying spacecraft, such as Explorers, Pioneers, Space Telescope, Landsats, and Long Duration Exposure Facilities.

b. Types of Opportunity

(1) A common and sought after opportunity is to participate as a Principal Investigator (PI) responsible for conceiving and conducting a space investigation. This may involve a major piece of instrumentation. In the case of a "facility" or "multiuser" payload, each PI's responsibilities would ordinarily involve a relatively minor portion of the total instrument.

(2) There may also be an opportunity to serve on a PI's team as a member or Co-Investigator.

(3) A type of opportunity that generally involves the use of data from another investigator's instrument is that of guest investigator or guest observer. Guest investigators usually participate after the primary objectives have been satisfied for the investigations involved.

(4) A team may be formed from selected investigators to assist in defining planned mission objectives and/or to determine, in a general manner, the most meaningful instruments to accomplish the mission objectives.

c. Selection and Acquisition Procedures—The investigation acquisition process may be applicable to all of these types of opportunities. The supposition common in these opportunities is that the best ideas and approaches are likely to result from the broadest possible involvement of the scientific, technological or applications user communities.

3. Minor Missions

a. Examples—Research aircraft, sounding rockets, balloons, and minor missions are

generally of short duration, small in size, often single purpose, and subject to repetition. Many investigations are follow-on to past-flight investigations.

b. Types of Opportunity

(1) PIs responsible for investigation.

(2) Data use or analysis.

c. Selection and Acquisition Process—Opportunities for participation on minor missions are generally suitable for normal procurement procedures. The use of a general announcement announcing the general nature and schedule of flights may be appropriate when considered necessary to broaden participation by requesting investigator-initiated research proposals. Procurement procedures as contained in NASA FAR Supplement shall be used for follow-on repeat flights. Although NASA seeks unique, innovative ideas for these missions, the prospect of reflight and the latitude in determining number and schedule of flights argue against the need for the use of the investigations acquisition process to force dissimilar proposals into an annual or periodic competitive structure. On the other hand, there are some minor missions addressed to specific limited opportunities; for example, a solar eclipse. When such limitations indicate that the special competitive structure is needed, it should be authorized.

4. Operational and Operational Prototype Spacecraft

a. Examples—GOES, TIROS.

b. Selection and Acquisition Process—The user agency can be expected to specify performance parameters. Payload definition will be the responsibility of the user agency and NASA. Specifications sufficient for normal procedures can be produced. Use of data from the mission is the responsibility of the user agency. Thus, the special process is not required.

5. Reimbursable Missions

a. Examples—INTELSAT, SATCOM, WESTAR, MARISAT.

b. Selection and Acquisition Process—Payload determination and delivery are the responsibility of the user organization. NASA's role is essentially to provide launch services. No special process is required.

6. Supporting Research and Technology (SR&T)

a. Examples—Studies, minor developments, instrument conceptualization, ground-based observations, laboratory and theoretical supporting research, and data reduction and analysis which is unconstrained by a specific opportunity.

b. Selection and Acquisition Process—Programs in these areas tend to go forward on a continuing basis, rather than exploiting unique opportunities. Normal procurement procedures should be utilized to satisfy these requirements. A general announcement of area of interest could be made when greater participation is deemed advisable. Proposals can be solicited or unsolicited and can be entertained within the context of the normal procurement procedure.

203 Specific Approval Required

The Program AA responsible for the program is responsible for determining whether or not to use the special investigations acquisition process. Normally on major projects, or when a project plan is required, use of the investigation acquisition system will be justified and recommended in the project planning documentation and will be coordinated with staff offices and discussed in the planning presentation to the Deputy Administrator or designee.

Chapter 3—The Announcement of Opportunity

300 General

The AO is characterized by its generality. However, it is essential that the AO contains sufficient data in order to obtain meaningful proposals. To a considerable extent, the detail and depth of the AO will depend on the objective. In all cases, judgment is of paramount importance, since the purpose is to get adequate information to assess the relevance, merit, cost, and management without overburdening the proposer.

301 Need for Preparatory Effort

1 When the use of the AO process is contemplated, there is need to consult with appropriate Headquarters offices and the Project Installation responsible for the project prior to release of the AO.

2. In addition, the need to meet legal requirements in the acquisition processes will require early external Program Office involvement to:

a. Synopsize the AO in the Commerce Business Daily prior to the time of release.

b. Determine if there is instrumentation or support equipment available which may be appropriate to the AO with all necessary background data considered essential for use by a proposer.

c. Determine mailing lists, including the mailing list maintained by the International Affairs Division, Office of External Relations, for broad dissemination of the AO.

d. Assure mandatory provisions are contained in the AO.

3. Other methods of dissemination of the AO may also be used, such as the use of press releases, etc. When possible, the AO should be widely publicized through publications of appropriate professional societies; however, NASA policy does not allow payment for the placement of advertisements.

302 Responsibilities

1. The Program Office originator is responsible for the content of the AO and coordination with concerned Headquarters offices and field installations. All personnel involved in the evaluation of proposals are responsible for familiarizing themselves and complying with this Handbook and other applicable regulations. To this end, they are expected to seek the advice and guidance of appropriate Headquarters program and staff offices, and Project Installation management.

2. The Program Office is also responsible for coordinating the AO with the International Affairs, Educational Affairs, Management Support Divisions, Office of External Relations, Office of General Counsel, and Office of Procurement prior to issuance. Attention is directed to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

3. Concurrence of the Office of Procurement is required before issuance of an AO.

303 Proposal Opportunity Period

1. The AO is considered the primary method of soliciting investigations. As such, it is necessary that the process accommodate the continuous opportunities afforded by the Shuttle/Spacelab flights. Thus, the following methods may be utilized, individually or in combination, to enable an AO and resultant proposals to be open for an extended period of time and/or to cover a series or range of flight possibilities or disciplines:

a. The AO may be issued establishing a number of proposal submission dates. Normally, no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposals.

b. The AO may be issued establishing a single proposal submission date. However, the AO could provide that NASA amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired within the AO objectives.

c. The AO may provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals, the time remaining prior to the flight opportunity(s) contemplated by the AO, and payload funding and availability.

2. Generally, a core payload of investigations would be selected from the initial submission of proposals under the above methods of open-ended AOs. These selections could be final or tentative recognizing the need for further definition. Proposals received by subsequent submission dates would be considered in the scope of the original AO but would be subject to the opportunities and resources remaining available or the progress being made by prior selected investigations.

3. Any proposal, whether received on the initial submission or subsequent submission, requires notification to the investigator and the investigator's institution of the proposal disposition. Some of the proposals will be rejected completely and the investigators immediately notified. The remaining unselected proposals may, if agreeable with the proposers, be held for later consideration and funding and the investigator so notified. However, if an investigator's proposal is considered at a later date, the investigator must be given an opportunity to validate the proposal with the investigator's institution and for updating the cost and other data contained in the original submission prior to a final selection. In summary, NASA may retain proposals, receiving Category I, II, or III classifications (see paragraph 403), for possible later sponsorship until no longer feasible to consider the proposal. When this final stage is reached, the investigator must be promptly notified.

4. If the intent is to hold proposals for possible later consideration, as discussed in subparagraph 3, the AO should specifically indicate this intent and the procedure to be used. Proposing investigators not desiring their proposals be held for later consideration should be given the opportunity to so indicate in their original submissions.

304 Guidelines for Announcement of Opportunity

1. The preparation of the AO should be a multi-functional effort. It involves program and project management and usually involves other offices of NASA.

2. The AO should be tailored to the particular needs of the contemplated investigations and be complete in itself. Each AO will be identified as (Program Office) originated and numbered consecutively each calendar year, e.g., OA–1–95, OA–2–95; OLMSA–1–95; OSS–1–95; etc. The required format and detailed instructions regarding the contents of the AO are contained in Appendix A.

3. The General Instructions and Provisions (Appendix B) are necessary to accommodate the unique aspects of the AO process. Therefore, they must be appended to each AO.

4. At the time of issuance, copies of the AO must be furnished to the Office of Procurement and to the Office of General Counsel.

5. Proposers should be informed of significant departures from scheduled dates for activities related in the AO.

305 Announcement of Opportunity Soliciting Foreign Participation

Proposals for participation by individuals outside the U.S. should be submitted in the same format (excluding cost plans) as U.S. proposals; they should be typewritten and be in English; the proposals should be reviewed and endorsed by the appropriate foreign governmental agency. If letters of "Notice of Intent" are required, the AO should indicate that they be sent to NASA's International Affairs Division, Office of External Relations. Should a foreign proposal be selected, NASA will arrange with the sponsoring foreign agency for the proposed participation on a no-exchange-of-funds basis, in which NASA and the sponsoring agency will each bear the cost of discharging its respective responsibilities. Note that additional guidelines applicable to foreign proposers are contained in the Management Plan Section of Appendix C (see Section II) and must be included in any Guidelines for Proposal Preparation or otherwise furnished to foreign proposers.

306 Guidelines for Proposal Preparation

While not all of the guidelines outlined in Appendix C will be applicable in response to every AO, the investigator should be informed of the relevant information required. The proposal may be submitted on a form supplied by the Program Office. However, the proposal should be submitted in at least two sections: (1) Investigation and Technical Section; and (2) Management and Cost Section as described in Appendix C.

Chapter 4—Evaluation of Proposals

400 General

The evaluation process assures consideration of the aspects of each proposal and constitutes progressive sorting of the proposals. A review resulting in a categorization is performed by using one of the methods or combination of the methods outlined in paragraph 402. The purpose of this initial review is to determine the scientific and/or technological merit of the proposals in the context of the AO objectives. Those proposals which are considered to have the greatest scientific or technological merit are then reviewed in detail for the engineering, management, and cost aspects, usually by the Project Office at the installation responsible for the project. Final reviews are performed by the Program Office and the Steering Committee and are aimed at developing a group of investigations which represent an integrated payload or a well-balanced program of investigation which has the best possibility for meeting the announced objectives within programmatic constraints. The importance of considering the interrelationship of the several aspects of the proposals to be reviewed in the process and the need for carefully planning their treatment should not be overlooked. An evaluation plan has been found helpful to the evaluators, program management officials, and the selection official. The evaluation plan should be developed before issuance of the AO. It should cover the recommended staffing for any subcommittee or contractor support, review guidelines as well as the procedural flow and schedule of the evaluation. While not mandatory, such a plan should be considered for each AO. A fuller discussion of the evaluation and selection process is included in the following paragraphs.

401 Criteria for Evaluation

1. Each AO must indicate those criteria which the evaluators will apply in evaluating a proposal. The relative importance of each criterion must also be stated. This information will allow investigators to make informed judgments in formulating proposals that best meet the stated objectives.

2. Following is a list of general evaluation criteria appropriate for inclusion in most AOs:

a. The scientific, applications, and/or technological merit of the investigation.

b. The relevance of the proposed investigation to the AO's stated scientific, applications, and/or technological objectives.

c. The competence and experience of the investigator and any investigative team.

d. Adequacy of whatever apparatus may be proposed with particular regard to its ability to supply the data needed for the investigation.

e. The reputation and interest of the investigator's institution, as measured by the willingness of the institution to provide the support necessary to ensure that the investigation can be completed satisfactorily.

In addition to or in lieu of the criteria listed herein, additional criteria may be utilized. In all cases, the evaluation criteria must be germane to the accomplishment of the stated objectives.

3. Cost and management aspects will be considered in all selections.

4. Once the AO is issued, it is essential that the evaluation criteria be applied in a uniform manner. If it becomes apparent, before the date set for receipt of proposals, that the criteria or their relative importance should be changed, the AO will be amended, and all known recipients will be informed of the change and given an adequate opportunity to consider it in submission of their proposals. Evaluation criteria and/or their relative importance will not be changed after the date set for receipt of proposals.

402 Methods of Evaluation

Alternative methods are available to initiate the evaluation of proposals received in response to an AO. These are referred to as the Advisory Subcommittee Evaluation Process, the Contractor Evaluation Process, and the Government Evaluation Process. In all processes, a subcommittee of the appropriate Program Office Steering Committee will be formed to categorize the proposals. The various approaches, described in detail in paragraph 403. Following categorization, those proposals still in consideration will be processed to the selection official as prescribed hereafter.

403 Advisory Subcommittee Evaluation Process

1. Evaluation of scientific and/or technological merit of proposed investigations is the responsibility of an advisory subcommittee of the Steering Committee. It is of prime importance that the appointment of members to the subcommittee be weighed carefully as these individuals may exercise significant influence on the selection of investigations and hence achievement of program goals and objectives.

2. The subcommittee constitutes a peer group qualified to judge the scientific and technological aspects of all investigation proposals. One or more subcommittees may be established depending on the breadth of the technical or scientific disciplines inherent in the AO's objectives. Each subcommittee represents a discipline or grouping of closely related disciplines. To maximize the quality of the subcommittee evaluation and categorization, the following conditions of selection and appointment should be considered.

a. The subcommittee normally should be established on an ad hoc basis.

b. Qualifications and acknowledgment of the professional abilities of the subcommittee members are of primary importance. Institutional affiliations are not sufficient qualifications.

c. The executive secretary of the subcommittee must be a full-time NASA employee.

d. Subcommittee members should normally be appointed as early as possible and prior to receipt of proposals.

e. Care must be taken to avoid conflicts of interest. These include financial interests, institutional affiliations, professional biases

and associations, as well as familiar relationships. Conflicts could further occur as a result of imbalance between Government and non-Government appointees or membership from institutions representing a singular school of thought in discipline areas involving competitive theories in approach to an investigation.

f. The subcommittee should convene as a group in closed sessions for proposal evaluation to protect the proposer's proprietary ideas and to allow frank discussion of the proposer's qualifications and the merit of the proposer's ideas. Lead review responsibility for each proposal may be assigned to members most qualified in the involved discipline. It is important that each proposal be considered by the entire subcommittee.

3. It may not be possible to select a subcommittee fully satisfying all of the conditions described in subparagraph 2. It is not the purpose of these guidelines to establish provisions for making trade-offs, where necessary, among the above criteria. This is properly the responsibility of the nominating and appointing officials. This latitude permits flexibility in making decisions in accord with circumstances of each application. In so doing, however, it is emphasized that recognized expertise in evaluating dissimilar proposals is essential to the continued workability of the investigation acquisition process.

4. Candidate subcommittee members should be nominated by the office having responsibility for the evaluation. Nominations should be approved in accordance with NMI 1150.2, "Establishment, Operation, and Duration of NASA Advisory Committees." The notification of appointment should specify the duration of assignment on the subcommittee, provisions concerning conflicts of interest, and arrangements regarding honoraria, per diem, and travel when actually employed.

5. It is important that members of the subcommittee be formally instructed as to their responsibilities with respect to the investigation acquisition process, even where several or all of the members have served previously. This briefing of subcommittee members should include:

a. Instruction of subcommittee members on agency policies and procedures pertinent to acquisition of investigations.

b. Review of the program goals, AO objectives, and evaluation criteria, including relative importance, which provide the basis for evaluation.

c. Instruction on the use of preliminary proposal evaluation data furnished by the Installation Project Office. The subcommittee should examine these data to gain a better understanding of the proposed investigations, any associated problems, and to consider cost in relation to the value of the investigations' objectives.

d. Definition of responsibility of the subcommittee for evaluation and categorization with respect to scientific and/or technical merit in accordance with the evaluation criteria.

e. Instruction for documentation of deliberations and categorizations of the subcommittee.

f. Inform the chairperson of the subcommittee and all members that they should familiarize themselves with the provisions of the current "Standards of Conduct for NASA Employees", NHB 1900.1, or "Standards of Conduct for NASA Special Government Employees", NHB 1900.2, as appropriate, regarding conflicts of interest. Members should inform the appointing authority if their participation presents a real or apparent conflict of interest situation. In addition, all participants should inform the selection official in the event they are subjected to pressure or improper contacts.

g. Inform members that prior to the selection and announcement of the successful investigators and investigations, subcommittee members and NASA personnel shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. Also, inform members that subsequent to selection of an investigation and announcement of negotiations with the investigator's institution, information concerning the proceedings of the subcommittee and data developed by the subcommittee will be made available to others within NASA only when the requestor demonstrates a need to know for a NASA purpose. Such information will be made available to persons outside NASA including other Government agencies, only when such disclosure is concurred in by the Office of General Counsel. In this connection, reference is made to 18 U.S.C. 1905 which provides criminal sanctions if any officer or employee (including special employees) of the United States discloses or divulges certain kinds of business confidential and trade secret information unless authorized by law.

6. The product of an advisory subcommittee is the classification of proposals into four categories. The categories are:

a. Category I—Well conceived and scientifically and technically sound investigations pertinent to the goals of the program and the AO's objectives and offered by a competent investigator from an institution capable of supplying the necessary support to ensure that any essential flight hardware or other support can be delivered on time and that data can be properly reduced, analyzed, interpreted, and published in a reasonable time. Investigations in Category I are recommended for acceptance and normally will be displaced only by other Category I investigations.

b. Category II—Well conceived and scientifically or technically sound investigations which are recommended for acceptance, but at a lower priority than Category I.

c. Category III—Scientifically or technically sound investigations which require further development. Category III investigations may be funded for development and may be reconsidered at a later time for the same or other opportunities.

d. Category IV—Proposed investigations which are recommended for rejection for the particular opportunity under consideration, whatever the reason.

7. A record of the deliberations of the subcommittee should be prepared by the assigned executive secretary and should be signed by the Chairperson. The minutes should contain the categorizations with basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

404 Contractor Evaluation Process

1. The use of the contractor method for obtaining support for evaluation purposes of proposals received in response to an AO requires the approval of the Program AA. Prior to the use of this method, discussion should be held with the Office of Procurement.

2. It is NASA policy to avoid situations in the procurement process where, by virtue of the work or services performed for NASA, or as a result of data acquired from NASA or from other entities, a particular company:

a. Is given an unfair competitive advantage over other companies with respect to future NASA business;

b. Is placed in a position to affect Government actions under circumstances in which there is potential that the company's judgment may be biased; or

c. Otherwise finds that a conflict exists between the performance of work or services for the Government in an impartial manner and the company's own self-interest.

3. To reduce the possibility of an organizational conflict of interest problem arising, the following minimum restrictions will be incorporated into the contract:

a. No employee of the contractor will be permitted to propose in response to the AO;

b. The "Limitation on Future Contracting" clause contained in NASA FAR Supplement 1852.209–71 and the conditions set forth in NASA FAR Supplement 1815.413–2 Alternate II (c) and (d) will be included in all such contracts; and

c. Unless authorized by the NASA contracting officer, the contractor shall not contact the originator of any proposal concerning its contents.

4. The scope of work for the selected contractor will provide for an identification of strengths and weaknesses and a summary of the proposals. The contractor will not make selections nor recommend investigations.

5. The steps to be taken in establishing evaluation panels and the responsibilities of NASA and the contractor in relation to the panels will be as follows:

a. The contractor will be required to establish and provide support to panels of experts for review of proposals to evaluate their scientific and technical merit;

b. These panels will be composed of scientists and specialists qualified to evaluate the proposals;

c. The agency may provide to the contractor lists of scientist(s) and specialist(s) in the various disciplines it believes are qualified to serve on the panels;

d. The contractor will report each panel's membership to NASA for approval; and

e. The contractor must make all the necessary arrangements with the panel members.

6. The evaluation support by the contractor's panels of experts will be accomplished as follows:

a. The panels will review the scientific and technical merit of the proposals in accordance with the evaluation criteria in the AO and will record their strengths and weaknesses.

b. The contractor will make records of each panel's deliberations which will form the basis for a report summarizing the results of the evaluations. Upon request, the contractor shall provide all such records to NASA;

c. The chairperson of each panel shall certify that the evaluation report correctly represents the findings of the review panel; and

d. A final report will be submitted as provided in the contract.

7. A subcommittee of the Program Office Steering Committee will be established on an ad hoc basis. Utilizing furnished data, the subcommittee will classify the proposals into the four categories enumerated in paragraph 403, "Advisory Subcommittee Evaluation Process." A record of the deliberations of the subcommittee should be prepared by an assigned executive secretary and signed by the chairperson. The minutes should contain the categorizations with the basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

405 Government Evaluation Process

1. The Program AA may, in accordance with NMI 1150.2, appoint one or more full-time Government employees as subcommittee members of the Program Office Steering Committee to evaluate and categorize the proposals.

2. Each subcommittee member should be qualified and competent to evaluate the proposals in accordance with the AO evaluation criteria. It is important that a subcommittee's evaluation not be influenced by others either within or outside of NASA.

3. The subcommittee members will not contact the proposers for additional information.

4. The subcommittee members will classify the proposals in accordance with the four categories indicated in paragraph 403. Each categorization will be supported by an appropriate rationale including a narrative of each proposal's strengths and weaknesses.

406 Engineering, Integration, and Management Evaluation

1. The subcommittee responsible for categorization of each proposal in terms of its scientific, applications, or technical merit should receive information on probable cost, technical status, developmental risk, integration and safety problems, and management arrangements in time for their deliberations.

2. This information should be provided at the discretion of the Headquarters Program Office by the Project Office at the installation. This information can be in general terms and should reflect what insights the Project Office can provide without requesting additional details from the proposers. This limited Project Office review will not normally give the subcommittees information of significant precision. The purpose is to give the subcommittee sufficient information so it can review the proposals in conjunction with available cost, integration, and management considerations to gain an impression of each investigator's understanding of the problems of the experiment and to permit gross trade-offs of cost versus value of the investigation objective.

3. Following categorization, the Project Office shall evaluate proposals in contention, in depth, including a thorough review of each proposal's engineering, integration, management, and cost aspects. This review should be accomplished by qualified engineering, cost, and business analysts at the project center.

4. In assessing proposed costs, the evaluation must consider:

a. The investigation objective.

b. Comparable, similar or related investigations.

c. Whether NASA or the investigator should procure the necessary supporting instrumentation or services and the relative cost of each mode.

d. Total overall or probable costs to the Government including integration and data reduction and analysis. In the case of investigations proposed by Government investigators, this includes all associated direct and indirect cost. With respect to cooperative investigations, integration, and other applicable costs should be considered.

5. The Project Office, as part of the in-depth evaluation of proposals that require instrumentation or support equipment, will survey all potential sources for Government-owned instrumentation or support equipment that may be made available, with or without modifications, to the potential investigator. Such items contributed by foreign cooperating groups which are still available under cooperative project agreements will also be considered for use under the terms and conditions specified in the agreements. As part of the evaluation report to the Program Office, the availability or nonavailability of instrumentation or support equipment will be indicated.

6. Proposals which require instrumentation should be evaluated by project personnel. This evaluation should cover the interfaces and the assessment of development risks. This evaluation should furnish the selection official with sufficient data to contribute to the instrument determinations. Important among these are:

a. Whether the instrument requires further definition;

b. Whether studies and designs are necessary to provide a reasonably accurate appreciation of the cost;

c. Whether the investigation can be carried out without incurring undue cost, schedule, or risk of failure penalties; and

d. Whether integration of the instrument is feasible.

7. In reviewing an investigator's management plan, the Project Office should evaluate the investigator's approach for efficiently managing the work, the recognition of essential management functions, and the effective overall integration of these functions. Evaluation of the proposals under final consideration should include, but not be limited to: workload—present and future related to capacity and capability; past experience; management approach and organization; e.g.:

a. With respect to workload and its relationship to capacity and capability, it is important to ascertain the extent to which the investigator is capable of providing facilities and personnel skills necessary to perform the required effort on a timely basis. This review should reveal the need for additional facilities or people, and provide some indication of the Government support the investigator will require.

b. A review should be made of the investigator, the investigator's institution, and any supporting contractor's performance on prior investigations. This should assist in arriving at an assessment of the investigator and the institution's ability to perform the effort within the proposed cost and time constraints.

c. The proposed investigator's management arrangements should be reviewed, including make or buy choices, support of any co-investigator, and preselected subcontractors or other instrument fabricators to determine whether such arrangements are justified. The review should determine if the proposed management arrangements enhance the investigator's ability to devote more time to the proposed experiment objectives and still effectively employ the technical and administrative support required for a successful investigation. In making these evaluations, the Project Office should draw on the installation's engineering, business, legal, and other staff resources, as necessary, as well as its scientific resources. If further information is needed from the proposers, it should be obtained through the proper contacts.

407 Program Office Evaluation

1. A Program Office responsible for the project or program at Headquarters will receive the evaluation of the proposals, and weigh the evaluative data to determine an optimum payload or program of investigation. This determination will involve recommendations concerning individual investigations; but, more importantly, should result in a payload or program which is judged to optimize total mission return within schedule, engineering, and budgetary constraints. The recommendations should facilitate sound selection decisions by the Program AA. Three sets of recommendations result from the Program Office evaluation:

a. Optimum payload or program of investigations, or options for alternative payloads or programs.

b. Recommendation for final or tentative selection based on a determination of the degree of uncertainty associated with individual investigations. A tentative selection may be considered step one of a two-step selection technique.

c. Upon consideration of the guidelines contained in paragraph 501-1c, recommending responsibility for instrument development.

2. The Installation Project Office evaluation is principally concerned with ensuring that the proposed investigation can be managed, developed, integrated, and executed with an

appropriate probability of technical success within the estimated probable cost. The Headquarters program Director, drawing upon these inputs, should be mainly concerned with determining a payload or program from the point of view of programmatic goals and budgetary constraints. Discipline and cost trade-offs are considered at this level. The Headquarters Program Office should focus on the potential contribution to program objectives that can be achieved under alternative feasible payload integration options.

3. It may be to NASA's advantage to consider certain investigations for tentative selection pending resolution of uncertainties in their development. Tentative selections should be reconsidered after a period of time for final selection in a payload or program of investigations. This two-step selection process should be considered when:

a. The potential return from the investigation is sufficient, relative to that of the other investigations under consideration, and that its further development appears to be warranted before final selection.

b. The investigation potential is of such high priority to the program that the investigation should be developed for flight if at all possible.

c. The investigative area is critical to the program and competitive approaches need to be developed further to allow selection of the optimum course.

4. Based on evaluation of these considerations associated with the investigations requiring further development of hardware, the following information should be provided to the Steering Committee and the Program AA responsible for selection:

a. The expected gain in potential return associated with the eventual incorporation of tentatively recommended investigations in the payload(s) or program.

b. The expected costs required to develop instrumentation to the point of "demonstrated capability."

c. The risk involved in added cost, probability of successfully developing the required instrument capability, and the possibility of schedule impact.

d. Identification of opportunities, if any, for inclusion of such investigations in later missions.

5. In those cases where investigations are tentatively selected, an explicit statement should be made of the process to be followed in determining the final payload or program of investigations and the proposers so informed. The two-phase selection approach provides the opportunity for additional assurance of development potential and probable cost prior to a final commitment to the investigation.

6. As instruments used in investigations become increasingly complex and costly, the need for greater control of their development by the responsible Headquarters Program Office also grows. Accordingly, as an integral part of the evaluation process, a deliberate decision should be made regarding the role of the Principal Investigator with respect to the provision of the major hardware associated with that person's investigation. The guidelines for the hardware acquisition determination are discussed in paragraph 501-1c.

7. The range of options for responsibility for the instrumentation consists of:

a. Assignment of full responsibility to the Principal Investigator. The responsibility includes all in-house or contracted activity to provide the instrumentation for integration.

b. Retention of developmental responsibility by the Government with participation by the Principal Investigator in key events defined for the program. In all cases the right of the Principal Investigator to counsel and recommend is paramount. Such involvement of the Principal Investigator may include:

(1) Provision of instrument specifications.

(2) Approval of specifications.

(3) Independent monitorship of the development and advice to the Government on optimization of the instrumentation for the investigation.

(4) Participation in design reviews and other appropriate reviews.

(5) Review and concurrence in changes resulting from design reviews.

(6) Participation in configuration control board actions.

(7) Advice in definition of test program.

(8) Review and approval of test program and changes thereto.

(9) Participation in conduct of the test program.

(10) Participation in calibration of instrument.

(11) Participation in final inspection and acceptance of the instrument.

(12) Participation in subsequent test and evaluation processes incident to integration and flight preparation.

(13) Participation in the development and support of the operations plan.

(14) Analysis and interpretation of data.

8. The Principal Investigator should as a minimum:

a. Approve the instrument specification.

b. Advise the project manager in development and fabrication.

c. Participate in final calibration.

d. Develop and support the operations plan.

e. Analyze and interpret the data.

9. The Project Installation is responsible for implementing the program or project and should make recommendations concerning the role for the Principal Investigators. The Program AA will determine the role, acting upon the advice of the Headquarters Program Office and the Steering Committee. The Principal Investigator's desires will be respected in the negotiation of the person's role allowing an appeal to the Program AA and the right to withdraw from participation.

10. The Program Office should make a presentation to the Steering Committee with supporting documentation on the decisions to be made by the responsible Program AA.

408 Steering Committee Review

1. The most important role of the Steering Committee is to provide a substantive review of a potential payload or program of investigations and to recommend a selection to the Program AA. The Steering Committee applies the collective experience of representatives from the program and discipline communities and offers a forum for discussing the selection from those points of view. In addition to this mission-specific evaluation function, the Steering Committee provides guidance to subcommittee chairpersons and serves as a clearinghouse for problems and complaints regarding the process. The Steering Committee is responsible for assuring adherence to required procedures. Lastly, it is the forum where discipline objectives are weighed against program objectives and constraints.

2. The Steering Committee represents the means for exercising three responsibilities in the process of selecting investigations to:

a. Review compliance with procedures governing application of the AO process.

b. Ensure that adequate documentation has been made of the steps in the evaluation process.

c. Review the results of the evaluation by the subcommittee, Project, and Program Offices and prepare an assessment or endorsement of a recommended payload or program of investigations to the Program AA.

3. The purpose in exercising the first of these responsibilities is to ensure equity and consistency in the application of the process. The Steering Committee is intended to provide the necessary reviews and coordination inherent in conventional acquisition practices.

4. The second and third responsibilities of the Steering Committee are technical. They require that the Steering Committee review the evaluations by subcommittee, the Project Office, and the Program Office for completeness and appropriateness before forwarding to the Program AA. Most important in this review are:

a. Degree to which results of evaluations and recommendations follow logically from the criteria in the AO.

b. Consistency with objectives and policies generally beyond the scope of Project/Program Offices.

c. Sufficiency of reasons stated for tentative recommendations of those investigations requiring further instrument research and development.

d. Sufficiency of reasons stated for determining responsibilities for instrument development.

e. Sufficiency of consideration of reusable space flight hardware and support equipment for the recommended investigations.

f. Sufficiency of reasons for classifying proposed investigations in their respective categories.

g. Fair treatment of all proposals.

5. The Steering Committee makes recommendations to the selection official on the payload or program of investigations and notes caveats or provisions important for consideration of the selection official.

409 Principles to Apply

1. Paragraph 408 contains a description of the evaluation function appropriate for a major payload or very significant program of investigation. The levels of review, evaluation, and refinement described should be applied in those selections where warranted but could be varied for less significant selection situations. It is essential to consider the principles of the several evaluative steps, but it may not be essential to maintain strict adherence to the sequence and structure of the evaluation system described. The selection official is responsible for determining the evaluation process most appropriate for the selection situation using this Chapter as a guide.

2. Significant deviations from the provisions of this Handbook must be fully documented and be approved by the Program AA after concurrence by the Office of General Counsel and Office of Procurement.

Chapter 5—The Selection Process

Evaluation stage	Principal emphasis	Results
Contractor (when authorized)	Summary evaluation (strengths and weaknesses.	Report to Subcommittee.
Subcommittee	Science and technological relevance, value, and feasibility.	Categorization of individual proposals.
Project Office	Engineering/cost/integration/management assessment.	Reports to Subcommittee and Program Office.
Program Office	Consistency with announcement and program objectives, and cost and schedule constraints.	Recommendations to Steering Committee of payload or program of investigations.
Steering Committee	Logic of proposed selections and compliance with proper procedures.	Recommendations to Program Associate Administrator.

500 General

The Program AA is responsible for selecting investigations for contract negotiation. This decision culminates the evaluations and processes that can be summarized as follows:

501 Decisions To Be Made

1. The selection decisions by the Program AA constitute management judgments balancing individual and aggregate scientific or technological merit, the contribution of the recommended investigations to the AO's objectives, and their consonance with budget constraints. The selection official may develop additional data to make the following decisions:

a. Determination of the adequacy of scientific/technical analysis supporting the recommended selections. This supporting rationale should involve considerations including:

(1) Assurance that the expected return contributes substantially to program objectives and is likely to be realized.

(2) Assurance that the evaluation criteria were applied consistently to all proposed investigations.

(3) Assurance that the set of recommended investigations constitutes the optimum program or payload considering potential value and constraints.

(4) Assurance that only one investigator is assigned as the Principal Investigator to each investigation and that the Principal Investigator will assume the associated responsibilities and be the single point of contact and leader of any other investigators selected for the same investigation.

b. Determination as to whether available returned space hardware or support equipment, with or without modification, would be adequate to meet or support investigation objectives.

c. Determination as to whether the proposed instrument fabricator qualifies and should be accepted as a sole source or whether the requirement should be competitive procured. The following guidelines apply:

(1) The hardware required should be subjected to competitive solicitation where it is clear that the capability is not sufficiently unique to justify sole source procurement.

(2) The hardware requirement should be purchased from the fabricator proposed by the investigator, which may be the investigator's own institution, (a) when the fabricator's proposal contains technical data that are not available from another source, and it is not feasible or practicable to define the fabrication requirement in such a way as to avoid the necessity of using the technical data contained in the proposal; (b) when the fabricator offers unique capabilities that are not available from another source; (c) when the selection official determines that the proposed hardware contributes so significantly to the value of the investigator's proposal as to be an integral part of it.

(3) If a producer other than the one proposed by the investigator offers unique capabilities to produce the hardware requirement, NASA may buy the hardware from the qualified fabricator.

(4) If a NASA employee submits a proposal as a principal investigator, any requirement for hardware necessary to perform the investigation must either be competed by the installation procurement office or a justification must be written, synopsized, and approved in accordance with the requirements of FAR and the NFS.

d. Determination of the desirability for tentative selection of investigations. This determination involves considerations including:

(1) Assessment of the state of development of the investigative hardware, the cost and schedule for development in relation to the gain in potential benefits at the time of final selection.

(2) Assurance that there is adequate definition of investigation hardware to allow parallel design of other project hardware.

(3) Assurance that appropriate management procedures are contained in the project plan for reevaluation and final selection (or rejection) on an appropriate time scale.

e. Determination of the acceptability of the proposer's management plan, including the proposed hardware development plan, and the necessity, if any, of negotiating modifications to that plan.

2. In the process of making the above determinations described in subparagraph 1, the Program AA may request additional information or evaluations. In most instances, this information can be provided by the Program Office responsible for the mission, project, or program. However, the Program AA may reconvene the subcommittee or poll the members individually or provide for additional analysis or require additional data from evaluators or proposers as considered necessary to facilitate the Program AA's decision.

502 The Selection Statement

Upon completion of deliberations, the responsible Program AA shall issue a selection statement. Ordinarily this statement will, upon request, be releasable to the public. As a minimum, the selection statement should include:

1. The general and specific evaluation criteria and relative importance used for the selection.

2. The categorizations provided by the subcommittee and the rationale for accepting or not accepting each Category I proposal and a succinct statement concerning the nonacceptance of all other proposals.

3. A concise description of each investigation accepted including an indication as to whether the selection is a partial acceptance of a proposal and/or a joinder with other investigators.

4. The role of the Principal Investigator with regard to hardware essential to the investigation and whether the Principal Investigator will be responsible for hardware acquisition and the basis therefor.

5. An indication of the plan and acquisition using the regular procurement processes, if the Principal Investigator is not to acquire the hardware.

6. A statement indicating whether the selection is final or tentative, recognizing the need for better definition of the investigation and its cost.

7. A statement indicating use of Government-owned space flight hardware and/or support equipment.

503 Notification of Proposers

1. It is essential that investigators whose proposals have no reasonable chance for selection be so apprised as soon as practicable. The responsible Program Office will, upon such determination, notify investigators of that fact with the major reason(s) why the proposals were so

considered. The notification letter should also inform such investigators that they may obtain a detailed oral debriefing provided they request it in writing. The letter should point out that such a debriefing would be available only after completion of the selection process and would otherwise be conducted in accordance with the NASA FAR Supplement. (See paragraph 504.)

2. Letters of notification will be sent to those Principal Investigators selected to participate. This letter should not commit the agency to more than negotiations for the selected investigation, but it should indicate the decision made and contain:

a. A concise description of the Principal Investigator's investigation as selected, noting substantive changes, if any, from the investigation originally proposed by the Principal Investigator.

b. The nature of the selection, i.e., whether it should be considered final or tentative requiring additional hardware or cost definition.

c. A description of the role of the Principal Investigator including the responsibility for the provision of instruments for flight experiments.

d. Identification of the principal technical and management points to be treated in subsequent negotiations.

e. Any rights to be granted on use of data, publishing of data, and duration of use of the data.

f. Where applicable, indication that a foreign selectee's participation in the program will be arranged between the International Affairs Division, Office of External Relations, and the foreign government agency which endorsed the proposal.

3. In conjunction with the notification of successful foreign proposers, the Program Office shall forward a letter to the responsible International Affairs Division, Office of External Relations, addressing the following:

a. The scientific technological objective of the effort.

b. The period of time for the effort.

c. The responsibilities of NASA and of the sponsoring governmental agency; these may include:

(1) Provision and disposition of hardware and software.

(2) Responsibilities for reporting, reduction and dissemination of data.

(3) Responsibilities for transportation of hardware.

d. Any additional information pertinent to the conduct of the experiment.

4. Using the information provided above, the International Affairs Division, Office of External Relations will negotiate an agreement with the sponsoring foreign agency.

5. Notices shall also be sent to those proposers not notified pursuant to the preceding paragraphs, and, as applicable, a copy to the sponsoring foreign government agency. It is important that these remaining proposers be informed at the same time as those selected. Other agency notifications and press release procedures will apply, as appropriate.

504 Debriefing

It is the policy to debrief, if requested, unsuccessful proposers of investigations in accordance with NFS 1815.1003. The following considerations are offered in arranging and conducting debriefings:

1. Debriefing should be done by an official designated by the responsible Program AA. Any other personnel receiving requests for information concerning the rejection of a proposal should refer to the designated official.

2. Debriefing of unsuccessful offerors should be made at the earliest possible time; debriefing will generally be scheduled subsequent to selection but prior to award of contracts to the successful proposers.

3. Material discussed in debriefing should be factual and consonant with the documented findings of several stages of the evaluation process and the selection statement.

4. The debriefing official should advise of weak or deficient areas in the proposal, indicate whether those weaknesses were factors in the selection, and advise of the major considerations in selecting the competing successful proposer where appropriate.

5. The debriefing official should not discuss other unsuccessful proposals, ranking, votes of members, or attempt to make a point-by-point comparison with successful proposals.

6. A memorandum of record of the debriefing should be provided the Chairperson of the Steering Committee.

Chapter 6—Payload Formulation

600 Payload Formulation

1. Payload elements for Space Transportation System (STS) missions can come from many sources. These include those selected through AOs, those generated by in-house research, unsolicited proposals and those derived from agreements between NASA and external entities. However, it is anticipated that the primary source of NASA payload elements will be the AO process. Generally, proposals for payload elements submitted outside the AO process will not be selected if they would have been responsive to an AO objective.

2. Payload elements for STS flights fall into two major categories. "NASA or NASA-related" payload elements are those which are developed by a NASA Program Office or by another party with which NASA has a shared interest. "Non-NASA" payload elements are those which require only STS operation services from NASA and interface with NASA through the Office of Space Flight.

3. In general, a Program Office will be designated responsibility for formulating the "NASA or NASA-related" portion of an STS payload. The Office of Space Flight will be responsible for formulating the "non-NASA" portion of an STS payload. Flights may, of course, consist wholly of payload elements of either type. Resource allocation for mixed missions will be determined by the Program Office and the Office of Space Flight.

Chapter 7—Procurement and Other Considerations

700 Early Involvement Essential

1. The distinctive feature of the AO process is that it is both a program planning system and a procurement system in one procedure. The choice of what aeronautical and space phenomena to investigate is program planning. Procurement is involved with the purchase of property and services to carry out the selected investigations.

2. Because of both the programmatic and multi-functional aspects of the AO process, early involvement of external program office elements is essential. Success of the process requires that it proceed in a manner that meets program goals and complies with statutory requirements and procurement policy.

3. The planning, preparation and selection schedule for the investigation should commence early enough to meet statutory and regulatory requirements. Chief of these are the requirements for soliciting maximum feasible competition and for conducting discussions with offerors within the competitive range by the Project Office and/or any other evaluation group or office authorized by the selection official.

701 Negotiation, Discussions, and Contract Award

Indicated below are some of the major procurement procedures that need to be accomplished to assure uniformity and sufficiency in the acquisition of investigations. These areas are not exclusive and not intended to substitute for coordination and good judgment before issuance of the AO, during evaluation of proposals, and prior to contract award.

1. As negotiated procurements must be made by soliciting proposals from the maximum number of qualified sources consistent with the requirement, the AO must also be synopsized in the Commerce Business Daily. Responses to the synopsis must be added to the AO mailing list. Every effort should be made to publish opportunities far enough in advance to encourage a broad response. (In no case less than 45 days before the date set for receipt of proposals).

2. Significant items for consideration after receipt of proposals:

a. Late Proposals—The policy on late proposals contained in the NFS 1815.412 is applicable. Potential investigators should be informed of this policy. In the AO context, the selection official or designee will determine whether a late proposal will be considered.

b. Competitive Considerations

(1) The proposals submitted in response to the AOs are not necessarily fully comparable. However, all proposals within the scope of an opportunity must be evaluated in accordance with the criteria in the AO.

(2) Cost must be considered in the evaluation if costs are involved in the investigation. General cost information should be given to the subcommittee by the Installation Project Office for use in determining the categories into which the subcommittee places proposals.

(3) Further information should be obtained, as necessary, by the Installation Project Office and/or any other evaluation group authorized by the selection official and from the investigators whose proposals are being considered. This is similar to the procurement procedure for conducting written and oral discussions. A major consideration during discussions is to avoid unfairness and unequal treatment. Good judgment is required by in the extent and content of the discussions. There should be no reluctance in obtaining the advice and guidance of management and staff offices during the discussion phase. A summary should be prepared of the primary points covered in the written and oral discussions and show the effect of the discussions on the evaluation of proposals. This summary should also contain general information about the questions submitted to the investigators, the amount of time spent in oral discussion, and revisions in proposals, if any, resulting from the discussions.

(4) During the conduct of discussions, all proposers being considered shall be offered an equitable opportunity to submit cost, technical, or other revisions in their proposals as may result from the discussions. All proposers shall be informed that any revisions to their proposals must be submitted by a common cut-off date in order to be considered. The record should note compliance of the investigators with that cut-off date.

3. Significant items for consideration before award:

a. Issuance of a Request for Proposal (RFP)—A formal RFP should not be issued to obtain additional information on proposals accepted under the AO process. Additional technical, cost, or other data received should be considered as a supplement to the original proposal.

b. Selection of Investigator/Contractor—The selection decision of the Program AA approves the selected investigators and their institutions as the only satisfactory sources for the investigations. The selection of the investigator does not constitute the selection of that person's proposed supporting hardware fabricator unless the selection official specifically incorporates the fabricator in the selection decision.

702 Application of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement (NFS)

The AO process supplants normal procurement procedures only to the extent necessary to meet the distinctive features of the process. This process is not intended to conflict with any established statutory requirements. The FAR, the NFS, and related procurement directives should be used for guidance in those instances where instructions are not in this Handbook.

703 Other Administrative and Functional Requirements

After selection, all other applicable administrative and functional requirements will be complied with or incorporated in any resultant contract. These may include requirements contained in such publications as NHB 5300.4(1B), "Quality Program Provisions for Aeronautical and Space System Contractors," and NHB 9501.2, "Procedures for Contractor Reporting of Correlated Cost and Performance Data."

Appendix A: Format of Announcement of Opportunity (AO)

OMB Approval Number 2700–0085

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Washington, DC 20546

ANNOUNCEMENT OF OPPORTUNITY

AO No. _____ (Issuance Date)

(Descriptive Heading)

I. Description of the Opportunity

This section should set forth the basic purpose of the AO and describe the opportunity in terms of NASA's desire to obtain proposals which will meet the stated scientific, applications and/or technological objectives. These objectives may be directed to the generation of proposals for investigations and/or they may pertain to the acquisition of dissimilar ideas leading to selection of investigators, guest observers, guest investigators, or theorists; and/or any other approved area as identified in NHB 8030.6. In those instances where proposals for investigations are sought, this section should describe the requirement, if any, for selected investigators to serve on advisory or working groups. In those instances where the project or program has not yet been approved, an qualifying statement should be included to indicate that this AO does not constitute an obligation for the Government to carry the effort to completion.

II. AO Objectives

This section will give a succinct statement of the specific scientific, applications, and/or technological objective(s) for the opportunity(s) for which proposals are sought.

III. Background

This section should provide an explanation of the context of the opportunity, i.e., information which will help the reader understand the relevance of the opportunity.

IV. Proposal Opportunity Period

This section should provide the proposal opportunity period(s). The following methods may be used individually or in conjunction for establishing the proposal opportunity period(s):

1. The AO may be issued establishing a single date by which proposals may be received. However, the AO could provide that the agency may amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired.

2. The AO may be issued to provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals and the time remaining prior to the flight opportunities contemplated by the AO.

3. The AO may be issued establishing a number of dates by which proposals may be received. Normally no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposal. If desired, this section should further inform the reader that if a proposal receives a Category I, II, or III rating but is not selected for immediate support, the proposal may, if desired by the proposer, be held by NASA for later consideration within the ground rules set forth in paragraphs 1 and 2. The section should inform the reader that if the person wishes the proposal to be so treated, it should be indicated in the proposal. This section should further indicate that offerors whose proposals are to be considered at a later time will be given the opportunity to revalidate their proposals with their institution and update cost data.

V. Requirements and Constraints

1. This section will include technical, programmatic, cost, and schedule requirements or constraints, as applicable, and will specify performance limits such as lifetime, flight environment, safety, reliability, and quality assurance provisions for flight-worthiness. It will specify the requirements and constraints related to the flight crew and the ground support. It will also include requirements for data analysis, estimated schedule of data shipment to user or observer, need for preliminary or raw data analysis and interim reports. It will specify planned period (time) for data analysis to be used for budgeting. It will provide any additional information necessary for a meaningful proposal.

2. When NASA determines that instrumentation, ground support equipment, or NASA supporting effort will be required or may be expected to be required by the contemplated investigations, the AO should indicate to the potential investigators that they must submit specific information regarding this requirement to allow an in-depth evaluation of the technical aspects, cost, management, and other factors by the Installation Project Office.

VI. Proposal Submission Information

1. Preproposal Activities—In this section, the AO will indicate requirements and activities such as the following:

a. Submittal of "Notice of Intent" to propose (if desired), date for submission, and any additional required data to be submitted. Indicate whether there are information packages which will only be sent to those who submit "Notice of Intent."

b. Attendance at the preproposal conference (if held). Information should be provided as to time, place, whether attendance will be restricted in number from each institution, and whether prior notice of intention to attend is required. If desired, a request may be included that questions be submitted in writing several days before the conference in order to prepare replies.

c. The name and address of the scientific or technical contact for questions or inquiries.

d. Any other preproposal data considered necessary.

2. Format of Proposals—This section should provide the investigator with the

information necessary to enable an effective evaluation of the proposal. The information is as follows:

a. Proposal—The AO should indicate how the proposal should be submitted to facilitate evaluation. The proposal should be submitted in at least two sections; (1) Investigation and Technical Section; and (2) Management and Cost Section.

b. Certification—The proposal must be signed by an institutional official authorized to certify institutional support, sponsorship of the investigation, management, and financial aspects of the proposal.

c. Quantity—The number of copies of the proposal should be specified. One copy should be clear black and white, and on white paper of quality suitable for reproduction.

d. Submittal Address—Proposals from domestic sources should be mailed to arrive not later than the time indicated for receipt of proposals to:

National Aeronautics and Space
Administration Office of (Program)
Code _____ AO No. _____
Washington, DC 20546

e. Format—To aid in proposal evaluation, and to facilitate comparative analysis, a uniform proposal format will be required for each AO. The number of pages, page size, and restriction on photo reduction, etc., may be included. The format contained in Appendix C can be used as a guide. Proposers may be requested to respond to all of the items or the AO may indicate that only selected items need be addressed. Using the Appendix format as a guide, specific guidelines may be prepared for the AO or an appropriate form developed.

3. Additional Information—This section may be used to request or furnish data necessary to obtain clear proposals that should not require further discussions with the proposer by the evaluators. Other pertinent data could also be included, such as significant milestones.

4. Foreign Proposals—The procedures for submission of proposals from outside the U.S. are contained in Appendix B, "General Instructions and Provisions." This section will describe any additional requirements, for example, if information copies of proposals are required to be furnished by the proposer to other organizations at the same time the proposal is submitted.

5. Cost Proposals (U.S. Investigators Only)—This section defines any special requirements regarding cost proposals of domestic investigators. Reference then should be made to the cost proposal certifications indicated in Appendix B, "General Instructions and Provisions."

VII. Proposal Evaluation, Selection, and Implementation

1. Evaluation and Selection Procedure

a. This section should notify the proposers of the evaluation process.

b. For example, a statement similar to the following should be included: "Proposals received in response to this AO will be reviewed by a subcommittee appointed by the (appropriate Program AA). The purpose of the review is to determine the scientific/technical merit of the proposals in the context of this AO and so categorize the proposals. Those proposals which are considered to have the greatest scientific/technical merit are further reviewed for engineering, integration, management, and cost aspects by the Project Office at the installation responsible for the project. On the basis of these reviews, and the reviews of the responsible Program Office and the Steering Committee, the (appropriate Program Associate Administrator) will appoint/select the investigators/investigations."

2. Evaluation Criteria

a. This section should indicate that the selection of proposals which best meet the specific scientific, applications, and/or technological objectives, stated in the AO, is the aim of the solicitation. This section should list the criteria to be used in the evaluation of proposals and indicate their relative importance. See paragraph 401, NHB 8030.6, for a listing of criteria generally appropriate.

b. This section will also inform the proposers that cost and management factors, e.g., proposed small business participation in instrumentation fabrication or investigation support, will be separately considered.

VIII. Schedule

This section should include the following, as applicable:

1. Preproposal conference date.
2. Notice of Intent submittal date.
3. Proposal submittal date(s).
4. Target date for announcement of selections.

IX. Appendices

1. General Instructions and Provisions (must be attached to each AO).
2. Other Pertinent Data, e.g., Spacelab Accommodations Data.

/s/ Associate Administrator for (Program)

Appendix B: General

Instructions and Provisions

I. Instrumentation and/or Ground Equipment

By submitting a proposal, the investigator and institution agree that NASA has the option to accept all or part of the offeror's plan to provide the instrumentation or ground support equipment required for the investigation or NASA may furnish or obtain such instrumentation or equipment from any other source as determined by the selecting official. In addition, NASA reserves the right to require use, by the selected investigator, of Government instrumentation or property that becomes available, with or without modification, that will meet the investigative objectives.

II. Tentative Selections, Phased Development, Partial Selections, and Participation with Others

By submitting a proposal, the investigator and the organization agree that NASA has the option to make a tentative selection pending a successful feasibility or definition effort. NASA has the option to contract in phases for a proposed experiment, and to discontinue the investigative effort at the completion of any phase. The investigator should also understand that NASA may desire to select only a portion of the proposed investigation and/or that NASA may desire the individual's participation with other investigators in a joint investigation, in which case the investigator will be given the opportunity to accept or decline such partial acceptance or participation with other investigators prior to a selection. Where participation with other investigators as a team is agreed to, one of the team members will normally be designated as its team leader or contact point.

III. Selection Without Discussion

The Government reserves the right to reject any or all proposals received in response to this AO when such action shall be considered in the best interest of the Government. Notice is also given of the possibility that any selection may be made without discussion (other than discussions conducted for the purpose of minor clarification). It is therefore emphasized that all proposals should be submitted initially on the most favorable terms that the offeror can submit.

IV. Foreign Proposals

See Appendix C, Section II, para. 3.

V. Treatment of Proposal Data

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should place the following notice on the title page of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. Information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal and Quotation Information (Data)

The information (data) contained in [insert page numbers or other identification] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; provided, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

VI. Status of Cost Proposals (U.S. Proposals Only)

The investigator's institution agrees that the cost proposal is for proposal evaluation and selection purposes, and that following selection and during negotiations leading to a definitive contract, the institution will be required to resubmit or execute a Standard Form (SF) Form 1411 "Contract Pricing Proposal Cover Sheet" and certifications and representations required by law and regulation.

VII. Late Proposals

The Government reserves the right to consider proposals or modifications thereof received after the date indicated, should such action be in the interest of the Government.

VIII. Source of Space Transportation System Investigations

Investigators are advised that candidate investigations for Space Transportation System (STS) missions can come from many sources.

IX. Disclosure of Proposals Outside Government

NASA may find it necessary to obtain proposal evaluation assistance outside the Government. Where NASA determines it is necessary to disclose a proposal outside the Government for evaluation purposes, arrangements will be made with the evaluator for appropriate handling of the proposal information. Therefore, by submitting a proposal the investigator and institution agree that NASA may have the proposal evaluated outside the Government. If the investigator or institution desire to preclude NASA from using an outside evaluation, the investigator or institution should so indicate on the cover. However, notice is given that if NASA is precluded from using outside evaluation, it may be unable to consider the proposal.

X. Equal Opportunity (U.S. Proposals Only)

By submitting a proposal, the investigator and institution agree to accept the following clause in any resulting contract:

Equal Opportunity

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

2. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (a) employment, (b) upgrading, (c) demotion, (d) transfer, (e) recruitment or recruitment advertising, (f) layoff or termination, (g) rates of pay or other forms of compensation, and (h) selection for training, including apprenticeship.

3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

4. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

5. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

6. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

7. The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO–1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

8. The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

9. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

10. The Contractor shall include the terms and conditions of subparagraph 1 through 9 of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

11. The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as means of enforcing these terms and conditions, including sanctions for non-compliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

XI. Patent Rights

1. For any contract resulting from this solicitation awarded to other than a small business firm or nonprofit organization, the clause at NFS 1852.227–70, "New Technology," shall apply. Such contractors may, in advance of contract, request waiver of rights as set forth in the provision at NFS 1852.227–71, "Requests for Waiver of Rights to Inventions."

2. For any contract resulting from this solicitation awarded to a small business firm or nonprofit organization, the clause at FAR 52.227–11, "Patent Rights—Retention by the Contractor (Short Form)" (as modified by NFS 1852.227–11), shall apply.

Appendix C: Guidelines for Proposal Preparation

The following guidelines apply to the preparation of proposals in response to an AO. The material is a guide for the proposer and not intended to be encompassing or directly applicable to the various types of proposals which can be submitted. The proposer should provide information relative to those items applicable or as required by the AO.

I. Cover Letter

A letter or cover page should be forwarded with the proposal signed by the investigator and an official by title of the investigator's organization who is authorized to commit the organization responsible for the proposal.

II. Table of Contents

The proposal should contain a table of contents.

III. Identifying Information

The proposal should contain a short descriptive title for the investigation, the names of all investigators, the name of the organization or institution and the full name, address, and telephone number of the Principal Investigator.

SECTION I—INVESTIGATION AND TECHNICAL PLAN

1. Investigation and Technical Plan

The investigation and technical plan generally will contain the following:

a. Summary. A concise statement about the investigation, its conduct, and the anticipated results.

b. Objective and Significant Aspects. A brief definition of the objectives, their value, and their relationships to past, current, and future effort. The history and basis for the proposal and a demonstration of the need for such an investigation. A statement of present development in the discipline field.

c. Investigation Approach

(1) Fully describe the concept of the investigation.

(2) Detail the method and procedures for carrying out the investigation.

2. Instrumentation

This section should describe all information necessary to plan for experiment development, integration, ground operations, and flight operations. This section must be complete in itself without need to request additional data. Failure to furnish complete data may preclude evaluation of the proposal.

a. Instrument Description—This section should fully describe the instrumentation and indicate items which are proposed to be developed as well as any existing instrumentation. Performance characteristics should be related to the experiment objectives as stated in the proposal.

b. Instrument Integration—This section should describe all parameters of the instrument pertinent to the accommodation of the instrument in the spacecraft, Spacelab,

Shuttle Orbiter, Space Station, etc. These include, but are not limited to, volumetric envelope; weight; power requirements; thermal requirements; telemetry requirement; sensitivity to or generation of contamination (e.g., EMI gaseous effluent); data processing requirements.

c. Ground Operations—This section should identify requirements for pre-launch or post-launch ground operations support.

d. Flight Operations—This section should identify any requirements for flight operations support including mission planning. Operational constraints, viewing requirements, and pointing requirements should also be identified. Details of communications needs, tracking needs, and special techniques, such as extravehicular activity or restrictions in the use of control thrusters at stated times should be delineated. Special communications facilities that are needed must be described. Any special orbital requirements, such as time of month, of day, phase of moon, and lighting conditions are to be given in detail. Describe real-time ground support requirements and indicate any special equipment or skills required of ground personnel.

3. Data Reduction and Analysis

A discussion of the data reduction and analysis plan including the method and format. A section of the plan should include a schedule for the submission of reduced data to the receiving point. In the case of Space Science programs, the National Space Science Data Center, Greenbelt, MD, will be the repository for such data and the Department of the Interior, Sioux Falls, SD, for earth observations data.

4. Orbiter Crew and/or Payload Specialist Training Requirement

A description of the tasks required of each crew member (Commander, Pilot, Mission Specialist) or payload specialist should be provided, including the task duration and equipment involved. Indicate special training necessary to provide the crew members or payload specialist(s) with the capability for performing the aforementioned tasks.

SECTION II—MANAGEMENT PLAN AND COST PLAN

A. Management Plan

The management plan should summarize the management approach and the facilities and equipment required. Additional guidelines applicable to non-U.S. proposers are contained herein:

1. Management

a. The management plan sets forth the approach for managing the work, the recognition of essential management functions, and the overall integration of these functions.

b. The management plan gives insight into the organization proposed for the work, including the internal operations and lines of authority with delegations, together with internal interfaces and relationships with the NASA major subcontractors and associated investigators. Likewise, the management plan usually reflects various schedules necessary for the logical and timely pursuit of the work accompanied by a description of the investigator's work plan and the responsibilities of the co-investigators.

c. The plan should describe the proposed method of instrument acquisition. It should include the following, as applicable.

(1) Rationale for the investigator to obtain the instrument through or by the investigator's institution.

(2) Method and basis for the selection of the instrument fabricator.

(3) Unique capabilities of the instrument fabricator that are not available from any other source.

(4) Characteristics of the proposed fabricator's instrument that make it an inseparable part of the investigation.

(5) Availability of personnel to administer the instrument contract and technically monitor the fabrication.

(6) Status of development of the instrument.

(7) Method by which the investigator proposes to:

(a) Prepare instrument specifications.

(b) Review development progress.

(c) Review design and fabrication changes.

(d) Participate in testing program.

(e) Participate in final checkout and calibration.

(f) Provide for integration of instrument.

(g) Support the flight operations.

(h) Coordinate with co-investigators, other related investigations, and the payload integrator.

(i) Assure safety, reliability, and quality.

(j) Provide required support for Payload Specialist(s), if applicable.

(8) Planned participation by small and/or minority business in any subcontracting for instrument fabrication or investigative support functions.

2. Facilities and Equipment

All major facilities, laboratory equipment, and ground-support equipment (GSE) (including those of the investigator's proposed contractors and those of NASA and other U.S. Government agencies) essential to the experiment in terms of its system and subsystems are to be indicated, distinguishing insofar as possible between those already in existence and those that will be developed in order to execute the investigation. The outline of new facilities and equipment should also indicate the lead time involved and the planned schedule for construction, modification, and/or acquisition of the facilities.

3. Additional Guidelines Applicable to Non-U.S Proposers Only

The following guidelines are established for foreign responses to NASA's AO. Unless otherwise indicated in a specific announcement, these guidelines indicate the appropriate measures to be taken by foreign proposers, prospective foreign sponsoring agencies, and NASA leading to the selection of a proposal and execution of appropriate arrangements. They include the following:

a. Where a "Notice of Intent" to propose is requested, prospective foreign proposers should write directly to the NASA official designated in the AO and send a copy of this letter to the International Relations Division, Office of External Relations, Code IR, NASA, Washington, DC 20546, U.S.A.

b. Unless otherwise indicated in the AO, proposals will be submitted in accordance with this Appendix excluding cost plans. Proposals should be typewritten and written in English.

c. Persons planning to submit a proposal should arrange with an appropriate foreign governmental agency for a review and endorsement of the proposed activity. Such endorsement by a foreign organization indicates that the proposal merits careful consideration by NASA and that, if the proposal is selected, sufficient funds will be available to undertake the activity envisioned.

d. Proposals including the requested number of copies and letters of endorsement from the foreign governmental agency must be forwarded to NASA in time to arrive before the deadline established for each AO. These documents should be sent to:

National Aeronautics and Space Administration
International Relations Division
Code IR
Office of External Relations
Washington, DC 20546
U.S.A.

e. Those proposals received after the closing date will be treated in accordance with NASA's provisions for late proposals. Sponsoring foreign government agencies may, in exceptional situations, forward a proposal directly to the above address if review and endorsement is not possible before the announced closing date. In such cases, NASA should be advised when a decision on endorsement can be expected.

f. Shortly after the deadline for each AO, NASA's International Relations Division will advise the appropriate sponsoring agency which proposals have been received and when the selection process should be completed. A copy of this acknowledgement will be provided to each proposer.

g. Successful and unsuccessful proposers will be contacted directly by the NASA Program Office coordinating the AO. Copies of these letters will be sent to the sponsoring Government agency.

h. NASA's International Relations Division will then begin making the arrangements to provide for the selectee's participation in the appropriate NASA program. Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(1) A letter of notification by NASA.

(2) An exchange of letters between NASA and the sponsoring foreign governmental agency.

(3) An agreement or Memorandum of Understanding between NASA and the sponsoring foreign governmental agency.

B. Cost Plan (U.S. Investigations Only)

The cost plan should summarize the total investigation cost by major categories of cost as well as by function.

1. The categories of cost should include the following:

a. Direct Labor—List by labor category, with labor hours and rates for each. Provide actual salaries of all personnel and the percentage of time each individual will devote to the effort.

b. Overhead—Include indirect costs, which because of its incurrence for common or joint

objectives, is not readily subject to treatment as a direct cost. Usually this is in the form of a percentage of the direct labor costs.

c. Materials—This should give the total cost of the bill of materials including estimated cost of each major item. Include lead time of critical items.

d. Subcontracts—List those over $25,000, specify the vendor and the basis for estimated costs. Include any baseline or supporting studies.

e. Special Equipment—Include a list of special equipment with lead and/or development time.

f. Travel—List estimated number of trips, destinations, duration, purpose, number of travelers, and anticipated dates.

g. Other Costs—Costs not covered elsewhere.

h. General and Administrative Expense—This includes the expenses of the institution's general and executive offices and other miscellaneous expenses related to the overall business.

i. Fee (if applicable).

2. Separate schedules, in the above format, should be attached to show total cost allocable to the following:

a. Principal Investigator and other Investigators' costs.

b. Instrument costs.

c. Integration costs.

d. Data reduction and analysis including the amount and cost of computer time.

3. If the effort is sufficiently known and defined, a funding obligation plan should provide the proposed funding requirements of the investigations by quarter and/or annum keyed to the work schedule.

Appendix D: Glossary of Terms and Abbreviations Associated with Investigations

Advisory Committee Subcommittee—Any committee, board, commission, council, conference, panel, task force; or other similar group, or any subcommittee or other subgroup thereof, that is not wholly composed of full-time Federal Government employees, and that is established or utilized by NASA in the interest of obtaining advice or recommendations.

Announcement of Opportunity (AO)—A document used to announce opportunities to participate in NASA programs. AOs are published in accordance with this Handbook.

AO Process—A term used to describe the program planning and procurement procedure used to acquire investigative effort, initiated by an AO.

Categorization—The process whereby proposed investigations are classified into four categories: synopsized here as Category I—recommended for immediate acceptance; Category II—recommended for acceptance but at a lower priority than Category I proposals; Category III—sound investigations requiring further development; Category IV—rejected.

Co-Investigator (Co-I)—Associate of a Principal Investigator, responsible to the Principal Investigator for discrete portions or tasks of the investigation. A NASA employee can participate as a Co-I on an investigation proposed by a private organization.

Data Users—Participants in NASA programs, selected to perform investigations utilizing data from NASA payloads or facilities.

Experiments—Activities or effort aimed at the generation of data. NASA-sponsored experiments generally concern generation of data obtained through measurement of aeronautical and space phenomena or use of space to observe earth phenomena.

Federal Acquisition Regulation (FAR)—The regulations governing the conduct of procurement.

Flight—That portion of the mission encompassing the period from launch to landing or launch to termination of the active life of spacecraft. The term shuttle "flight" means a single shuttle round trip—its launch, orbital activity, and return; one flight might deliver more than one payload. More than one flight might be required to accomplish one mission.

Flight Investigation—Investigation conducted utilizing aeronautical or space instrumentation.

Flight Opportunity—A flight mission designed to accommodate one or more experiments or investigations.

Guest Investigators—Investigators selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives. Sometimes referred to as Guest Observers.

Investigation—Used interchangeably with "Experiments."

Investigation Team—A group of investigators collaborating on a single investigation.

Investigator—A participant in an investigation. May refer to the Principal Investigator, Co-Investigator, or member of an investigation team.

Mission—The performance of a coherent set of investigations or operations in space to achieve program goals. (Example: Measure detailed structure of Sun's chromosphere; survey mineral resources of North America.)

NASA FAR Supplement (NFS)—Procurement regulations promulgated by NASA in addition to the FAR.

NHB—NASA Handbook.

NMI—NASA Management Instruction.

Notice of Intent—A notice or letter submitted by a potential investigator indicating the intent to submit a proposal in response to an AO.

Payload—A specific complement of instruments, space equipment, and support hardware carried to space to accomplish a mission or discrete activity in space.

Peer Group—A gathering of experts in related disciplinary areas convened as a subcommittee of the Program Office Steering Committee to review proposals for flight investigations.

Peer Review—The process of proposal review utilizing a group of peers in accordance with the categorization criteria as outlined in this Handbook.

Principal Investigator (PI)—A person who conceives an investigation and is responsible for carrying it out and reporting its results. A NASA employee can participate as a PI only on a government-proposed investigation.

Program—An activity involving human resources, materials, funding, and scheduling necessary to achieve desired goals.

Project—Within a program, an undertaking with a scheduled beginning and ending, which normally involves the design, construction, and operation of one or more aeronautical or space vehicles and necessary ground support in order to accomplish a scientific or technical objective.

Project Office—An office generally established at a NASA field installation to manage a project.

Selection Official—The NASA official designated to determine the source for award of a contract or grant.

Space Facility—An instrument or series of instruments in space provided by NASA to satisfy a general objective or need.

Steering Committee—A standing NASA sponsored committee providing advice to the Program Associate Administrators and providing procedural review over the investigation selection process. Composed wholly of full-time Federal Government employees.

Study Office—An office established at a NASA field installation to manage a potential undertaking which has not yet developed into project status.

Subcommittee—An arm of the Program Office Steering Committee consisting of experts in relevant disciplines to review and categorize proposals for investigations submitted in response to an AO.

Supporting Research and Technology (SR&T)—The programs devoted to the conduct of research and development necessary to support and sustain NASA programs.

Team—A group of investigators responsible for carrying out and reporting the results of an investigation or group of investigations.

Team Leader—The person appointed to manage and be the point of contact for the team and who is responsible for assigning respective roles and privileges to the team members and reporting the results of the investigation.

Team Member—A person appointed to a team who is an associate of the other members of the team and is responsible to the team leader for assigned tasks or portions of the investigation.

1870.202 [Amended]

187. In section 1870.202, paragraph (b) is revised to read as follows:

1870.202 System Content.

(a) * * *

(b) The system contains instructions for proposers. These instructions shall be included in the NRA, a form of broad agency announcement authorized at 1835.016.

188. Section 1870.203 and Appendix I are revised to read as follows:

1870.203 Instructions for Responding to NRAs.

(a) The "Instructions for Responding to NASA Research Announcements" document (prescribed in 1835.016–70(c)(4)) is set forth as Appendix I to this section.

(b) This Appendix may be reproduced locally as part of the NRA provided:

(1) The issuing office shall verify that the current version of Appendix I is used.

(2) The text shall be reproduced verbatim; however, the issuing office may remove the NFS page headers and add the NRA number. Any other change shall be treated as a deviation in accordance with 1801.400.

Appendix I to 1870.203—Instructions for Responding to NASA Research Announcements Instructions for Responding to Nasa Research Announcements

(June 1995)

1. Foreword

a. These instructions apply to "NASA Research Announcements." The "NASA Research Announcement (NRA)" permits competitive selection of research projects in accordance with statute while preserving the traditional concepts and understandings associated with NASA sponsorship of research.

b. These instructions are Appendix I to 1870.203 of the NASA Federal Acquisition Regulation Supplement.

2. Policy

a. Proposals received in response to an NRA will be used only for evaluation purposes. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

b. A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

3. Purpose

These instructions supplement documents identified as "NASA Research Announcements." The NRAs contain programmatic information and certain requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

4. Relationship to Award

a. A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate instrument.

b. Grants are generally used to fund basic research in educational and nonprofit institutions, while research in other private sector organizations is accomplished under contract. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement (NHB 5100.4). Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NHB 5800.1).

5. Conformance to Guidance

a. NASA does not have mandatory forms or formats for responses to NRAs; however, it is requested that proposals conform to the guidelines in these instructions. NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

b. To be considered responsive, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation.

6. NRA-Specific Items

Several proposal submission items appear in the NRA itself: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information. Items included in these instructions may be supplemented by the NRA.

7. Proposal Contents

a. The following information is needed to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

b. Transmittal Letter or Prefatory Material. (1) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(2) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(3) Type of organization: e.g., profit, nonprofit, educational, small business, minority, women-owned, etc.;

(4) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(5) Identification of other organizations that are currently evaluating a proposal for the same efforts;

(6) Identification of the NRA, by number and title, to which the proposal is responding;

(7) Dollar amount requested, desired starting date, and duration of project;

(8) Date of submission; and

(9) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

c. Restriction on Use and Disclosure of Proposal Information. Information contained in proposals is used for evaluation purposes only. Offerors or quoters should, in order to maximize protection of trade secrets or other information that is confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Notice

Restriction on Use and Disclosure of Proposal Information.

The information (data) contained in *[insert page numbers or other identification]* of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

d. Abstract. Include a concise (200–300 word if not otherwise specified in the NRA) abstract describing the objective and the method of approach.

e. Project Description. (1) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge; and relation to previous work done on the project and to related work in progress elsewhere. The statement should outline the plan of work, including the broad design of experiments to be undertaken and a description of experimental methods and procedures. The project description should address the evaluation factors in these instructions and any specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Subcontracting significant portions of a research project is discouraged.

(2) When it is expected that the effort will require more than one year, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

f. Management Approach. For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and arrangements for ensuring a coordinated effort should be described. Intensive working relations with NASA field centers that are not logical inclusions elsewhere in the proposal should be described.

g. Personnel. The principal investigator is responsible for supervision of the work and participates in the conduct of the research regardless of whether or not compensated under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

h. Facilities and Equipment. (1) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use.

(2) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for research and non-research purposes should be explained.

i. Proposed Costs. (1) Proposals should contain cost and technical parts in one volume: do not use separate "confidential" salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants; subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all manpower data in terms of man-months or fractions of full-time.

(2) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases. (Standard Form 1411 may be used).

(3) Allowable costs are governed by FAR Part 31 and the NASA FAR Supplement Part 1831 (and OMB Circulars A–21 for educational institutions and A–122 for nonprofit organizations).

j. Security. Proposals should not contain security classified material. If the research requires access to or may generate security classified information, the submitter will be required to comply with Government security regulations.

k. Current Support. For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

l. Special Matters. (1) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(2) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

8. Renewal Proposals

a. Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. A renewal proposal should not repeat all of the information that was in the original proposal. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

b. NASA may renew an effort either through amendment of an existing contract or by a new award.

9. Length

Unless otherwise specified in the NRA, effort should be made to keep proposals as brief as possible, concentrating on substantive material. Few proposals need exceed 15–20 pages. Necessary detailed information, such as reprints, should be included as attachments. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of "one-of-a-kind" attachments: their availability may be mentioned in the proposal.

10. Joint Proposals

a. Where multiple organizations are involved, the proposal may be submitted by only one of them. It should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

b. Where a project of a cooperative nature with NASA is contemplated, describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. The proposal must be confined only to that which the proposing organization can commit itself. "Joint" proposals which specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

11. Late Proposals

A proposal or modification received after the date or dates specified in an NRA may be considered if the selecting official deems it to offer NASA a significant technical advantage or cost reduction.

12. Withdrawal

Proposals may be withdrawn by the proposer at any time. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

13. Evaluation Factors

a. Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

b. Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

c. Evaluation of its intrinsic merit includes the consideration of the following factors, none of which is more important than any other:

(1) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(3) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical in achieving the proposal objectives.

(4) Overall standing among similar proposals and/or evaluation against the state-of- the-art.

d. Evaluation of the cost of a proposed effort includes the realism and reasonableness of the proposed cost and available funds.

14. Evaluation Techniques

Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house, others are evaluated by a combination of in-house and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. The final decisions are made by a NASA selecting official. A proposal which is scientifically and programmatically meritorious, but not selected for award during its initial review, may be included in subsequent reviews unless the proposer requests otherwise.

15. Selection for Award

a. When a proposal is not selected for award, and the proposer has indicated that the proposal is not to be held for subsequent reviews, the proposer will be notified. NASA will explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

b. When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation. The contracting officer may request certain business data and may forward a model contract and other information which will be of use during the contract negotiation.

16. Cancellation of NRA

NASA reserves the right to make no awards under this NRA and to cancel this NRA. NASA assumes no liability for cancelling the NRA or for anyone's failure to receive actual notice of cancellation. Cancellation may be followed by issuance and synopsis of a revised NRA, since amendment of an NRA is normally not permitted.

[FR Doc. 95–19144 Filed 8–8–95; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register

Vol. 60, No. 153

Wednesday, August 9, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110A]

RIN 1904–AA64

Alternative Fuel Transportation Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Correction to notice of limited reopening of the comment period.

SUMMARY: This document contains corrections to the Notice of Limited Reopening of the Comment Period that was published Monday, July 31, 1995, 60 FR 38974, FR Doc. 95–18737. The notice of limited reopening of the comment period requests public comment on possible options for defining the term "substantial portion," which is used to determine coverage for certain petroleum producers and importers, and on possible modifications of the proposed definition of "alternative fuel" with respect to alcohol fuels and biodiesel. In addition, this notice announces DOE's receipt of new information regarding automakers' alternative fueled vehicle production plans for the near future.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6116.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the notice of limited reopening of the comment period contains errors in the sequence of text in Part II which may be confusing and, therefore, are in need of correction. The substance of Part II is unchanged.

Correction of Publication

Accordingly, the publication on July 31, 1995, of the Notice of Limited Reopening of the Comment Period, which was the subject of FR Doc. 95–18737, is corrected by reprinting Part II, Definition of "Substantial Portion," beginning on page 38975, col. 1, and ending on page 38976, col. 2, in its entirety:

II. Definition of "Substantial Portion"

Section 501(a)(2) of the Energy Policy Act of 1992 (the "Act") defines the class of alternative fuel providers potentially subject to the alternative fueled vehicle acquisition requirements to include persons who: (1) Qualify as a "covered person" under section 301(5) of the Act, 42 U.S.C. 13211(5), and (2) produce or import an average of 50,000 barrels per day or more of petroleum and "a substantial portion of whose business is producing alternative fuels." 42 U.S.C. 13251(a)(2)(C). Thus, the term "substantial portion" is a key statutory determinant of whether a covered person that produces or imports petroleum is an alternative fuel provider required by the Act to acquire alternative fueled vehicles.

However, even if an entity meets all of the qualifications for a section 501(a)(2)(C) alternative fuel provider, including the "substantial portion" test, it nevertheless may be excepted from the vehicle acquisition requirements under section 501(a)(3) or exempted by DOE under section 501(a)(5). Under section 501(a)(3)(A), the vehicle acquisition requirements only apply to an affiliate, division or business unit of a covered person who is substantially engaged in the alternative fuels business. *See* proposed § 490.304. Moreover, under section 501(a)(3)(B), the vehicle acquisition requirements do not apply to any entity whose principal business is transforming alternative fuel into a product other than alternative fuel or consuming such fuel to manufacture a product that is not an alternative fuel. Under section 501(a)(5), DOE may exempt alternative fuel providers from the vehicle acquisition requirements if they can show either that (1) alternative fuels that meet their normal business requirements and practices are not available; or (2) that alternative fueled vehicles that meet their normal business requirements and practices are not offered for purchase or lease on reasonable terms and conditions. *See* proposed § 490.308.

In the February 28, 1995 notice of proposed rulemaking, DOE proposed to define the term "substantial portion" to mean that at least two percent of a covered person's refinery yield of petroleum products is composed of alternative fuels. *See* proposed § 490.301. DOE explained that it chose the two percent of refinery yield threshold because it represented the average yield for the production of alternative fuels by petroleum refiners, as reported by the Energy Information Administration. 60 FR 10978.

The notice of proposed rulemaking also explained that in developing the proposed definition of "substantial portion," the Department had considered, as an alternative, basing the definition on the portion of the gross revenue an entity derives from the production of alternative fuels. Ultimately, DOE did not propose a gross revenue threshold because the information needed to support that alternative was more fragmented than that available to support the two percent of refinery yield criterion, and DOE believed the percent of refinery yield criterion would adequately define the class of petroleum producers and importers who are "covered persons" under the Act. 60 FR 10979. Nevertheless, DOE asked for comment on whether reliable information exists that would allow establishment of a revenue measure for determining whether alternative fuels production comprises a substantial portion of a company's business, and it solicited suggestions for any other alternative definitions of "substantial portion." 60 FR 10979.

DOE received many comments on the definition of "substantial portion." Some commenters supported DOE's proposed definition of "substantial portion," agreeing that if at least two percent of a refinery's product yield is composed of an alternative fuel, the fuel provider should have to meet the Act's acquisition requirements. However, most comments on this issue criticized the two percent of refinery yield as being too low a threshold. Some commenters stated that the two percent refinery yield of petroleum products threshold would impose vehicle acquisition requirements on many refineries that only produce alternative

fuels (principally propane) as incidental by-products of the refining process. Several commenters recommended that DOE modify the rule to provide that at least 10 percent of a covered person's refinery yield of petroleum products must be composed of alternative fuels before that person would be deemed to have a "substantial portion" of its business involved in the production of alternative fuels. Other commenters urged DOE to adopt a definition of "substantial portion" that would be the same as the "principal business" criterion used in section 501(a)(2) for defining other categories of alternative fuel providers.

A few of the commenters recommended that DOE adopt a percentage of gross revenue derived from the sale of alternative fuels as the basis for the definition of "substantial portion." They pointed out that gross revenue is the measure used for determining whether other alternative fuel providers are "covered persons" because their "principal business" is in alternative fuels. In their view, if gross revenue can be used to determine whether an entity's principal business involves alternative fuels, it also should be used for determining whether a petroleum producer or importer has a substantial portion of its business in the production of alternative fuels.

After carefully reviewing all of the comments received on this issue, DOE thinks that a percentage of gross revenue derived from the sale of alternative fuels may be a better measure of an entity's involvement in the alternative fuels business than is the percentage of refinery yield of petroleum products included in the proposed rule's definition of "substantial portion." As pointed out by some commenters, a gross revenue measure can be applied to all producers and importers of petroleum, unlike the percent of refinery yield criterion which focuses solely on refining operations.

Despite the lack of comprehensive, publicly available information about petroleum producers' and importers' revenue sources on a product-by-product basis, DOE has been able to collect enough information about their sales of alternative fuels to frame a possible definition of "substantial portion" based on percent of gross revenue derived from alternative fuels.

One option DOE is considering is whether to define "substantial portion" to mean that at least 30 percent of the annual gross revenue of a covered person is derived from the sale of alternative fuels. This percentage of gross revenue appears to be an appropriate gross revenue threshold for two reasons. First, available information shows that major U.S. energy producing companies historically derive at least 30 percent of their annual gross revenue from the sale of alternative fuels.[1] Major energy producers are typically consolidated or integrated companies that are involved in oil and gas exploration, oil and gas production or importing, petroleum refining and marketing, transportation of products, other energy operations (coal, nuclear and other energy) and nonenergy businesses (primarily chemicals). Second, this definition would exclude from the class of covered persons subject to the vehicle acquisition requirements those refiners who produce alternative fuels only as an incidental by-product of the refining process. Refiners are typically involved only in petroleum refining and marketing operations.

DOE also believes this gross revenue percentage comports with the terms of section 501(a)(2) of the Act, 42 U.S.C. 13251(a)(2). If the term "substantial portion" were defined to include a percentage of gross revenue derived from alternative fuels that was higher than 30 percent, the distinction in the Act between "substantial portion" which applies to covered petroleum producers and importers (section 501(a)(2)(C)) and "principal business" which applies to other alternative fuel providers (section 501(a)(2) (A) and (B)) would be rendered meaningless. As noted in the preamble to the notice of proposed rulemaking, alternative fuels constitute an entity's "principal business" if the entity derives a plurality of its gross revenue from sales of alternative fuels, and a plurality may be less than 50 percent. 60 FR 10978. Therefore, DOE believes that 30 percent of gross revenue from alternative fuels may constitute a reasonable basis for the definition of "substantial portion."

This possible interpretation of "substantial portion" also appears to be consistent with the underlying intent of Congress with regard to petroleum-related entities. That intent was to apply the alternative fueled vehicle acquisition requirements only to major energy producers and importers.[2]

DOE requests comments from interested members of the public on this possible option for defining "substantial portion" or any alternative options they would like DOE to consider. DOE is particularly interested in receiving data or analysis that are relevant to this issue.

Thomas J. Gross,

Deputy Assistant Secretary for Transportation Technologies, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 95–19688 Filed 8–8–95; 8:45 am]

BILLING CODE 6450–01–P

[1] Sources used were: Energy Information Administration's *Performance Profiles of Major Energy Producers*, 1993 (DOE/EIA–0206); Moody's 1994 Industrial Manual; 1995 U.S.A. Oil Industry Directory; and Standard & Poor's 1994 Register—Corporations.

[2] The conference report on the Energy Policy Act of 1992 states that "the intent of section 501(a)(1) is not to cover all affiliates or divisions of the many large energy companies which have some, but not all, of their corporate units engaged in alternative fuels operations. For example, the oil and gas production affiliate or division of a major energy company described in 501(a)(1)(C) would be covered; so might a propane pipeline unit or a natural gas processing division, if the "substantially engaged" test is met. But an oil tanker division, a gasoline marketing affiliate, or a petrochemical unit whose major operations are the production of plastics, for example, would not be covered * * *." H.R. Rep. 1018, 102d Cong., 2d Sess. 367 (1992).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

[Docket No. 950609150–5150–01]

RIN 0648–AI08

Jade Collection in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserve Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is considering amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow small-scale, non-intrusive collection of jade from the Sanctuary. This advance notice of proposed rulemaking (ANPR) discusses the reasons NOAA is considering authorizing jade collection in the MBNMS, and, if it is determined to proceed with rulemaking to allow jade collection, the possible restrictions NOAA might place on such collection to ensure that Sanctuary resources or qualities would not be adversely impacted. NOAA is issuing this ANPR specifically to invite advice, recommendations, information and other comments from interested parties on whether to allow jade collection in the MBNMS and, if so, what restrictions might be necessary.

DATES: Comments must be received by September 8, 1995.

ADDRESSES: Comments should be sent to Scott Kathey, Monterey Bay National Marine Sanctuary office, 299 Foam Street, Suite D, Monterey, California, 93940, or Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910. Comments will be available for public inspection at the same addresses.

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647–4251 or Elizabeth Moore at (301) 713–3141.

SUPPLEMENTARY INFORMATION: In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) was designated on September 18, 1992. SRD issued final regulations, effective January, 1993, to implement the Sanctuary designation (15 CFR Part 944). The MBNMS regulations at 15 CFR 944.5(a) prohibit a relatively narrow range of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted.

The leasing, exploration, development or production of oil or gas in the Sanctuary is statutorily prohibited (Section 2203 of Pub. L. 102–587). As such, the final MBNMS implementing regulations absolutely prohibited exploration, production or development of oil, gas or minerals in the MBNMS (57 FR 43310, 43315–43317; 15 CFR 944.5(a)(1)). Further, the regulations and Designation Document (the constitution for the Sanctuary) prohibit NOAA from issuing a permit or other approval for this activity in the Sanctuary (15 CFR 944.5(h); Designation Document, Article V).

There is a region within the Sanctuary known as the Jade Cove area. Jade Cove consists of a series of small coves located south of Big Sur, near the town of Gorda. Jade (also called nephrite) occurs in veins in the serpentine bedrock formation, extending down the cliffs and into the seabed. The area is very dynamic, subject to strong waves and tides, which erode the veins and sometimes free the jade. Jade is found primarily as pebbles or larger stones on the shore and seabed, and as revealed deposits in the seafloor.

For a number of years prior to the designation of the MBNMS, tourists and local residents routinely visited the Jade Cove area to explore for and collect pieces of the naturally occurring jade. Even prior to the designation of the MBNMS, extraction of minerals from State submerged lands was prohibited by State law, unless permitted by the State. The National Forest Service also prohibits the removal without a lease of any rocks or minerals within the Los Padres National Forest, which abuts the inshore boundary of the Sanctuary in the Jade Cove area.

NOAA is considering amending the regulations for the MBNMS to allow small-scale, non-intrusive collection of jade from the Sanctuary. NOAA is considering this action for a variety of reasons, foremost of which is that preliminary indications suggest that small scale, non-intrusive collection of loose pieces of jade may not destroy, cause the loss of, or injure resources or qualities of the MBNMS. Further, the MBNMS Sanctuary Advisory Council (Council) has recommended to SRD that the regulations be amended to allow jade collection. The Council has devoted several of its meetings to obtain information and public testimony, and convened a work group to review this issue. There has also been consistent public support for the proposed course of action.

It may be possible to allow people to "beach comb" or dive for loose pieces of jade, much like what already occurs in this Sanctuary for items such as driftwood, without any resulting harm to Sanctuary resources or qualities. Jade is a non-living resource of the MBNMS. *See* 15 CFR 944.3. However, allowing small-scale, non-intrusive collection of small pieces already loose ("in float") and that would otherwise naturally disintegrate or be washed out to sea would not seem to pose a risk of harm to this resource. Further, it appears that collection of loose pieces of jade from the Sanctuary could be conducted without creating a risk of harm to other Sanctuary resources or qualities or the MBNMS ecosystem. NOAA will likely limit collection to hand picking pebbles or small stones already "in float" and devoid of any marine life, including algae and benthic organisms. If collection were allowed, no tools would be permitted that could injure Sanctuary resources or qualities, such as wedges, crowbars, picks, chisels and other tools used for digging, excavating, boring, breaking, prying, drilling, piercing, scraping, wedging, or other intrusive activities. No vehicles, winches, carts or other removal equipment would be permitted to be used in the Sanctuary to collect jade. However, NOAA may consider allowing the use of lift bags to float loose submerged jade to the shore. Any regulatory exception for the small-scale, non-intrusive collection of loose pieces of jade would not extend to oil or gas. As indicated earlier, there is a statutory prohibition against leasing, exploration, development, or production of oil or gas in the Sanctuary.

The prohibition against permitting or otherwise approving the exploration, development, or production of oil, gas, or minerals in the Sanctuary is a term of the Designation Document. Therefore, to allow small-scale, non-intrusive jade collection in the Sanctuary NOAA must comply with the procedures for altering a term of designation for a National Marine Sanctuary. As provided by section 304(a)(4) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1434(a)(4), the terms of designation may be modified only by the same procedures by which the original designation is made. Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. §§ 1433, 1434. Section 304 requires the preparation of an environmental impact statement, state consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to state waters within the Sanctuary.

Although NOAA is considering providing a limited exception for small-scale, non-intrusive jade collection from the regulatory prohibition against exploring for, producing or developing oil, gas or minerals, any jade collection that alters the seabed of the Sanctuary (e.g., digging into the seabed) would remain subject to the prohibition against alteration of the seabed (15 CFR 944.5(a)(5)). NOAA would not allow jade collection that alters the seabed of the Sanctuary. Further, any collection in California State waters would require a State permit because of the State's prohibitions against taking minerals from State submerged lands and disturbing State subsurface lands.

NOAA is seeking advice, recommendations, information and other comments, with reasons, on whether NOAA should amend the MBNMS regulations to allow small-scale, non-intrusive jade collection in the MBNMS. If NOAA allows jade collection, comments are requested on: (1) whether collection should be limited to loose pebbles or small stones; (2) whether the use of tools should be permitted to collect jade from the Sanctuary; (3) whether there should be limits on the amount of jade allowed to be taken from the Sanctuary and, if so, what limits; (4) what conditions or restrictions should be placed on jade collection; and (5) any other information

or other comments that may be pertinent to this issue.

Executive Order 12866

For purposes of Executive Order 12866, this advance notice of proposed rulemaking is determined to be not significant.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Dated: June 9, 1995.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–19633 Filed 8–8–95; 8:45 am]

BILLING CODE 3510-08-M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AD82

Supplemental Security Income for the Aged, Blind, and Disabled; Valuation of In-Kind Support and Maintenance With Cost-of-Living Adjustment

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement section 13735 of the Omnibus Reconciliation Act of 1993 (OBRA 1993). This statutory provision amends the Social Security Act (the Act) and requires that the new benefit rate, as increased by a cost-of-living adjustment (COLA), be used in determining the value of the statutory one-third reduction and the regulatory presumed maximum value for the computation of Federal supplemental security income (SSI) benefit payments for the first 2 months for which the COLA is in effect. These rules will provide that we will value the statutory one-third reduction and the regulatory presumed maximum value using the benefit rate as increased by a COLA to determine the amount of in-kind support and maintenance received by an individual which is to be counted for those months. This will preclude a decrease in the benefit amount the third month after a COLA, a situation which occurred under the present regulations. The legislation is effective for benefits paid for months after calendar year 1994.

DATES: To be sure that your comments are considered, we must receive them no later than October 10, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by e-mail to regulations@ssa.gov., or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in Wordperfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: Under retrospective monthly accounting (RMA), an individual's current SSI benefit amount is usually determined based upon the individual's income in the second preceding month ("budget month") before the current month. For example, January's SSI benefit amount is based on the individual's November income. In some instances, an individual receives income in the form of in-kind support and maintenance and it is counted using the value of the one-third reduction (VTR) or the presumed maximum value (PMV) rule. Under the law prior to the effective date of section 13735 of Public Law 103–66, the VTR and the PMV were based on the applicable benefit rates in effect in the "budget month." Because of RMA principles, when an annual COLA to the SSI benefit rate became effective in January, we used the VTR/PMV amount from November of the previous year to determine the individual's benefit for January if an individual had in-kind support and maintenance in the "budget month." For example, in figuring an individual's January 1994 benefit, we used November 1993 as the "budget month." Thus, in a computation using the VTR, we would subtract the 1993 VTR amount of $144.66 from the 1994 benefit rate of $446.00, giving the individual an SSI benefit of $301.34. February's benefit amount would also be computed using the new benefit rate and the 1993 VTR amount. However, in computing March's benefit amount, we used the benefit rate of $446.00 less the January 1994 VTR amount of $148.66, resulting in an SSI benefit amount of $297.34. Thus, the individual's January and February payments exceeded the March payment because of the increased amount of the new VTR used when January was the "budget month." Notices were then released to these individuals notifying them of the decrease in their March payment. This was confusing to SSI recipients because their payment amounts increased and then decreased even if there is no change in their living arrangements.

We propose to change the method of valuation of the VTR/PMV to reflect section 13735 of Public Law 103–66 for benefits paid after calendar year 1994, by using the new benefit rate as increased by a COLA in determining the VTR or PMV for the computation of SSI benefits for the first 2 months for which the COLA is in effect. Thus, with a COLA effective January 1, 1995, both the new increased 1995 benefit rate and new increased VTR or PMV amounts are being used in computing a January and February 1995 benefit amount. Unlike the example used previously, the individual's January, February, and March payments calculated by using the VTR amount will be the same assuming all other income remains constant—i.e., there will be no decrease in the SSI benefit amount the third month after a COLA. This will eliminate confusion for recipients and also eliminate the need for issuance of notices informing affected recipients of the decrease in their March payment.

We state in the proposed regulations at § 416.420(a) that we will use the benefit rate, as increased by a COLA, in determining the value of certain in-kind support and maintenance used to compute an individual's SSI benefit amount for the first 2 months in which the COLA is in effect. We also propose to add a third example to § 416.420(a) to further clarify the regulatory intent.

We state in the proposed regulations at § 416.1130 how we value in-kind support and maintenance when a COLA applies and have altered the example to reflect the situation when a COLA becomes effective.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are not subject to OMB review.

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements subject to OMB clearance.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 27, 1995.

Shirley Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts D and K of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended to read as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart D—Amount of Benefits

1. The authority citation for Part 416, Subpart D continues to read as follows:

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383.

2. Section 416.420 is amended by revising paragraph (a) to read as follows:

§ 416.420 Determination of benefits; general.

* * * * *

(a) *General rule.* We generally use the amount of your countable income in the second month prior to the current month to determine how much your benefit amount will be for the current month. We will use the benefit rate (see §§ 416.410 through 416.414), as increased by a cost-of-living adjustment, in determining the value of the one-third reduction or the presumed maximum value, to compute your SSI benefit amount for the first 2 months in which the cost-of-living adjustment is in effect. If you have been receiving an SSI benefit and a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your social security benefit in January exceeds the amount of your social security benefit in November. Similarly, we will compute the amount of your SSI benefit for February by including in your income the amount by which your social security benefit in February exceeds the amount of your social security benefit in December.

Example 1. Mrs. X's benefit amount is being determined for September (the current month). Mrs. X's countable income in July is used to determine the benefit amount for September.

Example 2. Mr. Z's SSI benefit amount is being determined for January (the current month). There has been a cost-of-living increase in SSI benefits effective January. Mr. Z's countable income in November is used to determine the benefit amount for January. In November, Mr. Z had in-kind support and maintenance valued at the presumed maximum value as described in § 416.1140(a). We will use the January benefit rate, as increased by the COLA, to determine the value of the in-kind support and maintenance Mr. Z received in November when we determine Mr. Z's SSI benefit amount for January.

Example 3. Mr. Y's SSI benefit amount is being determined for January (the current month). Mr. Y has Social Security income of $100 in November, $100 in December, and $105 in January. We find the amount by which his Social Security income in January exceeds his Social Security income in November ($5) and add that to his income in November to determine the SSI benefit amount for January.

* * * * *

Subpart K—Income

3. The authority citation for part 416, subpart K continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec 211 of Pub. L. 93–66, 87 Stat. 154.

4. Section 416.1130 is amended by revising paragraph (a) to read as follows:

In-Kind Support and Maintenance

§ 416.1130 Introduction.

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally, we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (§§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones receives an SSI benefit which is computed by subtracting one-third from the Federal benefit rate. This one-third represents the value of the income he receives because he lives in the household of a son who provides both food and shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We base his SSI payment for that month on the food and shelter he received from his son two months earlier in November. In determining the value of that food and shelter he received in November, we use the Federal benefit rate for January.

* * * * *

[FR Doc. 95–19502 Filed 8–8–95; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–123]

RIN 2115-AA97

Safety Zone: Grande Fiesta Italiana Fireworks, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone located in Hempstead Harbor, New York, for the Grande Fiesta Italiana fireworks program. If adopted, the safety zone would be in effect from 9 p.m.

until 10:15 p.m. on Sunday, September 10, 1995. This proposed regulation would close all waters of Hempstead Harbor, shore to shore, within a 300 yard radius of two fireworks barges anchored approximately 300 yards north of Bar Beach, Port Washington, New York.

DATES: Comments must be received on or before August 29, 1995.

ADDRESSES: Comments should be mailed to Captain of the Port, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Planning and Readiness Division, Bldg 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Planning and Readiness Division at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Good cause exists for publishing this Notice of proposed rulemaking (NPRM) with a 20 day comment period. A 20 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is deemed to be unnecessary and contrary to the public interest as it would delay publication of the final rule until immediately before or after the event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–123) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing, however, persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES.** If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announce by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York and CDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On July 17, 1995, Fireworks by Crucci, Inc. submitted an Application for Approval of Marine Event to hold a fireworks program in the waters of Hempstead Harbor. The fireworks program is being sponsored by the Sons of Italy. If adopted, the regulation would establish a temporary safety zone in all waters of Hempstead Harbor, shore to shore, within a 300 yard radius of the fireworks barges anchored approximately 300 yards north of Bar Beach, Port Washington, New York, at or near 40°49′52″N latitude, 073°39′10″W longitude (NAD 1983). The Safety zone would close this portion of the harbor to through vessel traffic. The regulation would be effective from 9 p.m. until 10:15 p.m. on September 10, 1995, unless extended or terminated sooner by the Captain of the Port New York. The safety zone would prevent vessels from transiting this portion of Hempstead Harbor, from shore to shore, and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. If adopted, the regulation would close a portion of Hempstead Harbor, shore to shore, north of Bar Beach to vessel traffic from 9 p.m. until 10:15 p.m. on September 10, 1995, unless extended or terminated sooner by the Captain of the Port New York. Although it would prevent traffic from transiting the area, the effect of the proposed regulation would not be significant for several reasons: the duration of the event is limited; the event is at a late hour; the amount of commercial traffic in the area is minimal; and the extensive, advance advisories which will be made. Accordingly, the Coast Guard expects the economic impact of the proposed regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons set forth in the Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket and are available for inspection at the office indicated in the **ADDRESSES** section. Under the National Environmental Policy Act, the approval of the permit for marine event for this event is a federal action which is categorically excluded in accordance with section 2.B.2.e(35)(h) of Commandant Instruction M16475.1B, as amended, July 29, 1994. The fireworks display lasts less than 30 minutes and is expected to involve less than 200 spectator craft.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–123, is added to read as follows:

§ 165.T01–123 Safety Zone; Grande Fiesta Italiana Fireworks, Hempstead Harbor, New York.

(a) *Location.* The safety zone includes the waters of Hempstead Harbor, shore to shore, within a 300 yard radius of a fireworks barge anchored approximately 300 yards north of Bar Beach, Port Washington, New York, at or near 40°49′52″N latitude 073°39′10″W longitude (NAD 1983).

(b) *Effective period.* This section is in effect from 9 p.m. until 10:15 p.m. on September 10, 1995, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 1, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–19676 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 183

[CGD 95–041]

Propeller Accidents Involving Houseboats and Other Displacement Type Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Reopening of comment period.

SUMMARY: In a notice published May 11, 1995 (60 FR 25191), the Coast Guard solicited comments from all segments of the marine community and other interested persons on various aspects of propeller accident avoidance. The comment period closed July 10, 1995. In response to the notice, the Coast Guard received over 100 letters. Various parties including the National Association of State Boating Law Administrators (NASBLA) requested an extension of the comment period. This notice reopens and extends the comment period.

DATES: Comments must be received on or before November 7, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD95–041), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0981.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this request for comments by submitting written data, views or arguments. Persons submitting comments should include their names and addresses and identify this notice (CGD 95–041). Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclosed stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. All comments received after the close of the initial comment period and before the reopening of the comment period will also be considered.

Background Information

The Coast Guard solicits comments from all segments of the marine community and other interested persons on various aspects of propeller accident avoidance, including: (1) The economic and other impacts of establishing a requirement for propeller guards on recreational houseboats and other displacement vessels; (2) suggestions on alternatives to propeller guards which should also be considered; (3) recommendations on the applicability of regulations; and (4) the concerns of the recreational vessel livery and charter industries.

Persons submitting comments should do so as directed under Request for Comments above, and specify the area(s) of concern on which comments are being submitted, state what impacts may result from one or more alternatives identified, suggest other alternatives, and provide reasons to support the information provided on potential impact or suggested alternatives.

The Coast Guard will consider all relevant comments in determining what action may be necessary to address propeller accidents involving houseboats and other displacement-type recreational vessels.

Dated: August 2, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–19675 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 0E3875/P623; FRL–4967–7]

RIN 2070–AC18

Cyproconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a time-limited tolerance for the residues of the fungicide cyproconazole, (2*RS*,3*RS*)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol, in or on the imported raw agricultural commodity coffee beans at 0.1 part per million (ppm). Sandoz Agro, Inc., petitioned pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for this regulation to establish a maximum permissible level for residues of the fungicide.

DATES: Comments, identified by the document control number [PP 0E3875/P623], must be received on or before September 8, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of the comments to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy.,

Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, [PP 0E3875/P623]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing to establish an import tolerance for the residues of the fungicide cyproconazole, (2*RS*,3*RS*)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol, in or on the raw agricultural commodity coffee beans at 0.1 part per million (ppm). The proposed regulation to establish a maximum permissible level of the fungicide pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, by amending 40 CFR part 180 to include this commodity was requested in a pesticide petition (PP 0E3875) submitted by Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include the following:

1. A 90-day rat study, in which the levels tested in Han Wistar strain rats were 0, 20, 80, and 320 ppm (0, 1, 4, and 16 mg/kg). Cyproconazole inhibited body weight gain, increased blood sodium, increased liver weights, and produced histological changes in the liver at the high dose. Increased blood creatinine and decreased calcium levels were observed at the high and low dose, but not at the mid-dose. Effects were reversed after cessation of dosing and a 4-week recovery period. Since these changes were not observed after the recovery period they were considered treatment related. A NOEL for this study was therefore not attained, but the NOEL would be less than 1.0 mg/kg.

2. A 13-week feeding study in dogs treated at 0, 20, 100, and 500 ppm yielded a NOEL of 20 ppm (0.8 mg/kg/day) and an LEL of 100 ppm (4 mg/kg/day). At the high dose, treatment-related changes included slack muscle tone, depressed body weight gain, and decreases in bilirubin, total cholesterol, HDL-cholesterol, triglycerides, total protein, and albumin. There were increases in platelet counts, alkaline phosphatase, gamma glutamyl transferase, absolute and relative liver weights, relative kidney weights, and relative brain weights. Liver toxicity was indicated by hepatomegaly.

3. A 21-day dermal study, in which levels tested in New Zealand white rabbits were 50, 250, and 1,250 mg/kg. The NOEL was 250 mg/kg and the LEL was 1,250 mg/kg. Effects included depressed body weight gain and food consumption and increased levels of AST, creatinine, and cholesterol.

4. A 1-year dog study. When dogs were fed a diet containing cyproconazole at levels of 0, 30, 100, or 350 ppm for one year, a NOEL of 30 ppm (1.0 mg/kg/day) and an LEL of 100 ppm (3.2 mg/kg/day) were attained. Several clinical laboratory parameters indicated a difference between the control and treated animals which was consistent with liver effects. Laminal eosinophilic intrahepatocytic bodies were observed in all males and two females at the high dose, and in one male at the mid-level dose. These changes were thought to represent adaptive hypertrophy of the endoplasmic reticulum. Relative kidney weights were increased in low- and high-dose females; cytochrome P450 was significantly increased in males and females at 350 ppm and females at 100 ppm.

5. A mouse carcinogenicity study in which cyproconazole at levels of 0, 15, 100, or 200 ppm added to the diet of CD-1 mice for 81 weeks (males) and 88 weeks (females) resulted in a NOEL for systemic toxicity of 15 ppm (1.8 mg/kg for males and 2.6 mg/kg for females). The LEL was 100 ppm (13.2 mg/kg for males and 17.7 mg/kg for females) based on a significantly increased incidence of hepatic single cell necrosis and diffuse hepatocytic hypertrophy at the two highest levels. The effect was more severe in males than females. There was a decreased amount of testicular germinal epithelium in males at the high dose which corresponded to an increased incidence of flaccid testes. There was an increased incidence of liver adenomas and carcinomas in both sexes.

6. A rat chronic/carcinogenicity study in which cyproconazole fed to KFM Wistar (HAN Wistar origin) rats (males for 118 weeks, females for 121 weeks) at 0, 20, 50, or 350 ppm (males: 1.0, 2.2, and 15.6 mg/kg; females: 1.2, 2.7, and 21.8 mg/kg) resulted in slightly decreased body weights in the high-dose females and increased incidence of fatty infiltration of the liver in the high-dose males. The NOEL for systemic toxicity was 50 ppm. The LEL was 350 ppm. It was determined that the dose levels were inadequate for the assessment of the carcinogenic potential of cyproconazole in the rat. The HED Carcinogenicity Peer Review Committee recommended that this phase of the study be repeated. The committee classified cyproconazole as a quantitated Group B_2 carcinogen with a $Q1^*$ of 0.30 $(mg/kg/day)^{-1}$ based on the absence of an adequate carcinogenicity study in rats and the structural relationship of cyproconazole to closely related analogues shown to have carcinogenic activity.

7. A rat developmental toxicity study in which cyproconazole (95.6% purity) was administered as a suspension by gavage to sperm-positive Wistar/HAN female rats at dose levels of 0, 6, 12, 24, or 48 mg/kg on days 6 through 15 of gestation. The NOEL for maternal toxicity was 6 mg/kg, and the LEL was 12 mg/kg based on decreased body weight gain during dosing. The NOEL for developmental toxicity was 6 mg/kg. The LEL was 12 mg/kg based on the increased incidence of supernumerary ribs.

8. A chinchilla rabbit developmental toxicity study in which cyproconazole (95.6% purity) was administered by gavage to 16 Chinchilla rabbits on days 6 through 18 of gestation at 0, 2, 10, or 50 mg/kg. The NOEL for maternal toxicity was 10 mg/kg (equivocal). The LEL was 50 mg/kg based on decreased body weight gain during dosing. Developmental effects were also evaluated. Hydrocephalus internus was observed in 1 fetus at each treatment level. Therefore, the NOEL for developmental toxicity was set at less than 2 mg/kg, and the LEL was 2 mg/kg. The incidence was 0.85, 0.83, and 0.93 for the low-, mid-, and high-dose fetuses and 0.08 for the historical control.

9. A New Zealand white rabbit developmental toxicity study in which cyproconazole (94.8% purity) was administered by gavage to 18 inseminated New Zealand White rabbits once daily on days 6 through 18 of gestation at dose levels of 2, 10, or 50 mg/kg. The NOEL for maternal toxicity was 10 mg/kg, and the LEL was 50 mg/kg based on decreased body weight gain. There was also evidence of developmental toxicity. The NOEL for developmental toxicity was 2 mg/kg, and the LEL was 10 mg/kg based on the increased incidence of malformed fetuses and litters with malformed fetuses.

10. A rat two-generation reproduction study in which technical cyproconazole (95.6% purity) was administered to 26 male and 26 female F_0 and F_1 KFM-Wistar rats per group for 10 and 12 weeks, respectively, during the pre-mating period via the diet at 0, 4, 20, or 120 ppm. Treatment of males continued for 3 weeks after termination of mating and females were treated until necropsy (post-weaning). The systemic NOEL for parental toxicity was set at 20 ppm (1.7 mg/kg) based on liver effects at 10.6 mg/kg/day. For reproductive toxicity, the NOEL was set at 4 ppm (0.4 mg/kg) and the LEL at 20 ppm (1.7 mg/kg) based on increased gestation length in the F_0 dams and decreased F_1 litter sizes.

11. Several mutagenicity studies. Mutagenicity potential of cyproconazole was tested in several studies considered acceptable by the Agency. Since the results of two chromosomal aberration assays indicated the cyproconazole is clastogenic, additional mutagenicity data were requested to address an identified heritable risk concern. For the potential to induce chromosome aberrations in CHO cells, cyproconazole was positive under nonactivated and activated conditions, thus supporting the evidence that cyproconazole is clastogenic in this test system. Cyproconazole was negative in Salmonella, mouse micronucleus, and SHE/cell transformation assays. A dominant-lethal assay in rats was submitted and was negative. Based on this evidence, the concern for a possible heritable effect was not pursued.

12. Metabolism/pharmacokinetics studies. Cyproconazole was shown to be extensively metabolized in the rat. Unchanged cyproconazole and 13 metabolites were isolated and identified, and 35 metabolites were detected in the excreta. Excretion was relatively rapid with the majority of the radioactivity appearing in the feces as a result of biliary elimination. Residues were found in renal fat, adrenals, kidney and liver, although no significant tissue radioactivity was observed at 168 hours post-dose.

The reference dose (RfD) used in the dietary exposure analysis was 0.01 mg/kg bwt/day based on a NOEL of 30.0 ppm (1.00 mg/kg bwt/day) from a 1-year dog feeding study with an uncertainty factor of 100 that demonstrated hepatotoxicity and organ weight changes observed at 3.2 mg/kg/day. The theoretical maximum residue contribution (TMRC) for the general population is 0.000002 mg/kg/day and for females, 20 years old and older, the TMRC is 0.000003 mg/kg/day. The anticipated residue contributions (ARC) as percentages of the RfD are 0.018 and 0.028% for the general population and females 20 years old or older, respectively. The chronic analysis for cyproconazole is not a worst-case estimate of dietary exposure, with all residues at anticipated levels and 100% of the commodities assumed to be treated with cyproconazole. Based on the risk estimates calculated in this analysis, it appears that chronic dietary risk from the use recommended is not of concern.

The upper-bound cancer risk, based on a Q_1^* of 0.30 $(mg/kg/day)^{-1}$, was calculated to be 5.3×10^{-7}, contributed through the proposed use of cyproconazole in the production of imported coffee beans. The carcinogenic analysis demonstrates that, using the proposed anticipated residues and without percent crop treated information incorporated into the analysis, the use on coffee does not result in a risk estimate exceeding the Agency's value for negligible cancer risk of 10^{-6}.

The nature of the residue in coffee is not fully understood. A metabolism study in coffee, using triazole-labeled cyproconazole, was submitted and was acceptable. Cyproconazole per se was the primary component of the residue. A metabolism study in wheat is being conducted to determine the fate of the phenyl portion of cyproconazole in plants. Preliminary results of the study have been submitted. It is the Agency's conclusion that the results of this study will not significantly alter the risk evaluation for cyproconazole and, therefore, establishing a time-limited tolerance for coffee beans would not pose any significant dietary risk to the public during the timeframe involved in completing and reviewing the wheat metabolism data on this chemical.

Adequate analytical methodology is available for enforcement. However, additional data are required to demonstrate that residues of several other pesticides registered for use on coffee do not interfere with the method. Prior to publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below. By way of public reminder, this notice also reiterates the registrant's responsibility under section 6(a)(2) of FIFRA, to submit additional factual information regarding adverse effects on the environment and to human health by these pesticides.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3875/P623]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP

0E3875/P623] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.485, to read as follows:

§ 180.485 Cyproconazole; tolerances for residues.

A time-limited tolerance is established for the residues of the fungicide cyproconazole, (2*RS*,3*RS*)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol, in or on the following imported raw agricultural commodity:

Commodity	Parts per million	Expiration date
Coffee beans[1]	0.1	July 1, 1997.

[1] There are no U.S. registrations as of August 9, 1995 for use on coffee beans.

[FR Doc. 95–19531 Filed 8–8–95; 8:45 am]

BILLING CODE 6560–50–F

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1051 and 1220

[Ex Parte No. 55 (Sub-No. 95)]

Petition for Rulemaking—Invoiceless Billing Transactions

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is issuing an advance notice of proposed rulemaking to examine restrictions against invoiceless billing between shippers and carriers. In this context, invoiceless billing means a system in which payments are made with no paper or electronic freight bill being issued by the carrier. Presently, Commission regulations require the issuance of freight bills by motor common carriers and require their retention for one year. This proceeding is instituted in response to a petition asking the Commission to modify the present regulations to allow consensual invoiceless billing between shippers, on the one hand, and motor common and contract carriers on the other. The Commission is asking for comments on this proposal and on whether consensual invoiceless billing should be authorized for other modes, including rail and water carriers. Following receipt of public comments, the Commission will decide whether any changes to the present rules may be warranted. If so, a notice of proposed rulemaking will be issued. Otherwise, the proceeding will be discontinued.

DATES: Any person interested in participating in this proceeding as a party of record may file comments by October 10, 1995.

ADDRESSES: Send an original and 10 copies of pleadings referring to Ex Parte No. 55 (Sub-No. 95) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: For a more detailed discussion of the current statutes and regulations, the issues raised by the petition, and the information that is needed to go forward, see the Commission's separate decision in this proceeding issued today. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

Regulatory Flexibility

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we need not conduct at this point an examination of impacts on small business. However, we welcome any comments regarding small entity considerations embodied in that Act.

Environmental and Energy Considerations

Issuing this notice will not significantly affect either the quality of the human environment or the conservation of energy resources because the notice merely seeks information and is not proposing any change in current rules or policy. We preliminarily conclude that, even if we subsequently decide to grant the relief sought by petitioner, an environmental assessment would not be necessary under our regulations because the proposed action would not result in changes in carrier operations that exceed the threshold established in our regulations. See 49 CFR 1105.6(c)(2). We invite comments on the environmental and energy impacts of the proposal.

List of Subjects

49 CFR Part 1051

Buses, Freight, Motor carriers, Reporting and Recordkeeping requirements.

49 CFR Part 1220

Motor carriers, Railroads, Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 10321 and 11144, and 5 U.S.C. 553.

Decided: July 25, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19512 Filed 8–8–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD 38

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Plants From Southwestern California and Baja California, Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Acanthomintha ilicifolia* (San Diego thornmint), *Dudleya stolonifera* (Laguna Beach dudleya), *Hemizonia conjugens* (Otay tarweed), and *Monardella linoides* ssp. *viminea* (willowy monardella) as endangered throughout their respective ranges in southwestern California and northern Baja California, Mexico, pursuant to the Endangered Species Act of 1973, as amended (Act). These species occur in coastal sage scrub, chaparral, and grassland habitats. The four taxa are threatened by a variety of factors including urban and agricultural development, competition from non-native plant species, off-road vehicle use, mining, grazing, and trampling by hikers. This proposed rule, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these four plant species.

DATES: Comments from all interested parties must be received by October 9, 1995. Public hearing requests must be received by September 25, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich at the above address (telephone 619/431-9440).

SUPPLEMENTARY INFORMATION:

Background

Acanthomintha ilicifolia (San Diego thornmint), *Dudleya stolonifera* (Laguna Beach liveforever), *Monardella linoides* ssp. *viminea* (willowy monardella), and *Hemizonia conjugens* (Otay tarweed) occur in San Diego and Orange Counties in southwestern California. In addition, populations of three of these taxa (*A. ilicifolia*, *H. conjugens*, and *M. linoides* ssp. *viminea*) extend into extreme northern Baja California, Mexico. These species occur in coastal sage scrub or in a mosaic of sage scrub, chaparral, riparian scrub, and grassland habitats.

Coastal sage scrub is a community typically dominated by a variety of drought-deciduous and evergreen sclerophyllous shrubs, including *Artemisia californica* (California sagebrush), *Eriogonum fasciculatum* (California buckwheat), *Encelia californica* (California encelia), *E. farinosa* (brittle bush), *Malosma laurina* (laurel sumac), *Opuntia* spp. (prickly pear, cholla), *Salvia* spp. (black sage, white sage), *Rhus integrifolia* (lemonadeberry), and *R. ovata* (sugarbush). Coastal sage scrub was historically distributed throughout cismontane (coastal) California south of San Francisco to Ensenada in Baja California, Mexico (Westman 1983). It ranges in elevation from sea level to about 600 meters (m) (2,000 feet (ft)) in inland sites in the southerly portion of its distribution (O'Leary 1990).

Acanthomintha ilicifolia grows in heavy clay soils in open areas of coastal sage-scrub, chaparral, and native grassland in San Diego County and northern Baja California, Mexico. *Dudleya stolonifera* is primarily restricted to weathered bluffs and rock outcrops in microhabitats within coastal sage scrub or chaparral. *D. stolonifera* is found only in the vicinity of Laguna Beach (Orange County). *Hemizonia conjugens* occurs in southern coastal San Diego County and northern Baja California, Mexico, and is typically found in clay soils on slopes and mesas within coastal sage scrub or grassland habitats. *Monardella linoides* ssp. *viminea* primarily inhabits washes in coastal sage scrub or riparian scrub habitats. Populations of *M. linoides* ssp. *viminea*, concentrated in the Miramar area of San Diego County, extend south into Baja California, Mexico.

Typically, areas with Mediterranean climates such as southern California have numerous rare, locally endemic species (Stebbins and Major 1965, Cody 1986). Southern California has the highest concentration of locally endemic plant species in the United

States (Gentry 1986) and currently experiences one of the highest human population growth rates in the country. Habitat destruction or modification adversely affects taxa native to this area by reducing population densities and contributing to habitat fragmentation. Rapid urbanization and agricultural conversion in Orange and San Diego Counties has already eliminated or reduced populations of the four plant taxa addressed in this proposed rule. These species have also been adversely affected by the invasion of non-native plants, off-road vehicle use, increased erosion, grazing, and trampling by humans.

By the 1980's, nearly 90 percent of the entire coastal sage scrub ecosystem in California had been lost (Westman 1981a, 1981b). In San Diego County, 95 percent of the native perennial grasslands and nearly 60 percent of the coastal sage scrub had been eliminated as a result of urban and agricultural development (Oberbauer and Vanderweir 1991, San Diego Association of Governments 1995). From 1950 to 1990, the human population of San Diego County increased by 349 percent and the population of Orange County increased by 1,015 percent (California Department of Finance 1993). Most of these increases occurred within or near sites historically occupied, in part, by coastal sage scrub. About 125,000 acres of coastal sage scrub remain in San Diego County (Service 1991). Between 1990 and 2015, the number of occupied housing units in San Diego County is expected to increase by 69 percent (San Diego Association of Governments 1991). The trend of habitat loss and fragmentation is expected to continue as the population of southern California expands.

Populations of the proposed taxa in Baja California are also threatened by land use practices. For example, Bowler (1990) and Oberbauer (1994) reported that coastal scrub vegetation in northern Baja California is being grazed, burned to increase grass production, and rapidly converted to row-crop agriculture or condominiums, campgrounds, and resort housing. Rea and Weaver (as cited in Atwood 1990) also noted that coastal sage scrub in Baja California ". . . has been seriously degraded by burning, grazing, and conversion to vineyards during the past two decades."

Discussion of the Four Species Proposed for Listing

Acanthomintha ilicifolia (San Diego thornmint) was first described by Asa Gray as *Calamintha ilicifolia*, based on a type specimen collected from "lower California," (Gray 1872). Gray (1878) subsequently renamed the species *A. ilicifolia*. *A. ilicifolia* is an annual aromatic herb of the mint family (Lamiaceae). Members of the genus have whorled flowers subtended by a pair of leaves and several sharply-spined bracts. *A. ilicifolia* can be distinguished from other members of the genus by its hairless anthers and style. The tubular, two-lipped corollas are white with rose markings on the lower lip.

Acanthomintha ilicifolia usually occurs on clay soils in open patches of coastal sage scrub and chaparral of coastal San Diego County and south to San Telmo in northern Baja California, Mexico. This taxon is considered to be ". . . one of the most restricted clay soil endemics" (Oberbauer 1993). It is frequently associated with gabbro soils derived from igneous rock, and also occurs in calcareous marine sediments. About 40 percent of the known 35 historic populations of *A. ilicifolia* in the United States have been extirpated. Currently, about 40,000 individuals are distributed over 20 sites in the United States ranging from San Marcos east to Alpine and south to Otay Mesa (San Diego County) (California Native Natural Diversity Data Base (CNNDDB) 1994, Reiser 1994). At least nine sites are known to have recently supported *A. ilicifolia* in Baja California, Mexico. The status of this species in Mexico is uncertain.

Dudleya stolonifera (Laguna Beach liveforever) was first described by Reid Moran (1949), based on a specimen collected in 1948 from Aliso Canyon (Orange County). This succulent perennial member of the stonecrop family (Crassulaceae) has basal rosettes of flat, oblong, bright green leaves that arise from a woody base. Its flowers have bright yellow-green petals that are fused near their base. *D. stolonifera* is distinguished by its branching stolons, with lateral vegetative branches that arise from the basal rosette (Moran 1977). *D. stolonifera* occurs on steep cliffs in canyons near Laguna Beach. This species is known from only six populations, comprising a total of 8,000 to 10,000 individuals (Fred Roberts, Service botanist, pers. comm. 1994).

Hemizonia conjugens (Otay tarweed) was first described by David D. Keck (1958) based on a specimen collected by L.R. Abrams from river bottom land in the Otay area of San Diego. *H. conjugens*, a glandular, aromatic annual of the sunflower family (Asteraceae), has a branching stem from 5 to 25 centimeters (2 to 9.8 inches) in height, and deep green or gray-green leaves with soft, shaggy hairs. The yellow flower heads are composed of 8 to 10 ray flowers and 13 to 21 disk flowers with hairless or sparingly downy corollas. The phyllaries are keeled with short-stalked glands and large, unstalked, flat glands near the margins. *H. conjugens* occurs within the range of *H. fasciculata* and *H. paniculata*. Certain morphological characteristics of *H. conjugens* are intermediate between those of the closely related species, *H. fasciculata* and *H. paniculata* (Tanowitz 1982). *H. conjugens* can be distinguished from other members of the genus by its keeled phyllaries, black anthers, and its number of disk and ray flowers.

Hemizonia conjugens has a very limited distribution, consisting of 15 populations near Spring Valley in southern San Diego County and one population in Baja California, Mexico (Rieser 1994; Sandy Morey, Endangered Plants Program Coordinator, California Department of Fish and Game, *in litt.* 1994). Three of the 16 historic localities of *H. conjugens* in the United States are considered to be extirpated (Hogan 1990, S. Morey *in litt.* 1994). This taxon is restricted to clay soils in coastal sage scrub and grassland habitats. *H. conjugens* appears to tolerate mild levels of disturbance such as light grazing (Dr. Barry Tanowitz, University of California, Santa Barbara, *in litt.* 1977; Hogan 1990). Such mild disturbances may create sites necessary for germination (Tanowitz 1977), but the species is threatened by activities such as development and intensive agriculture. Until its rediscovery in Baja California in 1977, this species was considered to be extinct as a result of extensive development within its range (Tanowitz 1978).

Monardella linoides.ssp. viminea was first described in 1902 by Edward L. Greene, who named it *Monardella viminea*, from a type specimen collected by Vassey in 1880 (Greene 1902). Greene (1906) subsequently renamed the plant *Madronella viminea*. Munz (1935) reduced the rank of *Monardella viminea* to a subspecies of *Monardella linoides*. *Monardella linoides* ssp. *viminea* is a perennial herb of the mint family (Lamiaceae) with a woody base and aromatic foliage. The leaves of this species are linear to lanceolate. Its pale white to rose-colored flowers are borne in dense terminal heads subtended by greenish-white, often rose-tipped bracts. This taxon can be distinguished from other members of the genus by its glaucous-green, hairy stem and its conspicuously gland-dotted bracts. *Monardella linoides* ssp. *viminea* often grows in sandy washes and floodplains, and is frequently associated with

Eriogonum fasciculatum (California buckwheat), *Platanus racemosa* (sycamore), *Quercus agrifolia* (coast live oak), *Artemisia californica* (California sagebrush), and *Baccharis sarothroides* (coyote-bush) (Scheid 1985).

Approximately 6,000 individuals of *Monardella linoides* ssp. *viminea* from 20 populations are thought to be extant in the United States. This taxon was previously known from 27 occurrences in the United States. All but one population of approximately 200 individuals occurs between Penasquitos Canyon and Mission Gorge in San Diego County. Fifteen populations have fewer than 100 plants, and 6 of these contain fewer than 15 individuals. One population occurs near Arroyo Jatay in northern Baja California, Mexico.

Previous Federal Actions

Federal government action on the four plant taxa considered in this rule began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and listed *Acanthomintha ilicifolia, Dudleya stolonifera, Monardella linoides* ssp. *viminea*, and *Hemizonia conjugens* as endangered. The Service published a notice on July 1, 1975 (40 FR 27823), of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and of its intention thereby to review the status of the plant taxa named therein. *A. ilicifolia, D. stolonifera, H. conjugens*, and *M. linoides* ssp. *viminea* were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, publication. *A. ilicifolia, D. stolonifera, H. conjugens*, and *M. linoides* ssp. *viminea* were also included in the June 16, 1976, proposal.

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, notice (43 FR 17909). The Endangered Species Act amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the outstanding portion of June 16, 1976, proposal, along with four other proposals that had expired.

The Service published a Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Acanthomintha ilicifolia, Dudleya stolonifera, Hemizonia conjugens*, and *Monardella linoides* ssp. *viminea* as category 1 candidate taxa (species for which data in the Service's possession are sufficient to support a proposal for listing). On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to the 1980 Notice of Review. This supplement treated *A. ilicifolia, M. linoides* ssp. *viminea*, and *H. conjugens* as category 2 candidate taxa (species for which data in the Service's possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). In the September 27, 1985, revised Notice of Review for plants (50 FR 39526), *D. stolonifera* was included as category 1 species; and *A. ilicifolia, H. conjugens*, and *M. linoides* ssp. *viminea* were included as category 2 taxa. Enough data were subsequently gathered to include *A. ilicifolia* as a category 1 species in the February 21, 1990, **Federal Register** (50 FR 45242). The plant Notice of Review was again revised on September 30, 1993 (58 FR 51144). The status of *D. stolonifera* and *A. ilicifolia* remained as category 1 candidate species; *H. conjugens* and *M. linoides* ssp. *viminea* remained as category 2 candidate species.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for all the species presently being proposed, because the 1975 Smithsonian report that included these species was accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but that the listing of these species was precluded by other pending listing actions of higher priority pursuant to section 4(b)(3)(c)(i) of the Act. The finding was reviewed in October 1984 through 1993.

In 1990, the Service received a petition to list *Hemizonia conjugens* (dated December 14, 1990) as endangered and a petition to list *Acanthomintha ilicifolia* (undated) as endangered from David Hogan of the San Diego Biodiversity Project. These petitions also requested the designation of critical habitat. *A. ilicifolia* and *H. conjugens* were included in the Smithsonian Institution's Report of 1975 that had been accepted as a petition. The Service, therefore, regarded Mr. Hogan's petitions to list these two taxa as second petitions.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). The threats facing these four taxa are summarized in Table 1. These factors and their application to *Acanthomintha ilicifolia* (Gray). Gray (San Diego thornmint), *Dudleya stolonifera* Moran (Laguna Beach liveforever), *Hemizonia conjugens* Keck (Otay tarweed), and *monardella linoides* ssp. *viminea* (Greene) Abrams (willowy monardella) are as follows:

	Trampling grazing	Alien plant species	ORV*	Urbanization	Mining	Alteration of hydrology
Acanthomintha ilicifolia	X	X	X	X	X	
Dudleya Stolonifera	X	X		X		
Hemizonia Conjugens	X		X	X		
Monardella linoides ssp. viminea	X	X	X	X		

*ORV=Off-road Vehicle.

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* The rapid urbanization of coastal southern California imminently threatens the four taxa in this proposed rule. Many of the same factors threatening *Acanthomintha ilicifolia, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* in the United States (urban and agricultural development) are threatening these species in Baja California, Mexico.

Of the 35 historically known populations of *Acanthomintha ilicifolia* in the United States, 15 have been extirpated by residential or commercial developments. In addition, off-road vehicle activity and trampling by cattle and humans have contributed to the decline of this species. Thirteen of the remaining 20 populations of *A. ilicifolia* occur on unprotected land, and several of these are declining rapidly. For example, a site near Rancho Santa Fe supported hundreds of plants in 1978, but only three plants in 1986 (CNNDDB 1994). The habitat in this area was degraded, apparently from the impacts of adjacent development (CNNDDB 1994). A population of *A. ilicifolia* in Encinitas contained 11,000 plants in 1989, but only 1,400 in 1992. This population is threatened by trampling and soil erosion (Robert Taylor, botanical consultant, pers. comm. 1992). Another locality was partially extirpated by an unauthorized haul road, which eliminated 60 to 70 percent of the population (CNNDDB 1994).

Five of the known remaining locations of *Acanthomintha ilicifolia* occur on protected land. Two populations occur on the Cleveland National Forest (Viejas Mountain and Poser Mountain). Two populations are found in parks owned by the City of San Diego (Penasquitos Canyon and Mission Trail). One population, located on McGinty Mountain, is managed by The Nature Conservancy and the California Department of Fish and Game. However, these localities are vulnerable to habitat degradation resulting from trampling, dumping, erosion, and off-road vehicle activity. The McGinty Mountain population is threatened by a proposed water tower project (Fred Sproul, botanical consultant, pers. comm. 1992). Roads adjacent to populations in the vicinity of McGinty Mountain and Penasquitos Canyon provide easy access for foot traffic and off-road vehicle use (Mike Kelly, Friends of Los Penasquitos Canyon, pers. comm. 1992). The Viejas Mountain population has been adversely affected by trampling impacts associated with grazing, resulting in increased erosion and the invasion of non-native plant species (Fred Sproul, pers. comm. 1992).

The status of *Acanthomintha ilicifolia* and its habitat in northwestern Baja California, Mexico, is not well documented. The species is known to occur as far south as Las Escobas near San Quintin, but its distribution in Mexico is spotty (Reid Moran, pers. comm. 1992). The San Diego Natural History Museum has herbarium specimens of *A. ilicifolia* from nine localities in Baja California, Mexico. However, little information is available on numbers of individuals or specific threats. One population near Tecate is threatened by an adjacent clay mining operation (Tom Oberbauer, senior planner, San Diego County, pers. comm. 1992). This northern region represents one of the most severely impacted areas in Baja California and many of the same factors (urban and agricultural development) that have affected the status of this taxon in the United States also threaten the species in Mexico.

Approximately 8,000 to 10,000 individuals of *Dudleya stolonifera* in six locations are thought to be extant. Urban development and associated edge effects (see Factor E) threaten *D. stolonifera.* Approximately half of the Canyon Acres population of *D. stolonifera* has been cleared by the landowner (CNNDDB 1992).

Habitat for *Dudleya stolonifera* is also degraded by adjacent land uses. The type locality for *D. stolonifera* is adjacent to urban development and is declining due to increased shading and competition from non-native plants (Kei Nakai, botanical consultant, pers. comm. 1992). The largest population of *D. stolonifera,* located directly adjacent to residential development in Aliso Canyon (Orange County), is threatened by fuel modification and hydroseeding (City of Laguna Beach 1993; Fred Roberts, pers. comm. 1994).

Proposed development threatens the majority of the remaining populations of *Hemizonia conjugens* in the United States. In addition, much of the potentially suitable habitat for this species has been cleared for agriculture. Three of the 18 historic locations of *H. conjugens* are considered to be extirpated (Hogan 1990, S. Morey *in litt.* 1994). None of the existing populations are entirely protected. One population previously known from an open space easement in a residential area had 100 plants in 1987, but was subsequently reported as extirpated (Hogan 1990). The majority of remaining habitat for this species is degraded by illegal dumping and off-road vehicle activity. At least five of the remaining localities for *H. conjugens* are within proposed development projects, and one of these may already be extirpated. At least 80 percent of the largest known population (about 60 percent of all known individuals) of this species is threatened by a proposed housing development (Dudek and Associates 1992, S. Morey *in litt.* 1994).

Monardella linoides ssp. *viminea* was previously known from 27 occurrences in the United States, seven of which have been extirpated by transportation projects and industrial development. Of the five remaining occurrences with at least 100 individuals, none are currently protected. The remaining populations of *M. linoides* ssp. *viminea* are threatened by urban development, sand and gravel mining, off-road vehicle activity, trampling, trash dumping, and erosion. One of the largest populations (2,000 to 3,000 individuals) is located on private property, on Federal land managed by the Navy, and on City-owned property (Sycamore Canyon City Park). This population has been damaged by off-road vehicles and fire, which continue to threaten the remaining populations of this taxon. Two populations on Miramar Naval Air Station land have been partially destroyed by road construction. The other two large populations of *M. linoides* ssp. *viminea* are on private property. One of these (approximately 340 individuals) is threatened by sand and gravel mining. The other population, with approximately 200 individuals, is on property proposed for development. Habitat for this taxon in Los Penasquitos City Regional Park is degraded by stream erosion, trash dumping, and the invasion of non-native species. Another population in San Clemente Park, owned by the City of San Diego, was reported to have approximately 60 plants in the early 1980's, but contained fewer than 35 plants in 1987 (CNNDDB 1992).

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Dudleya stolonifera* is threatened by overcollection. Field-collected specimens of *Dudleya stolonifera* have been found in southern California nurseries, and are likely to be harvested for private collections (Kei Nakai, horticulturalist, *in litt.* 1978, and pers. comm. 1992). *D. stolonifera* and *Monardella linoides* ssp. *viminea* are known to be in cultivation (Mike Evans, Tree of Life Nursery, *in litt.* 1987; Hickman 1993). Overutilization is not known to be a factor for the other taxa in this proposed rule.

C. *Disease or predation.* Herbivory may threaten some populations of the plants contained in this proposed rule. For example, failure of the *Acanthomintha ilicifolia* transplants at Quail Gardens was attributed primarily to rabbit predation (Don Miller, Quail Gardens, pers. comm. 1992). Herbivory by rabbits has also been identified as a threat to populations of *Monardella linoides* ssp. *viminea* in San Clemente Park (John Rieger, biologist, California Department of Transportation, pers. comm. 1992).

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could provide some protection for these taxa include: (1) the Federal Endangered Species Act in cases where these taxa occur in habitat occupied by a listed species; (2) conservation provisions under the Federal Clean Water Act; (3) listing under the California Endangered Species Act; (4) the California Environmental Quality Act; (4) implementation of conservation plans pursuant to the California Natural Community Conservation Planning program; (5) land acquisition and management by Federal, State, or local agencies or by private groups and organizations; (6) local laws and regulations; and (7) enforcement of Mexican laws.

The coastal California gnatcatcher *(Polioptila californica californica)* is listed as a threatened species under the Act, and occurs in some of the areas occupied by these four plant taxa. However, the legal authority to protect the gnatcatcher does not extend to candidate species. For example, the City of San Diego has recently approved plans for a large-scale development project that will result in significant impacts to the California gnatcatcher and coastal sage scrub. No mitigation for impacts to *Hemizonia conjugens* has been recommended by the project proponent (Ellen Berryman, Service biologist, pers. comm. 1994) Currently, the Service is working with local fire management agencies in San Diego County on a cooperative agreement that would allow for incidental take of the California gnatcatcher within 30 m (100 ft) of existing development. If implemented, this agreement may result in additional impacts to several of the taxa here proposed (John Lovio, Service biologist, pers. comm. 1995).

Conservation agreements with other Federal agencies may reduce the decline of some species to the point at which listing as threatened or endangered would not be appropriate. However, conservation agreements with other Federal agencies would not appreciably benefit most of the taxa in this rule. Two of the four taxa *(Dudleya stolonifera* and *Hemizonia conjugens)* do not occur on Federal lands, and only a small fraction of the populations of *Acanthomintha ilicifolia* occur on Federal lands (two of 14 populations). It is unlikely that a Conservation Agreement with the Forest Service on these populations would significantly affect the decline of the species. About one-half of the extant *Monardella linoides* ssp. *viminea* populations occur on private land and the distribution of this taxon, frequently characterized by small populations, is extremely restricted. A conservation agreement with the Navy would not reduce the decline of this taxon over a significant portion of its range.

Monardella linoides ssp. *viminea* could potentially be affected by projects requiring a permit from the Army Corps of Engineers under section 404 of the Clean Water Act. Although the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Pub. L. 92-500), which includes navigable and isolated waters, headwaters, and adjacent wetlands, there are no specific provisions that adequately address the need to conserve candidate species such as those considered herein. Candidate species receive no special consideration under section 404 of the Clean Water Act.

The California Fish and Game Commission has listed *Acanthomintha ilicifolia, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* as endangered and *Dudleya stolonifera* as threatened under the Native Plant Protection Act (chapter 10 section 1900 et seq. of the Fish and Game Code) and California Endangered Species Act (chapter 1.5 section 2050 *et seq.*). Though both statutes prohibit the "take" of State-listed plants (sections 1908 and 2080), State law exempts the taking of such plants via habitat modification or land use change by a landowner. After the Department notifies a land owner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plants" (chapter 10 section 1913). Although *H. conjugens* is listed as endangered by the State, at least two large-scale development projects have recently been approved by the City of San Diego that will have significant, unmitigated impacts on this species and its associated grassland/coastal sage scrub habitat (Ellen Berryman, pers. comm. 1994).

The majority of the known populations of *Acanthomintha ilicifolia, Dudleya stolonifera,* and *Hemizonia conjugens* occur on privately-owned land. Local and county zoning designations are subject to change and may not adequately consider the needs of sensitive species in the establishment of open space areas. The few existing resource protection ordinances are subject to interpretation, and compliance is not required in cases where findings of overriding social and economic considerations are made. In many cases, land-use planning decisions are made on the basis of environmental review documents prepared as a requirement of the California Environmental Quality Act (CEQA) or the National Environmental Policy Act. These documents have not adequately addressed potential impacts to the four taxa or offered sufficient compensation for losses that continue to contribute to net loss of habitat. As an example, impacts to biological resources associated with two large-scale residential development projects (approximately 98 hectares (ha) (244 acres (ac)) and 266 ha (665 ac)) in the vicinity of Otay Mesa, occupied in part by *H. conjugens,* are considered to be significant even after all mitigation measures are implemented. Nonetheless, statements of overriding considerations were developed, and both projects were recently approved by the San Diego City Council (Ellen Berryman, pers. comm. 1994).

Transplantation and relocation projects are frequently used to compensate for the loss of rare plant species under CEQA. Hall (1987) and Fiedler (1991) document several attempts at transplanting *Acanthomintha ilicifolia, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea.* In one transplantation project for *A. ilicifolia,* maintenance and monitoring was scheduled for a period of 5 years. Subsequently, all records of the project were lost and the new property owner claimed no responsibility for the project. This site was destroyed by trash dumping and off-road vehicle use (Hall 1987). At least six of the eight transplant populations of this species are either rapidly declining or have been extirpated, largely as a result of weed invasion (Fred Sproul, Mitch Beauchamp, Robert Taylor, botanical consultants, pers. comm. 1992). Although two of the transplanted *A. ilicifolia* populations (Sabre Springs and San Pasqual) are somewhat stable, they are not likely to survive when weeding is discontinued (Robert Taylor, pers. comm. 1992). One year after 45 individuals of *M. linoides* ssp. *viminea* were transplanted by the California Department of Transportation, only four had survived (Hall 1987). Of the 53 transplantation, relocation, or reintroduction projects reviewed by

Fiedler (1991), only 15 percent were considered to be fully successful. None of these included *A. ilicifolia, H. conjugens,* or *M. linoides* ssp. *viminea.* Transplantation has not yet been demonstrated to provide for the long-term viability of any of the four taxa under consideration in this proposed rule.

In 1991, the State of California established the Natural Communities Conservation Planning (NCCP) Program to address conservation needs of natural ecosystems throughout the State. The initial focus of the program is the coastal sage scrub community occupied, in part, by these four taxa. *Acanthomintha ilicifolia, Dudleya stolonifera, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* have been included as taxa for consideration under the coastal sage scrub NCCP Program. Several regional plans, the Multi-species Conservation Plan (MSCP) and the Multi-habitat Conservation Plan (MHCP) of San Diego County, and the Central/Coastal Subregional NCCP/Habitat Conservation Plan (Central/Coastal NCCP) of Orange County are under development by a consortium of county and municipal governments and other parties, including the California Department of Fish and Game and Service. Though no plans have been completed to date, progress is currently being made and significant protection will be provided by the NCCP program for the four taxa.

If adopted and implemented, the Central/Coastal NCCP as currently proposed may preclude the need to list *Dudleya stolonifera.* The Central/Coastal NCCP proposes protection for about 80 percent of the *D. stolonifera* populations in the San Joaquin Hills of Orange County. The largest population (about 40 percent of all individuals) would not be included within the preservation boundary. However, this population (Big Bend, Laguna Canyon) occurs on a rugged cliff and already receives some protection and management from the City of Laguna Beach which has recognized the significance of this locality since 1982.

While *Acanthomintha ilicifolia, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* will benefit from the MSCP and MHCP planning efforts in San Diego County, these planning efforts have yet to be approved. If adopted and implemented, the plans may preclude the need to list one or more of these taxa. About 70 percent of the United States populations of *A. ilicifolia* occur within the MSCP subregion, including eight of 11 major populations. Four of these eight major populations are not adequately conserved by the proposed preserve within the subregion, and other major populations are protected but subject to edge effects. The MHCP contains about 25 percent of the United States populations of *A. ilicifolia,* including two major populations. These populations are adequately protected.

All of the United States populations of *Hemizonia conjugens* occur within the MSCP subregion. Two of the major populations, containing about 70 percent of all known individuals, are within proposed development projects that would fragment the remaining habitat. The five remaining major populations (containing about 25 percent of all individuals) may be subject to edge effects. The Service is working with local jurisdictions and landowners to protect these populations.

While about 95 percent of the United States range of *Monardella linoides* ssp. *viminea* occurs within the MSCP subregion, only about 20 percent occurs outside Miramar Naval Air Station. Though Miramar is not participating in the MSCP, the Navy is working on a management plan with the advice of the Service. At least one additional small population occurs within the Poway Habitat Conservation Plan area. Current efforts in the MSCP and Poway, while proposing adequate conservation within their respective areas, are not enough to preclude listing. However, with the completion of the Navy's management plan, *M. linoides* ssp. *viminea* should be adequately protected.

Populations of *Acanthomintha ilicifolia* on Federal land (Cleveland National Forest) are being negatively affected by unauthorized grazing and illegal shooting and dumping (Winter 1991). The most significant populations of *Monardella linoides* ssp. *viminea* occur on Federal land at Miramar Naval Air Station. Though no management plan exists for this taxon, Miramar is nearing the completion of a draft plan. Management of the Naval Air Station will soon be transferred to the United States Marine Corps, which will participate in the planning effort.

The ranges of *Acanthomintha ilicifolia, Hemizonia conjugens,* and *Monardella linoides* ssp. *viminea* extend into northern Baja California, Mexico. Mexico has laws that could provide protection to rare plants; however, enforcement of these laws is lacking (Service 1992).

On July 29, 1983, *Dudleya stolonifera* was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is a treaty established to prevent international trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required from the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be exported for primarily commercial purposes. However, plants that are certified by the Service as artificially propagated in accordance with CITES conference resolutions may be exported for commercial purposes with only CITES export documents from the exporting country. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not regulate take or domestic trade.

E. *Other natural or manmade factors affecting their continued existence.* At least two of the taxa in this proposed rule, *Dudleya stolonifera* and *Monardella linoides* ssp. *viminea,* are threatened with stochastic (random) extinction by virtue of their small population sizes. Chance events, such as floods, fires, or drought, can substantially reduce or eliminate populations and increase the likelihood of extinction. In addition, small populations are threatened by inbreeding depression (Lande 1988, Ellstrand 1992). Small populations can have significantly lower germination rates than larger populations of the same species due to high levels of homozygosity (Menges 1991). Local extinctions of plant species can occur in areas with a high degree of environmental stochasticity (e.g. large fluctuations in rainfall, etc.). Furthermore, *Acanthomintha ilicifolia* and *Hemizonia conjugens* are annuals that undergo large population fluctuations from year to year. Annuals may not have a persistent seed bank or may be unable to recolonize areas of suitable habitat due to dispersal barriers such as intervening development. These populations are particularly vulnerable to local extirpations.

Non-native grass and forb species have invaded many of southern California's plant communities. Their presence and abundance is generally an indirect result of habitat disturbance by development, mining, grazing, discing, and alteration of hydrology. The invasion of both native and non-native wetland plant species as a result of altered drainage patterns threatens habitat for *Monardella linoides* ssp. *viminea* (Scheid 1985). Grazing negatively affects *Acanthomintha ilicifolia* by increasing erosion, contributing to soil compaction, and introducing a variety of non-native grasses that exclude *A. ilicifolia* from areas of otherwise suitable habitat (Winter 1991). Several populations of *Dudleya stolonifera* are threatened by trampling and the invasion of exotic plant species (Marsh 1992). All four taxa in this proposal are subject to displacement by exotic plant species.

Although many coastal sage scrub and chaparral species are adapted to periodic fires, the taxa in this proposal are threatened by fire that can result in the extirpation of individuals or entire populations of these species. In addition, the disruption in natural fire cycles can also result in the conversion of coastal sage scrub or chaparral habitats into non-native grasslands (Tyrrel 1982). For example, several catastrophic wildfires in 1993 burned over 16,000 ha (40,000 ac) of coastal sage scrub and associated habitats in Orange and San Diego Counties (Service, unpublished data). These fires affected three of the six remaining populations of *Dudleya stolonifera.* Due to the intensity of these burns, it is possible that some of the affected *D. stolonifera* populations will not fully recover.

Dudleya stolonifera, Hemizonia conjugens, Acanthomintha ilicifolia, and *Monardella linoides* ssp. *viminea* generally persist as small, isolated populations surrounded by urban or agricultural development. Much of the remaining habitat for these taxa is degraded, and is threatened by off-road vehicle activity, the invasion of nonnative plants, and trampling by cattle and humans. These four species are in danger of extinction throughout all or a significant portion of their ranges. The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these four taxa in determining to propose this rule. Based on this evaluation, the Service finds that the preferred action is to list *Dudleya stolonifera, Hemizonia conjugens, Acanthomintha ilicifolia,* and *Monardella linoides* ssp. *viminea* as endangered. These four taxa are threatened by one or more of the following factors: urbanization, agricultural conversion, off-road vehicle activity, stochastic events, overcollecting, trampling, and the invasion of nonnative species.

Critical habitat is not being proposed for these taxa for the reasons discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is listed. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that the designation of critical habitat is not prudent for these four species at this time. Publication of precise maps and descriptions of critical habitat would increase the degree of threat to the four taxa from take or vandalism and could contribute to their decline. The listing of these species under the Act publicizes the rarity of the plants and, thus, can make them attractive to researchers, curiosity seekers, or collectors of rare plants. *Dudleya stolonifera* and *Monardella linoides* ssp. *viminea* are known to be in cultivation.

Most populations of *Acanthomintha ilicifolia, Dudleya stolonifera,* and *Hemizonia conjugens* are on privately owned land with little or no Federal involvement. Therefore, the designation of critical habitat would provide no additional benefit for these taxa. Several populations of *Monardella linoides* ssp. *viminea* are found on Federal land at Miramar Naval Air Station. In addition, this taxon generally occurs along streams and washes where Federal involvement may occur through section 404 of the Clean Water Act. All appropriate Federal and State agencies and local planning agencies have been notified of the locations and importance of protecting habitat for these species. Protection of habitat for the four taxa will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of the taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, local, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agencies expected to have involvement with *Monardella linoides* ssp. *viminea* include the Army Corps of Engineers and the Environmental Protection Agency due to their permit authority, under section 404 of the Clean Water Act. *M. linoides* ssp. *viminea* occurs on Miramar Naval Air Station. This base will likely be involved through military activities or potential transfer of excess Federal lands. The Forest Service has jurisdiction over several populations of

Acanthomintha ilicifolia. M. linoides ssp. *viminea* may be affected by projects funded in part by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that permits may be sought for cultivated specimens, since two of the taxa are known to be under cultivation and are in domestic trade.

It is the policy of the Service (59 FR 36272) to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. Such information is intended to clarify the potential impacts of a species' listing on proposed and ongoing activities within the species' range. Three of the four species in this rule are known to occur on lands under the jurisdiction of the Forest Service or the Department of Defense. Collection, damage, or destruction of listed plants on these lands is prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act, if conducted in knowing violation of California State law, including State criminal trespass law.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Carlsbad Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE Lith Avenue, Portland, Oregon 97232–4181 (503) 231–2063 or FAX (503) 231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final decisions on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received by September 25, 1995. Such requests must be made in writing and be addressed to the Field Supervisor of the Carlsbad Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposal is available upon request from the Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary authors of this proposed rule are Ellen Berryman and Edna Rey-Vizgirdas (see **ADDRESSES** section) (telephone 619/431–9440).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under Flowering plants, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Acanthomintha ilicifolia.	San Diego thornmint	U.S.A. (CA)	Lamiaceae	E		NA	NA
Dudleya stolonifera	Laguna Beach liveforever.	U.S.A. (CA)	Crassulaceae	E		NA	NA
Hemizonia conjugens.	Otay tarweed	U.S.A. (CA) Mexico	Asteraceae	E		NA	NA
Monardella linoides ssp. viminea.	Willowy monardella	U.S.A. (CA) Mexico	Lamiaceae	E		NA	NA

Dated: July 5, 1995.

Mollie Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–19714 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 60, No. 153
Wednesday, August 9, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 4, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entity contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Animal and Plant Health Inspection Service
  Gypsy Moth Identification Worksheet
  PPQ Form 305
  State, Local or Tribal Government; Federal Government; 97,180 responses; 32,039 hours
  Terry McGovern, (301) 734–6365

Extension

- Cooperative State Research, Education and Extension Service
  Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program, Application Guidelines CSRS–701, 702, 703, 707, 708, and 709
  Not-for-profit institutions; Individuals or households; State, Local or Tribal Government; 463 responses; 9,375 hours
  Jeffrey L. Gilmore, (202) 720–1973.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.
[FR Doc. 95–19673 Filed 8–8–95; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Research Service

National Genetic Resources Advisory Council

According to the Federal Advisory Committee Act of October 6, 1972 (P.L. 92–463), the Agricultural Research Service announces the following meeting:

Name: National Genetic Resources Advisory Council.
Date: September 18–19, 1995.
Time: 8:30 a.m.–5:00 p.m., September 18, 1995; 8:30 a.m.–5:00 p.m., September 19, 1995.
Place: USDA, South Building, Room 3109, 14th and Independence Avenue S.W., Washington, D.C. 20250.
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before on after the meeting with the contact person below.
Purpose: To advance the development of the National Genetic Resources Program.
Contact Person: Henry L. Shands, Director, National Genetic Resources Program, Building 005, Room 115, BARC-West, Beltsville, Maryland 20705. Telephone: 301–504–5059.

Done at Beltsville, Maryland, this 1st day of August 1995.

Henry L. Shands,
Director, National Genetic Resources Program.
[FR Doc. 95–19642 Filed 8–8–95; 8:45 am]
BILLING CODE 3410–03–M

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on August 23 and 24, 1995, for a field trip and meeting. The field trip will begin at 8:00 a.m., August 23, at the Six Rivers National Forest Supervisor's Office, 1330 Bayshore Way, Eureka, California, and continue until 5:00 p.m. The field trip will visit the Pilot Creek Project on the Mad River Ranger District and will include presentations on watershed analysis, riparian management, and the Hayfork Adaptive Management Area. The meeting on August 24 will begin at 8:00 a.m. at the Six Rivers National Forest Supervisor's Office and continue until 3:00 p.m. Agenda items to be covered include: (1) Open public forum; (2) Report from Eel River Basin taskforce (3) Presentation on fish stock at risk; (4) Agency projects/programs needing PAC coordination; (5) Presentation on funding available through the California State Community Economic Revitalization Team (SCERT); (6) Overview of salmon restoration; and (7) Build agenda for next meeting. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting the Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (916) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest 825 N. Humboldt Avenue, Willows, CA, 95988, (916) 934–3316.

Dated: July 31, 1995.

Daniel K. Chisholm,
Forest Supervisor.
[FR Doc. 95–19562 Filed 8–8–95; 8:45 am]
BILLING CODE 3410–FK–M

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on August 25, 1995 at the City of Hoquiam High School conference room, 501 W. Emerson Street, Hoquiam, Washington. The meeting will begin at 10 a.m. and continue until 3 p.m. Agenda items include: (1) Review Watershed Analysis Priority Selections by PIEC; (2) Introduce 1996 restoration program; (3) Federal Process for Jobs-in-the-Woods (Update); (4) Pilot Adaptive Management Area Proposed Strategy; (5) Biodiversity Pathways Approach for Managed Forests; (6) Status Reports on Timber Harvest Levels, Salvage Sales and Late Successional Reserve Assessments; (7) Open Forum and (8) Public Comments. All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211 or Ronald R. Humphrey, Forest Supervisory, at (360) 956–2301.

Dated: August 3, 1995.

Ronald R. Humphrey,
Forest Supervisor.
[FR Doc. 95–19625 Filed 8–8–95; 8:45 am]
BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on Monday, September 11, 1995, at the Hotel Fort Des Moines, 10th and Walnut Streets, Des Moines, Iowa 50309. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 28, 1995.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 95–19589 Filed 8–8–95; 8:45 am]
BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 8:30 p.m. on Thursday, September 28, 1995, at the Radisson Hotel and Conference Center, 4728 Constitution Avenue, Baton Rouge, Louisiana 70808. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 28, 1995.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 95–19590 Filed 8–8–95; 8:45 am]
BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:00 p.m. on Thursday, September 7, 1995, at the Kansas City Marriott Allis, 200 West 12th Street, Kansas City, Missouri 64106. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 28, 1995.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 95–19591 Filed 8–8–95; 8:45 am]
BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on Monday, September 18, 1995, at the Oklahoma State University, Student Union Building, Room 211, Stillwater, Oklahoma 74058. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 28, 1995.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 95–19592 Filed 8–8–95; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration/IEP.
Title: American Management & Business Internship Training (AMBIT) Program: Applications.
Form Number(s): None.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 1,050 hours.
Number of Respondents: 450.
Avg Hours Per Response: 1 hour U.S. firms and 3 hours interns.
Needs and Uses: The U.S. Department of Commerce's International Trade

Administration, in collaboration with the International Fund for Ireland, has established the American Management & Business Internship Training (AMBIT) program. AMBIT–participating U.S. firms provide one–to–six–month training programs for managers and technical experts from Ireland and the border counties of Ireland in innovative business practices.

Affected Public: Businesses or other for–profit organizations, not–for–profit institutions.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/IEP/SABIT.

Title: SABIT: Applications and Questionnaire.

Form Number(s): None.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 700 hours.

Number of Respondents: 200.

Avg Hours Per Response: 3 hours applications; 30 minutes questionnaire.

Needs and Uses: The Special American Business Internship Training (SABIT) program assist economic restructuring in the Independent States of the former Soviet Union by exposing top–level business executives and scientists to American ways of innovation and management. SABIT places these individuals in U.S. firms for one to six month internships to gain firsthand experience in a market economy.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/IA/SIPS.

Title: SABIT: Application for License to Enter Watches and Watch Movements into the Customs Territory of the U.S. — P.L. 97–446.

Form Number(s): ITA–334P.

Agency Approval Number: 0625–0040.

Type of Request: Extension of a currently approved collection.

Burden: 6 hours.

Number of Respondents: 6.

Avg Hours Per Response: 1 hour.

Needs and Uses: Public Law 97–446, passed in 1983, requires Commerce to administer the distribution of duty–exemptions and duty–refunds to watch producers in the U.S. Territories and the Northern Marianas Islands. The annual allocation and the production incentive certificate for each producer are based on data supplied from this application.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/US&FCS/EPS.

Title: Marketing Data Forms.

Form Number(s): ITA–466P.

Agency Approval Number: 0625–0047.

Type of Request: Revision of a currently approved collection.

Burden: 3,750 hours.

Number of Respondents: 5,000

Avg Hours Per Response: ¾ hour.

Needs and Uses: The Marketing Data Form is sent to participants in overseas trade events to obtain information necessary to produce exhibit brochures and directories for promotional purposes. The information is also helpful in identifying foreign companies that may be interested in the products and/or services.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/US&FCS/EPS.

Title: Commercial News USA.

Form Number(s): ITA–4063P.

Agency Approval Number: 0625-0061.

Type of Request: Extension of a currently approved collection.

Burden: 917 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 20 minutes initial application; 5 minutes evaluation.

Needs and Uses: As part of its export promotion activities, ITA published COMMERCIAL NEWS USA (CNUSA) ten times a year. The purpose of the publication is to promote new American products and technology to overseas buyers. To participate in the program, a firm must apply to have its product information included. A fee must be paid if accepted. The application is used to determine if the product meets criteria for being included in CNUSA.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/IA/I.

Title: Petition Format for Requesting Relief Under U.S. Antidumping Duty Law.

Form Number(s): ITA–357P.

Agency Approval Number: 0625–0105.

Type of Request: Extension of a currently approved collection.

Burden: 1520 hours.

Number of Respondents: 38.

Avg Hours Per Response: 40 hours.

Needs and Uses: The information requested by the "Antidumping Questionnaire" is used to back–up petitioners' allegations that foreign merchandise is being dumped in the U.S. Petitioners can also follow the requirements set forth in the regulations and submit information in that manner. ITA uses this information to determine whether or not an antidumping duty investigation is warranted.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/IA/FTZ.

Title: Annual Report for Foreign Trade Zones (FTZ).

Form Number(s): ITA–359P.

Agency Approval Number: 0625–0109.

Type of Request: Extension of a currently approved collection.

Burden: 9,681 hours.

Number of Respondents: 15.

Avg Hours Per Response: 84 hours.

Needs and Uses: The Foreign Trade Zone Act (FTZ) requires annual reports from the FTZs. The reports summarize zone projects, operations and activities and they are the FTZ Board's only source of information on zone projects in the U.S. The information provides the basis for a consolidated annual report to Congress as required by the FTZ Act.

Affected Public: Businesses or other for–profit organizations and other not–for–profit institutions.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration (ITA).

Title: Export Trading Companies Contact Facilitation Service.

Form Number(s): ITA–44P.

Agency Approval Number: 0625–0120.

Type of Request: Extension of a currently approved collection.

Burden: 5,000 hours.

Number of Respondents: 10,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Export Trading Company Act of 1982 directs the Department of Commerce to provide a service to facilitate contact between producers of exportable goods and firms offering export trade services. ITA has established a clearinghouse for U.S. suppliers, banks, service organizations and export trading companies (ETCs). This helps U.S. producers identify and contact newly formed ETCs. The Contact Facilitation Service form is designed to obtain the information needed to put producers together with exporters.

Affected Public: Businesses or other for–profit organizations and other not–for–profit institutions and State, Local or Tribal Government.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration (ITA)

Title: Trade Fair Certification Program Application

Form Number(s): ITA–4100P.

Agency Approval Number: 0625–0130.

Type of Request: Extension of a currently approved collection.

Burden: 700 hours.

Number of Respondents: 70.

Avg Hours Per Response: 10 hours.

Needs and Uses: Non–governmental enterprises int he business of trade promotion requesting endorsement and assistance from Commerce can do so through the Trade Fair Certification Program. This endorsement signals to suppliers and foreign buyers that the U.S. Government supports the Trade Event.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/IA/SIPS.

Title: Watch Duty Exemption Program Forms.

Form Number(s): ITA–321P, 360P, 361P 15 CFR 303.6 THRU 303.12.

Agency Approval Number: 0625–0134.

Type of Request: Extension of a currently approved collection.

Burden: 96 hours.

Number of Respondents: 6.

Avg Hours Per Response: 29.5 hours

Needs and Uses: Public Law 97–446, passed in 1983, requires Commerce to administer the distribution of duty–exemptions and duty–refunds to watch producers in the U.S. territories. There are three forms used to implement this program. Form ITA–360P is a Certificate of Entitlement for Duty Refunds and is issued by the Department. Form ITA–361P is used by a company to request refunds of duties on watches and watch movements. Form ITA–321P collects information on duty–free shipments which is used to monitor duty–exemptions so as to prevent abuse of the Watch Duty Program.

Affected Public: Businesses or other for–profit organizations.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Officer Building, Washington, D.C. 20503.

Dated: August 2, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19638 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–CW–F

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Exception to Order Requirement.

Agency Form Number: None.

OMB Approval Number: 0694–0011.

Type of Request: Extension of a currently approved collection.

Burden: 3 hours.

Number of Respondents: 10.

Avg Hours Per Response: 15 minutes for reporting requirements and 1 minute for recordkeeping.

Needs and Uses: An export license application must be based on an order from a party in a foreign country. On rare occasions, BXA will consider granting a waiver to the order requirement when the exporter can show that an exception is warranted. The information collected is used to determine if an exception should be granted.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion, recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration (ITA).

Title: Mission – Exhibition Evaluation.

Agency Form Number: ITA–4075P.

OMB Approval Number: 0625–0034.

Type of Request: Extension of the expiration date.

Burden: 167 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 5 minutes.

Needs and Uses: In support of its export promotion program, ITA sponsors trade events abroad. The purpose of this data collection is obtain the views of participants on the success of the respective events. ITA uses the information to determine the efficiency, impact, and effectiveness of its overseas trade promotion activities.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration (ITA).

Title: Product Characteristics, Design Checkoff List.

Agency Form Number: ITA–426P.

OMB Approval Number: 0625–0035.

Type of Request: Extension of the expiration date.

Burden: 1,500 hours.

Number of Respondents: 3,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: ITA sponsors a number of overseas trade events each year. This form is used by U.S. firms participating in the trade fairs to indicate physical requirements of their displays.

Affected Public: Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration (ITA).

Title: Overseas Business Interest Questionnaire.

Agency Form Number: ITA–471P.
OMB Approval Number: 0625–0039.
Type of Request: Extension of a currently approved collection.
Burden: 1,000 hours.
Number of Respondents: 2,000.
Avg Hours Per Response: 30 minutes.
Needs and Uses: This information collection allows U.S. firms participating in overseas trade events sponsored by the Department of Commerce an opportunity to specifically identify the products they wish to promote. The information is used to schedule business appointments and to invite foreign companies to trade events.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration.
Title: Commercial News USA — Worldwide Services Program.
Agency Form Number: ITA–4099P.
OMB Approval Number: 0625–0127.
Type of Request: Extension of the expiration date.
Burden: 167 hours.
Number of Respondents: 500.
Avg Hours Per Response: 20 minutes.
Needs and Uses: This collection allows ITA to promote U.S. services available for export in overseas markets as part of its trade promotion activities. The information in incorporated into ITA's magazine, COMMERCIAL NEWS USA.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration (ITA).
Title: Information Services Order Form Program.
Agency Form Number: ITA–4096P.
OMB Approval Number: 0625–0143.
Type of Request: Extension of the expiration date.
Burden: 1,366 hours.
Number of Respondents: 7,659.
Avg Hours Per Response: Varies but ranges between 5 and 60 minutes.
Needs and Uses: The United States and Foreign Commercial Service offers their clients programs, market research, and services to enable them to begin exporting or to expand existing export efforts. This form is design to elicit information so that the trade specialists can make recommendations on which services or programs would help the client meet individual goals.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration.
Title: Advocacy Questionnaire.
Agency Form Number: ITA–4133P.
OMB Approval Number: 0625–0220
Type of Request: Extension of the expiration date.
Burden: 100 hours.
Number of Respondents: 200 respondents (multiple responses).
Avg Hours Per Response: 15 minutes.
Needs and Uses: ITA's Advocacy Center marshals federal resources to assist U.S. firms competing for major procurement worldwide. To provide this service, the Advocacy Center must determine whether the U.S. firm is eligible for U.S. government advocacy support.
Affected Public: Businesses or other for–profit organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: International Trade Administration (ITA).
Title: Commerce Trade Fair Privatization Application.
Agency Form Number: ITA–4134P.
OMB Approval Number: 0625—0222.
Type of Request: Extension of the expiration date.
Burden: 2,400 hours.
Number of Respondents: 200.
Avg Hours Per Response: 12 hours.
Needs and Uses: DOC has identified overseas trade fairs for which it seeks to transfer organization and management of U.S. pavilions from ITA to U.S. firms or trade associations. The information provided is used to assess the qualifications of applicants and to make selections for managing U.S. pavilions selected for this privatization effort.
Affected Public: Businesses or other for–profit organizations, not–for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Sea Grant Control.
Agency Form Number: NOAA 90–1.
OMB Approval Number: 0648–0008.
Type of Request: Extension of the expiration date.
Burden: 20 hours.
Number of Respondents: 40.
Avg Hours Per Response: 30 minutes.
Needs and Uses: The information collected identifies the participating organizations and personnel in a proposed Sea Grant project. It is used in the review of proposals.
Affected Public: Not–for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 482–3271.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Monthly Cold Storage Fish Report.
Agency Form Number: NOAA 88–16.
OMB Approval Number: 0648–0015.
Type of Request: Extension of the expiration date.
Burden: 1,000.
Number of Respondents: 200 (monthly responses).
Avg Hours Per Response: 8 minutes.
Needs and Uses: Data on cold storage of fish holdings are needed by the National Marine Fisheries Service for fishery management and development purposes, and by industry for the orderly distribution and purchase of fishery products.
Affected Public: Businsses or other for–profit organizations.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Processed Product Family of Forms.
Agency Form Number: NOAA 88–13.
OMB Approval Number: 0648–0018.
Type of Request: Extension of the expiration date.
Burden: 617 hours.
Number of Respondents: 5,141 (some more than 1 response).
Avg Hours Per Response: Approximately 8 minutes.
Needs and Uses: Data from seafood processors and wholesale dealers are needed by NMFS to develop economic forecasts on the impacts of fishery management regulations.
Affected Public: Businesses or other for–profit institutions.
Frequency: Monthly, annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Pacific Billfish Angler Survey.
Agency Form Number: 88–10.
OMB Approval Number: 0648–0020.

Type of Request: Extension of the expiration date.
Burden: 175 hours.
Number of Respondents: 2,500.
Avg Hours Per Response: 4 minutes.
Needs and Uses: Recreational fishermen who have fished for billfish in the Pacific Ocean are asked to report on their effort and catch. The information obtained is used to determine annual trends and is used in domestic and international fishery management discussions and plans.
Affected Public: Individuals.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Sea Grant Budget.
Agency Form Number: NOAA 90–4.
Type of Request: Extension of the expiration date.
Burden: 200 hours.
Number of Respondents: 40 (multiple responses).
Avg Hours Per Response: 15 minutes.
Needs and Uses: The object of the Sea Grant Program is to increase the understanding, assessment, development utilization, and conservation of the Nation's ocean and coastal resources. Both single and multi–project grants are given. The information on the budget form is used by both the grantee and grantor to determine the cost of each project and to determine the allowability of matching costs offered. Also is used in negotiating costs and administrative controls of expenditures by both parties.
Affected Public: Not–for–profit institutions.
Frequency: Annually.
Respondent's Obligation: Required to obtain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Saltonstall–Kennedy (S–K) Grant Application.
Agency Form Number: NOAA 88–204 and 88–205.
OMB Approval Number: 0648–0135.
Type of Request: Revision of a currently approved collection.
Burden: 2,566 hours.
Number of Respondents: 265 (some with multiple responses).
Avg Hours Per Response: Ranges between 2 and 13 hours depending on the requirement.
Needs and Uses: Under the S–K Act, financial assistance is made available through the Secretary of Commerce to the public for projects that help to strengthen or develop the U.S. fishing industry. Information is needed to decide which projects should be funded and to monitor and assess the success of completed projects.
Affected Public: Individuals, businesses or other for–profit organizations, not–for–profit institutions, federal, state, local or tribal government.
Frequency: On occasion, semi–annually, annually.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Deep Seabed Mining Regulations for Exploration Licenses.
Agency Form Number: None.
OMB Approval Number: 0648–0145.
Type of Request: Extension of the expiration date.
Burden: 80 hours.
Number of Respondents: 4.
Avg Hours Per Response: 20 hours.
Needs and Uses: Information is required under the mandate of the Deep Seabed Hard Mineral Resources Act for the purpose of issuing exploration licenses for deep seabed mining. Licensees are required to submit an annual report.
Affected Public: Businesses or other for–profit organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Applications and Reports for Registration as a Tanner or Agent.
Agency Form Number: None.
OMB Approval Number: 0648–0179.
Type of Request: Extension of the expiration date.
Burden: 78 hours.
Number of Respondents: 39.
Avg Hours Per Response: 2 hours.
Needs and Uses: Under the Marine Mammal Protection Act, Alaskan natives may take marine mammals for subsistence or for creating and selling native handicrafts. Possession of marine mammals so taken is allowed only to natives or registered agents or tanners. The requested information is needed to register the agent or tanner and to monitor activities through reports.
Affected Public: Individuals, businesses or other for–profit organizations.
Frequency: Annually, recordkeeping, on occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.
Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: GOES Weather Facsimile Transmission System (WEFAX).
Agency Form Number: None assigned.
OMB Approval Number: 0648–0227.
Type of Request: Revision of a currently approved collection.
Burden: 50 hours.
Number of Respondents: 300.
Avg Hours Per Response: 10 minutes.
Needs and Uses: Respondents are an international user community in the public domain who desire to receive and use satellite–derived products from GOES, TIROS, GMS, and METESAT satellite. NOAA requires a minimal amount of information from respondents in order to determine their station location, receiving status, and the satellites to be received.
Affected Public: Individuals, businesses or other for–profit organizations, not–for–profit institutions, farms, federal, state, local or tribal governments.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D. C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: July 31, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19640 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–CW–F

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.
Title: Foreign Trade Zone (FTZ) Application.
Form Number(s): None.
Agency Approval Number: 0625–0139.
Type of Request: Extension of a currently approved collection.
Burden: 9715 hours.

Number of Respondents: 100.
Avg Hours Per Response: It is estimated that the range of burden hours for each category is as follows: new zones, 90–150 hours; expansions, 15–30 hours; subzones, 60–150 hours.
Needs and Uses: The Foreign Trade Zone (FTZ) Act requires that a one–time application be made to the FTZ Board for authority to establish a foreign–trade zone project in a port of entry community. Applicant is normally a city, state port authority or other public or quasi–public organization.
Affected Public: Businesses or other for–profit institutions and State, Local or Tribal Government.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration
Title: Participant Agreement.
Form Number(s): ITA–4008P and ITA 4008P–A.
Agency Approval Number: 0625–0147.
Type of Request: Extension of a currently approved collection.
Burden: 2500 hours.
Number of Respondents: 7500.
Avg Hours Per Response: 20 minutes.
Needs and Uses: The International Trade Administration (ITA) sponsors trade fairs, trade and seminar missions, and catalogue or video–catalogue shows in which U.S. companies promote their goods and services. The Participation Agreement establishes the dollar contribution, collects participants profile information, and identifies goods to be shipped in conjunction with the overseas trade event.
Affected Public: Business or other for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration
Title: Format for Petition Requesting Relief Under U.S. Countervailing Duty Law.
Form Number(s): ITA–366P.
Agency Approval Number: 0625–0148
Type of Request: Revision of a currently approved collection.
Burden: 560 hours.
Number of Respondents: 14.
Avg Hours Per Response: 40 hours.
Needs and Uses: Under the Tariff Act of 1930, Commerce is required to conduct countervailing duty (CVD) investigations when acceptable petitions are received from an interested party. Commerce provides potential petitioners with Form ITA–366P to elicit the information required by the statute and regulations for the initiation of a countervailing investigation. The Information is used by ITA in determining whether a "countervailing duty" investigation should be started. It is also used by the International Trade Commission in making its "injury determination," as required by the statute.
Affected Public: Business or other for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/US&FCS/EPS
Title: International Buyer Program: Application and Exhibitor Data.
Form Number(s): ITA–4014P, ITA–4102P.
Agency Approval Number: 0625–0151.
Type of Request: Extension of a currently approved collection.
Burden: 919 hours.
Number of Respondents: 4,080.
Avg Hours Per Response: 3 hours, 20 minutes.
Needs and Uses: The International Buyer Program focuses on U.S. trade shows which have high export potential. U.S. Embassies recruit international buyers to attend these shows and encourage them to buy U.S. products and services. Information is gathered from U.S. exhibitors participating to determine which U.S. companies are interested in meeting with foreign visitors and to determine the overseas business interests of the exhibitors. Export counseling and services are provided to the U.S. exhibitors.
Affected Public: Business or other for–profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration.
Title: OECD Industrial Committee Subsidies and Structural Adjustment Questionnaire.
Form Number(s): None.
Agency Approval Number: 0625–0223
Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.
Burden: 1,120 hours.
Number of Respondents: 40.
Avg Hours Per Response: ¾ hour.
Needs and Uses: The U.S is a member of the Organization for Economic Cooperation and Development (OECD) and is participating in the OECD Industrial Subsidies Database project. The U.S. is required to provide information on State. Federal support to manufacturing from 1989–93. The U.S. will receive access to information submitted by other member countries.
Affected Public: Federal Government and State, Local or Tribal Government.
Frequency: One–time collection.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Application for Dean John A. Knauss Policy Fellowship.
Form Number(s): None.
Agency Approval Number: None.
Type of Request: Existing Collection.
Burden: 100.
Number of Respondents: 50.
Avg Hours Per Response: 2 hours.
Needs and Uses: The National Sea Grant Federal Fellows Program was established to provide a unique educational experience to students enrolled in graduate programs related to marine or Great Lakes studies. The program matches highly qualified students with "hosts" in the Legislative Branch, the Executive Branch, or appropriate associations/institutions located in Washington, D.C. A written application must be submitted to be considered for the fellowship.
Affected Public: Not–for–profit organizations.
Frequency: One–time collection.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.
Title: Emergency Beacon Registrations.
Form Number(s): None.
Agency Approval Number: None.
Type of Request: Existing Collection.
Burden: 1,250.
Number of Respondents: 5,000.
Avg Hours Per Response: 15 minutes.
Needs and Uses: This information collection is needed to support the mission of the satellite–aided search and rescue program known as COSPAS–SARSAT. Under this program distress signals are detected through NOAA's weather satellites, and transmitted to the Mission Control Center. The Center alerts the appropriate rescue forces worldwide.

Affected Public: Individuals or households, business or other for–profit organizations, Not for–profit institutions, Federal Government and State, Local or Tribal Government.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: NOAA General Counsel for Ocean Services.
Title: Involuntary Child and Spousal Support Allotments NOAA Corps Officers.
Form Number(s): None.
Agency Approval Number: 0648–0242.
Type of Request: Extension of a currently approved collection.
Burden: 1.
Number of Respondents: 1.
Avg Hours Per Response: 1.
Needs and Uses: Individuals entitled to (unpaid) spousal and/or child support from NOAA Corps officers may submit substantiating information in order to have money deducted from the officer's paycheck.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.
Title: Billfish Tagging Report. NOAA Corps Officers.
Form Number(s): 88–162.
Agency Approval Number: 0648–0009.
Type of Request: Extension of a currently approved collection.
Burden: 45 hours.
Number of Respondents: 1,500.
Avg Hours Per Response: .03 hour.
Needs and Uses: Anglers who volunteer to tag billfish are requested to submit a short report on the species and size of the fish tagged and the tagging location. This information is needed if information on the recovery of the tag is to have any value. Data obtained from the tagging program are used to determine growth rates and migratory patterns of billfish. Resulting analyses are used in developing fishery management plans.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS).
Title: Atlantic Tuna Fisheries.
Form Number(s): None.
Agency Approval Number: 0648–0168.
Type of Request: Extension of a currently approved collection.
Burden: 56.
Number of Respondents: 5.
Avg Hours Per Response: 10.6 hours.
Needs and Uses: The U.S. is a member of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Membercountries are required to report tuna catches made by their flag ships in the Commission's regulatory area. To comply with this requirement, vessels are required to keep a daily fishing log providing a variety of data. NMFS and ICCAT biologists use the information to study the effects of fishing on tuna abundance, If NMFS did not collect the data, the U.S. would not meet its responsibilities to ICATT.
Affected Public: Business or other for–profit.
Frequency: Annual.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: NOAA/OAR/National Sea Grant Program.
Title: Sea Grant Project Summary.
Form Number(s): None.
Agency Approval Number: 0648–0019.
Type of Request: Revision of a currently approved collection.
Burden: 240.
Number of Respondents: 40.
Avg Hours Per Response: 20 minutes.
Needs and Uses: The U.S. is a member of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Membercountries are required to report tuna catches made by their flag ships in the Commission's regulatory area. To comply with this requirement, vessels are required to keep a daily fishing log providing a variety of data. NMFS and ICCAT biologists use the information to study the effects of fishing on tuna abundance. If NMFS did not collect the data, the U.S. would not meet its responsibilities to ICATT.
Affected Public: Business or other for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202 New Executive Office Building, Washington, DC 20503.

Dated: August 4, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19687 Filed 8–8–95; 8:45 am]
BILLING CODE 3510–CW–P

Bureau of Export Administration

[Docket No. 5118–01]

Realtek Semi-Conductor Co. Ltd., 6F, No. 4 Fu-Shon Street, Taipei, Taiwan, Respondent; Decision and Order of Default

On July 12, 1995, the Administrative Law Judge (ALJ) issued a Recommended Decision and Default Order in the above-captioned matter. The Recommended Decision and Default Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. After describing the facts of the case and his findings based on those facts, the ALJ found that Realtek Semi-Conductor Co. Ltd. committed one violation of section 787.2 of the Regulations (EAR) by causing, aiding, or abetting the export in 1990 of U.S.-origin Trident TVGA 8800 and TVGA 8900 graphic chip technology from the United States to Taiwan without the written letter of assurance required by Section 779.4 of the Regulations.

The ALJ found that the appropriate penalty for the violations should be that the Respondent and all successors, assignees, officers, representatives, agents and employees be denied for a period of five years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the entire record, I affirm the Recommended Decision and Default Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: August 3, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Default Order

On March 31, 1995, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter, the "Department"), issued a charging letter initiating an administrative proceeding against Realtek Semi-Conductor Co. Ltd. (hereinafter, "Realtek"), a Taiwanese entity. The charging letter alleged that Realtek committed one violation of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1995)) (hereinafter, the "Regulations"),[1] issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (hereinafter, the "Act").[2]

Specifically, the charging letter alleged that, on or about April 1, 1990, Realtek caused, aided, or abetted the export from the United States to Taiwan of U.S.-origin Trident TVGA 8800 and TVGA 8900 technology without the written letter of assurance required by Section 779.4 of the Regulations. Accordingly, the Department alleged that Realtek committed one violation of Section 787.2 of the Regulations.

The charging letter was served on Realtek on April 12, 1995. Realtek failed to file an answer within 30 days after service pursuant to Section 788.7(a) of the Regulations. On June 5, 1995, I ordered the Department to file a proposed order together with any evidence in support of the allegation in the charging letter.

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that Realtek violated Section 787.2 of the Regulations by causing, aiding, or abetting the export from the United States to Taiwan of U.S.-origin Trident TVGA 8800 and TVGA 8900 technology without the written letter of assurance required by Section 779.4 of the Regulations.

The Department urges as a sanction that Realtek's export privileges be denied for a period of five years. I concur in the Department's recommendation.

Accordingly, it is therefore ordered,

First, that all outstanding individual validated licenses in which Realtek appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Realtek's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, Realtek, with an address at 6F, No. 4 Fu-Shon Street, Taipei, Taiwan, and all successors, assigns, officers, representatives, agents, and employees, shall, for a period of five years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly, or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department of using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Realtex by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) apply for, obtain, or use any license, Shipper's Exporter Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on Realtek and on the Department.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C.A. app. § 2412(c)(1)) and the Regulations (15 CFR 788.23).

Dated: July 12, 1995.

Edward J. Kuhlmann,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Avenue NW., Room 3898B, Washington, D.C. 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 95–19686 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–DT–M

[1] The alleged violation occurred during 1990. The Regulations governing the violation are found in the 1990 version of the Code of Federal Regulations, codified at 15 C.F.R. Parts 768–799 (1990).

[2] The Act expired on August 20, 1994. Executive Order 12924 (59 *Fed. Reg.* 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

Interntional Trade Administration

[A–357–804]

Silicon Metal From Argentina; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and termination in part.

SUMMARY: In response to a request from petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumpting duty order on silcon metal from Argentina. Petitioners requested that the review cover two manufacturers/exporters, Electrometalurgica Andian, S.A.I.C. (Andina) and Silarsa, S.A. (Silarsa), and the period September 1, 1993 through August 31, 1994. However, within 90 days of the publication of the Department's initiation notice, the petitioners withdrew their request for review of Andina in accordance with 19 CFR § 353.22(a). Because no other party requested a review of Andina, we are terminating this administrative review with respect to Andina. Petitioners did not withdraw their request with respect to Silarsa.

Since Silarsa did not provide the information requested by the Department in its questionnaire, we were unable to conduct an administrative review of this firm. We have, therefore, preliminary determined to use the best information available (BIA) and have assigned to Silarsa a 24.62 percent margin, the highest margin obtained in any review of this order. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION: On September 26, 1991, the Department published in the **Federal Register** (56 FR 48779) the antidumping duty order on silicon metal from Argentina. On September 2, 1994, the Department published in the **Federal Register** (59 FR 45664) a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period September 1, 1993 through August 31, 1994. We received timely requests on September 30, 1994, to conduct an administrative review of Andina and Silarsa from a group of four domestic producers of silicon metal (the petitioners): American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc., and SKW Metals and Alloys, Inc.

On October 13, 1994, in accordance with 19 § CFR 353.22(c), we published notice of initiation (59 FR 51939) covering the two manufacturing/exports named above.

Applicable Statute and Regulations

The Department is conducting this review in accordance with section 751(a) of the Tariff Act. Unless otherwise indicated, all citations of the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The product covered by the review is silicon metal. During the less-than-fair-value (LTFV) investigation, silicon metal was described as containing at least 96.00 percent, but less than 99.99 percent, silicon by weight. In response to a request by petitioners for clarification of the scope of the antidumping duty order on silicon metal from the People's Republic of China (PRC), the Department determined that material with a higher aluminum content containing between 89.00 and 96.00 percent silicon by weight is the same class or kind of merchandise as silicon metal described in the less-than-fair-value (LTFV) investigation (*Final Scope Rulings—Antidumping Duty Orders on Silicon Metal from the People's Republic of China, Brazil, and Argentina* (February 3, 1993)). Therefore, such material is within the scope of the orders on silicon metal from the PRC, Brazil, and Argentina. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) and is commonly referred to as a metal.

Semiconductor-grade silicon (silicon metal containing by weight not less than 99.9 percent of silicon metal and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. The HTS subheadings are provided for convenience and U.S. Customs Service purposes only; our written description of the scope of the proceedings is dispositive.

This review covers two manufactures/exporters of silicon metal to the United States, Andina and Salarsa. The period of review (POR) is September 1, 1993 through August 31, 1994.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of BIA is appropriate for Silarsa. The Department's regulations provide that we may take into account whether a party refuses to provide information (19 CFR § 353.37(b)) in selecting BIA. Generally, whenever a company refuses to cooperate with the Department, or otherwise significantly impedes the proceeding, the Department uses as BIA the highest rate for any company for the same class or kind of merchandise for the current or any prior segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the LTFV investigation or a prior administrative review; or (2) the highest calculated rate in the review for any firm for the same class or kind of merchandise from the same country. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et. al.; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, (Fed. Cir. 1993).

On October 26, 1994, the Department sent questionnaires to Andina and Silarsa requesting their respective responses to company-specific information needed to conduct the administrative review. The deadline for submission of the respondents' information was December 28, 1994. Andina submitted its response in a timely manner. However, petitioners subsequently withdrew their request for review of Andina in accordance with 19 CFR § 353.22(a)(5) of the Department's regulations. The Department, therefore, is terminating its review with respect to Andina. On December 29, 1994, Silarsa requested that it be excused from responding to the Department's antidumping duty request for information as it had exported only a small amount of silicon metal in October 1993. Moreover, Silarsa stated that it had ceased to produce silicon metal as of January 1994 (see letter from Silarsa to the Department dated December 29, 1994). Absent a timely filed withdrawal of the petitioners' review request, pursuant to 19 CFR § 353.22(a), the Department is obligated to conduct an administrative review following specific procedures after receipt of a timely request for review from an interested party, pursuant to 19 CFR § 353.22(c). In this instance, the petitioners did not withdraw their request for review of Silarsa. Neither the volume of Silarsa's exports to the United States, nor its claim that it ceased producing silicon metal is relevant to the Department's obligation to conduct this administrative review.

Since Silarsa did export silicon metal to the United States during the POR in question, but failed to provide the Department with the information needed to conduct the administrative review, we consider the firm to be uncooperative, and we have used as BIA 24.62 percent, the highest rate ever determined in this proceeding. This rate is Silarsa's BIA rate from the first administrative review of this antidumping duty order.

Preliminary Results of Review

We preliminarily determine the margin for this administrative review to be:

Manufacturer/exporter	Margin
Silarsa, S.A.	24.62

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR § 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in any event not later than the date the case briefs are due, under 19 CFR § 353.38(c). The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

Upon completion of the final results of this review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies, in the event the order is not revoked in part, will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 8.65 percent, the "all others" rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR § 353.22(c)(5) of the Department's regulations.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19693 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Revocation of Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of countervailing duty orders.

SUMMARY: Pursuant to section 753(b)(4) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the Commission) has issued a negative injury determination with respect to each of the countervailing duty orders listed in the Appendix to this notice. Therefore, pursuant to section 753(b)(3)(B) of the Act, the Department of Commerce (the Department) is notifying the public of its revocation of these countervailing duty orders.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen Lebowitz or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1995, the Department published a notice in the **Federal Register** which informed domestic interested parties of their right under section 753(a) of the Act to request an injury investigation from the Commission with respect to certain outstanding countervailing duty orders issued pursuant to former section 303 of the Act. *Countervailing Duty Order; Opportunity To Request a Section 753 Injury Investigation*, 60 FR 27693 (May 26, 1995), amended 60 FR 32942 (June 26, 1995). In conjunction with this notice, the Department sent letters to domestic interested parties notifying them of their right to request an injury investigation covering the subject orders pursuant to section 753(a) of the Act. The notice and letter advised parties that failure to submit a timely request for an injury investigation would result in the revocation of the subject order(s).

The Commission has notified the Department that it did not receive a timely request under section 753(a) covering any of the countervailing duty orders listed in the Appendix and, therefore, a negative injury determination has been made with respect to these orders pursuant to section 753(b)(4) of the Act. 19 U.S.C. 1675b(b)(4). As a result, the Department hereby revokes these countervailing duty orders pursuant to section 753(b)(3)(B) of the Act and will refund, with interest, any estimated countervailing duties collected since January 1, 1995, the period during which liquidation was suspended pursuant to section 753(a)(4) of the Act.[1]

[1] At the time the order on Ferrosilicon from Venezuela was issued, part of the merchandise (non-dutiable) covered by the order was subject to the requirement of an affirmative determination of material injury under section 303 of the Act. *See* "Notice of Opportunity to Request a Section 753 Injury Investigation," 60 FR 27963, at 27964 column 3, footnote 1 (May 26, 1995). The Department, therefore, partially revokes the order on Ferrosilicon from Venezuela with respect to subject merchandise entered on or after January 1, 1995 under the following HTS numbers: 7202.21.7500 and 7202.21.9000. The order remains in effect with respect to all subject merchandise entered under the following HTS numbers: 7202.21.1000, 7202.21.5000, 7202.29.0010, 7202.29.0050.

Dated: August 3, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

APPENDIX

Country	Case name/number	Date/FR of order
Argentina	Apparel (C–357–404)	3/12/85; 50 FR 9846
Argentina	Carbon Steel—Cold-Rolled Flat Products (C–357–005).	4/26/84; 49 FR 18006
Argentina	Leather Wearing Apparel (C–357–001)	3/18/83; 48 FR 11480
Argentina	Line Pipe (C–357–801)	9/27/88; 53 FR 37619
Argentina	Non-Rubber Footwear (C–357–052)	1/17/79; 44 FR 3474
Argentina	Standard Pipe (C–357–801)	9/27/88; 53 FR 37619
Argentina	Textile Mill Products (C–357–404)	3/12/85; 50 FR 9846
Argentina	Tubing, Heavy-Walled Rectangular (C–357–801).	9/27/88; 53 FR 37619
Argentina	Tubing, Light-Walled Rectangular (C–357–801).	9/27/88; 53 FR 37619
Malaysia	Wire Rod, Carbon Steel (C–557–701)	4/22/88; 53 FR 13303
Mexico	Ceramic Tile (C–201–003)	5/10/82; 47 FR 20012
Mexico	Leather Wearing Apparel (C–201–001)	4/10/81; 46 FR 21357
Mexico	Textile Mill Products (C–201–405)	3/18/85; 50 FR 10824
New Zealand	Brazing Copper Rod & Wire (C–614–501)	8/5/85; 50 FR 31838
New Zealand	Steel Wire (C–614–601)	9/2/86; 51 FR 31156
New Zealand	Steel Wire Nails (C–614–701)	10/5/87; 52 FR 37196
New Zealand	Wire Rod, Carbon Steel (C–614–504)	3/7/86; 51 FR 7971
Peru	Cotton Sheeting and Sateen (C–333–001)	2/1/83; 48 FR 4501
Peru	Cotton Yarn (C–333–002)	2/1/83; 48 FR 4508
Peru	Rebar (C–333–502)	11/27/85; 50 FR 48819
Peru	Textile Mill Products (C–333–402)	3/12/85; 50 FR 9871
South Africa	Ferrochrome (C–791–001)	4/9/81; 46 FR 21155
Sri Lanka	Textile Mill Products (C–542–401)	3/12/85; 50 FR 9826
Thailand	Apparel (C–549–401)	3/12/85; 50 FR 9818
Thailand	Butt-Weld Pipe Fittings (C–549–804)	1/18/90; 55 FR 1695
Thailand	Malleable Iron Pipe Fittings (C–549–803)	2/10/89; 54 FR 6439
Thailand	Pipe and Tube (C–549–501)	8/14/85; 50 FR 32751
Thailand	Rice (C–549–503)	4/10/86; 51 FR 12356
Thailand	Steel Wire Nails (C–549–701)	10/2/87; 52 FR 36987
Venezuela	Circular Welded Nonalloy Steel Pipe (C–307–806).	9/17/92; 57 FR 42964
Venezuela	Ferrosilicon (C–307–808) [1]	5/10/93; 58 FR 30770

/1/ This is only a partial revocation pertaining to entries under the following HTS numbers: 7202.21.7500 and 7202.21.9000. An order still remains on Ferrosilicon from Venezuela, covering the following HTS numbers: 7202.21.1000, 7202.21.5000, 7202.29.0010, and 7202.29.0050.

[C–475–815]

Notice of Countervailing Duty Order: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe ("Seamless Pipe") From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482–0588.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Investigation and Order

The scope of this investigation and order includes small diameter seamless carbon and alloy standard, line and pressure pipes (seamless pipes) produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this investigation and order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this investigation, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, bevelled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to these investigations are currently classifiable

under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

The following information further defines the scope of this investigation, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the American Society for Testing and Materials (ASTM) standard A–106 may be used in temperatures of up to 1000 degrees fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this investigation includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this investigation.

Specifically excluded from this investigation are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from the scope of this investigation, if covered by the scope of another countervailing duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this investigation are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671(a)), on June 12, 1995, the Department made its final determination that producers or exporters of seamless pipe in Italy receive benefits which constitute subsidies within the meaning of the countervailing duty law (60 FR 31992, June 19, 1995). On July 26, 1995, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of seamless pipe from Italy materially injure a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. sections 1671e and 1675), the Department hereby directs United States Customs officers to assess, upon further advice by the administering authority pursuant to sections 706(a)(1) and 751 of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of seamless pipe from Italy. These countervailing duties will be assessed on all unliquidated entries of seamless pipe from Italy entered, or withdrawn from warehouse, for consumption on or after November 28, 1994, the date on which the Department published its preliminary determination notice in the **Federal Register** (59 FR 60774), and before March 28, 1995, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals for consumption made on or after the date of publication of this order in the **Federal Register**. Entries of seamless pipe made on or after March 28, 1995, and prior to the date of publication of this order in the **Federal Register** are not subject to the assessment of countervailing duties since we cannot suspend liquidation of the subject merchandise, begun on November 28, 1994, for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties of this merchandise, the following cash deposit for seamless pipe from Italy.

Seamless Pipe

Country-Wide *Ad Valorem* rate 1.47 percent.

This notice constitutes the countervailing duty order with respect to seamless pipe from Italy, pursuant to section 706 of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is published in accordance with section 706 of the Act and 19 CFR 355.21.

Dated: August 2, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19694 Filed 8–8–95; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Quota Requirements for Certain Needle-Craft Display Models

August 3, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and quota requirements for needle-craft display models.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on August 11, 1995, needle-craft display models under United States Harmonized Tariff Schedule number 9817.57.01 are no longer subject to visa or quota requirements.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 3, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements. This directive also amends, but does not cancel, all visa requirements for all countries for which visa arrangements are in place with the United States.

Effective on August 11, 1995, needle-craft display models which are produced or manufactured in various countries and entered into the United States for consumption and withdrawal from warehouse for consumption into the United States under Harmonized Tariff Schedule (HTS) number 9817.57.01 are no longer subject to visa and quota requirements.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19641 Filed 8–08–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Defense Policy Board Advisory Committee

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee (MHCAC) has been renewed, effective August 3, 1995, in consonance with the public interest, and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The Defense Policy Board Advisory Committee will continue to provide the Secretary of Defense and other sernior officials in the Department of Defense with independent, informed advice and recommendations concerning matters of Defense policy. The Board focuses on long-term issues central to strategic planning for the Department of Defense, and provides research and analysis of topical issues of particular significance to the Secretary.

The Committee will continue to be composed of about 20 members who are acclaimed leaders in national security affairs. Efforts will be made to ensure a balanced membership, considering the functions to be performed and the interest groups represented, and will include academicians, private consultants, corporation executive, and both current and former government officials.

For further information regarding the Defense Policy Board Advisory Committee, contact: LTC Clay Stewart, (703) 697–4557.

Dated: August 3, 1995.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–19656 Filed 8–8–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board

Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 6 & 7 September 1995.

Time of Meeting: 0800–1600, 6 September 1995; 0900–1200, 7 September 1995.

Place: SRI—San Francisco, CA.

Agenda: The Army Science Board Ad Hoc Study on "The Impact of Information Warfare on Army Command, Control, Communications, Computers and Intelligence (C4I) Systems" will meet to hear classified briefings relative to the subject under study. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title, 5 U.S.C., Appendix 2, subsection 10(d). The proprietary matter to be discussed is so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–19564 Filed 8–8–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 24 and 25 August 1995.

Time of Meeting: 0900–1700, 24 and 25 August 1995.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) C4I Issue Group on "A Strategy for Leveraging Commercial Technologies for Future Army Radios" will meet to hear selected briefings relative to the study. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the

committee. For further information, please call Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–19563 Filed 8–8–95; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command Option To Extend Guaranteed Traffic

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice (Request for carrier industry comments).

SUMMARY: This notice establishes the procedures the Government will follow to exercise its option to extend the term of a Guaranteed Traffic award.

1. The Government may extend the term of awarded Guaranteed Traffic (GT) by written notice to the carrier. Notice of this intent will be sent to the carrier(s) 60 days prior to the original expiration date. The preliminary notice does not commit the Government to an extension.

a. If the Government exercises this option, the extended GT shall be considered to allow up to three 1-year extensions. All extensions will be in increments up to one year, not to exceed a total of 3 years.

b. The total duration of the GT, including the exercise of any option under this item, shall not exceed 5 years.

2. Rates shall be subject to adjustment in accordance with the following price adjustment procedures:

a. Increases or decreases in tendered rates shall be automatically made by the MTMC in accordance with the Producer Price Index published by the U.S. Department of Labor. Factors considered will be the Producer Price Index for General Freight, Truckload (PPI–GFTL), and Less than Truckload (PPI–GFLTL). Adjustments may be made for years 3, 4, and 5 of the GT award. No adjustments will be made when the percent of change is less than one percent.

b. For example, on a two-year GT award, the basic index will be that indicated for the month of the original effective date of the tender and at the end of the 21st month (3 months prior to expiration). Subsequent extension options will be based on the index for each of the succeeding 12 months. The net change will be developed by subtracting the latest index from the index in effect at the time of the original award or previous extension. The difference will be divided by the base index at the time of the award/previous extension for the increase authorized.

For example: October 1992=104.9
June 1994=110.1 (21 months)
Net Change=5.2
Price adjustment:
Net change/Base Index=5.2/104.9=4.9
This results in a 4.9% increase.

3. The Government will provide the carrier written notification of the price adjustment at least 45 days prior to the effective date thereof.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin Lamm, Military Traffic Management Command, ATTN: MTOP–T–ND, 5611 Columbia Pike, Falls Church, VA 22041–5050; or telephone (703) 681–6103.

SUPPLEMENTARY INFORMATION: Carrier comments or suggestions on these procedures will be considered if received at Headquarters, MTMC, MTOP–T–ND by September 7, 1995.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–19565 Filed 8–8–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/R) for the San Pedro Creek Section 205 Flood Control Project

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The San Francisco District, U.S. Army Corps of Engineers and its local sponsor, the City of Pacifica, are planning the construction of a flood control project along San Pedro Creek in San Mateo County, California. The project would provide a 100-year level of flood protection to homes and businesses in the floodplain of the lower portion of the San Pedro Creek drainage. This project would also restore wetlands and riparian habitat along this portion of San Pedro Creek that have been lost due to past development.

The Corps of Engineers is the lead agency for this project under the National Environmental Policy Act (NEPA), and the City of Pacifica is the lead agency under the California Environmental Quality Act (CEQA). The DEIS/R will enable the lead agencies to comply with the requirements of NEPA and CEQA.

FOR FURTHER INFORMATION CONTACT: Mr. Bill DeJager at (415) 744–3341, or at the Army Corps of Engineers, San Francisco District, 211 Main Street, Room 918, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: The San Pedro Creek Flood Control Project would be constructed under the authority of Section 205 of the Water Resources Act of 1948. An initial study of potential flood control alternatives along San Pedro Creek was completed in 1988. This study determined that there is a Federal interest in structural flood-control measures in the study area. A detailed project report has subsequently been initiated with the City of Pacifica, to support further Federal participation in the project.

As part of this study, the City of Pacifica has devised a flood control project for San Pedro Creek based on extensive public input. This project would involve construction of an underground bypass channel and an aboveground excavated floodway, both located on the southside of San Pedro Creek. The bypass channel would start at the Adobe Drive Bridge and would extend downstream approximately 2,300 feet to a point midway between the Adobe Drive Bridge and the Highway 1 Bridge. The bypass would be routed almost entirely under city streets, and would discharge into an excavated floodway. The excavated floodway would extend from the downstream end of the bypass west to State Highway 1. The portion of San Pedro Creek alongside the floodway would be rerouted and would meander through the floodway, which would be developed into a riparian forest. From Highway 1 downstream to the Pacific Ocean, the existing stream channel would be widened. In addition, an area north of the creek and west of Highway 1 would be excavated and would serve as a wetland and wildlife habitat.

Other alternatives to be considered in the DEIS/R will include: (1) no action; (2) channelization of the creek; and (3) construction of a floodwall. These alternatives have been considered in the past by both the Corps and the local sponsor.

The Corps of Engineers is requesting public input during the preparation of the DEIS/R for this project. All interested Federal, State, and local agencies, Indian tribes, private organizations, and individuals are invited to participate in the environmental scoping process established by Federal regulations.

A scoping meeting will be held in the City Council chambers, 2212 Beach Boulevard, Pacifica, California on September 7, 1995 at 7:30 p.m. The purpose of the meeting will be to determine the environmental issues of concern to the public that should be addressed by the DEIS/R. A public comment period for the proposal will open on August 16, 1995 and will close on September 15, 1995. The public will have an additional opportunity to comment on this proposal after the DEIS/R is released to the public, which is expected to be in January 1996.

The DEIS/R will examine environmental impacts of public concern arising from the scoping process, as well as project impacts already known to the Corps. These impacts will include, but are not limited to: wildlife, fisheries, threatened and endangered species, water quality, recreation, aesthetics, air quality, public safety, transportation, and construction impacts.

The DEIS/R will disclose the project's compliance with all other Federal environmental statutes, rules, and regulations. Included will be consultation with the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act and possibly the Endangered Species Act, and consultation with the State of California under the Coastal Zone Management Act, Clean Water Act, and Clean Air Act.

The City of Pacifica is issuing a separate notice regarding compliance with the requirements of CEQA. The aforementioned DEIS scoping meeting will also serve as a scoping meeting for the purposes of CEQA.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–19566 Filed 8–8–95; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitte- the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995. The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507 (d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (7) Affected public; (8) An estimate of the number of respondents per report period; (9) An estimate of the number of responses per respondent annually; (10) An estimate of the average hours per response; (11) The estimated total annual respondent burden; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information or copies of the forms and instructions should be directed to Norma White, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Ms. White may be telephoned at (202) 254–5327.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–574
3. 1902–0016
4. Gas Pipeline Certificates: Hinshaw Exemption
5. Business or other for-profit
6. Extension
7. Mandatory
8. 1 respondent
9. 1 response
10. 245 hours per response
11. 245 hours
12. FERC–574 data are used by the Commission in assessing applications for exemption from certain provisions of the Natural Gas Act by companies engaging in the transportation of sale for resale natural gas in interstate commerce.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FPC–14
3. 1902–0027
4. Annual Report for Importers and Exporters of Natural Gas
5. Business or other for-profit
6. Extension
7. Mandatory
8. 54 respondents
9. 1 response
10. 2 hours per response
11. 108 hours
12. The purpose of this report/filing is to collect data used to assist in the monitoring and regulation of natural gas imports and exports in the United States.

The third energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–73
3. 1902–0019
4. Oil Pipeline Service Life Data
5. Business or other for-profit
6. Extension
7. Mandatory
8. 10 respondents
9. 1 response
10. 40 hours per response
11. 400 hours
12. Data are used by the Commission to determine the depreciating portion of oil pipeline company operating expenses in establishing a company's total cost of service and ultimately the reasonableness of the amount charged to shippers/customers that is intended to recover the depreciation expense component.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., Aug. 1, 1995.

Yvonne M. Bishop, Director,

Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–19690 Filed 8–8–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

August 3, 1995.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. Type of Application: Declaratory Order.

b. Docket No.: DI95–3–000.

c. Date Filed: July 3, 1995.

d. Applicant: Georgia-Pacific Corporation.

e. Name of Project: Forest City (P–2660) and West Branch (P–2618).

f. Location: East Branch of St. Croix River in Washington and Aroostook Counties, Maine; and West Branch of St. Croix River in Washington, Hancock, and Penobscot Counties, Maine, respectively.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Pierce, Atwood, Scribner, Allen, Smith & Lancaster, One Monument Square, Portland, ME 04101, (207) 773–6411.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: September 15, 1995.

k. Description: The existing Forest City Project (No. 2660) consists of all United States portions of the following project works:

(1) Forest City Dam, a 16-foot-high, 500-foot-long earth embankment dam containing a gated timber spillway structure 65 feet wide, with 3 gates and a fish passage facility; (2) a reservoir (East Grand Lake) with surface area of 16,070 acres at elevation 434.94 feet m.s.l. and storage capacity of 105,300 acre-feet; and (3) other appurtenances.

The existing West Branch Project (No. 2618) consists of:

(A) West Grand Lake development: (1) West Grand Lake Dam, earth embankment and gravel-filled timber crib structure, 485 feet long and 13 feet high, containing a gated spillway structure, 77 feet wide with 5 gates, and a fish passage facility 24 feet wide; (2) a reservoir with surface area of 23,825 acres at elevation 301.43 feet m.s.l. and storage capacity of 160,000 acre-feet; and (3) other appurtenances.

(B) Sysladobsis Lake development (Project No. 2618): (1) Sysladobsis Lake Dam, an earth embankment structure, 250 feet long and 5.5 feet high, with a concrete cut-off wall and rock masonry downstream face, containing a gated spillway structure 23 feet wide with 2 gates, and a fish passage facility 7 feet wide; (2) a reservoir with surface area of 5,400 acres at elevation 305.62 feet m.s.l., and storage capacity of 25,000 acre-feet; and (3) other appurtenances.

The above-referenced reservoirs supply water to three downstream generating facilities, Grand Falls, Woodland, and Milltown. These generating facilities do not require licensing by the Commission.[1] The issue raised in Georgia-Pacific Corporation's petition is whether the above-referenced reservoirs are required to be licensed under Section 23(b) of the Federal Power Act.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19574 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[1] See October 28, 1988, Commission orders (UL89–1–000 Grand Falls Hydro Project and UL89–2–000 Woodland Hydro Project), and June 7, 1990 letter—Milltown Project.

Notice of Application Filed With the Commission

August 3, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No: 9340–022.

c. Date Filed: July 31, 1995.

d. Applicants: Lawrence E. and Veronica P. Smith Central Maine Power Company.

e. Name of Project: Kezar Falls.

f. Location: On the Ossipee River in the Village of Kezar Falls in York and Oxford Counties, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. Applicant Contact: John H. Bernotavicz, Esq. Curtis, Thaxter, Stevens, Broder & Micoleau, 185 State Street, P.O. Box 5307, Augusta, ME 04332–5307, (207) 775–2361.

i. FERC Contact: David W. Cagnon, (202) 219–2693.

j. Comment Date: August 21, 1995.

k. Description of Transfer: Central Maine Power agreed to purchase and terminate the power purchase agreement between central Maine Power and Lawrence E. and Veronica P. Smith (Smiths) and purchase all rights, title, permits, licenses, etc. related to ownership and operation from the Smiths. The termination of the power purchase agreement and the project purchase will result in savings to the rate payers of Central Maine Power.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19575 Filed 8–8–95; 8:45am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. CP95–634–000, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

August 2, 1995

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP95–634–000]

Take notice that on July 21, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–634–000 a request pursuant to Sections 157.205 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to abandon and to construct and operate replacement facilities under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the Issequah Meter Station by replacing one existing 8-inch turbine meter and appurtenances. The meter station is located in King County, Washington.

Comment date: September 18, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Eastern Transmission Corporation and Transcontinental Gas Pipe Line Corporation

[Docket No. CP95–641–000]

Take notice that on July 26, 1995, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642 and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–641–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon an interruptible exchange service that is performed between the two parties, all as more fully set forth in the application on file with the Commission and open to public inspection.

The exchange service is performed pursuant to Texas Eastern's Rate Schedule X–106 and Transco's Rate Schedule X–171, for an initial term of ten years, and year to year thereafter. It is stated that Texas Eastern and Transco no longer have purchase obligations from the respective fields and thus have no current need for this exchange service. No facilities are proposed to be abandoned herein.

Comment date: August 23, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP95–644–000]

Take notice that on July 27, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–644–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate facilities for a new point of delivery to Rock-Tenn Company (Rock-Tenn) located in Monroe County, Pennsylvania under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a 2-inch tap, 2-inch meter, meter run, 2-inch regulator, 2-inch monitor and approximately 100 feet of 4-inch pipeline within Columbia's existing measuring station yard on Columbia's Line L–1278 to provide a new point of delivery in order to provide interruptible transportation service for up to 1,700 dekatherms (dth) per day and up to 544,000 dth annually, for industrial use, for Rock-Tenn in Monroe County, Pennsylvania under Columbia's Rate Schedule ITS within certificated entitlements. Columbia states that there is no impact on Columbia's existing design day and annual obligations to its other customers as a result the construction and operation of these facilities. Columbia states that Rock-Tenn would reimburse Columbia for the cost of these facilities estimated to be $72,000, plus gross-up for income tax.

Comment date: September 18, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 95–19576 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–410–000]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on August 1, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective September 1, 1995:

Third Revised Sheet No. 4A

Alabama-Tennessee states that the purpose of this filing is to adjust the take-or-pay charges applicable to each of its jurisdictional sales and transportation customers pursuant to the reconciliation procedures established under Article I, section A.3 of the settlement approved by the Commission in this docket on October 17, 1991. Alabama-Tennessee states that this reconciliation has resulted in an increase in the Direct Billed Obligation and the Volumetric Surcharge (as those terms are defined under the settlement) that Alabama-Tennessee is authorized to collect from its jurisdictional sales and transportation customers.

Alabama-Tennessee requests such waivers of the Commission's Regulations as will be necessary to permit the tariff sheet to become effective as proposed in its filing.

Alabama-Tennessee states that copies of its filing were served upon its customers and interested public bodies and all the parties on the Commission's official service list established in the captioned docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1994)). All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19577 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–49–000]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on August 1, 1995, Algonquin LNG, Inc. (Algonquin LNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Volume No. 1
Second Revised Sheet No. 200.

The proposed effective date of this tariff sheet is September 1, 1995. Algonquin LNG states that the purpose of this filing is to reflect changes in Algonquin LNG's index of purchasers.

Algonquin LNG states that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19578 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–11–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on July 31, 1995, Eastern Shore Natural Gas Company (ESNG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective September 1, 1995.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Section 154.308 of the Commission's Regulations and Section 24 of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional storage rates. ESNG further states that the instant filing is being made to "track" changes in Transcontinental Gas Pipe Line (Transco) storage service rates.

As background to the instant filing, on March 1, 1995, Transco filed a Section 4 general rate case in Docket No. RP95–197–000, et. al. Transco filed to have rates effective April 1, 1995, but Commission suspended rates for five months making the effective September 1, 1995.

ESNG states that copies of the filing have been served upon its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and 385.214). All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19579 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT95–13–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on July 31, 1995, NorAm Gas Transmission Company (NorAm) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 31, 1995:

First Revised Sheet No. 239
Second Revised Sheet No. 240

NorAm states that this filing is being made pursuant to Order Nos. 566, *et seq.*, and Section 250.16(b) of the Commission's Regulations to update the subject tariff sheets.

NorAm states that a copy of this filing has been served upon NorAm's jurisdictional customers and state commissions.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19580 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–185–004]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on August 1, 1995, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume 1, the following tariff sheets, proposed to be effective September 1, 1995:

Substitute First Revised Sheet No. 135
Substitute First Revised Sheet No. 140
Substitute Second Revised Sheet No. 144
Substitute First Revised Sheet No. 148
Substitute Second Revised Sheet No. 291
Substitute First Revised Sheet No. 292

Northern states that such tariff sheets are being submitted in compliance with the Commission's "Order Following Technical Conference", issued July 17, 1995, in Docket No. RP95–185–000, to modify the tariff for changes to existing storage service and a new System Underrun Limitation (SUL) provision.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19581 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–409–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on August 1, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing changes to its FERC Gas Tariff to be effective September 1, 1995,[1] consisting of the following tariff sheets:

Third Revised Volume No. 1

Seventh Revised Sheet No. 5
Sixth Revised Sheet No. 5–A
Third Revised Sheet No. 6
Third Revised Sheet No. 7
Sixth Revised Sheet No. 8
Second Revised Sheet No. 8.1
First Revised Sheet No. 116
Second Revised Sheet No. 117
First Revised Sheet No. 118
Third Revised Sheet No. 271
First Revised Sheet No. 360
First Revised Sheet No. 361
Fifth Revised Sheet No. 375
Fourth Revised Sheet No. 376
Fifth Revised Sheet No. 377
Third Revised Sheet No. 378
Second Revised Sheet No. 380

Original Volume No. 2

Twenty-First Revised Sheet No. 2
Sixteenth Revised Sheet No. 2.1
Twentieth Revised Sheet No. 2–A

Northwest states that the changes reflect an overall change in its jurisdictional rates for transportation and storage services for the twelve month period ended April 30, 1995, adjusted for known and measurable changes through January 31, 1996, to provide additional revenues related to an increased revenue requirement and redesign of rates of approximately $19.2 million.[2]

Northwest's revenue requirement has increased due to increased cost of service, primarily as a result of 1) additions to gross rate base including system expansion facilities, 2) increased operating and maintenance expenses, the majority of which relate to an increase in headquarters office rent, and 3) increased depreciation expenses related primarily to new facilities, the reclassification of items for transmission to general plant, and to adjustments to the depreciable life of certain general plant items. All of these increases are partly offset by the revenues associated with additional services provided to system expansion shippers.

Northwest submitted with its filing proposed changes to modify Northwest's tariff to incorporate an amendment to Northwest's Rate Schedule T–1 firm transportation service for Pacific Interstate Transmission Company to restate the volume obligation and to eliminate the Btu conversion factor to be consistent with Northwest's other firm transportation service agreements. The filing also updates the existing tariff's rate sheets, updates the Index of Shippers, reduces the allocation to interruptable transportation, and corrects typographical errors in the tariff.

Northwest states that the filing was served on each of its customers and affected state commissions pursuant to Section 154.16(b) of the Commissions Regulations.

[1] Northwest in its filing indicated that it anticipates the filing to be suspended for the full five month period. In the event of such a suspension, Northwest requested an effective date of February 1, 1996. Northwest also requested that all tariff sheets be suspended for the same period of time as the rate changes.

[2] This amount reflects the increase over Northwest's currently effective rates in Docket No. RP94–220 as adjusted to reflect the removal of Northwest's investment in lost and unaccounted-for gas as ordered by the Commission in Docket No. RP95–187. The increase does not reflect the mitigating effects of the Storage Services Settlement in Docket No. RP93–5 and RP94–220, 71 FERC ¶ 61,063, on Northwest's Docket No. RP94–220 currently effective rates or Northwest's cost of service positions in rebuttal testimony filed on July 11, 1995, in that proceeding.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19582 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2984 Maine]

S.D. Warren Company; Notice of Public Scoping Meeting

August 3, 1995.

The Federal Energy Regulatory Commission (Commission) has received a "Report on S.D. Warren Company's Level Management Plan for Sebago Lake", required by the August 1994, Order on Complaints. The Order on Complaints required the licensee to file, for Commission approval, a lake level management plan that balances the various competing uses of Sebago Lake and that contains procedures for monitoring the impacts of the lake level management plan on indicators such as shoreline erosion, lake pollution, fish and wildlife resources, recreation, etc.

The Commission will proceed with scoping for an Environmental Impact Statement (EIS) for the Sebago Lake Water Management Plan. The Sebago Lake Water Level Management Plan EIS will describe and evaluate the probable impacts of the licensee's proposed management plan and all reasonable alternatives.

One element of the NEPA process is scoping. Scoping activities are initiated early in the process to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the document;
- Identify significant environmental issues related to the elements of the proposed water level management plan;
- Determine the depth of analysis for issues that will be discussed in the document; and
- Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis.

Scoping Meetings

Commission staff will conduct two public meetings for the Sebago Lake Water Level Management Plan EIS. All interested individuals, organizations, and agencies are invited to attend the planned meetings and help staff identify the scope of environmental issues that should be analyzed in the EIS.

The first scoping meeting, primarily, for public, will be conducted at 7 p.m. on Tuesday, August 22, 1995, at the Heffernan Center Auditorium, Saint Joseph's College, Windham, Maine.

The second meeting, primarily for agencies, will be held at 2 p.m. on Wednesday, August 23, 1995, at the Portland Public Library, Rines Auditorium, 5 Monument Square, Portland, Maine.

Procedures

The meetings, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the EIS. Individuals presenting statements at the meeting need to sign in before the meeting starts and to identify themselves for the record.

Concerned parties are encouraged to speak during the public meetings. Speaking time allowed for individuals will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Scoping Meeting Objectives

At each scoping meeting, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the EIS;
- Identify resource issues that the staff believes are of lesser importance and, therefore, do not require detailed analysis;
- Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and
- Encourage statements from experts and the public on issues that should be analyzed in the EIS.

Information Requested

Federal and state resource agencies, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to analyze the environmental impacts associated with the proposed Sebago Lake Water Level Management Plan. The types of information sought include the following:

- Data, reports, and resource plans that characterize the baseline physical, biological, or social environments in the vicinity of the projects; and
- Information and data that helps staff identify or evaluate significant environmental issues.

Scoping information and associated comments should be submitted to the Commission no later than September 5, 1995. Written comments should be provided at the scoping meeting or mailed to the Commission, as follows: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All filings sent to the Secretary of the Commission should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should clearly show the following caption on the first page:

FERC No. 2984
Sebago Lake Water Level Management Plan EIS

Intervenors and interceders (as defined in 18 CFR 385.2010) who file documents with the Commission are reminded of the Commission's Rules of Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the official service list for this proceeding.

For further information, please contact Thomas J. LoVullo (202) 219–1168.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19573 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–314–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 3, 1995.

Take notice that on August 1, 1995, Tennessee Gas Pipeline Company (Tennessee) tendered for filing in compliance with the Commission's July 17, 1995 order in the reference proceeding (72 FERC 61,052) a schedule indicating the current status of its Volumetric Transition Cost Account.

Tennessee states that, as required by the Commission's Order, the schedule shows the current status of both Tennessee's supply area and market area volumetric transition subaccounts and the cumulative amounts recovered pursuant to the volumetric market area and supply area surcharges.

Tennessee states that a copy of this filing was served on each of its customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19583 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–47–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

August 3, 1995.

Take notice that on July 17, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission a Refund Report in accordance with Section 4 of its Rate Schedule FT–NT.

Transco states that the report shows the flow through of refunds to Transco's FT–NT customers resulting from a refund received from Texas Gas Transmission Corporation (Texas Gas) in accordance with the Stipulation and Agreement in Texas Gas's general rate case Docket No. RP93–106, *et al.*, approved by the Commission on September 21, 1994.

Transco states that on July 13, 1995, it flowed through refunds totalling $1,381,483.30 including interest of $36,778.09, to its FT–NT customers for the referenced Texas Gas refund for the period November 1, 1993 through March 31, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19584 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–5–30–000]

Trunkline Gas Company Notice of Proposal Changes in FERC Gas Tariff

August 3, 1995.

Take notice that on August 1, 1995, Trunkline Gas Company (Trunkline) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets, listed on Appendix A to the filing. Trunkline, requests an effective date on September 1, 1995.

Trunkline states that this filing is being made in accordance with Section 23 (Miscellaneous Revenue Flowthrough Surcharge Adjustment) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline requests waiver of any provisions of the Commission's Regulations which may be necessary to make the tariff sheets and rates submitted herewith effective September 1, 1995.

Trunkline further states that copies of the filing area being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19585 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA96–1–35–000]

West Texas Gas, Inc.; Filing

August 3, 1995.

Take notice that on August 1, 1995, West Texas Gas, Inc. (WTG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Sixteenth Revised Sheet No. 4, proposed to be effective October 1, 1995. Sixteenth Revised Sheet No. 4 and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19586 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–136–000]

Williams Natural Gas Company; Notice of Informal Settlement Conference

August 3, 1995.

Take notice that an informal conference will be convened in this proceeding on Thursday, August 31, 1995, at 10 a.m., for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory

Commission, 810 First Street, NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Donald A. Heydt at (202) 208–0740.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19587 Filed 8–8–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 95–61–NG]

Sandoval Energy Corp.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Sandoval Energy Corporation (Sandoval) authorization to import and export a combined total of up to 100 Bcf of natural gas from and to Canada and Mexico. This import/export authorization shall extend for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

Sandoval's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., July 20, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–19691 Filed 8–8–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces proposed procedures for the disbursement of $592,001 (plus accrued interest) collected pursuant to a consent order with Macmillian Oil Company and $15,822 (plus accrued interest) collected pursuant to a consent order with Kenny Larson Oil Company. The funds will be distributed in accordance with the DOE's special refund procedures, 10 C.F.R. Part 205, Subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of the date of publication in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments concerning the Kenny Larson proceeding should conspicuously display reference to Case Number LEF–0046 and those concerning the Macmillian proceeding should display reference to Case Number VEF–0002.

FOR FURTHER INFORMATION CONTACT: Bryan F. MacPherson, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–5405.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been collected by the DOE pursuant to a consent orders with Macmillian Oil Company (Macmillian) and Kenny Larson Oil Company (Larson). The consent order with Macmillian settled possible pricing violations with respect to Macmillian's sales of propane, No. 2 fuel oil and Nos. 5 and 6 residual fuel oil. The DOE has collected $592,001 from Macmillian. The consent order with Larson settled possible pricing violations with respect to Larson's sales of motor gasoline. The DOE has collected $15,822 from Larson. The DOE is holding the funds in interest-bearing escrow accounts pending distribution.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication of this notice in the **Federal Register** and should be sent to the address provided at the beginning of the notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: August 2, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

August 2, 1995.

Name of Firms:
Macmillan Oil Company
Kenny Larson Oil Company

Dates of Filings:
June 5, 1992
October 18, 1994

Case Numbers:
LEF–0046
VEF–0002

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on June 5, 1992 and on October 18, 1994. The petitions request that the OHA formulate and implement procedures for the distribution of funds received pursuant to consent orders entered into between the DOE and Kenny Larson Oil Company (Larson) of Oregon City, Oregon, and Macmillan Oil Company (Macmillan) of Des Moines, Iowa.

I. Background

Larson and Macmillan were "reseller-retailers" as defined in 6 CFR 150.352 and 10 CFR 212.31. During the period from August 1973 to January 28, 1981, these companies were subject to the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F, and antecedent regulations at 6 CFR Part 150, Subpart L. An ERA audit of Larson's business records revealed possible pricing violations with respect to the firm's sales of motor gasoline during the period May through December 1979. An ERA audit of Macmillan's business records revealed possible pricing violations with respect to the firm's sales of propane, No. 2 fuel oil, and Nos. 5 and 6 residual fuel oil during the period November 1, 1973, through April 30, 1974. In order to settle all claims and disputes between these companies and the DOE regarding their compliance with the price regulations, the DOE entered into consent orders with Larson and Macmillan on September 21, 1981, and March 7, 1988, respectively.

In the Larson consent order, the firm agreed to remit a total of $7,415, approximately 38 percent of the amount of the overcharges alleged by the DOE, plus installment interest. Of the principal amount, $5,842 was to be remitted to the DOE, and $1,573 was to be paid directly to six of Larson's customers. Larson failed to comply with the Consent Order and remitted no funds to either the DOE or the six customers.[1] On August 29, 1994, we granted Larson a refund of $15,822 in the Texaco special refund proceeding. *Texaco Inc./Kenny Larson Oil Company*, 24 DOE ¶ 85,081 (1994) (*Texaco/Larson*). At that time, Larson was in default in the amount of $26,168 ($7,415 principal plus $18,753 interest) in its obligations pursuant to the Consent Order. Accordingly, in *Texaco/Larson*, we determined that the Texaco refund should be used to fund Larson's consent order escrow account, in satisfaction of the firm's principal settlement amount and partial satisfaction of its debt for interest accrued. Accordingly, the $15,822 Texaco refund was deposited into the Kenny Larson Oil Company escrow account maintained at the Department of the Treasury, Consent Order No. 000H00439. This is the amount which is available for distribution in this proceeding.

On February 1, 1983, a Proposed Remedial Order was issued to Macmillan which alleged that the firm violated the price regulations with respect to its sales of propane, No. 2 fuel oil, and Nos. 5 and 6 residual fuel oil. Macmillan contested the PRO before the OHA (Case No. HRO–0122). During the course of that proceeding, the ERA reduced the amount of the alleged overcharges from $383,268 to $333,853. *See* Letter from Ann C. Grover, Associate Solicitor, ERA, to Richard T. Tedrow, OHA Deputy Director (October 5, 1987). On March 7, 1988, Macmillan and DOE entered into a consent order that settled the PRO's allegations. Pursuant to the consent order obligation, Macmillan remitted a total amount of $592,001 (including pre-settlement interest) to the DOE in full satisfaction of the amount owed. The audit workpapers identify the customers that Macmillan allegedly overcharged.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement plans of distribution for funds received as a result of enforcement proceedings. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981). After reviewing the records in the present cases, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Larson and Macmillan consent order funds. We therefore propose to grant the ERA's petitions and assume jurisdiction over distribution of the funds.

III. Proposed Refund Procedures

A. Refund Claimants

In the first stage, refund monies will be distributed to those parties which were directly injured in transactions with Larson and Macmillan during the audit periods. We believe that the Larson and Macmillan customers who were adversely affected by the alleged overcharges are primarily those purchasers specifically identified in the consent orders and in the audit papers. In addition, customers who purchased motor gasoline from the three retail outlets operated by Larson were referred to as a class in the ERA audit files but could not be individually identified.[2] These parties may also file for refunds in this proceeding.

Based on the information we have about Larson's business, we expect that all applicants in the Larson proceeding and most applicants in the Macmillan proceeding will be ultimate consumers. As in many other refund proceedings, we are making a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges covered by the Consent Order. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit period and were not required to keep records which justified selling-price increases by reference to cost increases. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984); *Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We therefore propose that the end-users of Larson and Macmillan petroleum products named in the consent orders or workpapers be presumed injured by the alleged overcharges. Other end-user applicants in the Larson proceeding, if any, need only demonstrate that they purchased from Larson and document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.[3]

We expect some of the applicants in the Macmillan proceeding to be resellers or retailers. With respect to such applicants, we shall adopt a small-claims threshold of $5,000. Reseller or retailer applicants seeking refunds of $5,000 or less will not be required to demonstrate that they were injured by Macmillan's alleged overcharges. In addition, one former customer of Macmillan, E.L. Bride, appears to be a reseller whose potential refund amount is $141,986. Consistent with prior cases, it will be able to obtain a refund of $50,000 without making a demonstration that it was injured by Macmillan's overcharges. In order to obtain a refund of its full overcharge amount, it would have to show that it was injured by the overcharges. *See Gulf Oil Corporation*, 16 DOE ¶ 85,381 at 88,738 (1987); *Marathon Petroleum Company*, 14 DOE ¶ 85,269 at 88,510 (1986).

[1] On October 13, 1983, ERA filed a Subpart V petition with respect to the Larson Consent Order (Case No. HEF–0104). However, because of Larson's failure to remit the settlement amount, that petition was dismissed without prejudice. *See* Memorandum from Richard T. Tedrow, OHA Deputy Director, to Rayburn Hanzlik, ERA Administrator (July 3, 1985).

[2] See Memorandum from Leslie Adams, Director of the Case Settlement Division, ERA, to Milton Lorenz, Special Counsel, ERA, Case No. HEF–0104 (June 24, 1982).

[3] One of the named Larson customers (Portland General Electric) and three Macmillan customers (Iowa Power & Light, Atlantic Municipal Utilities, and Iowa South Utilities) are public utilities. As in other Subpart V proceedings, we will treat the utilities as end-users. Moreover, because each of their potential refunds is less than $5,000, we will not require them to submit the type of certification of pass-through required of public utilities that receive refunds in excess of the $5,000 small claims threshold. *See, e.g., Placid Oil Co.*, 18 DOE ¶ 85,176 at 88,290 (1988).

B. Calculation of Refund Amounts

As stated above, the audits which gave rise to the Macmillan Consent Order identified all of the customers allegedly overcharged during the audit period. In total, there are 66 identified customers who were allegedly overcharged by Macmillan during its refund period. The Larson audit identified six customers which account for 21.2 percent of the alleged overcharges, while the remaining 78.8 percent of the alleged overcharges were attributed to Larson's sales to customers at its retail stations. With respect to the identified customers of Larson and Macmillan, we have determined that the use of the audit results to establish potential refunds on a firm-specific basis is more accurate than any other method to relate probable injury to refund amount.

We shall therefore base the identified customers—potential refunds on the amount that each of these firms was allegedly overcharged, as determined by the ERA audit. Thus, the principal amount of each firm's maximum refund is 100 percent of the amount designated for that firm in the Consent Order plus a pro rata share of the interest that the DOE has collected on that amount. (For Larson, the latter is approximately 45 percent of the interest that Larson actually owed at the time the money was placed in the escrow account.) The firms and their potential refund amounts are listed in the Appendices to this Decision.

We propose to use a volumetric methodology to distribute that portion of the consent order fund attributable to transactions with members of Larson's retail class of purchaser. The volumetric refund presumption assumes that the alleged overcharges by a firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A retail customer claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co./ Siouxland Propane Co.*, 12 DOE 85,054 (1984).

Under the volumetric methodology we plan to adopt for the Larson proceeding, a retail customer claimant will be eligible to receive a refund equal to the number of gallons of motor gasoline purchased from Larson from May through December 1979 multiplied by the volumetric factor. The volumetric factor for Larson is equal to $0.0123.[4] We also propose to establish a minimum amount of $15 for refund claims. We have found that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 82,225 (1982); *see also* 10 CFR 205.286(b). Therefore, a claimant must have purchased at least 1,220 ($15/$0.0123) gallons of Larson motor gasoline during the Larson audit period in order to be eligible for a refund.

In addition, each successful claimant will receive a pro rata share of the interest accrued on the consent order funds between the date the funds were placed in the Larson and Macmillan escrow accounts and the date the applicant's refund is disbursed.

IV. Conclusion

Refund applications in this proceeding should not be filed until the issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim.

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. § 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA. Any funds in the Larson and Macmillan escrow account that OHA determines will not be needed to effect direct restitution to injured Larson and Macmillan customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That

(1) The refund amount remitted to the Department of Energy by Kenny Larson Oil Company pursuant to the September 21, 1981 Consent Order will be distributed in accordance with the foregoing Decision.

(2) The refund amount remitted to the Department of Energy by Macmillan Oil Company pursuant to the March 7, 1988 Consent Order will be distributed in accordance with the foregoing Decision.

APPENDIX A—LARSON CUSTOMERS AND THEIR POTENTIAL REFUND AMOUNTS

Customer name	Consent order amount	Interest collected	Potential principal refund
Schultz Sanitary Service	$416	$471	$887
B & C Towing	96	109	205
D & A Supply	91	101	192
Portland General Electric	685	773	1,458
Larry Hepler	93	109	202
Skig Nagal Farms	192	219	411
Retail Customers	5,842	6,625	12,467
Total	7,415	8,407	15,822

APPENDIX B—MACMILLAN CUSTOMERS AND THEIR POTENTIAL REFUND AMOUNTS

Customer name	Overcharge amount	Pre-settlement interest	Potential refund amount
Ace Lines, Inc	$223	$172	$395
Armstrong Rubber	17,982	13,904	31,886
Associated Milk Producers	635	491	1,126
Atlantic Municipal Utilities	694	537	1,231
Bankers Life	2,068	1,599	3,667

[4] The volumetric factor was computed by dividing $12,467 (78.8 percent of the $15,822 collected for the Larson escrow account) by 1,016,250 (the approximate number of gallons of motor gasoline sold by Larson to its retail customers during the audit period). The latter figure was obtained using information provided by Larson and by its primary supplier, Texaco Inc.

APPENDIX B—MACMILLAN CUSTOMERS AND THEIR POTENTIAL REFUND AMOUNTS—Continued

Customer name	Overcharge amount	Pre-settlement interest	Potential refund amount
Beaver Valley Canning	4,922	3,806	8,728
Bell Watcher	1,834	1,418	3,252
Bitucote Products	14	11	25
Boesen the Florist	285	220	505
Bookey Packing	843	652	1,495
C&K Enterprises	360	278	638
Charles Krizan	556	430	986
City of Pleasant Hill	7	5	12
College Osteopath Medicine	222	172	394
Crees Enterprises	1,015	785	1,800
Crouse Cartage	414	320	734
Dakota Oil Co	650	503	1,153
Dept. General Services	3,092	2,391	5,483
Des Moines Community College	411	318	729
Des Moines Independent Schools	10,035	7,759	17,794
E.L. Bride Company	80,066	61,920	141,986
Elview Construction	1,345	1,040	2,385
Equitable Life Insurance Co	4,736	3,662	8,398
Everds Bros	213	165	378
Exco Industries	520	402	922
Fidelity Warehouse	$3,146	2,432	5,578
Firestone	196	152	348
Fort Dodge Transport	517	400	917
George A. Hormel & Co	11,756	9,090	20,846
H. West Construction	25	19	44
Hotel Des Moines	325	251	576
Hotel Ft. Des Moines	3,494	2,702	6,196
Howe Laundry	1,093	845	1,938
Inland Mills	2,565	1,983	4,548
Iowa Road Builders	4,379	3,386	7,765
Iowa South Utilities	409	316	725
Iowa Power and Light	4,352	3,365	7,717
Keck, Inc	1,071	828	1,899
Little Giant Crane	652	504	1,156
Local 334	99	77	176
Matt Construction	523	404	927
Maytag	88,470	68,405	156,875
Meredith Publishing Co	2,721	2,104	4,825
National Gypsum	508	393	901
New Monroe Community Schools	2,111	1,632	3,743
Parker Oil Co	746	577	1,323
Pepsi Cola Bottlers	957	740	1,697
Ralston Purina	1,281	990	2,271
Savory Hotel	3,617	2,797	6,414
Sendler Stone Products	193	149	342
Shaver Oil Co	562	450	1,032
Stark Heating	761	588	1,349
State of Iowa Bldg	183	141	324
State of Iowa	1,222	945	2,167
Swift & Co	1,766	1,365	3,131
Swift Edible Oil Co	8,054	6,227	14,281
Target Ready Mix	18,175	14,053	32,228
Univ of N. Iowa	4,519	3,494	8,013
Univ of Iowa	21,616	16,713	38,329
VA Hospital	12	9	21
Veterans Memorial Auditorium	1,009	780	1,789
West Towers	3,406	2,634	6,040
Western Electric	952	736	1,688
Wilson & Co	1,822	1,409	3,231
Younkers (Dan Thomas)	407	315	722
[Illegible] Oil	1,019	788	1,807
Total	333,853	258,148	592,001

[FR Doc. 95–19689 Filed 8–8–95; 8:45 am]
BILLING CODE 6560–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180978; FRL 4969–1]

Carbofuran; Notice of Issuances and Receipt of Application for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued specific exemptions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, to the Texas Department of Agriculture, the Oklahoma Department of Agriculture, and the Mississippi Department of Agriculture and Commerce (hereafter referred to as the "Applicants") for use of the insecticide, flowable carbofuran, to control aphids on cotton. Due to the unique nature of these emergency situations, in which the time to review the conditions of these situations was short, it was not possible to issue a solicitation for public comment, in accordance with 40 CFR 166.24, prior to the Agency's decision to grant these exemptions. EPA is also announcing the receipt of a request from the Louisiana Department of Agriculture and Forestry for an emergency exemption to use flowable carbofuran on 300,000 acres of cotton.

DATES: EPA is waiving the public comment period, as allowed in 40 CFR 166.24, due to the short period of time available with which to review this situation and render a timely decision. However, comments may still be submitted and will be evaluated.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180978," should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180978]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dave Deegan, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington VA, (703) 308–8417; Internet address: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants requested that the Administrator issue specific exemptions for the use of the insecticide, carbofuran, formulated as Furadan 4F Insecticide-Nematicide, EPA Reg. No. 279–2876, manufactured by FMC Corporation, to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of these requests.

According to the Applicants, carbofuran is the only insecticide that could provide effective control of aphids. The applicants submitted data indicating that other currently registered insecticides either are showing signs of diminishing efficacy due to development of resistance in pest populations, or whose efficacy is not consistently reliable enough to control this pest infestation.

Under the uses requested and/or authorized in these specific exemptions, Furadan 4F was requested to be used at a rate of 0.25 lb. of active ingredient (a.i.) per acre per application, applied as a foliar spray using ground or aerial equipment. A maximum of two applications per acre were requested. If two applications are made, a maximum total rate of 0.5 lbs. of carbofuran may not be exceeded per acre.

Under the exemptions which have been granted, the Texas Department of Agriculture was authorized use of up to 100,000 lbs. of carbofuran to treat up to 400,000 acres of cotton; the Oklahoma Department of Agriculture was authorized use of up to 10,000 lbs. of carbofuran to treat up to 40,000 acres of cotton; and the Mississippi Department of Agriculture and Commerce was authorized use of up to 50,000 lbs. of carbofuran to treat up to 200,000 acres of cotton. These states were granted use of these amounts of carbofuran following the requested application rates.

The granted specific exemptions expire on September 15, 1995. In the event that it is granted, the proposed exemption from Louisiana would expire on September 15, 1995 as well.

The regulations governing section 18 [40 CFR 166.24(a)(5)] require that the Agency publish a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if the applicant proposes use of a chemical which has been the subject of a special review within the Agency. In the case of these states', and the situation found in their cotton producing areas, there was not adequate time to publish a notice of receipt and solicit public comments on these applications prior to the Agency reviewing the submitted data, and making and issuing its decisions. Therefore, as allowed for by 40 CFR 166.24(c), the comment period following a notice of receipt was eliminated, since the time available to make a decision required this.

A record has been established for this notice under docket number "[OPP–180978]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Interested persons are still invited to submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received regarding continuance of these emergency exemptions for the use of carbofuran on cotton.

List of Subjects

Environmental Protection, Pesticides and pests, Crisis exemptions.

Dated: July 28, 1995.

Stephen L. Johnson,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–19667 Filed 8–8–95; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Withdrawal of Report No. 2088; Application for Review of Action in Rulemaking Proceedings

August 4, 1995.

Report No. 2088, released August 1, 1995 listing the following Application for Review is hereby withdrawn.

Subject: Deferral of Licensing of MTA Commercial Broadband PCS. (GN Docket No. 93–253 and ET Docket No. 92–100)

Number of Petition Filed: 1.

Federal Communications Commission.

William F. Canton,
Acting Secretary.

[FR Doc. 95–19600 Filed 8–8–95; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

BOK Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BOK Financial Corporation, Tulsa, Oklahoma, to acquire 9.9 percent of Liberty Bancorp, Inc., Oklahoma City, Oklahoma, and thereby acquire Liberty Trust Company, Oklahoma City, Oklahoma, and thereby engage in: trust company activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y; Mid-America Credit Life Assurance Co., Oklahoma City, Oklahoma, and Mid-America Insurance Agency, Oklahoma City, Oklahoma; and thereby engage in underwriting credit-related, life, accident, and health insurance sold in connection with credit extensions made by subsidiaries of Liberty Bancorp, and acting as agent for the sale of credit-related life, accident, and health insurance sold in connection with credit extensions made by subsidiaries of Liberty Bancorp, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; and personal property leasing, pursuant to § 225.25(b)(5)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1995.

William W. Wiles,
Deputy Secretary of the Board.

[FR Doc. 95-19668 Filed 8-8-95; 8:45 am]
BILLING CODE 6210-01-F

Ralph L. Matteucci, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 23, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Ralph L. Matteucci, Phoenix, Arizona; to acquire an additional 11.19 percent, for a total of 18.01 percent; Richard L. Matteucci, Albuquerque, New Mexico, to acquire a total of 4.88 percent; Anna Maria Matteucci, Phoenix, Arizona, to acquire an additional 1.73 percent, for a total of 4.41 percent; and James L. Matteucci, Phoenix, Arizona, to acquire an additional 1.73 percent, for a total of 4.41 percent, of the voting shares of New Mexico National Financial, Inc., Roswell, New Mexico, and thereby indirectly acquire Bank of the Southwest, Roswell, New Mexico.

Board of Governors of the Federal Reserve System, August 3, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-19669 Filed 8-8-95; 8:45 am]
BILLING CODE 6210-01-F

Southern Financial Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 1, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Southern Financial Bancorp, Inc., Warrenton, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Southern Financial Bank (successor by merger to Southern Financial Federal Savings Bank), Warrenton, Virginia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Sable Bancshares, Inc., Chicago, Illinois; to become a bank holding company by acquiring 93.45 percent of the voting shares of Community Bank of Lawndale, Chicago, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Old National Bancorp, Evansville, Indiana; to acquire 100 percent of the voting shares of City National Bancorp, Inc., Fulton, Kentucky, and thereby indirectly acquire City National Bank, Fulton, Kentucky.

Board of Governors of the Federal Reserve System, August 3, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-19670 Filed 8-8-95; 8:45 am]
BILLING CODE 6210-01-F

Spencer Bancorporation, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Spencer Bancorporation, Inc., Spencer, Wisconsin; to engage *de novo*, in forming a community development corporation (CDC) as a wholly owned subsidiary; and the CDC would primarily make investments that would benefit low- and moderate-income persons and/or small businesses located in a low- and moderate-income area to stimulate economic development, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-19671 Filed 8-8-95; 8:45 am]
BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Administration for Children and Families; Statement of Organization, Functions and Delegates of Authority

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Service (DHHS), Administration for Children and Families (ACF) as follows: Chapter K, Administration for Children and families (56 FR 42332), as last amended, August 27, 1991; KA, the Office of the Assistant Secretary for Children and Families (59 FR 13969), as last amended, March 24, 1994; Chapter KP, the Office of Program Support (56 FR 42344), as last amended, August 27, 1991; Chapter KJ, the Office of Information Systems Management (OISM)/Child Support Information Systems (CSIS) (58 FR 40432), as last amended, July 28, 1993; KK, the Office of Financial Management (OFM) (59 FR 23730) as last amended May 6, 1995; KL, the Office of Management (OM) (58 FR 40432), as last amended July 28, 1993; Chapter KM, the Office of Policy and Evaluation (OPE) (56 FR 42348), as last amended, August 27, 1991; Chapter KN, the Office of Public Affairs (OPA) (56 FR 42349), as last amended, August 27, 1991. This reorganization of the ACF staff offices will achieve several important objectives and create a high performance team with highly permeable borders across organizational lines to focus on stewardship, partnership, results and service to the customers both internally and externally.

These Chapters are amended as follows:

I. Delete Chapter K, "The Administration for Children and Families" in its entirety and replace with the following:

K.00 Mission
K.10 Organizations
K.20 Functions

K.00 *Mission.* The Administration for Children and Families (ACF) provides national leadership and direction to plan, manage and coordinate the nationwide administration of comprehensive and supportive programs for vulnerable children and families. The Administration oversees and finances a broad range of programs for children and families, including Native Americans, persons with developmental disabilities, refugees, and legalized aliens, to help them develop and grow toward a more independent, self-reliant life. These programs, carried out by state, county, city, and tribal governments, and public and private local agencies, are designed to promote stability, economic security, responsibility and self-sufficiency.

The Administration coordinates development and implementation of family-centered strategies, policies, and linkages among its programs, and with other federal and state programs serving children and families. The Administration's programs assist families in financial crisis, emphasizing short-term financial assistance, and education, training and employment for the long term. Its programs for children and youth focus on those children and youth with special problems, including children of low-income families, abused and neglected children, those in institutions or requiring adoption or foster family services, runaway youth, children with disabilities, migrant children, and Native American children. The Administration promotes the development of comprehensive and integrated community and home-based modes of service delivery where possible.

The Administration provides national leadership to develop and coordinate public and private programs and serves as a focal point for states in the provision of financial assistance and intervention programs which promote and support permanence for children and family stability. The Administration advises the Secretary on issues pertaining to children and families, including Native Americans, people with developmental disabilities, refugees and legalized aliens.

K.10 *Organization.* The Administration for Children and Families (ACF) is a principal operating division of the Department of Health and Human Services (DHHS). The Administration is headed by the Assistant Secretary for Children and Families, who reports directly to the Secretary. The Assistant Secretary also serves as the Director of Child Support Enforcement. In addition the Assistant Secretary, the Administration consists of the Deputy Assistant Secretary for Program Operations, the Deputy Assistant Secretary for Policy and External Affairs, and Staff and Program Offices. ACF is organized as follows:

- Office of the Assistant Secretary for Children and Families (KA)
- Administration on Children, Youth and Families (KB)
- Administration on Developmental Disabilities (KC)
- Regional Office for Children and Families (KD 1–X)
- Administration for Native Americans (KE)
- Office of Child Support Enforcement (KF)—(which will remain as a separate organizational unit)
- Office of Community Services (KG)
- Office of Family Assistance (KH)
- Office of Regional Operations and State Systems (KJ)
- Office of Staff Development and Employee Relations (KL)
- Office of Planning, Research and Evaluation (KM)
- Office of Public Affairs (KN)
- Office of Program Support (KP)
- Office of Refugee Resettlement (KR)
- Office of Human Resources and Equal Employment Opportunity/Civil Rights (KS)
- Office of Legislative Affairs and Budget (KT)

K.30 *Functions.* The Administration develops, recommends and issues policies, procedures and interpretations to provide direction to the programs it administers. It directs reviews, provides consultation and conducts negotiations to achieve adherence to federal law and regulations for administration of its programs. It designs and administers systems and directs reviews of the programs to ensure cost-effectiveness, efficiency, quality, and financial integrity. The Administration provides technical assistance, conducts research and evaluation, and promotes information sharing for its programs. It also provides departmental leadership and guidance in the development and implementation of policies and standards applicable to state data systems development, information systems sharing, financial integrity, and quality assurance activities. The functions of the organizational elements of ACF are described in detail in successful chapters.

II. Delete Chapter KA, "The Office of the Assistant Secretary for Children and Families" in its entirety and replace as follows:

KA.00 Mission
KA.10 Organization
KA.20 Functions

KA.00 *Mission.* The Office of the Assistant Secretary for Children and Families provides executive direction, leadership, and guidance for all ACF programs. The Office provides national leadership to develop and coordinate public and private initiatives for carrying out programs which promote permanency placement planning, family stability and self-sufficiency. The Office advises the Secretary on issues affecting America's children and families, including Native Americans, persons with developmental disabilities, refugees and legalized aliens.

KA.10 *Organization.* The Office of the Assistant Secretary for Children and Families is headed by the Assistant Secretary who reports directly to the Secretary and consists of:

- The Office of the Assistant Secretary (KA)
- Executive Secretariat Office (KAB)
- President's Committee on Mental Retardation Staff (KAD)
- U.S. Advisory Board on Child Abuse and Neglect Staff (KAE)
- U.S. Commission on Child and Family Welfare Staff (KAF)

KA.20 *Functions.* A. The Office of the Assistant Secretary is responsible to the Secretary for carrying out AFC's mission and provides executive supervision to the major components of ACF.

These responsibilities include providing executive leadership and direction to plan and coordinate ACF program activities to assure their effectiveness, approving instructions, policies, publications, and grant awards issued by ACF, and representing ACF in relationships with governmental and non-governmental organizations. The Assistant Secretary for Children and Families also serves as the Director of the Office of Child Support Enforcement, and signs official Child Support Enforcement documents as the Assistant Secretary for Children and Families.

The Deputy Assistant Secretary for Program Operations serves as principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of strategic and operation management issues. The Deputy Assistant Secretary for Program Operations serves as ACF liaison to the General Counsel and, as appropriate, initiates action in securing resolution of

legal matters relating to management of the agency, and represents the Assistant Secretary on all administrative litigation matters. The Deputy Assistant Secretary provides day-to-day executive leadership and direction for the Office of Human Resources and Equal Employment Opportunity/Civil Rights, Office of Staff Development and Employee Relations and the Executive Secretariat Office. The Deputy Assistant Secretary for Program Operations represents the Assistant Secretary in HHS and with other Federal agencies and task forces in defining objectives and priorities, and in coordinating activities associated with reinvention and continuous improvement initiatives.

The Deputy Assistant Secretary for Policy and External Affairs serves as the principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of legislation, policy, strategic planning, performance measures and demonstration testing, research, evaluation, intergovernmental affairs, budget formulation and media. The Deputy Assistant Secretary for Policy and External Affairs develops broad policy strategies and concepts pertaining to on-going and anticipated program issues and recommends legislation relevant to ACF programs. The Deputy Assistant Secretary for Policy and External Affairs formulates and presents ACF's program budgets; represents the Assistant Secretary for Children and Families in budget negotiations with the Department and the Office of Management and Budget (OMB); and assists in planning for and presenting the budget before the OMB and Congress. The Deputy Assistant Secretary for Policy and External Affairs represents the Assistant Secretary for Children and Families on intergovernmental matters, media affairs, and in contacts and negotiations with Congressional members and staff and executives of agencies and organizations. The Deputy Assistant Secretary for Policy and External Affairs provides executive leadership and direction to the Office of Legislative Affairs and Budget, the Office of Planning, Research and Evaluation and the Office of Public Affairs. The Deputy Assistant Secretary for Policy and External Affairs also provides oversight for agency commissions and advisory committees, including the U.S. Advisory Board on Child Abuse and Neglect, the U.S. Commission on Child and Family Welfare and the President's Committee on Mental Retardation.

B. The Executive Secretariat Office ensures that issues requiring the attention of the Assistant Secretary, Deputy Assistant Secretaries and/or executive staff are addressed on a timely and coordinated basis; facilitates decisions on matters requiring immediate action including White House, congressional and secretarial assignments. It serves as the ACF liaison with the HHS Executive Secretariat. It receives, assesses and controls incoming correspondence and assignments to the appropriate ACF component(s) for response and action; provides assistance and advice to ACF staff on the development of responses to correspondence and on the controlled correspondence system; coordinates and/or prepares congressional correspondence; and tracks development of periodic reports and facilitates departmental clearance. The Director of the Executive Secretariat Office serves as the Freedom of Information Act Officer for ACF and coordinates hot line calls received by the Office of Inspector General and the General Accounting Office on ACF operations and personnel.

C. The President's Committee on Mental Retardation Staff (PCMR) provides general staff support for a Presidential-level advisory body, the President's Committee on Mental Retardation. It coordinates all meetings and congressional hearing arrangements; provides such advice and assistance in the areas of mental retardation as the President or Secretary may request; prepares and issues an annual report to the President concerning mental retardation and such additional reports or recommendations as the President may require or as PCMR may deem appropriate; and evaluates the national effort to prevent and ameliorate mental retardation. It works with other federal, state, and local governments and private sector organizations to achieve Presidential goals in mental retardation; develops and disseminates information to increase public awareness of mental retardation, to reduce its incidence, and to alleviate its effects. The Staff that supports the Committee reports to the Deputy Assistant Secretary for Policy and External Affairs.

D. The National Advisory Board on Child Abuse and Neglect Staff Provides support and information pertaining to studies, research, or analyses of various matters affecting child abuse and neglect for the Board to use in its deliberations and recommendations. The Staff assists the Board in preparing and submitting to the Secretary and appropriate Committees of Congress an annual report with recommendations on ways in which the purposes of the Child Abuse Prevention and Treatment Act can effectively be achieved. The Staff makes arrangements for all meetings and hearings of the Board. The staff reports to the Deputy Assistant Secretary for Policy and External Affairs.

E. The U.S. Commission on Child And Family Welfare Staff provides support pertaining to studies, research and analyses of various matters affecting families and children. The Commission's initial focus is on custody and visitation with an interest in keeping both parents involved in the emotional and financial support of their children. The staff assists the Commission by scheduling public hearings and forming panels of experts in family law, child welfare, child support and parents' and children's advocacy groups. The Staff assists the Commission in preparing an interim and final report to the Congress. The staff that supports the Commission reports to the Deputy Assistant Secretary for Policy and External Affairs.

III. Retitle Chapter KJ. "The Office of Information Systems Management/Child Support Information Systems" as the "Office of Regional Operations and Systems," and replace with the following:

KJ.00 Mission
KJ.10 Organization
KJ.20 Functions

KJ.00 *Mission.* The Office of Regional Operations and State Systems (OROSS) recommends to and advises the Assistant Secretary on all strategic and operational activities related to implementation of the agency's programs at the regional level. It oversees the performance and operation of all Regional Offices, and coordinates with program offices on strategies and implementation of program initiatives. It serves as the focal point for State automated systems funded with Federal financial participation for the Department. It coordinates ACF's development and implementation of strategies and policies related to payment integrity, electronic benefits transfer, welfare systems integration, and related initiatives and programs. It directs state systems activities on partnership, collaborative efforts, and technical assistance activities.

KJ.10 *Organization.* The Office of Regional Operations and State Systems is headed by a Director who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Director (KJA)
- Regional Operations Staff (KJB)
- Office of State Systems/Child Support Information Systems (KJC)

KJ.20 *Functions.* A. Office of the Director provides executive leadership for administering the agency's programs and initiatives at the regional level. The Director provides direction to the Regional Operations Staff and the Office of State Systems. The Director also serves as the Associate Deputy Director of Child Support Enforcement Systems and reports directly to the Director, Child Support Enforcement, on matters related to child support information systems. The Director is the principal advisor to the Assistant Secretary for Children and Families on region-related and State systems matters.

The Director supervises and supports the Regional Administrators in administering Regional Office activities and establishing and implementing cross-cutting program initiatives. The Director establishes coordinative arrangements with program and staff office directors to assure that the Regional Administrators can oversee operations, fulfill program responsibilities, and have access to needed information. The Director advises the Assistant Secretary of problems that could prevent the Regional Offices from carrying out the mission of ACF and the Department.

The Director represents the Assistant Secretary in HHS and with other Federal agencies and task forces on Region-related and State systems activities.

In conjunction with Program and Regional Offices, the Director provides the leadership of ACF's partnership and monitoring activities. The Director is jointly responsible with the Office of Planning, Research and Evaluation for implementing performance measures for ACF's goals and objectives.

Within the Office of the Director, administrative staff assist the Director in managing the administrative, personnel, and salaries and expenses activities for the Office of Regional Operations and State Systems.

B. The Regional Operations Staff develops and manages processes for liaison between ACF Regional Offices and the Assistant Secretary and program and staff offices in headquarters. The Staff supports Regional Offices by implementing and overseeing systems and procedures for communicating with and managing the workload emanating from the varied and diverse ACF Program Offices. The Staff monitors and evaluates Regional Office operations and makes plans for the utilization of regional resources to accomplish approved objectives. The Staff works with program offices to develop strategies for delivery of services to States and grantees.

C. The Office of State Systems/Child Support Information Systems oversees the Department's responsibilities for Federal financial participation in the funding of State automated systems for ACF programs. It coordinates ACF's development and implementation of strategies and policies related to payment integrity, electronic benefits transfer, welfare systems integration, and related initiatives and programs. It directs State systems activities on partnership, collaborative efforts, and technical assistance activities. It is headed by a Director who reports to the Director, Office of Regional Operations and State Systems. The Office consists of:

- Office of the Director (KJC1)
- State Systems Policy Staff (KJC2)
- Division of State Systems Approvals (KJC3)
- Division of Child Support Information Systems (KJC4)

1. The Office of the Director provides leadership for provision of technical assistance to States on information systems projects; and advances the use of computer technology in the administration of welfare and social services programs by States.

2. The State Systems Policy Staff is responsible for developing departmental policies and procedures under which States obtain Federal financial participation in the cost of automated systems development to support programs funded under the Social Security Act. It serves as the departmental focal point for the development and implementation of strategies and policies related to payment integrity, welfare systems integration and related initiatives and programs; and provides leadership and guidance to interagency work groups in these areas for the Department.

3. The Division of State Systems Approvals reviews, analyzes, and approves/disapproves State requests for Federal financial participation for automated systems development activities which support the AFDC, JOBS, Child Care, Head Start, Child Welfare, Foster Care, Social Services, and Refugee Resettlement programs. It provides assistance to States in developing or modifying automation plans to conform to Federal requirements. It monitors approved State systems development activities; conducts periodic reviews to assure State compliance with regulatory requirements applicable to automated systems supported by Federal financial participation. It provides guidance to States on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems.

4. The Division of Child Support Information Systems is a separate organizational unit which reports to the Associate Deputy Director for Child Support Enforcement, who reports to the Director of Child Support Enforcement. The Division reviews, analyzes, and approves/disapproves State requests for Federal financial participation for automated systems development activities which support the Child Support program. It provides assistance to States in developing or modifying automation plans to conform to Federal requirements. It monitors approved State systems development activities; conducts periodic reviews to assure State compliance with regulatory requirements applicable to automated systems supported by Federal financial participation. It provides guidance to States on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems.

V. Delete Chapter KL. "The Office of Management," retitle it as the "Office of Staff Development and Employee Relations" and replace with the following:

The Office of Staff Development and Employee Relations

KL.00 Mission
KL.10 Organization
KL.20 Functions

KL.00 *Mission.* The Office of Staff Development and Employee Relations (OSDER) serves as principal advisor to the Assistant Secretary and provides consultation, policy development, technical assistance and related services to all ACF components in the areas of training, staff development, organizational analysis, labor relations and employee relations.

KL.10 *Organization.* The Office of Staff Development and Employee Relations is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations.

KL.20 *Functions.* The Office of Staff Development and Employee Relations provides leadership in directing and managing agency-wide staff development and training activities for ACF. The Office is responsible for the functional management of training and development in the agency, including policy development, guidance, and technical assistance and evaluation of all aspects of career, employee,

supervisory, management, executive and organization development. Provides leadership in implementing the recommendations of the Staff Development and Training Team, by creating, managing/overseeing and monitoring an ACF training resource center and institutionalizing long-term developmental training for ACF employees.

The Office serves as the principal source of advice through the Deputy Assistant Secretary for Program Operations to the Assistant Secretary on organizational design by collaborating with staff to develop high-leverage, tailored solutions to achieve measurable outcomes and to transform the agency to a quality organization that supports ACF's vision, values and goals. The Office advises the Assistant Secretary on all aspects of ACF organizational analysis including: Planning for new organizational elements; and planning, organizing and performing studies, analysis and evaluations related to structural, functional and organizational issues, problems and policies to ensure organizational effectiveness. Conducts the review process for ACF reorganization proposals. Acts as liaison with the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval; prepares functional statements and official organizational charts. Administers ACF's system for review, approval, and documentation of delegations of authority and maintains the guidelines related to the delegations of authority.

Provides management advisory service on all labor management relations issues, including coordination and liaison with the Department. Plans and coordinates ACF-wide employee relations and labor relations activities including the application and interpretation of the Federal Labor-Management Relations Program, collective bargaining agreements and regulations. Pursues human relations innovations such as alternative dispute resolutions and serves as the focal point on all issues pertaining to the Labor-Management Partnership Council.

VI. Delete Chapter KM. "The Office of Policy and Evaluation" in its entirety, retitle it as the "Office of Planning, Research and Evaluation," and replace it with the following:

KM.00 Mission
KM.10 Organization
KM.20 Functions

KM.00 *Mission.* The Office of Planning, Research and Evaluation (OPRE) is the principal advisor to the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families on improving the effectiveness and efficiency of programs designed to make measurable improvements in the economic and social well-being of children and families.

The Office provides guidance, analysis, technical assistance, and oversight to ACF programs and across programs in the agency on: Strategic planning aimed at measurable results; performance measurement; research and evaluation methodologies; demonstration testing and model development; statistical, policy and program analysis; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Office oversees and manages the section 1110 and section 1115 social service research programs, including: Priority setting and analysis; processing waivers for welfare reform demonstrations; managing and coordinating major cross-cutting, leading-edge studies and special initiatives; collaborating with states, communities, foundations, professional organizations and others to promote the development of children, family focused services, parental responsibility, employment, and economic independence; and providing coordination and leadership in implementing the Government Performance and Results Act (GPRA).

KM.10 *Organization.* The Office of Planning, Research and Evaluation is headed by a Director who reports to the Deputy Assistant Secretary for Policy and External Affairs. The Office is organized as follows:

- Office of the Director (KMA)
- Division of Economic Independence (KBM)
- Division of Child and Family Development (KMC)

KM.20 *Functions* A. The Office of the Director provides direction and executive leadership to OPRE in administering its responsibilities. It services as principal advisor to the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families on all matters pertaining to: Improving the effectiveness and efficiency of ACF programs; strategic planning; performance measurement; program and policy evaluation; research and demonstrations; state and local innovations and progress; and public/private partnership initiatives of concern to the Assistant Secretary for Children and Families. It represents the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families at various planning, research, and evaluation forums and carries out special Departmental and Administration initiatives.

B. The Division of Economic Independence, in cooperation with ACF income support programs and others, works with Federal counterparts, states, community agencies, and the private sector to understand and overcome barriers to economic independence; promote parental responsibility; and assist in improving the effectiveness of programs that further economic independence.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: Strategic planning and performance measurement for economic independence; statistical, policy and program analysis; surveys, research, and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to programs which promote employment, parental responsibility, and economic independence.

The Division analyzes, processes and coordinates Federal review and decision-making for all section 1115 state welfare reform waiver demonstration requests; develops policy-relevant priorities; conducts, manages and coordinates major cross-program, leading-edge research, demonstrations, and evaluation studies; manages and conducts statistical, policy and program analyses on trends in employment, child support payments, and other income supports; and works in partnership with states, communities, and the private sector to promote employment, parental responsibility, and family economic independence.

C. The Division of Child and Family Development, in cooperation with ACF programs and others, works with Federal counterparts, states, community agencies, and the private sector to: Improve the effectiveness and efficiency of programs; assure the protection of children and other vulnerable populations; strengthen and promote family stability; and foster sound growth and development of children and their families.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: Strategic planning and performance measurement for child and family development; statistical, policy and program analysis; surveys, research and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Division manages the section 1110 social service research budget; develops policy-relevant priorities; conducts, manages and coordinates statistical analyses on social trends and progress on major cross-program, leading-edge research, demonstration, and evaluation studies; manages and conducts statistical, policy and program analyses on social trends and behaviors which impact child and family well-being; and works in partnership with states, local communities, and the private sector to promote the well-being of children and families.

VII. Amend "Chapter KN, Office of Public Affairs," as follows:

A. Under paragraph "KN.00 Mission." delete in its entirety and replace with the following:

Mission. The Office of Public Affairs (OPA) develops, directs and coordinates public affairs and communication services for ACF. In concert with the Deputy Assistant Secretary for Policy and External Affairs, it provides leadership, direction and oversight in promoting ACF's public affairs policies, programs and initiatives. The Office of Public Affairs also provides printing and distribution services for ACF.

B. Under "KN.20 Functions, paragraph C, Division of Publication Services," delete in its entirety and replace with the following:

Division of Publication Services in its entirety and replace with the following: Division of Publications Services directs the audio-visual, publication and printing management systems for ACF. It manages preparation and clearance of all ACF audio-visual product, publications, and graphic designs, including planning, budget oversight and technical support. It provides centralized graphics design services to ACF. It reviews requests for proposals for contracts and grants which involve publications, audio-visual materials and/or public information and education activity.

The Division also provides technical leadership and services in public information, printing, and mail distribution. Recommends approaches for meeting internal and external communications needs of the ACF. Acts as focal point for clearance of all publications and audio-visual projects whether produced in-house or by contract or grant.

VIII. Delete Chapter KP. "The Office of Program Support" in its entirety and replace with the following:

KP.00 Mission
KP.10 Organization
KP.20 Functions

KP.00 *Mission.* The Office of Program Support (OPS) advises the Assistant Secretary for Children and Families on information resource, financial, grants, procurement and materiel resource management activities, both internal and external to ACF. The Office develops, administers and coordinates financial, operational and budgetary policies, processes, and controls necessary to administer ACF programs and financial resources; directs discretionary and mandatory grant activities; oversees the utilization of information resources throughout ACF; directs ACF's information systems, computer centers and communications network activities; oversees telecommunications management; and, administers and coordinates ACF's internal control activities.

KP.10 *Organization.* The Office of Program Support (OPS) is headed by a Director who reports directly to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Director (KPA)
- Office of Information Services (KPB)
- Office of Financial Services (KPC)
- Office of Management Services (KPD)
- Office of Customer Service and Administration (KPE)

KP.20 *Functions.* A. Office of the Director directs and coordinates all activities of the Office of Program Support. The Director serves as ACF's: Chief Financial Officer (CFO); ACF's Chief Grants Management Officer; Federal Managers' Financial Integrity Act (FMFIA) Management Control Officer; Principal Information Resource Management Official; and, Reports Clearance Officer. The Director serves as the AFC liaison with the Assistant Secretary for Management and Budget, the General Accounting Office, the Office of the Inspector General, and the Office of Management and Budget for areas under OPS' purview. The Office of Program Support (OPS) advises the Assistant Secretary for Children and Families on information resource, financial, grants, procurement and materiel resource management activities, both internal and external to ACF. The Office develops, administers and coordinates financial, operational and budgetary policies, processes, and controls necessary to administer ACF programs and financial resources; directs discretionary and mandatory grant activities; oversees the utilization of information resources throughout ACF; directs ACF's information systems, computer centers and communications network activities; oversees telecommunications management; and, administers and coordinates ACF's internal control activities.

B. Office of Information Services (OIS) provides centralized information technology policy, procedures, standards and guidelines; develops long-range information resource management (IRM) plans; develops IRM policy, procurement plans and budget for OIS, develops and implements procurement strategies for ADP support services; reviews and analyzes all ADP acquisition documentation for compliance with applicable laws and regulations as well as for procurement strategy; coordinates technical assistance provided to program offices on ADP support services procurement; represents ACF on the Department's IRM Advisory Council; provides liaison and manages major interdepartmental IRM initiatives; conducts major information system reviews of ADP systems as required by the Department; directs and coordinates ACF's systems security and privacy responsibilities; maintains an ACF-wide program data inventory; coordinates mandated OMB approvals required under the Paperwork Reduction Act; and plans, directs and maintains ACF electronic records management system.

OIS manages the National Computer Center facility which provides services to ACF components and authorized state and country computer users for programs administered by ACF; plans, manages, maintains and operates ACF's local area networks (LANs), national wide-area network (WAN) and personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing; manages and maintains a Help Desk for ACF users and provides information technology and software training in coordination with ACF components, develops plans and places orders for data communications services; provides liaison with HHS, GSA and private firms on data telecommunications matters; and, provides assistance to ACF components to identify needs for and use of data telecommunications equipment and systems.

OIS designs, develops, implements and maintains application systems to support ACF administrative, budget and program systems; provides technical assistance to ACF program offices procuring system support services;

provides technical assistance on automated systems to state and local agencies who are users of ACF's Computer Center; and develops software policy, procedures, standards and guidelines.

C. Office of Financial Services (OFS) supports the Director, OPS in fulfilling ACF's Chief Financial Officer, Management Control Officer, and Chief Grants Officer responsibilities including preparation of the CFO 5 Year Plan; performs audit oversight and liaison activities, including preparing reports to Congress, Office of the General Counsel and the Office of the Inspector General. OFS writes/interprets financial policy and researches appropriation law issues; oversees and coordinates ACF's FMFIA activities; performs debt management functions and, develops and administers quality assurance, training and certification programs for grants management; and responsible for the annual preparation and audit of ACF's financial statement requirements.

OFS designs and develops budget estimating models and procedures, projects the five-year federal costs for ACF entitlement programs and analyzes the impact on ACF programs and customers of proposed changes to ACF entitlement programs. The Office provides requested updates of the projected cost estimates of the Office of Refugee Resettlement's (ORR) Cash and Medical Assistance Program and develops the means of making efficient use of related data collected by ACF. OFS facilitates the preparation of comprehensive administrative (salaries and expenses) budget for ACF; represents ACF in budget negotiations and other finance-related dealings with the Department; prepares apportionment requests and issues allotments and allowances; oversees reconciliation of accounting reports and monitors agency spending; develops and maintains budgetary controls and procedures to ensure observance of established ceilings on both funds and personnel; develops/interprets internal policies and procedures for OFS components; and, coordinates the management of ACF's interagency agreement activities.

OFS provides agency-wide guidance to program and regional office staff on grant related issues; including developing and interpreting financial and grants policy, coordinating strategic grants planning, facilitating policy advisory groups, and assuring consistent grant program announcements. OFS prepares, coordinates and disseminates action transmittals, information memoranda, and other policy guidance on financial and grants management issues; provides financial and grants administration training and technical assistance to ACF staff and grantees; and, in coordination with the Office of Management Services, directs and/or coordinates management initiatives to improve financial administration of ACF mandatory and discretionary grant programs.

D. Office of Management Services (OMS) provides centralized management and administration of acquisitions for ACF headquarters components; assures that all contracts awarded conform to applicable statutes, regulations and policies; develops ACF policies, procedures and instructions for the award and administration of all ACF acquisitions; reviews and interprets proposed HHS and OMB regulations, circulars and directives pertaining to acquisition management; solicits, negotiates, awards, modifies, terminates and closes all acquisitions issued by ACF; conducts the Small and Disadvantaged Business Utilization Program; and provides training and technical assistance to program and staff components on significant acquisition policies and procedures. OMS serves as the lead for ACF in coordination and liaison within ACF and with the Department, OMB, GSA and other federal agencies on procurement management issues and activities.

OMS develops and implements ACF's facilities management programs and activities, including preparation and implementation of a budget for space acquisitions and changes; maintains space inventories; provides mail, records (paper), fleet, real property, personal property and reprographics management, occupational health and safety, and physical security programs and messenger and labor services; principal liaison with private and/or federal building managers for all facilities management activities; coordinates and/or develops telecommunications plans and provides assistance to ACF components to identify needs for and use of voice telecommunications equipment and systems; operates/coordinates parking and commuter services and programs including transit subsidies and ridesharing; provides travel policy and management; functions as payroll liaison; manages the automated timekeeping systems; controls/maintains equipment, supplies, and personal property inventories; manages equipment repair services; reviews, controls, monitors and tracks all small purchases of common use supplies, stationery and publications; oversees the Information Resource Center (library); manages contracts for facilities management services, including space design, building alteration and repair, telecommunications, physical security, moving, systems furniture acquisitions and assembly, library, property inventory; and updates and maintains databases for telephone directories, directory boards, signs and security identification systems. OMS serves as the lead for ACF in coordination and liaison with the Department, GSA and other federal agencies on facilities, telecommunications, property management, travel and automated timekeeping issues and activities.

OMS provides management and technical administration of ACF discretionary, formula, entitlement and block grants; assures that all grants awarded by ACF conform with applicable statutes, regulations, and policies; computes grantee allocations, prepares grant awards, ensures incorporation of necessary grant terms and conditions, and monitors grantee expenditures; analyzes financial needs under grant programs; provides data in support of apportionment requests; prepares reports and analyses on the grantee's use of funds; maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ACF grant systems and the Department's grant payment systems; and, provides technical assistance to ACF program and regional components on grant operations and technical grants management issues; and performs audit resolution activities for ACF grant programs. OMS serves as the lead for ACF in coordination and liaison with the Department and other federal agencies on grants management and administration operational issues and activities.

E. Office of Customer Service and Administration (OCSA) develops and maintains a customer service plan for the OPS and conducts customer surveys for OPS; facilitates and assists in developing and writing standard operating procedures for all components within OPS; assists in office-specific training of OPS staff; assists OPS components with the provision of office-specific and functional training to program and regional offices; coordinates permanent and temporary teams formed within OPS; develops and maintains OPS staff directory and users' guide for OPS services.

OCSA is responsible for overseeing OPS' salaries and expenses budget. Provides direction to meet the human resource management needs within OPS; coordinates with the office which handles ACF's human resources activities and the Department to provide OPS staff with personnel services

including position management, staffing, recruitment, employee and labor relations, employee assistance, payroll, staff development and training, and special hiring and placement programs; and, maintains systems to track personnel actions to keep the Director of OPS and, as appropriate, the Directors of offices within OPS informed about the status of personnel actions, current full-time equivalency usage and salaries and expenses resources, and employee programs and benefits. All OPS personnel related issues, performance management activities and other administrative functions within OPS are handled within this office.

IX. Establish a new "Chapter KS," as follows:

The Office of Human Resources and Equal Employment Opportunity/Civil Rights.

KS.00 Mission
KS.10 Organization
KS.20 Functions

KS.00 Mission. The Office of Human Resources and Equal Employment Opportunity/Civil Rights (OHREEO/CR) provides oversight and direction to meet the human resource management needs of ACF components. The Office directs and manages the ACF Equal Employment Opportunity and Civil Rights program.

KS.10 *Organization.* The Office of Human Resources and Equal Employment Opportunity/Civil Rights is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations.

KS.20 *Functions.* The Office of Human Resources and Equal Employment Opportunity serves as the principal advisor to the Assistant Secretary for Children and Families on all aspects of human resource management and the Equal Employment Opportunity and Civil Rights program. Provides leadership, oversight and coordination for the planning, analysis, and development of human resource policies and programs. Serves as the liaison between ACF, the Office of Assistant Secretary for Personnel Administration, and the HHS Office for Civil Rights. Formulates and interprets new human service programs and strategies. Plans, develops and interprets ACF human resource policies, procedures and manuals/systems. Performs employee utilization and assessment evaluations. Participates in pilot projects and represents ACF on committees which relate to the functions of the office. Manages the performance recognition systems and the responsibilities of the Executive Resources Board (ERB), the Performance Review Board (PRB), and the Performance Standards Review Board. Manages and coordinates all awards programs for ACF. Manages special hiring and placement programs. Administers ACF's Personnel Security responsibilities and ACF's ethics program. Coordinates the ethics program with the Department's Office of Special Counsel for Ethics. Supports the implementation of ACF's streamlining efforts.

OHREEO/CR directs and manages the ACF Equal Employment Opportunity and Civil Rights program in accordance with Equal Employment Opportunity Commission (EEOC) regulations and HHS guidelines. Immediate oversight is provided by a staff under the direction of the ACF EEO Officer. Plans, develops, and evaluates programs and procedures designed to identify and eliminate discrimination in employment, training, incentive awards, promotion and career opportunities. Responsible for implementing and evaluating a cost-effective, timely, and impartial system for processing individual complaints of discrimination under Title VII of the Civil Rights Act of 1964, as amended. Provides information, guidance, advice, and technical assistance to ACF supervisors and managers on Affirmative Employment planning and other means of achieving parity and promoting work force diversity. Responsible for ensuring that ACF-conducted programs do not discriminate against recipients on the basis of race, color, national origin, age or disability. Monitors and implements civil rights compliance actions under Title VI, Section 504 of the Rehabilitation Act of 1973, as amended, and the Age Discrimination Act of 1975, as amended. Implements the applicable provisions of the Americans with Disabilities Act of 1990.

X. Establish a new "Chapter KT," as follows:

Office of Legislative Affairs and Budget

KT.00 Mission
KT.10 Organization
KT.20 Functions

KT.100 *Mission.* The Office of Legislative Affairs and Budget (OLAB) provides leadership in the development of legislation, budget, and policy, ensuring consistency in these areas among ACR program and staff offices, and with ACF and the Department's vision and goals. It advises the Assistant Secretary for Children and Families on all policy and programmatic matters which substantially impact the agency's legislative program, budget development process, and regulatory agenda. The Office serves as the primary ACF contact, for the Department, the Executive Branch, and the Congress on all legislative, budget development and regulatory activities.

KT.10 *Organization.* The Office of Legislative Affairs and Budget is headed by a Director, who reports to the Deputy Assistant Secretary for Policy and External Affairs.

KT.20 *Functions.* The Office of Legislative Affairs and Budget serves as the principal advisor to the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families on all policies and programmatic matters which substantially impact on legislative affairs, budget development, and the regulatory agenda; and represents the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary on budget, policy and legislative materials and activities.

Serves as the primary ACF contact for the Department, the Executive Branch, and Congress on all budget development activities; manages the development and presentation of ACF's budget; provides guidance to ACF program and staff components in preparing material in support of budget development.

Manages the ACF regulatory development process; negotiates regulatory policy positions with the Department and the Executive Branch; provides guidance to ACF programs and staff components on policy and programmatic matters which substantially impact the budget and regulatory development process; and reviews and analyzes other policy significant documents to ensure consistency with ACF's budget, vision and goals.

Serves as the focal point for congressional liaison in ACF and for the Office of Assistant Secretary for Legislation; counsels and advises the Assistant Secretary for Children and Families and senior ACF staff on congressional activities and relations; manages the preparation of testimony and briefings; negotiates clearance of testimony; monitors hearings and other congressional activities which affect ACF; and manages congressional inquiries.

Manages the ACF legislative planning cycle and the development of Reports to Congress; reviews and analyzes a wide range of Congressional policy documents, including legislative proposals, pending legislation, and bill reports; solicits and synthesizes internal ACF comments on such documents; negotiates legislative policy positions with the Department and the Executive

Branch; and reviews other policy significant documents to ensure consistency with statutory and congressional intent and the agency legislative agenda.

Dated: August 1, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–19570 Filed 8–8–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

Workers' Family Protection Task Force: Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Workers' Family Protection Task Force.

Times and Dates: 9 a.m.–4 p.m., August 24, 1995. 9 a.m.–3 p.m., August 25, 1995.

Place: Department of Labor, 200 Constitution Avenue, NW., Room S3215 A&B, Washington, DC 20210.

Status: Open to the public, limited only by the space available. The room will accommodate approximately 50 people.

Purpose: The Task Force will review and evaluate the report of a study to be conducted by NIOSH in cooperation with the Secretary of Labor, the Administrator of the Environmental Protection Agency, the Administrator of the Agency for Toxic Substances and Disease Registry, and heads of other Federal Government agencies as determined to be appropriate by the Director, NIOSH, on the potential for, the prevalence of, and the issues related to the contamination of workers' homes with hazardous chemicals and substances. The Task Force will determine and advise the Director, NIOSH, about additional data needs, if any, and the need for additional evaluation of the scientific issues related to and the feasibility of developing additional data. The Task Force will develop a recommended investigative strategy for use in obtaining needed information.

Matters to be Discussed: Agenda items will include a review of the Workers' Family Protection Task Force charter; the Workers' Family Protection Act and the report required by this Act; the identification of additional information needs to protect workers' families from home contamination; and the development of procedures necessary to accomplish the mission of producing a National investigative strategy to obtain the needed information.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert W. Mason, Ph.D., Executive Secretary, Workers' Family Protection Task Force, NIOSH, CDC, 4676 Columbia Parkway, M/S C–16, Cincinnati, Ohio 45226, telephone 513/533–8390.

Dated: July 28, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–19379 Filed 8–8–95; 8:45 am]

BILLING CODE 4163–19–M

Health Care Financing Administration

[ORD–077–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: May 1995

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice lists new proposals for Medicaid demonstration projects submitted to the Department of Health and Human Services during the month of May 1995 under the authority of section 1115 of the Social Security Act. This notice also lists proposals that were approved, disapproved, pending, or withdrawn during this time period. (This notice can also be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Room C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson, (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Month of May 1995

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

A. Comprehensive Health Reform Programs

1. New Proposals

No new comprehensive health reform proposals were received during the month of May.

2. Pending Proposals

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to persons with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995.

State Contact: Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, Arizona 85034, (602) 271–4422.

Federal Project Officer: Joan Peterson, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact: Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, Illinois 62763, (217) 782–2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a "managed cooperation demonstration project" in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll recipients currently eligible in the AFDC and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact: Karl Hockenbarger, Kansas Department of Social and Rehabilitation Services, 915 Southwest Harrison Street, Topeka, Kansas 66612, (913) 296–4719.

Federal Project Officer: Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–21–04, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand Medicaid eligibility to persons with incomes up to 250 percent of the Federal poverty level (FPL); those with incomes above 133 percent of the FPL would pay all or a portion of premiums.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, P.O. Box 2870, Baton Rouge, Louisiana 70821–2871, (504) 342–2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require Medicaid beneficiaries to enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, Missouri 65102–6500, (314) 751–6922.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire.

Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact: Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, New Hampshire 03301–6505, (603) 271–4332.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma proposes to implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized Medicaid beneficiaries will be enrolled during the first 2 years of the project.

Date Received: January 6, 1995.

State Contact: Dr. Garth Splinter, Oklahoma Health Care Authority, Lincoln Plaza, 4545 North Lincoln Blvd., Suite 124, Oklahoma City, Oklahoma 73105, (405) 530–3439.

Federal Project Officer: Helaine I. Fingold, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Health Access Plan Demonstration—Vermont.

Description: Vermont proposes to integrate Medicaid recipients into managed care plans and expand coverage to uninsured individuals up to 150 percent of the Federal poverty level. The State also proposes to provide pharmacy coverage to low income Medicare beneficiaries.

Date Received: February 24, 1995.

State Contact: Veronica Celani, Health Policy Director, Vermont Agency of Human Services, 103 State Street, Waterbury, Vermont 05671, (802) 828–2949.

Federal Project Officer: Sherrie Fried, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. Approved Conceptual Proposals (Awards of Waivers Pending)

No conceptual proposals were approved during the month of May.

4. Approved Grant Proposals (Award of Waivers Pending)

No grant proposals were awarded during the month of May.

5. Approved Proposals

Demonstration Title/State: The Diamond State Health Plan—Delaware.

Description: Delaware plans to expand eligibility for Medicaid to persons with incomes up to 100 percent of the Federal poverty level and require that the Medicaid population enroll in managed care delivery systems. The State's current section 1115 demonstration project, the Delaware Health Care Partnership for Children, will be incorporated into the statewide program as an optional provider for eligible children.

Date Received: July 29, 1994.

Date Approved: May 16, 1995.

State Contact: Kay Holmes, DSHP Coordinator, DHSS Medicaid Unit, Biggs Building, P.O. Box 906, New Castle, Delaware 19720, (302) 577–4900.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security

Boulevard, Baltimore, Maryland 21244–1850.

6. Disapproved Proposals

No comprehensive health reform proposals have been disapproved since January 1, 1993.

7. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the month of May.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

The following new proposal was received during the month of May.

Demonstration Title/State: Family Planning Services Eligibility Requirements Waiver—South Carolina.

Description: South Carolina proposes to extend Medicaid coverage for family planning services for 22 additional months to postpartum women with monthly incomes under 185 percent of the Federal poverty level. The objectives of the demonstration are to increase the number of reproductive age women receiving either Title XIX or Title X funded family planning services following the completion of a pregnancy, increase the period between pregnancies among mothers eligible for maternity services under the expanded eligibility provisions of Medicaid, and estimate the overall savings in Medicaid spending attributable to providing family planning services to women for 2 years postpartum. The duration of the proposed project would be 5 years.

Date Received: May 4, 1995.

State Contact: Eugene A. Laurent, Executive Director, State Health and Human Services Finance Commission, PO Box 8206, Columbia, South Carolina 29202–8206, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Room C3–24–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

2. Pending Proposals

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: Georgia submitted a Section 1115 proposal entitled "Georgia Children's Benefit Plan" to provide preventive and primary care services to children aged 1 through 5 living in families with incomes between 133 percent and 185 percent of the Federal poverty level. The duration of the project is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street Northwest, Atlanta, Georgia 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: High Cost User Initiative—Maryland.

Description: Maryland proposes to implement an integrated case management system for high-cost, high-risk Medicaid recipients.

Date Received: July 8, 1994.

State Contact: John Folkemer, Maryland Department of Health and Mental Hygiene, Office of Medical Assistance Policy, 201 West Preston Street, Baltimore, Maryland 21201, (410) 225–5206.

Federal Project Officer: William Clark, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–21–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid coverage for family planning services to all women of childbearing age living in families with incomes at or below 185 percent of the Federal poverty level, and to provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact: Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, Michigan 48909, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Room C3–24–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, PO Box 2348, Santa Fe, New Mexico 87504–2348, (505) 827–3106.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Room C3–24–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, Rhode Island 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–21–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Wisconsin.

Description: Wisconsin proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid recipients.

Date Received: March 9, 1994.

State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, PO Box 7850, Madison, Wisconsin 53707, (608) 266–0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, Room C3–16–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were awarded during the month of May.

4. Approved Proposals

No proposals were approved during the month of May.

5. Disapproved Proposals

No proposals were disapproved during the month of May.

6. Withdrawn Proposals

No proposals were withdrawn during the month of May.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: July 28, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–19648 Filed 8–8–95; 8:45 am]

BILLING CODE 4120–01–P

Office of Community Services

Potential Reallotment of Funds for FY 1994 Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, Administration for Children and Families, (ACF), DHHS.

ACTION: Preliminary Determination Concerning Funds Available for Reallotment.

SUMMARY: Notice is hereby given that a preliminary determination has been made that FY 1994 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment. Section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8261 et seq.), as amended, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal year, an amount allotted to a grantee for any fiscal year will not be used by that grantee during the fiscal year, the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted. It has been determined that a total of $81,829 of FY 1994 funds may be available for reallotment. This determination is based on reports from the State of Alaska and the Seldovia Village Tribe (Alaska) which were submitted to the Office of Community Services as required by 45 CFR 96.81.

The statute allows grantees who have funds unobligated at the end of a fiscal year to request that they be allowed to carry over up to 10 percent of their allotments to the next fiscal year. Funds in excess of this amount must be returned to HHS and are subject to reallotment to other grantees under section 2607(b)(1) of the LIHEAP statute. All of the amounts described in this notice were reported as unobligated FY 1994 funds in excess of the amount that the State and tribe named above could carry over to FY 1995.

The State of Alaska was notified by certified mail that $80,766 of its FY 1994 LIHEAP funds may be reallotted. The Seldovia Village Tribe was notified by certified mail that $1,063 of its FY 1994 LIHEAP funds may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officers of the State and tribe have 30 days from the date of the letters to submit comments to: Donald Sykes, Director, Office of Community Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

That 30 day period will expire on September 8, 1995. After considering any comments submitted, the Chief Executive Officer will be notified of the decision, and the decision will also be published in the **Federal Register**. If funds are reallotted, they will be allocated in accordance with section 2604 and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 1995. As FY 1994 funds, they will be subject to all of the requirements of the LIHEAP statute, including Section 2607(b)(2), which requires that a grantee must obligate at least 90% of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 1995 for these funds.

FOR FURTHER INFORMATION CONTACT: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447; telephone (202) 401–9351.

Dated: August 2, 1995.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 95–19680 Filed 8–8–95; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–3917–N–15]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a tool-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 2, 1995.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Approval as a Mortgage-Backed Securities Issuer.

Office: Government National Mortgage Association.

Description of the Need for the Information and its Proposed Use: This form is provided for use by applicants proposing to become Mortgage-Backed Securities issuers. It is designed to summarize their business background

and experience. The information is necessary in order for GNMA to determine whether the applicant meets all GNMA eligibility requirements contained in 24 CFR Part 390.

Form Number: HUD–11701.

Respondents: Business or Other For-Profit and the Federal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11701	50		1		.75		38

Total Estimated Burden Hours: 38.

Status: Extension, no changes.

Contact: Brenda Countee, HUD, (202) 708–2234; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated August 2, 1995.

[FR Doc. 95–19598 Filed 8–8–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. FR–3918–N–03]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: HUD is giving notice that it intends to amend the following Privacy Act system of records: Section 8 Program Research Data Files (HUD/PD&R–7).

EFFECTIVE DATE: This action will be effective without further notice on September 18, 1995, unless comments are received that dictate otherwise.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed amendment to the Rules Docket Clerk Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, at (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD is establishing new routine use disclosures for HUD/PD&R–7 to allow for the disclosure of information to authorized social science researchers participating in the Moving to Opportunities for Fair Housing Demonstration Program and in the Gautreaux Program in Chicago, the Social Security Administration, the Internal Revenue Service, and the Department of Employment Security. The new routine use will read as follows: (1) To authorized social science researchers participating in the Moving to Opportunities for Fair Housing Demonstration (MTO), and in the Chicago Gautreaux program, (2) To Abt Associates, and to other contractors selected by HUD to carry out the objectives of MTO-related research and evaluation, (3) To the Social Security Administration to verify income/wage data, (4) To the Internal Revenue Service to verify income data, and (5) To the Illinois Department of Employment Security to verify income/wage data for Section 8 certificate recipients in the Chicago CMSA.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all HUD systems of records was published in the "Federal Register Privacy Act Issuances, 1993 Compilation."

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget (OMB), pursuant to paragraph 4a of Appendix I to OMB Circular A 130, "Federal Agency Responsibilities for Maintaining Records about Individuals" dated June 25, 1993 (58 FR 36075, July 2, 1993).

Authority: 5 U.S.C. 552a 88 Stat. 1896; sec 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, DC, August 2, 1995.

Donald C. Demitros,

Acting Deputy Assistant Secretary for Management.

HUD PD&R–7

SYSTEM NAME:

Section 8 Program Research Data Files.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

A. To authorized social science researchers participating in the Moving to Opportunities for Fair Housing Demonstration Program (MTO) and in the Chicago Gautreau Program.

B. To Abt Associates, and to other contractors selected by HUD to carry out the objectives of MTO-related research and evaluation.

C. To the Social Security Administration to verify income/wage data.

D. To the Internal Revenue Service to verify income data.

E. To the Illinois Department of Employment Security verify income/wage data for Section 8 certificate recipients in the Chicago CMSA.

[FR Doc. 95–19599 Filed 8–8–95; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–05–1430–01; AZA–27340, AZA–27349]

Notice of Expiration of Segregation, Termination of Classification, Cancellation of Applications and Opening of Land, Hohokam Heritage Center, Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The segregation given to the land under Bureau of Land Management application, (AZA–27340), proposed withdrawal, expired on April 21, 1995. Notification of the proposed withdrawal was published in the **Federal Register** on April 22, 1993, (Vol. 58 FR. pg 21592) and the segregation was issued for a two year period. Additionally this notice will terminate the classification, published in the **Federal Register** on December 23, 1992, (Vol 57 FR. pg 61094), for 960.00 acres of essentially the same land for the same purpose. Due to a variety of reasons the entire project was canceled; therefore, the need for the withdrawal and/or the classification for the project ceased to exist. This action will open the land to surface entry and use and location under the United States mining laws. It has been and will remain open to mineral leasing.

EFFECTIVE DATE: Expiration of the withdrawal segregation was effective on April 21, 1995. Expiration of the classification will be effective upon publication in the **Federal Register**. The land will be opened on August 9, 1995.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0518.

SUPPLEMENTARY INFORMATION: Pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, the following described land is hereby relieved of the segregative effect provided by **Federal Register** publication dated April 22, 1993, and opened to location and entry under the United States mining laws and surface uses as allowed by law to the public lands.

Gila and Salt River Meridian, Arizona

T. 6 N., R. 1 W.,
Sec. 24, Lots 1–4, W½E½, W½;
Sec. 25, Lots 1, 5, 7, 9 & 11, NW¼NE¼, N½NW¼.

The area described contains approximately 908.38 acres in Maricopa County. The classification is terminated from the following described lands (AZA–27349).

Gila and Salt River Meridian, Arizona

T. 6 N., R. 1 W.,
Sec. 24, all;
Sec. 25, N½.

The area described contains approximately 960.00 acres in Maricopa County.

Dated: July 31, 1995.

Mary Jo Yoas,

Chief, Lands and Minerals Operations Section.

[FR Doc. 95–19567 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–32–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–805303

Applicant: Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to import scent samples from wild, captive-held and captive-born giant panda (*Ailuropoda melanoleuca*) from China (from the wild and Beijing Zoo, Wolong and Fuzhou Breeding Centers), Germany (Berlin Zoo), Mexico (Mexico City Zoo) and Spain (Madrid Zoo) for the purpose of enhancement of the species through scientific research. The scent samples collected from the wild will only be collected after having been naturally deposited. Samples collected from captive animals, may be collected incidental to other routine and necessary examinations.

PRT–805160

Applicant: William L. Shores, Orlando, FL

The applicant requests a permit to import the sport-hunted trophy of one bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Mr. Pine Louw, "Bankfontein" Springfontein, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–804082

Applicant: Dallas Zoo, Dallas, TX

The applicant requests a permit to import blood and tissue samples from no more than 20 Red uakari monkeys (*Cacajao calvus*) from Quebrada Blanco, Peru for the purpose of enhancement of the survival of the species through scientific research.

PRT–805165

Applicant: Chicago Zoo Park (Brookfield Zoo), Brookfield, IL

The applicant requests a permit to import 2 blood samples from 50 of the following wild animals: Black rhinoceros *(Diceros bicornis)*, African wild dogs (*Lycaon pictus*), and cheetah (*Acinonyx jubatus*). The samples are being collected by the Ministry of Environment and Tourism, Windhoek, Namibia for the purpose of enhancement of the survival of the species through scientific research.

PRT–805032

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to purchase in interstate commerce 3 captive-held female Asian elephants (*Elephas maximus*) from K & M Corporation (Circus Vargas) for the purpose of enhancement of the survival of the species through conservation education and propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 4, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–19682 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Wednesday, August 16, 1995; 1:30 p.m. until 4:30 p.m.

ADDRESSES: Weatherly Borough Hall, 10 Wilbur Street, Weatherly, PA 18255.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integral strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal

National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Acting Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: July 28, 1995.

David B. Witwer,

Acting Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 95–19558 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion for Human Remains and Associated Funerary Objects in the Control of Glacier Bay National Park and Preserve, Gustavus, AK

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of inventory of human remains and associated funerary objects in the control of Glacier Bay National Park and Preserve, Gustavus, AK. The human remains and associated funerary objects are curated at Washington State University, Pullman, WA.

A detailed inventory and assessment of these human remains and associated funerary objects has been made by the National Park Service curatorial and anthropological staff in consultation with representatives of Hoonah Indian Association.

The cremated human bones and associated funerary objects were recovered in 1964 from a collapsed log grave house on the western shore of Excursion Inlet, AK, by Dr. Robert E. Ackerman. The cremated human remains and funerary objects were originally in bent wood boxes which were deteriorated when documented by Dr. Ackerman.

The human remains represent a minimum of three adults of unknown sex, stature, and age. No known individuals were identifiable. Associated funerary objects include two copper tube fragments, two white glass shirt buttons, several clay pipestem fragments, an eroded piece of metal with bits of woven fabric, four pieces of shaped wood (remains of the bent wood box or boxes that originally contained the remains), a bone socket containing a wooden plug, and several decayed bits of cordage.

Testimony of Tlingit elders recorded in Goldschmidt and Haas, "*Possessory Rights of the Natives of Southeastern Alaska,*" (1946), and testimony taken during recent consultation with Hoonah Tlingit elders identifies Excursion Inlet as within the traditional territory of the Hoonah Tlingit. Dr. Ackerman suggests that the practice of cremation among the Hoonah Tlingit became very rare after 1890. On that basis these human remains are believed to have been interred sometime prior to that time.

Based on the above mentioned information, officials of the National Park Service has determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Hoonah Indian Association. All of the objects are reasonably believed to have been placed with or near individual Native American human remains either at the time of death or later as part of a death rite or ceremony.

This notice has been sent to officials of the Hoonah Indian Association. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Superintendent Jim Brady, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, AK 99826–0140, telephone (907) 697–2230 before September 8, 1995. Repatriation of the human remains and associated funerary objects to the Hoonah Indian Association may begin after that date if no additional claimants come forward.

Dated: August 3, 1995

Veletta Canouts

Acting, Departmental Consulting Archeologist and

Acting Chief, Archeological Assistance Division

[FR Doc. 95-19607 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–70–F

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 29, 1995. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by August 24, 1995.

Carol D. Shull,

Keeper of the National Register.

MASSACHUSETTS

Worcester County

Blackstone Manufacturing Company Historic District, Roughly, area surrounding Butler, Canal, Church, County, Ives, Main, Mendon, Old Mendon, and School Sts., Blackstone, 95001038

East Blackstone Village Historic District, Roughly, area along Elm St. at the jct. with Summer St., Blackstone, 95001040

Farnum's Gate Historic District, Roughly, area surrounding the jct. of Main and Blackstone Sts., Blackstone, 95001039

MISSOURI

Perry County

St. Mary's of the Barrens Historic District, SW of the jct. of W. Saint Joseph St. and MO 51, Perryville, 95001041

N. MARIANA ISLANDS

Saipan Municipality

Japanese 20mm Cannon Blockhouse, NW of Puntan Opyan, Saipan Island vicinity, 95001048

NEW JERSEY

Bergen County

Cooper, Tunis R., House, 83 Cooper St., Bergenfield, 95001046

Cumberland County

Maurice River Lighthouse, Lighthouse Rd., near the jct. of East Point Rd., Maurice River Township, 95001047

Essex County

Church Street School, 65 Church St., Nutley Township, Nutley, 95001042

TENNESSEE

Davidson County

Miller, Dr. Cleo, House, 1431 Shelton Ave., Nashville, 95001045

Rutherford County

Jones, Enoch H. House, 6339 Halls Hill Pike, Murfreesboro vicinity, 95001043

Wilson County

Seay, William Washington, House, 10575 Trousdale Ferry Pike, Flat Rock vicinity, 95001044

WISCONSIN

Dane County

Forest Products Laboratory, 1 Gifford Pinchot Dr., Madison, 95001037

[FR Doc. 95–19559 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Intent to Repatriate Cultural Items in the Possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, CA

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate cultural items in the possession of the Phoebe A. Hearst Museum, University of California, Berkeley, CA that meet the definition of "unassociated funerary object" under 25 U.S.C. 3001 (3)(B).

The items consist of an olla (1–22476) and an amulet (1–255409) collected from sites in the Vallecitos Valley of San Diego County, CA.

The catalogue information for the olla (1–22476) states that it is a "mortuary olla" and that it was collected for the Heye Museum of American Indians, which subsequently exchanged it to the University of California in 1920. It was collected on October 26, 1920 by Edward H Davis from Vallecitos, San Diego County, California. The olla is whole, made of ceramic and is colored light brown with patches of black fired areas. It is approximately 30 centimeters tall. The shape of the vessel is stylistically similar to ollas found throughout the aboriginal territory of the Diegueño/Tipai-Ipai, as it is outlined in the Handbook of North American Indians, Vol. 8, pp 592–609.

Based on the above information, Museum Officials have determined pursuant to 25 U.S.C. 3001 (3) (B) that the olla is reasonably believed to have been intentionally placed with or near individual human remains at the time of death or later as part of the death rite or ceremony of a culture.

The amulet (1–266409) was found in a cremation in Vallecitos Valley, San Diego County, California and is part of the Ben L. Squier collection. The catalogue record for the amulet states that it is made of clay with mica inclusions into the shape of a thunderbird. Its dimensions are 6 cm long and 2 cm in width at its widest point. The amulet is cracked in three places at its base, has a black surface, was finished by burnishing and has a hole through the body for stringing. The catalogue card further states "California, San Diego, Vallecito Valley" "Cremation assoc. w/ 16 small carved beads." The amulet was donated to the University of California in 1984 by the Oregon Historical Society without the cremation or beads.

Based on the above information museum officials have determined, pursuant to 25 U.S.C. 3001 (3)(B), that the amulet is reasonably believed to have been intentionally placed with or near individual human remains at the time of death or later as part of the death rite or ceremony of a culture.

Available evidence does not allow identification of a single Indian tribe as being culturally affiliated with these cultural objects. Recent assessment studies in consultation with Indian tribes indicate basic similarities in crematory practices, ceramics, and geographic location between known archaeological traditions from which similar objects have been recovered and groups believed to be ancestral to the contemporary Diegueño. Based on the above information museum officials have determined pursuant to 25 U.S.C. 3001 (2), that there is a relationship of shared group identity that can be reasonably traced between the olla and amulet and contemporary Diegueño descendants, including the San Pasqual Band of Indians, the Cuyapaipe Band of Mission Indians, Viejas Tribal Council, Manzanita General Council, Campo Band of Mission Indians, Jamul Band of Mission Indians, Sycuan Business Committee, Barona General Business, La Posta Band of Mission Indians, Inaja and Cosmit Band of Mission Indians, Mesa Grande Band of Mission Indians, and the Santa Ysabel Band of Mission Indians. The San Pasqual Band of Indians expressed an interest in repatriating these cultural items.

This notice has been sent to officials of the San Pasqual Band of Indians, the Cuyapaipe Band of Mission Indians, Viejas Tribal Council, Manzanita General Council, Campo Band of Mission Indians, Jamul Band of Mission Indians, Sycuan Business Committee, Barona General Business, La Posta Band of Mission Indians, Inaja and Cosmit Band of Mission Indians, Mesa Grande Band of Mission Indians, and the Santa Ysabel Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact Fritz Stern, NAGPRA Project Coordinator, University of California, Phoebe A. Hearst Museum of Anthropology, 103 Kroeber Hall, Berkeley, CA 94720, telephone (510) 643–7833 before September 8, 1995. Repatriation of these cultural items to the San Pasqual Band of Indians may begin after that date if no additional claimants come forward.

Dated: August 3, 1995

Veletta Canouts

Acting, Departmental Consulting Archeologist, and

Acting Chief, Archeological Assistance Division

[FR Doc. 95-19606 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–70–F

National Park Service Reorganization

AGENCY: National Park Service Interior.

ACTION: Notice.

SUMMARY: This Secretarial Order restructures the National Park Service and describes its central and field organization and the places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals of requests, or obtain decisions.

DATES: August 2, 1995.

Roger G. Kennedy,

Director.

Order No. 3189

Subject: National Park Service Reorganization.

Sec. 1 *Purpose.* The purpose of this Order is to reorganize the National Park Service in the following ways:

a. Restructure the Headquarters office down to the level of the Associate Directors, reducing the number of Associate Directors from six to five.

b. Replace the ten Regional offices with seven Field Director Offices.

c. Establish the concept of "clusters" of park units that will provide a framework for decision making and sharing resources.

d. Maximize efficient use of limited resources through establishment of program-specific National Program Centers.

Sec. 2 *Authority.* This Order is issued in accordance with the authority provided by Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended.

Sec. 3 *Basic Organization.* The new organization consists of Washington, DC Headquarters Office, seven Field Director Offices, sixteen System Support Offices, elven National Program Centers, two Administrative Service Centers, and the National Park Service Field Units (such as but not limited to parks, recreational areas, sites, and monuments).

Sec. 4 *Headquarters Organization.* The Headquarters Office in Washington, DC, provides national level leadership and advocacy, policy and regulatory formulation and direction, program guidance, budget formulation, legislative support, and accountability for programs and activities managed by the field and key program offices. Administrative, technical and other professional support to park and other customers are provided by the National Program Centers described in Sec. 6 of this Order. The Headquarters Office consists of the Office of the Director and five Associate Directors.

a. The Office of the Director is composed of the following: the Director and Deputy Director, who set the strategic direction and provide leadership to the organization as a whole; the Assistant Director for External Affairs, with responsibility for legislative and Congressional Affairs, Public Affairs, and Tourism the Chief, Office of International Affairs; and other such staff as necessary to support the Office of Director.

b. The Associate Director, Park Operations and Education replaces the position of

Associate Director, Operations, with responsibility for the functions of that former position, except for land resources, which are the responsibility of the Associate Director, Professional Services. The Associate Director, Park Operations and Education supervises the Statistical Unit (Denver) and the following national program centers: Field Operations Technical Support Center (Denver, CO); NPS Office, National Interagency Fire Center (Boise, ID); and the Interpretive Design Center (Harpers Ferry, WV).

c. The Associate Director, Natural Resource Stewardship and Science replaces the position of Associate Director, Natural Resources, with responsibility for the function of that former position and for environmental quality. The Associate Director, Natural Resource Stewardship and Science supervises the Chief Scientist for the National Park Service and the Natural Resources Program Support Center (Denver and Ft. Collins, CO).

d. The Associate Director, Cultural Resource Stewardship and Partnerships replaces the position of Associate Director, Cultural Resources, with responsibility for the functions of that former position and for partnership programs; grants administration; rivers, trails and conservation assistance; and State program review. The Associate Director, Cultural Resource Stewardship and Partnerships supervises the following National Program Centers: Cultural Resources Program Support Center, Partnership Programs Service Center, and National Center for Preservation Technology and Training.

e. The Associate Director, Professional Services replaces the position of Associate Director, Planning and Development, with responsibility for the functions of that former position, with the following exceptions. Environmental quality is transferred to the Associate Director, Natural Resource Stewardship and Science. Rivers, trails, and conservation programs; grants administration; and State program review are transferred to the Associate Director, Cultural Resource Stewardship and Partnerships. The Associate Director, Professional Services is also responsible for land resources and strategic planning and supervises the Planning, Design and Construction Center (Denver, CO), and the Information and Telecommunications Center (Denver, CO and Washington, DC).

f. The Associate Director, Administration replaces the positions of Associate Director, Budget and Administration and the Associate Director, Management Systems, with responsibility for the functions of those former position, with the exception of tourism, which is transferred to the Assistant Director, External Affairs. The Associate Director, Administration is also responsible for Equal Employment Opportunity, is the Chief Financial Officer for the National Park Service and supervises two Administrative Service Centers in the Washington, DC and Denver, CO metropolitan areas and the following National Program Centers: Accounting Operations Center (Reston), VA); Employee Development Center (Grand Canyon National Park, AZ; Harpers Ferry, WV; and Glynco, GA). The Director, National Park Service, is authorized to establish additional Administrative Service Centers, with approval from the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary—Policy, Management and Budget.

Sec. 5 *Field Organization.* The National Park Service Field Units (parks) are organized into a maximum of sixteen ecological-cultural-geographical clusters of 10–35 units each. Parks in a cluster will cooperatively share staff to maximize support to all units in the cluster. The cluster serves as a framework for cooperation and decision-making rather than a staffed organizational entity.

a. Seven Field Director Offices replace the ten Regional offices and are headed by Field Directors. Field Directors supervise the field units and System Support Offices within their Field Director Office boundaries; provide direction, oversight, budget formulation, and assistance in media relations and serve as the principal policy interface for the area as a whole, ensuring consistency with national priorities. The Field Director Office boundaries are shown on the attached map. The Field Director Offices are located as follows: Northeast (Philadelphia, PA); Southeast (Atlanta, GA); Midwest (Omaha, NE); Intermountain (Denver, CO); Pacific West (San Francisco, CA); Alaska (Anchorage, AK) and National Capital (Washington, DC).

b. Sixteen System Support Offices are established, each to be headed by a Superintendent and supporting a specific cluster. Each System Support Office provides and obtains professional, technical, and administrative services; provides technical assistance to conservation partners; serves as a liaison with other agencies and interests; and participates in ecosystem management, planning and partnerships. System Support Offices are named and located as a follows: New England/Adirondack in Boston, MA; Allegheny and Chesapeake in Philadelphia, PA; National Capital in Washington, DC; Atlantic Coastal Plain, Appalachian, and Gulf Coast in Atlanta, GA; Great Lakes and Great Plains in Omaha, NE; Colorado Plateau and Rocky Mountains in Denver, CO; Desert Southwest in Sante Fe, NM; Pacific/Great Basin in San Francisco, CA; Columbia/Cascades in Seattle, WA; Alaska in Anchorage, AK; and Pacific Islands in Honolulu, HI. The Director, National Park Service, is authorized to change the names of these System Support Offices and to change their location as funding becomes available, with approval from the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary—Policy, Management and Budget.

Sec. 6 *National Program Centers.* National Program Centers are established to provide administrative, technical, and other professional support to parks and other customers. The following organizations are National Program Centers: Accounting Operations Center; Employee Development Center; Natural Resources Program Support Center; Cultural Resources Program Support Center; Partnership Programs Service Center; National Center for Preservation Technology and Training; Planning, Design and Construction Center; Information and Telecommunications Center; Field Operations Technical Support Center; Interpretive Design Center; and the NPS Office at the National Interagency Fire Center.

Sec. 7 *Administrative Provision.* The Director, National Park Service is responsible for effecting the transfer of personnel, funds, and property to implement the provisions of this order.

Sec. 8 *Effective Date.* This Order is May 31, 1995. Implementation will be in phases at the discretion of the Director, National Park Service and upon notification through the Assistant Secretary for Fish and Wildlife and Parks to the Assistant Secretary—Policy, Management and Budget. This Order will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded or revoked, whichever comes first. In the absence of the foregoing action, the provisions of this Order will terminate and be considered obsolete on October 1, 1996.

Dated: May 31, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–19572 Filed 8–8–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32723]

Southern Pacific Transportation Co., The Denver and Rio Grande Western Railroad Co., St. Louis Southwestern Railway Co., and SPCSL Corp.—Construction and Operation Exemption—Stratford, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of conditional exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation of a line of railroad by Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, SP). The proposed line would be a 1,222-foot connection between the track of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and the track of SP at the Santa Fe/SP intersection at Stratford, TX. This decision will become effective, if appropriate, only upon completion of the Commission's environmental review concerning construction of the proposed rail line and issuance of a further decision.

DATES: Petitions to reopen must be filed by August 29, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32723 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioner's representative: Paul A. Cunningham, Harkins Cunningham, 1300 19th Street, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW, Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: July 28, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19514 Filed 8–8–95; 8:45 am]

BILLING CODE 7535–01–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on an environmental assessment prepared by Quisto Energy Corporation (Quisto) to construct, operate, and maintain a gas well located on the Main Floodway of the Lower Rio Grande Flood Control Project (LRGFCP), the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC) finds that the proposed action to issue a license to Quisto for such works is not a major federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46FR44083–44094); the USIBWC hereby gives notice that an environmental impact statement will not be prepared for the proposed action.

ADDRESS: Mr. Yusuf E. Farran, Division Engineer, Environmental Management Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1441. Telephone: 915/534–6704.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is for the USIBWC to issue a license to Quisto to construct, operate, and maintain a gas well and install related features within Meyerhoff No. 5. Drilling Unit, Lot 271, Kelly-Pharr Subdivision, Hidalgo County, Texas. The gas well is proposed to be located on privately owned land within the Main Floodway of the USIBWC LRGFCP approximately 8 kilometers southeast of the town of Pharr. Access to the drilling site is by way of existing county and private roads.

Alternatives Considered

Three alternatives were considered in the Environmental Assessment (EA):

The Proposed Action Alternative is for Quisto to construct, operate, and maintain a gas well is a cultivated field within the Main Floodway of the USIBWC LRGFCP. This proposed action will require the USIBWC to issue a license to ensure that such works do not cause an obstruction to flood flows within the floodway or interfere with the operation and maintenance of the LRGFCP.

The No Action Alternative is for Quisto to not construct, operate, and maintain a gas well within the Main Floodway of the LRGFCP. The no action alternative will not require the USIBWC to issue a license since no work will be done within the LRGFCP. The no action alternative will result in the denial of access to the mineral owner to rightfully owned minerals, loss of tax revenues to the State of Texas, and result in an unrecoverable clean energy source.

The Directional Well Alternative is for Quisto to drill a well from outside the Main Floodway to a depth below the proposed surface location. The directional well alternative will not require the USIBWC to issue a license since no work will be done within the LRGFCP. The directional well alternative is considered not workable because of a lack of an available surface drillsite outside the Main Floodway and technical problems associated with a bottomhole location some 457 meters or more from the surface location.

Environmental Assessment

The USIBWC received from Quisto a completed Environmental Assessment (EA) for the proposed gas well and related features. The EA is currently available for review and comment.

Finding of the Environmental Assessment

The EA finds that the proposed action for Quisto to construct, operate, and maintain a gas well within the Maine Floodway of the USIBWC LRGFCP (and the USIBWC to issue a license for such work) does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. The United States Army Corps of Engineers has determined that no waters of the United States including wetlands will be impacted by the proposed gas well and related features.

2. The United States Fish and Wildlife Service has determined that federally listed endangered or threatened species are unlikely to be adversely affected by the proposed gas well and related features.

3. The Texas Historical Commission has determined that no survey is required and the project may proceed.

4. The USIBWC has determined that the proposed gas well and related features will have no significant effect upon the flood carrying capacity of the Main Floodway.

On the basis of the Quisto EA, the USIBWC has determined that an environmental impact statement is not required for the issuance of license to Quisto to construct, operate, and maintain a gas well and install related features within the Main Floodway of the USIBWC LRGFCP and hereby provides notice of a finding of no significant impact (FONSI). An environmental impact statement will not be prepared unless addifional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice. A limited number of copies of the EA and FONSI are available to fill single copy requests at the above address.

Dated: August 2, 1995.

Randall A. McMains,

Attorney.

[FR Doc. 95–19626 Filed 8–8–95; 8:45 am]

BILLING CODE 4810–03–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entires are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Nonimmigrant Checkout Letter.

(2) Form C–146. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. This form is used in making inquiry of persons in the United States or abroad concerning the whereabouts of aliens and/or departure information wanted by the Immigration and Naturalization Service, when initial investigation to locate the alien or verify his/her departure has been unsuccessful.

(4) 20,000 annual respondents at .166 (10 minutes) per response.

(5) 3,320 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19611 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Standardized Supporting Letter for NATO Dependent Employment.

(2) Form—None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: Federal Government. The standardized supporting letter for NATO dependent employment will facilitate applications for employment by dependents of certain principal aliens classified as NATO–1, 2, 3, 4, 5, 6, and 7 nonimmigrants by ensuring that they are given proper consideration.

(4) 125 annual respondents at .25 hours per response.

(5) 31.25 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19612 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Emergency Federal Law Enforcement Assistance.

(2) Form—None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: State, Local or Tribal Governments. Others: None. The Immigration Act of 1990 added a new section which authorizes the Attorney General to expend up to $20 million of the Immigration Emergency Fund for the reimbursement of States and localities in three additional circumstances. This collection of information is needed for the States and localities to submit claims for reimbursement in connection with Immigration emergencies.

(4) 10 annual respondents at 30 hours per response.

(5) 306 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Office, United States Department of Justice.

[FR Doc. 95–19613 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–16–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Notice of Immigration Pilot Program.

(2) Form—None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: State, Local or Tribal Governments. Others: Individuals and households. The Immigration and Naturalization Service is seeking proposals from regional centers who wish to participate in a Pilot Immigration Program, provided for by Section 610 of the Appropriations Act of 1933. The Immigration Service will select a regional center(s) that is(are) responsible for promoting economic growth in a geographical area.

(4) 30 annual respondents at 40 hours per response.

(5) 1,200 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19614 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the

collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Dedicated Commuter Lane Usage Survey.

(2) Form—None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and Households. Others; None. Public Law 101–515 allows the Immigration and Naturalization Service to pilot test various fee-driven alternative inspection methods at land borders. This survey of the general public crossing the border will assist in the evaluation, planning and implementation of these pilot projects at selected locations.

(4) 100,000 annual respondents at .083 (5 minutes) per response.

(5) 8,300 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19615 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Systemic Alien Verification for Entitlements User Satisfaction Survey.

(2) INS Form M–398, Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: State, Local or Tribal Governments. Others—None. The Form M–398 is used by the Immigration and Naturalization Service (INS) to determine the satisfaction of the Systematic Alien Verification for Entitlements (SAVE) Program. The users of the SAVE system are the State Benefits Granting Agencies.

(4) 2,000 annual respondents at .025 (15 minutes) per response.

(5) 500 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19616 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

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(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Guidelines on Producing Master Exhibits for Asylum Applications.

(2) Form—None. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Not-for-profit institutions. Others; None. Master Exhibits are one means by which credible information on country conditions related to asylum applications are made available to Asylum and Immigration Officers for use in adjudicating cases.

(4) 20 annual respondents at 80 per response.

(5) 1,600 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19617 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Arrival and Departure Record.

(2) Form I–94T. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–94T Form is used to aid the effectiveness of the Transit without Visa (TWOV) process and to enhance accuracy of TWOV collection. This form provides the most efficient means for collecting and processing the required TWOE data.

(4) 1,200,000 annual respondents at .07 (4 minutes) per response.

(5) 14,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19618 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Visa Waiver Nonimmigrant Arrival and Departure Document.

(2) Form I–94W. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–94W Form is used in making inquiry of persons in the United States or abroad concerning the whereabouts of aliens and/or departure information wanted by the Immigration and Naturalization Service, when initial investigations to locate the alien or verify alien's departure has been unsuccessful.

(4) 4,000,000 annual respondents at .105 (6 minutes) per response.

(5) 420,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19619 Filed 7–8–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Affidavit of Support.

(2) Form I–134. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The information is used to determine if at the time of application for a visa, or admission into the United States, the applicant(s) are likely to become a public charge.

(4) 44,000 annual respondents at .332 per response.

(5) 14,608 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19620 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of the time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Immigration and Naturalization Service Applicnat Survey.

(2) Form G–842. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: Federal Government. The data collected on this form is needed to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicant for Federal employment in the Immigration and Naturalization Service.

(4) 75,000 annual respondents at 0.7 hours per response.

(5) 5,250 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19608 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the provisions of the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application to Replace Alien Registration Card.

(2) Form I–90. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–90 Form is used as the collection instrument to obtain the information necessary to issue a alien Registration Card because no card has yet been issued, or the original has been lost, stolen, or mutilated, or the information on the original must be updated or corrected, or there is a requirement by law to replace the resident alien card.

(4) 1,300,000 annual respondents at .90 (55 minutes) per response.

(5) 1,170,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19609 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Telephone Verification System Pilot—Employer Assessment.

(2) Form G–897. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Business or other for-profit. Others: None. This assessment will be used to determine the satisfaction of the employers, who are participating in the Telephone Verification System Pilot Program. The users of the Telephone Verification System are various employers throughout the United States.

(4) 200 annual respondents at .166 (10 minutes) per response.

(5) 33 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19610 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr.. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Supplementary Statement for Graduate Medical Trainees.

(2) Form I–644. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–556 Form is used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.

(4) 3,000 annual respondents at .083 per response.

(5) 249 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19623 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Immigrant Petition by Alien Entrepreneur.

(2) Form I–526. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–526 Form is used to petition for classification as an alien entrepreneur as provided by sections 121(B)(5) and 162(B) of the Immigration Act of 1990. The data collected on this form will be used by the Immigration Service to determine eligibility for the requested immigration benefit.

(4) 2,000 annual respondents at 1.25 hours per response.

(5) 2,500 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19621 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Inter-agency Record of Individual Requesting Change/Adjustment to or from A or G Status; or Requesting A or G Dependent Employment Authorization.

(2) Form I–556. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The I–556 Form facilities processing applications for benefits filed by Diplomatic and international organizational personnel or by persons requesting such status. The information assists the Department of State and the Immigration and Naturalization Service in exercising joint adjudicative responsibility in such matters.

(4) 3,300 annual respondents at .250 per response.

(5) 825 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19622 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Guam Visa Waiver Information.

Form I–736. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals and households. Others: None. The Immigration and Naturalization Alien Guam Visa Waiver, Public Law 99–396, provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into any stay on Guam as a visitor for a maximum stay of 15 days provided that no potential threat exists to the welfare, safety, and security of the United States, its territories, and the commonwealths.

(4) 60,000 annual respondents at .083 per response.

(5) 4,980 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 3, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19624 Filed 8–8–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 24th day of July, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 07/24/95]

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
31,250	Ackerman Shirt Co., Inc (Comp)	Ackerman, MS	07/12/95	Men's Flannel Shirts, Ladies' Blouses.
31,251	Babcock Ultrapower (Wkrs)	West Enfield, ME	07/14/95	Electrical Energy.
31,252	Blue Eagle Exploration (Comp)	Lakewood, CO	06/21/95	Exploration and Production of Oil.
31,253	Crown Pacific (IAMAW)	Sandpoint, ID	07/10/95	Softwood Lumber.
31,254	Dexter Shoe Co (Wkrs)	Milo, ME	07/07/95	Leather Shoes.
31,255	Donkenny Apparel, Inc (Wkrs)	Christiansburg, VA	07/13/95	Ladies' Apparel.
31,256	EIS Brake Parts Division (UAW)	Berlin, CT	06/27/95	Automobile Brake Wheel Cylinders.
31,257	Husky Enterprises (Wkrs)	Jermyn, PA	07/03/95	Bridal Gowns.
31,258	Jessico Corp. (Wkrs)	Monterey, VA	07/13/95	Ladies' Apparel.
31,259	KGS Systems, Inc. (Comp)	Harlingen, TX	07/06/95	Trucking Operations.
31,260	IBM Corp. (Wkrs)	Endicott; NY	07/13/95	Bank Machines.
31,261	Locke Insulator's Inc. (Wkrs)	Baltimore, MD	06/30/95	Electrical Insulators.
31,262	Network Color Technology (ue)	St. Charles, MO	07/10/95	Comic Books, Catalogs, Brochures.
31,263	Cowlitz Stud Co (cja)	Randle, WA	07/12/95	Softwood Lumber.
31,264	Polk Audio, Inc. (Comp)	Baltimore, MD	07/10/95	Loudspeakers.
31,265	Power Cords & Cable Corp (Wkrs)	College Point, NY	07/12/95	Electrical Power Cords.
31,266	Weyerhaeuser Paper Co (awpp)	North Bend, OR	06/30/95	Corrugated Medium Paper.
31,267	Woolrich, Inc. (Comp)	Alliance, NE	07/12/95	Ladies' & Men's Sportswear.
31,268	Maxus Energy Corp. (Comp)	Dallas, TX	06/30/95	Crude Oil & Natural Gas.
31,269	.....do	Kearny, NJ	06/30/95	Do.
31,270	Maxus Exploration Co (Comp)	Amarillo, TX	06/30/95	Do.

APPENDIX—Continued
[Petitions Instituted On 07/24/95]

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
31,271	....do	Canadian, TX	06/30/95	Do.
31,272	....do	Dumas, TX	06/30/95	Do.
31,273	....do	Jeanerette, LA	06/30/95	Do.
31,274	....do	Pampa, TX	06/30/95	Do.
31,275	....do	Perryton, TX	06/30/95	Do.
31,276	....do	Leedey, OK	06/30/95	Do.
31,277	....do	Spearman, TX	06/30/95	Do.
31,278	....do	Stinnett, TX	06/30/95	Do.
31,279	Maxus Aviation Co (Comp)	Dallas, TX	06/30/95	Do.
31,280	Riverside Farms (Comp)	Hamilton, TX	06/30/95	Do.
31,281	....do	Hamilton, TX	06/30/95	Do.
31,282	Sunray Gas Plant (Comp)	Dumas, TX	06/30/95	Do.
31,283	Chadco, Inc (Comp)	Corinth, MS	07/12/95	Knit Sportswear.
31,284	Key Plastics (Wkrs)	Felton, PA	07/12/95	Injection Molding Parts for Automobile.
31,285	Red Level Fashions (Wkrs)	Red Level, AL	07/07/95	Ladies' Apparel.

[FR Doc. 95–19660 Filed 8–8–95; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 17th day of July, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX
[Petitions instituted on 07/17/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,230	Hayward Pool Products (Comp)	Elizabeth, NJ	07/06/95	Plastic Valves, Lighting & Filter System.
31,231	Allegheny Ludlum Corp. (USWA)	Pittsburgh, PA	07/03/95	Stainless Steel.
31,232	Leff & Wolf (ILGWU)	New York, NY	06/26/95	Ladies' Skirts and Slacks.
31,233	Pietrafesa (ACTWU)	Carrollton, GA	07/07/95	Ladies' & Men's Suits, Jackets, etc.
31,234	Calvin Mfg. Co. (ACTWU)	Tallapoosa, GA	07/07/95	Men's & Boys' Clothing.
31,235	Daphne Handbag & Mfg. Co. (Wkrs)	Scranton, PA	06/30/95	Handbags, Totebags, Knapsacks.
31,236	Ford Electronics & Refrig. (UAW)	Lansdale, PA	06/29/95	Automobile Electrical Components.
31,237	Keystone Lighting (Comp)	Hayden Lake, ID	06/29/95	Fluorescent Light Fixtures.
31,238	NER Data Products Inc. (Comp)	Franklinville, NJ	06/09/95	Typewriter Ribbons.
31,239	NU Quaker Dyeing, Inc. (Wrks)	Easton, PA	06/28/95	Dye Woven Textiles.
31,240	National Garment Co. (Comp)	Fayette, MO	07/03/95	Children's Clothing.
31,241	Tamara 3X (Wrks)	New York, NY	06/30/95	Children's & Ladies' Apparel.
31,242	Fina Oil & Chemical Co. (Comp)	Dallas, TX	07/03/95	Oil & Natural Gas.
31,243	....do	Houston, TX	07/03/95	Do.
31,244	....do	....do	07/03/95	Do.
31,245	....do	Tyler, TX	07/03/95	Do.
31,246	....do	Midland, TX	07/03/95	Do.
31,247	....do	Houston, TX	07/03/95	Do.
31,248	Crown Pacific Ltd. (Comp)	Redmond, OR	07/03/95	Plywood.
31,249	McDonnell Douglas (IAM)	Hunt. Beach, CA	05/30/95	Rockets (Launch Vehicle).

[FR Doc. 95–19661 Filed 8–8–95; 8:45 am]
BILLING CODE 4510–30–M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,023; Hilco Coast Processing Co., Inc, Pepeekeo, HI

TA–W–31,030; Ulster Scientific, Inc., New Paltz, NY

TA–W–31,078; Penn Ventilator Co., Inc., Keyster, WV

In the following cases, the investigaion revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,226; American Steel Corp., Detroit, MI

TA–W–31,008; Magnox, Inc., Pulaski, VA

TA–W–31,141; Colorado Gas Compression, Inc (CGCI), Ingalls, OK

TA–W–30,950; International Business Machines Corp., Storage Systems Div. San Jose, CA

TA–W–31,129; Library Bureau, Inc., Herkimer, NY

TA–W–31,132; Chicago Laser Systems, Des Plaines, Il

TA–W–31,227; CMI Industries, Inc., Rolling Fork, MS

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,019; ERA Coats, Paterson, NJ

U.S. imports of women's and girls' coats and jackets declined both absolutely and as a percent of US comsumption in 1994 compared with 1993.

TA–W–31,221; M. Lidz, Inc., Wilkes Barre, PA

TA–W–31,047; Metrahealth Insurance Co., Inc., Voorhees, NJ (formerly the Travelers Insurance Companies, Inc)

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–31,070; Forster Manufacturing Co., Inc., Wilton ME

A certification was issued covering all workers separated on or after May 15, 1994.

TA–W–31,125; Market Manufacturing Co., Inc., Moxley, GA

A certification was issued covering all workers separated on or after May 24, 1994.

TA–W–31,155; Nicolette Fashions, Inc., West New York, NJ

A certification was issued covering all workers separated on or after June 2, 1994.

TA–W–31,198; Lavrelle Manufacturing, New York, NY

A certification was issued covering all workers separated on or after June 20, 1994.

TA–W–31,015; Casual Coat Co., Inc., Paterson, NJ

A certification was issued covering all workers separated on or after December 21, 1993.

TA–W–31,206 & TA–W–31,297; Anchor Glass Container Corp., Gurnee, IL Huntington Park, CA

A certification was issued covering all workers separated on or after June 16, 1994.

TA–W–31,064; Elegante Sleepwear, Inc., San German, PR

A certification was issued covering all workers separated on or after May 11, 1994.

TA–W–31,101; Purolator Products NA, Inc., Dexter, MO

A certification was issued covering all workers separated on or after May 24, 1994.

TA–W–31,173; Rielly Co., Inc., Valatie, NY

A certification was issued covering all workers separated on or after May 13, 1994.

TA–W–31,120; Occidental Chemical Corp., Durez Div. North Tonawanda, NY

A certification was issued covering all workers separated on or after May 19, 1994.

TA–W–31,124; Great Bear Industries, Cross City, FL

A certification was issued covering all workers separated on or after June 2, 1994.

TA–W–31,171; Heat Tech El Paso (Heater Wire, Inc.), El Paso, TX

A certification was issued covering all workers separated on or after June 5, 1994.

TA–W–31,082; Barco of California, Huntsville, TN

A certification was issued covering all workers separated on or after May 16, 1994.

TA–W–31,152; Lake Manufacturing Nazareth/Century Mills, Inc., Lake, MS

A certification was issued covering all workers separated on or after June 13, 1994.

TA–W–31,154; Summit Timber Co., Darrington, WA

A certification was issued covering all workers separated on or after June 7, 1994.

TA–W–31,143; Levi Strauss & Co., El Paso, TX

A certification was issued covering all workers separated on or after May 23, 1994.

TA–W–31,175 & A; General Electric Co., 1427 Broadway, (Motor Div) Fort Wayne, IN & 1701 College St. (Transformer Div) Fort Wayne, IN

A certification was issued covering all workers separated on or after June 14, 1994.

TA–W–31,056; Phillips Laser Magnetic Storage, Colorado Springs, CO

A certification was issued covering all workers separated on or after May 8, 1994.

TA–W–31,061; Strand Lighting, Inc., Rancho Dominquez, CA

A certification was issued covering all workers separated on or after May 12, 1994.

TA–W–31,092; Paragon Dye & Finishing, Paterson, NJ

A certification was issued covering all workers separated on or after May 18, 1994.

TA–W–31,186; Shana Knitwear, Inc., Asheboro, NC

A certification was issued covering all workers separated on or after May 30, 1994.

TA–W–31,134; Farah Manufacturing Co., Farah USA, Inc., El Paso, TX

A certification was issued covering all workers separated on or after June 5, 1994.

TA–W–31,073; Softhard Systems, Inc., Houston, TX

A certification was issued covering all workers separated on or after April 11, 1994.

TA–W–31,200, TA–W–31,201, TA–W–31,202; The Louisiana Land & Exploration Co., New Orleans, LA, Houston, TX, Denver, CO

A certification was issued covering all workers separated on or after June 27, 1994.

TA–W–31,200A, TA–W–31,200B, TA–W–31,203; The Louisiana Land & Exploration Co., Lafayette, LA, Houma, LA, Saraland, AL

A certification was issued covering all workers separated on or after June 23, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00480; Peerless Corp., Tigard, OR

The investigation revealed that criteria (3) and (4) were not met. A departmental survey conducted with major customers revealed that they continued to purchase products form the subject firm during the relevant period—not from Mexico or Canada or any other foreign source.

Affirmative Determinations NAFTA-TAA

NAFTA–TAA–00524; Dura Convertible Systems, Adrian, MI

A certification was issued covering all workers separated on or after July 11, 1994.

NAFTA–TAA–00489; Heat Tech, Inc., AKA Heater Wire, El Paso, TX

A certification was issued covering all workers separated on or after June 19, 1994.

NAFTA–TAA–00493; Waltec American Forging, Inc., Tool Room, Waterbury, CT

A certification was issued covering all workers separated on or after June 15, 1994.

I hereby certify that the aforementioned determinations were issued during the months of July, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 25, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19662 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,331]

Kerr-McGee Corporation, Headquartered in Oklahoma City, Oklahoma Operating Out of the Following Field Offices; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 10, 1994, applicable to all workers of Kerr-McGee Corporation headquartered in Oklahoma City, Oklahoma and operating out of various field offices in Wyoming, Oklahoma and Texas. The notice was published in the **Federal Register** on December 9, 1994 (59 FR 63823).

At the request of the Company, the Department reviewed the subject certification. New findings show worker separations have occurred at the Kerr-McGee Corporation offshore oil and gas production operations. These workers report out of the Kerr-McGee office located in Lafayette, Louisiana. Accordingly, the Department is amending the certification to cover these workers.

The intent of the Department's certification is to include all workers of Kerr-McGee Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,331 is hereby issued as follows:

"All workers of Kerr-McGee Corporation, headquartered in Oklahoma City, Oklahoma (TA–W–30,331) and Casper, Wyoming (TA–W–30,331A) engaged in the production of crude oil and natural gas who become totally or partially separated from employment on or after July 31, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

"All workers of Kerr-McGee Corporation, at the below cited locations engaged in the production of crude oil and natural gas who become totally or partially separated from employment on or after August 17, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–30,331B	El Reno, Oklahoma
TA–W–30,331C	Kilgore, Texas
TA–W–30,331D	Amarillo, Texas
TA–W–30,331E	Odessa, Texas
TA–W–30,331F	Sunray, Texas
TA–W–30,331G	Canadian, Texas
TA–W–30,331H	Lafayette, Louisiana"

Signed at Washington, D.C. this 21st day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19657 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,744]

Xerox Corporation a/k/a EDS Webster, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 21, 1994, applicable to all workers for Xerox Corporation engaged in employment related to the production of copiers and printers in Webster, New York. The notice was published in the **Federal Register** on October 21, 1994 (59 FR 53211).

The Department has been notified by the State Agency that Xerox Corporation was sold to EDS. Some Xerox workers were transferred to EDS for a limited period of time to train the new company's new employees.

The intent of the Department's certification is to include all workers of Xerox Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–29,744 is hereby issued as follows:

"All workers of Xerox Corporation, a/k/a EDS, Webster, New York engaged in employment related to the production of copiers and printers who became totally or partially separated from employment on or after March 29, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 28th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19658 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–30,961]

Zenith Distributing Corporation a/k/a Texlokla Division Plano, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on June 26, 1995, applicable to all workers at the subject firm. The amended notice was published in the **Federal Register**, on July 7, 1995 (60 FR 35435).

New information received from the State Agency show that some of the workers at the Zenith Distributing, Plano, Texas, had their unemployment insurance (UI) taxes paid to Texlokla Division.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–30,961 is hereby issued as follows:

"All workers of Zenith Distributing Corporation, a/k/a Texlokla Division, Plano, Texas engaged in employment related to sales and distribution of Zenith electronic products who became totally or partially separated from employment on or after April 24, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 28th day of July 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19659 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–09981, et al.]

Proposed Exemptions; Boston Safe Deposit

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) The nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Boston Safe Deposit and Trust Company Located in Boston, Massachusetts; Proposed Exemption

[Application No. D–9981]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of January 12, 1995, to the cash sale of certain commercial paper notes (the Notes) for $25,031,269 by the Common Trust Cash Investment Fund (the Fund) to Boston Safe Deposit and Trust Company (Boston Safe), a party in interest with respect to employee benefit plans invested in the Fund, provided that the following conditions are met:

(a) The sale was a one-time transaction for cash;

(b) The Fund received an amount which was equal to the greater of either (i) the amortized cost of the Notes, plus accrued but unpaid interest, as of the date of sale, or (ii) the fair market value of the Notes, as determined by an independent pricing service at the time of sale;

(c) The Fund did not pay any commissions or other expenses in connection with the sale;

(d) Boston Safe, as trustee of the Fund, determined that the sale of the Notes was appropriate for and in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction;

(e) Boston Safe took all appropriate actions necessary to safeguard the interests of the Fund, and the employee benefit plans invested in the Fund, in connection with the transactions; and

(f) If the exercise of any of Boston Safe's rights, claims or causes of action in connection with its ownership of the Notes results in Boston Safe recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the sum of:

(1) the purchase price paid for the Notes by Boston Safe (i.e. $25,031,269);

(2) the original issue discount on the Notes which remained unamortized as of the date Boston Safe acquired the Notes from the Fund; and

(3) the interest due on the Notes from and after the date Boston Safe purchased the Notes from the Fund, at the rate specified in the Notes, Boston Safe will refund such excess amounts promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of January 12, 1995.

Summary of Facts and Representations

1. Boston Safe is a Massachusetts trust company which provides a wide range of banking and fiduciary services to a broad array of clients, including employee benefit plans subject to the Act. The Fund is a common trust fund established and maintained by Boston Safe as trustee for the collective investment and reinvestment of assets contributed thereto by Boston Safe and its affiliates on behalf of their trust services clients, including employee benefit plans. The Fund is exempt from federal income tax pursuant to section 584 of the Code. As of December 6, 1994, the value of the Fund's portfolio (including the Notes) was approximately $935 million. As of such date, participating investors in the Fund included seventeen employee benefit plans (primarily voluntary employees' beneficiary associations).

2. The Fund purchased the Notes on August 1, 1994 for $24,988,375. The Notes were one year debentures with a par value of $25 million, issued by Orange County, California (the Issuer) on July 8, 1994 with a maturity date of July 10, 1995. The aggregate principal amount of the entire series of the Notes was $600 million. Interest on the Notes was taxable and payable monthly at a variable rate which was reset on the first day of each month. The interest rate was equal to the one-month London Interbank Offered Rate (LIBOR) set forth on the second business day prior to the reset date. The interest on the Notes was payable on the first business day of every month and at maturity. The principal of and unpaid accrued interest on the Notes were payable at maturity.

The Notes were secured by a repayment fund (the Repayment Fund) established by the Issuer at the time the Notes were issued. The assets of the Repayment Fund were invested in the Orange County Investment Pool (the Orange County Pool), an investment fund established by the Issuer for the collective investment of the assets of the Issuer and its several governmental subdivisions.

3. The decision to invest Fund assets in the Notes was made by Boston Safe as trustee of the Fund. Prior to the investment, Boston Safe conducted an investigation of the potential investment, including an examination of the financial condition of the Issuer. Boston Safe represents that the Fund's investment in the Notes was consistent with the Fund's investment policies and objectives.[1] At the time the Fund acquired the Notes, the Notes were rated "A–1 plus" by Standard & Poor's Corporation and "P–1" by Moody's Investor Services, Inc.

4. On December 6, 1994, due to large trading losses in the Orange County Pool, the Issuer filed two voluntary petitions under Chapter 9 of the Bankruptcy Code—one on behalf of the Issuer and the other on behalf of the Orange County Pool. Responding to these events, after written notice to participating investors, Boston Safe transferred the Notes to a liquidating account (the Liquidating Account) maintained on behalf of the participating investors then having an interest in the Fund. This transfer was effective December 6, 1994. As of such date, the seventeen employee benefit plans held approximately 15% of the interests in the Liquidating Account.

Boston Safe states that placing the Notes in the Liquidating Account allowed for the continued operation of the Fund because the segregation of the Notes from the other assets in the Fund confined the potential investment losses resulting from the Notes to those investors participating in the Fund as of December 6, 1994. Boston Safe was able

[1] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Notes by the Fund violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a-1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

to continue to permit additions and withdrawals from the Fund at $1.00 per share and investments in the Fund after December 6, 1994 were not affected by the Notes.

5. Boston Safe determined that, as a result of the trading losses incurred by the Orange County Pool and the subsequent bankruptcy filing by the Issuer, the security for the Notes had become inadequate and that full repayment of the Notes was questionable. Boston Safe also determined that the purchase of the Notes by Boston Safe would be permissible under the regulations of the Office of the Comptroller of Currency relating to common trust funds. Therefore, in order to protect the Fund and the participating investors (including the employee benefit plans) having an interest in the Liquidating Account from potential investment losses, Boston Safe decided to purchase the Notes from the Fund. Notice of this resolution was given to the appropriate representative of each of the participating investors having an interest in the Liquidating Account by telephone prior to the date of the transaction.

6. The purchase of the Notes was consummated on January 12, 1995 when Boston Safe purchased the Notes from the Fund for a lump sum cash payment of $25,031,269. This sum represented the amortized cost of the Notes (i.e. $24,993,915) plus the accrued interest owing on the Notes (i.e. $37,354) as of January 12, 1995, the date of the transaction. Therefore, Boston Safe states that the amount received by the Fund for the Notes represented the book value of the Notes on the date of the sale. This amount reflected the discounts received by the Fund when it purchased the Notes at a price that was slightly less than the par value of the Notes. The amortized cost of the Notes was determined by Boston Safe using the standard accounting methods employed by the Fund.

In this regard, Boston Safe used the straight-line method of amortization in calculating the amortized cost of the Notes as of January 12, 1995, the date of sale. The amortized cost of the Notes was determined using a series of computations.

First, the discount on the Notes at purchase was calculated as the difference between the par value of the Notes (i.e., the principal amount which the Issuer is obligated to repay upon the maturity of the Notes) and the price at which the Fund originally purchased the Notes on August 1, 1994. Thus, $25,000,000 (par value) − $24,988,375 (purchase price) = $11,625 (discount).

Second, in order to accrete the discount equally over the life of the Notes, Boston Safe computed the amount of the discount to be accreted on a daily basis by dividing the discount by the number of days the Fund anticipated holding the Notes (i.e., from August 1, 1994, the date of purchase, until maturity on July 10, 1995). Thus, $11,625 (discount) divided by 342 (number of days)[2] = $33.99123 (daily accretion factor).

Third, the accreted discount on the Notes as of January 12, 1995, the date of sale, was calculated by multiplying the daily accretion factor by the number of days the Fund had actually held the Notes on such date. Thus, $33.99123 (daily accretion factor) × 163 (number of days) = $5,540 (accreted discount).

Finally, the accreted discount was then added to the purchase price paid by the Fund for the Notes, with the final figure being the amortized cost of the Notes as of January 12, 1995. Thus, $5,540 (accreted discount) + $24,988,375 (purchase price) = $24,993,915 (amortized cost).

7. Prior to the consummation of the transaction, Boston Safe obtained valuations of the Notes as of the date of the sale from two independent pricing services, Kenny S&P Evaluation Services, Inc., and Muller Data Corporation. Boston Safe states that these pricing services are the industry standards with respect to the pricing of municipal bonds. The valuations of the Notes obtained from these independent pricing services were 85.50 percent of par value and 86.40 percent of par value, respectively. On the basis of these valuations, Boston Safe determined that the purchase price paid by Boston Safe to the Fund exceeded the aggregate fair market value of the Notes as of the date of the transaction. The purchase price was paid to the Liquidating Account and then distributed to participating investors holding interests in the Liquidating Account.

Boston Safe represents that the purchase price paid for the Notes was distributed to each of the participating investors in the Liquidating Account, including the employee benefit plans, based on their respective interests in that account. Such interests were determined based solely upon the relative values, including accrued interest on the Notes, of the investors' interests in the Fund on December 6, 1994. The value of an investor's interest in the Fund on December 6, 1994 was equal to the amounts deposited by or on behalf of the investor as of such date, plus its allocable share of the income of the Fund, less any withdrawals or distributions.

[2] For this purpose, Boston Safe represents that it is standard practice to determine the number of days by excluding the date of purchase and the date of maturity on the Notes.

8. Boston Safe, as trustee of the Fund, believed that the sale of the Notes to Boston Safe was in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction. Boston Safe states that any sale of the Notes on the open market would have produced significant losses for the Fund and for the individual employee benefit plan investors involved. Boston Safe represents that the sale of the Notes by the Fund to Boston Safe benefitted the participating investors in the Fund having an interest in the Liquidating Account by placing such investors, including the employee benefit plans, in the same economic position they would have occupied absent the insolvency of the Issuer. The participating investors in the Fund benefitted further because the purchase price paid by Boston Safe for the Notes substantially exceeded the aggregate fair market value of the Notes, as determined by the two independent pricing services from whom valuations were obtained. In addition, Boston Safe states that the transaction was a one-time sale for cash in connection with which the Fund did not bear any brokerage commissions, fees, or other expenses.

9. Boston Safe represents that it took all appropriate actions necessary to safeguard the interests of the Fund investors, including the employee benefit plans, in connection with the sale of the Notes. Boston Safe ensured that each Fund investor with interests in the Liquidating Account received the appropriate amount of cash from Boston Safe representing its respective interest in the Liquidating Account.

10. Boston Safe states that the sale of the Notes by the Fund to Boston Safe resulted in an assignment of all of the Fund's rights, claims, and causes of action against the Issuer or any third party arising in connection with or out of the issuance of the Notes or the purchase of the Notes by the Fund. Boston Safe states further that if the exercise of any of the foregoing rights, claims or causes of action results in Boston Safe recovering from the Issuer or any third party an aggregate amount that is more than the sum of: (a) the purchase price paid for the Notes by Boston Safe (i.e. $25,031,269); (b) the original issue discount on the Notes which remained unamortized as of the date Boston Safe acquired the Notes

from the Fund (i.e. $6085);[3] and (c) the interest due on the Notes from and after the date Boston Safe purchased the Notes from the Fund, at the rate specified in the Notes, Boston Safe will refund such excess amounts promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

11. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) The sale of the Notes by the Fund was a one-time transaction for cash; (b) the Fund received an amount equal to the amortized cost of the Notes, plus accrued but unpaid interest, at the time of sale, which was greater than the aggregate fair market value of the Notes as determined by independent pricing services at the time of sale; (c) the Fund did not pay any commissions or other expenses with respect to the sale; (d) Boston Safe, as trustee of the Fund, determined that the sale of the Notes was in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction; (e) Boston Safe took all appropriate actions necessary to safeguard the interests of the Fund in connection with the transactions and ensured that each Fund investor having an interest in the Liquidating Account received the appropriate amount of cash representing its respective interest in the Liquidating Account; and (f) Boston Safe will promptly refund to the Fund any amounts recovered from the Issuer or any third party in connection with its exercise of any rights, claims or causes of action as a result of its ownership of the Notes, if such amounts are in excess of: (i) The purchase price paid for the Notes by Boston Safe (i.e. $25,031,269); plus (ii) the original issue discount on the Notes which remained unamortized as of the date Boston Safe acquired the Notes from the Fund (i.e. $6085); plus (iii) the interest due on the Notes from and after the date Boston Safe purchased the Notes from the Fund, at the rate specified in the Notes.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate plan fiduciaries for each employee benefit plan that was a Fund investor with an interest in the Liquidating Account at the time of the transaction. Notice to the plan fiduciaries shall be made within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. This notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Times Mirror Savings Plus Plan (the Plan) Located in Los Angeles, California; Proposed Exemption

[Application No. D–10019]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed extensions of credit (the Loans) to the Plan by the Times Mirror Company (the Employer), the sponsor of the Plan, with respect to three guaranteed investment contracts issued by Confederation Life Insurance Company of Canada (Confederation); (2) the Plan's potential repayment of the Loans; and (3) the potential purchase of the GICs from the Plan by the Employer for cash; provided the following conditions are satisfied:

(a) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan could receive in arm's-length transactions with unrelated parties;

(b) No interest and/or expenses are paid by the Plan in connection with the transactions;

(c) Repayment of the Loans will be restricted to the GIC Proceeds, defined as cash proceeds obtained by the Plan from Confederation, state guaranty funds, any successor to Confederation, or any other third party making payments with respect to the obligations of Confederation under the GICs;

(d) Repayment of the Loans will be waived to the extent that the Loans exceed the GIC Proceeds; and

(e) In any sale of the GICs to the Employer, the Plan will receive a purchase price which is the higher of (1) the fair market value of the GIC less any amounts previously received by the Plan with respect to the GIC, or (2) the value of the GIC as set forth in paragraph 6 of this Proposed Exemption, with such purchase price determination to be made by the Bank of America, the Plan's Trustee (the Trustee).

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which includes a cash or deferred arrangement which is intended to qualify under sections 401(a) and 401(k) of the Code. In addition to salary deferral contributions, the Plan provides for voluntary participant contributions and Employer matching contributions from company profits. The employees eligible to participate in the Plan are employees of the Employer and seventeen subsidiaries including the Baltimore Sun Company, Matthew Bender & Company, Newsday, Inc., and the Sporting News Publishing Company. The Plan currently has approximately 17,600 participants, and Plan assets totalled $397.9 million as of December 31, 1994.

Individual participant accounts are maintained within the Plan. The Plan also holds accounts attributable to a payroll-based tax credit employee stock ownership plan on behalf of certain participants (PAYSOP Accounts), although no contributions have been made to the PAYSOP Accounts with respect to participant compensation paid after December 31, 1986. The PAYSOP Accounts are invested in Employer stock. All other accounts are invested at the direction of individual Plan participants among five investment funds, one of which is the Income Fund. The Income Fund invests in fixed income contracts, including the GICs, and short-term marketable securities. As of December 31, 1994, the Income Fund had assets of $103.4 million, and 9,473 Plan participants had a portion of their account balances invested in the Income Fund.

The Employer is the Plan administrator and named fiduciary under the Act. The Employer's authority to control and manage the Plan is delegated to the Retirement Plan Administrative Committee, the members of which are appointed by the Retirement Plan Committee, a sub-committee of the Board of Directors of the Employer. The assets of the Plan are held in Trust by the Bank of America. Investment authority is held by the

[3] This amount represents the difference between the original discount received by the Fund on the purchase of the Notes ($11,625) and the accreted discount received by the Fund for purposes of the sale of the Notes to Boston Safe at the amortized cost ($5,540). Thus, $11,625 − $5,540 = $6085.

Retirement Plan Committee which may invest Plan assets or may appoint an investment manager or managers. In any event, the Retirement Plan Committee is charged with the responsibility to monitor the investment performance of Plan assets.

2. The Employer is organized under the laws of the state of Delaware with its principal offices located in Los Angeles, California. It is publicly owned, and its shares are traded on the New York Stock Exchange. The Employer's primary business activities are newspaper publishing and the publication of professional information.

3. Among the assets of the Income Fund are the three GICs issued by Confederation. The GICs were purchased in April 1990, June 1990 and April 1991. Each of the GICs has a length of five years, and have interest rates of 9.43%, 9.21%, and 8.38% respectively. The GICs purchased in June 1990 and April 1991 permit benefit responsive withdrawals to fund benefit payments, investment fund transfers and hardship and other in-service withdrawals. The GIC purchased in April 1990 does not permit withdrawals without penalty. The terms of each GIC provide that a payment is to be made to the Plan each year consisting of the interest earned for the year less any withdrawals during the year. All interest payments due from Confederation through 1994 have been paid to the Plan. A final payment of principal and interest is due on the maturity date of each GIC. The final payment on the GIC purchased in April of 1990 was [illegible] on April 12, 1995, and the final payment on the GIC purchased in June of 1990 was due on July 1, 1995. Such payments have not been made by Confederation, nor has Confederation paid the April 1995 interest payment due on the GIC purchased in April 1991. As of August 12, 1994 the three GICs had a total book value (principal payments plus accrued interest) of $7.14 million.

4. On August 11, 1994, Canadian insurance company regulators seized the assets of Confederation. On the following day, the State of Michigan Insurance Commissioner seized the U.S. assets of Confederation and commenced legal action to place the U.S. operations of Confederation in a rehabilitation proceeding.[4] As a result of these actions, withdrawals and interest payments have been suspended, except to the extent the Plan holds a benefit-responsive contract. In the latter case, the Plan may withdraw up to 1.5% of the contract value each year for the purpose of making participant-requested withdrawals. A Special Deputy Rehabilitator (the Rehabilitator) has been appointed by the State of Michigan to oversee the rehabilitation of Confederation. The Rehabilitator will set the interest rate to be paid on Confederation contracts following the seizure by the Michigan authorities. The applicant represents that it is not possible to determine the extent to which earnings under the Rehabilitation Plan will fall short of the interest rates stated in each GIC, when interest and maturity payments will resume, and the extent to which the Plan will suffer a loss of principal. In order to relieve the uncertainty with respect to the GICs, and to prevent losses that may result from the Rehabilitation of Confederation, the Employer proposes to enter into the transactions described below.

5. The Employer proposes to make Loans to the Plan pursuant to a written agreement (the Agreement) under which the Loans will be non-interest bearing and non-recourse against the Plan and its participants and beneficiaries, except for the GIC Proceeds. In addition, the Plan will incur no expenses related to the Loans. The Loans will be made over at least the remaining terms of the GICs to fund any withdrawals, including investment fund transfers, and hardship and other in-service withdrawals, (offset by amounts paid for withdrawals by Confederation, see 4 above). In addition, the Employer will make Loans to enable the Income Fund to receive the interest payments due under the GICs. Interest through October 31, 1994, will be calculated at the rate specified in each GIC. Interest from November 1, 1994 until the date the Rehabilitator announces an interest rate for the GICs will be a Market Rate of interest described below. Interest for the period following the Rehabilitator's announcement will be at the rate set by the Rehabilitator. The Market Rate of interest for each month will be the rate reported for one year GICs in the Wall Street Journal on the last business day of the prior month. If the interest rate announced by the Rehabilitator exceeds the Market Rate, the Employer will advance the difference for the period the Market Rate was used. Further, the Employer may, at any time, lend the Plan the entire amount of principal and interest, as computed above, due under the GICs to allow the Plan to reinvest the proceeds and increase the return to Plan participants.

The Agreement also provides that repayment may only be made from the GIC Proceeds. To the extent the GIC proceeds are insufficient to repay the Loans, repayment will be waived by the Employer.

6. In addition to the Loans, the Agreement provides that Employer may purchase the GICs from the Plan. Upon the maturity date of each GIC, the Employer has the option of continuing to make the Loans to fund withdrawals and interest payments or to purchase the GICs as described herein. Within 60 days of the latest of: (a) The maturity date of the GIC; (b) the announcement of the Rehabilitation interest rate, or (c) the date of grant of this proposed exemption; the Employer may purchase each GIC from the Plan for the principal amount of each GIC plus interest at the contract rate through October 31, 1994, and the higher of the Market Rate or the Rehabilitation Rate from November 1, 1994 through the date of sale, less previous withdrawals and outstanding Loans (exclusive of Loans made to fund withdrawals) with respect to that GIC. In no event will the sales price for each GIC be less than the fair market value of the GIC less amounts previously received by the Plan with respect to the GIC.

7. The Trustee has determined that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries. Further, should the Employer decide to purchase the GICs, such purchase price will be the higher of (a) the fair market value of the GICs (less amounts previously received by the Plan), or (b) the value as computed in 6. above, as determined by the Trustee.

8. In summary, the Employer represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The transactions will enable the Plan to recover all amounts due with respect to the GICs; (b) the Loans will able the Plan to resume the ability to fund benefit payments, participant loans, hardship withdrawals and investment fund transfers within the Plan; (c) repayment of the Loans will be restricted to the GIC proceeds; (d) repayment will be waived to the extent the Loans exceed the GIC proceeds; (e) no interest or expenses will be incurred by the Plan with respect to the transactions; and (f) the Trustee has determined that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries, and in the event of a

[4] The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GICs.

sale of the GICs to the Employer, the price will be determined by the Trustee.

NOTICE TO INTERESTED PERSONS: Notice to interested persons will be provided within 30 days of the date of publication of this Notice in the **Federal Register**. Comments and requests for a hearing are due 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, (202) 219–8881. (This is not a toll-free number.)

Acushnet Company Employee Savings Plan (the Plan) Located in Fairhaven, Massachusetts; Proposed Exemption

[Application No. D–10026]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of guaranteed investment contract No. GA–5244 (the GIC) issued by Mutual Life Insurance Company of New Jersey (Mutual Benefit), to the Acushnet Company (the Employer), a Delaware corporation and a party in interest with respect to the Plan, provided the following conditions are met: (1) The sale is a one-time transaction for cash; (2) the Plan experiences no loss and incurs no expense from the sale; (3) the Plan receives as consideration for the sale the greater of either (a) the fair market value of the GIC on the date of the sale, or (b) the accumulated book value of the GIC as set forth in paragraph 3 of this Notice, with such determination to be made by the State Street Bank and Trust Company, the Plan fiduciary with respect to the GIC.

Summary of Facts and Representations

1. The Employer is a Delaware corporation with its principal offices in Fairhaven, Massachusetts. It is a wholly-owned subsidiary of American Brands, Inc. a publicly held corporation whose stock is traded on the New York Stock Exchange. The Employer is engaged in the manufacture and distribution of golf balls, golf shoes, gloves and related products.

2. The Plan is a defined contribution plan with individual accounts for Plan participants which is intended to qualify under sections 401(a) and 401(k) of the Code. Participants have the right to self direct the investment of the assets in their individual accounts. Plan assets totaled $70.6 million as of February 28, 1995. Also as of February 28, 1995, there were 2,183 Plan participants and beneficiaries who will be affected by the proposed transaction.

Prior to July 1, 1991, the Plan permitted investments in two investment funds. One of the investment funds, the Fixed Fund, was invested in several guaranteed investment contracts including the GIC issued by Mutual Benefit. The GIC was purchased effective December 1, 1990, with a maturity date of September 30, 1992, and an interest rate of 8%. The GIC was to be paid in full by Mutual Benefit on its maturity date. The GIC represented approximately 10% of the Fixed Fund's assets. Effective July 1, 1991, the Plan was amended to transfer the GIC from the Fixed Fund to a new investment fund called the Frozen Mutual Benefit GIC Fund (the Frozen GIC Fund). The sole asset of the Frozen GIC Fund is the GIC which is the subject of this proposed exemption. The Plan was also amended to prohibit: (1) Investments into the Frozen GIC Fund; (2) investment transfers from the Frozen GIC Fund into other investment funds; and (3) withdrawals from the Frozen GIC Fund for loan requests. On April 1, 1992, the Fixed Fund was discontinued and six new funds were made available to Plan participants for the investment of their individual accounts.

3. On July 16, 1991, the New Jersey Department of Insurance took control of Mutual Benefit pursuant to an order of the Superior Court of New Jersey. The court imposed a moratorium on cash withdrawals from Mutual Benefit's GICs.[5] On November 10, 1993, the New Jersey Superior Court approved a rehabilitation plan for Mutual Benefit (the Rehabilitation Plan). On April 29, 1994, the GIC was restructured and transferred to MBL Life Assurance Corporation (MBLLAC). Pursuant to the Rehabilitation Plan, principal payments with respect to the GIC will generally not be made until December 31, 1999, a lower rate of interest will be credited on the GIC for periods after December 31, 1991 than is guaranteed under the terms of the GIC and interest will be credited each year after 1994 based on MBLLAC's investment performance.

In lieu of subjecting participants of the Plan to the investment risks associated with retaining the GIC, and to permit the participants to redirect the funds invested in the Mutual Benefit GIC to safer investments without loss to the individual accounts of the participants in the Plan, the Employer proposes to purchase the GIC from the Plan.[6] In this regard, the Employer proposes to pay the Plan, in a one-time cash sale transaction, an amount that is not less than the accumulated book value of the GIC, which was $3,722,435 as of May 31, 1995. The accumulated book value is the total amount paid by the Plan for the GIC plus interest, less prior withdrawals. Interest will be calculated at the contract rate of 8% until September 30, 1992 which was the maturity date of the GIC. For the period beginning on October 1, 1992 through December 31, 1992, interest will be credited at a rate equal to 4%. For the period beginning on January 1, 1993 through December 31, 1994, interest will be credited at an annual rate equal to 3.5%. For 1995, interest will be credited at 3.55%. The rates of interest for periods after the maturity date of the GIC are the rates applicable to the GIC for those periods according to the Rehabilitation Plan. No expenses will be incurred by the Plan for the proposed transaction. In no event will the purchase price be less than the fair market value of the GIC on the date of sale.

4. The State Street Bank and Trust Company of Boston, Massachusetts, (State Street) which was the Plan trustee at the time the GIC was purchased, is the current Plan fiduciary with respect to the GIC. At the time of the consummation of the transaction, State Street as Plan fiduciary will determine the purchase price for the GIC with such price to be the higher of (a) The fair market value of the GIC, or (b) the accumulated book value of the GIC as described in 3. above.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) The proposed transaction is a one-time transaction for cash; (b) the proposed transaction will enable the Plan and its participants and beneficiaries to avoid any risks associated with the continued holding of the GIC; (c) the Plan will receive the higher of: (1) The fair market value of the GIC or (2) the accumulated book value of the GIC, with such determination be made by State Street; and (d) the Plan will not incur any expenses or loss from the proposed transaction.

[5] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility provisions of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

[6] The applicant previously applied for an administrative exemption to permit the Employer to make interest-free loans to the Plan which would enable the Plan to make benefit distributions to Plan participants (Exemption Application D–9146). The Department responded by letter dated August 5, 1992, that such loans may be encompassed by Prohibited Transaction Class Exemption (PTCE) 80–26 (45 FR 28545, April 29, 1980), and thus to the extent the transactions satisfy the conditions of PTCE 80–26, an administrative exemption is not necessary. The applicant represents that the Employer has not implemented the interest-free loan program described in application D–9146.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

New Bedford Institution for Savings Employee Stock Ownership Plan (the Plan) Located in New Bedford, Massachusetts; Proposed Exemption

[Application No. D–10033]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past acquisition and holding by the plan of certain stock warrants (the Warrants) in connection with a merger (the Merger) of NBB Bancorp, Inc. (NBB), the parent company of the Plan's sponsor, New Bedford Institution for Savings (NBB Bank), with Fleet Financial Group, Inc. (Fleet), provided the following conditions were satisfied: (a) The Plan's acquisition and holding of the Warrants occurred in connection with the Merger pursuant to which (i) all shares of common stock of NBB (NBB Stock) were converted, at the election of the shareholder, into cash or shares of common stock of Fleet (Fleet Stock) and (ii) each shareholder received 0.28 Warrants for each share of NBB Stock; (b) the acquisition and holding of the Warrants resulted from the independent action of NBB as a corporate entity, and all holders of NBB Stock, including the Plan, were treated in the same manner with respect to the Merger; and (c) the Warrants were automatically issued to the Plan, which made no affirmative election to acquire the Warrants.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective January 27, 1995.

Summary of Facts and Representations

1. The Plan is an employee stock ownership plan which, prior to the Merger, was maintained by NBB Bank, a Massachusetts savings bank and wholly owned subsidiary of NBB, a Delaware corporation. As of September 30, 1994, the Plan had 349 participants and total assets of approximately $7 million. As of that date, the assets of the Plan consisted of NBB Stock and cash.[7] The Plan is administered by a committee (the ESOP Committee) which, prior to the Merger, was appointed by the Board of Directors of NBB Bank and is currently composed of members appointed by Fleet Bank of Massachusetts, N.A. (Fleet Bank). The trustee of the Plan is Investors Bank and Trust Company (the Trustee), a Massachusetts trust company.

2. Fleet is a Rhode Island corporation which is parent company to a number of direct and indirect wholly-owned subsidiary banks, including Fleet Bank. On May 9, 1994, Fleet entered into an Agreement and Plan of Merger with NBB (the Agreement), providing for the Merger. As part of the Merger, Fleet Bank and NBB Bank entered into a separate merger agreement providing for the merger of NBB Bank with and into Fleet Bank. As a result of the Merger, Fleet Bank became the sponsor of the Plan.[8]

3. Under the terms of the Agreement, on the effective date of the Merger, January 27, 1995 (the Effective Date), each share of NBB Stock issued and outstanding immediately prior to the Effective Date (except treasury shares, shares held by NBB, Fleet or any of their subsidiaries in a fiduciary capacity or as collateral for a debt, and certain dissenting shares) was converted, at the election of the shareholder, into either cash in the amount of $48.50 or 1.457 shares of Fleet Stock. Each shareholder also received 0.28 Warrants for each share of NBB Stock. Each Warrant confers upon its holder the right to acquire one share of Fleet Stock at a purchase price of $43.875. Warrants may be exercised at any time during the five-year period commencing on the first anniversary of the Effective Date. The Warrants are treated as separate securities under federal securities laws and are traded on the New York Stock Exchange separately from Fleet Stock. The applicant represents that the Warrants and Fleet Stock issued in connection with the Merger were issued pursuant to an appropriate registration statement filed with the U.S. Securities and Exchange Commission prior to the Effective Date.

4. The applicant represents that immediately prior to the Effective Date, the Plan held 126,061 shares of NBB Stock, all of which were allocated to participants' accounts under the Plan. The Plan's holdings represented approximately 1.3% of the total issued and outstanding shares of NBB Stock.

5. The terms of the Agreement required the termination of the Plan upon the consummation of the Merger.[9] In preparation for the termination of the Plan, and the subsequent distribution of the participants' accounts, NBB Bank amended the Plan to permit the participants to direct the Trustee to exchange the NBB Stock allocated to their Plan accounts for cash, Fleet Stock or a combination thereof in accordance with the terms of the Agreement. The applicant represents that in order to avoid a prohibited transaction under section 406(a)(2) of the Act, the Plan was also amended to direct the Trustee to sell the Warrants received by the Plan as soon as practicable.[10]

6. Prior to the Effective Date, each participant in the Plan received written information concerning his/her right to elect cash or Fleet Stock in exchange for the NBB Stock allocated to his/her account, and an election form to be returned to the ESOP Committee.[11] The

[7] The applicant represents that the NBB Stock constituted "qualifying employer securities" within the meaning of section 407(d)(5) of the Act, and therefore, the Plan's ownership of such stock satisfied the requirements of section 407(a) of the Act. In this proposed exemption, the Department expresses no opinion as to whether the requirements of section 407 of the Act were satisfied.

[8] The applicant represents that each shareholder of NBB Bank, including the Plan, was entitled to vote on the Merger. The right to vote the Plan's NBB Stock was passed through to the participants.

[9] The applicant represents that the Plan was terminated effective September 30, 1994. The termination was approved by the Internal Revenue Service by letter dated June 12, 1995. The Plan currently is in the process of distributing its assets to the participants and beneficiaries.

[10] In this regard, we note that although Plan provisions directed the Trustee to sell the Warrants, the Department has taken the position that a trustee may follow such plan provisions only to the extent permitted by section 404(a)(1)(D) of the Act, i.e., insofar as such plan provisions are consistent with the provisions of Titles I and IV of the Act. For example, if a conflict between the prudence standard and plan provisions occurs, section 404(a)(1)(D) requires that plan provisions give way to the statutory requirements. Thus, in this case, the Trustee was responsible for determining, among other things, whether following such provisions would result in an investment decision which would be prudent for the Plan and would produce a result which would be for the exclusive purpose of providing benefits to the Plan participants and beneficiaries.

[11] Out of over 300 Plan participants, only 14 failed to make an election. As to these participants, the ESOP Committee directed that they be treated in the same manner as non-Plan holders of NBB Stock who made no election. Accordingly, like the

Continued

Plan acquired 51,116 shares of Fleet Stock and cash in the amount of $4,412,384 as a result of the Merger.[12] The Plan also acquired 35,295 Warrants. The applicant represents that the Warrants were automatically issued to each shareholder of NBB Stock in connection with the Merger on January 27, 1995. Thus, the Plan did not make any affirmative decision to accept the Warrants. Pursuant to the terms of the Plan as amended, the Warrants were sold by the Trustee in a blind transaction on the open market on April 7, 1995, for a price equal to $4.428 per Warrant or $156,301.50 in the aggregate. This amount was allocated among the Plan participants' accounts in the same proportion as the NBB Stock held in a participant's account immediately prior to the Effective Date bore to the total NBB Stock held by the Plan at such time.

7. In summary, the applicant represents that the subject transaction satisfied the criteria contained in section 408(a) of the Act because: (a) The Plan's acquisition and holding of the Warrants resulted from an independent action of NBB as a corporate entity; (b) all holders of NBB Stock, including the Plan, were treated in the same manner in connection with the Merger; and (c) the Warrants were automatically issued to the Plan, which made no affirmative election to acquire the Warrants.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of August, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–19663 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–29–P

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bankers Trust Company (Bankers Trust) Located in New York, NY; Exemption

[Prohibited Transaction Exemption 95–67; Exemption Application No. D–09869]

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of October 28, 1994, to the cash sale of certain structured notes (the Notes) for $432,131,250 by three collective investment funds for which Bankers Trust acts as trustee (the Funds) to Bankers Trust New York Corporation (BTNY), a party in interest with respect to employee benefit plans invested in the Funds, provided that the following conditions were met:

(a) Each sale was a one-time transaction for cash;

(b) Each Fund received an amount which was equal to the greater of either: (i) the par value of the Notes owned by the Fund at the time of sale, (ii) the purchase price paid by the Fund for its interest in each of the Notes, or (iii) the fair market value of the Notes owned by the Fund, as determined by bid quotations for the Notes obtained from independent broker-dealers at the time of sale;

(c) The Funds did not pay any commissions or other expenses with respect to the sale;

(d) Bankers Trust, as trustee of the Funds, determined that the sale of the Notes was in the best interests of each Fund, and the employee benefit plans invested in the Fund, at the time of the transactions;

(e) Bankers Trust took all appropriate actions necessary to safeguard the interests of the Funds, and the employee benefit plans invested in the Funds, in connection with the transactions; and

(f) The Funds received a reasonable rate of return during the period of time that the Funds held the Notes.

EFFECTIVE DATE: This exemption is effective as of October 28, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 15, 1995, at 60 FR 31508.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Masik Tool and Die Corporation Profit Sharing Plan (the Plan) Located in Cudahy, Wisconsin; Exemption

[Prohibited Transaction Exemption 95–68; Application No. D–09899]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The past leasing (the Lease) of a lathe (the Lathe) owned by the Plan and certain individually-directed accounts in the Plan (the Accounts) to Masik Tool and Die Corporation (Masik), a party in interest with respect to the Plan; and (2) the proposed cash sale (the Sale) of the Lathe by the Accounts to Masik.

This exemption is conditioned on the following requirements: (1) With respect to the past Lease—

(a) the terms and conditions of the Lease have been at least as favorable to the Plan and the Accounts as those obtainable in an arm's length transaction with an unrelated party; (b) the value of the Lathe did not exceed twenty-five percent of the assets of the Plan or of any of the Accounts at any time during the duration of the Lease; (c) an independent, qualified fiduciary approved of the Lease on behalf of the Plan and the Accounts and has monitored the Lease throughout its entirety; (d) the rental amount received by the Plan and the Accounts was based upon the fair market rental value of the Lathe; and (e) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Masik files Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

(2) With respect to the prospective Sale—

(a) the terms and conditions of the Sale are at least as favorable to the Accounts as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale is a one-time cash transaction; (c) the Accounts are not required to pay any commissions, costs or other expenses in connection with the Sale; (d) the Sale price for the Lathe is based upon its fair market value on the date of the Sale as determined by an independent, qualified appraiser; and (e) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Masik files Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions, which are not subject to this exemption.

EFFECTIVE DATE: This exemption is effective as of June 1, 1988 with respect to the Lease. The exemption is effective as of the date of the grant of the exemption with respect to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption Notice published on April 27, 1995 at 60 FR 20767.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

The Amended and Restated Profit Sharing Retirement Plan for Employees of 84 Lumber Company (the Profit Sharing Plan) and The Amended and Restated Savings Fund Plan for Employees of 84 Lumber Company (the Savings Plan; together, the Plans) Located in Eighty Four, Pennsylvania; Exemption

[Prohibited Transaction Exemption 95–69; Exemption Application Nos. D–09945 and D–09946]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The extension of credit by 84 Lumber Company (Lumber) to the Plans in the form of loans (the Loans) with respect to Guaranteed Investment Contract, Number CG0124601A issued by Executive Life Insurance Company (ELIC) to the Profit Sharing Plan and Guaranteed Investment Contract No. CG0124701A (both Contracts together, the GICs) issued by ELIC to the Savings Plan; and (2) the Plans' potential repayment of the Loans (the Repayments), provided: (a) All terms of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with an unrelated party; (b) no interest and/or expenses are paid by the Plans; (c) the Loans are made with respect to amounts invested by the Plans in the GICs; (d) the Repayments are restricted to the amounts, if any, paid to the Plans after the date of the Loans by ELIC or other responsible third parties with respect to the GICs (the GIC Proceeds); (e) the Repayments under each Loan will not exceed the total amount of the Loan; and (f) the Repayments are waived with respect to the amount by which any Loan exceeds the GIC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 15, 1995 at 60 FR 31515.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Universal Underwriters Group Thrift Plan (the Plan) Located in Overland Park, Kansas; Exemption

[Prohibited Transaction Exemption 95–70; Application No. D–09947]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application

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non-Plan holders of "no election" shares, these participants received Fleet Stock in connection with the Merger pursuant to provisions in the Agreement requiring that a minimum amount of Fleet Stock be issued in connection with the Merger and establishing a procedure for allocating such Stock among the holders of NBB Stock.

[12] The applicant represents that the Fleet Stock constitutes "qualifying employer securities" within the meaning of section 407(d)(5) of the Act and, therefore, the Plan's ownership of Fleet Stock satisfies the requirements of section 407(a) of the Act. In this proposed exemption, the Department expresses no opinion as to whether the requirements of section 407(a) of the Act are satisfied.

[Prohibited Transaction Exemption 95–67; Exemption Application No. D–09869, et al.]

Grant of Individual Exemptions; Bankers Trust Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The extensions of credit (the Loans) to the Plan from Universal Underwriters Insurance Company (the Employer), with respect to a guaranteed investment contract (the GIC) issued by Confederation Life Insurance Company (Confederation); (2) the Plan's potential repayment of the Loans upon the receipt by the Plan of payments under the GIC; and (3) the assignment by the Plan to the Employer of all claims or causes of action it may have against the Plan's former GIC placement advisor for recommending that the Plan purchase the GIC; provided the following conditions are satisfied:

(A) All terms and conditions of such transaction are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest or expenses are paid by the Plan in connection with the proposed transaction;

(C) The Loans will be repaid only out of amounts paid to the Plan by Confederation, its successors, or any other responsible third party;

(D) Repayment of the Loans will be waived to the extent that the Loans exceed GIC proceeds;

(E) A qualified independent fiduciary will represent the interests of the Plan throughout the duration of the proposed transaction; and

(F) The Employer's recovery resulting from a cause of action assigned to the Employer by the Plan will be limited to the amount necessary to pay for litigation expenses and to pay off the Plan's outstanding Loan balance and any excess recovery will be transferred back to the Plan.

WRITTEN COMMENTS: The Department received a total of 6 written comments. All 6 commentators urged the Department to grant the exemption. No commentators requested a hearing.

After giving full consideration to the entire record, including the written comments, the Department has determined to grant the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on June 7, 1995, at 60 FR 30109.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of August, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–19664 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–56]

Mellon Bank, N.A., and its Affiliates (Mellon)

AGENCY: Department of Labor.

ACTION: Notice of Technical Correction.

On July 12, 1995, the Department of Labor (the Department) published in the **Federal Register** (60 FR 35933) an individual exemption which permits: (1) the purchase and sale of securities, including the common stock of Mellon Bank Corporation (MBC Stock), between various Indexed Accounts, as defined therein, which are sponsored, maintained, trusteed, or managed by Mellon; (2) the purchase and sale of securities, including MBC Stock, between Indexed Accounts and various large accounts (the Large Accounts), as defined therein, pursuant to portfolio restructuring programs for the Large Accounts; and (3) the acquisition, holding or disposition of MBC Stock by Indexed Accounts for the purpose of maintaining strict quantitative conformity with the relevant index upon which the Indexed Account is based.

With respect to Section IV(e), the first full sentence in the second column on 60 FR 35935, relating to the definition of a "Large Account" for purposes of the exemption, should read as follows:

". . . As noted in Section I(h)(4), a "Large Account" shall only be an account . . . etc."

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams, of the Department, at (202) 219–8194.

Signed at Washington, D.C., this 4th day of August, 1995.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration.

[FR Doc. 95–19685 Filed 8–8–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Record Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before September 25, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Consolidated Farm Services Agency (N1–145–95–1). Administrative Management records.

2. Department of the Army (N1–AU–95–5). Accelerated destruction of temporary indexes and related files relating to investigative activities.

3. Department of Health and Human Services, Administration for Children and Families (N1–102–93–1). Program evaluation working files of the Office of Child Development, 1971–74.

4. Department of the Interior, Bureau of Reclamation (N1–115–94–1, N1–115–94–2, N1–115–94–3, and N1–115–94–9). General records pertaining to administrative, financial, and personnel management.

5. Department of Justice (N1–60–95–5). Swine flu administrative claim file case tracking system.

6. Department of Justice, Bureau of Prisons (N1–129–95–3). Requests by Federal agencies to waive purchases from Federal Prison Industries.

7. Department of State, Bureau of Politico-Military Affairs (N1–59–95–13). Routine, facilitative, and duplicative records relating to export policy.

8. Department of State, Bureau of Economic and Business Affairs (N1–59–94–25, –27, and –28). Routine, facilitative, and duplicative records relating to trade and commercial affairs.

9. Department of State, Office of the Legal Adviser (N1–76–95–1). Records relating to the Heathrow arbitration.

10. Department of Transportation, Office of the Secretary (N1–398–93–1). Employee fitness center data information system.

11. Department of Transportation, Office of the Secretary (N1–398–94–4). Routine and facilitative files concerning commercial space program activities. Substantial program records are proposed for permanent retention.

12. Department of Treasury of the Office of Federal Financing Bank. (N1–56–94–1). Loan Administration Files and Office Administration Files.

12. Department of Treasury, Internal Revenue Service (N1–58–95–1). Applications to participate in the tax return electronic filing programs.

14. Census Bureau, Geography Division (N1–29–95–1). Cronaflex (mylar) county, Place, and metropolitan maps of the 1980 decennial census. Microform maps are scheduled as permanent.

15. Environmental Protection Agency (N1–412–94–2). Electronic records, pollution enforcement and removal actions, and revised dispositions of various agencywide textual records.

16. National Archives and records Administration (N2–30–92–1). Accessioned records of the Bureau of Public Roads relating to road construction and war material surplus that were reappraised as temporary.

17. Peach Corps (N1–490–95–11). Trainee Request Handbooks.

18. Small Business Administration, Office of Disaster Assistance (N1–309–95–1). Listings of employment history of disaster employees.

19. Tennessee Valley Authority (N1–142–94–5). Records from the Division of Air and Water Resources determined during archival processing to lack sufficient archivial value to warrant permanent retention.

20. United States Information Agency (N1–306–94–5). Routine, facilitative, and duplicative records relating to overseas broadcasting.

Dated: August 1, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–19569 Filed 8–8–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336]

Northeast Nuclear Energy Co. (Millstone Nuclear Power Plant), (License Nos. DPR–21, DPR–65); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petitions filed by Mr. Anthony J. Ross (Petitioner) on August 7, 1993 and May 23, 1994, as supplemented by a letter from Petitioner on August 17, 1994. The Petition dated August 7, 1993 requested that the Executive Director for Operations take escalated enforcement action with regard to alleged violations at Millstone Nuclear Power Station. Specifically, Petitioner requested that a Severity Level II violation be issued against his department manager and a Severity Level III violation be issued against his first-line supervisor for apparent violation of the provisions of 10 CFR 50.7, that sanctions be instituted against these individuals for engaging in deliberate misconduct as described in 10 CFR 50.5, and that the first-line supervisor be removed from his position until a satisfactory solution to the problem can be achieved.

On May 23, 1994, Petitioner filed another Petition, requesting that the NRC issue a Severity Level II violation and other sanctions against the Maintenance Manager at the Millstone plant (Unit 1) and remove the Maintenance Manager from his position until resolution of the issues raised in his complaint. This additional Petition was supplemented on August 17, 1994 in which Petitioner requested that Severity Level I violations and other sanctions be issued against the Senior Vice President and the Chief Executive Officer at Millstone and that these individuals be removed from their

positions until a satisfactory solution to the problem can be achieved.

Based on a review of Petitioner's request and supplemental submission, the Licensee's responses dated October 12, 1993, August 4, 1994, and March 15, 1995, the report of NRC's Office of Investigations (OI Report No. 1–93–044), and the decisions of the Department of Labor on complaints filed by the Petitioner in these cases, the Director, Office of Enforcement, has denied these Petitions. The reasons for the denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–95–17) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 2nd day of August, 1995.

James Lieberman, Director,

Office of Enforcement.

[FR Doc. 95–19636 Filed 8–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; (Millstone Nuclear Power Station, Unit 1) (License No. DRP–21); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petition filed by Mr. Clarence O. Reynolds (Petitioner) dated August 22, 1993, as supplemented by letters dated October 19, 1993, June 29, 1994, and August 17, 1994. The Petition requested that the Executive Director for Operations take immediate escalated enforcement action with regard to Millstone Nuclear Power Station Unit 1. Specifically, Mr. Reynolds requested that multiple Severity Level II and III violations be issued against the Millstone Unit 1 Maintenance Department, that suspensions of Maintenance Department Management be instituted pending a complete investigation, and that the Executive Director for Operations' (EDO's) office insist that Mr. Reynolds be immediately reinstated as maintenance mechanics pending this investigation.

Based on a review of Petitioner's request and supplemental submission, the Licnesee's responses dated October 25, 1993, August 16, 1964, and January 27 and March 16, 1995. the report officer of investigations (OI Report No. 1–93–047R), and the decision of the Department of Labor on Petitioner's complaint, the Director, Office of Enforcement, has denied these Petitions. The reasons for the denial are explained in the "Director' Decision under 10 CFR 2.206" (DD–95–16) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, MD this 2nd day of August 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 95–19635 Filed 8–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–9 (50–267)]

Public Service Company of Colorado, Fort St. Vrain Independent Spent Fuel Storage Installation; Issuance of Amendment to Materials License SNM–2504

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 1 to Materials License No. SNM–2504 held by the Public Service Company of Colorado (PSC) for the receipt, possession, storage, and transfer of spent fuel at the Fort St. Vrain (FSV) Nuclear Power Plant site in an Independent Spent Fuel Storage Installation (ISFSI), located on the high plains in Weld County, Colorado, 55 kilometers (35 miles) north of Denver, Colorado. The amendment is effective as of the date of issuance.

By applications dated July 21, and August 24, 1994, PSC requested amendments to its license for the ISFSI to allow (1) the construction of new gas lines for the purpose of repowering the FSV power station and (2) the drilling of new gas wells near the ISFSI. These amendments are required by ISFSI License Condition 16, which states: —No new gas or oil pipelines shall be installed within one-half mile of the ISFSI without prior approval as evidenced by a license amendment." Therefore, this amendment allows construction of gas pipelines and new wells as described in the PSC applications dated July 21, and August 24, 1994.

A safety evaluation report prepared by NRC staff concludes that there is reasonable assurance that the public health and safety will remain protected by activities authorized by this license amendment and that the environmental impact will remain insignificant.

The Commission has determined that the amendment applications comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chap. I, which are set forth in the license amendment.

The Commission has determined that the amendment does not involve significant new safety information of a type that differs from any evaluated by previous Commission safety review. It does not involve a significant increase in the probability or consequences of an accident. It does not involve a significant decrease in a safety margin. Thus, it does not involve a significant hazards consideration. Therefore, the Commission has determined that the amendment does not present a genuine issue as to whether the health and safety of the public will be significantly affected and that prior public notice of the amendment is not required under 10 CFR 72.46(b)(2). Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has also determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.21, an environmental assessment need not be prepared in connection with issuance of the amendment. In support thereof, the Commission has concluded that this revision of the Materials License does not involve any changes in the scope or type of operations presently authorized by the license. Further, the Commission notes that (1) the integrity of the ISFSI is not threatened as a result of the activities to be conducted under the amendment, and (2) the work authorized under the amendment is to take place within the owner-controlled area, an area previously disturbed as part of construction and subsequent decommissioning of FSV as well as the ISFSI. In light of the foregoing, this amendment meets the conditions that (i) there is no significant change in the types or significant increase in the amounts of any effluent that may be released offsite, (ii) there is no significant increase in individual or cumulative occupational radiation exposure, (iii) there is no significant construction impact, and (iv) there is no significant increase in the potential for, or consequences from radiological accidents. Therefore, the categorical exclusion in 10 CFR 51.22(c)(11) applies and neither an environmental assessment nor an environmental impact statement is required for this action.

For further details with respect to this action, see (1) the amendment applications amendment dated July 21, and August 24, 1994, and (2) additional information dated July 12, 1995. These items are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room at the Weld County District Public Library, 23rd Avenue Branch, Greeley, Colorado 80631.

Dated at Rockville, MD, this 31st day of July 1995.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–19637 Filed 8–8–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on June 22, 1995 (60 FR 32568). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1, 1995, and June 30, 1995, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked in June 1995.

Schedule B

No Schedule B authorities were established or revoked in June 1995.

Schedule C

The following Schedule C authorities were established in June in 1995.

Consumer Product Safety Commission

Special Assistant to the Commissioner. Effective June 2, 1995.

Special Assistant to the Commissioner. Effective June 2, 1995.

Department of Agriculture

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective June 22, 1995.

Department of the Army (DOD)

Special Assistant for Policy to the Secretary of the Army. Effective June 8, 1995.

Department of Commerce

Director of Congressional Affairs to the Under Secretary for International Trade, International Trade Administration. Effective June 2, 1995.

Speechwriter to the Director, Office of Public Affairs. Effective June 8, 1995.

Confidential Assistant to the Counselor to the Department of Commerce. Effective June 22, 1995.

Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison. Effective June 22, 1995.

Special Assistant to the Director, Office or Business Liaison. Effective June 29, 1995.

Department of Defense

Special Assistant to the Assistant Secretary of Defense, International Security Policy. Effective June 5, 1995.

Department of Education

Confidential Assistant to the Special Assistant, Office of the Secretary. Effective June 22, 1995.

Department of Energy

Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective June 5, 1995.

Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective June 5, 1995.

Staff Assistant to the Director, Office of Nuclear Energy. Effective June 9, 1995.

Staff Assistant to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective June 9, 1995.

Staff Assistant to the Assistant Secretary for Policy. Effective June 9, 1995.

Department of Health and Human Services

Staff Assistant for Liaison to the Associate Commissioner for Legislative Affairs. Effective June 5, 1995.

Department of Housing and Urban Development

Staff Assistant to the Secretary of Housing and Urban Development. Effective June 2, 1995.

Staff Assistant to the Assistant Secretary for Public and Indian Housing. Effective June 5, 1995.

Staff Assistant to the General Counsel. Effective June 8, 1995.

Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs. Effective June 22, 1995.

Special Projects Officer to the Secretary's Representative, Mid-Atlantic Office. Effective June 22, 1995.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective June 22, 1995.

Special Assistant to the Assistant Secretary for Public Affairs. Effective June 22, 1995.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective June 29, 1995.

Department of Justice

Special Assistant to the Director, Violence Against Women Program. Effective June 12, 1995.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective June 29, 1995.

Department of Labor

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective June 29, 1995.

Department of Transportation

Congressional Liaison Officer to the Assistant Administrator for Government and Indian Affairs. Effective June 8, 1995.

Department of the Treasury

Deputy to the Assistant Secretary (Legislative Affairs and Public Liaison). Effective June 29, 1995.

Senior Advisor to the Deputy Assistant Secretary (Federal Finance). Effective June 29, 1995.

General Services Administration

Speical Assistant to the Associate Administrator for FTS 2000. Effective June 12, 1995.

Office of the United States Trade Representative

Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative for Congressional Affairs. Effective June 22, 1995.

Securities and Exchange Commission

Confidential Assistant to the Chief of Staff. Effective June 22, 1995.

U.S. International Trade Commission

Staff Assistant to the Commissioner. Effective June 22, 1995.

United States Information Agency

Deputy Director to the Director, Office of Arts America. Effective June 21, 1995.

United States Tax Court

Secretary (confidential Assistant) to the Judge. Effective June 30, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorriane A. Green,

Deputy Director.

[FR Doc. 95–19630 Filed 8–8–95; 8:45 am]

BILLING CODE 6325–01–M

Series Consolidation

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is proposing to simplify the Federal position classification structure by reducing the number of occupational series from 442 to about 74.

DATES: Written comments must be received on or before October 10, 1995.

ADDRESSES: Send written comments to Michael D. Clogston, Assistant Director for Classification, Office of Personnel Management, Room 7H29, 1900 E Street NW., Washington, DC 20415 (FAX 202–606–4891).

FOR FURTHER INFORMATION CONTACT: Terri Jurkofsky on 202–606–1721 or Raymond E. Moran on 202–606–2970, or FAX 202–606–4891.

SUPPLEMENTARY INFORMATION: The General Schedule comprises 442 occupational series within 22 occupational groups (job families.) An example of an occupational group is the GS–400, Biological Sciences Group; within the GS–400 group, there are 34 occupational series such as the Microbiology Series, Forestry Series, Range Technician Series, etc. To simplify the Federal position classification structure, the NPR recommended reducing the number of occupational series by one-half or more.

Over the past year and a half, an ad hoc discussion group of OPM staff, representatives of the Interagency Advisory Group executive committee, and Federal unions met to explore issues and approaches to series consolidation. The group generally agreed that we should simplify the structure and that we should look at significant, not incremental, consolidation. The discussion group considered a number of approaches using the NPR goals, and concepts such as equity, clarity, and utility as guiding principles.

OPM Proposal

Retain 20 of the current 22 occupational groups and merge the series within each of the occupational groups into one of four categories: Professional, Administrative, Technical, and Clerical. For example, under the proposal we would merge the 34 professional and technical series within the Biological Sciences Group into two: Biological Sciences Professional and Biological Sciences Technical. (There are no administrative or clerical occupations in this group.)

This reduces the number of series from 442 to about 74. It treats occupations similarly and provides an occupational breakout that remains familiar and understandable to Federal managers and employees. When set up, agencies would be required to use the series structure for *official classification actions*. Under the proposal, however, agencies can retain indefinitely some or all of the 442 occupational series designations and titles for internal use if it suits their needs.

The current occupational series codes will be provisionally retained as "job codes." Agencies will be required to report *job codes* in Governmentwide data collection efforts, including submissions to the Central Personnel Data File. The detailed information available from these job codes is needed for workforce analysis, pay comparability, and special rate determinations. Meanwhile, we will explore the issue of alternate means of storing and collecting occupational data for these purposes with staff of the various agencies.

We are also proposing to abolish the GS–000, Miscellaneous Occupations Group and the GS–700, Veterinary Medical Science Group. The series currently classified in the GS–000 miscellaneous group would be placed in one of the remaining 20 occupational groups; two of the three GS–700 veterinary occupational series would be placed under the renamed GS–600 Medical and Health Group and the GS–799 student trainee series would be abolished (See Administrative Items below).

We expect to retain most of the existing *functional* classification guides such as the Research Grade Evaluation Guide, the General Schedule Supervisory Guide, and the Office Automation Guide, and to develop new classification standards that comport with the revised group and series structure. In the future, when OPM issues a new broad standard, it will cancel and supersede any existing occupationally specific standards covering the same work. For example, when we issue a new standard in final form for the GS–400 Biological Sciences Professional Series it will cancel and supersede all specific standards in the GS–400 Biological Sciences Group such as the standards covering the Forester Series, the Wildlife Biologist Series, etc.

Administrative Items

1. Several occupational group titles would result in awkward, vague, or inappropriate group and series titles. We are proposing the following changes:

Current occupational group name	Proposed occupational group name
GS–100 Social Science, Psychology, and Welfare.	GS–100 Social Science.
GS–200 Personnel Management and Industrial Relations.	GS–200 Human Resources Management.
GS–300 General Administration, Clerical, and Office Services.	GS–300 Management and Office Services Support.
GS–500 Accounting and Budget.	GS–500 Financial Management.
GS–600 Medical, Hospital, Dental, and Public Health.	GS–600 Medical and Health.
GS–900 Legal and Kindred.	GS–900 Legal.
GS–1600 Equipment, Facilities, and Services.	GS–1600 Equipment and Facilities.
GS–1800 Investigations.	GS–1800 Protective Service.
GS–1900 Quality Assurance, Inspection, and Grading.	GS–1900 Quality Assurance.

2. We are proposing to abolish the GS–000 Miscellaneous Occupations Group and to place each of the 26 miscellaneous series in an occupational group that best covers its work. The exact placement of each series is as follows:

GS–100 Special Science Group: Community Planning, Community Planning Technician; Outdoor Recreation Planning; Sports Specialist; Chaplain.

GS–900 Legal Group: Foreign Law Specialist.

GS–1000 Information and Arts Group: Clothing Design; Guide.

GS–1100 Business and Industry Group: Bond Sales; Funeral Directing.

GS–1800 Protective Service Group: Correctional Institution Administration Series; Correctional Officer; Safety and Occupational Health Management; Safety Technician; Park Ranger; Environmental Protection Specialist; Environmental Assistant; Fingerprint Identification Series; Security Administration; Fire Protection and Prevention; United States Marshal; Police; Nuclear Materials Courier Service; Security Guard; Security Clerical and Assistance.

3. There are a few occupations and grade levels that are difficult to categorize because of an anomaly in the current PATC identifier, i.e., some occupations are identified as clerical up to a certain grade and technical above the grade. We will study this issue and provide instructions at a later date.

4. We plan to time the implementation of changes in classification that will result from series consolidation to coincide with another mass change (e.g., locality pay increases). This will eliminate the need to issue a *separate* personnel action to effect the change in classification. We propose that blocks 7 and 15 of the Standard Form 50, Notification of Personnel Action to be used to reflect the new classification title and that blocks 9 and 17 be used to record the job code. Block 45, the remarks section of personnel action form, would be used to identify the new implementing instructions that explain how to process the action. This approach minimizes the work required by agencies and, at the same time, serves to notify employees of changes in the classification of their positions as a result of series consolidation.

U.S. Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–19631 Filed 8–8–95; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, August 10, 1995, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: July 27, 1995.

Anthony P. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 95–19632 Filed 8–8–95; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Order No. 1070; Docket No. A95–17]

Prosser, Nebraska 68868 (Faye B. Kral, et al., Petitioners; Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued August 3, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A94–17

Name of Affected Post Office: Prosser, Nebraska 68868

Names(s) of Petitioner(s): Faye B. Kral, et al.

Type of Determination: Closing

Date of Filing of Appeal Papers: July 31, 1995

Categoires of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administration record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(B)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by August 15, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

July 31, 1995
Filing of Appeal letter
August 3, 1995
Commission Notice and Order of Filing of Appeal
August 25, 1995
Last day of filing of petitions to intervene [*see* 39 C.F.R. 3001.111(b)]
September 5, 1995
Petitioners' Participate Statement or Initial Brief [*see* 39 C.F.R. 3001.115 (a) and (b)]
September 25, 1995
Postal Service's Answering Brief [*see* 39 C.F.R. 3001.115(C)]
October 10, 1995
Petitioners' Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. 3001.115(d)]
October 17, 1995
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. 3001.116]
November 28, 1995
Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 95–19596 Filed 8–8–95; 8:45 am]

BILLING CODE 7710–FW–P–M

[Order No. 1069; Docket No. A95–16]

Strang, Nebraska 68444: (Ruth E. Hobbs, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued August 3, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A95–16
Name of Affected Post Office: Strang, Nebraska 68444
Name(s) of Petitioner(s): Ruth E. Hobbs
Type of Determination: Consolidation
Date of Filing of Appeal Papers: July 26, 1995
Categories of Issues Apparently Raised:
1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by August 10, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

July 26, 1995
Filing of Appeal letter
August 3, 1995
Commission Notice and Order of Filing of Appeal
August 21, 1995
Last day of filing of petitions to intervene [see 39 C.F.R. 3001.111(b)]
August 30, 1995
Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. 3001.115 (a) and (b)]
September 19, 1995
Postal Service's Answering Brief [see 39 C.F.R. 3001.115(c)]
October 4, 1995
Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. 3001.115(d)]
October 11, 1995
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]
November 23, 1995
Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 95–19595 Filed 8–8–95; 8:45 am]
BILLING CODE 7710–FW–P–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21266; 812–9700]

Stifel Nicolaus & Company, Incorporated; Notice of Application and Temporary Order

August 3, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Temporary order and notice of filing of application for permanent order under the Investment Company Act of 1940 (the "Act").

APPLICANT: Stifel Nicolaus & Company, Incorporated ("Stifel").

RELEVANT INVESTMENT COMPANY ACT SECTIONS: Permanent order requested, and temporary order granted, under section 9(c) of the Act for an exemption from the provisions of section 9(a) of the Act.

SUMMARY OF APPLICATION: Applicant has been granted a temporary order, and has requested a permanent order, under section 9(c) exempting it from the disqualification provisions of section 9(a).

FILING DATE: The application was filed on August 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 28, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 500 N. Broadway Street, St. Louis, Missouri 63102.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Stifel, a subsidiary of Stifel Finance Corp., is registered as a broker dealer and a municipal securities dealer under the Securities Exchange Act of 1934 ("Exchange Act"), and as an investment adviser under the Investment Advisers Act of 1940. Stifel acts from time to time as principal underwriter for unit investment trusts.

2. On August 3, 1995, the Commission filed a complaint in the United States District Court for the Western District of Oklahoma alleging violations of section 17(a) of the Securities Act of 1933, sections 10(b), 17(a)(1), and 15B(c)(1) of the Exchange Act and rules 10b–5, 17a–3, and 17a–4 thereunder, and Rules G–8, G–9, and G–17 of the Municipal Securities Rulemaking Board. The complaint related to undisclosed compensation received by Stifel in connection with municipal bond issues. On the same date as the complaint, Stifel entered into a related consent in which Stifel neither admitted nor denied any of the allegations in the complaint, except as to jurisdiction. Pursuant to the consent, the District Court entered a Final Judgment of Permanent Injunction, permanently enjoining Stifel from violating the above-named provisions. Stifel also agreed to disgorge $922,741 and pay prejudgment interest on that amount of $263,637, and to pay a penalty of $250,000.

3. In making the application, applicant acknowledges, understands and agrees that the application and any temporary exemption issued by the Commission shall be without prejudice to the Commission's consideration of any application for exemptions from statutory requirements, including the consideration of the instant application for a permanent exemption pursuant to section 9(c) or the revocation or removal of any temporary exemption granted in connection with the application.

Applicant's Legal Analysis

1. Applicant seeks relief exempting it from the provisions of section 9(a) of the Act solely with respect to the proposed injunction, for itself and any future entity that may become an affiliated person of Stifel.

2. Section 9(a) provides, in pertinent part, that it is unlawful for any person, or any affiliated person of such person, to serve or act in the capacity of investment advisor or depositor of any registered investment company, or principal underwriter of any registered open-end investment company or unit investment trust, if such person has been permanently or temporarily enjoined from engaging in any conduct in connection with its activities as an underwriter, broker, dealer, or investment adviser, or in connection with the purchase or sale of any security.

3. Section 9(c) provides that, upon application, the Commission shall by order grant an exemption from the provisions of section 9(a), either unconditionally or on a temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant the exemption.

4. As a result of the injunction, Stifel is subject to the disqualification provisions of section 9(a). Applicant asserts that the application of such provisions to it is unduly and disproportionately severe. Applicant further asserts that Stifel's conduct has been such as not to make it against the public interest or protection of investors to grant the requested relief.

5. Applicant states that the conduct that gave rise to the injunction involved Stifel's Oklahoma Public Finance Office, which is now closed, and was not in any way related to activities of application as underwriter for unit investment trusts. In addition, none of the individuals who acted improperly were involved in Stifel's underwriting of unit investment trusts.

6. Stifel has taken the following remedial actions in response to the events that led to the injunction:

a. Stifel formed a special committee of outside directors to conduct an investigation into the matters that formed the basis of the injunction. Stifel hired the law firm of Bryan Cave to assist the company in that regard. Bryan Cave hired the accounting firm of Coopers & Lybrand to assist them with the investigation.

b. As a result of the investigation mentioned above, Stifel has implemented new procedures regarding the disclosure and the prior review of certain fees.

c. The Stifel officer responsible for the majority of the illegal conduct, and his supervisor, have been terminated by the firm. The firm's assets in Oklahoma have been sold.

d. Stifel has hired a former Wisconsin State Securities Commissioner as its Director of Compliance and an attorney formerly in the Commission's Pacific Regional Office as General Counsel. The firm also has replaced the head of its municipal securities operations.

7. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to applicant because, if the exemption were not granted, the prohibitions would unfairly and unreasonably deprive applicant of its ability to provide uninterrupted services to the unit investment trusts for which it provides distribution services. Such inability would have an adverse effect on applicant's business. Applicant makes a market in the units of the unit investment trusts that it underwrites, which it no longer would be able to do absent the requested relief. In addition, applicant would be unable to render distribution services to registered unit investment trusts that may be organized in the future.

8. Applicant represents that it has not previously filed an application for relief pursuant to section 9(c), has no prior record of Commission enforcement proceedings, and is not subject to any judgment that would disqualify it under section 9(a).

9. Applicant believes that its ability to serve as principal underwriter for any registered unit investment trust, and to comply with the requirements of the Investment Company Act, are not impaired by the injunction.

Applicant's Condition

Applicant agrees that any order granted by the Commission pursuant to the application will be subject to the condition that Stifel will comply with the Final Judgment of Permanent Injunction.

Temporary Order

The Commission has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicant, finds that the issuance of a temporary order under section 9(c) of the Investment Company Act, subject to the foregoing condition, is not inconsistent with the public interest or the protection of investors.

Accordingly, it is ordered, under section 9(c) of the Investment Company Act, that the applicant be, and hereby is, granted a temporary exemption from the provisions of section 9(a) of the Act, solely with respect to the injunction specifically described in the application, subject to the condition contained in the application, which condition is expressly incorporated herein.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19650 Filed 8–8–95; 8:45 am]
BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Honolulu District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public meeting on Thursday, September 7, 1995 at 9:30 a.m. at the Business Information and Counseling Center, 130 Merchant Street, Suite 1030, Honolulu, HI 96813; to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Blvd., Room 2314, Honolulu, Hawaii 96850, (808) 541–2965.

Dated: August 3, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–19602 Filed 8–8–95; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–066]

National Environmental Policy Act Environmental Assessment for U.S. Coast Guard Activities Along the U.S. Atlantic Coast

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments. .

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations, and the Coast Guard National Environmental Policy Act

(NEPA) Implementing Procedures, the Coast Guard gives notice of the availability of an Environmental Assessment (EA) and a proposed Finding of No Significant Impact (FONSI) for public review and comment. The EA and proposed FONSI have been prepared for Coast Guard operations in the marine environment of the Atlantic coast from the northern tip of Maine south to Puerto Rico. The EA focuses on six whale and five turtle endangered or threatened species.

DATES: Comments must be received on or before September 8, 1995.

ADDRESSES: Comments, questions, or requests for copies of the EA and the proposed FONSI should be mailed or delivered to LCDR Wesley Marquardt, U.S. Coast Guard, Commandant (G–NIO), 2100 Second Street SW., Room 1201–A, Washington, DC 20593–0001. The comments will be available for inspection and copying in room 1201–A at the address listed above. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Wesley C. Marquardt, U.S. Coast Guard, Office of Navigation Safety and Waterway Services, (202) 267–1454.

SUPPLEMENTARY INFORMATION:

Discussion of Environmental Assessment

The EA and proposed FONSI address the impact of continuing to perform the missions assigned to U.S. Coast Guard along the Atlantic coast. These missions include but are not limited to: search and rescue; providing and maintaining aids to navigation; law enforcement; treaty enforcement; migrant interdiction; disaster relief; vessel traffic control; marine safety and environmental protection.

In order to perform all of these missions, it is necessary for U.S. Coast Guard vessels and aircraft to share the same areas along the Atlantic coast that are frequented by six whale and five turtle species which are listed as protected species.

The Environmental Assessment discusses the alternatives considered and selects the alternative most likely to result in no significant impact to the listed species. That alternative would modify methods of performance of USCG activities to provide protection for endangered or threatened species of whales and sea turtles and their critical habitats in U.S. waters of the Atlantic Ocean. Changes in USCG methods of performance would be limited to those that do not significantly increase risks to human health, property, and the environment. The modifications proposed would include increased training and awareness of Coast Guard personnel and decreased operating speeds for vessels in the areas frequented by the endangered or threatened species.

Request for Comments

The Coast Guard has prepared an Environmental Assessment (EA) and proposed Finding of No Significant Impact (FONSI) on U.S. Coast Guard activities along the U.S. Atlantic Coast. This notice announces the availability of the EA and proposed FONSI for public review and comment. In accordance with NEPA, as amended, and Coast Guard Policy, the Coast Guard encourages all interested or affected parties to participate in the public review process for this EA. Comments should specifically identify the environmental issues, topics, or information in the EA to which the comment applies. Comments, questions, or requests for copies of the EA and the proposed FONSI should be mailed or delivered to LCDR Wesley Marquardt at the address contained in **ADDRESSES**.

Dated: August 3, 1995.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–19560 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc.; Standards for Airport Security Access Control; Notice of Special Committee 186 Meeting To Be Held August 16–17, 1995; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction.

SUMMARY: In notice document 95–18735 on page 39069 in the issue of July 31, 1995, make the following correction:

In the heading, correct the committee name by removing "Standards for Airport Security Access Control" and adding instead "Automatic Dependent Surveillance-Broadcast (ADS–B)."

Dated: August 3, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–19603 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Aviation Systems Design Guidelines for Open Systems Interconnection; Notice of Meeting To Be Held August 15–17, 1995; Correction

AGENCY: Federal Aviation Administration.

ACTION: Correction.

SUMMARY: In notice document 95–18589 on page 38887 in the issue of Friday, July 28, 1995, make the following corrections:

In the heading, after "RTCA, Inc.," add "Special Committee 162." After the name of the Committee, "Aviation Systems Design Guidelines for Open Systems Interconnection," remove the incorrect acronym "OST" and add "OSI" instead.

Dated: August 3, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–19604 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3359

Applicant: Utah Railway Company, Mr. William Callor, Jr., Division Engineer, P. O. Box 57040, Salt Lake City, Utah 84157

The Utah Railway Company, seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between milepost 1.4 and milepost 4.3, near Martin, Utah, and between milepost 17.8 and milepost 18.4, near Wattis, Utah, consisting of the discontinuance and removal of nine signals, No.'s 14, 16, 21, 28, 35, 38, 43, 178 and 184.

The reason given for the proposed changes is that the signals are obsolete, delaying trains, and no longer needed to protect out of service branch lines.

BS–AP–No. 3360

Applicant: Norfolk Southern Railway Company, Mr. J. W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, S.W., Atlanta, Georgia 30303

The Norfolk Southern Railway Company, Central of Georgia Railroad seeks approval of the proposed discontinuance and removal of the automatic block signal and traffic control signal systems, on the single main track "P" Line and sidings between Columbus, Georgia, milepost P–291.8 and Leeds, Alabama, milepost P–423.8, Alabama Division, Columbus and Norris Yard District, a distance of approximately 132 miles.

The reason given for the proposed changes is that through traffic has been rerouted off this line segment several months ago and to save costs of testing, maintenance, and materials.

Rules Standards & Instructions Application (RS&I–AP) No. 1097

Applicant: Metro North Commuter Railroad Company, Mr. G. F. Walker, Assistant Vice President-Operations, 347 Madison Avenue, New York, New York 10017

Metro North Commuter Railroad Company (MNCW) seeks relief from the requirements of the Rules, Standard and Instructions, Title 49 CFR, Part 236, Section 236.566, to the extent that MNCW be permitted to operate, one non-equipped N.Y.C.T.A. Locomotive No. 64, to perform switching and transfer service, within automatic cab signal and train control territory, between Grand Central Terminal, milepost 0.0 and CP 7, milepost 6.4, on the Hudson Line, in New York, New York.

The reason given for the proposed changes is that Locomotive No. 64 would be operated at restricted speed not exceeding 15 mph under protection and authority of an absolute block, and considering a budgetary crisis, it is not cost effective to equip the locomotive.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590, within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on August 4, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–19681 Filed 8–8–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held September 27 and 28, 1995.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on September 27 and 28, 1995 in room 118, beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4 901 D Street, SW., Washington, DC 20024. Telephone (202) 401–4128, (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on September 27 and 28, 1995 in Room 118 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–19557 Filed 8–8–95; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

August 2, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

OMB Number: 1550–0041

Form Number: Not Applicable

Type of Review: Extension of a currently approved collection

Title: Procedures for Monitoring Bank Secrecy Act

Description: This collection is necessary to enable OTS to determine whether a savings association has implemented a program reasonably designed to assure and monitor compliance with the currency recordkeeping and reporting requirements established by Federal statute and the U.S. Department of Treasury regulations.

Respondents: Savings and Loan Associations and Savings Banks

Estimated Number of Recordkeepers: 1,512

Estimated Burden Hours Per Recordkeeper: 2 Hrs. Avg

Frequency of Response: Recordkeeping

Estimated Total Recordkeeping Burden: 3,024 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street NW., Washington, DC. 20552.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive

Office Building, Washington, DC 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–19594 Filed 8–08–95; 8:45 am]

BILLING CODE 6720–01–P

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

August 2, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: New

Form Number: 1604

Type of Review: New Collection

Title: Customer Survey—Consumer Complaints

Description: This information collection will be used to obtain feedback from consumers who have filed a complaint against a thrift. This information collection is part of OTS' efforts under the National Performance Review

Respondents: Individuals, businesses and non-for profits who are a thrift's customer

Estimated Number of Respondents: 1000

Estimated Burden Hours Per Respondent: 5 Minutes Avg.

Frequency of Response: Once

Estimated Total Reporting Burden: 83 Hrs.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–19593 Filed 8–8–95; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Art of Louis-Leopold Boilly: Modern Life in Napoleonic France" (See list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Kimbell Art Museum, Fort Worth, TX, from on or about November 4, 1995, to on or about January 12, 1996, and at the National Gallery of Art, Washington, D.C., from on or about February 4, 1996, to on or about April 28, 1996, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 4, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–19683 Filed 8–8–95; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Butcher, the Baker, the Candlestick-Maker" (See list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Hofstra Museum, Hempstead, New York, from on or about September 1, 1995, to on or about October 31, 1995, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 1, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–19685 Filed 8–8–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained in contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547.

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Certificate Showing Residence and Heirs of Deceased Veterans or Beneficiary, VA Form 29–541

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0469.

Title and Form Number: Certificate Showing Residence and Heirs of Deceased Veterans or Beneficiary, VA Form 29–541.

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses: The form is used to establish entitlement to Government Life Insurance proceeds in estate cases when formal administration of the estate is not required. The information is used by VBA to determine entitlement to Government Life Insurance proceeds.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,039 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,078.

ADDRESSES: Requests for copies of the form, the request for clearance, and supporting documentation may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

DATES: Comments on the collection of information should be directed to the OMB Desk Officer on or before September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–4412.

Dated: July 31, 1995.

By direction of the Secretary.

William T. Morgan,

Management Analyst Officer.

[FR Doc. 95–19697 Filed 8–8–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery System (NCS), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Number: None assigned.

Titles and Form Numbers: State Cemetery Data, VA Form 40–0241.

Type of Information Collection: Existing collection in use without an OMB control Number.

Needs and Uses: The information collection is used in conjunction with data gained from the national cemeteries to consider where to place national or state cemeteries.

Affected Public: State, Local or Tribal Governments.

Estimated Annual Burden: 52 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 52 respondents.

ADDRESSES: A copy of the submission may be obtained from Sonja McCombs, National Cemetery System (402B2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–5185.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do Not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 8, 1995.

Dated: July 31, 1995.

By direction of the Secretary.

William T. Morgan,

Management Analyst Officer.

[FR Doc. 95–19696 Filed 8–8–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 153
Wednesday, August 9, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. RAILROAD RETIREMENT BOARD NOTICE OF PUBLIC MEETING

Notice is hereby given that the Railroad Retirement Board will hold a meeting on August 16, 1995, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Field Service Structure—Recommendations 4, 5, 6, 7, 8, 13, 17, 18, 20, 21 and 31 from Task Force Report
(2) Open Audit Follow-up:
  A. OIG Report No. 94–16 (Supplemental Annuity Tax Rate)
  B. Status Report on Open Audit Recommendations Assigned to the Board
(3) Medicare Carrier Incentive Contract
(4) Travel to Washington, D.C. for Title II SSA Redesign
(5) Reduction in Prepayment Verification Period
(6) Unfunded Employment Credits
(7) Coverage Determinations:
  A. Greater Shenandoah Valley Development Company d/b/a Shenandoah Valley Railroad Company
  B. Port Railroads, Inc.
  C. Hollidaysburg & Roaring Spring Railroad Company
  D. Semo Port Railroad, Inc.
(8) Regulations:
  A. Parts 211 and 261—Proposed Rule—Administrative Finality and Finality of Returns of Compensation
  B. Part 255, Recovery of Overpayments
  C. Part 328, Voluntary Leaving of Work

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: August 4, 1995.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 95–19772 Filed 8–7–95; 12:16 pm]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 60, No. 153
Wednesday, August 9, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

Form Under Review by the Office of Management and Budget

Correction

In notice document 95–18657 appearing on page 39028 in the issue of Monday, July 31, 1995, in the first column, in the ninth line, "Rule 103f-3" should read "Rule 10f-3".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36029; File No. SR-NYSE-95-07]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Listing Standards for Options on Securities Issued in Certain Corporate Restructuring Transactions

Correction

In notice document 95–19161 beginning on page 39774 in the issue of Thursday, August 3, 1995, make the following correction:

On page 39778, in the the third column, above the FR document line, the signature line should appear as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35999; File No. SR–Phlx–95–41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Reducing the Value of the Semiconductor Index

July 20, 1995.

Correction

In notice document 95–18340 beginning on page 38387 in the issue of Wednesday, July 26, 1995, in the first column, the date line was omitted and should read as set forth above.

BILLING CODE 1505–01–D

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federal register

Wednesday
August 9, 1995

Part II

Department of Housing and Urban Development

Office of Policy Development and Research

Submission of Proposed Information Collection to OMB; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Policy Development and Research

[Docket No. FR–3917–N–14]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 23, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within 14 days from the date of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone no. (202) 708–0050. This is not a toll free number.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB for processing an information collection package related to the National Survey of Homeless Assistance Providers and Clients (hereinafter "survey"). HUD is requesting a review of this information collection on or before September 8, 1995.

The survey will provide estimates of the number and characteristics of service providers and an assessment of the types of programs and services available to people who are homeless. It will also provide detailed characteristics of persons using services. Under the auspices of the Interagency Council on the Homeless, the survey is being co-sponsored by 11 Federal agencies:

Department of Housing and Urban Development
Department of Health and Human Services
Department of Veterans Affairs
Department of Agriculture
Department of Commerce
Department of Education
Department of Energy
Department of Labor
Department of Transportation
Social Security Administration
Federal Emergency Management Agency

The survey includes two phases: the collection of information on service providers and the collection of information on service users (clients). In Phase 1, the Census Bureau will:

(1) Select a sample of geographic areas;

(2) Development a comprehensive list of service providers in the survey sample areas;

(3) Collect basic information from all service providers within the sample areas on programs offered, via a computer-assisted telephone interview; and

(4) Select a subsample of providers and collect detailed information on programs and services by mail, with telephone follow-up.

Phase 1 of the national survey is planned to be conducted starting in October 1995 and conclude by January 1996.

In phase 2, the Census Bureau will:

(1) Select a sample of service users (clients) within the sample areas:

(2) Select a sample of providers in designated programs; and

(3) Select clients and conduct personal visit interviews at selected service provider facilities.

This request is for clearance to conduct Phase 1 of the survey. A second package will be submitted to OMB later for Phase 2.

This request is for the following questionnaires:

- NSHAPC–100A Service Provider Core Data.
- NSHAPC–100B Emergency Shelter Programs; 100C Transitional Housing Programs; 100D Voucher Programs; and 100E Permanent Housing for the Homeless Programs. Note: Each of these surveys is identical except for its title and modest wording differences under the Voucher instrument.
- NSHAPC–100F Alcohol/Drug Programs; 100G Mental Health Care Programs; 100H Physical Health Care Programs; 100I Drop-In Center Programs; 100J HIV/AIDS Programs; and 100L Other Programs. Note: Each of these surveys is a shortened version of the Emergency Shelter Program survey and each is identical to the other.
- NSHAPC–100K Outreach Program.

NSHAPC–100M List of Providers Offering Homeless Programs.

A pre-test of the survey was conducted in April 1995 in three areas: Atlanta, GA; Pittsburgh, PA (including Allegheny, Fayette, Washington, and Westmoreland Counties); and the Armstrong County Community Action Agency Catchment area (a rural Community Action Agency service area outside Pittsburgh). The survey instruments have been revised to reflect the experience gained in the pre-test. The Census Bureau sought and obtained substantial expert input over a two-year period to develop the survey instruments.

The Department has submitted the proposal for the collection of information, as described below to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the infromation submission including numbers of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 27, 1995.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

Notice of Submission of Proposed Information Collection to OMB

Proposal: National Survey of Homeless Assistance Providers and Clients (NSHAPC).

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: This national survey would provide up-to-date information about the providers of homeless assistance and the characteristics of homeless persons who use services. The survey will be conducted in 76 areas including metropolitan and nonmetropolitan settings. The data will:

(1) be compared with the findings of a 1987 Urban Institute survey of homeless characteristics to understand reported changes in the nature of homelessness, especially those related to families with children;

(2) provide a basis for assessing local efforts to construct "continuums of care" for homeless people;

(3) be used to develop measures to assess the impact and performance of current homeless programs;

(4) will assist local governments and nonprofit organizations in designing more effective local programs; and

(5) provide a baseline for examining the effects on the homeless population of proposed changes to the McKinney homeless assistance programs, and America's "safety net" programs for the poor (e.g., Section 8, AFDC, JTPA, and Medicaid programs).

Form Number: None.

Respondents: Homeless service providers and homeless persons.

Frequency of Submission: One-time.

Reporting Burden: See attachment.

Total Estimated Burden Hours: Phase 1, Provider Surveys 17,500.

Status: New Survey.

Contact: James E. Hoben, HUD, (202) 708–0574 X132, George A. Ferguson, HUD, (202) 708–1480, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Date: July 27, 1995.

Supporting Statement

A. Justification

1. Necessity of Information Collection

The National Survey of Homeless Assistance Providers and Clients (NSHAPC) includes two phases: the collection of information on service providers (providers) and the collection of information on service users (clients).

Phase 1: In Phase 1, the Census Bureau will:

(1) Select a sample of geographic areas

(2) Develop a comprehensive list of service providers in the survey sample areas.

(3) Collect basic information from all service providers within the sample areas on programs offered, via a computer-assisted telephone interview.

(4) Select a subsample of providers and collect detailed information on programs and services by mail, with telephone follow-up.

Note: Steps 1 and 2 must be completed if Phase 2 is conducted.

Phase 2: In Phase 2, the Census Bureau will:

(1) Select a sample of service users (clients) within the sample areas in two other stages.

(2) Select a sample of providers in designated programs.

(3) Select clients and conduct personal visit interviews at selected service provider facilities.

This request is for clearance to conduct Phase 1 of the survey. A second OMB package will be submitted later for Phase 2. This request is for the following questionnaires listed by title and code number.

Data to be collected from all providers:

- NSHAPC—100A, Service Provider Core Data Questionnaire.

Data to be collected from major shelter providers: (Note: Each of these instruments is essentially identical, except for the title. Therefore, review of one satisfies review of the others.)

- NSHAPC–100B, Emergency Shelter Programs.
- NSHAPC–100C, Transitional Housing Programs.
- NSHAPC–100D, Voucher Programs.
- NSHAPC–100E, Permanent Housing for the Homeless Programs.

Data to be collected from special service providers: (Note: Each of these instruments is essentially identical, except for the title. Therefore, review of one satisfies review of the others.)

- NSHAPC–100F, Alcohol/Drug Programs.
- NSHAPC–100G, Mental Health Care Programs.
- NSHAPC–100H, Physical Health Care Programs.
- NSHAPC–100I, Drop-In Center Programs.
- NSHAPC–100J, HIV/AIDS Programs.
- NSHAPC–100L, Other Programs.

Data to be collected from homeless outreach programs:

- NSHAPC–100K, Outreach Programs.

Instrument for updating list of providers in a geographic area:

- NSHAPC–100M, List of Providers Offering Homeless Programs.

The national survey will provide estimates of the number and characteristics of service providers, and an assessment of the types of programs and services available to people who are homeless. The survey will also provide (in Phase 2) detailed characteristics of persons using services.

The national survey is being sponsored by the following Federal agencies:

- Department of Housing and Urban Development (HUD).
- Department of Health and Human Services (HHS).
- Department of Veterans Affairs (VA).
- Department of Agriculture (USDA).
- Department of Commerce (DOC).
- Department of Education (ED).
- Department of Energy (DOE).
- Department of Labor (DOL).
- Department of Transportation (DOT).
- Social Security Administration (SSA).
- Federal Emergency Management Agency (FEMA).

Data will be collected under HUD's data collection authority.

As part of the 1990 Census, the Census Bureau enumerated persons residing in homeless shelters and pre-identified street locations. However, this operation was not designed to provide the full range of information needed for guiding policy decisions related to homelessness. With this understanding, in September of 1993, the Bureau of the Census convened a conference of researchers, representatives of public interest groups, and government representatives to discuss ways of improving data collection on the homeless population. The consensus among this group was that the decennial census is not the appropriate vehicle for gathering information on the homeless population. They suggested that a new national survey using updated methodologies to obtain an accurate and useful picture of those homeless people who use services in the United States is needed.

2. Needs and Uses

The information the new survey would provide is critical for developing the kinds of effective public policy responses needed to break the cycle of homelessness, both through targeted programs and the leveraging of mainstream resources. This survey would provide up-to-date information about the characteristics of today's providers of homeless services and the homeless population who use services. The last comparable national study was in 1987 when the Urban Institute completed a survey of homeless persons. Also, included in the NSHAPC would be the first national examination of the characteristics of homelessness in rural America, fulfilling a Congressional mandate for a report on this subject.

The national NSHAPC survey would:

1. Provide information on the types of programs and services available to homeless persons, including population groups primarily served (e.g., veterans, people with mental illness); days of operation, occupancy levels, and sources of funding.

2. Provide national information on the types of services available to homeless persons in both urban and rural communities.

3. Provide information not addressed by the last national study in 1987 such

ss: What are the triggering events that precipitate homelessness? Where were homeless people living before they became homeless? How prevalent is AIDS among homeless persons? What impact does rural homelessness have on urban homelessness? What differences are there among homeless persons found in cities, suburbs, and rural areas?

4. Tell us what characteristics of the homeless population have changed since the 1987 study.

5. Collect additional information related to drug use, mental illness, AIDS, tuberculosis, and previous episodes of homelessness.

6. Include smaller cities, nonmetropolitan and rural areas in order to more accurately and fully reflect homelessness in the United States. The survey would interview a sufficient number of people using services in 76 geographic areas to ensure reliability of the national estimates. Of these 76 geographic areas, 28 would be large metropolitan areas, 24 would be medium and small metropolitan areas, and 24 would be nonmetropolitan areas (small cities and rural areas).

Discussion of Phase 1 Activities

Phase 1 will be on-going from October 1, 1995 through January 1996. Three steps occur in Phase 1.

Step 1: Completing the CATI Interview

1. Beginning on October 1, 1995, Census Bureau staff will use a computer-assisted telephone interview (CATI) to contact all service providers in the 76 sample communities. Service providers interviewed would include those with programs specifically targeted to the homeless (e.g., homeless shelters, soup kitchens, homeless outreach programs) as well as other community service providers with programs for which homeless individuals are eligible. The purpose of the survey of service providers would be to assess the types of programs and services available to homeless persons in these metropolitan, suburban, and rural areas. All service providers in the areas will be asked about the types of programs offered and basic information about each program offered, such as source of funding, days of operation, and population group primarily served (e.g., veterans, people with mental illness). Prior to the CATI calls, an advance letter, NSHAPC L(1)l, will be mailed to each provider.

Providers will be asked via the CATI the questions contained in the NSHAPC Form 100A, Service Provider Core Data Questionnaire. The following information about the service provider and programs offered at that address will be collected:

- Name.
- Contact for the facility.
- Address.
- Telephone number.
- Type of facility.
- Programs provided.

The following information will be collected for each program offered:

- Average number of adults and children participating in programs on a daily basis, and percent homeless.
- Average number of adults and children the facility serves on a daily basis.
- Familial status of persons the facility serves on a daily basis.
- Public or private affiliation.
- Source of funding.
- If the program is targeted to a specific subpopulation group.
- Number of facilities under contract to, or accepting vouchers.
- Expected days of operation for each program in February, 1996.
- Contact person for each program.

Step 2: Reviewing the List of Service Providers

Once the CATI interview is completed, service providers will be mailed a comprehensive list of service providers in the sample areas. Service providers asked to review the list for completeness and accuracy, will be asked to correct any incorrect entries, and to identify service providers that are omitted from the list. The updated lists are to be mailed back to the Census Bureau. After receipt of the reviewed list, Census Bureau personnel will remove duplicate entries from the list and prepare a master list of service providers for a geographic area. New service providers added to the list will then be contacted and Census Bureau staff will administer the CATI interview.

The Census Bureau plans to generate listings of service providers for each of the sample areas in the survey and mail, NSHAPC Form 100–M, List of Providers Offering Homeless Programs and the NSHAPC–L(2) letter to all service providers shown on the comprehensive list and all knowledgeable local persons. The knowledgeable local persons and service providers will be asked to review the listing of all service providers in their area for completeness, and to add any missed service providers to the list. **Note:** A sample of providers will be asked to provide additional information about the services they offer. This is discussed below under Phase 1, Step 3.

The Census Bureau is obtaining copies of national files of service providers from national organizations, Federal agencies, and from Community Action Program (CAP) coordinators. The Census Bureau has obtained a copy of lists of service providers from the following Federal agencies: FEMA, Health and Human Services, Veterans Affairs, and Labor, and it will obtain lists from Housing and Urban Development. National organizations, such as the National Coalition for the Homeless, National Alliance to End Homelessness, National Law Center on Homelessness and Poverty, National Network of Runaway and Youth Services, Catholic Charities, Better Homes Foundation, and Volunteers of America, Inc., have provided lists to the Census Bureau. The Census Bureau plans to unduplicate and merge these files into one comprehensive listing of service providers. This comprehensive list will be used as the initial sampling frame for identifying and interviewing service providers in the sample areas.

The local update may also provide the Census Bureau with additional names of service providers and local persons or organizations knowledgeable about homeless services. (Federal, State, and Local Agencies may not have the name of a service provider if the provider does not receive any federal, state, or local funding.)

Census Bureau personnel also will contact the state homeless coordinator designated in accordance with the McKinney Homeless Assistance Act. The Census Bureau will tell them about the survey, indicate which counties in their state are included in the survey, and provide them with a list of service providers in each of the sample areas. The state coordinators will be asked to review the list of service providers and note any additions or changes.

Note: Census Bureau personnel have already completed some initial contacts with Federal and state government offices, agencies, organizations, and knowledgeable local persons to begin compiling a national list of service providers.

Shelters for abused women and runaway youths will not be on the listings to be reviewed by service providers but are included in the sampling frame. This is to preserve the confidential locations of shelters for abused women and runaway youth.

The Census Bureau will use the master list of service providers as the frame to select the sample of service providers who will receive the detailed program questionnaires and to select the sample of provider facilities where client interviewing will be conducted.

Step 3: Completing the Detailed Information on Programs and Services

Once the CATI interviews are completed, a subsample of service providers will be asked to provide more detailed information about the specific

programs and services offered at their facility. Separate questionnaires for each program (e.g., NSHAPC Forms 100B to 100L) have been developed. Program managers will be asked to complete a questionnaire by mail for each program they administer. For each program offered, program managers will receive a copy of the appropriate program questionnaire and the NSHAPC L(3) L-letter. Census Bureau staff will follow up by telephone all nonresponding providers.

Discussion of Phase 2 Activities

The second phase of the survey consists of interviewing a sample of persons using services at homeless shelters, soup kitchens, and other service locations where homeless people are found. Interviews will take place continuously over a four-week period in order to obtain a representative sample. In addition to providing data on characteristics of the portion of the homeless population who use services, this phase of the survey would identify homeless subgroups and help determine their use of various types of assistance programs. It would also collect limited comparative data on housed persons with very low incomes who also rely on soup kitchens and other emergency assistance.

The survey will estimate characteristics at the national level only. The sample size is not large enough to produce estimates of client characteristics at the regional or local levels.

In 1987, the Urban Institute completed a survey of homeless persons. Data from the 1987 Urban Institute study represent the only national level data specific to homeless persons. Since the 1987 study, no significant national studies have been conducted to provide national information about the characteristics of homeless persons using services for homeless people.

NSHAPC data will be used to plan future programs and services funded via the McKinney Homeless Assistance Act and other programs to prevent homelessness as well as ameliorate it. Understanding the causes of homelessness can help guide the development of preventive strategies. Data from the NSHAPC will be used by the participating agencies to prepare reports in accordance with the requirements of the McKinney Homeless Assistance Act and other homeless assistance programs.

The following programs will benefit from the data collected in the NSHAPC.

Emergency/Temporary Shelter Assistance

Emergency Food and Shelter Program (FEMA)—Assistance directed toward temporary shelter
Emergency Shelter Grants Program (HUD)
Shelter for the Homeless [Department of Defense (DOD)]
Homeless Support Initiatives—Surplus Blankets (DOD)

Food and Nutrition Assistance

Commodities for Soup Kitchens (USDA)
Emergency Food and Shelter Program—Food Assistance (FEMA)
Commissary/Food Bank Initiatives (DOD) and (Department of Transportation (DOT)]
Federal Grain Inspection Service—Donation of Surplus Samples (USDA)

General Health Assistance

Health Care for the Homeless Grant Program (HHS)

General Health Assistance

Health Care for the Homeless Grant Program (HHS)
Domiciliary Care for Homeless Veterans Program (VA)

Assistance to Homeless Persons with Disabilities

Shelter Plus Care Program (HUD)
Supportive Housing Program (HUD)
Projects for Assistance in Transition from Homelessness (PATH) (HHS)
Access to Community Care and Effective Services and Supports (ACCESS) (HHS)
Community Support Program—homeless-specific portion (HHS)
National Institutes of Health (NIH) Research on Homelessness (HHS)
Homeless Chronically Mentally Ill Veterans Program (VA)
Safe Havens (HUD)
National Institute on Alcohol Abuse and Alcoholism (NIAAA) Research Demonstration on Homelessness (HHS)
Drug Abuse Prevention for Runaway & Homeless Youth (HHS)

Education, Training, and Employment Assistance

Education for Homeless Children & Youth State Grants Prog. (ED)
Examplory Projects Program—Homeless Children (ED)
Adult Education for the Homeless (ED)
Job Training for the Homeless Demonstration Program (DOL)
Homeless Veterans Reintegration Project (DOL)

Housing Assistance

Supportive Housing Program (HUD)
Section 8 Assistance for SROs (HUD)
Single Family Property Disposition Initiative (HUD)
Transitional Housing Demonstration Program (HHS)
Transitional Living Program for Homeless Youth (HHS)
Farmer's Home Administration (FMHA) Homes for the Homeless (USDA)
Shelter for Homeless Vets—Acquired Property Sales (VA)
Base Closure Properties (DOD, HUD)

Homeless Prevention

Emergency Food and Shelter Program (FEMA)—Prevention Assistance
Emergency Community Services Homeless Grant Program (HHS)
Emergency Shelter Grants program (HUD)

General/Misc. Aid to Homeless Providers

Emergency Community Services Homeless Grant Program (HHS)
Excess & Surplus Federal Real Property (GSA)/(HUD)/(HHS)
Runaway and Homeless Youth Program (HHS)

Programs for Homeless Children/Youth/Families

Family Support Centers (HHS)
Transitional Housing Demonstration Program (HHS)
Supportive Housing Program (HUD)
Education for Homeless Children & Youth State Grants Program (ED)
Exemplary Projects Program—Homeless Children (ED)
Runaway and Homeless Youth Program (HHS)
Transitional Living Program for Homeless Youth (HHS)
Drug Abuse Prevention for Runaway & Homeless Youth (HHS)

Programs for Homeless Veterans

Domiciliary Care for Homeless Veterans Program (VA)
Homeless Chronically Mentally Ill Veterans program (VA)
Shelter for Homeless Vets—Acquired Property Sales (VA)
Homeless Veterans Reintegration Project (DOL)

Information collected in Phase 1 will be used to: (1) develop a comprehensive listing of service providers nationwide and to develop a national profile of the types of programs offered to homeless people; (2) to select a sample of providers that will be asked more detailed information about services offered; and (3) to select the sample providers where client interviewing will be conducted.

3. Efforts to Minimize Burden

Not applicable. Respondents are individuals at provider facilities who

cannot respond with computer tapes or disks. We are also minimizing the burden of the FEMA Local Board Contact Persons, government contacts, service providers and knowledgeable local persons by giving them the combined listing of service providers to review as opposed to asking them to list all service providers in their area.

4. Efforts to Identify Duplication, and Use of Available Information

HUD consulted with other government agencies and outside experts and determined that the proposed national NSHAPC will be the only current, national data source with detailed information on the types and availability of programs and services offered and on the characteristics of literally homeless persons who use services. The most recent national data is the 1987 Urban Institute Study.

In March 1987, the Urban Institute conducted a survey of homeless persons who used services in cities of 100,000 or more. The NSHAPC is intended to parallel and extend the methodology used by the Urban Institute in the 1987 survey to capture a higher proportion of the literally homeless population who use services.

a. The NSHAPC will include additional geographical coverage. Cities with populations of 100,000 or less and areas outside of cities will be included in the survey sample. (The 1987 Urban Institute survey only included cities with populations over 100,000.)

b. The NSHAPC will include additional topic coverage. The client questionnaire covers more topics and in greater depth than was covered in the 1987 Urban Institute Survey. There are also some questions similar to those in the 1987 survey so that a comparison may be made between the results of the two surveys. (The 1987 Urban Institute survey only asked about drug treatment. The NSHAPC asks about drug treatment, as well as, types and frequencies of drugs used, and information about mental health.—

c. The interview period for client interviews for the national survey will be one month. The interview period for the Urban Institute's 1987 survey was one week.

While the results from the Urban Institute's 1987 survey provide characteristics of homeless persons who used services, it does not include the NSHAPC's additional emphasis on geographical and topic coverage as described in A.4. The 1987 study did not provide any information on the types of programs and services offered. The Urban Institute survey is also almost 10 years old. More recent information is needed. Thus, there is no similar information available that could be used or modified for use for the purposes described.

5. Minimizing Burden on Small Businesses

The Census Bureau plans on using the combined files from Federal agencies and national organizations and advocacy groups to generate listings of service providers for each sample area in the survey and mail the listings to all service providers contacted by telephone and all knowledgeable local persons. The knowledgeable local persons and service providers will be asked to review the listing for completeness of all service providers in their area and to add any missed service providers to the list. The state homeless coordinator will only be asked to review the listing of service providers (Form NSHAPC 100M). The Census Bureau believes the file will provide an initial comprehensive listing of service providers currently offering services to the homeless, thus reducing the burden of the service providers, government contacts, and knowledgeable local persons. No small businesses will be contacted.

6. Consequences of Less Frequent Collection

Not applicable. This is a one-time survey. Phase 1 will be conducted from October 2, 1995 to January 15, 1996, and Phase 2 from January 21 to March 30, 1996.

7. Consistency with 5 CFR 1320.6

The Census Bureau will collect these data in a manner consistent with the guidelines in 5 CFR 1320.6.

8. Consultations Outside the Agency

Consultations have been made with the following people:

Dr. Martha Burt, The Urban Institute, 2100 M Street, NW., Washington, DC 20037, Tel: (202) 857–8551

Ms. Lorraine Reilly (formerly of) The Urban Institute, 2100 M Street, NW., Washington, DC 20037, Tel: (202) 857–8551

Dr. Michael Dennis, Research Triangle Institute, Center for Social Research and Policy Analysis, P.O. Box 12194, Research Triangle Park, NC 27709–2194, Tel: (919) 541–6429

Dr. Greg Owen, Wilder Foundation, Wilder Research Center, 1295 Bandana Blvd., North—Suite 210, St. Paul, MN 55108–5197, Tel: (612) 647–4612

Ms. Joanne Wiggins, U.S. Dept. of Education, 600 Independence Avenue, SW—Room 4143, Washington, DC 20202, Tel: (202) 401–1958

Mr. Tom Fagan, U.S. Dept. of Education, 400 Maryland Avenue, SW—Room 2043, Washington, DC 20202, Tel: (202) 401–0039

Mr. John Pentecost, USDA–FmHA, Room 5345–South, MFHD–PD, Washington, DC 20250, Tel: (202) 720–8983

Mr. Tom Sanders, USDA–FmHA, Room 5343–South, MFHD–PD, Washington, DC 20250, Tel: (202) 720–1626

Ms. Amy Donoghue, USDA–FmHA–PAS, 3101 Park Center Drive—Room 1130, Alexandria, VA 22302, Tel: (703) 305–2920

Ms. Jean Whaley, Dept. of Housing and Urban Development, 451 Seventh Street, SW—Room 7267, Washington, DC 20410, Tel: (202) 708–1234

Ms. Jane Karadbil, Dept. of Housing and Urban Development, 451 Seventh Street, SW—Room 8112, Washington, DC 20410, Tel: (202) 708–1537

Mr. Lafayette Grisby (formerly of) Dept. of Labor, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, Tel: (202) 535–0677

Mr. John Heinberg, Dept. of Labor, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210 Tel: (202) 535–0682

Mr. David Lah, Dept. of Labor, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, Tel: (202) 535–0682

Mr. Pete Dougherty, Homeless Programs Specialist, Dept. of Veterans Affairs, 801 Vermont Avenue, NW., Washington, DC 20420, Tel: (202) 273–5716

Mr. Eric Lindblom (IIIC) (formerly of) Office of Mental Health, Dept. of Veterans Affairs, 801 Vermont Avenue, NW., Washington, DC 20420, Tel: (202) 535–7311

Dr. Robert Rosenheck, MD, VA Medical Center, NEPEC–182, 950 Campbell Avenue, West Haven, CT 06516, Tel: (203) 937–3850

Ms. Cynthia Taeuber, Office of the Deputy Director, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4358

Ms. Annetta Clark, Special Places/Group Quarters Team, Office of the Assistant Division Chief, Population Division, Bureau of the Census Washington, DC 20233, Tel: (301) 457–2378

Ms. Denise Smith, Special places/Group Quarters Team, Office of the Assistant Division Chief, Population Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–2378

Dr. Charles H. Alexander, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4290

Mr. David Hubble, Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4239

Ms. Marjorie Dauphin, Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4190

Ms. Miriam Rosenthal (formerly of) Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4270

Mr. David Hornick, Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4190

Mr. John Bushery, Quality Assurance and Evaluation Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–1915

Ms. Andrea Meier, Quality Assurance and Evaluation Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–1983

Mr. Michael McMahon, Field Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4901

Mr. Chester Bowie, Demographic Surveys Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–3773

Mr. Steven Tourkin, Methods, Procedures and Quality Control Branch, Demographic Surveys Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–3791

Ms. Jacquie Lawing, Deputy Assistance Secretary for Economic Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Suite 7204, Washington, DC 20410, Tel: (202) 708–0270

Mr. Mark Johnston, Senior Advisor on Homelessness, Department of Housing and Urban Development, 451 Seventh Street, SW, Suite 7274, Washington, DC 20410, Tel: (202) 708–5528

Mr. Mike Roanhouse, Office of Special Needs Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7258, Washington, DC 20410, Tel: (202) 708–1234

Mr. James Hoben, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Tel: (202) 708–0574

Mr. Keith Lively, Acting Deputy Assistance Secretary for Program Systems, Department of Health and Human Services, 200 Independence Avenue, SW, Room 447D, Washington, DC 20201, Tel: (202) 690–8774

Mr. Gerald Britten (formerly of) Deputy Assistant Secretary for Program Systems, Department of Health and Human Services, 200 Independence Avenue, SW, Room 447D, Washington, DC 20201, Tel: (202) 690–8774

Ms. Mary Ellen O'Connell, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW, Room 447D, Washington, DC 20201, Tel: (202) 260–0391

Mr. Fred Osher (formerly of) Office of Programs for the Homeless Mentally Ill, National Institute of Mental Health, Dept. of Health and Human Services, Parklawn Bldg., Room 3C06, 5600 Fishers Lane, Rockville, MD 20857, Tel: (301) 443–3706

Mr. Walter Leginski, Homeless Programs Branch, Center for Mental Health Services, Parklawn Building, room 11c–05, Rockville, MD 20857

Dr. Robert Huebner, Ph.D., Health Services Research Branch, National Institute of Alcohol Abuse and Alcoholism, Dept. of Health and Human Services, Willow Building, Suite 505, 600 Executive Boulevard, Rockville, MD 20892–7003, Tel: (301) 443–0786

Mr. Steve Bartolomei-Hill, Human Service Policy, Office of the Assistant Secretary for Planning and Evaluation, Dept. of Health and Human Services, Hubert H. Humphrey Bldg., Room 410E, 200 Independence Avenue, SW, Washington, DC 20201, Tel: (202) 690–7148

Ms. Rhoda Davis, Office of Supplemental Security Income, Dept. of Health and Human Services, Altmeyer Building, 6401 Security Blvd. Baltimore, MD 21235, Tel: (410) 965–6210

Ms. Terry Lewis, Administration on Children, Youth, and Families, Administration for Children and Families, Dept. of Health and Human Services, Mary E. Switzer Bldg., Room 2426, 330 C Street, SW, Washington, DC 20201, Tel: (202) 205–8051

Dr. Joan Turek Brezina, Ph.D., Program Systems, Office of the Assistant Secretary for Planning and Evaluation, Dept. of Health and Human Services, Hubert H. Humphrey Bldg., Room 444F, 200 Independence Avenue, SW., Washington, DC 20201, Tel: (202) 690–6141

Mr. Mike Jewell (formerly of) Office of the Assistant Secretary for Planning and Evaluation, Dept. of Health and Human Services, Hubert H. Humphrey Bldg—Room 447D, 200 Independence Avenue, SW, Washington, DC 20201, Tel: (202) 690–7316

Ms. Peg Washnitzer, Office of Community Services, Administration for Children and Families, Dept. of Health and Human Services, Aerospace Bldg., 7th Floor, 370 L'Enfant Promenade, SW, Washington, DC 20447, Tel: (202) 401–2333

Mr. Richard Chambers, Division of Intergovernmental Affairs, Health Care Financing Administration, Dept. of Health and Human Services, Hubert H. Humphrey Bldg., Room 410B, 200 Independence Avenue, SW, Washington, DC 20201, Tel: (202) 690–6257

Ms. Joan Holloway, Health Resources and Services Administration, Public Health Services, Dept. of Health and Human Services, Parklawn Bldg., Room 9–12, 5600 Fishers Lane, Rockville, MD 20857, Tel: (301) 443–8134

Ms. Marsha A. Martin (formerly of) Executive Director, Interagency Council on the Homeless, 457 Seventh Street, NW, Washington, DC, Tel: (202) 708–1480

Mr. George Ferguson, Interagency Council on the Homeless, 457 Seventh Street, NW, Washington, DC, Tel: (202) 708–1480

Ms. Della Hughes, National Network of Runaway and Youth Services, 1319 F Street, N.W., Suite 401, Washington, D.C. 20004, Tel: (202) 783–7949

Ms. Vera Johnson, SASHA Bruce Center Runaway Shelter, 1022 Maryland Avenue, N.E., Washington, D.C. 20002, Tel: (202) 675–9340

As a result of these consultations, all issues were resolved.

9. Assurance of Confidentiality

The provisions of the Privacy Act of 1974 (5 USC 552a) assure the confidentiality of the data from this survey.

During Phase 1 of the national survey, service providers contacted by telephone will receive an advance letter explaining the survey and the confidentiality of their responses and the voluntary nature of the NSHAPC along with other information required by the Privacy Act of 1974 at the time of initial contact. Service providers will also receive NSHAPC L(3)—letter with

the NSHAPC Form N List of Providers, and with the detailed program questionnaires, NSHAPC Forms 100B to 100L, (Attachments B to L, respectively) explaining the survey and the confidentiality of their responses. As can be seen on the NSHAPC questionnaire cover sheets (Attachments B through M respectively), a statement of confidentiality assurance is printed at the top of the form. Careful procedures are followed by the Bureau of the Census to assure privacy during the interview, and to protect the confidentiality of materials generated during the course of the interview. Every Bureau of the Census employee takes an oath and is subject to a jail sentence and a fine for improperly disclosing any information that would identify an individual or household. All field representatives are trained to interview respondents in private. All questionnaires associated with the national survey will be kept under secured conditions by the Bureau of the Census.

10. Justification for Sensitive Questions

The NSHAPC–100A to NSHAPC–100M questionnaires do not include any questions of a sensitive nature.

11. Cost

The total estimated cost for Phase 1 of the national survey is $1,950,000. Cost for Phase 1, Steps 1 and 2 is $1,500,000. Cost to collect detailed program and service level data (Step 3) is $450,000. We compiled this estimate using individual estimates developed within each Census Bureau division involved in this survey. Estimates are based on the size of the sample and the length of the questionnaires. Administrative overheads, design, printing, and mailing costs are included.

The total estimated cost for Phase 2 is $2,200,000.

The only cost to the service providers and the service users (clients) is the time it takes to complete the questionnaire.

12. Estimate of Respondent Burden

The projected number of government contacts, service providers and clients to be contacted and the estimated burden for the survey are indicated below:

BILLING CODE 4210-01-M

	FORM	Estimated Number of Contacts/Service Providers/Clients	Time - (Minutes)	Total Hours
Phase 1	NSHAPC 100A, Service Provider Core Data Questionnaire	25,000	15	6,250.
Phase 1	NSHAPC 100M, List of Providers Offering Homeless Programs	25,000	15	6,250
Phase 1	NSHAPC 100B to NSHAPC 100K, NOTE, Detailed Program Questionnaires	10,000	30	5,000
Phase 2	NSHAPC 100N, Client Questionnaire - To be Completed in Phase 2 of the survey. Client burden hours are not requested in this package.	3,800	45	2,850
	Total Hours for Phase 1			17,500
	Total Hours for Phase 2			2,850
	Total Hours for the National Survey			20,350

BILLING CODE 4210-21-C

We estimate the average time to complete the NSHAPC–100A, Service Provider Core Data Questionnaire (refer to Attachment A) to be 15 minutes; the review of the combined list of service providers to be 15 minutes, and the detailed program level questionnaire (refer to Attachments B to L) to be 30 minutes. These estimates are based on in-house testing of the questionnaires by the Census Bureau. We estimate the information burden for these forms to be 20,350 hours. This includes:

- 6,250 hours for the CATI interview.
- 6,250 hours for review of the combined list of service providers.
- 5,000 hours for the detailed program level questionnaire.
- 2,850 hours for the Client Questionnaire.

13. Reason for Change in Burden

Not Applicable. This is a new survey. There are, therefore, 0 hours in the current OMB inventory.

14. Project Schedule

Beginning in October 1, 1995, the Census Bureau plans on telephoning all service providers within sample areas to collect basic information about programs offered. After the phone calls are completed, the Census Bureau will mail the listings of service providers by sample area and the NSHAPC—L(2)L letter to providers contacted by telephone. A subsample of providers will also be asked to provide more detailed information about the services they offer. After conducting the CATI interviews, the Census Bureau will mail the appropriate questionnaires, NSHAPC Form 100B to 100L, to the providers in sample.

Census Bureau personnel also will contact individuals from federal and state governments, agencies, organizations and knowledgeable local persons and ask them to review the lists of service providers. The Census Bureau will conduct these operations during October 1995 to January 1996.

B. Collection of Information Employing Statistical Methods

1. Universe and Respondent Selection

The Census Bureau will conduct the national survey in 76 primary sampling areas. The Census Bureau will interview all service providers in the sample areas to collect basic information about the programs offered. This is a total of 25,000 interviews. The Census Bureau will select a subsample of providers within those areas and conduct detailed mail interviews for the programs and services offered by the provider. This is a total of a 5,000 providers.

Phase 1 of the survey will provide information on the types of programs and services available to homeless people. Phase 2 of the survey will provide detailed characteristics about homeless service users (clients), including the literally homeless. Most research to date has been conducted in urban and suburban areas. For such areas, there is a growing consensus among researchers that a service-based survey design with sampling over time (vs. one-time sampling) will give a good representation of the homeless population. For nonmetropolitan areas, the consensus is that an expansion of the types of service providers is needed to cover the homeless adequately. The Department of Agriculture requested an increase in the number of sample areas and the Census Bureau identified ways to design the survey to produce reasonably precise estimates of rural homelessness. However, it should be noted that the procedures for measuring rural homelessness will be less sophisticated than our procedures in urban areas. There is much to learn about rural areas and the NSHAPC is an excellent opportunity to collect information about rural homelessness. In the nonmetroplitan areas the sampling frame is the set of Community Assistance Program (CAP) "Catchment Areas", wherever they exist. CAP catchment areas are counties or local areas grouped together to receive funding and provide services to the needy and are served by a CAP agency. Our preliminary research indicates that CAP agencies are a good source for lists of services in the nonmetropolitan areas they cover. In a few nonmetropolitan areas where CAPs do not exist, the sampling frame is the set of counties or groups of counties.

2. Procedures for Collecting Information

Sampled Service Providers

The Census Bureau will conduct the survey in 76 sample areas; this is the first stage of sampling. Within each sample area, a comprehensive list of service providers will be developed. All providers will furnish basic, core information on programs offered. Phase 1, also includes a second stage of sampling where a subset of service providers will be selected within each sample area to be asked more detailed information about their programs and services.

Sample of Clients (Service Users)

In Phase 2, a sample of clients will be selected for interviewing. This is a three-stage sample, where the first-stage sample corresponds to the same 76 geographic areas discussed above for the provider-interview sample. In the second stage, a sample of providers will be selected in each sample area but only in designated programs. In the third stage, a sample of the clients at each of the sample provider facilities will be selected.

Estimation

In Phase 1, the estimates needed are proportions of providers falling in different categories.

The estimates needed for Phase 2 consist of proportions of clients falling in different categories. The base for these proportions can be derived in two ways:

a. Weighted estimates of the average number of persons using services on any given day in February;

b. Weighted estimates of the total number of persons using services at any time during February.

Other estimates can be derived from these. For example, the weights applied to obtain estimates (a) or (b) could be used for estimates only of those service-using persons who are homeless according to different definitions of homelessness. For the national survey, it is likely that a range of estimates will be provided, corresponding to different assumptions about coverage and multiplicity biases.

The weights for (a) will be standard survey weights based on the selection probability, with adjustments for nonresponse. There will be a "multiplicity" adjustment to reduce the relative weight of people who have more than one change of selection because they use more than one type of program, for example, both shelters and soup kitchens, as determined from the questionnaire.

For (b) three estimation methods are under consideration. One purpose of the pretest was to get information to evaluate these methods.

METHOD 1: *The weight will be proportional to the number of consecutive days prior to the interview (up to 28 days) that the person did not use a shelter (for the shelter sample) or soup kitchen (for the soup kitchen sample), and likewise for other types of programs.* For example, a person who says this is their first night in any shelter in the last 28 days will be given a weight 28 times the typical weight of a person who was in a shelter the night before. (Intuitively, the method assumes that for every person we find who is just entering homelessness, there are 27 others whom we miss because we did not happen to interview them on their first day.) There is a precise mathematical justification for the method as given an unbiased estimate of the total number of service users during 28-day periods centered around February, making some assumptions that overall patterns of service use are fairly constant throughout the month.

This is intended to be our primary method. The potential drawback of this method would be if the pretest finds too many people who are just starting to use services after a long absence, resulting in too many large weights. Limited research from 1990 census evaluation projects suggests that this should not be a problem. However, if this turns out to be a problem we would either use the Method 2 or use Method 1 with a 7-day "window" instead of a 28-day "window".

METHOD 2: *The weight will be inversely proportional to the number of days in the last week the client used a shelter (for the shelter sample) or soup kitchen (for the soup kitchen sample), and likewise for other types of programs.* This is the procedure used in the 1987 Urban Institute study. We will ask this question for comparability with that survey. This approach has two disadvantages. First, even if the questions are answered accurately, the method has a mathematical bias unless each person has the same pattern of service use each week. Second, it is not reasonable to ask a person for his/her average shelter use for an entire month, so the method cannot give direct estimates for the total number using services during a period longer than a week.

METHOD 3: *Capture-recapture.* We are not using capture-recapture estimation. It would require selecting the sample independently each day, so that there would be a chance that a person or small shelter might come into sample numerous times.

The Urban Institute and the Census Bureau developed the survey design. As part of Joint Statistical Agreements between the Urban Institute and the Census Bureau, the following operational papers and references were developed. Each are available from the Census Bureau on request.

Joint Statistical Agreement 91–30

—Developing a Provider List—November 27, 1991
—Methodological Issues and Options—November 27, 1991
—Options for Evaluating Coverage in Urban Areas—December 10, 1991
—Ranking of Data Items by Federal Agencies—December 10, 1991

Joint Statistical Agreement 92–01

—Draft Questionnaire and Agency Data Needs—March 26, 1992
—Developing Provider Lists for a National Homeless Survey—March 26, 1992
—Proposed Methodology for a National Homeless Survey—March 26, 1992
—Questions for Unduplicating and for Estimating a Month-Long Point Prevalence and Annual Prevalence—March 26, 1992
—Developing Estimates of the Number of Service Providers in Different Strata—April 10, 1992
—Options for Evaluating Survey Coverage in Urban Areas, and Preliminary
—Information on Rural Areas—April 10, 1992

Joint Statistical Agreement 92–04

—Mechanics of List Development and Additional Field and Survey Procedures—August 14, 1992
—Estimates of Service Providers and Users in Non-MSA Areas, and Options for
—Evaluating Survey Coverage in These Areas—August 4, 1992

List of References

3. Methods to Maximize Response

a. Survey Frame for Client Interviews

New research indicates the greatest improvement in coverage of the homeless population is through sampling this population over time, (e.g., soup kitchens and shelters) and outreach programs during a four-week period. The NSHAPC survey design uses a service-based methodology. A "service user" is anyone who uses generic services or shelters, soup kitchens, or other services for the homeless. The survey frame will include shelters, soup kitchens, outreach programs, and possibly other programs. A "non-service user" is anyone who does not use any of these services.

According to the 1987 Urban Institute study, the shelter frame covers homeless people who use shelters, which may be 35 to 40 percent of the homeless on any given night, and about 50 percent over the course of a week. If conducted on a one-night basis, the shelters' sampling frame taken by itself will miss many homeless who use shelters infrequently, homeless service users who do not use shelters but do use soup kitchens and other services, and homeless people who do not use any services. If data collection involves repeated samples from the same shelters over the course of a week or a month, a considerably higher proportion of the homeless (perhaps as high as 70 percent) is likely to be captured through a methodology based on shelters.

The soup kitchen sampling frame, taken by itself over the course of a week, will capture a proportion of very poor people residing in conventional dwellings who may turn out to be at imminent risk of hopelessness. According to the 1987 Urban Institute study, 43 percent of soup kitchen users are not literally homeless. When shelter and soup kitchen frames are combined during the course of a week, the shelter and soup kitchen frames will probably cover about 70 percent of the literally homeless and a small but unknown proportion of the service-using at-risk population. When data collection covers a month (as planned for the national survey), the coverage will be even greater—perhaps as high as 85–90 percent of the literally homeless.

In many cities, the array of services for the homeless include one or more outreach programs. These programs may be operated by a shelter, soup kitchen, drop-in center, health care center, neighborhood center, or other service facility. Their target population is homeless people who do not routinely use shelters or soup kitchens. The outreach programs typically distribute food, and sometimes blankets or warm clothing. Outreach teams typically follow a route that covers the known locations frequented by homeless street people, or where homeless street people assemble at the time they know the "food wagon" will come by. Including outreach programs in a design as a sampling frame allows one to maintain the control and efficiency associated with sampling service programs and their users, while still reaching the "reachable" proportion of the street homeless population. Outreach programs are probably the best single source of information about the hidden street population and the most cost effective opportunity to make contact with the street population. Additional enumeration of street locations and encampments yields little overall coverage improvement when shelters, soup kitchens, and outreach programs are interviewed over time.

The NSHAPC is designed to cover as much of the literally homeless population as possible and still meet the cost considerations of the sponsors. From previous research, it appears that up to 90 percent coverage of the literally homeless population is achievable with the shelter/soup kitchen/outreach programs methodology conducted during a winter month. This service-based methodology will be considerably cheaper and easier than implementing a street enumeration to attempt to get the last 10 percent. In addition, even if the resources were committed to achieve

full coverage, there is not guarantee we would get the last 10 percent.

b. Incentives to Participate in the Survey

The letters and information on the survey have been written to explain the benefits of the survey so that respondents will be encouraged to participate in the survey. Also, the Census Bureau has designed the survey questionnaires to minimize respondents' time and efforts. We think this effort will encourage providers to participate in the survey.

4. Contacts for Statistical Aspects and Data Collection

The following individuals are being consulted on statistical aspects of the survey design:

Dr. Martha Burt, The Urban Institute, 2100 M Street, NW, Washington, DC 20037, Tel: (202) 857–8551

Dr. Michael Dennis, Research Triangle Institute, Center for Social Research and Policy Analysis, PO Box 12194, Research Triangle Park, NC 27709–2194, Tel: (919) 541–6429

Dr. Charles H. Alexander, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, (301) 457–4290

The Census Bureau will collect the data for this survey. Mr. Steven Tourkin is responsible for the collection of all data and is the Census Bureau contact person for the survey.

Mr. Steven C. Tourkin, Demographic Surveys Division, Bureau of the Census, Washington, DC 20233, (301) 457–3791

List of Attachments

Attachment A NASHAPC–100A, Service provider Core Data Questionnaire

Attachment B NASHAPC–100B, Emergency Shelter Program Questionnaire

Attachment C NASHAPC–100C, Transitional Housing Program Questionnaire

Attachment D NASHAPC–100D, Voucher Program Questionnaire

Attachment E NASHAPC–100E, Permanent Housing for the Homeless Program Questionnaire

Attachment F NASHAPC–100F, Alcohol/Drug Program Questionnaire

Attachment G NASHAPC–100G, Mental health Care Program Questionnaire

Attachment H NASHAPC–100H, Physical Health Care Program Questionnaire

Attachment I NASHAPC–100I, Drop-in Center Program Questionnaire

Attachment J NASHAPC–100J, HIV/AIDS Program Questionnaire

Attachment K NASHAPC–100K, Outreach Program Questionnaire

Attachment L NASHAPC–100L, 'Other' Program Questionnaire

Attachment M NASHAPC–100M, Provider Update Form Questionnaire

BILLING CODE 4210–01–M

Attachment A

Form HPWUS-100A, Service Provider Core Data Questionnaire

-Open- *(At this point, we have a knowledgeable respondent on the phone)*

We are conducting a survey.....for the Interagency Council on the Homeless (an agency composed of Federal agencies). We have your facility as [fill provider name] located at [fill address]. Is this correct?

[ ] Yes
[ ] No

1a. **Do you offer programs to serve homeless persons at THIS ADDRESS?** - By homeless I mean persons without a home as defined by the Stewart B. McKinney Homeless Assistance Act of 1987. (Need to know what this definition is) By THIS ADDRESS I mean that you provide [bold] direct programs and services [n] to clients from this location.

[ ] Yes [Goto Q2a]
[ ] No [Goto List]

-List-

We will be sending you a list of service providers in your county. We ask that you help us to compile a more complete list of service care providers in your county so that we may better conduct our survey. Please give me the name, address and telephone number of the best person to send our list of service providers to.

@PROVIDER --->_____

@CONTACT --->_____

@STREET --->_____

@CITY --->_____

@ST --->_____ @ZIP --->_____

@PHONE --->_____

2a. **We are collecting information about housing programs, food programs, and health care programs. I would like to ask you about specific programs you provide at this address. Do you offer an emergency shelter program?** - [By emergency shelter program I mean a program which operates on a first-come first-served basis where people must leave in the morning and have no guaranteed bed for the next night OR be provided a specific bed for a specified period of time (even if they

leave the building every day). Please include facilities which provide temporary shelter during extremely cold weather (such as churches) and emergency shelters for runaway or neglected children and youth, and shelters for abused women.]

[ ] Yes
[ ] No

2b. **Do you offer a transitional housing program?** - A transitional housing program, with a maximum stay for clients of up to two years, offers augmented services to promote self-sufficiency and to gain permanent housing. By augmented services I mean.....

[ ] Yes
[ ] No

2c. **Do you offer permanent housing for homeless people?** - Permanent housing for homeless people includes support services. This housing may be section 8 vouchers, Public Housing Authority (PHA) units, Single Room Occupancies (SROs), and other long-term housing assistance. This is very important, please ONLY include permanent housing designed to serve persons who are coming from emergency shelters, transitional housing, or homeless AT THE TIME OF ENTRY INTO the permanent housing. By support services I mean (services to increase the stability and independence of individuals or families (e.g., independent living training).

PHA - Public Housing Authority
SRO - Single Room Occupancy (consists of private living/sleeping rooms and shared kitchens and bathrooms facilities. An SRO unit does not have a complete and private kitchen and bathroom facilities for each resident. One or two adults may occupy an SRO unit. Each living/sleeping room is considered one dwelling unit.

[ ] Yes
[ ] No

The next questions asks about food programs.

2d1. **Do you offer soup kitchen or meal distribution programs?** - This includes soup kitchens, food lines, and programs distributing prepared breakfasts, lunches, or dinners for homeless or needy people. These programs may be organized as food service lines, bag or box lunches, tables where people are seated, then served by program personnel. These programs may or may not have a place to sit and eat the meal. Needy people are....

[ ] Yes
[ ] No

2e. **Do you offer a food pantry program?** - By food pantry program, I mean a program which distributes uncooked food in boxes or bags.

[ ] Yes
[ ] No

2f. **Do you offer a mobile food program?** - This includes programs for homeless persons which visit designated street locations for the primary purpose of providing food.

[ ] Yes
[ ] No

2g. **Do you offer an outreach program?** - This includes programs in which homeless persons are contacted in non-traditional settings (for example, on streets, in subways, under bridges, in parks) to offer food, blankets, or other necessities; to assess needs and attempt to engage them in services; to offer medical, mental health and/or substance abuse services; and/or to offer other assistance on a regular basis for the purpose of improving their health, mental health, or social functioning, or increasing their utilization of human services and resources. By regular I mean at least once a week; and services may be during the day or at night.

[ ] Yes
[ ] No

2h. **Do you offer a physical health care program?** - This includes programs that provide health care to homeless persons, such as medical, dental, and other health care.

[ ] Yes
[ ] No

2i. Do you offer a mental health program for homeless persons? - This includes services provided to improve mental or psychological health or the ability to function well in social settings. Specific services include intervention or hospitalization during a moment of crisis, counseling, psychotherapy, psychiatric services, and psychiatric medication monitoring.

[ ] Yes
[ ] No

2j. Do you offer alcohol or other drug programs for homeless persons? - This includes services that are provided in a supervised setting to ensure that an individual safely reduces his/her level of alcohol or other drug intoxication to zero. The supervision may be provided by medically trained staff and may include the use of medication to control withdrawal.

[ ] Yes
[ ] No

2k. Do you offer HIV/AIDS programs for homeless persons?

[ ] Yes
[ ] No

2l. Do you offer a drop-in center program? - Drop-in centers provide daytime services primarily for homeless persons other than facilities serving meals, which are included in SOUP KITCHENS. When thinking about drop-in centers, do not include those centers that only serve meals. If only meals are served, please include them under soup kitchens. (help screen) - If soup kitchen go back to soup kitchen question Q2d1.

[ ] Yes
[ ] No

2m. Do you have migrant housing that is used to house homeless people in the off season? -

[ ] Yes
[ ] No

2n. Do you offer housing in exchange for vouchers? - Please include hotels, motels, or other facilities that are not shelters, for which vouchers are given out OR which operate under contact to provide shelter to homeless people.

[ ] Yes
[ ] No

2o. Does your office distribute vouchers for shelter? - Include offices which distribute vouchers for shelter to homeless people.

[ ] Yes
[ ] No

2p. Do you offer other programs which serve homeless clients? - Include those facilities which provide services for homeless persons, such as education, clothing distribution centers, and/or employment skills training.

[ ] Yes [ ] No

-2aspec-

Can you specify the other types of programs that you offer?

_____
_____
_____

This next set of questions are asked for any program that the facility offers. That is, nay question 2a. through 2p. marked 'Yes'. For illustrative purposes, the following questions refer to the emergency housing program.

BEGIN LOOP

I'm now going to ask you some questions about your emergency shelter program.

3a1. **Think ahead to February 1996, on what days will you operate the emergency shelter program in February 1996? When answering these questions, only consider the emergency shelter program.** - (MARK "X" EACH DAY THAT APPLIES. If open every day enter "E" for every day.)
@EVERYDAY [if @EVERYDAY EQ E THEN goto Q3WK ELSE goto 3a2.)

__Every day [goto 3WK]

___Th FEB1	___Fr FEB2	___St FEB3	___Sn FEB4
___Mn FEB5	___Tu FEB6	___Wd FEB7	___Thur FEB8
___Fr FEB9	___St FEB10	___Sn FEB11	___Mn FEB12
___Tu FEB13	___Wd FEB14	___Th FEB15	___Fr FEB16
___St FEB17	___Sn FEB18	___Mn FEB19	___Tu FEB20
___Wd FEB21	___Th FEB22	___Fr FEB23	___St FEB24
___Sn FEB25	___Mn FEB26	___Tu FEB27	___Wd FEB28

___Th FEB29

3WK. **I would like to verify that you are open on Saturdays and/or Sunday during the weekend. Is this correct?**

[ ] Yes [Goto 3a2]
[ ] No [Go to 3a1]

3a2. **On those days in February when the emergency shelter program operates, how many ADULTS, aged 18 years or older, does the program serve at this location?**

_____

3a3. **Of these ADULTS, approximately what percent are homeless now or were homeless prior to participating in this program?**
_____%

3a4. **Of the adults, approximately what percentage use the program 10 or more days a month?**_____%

3a5. **I'm now going to ask about the numbers of children and youth that the program serves. We consider 'youth' to be aged 12 to 17. On those days in February when the emergency shelter program operates, how many YOUTH does the program serve at this location?**

_____ [If 0, goto 3a6]

3a5b. **Of these YOUTH, aged 12 to 17 approximately what percent are homeless now or were homeless prior to participating in this program?**

_____%

3a6. **I'm now going to ask about the numbers of children that the program serves. We consider 'children' to be under the age of 12 years. On those days in February when the emergency shelter program operates, how many CHILDREN does the program serve at this location?**

_____ [If 0, goto 3a7]

3a6b. **Of these CHILDREN, under the age of 12, approximately what percent are homeless now or were homeless prior to participating in this program?**

_____%

8

Now I am going to ask you some questions about the percentages of different groups of people who use your facility.

3a7. On an average day that you are open in February, do you serve -

(a) both unaccompanied single persons and couples or families?

[ ] Yes [Goto 3a8]
[ ] No [Goto 3a7b]

(b) Do you have only unaccompanied single persons or just couples and families?

[ ] Unaccompanied persons [Goto Q3a8]
[ ] Couples and families [Goto Q3a11]

Now I'm going to ask more about the unaccompanied single persons that use your program. I want to find out what percent are adults, what percent are youths, and what percent are children.

3a8a. What percentage of your unaccompanied single persons are adults, 18 years of age or older?

____% adults

3a8b. What percentage of your unaccompanied persons are youths? Youths are 12 to 17 years old.

____% youths

3a8b. What percentage of your unaccompanied persons are children? Children are under 12 years old.

____% children?

The next questions ask about unaccompanied ADULTS that use your program.

3a9. Of these unaccompanied adults what percentage are male and what percentage are female?

_____% Male

_____% Female

9

Now I am going to be asking about the unaccompanied youths that use your program. Youths are ages 12 to 17.

3a10a. What percentage of your unaccompanied youths are male and what percentage are female?

(a) _____% Male

(b) _____% Female

Now I am going to be asking about the unaccompanied children that use your program. Children are under the age of 12.

3a10b. What percentage of your unaccompanied children are male and what percentage are female?

(a) _____% Male

(b) _____% Female

3a11a. I'm going to ask you about the couples or families that the program serves. There are 3 groups of these - (1) single parent families with children, (2) two-parent families with children, (3) adults couples without children. Considering these groups, what percentage of the couples and families are -

(a) Single-parent families with children? _____%

(b) Two-parent families with children? _____%

(c) Adult couples without children? _____%

3a12. Is this program a -

Mark (X) only one box.

(1) [ ] **Nonprofit, religious affiliated program?**

(2) [ ] **Non-profit, non-sectarian program?**

(3) [ ] **Private, for profit agency?**

(4) [ ] **Government agency?**

3a13a. What percentage of your funding for this program comes from private funding such as donations, foundation grants, United Way, individual's contributions?

_____%

3a13b. What percentage of your funding for this program comes from Federal, State, or local Government funding?

_____%

3a13c. What percentage of your funding for this program comes from another source?

_____%

-3a13csp-

Please specify the source of this other funding.

_____

3a14a. Does this program focus on any of the following population groups

- needy or impoverished people?

[ ] Yes
[ ] No

3a14b. victims of domestic violence, abused women?

[ ] Yes
[ ] No

3a14c. runaway or homeless children or youth?

[ ] Yes
[ ] No

3a14d. people with mental health problems?

[ ] Yes
[ ] No

3a14e. people with (only) drug or alcohol problems? (no mental health problems)

[ ] Yes
[ ] No

3a14f. people with drug (including every drug except alcohol?) and mental health problems?

[ ] Yes
[ ] No

3a14g. people with HIV/AIDS?

[ ] Yes
[ ] No

3a14h. veterans?

[ ] Yes
[ ] No

3a14i. Is any one else served by this program?

[ ] Yes [Goto 3a14isp]
[ ] No [Goto 3a14j]

3a14isp. Please specify who else is served by this program.

_____

3a14j. You told me that you focus on [fill Q3a114a-Q3a14isp where entry EQ 1]. Which of these, if any, would you consider to be the PRIMARY population group that you serve?

_____

The following questions are asked if 3a14h is 'Yes'. That is, is veterans are a focus group for the program.

3a15. You told me that one of the groups this program serves is veterans. Of all the clients that you serve in this program, what percent are veterans?

_____

3a16. Among these veterans, what percent are eligible for service-connected benefits?

_____%

3a17. Is this program sponsored by VA?

[ ] Yes [Goto 3a17a]

[ ] No [Goto 3a18]

3a17a. Is this a domiciliary program?

[ ] Yes

[ ] No

3a17b. Is this an HCMI contracted program?

(Homeless Chronically Mentally Ill)

[ ] Yes

[ ] No

3a17a. Is this a VA grant or per diem program?

[ ] Yes

[ ] No

3a18. Is this program sponsored by state or local government?

[ ] Yes

[ ] No

3a19. Is this program sponsored by any government agency, other than VA, state or local?

[ ] Yes [Goto 3a19b]

[ ] No [Goto conta]

3a19b. What government agency is this?

_____

The following question is asked to all respondents, as part of the loop.

-conta-

We will be sending a brief questionnaire to a sample of providers which asks some more detailed questions about the programs. If you are selected, who is the best person to contact about the emergency shelter program?

@CONTACTA --->_____

@ADDRESS --->_____

@CITY --->_____

@ST --->_____ @ZIP --->_____

@PHONE --->_____

END LOOP

The following questions will be included at the beginning of the loop for soup kitchens:

2d3. Do you offer breakfast?

[ ] Yes
[ ] No

2d4. Do you offer lunch?

[ ] Yes
[ ] No

2d5. Do you offer dinner?

[ ] Yes
[ ] No

2d6. Within the past 30 days, did you receive any USDA-donated foods, that is food that was donated by the United States Department of Agriculture, for your feeding program?

[ ] Yes [Goto 2d8]
[ ] No [Goto 2d7]

2d7. Does your program ever receive USDA-donated foods?

[ ] Yes [Goto 2d8]
[ ] No [Goto 2d9]

2d8. On average, how often do you receive USDA foods? Would you say that it is -

[ ] Every month?
[ ] Every quarter?
[ ] Less often than once each quarter?

2d9. About what proportion of the total foods used in your feeding program does the USDA-donated food account for?

[ ] 5 percent or less
[ ] 5 - 10 percent
[ ] 10-25 percent
[ ] 25-50 percent
[ ] more than 50 percent

After all loops are completed, the following question will be asked. Please note that this is identical to the question asked if question 1 is 'No'.

-List-

We will be sending you a list of service providers in your county. We ask that you help us to compile a more complete list of service care providers in your county so that we may better conduct our survey. Please give me the name, address and telephone number of the best person to send our list of service providers to.

@PROVIDER --->_____

@CONTACT --->_____

@STREET --->_____

@CITY --->_____

@ST --->_____ @ZIP --->_____

@PHONE --->_____

HPWUS–100B
7/21/95

Attachment B

EMERGENCY SHELTER PROGRAMS

This questionnaire contains some detailed questions about your emergency shelter program. We are interested in information about:

* services that might be needed by the clients who use this program;
* the capacity and utilization of your facility, and
* where your clients go when they leave your facility.

If you operate more than one program from your location, please consider only your emergency shelter program when answering these questions.

1

		b. How often are your clients able to get this need met . . . MARK (X) ONE BOX			c. Where is this service available . . . MARK ALL THAT APPLY		
1 a. Is the provision of food and/or clothing needed by the typical client in this program? *Answer b and c for each 'Yes'*		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Food	[ ] Yes [ ] No						
(2) Clothing	[ ] Yes [ ] No						

		b. How often are your clients able to get this need met . . . MARK (X) ONE BOX			c. Where is this service available . . . MARK ALL THAT APPLY		
2 a. Are the following 'life skills' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Money management or budgeting	[ ] Yes [ ] No						
(2) Household skills – cooking, cleaning, maintenance	[ ] Yes [ ] No						
(3) Personal relations counseling – conflict resolution	[ ] Yes [ ] No						
(4) Parenting training	[ ] Yes [ ] No						

		b. How often are your clients able to get this need met . . . MARK (X) ONE BOX			c. Where is this service available . . . MARK ALL THAT APPLY		
3 a. Are the following 'case management' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Needs assessment	[ ] Yes [ ] No						
(2) Development of individual goals and service plans	[ ] Yes [ ] No						
(3) Referral or assistance with entitlements	[ ] Yes [ ] No						
(4) Followup after client leaves	[ ] Yes [ ] No						

		b. How often are your clients able to get this need met . . . MARK (X) ONE BOX			c. Where is this service available . . . MARK ALL THAT APPLY		
4 a. Are the following 'housing' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Locating housing	[ ] Yes [ ] No						
(2) Applying for rental assistance	[ ] Yes [ ] No						
(3) Assistance with landlord/tenant relations	[ ] Yes [ ] No						
(4) Financial assistance with utilities and/or rent	[ ] Yes [ ] No						

2

5 a. Are the following 'education' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*: Usually	Some-times	Seldom	c. Where is this service available . . . *MARK ALL THAT APPLY*: Here, at this address	Elsewhere in the community	Not at all
(1) Help children enroll in school/ liason with school district	[ ] Yes [ ] No						
(2) Head Start	[ ] Yes [ ] No						
(3) Other childhood education	[ ] Yes [ ] No						
(4) Tutoring for school children	[ ] Yes [ ] No						
(5) English as a Second Language courses	[ ] Yes [ ] No						
(6) GED courses	[ ] Yes [ ] No						
(7) Family literacy services (e.g. Even Start/Family Literacy)	[ ] Yes [ ] No						
(8) Basic literacy training	[ ] Yes [ ] No						
(9) Basic skills training/adult education courses	[ ] Yes [ ] No						

6 a. Are the following 'employment' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*: Usually	Some-times	Seldom	c. Where is this service available . . . *MARK ALL THAT APPLY*: Here, at this address	Elsewhere in the community	Not at all
(1) Assessment of job skills	[ ] Yes [ ] No						
(2) Job Finding/Retention skills (e.g. training for job interviews)	[ ] Yes [ ] No						
(3) Job referral or placement	[ ] Yes [ ] No						
(4) Training for specific jobs	[ ] Yes [ ] No						
(5) Vocational rehabilitation	[ ] Yes [ ] No						
(6) Placement in volunteer jobs	[ ] Yes [ ] No						

7 a. Are the following 'general health care' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*: Usually	Some-times	Seldom	c. Where is this service available . . . *MARK ALL THAT APPLY*: Here, at this address	Elsewhere in the community	Not at all
(1) Health care assessment -- health history	[ ] Yes [ ] No						
(2) Primary care -- physical exam, etc.	[ ] Yes [ ] No						
(3) Emergency/acute care	[ ] Yes [ ] No						
(4) Prenatal care	[ ] Yes [ ] No						
(5) Immunizations	[ ] Yes [ ] No						
(6) HIV/AIDS services	[ ] Yes [ ] No						
(7) TB testing	[ ] Yes [ ] No						
(8) TB treatment	[ ] Yes [ ] No						
(9) Dental care	[ ] Yes [ ] No						
(10) Hospice care	[ ] Yes [ ] No						
(11) Health education/prevention	[ ] Yes [ ] No						

3

8 a. Are the following 'substance abuse' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*: Usually	Some-times	Seldom	c. Where is this service available . . . *MARK ALL THAT APPLY*: Here, at this address	Elsewhere in the community	Not at all
(1) Alcohol/drug testing -- (saliva, urine or blood)	[ ] Yes [ ] No						
(2) Alcohol/drug dependence assessment	[ ] Yes [ ] No						
(3) Detoxification	[ ] Yes [ ] No						
(4) Outpatient treatment	[ ] Yes [ ] No						
(5) Inpatient treatment	[ ] Yes [ ] No						
(6) Alcoholics/Cocaine/Narcotics Anonymous	[ ] Yes [ ] No						

9 a. Are the following 'mental health' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*: Usually	Some-times	Seldom	c. Where is this service available . . . *MARK ALL THAT APPLY*: Here, at this address	Elsewhere in the community	Not at all
(1) Mental health assessment	[ ] Yes [ ] No						
(2) Medication administration/monitoring	[ ] Yes [ ] No						
(3) Crisis intervention	[ ] Yes [ ] No						
(4) Outpatient therapy/counseling	[ ] Yes [ ] No						
(5) Inpatient treatment	[ ] Yes [ ] No						
(6) Peer group/self help -- (other than AA/NA/CA)	[ ] Yes [ ] No						

10 a. Are the following other services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*: Usually	Some-times	Seldom	c. Where is this service available . . . *MARK ALL THAT APPLY*: Here, at this address	Elsewhere in the community	Not at all
(1) Outreach	[ ] Yes [ ] No						
(2) Child care	[ ] Yes [ ] No						
(3) Domestic violence counseling	[ ] Yes [ ] No						
(4) Legal assistance	[ ] Yes [ ] No						
(5) Veteran's special services	[ ] Yes [ ] No						
(6) Other required services Specify: _____	[ ] Yes [ ] No						

4

11 **Is transporation or transportation assistance provided as part of this program?**

[ ] Yes -- *ANSWER QUESTION 12*

[ ] No -- *SKIP TO QUESTION 14, on the next page*

12 **For which of the following services is transportation provided to clients?**

MARK ALL THAT APPLY

[ ] Food and/or clothing

[ ] Life skills counseling, such as money management, household skills, parental training

[ ] Case management, such as needs assesment, assistance with entitlements, followup

[ ] Housing search services

[ ] Education -- classes for adults or children

[ ] Employment services, such as vocational rehabilitation, sheltered workshop, training

[ ] Health care

[ ] Substance abuse services

[ ] Mental health services

[ ] Child care

[ ] Domestic violence counseling

[ ] Legal assistance

[ ] HIV/AIDS services

[ ] Veteran's special services

13 **By which of the following methods are the transportation services provided?**

MARK ALL THAT APPLY

[ ] Reimbursement of client expenses (e.g. voucher, cash, tokens)

[ ] Program vehicles

[ ] Volunteers

[ ] Local government or public transportation

[ ] Other -- What? _____

5

14 **Does this program serve unaccompanied single persons?**

1 [ ] Yes -- CONTINUE WITH QUESTION 15

2 [ ] No -- SKIP TO QUESTION 21

15 **What is the maximum number of single persons you can shelter in your facility per day or night?**

_____ Persons

16 **During each of the months below, at what PERCENT OCCUPANCY for single persons do you usually operate?**

17 **For each month that you usually operate at full capacity (100%), please indicate the NUMBER of eligible persons you had to turn away. In the first column, enter the NUMBER of persons who were turned away on any one day or night. In the second column, enter the TOTAL NUMBER usually turned away during the entire month.**

Month	Percent		Number turned away on a typical day/night	Number turned away altogether during the month
January	_____%	If 100% -----	____	____
February	_____%	If 100% -----	____	____
March	_____%	If 100% -----	____	____
April	_____%	If 100% -----	____	____
May	_____%	If 100% -----	____	____
June	_____%	If 100% -----	____	____
July	_____%	If 100% -----	____	____
August	_____%	If 100% -----	____	____
September	_____%	If 100% -----	____	____
October	_____%	If 100% -----	____	____
November	_____%	If 100% -----	____	____
December	_____%	If 100% -----	____	____

If there are NO periods when you are full -- SKIP to Question 19
If there are periods when you are full -- CONTINUE with Question 17 above

UNACCOMPANIED SINGLE PERSONS -- Continued 6

18 For the periods that you operated at FULL capacity, or had to turn persons away, what were the reasons that demand for your services or facilities increased?

Never full [ ] -- SKIP TO 19

MARK ALL THAT APPLY WHEN FULL

1 [ ] Increase in need
2 [ ] Seasonal changes
3 [ ] Change in program participation criteria
4 [ ] Facilities closed elsewhere
5 [ ] Economic/job market changes
6 [ ] Change in program funding or capacity
7 [ ] Just filled to the maximum
8 [ ] Other -- WHAT?

_____
_____

19 For the periods that you operated at LESS than full capacity, what were the reasons that demand for your services or facilities decreased?

Never less than full [ ] -- SKIP TO 20

MARK ALL THAT APPLY

1 [ ] Decline in need
2 [ ] Seasonal changes
3 [ ] Change in program participation criteria
4 [ ] New facilities added elsewhere
5 [ ] Economic/job market changes
6 [ ] Change in program funding or capacity
7 [ ] Other -- WHAT?

_____
_____

20 This question asks about where your clients go when they are no longer served by your program.

Of the persons that you served last year, please estimate what PERCENT of the single persons went to the following destinations:

	Percent
The streets or other outside locations	_____%
Other emergency shelter	_____%
Transitional housing	_____%
Family or friend's housing	_____%
Private unsubsidized housing	_____%
Government subsidized housing, e.g Section 8, Public or Rural Rental Housing	_____%
Special permanent housing for disabled homeless (mentally ill, developmentally disadvantaged, HIV)	_____%
Hospital	_____%
Jail or prison	_____%
Other -- Where? _____	_____%
Don't Know	_____%
The above should total to --------	100%

7

21 Does this program serve couples/families -- two or more persons living as a unit?

1 [ ] Yes -- CONTINUE WITH QUESTION 22

2 [ ] No -- INTERVIEW COMPETED *Thank you!*

22 What is the maximum number of couples/families you can shelter in your facility per day or night?

_____ Couples/Families

23 During each of the months below, at what PERCENT OCCUPANCY do you usually operate for shelter space for couples/families?

24 For each month that you usually operate at full capacity (100%), please indicate the NUMBER of eligible couples/families you had to turn away. In the first column, enter the NUMBER of couples/families who were turned away on any one day or night. In the second column, enter the TOTAL NUMBER usually turned away during the entire month.

Month	Percent		Number turned away on a typical day/night	Number turned away altogether during the month
January	_____%	If 100% -----	____	____
February	_____%	If 100% -----	____	____
March	_____%	If 100% -----	____	____
April	_____%	If 100% -----	____	____
May	_____%	If 100% -----	____	____
June	_____%	If 100% -----	____	____
July	_____%	If 100% -----	____	____
August	_____%	If 100% -----	____	____
September	_____%	If 100% -----	____	____
October	_____%	If 100% -----	____	____
November	_____%	If 100% -----	____	____
December	_____%	If 100% -----	____	____

If there are NO periods when you are full -- SKIP to Question 26
If there are periods when you are full -- CONTINUE with Question 24 above

FAMILIES/COUPLES -- Continued 8

25 For the periods that you operated at FULL capacity, or had to turn families/couples away, what were the reasons that demand for your services or facility increased?

Never full [ ] -- SKIP TO 26

MARK ALL THAT APPLY WHEN FULL

1 [ ] Increase in need
2 [ ] Seasonal changes
3 [ ] Change in program participation criteria
4 [ ] Facilies closed elsewhere
5 [ ] Economic/job market changes
6 [ ] Change in program funding or capacity
7 [ ] Just filled to the maximum
8 [ ] Other -- WHAT?

_____

_____

26 For the periods that you operated at LESS than full capacity for couples/families, what were the reasons that demand for your services or facility decreased?

Never less than full [ ] -- SKIP TO 27

MARK ALL THAT APPLY

1 [ ] Decline in need
2 [ ] Seasonal changes
3 [ ] Change in program participation criteria
4 [ ] New facilites added elsewhere
5 [ ] Economic/job market changes
6 [ ] Change in program funding or capacity
7 [ ] Other -- WHAT?

_____

_____

27 This question asks about where your clients go when they are no longer served by your program.

Of the families/couples that you served last year, please estimate what PERCENT went to the following destinations:

	Percent
The streets or other outside locations	_____%
Other emergency shelter	_____%
Transitional housing	_____%
Family or friend's housing	_____%
Private unsubsidized housing	_____%
Government subsidized housing, e.g Section 8, Public or Rural Rental Housing	_____%
Special permanent housing for disabled homeless (mentally ill, developmentally disadvantaged, HIV)	_____%
Hospital	_____%
Jail or prison	_____%
Other -- Where? _____	_____%
Don't Know	_____%

The above should total to ----- 100%

HPWUS-100F
7/21/95

Attachment F

ALCOHOL/DRUG PROGRAMS

This questionnaire contains some detailed questions about your alcohol/drug program. We are interested in information about services that might be needed by the clients who use this program. If you operate more than one program from your location, please consider only your alcohol/drug program when answering these questions.

1

1 a. Is the provision of food and/or clothing needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Food	[ ] Yes [ ] No						
(2) Clothing	[ ] Yes [ ] No						

2 a. Are the following 'life skills' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Money management or budgeting	[ ] Yes [ ] No						
(2) Household skills – cooking, cleaning, maintenance	[ ] Yes [ ] No						
(3) Personal relations counseling – conflict resolution	[ ] Yes [ ] No						
(4) Parenting training	[ ] Yes [ ] No						

3 a. Are the following 'case management' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Needs assessment	[ ] Yes [ ] No						
(2) Development of individual goals and service plans	[ ] Yes [ ] No						
(3) Referral or assistance with entitlements	[ ] Yes [ ] No						
(4) Followup after client leaves	[ ] Yes [ ] No						

4 a. Are the following 'housing' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Locating housing	[ ] Yes [ ] No						
(2) Applying for rental assistance	[ ] Yes [ ] No						
(3) Assistance with landlord/tenant relations	[ ] Yes [ ] No						
(4) Financial assistance with utilities and/or rent	[ ] Yes [ ] No						

2

5 a. Are the following 'education' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Help children enroll in school/ liason with school district	[ ] Yes [ ] No						
(2) Head Start	[ ] Yes [ ] No						
(3) Other childhood education	[ ] Yes [ ] No						
(4) Tutoring for school children	[ ] Yes [ ] No						
(5) English as a Second Language courses	[ ] Yes [ ] No						
(6) GED courses	[ ] Yes [ ] No						
(7) Family literacy services (e.g. Even Start/Family Literacy)	[ ] Yes [ ] No						
(8) Basic literacy training	[ ] Yes [ ] No						
(9) Basic skills training/adult education courses	[ ] Yes [ ] No						

6 a. Are the following 'employment' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Assessment of job skills	[ ] Yes [ ] No						
(2) Job Finding/Retention skills (e.g. training for job interviews)	[ ] Yes [ ] No						
(3) Job referral or placement	[ ] Yes [ ] No						
(4) Training for specific jobs	[ ] Yes [ ] No						
(5) Vocational rehabilitation	[ ] Yes [ ] No						
(6) Placement in volunteer jobs	[ ] Yes [ ] No						

7 a. Are the following 'general health care' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Health care assessment -- health history	[ ] Yes [ ] No						
(2) Primary care -- physical exam, etc.	[ ] Yes [ ] No						
(3) Emergency/acute care	[ ] Yes [ ] No						
(4) Prenatal care	[ ] Yes [ ] No						
(5) Immunizations	[ ] Yes [ ] No						
(6) HIV/AIDS services	[ ] Yes [ ] No						
(7) TB testing	[ ] Yes [ ] No						
(8) TB treatment	[ ] Yes [ ] No						
(9) Dental care	[ ] Yes [ ] No						
(10) Hospice care	[ ] Yes [ ] No						
(11) Health education/prevention	[ ] Yes [ ] No						

3

8 a. Are the following 'substance abuse' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Alcohol/drug testing -- (saliva, urine or blood)	[ ] Yes ---- [ ] No						
(2) Alcohol/drug dependence assessment	[ ] Yes ---- [ ] No						
(3) Detoxification	[ ] Yes ---- [ ] No						
(4) Outpatient treatment	[ ] Yes ---- [ ] No						
(5) Inpatient treatment	[ ] Yes ---- [ ] No						
(6) Alcoholics/Cocaine/Narcotics Anonymous	[ ] Yes ---- [ ] No						

9 a. Are the following 'mental health' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Mental health assessment	[ ] Yes ---- [ ] No						
(2) Medication administration/monitoring	[ ] Yes ---- [ ] No						
(3) Crisis intervention	[ ] Yes ---- [ ] No						
(4) Outpatient therapy/counseling	[ ] Yes ---- [ ] No						
(5) Inpatient treatment	[ ] Yes ---- [ ] No						
(6) Peer group/self help -- (other than AA/NA/CA)	[ ] Yes ---- [ ] No						

10 a. Are the following other services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Sometimes	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Outreach	[ ] Yes ---- [ ] No						
(2) Child care	[ ] Yes ---- [ ] No						
(3) Domestic violence counseling	[ ] Yes ---- [ ] No						
(4) Legal assistance	[ ] Yes ---- [ ] No						
(5) Veteran's special services	[ ] Yes ---- [ ] No						
(6) Other required services	[ ] Yes ---- [ ] No						
Specify: _____							

4

11 Is transporation or transportation assistance provided as part of this program?

[ ] Yes -- *ANSWER QUESTION 12*

[ ] No -- *INTERVIEW COMPLETE -- Thank You!*

12 For which of the following services is transportation provided to clients?

MARK ALL THAT APPLY

[ ] Food and/or clothing

[ ] Life skills counseling, such as money management, household skills, parental training

[ ] Case management, such as needs assesment, assistance with entitlements, followup

[ ] Housing search services

[ ] Education -- classes for adults or children

[ ] Employment services, such as vocational rehabilitation, sheltered workshop, training

[ ] Health care

[ ] Substance abuse services

[ ] Mental health services

[ ] Child care

[ ] Domestic violence counseling

[ ] Legal assistance

[ ] HIV/AIDS services

[ ] Veteran's special services

13 By which of the following methods are the transportation services provided?

MARK ALL THAT APPLY

[ ] Reimbursement of client expenses (e.g. voucher, cash, tokens)

[ ] Program vehicles

[ ] Volunteers

[ ] Local government or public transportation

[ ] Other -- What? _____

HPWUS–100K
7/21/95

Attachment K

OUTREACH PROGRAMS

This questionnaire contains some detailed questions about your outreach program. We are interested in information about services that might be needed by the clients who use this program. If you operate more than one program from your location, please consider only your outreach program when answering these questions.

1

1 a. Is the provision of food and/or clothing needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Food	[ ] Yes [ ] No						
(2) Clothing	[ ] Yes [ ] No						

2 a. Are the following 'case management' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Needs assessment	[ ] Yes [ ] No						
(2) Development of individual goals and service plans	[ ] Yes [ ] No						
(3) Referral or assistance with entitlements	[ ] Yes [ ] No						
(4) Followup after client leaves	[ ] Yes [ ] No						

3 a. Are the following 'housing' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Locating housing	[ ] Yes [ ] No						
(2) Applying for rental assistance	[ ] Yes [ ] No						
(3) Assistance with landlord/tenant relations	[ ] Yes [ ] No						
(4) Financial assistance with utilities and/or rent	[ ] Yes [ ] No						

2

4 a. Are the following 'employment' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Assessment of job skills	[ ] Yes [ ] No						
(2) Job referral or placement	[ ] Yes [ ] No						

5 a. Are the following 'general health care' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Health care assessment -- health history	[ ] Yes [ ] No						
(2) Primary care -- physical exam, etc.	[ ] Yes [ ] No						
(3) Emergency/acute care	[ ] Yes [ ] No						
(4) Prenatal care	[ ] Yes [ ] No						
(5) Immunizations	[ ] Yes [ ] No						
(6) HIV/AIDS services	[ ] Yes [ ] No						
(7) TB testing	[ ] Yes [ ] No						
(8) TB treatment	[ ] Yes [ ] No						
(9) Dental care	[ ] Yes [ ] No						
(10) Health education/prevention	[ ] Yes [ ] No						

3

6 a. Are the following 'mental health' services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Mental health assessment	[ ] Yes [ ] No						
(2) Medication administration/monitoring	[ ] Yes [ ] No						
(3) Crisis intervention	[ ] Yes [ ] No						
(4) Outpatient therapy/counseling	[ ] Yes [ ] No						
(5) Inpatient treatment	[ ] Yes [ ] No						

7 a. Are the following other services needed by the typical client in this program? *Answer b and c for each 'Yes'*		b. How often are your clients able to get this need met . . . *MARK (X) ONE BOX*			c. Where is this service available . . . *MARK ALL THAT APPLY*		
		Usually	Some-times	Seldom	Here, at this address	Elsewhere in the community	Not at all
(1) Domestic violence counseling	[ ] Yes [ ] No						
(2) Legal assistance	[ ] Yes [ ] No						
(3) Veteran's special services	[ ] Yes [ ] No						
(4) Other required services	[ ] Yes [ ] No						
Specify: _____							

4

8 Is transporation or transportation assistance provided as part of this program?

[ ] Yes -- *ANSWER QUESTION 9*

[ ] No -- *INTERVIEW COMPLETE -- Thank You!*

9 For which of the following services is transportation provided to clients?

MARK ALL THAT APPLY

[ ] Food and/or clothing

[ ] Life skills counseling, such as money management, household skills, parental training

[ ] Case management, such as needs assesment, assistance with entitlements, followup

[ ] Housing search services

[ ] Education -- classes for adults or children

[ ] Employment services, such as vocational rehabilitation, sheltered workshop, training

[ ] Health care

[ ] Substance abuse services

[ ] Mental health services

[ ] Child care

[ ] Domestic violence counseling

[ ] Legal assistance

[ ] HIV/AIDS services

[ ] Veteran's special services

10 By which of the following methods are the transportation services provided?

MARK ALL THAT APPLY

[ ] Reimbursement of client expenses (e.g. voucher, cash, tokens)

[ ] Program vehicles

[ ] Volunteers

[ ] Local government or public transportation

[ ] Other -- What? _____

ATTACHMENT M

Form HPWUS-100M
7/20/95

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
ACTING AS COLLECTING AGENT FOR
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

LIST UPDATE FORM

THE SURVEY OF SERVICES FOR HOMELESS PERSONS

Regional office	PSU (State/County)	Identification number

NAME AND ADDRESS OF FACILITY:
Name
Street
City | State | ZIP Code
Contact name | Telephone No. ( )

RETURN COMPLETED FORM TO:
BUREAU OF THE CENSUS
105 S 7th Street, NW
First Floor
Philadelphia, PA 19106-3395

REVIEWING THE LIST OF SERVICE PROVIDERS AND KNOWLEDGEABLE PERSONS AND ORGANIZATIONS IN YOUR COUNTY

We have developed an initial list of service providers and organizations offering services to the homeless in your county. As you review the attached list, please note that our list may not include some providers. We are especially concerned that the list may not include homeless programs for domestic violence centers, runaway and homeless youth shelters, programs issuing vouchers for homeless person, and transitional living shelters. If you know the names and addresses for providers of these services and any others not listed, please add them to the list on the back of this form. Any providers that you are affiliated with should be added to the end of the questionnaire, Form HPWUS-100B(X), included in this package. We want the survey to show all available programs and services in your county/city being provided to homeless people. Identification of all service providers is important to us. Below is a summary of the steps to follow in reviewing the list of service providers.

A. Instructions

1. Look over the attached list of service providers and knowledgeable persons or organizations. Also, review the descriptions below of various types of service providers that we may have missed on our list.
2. Add any service providers, local knowledgeable persons or organizations not included on the list to attached HPWUS-L1A form. These organizations and persons should not be affiliated with your program. (Organizations and persons affiliated with your program should be recorded on the last pages of the questionnaire, Form HPWUS-100B(X), included in your package.) We can use any information you have about services to the homeless in your area.
3. Mark the box for "No new names to add," if you have no additional persons to add to the list.
4. Write any corrected name and/or address information to the right of the old information on the list, if you know anyone on the list who has changed names and/or addresses.

B. Description of Types of Service Providers

Listed below are detailed descriptions of the types of service providers to include in your listing.

1. **Regularly Scheduled Outreach Programs** for the homeless which, on a regular schedule, visit designated street locations offering homeless people food, blankets or other necessities.
2. **Drop-In Centers** that provide daytime services primarily for the homeless (other than facilities serving meals that should be included under soup kitchens).
3. **Emergency Shelters** which operate on a first-come first-served basis where people must leave in the morning and have no guaranteed bed for the next night or where people know that they have a bed for a specified period of time (even if they leave the building every day). Shelters include facilities which provide temporary shelter during extremely cold weather (such as churches) and may provide emergency shelter for runaway or neglected children and youth, or for battered or abused women.
4. **Transitional Housing** (maximum stay up to two years) which offer augmented services to promote self-sufficiency and to gain permanent housing.
5. **Permanent Housing** for homeless people with support services may include Section 8 vouchers, FHA units, SROs, and other long-term housing assistance.
6. **Voucher Arrangements** for hotels, motels, or other facilities (other than shelters) for which vouchers are given out OR which operate under contract to provide shelter to homeless people.
7. **Soup Kitchen or Meal Distribution** include soup kitchens, food lines, and programs distributing prepared breakfasts, lunches or dinners for homeless or needy people. These programs may be organized as food service lines, bag or box lunches, tables where people are seated and then served by program personnel, etc. These programs may or may not have a place to sit and eat the meal.
8. **Food Pantry** distributes uncooked food in boxes or bags.
9. **Health Care Providers** provide health care services to homeless people. This includes medical, dental, and other health problems.
10. **Mental Health Programs** for homeless persons not mentioned previously.
11. **Alcohol or other Drug Programs** for homeless persons not mentioned previously.
12. **HIV/AIDS Programs** for homeless persons not mentioned previously.
13. **Migrant Housing** for homeless persons in the off season.
14. **Other Facilities** which provide services for the homeless, such as clothing distribution centers, education and/or employment skills training.

Public reporting burden for this collection of information is estimated to average 15 minutes per response. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden to the U.S. Department of Housing and Urban Development, 451 7th Street, S.W. Washington, DC, 20410, and to the Office of Management and Budget, Paperwork Reduction Act 2528-0167, Washington, DC 20503. Do not send this completed form to either of these address.

Please list service providers, local knowledgeable persons, or organizations providing services that are not affiliated with your organization. (Make entries for providers affiliated with your organization on the last pages of the questionnaire. Form HPW/JS-1008(X), included in your package.) Make up to seven entries for providers and three entries for knowledgeable persons. If more than seven providers or three persons, send an attached handwritten or printed listing.

Thank you for your help in developing a complete list of programs and services for the homeless in your area. Our goal is to put together the most complete list of service providers possible.

☐No new names to add.

Name of Facility (Provider or organizations providing services) (List by all names known)	Address (Physical Location (List cross streets, etc.))	Telephone number

Other people knowledgeable about homeless programs	Address (Physical Location (List cross streets, etc.))	Telephone number	Title

Your name

[FR Doc. 95–19597 Filed 8–8–95; 8:45 am]

BILLING CODE 4210–01–C

federal register

Wednesday
August 9, 1995

Part III

Department of Education

34 CFR Part 345

State Grants Program for Technology-Related Assistance for Individuals With Disabilities; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 345

RIN 1820–AB28

State Grants Program for Technology-Related Assistance for Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations for the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive Statewide programs of technology-related assistance. These regulations are needed to implement the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994. The proposed regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds under this program.

DATES: Comments must be received on or before September 8, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Carol G. Cohen, U.S. Department of Education, Mary E. Switzer Building, Room 3420, Washington, DC. 20202–5251. Internet address Tech—Assistance@ed.gov.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Carol G. Cohen. Telephone: (202) 205–5666. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement Title I of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Act), as amended by the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994 (1994 Amendments) (Pub. L. 103–218). Title I of the Act establishes the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive Statewide programs of technology-related assistance.

The State Grants Program for Technology-Related Assistance for Individuals with Disabilities supports the National Education Goals. The program furthers the goal that every adult American—including individuals with disabilities—will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Summary of Major Provisions

The following is a summary of the major regulatory provisions for the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. The summary distinguishes between regulatory provisions that (1) incorporate statutory requirements and (2) other regulatory provisions. The other regulatory provisions contain interpretations of statutory text or provide standards and procedures for the program that are not stated in the statutory text. The Secretary is not authorized to change statutory requirements. Therefore, commenters are requested to direct their comments to the other regulatory provisions.

- *Statutory requirements*

These proposed regulations implement the following statutory changes enacted in the 1994 Amendments:

—*Types of grants* (§ 345.3):

Each State is eligible for one 3-year development grant, one 2-year extension grant (initial extension grant), and one 5-year extension grant (second extension grant). During the fourth year of a State's second extension grant, Federal funds will be reduced to 75% of the grant award received by the State in the third year; in the fifth year, Federal funds will be reduced to 50% of the grant award received by the State in the third year. After the fifth year, Federal funding will terminate. Each State is required, during its years of Federal funding under the Act, to seek alternative private and public funds for the future to enable the program to continue on a permanent basis after Federal funding is terminated.

—*Mandated activities* (§§ 345.30(b)(1) and 345.55):

States receiving grants under this program will be required to either perform six specific systems change and advocacy activities or perform other activities and demonstrate through progress reports that "significant progress" has been made in the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

—*Protection and advocacy services* (§ 345.55):

A State shall provide protection and advocacy services in one of two ways: A State may either provide funds to the designated protection and advocacy organization in that State, or a State may request that the Secretary annually reserve, from the funds made available to the State, an amount of funds to provide to a specific protection and advocacy organization in that State. However, if a State has been providing protection and advocacy services through an entity that is capable of performing the functions that would otherwise be performed under section 102(e)(20) of the Act by the system described in that section, as of June 30, 1993, the State may continue to do so.

The minimum amount that a State must expend on protection and advocacy services is determined by the Secretary, based on the size of the State's grant, the needs of individuals with disabilities within a State, the population of a State, and the geographic size of a State. In determining the minimum amount, the Secretary will primarily rely on the size of the State's grant. Annually the Department will specify the minimum amount for each State and will transmit this information to States. The minimum amount shall not be less than $40,000 and not more than $100,000. (There is no statutory limit or ceiling on the amount a State may expend on protection and advocacy services.) During the fourth and fifth years of the State's second extension grant, this minimum amount will be reduced to 75% and 50%, respectively, of the minimum amount specified for the State for the third year of the second extension grant. Federal funding terminates under this authority after the fifth year.

—*Corrective action plan* (§§ 345.60–345.62):

If a State does not make significant progress in developing its program of technology-related assistance, it becomes subject to a corrective action plan. Corrective action may include partial or complete fund termination, ineligibility to participate in the grant program for the following year, reduction in funding for the following year, or required redesignation of the lead agency. The Governor of the State must appoint a monitoring panel to oversee compliance with the corrective action plan. If the Governor fails to appoint a panel, the Secretary terminates Federal funds under this program. Based on its findings, a monitoring panel may determine that the lead agency has not accomplished the purposes of the Act and that there is good cause for redesignation of the agency and the temporary loss of funds by the State under Title I of the Act. The Secretary, based on the findings and recommendations of the monitoring panel, and after providing to the public notice and an opportunity for comment, makes a final determination regarding whether to order the Governor to redesignate the lead agency.

—*Redesignation of protection and advocacy services provider* (§ 345.63):

The protection and advocacy services provider in each State also is subject to redesignation if it has not met the protection and advocacy service needs of individuals with disabilities within the State. Under these circumstances, the Governor of the State would redesignate, but only after determining that good cause exists, providing public notice and opportunity for comment, and allowing the current protection and advocacy services provider the opportunity to appeal the determination to the Secretary. To redesignate, the Governor would hold an open competition within the State, consistent with section 105(d) of the Act.

—*Information and technical assistance:*

The Secretary will provide information and technical assistance to participating States, as well as to individuals with disabilities.

- *Major Regulatory Provisions*

The Secretary would implement the following regulatory provisions in these proposed regulations:

—*Control and administration of amounts received under the grant* (§§ 345.4 and 345.5(b)):

Each State is required under section 102(d) of the Act to designate a lead agency to be eligible for a grant under this program. The lead agency may be a (1) commission appointed by the Governor; (2) public-private partnership or consortium; (3) university-affiliated program; (4) public agency; (5) council established under Federal or State law; or (6) another appropriate office, agency, entity, or individual.

For purposes of the Act, obligations and responsibilities of the State are the same as those of the lead agency with two exceptions. Section 102(e)(12) requires a State to assure in its application that a public agency will be responsible for the control and administration of amounts received under the grant and that a public agency or an individual with a disability will hold title to property purchased with grant funds and administer this property. Thus, if the lead agency is an entity other than a public agency, a public agency will be responsible for controlling and administering amounts received under the grant and may be responsible for holding title to and administering property purchased with grant funds.

—*Allowable expenses* (§ 345.20(d)):

Section 101(b)(4) of the Act provides that a State may use program funds to pay for expenses, including travel expenses, and support services, including services of qualified interpreters, readers, and personal assistants services, that may be necessary to ensure access to the comprehensive statewide program of technology-related assistance by individuals with disabilities who are determined by the State to be in financial need.

The Secretary would limit these expenses to those incurred by participants in activities associated with the state technology program. Participants would include, for example, individuals with disabilities, parents, family members, advocates, authorized representatives, advisory board members, consumer consultants, and consumer attendees at State-sponsored conferences. Participants would not include, for example, consumers seeking direct services such as assessment and training and associated support such as transportation to an evaluation/demonstration site.

The Secretary would interpret allowable expenses to include, for example, travel, lodging, meals, childcare, eldercare, interpreters, and readers. In order to limit the costs allowed under the program, the Secretary believes it is necessary to pay for only those costs that would support the inclusion of eligible participants.

The Secretary solicits comments on whether any other participants or expenses should be included as examples, and whether a list should be included in the final regulations.

—*Protection and advocacy services* (§ 345.55):

Section 102(e)(20) of the Act provides that a State has the option to (1) make a grant to, or enter into a contract with, an entity to support protection and advocacy services through the systems established to provide protection and advocacy services; or (2) request that the Secretary do so on behalf of the State. If the State decides to enter into this grant or contract itself, the Secretary would require that each State that seeks a development or an extension grant must include in its application, and annually thereafter in its progress report, a copy of the protection and advocacy contract or grant agreement entered into by the State, or evidence of ongoing negotiations if it has not yet entered into a new contract or agreement. This is necessary to ensure that the State has entered into this contract or grant agreement.

If the State decides to request that the Secretary enter into this agreement with the entity established to provide protection and advocacy services, the Secretary would award a grant—not a contract—for protection and advocacy services. The Secretary would reduce the amount of the State's grant to carry out this activity. If a State makes this request, the State would be required to include the request in its application for a development grant or an extension grant and annually thereafter in its progress report. This is necessary to ensure that the Department has sufficient time to negotiate and enter into this agreement.

—*Limitation on indirect costs* (§ 345.30(b)(14)):

Section 102(e)(22) of the Act provides that a State must provide an assurance in its application that the percentage of funds received under the grant that is used for indirect costs shall not exceed 10 percent. The indirect cost limitation would apply to the total amount of the State's grant.

The indirect cost limitation does not ensure a subcontractor or subgrantee an indirect cost rate. This rate must be negotiated by the State and the subcontractor or subgrantee.

—*Mandated activities and significant progress* (§ 345.30(b)(1)):

Section 102(e)(7) of the Act provides States with the option of (1) performing the six activities listed in section 102(e)(7)(B) of the Act in carrying out systems change and advocacy activities; or (2) performing other activities and demonstrating through progress reports that "significant progress" has been made in the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance. Section 104(a) of the Act requires that the Secretary develop guidelines to be used in assessing the extent to which a State is making "significant progress." The Secretary is developing these guidelines. The Secretary would disseminate these guidelines on an annual basis to all grantees.

Each year, the Secretary will send to all States and entities either performance guidelines or a first or a second extension grant application packet that includes performance

guidelines. The package will contain directions regarding meeting the performance guidelines and copies of the performance guidelines. Each grantee would be required to meet or demonstrate significant progress toward meeting its annually derived set of priorities, goals, and objectives. If planned priorities, goals, or objectives are not met, grantees must document why, and if appropriate, provide a revised plan that includes a timetable for the particular priority, goal, and objective.

—Compliance with section 508 of the Rehabilitation Act of 1973 (§ 345.31(d)):

Section 103(d)(6) of the Act provides that, in an application for an extension grant, a State must provide an assurance that the State "or any recipient of funds made available to the State under (a development grant)" will comply with guidelines developed under section 508 of the Rehabilitation Act of 1973 (section 508). Section 508 guarantees that individuals with disabilities will have access to electronic and information technology. This requirement applies to all offices, agencies, and entities in a State. The Secretary believes that section 508 also applies to all subrecipients under the Act. The Secretary particularly solicits comments on this interpretation.

—Appeal of corrective action finding (§ 345.60)):

Section 105(b)(1) of the Act provides that any State that fails to comply with the requirements of Title I of the Act shall be subject to a corrective action plan. The Secretary would require that a State appeal a finding that it is subject to corrective action within 30 days of being notified in writing by the Secretary of the finding. (This timeframe is consistent with the Education Department General Administrative Regulations, at 34 CFR 81.37, which allows recipients of federal financial assistance from the Department of Education 30 days to appeal a notice of a disallowance decision requesting the return of misspent funds). The Secretary would respond to an appeal within 30 days.

—Title to devices (§ 345.30(b)(5)(ii)):

The Secretary would encourage the recycling of assistive technology devices that are no longer being used. Section 102(e)(12)(B) requires a public agency or an individual with a disability to hold title to property purchased with funds under the Act. Upon death or upon any event rendering an individual incapable of using, or making it unnecessary for an individual to use, an assistive technology device, the Secretary recommends that the individual, the individual's family, or the public agency recycle the device for use by other disabled individuals.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 345.1 *What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?*) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (Room 5121, FB–10B), Washington, DC. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Sections 345.30, 345.31, 345.42, 345.50, 345.53, and 345.55 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

States are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to be 30 hours per response for 55 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3022, ROB–3, 7th and D Streets, SW., Washington, DC., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 345

Grant program-education, Reporting and recordkeeping requirements.

Dated: October 27, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.224—State Grants Program for Technology-Related Assistance for Individuals with Disabilities)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 345 to read as follows:

PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.

345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?
345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?
345.3 What are the types of awards under this program?
345.4 Who is eligible to receive a development grant?
345.5 What are the responsibilities of the lead agency or public agency in applying for and in administering a development grant?
345.6 How does a State designate the lead agency?
345.7 Who is eligible to receive an extension grant?
345.8 What are the responsibilities of the lead agency in applying for and in administering an extension grant?
345.9 What regulations apply to this program?
345.10 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support?

345.20 What types of activities are authorized under this program?

Subpart C—How Does a State Apply for a Grant?

345.30 What is the content of an application for a development grant?
345.31 What is the content of an application for an extension grant?

Subpart D—How Does the Secretary Make a Grant?

345.40 How does the Secretary evaluate an application for a development grant under this program?
345.41 What other factors does the Secretary take into consideration in making development grant awards under this program?
345.42 What is the review process for an application for an extension grant?
345.43 What priorities does the Secretary establish?

Subpart E—What Conditions Must Be Met After an Award?

345.50 What are the reporting requirements for the recipients of development and extension grants?
345.51 When is a State making significant progress?
345.52 Who retains title to devices provided under this program?
345.53 What are the requirements for grantee participation in the Secretary's progress assessments?
345.54 How may grant funds be used under this program?
345.55 What are the responsibilities of a State in carrying out protection and advocacy services?

Subpart F—What Compliance Procedures May the Secretary Use?

345.60 Who is subject to a corrective action plan?
345.61 What penalties may the Secretary impose on a grantee that is subject to corrective action?
345.62 How does a State redesignate the lead agency when it is subject to corrective action?
345.63 How does a State redesignate the entity responsible for providing protection and advocacy services?

Authority: 29 U.S.C. 2201–2217, unless otherwise noted.

PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

§ 345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?

This program provides grants to States to support systems change and advocacy activities designed to assist States in developing and implementing consumer-responsive comprehensive Statewide programs of technology-related assistance that accomplish the purposes in § 345.2.

(Authority: 29 U.S.C. 2211(a); sec. 101(a) of the Act)

§ 345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?

The purposes of this program are to provide financial assistance to States to support systems change and advocacy activities designed to assist each State in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance, for individuals with disabilities of all ages, that is designed to—

(a) Increase the availability of, funding for, access to, and provision of, assistive technology devices and assistive technology services;

(b) Increase the active involvement of individuals with disabilities and their family members, guardians, advocates, and authorized representatives, in the planning, development, implementation, and evaluation of the program;

(c) Increase the involvement of individuals with disabilities and, if appropriate, their family members, guardians, advocates, or authorized representatives, in decisions related to the provision of assistive technology devices and assistive technology services;

(d) Increase the provision of outreach to underrepresented populations and rural populations, to enable the two populations to enjoy the benefits of programs carried out to accomplish the purposes described in this section to the same extent as other populations;

(e) Increase and promote coordination among State agencies, and between State agencies and private entities, that are involved in carrying out activities under this part, particularly providing assistive technology devices and assistive technology services, that accomplish a purpose described in another paragraph of this section;

(f)(1) Increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures, that facilitate the availability or provision of assistive technology devices and assistive technology services; and

(2) Facilitate the change of laws, regulations, policies, practices, procedures, and organizational structures, that impede the availability or provision of assistive technology devices and assistive technology services;

(g) Increase the probability that individuals with disabilities of all ages will, to the extent appropriate, be able to secure and maintain possession of assistive technology devices as these individuals make the transition between services offered by human service agencies or between settings of daily living;

(h) Enhance the skills and competencies of individuals involved in providing assistive technology devices and assistive technology services;

(i) Increase awareness and knowledge of the efficacy of assistive technology devices and assistive technology services among—

(1) Individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(2) Individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

(3) Educators and related services personnel;

(4) Technology experts (including engineers);

(5) Employers; and

(6) Other appropriate individuals;

(j) Increase the capacity of public agencies and private entities to provide and pay for assistive technology devices and assistive technology services on a statewide basis for individuals with disabilities of all ages; and

(k) Increase the awareness of the needs of individuals with disabilities for assistive technology devices and for assistive technology services.

(Authority: 29 U.S.C. 2201(b); sec. 2(b) of the Act)

§ 345.3 What are the types of awards under this program?

(a) Under this program, the Secretary—

(1) Awards three-year development grants to assist States in developing and implementing consumer-responsive comprehensive statewide programs that accomplish the purposes in § 345.2;

(2) May award an initial two-year extension grant to any State that meets the standards in § 345.42(a); and

(3) May award a second extension grant, for a period of not more than 5 years, to any State that meets the standards in § 345.42(b).

(b) The Secretary calculates the amount of the development grants in paragraph (a)(1) of this section on the basis of—

(1) Amounts available for making grants under this part;

(2) The population of the State or territory concerned; and

(3) The types of activities proposed by the State relating to the development of a consumer-responsive comprehensive statewide program of technology-related assistance.

(c) The Secretary calculates the amount of the extension grants in paragraph (a)(2) of this section on the basis of—

(1) Amounts available for making grants;

(2) The population of the State;

(3) The types of assistance proposed by the State in its application; and

(4) A description in its application of the amount of resources committed by the State and available to the State from other sources to sustain the program after federal funding ends.

(d)(1) In providing any increases in initial extension grants in paragraph (a)(2) of this section above the amounts provided to States for Fiscal Year 1993, the Secretary may give priority to States (other than the territories) that—

(i) Have the largest populations, based on the most recent census data; and

(ii) Are sparsely populated.

(2) To be eligible for the priority in paragraph (d)(1) of this section, the circumstances in paragraphs (d)(1)(i) or (ii) must have impeded the development of a consumer-responsive, comprehensive statewide program of technology-related assistance in a State.

(e) During the fourth and fifth years of a State's second extension grant, the amount received by a State will be reduced to 75% and 50%, respectively, of the amount paid to the State for the third year of the grant.

(Authority: 29 U.S.C. 2212(b), 2213(a), 2213(c)(1)(B) and (2), and 2213(c)(1)(D); secs. 102(b), 103(a), 103(c)(1)(B) and (2), 103(c)(1)(D) of the Act)

§ 345.4 Who is eligible to receive a development grant?

A State is eligible to receive a development grant under this program, provided that the Governor has designated a lead agency to carry out the responsibilities contained in § 345.5.

(Authority: 29 U.S.C. 2212(a)(1) and 2212 (d)(1); sec. 102(a) and 102(d)(1) of the Act)

§ 345.5 What are the responsibilities of the lead agency or public agency in applying for and in administering a development grant?

(a) The lead agency is responsible for the following:

(1) Submitting the application containing the information and assurances contained in § 345.30.

(2) Administering and supervising the use of amounts made available under the grant.

(3)(i) Coordinating efforts related to, and supervising the preparation of, the application;

(ii) Coordinating the planning, development, implementation, and evaluation of the consumer-responsive comprehensive statewide program of technology-related assistance among public agencies and between public agencies and private agencies, including coordinating efforts related to entering into interagency agreements; and

(iii) Coordinating efforts related to, and supervising, the active, timely, and meaningful participation by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals, with respect to activities carried out under the grant.

(4) The delegation, in whole or in part, of any responsibilities described in paragraphs (a) (1) through (3) of this section to one or more appropriate offices, agencies, entities, or individuals.

(b) If the lead agency is not a public agency, a public agency shall have the responsibility of controlling and administering amounts received under the grant.

(Authority: 29 U.S.C. 2212(d)(1) and 2212(e)(12)(A); sec. 102(d)(1) and 102(e)(12)(A) of the Act)

§ 345.6 How does a State designate the lead agency?

(a) The Governor may designate—

(1) A commission appointed by the Governor;

(2) A public-private partnership or consortium;

(3) A university-affiliated program;

(4) A public agency;

(5) A council established under Federal or State law; or

(6) Another appropriate office, agency, entity, or individual.

(b) The State shall provide evidence that the lead agency has the ability—

(1) To respond to assistive technology needs across disabilities and ages;

(2) To promote the availability throughout the State of assistive technology devices and assistive technology services;

(3) To promote and implement systems change and advocacy activities;

(4) To promote and develop public-private partnerships;

(5) To exercise leadership in identifying and responding to the technology needs of individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(6) To promote consumer confidence, responsiveness, and advocacy; and

(7) To exercise leadership in implementing effective strategies for capacity building, staff and consumer training, and enhancement of access to funding for assistive technology devices and assistive technology services across agencies.

(Authority: 29 U.S.C. 2212(d) (2) and (3); secs. 102(d) (2) and (3) of the Act)

§ 345.7 Who is eligible to receive an extension grant?

A State is eligible to receive an extension grant under this program.

§ 345.8 What are the responsibilities of the lead agency in applying for and in administering an extension grant?

(a) To be eligible to receive an initial extension grant, the lead agency shall—

(1) Submit an application containing the information and assurances in § 345.31; and

(2) Hold a public hearing in the third year of a program carried out under a development grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(b) To be eligible to receive a second extension grant, the lead agency shall—

(1) Submit an application containing the information and assurances in § 345.31; and

(2) Hold a public hearing in the second year of a program carried out under an initial extension grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(Authority: 29 U.S.C. 2213 (d) and (e); sec. 103 (d) and (e) of the Act)

§ 345.9 What regulations apply to this program?

The following regulations apply to the State Grants Program for Technology-Related Assistance for Individuals with Disabilities:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) 34 CFR part 75 (Direct Grant Programs), except § 75.618;

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations);

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except §§ 80.32(a) and 80.33(a);

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement);

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part.

(Authority: 29 U.S.C. 2201–2217; sec. 101–107 of the Act)

§ 345.10 What definitions apply to this program?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Nonpublic
Private
Project
Project period
Public

(b) *Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.*

(1) The following terms used in this part are defined in section 3 of the Act:

Advocacy services
Assistive technology device
Assistive technology service
Comprehensive statewide program of technology-related assistance
Consumer-responsive
Disability
Individual with a disability; individuals with disabilities
Institution of higher education
Protection and advocacy services
Secretary
State
Systems change and related activities
Technology-related assistance
Underrepresented population

(2) The following term used in this part is defined in section 102(b)(5) of the Act:

Territory

(d) *Other definitions.* The following definitions also apply to this part:

Initial extension grant means the two-year extension grant following a three-year development grant under this program.

Second extension grant means the extension grant following the initial extension grant under this program. The period of this grant is for a period of not more than 5 years.

(Authority: 29 U.S.C. 2201–2217; secs. 101–107 of the Act)

Subpart B—What Kinds of Activities Does the Department Support

§ 345.20 What type of activities are authorized under this program?

Any State that receives a development or extension grant shall use the funds made available through the grant to accomplish the purposes described in § 345.2 and, in accomplishing such purposes, may carry out any of the following systems change and advocacy activities:

(a) Support activities to increase access to, and funding for, assistive technology, including—

(1) The development, and evaluation of the efficacy, of model delivery systems that provide assistive technology devices and assistive technology services to individuals with disabilities, that pay for devices and services, and that, if successful, could be replicated or generally applied, such as—

(i) The development of systems for the purchase, lease, other acquisition, or payment for the provision, of assistive technology devices and assistive technology services; or

(ii) The establishment of alternative State or privately financed systems of subsidies for the provision of assistive technology devices and assistive technology services, such as—

(A) A loan system for assistive technology devices;

(B) An income-contingent loan fund;

(C) A low interest loan fund;

(D) A revolving loan fund;

(E) A loan insurance program; or

(F) A partnership with private entities for the purchase, lease, or other acquisition of assistive technology devices and the provision of assistive technology services;

(2) The demonstration of assistive technology devices, including—

(i) The provision of a location or locations within the State where the following individuals can see and touch assistive technology devices, and learn about the devices from personnel who are familiar with such devices and their applications:

(A) Individuals with disabilities and their family members, guardians, advocates, and authorized representatives;

(B) Education, rehabilitation, health care, and other service providers;

(C) Individuals who work for Federal, State, or local government entities; and

(D) Employers.

(ii) The provision of counseling and assistance to individuals with disabilities and their family members, guardians, advocates, and authorized representatives to determine individual needs for assistive technology devices and assistive technology services; and

(iii) The demonstration or short-term loan of assistive technology devices to individuals, employers, public agencies, or public accommodations seeking strategies to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(3) The establishment of information systems about, and recycling centers for, the redistribution of assistive technology devices and equipment that may include device and equipment loans, rentals, or gifts.

(b) Support activities to—

(1) Identify and coordinate Federal and State policies, resources, and services, relating to the provision of assistive technology devices and assistive technology services, including entering into interagency agreements;

(2) Convene interagency work groups to enhance public funding options and coordinate access to funding for assistive technology devices and assistive technology services for individuals with disabilities of all ages, with special attention to the issues of transition (such as transition from school to work, and transition from participation in programs under part H of the Individuals with Disabilities Education Act (20 U.S.C. 1471 et seq.), to participation in programs under part B of such Act (20 U.S.C. 1411 et seq.)) home use, and individual involvement in the identification, planning, use, delivery, and evaluation of such devices and services; or

(3) Document and disseminate information about interagency activities that promote coordination with respect to assistive technology devices and assistive technology services, including evidence of increased participation of State and local special education, vocational rehabilitation, and State medical assistance agencies and departments.

(c) Carry out activities to encourage the creation or maintenance of, support, or provide assistance to, statewide and community-based organizations, or systems, that provide assistive technology devices and assistive technology services to individuals with disabilities or that assist individuals with disabilities in using assistive technology devices or assistive technology services. The activities may include outreach to consumer organizations and groups in the State to coordinate the activities of the organizations and groups with efforts (including self-help, support groups, and peer mentoring) to assist individuals with disabilities and their family members, guardians, advocates, or authorized representatives, to obtain funding for, and access to, assistive technology devices and assistive technology services.

(d) Pay for expenses, including travel expenses, and services, including services of qualified interpreters, readers, and personal assistants services that may be necessary to ensure access to the comprehensive statewide program of technology-related assistance by individuals with disabilities who are determined by the State to be in financial need. The expenses must be incurred by participants in activities associated with the State technology program.

(e) Conduct a statewide needs assessment that may be based on data in existence on the date on which the assessment is initiated and may include—

(1) Estimates of the numbers of individuals with disabilities within the State, categorized by residence, type and extent of disabilities, age, race, gender, and ethnicity;

(2) In the case of an assessment carried out under a development grant, a description of efforts, during the fiscal year preceding the first fiscal year for which the State received a grant, to provide assistive technology devices and assistive technology services to individuals with disabilities within the State, including—

(i) The number of individuals with disabilities who received appropriate assistive technology devices and assistive technology services; and

(ii) A description of the devices and services provided;

(3) Information on the number of individuals with disabilities who are in need of assistive technology devices and assistive technology services, and a description of the devices and services needed;

(4) Information on the cost of providing assistive technology devices and assistive technology services to all individuals with disabilities within the State who need such devices and services;

(5) A description of State and local public resources and private resources (including insurance) that are available to establish a consumer-responsive comprehensive statewide program of technology-related assistance;

(6) Information identifying Federal and State laws, regulations, policies, practices, procedures, and organizational structures, that facilitate or interfere with the operation of a consumer-responsive comprehensive statewide program of technology-related assistance;

(7) A description of the procurement policies of the State and the extent to which such policies will ensure, to the extent practicable, that assistive technology devices purchased, leased, or otherwise acquired with assistance made available through a development or extension grant under this part are compatible with other technology devices, including technology devices designed primarily for use by—

(i) Individuals who are not individuals with disabilities;

(ii) Individuals who are elderly; or

(iii) Individuals with particular disabilities; and

(8) Information resulting from an inquiry about whether a State agency or task force (composed of individuals representing the State and individuals representing the private sector) should study the practices of private insurance companies holding licenses within the State that offer health or disability insurance policies under which an individual may obtain reimbursement for—

(i) The purchase, lease, or other acquisition of assistive technology devices; or

(ii) The use of assistive technology services.

(f) Support—

(1)(i) A public awareness program designed to provide information relating to the availability and efficacy of assistive technology devices and assistive technology services for—

(A) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(B) Individuals who work for public agencies, or for private entities (including insurers), that have contact with individuals with disabilities;

(C) Educators and related services personnel;

(D) Technology experts (including engineers);

(E) Employers; and

(F) Other appropriate individuals and entities; or

(ii) Establish and support the program if no such program exists.

(2) A public awareness program that may include the—

(i) Development and dissemination of information relating to the—

(A) Nature of assistive technology devices and assistive technology services;

(B) Appropriateness, cost, and availability of, and access to, assistive technology devices and assistive technology services; and

(C) Efficacy of assistive technology devices and assistive technology services with respect to enhancing the capacity of individuals with disabilities;

(ii) Development of procedures for providing direct communication among public providers of assistive technology devices and assistive technology services and between public providers and private providers of devices and services (including employers); and

(iii) Development and dissemination of information relating to the use of the program by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, professionals who work in a field related to an activity described in this section, and other appropriate individuals.

(g) Carry out directly, or may provide support to a public or private entity to carry out, training and technical assistance activities that—

(1)(i) Are provided for individuals with disabilities and their family members, guardians, advocates, and authorized representatives, and other appropriate individuals; and

(ii) May include—

(A) Training in the use of assistive technology devices and assistive technology services;

(B) The development of written materials, training, and technical assistance describing the means by which agencies consider the needs of an individual with a disability for assistive technology devices and assistive technology services in developing, for the individual, any individualized education program described in section 614(a)(5) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(a)(5)), any individualized written rehabilitation program described in section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722), any individualized family service plan described in section 677 of the Individuals with Disabilities Education Act (20 U.S.C. 1477), and any other individualized plans or programs;

(C) Training regarding the rights of the persons described in paragraph (f)(1)(i) of this section to assistive technology devices and assistive technology services under any law other than this Act, to promote fuller independence, productivity, and inclusion in and integration into society of such persons; and

(D) Training to increase consumer participation in the identification, planning, use, delivery, and evaluation of assistive technology devices and assistive technology services; and

(2)(i) Enhance the assistive technology skills and competencies of—

(A) Individuals who work for public agencies or for private entities (including insurers) that have contact with individuals with disabilities;

(B) Educators and related services personnel;

(C) Technology experts (including engineers);

(D) Employers; and

(E) Other appropriate personnel; and

(ii) Include taking actions to facilitate the development of standards, or, when appropriate, the application of standards, to ensure the availability of qualified personnel.

(h) Support the compilation and evaluation of appropriate data related to a program described in § 345.1.

(i)(1) Develop, operate, or expand a system for public access to information concerning an activity carried out under another paragraph of this section, including information about assistive technology devices and assistive technology services, funding sources and costs of assistance, and individuals, organizations, and agencies capable of carrying out such an activity for individuals with disabilities.

(2) Access to the system may be provided through community-based entities, including public libraries, centers for independent living (as defined in section 702(1) of the Rehabilitation Act of 1973 (29 U.S.C. 796a(1)), and community rehabilitation programs, as defined in section 7(25) of such Act (29 U.S.C. 706(25)).

(3) In developing, operating, or expanding a system described in paragraph (h)(1) of this section, the State may—

(i) Develop, compile, and categorize print, large print, braille, audio, and video materials, computer disks, compact discs (including compact discs formatted with read-only memory), information that can be used in telephone-based information systems, and other media as technological innovation may make appropriate;

(ii) Identify and classify existing funding sources, and the conditions of and criteria for access to such sources, including any funding mechanisms or strategies developed by the State;

(iii) Identify existing support groups and systems designed to help individuals with disabilities make effective use of an activity carried out under another paragraph of this section; and

(iv) Maintain a record of the extent to which citizens of the State use or make inquiries of the system established in paragraph (h)(1) of this section, and of the nature of inquiries.

(4) The information system may be organized on an interstate basis or as part of a regional consortium of States in order to facilitate the establishment of compatible, linked information systems.

(j)(1) The State may enter into cooperative agreements with other States to expand the capacity of the States involved to assist individuals with disabilities of all ages to learn about, acquire, use, maintain, adapt, and upgrade assistive technology devices and assistive technology services that individuals need at home, at school, at work, or in other environments that are part of daily living.

(2) The State may operate or participate in a computer system through which the State may electronically communicate with other States to gain technical assistance in a timely fashion and to avoid the duplication of efforts already undertaken in other States.

(j) Support the establishment or continuation of partnerships and cooperative initiatives between the public sector and the private sector to promote the greater participation by business and industry in the—

(1) Development, demonstration, and dissemination of assistive technology devices; and

(2) Ongoing provision of information about new products to assist individuals with disabilities.

(k) Provide advocacy services.

(l) Utilize amounts made available through development and extension grants for any systems change and advocacy activities, other than the activities described in another paragraph of this section, that are necessary for developing, implementing, or evaluating the consumer-responsive comprehensive statewide program of technology-related assistance.

(Authority: 29 U.S.C. 2211(b); sec. 101(b) of the Act)

Subpart C—How Does a State Apply for a Grant?

§ 345.30 What is the content of an application for a development grant?

(a) Applicants for development grants under this program shall include the

following information in their applications:

(1) Information identifying the lead agency designated by the Governor under § 345.4 and the evidence described in § 345.6(b).

(2) A description of the nature and extent of involvement of various State agencies, including the State insurance department, in the preparation of the application and the continuing role of each agency in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance, including the identification of the available resources and financial responsibility of each agency for paying for assistive technology devices and assistive technology services.

(3)(i) A description of procedures that provide for—

(A)(*1*) The active involvement of individuals with disabilities and their family members, guardians, advocates, and authorized representatives, and other appropriate individuals, in the development, implementation, and evaluation of the program; and

(*2*) To the maximum extent appropriate, the active involvement of individuals with disabilities who use assistive technology devices or assistive technology services, in decisions relating to such devices and services; and

(B) Mechanisms for determining consumer satisfaction and participation of individuals with disabilities who represent a variety of ages and types of disabilities, in the consumer-responsive comprehensive statewide program of technology-related assistance.

(ii) A description of the nature and extent of the—

(A) Involvement, in the designation of the lead agency under § 345.4, and in the development of the application, of—

(*1*) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(*2*) Other appropriate individuals who are not employed by a State agency; and

(*3*) Organizations, providers, and interested parties, in the private sector; and

(B) Continuing role of the individuals and entities described in paragraph (a)(3)(ii)(A) of this section in the program.

(4) A tentative assessment of the extent of the need of individuals with disabilities in the State, including individuals from underrepresented populations or rural populations for a statewide program of technology-related assistance and a description of previous efforts and efforts continuing on the date of the application to develop a consumer-responsive comprehensive statewide program of technology-related assistance.

(5) A description of State resources and other resources (to the extent this information is available) that are available to commit to the development of a consumer-responsive comprehensive statewide program of technology-related assistance.

(6) Information on the program with respect to the—

(i) Goals and objectives of the State for the program;

(ii) Systems change and advocacy activities that the State plans to carry out under the program; and

(iii) Expected outcomes of the State for the program, consistent with the purposes described in § 345.2.

(7)(i) A description of the data collection system used for compiling information on the program, consistent with requirements established by the Secretary for systems, and, when a national classification system is developed pursuant to section 201 of the Act, consistent with the classification system; and

(ii) Procedures that will be used to conduct evaluations of the program.

(8) A description of the policies and procedures governing contracts, grants, and other arrangements with public agencies, private nonprofit organizations, and other entities or individuals for the purpose of providing assistive technology devices and assistive technology services consistent with this part.

(b) Applicants for development grants shall include the following assurances in their applications:

(1)(i) An assurance that the State will use funds from a development or extension grant to accomplish the purposes described in § 345.2 and the goals, objectives, and outcomes described in paragraph (a)(6) of this section, and to carry out the systems change and advocacy activities described in paragraph (a)(6)(ii) of this section, in a manner that is consumer-responsive.

(ii) An assurance that the State, in carrying out systems change and advocacy activities, shall carry out the following activities, unless the State demonstrates through the progress reports required under § 345.50 that significant progress has been made in the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, and that other systems change and advocacy activities will increase the likelihood that the program will accomplish the purposes described in § 345.2:

(A) The development, implementation, and monitoring of State, regional, and local laws, regulations, policies, practices, procedures, and organizational structures, that will improve access to, provision of, funding for, and timely acquisition and delivery of, assistive technology devices and assistive technology services;

(B) The development and implementation of strategies to overcome barriers regarding access to, provision of, and funding for, such devices and services, with priority for identification of barriers to funding through State education (including special education) services, vocational rehabilitation services, and medical assistance services or, as appropriate, other health and human services, and with particular emphasis on overcoming barriers for underrepresented populations and rural populations;

(C) Coordination of activities among State agencies, in order to facilitate access to, provision of, and funding for, assistive technology devices and assistive technology services;

(D) The development and implementation of strategies to empower individuals with disabilities and their family members, guardians, advocates, and authorized representatives, to successfully advocate for increased access to, funding for, and provision of, assistive technology devices and assistive technology services, and to increase the participation, choice, and control of individuals with disabilities and their family members, guardians, advocates, and authorized representatives in the selection and procurement of assistive technology devices and assistive technology services;

(E) The provision of outreach to underrepresented populations and rural populations, including identifying and assessing the needs of such populations, providing activities to increase the accessibility of services to such populations, training representatives of such populations to become service providers, and training staff of the consumer-responsive comprehensive statewide program of technology-related assistance to work with such populations; and

(F) The development and implementation of strategies to ensure timely acquisition and delivery of assistive technology devices and assistive technology services, particularly for children.

(2) An assurance that the State will conduct an annual assessment of the consumer-responsive comprehensive statewide program of technology-related assistance, in order to determine—

(i) The extent to which the State's goals and objectives for systems change and advocacy activities, as identified in the State plan under paragraph (a)(6) of this section, have been achieved; and

(ii) The areas of need that require attention in the next year.

(3) An assurance that amounts received under the grant will be expended in accordance with the provisions of this part;

(4) An assurance that amounts received under the grant—

(i) Will be used to supplement amounts available from other sources that are expended for technology-related assistance, including the provision of assistive technology devices and assistive technology services; and

(ii) Will not be used to pay a financial obligation for technology-related assistance (including the provision of assistive technology devices or assistive technology services) that would have been paid with amounts available from other sources if amounts under the grant had not been available, unless—

(A) The payment is made only to prevent a delay in the receipt of appropriate technology-related assistance (including the provision of assistive technology devices or assistive technology services) by an individual with a disability; and

(B) The entity or agency responsible subsequently reimburses the appropriate account with respect to programs and activities under the grant in an amount equal to the amount of the payment;

(5) An assurance that—

(i) A public agency shall control and administer amounts received under the grant; and

(ii) A public agency or an individual with a disability shall—

(A) Hold title to property purchased with such amounts; and

(B) Administer such property.

(6) An assurance that the State will—

(i) Prepare reports to the Secretary in the form and containing information required by the Secretary to carry out the Secretary's functions under this part; and

(ii) Keep records and allow access to records as the Secretary may require to ensure the correctness and verification of information provided to the Secretary under this paragraph of this section.

(7) An assurance that amounts received under the grant will not be commingled with State or other funds;

(8) An assurance that the State will adopt fiscal control and accounting procedures as may be necessary to ensure proper disbursement of an accounting for amounts received under the grant;

(9) An assurance that the State will—

(i) Make available to individuals with disabilities and their family members, guardians, advocates, or authorized representatives information concerning technology-related assistance in a form that will allow individuals to effectively use the information; and

(ii) In preparing information for dissemination, consider the media-related needs of individuals with disabilities who have sensory and cognitive limitations and consider the use of auditory materials, including audio cassettes, visual materials, including video cassettes and video discs, and braille materials.

(10) An assurance that, to the extent practicable, technology-related assistance made available with amounts received under the grant will be equitably distributed among all geographical areas of the State;

(11) An assurance that the lead agency will have the authority to use funds made available through a development or extension grant to comply with the requirements of this part, including the ability to hire qualified staff necessary to carry out activities under the program;

(12)(i) An assurance that the State will annually provide, from the funds made available to the State through a development or extension grant under this part, an amount calculated in accordance with section 102(f)(4) of the Act in order to make a grant to, or enter into a contract with, an entity to support protection and advocacy services through the systems established to provide protection and advocacy under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.), the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.), and section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e).

(ii) The State need not provide the assurance in paragraph (b)(12)(i) of this section, if the State requests in its annual progress report or first or second extension application, as applicable, that the Secretary annually reserve, from the funds made available for a development or extension grant, an amount calculated in accordance with section 102(f)(4) of the Act, in order for the Secretary to make a grant to or enter into a contract with a system to support protection and advocacy services.

(13) An assurance that the State—

(i) Will develop and implement strategies for including personnel training regarding assistive technology within existing Federal- and State-funded training initiatives, in order to enhance assistive technology skills and competencies; and

(ii) Will document the training;

(14) An assurance that the percentage of the funds received under the grant that is used for indirect costs (as defined in OMB Circular A–87 incorporated by reference in 34 CFR 80.22(b)) shall not exceed 10 percent of the total amount of the grant; and

(15) An assurance that the lead agency will coordinate the activities funded through a development or extension grant under this part with the activities carried out by councils within the State, including—

(i) Any council or commission specified in the assurance provided by the State in accordance with section 101(a)(36) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(36));

(ii) The Statewide Independent Living Council established under section 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d));

(iii) The advisory panel established under section 613(a)(12) of the Individuals with Disabilities Education Act (20 U.S.C. 1413(a)(12));

(iv) The State Interagency Coordinating Council established under section 682 of the Individuals with Disabilities Education Act (20 U.S.C. 1482));

(v) The State Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act (20 U.S.C. 6024);

(vi) The State mental health planning council established under section 1914 of the Public Health Service Act (42 U.S.C. 300x-3);

(vii) Any council established under section 204, 206(g)(2)(A), or 712(a)(3)(H) of the Older Americans Act of 1965 (42 U.S.C. 3015, 3017(g)(2)(A), or 3058g(a)(3)(H)).

(16) An assurance that there will be coordination between the activities funded through the grant and other related systems change and advocacy activities funded by either Federal or State sources.

(c) Applicants for development grants shall provide any other related information and assurances that the Secretary may reasonably require.

(Authority: 29 U.S.C. 2212(e); sec. 102(e) of the Act)

§ 345.31 What is the content of an application for an extension grant?

A State that seeks an extension grant shall include the following in an application:

(a) The information and assurances described in § 345.30, except the

preliminary needs assessment described in § 345.30(a)(4).

(b) A description of the following:

(1) The needs relating to technology-related assistance of individuals with disabilities (including individuals from underrepresented populations or rural populations) and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals within the State.

(2) Any problems or gaps that remain with the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance in the State.

(3) The strategies that the State will pursue during the grant period to remedy the problems or gaps with the development and implementation of a program.

(4) Outreach activities to be conducted by the State, including dissemination of information to eligible populations, with special attention to underrepresented populations and rural populations.

(5)(i) The specific systems change and advocacy activities described in § 345.20 (including the activities described in § 345.30(b)(1)) carried out under the development grant received by the State, or, in the case of an application for a second extension grant, under an initial extension grant received by the State under this section, including—

(A) A description of systems change and advocacy activities that were undertaken to produce change on a permanent basis for individuals with disabilities of all ages;

(B) A description of activities undertaken to improve the involvement of individuals with disabilities in the program, including training and technical assistance efforts to improve individual access to assistive technology devices and assistive technology services as mandated under other laws and regulations in effect on the date of the application, and including actions undertaken to improve the participation of underrepresented populations and rural populations, such as outreach efforts; and

(C) An evaluation of the impact and results of the activities described in paragraph (b)(5)(i) (A) and (B) of this section.

(ii) The relationship of systems change and advocacy activities to the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

(iii) The progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance.

(6)(i) In the case of an application for an initial extension grant, a report on the hearing described in § 345.8(a)(2) or, in the case of an application for a second extension grant, a report on the hearing described in § 345.8(b)(2).

(ii) A description of State actions, other than a hearing, designed to determine the degree of satisfaction of individuals with disabilities, and their family members, guardians, advocates, or authorized representatives, public service providers and private service providers, educators and related service providers, technology experts (including engineers), employers, and other appropriate individuals and entities with—

(A) The degree of their ongoing involvement in the development and implementation of the consumer-responsive comprehensive statewide program of technology-related assistance;

(B) The specific systems change and advocacy activities described in § 345.20 (including the activities described in § 345.30(b)(1)) carried out by the State under the development grant or the initial extension grant;

(C) Progress made toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance; and

(D) The ability of the lead agency to carry out the activities described in § 345.6(b).

(c) A summary of any comments received concerning the issues described in paragraph (b)(6) of this section and response of the State to such comments, solicited through a public hearing or through other means, from individuals affected by the consumer-responsive comprehensive statewide program of technology-related assistance, including—

(1) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives;

(2) Public service providers and private service providers;

(3) Educators and related services personnel;

(4) Technology experts (including engineers);

(5) Employers; and

(6) Other appropriate individuals and entities.

(d) An assurance that the State and any recipient of funds made available to the State under the Act will comply with guidelines established under section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(e)(1) A copy of the protection and advocacy contract or grant agreement entered into by the State;

(2) Evidence of ongoing negotiations with an entity to provide protection and advocacy services, if the State has not yet entered into a grant or contract; or

(3) A request that the Secretary enter into a grant agreement with an entity to provide protection and advocacy services, pursuant to § 345.30(b)(12)(ii).

(Authority: 29 U.S.C. 2213 (d) and (e); secs. 103 (d) and (e) of the Act)

Subpart D—How Does the Secretary Make a Grant?

§ 345.40 How does the Secretary evaluate an application for a development grant under this program?

The Secretary evaluates each application using the selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 2212(a); sec. 102(a) of the Act)

§ 345.41 What other factors does the Secretary take into consideration in making development grant awards under this program?

In making development grants under this program, the Secretary takes into consideration, to the extent feasible—

(a) Achieving a balance among States that have differing levels of development of consumer-responsive comprehensive statewide programs of technology-related assistance; and

(b) Achieving a geographically equitable distribution of the grants.

(Authority: 29 U.S.C. 2212(c); sec. 102(c) of the Act)

§ 345.42 What is the review process for an application for an extension grant?

(a) The Secretary may award an initial extension grant to any State that—

(1) Provides the evidence described in § 345.6(b) and makes the demonstration described in paragraph (a)(2) of this section;

(2) Demonstrates that the State has made significant progress, and has carried out systems change and advocacy activities that have resulted in significant progress, toward the development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, consistent with this part; and

(3) Holds a public hearing in the third year of a program carried out under a development grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(b) The Secretary may award a second extension grant to any State that—

(1) Provides the evidence described in § 345.6(b) and makes the demonstration described in paragraph (a)(2) of this section;

(2) Describes the steps the State has taken or will take to continue on a permanent basis the consumer-responsive comprehensive statewide program of technology-related assistance with the ability to maintain, at a minimum, the outcomes achieved by the systems change and advocacy activities;

(3) Identifies future funding options and commitments for the program from the public and private sector and the key individuals, agencies, and organizations to be involved in, and to direct future efforts of, the program; and

(4) Holds a public hearing in the second year of a program carried out under an initial extension grant, after providing appropriate and sufficient notice to allow interested groups and organizations and all segments of the public an opportunity to comment on the program.

(c) In making any award to a State for a second extension grant, the Secretary makes an award contingent on a determination, based on the onsite visit in § 345.53, that the State is making significant progress toward development and implementation of a consumer-responsive comprehensive statewide program of technology-related assistance, except where the Secretary determines that the onsite visit is unnecessary. If the Secretary determines that the State is not making significant progress, the Secretary may take an action described in § 345.61.

(Authority: 29 U.S.C. 2213 (b) and (e) and 2215(a)(2); secs. 103 (b) and (e) and 105(a)(2) of the Act)

§ 345.43 What priorities does the Secretary establish?

(a) The Secretary gives, in each of the 2 fiscal years succeeding the fiscal year in which amounts are first appropriated for carrying out development grants, priority for funding to States that received development grants under this part during the fiscal year preceding the fiscal year concerned.

(b) For States that are applying for initial extension grants, the Secretary gives, in any fiscal year, priority to States that received initial extension grants during the fiscal year preceding the fiscal year concerned.

(c) The Secretary may establish other appropriate priorities under the Act.

(Authority: 29 U.S.C. 2212(b)(4) and 2213(c); secs. 102(b)(4) and 103(c) of the Act)

Subpart E—What Conditions Must Be Met After an Award?

§ 345.50 What are the reporting requirements for the recipients of development and extension grants?

(a) States receiving development and extension grants shall submit annually to the Secretary a report that documents significant progress in developing and implementing a consumer-responsive comprehensive statewide program of technology-related assistance documenting the following:

(1) The progress the State has made, as determined in the State's annual assessment (consistent with the guidelines established by the Secretary under § 345.51) in achieving the State's goals, objectives, and outcomes as identified in the State's application, and areas of need that require attention in the next year, including unanticipated problems with the achievement of the goals, objectives, and outcomes described in the application, and the activities the State has undertaken to rectify these problems.

(2) The systems change and advocacy activities carried out by the State including—

(i) An analysis of the laws, regulations, policies, practices, procedures, and organizational structure that the State has changed, has attempted to change, or will attempt to change during the next year, to facilitate and increase timely access to, provision of, or funding for, assistive technology devices and assistive technology services; and

(ii) A description of any written policies and procedures that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices and assistive technology services, particularly policies and procedures regarding access to, provision of, and funding for, such devices and services under education (including special education), vocational rehabilitation, and medical assistance programs.

(3) The degree of involvement of various State agencies, including the State insurance department, in the development, implementation, and evaluation of the program, including any interagency agreements that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices and assistive technology services such as agreements that identify available resources for, assistive technology devices and assistive technology services and the responsibility of each agency for paying for such devices and services.

(4) The activities undertaken to collect and disseminate information about the documents or activities analyzed or described in paragraphs (a)(1) through (3) of this section, including outreach activities to underrepresented populations and rural populations and efforts to disseminate information by means of electronic communication.

(5) The involvement of individuals with disabilities who represent a variety of ages and types of disabilities in the planning, development, implementation, and assessment of the consumer-responsive comprehensive statewide program of technology-related assistance, including activities undertaken to improve such involvement, such as consumer training and outreach activities to underrepresented populations and rural populations.

(6) The degree of consumer satisfaction with the program, including satisfaction by underrepresented populations and rural populations.

(7) Efforts to train personnel as well as consumers.

(8) Efforts to reduce the service delivery time for receiving assistive technology devices and assistive technology services.

(9) Significant progress in the provision of protection and advocacy services, in each of the areas described in § 345.55(c)(1)(ii).

(b) The State shall make these reports readily available to the public at no extra cost.

(c) The State shall submit on an annual basis—

(1) A copy of the protection and advocacy contract or grant agreement entered into by the State;

(2) Evidence of ongoing negotiations with an entity to provide protection and advocacy services, if the State has not yet entered into a grant or contract; or

(3) A request that the Secretary enter into a grant agreement with an entity to provide protection and advocacy services, pursuant to § 345.30(b)(12)(ii).

(Authority: 29 U.S.C. 2212(e)(16)(A) and 2214(b); secs. 102(e)(16)(A) and 104(b) of the Act)

§ 345.51 When is a State making significant progress?

A State is making significant progress when it carries out—

(a) The systems change and advocacy activities listed in § 345.30(b)(1)(ii)(A) through (F); or

(b) Other systems change and advocacy activities, if the State demonstrates through the progress reports developed by the Secretary and required to be submitted by a State in § 345.50 that it has accomplished the

purposes of the program listed in § 345.2.

(Authority: 29 U.S.C. 2212(e)(7) and 2214(a); secs. 102(e)(7) and 104(a) of the Act)

§ 345.52 Who retains title to devices provided under this program?

Title to devices purchased with grant funds under this part, either directly or through any contract or subgrant, must be held by a public agency or by an individual with a disability who is the beneficiary of the device. If the disabled individual does not have legal status to hold title, the title may be retained by a parent or legal guardian.

(Authority: 29 U.S.C. 2212(e)(12)(B); sec. 102(e)(12)(B) of the Act)

§ 345.53 What are the requirements for grantee participation in the Secretary's progress assessments?

Recipients of development grants shall participate in the Secretary's assessment of the extent to which States are making significant progress by—

(a) Participating in the onsite monitoring visits that will be made to each grantee during the final year of the development grant;

(b) Participating in an onsite monitoring visit, that is in addition to the visit in paragraph (a), if the State applies for a second extension grant and whose initial onsite visit occurred prior to the date of the enactment of the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994, unless the Secretary determines that the visit is not necessary.

(c) Providing written evaluations of the State's progress toward fulfilling its goals and the objectives of the project, and such other documents as the Secretary may reasonably require to complete the required assessment.

(Authority: 29 U.S.C. 2215(a); sec. 105(a) of the Act)

§ 345.54 How may grant funds be used under this program?

(a) States receiving funds under this part shall comply with the assurances provided under §§ 345.30 and 345.31.

(b) A State receiving a grant may make contracts or subgrants to the eligible entities in § 345.6, provided that—

(1) A designated public agency maintains fiscal responsibility and accountability; and

(2) All appropriate provisions related to data collection, recordkeeping, and cooperation with the Secretary's evaluation and program monitoring efforts are applied to all subcontractors and subgrantees as well as to the agency receiving the grant.

(Authority: 29 U.S.C. 2212(e), 2213(d), and 2215(a)(5); secs. 102(e), 103(d), and 105(a)(5) of the Act; sec. 437 of the General Education Provisions Act; 20 U.S.C. 1232f)

§ 345.55 What are the responsibilities of a State in carrying out protection and advocacy services?

(a)(1) A State is eligible to receive funding to provide protection and advocacy services if—

(i) The State, as of June 30, 1993, has provided for protection and advocacy services through an entity that is capable of performing the functions that would otherwise be performed under § 345.30(b)(12) by the system described in that section; and

(ii) The entity referred to in § 345.30(b)(12)(i) is not a system described in that section.

(b) A State that meets both of the descriptions in paragraph (a)(1) of this section also shall comply with the same requirements of this part as a system that receives funding under § 345.30(b)(12).

(c)(1) A system that receives funds under § 345.20(b)(12)(i) to carry out the protection and advocacy services described in § 345.20(b)(12)(i) in a State, or an entity described in paragraph (a)(1) of this section, shall prepare reports that contain the information required by the Secretary, including the following:

(i) A description of the activities carried out by the system or entity with the funds;

(ii) Documentation of significant progress, in providing protection and advocacy services, in each of the following areas:

(A) Conducting activities that are consumer-responsive, including activities that will lead to increased access to funding for assistive technology devices and assistive technology services.

(B) Executing legal, administrative, and other appropriate means of representation to implement systems change and advocacy activities.

(C) Developing and implementing strategies designed to enhance the long-term abilities of individuals with disabilities and their family members, guardians, advocates, and authorized representatives to successfully advocate for assistive technology devices and assistive technology services to which the individuals with disabilities are entitled under law other than this Act.

(D) Coordinating activities with protection and advocacy services funded through sources other than this Act, and coordinating activities with the systems change and advocacy activities carried out by the State lead agency.

(2) The system or entity shall submit the reports to the lead agency in the State not less often than every 6 months.

(3) The system or entity shall provide monthly updates to the lead agency concerning the activities and information described in paragraph (c) of this section.

(d) Before making a grant or entering into a contract under § 345.30(b)(12)(ii) to support the protection and advocacy services described in § 345.30(b)(12)(ii) in a State, the Secretary shall solicit and consider the opinions of the lead agency in the State with respect to the terms of the grant or contract.

(e)(1) In each fiscal year, the Secretary specifies for each State receiving a development or an extension grant the minimum amount that the State shall use to provide protection and advocacy services.

(2)(i) Except as provided for in paragraphs (e) (3) and (4), the Secretary calculates this minimum amount based on the size of the grant, the needs of individuals with disabilities within the State, the population of the State, and the geographic size of the State.

(ii) The minimum amount, however, is not less than $40,000 and not more than $100,000.

(3) If a State receives a second extension grant, the Secretary specifies a minimum amount for the fourth year (if any) of the grant period that equals 75 percent of the minimum amount specified for the State for the third year of the second extension grant of the State.

(4) If a State receives a second extension grant, the Secretary specifies a minimum amount for the fifth year (if any) of the grant period that equals 50 percent of the minimum amount specified for the State for the third year of the second extension grant of the State.

(5) After the fifth year (if any) of the grant period, no Federal funds may be made available under this title by the State to a system described in § 345.30(b)(12) or an entity described in paragraph (a) of this section.

(Authority: 29 U.S.C. 2212(f); sec. 102(f) of the Act)

Subpart F—What Compliance Procedures May the Secretary Use?

§ 345.60 Who is subject to a corrective action plan?

(a) Any State that fails to comply with the requirements of this part is subject to a corrective action plan.

(b) A State may appeal a finding that it is subject to corrective action within 30 days of being notified in writing by the Secretary of the finding.

(Authority: 29 U.S.C. 2215(b)(1); sec. 105(b)(1) of the Act)

§ 345.61 What penalties may the Secretary impose on a grantee that is subject to corrective action?

A State that fails to comply with the requirements of this part may be subject to corrective actions such as—

(a) Partial or complete termination of funds;

(b) Ineligibility to participate in the grant program in the following year;

(c) Reduction in funding for the following year; or

(d) Required redesignation of the lead agency.

(Authority: 29 U.S.C. 2215(b)(2); sec. 105(b)(2) of the Act)

§ 345.62 How does a State redesignate the lead agency when it is subject to corrective action?

(a) Once a State becomes subject to a corrective action plan under § 345.60, the Governor of the State, subject to approval by the Secretary, shall appoint, within 30 days after the submission of the plan to the Secretary, a monitoring panel consisting of the following representatives:

(1) The head of the lead agency designated by the Governor;

(2) Two representatives from different public or private nonprofit organizations that represent the interests of individuals with disabilities;

(3) Two consumers who are users of assistive technology devices and assistive technology services and who are not—

(i) Members of the advisory council, if any, of the consumer-responsive comprehensive statewide program of technology-related assistance; or

(ii) Employees of the State lead agency; and

(4) Two service providers with knowledge and expertise in assistive technology devices and assistive technology services.

(b) The monitoring panel must be ethnically diverse. The panel shall select a chairperson from among the members of the panel.

(c) The panel shall receive periodic reports from the State regarding progress in implementing the corrective action plan and shall have the authority to request additional information necessary to determine compliance.

(d) The meetings of the panel to determine compliance shall be open to the public (subject to confidentiality concerns) and held at locations that are accessible to individuals with disabilities.

(e) The panel shall carry out the duties of the panel for the entire period of the corrective action plan, as determined by the Secretary.

(f) A failure by a Governor of a State to comply with the requirements of paragraphs (a) through (e) of this section results in the termination of funding for the State under this part.

(g) Based on its findings, a monitoring panel may determine that a lead agency designated by a Governor has not accomplished the purposes described in § 345.2 and that there is good cause for redesignation of the agency and the temporary loss of funds by the State under this part.

(h) For the purposes of this section, "good cause" includes the following:

(1) Lack of progress with employment of qualified staff;

(2) Lack of consumer-responsive activities;

(3) Lack of resource allocation to systems change and advocacy activities;

(4) Lack of progress with meeting the assurances in § 345.30(b); or

(5) Inadequate fiscal management.

(i) If a monitoring panel determines that the lead agency should be redesignated, the panel shall recommend to the Secretary that further remedial action be taken or that the Secretary order the Governor to redesignate the lead agency within 90 days or lose funds under this part. The Secretary, based on the findings and recommendations of the monitoring panel, and after providing to the public notice and opportunity for comment, shall make a final determination regarding whether to order the Governor to redesignate the lead agency. The Governor shall make any redesignation in accordance with the requirements that apply to designations under § 345.6.

(Authority: 29 U.S.C. 2215(c); sec. 105(c) of the Act)

§ 345.63 How does a State redesignate the entity responsible for providing protection and advocacy services?

(a) The Governor of a State, based on input from individuals with disabilities and their family members, guardians, advocates, or authorized representatives, may determine that the entity providing protection and advocacy services has not met the protection and advocacy service needs of the individuals with disabilities and their family members, guardians, advocates, or authorized representatives, for securing funding for and access to assistive technology devices and assistive technology services, and that there is good cause to provide the protection and advocacy services for the State through a contract with a second entity.

(b) On making the determination in paragraph (a) of this section, the Governor may not enter into a contract with a second entity to provide the protection and advocacy services unless good cause exists and unless—

(1) The Governor has given the first entity 30 days notice of the intention to enter into the contract, including specification of good cause, and an opportunity to respond to the assertion that good cause has been shown;

(2) Individuals with disabilities and their family members, guardians, advocates, or authorized representatives, have timely notice of the determination and opportunity for public comment; and

(3) The first entity has the opportunity to appeal the determination to the Secretary within 30 days of the determination on the basis that there is not good cause to enter into the contract.

(c)(1) When the Governor of a State determines that there is good cause to enter into a contract with a second entity to provide the protection and advocacy services, the Governor shall hold an open competition within the State and issue a request for proposals by entities desiring to provide the services.

(2) The Governor shall not issue a request for proposals by entities desiring to provide protection and advocacy services until the first entity has been given notice and an opportunity to respond. If the first entity appeals the determination to the Secretary, the Governor shall issue such request only if the Secretary decides not to overturn the determination of the Governor. The Governor shall issue such request within 30 days after the end of the period during which the first entity has the opportunity to respond, or after the decision of the Secretary, as appropriate.

(3) The competition shall be open to entities with the same expertise and ability to provide legal services as a system in § 345.30(b)(12). The competition shall ensure public involvement, including a public hearing and adequate opportunity for public comment.

(Authority: 29 U.S.C. 2215(d); sec. 105(d) of the Act)

[FR Doc. 95–19601 Filed 8–8–95; 8:45 am]
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Wednesday
August 9, 1995

Part IV

Federal Trade Commission

16 CFR Parts 800 and 803
Notification and Report Form for Certain Mergers and Acquisitions Under the Antitrust Improvements Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 800 and 803

Notification and Report Form for Certain Mergers and Acquisitions Under the Antitrust Improvements Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This final rule revises 16 CFR part 803 Appendix, the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions (the "Form"). The Form must be completed and submitted by persons required to report mergers or acquisitions pursuant to Section 7A of the Clayton Act as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). The revised Form will require that 1992 revenue data, identified by 1987 Bureau of the Census Standard Industrial Classification (SIC) Codes, be provided in response to certain items on the Form that previously called for 1987 data. This final rule also removes 16 CFR part 800, the Transitional Rule addressing the treatment of acquisitions consummated before, and notifications filed on or before, September 5, 1978, the effective date of the Form and the rules implementing the HSR Act ("the Rules").

EFFECTIVE DATE: August 9, 1995.

ADDRESSES: All completed Forms, including any documents required to be submitted in response to any item on the Form, must be delivered to: Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, and Director of Operations, Antitrust Division, Room 3218, Department of Justice, Washington, DC 20530, as specified by 16 CFR 803.10(c).

FOR FURTHER INFORMATION CONTACT: William I. Schechter, Attorney, or Melea R. Epps, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. Telephone (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This change to the Form has been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the existing OMB clearance, Control No. 3084–0005.

Regulatory Flexibility Act

The Federal Trade Commission ("the Commission") has previously certified that the Premerger Notification Rules and Report Form do not significantly affect small businesses. The revision to the Form made by this notice will not change the premerger notification rules in any way that would affect that determination. Therefore, pursuant to 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354 (September 19, 1980), the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. Section 604 of the Administrative Procedure Act, 5 U.S.C. 604, requiring a final regulatory flexibility analysis of this revision is therefore inapplicable.

Background Information

The HSR Act requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General of the Antitrust Division of the Department of Justice ("the Assistant Attorney General") and to wait a designated period of time before consummating such proposed transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require "that the notification * * * be in such form and contain such documentary material and information * * * as is necessary and appropriate" to enable the agencies "to determine whether such acquisitions may, if consummated, violate the antitrust laws." (15 U.S.C. 18a(d)(1988)).

Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions. The Form is designed to provide the Commission and the Assistant Attorney General (collectively referred to as "the enforcement agencies") with the information and documentary material necessary and appropriate for an initial evaluation of the potential anticompetitive effects of significant mergers, acquisitions and certain similar transactions. The Form is not intended to elicit all potentially relevant information relating to an acquisition. Completion of the Form by all parties required to file ordinarily will permit both enforcement agencies to determine whether the waiting period should be allowed to expire or be terminated upon request, or whether a request for additional information should be made under section 7A(e) of the Act and 16 CFR 803.20.

All acquiring and acquired persons required by the HSR Act to file notification must complete the Form, or a photostatic or other equivalent reproduction, in accordance with the Rules, 16 CFR 801–803, and the instructions attached to the Form.

Statement of Basis and Purpose for the Commission's Revision of the Form and Removal of the Transitional Rule

Form Revision

To aid the enforcement agencies in determining the competitive significance of a proposed transaction, the Form requires parties to the transaction to provide information concerning their revenues for a given base year and for the most recent year for which revenue information is available. When the Form was first promulgated on July 31, 1978, 43 FR 33450, and became effective on September 5, 1978, it required data for 1972 as the base year.

The Form was revised in 1980 to require data for 1977 as the base year (45 FR 14205 (March 5, 1980)). In 1986, the Form was revised to require data for 1982 as the base year (51 FR 10368 (March 26, 1986)). Thereafter, a revision to the Form in 1990 changed the base year to 1987 (55 FR 31371 (August 2, 1990)). This notice changes the base year from 1987 to 1992 and requires revisions to the Form relating to the revenue information required by item 5 of the Form and the reference materials to be used in completing item 5, as discussed more fully below.

Item 5 of the Form is designed, in part, to elicit economic data classified by Standard Industrial Classification ("SIC") codes with respect to business activities within the U.S. in which the reporting person derived any dollar revenues in the base year and in the most recent year for which data are available. (Rule 803.2 (b) and (c), 16 CFR 803.2 (b) and (c), provide for certain limitations on item 5 and other data to be supplied by the reporting person). Such revenue data are required by industry (4-digit SIC code), by product class (5-digit SIC based code), and by product (7-digit SIC based code).

More specifically, item 5(a) currently requires that the reporting person provide 1987 revenue data for each 4-digit industry in which that filing person was engaged. Item 5(b)(i) currently requires that the reporting person engaged in manufacturing provide 1987 revenue data for each 7-digit product code from which it derived any revenues. Item 5(b)(ii) currently requires the reporting person to identify each manufactured product that it has added or deleted since 1987. For those products added, the reporting person must provide the total revenue attributable to the added product for the most recent year. (The reporting person may identify the product by a 7-digit product code or in the manner it ordinarily uses.) Item 5(b)(iii) currently requires that the reporting person engaged in manufacturing provided revenue data for the most recent year for each 5-digit product class from which it derived revenues. Item 5(c) currently requires that the reporting person engaged in non-manufacturing industries provide 4-digit revenue data for the most recent year. (Pursuant to Rule 803.2(b), acquired persons are required to limit their responses to item 5 to revenues derived from the assets being acquired and/or the issuer(s) whose voting securities are being acquired).

When originally promulgated, the Form required revenue data for two time periods, *i.e.*, for 1972 and for the most recent year for which the requested information was available. The use of the 1972 "base year" was designed to coincide with the then most recent quinquennial economic census and the Annual Survey of Manufacturers. These Bureau of Census publications (as updated) serve as the most readily available and reliable statistical sources of industry data and universe product revenue data to which individual company product revenue data can be compared. When the original Form was promulgated, the Commission and the Assistant Attorney General stated their intention to revise Item 5 to require submission of 1977 revenue data as soon as the Bureau of the Census published the 1977 Census of Manufacturers (43 FR 33526 (July 31, 1978)). Accordingly, the Commission amended the Form in 1980, in 1986 when the 1982 Census of Manufacturers was published, and again in 1990 when the 1987 Census of Manufacturers was published.

The Bureau of the Census is currently in the process of publishing its Final Reports for the 1992 Census of Manufacturers, and it projects that it will complete the publication of all Final Reports by September 1, 1995. Since most companies within the United States submit data to the Bureau of the Census for economic censuses, many potential reporting persons have gathered, compiled and assembled 1992 revenue data in accordance with the SIC code format for the 1992 Census of Manufacturers. In addition, the Bureau of the Census has completed its Numerical List of Manufactured and Mineral Products, 1992 Census of Manufacturers and Census of Mineral Industries (MC92–R–1) ("1992 Numerical List"). This publication contains 5-digit product class and 7-digit product codes for 1992 and is currently available from the Government Printing Office. Its present availability and the imminent availability of the 1992 product revenue universe data, contained in the Bureau of the Census Reports, to the enforcement agencies, permit the revision of item 5 to require 1992 data instead of 1987 data.

The previous change to the base year in 1990 was effective in 60 days from the date of publication of the Final Rule in the **Federal Register**. A transitional period during which filers could submit either 1982 or 1987 data was not provided because of significant changes in the 4-digit, 5-digit and 7-digit SIC codes. In contrast, the previous changes to the base year in 1980 and 1986 were effective immediately but provided for a 60-day transitional period during which filers were permitted to submit either the old or the new revenue data.

Because there have not been significant changes in the SIC codes from 1987 to 1992, the Commission has determined that the current changes to the Form will be effective immediately, subject to a transitional period until October 1, 1995, (as was permitted in the changeovers to the 1977 and 1982 base years). During such time, reporting persons may use as the base year either 1987 or 1992 when providing revenue and SIC code data in response to items 5(a), 5(b)(i), 5(b)(ii), 5(b)(iii) and 5(c) of the Form. Thereafter, the Commission and the Assistant Attorney General will accept only 1992 revenue and SIC code data. Forms submitted on or after October 1, 1995, that do not provide 1992 base year revenue data will be treated as deficient under § 803.10(c)(2) of the Rules. (16 CFR 803.10(c)(2)).

The Commission has decided to provide for a transitional period during which base year revenue data may be submitted for either 1987 or 1992 and the corresponding 1987 or 1992 SIC codes can be used in responding to item 5 in order to minimize the reporting burden on filing persons. The transitional period allows for the submission of new base year revenue data by first-time filers, who may otherwise be required to compile old base year revenue data solely for the purpose of completing the Form. It also permits reporting persons who routinely file notifications with the enforcement agencies to use existing old base year revenue data to complete the Form while finishing their collection and organization of new base year revenue data. Although this approach may temporarily complicate the substantive antitrust reviews conducted by the enforcement agencies, the difficulties should not be significant because there have not been substantial changes in the SIC codes for 1992. Moreover, the enforcement agencies' antitrust analysis clearly will benefit from the receipt of more up-to-date information.

In 1990, when the Form was amended to require submission of 1987 base year revenue data, the Commission and the Assistant Attorney General determined that reporting persons would be required to submit revenue data using the codes published by the Bureau of Census rather then the codes used by Census to collect the information. This requirement is no longer necessary since the Bureau of the Census used the same codes for data collection and for publication of the 1992 Census of Manufacturers. Accordingly, reporting persons will no longer be required to convert revenue data from collected codes to the codes published by the Bureau of Census when completing the Form.

The Commission believes that the notice and comment period ordinarily required by the Administrative Procedure Act ("the APA"), 5 U.S.C. 553(b) is unnecessary here. Section 553(b)(B) exempts from the APA's notice and comment requirements the promulgation of a rule where the agency, for good cause, finds that the standard procedure would be "impracticable, unnecessary, or contrary to the public interest." Promulgation of the proposed revision falls within this exemption for several reasons.

First, the public was afforded the opportunity to comment on the original Rules and Form in two notice and comment periods provided pursuant to the rulemaking requirements of the APA. The rulemaking culminated in the promulgation and publication of the Rules and the Form, and was accompanied by a Statement of Basis and Purpose (43 FR 33450 (July 31, 1978)). Since the present amendment does not depart from or alter the substance of the prior rulemakings (*i.e.*, it does not change the type or amount of information required by the Form), further opportunity for comment is unnecessary. See generally, *Texaco, Inc.* v. *Federal Energy Administration*, 531 F.2d 1071 (Emer. Ct. App.). *cert. denied*, 426 U.S. 941 (1976); *Durkin* v. *Edward S. Wagner Co.*, 115 F. Supp. 118 (D.N.Y. 1953), *aff'd* 217 F.2d 303 (2d Cir.), *cert. denied*, 348 U.S. 964 (1954).

Second, the Commission and the Assistant Attorney General gave notice of their intention to revise item 5 in the original promulgation of the Rules and the Form in response to numerous

comments received during the two comment periods of the original rulemaking. Several comments then opposed the requirement that 1972 data based on the SIC Codes be supplied on the grounds that the compilation of the 1972 data would be unduly cumbersome, burdensome and expensive. These positions were rejected by the Commission on the basis that revenue information "reported by SIC-based categories currently provides the only feasible basis for the effective preliminary review of reported acquisitions within the time limits imposed by the act." (43 FR at 33527, (July 31, 1978)).

Now, for the fourth time, the Commission is changing the requirements of item 5 consistent with its earlier notices. The change will lessen the compliance burden by requiring more recent revenue data, which are generally more easily retrievable by and readily available to reporting persons than 1987 data. The Commission finds that a separate notice and comment period at this time would be unnecessary and not in the public interest and, therefore, it is not required by the APA.

Section 553(d) (5 U.S.C. 553(d)(3)) of the APA requires that 30 days notice be provided to the public before a rule becomes effective, but provides an exception from this requirement where good cause is found. (5 U.S.C. 553(d)(3)). Rather than delay the effective date of the new requirements by 30 days, the Commission has determined in the public interest to accommodate all reporting persons by making the rule effective immediately but providing for a transitional period as described above. The transitional period in effect provides more than 30 days notice to reporting persons before they must complete the Form using 1992 base year revenue and SIC code data as required by this rule.

The Commission, with the concurrence of the Assistant Attorney General, hereby revises the Appendix to 16 CFR part 803.

The Transitional Rule

Section 7A of the Clayton Act became effective on February 27, 1977, 150 days after enactment. However, implementing rules could not be promulgated prior to the effective date. Therefore, on January 27, 1977, the Commission, with the concurrence of the Assistant Attorney General, promulgated a final rule designated the Transitional Rule (42 FR 6365 (February 2, 1977)). The Transitional Rule, 16 CFR part 800, created an exemption for all transactions consummated prior to the effective date of the Rules and specified the manner in which the Rules would be implemented during the first 30 days following the effective date. The Rules have now been in effect since September 5, 1978, and there are no longer any transactions that are subject to the Transitional Rule. Thus, the deletion of the Transitional Rule is appropriate at this time.

The Commission believes that the notice and comment period ordinarily required by the APA, 5 U.S.C. 553(b), is also unnecessary for the removal of the Transitional Rule, which falls within the exemption provided by Section 553(b)(B) of the APA. Because the Transitional Rule governs no current or future transactions, no members of the public will be affected by the deletion of the rule. Therefore, to make the removal of the Transitional Rule subject to the notice and comment requirements of the APA would be "impractical, unnecessary, or contrary to the public interest." (5 U.S.C. 553(b)(B)(1988)).

The Commission, with the concurrence of the Assistant Attorney General, hereby removes 16 CFR part 800.

List of Subjects in 16 CFR Parts 800 and 803

Antitrust.

Final Rule

Accordingly, under the authority at 15 U.S.C. 45(a) and 46(g) the Federal Trade Commission amends title 16 chapter I of the Code of Federal Regulations as follows:

PART 800—TRANSITIONAL RULE

1. Part 800 is removed.

PART 803—TRANSMITTAL RULES

2. The authority citation for part 803 continues to read as follows:

Authority: Section 7A(d), Clayton Act, 15 U.S.C. 18a(d) as added by section 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390.

3. The Appendix is amended by revising pages I and IV of the Instructions to the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions, and pages 6 and 7 of the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions to read as follows:

* * * * *

Appendix [Amended]

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ANTITRUST IMPROVEMENTS ACT
NOTIFICATION AND REPORT FORM
for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-16) constitute the Notification and Report Form ("the Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Filing persons need not, however, record their responses on the Form.

These Instructions specify the information which must be provided in response to the items on the Answer Sheets. *Only* the completed Answer Sheets, together with all documentary attachments are to be filed with the Federal Trade Commission and the Department of Justice.

Persons providing responses on attachment pages rather than on answer sheets must submit a complete set of attachment pages with **each** copy of the Form.

The term "documentary attachments" refers to materials supplied in responses to Item 2(d), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information-The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 303, Federal Trade Commission, 6th St. & Pa. Avenue, N.W., Washington, D.C. 20580, phone (202) 326-3100.

Definitions-The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) and 48 FR 34427 (July 29, 1983).

Affidavit-Attach the affidavit required by § 803.5 to page 1 of the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 803.5(a).)

Responses-*Each answer* should identify the **Item** to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each Item. Each additional sheet should identify at the top of the page the Item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be so identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any Item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any Item fully, give such information as is available and provide a statement of reasons for non-compliance as required by § 803.3. If exact answers to any Item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year-All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

SIC Data-This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) *All persons* must submit certain data at the 4-digit (SIC code) *industry* level. To the extent that dollar revenues are derived from *manufactured operations* (SIC major groups 20-39), data must also be submitted at the *5-digit product class* and *7-digit product levels* (SIC based codes).
The term "dollar revenues" is defined in § 803.2(d).

References- In reporting information by "4-digit (SIC code) industry" refer to the 1987 edition of the *Standard Industrial Classification Manual* published by the Executive Office of the President, Office of Management and Budget.

In reporting information by "5-digit product class" and "7-digit product" refer to the following reference publication published by the U.S. Bureau of the Census:
Numerical List of Manufactured and Mineral Products, 1992 *Census of Manufactures and Census of Mineral Industries* (MC92-R-1). Make sure that the Numerical List you use has MC92-R-1 printed on the cover.

Furthermore, when the Numerical List cites footnote 3, which refers to Appendices A and C for detail collected in a specified Current Industrial Report, you must provide revenue information using the 7-digit product codes listed in Appendix A.

Privacy Act Statement - Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Notification and Report Form may violate the antitrust laws. Furnishing the information on this Form is voluntary.

Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $10,000 per day.

the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document.

Persons filing notification may provide an optional index of documents called for by Item 4 on page 5 of the Answer Sheets.

NOTE: If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

* * * * *

ITEMS 5 through 9 and the Appendix

NOTE: *For Items 5 through 9 and the Appendix limited or separate responses may be required of the person filing notification. (See § 803.2(b) and (c).)*

ITEM 5(a) - 5(c): These Items request information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 4-digit (SIC code) *industry* level. To the extent that dollar revenues are derived from *manufacturing operations* (SIC major groups 20-39), data must also be submitted at the 5-digit product class and 7-digit product levels (SIC based codes).

NOTE: See the "References" listed in the General Instructions to the Form. Refer to the 1987 edition of the *Standard Industrial Classification Manual* for the 4-digit (SIC code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, 1992 *Census of Manufactures and Census of Mineral Industries* (MC92-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code."

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within 2-digit major group 63. Credit agencies other than banks; security and commodity brokers, dealers, exchanges, and services; holding and other investment offices, and real estate companies (2-digit SIC major groups 61, 62, 67 and 65) should identify or explain the revenues reported (e.g., dollar sales, receipts).

Persons filing notification should include the total dollar revenues for 1992 derived by all entities included within the person filing notification at the time this Notification and Report Form is prepared (even if such entities have become included within the person since 1992). For example, if the person filing notification acquired an entity in 1994, it must include that entity's 1992 revenues in Items 5(a) and 5(b)(i).

Item 5(a)-*Dollar revenues by industry.* Provide aggregate 4-digit (SIC code) industry data for 1992.

Item 5(b)(i)-*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations for the person filing notification for 1992 for each 7-digit product of the person in 2-digit SIC major groups 20-39 (manufacturing industries)

NOTE: When the Numerical List refers to footnote 3, which cites Appendices A and C for detail collected in a specified Current Industrial Report, you must provide revenue information using 7-digit product codes listed in Appendix A.

Item 5(b)(ii)-*Products added or deleted.* Within 2-digit SIC major groups 20-39 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1992, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 7-digit product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 1992 by reason of mergers or acquisition occurring since 1992. Dollar revenues derived from such products should be included in response to Item 5(b)(i). However, if an entity acquired since 1992 by the person filing notification(and now included within the person) itself has added any products since 1992, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets or voting securities since 1992 should also be listed here.

Item 5(b)(iii)-*Dollar revenues by manufactured product class.* Provide the following information about the aggregate operations of the person filing notification for the most recent year for each 5-digit product class of the person within SIC major groups 20-39 (manufacturing industries). If such data have not been compiled for the most recent year, estimates of dollar revenues by 5-digit product class may be provided if a statement describing the method of estimation is furnished.

Item 5(c)-*Dollar revenues by non-manufacturing industry.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 4-digit (SIC code) industry in SIC major groups other than 20-39 in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 4-digit industry may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

NOTE: *This million dollar minimum is applicable only to Item 5(c).*

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5 (See the "References" listed in the General Instructions to the Form. Refer to the 1987 editon of the *Standard Industrial Classification Manual* for the 4-digit (SIC Code) industry codes. Refer to the Numerical List of Manufactured and Mineral Products, *1992 Census of Manufactures and Census of Mineral Industries* (MC92-R-1) for the 5-digit product class and 7-digit product codes. Report revenues for the 5-digit and 7-digit codes using the codes in the columns labeled "Product code.")

5(a) DOLLAR REVENUES BY INDUSTRY

4-DIGIT INDUSTRY CODE *Product code published*	DESCRIPTION	1992 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

7-DIGIT PRODUCT CODE *Product code published*	DESCRIPTION	1992 TOTAL DOLLAR REVENUES

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–19546 Filed 8–8–95; 8:45 am]

BILLING CODE 6750–01–C

federal register

Wednesday
August 9, 1995

Part V

Federal Communications Commission

47 CFR Parts 1 and 26

General Wireless Communications Service; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 26

[ET Docket No. 94–32, FCC 95–319]

Wireless Service; General Wireless Communications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Second Report and Order* creates the General Wireless Communications Service and adopts rules for licensing of this service in the 4660–4685 MHz band. These rules will be found in newly adopted 47 CFR Part 26. The creation of the General Wireless Service comes in response to the Omnibus Budget Reconciliation Act of 1993 (Reconciliation Act), and is intended to benefit the public by permitting and encouraging the introduction of new services and the enhancement of existing services. These new and enhanced services and uses will create new jobs, foster economic growth, and improve access to communications by industry and the American public.

EFFECTIVE DATE: August 9, 1995. Section 26.104 which contains information collection requirements will not become effective until approved by the Office of Management and Budget. Notice of such approval and the effective date will be provided in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Rackley, 202–418–0620, or Dan Grosh 202–418–1534.

SUPPLEMENTARY INFORMATION:

Type of Review: New collection requirement
Title: In the Matter of Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use
OMB Number: None.
Form Number:
Affected Public: Business or other-for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.
Number of Respondents: 875
Estimated time per response: Approximately 4 hours
Total burden: Approximately 3500 hours five and ten years after initial license grant
Needs and Uses: These requirements comply with Congressional directive that the Commission adopt performance requirements to ensure prompt service to rural areas, prevent stockpiling or warehousing of spectrum and encourage investment in and development of new technologies

This is a synopsis of the *Second Report and Order* is avaialble for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Second Report and Order

1. By this action, the Commission creates the General Wireless Communications Service (GWCS), and adopts rules for licensing of this service in the 4660–4685 MHz band. The 25 megahertz of spectrum in the 4660–4685 MHz band was transferred from Federal Government to private sector use and was allocated to the Fixed and Mobile services in the *First Report and Order and Second Notice of Proposal Rule Making* (*First R&O/Second NPRM*) in this proceeding. (The *Notice of Inquiry* in this proceeding was published at 59 FR 255589, May 17, 1994; the *Notice of Proposed Rule Making* at 59 FR 19393, May 17, 1994; the *Notice of Proposed Rule Making* at 59 FR 19393, November 17, 1994; and the *First Report and Order* at 60 FR 13102, March 10, 1995.)

2. The *First R&O* allocated the 2390–2400 MHz band for use by unlicensed Personal Communicationa Services (PCS) devices, provided for continued use of the 2402–2417 MHz band by devices operating in accordance with Part 15 of our rules, supgraded the allocation of these bands for use by the Amateur service on a primary basis, and allocation the 5440–4685 MHz band for use by Fixed and Mobile Service. The *Second NPRM* proposed rules for use of the 4660=NPRM proposed rule for use of the 4660–4685 MHz band.

Service Rules

3. The *Second NPRM* proposed to create a new service, the General Wireless Communications Service (GWCS), for licensing of the 4660–4685 MHz band. This new service would allow a licensee to provide a wide range of Fixed or Mobile services. As stated in the Second NPRM, CWCS would provide licensees an opportunity to use the spectrum flexibility in order to meet the needs of consumers. Services that would not be within the proposed GWCS category included Broadcast services, Radio location services, and Satellite services.

4. The Commission proposed to establish the flexible GWCS service classification in order to enhance the ability of service providers to meet a variety of user needs. The Commission also acknowledged the possibility that these needs might better be accommodated by rules that prescribe the use of the 4660–4685 MHz frequency band only by specific services. Interested parties who opposed the proposed establishment of a GWCS category were asked to suggest ways in which use of the 4660–4685 MHz band could be limited to specific services. For example, the Commission sought comment on (1) what services should be treated as eligible; (2) whether we should divide channels in the band in a matter which assigns Fixed services exclusively to certain channels and Mobile services exclusively to other channels in the band; (3) whether we should establish priorities for Fixed service or Mobile service use of some or all of the channels established in the band; and (4) whether we should assign some or all channels established in the band for exclusive use by private Fixed or Mobile Services. Proponents of this alternative approach for designating services in the 4660–4685 MHz frequency band were asked to provide facts and arguments supporting their view that such an approach would better serve the Commission's objectives and the public interest than would the establishment of GWCS, which would permit use of the spectrum for these as well as other applications.

5. The Commission adopts the proposed General Wireless Communications Service for the 4660–4685 MHz block, largely as proposed in the *Second NPRM*. This flexible, broadly defined service should accommodate a wide variety of potential Fixed and Mobile service uses, including all of those identified by the commenters. The flexibility of GWCS should also help make frequencies available for new technologies and services, including those that have been mentioned in the current comments and those that may be developed in the years ahead. In addition, as a service category that is not limited to specific past and current uses, but is available for the implementation of future technologies, GWCS should encourage research and investment to invent, develop, and market new technologies, and spur their deployment to serve consumers.

6. Under the Reconciliation Act, the spectrum reallocated from Federal Government use is to be allocated and assigned to public use under a plan that makes frequencies available for new technologies and services, and stimulates the development of such technologies. The Commission believes that the General Wireless

Communications Service will foster the accomplishment of these goals. Additionally, GWCS should stimulate efficient use of the spectrum by encouraging licensees to find ways to use the spectrum for the variety of services allowed under the license. Of equal importance, GWCS will accommodate and spur the development of new technologies and services.

7. Commenters have not persuaded the Commission that limiting assignments to any of their specific proposed uses of the spectrum would better meet the goals of the Reconciliation Act, the Communications Act, and the public interest. Restricting the 4660–4685 MHz spectrum to defined uses or services, such as the specific uses proposed by various commenters, would tend to reduce the attractiveness of this spectrum for new technologies and services. Moreover, as discussed above, GWCS is flexible enough to permit the specific uses suggested by such commenters, as well as the other uses identified in the comments. If GWCS spectrum assignment applications submitted by qualified parties now seeking service-specific allocations are not mutually exclusive, those parties will be granted licenses to provide the specific services they wish to provide, as well as other permissible GWCS services. In the event the spectrum is assigned by auction because of mutual exclusivity, they will also be able to participate and seek to obtain licenses.

8. The Commission also believes that any interference issues that may arise among GWCS licensees can be satisfactorily resolved by general non-interference standards and technical rules. Many potential sources of unacceptable interference have been eliminated by barring use of GWCS for Broadcast services, Radiolocation services, and Satellite services. Further, the grant of each GWCS license will be made subject to the condition that the licensee not cause unacceptable interference with any other licensee or service. Failure to abide by this condition will render the licensee subject to fines, damages, or forfeiture of the license. The Commission is adopting technical rules similar to those in place for PCS. To the extent it proves necessary, the Commission can consider whether revisions to those rules are warranted after GWCS licenses are assigned.

9. The Commission finds no merit in arguments that the Fixed and Mobile allocation of this spectrum, and use of the flexible GWCS designation for assigning this spectrum, are unlawful. As discussed in the *First Report and Order* the provisions of the Communications Act and Commission precedent support the legality of allocating frequencies to more than one radiocommunication service, and of assigning licenses for use by a broadly defined service. The Commission is required by the National Telecommunications and Information Administration Organization Act (NTIAO Act) to issue regulations to allocate the 50 megahertz of spectrum that the Secretary of Commerce identified and recommended for immediate reallocation from Federal Government use no later than 18 months from enactment of the Reconciliation Act.[1] For purposes of this portion of the NTIAO Act, the term "allocation" is defined as "an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services."[2] The Table of Frequency Allocations often contains allocations to more than one type of service[3] and such allocations are specifically authorized in this instance by the NTIAO Act. Therefore, allocation of the 4660–4685 MHz band to Fixed and Mobile Services is permissible and consistent with established practice.

10. The Commission also believes that such an allocation is consistent with the Commission's obligations under the Communications Act. The Commission has broad authority under the Communications Act to allocate spectrum. This authority derives from Section 303 of the Communications Act. Nothing in the language of Section 303 establishes or suggests any limitation or restriction on the Commission's discretion to prescribe the nature of the service to be rendered over radio frequencies or authority to assign (or allocate) frequencies to the various classes of stations. Moreover, nothing in the language of Section 303 or its legislative history suggests that the Commission is prohibited from assigning spectrum to stations for more than one permissible use, or otherwise limits the Commission's discretion in making spectrum allocations that it deems to serve the public interest. With respect to allocation decisions, courts have accorded "substantial deference" to Commission determinations.[4] Finally, Commission precedent supports the permissibility of allocating spectrum in a manner that allows for its use by a broadly defined service.

11. The Commission, in the *Second NPRM*, noted that, in addition to the Fixed and Mobile service allocation adopted in the *First R&O*, 4660–4685 MHz is allocated on a co-primary basis for non-government fixed-satellite service (FSS) space-to-Earth links, with use limited to international inter-continental systems and subject to a case-by-case electromagnetic analysis in accordance with US footnote 245 of the Table of Frequency Allocations. The *NOI* in this proceeding requested comment on the necessity of maintaining the US245 restrictions on FSS use of this band, considering that it would no longer be available for Federal Government use. To facilitate the shared used of this band, the *Second NPRM* proposed to maintain the restrictions set forth in US footnote 245 on use of 4660–4685 MHz and requested comments on this proposal. The Commission adopts the proposal as contained in the *Second NPRM* and retains the restriction in this footnote.

12. The Commission next considers public safety issues. Under the NTIAO Act, the Commission's plan for allocating and assigning former Federal Government spectrum must contain appropriate provisions to ensure not only the availability of frequencies for new services, but also "the safety of life and property in accordance with the policies of Section 1 of the [Communication Act]"[5] In the current record, the Association of Public-Safety Communications Officials-International, Inc. (APCO) proposes designating at least a portion of the 4660–4685 MHz band for public safety mobile and aeronautical video operations. The current record does not, however, provide a sound basis for concluding that any or all of the 4660–4685 MHz band should be assigned as APCO suggests.

13. The Commission is firmly committed to ensuring that wireless and wired communications resources are deployed to promote the safety of life and property, as well as to carry out the other public interest goals of the Communications Act. The FCC and NTIA recently formed a Public Safety Wireless Advisory Committee to prepare a report on operational, technical and spectrum requirements of Federal, state and local public safety entities through

[1] Section 115(a) of the National Telecommunications and Information Administration Organization Act, 47 U.S.C. § 925(a) (NTIAO Act).

[2] Section 111(1) of the NTIAO Act, 47 U.S.C. § 921(1).

[3] *See* 47 C.F.R. § 2.106.

[4] *See* National Ass'n of Regulatory Util. Comm'ners v. FCC, 525 F.2d 630, 636 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976); *see also* Telocator Network of America v. FCC, 691 F.2d 525, 549 (D.C.Cir. 1982).

[5] Section 115(b)(2)(C) of the NTIAO Act, codified at 47 U.S.C. § 925(b)(2)(C).

the year 2010. This Committee is expected to begin its work in the very near future. The plan the Commission is developing for the 200 MHz of Federal Government spectrum scheduled to be reallocated to non-Government use over the next 10 years will contain provisions to address how the reallocated Federal Government spectrum can best be used to satisfy unmet national safety needs. The Commission is directed by statute to submit and implement this plan by February 1996.[6]

14. It is the Commission's hope and intent that the gaps identified in the current record regarding the scope of public safety needs for additional wireless spectrum, and how those needs might best and most efficiently be met, will spur public safety organizations and other interested parties to work together to help us develop an effective plan for using wireless communications to meet any unmet and future public safety needs. The FCC–NTIA Public Safety Wireless Advisory Committee will offer one useful forum for such efforts. One of the tasks undertaken by the advisory committee will be to identify spectrum for federal, state, and local public safety use. As part of that process, the Commission suggests that the advisory committee explore potential public safety uses of the 4635–4660 MHz band. The Commission expects to begin proceedings in the near future to allocate and establish rules for assigning this band, which consists of reallocated Federal Government spectrum which is scheduled to become available in January 1997. This band is directly adjacent to the 4660–4685 MHz band we are designating to GWCS in this Order and thus has essentially the same technical characteristics and potential uses. Public safety organizations may develop proposals to ensure that the Commission has a complete, well-developed record to consider whether and how this band might be allocated and assigned to meet public safety needs.

Use of Spectrum

15. The Commission expects that the General Wireless Communications Service will benefit the public by providing licensees the opportunity to use the spectrum in a variety of ways they find appropriate. The *Second NPRM* tentatively concluded that it is likely that these uses will principally involve the provision of subscriber-based services. Based on this conclusion, the Commission proposed to use competitive bidding as the assignment method for this spectrum if mutually exclusive applications are filed. Section 309(j)(2)(A) of the Communications Act provides that competitive bidding may be used by the Commission to assign spectrum if the "principal use" of the spectrum involves, or is reasonably likely to involve, the transmission or reception of communications signals to subscribers for compensation.

16. Based on the record, the *Second NPRM* tentatively concluded that the principal use of this spectrum under the Commission's proposed General Wireless Communications Service would involve, or was reasonably likely to involve, the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. The Commission requested further comment on this tentative conclusion. Based on the record in response to the *Second NPRM*, the Commission finds it likely that the principal use of this band will be for subscription services.

Assignment Method

17. Sections 309(j)(1) and 309(j)(2) of the Communications Act[7] permit auctions where mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission and where the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. As explained above, The Commission believes that the principal use of this spectrum will meet these requirements. In addition, Section 309(j)(2)(B) requires the Commission, before it may adopt the use of auctions to award licenses, to determine that use of competitive bidding will promote the objectives described in Sections 1 and 309(j)(3) of the Communications Act. The *Second NPRM* tentatively concluded that the use of competitive bidding to assign licenses in the 4660–4685 MHz band would promote these objectives. The *Second NPRM* also requested comments on other possible assignment methods.

18. The Commission concludes that, in cases of mutually-exclusive applications, GWCS spectrum should be assigned by auction, as we tentatively concluded in the *Second NPRM*. Based on our experience with comparative hearings, lotteries, and auctions, the Commission believes that auctions will in this case achieve the statutory objectives of Section 309(j)(3) of the Communications Act.

19. One important aspect of any assignment method is determining whether applications are mutually exclusive. In the *Second NPRM*, the Commission proposed to use a 30-day filing window or other application cut-off method to allow for competing applications. The *Second NPRM* also sought comment on whether some other type of filing group would be more appropriate for determining whether initial applications are mutually exclusive. None of the commenters addressed this issue or suggested alternatives to the proposed 30-day filing window. Therefore, the Commission adopts the 30-day filing window as proposed for GWCS applications.

Channelization; Aggregation

20. The *Second NPRM* next proposed that the 4660–4685 MHz band be licensed in five blocks, each of which would be 5 megahertz wide. The *Second NPRM* proposed to limit a single entity from obtaining more than three of these blocks in a single geographic licensing area. The *Second NPRM* further proposed that, regardless of the specific service to be provided, this spectrum will not count against the 45 megahertz spectrum cap that applies to certain commercial mobile radio service (CMRS) licensees.

21. The Commission adopts the proposed channelization plan consisting of five 5 megahertz blocks. The Commission also adopts the proposed aggregation limit of 15 megahertz of spectrum that may be obtained by a single entity. Lastly, the Commission adopts its tentative conclusion not to count this spectrum against the 45 megahertz spectrum cap that applies to certain CMRS licensees.

License Areas

22. The Commission will issue GWCS licenses based on EA-like geographic areas. The complete list of EA and EA-like areas is shown in Appendix C of the full text of this *Second Report and Order*. The five 5 MHz blocks will be designated as Blocks A through E: Block A (4660–4665 MHz), Block B (4665–4670 MHz), Block C (4670–4675 MHz), Block D (4675–4680 MHz) and Block E (4680–4685 MHz).

Eligibility

23. The *Second NPRM* proposed, in the event the Commission determined it reasonably likely that GWCS services would be commercial services, that there be no restrictions on eligibility to apply for licenses in this band other than those foreign ownership restrictions that apply to CMRS and common carrier fixed system licensees, and the restriction on foreign governments or their representatives related to the holding of private mobile radio service licenses. Although rural telephone companies would be eligible, the Commission did not propose to treat them differently than other applicants. The Commission now adopts these proposed broad eligibility standards for GWCS applications.

Competitive Bidding Issues

24. In the *Second NPRM*, the Commission proposed to use auctions to issue licenses for GWCS services in the 4660–4685 MHz band that meet the statutory auction criteria and sought comment on a wide range of issues related to competitive bidding. For example, regarding competitive bidding methodology for licenses in the 4660–4685 MHz band, the *Second NPRM* proposed to use simultaneous multiple round bidding for licensing of the proposed 5 MHz-wide MTA spectrum blocks. The Commission also tentatively proposed to auction all licenses simultaneously, because of the relatively high value and significant interdependence of the licenses. Commenters were asked to address these tentative conclusions and whether any other competitive bidding designs might be more appropriate for the licensing of this spectrum. The Commission adopts the tentative conclusion in the *Second NPRM* and will auction this spectrum by simultaneous multiple round bidding. However, the Commission reserves the discretion to hold one or more auctions.

25. The *Second NPRM* also sought comment on whether to allow combinatorial bidding for GWCS services, because it may be necessary or at least highly desirable that spectrum used for some services (*e.g.*, air-ground service) be licensed to the same entity nationwide. Combinatorial bidding is an auction method which allows applicants to bid for multiple licenses as all or nothing packages, *e.g.*, all licenses nationwide on a particular spectrum block, with the licenses awarded as a package if the combinatorial bid is greater than the sum of the high bids on the individual licenses in the package. The Commission declines to adopt combinatorial bidding in this decision, but will establish reduced bid withdrawal penalties for entities seeking nationwide licenses that should achieve results similar to combinatorial bidding, with far less uncertainty and complexity.

26. The *Second NPRM* invited comment on bidding procedures to be used in the 4660–4685 MHz auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. Assuming that the Commission would use simultaneous multiple round auctions, the *Second NPRM* generally proposed to use the same or similar bidding procedures to those used in simultaneous multiple round bidding for MTA-based PCS licenses. The Commission sought comment on whether any variations on these procedures should be adopted for licenses in the 4660–4685 MHz band. Based upon our successful experience in auctioning PCS spectrum and the absence of any dispute concerning the efficacy of the bidding procedures used there, the Commission adopts essentially the same procedures for GWCS licenses. Additional, more detailed information on bidding procedures and other auction information will be made public prior to the auction.

27. This *Second Report and Order* next considers procedural, payment, and penalty issues. As discussed below, the Commission will generally follow the procedural, payment, and penalty rules established in Subpart Q of Part 1 of the Commission's Rules.[8] First, regarding upfront payments, as in the case of other auctionable services, the Commission will require participants in the 4660–4685 MHz auction to tender to the Commission, in advance of the auction, a substantial upfront payment as a condition of bidding in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the penalty in the event of bid withdrawal or default. For GWCS, the Commission adopts the standard upfront payment formula of $0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding.

28. Second, the Commission adopts a requirement for 4660–4685 MHz GWCS licensees that successful bidders tender a 20 percent down payment on their bids to discourage default between the auction and licensing and to ensure payment of the penalty if such default occurs. Third, the Commission adopts the bid withdrawal, default, and disqualification rules for 4660–4685 MHz licensing based on the procedures established in our general competitive bidding rules. Under these procedures, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, or defaults by failing to remit the required down payment within the prescribed time, will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if the subsequent winning bid is lower. One exception is that the Commission will limit the bid withdrawal penalties for nationwide bidders to 5 percent of the withdrawn bids. A defaulting auction winner will be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less, up to 5 percent of the withdrawn bids. In the event that an auction winner defaults or is otherwise disqualified, the Commission will re-auction the license either to existing or new applicants. The Commission will retain discretion, however, to offer the license to the next highest bidder at its final bid level if the default occurs within five business days of the close of bidding.

29. The Commission next considers regulatory safeguards. First, the Commission establishes unjust enrichment regulations as directed by the Reconciliation Act. Specifically, the Commission adopts the transfer disclosure requirements contained in Section 1.2111(a) of our rules for all 4660–4685 MHz licenses obtained through the competitive bidding process. In addition, the Commission adopts the specific rules governing unjust enrichment by designated entities as proposed in the *Second NPRM*. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license.

30. Second, the Commission contemplates performance standards, as instructed by the Reconciliation Act and finds that no additional performance requirements are needed beyond the specific performance standards already provided for in the 4660–4685 MHz service rules.

31. Third, the Commission considers rules prohibiting collusion and adopts rules for the 4660–4685 service which are identical to those found at 47 CFR § 1.2105(c). Under these procedures, bidders will be required to identify on their applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships, or other agreements or

[6] *See* Section 115(b) of the NTIAO Act, codified at 47 U.S.C. § 925(b).

[7] 47 U.S.C. §§ 309(j)(1), 309(j)(2).

[8] 47 C.F.R. Part 1, Subpart Q.

understandings that relate to the competitive bidding process. Bidders will also be required to certify that they have not entered into any explicit or implicit agreements, arrangements, or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

32. The *Second Report and Order* deals with several issues regarding eligibility criteria and general rules governing the award of licensing preferences to certain designated entities, i.e. minority groups and women. In keeping with the general parameters set forth in PR Docket 93–253, the *Second NPRM* in the current docket proposed specific measures and eligibility criteria for designated entities in the 4660–4685 MHz service, designed to ensure that such designated entities are given the opportunity to participate both in the competitive bidding process and in the provision of service in the 4660–4685 MHz band. The Commission sought comment on these proposals, and specifically on identifying special provisions tailored to the unique characteristics of the service or services that might be offered in the 4660–4865 MHz band, in order to create meaningful incentives and opportunities in the service for small businesses and businesses owned by minorities and/or women.

33. In the *Second NPRM*, the Commission discussed and sought comment on these special provisions for designated entities:

(1) for businesses owned by women and minorities the Commission proposed that installment payments be available on all licenses and that a bidding credit of 25 percent be available on one of the five proposed spectrum blocks;

(2) for small business the Commission sought comment on allowing a reduced down payment requirement coupled with installment payments;

(3) the Commission did not believe that special preferences are needed to ensure adequate participation of rural telephone companies;

(4) the Commission sought comments on reducing upfront payments to encourage participation in the auction, particularly by all eligible designated entities; and

(5) the Commission sought comment on whether and how to designate one 5 MHz spectrum block as an "entrepreneurs' block."

34. The Commission also discussed and solicited comments on issues of the eligibility criteria for designated entities and provisions to prevent unjust enrichment by trafficking in licenses acquired through the use of bidding credits or installment payments.

35. The Commission concludes that its plan to award licenses for the 4660–4685 MHz band based on EA regions, will substantially enhance the opportunities for designated entities to participate in the GWCS license auction. Partitioning of licenses will further increase the opportunities for designated entities. Based on our experience in the other auctions held to date, the Commission is also adopting bidding and payment provisions that will help ensure that the auction assigns licenses to the bidders who value them most highly, while encouraging the participation of designated entities. Specifically, the Commission will permit small business licensees to make their payments in installments computed at a reasonable rate of interest (the rate for ten year U.S. Treasury obligations plus 2.5 percent). Small businesses will in addition be permitted to make reduced down payments and interest-only payments in the first two years of the license term, and will be allowed a 10 percent bidding credit on all blocks of spectrum. The Commission also adopt rules to prevent unjust enrichment from bidding preferences. The Commission does not adopt an entrepreneurial set aside, but will apply the designated entity bidding preferences to all five spectrum blocks.

36. The Commission limit eligibility for bidding credits, installment payments and reduced down payments to small businesses, including those owned by members of minority groups and women. The Commission lacks the information necessary to set different eligibility criteria for minority and women-owned entities that do not meet our small business size standards in order to achieve the goals of Section 309(j) in the GWCS services. By providing credits on all blocks, licensing the blocks based on EA geographic areas, and permitting disaggregation and partitioning, the Commission will create substantial opportunities for all small businesses, including those owned by minorities and women.

37. The *Second NPRM* requested comment on whether the Commission should utilize the Small Business Association net worth/net income definition of a small business (a net worth not in excess of $6 million with average net income after Federal income taxes for the preceding years not in excess of $2 million) we adopted in the *Competitive Bidding Second Report and Order* or, in the alternative, a gross revenue standard like that used in the broadband PCS context (average gross revenues for the three preceding years not in excess of $40 million). The Commission also proposed to apply the same affiliation and attribution rules for calculating revenues that we have previously adopted in the PCS context.

38. The Commission finds that the GWCS overall may be similar to broadband PCS in its requirements for capital and adopts the small business definition adopted there, namely any firm, together with its attributable investors and affiliates, with average gross revenues for the three preceding years not in excess of $40 million. The Commission also applies to 4660–4685 MHz applicants the same affiliation and attribution rules for calculating revenues previously adopted in the PCS context.

39. On the issues of installment payments and down payments, the Commission believes that ensuring the opportunity for small businesses to participate in providing service in the 4660–4685 MHz band is important for the telecommunications industry. The record in PR Docket 93–253 indicates that small businesses have not become major participants in telecommunications. The record in that docket also shows that small businesses have particular difficulties obtaining capital. As discussed in the *Second NPRM*, it appears that installment payments may have been more effective than bidding credits in attracting capital in the regional narrowband PCS auction, possibly because installment payments shift some of the financial risk of future failure to the Government. Therefore, the Commission adopts installment payments for any GWCS licensee meeting the definition of a small business.

40. Under this approach, small business licensees may elect to pay their winning bid amount (less upfront payments) in installments over the ten year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten year U.S. Treasury obligations plus 2.5 percent. Installment payments would be due quarterly on the anniversary of the day the license was granted. Timely payment of all installments would be a condition of the license grant and failure to make such timely payments would be grounds for revocation of the license.

41. The Commission also adopts additional payment preferences to further reduce the capital needs of small businesses. Small business licensees will be permitted to make interest-only installment payments during the first two years of the license. The Commission also reduces down payments for small businesses to 5 percent of the winning bid due five days after the auction closes and the remaining 5 percent down payment due five days after Public Notice that the license is ready for grant.

42. The *Second NPRM* next proposed a 25 percent bidding credit on one of the five proposed spectrum blocks for small businesses owned by women and minorities. These bidding credits would be available exclusively to minority and women-owned businesses. The Commission also proposed installment payments for these entities and sought comment on whether installment payments should also be available for small businesses. The Commission did not believe that special preferences were needed to ensure adequate participation of rural telephone companies in the provision of services in this spectrum, in view of the uncertainty concerning what specific uses may emerge in this band, the potential prices that licenses may bring, the effects of provisions for partitioning or leasing spectrum, and the advantages of incumbency and economies of scale that may already benefit rural telephone companies. The *Second NPRM* sought comment on this analysis.

43. The Commission adopts a 10 percent bidding credit for small businesses. As discussed above, the Commission is adopting installment payments for small business bidders and the small EA geographic licensing areas. In the Commission's judgment, these and other provisions of the licensing and auction rules should ensure that small businesses, including small businesses owned by women and minorities, will be able to participate effectively in obtaining GWCS licenses, whether or not those licenses are auctioned.

44. The Commission next considers transfer restrictions and unjust enrichment provisions. Restrictions on the transfer or assignment of licenses acquired by designated entities are intended to promote the Congressional intent that designated entities be permitted to participate in the provision of spectrum-based services, not simply to profit from trafficking in licenses acquired with the help of bidding preferences. The Commission adopts the proposal contained in the *Second NPRM*. Specifically, the Commission adopts a payment requirement on transfers of such licenses to entities that are not small businesses. Small businesses seeking to transfer a license to an entity that is not owned by women or minorities would be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before the transfer would be permitted. The amount of the penalty would be reduced over time so that a transfer in the first two years of the license would result in a payment of 100 percent of the value of the bidding credit; in year three of the license term the payment would be 75 percent; in year four the penalty would be 50 percent and in year five the payment would be 25 percent, after which there would be no payment.

45. On the issue of rural telephone company partitions, the Commission, in the *Second NPRM*, proposed to permit partitioning of MTA-based licenses, to permit licensees to lease the rights to operate a GWCS system within portions of their geographic service area or transfer their license to partition their service areas geographically, allowing another party to be licensed in the partitioned area, subject to Commission approval. The Commission elects to adopt partitioning procedures similar to those used for cellular licenses and adopted for broadband PCS licenses.

46. The *Second NPRM* next sought comment on whether to designate one 5 MHz spectrum block as an "entrepreneurs'" block. The Commission also invited comment on how eligibility for such a block should be defined. The Commission declines to adopt an entrepreneur's block for this band, based on our belief that bidding credits, installment payment options, and the other approaches also adopted will generate sufficient incentives to encourage participation in GWCS licensing. Unlike a set-aside, they also should not generate the risk of inefficient use of the 4660–4685 MHz spectrum and of dampening incentives for innovation.

Technical Rules

47. The *Second NPRM* proposed general and minimal technical restrictions that are based on the PCS rules. Specifically, the Commission proposed to limit the field strength at licensees' service area boundaries to 55 dBu unless licensees operating in adjacent areas agree to higher field strengths along their mutual border.[9] The Commission stated that licensees would be expected to coordinate their operations at the service area boundaries. The *Second NPRM* further stated that the Commission would encourage licensees to resolve adjacent channel interference problems. The Commission did, however, propose to require licensees to attenuate the power below the transmitter power (P) by at least 43 plus $10\log_{10}(P)$ or 80 decibels, whichever is less, for any emission at the edges of the 4660–4685 MHz band. Comments were requested on these proposals and any other technical rules that commenters believed appropriate.

48. Based on the record, the Commission adopts the technical rules as proposed in the *Second NPRM*. The PCS-based technical rules appear to be the best available rules to govern the flexible GWCS designation. However, the Commission recognizes that the technical rules may need to be adjusted to suit the needs of the eventual licensees. The rules also anticipate that licensees will in the first instance seek to resolve interference problems among themselves.

License Term

49. The *Second NPRM* noted that the Communications Act allows the Commission to establish a license term of up to 10 years, except for television or radio broadcasting stations, which may have a license term of up to 5 and 7 years, respectively. For services in the 4660–4685 MHz band, the *Second NPRM* proposed to establish a license term of 10 years, with a renewal expectancy similar to that of PCS and cellular telephone licensees. The *Second NPRM* indicated that this relatively long license term, combined with a high renewal expectancy, should help provide a stable regulatory environment that will be attractive to investors and, thereby, encourage development of this new frequency band. The Commission noted, however, that commenters had proposed using this band for auxiliary broadcast service and the statute requires that the term of any license for the operation of any auxiliary broadcast station or equipment must be concurrent with the term of the license for such primary television station. Therefore, the *Second NPRM* asked that commenters address whether the Commission should allow differing license terms in this band. The Commission finds that the statutory provision that requires a shorter license term will generally not apply, expect in the case of an applicant seeking to use GWCS for auxiliary broadcast use by a single station, within the meaning of Section 307(c).

Construction Requirements

50. The Commission, in the *Second NPRM*, acknowledged that the very wide array of potential services that

[9] The minimum field strength required for a good quality service for mobile reception in an urban environment is 35 dBu (CCIR Report 358–5) and the proposed 55 dBu field strength limit allows 20 dB additional for location variability.

could be offered in this band makes it difficult to develop construction requirements that can be applied fairly and equitably, without skewing the workings of the market. The Commission also recognized our responsibility to ensure that the spectrum we assign is used effectively. Therefore, the *Second NPRM* proposed, and the Commission now adopts, rules that would require build-out rules modeled on those adopted for broadband PCS. Specifically, these rules will require that within five years licensees in this band offer service to one-third of the population in the area in which they are licensed, and to serve two-thirds within ten years of being licensed. The Commission will also consider waivers or modification of these rules based on demonstrations that the spectrum is being used efficiently, not warehoused or stockpiled.

Regulatory Status

51. The Communications Act and Commission rules often apply differing requirements based on the type of service and the regulatory status of licensees. The new GWCS category for the 4660–4685 band would allow licensees to provide a variety or combination of Fixed and Mobile services. Under this service, both Fixed and Mobile applications would be permitted and an individual licensee could provide a number of Fixed and Mobile services. In the *Second NPRM*, the Commission observed that it may be difficult to determine the regulatory status of GWCS licensees. The Commission proposed to rely on applicants to identify specifically the type of service or services they intend to provide, and require them to include sufficient detail to enable the Commission to determine if the service will be Fixed or Mobile, and whether it will be offered as a commercial mobile radio service, a private mobile radio service, a common carrier Fixed service, or a private Fixed service. Comment was requested on the most efficient manner in which to administer the requirements of the Communications Act and the Commission's Rules, and grant licensees as much operational flexibility as possible. The Commission also solicited comments on whether to develop a new application long form for this general allocation or require an applicant to be responsible for filing the appropriate license application based upon the nature of the service designated by the applicant. Commenters were asked to address whether it is necessary for the Commission to require licensees to notify the Commission if they change the type of service offered using some or all of their licensed spectrum even though the new use would be permissible under the Commission's rules.

52. The Commission adopts the proposed approach of relying on applicants to identify the type of GWCS service or services each will provide, with sufficient detail to enable the Commission to determine the applicant's regulatory status. The proposed added step would usually be unnecessary and would tend to delay the offering of new services. The Commission believes that it would be in the public interest to develop an application form for the new service. To clarify and simplify the regulatory status of licensees, the Commission also adopts a presumption that GWCS licenses are providing fixed common carrier services, which appears from the record to be the most likely and common use of this spectrum. This presumption may be rebutted by an appropriate showing. The Commission delegates to the Wireless Telecommunications Bureau authority to develop forms appropriate to collect this data, and to monitor changes in licensee status.

Licensing Issues

53. The *Second NPRM* requested comment on whether the Commission is required or should find that it is in the public interest to adopt additional licensing rules in order to comply with the statutory requirement that we adopt assignment rules before August 10, 1995. The Commission finds it unnecessary at present to adopt additional license rules for GWCS. The Commission will follow the statutory provisions of Section 309(d) for public notice and other requirements. With respect to other licensing issues, the Commission will consider whether any additional rules are necessary, and what form those rules should take, after we have proceeded with the application and licensing process. The Commission should at that time have a more detailed understanding of the services licensees intend to provide and their regulatory status.

Final Regulatory Flexibility Analysis

54. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on small entities interested in operating on the 4660–4685 MHz band. As detailed in the full text of the *Second Report and Order*, the Commission has attempted, wherever possible within the statutory constraints, to establish regulations which, to the extent possible, minimize the burdens on such small businesses while providing maximum flexibility. The full text of the Commission's final regulatory flexibility analysis may be found in paragraph ____ of the full text of this decision.

Ordering Clauses

55. Accordingly, IT IS ORDERED that Part 26 of the Commission's Rules is added as set forth below. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

56. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE at the time of their publication in the **Federal Register**.[10]

List of Subjects

47 CFR Part 1

Telecommunications.

47 CFR Part 26

General wireless communications service.

Federal Communications Commission.
William F. Canton,
Acting Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. New paragraph (a)(8) is added to Section 1.2102 to read as follows:

§ 1.2102 Eligibility of applications for competitive bidding.

(a) * * *

(8) General Wireless Communications Service (GWCS) (see Part 26 of this chapter).

* * * * * *

Part 26 of Chapter I of Title 47 of the Code of Federal Regulations is added to read as follows:

[10] This Order is adopted pursuant to a statutory requirement that the Commission, by August 9, 1995, allocate and establish licensing rules for 50 megahertz of spectrum that was transferred from Federal Government to private sector use, as required by the Budget Act. Thus, there is good cause to order the rule changes publication. See 5 U.S.C. § 553(d)(3).

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE

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26.324 Transfer of control or assignment of station authorization.
26.325 Extension of time to complete construction.
26.326 Termination of authorization.

Authority: 47 U.S.C. Sections 154, 301, 302, 303, 309 and 332, unless otherwise noted.

Subpart A—General Information

§ 26.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) Basis. The rules for the general wireless communications service (GWCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for stations.

(b) Purpose. This part states the conditions under which portions of the radio spectrum are made available and licensed for GWCS.

(c) Scope. The rules in this part apply only to stations authorized under this part.

§ 26.2 Other applicable rule parts.

Other FCC rule parts applicable to licensees in the general wireless communications service include the following:

(a) Part 0. This part describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) Part 1. This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction.

(c) Part 2. This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) Part 5. This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) Part 17. This part contains requirements for construction, marking and lighting of antenna towers.

(f) Part 68. This part contains technical standards for connection of terminal equipment to the telephone network.

§ 26.3 Permissible communications.

GWCS licensees may provide any fixed or mobile communications service on their assigned spectrum. Broadcasting services, Radiolocation services and satellite services as defined in § 2.1 of this chapter are prohibited.

§ 26.4 Terms and definitions.

Assigned frequency. The center of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Effective radiated power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent isotropically radiated power (e.i.r.p.). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed service. A radio communication service between specified fixed points.

Fixed station. A station in the fixed service.

Gross revenues. Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g. cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall

be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

Land mobile service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land mobile station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land station. A station in the mobile service not intended to be used while in motion.

Mobile service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

National Geodetic Reference System (NGRS): The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

Rural telephone company. A rural telephone company is a local exchange carrier having 100,000 or fewer access lines, including all affiliates.

Small business: consortium of small businesses.

(1) A small business is an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than $40 million for the preceding three years.

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business.

Total assets. *Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.

Subpart B—Applications and Licenses

§ 26.11 Initial authorization.

(a) An applicant must file an application for an initial authorization in each market and frequency block desired.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted.

§ 26.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, is eligible to hold a license under this part.

§ 26.13 License period.

Licenses for service areas will be granted for ten year terms from the date of original issuance or renewal.

§ 26.14 Criteria for comparative renewal proceedings.

A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that the renewal applicant:

(a) Has provided "substantial" service during its past license term. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might just minimally warrant renewal; and

(b) Has substantially complied with applicable Commission rules, policies and the Communications Act.

Subpart C—Technical Standards

§ 26.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure.

(b) The Commission periodically publishes a list of type accepted equipment, entitled "Radio Equipment List, Equipment Accepted for Licensing." Copies of this list are available for public reference at the Commission's offices in Washington, D.C., at each of its field offices, and may be ordered from its copy contractor.

(c) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in Subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

(d) Applicants for type acceptance of transmitters that operate in these services must determine that the equipment complies with IEEE C95.1–1991, (ANSI/IEEE C95.1–1991), "IEEE Standards for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" as measured using methods specified in IEEE C95.3–1991, (ANSI/IEEE C95.3–1991), "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields—RF and Microwave." The applicant for type acceptance is required to submit a statement affirming that the equipment complies with these standards as measured by an approved method and to maintain a record showing the basis for the statement of compliance with IEEE C.95.1–1991. (See § 26.52 for availability of IEEE standards.)

§ 26.52 RF hazards.

(a) Licensees and manufacturers are required to ensure that their facilities and equipment comply with IEEE C95.1–1991. Measurement methods are specified in IEEE C95.3–1991. Copies of these standards are available from IEEE Standards Board, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331. Telephone: 1–800–678–4333. The limits for both "controlled" and "uncontrolled" environments, as defined by IEEE C95.1–1991, will apply to all GWCS base and mobile stations, as appropriate. The application for equipment authorization must contain a statement confirming compliance with IEEE C95.1–1991. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(b) GWCS hand-held devices whose maximum radiated power is 100 milliwatts or less are not required to be evaluated for compliance with ANSI/IEEE SAR (specific absorption rate) requirements, as long as 2.5 cm separation distance is maintained between the radiating structure and the body of the user. (The ANSI/IEEE standard uses the term "radiated power," meaning input power to the antenna.)

(c) For further information on the Commission's environmental rules see §§ 1.1301 through 1.1319 of this chapter.

§ 26.53 Emission limits.

(a) The power of any emission at the edges of the 4660–4685 MHz band shall be attenuated below the transmitter power (P) by at least $43 + 10 \log_{10}(P)$ or 80 decibels, whichever is less.

(b) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emission are attenuated at least 26 dB below the transmitter power.

(c) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the license's frequency block edges, both upper and lower, as the design permits.

(d) The measurements of emission power can be expressed in peak or average values, provided that they are expressed in the same parameters as the transmission power.

(e) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 26.54 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emission stays within the authorized frequency block.

§ 26.55 Field strength limits.

The predicted or measured median field strength at any location on the border of the GWCS service area shall not exceed 55 dBu unless licensees operating in adjacent areas agree to higher field strength along their mutual borders.

Subpart D—Miscellaneous

§ 26.101 Multiple ownership restrictions.

(a) GWCS licensees shall not have an ownership interest in more than three of the five, 5 megahertz wide channels available in any geographic area. For purposes of this restriction, a GWCS licensee is:

(1) Any institutional investor, as defined in § 26.4, with an ownership interest of ten or more percent in a GWCS license; and

(2) Any other person or entity with an ownership interest of five or more percent in a GWCS license.

(b) In cases where a party had indirect ownership, through an interest in an intervening entity (or entities) that has ownership in the GWCS license, that indirect ownership shall be attributable if the percentages of ownership at each level, multiplied together, equal five or more percent ownership of the GWCS license, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example. Party X has a non-controlling ownership interest of 25 percent in Company Y, which in turn has a non-controlling ownership interest of 10 percent in Company Z, the GWCS licensee. Party X's effective ownership interest in Company Z is Party X's ownership interest in Company Y (25 percent) times Company Y's ownership interest in Company Z (10 percent). Therefore, Party X's effective ownership interest in Company Z is 2.5 percent, and is not attributable.

(c) Notwithstanding paragraph (b) of this section, the following interests shall not constitute attributable ownership interests for purposes of paragraph (a) of this section.

(1) A limited partnership interest held by an institutional investor (as defined § 26.4) where the limited partner is not materially involved, directly or indirectly, in the management or operation of the GWCS holdings of the partnership, and the licensee so certifies. The criteria which would assure adequate insulation for the purposes of this certification require:

(i) Prohibiting limited partners from acting as employees of the limited partnership if responsibilities relate to the carrier activities of the licensee;

(ii) Barring the limited partners from serving as independent contractors;

(iii) Restricting communication among limited partners and the general partner regarding day-to-day activities of the licensee;

(iv) Empowering the general partner to veto admissions of new general partners;

(v) Restricting the circumstances in which the limited partners can remove the general partner;

(vi) Prohibiting the limited partners from providing services to the partnership relating to the GWCS holdings of the licensee; and

(vii) Stating that the limited partners may not become involved in the management or operation of the licensee.

§ 26.102 Service areas.

GWCS service areas are based on Economic Areas developed by the Bureau of Economic Analysis, Department of Commerce, referred to as "EAs" and three additional EA-like service areas: Guam and the Northern Mariana Islands (combined as one service area), Puerto Rico and the United States Virgin Islands (combined as one service area), and American Samoa.

(a) *Economic Areas.* Codes from 001 to 172 are assigned to the EAs in approximate geographic order, beginning with 001 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast. Except for the Western Oklahoma EA (126), the Northern Michigan EA (058), and the 17 EAs that mainly correspond to consolidated metropolitan statistical areas (CMSAs), each EA is named for the metropolitan area or city that is the node of its largest component economic area (CEA) and that is usually, but not always, the largest metropolitan area or city in the EA. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The following list provides EA codes and names.

Code and Name

001 Bangor, ME
002 Portland, ME
003 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH
004 Burlington, VT
005 Albany-Schenectady-Troy, NY
006 Syracuse, NY
007 Rochester, NY
008 Buffalo-Niagara Falls, NY
009 State College, PA
010 New York-No. New Jersey-Long Island, NY–NJ–CT–PA
011 Harrisburg-Lebanon-Carlisle, PA
012 Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD
013 Washington-Baltimore, DC–MD–VA–WV
014 Salisbury, MD
015 Richmond-Petersburg, VA
016 Staunton, VA
017 Roanoke, VA
018 Greensboro-Winston-Salem-High Point, NC
019 Raleigh-Durham-Chapel Hill, NC
020 Norfolk-Virginia Beach-Newport News, VA–NC
021 Greensville, NC
022 Fayettesville, NC
023 Charlotte-Gastonia-Rock Hill, NC–SC
024 Columbia, SC
025 Wilmington, NC
026 Charleston-North Charleston, SC
027 Augusta-Aiken, GA–SC
028 Savannah, GA
029 Jacksonville, FL

030 Orlando, FL
031 Miami-Fort Lauderdale, FL
032 Fort Myers-Cape Coral, FL
033 Sarasota-Bradenton, FL
034 Tampa-St. Petersburg-Clearwater, FL
035 Tallahassee, FA
036 Dothan, AL
037 Albany, GA
038 Macon, GA
039 Columbus, GA–AL
040 Atlanta, GA
041 Greenville-Spartanburg-Anderson, SC
042 Asheville, NC
043 Chattanooga, TN–GA
044 Knoxville, TN
045 Johnson City-Kingsport-Bristol, TN–VA
046 Hickory-Morganton, NC
047 Lexington, KY
048 Charleston, WV
049 Cincinnati-Hamilton, OH–KY–IN
050 Dayton-Springfield, OH
051 Columbus, OH
052 Wheeling, WV–OH
053 Pittsburgh, PA
054 Erie, PA
055 Cleveland-Akron, OH
056 Toledo, OH
057 Detroit-Ann Arbor-Flint, MI
058 Northern Michigan, MI
059 Green Bay, WI
060 Appleton-Oshkosh-Neenah, WI
061 Traverse City, MI
062 Grand Rapids-Muskegon-Holland, MI
063 Milwaukee-Racine, WI
064 Chicago-Gary-Kenosha, IL–IN–WI
065 Elkhart-Goshen, IN
066 Fort Wayne, IN
067 Indianapolis, IN
068 Champaign-Urbana, IL
069 Evansville-Henderson, IN–KY
070 Louisville, KY–IN
071 Nashville, TN
072 Paducah, KY
073 Memphis, TN–AR–MS
074 Huntsville, AL
075 Tupelo, MS
076 Greenville, MS
077 Jackson, MS
078 Birmingham, AL
079 Montgomery, AL
080 Mobile, AL
081 Pensacola, FL
082 Biloxi-Gulfport-Pascagoula, MS
083 New Orleans, LA
084 Baton Rouge, LA
085 Lafayette, LA
086 Lake Charles, LA
087 Beaumont-Port Arthur, TX
088 Shreveport-Bossier City, LA
089 Monroe, LA
090 Little Rock-North Little Rock, AR
091 Fort Smith, AR–OK
092 Fayetteville-Springdale-Rogers, AR
093 Joplin, MO
094 Springfield, MO
095 Jonesboro, AR
096 St. Louis, MO–IL
097 Springfield, IL
098 Columbia, MO
099 Kansas City, MO–KS
100 Des Moines, IA
101 Peoria-Pekin, IL
102 Davenport-Moline-Rock Island, IA–IL
103 Cedar Rapids, IA
104 Madison, WI
105 La Crosse, WI–MN
106 Rochester, MN
107 Minneapolis-St. Paul, MN–WI
108 Wausau, WI
109 Duluth-Superior, MN–WI
110 Grand Forks, ND–MN
111 Minot, ND
112 Bismarck, ND
113 Fargo-Moorhead, ND–MN
114 Aberdeen, SD
115 Rapid City, SD
116 Sioux Falls, SD
117 Sioux City, IA–NE
118 Omaha, NE–IA
119 Lincoln, NE
120 Grand Island, NE
121 North Platte, NE
122 Wichita, KS
123 Topeka, KS
124 Tulsa, OK
125 Oklahoma City, OK
126 Western Oklahoma, OK
127 Dallas-Fort Worth, TX
128 Abilene, TX
129 San Angelo, TX
130 Austin-San Marcos, TX
131 Houston-Galveston-Brazoria, TX
132 Corpus Christi, TX
133 McAllen-Edinburg-Mission, TX
134 San Antonio, TX
135 Odessa-Midland, TX
136 Hobbs, NM
137 Lubbock, TX
138 Amarillo, TX
139 Santa Fe, NM
140 Pueblo, CO
141 Denver-Boulder-Greeley, CO
142 Scottsbluff, NE
143 Casper, WY
144 Billings, MT
145 Great Fallas, MT
146 Missoula, MT
147 Spokane, WA
148 Idaho Falls, ID
149 Twin Falls, ID
150 Boise City, ID
151 Reno, NV
152 Salt Lake City-Ogden, UT
153 Las Vegas, NV–AZ
154 Flagstaff, AZ
155 Farmington, NM
156 Albuquerque, NM
157 El Paso, TX
158 Phoenix-Mesa, AZ
159 Tucson, AZ
160 Los Angeles-Riverside-Orange County, CA
161 San Diego, CA
162 Fresno, CA
163 San Francisco-Oakland-San Jose, CA
164 Sacramento-Yolo, CA
165 Redding, CA
166 Eugene-Springfield, OR
167 Portland-Salem, OR–WA
168 Pendleton, OR
169 Richland-Kennewick-Pasco, WA
170 Seattle-Tacoma-Bremerton, WA
171 Anchorage, AK
172 Honolulu, HI

(b) Other eligible areas not included in the Bureau of Economic Analysis's list of EAs include: Guam and the Northern Mariana Islands, Puerto Rico and United States Virgin Islands, and American Samoa.

§ 26.103 Frequencies.

The following frequencies are available for GWCS in the Economic Areas and other areas described in § 26.102 as shown below.

Channel Block and Frequency Band

Block A: 4660–4665 MHz
Block B: 4665–4670 MHz
Block C: 4670–4675 MHz
Block D: 4675–4680 MHz
Block E: 4680–4685 MHz

§ 26.104 Construction requirements.

(a) GWCS licensees shall within five years of initial license grant date offer service to one-third of the population in the area in which they are licensed. Licensees shall serve two-thirds of the population in the area in which they are licensed within ten years of initial license grant date.

(b) In demonstrating compliance with the above construction requirements, licensees must base their calculations on signal field strengths that ensure reliable service for the technology utilized. Licensees may use any service radius contour formula developed or generally used by industry, provided that such formula is based on the technical characteristics of their system.

(c) Upon meeting the five and ten year benchmarks in paragraph (a) of this section, licensees shall file a map and other supporting documentation that demonstrates compliance with the geographic area or population coverage requirement. Licensees shall file a statement indicating commencement of service. The filing must be received at the Commission on or before expiration of the relevant period.

(d) If the sale of a license is approved, the new licensee is held to the original build-out requirement.

(e) Failure by a licensee to meet the above construction requirements may result in forfeiture of the license and ineligibility to regain it.

Note to § 26.104: Population-based construction requirements contained in this section shall be based on the 1990 census.

Subpart E—Competitive Bidding Procedures for GWCS

§ 26.201 GWCS subject to competitive bidding.

Mutually exclusive initial applications to provide GWCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q, will apply unless otherwise provided in this part.

§ 26.202 Competitive bidding design for GWCS licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide GWCS service:

(1) Simultaneous multiple round actions

(2) Sequential oral auctions

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 26.203 Competitive bidding mechanisms.

(a) Sequencing. The Commission will establish and may vary the sequence in which GWCS licenses will be auctioned.

(b) Reservation price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(c) Minimum bid increments. The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish by Public Notice a suggested opening bid or a minimum opening bid on each license.

(d) Stopping rules. The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) Activity rules. The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted one activity rule waiver during each stage of an auction, or one automatic waiver during a specified number of bidding rounds. The Commission may change by Public Notice the number and frequency of such automatic activity rule waivers for a specific auction.

(f) Bidder identification during auctions. The Commission may choose, on an auction-by-auction basis, to release the identity of the bidders associated with bidder identification numbers. The Commission will announce by Public Notice before each auction whether bidder identities will be revealed.

(g) Nationwide bidders. Bidders seeking to aggregate EA-based GWCS licenses into nationwide licenses are required to declare the number of nationwide aggregations for which they will bid and to be active in every round of bidding on sufficient licenses to create the number of declared aggregations.

§ 26.204 Withdrawal, default and disqualification penalties.

(a) When the Commission conducts a simultaneous multiple round auction pursuant to § 26.202(a)(1), the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. The withdrawal penalty for a nationwide bidder for each aggregation is limited to 5 percent of the aggregate withdrawn bids. The withdrawal penalty for a nationwide bidder is calculated between the sum of the withdrawn bids and the sum of the subsequent high bids on the withdrawn licenses.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (a)(1) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(b) When the Commission conducts sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(c) In the case of single round bidding for GWCS licenses:

(1) If a bid is withdrawn before the Commission releases the initial Public Notice announcing the winning bidder(s), no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission releases the initial Public Notice announcing the winning bidder(s), the bid withdrawal penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded. Losing bidders will only be subject to this bid withdrawal penalty for a period of 30 days after the Commission releases the initial Public Notice announcing the winning bidders.

(d) In the case of oral sequential bidding for GWCS licenses:

(1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the bid withdrawal penalty of § 1.2104(g) of this chapter and paragraphs (a)(1) and (a)(2) of this section will apply.

§ 26.205 Bidding application (FCC) Form 175 and 175–S Short-Form).

All applicants for initial provision of GWCS service must submit applications on FCC Forms 175 and 175–S pursuant to the procedures set forth in § 1.2105 of this chapter. The Commission will issue a Public Notice announcing the date of a GWCS auction, the licenses which are to be auctioned, and the date on or before which applicants intending to participate in an upcoming GWCS auction must file their applications in order to be eligible for that auction. The

Public Notice will also contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

§ 26.206 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions bidders will be required to submit an upfront payment pursuant to the procedures set forth in § 1.2106 of this chapter.

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with the procedures set forth in § 1.2107 (a) and (b) of this chapter.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible small businesses may submit a down payment of 5 percent of the winning bid five days after the auction closes and 5 percent five days after public notice that the license is ready for grant.

§ 26.207 Long form applications.

Winning bidders will be required to submit long form applications on FCC form XXX, as modified, within ten (10) business days after being notified that they are the winning bidder. Applications on FCC Form XXX shall be submitted pursuant to the procedures set forth in subpart G of this part and § 1.2107 (c) and (d) of this chapter and any associated Public Notices. Only auction winners will be eligible to file applications on FCC Form XXX for initial GWCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form XXX.

§ 26.208 License grant, denial, default, and disqualification.

(a) Unless eligible for installment payments and/or a bidding credit, each winning bidder is required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in § 1.2109 of this Chapter.

(c) An eligible small business may elect to pay its winning bid, less up-front payments, over the terms of the license. Interest charges are fixed at the time of licensing at the rate equal to U.S. Treasury obligation plus 2.5 percent. Installment payments are due quarterly on the anniversary of the day the license was granted, except that interest-only installment payments are permitted during the first two years of the license.

§ 26.209 Eligibility for partitioned licenses.

(a) Notwithstanding § 26.102, an applicant that is a rural telephone company, as defined in § 26.4, may be granted a GWCS license that is geographically partitioned from a separately licensed EA, so long as the EA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive biding procedures—

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this part and Part 1 of this chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among rural telephone companies to partition the license pursuant to this section, if won at auction (*see* § 1.2105(a)(2)(viii));

(2) Each rural telephone company that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the EA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the EA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 26.324.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) Conforms to established geopolitical boundaries (such as county lines);

(2) Includes the wireline service area of the rural telephone company applicant; and

(3) Is reasonably related to the rural telephone company's wireline service area.

Note to paragraph (d)(3): A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (*see* § 26.104).

§ 26.210 Provisions for small businesses.

(a) Bidding credits. A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) Installment payments. A winning bidder that qualifies as a small business may pay its winning bid amount (less upfront payments) in installments over the ten year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten year U.S. Treasury obligations plus 2.5 percent. Installment payments are due quarterly on the anniversary of the day the license is granted. Failure to make timely installment payments may result in revocation of the license. Small businesses are permitted to make interest-only installment payments during the first two years of the license.

(c) Down payments. A winning bidder that qualifies as a small business is permitted to make a down payment equal to 5 percent of the winning bid due five days after the auction closes with the remaining 5 percent down payment dues five days after Public Notice that the license is ready for grant.

(d) Unjust enrichment. If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded as a condition of the approval of such assignment, transfer or other ownership change. The amount of the payment would be reduced over time so that a transfer in the first two years of the license would result in a payment of 100 percent of the value of the bidding credit; in year three of the license term the payment would be 75 percent; in year four the payment would be 50 percent and in year five the payment would be 25 percent, after which there would be no payment. Transfer of control or assignment of station license is also subject to provisions of § 1.2111 of this chapter.

Subpart F—Application, Licensing, and Processing Rules for GWCS

§ 26.301 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 26.302 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws, including §§ 26.101 and 26.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership. A GWCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(c) A GWCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

§ 26.303 Formal and informal applications.

(a) Except for an authorization under any of the conditions stated in section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission may grant only upon written application received by it, the following authorization: station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this Part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An information application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 26.304 Filing of GWCS applications, fees, and numbers of copies.

(a) As prescribed by §§ 26.304 and 26.307, standard formal application forms applicable to the GWCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or

(2) By calling the Commission's Forms Distribution Center, (202) 418–3676.

(b) Applications for the initial provision of GWCS service must be filed on FCC Form 175 in accordance with the rules in § 26.305 and Part 1, Subpart Q of this chapter. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form XXX for initial GWCS licenses. Mutually exclusive applications filed on Form 175 are subject to competitive bidding under those rules. GWCS applicants filing Form XXX need not complete Schedule B.

(c) All applications for GWCS radio station authorizations (other than applications for initial provision of GWCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: GWCS Processing Section. Applications requiring fees as set forth at Part 1, Subpart G, of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Wireless Telecommunications Bureau, Washington, DC 20554, GWCS Processing Section.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with thee microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743 of this chapter. Unless otherwise provided by the FCC, filings of five pages or less are exempt from the requirement to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filing pleadings, including pleadings under § 1.2108 of this chapter shall also submit 2 paper copies as provided in § 1.51 of this chapter.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm 0A 105mm negative (clear transparent characters appearing on an opaque background) at 240A to 270A reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125mm 0A 176 mm) or 5 0A 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The type of application (e.g. nationwide, or EA);

(iii) The month and year of the document;

(iv) Name of the document;

(v) File number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party;

(D) File number, applicant identification number, and call sign, if assigned;

(E) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Abbreviations may be used if they are easily understood.

§ 26.305 Standard application forms and permissive changes or minor modifications for the General Wireless Communications Service.

(a) Applications for the initial provision of GWCS service must be filed on FCC Forms 175 and 175–S.

(b) Subsequent application by auction winners or non-mutually exclusive applicants for GWCS radio station(s) under Part 26. FCC Form XXX ("Application for New or Modified General Wireless Communications Service Under Part 26") shall be submitted by each auction winner for each GWCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form XXX. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 26.11. GWCS applicants filing Form XXX need not complete Schedule B.

(c) Extensions of time and reinstatement. When a licensee cannot complete construction in accordance with the provisions of § 26.104, a timely application for extension of time (FCC Form 489) must be filed.

§ 26.306 Miscellaneous forms.

(a) Licensee qualifications. FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualifications Report") shall be filed by General Wireless Communications Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under part 22).

(b) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

§ 26.307 General application requirements.

(a) Each application (including applications filed on forms 175 and XXX) for a radio station authorization or for consent to assignment or transfer of control in the GWCS shall disclose fully the real party or parties in interest and must include the following information:

(1) A list of its subsidiaries, if any. Subsidiary means any business five per cent or more whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant.

(2) A list of its affiliates, if any. Affiliates means any business which holds a five per cent or more interest in the applicant, or any business in which a five per cent or more interest is held by another company which holds a five per cent interest in the applicant (e.g. Company A owns 5% of Company B and 5% of Company B and 5% of Company C; Companies B and C are affiliates).

(3) A list of the names, addresses, citizenship and principal business of any person holding five per cent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application. This information must be included in Exhibit V of the application.

(b) Each application for a radio station authorization in the GWCS must:

(1) Submit the information required by the Commission's rules, requests, and application forms;

(2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter; and

(3) Show compliance with and make all special showings that may be applicable.

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm×29.7 cm) or 8.5×11 inch (21.6 cm×27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The station call sign or application file number whenever the reference is to station files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding. However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of Subpart F of this part and § 1.2105 of this chapter, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by these rules; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(f) All applicants (except applicants filing FCC Form 175) are required to indicate at the time their application is filed whether or not a Commission grant of the application may have a significant environmental impact as defined by § 1.1307 of this chapter. If answered affirmatively, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed prior to construction. See § 1.1312 of this chapter. All GWCS licensees are subject to a continuing obligation to determine whether subsequent construction may have a significant environmental impact prior to undertaking such construction and to otherwise comply with §§ 1.1301 through 1.1319 of this chapter. See § 1.1312 of this chapter.

§ 26.308 Technical content of applications; maintenance of list of station locations.

All applications required by this part shall contain all technical information required by the application forms or associated Public Notice(s). Applications other than initial applications for a GWCS license must also comply with all technical requirements of the rules governing the GWCS (see Subparts C and D as appropriate).

§ 26.309 Station antenna structures.

(a) Unless the GWCS licensee has received prior approval from the FCC, no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the GWCS licensee has received prior approval from the FCC, no antenna structure at an airport or heliport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement; or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA, and except for military airports, it is clearly indicated that the airport will be available for public use; or at an airport or heliport that is operated by the armed forces of the United States; or at a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the airport runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) A GWCS station antenna structure no higher than 6.1 m (10 feet) above ground level at its site or no higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting are contained in Part 17 of this chapter, Construction, Marking and Lighting of Antenna Structures. To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the Federal Aviation Administration (FAA) on FAA Form 7460–1 and the FCC on FCC Form 854.

§ 26.310 Waiver of rules.

(a) Request for waivers. (1) Waivers of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) Denial of waiver, alternate showing required. If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 26.311 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, executive, or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. See also § 1.2105 of this chapter.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2) The application (other an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(3) The application is filed prior to the Public Notice issued under § 26.317 announcing the application filing date for the relevant auction or after the cutoff date prescribed in that Public Notice;

(c) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 26.312 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

§ 26.313 Amendment of application for General Wireless Communications Service filed on FCC Form 175.

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications. These are defects which may not be cured. See also § 1.2105 of this chapter.

(b) For GWCS, applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175, to make ownership changes or changes in the identification of parties to bidding consortia, provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for any of the same licenses as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of this chapter.

§ 26.314 Amendment of applications for General Wireless Communications Service (other than applications filed on FCC Form 175).

This section applies to all applications for General Wireless Communications Service other than applications filed on FCC Form 175.

(a) Amendments as of right. A pending application may be amended as a matter or right if the application has not been designated for hearing.

(1) Amendments shall comply with § 26.319, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 26.319 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) Major amendments, minor amendments. The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 26.317 under any of the following circumstances:

(1) Change in technical proposal. If the amendment results in a substantial change in the engineering proposal such as (but not necessarily limited to) a change in, or an addition of, a radio frequency; or

(2) Amendment to proposed service area. If the amendment extends the reliable service area of the proposed facilities outside its EA or other applicable market area as defined in § 26.102; or

(3) A substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, requests for waiver, (or other written communications) shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also § 1.2108 of this chapter.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(2) The amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

(3) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option; or

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure.

§ 26.315 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 26.303 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 26.317 when:

(1) The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not exceed 180 days may be granted under the standards of section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the renewal applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the president or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 26.316 Recept of application; applications in the General Wireless Communications Service filed on FCC Form 175 and other applications in the GWCS Service.

All applications for the initial provision of GWCS service must be submitted on FCC Forms 175 and 175–S. Mutually exclusive initial applications in the General Wireless Communications Services are subject to competitive bidding. FCC Form XXX ("Application for New or Modified General Wireless Communications Service Radio Station Under Part 26") must be submitted by each winning bidder for each GWCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the applicant will also file FCC Form 401. The aforementioned Forms 175, 175–S, and XXX are subject to the provisions of Part 1, Subpart Q of this chapter ("Competitive Bidding Proceedings") and subpart E of this part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 26.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's rules.

(c) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules.

§ 26.317 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto:

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance. Such notices are solely for the purpose of informing the public and do not create any rights in an applicant or any other person.

(4) Special environmental considerations as required by part 1 of this chapter.

(b) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing. Provided, that the Commission will not grant an application filed on Form XXX filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also § 1.2108 of this chapter.

(c) As an exception to paragraphs (a)(1), (a)(2) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 26.314) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities, see § 26.104;

(4) For temporary authorization pursuant to § 25.315;

(5) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(6) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(7) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 26.318 Dismissal and return of applications.

(a) Any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175–S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications are also subject to § 1.2104 of this chapter.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of this Section and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 26.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of § 1.2105 of this chapter (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which § 26.323 and 26.324 would apply, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

(b) Parties that have filed an application in the GWCS that is mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application or an amendment thereto, must obtain the approval of the FCC. Parties that have filed a petition to deny, informal objection or other pleading against a pending application, and then seek to withdraw or request dismissal of the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the FCC.

(1) The party withdrawing or requesting dismissal of its application, petition to deny, informal objection or other pleading must submit to the FCC a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(i) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other

pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to *bona fide* merger agreements;

(ii) The exact nature and amount of any consideration received or promised;

(iii) An itemized accounting of the expenses for which it seeks reimbursement; and

(iv) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(2) In addition, within 5 days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection or other pleading; and

(ii) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(3) For the purposes of this section:

(i) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(ii) Applications, petitions to deny, informal objections and other pleadings are deemed to be pending before the FCC from the time the application or petition to deny is filed with the FCC until such time as an order of the FCC granting, denying or dismissing the application, petition to deny, informal objection or other pleading is no longer subject to reconsideration by the FCC or to review by any court.

(iii) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.

(iv) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(v) Reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the FCC.

§ 26.320 Opposition to applications.

(a) Petitions to deny (including petitions for other forms or relief) and responsive pleadings for Commission consideration must comply with § 1.2108 of this chapter and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions §§ 1.41 through 1.52 of this chapter except where otherwise provided in § 1.2108 of this chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.

§ 26.321 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of GWCS service are subject to competitive bidding in accordance with the procedures in Subpart F of this part and in Part 1, Subpart Q of this chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§ 26.322 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also § 1.2108 of this chapter.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 26.321 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 26.320, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and,

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularly the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also § 1.2108 of this chapter);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements; or

(3) The application is entitled to comparative consideration (under § 26.321) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or Part 1 of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with Part 1, Subpart A of this chapter.

§ 26.323 Post-action divestitures.

Any parties sharing a common non-controlling ownership interests who aggregate more GWCS spectrum among them than a single entity is entitled to hold will be permitted to divest sufficient properties within 90 days of the license grant to come into compliance with the spectrum aggregation limits as follows:

(a) The GWCS applicant shall submit a signed statement with its long-form application stating that sufficient properties will be divested within 90 days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications subject to a condition that the licensee come into compliance with the GWCS spectrum aggregation limits within 90 days of grant.

(b) Within 90 days of license grant, the licensee must certify that the applicant and all parties to the application have come into compliance with the GWCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband GWCS licenses won by the applicant, impose the default payment and, based on the facts presented, take any other action it deems appropriate. Divestiture may be an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the property as it sees fit. In no event may the trustee retain the property for longer than six months from grant of license.

§ 26.324 Transfer of control or assignment of station authorization.

(a) Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the General Wireless Communications Service is also subject to § 1.2111 of this chapter (Assignment or transfer of control: unjust enrichment).

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(b) Form required:

(1) Assignment.

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within 30 days of the event causing the assignment.

(2) Transfer of control.

(i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) Form 430. Whenever an application must be filed under paragraphs (a)(1) or (a)(2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio License Qualification Report") unless an accurate report is on file with the Commission.

(4) Notification of completion. The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original build-out requirement of § 26.104.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Applicants seeking to transfer their licenses within three years after the initial license grant date are required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration to be received in return for the transfer of the license.

§ 26.325 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in § 26.104, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. See paragraph (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond his control. An application for modification of an authorization (under construction) does not extend the initial

construction period. If additional time to construct is required, an FCC Form 489 must be submitted.

§ 26.326 Termination of authorization.

(a) (1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also § 26.14 (Criteria for Comparative Renewal Proceedings).

(b) Special Temporary Authority. A special temporary authority shall automatically terminate upon failure to comply with the conditions in the authorization.

[FR Doc. 95–19486 Filed 8–8–95; 8:45 am]
BILLING CODE 6712–01–M

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Part VI

The President

Proclamation 6815—Minority Enterprise Development Week, 1995

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Presidential Documents

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The President

Proclamation 6815 of August 7, 1995

Minority Enterprise Development Week, 1995

By the President of the United States of America

A Proclamation

For citizens throughout the Nation, entrepreneurship is a proven gateway to economic empowerment. At its best, our free enterprise system works to ensure that all of our citizens have the opportunity to contribute fully to America's economic growth and to benefit fully from our economy's success. However, the road to entrepreneurial achievement is seldom easy. Those who undertake the journey must be talented, determined, and brave. But America has a history of rewarding risk-takers, and there is much to be gained in the attempt.

If this country is to continue to prosper in the years ahead, we must hold fast to the promise of minority enterprise development. Business growth in our minority communities creates wealth, encourages self-sufficiency, and generates jobs where they are needed. My Administration is working hard to strengthen all of our Nation's businesses, opening new domestic and international markets, stimulating the efficient use of developed but underutilized land in older cities and towns, and reducing the cost of borrowing for business start-ups and expansions. These innovative efforts are making an impact, and people throughout America are stepping forward to take advantage of the possibilities of investment.

This week plays an important part in our work to promote the growth of the minority business community. As we recognize America's outstanding minority business men and women, we honor their accomplishments and help spur them on to greater heights. Highlighting their success, this occasion touches even those who have not yet dreamed of starting their own businesses. We are all inspired by the example our entrepreneurs have set.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 24 through September 30, 1995, as "Minority Enterprise Development Week." I call on all Americans to commemorate this event with appropriate ceremonies and activities, joining together to recognize the contributions that minority entrepreneurs make every day to our national economic security.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of August, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–19866
Filed 8–8–95; 10:10 am]
Billing code 3195–01–P

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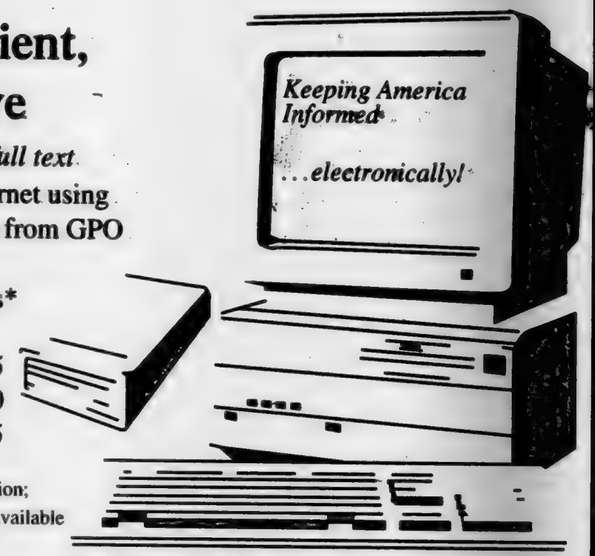
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8–10–95
Vol. 60 No. 154

federal register

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federal register

Thursday
August 10, 1995

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Rules and Regulations

Federal Register
Vol. 60, No. 154
Thursday, August 10, 1995

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GENERAL ACCOUNTING OFFICE

4 CFR Part 21

General Accounting Office; Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: The General Accounting Office (GAO) is amending its Bid Protest Regulations after receiving and considering the comments on the proposed rule published on January 31, 1995. The final rule implements the Federal Acquisition Streamlining Act of 1994 (FASA) and conforms GAO's current regulation to the practice that has evolved at GAO since April 1991, when GAO last revised part 21. The final rule will improve the overall efficiency and effectiveness of GAO's bid protest process by streamlining the process, by reducing the costs of pursuing protests at GAO for all parties, and by permitting GAO to resolve protests as expeditiously as possible. The final rule reflects the requirement in FASA that the implementing regulation be concise and easily understood by vendors and government officials. The final rule shortens the regulation, even though several provisions implementing FASA are added.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michael R. Golden (Acting Associate General Counsel) or Linda S. Lebowitz (Senior Attorney), 202–512–9732.

SUPPLEMENTARY INFORMATION:

Effective Dates

Protests filed at GAO prior to the effective date of this final rule will be considered under the previous rule published at 56 FR 3759 on April 1, 1991. That previous rule will also be used to consider (1) protests filed on or after the effective date of this rule which supplement or amend a protest filed at GAO prior to the effective date of this rule and (2) claims and requests for reconsideration filed on or after the effective date of this rule which concern a protest which was considered under the previous rule.

Background

On January 31, 1995, GAO published a proposed rule (60 FR 5871) in which it proposed to revise its Bid Protest Regulations. The supplementary information included with the proposed rule explained that the proposed revision to GAO's regulation implemented the statutory changes contained in the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103–355, 108 Stat. 3243, dated October 13, 1994. The proposed rule also was based on GAO's experience with the previous rule, including the use of protective orders and hearings, which was published at 56 FR 3759 on April 1, 1991. The proposed rule conformed GAO's regulation to the practice that had evolved at GAO since April 1991.

In revising its regulation, GAO has been guided by the statutory mandate in sec. 10002(e) of FASA that the implementing regulation be concise and easily understood by vendors and government officials, and by the principle that GAO's bid protest process remain as uncomplicated and informal as possible, consistent with the goal of providing expeditious and meaningful relief to vendors wrongfully excluded from procurements. More specifically, GAO's final rule will streamline the process, reduce the costs of pursuing protests at GAO for all parties, and permit GAO to resolve protests as expeditiously as possible. GAO's regulation is shortened overall, even though several new provisions implementing FASA are added. Redundancies are eliminated and language changes reflect an effort to make the regulation clearer and more readable.

Summary of Comments

Interested persons were invited to submit comments on GAO's proposed rule by April 3, 1995. We received written comments from 11 Federal agencies, 2 bar associations, 4 law firms, 1 industry association, and 2 members of the public. In adopting this final rule, we have carefully considered all comments received. The commenters generally were supportive of our efforts to streamline the bid protest process and to provide expeditious and meaningful relief to vendors wrongfully excluded from procurements. In this regard, the commenters suggested further language changes consistent with these goals. We have adopted many of these suggestions in the final rule to improve the efficiency of the process.

A discussion of the more significant comments concerning GAO's proposed rule, and our responses to these comments, are set forth below.

Section 21.0—Definitions

One commenter recommended that we expand the definition of "intervenor" in § 21.0(b) to include entities which participated in a procurement which were not selected for award. It was suggested that these entities be considered "intervenors" in spite of their decision not to file a protest. Because these entities can file a protest in their own right, we do not believe that expansion of the definition of "intervenor" is warranted. Also, under § 21.3(i), GAO may permit, or even request, the submission of statements by entities which do not choose to, or cannot, participate as a matter of right in a protest. For example, it has been our practice to allow submissions from trade associations and other participants in a procurement.

Section 21.1—Filing a Protest

One commenter, in supporting our efforts to make the final rule more "user-friendly," suggested that we further revise the language in § 21.1(c), which lists the elements of a protest filing, to include certain additional elements. We basically adopted this suggestion by adding language to require a protester to establish in its protest its interested party status and the timeliness of its protest. Moreover, we have added a new paragraph (d) to this section (and accordingly, have redesignated subsequent paragraphs) which provides that in addition, protesters may request in their protests a protective order, specific documents relevant to the protest grounds, and a hearing. Further, we have revised the language in redesignated paragraph (i) of this section to provide that protests will not be dismissed if a protester fails

to request in its initial protest filing a protective order, specific documents relevant to the protest grounds, or a hearing. We believe these revisions will significantly simplify a protester's preparation of its protest.

In response to a commenter's concern that the agency does not always receive a complete copy of a protest and all attachments, we have added language to redesignated paragraph (e) of § 21.1 to make it clear that the protester is obligated to furnish the agency with a complete copy of its protest, including all attachments.

With respect to redesignated paragraph (g) of § 21.1, several commenters argued that the requirement for the simultaneous submission at GAO of a redacted version of a protest (omitting confidential information), along with the full, unredacted protest, would be unduly burdensome. Accordingly, we have revised the language in this section to require that a redacted version of the protest be filed with GAO within 1 day after the filing of the unredacted protest.

Section 21.2—Time for Filing

In the proposed rule, consistent with the requirements of FASA, we have converted our timeliness rules from "working days" to "calendar days." Accordingly, a protester may file a protest (which does not involve an alleged solicitation impropriety) not later than 14 calendar days (as opposed to 10 working days) after the basis of protest is known or should have been known, whichever is earlier.

Section 1402(b) of FASA requires an agency which receives notice of a protest from GAO within 10 days after the date of contract award or within 5 days after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required to immediately direct the contractor to suspend contract performance. According to one commenter, Congress intended to provide meaningful relief to an unsuccessful offeror which filed a protest within 5 calendar days after a required debriefing, thus obviating the unsuccessful offeror's need to file a "defensive" protest prior to receiving all information to which it is entitled pursuant to a statutorily required debriefing.

In light of the 14-calendar-day rule for filing timely protests, the commenter argued that if a protest is based on information discovered before a required debriefing, the protester cannot wait to file its protest until after it is debriefed since, at that point, the 14-calendar-day period for filing a timely protest may have expired, although the protest may still be timely for the purpose of requiring the agency to suspend contract performance. For this reason, the commenter suggested that we change our timeliness rules to provide that a protest, other than one based on an alleged solicitation impropriety, be considered timely if it is filed within 14 calendar days after the protester knew (or should have known, if that is earlier) the basis of protest, or if it is filed within 5 calendar days after the required debriefing, whichever is later.

While we believe that this recommendation should be given further consideration, we decline to adopt this suggestion in the final rule because such a significant change to our longstanding timeliness rules should be published for comment prior to implementation. We plan to evaluate the protest practice which evolves in response to the implementation of the new debriefing requirements of FASA. If experience shows that a revision to our timeliness rules would be beneficial to the bid protest system, we will consider further rulemaking.

Section 21.3—Notice of Protest, Submission of Agency Report, and Time for Filing of Comments on Report

In response to a suggestion from a commenter, we have added language to § 21.3(a) to require that all protest communications be sent by means reasonably calculated to effect timely delivery. We believe this change will improve the efficiency of the bid protest process.

In response to suggestions from several commenters, we also have added language to clarify § 21.3(b) and to specifically acknowledge, consistent with our current practice, that an intervenor, as well as an agency, may file a request for dismissal of a protest prior to submission of the agency report.

Several commenters expressed concern regarding our implementation of the protest file requirement contained in sec. 1015 and 1065 of FASA. It was the consensus of these commenters that requiring an agency to file a protest file within 20 days of a request for such a file in every one of the large number of protests filed with our Office would represent an undue burden, in particular because of the need to redact the documents in the protest file. These commenters pointed out that many protests are dismissed (or withdrawn) within the first 20 days after filing, and that in those cases, the time and effort devoted to preparing a protest file would be wasted. In addition, some of these commenters stated that they would be forced to litigate every protest, even where summary dismissal is appropriate, because they would be compelled to devote their limited resources to preparing a protest file rather than to drafting requests for summary dismissal.

In response to the concerns expressed, we have decided not to adopt the protest file requirement at this time. While we continue to believe that filing a protest file early in the bid protest process will permit a more expeditious resolution of protests and offer other system efficiencies, in view of the concern that the requirement for early preparation of protest material is unduly burdensome, we have elected at this time not to implement a mandatory protest file requirement as part of our bid protest procedures.

In any event, we note that the agencies have a statutory obligation to implement a protest file procedure. Rather than our Office implementing a protest file requirement at this time, we think it is appropriate that the protest file requirement be implemented, in the first instance, in the Federal Acquisition Regulation (FAR). However, it remains our intention, in appropriate cases, to encourage agencies to voluntarily provide a protest file early in the bid protest process to ensure prompt development and resolution of protests, and to avoid the need for GAO to invoke the express option in roll-over situations (*i.e.*, those cases where GAO closes an initial protest without deciding the merits of the protest grounds originally raised because a subsequently filed protest, with new or related protest grounds, potentially renders a decision on the initial protest grounds meaningless). In this regard, in response to suggestions from several commenters, we have clarified the language in § 21.10(a) by expressly stating that GAO may invoke the express option on its own initiative. We plan to closely evaluate the impact of such voluntary use of the protest file and, if the results prove to be of benefit to the process, we will consider formally incorporating the protest file requirement into our procedures.

In response to a commenter's concern that the language in § 21.3(c) permitting an agency to request relevant documents from a protester will allow for "wide-open" document requests, we have clarified the language in this section to limit these requests to "appropriate cases."

To conform our regulation to current practice, we have revised the language in § 21.3(e) to provide for granting an agency's requests for extensions of time for submission of agency reports "on a case-by-case basis," rather than granting these requests "sparingly," the language which is used in our current regulation. (For consistency, we also have revised the language in § 21.3(h) to provide for granting a protester's requests for extensions of time for submission of comments "on a case-by-case basis," rather than granting these requests "sparingly," the language which is used in our current regulation.)

Section 21.5—Protest Issues Not for Consideration

Several commenters questioned our language change in § 21.5(b)(2) which provides that we will review the refusal by the Small Business Administration to issue a certificate of competency because of "a failure to consider vital information bearing on the firm's responsibility." We added this language to reflect our current case law. *See COSTAR*, B–240980, Dec. 20, 1990, 90–2 CPD ¶ 509; *American Industrial Contractors, Inc.*, B–236410.2, Dec. 15, 1989, 89–2 CPD ¶ 557.

Section 21.6—Withholding of Award and Suspension of Contract Performance

The information provided in § 21.6 is significantly modified. This section in the proposed rule repeated in substance the requirements for the withholding of award and the suspension of contract performance which are contained in 48 CFR part 33. These requirements are to be carried out by the agencies, not our Office, and therefore we refer readers to the relevant statutory and regulatory provisions addressing these requirements.

Section 21.7—Hearings

With regard to paragraphs (g) and (h) of § 21.7, several commenters requested clarification of the requirement for agencies to file consolidated post-hearing comments on the hearing and agency report, and clarification of the requirement to reference relevant hearing testimony and admissions. We have adopted the language recommended by the commenters.

Section 21.8—Remedies

Several commenters suggested that we address how we will implement the fee limitation provisions contained in sec. 1403 of FASA. We have added language to § 21.8(f)(2) referencing the statutory language of FASA. The agencies will adjudicate, in the first instance, claims for costs consistent with the statutory fee limitation provisions. If a protester and agency cannot reach agreement on a claim for costs within a reasonable time, we may, upon request of the protester, recommend the amount of costs the agency should pay in accordance with the statutory fee limitation provisions.

Regarding the limitation on attorneys' fees, issues involving, for example, a request for higher fees based on the cost of living or a special factor are more appropriately resolved on a case-by-case basis. We expect to provide necessary guidance to parties through our decisions. Concerning the consultant and expert witness fee limitation, FASA limits the payment of these fees to "the highest rate of compensation * * * paid by the Federal Government." While there is some difference of opinion among the commenters on whether Congress intended to cap fees at the highest rate fixed by the Classification Act Schedules 15, *see* 5 U.S.C. 3109, we believe that the proposed FAR implementation, which limits consultant and expert witness fees to the highest rate fixed by 5 U.S.C. 3109, is appropriate and consistent with the statutory language. We are unaware of any legislative history which suggests that this implementation is contrary to congressional intent.

Section 21.10—Express Option, Accelerated Schedule, and Summary Decision

Section 21.10 has been clarified to confirm that GAO may resolve any protest using a flexible, accelerated schedule. In addition, for any protest, GAO may issue a summary decision. We anticipate that a request for a summary decision will be made as soon as practicable after the protest is filed, thus permitting GAO to expedite the decision-making process in order to minimize the disruption to the procurement process.

Section 21.12—Distribution of Decisions

As stated in § 21.12, we have established an electronic distribution system to facilitate expedited access to decisions. The telephone number for obtaining information regarding access to this electronic distribution system is 202–512–5282. In addition, the telephone number for GAO's case status line is 202–512–5436. We encourage parties requiring copies of decisions or case status information to use these telephone numbers. We are also changing the format of bid protest decisions. In order to provide a more uniform format and to facilitate distribution through electronic systems, the decisions themselves will not have an original signature, but the typed designation "Comptroller General of the United States."

Section 21.13—Nonstatutory Protests

One commenter expressed concern with the language of § 21.13 regarding an agency's agreement to have its protests decided by GAO. While we believe that a language change is not required, we point out that the language in this section is intended to permit agencies to agree, in advance, that our Office decide a class of cases or a particular case. Once a protest is filed, however, we do not anticipate that an agency will revoke an agreement to have the pending protest decided by our Office, and, in fact, in the past no agency has revoked such an agreement.

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Bid protest regulations, Government contracts.

For the reasons set out in the preamble, title 4, chapter I, subchapter B, of the Code of Federal Regulations is amended as follows:

1. Part 21 is revised to read as follows:

PART 21—BID PROTEST REGULATIONS

Sec.

21.0 Definitions.
21.1 Filing a protest.
21.2 Time for filing.
21.3 Notice of protest; submission of agency report; and time for filing of comments on report.
21.4 Protective orders.
21.5 Protest issues not for consideration.
21.6 Withholding of award and suspension of contract performance.
21.7 Hearings.
21.8 Remedies.
21.9 Time for decision by GAO.
21.10 Express option, accelerated schedule, and summary decision.
21.11 Effect of judicial proceedings.
21.12 Distribution of decisions.
21.13 Nonstatutory protests.
21.14 Request for reconsideration.

Authority: 31 U.S.C. 3551–3556.

§ 21.0 Definitions.

(a) *Interested party* means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) *Intervenor* means an awardee if the award has been made or, if no award has been made, all bidders or offerors who appear to have a substantial prospect of receiving an award if the protest is denied.

(c) *Federal agency* means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the

House of Representatives and the Architect of the Capitol and any activities under his direction.

(d) *Contracting agency* means a Federal agency which has awarded or proposes to award a contract under a protested procurement.

(e) *Days* are calendar days. In computing a period of time for the purpose of this part, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the General Accounting Office (GAO), or another Federal agency where a submission is due, is closed for all or part of the last day, the period extends to the next day on which the agency is open.

(f) *Adverse agency action* is any action or inaction by a contracting agency which is prejudicial to the position taken in a protest filed with the agency, including a decision on the merits of a protest; the opening of bids or receipt of proposals, the award of a contract, or the rejection of a bid despite a pending protest; or contracting agency acquiescence in continued and substantial contract performance.

(g) A document is *filed* on a particular day when it is received by GAO by 5:30 p.m., eastern time, on that day. A document may be filed by hand delivery, mail, or commercial carrier; parties wishing to file a document by facsimile transmission or other electronic means must ensure that the necessary equipment is operational at GAO's Procurement Law Control Group.

§ 21.1 Filing a protest.

(a) An interested party may protest a solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services; the cancellation of such a solicitation or other request; an award or proposed award of such a contract; and a termination of such a contract, if the protest alleges that the termination was based on improprieties in the award of the contract.

(b) Protests must be in writing and addressed as follows: General Counsel, General Accounting Office, 441 G Street, NW., Washington, DC 20548, Attention: Procurement Law Control Group.

(c) A protest filed with GAO shall:

(1) Include the name, address, and telephone and facsimile numbers of the protester,

(2) Be signed by the protester or its representative,

(3) Identify the contracting agency and the solicitation and/or contract number,

(4) Set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents,

(5) Set forth all information establishing that the protester is an interested party for the purpose of filing a protest,

(6) Set forth all information establishing the timeliness of the protest,

(7) Specifically request a ruling by the Comptroller General of the United States, and

(8) State the form of relief requested.

(d) In addition, a protest filed with GAO may:

(1) Request a protective order,

(2) Request specific documents relevant to the protest grounds, and

(3) Request a hearing.

(e) The protester shall furnish a complete copy of the protest, including all attachments, to the individual or location designated by the contracting agency in the solicitation for receipt of protests, or if there is no designation, to the contracting officer. The designated individual or location (or, if applicable, the contracting officer) must receive a complete copy of the protest and all attachments no later than 1 day after the protest is filed with GAO. The protest document must indicate that a complete copy of the protest and all attachments are being furnished within 1 day to the appropriate individual or location.

(f) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise and logically arranged, and should clearly state legally sufficient grounds of protest. Protests of different procurements should be separately filed.

(g) Unless precluded by law, GAO will not withhold material submitted by a protester from any party outside the government. If the protester believes that the protest contains information which should be withheld, a statement advising of this fact must be on the front page of the submission. This information must be identified wherever it appears, and the protester must file, within 1 day after the filing of its protest with GAO, a redacted copy of the protest which omits the information.

(h) Parties who intend to file documents containing classified information should notify GAO in advance to obtain advice regarding procedures for filing and handling the information.

(i) A protest may be dismissed for failure to comply with any of the requirements of this section, except for the items in paragraph (d) of this section. In addition, a protest shall not be dismissed for failure to comply with paragraph (e) of this section where the contracting officer has actual knowledge of the basis of protest, or the agency, in the preparation of its report, was not prejudiced by the protester's noncompliance.

§ 21.2 Time for filing.

(a)(1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (a)(1) of this section, protests shall be filed not later than 14 days after the basis of protest is known or should have been known, whichever is earlier.

(3) If a timely agency-level protest was previously filed, any subsequent protest to GAO filed within 14 days of actual or constructive knowledge of initial adverse agency action will be considered, provided the agency-level protest was filed in accordance with paragraphs (a)(1) and (a)(2) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In cases where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to GAO will be considered timely if filed within the 14-day period provided by this paragraph, even if filed after bid opening or the closing time for receipt of proposals.

(b) Protests untimely on their face may be dismissed. A protester shall include in its protest all information establishing the timeliness of the protest; a protester will not be permitted to introduce for the first time in a request for reconsideration information necessary to establish that the protest was timely.

(c) GAO, for good cause shown, or where it determines that a protest raises issues significant to the procurement system, may consider an untimely protest.

§ 21.3 Notice of protest, submission of agency report, and time for filing of comments on report.

(a) GAO shall notify the contracting agency by telephone within 1 day after the filing of a protest, and, unless the protest is dismissed under this part,

shall promptly send a written confirmation to the contracting agency and an acknowledgment to the protester. The contracting agency shall immediately give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a reasonable prospect of receiving an award. The contracting agency shall furnish copies of the protest submissions to those parties, except where disclosure of the information is prohibited by law, with instructions to communicate further directly with GAO. All parties shall furnish copies of all protest communications to the contracting agency and to other participating parties. All protest communications shall be sent by means reasonably calculated to effect timely delivery.

(b) A contracting agency or intervenor which believes that the protest or specific protest allegations should be dismissed before submission of an agency report should file a request for dismissal as soon as practicable.

(c) The contracting agency shall file a report on the protest with GAO within 35 days after the telephone notice of the protest from GAO. The report shall include the contracting officer's statement of the relevant facts, a memorandum of law, and an index and a copy of all relevant documents including, as appropriate: The protest; the bid or proposal submitted by the protester; the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested; all evaluation documents; the solicitation, including the specifications or portions relevant to the protest; the abstract of bids or offers or relevant portions; and any other relevant documents. The contracting agency shall provide any additional documents requested in the protest or explain why it is not required to produce the documents. In appropriate cases, the contracting agency may request that the protester produce relevant documents that are not in the agency's possession.

(d) Subject to any protective order issued in the protest pursuant to § 21.4, the contracting agency shall simultaneously furnish a copy of the report to the protester and any intervenors. The copy of the report filed with GAO shall list the parties who have been furnished copies of the report and shall identify in an index any documents, or portions of documents, withheld from any party and the reason for the withholding. Where a protester does not have counsel admitted to a protective order and documents are withheld from the protester in accordance with this part, the agency shall provide documents adequate to inform the protester of the basis of the agency's position.

(e) The contracting agency may request an extension of time for the submission of the agency report. Extensions will be granted on a case-by-case basis.

(f) The protester may request additional documents when their existence or relevance first becomes evident. Except when authorized by GAO, any request for additional documents must be filed with GAO and the contracting agency not later than 2 days after their existence or relevance is known or should have been known, whichever is earlier. The contracting agency shall provide the requested documents and an index to GAO and the other parties within 5 days or explain why it is not required to produce the documents.

(g) Upon the request of a party, GAO will decide whether the contracting agency must provide any withheld documents and whether this should be done under a protective order. When withheld documents are provided, the protester's comments on the agency report shall be filed within 10 days after its receipt of the documents, unless otherwise specified by GAO.

(h) Comments on the agency report shall be filed with GAO within 14 days after receipt of the report, with a copy provided to the contracting agency and other participating parties. The protest shall be dismissed unless the protester files comments or a written statement requesting that the case be decided on the existing record, or requests an extension of time within the 14-day period. Unless otherwise advised by the protester, GAO will assume the protester received the agency report by the due date specified in the acknowledgment of protest furnished by GAO. Upon a showing that the specific circumstances of a protest require a period longer than 14 days for the submission of comments, GAO will set a new date for the submission of comments. Extensions will be granted on a case-by-case basis.

(i) GAO may permit or request the submission of additional statements by the parties and by other parties not participating in the protest as may be necessary for the fair resolution of the protest.

§ 21.4 Protective orders.

(a) At the request of a party or on its own initiative, GAO may issue a protective order controlling the treatment of protected information. Such information may include proprietary, confidential, or source-selection-sensitive material, as well as other information the release of which could result in a competitive advantage to one or more firms. The protective order shall establish procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information. Because a protective order serves to facilitate the pursuit of a protest by a protester through counsel, it is, in the first instance, the responsibility of protester's counsel to request that a protective order be issued and to submit timely applications for admission under that order.

(b) If no protective order has been issued, the agency may withhold from the parties those portions of its report which would ordinarily be subject to a protective order. GAO will review in camera all information not released to the parties.

(c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for admission under the order by submitting an application to GAO, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decisionmaking for any firm that could gain a competitive advantage from access to the protected information and that there will be no significant risk of inadvertent disclosure of protected information. Objections to an applicant's admission shall be raised within 2 days after receipt of the application, although GAO may consider objections raised after that time.

(d) Any violation of the terms of a protective order may result in the imposition of sanctions as GAO deems appropriate, including referral to appropriate bar associations or other disciplinary bodies and restricting the individual's practice before GAO.

§ 21.5 Protest issues not for consideration.

GAO shall summarily dismiss a protest or specific protest allegations that do not state a valid basis for protest, are untimely (unless considered pursuant to § 21.2(c)), or are not properly before GAO. A protest or specific protest allegations may be dismissed any time sufficient information is obtained by GAO warranting dismissal. Where an entire protest is dismissed, no agency report shall be filed; where specific protest allegations are dismissed, an agency

report shall be filed on the remaining allegations. Among the protest bases which shall be dismissed are the following:

(a) *Contract administration.* The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the agency are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978. 41 U.S.C. 601–613.

(b) *Small Business Administration issues.*—(1) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification may be reviewed solely by the Small Business Administration. 15 U.S.C. 637(b)(6).

(2) *Small Business Certificate of Competency Program.* Any referral made to the Small Business Administration pursuant to sec. 8(b)(7) of the Small Business Act, or any issuance of, or refusal to issue, a certificate of competency under that section will not be reviewed by GAO absent a showing of possible bad faith on the part of government officials or a failure to consider vital information bearing on the firm's responsibility. 15 U.S.C. 637(b)(7).

(3) *Procurements under sec. 8(a) of the Small Business Act.* Under that section, since contracts are entered into with the Small Business Administration at the contracting officer's discretion and on such terms as are agreed upon by the procuring agency and the Small Business Administration, the decision to place or not to place a procurement under the 8(a) program is not subject to review absent a showing of possible bad faith on the part of government officials or that regulations may have been violated. 15 U.S.C. 637(a).

(c) *Affirmative determination of responsibility by the contracting officer.* Because the determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an affirmative determination of responsibility will not be reviewed absent a showing of possible bad faith on the part of government officials or that definitive responsibility criteria in the solicitation were not met.

(d) *Procurement protested to the General Services Administration Board of Contract Appeals.* Interested parties may protest a procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals. After a protest to the Board, the same procurement generally may not be the subject of a protest to GAO. 40 U.S.C. 759(f).

(e) Protests not filed either in GAO or the contracting agency within the time limits set forth in § 21.2.

(f) Protests which lack a detailed statement of the legal and factual grounds of protest as required by § 21.1(c)(4), or which fail to clearly state legally sufficient grounds of protest as required by § 21.1(f).

(g) *Procurements by agencies other than Federal agencies as defined by sec. 3 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 472.* Protests of procurements or proposed procurements by agencies such as the U.S. Postal Service, the Federal Deposit Insurance Corporation, and nonappropriated fund activities are beyond GAO's bid protest jurisdiction as established in 31 U.S.C. 3551–3556.

(h) *Subcontract protests.* GAO will not consider a protest of the award or proposed award of a subcontract except where the agency awarding the prime contract has requested in writing that subcontract protests be decided pursuant to § 21.13.

§ 21.6 Withholding of award and suspension of contract performance.

Where a protest is filed with GAO, the contracting agency may be required to withhold award and to suspend contract performance. The requirements for the withholding of award and the suspension of contract performance are set forth in 31 U.S.C. 3553(c) and (d) and are implemented by 48 CFR part 33.

§ 21.7 Hearings.

(a) At the request of a party or on its own initiative, GAO may conduct a hearing in connection with a protest. The request shall set forth the reasons why a hearing is needed.

(b) Prior to the hearing, GAO may hold a pre-hearing conference to discuss and resolve matters such as the procedures to be followed, the issues to be considered, and the witnesses who will testify.

(c) Hearings generally will be conducted as soon as practicable after receipt by the parties of the agency report and relevant documents. Although hearings ordinarily will be conducted at GAO in Washington, DC, hearings may, at the discretion of GAO, be conducted at other locations.

(d) All parties participating in the protest shall be invited to attend the hearing. Others may be permitted to attend as observers and may participate as allowed by GAO's hearing official. In order to prevent the improper disclosure of protected information at the hearing, GAO's hearing official may restrict attendance during all or part of the proceeding.

(e) Hearings shall normally be recorded and/or transcribed. If a recording and/or transcript is made, any party may obtain copies at its own expense.

(f) If a witness whose attendance has been requested by GAO fails to attend the hearing or fails to answer a relevant question, GAO may draw an inference unfavorable to the party for whom the witness would have testified.

(g) If a hearing is held, no separate comments on the agency report should be submitted unless specifically requested by GAO. Each party shall file with GAO, within 7 days after the hearing was held or as specified by GAO, a single document expressing any comments on both the hearing and agency report, with copies furnished to the other parties. By the due date, if the protester has not filed comments or a written statement requesting that the case be decided on the existing record, GAO shall dismiss the protest.

(h) In post-hearing comments, the parties should reference all testimony and admissions in the hearing record that they consider relevant, providing specific citations to the testimony and admissions referenced.

§ 21.8 Remedies.

(a) If GAO determines that a solicitation, cancellation of a solicitation, termination of a contract, proposed award, or award does not comply with statute or regulation, it shall recommend that the contracting agency implement any combination of the following remedies:

(1) Refrain from exercising options under the contract;

(2) Terminate the contract;

(3) Recompete the contract;

(4) Issue a new solicitation;

(5) Award a contract consistent with statute and regulation; or

(6) Such other recommendation(s) as GAO determines necessary to promote compliance.

(b) In determining the appropriate recommendation(s), GAO shall, except as specified in paragraph (c) of this section, consider all circumstances surrounding the procurement or proposed procurement including the seriousness of the procurement deficiency, the degree of prejudice to other parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the government, the urgency of the procurement, and the impact of the recommendation(s) on the contracting agency's mission.

(c) If the head of the procuring activity determines that performance of the contract notwithstanding a pending protest is in the government's best interest, GAO shall make its recommendation(s) under paragraph (a) of this section without regard to any cost or disruption from terminating, recompeting, or reawarding the contract.

(d) If GAO determines that a solicitation, proposed award, or award does not comply with statute or regulation, it may recommend that the contracting agency pay the protester the costs of:

(1) Filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees; and

(2) Bid and proposal preparation.

(e) If the contracting agency decides to take corrective action in response to a protest, GAO may recommend that the agency pay the protester the costs of filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees. The protester shall file any request that GAO recommend that costs be paid within 14 days after being advised that the contracting agency has decided to take corrective action. The protester shall furnish a copy of its request to the contracting agency, which may file a response within 14 days after receipt of the request, with a copy furnished to the protester.

(f)(1) If GAO recommends that the contracting agency pay the protester the costs of filing and pursuing the protest and/or of bid or proposal preparation, the protester and the agency shall attempt to reach agreement on the amount of costs. The protester shall file its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 90 days after receipt of GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs.

(2) The contracting agency shall issue a decision on the claim for costs as soon as practicable after the claim is filed. If the protester and the contracting agency cannot reach agreement within a reasonable time, GAO may, upon request of the protester, recommend the amount of costs the agency should pay in accordance with 31 U.S.C. 3554(c). In such cases, GAO may also recommend that the contracting agency pay the protester the costs of pursuing the claim for costs before GAO.

(3) The contracting agency shall notify GAO within 60 days after GAO recommends the amount of costs the agency should pay the protester of the action taken by the agency in response to the recommendation.

§ 21.9 Time for decision by GAO.

(a) GAO shall issue a decision on a protest within 125 days after it is filed.

(b) In protests where GAO uses the express option procedures in § 21.10, GAO shall issue a decision on a protest within 65 days after it is filed.

(c) GAO, to the maximum extent practicable, shall resolve a timely supplemental protest adding one or more new grounds to an existing protest, within the time limit established in paragraph (a) of this section for decision on the initial protest. If an amended protest cannot be resolved within that time limit, GAO may resolve the amended protest using the express option procedures in § 21.10.

§ 21.10 Express option, accelerated schedule, and summary decision.

(a) At the request of a party or on its own initiative, GAO may decide a protest using an express option.

(b) The express option will be adopted at the discretion of GAO and only in those cases suitable for resolution within 65 days.

(c) Requests for the express option shall be in writing and received in GAO no later than 3 days after the protest or supplemental protest is filed. GAO will promptly notify the parties whether the case will be handled using the express option.

(d) When the express option is used, the following schedule applies instead of those deadlines in § 21.3 and § 21.7:

(1) The contracting agency shall file a complete report with GAO and the parties within 20 days after it receives notice from GAO that the express option will be used.

(2) Comments on the agency report shall be filed with GAO and the other parties within 7 days after receipt of the report.

(3) If a hearing is held, no separate comments on the agency report under paragraph (d)(2) of this section should be submitted unless specifically requested by GAO. Consolidated comments on the agency report and hearing shall be filed within 7 days after the hearing was held or as specified by GAO.

(4) Where circumstances demonstrate that a case is no longer suitable for resolution using the express option, GAO shall establish a new schedule for submissions by the parties.

(e) At the request of a party or on its own initiative, GAO may resolve any protest using an accelerated schedule and/or may issue a summary decision for any protest.

§ 21.11 Effect of judicial proceedings.

(a) A protester must immediately advise GAO of any court proceeding which involves the subject matter of a pending protest and must file with GAO copies of all relevant court documents.

(b) GAO will dismiss any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, or where the matter involved has been decided on the merits by a court of competent jurisdiction. GAO may, at the request of a court, issue an advisory opinion on a bid protest issue that is before the court. In these cases, unless a different schedule is established, the times provided in this part for filing the agency report (§ 21.3(c)), filing comments on the report (§ 21.3(h)), holding a hearing and filing comments (§ 21.7), and issuing a decision (§ 21.9) shall apply.

§ 21.12 Distribution of decisions.

(a) Unless it contains protected information, a copy of a decision shall be provided to the protester, any intervenors, the head of the contracting activity responsible for the protested procurement, and the senior procurement executive of each Federal agency involved; a copy shall also be made available to the public. A copy of a decision containing protected information shall be provided only to the contracting agency and to individuals admitted to any protective order issued in the protest. A public version omitting the protected information shall be prepared wherever possible.

(b) Decisions are available from GAO by electronic means.

§ 21.13 Nonstatutory protests.

(a) GAO will consider protests concerning awards of subcontracts by or for a Federal agency, sales by a Federal agency, or procurements by agencies of the government other than Federal agencies as defined in § 21.0(c) if the agency involved has agreed in writing to have protests decided by GAO.

(b) The provisions of this part shall apply to nonstatutory protests except for the provision of § 21.8(d) pertaining to recommendations for the payment of costs. The provision for the withholding of award and the suspension of contract performance, 31 U.S.C. 3553 (c) and (d), also does not apply to nonstatutory protests.

§ 21.14 Request for reconsideration.

(a) The protester, any intervenor, and any Federal agency involved in the protest may request reconsideration of a bid protest decision. GAO will not consider a request for reconsideration that does not contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(b) A request for reconsideration of a bid protest decision shall be filed, with copies to the parties who participated in the protest, not later than 14 days after the basis for reconsideration is known or should have been known, whichever is earlier.

(c) GAO will summarily dismiss any request for reconsideration that fails to state a valid basis for reconsideration or is untimely. The filing of a request for reconsideration does not require the withholding of award and the suspension of contract performance under 31 U.S.C. 3553(c) and (d).

Robert P. Murphy,

General Counsel.

[FR Doc. 95–19747 Filed 8–9–95; 8:45 am]

BILLING CODE 1610–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG76

Prevailing Rate Systems; Abolishment of Atlanta, Georgia, Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Federal Wage System special wage schedule for printing positions in the Atlanta, Georgia, wage area. Printing and lithographic employees in Atlanta, Georgia, will now be paid rates from the regular Atlanta, Georgia, wage schedule.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On May 17, 1995, OPM published an interim rule to abolish the Federal Wage System special wage schedule for printing positions in the Atlanta, Georgia, wage area. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on May 17, 1995 (60 FR 26341), is adopted as final without any changes.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–19749 Filed 8–9–95; 8:45 am]

BILLING CODE 6325–01–M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practice and Procedure; Realignment of Regional Offices

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (the Board) announces the realignment of the geographical jurisdiction of certain regional and field offices and the approved hearing locations for all of its offices. The realignment affects the Atlanta, Philadelphia, San Francisco and Washington, DC. Regional Offices and the Denver, New York, and St. Louis Field Offices.

EFFECTIVE DATE: August 10, 1995.

FOR FURTHER INFORMATION CONTACT: Darrell L. Netherton, Senior Executive for Regional Administration, (202) 653–7980.

SUPPLEMENTARY INFORMATION: The Board announces the realignment of the geographical jurisdiction of certain regional and field offices and the approved hearing locations for all of its offices. As a result, the Board will be more responsive to the needs of appellant and agency clients while maximizing the use of its financial and human resources.

Appeals and related matters will continue to be filed with the regional or field office having geographic jurisdiction. Accordingly, appellants, agencies and other interested parties should carefully review the regional and field office jurisdictional boundary changes in Appendix II and the changes in the approved hearing locations in Appendix III.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

PART 1201—[AMENDED]

Accordingly, the Board amends 5 CFR part 1201 as follows:

The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701 unless otherwise noted.

Appendices II and III to part 1201 are revised to read as follows:

Appendix II to Part 1201—Appropriate Regional or Field Office for Filing Appeals

All submissions shall be addressed to the Regional Director, if submitted to a regional office, or the Chief Administrative Judge, if submitted to a field office, Merit Systems Protection Board, at the addresses listed below, according to geographic region of the employing agency or as required by § 1201.4(d) of this part. The facsimile numbers listed below are TDD-capable; however, calls will be answered by voice before being connected to the TDD. Address of Appropriate Regional or Field Office and Area Served:

1. Atlanta Regional Office
   401 Peachtree Street NW., 10th floor
   Atlanta, Georgia 30308–3519
   Facsimile No.: (404) 730–2767
   (Alabama, Florida, Georgia, Mississippi, South Carolina and Tennessee, east of the Tennessee River)
2. Chicago Regional Office
   230 South Dearborn Street, 31st floor
   Chicago, Illinois 60604–1669
   Facsimile No.: (312) 886–4231
   (Illinois—all locations north of Springfield, Indiana, Michigan, Minnesota, Ohio, and Wisconsin)
3. St. Louis Field Office
   911 Washington Avenue, Suite 410
   St. Louis, Missouri 63101–1203
   Facsimile No.: (314) 425–4294
   (Illinois—Springfield and all locations south of Springfield, Iowa, Kansas City, Kansas, Kentucky, Missouri, and Tennessee west of the Tennessee River)
4. Dallas Regional Office
   1100 Commerce Street, Room 6F20
   Dallas, Texas 75242–9979
   Facsimile No.: (214) 767–0102
   (Arkansas, Louisiana, Oklahoma, and Texas)
5. Denver Field Office
   730 Simms Street, Suite 301
   PO Box 25025
   Denver, Colorado 80225–0025
   Facsimile No.: (303) 231–5205
   (Arizona, Colorado, Kansas—except Kansas City, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Wyoming)
6. Philadelphia Regional Office
   U.S. Customhouse, Room 501
   Second and Chestnut Streets
   Philadelphia, Pennsylvania 19106–2987
   Facsimile No.: (215) 597–3456
   (Delaware, New Jersey—except for the counties of Bergen, Essex, Hudson and Union, Maryland—except the counties of Montgomery and Prince Georges, Pennsylvania, and West Virginia)
7. Boston Field Office
   99 Summer Street, Suite 1810
   Boston, Massachusetts 02110–1200
   Facsimile No.: (617) 424–5708
   (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)
8. New York Field Office
   26 Federal Plaza, Room 3137–A
   New York, New York 10278–0022
   Facsimile No.: (212) 264–1417
   (New Jersey—counties of Bergen, Essex, Hudson and Union, New York, Puerto Rico, and Virgin Islands)
9. San Francisco Regional Office
   525 Market Street, Room 2800
   San Francisco, California 94105–2736
   Facsimile No.: (415) 744–3194
   (California and Nevada)
10. Seattle Field Office
    915 Second Avenue, Suite 1840
    Seattle, Washington 98174–1056
    Facsimile No.: (206) 220–7982
    (Alaska, Hawaii, Idaho, Oregon, Washington, and Pacific overseas areas)
11. Washington Regional Office
    5203 Leesburg Pike, Suite 1109
    Falls Church, Virginia 22041–3473
    Facsimile No.: (703) 756–7112
    (Maryland—counties of Montgomery and Prince Georges, North Carolina, Virginia, Washington, DC, and all overseas areas not otherwise covered)

Appendix III to Part 1201—Approved Hearing Locations by Regional Office Appeals

Atlanta Regional Office

Atlanta, Georgia
Augusta, Georgia
Macon, Georgia
Savannah, Georgia
Birmingham, Alabama
Huntsville, Alabama
Mobile, Alabama
Montgomery, Alabama
Jacksonville, Florida
Miami, Florida
Orlando, Florida
Pensacola, Florida
Tallahassee, Florida
Tampa/St. Petersburg, Florida
Jackson, Mississippi
Columbia, South Carolina
Charleston, South Carolina
Knoxville, Tennessee
Nashville, Tennessee

Chicago Regional Office

Chicago, Illinois
Davenport, Iowa/Rock Island, Illinois
Indianapolis, Indiana
Detroit, Michigan
Minneapolis/St. Paul, Minnesota
Cleveland, Ohio
Cincinnati, Ohio
Columbus, Ohio
Dayton, Ohio
Milwaukee, Wisconsin

St. Louis Field Office

St. Louis, Missouri
Kansas City, Missouri
Springfield, Missouri
Des Moines, Iowa
Lexington, Kentucky
Louisville, Kentucky
Memphis, Tennessee

Dallas Regional Office

Dallas, Texas
Corpus Christi, Texas
El Paso, Texas
Houston, Texas
San Antonio, Texas
Temple, Texas
Texarkana, Texas
Little Rock, Arkansas
Alexandria, Louisiana
New Orleans, Louisiana
Oklahoma City, Oklahoma
Tulsa, Oklahoma

Denver Field Office

Denver, Colorado
Grand Junction, Colorado
Pueblo, Colorado
Phoenix, Arizona
Tucson, Arizona
Wichita, Kansas
Billings, Montana
Great Falls, Montana
Missoula, Montana
Omaha, Nebraska
Albuquerque, New Mexico
Bismarck, North Dakota
Fargo, North Dakota
Rapid City, South Dakota
Sioux Falls, South Dakota
Salt Lake City, Utah
Casper, Wyoming

Philadelphia Regional Office

Philadelphia, Pennsylvania
Harrisburg, Pennsylvania
Pittsburgh, Pennsylvania
Wilkes-Barre, Pennsylvania
Baltimore, Maryland
Trenton, New Jersey
Dover, Delaware
Charleston, West Virginia
Morgantown, West Virginia

Boston Field Office

Boston, Massachusetts
Hartford, Connecticut
New Haven, Connecticut
Bangor, Maine
Portland, Maine
Manchester, New Hampshire
Portsmouth, New Hampshire
Providence, Rhode Island
Burlington, Vermont

New York Field Office

New York, New York
Albany, New York
Buffalo, New York
Syracuse, New York
Newark, New Jersey
San Juan, Puerto Rico

San Francisco Regional Office

San Francisco, California
Fresno, California
Los Angeles, California
Sacramento, California
San Diego, California
Santa Barbara, California
Las Vegas, Nevada
Reno, Nevada

Seattle Field Office

Seattle, Washington
Spokane, Washington
Richland, Kennewick, and Pasco, Washington
Anchorage, Alaska
Honolulu, Hawaii
Boise, Idaho
Pocatello, Idaho
Medford, Oregon
Portland, Oregon

Washington Regional Office

Bailey's Crossroads, Fall Church, Virginia
Norfolk, Virginia
Richmond, Virginia
Roanoke, Virginia
Asheville, North Carolina
Charlotte, North Carolina
Raleigh, North Carolina
Wilmington, North Carolina
Washington, DC

Dated: August 4, 1995.

Shannon McCarthy,

Deputy Clerk of the Board.

[FR Doc. 95–19729 Filed 8–9–95; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV95–929–2IFR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the Cranberry Marketing Committee (Committee) under Marketing Order No. 929 for the 1995–96 fiscal year. The Committee is responsible for local administration of the marketing order which regulates the handling of cranberries grown in 10 States. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program.

Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning September 1, 1995, through August 31, 1996. Comments received by September 11, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kathleen M. Finn, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456; telephone (202) 720–1509, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in 10 States, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, cranberries grown in 10 States are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries during the 1995–96 fiscal year beginning September 1, 1995, through August 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 30 handlers of cranberries who are subject to regulation under the cranberry marketing order and 1,050 producers of cranberries in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of cranberry producers and handlers may be classified as small entities.

The cranberry marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable cranberries handled from the beginning of such year. The budget of expenses for the 1995–96 fiscal year was prepared by the Committee and submitted to the Department for approval. The Committee consists of producers and a non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee conducted a mail vote and recommended 1995–96 marketing order expenditures of $201,336 and an assessment rate of $0.03 cents per 100-pound barrel of cranberries. In comparison, 1994–95 marketing year budgeted expenditures were $164,690. The 1995–96 marketing year budgeted expenditures of $210,336 are $36,646 more than the previous fiscal year. The increase is due to the funding of two new research projects for the 1995–96 season. The assessment rate will remain unchanged from the previous fiscal year.

Assessment income for 1995–96 is estimated to total $136,320 based on anticipated domestic shipments of 4,544,000 barrels of cranberries. The assessment income, plus $4,375 in interest income and a withdrawal of $60,641 from the Committee's authorized reserve fund will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1994–95 fiscal year are estimated to be $150,000. The reserve fund will be within the maximum permitted by the order of one fiscal year's expenses.

Major expense categories for the 1995–96 fiscal year include $71,345 for operating expenses, $41,000 for travel expenses, and $35,788 for research projects.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year begins on September 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable cranberries handled during the fiscal year; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. A new § 929.235 is added to read as follows:

§ 929.235 Expenses and assessment rate.

Expenses of $201,336 by the Cranberry Administrative Committee are authorized, and an assessment rate of $0.03 per 100-pound barrel assessable cranberries is established for the 1995–96 fiscal year ending on August 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: August 4, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19745 Filed 8–9–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 959

[FV95–959–1FR]

Onions Grown in South Texas; Changes in Bulk Bin Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule removes a requirement that polyethylene liners be used in bulk shipping bins. Such liners limit air flow inside the container and may cause the onions to decay more easily and result in a loss of product. Removal of this requirement should reduce product loss due to excessive decay and lessen the chances of receiver rejection. This rule also prohibits the use of bulk bins for shipments of onions for fresh whole use because the arrival condition of such onions is critical. Onions transported in bulk bins are not protected from damage, such as bruising, as well as those packed in smaller size cartons or bags. However, the arrival condition of onions for fresh chopping, slicing, or peeling, or other fresh use in which the form of the onion is changed is not as critical. The use of bulk bins, which are more cost effective for such shipments, may continue.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 690–0464; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (210) 682–2833, FAX (210) 682–5942.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR part 959), as amended, regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of South Texas onions who are subject to regulation under the order and approximately 70 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of South Texas onions may be classified as small entities.

At a public meeting on November 8, 1994, the South Texas Onion Committee (committee) recommended deleting a requirement that perforated polyethylene liners (poly liners) be used in the bulk bins under the authority for experimental shipments. It also recommended limiting the use of bulk bins to shipments of onions for peeling, slicing, chopping, or other fresh use in which the form of the onion is changed. Fourteen members and alternates were present, and all recommendations were unanimous.

Sweet onions normally have a high moisture content, and a poly liner, even when perforated, acts as a vapor barrier. Moisture remains inside the bin, or container, which can cause mold, bacteria, and other decay micro-organisms to develop. To avoid such a warm, damp environment, air

circulation is necessary. However, use of the poly liner blocks air movement and may cause "sweating" and decay of the onions. Because satisfactory arrival condition is important to onion receivers, the committee recommended that the requirement for poly liners be removed. This should lessen the chances of receiver rejections due to excessive decay.

At the meeting, the committee also recommended permitting onions for fresh peeling, chopping, or slicing to be shipped in bulk bins, as authorized by the provision for experimental shipments in the handling regulation. Although bags and cartons provide better protection during shipping, the committee does not believe that such additional protection is necessary for onions moving to processing outlets. Handlers have found that both bags and cartons are more difficult to load and unload than are bulk containers. In addition, bags and cartons are more expensive to buy and only last for one shipment, while bins can be used repeatedly. Also, bags and cartons must be disposed of at the destination, an additional cost, while bins can be returned for further use.

Therefore, subparagraph (i) of paragraph (f)(3) *Experimental shipments.* is hereby revised to remove the requirement for a poly liner and be limited to shipments for peeling, slicing, and chopping, and redesignated as (f)(3) *Peeling, slicing, and chopping.* The remaining parts of paragraph (3) *Experimental shipments.* are redesignated (f)(4) *Experimental shipments.* but are otherwise unchanged. Both paragraphs (f)(3) and (f)(4) continue to be subject to the safeguards under paragraph (g).

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0074.

A proposed rule was published in the **Federal Register** on June 12, 1995 (60 FR 30794). That rule provided that interested persons could file comments through July 12, 1995. No comments were received.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is hereby amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Paragraphs (f)(4) and (f)(5) of § 959.322 are redesignated (f)(5) and (f)(6) respectively; paragraphs (f)(3)(ii) and (f)(3)(iii) are redesignated (f)(4)(i) and (f)(4)(ii) and revised; paragraph (f)(3)(i) is redesignated as (f)(3) and revised; and the introductory text of paragraphs (g) and (g)(4) are revised to read as follows:

§ 959.222 Handling regulation.

* * * * *

(f) * * *

(3) *Peeling, chopping, and slicing.* (i) Upon approval of the committee, onions for peeling, chopping, and slicing may be shipped in bulk bins with inside dimensions of 47 inches x 37½ inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Such shipments shall be exempt from paragraph (c) of this section, but shall be handled in accordance with the safeguard provisions of § 959.54 and shall meet the requirements of paragraphs (a), (b), (d), and (g) of this section.

(4) *Experimental shipments.* (i) Upon approval by the committee, onions may be shipped for experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52, and 959.60, provided they are handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section.

(ii) Upon approval of the committee, onions may be shipped for testing in types and sizes of containers other than those specified in paragraphs (c) and (f)(2) of this section, provided that the handling of onions in such experimental containers shall be under the supervision of the committee.

* * * * *

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, processing, experimental purposes, or peeling, chopping and slicing shall:

* * * * *

(4) In addition to provisions in the preceding paragraphs, each handler making shipments for processing and peeling, chopping, and slicing shall:

* * * * *

Dated: August 4, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19777 Filed 8–9–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–130–AD; Amendment 39–9335; AD 95–15–52]

Airworthiness Directives; Boeing Model 747–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T95–15–52 that was sent previously to all known U.S. owners and operators of certain Boeing Model 747–100 and –200 series airplanes by individual telegrams. This AD requires a revision of the Airplane Flight Manual (AFM) and Airplane Weight and Balance Supplement to restrict cargo loading to a certain level. This AD also provides for the removal of the restrictions following accomplishment of a modification of the longitudinal floor beams. This amendment is prompted by a determination that inadequate strength in the floor beams exists on certain airplanes that have been modified for cargo configurations. The actions specified by this AD are intended to prevent failure of the longitudinal floor beams, which may cause the keel beam to fail and result in rupture of the fuselage.

DATES: Effective August 25, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–15–52, issued July 14, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before October 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–130–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On July 14, 1995, the FAA issued telegraphic AD T95–15–52, which is applicable to Model 747–100 series airplanes modified in accordance with Supplemental Type Certificate (STC) SA2322SO, SA2323SO, or SA5199NM; and Model 747–200 series airplanes modified in accordance with STC SA4227NM–D or SA5759NM.

Certain Model 747–100 and –200 series airplanes have been converted from a passenger configuration to a freighter configuration in accordance with STC's SA2322SO and SA2323SO (for Model 747–100 series airplanes) and SA4227NM–D (for Model 747–200 series airplanes). These STC's include, as part of their data packages, new Weight and Balance Supplements that specify the maximum allowable linear load per inch (commonly referred to as "running load") along the length of the fuselage. The Supplements increased this limit from 66.7 pounds per inch to 240 pounds per inch between Body Stations (BS) 1000 and 1480. The Supplements also define the maximum area load (expressed in pounds per square foot). The Supplement increased this limit from 100 pounds per square foot to 320 pounds per square foot between BS 1000 and BS 1480.

On January 16, 1990, the FAA issued AD 90–06–06, amendment 39–6490 (55 FR 8374, March 7, 1990), applicable to certain Boeing Model 747 series airplanes, to require structural modifications of older airplanes, including a requirement to modify the longitudinal floor beams. Recently, an operator of Model 747 airplanes applied for approval of an alternative method of compliance (AMOC) to AD 90–06–06. In reviewing the data to approve this AMOC, the FAA has found that the longitudinal floor beams between BS 1265 and BS 1480 had not been upgraded to withstand the increased running loads that would result from an airplane's conversion to freighter service. These Body Stations comprise a 215 inch-long linear portion of the fuselage over the wheel well section of the airplane.

Furthermore, the FAA finds that this same problem of inadequate strength in the floor beams exists on Model 747–100 and –200 series airplanes for which the type design has been changed to allow operation in accordance with STC's SA5199NM (for Model 747–100 series airplanes) and SA5759NM (for Model 747–200 series airplanes). These two STC's modify the weight and balance limitations of STC's SA2322SO, SA2323SO, and SA4227NM–D. However, these two STC's continue to define the maximum running load at 240 pounds per inch and the maximum area load at 320 pounds per square foot without strengthening the floor beam structure between BS 1000 and BS 1480.

The FAA has determined that a running load of 240 pounds per inch, for the freighter configuration, is above the capability of floor beam structure between BS 1265 and BS 1480. Additionally, the FAA finds that this structure, when loaded to the STC's-allowed limits is not sufficiently strong to sustain limit loads under all of the airspeed and load factor conditions, including those defined by section 25.333, "Flight envelope," and section 25.341, "Gust loads," of the Federal Aviation Regulations (14 CFR 25.333 and 14 CFR 25.341). Failure of the longitudinal floor beams may cause the keel beam to fail, and result in the rupture of the fuselage.

Since the unsafe condition described is likely to exist or develop on other airplanes having these STC's as part of their type design, the FAA issued Telegraphic AD T95–15–52 to require a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) and the Limitations section of the Airplane Weight and Balance Supplement to restrict cargo loading to a suitable level. The level established by this AD is based upon an FAA evaluation of the unmodified floor beam structure. The AD also provides for the removal of the restrictions following accomplishment of a modification of the longitudinal floor beams in accordance with a method approved by the FAA.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A Note has been included in this rule to clarify this long-standing requirement.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on July 14, 1995 to all known U.S. owners and operators of the affected Boeing Model 747–100 and –200 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped

postcard on which the following statement is made: "Comments to Docket Number 95–NM–130–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–15–52 Boeing: Amendment 39–9335. Docket 95–NM–130–AD.

Applicability: Model 747–100 series airplanes modified in accordance with Supplemental Type Certificates (STC) SA2322SO, SA2323SO, or SA5199NM; and Model 747–200 series airplanes modified in accordance with STC's SA4227NM–D or SA5759NM; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the longitudinal floor beams and keel beam and the subsequent rupture of the fuselage, accomplish the following:

(a) Within 24 clock hours (not flight hours) after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) and the Limitations section of the Airplane Weight and Balance Supplement (Model 747–100 or –200 series airplanes) to include the following information. This may be accomplished by inserting a copy of this AD in the AFM.

"1.1 MAIN CARGO DECK LIMITS (ADDITION):

Each of the following payload limits for pallet cargo apply to the main cargo deck floor between Body Stations 1265 and 1480.

Note: These limits take precedence over any other payload limits that may appear elsewhere in this or in any other document.

1. Do not exceed a linear load of 96.0 pounds per inch between Body Stations 1265 and 1480.

2. The maximum local floor loading in any area located between Body Stations 1265 and 1460 shall not exceed 150 pounds per square foot.

3. The cargo pallets that are located entirely or partially between Body Stations 1265 and 1480 are restricted as follows:

A. Pallets that are 96.0 inches in width and 125.0 inches in length shall not exceed a 1.0 g loading of 6,000 pounds.

B. Pallets that are 88.0 inches in width and 125.0 inches in length shall not exceed a 1.0 g loading of 5,500 pounds.

C. Pallets that are 88.0 inches in width and 108.0 inches in length shall not exceed a 1.0 g loading of 4,800 pounds."

(b) Accomplishment of a modification of the longitudinal floor beams in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, constitutes terminating action for the limitation requirements of paragraph (a) of this AD. The AFM limitation and Weight and Balance Supplement limitation may be removed following accomplishment of such a modification.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) This amendment becomes effective on August 25, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–15–52, issued on July 14, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on August 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19653 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–116–AD; Amendment 39–9331; AD 95–17–02]

Airworthiness Directives; Fokker Model F28 Mk 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mk 0100 series airplanes, that requires the installation of modified Passenger Service Unit (PSU) panel lenses, a one-time installation inspection to detect corrosion or deterioration of the PSU connectors, correction of discrepancies, and application of sealant. This amendment is prompted by reports that "No Smoking" and "Fasten Seat Belt" signs installed in certain overhead PSU's are not readable from passengers' and flight attendants' seats. This amendment is also prompted by reports of smoke in the passenger cabin caused by overheating of the PSU connectors. The actions specified by this AD are intended to ensure that warning signs are readable to passengers and flight attendants, and to eliminate a potential fire hazard.

DATES: Effective September 11, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mk 0100 series airplanes was published in the **Federal Register** on March 30, 1995 (60 FR 16390). That action proposed to require the installation of modified Passenger Service Unit (PSU) panel lenses. That action also proposed to require a one-time post-installation inspection to detect corrosion or deterioration of the PSU connectors, and correction of discrepancies, and application of sealant.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

One commenter requests that the proposed action be issued as two separate AD's: one to require replacement of the lenses, and the other to require the one-time inspection for corrosion. As justification for this request, the commenter points out that each of these requirements affects a different group of airplanes, and the respective service bulletins recommend different compliance times for accomplishing each of the actions. Further, this commenter, a U.S. operator, states that the proposed requirement to inspect airplanes immediately after the installation of the new panel lenses would ground airplanes on which the installation had been accomplished prior to the effective date of the final rule. For example, this operator states that it has already accomplished the proposed installation of new lenses on 23 of its affected airplanes; however, because the compliance time for the inspection [required by proposed paragraph (b)] would be "prior to further flight after accomplishing the installation [of the new panel lenses]," this operator would be required to immediately conduct the corrosion inspection of these airplanes. This situation would effectively ground this operator's airplanes until the inspection was conducted. By separating the proposal into two AD's, each with an appropriate and separate compliance time, operators would be alleviated from having to ground airplanes in order to immediately inspect airplanes that have had the new lenses installed at a previous time.

The FAA does not concur with the commenter's request that the action be issued as two separate rules. The FAA combined the two actions into one proposed rule since both of the referenced service bulletins applied to the same item (the PSU). By requiring both actions to be conducted concurrently, it was the FAA's intent to save the affected operators from the expenses associated with having to access the PSU twice; that is, one time for the lens installation and another time for the inspection. Because of such costs, the FAA did not anticipate that operators would want to conduct these two actions independently. However, the FAA now recognizes the problems that operators could encounter when trying to comply with the proposed requirements as currently written. In light of the information provided by the commenter, the FAA finds no reason why the two actions cannot be conducted at separate times. Accordingly, the FAA has retained both actions in this single final rule, but has revised the final rule to provide for a compliance time of 9 months for the accomplishment of both actions. Additionally, the final rule has been revised to indicate that only affected airplanes (i.e., those listed in the effectivity listing of the respective service bulletin) will be required to accomplish each of the actions.

This same commenter requests that the proposed compliance time for the corrosion inspection be extended since there may be a problem in obtaining parts for necessary repairs. Specifically, this commenter points out that a portion of the repair procedures would require installation of gaskets in two electrical receptacles in the PSU. The commenter states that the manufacturer of these gaskets has not yet ordered the raw stock in order to fabricate the gaskets and does not have a projected date for the fabrication of the gaskets; therefore, that manufacturer cannot offer a delivery schedule for the parts required for the repair. This situation would put affected operators at a disadvantage when attempting to comply with the repair requirements of the proposed rule.

The FAA does not concur that an extension of the compliance time for inspection is warranted. The FAA has contacted the manufacturer of the gaskets to determine if a parts availability problem would exist with respect to meeting the compliance time of this rulemaking action. The manufacturer advised that the gaskets come as part of a kit, and it currently has 600 of these kits on hand. It can provide additional kits upon request within 9 weeks of receiving an order. Based on this information, the FAA finds that ample repair parts will be available to operators within the 9-month compliance time of this final rule; therefore, an extension of the compliance time is not appropriate.

This same commenter requests that proposed paragraph (c) be clarified. The commenter points out that, as currently written, paragraph (c) would prohibit the installation of any PSU with the part numbers (P/N) "10–1178–( )" or "10–1571–( )" on any affected airplane. The notation "–( )" in this case indicates that any number(s) could be added as the last "dash number" of these P/N's, but regardless of that dash number, the part could not be installed. The commenter points out that this is misleading. The commenter states that some of the modified PSU's that would be required to be installed by paragraph (a) do not have totally different part numbers; some retain the first six numbers of the original P/N, but have different "dash numbers" added to the end of it. For example, P/N 10–1178–40 is an unmodified part that cannot be installed; its modified counterpart is P/N 10–1178–59 and is permitted to be installed. As is evident in this example, the first six numbers of both of these P/N's are the same; only the last two "dash numbers" are different. However, as paragraph (c) is proposed, neither of these parts would be permitted to be installed on an airplane, since that paragraph states that all P/N's with "10–1178–" as the first six numbers cannot be installed.

The FAA concurs that clarification is necessary. The FAA has revised the final rule to call out the specific part numbers of those parts that are not eligible for installation, and to specify the location where these parts may not be installed.

This same commenter considers that the economic information provided in the preamble to the proposal is understated, and that the associated costs are much greater than what the

FAA described. The FAA concurs that the economic information should be updated to provide a more accurate accounting of associated costs. The FAA based its previous analysis on the best data that were available at the time the proposal was developed. Since that time, the FAA has obtained more accurate figures and has revised the economic impact information, below, accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 83 airplanes of U.S. registry will be affected by this AD.

Installation of the modified PSU panel lenses requires approximately 22 work hours per airplane to accomplish, at an average labor cost of $60 per work hour. Required parts are estimated to cost $1,126 per airplane. Based on these figures, the total cost impact of the installation requirement of this AD on U.S. operators is estimated to be $203,018, or $2,446 per airplane.

The one-time inspection for corrosion requires approximately 5 work hours per airplane to accomplish, at an average labor cost of $60 per work hour. Based on these figures, the total cost impact of the inspection requirement of this AD on U.S. operators is estimated to be $24,900, or $300 per airplane.

Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $227,918, or $2,746 per airplane. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that the installation of modified PSU panel lenses has been accomplished on at least 23 of the affected airplanes; therefore, the future total cost impact of this AD is now $171,660.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–17–02 Fokker: Amendment 39–9331. Docket 94–NM–116–AD.

Applicability: Model F28 Mk 0100 series airplanes; equipped with Grimes Aerospace Passenger Service Units having part number (P/N) 10–1178–( ) or P/N 10–1571–( ); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that warning signs are readable to passengers and flight attendants, and to eliminate a potential fire hazard, accomplish the following:

(a) For airplanes listed in Fokker Service Bulletin SBF100–25–061, dated March 8, 1994 (as corrected by Fokker Service Bulletin Change Notification SBF100–25–061/02, dated June 20, 1994): Within 9 months after the effective date of this AD, install modified Passenger Service Unit (PSU) panel lenses in accordance with that service bulletin.

(b) For airplanes listed in Fokker Service Bulletin SBF100–25–068, dated March 31, 1994: Within 9 months after the effective date of this AD, perform a one-time inspection to detect corrosion and/or deterioration of the PSU connector, in accordance with that service bulletin. Prior to further flight, correct any discrepancies detected and apply sealant in accordance with the service bulletin.

(c) As of the effective date of this AD, no person shall install on any airplane a Grimes Aerospace PSU having the following part numbers (P/N):

(1) For PSU's located in the passenger compartment, except for the PSU panels at the last but one aft position on the left- and right-hand row (i.e., all except the second to the last row): P/N 10–1178–31 through –42, inclusive, must not be installed.

(2) For PSU's located in the passenger compartment at the last but one position at the left- and right-hand row (i.e., the second to the last row) only: P/N 10–1178–( ) must not be installed.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Aircraft Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The installation shall be done in accordance with Fokker Service Bulletin SBF100–25–061, dated March 8, 1994 (as corrected by Fokker Service Bulletin Change Notification SBF100–25–061/02, dated June 20, 1994). The inspection and correction of discrepancies shall be done in accordance with Fokker Service Bulletin SBF100–25–068, dated March 31, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 11, 1995.

Issued in Renton, Washington, on July 28, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19121 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–132–AD; Amendment 39–9332; AD 95–17–03]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011 series airplanes, that currently requires a visual inspection to detect cracks of the forward or aft side of the aft pressure bulkhead, and repair, if necessary. This amendment requires various inspections to detect cracks or other discrepancies of the aft pressure bulkhead, and repair, if necessary. This amendment is prompted by a recent report of in-flight loss of cabin pressure on a Model L–1011–385 series airplane due to a rupture of the aft pressure bulkhead as a result of fatigue-related cracking. The actions specified in this AD are intended to prevent such fatigue cracking, which could result in rupture of the aft pressure bulkhead and subsequent depressurization of the cabin.

DATES: Effective August 25, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 25, 1995.

Comments for inclusion in the Rules Docket must be received on or before October 25, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On January 16, 1990, the FAA issued AD 90–03–11, amendment 39–6492 (55 FR 2639, January 26, 1990), applicable to all Lockheed Model L–1011 series airplanes, to require a one-time visual inspection to detect cracks of the forward or aft side of the aft pressure bulkhead, and repair, if necessary. That action was prompted by a report of loss of cabin pressure in the aft pressure bulkhead, which resulted in a rupture of a single gore panel. The actions required by that AD are intended to prevent structural failure of the aft pressure bulkhead.

Since the issuance of that AD, the FAA has received a report of loss of cabin pressure on a Model L–1011–385 series airplane, which occurred while the airplane was cruising at 31,000 feet. Investigation revealed a 4-inch long crack that was oriented in a circumferential direction in the gore panel of the aft pressure bulkhead located at the inner edge of the 6-inch doubler. The crack ruptured rapidly until it was stopped by the anti-tear strap. The cause of the cracking has been attributed to fatigue. The airplane had accumulated 35,810 total flight hours and 19,688 total flight cycles. Fatigue-related cracking in the aft pressure bulkhead, if not detected and corrected in a timely manner, could result in rupture of the aft pressure bulkhead and subsequent depressurization of the cabin.

This recent incident is similar to the incident that occurred in 1989, which prompted the issuance of AD 90–30–11 to require a one-time visual inspection to detect cracks of the aft pressure bulkhead. The FAA finds that repetitive non-destructive inspections of the affected airplanes are necessary in order to ensure that the unsafe condition presented by fatigue cracking is corrected, and to provide an acceptable level of safety.

The FAA has reviewed and approved Lockheed L–1011 Service Bulletin 093–53–258, dated February 20, 1990, which describes procedures for:

1. Performing a visual inspection to detect cracks or other discrepancies (including oil can buckles) of the upper gore panels from either the forward side or the aft side of the aft pressure bulkhead;

2. Performing an eddy current inspection to detect cracks of the aft left-hand side and the forward right-hand side of the aft pressure bulkhead; and

3. Repair of gore panels, if any crack or discrepancy is detected.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 90–03–11 to require repetitive inspections to detect cracks or other discrepancies (including oil can buckles) of the upper gore panels from either the forward side or the aft side of the aft pressure bulkhead, and various follow-on inspections. This AD also requires an eddy current inspection to detect cracks of the aft left-hand side and the forward right-hand side of the aft pressure bulkhead. The actions would be required to be accomplished in accordance with the service bulletin described previously. If any crack or discrepancy is detected, a repair would be required to be accomplished in accordance with a method approved by the FAA.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be

considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–132–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6492 (55 FR 2639, January 26, 1990), and by adding a new airworthiness directive (AD), amendment 39–9332, to read as follows:

95–17–03 Lockheed Aeronautical System Company: Amendment 39–9332. Docket 95–NM–132–AD. Supersedes AD 90–03–11, Amendment 39–6492.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent fatigue-related cracking in the aft pressure bulkhead, which could result in rupture of the aft pressure bulkhead and subsequent depressurization of the cabin, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings, or within 30 days after the effective date of this AD, whichever occurs later; unless previously accomplished within the last 2,500 flight cycles; accomplish either paragraph (a)(1) or (a)(2) of this AD in accordance with Lockheed L–1011 Service Bulletin 093–53–258, dated February 20, 1990.

(1) Perform a visual inspection to detect cracks or other discrepancies (including oil can buckles) of the upper gore panels from either the forward side or the aft side of the aft pressure bulkhead, in accordance with paragraph 2.B. of the Accomplishment Instructions of the service bulletin. Within 90 days after accomplishing that visual inspection, perform an eddy current inspection to detect cracks of the aft left-hand side and the forward right-hand side of the aft pressure bulkhead, in accordance with paragraph 2.C. of the Accomplishment Instructions of the service bulletin. Repeat the eddy current inspection thereafter at intervals not to exceed 2,500 flight cycles; or

(2) Perform an eddy current inspection to detect cracks of the aft left-hand side and the forward right-hand side of the aft pressure bulkhead, in accordance with the service bulletin. Repeat the eddy current inspection thereafter at intervals not to exceed 2,500 flight cycles.

(b) If any crack or discrepancy is detected during any inspection required by this AD, prior to further flight, repair in accordance with Figure 4 of Lockheed L–1011 Service Bulletin 093–53–258, dated February 20, 1990; or in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with Lockheed L–1011 Service Bulletin 093–53–258, dated February 20, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 25, 1995.

Issued in Renton, Washington, on July 28, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19119 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 81–ANE–03; Amendment 39–9327; AD 95–16–07]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D series turbofan engines, that currently requires initial and repetitive inspections of 9th through 12th stage high pressure compressor (HPC) disks at the tierod holes. This amendment eliminates an optional on-wing ultrasonic inspection of the 10th stage high pressure compressor (HPC) disk. This amendment is prompted by a report of an uncontained failure of a 10th stage HPC disk that was previously inspected using the on-wing ultrasonic inspection method. The actions specified by this AD are intended to prevent uncontained fractures of 9th through 12th stage HPC disks and engine failure.

DATES: Effective September 11, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On February 7, 1984, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 81–08–02 R2, Amendment No. 39–4817 (49 FR 7361; February 29, 1984), to require initial and repetitive inspections of 9th through 12th stage high pressure compressor (HPC) disks at the tierod holes in Pratt & Whitney (PW) JT8D series turbofan engines. That action was prompted by cracks in the tierod holes in HPC disks that resulted in engine failures. That condition, if not corrected, can result in uncontained fractures of 9th through 12th stage HPC disks and engine failure.

On August 30, 1984, the FAA issued a correction to AD 81–08–02 R2, Amendment 39–4817 (49 FR 35618; September 11, 1984), to include an engine model that had been inadvertently omitted from the AD.

Since issuance of AD 81–08–02 R2, the FAA received a report of an uncontained fracture of a 10th stage HPC disk. This disk had been subjected to three previous on-wing ultrasonic inspections prior to fracture. This method has since been determined as inadequate for detecting tierod hole cracking.

On May 8, 1989, the FAA issued a notice of proposed rulemaking (NPRM) that was published in the **Federal Register** (54 FR 22306; May 23, 1989), that would have amended the existing AD by eliminating the optional on-wing ultrasonic inspection of the 10th stage HPC disk, and by including an engine model inadvertently omitted.

Since the issuance of that NPRM, the FAA has determined that the reference to the inadvertently omitted engine model was unnecessary, as the FAA had remedied this discrepancy in the August 30, 1984, correction. Also, the FAA now utilizes a revised format that supersedes existing AD's by publishing a complete document rather than only amending applicable paragraphs of the compliance section. Since the FAA changed the format of the proposed rule, the FAA determined that it was desirable to reopen the comment period to provide additional opportunity for public comment.

A Supplementary NPRM was published in the **Federal Register** on December 19, 1994 (59 FR 65281). That action reprints the corrected AD compliance section text in its entirety for clarity.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter states no objection to adoption of the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 200 engines that are affected by this AD, and the FAA has determined that eliminating the optional on-wing ultrasonic inspection will have negligible economic impact, since most operators use uninstalled tenth stage disk inspections.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4817 (49 FR 35618, September 11, 1984) and by adding a new airworthiness directive, Amendment 39–9327, to read as follows:

95–16–07 Pratt & Whitney: Amendment 39–9327. Docket 81–ANE–03. Supersedes AD 81–08–02 R2, Amendment 39–4817.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines with 9th through 12th stage high pressure compressor (HPC) disks specified in

Tables I through V and Table VIII of PW Alert Service Bulletin (ASB) No. 4723, Revision 12, dated March 8, 1990, installed. These engines are installed on but not limited to Boeing 727 series and 737 series, and McDonnell Douglas DC–9 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously in accordance with PW ASB No. 4723, Revision 9, dated July 13, 1983; Revision 10, dated September 15, 1986; or Revision 11, dated October 30, 1987. All inspections subsequent to the effective date of this AD must be accomplished in accordance with the methods and intervals identified in PW ASB No. 4723, Revision 12, dated March 8, 1990, except as is specified in paragraph (d) of this AD.

To prevent uncontained fractures of 9th through 12th stage HPC disks and engine failure, accomplish the following:

(a) Initially inspect 9th through 12th stage HPC disks at the tierod holes in accordance with Tables I through V and Table VIII of PW ASB No. 4273, Revision 12, dated March 8, 1990.

(b) Thereafter, inspect 9th through 12th stage HPC disks at the tierod holes in accordance with Tables I through V and Table VIII of PW ASB No. 4723, Revision 12, dated March 8, 1990. Disks initially inspected prior to the first inspection limit must be reinspected before reaching the specified reinspection interval, or before reaching the first inspection limit, whichever is later. In no case shall the established life limits of the disks be exceeded.

(c) Remove cracked disks from service prior to further flight, and replace with a serviceable part. Disks may be returned to service if repaired in accordance with Paragraph 7 of PW ASB No. 4723, Revision 12, dated March 8, 1990.

(d) For 10th stage HPC disks that were last inspected in accordance with the on-wing ultrasonic inspection procedure specified in AD 81–08–02 R2 prior to the effective date of this AD, inspect as follows:

(1) Perform a magnetic particle inspection or eddy current inspection in accordance with the procedure defined in Paragraph 6 and Appendix B of PW ASB No. 4723, Revision 12, dated March 8, 1990, no later than 750 cycles in service (CIS) since the last on-wing inspection.

(2) Accomplish all subsequent inspections in accordance with the methods and intervals specified in PW ASB No. 4723, Revision 12, dated March 8, 1990.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following ASB:

Document No.	Pages	Rev.	Date
PW ASB No. 4723	1	12	Mar. 8, 1990.
	2–8	10	Sept. 15, 1986.
	9–10	11	Oct. 30, 1987.
	11–25	10	Sept. 15, 1986.
Appendix A	A–1	10	Sept. 15, 1986.
	A–2		
Appendix B	B–1—B–9	7	Feb. 16, 1981.
	B–10	8	July 9, 1982.
	B–11—B–12	7	Feb. 16, 1981.
Total pages: 38.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 11, 1995.

Issued in Burlington, Massachusetts, on July 26, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–19232 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 2

RIN 2900–AH00

Delegation of Subpoena Authority and Description of Means of Service

AGENCY: Department of Veterans Affairs.

ACTION: Interim Final Rule with Request for Comments.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations concerning authority of VA officials to issue subpoenas: (1) by revoking the delegation of authority to the Inspector General and subordinate officials, and (2) by adding a delegation of authority to the Under Secretary for Health and certain subordinate officials. The regulations are also amended by specifying means of service for VA subpoenas. These amendments are intended to make the Department's delegations of subpoena power consistent with legal authority and to ensure that VA has the means to obtain information necessary to determine whether individuals are entitled to income-based benefits.

DATES: This interim final rule is effective on August 10, 1995. Comments must be received on or before October 10, 1995.

ADDRESSES: Mail written comments concerning these proposed regulations to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420; or hand deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street, NW, Washington, DC 20001. Comments should indicate that they are submitted in response to "RIN 2900–AH00." All written comments will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street, NW, Washington, DC 20001, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Barry M. Tapp, Deputy Assistant General Counsel (023A), Office of General Counsel, Department of Veterans Affairs, (202) 273–6334.

SUPPLEMENTARY INFORMATION: This document amends 38 C.F.R. § 2.1 to revoke delegations of authority to the Inspector General and subordinate officials for issuing subpoenas, and to provide delegations to the Under Secretary for Health and certain subordinates to issue subpoenas, and to specify means of service for VA subpoenas.

Revoking Current Inspector General Authority To Subpoena

Title 38 U.S.C. § 5711 authorizes the Secretary of Veterans Affairs and those employees to whom the Secretary delegates such authority to issue subpoenas for, and compel the attendance of, witnesses within a radius of 100 miles from the place of hearing and to require the production of documents. (38 U.S.C. § 5713 authorizes Federal district courts to enforce VA subpoenas.)

The Secretary delegated subpoena authority to, among others, the Inspector General, Deputy Inspector General, Assistant Inspector General for Investigation, and Deputy Assistant Inspector General for Investigation. No subpoenas have been issued pursuant to this delegation and the delegations to the Inspector General and subordinates of that office are revoked by this document.

The Inspector General Act of 1978 (the Act) established the Office of Inspector General in the VA. The Act mandated the duties of the Office, specifically giving the Inspector General investigative powers. The Act limited the subpoena authority of Inspector Generals to requiring the production of documents. The Act also established the Inspector General as an official independent of the control of agency heads. In a leading case on the authority of Inspector Generals established under the Act, the United States Court of Appeals for the District of Columbia Circuit held that "[i]f the agency head may delegate his subpoena authority to the agency's inspector general, . . . the congressional scheme is disrupted," making such delegations inconsistent with the Act's uniform distribution of power to its Inspector Generals. *United States* v. *Iannone*, 610 F.2d. 943, 947 (D.C. Cir. 1979). Accordingly, there is no authority for the delegation of subpoena power to the Inspector General and subordinates.

Delegating Authority to the Under Secretary for Health

Federal law authorizes the Secretary to operate income matching programs with other agencies to verify the income of VA beneficiaries so that VA may obtain information necessary to determine whether individuals are entitled to income-based benefits. 38 U.S.C. § 5317. The Secretary has delegated authority to the Under Secretary for Health to operate VA's income matching program. The Director, Income Verification Match Center, and the Associate Director for Operations have program responsibility for this program.

VA may not act on adverse information from income matching programs unless the data are independently verified. But sources for verifying information are not obligated to disclose the data merely at VA's request. Consequently, the Under Secretary for Health, the Director, Income Verification Match Center, and the Associate Director for Operations, Income Verification Match Center, are hereby delegated authority to issue subpoenas, compel the attendance of witnesses, and require the production of evidence.

Means of Service

This document also adds means of serving subpoenas issued by designated VA officials. In this regard, the regulations are amended to add the following:

Subpoenas issued pursuant to this section may be served by registered or certified mail, return receipt requested, addressed to the witness only. Personal service by any VA employee or other authorized person may be made where authorized in writing by the issuing official.

Administrative Procedure Act

This interim final rule constitutes rules of agency organization, procedure, or practice. Accordingly, pursuant to 5 U.S.C. 553, we are dispensing with prior notice and comment and with a 30-day delay of the effective date.

Regulatory Flexibility Act

The Secretary certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612. This amendment will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. § 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

There are no programs listed in the Catalog of Federal Domestic Assistance which will be directly affected by this rule.

Executive Order 12866

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

List of Subjects in 38 CFR Part 2

Authority delegations (Government agencies), Veterans Affairs Department.

Approved: June 20, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 2 is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501, unless otherwise noted.

2. Section 2.1 is revised to read as follows:

§ 2.1 Delegation of authority to employees to issue subpoenas, etc.

(a) *Authority to issue subpoenas.* Employees occupying or acting in the positions designated in paragraph (b) of this section shall have the power to issue subpoenas for (by countersigning VA Form 2–4003) and compel the attendance of witnesses within a radius of 100 miles from the place of hearing and to require the production of books, papers, documents, and other evidence. Issuing officials shall use discretion when exercising this power.

(b) *Designated positions.* The positions designated pursuant to paragraph (a) of this section are: General Counsel, Deputy General Counsel, Chairman, Board of Veterans' Appeals, Heads of Regional Offices and Centers having insurance or regional office activities, Under Secretary for Health (for income matching programs), Director, Income Verification Match

Center (for income matching programs), and the Associate Director for Operations, Income Verification Match Center (for income matching programs).

(c) *Means of service.* Subpoenas issued pursuant to this section may be served by registered or certified mail, return receipt requested, addressed to the witness only. Personal service by any VA employee or other authorized person may be made where authorized in writing by the issuing official.

(d) *Fees and mileage; district courts of the United States.* Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. In case of disobedience to any such subpoena, the aid of any district court of the United States may be invoked in requiring attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction in which the inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena issued to any officer, agent, or employee of any corporation or to any other person, issue an order requiring such corporation or other person to appear or to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Authority: 38 U.S.C.A. §§ 501, 5711)

[FR Doc. 95–19807 Filed 8–9–95; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA56–1–7066a; FRL–5252–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania: Reasonably Available Control Technology for Stroehmann Bakeries, Inc., Lycoming and Bradford Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from two Stroehmann Bakeries, Inc. (Stroehmann) facilities located in Sayre Borough, Bradford County and Old Lycoming Township, Lycoming County. These facilities are located in areas designated "not classified/attainment" for ozone which are part of the ozone transport region (OTR). The SIP revision requires Stroehmann to install and operate catalytic oxidation units on the bakery ovens associated with the production of yeast-based products. The intended effect of this action is to approve the SIP revision as constituting RACT for the Stroehmann facilities located in Sayre Borough and Old Lycoming Township. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective October 10, 1995 unless notice is received on or before September 11, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597–0545.

SUPPLEMENTARY INFORMATION: On February 24, 1995, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of State Plan Approvals issued by the Pennsylvania Department of Environmental Resources (DER) on February 9, 1995, identified as PA–41–0001 and PA–08–0001 and State Operating Permits issued February 9, 1995, identified as OP–41–0001A and OP–08–0001A for the Stroehmann facilities located in Old Lycoming Township and Sayre Borough, respectively.

Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT in ozone nonattainment areas classified as moderate or above for all major VOC and NO_X sources by no later than May 31, 1995. In addition, moderate ozone nonattainment area requirements, including RACT as specified in section 182(b)(2) and 182(f), apply throughout the ozone transport region (OTR) established by the CAA.

On February 24, 1995, the Pennsylvania DER submitted Plan Approvals PA–41–0001 and PA–08–0001 and Operating Permits OP–41–0001A and OP–08–0001A as revisions to its State Implementation Plan (SIP) for the control of VOC and NO_X emissions from two Stroehmann Bakeries, Inc. facilities located in Lycoming and Bradford Counties, respectively. These counties are located in areas classified as "not classified/attainment" for ozone. However, these areas are also part of the OTR and, pursuant to section 184 of the CAA, must meet the requirements of a moderate ozone nonattainment area, including the requirement that major sources implement RACT. The definition of major source for an area classified as "not classified/attainment" in the OTR is any source having the potential to emit 50 tons per year of volatile organic compounds (VOCs) or 100 tons per year of oxides of nitrogen (NO_X).

Summary of SIP Revision

The Stroehmann facility located in Sayre Borough, Bradford County produces bread and donuts in three production lines and generates potential VOC emissions of 313 tons/year. The Stroehmann facility in Old Lycoming Township, Lycoming County produces buns and rolls in two baking lines and generates potential VOC emissions of 144.3 tons per year. Sources of VOC emissions are the same at both Stroehmann facilities and include the prebake areas, baking ovens, combustion sources, ink jet printers, parts cleaning/maintenance activities, and painting operations. Neither facility is a major source of NO_X.

The most significant source of VOCs are the baking ovens associated with production lines where yeast-based breads, rolls and buns are produced. Pennsylvania DER determined that RACT for the baking ovens involved in the production of yeast-based breads, rolls and buns at the Sayre Borough and Old Lycoming Township facilities is the installation and operation of catalytic oxidation units to achieve a minimum 95% VOC removal efficiency and operate at a minimum operating temperature of 600°F.

RACT for the prebake areas was determined to be no additional control due to the technical infeasibility of capturing emissions from these areas. The remaining VOC sources generate emissions at de minimis levels and are not subject to further control. For these sources, the operating permits impose limits on their potential to emit at the de minimis levels of 3 pounds per hour, 15 pounds per day and 2.7 tons per year.

For more information on Pennsylvania's RACT determination and the specific provisions of the Plan Approvals and Operating Permits for these two facilities, please refer to the Technical Support Document (TSD) prepared for this notice. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA's review of this material indicates that Pennsylvania's Plan Approvals requiring the installation of catalytic oxidation units on the baking ovens associated with yeast-based production lines constitutes RACT for the Sayre Borough and Old Lycoming Township facilities. In addition, EPA agrees with Pennsylvania's conclusions regarding no further control as RACT for the prebake areas and the limits imposed by the operating permits limiting emissions from the combustion sources, ink jet printers, parts cleaning/maintenance activities, and painting operations at de minimis levels.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 10, 1995 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 10, 1995.

Final Action

EPA is approving Pennsylvania's SIP revision for the Stroehmann facilities located in Sayre Borough and Old Lycoming Township which was submitted on February 24, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1995. Filing a petition for reconsideration by the Administrator of this final rule to approve the SIP revision for the Stroehmann facilities in Pennsylvania does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 22, 1995.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(101) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(101) Revisions to the State Implementation Plan submitted by the Pennsylvania Department of Environmental Resources regarding RACT requirements for two Stroehmann Bakeries, Inc. facilities located in Lycoming and Bradford Counties, submitted on February 24, 1995.

(i) Incorporation by reference.

(A) Letter of February 24, 1995 from the Pennsylvania Department of Environmental Resources submitting a revision to the State Implementation Plan.

(B) Plan Approval Nos. PA–41–0001 and PA–08–0001 and Operating Permit Nos. OP–41–0001A and OP–08–0001A, issued and effective February 9, 1995.

(ii) Additional material.

(A) Remainder of the State Implementation Plan revision request submitted by the Pennsylvania Department of Environmental Resources on February 24, 1995, pertaining to the Plan Approvals and Operating Permits listed above.

[FR Doc. 95–19742 Filed 8–9–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN Docket No. 91–1; FCC 95–309]

Television Closed-Caption Decoding Circuitry

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order.

SUMMARY: This order deletes the requirement for television receivers to incorporate closed-caption decoder circuitry that is compatible with a cable television copy protection system developed by Eidak Corporation. This change was requested by the Consumer Electronics Group of the Electronic Industries Association. This action will relieve electronics manufacturers and consumers of the burden involved in incorporating special circuitry in television receivers for a technology that is not used by cable systems.

EFFECTIVE DATE: August 10, 1995.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 776–1627.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in GEN Docket No. 91–1, adopted July 25, 1995, and released August 3, 1995. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Paperwork Reduction

This action will not modify the information collection requirements contained in the current regulations.

Summary of the Order

1. The Commission is granting a request by the Consumer Electronics Group of the Electronic Industries Association (EIA) for partial relief of the Commission's closed-caption decoder circuitry requirements for television receivers. Specifically, this action deletes the requirement that television receivers, manufactured after January 1, 1995, incorporate closed-caption decoder circuitry that is compatible with a cable television copy protection system developed by Eidak Corporation. This action will relieve electronics manufacturers and consumers of the burden involved in incorporating special circuitry in television receivers for a technology that is not used by cable systems.

2. 47 CFR 15.119 requires that all television broadcast receivers with screen sizes equal to, or greater, 33 cm (13 inches) that were manufactured or imported on or after July 1, 1993 must be capable of receiving and displaying closed-captions. These rules also specify technical standards for the reception and display of such captioning. Previously, in the *Memorandum Order and Opinion* in this proceeding, 57 FR 19093, May 4, 1992, the Commission observed that existing closed-caption decoders may not function when the television signals are processed by some security systems designed to prevent unauthorized reception of cable service. It therefore adopted an additional requirement that the closed-caption circuitry of television receivers must function properly when receiving signals from all commonly known and used cable security systems designed and marketed prior to April 5, 1991.

3. Shortly prior to April 5, 1991, Eidak designed and marketed a copy protection system that was intended to prevent the video taping of certain programs carried by cable television systems or broadcast stations. The Eidak system dynamically changes the number of lines and the timing of the television picture. While these changes are not readily apparent to television viewers, video tape recorders, dependent on accurate and consistent timing, cannot copy Eidak-protected material. However, the Eidak system also interferes with the ability of existing closed-caption decoders to locate line 21 of the television broadcast signal, the line on which closed-caption information is carried. Thus, existing closed-caption decoders do not function properly when closed-caption information is processed by the Eidak system. For this reason, television receiver manufacturers would need to develop and incorporate in their products special circuitry that is only necessary for compatibility with Eidak-processed signals. Recognizing that the Eidak system was not widely used, the Commission provided television receiver manufacturers with additional time, until January 1, 1995, to incorporate Eidak compatibility within their closed-caption circuitry.

4. On September 29, 1994, EIA submitted a *Petition for Rule Making* and a *Petition for Partial Waiver* requesting relief from § 15.119(l) as it applies to Eidak's copy protection system. In these petitions, EIA states that no cable systems are using the Eidak technology. EIA further states that Eidak's copy protection system is a technology that has never been, is not now, and is not ever likely to be used by a cable system. EIA asks that the Commission either amend or waive § 15.119(l) with respect to the Eidak systems to relieve manufacturers and purchasers of television receivers of the expense and burden that is no longer necessary. On October 13, 1994, the Commission issued a Public Notice requesting comments on the EIA petitions. All of the commenting parties support EIA's request for relief.

5. Prior to receipt of the petitions from EIA, the Commission, on June 6, 1994, contacted the current holder of the rights to the Eidak technology, Mr. Richard Leghorn, to determine whether or not this technology was being employed by cable systems. In response, we were informed by Mr. Leghorn that "there are no cable systems using the Eidak technology." Mr. Leghorn indicated that the Eidak copy protection capability currently is incorporated in a cable satellite network with equipment in cable head-ends and in "a pay-per-view Colorado test site jointly operated by TCI, AT&T and U.S. West." He added that "it would be unfortunate if the option which the industry has to avail [itself] of Eidak's copy protection capabilities were to be removed by deletion of the requirements of § 15.119(l) of the Commission's rules."

6. We generally agree with Mr. Leghorn that maintaining regulations that require closed-caption reception to be compatible with copy protection systems is beneficial to consumers. However, we note that the Eidak system had not been implemented or used as an actual cable security system prior to April 5, 1991. Now, four years after the implementation of the closed-caption decoding requirements, the Eidak system has still not been widely implemented by cable systems or other industries. In view of the fact that the Eidak system has not achieved any significant acceptance by the cable industry, we now find that it is not necessary to require that the closed-caption circuitry of TV receivers be capable of functioning when receiving signals encoded with the Eidak technology.

7. Accordingly, it is ordered, that the provisions of § 15.119(l) of the regulations for providing closed-caption compatibility do not apply to the Eidak system. This action provides the relief sought in the *Petition for Partial Waiver* and the *Petition for Rule Making* filed by the Electronic Industries Association. The authority for this action is contained in sections 4(i), 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 302, 303(r). In accordance with 5 USC 553(b), a Notice of Proposed Rule Making is unnecessary since this action is an interpretation of the existing regulations.

List of Subjects in 47 CFR Part 15

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19702 Filed 8–9–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–295; RM–8362]

Radio Broadcasting Services; San Clemente, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes FM Channel 285A at San Clemente, California, in response to a Commission directive, based upon the unavailability of a transmitter site on non-military property for use by a fully spaced station at that community. *See* 58 FR 65155, December 13, 1993. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–295, adopted July 26, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 285A at San Clemente.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19751 Filed 8–9–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. MC–93–17]

RIN 2125–AD14

Federal Motor Carrier Safety Regulations; General; Intermodal Transportation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; petitions for reconsideration of effective date; final determination.

SUMMARY: Several petitioners requested an extension of the effective date of, and certain exemptions from, the final rule implementing the Intermodal Safe Container Transportation Act of 1992. On May 25, 1995 (60 FR 27700), the FHWA requested comments on the major issues raised by these petitioners. The FHWA has determined that a further extension is warranted and, therefore, is extending the effective date of the final rule until September 1, 1996 to allow the intermodal transportation industry sufficient time to comply by means of electronic data interchange and to allow the FHWA, the intermodal transportation industry, and other parties enough time to inform affected domestic and foreign entities of their responsibilities.

EFFECTIVE DATE: September 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–5763; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1994, the FHWA published a final rule which implemented the requirements of the Intermodal Safe Container Transportation Act of 1992 (the Act) (Pub. L. 102–548, 106 Stat. 3646, partly codified at 49 U.S.C. 5901–5907 (formerly 49 U.S.C. 501 and 508)). The original effective date of the final rule was June 27, 1995. The final rule requires any person who presents a container or trailer with a gross cargo weight of more than 4,536 kilograms or 10,000 pounds to an initial carrier for intermodal transportation to provide a certification to such carrier. Motor carriers are prohibited from accepting a loaded container or trailer prior to receiving a tangible certification. Motor carriers, rail carriers, water carriers, ocean common carriers, and intermediaries that receive a certification in the course of intermodal transportation must forward the certification to a subsequent carrier transporting the loaded container or trailer. The objective of the final rule is to reduce the number of overweight motor vehicles transporting intermodal containers or trailers by improving communication between shippers and motor carriers.

Petitions

During April and May 1995, the FHWA received letters from several companies and industry groups petitioning for an extension of the effective date of the final rule. Among those requesting an extension were APL Land Transport Services, Inc.; the European Shippers' Councils; "K" Line America, Inc.; the Intermodal Safe Container Coalition (Coalition); the National Industrial Transportation League; the Steamship Association of Southern California; and, Warren & Associates, a law firm representing two freight conferences.

On May 16, 1995 (60 FR 26001), the FHWA administratively extended the June 27, 1995, effective date until September 27, 1995, to allow the agency sufficient time to consider public comment on whether a further extension was warranted. On May 25, 1995 (60 FR 27700), the FHWA requested comments on whether an extension of the effective date of the final rule beyond September 27, 1995, was necessary. As a part of the second publication, the FHWA requested comments on a petition filed by the American Trucking Associations, Inc. (ATA) to exempt three types of motor carrier operations from the rule.

General Discussion of the Comments

Forty-six comments were received in response to the May 25, 1995, publication. Of these, twenty-two were from companies connected with intermodal transportation, nineteen from industry associations, two from individuals, and one each from a safety organization, a public association, and a port.

Comments Regarding Effective Date

Three parties supported a further extension, but recommended no specific effective date. One party recommended an effective date one year after publication of the final determination of the petitions. Seven parties supported a January 1, 1996, effective date. Seventeen parties supported a May 1, 1996, effective date. One party supported an effective date in the spring of 1996. Five parties supported a June 1, 1996, effective date. One party supported a September 1, 1996, effective date. Of the parties who supported a specific date, three stated that an additional extension may be necessary. Two parties opposed a further extension.

Electronic Data Interchange

The intermodal transportation industry relies heavily on electronic data interchange (EDI). In order to forward certifications by EDI, the intermodal transportation industry, in particular rail and water carriers, need to complete the following steps: The development of standards; preliminary analysis and design; computer programming; field testing and coordination; training; and final computer programming. The Union Pacific System and the Coalition commented that the American National Standards Institute and the Intermodal Association of North America have incorporated the necessary changes in their EDI Standard 3050 to accommodate a certification. The Coalition commented that EDI standard 3050 will be available in July, 1995, but Union Pacific and the Coalition stated that this standard will not become effective for the railroad industry until September 1, 1995. Union Pacific and the Association of American Railroads (AAR) explained further that railroads must be able to receive information via this standard by this date, but are not required to be able to send information via this standard until September 1, 1996. The Coalition and the AAR stated that one year from the effective date of a new standard is normally allowed for full implementation because of the complexity of the process. The Coalition explained that any company using a standard previous to EDI standard 3050 must modify the previous standard to accommodate a certification. Burlington Northern Railroad commented that programming the new or modified EDI standard will take until May, 1996 and that testing the standard and assisting their customers in the transition to the standard will take until September, 1996.

Based on the information submitted by the commenters, the FHWA has determined that a further extension of the effective date of the final rule is warranted. The FHWA extends the effective date of the final rule until September 1, 1996 to allow the intermodal transportation industry sufficient time to complete the necessary steps to achieve compliance with the final rule through the use of EDI.

Education

Several commenters to the May 25, 1995, publication asserted that a further extension of the effective date is necessary to provide sufficient time to educate affected parties in their responsibilities. Some commenters stated that there is a widespread lack of knowledge of the Act and the implementation of regulations outside the United States and expressed concern about the difficult task of educating foreign entities. Some commenters also made suggestions about the FHWA's educational efforts. Several stressed that the agency should make educational materials available prior to the effective date. The FHWA agrees that additional time is needed to educate affected domestic and foreign entities in order to avoid large disruptions in trade and commerce which may result from inadvertent failures to comply with the rule. The extension of the effective date until September 1, 1996, will enable the FHWA and cooperating entities to distribute educational materials and will also provide the intermodal transportation industry additional time to familiarize appropriate parties with their responsibilities.

Educational pamphlets, in English, which provide an overview of the final rule are now available for distribution. Individuals and companies interested in obtaining the pamphlet should contact the local FHWA Office of Motor Carriers in their area. The pamphlet will also be available in German, French, Spanish, Japanese, and Mandarin Chinese in the near future. Pamphlets will be provided to various associations for domestic and international distribution. In addition, the Department of State will assist the FHWA with the international distribution of the pamphlets. The FHWA will also request the assistance of various embassies with this task.

Petition for Exemptions by the American Trucking Associations, Inc.

On April 7, 1995, the ATA filed a petition to exempt three types of motor carrier operations from the final rule. In response to the May 25, 1995, publication, the ATA and the National Industrial Transportation League (NITL) modified the third exemption requested and stated that they would also submit by August 1, 1995, a joint petition requesting further changes to the rule. In view of these developments, the FHWA will defer until a later time any discussion of the ATA and ATA/NITL petitions, as well as the comments already submitted on the ATA's petition for three exemptions.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has previously determined that the final rule implementing the Intermodal Safe Container Transportation Act of 1992 is a significant regulatory action within the meaning of Executive Order 12866 and significant under Department of Transportation regulatory policies and procedures because it affects intermodal transportation and attracts substantial public interest. As such, the final rule was reviewed by the Office of Management and Budget and the Office of the Secretary of Transportation before being published. This present action only extends the effective date of the final rule and provides clarification of the rule. It is anticipated that the economic impact of this action will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. Based upon this evaluation, as well as for the reasons set forth in the previous paragraph, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this action directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements contained in the December 29, 1994, final rule have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and assigned the control number of 2125–0557 which expires on June 30, 1997. This action does not affect the recordkeeping requirements previously established.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Highways and roads, Intermodal transportation, Motor carriers, Recordkeeping requirements.

Authority: 49 U.S.C. 5901–5907, 31132, 31136, 31502 and 31504; 49 CFR 1.48.

Issued on August 3, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–19719 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 671, 672, 675, 676, and 677

[Docket No. 950508130–5171–02; I.D. 050195A]

RIN 0648–AH62

Limited Access Management of Federal Fisheries In and Off Alaska; Groundfish and Crab Fisheries Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS by this final rule imposes a temporary moratorium on the entry of new vessels into the groundfish fisheries under Federal jurisdiction in the Bering Sea and Aleutian Islands (BSAI) management area, the crab fisheries under Federal jurisdiction in the BSAI Area, and the groundfish fisheries under Federal jurisdiction in the Gulf of Alaska (GOA). This action curtails increases in fishing capacity and provides industry stability while the North Pacific Fishery Management Council (Council) and NMFS prepare, review, and, if approved, implement a comprehensive management plan for these fisheries. This action is intended to promote the conservation and management objectives of the Council and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

EFFECTIVE DATES: Effective September 11, 1995 through December 31, 1998, except for the amendments to §§ 671.4, 672.4, and 675.4, and §§ 676.3 and 676.4, which will become effective on January 1, 1996, through December 31, 1998; and the amendments to Figure 1 to part 677, § 677.4, and §§ 671.2, and 671.3, which are effective September 11, 1995.

ADDRESSES: Copies of the Fishery Management Plan (FMP) amendments and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for the moratorium may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Send comments regarding the paperwork burden or any other aspect of the collection-of-information requirements contained in this rule, including suggestions for reducing the burden, to Ronald Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel, and to the Office of Management and Budget (OMB), Paperwork Reduction Project (0648–0206), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI and the GOA are managed by NMFS under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, and the Fishery Management Plan for Groundfish of the Gulf of Alaska, respectively. The commercial harvest of king and Tanner crabs is managed under the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. These FMPs were prepared by the Council under the Magnuson Act. The FMP for the GOA groundfish fisheries is implemented primarily by regulations at 50 CFR part 672. The FMP for the BSAI groundfish fisheries is implemented primarily by regulations at 50 CFR part 675. The FMP for the king and Tanner crab fisheries in the BSAI is implemented by regulations at 50 CFR part 671 and by Alaska Administrative Code regulations at title 5, chapters 34 and 35. Other Federal regulations that also affect the

groundfish and crab fisheries are set out at 50 CFR parts 620, 676, and 677.

This action implements revisions of Amendment 23 to the BSAI groundfish FMP, Amendment 28 to the GOA groundfish FMP, and Amendment 4 to the BSAI crab FMP, which were approved by NMFS on June 29, 1995, under section 304(b)(3) of the Magnuson Act. These revised amendments address fishery management problems caused by excess harvesting capacity or overcapitalization by establishing temporary entry controls until more permanent controls on harvesting capacity can be implemented. The problems and issues these amendments address are discussed in the EA/RIR/FRFA and the notice of proposed rulemaking (60 FR 25677, May 12, 1995). A general description of the moratorium and these implementing regulations follows.

Vessel Moratorium

The moratorium limits access to the groundfish and BSAI Area crab resources off Alaska to vessels whose owners have been issued a moratorium permit for the vessel by NMFS or that are within a vessel category specified as exempt from the moratorium permit requirements in § 676.3(b). A moratorium permit is required in addition to any other permits required by Federal or State regulations. NMFS has revised its permit application and issuance process so that an integrated application may be used to apply for annual Federal groundfish permits and the Federal moratorium permit for groundfish and crab vessels. Part 677 is amended to remove and reserve Figure 1—the Fisheries Permit Application and Fisheries Processor Permit Application (Form FPP–1). That form will be revised for use as an integrated permit application.

1. Vessels Affected by the Moratorium

Any vessel that is not exempt and that catches and retains any species of king and Tanner crabs in a commercial fishery governed by the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area and its implementing regulations at 50 CFR part 671 ("moratorium crab species") is required to have on board a moratorium permit issued for that vessel. Any vessel that is not exempt and that conducts directed fishing for any groundfish species in a commercial fishery governed by the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, and the Fishery Management Plan for Groundfish of the Gulf of Alaska and their respective implementing regulations at 50 CFR parts 672 and 675, except for sablefish caught with fixed gear ("moratorium groundfish species"), also is required to have on board a moratorium permit issued for that vessel.

Moratorium crab species and moratorium groundfish species are referred to collectively as "moratorium species." The term "directed fishing" is defined in the groundfish FMPs' implementing regulations at 50 CFR parts 672 and 675. Basically, this term refers to the criteria by which NMFS determines which species of groundfish a vessel has been targeting when any fish are on board the vessel. A vessel that retains only incidental catches of moratorium groundfish species in the EEZ is not required to have a moratorium permit; however, it is required to have a Federal fisheries permit. A vessel without a moratorium permit in the EEZ is required to discard any catch of a moratorium groundfish species that exceeds the maximum retainable bycatch amount specified in parts 672 and 675. Crab species are prohibited species in the groundfish fishery, which means that any bycatch of crab must be immediately returned to the sea.

The Council specifically exempted certain categories of vessels from the moratorium permit requirement. The rationale for the exemptions was provided in the notice of proposed rulemaking for the initially proposed moratorium (59 FR 28827, June 3, 1994). Vessels within the following categories are not required to have moratorium permits, however, other Federal and State of Alaska permit requirements continue to apply:

- Vessels that are not used to catch fish (e.g., processor vessels, tenders, or support vessels);
- Vessels that do not catch and retain moratorium crab species or that do not conduct directed fishing for moratorium groundfish species;
- Vessels that catch and retain moratorium crab species or that conduct directed fishing for moratorium groundfish species only within State of Alaska waters;
- Vessels that conduct directed fishing for moratorium groundfish species in the GOA and that are no greater than 26 ft (7.9 m) in length overall (LOA);
- Vessels that catch and retain moratorium crab species in the BSAI Area or that conduct directed fishing for moratorium groundfish species in the BSAI management area and that are no greater than 32 ft (9.8 m) LOA;
- Vessels that are fishing for IFQ halibut, IFQ sablefish, or halibut or sablefish under the Western Alaska Community Development Quota (CDQ) program; or
- Vessels that, after the implementation of the CDQ program for pollock on November 18, 1992 (57 FR 54937, November 23, 1992), are specifically constructed and used in accordance with a Community Development Plan (CDP), are specially designed and equipped to meet specific needs that are described in the CDP, and are no greater than 125 ft (38.1 m) LOA. A vessel operating under the CDQ exemption also may be used to harvest non-CDQ species, but the exemption does not apply to a vessel if the vessel is transferred to an entity that does not have a CDP.

2. Moratorium Qualification

Generally, a vessel is qualified for a moratorium permit if it made a legal landing of any moratorium species during the qualifying period of January 1, 1988, through February 9, 1992. Exceptions to this general rule are described below.

A "legal landing" is defined as any amount of a moratorium species that was landed in compliance with Federal and state commercial fishing regulations in effect at the time of the landing. This definition is intended to limit landing claims to those that can be verified through required Federal and state catch or landing reports. A vessel owner who alleges that government records are in error must produce a copy of a valid state fish ticket or other report required at the time of landing as evidence that the vessel made a legal landing of a moratorium species from January 1, 1988, through February 9, 1992.

If the owner presents acceptable evidence of a legal landing of a moratorium species that the vessel made from January 1, 1988, through February 9, 1992, the vessel is qualified for a moratorium permit, unless that vessel is exempt from the moratorium permit requirements as described above. For example, a vessel that is less than or equal to 26 ft (7.9 m) LOA and that conducts directed fishing for groundfish in the GOA is exempt from the moratorium permit requirements. It is not qualified for a moratorium permit even if it made a legal landing of moratorium species from January 1, 1988, through February 9, 1992. Likewise, a vessel that made legal landings only of halibut and/or sablefish caught with fixed gear from January 1, 1988, through February 9, 1992, is not qualified for a moratorium permit since halibut is not a groundfish species and sablefish caught with fixed gear is not a moratorium groundfish species.

A moratorium permit will be issued to the owner of a qualified vessel after submission and approval of a completed application for a moratorium permit for that vessel. Moratorium qualification is a prerequisite for issuance of a moratorium permit. Moratorium qualification stays with the vessel, unless it is transferred by the vessel's owner (see transferability discussion below). NMFS will maintain a database of vessels that have moratorium qualification according to Federal or state catch or landings reports. Generally, a moratorium permit will be valid through December 31, 1998, unless the moratorium qualification on which it is based is transferred, or until the permit is revoked or suspended under 15 CFR part 904 (Civil Procedures). A moratorium permit based on the moratorium qualification of a vessel that was lost or destroyed before January 1, 1996, will be valid only through December 31, 1997, but may be renewed if the vessel makes a legal landing of a moratorium species in 1996 or 1997 (see transferability discussion below).

If a vessel has moratorium qualification, a moratorium permit will be issued for it provided it is not an exempt vessel, and provided the vessel's LOA does not exceed its "maximum LOA." A vessel's maximum LOA is the greatest LOA that the vessel, or its replacement, may have and remain qualified for a moratorium permit. A vessel's maximum LOA is based on the LOA of the original qualifying vessel on June 24, 1992. If the original qualifying LOA of a vessel is equal to or greater than 125 ft (38.1 m), the maximum LOA is the original qualifying LOA. If the original qualifying LOA of a vessel is less than 125 ft (38.1 m) LOA, the maximum LOA is 1.2 times the original qualifying LOA or 125 ft (38.1 m), whichever is less. This limited length increase allowance, known as the "20 percent rule," is intended to allow an owner of a small vessel to improve the vessel's stability by widening and lengthening its hull. Although increasing a small vessel's length under the 20 percent rule could improve the vessel's safety, it also could increase the vessel's fishing capacity. The Council recognized this possibility and allowed vessel length increases only for vessels less than 125 ft (38.1 m) LOA. The Council made this decision on June 24, 1992, to discourage owners of large vessels from increasing their vessels' length substantially between that date and the implementation date of the moratorium.

Vessels under reconstruction on June 24, 1992, are a special case, and the maximum LOA of such vessel is the vessel's LOA on the date reconstruction is completed. This special case is discussed in more detail below. Any vessel that exceeds its maximum LOA is not eligible for a moratorium permit and any moratorium permit already issued will be invalidated.

NMFS will use the existing definition of LOA in 50 CFR parts 672 and 675 for purposes of implementing the maximum LOA limitation. This definition refers to the length of a vessel "rounded to the nearest foot." NMFS will use standard arithmetic rounding in determining the LOA of a vessel for purposes of the moratorium. For example, a vessel that is 124 feet 7 inches in length would have an LOA of 125 feet (38.1 m), a vessel that is 125 feet 5 inches in length would have an LOA of 125 feet (38.1 m), and a vessel that is 125 feet 6 inches in length would have an LOA of 126 feet (38.4 m).

3. Crossovers

The Council's original moratorium proposal (59 FR 28827, June 3, 1994) would have allowed a vessel that qualified for a moratorium permit because of a legal landing, for example, of a moratorium crab species during the qualifying period, to cross over to moratorium groundfish species fisheries even if it had no previous landing history in a groundfish fishery. However, the Council decided at its meeting in December 1994 to propose limiting crossovers. Under the revised proposal, which this final rule adopts, a vessel that made a legal landing from January 1, 1988, through February 9, 1992, in either a groundfish or crab fishery, but not both, can cross over as a new vessel in the fishery in which it did not make a legal landing in the qualifying period provided:

1. It uses in the new fishery only the same fishing gear type that it used to qualify for the moratorium in the other fishery; or

2. It made a legal landing in the crossover fishery during the period February 10, 1992, through December 11, 1994, and it uses only the same fishing gear type that it used during that period.

Example 1. A vessel that made a legal landing in the BSAI Area crab fisheries from January 1, 1988, through February 9, 1992, would be eligible for a moratorium permit to operate in that fishery and in the BSAI management area or GOA groundfish fisheries using pot gear where that gear is authorized. The only legal fishing gear in the BSAI Area crab fisheries is pot gear. Therefore, if the vessel crosses over into the groundfish fisheries it is limited to using pot gear.

Example 2. A vessel that made a legal landing in the BSAI management area or GOA groundfish fisheries from January 1, 1988, through February 9, 1992, is eligible for a moratorium permit to operate in that fishery using any authorized fishing gear for groundfish. The same vessel also made a legal landing in the BSAI Area crab fishery from February 10, 1992, through December 11, 1994. Therefore, this vessel also is eligible for a moratorium permit to operate in the BSAI Area crab fishery, and it may move between fisheries using any authorized gear.

Example 3. A vessel that made a legal landing in the BSAI Area crab fisheries from January 1, 1988, through February 9, 1992, is eligible for a moratorium permit to operate in that fishery and in the BSAI management area or GOA groundfish fisheries using pot gear where that gear is authorized. The same vessel also made a legal landing in the groundfish fisheries using hook-and-line gear from February 10, 1992, through December 11, 1994. Therefore, this vessel is eligible for a moratorium permit to operate in the groundfish fisheries using pot gear and hook-and-line gear. However, unless the vessel made a legal landing in the groundfish fisheries using trawl gear during the period February 10, 1992, through December 11, 1994, it is not eligible to cross over into the groundfish fishery using trawl gear.

This crossover gear restriction recognizes the similarity of fishing gear used in the BSAI Area crab fisheries and some groundfish fisheries. It also recognizes that some vessels qualified in one moratorium fishery and crossed over to a new moratorium fishery after the cutoff date of February 9, 1992, based on the Council's original moratorium proposal. These vessels are allowed to continue to operate in the crossover fisheries under the moratorium, but are restricted to using the fishing gear they used in the crossover fisheries from February 10, 1992, through December 11, 1994, the date of the Council's decision to revise its original moratorium proposal.

This revision to the original proposed moratorium requires the issuance of moratorium permits with fishery-specific fishing gear type endorsements. Four fishery-specific/gear type endorsements are set forth in § 676.3(d) to cover the categories of fishing gear authorized in the Federal regulations (with respect to groundfish) and in the State of Alaska regulations (with respect to crab). These are:

1. Groundfish fisheries/trawl gear, which includes groundfish pelagic and nonpelagic trawl gears as defined at 50 CFR part 672;

2. Crab fisheries/pot gear, which includes crab pot gear as defined in the Alaska Administrative Code at title 5, chapters 34 and 35;

3. Groundfish fisheries/pot gear, which includes groundfish longline pot and pot-and-line gears as defined at 50 CFR part 672; and

4. Groundfish fisheries/hook gear, which includes groundfish hook-and-line and jig gears as defined at 50 CFR part 672.

The Director, Alaska Region, NMFS (Regional Director), will determine the appropriate fishery-specific/gear type endorsement(s) for a moratorium permit based on the permit application received, existing landings records, and the vessel's LOA. The moratorium permit will be endorsed with one or more of the fishery-specific/gear type endorsements listed above. For example, the owner of a vessel that made a legal landing of BSAI Area crabs during January 1, 1988, through February 9, 1992, will be issued a moratorium permit for the vessel endorsed to fish for groundfish and BSAI Area crab with pot gear. The owner of a vessel that made a legal landing from January 1, 1988, through February 9, 1992, of groundfish using trawl and/or hook gear but not pot gear during the qualifying period will be issued a moratorium permit for the vessel endorsed to fish for groundfish with pot, hook, and trawl gear, but the permit will not be endorsed to allow the vessel to fish for BSAI Area crabs unless it also had made a legal landing in the BSAI Area crab fishery during the period February 10, 1992, through December 11, 1994.

4. Transferability

A moratorium qualification is transferable under certain conditions. A moratorium qualification transfer must be approved by the Regional Director before a moratorium permit may be issued based on that qualification. If a vessel owner transfers the moratorium qualification of his vessel, then that vessel is no longer qualified for a moratorium permit to participate in any moratorium fishery after the effective date of the transfer. If the vessel had been issued a moratorium permit, then that permit will become invalid on the effective date of the transfer. A new moratorium permit will be issued for the vessel that the moratorium qualification was transferred to, once the transfer is approved and a permit application is submitted.

The purpose of providing for transfers of moratorium qualification is to allow a vessel owner to make limited improvements to or replace an existing vessel in the moratorium fisheries. Restrictions on transfers are necessary to limit the potential fishing capacity resulting from vessel improvements or replacements. The Regional Director will not approve a transfer of moratorium qualification to a vessel with an LOA exceeding the maximum LOA of the originally qualified vessel, and a moratorium permit will not be issued for the vessel. A moratorium permit becomes invalid if the LOA of the vessel for which it has been issued is increased to exceed the maximum LOA associated with the moratorium qualification.

Moratorium qualification is presumed to belong to the current owner of the vessel that made a legal landing of moratorium species from January 1, 1988, through February 9, 1992, unless otherwise specified in a purchase agreement or contract. The moratorium qualification of a vessel may be transferred from the owner of the vessel to another person by mutual agreement. For example, the moratorium qualification of a vessel may be retained by the vessel's owner for liquidation independently of the vessel. A vessel owner also may choose to retain the moratorium qualification of the vessel when it is sold, lost, or destroyed, so that he/she can obtain a moratorium permit for a replacement vessel. Regardless of the reason for transferring a moratorium qualification, valid documentation of the transfer is required before the transfer will be approved and a moratorium permit issued based on that moratorium qualification.

Fishery-specific/gear type endorsements cannot be separated and transferred independently of the endorsed permit. For example, a moratorium permit that authorizes a vessel to harvest moratorium species of groundfish and crab with pot gear could not be separated into a groundfish/pot permit and a crab/pot permit. Likewise, gear endorsements cannot be transferred separately from the permit. For another example, the hook endorsement on a groundfish/trawl, pot, and hook permit would not be transferrable.

A cutoff date of January 1, 1989, determines whether a qualified vessel that was lost or destroyed can transfer its moratorium qualification to a replacement vessel. The Council reasoned that a vessel owner who lost a vessel before January 1, 1989, would have replaced or salvaged the vessel before the end of the qualifying period if the owner intended to continue participation in the moratorium fisheries.

Salvage of lost or destroyed vessels: The moratorium qualification of a vessel that was lost or destroyed before January 1, 1989, is not valid for purposes of issuing a moratorium permit for that vessel unless salvage of that vessel started before June 24, 1992, and the salvaged vessel's LOA does not exceed its maximum LOA. The salvaged vessel must make a legal landing of a moratorium species within the period January 1, 1996–December 31, 1997, to maintain its qualification for a moratorium permit in 1998.

The moratorium qualification of a vessel lost or destroyed on or after January 1, 1989 is valid for purposes of issuing a moratorium permit for that vessel regardless of when salvage began provided that the vessel has not already been replaced and the LOA of the salvaged vessel does not exceed its maximum LOA.

Replacement of lost or destroyed vessels: The moratorium qualification of a vessel that was lost or destroyed before January 1, 1989, cannot be transferred to another vessel. The moratorium qualification of a vessel that was lost or destroyed on or after January 1, 1989, but before January 1, 1996, can be transferred to a replacement vessel provided the LOA of the replacement vessel does not exceed the maximum LOA of the vessel that was lost or destroyed. The vessel that was lost or destroyed will no longer be a moratorium qualified vessel. The moratorium permit of the replacement vessel will expire on December 31, 1997, unless the vessel makes a legal landing of a moratorium species on or before that date.

The moratorium qualification of a vessel that is lost or destroyed on or after January 1, 1996, may be transferred to a replacement vessel provided the LOA of the replacement vessel does not exceed the maximum LOA of the vessel that was lost or destroyed. The vessel that was lost or destroyed would no longer be a moratorium qualified vessel. In the case of multiple or sequential replacements or reconstructions of a moratorium qualified vessel, the LOA may not be increased beyond the maximum LOA of the original qualifying vessel.

Reconstruction: Vessel reconstruction is defined as a change in the LOA of the vessel from its original qualifying LOA. The moratorium qualification of a vessel is not valid for purposes of issuing a permit for that vessel if at any time on or after June 24, 1992, the LOA of the vessel is increased to exceed its maximum LOA. If reconstruction was completed prior to June 24, 1992, and the reconstructed vessel is less than 125 feet (38.1) LOA, further increases in LOA are allowed between June 24, 1992, and the end of the moratorium subject to the 20 percent rule discussed above under "Moratorium Qualification." If reconstruction was completed prior to June 24, 1992, and the reconstructed vessel is equal to or greater than 125 feet (38.1 m) LOA, the LOA of the reconstructed vessel is the maximum LOA. If reconstruction of a vessel began before June 24, 1992, and was completed after that date, the maximum LOA is the LOA of the reconstructed vessel on the date reconstruction was completed. This is the maximum LOA even if the LOA of the reconstructed vessel is less than 125 ft (38.1 m). The purpose of this exception to the 20 percent rule for vessels less than 125 ft (38.1 m) LOA is to prevent the disqualification of a vessel that was undergoing reconstruction on the date that the Council initially recommended its original moratorium proposal. The Council decided that such a vessel should be allowed to participate in the moratorium fisheries, but that it should not be allowed any additional length increases under the 20 percent rule.

Vessel reconstruction begins and ends with the start and completion of the physical modification of the vessel. For a vessel undergoing reconstruction on June 24, 1992, any increase in the LOA of the vessel resulting from that reconstruction must be documented. Acceptable documentation of the beginning and ending dates of reconstruction is limited to a notarized affidavit signed by the vessel owner and the owner/manager of the shipyard that specifies the beginning and ending dates of the reconstruction. If acceptable, the Regional Director will certify the new LOA as the maximum LOA for that vessel.

5. Administration

The final rule implements the moratorium by limiting the issuance of moratorium permits to moratorium-qualified vessels or their replacements. The Restricted Access Management Division, Alaska Region, NMFS, will administer the moratorium by maintaining a database of moratorium qualifications, receiving and reviewing permit and transfer applications, making initial determinations of eligibility, and issuing moratorium permits. This Division also will issue or renew a Federal fisheries permit to or for each vessel qualified for a moratorium permit and to each vessel for which a moratorium permit is not required but that otherwise would participate in the groundfish fisheries in the EEZ (i.e., a moratorium-exempt vessel such as a processor, support vessel, and a small vessel).

Most moratorium permits will be valid until the moratorium expires on December 31, 1998. For some salvaged vessels and some vessels that replace qualified vessels that are lost or destroyed, however, moratorium permits will expire after the first 2 years of the moratorium (i.e., on January 1, 1998). However, those moratorium permits can be renewed if the vessel makes a legal landing of a moratorium species in 1996 or 1997. The multi-year duration of a moratorium permit differs from that of a Federal fisheries permit, which is valid only for the year in which it is issued.

An application for a moratorium permit may be submitted at any time. Application forms for Federal Fisheries Permits, Federal Processor Permits, and Vessel Moratorium Permits will be integrated into a single application form. Submission of only one completed form is required for application for all three types of permits. A moratorium permit application for a vessel will be approved if the vessel's owner has a moratorium qualification and the vessel's LOA is less than or equal to the maximum LOA. If a moratorium permit is requested for a vessel that is not in the NMFS moratorium qualification database, then the applicant will be requested to provide evidence of the vessel's qualification either by demonstrating a legal landing of a moratorium species from January 1, 1998, through February 9, 1992, or a transfer of moratorium qualification. As stated above, moratorium qualification is presumed to remain with the current owner of a vessel that made a legal landing of any moratorium species from January 1, 1988, through February 9, 1992. Otherwise, a valid contract or agreement to transfer a vessel's moratorium qualification or retain it when the vessel is transferred is required to demonstrate ownership of the moratorium qualification. Determination of a vessel's maximum LOA is based on Federal or state permits or registration documents that demonstrate the original qualifying LOA of the vessel. If these documents are not available, NMFS may request the vessel owner to produce a marine survey, builder's plans, or other third-party documentation of the vessel's LOA on June 24, 1992.

An application for approval of transfer of moratorium qualification may be submitted at any time. Approval of a transfer requires the submission of a transfer agreement signed by the original owner(s) and receiver(s) of the moratorium qualification, and the submission of proof that the vessel to which the moratorium qualification would be applied for purposes of qualifying for a moratorium permit is less than or equal to the maximum LOA of the original qualifying vessel.

An initial administrative determination to deny the issuance of a moratorium permit will be explained in writing to the permit applicant, and the denial may be appealed following the procedures set forth at 50 CFR 676.25. A written appeal must be submitted to the Alaska Region, NMFS, within 60 days after the date that the determination was made. An initial administrative determination to deny an application for a permit will include a letter of authorization to the applicant authorizing the affected vessel to operate as if the application were approved pending appeal. The temporary authority granted by the letter of authorization will expire on the effective date of the final agency action on the appeal. The final agency action on the appeal, for purposes of judicial review, occurs at the end of the 60-day appeal period if no appeal were filed, or 30 days after the appellate officer's decision is issued, except as provided at 50 CFR 676.25. No appeal is provided for a denial of approval of a transfer of moratorium qualification. The maximum LOA restrictions would be too easily circumvented and the purpose of the moratorium undermined if appeals of denials of approvals of transfer were allowed. An administrative determination to deny approval of a transfer of a moratorium qualification and the issuance of a permit based on that moratorium qualification will be the final agency action for purposes of judicial review.

Changes From the Proposed Rule

The vessel moratorium implemented by this rule is described in the notice of proposed rulemaking published on May 12, 1995. The principal parts of the vessel moratorium remain as discussed in that notice. NMFS made changes regarding applications for fisheries permits and the duration of moratorium permits. NMFS also made editorial and formatting changes for clarity.

1. An application for a Federal Fisheries Permit must be submitted annually. This application provides NMFS with specific information regarding the vessel, fisheries, vessel operations, and owner. This information is necessary to maintain accurate and up-to-date records of the currently active vessels in the groundfish fisheries

and is necessary for management of the fishery. One application form is used to apply for both the Federal Fisheries Permit and the Federal Moratorium Permit and only one form needs to be submitted to apply for both in 1996.

2. Moratorium permits were proposed to be valid only for the calendar year for which they were issued, which would have required an annual renewal to confirm the validity of the vessel's qualification. Under the final rule, a moratorium permit, once issued, will remain valid for most vessels through December 31, 1998 (for some vessels through December 31, 1997, with renewal allowed for 1998 if the vessel makes a legal landing of a moratorium species in 1996 or 1997), or until the moratorium qualification on which the permit is based is transferred. The owners of most vessels with a moratorium permit are not required to provide information regarding moratorium qualification again during the temporary moratorium period.

Response to Comments

Twelve letters of comment were received on the proposed rule before the end of the comment period. The following paragraphs summarize and respond to those comments.

Comment 1: The proposed cutoff date for determining the replacement of a moratorium-qualified vessel that was lost or destroyed should be concurrent with the beginning of the qualifying period. As proposed, the qualifying period begins January 1, 1988, but a qualified vessel lost before January 1, 1989, loses its moratorium qualification and a transfer of it would not be possible. The proposed date of January 1, 1989, appears arbitrary and capricious because it is inconsistent with the qualifying period dates. If the date of January 1, 1989, is adopted for determining the replacement of lost or destroyed vessels, then an exception should be made in cases where the purchase of the fishing rights of a sunken vessel were made before the Council took its action to establish that date.

Response: The cutoff date of January 1, 1989, for replacing or salvaging a lost or destroyed vessel has a rational basis and is not arbitrary and capricious. In recommending this date, the Council reasoned that the owner of a vessel lost or destroyed before 1989 likely would have received insurance claims and replaced the vessel or begun salvage operations within the remaining qualifying period. If this had not happened, then the vessel owner probably did not intend to continue participation in the moratorium fisheries as a vessel owner. This measure provides a means of reducing the size of the qualifying fleet by excluding lost or destroyed vessels that were not replaced or salvaged within a reasonable period of time before the end of the qualifying period on February 9, 1992. The Council recommended this date in its initial moratorium proposal (June 3, 1994, 59 FR 28827) in which the qualifying period was January 1, 1980, through February 9, 1992. The Council's revised amendment proposal changed the qualifying period to January 1, 1988, through February 9, 1992. Although the beginning of the revised qualifying period and the vessel replacement cutoff date are only 1 year apart, the rationale for the cutoff date remains appropriate and reasonable. The purchase of moratorium qualification before the Council acted in June 1992, to propose a moratorium was highly speculative. No one knew at that time what the conditions and criteria for qualification would be or whether NMFS would approve the moratorium proposal. Limiting speculative investment in fishing capacity is an objective of the moratorium. An exception to the vessel replacement cutoff date would reward such speculation.

Comment 2: Any sunken vessel that has not been replaced within 3 to 4 years of its sinking should be disqualified from transferring its moratorium qualification. Further, any vessel owner who constructs a new vessel after having one sink should have the new vessel counted as the replacement vessel to prevent him from qualifying the new vessel and selling the fishing rights of the sunk vessel separately which would bring in two new vessels.

Response: Limiting the replacement of lost or destroyed vessels during the moratorium is reasonable; however, the moratorium is scheduled to expire in 3 years. If the Council were to determine that the moratorium should be extended, then such a measure could be included in a moratorium renewal proposal. The Council used this rationale, however, for vessels lost or destroyed during the qualifying period. The Council proposed a cutoff date, January 1, 1989, which is about 3 years before the end of the qualifying period. A qualified vessel lost or destroyed before the cutoff date, but not replaced during the qualifying period, would be disqualified from receiving a moratorium permit unless salvage operations had started before June 24, 1992. The moratorium rules provide for replacing vessels lost or destroyed on or after January 1, 1989, by transferring moratorium qualification from the lost vessel to a replacement vessel. No provision is made for replacing a lost or destroyed vessel with two vessels.

Comment 3: There was no definition of "length overall" in the proposed rule. The rule should clarify how NMFS intends to ascertain a vessel's current LOA.

Response: The proposed rule, at § 676.2, defined LOA as this term is defined at §§ 672.2 and 675.2. NMFS will determine maximum LOA by relying on Federal and state fishing permit data currently on file that indicate the original qualifying LOA of a vessel on June 24, 1992. Other documentation of a vessel's LOA may be requested by NMFS, especially if the maximum LOA is contested or in transfers of moratorium qualification. Such documentation may include a vessel survey, builder's plan, state or Federal registration certificate, or other reliable and probative documents. Fishing for moratorium species with a vessel that has an LOA in excess of the maximum LOA provided by the moratorium permit for that vessel is prohibited and would be a violation of the permit. Investigation of such activity will be an enforcement function.

Comment 4: If the moratorium qualification of a vessel is purchased before the effective date of the moratorium, then getting the signature of the original owner of the moratorium qualification on the transfer application should be unnecessary providing a copy of the purchase contract or bill of sale is attached to the transfer application as required.

Response: The regulations implementing the moratorium qualification transfer procedure at § 676.5(c) require, in part, a legible copy of a contract or agreement to transfer moratorium qualification signed by the affected persons and signatures of the same persons on a transfer application form. NMFS agrees that obtaining the signature of a former owner of moratorium qualification on a transfer application may be difficult if the applicant has lost contact with the former owner. In such instances, NMFS may waive the required signature of the former owner of the moratorium qualification on the transfer application if the signature(s) on the transfer contract or agreement are determined by NMFS to demonstrate sufficiently the former owner's intent to relinquish his/her interest in the moratorium qualification to the transfer applicant. A decision to waive any signature requirement on a transfer application will be made on a case-by-case basis. Section 676.5(c)(8) has been changed to provide for this discretion.

Comment 5: The revised qualification period is a marked improvement over the originally proposed qualification period because it would remove a significant number of vessels from moratorium qualification. The proposed moratorium would allow the Council and NMFS to bypass consideration of another interim license limitation system and to move directly toward an individual transferrable quota program.

Response: The Council must make the initial determination on the preferred limited access policy to follow the moratorium, if any. NMFS will review that policy recommendation, when it is submitted, for consistency with the Magnuson Act and other applicable laws.

Comment 6: The crossover provisions are too liberal. Crossover privileges would be accorded to three categories of vessels. There is no basis for permitting crossovers for the category which consists of vessels that qualified in only one fishery during the qualifying period and that any time after February 9, 1992, cross over to the other fishery using the same type of gear. This crossover provision is inconsistent with national standards 1, 4, 5, and 6, section 303(b)(6) of the Magnuson Act, and the purposes of the moratorium because it would allow hundreds of vessels to enter the groundfish fishery that did not operate in that fishery during the qualifying period or the recent past. This will contribute to overcapitalization in the groundfish fishery.

Response: The limited crossover provision on the revised moratorium proposal is far less liberal than that originally proposed. Although a vessel would be allowed to operate in certain crab or groundfish fisheries in which it had no prior fishing history, the flexibility afforded this vessel to move between fisheries is limited to using the same gear type in both fisheries. The number of vessels able to take advantage of this provision is not likely to overcapitalize seriously either fishery, relative to current capital in each fishery, during the effective period of the moratorium. Although this provision may advantage one group to the detriment of another, it is consistent with the Magnuson Act because it supports the objectives of the moratorium and the respective FMPs to allow fishermen flexibility while not significantly undermining the intent of the moratorium to control temporarily the growth of fishing effort in the affected fisheries.

Comment 7: The proposed rule does not distinguish between permits that would allow the landing of incidental catches of moratorium species while directed fishing for a non-moratorium species and permits that would allow directed fishing for a moratorium species by exempt vessels. Retention of a bycatch amount of a moratorium species while directed fishing for a non-moratorium species should be allowed to reduce discards of moratorium species.

Response: A Federal fishing permit currently is required to catch and retain any groundfish species and a State of Alaska fishing permit is required to catch and retain crab species regardless of whether the species was taken incidental to a targeted harvest of species other than groundfish or crab. These basic licensing requirements will continue under the moratorium. For example, a salmon troller who intends to retain his bycatch of a moratorium groundfish such as rockfish, would be required to have a Federal fisheries permit. Hence, bycatch amounts of a moratorium species will be retainable. The proposed rule provided for this by requiring (for groundfish) either a Federal fisheries permit or a moratorium permit. As changed in the final rule, both permits are required for vessels targeting moratorium species, but only the Federal fisheries permit is required of exempt vessels. The effect is the same, however.

Comment 8: The proposed moratorium is necessary as an interim measure to limit fishing capacity pending the establishment of an individual transferrable quota system that will lead to a much-needed reduction in fishing capacity and an end to the dangerous and destructive race for fish prevailing in the current open access system.

Response: Comment noted. At its meeting in June 1995, the Council approved license limitation as the recommended limited access system to follow the moratorium. NMFS will review that recommendation for consistency with the Magnuson Act and other applicable laws, and provide opportunity for public comment.

Comment 9: The proposed moratorium cuts out vessels that have a substantial history of participation in the crab fishery while allowing entry into that fishery, and the fixed-gear fishery for cod, a large number of vessels with no history of participation. The moratorium was designed to prevent new entrants, and not cut out past participants, while the Council developed a long-range plan. Instead, it has cut out vessels that relied on previously published control date notices. The revised moratorium ignores the primary concern of NMFS in disapproving the original proposal in that the proposed crossover provisions would allow a vessel with no prior history in a moratorium fishery to enter that fishery based on participation in a different moratorium fishery. The crossover provision would incorrectly treat a vessel entering a fishery in which it has never operated on par with a vessel resuming operations in or re-entering the same fishery. The crossover provision would unfairly expand the fishing privileges of one class of vessel while restricting opportunity for another. This ignores the "fair and equitable" requirement of national standard 4. Further, it ignores present participation, historical fishing practices, and the economics of the fishery in violation of section 303(b)(6) of the Magnuson Act. The analysis of the proposed moratorium ignored the fact that vessels that pioneered the Bering Sea crab fishery have exited that fishery because many crab stocks have been depressed since the 1980's.

Response: The moratorium was designed to prevent new entrants into the affected fisheries, but it also was designed to prevent the re-entry of historical vessels that had not participated in one of these fisheries within a reasonable period of time. The Council and NMFS determined that participation during the period January 1, 1988, through February 9, 1992, was a reasonable period of time for a vessel to qualify given the objective of the moratorium. Providing for historical vessels through a qualifying period that begins on January 1, 1980, as originally proposed, would have defeated the objective of the moratorium by qualifying a fleet substantially larger than that operating in any one year. This was one reason for NMFS' disapproving the original moratorium proposal. As approved, the moratorium implementing regulations would allow a vessel that "pioneered" the BSAI Area crab fishery in the early 1980's to re-enter that fishery if the vessel had made a legal landing in any groundfish fishery during the qualifying period with pot gear. The vessel also could re-enter the BSAI Area crab fishery if it had made a legal landing in any groundfish fishery during the qualifying period and also made a legal landing in the BSAI Area crab fishery during the period February 10, 1992, through December 11, 1994. If this vessel made no legal landings of BSAI Area crab during the period January 1, 1988 through December 11, 1994, however, then it is arguably no longer dependent on that fishery despite its early history. The allowance of certain vessels with no history in the

BSAI Area crab fishery to enter that fishery for the first time under the moratorium provides limited flexibility for vessels to move between the groundfish and BSAI Area crab fisheries. This flexibility is limited to vessels using the same type of gear in both fisheries (e.g., pot gear). This limited crossover provision is fair and equitable. Even though it provides advantages to one group to the detriment of another, it is justified in terms of the objective of the moratorium and the respective FMPs. The analysis of the proposed moratorium includes numbers of vessels that would be affected by moratorium alternatives with different qualifying periods.

Comment 10: The Alaska Board of Fisheries adopted its crab pot limitation to be consistent with the vessel lengths described in the moratorium proposed by the Council. Some vessel owners may increase the length of their vessels to carry more pots while maintaining the moratorium qualification of their vessels. The moratorium rule should address this issue and clearly state that such lengthening would not be allowed under the moratorium.

Response: The moratorium rule relies on the existing LOA definition in 50 CFR parts 672 and 675. That definition states that the LOA of a vessel means "the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments." If the LOA of a vessel exceeds its maximum LOA, then that vessel would be denied a moratorium permit, or if a moratorium permit were issued before the vessel length was increased to exceed its maximum LOA, then the permit would be invalidated. The moratorium regulations do not prohibit a vessel from changing its LOA from its original qualifying LOA, however, a vessel must be equal to or less than its maximum LOA to be issued or hold a valid moratorium permit.

Comment 11: There was a lack of public review and timely analysis associated with the Council's adoption of the moratorium. The time allowed for public comment on the proposed rule was too restrictive and unnecessarily abbreviated. Twenty days for public comment on an issue as significant to the fishery as is the moratorium is unreasonable, especially when the individual listed in the proposed rule notice as the contact for further information was absent from his NMFS office for all but 3 days of the 20-day public comment period. The convenience of the public seems to have been ignored. One letter requested additional time in which to comment.

Response: NMFS determined that a 20-day public comment period on the proposed rule was sufficient. The moratorium proposal was a revision of a previously published proposal (59 FR 28827, June 3, 1994) on which there was a 45-day comment period. Further, the moratorium proposal has been an issue of public interest and expression ever since the Council took its initial action on it in June 1992. Ample time has been provided for public comment on this issue to the Council and to NMFS. NMFS temporarily assigned another individual, who also was familiar with the moratorium proposed rule, to serve in the absence of the individual listed as the contact for further information. Public queries about the proposed rule to the contact phone number and address during the comment period were addressed.

Comment 12: Financial arrangements should not be disrupted by allowing moratorium qualifications to be transferred without regard to the legitimate interests of those who rely on the value of the vessel, together with its right to fish, in extending credit to the vessel owner. The mandatory requirements for an application for transfer in proposed § 676.5(c) should be amended to include consent of mortgagees of record. There is precedent in maritime law for requiring mortgagee consent before action is taken that could jeopardize the mortgagee's interest in a vessel. The addition of such a requirement could be easily administered by relying on U.S. Coast Guard records and requiring an applicant to provide a Coast Guard certificate of ownership and consent of any mortgagees of record with a transfer application.

Response: The mortgagee's interest in a vessel could be protected by including, in the mortgage agreement or contract, a requirement that the vessel owner secure the approval of the mortgagee before transferring ownership of the vessel or its moratorium qualification to another person. The regulatory burden of complying with the moratorium qualification transfer requirements will be lessened to the extent that the mortgagee's interest in the vessel can be protected without government intervention through a private agreement.

Comment 13: The proposed qualifying period neither provides for a fair and equitable allocation of fishing privileges, nor reasonably considers present participation. The qualifying period is based predominantly on economic and social factors that existed before June 1992 and ignores current economic conditions. Investments and participation that occurred in the groundfish and crab fisheries in the past 3 years were legal and reasonable, but are ignored by the qualifying period. The qualifying period should be modified to allow for present participants to be included under the moratorium.

Response: The Council and NMFS have taken present participation into account in establishing the qualifying period. The initially proposed qualifying period, January 1, 1980, through February 9, 1992, would have allowed an excessive number of vessels to qualify. After disapproval of the original moratorium proposal, the Council revised the qualifying period to January 1, 1988, through February 9, 1992. This change gave more weight to the vessels participating in the latter part of the original qualifying period. At its meeting in September 1994, the Council considered but chose not to extend the qualifying period through 1993. The Council made clear that it wanted to maintain its cutoff date of February 9, 1992, and did not want to reward persons who entered new vessels into the fisheries after that date by including them in the qualifying period. The Council and NMFS adequately notified the fishing industry that the future fishing privileges of new vessels entering the fisheries under Council authority were at risk by control date notices published September 5, 1990 (55 FR 36302), and June 21, 1993 (58 FR 33798), and the moratorium proposed rule published June 3, 1994 (59 FR 28827). The participation of a qualified vessel in a fishery that it did not participate in before February 9, 1992, was acknowledged by the Council in its revised moratorium proposal. This provision allows, for example, a vessel that qualified by participation in the groundfish fishery before February 9, 1992, and between February 10, 1992, and December 11, 1994, and that crossed over into the BSAI Area crab fishery, to continue access to the BSAI Area crab fishery during the moratorium. This crossover provision takes into account the investment in qualified vessels since February 9, 1992, but does not allow for qualification of vessels that began fishing for any moratorium species for the first time after that date.

One letter submitted after the close of the comment period stated that the vessel reconstruction provisions and the maximum length overall provisions amount to unlawful retroactive rulemaking under a recent U.S. Supreme Court decision, *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988). NMFS disagrees. The vessel reconstruction and length provisions are not retroactive rules and therefore are not governed by *Bowen*.

Classification

The Director, Alaska Region, NMFS, has determined that Amendment 23 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 28 to the FMP for Groundfish of the Gulf of Alaska, and Amendment 4 to the FMP for Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area are necessary for the conservation and management of the BSAI groundfish and crab fisheries and the GOA groundfish fisheries and are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws.

The Council prepared a final regulatory flexibility analysis as part of the regulatory impact review, which indicates that this rule could have a significant economic impact on a substantial number of small entities. A summary of this determination is included in the proposed rule (60 FR 25677, May 12, 1995). A copy of the EA/RIR/FRFA may be obtained (see ADDRESSES).

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) that have been approved by the Office of Management and Budget (OMB) (OMB control number 0648–0206). This approval expires April 30, 1997. The revised moratorium proposal would affect fewer vessels. Therefore, the paperwork burden would be somewhat less than originally estimated for the original collection-of-information request. The public paperwork burden for this collection is estimated to average 3.33 hours per response, including the time needed for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information that pertains to permit, appeals, and transfer applications. Send comments regarding this paperwork burden or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Management and Budget, Paperwork Reduction Project (0648–0206), Washington, DC, 20503 (ATTN: NOAA Desk Officer).

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects

50 CFR Part 671

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Parts 672, 675, and 677

Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 676

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 31, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 671, 672, 675, 676, and 677 are amended as follows:

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

1. The authority citation for 50 CFR part 671 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Effective September 11, 1995, § 671.2 is amended by adding the definitions for "King crab" and "Tanner crab", in alphabetical order, to read as follows:

§ 671.2 Definitions.

* * * * *

King crab means red king crab, *Paralithodes camtschatica*; blue king crab, *P. platypus*; or brown (or golden) king crab, *Lithodes aequispina*; scarlet (or deep sea) king crab, *L. couesi*.

* * * * *

Tanner crab means *Chionoecetes bairdi*; snow crab, *C. opilio*; grooved Tanner crab, *C. tanneri*; triangle Tanner crab, *C. angulatus*; or any hybrid of these Tanner crab species.

3. Effective September 11, 1995, § 671.3 is added to read as follows:

§ 671.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at § 611.92 of this chapter. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands management area are set forth at § 611.93 of this chapter.

(b) *King and Tanner crab.* Regulations governing the conservation and management of king and Tanner crab also are found in the Alaska Administrative Code at title 5, chapters 34, 35, and 39.

(c) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at part 301 of this title and part 676 of this chapter.

(d) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska and in the Bering Sea and Aleutian Islands management area are set forth at parts 620, 672, 675, and 676 of this chapter.

(e) *Limited access.* Regulations governing access to commercial fishery resources are set forth at part 676 of this chapter.

(f) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at § 216.24 and part 229 of this title.

(g) *Research plan.* Regulations governing elements of the North Pacific Fisheries Research Plan are set forth at part 677 of this chapter.

4. Effective January 1, 1996, through December 31, 1998, § 671.4 is revised to read as follows:

§ 671.4 Permits.

(a) All processors of Bering Sea and Aleutian Islands area king and Tanner crab must comply with the permit requirements of § 677.4 of this chapter.

(b) In addition to any other permits that may be required by Federal or state regulations, a moratorium permit may be required by part 676 of this chapter for a vessel of the United States if the vessel is used to catch and retain king or Tanner crab in the Bering Sea and Aleutian Islands Area.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

5. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. Effective September 11, 1995, through December 31, 1995, § 672.3, paragraph (f) is added to read as follows:

§ 672.3 Relation to other laws.

* * * * *

(f) *Crab fishing.* Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at parts 671 and 676 of this chapter, and in the Alaska Administrative Code at title 5, chapters 34, 35, and 39.

7. Effective January 1, 1996, through December 31, 1998, § 672.4, paragraphs (a) and (b)(1) introductory text are revised, and paragraph (k) is added to read as follows:

§ 672.4 Permits.

(a) *General.* No vessel of the United States may be used to fish for

groundfish in the Gulf of Alaska unless the owner first obtains a Federal fisheries permit for the vessel issued under this part. The owner of such vessel must renew the Federal fisheries permit annually. Federal fisheries permits are issued without charge.

(b) *Application.* (1) The vessel permit required under paragraph (a) of this section may be obtained or renewed by submitting to the Regional Director a written application containing the following information:

* * * * *

(k) *Moratorium permit.* In addition to the Federal fisheries permit required by paragraph (a) of this section and any other permits that may be required by Federal or state regulations, a moratorium permit may be required by part 676 of this chapter for a vessel of the United States if the vessel is used to conduct directed fishing for moratorium groundfish species, as defined at § 676.2 of this chapter, in the Gulf of Alaska.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

8. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

9. Effective September 11, 1995, through December 31, 1995, § 675.3, paragraph (f) is added to read as follows:

§ 675.3 Relation to other laws.

* * * * *

(f) *Crab fishing.* Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at parts 671 and 676 of this chapter, and in the Alaska Administrative Code at title 5, chapters 34, 35, and 39.

10. Effective January 1, 1996, through December 31, 1998, § 675.4, paragraphs (a) and (b)(1) introductory text are revised, and paragraph (k) is added to read as follows:

§ 675.4 Permits.

(a) *General.* No vessel of the United States may be used to fish for groundfish in the Bering Sea and Aleutian Islands management area unless the owner first obtains a Federal fisheries permit for the vessel issued under this part. The owner of such vessel must renew the Federal fisheries permit annually. Federal fisheries permits are issued without charge.

(b) *Application.* (1) The vessel permit required under paragraph (a) of this section may be obtained or renewed by submitting to the Regional Director a written application containing the following information:

* * * * *

(k) *Moratorium permit.* In addition to the Federal fisheries permit required by paragraph (a) of this section and any other permits that may be required by Federal or state regulations, a moratorium permit may be required by part 676 of this chapter for a vessel of the United States if the vessel is used to conduct directed fishing for moratorium groundfish species, as defined at § 676.2 of this chapter, in the Bering Sea and Aleutian Islands management area.

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF ALASKA

11. The authority citation for part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

12. Subpart A is amended by adding §§ 676.1, 676.2 676.5, and 676.6 effective September 11, 1995, through December 31, 1998 and §§ 676.3 and 676.4 are effective January 1, 1996 through December 31, 1998, to read as follows:

Subpart A—Moratorium on Entry

Sec.

676.1 Purpose and scope.
676.2 Definitions.
676.3 Moratorium permits.
676.4 Transfer of moratorium qualification; lost or destroyed vessels; reconstructed vessels.
676.5 Procedures.
676.6 Prohibitions.
676.7–676.9 [Reserved]

Subpart A—Moratorium on Entry

§ 676.1 Purpose and scope.

The sections of this subpart are effective from September 11, 1995, through December 31, 1998, unless otherwise noted. This subpart implements a moratorium on the entry of new vessels in the commercial fisheries for groundfish in the Gulf of Alaska and Bering Sea and Aleutian Islands management area and in the commercial fisheries for king and Tanner crabs in the Bering Sea and Aleutian Islands Area.

§ 676.2 Definitions.

In addition to the terms in the Magnuson Act and in parts 620, 671, 672, and 675 of this chapter, the terms in this subpart have the following meanings:

Bering Sea and Aleutian Islands Area means, with respect to moratorium crab species, the area over which the United States exercises exclusive fishery management authority as defined at part 671 of this chapter.

Bering Sea and Aleutian Islands management area means, with respect to moratorium groundfish species, the area over which the United States exercises exclusive fishery management authority as defined at part 675 of this chapter.

Catcher/processor vessel means a vessel that can be used as a catcher vessel and that can process or prepare fish to render it suitable for human consumption, industrial use, or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but not including heading and gutting unless additional preparation is done.

Catcher vessel means, with respect to moratorium groundfish species, a catcher vessel as defined at parts 672 and 675 of this chapter, or, with respect to moratorium crab species, a vessel that is used to catch, take, or harvest moratorium crab species that are retained on board as fresh fish product at any time.

Directed fishing means, with respect to moratorium groundfish species, directed fishing as defined at parts 672 and 675 of this chapter, or, with respect to moratorium crab species, the catching and retaining of any moratorium crab species.

Gulf of Alaska means, with respect to moratorium groundfish species, the area over which the United States exercises exclusive fishery management authority as defined at part 672 of this chapter.

Legal landing means any amount of a moratorium species that was or is landed in compliance with Federal and state commercial fishing regulations in effect at the time of the landing.

LOA means length overall as defined at parts 672 and 675 of this chapter.

Lost or destroyed vessel means a vessel that has sunk at sea or has been destroyed by fire or other accident and has been reported to the U.S. Coast Guard on U.S. Coast Guard Form 2692, Report of Marine Casualty.

Maximum LOA with respect to a vessel's eligibility for a moratorium permit means:

(1) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is less than 125 ft (38.1 m) LOA, 1.2 times the original qualifying LOA or 125 ft (38.1 m), whichever is less;

(2) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is equal to or greater than 125 ft (38.1 m), the original qualifying LOA; and

(3) For an original qualifying vessel under reconstruction on June 24, 1992, the LOA on the date reconstruction was completed, provided that maximum LOA is certified under § 676.4(e).

Moratorium crab species means species of king or Tanner crabs harvested in the Bering Sea and Aleutian Islands Area, the commercial fishing for which is governed by part 671 of this chapter.

Moratorium groundfish species means species of groundfish, except sablefish caught with fixed gear as defined at § 676.11, harvested in the Gulf of Alaska or harvested in the Bering Sea and Aleutian Islands management area, the commercial fishing for which is governed by parts 672 and 675 of this chapter, respectively.

Moratorium qualification means a transferable prerequisite for a moratorium permit.

Moratorium species means any moratorium crab species or moratorium groundfish species.

Original qualifying LOA means the LOA of the original qualifying vessel on June 24, 1992.

Original qualifying vessel means a vessel that made a legal landing during the qualifying period.

Person means any individual who is a citizen of the United States or any United States corporation, partnership, association, or other entity (or its successor in interest), whether or not organized or existing under the laws of any state.

Qualifying period means from January 1, 1988, through February 9, 1992.

Reconstruction means a change in the LOA of the vessel from its original qualifying LOA.

Regional Director means the Director, Alaska Region, NMFS, or an individual to whom the Regional Director has delegated authority.

§ 676.3 Moratorium permits.

This section is effective from January 1, 1996, through December 31, 1998.

(a) *General requirement.* Except as provided under paragraph (b) of this section, any vessel used to catch and retain any moratorium crab species or to conduct directed fishing for any moratorium groundfish species must have a valid moratorium permit issued for that vessel under this part on board the vessel at all times it is engaged in fishing activities. The term of the moratorium permit is for the duration of the moratorium unless otherwise specified.

(1) A moratorium permit issued under this part is valid only if:

(i) The vessel's LOA does not exceed its maximum LOA;

(ii) The vessel's moratorium qualification has not been transferred;

(iii) The permit has not been revoked or suspended under 15 CFR part 904 (Civil Procedures);

(iv) The permit is endorsed for all gear types on board the vessel; and

(v) The permit's term covers the fishing year in which the vessel is fishing.

(2) A moratorium permit must be presented for inspection upon the request of any authorized officer.

(b) *Moratorium exempt vessels.* A moratorium exempt vessel is not subject to the moratorium permit requirement of paragraph (a) of this section and is not eligible for a moratorium permit. A moratorium exempt vessel may catch and retain moratorium species provided it complies with the permit requirements of the State of Alaska with respect to moratorium crab species, Federal permit requirements at parts 672 and 675 of this chapter with respect to moratorium groundfish species, and other applicable Federal and State of Alaska regulations. A moratorium exempt vessel is a vessel in any of the following categories:

(1) Vessels other than catcher vessels or catcher/processor vessels;

(2) Catcher vessels or catcher/processor vessels less than or equal to 26 ft (7.9 m) LOA that conduct directed fishing for groundfish in the Gulf of Alaska;

(3) Catcher vessels or catcher/processor vessels less than or equal to 32 ft (9.8 m) LOA that catch and retain moratorium crab species in the Bering Sea and Aleutian Islands Area or that conduct directed fishing for moratorium groundfish species in the Bering Sea and Aleutian Islands management area;

(4) Catcher vessels or catcher/processor vessels that are fishing for IFQ halibut, IFQ sablefish, or halibut or sablefish under the Western Alaska Community Development Quota Program in accordance with regulations at subparts B and C of this part and that are not directed fishing for any moratorium species; or

(5) Catcher vessels or catcher/processor vessels less than or equal to 125 ft (38.1 m) LOA that after November 18, 1992, are specifically constructed for and used in accordance with a Community Development Plan approved under § 675.27 of this chapter, and are designed and equipped to meet specific needs that are described in the Community Development Plan.

(c) *Moratorium qualification.* A vessel has moratorium qualification if the vessel is an original qualifying vessel, is not a moratorium exempt vessel under paragraph (b) of this section, and its moratorium qualification has not been transferred. A vessel also has moratorium qualification if it receives a valid moratorium qualification through a transfer approved by the Regional Director under § 676.4 and that moratorium qualification is not subsequently transferred.

(d) *Moratorium permit endorsements.* A moratorium permit will be endorsed for one or more fishery-specific gear type(s) in accordance with the endorsement criteria of paragraph (e) of this section. A fishery-specific gear type endorsement authorizes the use by the vessel of that gear type in the specified fisheries. Fishing gear requirements for the Bering Sea and Aleutian Islands Area crab fisheries as set forth in the Alaska Administrative Code at title 5, chapters 34 and 35; and fishing gear requirements for the Gulf of Alaska and the Bering Sea and Aleutian Islands management area groundfish fisheries are set forth at parts 672 and 675 of this chapter. A moratorium permit may be endorsed for any one or a combination of the following fishing gear types:

(1) Trawl, which includes pelagic and nonpelagic trawl gear;

(2) Pot, which includes longline pot and pot-and-line gear; and

(3) Hook, which includes hook-and-line and jig gear.

(e) *Gear endorsement criteria.* For purposes of this paragraph, from January 1, 1988, through February 9, 1992, is "period 1," and from February 10, 1992, through December 11, 1994, is "period 2." Fishery-specific gear type endorsement(s) will be based on the following criteria:

(1) *Crab fisheries/pot gear endorsement.* A moratorium permit for a vessel may be endorsed for crab fisheries/pot gear if the vessel:

(i) Made a legal landing of a moratorium crab species in period 1;

(ii) Made a legal landing of a moratorium groundfish species with any authorized fishing gear in period 1, and, in period 2, made a legal landing of a moratorium crab species; or

(iii) Made a legal landing of moratorium groundfish in period 1 with pot gear.

(2) *Groundfish fisheries/trawl gear endorsement.* A moratorium permit may be endorsed for groundfish fisheries/trawl gear if the vessel:

(i) Made a legal landing of a moratorium groundfish species with any authorized fishing gear in period 1; or

(ii) Made a legal landing of a moratorium crab species in period 1, and, in period 2, made a legal landing of a moratorium groundfish species using trawl gear.

(3) *Groundfish fisheries/pot gear endorsement.* A moratorium permit may be endorsed for groundfish fisheries/pot gear if the vessel:

(i) Made a legal landing of a moratorium groundfish species with any authorized fishing gear in period 1; or

(ii) Made a legal landing of a moratorium crab species in period 1.

(4) *Groundfish fisheries/hook gear endorsement.* A moratorium permit may be endorsed for groundfish fisheries/hook gear if the vessel:

(i) Made a legal landing of a moratorium groundfish species with any authorized fishing gear in period 1; or

(ii) Made a legal landing of a moratorium crab species in period 1, and, in period 2, made a legal landing of a moratorium groundfish species using hook gear.

§ 676.4 Transfer of moratorium qualification; lost or destroyed vessels; reconstructed vessels.

This section is effective from January 1, 1996, through December 31, 1998.

(a) *General.* A transfer of a vessel's moratorium qualification must be approved by the Regional Director before a moratorium permit may be issued for the vessel to which the qualification is transferred. A moratorium permit is not transferrable or assignable. A fishery-specific gear type endorsement(s) is not severable from an endorsed permit. A transfer of moratorium qualification will not be approved by the Regional Director unless:

(1) A complete transfer application that satisfies all requirements specified at § 676.5 is submitted;

(2) The LOA of the vessel to which the moratorium qualification is transferred does not exceed the maximum LOA of the original qualifying vessel; and

(3) The moratorium permit associated with the moratorium qualification is not revoked or suspended.

(b) *Vessels lost or destroyed in 1988.* The moratorium qualification of a vessel that was lost or destroyed before January 1, 1989, may not be transferred to another vessel and is not valid for purposes of issuing a moratorium permit for that vessel, if salvaged, unless salvage began on or before June 24, 1992, and the LOA of the salvaged vessel does not exceed its maximum LOA. The moratorium qualification of such a vessel is not valid for purposes of issuing a moratorium permit for 1998 unless that vessel is used to make a legal landing of a moratorium species from January 1, 1996 through December 31, 1997.

(c) *Vessels lost or destroyed from 1989 through 1995.* The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1989, but before January 1, 1996, is valid for purposes of issuing a moratorium permit for that vessel, if salvaged, regardless of when salvage began provided that the vessel has not already been replaced and the LOA of the salvaged vessel does not exceed its maximum LOA. The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1989, but before January 1, 1996, may be transferred to another vessel provided the LOA of that vessel does not exceed the maximum LOA of the original qualifying vessel. The moratorium qualification of such a vessel is not valid for purposes of issuing a moratorium permit for 1998 unless that vessel is used to make a legal landing of a moratorium species from January 1, 1996 through December 31, 1997.

(d) *Vessels lost or destroyed after 1995.* The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1996, is valid for purposes of issuing a moratorium permit for that vessel, if salvaged, regardless of when salvage began provided that the vessel has not already been replaced and the LOA of the salvaged vessel does not exceed its maximum LOA. The moratorium qualification of any vessel that is lost or destroyed on or after January 1, 1996, may be transferred to another vessel providing the LOA of that vessel does not exceed the maximum LOA of the original qualifying vessel.

(e) *Reconstruction.* The moratorium qualification of a vessel is not valid for purposes of issuing a moratorium permit if, after June 23, 1992, reconstruction is initiated that results in increasing the LOA of the vessel to exceed the maximum LOA of the original qualifying vessel. For a vessel whose reconstruction began before June 24, 1992, and was completed after June 24, 1992, the maximum LOA is the LOA on the date reconstruction was completed provided the owner files an application for transfer and the Regional Director certifies that maximum LOA and approves the transfer based on information concerning the LOA of the reconstructed vessel submitted under § 676.5(d)(6).

§ 676.5 Procedures.

(a) *General.* An application for a moratorium permit may be requested from the Restricted Access Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668. Requests may be made by telephone by calling 907–586–7202 or 800–304–4846.

(b) *Application for permit.* With respect to any vessel of the United States, a moratorium permit will be issued to the owner of the vessel at the time of the permit application, and who has submitted, to the address in paragraph (a) of this section, a complete moratorium permit application that is subsequently approved by the Regional Director. A complete application for a moratorium permit must include the following information for each vessel:

(1) Name of the vessel, state registration number of the vessel and, the U.S. Coast Guard documentation number of the vessel, if any;

(2) Name(s), business address(es), and telephone and fax numbers of the owner of the vessel;

(3) Name of the managing company;

(4) Valid documentation of the vessel's moratorium qualification if requested by the Regional Director due to an absence of landings records for the vessel from January 1, 1988, through February 9, 1992;

(5) Reliable documentation of the vessel's original qualifying LOA if requested by the Regional Director, such as a vessel survey, builder's plan, state or Federal registration certificate, fishing permit records, or other reliable and probative documents that clearly identify the vessel and its LOA, and are dated before June 24, 1992;

(6) Specification of the fishing gear(s) used from January 1, 1988, through February 9, 1992, and (if necessary) the fishing gear(s) used from February 10, 1992, through December 11, 1994;

(7) Specification of the vessel as either a catcher vessel or a catcher/processor vessel;

(8) If applicable, transfer authorization if a permit request is based on transfer of moratorium qualification pursuant to paragraph (c) of this section; and

(9) Signature of the person who is the owner of the vessel or the person who is responsible for representing the vessel owner.

(c) *Moratorium permit issuance.* The owner of a vessel of the United States that has moratorium qualification will be issued a moratorium permit upon application if the vessel's LOA does not exceed its maximum LOA.

(d) *Application for approval of a moratorium qualification transfer.* An application for approval of a transfer of moratorium qualification must be completed and the transfer approved by the Regional Director before an application for a moratorium permit based on that transfer can be approved. An application for approval of a transfer and an application for a moratorium permit may be submitted simultaneously. A complete application for approval of transfer must include the following information as applicable for each vessel involved in the transfer of moratorium qualification:

(1) Name(s), business address(es), and telephone and fax numbers of the applicant(s) (including the owners of the moratorium qualification that is to be or was transferred and the person who is to receive or received the transferred moratorium qualification);

(2) Name of the vessel whose moratorium qualification is to be or was transferred and the name of the vessel that would receive or received the transferred moratorium qualification (if any), the state registration number of each vessel and, if documented, the U.S. Coast Guard documentation number of each vessel;

(3) The original qualifying LOA of the vessel whose moratorium qualification is to be or was transferred, its current LOA, and its maximum LOA;

(4) The LOA of the vessel that would receive or received the transferred moratorium qualification and documentation of that LOA by a current vessel survey or other reliable and probative document;

(5) A legible copy of a contract or agreement specifying the vessel or person from which moratorium qualification is to be or is transferred, the date of the transfer agreement, names and signatures of all current owner(s) of the vessel whose moratorium qualification is to be or was transferred, and names and signatures of all current owner(s) of the moratorium qualification that is to be or was transferred;

(6) With regard to vessel reconstruction:

(i) A legible copy of written contracts or written agreements with the firm that performed reconstruction of the vessel and that relate to that reconstruction;

(ii) An affidavit signed by the vessel owner(s) and the owner/manager of the firm that performed the vessel reconstruction specifying the beginning and ending dates of the reconstruction; and

(iii) An affidavit signed by the vessel owner(s) specifying the LOA of the reconstructed vessel;

(7) With regard to vessels lost or destroyed, a copy of U.S. Coast Guard Form 2692, Report of Marine Casualty; and

(8) Signatures of the persons from whom moratorium qualification would be transferred or their representative, and the persons who would receive the transferred moratorium qualification or their representative, unless NMFS determines that the signatures provided under paragraph (d)(5) of this section satisfy this requirement.

(e) *Appeal.* (1) The Chief, Restricted Access Management Division, Alaska Region, NMFS, will issue an initial administrative determination to each applicant who is denied a moratorium permit by that official. An initial administrative determination may be appealed by the applicant in accordance with § 676.25. The initial administrative determination will be the final agency action if a written appeal is not received by the Chief, Restricted Access Management Division, Alaska Region, NMFS, within the period specified at § 676.25(d).

(2) An initial administrative determination that denies an application for a moratorium permit must authorize the affected vessel to catch and retain moratorium crab or moratorium groundfish species with the type of fishing gear specified on the application. The authorization expires on the effective date of the final agency action relating to the application.

(3) An administrative determination denying approval of the transfer of a moratorium qualification and/or denying the issuance of a moratorium permit based on that moratorium qualification is the final agency action for purposes of judicial review.

§ 676.6 Prohibitions.

In addition to the prohibitions specified in §§ 620.7, 672.7, 675.7, and 676.16 of this chapter, it is unlawful for any person to:

(a) Submit false or inaccurate information on a moratorium permit application or application to transfer moratorium qualification;

(b) Alter, erase, or mutilate any moratorium permit;

(c) Catch and retain a moratorium species with a vessel that has a LOA greater than the maximum LOA for the vessel;

(d) Catch and retain a moratorium species with a vessel that has received an unauthorized transfer of moratorium qualification;

(e) Catch and retain moratorium crab species or conduct directed fishing for any moratorium groundfish species with a vessel that has not been issued a valid moratorium permit, unless the vessel is lawfully conducting directed fishing for sablefish under subparts B and C of this part;

(f) Catch and retain moratorium crab species or conduct directed fishing for any moratorium groundfish species with a vessel that does not have a valid moratorium permit on board, unless the vessel is lawfully conducting directed fishing for sablefish under subparts B and C of this part; and

(g) Violate any other provision of subpart A of this part.

§§ 676.7–676.9 [Reserved]

PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

13. The authority citation for part 677 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

14. Effective September 11, 1995, Figure 1 to part 677, *Federal Processor Permit Application (Form FPP–1)*, is removed and reserved.

15. Effective September 11, 1995, § 677.4(b) introductory text is revised as follows:

§ 677.4 Permits.

* * * * *

(b) *Application.* The permit required under paragraph (a) of this section may be obtained or renewed by submitting to the Regional Director a completed Federal Processor Permit Application for each vessel or processor containing the following information:

* * * * *

[FR Doc. 95–19344 Filed 8–7–95; 10:19 am]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 154
Thursday, August 10, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB85

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to amend its regulation on assessments in three ways. First, the FDIC proposes to delay the collection date for the first quarterly assessment payment that insured institutions must make for the first semiannual period of each year (first payment). Under the existing regulation, the collection date for this payment is December 30 of the prior year. The FDIC proposes to change the collection date to the first business day following January 1. Second, the FDIC proposes to give insured institutions the option of prepaying the first quarterly payment during the prior December. Institutions could prepay the amount of the first payment or twice that amount (an approximation of the entire amount due for the upcoming semiannual period). The FDIC's purpose in making these first two changes is to relieve certain institutions of the regulatory burden of having to make an extra assessment payment in 1995, while at the same time affording flexibility to other institutions to make such a payment if they should so desire. Third, the FDIC proposes to replace the interest rate to be applied to underpayments and overpayments of assessments with a new, more sensitive rate derived from the 3-month Treasury bill discount rate. The current standard rapidly becomes obsolete in volatile interest-rate markets; the proposed standard would be more sensitive to current market conditions.

DATES: Written comments must be received by the FDIC on or before September 11, 1995.

ADDRESSES: Written comments shall be addressed to Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429. Comments may be hand delivered to Room F–402, 1776 F Street NW., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [Fax number: (202)898–3838; Internet address: comments@fdic.gov] Comments will be available for inspection at the FDIC's Reading Room, Room 7118, 550 17th Street NW., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Allan Long, Assistant Director, Treasury Branch, Division of Finance (703) 516–5546; Claude A. Rollin, Senior Counsel, Legal Division (202) 898–3985; or Jules Bernard, Counsel, Legal Division, (202) 898–3731; Federal Deposit Insurance Corporation, Washington, D. C. 20429.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Payment Schedule

On December 20, 1994, the FDIC adopted a new procedure for the collection of deposit insurance assessments. See 59 FR 67153 (December 29, 1994). The new procedure became effective April 1, 1995. It applies to the second semiannual assessment period of 1995 (beginning July 1, 1995) and thereafter.

The FDIC collects assessment payments on a quarterly basis, by means of FDIC-originated direct debits through the Automated Clearing House network. The collection dates for the first semiannual period (January through June) of any given year are December 30 of the prior year and March 30 of the current year. The collection dates for the second semiannual period (July through December) are June 30 and September 30.

Thirty days prior to each collection date, the FDIC provides to each institution an invoice showing the amount that the institution must pay. The FDIC prepares the invoice from data that the institution has reported in its report of condition for the previous quarter.

Under this schedule, the first quarterly payment for the first semiannual period of a given year is collected during the prior year. The procedure is as follows: The institution determines its deposits on September 30 of the prior year, uses the information to prepare its report of condition, and files the report of condition by October 30. The FDIC uses the report of condition to prepare an invoice for the institution, and provides the invoice to the institution by November 30. The FDIC collects the payment by a direct debit on December 30. If December 30 falls on a weekend or holiday, the FDIC collects the payment on the previous business day.

Before adopting the new quarterly-collection procedure, the FDIC issued it as a proposed rule, and asked for public comment. 59 FR 29965 (June 10, 1994). The FDIC received 51 comment letters.

Two respondents pointed out that the FDIC's payment schedule would result in an anomaly in 1995. Institutions would pay their full semiannual assessment for the first semiannual period in 1995 in January, in accordance with the assessment regulations then in effect. Institutions would also pay both quarterly payments for the second semiannual period in 1995 (one at the end of June; the other at the end of September). Then they would make one further payment in 1995: the first payment for 1996. In effect, they would pay assessments for 5 quarters in 1995.

These commenters asked the FDIC to move the collection date for the first payment for 1996 from December 30, 1995, to January, 1996. In response, the FDIC looked into the issue further.

As a result of its inquiry, the FDIC determined that relatively few institutions would be adversely affected, and decided to retain the December collection date. The FDIC recognized that a December 1995 collection date could present a one-time problem for some institutions. But the FDIC concluded that this situation was a by-product of the shift from a semiannual to a quarterly collection procedure, and would not involve an "extra" assessment payment. 59 FR 67157. The FDIC further observed that this timing issue would adversely affect only institutions that use cash-basis accounting. Finally, the FDIC pointed out that the commenters' recommended solution—moving the December collection date to January—would not cure the problem if adopted only for a single year: the problem would recur in

1996. A permanent change in the collection date would be required. *Id.*

Shortly after the new system was adopted, however, the FDIC began to receive information suggesting that more institutions would be adversely affected by the December collection date than was initially thought. Moreover, the Independent Bankers Association of America (IBAA) issued a letter to the FDIC requesting the FDIC to reconsider the issue in light of the December collection date's effect on cash-basis institutions. The FDIC's Board of Directors considers that it is appropriate to regard the IBAA's request as a "petition for the amendment of a regulation" within the meaning of the FDIC's policy statement "Development and Review of FDIC Rules and Regulations," 2 FED. DEPOSIT INS. CORP. LAWS, REGULATIONS, RELATED ACTS 5057 (1984).

Accordingly, FDIC has decided to propose, for public comment, certain changes in the quarterly collection schedule. The proposed changes would take effect upon publication in the **Federal Register**.

2. Interest on Underpaid and Overpaid Assessments

The FDIC pays interest on amounts that insured institutions overpay on their assessments, and charges interest on amounts by which insured institutions underpay their assessments. The interest rate is the same in either case: namely, the United States Treasury Department's current value of funds rate which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published in the **Federal Register**. See 12 CFR 327.7(b).

The TFRM rate is based on aged data, and quickly becomes obsolete in volatile interest-rate markets. For example, the rate set for January through June, 1995, was based on the average rate data from October, 1993, through September, 1994. The practical consequence was that the TFRM rate for the January-to-June period in 1995 was 3% per annum, when the actual market rate at that time was over 5% per annum.

The FDIC is proposing to replace the TFRM rate with a rate keyed to the 3-month Treasury bill discount rate. The new rate would take effect on January 1, 1996.

B. The Proposed Amendment

1. The Payment Schedule

a. Delaying the Collection Date for First Payments

The proposed rule would change the collection date for the first quarterly payment for the first semiannual period of each year (first payment). Under the present regulation, the collection date is December 30 of the prior year. The proposed rule would delay the collection date to the first business day following January 1. Accordingly, every institution would ordinarily make its first payment on that date.

No other aspect of the collection procedure would be altered: there would be no change in the amount of the assessment due, and there would be no change in the other collection dates.

The proposal is designed to protect cash-basis institutions against the adverse consequences of having to make an extra assessment payment during 1995. The remedy is necessarily a continuing one. Accordingly, the FDIC considers that it is appropriate to make the change in the collection date permanent.

The FDIC believes that the delay in the collection date confers a financial benefit to institutions, because they may earn additional interest on the funds they retain for the additional time. The FDIC does not consider that it is appropriate to give a benefit of this kind to some institutions but not others, however. Accordingly, the FDIC proposes to delay the collection date for all institutions, not just for cash-basis institutions.

The FDIC further believes that most institutions have already prepared to comply with the direct-debit procedures, and would suffer no procedural disadvantage from the proposed delay in the collection date. The FDIC would collect the January 1 payment in the same manner as under the existing regulation.

b. Prepaying First Payments

The FDIC recognizes, however, that some institutions may prefer the existing payment schedule, notwithstanding the fact that they would be making five payments during 1995. The proposed rule accommodates these institutions. Under the proposed rule, an institution would be able to elect to prepay its first payment for any year.

The FDIC would collect prepayments by electronically debiting prepaying institutions' accounts, just as the FDIC collects other quarterly assessment payments. The collection date for the prepayments would be December 30 of the prior year (or, if December 30 is not a business day, the preceding business day).

An institution could prepay either the amount of the first payment or twice that amount. The doubled amount represents an approximation of the entire amount due for the first semiannual period. The approximation is not intended to be exact. Growing institutions would ordinarily owe an additional amount on the next quarterly collection date; shrinking institutions would ordinarily receive a credit for the overpayment.

In order to elect to prepay the first payment for a given year, an institution would have to file a certification to that effect by the preceding November 1. The prepayment election would be effective with respect to the first payment for the upcoming year and for all years thereafter.

The institution would have to complete a pre-printed form supplied by the FDIC to make the certification. The FDIC's Division of Finance would make pre-printed forms available for this purpose. The institution's chief financial officer, or an officer designated by the institution's board of directors, would have to sign the form.

An institution would certify that it would pay its first assessment in accordance with the prepayment procedure. The institution would also specify whether it would prepay the invoiced amount or double that amount.

An institution could terminate its election of the prepayment option in the same way as it made the election: by certifying that it was terminating the election for an upcoming year. As in the case of the original election, the institution would have to use a pre-printed form supplied by the FDIC to make the certification, and would have to file the form by November 1 of the prior year. The institution would then revert to the regular payment schedule for the upcoming year and for all future years.

An institution that terminated an election could make a new election. An institution could even terminate one election and make a new election for the same semiannual period—*e.g.*, for the purpose of changing the amount of a prepayment—if the institution filed both certifications by the November 1 deadline.

The proposed rule does not contemplate that the FDIC would pay interest on prepaid assessments.

The FDIC believes that it is appropriate to allow the prepayment option for two reasons. The FDIC recognizes that institutions that keep their books on an accrual basis are not materially harmed by having to pay five quarters' worth of assessments in 1995. (By the same token, these institutions are not materially harmed by delaying the collection date from December to January.)

Some of these institutions may prefer to prepay some or all of their first

semiannual assessments for their own business reasons. The FDIC further recognizes that institutions may have arranged their affairs in the expectation that the first payment for 1996 will be due in 1995. The FDIC is providing the prepayment option in order to enable these institutions to avoid unnecessary disruption and financial disadvantage.

2. Interest on Underpaid and Overpaid Assessments

The FDIC is proposing to replace the interest rate that is applied to underpaid assessments and overpaid assessments. The current rate is the TFRM rate (which is now 5.00% per annum), which is compounded annually. The FDIC would replace this rate with a more market-sensitive rate: the coupon equivalent rate set on the 3-month Treasury bill at the last auction held by the U.S. Treasury Department before the start of the quarter. Interest would be compounded as of the first day of each subsequent quarter. Currently, this rate is 5.51% per annum (see below).

Under the current regulation, interest begins to run on the day after collection date and continues to run through the day on which the debt is paid. If the new collection schedule were adopted, the collection date for the first quarterly payment for 1996 would be January 2. Interest on any overpayments or underpayments due on that date would begin to run on January 3.[1]

The next collection date is March 29 (March 30 being a Saturday). The FDIC would ordinarily collect or repay the full amount of the overpayment or underpayment (plus interest) on that date by adjusting the payment then due. Accordingly, interest on the overpayment or underpayment would run through March 29.

The initial interest rate would be the rate for the quarter for which (but not generally in which) the payment would be made. The collection date for the first quarter would be January 2, which falls within that quarter. But the collection dates for the second, third, and fourth calendar quarters are March 30, June 30, and September 30, respectively; if the regularly scheduled collection date falls on a weekend or holiday, the collection date is the preceding business day. Each of these collection dates falls in the quarter preceding the quarter for which the payment is due. Nevertheless, the initial interest rates on any underpayments or overpayments of payments due on these dates would be the rates for the second, third, and fourth quarters, respectively.

This initial interest rate on an overpayment or underpayment would apply to the amount in question for the entire interval running from the day after the collection date through the end of the quarter, or until the overpayment or underpayment were discharged, whichever came first. The FDIC would redetermine the rate at the beginning of each quarter. If any portion of the overpayment or underpayment (including interest) remained outstanding at that time, the FDIC would apply the new quarter's rate to the outstanding amount, beginning on the first day of the new quarter.

If the proposed rate had been in effect for the third quarter in 1995, the FDIC would have computed interest on an overpayment or underpayment of an amount due for that quarter as follows:

The FDIC would have based the rate on the average rate for the 3-month Treasury bill set at the June 26, 1995, auction (settling on June 29, 1995). On a bank discount rate basis (360-day year with no compounding), the auction resulted in a 5.35% average rate. This converts to a coupon equivalent rate of 5.51% according to the United States Treasury Department.

June 30 is the collection date. On the following day (July 1) the FDIC would have begun to apply the 5.51% rate to overpayments or underpayments collected on June 30. The outstanding amount would ordinarily be repaid on the next collection day, which falls on September 29 (September 30 being a Saturday).

A $1 million overpayment collected on June 30 and refunded on September 29 would have generated 91 days of interest: (91/366) × .0551 × $1,000,000 = $13,699.73.[2]

The FDIC is proposing to adopt the new rate because the new rate more closely approximates the opportunity cost of money both for the institution and for the FDIC. If an institution were to overpay its assessment, the FDIC would return to the institution the benefit that the institution would have been able to obtain by investing the excess amount. Conversely, if an institution were to underpay its assessment, the institution would have to restore to its fund—the Bank Insurance Fund (BIF) or the Savings Association Insurance Fund (SAIF)—the economic value of the interest that the fund would otherwise have earned.

The FDIC would apply the new rate (and the quarterly compounding) prospectively, not retroactively. The FDIC would apply the new rate to payments due for the first quarter of 1996 and thereafter, and to any outstanding amounts owed to or by the FDIC on and after January 1, 1996. For amounts owed to or by the FDIC during intervals prior to January 1, 1996, the FDIC would continue to apply the then-current TFRM rate (and the annual compounding) for those intervals.

C. Effect on the Insurance Funds

1. The Payment Schedule

The proposed shift in the collection date is not expected to have any substantial adverse impact on the insurance funds.

In the case of the BIF, the maximum amount of the interest foregone as a result of delaying the collection is not expected to exceed $600,000. The actual amount of the foregone interest is likely to be considerably less, as many BIF members can be expected to take advantage of the prepayment election. Accordingly, the FDIC considers that the BIF would not suffer any material harm by the loss of this revenue.

In the case of the SAIF, the foregone interest is not expected to exceed $108,000. Here again, the actual amount is likely to be considerably less. While this sum is not insubstantial, the FDIC believes that its loss would not materially harm the SAIF under current conditions, and would not impede the SAIF's progress toward recapitalization.

2. Interest on Underpaid and Overpaid Assessments

The change from the TFRM rate to the new rate is not expected to have any material impact on either the BIF or the SAIF. The net yearly amount routinely subject to the interest rate—that is, the net of the amounts that institutions routinely overpay, minus the amounts they routinely underpay—is approximately $2,000,000 per year in the aggregate for both funds. This amount represents a net overpayment. It is outstanding for 60 days on average; accordingly, at the current TFRM rate, the FDIC ordinarily pays out a net annual amount of approximately $16,000 in interest. Under the proposed new rate, the FDIC would pay out approximately $18,000 yearly—for a net change to the funds of just $2,000.

[1] Even in the case of prepaying institutions, the amounts to be collected from the institutions would not be due until the regular collection date. Accordingly, interest on overpayments and underpayments would begin to run from the regular collection date, not the prepayment date.

Furthermore, as noted above, the proposed rule does not contemplate that the FDIC would pay interest on prepaid assessments. In particular, if an institution elected to prepay double the amount of a first payment, the doubled amount would not be regarded as an "overpayment," and the FDIC would not pay interest on the extra amount so paid.

[2] The third calendar quarter in 1995 falls within the leapyear cycle that begins on March 1, 1995, and ends on February 29, 1996.

D. Assessment of the Reporting or Recordkeeping Requirements

1. The Payment Schedule

The FDIC considers that the proposed rule's reporting or recordkeeping requirements would be minimal. The proposed rule does not compel any institution to create or maintain new records. It merely delays the collection date for the first payment of each year, without changing the procedures that institutions must follow in order to make that payment.

Some institutions may take a different view, however. They may consider that they have already taken all the steps necessary to make a December payment, and yet must now do something more—namely, file the certification—in order to make that payment.

The FDIC believes, however, that the burden of the one-time filing would be so small as to be immaterial. The proposed rule would not require the institution to retain the form, or to file a new certification each year, or to keep any other new records.

2. Interest on Underpaid and Overpaid Assessments

The changes in the interest rate would have no effect on the reporting or recordkeeping requirements of insured institutions.

E. Effect on Competition

The proposed regulation is not expected to have any effect on competition among insured depository institutions.

F. Relationship of the Proposed Regulation to Other Government Regulations

The proposed regulation is not expected to have any impact on other government regulations.

G. Cost-Benefit Analysis

1. The Payment Schedule

The FDIC believes that the proposed regulation would not impose any new costs on non-electing institutions. On the contrary, it would benefit them by allowing them to retain the use of their funds for an extra interval. The proposal would provide a special benefit to cash-basis institutions by eliminating an expense they would otherwise have sustained in 1995.

In the case of electing institutions, the proposed regulation would also provide significant benefits. The FDIC believes that institutions will elect to prepay their first payments only if doing so is advantageous to them. The proposed rule would allow all institutions to earn extra interest: Accordingly, at a minimum, an institution would have to expect to derive an even greater benefit from electing the prepayment option. On the other hand, the only costs incurred by electing institutions are the costs of signing and submitting the certification. The FDIC considers that those costs are not likely to be significant.

2. Interest on Underpaid and Overpaid Assessments

The change from the TFRM rate to the proposed new rate would likewise impose minimal costs on institutions. The net amount at issue would not be material in the aggregate. For any particular institution, the net effect of the change would be impossible to predict, because the relationship between the TFRM rate and the proposed rate varies from one interval to another.

Accordingly, the FDIC believes that the benefits of the proposed rule would likely outweigh any costs it might impose.

H. Other Approaches Considered

1. Retaining the Status Quo

a. The Payment Schedule

In developing the proposal, the FDIC has considered whether it would be advisable to retain the current schedule without change.

As noted above, however, the FDIC recognizes that it is responsible for establishing the December 1995 collection date. The FDIC further recognizes that requiring institutions to make a payment on that date could adversely affect institutions that keep their financial records and make their financial reports on a cash basis. The FDIC believes that, if it can mitigate harm of this kind by modifying its regulations, it should make every effort to do so.

b. Interest on Underpaid and Overpaid Assessments

The FDIC also considered whether it would be desirable to retain the TFRM rate without change. The FDIC believed, however, that the rigidities and delays inherent in the TFRM rate militated against retaining this interest-rate standard.

2. Alternative Proposal

a. The Payment Schedule

The FDIC has also considered an alternative proposal: retaining the current payment schedule, while giving cash-basis institutions the option of electing to defer their first payment until January.

The alternative proposal would have focused narrowly on the one-time disadvantage that cash-basis institutions would suffer in 1995, and would have aimed at protecting those institutions against that disadvantage. Accordingly, the FDIC would not have offered the deferred-payment option to non-cash-basis institutions, and would not have offered the option to cash-basis institutions after 1995.

Institutions that exercised the option by November 1, 1995, would have made their first payment for 1996 on the first business day following January 1, 1996, and would have continued thereafter to make the first payment on the first business day of the year. Institutions that failed to exercise the option by November 1, 1995, would have had to make all their payments according to the regular payment schedule.

After an institution had made the election, the institution could have terminated the election—thereby reverting to the regular payment schedule—by so certifying to the FDIC in writing. For the termination to be effective for a given year, the institution would have had to provide the certification to that effect to the FDIC no later than November 1 of the prior year. The termination would have been permanent. The FDIC would not have charged interest on the delayed payments.

The FDIC has chosen to issue the proposed rule, rather than the alternative proposal, for two reasons. First, the FDIC expects that the approach set forth in the proposed rule would be more evenhanded: all institutions would have the benefit of the later collection date, and all would have an equal opportunity to earn additional interest on their funds. Second, the proposed rule would provide greater flexibility to all institutions to plan the timing of their expenses.

b. Interest on Underpaid and Overpaid Assessments

The FDIC also considered proposing to replace the single TFRM rate with a pair of rates: namely, the composite yield at market of the BIF and SAIF portfolios, respectively. These rates would have been determined retrospectively, because they are generated by looking at the interest that the portfolios actually earned. For the second quarter of 1995, the rates would have been 5.70% for the BIF and 5.61% for the SAIF.

The FDIC would have proposed the "composite yield at market" rate on the theory that such a rate would represent the FDIC's actual benefits (or costs) from

the overcollection (or undercollection) of assessments. If an institution were to overpay its assessment, the FDIC would return to the institution every bit of the benefit that the FDIC had received from the overpayment. Conversely, if an institution were to underpay its assessment, it would be obliged to restore to its fund the economic value of the interest the fund would otherwise have earned, and the fund would be made whole.

The FDIC has chosen to propose the new rate, rather than the "composite yield at market" rate, for two reasons. First, the new rate is based on a published rate, not on proprietary information, and accordingly is easier for people in the private sector to determine. Second, the new rate is intended to approximate the market value of the funds—that is, the interest that an institution earned or could have earned by investing the funds—rather than the vagaries of the investment portfolios of the BIF and the SAIF.

I. Effective Date

1. The Payment Schedule

The FDIC proposes to make the revisions to the payment schedule effective upon adoption by the Board of Directors. The FDIC considers that the new payment schedule would "relieve a restriction" within the meaning of 5 U.S.C. 553(d)(1), because it would delay the date on which the FDIC would regularly collect the first payments, and would thereby allow institutions to retain their funds for an extra interval. More to the point, the FDIC believes that there would be "good cause" to make this aspect of the final rule effective upon adoption because institutions should have as much time as possible to adjust to the new collection schedule and to decide whether to take advantage of the election option provided by the rule. Accordingly, the FDIC proposes to make the revisions to the payment schedule effective at once, rather than delay the effective date for 30 days, *see* 5 U.S.C. 553(d), or wait until the first day of the following calendar quarter, *see* 12 U.S.C. 4802(b).

2. Interest on Underpaid and Overpaid Assessments

The FDIC proposes to make the revision of the interest rate effective 30 days after publication of the final rule in the **Federal Register**. Ordinarily, the proposed effective date of the final rule would be October 1, 1995, the first day of the calendar quarter that begins on or after the expected date of publication of the final rule. *Id.* But the Administrative Procedure Act requires a 30-day waiting period between the publication of a final rule and its effective date. 5 U.S.C. 553(d). Accordingly, the proposed effective date of the final rule must be deferred to the end of the waiting period. *See* 12 U.S.C. 4802(b)(1)(C).

J. Paperwork Reduction Act

The proposed rule provides that, if institutions wish to elect the option of prepaying their first payments, they must file a written certification to that effect with the FDIC in advance, and do so on a form provided by the FDIC. Institutions would certify that they intended to take advantage of the prepayment procedure, and also report whether they wished to prepay the amount due for the first payment or double that amount.

By requiring institutions to provide information regarding the amount to be prepaid, the FDIC is engaging in a new "collection of information." The collection has been submitted to the Office of Management and Budget for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064–0057), Washington, D.C. 20503, with copies of such comments sent to Steven F. Hanft, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Room F–400, 550 17th St., N.W., Washington, D.C. 20429.

Institutions that wish to terminate the election must so certify to the FDIC in writing in advance, using a form provided by the FDIC. Certifications of this kind do not constitute "information" within the meaning of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), however, as they merely identify the institutions.

The FDIC estimates that approximately 500 institutions are likely to elect the prepayment option in 1995, the initial year that it is offered. Thereafter, the same number of institutions are likely to elect the prepayment option and/or terminate the election.

The estimated annual reporting burden for the collection of information requirement in this proposed rule is summarized as follows:

Approximate Number of Respondents: 500.
Number of Responses per Respondent: 1.
Total Approximate Annual Responses: 500.
Average Time per Response: 15 minutes.
Total Average Annual Burden Hours: 125.

K. Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The proposal would mitigate a cost incurred by certain smaller entities—namely, cash-basis depository institutions—that arises from the one-time shift from the semiannual assessment process to the new quarterly assessment schedule. The proposal further confers a benefit on all institutions (including smaller institutions) by allowing them to earn interest on their funds for an additional interval.

To the extent that an institution might incur a cost in connection with preparing and submitting the paperwork necessary to make the election, the FDIC believes that the cost would be minimal, and would be far outweighed by the resulting benefit. In any case, each institution's decision to make the election would be purely voluntary: the proposed rule would not compel an institution to accept any cost of this kind.

L. Request for Comment

The FDIC requests comments on all aspects of the proposal. In particular, the FDIC asks for comment on the following matters: the extent to which institutions expect to avail themselves of the prepayment option; the amounts they regularly expect to prepay; the magnitude of the burden that would be imposed by the FDIC's proposed procedures for electing the prepayment option; whether it would be more appropriate to require institutions to re-elect the pre-payment option each year; the likelihood that prepaying institutions will seek to revert to the regular collection schedule; the advisability of replacing the TFRM rate with the new rate, and the appropriateness of the new rate; and the relative desirability of the status quo and of the alternative proposal.

The FDIC's Board of Directors has determined that it is appropriate to receive comments for a period of 30 days rather than 60 days. The Board considers that the shorter comment period is necessary in order to implement the proposal within the available time-frame.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Freedom of information, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, the Board of Directors of the FDIC proposes to amend 12 CFR Part 327 as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Section 327.3 is amended by revising paragraphs (c)(2), (e), and (f) and by adding paragraph (c)(3) to read as follows:

§ 327.3 Payment of semiannual assessments.

* * * * *

(c) * * *

(1) * * *

(2) *Payment date and manner.* The Corporation will cause the amount stated in the applicable invoice to be directly debited on the following dates from the deposit account designated by the insured depository institution for that purpose:

(i) In the case of the first quarterly assessment payment for a semiannual period that begins on January 1, on the first business day of the semiannual period, except as provided in paragraph (c)(3) of this section; and

(ii) In the case of the first quarterly assessment payment for a se (3)semiannual period that begins on July 1, on the preceding June 30.

(3) *Prepayments.* (i) An insured depository institution may elect to prepay the first quarterly payment for a semiannual period that begins on January 1. An institution may elect to prepay either the amount of the first quarterly payment due for a semiannual period that begins on January 1, or twice that amount.

(ii) In order to elect the prepayment option with respect to a current semiannual period, an institution must so certify in writing to the Corporation no later than November 1 of the prior year. The prepayment certification shall be made on a pre-printed form provided by the Corporation. The form shall be signed by the institution's chief financial officer or such other officer as the institution's board of directors may designate for that purpose. The form shall be sent to the attention of the Chief of the Assessment Operations Section of the Corporation's Division of Finance. An institution may obtain the form from the Corporation's Division of Finance. The prepayment certification shall indicate whether the institution will prepay the first quarterly payment for the current semiannual period or twice that amount. The election shall be effective with respect to the current semiannual period and thereafter, until terminated.

(iii) An insured depository institution may terminate its election of the prepayment option, and revert to the regular payment schedule. In order to terminate the election with respect to a current semiannual period, an institution must so certify in writing to the Corporation no later than November 1 of the prior year. The termination certification shall be made on a pre-printed form provided by the Corporation. The form shall be signed by the institution's chief financial officer or such other officer as the institution's board of directors may designate for that purpose. The form shall be sent to the attention of the Chief of the Assessment Operations Section of the Corporation's Division of Finance. An institution may obtain the form from the Corporation's Division of Finance. The termination shall be permanent, except that an institution that has terminated an election may make a new election.

(iv) If an insured depository institution elects the prepayment option, the Corporation will cause the amount indicated in the prepayment certification to be directly debited on December 30 of the year prior to the current semiannual period from the deposit account designated by the insured depository institution for that purpose.

* * * * *

(e) *Necessary action, sufficient funding by institution.* Each insured depository institution shall take all actions necessary to allow the Corporation to debit assessments from the insured depository institution's designated deposit account and, prior to each payment date indicated in paragraphs (c)(2), (c)(3)(iv), and (d)(2) of this section, shall ensure that funds in an amount at least equal to the invoiced amount or, in the case of a prepayment pursuant to paragraph (c)(3)(iv) of this section, the amount indicated in the prepayment certification are available in the designated account for direct debit by the Corporation. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment.

(f) *Business days.* If a payment date specified in paragraph (c)(2)(ii), (c)(3)(iv), or (d)(2) of this section falls on a date that is not a business day, the applicable date shall be the previous business day.

* * * * *

3. Section 327.7 is amended by revising paragraphs (a)(2), (a)(3), and (b) and adding paragraph (c) to read as follows:

§ 327.7 Payment of interest on assessment underpayments and overpayments.

(a) * * *

(2) *Payment by Corporation.* (i) The Corporation will pay interest on any overpayment by the institution of its assessment.

(ii) An amount that an institution prepays on its assessment, whether in accordance with § 327.3(c) or otherwise, shall not be regarded as an overpayment of an assessment.

(3) *Accrual of interest.* Interest shall accrue under this section from the day following the regular collection date, as provided for in § 327.3 (c)(2) and (d)(2), of the quarterly assessment amount that was overpaid or underpaid, through the payment date applicable to the quarterly assessment invoice on which adjustment is made by the Corporation for the underpayment or overpayment, provided, however, that interest shall not begin to accrue on any overpayment until the day following the date such overpayment was received by the Corporation.

(b) *Rates after December 31, 1995.* On and after January 1, 1996—

(1) The interest rate for any calendar quarter will be the coupon equivalent yield of the average discount rate set on the 3-month Treasury bill at the last auction held by the United States Treasury Department prior to the commencement of the calendar quarter;

(2) The initial interest rate to be applied to an overpayment or underpayment of an amount due on a regularly scheduled collection date (whether or not prepaid) will be the interest rate for the calendar quarter following the last auction held by the United States Treasury Department immediately prior to that collection date; and

(3) The interest rate to be applied during any subsequent calendar quarter to the outstanding balance (including interest thereon) owed to or by the insured depository institution for assessments will be the interest rate for such calendar quarter and will begin on the first day of such calendar quarter.

(c) *Rates prior to January 1, 1996.* Through December 31, 1995—

(1) The interest rate will be the United States Treasury Department's current value of funds rate which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published in the **Federal Register**;

(2) The interest will be calculated based on the rate issued under the TFRM for each applicable period and compounded annually;

(3) For the initial year, the rate will be applied to the gross amount of the underpayment or overpayment; and

(4) For each additional year or portion thereof, the rate will be applied to the net amount of the underpayment or overpayment after that amount has been reduced by the assessment credit, if any, for the year.

By order of the Board of Directors.

Dated at Washington, D.C. this 3d day of August, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–19696 Filed 8–9–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–75–AD]

Airworthiness Directives; Beech Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech Model 400A airplanes. This proposal would require an inspection to verify if the securing rivet is installed on the rod end of the control push rods of the spoiler flight control system, an inspection to verify if the jam nut is secure on the opposite end of the rod end, and repair of any discrepancy. This proposal is prompted by a report of loss of roll control on the co-pilot's control wheel shortly after takeoff due to a rivet missing from the control push rod. The actions specified by the proposed AD are intended to ensure that the push rod rivets are installed. Missing control push rod rivets could result in the disengagement of the push rod end from the push rod tube; this could lead to loss of roll control and subsequent reduced controllability of the airplane after takeoff.

DATES: Comments must be received by September 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–75–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–75–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–75–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of loss of roll control on the co-pilot's control wheel on a Beech Model 400A airplane shortly after takeoff. Investigation revealed that the rod end of the control push rod of the co-pilot's spoiler flight control system had disengaged from the threaded end of the push rod tube at the center bellcrank. Further investigation revealed that a rivet was missing from both the pilot's and co-pilot's control push rod; this rivet secures the rod end that is threaded onto the control push rod. Additionally, the rod end on the opposite end of the control push rod was loose. These conditions, if not corrected, could result in disengagement of the push rod end from the push rod tube. This could lead to reduced controllability of the airplane after takeoff.

The FAA has reviewed and approved Beechcraft Safety Communique 400A–113, dated March 1995, which describes procedures for a one-time detailed visual inspection to verify if the securing rivet is installed on the control push rods of the spoiler flight control system, and an inspection to verify if the jam nut is secure on the opposite control rod end.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time detailed visual inspection to verify if the securing rivet is installed on the push rods of the spoiler flight control system, and an inspection to verify if the jam nut is secure on the opposite rod end. The actions would be required to be accomplished in accordance with the safety communique described previously. If any discrepancy is found, the repair would be required to be accomplished in accordance with a method approved by the FAA.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 96 Model 400A airplanes of the affected design in the worldwide fleet. The FAA estimates that 73 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $35,040, or $480 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket 95–NM–75–AD.

Applicability: Model 400A airplanes, serial numbers RK–1 through RK–96 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane after takeoff, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a detailed visual inspection to verify if the securing rivet is installed on the control push rods of the spoiler flight control system, and an inspection to verify if the jam nut is secure on the opposite rod end, in accordance with Beechcraft Safety Communique 400A–113, dated March 1995. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 4, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19774 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–83–AD]

Airworthiness Directives; Boeing Model 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747SP series airplanes. This proposal would require modification of the escape slide/raft on Door 2 of the airplane. This proposal is prompted by reports indicating that the escape slide/raft on Door 2 deployed onto the wing of the airplane and did not inflate automatically. The actions specified by the proposed AD are intended to ensure that the escape slide/raft on Door 2 inflates automatically so that passengers are able to exit the airplane through Door 2 in the event of an emergency evacuation.

DATES: Comments must be received by October 4, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–83–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Monica Nemecek, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington

98055–4056; telephone (206) 227–2773; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–83–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–83–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during an annual check, the escape slide/raft on Door 2 of a Boeing Model 747SP series airplane deployed onto the wing of the airplane, but did not inflate automatically. Investigation revealed that the firing lanyard was not being pulled from the regulator actuator assembly because the bottle and bottle pouch were trapped on the wing by the remainder of the slide/raft pack bundle. This condition, if not corrected, could result in the inability of passengers to exit the airplane through Door 2 in the event of an emergency evacuation.

The FAA has reviewed and approved BFGoodrich Service Bulletin 7A1255–25–275, dated February 25, 1994, which describes procedures for modification of the escape slide/raft on Door 2. The modification entails adding a four-inch (10.2 cm) extension to the bottle pouch hanger, installing a lanyard lever (force intensifier) on the firing lanyard, and enhancing the packing instructions for the unit. Accomplishment of the modification will provide more reliable automatic inflation of the Door 2 slide/raft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the escape slide/raft on Door 2 of the airplane. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that, although this action addresses a problem associated with a component and not specifically with the airplane itself, the proposed AD would be applicable to the airplane model (Boeing Model 747SP's, in this case) rather than to the discrepant component (BFGoodrich slide/rafts, in this case). The FAA's general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in only one particular make and model of aircraft, the AD is issued so that it is applicable to the aircraft, rather than the item. Making the AD applicable to the airplane model on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. It is for this reason that this proposed AD would be applicable to Model 747SP's rather than to the BFGoodrich evacuation system. Additionally, calling out the airplane model as the subject of the AD prevents "unknowing non-compliance" on the part of the operator.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 45 Model 747SP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $259 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,548, or $379 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–83–AD.

Applicability: Model 747SP series airplanes equipped with BFGoodrich evacuation systems identified in BFGoodrich Service Bulletin 7A1255–25–275, dated February 25, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of passengers to exit the airplane through Door 2 in the event of an emergency evacuation, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the escape slide/raft on Door 2 in accordance with BFGoodrich Service Bulletin 7A1255–25–275, dated February 25, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 4, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19775 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Requirements for Labeling of Retail Containers of Charcoal; Proposed Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.[1]

SUMMARY: Under the Federal Hazardous Substances Act, the Commission is proposing a rule to change the required labeling for retail containers of charcoal intended for cooking or heating. The labeling addresses the carbon monoxide hazard associated with burning charcoal in confined spaces. The proposed amendments, which include a pictogram, are intended to make the label more noticeable and more easily read and understood and to increase the label's ability to motivate consumers to avoid burning charcoal in homes, tents, or vehicles.

DATES: Comments on the proposal should be submitted no later than October 24, 1995.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408, telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: Sharon White, Project Manager, Division of Human Factors, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0468 ext. 1286.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutes and Regulations. Since its creation in 1973, the Consumer Product Safety Commission ("Commission" or "CPSC") has administered the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1278. Prior to that time, the FHSA was administered by the Food and Drug Administration ("FDA").

The FHSA defines "hazardous substance" as including any "substance or mixture of substances which (i) is toxic * * * if [it] may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use. * * *" Section 2(f)(1)(A) of the FHSA, 15 U.S.C. 1261(f)(1)(A). Hazardous substances are misbranded if they do not bear the labeling required by section 2(p)(1) of the FHSA, 15 U.S.C. 1261(p)(1).

Section 3(b) of the FHSA, 15 U.S.C. 1262(b), authorizes the Commission to issue regulations establishing variations from or additions to the labeling required under section 2(p)(1) if the Commission finds that the requirements of section 2(p)(1) are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance. Rulemaking under section 3(b) is conducted under the informal notice and comment procedure provided in 5 U.S.C. 553.

In addition, section 3(a) of the FHSA, 15 U.S.C. 1262(a), authorizes the Commission to issue regulations declaring products to be hazardous substances if the Commission finds they meet the definition of hazardous substance in section 2(f)(1)(A). The purpose of this authority is to avoid or resolve uncertainty as to the application of the FHSA. 15 U.S.C. 1262(a).

In 1970, the FDA proposed a rule under sections 3(a) and 3(b) of the FHSA to require a statement on packages of charcoal intended for household use that would warn of the potentially deadly hazard of carbon monoxide ("CO") poisoning from breathing the combustion products of charcoal when used in a confined area. 35 FR 13887 (September 2, 1970). In 1971, FDA issued a final rule that is currently codified in 16 CFR 1500.14(b)(6). That section requires the following borderlined label on containers of charcoal for retail sale and intended for cooking or heating:

BILLING CODE 6355–01–P

[1] The Commission voted 2–1 to propose this rule. Chairman Ann Brown and Commissioner Thomas H. Moore voted for the proposal; Commissioner Mary Sheila Gall voted against the proposal. Separate statements by each commissioner are available from the Office of the Secretary.

WARNING: Do Not Use for Indoor Heating or Cooking Unless Ventilation is Provided for Exhausting Fumes to Outside. Toxic Fumes May Accumulate and Cause Death.

BILLING CODE 6355-01-C

The current label is required to appear on both the front and back panels of bags of charcoal, in the upper 25% of the panels, at least 2 inches below the seam, at least 1 inch above any other reading material or design element of the bag, and in specified minimum type sizes.

2. Nature of the hazard. [6, Tab B][2] CO is produced by the incomplete combustion of fuels such as charcoal. The level of CO produced from burning charcoal may accumulate to toxic levels in closed environments. CO is a colorless, odorless gas which reduces the blood's ability to carry oxygen by reacting with hemoglobin to form carboxyhemoglobin (COHb). The symptoms of CO poisoning range from nausea to death. Each individual's reaction to CO exposure varies, depending on several factors including age, health status, or smoking habits. Due to the nonspecific nature of the symptoms that can be associated with CO poisoning (e.g., fatigue, lethargy, dizziness, or diarrhea), misdiagnoses of both acute and chronic CO poisonings can be expected. Additionally, CO is odorless, which may contribute to individuals frequently being unaware of their exposure to CO.

3. Petition from Barbara Mauk. On October 12, 1990, CPSC received a letter from Barbara Mauk petitioning the Commission to amend the current label on bags of charcoal. [1] In this letter, the petitioner cited an incident that occurred when she and her son were camping 1 year previously. After grilling food outside her camper and before retiring for the night, she brought the grill inside the camper. She assumed that the charcoal was extinguished, even though the grill was still warm. Two days after the incident, she and her son were found. Her son died from CO poisoning, and she was hospitalized and treated for CO poisoning. Ms. Mauk stated that she knew that CO has no odor and can be lethal, but she did not know that charcoal can produce CO. She stated that had she known this, she would have taken the precaution of making sure the coals were out or left the grill outside. The petition (No. HP 91–1) requested that the current label on bags of charcoal be revised to state that: (1) Charcoal produces CO (and if applicable, other lethal or toxic fumes), (2) charcoal produces fumes until the charcoal is extinguished, and (3) CO has no odor.

On December 22, 1992, the Commission voted to grant the petition as to the statements that charcoal produces CO and that CO has no odor, and deny the petition as to adding statements that charcoal produces these fumes until the charcoal is completely extinguished. [2] The Commission also voted to improve the label's precautionary language, specifically with reference to ventilation.

4. Subsequent actions by the Commission. In 1993, the Commission's staff became aware of data that indicated that a pictogram is needed to communicate the safety message to those who do not read English. [6, Tab E(1)] Further, an article, discussed below in section B of this notice, reported that 73% of the victims in one area over an 11-year period were members of ethnic minorities, many of whom were Hispanic or Asian immigrants who could not speak English. [3]

On April 22, 1994, the staff met with industry to present staff's recommendations for revising the warning label on packages of charcoal. Industry indicated a willingness to revise the warning label, but raised a number of concerns. [6, Tab F] These concerns were considered in developing the label.

On June 1, 1994, the Commission directed the staff to prepare, for the Commission's consideration, a draft notice of proposed rulemaking ("NPR") to amend the labeling currently required for packages of charcoal to warn of the dangers of burning charcoal indoors. The proposed label would: (1) Clarify the dangers of burning charcoal indoors; (2) remove the possibly misleading statement that implies that charcoal can be safely burned indoors with "ventilation;" (3) add color to the signal word panel; (4) include a pictogram, if feasible; (5) include a Spanish safety message if a pictogram is not feasible; and (6) include additional features recommended by the staff to make the safety messages more conspicuous and understandable.

On April 13, 1995, staff met with industry again to present the results of the pictogram tests and staff's current recommendations for revising the warning label on packages of charcoal. [6, Tab F] The changes to the recommended warning label reflected, for the most part, concerns industry representatives raised at the April 1994 meeting. After considering the additional comments received at the April 1995 meeting, the staff recommended a label to the Commission. The staff also described possible variations of that label for the Commission's consideration. The label the Commission decided to propose, and the reasons the various features of the label were chosen, are described in section D of this notice.

B. CO Poisoning Incidents

The Commission's Division of Hazard Analysis examined available data concerning CO poisoning incidents. [6, Tab C] That Division estimates that there was an average of about 26 non-fire CO-related deaths per year associated with charcoal grills and hibachis from 1986 to 1991.[3] (The annual estimate of non-fire CO deaths fluctuates, with no discernible pattern.) Data from the CPSC's National Electronic Injury Surveillance System ("NEISS") indicate that there was an average of about 400 emergency-room-treated injuries involving charcoal grills and hibachis annually from 1980 to 1993.

Hazard Analysis staff reviewed 103 incident reports involving CO deaths and injuries associated with charcoal for the years 1986 to 1994. There were 164 victims reported in the incidents: 111 died and 53 recovered. Most of the victims were males who were exposed to CO while sleeping. Eighty-seven of the 164 victims were members of ethnic minorities, and slightly more than half of these were reported to be Hispanic. The data provide some indication that many of the Hispanic victims, particularly those who were foreign-born, were of a low socioeconomic status. The English language literacy for most of these victims was not reported. However, three reports indicated that a Spanish translator was present during the investigation. Information about the victims' awareness of the potential for CO poisoning from burning charcoal indoors was not available for most of the incidents.

More than half (65) of the incidents involved a charcoal barbecue grill or hibachi. Information on the safety labeling on the packages of the charcoal involved in most of these incidents was not available. However, the Commission's Office of Compliance has no record of opening a case based on a violation of the charcoal special labeling

[2] Numbers in brackets indicate the number of a document as listed in the List of Relevant Documents in Appendix 1 to this notice.

[3] As noted above, CO is produced as a product of incomplete combustion. The term "non-fire" means that the CO was not produced as the result of a conflagration or other unintended open flame.

requirement, and there is no reason to believe that the packages of charcoal involved in these incidents did not bear labels warning of the CO hazard.

Half of the incidents occurred when the victims burned charcoal in their homes or in areas being used for living purposes. There were 52 cases where it was reported that victims used charcoal to keep warm. In nine incidents, there was an indication of an attempt to provide some ventilation. Most of the incidents occurred during the fall and winter.

An article prepared by Hampson, N.B. et al. (1994), reports that 79 victims were treated for CO poisoning resulting from burning charcoal indoors in the Seattle, Washington, area between October 1982 and October 1993. [3] Fifty-eight (73%) of the victims were members of ethnic minorities, many of whom were Hispanic or Asian immigrants who could not speak English. There was no information available, however, documenting whether they could read English.

C. The Pictogram

The CPSC staff, a charcoal manufacturer, and Dr. Neil B. Hampson of Washington State each developed a pictogram. [6, Tab E(2)] Each pictogram was tested according to ANSI Z535.3, American National Standard for Criteria for Safety Symbols.

The pictogram developed by CPSC staff obtained the highest percentage of correct responses in the first round of testing. This pictogram achieved 56% correct responses, with 4% critical confusion. (Critical confusion is where the message conveyed contradicts the intended message.)

Based on findings from the test results, the three pictograms were revised and presented for a second round of testing. The revised pictogram developed by a charcoal manufacturer obtained the highest percentage of correct responses in this round of testing (74% correct responses, with no critical confusion).

The ANSI Z535.3 test method recommends that, to be selected, a pictogram should obtain 85% correct responses with a maximum of 5% critical confusion. In this case, however, the staff believes that, for the following reasons, it is appropriate to use the pictogram that scored highest [6, Tab E(1)]:

1. Stringent criteria were used to select the subjects, which helps to assure a rigorous test. Fifty subjects were tested (50% Hispanics who did not read English and were at or below the poverty level, and 50% people who do read English and were below the median income). No middle or upper income people were included in the test.

2. Had the pictogram been tested in context (i.e., on bags of charcoal), the 85% level might have been attained.

3. The 74% correct responses for the pictogram chosen does not differ greatly from the 85% ANSI criterion. Furthermore, the tested pictogram had no critical confusion in the responses, while ANSI allows 5%. This is significant because a person who believed that the pictogram meant that it was appropriate to burn charcoal indoors could be more likely to do so.

Staff previously recommended that if the pictograms did not adequately communicate the safety message, the safety message should be presented in both English and Spanish. As discussed above, the Commission concludes that the pictogram does adequately convey the message. However, according to the contractor who administered the test, a clinical psychologist who regularly works with low-income Hispanics, many in the target population are unable to read either English or Spanish. [6, Tab E(2)] Therefore, a safety message in Spanish instead of a pictogram would not necessarily reach those Hispanics who do not read English.

Additionally, while the largest single group of minority victims identified in the CPSC data is Hispanic, others, most notably Asian immigrants who do not read English or Spanish, would not be informed by a label in Spanish.

Accordingly, a pictogram appears to be the most effective measure to address those who do not read English. The Commission does not believe that a label that combines both English and Spanish warning statements with a pictogram is warranted. For the reasons discussed above, the Commission cannot conclude in this case that such a label would be significantly more effective than one combining a pictogram and a warning statement in English. Furthermore, including both languages and a pictogram on the label would increase the size of the label, with potential adverse economic effects on the industry. See the discussion of label size below in section E of this notice.

A charcoal grill manufacturer objected to some features in the depiction of the grill in the pictograms that were tested. [7] The manufacturer stated that the depiction of a grill with three legs and a semi-ellipsoid shaped kettle, as in the tested pictogram, violated registered trademarks of its brand of grill. The Commission's Human Factors staff concluded that a pictogram that depicted a grill with four legs and a shallower shape of the kettle would communicate the idea of a charcoal grill at least as well as the tested version. Accordingly, the proposed pictogram differs from the most successful one tested in those regards. The fact that the Commission is proposing these changes from the tested pictogram should not be interpreted as an opinion on the validity of the relevant trademarks or as a waiver of any right in the nature of "fair use" that the Government may have to use a trademark without authorization.

During the development of the proposed label, the Commission's staff discussed with industry whether the pictogram should appear above or to the side of the warning statement. Industry noted that allowing the pictogram to be beside the warning statement would reduce the vertical height of the revised label. As discussed below, increasing the minimum allowed height of the label can have an adverse economic effect on producers of bags for charcoal. The Commission's staff also concluded that placing the pictogram to the left of the warning statement will make the label more appealing visually and thus more effective. Accordingly, the Commission is proposing to require the pictogram to be adjacent to, and to the left of, the warning statement.

D. The Warning Statement

The Commission proposes that the revised label should explicitly state: "CARBON MONOXIDE HAZARD—Burning charcoal indoors can kill you. It gives off carbon monoxide, which has no odor. NEVER burn charcoal inside homes, vehicles, or tents." The rationale for the revisions to the label is discussed briefly below [6, Tab E(1)].

Statement of Hazard. To motivate consumers to comply with the label, it is important that the label explicitly state the hazard, i.e., that burning charcoal indoors can kill due to the production of CO. Thus, the label states "CARBON MONOXIDE HAZARD."

An early draft of the label used the term "CARBON MONOXIDE POISONING." This was changed because industry claimed that the term could be interpreted by some consumers as inaccurately warning that charcoal cooking could poison food.

Statement of Consequences. The phrase "cause death" in the current label should be replaced by the more personal phrase "can kill you." Research indicates that personalizing the warning will make it difficult for users to conclude that the warning is not directed at them and, therefore, that it is not important to comply with the warning.

Statement of How to Avoid Hazard. The label should clearly state the action to be taken or avoided. Thus, the label should be revised to state "NEVER burn charcoal inside homes, vehicles, or tents." The current statement, "Do Not Use for Indoor Heating or Cooking Unless Ventilation Is Provided for Exhausting Fumes to Outside," may be dangerously misleading. It may incorrectly convey to the user that it is safe to burn charcoal indoors if some sort of ventilation is provided. Even if charcoal is burned in areas where there is some ventilation, CO may not be reduced to safe levels.

An industry member stated that advising users that they should never burn charcoal indoors was unnecessary and too stringent. He cited the example of restaurants, and some home owners, that cook indoors with charcoal under a hood with ducting and a high-capacity exhaust fan to expel the CO to the outside. He also expressed the fear that changing the wording of the label would make users think there had been some change in the product that made it more dangerous.

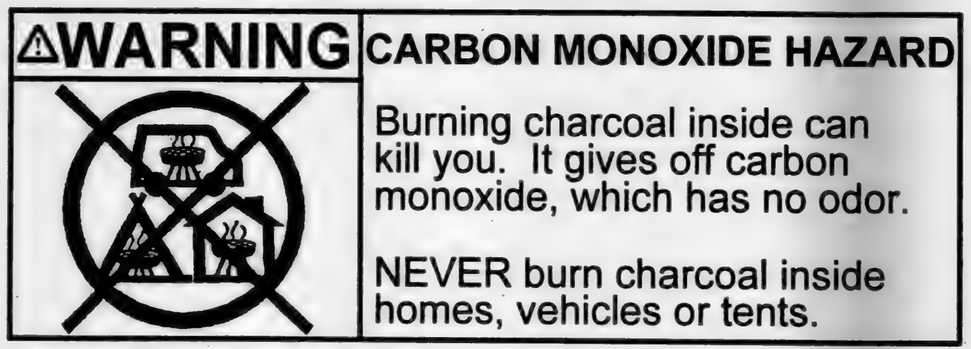
The Commission does not believe that persons who have gone to the trouble and expense of installing a powered exhaust hood specifically so they can cook indoors with charcoal are going to think the label applies to them (except to the extent they should be sure the exhaust system is operating properly). The Commission concludes that including language on the label to indicate that charcoal can be burned indoors if such an exhaust system is used would dilute the primary safety message and confuse consumers who did not have such a system.

Marketers of charcoal may provide additional explanatory material about the statement to never use charcoal in homes. And, the label statement could even be asterisked or footnoted to draw attention to such material. However, such explanatory material must not negate the content of the warning for persons without such specialized equipment. To do so would violate the prohibition against deceptive disclaimers at 16 CFR 1500.122. In addition, packages of charcoal that are supplied only to restaurants and other commercial establishments are not required to comply with the FHSA, and are not subject to the requirements for either the current label or the proposed revised label.

This industry member also stated that it was safe to burn charcoal in a fireplace that has a chimney with an open flue. However, the Commission has information indicating that burning charcoal in a fireplace may not create a chimney draft sufficient to exhaust CO to the outside. [11] Accordingly, based on the presently available information, the Commission concludes that including a statement that charcoal can be burned in fireplaces would constitute a prohibited deceptive disclaimer. The Commission seeks comment on this issue, including specific data on whether, and under what conditions, charcoal can safely be burned in a fireplace.

Recommended Revised Label. For the reasons stated above, and elsewhere in this notice, the Commission proposes that the label currently required on packages of charcoal be revised to appear and read as follows:

BILLING CODE 6355-01-P



BILLING CODE 6355-01-C

E. Other Features of the Label

Conspicuousness of the Safety Messages. The Commission's Human Factors staff concluded that, as a matter of optimum label design, it would be desirable for the label to be consistent with the ANSI Z535.4, American National Standard for Product Safety Signs and Labels. That standard specifies that the signal word "WARNING" should be written in black lettering surrounded by an orange background. The signal word should also be placed at the top of the label and be preceded by the hazard alert symbol.

Under the ANSI standard for safety labels, the label should also be surrounded by a black borderline, which in turn should be surrounded by a white border to make the label more distinct. The Human Factors staff also recommended that the lettering of the warning statement be in black on a white background, to maximize readability. In addition, they recommended that the "X" on the pictogram be red, to achieve the maximum visual impact and warning effect.

The charcoal-bag industry, however, pointed out that this optimum label would require the bag to have a minimum of four colors: red, orange, black, and white. The industry stated that many of the printing presses for charcoal bags have the capability of printing only six colors, and that presses capable of printing more than six colors are very expensive. Generally, most bags already have at least six colors, and the presently-used colors often do not include one or more of the colors that would be required by the "optimum" label described above. Industry members stated that customers may consider the color scheme of a product to be part of its brand identification. For the reasons given by the industry, the Commission is proposing to not use the colors specified by ANSI and described above. Thus, the proposed label will not change the present requirement that the label shall be in a "color sharply contrasting with the background" and that the borderline shall be "heavy." Examples of color combinations that the Commission's staff considers to be sharply contrasting, in order of expected visual efficiency, are: black on white; black on yellow; white on black; dark blue on white; white on dark red, green, or brown; black on orange; dark green and red on white; white on dark gray; and black on light gray. [9] Examples of colors that may not be considered sharply contrasting are: black on dark blue or dark green, dark red on light red, light red on reflective silver, and white on light gray or tan. See 16 CFR 1500.121(d).

Processing Safety Messages. To make the label easier to read and understand, the Commission proposes that the messages be presented concisely and in an outline form, be presented in a horizontal format, be left-justified with a ragged right margin, be in upper and lower case lettering, be in the appropriate point-type, have an acceptable strokewidth-to-height ratio, and have sufficient space between lines of text. [6, Tab E(1)]

Type Size. The Commission's Human Factors staff determined that in order for the label's type to be legible and conspicuous, 18-point type would be required. [6, Tab E(1)] Thus, the proposed revision specifies 18-point type (3/16 inches) as the minimum allowable type size for the safety messages. The signal word shall be in at least 27-point type (9/32 inches).

Label Size. When the minimum specified type sizes are laid out in the configuration specified in the proposed revised label, the label is 2 inches high. Accordingly, this is the minimum allowable height of the label, and this size is suitable for the smallest-size bags of charcoal presently marketed (2.5 lb.).

An industry member raised the question of whether the label can or should be proportionately larger for larger-size bags. The Commission recommends that larger bags use larger labels to the extent feasible. The Commission solicits comment on whether it should, in the final rule, require that labels be proportionately larger for larger bags. If the Commission requires proportionately larger labels, it could require larger type sizes for specified ranges of the area of the front and back panels of the package. Comment is solicited on the appropriate parameters and on the potential economic effects of larger labels on larger bags.

The proposed revised label is taller than the currently required label. The current label is required to be at least 2 inches from the top seam. In order to maintain this required distance, the bottom edge of a taller label would have to be lower on the bag. This could interfere with existing graphics, which would then have to be redesigned. This could require additional modifications to printing plates and increase the cost of the proposed label revision, without providing any identifiable safety benefit. Therefore, the Commission is proposing to change the minimum allowable distance from the top seam to the label from 2 inches to 1 inch. This would allow the taller label to be printed without affecting other printing lower on the bag.

The Commission proposes to retain the current requirements that the label must be on both the front and back panels of the bag and in the upper 25% of the panels.

F. Economic and Product Information [6, Tab G]

Charcoal is a solid carbon material made from wood subjected to extremely high temperature. It is available in lump, briquet and powdered forms. To produce charcoal briquets, charcoal is ground, mixed with other ingredients, and pressed into pillow shapes. Lump and briquet charcoal is used as a fuel in cooking and in specialized scientific, industrial and horticultural applications. Recreational cooking consumes approximately 80–90% of charcoal production. Specialized uses account for the remainder of charcoal consumption.

Nearly 800,000 tons of charcoal briquets were sold in 1992. Charcoal briquet sales doubled between 1967 and 1977, were relatively flat during the 1980's, and have shown a slight rise since 1991. The popularity of gas grills may explain the flattening of sales during the 1980's. Charcoal briquet sales account for approximately 80–90% of the annual production of charcoal. Imports comprise less than 1% of the domestic sales of charcoal.

Supermarkets and hardware, discount, drug, and garden supply stores sell charcoal to consumers in a variety of types and packages. Three major types of charcoal briquets are available. One is the standard briquet. Another is the "instant-light" briquet, which is impregnated with a flammable substance. The third is a "flavor additive" briquet which is produced with an aromatic wood such as hickory or mesquite. Standard briquets generally are sold in multi-walled (multi-layered) 5, 10, 20 and 40-pound paper bags. The instant-light briquets are available in similar 2½, 4, 5, 8, and 15-pound bags. Briquets are also available in single use, wax impregnated, "light-the-bag" packages. Lump charcoal, which is pure charcoal, is marketed as a natural product and is available in packaging similar to briquets. Charcoal also may be sold in other sizes of bags or in corrugated boxes depending upon marketing considerations. Based on an informal study of the Washington, D.C. area market, the retail price of charcoal ranges from approximately $.25 to $.75 per pound depending on package size, although the retail price of some specialty charcoal may be higher.

Approximately 10 companies manufacture lump and briquet charcoal in the United States. Several companies import charcoal. According to industry representatives, the top five domestic charcoal manufacturers control an estimated 90–95% of the market, with the leading company controlling approximately 50%. Manufacturers provide lump charcoal and charcoal briquets under an estimated 150 different brand names, most of which are private or "store" brands. Relatively few are nationally or regionally marketed brands.

An estimated 47.5 million households own charcoal grills. Based on a survey conducted by the Barbecue Industry Association, the number of "barbecuing events" more than doubled over a 10-year period, with an estimated 2.3 billion occurrences in 1991. [5] Based on ownership and usage data obtained through this survey, an estimated 800 million of these barbecuing events used charcoal. These data indicate that there was an estimated average of 17 charcoal barbecuing events per year per household that owned a charcoal grill. It is also estimated that, on average, each of these households uses the equivalent of 3.4 10-pound bags of charcoal per year.

There are approximately 26 deaths and 400 CO-related emergency room-treated injuries associated with the use of charcoal each year. Thus, there was approximately one death for every 1.8 million households owning charcoal grills and one CO injury for every 118,750 households owning charcoal grills. Additionally, there were an estimated 160 million bags of charcoal briquets sold in 1992. Thus, there was approximately one death for every 6.2 million charcoal briquet bags (0.16 deaths per million bags) and one CO injury for every 0.4 million bags (2.5 injuries per million bags).

The Commission estimates that changing the labeling requirements for packages of charcoal has the potential

for substantial benefits to society. Based on the CPSC's injury cost model, the average annual societal cost of an injury from charcoal-related CO poisoning is approximately $10,000. The annual societal cost of these injuries is approximately $4 million, given the estimated 400 such injuries per year. Additionally, there are an estimated 26 deaths per year from charcoal-related CO poisonings. Assuming a statistical value of life of $5 million, these injuries and deaths cost society about $134 million annually. The avoidance of these injuries and deaths represents the maximum potential benefits to society.

The costs to industry of revising the warning label include one-time, start-up expenses and continuous, ongoing expenses. Start-up expenses include the cost of new printing equipment and printing plates, artwork, and negatives. Ongoing expenses relate to the additional color requirements of the recommended warning label.

If the Commission were to mandate the "optimum" warning label described above, which includes the additional color requirements, industry representatives have indicated that aggregate start-up expenses for the label could amount to as much as $6 million. Further, the ongoing costs for added color may be around $4 million per year. If the start-up expenses are amortized over a 5-year period, the costs of the revisions to the warning label may amount to about $5.2 million annually.

However, the Commission is proposing to ease the requirements for the placement of the label on bags of charcoal and to not mandate additional colors. The costs of the proposed revision are estimated to be no more than $1 million in start-up expenses. Easing the recommended color requirements will allow continued use of current printing equipment. Since the revised labeling rule is proposed to have an effective date 12 to 18 months after publication of the final rule, no additional burden to industry should result. This time should allow firms to use up existing inventories of printed bags. If any preprinted bags remain unfilled at that time, the costs of not using these bags and of discarding them are not expected to be significant.

Benefits to society from the new label would exceed costs at 1% effectiveness if, as proposed, additional colors are not required and the current label position requirements are eased. If the label was required to contain the four specified colors and the position requirements of the label were not eased, as in the "optimum" label described above, the label would need to be about 4% effective in order for benefits to exceed costs.

G. Effective Date

The rule applies only to filled containers of charcoal. Marketers of charcoal, however, have indicated that it is not unusual to have an inventory of printed bags that would take 1 or 2 years to use up. These marketers would prefer that the revised requirement relate to the date the bag or other container was printed, so that all existing inventories could be used. This approach would be impractical for the Commission to enforce, however, since the staff would have to determine not only when the bag of charcoal was filled, but when the bag was printed. Accordingly, the Commission has decided to specify that the rule applies to all containers of subject charcoal that are filled on or after the effective date.

In order to address the marketers' concern about inventories, however, the Commission proposes that the revised rule will not become effective until sufficient time has passed for the industry to use up most of its current inventory of printed bags. The Commission estimates that this will occur on a date that is 12 to 18 months after the issuance of a final rule. This will provide time to revise the plates needed to print the new label, revise any other plates that may be affected on the bag, conduct consumer acceptance tests if needed, print new bags, and incorporate the new bags into production. It will also provide time for existing inventories of printed bags to be depleted. Of course, manufacturers who order additional printing of bags between now and the effective date of the rule should limit the quantities ordered so that large numbers of bags will not have to be discarded or stickered with the new label. Accordingly, the Commission proposes that the effective date will be at least 12, but not more than 18, months after any final rule is published.

Although there can be no guarantee that any final rule will be the same as the proposed rule, some manufacturers may wish to voluntarily use the revised label before the effective date of a final rule. For such firms, the Commission will, until further notice published in the **Federal Register**, consider labels complying with the proposal as complying with the current requirements of 16 CFR 1500.14(b)(6), as well as with any revised requirements of this section, provided that such labels are brought into full compliance with the final rule as supplies are exhausted.

H. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic analysis examined the potential effects of the proposed rule on small entities. [6, Tab G] Businesses affected by label-change costs may include charcoal manufacturers (approximately 10 firms), bag suppliers, and firms that own a charcoal brand name (proprietary or private label brands). Industry representatives predict that the bulk of the costs of developing new labels will fall initially on the charcoal manufacturers. As noted above, these costs may include those associated with the development or purchase of new printing plates, printing equipment, artwork, and negatives.

Several private label manufacturers have indicated that they will be disproportionately affected by a label change. These firms package charcoal under a large number of brand names, which may require hundreds of plate changes. According to information currently available, the number of small firms that may be disproportionately affected by a label change is not substantial, as only a few small firms may fall into this category. Easing of the margin and color requirements, as proposed, will substantially reduce these firms' costs. These effects may be further mitigated if the firms are able to pass costs through to their customers or if their plates are near the end of their service life. Costs for other small firms are not expected to be significant, due to the relatively small number of brands and sizes handled by such firms.

The rule should not require small firms to buy new printing presses. Manufacturers would be given enough time to use up existing supplies of printed bags. Bags filled with charcoal before the effective date are not subject to the revised requirements.

Accordingly, for the reasons given above, the Commission preliminarily certifies that the proposed rule, if issued, would not have significant economic effects on a substantial number of small entities. However, the Commission solicits comments concerning the potential effects of the proposed rule on small firms.

I. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed rule to revise the warning labels for packages of charcoal. Preliminary analysis of the potential impact of this proposed rule indicates that it would have no significant effects on the environment if the effective date of a rule enables the firms to deplete existing stocks of filled and empty bags. (Some firms have indicated that, depending on the time of the year, they may have as much as a 2-year supply of filled and empty bags.) As previously noted, bags filled before the effective date would not be affected by the proposed rule. Even if some old inventory of bags remains and cannot be restickered, the environmental consequences would not be major.

Therefore, because the proposed rule would have no significant impact on the environment, neither an environmental assessment nor an environmental impact statement is required.

J. Conclusion

For the reasons discussed above, the Commission preliminarily concludes that the labeling required by section 2(p)(1) of the FHSA for packages of charcoal is not adequate for the protection of the public health and safety, in view of the special hazard of CO poisoning presented by using charcoal in a confined area. The Commission preliminarily finds that the additional label requirements in the proposed revised label are necessary for the protection of the public health and safety and proposes to issue such requirements under the authority of section 3(b) of the FHSA, 15 U.S.C. 1262(b).

Effective Date

The Commission proposes to make the final rule effective on a date that is 12 to 18 months after it is published in the **Federal Register**, as to charcoal intended for cooking or heating that is placed in containers for retail sale on or after that date.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law Enforcement, Toys.

For the reasons given above, the Commission proposes to amend 16 CFR part 1500 as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.14 is amended by revising the borderlined label statement in paragraph (b)(6)(i) and paragraph (b)(6)(ii) as follows:

§ 1500.14 Substances requiring special labeling under section 3(b) of the act.

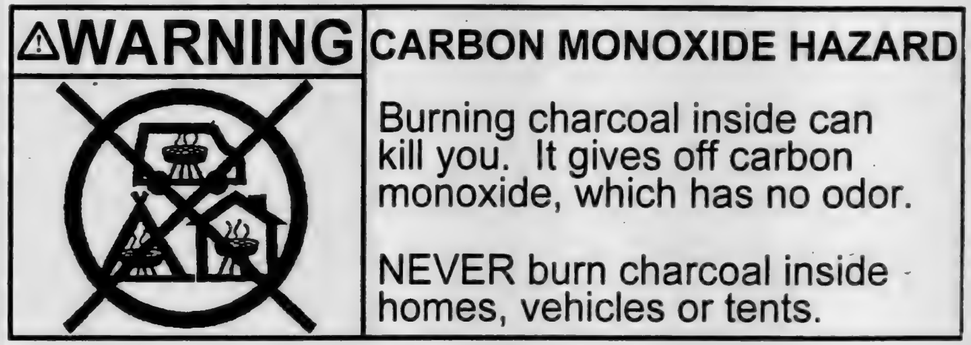
* * * * *

(b) * * *

(6) * * *

(i) * * *

BILLING CODE 6355-01-P



BILLING CODE 6355-01-C

(ii) For bags of charcoal, the label specified in paragraph (b)(6)(i) of this section shall appear within a heavy borderline in a color sharply contrasting to that of the background, on both the front and back panels in the upper 25 percent of the panels of the bag, at least 1 inch below the seam and at least 1 inch above any reading material or design elements. The signal word "WARNING" shall be in capital letters in at least 27-point (7.14 mm, 9/32 inch) type. The remaining text of the warning statement shall be in at least 18-point (4.763 mm, 3/16 inch) type. The lettering shall have a strokewidth-to-height ratio of from 1:6 to 1:8, and the spacing between the bottom of the letters of one line of the statement of consequences and the statement of how to avoid the hazard and the top of the letter of the next line of that statement shall be about one-fourth of the height of the type size. The label shall be at least 50.8 mm (2 inches) high. The label's lettering and pictogram shall have the size relation to each other and to the remainder of the label as shown in paragraph (b)(6)(i) of this section.

* * * * *

Dated: August 1, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of Relevant Documents

(Note: This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Petition HP 91–1 from Barbara Mauk.
2. Letter to Barbara Mauk from Sadye E. Dunn, CPSC, January 28, 1993.
3. Hampson, N.B. et al., *JAMA* (January 5, 1994).
4. Cost information from industry.
a. The Clorox Company (Kingsford), P.O. Box 493, Pleasanton, CA 94566.
b. King and Spalding, representing Royal Oak Enterprises, Inc., 1730 Pennsylvania Ave. N.W., Washington, D.C. 20006.
c. Hickory Specialties, Inc., P.O. Box 1669, Brentwood, TN 37024.
5. Barbecue Industry Association survey. Barbecue Industry Association, 710 East Ogden, Suite 113, Naperville, IL 60563.
6. Briefing package dated July 6, 1995, with Tabs A–H.
TAB A—Background Information on Charcoal Labeling in Briefing Package memo dated May 18, 1994 accompanied by FDA's Notices of Proposed and Final Rulemaking dated September 2, 1970, and August 11, 1971, and Petition for Amending Labeling Requirements for Charcoal Intended for Household Use, dated October 12, 1990.
TAB B—Memorandum from Laureen E. Burton of Directorate for Health Sciences to Sharon R. White, entitled "Carbon Monoxide Toxicity Review for the Charcoal Labeling Project," dated March 8, 1994.
TAB C Memorandum from Leonard Schachter Directorate for Epidemiology, Division of Hazard Analysis to Sharon R. White, entitled "Charcoal Labeling Project," dated December 12, 1994.
TAB D—Memorandum from Charles M. Jacobson of Office of Compliance and Enforcement to Susan E. Womble, entitled "Compliance Experience with Current FHSA Labeling Requirements for Charcoal Briquets," dated April 30, 1992.
TAB E—1. Memorandum from Sharon R. White of Directorate for Engineering Sciences, Division of Human Factors to The File entitled, "Proposed Revisions to Labeling Requirements for Packages of Charcoal" dated June 15, 1995.
2. Memorandum from George Sweet of Directorate for Engineering Sciences, Division of Human Factors to Sharon R. White entitled, "Pictogram Testing for Warning Labels on Charcoal Bags," dated June 12, 1995.
TAB F—Logs of Industry Meetings on (1) April 22, 1994, and (2) April 13, 1995.
TAB G—Memorandum from Mary F. Donaldson of Directorate of Economic Analysis to Sharon R. White, entitled "Economic Analysis of a Revision to Charcoal Labeling," dated June 22, 1995.
TAB H—Draft **Federal Register** Notice—Notice of Proposed Rulemaking.
7. Letter from James C. Stephen, President, Weber-Stephen Products Co., to Sharon R. White, CPSC, May 11, 1995.
8. Letter from Harleigh Ewell, CPSC, to James C. Stephen, President, Weber-Stephen Products Co., June 29, 1994.
9. Woodson, W.; Tillman, B.; and Tillman, P., 1992.
10. ANSI Z535.3–1991, American National Standard for Criteria for Safety Symbols.
11. Perry, E., and Neily, M. (1985). Burning Charcoal Briquettes in a Fireplace. U.S. Consumer Product Safety Commission, Washington, DC.
12. Letter from Leonard S. Gryn, Executive Vice President, Weber-Stephen Products Co., to Harleigh Ewell, CPSC, July 5, 1995.

[FR Doc. 95–19357 Filed 8–9–95; 8:45 am]
BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–26–95]

RIN 1545–AT55

Treatment of Underwriters in Section 351 and Section 721 Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes rules for transfers of cash to a corporation or a partnership. The proposed regulations will affect taxpayers in transactions intended to qualify under section 351 and section 721 when there is an offering of stock or partnership interests through an underwriter. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by November 8, 1995. Requests to speak at the public hearing scheduled for Wednesday, January 17, 1996, at 10 a.m., with outlines of oral comments, must be received by Wednesday, December 27, 1995.

ADDRESSES: Send submissions: CC:DOM:CORP:T:R (CO–26–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (CO–26–95), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation under section 351(a), Susan T. Edlavitch, (202) 622–7750; concerning the proposed regulation under section 721(a), Brian J. O'Connor, (202) 622–3060; concerning submissions and the hearing, Mike Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 351(a) provides that no gain or loss is recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in the corporation and immediately after the exchange the person or persons are in control (as defined in section 368(c)) of the corporation.

Section 721(a) provides that no gain or loss is recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Rev. Rul. 78–294, 1978–2 C.B. 141, involves the incorporation of an existing sole proprietorship by an individual to raise capital through a public offering. The individual sought the assistance of an underwriter. In accordance with the plan, the individual organized a new corporation, which had capital stock of 1,000 authorized but unissued shares.

Situation 1 describes a transaction that was considered to fall within the general definition of a "best efforts" underwriting. Pursuant to an agreement among the individual, the new corporation, and the underwriter, the individual transferred all the business property to the new corporation in exchange for 500 shares of stock. The underwriter agreed to use its best efforts as an agent of the corporation to sell the 500 unissued shares to the general public at $200 per share. The underwriter succeeded in selling the stock within two weeks of the initial offering with no change in the terms of the offering.

Situation 2 describes a transaction that was considered to fall within the general definition of a "firm commitment" underwriting. Pursuant to an agreement among the individual, the new corporation, and the underwriter, the individual transferred all the business property to the new corporation in exchange for 500 shares of stock, and the underwriter transferred $100,000 in cash to the new corporation in exchange for the remaining 500 shares. At the time of the underwriter's purchase, the underwriter had not entered into a binding contract to dispose of its stock in the new corporation. However, the underwriter intended to sell its 500 shares, but, if unsuccessful, was required to retain them. Following the exchanges, the underwriter sold its 500 shares of stock in the new corporation to the general public within two weeks of the initial offering. The individual retained the

500 shares of stock in the new corporation.

In Situation 1, the ruling holds that the individual who transferred the business property to the corporation and the investors in the public offering were co-transferors in a single transaction that qualified under section 351. In Situation 2, the ruling holds that the firm commitment underwriter was a transferor along with the individual and that their control was not defeated by the subsequent resale of 50 percent of the stock in the public offering.

The IRS and Treasury believe that Situation 2 of Rev. Rul. 78–294 does not reflect current underwriting practices. In addition, the IRS and Treasury believe that underwritings of partnership interests should be treated similarly to underwritings of stock. Further, the proposed regulations are necessary to prevent inappropriate imposition and inappropriate avoidance of tax.

The proposed regulations, under certain circumstances, disregard underwriters of stock and partnership interests for purposes of section 351 and section 721. The proposed treatment of underwriters is similar to their treatment under § 1.382–3(j)(7) and § 1.1273–2(e).

Explanation of Provisions

Proposed Amendment Adding § 1.351–1(a)(3)

This document proposes to add § 1.351–1(a)(3) to 26 CFR part 1. The proposed regulation provides that, for the purpose of section 351, if a person acquires stock from an underwriter in exchange for cash in a qualified underwriting transaction, the person who acquires the stock from the underwriter is treated as transferring cash directly to the corporation in exchange for the stock and the underwriter is disregarded. A qualified underwriting transaction is a transaction in which a corporation issues stock for cash in an underwriting in which either the underwriter is an agent of the corporation or the underwriter's ownership of stock is transitory. The proposed regulation would render Rev. Rul. 78–294 obsolete. No inference is intended as to transactions not within the scope of the proposed regulation.

Proposed Amendment Adding § 1.721–1(c)

This document proposes to add § 1.721–1(c) to 26 CFR part 1. The proposed regulation provides that, for the purpose of section 721, if a person acquires a partnership interest from an underwriter in exchange for cash in a qualified underwriting transaction, the person who acquires the partnership interest from the underwriter is treated as transferring cash directly to the partnership in exchange for the partnership interest and the underwriter is disregarded. A qualified underwriting transaction is a transaction in which a partnership issues partnership interests for cash in an underwriting in which either the underwriter is an agent of the partnership or the underwriter's ownership of the partnership interests is transitory. No inference is intended as to transactions not within the scope of the proposed regulation.

Comments Solicited

The IRS and Treasury invite public comment on the proposed regulations. In particular, the IRS and Treasury solicit comments on (a) whether the proposed rules should apply for all tax purposes; (b) whether the proposed rules should be limited to underwriters; and (c) whether the proposed rules should be limited to cash transactions.

Proposed Effective Dates

New § 1.351–1(a)(3) and new § 1.721–1(c) are proposed to be effective for qualified underwriting transactions occurring on or after the date of publication as final regulations in the **Federal Register**.

Effect on Other Documents

The following publication would become obsolete as of the date of publication in the **Federal Register** of the final regulations: Rev. Rul. 78–294, 1978–2 C.B. 141.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, January 17, 1996, beginning at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments, an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Wednesday, December 27, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Susan T. Edlavitch of the Office of Assistant Chief Counsel (Corporate) and Brian J. O'Connor of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.351–1 also issued under 26 U.S.C. 351. * * *

Section 1.721–1 also issued under 26 U.S.C. 721. * * *

Par. 2. In § 1.351–1, paragraph (a)(3) is added to read as follows:

§ 1.351–1 Transfer to corporation controlled by transferor.

(a) * * *

(3) *Underwritings of stock*—(i) *In general.* For the purpose of section 351,

if a person acquires stock of a corporation from an underwriter in exchange for cash in a qualified underwriting transaction, the person who acquires stock from the underwriter is treated as transferring cash directly to the corporation in exchange for stock of the corporation and the underwriter is disregarded. A qualified underwriting transaction is a transaction in which a corporation issues stock for cash in an underwriting in which either the underwriter is an agent of the corporation or the underwriter's ownership of the stock is transitory.

(ii) *Effective date.* This paragraph (a)(3) is effective for qualified underwriting transactions occurring on or after the date of publication of the final regulation in the **Federal Register**.

* * * * *

Par. 3. In § 1.721–1, paragraph (c) is added to read as follows:

§ 1.721–1 Nonrecognition of gain or loss on contribution.

* * * * *

(c) *Underwritings of partnership interests*—(1) *In general.* For the purpose of section 721, if a person acquires a partnership interest from an underwriter in exchange for cash in a qualified underwriting transaction, the person who acquires the partnership interest is treated as transferring cash directly to the partnership in exchange for the partnership interest and the underwriter is disregarded. A qualified underwriting transaction is a transaction in which a partnership issues partnership interests for cash in an underwriting in which either the underwriter is an agent of the partnership or the underwriter's ownership of the partnership interests is transitory.

(2) *Effective date.* This paragraph (c) is effective for qualified underwriting transactions occurring on or after the date of publication of the final regulation in the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–19447 Filed 8–9–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[CO–19–95]

RIN 1545–AT43

Transfers to Investment Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to regulations relating to transfers to investment companies. The amendments are necessary to clarify existing regulations relating to certain transfers to a controlled corporation. Generally, the regulations will be amended to provide when certain transfers will not cause a diversification of the transferors' interests.

DATES: Written comments and requests for a public hearing must be received by November 8, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (CO–19–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (CO–19–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew M. Eisenberg, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document proposes amendments to the Income Tax Regulations (26 CFR part 1) under section 351 of the Internal Revenue Code of 1986. Section 351(a) provides that no gain or loss will be recognized if one or more persons transfer property to a corporation solely in exchange for stock in the corporation and immediately after the exchange the transferors control the transferee corporation. Section 351(e)(1) provides that section 351(a) will not apply to a transfer of property to an investment company.

The rule of section 351(e)(1) was enacted as part of the Foreign Investors Tax Act of 1966, with the goal of preventing individuals from achieving tax-free diversification by the transfer of one or a few stocks or securities to a corporation (referred to as a swap fund). See generally H. Rep. No. 1049, 94th Cong., 2d Sess. (Apr. 27, 1976).

Section 1.351–1(c)(1) states that a transfer to an investment company will occur when (i) the transfer results in diversification of the transferors' interests and (ii) the transferee is a Regulated Investment Company (RIC), Real Estate Investment Trust (REIT), or a corporation more than 80 percent of the value of whose assets (excluding cash and non-convertible debt obligations) are readily marketable stocks or securities. Section 1.351–1(c)(5) provides that a transfer ordinarily results in the diversification of the transferors' interests if two or more persons transfer nonidentical assets to a corporation in the exchange.

As part of the Tax Reform Act of 1976 (the 1976 Act), Congress enacted sections 683(a) and 721(b), which incorporate the section 351(e) rules for transfers to a trust and a partnership, respectively.

The 1976 Act also addressed reorganizations of investment companies by enacting section 368(a)(2)(F). This legislation was intended to prevent the tax-free merger of a closely held corporation holding an undiversified group of assets into a publicly held diversified investment company, resulting in a tax-free diversification of the interests of the target shareholders.

Section 368(a)(2)(F)(i) provides that a transaction between two "investment companies" otherwise qualifying as a reorganization will not qualify as a reorganization for any corporation in the transaction that is not a RIC, REIT, or corporation described in section 368(a)(2)(F)(ii). Section 368(a)(2)(F)(iii) defines an investment company as a RIC, REIT, or corporation with at least 50 percent of its assets comprised of stocks or securities and 80 percent of its assets held for investment. A corporation satisfies section 368(a)(2)(F)(ii) if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer and not more than 50 percent of the value of its total assets is invested in the stock and securities of five or fewer issuers. For purposes of the section 368(a)(2)(F)(ii) test, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer. Also, a person holding stock in a RIC, REIT, or other investment company (as defined in section 368(a)(2)(F)(iii)) that meets the requirements of section 368(a)(2)(F)(ii) shall be treated as holding its proportionate share of the assets held by the company. Section 368(a)(2)(F)(iv) provides that in determining total assets, certain assets shall be excluded, including cash and cash items (including receivables), Government securities, and assets acquired to meet section 368(a)(2)(F)(ii) or to cease to be an investment company. Section 368(a)(2)(F)(v) provides that section 368(a)(2)(F) shall not apply if the stock of each investment company is owned substantially by the same persons in the same proportions. Section 368(a)(2)(F)(vii) defines securities for purposes of clauses (ii) and (iii) of section 368(a)(2)(F).

Reasons for Change

The IRS wants to clarify that § 1.351–1(c)(5) does not prevent tax-free combinations of already diversified portfolios, and that combinations of already diversified portfolios are not inconsistent with the purposes of section 351(e) (i.e., preventing the tax-free transfer of one or a few stocks or securities to swap funds). For example, RICs often transfer portfolios of investment assets to partnerships under section 721(a) (which is subject to the section 351(e) rules pursuant to section 721(b)). These transactions are appropriately tax-free because the RICs are not transferring one or a few stocks or securities, but rather, the RICs are transferring diversified portfolios of stocks and securities.

Also, the nonidentical asset standard of § 1.351–1(c)(5) is stricter than the test applied for combinations of investment companies under the corporate reorganization provisions (see section 368(a)(2)(F)(ii)). Transfers of certain diversified portfolios to a corporation may be taxable under section 351(e), while the same portfolios could be combined through a merger that may qualify as a tax-free reorganization.

Explanation of Provisions

The proposed amendments to § 1.351–1(c) provide that transfers of assets will not be treated as transfers that result in diversification of the transferors' interests for purposes of § 1.351–1(c)(1)(i) if each transferor transfers assets that satisfy section 368(a)(2)(F)(ii), as modified. Under this rule, no transfers of nonidentical assets to a corporation described in § 1.351–1(c)(1)(ii) will qualify for nonrecognition treatment under section 351 unless each transferor transfers assets that satisfy section 368(a)(2)(F)(ii), as modified.

For purposes of § 1.351–1(c), relevant provisions of section 368(a)(2)(F) will apply to the section 368(a)(2)(F)(ii) test. Those provisions include the controlled group and look-through rules found in clause (ii) (members of a controlled group of corporations are considered as one issuer and persons holding stock in certain investment companies are treated as holding a proportionate share of the investment company's assets), the common ownership rule found in clause (v) (diversification will not be considered to occur if the interests in the assets to be transferred are held substantially by the same persons in the same proportions as the interests in the transferee), and the definition of securities found in clause (vii) (the term securities includes investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a–2(36)). The definition of total assets in section 368(a)(2)(F)(iv) will apply, except that Government securities will be included in determining total assets, unless the Government securities are acquired to meet section 368(a)(2)(F)(ii).

The proposed modification of the definition of total assets to include Government securities addresses a problem caused by transfers of funds consisting mostly of Government securities. For example, if 95 percent of a money market fund's assets are invested in Government securities and five percent are invested in the stock of corporation *X*, the Government securities would not be treated as securities (see section 368(a)(2)(F)(vii)) and, without the modification, would be excluded from total assets for purposes of the 25 and 50 percent test of section 368(a)(2)(F)(ii). As a result, the unmodified test would treat 100 percent of the fund's assets as *X* stock and the fund would not satisfy the 25 and 50 percent test of section 368(a)(2)(F)(ii). The modified test would include Government securities in total assets. The fund would satisfy the modified test because the stock of one issuer would constitute only five percent of the fund's portfolio. The IRS believes that the modification is appropriate because the presence of a small amount of nondiversified property in a Government securities portfolio (otherwise qualifying under section 368(a)(2)(F)(ii)) should not disqualify the portfolio from tax-free treatment.

The adoption of the modified section 368(a)(2)(F)(ii) test is intended to limit section 351(e) to cases more analogous to the typical swap fund cases that were the focus of the section 351(e) legislation. Also, the adoption of this test should minimize the different tax treatment of a section 351 transfer and a section 368 reorganization under economically similar situations. This test will also apply for purposes of sections 683(a) and 721(b). Finally, a proposed revision to § 1.584–4(a) adopts this test.

Proposed Effective Date

These regulations are proposed to apply to transfers of assets occurring on or after the date of publication as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Andrew M. Eisenberg, Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 as proposed to be amended in a document published elsewhere in this issue of the **Federal Register** continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.351–1 also issued under 26 U.S.C. 351 * * *.

Par. 2. Section 1.351–1 is amended by:

1. Redesignating paragraph (c)(6) as paragraph (c)(7).

2. Adding new paragraph (c)(6) to read as follows:

§ 1.351–1 Transfer to corporation controlled by transferor.

* * * * *

(c) * * *

(6) For purposes of paragraph (c)(5) of this section, a transfer of assets will not be treated as resulting in a diversification of the transferors' interests if each transferor transfers a diversified portfolio of assets. For purposes of this paragraph, a portfolio of assets is diversified if it satisfies section 368(a)(2)(F)(ii), applying the relevant provisions of section 368(a)(2)(F), except that, in applying section 368(a)(2)(F)(iv), Government securities are included in determining total assets, unless the Government securities are acquired to meet section 368(a)(2)(F)(ii).

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–19449 Filed 8–9–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[PS–29–92]

RIN 1545–AQ84

Diversification of Common Trust Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document proposes regulations relating to the diversification of common trust funds at the time of a combination or division. The proposed regulations will affect common trust funds and their participants.

DATES: Written comments and requests for a public hearing must be received by November 8, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–29–92), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS–29–92), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brian J. O'Connor, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document proposes amendments to the Income Tax Regulations (26 CFR part 1) under section 584 of the Internal Revenue Code of 1986 relating to common trust funds.

A common trust fund is an investment vehicle set up by a bank in the form of a state-law trust. The investors in a common trust fund, referred to as participants, are trusts and certain other accounts for which the bank acts as a fiduciary.

Section 584(b) provides that a common trust fund is not subject to taxation. Instead, each participant that invests in the common trust fund includes its proportionate share of the common trust fund's income or loss on its own return.

Under section 584(e), the contribution of property to a common trust fund is a taxable event to the contributing participant. This provision was added to section 584(e) by the Tax Reform Act of 1976 and was intended to prevent participants from using a common trust fund to diversify their portfolios tax-free. Accordingly, the legislative history to the 1976 amendment indicates that mergers or divisions of common trust funds will continue to be tax-free as long as the combining or dividing funds have portfolios that are diversified within the meaning of the corporate merger rules. S. Rep. No. 938, pt. 2, 94th Cong., 2d Sess. 48 (1976), 1976–3 (Vol. 3) C.B. 643, 690. The diversification test for corporate mergers, section 368(a)(2)(F)(ii), was enacted in 1976 as part of the same legislation.

Section 1.584–4(a), promulgated in 1984 and based on the 1976 amendment, provides that the transfer of a participating interest as a result of the combination of two or more common trust funds, or the division of a single common trust fund, is not considered an admission or a withdrawal if the combining, dividing, and resulting funds have diversified portfolios within the meaning of section 368(a)(2)(F)(ii).

Under section 368(a)(2)(F)(ii), a corporation has a diversified portfolio if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer and not more than 50 percent of the value of its total assets is invested in the stock and securities of five or fewer issuers. For purposes of the section 368(a)(2)(F)(ii) test, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer. Also, a person holding stock in a regulated investment company, real estate investment trust, or other investment company (as defined by section 368(a)(2)(F)(iii)) that meets the requirements of section 368(a)(2)(F)(ii) shall be treated as holding its proportionate share of the assets held by the company. Section 368(a)(2)(F)(iv) provides that in determining total assets, certain assets shall be excluded, including cash and cash items (including receivables), Government securities, and assets acquired to meet section 368(a)(2)(F)(ii) or to cease to be an investment company. Section 368(a)(2)(F)(v) provides that section 368(a)(2)(F) shall not apply if the stock of each investment company is owned substantially by the same persons in the same proportions. Section 368(a)(2)(F)(vii) defines securities for purposes of clauses (ii) and (iii) of section 368(a)(2)(F).

Reasons for Change

Excluding Government securities from a common trust fund's total assets pursuant to section 368(a)(2)(F)(iv) could inappropriately cause a fund with investments in Government securities to fail to be diversified under section 368(a)(2)(F)(ii). For example, if 95 percent of a common trust fund's assets are invested in Government securities and five percent are invested in the stock of corporation *X*, only five percent of the fund's total assets (that is, only the *X* stock) would be included in total assets in applying section 368(a)(2)(F)(ii). As a result, the *X* stock would be treated as constituting 100 percent of the common trust fund's assets and the fund would not satisfy the 25 and 50 percent test of section 368(a)(2)(F)(ii). Because excluding Government securities from a common trust fund's total assets could cause a fund with investments in Government securities to fail to be diversified under section 368(a)(2)(F)(ii), common trust funds might be discouraged from investing in Government securities.

Explanation of Provisions

Under the proposed amendment to § 1.584–4(a), the diversification test applied to a common trust fund at the time of a merger or division will continue to be section 368(a)(2)(F)(ii). However, the test is modified so that Government securities are now counted in determining a fund's total assets, unless the Government securities are acquired to meet section 368(a)(2)(F)(ii).

For purposes of § 1.584–4(a), relevant provisions of section 368(a)(2)(F) will apply to the section 368(a)(2)(F)(ii) test. Those provisions include the controlled group and look-through rules found in clause (ii) (members of a controlled group of corporations are considered as one issuer and persons holding stock in certain investment companies are treated as holding a proportionate share of the investment company's assets), the common ownership rule found in clause (v) (diversification will not be considered to occur if the interests in

the common trust funds transferred are held substantially by the same persons in the same proportions), and the definition of securities found in clause (vii) (the term securities includes investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a–2(36)). The definition of total assets in section 368(a)(2)(F)(iv) will apply, except that, as stated above, Government securities will be included in determining total assets, unless the Government securities are acquired to meet section 368(a)(2)(F)(ii).

The proposed regulations contain the same diversification test as that in the proposed regulations under section 351(e) dealing with transfers to investment companies. Thus, these proposed regulations would ensure that a uniform diversification test is applied to common trust funds and similar investment entities.

The proposed regulations also update the regulations under section 584 to conform to changes in the law.

Proposed Effective Date

These regulations are proposed to apply to combinations and divisions of common trust funds consummated on or after the date of publication as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Brian J. O'Connor, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1, is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.584–2 [Amended]

Par. 2. Section 1.584–2 is amended by:

1. Removing paragraph (b)(1).

2. Redesignating paragraph (b)(2) as paragraph (b).

Par. 3. Section 1.584–4 is amended by:

1. Removing paragraphs (a)(1) and (a)(2).

2. Revising the sixth sentence of paragraph (a).

3. Adding two sentences after the sixth sentence of paragraph (a).

The revision and additions read as follows:

§ 1.584–4 Admission and withdrawal of participants in the common trust fund.

(a) * * * When a participating interest is transferred by a bank, or by two or more banks that are members of the same affiliated group (within the meaning of section 1504), as a result of the combination of two or more common trust funds or the division of a single common trust fund, the transfer to the surviving or divided fund is not considered to be an admission or a withdrawal if the combining, dividing, and resulting common trust funds have diversified portfolios. For purposes of this paragraph, a common trust fund has a diversified portfolio if it satisfies section 368(a)(2)(F)(ii), applying the relevant provisions of section 368(a)(2)(F), except that, in applying section 368(a)(2)(F)(iv), Government securities are included in determining total assets, unless the Government securities are acquired to meet section 368(a)(2)(F)(ii). In addition, for a transfer of a participating interest in a division of a common trust fund not to be considered an admission or withdrawal, each participant's pro rata interest in each of the resulting common trust funds must be substantially the same as was the participant's pro rata interest in the dividing fund.

* * * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–19448 Filed 8–9–95; 8:45 am]

BILLING CODE 4830–01–U

Departmental Offices

31 CFR Part 1

Privacy Act of 1974; Proposed Rule Exempting System of Records From Certain Provisions of the Privacy Act

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment of 31 CFR 1.36 to exempt the system of records entitled Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS 34.018 from certain provisions of the Privacy Act. The exemption is intended to comply with legal prohibitions against the disclosure of certain kinds of information and to protect certain information on individuals maintained in this system of records.

DATES: Comments must be received no later than September 11, 1995.

ADDRESSES: Please submit comments to the Director, Office of Disclosure, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

FOR FURTHER INFORMATION CONTACT: Phyllis DePiazza, Chief, Privacy Act and Education Branch, Office of Disclosure, Internal Revenue Service at (202) 622–6240.

SUPPLEMENTARY INFORMATION: The Integrated Data Retrieval System (IDRS) Security Files is a computerized system which permits tax account access for the purposes of recording transactional information to tax accounts. The system is designed to identify potential unauthorized accesses to tax account information and to detect certain questionable accesses and/or patterns of access. Access to the system would

enable employees to attempt to elude detection or otherwise frustrate any investigatory actions. The return and return information contained within this system constitute investigatory material compiled for law enforcement purposes under Title 26 of the United States Code.

Pursuant to the Privacy Act of 1974, the Department of the Treasury is publishing separately the Notice of Alteration of this Treasury/IRS system of records, to be maintained by the IRS.

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes. The Internal Revenue Service has as its principal function enforcement of the tax laws of the United States. This enforcement activity contains investigatory material compiled for law enforcement purposes under Title 26 of the United States Code.

The exemption under 5 U.S.C. 552a(k)(2), relating to investigatory material compiled for law enforcement purposes, is hereby claimed for this system.

The Department of the Treasury is hereby giving notice of a proposed rule to exempt this system of records described above from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) and the authority of 31 CFR 1.23(c). The reason for exempting this system of records from this provision of 5 U.S.C. 552a is set forth in the rule itself.

As required by Executive Order 12291, it has been determined that this proposed rule is not a "major" rule and, therefore, does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 522 as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of Subpart C is amended by adding the following text in numerical order under the heading THE INTERNAL REVENUE SERVICE:

* * * * *

(b) * * *

(1) * * *

Name of system	No.
. . . . .	.
Integrated Data Retrieval System (IDRS) Security Files	34.018
. . . . .	.

* * * * *

Approved: July 20, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 95–19735 Filed 8–9–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AC05

Glacier Bay National Park, Alaska: Vessel Management Plan Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed Rule; re-opening of public comment period.

SUMMARY: The proposed rule would revise National Park Service regulations, including vessel quotas, that were established to protect the endangered humpback whale and other resources Glacier Bay National Park and Preserve manages. The regulations follow an Endangered Species Act, Section 7, consultation with the National Marine Fisheries Service (NMFS), and are consistent with the 1993 Biological Opinion issued by that agency. The regulations are drafted to track the proposed action (Alternative Five) from the six-alternative Vessel Management Plan and Environmental Assessment prepared by the NPS.

The proposed regulations contemplate an increase in cruise ship use, to be offset by specific mitigation measures. The regulations would authorize a 72 percent seasonal increase in cruise ship traffic during the months of June, July and August. However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two).

Rather, the increased traffic will be absorbed, for the most part, by authorizing more cruise ship entries in early and late summer. The NPS also solicits comments on the possibility of modest increases in seasonal use by charter and private vessels.

The proposed regulations would extend and codify park compendium vessel regulations that were developed, under the authority of the existing regulations, for the protection of humpback whales, Steller sea lions, and other wildlife and resource values within the park. Additional measures are also proposed to mitigate natural resource impacts associated with the proposed increase in vessel traffic..

Finally, to provide park visitors a range of recreational opportunities and to maintain opportunities for the safe use of kayaks, the proposed regulations would close the upper Muir Inlet to motor vessels on a seasonal basis.

This rulemaking, the substance of which was printed as a proposed rule on June 5, 1995 (60 FR 29523), extends the comment period for another 15 days to allow additional review and comment by interested groups and persons.

DATES: Comments will be accepted until August 25, 1995.

ADDRESSES: Comments should be addressed to: Superintendent, Proposed Regulations Comment, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826

FOR FURTHER INFORMATION CONTACT: J. M. Brady, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826, Telephone: (907) 697–2230.

SUPPLEMENTARY INFORMATION:

Extended Comment Period: Glacier Bay National Park—Vessel Management Plan Regulations.

This document announces a 15-day re-opening of the comment period for the proposed Glacier Bay National Park—Vessel Management Plan Regulations, that was published in the **Federal Register** on June 5, 1995 (60 FR 29523). The initial comment period expired on August 4, 1995. Comments received during the initial comment period requested additional time to review the proposed regulations. Accordingly, the comment period for the proposed rule is hereby extended for an additional 15 days.

Dated: August 4, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–19730 Filed 8–9–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA56–1–7066b; FRL–5253–1]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania: Reasonably Available Control Technology for Stroehmann Bakeries, Inc., Lycoming and Bradford Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing and requiring the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from two Stroehmann Bakeries, Inc. (Stroehmann) facilities located in Sayre Borough, Bradford County and Old Lycoming Township, Lycoming County. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and in the Technical Support Document prepared for that rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 11, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597–0545.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 22, 1995.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 95–19743 Filed 8–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 258

[FRL–5275–3]

RIN 2050–AE24

Alternatives for Ground-Water Monitoring and Delay of General Compliance Date for Small Municipal Solid Waste Landfills Located in Either Dry or Remote Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: On October 9, 1991, the Environmental Protection Agency (EPA) promulgated final solid waste disposal facility criteria (40 CFR Part 258), setting in place national minimum standards for municipal solid waste landfills (MSWLFs). In that rulemaking, the Agency provided an exemption from ground-water monitoring for small MSWLF units located in dry or remote locations. The Agency provided this relief as it sought to balance the protection of human health and the environment with the practicable capability of these small community landfill owners and operators.

In 1993, the U.S. Court of Appeals for the District of Columbia vacated this ground-water monitoring exemption. The Agency today is proposing to provide to approved States and Tribes the flexibility to determine alternative ground-water monitoring requirements, on a site-specific basis, for small MSWLFs that are located in either dry or remote areas (hereafter referred to as "qualifying small MSWLFs"). Under this proposal, approved States and Tribes may consider site-specific alternatives to conventional ground-water monitoring that are relatively low in cost and are still capable of detecting contamination. Through the use of ground-water monitoring alternatives, the Agency estimates potential annual national cost savings of between $5.9 million to $22.2 million. The Agency is providing a 90-day comment period for this portion of today's proposal.

Today's rulemaking also solicits comment on a delay of the general compliance date of the MSWLF criteria for qualifying small MSWLFs. The Agency is providing a 30-day comment period for this separate portion of today's proposal.

DATES: The Agency is accepting public comments on the proposed rule changes related to the delay of the compliance date for small MSWLFs located in dry and remote areas in §§ 258.1(d)(3), 258.1(e)(4), 258.2, and 258.50(e) for a 30-day period beginning on August 10, 1995. The Agency also is accepting public comments on a separate proposed rule change allowing the use of alternative ground-water monitoring methods in § 258.50(a) for a 90-day period beginning on August 10, 1995.

ADDRESSES: The public should submit an original and two copies of their comments on this proposed rule to the Docket Clerk (5305), U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All written comments received by EPA regarding the delay of the compliance date will be placed in public docket number F–95–AGDP–FFFFF. Please place the docket number F–95–AGDP–FFFFF on the comments submitted to the Agency on this issue. Written comments received by EPA regarding the use of alternative ground-water monitoring methods will be placed in public docket number F–95–AGAP–FFFFF. Please place the docket number F–95–AGAP–FFFFF on the comments submitted to the Agency on this issue.

Background information collected in support of today's proposed rule may be found in public docket number F–95–AGAP–FFFFF. All dockets are available for viewing in the RCRA Information Center (RIC), located in Room M2616, U.S. EPA, 401 M Street SW.,

Washington, DC 20460. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials. Call 202–260–9327 for an appointment. Copies cost $0.15 per page for materials exceeding 100 pages.

FOR FURTHER INFORMATION CONTACT: For general questions on this proposed rule, contact the RCRA/Superfund Hotline at 1–800–424–9346, TDD 1–800–553–7672 (hearing impaired); in the Washington, DC metropolitan area the number is 703–412–9810, TDD 703–412–3323. For technical questions, contact Mr. Andrew Teplitzky (703–308–7275) or Mr. Allen Geswein (Phone 703–308–7261): Office of Solid Waste, U.S. Environmental Protection Agency, Mail Code 5306W, 401 M St. SW., Washington, DC 20460.

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I. Authority

The Agency is proposing today's regulations under the authority of section 4010(c) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6949a(c). Section 4010(c) requires EPA to establish appropriate ground-water monitoring, location, and corrective action criteria for MSWLFs that may receive household hazardous wastes or hazardous waste from small quantity generators. Section 4010(c) States that: "At a minimum such revisions for facilities potentially receiving such wastes should require ground-water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate."

II. Background

A. 40 CFR Part 258 and Small Landfill Exemption

On August 30, 1988, the Agency published proposed landfill criteria under Subtitle D of RCRA (53 FR 33314), including minimum federal criteria for location restrictions, facility design and operation, ground-water monitoring, corrective action, financial assurance, and closure and post-closure care requirements. The Agency received over 350 public comments in response to the proposed criteria.

The Agency received a significant number of public comments on the impact the proposal would have on small communities that own and operate small landfills. Commentors were concerned that: (1) Small communities face shortages of technical professionals trained in landfill design and operating practices; (2) small communities have insufficient financial resources to be able to comply with the most costly requirements of the criteria (i.e., the design and ground-water monitoring requirements); and (3) a resurgence in illegal dumping would occur if the proposed criteria resulted in closures of small landfills.

Responding to these concerns in the landfill criteria final rule, published on October 9, 1991 (56 FR 50978), EPA included an exemption for owners and operators of certain small MSWLF units from the design and ground-water monitoring requirements of the criteria. To qualify for the exemption, the small landfill could only accept less than twenty tons of municipal solid waste per day (based on an annual average), have no evidence of existing ground-water contamination, and either: (1) Serve a community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or (2) be located in an area that annually receives less than or equal to 25 inches of precipitation and serve a community that has no practicable waste management alternative. In adopting this limited exemption, the Agency believed it had complied with the statutory requirement to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators.

In January, 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a petition with the U.S. Court of Appeals, District of Columbia Circuit, for review of the Subtitle D criteria. The Sierra Club and NRDC alleged, among other things, that EPA exceeded its statutory authority when it provided for an exemption for certain landfills from the ground-water monitoring requirements. On May 7, 1993, the Court of Appeals issued its opinion in *Sierra Club* v. *United States Environmental Protection Agency* 992 F.2d 337 (D.C. Cir. 1993). The Court determined that under RCRA section 4010(c), the only factor EPA could consider in determining whether facilities must monitor ground-water was whether such monitoring was "necessary to detect contamination," not whether such monitoring is "practicable." Thus, the Court vacated the small landfill exemption as it pertains to ground-water monitoring, and remanded that portion of the final rule to the Agency for further consideration. The Court did not require EPA to remove the exemption for design requirements, since the Sierra Club and NRDC did not challenge the final rule's exemption from the design requirement.

Consequently, as part of the Agency's October 1, 1993 final rule delaying the effective date of the MSWLF criteria (58 FR 51536; October 1, 1993), EPA rescinded the exemption from ground-water monitoring for qualifying small MSWLFs. At the same time, however, EPA delayed the effective date of the MSWLF criteria for qualifying small MSWLFs for two years (until October 9, 1995), to allow owners and operators of such small MSWLFs adequate time to decide whether to continue to operate in light of the Court's ruling, and to prepare financially for the added costs if they decided to continue to operate. This additional two-year period also was intended to provide time for EPA to determine if there are practical and affordable alternative monitoring systems or approaches that are adequate to detect contamination.

The U.S. Court of Appeals decision does not preclude EPA from issuing separate ground-water monitoring standards for these landfills, taking into account size, location, and climate, as long as these separate standards ensure that any ground-water contamination

would be detected. The Agency, therefore, solicited comments on alternative ground-water monitoring requirements in the publication of the proposed rule to extend the effective date of the MSWLF criteria (56 FR 40568, July 28, 1993), and later, held a series of related public meetings.

The Agency announced on May 9, 1994, that it would hold a series of four public meetings to provide an additional opportunity for interested parties to present the Agency with information regarding the costs of monitoring ground water at qualifying small MSWLF units, and on any cost-effective alternatives to conventional ground-water monitoring (59 *FR* 23857). These four meetings were held in June, 1994, in Midland, Texas; Salt Lake City, Utah; Anchorage, Alaska; and Washington, DC. Approximately 60 commentors representing State and local governments, landfill owners and operators, geologists, engineers, and other parties involved in waste management presented testimony at those meetings. A copy of these comments may be found in public docket number F–95–AGAP–FFFFF.

Based on the public comments submitted in response to the 1988 proposed rule, the additional comments received at these public meetings, and on related Agency research, the Agency continues to believe that certain qualifying small MSWLFs warrant special consideration with respect to their ground-water monitoring requirements.

B. Special Circumstances of Small Communities and Related Public Comments

In the preamble (56 *FR* 50989 through 50991, October 9, 1991) to the Solid Waste Disposal Facility Criteria Final Rule codified under 40 CFR part 258, the Agency discussed the particular circumstances of small remote communities and the hardships those communities would face if they had to comply with all of the ground-water monitoring requirements of part 258. These circumstances were, in part, the basis for the small landfill exemption described in the previous section of this preamble. Although the ground-water monitoring portion of the exemption has been deleted, the Agency still believes that it may not be necessary or appropriate to require qualifying small MSWLFs in arid or remote areas to comply with the full ground-water monitoring requirements in part 258.

As indicated in the preamble to part 258, circumstances that characterize small communities and their landfills may include: (a) Certain mitigating hydrogeologic and climatic factors, and their influence on impacts to ground water; (b) limited financial resources and technical expertise to comply with the design and ground-water monitoring provisions; (c) financial and practical obstacles to providing regionalized solid waste management practices, such as large geographic distances between communities, or geographic isolation for extended periods of time due to winter weather conditions; and (d) the potential for increased illegal dumping if small landfills are no longer available or regionalization of solid waste is impractical or excessively expensive. The next section of the preamble describes these circumstances in more detail and discusses additional information provided by commentors at the four public meetings.

1. Influence of Certain Hydrogeologic and Climatic Factors on Leachate Generation and Potential Ground-Water Contamination at Small Landfills

The risks of contamination posed by qualifying small MSWLFs vary from location to location and depend on an array of climatic, geologic, and hydrogeologic factors. It was asserted by most commentors that MSWLF units meeting the criteria of 258.1(f)(1) pose a relatively low risk of contamination to ground water. The reasons for this, the commentors noted, are that qualifying small, dry MSWLFs (and many of the remote MSWLFs in Alaska) are situated in areas receiving very small amounts of precipitation, and in such "dry" areas where evapotranspiration often exceeds precipitation annually, the amounts of leachate generated would be minimal. Several commentors reflected that, in general, lower levels of precipitation decrease the probability for leachate generation at MSWLFs, corresponding to a decreased potential for adverse environmental impacts. Commentors stated that the time of year and the frequency and intensity of a precipitation event may significantly affect the potential for leachate generation. Commentors also remarked that in many arid western locations, ground-water is located hundreds of feet below the surface and may be separated from the landfill by rock formations with relatively low permeabilities. Commentors contended that migration of leachate to the ground-water table in such climatic and geologic conditions would be unlikely.

When the D.C. Circuit Court of Appeals remanded the ground-water monitoring exemption in the final MSWLF criteria back to the Agency in *Sierra Club* v. *U.S. EPA*, the Court stated that the "record provides no basis to conclude that * * * the aridity of a facility's climate suffices to establish that ground-water monitoring is not 'necessary to detect contamination.'" 992 F.2d at 345. Today's proposal, rather than using the aridity of a facility's climate to provide a ground-water monitoring exemption, uses aridity as a basis for allowing approved States and Tribes to permit the use of alternative monitoring techniques. The Agency is proposing to grant this authority to approved States and Tribes because it believes that small landfills located in arid areas of the U.S. are less likely to present a threat of contamination due to the dry climate and often great distance to ground water. It is important to note that this is not an exemption, but rather it enables approved States and Tribes to tailor monitoring programs based on site-specific characteristics.

The Agency continues to believe that ground-water monitoring plays an important role in ensuring protection of human health and the environment. However, the Agency believes that the relative public health and environmental risks posed by very small landfills located in arid areas is quite low, based on several reasons.

First, as noted by the commentors, lower levels of precipitation decrease the probability for leachate generation at MSWLFs. Agency water balance studies used to predict leachate generation from MSWLFs indicate that landfills located in dry areas generate very little leachate available for release to the ground water. In addition, the Agency's Subtitle D Risk Model used to predict human health risk resulting from landfills based on a variety of factors, showed that while no single factor is responsible for determining overall risk (i.e., risk results from a complex interaction of factors), a much lower risk of contamination exists from landfills located in dry areas of the country experiencing low net infiltration of precipitation versus wet areas with high net infiltration.

The Agency's choice of 25 inches of precipitation per year as a cut-off for the small landfill exemption contained in the original final MSWLF criteria was based, in part, on case studies on ground-water contamination from MSWLFs developed from State data. (A copy of these case studies may be found in public docket F–95–AGAP–FFFFF. The 25 inch cut-off was selected because, in part, under these conditions, evapotranspiration exceeds precipitation, making very little precipitation available to infiltrate the soil. Evapotranspiration is the portion of precipitation returned to the atmosphere by direct evaporation, by transpiration

of vegetation, or by sublimation from snow and ice. In addition, many of the locations characterized by net evapotranspiration also have ground water located at great depths, further reducing the risk of a small amount of leachate that could be generated by these small landfill from ultimately reaching the ground water. For these reasons, the Agency believes that the 25 inch annual precipitation criterion in the original small landfill exemption represents a reasonable cut-off for qualifying for the ground-water monitoring flexibility in today's rule. The Agency specifically requests data (for docket number F–95–AGAP–FFFFF) that either supports the 25 inch cut-off or provides the basis for establishing another criterion as a qualifier for today's flexibility.

Second, in addition to the low precipitation, the size of the landfill plays another factor in the potential for leachate generation. Agency water balance studies used to predict leachate generation from MSWLFs indicate a relationship between the area of a landfill surface and the quantity of leachate generated over time, whereby the smaller the surface area of the landfill, the lower the quantity of leachate generated. In general, landfills receiving small amounts of waste occupy less surface area than landfills receiving larger amounts of waste. The Agency's Subtitle D Risk Model was used to predict risk as a function of landfill size. Again, while no single factor is responsible for overall risk from a landfill, the model generally predicted a much lower risk of contamination from the smallest class of landfills modelled (approximately less than 20 TPD) relative to larger facilities. The Agency believes that the 20 TPD cut-off in the original small landfill exemption continues to represent a reasonable limit for qualifying as a small landfill for today's rule. Additional explanation of the 20 TPD limitation is contained in the preamble to the final MSWLF criteria (56 FR 50989–50991, October 9, 1991).

While a landfill may be small and dry, it may not always be a candidate for today's ground-water monitoring flexibility. Therefore, today's rule would require Directors of approved programs to assess the viability of alternative monitoring techniques on a site-specific basis. For example, the Agency recognizes that sources of moisture in addition to precipitation, such as ground-water intrusion into the landfill and the release of ambient waste moisture through waste degradation and compression, should be considered on a site-specific basis along with the influences of size, climate, and geology when determining the ground-water monitoring requirements for a particular landfill.

The Agency continues to be aware of constraints on small community landfills located in geographically isolated areas where it is economically impracticable for the community to take advantage of a regional waste management facility. While today's proposal is limited to arid landfills (i.e., those located in areas receiving less than 25 inches of precipitation annually), the Agency recognizes that some small landfills located in areas receiving greater than 25 inches of annual precipitation also may face economic hardships associated with getting access to a regional waste management facility and therefore would also desire to take advantage of cost-efficient alternative monitoring methods, where conditions are appropriate.

Thus, it may be appropriate for landfills serving small populations in geographically isolated areas receiving greater than 25 inches of annual precipitation to take advantage of alternative monitoring methods where the local hydrogeology of the site minimizes, to a large extent, the migration of leachate to ground water. For example, areas with deep water tables and an adequate thickness of low permeability soil or rock between the landfill and water table could be candidates for using alternative monitoring methods. Other such landfills may be located in areas where bedrock (or permafrost in Alaska) exists at or near the base of the landfill, causing any potential leachate to migrate laterally over the bedrock rather than vertically to ground water below. Here again, a simplified alternative monitoring strategy may provide a more cost-effective and equally accurate method of detecting a release from the landfill.

Small communities in areas receiving greater than 25 inches of annual precipitation face many of the same financial problems that exist in arid areas. Therefore, the Agency also is requesting comment (for docket number F–95–AGAP–FFFFF) on the appropriateness of extending today's flexibility to any small landfill that has no practicable waste management alternative. The Agency solicits comment (for docket number F–95–AGAP–FFFFF) on whether alternative monitoring methods will detect contamination in more humid environments.

Because higher annual precipitation could lead to additional leachate generation at a landfill, the Agency believes that site-specific conditions (e.g., hydraulic conductivity, depth to the uppermost aquifer) become increasingly important factors when considering whether to extend today's flexibility to non-arid small landfills. At this time, the Agency does not have sufficient data to identify those situations where it would be appropriate for small landfills in non-arid areas to use alternative ground-water monitoring methods to detect contamination. Therefore, the Agency requests comments (for docket number F–95–AGAP–FFFFF) and data on an appropriate set of hydrogeologic conditions that should exist at a small landfill before it could qualify for today's proposed flexibility to use alternative monitoring techniques.

2. Limited Financial Resources

A number of States and local governments have submitted cost data regarding ground-water monitoring demonstrating the high cost of ground-water monitoring at a landfill serving smaller communities where economies of scale are not available to decrease per capita or per household costs.

- The Texas Natural Resource Conservation Commission (TNRCC) reported that as many as 110 communities in west Texas (served by qualifying small MSWLFs) would be significantly impacted by existing part 258 ground-water monitoring requirements. TNRCC reports that if part 258 ground-water monitoring requirements are fully implemented, they would increase average monthly household waste disposal costs in the 110 communities by 285 percent.
- The New Mexico Environment Department indicated that application of all part 258 ground-water monitoring requirements would increase waste disposal costs per household by approximately $44.00 per month in communities served by qualifying small MSWLFs.
- The Alaska Department of Environmental Conservation (ADEC) reports that for the 289 qualifying small MSWLFs in Alaska, a total capital cost of approximately $6.5 million would be incurred just for the cost of installing monitoring wells (which is cited to be about one-third of the annual construction budget for village sanitation facilities in Alaska). ADEC reports annual cost estimates of $10,600 per facility for sample collection, shipping, and analysis, assuming the landfill has four monitoring wells sampled twice annually. ADEC states that the average community operating budget (for a population of about 800 individuals) is $50,000 to $80,000 per year for all services, not just solid waste; therefore, ground-water monitoring alone would consume on average about 13–20% of a community's budget.

As discussed in the Preamble to the final part 258 MSWLF criteria (56 FR 50989), the Agency recognized that the landfill criteria could have a significant economic impact on those small landfills that could not regionalize to benefit from the economies of scale available to larger MSWLFs. RCRA § 4010(c) directed the Agency to promulgate MSWLF criteria "necessary to protect human health and the environment * * * [taking] into account the *practicable capability* of such facilities (emphasis added)." The Agency, when it developed the MSWLF criteria, interpreted the phrase "practicable capability" to allow for the consideration of the cost of the criteria to MSWLF owners and operators (see 56 FR 509830). Therefore, the Agency included a small landfill exemption in the original MSWLF criteria to exempt lower risk small MSWLFs from the two highest cost components of the rule: ground-water monitoring (27 percent of the total costs) and liners/leachate collection systems (40 percent of the total costs).

Based on the low risk associated with the qualifying small MSWLFs (as discussed in the previous section of today's preamble) and the high costs associated with full ground-water monitoring for qualifying small MSWLFs, the Agency continues to believe that some relief is warranted for these MSWLFs. Cost information developed by the Agency (discussed in Section VII of this Preamble), and similar information submitted in public comments and summarized above, indicates a significant financial burden would be placed on small communities due to implementation of all of the part 258 ground-water monitoring requirements. In particular, the Agency remains concerned about communities with exceptionally low operating budgets that are unable to participate in regional arrangements with neighboring communities to lower their cost of compliance. The ground-water monitoring flexibility provided in today's proposal is designed to alleviate some of the cost burden on affected small landfills, while still ensuring detection of contamination to ground water.

3. Obstacles to Regional Solid Waste Management Practices

In some areas of the U.S., the cost of compliance with the MSWLF criteria can be shared among a number of communities through the use of a regional disposal facility. However, the preamble of part 258 final rule (56 FR 50989) discusses why regionalization of solid waste management is not feasible for many small communities. The preamble states that, in addition to economic constraints, significant geographic obstacles exist particularly in remote areas of the country where communities are separated by great distances or where surface transportation is not available for extended periods of time during the year (such as in Alaska).

The Agency has performed an analysis to determine the costs for closing small landfills, opening a transfer station, and hauling a community's waste to a regional facility. The analysis concludes that for a 10 ton per day (TPD) landfill, the total annual cost is about $160,000 ($160 per household). For a 1 TPD landfill, the total annual cost is about $18,000 ($180 per household). This analysis assumes a one-way land traveled distance of 65 miles as discussed in the docket for this rulemaking (F–95–AGAP–FFFFF). The higher annual household cost for the 1 TPD landfill versus the 10 TPD facility arises from a smaller number of households being served by the 1 TPD facility. This cost analysis is discussed further in technical background document located in docket number F–95–AGAP–FFFFF.

Small remote communities also may experience practical obstacles to regional solid waste management. Commentors at the public meetings related the difficulties associated with transporting waste where communities are separated by large geographic distances, or are served only by unimproved roads that are not likely to be adequate for heavy truck traffic. In certain areas of Alaska, road systems may not be available at all.

4. Likelihood of Increased Illegal Dumping

Many commentors have asserted that the number and extent of illegal dump sites will increase dramatically if small landfills are no longer available or if the regionalization of solid waste is impractical or excessively expensive. This assertion is supported by data provided by the Texas Natural Resource Conservation Commission (TNRCC) and contained in docket number F–95–AGAP–FFFFF, that suggest a positive correlation between landfill closures and illegal dumping in Texas for the years 1988–1994.

C. Additional Public Comments

1. Comments on Alternatives

When the Agency announced the public meetings on alternatives to ground-water monitoring (59 FR 23857, May 9, 1994), it asked for commentors to provide ideas regarding potential alternatives and their costs and limitations. This section describes various technical approaches to alternatives to ground-water monitoring that were mentioned at these public meetings.

Commentors strongly encouraged EPA to provide States and Tribes with greater flexibility to determine ground-water monitoring requirements for qualifying small MSWLFs, including the flexibility to allow alternatives to conventional ground-water monitoring on a site-specific basis. Commentors indicated that in determining alternatives to ground-water monitoring that were able to detect ground-water contamination, consideration must be given to site-specific factors such as rock and soil types, hydrogeology, and climate, and to other general factors such as equipment availability and cost of operation.

Commentors focused on alternatives that monitor conditions in the unsaturated zone, in the saturated zone (i.e., ground water), in surface waters, in the surrounding soils, and in the landfill itself. Commentors addressed situations when early detection monitoring used in the unsaturated zone would be advantageous over conventional ground-water monitoring. The Agency believes that in geologic settings where ground water lies hundreds of feet below the MSWLF, appropriately installed unsaturated zone monitoring devices placed just below the MSWLF and above the uppermost aquifer would have the capability to detect releases of leachate from the MSWLF before leachate contacts ground water. The docket for today's proposal (F–95–AGAP–FFFFF) contains several compilations of information on a variety of alternative monitoring techniques, including a description of the techniques and a discussion of the site-specific conditions that are appropriate for each.

Commentors offered specific "early detection" methods, that include the measurement of moisture content within the soil or rock formations just beneath the landfill by using gypsum blocks, geophysical electrical resistivity surveys, and/or lysimeters. For further explanation of these methods, the reader is referred to two technical background documents: "Examples of Alternatives to Conventional Ground-Water Monitoring Wells at Small, Dry or

Remote Landfills" and "Subsurface Characterization and Monitoring Techniques, Volumes I and II." Both documents may be found in the docket for this rulemaking (F–95–AGAP–FFFFF).

While many of these early detection methods, such as gypsum blocks and resistivity surveys, do not measure any of the specific chemical parameters listed in Appendix I and II of Part 258, the Agency agrees with commentors that they are well-established, reliable indicators of moisture that are affordable for many small MSWLFs to employ. Detection of moisture by an early detection system can be a way to predict potential leachate movement from a MSWLF unit. The Agency recognizes that the presence of moisture does not necessarily mean that there is contamination leaving the MSWLF unit, but detection of moisture can be an effective first step in a phased approach to detecting contamination. EPA believes that these systems can be cost effective in such applications and believes that the States and Tribes can use site-specific information to determine when to use these systems.

Commentors were in agreement that a phased approach would be the most feasible and cost-effective method of implementation. In such an approach, an effective low cost technology could be used to detect moisture movement beneath a MSWLF unit. The ground water would be sampled to determine ground-water quality in a second phase. Later, should ground-water contamination be detected, an expanded monitoring system would be employed to provide greater detail on the nature and extent of contamination.

The Agency agrees with this approach for implementing the ground-water monitoring requirements of RCRA Section 4010(c). The Agency believes that if low-cost moisture detection devices (such as gypsum blocks) were used as the initial monitoring technique and moisture was detected beneath or near the landfill, expanded monitoring would be implemented to confirm whether an actual release from the landfill had occurred or if the moisture detection devices were reacting to infiltrating water from another source. One example of an expanded monitoring technique for this situation could be the use of small diameter sampling tools that are temporarily driven into the ground by hydraulically powered hammers to recover subsurface solids, liquids, or gases for laboratory analysis.

In cases where the recovery and analysis of ground water is necessary, several commentors pointed out that the Agency should allow limited saturated zone monitoring for a narrow set of indicator elements and/or parameters in place of the Appendix I constituents. The Agency agrees that alternative parameters used in lieu of current Appendix I constituents may be appropriate for these facilities on a site-specific basis. A further discussion regarding the use of alternative parameters may be found in Section IV.B.1 of today's preamble.

Several commentors provided case studies on the use of existing agricultural and drinking water supply wells in ground-water monitoring. The Agency believes that the use of existing agricultural and drinking water supply wells may be acceptable where the wells are located so that they detect potential contamination from the MSWLF unit. An owner/operator could determine the suitability of existing wells for detecting a release by conducting a characterization of the site hydrogeology, including analysis of existing well logs.

For MSWLF units in Alaska, commentors indicated that conditions are so unique in the State that alternative monitoring techniques in Alaska would not usually be considered appropriate for the 48 contiguous States. For example, commentors stated that, in many instances, surface-water monitoring would be more appropriate than ground-water monitoring. This is because lateral migration of leachate is more probable and is of greater concern than migration to ground water, due to low permeability subsurface soils and the presence of permafrost in some areas. Commentors recommended monitoring surface/subsurface temperatures at frozen landfills located in permafrost areas. Commentors from Alaska also recommended modifying the frequency of ground-water monitoring such that monitoring occurs when leachate and water contamination problems are most likely to be detected. The Agency believes that conditions in Alaska are so unique that the State regulatory authority, once approved, would be in the best position to understand the local conditions and corresponding monitoring techniques appropriate for those conditions.

2. Comments on 40 CFR 258.50(b), Demonstration of No Potential for Migration

The final MSWLF criteria in 40 CFR part 258 contained two types of exemptions from ground-water monitoring: (1) the small landfill exemption that was later vacated by the U.S. Court of Appeals and (2) an exemption that can be granted by the Director of an approved State or Tribe based on a demonstration that there is no potential for migration of hazardous constituents from the MSWLF unit to the uppermost aquifer during the facility's active life and post-closure care period. This no-migration exemption was not vacated by the U.S. Court of Appeals decision, and is available to all MSWLFs, regardless of size, where authorized by approved State regulations. The requirements for this demonstration are established in 40 CFR 258.50(b) and call for: (1) "site-specific field collected measurements, and sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport" and (2) "contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment."

In EPA's announcement of the public meetings, the Agency, in addition to requesting comments on ground-water monitoring alternatives, requested any information on the ability of owners and operators of qualifying small MSWLFs to demonstrate no potential for migration. Although the Agency was not re-proposing 40 CFR 258.50(b) in that request for comment, the Agency was trying to evaluate the extent to which § 258.50(b) would accommodate qualifying small MSWLFs. In response, commentors indicated that the Agency should establish guidance to simplify and streamline this process for small communities. Commentors also suggested that the Agency provide guidance on the type and quality of data that are necessary to substantiate a "no-migration" demonstration for small landfills located in arid locations.

The Agency believes that the regulatory standard for demonstrating no potential for migration should not be changed, and that any variance from ground-water monitoring based on this standard should be granted only after the site-specific conditions of 40 CFR 258.50(b) are satisfied. The Agency plans to issue a technical guidance document to provide additional information to assist owners and operators of qualifying small MSWLFs in making a demonstration of no-migration, where such an exemption is available from approved States and Tribes. The Agency plans to make this guidance readily available to qualifying small MSWLFS. Additional discussion on the demonstration of no potential for migration is contained in the October 9, 1991 Solid Waste Disposal Facility Criteria final rule (56 FR 51061).

3. Proposal for Extension to General Compliance Date

As a separate matter in today's proposal, the Agency is requesting comment on two alternatives regarding an extension of the general compliance date for meeting the criteria in 40 CFR part 258. As noted earlier, the Agency has established a separate docket for this aspect of today's proposal (docket number F–95–AGDP–FFFFF) and has provided only a 30-day comment period. The shorter comment period is necessary to allow the Agency to put an extension in place by the time the current compliance date expires on October 9, 1995.

For qualifying small MSWLFs, the general compliance date for meeting the requirements of the solid waste disposal facility criteria specified in 40 CFR part 258, currently is October 9, 1995. Unless the qualifying small MSWLF ceases receipt of waste by this date, the qualifying small MSWLF must comply with all of the part 258 regulations including location, operation, ground-water monitoring and corrective action, closure and post-closure care, and financial assurance.

This October 9, 1995 compliance date does not apply in several circumstances, however. First, the effective date for ground-water monitoring for qualifying small MSWLFs located greater than two miles from a drinking water intake is October 9, 1996. Second, qualifying small MSWLFs are exempt from the design requirements of part 258 unless ground-water contamination that can be attributed to that MSWLF is discovered. Finally, in a separate rulemaking, the Agency extended the effective date for the financial assurance requirements (Subpart G) for all MSWLF units, regardless of size, until April 9, 1997 (see 60 FR 17649, April 7, 1995).

Since the Agency announced that it was investigating the possibility of providing approved States/Tribes with the flexibility to allow qualifying small MSWLFs to use alternatives to ground-water monitoring, the Agency believes (based on public comments) that a number of these MSWLFs have delayed plans for investing resources towards compliance with the requirements in 40 CFR part 258 until the Agency publishes a final rule governing the use of ground-water monitoring alternatives. The Agency believes that qualifying small MSWLFs, in determining whether to remain in operation past the general compliance date of October 9, 1995, should be able to consider any site-specific flexibilities allowed under a final rule on alternatives to ground-water monitoring.

The Agency anticipates publication of a final rule regarding ground-water monitoring alternatives by October, 1996. Therefore, as part of today's proposed rule, the Agency is proposing to extend the general compliance date for qualifying small MSWLFs from October 9, 1995 to October 9, 1997. This should provide qualifying small MSWLFs with sufficient time to come into compliance. Should public comment support today's proposal to extend the general compliance date for qualifying small MSWLF units, the Agency would publish a final rule for the general compliance date extension prior to October 9, 1995. The Agency recognizes that time is short for this action and has taken steps that will allow the decision to be made prior to October 9, 1995. For this reason, the Agency has set a 30-day public comment period for the proposed rule changes that relate to extending the compliance date and has established a separate public docket (F–95–AGDP-FFFFF) for comments on the extension.

If finalized, qualifying small MSWLF units would not become subject to compliance with any of the part 258 requirements until October 9, 1997. At that time, these MSWLF units must be in compliance with all of the part 258 requirements, including the ground-water monitoring (or alternative ground-water monitoring) requirements and financial assurance requirements. Should a qualifying small MSWLF unit cease receipt of waste prior to October 9, 1997, the owner/operator of that unit need only comply with the final cover requirements as specified in § 258.60(a). The final cover would have to be installed by October 9, 1998.

As a result of today's proposal to extend the general compliance date for qualifying small MSWLFs from October 9, 1995 to October 9, 1997, the Agency is proposing to make corresponding changes in the regulatory language in 40 CFR part 258. First, § 258.1(d)(3) and (e)(4) would be revised to reflect the new compliance date of October 9, 1997. Second, the definition of "New MSWLF unit" under § 258.2 would be modified to account for the new general compliance date of October 9, 1997. Finally, the applicability section under § 258.50(e) would be revised by removing paragraphs (1) and (2), which allowed for two different effective dates for the ground-water monitoring requirements based on the distance of the MSWLF unit to a drinking water intake. Today's proposal would create one effective date (i.e., October 9, 1997) for ground-water monitoring for all qualifying small MSWLFs, regardless of its distance to a drinking water intake. The Agency believes that the new proposed effective date will provide sufficient time for all qualifying small MSWLFs to comply.

During development of today's proposal to extend the general compliance date for qualifying small landfills to October 9, 1997, the Agency received comments that situations existed where another extension of the effective date for *all* of the requirements of 40 CFR part 258 may not be appropriate.

First, the Agency learned that certain qualifying small landfill owners/operators have already made arrangements to close their facilities and have established alternative means of waste management, particularly through the development of regionalized facilities. The Agency understands that the establishment of regional commitments amongst numerous small communities that heretofore have independently managed their own waste, can be a time-consuming and, at times, delicate process. The Agency was informed that an extension of the general compliance date could undermine these commitments by creating an incentive for these owners/operators to reopen their closed facilities.

The Agency also learned that a number of the qualifying small landfills closed in advance of the October 9, 1995 compliance date due to the expense of compliance. The Agency understands that another delay of the general compliance date might serve to penalize those facilities that are trying to work within the rules by either deciding to close or make other arrangements and reward those communities that have done little or nothing. Finally, the Agency was informed that another delay of the general compliance date could allow the reopening of poorly designed and operated facilities that have already closed in anticipation of the October 9, 1995 compliance date.

The Agency does not have information on the extent to which the aforementioned problems may arise should a two-year delay of the general compliance date be promulgated. Therefore, the Agency requests comment (addressed to docket number F–95–AGDP-FFFFF) on these and any other concerns that may result from a two-year delay of the general compliance date.

In addition to soliciting comment on the implications of a two-year general compliance date delay, the Agency invites comments (also addressed to docket number F–95–AGDP-FFFFF) on an alternative to the proposed two-year delay. The alternative approach would

maintain a general compliance date for qualifying small landfills of October 9, 1995, but would extend the effective date of ground-water monitoring and financial assurance until October 9, 1997. Under this alternative approach, such an owner/operator that accepts waste after October 9, 1995 would have to comply with the location restrictions and operating requirements. Should that owner/operator cease receipt of waste by October 9, 1997 and place final cover on the landfill by October 9, 1998, that facility would be exempt from ground-water monitoring. Under this approach, the owner/operator also would be exempt from the financial assurance requirements for closure since closure would be completed within one year of last receipt of waste. In addition, because most of the costs of post-closure care are attributed to ground-water monitoring, the Agency also would exempt the owner/operator from demonstrating financial assurance for the post-closure care period. Table I provides a summary of the proposed delay of the general compliance date and the alternative approach.

TABLE I.—PROPOSED APPROACHES FOR EXTENDING THE EFFECTIVE DATES FOR SMALL LANDFILL LOCATED IN DRY OR REMOTE LOCATIONS

Approach	Requirements effective on October 9, 1995	Requirements effective on October 9, 1997
Proposed Approach: Delay of General Compliance Date.	No requirements take effect	All requirements take effect.
Alternative Approach: Delay of Groundwater monitoring and financial assurance.	All requirements other than groundwater monitoring and financial assurance take effect.	If cease receipt of waste by October 9, 1997: placement of final cover required by October 9, 1998. [Note: owner/operator exempt from groundwater monitoring and financial assurance requirements.] If continue receipt of waste after October 9, 1997: all other requirements take effect, including groundwater monitoring and financial assurance.

III. Alternatives to Ground-Water Monitoring

In addition to reviewing the comments described in section II.C.1 of this preamble, the Agency conducted a literature review to assess the types of equipment and techniques that can function as alternatives to the full ground-water monitoring requirements of Part 258. This literature may be found in the docket for today's rule (F–95–AGAP–FFFFF). The following discussion presents a summary of this review. While this discussion does not contain an exhaustive description of all possible alternatives, it does discuss several of the technologies available and in use today for a variety of geological and hydrogeological purposes. Based on this literature review, the Agency believes that ground-water monitoring well alternatives, such as those described in this section, can, on a site-specific basis, detect contamination and determine the nature and extent of contamination.

Alternatives to conventional ground-water monitoring include various types of equipment and measurement techniques that are capable of recovering physical samples of ground water or soil and are capable of detecting changes in subsurface conditions that are indicative of a release from a landfill. In general, alternatives to ground-water monitoring wells can be placed into two categories depending on the type of measurements made and the data collected. One category, geochemical alternatives, includes samples of soil, water, rock, or other materials for laboratory analysis. A second category, geophysical alternatives, involves methods that rely on the measurement of electrical properties, such as conductivity or resistivity. Both unsaturated zone monitoring and saturated zone monitoring are possible with geochemical and geophysical alternatives, depending on the particular characteristics of a landfill and the capabilities of the alternative chosen.

Common sampling devices are readily available and may be used for collecting geochemical sample material. Hand-held soil samplers can be used for sampling at depths of several feet, and power-driven augers may be needed to penetrate and sample consolidated subsurface material. The use of a rotary drill may be necessary if geochemical samples must be collected from relatively great depths. Small diameter sampling tools may be pushed into the subsurface with hydraulic equipment for the collection of soil or ground-water samples beneath the landfill. Small diameter sampling tools are capable of reaching depths of about 50 feet in loosely consolidated soil or sediment, but are not designed to penetrate thick rock formations. During sample collection, geochemical samples must be handled and stored to avoid accidental sample contamination.

Under appropriate conditions, soil pore liquid from the unsaturated zone may be collected for laboratory analysis. This procedure involves a porous cup that is placed into the subsurface and is connected to a vacuum-pressure source. The vacuum draws liquid into the cup, and the liquid is transported through a tube to the surface where it is collected.

Alternatives that employ geophysical principles generally provide an indirect method for detecting contamination. Electrical geophysical methods can measure the contrasting electrical properties of subsurface features. By injecting an electrical current into the ground with electrodes and measuring the resulting potential field, a geophysical electrical resistivity survey can delineate conductive contaminant plumes, vertical and lateral extent of geological features, and fresh/salt water interfaces. Electrical resistivity measurements are normally correlated with geology from subsurface borings to validate survey results.

Another method relying on geophysical measurements involves moisture detection blocks or electrical resistance sensors. Electrical resistance sensors measure the electrical potential between two wires spaced a few centimeters apart. The two wires are embedded in a porous matrix (typically gypsum-based), forming a block a few inches in diameter with wire leads. The blocks are embedded in the subsurface and the wires extend to the surface where they are attached to a portable resistivity meter. Because the block matrix is porous, soil pore liquids can freely enter and leave. When the soils and the electrical resistance blocks are dry, the resistance to electrical current flow is high, and conversely, when the soil and blocks become wet, a low resistance is measured on the meter. These blocks represent a point measurement of soil moisture content. Electrical resistance sensors have an effective life span of up to several years, at which time they must be replaced.

A full discussion of other types of equipment and techniques possibly serving as alternatives to ground-water monitoring wells is beyond the scope of this preamble discussion. For further information on alternatives to ground-water monitoring, the reader is referred to two technical background documents "Examples of Alternatives to Conventional Ground-Water Monitoring Wells at Small, Dry or Remote Landfills" and "Subsurface Characterization and Monitoring Techniques, Volumes I and II," which may be found in docket number F–95–AGAP–FFFFF for this proposed rule. The Agency is assessing the need for additional technical guidance to provide regulators and landfill owners and operators with further information regarding ground-water monitoring well alternatives.

In conjunction with the types of alternatives described above and in the docket for this rulemaking, the Agency fully supports the use of beneficial modified operating practices that may serve to reduce the potential for leachate generation in certain situations. Examples of such operating practices may include the use of movable covers to prevent rainfall infiltration into the working face and body of the landfill, early final closure of the landfill cell, and careful contouring and drainage design of the final cover to route precipitation away from the closed MSWLF unit.

IV. Proposed Rule for Alternatives to Ground-Water Monitoring

A. Overview

Based on the information contained in docket number F–95–AGAP–FFFFF and on comments received at the public meetings, the Agency today is proposing to allow alternatives to the full part 258 ground-water monitoring requirement for qualifying small MSWLFs, where approved by the Director of an approved State or Tribe. This proposed rule covers only those MSWLFs meeting the criteria of 40 CFR 258.1(f)(1). The Agency estimates that approximately 750 MSWLFs would qualify as a small landfill meeting the conditions of § 258.1(f)(1). The Agency estimates that between 300 to 500 of these 750 MSWLF units would be able to use alternative ground-water monitoring systems; however, the final decision to allow the use of alternative ground-water monitoring systems would be made by the approved State or Tribe and not by the Agency.

Under today's proposal, all landfills that are not qualifying small MSWLFs would be subject to the full ground-water monitoring requirements of 40 CFR part 258, subpart E, unless they could demonstrate no potential for migration under 40 CFR 258.50(b). This proposed rule does not provide any additional exemption or "no-action" alternative to the ground-water monitoring requirements in 40 CFR part 258. An approved State or Tribe may only waive ground-water monitoring requirements if the MSWLF unit meets the conditions established in 40 CFR 258.50(b).

Today's proposal, if finalized, would allow approved States and Tribes the flexibility to determine the most appropriate alternative to ground-water monitoring for qualifying small MSWLFs based on site-specific data as long as the alternative ensures the detection of contamination. Monitoring may be conducted with a variety of relatively low-cost geochemical and geophysical technologies capable of detecting contamination and assessing the nature and extent of contamination. Some alternatives may detect contamination by directly measuring the levels of constituents in ground water, while other alternatives may monitor the unsaturated zone or saturated zone for the properties of solids, gases, or liquids that are determined to be indicative of releases from the MSWLF unit.

When the Agency proposed the MSWLF criteria in August, 1988, it discussed the reasons for requiring ground-water monitoring at all MSWLFs, indicating that ground-water monitoring is "an essential measure to ensure protection of human health and the environment * * * [and] * * * the most reliable method for determining whether a landfill is in compliance with the overall performance standard" of the MSWLF criteria. See 53 FR 33366. The Agency believes that the approach adopted in today's proposal, allowing the use of alternative methods to detect ground-water contamination (other than monitoring wells), will continue to satisfy the statutory requirements in RCRA section 4010(c) that ground-water monitoring be implemented at all MSWLFs "as necessary to detect contamination."

By providing flexibility to approved States and Tribes to establish the best tailored alternative ground-water monitoring regime for each qualified small MSWLF, today's proposal is designed to ensure detection of contamination in an effective manner that best takes into account the numerous, complex characteristics that are encountered on a site-specific basis. Today's proposal does not exempt qualifying small MSWLFs from ground-water monitoring, but instead allows a stepwise approach for detecting a release from the landfill that could result in ground-water contamination. Today's proposed rule provides the flexibility to approved States or Tribes to allow qualifying small MSWLFs to use cost-effective screening techniques rather than requiring immediate use of a full ground-water monitoring well program. Should the screening techniques indicate the possibility of ground-water contamination, the approved State or Tribe would then require that owners and operators establish more precise techniques that could quantify the contamination, including the installation of monitoring wells when warranted.

Alternative ground-water monitoring methods (e.g., monitoring in soil or in the unsaturated zone) are intended to detect the escape of contaminants from the MSWLF and thereby accomplish the same purpose as the ground-water monitoring well program pursuant to 40 CFR 258.51 through 258.55. While the alternative methods may not always include the collection of actual ground-water samples, they will indicate if a release from the landfill has occurred, at which point the alternative ground-water monitoring method may need to be supplemented by the installation of ground-water wells to ascertain whether the ground-water below the MSWLF has been contaminated.

The Agency understands that numerous methods and techniques exist for sampling and monitoring the saturated and unsaturated zones at qualifying small MSWLFs and that existing field methods are often refined and new methods are continually being developed. Therefore, the Agency believes it would be inappropriate to delineate in today's regulations all of the specific alternatives that may be authorized by approved States and Tribes. Approved State and Tribal authorities would decide which of the available alternatives to ground-water monitoring will ensure detection of contamination from the qualifying small MSWLF. These decisions will be made in a public forum, since the programs administered by States and Tribes provide opportunities for public participation during the permit issuance process (40 CFR part 256). Thus, members of the public will have an opportunity to comment on the selection of an appropriate and reliable

alternative ground-water monitoring technique at that time.

B. Proposed Approach for Using Alternatives

1. Consideration of Site-Specific Factors in Selection of an Alternative Monitoring Technique

The Agency believes site-specific factors need to be considered in determining which, if any, alternative(s) may be appropriate to detect contamination. To ensure that appropriate decisions regarding the use of alternatives to ground-water monitoring are made, the Agency believes that the following factors should be considered, as warranted and appropriate, on a site-specific basis:

- The geology and hydrogeology of the site;
- The impact of manmade and natural features on the effectiveness of an alternative technology;
- Precipitation amounts, temperature, and other climatic factors; and
- The effectiveness of indicator parameters in detecting a potential release from the MSWLF unit.

The following discussion serves to illustrate, in general, why these site-specific factors should be considered when choosing an appropriate monitoring alternative.

a. The geological and hydrogeological characteristics of the site.

The ground-water monitoring requirements in the final MSWLF criteria provide that the number, spacing, and depths of monitoring well systems should be determined based upon site-specific technical information that must include a site characterization of the geology and hydrogeology (40 CFR 258.51(d); see also preamble discussion in 56 FR 51066). The Agency believes that a similar understanding of the geology and hydrogeology also is desirable when deciding whether it is appropriate to use alternative monitoring technologies.

For example, the Director of an approved State or Tribe, when considering the use of gypsum blocks as an alternative, would need to determine if the presence of shallow ground water could lead to false indications of releases from the landfill through seasonal fluctuations in ground-water depth and how wet-dry periods and soil chemistry would affect the useful life of the gypsum blocks. Additionally, knowledge of site geology is important where an owner or operator is considering the use of small diameter sampling tools to sample around and beneath the landfill for detecting a release. This technology is influenced by the ability of the tool to penetrate subsurface materials. For example, this technique is most likely to be workable where the geology consists of loosely consolidated sediment down to the depth at which samples are required.

b. The impact of manmade and natural features on the effectiveness of an alternative technology.

Manmade and natural features at a particular site may be important factors in influencing the capability of an alternative technology to detect contamination. For example, as discussed earlier, some alternatives may employ the use of electrical geophysical principles to provide an indirect method for detecting contamination by measuring the contrasting electrical properties of subsurface features to delineate contaminant plumes. However, when conducting geophysical electrical resistivity surveys, measurement errors may result from electrical currents in the ground that interfere with the current being measured. Therefore, before employing these surveys, potential subsurface interferences should be considered, such as naturally-occurring sulfide deposits, the presence of electrical power lines, or buried metal objects that are corroding. Additionally, electrical resistivity surveys are not recommended for use in paved areas.

Natural features of a site may impede access necessary to bring certain equipment on site. For example, ground penetrating radar radiates short pulses of high-frequency radio waves into the ground to delineate a leachate plume. The bulkiness of the equipment, however, may limit its use in rough and inaccessible terrain.

c. Climatic factors that may influence the selection, use, and reliability of alternative ground-water monitoring procedures.

The MSWLF owner or operator must have knowledge of precipitation amounts in order to determine whether the MSWLF qualifies for today's flexibility. In addition, an understanding of the local climatic conditions is important in understanding the effectiveness of possible alternative monitoring methods. For example, ground penetrating radar is best applied in areas with very dry soil conditions. Seismic refraction, an alternative technology that relies on an artificial seismic source (hammer, controlled explosive charge) to create underground seismic waves that are read with a seismograph to delineate soils/geology and leachate, might be limited by cold or relatively wet weather. Finally, where soil pore liquid is collected from the unsaturated zone through the use of porous cup lysimeters, the effectiveness of the lysimeter will be hindered in areas where soils are frozen, extremely dry, or where subjected to freeze-thaw.

d. The effectiveness of indicator parameters in detecting a release.

A number of qualifying small MSWLFs may be able to use alternative technologies to detect contamination in the unsaturated zone. Where these unsaturated zone monitoring methods are allowed by an approved State or Tribe, the owner/operator would be monitoring for parameters that can be detected by application of that specific technology (e.g., gypsum blocks would monitor for the presence of moisture in the zone underlying the MSWLF). Some qualifying small MSWLFs, however, may not be able to use alternative technologies and may need to use traditional monitoring wells to sample and analyze ground water.

In these situations, the current detection monitoring program in § 258.54 requires sampling and analysis at each well for 15 metals and 47 volatile organic compounds (VOCs); however, approved States and Tribes currently are permitted to (1) replace some or all of the metals with geochemical parameters (e.g., ammonia, total dissolved solids) and (2) delete any metal or VOC if that constituent is not in or cannot be derived from the waste in the landfill.

At the June, 1994 public meetings, many of the commentors suggested that the MSWLF owner/operator should have the flexibility to use a shorter, less costly list of monitoring parameters for ground-water monitoring wells (primarily geochemical parameters) so long as these parameters would indicate a release from the MSWLF. Such flexibility would be designed to allow an owner/operator to use geochemical parameters in place of both metals and VOCs without having to demonstrate that each of the 47 VOCs is not in or cannot be derived from the waste in the MSWLF.

For the reasons discussed earlier in today's preamble (Section II.B.1), the Agency believes that approved States and Tribes should have the flexibility to establish an alternative list of indicator parameters for qualifying small MSWLFs, where appropriate given site-specific circumstances. These reasons include low precipitation, low net infiltration, and great depth to ground water at many of these sites, the relatively small amounts of waste received at these MSWLFs, and the practicable capability (i.e., economic) considerations of qualifying small MSWLFs. The Agency's technical

background document ("Examples of Alternatives to Conventional Ground-Water Monitoring Wells at Small, Dry or Remote Landfills") and cost analysis for today's rule suggests that the use of indicator parameters (e.g., Ph, specific conductance, total organic carbon, total organic halogen), where appropriate, may be a cost-effective means for owners/operators of a qualifying small MSWLF to detect contamination from their unit. Again, this could be the first step in a phased approach that eventually could lead to full ground-water monitoring pursuant to the final MSWLF criteria.

Thus, today's proposal would allow approved States and Tribes to permit the use of a set of parameters tailored to a site-specific location. The appropriate use of this flexibility again would be tied to the site-specific conditions at the particular qualifying small MSWLF. For example, the effectiveness of an alternative set of parameters depends, in part, on having an adequate understanding of the geochemistry of underlying rock, soil, and ground water, to ensure that natural variability in concentrations of elements or parameters in the ground water can be distinguished from concentrations that are indicative of a release from the MSWLF.

As illustrated in the above discussion, the selection, use, and reliability of alternative monitoring technologies or parameters depends on a number of site-specific factors. Additional information on the types of site-specific factors that should be considered for various alternative monitoring techniques and how to apply them may be found in the technical background documents entitled "Examples of Alternatives to Conventional Ground-Water Monitoring Wells at Small, Dry or Remote Landfills" and "Subsurface Characterization and Monitoring Techniques, Vols. I and II."

2. Phased Approach to Alternative Ground-Water Monitoring

Today's proposal uses an approach that would allow approved States or Tribes to implement the proposed ground-water monitoring flexibility in phases. Thus, today's proposal would allow approved States or Tribes to authorize the use of alternatives to full part 258 ground-water monitoring requirements for initially "detecting" contamination. If contamination is detected, the approved State or Tribe could then allow use of further alternatives for "expanded monitoring" to assess the nature and extent of "detected" contamination. Alternatives, or combinations of alternatives, could be used for both detection and expanded monitoring. Expanded monitoring, however, might require the use of conventional ground-water monitoring wells, or other aspects of the full part 258 ground-water monitoring requirements.

As used in this proposed rule, "detection" would refer to the moment when data, instrument readings, analyses, or other information collected by an alternative to full part 258 ground-water monitoring requirements indicates a change in surface or subsurface conditions that could be caused by a release from an MSWLF. "Expanded monitoring" would refer to the steps taken to determine whether the "detected" release is an actual release from the MSWLF and to determine the nature and extent of the release.

Under today's proposal, if expanded monitoring using alternatives indicates that a release from the MSWLF unit has contaminated the saturated zone, then the owner/operator would be required to install ground-water monitoring wells and comply with the full range of ground-water monitoring requirements of 40 CFR part 258 (§§ 258.50 through 258.58). If expanded monitoring indicates that a release from the MSWLF unit exists, but has not yet contaminated the saturated zone, the Director of an approved State or Tribe would establish a schedule for the owner/operator to propose, as necessary, measures to prevent further contaminant migration and to remediate contamination in a manner that ensures protection of human health and the environment.

V. Role of States and Tribes

Section 4005(c) of RCRA requires that each State (or Tribe) adopt and implement a "permit program or other system of prior approval and conditions" adequate to assure that each facility that may receive household hazardous waste or small quantity generator waste will comply with the revised MSWLF criteria. The statute also requires each State (or Tribe) to adopt and implement a permit program not later than 18 months after promulgation of EPA's final criteria (October 9, 1991).

The issue of whether Tribes should be approved to administer programs under RCRA Subtitle D is about to be proposed generically as part of the State and Tribal Implementation Rule (STIR). The Agency is seeking comment on the issue of Tribal permit program approval as part of the STIR and not as part of today's proposed rule. References to potential Tribal approvals in today's proposed rule are being made to be consistent with the STIR proposal.

The Agency believes that an approved State or Tribal permit program plays an important role in the proper implementation of today's rule to allow alternative ground-water monitoring requirements. Approved State or Tribal permit programs provide opportunities for public participation during the permit issuance process, at which time alternative ground-water monitoring procedures would be considered.

The STIR proposal will establish adequacy determination requirements and procedures for State and Tribal MSWLF permit programs, including submission of an MSWLF permit program application. The statute, however, does not require that the STIR be in place before EPA assesses the adequacy of any State or Tribal program. In fact, while the EPA has not yet promulgated the STIR, the Agency has already reviewed and approved over 40 State programs.

The STIR proposal also will include procedures for submitting revised applications for State and Tribal program adequacy determinations, should a State or Tribe revise its permit program after it has been deemed adequate. Program revision may be necessary when the pertinent Federal statutory or regulatory authority or relevant guidance changes, or when responsibility for the State or Tribal program is shifted within the lead agency or to a new or different State or Tribal agency or agencies. Final promulgation of today's proposed changes to part 258 may require revision to a State's or Tribe's permit program application, as well.

The statute does not establish any mandatory timeframes for revising approved programs, submitting revised applications, or re-examining adequacy determinations. Schedules for States and Tribes to submit revised applications to the Regional Administrator, where needed, are to be negotiated by the State or Tribal Director and the Regional Administrator. This arrangement should minimize potential disruption to on-going program activities.

States and Tribes may receive approval of their permit programs prior to the final promulgation of today's rule and later elect to adopt the revised regulatory language regarding alternatives to ground-water monitoring. These States and Tribes should work with their respective Regional EPA offices as they proceed to revise their permit programs.

VI. Consideration of Issues Related to Environmental Justice

The Agency believes that this proposed rule, if finalized, would not have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community. Rather, the Agency believes that this rulemaking will bring the cost of ground-water monitoring to an affordable level for some eligible communities that otherwise would have to bear the cost of full ground-water monitoring under 40 CFR part 258. As a result, the Agency believes that this rule will enable some minority and/or low-income communities to be served by a local landfill, and will reduce the potential for open burning and illegal dumping. Because this rule would reduce the financial impacts of ground-water monitoring, such communities may be able to allocate some funding to other priority issues affecting their local environments.

VII. Impact Analysis

A. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant. A significant regulatory action is defined by Executive Order 12866 as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of the Executive Order, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions will be documented in the public record.

The Agency estimated the annual effect on the economy by comparing the costs of alternatives to ground-water monitoring with the costs of full ground-water monitoring. The Agency estimates the national annual costs of baseline ground-water monitoring requirements at qualifying small facilities to range from $7.2 million to $26.6 million per year. National annual costs of the lowest-cost alternative range from $1.3 million to $4.4 million per year, resulting in a $5.9 million to $22.2 million savings over baseline ground-water monitoring requirements. Actual regulatory savings from this proposal are likely to be less because site-specific factors and/or State regulatory decisions may preclude the use of the lowest cost alternative. Because appropriately selected alternatives to ground-water monitoring will be able to detect contamination, the Agency anticipates that there will be no decrease in environmental benefits as a result of the proposed rule. The full cost analysis may be found in the docket (F–95–AGAP–FFFFF) to this rulemaking.

For estimating costs of alternatives to ground-water monitoring, the Agency selected several alternatives for cost modeling purposes. These alternatives include: (A) collection and analysis of ground-water samples from existing drinking water/agricultural wells and springs; (B) collection of ground-water samples from monitoring wells and analysis for a reduced list of constituents; (C) annual sampling and analysis of geologic (solid/liquid) materials from the unsaturated zone; (D) collection and analysis of soil gas samples from the unsaturated zone; (E) performing an electrical resistivity survey, and; (F) installing moisture-detection gypsum blocks.

The lowest cost alternative differed depending on the size and the remaining life of the landfill. In most cases, the lowest-cost alternatives involved unsaturated zone monitoring techniques. It is also important to note that for this analysis the Agency assumed that no contamination occurred or was detected. If contamination is detected, further analysis is required and the cost savings over baseline ground-water monitoring requirements would be reduced, or even eliminated.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

The proposed amendment to 40 CFR part 258 would reduce the regulatory burdens of the part 258 criteria, thereby imposing no additional economic impact to small entities. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act).

C. Paperwork Reduction Act

The Agency has determined that there are two reporting requirements associated with today's proposed rule. Under this proposal, MSWLF owners/operators subject to these provisions are required to report to the Directors of approved States and Tribes: (a) the nature and extent of any contamination detected, and (b) proposed corrective measures to prevent further contamination or to remediate contamination. These reporting requirements will not cause any additional burden over existing similar requirements of 40 CFR part 258; they are merely different because they are generated by alternative monitoring programs. These requirements have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

D. Executive Order 12875

Under Executive Order 12875, Federal agencies are charged with enhancing intergovernmental partnerships by allowing State and local governments the flexibility to design solutions to problems the citizenry is facing. Executive Order 12875 calls on Federal agencies to either pay the direct costs of complying with Federal mandates or to consult with representatives of State, local, or tribal governments prior to formal promulgation of the requirement. The executive order also relates to increasing flexibility for State, Tribal, and local governments through waivers.

For this rulemaking, the Agency met with representatives of State and local governments, and other members of the regulated community, to provide them with an opportunity to present the Agency with information regarding the costs of monitoring ground water at qualifying small MSWLFs, and on any cost-effective alternatives to full part 258 ground-water monitoring requirements. The extent of the Agency's consultation with affected parties is discussed earlier in this preamble. Through this consultation

with State and local governments and members of the regulated community, the Agency believes that it has complied with the requirements of Executive Order 12875, and that this proposed rule will not lead to an unfunded Federal mandate. In fact, this proposal is expressly designed to increase the flexibility available to approved States and Tribes.

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: August 3, 1995.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, part 258 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949a(c); 33 U.S.C. 1345 (d) and (e).

2. Section 258.1 is amended by revising paragraphs (d)(3) and (e)(4) to read as follows:

§ 258.1 Purpose, scope, and applicability.

* * * * *

(d) * * *

(3) MSWLF units that meet the conditions of paragraph (f)(1) of this section and receive waste after October 9, 1991 but stop receiving waste before October 9, 1997, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1998. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1998 will be subject to all the requirements of this part 258, unless otherwise specified.

* * * * *

(e) * * *

(4) For a MSWLF unit that meets the conditions for the exemption in paragraph (f)(1) of this section, the compliance date for all applicable requirements of part 258, unless otherwise specified, is October 9, 1997.

* * * * *

3. Section 258.2 is amended by revising the definition of a "new MSWLF unit" to read as follows:

§ 258.2 Definitions.

* * * * *

New MSWLF unit means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1997 if the MSWLF unit meets the conditions of § 258.1(f)(1).

* * * * *

4. Section 258.50 is amended by revising paragraphs (a) and (e) and by adding paragraph (i) to read as follows:

§ 258.50 Applicability.

(a) The requirements in this subpart apply to MSWLF units, except as provided in paragraphs (b) and (i) of this section.

* * * * *

(e) Owners and operators of all MSWLF units that meet the conditions of § 258.1(f)(1) must comply with all applicable ground-water monitoring requirements of this part by October 9, 1997.

* * * * *

(i) Directors of approved States and Tribes may allow any MSWLF unit meeting the criteria established by § 258.1(f)(1) to use alternatives to the ground-water monitoring system prescribed in §§ 258.51 through 258.55 so long as the alternatives will detect and, if necessary, assess the nature or extent of contamination from the MSWLF unit on a site-specific basis; or establish and use, on a site-specific basis, an alternative list of indicator parameters for some or all of the constituents listed in Appendix I to part 258. Alternative indicator parameters approved by the Director of an approved State or Tribe under this section must ensure detection of contamination from the MSWLF unit.

(1) If contamination is detected through the use of any alternative to the ground-water monitoring system prescribed in §§ 258.51 through 258.55, the MSWLF unit owner or operator must perform expanded monitoring to determine whether the detected contamination is an actual release from the MSWLF unit and, if so, to determine the nature and extent of the contamination. The Director of the approved State or Tribe shall establish a schedule for the MSWLF unit owner or operator to submit results from expanded monitoring in a manner that ensures protection of human health and the environment.

(i) If expanded monitoring indicates that contamination from the MSWLF unit has reached the saturated zone, the owner or operator must install ground-water monitoring wells and sample these wells in accordance with §§ 258.51 through 258.55.

(ii) If expanded monitoring indicates that contamination from the MSWLF unit is present in the unsaturated zone or on the surface, the Director of an approved State or Tribe shall establish a schedule for the owner or operator to submit a description of any necessary corrective measures. The schedule shall ensure corrective measures, where necessary, are undertaken in a timely manner that protects human health and the environment. The proposed corrective measures are subject to revision and approval by the Director of the approved State or Tribe. The owner or operator must implement the corrective measures according to a schedule established by the Director of the approved State or Tribe.

(2) When considering whether to allow alternatives to a ground-water monitoring system prescribed in §§ 258.51 through 258.55, including alternative indicator parameters, the Director of an approved State or Tribe shall consider at least the following factors:

(i) The geological and hydrogeological characteristics of the site;

(ii) The impact of manmade and natural features on the effectiveness of an alternative technology;

(iii) Climatic factors that may influence the selection, use, and reliability of alternative ground-water monitoring procedures; and

(iv) The effectiveness of indicator parameters in detecting a release.

(3) The Director of an approved State or Tribe can require an owner or operator to comply with the requirements of §§ 258.51 through 258.55, where it is determined by the Director that using alternatives to ground-water monitoring approved

under this subsection are inadequate to detect contamination and, if necessary, to assess the nature and extent of contamination.

[FR Doc. 95–19666 Filed 8–9–95; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–245; RM–8315]

Radio Broadcasting Services; Hayneville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by R. J. Miller, requesting the allotment of FM Channel 300A to Hayneville, Alabama, as that community's first local aural transmission service, based upon the petitioner's withdrawal of interest, and the absence of any other acceptable expression in pursuing the allotment request in response to the *Notice*. *See* 58 FR 50313, September 27, 1993. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–245, adopted July 26, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19753 Filed 8–9–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–128, RM–8672]

Radio Broadcasting Services; Carthage, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Sharon K. Bryan, requesting the allotment of Channel 230A to Carthage, Illinois, as that community's second local FM service. Channel 230A can be allotted to Carthage in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 230A at Carthage are North Latitude 40–24–48 and West Longitude 91–08–00.

DATES: Comments must be filed on or before September 25, 1995, and reply comments on or before October 10, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033, (Attorney for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–128, adopted July 28, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19750 Filed 8–9–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–129, RM–8673]

Radio Broadcasting Services; Colchester, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Sharon K. Bryan, requesting the allotment of Channel 281A to Colchester, Illinois, as that community's first local FM service. Channel 281A can be allotted to Colchester in compliance with the Commission's minimum distance separation requirements, with a site restriction of 12.2 kilometers (7.6 miles) northwest of the community, in order to avoid a short-spacing to the licensed site of Station WMOS (FM), Channel 280A, Quincy, Illinois. The coordinates for Channel 281A at Colchester are North Latitude 40–31–26 and West Longitude 90–51–08.

DATES: Comments must be filed on or before September 25, 1995, and reply comments on or before October 10, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033, (Attorney for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–129, adopted July 28, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19752 Filed 8–9–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–130, RM–8674]

Radio Broadcasting Services; Taylorville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Miller Communications, Inc., requesting the allotment of Channel 247A to Taylorville, Illinois, as that community's third local FM service. Channel 247A can be allotted to Taylorville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.9 kilometers (4.9 miles) south, in order to avoid a short-spacing to Station WHMS(FM), Channel 248B, Champaign, Illinois. The coordinates for Channal 247A at Taylorville, Illinois, are North Latitude 39–28–44 and West Longitude 89–18–36.

DATES: Comments must be filed on or before September 25, 1995, and reply comments on or before October 10, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., Washington, DC 20006, (Attorney for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–130, adopted July 28, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19755 Filed 8–9–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–125, RM–8670]

Radio Broadcasting Services; Saint Joseph, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Saint John's University seeking the allotment of Channel 260A at Saint Joseph, Minnesota. Channel 260A can be allotted to Saint Joseph at coordinates 45–31–24 and 94–18–48. There is a site restriction 4.6 kilometers (2.9 miles) south of the community.

DATES: Comments must be filed on or before September 25, 1995, and reply comments on or before October 10, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Bodorff, Todd M. Stansbury, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–125, adopted July 24, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19754 Filed 8–9–95; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–92; DA 95–1711]

Review of the Commission's Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission granted a 30-day extension of time to file comments and reply comments in the above proceeding in response to a request filed by the Network Affiliated Stations Alliance for a 60-day extension. The rulemaking seeks comment on five Commission rules governing programming practices between networks and their affiliates. *See Notice of Proposed Rule Making* in MM Docket No. 95–92, FCC 95–254 (released June 15, 1995), 60 FR 35369 (July 7, 1995).

DATES: Comments are now due on September 28, 1995; reply comments are due October 27, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin ((202) 776–1653) or Robert Kieschnick ((202) 739–0764).

SUPPLEMENTARY INFORMATION:

Order Granting Extension of Time

Adopted: August 2, 1995.
Released: August 3, 1995.

1. On June 15, 1995, the Commission initiated a rulemaking proceeding reexamining the Commission's rules governing programming practices of networks and their affiliates—specifically the right to reject rule, the time option rule, the exclusive affiliation rule, the dual network rule and the network territorial exclusivity rule. *Notice of Proposed Rule Making* in MM Docket No. 95–92, FCC 95–254 (released June 15, 1995), 60 FR 35369 (July 7, 1995). Comments were due August 28, 1995, and reply comments were due September 27, 1955.

2. On July 17, 1995, the Network Affiliated Stations Alliance (NASA) filed a motion seeking a 60-day extension of time to file comments and reply comments. NASA contends that additional time is necessary to compile the substantial economic data required to properly assess the rules at issue. Further, NASA submits that given the length of time these rules have been in place and the breadth of the proposals in the *Notice*, an extension of 60 days is reasonable.

3. As set forth in § 1.46 of the Commission's rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. We do not agree that a 60-day extension is warranted in this case. We are persuaded by petitioner, however, that some extension of time is necessary to enable parties to carefully compile a complete record regarding the complex issues raised in this proceeding. We will therefore extend the comment and reply comment deadlines by 30 days.

4. Accordingly, it is ordered that the Motion for Extension of Time filed in MM Docket No. 95–92 by the Network Affiliated Stations Alliance is granted to the extent indicated above.

5. It is further ordered that the time for filing comments in the above-captioned proceeding is extended to September 28, 1995, and the time for filing reply comments is extended to October 27, 1995.

6. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and §§ 0.204(b), 0.283, and 1.45 of the Commission's rules, 47 CFR 0.204(b), 0.283, and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95–19703 Filed 8–9–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–126, RM–8671]

Radio Broadcasting Services; Denison-Sherman, Paris, Jacksboro, TX, and Madill, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Hunt Broadcasting, Inc., licensee of Station KDVE(FM), Channel 269C3, Denison-Sherman, Texas, seeking the substitution of Channel 269C1 for Channel 269C3 and modification of its license to specify the higher powered channel. To accommodate the allotment of Channel 269C3 at Denison-Sherman, we also propose to substitute Channel 282C2 for Channel 270C2 at Paris, Texas, and the modification of Station KBUS(FM)'s license; the substitution of Channel 273A for Channel 269A as well as, a change of site for Station KAIH(FM at Jacksboro, Texas, and modification of Station KAIH(FM) construction permit accordingly. *See* Supplemental Information, *infra*.

DATES: Comments must be filed on or before September 25, 1995, and reply comments on or before October 10, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph P. Benkert, 1610 Wynkoop Street, Suite 200, Denver, Colorado 80202–1196 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. , adopted July 25, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channels 269C1, 282C2, 252A, and 273A can be allotted to Denison-Sherman, Paris, Jacksboro, Texas, and Madill, Oklahoma, in compliance with the Commission's minimum distance separation requirements. Channel 269C1 can be allotted to Denison-Sherman without the imposition of a site restriction. The coordinates for Channel 269C1 at Denison-Sherman are 33–41–39 and 96–34–38. The coordinates for Channel 252A at Jacksboro, Texas, are 33–14–26 and 98–11–16. The coordinates for Channel 282C2 at Paris, Texas, are 33–45–04 and 95–24–51. The coordinates for Channel 273A at Madill, Oklahoma, are 34–06–24 and 96–46–30.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19741 Filed 8–9–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

[I.D. 071095A]

South Atlantic Fishery Management Council; Postponement of Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Postponement of public hearings.

SUMMARY: On July 19, 1995, the South Atlantic Fishery Management Council (Council) proposed to hold public hearings to solicit comments on management measures for a new Fishery Management Plan for Golden Crab (FMP). Due to inclement weather from Hurricane "Erin," the hearings in the Florida area had to be cancelled and rescheduled.

DATES: Written comments regarding the issues being discussed at the rescheduled hearings will be accepted through August 18, 1995.

The hearings are rescheduled as follows:

1. Tuesday, August 15, 1995, 7:00 p.m., Cocoa Beach, FL;

2. Wednesday, August 16, 1995, 7:00 p.m., Fort Lauderdale, FL; and

3. Thursday, August 17, 1995, 7:00 p.m., Marathon, FL.

ADDRESSES: To send comments, and to request copies of public hearing documents, write to: Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699. The hearings will be held at the following locations:

1. Cocoa Beach—Holiday Inn; 1300 N. Atlantic Avenue, Cocoa Beach, FL 32931; telephone (407) 783–2271;

2. Fort Lauderdale—Sheraton Design Center Hotel, 1825 Griffin Road, Dania, FL 33004; telephone (305) 920–3500; and

3. Marathon—Hawk's Cay Resort, MM61, Duck Key, FL 33050; telephone (305) 743–7000.

FOR FURTHER INFORMATION CONTACT: Robert K. Mahood, (803) 571–4366; Fax: (803) 769–4520.

SUPPLEMENTARY INFORMATION: Notice of the public hearings on golden crab was published in the **Federal Register** on July 19, 1995 (60 FR 37044). The hearings in the Florida area were scheduled for August 1, 2, and 3, but were cancelled due to hurricane Erin. The hearing in Charleston, SC, will remain as originally scheduled on August 7, 1995. The Council is also informing persons of the rescheduling via news releases distributed through the local media.

The Council hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by July 18, 1995 (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19705 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 646

[I.D. 072895E]

The Snapper-Grouper Fishery and other Finfish Fisheries of the South Atlantic; Public Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) is holding public scoping meetings to solicit comments on: The sale of fish (all species) caught under the recreational bag limits established by the Council's fishery management plans (FMPs); and on the issue of recreational catch and the commercial bycatch of wreckfish under the FMP for the Snapper-Grouper Fishery of the South Atlantic. See the **SUPPLEMENTARY INFORMATION** section for additional information on the scoping meetings.

DATES: The public scoping meetings are scheduled to begin at 6:30 p.m. on Monday, August 21, 1995, in Charleston, SC.

ADDRESSES: The public scoping meetings will be held in conjunction with the South Atlantic Council public meetings at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone (1–800) 334–6660.

Requests for copies of public scoping documents should be sent to the Council at the following address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Robert K. Mahood, Council Executive Director; telephone: (803) 571–4366; fax: (803) 769–4520.

SUPPLEMENTARY INFORMATION: A public scoping meeting will be held to solicit comments on the sale of fish caught under the recreational bag limit (all species). The Council has considered this issue on numerous occasions over the past several years, and both commercial and recreational fishermen have expressed concerns about this matter. Currently, all of the Council's FMPs allow for the sale of fish taken under a legal bag limit. The issue regarding the sale of fish caught under bag limits involves several considerations including: (1) The definitions of recreational and commercial fishermen; (2) the ethical question of a "recreational" fisherman selling his catch; and (3) the impacts of selling fish caught under an FMP-established bag limit on an FMP-established commercial quota for the same species. The Council will consider prohibiting the sale of fish by recreational anglers. The Council is inviting and will consider the views of recreational and commercial fishermen and other interested persons on this matter prior to taking any formal and final action; the Council is particularly interested in hearing about the possible impacts of prohibiting the sale of recreationally-caught fish.

The Council will also hold a public scoping meeting to solicit comments on wreckfish caught by recreational fishermen and on the commercial bycatch of wreckfish outside of the Blake Plateau. Amendments 3 and 4 to the FMP for the Snapper-Grouper Fishery of the South Atlantic (Snapper-Grouper FMP) established a management program for wreckfish in the South Atlantic region. A regulatory adjustment framework measure was also included in the Snapper-Grouper FMP allowing the Council to set total allowable catch (TAC) each year and at the same time consider other management changes or options.

Amendment 5 to the Snapper-Grouper FMP established an individual transferable quota (ITQ) system in the wreckfish fishery that allows only ITQ shareholders to land and sell wreckfish, and allows only permitted dealers to handle wreckfish and to buy wreckfish from ITQ shareholders. Recently, reports indicate that wreckfish is being caught by recreational fishermen fishing primarily for red grouper off Key West, FL. Also, commercial snapper-grouper fishermen, especially off south Florida, are experiencing occasional wreckfish bycatch. These reports do not indicate frequency or poundage of catches, how the catches are being disposed of, that the catches are of significant quantities or the frequency of these occurrences.

The Council is considering the following management options for regulating this fishery: (1) No action (i.e., continue to prohibit the taking or landing of wreckfish in the South Atlantic region except by individual transferable quota (ITQ) shareholders; (2) set a recreational bag limit of 1 or 2 fish per fisherman per trip; (3) set a recreational bag limit of 1 or 2 fish per boat per trip; (4) set a recreational bag limit of 1 or 2 fish per boat per day; (5) set an undetermined recreational bag limit; (6) set a bag limit of 1 or 2 fish per boat per trip for commercial fishermen in the South Atlantic region who are not wreckfish ITQ shareholders; (7) set a bag limit of 1 or 2 fish per boat per day for commercial fishermen in the South Atlantic region who are not wreckfish ITQ shareholders; (8) set a bag limit of 1 or 2 fish per boat per trip for commercial fishermen in the south Florida area who are not wreckfish ITQ shareholders; (9) set a bag limit of 1 to 2 fish per boat per day for commercial fishermen in the south Florida area who are not wreckfish ITQ shareholders; (10) allow for an undetermined commercial bag limit in the South Atlantic region; and (11) allow for an undetermined commercial bag limit only in the South Florida area.

Written public comments on the subjects of the scoping meetings, including any Council scoping documents made available to the public, may be submitted to the Council from the time of the scoping meetings until such time as the Council has prepared appropriate and related public hearing documents that are available for public comment. For copies of the public scoping documents (see **ADDRESSES**).

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by June 16, 1995.

For special accommodations regarding the meetings and hearing, contact the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: August 3, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19701 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 154

Thursday, August 10, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fuzzy Bighorn EIS; Clearwater National Forest, Orofino, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised Notice, Intent to prepare an Environmental Impact Statement.

SUMMARY: The original Notice of Intent was published in the **Federal Register** on July 28, 1989 on page 31353. A Revised Notice was submitted on July 17, 1991. This revision references the Revised Notice of 1991. Changes to that Revision are as follows: The analysis area no longer includes Bighorn Creek or Weitas Creek drainages, nor is it 6600 acres as described on page 1 and page 3 of that Revision. The analysis area still encompasses Orogrande Creek, but in its entirety, instead of just a portion, and now totals approximately 57,000 acres.

Also, on page 7 of that Revision it states that the Final EIS is expected to be released March 30, 1992. That has changed. The Final EIS is now expected to be released September 30, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Lilly, Fuzzy Bighorn Interdisciplinary Team Leader, or Douglas Gober, District Ranger, Pierce Ranger District, Clearwater National Forest, Rt. 2, Box 191, Kamiah, ID 83536, (208) 935–2513. The Responsible Official is the Forest Supervisor of the Clearwater National Forest.

Dated: July 27, 1995.

James Caswell,

Forest Supervisor, Clearwater National Forest.

[FR Doc. 95–19806 Filed 8–9–95; 8:45 am]

BILLING CODE 3410–11–M

Draft Revised Rio Grande National Forest Land and Resource Management Plan and Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Publication of the Draft Revised Rio Grande National Forest Land and Resource Management Plan and Environmental Impact Statement.

SUMMARY: The Proposed Revised Land and Resource Management Plan and Draft Environmental Impact Statement for the Rio Grande National Forest is being released for public review and comment on August 10, 1995. Interest has been expressed by several interested groups and individuals for an extended comment period due to the technical complexity of the documents and the critical nature of the Revision Topics. For these reasons the Forest has decided to offer the documents for review and comment for 120 days instead of the normal 90 day period.

EFFECTIVE DATE: Public Comment period will be 120 calendar days from August 10, 1995, ending on December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to James B. Webb, Forest Supervisor, 1803 West Highway 160, Monte Vista, Colorado 81144, (719) 852–5941.

SUPPLEMENTARY INFORMATION: The Proposed Revised Land and Resource Management Plan and Draft Environmental Impact Statement for the Rio Grande National Forest is being released for Public review and comment on August 10, 1995. Interest has been expressed by several interested groups and individuals for an extended period due to the technical complexity of the documents and the critical nature of the Revision Topics. For these reasons the Forest has decided to offer the documents for review and comment for 120 days instead of the normal 90 day period. The comment period will last 120 days, beginning on August 10 and ending on December 7, 1995.

The Forest Interdisciplinary Planning Team prepared the DEIS and Proposed Plan with intensive public involvement prior to the formulation of the alternatives. Public involvement included persons throughout Colorado and northern New Mexico, as well as extensive mailings, to keep people informed and to allow a two-day dialogue with the public.

This plan is the first in the region to incorporate a biodiversity assessment based on information at the Province and Ecosection levels of ecosystems. This Plan is also the first to analyze environmental consequences based on two levels of budgets, the first being a 3 year average of experienced funding, and the second being the level necessary to fully implement the vision of the alternative. The results of this budget-driven display have been to more realistically show what we are likely to accomplish on the Forest within the planning period. One of the notable results is that we do not expect to be able to meet our ASQ with any of the alternatives which have an ASQ, and the difference between ASQ and harvest level ranges from 33 to 90 percent reduction.

The Regional Forester has selected Alternative D as the preferred alternative. The documents will be revised in response to public comments prior to the publication of the Final EIS and Forest Plan in 1996.

Interested parties are invited to send comments regarding the Draft documents to the address cited above.

Dated: July 26, 1995.

William J. Gourmay,

Acting Regional Forester.

[FR Doc. 95–19773 Filed 8–9–95; 8:45 am]

BILLING CODE 3410–11–M

Blue Mountains Natural Resources Institute (BMNRI), Board of Directors

AGENCY: Pacific Northwest Research Station, USDA.

ACTION: Notice of meeting.

SUMMARY: The Blue Mountains Natural Resources Institute Board of Directors will meet on September 6, 1995 at Eastern Oregon State College, Hoke Hall, Room 309, 1410 L Avenue in La Grande, Oregon. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) Develop concise descriptive statement of BMNRI purpose; (2) approval of three year tactical plan; (3) approval of annual work plan; (4) final review and approval of letter to Secretary of Agriculture; (5) review current year activities; and (6) public comments. All Blue Mountains Natural Resources Institute Board

Meetings are open to the public. Interested citizens are encouraged to attend. Members of the public who wish to make a brief oral presentation at the meeting should contact John Henshaw, BMNRI, 1401 Gekeler Lane, La Grande, OR 97850, 503–963–7122, no later than 5:00 p.m. September 5, 1995 to have time reserved on the agenda.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to John Henshaw, Acting Program Manager, Blue Mountains Natural Resources Institute, 1401 Gekeler Lane, La Grande, Oregon 97850, 503–963–7122.

Dated: August 2, 1995.

John Henshaw,

Acting Program Manager.

[FR Doc. 95–19776 Filed 8–9–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Customer Feedback Survey.

Agency Form Number: None Assigned.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 350 hours.

Number of Respondents: 4,200.

Avg Hours Per Response: 5 minutes.

Needs and Uses: Under Executive Order 12862, President Clinton instructed all agencies to establish customer service standards, to identify their customers, to assess customer satisfaction, and to take necessary steps to improve customer satisfaction. NTIA will be collecting data to improve in scope and quality of its electronic information dissemination services and products.

Affected Public: Individuals, businesses or other for–profit organizations, not–for–profit institutions, farms, federal, state, local and tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Virginia Huth, (202) 395–3785.

Agency: Technology Administration.

Title: Nominations for National Technology Medal.

Agency Form Number: None Assigned.

OMB Approval Number: 0692–0001.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 375 hours.

Number of Respondents: 125.

Avg Hours Per Response: 3 hours.

Affected Public: Individuals, businesses or other for–profit organizations, not–for–profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–7340.

Agency: Technology Administration.

Title: Application for Manufacturing Technology Fellowship.

Agency Form Number: None Assigned.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 5,400 hours.

Number of Respondents: 200.

Avg Hours Per Response: 27 hours.

Needs and Uses: The U.S. – Japanese Manufacturing Fellowship program is a partnership effort that provides U.S. manufacturing engineers the opportunity to spend a year in Japan learning Japanese techniques. The information collected is needed to evaluate the qualifications applicants.

Affected Public: Individuals, businesses or other for–profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (2020 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective Desk Officer listed above, Room 10236, New Executive Office Building, Washington, D.C. 20503.

Dated: July 31, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19639 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–CW–F

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms and opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 06/17/95–07/16/95

Firm name	Address	Date petition accepted	Product
Applied Engineering Products, Inc. DBA Yes Trading.	404 West 400 South, Salt Lake City, UT 84101.	06/28/95	Unisex Tops, Trousers, and Shorts of Cotton.
BBC Industries, Inc	1526 Fenpark Drive, Fenton, MO 63026.	07/06/95	Infrared Heater Elements and Panels and Ovens.
Fulton Ferracute Industries International, Inc.	3844 Walsh Street, St. Louis, MO 63116.	07/13/95	Sugar Mills and Hydraulic Power Units.
General Tool Specialties, Inc	284 Sunnymead Road, Somerville, NJ 08876.	07/13/95	Molds for Plastic Injection, Compression and Transfer, and Aluminum Die Castings.
GHM Industries, Inc	41 Fremont Street, Worcester, MA 01603.	06/23/95	Textile Finishing Machinery.
Gunver Manufacturing Co., Inc	255 Sheldon Road, Manchester, CT 06040.	07/10/95	External and Internal Brackets, and Struts.
Keltronics Corporation	4000 North Lindsay, Oklahoma City, OK 73105.	07/10/95	Telecommunications Resistive Conference Bridges and Attenuators, and Printed Circuit Boards.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 06/17/95–07/16/95—Continued

Firm name	Address	Date petition accepted	Product
Melbourne Manufacturing Company, Inc.	1708 Delmar Avenue, St. Louis, MO 63103.	07/10/95	Leather and Synthetic Handbags.
Sayett Group, Inc	17 Tobey Village Office Park, Pittsford, NY 14534.	07/11/95	Electronic Imaging Equipment.
Shallbetter Brothers, Inc. DBA Shallbetter, Inc.	640 Arizona, NW, Huron, SD 57350.	06/30/95	Electrical Power Equipment.
Sohl Electronic Industries, Inc	290 Pratt Street, Meriden, CT 06450.	06/28/95	Printed Circuit Boards.
Southern Magic, Inc	1456 Highway 317 South, Franklin, LA 70538.	07/06/95	Steel and Aluminum Products Fabricator.
Terry Kost DBA Best Shingle Company.	1718 South Tilden, Aberdeen, WA 98520.	07/13/95	Shakes and Shingles.
The Protector Corporation	6681 Arapahoe, Boulder, CO 80303.	07/06/95	Soft Carrying Cases, Custom Cases and Covers to Protect Office Equipment.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 28, 1995.

Brenda A. Johnson,

Acting Director, Trade Adjustment Assistance Division.

[FR Doc. 95–19756 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–24–M

Foreign-Trade Zones Board

[Docket 40–95]

Foreign-Trade Zone 2, New Orleans, LA Proposed Foreign-Trade Subzone BP Exploration & Oil Inc. (Oil Refinery Complex) New Orleans, Louisiana, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans, grantee of FTZ 2, requesting special-purpose subzone status for the oil refinery complex of BP Exploration & Oil Inc., located in Plaquemines Parish, Louisiana (New Orleans area). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 3, 1995.

The refinery complex consists of 2 sites in Plaquemines Parish, Louisiana: *Site 1* (670 acres)—main refinery and petrochemical feedstock complex located on the Mississippi River at 15551 Highway 23, Belle Chasse, some 20 miles south of New Orleans; *Site 2* (409,000 barrel leased capacity)—tank farm (owned by Chevron), located on the Mississippi River at milemarker 25.7, Buras, some 30 miles southeast of the refinery.

The refinery (250,000 barrels per day; 370 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates, residual fuels, and naphthas. Petrochemicals include methane, ethane, propane, benzene, and xylene. Refinery by-products include petroleum coke and carbon black. Some 50 percent of the crude oil (90 percent of inputs), and some feedstocks and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25¢ to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Hale Boggs Federal Building, 501 Magazine Street, Room 1043, New Orleans, Louisiana 70130

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: August 3, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–19823 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 755]

Grant of Authority for Subzone Status, BASF Corporation, (Vitamins/Industrial Plastics/Plastic Auto Parts) Wyandotte, MI

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of

the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Detroit Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 70, for authority to establish special-purpose subzone status at the chemical products (vitamins, industrial plastics, and plastic auto parts) manufacturing facilities of BASF Corporation in the Wyandotte, Michigan, area, was filed by the Board on October 12, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 52–93, 58 FR 55040, 10–25–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 70S) at the plant sites of BASF Corporation in the Wyandotte, Michigan, area, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 2nd day of August 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–19821 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 39–95]

Foreign-Trade Zone 15, Kansas City, Missouri; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 15, requesting authority to expand its zone in the Kansas City, Missouri area, within the Kansas City, Missouri, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 26, 1995.

FTZ 15 was approved on March 23, 1973 (Board Order 93, 38 FR 8622, 4/4/73) and expanded on October 25, 1974 (Board Order 102, 39 FR 39487, 11/7/74). The zone project includes 3 general-purpose sites in the Kansas City, Missouri, port of entry area: *Site 1* (250,000 sq. ft.)—Midland International Corp. warehouse, 1650 North Topping, Kansas City; *Site 2* (2,815,000 sq. ft.)—surface/underground warehouse complex, 8300 NE., Underground Drive, Kansas City; and, *Site 3* (101,000 sq. ft.)—Kansas City International Airport, 12600 NW., Prairie View Road, Kansas City. An application is currently pending with the Board for an additional site in the Sugar Creek/Independence, Missouri area (Docket No. 15–95).

The applicant is now requesting authority to expend Site 3 to include the entire Kansas City International Airport facility (10,000 acres). The property is owned by the Kansas City Aviation Department and includes 3 air cargo facilities and jet fuel storage/distribution facilities.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 601 East 12th Street, Room 635, Kansas City, Missouri 64106

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: August 2, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–19822 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–038]

Bicycle Speedometers From Japan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: We are amending the final results of the administrative review on bicycle speedometers from Japan published on June 5, 1995 (60 FR 29552), to reflect the correction of a ministerial error made in the margin calculations in those final results. We are publishing this amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: August 10, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

The review covers the shipments of Cateye, a manufacturer/exporter of bicycle speedometers during the period November 1, 1992, through October 31, 1993.

Applicable Statute and Regulations

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by the review are shipments of bicycle speedometers. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 9029.20.20, 9029.40.80, and 9029.90.40. HTS item numbers are provided for convenience and Customs purposes. Our written description remains dispositive.

Amendment of Final Results

On June 7, 1995, Cateye Co. Ltd., alleged that the Department made a clerical error in the calculation of foreign market value (FMV) by failing to deduct from the FMV extra packing expenses for split cartons for those home market sales that incurred these expenses. We agree that the extra packing expenses should have been deducted from those sales and have recalculated the weighted-average margin accordingly.

Final Results of Review

As a result of our review, we have determined that the following margin exists for the period November 1, 1992 through October 31, 1993:

Manufacturer/Exporter	Margin (percent)
Cateye Co., Ltd.	1.31

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these amended final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act, and will remain in effect until publication of the final results of the next administrative review: (1) The cash deposit rate for the reviewed company will be 1.31 percent; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 26.44 percent, which is the "new shipper" rate established in the first administrative review. In accordance with the Court of International Trade's (CIT's) decisions in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993), and *Federal Mogul Corporation and the Torrington Company* v. *the United States*, 822 F Supp. 782 (CIT 1993), we are basing the "all others" rate on the "new shipper" rate established in the first final results of administrative review published by the Department (47 FR 28978, July 2, 1982) because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)), and 19 CFR 353.22.

Dated: July 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19819 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

SUMMARY: On April 25, 1995, the United States Court of International Trade (CIT) affirmed our results for the following redeterminations on remand of the final results of administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan: Tatung Company, et al. v. United States, Consol. Court No. 90–12–00649 (third review); International Brotherhood of Electrical Workers, et al., v. United States, Consol. Court No. 92–03–00137 (sixth review); and, Zenith Electronics Corp. et al. v. United States, Consol. Court No. 93–07–00404 (eighth review).

EFFECTIVE DATE: August 10, 1995.

FOR FURTHER INFORMATION CONTACT: John Kugelman or Michael J. Heaney, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0649 or 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 1994, December 16, 1994, and January 6, 1995, the CIT issued orders directing the Department to recalculate the value-added tax (VAT) according to the methodology employed in Federal Mogul v. United States, 834 F. Supp. 1391 (CIT October 7, 1993) (Federal Mogul) for various companies for the periods April 1, 1986 through March 31, 1987 (third review), April 1, 1989 through March 31, 1990 (sixth review), and April 1, 1991 through March 31, 1992 (eighth review). Also, on December 16, 1994, the CIT directed the Department in the eighth review to establish a methodology for the adjustment to United States price for uncollected import duties forgiven upon export.

Pursuant to the instructions of the CIT, the Department calculated the VAT consistent with the methodology employed in Federal Mogul, for various companies for the third, sixth, and eighth reviews. The Department established a methodology for calculating and made an adjustment in the eighth review for uncollected import duties on exported merchandise. On April 25, 1995, the Court affirmed our application of the VAT methodology, and adjustments for uncollected import duties.

Amended Final Results of Review

The results of our calculations are presented below:

Company	Period	Margin (percent)
AOC	4/1/86–3/31/87 ..	0.88
Proton	4/1/86–3/31/87 ..	0.86
Proton	4/1/89–3/31/90 ..	0.53
Action	4/1/91–3/31/92 ..	2.69
Proton	4/1/91–3/31/92 ..	6.23
Tatung	4/1/91–3/31/92 ..	1.75

Based on the results of the eighth review (4/1/91–3/31/92), the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries for Action, Proton, and Tatung in accordance with the procedures discussed in the final results of these reviews. Because AOC had no shipments during the eighth review, and has filed an appeal concerning the final results for the seventh review, the Department will make no changes to AOC's cash deposit rate at this time. These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

The Department will issue appraisement instructions directly to the Customs Service for each exporter.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d) and 19 CFR 353.28(c).

Dated: August 4, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19820 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DS–M

[C–307–804]

Gray Portland Cement and Clinker From Venezuela; Termination of Administrative Review of Suspended Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Administrative Review of Suspended Countervailing Duty Investigation.

SUMMARY: On April 14, 1995, the Department of Commerce ("the Department") initiated an administrative review of the suspended countervailing duty investigation on gray portland cement and clinker from Venezuela. On July 5, 1995 the Ad Hoc Committee of Florida Producers of Gray Portland Cement withdrew their request for an administrative review. The Department is now terminating this review.

EFFECTIVE DATE: August 10, 1995.

FOR FURTHER INFORMATION: Contact Nithya Nagarajan or Donna Kinsella, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–0193 or telefax (202) 482–1388.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 1995, the Department of Commerce published in the **Federal Register** a notice of initiation of administrative review of the suspended countervailing duty investigation on gray portland cement and clinker from Venezuela (60 FR 19017) at the request of the Ad Hoc Committee of Florida Producers of Gray Portland Cement. This notice stated that we would review information submitted by the Government of Venezuela for the period January 1, 1994 through December 31, 1994. The Ad Hoc Committee of Florida Producers of Gray Portland Cement subsequently withdrew their request for review on July 5, 1995. Under § 355.22(a)(3) of the Department's regulations, a party requesting a review may withdraw that request no later than 90 days after the date of publication of the notice of initiation. Because the withdrawal by the Ad Hoc Committee of Florida Producers of Gray Portland Cement occurred within the time frame specified in 19 CFR 355.22(a)(3), and no other interested party has requested an administrative review for this period, the Department is now terminating this review.

This notice is published pursuant to § 355.22(a)(3) of the Department's regulations (19 CFR 355.22(a)(3)).

Dated: August 3, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–19818 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DS–P

(C–475–817)

Notice of Countervailing Duty Order: Oil Country Tubular Goods ("OCTG") From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 10, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0588.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Investigation and Order

In its final determination, the Department determined that oil country tubular goods (OCTG) comprised a single class or kind of merchandise. In its final determination, the International Trade Commission (ITC) found two like products:

(1) Drill pipe and (2) OCTG other than drill pipe (*i.e.*, casing and tubing). The ITC did not find material injury, or threat of material injury with regard to drill pipe. Consequently, the countervailing duty order covers only OCTG other than drill pipe.

The merchandise covered by this order are OCTG, hollow steel products of circular cross-section, including only oil well casing and tubing pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The OCTG subject to this order are currently classified in the *Harmonized Tariff Schedule of the United States (HTSUS)* under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Drill pipe is classifiable under *HTSUS* item numbers 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, and 7304.20.80.60. However, pursuant to the ITC's negative determination regarding drill pipe, we have deleted these numbers from the scope of this order.

Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671(a)), on June 19, 1995, the Department made its final determination that producers or exporters of OCTG in Italy receive benefits which constitute subsidies within the meaning of the countervailing duty law (60 FR 33577, June 28, 1995). On August 3, 1995, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of OCTG from Italy materially injure a U.S. industry. Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. sections 1671e and 1675), the Department hereby directs United States Customs officers to assess, upon further advice by the administering authority pursuant to sections 706(a)(1) and 751 of the Act, countervailing duties equal to the amount of the estimated net subsidy on all entries of OCTG from Italy. These countervailing duties will be assessed on all unliquidated entries of OCTG from Italy entered, or withdrawn from warehouse, for consumption on or after December 2, 1994, the date on which the Department published its preliminary determination notice in the **Federal Register** (59 FR 61870), and before April 1, 1995, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals for consumption made on or after the date of publication of this order in the **Federal Register**. Entries of OCTG made on or after April 1, 1995, and prior to the date of publication of this order in the **Federal Register** are not subject to the assessment of countervailing duties since we cannot suspend liquidation of the subject merchandise, begun on December 2, 1994, for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties of this merchandise, the following cash deposit for OCTG from Italy.

OCTG

Country-Wide *Ad Valorem* Rate 1.47 Percent.

This notice constitutes the countervailing duty order with respect to OCTG from Italy, pursuant to section 706 of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect. This order is published in accordance with section 706 of the Act and 19 CFR 355.21.

Dated: August 4, 1995.

Susan G. Esserman.

Assistant Secretary for Import Administration.

[FR Doc. 95–19817 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–154R. *Applicant:* University of Hawaii, School of Ocean and Earth Science and Technology, Department of Geology & Geophysics, 2525 Correa Road, Honolulu, HI 96822. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the FEDERAL REGISTER of January 26, 1995.

Docket Number: 95–060. *Applicant:* University of California, Santa Cruz, Earth Sciences Department, 1156 High Street, Santa Cruz, CA 95064. *Instrument:* 5 ea. Seismograph, Model STS-2. *Manufacturer:* G. Streckeisen, Switzerland. *Intended Use:* The instrument will be used to record earthquakes all over the world for study to improve the understanding of the source process of earthquakes. In addition, the instrument will be used to study the nature of the deep extension of the San Andreas Fault in California. *Application Accepted by Commissioner of Customs:* July 14, 1995.

Docket Number: 95–061. *Applicant:* University of Southern California, 1540 Alcazar, Bldg. CHP 155, Los Angeles, CA 90033. *Instrument:* 3-Dimensional Motion Analyser, Model Vicon System 370. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended Use:* The instrument will be used for the study of the walking patterns of human subjects in order to understand the biomechanics of the human gait, particularly as this applies to the treatment of rehabilitation patients. *Application Accepted by Commissioner of Customs:* July 18, 1995.

Docket Number: 95–062. *Applicant:* Carnegie Mellon University, 4400 Fifth Avenue, Pittsburgh, PA 15213. *Instrument:* Electron Microscope, Model H-7100. *Manufacturer:* Nissei Sangyo, Japan. *Intended Use:* The instrument will be used in research projects aimed at an understanding of fundamental cell, developmental, neurobiological, and physiological processes. Specific projects will include: (1) correlated electron microscopic and light optical studies; (2) high resolution immunolocalization studies; (3) ultrastructural analysis of mutant visual systems in Drosophila, and of tissues in transgenic mice; (4) determination of the subcellular distribution of mRNAs by electron microscopic in situ hybridization; and (5) structural studies of the motor protein kinesin, including conformational changes in the protein under varying ionic conditions and kinesin-microtubule interactions. In addition, the instrument will be used in the course Techniques in Electron Microscopy to teach basic methods in transmission electron microscopy to graduate students and advanced undergraduate students. *Application*

Accepted by Commissioner of Customs: July 18, 1995.

Docket Number: 95–063. *Applicant:* Oklahoma State University, Purchasing Department, 208G Whitehurst, Stillwater, OK 74078. *Instrument:* Mass Spectrometer, Model VG Isochrom-EA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to analyze for the presence of the stable isotope ^{15}N, which is used as a tracer for fertilizer N in crop production systems. Investigations will be conducted to establish critical levels associated with plant gaseous N loss in various winter wheat production systems and to determine which system offers the greatest opportunity for increasing fertilizer N use efficiency while decreasing potential nitrate N leaching losses. In addition, the instrument will be used for educational purposes in the course Soil-plant Relationships, Agronomy 5813. *Application Accepted by Commissioner of Customs:* July 18, 1995.

Docket Number: 95–064. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, Urbana, IL 61801. *Instrument:* Force and Moment Wind Tunnel Balance. *Manufacturer:* Aertect A.T.E. Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the lift, drag, and pitching moment on an airfoil model mounted vertically between the wind tunnel floor and ceiling during experiments related to the performance determination for a two dimensional airfoil. *Application Accepted by Commissioner of Customs:* July 21, 1995.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–19813 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DS–F

University of Kentucky, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–040. *Applicant:* University of Kentucky, Lexington, KY 40506-0055. *Instrument:* Electron-Electron Coincidence Apparatus. *Manufacturer:* University of Southhampton, United Kingdom. *Intended Use:* See notice at 60 FR 31144, June 13, 1995. *Advice Received From:* The National Institute of Standards and Technology, July 12, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides an electron gun emission source, a metal-vapor atomic beam, scattered and ejected electron detectors, and a hemispherical electrostatic monochrometer for determining atomic metal-vapor autoionizing energy levels. The National Institute of Standards and Technology advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–19812 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DS–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Transshipment Charges for Certain Cotton Textile Products Produced or Manufactured in Pakistan

August 4, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging illegal transshipments to a 1995 limit.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based on investigations conducted by the Government of the United States, CITA has determined that cotton sheets in Category 361 were transshipped in circumvention of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The United States Government requested consultations in writing with the Government of Pakistan on February 7, 1995. The U.S. Government and the Government of Pakistan met on March 28 and 29, 1995 and July 11 and 12, 1995, in Washington to discuss the charges. The U.S. Government provided the Government of Pakistan with sufficient evidence of transshipment during these meetings. The U.S. Government informed the Government of Pakistan of the charges to be made to the 1995 quota for Category 361. Accordingly, since a mutually satisfactory agreement was not reached, in the letter published below the Chairman of CITA directs the Commissioner of Customs to charge 691,082 numbers to the 1995 quota level for Category 361.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in Pakistan and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 9014, published on February 16, 1995.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, I request that, effective on August 11, 1995, you charge 691,082 numbers to the limit established in the directive dated February 13, 1995 for textile products in Category 361, produced or manufactured in Pakistan and exported during the period beginning on January 1, 1995 and extending through December 31, 1995.

This letter will be published in the **Federal Register**.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19758 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DR–F

Recision of a Request to Consult and a Limit on Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

August 4, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcing the recission of a request to consult and issuing a directive to the Commissioner of Customs cancelling a limit.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to rescind the request made on March 29, 1995 to consult on imports of cotton and man-made fiber underwear in Categories 352/652 from Thailand.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Categories 352/652 for the period March 29, 1995 through December 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 32656, published on June 23, 1995.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on June 26, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textile products in Categories 352/652, produced or manufactured in Thailand and exported during the period which began on March 29, 1995 and extends through December 31, 1995. All import charges shall be retained.

Effective on August 11, 1995, you are directed to cancel the limit established for Categories 352/652 for the period March 29, 1995 through December 31, 1995. For administrative purposes, individual Categories 352 and 652 shall remain subject to the Group II limit established in the directive dated March 30, 1995 for the period beginning on January 1, 1995 and extending through December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–19757 Filed 8–9–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Options on the Federal Funds Rate Futures Contract, and Amendments to the Dormant Federal Funds Rate Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of a proposed commodity option contract and amendments to the underlying futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in options on its federal funds rate futures contract. In addition, the CME proposes to amend the dormant federal funds rate futures contract that would underlie the proposed contract, and it has filed a request to list federal funds rate futures and option contracts for trading through GLOBEX. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 11, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Reference should be made to the CME federal funds rate futures option contract and the request to reactivate trading in the federal funds rate futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Regarding the dormant federal funds rate futures contract, the CME proposes to revise the trading unit to represent interest paid on a $3 million, rather than a $5 million, 30-day borrowing of overnight Federal funds. This proposal would lower the value of a basis point change to $25 from $41.67. The Exchange also proposes to reduce the minimum price fluctuation to .005 from .01 and to establish price limits for trading during the GLOBEX session.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 4, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–19814 Filed 8–9–95; 8:45 am]

BILLING CODE 6551–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Innovative Community Service Demonstration Programs

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National Service (the Corporation) announces the availability of up to $500,000 for innovative community service demonstration programs that integrate national service programs. The Corporation expects to make up to 15 grants. The expected range of grants is $25,000 to $100,000 depending on the circumstance, program scope and need. The successful applicant will demonstrate that community impact can be increased when the resources of the various programs it supports are joined to focus on specific, critical community problems. This program is subject to the availability of funds.

DATES: Application materials will be available beginning on August 9, 1995. Deadline for submission of applications is 3:30 p.m. Eastern Daylight Time, on Tuesday, September 12, 1995.

ADDRESSES: Applications must be submitted to: Corporation for National Service, 1201 New York Avenue NW, Ninth Floor, Washington, D.C. 20525, Attention: Margaret Rosenberry. Applications may not be submitted by facsimile. This notice may be requested in an alternative format for the visually impaired.

FOR FURTHER INFORMATION CONTACT: To obtain applications, contact the Corporation in writing via facsimile at (202) 565–2786, Attention: Margaret Rosenberry. For further information, contact Margaret Rosenberry, Director of Program Planning and Development, at (202) 606–5000, ext. 154.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's education, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. Pursuant to the National and Community Service Act of 1990, as amended, the Corporation "may undertake activities to . . . support innovative and model programs." 42 U.S.C. 12653(b).

Programs funded under these grants are intended to be innovative and demonstrate ways a wide variety of Corporation-funded programs and other volunteer efforts can work together to increase their impact on local communities. Therefore, grants will not fund programs per se, but will support models of collaboration among existing service programs. Development of a proposal for funds under these guidelines will require existing programs to meet to plan joint activities, identify mutual needs and priorities and develop a collaborative structure.

Eligible Applicants

The application must represent a partnership that includes at least four eligible partners. One of the partners in the collaborations must be designated as the legal applicant. Eligible partners for the application include: AmeriCorps* State grantees and their operating or project sites; AmeriCorps* National grantees and their operating or project sites; AmeriCorps* NCCC; Learn and Serve America programs; AmeriCorps* VISTA program sponsors; and National Senior Service Corps program sponsors.

Eligible partners—those entities that are currently operating programs under a Corporation grant or entities sponsoring AmeriCorps* VISTA or National Senior Service Corps—are eligible to apply as the legal applicant. AmeriCorps* NCCC, while an eligible partner, cannot be the legal applicant, or the recipient of any of these funds.

Period of Support

Grants are made on an annual basis and may be renewed for up to two additional years based on performance and availability of funds.

Overview of Application Requirements

Application requirements will be set forth in detail in the application materials. Each applicant must submit one bound original and four (4) copies of the application package. The requirements will include a completed application form, a narrative section, an implementation timeline, budget information, certifications and assurances pertaining to recipients of federal funding.

Application Review

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application complies with the application instructions and contains all the information required. The Corporation will assess applications based on the criteria listed below:

(1) Program Design and Impact (50%)
(2) Program Organizational Capacity (25%)
(3) Cost-Effectiveness/Sustainability (25%)

Dated: August 7, 1995.

Terry Russell,

General Counsel, Corporation for National and Community Service.

[FR Doc. 95–19815 Filed 8–9–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Air Force Materiel Command

Lt. Gen. Lawrence P. Farrell, Jr.

Air Staff and "Others"

Brig. Gen. Ronald T. Sconyers
Brig. Gen. Thomas R. Case
Mr. Frank J. Colson

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–19799 Filed 8–9–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

MTMC's Regional Meetings to Discuss the Department of Defense (DOD) Personal Property Program

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice.

SUMMARY: MTMC is engaged in re-engineering the existing DOD Personal Property Program. As part of the re-engineering effort, MTMC on 30 June 1995 published a draft requirements document and on 1 August 1995 released the proposed acquisition strategy that together provides details to industry concerning the anticipated requirements to participate in the movement of personal property for DOD under the new program. MTMC believes it is essential that dialogue continues with industry concerning the reengineering effort. Consequently, MTMC has set up regional meetings throughout the United States to discuss the reengineering effort.

DATES: The following dates and locations have been determined for the regional meetings:

22 August 1995 (morning) Miami, Florida (Double Tree Grand Hotel)
31 August 1995 (morning) Ft. Lewis, Washington
1 September 1995 (afternoon) San Diego, California (Naval Supply Depot)
6 September 1995 (morning) Wright Patterson AFB, Ohio
8 September 1995 (morning) McConnell AFB, Kansas (Emerald City Complex)
12 September 1995 (morning) Charleston AFB, South Carolina
15 September 1995 (morning) Bayonne, New Jersey (MTMC–Eastern Area)

FOR FURTHER INFORMATION CONTACT: Reservations and additional information concerning the meetings and times may be made by calling Ms Anne Dugger at (703) 681–6393 or Mr. Joe DeLucia at (703) 681–6753.

SUPPLEMENTARY INFORMATION: This is for informational planning purposes. More information on locations and times will be available through the MTMC reengineering bulletin board or through the carrier associations. All participants will be responsible for their own lodging arrangements, travel, and other expenses.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–19809 Filed 8–9–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 1 & 2 August 1995.

Time of Meeting: 0800–1700, 1 August 1995. 0800–1300, 2 August 1995.

Place: Huntsville, AL.

Agenda: The Army Science Board's (ASB) Independent Assessment on "Hit-To-Kill Interceptor Lethality" will hold an initial kick-off meeting. the focus is on establishing a current status of TMD lethality and preparing for future group direction. Following the required conflict of interest presentation, the group will receive an intelligence briefing from the U.S. Army Space and Strategic Defense Command. This will be followed by a review of study group direction, identification of future briefings, outlining action items and defining a future schedule. The last major topic of this meeting will be to define special study group activities. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically paragraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified information to be discussed is so inextricably intertwined so as to preclude opening any portion of these meetings. The ASB Administrative Officer may be contacted for further information at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–19746 Filed 8–9–95; 8:45 am]

BILLING CODE 3710–08–M

MTMC's Acquisition Strategy Concerning the Department of Defense (DOD) Personal Property Program

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice.

SUMMARY: MTMC is engaged in re-engineering the existing DOD Personal Property Program in an effort to enhance the quality of life for our service members and their families. As additional objectives of this re-engineering effort, MTMC desires to simplify the process, control program costs, and ensure quality of service. The re-engineering effort will adopt, to the fullest extent possible, proven commercial business practices and relieve carriers of DOD unique terms and conditions. As part of the re-engineering effort, MTMC on 30 June 1995 published a draft requirements document that provides details to industry concerning the anticipated requirements to participate in the movement of personal property for DOD. In conjunction with the previous release of the requirements document, MTMC is publishing the acquisition strategy. The acquisition strategy along with the requirements document should be considered a single package. MTMC requests that industry provide their combined input, suggestions, and constructive criticism concerning the draft requirement document and the acquisition strategy.

DATES: Comments must be received by 20 September 1995.

ADDRESSES: Mail comments to Headquarters, Military Traffic Management Command, ATTN: MTOP–Q, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Joe DeLucia, MTOP–QE, (703) 681–6753.

SUPPLEMENTARY INFORMATION: The acquisition strategy and the draft of the requirements document can be obtained by accessing MTMC's re-engineering update from the EasyLink Bulletin Board. To subscribed to AT&T EasyLink services carriers may contact AT&T EasyLink representative Lynn Phelps at 1–800–346–1557. Procedures to access the bulletin board system are as follows:

MTMC BBS Access

To access the MTMC BBS a communication software is required. The software could be EasyLink's Office Access, Procomm Plus, or some other type of off the shelf communication software. Also required is an account on the EasyLink network.

Office Access Software

- At the Main Menu type *C* for the On-line Communication Menu.
- At the On-line Communication Menu type *F* for FYI. The software will dial the network and exit into FYI.
- The network will ask for CATEGORY NAME, type *MTMC*. This will place you in the MTMC BBS.
- To maneuver within the BBS to ADCSOPS for Quality.

a. From the main menu TYPE *2* for the ADCSOPS for Quality.
b. TYPE *1* for the Re-Engineered Personal Property Program.
c. TYPE *1* for Contacts.
d. TYPE *2* for Information.

As information scrolls across the screen, the information is automatically downloaded to the hard drive on your computer.

- Press *END* key to disconnect from EasyLink.
- Press *ESC* key and return to the Main Menu.
- Type *I* to access the Inbound Journal.
- High light the message and Press *ENTER* to view the BBS categories that were scanned.

PROCOMM PLUS Software

- At the Dialing Directory press *R* to Revise Entry. Type in the entry name.
- The remaining setup entries are as follows:
- Number=*1–800–325–4112* or *1–800–445–7523*.
- BAUD=*2400*.
- PARITY=*Even*.
- DATA BITS=*7*.
- STOP BITS=*1*.
- DUPLEX=*HALF*.
- SCRIPT=BLANK.
- PROTOCOL=*ASCII*.
- TERMINAL=*ANSI*.

• Press *Enter* to dial the network.
• At the EASYLINK ID prompt type your *USERID AND PASSWORD*.
• At the PTS prompt type *EXIT*. This will exit the EasyLink network and provide an EasyLink Service Menu.
• Press *2* to select FYI.
• Hold down the *ALT* key and press *F1* and type a log name. This will open the log and allow the capture of the BBS data as it is scanned.
• The network will ask for CATEGORY NAME, type *MTMC*. This will place you in the MTMC BBS.

To maneuver within the BBS to ADCSOPS for Quality.

a. From the main menu *TYPW 2* for the ADCSOPS for Quality.
b. *TYPE 1* for the Re-Engineered Personal Property Program.
c. *TYPE 1* for Contacts.
d. *TYPE 2* for Information.

• The software will automatically capture the categories that are typed. After the category scan is completed, press *ALT* and the *H* keys to logoff.
• Hold down the *ALT* key and press *F1* to close the log.
• Hold down the *ALT* key and press *V*. Type the log name to view it. This will allow the captured BBS date to be viewed.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 95-19008 Filed 8-9-95; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.300]

Alaska and Native Hawaiian Cultural and Arts Development Program

AGENCY: Department of Education.

ACTION: Notice of funding available for fiscal year (FY) 1995 and procedures for certification of eligibility and application.

PURPOSE OF PROGRAM: The Native Hawaiian and Alaska Native Culture and Arts Development Program authorizes grants to provide scholarly study of, and instruction in, Native Hawaiian or Alaska Native art and culture; to establish programs that culminate in the awarding of degrees in the various fields of Native Hawaiian or Alaska Native art and culture; or to establish centers and programs with respect to Native Hawaiian or Alaska Native art and culture that are similar in purpose to the centers and programs described in 20 U.S.C. 4417(b), (c).

BACKGROUND: In 1994, Congress amended the Native Hawaiian culture and arts development program to include programs for Alaska Native culture and arts development (20 U.S.C. 1441). The legislation authorizes grants to support programs for Native Hawaiian or Alaska Native culture and arts development to any private, nonprofit organization or institution that primarily serves and represents Native Hawaiians or Alaska Natives, and has been recognized by the Governor of the State of Hawaii or the Governor of the State of Alaska, as appropriate, for the purpose of making such organization or institution eligible to receive such grants.

For FY 1995, $1,000,000 was originally appropriated for this program. However, a Congressional budget rescission has reduced the appropriated amount to $500,000. In addition, the rescission bill specifies that these funds shall be available only for Native Alaskans.

For any grants made under this program for Alaska Native arts and culture, the grant recipient must establish a governing board to manage and control the program for which the grant is made, the members of which—

(a) Include Alaska Natives and individuals widely recognized in the field of Alaska Native art and culture;

(b) Represent the Eskimo, Indian, and Aleut cultures of Alaska; and

(c) Serve for a fixed term.

ELIGIBLE APPLICANTS: An eligible applicant is any private, nonprofit organization or institution that primarily serves and represents Alaska Natives and has been recognized by the Governor of the State of Alaska for the purpose of making the organization or institution eligible to receive a grant under this program.

CERTIFICATION SUBMISSION: Potential applicants must submit their request for certification as an eligible entity for a grant under this program directly to the Governor of Alaska. This request for certification must be received by the Governor no later than August 16, 1995, at the following address: The Honorable Tony Knowles, Governor of Alaska, P.O. Box 110001, Juneau, Alaska 99811-0001.

Only those entities that have been certified by the Governor of the State of Alaska will be considered eligible to participate in this program.

APPLICATION REQUIREMENTS: If more than one eligible applicant is identified by the Governor of Alaska, the eligible applicants will compete for the funding available under this program. The criteria in 34 CFR 75.210 (the Education Department General Administrative Regulations) will be used to evaluate the applications submitted by multiple eligible applicants. The 15 additional points to be distributed among the evaluation criteria under 34 CFR 75.210(c) will be allocated to the "Plan of Operation" selection criterion for a possible total of 30 points.

If only one eligible applicant is certified by the Governor of Alaska, the application for funding should address the requirements of the statute and the Department will then review the application to ensure that the program meets the purposes of the statute (20 U.S.C. 4441).

DEADLINE FOR RECEIPT OF APPLICATIONS: September 18, 1995.

AVAILABLE FUNDING: $500,000.

PROJECT PERIOD: 12 months.

ESTIMATED NUMBER OF AWARDS: One.

PROGRAM AUTHORITY: 20 U.S.C. 4441.

FOR FURTHER INFORMATION CONTACT: Cathie Martin, Office of Indian Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building-Room 4300, Washington, DC 20202-6335. Telephone 202-260-3774 or 1-800-501-5795. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Catalog of Federal Domestic Assistance Number: 84.300 Alaska and Native Hawaiian Cultural and Arts Development Program)

Dated: August 7, 1995.

Thomas W. Payzant,
Assistant Secretary Elementary and Secondary Education.
[FR Doc. 95-19870 Filed 8-9-95; 8:45 am]
BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95-1394-000, et al.]

Central Illinois Light Company, et al.; Electric Rate and Corporate Regulation Filings

August 3, 1995.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Light Company

[Docket No. ER95-1394-000]

Take notice that on July 19, 1995, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customer and six signed Service Agreements under the Coordination Sales Tariff approved on April 25, 1995.

CILCO is requesting a waiver of the notice period to the extent necessary to allow the Service Agreements to be effective as of July 1, 1995.

Copies of the filing were served on all customers and the Illinois Commerce Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER95-1422-000]

Take notice that on July 24, 1995, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS-FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity: Utility 2000 Energy Corporation.

A copy of this filing has been served on the above listed entity and the Arizona Corporation Commission.

Comment date: August 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Mid American Natural Resources, Inc.

[Docket No. ER95-1423-000]

Take notice that on July 24, 1995, Mid American Natural Resources, Inc. (Mid American), tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.206, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1 to be effective on the date of the Commission order.

Mid American intends to engage in electric power and energy transactions as a marketer and broker. In transactions where Mid American sells electricity it proposes to make such sales at rates, terms, and conditions to be mutually agreed to with the purchasing party. Mid American is not in the business of generating, transmitting, or distributing electric power.

Comment date: August 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. CINergy Services, Inc.

[Docket No. ER95-1424-000]

Take notice that on July 24, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating company, PSI Energy, Inc. (PSI), a Third Amendment, dated June 30, 1995, to the Interconnection Agreement, dated May 1, 1992 as amended, by and between Indianapolis Power & Light Company and PSI.

The Third Amendment revises the definitions for Out-Of-Pocket Costs and Emission Allowances and provides for CINergy Services to act as agent for PSI. The following Service Schedules have also been revised:

A. Emergency Service
B. Interchange Energy
C. Short Term Power and Energy
D. Carmel Southeast Tap

CIN and IPL have requested an effective date of October 1, 1995 for Service Schedules A, B and C and an effective date of September 1, 1995 for Service Schedule D.

Copies of the filing were served on Indianapolis Power & Light Company, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company

[Docket No. ER95-1425-000]

Take notice that on July 24, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission eight Service Agreements (the Agreements) between PP&L and (1) Stand Energy Corporation, dated July 1, 1995, (2) LG&E Power Marketing, Inc., dated July 3, 1995, (3) Catex Vital Electric, L.L.C., dated July 7, 1995, (4) CMEX Energy, Inc., dated July 7, 1995, (5) CNG Power Services Corporation, dated July 7, 1995, (6) Heartland Energy Services, Inc., dated July 7, 1995, (7) InterCoast Power Marketing Company, dated July 7, 1995, and (8) New York State Electric & Gas Corporation, dated July 7, 1995. The Agreements supplement a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95-782-000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶ 61,081 (1993), PP&L requests the Commission to make the Agreement effective as of the date of execution of each, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95-782-000.

PP&L states that a copy of its filing was provided to the customers involved and to the Pennsylvania Public Utility Commission.

Comment date: August 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light Company

[Docket No. ER95-1426-000]

Take notice that on July 24, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission one Borderline Service Agreement (the Agreement) between PP&L and Metropolitan Edison Company (Met-Ed) dated June 29, 1995. The Agreement supplements a borderline service umbrella tariff approved by the Commission in Docket No. ER93-847-000 by establishing the precise point of deliver, metering arrangements, and transmission losses associated with a new point of delivery under the umbrella tariff.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶ 61,081 (1993), PP&L requests the Commission to make the Agreement effective as of June 29, 1995, because service will be provided under an umbrella tariff and the service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER93-847-000.

PP&L states that a copy of its filing was provided to Met-Ed and to the Pennsylvania Public Utility Commission.

Comment date: August 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER95-1427-000]

Take notice that on July 24, 1995, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission an amendment of a transmission service agreement with the Bonneville Power Administration.

Comment date: August 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. South Carolina Electric & Gas Company

[Docket No. ER95–1428–000]

Take notice that on July 24, 1995, South Carolina Electric & Gas Company, tendered for filing proposed cancellation of Rate Schedule T1.S5.1(FPC) between South Carolina Electric & Gas Company and The Commissioners of Public Works, Town of McCormick, South Carolina.

Under the proposed cancellation the contract will be replaced with the Rate Schedule included with this filing.

Copies of this filing were served upon The Commissioners of Public Works, Town of McCormick, South Carolina.

Comment date: August 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19720 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG95–63–000, et al.]

EI Power, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 4, 1995.

Take notice that the following filings have been made with the Commission:

1. EI Power, Inc.

[Docket No. EG95–63–000]

On July 28, 1995, EI Power, Inc. ("EI Power"), c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to 18 CFR Part 365 of the Commission's Regulations.

EI Power states that it is a Delaware corporation formed to engage in project development activities associated with the direct or indirect acquisition of ownership interests in one or more eligible facilities and/or EWGs. EI Power further states that it has previously been determined to be an EWG. According to EI Power, this filing is occasioned because EI Power intends to acquire all of the voting capital stock of (i) EI Barranquilla, Inc., a Delaware corporation and (ii) Guaracachi America, Inc., a Delaware corporation.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. EI International

[Docket No. EG95–64–000]

On July 28, 1995, EI International, c/o Energy Initiatives, Inc, One Upper Pond Road, Parsippany, New Jersey, 07054, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

According to the application, EI International (formerly known as EI Cayman) is a Cayman Islands corporation previously determined to be an EWG on the basis of its intention to acquire an ownership interest in Termobarranquilla S.A., Empresa de Servicios Publicos ("TEBSA"), a Colombian Corporation which was formed to develop, construct and own an eligible facility to be located in Soledad near Barranquilla, Colombia. This filing is occasioned because EI International no longer intends to acquire such ownership interest. Instead, according to the application, EI International is planning to acquire all of the capital stock of EI Services Colombia, a Colombian corporation which was formed to enter into an operation and maintenance agreement with TEBSA to operate such facility. All of the facility's electricity will be sold at wholesale to Corporacion Electrica de la Costa Atlantica, a Colombian entity. EI International also intends to enter into similar agreements (either directly or through wholly-owned subsidiaries) with one or more as-yet-unidentified eligible facilities and EWGs.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. EI Barranquilla, Inc.

[Docket No. EG95–65–000]

On July 28, 1995, EI Barranquilla, Inc. ("EI Barranquilla"), c/o Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

EI Barranquilla states that it is a Delaware corporation formed to acquire up to 30% but in no event less than 5% of the voting shares of Termobarranquilla S.A., Empresa de Servicios Publicos, a Colombian corporation which was formed to develop, construct and own an eligible facility located in Soledad, near Barranquilla, Colombia. Corporacion Electrica de la Costa Atlantica, a Colombian utility, will purchase all of the electrical output from the Facility.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Electric Company v. Dartmouth Power Associates Limited Partnership and EMI/Dartmouth, Inc.)

[Docket No. EL95–66–000]

Take notice that on July 27, 1995, Commonwealth Electric Company tendered for filing a complaint against Dartmouth Power Associates Limited Partnership and EMI/Dartmouth, Inc. concerning violation of filed rate schedule, motion for consolidation of proceedings, and motion for summary disposition.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Eastern Power Distribution, Inc.

[Docket No. ER94–964–006]

Take notice that on July 17, 1995, Eastern Power Distribution, Inc. (Eastern) filed certain information as required by the Commission's April 5, 1994, order in Docket No. ER94–964–000. Copies of Eastern Power's informational filing are on file with the Commission and are available for public inspection.

6. Morgan Stanley Capital Group, Inc.

[Docket No. ER94–1384–006]

Take notice that on July 26, 1995, Morgan Stanley Capital Group, Inc. tendered for filing certain information as required by the Commission's order dated November 8, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

7. Mesquite Energy Services, Inc.

[Docket No. ER95–74–002]

Take notice that on July 31, 1995, Mesquite Energy Services Inc. tendered for filing certain information as required by the Commission's order dated January 4, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

8. National Power Management Company

[Docket No. ER95–192–002]

Take notice that on July 28, 1995, National Power Management Company (National Power) filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–192–000. Copies of National Power's informational filing are on file with the Commission and are available for public inspection.

9. Wickland Power Services

[Docket No. ER95–300–003]

Take notice that on July 26, 1995, Wickland Power Services tendered for filing certain information as required by the Commission's order dated March 16, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

10. Stand Energy Corporation

[Docket No. ER95–362–002]

Take notice that on July 26, 1995, Stand Energy Corporation filed certain information as required by the Commission's February 24, 1995, letter-order in Docket No. ER95–362–000. Copies of Stand Energy Corporation's informational filing are on file with the Commission and are available for public inspection.

11. CLP Hartford Sales L.L.C.

[Docket No. ER95–393–004]

Take notice that on July 28, 1995, CLP Hartford Sales L.L.C. filed certain information as required by the Commission's February 22, 1995, order in Docket No. ER95–393–000. Copies of CLP Hartford Sales L.L.C.'s informational filing are on file with the Commission and are available for public inspection.

12. Audit Pro Incorporated

[Docket No. ER95–878–001]

Take notice that on July 28, 1995, Audit Pro Incorporated (Audit Pro) filed certain information as required by the Commission's June 2, 1995, order in Docket No. ER95–878–000. Copies of Audit Pro's informational filing are on file with the Commission and are available for public inspection.

13. PECO Energy Company

[Docket No. ER95–1155–000]

Take notice that on July 19, 1995, PECO Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Dayton Power and Light Company

[Docket Nos. ER95–1158–000 and ER95–1256–000]

Take notice that on July 28, 1995, Dayton Power and Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Prairie Winds Energy, Inc.

[Docket No. ER95–1234–000]

Take notice that on July 5, 1995, Prairie Winds Energy, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Power & Light Company

[Docket No. ER95–1384–000]

Take notice that on July 17, 1995, Wisconsin Power & Light Company (WP&L) tendered for filing an amended Wholesale Contract dated July 10, 1995, between Pioneer Power & Light Company and WP&L. WP&L states that this amended Wholesale Power Contract revises the previous agreement between the two parties dated December 15, 1977, and designated Rate Schedule Number 118 by the Commission.

The parties have amended the Wholesale Power Contract to add an additional delivery point. Service under this amended Wholesale Power Contract will be in accordance with standard WP&L Rate Schedule W–3.

WP&L requests an effective date of July 15, 1995 which is concurrent with the expected in service date. WP&L states that copies of the amended Wholesale Power Contract and the filing have been provided to Pioneer Power & Light Company and the Public Service Commission of Wisconsin.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Southern California Edison Company

[Docket No. ER95–1402–000]

Take notice that on July 20, 1995, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 246.18 and all supplements thereto in the above-referenced docket.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Southern California Edison Company

[Docket No. ER95–1403–000]

Take notice that on July 20, 1995, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 248.16 and FERC Rate Schedule No. 248.17 and all supplements thereto in the above-referenced docket.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Southern California Edison Company

[Docket No. ER95–1405–000]

Take notice that on July 20, 1995, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 249.17 and FERC Rate Schedule No. 249.18 and all supplements thereto in the above-referenced docket.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. JPower

[Docket No. ER95–1421–000]

Take notice that on July 21, 1995, Jpower tendered for filing a power marketing application under rate schedule No. 1 to become effective September 1, 1995.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Indiana Gas and Electric Company

[Docket No. ER95–1429–000]

Take notice that on July 25, 1995, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing to a proposed Interchange Agreement with AES Power, Inc. (AES).

The proposed revised Interchange Agreement will provide for the purchase, sale, and transmission of capacity and energy by either party under the following Service Schedules: (a) SIGECO Power Sales; (b) AES Power Sales, and (c) Transmission Service.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of July 28, 1995.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. New England Power Company

[Docket No. ER95–1430–000]

Take notice that on July 25, 1995, New England Power Company, tendered

for filing a parallel transmission supply agreement executed by New England Power Company, Massachusetts Electric Company and General Electric in Lynn, Massachusetts.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Virginia Electric and Power Company

[Docket No. ER95–1431–000]

Take notice that on July 25, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between LG&E Power Marketing Inc. and Virginia Power, dated December 31, 1994 under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services LG&E Power Marketing Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Kentucky Public Service Commission, Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Allegheny Power Service Corporation on Behalf of West Penn Power Company

[Docket No. ER95–1432–000]

Take notice that on July 26, 1995, Allegheny Power Service Corporation on behalf of West Penn Power Company and its wholesale Customers submitted Supplement No. 4 to the above-referenced docket, a filing to change rates to reflect a reduction in corporate net income tax legislated by the Pennsylvania General Assembly. Allegheny Power Service Corporation requests waiver of notice requirements and asks the Commission to grant a August 1, 1995, effective date.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission and all parties of record.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Proler Power Marketing, Inc.

[Docket No. ER95–1433–000]

Take notice that on July 25, 1995, Proler Power Marketing, Inc. (the Petitioner), tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1.

The Petitioner intends to engage in wholesale electric power transactions as a marketer. The Petitioner will purchase power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resell such power to other purchasers. The Petitioner proposes to charge rates mutually agreed upon by the parties. The Petitioner is not in the business of producing or transmitting electric power. The Petitioner does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. CINergy Services, Inc.

[Docket No. ER95–1434–000]

Take notice that on July 26, 1995, CINergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated June 1, 1995, between CIN, CG&E, PSI and MidCon Power Services Corp. (MidCon).

The Interchange Agreement provides for the following service between CIN and MidCon:

1. Exhibit A—Power Sales by MidCon
2. Exhibit B—Power Sales by CIN

CIN and MidCon have requested an effective date of August 1, 1995.

Copies of the filing were served on MidCon Power Services Corp., the Kentucky Public Service Commission, Public Utilities Commission of Ohio, Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Great Bay Power Corporation

[Docket No. ER95–1435–000]

Take notice that on July 26, 1995, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Catex Vitol Electric Inc. and Great Bay for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–524–000. The service agreement is proposed to be effective August 1, 1995.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Commonwealth Electric Company, Cambridge Electric Light Co.

[Docket No. ER95–1436–000]

Take notice that on July 27, 1995, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the "Companies", tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Customers:

Engelhard Power Marketing, Inc., New York State Electric & Gas Corporation, Northeast Utilities Service Company

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and the Customers to enter into separately scheduled transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Union Electric Company

[Docket No. ER95–1437–000]

Take notice that on July 27, 1995, Union Electric Company, tendered for filing Fourth Revised Exhibit A to its Wholesale Electric Service Agreements with the Cities of California, Centralia, AWP, Fredericktown, Hannibal, Kahoka, Kirkwood, Linneus, Marceline, Owensville, Perry, Rolla, and St. James, Missouri; Citizens Electric Corporation; and Sho-Me Power; and the First Revised Exhibit C for the City of Jackson, Missouri, providing for a decrease in the rates charged pursuant to said Agreements.

Said decrease in rates follows a decrease in the Company's Missouri retail rates and is being applied to the Company's wholesale customer's settlement rates pursuant to Section 2 of said Wholesale Electric Service Agreements (and Item 3 for the City of Jackson).

Copies of the filing were served upon the public utility's jurisdictional customers and the Missouri Public Service Commission.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. New England Power Company

[Docket No. ER95–1438–000]

Take notice that on July 27, 1995, New England Power Company and Massachusetts Electric Company tendered for filing an Agreement for Transmission Study Services executed with Boston Edison Company.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. IGM, Inc.

[Docket No. ER95–1439–000]

Take notice that on July 27, 1995, IGM, Inc. (IGM), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waiver and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective October 1, 1995.

IGM intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where IGM sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. IGM is not in the business of generating, transmitting, or distributing electric power.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

32. Portland General Electric Company

[Docket No. ER95–1440–000]

Take notice that on July 26, 1995, Portland General Electric Company (PGE), filed an executed Service Agreement with Coastal Electric Services Company. The Service Agreement is submitted pursuant to the tariff provisions pertaining to unit contingent capacity and/or energy sale agreement under Service Schedule E of FERC Electric Tariff, 1st Revised Volume No. 2 (Docket No. ER95–734–000).

PGE requests that the Service Agreement become effective on August 1, 1995 and requests waiver of the Commission's Regulations.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

33. Conoco Power Marketing Inc.

[Docket No. ER95–1441–000]

Take notice that on July 27, 1995, Conoco Power Marketing Inc. (CPMI), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the date of the Commission's order accepting the Rate Schedule for filing.

CPMI intends to engage in electric power and energy transactions as a marketer. In these transactions, CPMI proposes to charge market-determined rates, mutually agreed upon by the parties. All sales and purchases will be arms-length transactions.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

34. Bangor Hydro-Electric Company

[Docket No. ER95–1442–000]

Take notice that on July 28, 1995, Bangor Hydro-Electric Company (Bangor), tendered for filing Rate Schedule No. FERC No. 7 (Fifteenth Revision) for partial requirements service to Eastern Maine Electric Cooperative, Inc.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

35. Montaup Electric Company

[Docket No. ER95–1443–000]

Take notice that on July 27, 1995, Montaup Electric Company (Montaup or the Company), filed amendments to the budgets included n the report titled Conservation and Load Management Annual Report Information Filing and Projected Revenue Requirements dated October 31, 1994 (the Informational Filing). Conservation and Load Management (C&LM) activities in Blackstone Valley Electric Company's (Blackstone) service area have been more successful than was originally expected when the 1995 C&LM budgets were developed. As a result, actual expenditures for C&LM in Blackstone's service area will be approximately 30 percent higher than was projected when the Informational Filing was submitted to the Commission. The purpose of the filing is to amend Montaup's 1995 C&LM budget to better reflect the actual C&LM expenses anticipated in Blackstone's service area and minimize the true-up that will follow in 1996. Montaup requests that the filing be allowed to become effective on October 1, 1995.

Comment date: August 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

36. Englehard Power Marketing, Inc.

[Docket No. ER94–1690–005]

Take notice that on July 28, 1995, Englehard Power Marketing, Inc. filed certain information as required by the Commission's December 29, 1994, letter-order in Docket No. ER94–1690–000. Copies of Englehard Power Marketing, Inc.'s informational filing are on file with the Commission and are available for public inspection.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19778 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2354–033 Georgia]

Georgia Power Company; Notice of Availability of Environmental Assessment

August 4, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a non-capacity related amendment of license for the North Georgia Hydroelectric Project, No. 2354–033. The North Georgia Hydroelectric Project is located on Tallulah and Tugalo Rivers in Raburn, Habersham, and Stevens Counties, Georgia and Oconee County, South Carolina. The application is for approval to lease lands to the Georgia Department of Natural Resources for the

construction of the Tallulah Gorge State Park and Conservation Area. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19779 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–653–000]

Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company; Notice of Application

August 4, 1995.

Take notice that on July 31, 1995, Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, jointly as the companies, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for an order granting permission and approval to abandon certain transportation service which was one required to permit the transportation of gas for Cabot Corporation (Cabot), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia stated that Columbia Gulf received up to 1,000 Mcf/d of gas at an existing connection in Eugene Block 285, Gulf of New Mexico, Offshore Louisiana, from Cabot and delivered it to Columbia at an existing point of delivery in Boyd County, Kentucky for Cabot's account. Upon receipt of the gas in Kentucky, Columbia transported and delivered it to Cabot at an existing point of delivery at Columbia's Lanham Compressor Station in Kanawha County, West Virginia. Both Columbia and Columbia Gulf charged Cabot transportation for services rendered.

Columbia states that the transportation agreement has been terminated and no volumes flowed since December 1991. The rate schedule for which the companies are seeking abandonment authority is as follows:

Docket No.	Company	Volume Mcf/d	Rate schedule
CP76–450	Columbia.	1,000	X–65
CP76–450	Columbia Gulf.	1,000	X–44

Any person desiring to be heard or to make any protest with reference to said application should on or before August 14, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirement of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19721 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–59–005 and Docket No. RP95–414–000]

Cove Point LNG Limited Partnership; Notice of Compliance Filing

August 4, 1995.

Take notice that on July 31, 1995, Cove Point LNG Limited Partnership ("Cover Point") filed it First Revised FERC Gas Tariff, Original Volume No. 1, Sheet Nos. 1 to 205.

Cover Point states that this filing is being made in compliance with the Commission's order of September 28, 1994, in Docket No. CP94–59, *et al.* which *inter alia*, authorized Cove Point to provide peaking and transportation services subject to conditions contained therein. Although not addressed in the prior Commission orders Cover Point has revised the capacity release and assignment provisions of its tariff in accordance with the Commission's Order No. 577.

Cove Point states that a copy of the filing is being served on all parties to this proceeding, jurisdictional customers, and interested state commissions.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211 and 214 (1995). All such motions or protests should be filed on or before August 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19722 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–412–000]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1995.

Take notice that on August 2, 1995, K N Interstate Gas Transmission Co. (KNI) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–B and First Revised Volume No. 1–D certain revised tariff sheets. KNI requests that the tendered sheets be accepted for filing and permitted to become effective July 10, 1995.

KNI states that the purpose of its filing is to comply with the Commission's Order Granting Rehearing (Order No. 577–A) issued May 31, 1995 in Docket No. RM95–5–001. KNI states that in the instant filing, KNI submits tariff revisions to its general terms and conditions for services concerning short-term capacity releases the are exempt from advance posting and bidding requirements pursuant to Section 284.243(h)(1) of the Commission's Regulations. KNI's tariff revisions provide that short-term capacity releases of 31 days or less will be exempt from the Commission's advance posting and bidding requirements.

KNI states that a copy of its filing was served on all KNI jurisdictional customers, interested parties and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 95–19724 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2588 Wisconsin]

City of Kaukauna, WI; Notice of Intent to File an Application for a New License

August 4, 1995.

Take notice that the City of Kaukauna, WI, the existing licensee for the Little Chute Hydroelectric Project No. 2588, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2588 was issued effective August 1, 1950, and expires July 31, 2000.

The project is located on the Fox River in Outagamie County, Wisconsin. The principal works of the Little Chute Project consist of an integral intake powerhouse, located at the right abutment of the United States Army Corps of Engineers Little Chute Dam, containing three units with a total installed capacity of 3,300 Kw; connections to three 2.4/12–Kv single phase transformers and a 12–Kv transmission line 1.25 miles long; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the Kaukauna Electric and Water Department, 777 Island Street, Kaukauna, WI 54130.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19723 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1280–000]

Niagara Mohawk Power Corporation; Notice of Filing

August 4, 1995.

Take notice that on July 17, 1995, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 18, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19780 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–353–000]

NorAm Gas Transmission Company; Notice Rescheduling Informal Settlement Conference

August 4, 1995.

Take notice that an informal settlement conference scheduled for Tuesday, August 8, 1995 in this proceeding is rescheduled for Thursday, August 10, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Donald Williams (202) 208–0743 or Irene Szopo (202) 208–1602.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19725 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–411–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 1995.

Take notice that on August 1, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Seventeenth Revised Tariff Sheet Nos. 4, 5, 6, 7 and 8, and First Revised Sheet No. 15 which are proposed to become effective September 1, 1995.

Panhandle states that its filing implements, in accordance with Section 18.7 of the General Terms and Conditions of First Revised Volume No. 1 of Panhandle's FERC Gas Tariff, the recovery of Gas Supply Realignment (GSR) Costs by means of GSR Reservation Surcharges applicable to service under Rate Schedules FT, EFT, SCT and LFT and the comparable component applicable to interruptible rates under Rate Schedules IT and EIT.

Panhandle states that the costs included for recovery herein are costs which resulted from Panhandle having to terminate its existing gas supply contracts in connection with implementing Order No. 636, et seq., which, among other things, required Panhandle to restructure its services and

operations to provide its sales customers the choice of reducing and terminating their obligations under their existing sales contract.

Panhandle states that the purpose of this filing is to provide for Panhandle's recovery of $1,753,014 of Gas Supply Realignment (GSR) Costs, (actual payments with associated carrying charges from date of payment to September 1, 1995) as defined in Section 18.7(b)(1) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1 (General Terms and Conditions), plus $273,274 of levelized carrying charges calculated for the three year period these charges are to be in effect. The GSR Costs sought to be recovered in the present filing, which are associated with three gas supply termination agreements, were not included in Panhandle's prior GSR Cost Recovery filing in Docket No. RP94–325–000.

Panhandle states that the amounts included for recovery as GSR Reservation Surcharges under Rate Schedules FT, EFT, SCT and LFT and the amounts included for recovery under Rate Schedules IT and EIT have been calculated using the methods described which are consistent with the Commission's orders and pronouncements regarding the recovery of GSR Costs, and most particularly the so-called Natural discount attribution policies. Although Panhandle previously has objected to and sought rehearing of the application of that policy to its filings, Panhandle recognizes that the Natural approach is the Commission's current policy and Panhandle's present rate derivation conforms to it. Panhandle's use of that method is in compliance with prior Commission orders and is without prejudice to Panhandle's right to adjust the charges to shippers included in this filing by direct bill, surcharge or such other method as the Commission may permit, in the event of reversal, vacation or modification of that policy.

Panhandle states that a copy of this filing has been served on all customers affected by this filing and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19726 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–49–002]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 4, 1995.

Take notice that on August 2, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing a revised tariff sheet to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that on July 7, 1995, Williston Basin filed Sub Fourteenth Revised Sheet No. 16 in compliance with the Commission's June 29, 1995, Order in the above-referenced docket to reflect the proper rate structure under Rate Schedule ST–1. Pursuant to a telephone conversation with a member of the FERC Staff, it came to Williston Basin's attention that the gas supply realignment surcharge amounts in Footnote C of that tariff sheet were incorrect.

Williston Basin states that it is filing 2nd Sub Fourteenth Revised Sheet No. 16, which reflects the correct gas supply realignment surcharge amounts in Footnote C. Williston Basin requests that the above referenced tariff sheet be made effective July 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19727 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–4–49–004]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 4, 1995.

Take notice that on August 2, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that it is filing as a supplement to its July 28, 1995, Annual Gas Supply Realignment Reconciliation Compliance Filing revised tariff sheets which reflect the Annual Fuel Reimbursement Adjustment Provision filed by Williston Basin on June 30, 1995 in Docket No. TM95–5–49–000.

Williston Basin has requested that the Commission accept this filing to become effective August 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19728 Filed 8–9–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5275–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, Please refer to the EPA ICR No.

SUPPLEMENTAL INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0940.11; Air Quality Networks, Monitoring and Quality Precision Data; was approved 06/28/95; OMB No. 2060–0084; expires 01/31/96.

EPA ICR No. 0193.05; NESHAP for Beryllium—Subpart C; was approved 06/30/95; OMB No. 2060–0092; expires 06/30/98.

EPA ICR No. 1739.01; National Emission Standard for Hazardous Air Pollutants for the Printing and Publishing Industry; was approved 07/03/95; OMB No. 2060–0335; expires 07/31/98.

EPA ICR No. 1686.02; NESHAP for the Secondary Lead Smelter Industry; was approved 06/30/95; OMB No. 2060–0296; expires 06/30/98.

EPA ICR No. 1668.02; Oil Pollution Prevention National Survey; was approved 06/21/95; OMB No. 2050–0134; expires 12/31/95.

EPA ICR No. 1701.02; National Human Exposure Assessment Survey (NHEXAS): Phase I Field Study; was approved 07/07/95; OMB No. 2080–0053; expires 07/31/98.

EPA ICR No. 0794.07; Notification of Substantial Risk of Injury to Health and the Environment under Section 8(e) of the Toxic Substances Control Act (TSCA); was approved 06/30/95; OMB No. 2070–0046; expires 06/30/97.

EPA ICR No. 1656.02; Risk Management Program for Chemical Accident Prevention; was approved 06/21/95; OMB No. 2050–0144; expires 06/30/98.

EPA ICR No. 1189.05; Identification, Listing and Rulemaking Petitions; was approved 06/28/95; OMB No. 2050–0053; expires 06/30/95.

EPA ICR No. 1597.02; Universal Waste Handlers and Destination Facilities, Reporting and Recordkeeping Requirements; was approved 06/28/95; OMB No. 2050–0147; expires 06/30/98.

EPA ICR No. 1381.04; Compliance with 40 CFR Part 258 Solid Waste Disposal Facility Criteria, Recordkeeping and Reporting Requirements; was approved 06/21/95; OMB No. 2050–0122; expires 12/31/96.

EPA ICR No. 1681.02; Epoxy Resin and Non-Nylon Polyamide Resin Production, National Emission Standards for Hazardous Air Pollutants; was approved 07/03/95; OMB No. 2060–0290; expires 07/31/98.

EPA ICR No. 1713.01; Federal Operating Permits Program of the Clean Air Act—Part 71; was approved 07/14/95; OMB No. 2060–0336; expires 07/31/98.

EPA ICR No. 0107.05; Source Compliance and State Action Reporting; was approved 07/30/95; OMB No. 2060–0096; expires 07/31/98.

EPA ICR No. 1748.01; State Small Business Stationary Source Technical and Environmental Compliance Assistance Program; was approved 07/20/95; OMB No. 2060–0337; expires 07/31/98.

EPA ICR No. 0186.07; NESHAP for Vinyl Chloride 40 CFR Part 61, Subpart F; was approved 06/30/95; OMB No. 2060–0071; expires 06/30/98.

EPA Withdrawals

EPA ICR No. 1744.01; Carbamate Production Waste, Reporting and Recordkeeping Requirements for Needs Listed; was withdrawn from OMB Review.

EPA ICR No. 1692.01; NESHAP for Petroleum Refineries, Reporting and Recordkeeping Requirements, Part 63, Subpart CC; was withdrawn from OMB Review.

Dated: August 4, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–19792 Filed 8–9–95; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5275–6]

Office of the Federal Environmental Executive; Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds

AGENCY: Office of the Federal Environmental Executive, EPA.

ACTION: Notice.

SUMMARY: This document announces guidance developed by the interagency workgroup under the direction of the Federal Environmental Executive to assist federal agencies in the implementation of environmentally and economically beneficial landscape practices. This guidance is in response to the requirements of the executive memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds.

FOR FURTHER INFORMATION CONTACT: Debra Yap, (202) 260–9291.

SUPPLEMENTARY INFORMATION: On April 26, 1994, the President issued a memorandum to Federal agencies addressing landscape management practices on federal landscaped grounds. In developing the implementing guidance, the Federal Environmental Executive sought public comment through a **Federal Register** "Notice, Review & Comment." This guidance, as written by the interagency taskforce, represents the culmination of discussions among interested parties, industry and government, and the responses to the **Federal Register** Notice.[1]

The principles identified here provide a framework for the use of environmentally and economically beneficial landscape practices on managed federal lands and federally-funded projects. They are meant to improve and expand upon current principles of landscape design, implementation and management. They are intended to assist in federal planning and decision-making and can be incorporated into federal agency guidance/policy for landscape management practices.

As identified in the memorandum the guidance focuses on 5 (five) guiding principles: (1) Use regionally native plants (see definition below) for landscaping; (2) Design, use or promote construction practices that minimize adverse effects on the natural habitat; (3) Seek to prevent pollution; (4) Implement water and energy efficient practices; (5) Create outdoor demonstration projects.

This guidance is intended to promote principles of "sustainable landscape design and management" which recognizes the interconnection of natural resources, human resources, site design, building design, energy management, water supply, waste prevention, and facility maintenance and operation. In general, sustainable design embodies the concept that,

* * * human civilization is an integral part of the natural world and that nature must be preserved and perpetuated if the human community is to sustain itself indefinitely.[2]

Sustainable landscape management seeks to minimize impact on the environment and maximize the value received for the dollars expended.

Sustainable landscape design is economically beneficial in its principle of evaluating and optimizing the full life-cycle of products and processes: cost is considered from initial design through the life of the project. For example, although sustainable site design and development may have a higher initial cost, it may prove economical over the life of the project.

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[1] **Federal Register**, Vol. 59, No. 161, Monday August 22, 1994. The Executive Memorandum was incorporated and printed in the Notice, Review & Comment.

[2] p. 4, *Guiding Principles of Sustainable Design*, U.S. Department of the Interior, National Park Service, Denver Service Center, September 1993.

In this example, a well-designed and implemented plan can result in healthier, longer-lived plantings which rely less on pesticides and fertilizers, minimize water use, require less maintenance, and increase erosion control. Sustainable landscape design considers the characteristics of the site and soil, intended effect and use of the developed area, in addition to the selection of plants.

It is not the intent of this guidance to supersede federal agency directives, policy, or other guidance which relate to the mission of that agency or to health and safety concerns. It is not intended to supersede agency objectives or guiding principles such as those pertaining to the National Park Service's four primary management zones—natural, cultural, park development, special use—and their subzones; or those pertaining to the Forest Service's National Hierarchy and Recreation Opportunity Spectrum classification systems. Finally, this guidance does not advocate replacement of existing landscapes, unless it is cost-effective to do so.

Intent of Guiding Principles

The following describes the intent of the implementing guidance and discusses opportunities for federal initiatives. These opportunities are not all-inclusive and federal agencies are encouraged to investigate other initiatives for environmentally and economically beneficial landscaping practices.

1. Use Regionally Native Plants for Landscaping

In the selection of plants for managed federal lands and federally-funded projects, the federal government has the opportunity to choose plants which are aesthetically pleasing, require minimal care, and reflect a "sense of place," i.e. the physical, or symbolic representations of a community or area. By carefully selecting the "right plants for the right place" and matching plant characteristics to site and soil conditions, federal agencies can promote sustainable landscapes. Characteristics of sustainable landscapes include: minimizing water use, reducing the need for pesticides and fertilizers, reducing maintenance costs, utilizing hardy plants, and increasing erosion control. Where the appropriate conditions exist, regionally native plants offer the advantages of natural adaptation to the climatic and geologic environments. In addition, use of regionally native plants can promote regional identity, and enhance wildlife habitat and biodiversity.

2. Design, Use or Promote Construction Practices That Minimize Adverse Effects on the Natural Habitat

Construction practices can adversely affect and alter natural and other habitat. Federal projects can be sited, designed, and constructed to minimize that impact. Federal agencies can incorporate elements of sustainable design into their architectural and engineering plans and specifications for projects planned, designed, and constructed by federal agency or contractor personnel.

Structures can be integrated with the existing plant and animal communities and cultural (human) environments. Considerations include such elements as: ecology of the site; human factors (i.e. historic issues, mission, adjacent land use, and local culture, neighboring communities); water/energy use; pollution prevention and other special issues.

Impact on existing vegetation can be minimized by protecting and integrating plants into the site design. Analyses of the soil and subsurface material are important to the later success of existing and future plantings. These analyses can also indicate the existence of toxic or other undesirable material.

Additional beneficial construction practices which minimize adverse impacts to natural habitat include the proper disposal of construction waste and debris such as paints and other chemicals, concrete, and other building material.

3. Seek to Prevent Pollution

Pollution prevention is a national policy and one of the principles of sustainable landscape management. The primary tenet is: whenever feasible, pollution should be prevented or reduced at the source, and where pollution cannot be prevented, it should be recycled in an environmentally safe manner. Executive Order 12856, "Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements" was issued to ensure that

* * * all Federal agencies conduct their facility management and acquisition activities so that, to the maximum extent practicable, the quantity of toxic chemicals entering any wastestream, including any releases to the environment, is reduced as expeditiously as possible through source reduction; that waste that is generated is recycled to the maximum extent practicable; and that any wastes remaining are stored, treated or disposed of in a manner protective of public health and the environment * * *[3]

[3] Executive Order 12856 of August 3, 1993 "Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements", **Federal Register** Vol. 58, No. 150, Friday, August 6, 1993.

In keeping with the executive order and the principles of sustainable landscapes practices, the following initiatives have been identified as having a salutary effect on landscape management.

Manage Pesticides and Fertilizers

The improper use of pesticides and fertilizers contributes to the pollution of both surface and groundwater in the United States. Using effective landscape management practices, and appropriate application of pesticides and fertilizers, federal agencies may minimize that impact on water quality as well as to other aspects of the environment.

Further, federal agencies may better manage soil amendments and fertilizers by utilizing soil and plant tissue samples analyses which can indicate soil deficiencies and nutrient use. The recommended method of managing pests and pesticides is called Integrated Pest Management or IPM as described below.

Use IPM

Through the use of appropriate control measures and proper application, IPM can result in a reduction in the use of chemicals contained in pesticides which may adversely impact human health and the environment. Integrated Pest Management is a decision-making process which considers cultural, mechanical, biological, and chemical controls of pests. Control mechanisms are selected as each situation warrants. Where chemical control is used, specific pest populations are targeted when they are most vulnerable rather than indiscriminate application of these chemicals.

Minimize Runoff

Uncontrolled runoff adversely impacts the environment: (1) As a major contributor to soil erosion; and (2) the primary vehicle for chemical pollutants to be introduced into the environment (particularly non-point source runoff). Federal agencies can ameliorate adverse impacts associated with run-off through a variety of preventative mechanisms: physical; vegetative, and operational. For example, grasses have been demonstrated to be a viable mechanism for minimizing run-off and controlling soil erosion. A viable method of managing the pollutants associated with the first flush of stormwater run-off is bioretention of the storm water in an appropriately landscaped area.

Recycle Landscape Trimmings

Federal agencies have the opportunity to effect both good landscape management practices and good waste management practices by recycling and using recycled landscape trimmings. A significant portion of what is treated as waste is comprised of leaves, grass clippings, plant trimmings, and woody material. These elements are a desirable resource for composted material, mulches, and landscape amendments. By using these products, federal agencies can effectively and economically enrich the soil, promote plant growth, preserve soil moisture, reduce erosion, and inhibit weed growth.

4. Implement Water and Energy Efficient Practices

Irrigating lawns and landscapes can account for a significant proportion of total water use, particularly during peak watering season. Reducing the inefficient irrigation of lawns and landscapes with potable water can reduce water cost, and the energy usage/cost associated with water pumping. In addition, water use efficiency can relieve the increasing demand being placed on water resources, distribution systems, and wastewater treatment systems.

Federal facilities can effectively reduce water use and conserve potable water through a number of practices. For example, water usage can be reduced through the use of mulches and careful selection and siting of plants. Plants adapted to local conditions can be selected so supplemental water will not be required after an initial establishment period of 3–5 years. Other water-efficient landscape practices include: determining the water requirements for discrete water-use zones; using and maintaining efficient irrigation systems; and watering only as needed. A water-efficient and cost-effective manner of irrigation which is becoming increasingly popular, where available, is the use of recycled or reclaimed water.

Recent legislation, as well as recent executive orders, reflect the federal government's commitment to energy and water conservation. Water-efficient landscape practices contribute two-fold: first, to the conservation of fresh, potable water; and second, to the conservation of energy associated with the distribution and treatment of water. Landscape practices may also directly impact energy conservation by siting plants to provide shade and cooling to paved surfaces and building structures resulting in reduced building cooling loads. Conversely, plants may also be sited such that they optimize solar heat gain and inhibit heat loss during cooler periods to reduce building heating loads.

To assist agencies in meeting the energy and water conservation requirements mandated by the Energy Policy Act of 1992 [Public Law 102–486, October 24, 1992], the Department of Energy was directed to establish the Federal Energy Efficiency Fund. Administered by the Federal Energy Management Program office, the fund provides grants to agencies for energy and water conserving projects. Grant proposals are competitively assessed for their technical and economic effectiveness. Water conserving landscapes are eligible to compete for grants under this fund.

5. Create Outdoor Demonstration Projects

Landscape demonstration projects promote public awareness and education and can be a catalyst for similar initiatives by the general public as well as other governmental agencies. They can also aid in the development and expansion of beneficial techniques and technologies. Outdoor demonstration projects are an effective method of promoting and sharing information about environmentally sensitive landscape approaches and the use of environmentally and economically beneficial landscape practices. Outdoor demonstration projects can also showcase partnership opportunities among industry, academia, and other governmental agencies. Cooperative agreements can assist in the development of technologies and techniques in such areas as recycled or reclaimed water use.

Other Initiatives

To further promote and demonstrate that environmentally beneficial practices can be both beautiful and economical, the Executive Memorandum identified a number of initiatives. These include: (1) The establishment of annual awards to recognize outstanding efforts in site design, and development, landscaping management practices of agencies and individual employees; and (2) the requirement for the Department of Agriculture to conduct research on the sustainability, propagation and use of native plants.

- Establishment of Annual Award

The Office of the Federal Environmental Executive in conjunction with the Department of Energy's Federal Energy Management Program (FEMP), has established an annual award recognizing outstanding efforts by agencies and individual employees in the demonstration of beneficial landscape management practices. This annual award has been incorporated into FEMP's Annual Federal Energy and Water Conservation Award Program. In October 1995, the winners of the first annual Beneficial Landscape Practices award will be announced.

- Research by the Department of Agriculture in Cooperation With Other Agencies on Suitability, Propagation and Use of Native Plants for Landscaping

As identified in the *National Performance Review, Accompanying Report: Reinventing Environmental Management*, barriers to the use of native plants include: limited availability of native plants; lack of knowledge about the use, maintenance, and propagation of native plants; the more prevalent use of exotic species; and the spread of invasive exotics. The U.S. Department of Agriculture possesses experience and expertise in the development of plants, management of federal lands, and conservation of soils. By working with other federal agencies, universities, botanic gardens, arboreta, and commercial nurseries, the USDA's Agricultural Research Service and Natural Resource and Conservation Service can further the use of native plant species in the landscape. In addition, the USDA has been directed to make information available to agencies and the public on the suitability, propagation and use of native plants for landscaping.

Guidelines

Applicability

These guidelines are meant to assist Federal decision-making at the agency and facility level. Where cost effective and to the maximum extent practicable, they shall be incorporated into agency guidance and policy and reflected in agency landscape management practices, site design, and development. These guidelines apply to decisions regarding landscape management practices, site design, and development on Federal grounds and at Federal projects in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Federal facilities located outside the customs territory of

the United States and Federal agencies at overseas U.S. facilities are encouraged to abide by the principles set forth in the Executive Memorandum and these guidelines. Where Federal funding is provided to support landscaping projects on non-federal lands, these guidelines shall also apply.

The policies and recommendations set out in this document are not final action, but are intended solely as interpretive guidance for implementation of the Executive Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscape Grounds by affected Federal government agencies. This Guidance does not supersede Federal agency policies or directives or established regulation. Nothing in this document shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Definitions

Native Plant

A native plant species is one that occurs naturally in a particular region, ecosystem and/or habitat without direct or indirect human actions.

Pesticide

A pesticide is "any substance or mixture of substances: (a) For preventing, destroying, repelling, or mitigating any pest, or (b) for use as a plant regulator, defoliant, or desiccant." [FIFRA Section 2(u)]

Pest

A pest is "(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest." [FIFRA Section 2 (t)]

Compliance With the National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) provides a mandate and a framework for federal agencies to consider all reasonably foreseeable environmental effects of their actions. Where Federal projects or federally-funded activities or projects considered in the NEPA process include landscape considerations, draft and final NEPA documentation and Record of Decision for the proposed action and alternatives, as applicable, shall reflect the recommendations established in this Guidance.

1. Use of Regionally Native Plants for Landscaping

Federal agencies, Federal projects or federally-funded projects, shall incorporate regionally native plants in site design and implementation where cost-effective and to the maximum extent practicable. Federal agencies shall strive to avoid or minimize adverse impacts of proposed actions or projects on existing communities of native plants.

Federal agencies shall ensure that the appropriate site and soil analyses are performed during pre-design stages of the project. To aid in proper plant selection and to ensure success of the plantings, analyses should match plant characteristics with site and soil conditions. Site design and implementation as well as plant selection shall incorporate such considerations as their biological needs, minimal plant care, low water use, and minimal need for fertilizers and pesticides.

Plants selected shall be in character with the project site plant communities. Those plants selected for Federal landscape projects or federally-funded landscape projects shall be nursery propagated from sources as close as practicable to the project area. Native plants collected from existing indigenous populations shall not be used unless they are salvaged from an area where they would otherwise be destroyed in the near-term. Where native plant seeds are to be used for federal projects, they should be unadulterated by other plant species. Federal agencies should ensure that appropriate actions are taken to support the success of native plant species used for Federal or federally-funded landscaping projects.

2. Design, Use, or Promote Construction Practices That Minimize Adverse Impacts on the Natural Habitat

Federal agencies, Federal projects or federally-funded projects shall avoid or minimize adverse impacts to natural habitat. During preliminary selection of sites for Federal or federally-funded projects, Federal agencies shall avoid sites which are relatively undisturbed. If such areas cannot be avoided, Federal agencies should employ construction practices and procedures which minimize adverse impacts to natural habitat and incorporate existing vegetation and associated natural habitat into the project. Where new projects require use of a relatively undisturbed site, site clearing and preparation should be limited in order to prevent unnecessary adverse impacts. Where adverse impacts to natural habitat occur as a result of Federal or federally-funded projects, Federal agencies shall mitigate impacts to natural habitat on-site where feasible. On-site and off-site compensatory mitigation shall fully reflect lost natural habitat values.

Federal site design and development should consider: environmental elements, human factors, context, sustainability, and pertinent special issues. Development of the site should include assessments of the soil and subsurface material.

Project decision-makers, including designers, contract supervisors, contractors, field inspectors, site or facility master planners, and maintenance personnel shall either be knowledgeable of or informed of likely project related impacts to natural habitat. Where existing plantings are incorporated into the site design, they shall be adequately protected from construction activities. Project plans and specifications shall include explicit direction regarding construction practices to meet the goals of this guidance. On-site project managers and contractors shall ensure that practices which minimize impacts to natural habitat are followed during project construction. Such practices may include site management to control soil erosion and non-point source run-off and proper disposal of construction material and debris. Where practicable, personnel responsible for on-site construction practices, including contractors and construction inspectors, shall be knowledgeable about natural habitat resources.

3. Seek to Prevent Pollution

Federal agencies, Federal projects or federally-funded projects shall use chemical management practices which reduce or eliminate pollution associated with the use of chemical fertilizers and pesticides. Wherever practicable, Federal agencies shall employ practices which avoid or minimize the need for using fertilizers and pesticides. These practices include, but are not limited to: selection of plant species that do not require chemical fertilizers and pesticides; use of landscape management products and practices that limit growth of "weed" species; use of integrated pest management techniques and practices; use of chemical pesticides which biodegrade, and use of slow-release fertilizers.

Federal agencies shall recycle and/or compost leaves, grass clippings, and landscape trimmings for further use as both soil amendments and mulches. Woody debris such as tree trunks, stumps, limbs, etc., resulting from federally-funded activities shall also be recycled as appropriate.

Federal agencies shall use landscape management practices, including plant selection and placement, which control and minimize soil erosion, runoff of chemicals, and pollution of groundwater. Federal agencies shall also consider energy and water conservation benefits in the siting and selection of plants.

Federal agencies and facilities subject to the requirements of Executive Order 12856 shall identify those chemicals used at their facilities for landscape management and develop alternative landscape management practices to reduce or eliminate the use of those chemicals.

4. Implement Water and Energy Efficient Landscape Practices

Federal agencies, Federal projects or federally-funded projects, shall use water-efficient landscape design and management practices. These practices (such as Xeriscape) shall include planning and designing landscaping projects with consideration to: watering requirements, existing vegetation, topography, climate, intended use of the property and water-use zones. In addition, facility managers shall conduct soil analyses and, as appropriate, amend the soil at the project site to improve its ability to support plants and retain water. Initial site design as well as the addition of plants in established areas shall seek to establish water-use zones and promote efficient irrigation practices.

Where irrigation systems have been installed, irrigation scheduling should be adjusted seasonally to the evapo-transpiration rate (ET) for the plants in that particular climate.

Irrigation with recycled or reclaimed water, where practicable, shall serve as a preferred alternative to the use of potable water. Finally, Federal agencies and facilities, Federal projects and federally-funded projects, are encouraged to use water audits to identify additional opportunities for water-efficient landscape practices.

5. Create Outdoor Demonstration Projects

Federal agencies, Federal projects or federally-funded projects, shall create and maintain outdoor demonstration projects exhibiting and promoting the benefits of economically and environmentally sound landscaping practices. These exhibits may include the selection and use of native plant species and the use of water-efficient and energy-conserving practices. Exhibits may include small scale projects, such as interpretive or wildlife gardens, that focus on environmentally sound landscape management practices, site design, and development appropriate for residential, commercial, and institutional application. Additionally, demonstration projects may highlight larger projects, such as wetland or grassland restoration or woodland rehabilitation, that are more likely implemented by groups or state and local governments. Federal agencies are encouraged to form public/private partnerships with groups such as educational institutions, arboreta, commercial nurseries, botanic gardens and garden clubs, to advance the goals of the Executive Memorandum. Federal agencies are encouraged to work with and share information with other interested nonfederal parties to promote the use of environmentally and economically sound landscaping practices.

Fran McPoland,

Federal Environmental Executive.

[FR Doc. 95–19795 Filed 8–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5275–4]

Proposed Assessment of Clean Water Act Class II Administrative Penalty and Opportunity to Comment

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 309(g) of the Federal Clean Water Act, 33 U.S.C. 1319(g), EPA is authorized to assess a Class II administrative penalty of up to $125,000 against any person who, without authorization, discharges a pollutant to a water of the U.S., as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, and its implementing regulations. As required under section 309(g)(4), 33 U.S.C. 1319(g)(4), EPA Region IX hereby gives notice of the following proposed Class II penalty action and the public's opportunity to comment on it.

On June 22, 1995, EPA Region IX commenced proceeding to assess a Class II penalty of $60,000 against Sundance International, Ltd. and Kemper Development Company, Inc. (Docket No. CWA 404–09a–95–005) by filing a complaint with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389. The complaint alleges that Sundance International used earth moving and other construction equipment to conduct certain grading, filling and vegetation removal activities below the ordinary high water mark of Vail Lake at the Marina site on property owned by Kemper Development Company. The complaint further alleges that these discharges never received required authorization from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, 33 U.S.C. 1344. The public is invited to submit written comments on this proposed penalty action during a thirty day comment period.

DATES: The public comment period closes September 11, 1995.

ADDRESSES: Written comments on this proposed action should be submitted to the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of 40 CFR part 22, review the complaint or other documents filed by the parties in this proceeding, comment on the proposed penalty assessment, or participate in any hearing which may be held should contact the Regional Hearing Clerk at the address or phone number listed above. Unless otherwise noted, the public record for the proceeding is located in the regional office at the address above and is available for public inspection during normal business hours. All information submitted by the respondent will be part of the public record and subject to provisions of law restricting public disclosure of confidential information.

SUPPLEMENTARY INFORMATION: This penalty proceeding and the procedures for public comment and participation are governed by EPA's "Consolidated Rules of Practice Governing and Administrative Permits," at 40 CFR part 22, which is available at most libraries. To provide an opportunity for public comment, EPA will not take final actions in the proceeding prior to thirty (30) days after publication of this notice.

Dated: August 1, 1995.

Karen Schwinn,

Acting Director, Water Management Division.

[FR Doc. 95–19793 Filed 8–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5275–5]

City Industries Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under Section 122(g) of the Comprehensive Environmental

Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the City Industries Superfund Site, Winter Park, Orange County, Florida with Storage Technology Corporation. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, 404/347–5059 X6169.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: August 1, 1995.

H. Kirk Lucius,

Chief, Waste Programs Branch, Waste Management Division.

[FR Doc. 95–19794 Filed 8–9–95; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review

August 7, 1995.

The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). Comments concerning the Commission's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated information techniques are requested.

Persons wishing to comment on this information collection should submit comments on or before August 17, 1995.

Direct all comments to Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561. and Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov. Copies may also be obtained via fax by contacting the Commission's Fax on Demand System. To obtain fax copies call 202–418–0177 from the handset on your fax machine, and enter the document retrieval number indicated below, when prompted.

On 2/7/95, the Commission adopted a Report and Order in MM Docket No. 93–24, Amendment of Part 74 of the Commission's Rules With Regard to the Instructional Television Fixed Service, which will increase the efficiency of Commission processing of applications for new stations, major amendments for new stations, and major changes to existing stations. By this Report and Order we have revised the FCC 330 to reflect the following: (1) An instruction was added that advises licensees assigning CPs for unbuilt ITFS facilities of the requirement to submit documentation of reasonable and prudent out-of-pocket expenses with their assignment applications; (2) the form was modified to reflect the following changes as adopted in the Report and Order: (a) permit an educator, if it chooses, to execute a 10-year lease agreement without regard to the duration of the educator's current license term; (b) service area protection will only be granted when applicant request the protection in the application; (c) interference protection for receive sites will be 35 miles or less from the transmitter; (d) we have modified the current classification of facility changes to increase processing efficiency; (e) we will require applicants to identify the contact person responsible for implementation of the ITFS program at receive site; and (f) we will require additional information on the accreditation status of an applicant. In addition to the above changes, the Commission will no longer require prior Commission approval for the deletion of a receive site. We have requested that OMB approval the above changes by August 17, 1995.

OMB Approval Number: 3060–0062.

Title: Application to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s).

Form No.: FCC 330.

Type of Review: Revision of an existing collection.

Respondents: Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 2,000.

Estimated Time Per Response: 5 hours.

Total Annual Burden: 10,000 hours.

Needs and Uses: FCC Form 330 is used to apply for authority to construct a new or make changes in an Instructional Television Fixed or response station and low power relay station, or for consent to license assignment or transfer of control. The requirement for filing FCC 330 is in accordance with Sections 154(i), 303, 308, and 309 of the Communications Act of 1934, as amended. The data is used by FCC staff to determine if the applicant meets basic statutory requirements and is qualified to become a licensee of the Commission.

Fax Document Retrieval Number: 600062.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–19829 Filed 8–9–95; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010889–003.

Title: Port of Galveston/Container Terminal of Galveston, Inc. Terminal Agreement.

Parties: Port of Galveston, Container Terminal of Galveston, Inc.

Synopsis: The filed amendment clarifies the default terms of the Agreement.

Agreement No.: 224–200563–004.

Title: Port of Oakland/Trans Pacific Container Service Corporation Terminal Agreement.

Parties: Port of Oakland, Trans Pacific Container Service Corporation ("Trapac").

Synopsis: The filed amendment revises the formula that permits Trapac a credit against a portion of the amounts payable under the Agreement due to Trapac's payment of financing costs associated with bonds issued to construct marine terminal facilities.

Agreement No.: 224–200959.

Title: Agreement by and between Trans Pacific Container Service Corporation/Marine Terminals Corporation.

Parties: Trans Pacific Container Service Corporation ("TRAPAC"), Marine Terminals Corporation ("MTC")

Synopsis: The filed Agreement authorizes the parties to cooperate in operating TRAPAC's facility at the Port of Seattle's Terminal 30. Among other things, TRAPAC will provide administrative and support services and MTC will provide necessary stevedoring, maintenance, marketing, and related services.

Dated: August 7, 1995.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–19784 Filed 8–9–95; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Briz Forwarding, Inc., 1 George Street, Brooklyn, NY 11206, Officer: Bella Foss

Logistics International, Inc., 10159 East 11th Street, Ste. 310, Tulsa, OK 74128, Officers: Mitchell L. Bray, President; Maria U. Canteras, Secretary

Matrix CT, Inc., 200 Connecticut Avenue, Norwalk, CT 06854, Officers: Douglas Cruikshank, Co-President; Ronald S. Cruse, Co-President

International Transportation Consultant, 162 Oakridge K, Deerfield Beach, FL 33442, Officers: Claudio Rozentzvaig, President; Celia J. Garcio, Vice President

BNX Shipping Inc., 500 S. Carson Plaza Dr., #210, Carson, CA 90746, Officer: Dae K. Kim, President

Elaine Blair, 4404 Trilby Avenue, Tampa, FL 33616, Sole Proprietor.

Dated: August 7, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–19785 Filed 8–9–95; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

James Walker Branyon; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 24, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. James Walker Branyon, Fayette, Alabama; to acquire a total of 19.11 percent of the voting shares of F.B.H. Corporation, Fayette, Alabama, and thereby indirectly acquire Citizens Bank of Fayette, Fayette, Alabama.

Board of Governors of the Federal Reserve System, August 4, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-19759 Filed 8-9-95; 8:45 am]

BILLING CODE 6210-01-F

Financial Trust Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 5, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Financial Trust Corp., Carlisle, Pennsylvania; to acquire 100 percent of the voting shares of Washington County National Bank, Williamsport, Maryland.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Heart of Georgia Bancshares, Inc., Mount Vernon, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank & Trust Company of Mount Vernon, Mount Vernon, Georgia.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Star Valley Bancshares, Inc., Afton, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of Star Valley State Bank, Afton, Wyoming (in organization).

Board of Governors of the Federal Reserve System, August 4, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-19760 Filed 8-9-95; 8:45 am]

BILLING CODE 6210-01-F

HSBC Holdings, PLC, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or

control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 24, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. *HSBC Holdings PLC*, London, United Kingdom, and HSBC Holdings BV, Amsterdam, Netherlands; to acquire through its subsidiary, James Capel Incorporated (JCI), New York, New York, an office of NatWest Securities Corporation and thereby engage in investment and financial advice, pursuant to § 225.25(b)(4)(iv) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First American Corporation*, Nashville, Tennessee; to acquire Charter Federal Savings Bank, Bristol, Virginia, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The proposed activities will be conducted throughout the State of Virginia.

Board of Governors of the Federal Reserve System, August 4, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-19761 Filed 8-9-95; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Proposed Agency Information Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0246, 48 CFR 552.210–79 Packing List.

A uniquely numbered Government commercial credit card has been authorized for making payment for orders under $25,000 placed against certain schedule contracts. Acceptance of the card by vendors is not mandatory. In order to verify receipt of orders placed orally, the cardholders names and telephone number must be included in the packing list.

AGENCY: Office of GSA Acquisition Policy.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets NW., Washington, DC 20405.

ANNUAL REPORTING BURDEN: 105,000 responses per year; 2 minutes per response; annual burden hours 875.

FOR FURTHER INFORMATION CONTACT: Ida Ustad (202–501–1043).

COPY OF PROPOSAL: A copy of this proposal may be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F Streets NW., Washington, DC 20405, or by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: August 2, 1995.

Kenneth S. Stacey,

Acting Director, Information Management Division (CAI).

[FR Doc. 95–19736 Filed 8–9–95; 8:45 am]

BILLING CODE 6820–61–M

Proposed Agency Information Collection Activities; Comment Request

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0080, General Services Administration Acquisition Regulation (GSAR) Part 532, Contract Financing.

To ensure that all adjustments have been made and claims submitted before contract closeout, building service contractors are required to submit a release of claims before final payment. Use of GSA Form 1142 standardizes information and eliminates the need for GSA regions or contractors to prepare their own release.

AGENCY: Office of GSA Acquisition Policy.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets NW., Washington, DC 20405.

ANNUAL REPORTING BURDEN: 2,000 responses per year; 10 minutes per response; annual burden hours 200.

FOR FURTHER INFORMATION CONTACT: Ida Ustad (202–501–1043).

COPY OF PROPOSAL: A copy of this proposal may be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F Streets NW., Washington, DC 20405, or by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: August 2, 1995.

Kenneth S. Stacey,

Acting Director, Information Management Division (CAI).

[FR Doc. 95–19737 Filed 8–9–95; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of New Types of Therapeutic Compounds for Acquired Immunodeficiency Syndrome (AIDS) and Other Human and Animal Diseases of Retroviral Etiology Identified Using Novel Screening Assays

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. § 3710; Executive Order 12591 of April 10, 1987), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical or biotechnology company to develop novel therapeutics for AIDS and other human and animal diseases of retroviral etiology based upon a newly identified highly conserved HIV target protein. Any CRADA for the biomedical use of this technology will be considered. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and their timely commercialization. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or nonexclusive commercialization license to subject inventions arising under the CRADA.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Cindy K. Fuchs, J.D., Office of Technology Development, National Cancer Institute-Frederick Cancer Research and Development Center, P.O. Box B, Frederick, MD 21702–1201, Telephone: (301) 846–5465, Facsimile: (301) 846–6820. Background information, including abstracts and reprints, is available. In addition, pertinent information not yet publicly disclosed may be obtained under a confidential disclosure agreement.

Requests for copies of the patent applications, license application form, or other questions and comments concerning the licensing of this technology should be directed to Steven M. Ferguson, Acting Chief, Infectious Disease Branch, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804, Telephone: (301) 496–7735 ext. 266, Facsimile: (301) 402–0220. A signed confidentiality agreement will be required to receive copies of the patent applications.

EFFECTIVE DATE: In view of the high priority for developing new drugs for the treatment of HIV infection, interested parties should notify the NCI Office of Technology Development in writing no later than sixty (60) days from the date of this announcement. Respondents will then be provided an additional ninety (90) days for submitting formal CRADA proposals.

SUPPLEMENTARY INFORMATION: Current antivirals are ineffective against HIV–1 largely due to the emergence of drug resistant viral mutants. HIV–1 contains regions known as CCHC zinc fingers in the retroviral nucleocapsid protein. These CCHC zinc fingers are highly conserved throughout nearly all retroviruses. The CCHC zinc fingers are sequences of 14 amino acids with four invariant residues, $Cys(X)_2Cys(X)_4His(X)_4Cys$, that chelate zinc and perform essential functions in viral infectivity. Mutations in the CCHC zinc fingers render HIV–1 non-infectious. Many compounds that disrupt the CCHC zinc fingers also inactivate the HIV–1 virus. HIV–1 has two zinc fingers, both of which are necessary for infectivity. The invariant nature of the retroviral zinc fingers and the requirement of both fingers would make the development of drug resistant viral mutants unlikely. HIV–1 CCHC zinc fingers exhibit a previously unrecognized susceptibility to attack by certain types of compounds. Compounds with this activity may be useful for developing new types of anti-retroviral drugs.

The AIDS Vaccine Program at the National Cancer Institute-Frederick Cancer Research and Development Center (NCI–FCRDC) has developed novel screening assays for identifying compounds capable of inactivating retroviruses, including HIV–1. The screening assays are based on the ability of a compound to disrupt the CCHC zinc fingers. Retroviral CCHC zinc fingers complex with two zinc ions, each with a formal charge of +2. Compounds that react with the CCHC zinc fingers and remove the zinc ions cause a change in the conformation and charge of the nucleocapsid protein, which can be detected as a change in its electrophoretic mobility using capillary zone electrophoresis (CZE). Purified CCHC zinc fingers may be reconstituted with radioactive $zinc^{65}$. By monitoring the release of radioactive $zinc^{65}$ caused by the reaction of a test compound with a retroviral CCHC zinc finger, it is possible to determine the reactivity of the test compound. Changes in the intrinsic fluorescence, fluorescence of artificial probes, or fluorescent zinc chelators can be used to monitor the loss of zinc from the HIV–1 CCHC zinc fingers. Reverse phase high performance liquid chromatography (HPLC) can be used to separate CCHC zinc fingers that have been reacted with compounds resulting in covalent changes in these proteins. Nuclear magnetic resonance (NMR) can be used to monitor the loss of zinc from retroviral CCHC zinc fingers. Because these assays do not utilize live virus, special containment facilities are not required for the screening procedures. Several of these assays are adaptable for high throughput screening. Gel mobility shift assays also can be used to identify and study compounds which are able to penetrate intact virus and to induce conformational changes in the CCHC zinc fingers. These assays can utilize HIV–1 or retroviruses that are not pathogenic for humans. Since CCHC zinc fingers are highly conserved among nearly all retroviruses, assays based upon these structures are suitable for screening for drugs that would be effective against viruses for adult T-cell leukemia, tropical spastic paraparesis caused by Human T-Cell Leukemia Virus-I and -II (HTLV-I and HTLV-II) as well as retroviral infections in animals such as feline leukemia virus and feline immunodeficiency virus in cats, equine infectious virus in horses, and lentivirus isolated from sheep, goats and cattle.

The patent portfolio for this technology includes the following pending patent applications:

Serial Numbers: 08/312,331 and 08/379,420

Title: "A Method for Identifying and Using Compounds that Inactivate HIV–1 and Other Retroviruses by Attacking Highly Conserved Zinc Fingers in the Viral Nucleocapsid Protein"

Inventors: Dr. Louis E. Henderson, Dr. Larry O. Arthur, and Dr. William G. Rice.

The patent rights in these inventions have been assigned to the United States of America. Parties interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the foregoing patent applications in order to commercialize products arising from the CRADA.

The role of the National Cancer Institute in this CRADA will include but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing screening assay reagent(s) to the CRADA Collaborator in "start-up" quantities.
4. Contracting, as needed, support services at the NCI-FCRDC such as antigen and antibody production.
5. Screening candidate therapeutic compounds using the novel assays described above.
6. Screening promising candidates in HIV viral infectivity assays.
7. Publishing research results.

The role of the CRADA Collaborator may include but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.

3. Providing support for ongoing CRADA-related research in the development of candidate therapeutic compounds:
   (a) financial support to facilitate scientific goals;
   (b) technical or financial support for further design of candidate therapeutic compounds; and
   (c) financial and logistical support for clinical trials Phases I-III.
4. Providing and implementing plans to independently secure future continuing supplies of candidate therapeutic compounds to assure continued preclinical and clinical development.
5. Providing plans and supporting clinical development leading to FDA approval of candidate therapeutic compounds.
6. Producing, packaging, marketing, and distributing successful therapeutic compounds.
7. Using the proposed technology for other novel biopharmaceutical and/or veterinary applications.
8. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.
2. The demonstration of adequate resources to perform the research, development and commercialization of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
3. The ability to perform clinical testing or trials, and obtain IND, NDA and FDA approval for a new drug or treatment modality.
4. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.
5. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.
6. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.
7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) the grant of a research license to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to negotiate for an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated July 28, 1995.

Thomas D. Mays,

Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 95–19733 Filed 8–9–95; 8:45 am]

BILLING CODE 4140–01–P

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: August 14, 1995.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training.

Dated: August 4, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–19732 Filed 8–9–95; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Tumor Infiltrating Lymphocytes as a Treatment Modality for Human Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent 5,126,132 and corresponding foreign patent applications entitled, "Tumor Infiltrating Lymphocytes as a Treatment Modality for Human Cancer" to Applied Immune Systems, Inc. of Santa Clara, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Conventional chemotherapy is relatively ineffective in the treatment of patients with metastatic cancer. An effective therapy of patients with malignancy is needed. New cancer therapy modalities utilizing the augmentation of a cancer patient's immune system (immunotherapy) have attracted much scientific interest. The present invention covers a method of providing immunotherapy to cancer patients using a combination of tumor infiltrating lymphocytes (TIL) and interleukin-2. Tumors that are removed from cancer patients are used for the isolation of lymphocytes (tumor infiltrating lymphocytes). Single cell suspensions are prepared which consist largely of tumor cells but with occasional lymphocytes. These lymphocytes are cultured in presence of IL–2 which expands their numbers and activates them to destroy the tumor cells. Patients with cancer are then treated with these TIL along with interleukin-2. At the site of tumor, these TIL destroy tumor either by direct contact or by the secretion of cytokines. Several clinical studies have demonstrated the efficacy of this cancer therapy.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 247; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before October 10, 1995 will be considered. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 26, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–19734 Filed 8–9–95; 8:45 am]

BILLING CODE 4140–01–P

Office of Inspector General

Publication of OIG Special Fraud Alerts: Home Health Fraud, and Fraud and Abuse in the Provision of Medical Supplies to Nursing Facilities

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth two recently issued OIG Special Fraud Alerts concerning fraud and abuse practices in the home health industry and in the provision of medical supplies to nursing facilities. For the most part, the OIG Special Fraud Alerts address national trends in health care fraud, including potential violations of the Medicare anti-kickback statute. These two Special Fraud Alerts, issued directly to the health care provider community and now being reprinted in this issue of the **Federal Register**, specifically address fraud and abuse in the provision of (1) home health services and (2) medical supplies to nursing facilities, including the submission of false claims and anti-kickback violations.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Office of Management and Policy, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Inspector General (OIG) issues Special Fraud Alerts based on information it obtains concerning particular fraudulent and abusive practices within the health care industry. These Special Fraud Alerts provide the OIG with a means of notifying the industry that we have become aware of certain abusive practices which we plan to pursue and prosecute, or bring civil and administrative action, as appropriate. The alerts also serve as a powerful tool to encourage industry compliance by giving providers an opportunity to examine their own practices.

The Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs. On December 19, 1994, the OIG published in the **Federal Register** the texts of 5 previously-issued Special Fraud Alerts, and announced the intention to publish in the same manner subsequent issuances as a regular part of distribution of these Special Fraud Alerts (59 FR 65372).

The first of these new Special Fraud Alert serves to point out the prevalence of certain types of home health care fraud, including (1) cost report frauds; (2) billing for excessive services or services not rendered; (3) use of unlicensed or untrained staff; (4) falsified plans of care; (5) forged physician signatures on plans of care; and (6) kickbacks that the OIG has uncovered.

The second new Special Fraud Alert, focusing on the provision of medical supplies to nursing facilities, identifies some of the illegal practices that the OIG has recently uncovered. These include (1) the submitting of claims to Part B of Medicare for medical supplies and equipment that are not medically necessary; (2) submitting claims for items that are not provided as claimed; (3) double billings; and (4) paying or receiving kickbacks in exchange for Medicare or Medicaid referrals.

These two issuances are the first in a series of new Special Fraud Alerts being developed by the OIG over the next year to heighten both the public's and industry's awareness of fraudulent health care practices. A reprint of both of these Special Fraud Alerts follows.

II. Special Fraud Alert: Home Health Fraud

(June 1995)

The Office of Inspector General was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse and waste in Health and Human Services programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations and inspections.

To help reduce fraud and abuse in the Medicare and Medicaid programs, the OIG actively investigates schemes to fraudulently obtain money from these programs and, when appropriate, issues Special Fraud Alerts which identify segments of the health care industry that are particularly vulnerable to abuse. This Special Fraud Alert focuses on the home health industry and identifies some of the illegal practices the OIG has uncovered.

What Is Home Health Care And Who Is Eligible To Receive It?

Medicare's home health benefit allows people with restricted mobility to remain non-institutionalized and receive needed care at home. Home health services and supplies are typically provided by nurses and aides under a physician-certified plan of care.

Medicare will pay for home health services if a beneficiary's physician certifies that he or she:

- is homebound—i.e., confined to the home except for infrequent or short absences or trips for medical care, and
- requires one or more of the following qualifying services: physical therapy, speech-language pathology, or intermittent skilled nursing.

If a homebound patient requires a qualifying service, Medicare also covers services of medical social workers and certain personal care such as bathing, feeding, and assistance with medications. However, a beneficiary who needs only this type of personal or custodial care does not qualify for the home health benefit.

Fraud and Abuse in the Home Health Industry

Home care is consuming a rapidly increasing portion of the federal health budget. This year, Medicare payments for home health will reach close to $16 billion, up from $3.3 billion in 1990—nearly a five fold increase. Home health care is particularly vulnerable to fraud and abuse because:

• Medicare covers an unlimited number of visits per patient;
• Beneficiaries pay no co-payments except on medical equipment;
• Patients don't receive explanations of benefits (EOBs) for bills submitted for home health services; and
• There is limited direct medical supervision of home health services provided by non-medical personnel.

The OIG has learned of several types of fraudulent conduct, outlined below, which have or could result in improper Medicare reimbursement for home health services.

False or Fraudulent Claims Relating to the Provision of Home Health Services

The government may prosecute persons who submit or cause false or fraudulent claims for payment to be submitted to the Medicare or Medicaid programs. Examples of false or fraudulent claims include claims for services that were never provided, duplicate claims submitted for the same service, and claims for services to ineligible patients. A claim for a service that a health care provider knows was not medically necessary may also be a fraudulent claim.

Submitting or causing false claims to be submitted to Medicare or Medicaid may subject a person to criminal prosecution, civil penalties including treble damages, and exclusion from participation in the Medicare and Medicaid programs. OIG has uncovered the following types of fraudulent claims related to the provision of home health services.

Claims For Home Health Visits That Were Never Made And For Visits to Ineligible Beneficiaries

OIG has uncovered instances where home health agencies are submitting false claims for home health visits. These include:
• Claims for visits not made.
• Claims for visits to beneficiaries not homebound.
• Claims for visits to beneficiaries not requiring a qualifying service.
• Claims for visits not authorized by a physician.

One home health agency billed Medicare for 123 home health visits to a patient who never received a single visit, and submitted claims for beneficiaries who were in an acute care hospital during the period the agency claimed to have provided home visits. Another agency provided a home health aide to a beneficiary so mobile that he volunteered at a local hospital several times a week.

A third agency claimed nearly $26 million during one year in visits that were not made, visits to patients that were not homebound, and visits not authorized by a physician. OIG interviews indicated that beneficiary signatures were forged on visit logs and physician signatures were forged on plans of care. This agency had subcontracted with other entities to provide home health care to its patients, and claimed that the subcontractors falsely documented that visits were made and services were provided.

Medicare permits a home health agency to contract with other organizations, including agencies not certified by Medicare, to provide care to its patients. However, the agency remains liable for all billed services provided by its subcontractors. The use of subcontracted care imposes a duty on home health agencies to monitor the care provided by the subcontractor.

Home health agencies, as well as the physicians who order home health services, are responsible for ensuring the medical necessity of claims submitted to Medicare. A physician who orders unnecessary home health care services may be liable for causing false claims to be submitted by the home health agency, even though the physician does not submit the claim. Furthermore, if agency personnel believe that services ordered by a physician are excessive or otherwise inappropriate, the agency cannot avoid liability for filing improper claims simply because a physician has ordered the services.

Fraud in Annual Cost Report Claims

In addition to submitting claims for specific services, home health agencies submit annual cost reports to Medicare for reimbursement of administrative, overhead and other general costs. For these costs to be allowable, Medicare regulations require that they be (1) reasonable, (2) necessary for the maintenance of the health care entity, and (3) related to patient care. However, the OIG has audited cost reports which include costs for entertainment, travel, lobbying, gifts, and other expenses unrelated to patient care such as luxury automobiles and cruises. One home health agency claimed several million dollars in unallowable costs during one cost reporting year. These included utility and maid service payments for the owner's condominium, golf pro shop expenses, lease payments on a luxury car for the owner's son at college, and payment of cable television fees for the owner's mother.

Medicare also requires home health agencies to disclose in their cost reports the identity of related parties with whom they conduct business, in order to adjust costs that are likely to be inflated by health care providers who self-deal (i.e., purchase goods or services from related companies). A related party issue exists when there is common control or common interest between the provider and the organization with whom it is doing business. OIG has investigated home health agencies which failed to disclose ownership or other relationships with entities with whom they contracted for accounting services, management/consulting services, and medical supplies. These agencies billed Medicare unallowable amounts for marked-up supplies and services.

Paying Or Receiving Kickbacks In Exchange For Medicare or Medicaid Referrals

Kickbacks in exchange for the referral of reimbursable home health services is another type of fraud that OIG has observed. The Medicare program guarantees freedom of choice to its beneficiaries in the selection of health care providers. Because kickbacks violate that principle and also increase the cost of care, they are prohibited under the Medicare and Medicaid programs. Under the anti-kickback statute, it is illegal to knowingly and willfully solicit, receive, offer or pay anything of value to induce, or in return for, referring, recommending or arranging for the furnishing of any item or service payable by Medicare or Medicaid.

OIG is aware of home health providers offering kickbacks to physicians, beneficiaries, hospitals, and rest homes in return for referrals. Kickbacks have taken the following forms:
• Payment of a fee to a physician for each plan of care certified by the physician on behalf of the home health agency.
• Disguising referral fees as salaries by paying referring physicians for services not rendered, or in excess of fair market value for services rendered.
• Offering free services to beneficiaries, including transportation and meals, if they agree to switch home health providers.
• Providing hospitals with discharge planners, home care coordinators, or home care liaisons in order to induce referrals.
• Providing free services, such as 24 hour nursing coverage, to retirement homes or adult congregate living facilities in return for home health referrals.
• Subcontracting with retirement homes or adult congregate living facilities for the provision of home health services, to induce the facility to make referrals to the agency.

Parties that violate the anti-kickback statute may be criminally prosecuted, and also may be subject to exclusion from the Medicare and Medicaid programs.

Marketing Uncovered Or Unneeded Home Care Services to Beneficiaries

OIG has learned of high pressure sales tactics employed by some agencies in the home health community to maximize their patient population and their profits. These agencies target healthy beneficiaries on the street or in their homes and offer non-covered services, such as grocery shopping or housekeeping, in exchange for Medicare identification numbers. Physicians have also reported that some agencies attempt to pressure them to order unnecessary personal care services by informing them that their patients are requesting these services and will find another physician if their demands are not met.

These abusive marketing practices can result in false claims liability on the part of agencies and/or physicians, and may also constitute illegal kickbacks.

III. Special Fraud Alert: Medical Supplies to Nursing Facilities

(August 1995)

The Office of Inspector General was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse and waste in Health and Human Services programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations and inspections.

To help reduce fraud and abuse in the Medicare and Medicaid programs, the OIG actively investigates schemes to fraudulently obtain money from these programs and, when appropriate, issues Special Fraud Alerts which identify segments of the health care industry that are particularly vulnerable to abuse. This Special Fraud Alert focuses on the provision of medical supplies to nursing facilities and identifies some of the illegal practices that the OIG has uncovered.

How Nursing Facility Benefits are Reimbursed

Many nursing facilities receive reimbursement from Medicare and Medicaid for care and services provided to eligible residents. Under Medicare Part A, skilled nursing facility services are paid on the basis of cost, and compensate the provider for covered nursing stays of a limited length. For Medicaid-eligible residents, extended nursing facility stays may be reimbursed by state-administered programs financed in part by Medicaid. Nursing facility residents may be concurrently eligible for benefits under Medicare Part B. These benefits may include payment for medically necessary equipment, prosthetic devices and supplies.

Nursing facilities and their residents have become common targets for fraudulent schemes involving medical supplies. The OIG has become aware of a number of fraudulent arrangements by which medical suppliers profit from inappropriate business dealings, in the name of unwitting nursing facility residents.

Sometimes, nursing facility management and staff also are involved in these schemes.

False or Fraudulent Claims Relating to the Provision of Medical Supplies

The government may prosecute persons who submit or cause the submission of false or fraudulent claims to the Medicare or Medicaid program. Examples of false or fraudulent claims include claims for items that were never provided or were not provided as claimed, duplicate claims submitted for the same item, and claims for items that the supplier knows are not medically necessary.

Submitting or causing false claims to be submitted to Medicare or Medicaid may subject the individual or entity to criminal prosecution, civil penalties including treble damages, and exclusion from participation in the Medicare and Medicaid programs. The OIG has uncovered the following types of fraudulent transactions related to the provision of medical supplies to nursing facilities.

Claims for Medical Supplies and Equipment That Are Not Medically Necessary

• Many of the supplies and equipment used in the care of nursing facility residents are provided by the nursing facility and should be reflected in the facility's Medicare cost report. The OIG has uncovered numerous instances in which suppliers provide the nursing facility with general medical supplies such as tape, adhesive remover, skin creams and syringes, but rather than bill the facility, the supplier submits claims to Medicare Part B. The claims misrepresent that the items are medically necessary for individual beneficiaries and therefore reimbursable under Part B.

For example, one supplier billed Part B for an "oral/nasal hygiene program" which consisted of supplies, such as saline solution, latex gloves and cotton swabs, marketed as prepackaged kits. Upon investigation, the OIG determined that these items, which were shipped to the facility in bulk quantities, were neither medically necessary, nor used for the care of the residents identified on the claims. In such a case, the supplier may be liable under criminal, civil and administrative laws for submitting fraudulent claims. The nursing facility may also be liable if the OIG determines that the nursing facility knew or should have known that the claims were false and participated in the offense.

Claims for Items That Are Not Provided as Claimed or Double Billed

• Many inappropriate transactions involve marketing of incontinence supplies. In one case, a supplier was found to have delivered adult diapers, which are not covered by Medicare Part B, and improperly billed these items as expensive prosthetic devices called "female external urinary collection devices." In another case, a supplier delivered only incontinence care products, such as lubricants and cleansers. These items are covered only as accessories to medically necessary prosthetic devices such as female external urinary collection devices. Medicare received bills for each accessory, even though the primary item was not provided.

• In some cases, multiple payments are made for particular items shipped to nursing facilities. For instance, a nursing facility ordered and accepted delivery of certain medical supplies for the facility's general use. The nursing facility appropriately claimed the supplies as expenses related to patient care on its Medicare cost report. However, the supplier also submitted separate claims to Medicare Part B on behalf of each resident in the facility. In order to receive Part B reimbursement, the supplier misrepresented its entitlement to payment, as well as the eligibility and coverage of individual beneficiaries. Other payment sources, such as Medicaid or private payers, may also have been billed by the supplier. The supplier may be liable under criminal, civil and administrative provisions if the supplier claimed falsely that the beneficiary met the required eligibility and coverage criteria. The nursing facility may also be liable for falsifying its Part A cost report if it knew or should have known of the duplicate billing and participated in the offense.

Paying or Receiving Kickbacks in Exchange for Medicare or Medicaid Referrals

It is illegal under the anti-kickback statute to knowingly and willfully solicit, receive, offer or pay remuneration in cash or in kind to induce or in return for referring, recommending or arranging for the furnishing of any item or service payable by Medicare or Medicaid.

Violation of the anti-kickback statute may carry criminal penalties, program exclusion, or both. Immunity may be available where otherwise illegal conduct meets the criteria specified in "safe harbor" regulations published by the Secretary of the Department of Health and Human Services. These regulations may be found in 42 CFR part 1001.

• A supplier gives a nursing facility non-covered medical products at no charge, provided the facility assists in the ordering of Medicare-reimbursed products. For instance, incontinence care kits may consist of reimbursable supplies as well as non-reimbursable items, such as disposable underpads or adult diapers. The OIG has identified instances where suppliers have billed the program for providing nursing facilities with thousands of medical supplies contained within incontinence kits which were not medically necessary for the care of the patients. The nursing facilities accepted delivery of the kits, removed the diapers and other items useful in general patient care, and discarded the remainder of the kits. At the same time, the supplier received Medicare reimbursement for shipment of products which were not medically necessary and often not used.

Both the supplier and the nursing facility may be liable for false claims as in the previous examples. However, both parties may also be liable under the anti-kickback statute, if one purpose of providing the free diaper was to induce the nursing facility to arrange for the procurement of items paid for by Medicare or Medicaid.

Other Examples of Fraudulent Practices

The OIG has received many complaints from nursing facility administrators and staff about suppliers that deliver unordered goods which are billed to Medicare. Analysts and investigators also have found that many nursing facilities do not always report such abuses, perhaps because the nursing facilities may gain a benefit from the use of these "free" supplies. In other cases, nursing facilities actively solicit unauthorized deliveries or other items of value, such as cash and in-kind rewards. In exchange, the nursing facility offers the equipment supplier access to patients' medical records and other information needed to bill Medicare.

Note: Under 42 CFR 483.10(e), it is a violation of a resident's rights, and therefore of the facility's conditions of participation, to make unauthorized disclosures from the resident's medical records.

• The OIG has investigated suppliers who supply nursing facilities with low-cost items, but submit Part B claims for high-priced items. For instance, one supplier provided simple restraining devices, but claimed that custom-made orthotic body jackets were provided to specified Part B beneficiaries.

• The OIG also has investigated a case in which a supplier gathered information on the death of nursing facility residents. Immediately thereafter, the supplier back-dated orders of medical supplies in quantities consistent with Medicare's 30-day limitation on after-death shipments.

What To Look For in Nursing Facility Supply Transactions

Suppliers engaged in the fraudulent schemes described above attempt to avoid detection in a variety of ways. Nursing facility administrators and staff aware of supplier fraud may be bribed through the payment of kickbacks and other illegal remuneration. Also, beneficiaries may be kept unaware of fraudulent billings if a supplier routinely "waives," or fails to collect, co-payments from the residents for Part B items. The following factors may also indicate improper supply transactions:

• Excessive volumes of medical supplies delivered to, or solicited by, nursing facilities and kept as inventory for lengthy periods.

• Items provided directly to nursing facility residents that are unordered, unnecessary or unused.

• Unusually active presence in nursing facilities of medical supply sales representatives who are given, or request, unlimited access to patient medical records.

• Questionable documentation for medical necessity of supplies.

IV. Contacting the OIG About Fraud and Abuse

The following common language is set forth in both OIG Special Fraud Alerts:

What To do If You Have Information About Fraud and Abuse Against the Medicare and Medicaid Programs

If you have information about the types of activities described above, contact any of the regional offices of the Office of Investigations of the Office of Inspector General, U.S. Department of Health and Human Services, at the following locations:

Regions	States served	Telephone
Boston	MA, VT, NH, ME, RI, CT	617–565–2660
New York	NY, NJ, PR, VI	212–264–1691
Philadelphia	PA, MD, DE, WV, VA	215–596–6796
Atlanta	GA, KY, NC, SC, FL, TN, AL, MS (No. District)	404–331–2131
Chicago	IL, MN, WI, MI, IN, OH, IA, MO	312–353–2740
Dallas	TX, NM, OK, AR, LA, MS (So. District)	214–767–8406
Denver	CO, UT, WY, MT, ND, SD, NE, KS	303–844–5621
Los Angeles	AZ, NV (Clark Co.), So. CA	714–836–2372
San Francisco	No. CA, NV, AZ, HI, OR, ID, WA	415–556–8880
Washington, D.C.	DC and Metropolitan areas of VA & MD	202–619–1900

To Report Suspected Fraud, Call or Write: 1–800–HHS–TIPS, Department of Health and Human Services, Office of Inspector General, P.O. Box 23489, L'Enfant Plaza Station, Washington, D.C. 20026–3489.

Dated: August 4, 1995.

June Gibbs Brown,

Inspector General.

[FR Doc. 95–19731 Filed 8–9–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–95–1220–00; N2–21–95]

Nevada; Temporary Closure of Certain Public Lands in the Winnemucca District for Management of the 1995 Running of the "Reno 300" Off-Highway Vehicle (OHV) Race

AGENCY: Bureau of Land Management (Interior).

ACTION: Temporary closure of certain Public Lands in Washoe, Pershing, Churchill and Lyon Counties, Nevada on and adjacent to the 1995 "Reno 300" race course on August 26, 1995. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittee(s) and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Winnemucca District, Washoe, Lyon, Churchill and Pershing Counties will be temporarily closed to public access from 0600 hours, August 26, 1995 to 2400 hours August 26, 1995, to protect persons, property and public land resources on and adjacent to the 1995 "Reno 300" OHV race course. The Sonoma-Gerlach Area Manager is the authorized officer for the 1995 "Reno 300" OHV race, permit number N2–21–95. These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1995 "Reno 300" OHV race course.

The following public lands administered by the BLM restricted or closed are described as the following: T. 21 N., R. 24 E., Sec. 36; T. 22 N., R. 24 E., Sec. 2 and 12; T. 23 N., R. 24 E., Sec. 2, 10, 14 and 26; T. 24 N., R. 24 E., Sec. 9, 10, 12, 16, 17, 20, 22, 26, 28 and 34; T. 25 N., R. 24 E., Sec. 36; T. 20 N., R. 25 E., Sec. 4 and 6; T. 21 N., R. 25 E., Sec. 6, 8, 12, 14, 20, 22, 28 and 32; T. 22 N., R. 25 E., Sec. 18 and 30; T. 23 N., R. 25 E., Sec. 2, 10 and 12; T. 24 N., R. 25 E., Sec. 10, 22, 28 and 34; T. 25 N., R. 25 E., Sec. 28, 30, 31 and 34; T. 21 N., R. 26 E., Sec. 6; T. 22 N., R. 26 E., Sec. 2, 14, 22, 28 and 32; T. 23 N., R. 26 E., Sec. 4, 16, 22, 26 and 36; T. 24 N., R. 26 E., Sec. 28 and 32.

The lands involved are located in the Mount Diablo Meridian and are located north and northeast of Fernley, Nevada. They are within Washoe, Pershing, Churchill and Lyon Counties. A map showing the exact route of the course is available from the following BLM office: the Winnemucca District Office, 705 East Fourth Street, Winnemucca, Nevada, 89445, (702) 623–1500.

Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided for in 43 CFR 8360.7.

FOR FURTHER INFORMATION CONTACT: Lynn Clemons, 705 East Fourth Street, Winnemucca, Nevada 89445, (702) 623–1500.

Dated: July 25, 1995.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 95–19707 Filed 8–9–95; 8:45 am]

BILLING CODE 4310–HC–P

[ID–014–05–1430–01; IDI–31387]

Notice of Intent to Amend to Cascade Resource Management Plan, Idaho.

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR part 1600) this notice advises the public that the Cascade Resource Area of the Boise District, Lower Snake River Ecosystem, Bureau of Land Management, is proposing to amend the Cascade Resource Management Plan. This amendment will allow consideration of an application for Indemnity School Land Selection from the State of Idaho which would allow the transfer of 920 acres of public land in Valley County to the State of Idaho. The public lands are described as:

Boise Meridian, Idaho

T. 17 N., R. 4 E.,
Section 21: S½NW¼, S½SE¼,
Section 22: N½SE¼NE¼, E½SE¼,
Section 33: E½SW¼, W½SE¼,
Section 35: SW¼, NE¼SE¼, W½SE¼,
T. 18 N., R. 4 E.,
Section 17: SE¼NE¼,
Section 19: E½E½.

The main issue anticipated in this plan amendment is whether it is appropriate to transfer the subject lands to the State of Idaho to satisfy part of the remaining entitlement for lands which the State of Idaho did not receive at statehood.

A land use plan amendment and environmental analysis will be prepared for the subject lands by an interdisciplinary team including recreation, visual, botany, wildlife, fisheries, forestry, minerals, range, soils, and cultural resource specialists.

DATES: For a period of 30 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Ecosystem Manager at the address shown below.

ADDRESSES: Comments should be sent to the Ecosystem Manager, Bureau of Land Management, Lower Snake River Ecosystem, Boise District, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Effie Schultsmeier, Cascade Area Realty Specialist, 3948 Development Avenue, Boise, Idaho 83705, (208) 384–3300 to obtain additional information regarding this plan amendment. The existing land use plan and maps are available for review at the Cascade Resource Area office in Boise, Idaho.

SUPPLEMENTARY INFORMATION: The subject lands have been segregated from the public land laws, including the mining and mineral leasing laws by submission of the State's application on July 6, 1995. The segregative effect of this Notice on the public lands shall end upon issuance of a clearlist or two years from the date of the application, whichever occurs first.

Dated: August 2, 1995.

Sharon L. Sita,

Acting Ecosystem Manager.

[FR Doc. 95–19798 Filed 8–9–95; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Washington, Oregon, and California Population of the Marbled Murrelet (Brachyramphus marmoratus marmoratus) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery the availability for public review of a draft recovery plan for the threatened Marbled Murrelet, *Brachyramphus marmoratus marmoratus* (Washington, Oregon, and California Population). This species feeds primarily on fish and invertebrates

in near-shore marine waters. In Washington, Oregon and California, they nest on large limbs of mature or old-growth conifers, flying inland up to 80 kilometers (50 miles) to nest. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before October 10, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266 (telephone: 503–231–6179), or the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–6131). Written comments and materials regarding the plan should be addressed to Mr. Russell D. Peterson, State Supervisor, at the above Portland Field Office address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Oregon State Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Gary S. Miller at the above Oregon State Office address (telephone: 503–231–6179).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification or delisting, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

In North America, Marbled Murrelets range along the Pacific coast from Alaska to California. The Washington, Oregon and California population breeds along a coastal strip from the Olympic Peninsula and northern Cascades, Washington, and along the coasts of Oregon and California. Their at-sea distribution becomes discontinuous in this area. The southern end of the breeding range occurs in central California. Some wintering birds are found in southern California and as far south as northern Baja California, Mexico. Marbled Murrelets feed primarily on fish and invertebrates in near-shore marine waters. In Washington, Oregon and California, they nest on large limbs of mature or old-growth conifers, flying inland up to 80 kilometers (50 miles) to nest. Currently, breeding populations are not distributed continuously throughout the forested portion of the three-state area. Recent at-sea survey work also indicates that current populations of Marbled Murrelets are experiencing extremely low recruitment. The principal causes of decline are nesting habitat modification (both loss and fragmentation of nesting habitat) and mortality from net fisheries and oil spills. Critical habitat was proposed for the species on January 27, 1994 (59 FR 3811). Recovery of this species will require securing currently suitable nesting habitat, decreasing adult and juvenile mortality, increasing suitable habitat quality and quantity, and continued research to address more specific life-history requirements.

Public Comment Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Author

The author of this notice is Gary Miller (see Oregon State Office address above).

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 21, 1995.

Michael Spear,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 95–19354 Filed 8–9–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Finding of No Significant Impact

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of the availability of a Finding of No Significant Impact.

SUMMARY: The purpose of this Notice is to make available to the public the Finding of No Significant Impact pursuant to an Environmental Assessment regarding the release in the United States of three nonindigeneous insects *Galerucella calmariensis, Galerucella pusilla,* and *Hylobius tansversovittatus.* The purpose of the release is to reduce and control *Lythrum salicaria* on Service-managed wetlands and to assist the States in the reduction and control of purple loosestrife on non-Service wetlands.

FOR FURTHER INFORMATION CONTACT: Sean Furniss, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, 600 ARLSQ, 1849 C Street NW., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service made available for public comment an Environmental Assessment through publication on June 19, 1995, in the **Federal Register** (60 FR 32023). Upon review of the comments received and the scientific evidence supporting the Environmental Assessment, it was determined that the introduction of the three nonindigeneous insects would have no significant impact on the quality of the human environment. This finding of no significant impact (FONSI) reads in whole *es* follows:

Finding Of No Significant Impact

The United States Fish and Wildlife Service (Service), U.S. Department of the Interior, proposes to release in the United States three nonindigeneous insects *Galerucella calmariensis, Galerucella pusilla,* and *Hylobius tansversovittatus* in addition to the two previously approved nonindigeneous insects *Nanophyes marmoratus* and *N. brevis.* The Service proposes to release these five insect species so they can contribute to the biological control of purple loosestrife (*Lythrum salicaria*), an introduced weed, on Service-managed wetlands and to assist the States to reduce and control this plant on non-Service wetlands. These insects are not native to North America.

During the summer of 1995, the Service proposes to acquire and begin releasing the beetles at selected refuges in Fish and Wildlife Service Regions 3 and 5. In following years, the Service will acquire and release the beetles throughout the range of purple loosestrife in the United States.

The primary reason for releasing these five insect species as a tool for purple loosestrife control is to lessen the negative environmental impacts caused by purple loosestrife infestations themselves and the methods used currently to control the weed plant. The intended result of the proposed action is to cause positive environmental impacts.

In addition to the proposed action, the Service also considered the alternative of continuing current management of purple loosestrife on Service lands without biological control agents as well as the alternative of using the two previously approved biological control agents *Nanophyes marmoratus* and *N. brevis* in addition to the current management practices. The selected alternative is the proposed action of releasing the five insects to develop a continuous biological control of the plant.

Based on my review and evaluation of the subject Environmental Assessment, I find that the proposed release in the United States of *G. calmariensis, G. pusilla, Hylobius tansversovittatus, Nanophyes marmoratus* and *N. brevis* as tools for the control of purple loosestrife *Lythrum salicaria,* as described in the environmental assessment, is not expected to have a significant negative impact on the quality of the human environment. This finding is supported by the following:

1. The host ranges of *G. calmariensis, G. pusilla, Hylobius tansversovittatus, Nanophyes marmoratus* and *N. brevis* are restricted to the genus of the target host *Lythrum salicaria.* Once released, these species are not expected to feed on any plant species other than the nonindigenous target weed, purple loosestrife.

2. Releases of these insect species are not expected to have negative impacts on any endangered or threatened species listed by any Federal Government or State Government.

3. Use of chemical pesticides and fire to control purple loosestrife would be reduced if, as expected, the proposed biological control agents prove to be both safe and efficacious.

4. The proposed release is expected to have a positive effect on biotic diversity in aquatic natural resources.

Dated: July 13, 1995.

Robert Streeter,

Assistant Director, Refuges and Wildlife, U.S. Fish and Wildlife Service.

Dated: August 2, 1995.

Robert C. Lesino,

Acting Assistant Director, Refuges and Wildlife.

[FR Doc. 95–19781 Filed 8–9–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment, Habitat Conservation Plan, and Receipt of an Application for an Incidental Take Permit for the Sam Houston Resource Conservation & Development Areas, Inc., Native Gulf Coast Prairie Restoration Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Sam Houston Resource Conservation & Development Area, Incorporated has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The proposed permit, which is for a period not to exceed 99 years, would authorize the future take of the endangered Attwater's prairie chicken Tympanuchus cupido attwateri (APC) and the endangered Houston toad Bufo houstonensis incidental to such lawful activities as farming, ranching, residential development, etc., on private land in the Gulf Coast Prairie Ecosystem of Texas. The proposed permit would authorize incidental take only on land that is enrolled in the "safe harbor" program.

An Environmental Assessment (EA) and Habitat Conservation Plan (HCP) have been prepared for the incidental take permit application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application should be received on or before September 11, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA and/or HCP may obtain a copy by contacting either Mr. Steven D. Arey or Ms. Edith A. Erfling, Clear Lake Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058 (713/286–8282). Documents will be available by written request for public inspection, by appointment, during normal business hours at the Clear Lake Field Office (8:00 a.m. to 5:00 p.m.). Written data or comments concerning the application or EA should be submitted to the Field Supervisor (see **ADDRESS** above). Please refer to Permit Number PRT–805073).

FOR FURTHER INFORMATION CONTACT: Mr. Steven D. Arey or Ms. Edith A. Erfling at the above Clear Lake Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Attwater's prairie chicken or the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Sam Houston Resource Conservation & Development Area, Incorporated has initiated a program to restore, conserve, enhance, and maintain the historic Gulf Coast Prairies of Texas and to ensure the continued existence of the coastal prairie ecosystem. A significant component of the success of the program is the development of a plan under Section 10(a)(1)(B) of the Act that encourages restoration, conservation and/or enhancement of prairie habitats that support either endangered or threatened species of fish or wildlife on private land in return for protection—a "safe habor"—from any additional future liabilities under the Act.

Only land that is enrolled in the "safe habor" program for which a landowner Prairie Restoration Agreement (Agreement) has been signed will be covered by the proposed permit. The Agreement will specify the proposed habitat improvements and record the general condition of the site through maps, photos, and biological surveys. Agreements will be for a minimum of 10 years and subject to a potential repayment obligation to RC&D, of an amount equal to 100% of the amounts expended, if the Agreement is terminated due to a cooperator's breach of the Agreement.

This proposal does not involve the incidental take of *existing* endangered species habitat; i.e., the baseline habitat on private land will be protected. Nor does the proposal allow an endangered species to be shot, captured or otherwise directly "taken".

The area to be affected by the proposed action encompasses 19 counties within the Gulf Coast Prairies

of Texas and includes only those areas that historically contained coastal prairie habit. The counties included within this program are as follows: Aransas, Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Goliad, Harris, Jackson, Jefferson, Liberty, Matagorda, Orange, Refugio, Victoria, Waller, and Wharton.

Priority will be placed on securing Agreements with landowners located adjacent to, or near, one of the remaining APC populations. Specifically targeted are tracts within a 5-mile radius of Attwater's Prairie Chicken National Wildlife Refuge, sites in southern Galveston and Brazoria Counties that are located between the Nature Conservancy's Galveston Bay Coastal Prairie Preserve and Brazoria National Wildlife Refuge, and sites within a 5-mile radius of known prairie chicken populations in Refugio County.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–19770 Filed 8–9–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plans and Receipt of Applications for Incidental Take Permits for Construction of Single Family Residences in Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Applicants have applied to the Fish and Wildlife Service (Service) for an incidental take permits pursuant to Section 10(a) of the Endangered Species Act (Act). The requested permits would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of single family residences in Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plans (EA/HCP) for the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the applications should be received September 11, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCPs may obtain a copy by contacting Joseph E. Johnston or Mary Orms, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by appointment only, during normal business hours (8:00 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Field Supervisor, Ecological Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to the permit numbers when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Mary Orms at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANT: Walter Jonas plans to construct a single family residence on Lot 135, Unit 2, Cardinal Hills Subdivision, 15106 Flamingo Drive N., Austin, Travis County, Texas. The Applicant has been issued the Permit Number PRT–804388 for a period of 1 year. This action will eliminate less than one-half acre of land and indirectly impact less than one-half additional acre of golden-cheeked warbler habitat. The Applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

APPLICANT: David W. DiJoy plans to construct a single family residence on Lot 67, Block B, Rob Roy on the Lake Subdivision, 101 Lowell Lane, Austin, Travis County, Texas. The Applicant has been issued the Permit Number PRT–804125 for a period of 1 year. This action will eliminate less that one-half acre of land and indirectly impact less than one-half additional acre of golden-cheeked warbler habitat. The Applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

APPLICANT: Richland SA, Ltd. plans to construct single family residences on the following lots:

Lot 1, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804126)
Lot 2, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804127)
Lot 3, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804128)
Lot 4, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804129)
Lot 5, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804130)
Lot 6, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804131)
Lot 7, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804132)
Lot 8, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804133)
Lot 9, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804135)
Lot 10, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804136)
Lot 12, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804137)
Lot 13, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804138)
Lot 14, Block D, Phase One, Canyon Mesa Subdivision, Kabar Trail, Austin, Travis County, Texas, (PRT–804139)

The Applicant has been issued the Permit Numbers PRT–804126 to PRT–133 and PRT–804135 to PRT–804139 above. The permits are for a period of 20 years. This action will eliminate less than one-half acre of land per residence and indirectly impact less than one-half additional acres of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 per residence into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to these actions were rejected because selling or not developing the subject properties with federally listed species present was not economically feasible.

Dated: July 8, 1995.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–19651 Filed 8–9–95; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–363–364 and 731–TA–711–717 (Final)]

Oil Country Tubular Goods (OCTG) from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and 1673d(b), respectively), that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of OCTG [2] from the following countries that have been found by the Department of Commerce (Commerce) to be subsidized and/or sold in the United States at less than fair value (LTFV):

Country	OCTG excluding drill pipe [1]	Drill pipe [2]
Argentina	731–TA–711 [3]	731–TA–711
Italy	701–TA–364 [4] & 731–TA–713 [4]	
Japan	731–TA–714 [5]	731–TA–714
Korea	731–TA–715 [3]	
Mexico	731–TA–716 [3]	731–TA–716

[1] These determinations are based on findings of material injury.

[2] These determinations are based on findings of threat of material injury (Chairman Watson and Commissioner Crawford finding material injury).

[3] Chairman Watson and Commissioner Crawford dissenting.

[4] Chairman Watson, Vice Chairman Nuzum, and Commissioner Crawford dissenting.

[5] Chairman Watson dissenting.

The Commission further determines that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports of OCTG from the following countries that have been found by Commerce to be subsidized and/or sold in the United States at LTFV:

Country	OCTG excluding drill pipe	Drill pipe
Austria	701–TA–363 [1] & 731–TA–712 [1].	701–TA–363 & 731–TA–712
Italy		701–TA–364 & 731–TA–713
Korea		731–TA–715
Spain	731–TA–717 [1]	731–TA–717

[1] Commissioners Newquist and Bragg dissenting.

Background

The Commission instituted these investigations effective December 2, 1994; January 24, 1995; February 2, 1995; and June 20, 1995, following determinations by Commerce that imports of OCTG from Austria and Italy were being subsidized within the meaning of section 703(b) of the Tariff Act of 1930 (19 U.S.C. § 1671b(b)) and that imports of OCTG from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain were being sold at LTFV within the meaning of section 733(b) of the Tariff Act of 1930 (19 U.S.C. § 1673b(b)). The petitions for these investigations were filed on June 30, 1994, prior to the effective date of the Uruguay Round Agreements Act. Thus, these investigations were subject to the substantive and procedural rules of the Tariff Act of 1930 as it existed prior to the Uruguay Round Agreements Act.[3]

Notices of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of January 12, 1995; February 23, 1995; and June 23, 1995. (60 FR 2983; 60 FR 10107; and 60 FR 32708). The hearing was held in Washington, DC, on June 27, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 2, 1995. The views of the Commission are contained in USITC Publication 2911 (August 1995), entitled "OIL COUNTRY TUBULAR GOODS FROM ARGENTINA, AUSTRIA, ITALY, JAPAN, KOREA, MEXICO, AND SPAIN: Investigations Nos. 701–TA–363 and 364 (Final) and Investigations Nos. 731–TA–711–717 (Final)."

Issued: August 3, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–19706 Filed 8–9–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32746]

Consolidated Rail Corporation—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant local trackage rights to Consolidated Rail Corporation (Conrail) as follows: over a line of railroad between the NW/Conrail property line at the connection track in the southeast quadrant between the tracks of Conrail and NW at or near NW's milepost D113.9 at Butler, IN and the northernmost connection to the industrial trackage of Steel Dynamics, Inc. (SDI), in Wilmington Township, DeKalb County, IN, at or near NW's milepost 118.4, a distance of approximately 5 miles. The proposed transaction will allow Conrail to better serve its customer, SDI.[1] The trackage rights will be effective on such date as the parties may agree in writing, but not sooner than seven days after the filing date of this notice.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: John J. Paylor, 2001 Market St., 16A, P.O. Box 41416, Philadelphia, PA 19101–1416.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] OCTG are hollow steel products of circular cross-section. These products include oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether or not conforming to API or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). These investigations do not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. OCTG other than drill pipe are provided for in subheadings 7304.20 (excluding subheadings 7304.20.70 and 7304.20.80), 7305.20, and 7306.20 of the Harmonized Tariff Schedule of the United States; drill pipe is provided for in subheadings 7304.20.70 and 7304.20.80.

[3] *See* P.L. 103–465, approved December 8, 1994, 108 Stat. 4809, at § 291.

[1] Conrail is restricted to using the trackage rights to provide local rail service to SDI only.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 3, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19810 Filed 8–9–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 507X)]

CSX Transportation, Inc.—Abandonment Exemption—in Duplin County, NC

CSX Transportation, Inc. (CSXT) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon 0.35-miles rail of rail line between milepost AC–208.07 and milepost AC–208.42 at the end of track in Wallace, Duplin County, NC.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), and 1152.50(d)(1) (notice to government agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective September 7, 1995, unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] statements of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by August 18, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 28, 1995. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, one copy must be served on Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 11, 1995. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 4, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19771 Filed 8–9–95; 8:45 am]

BILLING CODE 7035–01–P

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application for Posthumous Citizenship.

(2) Form N–644. Immigration and Naturalization Service. United States Department of Justice.

(3) Primary: Individuals or households. Other: None. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine decedent's eligibility for such status.

(4) 100 annual respondents 1.833 hours per response.

(5) 183 annual burden hours.

(6) Not applicable under section 3504(h) of Pub. L. 96–511.

Public comment on this item is encouraged.

Dated: August 7, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19789 Filed 8–9–95; 8:45 am]

BILLING CODE 4410–16–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and

(6) An indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Monthly Report Naturalization Papers Forwarded.

(2) Form N–4. Immigration and Naturalization Service. United States Department of Justice.

(3) Primary: Federal Government. Other: State, Local or Tribal Government. This form will be used by the clerk of a Naturalization Court to report to the Immigration and Naturalization Service (INS) the Oath Administration ceremonies held each month and to account for certificates of naturalization delivered to individuals by the court. INS will use this information to complete the records on naturalization cases, and to audit costs incurred by the courts, which are charged to the INS.

(4) 1,920 annual respondents.

(5) 960 annual burden hours.

(6) Not applicable under section 3504(h) of Pub. L. 96–511.

Public comment on this item is encouraged.

Dated: August 7, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19788 Filed 8–9–95; 8:45 am]

BILLING CODE 4410–16–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Data Base of Providers for Offender Job Training and Placement Services.

(2) None. National Institute of Corrections, United States Department of Justice.

(3) Primary: State, Local or Tribal Government. Others: Federal Government. The Department of Justice has established the Office of Correctional Job Training and Placement within the National Institute of Corrections, pursuant to Section 20418 of the Violent Crime Control and Law Enforcement Act of 1994. The purpose of this office is to encourage and support job development, training, and placement programs, which provide services to incarcerated and ex-offenders. The information gathered from the survey will be placed in a data base to identify service providers to support the program.

(4) 3,500 annual respondents at .166 per response.

(5) 581 annual burden hours.

(6) Not applicable under section 3504(h) of Pub. L. 96–511.

Public comment on this item is encouraged.

Dated: August 7, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19787 Filed 8–9–95; 8:45 am]

BILLING CODE 4410–35–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *CCL Custom Manufacturing, Inc.*, Civil Action No. 95–0397–P, was lodged on July 27,

1995, with the United States District Court for the District of Rhode Island.

The complaint in the *CCL Custom Manufacturing* action was filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, to recover costs incurred by the United States in taking response actions in connection with the first operable unit cleanup at the Peterson/Puritan, Inc. Superfund Site ("Site") located in the towns of Lincoln and Cumberland, Providence County, Rhode Island, and to obtain an order requiring the defendants to implement the remedy for the first operable unit at the Site selected by EPA in a record of decision dated September 30, 1993 ("ROD"). The first operable unit at the Site includes the facilities owned and operated by CCL Custom Manufacturing, Inc. and Pacific Anchor Chemical Company, the facility formerly owned and operated by SUPERVALU Operations, Inc., as well as the geographical extent of the contamination emanating from those facilities including, but not limited to, the Quinnville Wellfield to the extent that it is affected by contamination emanating from the CCL Custom Manufacturing, Inc. facility.

The proposed Consent Decree embodies an agreement by defendants CCL Custom Manufacturing, Inc., CPC International Inc. (as indemnitor of CCL Custom Manufacturing, Inc.), Lonza Inc., Pacific Anchor Chemical Company, and SUPERVALU Operations, Inc. to implement the remedy for the first operable unit set forth in the ROD, to reimburse the United States in the amount of $1,090,615.56 for past response costs incurred in connection with the first operable unit, and to reimburse the United States for future response costs that will be incurred in connection with the first operable unit. The defendants have also agreed to make a payment of $43,883 to the United States in order to settle a potential claim of the United States pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. 9607(a)(4)(C), for damages for injury to, destruction of, or loss of natural resources at the first operable unit. The proposed Consent Decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

The proposed Consent Decree also embodies a settlement involving Lonza Inc., Pacific Anchor Chemical Company, and SUPERVALU Operations, Inc. of certain claims of the State of Rhode Island related to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *CCL Custom Manufacturing, Inc.*, DOJ Ref. #90–11–3–1233. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, One Congress Street, Boston Massachusetts, at the United States Attorney's Office located at the Westminster Square Building, 10 Dorrance Street, 10th Floor, Providence 02903, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $146.25 for the decree and all appendices, or in the amount of $51.75 for the decree and Appendices A (Statement of Work) and C–F (lists of settling defendants) (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–19738 Filed 8–9–95; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. § 9622(d)(2), notice is hereby given that on July 26, 1995, two Consent Decrees in *United States* v. *Hercules, et al.*, Civil Action No. 89–562–SLR, were lodged with the United States District Court for the District of Delaware.

The complaint in this case, as amended, was filed under Section 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, with respect to the Delaware Sand & Gravel Superfund Site ("DS&G Site") located in New Castle County, Delaware, against numerous defendants, many of whom have agreed to settlement terms under a prior consent decree. The two consent decrees lodged with the Court on July 26, 1995 settle claims brought by the United States against Avon Products, Inc. and MRC Holdings, Inc. Under the first of these two Consent Decrees, Avon Products, Inc. has agreed to reimburse EPA for costs incurred in the amount of $375,000. Under the terms of the second consent decree, MRC Holdings, Inc. has agreed to reimburse EPA for costs incurred in the amount of $300,000.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Hercules, et al.*, Civil Action No. 89–562–SLR, Ref. No. 90–11–2–298. The proposed Consent Decrees may be examined at the office of the United States Attorney, District of Delaware, Chemical Bank Plaza, 1201 Market Street, Suite 100, Wilmington, Delaware 19899. Copies of the Consent Decrees may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, D.C. 20005 (202–624–0892) and the offices of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. When requesting a copy by mail, please enclose a check in the amount of $5.50 for the Avon Products, Inc. agreement or $5.75 for the MRC Holdings, Inc. agreement (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–19739 Filed 8–9–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Princeton Enterprises, Inc., et al.*, Civil Action No. 90–76–C, was lodged on July 25, 1995 with the United States District Court for the Northern District of West Virginia. The

consent decree requires three defendants, Kenneth Riffle, Riffle Equipment Company, and Myron Jackson d/b/a Myron Jackson Trucking to gather asbestos containing materials at the Site and bury them in existing foundations at the Site, in accordance with the National Emissions Standards for Hazardous Air Pollutants applicable to asbestos. The Consent Decree also requires the defendants to pay a civil penalty of $500.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Princeton Enterprises, Inc., et al.*, DOJ Ref. #90–5–2–1–1462.

The proposed consent decree may be examined at the office of the United States Attorney, 12th and Chapline Streets, Room 236, Federal Building, Wheeling, WV 26033; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–19805 Filed 8–9–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. FTD Corporation; Florists' Transworld Delivery, Inc.; and FTD Association; Proposed Enforcement Order

Notice is hereby given that a proposed enforcement order has been filed with the United States District Court for the Eastern District of Michigan in a civil antitrust case, *United States* v. *FTD Corporation, et al.*, Supp. to Civ. Action No. 56–15748.

On August 2, 1995, the United States filed a petition for an order to show cause why the respondents FTD Corporation, Florists' Transworld Delivery, Inc. ("FTDI") and FTD Association should not be found in civil contempt for violating a consent decree entered by the court in 1990. That decree prohibited FTD, then a single entity, from exploiting its position to induce florists to forgo membership in competing floral wire associations. The United States' petition states that the three respondents violated the decree by promoting FTDI's incentive program called "FTD Only." Under the proposed enforcement order, agreed to by the parties, FTD will stop its practice of inducing member florists to use its floral wire service exclusively and will not adopt any similar program in the future. In addition, the corporate ties between FTDI and FTD Association will be significantly curtailed.

The public is invited to comment on the proposed enforcement order. Comments should be addressed to Christopher J. Kelly, Acting Chief, Civil Task Force I, U.S. Department of Justice, Antitrust Division, 3525 7th Street, N.W., Room 400, Washington, D.C. 20530 (202/514–8348). Comments must be received within sixty days.

Copies of the papers filed with the court are available for inspection in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, DC 20530 (telephone: (202) 514–2481), and at the office of the Clerk of the United States District Court for the Eastern District of Michigan, 231 West Lafayette Street, Detroit, Michigan 48226 (313/226–7200). Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Rebecca P. Dick,

Acting Deputy Director of Operations.

[FR Doc. 95–19811 Filed 8–9–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Accident Investigation Procedures Review

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Mine Safety and Health Administration (MSHA) is conducting a review of its accident investigation procedures and policies, which were last reviewed in 1991. The typical MSHA accident investigation includes a physical inspection of the mine site, equipment testing and analysis, and witness interviews. Although the Agency is interested in the public's views on its complete investigation procedures, the Agency particularly seeks comments on the witness interview phase. MSHA will use these comments to assist in its review.

DATES: Written comments must be submitted on or before October 10, 1995.

ADDRESSES: The accident investigation procedures apply to all mines, and comments may be sent to either the Administrator, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 828, Arlington, Virginia 22203, Fax: 703–235–1517 or to the Administrator, Metal and Nonmetal Mine Safety and Health, 4015 Wilson Boulevard, Room 728, Arlington, Virginia 22203, Fax: 703–235–9173, as appropriate. Commenters are encouraged to send comments on a computer disk along with an original hard copy.

FOR FURTHER INFORMATION CONTACT: Jack Tisdale, Accident Investigation Program Manager, Division of Coal Mine Safety and Health, 703–235–1140, or David Park, Accident Investigation Program Manager, Division of Metal and Nonmetal Mine Safety and Health, 703–235–1565.

SUPPLEMENTARY INFORMATION: MSHA accident investigation procedures are designed to identify all relevant facts about a mining accident in an orderly manner and then to determine the contributory causes of a particular accident. After MSHA reviews and analyzes the facts, the Agency issues a report describing its findings and conclusions regarding the accident. The purpose of the report is to help prevent similar accidents from occurring in the future.

The investigation process itself is composed of three phases—physical inspection of the areas of the affected mine, analysis and testing of mining equipment which may have been involved in the accident, and interviews of persons who may have relevant information about the conditions or practices surrounding the accident. While these phases have not changed over the years, issues such as who should be present during witness interviews have been raised.

Specifically, in investigations involving fatalities, concerns have been raised over the attendance of mine operators and their representatives, miners' representatives, families of the victims and their representatives, and the news media. It is MSHA's experience that the attendance of these parties at a witness interview session

can adversely affect the Agency's ability to ascertain the facts important to understanding the cause of the accident.

In order to seek a wide range of viewpoints in its review of these procedures, particularly as they pertain to witness interviews, the Agency is soliciting comments, especially from people who would be directly affected if revised witness interview procedures result from this review. The principal procedures that are the subject of the review are contained in this notice.

I. Legislative and Regulatory Background

The responsibility of MSHA to conduct accident investigations is found in the statutory provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. section 801 et seq. (Mine Act).

Among other responsibilities, section 103(a) of the Mine Act directs that MSHA shall make frequent inspections and investigations for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in mines. MSHA is also given the responsibility in section 103 to gather information with respect to mandatory health and safety standards, determine whether an imminent danger exists, and whether there is compliance with the mandatory health and safety standards or with any citation, order, or decision issued under the Mine Act.

In addition to the general provisions of section 103(a) for the investigation of accidents, the Mine Act provides significant and specific responsibilities for MSHA to assume in connection with those investigations. For example, section 103(b) provides that the Agency may hold a public hearing and issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. In connection with any public hearing, oaths may be administered as well.

Other statutory authority in section 103 can indirectly affect accident investigations. Section 103(j) provides that in the event an accident occurs, the operator shall notify MSHA and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the causes of the accident. MSHA is authorized, where rescue and recovery work is necessary, to take whatever action is deemed appropriate to protect the life of any person, and the Agency may supervise and direct the rescue and recovery activities in such mine.

Finally, section 103(d) requires that accidents are to be investigated by the mine operator or his agent to determine the cause of the accident and means of preventing a recurrence. Records regarding the accident and investigation are to be made available to MSHA. Regulations regarding operator accident investigations and recordkeeping are contained in 30 CFR part 50.

II. Current Investigation Procedures

MSHA currently has guidelines and instructions for conducting investigations of accidents in the MSHA handbook, "Investigation of Mining Accidents and Other Occurrences Relating to Health and Safety." The guidelines and instructions are primarily procedural and administrative, and are intended to serve as organizational and technical aids for MSHA's accident investigators. The handbook, originally dated September 1988, was last substantively revised in July 1991.

MSHA's objective is to conduct its investigations in an independent and unbiased manner. As part of each accident investigation, Agency staff in various areas of expertise thoroughly examine the circumstances, determine the causes, and disseminate information which may be used to prevent future similar accidents. MSHA conducts its investigations in a manner designed to assure that the information gathered is complete and accurate. Each investigation is composed of three phases including a physical inspection of the affected mine, complete analysis and testing of mining equipment which may have been involved in the accident, and interviews of persons who may have relevant information about the conditions or practices surrounding the accident. The following discussion addresses each phase.

A. Physical Examination of the Accident Site

The physical examination of an accident site is usually conducted in cooperation with the relevant state agency that has authority over matters of mine safety and health, the mine operator, and the miners' representative. State mine safety and health agencies generally have some statutory or regulatory authority to conduct accident investigations. Consistent with the Mine Act, mine operators accompany MSHA personnel during the physical examination of the accident site. Section 103(f) of the Mine Act provides rights for miners' representatives to participate in enforcement-related activities of MSHA. In the accident investigation context, these rights include the participation of miner representatives during the physical examination of accident sites.

B. Equipment Analysis

Another phase of MSHA accident investigations involves the analysis of mining equipment which may have been involved in the accident. In these cases, MSHA investigators have invited the equipment manufacturer's representative to participate as an information source for MSHA. The equipment manufacturer assists the MSHA investigators in making determinations relative to equipment failures or malfunctions. MSHA may also perform testing of equipment or other physical evidence as necessary to identify contributing or causative factors. Other private interests may participate in these testing activities if MSHA believes that their participation will assist in the Agency's analysis of the cause of the accident. State officials, representatives of the mine operator, the manufacturer, and miners' representatives ordinarily may observe equipment testing.

C. Witness Interviews

The witness interview phase is an important part of the accident investigation. Because witness recollections can become vague with the passage of time, these interviews usually occur as soon as possible after the accident scene has been physically examined. The goal of the interview is to obtain a candid, precise, and accurate statement from the witness. Cooperation between the mine operator, miners, and any other interested parties in the investigation during the interview phase is essential. It results in a greater opportunity for MSHA to develop a comprehensive accident report based on accurate facts, resulting in valid conclusions as to the cause of the accident. These conclusions, in turn, lead to better guidance for MSHA and the public in preventing future accidents.

Under current accident investigation policy, each person is interviewed separately to obtain his or her personal recollection of the relevant events and circumstances. The witness' statement is completely voluntary. The witness may refuse to answer any question or may terminate the interview at any time. Witnesses are advised prior to the interview that they have a right to have a personal representative of their choice present during the interview process. They are also advised that there will be a verbatim record of the interview, which will be made available to the public at the conclusion of the investigation (except in those cases where a confidential interview is given). Witnesses are advised of their option to make a confidential statement, which MSHA will protect from public disclosure to the extent allowed by law.

MSHA accepts relevant information from any source, public or confidential. Information obtained by others is considered on its merits but, as the fact finder and investigating authority, MSHA makes its own evaluation of the probative value of such information.

MSHA recognizes that many states have a responsibility for the investigation of mining accidents which occur in their jurisdiction. For this reason, MSHA cooperates extensively with state mining officials in conducting all phases of its accident investigations, including witness interviews.

The MSHA investigator considers the following factors when determining the appropriate procedures for conducting witness interviews:

1. The role of the mine operator, miners' representative, and the state mining agency;
2. Ground rules for the questioning of witnesses by parties other than MSHA;
3. The method for recording the interviews (e.g., tape recorder, stenographic reporter); and
4. The location of the interviews.

The procedures which are used depend upon the circumstances of each accident investigation, and the decisions are made by the investigator at the scene on a case-by-case basis. Witness interviews conducted with the participation of the mine operator, the representative of the miners, where the miners have representation, and the state inspection agency is the normal procedure. This multi-party format results in an investigation where the affected parties are afforded an opportunity to bring their viewpoints to the investigation and enhance the completeness of the report. Under current policy, MSHA may limit the participation and/or attendance of parties either directly or indirectly involved in the investigation during the witness interview phase. Additionally, the attendance of other persons, particularly persons not directly involved in the investigation, may also be restricted.

The MSHA Accident Investigation Manual lists five factors for the MSHA investigator to consider when determining who may be present for a witness interview. These factors are:

1. Public statements or disclosures from participants that may compromise the integrity of the investigation;
2. Behavior during interviews that could interfere with the effectiveness of the interview process;
3. Otherwise creating an atmosphere not conducive to MSHA's carrying out its investigatory responsibilities;
4. Indications of disruptive conduct as evidenced during the physical inspection of the mine; and
5. Requests by the witness for a private interview.

The existence of one or more of these factors may cause the accident investigator to conduct witness interviews in private; that is, with only federal and state mining officials present.

In all instances, however, each witness is afforded the opportunity to be accompanied by a personal representative of his or her choosing.

III. Court Decisions Which Have Affected the Procedure

For many years, MSHA and its predecessor agencies used the multi-party format for conducting accident investigations, including the witness interview process. Typically, the operator and the representative of the miners, if any, joined with MSHA and state mining officials in all aspects of the accident investigation process. The witness statements were voluntary and public hearings were normally not held. (The last public hearings in an accident investigation were held in 1976 and 1977 as part of MSHA's investigations of the Scotia mine explosions and the Tower City, Pennsylvania, inundation.)

In 1984 there was high media interest in the Wilberg Mine accident investigation. Twenty-seven miners lost their lives in a fire. Media representatives sued MSHA, seeking access to the witness interview sessions. In *Society of Professional Journalists* v. *Secretary of Labor*, 616 F.Supp. 569 (D.D.C. Utah, 1985), the Court ruled that while the government could conduct private questioning (excluding the media) solely by government officials, MSHA could not selectively permit some members of the public to attend a questioning session while excluding other members of the public, specifically, the media. The Court did not explicitly resolve the issue of exactly who was to be considered a member of the public. MSHA appealed the decision to the Tenth Circuit Court of Appeals. The Circuit Court directed that the judgment be vacated and dismissed the case on the ground that the issue was moot since MSHA's investigation was completed 832 F.2d. 1180 (10th Cir., 1987).

After that case, MSHA instituted an investigative process which provided that the operator and the miners' representative be excluded as participants in the witness interview phase, except when either party was acting as the personal representative of an individual witness. Later, during an accident investigation at a union-affiliated mine, the United Mine Workers of America (UMWA) filed a court challenge to change this process. In *International Union, UMWA* v. *Martin*, 785 F.Supp. 1025 (D.D.C., 1992), the Federal District Court for the District of Columbia upheld the right of the government to conduct completely private government questioning of witnesses. The practical effect of this legal decision was to create a witness interview procedure which neither the mine operator nor the miners' representative favored. MSHA then decided that it would give the Agency's accident investigators discretion to conduct interviews in a manner most conducive to a complete and accurate accident report. Revised procedures, issued in 1991, included this discretionary authority and are in effect today.

IV. Discussion of the Witness Interview Process

In the past, MSHA has successfully conducted joint interviews with the participation of the mine operator, the representative of the miners, and the state inspection agency, and has found that such procedures often result in the most complete account of an accident. However, MSHA is concerned that in some circumstances the presence of nongovernmental parties in the interviews can discourage witnesses from being candid and forthcoming. Therefore, in some investigations MSHA has conducted "government participants only" interviews, allowing only state enforcement personnel to be present along with MSHA.

In recent years, this issue has been raised in various circumstances. For example, MSHA investigators have had to determine whether a victim's family member and attorney should be permitted to attend witness interview sessions. In other instances, MSHA investigators have found reason to conduct interviews with only MSHA and state officials present, and the operator or the operator's attorney have requested to serve as the personal representative for employee witnesses. In similar situations, attorneys for the operator have requested to observe the witness interview sessions. The issue of "government participants only" interviews has also been raised when attorneys representing equipment manufacturers requested to participate

as observers at witness interview sessions. Also, on occasion several persons from the involved interests have requested to be present at witness interviews, creating a large group of participants.

V. Request for Comments

MSHA is specifically soliciting public comment on the Agency's accident investigation policy. MSHA is particularly interested in comments and suggestions for improving the witness interview phase of the investigation.

As stated earlier, MSHA's goal is an accident investigation procedure that provides a forum for collecting the most accurate information about the causes of accidents. This information will be used to develop an investigation report that provides the most effective tool to the Agency and the public in preventing future accidents.

Dated: August 8, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–19786 Filed 8–9–95; 8:45 am]

BILLING CODE 4510–43–P

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health: Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Notice of Meeting.

SUMMARY: Notice is hereby given that the Maritime Advisory Committee for Occupational Safety and Health, established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor on matters relating to occupational safety and health programs, policies, and standards in the maritime industries of the United States will meet September 7 and 8, 1995, at the Inn on Bourbon Street, 541 Bourbon Street, New Orleans, Louisiana.

ADDRESSES: Any written comments in response to this notice should be sent to the following address: OSHA, Office of Maritime Standards, Room N–3621, 200 Constitution Avenue, NW, Washington, DC 20210. Phone (202) 219–7234, fax (202) 219–7477.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Office of Maritime Standards, OSHA, (202) 219–7234.

SUPPLEMENTARY INFORMATION: The third meeting of the Maritime Advisory Committee on Occupational Safety and Health will be held September 7 from 9 to 5, and September 8 from 9 to 1 at the Inn on Bourbon Street, 541 Bourbon Street, New Orleans, Louisiana. At this meeting, the Committee will continue its discussions on maritime enforcement, standards, and outreach initiatives. An extensive discussion of safety and health programs is planned.

All interested persons are invited to attend the public meetings of MACOSH. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Theda Kenney at 202–219–8061, no later than August 25, 1995, to obtain appropriate accommodations.

Written data, views or comments for consideration by the Committee may be submitted, preferably with 20 copies, to Larry Liberatore at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Members of the general public may request an opportunity to make oral presentations at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless these questions have been specifically approved by the chairperson. Anyone wishing to make an oral presentation should notify Larry Liberatore before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory Committee.

Signed at Washington, DC, this 3rd day of August 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–19791 Filed 8–9–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted For OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting an expedited notice of information collection that will affect the public. Interested persons are invited to submit comments by September, 7, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Collaborative for Excellence in Teacher Preparation.

Affected Public: Not for profit institutions.

Respondents/Reporting Burden:

Surveys	Respondents	Average burden
Faculty	50	30 minutes.
Preservice Teachers Interview/Focus Groups:	50	20 minutes.
Principal Investigators.	2	2 hours.
Education Faculty	3	20 minutes.
Math/Science Faculty.	6	20 minutes.
Dean/Chair	3	30 minutes.
K–12 Teachers	4	20 minutes.
Student Focus Group.	5	30 minutes.
Total Hours 324		

Abstract: Information is needed to assess the planning process, characteristics, and impact of the Collaborative for Excellence in Teacher Preparation. Data obtained through surveys and interviews of college faculty, surveys and focus groups of preservice students and interviews of K–12 teachers will be used for this purpose and for program planning within the Directorate for Education and Human Resources.

Dated: August 8, 1995.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 95–19762 Filed 8–9–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: August 28, 1995, 8 a.m.–5 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Anthony Centodocati, Program Director, SBIR Office, (703) 306–1390, Dr. John Cozzens, Program Director, CISE, (703) 306–1936, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1390.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 7, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–19801 Filed 8–9–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: August 29, 1995, 8 a.m.–5 p.m.

Place: Room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Charles Hauer, Program Director, SBIR Office, (703) 306–1390, Dr. Shih-Chi Liu, Program Director, CMS, (703) 306–1362, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 7, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–19802 Filed 8–9–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—#1194.

Date and Time: August 30, 1995, 8 a.m. – 5 p.m.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Darryl Gorman, Program Director, SBIR Office, (703) 306–1390, Dr. Bruce McDonald, Program Director, DMR, (703) 306–1835, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Phase I Small Business proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 7, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–19803 Filed 8–9–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meetings

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in materials Research (1203) will be holding panel meetings for the purpose of reviewing proposals submitted to the Small Business Innovation Research Program in the area of Materials Research. In order to review the large volume of proposals, panel meetings will be held on August 29–30 (2), August 30, September 6, 11, 13, and October 6. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, Va. from 8:30 to 5 each day.

Contact Person: Dr. Robert J. Reynik, Senior Staff Scientist, Division of Materials Research, NSF, Room 1065, 4201 Wilson Blvd., Arlington, VA 22230 (703) 306–1814.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: August 7, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–19804 Filed 8–9–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Polar Programs (#1209).

Date and Time: August 28–29, 1995, 9 am–5 pm.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Julie Palais, Polar Glaciology Manager, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Polar Glaciology Antarctic proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 7, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–19800 Filed 8–9–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313 and 50–368]

Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–51 and NPF–6, issued to Entergy Operations, Inc. (the licensee), for operation of Arkansas Nuclear One, Units 1 and 2 (ANO–1&2), located in Pope County Arkansas.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated October 24, 1994, for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." The exemption would allow implementation of a hand geometry biometric system for site access control such that picture badges and access control cards for certain non-employees can be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) specifies that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *."

Currently, employee and contractor identification/access control badges are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Arkansas Nuclear One site. Station security personnel are required to maintain control of the badges while the individuals are offsite. Security personnel retain each identification/access control badge when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued the individual picture identification/access control card which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is "screened" by the required detection equipment. The individual provides a personal identification number (PIN) to the issuing guard and is screened again by the issuing security officer using the picture identification on the access card. Having received the badge, the individual proceeds to the access portal, inserts the access control card into the card reader, and passes through the turnstile which is unlocked by the access card. Once inside the station, the access card allows entry only to preauthorized areas and the individual's PIN is no longer required.

This present procedure is labor intensive since security personnel are required to verify badge issuance, ensure badge retrieval, and maintain the badge in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badge from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badge offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge issuance, ensuring badge retrieval, and maintaining badges could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their access authorization card into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the "signature" template.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification/access control badges will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at each site.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternate action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of ANO–1&2 dated February 1973 and June 1977 respectively.

Agencies and Persons Consulted

In accordance with its stated policy, on July 26, 1995, the staff consulted with the Arkansas State official, Don Green of the Arkansas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this proposed action, see the request for exemption dated October 24, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville Arkansas 72801.

Dated at Rockville, Maryland this 3rd day of August 1995.

For the Nuclear Regulatory Commission.

George Kalman,

Senior Project Manager, Project Directorate IV-1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19768 Filed 8–9–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–382]

Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–38, issued to Entergy Operations, Inc. (the licensee), for operation of the Waterford Steam Electric Station, Unit 3 (Waterford 3) located in St. Charles Parish, Louisiana.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated October 24, 1994, for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." The exemption would allow implementation of a hand geometry biometric system for site access control such that picture badges and access control cards for certain non-employees can be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) specifies that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

Currently, employee and contractor identification/access control badges are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Waterford 3 site. Station security personnel are required to maintain control of the badges while the individuals are offsite. Security personnel retain each identification/access control badge when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued the individual picture identification/access control card which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is "screened" by the required detection equipment. The individual provides a personal identification number (PIN) to the issuing guard and is screened again by the issuing security officer using the picture identification on the access card. Having received the badge, the individual proceeds to the access portal, inserts the access control card into the card reader, and passes through the turnstile which is unlocked by the access card. Once inside the station, the access card allows entry only to preauthorized areas and the individual's PIN is no longer required.

This present procedure is labor intensive since security personnel are required to verify badge issuance, ensure badge retrieval, and maintain the badge in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badge from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badge offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge issuance, ensuring badge retrieval, and maintaining badges could be eliminated while the balanced of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification

methodology's capability to discern an individual's identity. Unlike the photograph identification badge, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their access authorization card into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the "signature" template.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification/access control badges will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at each site.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternate action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of Waterford Steam Electric Station, Unit 3 dated September 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on July 24, 1995, the NRC staff consulted with the Louisiana State official, Dr. Stan Shaw, Assistant Administrator of the Louisiana Radiation Protection Division, Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this proposed action, see the request for exemption dated October 24, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 2nd day of August 1995.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19765 Filed 8–9–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Peco Energy Co., Public Service Electric & Gas Co., Delmarva Power & Light Co., Atlantic City Electric Co., Peach Bottom Atomic Power Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–44 and DPR–56, issued to PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company (the licensee), for operation of the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3 located in York County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would extend the allowed-out-of-service-times (AOTs) for the PBAPS Energy Diesel Generators (EDGs) based on the availability of an alternate AC (AAC) power source. The AAC is a direct tie line between the PBAPS and the Conowingo Hydroelectric Station located approximately 9 miles down the Susquehanna River from PBAPS. Currently, the AOT for a single inoperable EDG is 7 days. The amendments would allow the AOT for a single EDG inoperable to be a maximum of 14 days provided the Conowingo line is verified to be available. However, under no circumstances will the AOT be more than 7 days without the Conowingo line being available.

The proposed action is in accordance with the licensee's application for amendments dated April 7, 1994, as supplemented by letters dated June 2, 1994, September 6, 1994, June 16, 1995 and July 13, 1995.

The Need for the Proposed Action

The proposed action will provide increased flexibility in scheduling and performing maintenance activities on the EDGs. The licensee currently faces significant challenges to complete periodic maintenance and modification activities within the existing TS 7-day AOT. Expiration of the AOT for EDGs without restoring all EDGs to an operable status requires shutting down both Peach Bottom units in accordance with the existing TS. In addition, the 7-day maximum EDG AOT in the current TS precludes the performance of certain major beneficial maintenance activities and modifications without shutting down both Peach Bottom units.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and based on the information presented in the licensee's application, concludes that the proposed extension of the EDG's AOT in conjunction with the availability of the Conowingo line, will not increase the probability of initiating events leading to a design basis accident. The additional reliability of the offsite source afforded by the Conowingo line would improve the potential for mitigating loss-of-offsite power events. Consequently, the consequences of accidents would not be significantly increased, nor would the post-accident radiological releases be greater than previously determined.

The proposed action would not otherwise affect radiological plant effluents. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action (extending EDG AOTs) does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Peach Bottom Atomic Power Station, Units 2 and 3, dated April 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on July 24, 1995, the staff consulted with the Pennsylvania State official, Stan Maingi, of the Pennsylvania Department of Environmental Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 7, 1994, as supplemented by letters dated June 2, and September 6, 1994, and June 16, and July 13, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania.

Dated at Rockville, MD, this 4th day of August 1995.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19764 Filed 8–9–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corporation, Oyster Creek Nuclear Generating Station; Issuance of Partial Director's Decision Under 10 CFR § 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC) has denied in part a Petition, dated September 19, 1994, and supplemented December 13, 1994, submitted by Oyster Creek Nuclear Watch, Reactor Watchdog Project, and Nuclear Information and Resource Service (Petitioners). The Petition requested that the NRC take action regarding the Oyster Creek Nuclear Generating Station (OCNGS) pursuant to 10 C.F.R. § 2.206.

The September 19, 1994, Petition requests that the NRC (1) immediately suspend the OCNGS operating license until the Licensee inspects and repairs or replaces all safety-class reactor internal component parts subject to embrittlement and cracking, (2) immediately suspend the OCNGS operating license until the Licensee submits an analysis regarding the synergistic effects of through-wall cracking of multiple safety-class components, (3) immediately suspend the OCNGS operating license until the Licensee has analyzed and mitigated any areas of noncompliance with regard to irradiated fuel pool cooling as a single-unit boiling-water reactor (BWR), and (4) issue a generic letter requiring other licensees of single-unit BWRs to submit information regarding fuel pool boiling in order to verify compliance with regulatory requirements, and to promptly take appropriate mitigative action if the units are not in compliance.

The December 13, 1994, supplemental Petition requests that the NRC: (1) suspend the license of the OCNGS until the Petitioners' concerns regarding cracking are addressed, including inspection of all reactor vessel internal components and other safety-related systems susceptible to intergranular stress corrosion cracking (IGSCC) and completion of any and all necessary repairs and modifications; (2) explain discrepancies between the response of the NRC staff dated October 27, 1994, to the Petition of September 19, 1994, and the time-to-boil calculations for the FitzPatrick plant; (3) require the GPU Nuclear Corporation to produce documents for evaluation of the time-to-boil calculation for the OCNGS irradiated fuel pool; (4) identify redundant components that may be powered from onsite power supplies to be used for spent fuel pool cooling as qualified Class 1E systems; (5) hold a public meeting in Toms River, New Jersey, to permit presentation of additional information related to the Petition; and (6) treat the Petitioners' letter of December 13, 1994, as a formal appeal of the denial of the Petitioners' request of September 19, 1994, to immediately suspend the OCNGS operating license.

The Director of the Office of Nuclear Reactor Regulation has denied Requests (1) and (2) of the September 19, 1994, Petition and Request (1) of the December 13, 1994, supplemental Petition to suspend the operating license of the OCNGS until the Licensee inspects and repairs, modified, or replaces all safety-class reactor internal component parts subject to embrittlement and intergranular stress corrosion cracking. The reasons for this denial are explained in the "Partial Director's Decision Under 10 CFR § 2.206" (DD–95–18), the complete text of which follows this notice, and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local

public document room for the Oyster Creek Nuclear Generating Station located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753. A decision regarding Requests (3), and (4) of the September 19, 1994 Petition, and Requests (2), (3), and (4), of the December 13, 1994, supplemental Petition will be issued under separate cover upon completion of the NRC staff's review.

A copy of this Partial Director's Decision will be filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c). As provided in that regulation, the Decision will constitute the final action of the Commission 25 days after the date of the issuance of the Decision, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 4th day of August 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

Appendix A—Partial Director's Decision Under 10 CFR § 2.206 (DD95–18)

I. Introduction

By letter dated September 19, 1994, Reactor Watchdog Project, Nuclear Information and Resource Service (NIRS), and Oyster Creek Nuclear Watch (Petitioners), submitted a Petition pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 C.F.R. § 2.206), requesting that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Oyster Creek Nuclear Generating Station (OCNGS), operated by the GPU Nuclear Corporation (GPUN or the Licensee). By letter dated December 13, 1994, Petitioners supplemented the Petition.

The September 19, 1994, Petition requests that the NRC (1) immediately suspend the OCNGS operating license until the Licensee inspects and repairs or replaces all safety-class reactor internal component parts subject to embrittlement and cracking, (2) immediately suspend the OCNGS operating license until the Licensee submits an analysis regarding the synergistic effects of through-wall cracking of multiple safety-class components, (3) immediately suspend the OCNGS operating license until the Licensee has analyzed and mitigated any areas of noncompliance with regard to irradiated fuel pool cooling as a single-unit boiling-water reactor (BWR), and (4) issue a generic letter requiring other licensees of single-unit BWRs to submit information regarding fuel pool boiling in order to verify compliance with regulatory requirements, and to promptly take appropriate mitigative action if the unit is not in compliance.

The December 13, 1994, supplemental Petition requests that the NRC: (1) suspend the license of the OCNGS until the Petitioners' concerns regarding cracking are addressed, including inspection of all reactor vessel internal components and other safety-related systems susceptible to intergranular stress corrosion cracking (IGSCC) and completion of any and all necessary repairs and modifications; (2) explain discrepancies between the response of the NRC staff dated October 27, 1994, to the Petition of September 19, 1994, and the time-to-boil calculations for the FitzPatrick plant; (3) require GPUN to produce documents for evaluation of the time-to-boil calculation for the OCNGS irradiated fuel pool; (4) identify redundant components that may be powered from onsite power supplies to be used for spent fuel pool cooling as qualified Class 1E systems; (5) hold a public meeting in Toms River, New Jersey, to permit presentation of additional information related to the Petition; and (6) treat the Petitioners' letter of December 13, 1994, as a formal appeal of the denial of the Petitioners' request of September 19, 1994, to immediately suspend the OCNGS operating license.

The September 19, 1994, Petition sought relief concerning safety-class reactor internal components based on the following premises: (a) the core shroud in General Electric BWRs is vulnerable to age-related deterioration; (b) 12 domestic and foreign BWR owners have found extensive cracking on welds of the core shroud; (c) only 10 of 36 U.S. BWR owners have inspected their core shrouds and 9 of the 10 core shrouds had cracks; (d) 19 of 25 selected BWR internal components are susceptible to stress corrosion cracking and 6 of 19 are susceptible to irradiation-assisted stress corrosion cracking; (e) as the oldest operating General Electric Mark I BWR and the third oldest operating reactor in the United States, OCNGS has been subjected to the longest period of operational conditions that cause embrittlement and cracking; (f) the BWR Owners Group (BWROG) stated that cracking of the core shroud is a warning signal that additional safety-class reactor internals are increasingly susceptible to age-related deterioration; (g) cracking of any single part or multiple components jeopardizes safe operation of that nuclear station; (h) Oyster Creek did not inspect for core shroud cracking prior to the current refueling outage and other safety-class reactor internals have not been adequately inspected for cracking; and (i) a safety analysis has not been performed on the potential synergistic effects of multiple-component cracking.

The September 19, 1994, Petition also sought relief concerning fuel pool cooling design deficiencies, based on the following premises: (a) various design defects in BWR fuel pool cooling systems pose a significant increase in risk to the public safety and violate 10 CFR 50.59; 10 CFR Part 50, Appendix A, Criterion 63; 10 CFR Part 50, Appendix B, Criterion III; and Regulatory Guides 1.13, 1.89, and 1.97; (b) OCNGS is a single-unit facility with no adjacent units to rely upon in the event that a design-basis event were to disable the fuel pool cooling system; and (c) OCNGS has not docketed any material with regard to BWR design deficiencies identified in the 10 CFR Part 21 Report of Substantial Safety Hazard (November 27, 1992) of Messrs. Lochbaum and Prevatte, and thus OCNGS may be in violation of NRC regulatory requirements.

The Petitioners assert the following bases to support their requests in the December 13, 1994, supplemental Petition: (a) the October 27, 1994, letter of the NRC staff, acknowledging receipt of the Petition and denying the requests for immediate suspension of the operating license, failed to address concerns central to the Petition, such as the Licensee's failure to recognize that IGSCC indicates that cracking could be occurring in additional safety-class reactor internal components and the Licensee's failure to perform inspections of all safety-class components to determine whether cracking is occurring; (b) recently discovered cracking in the top guide and core plates in foreign BWRs and cracking discovered on December 8, 1994, at the New York Power Authority's (NYPA's) FitzPatrick reactor underscore the Petitioners' concern that additional safety-class components at OCNGS are degrading; (c) the Licensee did not conduct an enhanced inspection of the core plate and top guide of the OCNGS facility during the current outage, despite notification by the General Electric Rapid Information Communication Service Information Letter (GE RICSIL) 071 dated November 22, 1994; (d) the Licensee, the NRC, and the BWR Owners Group (BWORG) have failed to provide an analysis of the synergistic effects of multiple-component cracking of additional safety-class reactor internal components; (e) the time-to-boil calculation is dictated by the amount of decay heat generated and the volume of water in the fuel pool rather than the number of reactors at a site that store irradiated fuel in a separate pool; (f) NRC documents state that the time-to-boil calculation for FitzPatrick following a loss-of-coolant accident is 8 hours, and NYPA documents state that the time-to-boil calculations in two cases are 11.86 and 5.36 hours. Finally, nothing indicates that the time-to-boil calculation at OCNGS is longer than the time-to-boil calculation at the Susquehanna facility; and (g) the NRC and the licensee have failed to establish whether redundant components and power supplies to the OCNGS fuel pool cooling system have been qualified as Class 1E systems.

The Petitioners' requests that the Commission immediately suspend the OCNGS operating license were denied in my letter of October 27, 1994, to the Petitioners, because (1) OCNGS was in a refueling outage, had inspected core shroud welds, and was making structural modifications before restart of the unit to address some weld cracks found during the inspection, and (2) inspections and corrective actions recommended by General Electric Company and the American Society of Mechanical Engineers Boiler and Pressure Vessel Code for various reactor internals had been and continued to be performed by the Licensee.

The Petitioners' request for treatment of their letter of December 13, 1994, as a formal appeal of the NRC staff's denial of their request of September 19, 1994, for immediate suspension of the OCNGS operating license, was denied in my letter of April 10, 1995, to the Petitioners. The Petitioners provided no basis for revisiting the denial of their request of September 19, 1994, for immediate suspension of the license. As discussed below, the Licensee completed all ASME Code Section XI reactor vessel internal inspections and BWROG recommended inspections and took appropriate remedial action before re-start of OCNGS in December 1994. The NRC staff was also aware of the potential problem for United States BWRs raised by cracking in top guide and core plates of foreign BWRs before the restart of OCNGS. The NRC staff determined, as explained below, that cracks in these components would not adversely affect safety of the plant because of differences in the OCNGS design as compared to the affected foreign reactors.

Regarding the OCNGS spent fuel pool cooling system capability, the staff determined that the time to the onset of spent fuel pool boiling following a loss of spent fuel pool cooling during periods where the reactor vessel contains irradiated fuel at single unit BWR sites, such as OCNGS, is long enough to allow compensatory measures. The probability of a sustained loss of spent fuel pool cooling creating adverse environmental conditions that may cause failure of essential equipment is extremely low. Therefore, the staff has concluded that immediate action to address the concerns the Petitioners have identified at OCNGS is not justified. As stated in my letter of October 27, 1994, spent fuel pool safety is being reviewed generically by the staff and this review has not yet been completed.

The Petitioners' request for a public meeting was denied in my letter of April 10, 1995.[1] The issue of internals cracking has been discussed at several public meetings, including a public meeting on November 4, 1994, that a representative of NIRS attended regarding the OCNGS core shroud. With respect to spent fuel pool cooling, the staff has held several public meetings and public briefings with the Advisory Committee on Reactor Safeguards. Summaries of these public meetings are available in the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document rooms for the affected BWR plants. Transcripts of ACRS meetings are also available.

The NRC staff's review of the issues related to cracking of reactor internal components, raised by Requests (1) and (2) of the September 19, 1994, Petition, and Request (1) of the December 13, 1994, supplemental Petition, is now complete. For the reasons set forth below, the Petition is denied with respect to these requests. A Director's Decision concerning the issues related to irradiated fuel pool cooling and fuel pool boiling, raised by Requests (3) and (4) of the September 19, 1994, Petition and Requests (2), (3), and (4) of the December 13, 1994, supplemental Petition will be issued upon completion of the NRC staff's review regarding those matters.

II. Background

Intergranular stress corrosion cracking (IGSCC) of BWR internal components has been identified as a technical issue of concern by both the NRC staff and the nuclear industry. The core shroud is among the internal reactor components susceptible to IGSCC. Identification of cracking at the circumferential beltline region welds in several plants during 1993 led to the publication of NRC Information Notice (IN) 93–79, "Core Shroud Cracking at Beltline Region Welds in Boiling-Water Reactors," issued on September 30, 1993. Several licensees inspected their core shrouds during planned outages in the spring of 1994 and found cracking at the circumferential welds. The NRC has closely monitored these inspection activities. Additionally, licensees have inspected other BWR reactor vessel internal components as discussed below. NRC issued IN 94–42, "Cracking in the Lower Region of the Core Shroud in Boiling-Water Reactors," on June 7, 1994, and Supplement 1 to IN 94–42, on July 19, 1994, concerning cracking in the core shroud found at Dresden Unit 3 and Quad Cities Unit 1. IN 95–17, "Reactor Vessel Top Guide and Core Plate Cracking," issued on March 10, 1995, concerned reactor vessel top guide and core plate cracking. The NRC has monitored Licensee inspection activities of these components at the OCNGS as discussed below.

III. Discussion

A. Petitioners request that the NRC suspend the OCNGS license until the Licensee inspects and repairs or replaces all safety-class reactor internal component parts subject to embrittlement and cracking. Nuclear power reactor licensees, including GPUN, are required by 10 C.F.R. § 50.55a to implement inservice inspection programs in accordance with the guidelines of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). The scope of the inservice inspection programs for reactor pressure vessels and their internal components is prescribed by ASME Code, Section XI, Division 1, Subsections IWA and IWB. The Licensee is also required by ASME Code, Section XI, Article IWA–6000, to submit the results of these inspections to the NRC within 90 days of completion. The NRC staff performs periodic audits of licensee-implemented inservice inspection programs to determine compliance with applicable codes and regulations. These audits are documented in NRC inspection reports, which are publicly available at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the OCNGS located at the Ocean County Library, Reference

[1] In addition, the NRC staff determined, in accordance with the guidance in NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," that an informal public hearing was not warranted because the Petition did not present new information or a new approach for evaluating the concerns Petitioners raised.

Department, 101 Washington Street, Toms River, NJ 08753.

The Licensee performed inspections of the OCNGS reactor vessel and its internal safety-related components in accordance with the requirements of ASME Code, Section XI, and the NRC staff has reviewed the Licensee's inservice inspection programs, as discussed below.

Cracking of the core spray piping was first detected during Licensee inspections at OCNGS in 1978, and its extent has been evaluated by the Licensee during each subsequent outage. The core spray piping was repaired in 1978 and 1980. Since that time, additional visual inspections by the Licensee have not identified any significant degradation of the piping or of the repairs made to the piping. The NRC's review of the Licensee's inspection results and disposition during the 14R outage, documented in NRC Inspection Report 50–219/92–22, dated March 19, 1993, and a letter to GPUN dated November 18, 1994, regarding the 15R inspection concluded that the Licensee inspections and dispositions of core spray system findings were appropriate.

The Licensee first detected cracking of the top guide in 1991 and has closely monitored it in successive outages. The NRC staff conducted an inspection in June 1991, and concluded that the Licensee's disposition of the top guide crack as "acceptable as is" was adequate. The results of the inspection were reported in NRC Inspection Report 50–219/91–21, dated August 9, 1991. During an NRC inspection conducted in December 1992 and January 1993, the NRC staff evaluated the results of a remote visual inspection of the top guide conducted by General Electric Corporation for GPUN. The staff evaluated the quality of the Licensee's visual inspection of the top guide and agreed with the Licensee's determination that the top guide was acceptable to "use as is". The results of the inspection were reported in NRC Inspection Report 50–219/92–22, dated March 19, 1993.

The Licensee notified the NRC staff during an October 11, 1994, telephone call that additional cracking in the top guide had been found. The Licensee also reported that cracks found in earlier inspections of the top guide had not shown any measurable growth. In addition, during the refueling outage for Cycle 15 of operation (15R refueling outage), which began in September 1994, the Licensee assessed all the cracks that had been identified to ensure they would not jeopardize the structural integrity or function of the top guide.

It should be noted that the location of the cracks that have been detected in the OCNGS top guide is different from that in the foreign reactor cited in the NIRS letter of December 13, 1994, and the subject of GE RICSIL–071. Moreover, both the top guide and the core plate at OCNGS are components of a GE BWR while the foreign plant is a non-GE BWR. Furthermore, the OCNGS core plate is bolted in place, and the top guide is restrained vertically by hold-down devices and horizontally by lateral supports. These configurations result in a highly redundant structure, and even if cracking similar to that observed in the foreign plant were to occur, it would not adversely affect the safety of the plant, and these components could still perform their safety-related functions.

The BWROG has addressed the issue of cracking in the internal components of reactor pressure vessels by recommending that BWR licensees perform inspections of various components pursuant to vendor recommendations of the General Electric Company. Among inspections recommended by the BWROG are examination of core spray spargers, core shrouds, top guides, return line nozzles, and in-core instrumentation, which in the case of OCNGS are the intermediate power range monitors. The BWROG has also formed the Boiling Water Reactor Vessels & Internals Project (BWRVIP), chaired by five nuclear industry vice presidents, to develop a proactive program to address and mitigate cracking in reactor pressure vessel internal components. NRC staff correspondence with the BWRVIP, staff evaluation of the BWRVIP generic submittals, summaries of meetings with the BWRVIP, and staff assessments of plant-specific submittals in regard to these subjects are also available to the public for review at the local public document room of each BWR plant.

The Licensee inspected the following safety-related components during the 15R refueling outage, which began in September 1994: core spray sparger and annular piping, steam dryer and separator assembly, core shroud head bolts, core support plate holddown bolts, guide rod and steam dryer support brackets, feedwater spargers, top guide assembly, four intermediate-power range monitors, one low-power range monitor, core shroud brackets, conical support to shell weld, and the core shroud. Cracking was observed on the core shroud and a steam dryer bracket, and required repairs to these components were made. Minor cracking was observed on the core spray piping, a tack weld on the keeper bolt of the feedwater spargers, and the top guide cross beams. None of these cracks would have prevented the components from performing their normal operating and postulated accident functions. These indications were dispositioned as is. The Licensee submitted results of its core shroud inspection and its core spray sparger inspection to the NRC in separate letters, both dated November 3, 1994. As a result of a conference call on January 19, 1995, the Licensee submitted a summary of the results of its inspections of reactor vessel internal components performed during the 15R refueling outage. By a letter dated March 16, 1995, in accordance with 10 CFR § 50.55a(g) and ASME Section XI, IWA 6220, (1986 Edition with no addenda), GPUN forwarded the reports of its inservice inspection activities conducted during the 15R refueling outage. In the report GPUN lists the inspections performed and discusses unacceptable indications of certain components and their disposition. Inservice inspection of reactor vessel internal components is required by the ASME Code and the licensee's inservice inspection program for future outages provides assurance that degradation of components will be detected and appropriate action will be taken. The documents discussed above are available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

The Licensee's inspection of the OCNGS core shroud found that one of the ten circumferential welds (the H4 weld) had indications of substantial cracking. To ensure shroud integrity under all postulated accidents, the Licensee elected to install a modification, consisting of ten stabilizing tie-rods, designed to ensure that the core shroud would perform its design functions under normal operation and postulated accidents even if it were to develop 360° through-wall cracks. The NRC staff reviewed this modification and issued a safety evaluation on November 25, 1994, which concluded that the core shroud modification proposed by the Licensee is acceptable and, therefore, is approved. The safety evaluation is also available at the public document rooms previously listed.

On the basis of the NRC staff's review of various plant-specific and industry programs implemented by the Licensee, the NRC staff concluded that the Licensee took appropriate actions to address embrittlement and cracking in, and thus to ensure the reliability of, the OCNGS reactor vessel internal components.

Based on the above, the staff has concluded that suspension of the Oyster Creek Nuclear Generating Station operating license due to embrittlement and cracking of the reactor vessel internal components is not warranted. As stated previously, continued monitoring of reactor vessel internals as required by the ASME Code and the licensee's inservice inspection program will provide assurance that degradation of components will be detected and appropriate action will be taken.

B. Petitioners request that the NRC suspend the OCNGS operating license until the Licensee provides an analysis regarding the synergistic effects of through-wall cracking of multiple safety-class components. The majority of reactor internals are fabricated from high-toughness materials such as stainless steel and were designed with significant margins on allowable stresses. As such, cracking must be severe to adversely impact plant safety. It is unlikely that licensee inspections would not find such severe degradation. In fact, identification and sizing of the cracks in the H4 location on the OCNGS core shroud are good examples of the effectiveness of the inspections. In addition, NRC staff evaluation of the results from internals inspections performed to date at OCNGS resulted in the conclusion that ASME Code safety margins have been maintained.

The Licensee has not provided an analysis to NRC that addresses the synergistic effects of cracking in multiple safety-class components. The NRC staff does not consider the lack of such an analysis to be a safety concern because of the inspection requirements that pertain to reactor internals and the results of inspections performed to date. See Section III.A, *supra*.

Continued monitoring of reactor vessel internals as required by the ASME Code and the licensee's inservice inspection program will provide information about the structural integrity of reactor vessel internals in the long term. The NRC has asked the BWR Vessel Internals Project (BWRVIP), an industry group, to develop an assessment to address cracking in BWR reactor vessel internals. A report from the BWRVIP is expected on the long term effects of reactor vessel internals cracking in late 1995. In addition, the NRC has undertaken a longer term evaluation of the effects of cracking in multiple reactor vessel internal components that will be approached with appropriate treatment of the key variables (safety function, material susceptibility, loading, environment, etc.).

Based on the above, the staff has concluded that suspension of the Oyster Creek Nuclear Generating Station license, due to the lack of an analysis of the synergistic effects of through-wall cracking of safety-class reactor internal components, is not warranted.

IV. Conclusion

The Petitioners requested that the NRC suspend the operating license of Oyster Creek Nuclear Generating Station until: (1) the Licensee inspects, repairs, or replaces, all safety-class reactor internal components subject to embrittlement and cracking, and (2) the Licensee provides an analysis regarding the synergistic effects of through-wall cracking of multiple safety-class components. For the reasons discussed above, I conclude that the issues raised by the Petitioners are being adequately addressed and that there is no basis for suspending the OCNGS operating license or taking the other requested action. Accordingly, the Petitioners' above-referenced requests are denied.

A copy of this Partial Director's Decision will be filed with the Secretary of the Commission for review as stated in 10 CFR 2.206(c). This Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 4th day of August 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–19766 Filed 8–9–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 203 and 203 to Facility Operating License Nos. DPR–32 and DPR–37 issued to Virginia Electric and Power Company, which revised the License and the Technical Specifications for operation of the Surry Power Station, Unit Nos. 1 and 2 located in Surry County, Virginia. The amendments are effective as of the date of issuance.

The amendments modified the Licenses and the Technical Specifications to increase the authorized core power level for Surry, Units 1 and 2, from 2441 MWt to 2546 MWt.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 16, 1994 (59 FR 65085). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement.

Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 32356).

For further details with respect to the action see (1) the application for amendment dated August 30, 1994, and supplemented February 6, February 13, February 27, March 23, March 28, April 13, April 20, April 28, May 5, and June 8, 1995, (2) Amendment Nos. 203 and 203 to License Nos. DPR–32 and DPR–37, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Swen Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 3rd day of August 1995.

For The Nuclear Regulatory Commission.

Bart C. Buckley,

Senior Project Manager, Project Directorate II–1, Division of Reactor Projects, Offiee of Nuclear Reactor Regulation.

[FR Doc. 95–19767 Filed 8–9–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell (202) 942–8800

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549

Extensions:
Form 144, File No. 270–112
Regulations S, File No. 270–315

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval extension of the following currently approved form and regulation:

Form 144 provides notice of a proposed sale of securities pursuant to Rule 144 under the Securities Act of 1933. It is estimated that 31,136 respondents would incur 62,672 burden hours annually to comply with Form 144.

Regulation S contains rules governing the offer and sale of securities made outside of the United States without registration under the Securities Act of 1933. Regulation S does not directly impose burden hours on filers (the burden hours are reflected in submissions for forms that refer to the disclosure requirements in Regulation S) and therefore is assigned one burden hour for administrative convenience.

General comments regarding the estimated burden hours should be directed to the OMB Clearance Officer at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549 and Clearance Officer, Project Numbers 3235–0101 (Form 144) and 3235–0357 (Regulation S), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: July 31, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–19718 Filed 8–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36060; File No. SR–NYSE–95–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Initial Listing Fees

August 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 3, 1995 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend the Exchange's fee schedule for listed companies by (i) limiting the initial listing fee component of the Original Listing Fee for common shares to the first 125 million common shares issued and (ii) establishing a flat $5,300 "technical fee" for reserve stock splits.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange routinely reviews its pricing relative to listed and prospective listed companies. This proposal is intended to address certain anomalies within the Exchange's current pricing relating specifically to very large capitalization companies. The proposed rule change would limit the Initial Fee component of the Original Listing Fee for common shares to the first 125 million common shares issued. In addition, the initial fee for additional shares subsequently listed will be based on the fee bracket appropriate to the new shares being listed, in relation to the company's total number of shares issued.

The proposal also amends the Exchange's listing fees with respect to reverse stock splits. The Exchange currently charges an initial fee on all shares issued in connection with a reverse stock split. A listed company effecting a reverse stock split, however, has already paid an initial fee on all its outstanding shares, and the reverse split will result in there being fewer shares outstanding. Thus, the Exchange is proposing to charge only $5,300 for reverse stock splits, the "technical fee" that it currently charges for a reincorporation or a change in corporate structure, such as the formation of a holding company.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objectives of Section 6(b)(4)[4] in particular in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(e)(6)[6] thereunder.

A proposed rule change filed under Rule 19b–4(e)[7] does not become operative prior to thirty days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The NYSE has requested, in order for it to reduce its listing fees as quickly as possible, that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the thirty days specified under Rule 19b–4(e)(6)(iii).[8] The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and therefore has determined to make the proposed rule change operative as of the date of this order.

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR–NYSE–95–27 and should be submitted by August 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–19790 Filed 8–9–95; 8:45 am]

BILLING CODE 8010–01–M

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[1] 15 U.S.C. 78s(b)(1).
[2] NYSE Listed Company Manual ¶ 902.02.
[3] 15 U.S.C. 78f(b).
[4] 15 U.S.C. 78f(b)(4).
[5] 15 U.S.C. 78s(b)(3)(A).
[6] 17 CFR 240.19b–4(e)(6).
[7] 17 CFR 240.19b–4(e).
[8] 17 CFR 240.19b–4(e)(6)(iii).
[9] 17 CFR 200.30–3(a)(12).

[File No. 500–1]

Order Directing Suspension of Trading

August 4, 1995.

In the matter of American Telephone & Data Inc.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of American Telephone & Data Inc. ("AT&D"), currently quoted in the NASD's OTC Bulletin Board, and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the accuracy and adequacy of AT&D's financial statements.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of AT&D, over-the-counter, or otherwise, is suspended for the period from 1:45 p.m. EDT August 4, 1995 through 1:45 p.m. EDT on August 18, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–19715 Filed 8–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21267; File No. 812–9500]

The Lincoln National Life Insurance Company, et al.

August 3, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The Lincoln National Life Insurance Company ("Lincoln Life"), Lincoln National Variable Annuity Fund A ("Fund A"), and Lincoln National Variable Annuity Fund B ("Fund B", and together with Fund A, the "Funds").

RELEVANT 1940 ACT PROVISIONS: Order requested under Section 17(b) granting an exemption from the provisions of Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit the merger of Fund B into Fund A.

FILING DATE: The application was filed on May 5, 1995. Applicants have represented that they will file an amendment to the application during the notice period to include the representations summarized herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 28, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Applicants, Jack D. Hunter, Esq., The Lincoln National Life Insurance Company, 1300 South Clinton Street, P.O. Box 1110, Fort Wayne, Indiana 46801.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Wendy Finck Friedlander, Deputy Chief, (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Lincoln Life, a wholly-owned subsidiary of Lincoln National Corporation, is a stock life insurance company organized under the laws of Indiana. Lincoln Life is the sponsoring insurance company, investment adviser and principal underwriter for Fund A and Fund B.

2. Fund A was established by Lincoln Life pursuant to Indiana law on September 16, 1966, and is registered with the Commission as an open-end, management investment company. Fund A was organized as the investment vehicle for individual and group variable annuity contracts for use with certain tax-qualified retirement plans, annuity purchase plans, individual retirement annuities and government plans. Fund A's principal investment objective is the long-term growth of capital. A secondary investment objective is the production of current income. Fund A seeks to accomplish these objectives by investing in equity securities, principally common stocks. Fund A is managed by a three person Board of Managers elected by Fund A contract owners.

3. Fund B was established by Lincoln Life pursuant to Indiana law on

December 1, 1966, and is registered with the Commission as an open-end, management investment company. Fund B was organized as the investment vehicle for variable annuity contracts for individual use and for use with plans and trusts on a non-tax qualified basis. Fund B has the same investment objectives and policies of Fund A, and is managed by a three person Board of Managers elected by Fund B contract owners. The membership of the Board of Managers for Fund A and Fund B is identical.

4. Prior to 1984, federal tax law required that capital gains of Fund B be treated differently from capital gains of Fund A because the contracts for which Fund B serves as the investment vehicle were not for use with tax-qualified plans. In 1984, federal tax law was amended to eliminate this difference. Because of this change in federal tax law, the principal reason for the separate existence and operation of Fund A and Fund B no longer applies.

5. The Board of Directors of Lincoln Life has determined that the efficiency of the operations of the Funds could be improved by merging Fund B into Fund A. Accordingly, the respective Board of Managers for Fund A and Fund B, none of whom are "interested persons," as defined in Section 2(a)(19) of the 1940 Act, considered and approved an Agreement and Plan of Reorganization (the "Reorganization Agreement"). Pursuant to the Reorganization Agreement, the assets and liabilities of Fund B will be transferred to Fund A in exchange for accumulation and annuity units of Fund A to be credited to contract owners of Fund B. The aggregate value of the accumulation and annuity units credited by Fund A would correspond to the value of the net assets transferred by Fund B to Fund A. Following the proposed reorganization, each Fund B contract owner will possess a number of Fund A accumulation or annuity units (both full and fractional) that when multiplied by the accumulation unit value of Fund A units, would result in an aggregate accumulation unit value equal to the aggregate accumulation unit value of the accumulation and annuity units the contract owner had in Fund B immediately before the consummation of the proposed reorganization.

6. Applicants state that the Funds are seeking contract owner approval of the reorganization. The Reorganization Agreement provides that the consummation of the proposed reorganization is conditioned upon approval of the contract owners of Fund A and Fund B. Lincoln Life will pay all of the costs in connection with the proposed reorganization including costs of printing and distributing proxy materials, counting contract owner instructions, legal and auditing fees, and expenses of holding the contract owners' meeting. Applicants state that they do not expect that the proposed reorganization will entail any liquidation expenses because the Funds have identical investment objectives. However, Lincoln Life will pay any liquidation expenses in the event that, as investment adviser to Fund A, it considers any securities held by Fund B to be unsuitable for Fund A. Applicants state that the reorganization will have no tax consequences for contract owners.

Applicants' Legal Analysis

1. Section 17(a) of the 1940 Act provides generally that it is unlawful for any affiliated person of a registered investment company acting as principal knowingly to purchase from or to sell any security or other property to such registered investment company. Section 17(b) of the 1940 Act provides generally that the Commission may grant an order exempting a transaction otherwise prohibited by Section 17(a) of the 1940 Act if evidence establishes that: (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

2. The proposed reorganization may be subject to the provisions of Section 17(a) of the 1940 Act since it could be viewed as one investment company (Fund B) selling its assets to another investment company (Fund A) that is affiliated by reason of having the same sponsoring insurance company, investment adviser and principal underwriter (Lincoln Life) that may be deemed to be in control of both investment companies.

3. Rule 17a–8 under the 1940 Act exempts mergers of certain affiliated investment companies from the provisions of Section 17(a) of the 1940 Act under certain conditions. However, the exemption provided by Rule 17a–8 may not be available in this case since Rule 17a–8 is limited to mergers of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers. Fund A and Fund B also may be affiliates of each other because they have a common sponsoring insurance company and common principal underwriter. Applicants maintain, however, that the proposed reorganization falls within the spirit and intent of Rule 17a–8.

4. Applicants assert that the proposed reorganization is fair and reasonable to the Fund B contract owners and to Fund A because the proposed reorganization will not affect any rights to annuity payments, the annuity options that are offered under any contract of either Fund, the death benefit or the federal income tax treatment during the accumulation or payment periods of any contract of either Fund. There are no material differences between the voting or other rights of contract owners or annuitants of Fund B and the rights such contract owners or annuitants will have as contract owners or annuitants of Fund A. Applicants state that Fund A will pay the same fees to Lincoln Life after the proposed reorganization as Fund B currently pays.

Applicants state that identical methods and procedures are used to determine the value of the assets and accumulation units of each of Fund A and Fund B, and, at the time of the proposed reorganization, each Fund is expected to have a portfolio similar to that of the other Fund. Thus, Applicants maintain that the interests of Fund A contract owners will not be diluted by the proposed reorganization.

5. Applicants also maintain that the proposed transaction does not involve overreaching on the part of any party to the transaction because of the similarity of the Funds' portfolios and the use of an objective standard to value the portfolio securities of each of the Funds. Furthermore, the Board of Managers of both Fund A and Fund B, none of whom are interested persons of Fund A, Fund B or Lincoln Life, determined that the terms of the proposed reorganization do not involve overreaching on the part of any persons concerned.

6. Applicants state that the proposed reorganization is not inconsistent with the investment policy of each Fund as set forth in the registration statements and reports filed under the 1940 Act. Both Funds have identical investment objectives and the same investment adviser.

7. Applicants also state that the proposed reorganization is necessary or appropriate in the public interest and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act. In particular, Applicants maintain that the proposed reorganization will reduce operating costs due primarily to economies of scale, compared to the costs of continuing the operation of Fund B separately from Fund A. Applicants assert that enhanced flexibility in the management of Fund B's relatively small investment portfolio, and enhanced opportunities for portfolio diversification, may be obtained through combining the assets of Fund B with those of Fund A.

Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemption from Section 17(a) of the 1940 Act to permit the proposed reorganization meets the standards in Section 17(b) of the 1940 Act. In this regard, Applicants assert that the proposed reorganization is fair and reasonable, does not involve overreaching on the part of any person concerned, is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act, and is consistent with the provisions, policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–19717 Filed 8–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–21288; 812–8892]

TIFF Investment Program, Inc. and Foundation Advisers Inc.; Notice of Application

Dated: August 3, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: TIFF Investment Program, Inc. ("TIP") and Foundation Advisers Inc. ("FAI").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(a) and rule 18f–2.

SUMMARY OF APPLICATION: TIP is a registered investment company advised by FAI. FAI oversees the selection of other investment advisers for the TIP portfolios, monitors such investment advisers, and allocates assets among them. The order would permit an investment adviser other than FAI to serve as an investment adviser to one or more portfolios of TIP without receiving prior shareholders approval.

FILING DATES: The application was filed on March 18, 1994, and amended on July 6, 1994, October 21, 1994, and July 19, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 29, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o AMT Capital Services, Inc., 430 Park Avenue, 17th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, at (202) 942–0565, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. TIP is a registered open-end management investment company consisting of seven series: TIFF U.S. Equity Fund, TIFF International Equity Fund, TIFF Emerging Markets Fund, TIFF Bond Fund, TIFF Short-Term Fund, TIFF Global Equity Fund, and TIFF Multi-Asset Fund (each a "Fund," and together, the "Funds"). Investment in TIP is available only to grantmaking foundations and other organizations that qualify for exemption from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 ("501(c)(3) organizations"), other than educational endowments.

2. FAI is registered as an investment adviser under the Investment Advisers Act of 1940. FAI serves as investment adviser for the TIP Funds. FAI is a not-for-profit corporation the purpose of which is to facilitate investment by foundations and other 501(c)(3) organizations, other than educational endowments, in securities and other assets. The fee schedule between TIP and FAI reflects the essentially cost-recovery, not-for-profit orientation of the undertaking.

3. Applicants believe that returns can be enhanced by careful selection and blending of styles of several investment managers within a single asset class. Accordingly, the Funds are structured as multi-manager investment vehicles for implementation of long-term asset allocation strategies. Investment advisory services for each Fund will be provided by two or more outside money managers, each of whom will have different but complementary styles and specific, targeted performance objectives. Applicants believe that TIP's use of multiple managers for each Fund will be a principal reason that foundations will invest in the TIP Funds.

4. Applicants seek an exemption from section 15(a) and rule 18f–2 to permit an investment adviser other than FAI (a "Money Manager") to serve as an investment adviser to one or more series funds established and maintained by TIP under a written contract that has not been approved by a vote of the majority of the outstanding voting securities of the TIP series, including a contract that has terminated as a result of its "assignment." Although shareholders will not vote on Money Manager changes, applicants will provide shareholders with an information statement that includes all the information that would be included in proxy statement within 60 days of the hiring of any new Money Manager or the implementation of any proposed material change in a Money Manager contract.

5. FAI bears responsibility for identifying, evaluating, selecting, and monitoring Money Managers, formulating and refining objectives and guidelines appropriate to each Money Manager, and evaluating and negotiating advisory fees. To discharge its duties, FAI must recommend the replacement of Money Managers, and propose changes in the agreement between each Money Manager and the TIP Fund that employs it.

6. TIP will rely on FAI to monitor the performance of each Money Manager employed by TIP, as well as other attributed that could affect a Money Manager's future performance (*e.g.*, growth in assets under management, personnel turnover, etc.). Applicants believe that it is in the best interest of TIP's shareholders for TIP's directors to be able to respond promptly to FAI's recommendations by negotiating changes in Money Managers' contracts or, if necessary, by adding one or more new Money Managers.

Applicants' Legal Analysis

1. Section 15(a) makes it unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants believe the Funds would incur substantial unnecessary expenses if they were required to obtain shareholder approval of Money Manager changes deemed necessary for the effective functioning of TIP's multi-manager program. Further, the delay associated with holding a meeting solely for this purpose would hamper FAI in performing its manager selection and allocation duties.

3. TIP's multi-manager structure is prominently featured in its Prospectus and Statement of Additional Information. Descriptions of the criteria used by FAI to select Money Managers and to establish appropriate compensation structures for the Money Managers, as well as descriptions of each Money Manager, are included in TIP's Prospectus and Statement of Additional Information.[1]

4. Given TIP's multi-manager structure, a decision to hire a new Money Manager for the TIP Funds is closely analogous to the decision by a money management firm to hire another portfolio manager or analyst. Under TIP's investment advisory agreements, the duties and responsibilities of a Money Manager employed by TIP is limited to the management of a defined portion of a Fund's assets allocated to the Money Manager by FAI. No Money Manager has responsibility for the on-going administration and corporate maintenance of TIP or for the servicing of its shareholders, those functions being exclusively the responsibility of FAI and AMT Capital Services, Inc., which acts pursuant to contract with TIP as administrator and distributor of the TIP Funds.

5. The relationship between FAI acting on behalf of TIP on the one hand, and a Money Manager on the other, is entirely at arm's length. The Money Managers employed by TIP have not sponsored the TIP Funds. The order will be conditioned to ensure that there can be no officer or director of TIP or FAI who will own (other than through a pooled investment vehicle) any interest in a Money Manager except for ownership of less than 1% of the outstanding securities of a publicly-traded company that is a Money Manager or an entity that controls, is controlled by, or is under common control with a Money Manager.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree that the requested exemption will be subject to the following conditions:

1. FAI will not enter into a Money Manager contract with any Money Manager that is an affiliated person (as defined in section 2(a)(3) of the Act) of TIP or FAI other than by reason of serving as a Money Manager to one or more of the Funds (an "Affiliated Money Manager") without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

2. At all times, a majority of the directors of TIP will be persons each of whom is not an "interested person" of TIP (as defined in section 2(a)(19) of the Act) (the "Independent Directors"), and the nomination of new or additional Independent Directors will be placed with the discretion of the then existing Independent Directors.

3. When a Money Manager change is proposed for a Fund with an Affiliated Money Manager, the directors of TIP, including a majority of the Independent Directors, will make a separate finding, reflected in TIP's board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which FAI or the Affiliated Money Manager derives an inappropriate advantage.

4. FAI will provide general management and administrative services to TIP, and, subject to review and approval by TIP's directors, will: (a) set the Funds' overall investment strategies; (b) select Money Managers; (c) allocate and, when appropriate, reallocate the Funds' assets among Money Managers; (d) monitor and evaluate the performance of Money Managers; and (e) ensure that the Money Managers comply with TIP's investment objectives, policies, and restrictions.

5. New Funds of TIP created after the issuance of the order will disclose their reliance on the order in their prospectuses and will have such reliance approved by consent of their sole shareholder.

6. Within 60 days of the hiring of any new Money Manager or the implementation of any proposed material change in a Money Manager contract, FAI will furnish shareholders all information about a new Money Manager or Money Manager contract that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Money Manager or any proposed material change in the Fund's Money Manager contract. FAI will meet this condition by providing shareholders, within 60 days of the hiring of the Money Manager or the implementation of any material change to the terms of a Money Manager contract, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the "Exchange Act"). The information statement also will meet the requirements of Schedule 14A under the Exchange Act.

7. No director or officer of TIP or FAI will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director or officer) any interest in a Money Manager except for: (a) ownership of interests in FAI or any entity that controls, is controlled by, or is under common control with FAI; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Money Manager or an entity that controls, is controlled by, or is under common control with a Money Manager.

8. TIP will disclose in all prospectuses relating to any Fund the existence, substance, and effect of any order granted pursuant to the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–19716 Filed 8–9–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Since TIP commenced operations in May 1994, it has disclosed in its prospectus that it was seeking an exemptive order from the SEC exempting it from the requirement that each agreement between TIP and a Money Manager be approved by a vote of a majority of the shareholders of the affected Fund.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted with 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer: Georgia Greene, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Request for Counseling.
Form No.: SBA Form 641.
Frequency: On Occasion.
Description of Respondents: Individuals requesting counseling, management counseling from SBA.
Annual Responses: 450,000.
Annual Burden: 59,850.

Dated: August 3, 1995.

Georgia Greene,

Chief, Administrative Information Branch.

[FR Doc. 95–19704 Filed 8–9–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 28, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–341.
Date filed: July 25, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC12 Fares 0477 dated July 21, 1995, US–UK Add-Ons—Resolution 0151h.
Proposed Effective Date: October 1, 1995.

Docket Number: OST–95–342.
Date filed: July 25, 1995.
Parties: Members of the International Air Transport Association.
Subject:
r-1 COMP Telex Mail Vote 733, Specific Commodity Rates from India
r-2 COMP Reso/C 062 dated February 24, 1995, Resolution 501 only (All other resolutions in this memorandum were previously filed and assigned Docket 50217.)
r-3 COMP Reso/C 0624 dated February 24, 1995, Resolution 002kk only (were previously filed and assigned Docket 50217.) Airline Economic Justification (A summary is attached. Minutes can be found in Docket 50186 in Memorandum COMP Meet/C 0200.)
Proposed Effective Date: upon government approval.

Docket Number: OST–95–343.
Date filed: July 25, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC3 Telex Mail Vote 750, Indonesia/Malaysia/Thailand-Japan fares, r-1—041, r-2—0631.
Proposed Effective Date: August 1, 1995.

Docket Number: OST–95–354.
Date filed: July 27, 1995.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1682 dated July 25, 1995, Canada-Europe Expedited Resos, r-1—076jj, r-4—054j, r-7—071q, r-2—080rr, r-5—064j, r-8—073yy, r-3—044j, r-6—073ss.
Proposed Effective Date: September 1/October 1/November 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–19709 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 28, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–357.
Date filed: July 27, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 24, 1995.
Description: Application of American Airlines, Inc., pursuant 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for renewal of segment 7 of its certificate of public convenience and necessity for Route 560 (Miami-Cancun), as amended and reissued by Order 92–5–20, May 8, 1992.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–19708 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Fitness Determination of Sierra Expressway L.L.C.

AGENCY: Department of Transportation, Secretary.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 95–8–11, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Sierra Expressway L.L.C., is fit, willing, and able to provide commuter air service under 49 U.S.C. 41738.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determinations should file their responses with Kathy Lusby Cooperstein, Air Carrier Fitness Division, X–56, Room 6401, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2337.

Dated: August 4, 1995.

Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–19769 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

[FHWA Docket No. 95–23]

Uniform Relocation Act, Certification Pilot Program in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The Florida Department of Transportation (FDOT) proposes to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) on Federal-aid highway projects in two of its districts through use of a certification procedure permitted by the Uniform Act. The FDOT would comply with the Uniform Act by conducting its right-of-way program in accordance with State laws determined by the FHWA, the Federal lead agency for the Uniform Act, to have the same purpose and effect as the Uniform Act. Comments are requested on the FDOT's proposed certification and on the determination sought from the FHWA concerning the purpose and effect of the State laws relied on by the FDOT.

DATES: Comments are requested by September 11, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–23 Federal Highway Administration, Room 4232, HCC–10, Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope/postcard.

FOR FURTHER INFORMATION CONTACT: Marshall Schy, Chief, Policy Development Branch, Office of Right-of-Way, HRW–11, (202) 366–2035; or Reid Alsop, Office of Chief Counsel, HCC–31, (202) 366–1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Uniform Act (42 U.S.C. 4601–4655) provides relocation benefits to persons forced to move by Federal or federally-assisted programs or projects. It also establishes policies relating to the acquisition of real property for such programs or projects. The FHWA has been designated the Federal Government's lead agency for implementing the Uniform Act.

Sections 210 and 305 of the Uniform Act (42 U.S.C. 4630 and 4655) require State agencies that receive Federal financial assistance for programs or projects that will result in the acquisition of real property or the displacement of persons to provide "assurances" that they will comply with the Act's provisions. Section 103 of the Uniform Act (42 U.S.C. 4604) provides that, in lieu of those assurances, a State agency may comply by certifying (and receiving the FHWA's determination) that it will be operating under State laws that "will accomplish the purpose and effect" of the Uniform Act.

The FDOT has applied for the establishment of a certification pilot program that would cover Uniform Act compliance on Federal-aid highway projects for a period of two years. The pilot program would be limited to the FDOT's Districts 2 and 4. District 2 includes the area encompassed by the counties of Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duvall, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam, St. Johns, Suwannee, Taylor, and Union. District 4 includes the area encompassed by the counties of Broward, Indian River, Martin, Palm Beach, and St. Lucie.

In its certification application the FDOT relies on the authority in sections 120.543 and 339.05 of the Florida statutes, and on the existing FDOT right-of-way procedures. The two statutory provisions grant the FDOT broad authority to comply with Federal (Uniform Act) requirements. The FDOT right-of-way procedures govern the FDOT's compliance with the provisions of the Uniform Act. Accordingly, if the certification pilot program is approved, it is anticipated that the level of benefits and assistance provided to property owners and displaced persons will remain virtually unchanged since the FDOT will continue to operate under the same State laws and procedures that currently govern its compliance with the Uniform Act. The primary changes are expected to be the elimination of FHWA approvals or oversight of Uniform Act implementation in the two FDOT districts and the simplified administration associated with the State operating under its own procedures.

If the certification pilot program is approved, the FHWA, under section 103(c) of the Uniform Act, could still withhold project approvals or rescind acceptance of the FDOT's certification if the FDOT failed to comply with the certification or with the State law upon which the certification was based.

In accordance with section 103(b)(3) of the Uniform Act, the FHWA is providing an opportunity for public review and comment before making a determination concerning the "purpose and effect" of such State laws. Following the expiration of the comment period the FHWA will make a determination concerning the purpose and effect of the applicable State laws, and will either approve or disapprove the FDOT certification request.

Authority: 42 U.S.C. 4604.

Issued on: August 3, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–19816 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

[Docket No. 95–61; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992 Volvo 740 GL and 940 GL Sedan and Wagon Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Volvo 740 GL and 940 GL Sedan and Wagon passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1992 Volvo 740 GL and 940 GL sedans and wagons that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 11, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1992 Volvo 740 GL and 940 GL sedans and wagons are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1992 Volvo 740 GL and 940 GL sedans and wagons that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1992 Volvo 740 GL and 940 GL sedans and wagons to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1992 Volvo 740 GL and 940 GL sedans and wagons, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1992 Volvo 740 GL and 940 GL sedans and wagons are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Level Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1992 Volvo 740 GL and 940 GL sedans and wagons comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that these vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarkers; (b) installation of U.S.-model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer; (b) installation of knee bolsters to augment the vehicles' air bag based passive restraint system, which otherwise conforms to the standard. The petitioner states that in addition to a driver's side air bag, the vehicles are equipped with side impact protection systems, with manual lap and shoulder belts in the front and rear outboard seating positions, and with a manual lap belt in the center seating positions.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 4, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19711 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–62; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1993 BMW 525i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 BMW 525i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 BMW 525i that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 11, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Northern California Diagnostic Laboratories, Inc. of Napa, California ("N.C.D.L.") (Registered Importer 92–011) has petitioned NHTSA to decide whether 1993 BMW 525i passenger cars are eligible for importation into the United States. The vehicle which N.C.D.L. believes is substantially similar is the 1993 BMW 525i that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Bayerische Motoren Werke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 BMW 525i to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

N.C.D.L. submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 BMW 525i, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 BMW 525i is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1993 BMW 525i complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 4, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–19712 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–59

Research and Special Programs Administration

International Standards on the Transport of Radioactive Materials; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA) Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to discuss issues to be considered at the International Atomic Energy Agency (IAEA) Technical Committee Meeting (TCM) on the safe transport of radioactive material to be held September 25–29, 1995 in Vienna, Austria.

DATES: September 19, 1995 at 9:30 a.m.

ADDRESSES: Room 4200, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard Boyle, Chief, Radioactive Materials Branch, Office of Hazardous Materials Technology, Department of Transportation, Washington, DC 20590; (202) 366–4545.

SUPPLEMENTARY INFORMATION: This TCM is the fourth and final meeting of the committee responsible for producing the 1996 edition of the IAEA's Regulations for the Safe Transport of Radioactive Material, Safety Series No. 6, and will serve as the final opportunity for the IAEA Member States to propose and discuss additions and deletions to the 1996 edition of the transportation regulations. A draft of the 1996 edition of the IAEA regulations was made available by RSPA for review and comment on April 11, 1995. Although any aspect of the revised regulations may be discussed, the primary task of this committee is to consider issues raised by industry and the public during the comment period and the proposals for amendment made by the two TCMs and two consultant services meetings which have been held since the committee last met in October of 1994.

The major issues on the agenda are:

1. The recommendations made the TCM on the development of transport regulations for radioactive material, TCM–946. Specifically, TCM–946 discussed issues relating to the development of radionuclide specific exemption quantities for radioactive materials in transport and the air transport of radioactive material in large quantities or with high activity.

2. The recommendations made by the TCM on improving individual Member State compliance with existing transport regulations, TCM–911. Specifically, TCM–911 discussed the issues relating to the quality assurance and quality compliance aspects of the regulations (Chapter 8).

3. The recommendations made by the consultant service meeting on the proper packaging and transport of uranium hexafluoride, CT–2430. Specifically, CT–2430 discussed proper performance criteria for packages containing uranium hexafluoride, proper handling and transportation requirements for uranium hexafluoride, and changes that needed to be made to the IAEA transportation regulations regarding uranium hexafluoride.

4. The recommendations made by the consultant service meeting on criticality safety during transport, CT–2452. Specifically, CT–2452 discussed proper criticality analysis techniques, regulatory exemptions for small quantities of fissile materials, and changes that needed to be made to the IAEA transportation regulations regarding criticality safety.

The public is invited to attend without prior notification.

DOCUMENTS: Copies of documents relating to the issues to be covered at the TCM are on file in RSPA's Dockets unit (Nassif Building, Room 8421) and may be viewed Monday—Friday from 8:00 a.m. to 4:30 p.m. Documents may also be ordered by contacting RSPA's Dockets Unit at (202) 366–4453.

Issued in Washington, DC, on August 4, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–19713 Filed 8–9–95; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Implementation of Executive Order No. 12959 With Respect to Iran

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice; publication of general licenses and general notices.

SUMMARY: The Office of Foreign Assets Control is publishing its interim general licenses and general notices issued through July 21, 1995, to implement recently imposed economic sanctions on Iran.

FOR FURTHER INFORMATION CONTACT: Regarding the issuance of licenses, Licensing Division (tel.: 202/622–2480); regarding banking and compliance questions, Compliance Programs Division (tel.: 202/622–2490); or, regarding legal questions, Chief Counsel's Office (tel.: 202/622–2410); Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 and type "/GO FAC" or call 202/512–1530 for disks or paper copies. This file is available for downloading in WordPerfect 5.1, ASCII, and Postscript formats. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem dial 703/321–3339, and select self–expanding file "T11FR00.EXE" in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

In Executive Order No. 12613 of October 29, 1987 (3 CFR, 1987 Comp., p. 256, 52 FR 41940), President Reagan imposed import sanctions against Iran, invoking the authority, *inter alia*, of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa–9 ("ISDCA"). In Executive Order 12957 of March 15, 1995 (60 FR 14615, March 17, 1995), President Clinton declared a national emergency with respect to the actions and policies of the Government of Iran, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701–06 ("IEEPA"). The President substantially supplemented and amended the sanctions in those orders in Executive Order 12959 of May 6, 1995 (60 FR 24757, May 9, 1995), invoking the authority, *inter alia*, of IEEPA and ISDCA. In the Executive orders, the President imposed specified sanctions against Iran, and authorized the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as might be necessary to carry out the purposes of those orders.

The Office of Foreign Assets Control is publishing its interim general licenses and general notices issued through July 21, 1995, to provide guidance to the public on its interpretation of Executive Order 12959. Whenever possible, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document. Any interested person may write the Director of the Office of Foreign Assets Control at the above address to make comments or suggestions with respect to the general licenses and general notices printed below.

GENERAL LICENSE NO. 1

30–Day Delayed Effective Date for Pre–May 7, 1995 Trade Contracts Involving Iran

(a) All transactions necessary to complete performance of a trade contract entered into prior to May 7, 1995, and involving Iran (a "pre–existing trade contract"), including the exportation of goods, services (including financial services), or technology from the United States that were authorized pursuant to Federal regulations in force immediately prior to May 7, 1995, or performance under a contract for transactions in Iranian–origin or Iranian government–owned or controlled goods or services not involving importation into the United States, are authorized without specific licensing by the Office of Foreign Assets Control ("OFAC") if the conditions in subsection (a)(1) or subsection (a)(2) are met:

(1) If the pre–existing trade contract is for exportation of goods or technology from the United States that were authorized pursuant to Federal regulations in force immediately prior to May 7, 1995, the goods or technology must be exported from the United States prior to 12:01 a.m. EDT, June 6, 1995, and all other activity by U.S. persons that is necessary and incidental to the performance of the pre–existing trade contract (other than payment under a financing contract) must be completed prior to 12:01 a.m. EDT, August 6, 1995; or

(2) If the pre–existing trade contract is for:

(i) The provision of services benefitting a person in Iran, the Government of Iran, or an entity owned or controlled by the Government of Iran, or

(ii) The reexportation of goods or technology to Iran, the Government of Iran, or an entity owned or controlled by the Government of Iran that were authorized pursuant to Federal regulations in force immediately prior to May 7, 1995, or

(iii) Transactions relating to goods or services of Iranian origin or owned or controlled by the Government of Iran other than transactions relating to importation into the United States of such goods or services,

all obligations under the pre–existing trade contract must be fully completed prior to 12:01 a.m. EDT, June 6, 1995.

(b) In order to complete performance of a pre–existing trade contract, and consistent with section 8(a) of Executive Order 12959, the arrangement or renegotiation of contracts for transactions necessary and incidental to performance of the pre–existing trade contract is authorized. Such incidental transactions may include, for example, financing, shipping and insurance arrangements. Amendments to pre–existing trade contracts for the purpose of accelerating a previously–specified delivery schedule under a contract for a fixed quantity or value of goods, technology or services, or curtailing or cancelling required performance, are authorized without specific licensing. Any other alteration of the trade contract must be specifically licensed by OFAC.

(c) The existence of a contract will be determined with reference to the principles contained in Article 2 of the Uniform Commercial Code.

(d) No U.S. person may change its policies or operating procedures in order to enable a foreign entity owned or controlled by U.S. persons to enter into a transaction that could not be entered into directly by a U.S. person located in the United States pursuant to Executive Order 12959.

Issued: May 19, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 2

Payment and U.S. Dollar Clearing Transactions Involving Iran

[**Note:** The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995—the "Order"). Section 1(b) of the Order prohibits the exportation of services (including financial services) to Iran. This general license provides guidance to U.S. banking institutions for the transfer of funds not involving accounts of persons located in Iran, the Government of Iran, or entities owned or controlled by the Government of Iran maintained on the books of a U.S. banking institution ("Iranian Accounts"). Iranian Accounts must be operated in accordance with General License No. 3, issued contemporaneously with this license.

Transfer instructions directing the movement of funds or the performance of other banking services that would directly or indirectly benefit persons in Iran or the Government of Iran are requests for the exportation of services. Such services may not be performed by a U.S. banking institution, and thus the transfer instructions must be rejected, unless the transfer is authorized by the general license below or by a specific or another general license issued by the Office of Foreign Assets Control ("OFAC"). Pursuant to section 8(a)(i) of the Order, contracts for the provision of financial services in force on May 6, 1995 (including the account contracts for Iranian Accounts) may continue to be performed through 12:01 a.m. EDT, June 6, 1995.]

(a) United States banking institutions ("U.S. banking institutions") are authorized to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran, the Government of Iran, or entities owned or controlled by the Government of Iran, if the transfer is covered in full by any of the following conditions and does not involve debiting or crediting an Iranian Account:

(1) The transfer arises from an underlying transaction that is not prohibited by or not subject to the Order (such as a third–country transaction not involving a United States person or not otherwise prohibited by the Order); or

(2) The transfer arises from an underlying transaction that has been authorized by a specific or general license issued by the Office of Foreign Assets Control; or

(3) The transfer arises from an underlying transaction that is exempted from regulation pursuant to section 203(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1702(b), such as an exportation of information or informational materials to Iran, a travel–related remittance, or payment for the shipment of a donation of articles to relieve human suffering; or

(4) The transfer is a non–commercial remittance to or from Iran, such as a family remittance not related to a family–owned enterprise.

(b) Before a U.S. banking institution initiates a payment subject to the Order on behalf of a customer, or credits a transfer subject to the Order to the account on its books of the ultimate beneficiary, the U.S. banking institution must determine that the transfer is not prohibited by the Order.

(c) Pursuant to the prohibitions in section 1(f) of the Order, a United States banking institution may not make transfers to or for the benefit of a foreign–organized entity owned or controlled by it if the underlying transaction would be prohibited if engaged in directly by the U.S. banking institution.

(d) This general license does not authorize transactions with respect to property blocked pursuant to residual provisions of the Iranian Assets Control Regulations, 31 C.F.R. Part 535.

(e) For the purposes of this general license:

(1) The term "United States banking institution" or "U.S. banking institution" means:

(i) Any entity organized under the laws of any jurisdiction within the United States (including its foreign branches), and

(ii) Any agency, office, or branch located in the United States of a foreign entity,

that is engaged primarily in the business of banking, including accepting deposits and making, granting, transferring, holding, or brokering loans or credits. The term includes, among others, depository institutions, banks, savings banks, savings associations, mortgage companies, credit unions, and trust companies;

(2) The term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States, and vessels and aircraft of U.S. registration.

For further information concerning this general license contact the Compliance Programs Division of the Office of Foreign Assets Control at (202)622–2490.

Issued: June 1, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 3

Exportation of Services: Iranian Accounts at U.S. Financial Institutions

[**Note:** The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995).]

(a) Until 12:01 a.m. EDT, June 6, 1995, U.S. financial institutions are authorized to perform services with respect to accounts held on their books for persons located in Iran, the Government of Iran, or entities owned or controlled by the Government of Iran, pursuant to contracts in force as of May 6, 1995 ("Iranian Accounts").

(b) After 12:01 a.m. EDT, June 6, 1995, U.S. financial institutions are prohibited from performing services with respect to Iranian Accounts at the instruction of the Government of Iran, entities owned or controlled by the Government of Iran, and persons located in Iran, except that U.S. financial institutions are authorized to provide and be compensated for services and incidental transactions with respect to:

(1) The maintenance of Iranian Accounts, including the payment of interest and the debiting of service charges,

(2) The processing of transfers arising from underlying transactions that are exempted from regulation pursuant to section 203(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1702(b), such as an exportation of information or informational materials to Iran, a travel–related remittance, or payment for the shipment of a donation of articles to relieve human suffering, and

(3) At the request of the account party, the closing of Iranian Accounts and the lump sum transfer only to the account party of all remaining funds and other assets in the account.

(c) Specific licenses may be issued with respect to the operation of Iranian Accounts that constitute accounts of:

(1) Foreign government missions and their personnel in Iran, or

(2) Missions of the Government of Iran in the United States.

(d) For the purposes of this general license the term "United States financial institution" means:

(1) Any entity organized under the laws of any jurisdiction within the United States (including its foreign branches), and

(2) Any agency, office, or branch located in the United States of a foreign entity,

that is engaged primarily in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. The term includes, among others, depository institutions, banks, savings banks, savings associations, mortgage companies, credit unions, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, insurance companies, credit card issuers, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing.

For further information concerning this general license contact the Compliance Programs Division of the Office of Foreign Assets Control at (202)622–2490.

Issued: June 1, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

ANNEX TO GENERAL LICENSE NO. 3

Banks Controlled by the Government of Iran

The following banks have been determined to be owned or controlled by the Government of Iran:

AGRICULTURAL COOPERATIVE BANK OF IRAN (a.k.a. BANK TAAVON KESHAVARZI IRAN), No. 129 Patrice Lumumba Street, Jalal–Al–Ahmad Expressway, P.O. Box 14155/6395, Tehran, Iran

AGRICULTURAL DEVELOPMENT BANK OF IRAN (a.k.a. BANK JOSIAIYI KESHAHVARZI), Farahzad Expressway, Tehran, Iran

BANK JOSIAIYI KESHAHVARZI (a.k.a. AGRICULTURAL DEVELOPMENT BANK OF IRAN), Farahzad Expressway, Tehran, Iran

BANK MARKAZI JOMHOURI ISLAMI IRAN (a.k.a. THE CENTRAL BANK OF IRAN), Ferdowsi Avenue, P.O. Box 11365–8551, Tehran, Iran

BANK MASKAN (a.k.a. HOUSING BANK (of Iran)), Ferdowsi St., Tehran, Iran

BANK MELLAT, Park Shahr, Varzesh Avenue, P.O. Box 11365/5964, Tehran, Iran, and all offices worldwide, including, but not limited to:

BANK MELLAT (Branch), Ziya Gokalp Bulvari No. 12, Kizilay, Ankara, Turkey

BANK MELLAT (Branch), Binbir Cicek Sokak, Buyukdere Caddesi, P.O. Box 67, Levant, Istanbul, Turkey

BANK MELLAT (Branch), 48 Gresham Street, London EC2V 7AX, England

BANK MELLI, P.O. Box 11365–171, Ferdowsi Avenue, Tehran, Iran, and all offices worldwide, including, but not limited to:

BANK MELLI (Branch), 4 Moorgate, London EC2R 6AL, England

BANK MELLI (Branch), Schadowplatz 12, 4000 Dusseldorf 1, Germany

BANK MELLI (Branch), Friedenstrasse 4, P.O. Box 160 154, 6000 Frankfurt am Main, Germany

BANK MELLI (Branch), P.O. Box 112129, Holzbruecke 2, 2000 Hamburg 11, Germany

BANK MELLI (Branch), Odeonsplatz 18, 8000 Munich 22, Germany

BANK MELLI (Branch), 43 Avenue Montaigne, 75008 Paris, France

BANK MELLI (Branch), 601 Gloucester Tower, The Landmark, 11 Pedder Street, P.O. Box 720, Hong Kong

BANK MELLI (Representative Office), 333 New Tokyo Building, 3–1 Marunouchi, 3–chome, Chiyoda–ku, Tokyo, Japan

BANK MELLI (Agency), 818 Wilshire Boulevard, Los Angeles, California 90017, U.S.A.

BANK MELLI (Agency), 767 Fifth Avenue, 44th Floor, New York, New York 10153, U.S.A.
BANK MELLI (Representative Office), Smolensky Boulevard 22/14, Kv. S., Moscow, Russia
BANK MELLI (Branch), Flat No. 1, First Floor, 8 Al Sad El–Aaly, Dokki, P.O. Box 2654, Cairo, Egypt
BANK MELLI (Branch), Ben Yas Street, P.O. Box No. 1894, Riga Deira, Dubai, U.A.E.
BANK MELLI (Branch), P.O. Box 2656, Shaikha Maryam Building, Liwa Street, Abu Dhabi, U.A.E.
BANK MELLI (Branch), B.P.O. Box 1868, Clock Tower, Industrial Road, Al–Ain Club Building in from Emertel Al Ain, Al Ain, Abu Dhabi, U.A.E.
BANK MELLI (Branch), P.O. Box 1894, Riqa, Ban Yas Street, Deira, Dubai, U.A.E.
BANK MELLI (Branch), Mohd–Habib Building, Al–Fahidi Street, P.O. Box 3093, Bur Dubai, Dubai, U.A.E.
BANK MELLI (Branch), P.O. Box 248, Fujairah, U.A.E.
BANK MELLI (Branch), Sami Sagar Building Oman Street Al–Nakheel, P.O. Box 5270, Ras–Al Khaimah, U.A.E.
BANK MELLI (Branch), P.O. Box 459, Al Bory Street, Sharjah, U.A.E.
BANK MELLI (Branch), P.O. Box 785, Government Road, Shaikh Mubarak Building, Manama, Bahrain
BANK MELLI (Branch), P.O. Box 23309, Shaikh Salman Street, Road No. 1120, Muharraq 211, Bahrain
BANK MELLI (Branch), P.O. Box 5643, Mossa Abdul Rehman Hassan Building, 238 Al Burj St., Ruwi, Muscat, Oman
BANK OF INDUSTRY AND MINE (of Iran) (a.k.a. BANK SANAT VA MADAN), Hafez Avenue, P.O. Box 11365/4978, Tehran, Iran
BANK REFAH KARGARAN (a.k.a. WORKERS WELFARE BANK (of Iran)), Moffettah No. 125, P.O. Box 15815 1866, Tehran, Iran
BANK SADERAT IRAN, Bank Saderat Tower, P.O. Box 15745–631, Somayeh Street, Tehran, Iran, and all offices worldwide, including, but not limited to:
BANK SADERAT IRAN (Branch), Hamdam Street, Airport Road Intersection, P.O. Box 700, Abu Dhabi, U.A.E.
BANK SADERAT IRAN (Branch), Al–Am Road, P.O. Box 1140, Al Ein, Abu Dhabi, U.A.E.
BANK SADERAT IRAN (Branch), Liwara Street, P.O. Box 16, Ajman, U.A.E.
BANK SADERAT IRAN (Branch), 3rd Floor Dom Dasaf Building, Mejloka Street 7A, Ashkhabad, Turkmenistan
BANK SADERAT IRAN (Branch), 25–29 Panepistimiou Street, P.O. Box 4308, GR–10210, Athens 10672, Greece
BANK SADERAT IRAN (Branch), Imam Ali Street, Sahat Yaghi, Ras Elain–Alektisad Building 2nd Floor, Baalbeck, Lebanon
BANK SADERAT IRAN (Branch and Offshore Banking Unit), 106 Government Road, P.O. Box 825, Manama Town 316, Bahrain
BANK SADERAT IRAN (Branch), Hamra Pavillion Street, Savvagh and Daaboul Building 1st Floor, P.O. Box 113–6717, Beirut, Lebanon
BANK SADERAT IRAN (Branch), Alghobairi Boulevard, Beirut, Lebanon
BANK SADERAT IRAN (Branch), 28 Sherif Street, P.O. Box 462, Cairo, Egypt
BANK SADERAT IRAN (Branch), Old Ben–Ghanem Street (next to God Market), P.O. Box 2256, Doha, Qatar
BANK SADERAT IRAN (Branch), Almaktoum Road, P.O. Box 4182, Deira, Dubai, U.A.E.
BANK SADERAT IRAN (Branch), Bazar Murshid, P.O. Box 4182, Deira, Dubai, U.A.E.
BANK SADERAT IRAN (Branch), Alfahid Road, P.O. Box 4182, Bur Dubai, Dubai, U.A.E.
BANK SADERAT IRAN (Branch), Sherea Shekikh Zayad Street, P.O. Box 55, Fujairah, U.A.E.
BANK SADERAT IRAN (Branch), Wilhelm Leuschner Strasse 41, P.O. Box 160151, W–6000 Frankfurt am Main, Germany
BANK SADERAT IRAN (Branch), P.O. Box 112227, Hopfenhof Passage, Kleiner Bustah 6–10, W–2000 Hamburg 11, Germany
BANK SADERAT IRAN (Branch), Lothbury, London EC2R 7HD, England
BANK SADERAT IRAN (Representative Office), 707 Wilshire Boulevard, Suite 4880, Los Angeles, California 90017, U.S.A.
BANK SADERAT IRAN (Agency), 375 Park Avenue, New York, New York 10152, U.S.A.
BANK SADERAT IRAN (Branch), P.O. Box 4269, Mutrah, Muscat, Oman
BANK SADERAT IRAN (Branch), 16 rue de la Paix, Paris 2eme, 75002 Paris, France
BANK SADERAT IRAN (Branch), Alarobe Road, P.O. Box 316, Sharjah, U.A.E.
BANK SANAT VA MADAN (a.k.a. BANK OF INDUSTRY AND MINE (of Iran)), Hafez Avenue, P.O. Box 11365/4978, Tehran, Iran
BANK SEPAH, Emam Khomeini Square, P.O. Box 11364, Tehran, Iran, and all offices worldwide, including, but not limited to:
BANK SEPAH (Branch), Muenchener Strasse 49, P.O. Box 10 03 47, W–6000 Frankfurt am Main 1, Germany
BANK SEPAH (Branch), 5/7 Eastcheap, EC3M 1JT London, England
BANK SEPAH (Branch), 650 Fifth Avenue, New York, New York 10019, U.S.A.
BANK SEPAH (Branch), 17 Place Vendome, 75001 Paris, France.
BANK SEPAH (Branch), Via Barberini 50, 00187 Rome, Italy
BANK SEPAH (Representative Office), Ufficio di Rappresentan Za, Via Ugo Foscolo 1, 20121 Milan, Italy
BANK TAAVON KESHAVARZI IRAN (a.k.a. AGRICULTURAL COOPERATIVE BANK OF IRAN) No. 129 Patrice Lumumba Street, Jalal–Al–Ahmad Expressway, P.O. Box 14155/6395, Tehran, Iran
BANK TEJARAT, 130 Taleghani Avenue, Nejatoullahie, P.O. Box 11365–5416, Tehran, Iran, and all offices worldwide, including, but not limited to:
BANK TEJARAT (Branch), 6/8 Clements Lane, London EC4N 7AP, England
BANK TEJARAT (Branch), 44 Avenue des Champs Elysees, 75008 Paris, France
DEUTSCH–IRANISCHE HANDELSBANK AG (n.k.a. EUROPAEISCH–IRANISCHE HANDELSBANK AG) Depenau 2, W–2000 Hamburg 1, Germany, and all offices worldwide, including, but not limited to:
DEUTSCH–IRANISCHE HANDELSBANK AG (n.k.a. EUROPAEISCH–IRANISCHE HANDELSBANK AG) (Representative Office), 23 Argentine Square, Beihaghi Bulvard, P.O. Box 15815/1787, Tehran 15148, Iran
EUROPAEISCH–IRANISCHE HANDELSBANK AG (f.k.a. DEUTSCH–IRANISCHE HANDELSBANK AG) Depenau 2, W–2000 Hamburg 1, Germany, and all offices worldwide, including, but not limited to:
EUROPAEISCH–IRANISCHE HANDELSBANK AG (f.k.a. DEUTSCH–IRANISCHE HANDELSBANK AG) (Representative Office), 23 Argentine Square, Beihaghi Bulvard, P.O. Box 15815/1787, Tehran 15148, Iran
HOUSING BANK (of Iran) (a.k.a. BANK MASKAN), Ferdowsi St., Tehran, Iran
IRAN OVERSEAS INVESTMENT BANK LIMITED (f.k.a. IRAN OVERSEAS INVESTMENT CORPORATION LIMITED), 120 Moorgate, London EC2M 6TS, England, and all offices worldwide, including, but not limited to:
IRAN OVERSEAS INVESTMENT BANK LIMITED (Representative Office), 1137 Avenue Vali Asr off Park–e–SAll, P.O. Box 15115/531, Tehran, Iran
IRAN OVERSEAS INVESTMENT BANK LIMITED (Agency), Suite 3c Olympia House, 61/63 Dame Street, Dublin 2, Ireland
IRAN OVERSEAS INVESTMENT BANK LIMITED (Agency), Improgetti, Via Germanico 24, 00192 Rome, Italy
IRAN OVERSEAS TRADING COMPANY LIMITED (Subsidiary), 120 Moorgate, London EC2M 6TS, England
IRAN OVERSEAS INVESTMENT CORPORATION LIMITED (n.k.a. IRAN OVERSEAS INVESTMENT BANK LIMITED), 120 Moorgate, London EC2M 6TS, England
THE CENTRAL BANK OF IRAN (a.k.a. BANK MARKAZI JOMHOURI ISLAMI IRAN), Ferdowsi Avenue, P.O. Box 11365–8551, Tehran, Iran
WORKERS WELFARE BANK (of Iran) (a.k.a. BANK REFAH KARGARAN), Moffettah No. 125, P.O. Box 15815 1866, Tehran, Iran

GENERAL LICENSE NO. 4

Transactions in Iranian–Origin and Iranian Government Property

[Note: The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995—the "Order").]

(a) Except for transactions involving the Government of Iran or an entity owned or controlled by the Government of Iran, all domestic transactions with respect to Iranian–origin goods located in the United States are authorized, provided that this paragraph (a) does not affect the status of property blocked pursuant to 31 C.F.R. Part 535 or detained or seized, or subject to detention or seizure, pursuant to 31 C.F.R. Part 560 or the Order.

(b) All transactions necessary and incidental to a U.S. person's disposition of goods or services of Iranian origin or owned or controlled by the Government of Iran that are located or to be performed outside the United States and were acquired by that U.S. person in transactions not prohibited by 31 C.F.R. Part 535 or Part 560, or by the Order, are authorized, provided:

(1) The disposition does not result in the importation of such goods or services into the United States, and

(2) The disposition is completed no later than 12:01 a.m. EDT, August 6, 1995.

(c) Except as provided in paragraph (a), after 12:01 a.m. EDT, June 6, 1995, U.S. persons may not deal in goods or services of Iranian origin or owned or controlled by the Government of Iran, except that the following transactions are authorized:

(1) Transactions by a U.S. person with third–country nationals incidental to the storage and maintenance in third countries of Iranian–origin goods owned prior to May 7, 1995, by that U.S. person or acquired thereafter by that U.S. person consistent with the provisions of the Order;

(2) Exportation of Iranian–origin household and personal effects from the United States incident to the relocation of U.S. persons outside the United States;

(3) Importation of Iranian–origin household and personal effects, including baggage and articles for family use, of persons arriving in the United States; to qualify, articles included in such effects must have been actually used by such persons or their family members abroad, must not be intended for any other person or for sale, and must not be otherwise prohibited from importation;

(4) Purchase for personal use or consumption in Iran of Iranian–origin goods or services; and

(5) Transactions authorized pursuant to Subpart E of 31 C.F.R. Part 560, except that importations after 12:01 a.m. EDT, June 6, 1995, pursuant to authorizations contained in §§ 560.503 ("Importation pursuant to prior contractual agreements"), 560.504 ("Iranian goods in third countries prior to effective date"), and 560.514 ("Importation of household effects and personal goods authorized") are hereby prohibited.

(d) In addition to transactions authorized by paragraph (c)(1) of this general license, a U.S. person is authorized after 12:01 a.m. EDT, June 6, 1995, to use or dispose of Iranian–origin household and personal effects that are located outside the United States and that have been acquired by the U.S. person in transactions not prohibited by 31 C.F.R. Part 560 or the Order.

Issued: June 3, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 5

Exportation and Importation of Information and Informational Materials

[Note: The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995).]

(a) The exportation to Iran of information and informational materials, whether commercial or otherwise, regardless of format or medium of transmission, is exempt from the prohibitions contained in Executive Order 12959.

(b) The importation of information and informational materials of Iranian origin from any location, whether commercial or otherwise, regardless of format or medium of transmission, is authorized.

(c) All financial and other transactions related to the importation or exportation of information and informational materials are authorized.

(d) Specific licenses may be issued on a case–by–case basis for the exportation of equipment necessary for the establishment of news wire feeds or other transmissions of information or informational materials.

(e) For the purposes of this general license:

(1) The term informational materials includes, without limitation:

(i) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artwork and news wire feed;

(ii) To be considered informational materials, artwork must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States;

(2) The terms information and informational materials with respect to U.S. exports do not include items:

(i) That would be controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1993) (the "EAA"), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, including "software" that is not "publicly available" as these terms are defined in 15 CFR Parts 779 and 799.1 (1994); or

(ii) With respect to which acts are prohibited by 18 U.S.C. chapter 37; and

(3) The terms "information" and "informational materials" do not include blank media for the recording of information.

Issued: June 14, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 6

Diplomatic Pouches

[Note: The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order No. 12959 of May 6, 1995 (60 FR 24757, May 9, 1995).]

All transactions in connection with the importation into the United States from Iran, or the exportation from the United States to Iran, of diplomatic pouches and their contents are authorized.

Issued: June 14, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 7

Policy Governing News Organization Offices

[Note: The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995).]

(a) Specific licenses may be issued authorizing transactions necessary for the establishment and operation of news bureaus in Iran by U.S. organizations whose primary purpose is the gathering and dissemination of news to the general public.

(b) Transactions that will be authorized include but are not limited to those incident to the following:

(1) Leasing office space and securing related goods and services;

(2) Hiring support staff;

(3) Purchasing Iranian–origin goods for use in the operation of the office; and

(4) Paying fees related to the operation of the office in Iran.

(c) Specific licenses may be issued authorizing transactions necessary for the establishment and operation of news

bureaus in the United States by Iranian organizations whose primary purpose is the gathering and dissemination of news to the general public.

(d) The number assigned to such specific licenses should be referenced in all import and export documents and in all funds transfers and other banking transactions through banking institutions organized or located in the United States in connection with the licensed transactions to avoid disruption of the trade and financial transactions.

Issued: June 14, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 8

Exportation of Agricultural Commodities

[Note: The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995).]

(a) All transactions by U.S. persons in connection with the exportation from the United States to Iran of any agricultural commodity under an export sales contract are authorized, provided (1) such contract was entered into prior to 12:01 a.m. EDT, May 7, 1995, and (2) the terms of such contract require delivery of the commodity prior to February 2, 1996. The performance of letters of credit and other financing agreements with respect to exports authorized by this general license is authorized pursuant to their terms.

(b) For purposes of this general license, the term "agricultural commodity" shall be defined as feed grains, rice, wheat, cotton, peanuts, tobacco, dairy products, and oilseeds (including vegetable oil).

(c) Specific licenses may be granted on a case–by–case basis for transactions by U.S. persons in connection with the exportation of other agricultural articles from the United States to Iran that do not fall within the definition of "agricultural commodity" contained in paragraph (b) of this general license, provided such exportation is pursuant to an export sales contract and the conditions set forth in paragraphs (a)(1) and (a)(2) of this general license are met.

Issued: June 14, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 9

Iranian Government Missions in the United States

[Note: The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995).]

(a) All transactions ordinarily incident to the importation of goods or services into the United States by, the exportation of goods or services from the United States by, or the provision of goods or services in the United States to, the missions of the government of Iran to international organizations in the United States, and Iranians admitted to the United States under section 101(a)(15)(G) of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101(a)(15)(G), are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the mission, or for personal use personnel admitted to the U.S. under INA section 101(a)(15)(G), and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(b) All transactions ordinarily incident to the importation of goods or services into the United States by, the exportation of goods or services from the United States by, or the provision of goods or services in the United States to, the Iranian Interests Section of the Embassy of Pakistan (or any successor protecting power) in the United States, are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the Interests Section, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

(c) All transactions ordinarily incident to the provision of goods or services in the United States to the employees of Iranian missions to international organizations in the United States, and to employees of the Iranian Interests Section of the Embassy of Pakistan (or any successor protecting power) in the United States, are authorized, provided that the transaction is not otherwise prohibited by law.

Issued: June 14, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 10

Transactions Related to the Resolution of Disputes Between the United States or United States Nationals and the Government of Iran

[Note: The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995—the "Order"). Section 1 of the Order contains prohibitions on transactions with respect to Iran that are applicable except to the extent provided in regulations, orders, directives or licenses that may be issued pursuant to the Order. At the time of signing the Order, the President directed the Secretary of the Treasury to authorize through licensing, *inter alia*, "transactions by United States persons related to the Iran–U.S. Claims Tribunal in The Hague, established pursuant to the Algiers Accords, and other international obligations and United States government functions." This general license provides a policy statement concerning transactions that will be licensed related to the resolution of disputes between the Government of Iran and the United States or United States nationals at the Iran–U.S. Claims Tribunal, other international tribunals, and domestic courts in the United States and abroad.]

(a) Specific licenses may be issued on a case–by–case basis to authorize transactions in connection with awards, decisions or orders of the Iran–U.S. Claims Tribunal, the International Court of Justice, or other international tribunals (collectively, "tribunals"); agreements settling claims brought before tribunals; and awards, orders, or decisions of an administrative, judicial or arbitral proceeding in the United States or abroad, where the proceeding involves the enforcement of awards, decisions or orders of tribunals, or is contemplated under an international agreement, or involves claims arising before 12:01 a.m. EDT, May 7, 1995, that resolve disputes between the Government of Iran and the United States or United States nationals, including the following transactions:

(1) Importation into the United States of, or any transaction related to, goods and services of Iranian origin or owned or controlled by the Government of Iran;

(2) Exportation or reexportation to Iran, the Government of Iran, or an entity owned or controlled by the Government of Iran of any goods, technology, or services, except to the extent that such exportation or reexportation is also subject to export licensing application requirements of another agency of the United States Government and the granting of such a license by that agency would be prohibited by law;

(3) Financial transactions related to the resolution of disputes at tribunals, including transactions related to the funding of proceedings or of accounts related to proceedings or to a tribunal; participation, representation, or testimony before a tribunal; and the payment of awards of a tribunal; and

(4) Other transactions otherwise prohibited by the Order necessary to permit implementation of the foregoing awards, decisions, orders, or agreements.

(b) Specific licenses may be issued on a case–by–case basis to authorize payment of costs related to the storage or maintenance of goods in which the Government of Iran or an entity owned or controlled by the Government of Iran has title, and to authorize the transfer of title to such goods, provided that such goods were in the United States on the effective date of the Order and that such goods are the subject of a proceeding pending before a tribunal.

(c) Section 560.513 of title 31 of the Code of Federal Regulations remains in force.

(d)(1) All transactions are authorized with respect to the importation of goods and services necessary to the initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals.

(2) Specific licenses may be issued on a case–by–case basis to authorize the exportation of goods and services necessary to the initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before tribunals, except to the extent that the exportation is also subject to export licensing application requirements of another agency of the United States Government and the granting of such a license by that agency would be prohibited by law.

For further information concerning this statement of licensing policy, contact the Licensing Division of the Office of Foreign Assets Control at 202/622–2480.

Issued: June 22, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 11

Exportation of Household Goods and Personal Effects to Iran

[Note: The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995).]

The exportation from the United States to Iran of household and personal effects, including baggage and articles for family use, of persons departing the United States to relocate in Iran is authorized provided the articles included in such effects have been actually used by such persons or their family members, are not intended for any other person or for sale, and are not otherwise prohibited from exportation.

Issued: July 21, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL LICENSE NO. 12

Exportation of Legal Services

[Note: The following general license is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995 – the "Order"). The prohibition on the exportation of services contained in section 1(b) of the Order applies to services performed in the United States, or outside the United States by an individual United States person ordinarily resident in the United States or by the overseas branch of an entity located in the United States, and where the services are performed on behalf of a person in Iran or the Government of Iran or where the benefit of such services is otherwise received in Iran. The benefit of services performed anywhere in the world on behalf of the Government of Iran, including services performed for a controlled entity or a specially designated national of the Government of Iran, is presumed to be received in Iran. For example, United States persons may not, without authorization from the Office of Foreign Assets Control in the form of a specific or general license, provide legal representation to the Government of Iran or a person in Iran with respect to contract negotiations, contract performance, or other business dealings. The following general license authorizes the performance of certain legal services.]

(a) The provision of the following legal services to the Government of Iran or to a person in Iran, and receipt of payment therefor, are authorized:

(1) The provision of legal advice and counseling to the Government of Iran or to a person in Iran on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counselling is not provided to facilitate transactions in violation of the Order;

(2) The representation of the Government of Iran or of a person in Iran when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(3) The initiation of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests of the Government of Iran that were in existence prior to May 7, 1995, or acquired thereafter in a transaction not inconsistent with the Order;

(4) The representation of the Government of Iran or a person in Iran before any federal or state agency with respect to the imposition, administration, or enforcement of United States sanctions against Iran;

(5) The initiation and conduct of legal proceedings, in the United States or abroad, including administrative, judicial and arbitral proceedings and proceedings before international tribunals (including the Iran–U.S. Claims Tribunal and the International Court of Justice):

(i) To resolve disputes between the Government of Iran and the United States or a United States national;

(ii) Where the proceeding is contemplated under an international agreement; or

(iii) Where the proceeding involves the enforcement of awards, decisions, or orders resulting from such legal proceedings,

provided that any transaction, unrelated to the provision of legal services or the payment therefor, that is necessary or related to the execution of an award, decision or order resulting from such legal proceeding, or otherwise necessary to the conduct of such proceeding, shall require a specific license in accordance with General License No. 10;

(6) The provision of legal advice and counselling to the Government of Iran or to a person in Iran in connection with settlement or other resolution of matters described in paragraph (5) of this general license; and

(7) The provision of legal services in any other context in which prevailing United States law requires access to legal counsel at public expense.

(b) The provision of any other legal services to a person in Iran or the Government of Iran requires the issuance of a specific license.

Issued: July 21, 1995
R. Richard Newcomb,
Director, Office of Foreign Assets Control.

GENERAL NOTICE NO. 1

Applications for Limited Time Extension to Perform Transactions, Including Exportation

The President, by Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995—the "Order"), prohibited trade–related transactions with Iran, including the exportation from the United States of all goods, services, and technology, with certain limited exceptions, to Iran, the Government of Iran ("GOI"), or to any entity owned or controlled by the GOI, or the financing of any such prohibited exportation. General License No. 1, issued May 19, 1995, describes those transactions involving Iran which, pursuant to section 8 of the Order, have a delayed effective date of 12:01 am EDT, June 6, 1995, or which are authorized in connection with those transactions. The 30–day period from the date of the signing of the Order to the effective date for such pre–existing trade transactions involving exportation permitted U.S. persons to perform on their pre–May 7 trade contracts while terminating future binding trade obligations with respect to Iran.

This General Notice No. 1 describes how a person may request additional time for the performance of a pre–May 7 trade contract by submitting a letter providing the information specified below. Specific licenses are being granted on a case–by–case to permit wind–down performance of pre–May 7 trade contracts through a final deadline of 12:01 a.m. EDT, August 6, 1995. For agricultural commodities, see General License No. 8, issued June 14, 1995.

The license application should include:

- Identity of the parties to the trade contract;
- Description in detail of the subject goods;
- Description of the trade contract, including the date on which the trade contract became binding;
- Description of the financing arrangements; and
- Explanation of why an extension is requested.

Applications should be addressed to: Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220. Telephone inquiries may be made to the Licensing Division at (202) 622–2480.

Issued: June 28, 1995

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

GENERAL NOTICE NO. 2

Payment of Letters of Credit by U.S. Agencies of Iranian Banks

[**Note:** The following general notice is issued pursuant to the authority delegated to the Secretary of the Treasury in Executive Order 12959 of May 6, 1995, 60 FR 24757 (May 9, 1995).]

The Office of Foreign Assets Control has issued authorizations that enable Bank Melli Iran New York Agency, Bank Melli Iran Los Angeles Agency, Bank Saderat Iran New York Agency and Bank Sepah Iran New York Agency (the "Agencies") through December 29, 1995 to complete transactions for U.S. exporters involving letters of credit which they issued, confirmed, or advised. Any letter of credit issued, confirmed, or advised by an Agency may be paid by that Agency, provided that the letter of credit was issued, confirmed, or advised prior to June 6, 1995 and that the underlying export was completed in accordance with the terms of General License No. 1 or a specific license issued to the exporter by the Office of Foreign Assets Control. In addition, the Agencies have been authorized to offer discounted advance payments on deferred payment letters of credit which they issued, confirmed, or advised provided they meet the above criteria.

Issued: July 14, 1995

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Dated: July 21, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 26, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 95–19832 Filed 8–7–95; 5:03 pm]

BILLING CODE 4810–25–F

Sunshine Act Meetings

Federal Register

Vol. 60, No. 154

Thursday, August 10, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 10, 1995, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

1. Flood Insurance [12 CFR Part 614] (Proposed Rule)

Dated: August 7, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–19843 Filed 8–7–95; 4:51 pm]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 95–19276.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 10, 1995; at 10:00 a.m. Meeting Open to the Public.

This meeting has been canceled.

DATE AND TIME: Tuesday, August 15, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 17, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995–24: Robert Palmer, Ph.D.
Advisory Opinion 1995–26: Senator Frank H. Murkowski
Regulations:
MCFL Regulations: Revised Rules on Candidate Appearances, Facilitation, Endorsements, Voter Guides and Meeting Rooms (11 C.F.R. §§ 114.2(f), 114.3(c), 114.4 (b) & (c), and 114.12)).
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–19957 Filed 8–8–95; 3:27 pm]

BILLING CODE 6715–01–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:30 a.m., August 28, 1995.

PLACE: On board *Mississippi V* at the Ferry Landing, Hickman, KY.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

TIME AND DATE: 9:00 a.m., August 29, 1995.

PLACE: On board *Mississippi V* at City Front, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

TIME AND DATE: 9:00 a.m., August 30, 1995.

PLACE: On board *Mississippi V* at Port Rosedale, Rosedale, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

TIME AND DATE: 8:30 a.m., September 1, 1995.

PLACE: On board *Mississippi V* at Tecbe-Vermilion Pumping Plant, Krotz Springs, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Noel D. Caldwell, telephone 601–634–5766.

Noel D. Caldwell,

Executive Assistant, Mississippi River Commission.

[FR Doc. 95–19942 Filed 8–8–95; 2:16 pm]

BILLING CODE 3710–GX–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 2:05 p.m., Monday, August 7, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice, that it be closed to the public, and that earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. Acting General Counsel James Engel certified that the meeting could be closed under those exemptions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–19844 Filed 8–7–95; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board

DATE AND TIME:
August 17, 1995, 9:00 a.m. Closed Session

August 18, 1995, 8:00 a.m. Closed Session
August 18, 1995, 8:15 a.m. Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS:
Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, August 17, 1995

Closed Session (9:00 a.m.–11:30 a.m.)

—NSF FY 1997 Budget

Friday, August 18, 1995

Closed Session (8:00 a.m.–8:15 a.m.)

—Minutes, July 1995 Meeting
—Grants and Contracts

Friday, August 18, 1995

Open Session (8:15 a.m.–9:45 a.m.)

—Minutes, July 1995 Meeting
—Closed Session Agenda Items for October
—Chairman's Report
—Director's Report
—Committee Reports
—Other Business/Adjourn
—GEO Presentation

Marta Cehelsky,

Executive Officer.

[FR Doc. 95–19845 Filed 8–7–95; 4:51 pm]

BILLING CODE 7555–01–M

federal register

Thursday
August 10, 1995

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Proposed Designation of Critical Habitat for the Marbled Murrelet; Supplemental Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC33

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service originally proposed to designate critical habitat for the marbled murrelet (*Brachyramphus marmoratus marmoratus*) in Washington, Oregon, and California on January 27, 1994 (59 FR 3811). Based on comments received on the original proposal and additional information, the Service has amended the proposed designation of critical habitat for the marbled murrelet, listed as a threatened species under the Endangered Species Act (Act).

The marbled murrelet is a small seabird of the Alcidae family that forages in the near-shore marine environment and nests in large trees in coniferous forest along the coast. Located primarily on Federal land, and to a lesser extent on State, county, city, and private lands, this amended critical habitat proposal would provide additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by a Federal agency. Section 4 of the Act requires the Service to designate critical habitat for listed species on the basis of the best scientific information available and to consider the economic and other relevant impacts of including particular areas in the designation.

DATES: Comments from all interested parties must be received by October 10, 1995. The Service will hold five public hearings on this proposal. The dates and locations for the hearings are included in the Public Comments Solicited section, under the **SUPPLEMENTARY INFORMATION** caption.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon, 97266. The complete file for this proposal is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Russell Peterson, State Supervisor, U.S. Fish and Wildlife Service, see **ADDRESSES** section or telephone 503–231–6179 or FAX 503–231–6195.

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

On January 15, 1988, the U.S. Fish and Wildlife Service (Service) received a petition to list the North American subspecies of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) in Washington, Oregon, and California as a threatened species under the Endangered Species Act. On October 17, 1988, the Service published a finding that the petition had presented substantial information to indicate that the requested action may be warranted (53 FR 40479). Because of the increased research effort and new information available, the status review period was reopened, with the concurrence of the petitioners, from March 5, 1990, through May 31, 1990 (55 FR 4913).

On June 20, 1991, the Service published a proposal to list the marbled murrelet in Washington, Oregon, and California as a threatened species (56 FR 28362). The comment period was reopened for 30 days on January 30, 1992, to gather the most updated information about the species (57 FR 3804). Following an order by the U.S. District Court for the Western District of Washington denying a 6-month extension, the Service published the final rule listing the marbled murrelet in Washington, Oregon, and California as a threatened species (57 FR 45328, Oct. 1, 1992). In February 1993, the Service appointed a Recovery Team to develop a recovery plan for the marbled murrelet.

On November 2, 1993, the U.S. District Court for the Western District of Washington granted a motion by the plaintiffs in *Marbled Murrelet* v. *Babbitt* to compel a proposed designation of critical habitat. In the ruling, the court ordered the Secretary of the Interior to propose designating critical habitat for the marbled murrelet no later than January 21, 1994, and to make a final designation of critical habitat as soon as reasonably possible under applicable law.

On January 27, 1994, the Service published a proposed rule for the designation of critical habitat for the marbled murrelet (59 FR 3811). Public comment was due by April 27, 1994. On March 14, 1994, the Service received a request for a public hearing. To allow additional comment, the public comment period was reopened for 30 days on May 9, 1994. The public hearing was conducted on May 24, 1994, in North Bend, Oregon. Based on comments received from the Recovery Team, other comments, and additional information, the Service has significantly amended its proposed critical habitat designation. Therefore, the Service is requesting public comment on all aspects of this amended proposal, including the draft economic analysis. The draft Recovery Plan for the marbled murrelet (USFWS 1995) is being released for public comment simultaneously with this proposal.

Ecological Considerations

The marbled murrelet is a small seabird of the Alcidae family. The North American subspecies ranges from the Aleutian Archipelago in Alaska, eastward to Cook Inlet, Kodiak Island, Kenai Peninsula and Prince William Sound, south along the coast through the Alexander Archipelago of Alaska, British Columbia, Washington, and Oregon to central California. Some wintering birds are found in southern California. A separate subspecies (*Brachyramphus marmoratus perdix*) occurs in Asia. Though recent genetic analysis indicates that the North American subspecies may warrant full specific status (Friesen *et al.* 1994), a status change has not yet been recognized.

Marbled murrelets spend most of their lives in the marine environment where they feed primarily on small fish and invertebrates in near-shore marine waters. They forage by pursuit diving in waters generally up to 80 meters (260 feet) deep and 0.3 to 2 kilometers (0.2 to 1.2 miles) off-shore. Pairs are often seen diving simultaneously, which researchers suggest may increase foraging efficiency (Strachan *et al.* 1995). Courtship behaviors have been observed at sea although copulation rarely has been witnessed. Marbled murrelets also aggregate, loaf, preen, and exhibit wing-stretching behaviors on the water.

Marbled murrelets nest inland, typically in large-diameter old-growth trees in low-elevation forests with multi-layered canopies (Hamer and Nelson 1995b). Marbled murrelets have been found occasionally on rivers and inland lakes (Carter and Sealy 1986; Strachan *et al.* 1995).

Marbled murrelets appear to be solitary in their nesting habits but are frequently detected in groups in the forest (USFWS 1995). Two nests discovered in Washington during 1990 were located within 46 meters (150 feet) of each other (Hamer and Cummins 1990), and two nests discovered in Oregon during 1994 were located within 33 meters (100 feet) of each other (K. Nelson, OR Coop. Wildl. Res. Unit, pers. comm. 1995).

Nesting occurs over an extended period from late March to late September (Carter and Sealy 1987; Hamer and Nelson 1995b). During the breeding period, the female marbled murrelet lays a single egg in a tree containing a suitable nesting platform (e.g., large or forked limbs, dwarf mistletoe (*Arceuthobium* spp.) infections, witches brooms, deformities, etc. (Hamer and Nelson 1995b)). Both sexes incubate the egg in alternating 24-hour shifts for approximately 30 days, and the young fledges after an additional 27 to 40 days (Simons 1980; Hirsch *et al.* 1981; Singer *et al.* 1991; Hamer and Nelson 1995a; Nelson and Hamer 1995a). Adults feeding young fly from ocean feeding areas to nest sites at all times of the day, but most often at dusk and dawn (Hamer and Cummins 1991; Nelson and Hamer 1995a). Chicks are fed at least once a day. The adults usually carry only one fish at a time to the young (Carter and Sealy 1987; Hamer and Cummins 1991; Singer *et al.* 1992; K. Nelson, pers. comm. 1992; Nelson and Hamer 1995a). The young are semi-precocial. Before leaving the nest, the young molt into a distinctive juvenile plumage. A fledgling's first flight is from the nest directly to the marine environment (Hamer and Cummins 1991).

Marbled murrelets have been observed at some inland sites during all months of the year (Paton *et al.* 1987; Naslund 1993). Attendance at breeding sites during the non-breeding season may enhance pair bond maintenance, facilitate earlier breeding, or reinforce familiarity with flight paths to breeding sites (Naslund and O'Donnell 1995; O'Donnell *et al.* 1995).

With respect to critical habitat, the Service considered two components of marbled murrelet habitat that are biologically essential—(1) terrestrial nesting habitat, and (2) marine foraging habitat used during the breeding season. Forested areas with conditions that support nesting marbled murrelets are referred to as "suitable nesting habitat." Marine areas with conditions that support foraging marbled murrelets are referred to as "suitable foraging habitat."

Throughout the forested portion of the species' range, marbled murrelets typically nest in forested areas containing characteristics of older forests (Binford *et al.* 1975; Sealy and Carter 1984; Carter and Sealy 1987; Carter and Erickson 1988; Marshall 1988; Paton and Ralph 1988; Nelson 1989, 1992; Hamer and Cummins 1990, 1991; Quinlan and Hughes 1990; Kuletz 1991; Singer *et al.* 1991, 1992; Nelson *et al.* 1992; Hamer *et al.* 1994; Ralph *et al.* 1995a).

The marbled murrelet population in Washington, Oregon, and California nests in most of the major types of coniferous forests in the western portions of these states, wherever older forests remain inland of the coast. Although marbled murrelet nesting habitat characteristics are somewhat variable throughout the range of the species, some general habitat attributes are characteristic throughout its range, including the presence of nesting platforms, adequate canopy cover over the nest, landscape condition, and distance to the marine environment.

Individual tree attributes that provide conditions suitable for nesting include large branches (average of 32 centimeters (13 inches), range of 10 to 81 centimeters (4 to 32 inches) in Washington, Oregon, and California) or forked branches, deformities (e.g., broken tops), dwarf mistletoe infections, witches brooms, or other structures large enough to provide a platform for a nesting adult murrelet (Carter and Sealy 1987; Hamer and Cummins 1990, 1991; Singer *et al.* 1991, 1992; Ralph *et al.* 1993; Hamer *et al.* 1994; Hamer and Nelson 1995b). These structures are typically found in old-growth and mature forests, but may be found in a variety of forest types including younger forests containing remnant large trees.

Northwestern forests and trees typically require 200 to 250 years to attain the attributes necessary to support marbled murrelet nesting, although characteristics of nesting habitat sometimes develop in younger coastal redwood (*Sequoia sempervirens*) forests. Forests with older residual trees remaining from earlier forests may also develop into nesting habitat more quickly than those without residual trees. These remnant attributes can be products of fire, wind storms, or previous logging operations that did not remove all of the trees. Other factors that may affect the time required to develop suitable nesting habitat characteristics include site productivity and microclimate.

As of January 1, 1994, 65 nests had been located in North America, including 6 in Washington, 22 in Oregon, and 10 in California (Binford *et al.* 1975; Varoujean *et al.* 1989; Quinlan and Hughes 1990; Hamer and Cummins 1990, 1991; Kuletz 1991; Singer *et al.* 1991, 1992; Hamer and Nelson 1995b). All of the nests in Washington, Oregon, and California were in large trees that were more than 81 centimeters (32 inches) diameter at breast height (dbh). Of the 37 nests for which data were collected, 70 percent were on a moss substrate and 30 percent were on litter, such as bark pieces, conifer needles, small twigs, or duff. Fifty-nine percent of the nests were on large or deformed branches, 16 percent were on forked limbs, 6 percent were on a limb where it attached to the tree bole, 11 percent were on dwarf mistletoe, and 8 percent were on other structures (T. Hamer, Hamer Environmental, pers. comm. 1995).

More than 94 percent of the nests were in the top half of the nest trees, which may allow easy nest access and provide shelter from potential predators and weather. Canopy cover directly over the nests was typically high (average 84 percent, range 5 to 100 percent) in Washington, Oregon, and California (T. Hamer, pers. comm. 1995). This cover may provide protection from predators and weather. Such canopy cover may be provided by trees adjacent to the nest tree, and/or by the nest tree itself. Canopy closure of the nest stand/site varied between 12 and 99 percent and averaged 48 percent (T. Hamer, pers. comm. 1995).

Nest stand size in Washington, Oregon, and California varied between 3 and 1,100 hectares (7 and 2,717 acres) and averaged 206 hectares (509 acres) (Hamer and Nelson 1995b). Miller and Ralph (1995) found in California that stand size had no effect on whether murrelets were present or occupied a stand. However, the effects of stand size on murrelet presence and use may be masked by other factors such as small sample sizes in the larger stand categories, stand history, and proximity of a stand to other old-growth stands.

General landscape condition also may influence the degree to which marbled murrelets nest in an area. In Washington, marbled murrelet detections increased when old-growth/mature forests comprised more than 30 percent of the landscape (Hamer and Cummins 1990). Hamer and Cummins (1990) found that detections of marbled murrelets decreased in Washington when the percentage of clear-cut/meadow in the landscape increased above 25 percent. Additionally, Raphael *et al.* (1995) found that the percentage of old-growth forest and large sawtimber was significantly greater within 0.8-kilometer (0.5-mile) of sites (203-hectare (501-acre) circles) that were occupied by murrelets than at sites where they were not detected. Raphael *et al.* (1995) suggested tentative guidelines based on this analysis that sites with 35 percent old-growth and large sawtimber in the landscape are more likely to be occupied. In California, Miller and Ralph (1995) found that the density of

old-growth cover and the presence of coastal redwood were the strongest predictors of murrelet presence.

Nests have been located in forested areas dominated by coastal redwood, Douglas-fir (*Pseudotsuga menziesii*), mountain hemlock (*Tsuga mertensiana*), Sitka spruce (*Picea sitchensis*), western hemlock (*Tsuga heterophylla*), and western redcedar (*Thuja plicata*) (Binford *et al.* 1975; Quinlan and Hughes 1990; Hamer and Cummins 1991; Singer *et al.* 1991, 1992; Hamer and Nelson 1995b). Individual nests in Washington, Oregon, and California have been located in Douglas-fir, coastal redwood, western hemlock, western redcedar, and Sitka spruce trees.

For nesting habitat to be accessible to marbled murrelets, it must occur at a distance from the marine environment consistent with the flight and energetic capabilities of the species. The farthest inland distance for a known occupied site is 84 kilometers (52 miles) in Washington. The farthest known inland occupied sites in Oregon and California are 61 and 56 kilometers (38 and 35 miles), respectively. Occupied sites are defined as forest stands where marbled murrelets have been observed exhibiting behaviors generally associated with nesting. Additionally, detections (not occupied sites) have been documented farther inland in Oregon (K. Nelson, pers. comm. 1995).

Marbled murrelet nests are difficult to locate for several reasons—(1) nests are generally located high in the canopy; (2) adults and juveniles have cryptic plumage during most of the nesting season; (3) adults can be extremely quiet in the vicinity of nests; and (4) adults may show activity near the nest only once per day, usually under low light conditions. Therefore, identification of occupied sites and suitable nesting habitat are the best indicators of potential nest sites. Indicators of occupied habitat include active nests; egg shell fragments; young found on the forest floor; marbled murrelets seen flying through the forest beneath the canopy, landing in trees, circling above the canopy, and calling from a stationary perch; or large numbers of murrelets heard calling from in and around a stand.

Inland, marbled murrelets are generally easier to detect at high-use sites during the spring and late summer when breeding activities peak (Paton and Ralph 1988; Nelson 1989). Inland detections of the species are less frequent during the early fall when murrelets have presumably completed breeding and are undergoing a flightless molt at sea. Similarly, detections are more difficult in areas that support low numbers of reproducing pairs.

Marbled murrelets spend most of their lives in the marine environment where they consume a diverse group of prey. Maintaining areas that support populations of prey species juxtaposed with nesting areas are essential to maintaining successfully reproducing marbled murrelet populations (Burkett 1995). Murrelets often aggregate near local food concentrations, resulting in a clumped distribution in the marine environment (Sealy and Carter 1984). Prey breeding areas (e.g., near-shore kelp beds, sand or gravel beaches, sand banks, etc.) and areas where prey may concentrate (e.g., near-shore upwellings, waters at the mouths of bays and coastal rivers, eddies in the vicinity of headlands, river mouths and associated plumes, and tidal rips, etc.) are likely the most important features determining murrelet foraging opportunities (Ainley *et al.* 1995; Hunt 1995). Human-caused disturbances (e.g., intense commercial or recreational fishing) may affect prey density or accessibility.

Most of the information available about prey species of marbled murrelets is from the Gulf of Alaska and British Columbia, and is summarized by Burkett (1995). Marbled murrelets generally forage in near-shore marine waters at distances of 0.3 to 2 kilometers (0.2 to 1.2 miles) from shore; however, they occur at distances up to 24 kilometers (14 miles) from shore in reduced numbers. Marine systems producing sufficient prey to support marbled murrelets provide suitable foraging habitat for the species.

Marbled murrelets have been reported feeding on a wide variety of small fish and invertebrates, indicating their flexibility and capability to use alternative prey sources. Prey include Pacific sandlance (*Ammodytes hexapterus*), Pacific herring (*Clupea harengus*), northern anchovy (*Engraulis mordax*), osmerids, sea perch (*Cymatogaster aggregata*), euphausiids (*Euphausia pacifica* and *Thysanoessa spinifera*), mysids (*Neomysis* spp.), and amphipods, among others (Sealy 1975; Sanger 1987; Sanger and Jones 1981; Carter and Sealy 1990; Strong *et al.* 1993; Burkett 1995). Fish are an important component of the diet during the summer, which coincides with the nestling and fledgling periods, while euphausiids, mysids, and amphipods seem to be more important in the winter and spring in some areas (Munro and Clemens 1931; Sealy 1975; Krasnow and Sanger 1982; Sanger 1983, 1987; Carter 1984; Carter and Sealy 1990; Vermeer 1992; Burkett 1995).

Prior to euroamerican settlement, nesting habitat for the marbled murrelet was well-distributed, particularly in the wetter portions of its range in Washington, Oregon, and California. This habitat was generally found in large, contiguous blocks as described under the Management Considerations section of this proposed rule. The Recovery Team considered the loss of habitat to be one of the primary factors limiting current population size from British Columbia to California.

Currently, breeding populations of marbled murrelets are not distributed continuously throughout the species' range. Little habitat remains at low elevations in Washington's Puget Trough. Lands surrounding the Puget Trough, particularly to the east and south, are highly urbanized, developed for agricultural use, or contain young forests, forcing marbled murrelets to fly up to 42 kilometers (25 miles) inland to reach the first-available suitable nesting habitat.

Off the Oregon and California coasts, three areas where marbled murrelets are concentrated at sea correspond to the four largest remaining blocks of coastal older forest inland. These blocks of older forest are separated by areas of little or no habitat that correspond to areas where few marbled murrelets are found at sea (Strong *et al.* 1995; Varoujean and Williams 1995; Ralph and Miller 1995; Ralph *et al.* 1995b).

The area between the Olympic Peninsula in Washington and Tillamook County in Oregon (160 kilometers (100 miles)) contains few occupied sites or sightings of marbled murrelets. In California, approximately 480 kilometers (300 miles) separate the large breeding populations to the north in Humboldt and Del Norte Counties from the southern breeding population in San Mateo and Santa Cruz Counties. Currently this reach contains few marbled murrelets; however, the area likely contained significant numbers of marbled murrelets before extensive logging (Paton and Ralph 1988, Larsen 1991). The degree of interaction that occurs across these areas containing few murrelets is unknown.

Marbled murrelets are affected by impacts to their nesting habitat, marine foraging habitat, and food supply, as well as direct mortality from human activities such as oil spills and gill nets. Based on analyzing likely ranges of fecundity and survivorship of this species, Beissinger (1995) estimated that marbled murrelets in Washington, Oregon, and California are most likely declining at a rate between 4 and 6 percent per year.

Beissinger (1995) derived the range of fecundity estimates from reviewing the results of several studies of juvenile to adult ratios and nesting success. Fecundity, the number of female young produced annually per adult female, ranged from 0.06 to 0.18. Marbled murrelets have a low annual reproductive potential because they lay only one egg at a time and probably nest only once a year. To put these numbers in context, fecundity levels would need to be between 0.20 and 0.46 for the population to remain stable or increase (USFWS 1995). Beissinger obtained an estimated annual probability of 0.845 adult survivorship for marbled murrelets by applying Nur's (1993) results relating survival to body size and reproductive effort for 10 alcid species. Alcids typically experience high rates of mortality prior to attaining breeding age (Hudson 1985).

Beissinger (1995) then estimated lambda (λ), the expected annual growth rate of a population, for several likely combinations of fecundity and survival, all combinations of which showed population declines. The declines estimated by Beissinger's model are similar to population declines reported in two field data sets from Alaska (spanning 20 years) and British Columbia (spanning 10 years).

The current declining population numbers may be related to several factors. In addition to habitat loss and fragmentation, which may reduce nesting success, declines may be exacerbated by high mortality rates of the young of the year prior to reaching the ocean, and high mortality rates of juveniles and adults in the marine and terrestrial environments.

Marbled murrelets display a variety of morphological and behavioral characteristics indicative of selection pressures from predation at nest sites. For example, plumage and eggshells exhibit cryptic coloration and adults fly to and from nests by indirect routes and often under low-light conditions (Nelson and Hamer 1995a). Potential nest predators include the common raven (*Corvus corvax*), Steller's jay (*Cyanocitta stelleri*), American crow (*Corvus brachyrhynchos*), great horned owl (*Bubo virginianus*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), northern goshawk (*Accipiter gentilis*), raccoon (*Procyon lotor*), marten (*Martes americana*), and fisher (*Martes pennanti*). Ravens, Steller's jays, and possibly great horned owls are known predators of eggs or chicks (Nelson and Hamer 1995b).

From 1974 through 1993, approximately 64 percent of the marbled murrelet nests in Washington, Oregon, and California failed, where nest success/failure was documented. Of those nests, 57 percent failed due to predation (Nelson and Hamer 1995b). The relatively high predation rate could be biased because nests near forest edges may be more easily located by observers and more susceptible to predation and because observers may attract predators. Hamer and Nelson (1995b) believed that researchers had minimal impacts on predation in most cases because the nests were monitored from a distance and relatively infrequently, and precautions were implemented to minimize predator attraction.

Although the effect of habitat alterations on predation of marbled murrelet nests has not been specifically studied, a comparison has been made of successful nests and those that failed because of predation. Nelson and Hamer (1995b) found that successful nests were significantly farther from forest edges and were better concealed than unsuccessful nests.

Several possible reasons exist for the high observed predation rates of marbled murrelet nests. Populations of corvids (jays, crows, and ravens) and great horned owls are increasing in the western United States, largely in response to habitat changes and food sources provided by humans (Robbins *et al.* 1986; Rosenberg and Raphael 1986; Johnson 1993; Marzluff *et al.* 1994). Creation of forest edge habitat, at least in some forest-dominated landscapes, has been implicated in increased forest bird nest predation rates (Chasko and Gates 1982; Yahner and Scott 1988), and in general, nesting success has been shown to decline near forest edges (Paton 1994). Studies of artificial nests in Pacific Northwest forests also indicated that predation of forest birds' nests may be affected by habitat fragmentation and forest management (Vega 1993; Bryant 1994; C. Chambers, Oregon State University, pers. comm. 1994). Larger stands contain sufficient internal structure to potentially minimize the risk of predation at the nest and provide suitable climatic conditions for nesting.

Mortality of adults and juveniles occurs in the terrestrial and the marine environments. For example, in the terrestrial environment adult marbled murrelets have been preyed upon by sharp-shinned hawks, peregrine falcons (*Falco peregrinus*), bald eagles (*Haliaeetus leucocephalus*), and possibly merlins (*F. columbarius*) (Marks and Naslund 1994).

In the marine environment, oil spills and commercial net fisheries adversely affect marbled murrelets. Clean water is important for survival and completion of the murrelet's life cycle and for the conservation of the species. Clean, unpolluted water is essential for maintaining the health of individual marbled murrelets and prey species, and for providing areas for social interactions and other behaviors.

Marbled murrelets have a high vulnerability to oiling, and oil spills have had catastrophic effects when large spills have occurred in the vicinity of murrelet concentrations. Areas where impacts have been particularly severe include Prince William Sound in Alaska, western Washington, and central California (Carter and Kuletz 1995). The 45 marbled murrelets recovered after the *Tenyo Maru* spill in 1991 at the mouth of the Strait of Juan de Fuca in Washington was the greatest number of murrelets recovered in any oil spill, with the exception of the *Exxon Valdez* oil spill, and represented a significant portion of the local population (Carter and Kuletz). Oil spills may also affect forage fish populations (Irons 1992; Oakley and Kuletz 1994; Piatt and Anderson In press), reduce reproductive success, and disrupt breeding activity (Carter and Kuletz 1995). Chronic oil pollution can cause mortality through oiling and ingestion of oil. Other forms of pollution may also affect birds directly through toxic effects on their food supply.

Mortality of marbled murrelets from entanglement and drowning in fishing nets has declined in recent years in Washington, Oregon, and California, but is still of concern, particularly in Washington. Gill-net fisheries are most significant as a threat to murrelets in the marine environment in Washington, although closures of some areas, specifically to protect marbled murrelets, are proposed for the 1995 season (National Marine Fisheries Service 1995). Gill-net fisheries no longer occur in Oregon, with the exception of the Columbia River. In California, fishing regulations protect most murrelets from this type of mortality (Carter *et al.* 1995).

Gill-net fisheries occur at the mouth of the Columbia River, in Willapa Bay, Grays Harbor, the Strait of Juan de Fuca, and Puget Sound, although fishing efforts in coastal fisheries have been greatly reduced because of depressed salmon (*Oncorhynchus* spp.) runs. An observer program in 1994 in the all-citizens and Tribal sockeye salmon (*Oncorhynchus nerka*) drift gill-net fishery of north Puget Sound, which is the most significant fishery in Puget Sound, estimated an entanglement of 15 murrelets, with a range of 2 to 59

murrelets (Pierce *et al.* in draft). Entanglement in other Washington drift net and set gill-net fisheries has also been documented (Speich and Wahl 1989; Craig and Cave 1993; BIA 1994; J. Grettenberger, USFWS, pers. comm. 1995). Observer programs in 1993 and 1994 in Puget Sound salmon purse seine fisheries indicated that entanglement rates of marbled murrelets were much lower with this gear type (Natural Resources Consultants 1995).

Adults are also subject to other sources of mortality. Marbled murrelets have been accidentally hooked on fishing lures, and could also become entangled in fishing line (Campbell 1967; Burger 1993). In general, increased mortality of adult seabirds and decreased reproductive efforts have been linked with El Niño episodes when food supplies are depressed (Graybill and Hodder 1985). However, marbled murrelets have evolved to survive El Niño events over the long term (USFWS 1995).

Management Considerations

Marbled murrelets are found in forests containing a variety of structures, which are in part the result of varied management practices. In many areas, management practices have resulted in fragmentation of the remaining older forests and creation of large areas of younger forests that have yet to develop habitat characteristics suitable for marbled murrelet nesting. Past and current forest management practices have also resulted in a forest age distribution skewed toward younger-aged stands at a landscape scale.

In many portions of the range of the marbled murrelet, forest management has historically concentrated on clear-cut logging. After forests are clear-cut, the areas are traditionally replanted to a single or few tree species and maintained as even-aged stands for maximum wood-fiber production. Site-preparation and management activities may further decrease species' diversity. These methods include prescribed burning and the use of herbicides or mechanical methods to control competing vegetation.

Historical logging practices in some portions of the species' range consisted of more selective timber harvest, leaving remnant patches of forests of varying ages with older forest characteristics. The uneven-aged management practices used in these areas usually resulted in more diverse forests that may provide some nesting habitat where a few trees containing suitable marbled murrelet nesting structure remain.

Current and historic marbled murrelet habitat loss is generally attributed to timber harvest and land conversion practices, although, in some areas, natural catastrophic disturbances such as forest fires have caused losses. Reduction of the remaining older forest has not been evenly distributed in western Washington, Oregon, and California. Timber harvest has been concentrated at the lower elevations and in the Coast Ranges (Thomas *et al.* 1990), generally overlapping the range of the marbled murrelet.

Habitat for marbled murrelets has been generally declining since the arrival of European settlers. Bolsinger and Waddell (1993) estimated that old-growth forest in Washington, Oregon, and California have declined by two-thirds statewide during the last five decades. Information specific to the range of the marbled murrelet is not available. Historic forest conditions have been estimated for western Washington and Oregon by several authors. Marbled murrelet habitat represents a significant portion of area included in these estimates, therefore, trends in habitat are assumed to follow the same general pattern identified for the larger area.

Although the extent of mature and old-growth forest before the 1800s is difficult to quantify, western Washington and Oregon are estimated to have been covered by approximately 9.7 to 12.8 million hectares (24 to 32 million acres) of forest at the time of euroamerican settlement in the early to mid-1800s, of which about 5.6 to 7.9 million hectares (14 to 20 million acres) (60 to 70 percent) are estimated to have been old-growth (Society of American Foresters Task Force 1983; Spies and Franklin 1988; Morrison 1988; Norse 1988; Booth 1991; Ripple 1994). As of 1991, there were approximately 1.4 million hectares (3.4 million acres) of old-growth forest remaining in western Washington and Oregon, an 82 percent reduction from estimated prelogging levels (Booth 1991).

Estimates for a similar time period in northwestern California are not as precise, but suggest there were between 526,000 and 1.3 million hectares (1.3 and 3.2 million acres) of old-growth Douglas-fir/mixed conifer forest and approximately 890,000 hectares (2.2 million acres) of old-growth coastal redwood forest (Society of American Foresters Task Force 1983; Laudenslayer 1985; Fox 1988; California Department of Forestry and Fire Protection 1988; Morrison 1988). Currently there are approximately 28,000 hectares (70,000 acres) of old-growth coastal redwood forest remaining in California (Larsen 1991).

Some of the forests that were affected by past natural disturbances, such as forest fires and windthrow, currently provide suitable nesting habitat for marbled murrelets because they retain scattered individual or clumps of large trees which provide structure for nesting. This is particularly true in coastal Oregon where extensive fires occurred historically. Marbled murrelet nests have been found in remnant old-growth trees in mature forests in Oregon.

Forests providing suitable nesting habitat and nest trees generally require 200 to 250 years to develop characteristics that supply adequate nest platforms for marbled murrelets. This time period may be shorter in redwood forests and in areas where significant remnants of the previous stand remain. Intensively managed forests in Washington, Oregon, and California have been managed on average cutting rotations of 70 to 120 years (USDI 1984; USDA 1988). Cutting rotations of 40 to 50 years are common for some private lands. Timber harvest strategies on Federal lands and some private lands have emphasized dispersed clear-cut patches and even-aged management. Forest lands that are intensively managed for wood fiber production are generally prevented from developing the characteristics required for marbled murrelet nesting. Suitable nesting habitat that remains under these harvest patterns is highly fragmented.

Previous Management Efforts

In May 1991, the U.S. House of Representatives' Committees of Agriculture and Merchant Marine and Fisheries commissioned the Scientific Panel on Late-Successional Forest Ecosystems (Scientific Panel) to provide an array of alternatives for the management of Late-Successional forests on Federal lands in the range of the northern spotted owl (*Strix occidentalis caurina*). Information about the known inland locations of marbled murrelets and marbled murrelet habitat was included in the base information used by the Scientific Panel and was specifically considered in developing the alternatives. The proposed reserve system developed by the Scientific Panel is often referred to as Late-Successional/Old-Growth areas (LSOGs).

Since the listing of the marbled murrelet population of Washington, Oregon, and California as threatened, several different approaches to management of the species or its habitat have been developed through various Federal efforts.

In March 1993, the U.S. Forest Service (Forest Service) released its Scientific Analysis Team Report (Thomas *et al.* 1993). In this report, the Forest Service proposed several interim measures designed to preserve options for management of marbled murrelets and their habitat until the Marbled Murrelet Recovery Plan could be completed and implemented. The measures included—(1) the protection of all marbled murrelet nesting habitat within 83 kilometers (50 miles) of the marine environment in Washington and Oregon north of Oregon State Highway 42 and within 58 kilometers (35 miles) of the marine environment in the remainder of Oregon and California; and, (2) the protection of amounts of "recruitment" habitat (young stands likely to develop into suitable nesting habitat) equivalent to 50 percent of the total amount of existing suitable nesting habitat. Also, seasonal restrictions on timber harvest operations in and near suitable nesting habitat were identified to avoid disturbing nesting marbled murrelets.

In July 1993, the Service, Forest Service, U.S. Bureau of Land Management, National Park Service, National Marine Fisheries Service, and U.S. Environmental Protection Agency released the Report of the Forest Ecosystem Management Assessment Team (FEMAT Report) (USDA *et al.* 1993a). From this report the President identified Option 9 as the preferred management option. Option 9 is described as Alternative 9 in the Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (USDA *et al.* 1993b). Alternative 9 was adopted through the Record of Decision for Amendments to the Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (ROD) and is referred to as the Northwest Forest Plan (USDA and USDI 1994).

Within the range of the marbled murrelet, the Northwest Forest Plan designates a system of Late-Successional Reserves, which provides large areas expected to eventually develop into contiguous, unfragmented forest. This reserve system was constructed in part around the LSOGs designated by the Scientific Panel.

In addition to Late-Successional Reserves, the Northwest Forest Plan designates a system of Adaptive Management Areas, where efforts focus on answering management questions, and matrix areas, where most forest production occurs. Administratively withdrawn lands, as described in the individual National Forest or Bureau of Land Management land use plans, are also part of the Northwest Forest Plan.

Specific measures in the Northwest Forest Plan protect all forest sites occupied by marbled murrelets outside of the Federal reserve system. These measures include surveys prior to activities that may affect habitat and protection of contiguous marbled murrelet nesting and recruitment habitat (stands capable of becoming suitable nesting habitat within 25 years) within 0.8-kilometer (0.5-mile) of areas occupied by murrelets.

An assessment of population viability of marbled murrelets was conducted by the FEMAT and resulted in about a 60 percent likelihood (with a range of 50 to 75 percent) that the marbled murrelet population on Federal lands would be stable and well distributed after 100 years, regardless of which option was selected. An additional assessment based only on habitat conditions resulted in an 80 percent likelihood that marbled murrelet populations would remain stable and well distributed on Federal lands.

The Service recognizes the value of the Northwest Forest Plan (USDA and USDI 1994) and acknowledges its integral role in marbled murrelet conservation. The Northwest Forest Plan complements this critical habitat proposal by stressing the need for protection of large, unfragmented areas of suitable nesting habitat that are well-distributed throughout the species' range, with special emphasis on areas close to the marine environment.

The marbled murrelet Recovery Team continues to work on a Recovery Plan that will outline a strategy for recovery. The draft Marbled Murrelet (Washington, Oregon, and California Population) Recovery Plan (Draft Recovery Plan) (USFWS 1995) suggested the establishment of six Marbled Murrelet Conservation Zones where viable populations of murrelets should be maintained in Washington, Oregon, and California. The Recovery Team would designate the Marbled Murrelet Conservation Zones to address differing needs for recovery actions in portions of the marbled murrelet's range and to maintain well-distributed populations. The zones are generally described as—(1) the Puget Sound Conservation Zone includes all the waters of Puget Sound, the eastern waters of the Strait of Juan de Fuca and associated inland habitat within the range of the marbled murrelet; (2) the Western Washington Coast Range Conservation Zone includes the outer coast of Washington, the western waters of the Strait of Juan de Fuca and associated inland habitat within the range of the marbled murrelet; (3) the Oregon Coast Range Conservation Zone includes most of the coastal waters of Oregon and associated inland habitat within the range of the marbled murrelet; (4) the Siskiyou Coast Range Conservation Zone includes a portion of the coastal waters of Oregon and California and associated inland habitat within the range of the marbled murrelet; (5) the Mendocino Conservation Zone includes a portion of the California coastal waters and associated inland habitat within the range of the marbled murrelet; and (6) the Santa Cruz Mountains Conservation Zone includes a portion of the central California coastal waters and associated inland habitat within the range of the marbled murrelet (USFWS 1995).

In addition, the Forest Service has assembled "Ecology and Conservation of the Marbled Murrelet," a compilation of original studies and literature reviews, that represents the most current treatise on marbled murrelets (Ralph *et al.* 1995a). The conservation assessment will aid in the management of marbled murrelets considering the difficulties associated with gaining information about this species. Ralph *et al.* (1995b) suggested adding additional conservation zones to include all of the murrelet populations in North America.

The Oil Pollution Act of 1990 addresses the development of a national planning and response system for spills in marine and freshwater environments. A variety of planning efforts are underway that address responses to worst-case discharges of oil or hazardous substances, and mitigation or prevention of a substantial threat of discharge from a vessel, offshore facility, or onshore facility. Planning efforts include the development of a national contingency plan, regional area contingency plans, and local geographic response plans. The Service has worked extensively with the U.S. Coast Guard, industry representatives, local and response communities, and other State, Federal, and Tribal natural resource trustees to develop area contingency plans and geographic response plans for Pacific coastal areas. These plans address mechanical recovery, use of dispersants, in-situ burning, shoreline cleanup, protection of sensitive areas, as well as protection, rescue, and rehabilitation of fish and wildlife. These planning efforts and associated spill exercises should help prevent or minimize the impact of spills on natural resources.

Mortality of marbled murrelets in commercial net fisheries in Washington has been addressed through changes in State regulations. In 1995, the State of

Washington and the Tribes instituted area closures in a number of areas with high densities of marbled murrelets to reduce the potential for entanglement. In addition, efforts are underway to evaluate modified gillnets designed to reduce seabird entanglement, as well as research to evaluate the fisheries/murrelet overlap and factors that affect entanglement. Educational programs that provide material to fisherman on marbled murrelet identification and distribution have been implemented. Through section 7 consultation, observer programs were required in 1993 and 1994 to evaluate and quantify the extent of marbled murrelet mortality in purse seine and gillnet salmon fisheries (U.S. Fish and Wildlife Service 1995a, 1995b, 1995c).

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—"(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed *, * * upon determination * * * that such areas are essential for the conservation of the species." 16 U.S.C. 1532(5)(A). The term "conservation," as defined in section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this (Act) are no longer necessary * * *" 16 U.S.C. 1532(3).

Role in Species Conservation

The use of the term "conservation" in the definition of critical habitat indicates that its designation should include habitat crucial to a species' eventual recovery and delisting. However, when critical habitat is designated at the time a species is listed or before a recovery plan is completed, the Service frequently does not know all of the habitat areas that are essential for a species' recovery. Thus, the Act provides that critical habitat designations may be revised from time to time (16 U.S.C. 1533 (a)(3)(B)).

The designation of critical habitat is one of several measures available to contribute to the conservation of a listed species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements). thus alerting the public to the importance of an area in the species' conservation. Critical habitat also identifies areas that may require special management or protection. The identification of these areas may be helpful in planning land use activities and highlighting critical areas for consideration in developing habitat conservation plans for section 10 incidental take permit applications. The added emphasis on these areas for conservation of the species may shorten the time needed to achieve recovery.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. As such, designation may affect non-Federal lands only where such a Federal nexus exists. Federal agencies must insure that their actions do not result in destruction or adverse modification of critical habitat. Aside from this added consideration under section 7, the Act does not provide any additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat. Specific management recommendations for critical habitat are addressed in recovery plans, management plans, and in section 7 consultation.

Primary Constituent Elements

A designation of critical habitat begins by identifying areas where the physical and biological features essential to conservation of a species are found. In determining which areas to designate as critical habitat, the Service considers those physical and biological features that are essential to a species' conservation and that may require special management considerations or protection. Such physical and biological features, as stated in 50 CFR 424.12, include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service is required to base critical habitat designations on the best scientific data available (50 CFR 424.12). In proposing to designate critical habitat for the marbled murrelet in Washington, Oregon, and California, the Service has reviewed its overall approach to the conservation of the species. For a thorough discussion of the ecology and life history of this subspecies, see the Service's Biological Report (Marshall 1988), the final listing rule published in the **Federal Register** on October 1, 1992 (57 FR 45328), The Status and Conservation of the Marbled Murrelet in North America (Carter and Morrison 1992), the draft Recovery Plan (USFWS 1995), the Ecology and Conservation of the Marbled Murrelet (Ralph *et al.* 1995a), and the Ecological Considerations section of this proposed rule.

The Service has determined that the physical and biological habitat features (referred to as the primary constituent elements) associated with the terrestrial environment that support nesting, roosting, and other normal behaviors are essential to the conservation of the marbled murrelet and require special management considerations.

Within areas essential for marbled murrelet nesting, the Service has focused on the following primary constituent elements: (1) individual trees with potential nesting platforms, (2) forested areas surrounding and contiguous to potential nest trees with canopy height of at least one-half the site-potential tree height, (3) forested areas of at least one-half the site-potential tree height regardless of the presence of potential nest platforms. These primary constituent elements are essential to provide and support suitable nesting habitat for successful reproduction of the marbled murrelet.

Individual nest trees include large trees, generally more than 81 centimeters (32 inches) dbh with the presence of potential nest platforms or deformities such as large or forked limbs, broken tops, dwarf mistletoe infections, witches brooms, or other formations providing platforms of sufficient size to support adult murrelets. Because marbled murrelets do not build nests, moss or detritus may be important to cushion or hold the egg. Platforms should have overhead cover for protection from predators and weather, which may be provided by overhanging branches, limbs above the nest area, or branches from neighboring trees. Based on current information from Washington, Oregon, and California, nests have been found in Douglas-fir, coastal redwood, western hemlock, western redcedar, or Sitka spruce (Hamer and Nelson 1995b).

Nesting habitat includes the forested areas in which the nest trees are contained. Nesting areas are defined as contiguous forest surrounding potential nest trees with no separations of more than 100 meters (330 feet) wide from adjacent forested areas. Nest trees may be scattered or clumped throughout the area. Nesting areas may contain fewer than one suitable nesting tree per acre. Regardless of the distribution of nest trees, nesting habitat includes the entire contiguous forested area with canopy height of at least one-half the site-potential tree height. The site-potential tree height is the average maximum height possible for a tree given the local growing conditions. The forested area surrounding the nest tree may provide protection from predators and climatic factors by reducing effects from forest edge.

On a landscape basis, the presence of late-successional forest with canopy closure and canopy height of at least one-half the site-potential tree height contributes to the conservation of the marbled murrelet, even if these forests do not contain potential nest trees. These forests may increase the amount of cover for murrelets in flight to and from the nest, reduce the differences in microclimates associated with forested and unforested areas, and reduce potential for windthrow during storms. Raphael *et al.* (1995) found that occupied sites have significantly larger proportions of old-growth and large sawtimber in the vicinity.

Criteria for Identifying Proposed Critical Habitat

Several qualitative criteria were considered in the selection of specific areas as proposed critical habitat. These criteria are generally similar to criteria used in the development of several recent Federal management proposals, such as the Scientific Panel (Johnson *et al.* 1991) and Northwest Forest Plan (USDA and USDI 1994). The following is a description of the criteria considered:

Suitable Nesting Habitat: Proposed critical habitat units include areas with current suitable nesting habitat and other primary constituent elements. Forests that are not currently suitable for nesting, but that are at least one-half the site-potential tree height of the area, are also important in improving habitat conditions through reduced fragmentation and creation of large contiguous forested areas that may reduce the potential for predation.

Survey Data: Information about presence/absence and occupancy were used to indicate murrelet use areas. Proposed critical habitat units include most of the known sites occupied by marbled murrelets on Federal, State, County, and private lands. However, known occupied sites may represent only a small portion of the population due to the limited coverage of past survey efforts.

Proximity to Marine Foraging Habitat: During the nesting season, marbled murrelets forage in the marine environment and return to the nest at least once daily carrying a prey item to their young. Foraging and nesting habitat areas must be juxtaposed within the flight capabilities and energetic limits of the species. Proposed critical habitat units were designated, taking into account the distance of murrelet detections from the marine environment in a given area.

Risk of Catastrophic Events: Proposed critical habitat units include areas where the risk of human-caused catastrophic events such as wildfires is high and high numbers of marbled murrelets are present.

Large, Contiguous Blocks of Nesting Habitat: In response to the problems of fragmentation of suitable habitat, potential increases in predation, and reduced reproductive success, the Service concentrated on defining proposed critical habitat units in terms of large, contiguous blocks of late-successional forest. The Service used the Late-Successional Reserve system identified in the Northwest Forest Plan (USDA and USDI 1994) to the extent possible to provide large blocks of habitat. Marbled murrelet locations and habitat were considered in the development of these reserves. State, County, private, and city lands were included where large blocks of Federal reserve areas were insufficient or not available, but critical habitat was crucial to retaining distribution of the species.

Rangewide Distribution: To maintain the current distribution of the species and reduce the impact of catastrophic losses of habitat or murrelets, proposed critical habitat units were identified throughout the range of the species in the three states. With well-distributed critical habitat, the probability of catastrophic wildfires or storm events threatening the survival or recovery of the species in Washington, Oregon, and California would be reduced. Maintaining suitable nesting habitat, and therefore local murrelet concentrations, throughout the range of the species would reduce the effect of potential losses from oil spills or other marine events. Given the intense site fidelity of many alcid species, maintaining rangewide distribution may also provide potential source populations for the recolonization of future habitat.

Adequacy of Existing Protection and Management: The Service considered the existing legal status of lands in proposing areas as critical habitat. Areas with permanent legal protection of wildlife, such as congressionally designated wilderness areas, national parks, and national wildlife refuges are generally not proposed unless specific threats were identified which are not addressed by existing management and protection.

Proposed Areas Identified by Applying Criteria

Application of the foregoing criteria and consideration of comments and information received as a result of the initial proposal has resulted in a proposed designation of additional areas beyond those in the January 27, 1994, proposal. These additional areas include Federal and non-Federal lands.

The current proposal includes many of the Late-Successional Reserves, as described in the Northwest Forest Plan, on Federal lands within the range of the marbled murrelet in Washington, Oregon, and California. These areas, as managed under the Northwest Forest Plan, will develop into large blocks of suitable murrelet nesting habitat over time. However, the Recovery Team has commented that these areas alone are insufficient to reverse the current population decline in marbled murrelets and maintain a well-distributed population. Portions of Congressionally Withdrawn Areas are proposed where the area provides essential nesting habitat and is subject to external threats because the government does not own the timber rights on some of the land.

The FEMAT report recognized the limited ability of Federal agencies to recover this species on Federal lands alone. "Although the Forest Ecosystem Management Assessment was designed to address only Federal lands within the range of the northern spotted owl, the marbled murrelet is an example of a species whose life history requirements cannot be accommodated only on Federal lands. The marbled murrelet is a seabird that nests inland and therefore is influenced by both the marine and terrestrial environments. Its nesting range in the three-state area includes land that is south of the range of the northern spotted owl. In addition, several areas that are considered key to the recovery of the marbled murrelet involve private and state lands" (FEMAT Report at IV–151 and IV–152, USDA *et al.* 1993a).

Based on information provided in public comments, including the recommendations of the Marbled Murrelet Recovery Team (Miller *et al., In litt.* 1994), the Service is now proposing to designate selected non-Federal lands that meet the requirements identified in the Criteria for Identifying Critical Habitat section, where Federal lands alone are insufficient to provide suitable nesting habitat for the recovery of the species.

State lands are proposed for critical habitat designation where Federal lands are limited or nonexistent and where they were considered by the Recovery Team as essential for maintaining marbled murrelet populations and nesting habitat. State lands are particularly important in southwestern Washington, northwestern Oregon, and California south of Cape Mendocino. Small segments of county lands are also included in northwestern Oregon and central California.

Some private lands are being proposed as critical habitat because they provide essential elements. These areas include the Arlecho Basin supporting occupied sites in the lowlands of northern Washington; land supporting known occupied sites in southwestern Washington and in Oregon; nesting habitat and occupied sites for the at-sea murrelet population in the southern portion of the Recovery Team's proposed Marbled Murrelet Conservation Zone 4 in California; and nesting habitat for the central California population. State, county, city, and private lands contain the last remnants of nesting habitat for the southern-most population of murrelets, which is the smallest, most isolated, and most susceptible to extirpation.

Areas Not Proposed

Not all suitable nesting habitat is included in the proposed critical habitat units. Emphasis has been placed on those areas considered most essential to the species' conservation in terms of habitat, distribution, and ownership. That does not mean that lands outside of proposed critical habitat units are not important to the marbled murrelet. Some Federal lands outside of proposed critical habitat are expected to receive additional protection from the conservation measures proposed in the Northwest Forest Plan. Under the ROD, all marbled murrelet habitat will be surveyed prior to removal or degradation of habitat and all occupied sites will be protected. The Adaptive Management Areas, matrix lands, and administratively withdrawn lands contain areas of occupied habitat that would be protected from timber harvest. Some habitat on non-Federal lands may receive protection through prohibitions of take of marbled murrelets under section 9 of the Act.

The Hoopa Valley Indian Reservation (Reservation) was considered but not proposed for critical habitat designation because no occupied sites have been documented after 3 years of surveys on various portions of the Reservation. The Reservation contains only moderate quality marbled murrelet habitat and is surrounded by Federal lands. Some of those Federal lands contain high quality habitat supporting occupied sites and are either proposed or protected as a Congressionally Withdrawn Area.

Three other areas of Tribal land were considered for inclusion in critical habitat, including portions of Quinault and Makah Reservations in Washington and lands owned by the Siletz Tribe in Oregon. The Makah Reservation was not proposed because little habitat remains in this area. The Quinault and Siletz lands support marbled murrelets and contain suitable habitat. However, the Service did not propose these areas because while they are important to the conservation of marbled murrelets, there are alternative approaches to achieving the conservation of murrelets on these lands, including consultations under section 7 of the Act and development of habitat conservation plans under section 10.

The Service considered including five marine areas in critical habitat. Clean water and accessible foraging opportunities are important life history requirements for the marbled murrelet. These five areas support the highest concentrations of murrelets during the breeding season in Washington, Oregon, and California. One area consisted of the waters of Puget Sound and the Strait of Juan de Fuca in Washington, including the waters surrounding the San Juan Islands. The Service also considered near shore waters (within 2 km (1.2 mi) of the shore) along the Pacific coast from Cape Flattery to Point Grenville in Washington, from Newport Bay to Coos Bay in Oregon, from the California State border to Cape Mendocino in northern California, and from Pillar Point to Davenport in central California. While these areas are extremely important to the conservation of marbled murrelets, the Service does not believe that these areas meet section 3(5)(A)(i)(II) of the Act, in that they do not need special management consideration or protection beyond that provided by existing Federal laws and regulations, which was discussed in the Previous Management Efforts section.

While the Recovery Plan clearly indicates that marine habitat is important to the survival of marbled murrelets, it also indicates that the primary concern with respect to declining murrelet populations is loss of nesting habitat. The Service's evaluation of the effects of actions in the terrestrial environment focuses on the impacts to the species habitat, although take of murrelets is also addressed. With respect to the marine environment, however, the Service is primarily concerned with mortality issues.

Activities or events that adversely affect marbled murrelets at sea seem to be more associated with the mortality of individual birds than with long-term destruction or adverse modification of habitat. For example, gill-net fisheries result in incidental capture of murrelets, but may not significantly adversely affect the prey base. Murrelets appear to forage opportunistically on available fish, and are likely able to respond to slight changes in fish abundance.

Murrelets are also adversely affected by spills of oil and other pollutants. Although these events undoubtedly harm the murrelet prey base, they also result in the death of birds in the area of the event. The effects of these events on the murrelet prey base are somewhat more difficult to predict, than are the effects on any murrelets that happen to be in the area. The Service's assessments of these events typically relies upon an assessment of the mortality issue rather than an assessment of habitat issues such as prey base.

Thus, given the Service's current focus with respect to impact assessment, designation of critical habitat in the terrestrial environment is appropriate; however, designation of critical habitat in the marine environment would not provide additional benefits to marbled murrelets.

Congressionally Withdrawn Areas

Congressionally Withdrawn Areas (e.g., wilderness areas and national parks) are limited in the range of the marbled murrelet in Washington, Oregon, and California. Few wilderness areas are within the flight distance of marbled murrelets from the marine environment, though some of these areas provide crucial contributions to the conservation of the species. Wilderness areas and national parks contain approximately 302,000 hectares (747,000 acres) of marbled murrelet nesting habitat, representing 29 percent of the suitable nesting habitat on Federal lands in the range of the marbled murrelet. However, a substantial portion of these areas is incapable of producing marbled murrelet nesting habitat because of forest composition, lack of forest cover, elevation, and other constraints and, by themselves, Congressionally Withdrawn Areas are incapable of supporting stable and interactive populations of marbled murrelets.

Marbled murrelet habitat in Congressionally designated wilderness areas, national parks, national monuments (natural areas), and national wildlife refuges is generally managed to protect natural ecosystems and for the benefit of wildlife. Thus habitat in these areas generally does not require special management consideration or protection. For example, a potential highway realignment through the Redwood National Park in northern California could result in the removal of occupied habitat. The Park's authority and general management goals are considered adequate to conserve the species without the additional designation of critical habitat. However, not all Congressionally Withdrawn Areas are managed in this manner. For example, some national recreation areas may not be managed to maintain older forest habitats or may face external actions (e.g., outside ownership of mineral or timber rights) which threaten marbled murrelet habitat within the area.

One Congressionally designated area in California, Golden Gate National Recreation Area, is being proposed for designation because potential marbled murrelet habitat within the area is still subject to timber harvest and loss. The National Park Service does not control rights to the standing forest on some of the recreation area. Several other Congressionally designated areas were considered important to recovery of the marbled murrelet because of their location within the range of the species and presence of suitable nesting habitat, but are not proposed because they do not require special management. These include—(1) North Cascades, Olympic, and Mount Rainier National Parks; Willapa National Wildlife Refuge; Mount Saint Helens National Volcanic Monument; Mount Baker, Noisy Diobsud, Glacier Peak, Boulder River, Henry M. Jackson, Alpine Lakes, Clearwater, Norse Peak, Glacial View, Tatoosh, Buckhorn, The Brothers, Mount Skokomish, Wonder Mountain, and Colonel Bob Wilderness Areas in Washington; (2) Drift Creek, Cummins Creek, Rock Creek, Grassy Knob, Wild Rogue, and Kalmiopsis Wilderness Areas in Oregon; and (3) the Kalmiopsis, Siskiyou, and Trinity Wilderness Areas; Muir Woods National Monument; and Point Reyes National Seashore in California. Portions of the Smith River National Recreation Area in California were not included because they did not contain high-quality nesting habitat. External threats in these areas are very limited, management goals are generally adequate to conserve the species, and these areas do not require special management consideration or protection.

Effects of the Proposed Designation

This proposal for designation of critical habitat for the marbled murrelet identifies 33 proposed critical habitat units encompassing approximately 1,800,160 hectares (4,453,200 acres) of Federal and non-Federal lands based on information available in the Interagency Geographic Information System (GIS). Twenty-three proposed critical habitat units include State, county, city, or private lands. See Table 1.

TABLE 1.—PROPOSED TERRESTRIAL CRITICAL HABITAT BY STATE, OWNERSHIP, AND LAND LOCATION

	Hectares	Acres
Washington:		
Federal Lands:		
Congressionally Withdrawn Lands	500	1,200
Late-Successional Reserves	494,100	1,220,900
State Lands	199,580	493,200
Private Lands	1,770	4,400
Oregon:		
Federal Lands:		
Late Successional Reserves	645,740	1,595,600
State Lands	112,890	279,000
County Lands	500	1,200
Private Lands	400	1,000
California (Northern):		
Federal:		
Congressionally Withdrawn Lands	10,310	25,500
Late-Successional Reserves	229,350	566,700
State Lands	70,630	174,600
Private Lands	16,420	40,500
California (Central):		
State Lands	14,620	36,100
County Lands	3,230	8,000
City Lands	440	1,100
Private Lands	1,680	4,200

Some small areas of naturally occurring or human-created unsuitable habitat (i.e., areas that have never been or will likely never be marbled murrelet nesting habitat, such as alpine areas, water bodies, serpentine meadows, airports, roads, buildings, parking lots, etc.) are inside the boundaries of proposed critical habitat units but are not considered critical habitat because they do not provide constituent elements. Where possible, these areas were not included within the proposed critical habitat boundaries and acreage totals were adjusted to reflect the exclusion of this non-suitable habitat. However, many of these areas are small and could not be physically identified on the GIS maps. Current mapping information does not allow precise identification of the location of primary constituent elements. The Service is continuing to gather information to refine the boundaries of proposed critical habitat units to eliminate areas that do not contain one or more of the primary constituent elements or will remain non-suitable.

Efforts by Federal agencies to survey for marbled murrelets have been

concentrated in areas of proposed timber sales or limited research locations. A small fraction of the suitable nesting habitat has been surveyed to date, and surveys have not been uniformly spread throughout the range of the species. Therefore, known occupied sites provide only a partial indication of the potential areas used by the species. In addition, there are a significant number of known occupied sites within Redwood National Park that are not currently on the database and are therefore not reported here. The proposed critical habitat includes 665 (93 percent) of the 715 known occupied sites on Federal lands.

The Service does not have specific information about the amount of suitable nesting habitat or habitat containing one or more of the primary constituent elements on non-Federal lands within the species' range, although the Service is aware of at least 264 known occupied sites on non-Federal lands, of which 181 (68 percent) are within proposed critical habitat. The Service continues to seek information and comments about the location of suitable nesting habitat and occupied sites on non-Federal lands.

Available Conservation Measures

Two of the principal purposes of the Act, as stated in section 2(b), are to provide a means to conserve the ecosystems upon which endangered and threatened species depend and to provide a program for the conservation of listed species. The Act mandates the conservation of species through several different mechanisms, such as—sections 7(a)(1) and 7(a)(2) (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and ensuring that Federal actions will not likely jeopardize the continued existence of the listed species); section 9 (prohibition of taking of listed species); section 10 (habitat conservation plans); and section 6 (cooperative State and Federal grants).

Recovery Planning

Designation of critical habitat would not offer specific direction for managing marbled murrelet nesting or foraging habitat and would not provide a management or conservation plan for the species. Recovery plans typically provide guidance for conservation, which may include population goals and the identification of areas that may need protection or special management. Recovery plans usually include management recommendations for designating critical habitat. The Service continues to work closely with the Marbled Murrelet Recovery Team relative to critical habitat.

The Act joins the recovery planning and critical habitat processes through its definition of conservation. However, critical habitat does not replace, and cannot be replaced by, recovery planning. Critical habitat will not, in itself, lead to the recovery of the species. Critical habitat provides one of several measures available to contribute toward the conservation of a species.

Recovery planning is an "umbrella" that guides all of these activities and promotes a species' conservation. Recovery plans provide guidance, which may include population goals and identification of areas that are in need of protection or special management. Recovery plans also include management recommendations for areas proposed or designated as critical habitat. Critical habitat promotes recovery by highlighting areas that should be given additional consideration in planning processes. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) and that require special management or protection. Although the recommendations contained in recovery plans are not legally binding, critical habitat provides a regulatory mechanism when a Federal nexus is present to increase immediate protection of these primary constituent elements and essential areas and preserve options for the long-term conservation of the species.

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies insure that their actions are not likely to jeopardize the continued existence of any listed species. A Federal agency must consult with the Service if its proposed action may affect a listed species or critical habitat.

Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402.

Destruction or adverse modification of critical habitat is defined as "* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." 50 CFR 402.02. Jeopardy is defined at 50 CFR 402.02 as any action that would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild.

Survival and recovery, mentioned in the definitions of "adverse modification" and "jeopardy", are directly related. Survival may be viewed as a linear continuum between recovery and extinction of a species. The closer a species is to recovery, the greater the certainty of the species' continued survival. The terms "survival" and "recovery" are related by the degree of certainty that the species will persist during a given period of time. Survival relates to viability. Factors that influence a species' viability include population numbers, distribution throughout its range, vulnerability to chance catastrophic events, and reproductive success.

The definition of critical habitat in the Act indicates that the purpose of critical habitat is to contribute to a species' conservation. The section 7 requirement that Federal agencies insure that their actions do not result in destruction or adverse modification of critical habitat applies to actions that would impair survival and recovery of a listed species. As a result of this connection between critical habitat and recovery, the requirement that Federal agencies insure against destruction or adverse modification of critical habitat enables the critical habitat to contribute to the recovery of the species.

After a proposal of critical habitat, section 7(a)(4) of the Act and implementing regulations (50 CFR 402.10) require Federal agencies to confer with the Service on any action that is likely to result in the destruction or adverse modification of the proposed critical habitat. Conference reports provide advisory conservation recommendations to assist a Federal agency in identifying and resolving conflicts that may be caused by the proposed action.

If an agency requests, and the Service concurs, a formal conference report may be issued. Formal conference reports on proposed critical habitat contain an opinion that is prepared in accordance with 50 CFR 402.14 as if the proposed critical habitat were already designated. Such a formal conference report may be adopted as a biological opinion pursuant to 50 CFR 402.10(d) when critical habitat is finally designated, if no significant information or changes in the action occur that would alter the content of the opinion.

Basis for Analysis

Designation of critical habitat focuses on the primary constituent elements within the designated habitat units and their contribution to the species' survival and recovery. The evaluation of actions that may affect proposed critical habitat for the marbled murrelet would consider the effects of a Federal action on any of the factors that were the basis for determining the habitat to be critical, including the primary constituent elements of potential nest trees, and surrounding forest.

The range of the marbled murrelet has been subdivided by the Recovery Team into six Marbled Murrelet Conservation Zones, as discussed in the Previous Management Efforts section (USFWS 1995). These subdivisions were not based on identification of separate populations of marbled murrelets, but rather on the need for differing recovery actions in portions of the marbled murrelet's range, and the need to maintain well-distributed populations. Marbled murrelets within the conservation zones are likely to interact across zone boundaries at some level.

For a wide-ranging species such as the marbled murrelet, if multiple critical habitat units are designated, each unit would have a local, regional, and rangewide role in contributing to the conservation of the species. The loss of a single unit may not jeopardize the continued existence of the species, but may significantly reduce the ability of critical habitat to contribute to recovery. In some cases the loss of a critical habitat unit could reduce local population levels. This could have a detrimental effect on the stability of the conservation zone, or at the least on that portion of the zone where the loss occurred.

The basis for an adverse modification opinion would be related to adverse impacts on a conservation zone identified in the recovery plan (USFWS 1995). The loss of populations in one or more conservation zone, or even a major part of a conservation zone, could lead to genetic and demographic isolation of parts of the population. Analysis of impacts to individual units must consider the effects to the local area (both the unit and surrounding units), conservation zone, and the overall range of the marbled murrelet in Washington, Oregon, and California.

Examples of Proposed Actions

Section 4(b)(8) of the Act requires, for any proposed or final regulation concerning critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by the critical habitat designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

A variety of ongoing or proposed activities may adversely impact the proposed marbled murrelet critical habitat. Examples of such activities include, but are not limited to, forest management, conversion, and roadbuilding that have the following effects on the primary constituent elements:

(1) Removal or degradation of individual nest platforms or trees with a potential nesting platform that results in a significant decrease in the value of the trees for future nesting use. Removal or degradation of support trees adjacent to trees with potential nesting platforms that provide habitat elements essential to the suitability of the potential nest tree or platform, such as trees providing cover from weather or predators.

(2) Removal or degradation of forested areas surrounding and contiguous to potential nest trees with canopy height of at least one-half the site-potential tree height, including removal or degradation of trees currently unsuitable for nesting that contribute to the structure/integrity of the potential nest area (i.e., trees that contribute to the canopy of the forested area). These trees provide the closed canopy and stand conditions important for marbled murrelet nesting.

(3) Removal or degradation of forested areas within critical habitat with canopy height of at least one-half the site-potential tree height, regardless of the presence of potential nest platforms. These forests provide a landscape more conducive to nesting marbled murrelets.

Activities that do not affect the primary constituent elements in the forest are unlikely to be affected by the proposed designation. Such activities would include, but are not limited to, certain recreational use and personal-use commodity production (e.g., noncommercial mushroom picking, Christmas tree cutting, rock collecting, recreational fishing along inland rivers).

Activities conducted according to the standards and guidelines for Late-Successional Reserves, as described in the ROD for the Northwest Forest Plan would, in most cases, be unlikely to result in the destruction or adverse modification of the proposed marbled murrelet critical habitat. Activities in these areas would be limited to manipulation of young forest stands that are not currently marbled murrelet nesting habitat. Also, these manipulations would be conducted in a manner that would not slow the development of these areas into future nesting habitat, and should speed the development of some characteristics of older forest.

Section 10(a)(1)(B) of the Act authorizes the Service to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species. The issuance of an incidental take permit is a Federal action and is subject to the consultation requirements of section 7 of the Act. The Service expects that HCPs that contribute to the conservation of the murrelet would be consistent with the proposed critical habitat designation.

Several HCP efforts are currently underway in areas proposed for murrelet critical habitat designation, such as State lands in Washington, the Elliott State Forest in Oregon, and Pacific Lumber lands in California. Any lands within critical habitat that are included in an HCP that addresses conservation of the marbled murrelet will be subsequently excluded from critical habitat designation upon approval of the HCP by the Service.

Economic Analysis Summary

Section 4(b)(2) of the Act requires the Service to consider the economic and other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude areas from critical habitat if he/she determines that the benefits of such exclusion outweigh the benefits of specifying such area as critical habitat, unless failure to designate a specific area would result in extinction of the species. The Service contracted with ECONorthwest, a consulting firm in Eugene, Oregon, to conduct an economic analysis of the potential economic effects of designating critical habitat for the marbled murrelet. As required by the Endangered Species Act, the report addresses only the economic consequences of the proposed critical habitat. It does not address the consequences of listing the species or other actions that have been proposed or taken to protect marbled murrelets.

The proposed designation of critical habitat for the marbled murrelet would

affect the economy via a single mechanism—if the designation becomes final, Federal agencies would have to insure that actions they carry out, authorize or fund would not likely destroy or adversely modify the designated habitat. A critical habitat designation would not affect activities on State, local, or private lands unless there is a Federal permit, license, or funding involved.

The proposed marbled murrelet critical habitat is not separate from the surrounding economy. A critical habitat designation would have multiple effects on the economy, some negative and some positive. The murrelet critical habitat proposal and the requirement that Federal agencies insure that their actions are not likely to destroy or adversely affect the habitat, would have economic consequences for four groups:

(1) It would reduce the amount of certain types of forested habitat available to firms, such as firms in the timber industry, that benefit from conventional logging practices that degrade critical habitat;

(2) It would benefit the households and firms that otherwise incur spillover costs when critical habitat is degraded;

(3) It would benefit those who see critical habitat as an element of the local quality of life; and

(4) It would benefit those who place an intrinsic value on the marbled murrelet, its habitat, and other species supported by the habitat.

To obtain information regarding the potential impact of the proposed designation on the activities of Federal agencies, the Service solicited information directly from the affected agencies. It contacted Federal agencies in western Washington, western Oregon, and northwestern California informing them of the Service's inquiry into the potential impacts of proposed designation. Seven agencies indicated that the designation would not affect their activities. Twenty-two agencies stated that the designation might affect their activities. To these, the Service provided additional information and sent each a questionnaire asking the agency to describe its future activities with and without the proposed designation.

Most agencies that responded to the questionnaire indicated that the designation would have little or no effect on their activities. A number of agencies indicated that, based on information currently available, they could not determine the potential effect. Two agencies, the Oregon State Office of the Bureau of Land Management and Region 6 of the Forest Service concluded that the proposed designation would cause a reduction in timber harvest on lands they administer. With the designation and in the absence of a specific exception, the Bureau of Land Management and Forest Service would not proceed with logging of approximately 20 million board feet (MMBF) of timber on 10 sold and awarded timber sales in Washington and Oregon.

No single method of analysis can provide a full view of the designation's potential economic consequences and, hence, three different methods were used in the economic analysis. First, a static estimate of the potential impacts on the economy was developed using common analytical tools that embody strong simplifying assumptions regarding the economy's ability to respond and adjust to the designation. Second, these assumptions were relaxed, taking into account the economy's probable long-run adjustment to the designation, and discussed the transition process that would yield the long-run outcome. Third, the designation's potential impacts on national economic welfare were assessed and the issues related to the fairness of the designation were discussed.

Static Estimate of the Economic Consequences

The static analysis presents a worst-case estimate of the proposed designation's potential impact by assuming that critical habitat-related changes in the activities of Federal agencies would occur abruptly and that capital, labor, and other factors of production would be locked in place and unable to respond. Within this framework, it is assumed that, if a designation caused a reduction in the output of a good or service, the capital, labor, and other factors of production associated with the displaced good or service would become permanently unemployed. These assumptions imply that there would be no compensating response by the economy, e.g., it assumes that firms would not tap into alternative markets and displaced workers would not find replacement jobs in response to the reduction in the output of the good or service.

With the information currently available, the impact of designation on all four groups listed above cannot be assessed using only the analytical tools of static analysis. Static analysis alone limits the analysis to impacts on only Group #1, i.e., firms that, in the absence of a designation, would engage in or otherwise benefit from the degradation of critical habitat (e.g., some methods of logging timber from Federal lands). The static analysis fails to capture the impacts on Groups 2, 3, and 4. Despite its limitations, the static estimate is useful because it presents the worst-case description of the proposed designation's potential impacts, and it sets the stage for the examination of the economy's long-run adjustment to a designation.

Using employment multipliers generated by input-output techniques, the static analysis of the reductions in timber harvest indicates that canceling already sold and awarded timber sales would cause a total reduction of 387 person-years of work. This is a one-time impact that probably would be concentrated in less than 1 year, but might be stretched over a longer period.

All of these reductions would not necessarily occur in the vicinity of the restricted harvests. Because the timber industry is highly competitive over an area encompassing at least western Washington, western Oregon, northern California, the reductions would occur in the least competitive firm(s) within the entire area. These may be hundreds of miles from the sites where timber-harvest is reduced. Most of the impact on employment is likely to occur in or near metropolitan areas, reflecting the concentration in these areas of the timber industry, itself, as well as the other sectors that are related to the timber industry.

Long-run Adjustment and the Transition Process

Most workers displaced because of the designation would find replacement jobs quickly as tens of thousands have during the past 15 years. After one year, the unemployment rate among workers who lose their jobs because of the designation probably would equal the rate among other workers with similar education and training.

The proposed designation probably would have positive impacts on the output, employment, and earnings in those industries that otherwise incur spillover costs when critical habitat is degraded. The spillover costs include impacts to fisheries from habitat and population losses; increased risk of flooding; sediment removal and ecosystem repair; water quality reduction; and unemployment insurance costs. By reducing the timber industry's spillover costs, the proposed designation would stimulate other sectors of the economy, though by how much is uncertain.

The proposed designation would probably exert a long-run, positive influence on the natural-resource aspects of the area's quality of life. Hence, the proposed designation would have a positive impact on all households, firms, and communities sensitive to the quality of these resources. Evidence from studies in Oregon indicate that at least one-third of the population is sensitive to the region's natural-resource amenities.

The marbled murrelet and its habitat have intrinsic value. Given the proposed designation's goal of recovering the marbled murrelet, it is anticipated that the proposed designation would exert a positive influence on this value, though, again, by how much is uncertain.

Overall Economic Effects

Conceptually, at least, one measures the proposed designation's impact on national economic welfare by looking at the difference in the value society ascribes to two bundles of goods and services, one with the proposed designation and the other without it. In this case, the bundle of goods and services affected by the proposed designation has four major components—(1) the marbled murrelet and its habitat; (2) the natural-resource amenities and other elements of the local quality of life; (3) goods and services that would be affected by the proposed designation; and (4) the productivity of workers, households, firms, and communities that would be affected by the proposed designation.

Values ascribed to the marbled murrelet and its habitat commonly are separated into two groups—use values (e.g., consumptive use of the resource as a source of food or medicine, or passive use of the resource as a source of scenic beauty) and non-use values (e.g., benefits a person derives from knowing that a species or some other natural resource exists). Marbled murrelets currently have little apparent use value. They have essentially no value as a source of food to humans. They have some recreational value to birdwatchers, although the magnitude of this value is unknown. Marbled murrelets and their habitat have some non-use value but, again, the magnitude of this value is not currently quantifiable. Hence, the Service would have to rely on judgment to assess the magnitude of the proposed designation's impact on these values.

By reducing logging in certain areas, the proposed designation would increase the quality of life with respect to:

(1) The visual aesthetics of riparian areas. In general, the aesthetic value of these areas is higher, the more natural their appearance. Insofar as the proposed designation would maintain the natural appearance, it would maintain their amenity value.

(2) The visual aesthetics of some upland areas that otherwise would experience timber harvests. The proposed designation would maintain the amenity values of these areas by maintaining their natural appearance. The aesthetics and water-related recreation associated with streams that experience improvements in water quality, including reductions in sediment, would be enhanced.

(3) The aesthetics and recreational opportunities, e.g., whitewater rafting, associated with changes in the quantity and timing of water runoff so that less runoff occurs as peak flow in the spring and more occurs as base flow during the summer.

(4) The visual aesthetics and recreational opportunities associated with increased populations of wildlife related to riparian areas.

The proposed designation may have a wide range of effects by preventing activities that would have spillover effects on habitat critical to the recovery of the murrelet and, hence, on the firms and households sensitive to activities inconsistent with the designation. These spillover effects include: (1) impacts on the structure of the local and regional economies, (2) sedimentation, (3) global climate change, (4) future listings of threatened or endangered species, (5) human morbidity and mortality, and (6) impacts on landuse. In general, there is insufficient information to estimate the value of these effects.

Similarly, there is insufficient evidence to support quantification of the effects on the productivity of labor and other factors of production. On balance, the proposed designations overall effect on the nation's productivity could be positive or negative, but the impact probably would be close to zero.

A major issue regarding the economic fairness of the proposed designation is its potential impacts on the value of private property. The proposed designation would have a negative effect on values that depend on Federal agencies engaging in or supporting the degradation of critical habitat. It would have a positive effect on values that otherwise would be depressed by the spillover costs from habitat degradation. It also would have a positive impact on values that depend on the habitat's contribution to the area's quality of life.

In sum, the evidence is insufficient to conclude whether the proposed designation would result in net economic benefits or costs. It does appear likely, however, that the overall net effect is close to zero.

Copies of the complete draft economic analysis are available upon request from the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** section).

Summary of Comments and Recommendations on the First Proposal

In the January 27, 1994, proposed rule for designation of marbled murrelet critical habitat, the Service requested all interested parties to submit information and comments concerning the proposal. Additional comments were taken at the public hearing on May 24, 1994, in North Bend, Oregon.

During the public comment period, the Service received 130 written comments. In addition, 25 people testified at the public hearing. All comments received are part of the administrative record and are available for public review. Issues raised during the public comment period that were not addressed in the body of the amended proposal are discussed next.

Issue 1: One commenter suggested that, due to aboriginal influences, only 5 to 38 percent of the land in the Douglas-fir Region was comprised of patches of 200-year-old trees prior to euroamerican settlement, a value different from those listed in the proposed rule.

Service Response: The little information that exists describing pre-settlement forests supports the Service's general conclusion that approximately 60 to 70 percent of the forested areas in range of the marbled murrelet in Washington, Oregon, and California contained an old-growth component, major portions of which were distributed in large, contiguous blocks. Human-caused factors have significantly reduced the amount of old-growth forests in the range of the marbled murrelet in Washington, Oregon, and California compared to pre-historic levels (Spies and Franklin 1988; Teensma *et al.* 1991; Booth 1991; Larsen 1991; Bolsinger and Waddell 1993; Ripple 1994; Perry 1995; Ralph *et al.* 1995b). The Service believes this material represents the best available scientific information.

Issue 2: Commenters suggested that prey distribution and abundance, rather than inland forest conditions, may dictate murrelet distributions at sea.

Service Response: The Service agrees that prey distribution and abundance is an important ecological factor for murrelets at sea.

However, particularly during the nesting season, marbled murrelets are found in high numbers in close proximity to areas where inland forested conditions are considered suitable for nesting throughout large portions of coastal Washington, Oregon, and

California (Carter and Erickson 1992; Varoujean and Williams 1995; Ralph and Miller 1995; Ralph *et al.* 1995b; Strong *et al.* 1995). Conversely, marine concentrations tend to be low where on-shore habitat is limited.

The distribution of marbled murrelets in the marine environment changes after the nesting season. This suggests that proximity to their nesting habitat is important for marbled murrelets during the breeding season even though food may be more abundant elsewhere (Ralph *et al.* 1995b). However, it could be that changes in prey distribution and abundance occur coincidentally with the end of the nesting season. Marbled murrelets have been documented to use a variety of prey species, which suggests that they are capable of exhibiting flexibility regarding food resources available to them during the nesting season. Therefore, the Service believes that the condition of inland nesting habitat is an important factor explaining distributions in the marine environment during the nesting season.

Issue 3: Commenters suggested that suitable nesting habitat (defined as mature forests with approximately two remnant old-growth trees per acre) is under-used and not a limiting factor for marbled murrelets.

Service Response: There may be localized situations where habitat that is currently suitable for nesting is not currently occupied. The ability of this species to rapidly colonize new areas is unknown, but is likely to be low for several reasons—(1) population numbers are low and scattered in some areas; (2) marbled murrelets have a low reproductive rate, providing few young to serve as colonizers; (3) this species evolved to use nesting habitat that was relatively stable from year-to-year, and may be less adaptive to the loss of nesting areas in a given year (Divoky and Horton 1995); and (4) potentially suitable habitat may be scattered and not necessarily high-quality habitat, both of which may result in a lag time for colonization.

However, the Service continues to believe that nesting habitat is a limiting factor in some areas because of the close association of marbled murrelet nests to older forest habitat, the amount of which has been reduced significantly (See Issue 1). All marbled murrelet nests located as of January 1994 in Washington, Oregon, and California have been associated with forests considered to be older forest or which contain late-successional components (Hamer and Nelson 1995b). In addition, at-sea distributions of marbled murrelets during the nesting season along coastal Oregon and California shorelines roughly correspond to inland distributions of late-successional forests (See Issue 2).

Issue 4: One commenter disagreed with the use of sites identified as occupied by marbled murrelets under the Pacific Seabird Group protocol as a criteria for critical habitat designation, because the commenter believes that some of the behaviors that resulted in occupied status were not indicative of nesting.

Service Response: The Service used all available information in the selection of areas for proposed designation of critical habitat. Survey information was only one of the criteria considered in selecting areas for proposed critical habitat designation. Survey results (including occupied sites, marbled murrelet presence, and lack of detections) were used as indicators of the presence/absence of marbled murrelets in specific areas. However, survey efforts were minimal in many areas, and coverage of areas was discontinuous. Such information was of limited use in proposing critical habitat in portions of the range.

Issue 5: Several commenters raised issues related to nest predation and predator numbers. These were primarily related to the effects of timber harvest and forest edge on predator numbers and marbled murrelet nest predation rates. The appropriateness of applying nest predation studies from other regions of the country to the Pacific Northwest was also raised.

Service Response: The Service has amended the proposed rule to reflect the comments and to provide additional documentation on statements related to predation. The Service believes, however, that existing data still indicate that nest predation is a significant issue in forest edge, even if the causes are unclear. Nelson and Hamer's (1995b) analysis of nest predation indicates that marbled murrelet nests nearer to forest edges experience significantly higher predation rates than nests in the forest interior. Studies have also been completed or are underway in the Pacific Northwest since the proposed rule that indicate the timber harvest in a forest can increase nest predation rates on forest birds under some circumstances (Vega 1993; Bryant 1994; C. Chambers, pers. comm. 1994). It is recognized, however, that additional research on this subject is needed.

Issue 6: Several commenters recommended that the Service designate all Federal lands before considering designating State or private lands.

Service Response: In proposing murrelet critical habitat, the Service examined all areas, regardless of ownership, that may be essential for the conservation of the species. The Service did propose Federal lands first, however, if in a given area, Federal lands were insufficient to meet the conservation needs of the species, other lands were also proposed.

Issue 7: Several commenters, including the Marbled Murrelet Recovery Team, recommended the inclusion or exclusion of specific areas in the proposed designation of critical habitat. Some commenters recommended including all important marine environments, all potential or recruitment habitat, historic areas, or all suitable habitat in the designation. Several commenters recommended that the Service include additional criteria for identifying critical habitat, including, but not limited to, foraging areas in the marine environment; all occupied habitat; buffer areas; flight corridors; minimum nest limb height; minimum nest stand canopy height; and canopy closure and stand size.

Service Response: All such recommendations were examined carefully. Specific areas were not included in the proposal if they did not meet the Act's criteria for designation as critical habitat, and were added if they met the Act's criteria for designation. The Service based its murrelet critical habitat proposal on the principal biological or physical features that are essential to the conservation of the species and that require special management considerations or protection.

In the marine environment, the Service agrees that maintaining aquatic habitat is essential to the marbled murrelet, and that marine conditions may affect distribution and survival of the species. Addressing anthropogenic sources of mortality and degradation of habitat quality in aquatic habitats will be an important component in recovering marbled murrelet populations. However, the Service does not believe that special management consideration or protection is required in the marine environment beyond those provided by existing Federal laws and regulations, which was discussed in the Previous Management Efforts section. Therefore, the Service did not include areas in the marine environment. Some terrestrial occupied sites were not included because they may not require special management or protection beyond that provided by existing Federal laws and regulations or they were not considered essential to the conservation of the species due to location, site conditions, or history. Therefore, not all areas occupied by the species were included in this critical habitat proposal.

Marbled murrelets have been observed using flight paths such as river corridors on flights inland, however, marbled murrelets have also been observed flying over ridges, cities, and agricultural areas to access inland areas (T. Hamer pers. comm. 1995). The use of flight corridors has not been shown to be essential for access to inland forested habitat.

Stand and individual tree attribute information (e.g., nest limb height; nest stand canopy height and closure; and size) was unavailable for use in proposing the boundaries of murrelet critical habitat. However, these attributes were considered in the evaluation of the primary constituent elements of murrelet critical habitat.

Issue 8: Several commenters recommended the inclusion of specific management requirements for designated critical habitat.

Service Response: A designation of critical habitat does not establish a management plan and does not impose any specific management requirements on the area designated. Critical habitat is an inventory of habitat and areas that contain the biological features essential to the conservation of the species. Management requirements for critical habitat are addressed through recovery and land management planning processes.

Issue 9: One commenter recommended keeping the public comment period open until the Service had all the information needed to propose critical habitat. Another commenter recommended waiting until the Recovery Plan was complete to designate critical habitat.

Service Response: The Act requires the Service to designate critical habitat to the maximum extent prudent and determinable, at the time of listing. If critical habitat is not determinable at the time a species is listed, the Act allows the Service up to one additional year to designate critical habitat to the maximum extent prudent. The Act and implementing regulations require the Service to employ the best available information in the designation of critical habitat, but a designation must comply with the statutory time frames.

The Act does not impose deadlines for completing recovery plans and does not provide the authority for the Service to delay designation of critical habitat while waiting for a completed recovery plan.

Issue 10: One commenter suggested that the prohibitions of take of listed species under section 9 of the Act protected occupied murrelet sites and therefore the Service did not need to designate critical habitat.

Service Response: Section 9 of the Act prohibits the take of a listed species. The term "take" is defined in the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532(19)). A designation of critical habitat and the resulting consultation process for Federal actions under section 7 of the Act address impacts to a species which may not involve take.

Issue 11: One commenter indicated that state laws were sufficient to protect marbled murrelets and therefore critical habitat did not need to be designated.

Service Response: Current state regulations have not prevented habitat loss for the marbled murrelet. Habitat loss is considered to be one of the primary factors that has contributed to the need to list the murrelet in Washington, Oregon, and California.

Issue 12: Several commenters provided information about issues related to the listing of the species (e.g., new population numbers, whether the listed population is distinct, whether listing was premature due to lack of information, and whether the listed population is at the natural edge of the species' range).

Service Response: A proposal to designate critical habitat does not include a review of the listing determination. Comments relevant only to the listing decision were not incorporated in this proposal. Information that was pertinent to critical habitat and the biological information used in the development of the proposal were reviewed and incorporated as appropriate.

Issue 13: Several commenters indicated that an Environmental Impact Statement should be written for a designation of critical habitat.

Service Response: The Service has determined that rules issued pursuant to section 4(a) of the Endangered Species Act do not require preparation of an environmental impact statement under the National Environmental Policy Act. The Service's determination has been upheld by the 9th Circuit Court of Appeals in a decision concerning the critical habitat designation for the northern spotted owl.

Issue 14: Several commenters indicated that designation of non-Federal lands as critical habitat would result in the "taking" of private property.

Service Response: A critical habitat designation affects only actions authorized, funded, or carried out by Federal agencies. It would not result in a taking of private property.

Issue 15: Several commenters expressed concern about the ability to access private lands that lie adjacent to or are surrounded by critical habitat.

Service Response: If murrelet critical habitat is designated, issues concerning access across Federal lands could be resolved through the consultation process under section 7 of the Act.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in conjunction with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The proposed rule has been reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior has determined that the proposed designation of critical habitat for the marbled murrelet would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this proposed rule concerning public projects and private activities within critical habitat units, it is not clear whether significant economic impacts would result from the proposed critical habitat designation. Also, no direct costs, enforcement costs, information collection, or record-keeping requirements would be imposed on small entities by this proposed designation. Further, the proposed rule contains no record-keeping requirements as defined by the Paperwork Reduction Act of 1980. Finally, the Department has assessed the effects of this rulemaking action on State, local, and Tribal governments, and the private sector pursuant to Title II of the Unfunded Mandates Reform Act of 1995. The Department has determined that this action does not compel the expenditure of $100 million or more by any State, local or Tribal government, or any individual in the private sector. Therefore, a statement under section 202 of the Unfunded Mandates Reform Act is not required.

Public Comments Solicited

The Service intends that any final action resulting from this amended critical habitat proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned government agencies, Indian Nations, the scientific community, industry, or any other interested party concerning all aspects of this proposed rule, including the economic analysis, are hereby solicited.

The Service has scheduled five public hearings to facilitate receipt of public comments. The dates and locations of the hearings are provided below. Anyone expecting to make an oral presentation at these hearings is encouraged to provide a written copy of their statement to the hearing officer prior to the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at these hearings or mailed to the Service.

Tuesday, September 5, 1995, from 2:00–4:00 p.m. and 6:00–8:00 p.m., at the Red Lion Hotel Columbia River, 1401 North Hayden Island Drive, Portland, Oregon.

Thursday, September 7, 1995, from 2:00–4:00 p.m. and 6:00–8:00 p.m., at the Red Lion Hotel, 1313 North Bayshore Drive, Coos Bay, Oregon.

Tuesday, September 12, 1995, from 2:00–4:00 p.m. and 6:00–8:00 p.m., at the Eureka Inn, 518 Seventh Street, Eureka, California.

Thursday, September 14, 1995, from 2:00–4:00 and 6:00–8:00 p.m., at the Coconut Grove Conference Center, 400 Beach Street, Santa Cruz, California.

Tuesday, September 19, 1995, from 2:00–4:00 p.m. and 6:00–8:00 p.m., at the Bellevue Conference Center, 121 107th Avenue, Bellevue, Washington.

Comments are particularly sought concerning:

(1) The reasons why any Federal lands (either proposed critical habitat or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) The location and reasons why any non-Federal lands should or should not be determined to be critical habitat as provided by section 4 of the Act, including information on whether lands proposed contain the primary constituent elements identified in this amended proposal for the marbled murrelet, potential threats to the marbled murrelet, and the value of areas to the conservation of the species;

(3) The reasons why any marine areas should or should not be determined to be critical habitat as provided by section 4 of the Act, including information on potential threats, current activities, the effect of current regulatory mechanisms, and benefits to the species;

(4) Current and planned activities in proposed critical habitat areas and their possible impacts on proposed critical habitat;

(5) Any threats to the conservation of the marbled murrelet or the maintenance of marbled murrelet nesting habitat on Congressionally-protected lands within the range of the marbled murrelet;

(6) Current and planned activities within Congressionally-protected areas that might affect, positively or negatively, the conservation of the marbled murrelet, including any management plans or statutory mandates;

(7) Other physical and biological features that are essential to the conservation of the species and in need of special management or protection;

(8) Specific information on the amount, location, and distribution of suitable marbled murrelet nesting habitat; and the numbers and distribution of sites occupied by marbled murrelets on all ownerships and land designations;

(9) Information concerning health of the ecosystems on which the marbled murrelet depends;

(10) Information on the economic benefits and costs that would result from the proposed designation of critical habitat for the marbled murrelet, including the segments of the economy that would be affected by the proposed designation;

(11) Data and information relevant to determining whether the benefits of excluding a particular area from critical habitat outweigh the benefits of specifying the area as critical habitat;

(12) Analyses useful in evaluating economic and other relevant impacts; and

(13) Additional information that should be considered in analyzing economic and other impacts of the proposed designation;

References Cited

A compete list of all references cited herein is available upon request from the Field Supervisor, U.S. Fish and Wildlife Service, Portland Field Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon, 97266; telephone (503) 231–6179.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by revising the "Critical habitat" entry for "Murrelet, marbled" under BIRDS to read: 17.95(b).

3. Section 17.95(b) is amended by adding critical habitat for the marbled murrelet, in the same alphabetical order as the species occurs in § 17.11(h), as follows.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

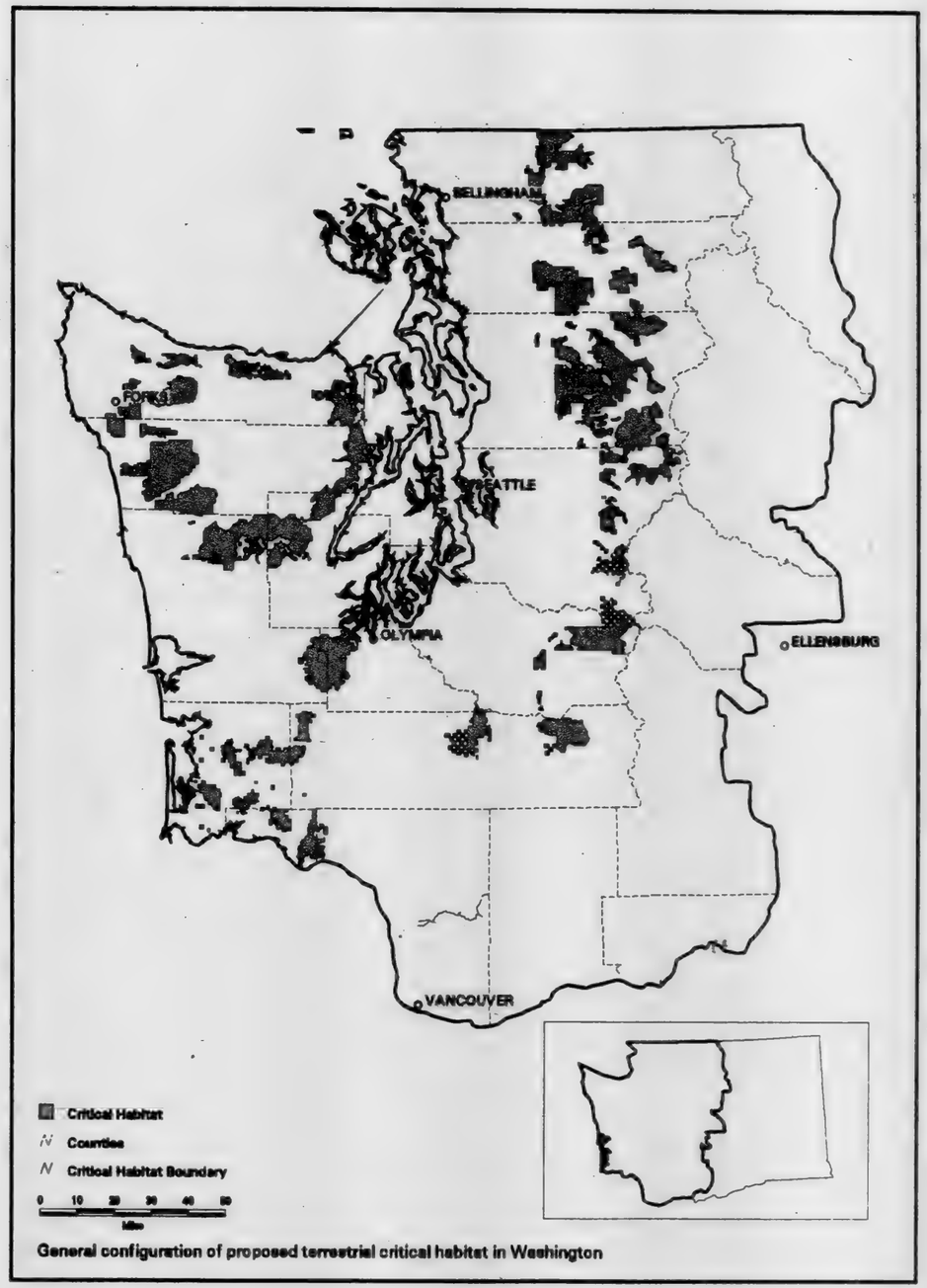
(b) Birds

* * * * *

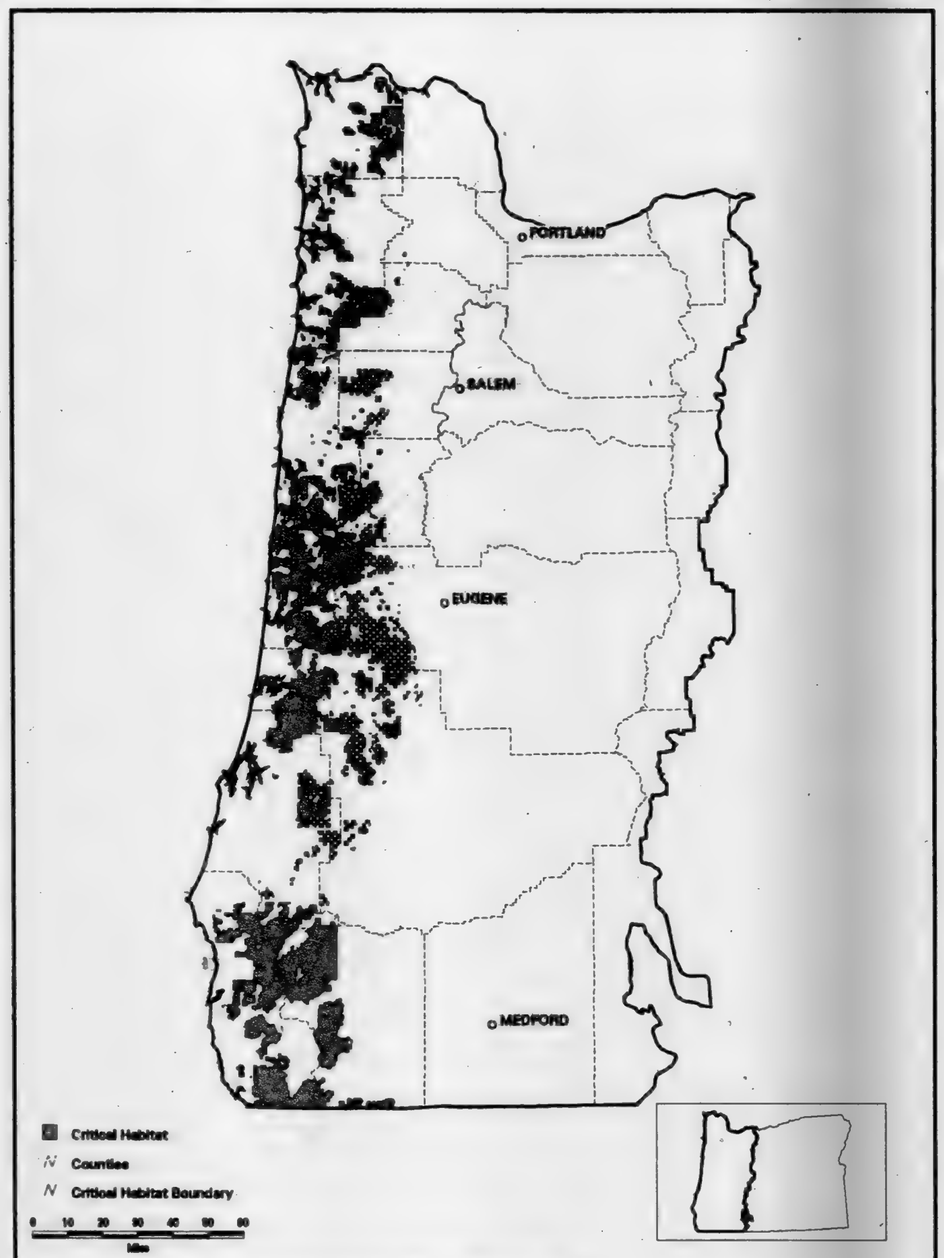
MARBLED MURRELET
(*Brachyramphus marmoratus marmoratus*):

1. Critical habitat units are depicted for the States of Washington, Oregon, and California on the maps below.

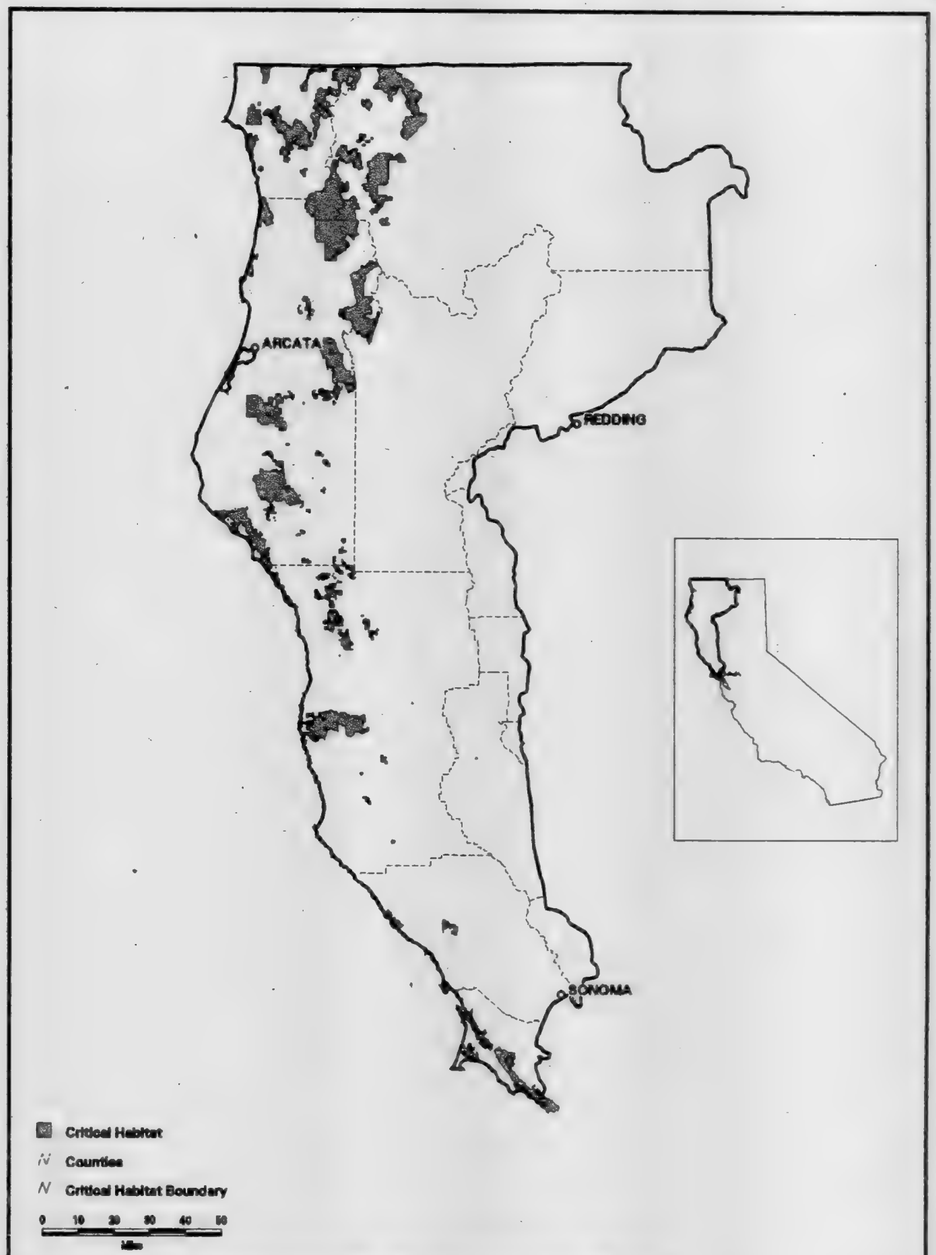
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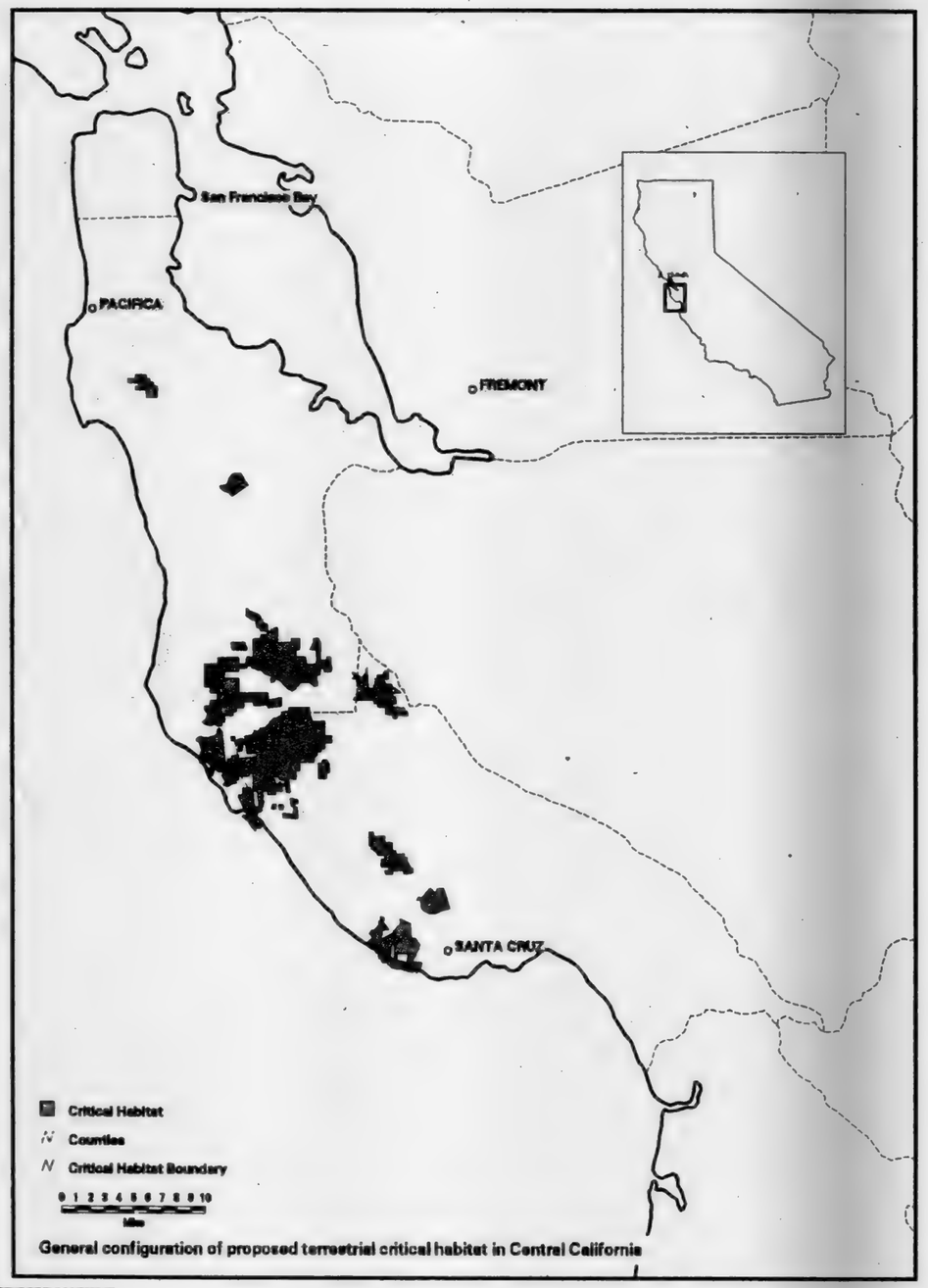
General configuration of proposed terrestrial critical habitat in Washington



General configuration of proposed terrestrial critical habitat in Oregon



General configuration of proposed terrestrial critical habitat in Northern California



General configuration of proposed terrestrial critical habitat in Central California

BILLING CODE 4310-55-C

2. Non-Federal lands included within critical habitat designated for the marbled murrelet shall be subsequently excluded from such designation by the U.S. Fish and Wildlife Service upon the approval of a Habitat Conservation Plan (HCP) that includes the affected lands and addresses the conservation of the marbled murrelet.

3. The primary constituent elements: forest lands that are used or potentially used by the marled murrelet for nesting and roosting.

4. A description of the critical habitat units follows.

Map and description of WA–01–a taken from United States Fish and Wildlife Service 1:100;000 map; Cape Flattery, Forks, and Port Angeles, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.28N., R.10W. Willamette Meridian: W½ W½ Section 1; Sections 2–6; Section 7 except S½ S½; N½, N½ SW ¼ Section 8; N½ Section 9; N½ NW¼, NE¼ Section 10; N½ Section 11; E½ NW¼ Section 12.

T.28N., R.11W. Willamette Meridian: Sections 1–5; S½ S½, NE¼ SW¼, N½ SE¼, S½ NE¼, NE¼ NE¼ Section 6; Section 7; Sections 8–12; N½ NW¼ Section 13; N½ N½, S½ NE¼, SE¼ NW¼ Section 14; N½ NW¼, SW¼ NW¼ Section 15; N½ N½, SW¼ NW¼, SE¼ NE¼ Section 16; NW¼ NW¼, SE¼ NW¼, NE¼ NW¼, NE¼ Section 17; N½ NE¼, NE¼ NW¼ Section 18.

T.28N., R.12W. Willamette Meridian: SW ¼ Section 2; S½ S½, NE¼ SE¼ Section 3; N½ N½ Section 10;N½ Section 11; W½ NW¼, E½, SE¼ NW¼, NE¼ SW¼ Section 12.

T.29N., R.10W. Willamette Meridian: SW¼ NW¼, SW¼ SE¼, SW¼ Section 1; Section 2 except N½ NE¼; Sections 3–5; S½ S½, NE¼ SE¼, NW¼ SW¼, NE¼ Section 6; Sections 7–24; Section 25 except SE¼ SE¼; Sections 26–35; NW¼, N½ SW¼, SW¼ SW¼,W½ NE¼, NE¼ SE¼ Section 36.

T.29N., R.11W. Willamette Meridian: SE¼, SE¼ NE¼ Section 12; Section 13; N½, N½ SE¼, SE¼ SE¼, NE¼ SW¼ Section 14; S½ SE¼, NE¼ SE¼ Section 22; S½, E½ NE¼ Section 23; Sections 24–27; S½, S½ NE¼, NE¼ NE¼, SW¼ NW¼ Section 28; E½ SE¼ Section 29; SE¼ SE¼ Section 31; SW¼ SW¼, SE¼, S½ NE¼, E½ SW¼, SE¼ NW¼, NE¼ NE¼ Section 32; Sections 33–36.

T.30N., R.09W. Willamette Meridian: SW¼ SW¼ Section 18; NE¼ NW¼ Section 19.

T.30N., R.10W. Willamette Meridian: E½ SW¼, SE¼, NE¼ Section 1; NW¼ SW¼, SW¼ SW¼, SE¼ SW¼, SW¼ SE¼ Section 2; Section 3 except NE¼; Sections 4–5; S½ Section 6; Sections 7–10; N½, N½ S½, SW¼ SW¼ Section 11; Section 12; N½, N½ SE¼, SE¼ SE¼ Section 13; NW¼ NW¼, E½ NE¼ Section 14; N½, NE¼ SW¼, NW¼ SE¼ Section 15; N½ Section 16; N½ Section 17; Section 18 except S½ SE¼; N½ NW¼ Section 19; SE¼ SE¼ Section 31; S½ S½ Section 32.

T.30N., R.11W. Willamette Meridian: Section 1 except SW¼ SE¼; Section 2; N½, N½ SE¼, SE¼ SE¼ Section 3; NE¼, N½ NW¼ Section 4; NE¼ NE¼ Section 10; N½ NE¼, NE¼ NW¼, SW¼ SW¼ Section 11; NW¼ NW¼, S½, E½ NE¼ Section 12; Section 13; S½ NW¼, S½, NE¼ Section 14; S½, SE¼ NE¼ Section 15; SE¼ NW¼, S½ Section 17; E½ SE¼ Section 18; NE¼, E½ NW¼ Section 20; N½ SE¼, N½ Section 21; N½, N½ S½ Section 22; N½, N½ SW¼ Section 23; NW¼, NW¼ NE¼, SW¼ NE¼, NE¼ NE¼ Section 24.

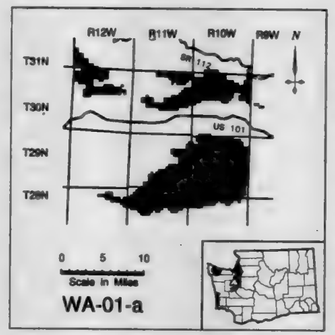
T.30N., R.12W. Willamette Meridian: W½ Section 3; Section 4–5; S½, E½ NE¼, SW¼ NE¼, S½ NW¼ Section 6; SE¼ NW ¼, N½ NW¼, NE¼ Section 7; Section 8 except W½ SW¼; N½ NE¼ Section 9; S½ Section 10; S½ SW¼, SW¼ SE¼, NE¼ SE¼ Section 11; W½ NW¼ Section 13; NW¼, W½ NE¼, NE¼ NE¼ Section 14; N½ N½, SE¼ NE¼ Section 15; Section 17 except S½ S½, NE¼ SE¼.

T.31N., R.10W. Willamette Meridian: S½ S½ Section 32; S½ SW¼, SW¼ SE¼ Section 33.

T.31N., R.12W. Willamette Meridian: NW¼, SW¼, SE¼ Section 30; Section 31 except S½ SW¼; Section 32 except NE¼; S½ SW¼ Section 33.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T. 30N. R.12W. Willamette Meridian: S½ S½ Section 9; N½ Section 16.



Map and description of WA–01-b taken from United States Fish and Wildlife Service 1:100;000 map; Port Angeles, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas;

T.29N., R.07W. Willamette Meridian: NW¼ NW¼ Section 1; N½ NE¼ Section 2.

T.30N., R.07W. Willamette Meridian: SW¼ SE¼ Section 26; Section 29; Section 30 except SE¼ NE¼, N½ NE¼; Section 31 except S½ SW¼; W½ W½, NE¼ NW¼ Section 32; W½ NW¼, N½ SW¼, S½ NE¼, NE¼ NE¼ Section 33; NW¼, W½ NE¼, SE¼ NE¼, NE¼ SE¼ Section 34; N½, N½ S½, S½ SE¼, SE¼ SW¼ Section 35; Section 36.

T.30N., R.08W. Willamette Meridian: S½ S½ except SW¼ SW¼ Section 20; S½ SW¼ Section 21; Section 25; Section 26 except NW¼ NE¼; Section 27; Section 28; Section 29; N½ N½, SE¼ NE¼ Section 33; N½, N½ SE¼ Section 34; N½, NW¼ SW¼ Section 35; N½ Section 36.

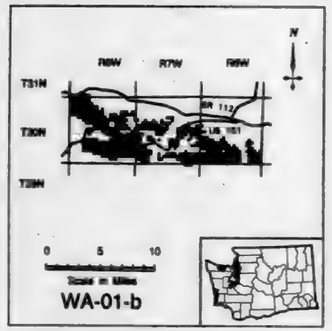
Proposed Critical Habitat includes only State or County lands described within the following areas:

T.30N., R.06W. Willamette Meridian: NW¼ SW¼ Section 18; N½ NW¼, S½ Section 19; S½ SW¼ Section 20; SW¼ SW¼, SE¼ SW¼, NE¼ SW¼ Section 21; SE¼ SE¼ Section 23; NW¼ NW¼, W½ SW¼, SE¼ SW¼, SE¼ SE¼ Section 25; NE¼, E½ SE¼, SW¼ SE¼ Section 26; SW¼, NW¼ SE¼, S½ SE¼, SE¼ NW¼ Section 27; Section 28 except SE¼ SW¼, NE¼ NE¼; Section 29; Section 30 except S½ SW¼; Sections 31–34; E½ E½ Section 35; Section 36.

T.30N., R.07W. Willamette Meridian: SE¼ SE¼ Section 9; S½ SW¼ Section 10; S½ S½, N½ SE¼ Section 13; SE¼, SE¼ NE¼, SE¼ SW¼ Section 14; SE¼ SE¼, SW¼ NW¼, NE¼ NW¼ Section 15; Section 16 except N½ NE¼, W½ NW¼, NE¼ SE¼; S½, S½ N½, NW¼ NE¼ Section 17; NW¼ NW¼, S½, NE¼ NE¼, S½ NE¼ Section 18; SW¼, SW¼ NE¼, S½ NW¼, NW¼ NW¼ Section 19; SW¼, SW¼ SE¼, E½ NE¼ Section 20; NW¼, SW¼ SW¼, NW½ NE¼ Section 21; S½ SW¼, E½ E½ Section 22; S½ NW¼, N½ SW¼, SE¼ SE¼, W½ NE¼, NE¼ NE¼, NE¼ NW¼ Section 23; N½, NW¼ SW¼, N½ SE¼, SE¼ SE¼ Section 24; S½ NW¼, NE¼, Section 25; N½, NW¼ SE¼ Section 27.

T.30N., R.08W. Willamette Meridian: S½ SW¼ Section 4; Section 5 except E½ NE¼; Section 6 except NW¼ NW¼; Section 7 except S½ SW¼; Section 8; Section 9 except NW¼ NE¼; SW¼ SW¼, SE¼ Section 10; Section 11 except NW¼, N½ NE¼, NE¼ NW¼; N½ S½, SW¼ NW¼, S½ NE¼, SE¼ SE¼ Section 12; NW¼ NW¼, NE¼ NE¼, SE¼ SE¼, S½ SW¼, NW¼ SW¼ Section 13; Section 14; NW¼, SW¼, NE¼ Section 15; Section 16; SE¼ NW¼, N½ NW¼, NE¼ Section 17; N½ NE¼, SW¼ NE¼, NE¼ NW¼ Section 20; NE¼ NE¼ Section 21; N½ NW¼, SE¼ NW¼, W½ SE¼, SW¼ SE¼, NE¼ Section 22; NW¼, SW¼, SE¼, SW¼ NE¼ Section 23; S½, S½ N½, N½ NE¼ Section 24; NW¼ NE¼ Section 26.

T.31N., R.08W. Willamette Meridian: W½ SE¼ Section 31; W½ SW¼, S½ SE¼ Section 32.



Map and description of WA–02–a taken from United States Fish and Wildlife Service 1:100;000 map; Cape Flattery and Forks, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.28N., R.12W. Willamette Meridian: S½, S½ NW¼, SW¼ NE¼ Section 4; S½, S½ N½ Section 5; Section 6 except NE¼ NE¼; Sections 7–9; Sections 16–21; Sections 28–33.

T.29N., R.12W. Willamette Meridian: S½ Section 7; S½ SW¼, SW¼ SE¼ Section 8; NW¼, NW¼ SW¼, NW¼ NE¼ Section 16; Section 17 except SE¼ SE¼; Section 18; Section 19 except SE¼ SE¼; NW¼, N½ SW¼, SW¼ SW¼ Section 20; W½ W½, NE¼ NW¼, NE¼ SW¼ Section 30.

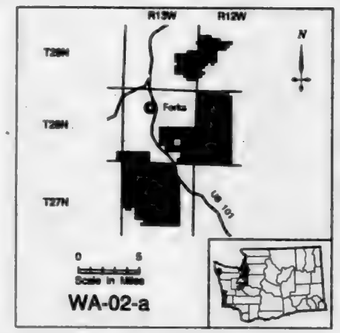
T.29N., R.13W. Willamette Meridian: S½ S½, NE¼ NE¼ Section 13; Section 23 except SW¼ SW¼; Sections 24–25; N½, N½ SW¼, N½ SE¼, SE¼ SE¼ Section 26, N½ N½ Section 36.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.27N., R.13W. Willamette Meridian: W½ NW¼, SE¼ NW¼, SW¼ Section 2; Sections 3–10; W½, W½ SE¼, W½ NE¼ Section 11; W½, W½ SE¼, W½ NE¼ Section 14; Sections 15–18; NW¼ SE¼, NE¼ SW¼, N½ Section 19; Sections 20–22; W½, W½ SE¼, W½ NE¼ Section 23; W½, W½ SE¼, W½ NE¼ Section 26; Sections 27–28; N½, E½ SE¼, SW¼ SE¼ Section 29.

T.28N., R.13W. Willamette Meridian: Sections 22–25; W½ NW¼, E½ NE¼, S½ Section 26; NW¼, E½ Section 27; Sections 31–32; W½ W½ Section 33; NW¼ NE¼ Section 34; E½ E½, W½ SE¼ Section 35; Section 36.

T.28N., R.14W. Willamette Meridian: E½ Section 36.



Map and description of WA–02–b taken from United States Fish and Wildlife Service 1:100;000 map; Forks and Mt Olympus, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.25N., R.10W. Willamette Meridian: Sections 29–30; Section 31 except SE¼ SE¼; N½ NW¼, SW¼ NW¼ Section 32.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.24N., R.11W. Willamette Meridian: N½ N½ Section 1; N½, N½ SW¼ Section 2; Sections 3–8; Section 9 except SE¼; N½ NW¼ Section 10; NW¼ Section 16; NW¼, W½ NE¼, NW¼ SW¼ Section 17; Section 18 except SE¼ SE¼; NW¼ NW¼ Section 19.

T.24N., R.12W. Willamette Meridian: S½ NW¼, SW¼, S½ SE¼, NW¼ NW¼, SW¼ NE¼, NW¼ SE¼ Section 1; SE¼, E½ NE¼ Section 2; W½ SE¼, NE¼ SE¼, S½ NE¼ Section 10; Section 11; Section 12 except NE¼ SE¼; NW¼, SW¼, N½ NE¼, SW¼ NE¼ Section 13; N½, S½ SE¼, NE¼ SE¼ Section 14; NE¼ NW¼, NE¼, N½ SE¼ Section 23; N½, N½ SW¼ Section 24.

T.25N., R.10W. Willamette Meridian: Sections 1–11; NW¼, NE¼ SW¼ Section 14; Section 15 except SE¼ SW¼, S½ SE¼; Sections 16–20; NW¼, N½ NE¼, SW¼ NE¼ Section 21.

T.25N., R.11W. Willamette Meridian: Section 1–18; Section 19 except SW¼ SE¼; Section 20 except NE¼ NW¼; Sections 21–36.

T.25N., R.12W. Willamette Meridian: Section 1 except N½ N½, SE¼ NE¼, NE¼ SE¼; Section 2 except E½ NE¼; Section 3 except NE¼ NW¼; E½ E½ Section 4; SE¼ Section 5; SE¼ SW¼ Section 6; Section 7; N½ Section 8; Section 9; Section 10 except NE¼ NE¼; SE¼ NW¼, S½ Section 11; Section 12; Section 13 except S½ SW¼; W½ W½, E½ Section 14; Sections 15–16; W½ NW¼, S½ S½, NW¼ SW¼, NE¼ SE¼ Section 17; Section 18; N½ NE¼, SW¼ NE¼, E½ NE¼ Section 19; N½ N½ Section 20; N½ N½ Section 21; N½ N½ Section 22; NW¼ NW¼ Section 23; E½ SW¼, NE¼ NW¼, NE¼ Section 24; Section 25 except NW¼ NW¼; Section 26 except S½, S½ NE¼; Section 35 except W½ W½, Section 36.

T.25N., R.13W. Willamette Meridian: Section 1 except N½ N½, SW¼ NE¼, NE¼ SE¼; S½, S½ NE¼ Section 2; NE¼ NW¼, S½ S½, N½ NE¼, SE¼ NE¼ Section 11; Section 12; Section 13 except SW¼ SW¼; Section 14; N½ NW¼ Section 23; NE¼ NW¼ Section 24.

T.26N., R.09W. Willamette Meridian: S½ NW¼, SW¼, SW¼ NE¼ Section 19; Sections 30–31.

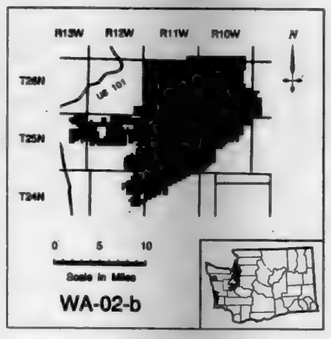
T.26N., R.10W. Willamette Meridian: W½ W½ Section 1; Sections 2–11; W½ SW¼ Section 13; Sections 14–36.

T.26N., R.11W. Willamette Meridian: Sections 1–5; NW¼ NW¼ Section 6; Sections 7–36.

T.26N., R.12W. Willamette Meridian: S½ SE¼ Section 33; SW¼ SW¼, S½ SE¼ Section 34; S½ SW¼, SW¼ SE¼ Section 35; Section 36.

T.27N., R.10W. Willamette Meridian: S½ Section 31; S½ Section 32; S½ Section 33; S½ Section 34; S½ Section 35.

T.27N., R.11W. Willamette Meridian: SE¼ Section 35; S½ Section 36.



Map and description of WA–02–c taken from United States Fish and Wildlife Service 1:100;000 map; Forks and Mt Olympus, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.23N., R.10W. Willamette Meridian: N½ Section 1; N½ N½, SE¼ NE¼ Section 2; S½ NW¼, NE¼ NW¼, NE¼ Section 15; N½, SE¼, SE¼ NW¼, S½ NE¼ Section 16.

T.24N., R.09W. Willamette Meridian: W½, SE¼, W½ NE¼ Section 3; Sections 4–9; Section 10 except E½ SE¼; Section 15 except E½ NE¼, S½ SE¼, NE¼ SE¼; Sections 16–21; Sections 28–33.

T.24 ½N., R.09W. Willamette Meridian: Section 31 except NE¼ NE¼; Section 32 except NE¼ NE¼, NW¼ NW¼; Section 33 except N½ N½; SW¼, SW¼ SE¼ Section 34.

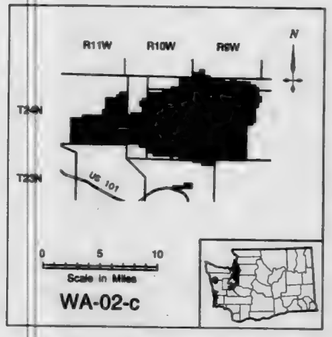
T.24N., R.10W. Willamette Meridian: Sections 1–4; Section 5 except NW¼ NW¼; Section 6 except N½ N½; Sections 7–30; N½, N½ SE¼ Section 31; N½, N½ S½ Section 32; N½, N½ S½, SE¼ SE¼, SE¼ SW¼ Section 33; Sections 34–36.

T.24 ½N., R.10W. Willamette Meridian: S½ S½, E½ NE¼, NE¼ SE¼ Section 33; Sections 34–36.

T.25N., R.09W. Willamette Meridian: S½, S½ NE¼ Section 31; S½ SW¼ Section 32.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.24N., R.11W. Willamette Meridian: S½ SW¼, NE¼ SW¼, Mr. Speaker, SE¼ Section 12; Section 13; Section 14; S½ S½ Section 20; S½ Section 21; E½ NE¼, S½ Section 22; Sections 23–29; Sections 32–36.



Map and description of WA–02–d taken from United States Fish and Wildlife Service 1:100;000 map; Forks, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

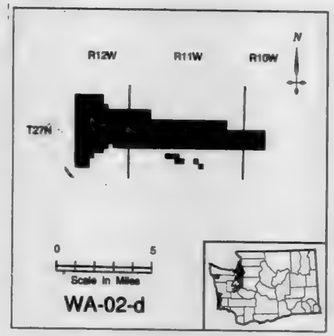
T.27N., R.11W. Willamette Meridian: NE¼ SW¼, SW¼ SE¼ Section 27; S½ NW¼, NW¼ SE¼, NE¼ SE¼ Section 28; SE¼ NE ¼ Section 29.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.27N., R.10W. Willamette Meridian: Section 19.

T.27N., R.11W. Willamette Meridian: S½ Section 14; S½ Section 15; S½ Section 16; S½ Section 17; Section 18–24.

T.27N., R.12W. Willamette Meridian: S½ N½, S½ Section 10; SW¼, SW¼ SE¼, S½ NW¼ Section 11; Sections 13–15; Section 22; Section 23 except S½ SE¼, NE¼ NE¼; Section 24; N½ NE¼ Section 25; N½ NW¼ Section 26; Section 27 except E½ SE¼.



Map and description of WA–03–a taken from United States Fish and Wildlife Service 1:100;000 map; Mt. Olympus and Shelton, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.21N., R.07W. Willamette Meridian: SE¼ SE¼, NW¼ SE¼, SW¼ NE¼, NE¼ NW¼ Section 3.

T.21N., R.08W. Willamette Meridian: NW¼ NW¼ Section 3; Sections 4–9; N½, N½ SW¼, SE¼ SW¼, NW¼ SE¼, Section 16; Section 17 except S½ S½; Section 18 except S½ S½.

T.21N., R.09W. Willamette Meridian: Section 1; Section 2 except N½ NW¼; Section 3 except SE¼, SE¼ NE¼; NW¼, E½ NE¼, S½ NW¼, SE¼ NE¼ Section 4; E½ E½, NW¼ NW¼ Section 5; E½ NW¼, NE¼ Section 6.

T.22N., R.07W. Willamette Meridian: SW¼ SW¼, N½, N½ S½ Section 1; N½ NE¼, SE¼ NE¼ Section 2; E½ W½, SW¼ NE¼, NW¼ NW¼ Section 3; W½, NW¼ SE¼, SW¼ NE¼, N½ NE¼ Section 4; Section 5 except SW¼ SE¼; S½ SW¼, SE¼, S½ NE¼, NE¼ NE¼, NW¼ SW¼ Section 6; NE¼ NW¼, N½ NE¼ Section 7; NW¼ NE¼, NE¼ SW¼, SW¼ SE¼, E½ SE¼ Section 8; N½ NW¼, SW¼ NW¼, S½ SE¼, NE¼ SE¼ Section 9; W½, W½ SE¼ Section 10; E½ NE¼ Section 11; NW¼ NW¼, S½ NW¼, W½, SE¼, N½ SW¼, SE¼ SW¼ Section 12; SE¼ SW¼, N½ SE¼, SW¼ SE¼, NW¼ NE¼, SE¼ NE¼ Section 13; SW¼ NW¼, SW¼ SE¼, SW¼ Section 14; N½ N½, SW¼ NW¼, SW¼, S½ SE¼, NE¼ SE¼ Section 15; Section 16 except SW¼ NW¼, N½ NW¼; E½ SW¼, NW¼ NE¼ Section 17; NE¼ SW¼, SW¼ SW¼ Section 18; NW¼ SE¼, N½ NW¼, SW¼, SW¼ NW¼, SE¼ NE¼ Section 19; N½ NW¼, SE¼ NW¼, SW¼, S½ NE¼, E½ SE¼, NE¼ NE¼ Section 20; N½, E½ SW¼, W½ SE¼, NE¼ SE¼ Section 21; N½ Section 22; N½ NW¼, SW¼ SE¼, SW¼ NW¼, SE¼ SW¼, N½ SE¼, SE¼ NE¼ Section 23; NW¼ NW¼ Section 24; N½ NW¼, SW¼ NW¼ Section 26; SE¼ NW¼, E½ SW¼, S½ NE¼, SW¼ SW¼ , NE¼ NE¼ Section 27; NE¼ NW¼ Section 28; E½ NW¼, W½ NE¼, NE¼ NE¼, W½ SW¼ Section 29; SE¼ SE¼ Section 30; N½, N½ SW¼, SW¼ SW¼, NW¼ SE¼ Section 31; E½ W½, W½ SW¼ Section 34.

T.22N., R.08W. Willamette Meridian: W½ NW¼, NW¼ NE¼, SW¼ Section 2; Section 3–9; W½, NE¼ NE¼, W½ NE¼ Section 10; E½ SW¼, SE¼, S½ NE¼ Section 11; W½ SW¼, SW¼, NW¼ Section 12; SE¼ SE¼ Section 13; N½ NE¼ Section 14; Section 15 except E½ NE¼, SE¼ SE¼; Sections 16–21; Section 22 except E½ E½, SW¼ NE¼; NE¼ SE¼, N½ NE¼, SE¼ NE¼ Section 24; Section 27 except SE¼ SE¼; Sections 28–33; N½ NW¼, S½ SE¼, NE¼ SE¼, NW¼ NE¼, SW¼ SW¼ Section 34; SE¼ NW¼, SW¼, E½ Section 35; S½ SE¼, SW¼ SW¼, E½ NE¼ Section 36.

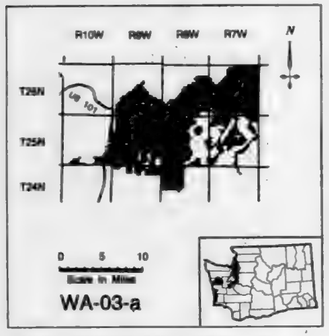
T.22N., R.09W. Willamette Meridian: Sections 1–5; E½ Section 6; E½ Section 7; Sections 8–25; Section 26 except SW¼; Section 27 except SW¼ NW¼, W½ SW¼; Sections 28–33; Section 34 except NW¼ NW¼, NE¼ SE¼; E½, E½ SW¼, SE¼ NW¼, NW¼ NW¼ Section 35.

T.22N., R.10W. Willamette Meridian: E½ SE¼ Section 13; SE¼ SW¼, SE¼, NW¼ NE¼ Section 24; SE¼ SW¼, SE¼, S½ NE¼, NE¼ NE¼ Section 25; SE¼ SE¼ Section 31; S½, S½ NE¼, SE¼ NW¼ Section 32; S½ SW¼, SW¼ SE¼, NW¼ NW¼ Section 33; SE¼ SE¼, NE¼ NE¼ Section 34; Section 35 except S½ SW¼; Section 36.

T.23N., R.07W. Willamette Meridian: Sections 1–2; Section 3 except NE¼ NE¼, NW¼ NW¼; E½ SW¼, SE¼, S½ NE¼ Section 4; SW¼ Section 7; NE¼ SE¼, S½ SW¼ Section 8; Section 9 except NW¼ NW¼; Sections 10–16; Section 17 except NW¼ NW¼; Section 18 except NE¼ NE¼; Sections 19–30; N½, NW¼ SW¼, N½ SE¼, SE¼ SE¼ Section 31; Section 32–33; Section 34 except S½ SE¼; Sections 35–36.

T.23N., R.08W. Willamette Meridian: NE¼ SW¼, S½ NE¼, SE¼ Section 11; Section 12 except N½ N½; Section 13–14; S½, S½ NE¼ Section 15; SE¼ SE¼ Section 16; E½ SW¼, SW¼ SW¼, SE¼, S½ NE¼, NE¼ NE¼ Section 21; Sections 22–29; S½, S½ NW¼, NW¼ NW¼ Section 30; Sections 31–35; N½ Section 36.

T.23N., R.09W. Willamette Meridian: SW¼ SE¼ Section 10; S½ NW¼, SW¼, E½ SE¼, SE¼ SE¼, NW¼ NE¼, NE¼ NW¼ Section 15; SE¼ NE¼, SE¼ SW¼, SE¼ Section 16; SE¼ SE¼ Section 19; S½, S½ NE¼, NE¼ NE¼ Section 20; Sections 21–22; W½ W½, E½ SW¼, W½ SE¼, SE¼ SE¼ Section 23; SW¼ SW¼ Section 24; Section 25–29; SE¼ SW¼, SE¼, E½ NE¼ Section 30; E½ W½, E½ Section 31; Section 32–36.



Map and description of WA–03–b taken from United States Fish and Wildlife Service 1:100;000 map; Mt. Olympus and Shelton, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

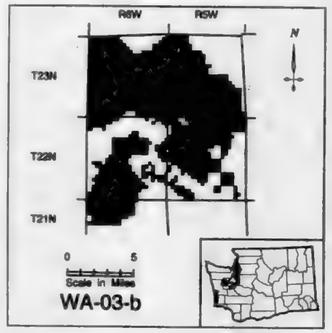
T.21N., R.06W. Willamette Meridian: W½, NW¼ NE¼ Section 3; Sections 4–6; NW¼ NW¼, E½ W½, SW¼ SW¼, E½ Section 7; Section 8; E½, NE¼ Section 9; N½ NW¼ Section 10.

T.22N., R.05W. Willamette Meridian: Sections 1–4; S½, NE¼ NW¼, NE¼ Section 5; NW¼, SE¼, E½ SW¼, W½ NE¼, SE¼ NE¼ Section 6; Section 7 except NW¼ NW¼; Sections 8–10; Section 11 except E½ SE¼, NE¼ NE¼; W½ W½, E½ NW¼, NW¼ NE¼, NE¼ SW¼ Section 14; N½ NW¼, W½ SW¼ Section 15; Sections 16–18; N½ NW¼, W½ SW¼, NE¼, SE¼ NW¼, NE¼ SE¼ Section 19; Sections 20–22; Section 26; N½, N½ SE¼, SW¼ SE¼, NE¼ SW¼ Section 28; NW¼ NW¼, N½ NE¼, SE¼ NE¼ Section 29; S½ SW¼, NW¼ SE¼, SW¼ NE¼, NE¼ SE¼ Section 30; NE¼ NW¼, NE¼, NE¼ SE¼ Section 31; W½ NW¼, N½ SW¼, SE¼, SW¼ NE¼, SE¼ SW¼, SE¼ NW¼ Section 32; NE¼ Section 34; W½ W½, NE¼ SW¼ Section 36.

T.22N., R.06W. Willamette Meridian: N½ NW¼, NE¼, NE¼ SE¼ Section 1; SE¼ NE¼, NE¼ NW¼ Section 2; NW¼ NW¼ Section 4; NW¼, W½ SW¼,W½ NE¼, NE¼ NE¼ Section 5; Section 6 except S½ SE¼, SE¼ SW¼; E½ SE¼ Section 8; S½ Section 9; S½ NW¼, S½, NE¼ NW¼, W½ NE¼ Section 10; SW¼, SW¼ SE¼ Section 11; NE¼ SE¼, S½ SE¼ Section 12; Section 13 except W½ SW¼; NW¼, N½ SW¼ Section 14; Section 15 except SE¼ SW¼, S½ SE¼; Section 16; SW¼ SE¼, E½ E½ Section 17; SE¼ NW¼, S½ NE¼, N½ SE¼, SE¼ SE¼ Section 19; Section 20 except E½ NW¼; Section 21; W½ SW¼ Section 22; W½ SW¼, NE¼ SW¼, SW¼ NE¼, E½ SE¼ Section 23; N½ NE¼ Section 24; S½ N½, NE¼ NE¼, SE¼ SE¼, NE¼ NE¼, N½ SE¼ Section 25; NW¼, SE¼ NE¼, NE¼ SE¼, SW¼ SW¼, N½ NE¼ Section 26; Section 27 except N½ NE¼, SE¼ NE¼; Sections 28–29; SE¼, SW¼ NE¼, E½ NE¼, NE¼ SW¼ Section 30; Section 31 except W½ NW¼; Sections 32–33; Section 34 except E½ SE¼; N½ NW¼ Section 35.

T.23N., R.05W. Willamette Meridian: W½ SW¼ Section 4; Sections 5–8; Section 9 except NE¼ NE¼; S½ SW¼ Section 14; N½ NW¼, NW¼ SW¼, S½ S½, SW¼ NW¼ Section 15; Sections 16–22; Section 23 except SE¼ NE¼, N½ NE¼; S½ SW¼ Section 24; W½ Section 25; Section 26–35; Section 36 except NE¼.

T.23N., R.06W. Willamette Meridian: S½ SW¼, NE¼ SW¼, SE¼, S½ NE¼, NE¼ NE¼ Section 1; E½ SE¼ Section 2; S½ NW¼, NW¼ NW¼, SW¼, W½ SE¼, SE¼ SE¼ Section 4; Sections 5–9; S½ N½, S½, NW¼ NW¼ Section 10; Sections 11–32; Section 33 except S½ SE¼, NE¼ SE¼; Section 34 except SW¼; Sections 35–36.



Map and description of WA–04–a taken from United States Fish and Wildlife Service 1:100;000 map; Shelton and Chehalis River, Washington; 1995.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.16N., R.03W. Willamette Meridian: W½ SW¼ Section 2; E½ NW¼, NE¼ SW¼, S½ SW¼,W½ NE¼, SE¼ Section 3; NE¼, SE¼ SE¼, W½ Section 4; Sections 5–7; W½, W½ NE¼, SE¼ NE¼ Section 8; N½ NW¼, NE¼ NE¼ Section 9; NW¼,W½ NE¼ Section 10; NW¼, NW¼ SW¼, W½ NE¼ Section 16; Sections 17–18; Section 19 except W½ SW¼, SW¼ NW¼; W½ W½ Section 20; NE¼ NW¼, N½ NE¼, SE¼ NE¼ Section 30.

T.16N., R.04W. Willamette Meridian: Sections 1–17; Section 18 except SW¼; N½ NE¼ Section 19; Section 20 except W½ SW¼; Sections 21–23; W½ W½ Section 24; N½ NW¼ Section 26; Section 27 except S½ SE¼; NE¼ NW¼, S½ SE¼, NE¼ SE¼, N½ NE¼ Section 28.

T.16N., R.05W. Willamette Meridian: S½ SW¼, SE¼ Section 1; S½ SE¼, NE¼ SE¼ Section 2; N½, N½ SW¼, NW¼ SE¼, SE¼ SW¼ Section 11; N½ Section 12; Section 13; E½ NE¼ Section 14.

T.17N., R.03W. Willamette Meridian: W½ W½ Section 2; Sections 3–7; Section 8 except SW¼ SE¼; Section 9; SW¼ SW¼ Section 10; NW¼ NW¼ Section 15; Section 16; NW¼ NW¼, S½ NW¼, W½ SE¼, SW¼ Section 17; Sections 18–21; Sections 28–33; NW¼ SW¼, SE¼ SW¼, SW¼ SE¼ Section 34.

T.17N., R.04W. Willamette Meridian: Sections 1–36.

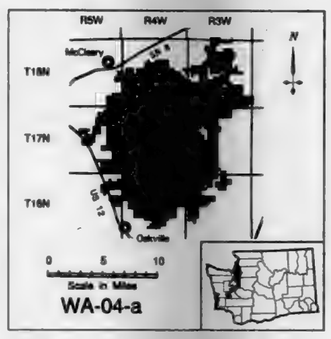
T.17N., R.05W. Willamette Meridian: Section 1; Section 2 except N½ NW¼, SW¼ NW¼; E½ SE¼ Section 3; SE¼ SW¼, E½ Section 10; Section 11 except S½ SW¼; Sections 12–13; E½ Section 14; SW¼, E½ NW¼, NE¼ Section 15; NW¼, SE¼, SE¼ SW¼, NE¼ NE¼, W½ NE¼ Section 16; E½ NW¼, NE¼ Section 21; W½ NW¼, NE¼ NW¼ Section 22; S½, NE¼ Section 23; Sections 24–25; S½ S½ Section 26; S½ SE¼ Section 27; Sections 35–36.

T.18N., R.03W. Willamette Meridian: N½ N½, S½ SE¼, SE¼ SW¼ Section 3; E½ NE¼, W½, NE¼ NE¼ Section 4; SE¼ Section 5; E½ E½, SW¼ SE¼ Section 8; Sections 9–10; W½ NW¼, NW¼ SW¼ Section 11; SW¼, S½ SE¼, SE¼ NW¼ Section 14; Section 15 except SW¼ SW¼; Section 16; Section 17 except NW¼ NW¼, E½ SE¼; SE¼ NW¼, SE¼ SW¼, N½ SW¼, SE¼, S½ NE¼ Section 18; NE¼ NW¼, NW¼ SW¼, S½ S½ Section 19; E½ SE¼,W½ E½, W½ Section 20; S½, S½ NE¼, SE¼ NW¼ Section 21; NW¼, W½ NE¼, N½ SW¼, SW¼ SW¼, NW¼ SE¼, SE¼ SE¼ Section 22; Section 26; Section 27 except NE¼ NW¼, NW¼ NE¼; Sections 28–35; Section 36 except S½ SE¼.

T.18N., R.04W. Willamette Meridian: SE¼ SE¼, SE¼ SW¼ Section 9; S½ S½ Section 10; SW¼ SW¼ Section 11; SW¼ SW¼, NE¼ SE¼, SE¼ SE¼ Section 13; W½ NW¼, SW¼, W½ SE¼, SE¼ SE¼ Section 14; Sections 15–16; E½ SW¼, SE¼ Section 17; SE¼, E½ SW¼ Section 18; Sections 19–23; Section 24 except N½ NE¼, SE¼ NE¼; Sections 25–36.

T.18N., R.05W. Willamette Meridian: S½ SE¼ Section 13; S½ S½ Section 24; S½ S½ Section 25; E½ Section 35; Section 36.

T.19N., R.03W. Willamette Meridian: S½ S½ Section 33.



Map and description of WA–05–a taken from United States Fish and Wildlife Service 1:100;000 map; Chehalis River, Washington; 1995.

Proposed Critical Habitat includes only State or County lands described within the following areas:

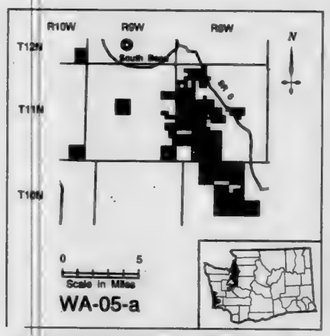
T.12N., R.08W. Willamette Meridian: Section 3 except S½ SW¼, SW¼ SE¼; Section 4 except S½ S½; Section 5; Section 9; Section 10 except NW¼ NW¼; S½ S½ Section 11; Sections 14–16.

T.13N., R.08W. Willamette Meridian: SW¼ SW¼ Section 4; Section 5 except N½ NW¼, NW¼ NE¼; S½ SE¼, NE¼ SE¼, S½ NE¼ Section 6; Section 7 except SE¼ NW¼, E½ NE¼; W½ W½, SE¼ SE¼, NW¼ SE¼ Section 8; SW¼ Section 14; NE¼ SW¼, SE¼, Section 15; Sections 16–20; NW¼ NW¼, E½ NW¼, SW¼ SW¼, NE¼ Section 21; W½ NW¼ Section 22; NW¼ NW¼ Section 23; Sections 28–29; Section 30 except N½ N½; Sections 32–33.

T.13N., R.09W. Willamette Meridian: S½ Section 12; S½ SW¼ Section 13; Section 16; NE¼ NW¼, E½ SW¼, N½ NE¼, SE¼ Section 24; E½ SE¼, NE¼ Section 25; Section 36 except W½ W½.

T.13N., R.10W. Willamette Meridian: Section 36.

T.14N., R.10W. Willamette Meridian: Section 36.



Map and description of WA–05–b taken from United States Fish and Wildlife Service 1:100;000 map; Astoria, Oregon-Washington; 1995.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.10N., R.09W. Willamette Meridian: N½, N½ SE¼, NE¼ SW¼ Section 3; N½ NE¼ Section 4.

T.11N., R.09W. Willamette Meridian: Sections 4–10; W½ Section 14; Sections 15–18; Section 19 except SW¼ SW¼; Sections 20–22; Sections 27–29; NW¼, E½ Section 33; N½, SE¼ Section 34.

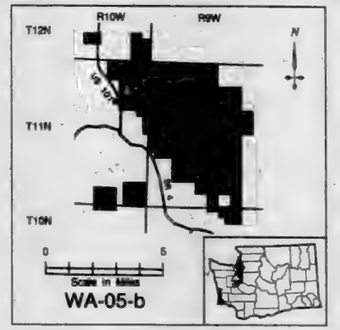
T.11N., R.10W. Willamette Meridian: Sections 1–2; NE¼ SW¼, E½ Section 11; Section 12; E½ SE¼, N½ NE¼, SE¼ NE¼ Section 13; Section 36.

T.12N., R.10W. Willamette Meridian: S½ SW¼ Section 25; NW¼, E½ NE¼ Section 34; Section 36.

Proposed Critical Habitat includes only Private lands described within the following areas:

T.11N., R.10W. Willamette Meridian: E½ SE¼, SE¼ NE¼ Section 34; S½ NW¼, SW¼, W½ SE¼, SW¼ NE¼ Section 35.

T.10N., R.10W. Willamette Meridian: N½ NW¼, NW¼ NE¼ Section 2; NE¼ NE¼ Section 3.



Map and description of WA–05–c taken from United States Fish and Wildlife Service 1:100;000 map; Astoria, Oregon-Washington; 1995.

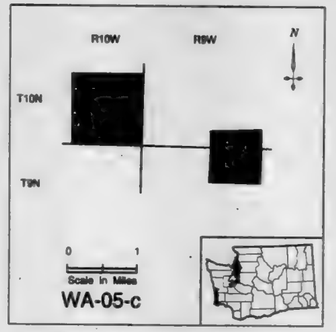
Proposed Critical Habitat includes only State or County lands described within the following areas:

T.10N., R.10W. Willamette Meridian: Section 36.

Proposed Critical Habitat includes only Private lands described within the following areas:

T.09N., R.09W. Willamette Meridian: NW¼, W½ NE¼ Section 5.

T.10N., R.09W. Willamette Meridian: S½ SW¼, SW¼ SE¼ Section 32.



Map and description of WA–05–d taken from United States Fish and Wildlife Service 1:100;000 map; Cape Flattery, Washington; Astoria, Oregon-Washington; 1995.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.10N., R.06W. Willamette Meridian: Sections 2–5; N½, S½ SE¼ Section 6; SE¼, N½ NE¼, SE¼ NE¼ Section 7; Section 8–10; Sections 14–17; E½ Section 18; Section 19; SW¼ NW¼, SW¼, W½ NE¼, NE¼ NE¼ Section 20; Section 21–27; S½ NW¼, SW¼, SE¼ Section 28; NE¼ Section 29; NW¼, W½ NE¼ Section 30; N½, N½ SW¼ Section 33; N½, W½ SE¼, NE¼ SE¼ Section 34; N½, SW¼, NW¼ SE¼ Section 35; Section 36 except SE¼ SW¼.

T.10N., R.08W. Willamette Meridian: NW¼ NW¼ Section 1; Section 2; NW¼ Section 10; NE¼, E½ NW¼, N½ SE¼ Section 11; W½ NW¼, SW¼ NE¼ Section 12.

T.11N., R.07W. Willamette Meridian: W½ Section 8; Section 18 except SE¼ SE¼; Sections 17–18; Section 19 except SW¼ SW¼; Section 20; S½ SE¼ Section 21; N½ Section 29; N½, SW¼ Section 30; N½ NW¼ Section 31; E½, E½ W½, SW¼ SW¼ Section 36.

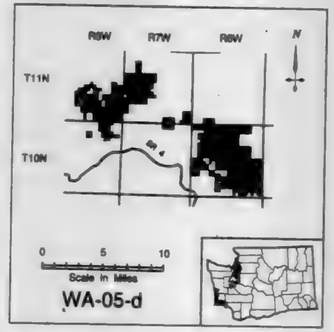
T.11N., R.08W. Willamette Meridian: S½ SW¼ Section 13; SE¼ SE¼ Section 20; S½, S½ NE¼ Section 21; S½ NW¼, NW¼ NW¼, SE¼ Section 22; NW¼ SW¼ Section 23; Sections 24–25; Section 26 except W½ NW¼, E½ SW¼; Sections 27–28; E½ SE¼, NE¼ Section 33; N½, SE¼ Section 34; Sections 35–36.

Proposed Critical Habitat includes only Private lands described within the following areas:

T.10N., R.07W. Willamette Meridian: NW¼ Section 2; NE¼ Section 3.

T.11N., R.06W. Willamette Meridian: S½ Section 32.

T.11N., R.07W. Willamette Meridian: SE¼ Section 34; SW¼ Section 35.



Map and description of WA–05–e taken from United States Fish and Wildlife Service 1:100;000 map; Astoria, Oregon-Washington; 1995.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.08N., R.04W. Willamette Meridian: Section 4 except SE¼ SE¼; W½ NW¼, SW¼, S½ SE¼, NE¼ NW¼ Section 5; S½ Section 6; N½ Section 7.

T.08N., R.05W. Willamette Meridian: Section 1 except SW¼ NW¼; NW¼, NW¼ NE¼, Section 2; Section 3 except SE¼; Section 4; N½ SE¼, SE¼ SE¼ Section 5; NW¼, SE¼, N½ NE¼ Section 9; SW¼ Section 10; N½ NE¼ Section 12; Section 16; N½, N½ SE¼ Section 21.

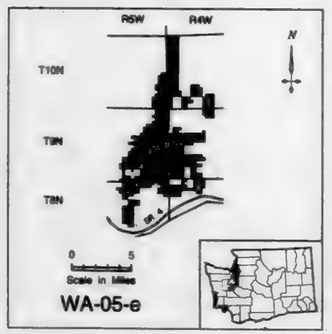
T.09N., R.04W. Willamette Meridian: Section 3 except SW¼ SW¼; W½ W½ Section 6; W½ NW¼, NW¼ SW¼, SE¼ Section 7; NW¼ SW¼ Section 8; SW¼ SW¼ Section 10; W½ NW¼, NW¼ SW¼

Section 15; Section 16 except S½ SE¼, SE¼ SW¼; Sections 17–19; W½, S½ SE¼ Section 20; S½ S½ Section 21; NW¼ NW¼ Section 27; N½ N½, SW¼ NW¼, S½ Section 28; Sections 29–31; W½ Section 32; W½, SE¼ Section 33.

T.09N., R.05W. Willamette Meridian: Section 1; N½ N½, NW¼ SE¼ Section 2; E½ SE¼ Section 10; Section 11 except N½ NW¼; Sections 12–14; Section 15 except N½ NW¼; S½ SE¼, SE¼ NE¼ Section 16; SE¼, SE¼ NE¼ Section 21; Sections 22–28; E½ SE¼ Section 29; SE¼ SE¼ Section 32; Section 33 except E½ NW¼, W½ NE¼, SE¼ NE¼, NE¼ SE¼; Section 34 except NW¼; Sections 35–36.

T.10N., R.04W. Willamette Meridian: Sections 6–7; Sections 18–19; S½ SE¼, SE¼ SW¼ Section 27; Section 28 except NE¼ NE¼, W½ SW¼ Section 29; Section 30; W½ Section 31; W½, NE¼ Section 32; SW¼ NW¼ Section 33; Section 34.

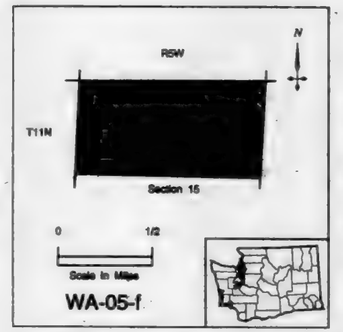
T.10N., R.05W. Willamette Meridian: Section 24 except NW¼ NW¼; Section 25; E½ NE¼, SE¼ SE¼ Section 26; E½ Section 35; Section 36.



Map and description of WA–05–f taken from United States Fish and Wildlife Service 1:100;000 map; Astoria, Oregon-Washington; 1995.

Proposed Critical Habitat includes only Private lands described within the following areas:

T.11N., R.05W. Willamette Meridian: N½ Section 15.



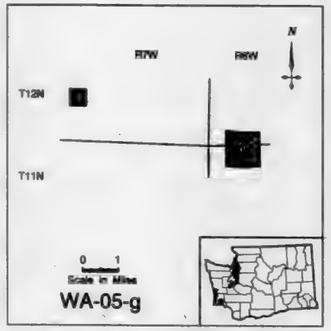
Map and description of WA–05–g taken from United States Fish and Wildlife Service 1:100;000 map; Astoria, Oregon-Washington; 1995.

Proposed Critical Habitat includes only Private lands described within the following areas:

T.11N., R.06W. Willamette Meridian: NW¼, NW¼ SW¼ Section 5; NE¼, SE¼ Section 6.

T.12N., R.06W. Willamette Meridian: SE¼ SE¼ Section 31; SW¼ SW¼ Section 32.

T.12N., R.07W. Willamette Meridian: SW¼ Section 28.



Map and description of WA–05–h taken from United States Fish and Wildlife Service 1:100;000 map; Chehalis River, Washington; 1995.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.12N, R.05W. Willamette Meridian: NW¼ Section 6.

T.12N, R.06W. Willamette Meridian: NE¼ NE¼, S½ NE¼ Section 1; NW¼, W½ NE¼, NE¼ NE¼ Section 3; N½ NE¼ Section 6.

T.12N, R.07W. Willamette Meridian: N½ NE¼ Section 1.

T.12N, R.08W. Willamette Meridian: NE¼ NW¼, NE¼ Section 1.

T.13N, R.05W. Willamette Meridian: N½ NW¼ Section 1; N½ NE¼ Section 2; NE¼ SW¼, S½ SW¼, SE¼ Section 8; S½ SW¼, NE¼ SW¼ Section 9; S½ Section 10; Sections 15–21; Section 22 except S½ SE¼, NE¼ SE¼, E½ NE¼; NW¼, NW¼ NE¼ Section 27; NE¼ Section 28; Section 29–31; Section 32 except W½ SW¼.

T.13N, R.06W. Willamette Meridian: Sections 6–7; SW¼ SW¼ Section 8; SE¼ Section 12; Section 13; Section 14 except W½ W½; W½ NW¼ Section 15; Section 16; Sections 18–33; Section 34 except SW¼ SW¼; Section 35; Section 36 except SE¼ SW¼.

T.13N, R.07W. Willamette Meridian: Sections 1–2; Section 3 except NW¼; 6½ NW¼, SW¼ SW¼ Section 7; SE¼ NE¼, NE¼ SE¼ Section 9; S½ NW¼, NE¼ NW¼, S½ Section 10; Sections 11–16; W½ SW¼, SE¼ SW¼, S½ SE¼, NE¼ Section 17; NW¼, SE¼ Section 18; E½ NE¼, SE¼ Section 19; N½, SE¼ Section 20; Sections 21–24; Section 27; W½ W½ Section 28; Section 29 except W½ NW¼; SE¼ Section 30; W½ Section 31; NW¼, NW¼ NE¼, Section 32; Section 36.

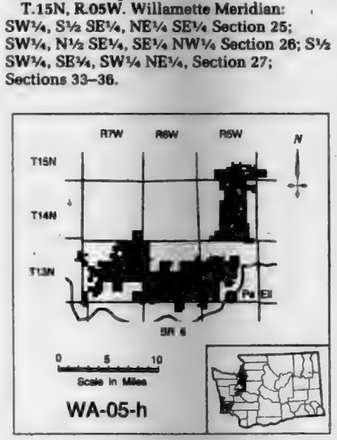
T.13N, R.08W. Willamette Meridian: SE¼ SW¼, E½ Section 12.

T.14N, R.05W. Willamette Meridian: S½ Section 1; Sections 2–4; E½ Section 9; Section 10–11; N½ NE¼ Section 12; Sections 14–16; Sections 21–23; W½ W½ Section 25; Sections 26–28; SW¼, E½ Section 32; Sections 33–35; SW¼, W½ NW¼ Section 36.

T.14N, R.07W. Willamette Meridian: Section 36.

T.15N, R.04W. Willamette Meridian: Section 31 except S½ S½.

T.15N, R.05W. Willamette Meridian: SW¼, S½ SE¼, NE¼ SE¼ Section 25; SW¼, N½ SE¼, SE¼ NW¼ Section 26; S½ SW¼, SE¼, SW¼ NE¼, Section 27; Sections 33–36.



Map and description of WA–06–a taken from United States Fish and Wildlife Service 1:100,000 map; Port Angeles, Mt Olympus and Seattle, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.26N., R.02W. Willamette Meridian: SW¼ SW¼, NE¼, E½ SW¼ Section 2; Section 3 except N½ NE¼, SE¼ NE¼; E½, N½ NW¼, SE¼ NW¼, NE¼ SW¼ Section 4; N½ N½, SW¼ NW¼, S½ SW¼ Section

5; Sections 6–7; W½, S½ SE¼ Section 8; S½ SE¼, SE¼ SW¼, NE¼ NE¼ Section 9; Section 10 except SW¼ NW¼, NW¼ SW¼; Section 14 except E½ SE¼; S½ SW¼, E½ NE¼, NW¼ NE¼, NE¼ SE¼ Section 15; Section 16 except NE¼ SE¼, E½ NE¼; Section 17–21; W½ W½, SE¼ SW¼, SW¼ SE¼ Section 22; Section 27 except E½ E½, NW¼ NE¼.

T.26N., R.03W. Willamette Meridian: Sections 1–2; Section 3 except W½ SW¼, SE¼ SW¼, SW¼ NW¼; NE¼ NE¼ Section 4; E½ Section 10; Section 11–14; Section 15 except N½ NW¼; N½ S½, SE¼ NE¼ Section 16; SE¼ SE¼ Section 17; S½ N½ Section 19; NE¼, S½ NW¼, NE¼ NW¼ Section 20; NE¼ NE¼, NW¼ NW¼ Section 21; N½ NW¼, E½ NE¼ Section 22; Section 23 except SW¼; Section 24.

T.26N., R.04W. Willamette Meridian: NE¼ Section 24.

T.27N., R.02W. Willamette Meridian: SW¼ SW¼ Section 5; Section 6 except NE¼ NE¼; Section 7; W½ W½ Section 8; W½ W½, SE¼, SW¼ NE¼ Section 17; Sections 18–20; NW¼ SW¼ Section 21; SW¼, S½ NW¼, NW¼ NW¼ Section 28; Sections 29–33; W½, N½ NE¼ Section 34; N½ NW¼, E½ Section 35.

T.27N., R.03W. Willamette Meridian: Section 1; Section 2 except SW¼ SW¼; NE¼ NE¼ Section 3; E½, E½ SW¼, SE¼ NW¼ Section 11; Section 12–13; Section 14 except W½ NW¼, SE¼ NW¼; E½ SE¼ Section 15; E½ E½, SW¼ SE¼ Section 22; Sections 23–26; Section 27 except N½ NW¼, SW¼ NW¼; SE¼ SW¼, SE¼ Section 28; E½ NW¼, S½ SE¼, NE¼ SE¼, NE¼ Section 33; N½ N½, S½ SW¼, NW¼ SW¼, SE¼ NE¼, SE¼ Section 34; Sections 35–36.

T.28N., R.02W. Willamette Meridian: NE¼ NW¼, NW¼ NE¼ Section 5; SW¼ SW¼ Section 7; SE¼ SW¼ Section 8; NE¼ NW¼, NW¼ SE¼, SE¼ SE¼ Section 17; NW¼, SW¼ NE¼ Section 18; NE¼ NW¼, SE¼ SW¼ Section 20; N½ SW¼, SE¼ SW¼, W½ SE¼ Section 28; NE¼ NW¼, W½ NE¼ Section 29; S½ SE¼ Section 30; SE¼ NW¼, SW¼, W½ SE¼ Section 31.

T.28N., R.03W. Willamette Meridian: W½ SE¼, NE¼, N½ NW¼ Section 1; W½, N½ NE¼, SE¼ NE¼, SW¼ SE¼ Section 2; Sections 3–5; Section 6 except SW¼ NW¼, SW¼ SW¼; Section 7 except NW¼ NW¼; Sections 8–10; SW¼, NW¼, NW¼ NE¼, NW¼ SE¼, S½ SE¼ Section 11; S½ SW¼, SE¼, SE¼ NE¼ Section 12; Section 13–23; N½ NE¼, SE¼ NE¼, N½ NE¼, SE¼ NE¼ Section 24; N½ SW¼, W½ NW¼ Section 25; Section 26–28; Section 29 except W½ SW¼; S½ S½, Section 30 except SE¼, S½ SW¼; E½ E½, NW¼ NE¼ Section 32; Section 33 except S½ SE¼, SE¼ SW¼; Section 34; Section 35 except NE¼ SE¼, SE¼ NE¼; E½ SE¼ Section 36.

T.28N., R.04W. Willamette Meridian: SE¼ SE¼ Section 12; SE¼ SW¼, SE¼, E½ NE¼ Section 13; Section 24 except NW¼ NW¼; Section 25; S½ SE¼, NE¼ SE¼ Section 26; E½ NW¼, E½ Section 35; NW¼, N½ SW¼, SW¼ SW¼, N½ NE¼, SW¼ NE¼ Section 36.

T.29N., R.02W. Willamette Meridian: W½ NW¼, SE¼ NW¼, N½ S½, NE¼ Section 30; SW¼ NW¼, W½ SW¼, NE¼ SE¼ Section 31; W½ NW¼, SE¼ NW¼, SW¼, W½ SE¼ Section 32.

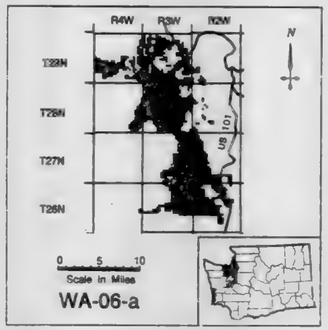
T.29N., R.03W. Willamette Meridian: S½ SE¼ Section 18; Section 19; NW¼, W½ SW¼ Section 20; E½ NE¼, E½ SW¼, NE¼ SW¼, SE¼ Section 23; Section 24 except E½ SE¼, SE¼ NE¼; Section 25; NW¼, N½ SW¼, N½ NE¼, SW¼ NE¼, SE¼ SE¼ Section 26; SE¼, S½ SW¼, E½ NE¼ Section 27; S½ SW¼, NE¼ SW¼ Section 28; W½, SE¼, SW¼ NE¼ Section 29; Section 30 except E½ E½; Sections 31–34; S½, NW¼ SW¼ Section 35; N½ NW¼, S½, NW¼ NE¼ Section 36.

T.29N., R.04W. Willamette Meridian: S½, S½ NW¼, NW¼ NW¼, SW¼ NE¼ Section 19; SW¼, S½ SE¼, NW¼ SE¼ Section 20; SW¼, SE¼ SE¼ Section 21; E½ W½, SW¼ SW¼, W½ SE¼, NE¼ Section 22; NE¼ SW¼, SE¼, E½ NE¼, NW¼ NW¼ Section 23; Section 24 except W½ W½; NW¼ SW¼, SE¼ SW¼, SE¼, E½ NE¼, NW¼ NE¼ Section 25; SW¼ NW¼, NE¼ SW¼, E½ E½, NW¼ NE¼ Section 26; NW¼, N½ SE¼, NW¼ NE¼, S½ NE¼ Section 27; Sections 28–30; N½, N½ SW¼ Section 32; N½ NW¼, SW¼ NW¼, NW¼ NE¼ Section 33; SE¼ NE¼, NE¼ SE¼ Section 34; SW¼ NW¼, SE¼ NE¼, N½ S½ Section 35; Section 36 except SW¼ SW¼.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.29N., R.03W. Willamette Meridian: W½ SW¼, SE¼ SW¼, SW¼ SE¼ Section 4; S½ SW¼, SE¼, SE¼ NE¼ Section 5; SE¼ NE¼, S½ SE¼, W½ SW¼, NE¼ SE¼ Section 6; Section 7 except E½ NW¼; Section 8 except NE¼, SW¼ SW¼; Section 9; W½ NW¼, SE¼ NW¼, SW¼, NE¼ SE¼, NE¼ Section 10; E½ SW¼, SE¼ NE¼, NW¼, SE¼ Section 11; NW¼, E½ SW¼ Section 13; Section 14 except W½ NW¼, SE¼ NW¼; N½ NW¼ Section 15; W½, NW¼ NE¼, NW¼ SE¼ Section 16; Section 17 except W½ NW¼; N½ SE¼, W½ NE¼, E½ NW¼, NE¼ SW¼ Section 18; S½ NW¼, NE¼, NE¼ SE¼ Section 21; N½ NW¼ Section 27; NE¼ NE¼ Section 28.

T.29N, R.04W. Willamette Meridian: E½ SE¼ Section 1; E½, SE¼ SW¼ Section 12; NE¼, E½ NW¼, N½ SE¼, SW¼ SE¼, NE¼ SW¼ Section 18.



Map and description of WA–06–b taken from United States Fish and Wildlife Service 1:100;000 map; Mt Olympus and Shelton, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.23N., R.04W. Willamette Meridian: NW¼, N½ NE¼ Section 3; Section 4 except SE¼ SE¼; Sections 5–6; N½ Section 7; N½ Section 8; NW¼ Section 9.

T.23N., R.05W. Willamette Meridian: SE¼ Section 3; E½ NE¼ Section 10; S½ N½, NE¼ SW¼, NW¼ SE¼ Section 11; S½ NW¼, NE¼ Section 12.

T.24N., R.03W. Willamette Meridian: Sections 5–6; N½ SW¼, W½ NE¼ Section 7.

T.24N., R.04W. Willamette Meridian: Sections 1–5; E½ SE¼ Section 6; SE¼ NW¼, SW¼, N½ SE¼, SW¼ SE¼, NE¼ Section 7; Section 8 except S½ SW¼, SW¼ SE¼; Sections 9–16; SE¼ SW¼, E½ Section 17; N½ NW¼ Section 18; S½ SE¼, NE¼ SE¼, S½ NE¼ Section 19; Sections 20–24; Section 25 except S½ SE¼; Sections 26–29; S½ NW¼, NE¼ NW¼, S½ SE¼, NE¼ SE¼, E½ NE½, NW¼ NE¼ Section 30; Section 31 except NW¼, NW¼ SW¼; Sections 32–34; Section 35 except S½ SE¼; W½ NE¼ Section 36.

T.24N., R.05W. Willamette Meridian: SE¼ SE¼ Section 12; NE¼ NE¼ Section 13.

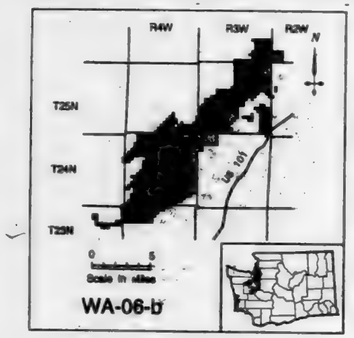
T.25N., R.02W. Willamette Meridian: E½ NW¼, SW¼ SW¼ Section 18.

T.25N., R.03W. Willamette Meridian: Sections 1–3; Sections 10–12; N½, N½ SE¼, SE¼ SE¼ Section 13; Section 14 except SE¼ SE¼; Section 15; Section 16 except N½ NW¼, NW¼ NE¼; S½ SW¼, SE¼, S½ NE¼ Section 17; S½ SW¼, SE¼, NE¼ SW¼, NE¼ Section 19; Sections 20–21; Section 22 except NE¼ SE¼, SE¼ NE¼, S½ SE¼; S½ SE¼, NE¼ NW¼ Section 23; N½, N½ SE¼ Section 24; Section 25 except SE¼ SE¼; SE¼ NW¼, SW¼ Section 26; NW¼, N½ SW¼, SW¼ SW¼, N½ SE¼ Section 27; Sections 28–32; Section 33 except E½ E½, SW¼ SE¼, SW¼ NE¼; Section 36 except SE¼ NW¼, NE¼ NE¼, SW¼ SE¼.

T.25N., R.04W. Willamette Meridian: E½ SE¼ Section 25; SW¼ SW¼ Section 26; SE¼ SW¼, SE¼, SE¼ NE¼ Section 27; SE¼ SW¼, SE¼ NE¼, SE¼ Section 33; Section 34; Section 35 except NE¼ NE¼; Section 36 except N½ NW¼.

T.26N., R.02W. Willamette Meridian: Section 31.

T.26N., R.03W. Willamette Meridian: Section 25; E½ Section 26; SE¼ SE¼ Section 33; S½ S½ Section 34, Section 35 except NW¼ NW¼, NW¼ SW¼; Section 36.



Map and description of WA–07–a taken from United States Fish and Wildlife Service 1:100,000 map; Bellingham and Mt Baker, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.37N., R.06E. Willamette Meridian: N½ NE¼ Section 1.

T.37N., R.07E. Willamette Meridian: NW¼ NW¼, S½ NW¼, SW¼, W½ SE¼, NE¼ SE¼, SW¼ NE¼ Section 3; Section 4 except SE¼ SW¼; Section 5 except SW¼ SW¼; N½, NE¼ SE¼ Section 6; N½ NE¼ Section 8; NE¼ NW¼ Section 10.

T.38N., R.06E. Willamette Meridian: Section 1; Sections 12–13; E½, E½ W½ Section 36.

T.38N., R.07E. Willamette Meridian: NW¼, N½ SW¼, SW¼ SW¼ Section 3; Sections 4–8; Section 9 except S½ SE¼; W½ NW¼, N½ NW¼, SW¼ NW¼ Section 16; Section 17 except SE¼; Sections 18–19; NW¼, NW¼ NE¼, W½ SW¼ Section 20; SW¼, N½ SE¼, SW¼ SE¼ Section 27; NW¼ NW¼ Section 29; Section 30 except NE¼ SE¼; Section 31; Section 32 except NE¼ NE¼; Section 33 except NW¼ NW¼; W½ W½, NE¼ SW¼ Section 34.

T.39N., R.06E. Willamette Meridian: E½ Section 23; Sections 25–26; Section 36.

T.39N., R.07E. Willamette Meridian: Sections 1–4; Section 5 except SW¼; E½, E½ W½, W½ SE¼ Section 8; Section 9 except NE¼ NE¼; Sections 10–12; E½ E½ Section 13; Sections 14–15; N½, SE¼ Section 16; NE¼ Section 17; Section 21 except N½ NW¼; W½, SW¼ NE¼ Section 22; NE¼ NW¼ Section 23; W½, SW¼ NE¼ Section 27; Section 28; W½ NW¼, SW¼ Section 30; Sections 31–33; W½, SW¼ SE¼ Section 34.

T.39N., R.08E. Willamette Meridian: Sections 1–12; W½, W½ E½ Section 15; Sections 16–17; S½ SE¼, NE¼ SE¼, SE¼ NE¼ Section 19; Sections 20–21; W½, W½ E½ Section 22.

T.39N., R.09E. Willamette Meridian: N½ NW¼, SW¼ NW¼, SW¼ SW¼ Section 3; Sections 4–8; Section 9 except S½ SE¼; Section 10 except E½ E½, NW¼ NE¼; SW¼ NW¼ Section 14; N½ NE¼, NE¼ NW¼, SE¼ NE¼ Section 15; W½ Section 16; Section 17; NE¼, NE¼ SE¼ Section 18; N½ NE¼, SE¼ NE¼ Section 20; NW¼, N½ SW¼, W½ NE¼ Section 21.

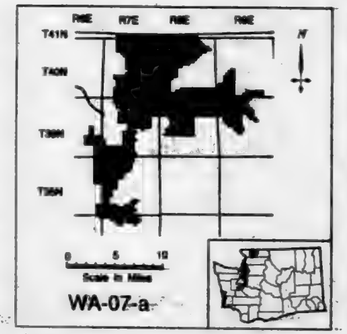
T.40N., R.07E. Willamette Meridian: Sections 1–4; E½ Section 5; NE¼ Section 8; Section 9 except SW¼ SW¼; Sections 10–15; E½ Section 16; SE¼, E½ SW¼ Section 20; SW¼, E½ Section 21; Sections 22–28; E½ Section 29; Sections 32–36.

T.40N., R.08E. Willamette Meridian: S½ SW¼ Section 1; Section 2 except NE¼, NE¼ NW¼, NE¼ SE¼; Sections 3–10; Section 11 except SE¼ SW¼, SE¼; N½ NW¼ Section 12; NW¼, N½ NE¼, SW¼ NE¼, NW¼, SW¼ Section 15; Section 16 except S½ SE¼; Sections 17–20; W½ W½, NE¼ NW¼ Section 29; Sections 30–31; S½, W½ NW¼, SE¼ NE¼ Section 32; Sections 33–36.

T.40N., R.09E. Willamette Meridian: SE¼ SE¼ Section 19; NE¼, SE¼ NW¼ Section 20; Section 29; S½, E½ NE¼ Section 30; Sections 31–32; S½ S½, N½ SE¼ Section 33; Section 34 except N½ N½; S½ N½, N½ S½, S½ SW¼ Section 35.

T.41N., R.07E. Willamette Meridian: Sections 32–36.

T.41N., R.08E. Willamette Meridian: Sections 31–34, W½ SW¼ Section 35.



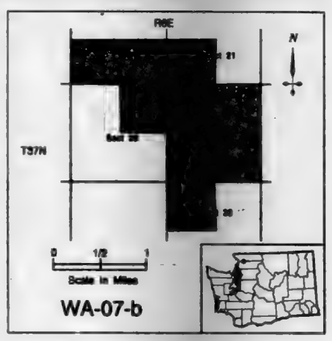
Map and description of WA–07–b taken from United States Fish and Wildlife Service 1:100,000 map; Bellingham, Washington; 1995.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.37N., R.06E. Willamette Meridian: SW¼ SW¼ Section 20; NE¼ NE¼ Section 28.

Proposed Critical Habitat includes only Private lands described within the following areas:

T.37N., R.06E. Willamette Meridian: N½ SW¼, SE¼ SW¼, SE¼ Section 20; SW¼ Section 21; Section 28 except NE¼ NE¼; NE¼ Section 29; NW¼ Section 33.



Map and description of WA–07–c taken from United States Fish and Wildlife Service 1:100,000 map; Mt Baker and Sauk River, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.35N., R.09E. Willamette Meridian: Section 1; Section 2; E½ Section 11; Section 12; NE¼ NE¼ Section 13; N½ NE¼ Section 14.

T.35N., R.10E. Willamette Meridian: SW¼ NW¼, SW¼, SW¼ SE¼ Section 6; Section 7; Section 8 except N½ NE¼, NE¼ NW¼; NW¼ SW¼ Section 9; NW¼ NW¼ Section 17; N½ N½, S½ NW¼ Section 18.

T.36N., R.07E. Willamette Meridian: Section 1; E½ E½ Section 2; Section 3.

T.36N., R.08E. Willamette Meridian: W½ W½ Section 4; Section 5 except W½ W½; W½ W½ Section 6.

T.36N., R.09E. Willamette Meridian: Section 1; Section 2; Section 3 except S½ S½; Section 4; E½ Section 5; Section 8 except S½ SE¼; N½ SW¼, NW¼ Section 9; E½ SE¼, SE¼ NE¼ Section 10; Section 11 except N½ NW¼; Sections 12–15; E½ E½ Section 16; Sections 21–24; W½ W½ Section 26; Section 27 except SW¼, SW¼ SE¼; Section 28 except SW¼ SW¼, SE¼ SE¼; S½, W½ NE¼, E½ NW¼ Section 33.

T.36N., R.10E. Willamette Meridian: W½ SW¼ Section 5; S½ S½ Section 6; Section 7; W½ W½ Section 8; S½ NW¼, NW¼ NW¼, SW¼, SW¼ SE¼ Section 17; Sections 18–19; Section 20 except NE¼ NE¼; W½ SW¼, SW¼ NW¼ Section 21; W½ W½, SE¼ SW¼ Section 28; Section 29; Section 30; W½ W½, N½ NE¼, NE¼ NW¼ Section 31; N½ NW¼, NE¼ NE¼ Section 32.

T.37N., R.07E. Willamette Meridian: S½ SE¼, NE¼ SE¼ Section 9; S½, S½ NE¼ Section 10; S½, SE¼ NE¼ Section 11; W½ SW¼ Section 13; Sections 14–15; Section 16 except NW¼ NW¼; NE¼ SE¼ Section 17; E½ W½, NW¼ NW¼, E½ Section 21; Sections 22–27; E½, NE¼ NW¼ Section 28; E½ E½, NW¼ NE¼ Section 33; Sections 34–36.

T.37N., R.08E. Willamette Meridian: Sections 1–3; SE¼ NE¼, N½ NE¼ Section 4; NE¼ SW¼, N½ SE¼, SE¼ SE¼, S½ N½, NE¼ NW¼, NW¼ NE¼ Section 7; S½, S½ N½ Section 8; Sections 9–15; Section 16 except S½ SW¼; N½ NW¼, NE¼ Section 17; S½ SW¼ Section 18; Section 19; S½ N½, S½ Section 20; Section 21 except NE¼ NW¼; Sections 22–36.

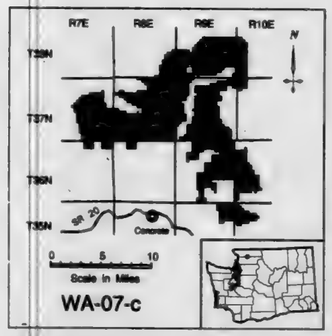
T.37N., R.09E. Willamette Meridian: Section 1 except S½ SW¼; Section 2 except N½ N½; S½ SW¼, SE¼, NE¼ SW¼ Section 3; S½ S½ Section 4; NW¼, W½ SW¼, W½ NE¼, SE¼ SE¼ Section 5; Sections 6–7; W½ NW¼, NW¼ SW¼, E½ E½ Section 8; Section 9; Section 10; N½ N½, SW¼ NW¼, SW¼ Section 11; W½ SW¼ Section 14; Sections 15–16; E½ E½, W½ SE¼ Section 17; W½, W½ SE¼, N½ NE¼, SW¼ NE¼ Section 18; Section 19 except NE¼ NE¼; E½ Section 20; Sections 21–22; W½ W½, SE¼ SW¼ Section 23; W½ SW¼, SE¼ SW¼ Section 25; W½, SE¼, SW¼ NE¼ Section 26; Sections 27–28; SW¼, E½, S½ NW¼ Section 29; NW¼, NW¼ SW¼, N½ NE¼ Section 30; SE¼ SW¼, S½ SE¼, NE¼ SE¼ Section 31; Sections 32–35; W½ Section 36.

T.37N., R.10E. Willamette Meridian: Section 6; N½ NW¼, Section 7.

T.38N., R.08E. Willamette Meridian: SE¼ SE¼ Section 23; S½, S½ NE¼ Section 24; Section 25; SE¼, SE¼ SW¼, S½ NE¼, NE¼ NE¼ Section 26; S½ S½ Section 33; S½ S½, NE¼ SE¼ Section 34; SW¼, E½, E½ NW¼ Section 35; Section 36.

T.38N., R.09E. Willamette Meridian: Sections 13–15; Section 16 except N½ NW¼, SW¼ NW¼; SE¼ SE¼ Section 17; Section 19 except N½ N½; Section 20 except N½ NW¼, SW¼ NW¼; Sections 21–31; Section 32 except NW¼; Section 33 except S½ SE¼; Section 34 except S½ S½; NW¼, NW¼ NE¼ Section 35; SE¼, E½ NE¼ Section 36.

T.38N., R.10E. Willamette Meridian: Section 18 except NE¼ NE¼; Section 19; Section 30; Section 31.



Map and description of WA–07–d taken from United States Fish and Wildlife Service 1:100,000 map; Cape Flattery, Mt. Baker and Sauk River, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.34N, R.12E. Willamette Meridian: Sections 1–2; Section 3 except SW¼ NW¼, NW¼ SW¼; NE¼ NW¼, N½ NE¼ Section 10; N½ N½ Section 11; N½ NW¼, NW¼ NE¼ Section 12.

T.34N, R.13E. Willamette Meridian: W½ Section 4; Section 5; Section 6 except SE¼ SE¼; N½ NE¼, SE¼ NE¼ Section 8; NW¼, N½ NE¼ Section 9.

T.35N, R.11E. Willamette Meridian: N½, NE¼ SE¼ Section 1; N½, NW¼ SW¼ Section 2; N½, SW¼ Section 3; Section 4.

T.35N, R.12E. Willamette Meridian: S½ SW¼, NW¼ SW¼ Section 5; S½ NW¼, S½, SW¼ NE¼, NW¼ NW¼ Section 6; Sections 7–8; Section 9 except NE¼, NE¼ SE¼, NE¼ NW¼; S½ SW¼ Section 10; N½ NW¼, SW¼ NW¼ Section 13; Section 14 except E½ SE¼; Section 15 except NW¼ NE¼; Sections 16–18; N½ SE¼, SE¼ SE¼, NE¼ Section 19; Sections 20–22; W½, W½ NE¼ Section 23; S½, SW¼ NE¼ Section 25; S½, N½ NW¼ Section 26; Sections 27–29; E½ NE¼, NE¼ SE¼ Section 30; Section 32 except W½ SW¼, SW¼ NW¼; Sections 33–36.

T.35N, R.13E. Willamette Meridian: SW¼, SW¼ SE¼ Section 30; Section 31 except NE¼ NE¼; SW¼, S½ Section 32; SW¼ SW¼ Section 33.

T.36N, R.11E. Willamette Meridian: S½ S½, N½ SE¼ Section 23; SW¼ SW¼ Section 24; W½, W½ E½ Section 25; Section 26; Section 27 except N½ NW¼; SE¼ SE¼ Section 28; Sections 33–35; Section 36 except E½ NE¼.

Map and description of WA–08–a taken from United States Fish and Wildlife Service 1:100,000 map; Baker and Sauk River, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.32N., R.08E. Willamette Meridian: N½, N½ SW¼ Section 1; N½ Section 3; NW¼, N½ NE¼ Section 4; N½ Section 5; N½ Section 6.

T.33N., R.08E. Willamette Meridian: Sections 1–30; Section 31 except S½ SE¼; Sections 32–35; Section 36 except SE¼ SW¼, SE¼, SE¼ NE¼.

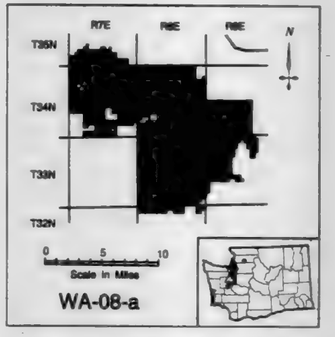
T.33N., R.09E. Willamette Meridian: NW¼, SW¼ NE¼, SW¼, W½ SE¼ Section 2; Sections 3–10; W½, W½ NE¼ Section 11; Sections 15–20; Section 21 except S½ SW¼; SW¼ SW¼ Section 22; W½ W½ Section 30.

T.34N., R.07E. Willamette Meridian: Sections 1–6; Section 7 except NW¼ SE¼, SE¼ SE¼; Sections 8–21; Section 22 except SW¼; Sections 23–24; Section 25 except SW¼ SE¼; Section 26; S½ Section 27; Sections 28–29; N½ NW¼, S½ Section 32; Section 33; Section 34 except SW¼ NE¼.

T.34N., R.08E. Willamette Meridian: Sections 2–11; Section 12 except N½ NW¼; Sections 13–28; Section 29 except S½ NW¼, N½ SW¼; N½, NE¼ SE¼, S½ SE¼, NW¼ SW¼ Section 30; Sections 31–36.

T.34N., R.09E. Willamette Meridian: Sections 19–22; Sections 27–34.

T.35N., R.07E. Willamette Meridian: S½ SW¼, NE¼ SW¼ Section 27; S½, S½ SW¼, SE¼ Section 28; Section 29 except NW¼ NW¼, NE¼; SE¼ SW¼, SE¼ Section 30; Sections 31–34; S½ Section 35.



Map and description of WA–08–b taken from United States Fish and Wildlife Service 1:100,000 map; Sauk River, Washington; 1995.

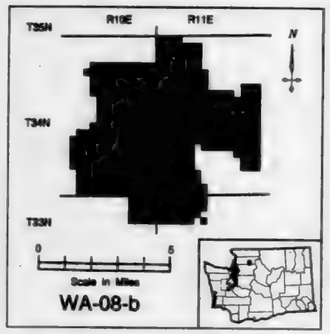
Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.33N., R.10E. Willamette Meridian: Section 1.

T.33N., R.11E. Willamette Meridian: Section 5 except NE¼ SE¼, SW¼ SE¼; Section 6.

T.34N., R.10E. Willamette Meridian: SW¼ NE¼, E½ Section 10; Sections 11–14; NW¼ NE¼, E½ E½ Section 15; SE¼ SE¼ Section 21; Section 22 except NW¼, NW¼ NE¼; Sections 23–27; E½ E½ Section 28; Sections 34–36.

T.34N., R.11E. Willamette Meridian: Section 5 except N½ N½, E½ E½; Sections 6–7; Section 8 except NE¼ NE¼; S½ SE¼, SE¼ SW¼ Section 10; Section 15 except NW¼ NW¼; Sections 16–22; Section 27 except W½ SW¼; N½ N½ Section 28; W½, NE¼ NE¼ Section 29; Sections 30–31; Section 32 except E½ NE¼.



Map and description of WA–09–a taken from United States Fish and Wildlife Service 1:100;000 map; Sauk River, Washington; 1995.

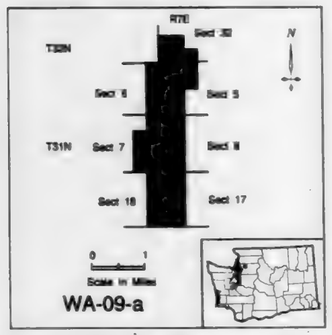
Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.31N., R.07E. Willamette Meridian: NW¼, N½ SW¼, W½ NE¼ Section 5; E½ NE¼ Section 6.

T.32N., R.07E. Willamette Meridian: SW¼, SW¼ SE¼ Section 32.

Proposed Critical Habitat includes only Federal lands designated as Congressionally Withdrawn Areas described within the following areas:

T.31N., R.07E. Willamette Meridian: S½ SW¼ Section 5; E½ SE¼ Section 6; Section 7 except W½, NW¼ NE¼; W½ Section 8; W½ Section 17; E½ E½ Section 18.



Map and description of WA–09–b taken from United States Fish and Wildlife Service 1:100;000 map; Sauk River, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.29N., R.09E. Willamette Meridian: Section 1; N½ Section 2; Sections 3–6; N½ Section 7; N½ Section 8; N½ Section 9; NW¼ Section 10.

T.29N., R.10E. Willamette Meridian: Sections 1–3; W½ Section 6; Sections 11–13.

T.29N., R.11E. Willamette Meridian: N½ NE¼, SE¼ NE¼, NE¼ NW¼ Section 3; Sections 6–7; SW¼, S½ SE¼, NW¼ SE¼ Section 17; Section 18; N½ NW¼, SE¼ NW¼, NE¼, NE¼ SE¼ Section 19; N½, NW¼ SW¼ Section 20.

T.30N., R.08E. Willamette Meridian: Sections 1–3; N½ Section 4; N½ Section 5; N½, SE¼ Section 11; Section 12; Section 13 except E½ SW¼; E½ E½ Section 14; SW¼ Section 15; N½ NE¼ Section 16; Section 17; Section 18 except SW¼ NW¼, N½ SW¼; Sections 19–23; Section 24 except NE¼ NW¼ ; Sections 25–26; N½ Section 27; N½ Section 28; N½, SE¼ Section 35.

T.30N., R.09E. Willamette Meridian: N½ NW¼, SE¼ NW¼, E½ SE¼, SE¼, S½ NE¼ Section 1; NE¼ NE¼ Section 2; W½, NW¼ NE¼ Section 6; Section 7; S½ NW¼, S½ Section 8; S½ SW¼ Section 10; N½ NE¼ Section 12; SE¼ SE¼ Section 13; S½ NW¼, SW¼, W½ SE¼ Section 14; Section 15 except NE¼ NW¼, SE¼ SE¼; SE¼ NW¼, NE¼, SW¼, N½ SE¼, SW¼ SE¼ Section 16; SE¼, S½ NE¼ Section 17; W½ W½, NE¼ SW¼, SE¼ NW¼ Section 18; Section 19 except E½ NE¼; Section 20 except NE¼ NW¼, SW¼; Section 21; Section 22 except SE¼ SW¼; Section 23 except SE¼ SE¼, NW¼ NW¼; S½ NW¼, SE¼ SW¼, SE¼, SE ¼ NE¼ Section 24; Sections 25–36.

T.30N., R.10E. Willamette Meridian: Sections 1–6; N½, NE¼ SE¼ Section 7; Section 8 except SW¼ SW¼; Sections 9–17; E½ E½ Section 18; Section 19 except N½ NW¼, SW¼ NE¼; Sections 20–28; Section 29 except S½ S½; Section 30 except S½ SE¼; Section 31 except NE¼; NE¼ NE¼ Section 32; NE¼, E½ SE¼, NE¼ NW¼ Section 33; Sections 34–36.

T.30N., R.11E. Willamette Meridian: SW¼ SE¼, S½ SW¼, NW¼ SW¼ Section 5; Sections 6–7; Section 8 except NE¼ NE¼; N½ SE¼, SE¼ SE¼, NE¼ SW¼ Section 9; Section 10 except N½ NW¼, SW¼ NW¼, NW¼ NE¼; Section 15 except SE¼ SE¼; Sections 16–22; NW¼ NW¼ Section 27; Section 28 except E½ SE¼, SE¼ NE¼; Sections 29–31; Section 32 except SE¼, SE¼ NE¼, NE¼ SW¼; Section 33 except SW¼, SW¼ NW¼, SW¼ SE¼; Section 34 except NE¼, N½ NW¼, SE¼ NW¼, NE¼ SE¼.

T.31N., R.07E. Willamette Meridian: Sections 12–13.

T.31N., R.08E. Willamette Meridian: W½ SW¼ Section 3; S½, S½ NE¼ Section 4; S½ Section 5; SE¼ SE¼ Section 6; Section 7 except N½ NW¼, NW¼ NE¼; Section 8 except SE¼; N½ N½, NW¼ SW¼ Section 9; N½ NW¼, SW¼ NW¼, SW¼, SW¼ SE¼ Section 17; Sections 18–21; Section 22 except N½ NE¼; S½ NW¼, SW¼, W½ SE¼ Section 23; Section 25 except N½ NE¼, SE¼ NE¼; Sections 26–36.

T.31N., R.09E. Willamette Meridian: Section 1; E½ NE¼ Section 2; SE¼, E½ NE¼ Section 3; SE¼ NW¼, NE¼ SW¼, W½ NE¼ Section 10; S½ SE¼, NE¼ SE¼, SE¼ NE¼, N½ NE¼ Section 12; Section 13 except NW¼, W½ SW¼; Section 23 except N½ NW¼, NW¼ NE¼, W½ SW¼, SW¼ NW¼; Sections 24–26; S½ Section 27; NE¼ SE¼ Section 28; W½ Section 31; NE¼ NW¼, S½ SE¼, NE¼ SE¼, SE¼ NE¼, N½ NE¼ Section 35; Section 36.

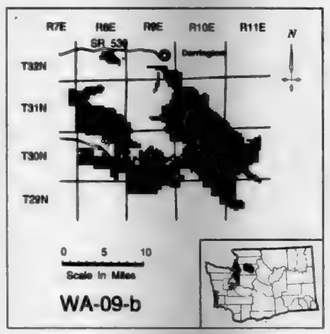
T.31N., R.10E. Willamette Meridian: Section 6 except E½ E½; Sections 7–8; S½ NW¼, SW¼, W½ SE¼, NW¼ NW¼ Section 9; SE¼ SW¼, SW¼ SE¼ Section 10; Sections 15–22; S½ SW¼, NW¼ SW¼ Section 23; SW¼, S½ SE¼, SW¼ NW¼ Section 25; Sections 26–36.

T.31N., R.11E. Willamette Meridian: SW¼ NW¼, SW¼ Section 31.

T.32N., R.08E. Willamette Meridian: SW¼ Section 14; S½ Section 15; E½ NE¼ Section 21; N½ SE¼ Section 22; Section 23 except NE¼ NE¼; E½ SW¼, SE¼ NE¼ Section 24; NW¼ NW¼ Section 25.

T.32N., R.09E. Willamette Meridian: S½ Section 26; N½ S½, S½ SE¼ Section 27; N½ SE¼ Section 28; SE¼ NE¼, E½ SE¼ Section 34; E½, NE¼ NW¼ Section 35; Section 36 except SW¼ NE¼.

T.32N., R.10E. Willamette Meridian: Section 31 except E½ E½, NW¼ NE¼, NE¼ NW¼.



Map and description of WA–09–c taken from United States Fish and Wildlife Service 1:100;000 map; Sauk River and Skykomish River, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.27N., R.09E. Willamette Meridian: NE¼ NW¼, N½ NE¼ Section 1.

T.27N., R.10E. Willamette Meridian: NW¼ NW¼ Section 6.

T.28N., R.09E. Willamette Meridian: N½ NE¼ Section 3; S½ S½ Section 23; S½ S½ Section 24; Section 25 except S½ SW¼, SW¼ SE¼; Section 26 except N½ N½, S½ S½; SE¼ SW¼, S½ SE¼, NE¼ SE¼ Section 36.

T.28N., R.10E. Willamette Meridian: S½ Section 19; Section 20 except NW¼ NW¼, NE¼ NE¼; NW¼ SW¼ Section 21; S½ SW¼, SW¼ SE¼ Section 24; NW¼, NW¼ NE¼ Section 25; S½ NW¼, N½ SW¼, NW¼ SE¼, NE¼ Section 26; S½ N½, N½ S½ Section 27; NW¼ NW¼ Section 29; NW¼, W½ SW¼, W½ NE¼, NE¼ NE¼ Section 30; Section 31 except SW¼ NW¼; NW¼, W½ SW¼, NE¼ SW¼, SW¼ NE¼ Section 32.

T.29N., R.08E. Willamette Meridian: S½ SE¼ Section 22; NE¼ SE¼ Section 25; NW¼, N½ NE¼, SW¼ NE¼ Section 27.

T.29N., R.09E. Willamette Meridian: S½ NW¼, N½ SW¼ Section 29; S½ SW¼, SW¼ SE¼, N½ S½, S½ NE¼, SE¼ NW¼ Section 30; S½ SE¼ Section 34.

Proposed Critical Habitat includes only State or County lands described within the following areas:

T.27N., R.09E. Willamette Meridian: NW¼ NW¼, SW¼ Section 2; N½ NW¼, SE¼ NW¼, E½ Section 3; NE¼ NE¼ Section 4; N½ NE¼ Section 10; S½ NW¼, NE¼ NW¼, S½ SW¼, SE¼, SW¼ NE¼ Section 11; Section 12 except NW¼ NW¼; Section 13; Section 14 except SW¼, S½ NW¼, W½ NE¼, SW¼ SE¼; N½ NE¼, NE¼ NW¼ Section 24.

T.27N., R.10E. Willamette Meridian: SW¼ SW¼ Section 3; S½ SE¼ Section 4; SE¼ SW¼, S½ SE¼ Section 6; Section 7; Section 8 except N½ N½; Section 9; NW¼, W½ SW¼ Section 10; N½, N½ S½, SE¼ SE¼ Section 16; Section 17 except S½ SE¼, NE¼ SE¼; Section 18; N½ NW¼ Section 19.

T.28N., R.08E. Willamette Meridian: Section 3 except N½ NW¼; Sections 4–5; W½ NW¼, SW¼, SW¼ SE¼ Section 6; Section 7 except NE¼ NE¼; NW¼ NW¼, SE¼ SE¼, NW¼ NE¼, E½ NE¼ Section 8; W½ W½, NE¼ NW¼, SW¼ SE¼, E½ E½, NW¾ NE¼ Section 9; Section 10; W½ W½ Section 11; W½ W½ Section 14; Section 15; S½ S½, E½ NE¼, W½ NW¼, SW¼ NW¼ Section 16; Section 17 except E½ NW¼; Section 18 except SW¼; NE¼ SE¼ Section 19; W½, E½ SE¼ Section 20; N½ NW¼, NE¼ NW¼ Section 21; NW¼ NE¼, W½ NW¾ Section 29; NE¼ NW¼, NE¼ Section 36.

T.28N., R.09E. Willamette Meridian: Sections 1–2; Section 3 except N½ NE¼; Section 4; SE¼ Section 5; NE¼ Section 8; Section 9 except SW¼; Sections 10–11; Section 12 except SE¼, S½ SW¼; N½ S½, SE¼ NE¼ Section 13; Section 14 except SE¼ SE¼; Section 15 except SW¼; Sections 16–17; S½ Section 20; Section 21; Sections 27–28; Section 29 except NW¼, N½ SW¼; N½ N½, NE¼ SE¼, SE¼ NE¼ Section 31; N½ NW¼, SW¼ NW¼, NE¼ Section 32; Section 33 except SW¼ SW¼; Section 34 except NE¼ SE¼; SW¼ Section 35.

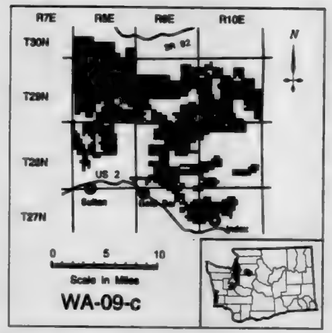
T.28N., R.10E. Willamette Meridian: W½ Section 2; Section 3; Section 4 except N½ NE¼, SW¼ NE¼; Sections 5–6; NW¼ Section 7; SW¼ NW¼, NW¼ SW¼ Section 18.

T.29N., R.08E. Willamette Meridian: Sections 1–21; Section 22 except S½ SE¼; Section 23 except S½ SW¼; Section 24; N½ NW¼, SE¼ NW¼, NE¼, S½ S½ Section 25; S½ NW¼, NW¼ SE¼, SW¼, S½ SE¼, N½ NE¼ Section 26; Section 27 except NW¼, N½ NE¼, SW¼ NE¼; N½ NW¼, E½ SE¼, NW¼ NE¼, W½ SW¼ Section 28; Sections 29–30; SE¼ SE¼, N½ NW¼ Section 31; E½ NW¼, NE¼ Section 32; Sections 33–34; Section 35 except SE¼ SW¼, SW¼ SE¼; Section 36.

T.29N., R.09E. Willamette Meridian: S½ Section 2; S½ Section 7; S½ Section 8; S½ Section 9; Section 11; Section 12 except NE¼ SE¼; Section 13 except S½ SW¼; Sections 14–19; Section 20 except S½SE¼, SE¼ SW¼; Section 21 except S½ S½; Section 22 except S½ S½; NW¼, W½ NE¼ Section 23; N½ NE¼ Section 24; Section 25 except N½ NE¼; Section 26 except N½ NW¼, NW¼ NE¼; S½ SE¼ Section 29; N½ N½, SW¼ NW¼ Section 30; W½, W½ E½, NE¼ SE¼, NE¼ NE¼ Section 31; Section 32 except W½ NW¼, NW¼ SW¼; NW¼ NW¼, S½ NW¼, SW¼, W½ SE¼, SE¼ SE¼, SW¼ NE¼ Section 33; NE¼ NW¼, SW¼ SW¼, NE¼ SE¼, NE¼ Section 34; Section 35; Section 36 except NE¼ SE¼, SE¼ NE¼.

T.29N., R.10E. Willamette Meridian: SE¼ SW¼, S½ SE¼, NE¼ SE¼ Section 6; NW¼, N½ SW¼, SE¼ SW¼, NW¼ SE¼, S½ SE¼, N½ NE¼ Section 7; Section 8; S½ SW¼, SW¼ SE¼ Section 9; Section 10 except SE¼ SW¼; Section 14; Section 15 except N½ NW¼, NW¼ NE¼; Section 16; SE¼, E½ NE¼ Section 17; Sections 18–19; W½ SW¼, E½ E½ Section 20; Sections 21–24; Section 25 except SE¼ SE¼; Section 26 except NW¼ SW¼; SW¼ SW¼ Section 27; Sections 28–33; SW¼ NW¼, W½ SW¼, SE¼ SW¼, S½ SE¼ Section 34; Section 36 except S½ SW¼.

T.30N., R.10E. Willamette Meridian: S½ Section 27; S½ Section 28; Sections 27–34; SW¼ Section 35; Section 36.



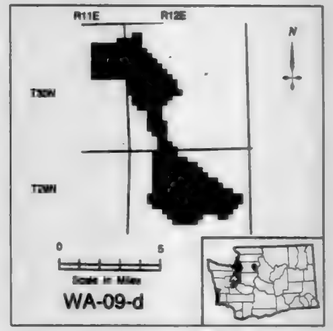
Map and description of WA–09–d taken from United States Fish and Wildlife Service 1:100;000 map; Sauk River, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.29N., R.12E. Willamette Meridian: SW¼ SE¼, SW¼ Section 3; Section 4 except N½ NE¼; Section 5 except W½ W½; Section 8 except W½ W½; Section 9; Section 10; SW¼, S½ SE¼, NW¼ SE¼, S½ NW¼ Section 11; SW¼ SW¼ Section 12; Section 13 except E½ NE¼, SE¼, SE¼ SW¼; Sections 14–16; Section 17 except SW¼ SE¼, S½ SW¼, NW¼ SW¼; Section 21 except S½, SW¼ NW¼; NW¼, NW¼ NE¼ Section 23.

T.30N., R.11E. Willamette Meridian: S½ SW¼, SE¼ Section 1; S½ S½ Section 2; Sections 11–12; N½ Section 13; N½ Section 14.

T.30N., R.12E. Willamette Meridian: Section 6 except N½ NE¼, NW¼; Section 7; SW¼ NW¼, SW¼, SW¼ SE¼ Section 8; SW¼ NW¼, SW¼ Section 16; Sections 17–18; N½ NW¼, E½, SE¼ NW¼, NE¼ SW¼ Section 19; Section 20 except SE¼ SE¼; N½ NW¼, SW¼ NW¼, NW¼ NE¼ Section 21; Section 29 except E½ NE¼; NE¼ NW¼, E½ Section 32; W½ SW¼, SE¼ SW¼ Section 33.



Map and description of WA–09–e taken from United States Fish and Wildlife Service 1:100;000 map; Sauk River, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.31N., R.11E. Willamette Meridian: N½ N½ Section 1; S½ NW¼, NW¼ NW¼, SW¼, N½ NE¼ Section 2; Section 3; Section 4 except SE¼ SE¼; NE¼ NW¼, NE¼ SE¼, NE¼ Section 5; NE¼ NW¼, N½ NE¼ Section 9; E½ Section 10; W½ SE¼, SW¼ NE¼, NW¼, SW¼ Section 11; W½, W½ NE¼, SE¼ Section 14; E½ Section 15; N½ NE¼ Section 22; N½ NW¼ Section 23.

T.31N., R.12E. Willamette Meridian: N½ NW¼, SW¼ NW¼, NW¼ NE¼ Section 5; N½ NW¼, NE¼ Section 6.

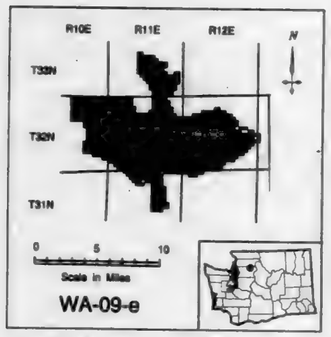
T.32N., R.10E. Willamette Meridian: Sections 1–3; Sections 10–13; Section 14 except SW¼ SW¼; N½ N½ Section 15; Section 23 except W½ NW¼, NW¼ SW¼; Sections 24–25; Section 26 except S½ SW¼, SW¼ SE¼; N½ NE¼, NE¼ NW¼ Section 36.

T.32N., R.11E. Willamette Meridian: NE¼ NE¼ Section 2; E½ Section 3; Sections 5–8; S½ Section 9; Section 10 except NW¼ NW¼; Section 11; SW¼, S½ SE¼, W½ NW¼ Section 12; Sections 13–30; N½, NE¼ SW¼, SE¼ Section 31; Section 32–36.

T.32N., R.12E. Willamette Meridian: S½ S½, NE¼ SE¼ Section 7; S½, S½ NE¼ Section 8; Section 9 except N½ NW¼; Section 10 except N½ NW¼, NE¼; SW¼ SW¼ Section 13; SW¼, S½ NW¼, NW¼ NW¼, S½ SE¼ Section 14; Sections 15–23; Section 24 except NE¼ NE¼; NW¼, NW¼ SW¼, NW¼ NE¼ Section 25; Sections 26–33; NW¼, N½ NE¼, NW¼ SW¼ Section 34; N½ NW¼, SW¼ NW¼ Section 35.

T.32N., R.13E. Willamette Meridian: W½ SW¼, SW¼ NW¼ Section 24.

T.33N., R.11E. Willamette Meridian: S½ SW¼ Section 15; SW¼, S½ SE¼ Section 16; Section 21; Section 22 except NE¼ NE¼; S½ NW¼, N½ SW¼, SW¼ SW¼ Section 23; W½ Section 25; Section 26 except N½ NE¼; Section 27; NE¼, N½ SE¼, SE¼ SE¼, N½ NW¼, SE¼ NW¼ Section 28; Section 34 except W½ SW¼; Section 35; W½ NW¼ Section 36.



Map and description of WA–10–a taken from United States Fish and Wildlife Service 1:100;000 map; Skykomish River, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.26N., R.09E. Willamette Meridian: NW¼ NW¼ Section 6.

T.26N., R.10E. Willamette Meridian: NW¼ SW¼ Section 4; NW¼ NW¼, E½ NW¼, NE¼ SE¼, NE¼ Section 5; Section 7 except N½ N½, NE¼ SE¼, SE¼ NE¼; SW¼ SE¼, E½ SE¼ Section 8; Section 9 except N½ N½, SW¼ NW¼; S½ Section 13; Section 14 except N½ NE ¼; Sections 15–16; Section 17 except NW ¼ NW ¼; Sections 18–19; NE¼ NW¼, E½ SE¼, NE¼ Section 20; Sections 21–23; Section 24 except E½ NW¼, NW¼ SW¼, NW¼ NE¼; N½ NE¼ Section 25; NE¼ NW¼ Section 26; N½ N½ Section 27; N½ N½ Section 28; N½ NE¼ Section 29; NW¼, N½ SW¼, W½ NE¼, NE¼ NE¼ Section 30.

T.26N., R.11E. Willamette Meridian: Section 2; Section 4 except SW¼ SW¼; Section 5 except SE¼ SE¼; Sections 6–7; NW¼, W½ SW¼, NE¼ SW¼, NW¼ NE¼ Section 8; NW¼ NE¼ Section 9; Section 18 except NW¼ NW¼, SW¼ SW¼, E½ SE¼, S½ NE¼; E½ Section 19; SW¼ NW¼ Section 20; N½ N½ Section 30.

T.27N., R.09E. Willamette Meridian: S½ SE¼ Section 19; SW¼ SW¼ Section 20; Section 30 except N½ NW¼, SW¼ NW¼; Section 31; Section 32 except SE¼, E½ NE¼.

T.27N., R.10E. Willamette Meridian: Section 1 except W½ NW ¼; E½, NE¼ SW¼ Section 11; Sections 12–13; N½ NW¼, E½ Section 14; N½, NE¼ SW¼, SE¼ Section 23; Section 24; N½ N½, SE¼ NE¼ Section 25; SE¼ SW¼, E½ Section 26; S½ S½ Section 29; SE¼ SE¼ Section 30; E½ NW¼, NE¼ SE¼, NE¼ Section 31; Section 32; Section 35 except SW¼ SW¼; Section 36.

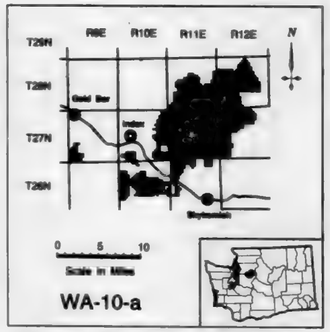
T.27N., R.11E. Willamette Meridian: Sections 1–11; Section 12 except NE¼ SE¼, SE¼ NE¼; Sections 13–20; NW¼, N½ SW¼, E½ SE¼, NW¼ SE¼, SW¼ SW¼ Section 21; Section 22 except SW¼ NW¼; Sections 23–36.

T.27N., R.12E. Willamette Meridian: W½ SW¼, SE¼ SW¼ Section 2; Section 3 except N½ NE¼; Sections 4–6; Section 7 except W½ SW¼; Sections 8–10; NW¼, W½ SW¼ Section 11; N½, W½ SW¼, NE¼ SW¼ Section 16; Sections 17–19; W½ Section 20; W½, SW¼ NE¼, NW¼ SE¼ Section 29; Sections 30–31; W½ NW¼, NW¼ SW¼ Section 32.

T.28N., R.10E. Willamette Meridian: SE¼ SE¼ Section 36.

T.28N., R.11E. Willamette Meridian: S½ SE¼ Section 9; SW¼ SW¼ Section 10; SE¼ Section 12; Section 13 except W½ SW¼, NW¼; Section 15 except NE¼ NE¼; Section 16 except N½ NW¼; S½, SE¼ NW¼, S½ NE¼ Section 17; SE¼ SE¼ Section 19; Section 20 except SW¼ NW¼, NW¼ SW¼; Sections 21–22; Section 23 except NE¼ NW¼; Section 24–29; E½ Section 30; Section 31 except N½ NW¼, SW¼ NW¼; Sections 32–36.

T.28N., R.12E. Willamette Meridian: SW¼ NW¼, SW¼, SW¼ SE¼ Section 3; SW ¼ SE¼, E½ SE¼ Section 4; Section 7 except N½ N½; SW¼, W½ SE¼, SE¼ SE¼ Section 8; Section 9 except W½ NW¼; Section 10 except NE¼ NE¼; SW¼ SW¼ Section 11; W½ NW¼, SW¼, W½ SE¼, SE¼ NW¼ Section 14; Sections 15–23; N½ Section 26; N½ Section 27; W½, N½ NE¼, SW¼ SE¼ Section 28; Sections 29–32; W½, W½ E½, SE¼ SE¼ Section 33.



Map and description of WA–10–b taken from United States Fish and Wildlife Service 1:100;000 map; Skykomish River, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.25N., R.10E. Willamette Meridian: Section 3 except N½ NE¼, SW¼ SW¼, NE¼ NW¼; Sections 4 except SE¼ SE¼; Section 5 except NW¼ NW¼, NW¼ NE¼; S½, SE¼ NE¼ Section 6; Sections 7–8; Section 9 except NW¼ SW¼, NE¼, E½ SE¼, SW¼ SW¼; Section 10 except SW¼ SW¼; Section 11; W½ NW¼, SW¼, W½ SE¼, SE¼ NW¼ Section 14; Sections 15–23; N½ Section 26; N½ Section 27; W½, N½ NE¼, SW¼ SE¼ Section 28; Sections 29–32; W½, W½ E½, SE¼ SE¼ Section 33.

T.25N., R.11E. Willamette Meridian: Sections 1–4; Sections 9–12; N½, NW¼ SE¼ Section 13; N½, N½ S½ Section 14; Section 15; N½, NW¼ SW¼ Section 16; N½ SE¼, SW¼ SE¼, SE¼ SW¼ Section 17; SE¼ SW¼, NW¼ SE¼, S½ NE¼, NE¼ NE¼ Section 19; N½ NW¼, SW¼ NW¼ Section 20; E½ NW¼, NE¼ SW¼, E½ Section 22; W½ NW¼ Section 23; NE¼ SW¼, W½ NE¼ Section 27.

T.25N., R.12E. Willamette Meridian: Sections 1–4; Section 5 except W½ W½; W½ Section 6; Section 7; Section 8 except NE¼ NW¼; Section 9; Section 10 except SE¼ SE¼; Section 11–12; N½, N½ S½ Section 13; N½ NE¼, NE¼ NW¼, SE¼ NE¼, NE¼ SE¼ Section 14; Sections 16–20; NW¼, W½ SW¼, NW¼ NE¼ Section 21; N½, NW¼ SE¼, NE¼ SW¼ Section 29; E½ NE¼ Section 31.

T.25N., R.13E. Willamette Meridian: NW¼ Section 6; W½, W½ E½ Section 7; W½, NW¼ SE¼, SW¼ NE¼ Section 18; NW¼, N½ SW¼, SW¼ SW¼ Section 19.

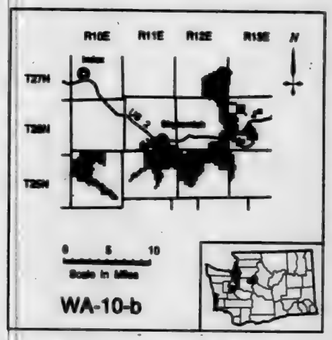
T.26N., R.11E. Willamette Meridian: W½ SW¼ Section 27; S½ SE¼, E½ SW¼, NE¼ SE¼ Section 28; S½ SW¼, E½ Section 32; NE¼ NW¼, SW¼ NW¼, N½ SW¼, NE¼ Section 33; Sections 34–35; S½ Section 36.

T.26N., R.12E. Willamette Meridian: Section 1; NE¼, E½ SE¼, NE¼ NW¼ Section 2; NE¼ NE¼ Section 3; Section 12; Section 13 except SW¼ SW¼; Section 24 except NW¼, N½ SW¼, SW¼ NE¼, SW¼ SW¼; N½, S½ S½ Section 25; E½ E½, W½ SE¼, NW¼ NE¼ Section 34; Sections 35–36

T.26N., R.13E. Willamette Meridian: SE¼ SW¼, S½ SE¼ Section 6; Section 8; S½ SW¼, SE¼ Section 10; NW¼ NW¼, S½ NE¼, NW¼ NW¼ Section 16; W½ SW¼ Section 17; Section 18–19; SE¼, W½ W½, SE¼ SW¼, SW¼ SE¼, E½ SE¼ Section 20; S½, SE¼ NW¼, SW¼ NE¼ Section 21; W½ SW¼ Section 22; NW¼, N½ SW¼ Section 27; NE¼, N½ SE¼, NE¼ SW¼, N½ NW¼, SE¼ NW¼ Section 28; N½ N½, S½ S½, NE¼ SW¼ Section 29; N½, W½ SE¼, SE¼ SE¼ Section 30; W½ W½ Section 31; N½, N½ SW¼ Section 32.

T.27N., R.12E. Willamette Meridian: S½ SW¼, SW¼ SE¼ Section 13; S½ S½, NE¼ SW¼, SE¼ NW¼, N½ SE¼ Section 22; S½, S½ NE¼, NE¼ NE¼, SE¼ NW¼ Section 23; Sections 24–27; Section 34–36.

T.27N., R.13E. Willamette Meridian: W½ W½, SE¼ NW¼ Section 19; W½ NW¼, NW¼ SW¼ Section 20.



Map and description of WA–10–c taken from United States Fish and Wildlife Service 1:100;000 map; Cape Flattery, Skykomish River and Snoqualmie Pass, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.20N., R.10E. Willamette Meridian: Section 2 except N½ N½, SW¼ NW¼, NW¼ SW¼.

T.21N., R.09E. Willamette Meridian: Section 12; Section 14; NE¼ Section 22; N½ NW¼ Section 24.

T.21N., R.10E. Willamette Meridian: Section 2; S½ SE¼, NW¼ SE¼, SW¼ Section 4; Section 6; Section 8 except S½ SW¼; Section 10 except E½ SE¼, SE¼ NE¼; Section 12; Section 14; Section 16 except E½ NE¼; Section 18; N½ NW¼, E½ SE¼, NE¼ Section 20; Section 22 except E½ NE¼; Section 24 except SW¼ SW¼; N½ NE¼ Section 26; NE¼ NW¼, SW¼ SW¼, N½ NE¼ Section 36.

T.21N., R.11E. Willamette Meridian: Section 6; E½ W½, NW¼, W½ SW¼, W½ NE¼ Section 8; Section 18 except E½ SE¼; N½ NW¼, SW¼ NW¼, SW¼ SW¼ Section 30.

T.22N., R.09E. Willamette Meridian: S½ S½ Section 2; N½ Section 11; W½ NW¼, S½, NE¼ NW¼ Section 12; Section 36 except W½ NW¼, NE¼ NW¼, NW¼ SW¼.

T.22N., R.10E. Willamette Meridian: S½ SE¼ Section 12; S½, NE¼, S½ NW¼ Section 13; S½, SE¼ NE¼ Section 14; W½, SE¼ Section 18; Section 20 except SE¼ SE¼; S½ SE¼, NE¼ SE¼, NE¼ NE¼ Section 22; Section 23; Sections 24–26; E½ SE¼ Section 28; S½ S½ Section 32; Section 34; N½ NW¼, NW¼ NE¼ Section 35; Section 36.

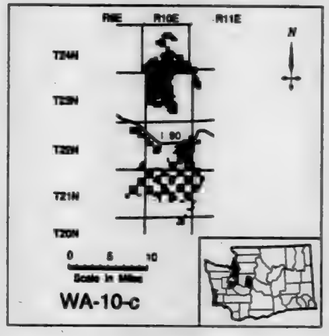
T.22N., R.11E. Willamette Meridian: S½ SW¼, SE¼ Section 18; W½ W½ Section 19; W½ SW¼, SW¼ NW¼ Section 31.

T.23N., R.10E. Willamette Meridian: NW¼ NE¼, N½ SW¼, NW¼, SW¼ SW¼ Section 3; Sections 4–9; Section 10 except E½ NW¼, E½; W½, SW¼ SE¼ Section 15; Sections 16–19; Section 20 except SE¼ NW¼, S½ NE¼, NE¼ NE¼; Section 21; Section 22 except SW¼ NE¼, NE¼ SE¼, E½ NE¼; Section 27; Section 28 except N½ SE¼, SE¼ NE¼, NE¼ SE¼; N½ N½ Section 29.

T.23N., R.11E. Willamette Meridian: NW¼, W½ SW¼, SE¼ SW¼, W½ NE¼ Section 6; Section 7; W½ SW¼ Section 8; W½ NW¼ Section 17; N½ NE¼, SE¼ NE¼ Section 18.

T.24N., R.10E. Willamette Meridian: S½ SE¼, SE¼ NE¼ Section 9; N½ S½, N½ Section 10; SW¼, SW¼ NW¼, SW¼ SE¼ Section 11; W½ NW¼, NW¼ SW¼, SE¼ SW¼, SW¼ SE¼ Section 15; N½, N½ SE¼ Section 16; E½ SE¼, SW¼ SE¼ Section 21; E½ NW¼, S½, W½ NE¼, SE¼ NE¼ Section 22; SW¼, SW¼ NW¼, S½ SE¼ Section 23; S½ SW¼ Section 24; Section 25 except NE¼; S½, SE¼ NE¼, N½ NE¼ Section 26; Section 27; Section 28 except NW¼; Section 29 except N½ NW¼; S½ SE¼, NE¼ SE¼ Section 30; Sections 31–36.

T.24N., R.11E. Willamette Meridian: W½ SE¼ Section 31.



Map and description of WA–11–a taken from United States Fish and Wildlife Service 1:100;000 map; Snoqualmie Pass and Mt Rainier, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.17N., R.10E. Willamette Meridian: Sections 1–2; Section 3 except W½ NW¼, SW¼ SW¼.

T.17N., R.11E. Willamette Meridian: W½ SW¼, SE¼ SW¼ Section 6; NW¼ NE¼ Section 7.

T.18N., R.08E. Willamette Meridian: Sections 1–2; E½, E½ NW¼, NW¼ NW¼ Section 3; E½ NW¼, N½ NE¼, SW¼ NE¼ Section 4; NE¼ NE¼ Section 10; Section 11 except SW¼ SE¼, W½ SW¼, SE¼ SW¼; Sections 12–13; Section 14 except NW¼, NW¼ NE¼, N½ SW¼, SW¼ SW¼; SW¼ Section 20; E½ SE¼, SE¼ NE¼ Section 22; Sections 23–24; Section 25 except SW¼ SW¼; N½, NE¼ SE¼ Section 26; S½ SE¼, NE¼ SE¼ Section 36.

T.18N., R.09E. Willamette Meridian: Sections 1–30; Section 31 except N½ NW¼; Sections 32–36.

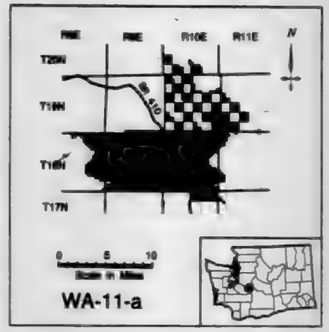
T.18N., R.10E. Willamette Meridian: Sections 1–12; NW¼, NW¼ SW¼, N½ NE¼ Section 13; Sections 14–23; NW¼ SW¼, S½ SW¼, SW¼ SE¼ Section 24; Sections 25–35; Section 36 except S½ NE¼.

T.18N., R.11E. Willamette Meridian: NW¼ NE¼ Section 2; NE¼ NE¼, SW¼ NW¼ Section 5; Section 6; NW¼, W½ NE¼, NW¼ SW¼ Section 7; W½ NW¼, SE¼ NW¼, SW¼, W½ SE¼ Section 30; SW¼ SW¼ Section 31.

T.19N., R.10E. Willamette Meridian: Section 4; Section 6 except E½ NE¼; Section 8; W½ W½, SE¼ SW¼, S½ SE¼ Section 10; S½ SW¼, SE¼ Section 12; Section 14; Section 16; Section 18; Section 20; Section 22; Sections 24–26; Section 28; W½, SE¼ Section 30; Section 32; W½, SE¼ Section 34; Section 36.

T.19N., R.11E. Willamette Meridian: W½, SE¼ Section 18; Section 20; Section 28; SW¼ SW¼ Section 35.

T.20N., R.10E. Willamette Meridian: W½ SE¼, SE¼ SE¼ Section 28; Section 30 except SW¼ SW¼; Section 32 except N½ NE¼; Section 34 except NE¼ NE¼.



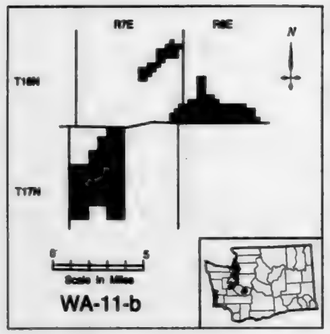
Map and description of WA–11–b taken from United States Fish and Wildlife Service 1:100;000 map; Snoqualmie Pass and Mt Rainier, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.17N, R.07E. Willamette Meridian: Section 4; SE¼ Section 5; Section 8 except N½ NW¼; Section 9; Sections 16–21; Section 28; N½ N½ Section 29; Section 30.

T.18N, R.07E. Willamette Meridian: S½ SW¼, NE¼ SW¼, S½ SE¼ Section 12; NW¼, W½ SE¼ Section 13; NE¼, N½ SE¼, SW¼ SE¼, S½ SW¼ Section 14; NE¼, N½ SE¼ Section 22; N½ NW¼, SW¼ NW¼ Section 23; Section 36 except W½ NW¼, NE¼ NW¼.

T.18N, R.08E. Willamette Meridian: SW¼ Section 20; SW¼ SW¼ Section 28; Section 29 except NE¼; S½ SE¼ Section 30; Sections 31–33; Section 34 except NE¼ NE¼; SW¼ NW¼, W½ SW¼, SE¼ SW¼ Section 35.



Map and description of WA–11-c taken from United States Fish and Wildlife Service 1:100;000 map; Tacoma and Centralia, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

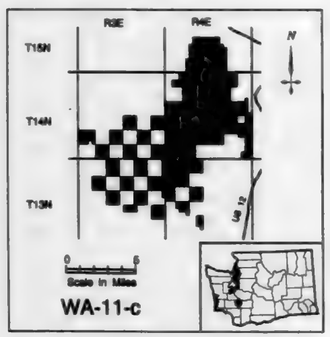
T.13N., R.03E. Willamette Meridian: Section 2; Section 4; Section 8; Section 10; Section 12; Section 14; Section 16; N½ Section 22; Section 24.

T.13N., R.04E. Willamette Meridian: Sections 4–6; Section 16; Section 18 except SW¼ SW¼; N½, NE¼ SW ¼, N½ SE¼, SE¼ SE¼ Section 20; N½ SE¼, SE¼ SE¼, NE¼ Section 28.

T.14N., R.03E. Willamette Meridian: Section 22; Section 24; Section 26; Section 28; Section 30; Section 32; Section 34; Section 36.

T.14N., R.04E. Willamette Meridian: Section 2–5; SE¼ Section 6; Sections 8–10; W½ Section 11; SE¼ SE¼ Section 12; Section 13 except NE¼ SE¼, E½ NE¼; Sections 14–23; Section 24 except NW¼; Section 25 except SW¼; N½ N½ Section 26; Sections 27–32; E½ SW¼, E½ Section 36.

T.15N., R.04E. Willamette Meridian: S½ Section 21; S½ Section 22; NW¼ NW¼, S½ NW¼, SW¼ Section 26; Sections 27–28; E½ E½ Section 29; E½ Section 32; Sections 33–34; W½ Section 35.



Map and description of WA–11–d taken from United States Fish and Wildlife Service 1:100;000 map; Mt. Rainier, Washington; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.13N., R.07E. Willamette Meridian: Section 10; Section 12; Section 14; Section 22.

T.13N., R.08E. Willamette Meridian: Sections 1–6; Section 9 except SE¼ SE¼; N½ N½, SW¼ NE¼ Section 10; SE¼, N½ NW¼ Section 11; Section 12 except S½ S½; Section 16 except E½ E½; Section 17; Section 18 except S½ S½; Section 20 except SW¼, W½ NW¼, S½ SE¼; NW¼, N½ SW¼ Section 21.

T.13N., R.09E. Willamette Meridian: NW¼ NW¼ Section 3; Section 4 except S½ SE¼; Sections 5–6; N½, N½ S½ Section 7; N½, N½ SW¼, NE¼ SE¼ Section 8; W½ NW¼ Section 9.

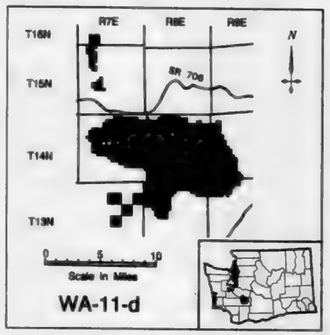
T.14N., R.07E. Willamette Meridian: SW¼ NW¼, S½ Section 1; Section 2 except N½ N½; Section 3 except NE¼ NE¼, SE¼, E½ SW¼, SW¼ SW¼; Section 4; E½ SE¼ Section 7; S½, S½ N½ Section 8; Sections 9–17; N½ NE¼, SE¼ NE¼ Section 18; Section 20 except SW¼, S½ SE¼; N½, SE¼, N½ SW¼ Section 21; Sections 22–24; Section 25 except S½ SW¼, SW¼ SE¼; Section 26 except S½ S½; NE¼, N½ NW¼ Section 27; NE¼ NE¼ Section 28.

T.14N., R.08E. Willamette Meridian: S½ SE¼ Section 2; SW¼, W½ SE¼ Section 3; Section 4; Section 5 except NW¼ NW¼; SW¼ NW¼, S½ Section 6; Sections 7–36.

T.14N., R.09E. Willamette Meridian: Section 7 except N½ NW¼; W½ W½ Section 8; SW¼, W½ NW¼, SE¼ NW¼, SW¼ SE¼ Section 17; Sections 18–19; Section 20 except NE¼ NE¼; W½ SW¼ Section 21; W½, W½ SE¼, SW¼ NE¼ Section 28; Section 29–32; Section 33 except W½ NE¼; SW¼ SW¼ Section 34.

T.15N., R.07E. Willamette Meridian: W½, W½ SE¼, NW¼ NE¼ Section 5; E½ NE¼, NE¼ SE¼ Section 6; W½, W½ NE¼, SW¼ SE¼ Section 8; SW¼ SW¼ Section 16; NE¼ NW¼, NW¼ NE¼ Section 17; SE¼, NE¼ SW¼, SE¼ NW¼, S½ NE¼, NE¼ NE¼ Section 20; W½ W½, SE¼ SW¼ Section 21.

T.16N., R.07E. Willamette Meridian: Section 32.



Map and description of OR–01-a taken from United States Fish and Wildlife Service 1:100,000 map; Astoria, Nehalem River, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.05N., R.07W. Willamette Meridian: SE¼ SE¼ Section 3.

Proposed Critical Habitat includes only State lands described within the following areas:

T.08N., R.06W. Willamette Meridian: W½ SW¼, SW¼ NW¼ Section 17; Section 18 except NE¼ NE¼; Section 19; W½ W½ Section 20; W½ Section 28; E½ Section 29; NW¼, N½ SW¼, SW¼ SW¼ Section 30; W½ W½, SE¼ SW¼ Section 31; E½ Section 32; W½ Section 33.

T.08N., R.07W. Willamette Meridian: Section 13; E½ Section 14; Section 23 except NW¼; Section 24–26; Section 36.

T.07N., R.06W. Willamette Meridian: N½ SW¼, SE¼ SW¼ Section 2; W½ W½, SE¼ SW¼ Section 3; Section 4; Sections 9–11; Sections 13–14; Section 16; Sections 25–36.

T.07N., R.07W. Willamette Meridian: Sections 30–31; W½ Section 32.

T.07N., R.08W. Willamette Meridian: Section 22 except N½ N½; Section 23 except N½ NW¼; Section 24 except NE¼; Section 25; Section 26 except S½ SW¼; N½, N½ SW¼, SE¼ SW¼ Section 27; NE¼ Section 28; SE¼ NE¼, NE¼ SE¼ Section 34; S½ Section 35; Section 36.

T.06N., R.05W. Willamette Meridian: W½ SW¼, SW¼ NW¼, Section 18; W½ W½ Section 19; NW¼ NW¼ Section 30.

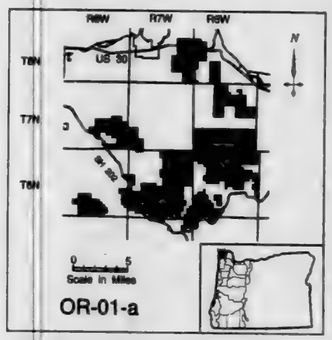
T.06N., R.06W. Willamette Meridian: Section 1 except N½ NE¼; Sections 2–6; N½ NE¼ Section 7; Section 8 except W½ SW¼; Sections 9–10; Section 11 except S½ NE¼, N½ SE¼, SE¼ NW¼; N½ NW¼, NW¼ NE¼, SW¼ SW¼ Section 12; Section 13 except S½ SW¼, NW¼ SW¼, NE¼ NE¼; Section 14 except S½ SE¼; Section 15; Section 16 except SW¼ SE¼, SE¼ SW¼; Section 17 except SW¼ SW¼; S½ SE¼, NE¼ SE¼ Section 19; E½ NE¼ Section 21; NE¼, N½ NW¼ Section 22; NW¼ Section 23; NE¼, E½ SE¼ Section 24; NE¼ NE¼ Section 25; W½ Section 28; SW¼, W½ NW¼, E½ NE¼, SW¼ SE¼ Section 29; Sections 30–32; S½ N½, W½ SW¼, NE¼ SW¼ Section 33.

T.06N., R.07W. Willamette Meridian: Sections 1–3; E½ NE¼ Section 4; NW¼ NW¼ Section 5; N½ NE¼ Section 6; E½ SE¼ Section 9; Sections 10–15; NE¼ NE¼, S½ SW¼ Section 16; S½ S½ Section 17; SW¼, S½ NW¼ Section 18; Section 19 except N½ SE¼, S½ NE¼, NW¼ NW¼, NE¼ NE¼; Sections 20–23; W½ W½ Section 24; W½ W½, NE¼ SW¼, SE¼ NW¼, SE¼ SE¼ Section 25; Sections 26–30; Section 31 except SW¼, S½ SE¼, SW¼ NW¼; N½ Section 32; Section 33; Section 34 except SE¼ SE¼; Section 35 except NE¼ SW¼; Section 36 except S½ NW¼, NE¼ NW¼, NW¼ SW¼.

T.06N., R.08W. Willamette Meridian: S½ NE¼, NE¼ SE¼ Section 13; SE¼, E½ SW¼ Section 24; E½ Section 25; SW¼, SW¼ SE¼ Section 27; Section 28 except E½ NE¼; Section 29 except NW¼; E½ Section 32; Sections 33–34; SW¼ NW¼, NW¼ SW¼ Section 35; NE¼ NE¼ Section 36.

T.05N., R.06W. Willamette Meridian: W½ NW¼ Section 4; NE¼ Section 5; W½, NW¼ NE¼ Section 6.

T.05N., R.07W. Willamette Meridian: Section 1 except W½ NW¼, S½ SE¼; N½ NW¼ Section 3.



Map and description of OR–01–b taken from United States Fish and Wildlife Service 1:100,000 map; Nehalem River, Oregon; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.03N., R.08W. Willamette Meridian: Sections 6–7; Sections 16–17; Section 18 S of Foss River; Sections 19–21; Sections 27–28.

T.03N., R.09W. Willamette Meridian: Section 1 except W½ NW¼, NW¼ SW¼; S½ SE¼ Section 2; NW¼, W½ SW¼ Section 3; Section 4 except W½ NW¼, NW¼ SW¼; Section 5 except W½ NW¼; Section 8 except SW¼ NW¼, NW¼ SW¼; Section 9; Section 10 except N½ NE¼, NE¼ NW¼; Section 11 except NW¼ NW¼; Sections 12–16; Section 21 except W½ NW¼, SE¼ NW¼; Section 23 lying N of Foss River; W½, NW¼ Section 24 lying N of Foss River; Section 28.

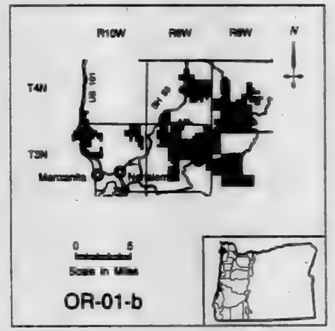
T.03N., R.10W. Willamette Meridian: W½ Section 1; Section 2 except NW¼; SW¼, S½ SE¼ Section 5; Section 6 except NW¼ NW¼, NE¼ NE¼; Section 7; N½ NE¼, SE¼ NE¼, NW¼ NW¼ Section 8; W½ NE¼ Section 11; Section 12 except E½ E½, W½ SW¼; NW¼ NE¼ Section 13; S½, E½ NE¼ Section 17; Section 18 except N½ NE¼, SE¼ NE¼.

T.03N., R.11W. Willamette Meridian: SE¼ Section 1; Section 12.

T.04N., R. 08W. Willamette Meridian: S½, S½ NW¼, SW¼ NE¼ Section 8; SE¼ Section 10; S½ S½, W½ NW¼, SE¼ NW¼, SW¼ NE¼ Section 14; Section 15 except NW¼; Section 17 except NW¼ SW¼; Sections 19–20; Section 21 except N½ NW¼; Section 22 except S½ NE¼, NW¼ NE¼; E½ NW¼, NW¼ NW¼, W½ NE¼ Section 23; Section 27–29; S½ SE¼, SE¼ SW¼ Section 30; SE¼, NE¼, NE¼ NW¼, E½ SW¼, SW¼ SW¼ Section 31; Sections 32–33; Section 34 except SE¼ NE¼, NE¼ SE¼.

T.04N., R.09W. Willamette Meridian: Section 10 except NW¼; SW¼ Section 11; Sections 13–14; E½, SE¼ SW¼ Section 15; N½ NE¼, SE¼ NE¼ Section 22; Section 23 except SE¼ SE¼; N½, W½ SW¼, NW¼ SE¼ Section 24; SW¼ SW¼ Section 28; SE¼ SE¼ Section 29; Section 32 except W½ W½, NE¼ NW¼; W½ W½, S½ SE¼, SE¼ SW¼ Section 33; Section 34 except N½, NE¼ SW¼; SW¼ SW¼ Section 35.

T.04N., R.10W. Willamette Meridian: S½ SW¼, NW¼ SW¼, SW¼ SE¼ Section 30; Section 31 except NE¼, E½ SE¼.



Map and description of OR–01–c taken from United States Fish and Wildlife Service 1:100,000 map; Nehalem River and Yamhill River, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.01N., R.09W. Willamette Meridian: W½ SW¼ Section 25; E½ SE¼, SW¼ SE¼ Section 26; E½ SE¼, W½ SW¼, SE¼ SW¼, SE¼ NE¼, SW¼ NW¼ Section 34; Section 35 except SW¼, NW¼ NW¼; N½ Section 36.

T.01S., R.08W. Willamette Meridian: Section 7 except SE¼, E½ NE¼, NW¼ NW¼; S½ S½ Section 17; Section 18 except N½, NW¼ SE¼; N½ N½, SW¼ NE¼, SE¼ NW¼, SE¼ SW¼ Section 19; N½ N½, NE¼ SW¼, SW¼ SW¼ Section 20; Section 21 except N½ NE¼, S½ SW¼; S½ SW¼, NW¼ SW¼, SW¼ NW¼ Section 22; SW¼, S½ NW¼ Section 27; S½ NW¼, S½ SE¼, N½ SW¼, SE¼ SW¼ Section 28; S½ NE¼, N½ SE¼, S½ SW¼, NE¼ SW¼ Section 29; NE¼, N½ NW¼, SW¼ NW¼, NW¼ SW¼ Section 33; Section 34 except E½ SE¼, SE¼ NE¼, S½ SW¼, SW¼ NW¼; NW¼ NW¼ Section 35; Section 36 except N½ NW¼.

T.01N., R.10W. Willamette Meridian: NW¼ NE¼, NE¼ NW¼ Section 1; SW¼ Section 2; W½, S½ SE¼ Section 11; NW¼, SE¼, S½ NE¼, S½ SW¼ Section 13; S½ SE¼ Section 14; S½ SE¼ Section 22; Section 23 except NW¼; Sections 24–26; E½, SE¼ NW¼, NE¼ SW¼ Section 27; Section 34 except S½ S½; Section 35 except SW¼, S½ NW¼, SW¼ SE¼; NE¼, W½ NW¼ Section 36.

T.01S., R.08W. Willamette Meridian: N½ Section 6; SE¼ Section 7; SW¼ Section 16; N½ S½, SE¼ NW¼ Section 17; N½ N½, SE¼ NW¼, SW¼ NE¼, NW¼ SE¼ Section 18; Section 19 except N½ N½, SE¼ SE¼, SW¼ NE¼ SE¼ NW¼; Section 20 except S½ S½, N½ N½, NE¼ SW¼; S½ SW¼, Section 21; N½ N½, SW¼ NE¼ Section 28.

Proposed Critical Habitat includes only State lands described within the following areas:

T.02N., R.09W. Willamette Meridian: Section 3; E½, E½ NW¼ Section 7; S½ Section 16; Section 18 except W½ NW¼; Sections 19–22; Sections 29–32.

T.02N., R.10W. Willamette Meridian: E½ SE¼ Section 13; E½ E½, NW¼ SE¼ Section 24; S½ SE¼, SE¼ SW¼ Section 25; SE¼ NE¼, SE¼ SE¼ Section 35; Section 36 except SE¼ NW¼.

T.01N., R.09W. Willamette Meridian: Section 9; Section 16 except S½ SW¼; SW¼, SW¼ SE¼ Section 19; Section 20 except N½ N½, SE¼ NE¼, SW¼ NW¼, NW¼ SW¼; N½ NE¼, S½ SW¼, NW¼ SW¼ Section 21; Section 26 except S½ SE¼, NE¼ SE¼; Section 27; W½ Section 28; Section 29 except SE¼ NW¼, SW¼ NE¼; Section 30; NE¼, N½ NW¼, SW¼ NW¼, NE¼ SE¼ Section 31; N½, NE¼ SE¼ Section 32; S½ S½, N½ NW¼, SW¼ NW¼, NW¼ SW¼ Section 33; Section 34 except E½ SE¼, SE¼ NE¼, S½ SW¼, SW¼ NW¼; NW¼ NW¼ Section 35; Section 36 except N½ NW¼.

T.01N., R.10W. Willamette Meridian: NW¼ NE¼, NE¼ NW¼ Section 1; SW¼ Section 2; W½, S½ SE¼ Section 11; NW¼, SE¼, S½ NE¼, S½ SW¼ Section 13; S½ SE¼ Section 14; S½ SE¼ Section 22; Section 23 except NW¼; Sections 24–26; E½, SE¼ NW¼, NE¼ SW¼ Section 27; Section 34 except S½ S½; Section 35 except SW¼, S½ NW¼, SW¼ SE¼; NE¼, W½ NW¼ Section 36.

T.01S., R.08W. Willamette Meridian: N½ Section 6; SE¼ Section 7; SW¼ Section 16; N½ S½, SE¼ NW¼ Section 17; N½ N½, SE¼ NW¼, SW¼ NE¼, NW¼ SE¼ Section 18; Section 19 except N½ N½, SE¼ SE¼, SW¼ NE¼ SE¼ NW¼; Section 20 except S½ S½, N½ N½, NE¼ SW¼; S½ SW¼, Section 21; N½ N½, SW¼ NE¼ Section 28.

Proposed Critical Habitat includes only County lands described within the following areas:

T.01N., R.09W. Willamette Meridian: S½ SW¼ Section 16; NW¼, S½ NE¼, N½ SE¼, SW¼ SE¼, NE¼ SW¼ Section 21; E½ Section 28; N½ NE¼, SE¼ NE¼, SE¼ NW¼ Section 33.

T.01S., R.09W. Willamette Meridian: E½ SE¼ Section 8; W½ SW¼ Section 9; W½ NW¼ Section 16.

T.01S., R.09W. Willamette Meridian: E½ E½ Section 1; Section 3 except S½ SW¼; S½ SE¼, NE¼ SE¼, SE¼ SW¼ Section 7; W½ SE¼ Section 9; Section 13 except N½ NW¼, SE¼ NW¼, NE¼ SW¼ NW¼ SE¼; S½ SE¼, SE¼ SW¼ Section 14; N½ NE¼, E½ NW¼ Section 16; N½, N½ SE¼ Section 17; NE¼, E½ NW¼ Section 18; NW¼, W½ NE¼ Section 23; N½ NW¼, SW¼ SW¼, SE¼ SE¼ Section 24; Section 25; Section 36 except S½ S½, SW¼ NW¼, NW¼ SW¼.

T.01S., R.11W. Willamette Meridian: N½ S½, NE¼ Section 13.

T.01S., R.11W. Willamette Meridian: SE¼ SE¼ Section 13.

Proposed Critical Habitat includes only State lands described within the following areas:

T.02N., R.09W. Willamette Meridian: Section 3; E½, E½ NW¼ Section 7; S½ Section 16; Section 18 except W½ NW¼; Sections 19–22; Sections 29–32.

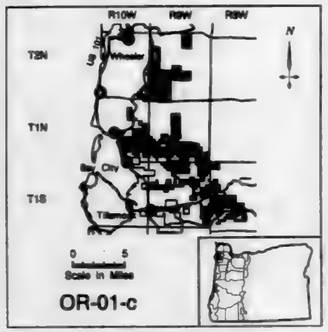
T.02N., R.10W. Willamette Meridian: E½ SE¼ Section 13; E½ E½, NW¼ SE¼ Section 24; S½ SE¼, SE¼ SW¼ Section 25; SE¼ NE¼, SE¼ SE¼ Section 35; Section 36 except SE¼ NW¼.

T.01N., R.09W. Willamette Meridian: Section 9; Section 16 except S½ SW¼; SW¼, SW¼ SE¼ Section 19; Section 20 except N½ N½, SE¼ NE¼, SW¼ NW¼, NW¼ SW¼; N½ NE¼, S½ SW¼, NW¼ SW¼ Section 21; Section 26 except S½ SE¼, NE¼ SE¼; Section 27; W½ Section 28; Section 29 except SE¼ NW¼, SW¼ NE¼; Section 30; NE¼, N½ NW¼, SW¼ NW¼, NE¼ SE¼ Section 31; N½, NE¼ SE¼ Section 32; S½ S½, N½ NW¼, SW¼ NW¼, NW¼ SW¼ Section 33; Section 34 except E½ SE¼, SE¼ NE¼, S½ SW¼, SW¼ NW¼; NW¼ NW¼ Section 35; Section 36 except N½ NW¼.

T.01N., R.10W. Willamette Meridian: NW¼ NE¼, NE¼ NW¼ Section 1; SW¼ Section 2; W½, S½ SE¼ Section 11; NW¼, SE¼, S½ NE¼, S½ SW¼ Section 13; S½ SE¼ Section 14; S½ SE¼ Section 22; Section 23 except NW¼; Sections 24–26; E½, SE¼ NW¼, NE¼ SW¼ Section 27; Section 34 except S½ S½; Section 35 except SW¼, S½ NW¼, SW¼ SE¼; NE¼, W½ NW¼ Section 36.

T.01S., R.08W. Willamette Meridian: N½ Section 6; SE¼ Section 7; SW¼ Section 16; N½ S½, SE¼ NW¼ Section 17; N½ N½, SE¼ NW¼, SW¼ NE¼, NW¼ SE¼ Section 18; Section 19 except N½ N½, SE¼ SE¼, SW¼ NE¼ SE¼ NW¼; Section 20 except S½ S½, N½ N½, NE¼ SW¼; S½ SW¼, Section 21; N½ N½, SW¼ NE¼ Section 28.

T.01S., R.11W. Willamette Meridian: N½ S½, NE¼ Section 13.



Map and description of OR–01–d taken from United States Fish and Wildlife Service 1:100,000 map; Nehalem River, Oregon; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.04N., R.06W. Willamette Meridian: W½ NW¼, NE¼ NW¼, NW¼ NE¼, NW¼ SW¼ Section 4; NE¼, E½ SE¼, NW¼ SE¼, NE¼ NW¼ Section 5; SW¼ SW¼ Section 19; NW¼, N½ SW¼, SW¼ SW¼, N½ SE¼, SE¼ SE¼, SW¼ NE¼ Section 30; W½ NW¼ Section 31.

T.04N., R.07W. Willamette Meridian: S½ NW¼, N½ SW¼, SW¼ SW¼ Section 1; Section 2; E½, E½ NW¼, NW¼ NW¼, NE¼ SW¼ Section 3; SE¼, S½ NE¼, S½ SW¼, NW¼ SW¼ Section 9; E½, S½ SW¼, NE¼ NW¼ Section 10; Section 11 except E½ NE¼; W½ Section 13; Sections 14–16; Sections 21–23; Section 24 except NE¼ NE¼; NE¼, E½ NW¼, NW¼ NW¼, NE¼ SE¼ Section 25.

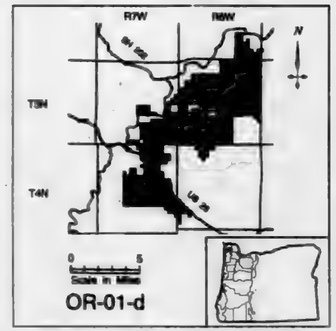
T.05N., R.06W. Willamette Meridian: Sections 1–3; SE¼, S½ NE¼, S½ SW¼ Section 7; Sections 8–18; Section 19 except SE¼ NE¼, NE¼ SE¼; Section 20 except S½ NW¼; Section 21 except NE¼ SW¼, NW¼ SE¼; Section 22; Section 23 except SE¼ SE¼; Section 24 except S½ SW¼; NE¼ NE¼ Section 25; Sections 27–34.

T.05N., R.07W. Willamette Meridian: SE¼, SE¼ NE¼, SE¼ SW¼ Section 13; Section 22 except S½ S½; N½ SW¼ Section 23; S½, E½ NW¼ Section 24; Sections 25–26; SE¼, S½ NE¼, E½ SW¼, SE¼ NW¼ Section 27; SE¼ Section 33; Section 34 except W½ NW¼, NE¼ SW¼; Sections 35–36.

T.05N., R.08W. Willamette Meridian: S½ NW¼ Section 25; SE¼ NE¼ Section 26.

T.06N., R.05W. Willamette Meridian: SW¼ NW¼ Section 31.

T.06N., R.06W. Willamette Meridian: W½ SW¼ Section 25; Section 26 except SE¼ NE¼, NE¼ SE ¼; Section 35; S½, SE¼ NE¼, S½ NW¼, NW¼ NW¼ Section 36.

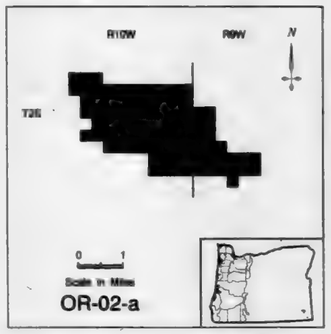


Map and description of OR–02–a taken from United States Fish and Wildlife Service 1:100,000 map; Yamhill River, Oregon; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.02S., R.09W. Willamette Meridian: Section 22 except SW¼, W½ NW¼; Sections 23–25; Section 26 except S½ S½; E½ NE¼, SW¼ NE¼ Section 27.

T.02S., R.08W. Willamette Meridian: SW¼ Section 19; SW¼ Section 29; Section 30 except N½ NE¼, SE¼ NE¼; NE¼ NE¼ Section 31.



Map and description of OR–02–b taken from United States Fish and Wildlife Service 1:100,000 map; Yamhill River, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.03S., R.09W. Willamette Meridian: SW¼, SE¼ NW¼ Section 3; Section 4 except N½ NE¼, W½ NW¼, SE¼ NW¼; SE¼ SE¼ Section 8; Section 9 except SW¼ NW¼; W½ W½, NW¼ NE¼, NE¼ NW¼ Section 10; W½ NW¼ Section 15; N½ N½, NW¼ SE¼, SE¼ NW¼, SW¼ NE¼ Section 16; SE¼ NE¼ Section 17; Section 19 except E½, NW¼ NW¼, S½ SW¼; SE¼ SE¼ Section 31.

T.03S., R.10W. Willamette Meridian: S½ SE¼, NW¼ SE¼, SE¼ SW¼ Section 22; Section 23 except N½ NW¼; S½, SE¼ NE¼ Section 24; N½ NW¼, NW¼ SW¼, NW¼ NE¼ Section 25; Section 26 except E½ SE¼; Section 27 except N½ SE¼, SW¼ NE¼, NE¼ SW¼, SE¼ NW¼; Section 28 except W½ W½, NE¼ NW¼; SE¼, S½ N½, E½ SW¼ Section 32; Section 33 except NW¼ NW¼; N½ N½, SW¼ NW¼ Section 34; N½ NW¼, NW¼ SE¼, SE¼ NW¼, NE¼ SW¼ Section 35.

T.04S., R.09W. Willamette Meridian: SW¼ SW¼ Section 4; S½ S½, NW¼ SE¼, N½ SW¼ Section 5; Section 6 except W½ W½, NE¼ NE¼; Section 7 except W½ NW¼; Section 8; Section 9 except NE¼ NE¼; SW¼, SW¼ NW¼ Section 10; NW¼ Section 15; Section 16 except SW¼, S½ NW¼, SW¼ SE¼; N½ N½, SW¼ NE¼ Section 17; N½ N½, S½ NW¼ Section 18.

T.04S., R.10W. Willamette Meridian: W½ SW¼, NE¼ SW¼ Section 3; Section 4 except S½ SW¼, SW¼ NW¼; Section 5 except SE¼, SE¼ NE¼; SE¼, S½ NE¼, NE¼ NE¼, SE¼ SW¼ Section 6; N½ NE¼, NE¼ NW¼ Section 7; N½ NE¼ Section 9.

T.05S., R.09W. Willamette Meridian: SW¼ SW¼ Section 5; S½ SE¼, NW¼ SE¼ Section 6; Section 7; W½ W½, SE¼ NW¼, NE¼ SW¼, SW¼ SE¼ Section 8; NW¼, NW¼ NE¼, NW¼ SW¼ Section 17; Section 18; Section 19 except S½, SE¼ NE¼; NW¼ NW¼ Section 20.

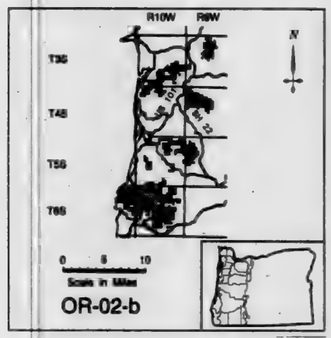
T.05S., R.10W. Willamette Meridian: S½, S½ NE¼, SE¼ NW¼ Section 1; Section 2 except NE¼; NE¼, S½ NW¼, S½ SE¼, SE¼ SW¼ Section 3; E½ SE¼, SE¼ NE¼, SE¼ SW¼ Section 4; Section 10 except W½ W½, E½ SW¼, SE¼ NE¼, NE¼ SE¼; W½ NW¼, E½ SE¼, NE¼ SW¼ Section 11; Section 12 except NW¼; NE¼ NE¼, SE¼ SE¼ Section 13; NE¼ NE¼ Section 14; N½ NE¼ Section 15; SW¼, SW¼ NW¼ Section 17; Section 20 except W½ W½; SE¼ NW¼, SW¼ NE¼, NW¼ SE¼ Section 23; NE¼ NE¼ Section 24; N½ NW¼, NW¼ NE¼ Section 26; Section 32 except N½, NW¼ SW¼; S½ S½, NE¼ SE¼, NW¼ SW¼ Section 33; SW¼, E½ NW¼, SW¼ NE¼, NW¼ SE¼ Section 34.

T.06S., R.10W. Willamette Meridian: Section 2; W½ W½, SE¼ SE¼ Section 3; Section 4 except SW¼ SW¼; NE¼, N½ SE¼, E½ NW¼ Section 5; W½ SE¼, SW¼, SW¼ NW¼, SW¼ NE¼, SE¼ SE¼ Section 6; Section 7 except SE¼ SE¼, E½ NE¼; Section 8 except N½ NE¼; Section 9 except S½ SE¼, SE¼ SW¼, NW¼ NW¼, Section 10; Section 11 except NE¼, SE¼ SE¼, SW¼ Section 12; S½, SW¼ NW¼, NW¼ NE¼ Section 14; Section 15 except NW¼; Section 16 except N½ NE¼; Section 17; Section 18 except W½ NE¼, SE¼ NW¼; Section 19 except E½ SW¼, E½ E½, SW¼ SE¼; W½ NE¼, E½ NW¼ Section 20; Sections 21–22; Section 23 except E½ E½; W½ NW¼, SE¼ NW¼, S½ SW¼ Section 26; W½ W½, NE¼, NE¼ NW¼, SE¼ SE¼ Section 27; Section 28 except SW¼ NW¼.

T.06S., R.11W. Willamette Meridian: Section 1–2; Section 11 except NW¼ SW¼; Section 12; Section 13 except SW¼ NE¼, SE¼ NW¼; NE¼, N½ SE¼ Section 14; NE¼ Section 24.

Proposed Critical Habitat includes only State lands described within the following areas:

T.05S., R.10W. Willamette Meridian: SE¼ NE¼, NE¼ SE¼ Section 10; W½ SW¼ Section 11; NW¼ NW¼ Section 14.



Map and description of OR–02–c taken from United States Fish and Wildlife Service 1:100,000 map; Yamhill River and Corvallis, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.06S., R.09W. Willamette Meridian: SE¼ Section 33.

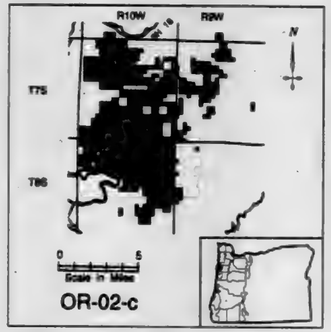
T.06S., R.10W. Willamette Meridian: SE¼, E½ SW¼ Section 32.

T.07S., R.09W. Willamette Meridian: SW¼, W½ NW¼, SE¼ NW¼, SW¼ SE¼ Section 3; SE¼, E½ NE¼, SW¼ NE¼, NE¼ SW½ Section 4; SW¼ SW¼ Section 5; W½ SW¼, SW¾ NW¼ Section 7; Section 8 except S½ SW¼ SW¼ SE¼; Section 9 except N½ NE¼, NE¼ NW¼, SE¼ NE¼, SW¼ SE¼, SE¼ SW¼; SW¼ SW¾ Section 10; Section 16 except E½ E½, NE¼ NW¼; S½, E½ NE¼, SW¼ NW¼ Section 17; Section 18 except W½ W½, NE¼ NE¼; S½ SW¼, NE¼ SW¼, SE¼ NW¼, NE¼ NE¼ Section 19; NE¼, NW¼ SE¼ Section 20; W½ NW¼, NE¼ NW¼, S½ SW¼ Section 21; E½ SE¼ Section 23; N½ NW¼, SW¼ NW¼ Section 28; SE¼ NE¼ Section 29; N½ NW¾, SW¼ NW¼, SW¼ SE¼ Section 30; Section 31 except N½ NW¼, E½ SE¼, NW¼ SE¼, SE¼ NE¼.

T.07S., R.10W. Willamette Meridian: Section 3 except N½, SE¼ SE¼; Section 4; Section 5 except W½ SW¼; Section 7 except W½ W½; Sections 8–9; Section 10 except E½ NE¾, SW¼ NE¼; N½ S½, E½ NE¼, SW¼ SW¼ Section 11; Section 12 except NW¼ NW¼, SW¼ SW¼, SW¼ NE¼, NW¼ SE¼, SE¼ NW¼, NE¼ SW¼; Section 13 except NW¼ NW¼; Section 14 except N½ NW¼, SW¼ SW¼, SE¼ NE¼; Section 15 except S½ S½; Section 16 except SE¼ SE¼; Section 17 except W½ SW¼; NE¼, E½ NW¼ Section 18; S½ SE¼, SE¼ SW¼ Section 20; NE¼, SW¼ Section 21; Sections 22–23; Section 24 except N½ SE¼, S½ NE¼, NE¼ SW¼; Section 25 except NW¼; Section 26 except NW¼; Sections 27–28; Section 29 except W½ NW¼; SE¼ SE¼ Section 30; Section 31 except N½ NW¼, NW¼ NE¼; Sections 32–35; W½ W½, E½ E½ Section 36.

T.08S., R.09W. Willamette Meridian: SE¼ NW¾ Section 5; NW¼ NW¾, SW¼ SW¼ Section 7; S½ SW¼ Section 18; NW¼, NW¾ SW¼ Section 19.

T.08S., R.10W. Willamette Meridian: Sections 1–5; Section 6 except W½ SW¼; Section 7 except NE¼ SE¼, SW¼ SW¼; Sections 8–14; Section 15 except SE¼ SE¼; E½ E½, NW¼ NE¼, SW¼ SE¼ Section 16; Sections 23 except SW¼ NW¼, NW¼ SW¼; Section 24; NE¼ NW¼, NW¾ NE¼ Section 25; Section 26 except SE¼, E½ NE¼; Section 27 except W½, W½ SE¼; W½ NE¼ Section 28.



Map and description of OR–02–d taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.07S., R.06W. Willamette Meridian: SW¼, W½ Section 4; Section 5 except N½ NE¼, NW¼ NW¼; Section 6 except NE¼, N½ NW¼, NW¼ SE¼; Section 7; S½ Section 9; Section 17 except NW¼, W½ NE¼, NW¼ SW¼.

T.07S., R.07W. Willamette Meridian: Section 1 except NW¼; Sections 2–3; Section 4 except NW¼, NW¼ NE¼; Section 5 except E½ NE¼; NE¼ NE¼ Section 6; Section 7; N½ Section 8; Section 9; Section 11 except SE¼ SW¼, SW¼ SE¼; E½ NE¼, NE¼ SE¼ Section 12; Section 13 except NE¼ NE¼, NE¼ SE¼; Section 15; Section 17; N½ Section 18; Section 19; Section 21; Section 23; N½ Section 25; N½ Section 26; Section 27; E½ SW¼ Section 28; Section 29; Section 31; S½ SW¼ Section 32; Section 33; NW¼ Section 34.

T.07S., R.08W. Willamette Meridian: Section 1; SE¼ Section 12; Section 13; S½, S½ N½ Section 14; Section 15 except W½ W½; Section 17; Section 18 except W½ W½; Section 19 except W½ W½; W½ Section 20; N½ NE¼ Section 22; Section 23; Section 25; Section 27 except NE¼ NE¼; Section 28 except E½ SW¼, NW¼ SW¼; Section 29 except S½ SE¼; Section 30 except W½ W½; Section 31 except W½ W½; Section 32 except NE¼, N½ SE¼; Section 33 except SE¼ SE¼; Section 35 except N½ N½.

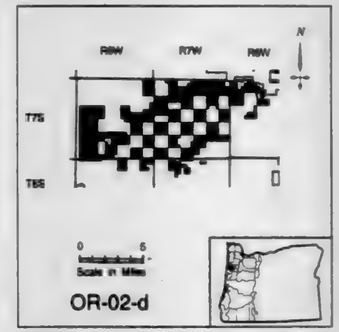
T.08S., R.07W. Willamette Meridian: S½ NE¼ Section 3; N½ N½, N½ SW¼, SE¼ SW¼, SW¼ SE¼ Section 4; Section 5 except N½ NE¼; N½ NE¼, SW¼ NE¼ Section 8; NW¼ NE¼, NE¼ NW¼ Section 9.

T.08S., R.08W. Willamette Meridian: Section 1 except SE¼, NE¼ SW¼; E½ E½ Section 2; Section 3 except W½ W½; N½ N½ Section 5; N½ N½ Section 6.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.07S., R.06W. Willamette Meridian: SE¼ SW¼, SW¼ SE¼ Section 4; E½ NW¼ Section 9.



Map and description of OR–02–e taken from United States Fish and Wildlife Service 1:100,000 map; Yamhill River, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.01S., R.05W. Willamette Meridian: SE¼, S½ SW¼, S½ NE¾ Section 19; N½ NE¼, NE¼ NW¼ Section 30.

T.02S., R.05W. Willamette Meridian: SW¼ NE¼, NE¼ SW¼ Section 5; SW¼ SE¼ Section 7.

T.02S., R.06W. Willamette Meridian: NW¼, SW¾ SW¼ Section 25; S½ S½, S½ NE¼, NE¼ NE¼, SE¼ NW¼ Section 26; Section 35; W½ SW¼ Section 36.

T.02S., R.08W. Willamette Meridian: Section 31 except W½ NW¼, E½ SE¼, NE¼ NE¼; Section 32 except NE¼, SW¼ SW¼; Section 33 except NW¼ NW¼; W½ NW¼, NW¼ SW¼ Section 34.

T.03S., R.06W. Willamette Meridian: NE¼ NW¼ Section 1; Section 7; S½ SW¼ Section 16; Sections 17–20; W½, W½ E½ Section 21; SW¼, W½ SE¼, SW¼ NE¼ Section 27; SW¼, S½ NW¼, NW¼ SE¼, SW¼ NE¼ Section 28; Section 29; Section 30 except NE¼; Section 31; W½ Section 32; Section 33 except SW¼, SW¼ SE¼; NE¼ NE¼ Section 35.

T.03S., R.07W. Willamette Meridian: S½ Section 5; Section 7; S½ NE¼, W½ NW¼,

N½ SW¼, NW¼ SE¼, SE¼ SE¼ Section 8; Section 9; Section 10 except N½ NE¼, NW¼ NW¼; Section 11; Section 12 except E½ E½, SW¼ NE¼; Sections 13–15; S½ Section 16; Section 17; SW¼, N½ NE¼, W½ NW¼ Section 18; Section 19; Section 20 except W½ W½, SE¼ SW¼; Sections 21–25; E½ Section 26; Sections 27–29; E½ Section 30; Section 31; Section 32 except S½ SE¼, NE¼ SE¼; Section 33 except NW¼ NW¼, SW¼ SW¼; N½ N½, SE¼ Section 34; Section 35; W½ Section 36.

T.03S., R.08W. Willamette Meridian: SW¼, S½ SE¼ Section 1; Section 3 except E½ SE¼; S½ S½, W½ NW¼ Section 4; Section 5 except W½ NW¼, SE¼ NW¼, SW¼ NE¼; N½ NW¼, E½ SE¼ Section 6; Section 7 except N½ N½, SW¼ NE¼, SE¼ NW¼; Section 8 except S½ SE¼; Section 9 except SW¼ SW¼; Section 10 except N½ NW¼, NW¼ NE¼; Section 11; Section 13; NE¼, N½ NW¼, SE¼ SW¼ Section 14; Section 15 except SW¼, SW¼ NW¼; NW¼ NW¼ Section 17; Section 18 except S½ SE¼; NW¼, N½ SW¼, SE¼ SW¼, SW¼ NE¼ Section 19; SE¼, S½ NE¼, E½ SW¼ Section 21; Section 22 except SW¼ NE¼, SE¼ NW¼; Section 23; Section 24 except N½ NE¼, SE¼ NE¼; Section 25 except NE¼ SW¼, SW¼ NE, NW¼ SE¼, SE¼ NW¼; N½ NE¼, NW¼ NW¼, SE¼ SE¼; Section 26; Section 27 except NE¼ SW¼, SW¼ NE¼, NW¼ SE¼, SE¼ NW¼; SW¼ SW¼ Section 28; S½ S½ Section 29; S½, W½ NW¼ Section 31; Section 32 except SW¼; Sections 33–34; S½, W½ NW¼ Section 35; W½ NE¼ Section 36.

T.03S., R.09W. Willamette Meridian: Section 1 except S½ SE¼, NE¼ SE¼, SW¼ NW¼; SE¼ SE¼ Section 2; Section 11 except NW¼, W½ NE¼, NW¼ SW¼; Sections 12–13; NE¼, N½ NW¼, E½ SE¼ Section 14; E½ NE¼ Section 23; N½, NE¼ SE¼ Section 24.

T.04S., R.06W. Willamette Meridian: Section 5 except E½ E½, SW¼ SE¼; Sections 6–7; S½ SW¼, W½ SE¼ Section 18.

T.04S., R.07W. Willamette Meridian: Section 1 except NE¼; W½, N½ NE¼ Section 2; Section 3 except NW¼; E½ E½, NW¼ NE¼, NE¼ NW¼, SE¼ SW¼, SW¼ SE¼ Section 4; N½, E½ SE¼ Section 5; Section 6 except NE¼, W½ SE¼; Section 7; SW ¼, NE¼ SE¼ Section 8; Section 9; N½ Section 10; Section 11; Section 12 except SE¼ SW¼; Section 13; Section 14 except N½ NW¼, S½ NE¼, E½ SE¼; Section 15 except SW¼ SW¼; E½ E½, NW¼ NE¼ Section 16; Section 17 except N½ S½; Section 18 except NW¼.

T.04S., R.08W. Willamette Meridian: SE¼ NE¼, SE¼ SE¼, SW¼ SW¼ Section 1; Section 2 except SE¼ NW¼, E½ NE¼, SW¼ NE¼, NE¼ SE¼, NW¾ SW¼; N½ N½, S½ S½, SW¼ NW¼ Section 3; Section 4 except S½ SE¼; Sections 5–8; Section 9 except N½ NE¼; Section 10; Section 11; Section 12 except NE¼ NE¼, SW¼ NW¼, NW¼ SW¼; Sections 13–14; Section 15 except N½ NE¼; Sections 16–25; Section 26 except W½ SW¼; Section 27 except E½ SE¼; Section 28–35; N½ Section 36.

T.04S., R.09W. Willamette Meridian: S½ SE¼, NE¼ SE¼ Section 1; SE¼, SE¼ SW¼ Section 11; Section 12 except NW¼ NE¼, SW¼ NW¼, N½ NW¼; Section 13; E½, NE¼ NW¼ Section 14; Section 23 except N½ NW¼, SW¼ NW¼; Sections 24–26; SE¼, E½ NE¼, SW¼ NE¼, SE¼ NW¼ Section 27; NE¼, SE¼ SE¼ Section 34; N½ N½, S½ S½, SW¼ NW¼, E½ SE¼, SE¼ NE¼, NE¼ SE¼ Section 35; Section 36.

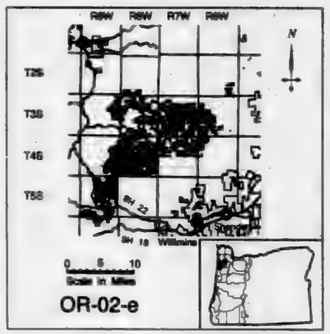
T.05S., R.09W. Willamette Meridian: Sections 1–2; NE¼ NE¼, W½ SW¼, SE¼ SW¼, SW¼ NW¼, E½ SE¼, SW¼ SE¼ Section 3; Section 4 except W½ W½; Section 9 except, S½, N½ SW¼, SE¼ SW¼; Section 10–15; Section 16 except W½ W½; Section 21 except W½ NW¼, NW¼ SW ¼; Section 22; Section 23 except SE¼, SW¼ NW¼, NW¼ SW¼; Section 24 except W½ SW¼; N½ NE¼ Section 25; Section 26 except E½ E½; Section 27 except E½ NE¼, S½ SW¼, NW¼ NW¼; NE¼ NW¼ Section 28; Section 31 except N½ NW¼, SW¼ NW¼; Section 32 except NE¼ NE¼; SW¼, S½ NW¼, SW¼ SE¼ Section 33; Section 34 except W½, NW¼ SE¼; Section 35 except NE¼ NE¼.

T.06S., R.09W. Willamette Meridian: W½, W½ NE¼ Section 2; N½, N½ SW¼, SW¼ SW¼ Section 3; Section 4 except SE¼ SE¼; N½ Section 5; N½ NE¼, NE¼ NW¼ Section 6; NE¼, E½ NW¼ Section 9.

T.06S., R.10W. Willamette Meridian: NE¼ NE¼ Section 1.

Proposed Critical Habitat includes only State lands described within the following areas:

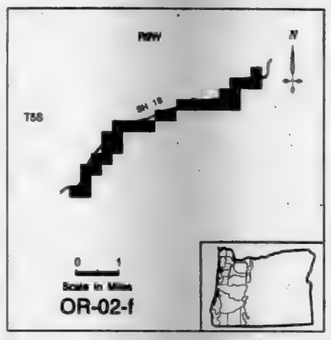
T.03S., R.07W. Willamette Meridian: N½ Section 16.



Map and description of OR–02–f taken from United States Fish and Wildlife Service 1:100,000 map; Yamhill River, Oregon; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.06S., R.09W. Willamette Meridian: E½ SE¼ Section 11; S½ SW¼, NE¼ SE¼ Section 12; W½ NW¼ Section 13; N½ Section 14; S½ NE¼, N½ SW¼, NE¼ NE¼, SW¼ SW¼ Section 15; S½ Section 16; SE¼ SE¼ Section 17; E½ NE¼, SW¼ NE¼, N½ SE¼, SW¼ SE¼, SE¼ SW¼ Section 20; W½ NW¼, NE¼ NW¼ Section 21; W½ NE¼, E½ NW¼ Section 29.



Map and description of OR–03–a taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Oregon; 1995.

Proposed Critical Habitat includes only Private lands described within the following areas:

T.09S., R.09W. Willamette Meridian: S½ SE¼, NE¼ SE¼ Section 23; W½ NW¼, NW¼ SW¼ Section 25; NE¼ Section 26; W½ SW¼ Section 34.

T.10S., R.09W. Willamette Meridian: SW¼ Section 15.

T.10S., R.10W. Willamette Meridian: SE¼ Section 14.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.09S., R.09W. Willamette Meridian: SE¼ SE¼ Section 33.

T.10S., R.10W. Willamette Meridian: NW¼ SE¼ Section 2.

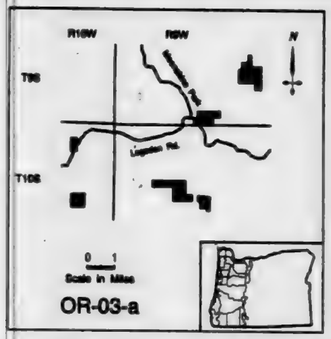
Proposed Critical Habitat includes only State lands described within the following areas:

T.09S., R.09W. Willamette Meridian: E½ SW¼, NW¼ SE¼ Section 34.

T.10S., R.09W. Willamette Meridian: NW¼, N½ SW¼, NW¼ SE¼ Section 16; N½ NE¼, NE¼ NW¼ Section 17.

Proposed Critical Habitat includes only County lands described within the following areas:

T.10S., R.10W. Willamette Meridian: SW¼ SE¼ Section 2.



Map and description of OR–03–b taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Oregon; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.10S., R.06W. Willamette Meridian: W½ SW¼ Section 30.

T.10S., R.07W. Willamette Meridian: S½ Section 25; N½ Section 36.

T.11S., R.07W. Willamette Meridian: SW¼ SW¼ Section 15; S½ N½, SE¼ Section 16; Section 21 except S½, SW¼ NW¼; S½, S½ NW¼ Section 29; Section 31; Section 32 except SE¼, NE¼ SW¼.

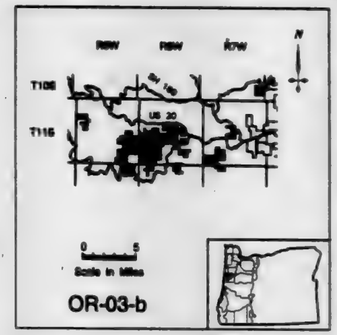
T.11S., R.08W. Willamette Meridian: SW¼ SW¼ Section 14; Section 15 except NE¼, NE¼ NW¼; S½ N½, N½ S½, S½ SW¼ Section 16; SW¼, W½ SE¼ Section 17; S½ SE¼, E½ SW¼ Section 18; Sections 19–21; W½, S½ SE¼, NE¼ SE¼, NE¼ NE¼ Section 22; SW¼, NW¼ NW¼ Section 23; SW¼, NW¼ SE¼ Section 26; Section 27 except SW¼, E½ NE¼; NW¼ NW¼ Section 28; Sections 29–31; Section 32 except SE¼; SE¼ SE¼ Section 33; S½ S½ Section 34; N½ NW¼ Section 35.

T.11S., R.09W. Willamette Meridian: N½ NE¼ Section 5; S½ Section 7; NW¼ NW¼ Section 17; SE¼, S½ NE¼, NE¼ NE¼, SE¼ NW¼ Section 18; SE¼ SE¼ Section 22; Section 23 except NW¼; Section 24 except W½ NE¼, E½ NW¼; Section 25; Section 26 except S½ NW¼, N½ SW¼; E½ SE¼, SE¼ NE¼ Section 34; Section 35.

T.12S., R.07W. Willamette Meridian: Section 5 except S½, SW¼ NW¼.

T.12S., R.08W. Willamette Meridian: NW¼ SW¼ Section 2; NE¼, E½ NW¼, N½ SE¼ Section 3; NW¼ Section 5; E½ E½, SW¼ NE¼ Section 6.

T.12S., R.09W. Willamette Meridian: S½ SW¼, N½ NW¼, SE¼ NW¼, NW¼ NE¼ Section 1; E½, E½ NW¼ Section 2.



Map and description of OR–03–c taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.08S., R.06W. Willamette Meridian: SE¼ SE¼, SW¼ SW¼ Section 30; Section 31 except S½ S½, N½ SE¼, SE¼ NE¼, W½ NW¼ Section 33.

T.08S., R.07W. Willamette Meridian: Section 31 except S½ SE¼, NE¼ NE¼, NW¼ NW¼, SW¼ SW¼.

T.09S., R.06W. Willamette Meridian: N½ N½, S½ NW¼ Section 5; NE¼, N½ NW¼, NE¼ SE¼ Section 7.

T.09S., R.07W. Willamette Meridian: Section 1 except W½ NW¼; Section 3 except NE¼; SE¼ SW¼, SW¼ SE¼ Section 4; Section 9 except SE¼ SE¼; Section 11; Section 13; W½, W½ NE¼, NW¼ SE¼ Section 15; SE¼, E½ SW¼ Section 17; NW¼, NW¼ SW¼ Section 21; E½ NE¼, NE¼ SE¼ Section 23; Section 29 except SE¼; Section 31; S½, SE¼ NW¼ Section 33; W½ W½, NE¼ NE¼ Section 35.

T.09S., R.08W. Willamette Meridian: NW¼, W½ SW¼ Section 11; Section 27 except N½ NE¼, SE¼ NE¼; Section 35 except S½ NE¼, NE¼ NW¼.

T.10S., R.05W. Willamette Meridian: N½ SE¼ Section 29.

T.10S., R.07W. Willamette Meridian: N½ N½ Section 1; N½ N½ Section 5; S½ NE¼, N½ SE¼, SW¼ SE¼, SE¼ SW¼ Section 18.

Proposed Critical Habitat includes only State lands described within the following areas:

T.08S., R.07W. Willamette Meridian: SE¼ Section 11; SE ¼ Section 12; N½, W½ SE¼ Section 13; E½ Section 14.

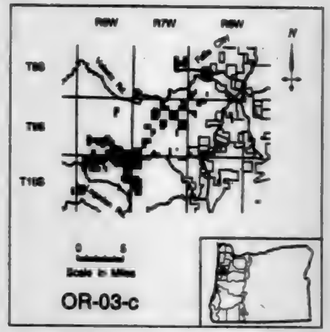
T.09S., R.08W. Willamette Meridian: Section 28 except N½ N½; N½ S½, NW¼, S½ NE¼ Section 29; SE¼ Section 32; N½ NW¼ Section 33; Section 34 except NW¼; Section 36 except N½ N½.

T.10S., R.07W. Willamette Meridian: Section 6; N½ N½ Section 7; NW¼, W½ SW¼, NE¼ SW¼, NW¼ NE¼ Section 18; Section 19 except W½ SW¼.

T.10S., R.08W. Willamette Meridian: Section 1 except SW¼ SE¼; Section 2; NE¼, N½ NW¼, SW¼ NW¼, NE¼ SE¼ Section 3; Section 4 except SW¼ SE¼, SE¼ SW¼; Section 5; E½ Section 6; NE¼ Section 7; NE¼, E½ NW¼ Section 8; NW¼, NE¼ NE¼ Section 9; W½ NW¼ Section 10; Section 12; Section 13 except S½ SW¼, SW¼ SE¼; E½ NE¼ Section 14; SW¼ SW¼ Section 18; Section 19; E½ NE¼, N½ SE¼ Section 24.

Proposed Critical Habitat includes only Private lands described within the following areas:

T.09S., R.08W. Willamette Meridian: S½ SW¼ Section 29; N½ NE¼, NE¼ NW¼ Section 35.



Map and description of OR–04–a taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Waldport and Eugene, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.11S., R.10W. Willamette Meridian: SE¼ SE¼ Section 35.

T.12S., R.09W. Willamette Meridian: N½ N½ Section 6; Section 7 except NW¼ NE¼; Section 8 except NE¼ NW¼, W½ NE¼, NW¼ SE¼, NE¼ NE¼; SE¼ SE¼ Section 14; S½ SW¼ Section 15; SE¼ SE¼ Section 16; Sections 17–18; Section 19 except W½ W½, NE¼ NE¼, SE¼ SW¼; Section 20 except SE¼ NW¼; Section 21 except N½ NW¼, NW¼ NE¼; Section 22 except NE¼ NE¼; Section 23 except N½ NW¼; E½ E½ Section 24; Sections 26–28; N½, N½ SE¼ NE¼, SE¼ SE¼ Section 29; S½ NE¼, NE¼ NE¼ Section 32; W½ Section 33; NE¼ NW¼ Section 34; S½ SW¼, NE¼ NW¼ Section 35.

T.12S., R.10W. Willamette Meridian: Sections 1–2; Section 3 except E½ NW¼, S½ NE¼; Section 4; S½, E½ NE¼, SW¼ NW¼ Section 5; S½ SE¼ Section 6; Sections 7–8; N½, N½ SE¼ Section 9; N½ Section 10; Section 11 except SW¼ SW¼; Section 12; N½ N½, SW¼ NE¼, NE¼ SW¼, NW¼ SE¼, SE¼ NW¼ Section 13; NE¼ NE¼ Section 14; Section 16; Section 17; Section 18 except N½ S½; Sections 19–21; Section 25 except NW¼; Section 28; Section 29 except SW¼, NW¼ SE¼; N½, NW¼ SW¼ Section 30; NE¼ SE¼ Section

31; Section 32 except W½ NW¼, NE¼ NW¼, SW¼ SW¼; Section 33 except S½ SE¼, SE¼ SW¼; SE¼, E½ Section 35.

T.12S., R.11W. Willamette Meridian: S½ NW¼, S½ SW¼, NE¼ SW¼ Section 9; SE¼, S½ SW¼, NE¼ SW¼ Section 11; Section 12; Section 13 except SE¼ SE¼; N½, N½ SE¼, S½ S½ Section 14; NE¼ Section 22; Sections 23–24; Section 25 except W½ SW¼, SW¼ NW¼; Section 26 except SE¼ NE¼; E½ Section 27; Section 35; Section 36 except E½ SE¼, SE¼ NE¼.

T.13S., R.09W. Willamette Meridian: Section 2 except SE¼; NE¼ Section 4; SW¼ Section 5; Section 6–7; W½ Section 8; Sections 18–19; Section 20 except N½, NE¼ SE¼; Section 28 except NE¼, NE¼ NW¼; Section 29 except NW¼ SW¼; Sections 30–33; W½ W½, SE¼ SW¼, SW¼ SE¼ Section 34; SW¼ SE¼ Section 35.

T.13S., R.10W. Willamette Meridian: Section 1; Section 2; E½ E½ Section 3; NW¼ NW¼ Section 4; NE¼, NE¼ NW¼ Section 5; W½ NW¼ Section 6; S½ NE¼, NE¼ SE¼, S½ S½ Section 7; Section 10 except NW¼, NW¼ SW¼; Sections 11–15; Section 16 except NW¼, NW¼ NE¼; SE¼, SW¼ SW¼, E½ SW¼, SW¼ NE¼ Section 17; Sections 18–25; Section 26 except SW¼ SW¼; N½ NE¼, SE¼ NE¼, SE¼ SE¼ Section 27; SE¼ NW¼, W½ NW¼, SW¼ SE¼ Section 28; Section 29; N½, N½ SE¼, NE¼ SW¼, SW¼ SW¼ Section 30; S½, S½ NE¼ Section 31; Section 32 except W½ SE¼; Section 33 except E½ E½, S½ SE¼, NE¼ SE¼, NE¼ NE¼ Section 34; Section 35 except SE¼ NE¼, NE¼ NW¼; SW¼, N½ SE¼, N½ NE¼, SE¼ NW¼ Section 36.

T.13S., R.10½W. Willamette Meridian: N½ Section 6.

T.13S., R.11W. Willamette Meridian: Section 1 except SE¼ SE¼; Section 2 except NW¼ NW¼; Section 11 except W½ SW¼, SE¼ SW¼, SW¼ SE¼; W½, W½ NE¼, E½ SE¼ Section 12; Section 13 except W½ SW¼, NE¼ NW¼, SW¼ NW¼, S½ SE¼; E½, N½ NE ¼, SW¼ SE¼ Section 14; Section 15 except W½ NW¼, NE¼ NW¼, NW¼ SW¼; N½ NE¼ Section 22; N½ NW¼, SW¼ NE¼ Section 23; except N½ NE¼, S½ NW¼, NE¼ NW¼ Section 24; N½ N½, SW¼, S½ SE¼, N½ NW¼ Section 25; SW¼, SW¼ SE¼ Section 26; NW¼ SE¼ Section 33; Section 34 except W½ W½; Section 35; Section 36 except SE¼, E½ NE¼.

T.14S., R.06W. Willamette Meridian: SW¼ SW¼ Section 7.

T.14S., R.09W. Willamette Meridian: Section 2 except NE¼, SE¼ SE¼; Section 3 except S½ SW¼; Section 4 except S½ SE¼; Section 5 except S½ SW¼, SW¼ SE¼; Section 6 except S½ NW¼, N½ SW¼, SW¼ NW¼; Section 7 except SE¼ SW¼, NW¼ SE¼, SE¼ NE¼; NW¼, SE¼, S½ SW¼ Section 8; Section 9 except W½ NW¼; Section 10 except N½ NE¼; SW¼, S½ NW¼, S½ SE¼ Section 11; S½ S½ Section 12; Section 13 except SE¼; Sections 14–15; Section 16 except SW¼, W½ NW¼; Section 18 except N½ N½, N½ SE¼, SE¼ NE¼, SE¼ SW¼, SE¼ SE¼; N½, NE¼ SE¼ Section 19; Section 23 except SW¼, E½ NW¼; W½ Section 24; Section 25; E½ Section 26; S½ NW¼ Section 36.

T.14S., R.10W. Willamette Meridian: Section 1 except N½ SE¼, E½ NE¼; Section 2; Section 3 except N½ SE¼; Section 4; Section 5 except W½ NE¼, SE¼ NW¼, NE¼ SW¼ NW¼ SE¼; Sections 6–7; Section 8 except SW¼ SW¼; Sections 9–11; Section 12 except NW¼ NW¼; Sections 13–15; Section 16 except S½ SW¼; Section 17 except S½ SE¼, NW¼ NW¼; Section 18 except S½ S½; N½ NE¼ Section 22; Section 23 except E½ SW¼, SW¼ NW¼, SE¼ SW¼; Section 24 except NE¼ SE¼; N½ N½, SE¼ NW¼ Section 25.

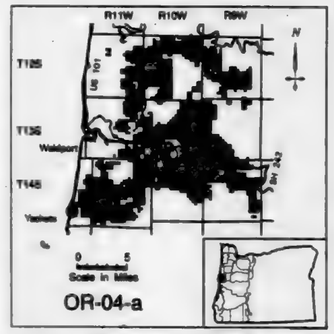
T.14S., R.11W. Willamette Meridian: Sections 1–2; N½ NE¼ Section 3; S½ NW¼, SW¼ NE¼ Section 4; Section 5 except SE¼, NE¼ SW¼; NE¼, E½ SE¼, E½ NW¼ Section 6; Section 7; Section 8 except N½ NE¼; S½ S½, NE¼ SE¼ Section 9; Section 10 except N½ NW¼, SW¼ SW¼, NW¼ NE¼; Sections 11–12; W½ W½ Section 13; Sections 14–21; Section 22 except NE¼, S½ NW¼, N½ SW¼; Section 23 except SE¼ SE¼; W½ NW¼, NW¼ SW¼, E½ SW¼ Section 24; E½ NW¼, N½ SW¼, Section 25; W½ NE¼, W½ SW¼, W½ SE¼, SE¼ SW¼, NE¼ NE¼ Section 26; Sections 27–30; N½, NE¼ SW¼ Section 31; Section 32 except SE¼, S½ SW¼, S½ NE¼; N½ Section 33; N½ N½, SW¼ NW¼ Section 34; N½ NW¼ Section 35.

T.14S., R.12W. Willamette Meridian: S½ SE¼ Section 1; Section 12 except W½ W½, NE¼ NW¼, SE¼ SW¼; Section 13 except N½ NW¼; E½ SE¼, SE¼ NE¼ Section 14; SE¼, E½ NE¼, E½ SW¼ Section 23; Sections 24–25.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.14S., R.09W. Willamette Meridian: SE¼ NE¼ Section 8.



Map and description of OR–04–b taken from United States Fish and Wildlife Service 1:100,000 map; Waldport, Eugene, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.14S., R.09W. Willamette Meridian: SW¼ SW¼ Section 27; SW¼, S½ SE¼, NW¼ SE¼, SW¼ NW¼ Section 28; Section 29 except N½ NE¼; SE¼, E½ SW¼, SW¼ NW¼, NW¼ SW¼ Section 30; Section 31 except W½ NW¼, NE¼ SW¼; Sections 32–33; Section 34 except W½ NE¼; S½ S½, SW¼ NW¼, E½ NW¼ Section 35.

T.14S., R.10W. Willamette Meridian: S½ SW¼, SW¼ SE¼ Section 20; SE¼ NE¼ Section 25; Section 29 except E½ SE¼; Sections 30–31; Section 32 except E½ E½.

T.14S., R.11W. Willamette Meridian: Section 25; SE¼ SE¼ Section 34; SE¼, E½ SW¼, SW¼ SW¼ Section 35; Section 36 except NW¼, N½ NE¼.

T.15S., R.09W. Willamette Meridian: E½ NE¼, NE¼ SE¼, SW¼ SW¼ Section 1; Sections 2–5; Section 6 except S½ SW¼, SW¼ SE¼; E½ E½ Section 7; N½ N½, S½ S½, NE¼ SE¼ Section 8; Section 9 except S½ SW¼; Section 10 except W½ SE¼, NE¼ SE¼; Section 11; N½ SW¼, S½ NW¼, NW¼ NW¼, E½ SE¼, SE¼ NE¼ Section 12; Section 13; Section 14 except NE¼ SE¼; Section 15; Section 16 except W½ SW¼, N½ SE¼, SW¼ NE¼, NE¼ NW¼; Section 17 except SE¼; Section 18 except NW¼, W½ SE¼, NW¼ NE¼; Section 19 except E½ SE¼, SE¼ NE¼, NW¼ NW¼; E½ SE¼, N½ NW¼, SE¼ NE¼ Section 20; Section 21 except N½ NW¼; Section 22 except SW¼, SE¼ NW¼; Sections 23–26; E½, E½ SW¼, SW¼ SW¼ Section 27; Section 28; E½ Section 29; N½ NW¼, NW¼ NE¼ Section 30; Section 32 except E½ E½; Sections 33–36.

T.15S., R.10W. Willamette Meridian: Section 1 except N½ NW¼, W½ NE¼, E½ SE¼; E½ SE¼ Section 2; SW¼ SW¼ Section 4; Sections 5–7; Section 8 except NE¼ SW¼; SW¼, W½ NW¼, SE¼ NW¼,W½ SE¼ Section 9; NE¼ NE¼ Section 11; N½ NW¼, SE¼ NW¼, NW¼ NE¼ Section 12; W½ SW¼, SW¼ NW¼ Section 14; SE¼, E½ SW¼, NE¼ NE¼, S½ NE¼ Section 15; Sections 16–22; NE¼ SE¼ Section 24; SW¼ Section 25; Section 26 except NE¼; Sections 27–32; Section 33 except SE¼ SE¼; Section 34 except S½ S½; N½, NE¼ SE¼ Section 35.

T.15S., R.11W. Willamette Meridian: NW¼, N½ SW¼, NW¼ NE¼, SW¼ SE¼ Section 1; N½ N½, S½ SE¼, SE¼ SW¼ Section 2; E½ E½, NW¼ NW¼ Section 3; Section 4 except N½ NW¼; N½ SW¼, N½ NE¼, S½ NW¼ Section 5; SW¼, W½ NW¼, SE¼ NW¼, S½ NE¼, W½ SE¼, NE¼ SE¼ Section 6; W½, W½ SE¼ Section 7; NE¼, S½ NW¼, NE¼ SW¼, NE¼ SE¼ Section 8; Section 9 except N½ NE¼, NE¼ NW¼, SE¼ NE¼; Section 10; Section 11 except, NE¼ SE¼, SE¼ NE¼; Section 12 except SE¼ SW¼; Section 13 except, N½ NW¼, SE¼ NW¼; Section 14; Section 15 except, SW¼ NW¼; N½ NW¼, SW¼ NW¼ Section 18; NE¼ NE¼ Section 21; Section 22 except SW¼, E½ NE¼, NW¼ SE¼; Sections 23–26; Section 27 except N½ NW¼, SW¼ NW¼; Section 28 except N½ NE¼, SE¼ NE¼; S½, SE¼ NE¼ Section 29; S½ Section 30; Section 31 except N½ NW¼, NW¼ NE¼, SE¼ NE¼; Section 32 except S½ N½, NE¼ SE¼; Section 33 except S½ SE¼; NW¼, N½ SW¼, W½ NE¼, NW¼ SE¼ Section 34; Section 35 except SW¼, W½ NW¼, SE¼ NW¼, N½ NE¼; Section 36.

T.15S., R.12W. Willamette Meridian: Section 1 except N½ NW¼; Section 2–3; Section 11 except SE¼ SE¼; Section 12 except S½ SW¼; Section 13 except NW¼, SW¼ NE¼; N½ NW¼, SE¼ NW¼, NW¼ NE¼ Section 14; NE¼ SE¼, SW¼ SE¼ Section 22; N½ N½, SE¼ NW¼ Section 24; Section 25 except N½ NE¼, NE¼ NW¼; S½, S½ NE¼, S½ NW¼, NE¼ NE¼ Section 26; E½ E½ Section 27; Section 34–35; Section 36 except N½ N½.

T.16S., R.09W. Willamette Meridian: Section 1 except N½ S½; Sections 2–5; S½ Section 6; Sections 7–15; Section 16 except SE¼; Section 17; Section 18 except SW¼ SW¼; Section 19; NE¼, E½ W½, NW¼ NW¼ Section 21; Sections 22–24; NE¼, N½ NW¼, NW¼ SW¼, SE¼ NW¼ Section 25; Section 26 except S½ SE¼, SW¼ NW¼; Sections 27–28; Section 29 except N½ N½; Section 30; Section 31 except SW¼, SE¼ NW¼, SW¼ NE¼; Sections 32–34; Section 35 except NE¼, SW¼ SW¼, N½ SE¼; SE¼ NE¼ Section 36.

T.16S., R.10W. Willamette Meridian: SE¼, SE¼ SW¼, SE¼ NE¼ Section 1; S½ SE¼, NE¼ NE¼, SW¼ Section 4; Section 5 except SE¼ NE¼; Sections 6–8; Section 9 except S½ SE¼; Section 10 except SW¼ SW¼, N½ NE¼; NE¼ SE¼ Section 11; Section 12 except W½ NW¼; Section 13 except S½ SE¼, SE¼ SW¼, SW¼ NW¼; Section 14; Section 15 except SE¼ SW¼, SW¼ SE¼, N½ NE¼; Section 16 except N½ SE¼; Section 17–21; Section 22 except W½ NE¼, NW¼ SE¼; Section 23; Section 24 except NW¼ NE¼, E½ NW¼, NE¼ SW¼; N½ N½, E½ SE¼, W½ SW¼ Section 25; Section 26 except S½ SW¼; Section 27 except E½ SE¼, SE¼ NE¼; Section 28; Section 29 except SW¼ SE¼, SE¼ SW¼; Section 30 except NW¼ SE¼, NE¼ SW¼, E½ SE¼; Section 31; Section 32 except N½ N½; Section 33 except W½ NW¼, SE¼ NW¼, E½ NE¼, SW¼ NE¼; NE¼ NW¼, W½ W½ Section 34; N½ NE¼ Section 35; SE¼ NE¼ Section 36.

T.16S., R.11W. Willamette Meridian: NE¼, E½ NW¼, E½ SE¼ Section 1; Section 2 except E½ E½, NW¼ NW¼; W½ Section 3; Section 4–6; N½ NE¼, SE¼ NE¼, NE¼ NW¼ Section 8; N½ Section 9; Section 10 except SE¼ SE¼; Section 11 except S½ S½; Section 12 except E½ NW¼, NW¼ NE¼; Section 13; Section 14 except W½ NW¼, NE¼ NW¼ NW¼ NE¼; SE¼ Section 15; SW¼ SW¼ Section 18; Section 19 except NE¼ SE¼; S½ SW¼, W½ SE¼ Section 20; S½ SE¼, NE¼ SW¼, E½ SW¼ Section 21; Section 22 except NW¼ NW¼; Sections 23–26; Section 27 except E½ NW¼, NW¼ NE¼; Section 28; Section 29 except NE¼ NE¼; Sections 30–36.

T.16S., R.12W. Willamette Meridian: Sections 1–2; S½ SE¼, E½ SW¼ Section 3; NE¼, N½ SE¼, SW¼ SE¼, W½ SW¼ Section 10; N½, N½ SW¼ Section 11; N½ N½ Section 12; SE¼, W½ SW¼ Section 13; N½ NE¼ Section 22; Section 23 except N½ NE¼; Sections 24–25; Section 26 except S½ S½, NW¼ SW¼, SW¼ NW¼; Section 35 except SW¼ SW¼; Section 36.

T.17S., R.08W. Willamette Meridian: NW¼ SE¼ Section 18.

T.17S., R.09W. Willamette Meridian: Section 1 except E½ SE¼, SW¼ SE¼; Section 2 except E½ W½, SW¼ NE¼; Section 3 except S½ SE¼, NE¼ SE¼, SE¼ SE¼; Section 4 except S½ SW¼, SW¼ SE¼; Section 5; Section 6 except NW¼; Section 7 except NW¼ SW¼; Section 8; W½ SW¼, NE¼ SW¼, E½ NE¼ Section 9; N½ NW¼, NW¼ NE¼ Section 10; W½ NE¼, E½ NW¼, NE¼ NW¼, SW¼ SW¼ Section 11; S½ SE¼ Section 14; W½ NW¼, NW¼ SW¼ Section 16; Section 17 except W½ SE¼, SE¼ SW¼; Sections 18–19; Section 20 except E½ E½, NW¼ NE¼; N½ Section 29; N½ N½, W½ SW¼, SE¼ SW¼ Section 30; Section 31 except S½ NE¼, NW¼ SE¼; E½ NE¼, SW¼ NW¼ Section 32; S½ SE¼ Section 33; S½ S½ Section 34; S½ SE¼, SE¼ SW¼ Section 35.

T.17S., R.10W. Willamette Meridian: SE¼ SE¼ Section 1; SE¼ NW¼ Section 2; Section 3 except E½, E½ NW¼; Section 4; Section 5 except NW¼ SE¼; Section 6 except S½ NE¼, NW¼ SE¼; W½, E½ SW¼ Section 7; Sections 8–9; N½, W½ SW¼ Section 10; E½ E½, NE¼ NW¼, NW¼ NE¼, SW¼ SE¼, SE¼ SW¼ Section 12; Section 13 except NW¼ NW¼; S½, SW¼ NW¼ Section 14; E½ SE¼, NW¼ NW¼ Section 15; Sections 16–18; NW¼, N½ NE¼, SE¼ NE¼, E½ SE¼, NW¼ SE¼ Section 19; Section 20; Section 21 except NW¼ NW¼; Section 22 except N½ NW¼, NW¼ NE¼, NE¼ SE¼, SW¼ SE¼; Section 23 except N½ SW¼, S½ SE¼; NW¼, N½ NE¼, N½ SW¼ Section 24; Section 25 except N½ NE¼, NE¼ NW¼, SE¼ NE¼; Section 26; Section 27 except W½ SW¼, S½ NW¼, NE¼ NW¼, NW¼ NE¼; Section 28 except SE¼ SE¼; Section 29; Section 30–31; S½, E½ NE¼ Section 32; Section 33 except NE¼ NE¼; NE¼, W½ SW¼, SE¼ SW¼, NE¼ SE¼, NE¼ NW¼ Section 34; Section 35 except SW¼ SW¼, SW¼ SE¼.

T.17S., R.11W. Willamette Meridian: Section 1 except SE¼ SW¼, S½ SE¼; Section 2 except SE¼ NE¼, NE¼ SE¼; S½, E½ NE¼, S½ NW¼ Section 3; Sections 4–5; Section 6 except S½ SE¼; SE¼, S½ SW¼, NW¼ SW¼, NE¼ NW¼, SE¼ NE¼, SW¼ NW¼ Section 7; Section 8; Section 9 except SE¼ SE¼; N½, N½ SE¼, SE¼ SE¼ Section 10; Section 11 except NE¼ NW¼, NW¼ SE¼; Section 12; NE¼ NE¼ Section 13; Section 16 except E½ E½; W½, S½ SE¼ Section 17; N½, N½ SE¼, S½ SW¼ Section 18; NW¼, E½ SW¼ Section 19; Section 20; W½, NW¼ SE¼ Section 21; E½ SE¼ Section 24; Section 25 except NW¼, NW¼ NE¼, NW¼ SW¼; SE¼ SE¼ Section 26; W½ Section 28; Section 29; S½ NW¼, NE¼ NW¼ Section 30; Section 31 except NW¼, NW¼ NE¼, NW¼ SW¼; Section 32; NW¼, W½ SW¼ Section 33; SE¼, S½ NE¼ Section 34; Section 35 except N½ NW¼, NW¼ NE¼; Section 36.

T.17S., R.12W. Willamette Meridian: Section 1; Section 2 except W½ NW¼, NW¼ SW¼; NE¼ Section 11; Section 12 except S½ SW¼, NW¼ SW¼; E½ Section 13; E½ NE¼, SE¼ SE¼ Section 24; NW¼ NE¼ Section 25.

T.18S., R.08W. Willamette Meridian: SW¼ SW¼ Section 6.

T.18S., R.09W. Willamette Meridian: W½ NE¼, E½ NW¼, NW¼ NW¼ Section 1; Section 2 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; Section 3; Section 4 except W½ SW¼; NE¼ NE¼ Section 5; N½ NE¼, NE¼ SE¼, SE¼ NE¼ Section 7; Section 8 except S½ S½, N½ NW¼; N½ N½, SW¼ NE¼ Section 9; E½ NE¼, SW¼ NE¼ Section 10; NE¼ NW¼ Section 11.

T.18S., R.10W. Willamette Meridian: NW¼ NW¼ Section 3; N½ NE¼ Section 4; N½ NW¼, SW¼ NW¼, W½ SW¼ Section 6; NE¼, NE¼ NW¼ Section 7; W½ NW¼ Section 8.

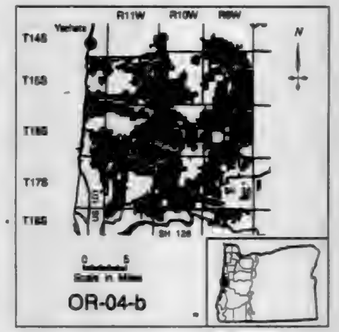
T.18S., R.11W. Willamette Meridian: Section 1 except SW¼ SW¼; N½, W½ SE¼ Section 2; E½ NE¼, NE¼ SE¼ Section 3; NW¼, N½ NE¼, NW¼ SW¼ Section 5; Section 6; NE¼ NW¼ Section 7; NW¼ NE¼ Section 11, NE¼ NE¼ Section 12.

Proposed Critical Habitat includes only State lands described within the following areas:

T.17., R.08W. Willamette Meridian: S½ SE¼, NE¼ SE¼ Section 18; NE¼, NW¼ SE¼ Section 19.

T.17., R.09W. Willamette Meridian: N½ SW¼, SW¼ NE¼, S½ NW¼ Section 25; SE¼ NE¼, N½ SE¼ Section 26; Section 32 except N½ S½, E½ NE¼, SW¼ NW¼; S½ NW¼, NE¼ NW¼, NW¼ NE¼, NE¼ SW¼, S½ SW¼ Section 33.

T.18S., R.09W. Willamette Meridian: W½ SW¼ Section 4; SE¼, S½ NE¼, N½ NW¼ Section 5; N½ SE¼, SE¼ NE¼ Section 9.



Map and description of OR–04–c taken from United States Fish and Wildlife Service 1:100,000 map; Reedsport, Eugene and Cottage Grove, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.18S., R.09W. Willamette Meridian: NW¼ NE¼, NE¼ NW¼, E½ SW¼ Section 14; SE¼, NE¼ NW¼ Section 23; Section 25; S½ SW¼, NW¼ SW¼, SW¼ SE¼ Section 26; Section 27 except N½, NW¼ SW¼; S½ SE¼ Section 28; S½ Section 32; Section 33 except NW¼ NW¼; Sections 34–36.

T.18S., R.10W. Willamette Meridian: S½ Section 9; SW¼, W½ SE¼ Section 10; SW¼ SW¼ Section 14; Section 15 except NE¼ NE¼; N½ N½ Section 16; Section 17 except N½ N½, SE¼ NE¼; Section 18 except N½ NE¼, NE¼ NW¼, SW¼ NW¼, NW¼ SW¼; Section 19 except SE¼ NW¼; Sections 34–36.

20; W½ NW¼, SE¼ NE¼, NE¼ SE¼ Section 21; Section 22 except E½ NE¼, NW¼ NE¼, NE¼ SW¼; Section 23 except NE¼, N½ NW¼, NW¼ SE¼; Sections 25–26; Section 27 except SW¼ SW¼; W½ W½, E½ SE¼, SE¼ NE¼ Section 28; Section 29–32; Section 33 except E½ W½, NW¼ SW¼; Section 34 except SW¼, SE¼ NW¼, SW¼ SE¼; Section 35 except NE¼ NW¼.

T.18S., R.11W. Willamette Meridian: Section 13; Section 14 except NW¼ NW¼; Section 22 except N½ NW¼, SW¼ SW¼; Sections 23–26; NE¼, NE¼ NW¼, SE¼ SE¼ Section 27; S½ SW¼, W½ SE¼ Section 28; S½ SE¼, NE¼ SE¼, SE¼ NE¼ Section 29; NE¼ NE¼ Section 32; Section 33; Section 34 except N½ NE¼, NE¼ NW¼; Section 35 except SE¼ NW¼; Section 36.

T.19S., R.09W. Willamette Meridian: Sections 1–2; Section 3 except S½ SW¼, NW¼ SW¼; Sections 4–5; Section 6 except N½ NW¼, E½ SE¼; Section 7 except NE¼, W½ SW¼, NW¼ SE¼; Section 8; Section 9; Section 11; N½ Section 12; Section 13; Section 15; Sections 17–25; N½ N½, SW¼ NW¼, NW¼ SW¼ Section 26; Sections 27–33; N½ NE¼ Section 34; Section 35 except N½ NW¼; SE¼, E½ NE¼ Section 36.

T.19S., R.10W. Willamette Meridian: Section 1 except NW¼ NW¼; Section 2 except W½ SE¼, NE¼ SE¼, SE¼ NE¼, SW¼ NW ¼; Section 3 except NE¼ SE¼, SW¼ SE¼; Section 4 except S½ SE¼; Sections 5–8; Section 9 except E½ NE¼; S½, SE¼ NW¼, SW¼ NE¼ Section 10; Section 11 except N½ N½, SW¼ NW¼; Section 12 except E½ SE¼; Section 13 except SE¼ SE¼; Sections 14–23; Section 24 except N½ NE¼, NE¼ NW¼; Sections 25–28; Section 29 except W½ SW¼; Section 30; S½ SE¼, SW¼ SW¼ Section 31; Section 32 except W½ NW¼, S½ SE¼, NE¼ SE¼, SE¼ SW¼; Section 33 except S½ N½, N½ NE¼; Section 34 except S½ N½, NW¼ SE¼; Section 35 except NW¼ NW¼; N½ N½ Section 36.

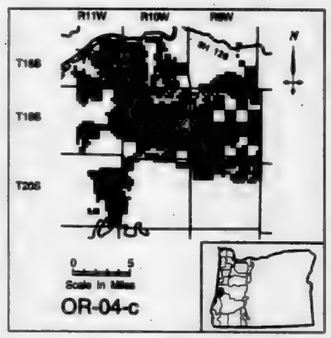
T.19S., R.11W. Willamette Meridian: Section 1 except W½ SW¼, SW¼ NW¼; N½ N½, W½ SW¼, SW¼ NW¼ Section 2; Sections 3–4; Section 9 except S½ SW¼, NW¼ SW¼, SE¼ SE¼; Section 10 except S½, SW¼ NW¼; W½ NW¼ Section 11; Section 12 except W½ SW¼, NE¼ SW¼, SW¼ NW¼; Section 13; E½ SE¼, NW¼ SE¼ Section 14; Section 21 except N½ NW¼, SW¼ NW¼; Section 22 except N½ NE¼; Section 23 except N½ NW¼, NW¼ NE¼; Section 24; NE¼, NE¼ NW¼ Section 25; N½, SW¼ SW¼ Section 27; Section 28 except E½ SW¼; NE¼, W½ SE¼, E½ SW¼, SW¼ NW¼ Section 33.

T.20S., R.09W. Willamette Meridian: Section 1 except NE¼ NE¼; Section 2 except SW¼ SW¼; Section 3 except NW¼ NW¼; Sections 4–6; Section 7 except W½ W½, SE¼ SW¼, S½ SW¼; Section 8; N½, NE¼ SE¼ Section 9; SE¼, S½ NW¼ Section 10; Section 11 except NW¼ NW¼; Section 12 except W½ SW¼; N½ NW¼, NW¼ NE¼ Section 13; N½ NW¼, NW¼ NE¼ Section 14; NE¼ NE¼ Section 15.

T.20S., R.10W. Willamette Meridian: N½ S½, N½ Section 1; N½ N½ Section 2; N½ N½ Section 3; NE¼ NE¼ Section 4; N½ NW¼ Section 5; Section 6; W½, N½ NE¼, SW¼ SE¼ Section 7; Section 18 except S½ SW¼, E½ SE¼; SW¼, W½ NW¼, NW¼ SE¼ Section 19; W½ Section 30.

T.20S., R.11W. Willamette Meridian: Section 10 except N½ N½, SW¼ SW¼; Sections 11–14; E½ Section 15; E½ E½, NW¼ NE¼ Section 22; Section 23 except S½ SW¼; Section 24–25; E½ Section 26; Section 27 except N½, NE¼ SW¼; Section 35 except W½, SW¼ SE¼; N½ N½, W½ SW¼; NE¼ SW¼, SW¼ NW¼ Section 36.

T.21S., R.11W. Willamette Meridian: NE¼ NE¼ Section 2.



Map and description of OR–04–d taken from United States Fish and Wildlife Service 1:100,000 map; Reedsport and Cottage Grove, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.20S., R.09W. Willamette Meridian: E½ SE¼, SW¼ SW¼, SE¼ NE¼ Section 32; SW¼, SW¼ SE¼ Section 33.

T.20S., R.10W. Willamette Meridian: S½ Section 11; W½ Section 13; NE¼ Section 14; SE¼ SE¼ Section 22; W½, SW¼ SE¼ Section 23; SW¼ NW¼ Section 25; Section 26 except SE¼ NE¼; Section 27 except W½ W½, E½ SW¼; NE¼, S½ SE¼ Section 34; Section 35 except N½ S½, SW¼ SW¼.

T.21S., R.09W. Willamette Meridian: S½ SW¼, NE¼ SW¼ Section 2; Section 3 except NE¼ NE¼; W½ NE¼, E½ NW¼ Section 4; E½ E½, NE¼ SW¼, SW¼ SW¼ Section 5; SE¼, SW¼ NE¼ Section 6; Section 7–8; Section 9 except N½ SE¼, S½ NE¼; SW¼, E½ NW¼ Section 10; Section 11; Section 14 except E½ E½; Section 15; Sections 17–19; NW¼ Section 20; Section 21; W½ NE¼ Section 22; Section 23; Section 29; Sections 31–35.

T.21S., R.10W. Willamette Meridian: Section 2; Section 3; NE¼ NE¼ Section 4; SW¼ SW¼ Section 5; W½ SW¼ Section 6; Section 7; S½, NW¼ Section 8; NE¼ Section 10; Sections 11–14; Section 15 except W½ NW¼; Sections 17–21; Section 22 except N½; Sections 28–30; Section 31 except NW¼ SW¼ SE¼ SW¼; Sections 32–35.

T.21S., R.11W. Willamette Meridian: SE¼ SE¼ Section 1; SW¼ SW¼ Section 14; S½ N½, S½ S½, N½ NW¼ Section 23; Sections 24–25; Section 26 except NW¼ NW¼; Section 27 except N½ N½; Section 28 except N½ N½, N½ SW¼; S½ NE¼ Section 29; NE¼ NE¼ Section 32; Section 33 except S½ SW¼; Section 34 except NW¼ SW¼; Section 35 except S½ SW¼, NW¼ SW¼; Section 36 except W½ SW¼.

T.22S., R.09W. Willamette Meridian: Section 4 except SE¼, SW¼ NE¼, NE¼ SW¼; Section 5 except SW¼; Section 6 except SE¼, SE¼ NE ¼; Section 7; Section 9; NW¼ SW¼ Section 17.

T.22S., R.10W. Willamette Meridian: Sections 1–5; NE¼, N½ SE¼, SE¼ SE¼ Section 6; Section 8 except SW¼, SW¼ NW¼, SW¼ SE¼; Sections 9–12; N½ Section 13; NE¼, N½ NW¼, SW¼ NW¼, NE¼ SE¼ Section 14; NW¼, W½ NE¼, NW¼ SW¼ Section 15; N½ NE¼, SE¼ NE¼ Section 17.

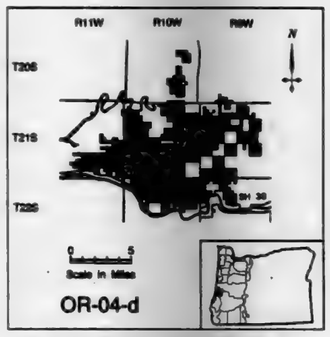
T.22S., R.11W. Willamette Meridian: NE¼ NE¼ Section 1.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.22S., R.09W. Willamette Meridian: N½ NE¼ Section 16.

T.22S., R.11W. Willamette Meridian: SE¼ NE¼ Section 1.



Map and description of OR–04–e taken from United States Fish and Wildlife Service 1:100,000 map; Cottage Grove and Roseburg, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.22S., R.08W. Willamette Meridian: NE¼, N½ NW¼, SE¼ NW¼, NE¼ SW¼ Section 27.

T.22S., R.09W. Willamette Meridian: SE¼ SW¼ Section 34.

T.23S., R.08W. Willamette Meridian: Section 3 except NW¼ NW¼; Section 5; S½, SE¼ NE¼, SW¼ NW¼ Section 6; Section 7; Section 9; NW¼, S½ S½, NW¼ SW¼ Section 11; Section 14 except N½ NE¼; W½ NW¼, N½ SE¼, SE¼ NW¼, SW¼ NE¼, NE¼ SW¼ Section 14; Section 15; Section 17–19; Section 20 except N½ NE¼, SE¼ NE¼, NE¼ SE¼; Section 21; Section 23 except S½ NE¼, SW¼ NW¼; NW¼ NW¼ Section 25; Section 27; Section 28 except N½ NE¼, SE¼ NE¼, NE¼ NW¼; Sections 29–33; Section 35 except E½ NE¼.

T.23S., R.09W. Willamette Meridian: Section 3 except NE¼, W½ W½; SW¼ SW¼ Section 4; SW¼ SW¼ Section 6; Sections 7–8; W½ Section 9; SW¼ SW¼ Section 12; N½, W½ SW¼, SE¼ SW¼, E½ SE¼ SW¼ SE¼ Section 13; Sections 14–17; Section 20 except S½ N½; Section 21–22; N½ Section 23; Sections 24–25; Section 26 except NW¼; Section 27; Section 28 except E½ SE¼; Section 29.

T.23S., R.10W. Willamette Meridian: Section 1.

T.24S., R.07W. Willamette Meridian: SE¼ NW¼ Section 6; Section 7; E½ Section 18; Section 19 except E½ E½, SW¼ SE¼.

T.24S., R.08W. Willamette Meridian: Section 1; Section 3; E½, E½ SW¼ Section 9; Sections 10–11; Section 13; Section 15; SE¼, SE¼ NE¼ Section 17; Section 20 except NW¼; Section 21; SE¼ Section 22; Section 23; Section 25; Sections 27–29; Section 33; Section 35.

T.25S., R.07W. Willamette Meridian: S½ S½, NW¼ SE¼ Section 6; S½ S½, NE¼ NE¼ Section 7; NW¼ NE¼, NW¼ NW¼ Section 16; Section 17 except NE¼ NE¼; Section 18 except W½ W½; Section 19 except NE¼ NE¼; N½ N½, SE¼ NW¼ Section 20; S½ S½, NW¼ /SW¼ NE¼ SW¼ Section 21; SW¼, S½ NW¼, NW¼ SE¼ Section 27; NW¼ SW¼, NE¼ NE¼, S½ SW¼ Section 28; SE¼, S½ NE¼, NE¼ NE¼, E½ SW¼ Section 29; NW¼ NW¼ Section 30; E½, W½ SW¼ Section 31; W½ Section 32; W½, W½ E½, SE¼ NE¼ Section 33; W½ NW¼ Section 34.

T.25S., R.08W. Willamette Meridian: Section 1; Sections 3–4; E½ E½ Section 5; Section 8 except W½, NW¼ NE¼; Section 9; N½ NE¼, NE¼ NW¼, NW¼ SW¼ Section 10; Section 11; NE¼ NE¼ Section 12; Section 13; S½ SE¼, NE¼ NW¼ Section 14; N½ N½, SW¼, SW¼ NW¼, SE¼ SE¼ Section 15; Section 20 except NW¼ NW¼; W½ NW¼, NW¼ SW¼ Section 21; E½ NE¼, NE¼ SE¼ Section 22; Section 23; Section 24 except SE¼, W½ NW¼; Section 25; Section 30 except SW¼, W½ NW¼; Section 32 except SE¼; NE¼ NE¼ Section 36.

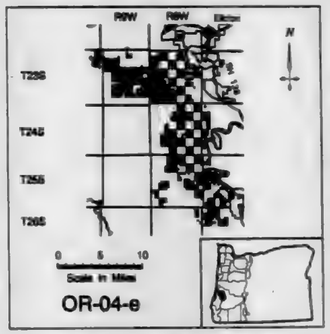
T.26S., R.07W. Willamette Meridian: Section 5; NE¼, SE¼, SW¼ Section 6; Section 7 except NW¼ SW¼, SW¼ NW¼; N½ NE¼, SE¼ NE¼, E½ SE¼, N½ SW¼, NW¼ NW¼ Section 8; Section 9 except N½ NW¼.

T.26S., R.08W. Willamette Meridian: W½, E½ SE¼, SE¼ SW¼ Section 1; NW¼ SE¼, SE¼ NW¼ Section 12.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.25S., R.07W. Willamette Meridian: SW¼ SE¼ Section 6; NE¼ NW¼ Section 34.



Map and description of OR–04–f taken from United States Fish and Wildlife Service 1:100,000 map; Cottage Grove and Roseburg, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.22S., R.06W. Willamette Meridian: S½, S½ NE¼ Section 17; Section 19; Section 21; Section 29; Section 30 except W½ NW¼, SE¼ NW¼, NW¼ SW¼; Section 31; NW¼ NE¼, NE¼ NW¼ Section 32; Section 33.

T.23S., R.06W. Willamette Meridian: W½ SW¼ Section 4; Section 5 except W½ SW¼; N½ NE¼, NE¼ NW¼ Section 8; NW¼ NW¼ Section 9; Section 11 except N½ N½; NW¼ NW¼ Section 12; SE¼ Section 14; Section 15 except W½ W½; Section 19 except NW¼ NW¼; N½ NW¼, SW¼ NW¼, NW¼ SW¼, SE¼ SE¼ Section 20; Section 21 except N½ N½; W½ SW¼, S½ SE¼, NE¼ NW¼, SW¼ NW¼, N½ NE¼ Section 22; Section 23 except N½ NW¼, SE¼ SW¼; N½ NE¼, S½ NW¼, SW¼ NE¼, NW¼ NW¼, SW¼ SW¼ Section 26; Section 27 except N½ NE¼, NE¼ NW¼; Section 28 except E½ NW¼, NW¼ SE¼, NE¼ SW¼; Section 29 except SW¼ SW¼; Section 31; NW¼ NW¼ Section 32; Section 33 except W½ NW¼, NW¼ SW¼; W½ NW¼, NW¼ SW¼ Section 34; Section 35 except NW¼ NW¼.

T.23S., R.07W. Willamette Meridian: N½ NW¼, S½ NE¼, N½ SW¼, NW¼ SE¼ Section 3; E½ NW¼, S½ NE¼, NE¼ SE¼ Section 15; Section 23 except N½ N½, SE¼ NW¼, SW¼ NE¼, SW¼ SW¼; Section 25; S½ SE¼, SW¼ SE¼ Section 33.

T.24S., R.06W. Willamette Meridian: N½ NE¼ Section 2; Section 3; N½ SW¼, NW¼ SE¼, SW¼ NE¼ Section 4; Section 5; NW¼ NE¼ Section 10.

T.24S., R.07W. Willamette Meridian: N½ NW¼ Section 2; S½ SW¼, NW¼ SW¼, SW¼ SE¼, SE¼ NE¼ Section 3; Section 11 except NE¼, E½ SE¼, NE¼ NW¼; N½ N½, W½ SE¼, SW¼ NW¼ Section 15; E½ SE¼ Section 21; Section 23; NW¼ NW¼ Section 24; Section 25; Section 27 except SW¼, SW¼ NW¼; SE¼ SW¼, NW¼ SW¼, SW¼ NW¼ Section 28; Section 35.

T.25S., R.06W. Willamette Meridian: N½ NE¼ Section 6; S½ NW¼, N½ SW¼, SW¼ SW¼ Section 7; NW¼ NW¼ Section 18.

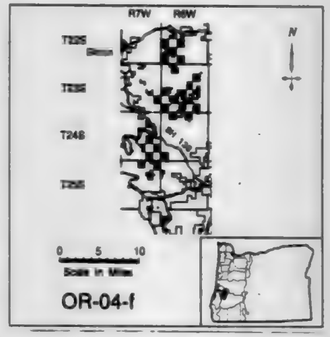
T.25S., R.07W. Willamette Meridian: Section 1; NE¼ Section 2; Section 3; S½, S½ NE¼ Section 11; N½ N½, SW¼ SW¼ Section 12; NE¼, E½ NW¼ Section 14.

T. 26S., R.06W. Willamette Meridian: NW¼, NW¼ SW¼, NW¼ NE¼ Section 7.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.24S., R.07W. Willamette Meridian: SE¼ NE¼ Section 15.



Map and description of OR–04–g taken from United States Fish and Wildlife Service 1:100,000 map; Cottage Grove, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.21S., R.06W. Willamette Meridian: Section 31.

T.21S., R.07W. Willamette Meridian: Section 7 except E½ E½; Section 16 except N½ NW¼; Section 17; Section 18 except N½ NE¼, NE¼ NW¼; Section 19; NW¼, N½ NE¼, SW¼ NE¼, NE¼ SW¼, NW¼ SE¼ Section 20; Section 21; Section 25; NE¼, NW¼ NW¼ Section 28; Section 29; N½, SW¼, NE¼ SE¼ Section 30; Section 31 W½ NW¼, NW¼ SW¼; Section 33; Section 35.

T.21S., R.08W. Willamette Meridian: Section 1; S½ SE¼, SE¼ SW¼ Section 2; S½ SW¼ Section 3; Section 10 except NE¼; Section 11 except SW¼ SW¼; Section 12; Section 13 except S½ SW¼; Section 14; Section 23 except E½ E½; E½ Section 24; Section 25; N½ N½, E½ SE¼, SE¼ NE¼ Section 26; S½ Section 35; SE¼ SE¼, SW¼ SW¼ Section 36.

T.22S., R.06W. Willamette Meridian: Section 5; NW¼, N½ NE¼, NE¼ SW¼ Section 7.

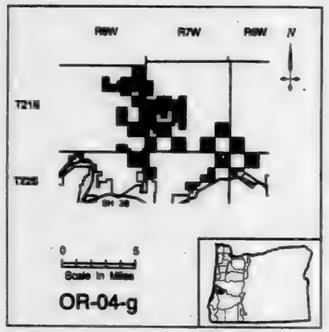
T.22S., R.07W. Willamette Meridian: Section 1; W½ Section 6; Section 7 except S½ S½, W½ NW¼, NW¼ SE¼; Section 11 except NW¼; NW¼, N½ NE¼, SW¼ NE¼, NE¼ SW¼ Section 15.

T.22S., R.08W. Willamette Meridian: Section 1; N½ NE¼, NE¼ NE¼ Section 5.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.21S., R.08W. Willamette Meridian: S½ NW¼, NW¼ SW¼, NW¼ NE¼, SE¼ NE¼ Section 5.

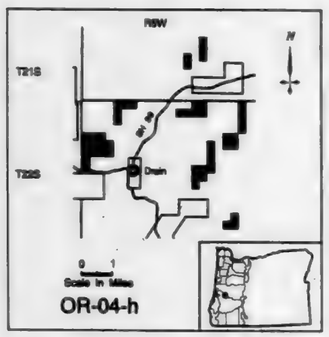


Map and description of OR–04–h taken from United States Fish and Wildlife Service 1:100,000 map; Cottage Grove, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.21S., R.05W. Willamette Meridian: E½ SW¼, E½ NE¼, NE¼ SE¼ Section 27.

T.22S., R.05W. Willamette Meridian: W½ W½ Section 1; NE¼, S½ NW¼ Section 3; W½ NW¼, NE¼ NW¼, NW¼ NE¼, NW¼ SW¼ Section 5; Section 7 except S½ SE¼, SE¼ SW¼, NE¼ NE¼; NE¼, W½ SW¼, SW¼ NW¼ Section 11; NW¼ NW¼ Section 14; NE¼, NW¼ SE¼ Section 15; NW¼ NW¼ Section 18; S½ SE¼, NE¼ SE¼ Section 23.



Map and description of OR–04–i taken from United States Fish and Wildlife Service 1:100,000 map; Eugene and Cottage Grove, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.17S., R.06W. Willamette Meridian: W½ NW¼, NE¼ NW¼, NW¼ NE¼ Section 31; SE¼ SE¼ Section 35.

T.17S., R.07W. Willamette Meridian: E½ SE¼, SE¼ NE¼ Section 10; Section 11; S½, SW¼ NW¼ Section 13; Section 15 except E½ NE¼, NW¼ NW¼; NW¼, S½ S½, NW¼ NE¼ Section 19; SE¼ Section 25; Section 29 except E½ W½, W½ NE¼.

T.17S., R.08W. Willamette Meridian: Section 13; Section 17 except SW¼, NE1/ 4 NE¼, NW¼ NW¼; Section 21; S½ SW¼, NW¼ NW¼ Section 22; Section 23; Section 25; Section 27; NE¼ SW¼ Section 28; E½ E½ Section 33; Section 35.

T.18S., R.06W. Willamette Meridian: Section 5 except SW¼ SW¼; SE¼ Section 11; Section 19 except NW¼ NW¼; Section 21 except E½ SE¼; SW¼ Section 23; Section 27 except S½ NE¼; Section 31; NE¼, W½ SE¼, NE¼ SW¼, NW¼ NW¼ Section 35.

T.18S., R.07W. Willamette Meridian: Section 1 except NW¼ NW¼, SW¼ SW¼; N½, NE¼ SE¼ Section 7; Section 17 except SE¼ SW¼, NW¼ SW¼; Section 19 except S½ SW¼, SW¼ SE¼; Section 21 except S½ SE¼, SE¼ SW¼; Section 25; Section 27; Section 29; Section 31; SW¼ SW¼ Section 32; Section 33 except NE¼ SW¼, NW¼ SE¼; S½ SW¼ Section 34; Section 35 except E½ SE¼.

T.18S., R.08W. Willamette Meridian: NW¼, NW¼ NE¼ Section 1; SE¼ NE¼ Section 2; Section 3; Section 4 except E½, NW¼ NW¼; Section 9; Section 11 except E½ SE¼, SW¼ SE¼; Section 13 except N½ NE¼, E½ NW¼, SW¼ SW¼; N½, S½ SW¼, NE¼ SE¼, SE¼ NE¼, SW¼ NW¼ Section 16; Section 19; Section 21 except E½ NW¼, NW¼ SE¼; S½, SE¼ NE¼, SW¼ NW¼ Section 23; Section 25; Section 27; SE¼, N½ NE¼ Section 28; Section 29 except E½ NE¼; Section 31; NW¼ NE¼ Section 32; Section 33 except NE¼; Section 35 except S½ SW¼, SW¼ SE¼.

T.19S., R.05W. Willamette Meridian: Section 7 except NE¼ NE¼ SW¼ SW¼; NW¼ NW¼, S½ SW¼ Section 17; Section 19; Section 29; Section 31; NW¼ NW¼ Section 32; Section 35 except NE¼ NE¼.

T.19S., R.06W. Willamette Meridian: Section 1 except N½ NW¼, SW¼ NW¼; Section 3 except SW¼ SW¼; Section 5; Section 7 except N½ NE¼; SE¼ NW¼, NE¼ SW¼ Section 8; E½, S½ SW¼, SW¼ NW¼ Section 15; Section 17 except NE¼ NE¼, SW¼ NW¼; Section 19 except SE¼ SE¼; E½ NW¼, SW¼ NE¼ Section 20; Section 21; Section 23; Section 25; Section 27; Section 29; Section 31; Section 33; SE¼ NE¼ Section 34; Section 35.

T.19S., R.07W. Willamette Meridian: Section 1 except S½ SE¼, SE¼ SW¼; N½, E½ SE¼, E½ SW¼ Section 3; S½, E½ NE¼, NW¼ NW¼ Section 5; Section 7; Section 9 except N½ NW¼, SW¼ NW¼; S½, S½ N½, NW¼ NW¼, NE¼ NE¼ Section 11; Section 13; Section 15 except N½ NE¼, NW¼ NE¼; Section 17; Section 19 except N½ SW¼; Section 21; Section 23; SW¼ SE¼ Section 24; NE¼ NE¼, S½ SE¼ Section 25; Section 27; Section 29; S½ Section 30; Section 31; W½ NW¼ Section 32; Section 33; Section 35.

T.19S., R.08W. Willamette Meridian: Section 1; Section 5; N½ NW¼ Section 6; Section 7; SW¼, W½ SE¼ Section 8; W½ Section 9; SE¼ SE¼ Section 11; NE¼, E½ NW¼, NW¼ NW¼, NE¼ SE¼ Section 13; Section 17; N½ S½, SE¼ NE¼, NW¼ NW¼ Section 18; Section 19; NE¼ NE¼, S½ SW¼, SW¼ SE¼ Section 20; Section 21; SW¼ SE¼ Section 22; Section 23; SE¼ SE¼ Section 24; Section 25; NW¼ Section 26; Section 27; SE¼ SE¼ Section 28; Section 29; W½ SE¼, E½ SW¼, SW¼ SW¼ Section 30; Section 31; Section 33; Section 35.

T.20S., R.05W. Willamette Meridian: W½ W½ Section 3; Section 5; Section 7 except N½ SW¼, SW¼ NW¼; W½, W½ NE¼ Section 15; Section 17 except NW¼; Section 19; Section 21 except N½, NE¼ SE¼; NE¼, SW¼, NE¼ SE¼ Section 29; Section 31; Section 33; NW¼ SW¼ Section 34.

T.20S., R.06W. Willamette Meridian: Section 1 except S½ SW¼; Section 3 except E½ SW¼, SW¼ SW¼; SE¼ NE¼ Section 4; Section 5; S½ SW¼, SW¼ SE¼ Section 6; Section 7 except S½ SW¼; Section 9; Section 11 except W½ NW¼, NW¼ SW¼, SE¼ NE¼; Section 13; Section 15; Section 17; E½ SE¼ Section 18; Section 19 except E½ E½; Section 21; Section 23; SW¼ SW¼ Section 24; Section 25; N½ SE¼, SW¼ SE¼ Section 26; Section 27; E½ NE¼, NE¼ SE¼ Section 28; Section 29; E½ E½ Section 30; Section 31; S½ NE¼, W½ SW¼ Section 32; SE¼, N½ NW¼, SW¼ NW¼, NW¼ NE¼, SE¼ NE¼, SE¼ SW¼ Section 33; Section 35 except S½ SW¼.

T.20S., R.07W. Willamette Meridian: Section 1 except N½ NE¼; SE¼ SE¼ Section 2; Section 3 except E½ NW¼; Section 5; Section 6 except N½ N½; Section 11; Section 12 except E½ E½, NW¼ SE¼, SW¼ NE¼; Section 13; Section 14 except E½ SE¼; Section 15; NE¼ SE¼ Section 20; Section 21; Section 22 except SE¼, SE¼ NE¼; Section 23 except W½ SW¼, SE¼ SE¼, SW¼ NW¼; Section 33 except E½ NE¼; SW¼ Section 34.

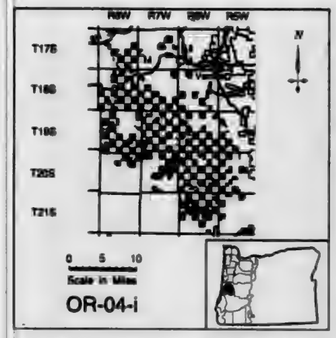
T.20S. R.08W. Willamette Meridian: Section 1; SW¼ Section 2; Section 3; N½ NE¼ Section 6; Section 9 except SW¼ SW¼; Section 11; W½ W½ Section 12; NW¼ NW¼ Section 13.

T.21S., R.05W. Willamette Meridian: Section 3 except NE¼ NE¼, SE¼ SE¼; N½ Section 5; Section 7; Section 19 except S½ SE¼.

T.21S., R.06W. Willamette Meridian: Section 1 except S½ NW¼, SW¼ NE¼, SE¼ SE¼; Section 3; Section 5; W½ SW¼ Section 6; Section 7 except NW¼ NE¼; Section 8 except SE¼; Section 9; Section 11; NE¼ Section 12; Section 13; Section 14 except NE¼; Sections 15–17; N½ NW¼, NW¼ NE¼, S½ SE¼, NE¼ SW¼, NW¼ SW¼ Section 18; Section 19; NW¼ NE¼ Section 20; Section 21; S½ NE¼, N½ SE¼ Section 22; Section 23; Section 27.

Proposed Critical Habitat includes only State lands described within the following areas:

T.17S., R.08W. Willamette Meridian: SE¼ NW¼ Section 28.



Map and description of OR–04–j taken from United States Fish and Wildlife Service 1:100,000 map; Eugene, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.13S., R.06W. Willamette Meridian: S½ Section 31.

T.14S., R.06W. Willamette Meridian: SW¼ NW¼ Section 6; Section 7; Section 31.

T.14S., R.07W. Willamette Meridian: Section 1; Section 9; NE¼ SE¼ Section 10; Section 11 except SE¼; Section 12 except E½ E½, S½ SW¼, NE¼ SW¼, SE¼ NW¼; Section 13 except N½ SW¼, SE¼ SW¼, SW¼ SE¼; SE¼ SW¼ Section 14; Section 17; Section 19 except NE¼ NE¼; SW¼ SE¼, S½ SW¼, NW¼ SW¼ Section 20; Section 21 except N½ NW¼, SW¼ NW¼; Section 23 except SW¼ SE¼; S½ SE¼, NE¼ SE¼, SE¼ NE¼ Section 24; Section 25; Section 26 except N½ N½; Section 27; S½ Section 28; Sections 29–34.

T.14S., R.08W. Willamette Meridian: Section 19 except N½ N½, SW¼ SW¼; SW¼ Section 20; S½ S½, N½ SW¼ Section 21; S½ SW¼, W½ SE¼ Section 22; S½ SW¼ Section 23; E½ E½, W½ NE¼ Section 25; NW¼ Section 26; Section 27; E½ SW¼ Section 28; Section 29 except N½ N½; Section 30 except N½ NE¼, SW¼ NE¼, W½ SE¼, E½ SW¼; Section 31 except N½ SW¼, NW¼ SE¼; Section 32; N½ S½, N½ Section 33; NW¼, N½ NE¼, NW¼ SW¼ Section 34; NW¼ NW¼ Section 35.

T.15S., R.06W. Willamette Meridian: Section 29; Section 31; Section 33 except NE¼, E½ SE¼, SW¼ NW¼; SE¼ SE¼ Section 34; SW¼ SW¼ Section 35.

T.15S., R.07W. Willamette Meridian: Section 3 except S½ SW¼; Section 4 except E½ NE¼, NW¼ SE¼, NE¼ SE¼; Sections 5–6; Section 7 except S½ S½; NW¼ NE¼ Section 8; Sections 18–21; Section 25 except SE¼ NE¼; Section 27; Section 29; SW¼ SW¼ Section 30; Section 31; Section 33 except NE¼; SE¼ NW¼, SE¼ NE¼, NE¼ SE¼ SW¼ SE¼ Section 35.

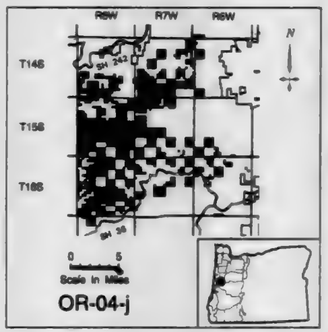
T.15S., R.08W. Willamette Meridian: Section 1; S½ Section 2; Section 3 except W½ SW¼, NE¼ SW¼, NW¼ SE¼, N½ NE¼, SW¼ NW¼; NE¼, SW¼ SW¼ Section 4; Section 5 except S½ NE¼, SE¼ NW¼, NE¼ SW¼, W½ SW¼, N½ SE¼; Section 6 except SE¼, E½ SW¼, S½ NW¼, S½ SW¼; Section 7 except N½ N½, SE¼ NE¼; Section 9 except S½ SE¼; Section 11; Sections 13–14; Section 15 except NW¼ NW¼; Sections 16–27; N½ Section 28; Sections 29–31; N½, W½ SW¼ Section 32; Section 33; S½ SW¼, SW¼ SE¼ Section 34; Section 35; W½ Section 36.

T.16S., R.06W. Willamette Meridian: SE¼, E½ SW¼, NW¼ SW¼, SW¼ NW¼ Section 3; Section 5 except S½ SW¼, NW¼ SW¼, SW¼ NW¼; Section 7 except S½ SE¼, NE¼ SE¼; SW¼ SE¼ Section 8; Section 9; SW¼ NE¼, NE¼ NW¼ Section 12; NW¼, N½ NE¼, W½ SE¼, SW¼ SW¼ Section 17; S½ S½ Section 33.

T.16S., R.07W. Willamette Meridian: Section 1; Section 3 except S½ SW¼; Section 5 except S½ SW¼, SW¼ SE¼; S½ SW¼ Section 6; Section 7 except NE¼, NW¼ NW¼; NE¼, N½ SE¼, SE¼ NW¼ Section 11; Section 13; E½, SW¼ Section 15; W½ NW¼ Section 18; S½, S½ N½ Section 19; Section 21.

T.16S., R.08W. Willamette Meridian: Section 1 except SW¼ SW¼; N½ NW¼, SE¼ SE¼ Section 2; Sections 3–4; Section 5 except W½ SW¼, NE¼ SW¼, NW¼ SE¼, NW¼ NW¼; S½ SW¼, NE¼ SW¼, W½ NW¼, SE¼ NW¼, NW¼ NE¼ Section 6; N½ NE¼, S½ SE¼, W½ SW¼, SW¼ NW¼ Section 7; Sections 8–9; W½ W½ Section 10; Section 11; SW¼ SW¼ Section 12; Section 13 except S½ SE¼, SW¼ SW¼; SW¼ SW¼ Section 14; Section 15; Section 17 except SW¼ NW¼; SW¼, W½ NW¼, E½ SE¼, NW¼ SE¼, SE¼ NE¼ Section 18; Section 19 except E½ SW¼, S½ NE¼; NW¼ SE¼; N½, N¼ SW¼, E½ SE¼ Section 20; Sections 21–23; S½ SW¼, NE¼ NW¼, SW¼ SE¼ Section 24; Section 25; N½ Section 26; Section 27; Section 28 except S½ SE¼; Section 29 except NW¼ NW¼; S½ SE¼, SE¼ NE¼, NE¼ NW¼, SW¼ NW¼ Section 30; Section 31 except N½ NW¼; Section 32 except SE¼, Section 33; S½ Section 34; N½, NW¼ SE¼ Section 35; N½ NE¼ Section 36.

T.17S., R.08W. Willamette Meridian: Section 5; N½ NE¼ Section 6.



Map and description of OR–04–k taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Eugene, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.12S., R.06W. Willamette Meridian: NW¼ NW¼ Section 31.

T.12S., R.07W. Willamette Meridian: SE¼, S½ SW¼, S½ NE¼, NE¼ SW¼ Section 10; Section 11 except N½ N½; W½ SW¼, SW¼ NW¼ Section 12; Sections 14–15; Section 16 except NW¼ NW¼; Section 19 except N½ N½; Section 20 except SW¼ SW¼; Sections 21–23; W½ Section 24; Section 25; Section 26 except SE¼ SW¼; Sections 27–30; Section 31 except W½ NW¼, NW¼ SW¼ Section 32 except NW¼, NW¼ NE¼; Sections 33–34; Sections 35 except N½ NW¼; N½ N½, W½ SW¼, SW¼ NW¼ Section 36.

T.12S., R.08W. Willamette Meridian: SW¼ SW¼ Section 2; SW¼, S½ SE¼ Section 3; NW¼ NW¼,W½ SE¼ Section 4; Section 5 except NW¼, S½ SW¼, NE¼ SE¼; NE¼, E½ NW¼ Section 7; W½ NW¼, N½ SE¼ Section 8; Section 9 except NE¼ NE¼, W½ SW¼, SE¼ SW¼, W½ SE¼; SE¼, NE¼ NE¼ Section 10; Section 11 except N½ NE¼, NE¼ NW¼, SE¼ SE¼; Section 12 except N½, NE¼ SE¼; E½, E½ SW¼ Section 13; N½ N½, S½ NE¼, SE¼ SW¼ Section 15; N½ NE¼, NW¼ NW¼ Section 16; Section 17 except NW¼, NW¼ NE¼; SW¼, W½ SE¼, SW¼ NW¼ Section 18; W½, SW¼ SE¼ Section 19; S½ NE¼ Section 20; Section 21; Section 22 except NW¼ NW¼; SE¼, S½ SW¼ Section 23; W½ W½ Section 24; Section 25; N½ Section 26; Section 27; W½ SW¼ Section 28; Section 29 except E½ NE¼, NW¼ NE¼; W½ SW¼, N½ NW¼, NW¼ NE¼, NE¼ SE¼ Section 30; Section 31; SW¼ SW¼ Section 32; Section 33 except SE¼, W½ NE¼, NW¼ NW¼; Section 35 except SW¼ NW¼, NW¼ SW¼; SE¼ SE¼ Section 36.

T.12S., R.09W. Willamette Meridian: E½ SE¼, SE¼ NE¼ Section 13; E½ E½ Section 24.

T.13S., R.07W. Willamette Meridian: NW¼ NW¼ Section 1; N½ NE¼, S½ SE¼, W½ NW¼, N½ SW¼, SW¼ SW¼, SE¼ NW¼, SW¼ NE¼ SE¼ Section 2; Section 3; Section 5; W½ Section 6; Section 7; Section 9; N½ NW¼, SW¼ NW¼ Section 15; Section 17; SW¼ SW¼ Section 18; N½ SW¼, SE¼ SW¼, W½ SE¼, SE¼ SE¼, N½ Section 19; E½ NW¼, NE¼ SW¼, W½ NE¼ Section 21; S½, W½ NW¼ Section 27; Section 35 except S½, NE¼ NE¼.

T.13S., R.08W. Willamette Meridian: Section 1; NE¼ Section 2; Section 3 except NE¼ NE¼; Section 5; S½ Section 6; Section 7; E½ SE¼ Section 8; Section 9 except NW¼ NE¼; Section 11; W½ NW¼, SE¼ NW¼, E½ SE¼, NW¼ SE¼, SE¼ NE¼, NE¼ SW¼ Section 12; Section 13; E½, NE¼ SW¼ Section 14; Section 15; Section 17; Sections 19–21; Section 23; W½ W½, SE¼ NW¼, SE¼ NE¼ Section 24; Section 25; W½ SE¼, E½ SW¼, SW¼ SW¼, NW¼ NW¼ Section 26; Section 27; Section 29; NW¼, NW¼ SW¼, SW¼ SE¼ Section 30; Section 31; SE¼ SE¼, SW¼ NW¼ Section 32; Section 33; SW¼ NW¼ Section 34; Section 35 except E½ SE¼.

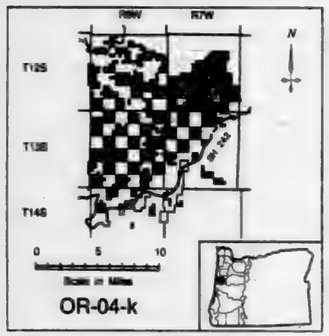
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T.13S., R.09W. Willamette Meridian: E½ E½ Section 25.

T.14S., R.07W. Willamette Meridian: SW¼ SW¼ Section 5; NE¼ NE¼ Section 7; NW¼ NW¼ Section 8.

T.14S., R.08W. Willamette Meridian: NW¼ NW¼ Section 2; N½ N½, N½ SW¼, S½ NW¼ Section 3; Section 5 except S½ SE¼; Section 7 except W½ SW¼, SW¼ NW¼, N½ NW¼; SE¼, S½ NE¼, NE¼ NE¼ Section 11; W½ SW¼ Section 15.

T.14S., R.09W. Willamette Meridian: NE¼ NE¼ Section 1.



Map and description of OR–05–a taken from United States Fish and Wildlife Service 1:100,000 map; Reedsport, Cottage Grove, Coos Bay and Roseburg, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.22S., R.10W. Willamette Meridian: N½, NW¼ SW¼, NW¼ SE¼ Section 35.

Proposed Critical Habitat includes only State lands described within the following areas:

T.22S., R.10W., Willamette Meridian: E½ SW¼, NW¼ SE¼, S½ SE¼, SW¼ NE¼, SE¼ NW¼, SW¼, Lots l, 2, 6–9, a portion of Lot 3 Section 07; Lot 5, Lot 7 Section 08; Lot 9, SE¼ SW¼ Section 14; Lots 9, 10, a portion of Lot 7, SE¼ SE¼ Section 15; E½ SW¼, SW¼ SE¼, Lots 5–8, Lots 10–15 Section 17; Sections 18–20; Section 21 except Lot 18; Section 22; Lots 5–11, SW¼ NE¼, E½ NW¼, NE¼ SW¼, N½ SE¼ Section 23; NE¼ NW¼ Section 24; Sections 26–34; E½ SW¼, a portion of S½ SE¼ Section 35.

T.22S., R.11W., Willamette Meridian: Lot 5, Lots 9–14 Section 01; S½ NW¼, SW¼ NE¼, N½ SE¼, NE¼ SW¼, Lots 5–9 Section 02; NW¼ NE¼, SE¼ NE¼, E½ SE¼, Lot 1, a portion of SW¼ NE¼ Section 03; Lots 1–4, N½ S½, NE¼, SE¼ NW¼ Section 09; Lots 2–3, N½ SW¼, NW¼ Section 10.

T.22S., R.11W., Willamette Meridian: Lot 1, Lots 4–7, a portion of Lot 3, NE¼ NW¼, NE¼, NE¼ SE¼, a portion of NW¼ SE¼ Section 11; Sections 12–14; S½, NW¼, a portion of S½ NE¼ Section 15; Section 16; N½ SW¼, SE¼ SW¼, E½ SE¼, SW¼ NE¼, SE¼ NW¼, Lots 5–7 Section 19; S½ NE¼, NE¼ NE¼, SE¼, Lots 1–4 Section 17; S½ NW¼, W½ E½, SW¼, NE¼ NE¼, Lots 1–4 Section 20; Sections 21–36.

T.22S., R.12W., Willamette Meridian: Lots 2–4, W½ SE¼, SW¼ NE¼, SE¼ NW¼, E½ SW¼ Section 24; Lot 4, SW¼ SE¼, S½ SW¼ Section 25; N½ SE¼, SE¼ SE¼ Section 26; NE¼ NE¼, SW¼ NE¼, a portion of E½ SE¼ Section 35; Section 36.

T.23S., R.10W., Willamette Meridian: Lots 1–13, Lots 16–21, W½ SW¼ Section 02; Section 03; Section 10.

T.23S., R.10W., Willamette Meridian: Lots 1, 4, 5, 8, 9, SE¼ NW¼, E½ SW¼, SE¼ Section 11; N½ NE¼, NW¼ Section 14; Section 15; Sections 22–23; SE¼, NW¼ Section 24; Sections 26–27.

T.23S., R.10W., Willamette Meridian: Sections 04–09; Sections 16–21; Sections 28–30; W½ NW¼, NE¼, NW¼ SE¼, NE¼ SW¼, Lots 1–5, a portion of Lot 6 Section 31; N½ NE¼, SW¼ NE¼, NW¼, NW¼ SE¼ Section 32; W½ NE¼, NW¼, NW¼ SW¼, NE¼ NE¼ Section 33.

T.23S., R.11W., Willamette Meridian: Sections 01–06; E½ W½, E½, Lots 2–4 Section 07; Sections 08–17; N½, N½ SE¼, Lot 3, a portion of NE¼ SW¼ Section 18; S½ NE¼ NW¼, NE¼, SE¼ NW¼, SE¼, E½ SW¼, Lots 2–4, a portion of Lot 1 Section 19.

T.23S., R.11W., Willamette Meridian: Sections 20–25; S½, N½ N½, SW¼ NW¼, SE¼ NE¼, portions of SE¼ NW¼ and SW¼ NE¼ Section 26; Sections 27–29; Lots 1, 3, 4, SE¼, E½ SW¼, N½ NE¼, NE¼ NW¼ Section 30; Sections 31–36.

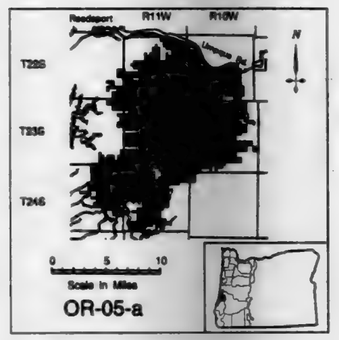
T.23S., R.12W., Willamette Meridian: NE¼ SE¼, Lots 1–4 Section 01; NE¼ Section 02; S½ NE¼, SE¼ NW¼, SE¼ Section 12; NE¼, E½ NW¼ Section 13; E½ SE¼ Section 25; SE¼ SE¼, a portion of SW¼ SE¼ Section 27; E½ NE¼, S½ S½, NE¼ SE¼ Section 34; S½, NE¼, W½ NW¼, SE¼ NW¼ Section 35; S½ SE¼, SW¼, N½ NE¼, W½ NW¼, portions of S½ NE¼ and N½ SE¼ Section 36.

T.24S., R.10W., Willamette Meridian: Lots 1–4, Lots 7–18 Section 06.

T.24S., R.11W., Willamette Meridian: Sections 01 and 02; Lots 1–4, S½ N½, SE¼, E½ SW¼, portions of W½ SW¼ Section 03; Section 04 except a portion of SE¼ SE¼; Sections 05–08; N½, SW¼, N½ SE¼, SW¼ SE¼ Section 09; Section 10; N½, N½ S½ Section 11; N½ Section 12; Sections 15–16; N½, N½ SW¼, NW¼ SE¼, Lots 1–3, a portion of SE¼ SE¼ Section 17; Section 18; a portion of N½ NE¼ Section 19; a portion of Lot 1, Lots 2–7, NE¼ SE¼, a portion of E½ NE¼ Section 20; Section 21; N½, N½ S½, Lots 1–2 Section 22; Lots 4–5, W½ SW¼, SE¼ SW¼, SW¼ SE¼ Section 27; Sections 28–29; a portion of Lot 1 Section 30; NE¼, E½ NW¼, N½ SE¼ Section 31; N½, N½ SW¼, NW¼ SE¼ Section 32.

T.24S., R.11W., Willamette Meridian: NW¼, N½ NE¼, SE¼ NE¼ Section 33; N½ N½ Section 34.

T.24S., R.12W., Willamette Meridian: Sections 01–03; NE¼ SE¼, SE¼ NE¼ Section 04; SE¼ SE¼, a portion of E½ NE¼ Section 09; Sections 10–14; E½, NE¼ NW¼, Lot 1, portions of Lot 2 and SE¼ SW¼ Section 15; S½ N½, N½ NE¼ Section 16; NE¼, SE¼ NW¼, NE¼ SW¼, N½ SE¼ Section 22; Section 23 except SE¼ NE¼; Lots 1–2, NE¼ NE¼, W½ E½, SE¼ SE¼, S½ NW¼, SW¼, a portion of SE¼ NE¼ Section 24; Lots 1–2, N½ NE¼, a portion of S½ NW¼ Section 25.

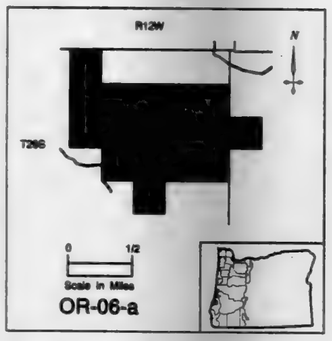


Map and description of OR–06–a taken from United States Fish and Wildlife Service 1:100,000 map; Coos Bay, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.26S., R.11W. Willamette Meridian: NW¼ SW¼ Section 6.

T.26S., R.12W. Willamette Meridian: Section 1 except N½ N½; E½ NE¼, NE¼ SE¼ Section 2; NE¼ NW¼ Section 13.



Map and description of OR–06–b taken from United States Fish and Wildlife Service 1:100,000 map; Roseburg, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.25S., R.10W. Willamette Meridian: SE¼, SE¼ NE¼ Section 29; Section 31; Section 33.

T.26S., R.09W. Willamette Meridian: SE¼, E½ SW¼ Section 9; Section 10 except NE¼; Section 17; S½ S½ Section 18; Section 19; SW¼ SW¼ Section 20; Section 21; N½ N½, S½ S½ Section 28; Section 29; Section 31 except N½ SW¼, SW¼ SW¼; SW¼, W½ SE¼, SE¼ NW¼ Section 32; Section 33.

T.26S., R.10W. Willamette Meridian: Sections 3–5; E½, SE¼ NW¼ Section 6; Section 7; SW¼, S½ NE¼ Section 8; Section 9; Section 11; Section 13; N½ Section 14; Sections 15–17; Section 19; SE¼ Section 20; NE¼, E½ NW¼, NW¼ NW¼ Section 21; W½ Section 22; Section 23; N½ N½, N½ S½ Section 24; Section 25; Section 27; NE¼ Section 28; Sections 29–31; E½ Section 32; Section 33; Section 35 except SE¼.

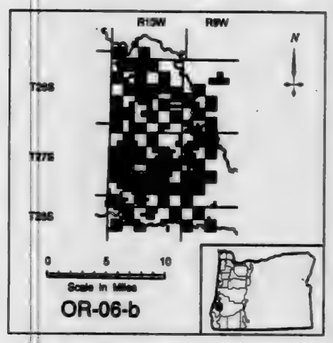
T.27S., R.09W. Willamette Meridian: Sections 4–5; SE¼, NE¼ NE¼, SE¼ SW¼ Section 6; Section 7 except NW¼ SW¼; N½ NW¼, W½ SW¼ Section 8; Section 9; Section 17; Section 18 except SW¼, SE¼ SE¼; Section 19 except NE¼ NE¼; Sections 20–21; Sections 29–31; E½ SE¼, SW¼ SE¼ Section 33.

T.27S., R.10W. Willamette Meridian: E½ E½, W½ SE¼ Section 1; Section 3; S½ SW¼ Section 4; Section 5; SE¼ Section 6; Sections 7–9; NE¼, SE¼ SE¼ Section 10; Section 11; S½ NW¼, W½ SW¼, SE¼ SE¼ Section 12; Sections 13–15; N½ Section 16; Sections 17–20; Sections 21–23; W½ NW¼ Section 24; Sections 25–28; Section 29 except S½ SW¼, SW¼ SE¼; NE¼, SE¼ SE¼, W½ SW¼ Section 30; Section 31; S½ S½, S½ NW¼, NW¼ SW¼ Section 32; Section 33 except SW¼ SW¼; SW¼ NW¼ Section 34; Section 35.

T.28S., R.09W. Willamette Meridian: SE¼ SW¼ Section 4; Section 5; Section 7 except N½ NW¼; Section 9.

T.28S., R.10W. Willamette Meridian: Section 1; Section 3 except N½ SE¼; Sections 4–5; N½ NE¼, NE¼ NW¼, SE¼ SE¼ Section 6; Section 7 except W½ NW¼, NW¼ SW¼; S½ N½, NE¼ NW¼ Section 8; Section 9 except NE¼; N½ NE¼, E½ NW¼, E½ SE¼ Section 11; NW¼ NW¼ Section 12.

T.28S., R.11W. Willamette Meridian: E½ SE¼ Section 1.



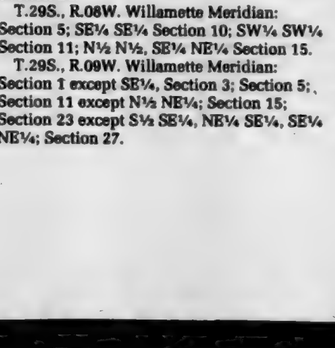
Map and description of OR–06–c taken from United States Fish and Wildlife Service 1:100,000 map; Roseburg and Canyonville, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.29S., R.10W. Willamette Meridian: SW¼ NW¼, SE¼ SW¼, W½ SW¼ Section 11; S½ SE¼, W½ SW¼ Section 12; Section 13; Section 14 except W½ W½; E½ SE¼, SE¼ NE¼ Section 20; Section 21 except E½ NE¼; E½, W½ SW¼ Section 23; NE¼ NE¼ Section 27; NE¼ NE¼ Section 28; Section 31.

T.30S., R.11W. Willamette Meridian: E½, SE¼ SW¼ Section 1 Section 12 except W½; E½, NW¼ Section 13; N½ SE¼, S½ NE¼, NE¼ SW¼, SE¼ NW¼ Section 35; NW¼ NW¼ Section 36.

T.31S., R.11W. Willamette Meridian: SW¼ Section 2.



Map and description of OR–06–d taken from United States Fish and Wildlife Service 1:100,000 map; Roseburg, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.28S., R.07W. Willamette Meridian: N½, E½ SE¼, NW¼ SW¼ Section 5; N½ NW¼, NW¼ NE¼, S½ SE¼, W½ SW¼; Section 7; SE¼ NE¼ Section 8; NW¼ NW¼ Section 9; SW¼ Section 17; NW¼ NW¼ Section 18; Section 19; NW¼ Section 20.

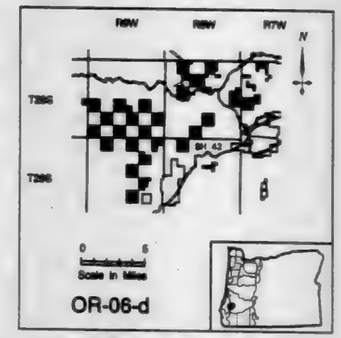
T.28S., R.08W. Willamette Meridian: Section 3 except SE¼ SE¼; NW¼ NW¼ Section 4; Section 5; NE¼ Section 8; Section 9; NE¼ NE¼, NW¼ NW¼ Section 10; NW1/W NW¼ Section 11; Section 13 except W½ W½, NE¼ NW¼; N½ NW¼, NW¼ NE¼ Section 15; Section 17; NE¼, E½ NW¼ Section 24; Section 27; Section 33.

T.28S., R.09W. Willamette Meridian: Section 19; Section 21; SW¼ Section 22; Section 23; Section 25; Section 27; Section 29; Section 31; Section 33; Section 35.

T.28S., R.10W. Willamette Meridian: NE¼ Section 24.

T.29S., R.08W. Willamette Meridian: Section 5; SE¼ SE¼ Section 10; SW¼ SW¼ Section 11; N½ N½, SE¼ NE¼ Section 15.

T.29S., R.09W. Willamette Meridian: Section 1 except SE¼, Section 3; Section 5; Section 11 except N½ NE¼; Section 15; Section 23 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; Section 27.



Map and description of OR–07–a taken from United States Fish and Wildlife Service 1:100,000 map; Port Orford, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.31S., R.12W. Willamette Meridian: N½ NW¼, SW¼ NW¼ Section 5; SE¼, E½ SW¼, SW¼ SW¼, NE¼ NW¼ Section 15; Section 21; Section 22 except SE¼; Section 23 except E½ NE¼, SW¼ NE¼; W½ NW¼ Section 25; Section 27.

T.32S., R.10W. Willamette Meridian: Section 2 except E½ E½; Section 3 except E½ NE¼, SW¼ NE¼; SE¼ SE¼ Section 4; S½, W½ NW¼ Section 7; W½ SW¼, SE¼ NE¼ Section 8; Section 9 except N½ N½, E½ SE¼, SE¼ NE¼; Section 10 except NW¼ NW¼, SW¼ SW¼; Section 11 except E½ NE¼, NE¼ SE¼, SW¼ SE¼, SE¼ SW¼; NW¼ NW¼ Section 14; N½ N½, SE¼ NE¼, W½ SW¼, S½ NW¼ Section 15; Sections 16–17; E½ E½ Section 18; Section 19 except S½ NW¼, NE¼ NW¼, NW¼ NE¼; Section 20–21; W½ NW¼, SW¼ NW¼ Section 22; N½ N½ Section 28; N½ NE¼, NW¼ NE¼ Section 29; W½ W½ Section 30; W½ NW¼ Section 31.

T.32S., R.11W. Willamette Meridian: SE¼ Section 1; N½ N½, SW¼ NW¼ Section 4; Section 5; N½, NE¼ SE¼ Section 6; NE¼ SE¼ Section 7; Section 8 except SW¼ NW¼; W½ Section 9; Section 12 except SW¼ SW¼; Section 13; SE¼ Section 14; Section 16 except E½, SE¼ SW¼; Section 17; Section 18 except N½ NW¼, E½ SW¼, NW¼ SE¼; Sections 19–20; W½ W½ Section 21; SE¼ Section 22; Section 23 except SE¼ NE¼; Section 24 except S½ NW¼, N½ SW¼; Sections 25–26; NE¼ Section 27; E½, S½ SW¼ Section 28; S½ S½, W½ NW¼, NW¼ SW¼ Section 29; Sections 30–32; Section 33 except W½ NE¼, E½ NW¼; Section 34; Section 35 except NE¼ NE¼; NE¼, W½ W½, NW¼ SW¼ Section 36.

T.32S., R.12W. Willamette Meridian: E½ NE¼, N½ SE¼, SW¼ SE¼ Section 1; W½ NW¼ Section 2; Section 3; Section 10 except SE¼ SE¼; E½ SE¼ Section 13; W½, NW¼ NE¼ Section 15; E½ SE¼, SE¼ NE¼ Section 16; Sections 19–20; NW¼, N½ SW¼, W½ NE¼ Section 21; SE¼ SE¼ Section 23; E½ E½, S½ SW¼ Section 24;

Section 25; Section 26 except N½ NW¼, NW¼ NE¼, SW¼ NW¼; S½ SE¼, SE¼ SW¼ Section 27; N½ NW¼, SW¼ NW¼ Section 29; Section 30 except S½ SE¼, NE¼ SE¼; W½, W½ E½ Section 31; SE¼, S½ NE¼, NE¼ NE¼, SE¼ SW¼ Section 33; Sections 34–36.

T.32S., R.13W. Willamette Meridian: Section 4 except N½ N½, SW¼ NW¼; S½ Section 5; Section 6 except N½, N½ SW¼, NW¼ SE¼; N½, S½ S½, NE¼ SE¼ Section 7; Section 8; NE¼ NE¼ Section 17; Sections 22–23; S½ Section 24; Sections 25–27; SE¼ NE¼ Section 31; Section 32 except NW¼ NW¼; Section 33–36.

T.32S., R.14W. Willamette Meridian: SE¼ SE¼ Section 12; N½ Section 17; W½ SW¼ Section 19; Section 22 except W½ W½, SE¼ SW¼, NE¼ NE¼, SW¼ SE¼; Section 23 except S½ SE¼, NE¼ NE¼; Section 24 except N½ N½, W½ SW¼, SE¼ NW¼, SW¼ NE¼; E½ NE¼, NW¼ NE¼, NE¼ SE¼ Section 25; W½ SW¼, SE¼ SW¼, SW¼ SE¼ Section 29; SE¼, E½ SW¼, SW¼ SW¼, NW¼ NW¼ Section 30; Section 31 except W½ NW¼, NW¼ SW¼; Section 32; W½ W½, NE¼ SW¼ Section 33.

T.32S., R.15W. Willamette Meridian: E½ SE¼ Section 25.

T.33S., R.11W. Willamette Meridian: Sections 7–8; Section 9 except E½ NW¼, W½ NE¼; Sections 10–11; NW¼, W½ NE¼, W½ SW¼, NE¼ SW¼, NW¼ SE¼ Section 12; NW¼ NW¼, SE¼ NW¼ Section 13; Section 14 except SE¼, E½ SW¼, SW¼ NE¼; Sections 15–20; Section 21 except SE¼; Section 22 except SE¼ SE¼; W½ NW¼, NW¼ SW¼ Section 23; N½ NW¼, SW¼ NW¼ Section 27; S½ NE¼, NW¼ SE¼, SE¼ SW¼ Section 28; W½, N½ NE¼ Section 29; Sections 30–31; Section 32 except N½ NE¼; NW¼ NW¼ Section 33.

T.33S., R.12W. Willamette Meridian: Sections 7–8; S½, SW¼ NW¼ Section 9; Section 10 except NW¼, NW¼ NE¼; Sections 11–32; Section 33 except E½ SE¼; Section 34 except N½ SW¼; Sections 35–36.

T.33S., R.13W. Willamette Meridian: SE¼ SE¼ Section 8; Sections 9–16; Section 17 except NW¼, W½ NE¼; SE¼ SE¼ Section 18; Sections 19–20; Section 21 except SE¼; N½ N½, SE¼ NE¼ Section 22; Section 23 except S½ SW¼; Sections 24–25; NW¼ Section 28; Section 29 except S½ S½, NE¼ SE¼; Section 30 except S½ SE¼; N½ NW¼, SW¼ NW¼, NW¼ SW¼ Section 31; SE¼ Section 34; Section 35 except NW¼ NW¼; Section 36.

T.33S., R.14W. Willamette Meridian: W½ Section 5; Section 7 except N½ N½, NW¼ SW¼, SW¼ NW¼; W½ SW¼ Section 8; SW¼, S½ SE¼, S½ NW¼ Section 13; SE¼, S½ SW¼, S½ NE¼ Section 14; S½ SW¼, NW¼ SW¼, SW¼ NE¼ Section 17; N½ SE¼, SW¼ SE¼ Section 18; E½ NW¼, NW¼ NW¼ Section 20; SE¼, S½ N½, NE¼ NE¼ Section 21; Section 22 except S½ SW¼, NE¼ NE¼; Sections 23–28; Section 29 except NW¼, NW¼ SW¼; SE¼ SE¼ Section 30; NE¼ NE¼ Section 31; Sections 32–35; Section 36 except NW¼, E½ SE¼.

T.34S., R.11W. Willamette Meridian: NW¼, NW¼ NE¼, NW¼ SW¼ Section 4; Sections 5–6; Section 7 except NE¼ SE¼; Section 8 except S½ NW¼; NE¼ NW¼, NW¼ NE¼; SW¼ NW¼ Section 9; NW¼ SW¼, SW¼ NW¼ Section 17; NE¼, NE¼ SE¼ Section 18; Section 19 except NE¼ NE¼, NE¼ SE¼; W½, N½ NE¼ Section 30; SW¼, E½ NW¼ Section 31.

T.34S., R.12W. Willamette Meridian: Sections 1–3; Section 4 except SW¼ SW¼; Section 5 except S½ S½; Section 6 except SE¼ SE¼; Section 7 except E½ E½; SE¼ SE¼ Section 8; Section 9 except W½ NW¼; Sections 10–36.

T.34S., R.13W. Willamette Meridian: Section 1; Section 2 except SW¼ SW¼; NE¼, NE¼ SE¼, E½ NW¼ Section 3; Section 11 except W½ W½; Sections 12–14; E½ SE¼ Section 15; S½ SW¼, SW¼ SE¼ Section 17; E½ E½ Section 19; Sections 20–25; Section 26 except W½ SW¼, SE¼ SW¼.

T.35S., R.11W. Willamette Meridian: S½ SW¼, NE¼ NW¼ Section 6; NW¼, W½ NE¼ Section 7; S½ SW¼, NW¼ SW¼, S½ NW¼, NE¼ NW¼, NW¼ NE¼ Section 18; N½ NW¼, NE¼ SW¼ Section 19.

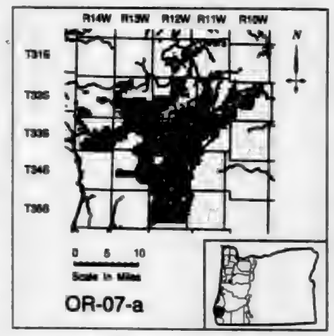
T.35S., R.12W. Willamette Meridian: Sections 1–5; Section 6 except S½ SW¼, SW¼ SE¼; SE¼, E½ NE¼ Section 7; Sections 8–11; W½ SW¼, NW¼ SW¼, SW¼ SE¼, NE¼ NE¼ Section 12; Section 13 except SE¼ NE¼, NE¼ SE¼; Sections 14–29; Sections 30 except SE¼ NE¼, SE¼ SE¼.

T.35S., R.13W. Willamette Meridian: SE¼ NE¼ Section 25.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.32S., R.13W. Willamette Meridian: Sections 18–21; Sections 28–29; N½ Section 30.



OR-07-a

Map and description of OR–07–b taken from United States Fish and Wildlife Service 1:100,000 map; Port Orford and Gold Beach, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.35S., R.11W. Willamette Meridian: Section 31.

T.35S., R.12W. Willamette Meridian: Section 31 except E½ E½; Section 32 except S½ SW¼, SW¼ SE¼, NW¼ SW¼; Sections 33–36.

T.35S., R.13W. Willamette Meridian: Section 31 except W½ SW¼, S½ NW¼; Section 32 except E½ SE¼, Section 33 except N½ SE¼, SW¼ SW¼, NW¼ NW¼; Section 34 except NE¼ SW¼, NW¼ SE¼; Section 35; Section 36 except NE¼ SE¼.

T.36S., R.12W. Willamette Meridian: Sections 1–2; Section 3 except SW¼ NE¼; Section 4; NE¼, E½ SE¼, NE¼ NW¼ Section 5; E½ E½ Section 8; Sections 9–16; Section 17 except N½ NW¼; SE¼ SE¼ Section 18; E½ E½, NW¼ NE¼ Section 19; Sections 20–24; N½ NW¼, NW¼ NE¼ Section 25; Section 26 except N½ SE¼; Sections 27–29; Section 30 except W½, SW¼ SE¼; SE¼, E½ SW¼, E½ NE¼ Section 31; Sections 32–35; SW¼, W½ NW¼ Section 36.

T.36S., R.13W. Willamette Meridian: Sections 1–3; Section 4 except SW¼, S½ NW¼, S½ SE¼; Section 5 except S½ NE¼, NW¼ NW¼; Section 6 except N½ NE¼, SW¼ SW¼; N½, SW¼ SE¼ Section 7; Section 8 except SE¼ NE¼; Section 9 except NW¼ NE¼, NE¼ NW¼, SW¼ NW¼, NW¼ SW¼; Sections 10–11; Section 12 except E½ SE¼, SE¼ NE¼; Section 13 except SE¼, E½ NE¼, SW¼ NE¼, E½ SW¼; Section 14 except SW¼; Section 15 except W½ NW¼, NW¼ SW¼; N½ NE¼, SW¼, S½ SE¼ Section 17; E½, E½ SW¼ Section 18; Section 19 except W½ NW¼, W½ SE¼, SE¼ NW¼; NW¼, SW¼ NE¼, SW¼ SE¼ Section 20; Section 22 except NW¼, NW¼ SW¼; Section 23; Section 24 except NE¼; Sections 25–26; Section 27 except N½ NW¼; E½ SE¼ Section 28; Section 29 except E½ E½; Sections 30–32; W½ SW¼ Section 33; Section 34; N½, W½ SW¼ Section 35; N½ N½ Section 36.

T.36S., R.12 ½W. Willamette Meridian: Section 1 except E½ SE¼; Section 12 except E½ E½, SW¼ SE¼, SW¼, E½ NW¼ Section 24; W½ Section 25; NW¼ NW¼ Section 36.

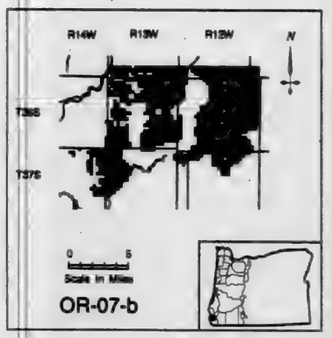
T.36S., R.14W. Willamette Meridian: SE¼ SE¼ Section 24.

T.37S., R.12W. Willamette Meridian: NW¼ NW¼ Section 1; Section 2 except SE¼, SE¼ NE¼, SE¼ SW¼; Section 3 except NW¼ SW¼; Section 4; N½ N½, SW¼ NW¼ Section 5; Section 6 except S½ S½, NW¼ NW¼; NE¼, E½ SE¼, N½ NW¼ Section 9; W½, NW¼ NE¼ Section 10; NW¼ NE¼ Section 12.

T.37S., R.13W. Willamette Meridian: SE¼ NE¼, NE¼ SE¼ Section 1; W½ Section 5; Sections 6–7; Section 8 except NE¼ NE¼; W½ SW¼ Section 9; NW¼ NW¼ Section 16; Section 17 except S½ SE¼; Section 18; Section 19 except S½ SE¼, NE¼ SE¼; N½ NW¼ Section 20; NW¼ NW¼ Section 30.

T.37S., R.14W. Willamette Meridian: Section 1 except SW¼ SW¼; E½ E½, SW¼ NE¼ Section 2; NW¼ SW¼, SW¼ NW¼, NW¼ NE¼ Section 3; SE¼ NE¼ Section 4; E½ Section 11; E½, E½ NW¼ Section 12; SE¼, N½ NE¼, NE¼ NW¼ Section 13; NE¼ NE¼ Section 14; SE¼ NE¼ Section 23; Section 24 except NW¼ NE¼, NE¼ NW¼.

T.37S., R.12 ½W. Willamette Meridian: Section 1 except N½ NE¼; NW¼ NE¼ Section 12.



OR-07-b

Map and description of OR–07–c taken from United States Fish and Wildlife Service 1:100,000 map; Gold Beach, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.37S., R.11W. Willamette Meridian: W½ SW¼ Section 31.

T.37S., R.12W. Willamette Meridian: S½ SW¼, W½ SE¼ Section 17; SW¼ SE¼ Section 18; Section 19 except N½ NW¼, NW¼ NE¼; Section 20; W½ SW¼, SW¼ NW¼ Section 21; S½ SE¼, SW¼, W½ NW¼ Section 28; Sections 29–33; W½, S½ SE¼, NE¼ SE¼ Section 34; S½, S½ NE¼ Section 35; Section 36.

T.37S., R.13W. Willamette Meridian: SE¼, SE¼ SW¼ Section 24; Section 25; Section 26 except W½ NW¼, NE¼ NW¼, NW¼ NE¼; SE¼, S½ NE¼, NE¼ NE¼, SE¼ SW¼ Section 34; Sections 35–36.

T.37S., R.12 ½W. Willamette Meridian: Section 19 except N½ NW¼, NE¼ NE¼; Section 25; Section 36.

T.37 ½S. R.11W. Willamette Meridian: W½ SW¼ Section 31.

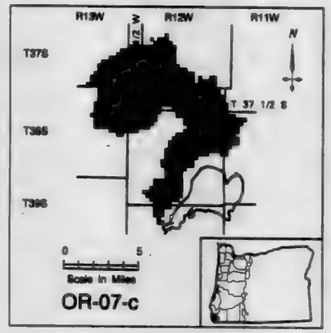
T.37 ½S. R.12.W. Willamette Meridian: Section 25 except E½ E½; Sections 26–36.

T.38S., R.11W. Willamette Meridian: Section 6 except NE¼, S½ SE¼, NE¼ NW¼; W½, W½ SE¼, NW¼ NE¼ Section 7; N½ NW¼, SW¼ NW¼, NW¼ SW¼ Section 18.

T.38S., R.12W. Willamette Meridian: Sections 1–2; Section 3 except SW¼ NW¼, S½ SW¼, NW¼ SW¼; E½ NE¼ Section 4; NW¼, N½ SW¼, NW¼ NE¼ Section 5; Section 6; N½ NW¼ Section 7; SE¼, SE¼ NE¼, SE¼ SW¼ Section 9; Section 10 except NW¼ NW¼; Sections 11–12; N½ N½, SE¼ NE¼ Section 13; N½, NW¼ SW¼ Section 14; Section 15; Section 16 except NW¼ NW¼; E½ NE¼ Section 20; Section 21; NW¼, N½ NE¼, W½ SW¼ Section 22; W½ W½ Section 27; Section 28; Section 29 except N½ N½, SW¼ NW¼, NW¼ SW¼; N½ NE¼, SE¼ NE¼ Section 31; Section 32 except SW¼ SW¼; Section 33 except S½ SE¼; W½ NW¼, SW¼ SW¼ Section 34.

T.38S., R.13W. Willamette Meridian: Sections 1–2; E½ E½, SW¼ SE¼ Section 10; Sections 11–13; Section 14 except S½ SW¼, SW¼ SE¼; E½ NE¼, SE¼ NE¼ Section 15; NW¼ NE¼, NE¼ NW¼ Section 24.

T.39S., R.12W. Willamette Meridian: N½ NW¼ Section 4; Section 5 except W½ W½, SE¼ SW¼, SE¼ SE¼; N½ NE¼ Section 6.



OR-07-c

Map and description of OR–07–d taken from United States Fish and Wildlife Service 1:100,000 map; Gold Beach and Grants Pass, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.38S., R.11W. Willamette Meridian: S½ SE¼ Section 31.

T.39S., R.11W. Willamette Meridian: S½ SW¼, SW¼ SE¼ Section 4; SW¼, W½ SE¼, SE¼ SE¼, SW¼ NW¼ Section 5; E½, SE¼ NW¼ Section 6; NE¼, SW¼, N½ SE¼ Section 7; Section 8 except S½ SW¼, NE¼ SW¼, SW¼ SE¼; Section 9; W½ SW¼, NE¼ SW¼, SW¼ NW¼ Section 10; N½ NW¼, SW¼ SW¼ Section 15; Section 16 except W½ SW¼, SW¼ NW¼; NE¼ NE¼ Section 17; Section 18 except NE¼; Sections 19–20; Section 21 except SE¼ SE¼; W½ NW¼, SW¼ NW¼ Section 22; N½ NW¼ Section 28; N½ N½, W½ SW¼ Section 29; Sections 30–31; Section 32 except NE¼ NE¼; SW¼, SW¼ NW¼, SW¼ SE¼ Section 33.

T.39S., R.12W. Willamette Meridian: S½ SW¼, SW¼ SE¼ Section 1; S½ S½ Section 2; S½ Section 3; Section 10 except S½ S½; Section 11 except S½ SW¼; Section 12; E½, N½ NW¼ Section 13; SW¼ SW¼ Section 18; W½, W½ E½, SE¼ SE¼ Section 19; SE¼, SW¼, NE¼ Section 20; Section 21; S½ S½, NW¼ SW¼, SW¼ NW¼ Section 22; S½, S½ NE¼ Section 23; Section 24 except NW¼ NW¼; Sections 25–29; Section 30 except SE¼ NW¼, NE¼ SW¼; Sections 31–36.

T.39S., R.13W. Willamette Meridian: S½ SW¼ Section 28; E½ NE¼, E½ SW¼, SE¼ SE¼ Section 32; Section 33; W½ SW¼ Section 34.

T.40S., R.09W. Willamette Meridian: SW¼, SW¼ NW¼ Section 5; SE¼ SE¼ Section 6; Section 7 except SE¼ SE¼, NW¼ NW¼; NW¼, NW¼ SW¼ Section 8; W½ W½ Section 18; W½ W½ Section 19; W½ SW¼ Section 20; Section 27 except N½ N½; Section 28 except N½ NW¼, NW¼ NE¼, SW¼ NW¼; SE¼ SE¼, SW¼ SW¼, NW¼ NW¼ Section 29; Section 30 except NE¼ NW¼, NW¼ NE¼; S½ S½, W½ NW¼, NW¼ SW¼ Section 31; Section 32 except N½ NW¼, SW¼ NW¼; Section 33; Section 34 except E½ SE¼, SE¼ NE¼, SW¼ SE¼.

T.40S., R.10W. Willamette Meridian: E½ SE¼, SW¼ SE¼ Section 2; SE¼ SE¼ Section 4; SE¼ Section 8; Section 9 except N½ NW¼, NW¼ NE¼; Section 10 except NE¼ NE¼; Section 11; S½, W½ NW¼, SE¼ NE¼ Section 12; Sections 13–16; Section 17 except NW¼, NW¼ NE¼, NW¼ SW¼; Section 19 except NW¼, W½ SW¼, NW¼ NE¼; Sections 20–36.

T.40S., R.11W. Willamette Meridian: N½ NW¼, SW¼ NW¼, NW¼ SW¼, NW¼ NE¼ Section 4; Sections 5–8; W½ SW¼ Section 9; Section 16 except E½ E½; Sections 16–21; E½ SE¼, SW¼ SE¼ Section 25; Section 27 except E½, NE¼ NW¼; Sections 28–33; W½ Section 34; Section 36 except NW¼ NW¼.

T.40S., R.12W. Willamette Meridian: Sections 1–17; Section 18 except W½ W½; Sections 19–30; E½, N½ NW¼, NE¼ SE¼, SE¼ NW¼ Section 31; Sections 32–36.

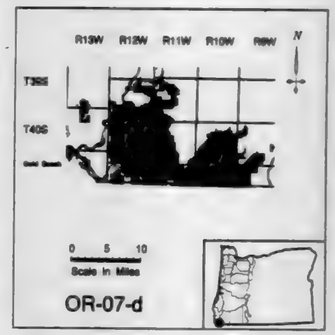
T.40S., R.13W. Willamette Meridian: Section 4 except S½ SE¼; E½ E½ Section 5; W½, NW¼ NE¼, S½ SE¼, NE¼ SW¼ Section 9; W½ Section 10; SE¼ SW¼ Section 12; N½ NW¼ Section 13.

T.41S., R.09W. Willamette Meridian: Sections 4–8; Sections 17–18.

T.41S., R.10W. Willamette Meridian: Sections 1–18.

T.41S., R.11W. Willamette Meridian: Section 1; Section 2 except N½ NE¼, SW¼ NE¼; Sections 3–15; Sections 17–18.

T.41S., R.12W. Willamette Meridian: Sections 1–4; Section 5 except W½, SW¼ SE¼; Section 7 except NW¼, W½ SW¼, NW¼ NE¼; W½, S½ SE¼ Section 8; Section 9 except S½ S½, NW¼ SW¼; Section 10; Section 11 except SE¼ SW¼; Sections 12–13; SW¼, S½ SE¼, NE¼ SE¼, NE¼ NE¼, NW¼ NW¼ Section 14; Section 15; Section 17; Section 18 except W½ W½.



OR-07-d

Map and description of OR–07–e taken from United States Fish and Wildlife Service 1:100,000 map; Grants Pass, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.36S., R.08W. Willamette Meridian: W½ SW¼, SW¼ NW¼ Section 18; W½ W½, SE¼ SW¼, SW¼ SE¼ Section 19; Section 30 except SE¼, SE¼ NE¼; W½ Section 31.

T.36S., R.09W. Willamette Meridian: S½, SE¼ NE¼ Section 13; E½ SE¼ Section 14; SE¼, SE¼ SW¼ Section 20; S½, S½ NE¼ Section 21; S½, S½ NW¼ Section 22; Section 23 except N½ NW¼; Sections 24–28; Section 29 except NW¼ NW¼; Section 30 except N½ N½, NW¼ SW¼; Section 31 except NW¼ NW¼; Sections 32–36.

T.36S., R.10W. Willamette Meridian: E½ SE¼ Section 36.

T.37S., R.08W. Willamette Meridian: S½ SW¼, NW¼ SW¼ Section 6; Section 7 except SE¼ SE¼; N½ NW¼, SW¼ NW¼ Section 18; NW¼ Section 19.

T.37S., R.09W. Willamette Meridian: Sections 1–6; Section 7 except NE¼ NE¼; Section 8 except NE¼ SE¼, NW¼ NE¼, SE¼ NW¼; Sections 9–23; Section 24 except SE¼ SE¼; Section 25 except E½, SE¼ SW¼; Sections 26–32; Section 33 except NE¼ SW¼; Sections 34–35; W½ NW¼ Section 36.

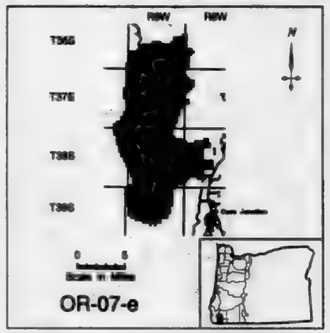
T.37S., R.10W. Willamette Meridian: E½ E½ Section 1; E½ E½, SW¼ SE¼ Section 12; E½ Section 13; E½ E½ Section 24; SE¼, S½ NE¼, NE¼ NE¼, SE¼ SW¼ Section 25; SE¼, SE¼ NE¼ Section 35; Section 36 except NW¼ NW¼.

T.38S., R.08W. Willamette Meridian: S½, SW¼ NW¼ Section 7; Section 8 except N½ N½; W½, W½ SE¼ Section 9; W½ NW¼, NW¼ SW¼ Section 15; Sections 17–18; Section 19 except SE¼ SE¼, NE¼ SE¼; Sections 20–21; SW¼ SW¼ Section 28; Section 29 except NE¼ SE¼, SW¼ NE¼, SW¼ SW¼; Section 30 except S½ SE¼; NW¼ NW¼ Section 31; Section 32.

T.38S., R.09W. Willamette Meridian: Section 2 except E½ NE¼, NE¼ SE¼; Section 3 except NE¼ NE¼; Sections 4–11; Section 12 except NE¼ NE¼; Sections 13–23; Section 24 except NE¼ NW¼; Sections 25–29; Section 30 except W½ SW¼; E½, S½ SW¼ Section 31; Sections 32–35; Section 36 except S½ SE¼, NE¼ SE¼, SE¼ SW¼.

T.38S., R.10W. Willamette Meridian: Section 1; Section 2 except W½, SW¼ SE¼; E½ NE¼, NE¼ SE¼ Section 11; Section 12; Section 13 except W½ SW¼; NE¼, E½ SE¼ Section 24.

T.39S., R.09W. Willamette Meridian: Section 2 except E½ SE¼, SE¼ NE¼; Sections 3–10; Section 11 except E½ E½, SW¼ SE¼; NW¼, W½ SW¼ Section 14; Sections 15–17; Section 18 except W½ W½, SE¼ SW¼; N½ N½, SE¼ NE¼ Section 20; N½, NW¼ SE¼ Section 21; NW¼, W½ NE¼, NW¼ SW¼ Section 22.



Map and description of OR–07–f taken from United States Fish and Wildlife Service 1:100,000 map; Port Orford, Canyonville, Gold Beach and Grants Pass, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.32S., R.09W. Willamette Meridian: Section 34 except NW¼ NW¼; W½ SW¼, SW¼ SW¼ Section 35.

T.32S., R.10W. Willamette Meridian: Section 25; E½ Section 26; Section 35 except N½ NW¼, SW¼ NW¼, SW¼ SW¼ Section 35; Section 36.

T.33S., R.09W. Willamette Meridian: W½ SW¼, SW¼ NW¼ Section 1; Section 2 except N½ NE¼; Sections 3–11; W½ NW¼ Section 12; Sections 14–23; Sections 26–35.

T.33S., R.10W. Willamette Meridian: Section 1; Section 2 except NW¼ NW¼; SE¼ Section 3; S½ S½ Section 5; E½ E½, N½ SW¼, NW¼ SE¼, SW¼ NE¼ Section 9; Sections 10–14; Section 15 except SW¼ SW¼; NE¼ NE¼ Section 16; S½ SE¼ Section 21; Section 22 except W½ NW¼; Sections 23–27; Section 28 except NW¼, NE¼ SW¼; E½ E½ Section 31; Section 32 except NW¼ NE¼, NE¼ NW¼; Sections 33–36.

T.34S., R.09W. Willamette Meridian: Sections 2–11; Sections 14–23; Sections 26–35.

T.34S., R.10W. Willamette Meridian: Sections 1–5; Section 6 except NW¼, NW¼ NE¼; Sections 7–11; Sections 12–30; N½, NE¼ SE¼ Section 31; Sections 32–36.

T.34S., R.10 ½W. Willamette Meridian: S½ Section 7; Section 18–19; Section 30–31.

T.34S., R.11W. Willamette Meridian: E½ SE¼, SE¼ NE¼ Section 11; Section 12 except E½, E½ SW¼, NW¼ NW¼; Section 13 except NE¼, NE¼ NW¼; E½ E½, SW¼ SW¼ Section 14; SE¼ SE¼ Section 15; E½ SW¼ Section 21; SE¼, E½ NE¼, S½ SW¼, NW¼ SW¼ Section 22; Section 23 except NE¼ NW¼, NW¼ NE¼; Sections 24–28; SE¼ NE¼, NE¼ SE¼ Section 31; Section 32 except NW¼ NW¼; Sections 33–36.

T.35S., R.09W. Willamette Meridian: Sections 2–11; Sections 14–20; Section 21 except S½ SE¼, NE¼ SE¼, NE¼ NE¼; SW¼ SW¼ Section 27; W½ W½, S½ SE¼, SE¼ SW¼ Section 28; Sections 29–31; Section 32 except SE¼ SW¼, SW¼ SE¼; Section 33; Section 34 except E½, NE¼ NW¼.

T.35S., R.10W. Willamette Meridian: Sections 1–5; E½ SE¼ Section 6; NE¼ NE¼ Section 7; N½ NW¼, SE¼ SE¼ Section 8; Section 9 except W½ NW¼, NW¼ SW¼; Sections 10–16; Section 17 except N½ NW¼, SW¼ NW¼; S½ SE¼, NE¼ SE¼, SE¼ SW¼ Section 18; Sections 19–36.

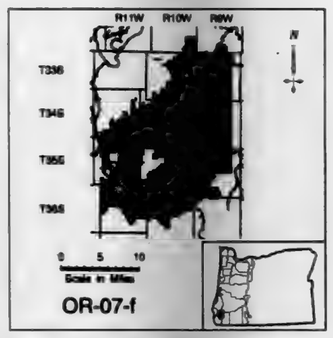
T.35S., R.10 ½W. Willamette Meridian: Section 6; Section 7 except E½ E½; Section 18 except S½ NE¼, NE¼ NE¼, SE¼; NW¼, W½ SW¼, NW¼ NE¼ Section 19; W½ W½ Section 30; Section 31 except N½ NE¼, NE¼ NW¼.

T.35S., R.11W. Willamette Meridian: Sections 1–5; E½ E½ Section 6; E½ E½ Section 7; Sections 8–15; Section 17; E½ NE¼ Section 18; SE¼ SE¼ Section 19; Section 20; Section 21 except SW¼ NE¼, NW¼ SE¼, SE¼ NW¼, SE¼ SW¼; Sections 22–28; NW¼, S½ SE¼, NW¼ SE¼, NE¼ SW¼ Section 29; E½ E½ Section 31; Section 32 except NW¼ NE¼, NE¼ NW¼; Sections 33–36.

T.36S., R.09W. Willamette Meridian: NW¼ NW¼ Section 3; N½ N½ Section 4; NW¼ NW¼ Section 5; Section 6 except S½ SE¼, NE¼ SE¼; NW¼ NW¼ Section 7.

T.36S., R.10W. Willamette Meridian: Sections 1–11; Section 12 except S½ S½, NE¼ SE¼; N½ NW¼, SW¼ NW¼ Section 14; N½, NW¼ SW¼ Section 15; Section 16; Section 17 except S½ SW¼; Section 18 except S½ SE¼, SW¼ SW¼; N½ NE¼, SE¼ NE¼ Section 20; Section 21 except W½ SW¼.

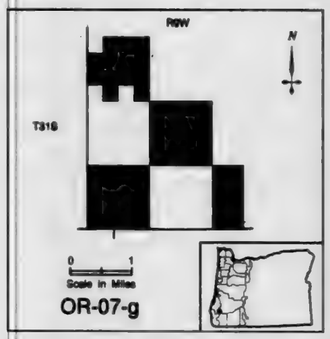
T.36S., R.11W. Willamette Meridian: Sections 1–3; Section 4 except NE¼ SW¼, SW¼ NE¼, SE¼ NW¼, NW¼ SE¼; Sections 5–15; Sections 16 except S½ SW¼; S½ S½ Section 17; Section 18; Section 19 except SE¼, S½ SW¼, SE¼ NE¼; E½ NE¼ Section 21; Section 22 except SW¼ SW¼; Sections 23–24; N½ N½ Section 25; Section 26 except SE¼, S½ NE¼, SE¼ SW¼; NE¼, E½ SE¼, NE¼ NW¼.



Map and description of OR–07–g taken from United States Fish and Wildlife Service 1:100,000 map; Canyonville, Oregon; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.31S., R.09W. Willamette Meridian: Section 19 except NW¼ NW¼; SW¼ SW¼, SW¼ SE¼, Section 29; Section 31; W½ Section 33.

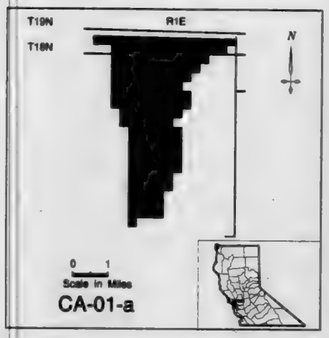


Map and description of CA–01–a taken from United States Fish and Wildlife Service 1:100;000 map; Grants Pass, Oregon; Crescent City and Happy Camp, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.18N., R.01E. Humboldt Meridian: NW¼ NW¼ Section 1; W½, NE¼, NW¼ SE¼ Section 2; Section 3; E½ Section 4; NE¼, E½ SE¼ Section 9; Section 10; W½ NE¼, NW¼, W½ SW¼, NE¼ SW¼ Section 11; W½ Section 14; Section 15; Section 22; W½ NW¼, NE¼ NW¼, NW¼ SW¼ Section 23; N½, NW¼ SW¼ Section 27.

T.19N., R.01E. Humboldt Meridian: Section 33 except S½ SW¼; Section 34; Section 35; Section 36 except SE¼ SE¼.



Map and description of CA–01–b taken from United States Fish and Wildlife Service 1:100;000 map; Crescent City and Happy Camp, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.14N., R.03E. Humboldt Meridian: NW¼ Section 27; SE¼, S½ SW¼, NE¼ SW¼, S½ NE¼, NE¼ NE¼ Section 28; E½ SE¼, SE¼ SE¼ Section 29; E½, N½ NW¼, SE¼ NW¼ Section 33.

T.13N., R.03E. Humboldt Meridian: NW¼ NW¼ Section 3.

T.17N., R.02E. Humboldt Meridian: S½ SE¼ Section 29; Section 31 except NW¼; SW¼, W½ NW¼, SE¼ NW¼, SW¼ NE¼ Section 32.

T.17N., R.01E. Humboldt Meridian: S½ SW¼, W½ SE¼ Section 35; SW¼ SW¼ Section 36.

T.16N., R.03E. Humboldt Meridian: S½ S½, SW¼ NW¼ Section 17; SE¼, E½ SW¼, S½ NE¼ Section 18; Section 19 except NW¼ NW¼, NW¼ SW¼; Section 20; SW¼, W½ NW¼, SW¼ SE¼ Section 21; W½ SW¼, NE¼ SW¼, SW¼ NW¼ Section 27; Sections 28–33; S½, S½ NW¼, SW¼ NE¼ Section 34.

T.16N., R.02E. Humboldt Meridian: W½ Section 5; Section 6 except SW¼ SW¼; Section 7; Section 8 except NE¼ NE¼; W½ SW¼, SE¼ NW¼ Section 9; W½ NW¼, SW¼ SW¼, SW¼ SE¼ Section 16; Section 17–21; Section 22 except N½ NE¼, SE¼ NE¼, SE¼ NE¼, N½ SE¼, NE¼ NW¼; S½, SW¼ NE¼ Section 25; Section 26 except NE¼ NE¼; Sections 27–29; E½ NE¼, NW¼ NE¼ Section 30; Section 32 except W½ SW¼; Sections 33–36.

T.16N., R.01E. Humboldt Meridian: Sections 1–2; SE¼, SE¼ NE¼ Section 3; NE¼, NE¼ NW¼ Section 10; N½, E½ SE¼ Section 11; Section 12; N½ NE¼, NE¼ NW¼ Section 13; NE¼ Section 24.

T.15N., R.03E. Humboldt Meridian: Section 2 except N½ NE¼, NE¼ NW¼; Sections 3–6; N½ Section 7; S½ SE¼, SE¼ SW¼ Section 8; Sections 9–10; W½, W½ NE¼ Section 11; SW¼ SW¼ Section 13; Section 14 except NE¼, NE¼ SE¼; Sections 15–17; Section 18 except NW¼, SW¼ NE¼, NW¼ SW¼; NE¼, NE¼ NW¼ Section 19; Section 20 except SW¼; Sections 21–23; W½ NW¼, NW¼ SW¼ Section 24; Section 27 except E½ E½, SW¼ NE¼, NW¼ SE¼, SW¼ SW¼; NW¼, E½ NE¼, NW¼ NE¼ Section 28; NE¼, N½ SE¼, NE¼ SW¼ Section 29.

T.15N., R.02E. Humboldt Meridian: Sections 1–3; N½ N½, SE¼ NE¼ Section 4; NE¼ NE¼ Section 5; Section 10 except SW¼, W½ NW¼; Section 11; Section 12 except SE¼ SE¼; Section 13 except E½ E½, SW¼ SE¼; Section 14; E½ NE¼, NE¼ SE¼ Section 15; Section 23 except SE¼, S½ NE¼, NW¼ NW¼; S½ SW¼, NE¼ NE¼ Section 24; Section 25 except S½ SE¼, S½ NE¼, NE¼ NE¼, NW¼ NW¼; Section 26 except NE¼ NE¼; S½, SE¼ NE¼ Section 27; E½ SE¼, SW¼ SE¼, SW¼ NE¼ Section 28; Section 33–34; Section 35 except NE¼, E½ SE¼.

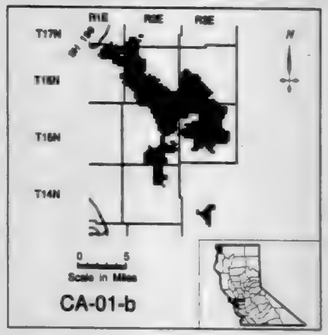
T.14N., R.02E. Humboldt Meridian: Section 3; Section 10; NW¼ Section 11; NW¼ NW¼ Section 14.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.14N., R.03E. Humboldt Meridian: NW¼ Section 27; SE¼, S½ SW¼, NE¼ SW¼, S½ NE¼, NE¼ NE¼ Section 28; E½ SE¼, SE¼ SE¼ Section 29; E½, N½ NW¼, SE¼ NW¼ Section 33.

T.13N., R.03E. Humboldt Meridian: NW¼ NW¼ Section 3.



Map and description of CA–01–c taken from United States Fish and Wildlife Service 1:100;000 map; Happy Camp and Hoopa, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T. 11N., R.06E. Humboldt Meridian: N½ NW¼, SW¼ NW¼, NW¼ NE¼ Section 30.

T. 11N., R.05E. Humboldt Meridian: N½ NW¼, SE¼ NW¼, NE¼ SW¼ Section 36.

T. 10N., R.04E. Humboldt Meridian: NE¼ NE¼ Section 6.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T. 14N., R.05E. Humboldt Meridian: S½ SW¼, NW¼ SW¼, SW¼ SE¼ Section 7; Section 18 except E½ E½, SW¼ NE¼, Section 31 except NE¼, E½ NW¼, NE¼ SE¼.

T. 14N., R.04E. Humboldt Meridian: SE¼, SE¼ SW¼ Section 12; Section 13 except W½ NW¼, Section 24; Section 25 except SE¼ NE¼; NE¼, E½ SE¼ Section 26; SE¼, E½ NE¼ Section 35; Section 36.

T. 13N., R.05E. Humboldt Meridian: S½ SW¼, NW¼ SW¼ Section 5; Sections 6–7; Section 8 except NE¼, W½ NW¼, NW¼ SE¼; SW¼ Section 10; W½, SW¼ SE¼ Section 15; Sections 16–21; W½, W½ NE¼ Section 22; N½ N½ Section 28; Section 29 except SE¼; Sections 30–31, Section 32 except NE¼, E½ SE¼; SE¼, SE¼ NE¼, SE¼ SW¼ Section 35; Section 36 except N½, NE¼ SE¼.

T. 13N., R.04E. Humboldt Meridian: Section 1; Section 2 except W½ NW¼, NW¼ SW¼; S½ SE¼ Section 3; SE¼ SE¼ Section 9; Sections 10–15; E½ E½ Section 16; SE¼, S½ NE¼, NE¼ NE¼, SE¼ SW¼ Section 21; Sections 22–28; Section 29 except N½ N½; Section 30 except N½ N½, SW¼ NW¼; Sections 31–36.

T. 13N., R.03E. Humboldt Meridian: SE¼ SE¼, SW¼ SW¼ Section 25; Section 35 except N½ NW¼, SW¼ NW¼, NW¼ SW¼; Section 36.

T. 12N., R.06E. Humboldt Meridian: W½ W½ Section 6; Section 7 except E½ E½,

NW¼ NE¼, NE¼ NW¼; NW¼, W½ NE¼ Section 18.

T. 12N., R.05E. Humboldt Meridian: Section 1 except SE¼ SW¼; Section 2; S½, SE¼ NE¼ Section 3; Section 4 except N½ NE¼; Sections 5–23; Section 24 except E½ E½; Sections 25–36.

T. 12N., R.04E. Humboldt Meridian: Sections 1–36.

T. 12N., R.03E. Humboldt Meridian: Sections 1–2; S½, E½ NE¼ Section 3; Section 10 except W½ W½, NE¼ NW¼; Sections 11–14, Section 15 except W½ W½; E½ NE¼, N½ SE¼ Section 22; Section 23; Section 24; Section 25 except N½ SE¼, SW¼ SE¼, SW¼ NE¼; N½ NE¼, SE¼ NE¼ Section 26.

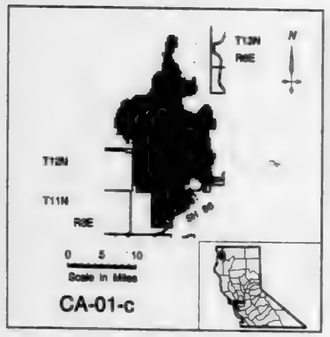
T. 11N., R.06E. Humboldt Meridian: SW¼, W½ NW¼, W½ SE¼ Section 6; W½, NW¼ NE¼ Section 7; NW¼ NW¼, NW¼ SW¼ Section 18; W½ W½, SE¼ SW¼ Section 19; N½ NW¼, SW¼ NW¼, NW¼ NE¼ Section 30.

T. 11N., R.05E. Humboldt Meridian: Sections 1–20; Section 21 except NW¼ SW¼, SE¼ SW¼; Sections 22–24; Section 25 except SE¼, SE¼ NE¼; Section 26 except SW¼, SW¼ SE¼, SW¼ NW¼; NE¼ NE¼, NW¼ NW¼ Section 27; Sections 28–32; W½ W½, E½ SE¼, SW¼ SE¼, SE¼ SW¼ Section 33, W½ SW¼ Section 34.

T. 11N., R.04E. Humboldt Meridian: Sections 1–17, Section 18 except SW¼ NW¼, NW¼ SW¼; Section 19 except SW¼ NW¼; Sections 20–30; N½ N½, E½ SE¼, SE¼ NE¼ Section 31; Sections 32–36.

T. 10N., R.05E. Humboldt Meridian: NW¼, W½ SW¼, SW¼ NE¼, NE¼ SE¼ Section 3, Sections 4–9, Section 10 except S½, E½ NE¼, NW¼ NE¼; NW¼ NW¼ Section 11; NW¼, N½ NE¼, NW¼ SW¼ Section 16; Section 17 except NW¼ NW¼, SE¼ SE¼; Section 18 except E½ NE¼, NE¼ SE¼; Section 19 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; NW¼ NW¼, W½ SW¼ Section 30.

T. 10N., R.04E. Humboldt Meridian: Sections 1–3; N½ N½ Section 4; N½ N½ Section 5; Sections 10–15; Sections 22–23; Section 24 except SE¼ SW¼; Section 25 except N½ NE¼, NE¼ NW¼; Sections 26–27.



Map and description of CA–01–d taken from United States Fish and Wildlife Service 1:100;000 map; Happy Camp California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.17N., R.03E. Humboldt Meridian: E½ E½, NW¼ NE¼ Section 24; E½ E½, W½ SE¼, SE¼ SW¼ Section 25; N½ N½ Section 36.

T.16N., R.03E. Humboldt Meridian: S½ SW¼, SE¼, NE¼ SW¼ Section 1; NE¼ SE¼, SE¼ NE¼ Section 11; Section 12; Section 13 except W½ SW¼, SW¼ NW¼; E½ NE¼, NE¼ NW¼, SE¼ NE¼, NE¼ SE¼ Section 24; E½ SE¼, SW¼ SE¼ Section 25; Section 36 except W½ W½, E½ SW¼, W½ SE¼.

T.15N., R.07E. Humboldt Meridian: SW¼ NW¼, NW¼ SW¼ Section 7.

T.15N., R.06E. Humboldt Meridian: NW¼ Section 13.

T.15N., R.03E. Humboldt Meridian: E½ E½ Section 1; E½ E½, SW¼ SE¼ Section 12.

T.14N., R.06E. Humboldt Meridian: Section 4 except E½ E½, SW¼ SE¼, SE¼ SW¼; E½ Section 5; E½ Section 8; Section 9 except E½ NE¼, NE¼ SE¼; Section 16 except NE¼ SE¼; E½ Section 17; NE¼ Section 20; Section 21 except SW¼ SW¼; SW¼, S½ NW¼ Section 22; NE¼ NW¼ Section 28.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.18N., R.04E. Humboldt Meridian: SW¼ SE¼ Section 33; E½ SE¼ Section 35; S½ SW¼, NW¼ SW¼ Section 36.

T.17N., R.06E. Humboldt Meridian: S½ SW¼, NW¼ SW¼, SW¼ SE¼ Section 14; S½ SW¼, NE¼ SE¼ Section 15; S½ SE¼, NW¼ SE¼ Section 16; E½ Section 21; Section 22; Section 23 except NE¼ NE¼; W½ SW¼ Section 24; Section 26 except E½ SE¼; Section 27 except SW¼, W½ SE¼, SE¼ NW¼; NE¼ NE¼ Section 28.

T.17N., R.05E. Humboldt Meridian: SW¼, SW¼ NW¼ Section 4; Section 5 except N½ N½, SW¼ NW¼; Section 6 except NE¼, E½ NW¼; Section 7–8; W½ NW¼ Section 9.

T.17N., R.04E. Humboldt Meridian: S½, S½ NW¼, NE¼ NW¼ Section 1; Section 2 except NE¼ NE¼, SW¼ SW¼; Section 3 except E½ SE¼, W½ NW¼, NE¼ NW¼, NW¼ NE¼; S½, S½ NW¼; NW¼ NW¼ Section 5; E½ SE¼ Section 6; Section 7 except NW¼; Sections 8–9; Section 10 except S½ S½, NE¼ SE¼, NE¼ NE¼; NE¼ NE¼ Section 11; Section 12 except S½ SW¼, SW¼ SE¼; Section 16 except E½ NE¼, NE¼ SE¼; Sections 17–18; Section 19 except E½ E½; SE¼, NE¼ SW¼ Section 20; S½ Section 21; SW¼, S½ SE¼ Section 22; Section 27 except SE¼ SE¼; Section 28 except SW¼ SW¼; E½ NE¼, NW¼ NE¼, S½ SW¼, NW¼ SW¼ Section 29; Section 30; Section 31 except W½ SW¼; Section 32 except NE¼ NE¼; E½ NE¼, NW¼ NE¼; S½ SW¼, NW¼ SW¼, SW¼ SE¼ Section 33; NW¼, W½ NE¼, NE¼ SW¼, NW¼ SE¼ Section 34.

T.16N., R.04E. Humboldt Meridian: Section 2 except N½, E½ SE¼, W½ SW¼; Section 3 except NE¼, E½ SE¼, NE¼ NW¼; Sections 4–7; NW¼, W½ SW¼, E½ NE¼, NW¼ NE¼ Section 8; SW¼ SW¼ Section 9; Section 10 except S½ SE¼, Section 11 except S½ S½; NW¼ NW¼ Section 15; N½ NE¼, NE¼ NW¼ Section 16; NW¼ NW¼ Section 17; Sections 18–19; Section 30 except SE¼ SE¼; W½, W½ NE¼ Section 31.

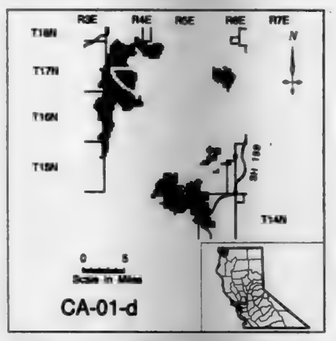
T.15N., R.06E. Humboldt Meridian: W½ SW¼ Section 2; S½ Section 3; SE¼ NE¼, SE¼ Section 4; E½ SE¼ Section 9; Section 10 except E½ NW¼, NW¼ NE¼; N½ NW¼ Section 11; NE¼ SE¼, SE¼ NE¼ Section 12; S½ NE¼ Section 14; NW¼ NW¼ Section 15; Section 16 except S½, NW¼ NW¼; S½ NE¼ Section 22; W½ NW¼ Section 23; NW¼ SW¼ Section 28; Section 29 except NW¼, N½ NE¼, NW¼ SW¼; E½ SE¼, SW¼ SE¼, SE¼ SW¼ Section 30; Section 31 except NW¼ NW¼, SW¼ SW¼; Section 32; S½ S½ Section 33.

T.15N., R.05E. Humboldt Meridian: SE¼ Section 22; Section 23 except N½, NW¼ SE¼; W½ SW¼ Section 24; W½ NW¼, NW¼ SW¼ Section 25; Section 26; Section 27 except N½ NW¼; S½ SE¼, NE¼ SE¼ Section 28; E½, E½ SW¼ Section 33; Sections 34–35; Section 36 except SE¼ NE¼.

T.15N., R.04E. Humboldt Meridian: W½ Section 6; N½ NW¼, SW¼ NW¼, NW¼ SW¼ Section 7.

T.14N., R.06E. Humboldt Meridian: W½ Section 5; Section 6; Section 7; W½ Section 8; Section 17 except W½ SW¼; E½ NE¼ Section 18; N½ NW¼, SE¼ NW¼ Section 20.

T.14N., R.05E. Humboldt Meridian: Sections 1–2; Section 3 except SE¼, S½ NW¼; NW¼, N½ NE¼ Section 4; NE¼, N½ SE¼, N½ NW¼ Section 10; Section 11 except SW¼ SW¼; Section 12; N½ N½ Section 13; E½ NE¼ Section 14.



Map and description of CA–01–e taken from United States Fish and Wildlife Service 1:100;000 map; Grants Pass, Oregon; Happy Camp, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.41S., R.07W. Willamette Meridian: S½ SW¼, NW¼ SW¼ Section 6; N½ NW¼, SW¼ NW¼ Section 7; SE¼, SE¼ NE¼ Section 8; S½ SE¼, SW¼, S½ NW¼ Section 9; NW¼ NE¼, E½ E½ Section 17.

T.41S., R.08W. Willamette Meridian: Section 1 except N½ N½, S½ SW¼, NE¼ SW¼; Section 2 except N½ N½; W½ SW¼, SW¼ NW¼ Section 3; Section 4 except N½ N½, W½ SW¼, SW¼ NW¼; Section 7 except N½ NE¼, NE¼ NW¼; W½ SW¼, SW¼ NW¼ Section 8; Section 9 except W½ W½; W½ NW¼, E½ SE¼ Section 10; Section 11 except SE¼ NE¼; Section 12–14; Section 15 except N½ NW¼, NW¼ NE¼; Section 16 except NW¼ NW¼; Section 17 except N½ NE¼; Section 18.

T.41S., R.09W. Willamette Meridian: SE¼ NE¼ Section 12; NE¼ NE¼ Section 13.

T.19N., R.06E. Humboldt Meridian: SE¼ SE¼ Section 31; Section 32 except NW¼ NW¼; W½ Section 33.

T.19N., R.05E. Humboldt Meridian: Section 32 except W½ W½, S½ SW¼; Sections 33–34; Section 35 except S½ SW¼, SW¼ SE¼; NW¼ NW¼ Section 36.

T.19N., R.04E. Humboldt Meridian: Section 32; W½ Section 33.

T.18N., R.05E. Humboldt Meridian: Section 5 except NW¼; SE¼ Section 6; Section 7 except S½ S½, NW¼ SW¼; Section 16–17; SE¼, E½ SW¼, S½ NW¼, NW¼ NW¼, S½ NE¼ Section 18; N½ Section 19.

T.18N., R.04E. Humboldt Meridian: W½ SW¼ Section 2; Section 3 except E½ NE¼, NW¼ NW¼, W½ SE¼, SE¼ SW¼; W½, NW¼ SE¼, SW¼ NE¼ Section 4; NE¼ NW¼ Section 9.

T.18N., R.03E. Humboldt Meridian: Section 1 except SW¼ SW¼; E½ SE¼, SW¼ SE¼, SE¼ NE¼, SW¼ Section 2; Section 11 except SE¼ SE¼; NW¼ NE¼ Section 12; W½ NW¼ Section 14; Section 15 except W½, NW¼ NE¼; E½ NW¼, W½ NE¼, E½ SW¼, SW¼ SW¼, NE¼ NE¼, NW¼ SE¼ Section 22; W½ Section 27; SE¼, SE¼ NE¼, SE¼ SW¼ Section 28; E½ SE¼, SE¼ NE¼ Section 32; Section 33 except NW¼ NW¼; W½ Section 34.

T.17N., R.03E. Humboldt Meridian: N½ NW¼, SW¼ NW¼, NW¼ SW¼ Section 3; Section 4 except S½ S½.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

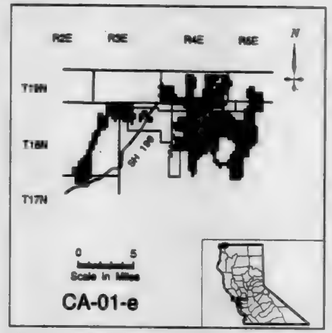
T.18N., R.06E. Humboldt Meridian: Section 5 except E½ E½; E½ E½, S½ SW¼, SW¼ SE¼ Section 6; Section 7; Section 8 except NE¼ NE¼; Sections 17–19; NW¼, W½ SW¼, NW¼ NE¼ Section 20; NW¼ NW¼ Section 29; Section 30 except E½ SE¼, SE¼ NE¼; Section 31 except E½ E½, SW¼ SE¼.

T.18N., R.05E. Humboldt Meridian: Section 1 except N½ NE¼, SE¼ NE¼; Sections 2–4; Sections 8–12; Section 13 except W½ SW¼; SE¼ SW¼, SW¼ SE¼; Section 14 except SE¼; Section 15; Section 20 except S½ SW¼, SW¼ SE¼; Section 21; Section 22 except SW¼ SE¼; NW¼, N½ SW¼, SW¼, SW¼ SW¼ Section 23; SE¼ SE¼ Section 24; Section 25 except NW¼, NW¼ SW¼; W½ NW¼, N½ SW¼, SE¼ SW¼, S½ SE¼ Section 26; Section 28 except SE¼, SE¼ NE¼; E½ E½ Section 29; E½ NE¼ Section 32; Section 33 except E½, SE¼ SW¼; NW¼ NE¼ Section 35; E½, NE¼ NW¼ Section 36.

T.18N., R.04E. Humboldt Meridian: Section 5; N½ NE¼, NE¼ NW¼ Section 8.

T.17N., R.06E. Humboldt Meridian: N½ NW¼ Section 6.

T.17N., R.05E. Humboldt Meridian: N½ NE¼ Section 1.



Map and description of CA–02–a taken from United States Fish and Wildlife Service 1:100;000 map; Crescent City, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.14N., R.01E. Humboldt Meridian: SE¼, S½ NE¼, E½ SW¼ Section 21; S½ SW¼, NW¼ SW¼ Section 22; N½ NW¼, SW¼ NW¼ Section 27; Section 28 except SW¼, NW¼ NW¼, S½ SE¼.

T.17N., R.01E. Humboldt Meridian: SW¼ SW¼ Section 21; W½ NW¼, NW¼ SW¼ Section 28; E½ NE¼, NE¼ SE¼ Section 29.

Proposed Critical Habitat includes only State lands described within the following areas:

T.14N., R.01E. Humboldt Meridian: Section 6 except NE¼, E½ SE¼, SW¼ SW¼; E½ W½, NW¼ NE¼, SW¼ SE¼ Section 7; NE¼ SE¼, NW¼ NE¼ Section 18.

T.15N., R.01E. Humboldt Meridian: W½ SW¼ Section 6; S½ Section 7; Section 8 except E½ E½, W½ NW¼; N½, W½ SW¼ Section 17; Sections 18–19; W½ NW¼ Section 20; W½, N½ NE¼ Section 30; W½ Section 31.

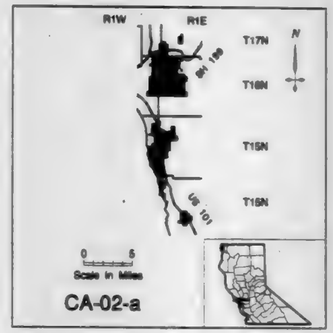
T.15N., R.01W. Humboldt Meridian: E½ SE¼, SW¼ SE¼, SE¼ SW¼ Section 1; Section 12 except W½ NW¼, NW¼ SW¼; E½, SE¼ SW¼ Section 13; Sections 24–25; E½, N½ NW¼ Section 36.

T.16N., R.01E. Humboldt Meridian: W½ NW¼ Section 4; Section 5 except SE¼ SE¼; Sections 6–7; Section 8 except SE¼ NE¼, NE¼ SE¼; SW¼ NW¼, S½ SW¼ Section 9; W½, E½ NE¼ Section 16; Sections 17–20; W½, W½ SE¼ Section 21.

T.16N., R.01W. Humboldt Meridian: Section 1; SE¼ SE¼ Section 2; Sections 12–13; E½ E½ Section 14; SE¼, E½ NE¼ Section 23; Section 24.

T.17N., R.01E. Humboldt Meridian: SW¼, SW¼ SE¼ Section 30, Section 31 except E½ SE¼, NE¼ NE¼.

T.17N., R.01W. Humboldt Meridian: SE¼ SE¼ Section 25; S½, E½ NE¼ Section 36.



Map and description of CA–02–b taken from United States Fish and Wildlife Service 1:100;000 map; Orick and Hoopa, California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

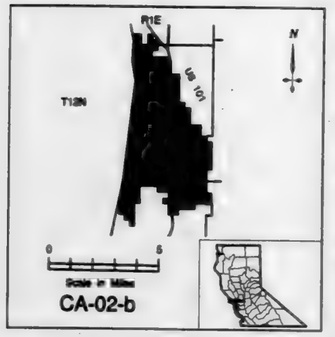
T.11N., R.01E. Humboldt Meridian: Section 1; Section 2; N½ N½ Section 3; Section 4 except E½ SE¼, SE¼ NE¼; W½ E½, NW¼, NE¼ SW¼ Section 9; N½ NE¼, SW¼ NE¼, E½ NW¼ Section 11; N½ NW¼ Section 12.

T.11N., R.02E. Humboldt Meridian: W½ SW¼ Section 6.

T.12N., R.01E. Humboldt Meridian: N½ NW¼, SW¼ NW¼, S½ Section 3; E½ W½, E½ Section 4; Section 9; Section 10; S½ NW¼, SW¼ Section 11; W½, NW¼ SE¼, S½ SE¼ Section 14; Section 15; Section 16; Section 21; Section 22; Section 23; SW¼ Section 24; Section 25; Section 26; Section 27; Section 28; Section 33; Section 34; Section 35; Section 36.

T.12N., R.02E. Humboldt Meridian: SW¼ NW¼, W½ SW¼ Section 30; W½ NW¼ Section 31.

T.13N., R.01E. Humboldt Meridian: SW¼,W½ SE¼ Section 33; SW¼ SW¼ Section 34.



Map and description of CA–02–c taken from United States Fish and Wildlife Service 1:100;000 map; Orick, California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

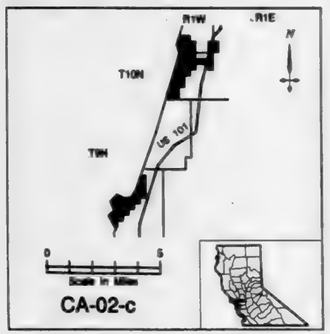
T.09N., R.01W. Humboldt Meridian: W½ SW¼, SW¼ NW¼ Section 24 above Mean High Water (MHW); NW¼ NW¼ Section 25; Section 26 except S½ SE¼, NE¼ SE¼; Section 27 to MHW; NE¼ Section 34; NW¼ NW¼ Section 35.

T.10N., R.01E. Humboldt Meridian: Section 29 except S½ S½, NW¼ SE¼, NE¼ SW¼, NW¼ NE¼, NE¼ NW¼; Section 30 above MHW; W½, W½ NE¼ Section 31.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only State lands described within the following areas:

T.10N., R.01E. Humboldt Meridian: E½ SE¼, W½ SW¼ Section 20; Section 19 above MHW.



Map and description of CA–03–a taken from United States Fish and Wildlife Service 1:100;000 map; Eureka and Hayfork, California; 1995.

Proposed Critical Habitat includes only Private lands described within the following areas:

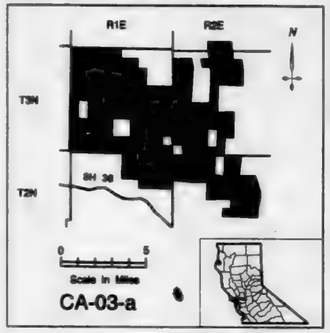
T.02N., R.01E. Humboldt Meridian: Section 1–3; N½ Section 10; Section 11–12.

T.02N., R.02E. Humboldt Meridian: Section 3; W½ Section 4; Section 5–6; N½ Section 7; N½ Section 8; Section 9–14; Section 15 except SW¼; N½ Section 16; N½ Section 22; N½ Section 23.

T.03N., R.01E. Humboldt Meridian: S½ Section 3; Section 4–10; W½ Section 11; Section 13–18; W½ Section 19; Section 20–26; E½ Section 27; W½ Section 28; Section 29–35; Section 36 except NE¼.

T.03N., R.02E. Humboldt Meridian: Section 3 except NE¼; Section 4; SE¼ Section 5; S½ Section 6; Section 7; Section 9; Section 10; W½ Section 16; Section 18–20; Section 21 except NE¼; SW ¼ Section 22; W½ Section 27; Section 28 except SW¼; Section 29–30; Section 31 except SW¼; Section 32; Section 33 except NW¼.

T.04N., R.02E. Humboldt Meridian: S½ Section 33; SW¼ Section 34.



Map and description of CA–04–a taken from United States Fish and Wildlife Service 1:100;000 map; Cape Mendocino and Garberville, California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.01N., R.01E. Humboldt Meridian: SE¼ SW¼, SE¼ Section 24; SW¼ NW¼, N½ N½ Section 25; S½ NE¼, NE¼ NE¼, SE¼ NW¼ Section 26.

T.01N., R.02E. Humboldt Meridian: E½ NE¼ Section 11; NW¼ Section 12; S½, S½ SW¼, SE¼ NE¼ Section 19; W½ W½ Section 29; N½ NW¼, E½ SE¼, SE¼ NW¼, NE¼ Section 30; NW¼ NW¼, SE¼, E½ SW¼ Section 32.

T.01S., R.01E. Humboldt Meridian: SE¼ NE¼, E½ SE¼ Section 15; SW¼ NW¼, SW¼, W½ SE¼, SE¼ SE¼ Section 14; S½ S½ Section 13; E½ E½, SW¼ SE¼, SE¼ SW¼ Section 22; Sections 23–27; Section 28 except N½, NW¼, NW¼ SW¼, SW¼ NW¼; Section 33 except SW¼ NW¼, SW¼, SW¼ SE¼; Sections 34–36.

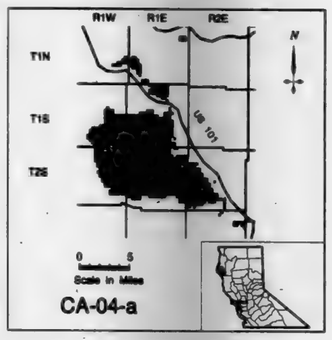
T.01S., R.02E. Humboldt Meridian: Section 3; Section 4 except SW¼ NW¼; NE¼ NE¼ Section 9; N½ NW¼, SE¼ NW¼, N½ NE¼, SW¼ NE¼, NE¼ SE¼ Section 10; W½ NW¼, SW¼, E½ NW¼ Section 14; SE¼ Section 15; S½ NW¼, SW¼, S½ SE¼ Section 16; S½, SE¼ NE¼ Section 17; S½ S½ Section 18; Sections 19–22; W½ Section 23; W½ Section 26; Sections 27–34; W½ NW¼, N½ SW¼, SW¼ SW¼, SW¼ SE¼, S½ SE¼ NW¼ SE¼ Section 35.

T.02S., R.01E. Humboldt Meridian: Sections 1–2; Section 3 except SE¼ SE¼; E½ E½ Section 4; E½ E½ Section 9; Section 10–14; Section 15 except W½, SW¼; E½, E½ NW¼, NW¼ NW¼ Section 22; Sections 23–25; Section 26 except SW¼ NE¼, SW¼, S½ NW¼.

T.02S., R.02E. Humboldt Meridian: S½ Section 1; Section 2 except NE¼, NE¼; Sections 3–24; Section 25 except SW¼ SW¼; N½ Section 26; Section 27 except S½ S½; Section 28 except S½, NW¼ SW¼; Section 29 except SE¼; Section 30 except E½, SE¼ SW¼, SW¼ SE¼; NE¼ NW¼, N½ NE¼ Section 36.

T.02S., R.03E. Humboldt Meridian: Section 7 except N½; NW¼ SW¼ Section 8; Section 17 except NE¼, E½ SE¼; Sections 18–20; Section 21 except E½ NW¼, W½ NE¼, NE¼ NE¼, SE¼; S½ S½, NW¼ SW¼, SW¼ NW¼ Section 27; Section 28 except NE¼ NE¼; Section 29; Section 30; Section 31 except S½ S½, NW¼ SE¼; N½ Section 32 except SE¼ NE¼; N½ NE¼, NE¼ NW¼ Section 33; E½ E½ SE¼ Section 34.

T.03S, R.03E. Humboldt Meridian: SE¼ NW¼, NW¼ NE¼ Section 3; E½ NE¼ Section 11; NE¼, NE¼ SE¼, N½ NW¼, SW¼ NW¼ Section 12.



Map and description of CA–04–b taken from United States Fish and Wildlife Service 1:100;000 map; Garberville, California; 1995.

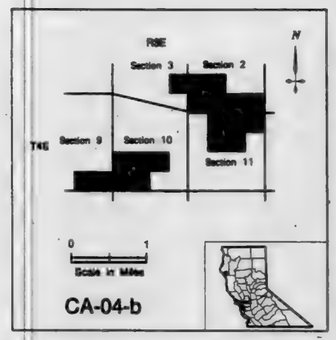
Proposed Critical Habitat includes only State lands described within the following areas:

T.04S., R.03E. Humboldt Meridian: SW¼, S½ SE¼ Section 2; S½ SE¼ Section 9; SW¼, NW¼ SE¼ Section 10; E½ NW¼, W½ NE¼, NE¼ NE¼ Section 11.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only State lands described within the following areas:

T.04S., R.03E. Humboldt Meridian: NE¼ SE¼ Section 3.



Map and description of CA–05–a taken from United States Fish and Wildlife Service 1:100;000 map; Cape Mendocino, Garberville and Covelo, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.02S., R.02E. Humboldt Meridian: SE¼ SE¼ Section 31; SW¼ SE¼ Section 32.

T.03S., R.02W. Humboldt Meridian: SE¼ SE¼ Section 12; Sections 13–14; Section 15 East of Mean High Water (MHW); Section 16 East of MHW except N½ N½; Section 22 East of MHW; Section 23 East of MHW; Section 24 except S½ SE¼, NE¼ SE¼; NW¼ NW¼ Section 25; N½ NE¼ Section 26 East of MHW.

T.03S., R.01W. Humboldt Meridian: SW¼ SW¼ Section 9; NE¼ SE¼ Section 10; S½, SE¼ NE¼ Section 11; SW¼ NW¼, W½ SW¼, SE¼ SW¼, S½ SE¼ Section 12; Sections 13–16; Section 17 except NW¼ NE¼; Section 18; N½ NW¼, NE¼ NE¼, SW¼ SW¼, NE¼ SW¼ Section 19; N½, N½ SE¼, SE¼ SE¼ Section 20; Sections 21–27; NE¼ NW¼, NE¼, NE¼ SE¼ Section 28; SE¼ NE¼ Section 30, SE¼ NE¼ Section 32; N½ NW¼, SE¼ SW¼, SE¼ Section 33; Section 34 except SE¼ SE¼; N½ N½, SW¼ NW¼ Section 35; Section 36 except SW¼ SW¼, S½ SE¼.

T.03S., R.01E. Humboldt Meridian: SE¼ SW¼ Section 6; S½ NW¼, NE¼ NW¼ Section 7; N½ S½, SE¼ Section 12; E½ SE¼, NW¼ SE¼, SE¼ NE¼ Section 13; SW¼ SW¼ Section 18; W½ SW¼, NW¼ NW¼ Section 19; SE¼ NE¼, NE¼ SE¼ Section 24; W½ SW¼ Section 29; Section 30 except NE¼ NE¼; Section 31; W½ W½, NE¼ NW¼, NE¼ SW¼ Section 32.

T.03S., R.02E. Humboldt Meridian: W½ W½, NE¼ NW¼, SE¼ NE¼, SW¼ SE¼ Section 5; E½ SE¼, SW¼ SE¼ Section 6; Section 7 except SW¼ NW¼, SE¼ SE¼; W½ W½, SE¼ NW¼, E½ SW¼, W½ NE¼, W½ SE¼, SE½ SE¼ Section 8; S½ SW¼ Section 9; E½ SW¼ Section 18; NE¼ NW¼, SE¼ SW¼, SW¼ SE¼ Section 19; SE¼ NE¼ Section 20; NW¼ NW¼ Section 28; NW¼ NE¼ Section 30.

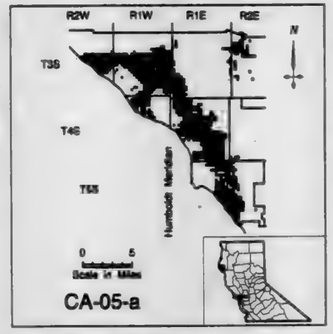
T.04S., R.01W. Humboldt Meridian: Section 3; Section 4 except NW¼ NW¼; Section 9 to MHW except for E½ E½; Section 10 to MHW except N½ NE¼, SW¼ NE¼, SW¼ SE¼; W½ SW¼ Section 11; N½ NW¼ Section 14.

T.04S., R.01E. Humboldt Meridian: SW¼, W½ SE¼, SE¼ SE¼, S½ NE¼ Section 4; Section 5; Section 6 except W½ W½; NE¼, E½ NW¼, N½ SE¼ Section 7; Section 8; Section 9 except N½ NW¼; S½, E½ NE¼ Section 10; SW¼, SW¼ NW¼ Section 11; Section 15; Sections 16–17; E½ E½, SW¼ NW¼, SW¼ NE¼ Section 18; E½ E½, NW¼ NE¼ Section 19; Section 20 except S½ SW¼; Sections 21–23; S½ NW¼, NW¼ NW¼, SW¼, SW¼ NE¼, NW¼ SE¼ Section 24; W½ Section 25; Section 26; Section 27 except SW¼ SW¼; N½ NE¼, NE¼ NW¼ Section 28; NE¼ NW¼, NE¼ NE¼ Section 29; NE¼, E½ NW¼, E½ SW¼, N½ SE¼, SW¼ SE¼ Section 33; Section 34 except S½ SW¼; Section 35; W½ Section 36.

T.04S., R.02E. Humboldt Meridian: S½ SW¼, NE¼ SW¼, NW¼ SE¼ Section 31.

T.05S., R.01E. Humboldt Meridian: Section 1; Section 2 except N½ SW¼; E½ NE¼, SW¼ NE¼ Section 3; W½ NE¼, SE¼ NE¼, SW¼ SE¼ Section 11; Section 12 except N½ NW¼, NE¼ SW¼; Section 13 except W½ NE¼, SE¼ NE¼, NE¼ SE¼; E½ Section 14; Section 23 East of MHW; Section 24; Section 25 East of MHW.

T.05S., R.02E. Humboldt Meridian: W½ NW¼, NW¼ SW¼, E½ SW¼, NW¼ SE¼ Section 6; SW¼, E½ NW¼, SW¼ NW¼ Section 7; Section 18 except SW¼ NW¼, E½ E½, SW¼ SE¼ Section 19 except N½ NE¼, SE¼ NE¼; SW¼ NW¼ Section 28; Section 30 except SE¼ SE¼; W½ Section 31.



Map and description of CA–05–b taken from United States Fish and Wildlife Service 1:100;000 map; Covelo, California; 1995.

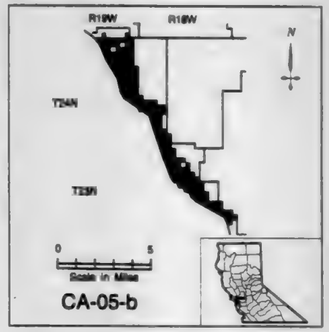
Proposed Critical Habitat includes only State lands described within the following areas:

T.24N., R.19W. Mt. Diablo Meridian: W½ SW¼ Section 2; Section 3 except NW¼, W½ NE¼, NE¼ NE¼ SW¼ SE¼; NE¼ SW¼, SW¼ NE¼, SE¼ Section 4; NE¼ SE¼, SE¼ NE¼, N½ NE¼ Section 9; Section 10 except NW¼ NW¼; W½ W½ Section 11; W½ Section 14; Section 15 except W½ SW¼; NE¼, N½ SE¼ Section 22; Section 23 except NE¼, NE¼ SE¼; S½ SW¼ Section 24; Section 25 except E½ SE¼; NW¼, NE¼ NW¼ Section 26; Section 36 except NE¼ NE¼, W½ SW¼.

T.24N., R.18W. Mt. Diablo Meridian: W½ SW¼ Section 31.

T.23N., R.19W. Mt. Diablo Meridian: E½ E½ Section 1.

T.23N., R.18W. Mt. Diablo Meridian: SW¼ SW¼ Section 5; Section 6 except NE¼ NW¼, NE¼, NE¼ SE¼; Section 7; Section 8 except NW¼ NW¼, NE¼, NE¼ SE¼; W½ SW¼ Section 15; Section 16 except E½ NW¼, NE¼, NW¼, N½ SE¼; NE¼ Section 21; N½ NW¼, SE¼ NW¼, W½ NE¼, SE¼ NE¼, NW¼ SE¼ Section 22.



Map and description of CA–06–a taken from United States Fish and Wildlife Service 1:100;000 map; Garberville and Covelo, California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.05S., R.03E. Humboldt Meridian: Section 13 except NE¼; Section 14 except N½ NE¼; SE¼ NE¼, E½ SE¼ Section 15; NW¼ NE¼ Section 24.

T.05S., R.04E. Humboldt Meridian: W½ SW¼ Section 18.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.24N., R.15W. Mt. Diablo Meridian: SW¼ Section 4; Section 5 except W½ SW¼, SE¼ SW¼, NW¼ NW¼; S½ NE¼ Section 6.

T.24N., R.16W. Mt. Diablo Meridian: N½ NE¼, NE¼ NW¼ Section 3; NE¼ NW¼, SW¼ NW¼, S½ SE¼, Section 5; W½ NW¼ Section 6; SE¼ SW¼, W½ SE¼, SE¼ SE¼ Section 9; S½ SW¼ Section 10.

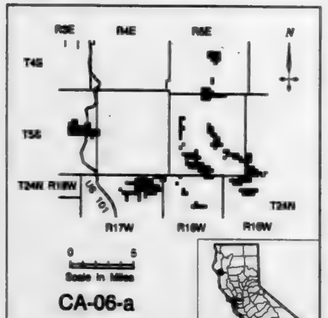
T.24N., R.17W. Mt. Diablo Meridian: Section 1 except NW¼ NW¼, SE¼ SE¼; Section 2 except SE¼ SW¼; S½ S½, NE¼ SE¼, S½ N½, NE¼ NE¼ Section 3; SE¼ SE¼, NW¼ SE¼ Section 4; W½ NW¼ Section 10; NW¼ NE¼, W½ NW¼ Section 11.

T.05S., R.05E. Humboldt Meridian: N½ NW¼ Section 2; N½ N½, SW¼ NW¼ Section 3; NE¼ Section 4; SE¼ SE¼ Section 7; SW¼ SW¼ Section 8; SW¼ NW¼, SW¼, SW¼ SE¼ Section 15; NW¼ SW¼ Section 17; E½ E½ Section 18; NE¼ NE¼, SE¼

SE¼ Section 19; SW¼ SW¼, NW¼ SW¼ Section 20; NE¼, NE¼ SW¼, N½ SE¼, SW¼ SE¼ Section 22; NW¼ SW¼ Section 23, S½ NW¼, N½ SW¼, S½ SE¼, NW¼ SE¼ Section 25; NE¼ NW¼, NE¼ SW¼, W½ NE¼, SE¼ NE¼ Section 26; W½ W½, NE¼ SW¼ Section 28; S½ N½, E½ SW¼, N½ SE¼ Section 29; NE¼, NE¼ NW¼ Section 32; NW¼ NE¼, S½ NE¼, NW¼, NE¼ SW¼, SE¼ Section 33; SW¼ NW¼, N½ SW¼, SW¼ SW¼ Section 34.

T.05S., R.06E. Humboldt Meridian: S½ NW¼, SW¼ Section 30; Section 31 except NE¼ NW¼, N½ NE¼, SE¼ NE¼.

T.04S., R.05E. Humboldt Meridian: S½ SW¼, SW¼ SE¼ Section 15; SE¼ SE¼ Section 16; NW¼, W½ NE¼, NE¼ SW¼ Section 22; SW¼ SW¼ Section 27; SE¼ Section 33; E½ NW¼, NW¼ NW¼, W½ SW¼, SE¼ SW¼ Section 34.



Map and description of CA–06–b taken from United States Fish and Wildlife Service 1:100;000 map; Covelo, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.21N., R.15W. Mt. Diablo Meridian: W½ NW¼ Section 5; Sections 6–7; NW¼ NE¼, N½ NW¼, SW¼ NW¼, N½ S½, SW¼ SW¼ Section 8; W½ W½, SE¼ SW¼, S½ SE¼ Section 17; Section 18.

T.21N., R.16W. Mt. Diablo Meridian: Section 1; N½ NE¼, NE¼ NW¼, SE¼ SE¼ Section 2; E½ NE¼ Section 11; Section 12 except NW¼ SW¼ and S½ SW¼; NE¼, NE¼ SE¼ Section 13.

T.22N., R.14W. Mt. Diablo Meridian: NW¼ SW¼, S½ SW¼ Section 6; Section 7; Section 18 except E½ SE¼; N½ SE¼, SE¼ SE¼ Section 19; N½ SW¼, NW¼ SE¼, S½ SE¼ Section 20; SW¼ SW¼, NE¼ SE¼ Section 21; NW¼ NW¼, S½ NW¼ Section 22; E½ NE¼, W½ NW¼, NE¼ SE¼ Section 28; NE¼, NE¼ NW¼, S½ NW¼, SW¼, NW¼ SE¼ Section 29; S½ NE¼, N½ NW¼, SE¼ Section 32.

T.22N., R.15W. Mt. Diablo Meridian: SW¼ NE¼, S½ Section 1; N½, Section 12; E½ Section 13; NE¼ SW¼, S½ SW¼, W½ SE¼ Section 19; SW¼ NE¼ Section 24; SW¼ NE¼, W½ NW¼, SW¼, W½ SE¼ Section 30; SW¼ NE¼, NW¼ NW¼, S½ NW¼, S½ Section 31.

T.22N., R.16W. Mt. Diablo Meridian: Section 3 except N½ NW¼ and SE¼ NW¼; Section 4; Section 5 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; E½, E½ W½, S½ SW¼, SE¼ NW¼ Section 6; NE¼ NE¼, N½ NW¼, SE¼ SW¼, SE¼ Section 7; N½ NE¼, E½ W½, S½ SE¼, SW¼ SW¼ Section 8; Section 9 except NW¼; SW¼ NE¼, W½, NW¼ SE¼, S½ SE¼ Section 10; NW¼ NW¼ Section 16; N½ NE¼, W½ Section 17; Section 18 except NW¼ NW¼, SE¼ SW¼; S½ NE¼, NE¼ NE¼ Section 19; NW¼ SW¼ Section 20; N½ NE¼, SE¼ SE¼ Section 21; N½ NW¼, S½ SW¼, SW¼ SE¼ Section 22; SE¼ SE¼ Section 23; Section 26; Section 27 except NE¼ NE¼, W½ SW¼, S½ SE¼, SE¼ SW¼; SE¼ Section 34; Section 35.

T.22N., R.17W. Mt. Diablo Meridian: NE¼ NE¼, SW¼ NE¼, SE¼ NW¼, NE¼ SW¼, W½ SE¼ Section 12; S½ SE¼ Section 13; NE¼ Section 24.

T.23N., R.16W. Mt. Diablo Meridian: E½ NE¼, NE¼ SE¼ Section 5; W½ W½ Section 6; E½ W½, E½, W½ SW¼ Section 7; SW¼ NW¼, SW¼ SW¼ Section 8; W½ Section 17; Section 18 except NE¼ NE¼, W½ SW¼, SE¼ SW¼; S½ SE¼, SE¼ SW¼ Section 19; S½ Section 20; NW¼ NW¼, S½ NW¼, SW¼, SW¼ SE¼ Section 28; Section 29 except NE¼ NW¼; Section 30 except NE¼ NE¼; Section 31 except SW¼ SW¼; Section 32 except SE¼ NE¼, SW¼ SE¼, E½ SE¼; S½ NE¼, NW¼ NE¼, N½ NW¼, S½ Section 33; S½ NW¼, N½ SW¼ Section 34.

T.23N., R.17W. Mt. Diablo Meridian: Section 1 except S½ SW¼; NE¼ SE¼ Section 2.

T.24N., R.16W. Mt. Diablo Meridian: SE¼ NE¼, SE¼ NW¼, NW¼ SW¼, SE¼ SW¼, NE¼ SE¼ Section 17; W½ SE¼, SW¼ Section 18; Section 19 except SW¼ SE¼; W½ NE¼, E½ NW¼ Section 20; S½ NW¼, SW¼ Section 27; Section 28 except N½ N½ and SE¼ SW¼; Section 29 except N½ NE¼, NW¼ NW¼; Section 30 except N½ NE¼; Section 31; Section 32 except SE¼ NE¼ and E½ SE¼; N½ NE¼, NW¼ NW¼ Section 33; NW¼ Section 34.

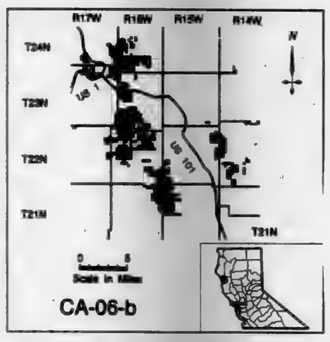
T.24N., R.17W. Mt. Diablo Meridian: NE¼ NE¼ Section 23; Section 24 except NE¼ NW¼, NW¼ NE¼; E½, E½ NW¼, NW¼ NW¼ Section 25.

Proposed Critical Habitat includes only State lands described within the following areas:

T.21N., R.16W. Mt. Diablo Meridian: NE¼ SW¼ SE¼ NW¼ Section 26.

T.23N., R.17W. Mt. Diablo Meridian: N½ SW¼ Section 2; Section 3 except NE¼, SW¼ NW¼, S½ SE¼, SE¼ SW¼; E½ NW¼, W½ NE¼, SE¼ NE¼, N½ SW¼, N½ SE¼ Section 4.

T.24N., R.17W. Mt. Diablo Meridian: Section 28 except E½ NE¼, NE¼ NE¼, SW¼ SW¼.



Map and description of CA–07–a taken from United States Fish and Wildlife Service 1:100;000 map; Ukiah, California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.17N., R.14W. Mt. Diablo Meridian: W½ SW¼, NE¼ SW¼ Section 6; W½ NW¼, NW¼ SW¼ Section 7.

T.17N., R.15W. Mt. Diablo Meridian: W½, W½ SE¼ Section 2; Section 3–6; Section 9 except S½ SE¼; Section 10 except S½ S½; Section 11; Section 12 except NE¼ NE¼, S½ SE¼, NE¼ SE¼; NE¼ NE¼ Section 14; W½ NW¼, NE¼, NW¼ Section 16; Section 17; Section 18 except SW¼, SW¼ NW¼; NE¼ NW¼ Section 20.

T.17N., R.16W. Mt. Diablo Meridian: N½ N½, SE¼ NE¼, NE¼ SE¼ Section 1; Section 3 except W½ W½; Section 4–6; NE¼ Section 7; N½, N½ SW¼ Section 8; N½, N½ SE¼, SE¼ SE¼ Section 9; Section 10 except E½ NE¼, NE¼ SE¼; NE¼ NE¼ Section 15; Section 18 except SE¼ SE¼; W½ NE¼, W½ Section 19; W½ NW¼ Section 30.

T.17N., R.17W. Mt. Diablo Meridian: Section 1–3; N½ NE¼, SE¼ NE¼, SW¼ NW¼, S½ Section 4; NE¼, N½ NW¼, SE¼ NW¼, NE¼ SE¼, S½ S½ Section 5; N½ NE¼ Section 6; Section 8 except W½ SW¼, SE¼ SW¼, and SW¼ SE¼; Section 9–15; SE¼ NE¼, N½ NE¼, NE¼ NW¼, S½ Section 16; S½ Section 17; SW¼ SW¼, E½ SW¼, SE¼ Section 18; SW¼ NW¼ Section 19; N½ NE¼ Section 20; Section 21 except SE¼ SW¼; Section 22 except E½ SW¼ and SW¼ SE¼; Section 23 except NW¼ SW¼; Section 24; NE¼ NW¼, NW¼ SW¼ Section 26; Section 27 except SW¼ NW¼, SE¼ SE¼, N½ NE¼; NW¼ NE¼, S½ NE¼, NE¼ NW¼, NE¼ SE¼ Section 28.

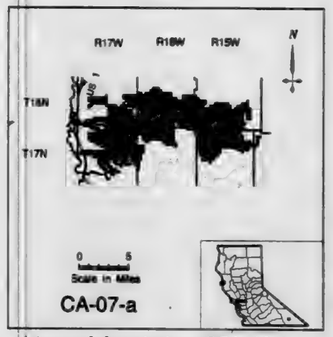
T.17N., R.18W. Mt. Diablo Meridian: SE¼ SE¼ Section 13.

T.18N., R.15W. Mt. Diablo Meridian: SW¼ SW¼ Section 18; Section 19 except NE¼ SE¼; SE¼ NE¼, NE¼ SW¼, S½ SW¼, SE¼ Section 20; Section 21 except N½ N½; SW¼ NW¼, SW¼, SE¼ SE¼ Section 22; S½ NE¼, S½ Section 23; W½ W½, SE¼ SW¼ Section 24; W½ Section 25; Section 26 except SE¼ NE¼ and E½ SE¼; Section 27; Section 28; Section 29; Section 30; Section 31; Section 32; Section 33; Section 34; Section 35 except NE¼ NE¼ and NE¼ SE¼.

T.18N., R.16W. Mt. Diablo Meridian: S½ S½ Section 13; SE¼ Section 14: SW¼ Section 15; NW¼ NW¼, S½ NW¼, S½ Section 16; NE¼, SE¼ NW¼, S½ Section 17; SE¼ SE¼, S½ SW¼ Section 18; Section 19–22; Section 23 except N½ NW¼; Section 24–33; Section 34 except E½ SE¼; Section 35 except SW¼ SW¼; Section 36.

T.18N., R.17W. Mt. Diablo Meridian: Section 20 except N½ N½ and SW¼ SW¼; Section 21 except NW¼ NE¼ and N½ NW¼; NE¼, NE¼ SE¼, SW¼ SE¼ Section 23; Section 24; Section 25 except S½ NW¼, SE¼; Section 26 except NW¼ NW¼; Section 27; NE¼ NE¼ Section 28; N½ NW¼, SW¼ NW¼ Section 29; NW¼ SW¼, NE¼ SE¼, S½ S½ Section 31; S½ NE¼, S½ Section 32; S½ N½, N½ S½, SE¼ SE¼ Section 33; Section 34; Section 35; Section 36.

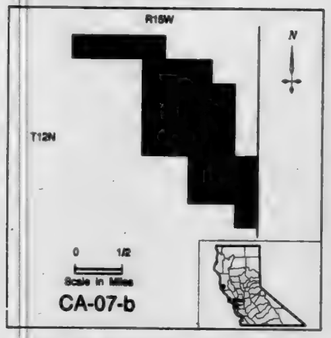
T.18N., R.18W. Mt. Diablo Meridian: SW¼ SE¼ Section 25; SE¼, SE¼ NW¼, W½ NE¼ Section 36.



Map and description of CA–07–b taken from United States Fish and Wildlife Service 1:100;000 map; Ukiah, California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

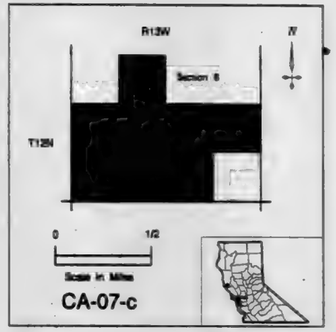
T.14N., R.15W. Mt. Diablo Meridian: S½ S½ Section 11; Section 13 except E½ E½, NW¼ NE¼; E½ E½ Section 14; NE¼, E½ NW¼, NE¼ SE¼ Section 24.



Map and description of CA–07–c taken from United States Fish and Wildlife Service 1:100;000 map; Point Arena, California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

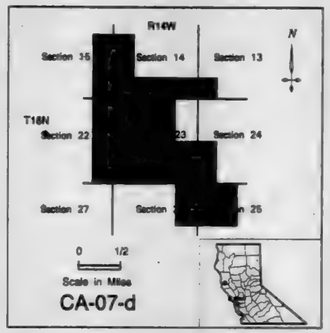
T.12N., R.13W. Mt. Diablo Meridian: SE¼ NW¼, SW¼, N½ SE¼, SW¼ SE¼ Section 5.



Map and description of CA–07–d taken from United States Fish and Wildlife Service 1:100;000 map; Ukiah, California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.16N., R.14W. Mt. Diablo Meridian: S½ S½ Section 14; SE¼, S½ NE¼ Section 15; E½ Section 22; Section 23 except NE¼; W½ NW¼ Section 25; NE¼ Section 26.



Map and description of CA–08–a taken from United States Fish and Wildlife Service 1:100;000 map; Point Arena, California; 1995.

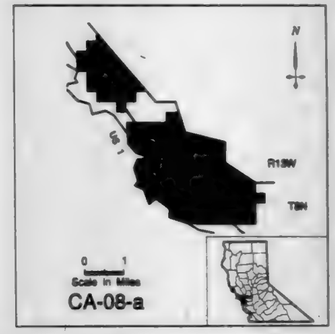
Description of lands using protracted Public Land Survey Lines

Proposed Critical Habitat includes only State lands described within the following areas:

T.08N., R.13W. Mt. Diablo Meridian: SW¼ NW¼ Section 2; Section 3; Section 4 east of Mean High Water (MHW); Section 5 east of MHW.

T.09N., R.13W. Mt. Diablo Meridian: S½ NW¼, SW¼, S½ SE¼, NW¼ SE¼ Section 18; Section 19; SW¼, SW¼ NW¼ Section 20; SW¼, S½ SE¼ Section 28; SE¼ NE¼, S½ Section 29; E½ Section 30 east of MHW; Section 32 east of MHW; Section 33; Section 34 except NE¼, NE¼ SE¼.

T.09N., R.14W. Mt. Diablo Meridian: SE¼ Section 13; E½ Section 24 east of MHW.



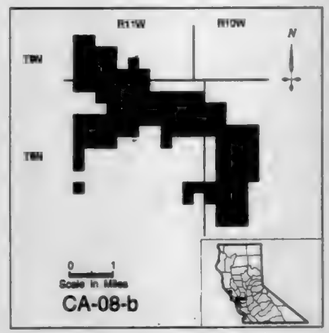
Map and description of CA–08–b taken from United States Fish and Wildlife Service 1:100;000 map; Point Arena and Healdsburg, California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.08N., R.10W. Mt. Diablo Meridian: S½ SW¼ Section 5; Section 6 except E½ NE¼, NW¼ NE¼, NE¼ NW¼, NE¼ SE¼; Section 7 except W½ W½; W½ Section 8; Section 18 except W½ SW¼.

T.08N., R.11W. Mt. Diablo Meridian: Sections 1–2; Section 3 except S½ NW¼, SW¼ NE¼; N½ NE¼, E½ NW¼, NE¼ SW¼ Section 10; N½ NE¼, SW¼ NE¼ Section 13; NW¼ NW¼ Section 15.

T.09N., R.11W. Mt. Diablo Meridian: SW¼ SW¼ Section 27; SE¼ SE¼ Section 28; E½ E½ Section 33; Section 34; SW¼, W½ SE¼, SW¼ NE¼, SE¼ NW¼ Section 35.



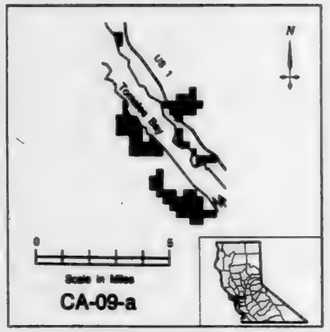
Map and description of CA–09–a taken from United States Fish and Wildlife Service 1:100;000 map; Napa, California; 1995.

Description of lands using protracted Public Land Survey Lines

Proposed Critical Habitat includes only State lands described within the following areas:

T.03N., R.09W. Mt. Diablo Meridian: NW¼ NW¼, W½ SW¼ Section 4; SW¼ SW¼ Section 5; Section 6 except NE¼ NE¼ and S½ SW¼; NE¼ Section 7; SW¼ NE¼, NW¼ Section 8; SW¼ NE¼, N½ NW¼, E½ SE¼ Section 9; N½ SW¼ Section 10; SE¼ SW¼, SW¼ SE¼ Section 16; Section 17 except E½ NE¼; NE¼ Section 20; Section 21 except SW¼ SW¼; S½ NW¼, N½ SW¼ Section 22.

T.04N., R.09W. Mt. Diablo Meridian: W½ SW¼ Section 19; S½ NE¼ SW¼, SE¼ SW¼ Section 31; SE¼ Section 32; SW¼ NE¼, SW¼, SE¼ Section 33.



Map and description of CA–09–b taken from United States Fish and Wildlife Service 1:100;000 map; Napa and San Francisco, California; 1995.

Description of lands using protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal Lands within the Golden Gate National Recreation Area described within the following areas:

T.01S., R.06W., Mt. Diablo Meridian: Sections 2–11; Sections 12–13 above Mean High Water (MHW); Sections 14–15; Sections 16–17 above MHW; Sections 21–24 above MHW.

T.01S., R.07W., Mt. Diablo Meridian: Sections 1–2 above MHW.

T.01N., R.06W., Mt. Diablo Meridian: Section 19; Sections 30–34.

T.01N., R.07W., Mt. Diablo Meridian: Sections 4–9; Section 11; Sections 16–17; Section 21 above MHW; Section 22; Section 35 above MHW; Section 36.

T.01N., R.08W., Mt. Diablo Meridian: Sections 1–2; Section 12 above MHW.

T.02N., R.07W., Mt. Diablo Meridian: Section 31.

T.02N., R.08W., Mt. Diablo Meridian: Sections 1–9; Sections 15–17; Sections 20–23; Sections 25–27; Sections 34–36.

T.02N., R.09W., Mt. Diablo Meridian: Section 1.

T.03N., R.08W., Mt. Diablo Meridian: Sections 28–35.

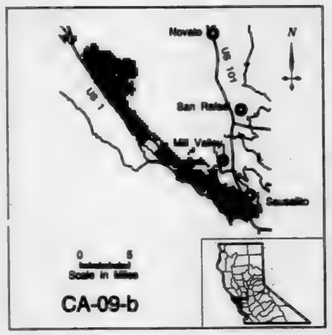
T.03N., R.09W., Mt. Diablo Meridian: Sections 23–25; Section 36.

Proposed Critical Habitat includes only State lands described within the following areas:

T.01N., R.06W. Mt. Diablo Meridian: Section 19; Sections 30–31.

T.01N., R.07W. Mt. Diablo Meridian: Sections 8–9; Sections 13–17; Sections 21–26; Section 27 above MHW; Section 36.

T.02N., R.08W. Mt. Diablo Meridian: Sections 2–4; Sections 9–11; Sections 14–15.



Map and description of CA–10–a taken from United States Fish and Wildlife Service 1:100;000 map; Grants Pass, Oregon; Happy Camp, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.16N., R.08E. Humboldt Meridian: SE¼ NE¼, SE¼ Section 16.

T.17N., R.07E. Humboldt Meridian: Section 1; Section 2 except NW¼ SW¼, S½ SW¼; NE¼, N½ NW¼, SE¼ NW¼ Section 3; NE¼ NE¼ Section 4; NE¼ SW¼, E½ Section 11; N½ N½, SW¼ NW¼, W½ SW¼ Section 12; NW¼ NW¼, S½ NW¼, W½ SW¼ Section 13; NE¼, NE¼ SE¼ Section 14.

T.17N., R.08E. Humboldt Meridian: N½ NE¼ Section 4; Section 6 except E½ E½.

T.18N., R.07E. Humboldt Meridian: S½ NE¼, NE¼ NE¼, S½ SW¼, NE¼ SW¼, SE¼ Section 30; NE¼, N½ NW¼, SE¼ NW¼ Section 31; SE¼ NE¼, N½ NE¼, NW¼ Section 32; Section 36 except NE¼ NW¼, S½ NW¼.

T.18N., R.08E. Humboldt Meridian: N½, S½ SW¼, NE¼ SE¼ Section 31.

T.41S., R.06W. Willamette Meridian: SW¼ SW¼ Section 3; Section 4 except NE¼, N½ NW¼; S½, SE¼ NE¼ Section 5; S½ SE¼, SE¼ SW¼ Section 6; Sections 7–9; NW¼ SW¼, SW¼ NW¼ Section 10; SW¼ SW¼ Section 15; S½ S½, NW¼ SE¼, W½ NW¼ Section 16; Section 17–18.

T.41S., R.07W. Willamette Meridian: Section 10 except W½ NW¼, NW¼ SW¼, N½ NE¼, SE¼ NE¼; Section 11 except NW¼, NW¼ NE¼; Section 12 except N½ NW¼, NW¼ NE¼; Sections 13–15.

T.46N., R.12W. Mt. Diablo Meridian: NW¼ NW¼ Section 2; Section 3 except S½ SE¼; Sections 4–5; SE¼ SE¼ Section 6; N½ NE¼, SE¼ NE¼, E½ SE¼ Sections 7–9; Section 10 except NE¼, NE¼ NW¼, NE¼ SE¼; SW¼ NW¼, W½ SW¼ Section 14; Section 15–16; Section 17 except SW¼, SW¼ SE¼, E½ NE¼ Section 18; NE¼ NE¼ Section 20; Sections 21–22; W½ W½, SE¼ SW¼, SW¼ SE¼ Section 23; Section 25 except N½ NW¼; Sections 26–27; E½ E½ Section 28; SE¼ SE¼ Section 29; E½ Section 31; Section 32 except NE¼ NE¼; Section 33 except NW¼ NE¼; Section 34–35.

T.46N., R.11W. Mt. Diablo Meridian: W½ W½ Section 30; W½ NW¼, NW¼ SW¼ Section 31.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.15N., R.08E. Humboldt Meridian: Section 4 except SW¼ NW¼, NW¼ SW¼, and S½ SW¼; N½ NE¼, SE¼ NE¼ Section 9.

T.16N., R.08E. Humboldt Meridian: NE¼, N½ SE¼, SE¼ SE¼ Section 21; E½ NE¼, SE¼ SW¼, SE¼ Section 28; Section 33 except NW¼ NW¼.

T.18N., R.07E. Humboldt Meridian: Section 1–4; E½ NE¼, SE¼ Section 5; E½ NE¼ Section 8; Section 9–14; Section 15 except W½ SW¼; Section 16; SE¼ NE¼, E½ SE¼ Section 17; E½ E½, SE¼ SW¼, SW¼ SE¼ Section 20; Sections 21–29; N½, SE¼ Section 33; Section 34–35.

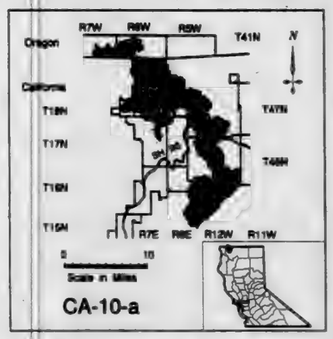
T.18N., R.08E. Humboldt Meridian: W½ W½, SE¼ SW¼ Section 6; Section 7 except N½ NE¼; Section 8 except N½ N½, SE¼ NW¼, S½ NE¼; SW¼ SW¼ Section 9; W½, S½ SE¼ Section 16; Section 17–21; Section 28; Section 29 except SW¼ SE¼; Section 30; NW¼ NW¼ Section 32; N½ NE¼, S½ SE¼ Section 33.

T.19N., R.07E. Humboldt Meridian: N½ N½ Section 31; SE¼ NE¼, E½ SE¼ Section 32; Section 33–36.

T.45N., R.12W. Mt. Diablo Meridian: N½ NW¼, SW¼ NW¼ Section 1; Section 2–5; Section 6 except NW¼ NW¼; Section 7–10; NW¼ NE¼, W½ SW¼ NE¼, NW¼, N½ SW¼ Section 11; NW¼ NE¼, NW¼, W½ SW¼ Section 15–20; N½ NE¼, SW¼ NE¼, W½ Section 21; NW¼ NW¼ Section 28; N½, N½ SW¼, SW¼ SW¼, NW¼ SE¼ Section 29; Section 30; N½ NE¼, SW¼ NE¼, NW¼, NW¼ SE¼ Section 31.

T.46N., R.12W. Mt. Diablo Meridian: Section 4–5;

T.47N., R.12W. Mt. Diablo Meridian: SW¼ SW¼ Section 5; NE¼ SW¼, S½ S½ Section 6; Section 7; Section 8 except NE¼; SW¼ SW¼ Section 9; Section 16 except NW¼ NE¼ and E½ E½; Section 17–20; N½ NW¼, SW¼ NW¼, NW¼ SW¼, S½ SW¼ Section 21; NW¼ SW¼, S½ SW¼, SW¼ SE¼ Section 26; Section 27 except NE¼ NE¼; Section 28 except N½ NE¼; Section 29–30; N½ NE¼, SE¼ NE¼ Section 31; Section 32 except SE¼ SW¼, SE¼ SE¼; Section 33–34; Section 35 except SE¼ NE¼, E½ SE¼, SW¼ SE¼, S½ SE¼ SW¼.



Map and description of CA–10–b taken from United States Fish and Wildlife Service 1:100;000 map; Happy Camp and Hoopa, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.11N., R.07E. Humboldt Meridian: Section 4 except NE¼ NE¼, N½ SE¼, SE¼ NE¼; Section 5 except NE¼ NE¼; E½ SE¼, SE¼ NE¼ Section 6; Section 8 except S½ S½, NW¼ SW¼, SW¼ NW¼; Section 9 except S½ S½; NW¼ NW¼, S½ NW¼, NW¼ SW¼ Section 10.

T.12N., R.06E. Humboldt Meridian: NE¼, N½ SE¼, SE¼ SE¼ Section 2; NE¼ NE¼ Section 11; N½ Section 12; SE¼, S½ NE¼ Section 13; Section 23 except N½ N½, S½ NW¼, NW¼ SW¼; Section 24 except N½ NW¼; N½ N½ Section 25; E½ NW¼, N½ NE¼, SW¼ NE¼, NW¼ SE¼ Section 26.

T.12N., R.07E. Humboldt Meridian: Section 3 except S½ SE¼; Section 4–6; Section 7 except S½ S½; Section 8 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; NW¼ Section 17; Section 18 except SE¼ SE¼; N½ NW¼, NW¼ NE¼; NW¼, NW¼ NE¼ Section 19; S½ SE¼ Section 33.

T.13N., R.06E. Humboldt Meridian: Section 1; Section 2; Section 3 except W½ SW¼; Section 10 except W½ NW¼, SW¼; Section 11; Section 12; Section 13; Section 14; Section 15; Section 16 except NW¼ NW¼, NW¼ SW¼, S½ SW¼; SE¼ NE¼ Section 17; Section 21 except W½ W½, SE¼ SW¼, SW¼ SE¼; Section 22 except SW¼ SW¼; Section 23; Section 24; Section 25; Section 26; NE¼ SE¼ Section 34; N½, SE¼, N½ SW¼ Section 35; Section 36.

T.13N., R.07E. Humboldt Meridian: W½ NW¾, NW¼ SW¼ Section 3; Section 4 except SE¼ SE¼; Section 5; Section 6; Section 7; Section 8; Section 9 except SE¼ SW¼, NE¼ NE¼, S½ SE¼; N½ NW¼ Section 16; N½ N½ Section 17; N½ N½ Section 18; Section 31 except N½; Section 32 except N½; SW¼, W½ SE¼ Section 33; SW¼ SE¼, Section 34.

T.14N., R.06E. Humboldt Meridian: SE¼ SW¼, S½ SE¼ Section 12; Section 13; E½ E½ Section 14; NE¼ NE¼ Section 23; Section 24 except W½ SW¼; E½, E½ SW¼ Section 25; SE¼ NE¼, NE¼ SE¼, S½ SE¼ Section 35; Section 36 except N½ NW¼.

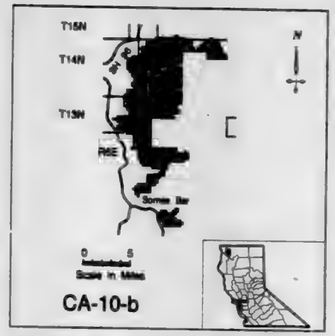
T.14N., R.07E. Humboldt Meridian: Section 1 except NE¼, N½ SE¼, SE¼ SE¼; Section 2–4; Section 5 except N½ NW¼, NW¼ NE¼; SE¼ NE¼, SE¼ SW¼, NE¼ SE¼, S½ SE¼ Section 6; Section 7 except W½ NW¼; Section 8; Section 9; Section 10; N½ NE¾, W½ Section 11; N½ N½ Section 12; NW¼, S½ SW¼ Section 14; Section 15; Section 16; Section 17; Section 18; Section 19; Section 20; Section 21; Section 22; W½ Section 23; W½ Section 26; Section 27; Section 28; Section 29; Section 30; Section 31; Section 32; Section 33; Section 34; NW¼ NW¼, S½ NW¼, SW¼ Section 35.

T.14N., R.08E. Humboldt Meridian: SW¼, SW¼ SE¼, W½ NW¼, SE¼ NW¼ Section 4; Section 5; Section 6 except NW¼, NW¼ NE¼, NW¼ SW¼; N½ N½ Section 7; Section 8; Section 9 except NE¼ NE¼; W½ SW¼ Section 10.

T.15N., R.07E. Humboldt Meridian: SE¼ SE¼ Section 32; S½ S½ Section 33; SE¼, S½ SW¼ Section 34; S½ SW¼, SW¼ SE¼ Section 35.

T.15N., R.08E. Humboldt Meridian: SE¼ SE¼ Section 31; SE¼ SW¼, SW¼ SE¼, Section 32.

T.44N., R.12W. Mt. Diablo Meridian: W½ SW¼ Section 31.



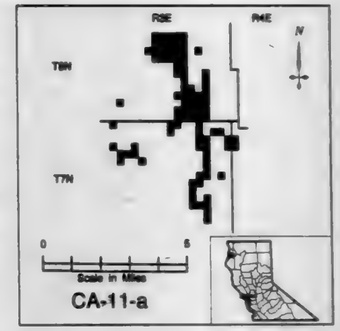
Map and description of CA–11–a taken from United States Fish and Wildlife Service 1:100;000 map; Hoopa and Hayfork, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.07N. R.03E., Humboldt Meridian: E½ SE¼, W½ SW¼, SE¼ NW¼, SW¼ NE¼ Section 1; E½ E½, NW¼ NW¼, Section 2; E½ NE¼ Section 3; SW¼ SE¼ Section 4; SE¼ SE¼, SE¼ NE¼ Section 5; W½ NW¼, NE¼ NW¼, NW¼ NE¼, SE¼ NE¼ Section 9; SE¼ SE¼ Section 11; W½ W½ , SW¼ SE¼ Section 12; W½ SW¼ Section 13; N½ NE¼, SW¼ NE¼, NW¼ SE¼, S½ SE¼ Section 14; W½ NW¼ Section 24.

T.07N. R.04E., Humboldt Meridian: W½ SW¼ Section 6.

T.08N. R.03E., Humboldt Meridian: SE¼, S½ NE¼, SE¼ NW¼, S½ SW¼, NE¼ SW¼ Section 22; W½ SW¼, SW¼ NW¼, SW¼ SE¼, S½ NW¼ Section 23; W½ W½, SE¼ SW¼, E½ SE¼ Section 26; NE¼, N½ NW¼ Section 27; NW¼ SW¼ Section 33; NE¼ NE¼, E½ SE¼ Section 34; Section 35; W½ SW¼ Section 36.



Map and description of CA–11–b taken from United States Fish and Wildlife Service 1:100;000 map; Hayfork, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.03N., R.02E. Humboldt Meridian: SE¼ NE¼, S½ NW¼, N½ N½ Section 1; NE¼, N½ NW¼, SE¼ NW¼, N½ SE¼ Section 2.

T.03N., R.03E. Humboldt Meridian: NW¼ NW¼ Section 5; N½ NE¼, SE¼ NW¼, NE¼ SW¼, NW¼ SE¼, SW¼ SE¼ Section 6; SE¼ Section 10; NE¼ Section 15.

T.03N., R.04E. Humboldt Meridian: SW¼ NE¼, SW¼ NW¼, N½ N½ Section 1; Section 2 except SE¼ SE¼; E½ NE¼, SE¼ SW¼, SE¼ Section 3; W½ NE¼, NW¼ Section 5; E½ NE¼ Section 6.

T.03N., R.05E. Humboldt Meridian: NE¼, N½ SE¼ Section 6; SW¼ NW¼, N½ SW¼, SW¼ SW¼ Section 7; NW¼ NW¼ Section 18.

T.04N., R.02E. Humboldt Meridian: S½ SE¼ Section 25.

T.04N., R.03E. Humboldt Meridian: S½ NW¼, NW¼ SE¼, SE¼ SE¼ Section 31.

T.04N., R.04E. Humboldt Meridian: E½ NE¼ Section 1; E½ E½ Section 12; S½ SE¼ Section 21; S½ SW¼ Section 22; N½ S½, SE¼ SE¼ Section 25; SE¼ NW¼, NE¼ SW¼, N½ SE¼, SE¼ SE¼ Section 26; S½ NE¼, NW¼, N½ SE¼ Section 27; N½, S½ S½, NE¼ SW¼ Section 28; SW¼ NW¼ Section 29; S½ NE¼, SW¼, W½ SE¼ Section 30; NE¼, N½ NW¼, SE¼ NW¼, N½ SE¼, NW¼ SW¼ Section 31; SW¼ NE¼, W½ SE¼, S½ SW¼, NW¼ SW¼ Section 32; N½ N½, SE¼ NE¼, SE¼ NW¼, NE¼ SE¼ Section 33; Section 34 except N½ NE¼, S½ SW¼; Section 35 except N½ N½, S½.

T.04N., R.05E. Humboldt Meridian: Sections 1–12; Section 13 except S½ NE¼, NE¼ SE¼; Section 14; Section 15 except W½ NW¼ and SW¼; W½ NW¼, NW¼ SW¼ Section 17; N½, NE¼ SE¼ Section 18; Section 19 except W½ W½; Section 20; NW¼ NE¼, SW¼ Section 21; N½ NE¼, SE¼ NE¼ Section 22; Section 23; Section 24 except SE¼ SE¼; N½ NW¼ Section 25; NW¼ NE¼, NW¼ Section 26; NW¼ NW¼ Section 28; Section 29 except S½ NE¼, N½ SE¼; Section 30; Section 31 except SW¼ SW¼; NW¼, W½ SW¼ Section 32.

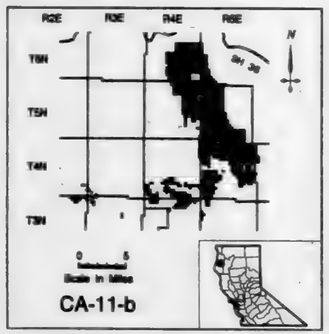
T.04N., R.06E. Humboldt Meridian: N½ Section 6; W½, W½ E½ Section 7; NW¼ NW¼ Section 19.

T.05N., R.04E. Humboldt Meridian: Section 1 except NE¼ NE¼; Section 2; Section 3; E½ NE¼ Section 4; N½ Section 10; Sections 11–14; Section 23 except W½ SW¼ and S½ SE¼; Section 24; N½ NW¼, S½ SE¼ Section 25; E½ NW¼, NE¼ SW¼ Section 26.

T.05N., R.05E. Humboldt Meridian: Section 4 except E½ E½; Sections 5–8; Section 9 except SW¼ NE¼ and E½ E½; Section 16 except E½ E½; Sections 17–21; W½ SW¼ Section 22; W½ SW¼ Section 25; S½ Section 26; Section 27 except E½ NE¼; Sections 28–35; W½ W½ Section 36.

T.06N., R.04E. Humboldt Meridian: Sections 13–15; Sections 21–27; Section 28 except SW¼ NW¼; Section 33 except W½ SW¼; Sections 34–35.

T.06N., R.05E. Humboldt Meridian: W½, W½ SE¼ Section 18; Section 19; SW¼ NW¼, W½ SW¼ Section 29; Sections 30–31; Section 32 except N½ NE¼, SE¼ NE¼; S½ S½ Section 33.



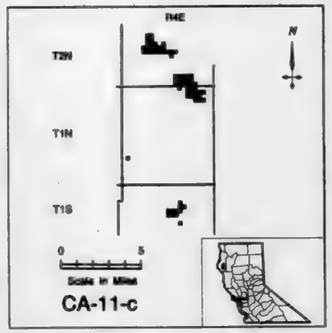
Map and description of CA–11–c taken from United States Fish and Wildlife Service 1:100;000 map; Garberville, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.02S., R.04E. Humboldt Meridian: E½ NE¼, SW¼, N½ SE¼, SW¼ SE¼ Section 10; SW¼ NW¼ Section 11; SE¼ NE¼ Section 15.

T.01S., R.04E. Humboldt Meridian: SW¼ NW¼, SW¼ SW¼ Section 1; Section 2 except NE¼ NE¼ and S½ SW¼; NW¼ NE¼ Section 3; SE¼ NW¼ Section 30.

T.01N., R.04E. Humboldt Meridian: S½ SE¼ Section 17; E½, E½ SW¼ Section 20; SW¼ NE¼, SW¼ NW¼, SW¼, NW¼ SE¼, S½ SE¼ Section 21; S½ SW¼ Section 22; NW¼ NW¼ Section 27; S½ NE¼, SE¼ NW¼, E½ SW¼, SE¼ Section 34; S½ NW¼, SW¼, SW¼ SE¼ Section 35.



Map and description of CA–11–d taken from United States Fish and Wildlife Service 1:100;000 map; Hoopa and Hayfork, California; 1995.

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.07N., R.05E. Humboldt Meridian: NE¼ NE¼ Section 8; NE¼, E½ SE¼ Section 9; Section 24 except W½ W½; Section 25 except W½; SW¼ NW¼, W½ SW¼ Section 34.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.06N., R.06E. Humboldt Meridian: N½ NE¼, W½ Section 1; Section 2; Section 3; NE¼, NE¼ NW¼ Section 4; Section 11 except W½ NW¼; W½ NW¼ Section 12; N½ NE¼, SW¼ NE¼, E½ NW¼, E½ SW¼, NW¼ SE¼ Section 14.

T.07N., R.05E. Humboldt Meridian: Section 1; Section 2; Section 3; NE¼, S½ NW¼, S½ NE¼ NW¼, NW¼ SW¼, SE¼ SE¼ Section 4; E½, S½ NE¼ SW¼ Section 5; Section 10; Section 11; Section 12; Section 13 except W½ SW¼; N½ N½ Section 14.

T.07N., R.06E. Humboldt Meridian: W½ NW¼, NW¼ SW¼ Section 2; Section 3 except S½ S½; Section 4 except S½ SE¼; Sections 5–8; NW¼ NW¼, S½ Section 9; S½ SW¼ Section 10; E½ NE¼, SW¼ NE¼, SE¼ SW¼, SE¼ Section 12; Section 13 except E½ SE¼; Section 14 except NW¼ NE¼ and N½ NW¼; Section 15 except NE¼ NE¼; Sections 16–23; NW¼ NE¼, W½ Section 24; N½ NW¼, SW¼ NW¼; W½ SE¼ NW¼, W½ SW¼, W½ NE¼ SW¼ Section 25; Sections 26–30; Section 31 except SW¼ SE¼; Sections 32–35; NW¼ NW¼ Section 36.

T.07N., R.07E. Humboldt Meridian: SW¼ Section 6; NW¼ NW¼ Section 7.

T.08N., R.05E. Humboldt Meridian: E½ Section 1; E½ E½ Section 12; SE¼ SE¼ Section 33; SE¼ NE¼, S½ SW¼, SE¼ Section 34; S½ Section 35; Section 36 except N½ NW¼, NW¼ NE¼.

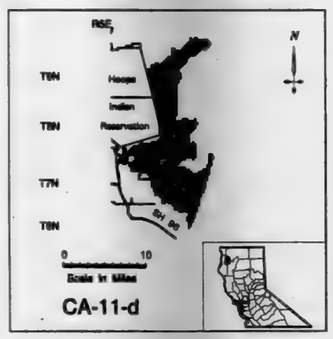
T.08N., R.06E. Humboldt Meridian: W½ W½ Section 4; Sections 5–8; W½ W½ Section 9; S½ SW¼, NE¼ SW¼ Section 14; SW¼, S½ SE¼ Section 15; NW¼ NW¼, S½ S½, NE¼ SE¼ Section 16; Sections 17–18; Section 19 except W½ W½; Sections 20–22; N½ NW¼, SW¼ NW¼, NW¼ NE¼, N½ SW¼, SW¼ SW¼ Section 23; NE¼ NE¼, W½, W½ E½ Section 27; Sections 28–29; Section 30 except NW¼, NW¼ SW¼; Sections 31–33; Section 34 except E½ NE¼; SW¼, SW¼ NW¼ Section 35.

T.09N., R.05E. Humboldt Meridian: S½ SE¼ Section 12; Section 13; SE¼ Section 14; E½ E½ Section 23; Section 24; Section 25; Section 36 except W½ W½.

T.09N., R.06E. Humboldt Meridian: NW¼ NE¼, N½ NW¼ Section 1; N½, SW¼, NW¼ SE¼ Section 2; Section 3; Section 4 except N½ NW¼, NW¼ NE¼; Section 5 except W½; SE¼, SE¼ NE¼, SE¼ SW¼, SE¼ Section 7; Sections 8–9; NW¼, SW¼ SW¼, NW¼ NE¼, N½ SW¼ Section 10; Section 16 except SE¼, SE¼ NE¼; Sections 17–20; NW¼ SE¼, W½ NE¼, W½ Section 21; NE¼ NW¼, W½ W½ Section 28; Sections 29–32; W½ W½ Section 33.

T.10N., R.06E. Humboldt Meridian: SE¼ SW¼, SW¼ SE¼ Section 26; SE¼ SE¼ Section 27; E½ NE¼, SW¼ NE¼, SE¼, E½ SW¼, SW¼ SW¼ Section 34; Sections 35–36.

T.10N., R.07E. Humboldt Meridian: SW¼ NW¼, NW¼ SW¼ Section 31.

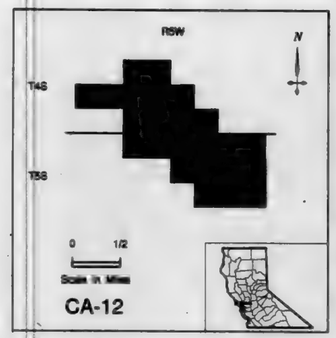


Map and description of CA–12 taken from United States Fish and Wildlife Service 1:100;000 map; California; 1995.

Proposed Critical Habitat includes only City lands described within the following areas:

T.04S., R.05W. Mount Diablo Meridian: N½ SE¼ Section 32; SW¼, S½ NW¼, S½ SE¼, NW¼ SE¼ Section 33.

T.05S., R.05W. Mount Diablo Meridian: NW¼, N½ SW¼ Section 3; NE¼, N½ NW¼, NE¼ SE¼ Section 4.



Map and description of CA–13 taken from United States Fish and Wildlife Service 1:100;000 map; California; 1995.

Description of lands using protracted Public Land Survey Lines

Proposed Critical Habitat includes only County lands described within the following areas:

Lands within Spanish Land Grant: Grant Number 168–Canada de Raymundo.

T.06S., R.04W. Mount Diablo Meridian: SW¼, S½ NW¼, NW¼ NW¼, SW¼ SE¼ Section 3; SE¼, S½ NE¼, NE¼ NE¼, SE¼ SW¼ Section 4; NE¼, N½ NW¼ Section 9; NW¼ NW¼ Section 10.

Map and description of CA–14–a taken from United States Fish and Wildlife Service 1:100;000 map; California; 1995.

Proposed Critical Habitat includes only City lands described within the following areas:

T.07S., R.04W. Mount Diablo Meridian: N½ NE¼ Section 35.

Proposed Critical Habitat includes only County lands described within the following areas:

T.07S., R.03W. Mount Diablo Meridian: S½, S½ NE¼ Section 31.

T.07S., R.04W. Mount Diablo Meridian: N½ SE¼, S½ NE¼, SE¼, NW¼ Section 22; S½ SW¼, NW¼ SW¼ Section 23; SW¼ Section 25; Section 28 except SW¼, E½ NE¼, NE¼ SE¼, SW¼ NW¼; SE¼, NE¼ SW¼ Section 33; W½ SW¼ Section 34; Section 35 except N½ NE¼, NW¼ NW¼; Section 36 except E½ NE¼, NW¼ NE¼.

T.08S., R.03W. Mount Diablo Meridian: Sections 6 except E½ E½; Section 7 except E½ NE¼; S½ S½ Section 8; SW¼ SW¼ Section 9; NW¼, NW¼ Section 16; N½ N½ Section 17; N½, NW¼ SE¼ Section 18.

T.08S., R.04W. Mount Diablo Meridian: Sections 1–2; SE¼, E½ NE¼, E½ SW¼ Section 3; NW¼ NW¼, NE¼ NE¼ Section 10; NE¼, N½ NW¼ Section 11; Section 12 except SW¼ SW¼.

Proposed Critical Habitat includes only Private lands described within the following areas:

T.08S., R.04W. Mount Diablo Meridian: S½ Section 4; SE¼ Section 5; Sections 7–8; N½ Section 9; Section 16–18; Section 20 except NW¼, SE¼ SE¼; NW¼ Section 21.

Proposed Critical Habitat includes only State lands described within the following areas:

T.07S., R.03W. Mount Diablo Meridian: S½ NW¼, N½ SW¼, SE¼ SW¼ Section 33.

T.08S., R.03W. Mount Diablo Meridian: E½ SW¼ Section 3; S½ S½, E½ NW¼, NE¼ SW¼ Section 4; SW¼, S½ NW¼, S½ SE¼ Section 5; E½ SE¼, SE¼ NE¼ Section 6; E½ NE¼ Section 7; Section 8 except S½ S½; NW¼, N½ NE¼, NW¼ SW¼ Section 9; W½, NW¼ Section 10.

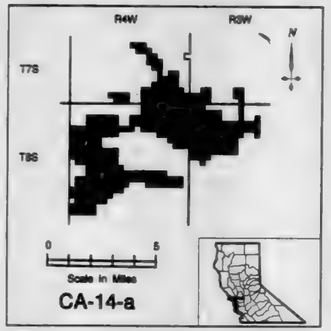
T.08S., R.04W. Mount Diablo Meridian: SE¼, S½ SW¼ Section 19; SE¼ SE¼ Section 20; Section 21 except NW¼; N½, NW¼ SW¼ Section 22; Section 23 except S½ S½; S½ NW¼, N½ SW¼, NW¼ SE¼, SW¼ NE¼ Section 24; N½ NW¼, SW¼ NW¼ Section 28; Sections 29 except E½ SE¼; NE¼, N½ NW¼ Section 30.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only State lands described within the following areas:

Lands within Spanish Land Grant: Grant Number 205–Punta de Ano Nuevo.

T.08S., R.04W. Mount Diablo Meridian: SW¼ SW¼ Section 29; S½ Section 30.



Map and description of CA–14–b taken from United States Fish and Wildlife Service 1:100;000 map; California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.08S., R.03W. Mount Diablo Meridian: S½ SE¼ Section 19; S½ SW¼ Section 20; Section 29 except E½ NE¼; Section 30 except NW¼ NW¼; Sections 31–32; Section 33 except E½ E½.

T.08S., R.04W. Mount Diablo Meridian: SE¼, E½ SW¼, SW¼ SW¼, SE¼ NE¼ Section 25; SE¼ SE¼ Section 34; SE¼, S½ SW¼, NE¼ SW¼, NE¼ NE¼ Section 35; Section 36.

T.09S., R.03W. Mount Diablo Meridian: W½ NW¼ Section 3; Section 4 except E½ SE¼; Sections 5–7; Section 8 except S½ SE¼, SE¼ SW¼; N½ NW¼, SW¼ NW¼ Section 9; SW¼ NW¼ Section 15; NE¼, N½ SE¼ Section 16; Section 18 except E½ SE¼; W½ NW¼ Section 19; S½ NE¼, NW¼ NE¼, NW¼ SE¼, SE¼ SE¼ Section 30; N½ NE¼, S½ NW¼, SW¼ NE¼ Section 31.

T.09S., R.04W. Mount Diablo Meridian: Sections 1–2; Section 3 except NW¼ NW¼, SW¼ SW¼; E½ SE¼ SE¼ NE¼ Section 4; SE¼, S½ SW¼, NE¼ SW¼, SW¼ NE¼ Section 9; S½, N½ NE¼, NE¼ NW¼ Section 10; Sections 11–12; Section 13 except SE¼ SW¼; Sections 14–16; E½ E½, SE¼ SW¼ Section 22; Section 23; Section 24 except E½ E½, NE¼ NW¼, NW¼ NE¼; N½ NW¼, SE¼ SE¼, SE¼ SW¼ Section 25; E½ W½, NW¼ NW¼, NE¼ NE¼ Section 26; Section 27 except E½ NE¼, NE¼ SE¼; SE¼, E½ NE¼, NW¼ NE¼, NE¼ NW¼, S½ NW¼ Section 34; N½ NW¼, SE¼ SW¼ Section 35.

T.10S., R.04W. Mount Diablo Meridian: NE¼ NE¼ Section 3.

Proposed Critical Habitat includes only Private lands described within the following areas:

T.09S., R.04W. Mount Diablo Meridian: Section 16; Section 21 except S½, E½ NE¼.

Description of Lands Using Protracted Public Land Survey Lines

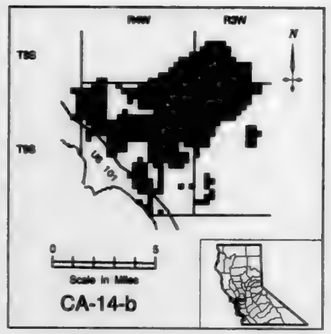
Proposed Critical Habitat includes only State lands described within the following areas:

T.09S., R.04W. Mount Diablo Meridian: NE¼ SE¼ Section 28.

Lands within Spanish Land Grant: Grant Number 205-Punta de Ano Nuevo.

T.08S., R.04W. Mount Diablo Meridian: SE¼ SW¼, SW¼ SE¼ Section 4.

T.09S., R.04W. Mount Diablo Meridian: Section 5 except E½ E½; Section 6 except N½ N½, W½ SW¼; Section 7 except W½ NW¼, S½ SE¼, SW¼ SE¼; Section 8 except E½ NE¼, NE¼ SE¼; Section 17 except S½ SW¼, SW¼ SE¼; E½ SE¼ Section 18; W½ NE¼, NE¼ SE¼ Section 20; W½ NW¼, NW¼ SW¼ Section 21.

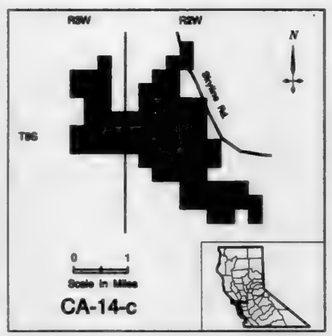


Map and description of CA–14–c taken from United States Fish and Wildlife Service 1:100;000 map; California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.08S., R.02W. Mount Diablo Meridian: NW¼ SW¼, SW¼ NW¼ Section 5; S½ SE¼, NE¼ SE¼ Section 6; Section 7 except W½ NW¼, NW¼ SW¼; SW¼ Section 8; W½, SW¼ NE¼, NW¼ SE¼ Section 17; Section 18 except S½ SW¼, NW¼ SW¼; N½, N½ SE¼ Section 20; W½ NW¼, SE¼ NW¼, NE¼ SW¼ Section 21.

T.08S., R.03W. Mount Diablo Meridian: S½ SW¼, W½ SE¼ Section 1; Section 12 except W½ NE¼, W½ SW¼; N½ Section 13.



Map and description of CA–15 taken from United States Fish and Wildlife Service 1:100;000 map; California; 1995.

Proposed Critical Habitat includes only State lands described within the following areas:

T.10S., R.02W. Mount Diablo Meridian: S½ S½, NW¼ SW¼ Section 6; Section 7 except S½ SW¼, NW¼ SW¼; SW¼, S½ NW¼, SW¼ SE¼ Section 8; SW¼, SW¼ NW¼ Section 16; Section 17 except SW¼ SW¼; SE¼ NE¼, NE¼ SE¼ Section 18; N½ NW¼ Section 20; N½ N½ Section 21.

Description of Lands Using Protracted Public Land Survey Lines

Proposed Critical Habitat includes only State lands described within the following areas:

Lands within Spanish Land Grant: Grant Number 208–Canada del Rincon en el Rio de San Lorenzo de Santa Cruz.

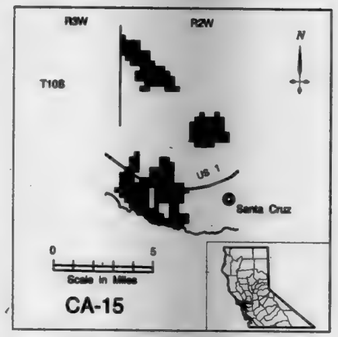
T.10S., R.02W. Mount Diablo Meridian: SE¼, SE¼ NE¼, SE¼ SW¼ Section 34; S½, SW¼ NE¼ Section 35.

T.11S., R.01W. Mount Diablo Meridian: NW¼ SW¼, SW¼ NW¼ Section 1; Section 2 except S½ SE¼; Section 3 except W½ W½, SE¼ SW¼.

Grant Number 207-Refugio

T.11S., R.01W. Mount Diablo Meridian: SE¼, SE¼ NE¼ Section 7; E½ SE¼ Section 8; S½ SW¼, NW¼ SW¼ Section 9; W½, S½ SE¼ Section 16; Section 17 except NW¼; Section 18 except NW¼ NW¼, SE¼ NE¼, NE¼ SE¼; Section 19 except S½ SW¼, NW¼ SW¼; Section 20 except W½ E½, S½ SE¼; Section 21 except SE¼ SE¼, SW¼ SW¼; NW¼ NW¼ Section 22; SW¼ NW¼, NW¼ SW¼ Section 27; Section 28 except W½ NW¼, NE¼ NE¼; SW¼ SW¼; Section 29 except SW¼, S½ SE¼, N½ NE¼, SW¼ NW¼; NE¼ NE¼ Section 30.

T.11S., R.03W. Mount Diablo Meridian: NE¼ NE¼ Section 24.



Dated: July 31, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–19355 Filed 8–9–95; 8:45 am]

BILLING CODE 4310–55–P

federal register

Thursday
August 10, 1995

Part III

Department of Education

Direct Grant and Fellowship Programs; Notice

DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1996.

SUMMARY: The Secretary invites applications for new awards for fiscal year (FY) 1996 under many of the Department's direct grant and fellowship programs and announces deadline dates for the transmittal of applications under these programs. This combined application notice contains fiscal and programmatic information for potential applicants under the Department's programs announced in this issue of the **Federal Register**. This notice also lists any FY 1996 programs previously announced in the **Federal Register**, as well as FY 1996 programs to be announced at a later date.

DATES: *Dates of Application Notices:* The actual or estimated date for publication of the application notice for a given program is listed in column three of Chart 1. For any previously announced program, column three of Chart 1 also includes the **Federal Register** volume and page reference to that notice. If a program has yet to publish an application notice, an estimated date (est.) or TBA (to be announced) is listed in column three of Chart 1.

Deadline Dates for Transmitting Applications: The actual or estimated deadline date for transmitting applications under a program is listed in column four of Chart 1.

Other Dates for Programs Announced in This Notice: For programs and competitions announced in this notice, the chart for each principal office (Charts 2 through 7) includes the following dates for each program or competition: the date on which applications will be available, the deadline for submission of applications, and—for programs subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs)—the deadline date for transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties.

Other Dates for Programs Not Announced in This Notice: For programs and competitions not announced in this notice—that is, those published elsewhere in this edition of the **Federal Register**, those previously published, and those to be announced later—the application notice for each program or competition, as published (or to be published) in the **Federal Register**, includes the following dates: the date of availability of applications, the deadline for submission of applications, and—for programs subject to EO 12372—the deadline date for transmittal of State Process Recommendations by SPOCs and comments by other interested parties.

ADDRESSES: *For Applications or Further Information:* The address and telephone number for obtaining applications for, or further information about, an individual program are in the application notice for that program.

For Programs under the Office of Educational Research and Improvement: As explained in the **SUPPLEMENTARY INFORMATION** section of this preamble, application notices for new awards under programs and competitions of the Office of Educational Research and Improvement (OERI) are to be published later. In the meantime, as an aid to customers, each principal component of OERI is providing an address and facsimile (FAX) machine number that interested parties may use to be put on a mailing list to receive information—such as an application package—when that information becomes available. For these addresses and FAX numbers see lists of OERI programs and competitions in Chart 1.

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Intergovernmental Review: The address for transmitting recommendations and comments under Executive Order 12372 is in the appendix to this notice. The appendix also contains the addresses of individual SPOCs.

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases) or World Wide Web site (at http://www.ed.gov/). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Department's first combined application notice was published in September 1989. It was based on the idea—subsequently affirmed by numerous parties in the educational community—that placing as many application notices as possible in a single notice would assist potential applicants in planning projects and activities. In the intervening years, other issues affecting the application and grant award processes were identified, including the view of a number of potential applicants that the Department's schedule for grant awards did not allow grantees sufficient time to implement departmentally assisted projects before the start of the academic year.

As part of the Administration's goal to "reinvent" the Federal Government and the Department's determination to improve the timeliness of grant awards, the Secretary last year adopted a number of changes in the way grant competitions are announced and grants awarded under the Department's programs.

In order to announce and award grants to accommodate the academic year, the Secretary determined that grants should be awarded by June 1 preceding the academic year, to the maximum extent possible. To allow applicants more time to prepare applications and the Department the necessary time to process those applications, the Secretary further determined that application announcements should be published earlier.

Consistent with this policy, this section of the combined application notice contains those application announcements that the Department is able to publish at this time, and references any application notices for FY 1996 that were published before this combined notice.

Among the programs and competitions omitted from this notice are those governed by statutes that are undergoing congressional reauthorization. These include programs administered by the Office of Vocational and Adult Education.

This notice also does not include programs of the Office of Educational Research and Improvement (OERI). Under the statute reauthorizing OERI—the Educational Research, Development, Dissemination, and Improvement Act of 1994—the Assistant Secretary for Educational Research and Improvement must develop standards for these programs in consultation with the National Educational Research Policy and Priorities Board. On June 7, 1995 the Assistant Secretary published in the

Federal Register (60 FR 30160) for public comment proposed Standards for the Evaluation of Applications for Grants and Cooperative Agreements and Proposals for Contracts.

Also omitted from this notice are programs and competitions to be governed by new regulations or funding priorities that have not yet been issued in final form. These include a number of programs and competitions of the Office of Special Education Programs. In addition, this notice does not contain programs and competitions that will use application forms not yet approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

The Secretary will publish a second section of the combined notice in the fall of 1995 or when there is enough new information concerning these programs and competitions to warrant publication. This second section of the combined notice will reference all programs and competitions announced in this notice, as well as any for which application notices will have been published in the interim. The Secretary anticipates that most of the Department's remaining application notices for new awards for FY 1996 will be included in the second section or published as separate application notices before publication of that section.

Available Funds

The Congress has not yet enacted a fiscal year 1996 appropriation for the Department of Education. The Department is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimates of the amounts of funds that will be available for these programs are based in part on the President's 1996 budget request and in part on the level of funding available for fiscal year 1995.

Potential applicants should note, however, that the Congress is considering proposals to eliminate or reduce funding in 1996 for many of the discretionary grant programs administered by the Department. Final action on the 1996 appropriation may require the Department to cancel some of the competitions announced in this notice, as well as some of those the notice indicates will be announced at a later date. Only the House of Representatives has passed an appropriations bill for 1996, with Senate action not scheduled to occur until September. A footnote [1] preceding a CFDA No. in column one of Chart 1 (e.g. [1]84.000A) indicates a competition that would be canceled were the House bill to be enacted into law without change.

A footnote [2] following the name of a program in column two of Chart 1 indicates a program or competition for which the Administration also has proposed the termination of funding because similar activities can be supported under other programs.

THE DEPARTMENT OF EDUCATION IS NOT BOUND BY ANY OF THE ESTIMATES IN THIS NOTICE.

Organization of Notice

This notice is organized in two parts.

Part I lists in Chart 1 all direct grant programs and certain fellowship programs under which the Secretary is making, or plans to make, new awards in FY 1996. The listings are organized under the principal program offices of the Department. For each principal office the listing includes three categories of application notices: those already published, those published in this issue of the **Federal Register**, and those to be published at a later date. The programs are listed in order of their Catalog of Federal Domestic Assistance (CFDA) numbers irrespective of category.

Part II contains fiscal and programmatic information for all programs announced in this notice.

Each principal program office is assigned a separate chart as follows:

Chart 2—Office of Bilingual Education and Minority Languages Affairs.

Chart 3—Office of Educational Research and Improvement.

Chart 4—Office of Elementary and Secondary Education.

Chart 5—Office of Postsecondary Education.

Chart 6—Office of Special Education and Rehabilitative Services.

Chart 7—Office of Vocational and Adult Education.

Programs To Be Announced at a Future Date

For FY 1996 a number of programs will be governed by new regulations or funding priorities. Application notices for these programs will be published when final regulations or priorities are completed. This notice references these types of programs with footnote [3] following the respective estimated date (est.) [3] in column three of Chart 1. For further information regarding many of these programs, readers are referred to the following notices of proposed rulemaking and notices of proposed funding priorities that have been published in the **Federal Register**:

Bilingual Education: Comprehensive School Grants—Notice of Proposed Priority, 60 FR 11866 (3/2/95)

Office of Educational Research and Improvement (OERI); Educational Research and Development Centers Program—Notice of Proposed Priorities, 60 FR 18340 (4/10/95)

Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI)—Evaluation of Applications for Grants and Cooperative Agreements and Proposals for Contracts—Notice of Proposed Rulemaking, 60 FR 30160 (6/7/95)

National Institute on Disability and Rehabilitation Research—Notice of Proposed Funding Priority for Fiscal Years 1996–1997 for the Knowledge Dissemination and Utilization Program, 60 FR 37926 (7/24/95)

National Education Goals

In developing this combined application notice the Department has sought to ensure that programs awarding grants during FY 1996 will further achievement of the National Education Goals, as found in Pub. L. 103–227 (the Goals 2000: Educate America Act, enacted March 31, 1994). The Secretary encourages applicants under these programs to consider the National Education Goals in developing their applications.

The National Education Goals for the year 2000 are as follows:

- All children in America will start school ready to learn.
- The high school graduation rate will increase to at least 90 percent.
- All students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation's modern economy.
- United States students will be first in the world in mathematics and science achievement.
- Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
- Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
- The Nation's teaching force will have access to programs for the continued improvement of their

professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.

• Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

Applicability of Section 5301 of the Anti-Drug Abuse Act of 1988

A number of programs listed in the chart provide that a grant, fellowship, traineeship, or other monetary benefit may be awarded to an individual. This award may be made to the individual either directly by the Department or by a grantee that receives Federal funds for the purpose of providing, for example, fellowships, traineeships, or other awards to individuals.

Section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690; 21 U.S.C. 862) provides that a sentencing court may deny eligibility for certain Federal benefits to an individual convicted of drug trafficking or possession. Thus, an individual who applies for a grant, fellowship, or other monetary benefit under a program covered by this notice should understand that, if convicted of drug trafficking or possession, he or she is subject to denial of eligibility for that benefit if the sentencing court imposes such a sanction. This denial applies whether the Federal benefit is provided to the individual directly by the Department or is provided through a grant, fellowship, traineeship, or other award made available with Federal funds by a grantee.

Any persons determined to be ineligible for Federal benefits under the provisions of section 5301 are listed in the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs."

Applicability of the Federal Debt Collection Procedures Act of 1990

The programs listed in the chart make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101–647; 28 U.S.C. 3201). The Act provides that if there is a judgment lien against a debtor's property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

Intergovernmental Review of Federal Programs

Certain programs in this notice are subject to the requirements of EO 12372 and the regulations in 34 CFR part 79. These programs are identified in Charts 1 through 6 with a date in the column headed "Deadline for intergovernmental review." For further information, an applicant under a program subject to the Executive order—and other parties interested in that program—are directed to the appendix to this notice.

PART I.—CHART 1.—LIST OF APPLICATION NOTICES

CFDA No.	Name of program	Application notice	Application deadline date
Office of Bilingual Education and Minority Languages Affairs			
84.003G[1]	Bilingual Education—Academic Excellence Awards	12/11/95 (est.)[3]	1/29/96 (est.).
84.194Q[1]	Bilingual Education—State Grant Program	In this issue	1/26/96.
84.195C[1]	Bilingual Education—Graduate Fellowship Program	TBA[3]	TBA.
84.195E[1]	Bilingual Educational Career Ladder Program	In this issue	1/5/96.
84.288S[1]	Bilingual Education—Program Development and Implementation Grants	In this issue	1/26/96.
84.290U[1]	Bilingual Education—Comprehensive School Grants	10/6/95 (est.)[3]	12/8/95 (est.).
Office of Educational Research and Improvement			
National Institute on Student Achievement, Curriculum, and Assessment			
84.279A[1]	Assessment Development, and Evaluation Grants Program	11/17/95 (est.)	3/4/95 (est.).
84.305A	Center for Improving Student Learning and Achievement	8/31/95 (est.)[3]	12/12/95 (est.).
84.305B	Center for Improving Student Assessment and Educational Accountability	8/31/95 (est.)[3]	12/12/95 (est.).
84.305F	Field-Initiated Studies	10/2/95 (est.)	1/5/96 (est.).
National Institute on the Education of At-Risk Students			
84.306A	Center for Meeting the Educational Needs of a Diverse Student Population	8/31/95 (est.)[3]	12/12/95 (est.).
84.306F	Field-Initiated Studies	10/2/95 (est.)	1/5/96 (est.).
National Institute on Early Childhood Development and Education			
84.307A	Center for Enhancing Young Children's Development and Learning	8/31/95 (est.)[3]	12/12/95 (est.).
84.307F	Field-Initiated Studies	10/2/95 (est.)	1/5/96 (est.).
National Institute on Educational Governance, Finance, Policymaking, and Management			
84.308A	Center on Increasing the Effectiveness of State and Local Education Reform Efforts.	8/31/95 (est.)[3]	12/12/95 (est.).
84.308F	Field-Initiated Studies	10/2/95 (est.)	1/5/96 (est.).
National Institute on Postsecondary Education, Libraries, and Lifelong Learning			
84.309A	Center for Improving Postsecondary Education	8/31/95 (est.)[3]	12/12/95 (est.).
84.309B	Center for Improving Adult Learning and Literacy	8/31/95 (est.)[3]	12/12/95 (est.).
84.309F	Field-Initiated Studies	10/2/95 (est.)	1/5/96 (est.).

PART I.—CHART 1.—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
Office of Reform Assistance and Dissemination (ORAD)			
84.073A[1]	National Diffusion Network (NDN)—Exemplary Projects	1/12/96 (est.)	3/11/96 (est.).
84.073F[1]	National Diffusion Network (NDN)—Private School Facilitator Project	12/8/95 (est.)	1/29/96 (est.).
84.073C[1]	National Diffusion Network (NDN)—State Facilitator Projects	12/8/95 (est.)	1/29/96 (est.).
84.168A[1]	Dwight D. Eisenhower Professional Development Program Federal Activities: Christa McAuliffe Fellowship Program.	10/20/95 (est.)	12/15/95 (est.).
84.168B[1]	Dwight D. Eisenhower Professional Development Program Federal Activities: Development of Teacher Networks.	12/1/95 (est.)	2/9/96 (est.).
84.168C[1]	Dwight D. Eisenhower Professional Development Program: Professional Development Demonstration Project.	2/1/96 (est.)	5/1/96 (est.).
84.203A[1]	Star Schools Program—Distance Education Projects	2/7/96 (est.)	4/18/96 (est.).
84.203B[1]	Star Schools Program—Statewide Telecommunications Network	2/7/96 (est.)	4/18/96 (est.).
84.203C[1]	Star Schools Program—Dissemination of Information on Distance Learning	2/7/96 (est.)	4/18/96 (est.).
84.203D[1]	Star Schools Program—Special Local Project	2/7/96 (est.)	4/18/96 (est.).
84.206A	Jacob K. Javits Gifted and Talented Students Education Program	3/1/96 (est.)	6/19/96 (est.).
84.303A	Technology for Education: K–12 Technology Learning Challenge Grants	11/20/95 (est.)	2/29/95 (est.).
84.303B[1]	Technology for Education: Adult Technology Learning Challenge Grants	11/20/95 (est.)	2/29/95 (est.).
National Center for Education Statistics			
84.999B	National Assessment of Educational Progress (NAEP)—Data Reporting Program.	9/6/95 (est.)	11/3/95 (est.).
Library Programs			
84.036A[1]	Library Education and Human Resource Development Program—Institutes[2]	9/29/95 (est.)	12/1/95 (est.).
84.036B[1]	Library Education and Human Resource Development Program—Fellowships[2]	9/29/95 (est.)	12/8/95 (est.).
84.039D[1]	Library Research and Demonstration Program[2]	9/29/95 (est.)	3/1/96 (est.).
84.163A	Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants	9/29/95 (est.)	12/1/95 (est.).
84.163B	Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects.	9/29/95 (est.)	5/6/96 (est.).
84.167A[1]	Library Literacy Program	9/29/95 (est.)	12/8/95 (est.).
Office of Elementary and Secondary Education			
84.062A[1]	Educational Services for Indian Adults	11/3/95 (est.)	1/29/96 (est.).
84.083A[1]	Women's Educational Equity Act Program—Implementation Grants	10/20/95 (est.)	1/5/96 (est.).
84.083B[1]	Women's Educational Equity Act Program—Research Development Grants	10/20/95 (est.)	1/5/96 (est.).
84.087A[1]	Indian Fellowship	10/13/95 (est.)	1/12/96 (est.).
84.144A	Migrant Education Program—National Coordination Activities	11/3/95 (est.)	2/2/96 (est.).
84.184C[1]	Safe and Drug Free Schools and Communities Program—Federal Activities: Alternatives to Expulsion Projects.	9/15/95 (est.)	12/20/95 (est.).
84.184D[1]	Safe and Drug Free Schools and Communities Program—Federal Activities: School Truancy Prevention.	9/15/95 (est.)	2/2/96 (est.).
84.184E[1]	Safe and Drug Free Schools and Communities Program—Federal Activities: Removing Weapons from Schools.	9/15/95 (est.)	2/2/96 (est.).
84.214A	Migrant Education Even Start	11/9/95 (est.)	3/1/96 (est.)
84.258A	Even Start Family Literacy for Indian Tribes and Tribal Organizations	1/29/96 (est.)	3/25/96 (est.)
84.313A	Even Start Special Grants for Women's Prisons	12/11/95 (est.)	3/18/96 (est.)
84.314A	Even Start Statewide Family Literacy Initiative Grants	7/28/95 (est.)	10/20/95 (est.).
84.282A[1]	Public Charter Schools	10/13/95 (est.)	12/19/95.
84.299A[1]	Office of Indian Education—Special Projects: Demonstration Grants	11/3/95 (est.)	1/29/96 (est.).
84.299B[1]	Office of Indian Education—Special Projects: Professional Development Grants	11/3/95 (est.)[3]	1/29/96 (est.).
84.312A[1]	GOALS 2000 Urban/Rural Local Reform Initiative	12/15/95 (est.)	2/23/96 (est.).
Office of Postsecondary Education			
84.016A	Undergraduate International Studies and Foreign Language Program	In this issue	11/3/95.
84.017A	International Research and Studies Program	In this issue	10/27/95.
84.019A	Fulbright-Hays Faculty Research Abroad Program	In this issue	10/30/95.
84.021A	Fulbright-Hays Group Projects Abroad Program	In this issue	10/20/95.
84.022A	Fulbright-Hays Doctoral Dissertation Research Abroad Program	In this issue	10/30/95.
84.031G[1]	Endowment Challenge Grant Program	In this issue	6/17/96.
84.031H	Designation as an Eligible Institution for the Strengthening Institutions and Endowment Challenge Grant Programs.	9/5/95 (est.)	11/3/95 (est.).
84.103	Training Program for Federal TRIO Programs	In this issue	11/27/95.
84.120A	Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects.	In this issue	12/8/95.
84.153A	Business and International Education Program	In this issue	11/6/95.
84.204A[1]	School, College, and University Partnerships Program	In this issue	1/19/96.

PART I.—CHART 1.—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
84.220A	Centers for International Business Education Program	In this issue	11/10/95.
84.229A	Language Resource Centers Program	In this issue	10/27/95.
84.262A	Programs to Encourage Minority Students to Become Teachers	In this issue	11/17/95.
	Fund for the Improvement of Postsecondary Education (FIPSE)		
84.116A	Comprehensive Program (Preapplications)	8/15/95 (est.)	10/18/95 (est.).
84.116B	Comprehensive Program (Applications)[4]	8/15/95 (est.)	3/18/96 (est.).
	Office of Special Education and Rehabilitative Services		
	Office of Special Education Programs		
84.023B[1]	Student-Initiated Research Projects	In this issue	2/22/96.
84.023C[1]	Field-Initiated Research Projects	In this issue	11/17/95.
84.023F[1]	Examining Alternatives for Results Assessment for Children with Disabilities	In this issue	1/5/95.
84.023J[1]	Research Institute for Children with Disabilities with Curriculum and Instructional Interventions.	TBA[3]	TBA.
84.023N[1]	Initial Career Awards	TBA[3]	TBA.
84.023S[1]	Study of Children with Disabilities from Diverse Socio-Economic Households Served under the Individuals with Disabilities Education Act.	TBA[3]	TBA.
84.024A[1]	National Early Childhood Technical Assistance Center	TBA[3]	TBA.
84.024B[1]	Model Demonstration Projects for Young Children with Disabilities	TBA[3]	TBA.
84.024D[1]	Outreach Projects for Young Children with Disabilities	TBA[3]	TBA.
84.024S[1]	Early Childhood Research Institutes	TBA[3]	TBA.
84.025C	Technical Assistance for Children, Adolescents, and Young Adults Who Are Deaf-Blind.	In this issue	10/25/95.
84.025D	Demonstration Projects for Children with Deaf-Blindness	In this issue	10/25/95.
84.025U	National Clearinghouse for Children Who Are Deaf-Blind	In this issue	11/1/95.
84.026J	Closed-Captioned Television Programming	TBA[3]	TBA.
84.029A[1]	Preparation of Personnel to Serve Children and Youth with Low-Incidence Disabilities.	TBA[3]	TBA.
84.029D[1]	Preparation of Leadership Personnel	In this issue	11/20/95.
84.029E[1]	Minority Institutions Personnel	In this issue	12/1/95.
84.029G[1]	Preparation of Personnel to Serve Children and Youth with High-Incidence Disabilities.	TBA[3]	TBA.
84.029K[1]	Special Projects	In this issue	12/8/95.
84.029M	Parent Training and Information Centers	In this issue	11/13/95.
84.078C	Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities.	TBA[3]	TBA.
84.086U	Outreach Projects: Serving Children with Severe Disabilities in General Education and Community Settings.	TBA[3]	TBA.
84.158A	State Systems for Transition for Youth with Disabilities	In this issue	12/22/95.
84.158Q	Outreach Projects for Services for Youth with Disabilities	TBA[3]	TBA.
84.158V	Model Demonstration Projects to Improve the Delivery and Outcomes of Secondary Education for Students with Disabilities.	TBA[3]	TBA.
84.159B[1]	Testing the Use of an Instrument to Measure Student Progress	TBA[3]	TBA.
84.159K[1]	State-Federal Administrative Information Exchange	TBA[3]	TBA.
84.180G[1]	Technology, Educational Media, and Materials Research Projects that Promote Literacy.	In this issue	11/13/95.
84.180U[1]	Collaborative Research on Technology, Media, and Materials for Children and Youth with Disabilities.	In this issue	1/12/96.
84.237G	Non-Discriminatory, Culturally Competent, Collaborative Demonstration Models to Improve Services for Students with Serious Emotional Disturbance and Prevention Services for Students with Emotional and Behavioral Problems.	In this issue	1/12/96.
84.237H	Developing Effective Secondary School-Based Practices for Youth with Serious Emotional Disturbance.	TBA[3]	TBA.
84.237T	Developing Strategies for Effective Collaboration among Educators and Agencies Serving Children and Youth with, or at Risk of Developing, Serious Emotional Disturbance.	TBA[3]	TBA.
	National Institute on Disability and Rehabilitation Research		
84.133B	Rehabilitation Research and Training Centers	10/20/95 (est.)	2/9/96 (est.).
84.133D	Knowledge Dissemination and Utilization Program	9/29/95 (est.)[3]	1/26/96 (est.).
84.133E	Rehabilitation Engineering Research Centers	10/10/95 (est.)	1/12/96 (est.).
84.133F	Research Fellowships	5/30/95 (60 FR 28284)	10/20/95.
84.133G	Field-Initiated Projects	5/30/95 (60 FR 28284)	9/29/95.

PART I.—CHART 1.—LIST OF APPLICATION NOTICES—Continued

CFDA No.	Name of program	Application notice	Application deadline date
	Rehabilitation Services Administration		
84.128G	Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers with Disabilities.	In this issue	1/29/96.
84.128J	Projects for Initiating Recreation Programs for Individuals with Disabilities	In this issue	1/29/96.
84.129T	Distance Learning through Telecommunications	In this issue	10/2/95.
84.129U–1	Parent Information and Training Programs	In this issue	10/2/95.
84.129U–3	Parent Information and Training Programs—Technical Assistance	In this issue	10/2/95.
84.234M	Projects with Industry	In this issue	1/2/96.
84.235U	Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities.	In this issue	12/5/95.
84.235V	Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities.	In this issue	12/5/95.
84.250F	Vocational Rehabilitation Service Projects for American Indians with Disabilities	In this issue	6/14/96.
84.264B	Rehabilitation Continuing Education Programs	In this issue	10/2/95.
84.315	Capacity Building for Traditionally Underserved Populations	In this issue	2/16/96.
	Office of Vocational and Adult Education		
	Application notices for new discretionary grant awards, if any, will be published at a future date.		

[1] This competition would be cancelled if the appropriations bill for 1996 passed by the House of Representatives were to be enacted into law without change.
[2] The Administration also has proposed the termination of funding for this program or competition because similar activities can be supported under another program.
[3] This program will be governed by new regulations or funding priorities.
[4] Applicants for 84.116B must submit preapplications under 84.116A by 10/18/95.

Part II

The following Charts 2 through 7 contain fiscal and programmatic information about each of the programs announced in this notice. Each chart is followed by additional information regarding these programs.

CHART 2.—OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.194Q Bilingual Education—State Grant Program	11/17/95	1/26/96	3/27/96	N/A	N/A	7
84.195E Bilingual Education—Career Ladder Program	11/1/95	1/5/96	3/5/96	$140,000–200,000	$170,000	46
84.288S Bilingual Education—Program Development and Implementation Grants	10/3/95	1/26/96	3/27/96	100,000–175,000	150,000	100

84.194Q Bilingual Education: State Grant Program

Purpose of Program: To assist State educational agencies (SEAs) to (1) collect data on the State's limited English proficient (LEP) population and the educational programs and services available to that population; (2) assist local educational agencies (LEAs) in the State with program design, capacity building, assessment of student performance, and program evaluation; and (3) train SEA personnel in educational issues affecting LEP children and youth.

Eligible Applicants: SEAs.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, and 85.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Eight points are added to this criterion for a possible total of 23 points.

Evaluation plan (34 CFR 75.210(b)(6)). Seven points are added to this criterion for a possible total of 12 points.

Project Period: Up to 36 months.

For Applications or Information Contact: Luis A. Catarineau, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9907.

Program Authority: 20 U.S.C. 7454.

84.195E Bilingual Education: Career Ladder Program

Purpose of Program: To provide grants (1) to upgrade the qualifications and skills of noncertified educational personnel—especially educational paraprofessionals—to meet high professional standards, including certification and licensure as bilingual education teachers and other educational personnel who serve limited English proficient students; and (2) to help recruit and train secondary school students as bilingual education teachers and other educational

personnel to serve limited English proficient students.

Eligible Applicants: Institutions of higher education (IHEs) applying in consortia with one or more local educational agencies (LEAs) or one or more State educational agencies (SEAs). Consortia may include community-based organizations or professional educational organizations.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating applications for grants under this program the Secretary uses the selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Eight points are added to this criterion for a possible total of 23 points.

Evaluation plan (34 CFR 75.210(b)(6)). Seven points are added to this criterion for a total of 12 points.

Project Period: Up to 60 months.

For Applications or Information Contact: Cindy Ryan, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–8842.

Program Authority: 20 U.S.C. 7474.

84.288S Bilingual Education: Program Development and Implementation Grants

Purpose of Program: To provide grants to develop and implement new comprehensive, coherent, and successful bilingual education or special alternative instructional programs for limited English proficient students, including programs of early childhood education, kindergarten through twelfth grade education, gifted and talented education, and vocational and applied technology education.

Eligible Applicants: One or more local educational agencies (LEAs); one or more LEAs in collaboration with an institution of higher education (IHE), community-based organization (CBO), other LEAs, or a State educational agency (SEA); or a CBO or an IHE that has an application approved by the LEA to develop and implement early childhood education or family education programs or to conduct an instructional program that supplements the educational services provided by an LEA.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Extent of need for the project (34 CFR 75.210(b)(2)). Eight points are added to this criterion for a possible total of 28 points.

Plan of operation (34 CFR 75.210(b)(3)). Seven points are added to this criterion for a possible total of 22 points.

Project Period: 36 months.

For Applications or Information Contact: Petraine Johnson, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–8766.

Program Authority: 20 U.S.C. 7422.

CHART 3.—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards
National Institute on Student Achievement, Curriculum, and Assessment						
Application notices for all programs and competitions will be published at a future date						
National Institute on the Education of At-Risk Students						
Application notices for all programs and competitions will be published at a future date						
National Institute on Early Childhood Development and Education						
Application notices for all programs and competitions will be published at a future date						
National Institute on Educational Governance, Finance, Policymaking, and Management						
Application notices for all programs and competitions will be published at a future date						
National Institute on Postsecondary Education, Libraries, and Lifelong Learning						
Application notices for all programs and competitions will be published at a future date						

CHART 3.—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT—Continued

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards
Office of Reform Assistance and Dissemination (ORAD)						
Application notices for all programs and competitions will be published at a future date						
National Center for Education Statistics						
Application notices for all programs and competitions will be published at a future date						
Library Programs						
Application notices for all programs and competitions will be published at a future date						

CHART 4.—OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards
Application notices for all programs and competitions will be published at a future date						

CHART 5.—OFFICE OF POSTSECONDARY EDUCATION

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.016A Undergraduate International Studies and Foreign Language Program.	9/1/95	11/3/95	1/2/96	$40,000–90,000	$65,000	32
84.017A International Research and Studies Program.	8/25/95	10/27/95	N/A	$30,000–140,000	$95,588	15
84.019A Fulbright-Hays Faculty Research Abroad Program.	8/21/95	10/30/95	N/A	$17,000–75,000	$38,000	22
84.021A Fulbright-Hays Group Projects Abroad Program.	9/1/95	10/20/95	N/A	$30,000–90,000	$56,600	38
84.022A Fulbright-Hays Doctoral Dissertation Research Abroad Program.	8/25/95	10/30/95	N/A	$9,000–72,000	$29,000 (per fellow).	61 (indiv. fellowships)
84.031G Endowment Challenge Grant Program.	4/17/96	6/17/96	N/A	$50,000–500,000	$350,000	6
84.103 Training Program for Federal TRIO Programs.	9/22/95	11/27/95	N/A	$80,000–280,000	$190,000	12
84.120A Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects.	10/16/95	12/8/95	2/14/96	Institutional Projects: $100,000–300,000.	$120,000	10
				Design Projects: $16,000–20,000.	$18,000	1
				Special Projects: $20,000–150,000.	$25,000	10
				Cooperative Projects: $200,000–500,000.	$175,000	2
84.153A Business and International Education Program.	9/1/95	11/6/95	1/5/96	$50,000–90,000	$80,000	23

CHART 5.—OFFICE OF POSTSECONDARY EDUCATION—Continued

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.204A School, College, and University Partnerships Program.	10/31/95	1/19/96	3/19/96	$250,000–300,000	$275,000	4
84.220A Centers for International Business Education Program.	9/1/95	11/10/95	1/9/96	$150,000–350,000	$261,000	13
84.229A Language Resource Centers Program.	8/25/95	10/27/95	N/A	$350,000–450,000	$400,000	5
84.262A Programs to Encourage Minority Students to Become Teachers.	10/02/95	11/17/95	12/22/95	Teaching Partnership Projects: $120,000–300,000.	210,000	8
				Teacher Placement Projects: $120,000–300,000.	$210,000	4
Fund for the Improvement of Postsecondary Education (FIPSE)						
Application notices for all programs and competitions will be published at a future date..						

84.016A Undergraduate International Studies and Foreign Language Program

Purpose of Program: To provide grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Eligible Applicants: Institutions of higher education; combinations of institutions of higher education; and public and nonprofit private agencies and organizations, including professional and scholarly associations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 655 and 658.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under 34 CFR 75.105(c)(2)(i), 34 CFR 658.35, and section 604(a)(4) of title VI of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards five points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Applications from institutions of higher education or combinations of institutions that—

(a) Require entering students to have successfully completed at least two years of secondary school foreign language instruction;

(b) Require each graduating student to earn two years of postsecondary credit in a foreign language or have demonstrated equivalent competence in the foreign language;

(c) In the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

Supplementary Information: An institutional grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year.

Project Period: 24 to 36 months.

For Applications or Information Contact: Christine Corey, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5332. Telephone: (202) 401–9783.

Program Authority: 20 U.S.C. 1124.

84.017A International Research and Studies Program

Purpose of Program: To provide grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields to provide full understanding of the places in which the foreign languages are commonly used.

Eligible Applicants: Public and private agencies, organizations, and institutions; and individuals.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 655 and 660.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 75.105 (c)(2)(i), and 34 CFR 660.34 and 660.10, the Secretary gives preference to applications that meet either of the following competitive priorities. The Secretary awards five points to an application that meets either of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

(a) Studies and surveys to determine needs for increased or improved instruction in foreign language, area studies, or other international fields, including the demand for foreign language, area, and international specialists in government, education, and the private sector.

(b) Studies and surveys to assess the use of graduates of programs supported under title VI of the Higher Education Act, as amended, by governmental, educational, and private sector organizations; and other studies assessing the outcomes and effectiveness of programs supported under title VI.

Project Period: 12 to 36 months.

For Applications or Information Contact: Jose L. Martinez, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5331. Telephone: (202) 401–9784.

Program Authority: 20 U.S.C. 1125.

84.019A Fulbright-Hays Faculty Research Abroad Program

84.022A Fulbright-Hays Doctoral Dissertation Research Abroad Program

Purpose of Programs: (a) The Faculty Research Abroad Program offers opportunities to faculty members of higher education for research and study in modern foreign languages and area studies. (b) The Doctoral Dissertation Research Abroad Fellowship Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

Eligible Applicants: Institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b) The regulations for these programs in 34 CFR parts 662 and 663.

Priorities: Under 34 CFR 75.105(c)(3), 34 CFR 663.32(c) (Higher Education Programs in Modern Foreign Language Training and Area Studies—Faculty Research Abroad Fellowship Program), and 34 CFR 662.32(c) (Higher Education Programs in Modern Foreign Language Training and Area Studies—Doctoral Dissertation Research Abroad Fellowship Program) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

Research projects that focus on one or more of the following: Africa, East Asia, Southeast Asia and the Pacific, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Central and South America and the Caribbean).

Note: Applications that propose projects focused on Western Europe will not be funded.

Project Period: Three to 12 months for Faculty Research Abroad; and 6 to 12 months for Doctoral Dissertation Research Abroad.

For Applications or Information Contact:

For Faculty Research Abroad Program: Eliza Washington, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5331. Telephone: (202) 401–9777.

For Doctoral Dissertation Research Abroad Program: Karla Ver Bryck Block, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5331. Telephone: (202) 401–9774.

Program Authority: 22 U.S.C. 2452(b)(6).

84.021A Fulbright-Hays Group Projects Abroad Program

Purpose of Program: To provide grants to support overseas projects in training, research, and curriculum development in modern foreign languages and area studies by teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development, group research or study, or advanced intensive language projects.

Eligible Applicants: Institutions of higher education; State departments of education; nonprofit private educational organizations; and consortia of these types of institutions, departments, and organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 664.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 664.32 the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

Group projects that focus on one or more of the following: Africa, East Asia, the Western Hemisphere (Central and South America and the Caribbean), Southeast Asia and the Pacific, East Central Europe and Eurasia, the Near East, and South Asia.

Note: Applications that propose projects focused on Western Europe will not be funded.

Competitive Priority: Within the absolute priority specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 664.32, gives preference to applications that meet the following competitive priority. The Secretary awards up to five points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools.

Project Periods:

For short-term seminar projects: five weeks.

For curriculum development projects: six to eight weeks. For group research or study projects: two to twelve months.

For advanced overseas intensive language training projects: six weeks to 36 months.

For Applications or Information Contact: Dr. Lungching Chiao, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5332. Telephone: (202) 401–9772.

Program Authority: 22 U.S.C. 2452(b)(6).

84.031G Endowment Challenge Grant Program

Purpose of Program: To provide matching grants to eligible institutions of higher education to establish or increase their endowment funds.

Eligible Applicants: Institutions of higher education that are designated as eligible. The Secretary publishes separately in the **Federal Register** a notice informing interested parties how to be designated as eligible to apply for Endowment Challenge Grant funds.

Note: In the fiscal year 1996 budget request, the President has proposed to limit eligibility. If the President's proposal is enacted, only historically black colleges and universities that meet the eligibility requirements of this program would be eligible to apply for support.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 74.61(h) or 34 CFR 80.26 and the appendix to 34 CFR part 80, as applicable; 74.80, 74.84 and 74.85; 75.100 through 75.102 and 75.217; and in 34 CFR parts 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 628.

Project Period: 240 months (20 years).

Fundraising Period: 18 months (September 1996–March 1998).

For Applications or Information Contact: Steven Pappas, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5337. Telephone: (202) 708–8866. Applications will be sent to those institutions designated as eligible.

Program Authority: 20 U.S.C. 1065.

84.103 Training Program for Federal TRIO Programs (Training Program)

Purpose of Program: To provide Federal financial assistance to train the staff and leadership personnel employed in, or preparing for employment in, projects under the Federal TRIO Programs.

Eligible Applicants: Institutions of higher education; and public and nonprofit private agencies and organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 642.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 642.34(a) the Secretary gives preference to applications that meet one or more of the following priorities. Under 34 CFR 75.201(a) and 642.31(f)(2)(iii) the Secretary awards up to 8 1/3 points to an application that provides effective training in one or more of the following subjects:

(1) Student financial aid.

(2) General project management for new directors.

(3) Legislative and regulatory requirements for the operation of the Federal TRIO programs.

(4) The design and operation of model programs for projects funded under the Federal TRIO programs.

(5) Retention and graduation strategies.

(6) Counseling.

(7) Reporting student and project performance.

Project Period: Up to 24 months.

For Applications or Information Contact: Blanca Rosa Rodriguez, U.S. Department of Education, 600 Independence Avenue, SW., suite 600D, Portals Building, Washington, DC 20202–5249. Telephone: (202) 708–4804.

Program Authority: 20 U.S.C. 1070d–1d.

84.120A Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects

Purpose of Program: To effect long-range improvement in science education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific careers.

Eligible Applicants:

(a) *For institutional, design, and special projects described in 34 CFR 637.14(a), (b) and (c):* Public and nonprofit private minority institutions.

Note: A minority institution is defined in 34 CFR 637.4(b) as an accredited college or university whose enrollment of a single minority group or combination of minority groups, as defined in 34 CFR 637.4(b), exceeds 50 percent of the total enrollment.

(b) *For institutional, design, and special projects described in 34 CFR 637.14(b) and (c):* Non-profit science-oriented organizations; professional scientific societies; and nonprofit accredited colleges and universities that render a needed service to a group of eligible minority institutions, as defined in 34 CFR 637.4(b), or that provide inservice training of project directors, scientists, and engineers from eligible minority institutions.

(c) *For cooperative projects:* Groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution, as defined in 34 CFR 637.4(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 637.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Project Period: Up to 36 months.

For Applications or Information Contact: Dr. Argelia Velez-Rodriguez, U.S. Department of Education, 600 Independence Avenue, SW., Courtyard Suite C–80, Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3261. The Department encourages applicants to FAX requests for applications to: (202) 260–7615.

Program Authority: 20 U.S.C. 1135b–1135b–3, 1135d–1135d–6.

84.153A Business and International Education Program

Purpose of Program: To provide grants both to enhance international business education programs and expand the capacity of the business community to engage in international economic activities.

Eligible Applicants: Institutions of higher education that have entered into agreements with business enterprises, trade organizations, or associations engaged in international economic activity.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 655 and 661.

Supplementary Information: A grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year.

Project Period: 24 months.

For Applications or Information Contact: Sarah T. Beaton, U.S. Department of Education, 600 Independence Avenue SW., Washington, DC 20202–5332. Telephone: (202) 401–9778.

Program Authority: 20 U.S.C. 1130–1130b.

84.204A School, College, and University Partnerships (SCUP) Program

Purpose of Program: To provide grants to higher education and secondary school partnerships to conduct activities that will improve high school retention and graduation rates of low-income and disadvantaged students, improve their academic skills, and prepare them for programs of postsecondary education or gainful employment following graduation from high school.

Eligible Applicants: Institutions of higher education; State higher education agencies; consortia of one or more institutions of higher education or State higher education agencies or both.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 610.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities:

Absolute Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 610.4(a) the Secretary gives absolute preference to applications that meet two or more of the following priorities. The Secretary funds under this program only applications that meet two or more of these absolute statutory priorities:

(1) Projects that will serve predominantly low-income communities.

(2) Projects that will conduct programs during both the regular school year and the summer.

(3) Projects designed to serve one or more of the following historically underrepresented and underserved populations of students: educationally disadvantaged students; students with disabilities; potential dropouts; pregnant adolescents and teenage parents; children of migratory agricultural workers or of migratory fishermen; and students whose native language is other than English.

(4) Projects designed to encourage women and minorities who are underrepresented in the fields of science and mathematics to pursue these fields of study.

Competitive Priority: Within the absolute priorities specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(ii) and 34 CFR 610.4(b), gives preference to applications that meet the following competitive priority. An application that meets this competitive priority is selected by the Secretary over applications of comparable merit that do not meet the priority:

Projects in which the primary focus is to stimulate school-wide reform and systemic improvements in schools serving a high concentration of disadvantaged students (in contrast to projects in which the aim is to provide supplemental services to a discrete subpopulation of students).

The following illustrate some of the kinds of systemic changes the Secretary is particularly interested in supporting; projects incorporating these illustrated changes do not receive preference over other projects that also meet the competitive priority:

(1) Change initiatives in which education officials, businesses, and other community leaders look critically at all aspects of an education system that impact on the academic performance of disadvantaged students, identify areas for improvement, develop comprehensive plans for change, and commit to work over the long term to make those changes happen.

(2) Change initiatives that link curriculum, teacher education and training, certification and recertification, instructional materials, and assessments to high student academic standards.

(3) Change in all parts of an education system—including flexible governance, management, and high technology systems—that impact on the overall direction of the system and lead to improvements in student performance, postsecondary aspirations and entrance, and employment opportunities.

(4) Institutionalization of processes, functions, or structures introduced by the project.

(5) Integration of the improvement initiative into the natural workings of the partner organizations to ensure that the project's effects or outcomes are sustained beyond the period of Federal support.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 610.21.

Under 34 CFR 610.20, the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Need for the project—priorities (34 CFR 610.21(a)(2)). Nine points are added to this criterion for a possible total of 15 points.

Likelihood of success (34 CFR 610.21(g)). Six points are added to this criterion for a possible total of 12 points.

Estimated Project Start Date: June 1, 1996.

Project Period: Up to 60 months.

For Applications or Information Contact: Blanca Rosa Rodriguez, U.S. Department of Education, 600 Independence Avenue, SW., suite 600D, Portals Building, Washington, DC 20202–5249. Telephone: (202) 708–4804.

Program Authority: 20 U.S.C. 1001 et seq.

84.220A Centers for International Business Education Program

Purpose of Program: To provide grants to eligible applicants to pay the Federal share of the cost of planning, establishing, and operating centers for international business education.

Eligible Applicants: Institutions of higher education; and combinations of institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86; and (b) Because there are no program-specific regulations for this program, applicants are directed to the authorizing statute for the Centers for International Business Education Program, section 612 of part B, title VI, of the Higher Education Act of 1965, as amended (20 U.S.C. 1130–1).

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210(a) and (c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of Operation (34 CFR 75.210(b)(3)). Ten points are added to this criterion for a possible total of 25 points.

Budget and Cost Effectiveness (34 CFR 75.210(b)(5)). Five points are added to this criterion for a possible total of 10 points.

Project Period: 36 months.

For Applications or Information Contact: Susanna C. Easton, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5332. Telephone: (202) 401–9780.

Program Authority: 20 U.S.C. 1130–1.

84.229A Language Resource Centers Program

Purpose of Program: To provide assistance to centers that serve as resources for improving the Nation's capacity for teaching and learning foreign languages.

Eligible Applicants: Institutions of higher education; and combinations of institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 655 and 669.

Priorities:

Competitive Preference Priority: Under 34 CFR 75.105(c)(2)(ii) and 34 CFR 669.22(a) and 669.3(d) the Secretary gives preference to applications that meet the following competitive priority. An application that meets this priority is selected by the Secretary over applications of comparable merit that do not meet the priority:

Training of teachers in the administration and interpretation of foreign language performance fests, the use of effective teaching strategies, and the use of new technologies.

Invitational Priority: Within the competitive priority specified within this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects involving schools of education in the training of prospective foreign language teachers.

Project Period: 36 months.

For Applications or Information Contact: Sara West, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5331. Telephone: (202) 401–9782.

Program Authority: 20 U.S.C. 1123.

84.262A Programs to Encourage Minority Students to Become Teachers

Purpose of Program: To improve recruitment and training opportunities in education for minority individuals, including language minority individuals; to increase the number of minority teachers, including language minority teachers, in elementary and secondary schools; and to identify and encourage minority students in the 7th through 12th grades to aspire to, and to prepare for, careers in elementary and secondary school teaching. The program comprises two components: the Teacher Partnerships Program and the Teacher Placement Program.

Eligible Applicants:

(a) The Secretary awards grants under the Teacher Partnerships Program to partnerships between: (1) one or more institutions of higher education that have a demonstrated record and special expertise in carrying out the purposes of this program; *and* (2) one or more local educational agencies, a State educational agency or a State higher education agency, or one or more community-based organizations.

(b) The Secretary awards grants under the Teacher Placement Program to institutions of higher education that

have schools or departments of education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210(a) and (c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Meeting the purposes of the authorizing statute (34 CFR 75.210 (b)(1)). Ten points are added to this criterion for a possible total of 40 points.

Evaluation plan (34 CFR 75.210 (b)(6)). Five points are added to this criterion for a possible total of 10 points.

Project Period: Up to 36 months.

For Applications or Information Contact: Vicki Payne, U.S. Department of Education, 600 Independence Avenue, SW., suite C–80 Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3291. The Department encourages applicants to FAX requests for applications to (202) 260–7615.

Program Authority: 20 U.S.C. 1112, 1112a–1112e.

CHART 6.—OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimate range of awards	Estimated average size of awards	Estimated number of awards
Office of Special Education Programs						
84.023B Student-Initiated Research Projects	9/11/95	2/22/96	N/A	$10,000–20,000	$15,000	18
84.023C Field-Initiated Research Projects	9/11/95	11/17/95	N/A	70,000–180,000	125,000	23
84.023F Examining Alternatives for Results Assessment for Children with Disabilities	9/11/95	1/5/96	N/A	170,000–180,000	175,000	5
84.025C Technical Assistance for Children, Adolescents, and Young Adults Who Are Deaf-Blind	9/11/95	10/25/95	12/22/95	1,600,000	1,600,000	1
84.025D Demonstration Projects for Children with Deaf-Blindness	9/11/95	10/25/95	12/22/95	130,000–135,000	133,000	5
84.025U National Clearinghouse for Children Who Are Deaf-Blind	9/11/95	11/1/95	1/2/96	325,000	325,000	1
84.029D Preparation of Leadership Personnel	9/11/95	11/20/95	1/22/96	150,000–200,000	175,000	10
84.029E Minority Institutions Personnel	9/11/95	12/1/95	2/1/96	150,000–200,000	175,000	17
84.029K Special Projects	9/11/95	12/8/95	2/8/96	150,000–200,000	175,000	14
84.029M Parent Training and Information Centers	9/11/95	11/13/95	1/16/96	100,000–400,000	165,000	16
84.158A State Systems for Transition for Youth with Disabilities	9/11/95	12/22/95	2/22/96	350,000–500,000	435,000	12
84.180G Technology, Educational Media, and Materials Research Projects that Promote Literacy	9/11/95	11/13/95	1/16/96	192,000–200,000	196,000	5
84.180U Collaborative Research on Technology, Media, and Materials for Children and Youth with Disabilities	9/11/95	1/12/96	3/12/96	295,000–305,000	300,000	6
84.237G Non-Discriminatory, Culturally Competent, Collaborative Demonstration Models to Improve Services for Students with Serious Emotional Disturbance and Prevention Services for Students with Emotional and Behavioral Problems	9/11/95	1/12/96	3/12/96	160,000–173,000	166,000	3
National Institute on Disability and Rehabilitation Research						
Application notices for all programs and competitions have been published or will be published at a future date						

CHART 6.—OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES—Continued

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimate range of awards	Estimated average size of awards	Estimated number of awards
Rehabilitation Services Administration						
84.128G Vocational Rehabilitation Services Projects for Migratory Agricultural and Seasonal Farmworkers with Disabilities	10/23/95	1/29/96	3/29/96	150,000–175,000	162,500	3
84.128J Projects for Initiating Recreation Programs for Individuals with Disabilities	10/2/95	1/29/96	3/29/96	110,000–140,000	114,000	15
84.129T Distance Learning Through Telecommunications	8/21/95	10/30/95	12/29/95	240,000–260,000	248,000	4
84.129U–1 Parent Information and Training Programs	8/21/95	10/30/95	12/29/95	80,000–90,000	86,000	8
84.129U–3 Parent Information and Training Programs—Technical Assistance	8/21/95	10/30/95	12/29/95	90,000–110,000	100,000	1
84.234M Projects with Industry	10/2/95	1/2/96	3/11/96	200,000–250,000	225,000	80
84.235U Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities	9/15/95	12/5/95	2/5/96	180,000–220,000	200,000	15
84.235V Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth With Disabilities	9/15/95	12/5/95	2/5/96	180,000–220,000	200,000	15
84.250F Vocational Rehabilitation Service Projects for American Indians with Disabilities	1/8/96	6/14/96	N/A	200,000–400,000	285,000	11
84.264B Rehabilitation Continuing Education Programs	8/21/95	10/30/95	12/29/95	490,000–510,000	500,000	3
84.315 Capacity Building for Traditionally Underserved Populations	9/15/95	2/16/96	4/19/96	80,000–120,000	100,000	14

84.023B, C, and F Research in Education of Individuals with Disabilities Program

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

Eligible Applicants: State and local educational agencies; institutions of higher education; and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 324.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 324.10 the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only those applications that meet any one of these absolute priorities:

(Note: If an applicant wishes to apply under more than one of these absolute priorities, the applicant must submit a separate application under each affected priority.)

Absolute Priority 1—Student-Initiated Research Projects (84.023B). This priority supports short-term (up to 12 months) postsecondary student-initiated research projects—consistent with the purposes of the program, as described in 34 CFR 324.1—focusing on (1) special education and related services for children and youth with disabilities or (2) early intervention services for infants and toddlers.

Projects must—

(1) Develop research skills in postsecondary students; and

(2) Include a principal investigator who serves as a mentor to the student-researcher while the project is carried out by the student.

The budget for a project must provide for a trip to Washington, DC for the annual two-day Research Project Directors' meeting.

Project Period: Up to 12 months.

Absolute Priority 2—Field-Initiated Research Projects (84.023C). This priority provides support for a wide range of field-initiated research projects that support innovation, development, exchange, and use of advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities.

Invitational Priorities:

Within Absolute Priority 2 the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

(1) Short-term (i.e. up to 12 months) research projects that are budgeted at $100,000 or less, and that are one or more of the following: pilot studies, projects that employ new methodologies, descriptive studies, projects to advance assessment, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, projects that analyze extant data bases.

The Secretary encourages studies that use these approaches to foster the full participation and maximize the achievement of students with disabilities in educational reform efforts related to the Goals 2000: Educate America Act.

(2) Projects that implement and examine a model or models for using research knowledge to improve educational practice and outcomes for children with disabilities, and that include methodologies with the capacity to judge the effectiveness of the model or models as implemented in practice settings.

(3) Projects that study the delivery of coordinated services from providers such as health, social service, and mental health agencies.

(4) Projects that study non-categorical approaches to establishing eligibility for special education.

(5) Projects that study and develop instructionally relevant assessment practices that can also be used to establish student eligibility for special education.

Project Period: The majority of projects will be funded for up to 36 months. Only in exceptional circumstances—such as projects that include repeated measurement or a longitudinal design—will projects be funded for more than 36 months or up to a maximum of 60 months.

Supplementary Information: The Secretary does not fund a project at an amount exceeding the high end of the range for this competition, as specified in Chart 6.

Absolute Priority 3—Examining Alternatives for Results Assessment for Children with Disabilities (84.023F). The Assistant Secretary for Special Education and Rehabilitative Services establishes an absolute priority for research projects that meet the requirements of paragraphs (a), (b), and (c) as follows:

(a) Pursue systematic programs of applied research focusing on one or more issues related to assessment or results based accountability for students with disabilities, or both. These issues include, but are not limited to the following:

(1) *Testing accommodations and adaptations.* When adaptations and accommodations are made to permit students with disabilities to participate in results assessments, how are the technical characteristics of the assessments affected? How can the results be interpreted? To what degree can these scores be aggregated with nonadapted assessments? What are the best methods for selecting appropriate accommodations and adaptations? How can testing accommodations be related to instructional accommodations?

(2) *Alternative assessments.* If alternative assessments (such as performance assessments or portfolio assessments) are provided for students with disabilities, how can these assessments be compared with conventional assessments? What technical criteria can appropriately be applied to these assessments if used with students with disabilities?

(3) *Development of assessments.* How can general educational assessments be developed to be more inclusive for students with disabilities? How can problematic items and item formats be identified? How can students with disabilities be adequately represented in test development and validation samples? What are the effects if tests developed for general populations are administered to students with disabilities?

(4) *Including students with disabilities in general assessments.* How should decisions be made and documented to include students with disabilities in general educational assessments or alternative assessments? What factors influence these decisions?

(5) *System development.* How can assessment and accountability systems be developed with the range and flexibility to accommodate diverse student populations? How can accountability and individualization both be maintained?

(6) *Basic concepts and principles.* How can basic concepts and principles in assessment be revised to reflect new approaches to assessment and new roles and challenges in assessing children with disabilities?

(b) Produce and disseminate information that can be applied in educational programs, as well as in subsequent research.

(c) Coordinate their activities, as appropriate, with the Center to Support the Achievement of World Class Outcomes for Students with Disabilities and with other related projects funded under the Goals 2000: Educate America Act.

The budget for a project must provide for two trips annually to Washington, DC for (1) a two-day Research Project Directors' meeting; and (2) another meeting: to meet and collaborate with the project officer of the Office of Special Education Programs and the other projects funded under this priority, to share information, and to discuss findings and methods of dissemination.

Project Period: Up to 36 months.

Supplementary Information: It is estimated that the Secretary will fund projects at a level of $175,000 for the first year of a project. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

For Applications and General Information Contact: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette—Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

For Technical Information Contact:

For Student-Initiated Research Projects (84.023B): Doris Andres, U.S. Department of Education, 600 Independence Avenue, SW., room 3526, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8125. FAX: (202) 205–8105. Internet: Doris—Andres@ed.gov

For Field-Initiated Research Projects (84.023C): Tom V. Hanley, U.S. Department of Education, 600 Independence Avenue, SW., room 3526, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8110. FAX: (202) 205–8105. Internet: Tom—Hanley@ed.gov

For Examining Alternatives for Outcome Assessment for Children with Disabilities (84.023F): David Malouf, U.S. Department of Education, 600 Independence Avenue, SW., room 3521, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8111. FAX: (202) 205–8105. Internet: Dave—Malouf@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1441–1443.

84.025C, D, and U Services for Children with Deaf-Blindness Program

Purpose of Program: To provide Federal assistance to address the special needs of infants, toddlers, children, and youth with deaf-blindness.

Eligible Applicants: Public or nonprofit private agencies, institutions, or organizations, including Indian tribes, the Bureau of Indian Affairs of the Department of Interior (if the Bureau is acting on behalf of schools operated by the Bureau for children and students on Indian reservations), and tribally controlled schools funded by the Department of Interior.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Applicable Regulations: (a) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 307.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 307, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

(**Note:** The Department is not bound by any estimates in this notice, except as otherwise provided by statute.)

Absolute Priority 1—Technical Assistance for Children, Adolescents, and Young Adults Who Are Deaf-Blind (84.025A). (a) This priority supports one project that provides technical assistance to State and Multi-State Projects funded under 34 CFR 307.11 of the Services for Children with Deaf-Blindness Program, lead agencies under part H of the Individuals with Disabilities Education Act (IDEA), and State educational agencies. This priority also includes technical assistance to State educational agencies in making available to adolescents and young adults with deaf-blindness, programs and services to facilitate their transition from education to employment and other services such as vocational, independent living, and other postsecondary services.

(b) A grantee must provide the services required by 34 CFR 307.12 and 307.13.

The Secretary invites applications that use a consortia approach in conducting the activities authorized under this priority.

Project Period: 60 months.

Absolute Priority 2—Demonstration Projects for Children with Deaf-Blindness (84.025D). This priority supports projects that develop, improve, or demonstrate new or existing methods, approaches, or techniques that contribute to the adjustment, early intervention, and education of children who are deaf-blind.

Invitational Priority: Within Absolute Priority 2 the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications: Projects that—

(a) Improve instructional techniques that enhance communication skills, including use of augmentative devices and assistive technology;

(b) Improve social skills, including social interaction;

(c) Improve independent living skills, including selfdetermination, mobility, and other community living skills;

(d) Improve recreation and leisure skills; or

(e) Improve more traditional skills, including academic achievement and transition and employment skills.

Project Period: 36 months.

Absolute Priority 3—National Clearinghouse for Children Who Are Deaf-Blind (84.025U). This priority supports a national clearinghouse for children who are deaf-blind. The clearinghouse will—

(a) Identify, coordinate, and disseminate information on deaf-blindness, emphasizing information concerning practices developed through research, development, or demonstration activities that have produced statistical or narrative data establishing their effectiveness with children who are deaf-blind including—

(1) Special educational and early intervention programs, services, and resources;

(2) Related medical, health, social, and recreational services;

(3) The nature of deaf-blindness and its early intervention, educational, and employment implications;

(4) Legal issues affecting persons with disabilities; and

(5) Information on available services and programs in postsecondary education for adolescents and young adults with deaf-blindness;

(b) Interact with educators, professional groups, and parents to identify areas for programming, materials development, training, and expansion of specific services;

(c) Maintain a computerized data base on local, regional, and national resources; and

(d) Respond to information requests from professionals, parents, and members of the public.

Project Period: 36 months.

For Applications and General Information Contact: Robin Buckler, U.S. Department of Education, 600 Independence Avenue SW., room 4617, Switzer Building, Washington, DC 20202–2732. Telephone: (202) 205–9844.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

For Technical Information Contact: Charles Freeman, U.S. Department of Education, 600 Independence Avenue, SW., room 4617, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8165.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1422.

84.029D, E, K, and M Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training and Parent Training and Information Centers

Purpose of Program: (a) The purpose of Grants for Personnel Training is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities. (b) The purpose of Parent Training and Information Centers is to enable parents to work more fully and effectively with professionals in meeting the needs of infants, toddlers, children, and youth with disabilities.

Eligible Applicants:

Under Absolute Priorities 1 (Preparation of Leadership Personnel) and 2 (Minority Institutions): Institutions of higher education; and appropriate nonprofit agencies.

Under Absolute Priority 3 (Special Projects): Institutions of higher education; State agencies; and other appropriate nonprofit agencies.

Under Absolute Priority 4 (Parent Training and Information Centers): parent organizations, as defined in 34 CFR 316.5(c).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 316 and 318.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 75.105(c)(3), 34 CFR 316, and 34 CFR 318, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only those applications that meet any one of these absolute priorities:

(**Note:** If an applicant wishes to apply under more than one of these absolute priorities, the applicant must submit a separate application under each affected priority.)

Absolute Priority 1—Preparation of Leadership Personnel (84.029D). This priority supports projects designed to provide preservice professional preparation of leadership personnel in

special education, related services, and early intervention. Leadership training is considered to be preparation in—

(a) Supervision and administration at the advanced graduate, doctoral, and post-doctoral levels;

(b) Research; and

(c) Personnel preparation at the doctoral and post-doctoral levels (34 CFR 318.11(a)(4)).

Invitational priorities: Within Absolute Priority 1 the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

(a) Projects designed to foster successful coordination between special education and regular education teachers, administrators, related services personnel, infant intervention specialists, and parents.

(b) Projects that coordinate their professional development programs for regular and special education personnel.

(c) Projects that include recruitment of leadership personnel from groups that are underrepresented in educational leadership positions.

Project period: Up to 48 months.

Absolute Priority 2—Minority Institutions (84.029E). This priority supports awards to Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent. Awards may provide training of personnel in all areas noted in 34 CFR 318.10(a)(1) and (2) and must be designed to increase the capabilities of the institution in appropriate training areas (34 CFR 318.11(a)(16)).

Project Period: Up to 48 months.

Absolute Priority 3: Special Projects (84.029K). This priority supports projects that include development, evaluation, and distribution of innovative approaches to personnel preparation; development of curriculum materials to prepare personnel to educate or provide early intervention services; and other projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities.

(a) Appropriate areas of interest include—

(1) Preservice preparation programs to prepare regular educators to work with children and youth with disabilities and their families;

(2) Preparing teachers to work in community and school settings with children and youth with disabilities and their families;

(3) Inservice and preservice preparation of personnel to work with infants, toddlers, children, and youth with disabilities and their families;

(4) Inservice and preservice preparation of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families;

(5) Inservice and preservice preparation of special education and related services personnel in instructive and assistive technology to benefit infants, toddlers, children, and youth with disabilities; and

(6) Recruitment and retention of special education, related services, and early intervention personnel.

(b) Both inservice and preservice preparation must include a component that addresses the coordination among all service providers, including regular educators. (See 34 CFR 318.11(a)(5).)

Invitational priorities: Within Absolute Priority 3 the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Project that develop, demonstrate, evaluate, and disseminate—

(a) Approaches to prepare teachers with strategies, including behavioral management techniques, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom;

(b) Approaches to prepare teachers in innovative instructional methodologies designed to help children with disabilities improve their reading performance; or

(c) Intensive and sustained inservice training to teachers or teams of teachers through institutes or other methods designed to ensure that they have the knowledge and skills necessary to help children with disabilities meet challenging standards established for all children.

Project Period: Up to 36 months.

Absolute Priority 4—Parent Training and Information Centers (84.029M). The purpose of this priority is to support Parent Training and Information Centers that assist parents to—

(1) Better understand the nature and needs of the disabling conditions of their children with disabilities;

(2) Provide follow-up support for the educational programs of their children with disabilities;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decision-making processes, including the development of the individualized education program, for a child with a disability;

(5) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities and their families; and

(6) Understand the provisions for educating children with disabilities under the Individuals with Disabilities Education Act.

Competitive Priorities: Within Absolute Priority 4, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities:

(a) Providing parent training and information in one or more Empowerment Zones or Enterprise Communities. The Secretary awards 5 points to an application that meets the competitive priority relating to Empowerment Zones or Enterprise Communities published in the **Federal Register** on November 7, 1994 (59 FR 55534). These points are in addition to any points the application earns under the selection criteria for the program.

(b) Assisting the Secretary in ensuring that awards are distributed geographically on a State or regional basis throughout all the States. The Secretary awards 15 points to an application that provides parent training and information in a State, or geographic area, that would be unserved by an existing Parent Training and Information Center in FY 1996. These points are in addition to any points the application earns under the selection criteria for the program and under competitive preference (a).

Project Period: Up to 60 months.

Supplementary Information: The selection criteria that are used to evaluate applications under this priority award significant points based on the extent to which a proposed project addresses the needs of parents of minority infants, toddlers, children, and youth with disabilities.

Also, a list of States or geographic areas that are currently unfunded or underserved is available from the contact person listed below.

For Applications and General Information Contact: Cecelia Aldridge, U.S. Department of Education, 600 Independence Avenue SW., room 3072, Switzer Building, Washington, DC 20202–2651. Telephone: 205–9979. FAX: (202) 205–9070. Internet: Cecelia—Aldridge@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 260–7381.

For Technical Information Contact: For Preparation of Leadership Personnel (84.029D): Bob Gilmore, U.S. Department of Education, 600 Independence Avenue SW., room 3076, Switzer Building, Washington, DC 20202–2651. Telephone: (202) 205–9080. FAX: (202) 205–9070. Internet: Bob—Gilmore@ed.gov

For Minority Institutions Personnel (84.029E): Victoria Mims, U.S. Department of Education, 600 Independence Avenue SW., room 3513, Switzer Building, Washington, DC 20202–2651. Telephone: (202) 205–8687. Telephone: (202) 205–8687. FAX: (202) 205–9070. Internet: Victoria—Mims@ed.gov

For Special Projects (84.029K): Angele Thomas, U.S. Department of Education, 600 Independence Avenue SW., room 3518, Switzer Building, Washington, DC 20202–2651. Telephone: (202) 205–8100. FAX: (202) 205–9070. Internet: Angele—Thomas@ed.gov

For Parent Training and Information Centers (84.029M): Harvey Liebergott, U.S. Department of Education, 600 Independence Avenue SW., room 3072, Switzer Building, Washington, DC 20202–2651. Telephone: (202) 205–9082. FAX: (202) 205–9070. Internet: Harvey—Liebergott@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 260–7381.

Program Authority: 20 U.S.C. 1431.

84.158A State Systems for Transition Services for Youth with Disabilities

Purpose of Program: To assist States to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

Eligible Applicants: A State education agency (SEA) and a State vocational rehabilitation agency that submit a joint application; or, if a vocational rehabilitation agency does not choose to participate, an SEA and a State agency that provides transition services to individuals who are leaving programs under the Individuals with Disabilities Education Act that submit a joint application.

Note: Because this is a one-time grant, States that have previously received a grant under this program are not eligible to apply (34 CFR 325.2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR part 325.

Project Period: 60 months.

For Applications and General Information Contact: Oneida Jennings, U.S. Department of Education, 600 Independence Avenue, SW., room 4627, Switzer Building, Washington, DC 20202–2732. Telephone (202) 205–9377.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

For Technical Information Contact: William Halloran, U.S. Department of Education, 600 Independence Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone (202) 205–8112.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1425(e).

84.180G, U Technology, Educational Media, and Materials for Individuals with Disabilities Program

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

Eligible Applicants: Institutions of higher education; State educational agencies; local educational agencies; public agencies; and nonprofit or for-profit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 333.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 333.1 and 333.3, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only those applications that meet any one of these absolute priorities:

Absolute Priority 1—Technology, Educational Media and Materials Research Projects that Promote Literacy (84.180G). This priority provides support for research projects that examine how advancing the availability, quality, use, and effectiveness of technology, educational media, and materials can address the problem of illiteracy among individuals with disabilities.

Invitational Priority: Within Absolute Priority 1 the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in projects that—

(a) Define literacy as: to read, to communicate, to compute,to make judgments, and to take appropriate action;

(b) Are of rigorous design and employ clearly explicated quantitative or qualitative methodologies, or both, appropriate to the purpose of the project; and

(c) Consider learning and psycho-social factors in examining the availability, quality, and use of specified technology, educational media, and materials, and in examining their effectiveness in providing experiences and opportunities that improve the literacy of children and youth with disabilities.

Project Period: Up to 36 months.

Absolute Priority 2—Collaborative Research on Technology, Media, and Materials for Children and Youth with Disabilities (84.180U). The Assistant Secretary establishes an absolute priority for collaborative research projects that include all of the following activities, (a) through (e):

(a) Formulate a research topic and design based on program commitments (1) through (3)—as described in the Background section of the notice of final priority published on October 13, 1994 (59 FR 52047)—as these commitments relate to improving, at the local level, education or related services or both for students with disabilities. These program commitments are as follows: (1) enable the learner across environments, (2) promote effective policy, and (3) foster use through professional development.

Note: This priority is not intended to support projects that are primarily engaged in product development; thus, commitment (4) (create innovative tools)—as described in the Background section of the notice of final priority of October 13, 1994 (59 FR 52047)—may be included only as a supporting activity.

In formulating the research topic, projects must develop a focus in terms of (i) curriculum areas, grade or age levels, disabilities, and types of services provided; or (ii) specific types of

technology, media, and materials; or (iii) both (i) and (ii).

In formulating the research design, projects must apply the standards for conducting rigorous social science research.

The following research topics are offered as illustrative examples and do not represent the full range of possible topics. These examples are broad, and projects may opt for more narrow focuses. However, projects must address all three program commitments—either as background, contextual factors, or as components of interventions or manipulations.

Example 1: Research on how local policies in schools and other agencies restrict or facilitate the acquisition and use of assistive devices, and how professional development within the context of these policies can yield improved assistive technology services to better enable students to access school, home, and community environments.

Example 2: Research on how local policies regarding curriculum and accountability can be revised to promote interdisciplinary professional collaboration in the effective use of technology, media, and materials to enable students with disabilities to acquire high-level problem-solving strategies.

Example 3: Research on how policies and professional practices may contribute to inequitable access and use of technology, media, and materials for some students with disabilities, and how the inequities can be reduced by means of policy or professional interventions or both to better enable students with disabilities to engage in beneficial educational experiences.

(b) Conduct a program of collaborative research on the research topic.

(c) Measure the effects of the intervention and relationships within and across the program commitments (1, 2, and 3).

(d) Disseminate information on the findings of the collaborative research in a form conducive to use by other schools or service providers, as well as other researchers.

(e) Coordinate their activities, as appropriate, with recipients of grants under the Technology-Related Assistance for Individuals with Disabilities Act (Pub. L. 100–407, as amended by Pub. L. 103–218).

The budget of a project must provide for two trips annually to Washington, DC for (1) a two-day Research Project Directors' meeting; and (2) another meeting: to meet and collaborate with the project officer of the Office of Special Education Programs and the other projects funded under this priority, to share information, and to discuss findings and joint methods of dissemination.

Project Period: Up to 36 months.

For Applications and General Information Contact: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette—Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

For Technical Information Contact:

For Technology, Educational Media, and Materials Research Projects that Promote Literacy (84.180G): Jane Hauser, U.S. Department of Education, 600 Independence Avenue, SW., room 3521, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8126. FAX: (202) 205–8105. Internet: Jane Hauser@ed.gov

For Collaborative Research on Technology, Media, and Materials for Children and Youth with Disabilities (84.180U): Ellen Schiller, U.S. Department of Education, room 3523, Switzer Building, 600 Independence Avenue, SW., Washington, DC 20202–2641. Telephone: (202) 205–8123. FAX: (202) 205–8105. Internet: Ellen—Schiller@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1461.

84.237G Program for Children and Youth with Serious Emotional Disturbance

Purpose of Program: To support projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Eligible Applicants: Institutions of higher education; State educational agencies; local educational agencies; and other appropriate public and nonprofit private institutions or agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 328.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 328.3(a)(5) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority—Nondiscriminatory, Culturally Competent, Collaborative Demonstration Models to Improve Services for Students with Serious Emotional Disturbance and Prevention Services for Students with Emotional and Behavioral Problems (84.237G). The Assistant Secretary establishes an absolute priority for demonstration projects that develop, implement, evaluate, and disseminate nondiscriminatory, culturally competent, collaborative practices to (1) prevent children with emotional and behavioral problems from developing serious emotional disturbance, and (2) improve special education and related services for ethnic and cultural minority students with serious emotional disturbance, in the least restrictive environment.

Projects must establish local, community-based assessment, planning, prevention, and intervention teams that involve participation from education, mental health, juvenile justice agencies, other appropriate community service agencies, and organizations representing families.

The first stage of each project must consist of the development and refinement of working agreements among the various community agencies and organizations, to identify approaches that improve the capacity of individuals and systems to respond skillfully, respectfully, and effectively to students, families, teachers, and other providers in a manner that recognizes, affirms, and values their worth and dignity.

The first stage planning must include the collaborative consideration and development, by all participating groups, of nondiscriminatory, culturally competent techniques that enhance the fairness and effectiveness of key service delivery elements, including—but not necessarily limited to—assessment, education, training, transition planning, and the provision of related services.

The second stage of each project must consist of the implementation and evaluation of the services delivered, across service providers, followed by dissemination of the results.

The budget for a project must provide for two trips annually to Washington, DC for (1) a two-day Research Project Directors' meeting; and (2) another meeting: to meet and collaborate with the Office of Special Education Programs' project officer and the other projects funded under this priority, to share information, and to discuss findings and methods of dissemination.

Project Period: Up to 48 months.

For Applications and General Information Contact: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette—Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

For Technical Information Contact:

For Nondiscriminatory, Culturally-Competent, Collaborative Demonstration Models to Improve Services for Students with Serious Emotional Disturbance and Prevention Services for Students with Emotional and Behavioral Problems (84.237G): Tom V. Hanley, U.S. Department of Education, 600 Independence Avenue, SW., room 3526, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8110. FAX: (202) 205–8105. Internet: Tom—Hanley@ed.gov

Program Authority: 20 U.S.C. 1426.

REHABILITATION SERVICES ADMINISTRATION

84.128G Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers With Disabilities

Purpose of Program: To provide grants for vocational rehabilitation services for migratory agricultural workers or seasonal farmworkers with disabilities.

Eligible Applicants: State vocational rehabilitation agencies (SVRAs); nonprofit agencies working in collaboration with the SVRAs; local agencies administering vocational rehabilitation programs under written agreements with SVRAs; and SVRAs that enter into agreements with the SVRAs of one or more other States to develop cooperative programs for the provision of vocational rehabilitation services.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 369 and 375.

Project Period: Up to 60 months.

For Applications or Information Contact: Fred Isbister, U.S. Department of Education, 600 Independence Avenue, SW., room 3330, Switzer Building, Washington, DC 20202–2740. Telephone: (202) 205–9297 or the electronic bulletin boards of the Rehabilitation Services Administration at (202) 205–5574 (2400 bps) or (202) 205–9950 (9600 bps) to order applications; or (202) 205–8206 for information.

Program Authority: 29 U.S.C. 777b.

84.128J Projects for Initiating Recreational Programs for Individuals With Disabilities

Purpose of Program: To provide grants for initiating recreation programs providing individuals with disabilities recreational activities and related experiences that can be expected to aid in their employment, mobility, socialization, independence, and community integration.

Eligible Applicants: States; other public agencies, including federally recognized Indian tribal governments; and nonprofit private organizations.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR parts 369 and 378.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Project Period: Up to 36 months.

For Applications or Information Contact: Fred Isbister, U.S. Department of Education, 600 Independence Avenue, SW., room 3330, Switzer Building, Washington, DC 20202–2740. Telephone: (202) 205–9297 or the electronic bulletin boards of the Rehabilitation Services Administration at (202) 205–5574 (2400 bps) or (202) 205–9950 (9600 bps) to order applications; or (202) 205–8206 for information.

Program Authority: 29 U.S.C. 777(f).

84.129T Distance Learning through Telecommunications

Purpose of Program: To support the formation of regional partnerships between institutions of higher education and other public and private entities for the purpose of developing and implementing through the use of telecommunications in-service training programs—including certificate or degree granting programs concerning vocational rehabilitation services and related services—for vocational rehabilitation professionals.

Eligible Applicants: Institutions of higher education with demonstrated experience in continuing education for vocational rehabilitation personnel.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, 85, and 86.

Supplementary Information:

In awarding grants under this competition, the Secretary takes into consideration the sparsity of State populations in the region to be served.

Each application submitted under this program must propose to serve one of the 10 regions served by the Rehabilitation Services Administration.

Each application must include all of the following:

(1) A detailed explanation of how the applicant will use interactive audio, video, and computer technologies between distant locations to provide in-service training programs to the region.

(2) A description of how the applicant intends to use and build upon existing telecommunications networks within the region to be served.

(3) A copy of all agreements governing the division of functions within the partnership, including an assurance that all States within the region will be served.

(4) A copy of a binding commitment entered into between the partnership and each entity that is legally permitted to provide, and from which the partnership is to obtain, the telecommunications services and facilities required for the project. The binding commitment must stipulate that if the partnership receives the grant, the entity will provide those telecommunications services and facilities in the area to be served within a reasonable time and at a charge that is in accordance with State law.

(5) A description of the curriculum to be provided, the frequency of service, and the sites of service.

(6) A description of the need to purchase or lease computer hardware and software, audio and video equipment, telecommunications terminal equipment, or interactive video equipment.

(7) An assurance that the partnership will use not less than 75 percent of the amount of the grant for instructional curriculum development and programming.

(8) A description of the means by which the project will be evaluated.

For Applications or Information Contact: Beverly Brightly, U.S.

Department of Education, 600 Independence Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–9561.

Program Authority: 29 U.S.C. 797b(a).

84.129U–1 Parent Information and Training Programs

Purpose of Program: To establish programs to provide training and information to enable individuals with disabilities, and the parents, family members, guardians, advocates, or other authorized representatives of those individuals, to participate more effectively with professionals in meeting the vocational and rehabilitation needs of individuals with disabilities.

Eligible Applicants: Nonprofit private organizations.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

Supplementary Information:

(a) *Distribution of Grants:* Under this competition the Secretary distributes grants geographically to the greatest extent possible throughout all States, and targets awards to individuals with disabilities and the parents, family members, guardians, advocates, or authorized representatives of those individuals, in both urban and rural areas or on a State or regional basis.

(b) *Demonstration of Capacity and Expertise:* Each application submitted under this competition must demonstrate the capacity and expertise of the applicant to—

(1) Coordinate and work closely with the parent training and information centers established under section 631 of the Individuals with Disabilities Education Act (20 U.S.C. 1431); and

(2) Effectively conduct the training and information activities authorized under this program.

(c) *Assurances:* Each application submitted under this competition must provide assurances that the grantee at the time it receives a grant—

(1) Is governed by a board of directors that includes professionals in the field of vocational rehabilitation and on which a majority of members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of those individuals; or

(2)(i) Has a membership that represents the interests of individuals with disabilities; and

(ii) Has established a special governing committee that includes professionals in the field of vocational rehabilitation and on which a majority of members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of those individuals.

(d) *Other Assurances:* Each application submitted under this competition must provide assurances that—

(1) The grantee will serve individuals with a full range of disabilities, and the parents, family members, guardians, advocates, or authorized representatives of those individuals;

(2) The grantee will consult with appropriate agencies, in the jurisdiction served by the program, that serve or assist individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of those individuals; and

(3) The board of directors or special governing committee will meet at least once in each calendar quarter to review the training and information program, and, in the case of a special governing committee, will directly advise the governing board regarding the views and recommendations of the committee.

(e) *Use of Grants:* Each grantee shall assist individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals to—

(1) Better understand vocational rehabilitation and independent living programs and services;

(2) Provide follow-up support for transition and employment programs;

(3) Communicate more effectively with transition and rehabilitation personnel and other relevant professionals;

(4) Provide support in the development of the individualized written rehabilitation program;

(5) Provide support and expertise in obtaining information about rehabilitation and independent living programs, services, and resources that are appropriate; and

(6) Understand the provisions of the Rehabilitation Act, particularly provisions relating to employment, supported employment, and independent living.

(f) *Other Requirements:* The appropriate provisions of section 306 of the Rehabilitation Act of 1973, as amended, also apply to grants under this competition. (29 U.S.C. 776)

For Applications or Information Contact: Beverly Brightly, U.S. Department of Education, 600 Independence Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–9561.

Program Authority: 29 U.S.C. 797b(c).

84.129U–3 Parent Information and Training Programs—Technical Assistance

Purpose of Program: To provide coordination and technical assistance to Parent Information and Training Projects.

Eligible Applicants: Nonprofit private organizations.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

For Applications or Information Contact: Beverly Brightly, U.S. Department of Education, 600 Independence Avenue SW., room 3322, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–9561.

Program Authority: 29 U.S.C. 797b(c).

84.234M Projects with Industry

Purpose of Program: To (1) create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process; (2) identify competitive job and career opportunities and the skills needed to perform these jobs; (3) create practical settings for job readiness and training programs; and (4) provide job placements and career advancement.

Eligible Applicants: (1) Designated State units; (2) labor unions; (3) employers; (4) community rehabilitation program providers; (5) trade associations; (6) Indian tribes or tribal organizations; or (7) other agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities.

Only applicants that propose to serve a geographic area that is currently unserved or underserved by the Projects with Industry program may receive new awards under this program.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) the regulations for this program in 34 CFR parts 369 and 379.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Project Period: Up to 60 months.

Priorities:

Competitive Priority: Under 34 CFR 75.105(c)(2)(i) and the notice of final priorities for this program published in the **Federal Register** on December 9, 1994 (59 FR 63860), the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Providing Program Services in an Empowerment Zone or Enterprise Community.

Background: The Empowerment Zone and Enterprise Community Program is a critical element of the Administration's community revitalization strategy. The program is a first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

Under this program the Federal Government has designated 9 Empowerment Zones (Atlanta, GA; Baltimore, MD; Chicago, IL; Detroit, MI; New York, NY; Philadelphia, PA/Camden, NJ; Kentucky Highlands, KY; Mid-Delta, MS; and Rio Grande Valley, TX); 2 Supplemental Empowerment Zones (Los Angeles, CA and Cleveland, OH); and 95 Enterprise Communities (a full list of which is available upon request). Interested individuals may contact the Department of Housing and Urban Development (HUD) at 1–800–998–9999 for additional information on the Empowerment Zone and Enterprise Community Program.

Under the Empowerment Zone and Enterprise Community Program communities are invited to submit strategic plans that comprehensively address how the community would link economic development with education and training, as well as how community development, public safety, human services, and environmental initiatives together would support sustainable communities.

Priority:

The Secretary gives competitive preference to applications that—

(1) Propose the provision of substantial services in Empowerment Zones or Enterprise Communities; and

(2) Propose projects that contribute to the strategic plan of the Empowerment Zone or Enterprise Community activities and that are made an integral component of the Empowerment Zone or Enterprise Community activities.

A PWI project may provide services at one or more sites. Under this program a PWI project is considered to be providing substantial services in a zone or community if a minimum of 51 percent of the total number of persons served by the project, irrespective of the number of sites, reside in a zone or community and at least one of the project sites is located within the boundaries of a zone or community. If there is only one project site, it must be located within the boundaries of a zone or community.

Invitational Priorities: Within the competitive priority in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1. Projects that demonstrate the use of alternative work setting models of employment, such as flexiplace or telecommute, to assist individuals with disabilities to secure and maintain competitive employment.

Invitational Priority 2. Projects that demonstrate the use of workplace apprenticeship programs designed to encourage, support, and train individuals with disabilities for employment in careers with advancement potential.

Invitational Priority 3. Projects that demonstrate effective outreach and collaboration with minority-owned businesses in order to secure competitive placement opportunities for individuals with disabilities. Minority-owned businesses are defined as nonprofit and for-profit entities at least 51 percent owned or controlled by one or more minority individuals.

Invitational Priority 4. Projects that demonstrate a service model or design that will facilitate the transition from school-to-work of individuals with disabilities. Projects should focus on placing youth with disabilities in employment with career path or career advancement opportunities.

For Applications and General Information Contact: Constance Pledger, U.S. Department of Education, 600 Independence Avenue SW., room 3318 Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–9343 or the electronic bulletin boards of the Rehabilitation Services Administration at (202) 205–5574 (2400 bps) or (202) 205–9950 (9600 bps) to order applications; or (202) 205–9415 for information.

Program Authority: 29 U.S.C. 795g.

84.235U Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities

Purpose of Program: To provide financial assistance to projects for expanding or otherwise improving vocational rehabilitation and other rehabilitation services for individuals with disabilities, especially individuals with the most severe disabilities.

Eligible Applicants: State agencies; other public agencies and organizations, including federally recognized Indian tribal governments; and nonprofit private agencies and organizations.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR parts 369 and 373.

Priorities:

Competitive Priority: Under 34 CFR 75.105(c)(2)(i) and the notice of final priorities for this program published in the **Federal Register** on December 9, 1994 (59 FR 63860), the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Providing Program Services in an Empowerment Zone or Enterprise Community.

Background:

The Empowerment Zone and Enterprise Community Program is a critical element of the Administration's community revitalization strategy. The program is a first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

Under this program the Federal Government has designated 9 Empowerment Zones (Atlanta, GA; Baltimore, MD; Chicago, IL; Detroit, MI; New York, NY; Philadelphia, PA/Camden, NJ; Kentucky Highlands, KY; Mid-Delta, MS; and Rio Grande Valley, TX); 2 Supplemental Empowerment Zones (Los Angeles, CA and Cleveland, OH); and 95 Enterprise Communities (a full list of which is available upon request). Interested individuals may contact the Department of Housing and Urban Development (HUD) at 1–800–998–9999 for additional information on the Empowerment Zone and Enterprise Community Program.

Under the Empowerment Zone and Enterprise Community Program communities are invited to submit strategic plans that comprehensively address how the community would link economic development with education and training, as well as how community development, public safety, human services, and environmental initiative

together would support sustainable communities.

Priority

The Secretary gives competitive preference to applications that—

(1) Propose the provision of substantial services in Empowerment Zones or Enterprise Communities; and

(2) Propose projects that contribute to the strategic plan of the Empowerment Zone or Enterprise Community and that are made an integral component of the Empowerment Zone or Enterprise Community activities.

Under this program a project is considered to be providing substantial services if a minimum of 51 percent of the persons served by the project reside within the Empowerment Zone or Enterprise Community.

Invitational Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Services to Minorities and Women. Applications that propose to provide culturally sensitive vocational rehabilitation services and make significant outreach efforts to identify and serve individuals with disabilities from minority backgrounds and women with disabilities.

Invitational Priority 2—Services to People with HIV or AIDS. Applications that propose to provide vocational rehabilitation services to people with HIV or AIDS.

Invitational Priority 3—Rehabilitation Technology. Applications that address the uses of technology in the successful rehabilitation of individuals with disabilities.

For Applications or Information Contact: Pamela Martin, U.S. Department of Education, 600 Independence Avenue, SW., room 3414, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–8494 or the electronic bulletin boards of the Rehabilitation Services Administration at (202) 205–5574 (2400 bps) or (202) 205–9950 (9600 bps) to order applications; or (202) 205–8494 for information.

Program Authority: 29 U.S.C. 777a(a)(1).

84.235V Special projects and demonstrations for providing transitional rehabilitation services to youth with disabilities.

Purpose of Program: To provide job training to prepare youth with disabilities for entry into the labor force, including competitive or supported employment.

Eligible Applicants: State agencies; other public agencies and organizations, including federally recognized Indian tribal governments; and nonprofit agencies and organizations.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR parts 369 and 376.

Priority

Competitive Priority: Under 34 CFR 75.105(c)(2)(i) and the notice of final priorities for this program published in the **Federal Register** on December 9, 1994 (59 FR 63860), the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Providing Program Services in an Empowerment Zone or Enterprise Community

Background

The Empowerment Zone and Enterprise Community Program is a critical element of the Administration's community revitalization strategy. The program is a first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

Under this program the Federal Government has designated 9 Empowerment Zones (Atlanta, GA; Baltimore, MD; Chicago, IL; Detroit, MI; New York, NY; Philadelphia, PA/Camden, NJ; Kentucky Highlands, KY; Mid-Delta, MS; and Rio Grande Valley, TX); 2 Supplemental Empowerment Zones (Los Angeles, CA and Cleveland, OH); and 95 Enterprise Communities (a full list of which is available upon request). Interested individuals may contact the Department of Housing and Urban Development (HUD) at 1–800–998–9999 for additional information on the Empowerment Zone and Enterprise Community Program.

Under the Empowerment Zone and Enterprise Community Program communities are invited to submit strategic plans that comprehensively address how the community would link economic development with education and training, as well as how community development; public safety, human services, and environmental initiative together would support sustainable communities.

Priority:

The Secretary gives competitive preference to applications that—

(1) Propose the provision of substantial services in Empowerment Zones or Enterprise Communities; and

(2) Propose projects that contribute to the strategic plan of the Empowerment Zone or Enterprise Community and that are made an integral component of the Empowerment Zone or Enterprise Community activities.

Under this program a project is considered to be providing substantial services if a minimum of 51 percent of the persons served by the project reside within the Empowerment Zone or Enterprise Community.

For Applications or Information Contact: Pamela Martin, U.S. Department of Education, 600 Independence Avenue SW., room 3414, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–8494 or the electronic bulletin boards of the Rehabilitation Services Administration at (202) 205–5574 (2400 bps) or (202) 205–9950 (9600 bps) to order applications; or (202) 205–8494 for information.

Program Authority: 29 U.S.C. 777a(b).

84.250F Vocational rehabilitation service projects for American Indians with disabilities.

Purpose of Program: To provide vocational rehabilitation services in order to prepare for suitable employment American Indians with disabilities who reside on Federal or State reservations

Eligible Applicants: Governing bodies of Indian Tribes; and consortia of those governing bodies located on Federal or State reservations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR parts 369 and 371.

Statutory Priority: Section 130(b)(4) of the Rehabilitation Act provides that, in making new awards under this program, the Secretary gives priority consideration to applications for the continuation of tribal programs that have been funded under this program. For this competition in fiscal year 1996, the Secretary will implement this priority by giving a competitive preference of 10 bonus points, in accordance with 34 CFR 75.105(c)(2)(i), to applications that meet this priority.

For Applications or Information Contact: Barbara M. Sweeney, U. S. Department of Education, 600 Independence Avenue SW., room 3225, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–9544.

Program Authority: 29 U.S.C. 750.

84.264B Rehabilitation continuing education programs.

Purpose of Program: To support cooperative agreements for training centers that serve either a Federal region or another geographic area and provide a broad, integrated sequence of training activities throughout a multi-State geographical area.

Eligible Applicants: State and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Note: Applications are invited for the provision of training for Department of Education Regions V, VII, and IX only.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, and 86; and (b) The regulations for this program in 34 CFR Parts 385 and 389.

Note: The regulations in 34 CFR Part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priorities: The priority in the notice of final priorities for this program, as published in the **Federal Register** on December 5, 1994 (59 FR 62506). For the purpose of this notice, the Secretary designates this priority as an absolute priority for FY 1996. Under an absolute priority the Secretary funds only applications that meet the priority (34 CFR 75.105(c)(3)).

For Applications or Information Contact: Richard Melia, U.S. Department of Education, 600 Independence Avenue SW., room 3324, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9400 or the electronic bulletin boards of the Rehabilitation Services Administration at (202) 205–5574 (2400 bps) or (202) 205–9950 (9600 bps) to order applications; or (202) 205–9400 for information.

Program Authority: 29 U.S.C. 771a.

84.315 Capacity building for traditionally underserved populations.

Purpose of Program: To provide outreach services and other related activities (such as cooperative efforts) to: (1) Historically Black Colleges and Universities, Hispanic-serving institutions of higher education, and other institutions of higher education whose minority student enrollment is at least 50 percent; (2) nonprofit and for-profit agencies at least 51 percent owned or controlled by one or more minority individuals; and (3) underrepresented populations, to enhance their capacity and increase their participation in competitions for grants, contracts, and cooperative agreements under titles I through VIII of the Rehabilitation Act, as amended.

Eligible Applicants: States; other public and nonprofit agencies and organizations; and for-profit agencies and organizations.

Applicable Regulations: Since this direct grant program does not have implementing regulations, the Secretary implements this program under the authorizing statute (section 21 of the Rehabilitation Act) and the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: To evaluate applications for new grants under this program, the Secretary uses the following selection criteria in 34 CFR 75.210 for a discretionary grant program that does not have regulations:

(a) Meeting the purposes of the authorizing statute (35 points).

(b) Extent of need for the project (25 points).

(c) Plan of operation (20 points).

(d) Quality of key personnel (7 points).

(e) Budget and cost effectiveness (5 points).

(f) Evaluation plan (5 points).

(g) Adequacy of resources (3 points).

Project Period: Up to 36 months.

For Applications and General Information Contact: Thomas E. Finch, U.S. Department of Education, 600 Independence Avenue, SW., room 3038, Switzer Building, Washington, DC 20202–2575. Telephone: (202) 205–8292 or the electronic bulletin boards of the Rehabilitation Services Administration at (202) 205–5574 (2400 bps) or (202) 205–9950 (9600 bps) to order applications.

Program Authority: Section 21 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 718b.

CHART 7.—OFFICE OF VOCATIONAL AND ADULT EDUCATION

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
Application notices for new discretionary grant awards, if any, will be published at a future date						

Invitation to Comment:

The Secretary welcomes comments and suggestions for improving the annual combined application notice.

Please direct any comments and suggestions to Steven N. Schatken, Assistant General Counsel for Regulations, U.S. Department of Education, 600 Independence Avenue, SW. (room 5105, FB–10B), Washington, D.C. 20202–2241.

Dated: August 4, 1995.

Richard W. Riley,

Secretary of Education.

Appendix—Intergovernmental Review of Federal Programs

This appendix applies to each program that is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more

than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each of those States under the Executive order. A listing containing the Single Point of Contact for each State is included in this appendix.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, EO 12372—CFDA# [commenter must insert number—including suffix letter, if any], U.S. Department of Education, room 6213, 600 Independence Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

State Single Points of Contact

Note: In accordance with Executive Order #12372, this listing represents the designated State Single Points of Contact. Because participation is voluntary some States no longer participate in the process. These include: Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, and Washington. Alabama, which did not participate when this list was last published by the Department of Education in June 1994, now participates.

Alabama

Jon C. Strickland, Alabama Department of Economic and Community Affairs, Planning and Economic Development Division, 401 Adams Avenue, Montgomery, Alabama 36103–5690, Telephone (205) 242–5483, FAX (205) 242–5515

Arizona

Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, FAX (602) 280–1305

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th Street, room 412, Little Rock, Arkansas 72203, Telephone (501) 682–1074 FAX (501) 682–5206

California

Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone (302) 739–3326, FAX (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W., Suite 500, Washington, DC 20005, Telephone (202) 727–6554, FAX (202) 727–1617

Florida

Suzanne Traub-Metlay, Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, The Capitol (room 1603), Tallahassee, Florida 32399–0001, Telephone (904) 488–8114, FAX (904) 488–9005

Georiga

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W., room 401J, Atlanta, Georgia 30334, Telephone (404) 656–3855 or 656–3829, FAX (404) 656–7938

Illinois

Tim Golemo, State Single Point of Contact, Department of Commerce and Community Affairs, 620 East Adams, Springfield, Illinois 62701, Telephone (217) 782–1671, FAX (217) 782–6620

Indiana

Francis E. Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–2972, FAX (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 242–4719, FAX (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone (502) 573–2382, FAX (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 287–3261, FAX (207) 287–6489

Maryland

William G. Carroll, Manager, State Clearinghouse, for Intergovernmental Assistance, Maryland Office of Planning, 301 West Preston Street, room 1104, Baltimore, Maryland 21201–2365, Telephone (410) 225–4490, FAX (410) 225–4480

Michigan

Richard S. Pastula, Director, Office of Federal Grants, Michigan Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Telephone (517) 373–7356, FAX (517) 373–6683

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone (601) 359–6762, FAX (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, room 760, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834, FAX (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, FAX (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/Mike Blake, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155, FAX (603) 271–1728

New Jersey

Gregory W. Adkins, Assistant Commisioner, New Jersey Department of Community Affairs

Please direct all correspondence and questions about intergovernmental review to:

Andrew J. Jaskolka, State Review Process, Intergovernmental Review Unit, CN 800, room 813A, Trenton, New Jersey 08625–0800, Telephone (609) 292–9025, FAX (609) 633–2132

New Mexico

Robert Peters, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505)827–3861

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232, FAX (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094, FAX (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to:

Linda Wise, Telephone (614) 466–0698, FAX (614) 466–5400

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone (401) 277–2656, FAX (401) 277–2083

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494, FAX (803) 734–0385

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1771, FAX (512) 463–1888

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, room 116, State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535, FAX (801) 538–1547

Vermont

Nancy McAvoy, State Single Point of Contact, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05609, Telephone (802) 828–3326, FAX (802) 828–3339

West Virginia

Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, Telephone (304) 558–4010, FAX (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street, 6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone (608) 266–2125, FAX (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574, FAX (307) 638–8967

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone 011–671–472–2285, FAX 011–671–472–2825

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose B. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone (809) 727–4444 or 723–6190, FAX (809) 724–3270 or 724–3103

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to:

Linda Clarke, Telephone (809) 774–0750, FAX (809) 776–0069

Note: This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Donna Rivelli (Telephone (202) 395–5858) at the Office of Management and Budget and to the State in question. Changes to the list will only be made upon formal notification by the State.

[FR Doc. 95–19748 Filed 8–9–95; 8:45 am]
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federal register

Thursday
August 10, 1995

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Proposed Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, amended 60 FR 20726).

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, amended 60 FR 20726). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee at its meeting on September 11–12, 1995. After consideration of these proposals and comments by the Recombinant DNA Advisory Committee, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by September 4, 1995, will be reproduced and distributed to the Recombinant DNA Advisory Committee for consideration at its September 11–12, 1995, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX to 301–496–9839.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Steiner and Holt

On April 13, 1995, Drs. Mitchell Steiner and Jeffrey Holt of Vanderbilt University School of Medicine, Nashville, Tennessee, submitted a human gene transfer protocol entitled: Gene Therapy for the Treatment of Advanced Prostate Cancer by In Vivo Transduction with Prostate-Targeted Retroviral Vectors Expressing Antisense c-myc RNA to the Recombinant DNA Advisory Committee for formal review and approval during the June 8–9, 1995, meeting. Due to reviewers' comments before the June 1995 meeting, the protocol was deferred and not forwarded to the committee.

On July 7, 1995, Drs. Steiner and Holt submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval during the September 11–12, 1995, meeting.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Crystal

In a letter dated July 17, 1995, Dr. Ronald Crystal of the New York Hospital—Cornell Medical Center, New York, New York, submitted a human gene transfer protocol entitled: A Phase I Study of Direct Administration of a Replication Deficient Adenovirus Vector Containing the E. coli Cytosine Deaminase Gene to Metastatic Colon Carcinoma of the Liver in Association with the Oral Administration of the Pro-Drug 5-Fluorocytosine to the Recombinant DNA Advisory Committee for formal review and approval.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Hortobagyi, Lopez-Berestein, Hung

In a letter dated July 11, 1995, Drs. Gabriel Hortobagyi, Gabriel Lopez-Berestein, and Mien-Chie Hung of the University of Texas, MD Anderson Cancer Center, Houston, Texas, submitted a human gene transfer protocol entitled: Phase I Study of E1A Gene Therapy for Patients with Metastatic Breast or Ovarian Cancer that Overexpress HER–2/neu to the Recombinant DNA Advisory Committee for formal review and approval.

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Curiel and Alvarez

In a letter dated January 5, 1995, Drs. David Curiel and Ronald Alvarez of the University of Alabama, Birmingham, Alabama, submitted a human gene transfer protocol entitled: A Phase I Study of Recombinant Adenovirus Vector-Mediated Delivery of an Anti-erbB–2 Single-Chain (sFv) Antibody Gene for Previously Treated Ovarian and Extraovarian Cancer Patients to the Recombinant DNA Advisory Committee for formal review and approval at its March 6–7, 1995, meeting. Due to reviewers' comments before the March 1995 meeting, the protocol was not forwarded to the committee.

In a letter dated April 12, 1995, Drs. Curiel and Alvarez submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval at its June 8–9, 1995, meeting. Due to reviewers' comments before the June 1995 meeting, the protocol was deferred and not forwarded to the committee.

On July 14, 1995, Drs. Curiel and Alvarez submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval during the September 11–12, 1995, meeting.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Isner

In a letter dated July 14, 1995, Dr. Jeffrey Isner of St. Elizabeth's Medical Center, Tufts University School of Medicine, Boston, Massachusetts, submitted a human gene transfer protocol entitled: Arterial Gene Transfer for Restenosis to the Recombinant DNA Advisory Committee for formal review and approval.

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Bozik, Gilbert, Lotze

In a letter dated July 13, 1995, Drs. Michael Bozik, Mark Gilbert, and Michael Lotze of the University of Pittsburgh Cancer Institute, Pittsburgh, Pennsylvania, submitted a human gene transfer protocol entitled: Gene Therapy of Malignant Gliomas: A Phase I Study of IL–4 Gene-Modified Autologous Tumor to Elicit an Immune Response to the Recombinant DNA Advisory Committee for formal review and approval.

VII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Riddell

In a letter dated July 11, 1995, Dr. Stanley Riddell of the Fred Hutchinson Cancer Research Center, Seattle, Washington, submitted a human gene transfer protocol entitled: Phase I Study to Evaluate the Safety of Cellular Adoptive Immunotherapy using Autologous Unmodified and Genetically Modified CD8+ HIV-Specific T Cells in HIV Seropositive Individuals to the Recombinant DNA Advisory Committee for formal review and approval.

VIII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Rosenblatt

In a letter dated July 13, 1995, Dr. Joseph Rosenblatt of the University of California, Los Angeles, California, submitted a human gene transfer protocol entitled: A Phase I Trial of Autologous CD34+ Hematopoietic Progenitor Cells Transduced with an Anti-HIV–1 Ribozyme to the Recombinant DNA Advisory Committee for formal review and approval.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: July 31, 1995.

Suzanne Medgyesi-Mitschang,

Acting Deputy Director for Science Policy and Technology Transfer.

[FR Doc. 95–19872 Filed 8–9–95; 8:45 am]

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Thursday
August 10, 1995

Part V

The President

Executive Order 12969—Federal Acquisition and Community Right-To-Know

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Vol. 60, No. 154
Thursday, August 10, 1995

Presidential Documents

Title 3—

The President

Executive Order 12969 of August 8, 1995

Federal Acquisition and Community Right-To-Know

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) ("EPCRA") and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) ("PPA") established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released into the air, land, and water in their communities by manufacturing facilities.

The Toxics Release Inventory ("TRI") established pursuant to section 313(j) of EPCRA, 42 U.S.C. 11023(j), based on information required to be reported under section 313 of EPCRA and section 6607 of PPA, 42 U.S.C. 13106, provides the public, industry, and Federal, State, and local governments with a basic tool for making risk-based decisions about management and control of toxic chemicals, that can have significant adverse effects on human health and the environment. TRI data allow the public, industry, and government to gauge the progress of industry and government efforts to reduce toxic chemical wastes.

Sharing vital TRI information with the public has provided a strong incentive for reduction in the generation, and, ultimately, release into the environment, of toxic chemicals. Since the inception of the TRI program, reported releases to the environment under TRI have decreased significantly.

The efficiency of the Federal Government is served when it purchases high quality supplies and services that have been produced with a minimum impact on the public health and environment of communities surrounding government contractors. Savings associated with reduced raw materials usage, reduced use of costly, inefficient end-of-pipeline pollution controls, and reduced liability and remediation costs from worker and community claims all serve to increase the economic and efficient provision of essential supplies and services to the government. As a result of TRI reporting, many manufacturers have learned of previously unrecognized significant efficiencies and cost savings in their production processes.

The Federal Government's receipt of timely and quality supplies and services is also served by the general enhancement of relations between government contractors and the communities in which they are situated, as well as the cooperative working relationship between employers and employees who may be subject to exposure to toxic materials.

Information concerning chemical release and transfer can assist the government to purchase efficiently produced, lower cost, and higher quality supplies and services that also have a minimum adverse impact on community health and the environment.

NOW, THEREFORE, to promote economy and efficiency in government procurement of supplies and services, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including EPCRA, 42 U.S.C. 11001 et seq., PPA, 42 U.S.C. 13101 et seq., 40 U.S.C. 471 and 486(a), and 3 U.S.C. 301, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the executive branch in procuring supplies and services that, to ensure the economical and efficient procurement of Federal Government contracts, Federal agencies, to the greatest extent practicable, shall contract with companies that report in a public manner on toxic chemicals released to the environment.

Sec. 2. *Definitions.* 2–201. All definitions found in EPCRA and PPA and implementing regulations are incorporated into this order by reference, with the following exceptions for purposes of this order.

2–202. "*Federal agency*" means an "Executive agency," as defined in 5 U.S.C. 105. For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2–203. "*Acquisition*" means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when the Federal department or agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

2–204. "*Toxic chemical*" means a substance on the list described in section 313(c) of EPCRA, 42 U.S.C. 11023(c), as it exists on the effective date of this order.

2–205. "*Administrator*" means the Administrator of the United States Environmental Protection Agency ("EPA").

2–206. "*Federal contractor*" means an entity that has submitted the successful bid or proposal in response to a competitive acquisition solicitation.

Sec. 3. *Applicability.* 3–301. Each Federal agency shall, to the maximum extent practicable, include in contract solicitations as an eligibility criterion for the award of competitive acquisition contracts expected to equal or exceed $100,000 with the Federal contractors described in subsection 3–302, the requirement that such contractors must file (and continue to file for the life of the contract) a Toxic Chemical Release Form ("Form R"), as described in sections 313(a) and (g) of EPCRA, 42 U.S.C. 11023(a) and (g), for each toxic chemical manufactured, processed, or otherwise used by the Federal contractor at a facility, as described in section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of PPA, 42 U.S.C. 13106.

3–302. The Federal contractors subject to the eligibility criterion described in subsection 3–301 above are those who currently report to the TRI pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A), that is, manufacturers having Standard Industrial Classification Code ("SIC") designations of 20 through 39 (as in effect on July 1, 1985).

3–303. Each Federal agency shall find that a prospective Federal contractor has satisfied the requirement in subsection 3–301 if the contractor certifies in a solicitation that it:

(a) Does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(b) Does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(c) Does not meet the reporting thresholds established under section 313(f) of the EPCRA, 42 U.S.C. 11023(f); or

(d) Has complied fully with the reporting requirements of subsection 4–404.

3–304. Each Federal agency shall require the filings described in subsection 3–301 above to include information on all chemicals identified by the Administrator pursuant to section 313(c) of EPCRA, 42 U.S.C. 11023(c), as of the date of this order.

3–305. Each Federal agency may amend existing contracts, to the extent permitted by law and where practicable, to require the reporting of information specified in subsection 3–301 above.

3–306. As consistent with Title IV of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, and section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11), the requirements of this order are only applicable to competitive acquisition contracts expected to equal or exceed $100,000.

Sec. 4. *Implementation.* 4–401. Not later than September 30, 1995, the EPA shall publish in the **Federal Register** guidance for compliance with this order, including applicability with respect to subcontractors.

4–402. Within 30 days of the issuance of the guidance provided for in subsection 4–401 above, each Federal agency shall include in all acquisition solicitations issued on or after the effective date of this order, the provisions necessary to effect this order.

4–403. For all contracts expected to exceed $500,000, each Federal agency shall consult with the Administrator or the Administrator's designee when the agency believes it is not practicable to include the eligibility requirement of section 3–301 in the contract solicitation or award.

4–404. Each Federal agency shall require each Federal contractor designated in subsection 3–302 above to:

(a) Have included in its response to the contract solicitation a certification, as specified in the guidelines published pursuant to subsection 4–401 of this order, that it will (if awarded the contract) comply with the requirements of subsection 3–301; and

(b) File with the Administrator and each appropriate State pursuant to section 313(a) of EPCRA, 42 U.S.C. 11023(a), the information required by subsection 3–301, beginning on the next July 1 after the date on which the contract is awarded.

4–405. Information submitted to the EPA pursuant to subsection 4–404(b) above shall be subject to the trade secret protections provided by section 322 of EPCRA, 42 U.S.C. 11042. Information that is not trade secret shall be made available to the public pursuant to sections 313(h) and (j) of EPCRA, 42 U.S.C. 11023(h) and (j). The Administrator is directed to review reports submitted pursuant to this order to determine the appropriateness of any claims for trade secret protection.

4–406. When the Administrator determines that a Federal contractor has not filed the necessary forms or complete information as required by subsection 3–301 above, the Administrator or the Administrator's designee may recommend termination of the contract for convenience. The Administrator shall transmit that recommendation to the head of the contracting agency, and that agency shall consider the recommendation and determine whether to terminate the contract. In carrying out this responsibility, the Administrator may investigate any subject Federal contractor to determine the adequacy of compliance with the provisions of this order and the Administrator's designee may hold such hearings, public or private, as the Administrator deems advisable to assist in the Administrator's determination of compliance.

4-407. Each contracting agency shall cooperate with the Administrator and provide such information and assistance as the Administrator may require in the performance of the Administrator's functions under this order.

4–408. Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to assist in full compliance with this order.

Sec 5. *General Provisions.* 5–501. The requirements of this order shall be implemented and incorporated in acquisition regulations, including the Federal Acquisition Regulations (FAR), within 90 days after the effective date of this order.

5–502. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, it officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

5–503. This order shall be effective immediately and shall continue to be in effect until revoked.

William J. Clinton

THE WHITE HOUSE,
August 8, 1995.

[FR Doc. 95–19972
Filed 8–8–95; 5:01 pm]
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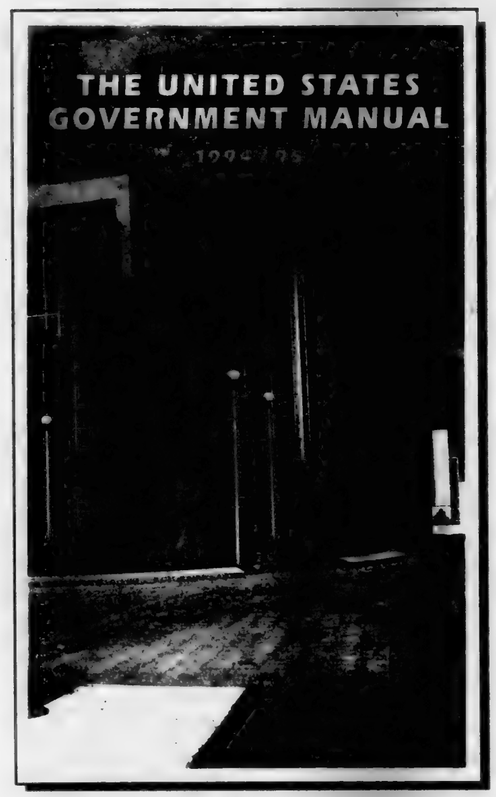
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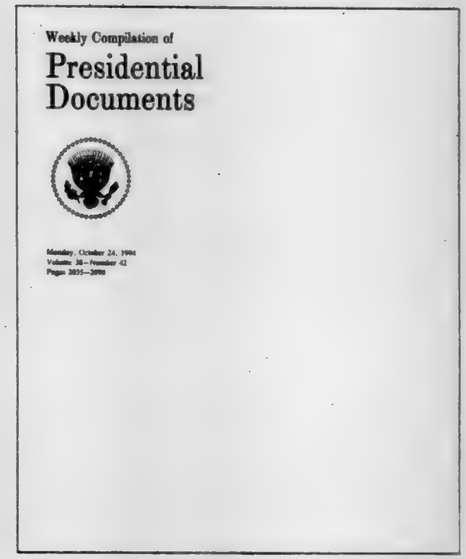
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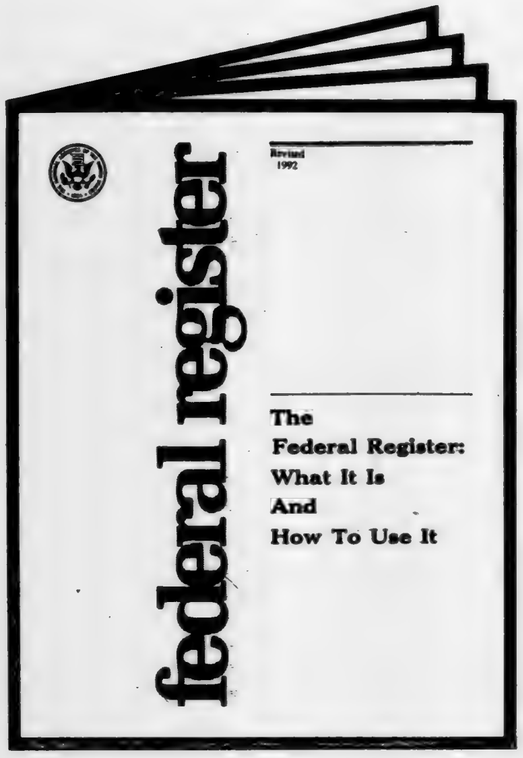
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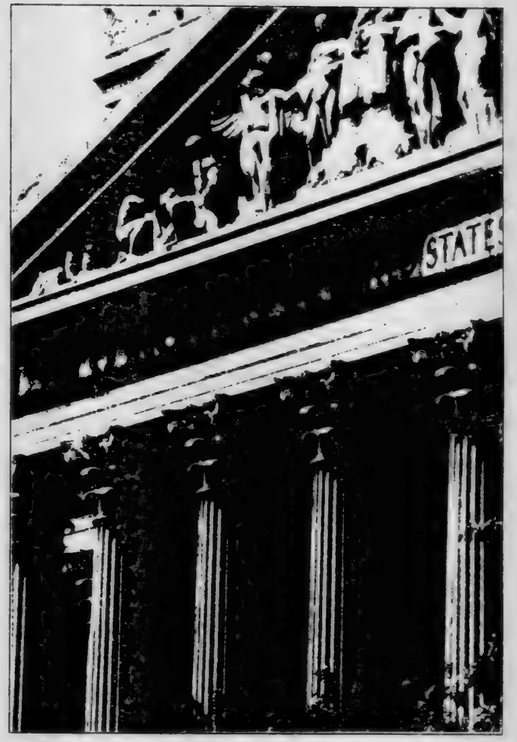
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Rules and Regulations

Federal Register
Vol. 60, No. 155
Friday, August 11, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 94–117–3]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Oriental fruit fly regulations by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on the interstate movement of regulated articles from that area. The interim rule was necessary to relieve restrictions that are no longer needed to prevent the artificial spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County and that the quarantine and restrictions are no longer necessary.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on April 7, 1995, and published in the **Federal Register** on April 13, 1995 (60 FR 18727–18728, Docket No. 94–117–2), we amended the Oriental fruit fly regulations in 7 CFR 301.93–3 by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on interstate movement of regulated articles from that area.

Comments on the interim rule were required to be received on or before June 12, 1995. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301.93–3(c) and that was published at 60 FR 18727–18728 on April 13, 1995.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 3rd day of August 1995.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–19856 Filed 8–10–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–104–AD; Amendment 39–9262; AD 95–12–12]

Airworthiness Directives; de Havilland Model DHC–8–102, –103, and –106, Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 95–12–12 that was published in the **Federal Register** on June 13, 1995 (60 FR 31063). The typographical error resulted in a reference to a part number that does not exist. This AD is applicable to certain de Havilland Models DHC–8–102, –103, and –106 series airplanes and requires repetitive operational testing of the stall warning computers.

DATES: Effective June 28, 1995.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of June 28, 1995 (60 FR 31063, June 13, 1995).

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581, telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 95–12–12, amendment 39–9262, applicable to certain de Havilland Model DHC–8–102, –103, and –106 series airplanes, was published in the **Federal Register** on June 13, 1995 (60 FR 31063). That AD requires repetitive operational testing of the stall warning computers and replacement of non-operational stall warning computers with new or serviceable units. That AD also provides an optional terminating action for the repetitive operational tests.

As published, that AD contained a typographical error in paragraph (b), which describes the optional terminating action. That paragraph stated that replacement of stall warning computers having part number (P/N) "3605–5, –6, or –7" with new stall warning computers having P/N 3605–8 would constitute terminating action. However, "P/N 3605–7" was inadvertently indicated in that paragraph instead of the correct part number of "P/N 3605–4." (In fact, P/N 3605–7 does not exist.) In all other parts of the published AD and its preamble, these part numbers were correctly cited as "P/N 3605–4, –5, and –6."

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of the AD remains June 28, 1995.

§ 39.13 [Corrected]

On page 31065, in the first column, paragraph (b) of AD 95–12–12 is corrected to read as follows:

* * * * *

(b) Replacement of stall warning computers having part number (P/N) 3605–4, –5, or –6 with new stall warning computers having P/N 3605–8, in accordance with Bombardier Service Bulletin S.B. 8–27–76, dated October 31, 1994, constitutes terminating action for the repetitive operational test requirements of this AD.

* * * * *

Issued in Renton, Washington, on August 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19655 Filed 8–10–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 73

[Airspace Docket No. 95–ACE–8]

Change Time of Designation for Restricted Areas R–3601A and R–3601B, Brookville, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation for Restricted Areas R–3601A and R–3601B, Brookville, KS. The Department of the Air Force has reviewed current requirements for these areas and determined that the current designated times may be reduced. This action increases the availability of restricted airspace for public use.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations amends the time of designation for Restricted Areas R–3601A and R–3601B. The time of designation for R–3601A and R–3601B are reduced from "Monday, Wednesday, Friday and Saturday, 0800 to 1800 local time; Tuesday and Thursday, 0800 to 2230 local time; other times by NOTAM 24 hours in advance." to "Monday through Friday, 0900 to 1700 local time; other times by NOTAM 6 hours in advance." I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.36 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The action reduces the restricted areas time of designation. In accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," this action is not subject to environmental assessments and procedures and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

73.36 [Amended]

2. Section 73.36 is amended as follows:

R–3601A Brookville, KS [Amended]

By removing the existing "Time of designation. Monday, Wednesday, Friday and Saturday, 0800 to 1800 local time; Tuesday and Thursday, 0800 to 2230 local time; other times by NOTAM 24 hours in advance." and substituting the following: "Time of designation. Monday through Friday, 0900 to 1700 local time; other times by NOTAM 6 hours in advance."

R–3601B Brookville, KS [Amended]

By removing the existing "Time of designation. Monday, Wednesday, Friday and Saturday, 0800 to 1800 local time; Tuesday and Thursday, 0800 to 2230 local time; other times by NOTAM 24 hours in advance." and substituting the following: "Time of designation. Monday through Friday, 0900 to 1700 local time; other times by NOTAM 6 hours in advance."

Issued in Washington, DC, on August 2, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–19904 Filed 8–10–95; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–36063; 35–26352; IC–21270]

RIN 3235–AB14

Employee Benefit Plan Exemptive Rules Under Section 16 of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Extension of Phase-In Period for § 240.16b–3.

SUMMARY: The Commission today is extending the phase-in period for compliance with the substantive conditions of new Rule 16b–3 regarding employee benefit plan transactions under the Securities Exchange Act of 1934 pending further notice and rulemaking under the provision.

DATES: Effective on August 11, 1995. The phase-in period for compliance with new § 240.16b–3, which previously has been extended to September 1, 1995, is extended until September 1, 1996, or such different date as set in further rulemaking under Section 16.

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Office of the Chief Counsel, Division of Corporation Finance, at (202) 942–2900.

SUPPLEMENTARY INFORMATION: On February 8, 1991, the Commission adopted comprehensive revisions to the rules under Section 16 [1] of the Securities Exchange Act of 1934 ("Exchange Act").[2] The new regulatory scheme generally became effective on May 1, 1991, but a 16 month phase-in period was provided with respect to specified rules affecting employee benefit plans, in order to give registrants ample time to review the rule changes and amend their plans accordingly.[3] The Adopting Release provided that registrants could continue to rely on the exemptions from Section 16(b) of the Exchange Act [4] afforded by former Rules 16a–8(b),[5] 16a–8(g)(3),[6] and 16b–3 [7] after May 1, 1991, but would be required to adopt the substantive conditions of new Rule 16b–3 [8] by September 1, 1992.[9]

The Rule 16b–3 phase-in period was extended until September 1, 1995, in contemplation of further rulemaking under Section 16 with regard to employee benefit plans.[10] Because the Commission currently is engaged in such rulemaking,[11] the Commission is extending the phase-in period for new Rule 16b–3 until September 1, 1996, or such different date as is set by the Commission.

By the Commission.

Dated: August 7, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19932 Filed 8–10–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78p (1994).

[2] 15 U.S.C. 78a *et seq.* (1988).

[3] Exchange Act Release No. 28869 (February 8, 1991) [56 FR 7242] ("Adopting Release"). See Section VII of the Adopting Release for transition provisions generally and Section VII.C for transition provisions relating to employee benefit plans.

[4] 15 U.S.C. 78p(b).

[5] 17 CFR 16a–8(b).

[6] 17 CFR 16a–8(g)(3).

[7] 17 CFR 16b–3 (1990).

[8] 17 CFR 240.16b–3 (1991).

[9] The phase-in period applies only to the exemption from Section 16(b), not to the revised reporting requirements under Section 16(a) that became effective on May 1, 1991.

[10] See Exchange Act Release No. 34513 (August 10, 1994) [59 FR 42448].

[11] See Exchange Act Releases Nos. 34514 (August 10, 1994) [59 FR 42449] and 34–34681 (September 16, 1994) [59 FR 48579].

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

[T.D. 95–61]

Accounting Procedures for Drawback

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice that Customs is amending the general drawback rate (or contract) for crude petroleum and petroleum derivatives (Treasury Decision (T.D.) 84–49) to permit first-in-first-out (FIFO) accounting for exports and drawback deliveries of petroleum products with different drawback factors which are commingled in inventory. Customs is also revoking a published ruling (Customs Service Decision (C.S.D.) 84–82) under which identification of merchandise and articles for drawback purposes is permitted on a "higher-to-lower" basis. However, drawback claimants operating under properly approved specific drawback rates may continue to claim drawback using higher-to-lower accounting procedures, as provided for in C.S.D. 84–82, if the drawback rates under which they are operating expressly provide for the use of such procedures, until such rates are modified, with notice to the rate holders.

EFFECTIVE DATE: The amendment of T.D. 84–49 and the revocation of C.S.D. 84–82 will be effective as to drawback entries or claims properly filed with Customs on or after November 9, 1995, unless there is a prior approved properly-executed contract.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Entry Rulings Branch, Office of Regulations and Rulings, 202–482–7040.

Background

Section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), authorizes "drawback". Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law, including manufacturing and unused merchandise drawback. Under section 1313(a), drawback is authorized when imported merchandise is used in the manufacture of articles which are exported or destroyed. Under section 1313(j)(1), drawback is authorized when imported merchandise is exported or destroyed without having been used in the U.S. Sections 1313(b) and (j)(2) respectively provide for the substitution of other merchandise (whether imported or domestic) for the imported merchandise in manufacturing and unused merchandise drawback. Section 1313(l) provides that the allowance of drawback shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe.

The regulations pertaining to drawback are found in part 191 of the Customs Regulations (19 CFR part 191). Under the Customs Regulations (19 CFR part 191, subparts B and D), manufacturers or producers of articles intended for exportation with drawback under section 1313(a) or (b) must apply for and obtain approval of a drawback rate (sometimes called a drawback contract) describing the manufacturing or production operations covered and setting forth the conditions which are to be met to obtain drawback.

Subpart D of part 191 of the Customs Regulations (19 CFR part 191, subpart D) authorizes general drawback rates for certain common manufacturing operations. A general drawback rate for substitution manufacturing drawback under section 1313(b) for crude petroleum and petroleum derivatives is provided for in T.D. 84–49, 18 Cust. Bull. 149. This general drawback rate was initially promulgated by T.D. 56487, which added the rate to the Customs Regulations then pertaining to drawback (see 19 CFR 22.6(g–1) (1983)). The general rate for crude petroleum and petroleum derivatives now in T.D. 84–49 is substantively the same as the rate formerly contained in the Customs Regulations.

The features and procedures of, as well as the background to, T.D. 84–49 and its predecessor (see 19 CFR 22.6(g–1)(1983), as promulgated by T.D. 56487) were extensively described in the June 28, 1994, **Federal Register** (59 FR 33322) notice inviting public comment on the subject of this document. Under T.D. 84–49, distribution of drawback among the products produced during a period of production is based on the relative values of all products manufactured or produced during the production period, as of the time of separation of the products. The time of separation of the products is considered to be the monthly period of production. Relative values are stated in terms of drawback factors, which attach to each of the products manufactured or produced during the production period. An example of the calculation of these drawback factors was given in the June 28, 1994, **Federal Register** notice.

Because the relative value of the petroleum products which may be produced under T.D. 84–49 may vary from month to month, the drawback factors for a particular product produced under the procedures in T.D. 84–49 may also vary from month to month. The T.D. contains explicit procedures to account for such variances. When the inventory of a particular product contains product with different drawback factors (*e.g.*, if the inventory of a product was from more than one month's production, each month's quantity could have a different drawback factor), withdrawals from the inventory for exports are required to be

from lowest factor on hand, withdrawals for drawback deliveries (i.e., for further manufacture resulting in a product on which drawback could be claimed) are required to be from lowest on hand after exports are deducted, and withdrawals for domestic (nondrawback) shipments are required to be from earliest on hand after withdrawals for export and drawback deliveries are deducted.

The above accounting procedures were based on the accounting requirements for drawback applicable at the time that the general drawback rate was initially promulgated, as fully described in the June 28, 1994, **Federal Register** notice. The general requirements in the Customs Regulations for records, storage, and identification pertaining to drawback are now found in 19 CFR 191.22. Section 191.22(c) authorizes the identification for drawback purposes of commingled lots of fungible merchandise or articles by applying FIFO accounting principles or any other accounting procedure approved by Customs. Customs has issued a number of rulings on the accounting procedures which may be used to identify merchandise or articles for drawback purposes. Those rulings and the background to them were extensively described in the June 28, 1994, **Federal Register** notice. In one of those rulings, Customs Service Decision (C.S.D.) 84–82, 18 Cust. Bull. 1036, Customs held that when fungible drawback and nondrawback input was placed in commingled storage, withdrawals for drawback purposes could be identified on a higher-to-lower basis against the drawback input commingled therein.

In the June 28, 1994, **Federal Register** notice, Customs furnished notice that it had been requested to amend T.D. 84–49 to permit the accounting for withdrawals for export and for drawback deliveries from the inventory of a particular product containing product with different drawback factors on the basis of FIFO or higher-to-lower. In the June 28, 1994, **Federal Register** notice, Customs stated that it believed that the proposal to amend T.D. 84–49 to permit the accounting on a FIFO basis in the described situation had merit. In the interest of administrative simplicity, Customs stated that it believed that the order of such withdrawals should continue to be the same (*i.e.*, first exports, then drawback deliveries, then domestic shipments). In regard to the proposal to amend T.D. 84–49 to permit the described accounting on a higher-to-lower basis, however, Customs stated that T.D. 84–49 should not be amended to permit such accounting. Customs also stated that C.S.D. 84–82, the only published Customs ruling permitting higher-to-lower accounting for drawback purposes, as well as any unpublished Customs rulings to the same effect, should be revoked. The reasons for these conclusions were fully described in the June 28, 1994, **Federal Register** notice.

In the June 28, 1994, **Federal Register** notice, Customs invited comments on the proposed changes. Four commenters responded to the notice. After review of these comments, Customs has decided to proceed as proposed (*i.e.*, to amend T.D. 84–49 to permit the described accounting on a FIFO basis and to revoke C.S.D. 84–82). In regard to the latter, it is Customs position that unless substitution is specifically provided for in the law, accounting methods used to identify merchandise or articles for drawback purposes must be revenue neutral or favorable to the Government. Other criteria for evaluating such accounting methods include consistency with commercial accounting procedures, consistency with the accounting procedures generally used by the drawback claimant, and ease of administration. The comments received are discussed below.

Discussion of Comments

Comment: The use of FIFO accounting for T.D. 84–49, as proposed in the June 28, 1994, **Federal Register** notice, is not opposed. However, in the interest of maximum flexibility in accounting for drawback, higher-to-lower accounting should also be permitted for the described accounting in T.D. 84–49.

Response: In regard to the comment on FIFO accounting for T.D. 84–49, this document is proceeding as proposed and amending T.D. 84–49 to permit such accounting. In regard to permitting higher-to-lower accounting for the described purposes in T.D. 84–49, such accounting would not be revenue neutral or favorable to the Government (*i.e.*, withdrawals for drawback purposes (exports or drawback deliveries) would always be from the highest drawback factor first, thus always resulting in the greatest amount of drawback). Furthermore, higher-to-lower accounting methods are not consistent with commercial accounting procedures nor, based on information submitted to Customs by a representative of the petroleum industry, are they consistent with the accounting methods generally used by that industry. Therefore, Customs is *not* permitting higher-to-lower accounting for the described purposes in T.D. 84–49.

Comment: Customs should make it clear that T.D. 56487 (the predecessor of T.D. 84–49) is not authoritative on the issue of producibility, particularly that of proportional deductions.

Response: The June 28, 1994, document did not, and was not intended to, comment on the authoritativeness of T.D. 56487 on the issue of producibility or the issue of proportional deductions (see 19 CFR 22.6(g–1)(5)(1983) and T.D. 84–49, paragraph (5)). No change was proposed in this regard.

Comment: C.S.D. 84–82 should not be revoked. Higher-to-lower accounting procedures are consistent with the purposes of the drawback law and adequately protect the revenue and should continue to be allowed to be used for drawback. Drawback claimants under section 1313(b) are able to substitute any eligible merchandise of the same kind and quality as eligible imported merchandise received and put into production. This should continue.

Response: This comment appears to be based on a misunderstanding of the proposal to revoke C.S.D. 84–82. The proposal would not (and could not) change the current statutory provision allowing a drawback claimant to substitute any eligible merchandise of the same kind and quality as the designated imported merchandise to use in manufacture or production of the exported articles. In this regard, Customs notes the amendment of section 1313(b) by the North American Free Trade Agreement (NAFTA) Implementation Act, Title VI, section 632 (Pub. L. 103–182; 107 Stat. 2057, 2192–2193), specifically providing for the substitution of any other merchandise (whether imported or domestic) for the imported duty-paid merchandise designated for drawback under section 1313(b). The same is true of substitution unused merchandise drawback under section 1313(j)(2) (*i.e.*, any merchandise (whether imported or domestic) may be substituted for the designated imported merchandise, provided that the lots of merchandise are commercially interchangeable and that the other requirements of the law are met).

The revocation of C.S.D. 84–82 would apply to the identification by accounting procedures of merchandise or articles in situations where the law does not authorize substitution. For example, except in the case of petroleum derivatives under certain circumstances, the drawback law does not authorize the substitution of articles on which drawback is claimed under the manufacturing drawback law (section 1313 (a) or (b)) for other articles. That is, when manufactured articles qualifying for drawback are commingled with nonqualifying articles after the former are manufactured by a drawback claimant, substitution under the law is not authorized. In such situations, identification of merchandise or articles for drawback purposes by accounting procedures must be revenue neutral or favorable to the Government and the accounting procedures should be consistent with the criteria for such accounting procedures described above.

Comment: The drawback law does not require any method of identifying fungible duty-paid imported materials which may be commingled in storage with other foreign or domestic materials; rather, the law delegates authority to the Secretary of the Treasury to prescribe appropriate accounting methods by regulation.

Response: Section 1313(l) of the drawback law provides that the allowance of drawback shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe. Under this authority, the agency has already prescribed, *inter alia*, a regulation governing the use of accounting methods (see, 19 CFR 191.22(c)). As stated above, the final interpretative ruling articulates Customs position that in situations where the law does not specifically authorize substitution, identification of merchandise or articles for drawback purposes by appropriate accounting procedures should be consistent with the criteria for such accounting procedures described above.

Comment: The higher-to-lower accounting method promotes administrative efficiency because it allows Customs to verify drawback claims without inquiring as to the order of withdrawal from commingled inventory.

Response: The drawback statute contains specific time limits (see *e.g.*, sections 1313 (i), (b), (c), (j), (p)). Any verification by Customs of whether a drawback claimant has complied with the drawback law and the regulations issued thereunder must include verification that the statutory time-limits were met.

Comment: If Customs decides to revoke C.S.D. 84–82 and proscribe the use of higher-to-lower accounting for drawback, Customs should specify a "cut-off" date for use of the higher-to-lower method. Customs should delay the effective date for this change in position because the drawback public may have relied on this ruling in establishing its inventory methods for drawback. One commenter suggests an implementation period of 3 years.

Response: Customs is delaying the effective date of the amendment of T.D. 84–49 and the revocation of C.S.D. 84–82 for 90 days after the publication of this document, the maximum delay provided for in the Customs Regulations for a modification or revocation of a ruling (see 19 CFR 177.9). Customs notes that, in regard to manufacturing drawback, a drawback claimant which relied on C.S.D. 84–82 should be able to document such reliance in its drawback rate (*i.e.*, in order to be paid manufacturing drawback, a claimant must have an approved drawback rate (see 19 CFR 191.23 and the general drawback rate for section 1313(a) (T.D. 81–234), as well as the sample drawback proposal for section 1313(b) provided for in 19 CFR 191.21(c), the latter of which contains specific sections in which the claimant is instructed to describe its inventory procedures)). In such instances (*i.e.*, when a claimant is operating under a drawback rate which specifically provides for higher-to-lower accounting), drawback claimants may continue to use higher-to-lower accounting procedures, as provided for in their drawback rates, until their rates are modified, and notice of the modification is sent to the rate holders.

Conclusion

For the reasons given in the June 28, 1994, **Federal Register** notice, and following careful consideration of the comments received and further review of the matter, Customs is taking the actions described in the June 28, 1994, **Federal Register** notice. That is:

1. T.D. 84–49 is amended to permit the accounting for withdrawals from inventory of exports and drawback deliveries on a FIFO basis. The order of such withdrawals will continue to be: first exports, then drawback deliveries, after which domestic shipments will be accounted for on a FIFO basis.

2. C.S.D. 84–82 is revoked.

This amendment of T.D. 84–49 and the revocation of C.S.D. 84–82 will be effective to drawback entries or claims properly filed with Customs on or after 90 days from the date of publication in the **Federal Register**. Drawback claimants operating under properly approved drawback rates under 19 CFR 191.23 may continue to claim drawback using higher-to-lower accounting procedures, as provided for in C.S.D. 84–82, if the drawback rates under which they are operating specifically provide for the use of such procedures, until such rates are modified, and notice of such modification is sent to the rate holders.

Michael H. Lane,
Acting Commissioner of Customs.

Approved: July 6, 1995.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–19911 Filed 8–10–95; 8:45 am]
BILLING CODE 4820–02–P

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8611]

RIN 1545–AS40

Conduit Arrangements Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to conduit financing arrangements issued under the authority granted by section 7701(l). The final regulations apply to persons engaging in multiple-party financing arrangements. The final regulations are necessary to determine whether such arrangements should be recharacterized under section 7701(l).

EFFECTIVE DATE: The regulations are effective September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Elissa J. Shendalman of the Office of the Associate Chief Counsel (International), (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1440. The estimated annual burden per recordkeeper is 10 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On August 10, 1993, Congress enacted section 7701(l) of the Internal Revenue Code (Code), which authorizes the

Secretary to "prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more parties where such recharacterization is necessary to prevent avoidance of any tax imposed by [title 26]." The legislative history to section 7701(l) noted with approval a series of tax court and IRS pronouncements that used "substance over form" principles to recharacterize conduit financing arrangements, but stated that the Secretary was not bound by the principles of these pronouncements in developing regulations.

On October 14, 1994, the IRS published a notice of proposed rulemaking in the **Federal Register** (59 FR 52110) under section 7701(l) of the Code. These proposed regulations permit the district director to disregard the participation of one or more intermediate entities in a conduit financing arrangement for purposes of sections 871, 881, 1441, and 1442.

Written comments responding to the notice were received, and a public hearing was held on December 16, 1994. After considering the written comments received and the statements made at the hearing, the IRS and Treasury adopt the proposed regulation as revised by this Treasury decision.

Explanation of Provisions and Summary of Significant Comments

A. Overview of Provisions

The final regulations make few substantive changes to the proposed regulations. Most changes are in the nature of refinements to, and clarifications of, the principles in the proposed regulations. It should be noted that the IRS and Treasury will continue to monitor conduit financing arrangements in the context of sections 871, 881, 1441 and 1442 after the publication of these final regulations. If the rules announced herein do not sufficiently address the avoidance of these taxes, the IRS and Treasury will consider modifying or supplementing these rules as they find necessary.

Section 1.881–3(a)(2) of the final regulations provides definitions of certain terms used throughout the regulations. A *financing arrangement* is defined as a series of transactions by which one person (the financing entity) advances money or other property, or grants rights to use property, and another person (the financed entity) receives money or other property, or the right to use property, if the advance and receipt are effected through one or more other persons (intermediate entities) and there are financing transactions linking the financing entity, each of the intermediate entities, and the financed entity. The final regulations supplement this basic rule with an anti-abuse rule that allows the IRS to treat related persons as a single entity where a taxpayer interposes a related person in an arrangement that would otherwise qualify as a *financing arrangement* to circumvent the application of the conduit rules.

A *financing transaction* includes a debt instrument, lease or license. In addition, an equity instrument may qualify as a *financing transaction* if the equity has certain debt-like characteristics. The term *financing transaction* also includes any other advance of money or property pursuant to which the transferee is obligated to repay or return a substantial portion of the money or other property advanced or the equivalent in value.

Section 1.881–3(a)(3)(i) authorizes the district director to determine that an intermediate entity is a conduit entity under the rules set forth in § 1.881–3(a)(4). Section 1.881–3(a)(3)(ii) describes the effects of conduit treatment. Section 1.881–3(a)(3)(ii)(B) generally provides that the character of the payments made under the recharacterized transaction (i.e. interest, rents, etc.) is determined by reference to the character of the payments made to the financing entity. However, if the financing transaction to which the financing entity is a party gives rise to a type of payment that would not be deductible if paid by the financed entity (e.g., dividends, as determined under U.S. tax principles), the character of the payments is not affected by the recharacterization.

Section 1.881–3(a)(3)(ii)(E) provides that a financing entity that is unrelated to both the intermediate entity and the financed entity is not liable for the tax imposed by section 881 unless it knows or has reason to know of a conduit financing arrangement. Moreover, the final regulations create a presumption that an unrelated financing entity does not know or have reason to know of a conduit financing arrangement where the intermediate entity that is a party to the financing transaction with the financing entity is engaged in a substantial trade or business.

Section 1.881–3(a)(4) provides the standards for determining whether an intermediate entity is a conduit entity for purposes of section 881. If an intermediate entity is related to either the financing entity or the financed entity, the intermediate entity will be a conduit entity only if (i) the participation of the intermediate entity in the financing arrangement reduces the U.S. withholding tax that otherwise would have been imposed, and (ii) the participation of the intermediate entity in the financing arrangement is pursuant to a plan one of the principal purposes of which is the avoidance of the withholding tax.

If a financing arrangement involves multiple intermediate entities, § 1.881–3(a)(4)(ii)(A) provides that the district director will determine whether each of the intermediate entities is a conduit entity. The factors, presumptions, and other rules in the regulations generally state how they should be applied in the case of multiple intermediate entities. The regulations state that, if no such rule is provided, the district director should apply principles consistent with the standards described above. Section 1.881–3(a)(4)(ii)(B) provides a general anti-abuse rule that allows the district director to treat related intermediate entities as a single intermediate entity if he determines that one of the principal purposes for the involvement of multiple intermediate entities in the financing arrangement is to prevent the characterization of an intermediate entity as a conduit entity, to reduce the portion of a payment that is subject to withholding tax or otherwise to circumvent the provisions of this section. The district director's determination is to be based upon all of the facts and circumstances, including, but not limited to, the factors indicating whether the intermediate entity's participation in a financing arrangement is pursuant to a tax avoidance plan.

Section 1.881–3(b) provides that the district director will weigh all available evidence regarding the purposes for the intermediate entity's participation in the financing arrangement. Moreover, § 1.881–3(b)(3) provides a presumption that a tax avoidance plan does not exist where an intermediate entity that is related to either the financing entity or the financed entity performs significant financing activities with respect to the financing transactions making up the financing arrangement.

In the case of an intermediate entity that is not related to either the financing entity or the financed entity, the intermediate entity will not be a conduit entity unless the requirements applicable to related parties are met (that is, there is a reduction in the tax imposed by section 881 and a tax avoidance plan) and, in addition, the intermediate entity would not have participated in the financing arrangement on substantially the same terms but for the fact that the financing entity advanced money or property to (or entered into a lease or license with) the intermediate entity. See § 1.881–3(a)(4)(i)(C). Under § 1.881–3(c)(2), the district director may presume that the intermediate entity would not have participated in the financing arrangement on substantially the same terms but for the financing transaction between the financing entity and the intermediate entity if another person has provided a guarantee of the financed entity's obligation to the intermediate entity. The term *guarantee* includes, but is not limited to, a right of offset between the two financing transactions to which the intermediate entity is a party.

Once the district director has disregarded the participation of a conduit entity in a conduit financing arrangement, § 1.881–3(d)(1)(i) provides that a portion of each payment made by the financed entity is recharacterized as a payment directly between the financed entity and the financing entity. If the aggregate principal amount of the financing transaction(s) to which the financed entity is a party is less than or equal to the aggregate principal amount of the financing transaction(s) linking any of the parties to the financing arrangement, the entire amount of the payment by the financed entity shall be recharacterized. If the aggregate principal amount of the financing transaction(s) to which the financed entity is a party is greater than the aggregate principal amount of the financing transaction(s) linking any of the parties to the financing arrangement, then the recharacterized portion shall be determined by multiplying the payment by a fraction the numerator of which is equal to the lowest aggregate principal amount of the financing transaction(s) linking any of the parties to the financing arrangement and the denominator of which is the aggregate principal amount of the financing transaction(s) to which the financed entity is a party.

Under § 1.881–3(d)(1)(ii)(A), the principal amount of a financing transaction generally equals the amount of money, or the fair market value of other property, advanced, or subject to a lease or license, valued at the time of the financing transaction. However, in the case of a financing arrangement where the same property is advanced, or rights granted from the financing entity through the intermediate entity (or entities) to the financed entity, the property is valued on the date of the last financing arrangement. This rule is intended to minimize the distortive effect of currency or other market fluctuations when there is a time lag between financing transactions. In addition, the principal amount of certain types of financing transactions is subject to adjustment. Sections 1.881–3(d)(1)(ii) (B) through (D) provide more detailed guidance regarding how these general rules are applied to different types of financing transactions.

Section 1.881–4 uses the general recordkeeping requirements under section 6001 to require a financed entity or any other person to keep records relevant to determining whether such person is a party to a financing arrangement and whether that financing arrangement may be recharacterized under § 1.881–3. Corporations that otherwise would report certain information on total annual payments to related parties pursuant to sections 6038(a) and 6038A(a) must also maintain such records where the corporation knows or has reason to know that such transactions are part of a financing arrangement. Specifically, the final regulations require the entity to retain all records relating to the circumstances surrounding its participation in the financing transactions and financing arrangements, including minutes of board of directors meetings and board resolutions and materials from investment advisors regarding the structuring of the transaction.

Under § 1.1441–7(d), any person that is a withholding agent for purposes of section 1441 with respect to the transaction (whether the financed entity or an intermediate entity that is treated as an agent of the financing entity) must withhold in accordance with the recharacterization if it knows or has reason to know that the financing arrangement is a conduit financing arrangement. The final regulations provide examples of how the "knows or has reason to know" standard, which generally applies to all withholding agents, is to be applied in this context.

B. Discussion of Significant Comments

Significant comments that relate to the application of the proposed regulation and the responses to them, including an explanation of the revisions made to the final regulation, are summarized below. Technical or drafting comments that have been reflected in the final regulations generally are not discussed.

1. General Approach

As described above, the final regulations adopt the general "tax avoidance" standard of the proposed regulations. Several commentators criticized the proposed regulations for setting forth new standards for the recharacterization of conduit transactions. They argued that the rulings that preceded these regulations required matching cash flows from the financed entity to the conduit entity and from the conduit entity to the financing entity. Some commentators argued that, because in their view the regulations adopt new standards, the regulations should only be effective for transactions entered into after the enactment of section 7701(l), while others argued that the regulations should only apply to transactions entered into after the publication of the final regulations. Finally, some commentators suggested that the regulations constituted an override of our treaty obligations and might therefore be invalid.

The IRS and Treasury believe that pre-section 7701(l) conduit rulings rested on a taxpayer having a tax avoidance purpose for structuring its transactions. The fact that an intermediate entity received and paid matching, or nearly matching, cash flows was evidence that the participation of the intermediate entity in the transaction did not serve a business purpose. Nevertheless, the fact that cash flows were not matched did not mean that the transaction had a business purpose.

The final regulations generally apply to payments made by financed entities after the date which is 30 days after the date of publication of the regulations because the IRS and Treasury believe that the regulations reflect existing conduit principles. Moreover, even if the regulations had adopted a new standard, it would be inappropriate to grandfather transactions that admittedly had a tax avoidance purpose. The final regulations do not apply to interest payments covered by section 127(g)(3) of the Tax Reform Act of 1984, and to interest payments with respect to other debt obligations issued prior to October 15, 1984 (whether or not such debt was issued by a Netherlands Antilles corporation). Prior law continues to apply with respect to payments on any such debt instruments.

As noted in the preamble to the proposed regulations, the IRS and Treasury believe that these regulations supplement, but do not conflict with, the limitation on benefits articles in tax treaties. They do so by determining which person is the beneficial owner of income with respect to a particular financing arrangement. Because the financing entity is the beneficial owner of the income, it is entitled to claim the benefits of any income tax treaty to which it is entitled to reduce the amount of tax imposed by section 881 on that income. The conduit entity, as an agent of the financing entity, cannot claim the benefits of a treaty to reduce the amount of tax due under section 881

with respect to payments made pursuant to the financing arrangement.

2. Discretion given to District Director

a. *Determination of whether conduit entity's participation will be disregarded.* Because the proposed regulations utilize a tax avoidance test that depends on the facts and circumstances, discretion is given to the district director to determine whether the participation of an intermediate entity had as one of its principal purposes the avoidance of U.S. withholding tax. Among other things, the district director may determine the composition of the financing arrangement and the number of parties to the financing arrangement.

Some commentators criticized this grant of discretion because they claimed that the regulations provide insufficient guidance regarding what factors the district director should take into account. Several commentators proposed adding presumptions, making certain existing presumptions irrebuttable or otherwise providing bright-line tests. One commentator suggested that the district director's discretion to determine the parties to a financing arrangement should be limited to the extent necessary to ensure that a taxpayer could prove that a different party that was entitled to treaty benefits was the real financing entity. Finally, another commentator suggested that the determination whether an intermediate entity's participation will be disregarded should be subject to review by a central control board in the National Office of the IRS.

Because the final regulations retain the facts and circumstances test used in the proposed regulations, the final regulations do not significantly reduce the district director's discretion. As discussed below, it was not considered necessary to add additional factors because the objective list of factors is not exclusive. The final regulations do, however, provide more guidance regarding the tax avoidance purpose test by adding several more examples. In addition, the final regulations modify the factor relating to whether there has been a significant reduction in tax to allow the taxpayer to produce evidence that there was not a reduction in tax because the entity that was the ultimate source of funds also was entitled to treaty benefits. See § 1.881–3(b)(2)(i).

The final regulations do not adopt the suggestion that the district director's discretion be subject to review at the National Office level. The final regulations, like the proposed regulations, provide that the determination of whether a tax avoidance plan exists is based on all of the facts and circumstances surrounding the intermediate entity's participation in the financing arrangement. The IRS and Treasury believe that such a determination would best be made at the local level.

b. *Judicial standard of review.* Because the district director is granted discretion by the regulations, his determinations generally will be reviewed by the court under an abuse of discretion standard. Commentators suggested that the district director's determination that an intermediate entity's participation should be disregarded should be reviewed by the court under this standard. One commentator instead suggested that courts review a district director's determination using a de novo standard of review. Another suggested that the IRS should be afforded only its normal presumption of correctness. The final regulations do not adopt these suggestions because they are fundamentally inconsistent with the grant of discretion to the district director.

3. Definitions

a. *Financing transaction, in general.* Commentators pointed out that thedefinition of *financing transaction* in the proposed regulations encompassed transactions that clearly were not meant to be covered by the proposed regulations. For example, under the proposed regulations, a foreign parent that contributed an existing note from its domestic subsidiary to a foreign subsidiary in exchange for common stock of the subsidiary that did not have any debt-like features nevertheless would be treated as a financing entity because the foreign parent had made an advance of property (the note) pursuant to which the foreign subsidiary had "become a party to an existing financing transaction".

The definitions of *financing transaction* and *financing arrangement* have been redrafted to address these concerns. See § 1.881–3(a)(2) (i) and (ii). The effect of the new definitions is to take a "snapshot" after all the transactions are in place to determine whether there is a *financing arrangement.*

b. Equity. Commentators noted that the proposed regulations were inconsistent in their treatment of how a controlling interest in a corporation, either before or after a default, affected whether an equity arrangement was a financing transaction. In addition, commentators requested that the final regulations explicitly exempt "common stock" and "ordinary preferred stock" from treatment as financing transactions.

In response to the first of these comments and in a general attempt to clarify the types of equity instruments that are financing transactions, the final regulations revise the definition of *financing transaction* with respect to equity. See § 1.881–3(a)(2)(ii) (A)(*2*) and (B). The new definition provides that the right to elect the majority of the board of directors will not, in and of itself, cause an equity instrument to be a financing arrangement. See § 1.881–3(a)(2)(ii)(B)(*2*)(*i*).

As to the second suggestion, the final regulations do not create a separate exception from the definition of financing transaction for "common stock" or "ordinary perpetual preferred stock." Whether a transaction constitutes a financing transaction depends upon the terms of the transaction, not simply on the label attached to the transaction. Moreover, because these terms are not themselves well-defined in either the Code or common law, the IRS and Treasury believe that excluding these categories of instruments would lead to disputes as to whether a particular instrument is "common stock" or, if not, whether it is "ordinary" perpetual preferred stock.

c. Guarantees. Commentators asked that final regulations explicitly provide that guarantees are exempted from treatment as financing transactions. The IRS and Treasury believe that the new definition of financing transaction, which does not treat becoming a party to a financing transaction as itself a financing transaction, clarifies that a guarantee is not a financing transaction. Moreover, the final regulations add an example to eliminate any doubt in this regard. See § 1.881–3(e) *Example 1.*

d. Leases and licenses. The proposed regulations provide that leases and licenses are financing transactions. Some commentators suggested that the regulations not include leases and licenses in the definition of financing transaction or that the IRS reserve on the subject of leases until it had more time to study the matter.

Other commentators proposed that certain types of leases, for instance short-term leases and leveraged leases, be excluded from the definition of financing transaction. The commentators pointed out that certain leveraged leases would be subject to recharacterization under the proposed regulations even though, in substance, the financing arrangement is the equivalent of a loan from a financing entity entitled to a zero rate of withholding on interest. Under § 1.881–3(d)(2) of the proposed regulations, which provides that the nature of the recharacterized payments is determined by reference to the transaction to which the financed entity is a party, the participation of the intermediate entity in a leveraged lease would substantially reduce the tax imposed under section 881 if the treaty between the United States and the country in which the lender was organized allowed withholding on rental payments. Because all of the negative factors of § 1.881–3(c)(2) and the "but-for" test of § 1.881–3(b) of the proposed regulations are met in a standard leveraged lease, this reduction in tax would allow the district director to recharacterize the financing arrangement as a conduit financing arrangement.

The IRS and Treasury believe that all leases and licenses, of whatever duration, can be used by taxpayers to structure a conduit financing arrangement. Accordingly, the final regulations continue to include leases and licenses in the definition of financing transaction. See § 1.881–3(a)(2)(ii)(A)(*3*). However, the final regulations change the character rule in the case of deductible payments. In those cases, the character of the payments under the recharacterized transaction is determined by reference to the financing transaction to which the financing entity is a party. As a result, under the final regulations, a leveraged lease generally will not be recharacterized as a conduit arrangement if the ultimate lender would be entitled to an exemption from withholding tax on interest received from the financed entity, even if rental payments made by the financed entity to the financing entity would have been subject to withholding tax.

e. Related. As noted above, it is more difficult for an intermediate entity to be a conduit entity if it is not related to either the financing entity or the financed entity. The definition of persons who are *related* to another person generally follows the definition used in section 6038A. One commentator suggested that the final regulations eliminate the constructive ownership rule of section 267(c)(3) from the definition of related. The same commentator further suggested that a person under common control within the meaning of section 482 should not be a related person for purposes of this regulation.

The IRS and Treasury believe that the term *related* should be broadly defined to ensure that the additional protection from recharacterization provided by the so-called "but for" test flows only to those entities that are not under the effective control of either the financing or the financed entity. Accordingly, the final regulations retain the definition of related provided in the proposed regulations. See § 1.881–3(a)(2)(v).

4. Factors Indicating the Presence or Absence of a Tax Avoidance Plan

a. In general. The proposed regulations provide that whether the participation of the intermediary in the financing arrangement is pursuant to a tax avoidance plan is determined based on all the relevant facts and circumstances. In addition, the proposed regulations provide a list of some of the factors that will be taken into account: the extent of the reduction in tax; the liquidity of the intermediate entity; the timing of the transactions; and, in the case of related entities, the nature of the business(es) of such entities.

Commentators asked that the final regulations adopt a number of additional factors. For example, commentators asked that the dissimilarity of cash flows or of financing transactions making up the financing arrangement constitute a positive factor (i.e., a factor that evidences the absence of a tax avoidance plan). Commentators also suggested that the positive factors include the fact that income was subject to net tax in the United States or in a foreign jurisdiction or, alternatively, that the transaction reduced other U.S. or foreign taxes more than it reduced the U.S. withholding tax (indicating that the purpose of the transaction was to avoid taxes other than the tax imposed by section 881).

The factors proposed by commentators generally relate to the issue of whether there were purposes, other than the avoidance of the tax imposed by section 881, for the participation of the intermediate entity in the financing arrangement. The final regulations do not add factors relating to purposes for the participation of an intermediate entity in a financing arrangement. However, § 1.881–3(b)(1) of the final regulations addresses the issue by clarifying that the district director will consider all available evidence regarding the purposes for the participation of the intermediate entity.

b. Factor relating to a complementary or integrated business. One of the factors listed in the proposed regulations is whether, if the intermediate entity is related to the financed entity, the two parties enter into a financing transaction to finance a trade or business actively engaged in by the financed entity that forms a part of, or is complementary to, a substantial trade or business actively engaged in by the intermediate entity. One commentator expressed uncertainty as to the policy behind this factor.

The intent of this factor was to take into account the fact that related corporations engaged in integrated businesses may enter into many financing transactions in the course of conducting those businesses, the vast majority of which have no tax avoidance purpose. Accordingly, § 1.881–3(b)(2)(iv) of the final regulations clarifies that the district director will take into account whether a transaction is entered into in the ordinary course of integrated or complementary trades or businesses in determining whether there is a tax avoidance plan. In addition, the factor is broadened so as to apply not only to transactions between the intermediate entity and the financed entity but to transactions between any two parties to the financing arrangement that are related to each other.

5. Presumption Regarding Significant Financing Activities

The proposed regulations provide that, in the case of an intermediate entity that is related to either the financing entity or the financed entity, a presumption of no tax avoidance arises where the intermediate entity performs significant financing activities for such entities. Among other things, the provision required employees of the intermediate entity (other than an intermediate entity that earned "active rents" or "active royalties") to manage "business risks" arising from the transaction on an ongoing basis. The proposed regulations provide an example showing that, if there are no such business risks because the intermediate entity has hedged itself fully at the time it entered into the financing transactions, the entity is not described in the provision.

One commentator criticized the articulation of the significant financing activities presumption in the proposed regulations on the grounds that the test should be solely whether the participation of the intermediate entity produces (or could be expected to produce) efficiency savings through a reduction in overhead costs and the ability to hedge the group's positions on a net basis. Another commentator proposed extending the presumption for significant financing activities to intermediate entities that are unrelated to both the financed entity and the financing entity.

As to the first comment, the IRS and Treasury agree that there is not a sufficient business purpose for the centralization of financing activities of a group of related corporations in a single

corporation unless the taxpayer anticipates efficiency savings. Although the prospect of such savings in general may establish a business purpose for the establishment of the subsidiary, it does not prevent the subsidiary from acting as a conduit with respect to any particular financing arrangement. This is demonstrated by the hedging example described above, the rationale for which is that either the financed entity or the financing entity could have entered into the long-term hedge so there is no economic justification for the participation of the intermediate entity in the particular financing arrangement. The IRS and Treasury believe that an affiliate that is not taking a continuing active role in coordinating and managing a financing transaction should not be entitled to the presumption that its participation is not pursuant to a tax avoidance plan.

As to the suggestion of extending the significant financing activities presumption to unrelated parties, the IRS and Treasury believe that this extension would be inconsistent with the purpose of the presumption. The significant financing presumption recognizes that there are legitimate business reasons for conducting financing activities through a centralized financing and hedging subsidiary. The decision to have an unrelated intermediate entity participate in a financing transaction is based on different considerations, including the regulatory effects of such transactions and the interests of the shareholders of the unrelated intermediary. These considerations are addressed by providing that such entities will not be conduit entities unless they satisfy the "but for" test. The final regulations do not extend the significant financing activities presumption to unrelated parties.

Accordingly, the requirements for the significant financing activities presumption in § 1.881–3(b)(3) of the final regulations are generally the same as those in the proposed regulations. However, the final regulations do add a requirement that the participation of the intermediate entity generate efficiency savings, and change the term *business risks* to *market risks* (to differentiate the risks of currency and interest rate movements from other, primarily credit, risks). In addition, one of the examples that illustrates the significant financing activities presumption has been revised to indicate that a finance subsidiary may be managing market risks even in the case of a fully-hedged transaction if the intermediate entity routinely terminates such long term arrangements when it finds cheaper hedging alternatives. See § 1.881–3(e) *Example 22.*

6. "But for" Test

a. In general. Under the proposed regulations, if the intermediate entity is not related to either the financing entity or the financed entity, the financing arrangement will not be recharacterized unless the intermediate entity would not have participated in the financing arrangement on substantially the same terms "but for" the fact that the financing entity advanced money or property to (or entered into a lease or license with) the intermediate entity.

Commentators asked for clarification regarding what it means for terms to be not substantially the same. One commentator proposed using the standards for material modifications under section 1001.

The IRS and Treasury believe that an attempt to set forth a comprehensive system of bright-line rules like those suggested by commentators would add unnecessary complexity to the regulation, given its anti-abuse purpose. Accordingly, the final regulations make no change to the proposed regulations in this regard.

b. Presumption where financing entity guarantees the liability of the financed entity. Under the proposed regulations, it is presumed that the intermediate entity would not have participated in the financing arrangement on substantially the same terms if, in addition to entering into a financing transaction with the intermediate entity, the financing entity guarantees the financed entity's liabilities under its financing transaction with the intermediate entity. A taxpayer may rebut this presumption by producing clear and convincing evidence that the intermediate entity would have participated in the financing arrangement on substantially the same terms even if the financing entity had not entered into a financing transaction with the intermediate entity.

Several commentators asked for clarification of this presumption. Some commentators suggested that the existence of a guarantee makes the existence of the financing transaction between the financing entity and the intermediate entity irrelevant to the determination of whether the intermediate entity would have participated in the financing arrangement on substantially the same terms. Another commentator proposed eliminating the "clear and convincing evidence" standard on the grounds that it is too difficult an evidentiary burden for the taxpayer to overcome.

The presumption regarding guarantees originated in Rev. Rul. 87–89 (1987–2 C.B. 195), which articulated the "but for" test in substantially the same terms as adopted in the final regulations. Rev. Rul. 87–89 provided that a statutory or contractual right of offset is presumptive evidence that the unrelated intermediary would not have participated in the financing arrangement on substantially the same terms without the financing transaction from the financing entity. The proposed regulations extend the presumption to all guarantees in order to prevent taxpayers from using forms of credit support other than the right of offset to avoid this presumption. The final regulations retain this rule. See § 1.881–3(c)(2).

The final regulations also retain the "clear and convincing evidence" standard. The taxpayer always must overcome the presumption of correctness in favor of the government by a preponderance of the evidence. Therefore, in order for this additional presumption to have any effect, it is necessary to raise the evidentiary standard. In addition, this standard of proof is not unreasonable, because an intermediate entity that is unrelated to the financing entity and the financed entity and that proves, by clear and convincing evidence, that it would have entered into the financing arrangement on substantially the same terms will avoid recharacterization as a conduit entity *even though* its participation in the financing arrangement is pursuant to a tax avoidance plan.

7. Multiple Intermediate Entities

a. In general. The proposed regulations provide guidance as to how some but not all of the operative provisions and presumptions apply to multiple intermediate entities. Several commentators asked that the final regulations clarify the manner in which the operative rules apply in the case of multiple intermediate entities. The final regulations provide additional guidance in the relevant operative rules and presumptions. In addition, the final regulations modify the example in the proposed regulations relating to multiple intermediate entities to clarify how some of these provisions and presumptions apply. See § 1.881–3(e) *Example 8.*

b. Special rule for related persons. Section 1.881–3(a)(4)(ii)(B) of the proposed regulations allows the district director to treat related persons as a single intermediate entity if he determines that one of the principal purposes for the structuring of a transaction was the avoidance of the application of the conduit financing arrangement rules. Several commentators suggested that the final regulations eliminate this section. One commentator suggested that the rule be limited to situations where one related corporation made an equity investment in another. Another believed that the IRS and Treasury should "wait and see" whether such a rule was really necessary to prevent taxpayers from circumventing the conduit financing arrangement rules.

The IRS and Treasury believe that an anti-abuse rule is necessary to prevent the circumvention of these rules through manipulation of the definition of financing arrangement. Accordingly, § 1.881–3(a)(2)(i)(B) of the final regulations retains the related party anti-abuse rule. Moreover, the final regulations include another more general anti-abuse rule that allows the district director to treat related intermediate entities as a single intermediate entity if he determines that one of the principal purposes for the involvement of multiple intermediate entities in the financing arrangement is to prevent the characterization of an entity as a conduit, to reduce the portion of a payment that is subject to withholding tax or otherwise to circumvent any other provision of this section. See § 1.881–3(a)(4)(ii)(B). This rule prevents a taxpayer from structuring a financing transaction with a small principal amount to reduce the amount of the recharacterized payment, and thus replaces the second half of the rule set forth in proposed regulation § 1.881–3(a)(4)(ii)(B). This rule is illustrated in § 1.881–3(e) *Example 7.*

8. Principal Amount

The proposed regulations provide that the principal amount of a financing transaction shall be determined on the basis of all of the facts and circumstances. Under the proposed regulations, the principal amount generally equals the amount of money, or the fair market value of other property (determined as of the time that the financing transaction is entered into), advanced in the financing transaction. The principal amount of a financing transaction is subject to adjustments, as appropriate.

Some commentators asked for clarification regarding whether adjustments would be made to the principal amount of a financing transaction to take account of amortization or depreciation. Another commentator suggested that the final regulations provide that calculations be performed in the functional currency of the intermediate entity in order to isolate currency fluctuations.

The final regulations provide that adjustments for depreciation and amortization are made when calculating the principal amount of a leasing or licensing financing transaction. See § 1.881–3(d)(1)(ii)(A).

Although the IRS and Treasury agree that the effect of currency fluctuations should be minimized, they believe that determining the principal amount in the functional currency of the intermediate entity would not always yield the correct result. Accordingly, the final regulations eliminate currency and market fluctuations to the extent possible by providing that, when the same property has been advanced by the financing entity and received by the financed entity, the determination of the principal amount is made as of the date the last financing transaction is entered into. See § 1.881–3(d)(1)(ii)(A). An example has been added to demonstrate how this rule applies to transactions in currencies other than the U.S. dollar. See § 1.881–3(e) *Example 25.*

9. Correlative Adjustments

The proposed regulations do not provide for correlative adjustments in the case of the district director's recharacterization of a financing arrangement as a transaction directly between a financing entity and a financed entity.

Commentators have requested that taxpayers be allowed to make correlative adjustments if their transactions are recharacterized. Commentators generally would not, however, allow the IRS to make correlative adjustments where such adjustments would result in greater tax liability.

The final regulations, like the proposed regulations, do not provide for correlative adjustments. The IRS and Treasury agree with commentators that it is not appropriate to use regulations that are intended to prevent the avoidance of tax under section 881 to recharacterize transactions for purposes of other code sections. Accordingly, taxpayers should not be able to use these regulations to make correlative adjustments to their tax returns.

10. Recordkeeping and Reporting Requirements

The proposed regulations require corporations that would otherwise report certain information on total annual payments to related parties pursuant to sections 6038(a) and 6038A(a) to report such information on a transaction-by-transaction basis where the corporation knows or has reason to know that such transactions are part of a financing arrangement. In addition, the proposed regulations require a financed entity or any other person to keep records relevant to determining whether such person is a party to a financing arrangement that is subject to recharacterization as part of their general recordkeeping requirements under section 6001.

Commentators criticized the reporting requirements imposed by the proposed regulation as unduly burdensome in that they would require reporting of all financing arrangements and not simply those subject to recharacterization as conduit financing arrangements. Moreover, they pointed out that, because the regulations only would require reporting of those transactions to which the financed entity is a party, the information reported would not be of significant value. The reported information would not be sufficient to allow the IRS to connect the reported financing transaction to the other financing transactions making up a financing arrangement.

The final regulations eliminate the reporting requirements provided in the proposed regulations and provide more specific guidance as to the type of records affected entities must retain. The recordkeeping requirements of § 1.881–4 have been revised to incorporate all of the information that entities would have had to report under the proposed regulations. In addition, the final regulations require the entity to retain all records relating to the circumstances surrounding its participation in the financing transactions and financing arrangements, including minutes of board of directors meetings and board resolutions and materials from investment advisors regarding the structuring of the transaction. See § 1.881–4(c)(2).

11. Withholding Obligations

Under the proposed regulations, a person that is otherwise a withholding agent is required to withhold tax under section 1441 or section 1442 in accordance with the recharacterization of a financing arrangement if the person knows or has reason to know that the financing arrangement is subject to recharacterization under sections 871 or 881. Commentators asked for additional guidance regarding the application of the "know or have reason to know" standard in the context of conduit financing arrangements. The final regulations include several examples regarding the circumstances in which a financed entity does and does not have

reason to know of the existence of a conduit financing arrangement.

C. Status of Revenue Rulings

The proposed regulations did not address the status of the existing revenue rulings relating to conduit arrangements. Commentators have asked for guidance regarding their status.

Concurrent with the publication of these regulations, the IRS is issuing a revenue ruling modifying the existing rulings. The revenue ruling limits the application of the old revenue rulings in the context of withholding tax to payments made before the effective date of the final regulations and to other provisions not covered by the conduit regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These regulations affect entities engaged in cross-border multiple-party financing arrangements. It is assumed that a substantial number of small entities will not engage in such financing arrangements. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information: The principal author of these regulations is Elissa J. Shendalman, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for "Sections 1.6038A–1 through 1.6038A–7" and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.871–1 also issued under 26 U.S.C. 7701(l). * * *

Section 1.881–3 also issued under 26 U.S.C. 7701(l).

Section 1.881–4 also issued under 26 U.S.C. 7701(l). * * *

Section 1.1441–3 also issued under 26 U.S.C. 7701(l). * * *

Section 1.1441–7 also issued under 26 U.S.C. 7701(l). * * *

Section 1.6038A–1 also issued under 26 U.S.C. 6038A.

Section 1.6038A–2 also issued under 26 U.S.C. 6038A.

Section 1.6038A–3 also issued under 26 U.S.C. 6038A and 7701(l).

Section 1.6038A–4 also issued under 26 U.S.C. 6038A.

Section 1.6038A–5 also issued under 26 U.S.C. 6038A.

Section 1.6038A–6 also issued under 26 U.S.C. 6038A.

Section 1.6038A–7 also issued under 26 U.S.C. 6038A. * * *

Section 1.7701(l)–1 also issued under 26 U.S.C. 7701(l). * * *

Par. 2. In § 1.871–1, paragraph (b)(7) is added to read as follows:

§ 1.871–1 Classification and manner of taxing alien individuals.

* * * * *

(b) * * *

(7) *Conduit financing arrangements.* For rules regarding conduit financing arrangements, see §§ 1.881–3 and 1.881–4.

* * * * *

Par. 3. Sections 1.881–0, 1.881–3 and 1.881–4 are added to read as follows:

§ 1.881–0 Table of contents.

This section lists the major headings for §§ 1.881–1 through 1.881–4.

§ 1.881–1 Manner of Taxing Foreign Corporations

(a) Classes of foreign corporations.
(b) Manner of taxing.
(1) Foreign corporations not engaged in U.S. business.
(2) Foreign corporations engaged in U.S. business.
(c) Meaning of terms.
(d) Rules applicable to foreign insurance companies.
(1) Corporations qualifying under subchapter L.
(2) Corporations not qualifying under subchapter L.
(e) Other provisions applicable to foreign corporations.
(1) Accumulated earnings tax.
(2) Personal holding company tax.
(3) Foreign personal holding companies.
(4) Controlled foreign corporations.
(i) Subpart F income and increase of earnings invested in U.S. property.
(ii) Certain accumulations of earnings and profits.
(5) Changes in tax rate.
(6) Consolidated returns.
(7) Adjustment of tax of certain foreign corporations.
(f) Effective date.

§ 1.881–2 Taxation of Foreign Corporations Not Engaged in U.S. Business

(a) Imposition of tax.
(b) Fixed or determinable annual or periodical income.
(c) Other income and gains.
(1) Items subject to tax.
(2) Determination of amount of gain.
(d) Credits against tax.
(e) Effective date.

§ 1.881–3 Conduit Financing Arrangements

(a) General rules and definitions.
(1) Purpose and scope.
(2) Definitions.
(i) Financing arrangement.
(A) In general.
(B) Special rule for related parties.
(ii) Financing transaction.
(A) In general.
(B) Limitation on inclusion of stock or similar interests.
(iii) Conduit entity.
(iv) Conduit financing arrangement.
(v) Related.
(3) Disregard of participation of conduit entity.
(i) Authority of district director.
(ii) Effect of disregarding conduit entity.
(A) In general.
(B) Character of payments made by the financed entity.
(C) Effect of income tax treaties.
(D) Effect on withholding tax.
(E) Special rule for a financing entity that is unrelated to both intermediate entity and financed entity.
(iii) Limitation on taxpayers's use of this section.
(4) Standard for treatment as a conduit entity.
(i) In general.
(ii) Multiple intermediate entities.
(A) In general.
(B) Special rule for related persons.
(b) Determination of whether participation of intermediate entity is pursuant to a tax avoidance plan.
(1) In general.
(2) Factors taken into account in determining the presence or absence of a tax avoidance purpose.
(i) Significant reduction in tax.
(ii) Ability to make the advance.
(iii) Time period between financing transactions.
(iv) Financing transactions in the ordinary course of business.
(3) Presumption if significant financing activities performed by a related intermediate entity.
(i) General rule.
(ii) Significant financing activities.
(A) Active rents or royalties.
(B) Active risk management.
(c) Determination of whether an unrelated intermediate entity would not have participated in financing arrangement on substantially same terms.
(1) In general.
(2) Effect of guarantee.
(i) In general.
(ii) Definition of guarantee.
(d) Determination of amount of tax liability.
(1) Amount of payment subject to recharacterization.
(i) In general.
(ii) Determination of principal amount.
(A) In general.
(B) Debt instruments and certain stock.
(C) Partnership and trust interests.
(D) Leases and licenses.
(2) Rate of tax.
(e) Examples.
(f) Effective date.

§ 1.881–4 Recordkeeping Requirements Concerning Conduit Financing Arrangements

(a) Scope.
(b) Recordkeeping requirements.
(1) In general.
(2) Application of sections 6038 and 6038A.
(c) Records to be maintained.
(1) In general.
(2) Additional documents.
(3) Effect of record maintenance requirement.
(d) Effective date.

§ 1.881–3 Conduit financing arrangements.

(a) *General rules and definitions*—(1) *Purpose and scope.* Pursuant to the authority of section 7701(l), this section provides rules that permit the district director to disregard, for purposes of section 881, the participation of one or more intermediate entities in a financing arrangement where such entities are acting as conduit entities. For purposes of this section, any reference to tax imposed under section 881 includes, except as otherwise provided and as the context may require, a reference to tax imposed under sections 871 or 884(f)(1)(A) or required to be withheld under section 1441 or 1442. See § 1.881–4 for recordkeeping requirements concerning financing arrangements. See §§ 1.1441–3(j) and 1.1441–7(d) for withholding rules applicable to conduit financing arrangements.

(2) *Definitions.* The following definitions apply for purposes of this section and §§ 1.881–4, 1.1441–3(j) and 1.1441–7(d).

(i) *Financing arrangement*—(A) *In general.* Financing arrangement means a series of transactions by which one person (the financing entity) advances money or other property, or grants rights to use property, and another person (the financed entity) receives money or other property, or rights to use property, if the advance and receipt are effected through one or more other persons (intermediate entities) and, except in cases to which paragraph (a)(2)(i)(B) of this section applies, there are financing transactions linking the financing entity, each of the intermediate entities, and the financed entity. A transfer of money or other property in satisfaction of a repayment obligation is not an advance of money or other property. A financing arrangement exists regardless of the order in which the transactions are entered into, but only for the period during which all of the financing transactions coexist. See *Examples 1, 2,* and *3* of paragraph (e) of this section for illustrations of the term financing arrangement.

(B) *Special rule for related parties.* If two (or more) financing transactions involving two (or more) related persons would form part of a financing arrangement but for the absence of a financing transaction between the related persons, the district director may treat the related persons as a single intermediate entity if he determines that one of the principal purposes for the structure of the financing transactions is to prevent the characterization of such arrangement as a financing arrangement. This determination shall be based upon all of the facts and circumstances, including, without limitation, the factors set forth in paragraph (b)(2) of this section. See *Examples 4* and *5* of paragraph (e) of this section for illustrations of this paragraph (a)(2)(i)(B).

(ii) *Financing transaction*—(A) *In general.* Financing transaction means—

(*1*) Debt;

(*2*) Stock in a corporation (or a similar interest in a partnership or trust) that meets the requirements of paragraph (a)(2)(ii)(B) of this section;

(*3*) Any lease or license; or

(*4*) Any other transaction (including an interest in a trust described in sections 671 through 679) pursuant to which a person makes an advance of money or other property or grants rights to use property to a transferee who is obligated to repay or return a substantial portion of the money or other property advanced, or the equivalent in value. This paragraph (a)(2)(ii)(A)(*4*) shall not apply to the posting of collateral unless the collateral consists of cash or the person holding the collateral is permitted to reduce the collateral to cash (through a transfer, grant of a security interest or similar transaction) prior to default on the financing transaction secured by the collateral.

(B) *Limitation on inclusion of stock or similar interests*—(*1*) *In general.* Stock in a corporation (or a similar interest in a partnership or trust) will constitute a financing transaction only if one of the following conditions is satisfied—

(*i*) The issuer is required to redeem the stock or similar interest at a specified time or the holder has the right to require the issuer to redeem the stock or similar interest or to make any other payment with respect to the stock or similar interest;

(*ii*) The issuer has the right to redeem the stock or similar interest, but only if, based on all of the facts and circumstances as of the issue date, redemption pursuant to that right is more likely than not to occur; or

(*iii*) The owner of the stock or similar interest has the right to require a person related to the issuer (or any other person who is acting pursuant to a plan or arrangement with the issuer) to acquire the stock or similar interest or make a payment with respect to the stock or similar interest.

(*2*) *Rules of special application*—(*i*) *Existence of a right.* For purposes of this paragraph (a)(2)(ii)(B), a person will be considered to have a right to cause a redemption or payment if the person has the right (other than rights arising, in the ordinary course, between the date that a payment is declared and the date that a payment is made) to enforce the payment through a legal proceeding or to cause the issuer to be liquidated if it fails to redeem the interest or to make a payment. A person will not be considered to have a right to force a redemption or a payment if the right is derived solely from ownership of a controlling interest in the issuer in cases where the control does not arise from a default or similar contingency under the instrument. The person is considered to have such a right if the person has the right as of the issue date or, as of the issue date, it is more likely than not that the person will receive such a right, whether through the occurrence of a contingency or otherwise.

(*ii*) *Restrictions on payment.* The fact that the issuer does not have the legally available funds to redeem the stock or similar interest, or that the payments are to be made in a blocked currency, will not affect the determinations made pursuant to this paragraph (a)(2)(ii)(B).

(*iii*) *Conduit entity* means an intermediate entity whose participation in the financing arrangement may be disregarded in whole or in part pursuant to this section, whether or not the district director has made a determination that the intermediate entity should be disregarded under paragraph (a)(3)(i) of this section.

(*iv*) *Conduit financing arrangement* means a financing arrangement that is effected through one or more conduit entities.

(*v*) *Related* means related within the meaning of sections 267(b) or 707(b)(1), or controlled within the meaning of section 482, and the regulations under those sections. For purposes of

determining whether a person is related to another person, the constructive ownership rules of section 318 shall apply, and the attribution rules of section 267(c) also shall apply to the extent they attribute ownership to persons to whom section 318 does not attribute ownership.

(3) *Disregard of participation of conduit entity*—(i) *Authority of district director.* The district director may determine that the participation of a conduit entity in a conduit financing arrangement should be disregarded for purposes of section 881. For this purpose, an intermediate entity will constitute a conduit entity if it meets the standards of paragraph (a)(4) of this section. The district director has discretion to determine the manner in which the standards of paragraph (a)(4) of this section apply, including the financing transactions and parties composing the financing arrangement.

(ii) *Effect of disregarding conduit entity*—(A) *In general.* If the district director determines that the participation of a conduit entity in a financing arrangement should be disregarded, the financing arrangement is recharacterized as a transaction directly between the remaining parties to the financing arrangement (in most cases, the financed entity and the financing entity) for purposes of section 881. To the extent that a disregarded conduit entity actually receives or makes payments pursuant to a conduit financing arrangement, it is treated as an agent of the financing entity. Except as otherwise provided, the recharacterization of the conduit financing arrangement also applies for purposes of sections 871, 884(f)(1)(A), 1441, and 1442 and other procedural provisions relating to those sections. This recharacterization will not otherwise affect a taxpayer's Federal income tax liability under any substantive provisions of the Internal Revenue Code. Thus, for example, the recharacterization generally applies for purposes of section 1461, in order to impose liability on a withholding agent who fails to withhold as required under § 1.1441–3(j), but not for purposes of § 1.882–5.

(B) *Character of payments made by the financed entity.* If the participation of a conduit financing arrangement is disregarded under this paragraph (a)(3), payments made by the financed entity generally shall be characterized by reference to the character (e.g., interest or rent) of the payments made to the financing entity. However, if the financing transaction to which the financing entity is a party is a transaction described in paragraph (a)(2)(ii)(A)(*2*) or (*4*) of this section that gives rise to payments that would not be deductible if paid by the financed entity, the character of the payments made by the financed entity will not be affected by the disregard of the participation of a conduit entity. The characterization provided by this paragraph (a)(3)(ii)(B) does not, however, extend to qualification of a payment for any exemption from withholding tax under the Internal Revenue Code or a provision of any applicable tax treaty if such qualification depends on the terms of, or other similar facts or circumstances relating to, the financing transaction to which the financing entity is a party that do not apply to the financing transaction to which the financed entity is a party. Thus, for example, payments made by a financed entity that is not a bank cannot qualify for the exemption provided by section 881(i) of the Code even if the loan between the financed entity and the conduit entity is a bank deposit.

(C) *Effect of income tax treaties.* Where the participation of a conduit entity in a conduit financing arrangement is disregarded pursuant to this section, it is disregarded for all purposes of section 881, including for purposes of applying any relevant income tax treaties. Accordingly, the conduit entity may not claim the benefits of a tax treaty between its country of residence and the United States to reduce the amount of tax due under section 881 with respect to payments made pursuant to the conduit financing arrangement. The financing entity may, however, claim the benefits of any income tax treaty under which it is entitled to benefits in order to reduce the rate of tax on payments made pursuant to the conduit financing arrangement that are recharacterized in accordance with paragraph (a)(3)(ii)(B) of this section.

(D) *Effect on withholding tax.* For the effect of recharacterization on withholding obligations, see §§ 1.1441–3(j) and 1.1441–7(d).

(E) *Special rule for a financing entity that is unrelated to both intermediate entity and financed entity—(1) Liability of financing entity.* Notwithstanding the fact that a financing arrangement is a conduit financing arrangement, a financing entity that is unrelated to the financed entity and the conduit entity (or entities) shall not itself be liable for tax under section 881 unless the financing entity knows or has reason to know that the financing arrangement is a conduit financing arrangement. But see § 1.1441–3(j) for the withholding agent's withholding obligations.

(*2*) *Financing entity's knowledge*—(*i*) *In general.* A financing entity knows or has reason to know that the financing arrangement is a conduit financing arrangement only if the financing entity knows or has reason to know of facts sufficient to establish that the financing arrangement is a conduit financing arrangement, including facts sufficient to establish that the participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan. A person that knows only of the financing transactions that comprise the financing arrangement will not be considered to know or have reason to know of facts sufficient to establish that the financing arrangement is a conduit financing arrangement.

(*ii*) *Presumption regarding financing entity's knowledge.* It shall be presumed that the financing entity does not know or have reason to know that the financing arrangement is a conduit financing arrangement if the financing entity is unrelated to all other parties to the financing arrangement and the financing entity establishes that the intermediate entity who is a party to the financing transaction with the financing entity is actively engaged in a substantial trade or business. An intermediate entity will not be considered to be engaged in a trade or business if its business is making or managing investments, unless the intermediate entity is actively engaged in a banking, insurance, financing or similar trade or business and such business consists predominantly of transactions with customers who are not related persons. An intermediate entity's trade or business is substantial if it is reasonable for the financing entity to expect that the intermediate entity will be able to make payments under the financing transaction out of the cash flow of that trade or business. This presumption may be rebutted if the district director establishes that the financing entity knew or had reason to know that the financing arrangement is a conduit financing arrangement. See *Example 6* of paragraph (e) of this section for an illustration of the rules of this paragraph (a)(3)(ii)(E).

(iii) *Limitation on taxpayer's use of this section.* A taxpayer may not apply this section to reduce the amount of its Federal income tax liability by disregarding the form of its financing transactions for Federal income tax purposes or by compelling the district director to do so. See, however, paragraph (b)(2)(i) of this section for rules regarding the taxpayer's ability to show that the participation of one or more intermediate entities results in no significant reduction in tax.

(*4*) *Standard for treatment as a conduit entity*—(i) *In general.* An intermediate entity is a conduit entity with respect to a financing arrangement if—

(A) The participation of the intermediate entity (or entities) in the financing arrangement reduces the tax imposed by section 881 (determined by comparing the aggregate tax imposed under section 881 on payments made on financing transactions making up the financing arrangement with the tax that would have been imposed under paragraph (d) of this section);

(B) The participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan; and

(C) Either—

(*1*) The intermediate entity is related to the financing entity or the financed entity; or

(*2*) The intermediate entity would not have participated in the financing arrangement on substantially the same terms but for the fact that the financing entity engaged in the financing transaction with the intermediate entity.

(ii) *Multiple intermediate entities*—(A) *In general.* If a financing arrangement involves multiple intermediate entities, the district director will determine whether each of the intermediate entities is a conduit entity. The district director will make the determination by applying the special rules for multiple intermediate entities provided in this section or, if no special rules are provided, applying principles consistent with those of paragraph (a)(4)(i) of this section to each of the intermediate entities in the financing arrangement.

(B) *Special rule for related persons.* The district director may treat related intermediate entities as a single intermediate entity if he determines that one of the principal purposes for the involvement of multiple intermediate entities in the financing arrangement is to prevent the characterization of an intermediate entity as a conduit entity, to reduce the portion of a payment that is subject to withholding tax or otherwise to circumvent the provisions of this section. This determination shall be based upon all of the facts and circumstances, including, but not limited to, the factors set forth in paragraph (b)(2) of this section. If a district director determines that related persons are to be treated as a single intermediate entity, financing transactions between such related parties that are part of the conduit financing arrangement shall be disregarded for purposes of applying this section. *See Examples 7* and *8* of paragraph (e) of this section for illustrations of the rules of this paragraph (a)(4)(ii).

(b) *Determination of whether participation of intermediate entity is pursuant to a tax avoidance plan*—(1) *In general.* A tax avoidance plan is a plan one of the principal purposes of which is the avoidance of tax imposed by section 881. Avoidance of the tax imposed by section 881 may be one of the principal purposes for such a plan even though it is outweighed by other purposes (taken together or separately). In this regard, the only relevant purposes are those pertaining to the participation of the intermediate entity in the financing arrangement and not those pertaining to the existence of a financing arrangement as a whole. The plan may be formal or informal, written or oral, and may involve any one or more of the parties to the financing arrangement. The plan must be in existence no later than the last date that any of the financing transactions comprising the financing arrangement is entered into. The district director may infer the existence of a tax avoidance plan from the facts and circumstances. In determining whether there is a tax avoidance plan, the district director will weigh all relevant evidence regarding the purposes for the intermediate entity's participation in the financing arrangement. See *Examples 11* and *12* of paragraph (e) of this section for illustrations of the rule of this paragraph (b)(1).

(2) *Factors taken into account in determining the presence or absence of a tax avoidance purpose.* The factors described in paragraphs (b)(2)(i) through (iv) of this section are among the facts and circumstances taken into account in determining whether the participation of an intermediate entity in a financing arrangement has as one of its principal purposes the avoidance of tax imposed by section 881.

(i) *Significant reduction in tax.* The district director will consider whether the participation of the intermediate entity (or entities) in the financing arrangement significantly reduces the tax that otherwise would have been imposed under section 881. The fact that an intermediate entity is a resident of a country that has an income tax treaty with the United States that significantly reduces the tax that otherwise would have been imposed under section 881 is not sufficient, by itself, to establish the existence of a tax avoidance plan. The determination of whether the participation of an intermediate entity significantly reduces the tax generally is made by comparing the aggregate tax imposed under section 881 on payments made on financing transactions making up the financing arrangement with the tax that would be imposed under paragraph (d) of this section. However, the taxpayer is not barred from presenting evidence that the financing entity, as determined by the district director, was itself an intermediate entity and another entity should be treated as the financing entity for purposes of applying this test. A reduction in the absolute amount of tax may be significant even if the reduction in rate is not. A reduction in the amount of tax may be significant if the reduction is large in absolute terms or in relative terms. See *Examples 13, 14* and *15* of paragraph (e) of this section for illustrations of this factor.

(ii) *Ability to make the advance.* The district director will consider whether the intermediate entity had sufficient available money or other property of its own to have made the advance to the financed entity without the advance of money or other property to it by the financing entity (or in the case of multiple intermediate entities, whether each of the intermediate entities had sufficient available money or other property of its own to have made the advance to either the financed entity or another intermediate entity without the advance of money or other property to it by either the financing entity or another intermediate entity).

(iii) *Time period between financing transactions.* The district director will consider the length of the period of time that separates the advances of money or other property, or the grants of rights to use property, by the financing entity to the intermediate entity (in the case of multiple intermediate entities, from one intermediate entity to another), and ultimately by the intermediate entity to the financed entity. A short period of time is evidence of the existence of a tax avoidance plan while a long period of time is evidence that there is not a tax avoidance plan. See *Example 16* of paragraph (e) of this section for an illustration of this factor.

(iv) *Financing transactions in the ordinary course of business.* If the parties to the financing transaction are related, the district director will consider whether the financing transaction occurs in the ordinary course of the active conduct of complementary or integrated trades or businesses engaged in by these entities. The fact that a financing transaction is described in this paragraph (b)(2)(iv) is evidence that the participation of the parties to that transaction in the financing arrangement is not pursuant to a tax avoidance plan. A loan will not be considered to occur in the ordinary

course of the active conduct of complementary or integrated trades or businesses unless the loan is a trade receivable or the parties to the transaction are actively engaged in a banking, insurance, financing or similar trade or business and such business consists predominantly of transactions with customers who are not related persons. See *Example 17* of paragraph (e) of this section for an illustration of this factor.

(3) *Presumption if significant financing activities performed by a related intermediate entity*—(i) *General rule.* It shall be presumed that the participation of an intermediate entity (or entities) in a financing arrangement is not pursuant to a tax avoidance plan if the intermediate entity is related to either or both the financing entity or the financed entity and the intermediate entity performs significant financing activities with respect to the financing transactions forming part of the financing arrangement to which it is a party. This presumption may be rebutted if the district director establishes that the participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan. See *Examples 21, 22* and *23* of paragraph (e) of this section for illustrations of this presumption.

(ii) *Significant financing activities.* For purposes of this paragraph (b)(3), an intermediate entity performs significant financing activities with respect to such financing transactions only if the financing transactions satisfy the requirements of either paragraph (b)(3)(ii)(A) or (B) of this section.

(A) *Active rents or royalties.* An intermediate entity performs significant financing activities with respect to leases or licenses if rents or royalties earned with respect to such leases or licenses are derived in the active conduct of a trade or business within the meaning of section 954(c)(2)(A), to be applied by substituting the term *intermediate* entity for the term *controlled foreign corporation.*

(B) *Active risk management*—(*1*) *In general.* An intermediate entity is considered to perform significant financing activities with respect to financing transactions only if officers and employees of the intermediate entity participate actively and materially in arranging the intermediate entity's participation in such financing transactions (other than financing transactions described in paragraph (b)(3)(ii)(*B*)(*3*) of this section) and perform the business activity and risk management activities described in paragraph (b)(3)(ii)(*B*)(*2*) of this section with respect to such financing transactions, and the participation of the intermediate entity in the financing transactions produces (or reasonably can be expected to produce) efficiency savings by reducing transaction costs and overhead and other fixed costs.

(*2*) *Business activity and risk management requirements.* An intermediate entity will be considered to perform significant financing activities only if, within the country in which the intermediate entity is organized (or, if different, within the country with respect to which the intermediate entity is claiming the benefits of a tax treaty), its officers and employees—

(*i*) Exercise management over, and actively conduct, the day-to-day operations of the intermediate entity. Such operations must consist of a substantial trade or business or the supervision, administration and financing for a substantial group of related persons; and

(*ii*) Actively manage, on an ongoing basis, material market risks arising from such financing transactions as an integral part of the management of the intermediate entity's financial and capital requirements (including management of risks of currency and interest rate fluctuations) and management of the intermediate entity's short-term investments of working capital by entering into transactions with unrelated persons.

(*3*) *Special rule for trade receivables and payables entered into in the ordinary course of business.* If the activities of the intermediate entity consist in whole or in part of cash management for a controlled group of which the intermediate entity is a member, then employees of the intermediate entity need not have participated in arranging any such financing transactions that arise in the ordinary course of a substantial trade or business of either the financed entity or the financing entity. Officers or employees of the financing entity or financed entity, however, must have participated actively and materially in arranging the transaction that gave rise to the trade receivable or trade payable. Cash management includes the operation of a sweep account whereby the intermediate entity nets intercompany trade payables and receivables arising from transactions among the other members of the controlled group and between members of the controlled group and unrelated persons.

(*4*) *Activities of officers and employees of related persons.* Except as provided in paragraph (b)(3)(ii)(B)(*3*) of this section, in applying this paragraph (b)(3)(ii)(B), the activities of an officer or employee of an intermediate entity will not constitute significant financing activities if any officer or employee of a related person participated materially in any of the activities described in this paragraph, other than to approve any guarantee of a financing transaction or to exercise general supervision and control over the policies of the intermediate entity.

(c) *Determination of whether an unrelated intermediate entity would not have participated in financing arrangement on substantially the same terms*—(1) *In general.* The determination of whether an intermediate entity would not have participated in a financing arrangement on substantially the same terms but for the financing transaction between the financing entity and the intermediate entity shall be based upon all of the facts and circumstances.

(2) *Effect of guarantee*—(i) *In general.* The district director may presume that the intermediate entity would not have participated in the financing arrangement on substantially the same terms if there is a guarantee of the financed entity's liability to the intermediate entity (or in the case of multiple intermediate entities, a guarantee of the intermediate entity's liability to the intermediate entity that advanced money or property, or granted rights to use other property). However, a guarantee that was neither in existence nor contemplated on the last date that any of the financing transactions comprising the financing arrangement is entered into does not give rise to this presumption. A taxpayer may rebut this presumption by producing clear and convincing evidence that the intermediate entity would have participated in the financing transaction with the financed entity on substantially the same terms even if the financing entity had not entered into a financing transaction with the intermediate entity.

(ii) *Definition of guarantee.* For the purposes of this paragraph (c)(2), a guarantee is any arrangement under which a person, directly or indirectly, assures, on a conditional or unconditional basis, the payment of another person's obligation with respect to a financing transaction. The term shall be interpreted in accordance with the definition of the term in section 163(j)(6)(D)(iii).

(d) *Determination of amount of tax liability*—(1) *Amount of payment subject to recharacterization*—(i) *In general.* If a financing arrangement is a conduit financing arrangement, a portion of each payment made by the financed entity with respect to the financing transactions that comprise the conduit financing arrangement shall be recharacterized as a transaction directly between the financed entity and the financing entity. If the aggregate principal amount of the financing transaction(s) to which the financed entity is a party is less than or equal to the aggregate principal amount of the financing transaction(s) linking any of the parties to the financing arrangement, the entire amount of the payment shall be so recharacterized. If the aggregate principal amount of the financing transaction(s) to which the financed entity is a party is greater than the aggregate principal amount of the financing transaction(s) linking any of the parties to the financing arrangement, then the recharacterized portion shall be determined by multiplying the payment by a fraction the numerator of which is equal to the lowest aggregate principal amount of the financing transaction(s) linking any of the parties to the financing arrangement (other than financing transactions that are disregarded pursuant to paragraphs (a)(2)(i)(B) and (a)(4)(ii)(B) of this section) and the denominator of which is the aggregate principal amount of the financing transaction(s) to which the financed entity is a party. In the case of financing transactions the principal amount of which is subject to adjustment, the fraction shall be determined using the average outstanding principal amounts for the period to which the payment relates. The average principal amount may be computed using any method applied consistently that reflects with reasonable accuracy the amount outstanding for the period. See *Example 24* of paragraph (e) of this section for an illustration of the calculation of the amount of tax liability.

(ii) *Determination of principal amount*—(A) *In general.* Unless otherwise provided in this paragraph (d)(1)(ii), the principal amount equals the amount of money advanced, or the fair market value of other property advanced or subject to a lease or license, in the financing transaction. In general, fair market value is calculated in U.S. dollars as of the close of business on the day on which the financing transaction is entered into. However, if the property advanced, or the right to use property granted, by the financing entity is the same as the property or rights received by the financed entity, the fair market value of the property or right shall be determined as of the close of business on the last date that any of the financing transactions comprising the financing arrangement is entered into. In the case of fungible property, property of the same type shall be considered to be the same property. See *Example 25* of paragraph (e) for an illustration of the calculation of the principal amount in the case of financing transactions involving fungible property. The principal amount of a financing transaction shall be subject to adjustments, as set forth in this paragraph (d)(1)(ii).

(B) *Debt instruments and certain stock.* In the case of a debt instrument or of stock that is subject to the current inclusion rules of sections 305(c)(3) or (e), the principal amount generally will be equal to the issue price. However, if the fair market value on the issue date differs materially from the issue price, the fair market value of the debt instrument shall be used in lieu of the instrument's issue price. Appropriate adjustments will be made for accruals of original issue discount and repayments of principal (including accrued original issue discount).

(C) *Partnership and trust interests.* In the case of a partnership interest or an interest in a trust, the principal amount is equal to the fair market value of the money or property contributed to the partnership or trust in return for that partnership or trust interest.

(D) *Leases or licenses.* In the case of a lease or license, the principal amount is equal to the fair market value of the property subject to the lease or license on the date on which the lease or license is entered into. The principal amount shall be adjusted for depreciation or amortization, calculated on a basis that accurately reflects the anticipated decline in the value of the property over its life.

(2) *Rate of tax.* The rate at which tax is imposed under section 881 on the portion of the payment that is recharacterized pursuant to paragraph (d)(1) of this section is determined by reference to the nature of the recharacterized transaction, as determined under paragraphs (a)(3)(ii)(B) and (C) of this section.

(e) *Examples.* The following examples illustrate this section. For purposes of these examples, unless otherwise indicated, it is assumed that FP, a corporation organized in country N, owns all of the stock of FS, a corporation organized in country T, and DS, a corporation organized in the United States. Country T, but not country N, has an income tax treaty with the United States. The treaty exempts interest, rents and royalties paid by a resident of one state (the source state) to a resident of the other state from tax in the source state.

Example 1. Financing arrangement. (i) On January 1, 1996, BK, a bank organized in country T, lends $1,000,000 to DS in exchange for a note issued by DS. FP guarantees to BK that DS will satisfy its repayment obligation on the loan. There are no other transactions between FP and BK.

(ii) BK's loan to DS is a financing transaction within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section. FP's guarantee of DS's repayment obligation is not a financing transaction as described in paragraphs (a)(2)(ii)(A)(*1*) through (*4*) of this section. Therefore, these transactions do not constitute a financing arrangement as defined in paragraph (a)(2)(i) of this section.

Example 2. Financing arrangement. (i) On January 1, 1996, FP lends $1,000,000 to DS in exchange for a note issued by DS. On January 1, 1997, FP assigns the DS note to FS in exchange for a note issued by FS. After receiving notice of the assignment, DS remits payments due under its note to FS.

(ii) The DS note held by FS and the FS note held by FP are financing transactions within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section, and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section.

Example 3. Financing arrangement. (i) On December 1, 1994 FP creates a special purposes subsidiary, FS. On that date FP capitalizes FS with $1,000,000 in cash and $10,000,000 in debt from BK, a Country N bank. On January 1, 1995, C, a U.S. person, purchases an automobile from DS in return for an installment note. On August 1, 1995, DS sells a number of installment notes, including C's, to FS in exchange for $10,000,000. DS continues to service the installment notes for FS.

(ii) The C installment note now held by FS (as well as all of the other installment notes now held by FS) and the FS note held by BK are financing transactions within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section, and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section.

Example 4. Related persons treated as a single intermediate entity. (i) On January 1, 1996, FP deposits $1,000,000 with BK, a bank that is organized in country N and is unrelated to FP and its subsidiaries. M, a corporation also organized in country N, is wholly-owned by the sole shareholder of BK but is not a bank within the meaning of section 881(c)(3)(A). On July 1, 1996, M lends $1,000,000 to DS in exchange for a note maturing on July 1, 2006. The note is in registered form within the meaning of section 881(c)(2)(B)(i) and DS has received from M the statement required by section 881(c)(2)(B)(ii). One of the principal purposes for the absence of a financing transaction between BK and M is the avoidance of the application of this section.

(ii) The transactions described above would form a financing arrangement but for the absence of a financing transaction between BK and M. However, because one of the principal purposes for the structuring of these financing transactions is to prevent characterization of such arrangement as a financing arrangement, the district director may treat the financing transactions between

FP and BK, and between M and DS as a financing arrangement under paragraphs (a)(2)(i)(B) of this section. In such a case, BK and M would be considered a single intermediate entity for purposes of this section. See also paragraph (a)(4)(ii)(B) of this section for the authority to treat BK and M as a single intermediate entity.

Example 5. Related persons treated as a single intermediate entity. (i) On January 1, 1995, FP lends $10,000,000 to FS in exchange for a 10-year note that pays interest annually at a rate of 8 percent per annum. On January 2, 1995, FS contributes $10,000,000 to FS2, a wholly-owned subsidiary of FS organized in country T, in exchange for common stock of FS2. On January 1, 1996, FS2 lends $10,000,000 to DS in exchange for an 8-year note that pays interest annually at a rate of 10 percent per annum. FS is a holding company whose most significant asset is the stock of FS2. Throughout the period that the FP–FS loan is outstanding, FS causes FS2 to make distributions to FS, most of which are used to make interest and principal payments on the FP–FS loan. Without the distributions from FS2, FS would not have had the funds with which to make payments on the FP–FS loan. One of the principal purposes for the absence of a financing transaction between FS and FS2 is the avoidance of the application of this section.

(ii) The conditions of paragraph (a)(4)(i)(A) of this section would be satisfied with respect to the financing transactions between FP, FS, FS2 and DS but for the absence of a financing transaction between FS and FS2. However, because one of the principal purposes for the structuring of these financing transactions is to prevent characterization of an entity as a conduit, the district director may treat the financing transactions between FP and FS, and between FS2 and DS as a financing arrangement. See paragraph (a)(4)(ii)(B) of this section. In such a case, FS and FS2 would be considered a single intermediate entity for purposes of this section. See also paragraph (a)(2)(i)(B) of this section for the authority to treat FS and FS2 as a single intermediate entity.

Example 6. Presumption with respect to unrelated financing entity. (i) FP is a corporation organized in country T that is actively engaged in a substantial manufacturing business. FP has a revolving credit facility with a syndicate of banks, none of which is related to FP and FP's subsidiaries, which provides that FP may borrow up to a maximum of $100,000,000 at a time. The revolving credit facility provides that DS and certain other subsidiaries of FP may borrow directly from the syndicate at the same interest rates as FP, but each subsidiary is required to indemnify the syndicate banks for any withholding taxes imposed on interest payments by the country in which the subsidiary is organized. BK, a bank that is organized in country N, is the agent for the syndicate. Some of the syndicate banks are organized in country N, but others are residents of country O, a country that has an income tax treaty with the United States which allows the United States to impose a tax on interest at a maximum rate of 10 percent. It is reasonable for BK and the syndicate banks to have determined that FP will be able to meet its payment obligations on a maximum principal amount of $100,000,000 out of the cash flow of its manufacturing business. At various times throughout 1995, FP borrows under the revolving credit facility until the outstanding principal amount reaches the maximum amount of $100,000,000. On December 31, 1995, FP receives $100,000,000 from a public offering of its equity. On January 1, 1996, FP pays BK $90,000,000 to reduce the outstanding principal amount under the revolving credit facility and lends $10,000,000 to DS. FP would have repaid the entire principal amount, and DS would have borrowed directly from the syndicate, but for the fact that DS did not want to incur the U.S. withholding tax that would have applied to payments made directly by DS to the syndicate banks.

(ii) Pursuant to paragraph (a)(3)(ii)(E)(*1*) of this section, even though the financing arrangement is a conduit financing arrangement (because the financing arrangement meets the standards for recharacterization in paragraph (a)(4)(i)), BK and the other syndicate banks have no section 881 liability unless they know or have reason to know that the financing arrangement is a conduit financing arrangement. Moreover, pursuant to paragraph (a)(3)(ii)(E)(*2*)(*ii*) of this section, BK and the syndicate banks are presumed not to know that the financing arrangement is a conduit financing arrangement. The syndicate banks are unrelated to both FP and DS, and FP is actively engaged in a substantial trade or business—that is, the cash flow from FP's manufacturing business is sufficient for the banks to expect that FP will be able to make the payments required under the financing transaction. See § 1.1441–3(j) for the withholding obligations of the withholding agents.

Example 7. Multiple intermediate entities—special rule for related persons. (i) On January 1, 1995, FP lends $10,000,000 to FS in exchange for a 10-year note that pays interest annually at a rate of 8 percent per annum. On January 2, 1995, FS contributes $9,900,000 to FS2, a wholly-owned subsidiary of FS organized in country T, in exchange for common stock and lends $100,000 to FS2. On January 1, 1996, FS2 lends $10,000,000 to DS in exchange for an 8-year note that pays interest annually at a rate of 10 percent per annum. FS is a holding company that has no significant assets other than the stock of FS2. Throughout the period that the FP–FS loan is outstanding, FS causes FS2 to make distributions to FS, most of which are used to make interest and principal payments on the FP–FS loan. Without the distributions from FS2, FS would not have had the funds with which to make payments on the FP–FS loan. One of the principal purposes for structuring the transactions between FS and FS2 as primarily a contribution of capital is to reduce the amount of the payment that would be recharacterized under paragraph (d) of this section.

(ii) Pursuant to paragraph (a)(4)(ii)(B) of this section, the district director may treat FS and FS2 as a single intermediate entity for purposes of this section since one of the principal purposes for the participation of multiple intermediate entities is to reduce the amount of the tax liability on any recharacterized payment by inserting a financing transaction with a low principal amount.

Example 8. Multiple intermediate entities. (i) On January 1, 1995, FP deposits $1,000,000 with BK, a bank that is organized in country T and is unrelated to FP and its subsidiaries, FS and DS. On January 1, 1996, at a time when the FP–BK deposit is still outstanding, BK lends $500,000 to BK2, a bank that is wholly-owned by BK and is organized in country T. On the same date, BK2 lends $500,000 to FS. On July 1, 1996, FS lends $500,000 to DS. FP pledges its deposit with BK to BK2 in support of FS' obligation to repay the BK2 loan. FS', BK's and BK2's participation in the financing arrangement is pursuant to a tax avoidance plan.

(ii) The conditions of paragraphs (a)(4)(i)(A) and (B) of this section are satisfied because the participation of BK, BK2 and FS in the financing arrangement reduces the tax imposed by section 881, and FS', BK's and BK2's participation in the financing arrangement is pursuant to a tax avoidance plan. However, since BK and BK2 are unrelated to FP and DS, under paragraph (a)(4)(i)(C)(*2*) of this section, BK and BK2 will be treated as conduit entities only if BK and BK2 would not have participated in the financing arrangement on substantially the same terms but for the financing transaction between FP and BK.

(iii) It is presumed that BK2 would not have participated in the financing arrangement on substantially the same terms but for the BK–BK2 financing transaction because FP's pledge of an asset in support of FS' obligation to repay the BK2 loan is a guarantee within the meaning of paragraph (c)(2)(ii) of this section. If the taxpayer does not rebut this presumption by clear and convincing evidence, then BK2 will be a conduit entity.

(iv) Because BK and BK2 are related intermediate entities, the district director must determine whether one of the principal purposes for the involvement of multiple intermediate entities was to prevent characterization of an entity as a conduit entity. In making this determination, the district director may consider the fact that the involvement of two related intermediate entities prevents the presumption regarding guarantees from applying to BK. In the absence of evidence showing a business purpose for the involvement of both BK and BK2, the district director may treat BK and BK2 as a single intermediate entity for purposes of determining whether they would have participated in the financing arrangement on substantially the same terms but for the financing transaction between FP and BK. The presumption that applies to BK2 therefore will apply to BK. If the taxpayer does not rebut this presumption by clear and convincing evidence, then BK will be a conduit entity.

Example 9. Reduction of tax. (i) On February 1, 1995, FP issues debt to the public that would satisfy the requirements of section 871(h)(2)(A) (relating to obligations that are not in registered form) if issued by a U.S. person. FP lends the proceeds of the debt offering to DS in exchange for a note.

(ii) The debt issued by FP and the DS note are financing transactions within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section. The holders of the FP debt are the financing entities, FP is the intermediate entity and DS is the financed entity. Because interest payments on the debt issued by FP would not have been subject to withholding tax if the debt had been issued by DS, there is no reduction in tax under paragraph (a)(4)(i)(A) of this section. Accordingly, FP is not a conduit entity.

Example 10. Reduction of tax. (i) On January 1, 1995, FP licenses to FS the rights to use a patent in the United States to manufacture product A. FS agrees to pay FP a fixed amount in royalties each year under the license. On January 1, 1996, FS sublicenses to DS the rights to use the patent in the United States. Under the sublicense, DS agrees to pay FS royalties based upon the units of product A manufactured by DS each year. Although the formula for computing the amount of royalties paid by DS to FS differs from the formula for computing the amount of royalties paid by FS to FP, each represents an arm's length rate.

(ii) Although the royalties paid by DS to FS are exempt from U.S. withholding tax, the royalty payments between FS and FP are income from U.S. sources under section 861(a)(4) subject to the 30 percent gross tax imposed by § 1.881–2(b) and subject to withholding under § 1.1441–2(a). Because the rate of tax imposed on royalties paid by FS to FP is the same as the rate that would have been imposed on royalties paid by DS to FP, the participation of FS in the FP–FS–DS financing arrangement does not reduce the tax imposed by section 881 within the meaning of paragraph (a)(4)(i)(A) of this section. Accordingly, FP is not a conduit entity.

Example 11. A principal purpose. (i) On January 1, 1995, FS lends $10,000,000 to DS in exchange for a 10-year note that pays interest annually at a rate of 8 percent per annum. As was intended at the time of the loan from FS to DS, on July 1, 1995, FP makes an interest-free demand loan of $10,000,000 to FS. A principal purpose for FS' participation in the FP–FS–DS financing arrangement is that FS generally coordinates the financing for all of FP's subsidiaries (although FS does not engage in significant financing activities with respect to such financing transactions). However, another principal purpose for FS' participation is to allow the parties to benefit from the lower withholding tax rate provided under the income tax treaty between country T and the United States.

(ii) The financing arrangement satisfies the tax avoidance purpose requirement of paragraph (a)(4)(i)(B) of this section because FS participated in the financing arrangement pursuant to a plan one of the principal purposes of which is to allow the parties to benefit from the country T-U.S. treaty.

Example 12. A principal purpose. (i) DX is a U.S. corporation that intends to purchase property to use in its manufacturing business. FX is a partnership organized in country N that is owned in equal parts by LC1 and LC2, leasing companies that are unrelated to DX. BK, a bank organized in country N and unrelated to DX, LC1 and LC2, lends $100,000,000 to FX to enable FX to purchase the property. On the same day, FX purchases the property and engages in a transaction with DX which is treated as a lease of the property for country N tax purposes but a loan for U.S. tax purposes. Accordingly, DX is treated as the owner of the property for U.S. tax purposes. The parties comply with the requirements of section 881(c) with respect to the debt obligation of DX to FX. FX and DX structured these transactions in this manner so that LC1 and LC2 would be entitled to accelerated depreciation deductions with respect to the property in country N and DX would be entitled to accelerated depreciation deductions in the United States. None of the parties would have participated in the transaction if the payments made by DX were subject to U.S. withholding tax.

(ii) The loan from BK to FX and from FX to DX are financing transactions and, together constitute a financing arrangement. The participation of FX in the financing arrangement reduces the tax imposed by section 881 because payments made to FX, but not BK, qualify for the portfolio interest exemption of section 881(c) because BK is a bank making an extension of credit in the ordinary course of its trade or business within the meaning of section 881(c)(3)(A). Moreover, because DX borrowed the money from FX instead of borrowing the money directly from BK to avoid the tax imposed by section 881, one of the principal purposes of the participation of FX was to avoid that tax (even though another principal purpose of the participation of FX was to allow LC1 and LC2 to take advantage of accelerated depreciation deductions in country N). Assuming that FX would not have participated in the financing arrangement on substantially the same terms but for the fact that BK loaned it $100,000,000, FX is a conduit entity and the financing arrangement is a conduit financing arrangement.

Example 13. Significant reduction of tax. (i) FS owns all of the stock of FS1, which also is a resident of country T. FS1 owns all of the stock of DS. On January 1, 1995, FP contributes $10,000,000 to the capital of FS in return for perpetual preferred stock. On July 1, 1995, FS lends $10,000,000 to FS1. On January 1, 1996, FS1 lends $10,000,000 to DS. Under the terms of the country T-U.S. income tax treaty, a country T resident is not entitled to the reduced withholding rate on interest income provided by the treaty if the resident is entitled to specified tax benefits under country T law. Although FS1 may deduct interest paid on the loan from FS, these deductions are not pursuant to any special tax benefits provided by country T law. However, FS qualifies for one of the enumerated tax benefits pursuant to which it may deduct dividends paid with respect to the stock held by FP. Therefore, if FS had made a loan directly to DS, FS would not have been entitled to the benefits of the country T-U.S. tax treaty with respect to payments it received from DS, and such payments would have been subject to tax under section 881 at a 30 percent rate.

(ii) The FS–FS1 loan and the FS1–DS loan are financing transactions within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section. Pursuant to paragraph (b)(2)(i) of this section, the significant reduction in tax resulting from the participation of FS1 in the financing arrangement is evidence that the participation of FS1 in the financing arrangement is pursuant to a tax avoidance plan. However, other facts relevant to the presence of such a plan must also be taken into account.

Example 14. Significant reduction of tax. (i) FP owns 90 percent of the voting stock of FX, an unlimited liability company organized in country T. The other 10 percent of the common stock of FX is owned by FP1, a subsidiary of FP that is organized in country N. Although FX is a partnership for U.S. tax purposes, FX is entitled to the benefits of the U.S.-country T income tax treaty because FX is subject to tax in country T as a resident corporation. On January 1, 1996, FP contributes $10,000,000 to FX in exchange for an instrument denominated as preferred stock that pays a dividend of 7 percent and that must be redeemed by FX in seven years. For U.S. tax purposes, the preferred stock is a partnership interest. On July 1, 1996, FX makes a loan of $10,000,000 to DS in exchange for a 7-year note paying interest at 6 percent.

(ii) Because FX is required to redeem the partnership interest at a specified time, the partnership interest constitutes a financing transaction within the meaning of paragraph (a)(2)(ii)(A)(*2*) of this section. Moreover, because the FX-DS note is a financing transaction within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section, together the transactions constitute a financing arrangement within the meaning of (a)(2)(i) of this section. Payments of interest made directly by DS to FP and FP1 would not be eligible for the portfolio interest exemption and would not be entitled to a reduction in withholding tax pursuant to a tax treaty. Therefore, there is a significant reduction in tax resulting from the participation of FX in the financing arrangement, which is evidence that the participation of FX in the financing arrangement is pursuant to a tax avoidance plan. However, other facts relevant to the existence of such a plan must also be taken into account.

Example 15. Significant reduction of tax. (i) FP owns a 10 percent interest in the profits and capital of FX, a partnership organized in country N. The other 90 percent interest in FX is owned by G, an unrelated corporation that is organized in country T. FX is not engaged in business in the United States. On January 1, 1996, FP contributes $10,000,000 to FX in exchange for an instrument documented as perpetual subordinated debt that provides for quarterly interest payments at 9 percent per annum. Under the terms of the instrument, payments

on the perpetual subordinated debt do not otherwise affect the allocation of income between the partners. FP has the right to require the liquidation of FX if FX fails to make an interest payment. For U.S. tax purposes, the perpetual subordinated debt is treated as a partnership interest in FX and the payments on the perpetual subordinated debt constitute guaranteed payments within the meaning of section 707(c). On July 1, 1996, FX makes a loan of $10,000,000 to DS in exchange for a 7-year note paying interest at 8 percent per annum.

(ii) Because FP has the effective right to force payment of the "interest" on the perpetual subordinated debt, the instrument constitutes a financing transaction within the meaning of paragraph (a)(2)(ii)(A)(*2*) of this section. Moreover, because the note between FX and DS is a financing transaction within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section, together the transactions are a financing arrangement within the meaning of (a)(2)(i) of this section. Without regard to this section, 90 percent of each interest payment received by FX would be treated as exempt from U.S. withholding tax because it is beneficially owned by G, while 10 percent would be subject to a 30 percent withholding tax because beneficially owned by FP. If FP held directly the note issued by DS, 100 percent of the interest payments on the note would have been subject to the 30 percent withholding tax. The significant reduction in the tax imposed by section 881 resulting from the participation of FX in the financing arrangement is evidence that the participation of FX in the financing arrangement is pursuant to a tax avoidance plan. However, other facts relevant to the presence of such a plan must also be taken into account.

Example 16. Time period between transactions. (i) On January 1, 1995, FP lends $10,000,000 to FS in exchange for a 10-year note that pays no interest annually. When the note matures, FS is obligated to pay $24,000,000 to FP. On January 1, 1996, FS lends $10,000,000 to DS in exchange for a 10-year note that pays interest annually at a rate of 10 percent per annum.

(ii) The FS note held by FP and the DS note held by FS are financing transactions within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section and together constitute a financing arrangement within the meaning of (a)(2)(i) of this section. Pursuant to paragraph (b)(2)(iii) of this section, the short period of time (twelve months) between the loan by FP to FS and the loan by FS to DS is evidence that the participation of FS in the financing arrangement is pursuant to a tax avoidance plan. However, other facts relevant to the presence of such a plan must also be taken into account.

Example 17. Financing transactions in the ordinary course of business. (i) FP is a holding company. FS is actively engaged in country T in the business of manufacturing and selling product A. DS manufactures product B, a principal component in which is product A. FS' business activity is substantial. On January 1, 1995, FP lends $100,000,000 to FS to finance FS' business operations. On January 1, 1996, FS ships $30,000,000 of product A to DS. In return, FS creates an interest-bearing account receivable on its books. FS' shipment is in the ordinary course of the active conduct of its trade or business (which is complementary to DS' trade or business.)

(ii) The loan from FP to FS and the accounts receivable opened by FS for a payment owed by DS are financing transactions within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section. Pursuant to paragraph (b)(2)(iv) of this section, the fact that DS' liability to FS is created in the ordinary course of the active conduct of DS' trade or business that is complementary to a business actively engaged in by DS is evidence that the participation of FS in the financing arrangement is not pursuant to a tax avoidance plan. However, other facts relevant to the presence of such a plan must also be taken into account.

Example 18. Tax avoidance plan—other factors. (i) On February 1, 1995, FP issues debt in Country N that is in registered form within the meaning of section 881(c)(3)(A). The FP debt would satisfy the requirements of section 881(c) if the debt were issued by a U.S. person and the withholding agent received the certification required by section 871(h)(2)(B)(ii). The purchasers of the debt are financial institutions and there is no reason to believe that they would not furnish Forms W–8. On March 1, 1995, FP lends a portion of the proceeds of the offering to DS.

(ii) The FP debt and the loan to DS are financing transactions within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section. The owners of the FP debt are the financing entities, FP is the intermediate entity and DS is the financed entity. Interest payments on the debt issued by FP would be subject to withholding tax if the debt were issued by DS, unless DS received all necessary Forms W–8. Therefore, the participation of FP in the financing arrangement potentially reduces the tax imposed by section 881(a). However, because it is reasonable to assume that the purchasers of the FP debt would have provided certifications in order to avoid the withholding tax imposed by section 881, there is not a tax avoidance plan. Accordingly, FP is not a conduit entity.

Example 19. Tax avoidance plan—other factors. (i) Over a period of years, FP has maintained a deposit with BK, a bank organized in the United States, that is unrelated to FP and its subsidiaries. FP often sells goods and purchases raw materials in the United States. FP opened the bank account with BK in order to facilitate this business and the amounts it maintains in the account are reasonably related to its dollar-denominated working capital needs. On January 1, 1995, BK lends $5,000,000 to DS. After the loan is made, the balance in FP's bank account remains within a range appropriate to meet FP's working capital needs.

(ii) FP's deposit with BK and BK's loan to DS are financing transactions within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section and together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section. Pursuant to section 881(i), interest paid by BK to FP with respect to the bank deposit is exempt from withholding tax. Interest paid directly by DS to FP would not be exempt from withholding tax under section 881(i) and therefore would be subject to a 30% withholding tax. Accordingly, there is a significant reduction in the tax imposed by section 881, which is evidence of the existence of a tax avoidance plan. See paragraph (b)(2)(i) of this section. However, the district director also will consider the fact that FP historically has maintained an account with BK to meet its working capital needs and that, prior to and after BK's loan to DS, the balance within the account remains within a range appropriate to meet those business needs as evidence that the participation of BK in the FP–BK–DS financing arrangement is not pursuant to a tax avoidance plan. In determining the presence or absence of a tax avoidance plan, all relevant facts will be taken into account.

Example 20. Tax avoidance plan—other factors. (i) Assume the same facts as in *Example 19*, except that on January 1, 2000, FP's deposit with BK substantially exceeds FP's expected working capital needs and on January 2, 2000, BK lends additional funds to DS. Assume also that BK's loan to DS provides BK with a right of offset against FP's deposit. Finally, assume that FP would have lent the funds to DS directly but for the imposition of the withholding tax on payments made directly to FP by DS.

(ii) As in *Example 19*, the transactions in paragraph (i) of this *Example 20* are a financing arrangement within the meaning of paragraph (a)(2)(i) and the participation of the BK reduces the section 881 tax. In this case, the presence of funds substantially in excess of FP's working capital needs and the fact that FP would have been willing to lend funds directly to DS if not for the withholding tax are evidence that the participation of BK in the FP-BK-FS financing arrangement is pursuant to a tax avoidance plan. However, other facts relevant to the presence of such a plan must also be taken into account. Even if the district director determines that the participation of BK in the financing arrangement is pursuant to a tax avoidance plan, BK may not be treated as a conduit entity unless BK would not have participated in the financing arrangement on substantially the same terms in the absence of FP's deposit with BK. BK's right of offset against FP's deposit (a form of guarantee of BK's loan to DS) creates a presumption that BK would not have made the loan to DS on substantially the same terms in the absence of FP's deposit with BK. If the taxpayer overcomes the presumption by clear and convincing evidence, BK will not be a conduit entity.

Example 21. Significant financing activities. (i) FS is responsible for coordinating the financing of all of the subsidiaries of FP, which are engaged in substantial trades or businesses and are located in country T, country N, and the United States. FS maintains a centralized cash management accounting system for FP and its subsidiaries in which it records all intercompany payables and receivables; these payables and receivables ultimately are reduced to a single balance either due from or owing to FS and each of FP's subsidiaries. FS is responsible for disbursing or receiving any cash payments required by transactions between its affiliates and unrelated parties. FS must borrow any cash necessary to meet those external obligations and invests any excess cash for the benefit of the FP group. FS enters into interest rate and foreign exchange contracts as necessary to manage the risks arising from mismatches in incoming and outgoing cash flows. The activities of FS are intended (and reasonably can be expected) to reduce transaction costs and overhead and other fixed costs. FS has 50 employees, including clerical and other back office personnel, located in country T. At the request of DS, on January 1, 1995, FS pays a supplier $1,000,000 for materials delivered to DS and charges DS an open account receivable for this amount. On February 3, 1995, FS reverses the account receivable from DS to FS when DS delivers to FP goods with a value of $1,000,000.

(ii) The accounts payable from DS to FS and from FS to other subsidiaries of FP constitute financing transactions within the meaning of paragraph (a)(2)(ii)(A)(*1*) of this section, and the transactions together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section. FS's activities constitute significant financing activities with respect to the financing transactions even though FS did not actively and materially participate in arranging the financing transactions because the financing transactions consisted of trade receivables and trade payables that were ordinary and necessary to carry on the trades or businesses of DS and the other subsidiaries of FP. Accordingly, pursuant to paragraph (b)(3)(i) of this section, FS' participation in the financing arrangement is presumed not to be pursuant to a tax avoidance plan.

Example 22. Significant financing activities—active risk management. (i) The facts are the same as in Example 21, except that, in addition to its short-term funding needs, DS needs long-term financing to fund an acquisition of another U.S. company; the acquisition is scheduled to close on January 15, 1995. FS has a revolving credit agreement with a syndicate of banks located in Country N. On January 14, 1995, FS borrows ¥10 billion for 10 years under the revolving credit agreement, paying yen LIBOR plus 50 basis points on a quarterly basis. FS enters into a currency swap with BK, an unrelated bank that is not a member of the syndicate, under which FS will pay BK ¥10 billion and will receive $100 million on January 15, 1995; these payments will be reversed on January 15, 2004. FS will pay BK U.S. dollar LIBOR plus 50 basis points on a notional principal amount of $100 million semi-annually and will receive yen LIBOR plus 50 basis points on a notional principal amount of ¥10 billion quarterly. Upon the closing of the acquisition on January 15, 1995, DS borrows $100 million from FS for 10 years, paying U.S. dollar LIBOR plus 50 basis points semiannually.

(ii) Although FS performs significant financing activities with respect to certain financing transactions to which it is a party, FS does not perform significant financing activities with respect to the financing transactions between FS and the syndicate of banks and between FS and DS because FS has eliminated all material market risks arising from those financing transactions through its currency swap with BK. Accordingly, the financing arrangement does not benefit from the presumption of paragraph (b)(3)(i) of this section and the district director must determine whether the participation of FS in the financing arrangement is pursuant to a tax avoidance plan on the basis of all the facts and circumstances. However, if additional facts indicated that FS reviews its currency swaps daily to determine whether they are the most cost efficient way of managing their currency risk and, as a result, frequently terminates swaps in favor of entering into more cost efficient hedging arrangements with unrelated parties, FS would be considered to perform significant financing activities and FS' participation in the financing arrangements would not be pursuant to a tax avoidance plan.

Example 23. Significant financing activities—presumption rebutted. (i) The facts are the same as in *Example 21*, except that, on January 1, 1995, FP lends to FS DM 15,000,000 (worth $10,000,000) in exchange for a 10 year note that pays interest annually at a rate of 5 percent per annum. Also, on March 15, 1995, FS lends $10,000,000 to DS in exchange for a 10-year note that pays interest annually at a rate of 8 percent per annum. FS would not have had sufficient funds to make the loan to DS without the loan from FP. FS does not enter into any long-term hedging transaction with respect to these financing transactions, but manages the interest rate and currency risk arising from the transactions on a daily, weekly or quarterly basis by entering into forward currency contracts.

(ii) Because FS performs significant financing activities with respect to the financing transactions between FS, DS and FP, the participation of FS in the financing arrangement is presumed not to be pursuant to a tax avoidance plan. The district director may rebut this presumption by establishing that the participation of FS is pursuant to a tax avoidance plan, based on all the facts and circumstances. The mere fact that FS is a resident of country T is not sufficient to establish the existence of a tax avoidance plan. However, the existence of a plan can be inferred from other factors in addition to the fact that FS is a resident of country T. For example, the loans are made within a short time period and FS would not have been able to make the loan to DS without the loan from FP.

Example 24. Determination of amount of tax liability. (i) On January 1, 1996, FP makes two three-year installment loans of $250,000 each to FS that pay interest at a rate of 9 percent per annum. The loans are self-amortizing with payments on each loan of $7,950 per month. On the same date, FS lends $1,000,000 to DS in exchange for a two-year note that pays interest semi-annually at a rate of 10 percent per annum, beginning on June 30, 1996. The FS-DS loan is not self-amortizing. Assume that for the period of January 1, 1996 through June 30, 1996, the average principal amount of the financing transactions between FP and FS that comprise the financing arrangement is $469,319. Further, assume that for the period of July 1, 1996 through December 31, 1996, the average principal amount of the financing transactions between FP and FS is $393,632. The average principal amount of the financing transaction between FS and DS for the same periods is $1,000,000. The district director determines that the financing transactions between FP and FS, and FS and DS, are a conduit financing arrangement.

(ii) Pursuant to paragraph (d)(1)(i) of this section, the portion of the $50,000 interest payment made by DS to FS on June 30, 1996, that is recharacterized as a payment to FP is $23,450 computed as follows: ($50,000 x $469,319/$1,000,000) = $23,450. The portion of the interest payment made on December 31, 1996 that is recharacterized as a payment to FP is $19,650, computed as follows: ($50,000 x $393,632/$1,000,000) = $19,650. Furthermore, under § 1.1441–3(j), DS is liable for withholding tax at a 30 percent rate on the portion of the $50,000 payment to FS that is recharacterized as a payment to FP, i.e., $7,035 with respect to the June 30, 1996 payment and $5,895 with respect to the December 31, 1996 payment.

Example 25. Determination of principal amount. (i) FP lends DM 10,000,000 to FS in exchange for a ten year note that pays interest semi-annually at a rate of 8 percent per annum. Six months later, pursuant to a tax avoidance plan, FS lends DM 5,000,000 to DS in exchange for a 10 year note that pays interest semi-annually at a rate of 10 percent per annum. At the time FP make its loan to FS, the exchange rate is DM 1.5/$1. At the time FS makes its loan to DS the exchange rate is DM 1.4/$1.

(ii) FP's loan to FS and FS' loan to DS are financing transactions and together constitute a financing arrangement. Furthermore, because the participation of FS reduces the tax imposed under section 881 and FS' participation is pursuant to a tax avoidance plan, the financing arrangement is a conduit financing arrangement.

(iii) Pursuant to paragraph (d)(1)(i) of this section, the amount subject to recharacterization is a fraction the numerator of which is the average principal amount advanced from FS to DS and the denominator of which is the average principal amount advanced from FP to FS. Because the property advanced in these financing transactions is the same type of fungible property, under paragraph (d)(1)(ii)(A) of this section, both are valued on the date of the last financing transaction. Accordingly, the portion of the payments of interest that is recharacterized is ((DM 5,000,000×DM 1.4/$1)/(DM 10,000,000×DM 1.4/$1) or 0.5.

(f) *Effective date.* This section is effective for payments made by financed entities on or after September 11, 1995. This section shall not apply to interest payments covered by section 127(g)(3) of the Tax Reform Act of 1984, and to interest payments with respect to other debt obligations issued prior to October

15, 1984 (whether or not such debt was issued by a Netherlands Antilles corporation).

§ 1.881–4 Recordkeeping requirements concerning conduit financing arrangements.

(a) *Scope.* This section provides rules for the maintenance of records concerning certain financing arrangements to which the provisions of § 1.881–3 apply.

(b) *Recordkeeping requirements*—(1) *In general.* Any person subject to the general recordkeeping requirements of section 6001 must keep the permanent books of account or records, as required by section 6001, that may be relevant to determining whether that person is a party to a financing arrangement and whether that financing arrangement is a conduit financing arrangement.

(2) *Application of Sections 6038 and 6038A.* A financed entity that is a reporting corporation within the meaning of section 6038A(a) and the regulations under that section, and any other person that is subject to the recordkeeping requirements of § 1.6038A–3, must comply with those recordkeeping requirements with respect to records that may be relevant to determining whether the financed entity is a party to a financing arrangement and whether that financing arrangement is a conduit financing arrangement. Such records, including records that a person is required to maintain pursuant to paragraph (c) of this section, shall be considered records that are required to be maintained pursuant to section 6038 or 6038A. Accordingly, the provisions of sections 6038 and 6038A (including, without limitation, the penalty provisions thereof), and the regulations under those sections, shall apply to any records required to be maintained pursuant to this section.

(c) *Records to be maintained*—(1) *In general.* An entity described in paragraph (b) of this section shall be required to retain any records containing the following information concerning each financing transaction that the entity knows or has reason to know comprises the financing arrangement—

(i) The nature (e.g., loan, stock, lease, license) of each financing transaction;

(ii) The name, address, taxpayer identification number (if any) and country of residence of—

(A) Each person that advanced money or other property, or granted rights to use property;

(B) Each person that was the recipient of the advance or rights; and

(C) Each person to whom a payment was made pursuant to the financing transaction (to the extent that person is a different person than the person who made the advance or granted the rights);

(iii) The date and amount of—

(A) Each advance of money or other property or grant of rights; and

(B) Each payment made in return for the advance or grant of rights;

(iv) The terms of any guarantee provided in conjunction with a financing transaction, including the name of the guarantor; and

(v) In cases where one or both of the parties to a financing transaction are related to each other or another entity in the financing arrangement, the manner in which these persons are related.

(2) *Additional documents.* An entity described in paragraph (b) of this section must also retain all records relating to the circumstances surrounding its participation in the financing transactions and financing arrangements. Such documents may include, but are not limited to—

(i) Minutes of board of directors meetings;

(ii) Board resolutions or other authorizations for the financing transactions;

(iii) Private letter rulings;

(iv) Financial reports (audited or unaudited);

(v) Notes to financial statements;

(vi) Bank statements;

(vii) Copies of wire transfers;

(viii) Offering documents;

(ix) Materials from investment advisors, bankers and tax advisors; and

(x) Evidences of indebtedness.

(3) *Effect of record maintenance requirement.* Record maintenance in accordance with paragraph (b) of this section generally does not require the original creation of records that are ordinarily not created by affected entities. If, however, a document that is actually created is described in this paragraph (c), it is to be retained even if the document is not of a type ordinarily created by the affected entity.

(d) *Effective date.* This section is effective September 11, 1995. This section shall not apply to interest payments covered by section 127(g)(3) of the Tax Reform Act of 1984, and to interest payments with respect to other debt obligations issued prior to October 15, 1984 (whether or not such debt was issued by a Netherlands Antilles corporation).

Par. 4. In § 1.1441–3, the OMB parenthetical at the end of the section is removed and paragraph (j) is added to read as follows:

§ 1.1441–3 Exceptions and rules of special application.

* * * * *

(j) *Conduit financing arrangements*—(1) *Duty to withhold.* A financed entity or other person required to withhold tax under section 1441 with respect to a financing arrangement that is a conduit financing arrangement within the meaning of § 1.881–3(a)(2)(iv) shall be required to withhold under section 1441 as if the district director had determined, pursuant to § 1.881–3(a)(3), that all conduit entities that are parties to the conduit financing arrangement should be disregarded. The amount of tax required to be withheld shall be determined under § 1.881–3(d). The withholding agent may withhold tax at a reduced rate if the financing entity establishes that it is entitled to the benefit of a treaty that provides a reduced rate of tax on a payment of the type deemed to have been paid to the financing entity. Section 1.881–3(a)(3)(ii)(E) shall not apply for purposes of determining whether any person is required to deduct and withhold tax pursuant to this paragraph (j), or whether any party to a financing arrangement is liable for failure to withhold or entitled to a refund of tax under sections 1441 or 1461 to 1464 (except to the extent the amount withheld exceeds the tax liability determined under § 1.881–3(d)). See § 1.1441–7(d) relating to withholding tax liability of the withholding agent in conduit financing arrangements subject to § 1.881–3.

(2) *Effective date.* This paragraph (j) is effective for payments made by financed entities on or after September 11, 1995. This paragraph shall not apply to interest payments covered by section 127(g)(3) of the Tax Reform Act of 1984, and to interest payments with respect to other debt obligations issued prior to October 15, 1984 (whether or not such debt was issued by a Netherlands Antilles corporation).

Par. 5. In § 1.1441–7, the OMB parenthetical at the end of the section is removed and paragraph (d) is added to read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

* * * * *

(d) *Conduit financing arrangements*—(1) *Liability of withholding agent.* Subject to paragraph (d)(2) of this section, any person that is required to deduct and withhold tax under § 1.1441–3(j) is made liable for that tax by section 1461. A person that is required to deduct and withhold tax but fails to do so is liable for the payment of the tax and any applicable penalties and interest.

(2) *Exception for withholding agents that do not know of conduit financing arrangement*—(i) *In general.* A withholding agent will not be liable under paragraph (d)(1) of this section for failing to deduct and withhold with respect to a conduit financing arrangement unless the person knows or has reason to know that the financing arrangement is a conduit financing arrangement. This standard shall be satisfied if the withholding agent knows or has reason to know of facts sufficient to establish that the financing arrangement is a conduit financing arrangement, including facts sufficient to establish that the participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan. A withholding agent that knows only of the financing transactions that comprise the financing arrangement will not be considered to know or have reason to know of facts sufficient to establish that the financing arrangement is a conduit financing arrangement.

(ii) *Examples.* The following examples illustrate the operation of paragraph (d)(2) of this section.

Example 1. (i) DS is a U.S. subsidiary of FP, a corporation organized in Country N, a country that does not have an income tax treaty with the United States. FS is a special purpose subsidiary of FP that is incorporated in Country T, a country that has an income tax treaty with the United States that prohibits the imposition of withholding tax on payments of interest. FS is capitalized with $10,000,000 in debt from BK, a Country N bank, and $1,000,000 in capital from FS.

(ii) On May 1, 1995, C, a U.S. person, purchases an automobile from DS in return for an installment note. On July 1, 1995, DS sells a number of installment notes, including C's, to FS in exchange for $10,000,000. DS continues to service the installment notes for FS and C is not notified of the sale of its obligation and continues to make payments to DS. But for the withholding tax on payments of interest by DS to BK, DS would have borrowed directly from BK, pledging the installment notes as collateral.

(iii) The C installment note is a financing transaction, whether held by DS or by FS, and the FS note held by BK also is a financing transaction. After FS purchases the installment note, and during the time the installment note is held by FS, the transactions constitute a financing arrangement, within the meaning of § 1.881–3(a)(2)(i). BK is the financing entity, FS is the intermediate entity, and C is the financed entity. Because the participation of FS in the financing arrangement reduces the tax imposed by section 881 and because there was a tax avoidance plan, FS is a conduit entity.

(iv) Because C does not know or have reason to know of the tax avoidance plan (and by extension that the financing arrangement is a conduit financing arrangement), C is not required to withhold tax under section 1441. However, DS, who knows that FS's participation in the financing arrangement is pursuant to a tax avoidance plan and is a withholding agent for purposes of section 1441, is not relieved of its withholding responsibilities.

Example 2. Assume the same facts as in *Example 1* except that C receives a new payment booklet on which DS is described as "agent". Although C may deduce that its installment note has been sold, without more C has no reason to know of the existence of a financing arrangement. Accordingly, C is not liable for failure to withhold, although DS still is not relieved of its withholding responsibilities.

Example 3. (i) DC is a U.S. corporation that is in the process of negotiating a loan of $10,000,000 from BK1, a bank located in Country N, a country that does not have an income tax treaty with the United States. Before the loan agreement is signed, DC's tax lawyers point out that interest on the loan would not be subject to withholding tax if the loan were made by BK2, a subsidiary of BK1 that is incorporated in Country T, a country that has an income tax treaty with the United States that prohibits the imposition of withholding tax on payments of interest. BK1 makes a loan to BK2 to enable BK2 to make the loan to DC. Without the loan from BK1 to BK2, BK2 would not have been able to make the loan to DC.

(ii) The loan from BK1 to BK2 and the loan from BK2 to DC are both financing transactions and together constitute a financing arrangement within the meaning of § 1.881–3(a)(2)(i). BK1 is the financing entity, BK2 is the intermediate entity, and DC is the financed entity. Because the participation of BK2 in the financing arrangement reduces the tax imposed by section 881 and because there is a tax avoidance plan, BK2 is a conduit entity.

(iii) Because DC is a party to the tax avoidance plan (and accordingly knows of its existence), DC must withhold tax under section 1441. If DC does not withhold tax on its payment of interest, BK2, a party to the plan and a withholding agent for purposes of section 1441, must withhold tax as required by section 1441.

Example 4. (i) DC is a U.S. corporation that has a long-standing banking relationship with BK2, a U.S. subsidiary of BK1, a bank incorporated in Country N, a country that does not have an income tax treaty with the United States. DC has borrowed amounts of as much as $75,000,000 from BK2 in the past. On January 1, 1995, DC asks to borrow $50,000,000 from BK2. BK2 does not have the funds available to make a loan of that size. BK2 considers BK1 to enter into a loan with DC but rejects this possibility because of the additional withholding tax that would be incurred. Accordingly, BK2 borrows the necessary amount from BK1 with the intention of on-lending to DC. BK1 does not make the loan directly to DC because of the withholding tax that would apply to payments of interest from DC to BK1. DC does not negotiate with BK1 and has no reason to know that BK1 was the source of the loan.

(ii) The loan from BK2 to DC and the loan from BK1 to BK2 are both financing transactions and together constitute a financing arrangement within the meaning of § 1.881–3(a)(2)(i). BK1 is the financing entity, BK2 is the intermediate entity, and DC is the financed entity. The participation of BK2 in the financing arrangement reduces the tax imposed by section 881. Because the participation of BK2 in the financing arrangement reduces the tax imposed by section 881 and because there was a tax avoidance plan, BK2 is a conduit entity.

(iii) Because DC does not know or have reason to know of the tax avoidance plan (and by extension that the financing arrangement is a conduit financing arrangement), DC is not required to withhold tax under section 1441. However, BK2, who is also a withholding agent under section 1441 and who knows that the financing arrangement is a conduit financing arrangement, is not relieved of its withholding responsibilities.

(3) *Effective date.* This paragraph (d) is effective for payments made by financed entities on or after September 11, 1995. This paragraph shall not apply to interest payments covered by section 127(g)(3) of the Tax Reform Act of 1984, and to interest payments with respect to other debt obligations issued prior to October 15, 1984 (whether or not such debt was issued by a Netherlands Antilles corporation).

Par. 6. In § 1.6038A–3, paragraphs (b)(5) and (c)(2)(vii) are added to read as follows:

§ 1.6038A–3 Record maintenance.

* * * * *

(b) * * *

(5) *Records relating to conduit financing arrangements.* See § 1.881–4 relating to conduit financing arrangements.

(c) * * *

(2) * * *

(vii) *Records relating to conduit financing arrangements.* See § 1.881–4 relating to conduit financing arrangements.

* * * * *

Par. 7. Section 1.7701(l)–1 is added to read as follows:

§ 1.7701(l)–1 Conduit financing arrangements.

(a) *Scope.* Section 7701(l) authorizes the issuance of regulations that recharacterize any multiple-party financing transaction as a transaction directly among any two or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by title 26 of the United States Code.

(b) *Regulations issued under authority of section 7701(l).* The following regulations are issued under the authority of section 7701(l)—

(1) § 1.871–1(b)(7);
(2) § 1.881–3;
(3) § 1.881–4;
(4) § 1.1441–3(j);
(5) § 1.1441–7(d);
(6) § 1.6038A–3(b)(5); and
(7) § 1.6038A–3(c)(2)(vii).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by adding an entry in numerical order and revising an entry to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.881–4	1545–1440
* * * * *	
§ 1.6038A–3	1545–1151 1545–1440
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: July 26, 1995.
Leslie Samuels,
Assistant Secretary of the Treasury.
[FR Doc. 95–19446 Filed 8–10–95; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 20

Federal Claims Collection; Collection of Debts by Federal Income Tax Refund Offset

AGENCY: Office of the Secretary, Labor.
ACTION: Final rule; interim rule adopted as final with changes.

SUMMARY: The Department of Labor is completing its rulemaking to implement the requirement of the Cash Management Improvement Act Amendments of 1992 that Federal agencies refer delinquent debt to the Internal Revenue Service (IRS) for collection by offset from a Federal income tax refund that may be due to the delinquent debtor. These regulations are necessary for the Department's participation in the IRS offset program. The IRS offset program has proven to be a cost-effective mechanism for collection of delinquent debt.

EFFECTIVE DATE: These regulations are effective September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Barnhard, Division of Planning and Internal Control, Office of Financial Integrity, Office of the Chief Financial Officer, Department of Labor, Room S–4502, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number 202/219–6184.

SUPPLEMENTARY INFORMATION: In 1992 the Congress passed and the President signed into law the Cash Management Improvement Act Amendments of 1992, which requires Federal agencies to participate in the IRS income tax refund offset program. On September 15, 1994 the Department of Labor published in the Federal Register an interim rule with request for comments implementing the IRS income tax refund offset program. The interim rule established a new Subpart E which specifies the procedures the Department of Labor will follow with regard to referral by its constituent offices, administrations and bureaus of past-due legally enforceable debts to IRS for collection by income tax refund offset.

The interim rule also established a new title for 29 CFR part 20: Federal Claims Collection. In addition to the new subpart E, part 20 contains the Department's regulations implementing the Debt Collection Act of 1982 (DCA). Subpart A implements the credit reporting provisions of the DCA; Subpart B, administrative offset; Subpart C, assessment of interest, penalties and administrative costs; and Subpart D, salary offset.

No comments were received in response to the notice of interim rulemaking with request for comments. Comments were to be submitted on or before November 14, 1994. However, two changes are made with the adoption of the interim rule as final due to changes in IRS requirements for participation in the offset program. In § 20.105 the specified minimum amounts for individual debts and business debts otherwise eligible for referral have been deleted. Section 10.106(b) is amended to delete reference to the requirement that business debts be referred to a commercial credit reporting agency.

Publication in Final

The Department of Labor has determined pursuant to 5 U.S.C. 553(b)(B) that good cause exists for waiving public comment on the changes to § 20.105 and § 20.106(b) set forth in this document. These changes merely reflect the change or elimination of certain IRS requirements for participation in the offset program. Therefore, public comment is unnecessary.

Executive Order 12866

This final rule is not classified as a "significant rule" under Executive Order 12866 on Federal regulations, because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking has occurred during this rulemaking, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory analyses do not apply.

Paperwork Reduction Act

This final rule is not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new information collection requirements.

List of Subjects in 29 CFR Part 20

Government employees, Loan programs, Credit, Administrative practice and procedure, Claims.

Accordingly, the interim rule amending part 20 of title 29 of the Code of Federal Regulations which was published at 59 FR 47249 on September 15, 1994 is adopted as a final rule with the following changes:

PART 20—FEDERAL CLAIMS COLLECTION

1. The authority citation for Part 20 continues to read as follows:

Authority: 31 U.S.C. 3711 *et seq.*; Subpart D is also issued under 5 U.S.C. 5514; Subpart E is also issued under 31 U.S.C. 3720A.

2. Section 20.105 is revised to read as follows:

§ 20.105 Minimum referral amount.

The IRS annually establishes the minimum amount for debts otherwise eligible for referral. Minimum referral amounts are established separately for individual debts and business debts, as set forth in the memorandum of understanding. The amount referred may include the principal portion of the debt, as well as any accrued interest, penalties and/or administrative cost charges.

3. Section 20.106(b) is revised to read as follows:

§ 20.106 Relation to other collection efforts.

* * * * *

(b) The debts of individuals of $100 or more will be reported to a consumer credit reporting agency before referral for tax refund offset.

* * * * *

Signed at Washington, DC, this 27th day of July, 1995.
Robert B. Reich,
Secretary of Labor.
[FR Doc. 95–19876 Filed 8–10–95; 8:45 am]
BILLING CODE 4510–23–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD02–95–016]

RIN 2115–AA97

Safety Zone; Lower Mississippi River, Mile 593.0 to Mile 597.0

AGENCY: Coast Guard, DOT.
ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River between mile 593.0 and mile 597.0. The zone is needed to protect vessel traffic from a collision hazard during weir dike construction operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation is effective from 7 a.m. on August 10, 1995, and terminates at 11:55 p.m. on September 30, 1995.

FOR FURTHER INFORMATION CONTACT: LTJG Roberts, Assistant Chief Operations Officer, Captain of the Port, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103, Phone: (901) 544–3941.

SUPPLEMENTARY INFORMATION:

Background and Purpose

At approximately 7 a.m. on August 10, 1995, the U.S. Army Corps of Engineers will commence weir dike construction operations at Lower Mississippi River mile 595.2 on the left descending bank. The construction is expected to be completed within 50 days from the commencement date. The navigable channel will be blocked during the operations. A safety zone has been established on the Lower Mississippi River from mile 593.0 to mile 597.0 in order to facilitate safe vessel passage. All vessels shall establish passing arrangements with the contact pilot aboard the M/V KATE, via VHF Marine Band Radio, Channel 13, prior to entering the safety zone and shall abide by the conditions of the arrangement. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary. Specifically, immediate action is necessary to facilitate construction operations during the present low water level of the river. Harm to the public or environment may result if vessel traffic is not controlled during construction operations. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary section 165.T02–200 is added to read as follows:

§ 165.T02–200 Safety Zone; Lower Mississippi River.

(a) *Location.* The following area is a Safety Zone: Lower Mississippi River mile 593.0 to mile 597.0.

(b) *Effective dates.* This section is effective from 7 a.m. on August 10, 1995, and terminates at 11:55 p.m. on September 30, 1995.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port. The captain of the Port, Memphis, Tennessee, will notify the maritime community of conditions affecting the area covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: July 26, 1995.
A.L. Thompson, Jr.,
Commander, USCG, Captain of the Port.
[FR Doc. 95–19825 Filed 8–10–95; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 165

[CGD02–95–015]

RIN 2115–AA97

Safety Zone; Lower Mississippi River, mile 840.0 to mile 835.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River between mile 840.0 and mile 835.0. The zone is needed to restrict vessel traffic in the regulated area to provide a safe work area for emergency responders and salvage personnel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation is effective from 11 p.m. on July 23, 1995 and terminates at 11:55 p.m. on December 31, 1995.

FOR FURTHER INFORMATION CONTACT: LTJG Roberts, Assistant Chief Operations Officer, Captain of the Port, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103, Phone: (901) 544–3941.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On July 23, 1995 the Coast Guard was notified that a towing vessel with 35 barges allided with the I–155 bridge at Lower Mississippi River mile 838.9. After further investigation by Marine Safety Office Memphis personnel, it was recommended that a safety zone be issued in order to prevent additional damage that could be caused by a tow striking a submerged barge and to aid in the safe location and salvage of the barges. The barges are believed to be located in the channel and pose a substantial threat to navigation. The safety zone will be limited to Lower Mississippi River mile 840.0 to mile 835.0.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary. Specifically, emergency response crews and salvage personnel require the area to be secured in order to aid in the location and salvage of the sunken barges. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Reporting and recordkeeping requirements, Security measures. Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary section 165.T02–015 is added to read as follows:

§ 165.T02–015 Safety Zone; Lower Mississippi River.

(a) *Location.* The following area is a Safety Zone: Lower Mississippi River mile 840.0 to mile 835.0.

(b) *Effective dates.* This section is effective from 11 p.m. on July 23, 1995 and terminates at 11:55 p.m. on December 31, 1995.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port. The Captain of the Port, Memphis, Tennessee, will notify the maritime community of conditions affecting the area covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: July 23, 1995.

A.L. Thompson, Jr.,

Commander, USCG, Captain of the Port.

[FR Doc. 95–19824 Filed 8–10–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 7

[Docket No. 950501124–5185–02]

RIN 0651–AA74

Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent and trademark cases, Parts 1, 2 and 7 of title 37, Code of Federal Regulations, to adjust certain patent and trademark fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operation, and is amending the requirements for recording documents on the Government Register. This rule also includes information relating to the availability of patent and trademark information products provided by the PTO.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Kopson by telephone at (703) 305–8510, fax at (703) 305–8525, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This rule change is designed to adjust PTO fees in accordance with the applicable provisions of title 35, United States Code; section 31 of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113); and section 10101 of the Omnibus Budget Reconciliation Act of 1990 (as amended by section 8001 of Public Law 103–66), all as amended by the Patent and Trademark Office Authorization Act of 1991 (Pub. L. 102–204).

The cover sheet referenced in 37 CFR 7.1(c) must be in a format approved by the Office. The Office of Public Records will maintain a list of approved formats that will meet this requirement. Contact the Office of Public Records at (703) 308–9743 regarding specific questions relating to this requirement and to seek approval of additional formats.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A fifty percent reduction in the fees paid under 35 U.S.C. 41(a) and (b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is required by 35 U.S.C. 41(h).

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index (CPI) over the previous 12 months.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (amended by section 8001 of Pub. L. 103–66) provides that there shall be a surcharge on all fees established under 35 U.S.C. 41(a) and (b) to collect $111 million in fiscal year 1996.

Subsection 41(d) of title 35, United States Code, authorizes the Commissioner to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, and for each black and white copy of a patent.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty (PCT).

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Commissioner under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office.*

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials relating to trademarks and other marks.

Section 31(a) of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113(a)), as amended, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the CPI.

Section 31 also allows new trademark fee amounts to take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office.*

Recovery Level Determinations

This rule adjusts patent and trademark fees for a planned recovery of $643,014,000 in fiscal year 1996, as proposed in the Administration's budget request to the Congress.

The patent statutory fees established by 35 U.S.C. 41(a) and (b) are being adjusted on October 1, 1995, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index (CPI–U). In calculating these fluctuations, the Office of Management and Budget (OMB) has determined that the PTO should use CPI–U data as determined by the Secretary of Labor. However, the Department of Labor does not make public the CPI–U until approximately 21 days after the end of the month being calculated. Therefore, the latest CPI–U information available is for the month of May 1995. In accordance with previous rulemaking methodology, the PTO uses the Administration's projected CPI–U for the 12-month period ending September 30, 1995, which is 3.2 percent. Based on this projection, patent statutory fees will be adjusted by 3.2 percent. Before the final fee schedule is published, the fees may be slightly adjusted based on actual data available from the Department of Labor.

Certain non-statutory patent processing fees established under 35 U.S.C. 41(d) and PCT processing fees established under 35 U.S.C. 376 are being adjusted to recover their estimated average costs in fiscal year 1996. Three patent service fees that are set by statute will not be adjusted. The three fees that are not being adjusted are assignment recording fees, printed patent copy fees and photocopy charge fees.

Certain trademark service fees established under 15 U.S.C. 1113 are being adjusted to recover their estimated average costs in fiscal year 1996.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees of $100 or more were rounded to the nearest $10. Fees between $2 and $99 were rounded to an even number so that the comparable small entity fee would be a whole number.

Workload Projections

Determination of workloads varies by fee. Principal workload projection techniques are as follows:

Patent application workloads are projected from statistical regression models using recent application filing trends. Patent issues are projected from an in-house patent production model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 79 percent, 55 percent and 32 percent, respectively. Service fee workloads follow linear trends from prior years' activities.

General Procedures

Any fee amount that is paid on or after the effective date of the fee increase would be subject to the new fees then in effect. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing or Transmission, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A Certificate of Mailing or Transmission under Section 1.8 is not "proper" for items which are specifically excluded from the provisions of Section 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing or Transmission is not "proper." Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. However, the provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate do apply to any paper or fee (including patent and trademark applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of the rules, as amended, the amount of the fee to be paid would be fee established by the amended rules.

A notice of final rulemaking was published at 60 FR 20195 (April 25, 1995) wherein several new fee provisions were made to implement the 20-year patent term and provisional applications. Language changes were made in 37 CFR 1.16 (a), (b), (d), (f), and (g) which are reproduced in this final rule package. In addition, fees involving 37 CFR 1.17 (r) and (s) are being adjusted by changes in the CPI to remain equal to the basic filing fee for a utility patent application.

PTO Information Dissemination Products

The PTO provides information to the public in the Patent Search Room and

the Trademark Search Library in Arlington, Virginia, and at 78 Patent and Trademark Depository Libraries around the country. A list of the libraries is included in each issue of the *Official Gazette of the Patent and Trademark Office*. In addition, a number of patent and trademark search tools and document-delivery products, published on paper and on various machine-readable media, are sold directly to the public.

Printed PTO publications may be ordered from the Government Printing Office (GPO) or one of its Book Stores located throughout the country. A list of patent and trademark-related publications with current prices and ordering information is available from the GPO (Subject Bibliography SB 021). Superintendent of Documents, P.O. Box 371984, Pittsburgh, PA 15250–7954, Voice: 202–512–1800, Fax: 202–512–2250.

Machine-readable publications, including magnetic tapes and CD–ROMs, may be ordered directly from the PTO. A printed catalog of machine-readable products, including current prices and ordering information, is available from the Office of Information Products Development. US Patent and Trademark Office, Office of Information Products Development, Crystal Park 3, Room 412, Washington, DC 20231, Voice: 703–308–0322, Fax: 703–308–0493.

The catalog of machine-readable products is published in the Official Gazette of the Patent and Trademark Office in late December each year and may also be viewed on, or downloaded from, the PTO electronic bulletin board (703–305–8950, 8/no/1) or from the PTO's home page on the Internet (http://www.uspto.gov/).

In order to ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), and (f)–(i), is revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.16, paragraphs (a), (b), (d), and (g) include language changes relating to provisional patent applications (see 60 FR 20195, dated April 25, 1995).

37 CFR 1.17 Patent Application Processing Fees

Section 1.17, paragraphs (b)–(g) (m), (r), and (s), is revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17, paragraphs (j) and (n)–(p), is revised to adjust fees established therein to recover costs.

37 CFR 1.18 Patent Issue Fees

Section 1.18, paragraphs (a)–(c), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.19 Document Supply Fees

Section 1.19, paragraphs (a)(1)(ii) and (a)(1)(iii) is revised to amend the language to reflect the PTO's most recent business practices.

Section 1.19, paragraph (b)(1), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post-Issuance Fees

Section 1.20, paragraphs (c), (i), and (j), is revised to adjust fees established therein to recover costs.

Section 1.20, paragraphs (e)–(g), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21, paragraph (a)(1), is revised to adjust fees established therein to recover costs.

37 CFR 1.445 International Application Filing, Processing, and Search Fees

Section 1.445, paragraph (a), is revised to adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.482 International Preliminary Examination Fees

Section 1.482, paragraphs (a)(1)(i), (a)(1)(ii), and (a)(2)(ii), is revised to adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a), (b) and (d), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 2.6 Trademark Fees

Section 2.6, paragraphs (b)(1)(ii) and (b)(1)(iii), is revised to amend the language to reflect the PTO's most recent business practices.

Section 2.6, paragraph (b)(2), is revised to adjust fees therein to recover costs.

37 CFR 7.1 Requirements

Section 7.1, is revised to designate the current language as paragraph (a), and to add new paragraphs (b)–(j) to clarify that the requirements for patent and patent application assignment documents, including the requirement for the fee set forth in § 1.21(h), submitted for recording also apply to instruments submitted for recording on the Government Register. Sections 7.1(b)–(d) and (f)–(i) contain language similar to that in §§ 3.21, 3.28, 3.31, 3.34, 3.26, 3.27, and 3.41, respectively.

Section 7.1(b), is added to provide that an instrument relating to a patent must identify the patent by the patent number, that an instrument relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number, *e.g.*, 07/123,456) or the serial number and filing date, that an instrument relating to an international patent application which designates the United States of America must identify the international application by the international application number (*e.g.*, PCT/US90/01234), and that if an assignment is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended.

Section 7.1(c), is added to provide that each instrument submitted to the PTO for recording must be accompanied by a cover sheet referring to those patent applications and patents against which the instrument is to be recorded, that one set of instruments and cover sheets to be recorded should be filed, and that if an instrument to be recorded is not accompanied by a completed cover sheet, the instrument and any incomplete cover sheet will be returned for proper completion of a cover sheet and resubmission of the instrument and a completed cover sheet.

Section 7.1(d), is added to provide that each cover sheet must contain: (1) the name of the party conveying the interest; (2) the name and address of the party receiving the interest; (3) a description of the interest conveyed or transaction to be recorded; (4) each application number or patent number against which the instrument is to be recorded, or an indication that the instrument is filed together with a patent application; (5) the name and address of the party to whom correspondence concerning the request to record the instrument should be mailed; (6) the number of applications or patents identified in the cover sheet and the total fee; (7) the date the instrument was executed; (8) a statement by the party submitting the instrument that to the best of the person's knowledge and belief, the information contained on the cover sheet is true and correct and any copy submitted is a true copy of the original instrument; and (9) the signature of the party submitting the instrument.

Section 7.1(e), is added that each patent cover sheet required by paragraph (c) of this section seeking to record a governmental interest as provided by paragraph (a) of this section must: (1) indicate that the instrument is to be recorded on the governmental register, and, if applicable, that the instrument is to be recorded on the Secret Register. See § 7.7, and (2) indicate, if applicable, that the instrument to be recorded is not an instrument affecting title. See paragraph (j) of this section.

Section 7.1(f), is added to provide for the correction of errors in the cover sheet. Specifically, § 7.1(e), provides that an error in a cover sheet recorded pursuant to this Part will be corrected only if: (1) the error is apparent when the cover sheet is compared with the recorded instrument to which it pertains, and (2) a corrected cover sheet accompanied by the recording fee set forth in paragraph (i) of this section and either the original recorded instrument or a copy of the original recorded instrument is filed for recordation.

Section 7.1(g), is added to provide that the Office will accept and record non-English language instruments only if accompanied by a verified English translation signed by the individual making the translation.

Section 7.1(h), is added to provide that instruments and cover sheets to be recorded should be addressed to the Commissioner of Patents and Trademarks, Box Assignment, Washington, D.C. 20231.

Section 7.1(i) is added to provide that all requests, except as provided by paragraph (j) of this section, to record instruments must be accompanied by the recording fee set forth in § 1.21(h) of this chapter, and that the fee set forth in § 1.21(h) of this chapter is required for each application and patent against which the instrument is recorded as identified in the cover sheet.

Section 7.1(j), is added to provide that no fee is required for each patent application and patent against which an instrument required by Executive Order 9424 (3 CFR 1943–1948 Comp.) to be filed if: (1) the instrument does not affect title and is so identified in the cover sheet (see paragraph (e) of this section); and (2) the cover sheet is filed in a format approved by the Office.

Response to Comments on the Rules

A notice of proposed rulemaking to adjust certain patent and trademark fee amounts and to amend the requirements for recording an assignment to apply to documents forwarded for recording on the Government Register was published in the **Federal Register** on May 26, 1995, at 60 FR 27934, and in the *Official Gazette of the United States Patent and Trademark Office* on May 30, 1995, at 1174 OG 134.

A public hearing was held June 29, 1995. Nine comments were received and considered in adopting the rules set forth herein. No oral testimony was presented.

Comment: Two respondents stated that the proposed inflationary increase of patent and trademark fees is unnecessary because the PTO is already operating at a surplus.

Response: Current PTO resources include carryover funds from fiscal year 1994. These carryover funds are partly unobligated balances to be carried forward, but primarily advanced fee payments for work to be done in fiscal year 1995. Furthermore, this carryover includes fee income generated from trademark-related products and services which, according to 35 U.S.C. 42(c), may be used only for trademark-related activities. Therefore, to recover all costs associated with the processing of patent applications, and to remain consistent with the current rate of inflation, the PTO is increasing certain patent fees by 3.2 percent as authorized by 35 U.S.C. 41(f).

In addition, two trademark service fees were proposed to be increased. The adopted fee amounts will recover the average cost of providing the service as authorized by 35 U.S.C. 41(d), and will also remain consistent with the equivalent patent service fee amounts.

Comments: Seven respondents objected to the proposal to amend the requirements for recording an assignment to apply to documents forwarded for recording on the Government Register. The respondents stated that not only are Government agencies required by Executive Order 9424 to forward an assignment to the PTO for recordation, but also the PTO lacks the authority under Title 35 of the United States Code to impose a fee for recording an assignment on the Government Register.

Response: 35 U.S.C. 41(d)(1) provides that the Commissioner shall charge a fee of $40 per property for recording any document affecting title. An assignment is a document affecting title. Therefore, the Office must require a $40 recording fee for recording any assignment, even those being recorded on the Government Register. If a document to be recorded on the Government Register does not affect title and if it is accompanied by the appropriate cover sheet, then no fee is required.

Other Considerations

This final rule change is in conformity with the requirements of Executive Order 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. This rulemaking contains no information collection within the meaning of the Paperwork Reduction Act. This final rule has been determined not to be significant for purposes of Executive Order 12866.

The PTO has determined that this final rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the final rule change would not have a signficiant impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The final rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 42(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h), which provides small entities with a 50-percent reduction in the major patent fees.

A comparison of existing and new fee amounts is included as an Appendix to this notice of final rulemaking.

Lists of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Inventions, and patents, Reporting and record keeping requirements.

For the reasons set forth in the preamble, the PTO is amending title 37 of the Code of Federal Regulations, Chapter 1, Part 1, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is amended by revising paragraphs (a), (b), (d), and (f) through (i), to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design or plant applications:

By a small entity (§ 1.9(f)).....$375.00
By other than a small entity $750.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)).....$39.00
By other than a small entity $78.00

* * * * *

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f)).....$125.00
By other than a small entity $250.00

(If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

* * * * *

(f) Basic fee for filing each design application:

By a small entity (§ 1.9(f)).....$155.00
By other than a small entity $310.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.9(f)).....$255.00
By other than a small entity $510.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.9(f)).....$375.00
By other than a small entity $750.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.9(f)).....$39.00
By other than a small entity $78.00

* * * * *

3. Section 1.17 is amended by revising paragraphs (b) through (g), (j), (m) through (p), (r), and (s) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(b) Extension fee for response within second month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)).....$190.00
By other than a small entity $380.00

(c) Extension fee for response within third month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)).....$450.00
By other than a small entity $900.00

(d) Extension fee for response within fourth month pursuant to § 1.136(a)

By a small entity (§ 1.9(f)).....$700.00
By other than a small entity $1,400.00

(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.9(f)).....$145.00
By other then a small entity $290.00

(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.9(f)).....$145.00
By other than a small entity 290.00

(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.9(f)).....$125.00
By other than a small entity $250.00

* * * * *

(j) For filing a petition to institute a public use proceeding under
§ 1.292 .....$1,430.00

* * * * *

(m) For filing a petition:

(1) For revival of an unintentionally abandoned application, or

(2) For the unintentionally delayed payment of the fee for issuing a patent:

By a small entity (§ 1.9(f)).....$625.00
By other than a small entity $1,250.00

(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—$870.00 reduced by the amount of the application basic filing fee paid.

(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—$1,740.00 reduced by the amount of the application basic filing fee paid.

(p) For submission of an information disclosure statement under
§ 1.97(c) $220.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.9(f)).....375.00
By other than a small entity $750.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.9(f)).....$375.00
By other than a small entity $750.00

4. Section 1.18 is revised to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.9(f)).....$625.00
By other than a small entity $1,250.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.9(f)).....$215.00
By other than a small entity $430.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.9(f)).....$315.00
By other than a small entity $630.00

5. Section 1.19 is amended by revising paragraphs (a)(1)(ii), (a)(1)(iii), (b)(1)(i), and (b)(1)(ii) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(a) * * *
(1) * * *

* * * * *

(ii) Overnight delivery to PTO Box or overnight fax $6.00
(iii) Expedited service for copy ordered by expedited mail or fax delivery service and delivered to the customer within two workdays $25.00

* * * * *

(b) * * *
(1) * * *

(i) Regular service $15.00
(ii) Expedited regular service $30.00

* * * * *

6. Section 1.20 is amended by revising paragraphs (c), (e) through (g), (i)(1), (i)(2), and (j) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(c) For filing a request for reexamination (§ 1.510(a)).....$2,390.00

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.9(f)) $495.00
By other than a small entity $990.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.9(f)).....$995.00
By other than a small entity $1,990.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.9(f)).....$1,495.00
By other than a small entity $2,990.00

* * * * *

(i) * * *

(1) unavoidable $660.00
(2) Unintentional $1,550.00

* * * * *

(j) For filing an application for extension of the term of a patent
(§ 1.740) $1,060.00

7. Section 1.21 is amended by revising paragraph (a)(1) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) * * *

(1) For admission to examination for registration to practice: fee payable upon application $310.00

* * * * *

8. Section 1.445 is amended by revising paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14).....$220.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:

(i) No corresponding prior United States national application with basic filing fee has been filed.....$660.00
(ii) A corresponding prior United States national application with basic filing fee has been filed.....$430.00

(3) A supplemental search fee when required, per additional invention $190.00

* * * * *

9. Section 1.482 is amended by revising paragraphs (a)(1) and (a)(2)(ii) to read as follows:

§ 1.482 International preliminary examination fees.

(a) * * *

(1) A preliminary examination fee is due on filing the Demand:

(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of $470.00
(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of $710.00

(2) * * *

(ii) Where the International Searching Authority for the International application was an authority other than the United States Patent and Trademark Office.....$250.00

* * * * *

10. Section 1.492 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)).....$340.00
By other than a small entity $680.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.9(f)).....$375.00
By other than a small entity $750.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)).....$505.00
By other than a small entity $1,010.00

(4) Where an international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):

By a small entity (§ 1.9(f)).....$47.00
By other than a small entity $94.00

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.9(f)).....$440.00
By other than a small entity $880.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)).....$39.00
By other than a small entity $78.00

* * * * *

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f)).....$125.00
By other than a small entity $250.00

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR Part 2 would continue to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is amended by revising paragraphs (b)(1)(ii), (b)(1)(iii), (b)(2)(i), and (b)(2)(ii) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

(ii) Overnight delivery to PTO Box or overnight fax $6.00
(iii) Expedited service for copy ordered by expedited mail or fax delivery service and delivered to the customer within two work days $25.00

* * * * *

(2) * * *

(i) Regular service $15.00
(ii) Expedited local service $30.00

* * * * *

PART 7—REGISTER OF GOVERNMENT INTERESTS IN PATENTS

1. The authority citation for 37 CFR Part 7 would continue to read as follows:

Authority: E.O. 9424, February 18, 1944, 9 FR 1959; 3 CFR 1943–1948 Comp.

2. Section 7.1 is revised to read as follows:

§ 7.1 Requirements.

(a) Executive Order 9424 (3 CFR 1943–1948 Comp.) requires the several departments and other executive agencies of the Government, including Government-owned or Government-controlled corporations, to forward promptly to the Commissioner of Patents and Trademarks for recording all licenses, assignments, or other interests of the Government in or under patents or applications for patents.

(b) An instrument relating to a patent must identify the patent by the patent number. An instrument relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number, e.g., 07/123,456) or the serial number and filing date. An instrument relating to an international patent application which designates the United States of America must identify the international applications by the international application number (e.g., PCT/US90/01234). If an assignment is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by its date of execution, name of each inventor, and title of the invention so that there can be no mistake as to the patent application intended.

(c) Each instrument submitted to the Office for recording must be accompanied by at least one cover sheet as specified in paragraph (d) of this section referring to those patent applications and patents against which the instrument is to be recorded. Only one set of instruments and cover sheets

to be recorded should be filed. If an instrument to be recorded is not accompanied by a completed cover sheet, the instrument and any incomplete cover sheet will be returned for proper completion of a cover sheet and resubmission of the instrument and a completed cover sheet.

(d) Each cover sheet required by paragraph (c) of this section must contain:

(1) the name of the party conveying the interest;

(2) the name and address of the party receiving the interest;

(3) a description of the interest conveyed or transaction to be recorded;

(4) each application number or patent number against which the instrument is to be recorded, or an indication that the instrument is filed together with a patent application;

(5) the name and address of the party to whom correspondence concerning the request to record the instrument should be mailed;

(6) the number of applications or patents identified in the cover sheet and the total fee;

(7) the date the instrument was executed;

(8) a statement by the party submitting the instrument that to the best of the person's knowledge and belief, the information contained on the cover sheet is true and correct and any copy submitted is a true copy of the original instrument; and

(9) the signature of the party submitting the instrument.

(e) Each patent cover sheet required by paragraph (c) of this section seeking to record a governmental interest as provided by paragraph (a) of this section must:

(1) indicate that the instrument is to be recorded on the governmental register, and, if applicable, that the instrument is to be recorded on the Secret Register. See § 7.7.

(2) indicate, if applicable, that the instrument to be recorded is not an instrument affecting title. See paragraph (j) of this section.

(f) An error in a cover sheet recorded pursuant to this Part will be corrected only if:

(1) the error is apparent when the cover sheet is compared with the recorded instrument to which it pertains, and

(2) a corrected cover sheet accompanied by the recording fee set forth in paragraph (i) of this section and either the original recorded instrument or a copy of the original recorded instrument is filed for recordation.

(g) The Office will accept and record non-English language instruments only if accompanied by a verified English translation signed by the individual making the translation.

(h) Instruments and cover sheets to be recorded should be addressed to the Commissioner of Patents and Trademarks, Box Assignment, Washington, D.C. 20231.

(i) All requests to record instruments must be accompanied by the appropriate fee. Except as provided in paragraph (j) of this section, a recording fee set forth in § 1.21(h) of this chapter fee is required for each application and patent against which the instrument is recorded as identified in the cover sheet.

(j) No fee is required for each patent application and patent against which an instrument required by Executive Order 9424 (3 CFR 1943–1948 Comp.) to be filed if:

(1) the instrument does not affect title and is so identified in the cover sheet (see paragraph (e) of this section); and

(2) the cover sheet is filed in a format approved by the Office.

Dated: August 4, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Note. The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Comparison of Existing and Revised Fee Amounts

37 CFR Sec.	Description	Pre-Oct. 1995	Oct. 1995
1.16(a)	Basic Filing Fee	$730	$750
1.16(a)	Basic Filing Fee (Small Entity)	365	375
1.16(b)	Independent Claims	76	78
1.16(b)	Independent Claims (Small Entity)	38	39
1.16(c)	Claims in Excess of 20	22	
1.16(c)	Claims in Excess of 20 (Small Entity)	11	
1.16(d)	Multiple Dependent Claims	240	250
1.16(d)	Multiple Dependent Claims (Small Entity)	120	125
1.16(e)	Surcharge—Late Filing Fee	130	
1.16(e)	Surcharge—Late Filing Fee (Small Entity)	65	
1.16(f)	Design Filing Fee	300	310
1.16(f)	Design Filing Fee (Small Entity)	150	155
1.16(g)	Plant Filing Fee	490	510
1.16(g)	Plant Filing Fee (Small Entity)	245	255
1.16(h)	Reissue Filing Fee	730	750
1.16(h)	Reissue Filing Fee (Small Entity)	365	375
1.16(i)	Reissue Independent Claims	76	78
1.16(i)	Reissue Independent Claims (Small Entity)	38	39
1.16(j)	Reissue Claims in Excess of 20	22	
1.16(j)	Reissue Claims in Excess of 20 (Small Entity)	11	
1.16(k)	Provisional Application Filing Fee	150	
1.16(k)	Provisional Application Filing Fee (Small Entity)	75	
1.16(l)	Surcharge—Incomplete Provisional App. Filed	50	
1.16(l)	Surcharge—Incomplete Provisional App. Filed (Small Entity)	25	
1.17(a)	Extension—First Month	110	
1.17(a)	Extension—First Month (Small Entity)	55	
1.17(b)	Extension—Second Month	370	380
1.17(b)	Extension—Second Month (Small Entity)	185	190

37 CFR Sec.	Description	Pre-Oct. 1995	Oct. 1995
1.17(c)	Extension—Third Month	870	900
1.17(c)	Extension—Third Month (Small Entity)	435	450
1.17(d)	Extension—Fourth Month	1,360	1,400
1.17(d)	Extension—Fourth Month (Small Entity)	680	700
1.17(e)	Notice of Appeal	280	290
1.17(e)	Notice of Appeal (Small Entity)	140	145
1.17(f)	Filing a Brief	280	290
1.17(f)	Filing a Brief (Small Entity)	140	145
1.17(g)	Request for Oral Hearing	240	250
1.17(g)	Request for Oral Hearing (Small Entity)	120	125
1.17(h)	Petition—Not All Inventors	130	
1.17(h)	Petition—Correction of Inventorship	130	
1.17(h)	Petition—Decision on Questions	130	
1.17(h)	Petition—Suspend Rules	130	
1.17(h)	Petition—Expedited License	130	
1.17(h)	Petition—Scope of License	130	
1.17(h)	Petition—Retroactive License	130	
1.17(h)	Petition—Refusing Maintenance Fee	130	
1.17(h)	Petition—Refusing Maintenance Fee—Expired Patent	130	
1.17(h)	Petition—Interference	130	
1.17(h)	Petition—Reconsider Interference	130	
1.17(h)	Petition—Late Filing of Interference	130	
1.20(b)	Petition—Correction of Inventorship	130	
1.17(h)	Petition—Refusal to Publish SIR	130	
1.17(i)	Petition—For Assignment	130	
1.17(i)	Petition—For Application	130	
1.17(i)	Petition—Late Priority Papers	130	
1.17(i)	Petition—Suspend Action	130	
1.17(i)	Petition—Divisional Reissues to Issue Separately	130	
1.17(i)	Petition—For Interference Agreement	130	
1.17(i)	Petition—Amendment After Issue	130	
1.17(i)	Petition—Withdrawal After Issue	130	
1.17(i)	Petition—Defer Issue	130	
1.17(i)	Petition—Issue to Assignee	130	
1.17(i)	Petition—Accord a Filing Date Under § 1.53	130	
1.17(i)	Petition—Accord a Filing Date Under § 1.62	130	
1.17(i)	Petition—Make Application Special	1,390	1,430
1.17(j)	Petition—Public Use Proceeding	130	
1.17(k)	Non-English Specification	110	
1.17(l)	Petition—Revive Abandoned Appl	55	
1.17(l)	Petition—Revive Abandoned Appl. (Small Entity)	1,210	1,250
1.17(m)	Petition—Revive Unintentionally Abandoned Appl	605	625
1.17(m)	Petition—Revive Unintent Abandoned Appl. (Small Entity)	840	870
1.17(n)	SIR—Prior to Examiner's Action	1,690	1,740
1.17(o)	SIR—After Examiner's Action	210	220
1.17(p)	Submission of an Information Disclosure Statement (§ 1.97)	50	
1.17(q)	Petition—Correction of Inventorship (Prov. App.)	50	
1.17(q)	Petition—Accord a filing date (Prov. App.)	730	750
1.17(r)	Filing a submission after final rejection (1.129(a))	365	375
1.17(r)	Filing a submission after final rejection (1.129(a)) (Small Entity)	730	750
1.17(s)	Per add'l invention to be examined (1.129(b))	365	375
1.17(s)	Per add'l invention to be examined (1.129(b)) (Small Entity)	1,210	1,250
1.18(a)	Issue Fee	505	625
1.18(a)	Issue Fee (Small Entity)	420	430
1.18(b)	Design Issue Fee	210	215
1.18(b)	Design Issue Fee (Small Entity)	610	630
1.18(c)	Plant Issue Fee	305	315
1.18(c)	Plant Issue Fee (Small Entity)	3	
1.19(a)(1)(i)	Copy of Patent	6	
1.19(a)(1)(ii)	Patent Copy—Overnight delivery to PTO Box or overnight fax	25	
1.19(a)(1)(iii)	Patent Copy Ordered by Expedited Mail or Fax—Exp. service	12	
1.19(a)(2)	Plant Patent Copy	24	
1.19(a)(3)(i)	Copy of Utility Patent or SIR in Color	12	15
1.19(b)(1)(i)	Certified Copy of Patent Application as Filed	24	30
1.19(b)(1)(ii)	Certified Copy of Patent Application as Filed, Expedited	150	
1.19(b)(2)	Cert or Uncert Copy of Patent-Related File Wrapper/Contents	25	
1.19(b)(3)	Cert. or Uncert. Copies of Office Records, per Document	25	
1.19(b)(4)	For Assignment Records, Abstract of Title and Certification	50	
1.19(c)	Library Service	3	
1.19(d)	List of Patents in Subclass	10	
1.19(e)	Uncertified Statement-Status of Maintenance Fee Payment		

37 CFR Sec.	Description	Pre-Oct. 1995	Oct. 1995
1.19(f)	Copy of Non-U.S. Patent Document	25	
1.19(g)	Comparing and Certifying Copies, Per Document, Per Copy	25	
1.19(h)	Duplicate or Corrected Filing Receipt	25	
1.20(a)	Certificate of Correction	100	
1.20(c)	Reexamination	2,320	2,390
1.20(d)	Statutory Disclaimer	110	
1.20(d)	Statutory Disclaimer (Small Entity)	55	
1.20(e)	Maintenance Fee—3.5 Years	960	990
1.20(e)	Maintenance Fee—3.5 Years (Small Entity)	480	495
1.20(f)	Maintenance Fee—7.5 Years	1,930	1,990
1.20(f)	Maintenance Fee—7.5 Years (Small Entity)	965	995
1.20(g)	Maintenance Fee—11.5 Years	2,900	2,990
1.20(g)	Maintenance Fee—11.5 Years (Small Entity)	1,450	1,495
1.20(h)	Surcharge—Maintenance Fee—6 Months	130	
1.20(h)	Surcharge—Maintenance Fee—6 Months (Small Entity)	65	
1.20(i)(1)	Surcharge—Maintenance After Expiration—Unavoidable	540	560
1.20(i)(2)	Surcharge—Maintenance After Expiration—Unintentional	1,500	1,550
1.20(j)	Extension of Term of Patent	1,030	1,060
1.21(a)(1)	Admission to examination	300	310
1.21(a)(2)	Registration to Practice	100	
1.21(a)(3)	Reinstatement to Practice	15	
1.21(a)(4)	Certificate of Good Standing	10	
1.21(a)(4)	Certificate of Good Standing, Suitable Framing	20	
1.21(a)(5)	Review of Decision of Director, OED	130	
1.21(a)(6)	Regrading of Examination	130	
1.21(b)(1)	Establish Deposit Account	10	
1.21(b)(2)	Service Charge Below Minimum Balance	25	
1.21(b)(3)	Service Charge Below Minimum Balance	25	
1.21(c)	Filing a Disclosure Document	10	
1.21(d)	Box Rental	50	
1.21(e)	International Type Search Report	$40	
1.21(g)	Self-Service Copy Charge	.25	
1.21(h)	Recording Patent Property	40	
1.21(i)	Publication in the OG	25	
1.21(j)	Labor Charges for Services	30	
1.21(k)	Unspecified Other Services		
1.21(k)	Terminal Use APS–CSIR (per hour)	50	
1.21(m)	Processing Returned Checks	50	
1.21(n)	Handling Fee—Incomplete Application	130	
1.21(o)	Terminal Use APS–TEXT	40	
1.24	Coupons for Patent and Trademark Copies	3	
1.296	Handling Fee—Withdrawal SIR	130	
1.445(a)(1)	Transmittal Fee	210	$220
1.445(a)(2)(i)	PCT Search Fee—No U.S. Application	640	660
1.445(a)(2)(ii)	PCT Search Fee—Prior U.S. Application	420	430
1.445(a)(3)	Supplemental Search	180	190
1.482(a)(1)(i)	Preliminary Exam Fee	460	470
1.482(a)(1)(ii)	Preliminary Exam Fee	690	710
1.482(a)(2)(i)	Additional Invention	140	
1.482(a)(2)(ii)	Additional Invention	240	250
1.492(a)(1)	Preliminary Examining Authority	660	680
1.492(a)(1)	Preliminary Examining Authority (Small Entity)	330	340
1.492(a)(2)	Searching Authority	730	750
1.492(a)(2)	Searching Authority (Small Entity)	365	375
1.492(a)(3)	PTO Not ISA nor IPEA	980	1,010
1.492(a)(3)	PTO Not ISA nor IPEA (Small Entity)	490	505
1.492(a)(4)	Claims—IPEA	92	94
1.492(a)(4)	Claims—IPEA (Small Entity)	46	47
1.492(a)(5)	Filing with EPO/JPO Search Report	850	880
1.492(a)(5)	Filing with EPO/JPO Search Report (Small Entity)	425	440
1.492(b)	Claims—Extra Individual (Over 3)	76	78
1.492(b)	Claims—Extra Individual (Over 3) (Small Entity)	38	39
1.492(c)	Claims—Extra Total (Over 20)	22	
1.492(c)	Claims—Extra Total (Over 20) (Small Entity)	11	
1.492(d)	Claims—Multiple Dependents	240	250
1.492(d)	Claims—Multiple Dependents (Small Entity)	120	125
1.492(e)	Surcharge	130	
1.492(e)	Surcharge (Small Entity)	65	
1.492(f)	English Translation—After 20 Months	130	
2.6(a)(1)	Application for Registration, Per Class	245	
2.6(a)(2)	Amendment to Allege Use, Per Class	100	

37 CFR Sec.	Description	Pre-Oct. 1995	Oct. 1995
2.6(a)(3)	Statement of Use, Per Class	100	
2.6(a)(4)	Extension for Filing Statement of Use, Per Class	100	
2.6(a)(5)	Application for Renewal, Per Class	300	
2.6(a)(6)	Surcharge for Late Renewal, Per Class	100	
2.6(a)(7)	Publication of Mark Under § 12(c), Per Class	100	
2.6(a)(8)	Issuing New Certificate of Registration	100	
2.6(a)(9)	Certificate of Correction of Registrant's Error	100	
2.6(a)(10)	Filing Disclaimer to Registration	100	
2.6(a)(11)	Filing Amendment to Registration	100	
2.6(a)(12)	Filing Affidavit Under Section 8, Per Class	100	
2.6(a)(13)	Filing Affidavit Under Section 15, Per Class	200	
2.6(a)(14)	Filing Affidavit Under Sections 8 & 15, Per Class	100	
2.6(a)(15)	Petitions to the Commissioner	200	
2.6(a)(16)	Petition to Cancel, Per Class	200	
2.6(a)(17)	Notice of Opposition, Per Class	100	
2.6(a)(18)	Ex Parte Appeal to the TTAB, Per Class	100	
2.6(a)(19)	Dividing an Application, Per New Application Created	3	
2.6(b)(1)(i)	Copy of Registered Mark	6	
2.6(6)(1)(ii)	Copy of Registered Mark, overnight delivery to PTO box or fax	25	
2.6(b)(1)(iii)	Copy of Reg. Mark Ordered Via Exp. Mail or Fax, Exp. Svc	12	15
2.6(b)(2)(i)	Certified Copy of TM Application as Filed	24	30
2.6(b)(2)(ii)	Certified Copy of TM Application as Filed, Expedited	50	
2.6(b)(3)	Cert. or Uncert. Copy of TM-Related File Wrapper/Contents	10	
2.6(b)(4)(i)	Cert. Copy of Registered Mark, Title or Status	20	
2.6(b)(4)(ii)	Cert. Copy of Registered Mark, Title or Status—Expedited	25	
2.6(b)(5)	Certified or Uncertified Copy of TM Records	40	
2.6(b)(6)	Recording Trademark Property, Per Mark, Per Document	25	
2.6(b)(6)	For Second and Subsequent Marks in Same Document	25	
2.6(b)(7)	For Assignment Records, Abstracts of Title and Cert	40	
2.6(b)(8)	Terminal Use X–SEARCH	0.25	
2.6(b)(9)	Self-Service Copy Charge	30	
2.6(b)(10)	Labor Charges for Services	[1]	
2.6(b)(11)	Unspecified Other Services		

These fees are not affected by this rulemaking.
[1] Actual cost.

[FR Doc. 95–19763 Filed 8–10–95; 8:45 am]
BILLING CODE 3510–16–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–62; RM–8601]

Radio Broadcasting Services; Linden, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Cass County Radio, allots Channel 257C3 to Linden, Texas, as the community's first local aural transmission service. *See* 60 FR 26018, May 16, 1995. Channel 257C3 can be allotted to Linden, Texas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 257C3 at Linden are 33–00–44 and 94–21–55. With this action, this proceeding is terminated.

DATES: Effective September 21, 1995. The window period for filing applications will open on September 21, 1995, and close on October 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–62, adopted August 1, 1995, and released August 7, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Linden, Channel 257C3.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19830 Filed 8–10–95; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21, Notice 14]

RIN 2127–AE99

Federal Motor Vehicle Safety Standards; Theft Protection; Correction

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Final rule; correction.

In Docket No. 1–21, Notice 13, Federal Motor Vehicle Safety Standards; Theft Protection; Final Rule; on page 30006 in the issue of Wednesday, June 7, 1995, making the following corrections:

On page 30011 in the first column, in the authority citation, 30162 should be replaced with 30115, 30117, and 30166.

On page 30011 in the first column, in 5.4.2.1(a)(1), introductory text, S5(a) should be replaced with S5.2.

On page 30011 in the first column, in S.4.2.1(a)(2), S5(b) should be replaced with S5.3.

Authority: 49 U.S.C. 322, 30111, 30162; delegation of authority at 49 CFR 1.50.

Issued: August 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–19896 Filed 8–10–95; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 60, No. 155
Friday, August 11, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 308, 310, 318, 320, 325, 326, 327, and 381

[Docket No. 95–034N]

Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems—Public Scoping Session for Issue-Focused Public Meetings on Proposed Regulation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Meeting notice; reopening of comment period.

SUMMARY: The U.S. Department of Agriculture is holding a public scoping session for a series of issue-focused public meetings to be held in September 1995 on the FSIS proposed rule, "Pathogen Reduction, Hazard Analysis and Critical Control Point (HACCP) Systems." The purpose of the scoping session is to discuss with all interested parties the agenda and format for the September meetings.

DATES: The scoping session will be held on August 23, 1995 from 9:00 AM to 4:00 PM. The scoping session will be convened by the Secretary.

The comment period for the proposed rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (60 FR 6674, February 3, 1995) will reopened as of August 11, 1995, and will extend until 30 days following the last September meeting. FSIS will publish notice of the comment period closing date.

ADDRESSES: The scoping session will be held at the U.S. Department of Agriculture, 14th and Independence Avenue, Back of the South Building Cafeteria (between the 2nd and 3rd Wings).

Send an original and two copies of written comments to: FSIS Docket Clerk, DOCKET 93–016P, Docket Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Danner, Director, Planning Office, Policy Evaluation and Planning Staff, FSIS, USDA, Room 6904, Franklin Court, Washington, DC 20250, (202) 501–7138. If you plan to attend, please contact Ms. Lisa Parks at (202) 501–7138.

SUPPLEMENTARY INFORMATION: USDA will hold a public scoping session on August 23, 1995 at the U.S. Department of Agriculture, 14th and Independence Avenue, Back of the South Building Cafeteria (between the 2nd and 3rd Wings) from 9:00 AM to 4:00 PM to discuss the agenda and format for a series of issue-focused public meetings to be held in September 1995 on the proposed rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (60 FR 6674, February 3, 1995).

August Public Scoping Session

The August 23, 1995 scoping session announced in this notice will be convened by Secretary of Agriculture Dan Glickman and will begin with a discussion of the topics to be included on the agenda for the September meetings, both those tentatively identified by FSIS, and those suggested for inclusion by interested parties. The meeting participants will then consider what format would best ensure that these issues will be fairly, frankly, and fully explored in September. After the August 23 scoping session, FSIS will issue a notice announcing the schedule, agenda and format for the September meetings.

Those wishing to attend the August session should contact Ms. Lisa Parks at (202) 501–7138. Also contact Ms. Parks if you require a sign language interpreter or other special accommodations. Those unable to attend the scoping session may submit comments or suggestions for planning the September meetings to FSIS no later than August 18, 1995.

Purpose and Nature of the September Meeting

The September meetings will provide an opportunity for interested persons to directly discuss the key concerns that were raised during the comment period on the proposed rule with USDA officials and with one another. To comply with the Administrative Procedure Act, these issue-focused meetings will be open to the public and announced in advance in the **Federal Register**. The proceedings will be transcribed, and the transcripts will be made a part of the rulemaking record.

These meetings will be plenary meetings, so that all interested parties can attend and participate in all the discussions. Interested parties with common concerns and positions on a particular issue are encouraged to designate a representative to speak for them on that issue. This will help foster focused, substantive dialogue on the key issues.

Tentatively identified agenda items for consideration at the September meetings include: (1) Tthe relationship between the proposed HACCP system and existing regulatory requirements (the layering issue); (2) options to reduce the expected economic impact of the proposed rule on small businesses, while still achieving desired food safety goals; (3) the proposed interim targets for pathogen reduction and the use of microbial testing to verify achievement of the targets; (4) the role of antimicrobial treatments and other technological interventions to improve food safety; (5) temperature/time requirements for chilling red meat; and (6) FSIS oversight of HACCP.

Reopening of Comment Period

FSIS is reopening the comment period for the proposed regulation, effective August 11, 1995, and extending until 30 days following the last September meeting, in order to include in the administrative record the transcript of the scoping session and the public meetings, written comments submitted by persons unable to attend the meetings, and other written comments submitted by interested parties on the matters addressed at the public meetings.

Done at Washington, DC, on August 8, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–19930 Filed 8–9–95; 9:23 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–45–AD]

Airworthiness Directives; de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 78–26–02, which currently requires repetitively inspecting the fuselage side frame flanges at Fuselage Station (FS) 218.125 and FS 219.525 for cracks on certain de Havilland DHC–6 series airplanes, and repairing or replacing any cracked part. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require modifying the fuselage side frames at the referenced FS areas as terminating action for the repetitive inspections that are currently required by AD 78–26–02. The actions specified in the proposed AD are intended to prevent failure of the fuselage because of cracks in the fuselage side frames, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before October 16, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581; telephone (516) 256–7523; facsimile (516) 568- 2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA- public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–45–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to de Havilland DHC–6 series airplanes. Assisting the FAA in this review were (1) de Havilland; (2) the Regional Airlines Association (RAA); and (3) several operators of the affected airplanes.

From this review, the FAA has identified AD 78–26–02, Amendment 39–3370, as one that should be superseded with a new AD that would require a modification that could eliminate the need for short-interval and critical repetitive inspections. AD 78–26–02 currently requires repetitively inspecting the fuselage side frame flanges at Fuselage Station (FS) 218.125 and FS 219.525 on certain de Havilland DHC–6 series airplanes, and repairing or replacing any cracked part.

De Havilland Service Bulletin (SB) No. 6/371, dated June 2, 1978, specifies procedures for inspecting, repairing, and modifying (Modification Nos. 6/1461 and 6/1462) the fuselage side frame flanges at FS 218.125 and FS 219.525. Modification No. 6/1461 introduces fuselage side frames manufactured from material having improved stress corrosion properties at FS 218.125, and Modification No. 6/1462 introduces fuselage side frames of this material at FS 219.525.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the bilateral airworthiness agreement between the United States and Canada. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

Based on its aging commuter-class aircraft policy and after reviewing all available information, the FAA has determined that AD action should be taken to eliminate the repetitive short-interval inspections required by AD 78–26–02, Amendment 39–3370, and to prevent failure of the fuselage because of cracks in the fuselage side frames, which, if not detected and corrected, could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland DHC-6 series airplanes of the same type design without Modification Nos. 6/1461 and 6/1462 incorporated, the proposed AD would supersede AD 78–26–02 with a new AD that would (1) retain the current requirement of repetitively inspecting the fuselage side frame flanges at FS 218.125 and FS 219.525, as applicable, and repairing or replacing any cracked part; and (2) require modifying the fuselage side frame flanges in the referenced FS areas (Modification Nos. 6/1461 and 6/1462) as terminating action for the repetitive inspections. Accomplishment of the proposed actions would be in accordance with de Havilland SB No. 6/371, dated June 2, 1978.

The FAA estimates that 94 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 300 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $16,200 (average) per airplane. Based on these figures, the total cost impact of the proposed modification on U.S. operators is estimated to be $3,214,800 or $34,200 per airplane. This cost figure is based upon the assumption that none of the affected airplane owners/operators have incorporated Modification Nos. 6/1461 and 6/1462.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 94 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 45 percent are operated in scheduled passenger service. A significant number of the remaining 55 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 4,800 hours time-in-service (TIS) after the proposed AD would become effective before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 24 to 48 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 24 to 48 years before the proposed modification would be mandatory.

The following paragraphs present cost scenarios for airplanes where no cracks were found and where cracks were found during the inspections, and where the remaining airplane life is 15 years with an average annual utilization rate of 1,600 hours TIS. A copy of the full Cost Analysis and Regulatory Flexibility Determination for the proposed action may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

- No Cracks Scenario: Under the provisions of AD 78–26–02, an owner/operator of an affected de Havilland DHC–6 series airplane in scheduled service who operates an average of 1,600 hours TIS annually would inspect every 400 hours TIS. This would amount to a remaining airplane life (estimated 15 years) cost of $18,420; this figure is based on the assumption that no cracks are found during the inspections. The proposed AD would incur the same inspections except at 600-hour TIS intervals until 4,800 hours TIS after the proposed AD would become effective where the operator would have to replace the fuselage side frame flanges (eliminating the need for further repetitive inspections), which would result in a present value cost of $31,433. The incremental cost of the proposed AD for such an airplane would be $13,013 or $4,959 annualized over the three years it would take to accumulate 4,800 hours TIS. An owner of a general aviation airplane who operates 800 hours TIS annually without finding any cracks during the 600-hour TIS inspections would incur a present value incremental cost of $7,598. This would amount to a per year amount of $1,594 over the six years it would take to accumulate 4,800 hours TIS.
- Limited Cracking Found Scenario: Under the provisions of AD 78–26–02, an owner/operator of an affected de Havilland DHC–6 series airplane who found limited cracking (as defined in SB No. 6/371) during an inspection would have to inspect each 300 hours TIS or 45 days, whichever occurs first, and replace the part within 360 days after finding the cracking. The proposed AD would require inspections every 300 hours TIS, and then require replacement at 4,800 hours TIS after the proposed AD would become effective. This would result in a present value total cost of $34,908 per airplane in scheduled service, which would make immediate replacement more economical ($32,400) than repetitively inspecting. With this scenario, the proposed AD would result in an incremental present value cost savings over that required in AD 78–26–02 of $1,491 per airplane in scheduled service (or $568 annualized over 3 years) and $6,517 ($1,367 annualized over 6 years) for airplanes operating in general aviation service.
- Excessive cracking scenario: AD 78–26–02 requires repairing or replacing the fuselage side frames if excessive cracking is found (as defined by SB No. 6/371), as would the proposed AD. The difference is that AD 78–26–02 requires immediate crack repair and then replacement within 360 days after finding the crack, and the proposed AD would require immediate repair and mandatory replacement of the fuselage side frames within 4,800 hours TIS after the proposed AD would become effective. This would result in a present value total cost of $34,709 per airplane in scheduled service, which would make immediate replacement more economical ($32,400) than repetitively inspecting. With this scenario, the proposed AD would average a present value cost savings over that required in AD 78–26–02 of $2,083 ($794 annualized over 3 years) for each airplane operated in scheduled service, and $6,607 ($1,386 annualized over 6 years) for each airplane operated in general aviation service.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed rule, or any number of small entities judged to be substantial by the rulemaking official. A "significant economic impact" is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft owned and the annualized cost thresholds, adjusted to 1994 dollars, at $69,000 for scheduled operators and $5,000 for unscheduled operators.

Of the 94 U.S.-registered airplanes affected by the proposed AD, 4 airplanes are owned by the federal government. Of the other 90, one business owns 26 airplanes, two businesses own 7 airplanes each, one business owns 3 airplanes, seven businesses own 2 airplanes each, and thirty-three businesses own 1 airplane each.

Because the FAA has no readily available means of obtaining data on sizes of these entities, the economic analysis for the proposed AD utilizes the worst case scenario using the lower annualized cost threshold of $5,000 for operators in unscheduled service instead of $69,000 for operators in scheduled service. With this in mind and based on the above ownership distribution, the 33 entities owning two or fewer airplanes would not experience a "significant economic impact" as defined by FAA Order 2100.14A. Since the remaining 11 entities do not constitute a "substantial number" as defined in the Order, the proposed AD would not have a "significant economic impact on a substantial number of small entities."

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 78–26–02, Amendment 39–3370, and adding the following new AD to read as follows:

De Havilland: Docket No. 91–CE–45–AD. Supersedes AD 78–26–02, Amendment 39–3370.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (serial numbers 1 through 411), certificated in any category, that do not have Modification Nos. 6/1461 and 6/1462 incorporated.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the fuselage because of cracks in the fuselage side frames, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 78–26–02), and thereafter as indicated below, inspect the fuselage side frames for cracks at Fuselage Station (FS) 218.125 and FS 219.525, as applicable (see chart below) in accordance with the Accomplishment Instructions section of de Havilland Service Bulletin (SB) No. 6/371, dated June 2, 1978. Utilize the following chart to determine which fuselage stations are affected:

Serial Nos.	Modification 6/1553 incorporated	Fuselage stations affected (both sides)
1 through 395	No	218.125 and 219.525.
1 through 395	Yes	219.525 only.
396 through 411 .	N/A	219.525 only.

Note 2: Modification 6/1553 incorporates fuselage side frames of improved stress corrosion resistant material at FS 218.125.

(1) If cracks are found that exceed the limits specified in Figure 3 of de Havilland SB No. 6/371, prior to further flight, accomplish one of the following:

(i) Repair the cracks in accordance with the Accomplishment Instructions: *Repair:* section of de Havilland SB No. 6/371, dated June 2, 1978. Reinspect thereafter at intervals not to exceed 600 hours TIS until the modification specified in paragraph (b) of this AD is incorporated; or

(ii) Replace the cracked fuselage side frame in accordance with the Accomplishment Instructions: *Replacement:* section of de Havilland SB No. 6/371, dated June 2, 1978. Reinspect any fuselage side frame not replaced at intervals not to exceed 600 hours TIS until the modification specified in paragraph (b) of this AD is incorporated.

(2) If cracks are found that are within the limits specified in Figure 3 of de Havilland SB No. 6/371, reinspect at intervals not to exceed 300 hours TIS until the modification specified in paragraph (b) of this AD is incorporated.

(3) If no cracks are found, reinspect thereafter at intervals not to exceed 600 hours TIS until the modification specified in paragraph (b) of this AD is incorporated.

(b) Within the next 4,800 TIS after the effective date of this AD, incorporate Modification Nos. 6/1461 and 6/1462 in accordance with the Accomplishment Instructions: *Replacement:* section of de Havilland SB No. 6/371, dated June 2, 1978. This consists of replacing all fuselage side frames required as specified in the following chart:

Serial Nos.	Modification 6/1553 incorporated	Fuselage stations affected (both sides)
1 through 395	No	218.125 and 219.525.
1 through 395	Yes	219.525 only.
396 through 411 .	N/A	219.525 only.

(c) Incorporating Modification Nos. 6/1461 and 6/1462 as specified in paragraph (b) of this AD is considered terminating action for the inspection requirement of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 78–26–02, Amendment 39–3370.

Issued in Kansas City, Missouri, on August 7, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19917 Filed 8–10–95; 8:45 am]

BILLING CODE 4910–13–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2615

RIN 1212–AA77

Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to form a negotiated rulemaking advisory committee.

SUMMARY: The Pension Benefit Guaranty Corporation intends to form a negotiated rulemaking advisory committee under the Negotiated Rulemaking Act of 1990. The committee will develop proposed amendments to the PBGC's regulations governing reportable events, *i.e.*, events that may be indicative of a need to terminate a pension plan. These amendments will, among other things, implement recent amendments contained in the Retirement Protection Act of 1994.

DATES: Comments and applications or nominations for membership must be received on or before September 15, 1995.

ADDRESSES: Comments and nominations or applications for membership may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments, nominations, and applications will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Background

Section 4043 of the Employee Retirement Income Security Act of 1974, as amended by the Retirement Protection Act of 1994, requires the reporting to the PBGC of certain events ("reportable events") that may be indicative of a need to terminate the plan. The PBGC's existing regulations on reportable events (29 CFR part 2615, subpart A) specify the events that must be reported, the circumstances under which reporting is waived, and the information that must be included in a reportable event filing.

RPA amended section 4043 of ERISA by (1) establishing the reporting obligation, which was previously placed solely on plan administrators, on contributing sponsors as well; (2) adding four new reportable events; (3) establishing a new obligation on contributing sponsors of certain underfunded plans to provide 30 days' advance notice of certain reportable events; and (4) protecting reportable event filings from public disclosure.

The PBGC intends to publish a proposed rule that would amend its existing regulations on reportable events to reflect RPA and to make other appropriate changes. Two major issues the PBGC intends to address in these regulations are: (1) The conditions under which the regulations should provide for waivers of reporting requirements (based on, *e.g.*, the size or funding status of the plan); and (2) the information the regulations should require as part of the reportable event filing (including, *e.g.*, plan actuarial and employer financial information). Other issues may be addressed as well.

The PBGC intends to use the negotiated rulemaking procedure in accordance with the Negotiated Rulemaking Act of 1990. The PBGC will form an advisory committee consisting of representatives of the affected interests and the agency for the purpose of reaching a consensus on the text of a proposed rule.

A number of interests (including employers, service providers, and participants) are likely to be significantly affected by new regulations on reportable events. The effect of the regulations is likely to vary, depending primarily on the size and funding status of the plan and the size, corporate structure, and financial condition of the employer.

Regulatory Negotiation

Negotiated rulemaking is a consensus-based approach to the development of agency rules, in which representatives of affected interests work together to reach consensus on the content of a proposed rule. The PBGC believes that these proposed regulations are appropriate for regulatory negotiation because of the various interests likely to be significantly affected and the complexity of the subject matter.

Formation of the committee is in the public interest in connection with developing rules concerning reportable events. The PBGC hopes to be able to use the consensus of the committee as the basis for the proposed rule.

The PBGC invites comments on the appropriateness of regulatory negotiation for these proposed regulations.

Committee Membership

The PBGC tentatively has identified the following interests and list of possible committee members:

Employer Representatives:
- Association of Private Pension and Welfare Plans
- Chamber of Commerce of the United States of America
- The ERISA Industry Committee
- Financial Executives Institute

Service Provider Representatives:
- American Academy of Actuaries
- American Bar Association
- American Institute of Certified Public Accountants
- American Society of Pension Actuaries

Participant Representatives:
- Air Line Pilots Association
- American Association of Retired Persons
- American Federation of Labor-Council of Industrial Organizations
- International Union, United Automobile, Aerospace & Implement Workers of America
- United Steelworkers of America

Pension Benefit Guaranty Corporation:
- Ellen A. Hennessy, Deputy Executive Director and Chief Negotiator
- William Posner, Deputy Executive

Director and Chief Operating Officer
Stuart A. Sirkin, Director, Corporate Policy and Research Department
Andrea E. Schneider, Director, Corporate Finance and Negotiations Department
James J. Keightley, General Counsel

The PBGC will use a neutral facilitator for the committee. The facilitator's role is to chair negotiating sessions and to help committee members define and reach consensus. The PBGC will nominate for the committee's consideration Kate Blunt, Special Assistant to the Deputy Executive Director and Chief Management Officer, to serve as the facilitator of the committee. Ms. Blunt has extensive experience in facilitating meetings, conducting focus groups, and mediating disputes. She will perform her duties as facilitator in an impartial manner.

All committee meetings will be open to the public.

Requests for Representation

Persons who will be significantly affected by the planned proposed rule on reportable events and who believe that their interests will not be adequately represented by the persons identified above may apply, or nominate another person, for membership on the committee to represent their interests. Each application or nomination must include: (1) The name of the applicant or nominee and a description of the interests that person will represent; (2) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent; (3) a written commitment that the applicant or nominee will actively participate in good faith in the development of proposed regulations; and (4) the reasons that the persons identified above do not adequately represent the interests of the person submitting the application or nomination.

Committee Expenses and Administrative Support

In most cases, committee members are responsible for their own expenses of participation. The PBGC may pay for certain expenses, in accordance with section 7(d) of the Federal Advisory Committee Act, if (1) a member certifies a lack of adequate financial resources to participate in the committee; and (2) the PBGC determines that such member's participation in the committee is necessary to assure adequate representation of the member's interest.

The PBGC will provide logistical, administrative, and management support to the committee. All meetings will be held at the PBGC's offices in Washington, D.C.

Proposed Agenda and Schedule

The proposed agenda and schedule for the committee's activities will be determined by the committee at the first meeting, which the PBGC anticipates will be held in October of 1995.

The PBGC's goal is to issue a proposed rule on reportable events by the spring of 1996. If it appears that the committee is unable to reach consensus in time to meet this goal, the PBGC may proceed with rulemaking based in part on information gained through the negotiated rulemaking process.

Notice of Establishment of Committee

After reviewing any comments on this Notice of Intent and any requests for representation, the PBGC will issue a notice announcing the establishment of a negotiated rulemaking advisory committee and the date of the first meeting, unless the PBGC decides, based on comments and other relevant considerations, that establishment of the committee is inappropriate. Notice of future meetings will be published in the **Federal Register**.

Issued in Washington, D.C., this 8th day of August, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–19929 Filed 8–10–95; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 256

RIN 1010–AC04

Pipeline Right-of-Way Applications and Assignment Fees; Requirements for Filing of Transfers

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) proposes to amend its regulations governing the filing fees charged for processing pipeline right-of-way applications and assignments, and applications for approval of instruments of transfer of a lease or interest. This amendment proposes to increase the filing fees for these documents, which will allow MMS to recover the full processing costs. MMS further proposes to adjust the filing fees by indexing them to the Consumer Price Index "U" which will enable MMS to continue to recover the processing costs of these documents. MMS will periodically publish these filing fee increases in the **Federal Register**.

DATES: Comments must be received or postmarked no later than October 10, 1995 to be consider in this rulemaking.

ADDRESSES: Comments should be mailed or hand-carried to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Andy Radford, telephone (703) 787–1144 or Jo Ann Lauterbach, telephone (703) 787–1606.

SUPPLEMENTARY INFORMATION:

Background

MMS last increased the filing fees for pipeline right-of-way applications and assignments on April 1, 1988. At that time, the fee for a pipeline right-of-way application was increased to $1,400, and the fee for a pipeline right-of-way assignment was increased to $50. MMS has not changed the $25 filing fee for instruments of transfer of a lease or interest since the administration of regulations concerning Outer Continental Shelf minerals and rights-of-way was transferred to MMS from the Bureau of Land Management under Amendment No. 1 to Secretarial Order No. 3071, dated May 10, 1982.

During the years since MMS last adjusted these filing fees, the costs to process these documents have increased. MMS conducted in-house cost analyses based on the costs of salaries and benefits, computer time, and overhead in each of the regional offices to determine the average processing cost for each of these documents. The results showed that MMS is undercharging for these services, and therefore, MMS is proposing to increase the fees.

This amendment proposes to increase the filing fee for a pipeline right-of-way application from $1,400 to $2,350; the filing fee for a pipeline right-of-way assignment from $50 to $60; and the filing fee for instruments of transfer of a lease or an interest from $25 to $185. Further, the amendment proposes to index the filing fees to the Consumer Price Index "U". The MMS will announce subsequent changes to the filing fee in the **Federal Register**.

Authors: The principal authors for this proposed rule are Andy Radford and Jo Ann Lauterbach, Engineering and Standards Branch, MMS.

Executive Order (E.O.) 12866

The Department of the Interior (DOI) reviewed this proposed rule under E.O. 12866 and determined that this document is not a significant rule.

Regulatory Flexibility Act

The DOI has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities. Any direct effects of this rulemaking will primarily affect OCS lessees and operators—entities that are generally not small due to the technical complexities and financial resources necessary to conduct OCS activities.

Paperwork Reduction Act

The Office of Management and Budget (OMB) approved the collections of information contained in this proposed rule under 44 U.S.C. 3501 et seq., and assigned clearance numbers 1010–0050 and 1010–0006.

Takings Implication Assessment

The DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. This action does not require a Takings Implication Assessment prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

E.O. 12778

The DOI has certified to OMB that this proposed rule meets the applicable civil justice reform standards provided in Sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, this action does not require the preparation of an Environmental Impact Statement.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 256

Administrtive practice and procedure, Continental shelf, Government contracts, Incorporation by reference, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: May 12, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 250 and 256 are proposed to be amended as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 is amended to read as follows:

Authority: 43 U.S.C. 1334.

2. Section 250.160 is amended by revising the fifth sentence and adding a new sentence following the fifth sentence in paragraph (a) to read as follows:

§ 250.160 Applications for a pipeline right-of-way grant.

(a) * * * A nonrefundable filing fee of $2,350 and the rental required under § 250.159(c)(2) of this part must accompany a new right-of-way application. MMS will periodically make technical amendments to adjust the filing fee according to the Consumer Price Index "U". * * *

* * * * *

3. Section 250.163 is amended by revising the last sentence in paragraph (b) and adding a new sentence following the last sentence to read as follows;

§ 250.163 Assignment of a right-of-way grant.

* * * * *

(b) * * * A nonrefundable filing fee of $60 must accompany the application for the approval of an assignment. MMS will periodically make technical amendments to adjust the filing fee according to the Consumer Price Index "U".

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

4. The authority citation for part 256 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

5. Section 256.64 is amended by revising the first sentence in paragraph (a)(2) and adding a new sentence following the first sentence to read as follows:

§ 256.64 Requirements for filing of transfers.

(a) * * *

(2) A nonrefundable filing fee of $185 must accompany an application for approval of any instrument of transfer required to be filed. MMS will periodically make technical amendments to adjust the filing fee according to the Consumer Price Index "U". * * *

[FR Doc. 95–19233 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 95–0720187–5187–01]

RIN 0651–AA79

Rules of Practice in Patent Cases; Reexamination Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is proposing to amend its rules of practice in patent cases to provide revised procedures for the reexamination of patents. H.R. 1732 proposes to authorize the extension of reexamination proceedings as a means for improving the quality of United States patents. The Office intends, through this proposed amendment of its rules, to provide patent owners and the public with guidance on the procedures the Office would follow in conducting reexamination proceedings.

DATES: A public hearing will be held on Wednesday, September 20, 1995, at the Stouffer Renaissance Crystal City Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia, 22202 at 9:30 a.m. Those wishing to present oral testimony must request an opportunity to do so no later than September 14, 1995. Written comments must be submitted on or before September 22, 1995.

ADDRESSES: Written comments concerning the rule changes should be addressed to the Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231, marked to the attention of Gerald A. Dost, Senior Legal Advisor, Special Program Law Office, Crystal Park 1, Suite 520. In addition, written comments may also be sent by facsimile transmission to (703) 308–6919 with a confirmation copy mailed to the above address, or by electronic mail messages over the Internet to reexamrule@uspto.gov.

Written comments concerning reexamination rule matters will be available for public inspection on October 2, 1995, in Room 520 of Crystal Park One, 2011 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Gerald A. Dost or Lawrence E. Anderson by telephone at (703) 305–9285, by electronic mail at landerso@uspto.gov, or by mail to Gerald A. Dost to his attention addressed to the Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:

Background

This proposed rulemaking sets forth distinct procedures directed towards determining and improving the quality and reliability of United States patents. The procedures are proposed to provide for the expanded reexamination of patents as proposed in H.R. 1732.

Discussion of General Issues Involved

The proposals are in response to H.R. 1782 which resulted from suggestions and comments to the Administration by the public, bar groups, and the August 1992 Advisory Commission on Patent Law Reform suggesting more participation in the reexamination proceeding by third party requesters. Under the rules proposed herein, third party requesters will have greater opportunity to participate in reexamination proceedings in keeping with the spirit and intent of the proposed law. At the same time, participation will be limited to minimize the costs and other effects of reexamination requests on patentees.

If H.R. 1732 is amended during the legislative process, the final rules will comply with this legislation as enacted. If H.R. 1732 is not enacted, the proposed rules for expanded reexamination of patents would be withdrawn.

Because reexamination filed before the proposed law takes effect will continue to be governed by 37 CFR 1.501–1.570, to avoid confusion between the new and old rules the newly proposed reexamination rules have been numbered 37 CFR 1.901–1.997.

Regarding the reexamination fee, 35 U.S.C. 41(d) requires the Commissioner to set the fee for reexamination at a level which will recover the estimated average cost to the Office. The estimated average cost is $4,500 per patent owner requested reexamination and $11,000 for third party requested reexaminations. The difference in price takes into account the estimate that the examiner will spend twice the amount of time examining a case where a third party requester is present and additional costs incurred during the appellate stages incident to additional processing steps required in the third party proceedings.

Discussion of the Major Specific Issues Involved

The proposed rules relating to reexamination proceedings are directed to the procedures set forth in proposed Chapter 30 of Title 35 of the United States Code (35 U.S.C. 301–307). This proposed Chapter provides for the citation of prior art in patents, filing of requests for reexamination, decisions on such requests, reexamination and appeal from reexamination decisions, and the issuance of a certificate at the termination of the reexamination proceedings.

Section 1.4 is proposed to be amended so that paragraph (a)(2) includes the reexamination §§ 1.901–1.997.

Section 1.6 is proposed to be amended so that paragraph (d)(5) includes § 1.913, which related to the exception of the use of facsimile transmission for filing the request for reexamination.

Section 1.11 is proposed to be amended so that paragraph (c), which relates to reexaminations at the initiative of the Commissioner, includes the reference to reexamination § 1.929.

Section 1.17 is proposed to be amended so that paragraph (l) reflects the fact that in the case of reexaminations filed after January 1, 1996, petitions for revival of a reexamination proceeding terminated for an unavoidable failure to respond require the fees of $55.00 for a small entity and $110.00 for other than small entity. Also, § 1.17 is proposed to be amended so that paragraph (m) reflects the fact that in the case of reexaminations filed after January 1, 1996, petitions for revival of a reexamination proceeding terminated for an unintentional failure to respond require the fees of $605.00 for a small entity and $1,1210.00 for other than small entity. The Office has proposed an increase in the fee set by § 1.17(m). See "Revision of Patent and Trademark Fees" published in the **Federal Register** at 60 FR 27934 (May 26, 1995) and in the Patent and Trademark Office *Official Gazette* at 1174 Off. Gaz. Pat. Office 134 (May 30, 1995).

Section 1.20 is proposed to be amended so that paragraph (c) reflects the fact that in the case of reexaminations filed after January 1, 1996, there is a two tier fee scale in which patent owner requesters will be charged $4,500 and third party requesters will be charged $11,000.

Section 1.25 is proposed to be amended so that paragraph (b), which relates to requests for reexaminations, includes the reference to reexamination § 1.913.

Section 1.26 is proposed to be amended so as to reflect that in the case of reexaminations filed after January 1, 1996, a refund of seventy-five percent (75%) of the fee paid for filing the request for reexamination will be made to the requester.

Section 1.112 is proposed to be amended so that the last sentence reflects the fact that in the case of reexamination filed after January 1, 1996, the examiner may close prosecution prior to making the action final. Section 1.113, which provides for a final rejection or action in a reexamination proceeding, is proposed to be amended so that its application is limited to applicants and patent owners in reexaminations filed before January 1, 1996. For reexaminations filed after January 1, 1996, the new reexamination rules will apply.

Section 1.115, which provides for amendments by the patent owner in a reexamination proceeding, is proposed to be amended so that its application is limited to applicants and patent owners in reexaminations filed before January 1, 1996. For reexaminations filed after January 1, 1996, the new reexamination rules will apply.

Section 1.116, which provides for amendments after final action in reexamination proceedings, is proposed to be amended so that its application is permissible after an action closing prosecution for patent owners in reexaminations filed on or after January 1, 1996. Also, for clarity, the rule is amended to provide that for reexaminations filed after January 1, 1996, no appeal is permitted until a right of appeal notice has been issued.

Section 1.136, which provides for filing of timely responses with petitions and fee for extension of time and extensions of time for cause, is amended to make it clear that for reexamination proceedings filed on or after January 1, 1996, § 1.957 is controlling for extensions of time.

Section 1.137, which provides for revival of abandoned applications or lapsed patents, is proposed to be amended to change the title and add new paragraphs (g) and (h). Paragraph (f) is proposed to be utilized for provisional applications. Paragraph (g) is proposed to be added to provide for revival of unavoidably terminated proceedings for reexamination proceedings filed before January 1, 1996. Paragraph (h) is proposed to be added to make it clear that for reexamination proceedings filed on or after January 1, 1996, § 1.958 is controlling.

Section 1.191, which provides for appeal to the Board of Patent Appeals and Interferences by the patent owner from any decision adverse to patentability, is proposed to be amended so as to be applicable to reexaminations filed before January 1, 1996. For reexamination proceedings filed on or after January 1, 1996, § 1.959 is controlling.

Section 1.192, which provides two months from the date of the Notice of Appeal for the patent owner to file an appeal brief in a reexamination proceeding, is proposed to be amended so as to be applicable to reexaminations filed before January 1, 1996. For reexamination proceedings filed on or after January 1, 1996, § 1.965 is controlling.

Section 1.193, which provides for the Examiner's answer and reply brief, is proposed to be amended so as to be applicable to reexaminations filed before January 1, 1996. For reexamination proceedings filed on or after January 1, 1996, §§ 1.969 and 1.971 are controlling.

Section 1.194, which provides for the oral hearing, is proposed to be amended so as to be applicable to reexaminations filed before January 1, 1996. For reexamination proceedings filed on or after January 1, 1996, § 1.973 is controlling.

Section 1.195, which provides for the affidavits or declarations after appeal, is proposed to be amended so as to be applicable to reexaminations filed before January 1, 1996. For reexamination proceedings filed on or after January 1, 1996, § 1.975 is controlling.

Section 1.196, which provides for the decision of the Board of Patent Appeals and Interferences, is proposed to be amended so as to be applicable to reexaminations filed before January 1, 1996. For reexamination proceedings filed on or after January 1, 1996, § 1.977 is controlling.

Section 1.197, which provides for action following the decision, is proposed to be amended so as to be applicable to reexaminations filed before January 1, 1996. For reexamination proceedings filed on or after January 1, 1996, § 1.979 is controlling.

Section 1.198, which provides for reopening after the decision, is proposed to be amended so as to be applicable to reexaminations filed before January 1, 1996. For reexamination proceedings filed on or after January 1, 1996, § 1.981 is controlling.

Section 1.301, which provides for appeal by the owner of a patent in reexamination proceedings to the U.S. Court of Appeals for the Federal Circuit, is proposed to be amended so as to be applicable to reexaminations filed before January 1, 1996. For reexamination proceedings filed on or after January 1, 1996, § 1.983 is controlling.

Section 1.303, which provides for remedy by civil action under 35 U.S.C. 145 for the owner of a patent in reexamination proceedings, is proposed to be amended so as to be applicable to reexaminations filed before January 1, 1996. For reexamination proceedings filed on or after January 1, 1996, § 1.983 is controlling.

Section 1.304 which provides for time for appeal or civil action, is proposed to be amended so as to refer also to § 1.957.

The title to Subpart D is proposed to be amended to provide that the reexamination rules in this part apply only to reexamination proceedings filed before January 1, 1996.

The proposed title to Subpart H provides that the reexamination rules in this part apply only to reexamination proceedings filed on or after January 1, 1996.

Proposed § 1.901 provides a system for citation of patents and printed publications to the Office for placement in the patent file by an person during the period of enforceability of the patent in accordance with 35 U.S.C. 301. The section provides for citations limited to patents and printed publications when the person making the citation states the pertinency and applicability of the citation to the patent and the bearing the citation has on the patentability of at lease one claim of the patent. The rule provides that a citation made by the patent owner may include an explanation of how the claims differ from the prior art cited. Any citations which include items other than patents and printed publications will not be entered in the patent file. This does not, of course, limit in any manner the kinds and types of information which can be relied upon in protests against pending patent applications, whether such be original applications or reissue applications. The term "period of enforceability of a patent" includes any period for which recovery can be had for infringement. Under usual circumstances, this would be the term of the patent plus the six years provided by 35 U.S.C. 286.

Proposed § 1.902 provides for the processing of prior art citations during a reexamination proceeding.

Proposed § 1.903 provides for the service of papers on parties.

Proposed § 1.904 provides that the notices published in the Official Gazette will be considered to be constructive notice.

Proposed § 1.905 provides for submission of papers by the public.

Proposed § 1.906 covers the scope of reexamination in a reexamination proceeding. While it is not intended that the examiners will routinely complete a new search when conducting reexamination, the examiners will be free to, and will, very likely, conduct additional searches and cite and apply additional prior patents and publications when they consider it is appropriate and beneficial to do so. Insofar as the actual reexamination is concerned, the examination is only on the basis of patents or printed publications and on the basis of the requirements of 35 U.S.C. 112, except for the best mode requirement. Claims in a reexamination proceeding must not enlarge the scope of the claims of the patent and must not introduce new matter. Paragraph (c) provides that questions relating to matters other than those indicated in paragraphs (a) and (b) of this section will not be resolved in a reexamination proceeding, but will be noted by the examiner as being an open question in the record. Patent owners could then file a reissue application if they wish such questions to be resolved.

Proposed § 1.907 sets forth when reexamination is prohibited. Once an order to reexamine has been issued under § 1.931, neither the patent owner nor the third party requester, if any, nor privies of either, may file a subsequent request for reexamination of the patent until a reexamination certificate is issued under § 1.997, unless authorized by the Commissioner. Once a final decision has been entered against a party in a civil action arising in whole or in part under 28 U.S.C. 1338 in which the party did not sustain its burden of proving invalidity of any patent claim in suit, then neither that party nor its privies may thereafter request reexamination of any such patent claim on the basis of issues which that party or its privies raised or could have raised in such civil action, and reexamination requested by that party or its privies on the basis of such issues may not thereafter be maintained by the Office.

Proposed § 1.909 provides for estoppel of their party requesters from previous reexamination proceedings. A third party requester, or its privy, who,

during a reexamination proceeding, has filed a notice of appeal to the Court of Appeals for the Federal Circuit, or who has participated as a party to an appeal by the patent owner, under the provisions of 35 U.S.C. 141 to 144, is estopped from later asserting, in a subsequent reexamination proceeding, the invalidity of any claim determined to be patentable on appeal on any ground which the third party requester, or its privy, raised or could have raised during the prior reexamination proceeding. A third party requester, or its privy, is deemed not to have participated as a party to an appeal by the patent owner unless, within twenty days after the patent owner has filed notice of appeal, the third party (or its privy) files notice with the Commissioner electing to participate.

Proposed § 1.911 provides factors for consideration of privies and persons bound. For the purposes of § 1.907, a determination of whether person is a privy with respect to the patent owner shall include consideration of whether there is: (1) a mutual, concurrent or successive relationship to the same property rights in the patent involved in the reexamination proceeding; or (2) representation of the interests of the patent owner concerning the patent. For the purposes of §§ 1.907 and 1.909, a determination of whether a person is a privy with respect to a third party requester shall include consideration of whether there is: (1) a mutual, concurrent or successive relationship to the same property rights which are or may be affected by and/or infringe the patent involved in the reexamination proceeding; or (2) representation of the interests of the other party which are or may be affected by and/or potentially infringe the patent. For the purposes of §§ 1.907 and 1.909, a person who is not a party to the reexamination proceeding but who controls or substantially participates in the control of the presentation of the reexamination proceeding on behalf of a party is bound by the determination of issues decided as though he or she were a named party. To have control of the presentation requires that person to have effective choice as to the legal theories and/or grounds of rejection or defenses to be advanced on behalf of the party to the reexamination proceeding. Under this section a party would be precluded from hiring another law firm and having that firm file a subsequent reexamination request in order to avoid the prohibitions of 35 U.S.C. 307(c) or 308.

Proposed § 1.913 sets forth procedures for any person to request reexamination in accordance with 35 U.S.C. 302 and limits the period for such request to the period of enforceability of the patent for which the request is filed.

Proposed § 1.915(a) requires payment of the fee for requesting reexamination. Paragraph (b) of new § 1.915 indicates what each request for reexamination must include. Paragraph (c) of new § 1.915 covers amendments which a patent owner can propose. Such amendments can accompany a request for reexamination by the patent owner. Paragraph (d) indicates that requests for reexamination may be filed by attorneys or agents on behalf of a requester, but it is noted that the real party in interest must be identified in accordance with § 1.915(b)(10).

Proposed § 1.917 indicates what will be done if the request is incomplete.

Proposed § 1.919 indicates the date on which the entire fee is received will be considered to be the date of the request for reexamination.

Proposed § 1.921 provides that prior art submissions by the third party requester filed after the reexamination order shall be limited solely to prior art which is used to rebut a finding a fact by the examiner or a response of the patent owner.

Proposed § 1.923 relates to a determination as to whether the request has presented a substantial new question of patentability under 35 U.S.C. 303 and requires that the determination be made within 3 months of the filing date of the request.

Proposed § 1.925 refers to the refund provisions.

Proposed § 1.927 provides for review by petition to the Commissioner of any decision refusing reexamination.

Proposed § 1.929 provides for reexamination at the initiative of the Commissioner under the provisions of the last sentence of paragraph (a) of 35 U.S.C. 303.

Proposed § 1.931 provides for ordering reexamination where a substantial new question of patentability has been found pursuant to §§ 1.923 or 1.929. Under paragraph (b), the only limitation placed on the selection of the examiner by the Office is that the same examiner whose decision was reversed on petition ordinarily will not conduct the reexamination.

Proposed § 1.933 covers the duty of disclosure by a patent owner in a reexamination proceeding involving the owner's patent.

Proposed § 1.935 indicates that the initial Office action normally accompanies the reexamination order.

Proposed § 1.937 provides that in accordance with 35 U.S.C. 305(c), unless otherwise provided by the Commissioner for good cause, all reexamination proceedings will be conducted with special dispatch. Paragraph (b) covers the basic items relating to the conduct of reexamination proceedings.

Proposed § 1.939 provides that no paper shall be filed before the first Office action.

Proposed § 1.941 provides for proposed amendments provided for the second sentence of 35 U.S.C. 305. Amendments submitted by the patent owner cannot enlarge the scope of a claim in the patent. Amendments will not be effectively entered into the patent until the certificate under § 1.997 and 35 U.S.C. 307 is issued.

Proposed § 1.943 provides a page limit for responses and briefs of 50 pages. Prior art references and Appendix of claims would not be included in this total.

Proposed § 1.945 provides that a patent owner will be given at least thirty days to respond to any Office action. Although problems may arise in certain cases and extensions of time may be granted, it is felt that relatively short response times are necessary in order to process reexaminations with "special dispatch."

Proposed § 1.9347 provides that in accordance with 35 U.S.C. 305(b)(3), if a patent owner files a response to any Office action on the merits, the third party requester may once file written comments.

Proposed § 1.949 provides when prosecution may be closed.

Proposed § 1.951 provides for responses by the parties after an Office action closing prosecution. The responses and time periods provided for by paragraphs (a) and (b) may run concurrently.

Proposed § 1.953 provides that, following the responses or expiration of the time for response in § 1.951, the examiner may issue a right of appeal notice which shall include a final rejection or final decision favorable to patentability in accordance with 35 U.S.C. 134. The intent of limiting the appeal rights until after the examiner issues a "Right of Appeal Notice" is to specifically preclude the possibility of one party attempting to appeal prematurely while prosecution before the examiner is being continued by the other party.

Proposed § 1.955 relates to the conduct of interviews in reexamination proceedings. The third party requested is permitted to attend all interviews. Interviews are permitted before the first Office action only when initiated by the examiner.

Proposed § 1.957 relates to extensions of time and termination of reexamination proceedings. In circumstances where the response by the patent owner is not required by the examiner and is merely discretionary, such as when all claims are allowed or their patentability is confirmed and the patent owner is merely given the opportunity for comment, such a failure to comment is not type of lack of response contemplated by paragraphs (b) and (c) and, therefore, not grounds for termination or limiting prosecution.

Proposed § 1.958 relates to revival of terminated proceedings.

Proposed § 1.959 relates to appeals and cross appeals to the Board of Patent Appeals and Interferences. Both patent owners and third party requesters are given appeal rights in accordance with 35 U.S.C. 306.

Proposed § 1.961 relates to time of transfer of the jurisdiction of the appeal over to the Board of Patent Appeals and Interferences.

Proposed § 1.962 relates to the definition of appellant and respondent.

Proposed § 1.963 relates to the time periods for filing briefs.

Proposed § 1.965 relates to the appellant brief.

Proposed § 1.967 relates to the respondent brief.

Proposed § 1.969 relates to the examiner's answer.

Proposed § 1.971 relates to the reply brief.

Proposed § 1.973 relates to the oral hearing.

Proposed § 1.975 relates to affidavits or declarations after appeal.

Proposed § 1.977 relates to the decision by the Board of Patent Appeals and Interferences.

Proposed § 1.979 relates to the procedures following the decision by the Board of Patent Appeals and Interferences.

Proposed § 1.981 relates to the procedure for reopening prosecution following the decision by the Board of Patent Appeals and Interferences.

Proposed § 1.983 relates to appeals to the United States Court of Appeals for the Federal Circuit, in accordance with 35 U.S.C. 306. Under H.R. 1732, civil actions under 35 U.S.C. 145 are not permitted in reexamination proceedings filed on or after January 1, 1996.

Proposed § 1.985 relates to notification or prior or concurrent proceedings.

Proposed § 1.987 relates to the stay of concurrent proceedings. Decisions as to whether to delay or combine cases will be made on a case-by-case basis to minimize delays and to protect the interests of all parties concerned.

Proposed § 1.989 relates to the merger of concurrent proceedings.

Proposed § 1.991 relates to the merger of a concurrent reissue application and a reexamination proceeding.

Proposed § 1.993 relates to the stay of a concurrent interference and reexamination proceeding.

Proposed § 1.995 relates to a third party requester's participation rights being preserved in merged proceeding.

Proposed § 1.997 concerns the issuance of the reexamination certificate under 35 U.S.C. 307 after the conclusion of reexamination proceedings. The certificate will cancel any patent claims determined to be unpatentable, confirm any patent claims determined to be patentable, and incorporate into the patent any amended or new claim determined to be patentable. Once all of the claims have been canceled from the patent, the patent ceases to be enforceable for any purpose. Accordingly, any pending reissue or other Office proceeding relating to a patent in which such a certificate has been issued will be terminated.

This provides a degree of assurance to the public that patents with all the claims canceled via reexamination proceedings will not again be asserted. It is intended that copies of the certificate will continue to be part of subsequently sold copies of the patent.

Other Considerations

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* It has been determined that this rulemaking is not significant for the purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impacts of these proposed changes are to expand the grounds for requesting a reexamination and to permit the third party to participate more extensively during the reexamination proceeding as well as having appeal rights.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes contain collection of information requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which is currently approved by the Office of Management and Budget under Control No. 0651–0033. The public reporting burden for the collection of information for requests for reexamination is estimated to average 2.0 hours each including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of System Quality and Enhancement, Patent and Trademark Office, Washington, D.C. 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: Paperwork Reduction Act Project 0651–0033).

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office proposed to amend Title 37 of the Code of Federal Regulations as set forth below.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set out in the preamble and under the authority given to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Part I of Title 37 CFR is proposed to be amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.4(a)(2) is proposed to be revised to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in Subpart B, §§ 1.31 to 1.378; of international applications in Subpart C, §§ 1.401 to 1.499; or reexamination of patents filed before January 1, 1996, in Subpart D,

1.501 to 1.570, and of reexaminations filed on or after January 1, 1996, in Subpart H, §§ 1.901–1.997; of interferences in Subpart E; §§ 1.601 to 1.690; of extension of patent term in Subpart F, §§ 1.710 to 1.785; and of trademark applications §§ 2.11 to 2.189.

* * * * *

3. Section 1.6(d)(5) is proposed to be revised to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(d) (5) A request for reexamination under § 1.510 or § 1.913.

* * * * *

4. Section 1.11(c) is proposed to be revised to read as follows:

§ 1.11 Files open to the public.

* * * * *

(c) All requests for reexamination for which the fee under 1.20(c) has been paid, will be announced in the Official Gazette. Any reexaminations at the initiative of the Commissioner pursuant to 1.520 or 1.929 will also be announced in the Official Gazette. The announcement shall include at least the date of the request, if any, the reexamination request control number of the Commissioner initiated order control number, patent number, title, class and subclass, name of the inventor, name of the patent owner of record, and the examining group to which the reexamination is assigned.

* * * * *

5. Section 1.17 (l) and (m) are proposed to be revised to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(l) For filing a petition:

(1) For the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371,

(2) For delayed payment of the issue fee under 35 U.S.C. 151, or,

(3) For the revival of an unavoidably terminated reexamination proceeding:

By a small entity (§ 1.9(f)).....55.00
By other than a small entity 110.00

(m) For filing a petition:

(1) For revival of an unintentionally abandoned application,

(2) For the unintentionally delayed payment of the fee for issuing a patent, or

(3) For reexamination proceedings filed on or after January 1, 1996, for the revival of an unintentionally terminated reexamination proceeding:

By a small entity (§ 1.9(f)).....605.00
By other than a small entity 1,210.00

* * * * *

6. Section 1.20(c) is proposed to be revised to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(c) For filing a request for reexamination (§ 1.915(a)):

By a patent owner.....$4,500.00
By a third party requester.....$11,000.00

* * * * *

7. Section 1.25(b) is proposed to be revised to read as follows:

§ 1.25 Deposit accounts.

* * * * *

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with respect to a particular paper filed. An authorization charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 or § 1.915 and any other fees required in a reexamination proceeding in a patent may also be filed with the request for reexamination. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

8. Section 1.26(c) is proposed to be revised to read as follows:

§ 1.26 Refunds.

* * * * *

(c) If the Commissioner decides not to institute a reexamination proceeding, for reexaminations filed on or after January 1, 1996, a refund of seventy-five percent (75%) of the fee paid for filing the request for reexamination will be made to the requester. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

9. Section 1.112 is proposed to be revised to read as follows:

§ 1.112 Reconsideration.

After response by applicant or patent owner (§ 1.111), the application or patent under reexamination will be reconsidered and again examined. The applicant or patent owner will be notified if claims are rejected, or objections or requirements made, in the same manner as after the first examination. Applicant or patent owner may respond to such Office action in the same manner provided in § 1.111, with or without amendment. Any amendments after the second Office action must ordinarily be restricted to the rejection or to the objections or requirements made. The application or patent under reexamination will be again considered, and so on repeatedly, unless the examiner has indicated that the action is final or is an action closing prosecution.

10. Section 1.113(a) is proposed to be revised to read as follows:

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration the rejection or other action may be made final, whereupon applicant's or (for reexaminations filed before January 1, 1996) patent owner's response is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Response to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the response to a final rejection or action must comply with any requirements or objection as to form.

* * * * *

11. Section 1.115 is proposed to be revised to read as follows:

§ 1.115 Amendment.

The applicant may amend before or after the first examination and action and also after the second or subsequent examination or reconsideration as specified in § 1.112 or when and as specifically required by the examiner. For reexaminations filed before January 1, 1996, the patent owner may amend in accordance with §§ 1.510(e) and 1.530(b) prior to reexamination, and during reexamination proceedings in accordance with §§ 1.112 and 1.116. For reexaminations filed on or after January 1, 1996, the patent owner may amend in accordance with § 1.915(c) prior to reexamination, and during reexamination proceedings in accordance with §§ 1.941 and 1.945.

12. Section 1.116(a) is proposed to be revised to read as follows:

§ 1.116 Amendments after final action.

(a) After final rejection or action (§ 1.113) or action closing prosecution (§ 1.949) for reexaminations filed on or after January 1, 1996, amendments may be made cancelling claims or complying with any requirement of form which has been made. Amendments presenting

rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after final rejection, and any proceedings relative thereto, shall not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135. Notwithstanding the above, for reexamination proceedings filed on or after January 1, 1996, no appeal may be had until a right of appeal notice has been issued pursuant to § 1.953.

* * * * *

13. Section 1.136(a)(2) and (b) are proposed to be revised to read as follows:

§ 1.136 Filing of timely responses with petition and fee for extension of time and extensions of time for cause.

(a) * * *

(2) The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. In no case may an applicant respond later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to § 1.193(b), 1.194, 1.196 or 1.197. See § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action. See § 1.550(c) for extension of time in reexamination proceedings filed before January 1, 1996, § 1.957 for extension of time in reexamination proceedings filed on or after January 1, 1996, and § 1.645 for extension of time in interference proceedings.

(b) When a response with petition and fee for extension of time cannot be filed pursuant to paragraph (a) of this section, the time for response will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the applicant is due, but in no case will the mere filing of the request effect any extension. In no case can any extension carry the date on which response to an Office action is due beyond the maximum time period set by statute or be granted when the provisions of paragraph (a) of this section are available. See § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action, § 1.645 for extension of time in interference proceedings, § 1.550(c) for extension of time in reexamination proceedings filed before January 1, 1996, and § 1.957 for extension of time in reexamination proceedings filed on or after January 1, 1996.

14. Section 1.137 (g) and (h) are proposed to be added and the Section heading revised to read as follows:

§ 1.137 Revival of abandoned application, lapsed patent or terminated reexamination.

* * * * *

(g) A reexamination proceeding filed before January 1, 1996, which is terminated for failure to prosecute may be revised as a pending proceeding if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an unavoidably terminated reexamination proceeding must be promptly filed after the patent owner is notified of, or otherwise becomes aware of, the termination of the proceeding, and must be accompanied by:

(1) a proposed response to continue prosecution of that proceeding unless it has been previously filed;

(2) the petition fee as set forth in § 1.17(1); and

(3) a showing that the delay was unavoidable. The showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(h) For reexamination proceedings filed on or after January 1, 1996, see § 1.958.

15. Section 1.191(a) is proposed to be revised to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(a) Every applicant for a patent or for reissue of a patent, or every owner of a patent under reexamination (for reexaminations filed before January 1, 1996), any of the claims of which have been twice rejected or who has been given a final rejection (§ 1.113), may, upon the payment of the fee set forth in § 1.17(e), appeal from the decision of the examiner to the Board of Patent Appeals and Interferences within the time allowed for response. Notwithstanding the above, for reexamination proceedings filed on or after January 1, 1996, § 1.959 et seq., is controlling.

* * * * *

16. Section 1.192(a) is proposed to be revised to read as follows:

§ 1.192 Applicant's brief.

(a) The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination (for reexaminations filed before January 1, 1996), or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences. Notwithstanding the above, for reexamination proceedings filed on or after January 1, 1996, § 1.965 is controlling.

* * * * *

17. Section 1.193 is proposed to be amended by adding a paragraph (c) to read as follows:

§ 1.193 Examiner's answer.

* * * * *

(c) Notwithstanding the above, for reexamination proceedings filed on or after January 1, 1996, §§ 1.969 and 1.971 are controlling.

18. Section 1.194 is proposed to be amended by adding a paragraph (d) to read as follows:

§ 1.194 Oral hearing.

* * * * *

(d) Notwithstanding the above, for reexamination proceedings filed on or after January 1, 1996, § 1.973 is controlling.

19. Section 1.195 is proposed to be revised to read as follows:

§ 1.195 Affidavits or declarations after appeal.

Affidavits, declarations, or exhibits submitted after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented. Notwithstanding the above, for reexamination proceedings filed on or after January 1, 1996, § 1.975 is controlling.

20. Section 1.196 is proposed to be amended by adding a paragraph (g) to read as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

* * * * *

(g) Notwithstanding the above, for reexamination proceedings filed on or after January 1, 1996, § 1.977 is controlling.

21. Section 1.197 is proposed to be amended by adding a paragraph (d) to read as follows:

§ 1.197 Action following decision.

* * * * *

(d) Notwithstanding the above, for reexamination proceedings filed on or after January 1, 1996, § 1.979 is controlling.

22. Section 1.198 is proposed to be revised to read as follows:

§ 1.198 Reopening after decision.

Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.196 without the written authority of the Commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown. Notwithstanding the above, for reexamination proceedings filed on or after January 1, 1996, § 1.981 is controlling.

23. Section 1.301 is proposed to be revised to read as follows:

§ 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.

Any applicant or any owner of a patent involved in a reexamination proceeding (filed before January 1, 1996) dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal: In the Patent and Trademark Office file a written notice of appeal directed to the Commissioner (see §§ 1.302 and 1.304); and in the Court, file a copy of the notice of appeal and pay the fee for appeal as provided by the rules of the Court. Notwithstanding the above, for reexamination proceedings filed on or after January 1, 1996, § 1.983 is controlling.

24. Section 1.303 is proposed to be amended by revising paragraphs (a) and (b) and adding a new paragraph (d) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

(a) Any applicant or any owner of a patent involved in a reexamination proceeding (filed before January 1, 1996) dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party dissatisfied with the decision of the Board of Patent Appeals and Interferences may, instead of appealing to the U.S. Court of Appeals for the Federal Circuit (§ 1.301), have remedy by civil action under 35 U.S.C. 145 or 146, as appropriate. Such civil action must be commenced within the time specified in § 1.304.

(b) If an applicant in an ex parte case or an owner of a patent involved in a reexamination proceeding (filed before January 1, 1996) has taken an appeal to the U.S. Court of Appeals for the Federal Circuit, he or she thereby waives his or her right to proceed under 35 U.S.C. 145.

* * * * *

(d) For reexamination proceedings filed on or after January 1, 1996, no remedy by civil action under 35 U.S.C. 145 is available.

25. Section 1.304(a)(2) is proposed to be revised to read as follows:

§ 1.304 Time for appeal or civil action.

(a) * * *

(2) The time periods set forth in this section are not subject to the provisions of §§ 1.136, 1.550(c), 1.957 or 1.645 (a) or (b).

* * * * *

26. The heading for Subpart D is proposed to be revised to read as follows:

Subpart D—Reexamination of Patents for Proceedings Filed Before January 1, 1996 (For Proceeding beginning on or after January 1, 1996, see Subpart H)

27. Subpart H is proposed to be added to read as follows:

Subpart H—Reexamination of Patents for Proceedings Filed On or After January 1, 1996 (For Proceedings beginning Before January 1, 1996, see Subpart D)

Sec.

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1.983 Appeal to the United States Court of Appeals for the Federal Circuit.

Proceedings Including Same Patient as in Reexamination

1.985 Notification of prior or concurrent proceedings.
1.987 Stay of concurrent proceeding.
1.989 Merger of concurrent reexamination proceedings.
1.991 Merger of concurrent reissue application and reexamination proceeding.
1.993 Stay of concurrent interference and reexamination proceeding.
1.995 Third party requester's participation rights preserved in merged proceedings.

Certificate

1.997 Issuance of reexamination certificate after reexamination proceedings.

§ 1.901 Citation of prior art in patent files.

(a) At any time during the period of enforceability of a patent, any person may cite to the Patent and Trademark Office in writing prior art consisting of patents or printed publications which that person states to be pertinent and applicable to the patent and believes to have a bearing on the patentability of any claim of a particular patent. If the citation is made by the patent owner, the explanation of pertinency and applicability may include an expansion of how the claims differ from the prior art.

(b) If the person making the citation wishes his or her identity to be excluded from the patent file and kept confidential, the citation papers must be submitted without any identification of the person making the submission.

(c) Citations of patent or printed publications by the public in patent files should either:

(1) reflect that a copy of the same has been mailed to the patent owner at the address as provided in § 1.33(c); or in the event service is not possible,

(2) be filed with the Office in duplicate.

(d) Except as provided in § 1.902, citations submitted in accordance with this section will be placed and made of record in the patent file.

§ 1.902 Processing of prior art citations in patent files during a reexamination proceeding.

Citations by the patent owner in accordance with § 1.933 and by a reexamination third party requester under § 1.915 will be entered in the patent file. The entry in the patent file of other citations submitted after the date of an order to reexamine pursuant to § 1.931 will be delayed until the reexamination proceeding has been terminated.

Reexamination Proceedings

§ 1.903 Service of papers on parties.

The patent owner and any third party requester will be sent copies of Office actions issued during the reexamination proceeding. After filing of a request for reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on every other party in the reexamination proceeding in the manner provided in § 1.248. Any document must reflect service or the document may be refused consideration by the Office. The failure of the third party requester, if any, to timely file or serve documents may result in their being refused consideration.

§ 1.904 Notice of reexamination in Official Gazette.

A notice of the filing of a reexamination request or initiation of a Commissioner-ordered reexamination will be published in the Official Gazette. The notice in the Official Gazette under § 1.11(c) will be considered to be constructive notice of the reexamination proceeding and reexamination will proceed.

§ 1.905 Submission of papers by public.

Unless specifically provided for, no submissions on behalf of any third parties other than third party requesters as defined in 35 U.S.C. 100(e) will be considered unless such submissions are in accordance with § 1.915 or entered in the patent file prior to the date of the order to reexamine pursuant to § 1.931. Submissions by third parties, other than third party requesters, filed after the date of the order to reexamine pursuant to § 1.931, must meet the requirements of § 1.901 (a) through (c) and will be treated in accordance with § 1.902.

§ 1.906 Scope of reexamination in reexamination proceeding.

(a) Claims in a reexamination proceeding will be examined on the basis of patents or printed publications and on the basis of the requirements of 35 U.S.C. 112 except for the best mode requirement.

(b) Claims in a reexamination proceeding must not enlarge the scope of the claims of the patent.

(c) Questions other than those indicated in paragraphs (a) and (b) of this section will not be resolved in a reexamination proceeding. If such questions are raised by the patent owner or third party requester during a reexamination proceeding, the existence of such questions will be noted by the examiner in the next Office action, in which case the patent owner may desire to consider the advisability of filing a reissue application to have such questions considered and resolved.

§ 1.907 Reexamination prohibited.

(a) Once an order to reexamine has been issued under § 1.931, neither the patent owner nor the third party requester, if any, nor privies of either, may file a subsequent request for reexamination of the patent until a reexamination certificate is issued under § 1.997, unless authorized by the Commissioner.

(b) Once a final decision has been entered against a party in a civil action arising in whole or in part under 28 U.S.C. 1338 that the party has not sustained its burden of proving invalidity of any patent claim in suit, then neither that party nor its privies may thereafter request reexamination of any such patent claim on the basis of issues which that party or its privies raised or could have raised in such civil action, and a reexamination requested by that party, or its privies, on the basis of such issues may not thereafter be maintained by the Office.

§ 1.909 Estoppel of third party requester from previous reexamination proceedings.

A third party requester, or its privy, who, during a reexamination proceeding, has filed a notice of appeal to the Court of Appeals for the Federal Circuit, or who has participated as a party to an appeal by the patent owner, under the provisions of 35 U.S.C. 141 to 144, is estopped from later serving, in a subsequent reexamination proceeding, the invalidity of any claim determined to be patentable on appeal on any ground which the third party requester, or its privy, raised or could have raised during the prior reexamination proceeding. A third party requester, or its privy, is deemed not to have participated as a party to an appeal by the patent owner unless, within twenty days after the patent owner has filed notice of appeal, the third party, or its privy, files notice with the Commissioner's electing to participate.

§ 1.911 Privies and persons bound.

(a) For the purposes of § 1.907, a determination of whether a person is a privy with respect to the patent owner shall include consideration of whether there is:

(1) a mutual, concurrent or successive relationship to the same property rights in the patent involved in the reexamination proceeding; or

(2) representation of the interests of the patent owner concerning the patent.

(b) For the purposes of §§ 1.907 and 1.909, a determination of whether a person is a privy with respect to a third party requester shall include consideration of whether there is:

(1) a mutual, concurrent or successive relationship to the same property rights which are or may be affected by and/or infringe the patent involved in the reexamination proceeding; or

(2) representation of the interests of the other party which are or may be

affected by and/or potentially infringe the patent.

(c) For the purposes of §§ 1.907 and 1.909, a person who is not a party to the reexamination proceeding but who controls or substantially participates in the control of the presentation of the reexamination proceeding on behalf of a party is bound by the determination of issues decided as though he or she were a named party. To have control of the presentation requires that person to have effective choice as to the legal theories and/or grounds of rejection or defenses to be advanced on behalf of the party to the reexamination proceeding.

Determining if Reexamination Will Be Ordered

§ 1.913 Persons eligible.

Except as otherwise provided, any person may, at any time during the period of enforceability of a patent, file a request for reexamination by the Patent and Trademark Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.901 or on the basis of the requirements of 35 U.S.C. 112 except for the best mode requirement.

§ 1.915 Content of request.

(a) The request must be accompanied by the fee for requesting reexamination set in § 1.20(c).

(b) Any request for reexamination must include the following parts:

(1) A statement pointing out each substantial new question of patentability based on prior patents and printed publications or based on the manner in which the patent specification or claims fail to comply with the requirements of 35 U.S.C. 112 except for the best mode requirement.

(2) An identification of every claim for which reexamination is requested.

(3) A detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested or a detailed explanation of the manner in which the specification or claim(s) fail to comply with 35 U.S.C. 112 except for the best mode requirement. If appropriate, the party requesting reexamination may also point out how claims distinguish over cited prior art or how 35 U.S.C. 112 requirements are complied with except for the best mode requirement.

(4) A copy of every patent or printed publication relied upon or referred to in paragraphs (b) (1) and (3) of this section accompanied by an English language translation of all the necessary and pertinent parts of any non-English language document.

(5) The entire patent for which reexamination is requested must be furnished in the form of cut up copies of the original patent with only a single column of the printed patent securely mounted or reproduced in permanent form on one side of a separate paper. A copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent must also be included.

(6) A certification that a copy of the request filed by a person other than the patent owner has been served in its entirety on the patent owner at the address as provided for in § 1.33(c). The name and address of the party served must be indicated. If service was not possible, a duplicate copy must be supplied to the Office.

(7) If the patent is currently involved in a reexamination proceeding for which a reexamination certificate has not been issued, a certification that the person making the request is not a privy of the patent owner or third party requester, unless otherwise authorized by the Commissioner.

(8) In a request filed by a third party requester, a certification that

(i) no final decision has been entered against that party or its privies in a civil action arising in whole or in part under 28 U.S.C. 1338 in which that party or its privies did not sustain its burden of proving the invalidity of any patent claim in suit, and

(ii) neither that party nor its privies are requesting reexamination of any such patent claim on the basis of issues which that party or its privies raised or could have raised in such civil action.

(9) In a request filed by a third party requester, a certification that the request does not assert the invalidity of any claim determined to be patentable on appeal on any ground which the third party requester or its privy raised or could have raised during a prior reexamination proceeding in which that party or its privies filed a notice of appeal to the Court of Appeals for the Federal Circuit and/or participated as a party to an appeal by the patent owner, under the provisions of 35 U.S.C. 141 to 144.

(10) A statement identifying the real party in interest to the extent necessary for a subsequent person filing a reexamination request to determine whether that person is a privy.

(c) A request filed by the patent owner may include a proposed amendment in accordance with § 1.121(f).

(d) If a request is filed by an attorney or agent identifying another party on whose behalf the request is being filed, the attorney or agent must have a power of attorney from that party or be acting in a representative capacity pursuant to § 1.34(a).

§ 1.917 Omission of a requirement in the request for reexamination.

If the request is not accompanied by the fee for requesting reexamination or all of the other parts required by § 1.915, the person identified as requesting reexamination will be so notified and given an opportunity to complete the request within a specified time. If the fee for requesting reexamination has been paid but the defect in the request is not corrected within the specified time, the determination whether or not to institute reexamination will be made on the request as it then exists. If the fee for requesting reexamination has not been paid, no determination will be made and the request will be placed in the patent file as a citation if it complies with the requirements of § 1.901 and/or § 1.902.

§ 1.919 Filing date for request for reexamination.

The filing date of the request is the date on which the request including the entire fee for requesting reexamination is received; or, if the request is not initially accompanied by the entire fee, the date on which the last portion of the fee is received in the Patent and Trademark Office.

§ 1.921 Submission of prior art by third party following the order for reexamination.

Prior art submissions by the third party requester filed after the reexamination order shall be limited solely to prior art which is used to rebut a finding of fact by the examiner or a response of the patent owner.

§ 1.923 Examiner's consideration of the request for reexamination.

Within three months following the filing date of a request for reexamination, an examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art cited therein, with or without consideration of other patents or printed publications, or by the failure of the patent specification or claim(s) to comply with the requirements of 35 U.S.C. 112 except for the best mode requirement. The examiner's determination will be used on the claims in effect at the time of the determination and will become a part of the official file of the patent and will be mailed to the patent owner at the address as provided for in § 1.33(c) and to the person requesting reexamination.

§ 1.925 Partial refund if request is denied.

Where no substantial new question of patentability has been found, a refund of a portion of the fee for requesting

reexamination will be made to the requester in accordance with § 1.26(c).

§ 1.927 Petition to review denial of the request for reexamination.

The requester may seek review by a petition to the Commissioner under § 1.181 within one month of the mailing date of the examiner's determination refusing reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that no substantial new question of patentability has been raised, the determination shall be final and nonappealable.

Reexamination of Patents

§ 1.929 Reexamination at the initiative of the Commissioner.

The Commissioner, at any time during the period of enforceability of a patent, may determine whether or not a substantial new question of patentability is raised by patents or printed publications which have been discovered by the Commissioner or which have been brought to the Commissioner's attention or by the failure of the patent specification or claim(s) to comply with the requirements of 35 U.S.C. 112 except for the best mode requirement. The Commissioner may order reexamination even though no request for reexamination has been filed in accordance with § 1.915. Normally requests from outside the Patent and Trademark Office that the Commissioner undertake reexamination on his or her own initiative will not be considered. Any determination to initiate reexamination under this section will become a part of the official file of the patent and will be given or mailed to the patent owner at the address as provided for in § 1.33(c).

§ 1.931 Order to reexamine.

(a) If a substantial new question of patentability is found, the determination will include an order for reexamination of the patent for resolution of the question.

(b) If the order for reexamination resulted from a petition pursuant to § 1.927, the reexamination will ordinarily be conducted by an examiner other than the examiner responsible for the initial determination under § 1.923.

Information Disclosure

§ 1.933 Information material to patentability in reexamination proceedings.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the teachings of all information material to patentability in a reexamination proceeding. Each individual associated with the patent owner in a reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding. The individuals who have a duty to disclose to the Office all information known to them to be material to patentability in a reexamination proceeding are the patent owner, each attorney or agent who represents the patent owner, and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. The duty to disclose the information exists with respect to each claim pending in the reexamination proceeding until the claim is cancelled. Information material to the patentability of a cancelled claim need not be submitted if the information is not material to patentability of any claim remaining under consideration in the reexamination proceeding. The duty to disclose all information known to be material to patentability in a reexamination proceeding is deemed to be satisfied if all information known to be material to patentability of any claim in the patent after issuance of the reexamination certificate was cited by the Office or submitted to the Office in an information disclosure statement. However, the duties of candor, good faith, and disclosure have not been complied with if any fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct by, or on behalf of, the patent owner in the reexamination proceeding. Any information disclosure statement must be filed with the items listed in § 1.98(a) as applied to individuals associated with the patent owner in a reexamination proceeding, and should be filed within two months of the date of the order for reexamination, or as sooner thereafter as possible.

(b) Under this section, information is material to patentability in a reexamination proceeding when it is not cumulative to information of record or being made of record in the reexamination proceeding, and

(1) It is a patent or printed publication that establishes, by itself or in combination with other patents or printed publications, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the patent owner takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability of a claim pending in a reexamination proceeding is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section, and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.906(c).

Office Actions and Responses (Before the Examiner)

§ 1.935 Initial Office action normally accompanies order to reexamine.

The order for reexamination will normally be accompanied by the initial Office action on the merits of the reexamination.

§ 1.937 Conduct of Reexamination.

(a) All reexamination proceedings, including any appeals to the Board of Patent Appeals and Interference, will be conducted with special dispatch within the Office, unless the Commissioner makes a determination that there is good cause for suspending the reexamination preceding. A final determination that good cause exists shall not be made until the patent owner and third party requesters (if any) have had a reasonable opportunity to comment on or oppose any suspension.

(b) Except as otherwise provided, the reexamination proceeding will be conducted in accordance with the sections governing the application examination process; §§ 1.104 through 1.119, and will result in the issuance of a reexamination certificate under § 1.997.

§ 1.939 Unauthorized papers.

Unless authorized by the reexamination regulations (§§ 1.901–

1.997), no paper shall be filed prior to the first Office action. If an unauthorized paper is filed by the patent owner or third party requester, it will not be considered in making the determination under § 1.923 and will be returned.

§ 1.941 Amendments by patent owner and their effective date.

(a) Any proposed amendment to the description and claims must be made in accordance with § 1.121(f) and be accompanied by an explanation of the support for the proposed amendment in the disclosure of the patent. No amendment may enlarge the scope of the claims of the patent or introduce new matter. No amendment may be proposed for entry in an expired patent. Moreover, no amendment will be incorporated into the patent by certificate issued after the expiration of the patent.

(b) Amendments made to a patent during a reexamination proceeding will not be effective until a reexamination certificate is issued.

§ 1.943 Length of responses and briefs.

Responses and appellant briefs by the patent owner (including amendments) and third party requester, if any, shall not exceed 50 pages in length, excluding Appendix of claims and reference materials such as prior art references. All further briefs by any party shall not exceed 35 pages in length.

§ 1.945 Response by patent owner.

The patent owner will be given at least thirty (30) days to respond to any Office action. Such response may include arguments in response to any rejections and/or proposed amendments or new claims to place the patent in condition where all claims, if amended as proposed, would be patentable.

§ 1.947 Response by third party requester to patent owner's response.

If the patent owner files a response to an Office action, any third party requester may once file written comments within a period of one month from the date of service of the patent owner's response. These comments shall be limited to issues covered by the action or the patent owner's response.

§ 1.949 Examiner's Office action closing prosecution.

Upon consideration of the issues and/or grounds of rejection a second or subsequent time, or upon allowance of all claims, the examiner shall issue an Office action treating all claims present in the reexamination proceeding, which may be an action closing prosecution. An action will not normally close prosecution if it includes a new ground of rejection which was not previously addressed by the patent owner, unless the new ground was necessitated by an amendment.

§ 1.951 Responses after Office action closing prosecution.

After any action closing prosecution issued by the examiner, the third party requester may once file written comments limited to the issues raised in the Office action closing prosecution. Such comments must be filed within the time set for response in the action closing prosecution. When the third party requester does file such comments, the patent owner may file comments responding to the third party requester's comments within one month from the date of service of the third party requester's comments on the patent owner.

(b) After any action closing prosecution issued by the examiner, the patent owner may once file written comments limited to the issues raised in the reexamination proceeding and/or present a proposed amendment to the claims which amendment will be subject to the criteria of § 1.116 as to whether it shall be entered and/or considered. Such comments and/or proposed amendments must be filed within the time set for response in the action closing prosecution. Where the patent owner does file such comments and/or proposed amendment, the third party requester may file comments responding to such comments and/or proposed amendments by the patent owner within one month from the date of service of patent owner's comments and/or proposed amendment on the third party requester.

§ 1.953 Examiner's Right of Appeal Notice.

Upon considering the responses of the patent owner and any third party requester subsequent to the Office action closing prosecution, or upon expiration of the time for submitting such responses, the examiner shall issue a "Right of Appeal Notice," unless the examiner reopens prosecution. The "Right of Appeal Notice" shall include a final rejection and/or final decision favorable to patentability which shall identify the status of each claim and reasons for patentability or grounds of rejection for each claim. It shall set a 30-day or one month time period, whichever is longer, for either party to appeal. If no appeal follows, the reexamination proceeding will be terminated and the Commissioner will proceed to issue a certificate under § 1.997 in accordance with the last action of the Office.

Interviews

§ 1.955 Interviews in reexamination proceedings.

(a) Interviews in reexamination proceedings pending before the Office between examiners and the owners of such patents or their attorneys or agents of record must be had in the Office at such times, within Office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Commissioner. Interviews should be arranged for in advance. A third party requester may not initiate an interview. A third party requester has a right to participate in an interview initiated by the patent owner or the examiner and must be given adequate notice and opportunity to participate. A senior level Office official will be present when the interview is attended by a third party requester.

(b) Interviews for the discussion of the patentability of claims in patents involved in reexamination proceedings will not be initiated by the patent owner prior to the first Office action thereon.

(c) In every instance of an interview with an examiner, each party must present a statement of the issues which were discussed. An interview does not remove the necessity for response to Office actions as specified in § 1.111.

Extensions of Time and Revival of Proceedings

§ 1.957 Extensions of time and cause for termination in reexamination proceedings.

(a) The time for taking any action by a patent owner or third party requester in a reexamination proceeding will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner or third party requester is due, but in no case will the mere filing of a request effect any extension. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

(b) If the patent owner fails to file a timely and appropriate response to any Office action in a reexamination proceeding, the reexamination proceeding will be terminated and the Commissioner will proceed to issue a certificate under § 1.997 in accordance with the last action of the Office, unless there is a third party requester and claims are found patentable.

(c) If there is a third party requester and claims are found patentable, and the patent owner fails to file a timely and appropriate response to any action in a reexamination proceeding, prosecution will be limited to claims found patentable at the time of the failure to respond and to claims which do not enlarge the scope of the claims found patentable at that time.

§ 1.958 Revival of terminated proceedings.

(a) A reexamination proceeding terminated for failure to prosecute may be revived as a pending proceeding if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an unavoidably terminated reexamination proceeding must be promptly filed after the patent owner is notified of, or otherwise becomes aware of, the termination of the proceeding, and must be accompanied by:

(1) a proposed response to continue prosecution of that proceeding unless it has been previously filed;

(2) the petition fee as set forth in § 1.17(l); and

(3) a showing that the delay was unavoidable. The showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(b) A reexamination proceeding terminated for failure of the patent owner to prosecute may be revived as a pending proceeding if the delay in prosecution was unintentional. A petition to revive an unintentionally terminated reexamination proceeding must be:

(1) accompanied by a proposed response to continue prosecution of that proceeding unless it has been previously filed;

(2) accompanied by the petition fee as set forth in § 1.17(m);

(3) accompanied by a statement that the delay was unintentional. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) filed either:

(i) within two months of the date of the first Office notification that the proceeding has been terminated; or

(ii) within two months of the date of the first decision on a petition to revive under paragraph (a) of this section which was timely filed within the time period set forth in paragraph (b)(4)(i) of this section.

(c) Any request for reconsideration or review of a decision refusing to revive a proceeding upon petition filed pursuant to paragraph (a) or (b) of this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision.

(d) The time periods set forth in this section cannot be extended, except that the time period set forth in paragraph (c) of this section may be extended under the provisions of § 1.957(a).

Appeal to the Board of Patent Appeals and Interferences

§ 1.959 Notice of appeal and cross appeal to Board of Patent Appeals and Interferences.

(a) (1) Once a "Right of Appeal Notice" has been issued, by filing a notice of appeal within the time provided in § 1.953 and paying the fee set forth in § 1.17(e), the patent owner may appeal to the Board of Patent Appeals and Interferences with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent.

(2) Once a "Right of Appeal Notice" has been issued, by filing a notice of appeal within the time provided in § 1.953 and paying the fee set forth in § 1.17(e), a third party requester involved in a reexamination proceeding may appeal to the Board of Patent Appeals and Interferences with respect to any final decision favorable to the patentability of any original or proposed amended or new claim of the patent.

(b) (1) Within fourteen days of service of a third party requester's notice of appeal, and upon payment of the fee set forth in § 1.17(e), a patent owner who has not filed a notice of appeal may file a notice of cross appeal with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent.

(2) Within fourteen days of service of a patent owner's notice of appeal, and upon payment of the fee set forth in § 1.17(e), a third party requester who has not filed a notice of appeal may file a notice of cross appeal with respect to any final decision favorable to the patentability of any original or proposed amended or new claim of the patent.

(c) The appeal in a reexamination proceeding must identify the claim(s) appealed, and must be signed by the patent owner or third party requester, or their duly authorized attorney or agent.

(d) An appeal when taken must be taken from the rejection of all claims under rejection in a Right of Appeal Notice which the patent owner proposes to contest, or from the determination of patentability of all claims indicated as patentable in a Right of Appeal Notice which the third party requester proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered.

(e) The time periods set forth in §§ 1.959 through 1.969 are subject to the provisions of § 1.957(a) for reexamination proceedings. See § 1.304(a) for extensions of time for filing a notice of appeal of the U.S. Court of Appeals for the Federal Circuit.

§ 1.961 Jurisdiction over appeal.

Jurisdiction over the patent under reexamination passes to the Board of Patent Appeals and Interferences upon transmittal of the file, including all briefs and examiner's answers, to the Board. Prior to the entry of a decision on the appeal, the Commissioner may sua sponte order the patent remanded to the examiner, for action consistent with the Commissioner's order.

§ 1.962 Appellant and respondent defined.

For the purposes of reexamination, appellant is any party filing a notice of appeal. A respondent is any opposing party responding to the appeal of the appellant. If more than one party appeals, each is an appellant with respect to the claims to which his or her appeal is directed and, to the extent each responds, each is a respondent with respect to the claims to which his or her opponent's appeal is directed.

§ 1.963 Time for filing briefs.

(a) If a party files a notice of appeal or cross appeal, the party must file an appellant brief within two months of the date of filing of their notice of appeal or cross appeal. However, if another party files a notice of appeal or cross appeal subsequent to that of the party, then the party must file an appeal brief within two months of the date of filing of the subsequent notice of appeal or cross appeal, so that the appellant briefs of all parties filing a notice of appeal or cross appeal will be due no later than two months after the last-filed notice.

(b) Once an appellant brief has been properly filed, an opposing party may file a respondent brief within one month from the date of service of the appellant brief. The examiner will consider both the appellant and respondent briefs and prepare an examiner's answer.

(c) The third party requester and the patent owner may each file a reply brief within one month of the date of the examiner's answer. No further brief will be acknowledged or considered.

§ 1.965 Appellant brief.

(a) Appellant(s) shall, within time limits for filing set forth in § 1.963, file a brief in triplicate and serve the brief on all parties in accordance with § 1.903. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and

arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

(b) On failure of a party to file the brief, accompanied by the requisite fee, within the time allowed, the appeal shall stand dismissed with respect to the claims appealed by that party.

(c) The brief shall contain the following items under appropriate headings and in the order indicated below unless the brief is filed by a party who is not represented by a registered practitioner:

(1) *Real Party in Interest.* A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest.

(2) *Related Appeals and Interferences.* A statement identifying by number and filing date all other appeals or interferences known to the appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of Claims.* A statement of the status of all the claims, pending or cancelled, and identifying the claims appealed.

(4) *Status of Amendments.* A statement of the status of any amendment filed subsequent to final rejection.

(5) *Summary of Invention.* A concise explanation of the invention or subject matter defined in the claims involved in the appeal, which shall refer the specification by column and line number, and to the drawing(s), if any, by reference characters.

(6) *Issues.* A concise statement of the issues presented for review.

(7) *Grouping of Claims.* For each ground of rejection, or, in the case where the appeal is by a third party requester, each determination of patentability or determination of inapplicability of a proposed rejection, which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of this group are believed to be separately patentable or unpatentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

(8) *Argument.* The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the basis therefor, with citations of the authorities, statues, and parts of the record relief on. Each issue should be treated under a separate heading.

(i) For each rejection or, in the case where the appeal is by a third party requester, any other determination under 35 U.S.C. 112, first paragraph, the argument shall specify the errors in the rejection or other determination and how the first paragraph of 35 U.S.C. 112 is or is not complied with, including, as appropriate, how the specification and drawings, if any,

(A) describe or fail to describe the subject matter defined by each of the appealed claims, and

(B) enable or fail to enable any person skilled in the art to make and use the subject matter defined by each of the appealed claims, and

(ii) For each rejection, or in the case where the appeal is filed by a third party requester, any determination, under 35 U.S.C. 112, second paragraph, the argument shall specify the errors in the rejection or other determination and how the claims do or do not particularly point out and distinctly claim the subject matter which appellant regards as the invention.

(iii) For each rejection or, in the case where the appeal is by a third party requester, each determination of patentability, under 35 U.S.C. 102, the argument shall specify the errors in the rejection or determination and why the appealed claims are or are not patentable under 35 U.S.C. 102, including any specific limitations in the appealed claims which are not described in the prior art.

(iv) For each rejection or, in the case where the appeal is by a third party requester, each determination of patentability under 35 U.S.C. 103, the argument shall specify the errors in the rejection or determination and, if appropriate, the specific limitations in the appealed claims which are or are not described in the prior art, and shall explain how such limitations render the claimed subject matter obvious or unobvious over the prior art. If the rejection or determination is based upon a combination of references, the argument shall explain why the references, taken as a whole, do or do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may or may not properly be combined with features disclosed in another reference. A general argument that all the limitations are or are not described in a single reference does not satisfy the requirements of this paragraph.

(v) For any rejection or, in the case where the appeal is by a third party requester, any determination of patentability, other than those referred to in paragraphs (c)(8)(i) to (iv) of this section, the argument shall specify the errors in the rejection or other determination and the specific limitations in the appealed claims, if appropriate, or other reasons, which cause the rejection or other determination to be in error.

(9) *Appendix.* An appendix containing a copy of the claims involved in the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If the appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed as to that party.

§ 1.967 Respondent brief.

(a) The brief(s) if the respondent(s) specified in § 1.963 must be filed in triplicate, served on all other parties in accordance with § 1.903 and be accompanied by the requisite fee set forth in § 1.17(f). Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown. The respondent brief shall be limited to issues raised in the appellant brief to which the respondent brief is directed.

(b) The respondent brief shall contain the following items under appropriate headings and in the order here indicated, and may include an appendix containing portions of the record on which reliance is made:

(1) *Real party in Interest.* A statement identifying the real party in interest, if the party named as the respondent in the brief is not the real party in interest.

(2) *Related Appeals and Interferences.* A statement identifying by number and filing date all other appeals or interferences known to the respondent, the respondent's legal representative, or assignee (if any) which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of claims.* A statement accepting or disputing appellant's statement of the status of claims. If appellant's statement of the status of claims is disputed, the errors in appellant's statement must be specified with particularity.

(4) *Status of amendments.* A statement accepting or disputing appellant's statement of the status of amendments. If appellant's statement of the status of amendments is disputed, the errors in appellant's statement must be specified with particularity.

(5) *Summary of invention.* A statement accepting or disputing appellant's summary of the invention or subject matter defined in the claims involved in the appeal. If appellant's summary of the invention or subject matter defined in the claims involved in the appeal is disputed, the errors in appellant's summary must be specified with particularity. A counter explanation of the invention may be made.

(6) *Issues.* A statement accepting or disputing appellant's statement of the issues presented for review and identifying any examiner's determination not to make a rejection proposed by the third party requester. If appellant's statement of the issues presented for review is disputed, the errors in appellant's statement must be specified with particularity. A counter statement of the issues for review may be made.

(7) *Grouping of claims.* A statement accepting or disputing any statement by appellant that allowed or rejected claims stand or fall together. If appellant's statement is disputed, the errors in appellant's statement must be specified with particularity. A counter statement may be made.

(8) *Argument.* A statement accepting or disputing the contentions of the appellant with respect to each of the issues. If a contention of the appellant or a determination of the examiner not to make a rejection proposed by the requester is disputed, the errors in appellant's argument or examiner's determination must be specified with particularity, stating the basis therefor, with citations of the authorities, statutes and parts of the record relied on. Each issue should be treated under a separate heading. An argument may be made with respect to each of the issues stated in the counter statement of the issues, with each counter stated issue being treated under a separate heading. The provisions of §§ 1.965(c)(8)(iii) and (iv) of these regulations shall apply to any argument raised under 35 U.S.C. 102 or 103.

(c) If a respondent brief is filed which does not comply with all the requirements of paragraph (b) of this section, respondent will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If the respondent does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the respondent brief will not be received into the record and will not be considered.

§ 1.969 Examiner's answer.

The primary examiner may, within such time as may be directed by the Commissioner, furnish a written statement in answer to the patent owner's and/or third party requester's appellant brief or respondent brief including such explanation of the invention claimed and of the references and grounds of rejection or reasons for patentability as may be necessary, supplying a copy to the patent owner and each third party requester, if any. If the primary examiner shall find that the appeal is not regular in form or does not relate to an appealable action, he or she shall so state and a petition from such decision may be taken to the Commissioner as provided in § 1.181.

§ 1.971 Reply brief.

(A) The patent owner and any third party requester may each file a reply brief directed only to such new points of argument as may be raised in the examiner's answer, within one month from the date of such answer. The new points of argument shall be specifically identified in the reply brief. If the examiner determines that the reply brief is not directly only to new points of argument raised in the examiner's answer, the examiner may refuse entry of the reply brief and will so notify the appellant.

(b) If the examiner's answer expressly states that it includes a new ground of rejection or allowance of claims not previously allowed, the party adversely affected must file a reply thereto within one month from the date of such answer to avoid dismissal of the appeal as to the claims subject to the new ground of rejection or allowance; such reply may be accompanied by any amendment (in the case of the patent owner) or material appropriate to the new ground. See § 1.957 for extensions of time for filing a reply brief.

§ 1.973 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which the appellant, or a respondent who has filed a respondent brief under § 1.967, considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Patent Appeals and Interferences as an appeal decided after oral hearing.

(b) If appellant, or a respondent who has filed a respondent brief under § 1.967, desires an oral hearing, he or she must file a written request for such hearing accompanied by the fee set forth in § 1.17(g) within one month after the date of the examiner's answer. If appellant, or a respondent who has filed a respondent brief under § 1.967, requests an oral hearing and submits therewith the fee set forth in § 1.17(g), an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. See § 1.957 for extensions of time in a reexamination proceeding.

(c) If no request and fee for oral hearing have been timely filed by an appellant or a respondent who has filed a respondent brief under § 1.967, the appeal will be assigned for consideration and decision. If an appellant or respondent who has filed a respondent brief under § 1.967 has requested an oral hearing and has submitted the fee set forth in § 1.17(g), a hearing date will be set, and notice thereof given to each appellant, to the primary examiner and to each respondent who has filed a respondent brief under § 1.967. The notice shall set a period within which all requests for oral hearing shall be submitted. Hearing will be held as stated in the notice, and oral argument will be limited to twenty minutes for each appellant and respondent, and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins.

§ 1.975 Affidavits or declarations after appeal.

Affidavits, declarations, or exhibits submitted after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented.

§ 1.977 Decision by the Board of Patent Appeals and Interferences.

(a) The Board of Patent Appeals and Interferences, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner, or on the grounds presented by a third party requester, or remand the reexamination proceeding to the examiner for further consideration. The affirmance of the rejection or allowance of a claim on any of the grounds

specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed or otherwise stated. A rejection of claims by the examiner may also be affirmed on the basis of the arguments presented by the third party requester.

(b) Should the Board of Patent Appeals and Interferences have knowledge of any grounds for rejecting any appealed claim not raised in the appeal, it may include in the decision a statement to that effect with its reasons for so holding, which statement shall constitute a new rejection of the claims. A new rejection shall not be considered final for purposes of judicial review. When the Board of Patent Appeals and Interferences makes a new rejection of an appealed claim, the patent owner may exercise one of the following two options with respect to the new ground:

(1) The patent owner may submit an appropriate amendment of the claims so rejected or a showing of facts, or both, and have the matter reconsidered by the examiner, in which event the patent will be remanded to the examiner. The statement of the Board of Patent Appeals and Interferences shall be binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground for rejection stated in the decision. Should the examiner again reject the claims, the patent owner may again appeal to the Board of Patent Appeals and Interferences.

(2) The patent owner may have the case reconsidered under § 1.979(b) by the Board of Patent Appeals and Interferences upon the same record. The request for reconsideration shall address the new ground for rejection and state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. Where request for such reconsideration is made, the Board of Patent Appeals and Interferences shall reconsider the new ground for rejection and, if necessary, rendered a new decision which shall include all grounds upon which a patent is refused. The decision on reconsideration is deemed to incorporate the earlier decision, except for those portions specifically withdrawn on reconsideration, and is final for the purpose of judicial review.

(c) Should the decision of the Board of Patent Appeals and Interferences include an explicit statement that a claim may be allowed in amended form, patent owner shall have the right to amend in conformity with such statement which shall be binding on the examiner in the absence of new references or grounds of rejection.

(d) Although the Board of Patent Appeals and Interferences normally will confine its decision to a review of rejections and allowances made by the examiner and/or arguments of the third party requester, should it have knowledge of any grounds for rejecting any allowed claim not advanced by the examiner or third party requester, it may recommend a rejection of the claim in its decision and remand the case to the examiner. In such event, the Board shall set a period, not less than one month, within which the patent owner may submit to the examiner an appropriate amendment, a showing of facts or reasons, or both, in order to avoid any grounds for rejection set forth in the recommendation of the Board of Patent Appeals and Interferences. The examiner shall be bound by any such recommended rejection and shall enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the examiner, overcomes the recommended rejection. Should the examiner make the recommended rejection final the patent owner may again appeal to the Board of Patent Appeals and Interferences.

(e) Whenever a decision of the Board of Patent Appeals and Interferences includes a remand, that decision shall not be considered a final decision. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board of Patent Appeals and Interferences may enter an order otherwise making its decision final.

(f) See § 1.957(a) for extensions of time to take action under this section.

§ 1.979 Action following decision.

(a) After decision by the Board of Patent Appeals and Interferences, the case shall be returned to the examiner, subject to a right of appeal or other review by the appellant or respondent, for such further action by the patent owner or by the examiner, as the condition of the case may require, to carry into effect the decision.

(b) Each party may file a single request for reconsideration or modification of the decision if filed within one month from the date of the original decision, unless that decision is so modified by the decision on reconsideration as to become, the effect, a new decision, and the Board of Patent Appeals and Interferences so states. The request for reconsideration shall state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. See § 1.957(a) for extensions of time for seeking reconsideration.

(c) The appeal proceedings are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the U.S. Court of Appeals for the Federal Circuit. The date of termination of proceedings is the date on which the appeal is dismissed or the date on which the time for appeal to the Federal Circuit expires. If an appeal to the Federal Circuit has been filed, proceedings are considered terminated when the appeal is terminated. An appeal to the Federal Circuit is terminated when the mandate is received by the Office. Upon termination of the reexamination proceeding, the Commission will issue a certificate under § 1.997.

§ 1.981 Reopening after decision.

(a) Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.979 without the written authority of the Commissioner, and then only for the reconsideration of matters not already adjudicated, sufficient cause being shown.

(b) In the event prosecution is reopened or the case is reconsidered by the primary examiner after decision by the Board of Patent Appeals and Interferences or by the U.S. Court of Appeals for the Federal Circuit, any third party requester who appealed or responded under § 1.967 may again present comments pursuant to § 1.947 and may appeal or participate in an appeal by the patent owner pursuant to § 1.959.

Appeal to the United States Court of Appeals for the Federal Circuit

§ 1.983 Appeal to the United States Court of Appeals for the Federal Circuit.

Any third party requester or patent owner involved in a reexamination proceeding who is a party to any appeal to the Board of Patent Appeals and Interferences and who is dissatisfied with the decision of the Board of Patent Appeals and Interferences may appeal to the U.S. Court of Appeals for the Federal Circuit and may be a party to any appeal thereto taken from a reexamination decision of the Board of Patent Appeals and Interferences. The appellant must take the following steps in such an appeal:

(a) in the Patent and Trademark Office file a written notice of appeal directed to the Commissioner (see §§ 1.302 and 1.304); and

(b) in the Court, file a copy of the notice of appeal and pay the fee, as provided for in the rules of the Court. A third party requester is deemed not to have participated as a party to an appeal by the patent owner, and thereby not subject to § 1.909, unless within twenty days after the patent owner has filed notice of appeal pursuant to § 1.983(a), the third party requester files notice with the Commissioner electing to participate.

Proceedings Involving Same Patent as in Reexamination

§ 1.985 Notification of prior or concurrent proceedings.

Any person at any time may file a paper in a reexamination proceeding notifying the Office of a prior or concurrent proceeding in which the same patent is or was involved, such as interferences, reissues, reexaminations, or litigation and the results of such proceedings. Such paper must be limited to merely providing notice of the other proceeding without discussion of issues of the current reexamination proceeding.

§ 1.987 Stay of concurrent proceeding.

If a patent in the process of reexamination is or becomes involved in litigation or a reissue application for the patent is filed or pending, the Commissioner shall determine whether or not to stay the reexamination or reissue proceeding.

§ 1.989 Merger of concurrent reexamination proceedings.

(a) If reexamination is ordered while a prior reexamination proceeding is pending for the same patent, the reexamination proceedings will be merged and result in the issuance of a single certificate under § 1.997.

(b) A reexamination proceeding filed under § 1.915 which is merged with a reexamination proceeding filed under § 1.510 will result in the merged proceeding being governed by §§ 1.901–1.997.

§ 1.991 Merger of concurrent reissue application and reexamination proceeding.

If a reissue application and a reexamination proceeding on which an order pursuant to § 1.931 has been mailed are pending on a patent, a decision may be made to merge the two proceedings or to stay one of the two proceedings. Where merger is a reissue application and a reexamination proceeding is ordered, the merged examination will be conducted in accordance with §§ 1.171 through 1.179 and the patent owner will be required to place and maintain the same claims in the reissue application and the reexamination proceeding during the pendency of the merged proceeding. In a merged proceeding, participation by the third party requester shall be limited to issues within the scope of reexamination. The examiner's actions and any responses by the patent owner or third party requester in a merged proceeding will apply to both the reissue application and the reexamination proceeding and be physically entered into both files. Any reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissue patent.

§ 1.993 Stay of concurrent interference and reexamination proceeding.

If a patent in the process of reexamination is or becomes involved in an interference, the Commissioner may stay reexamination or the interference. The Commissioner will not consider a request to stay an interference unless a motion (§ 1.635) to stay the interference has been presented to and denied by an administrative patent judge and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for a stay or such other time as the administrative patent judge may set.

§ 1.995 Third party requester's participation rights preserved in merged proceeding.

When a third party requester is involved in one or more proceedings including a reexamination proceeding, the merger of such proceedings will be accomplished so as to preserve the third party requester's right to participate to the extent specifically provided for in these regulations. In merged proceedings involving different requesters, any paper filed by one party in the merged proceeding shall be served on all other parties of the merged proceeding.

Certificate

§ 1.997 Issuance of reexamination certificate after reexamination proceedings.

(a) Upon the conclusion of a reexamination proceeding, the Commissioner will issue a certificate in accordance with 35 U.S.C. 307 setting forth the results of the reexamination proceeding and the content of the patent following the reexamination proceeding.

(b) A certificate will be issued in each patent in which a reexamination proceeding has been ordered under § 1.931. Any statutory disclaimer filed by the patent owner will be made part of the certificate.

(c) The certificate will be mailed on the day of its date to the patent owner at the address as provided for in § 1.33(c). A copy of the certificate will also be mailed to the requester of the reexamination proceeding.

(d) If a certificate has been issued which cancels all of the claims of the patent, no further Office proceedings will be conducted with regard to that patent or any reissue applications or reexamination requests relating thereto.

(e) If the reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.965(d), the reissued patent will constitute the reexamination certificate required by this section and 35 U.S.C. 307.

(f) A notice of the issuance of each certificate under this section will be published in the Official Gazette on its date of issuance.

Dated: August 1, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–19488 Filed 8–10–95; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5269–7]

National Oil and Hazardous Substance Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Ossineke Groundwater Contamination Site.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the Ossineke Groundwater Contamination Site (the "OGC Site"), from the National Priorities List (NPL), 40 CFR part 300, appendix B, and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action to delete the OGC Site from the NPL is proposed because EPA's Office of Superfund (OSF) and the State of Michigan Department of Natural Resources (MDNR) have determined that using the Hazardous Substance Superfund (the "Fund") to fund further

remedial action under CERCLA at this Site is not appropriate. Either OUST or the State of Michigan will undertake any necessary corrective actions at the OGC Site under the authorities of the Michigan Leaking Underground Storage Tank (LUST) Statute, the Michigan Environmental Response Act (MERA), or Subtitle I of the Resource Conservation and Recovery Act (RCRA). MDNR evaluates and responds to sites according to a State specific priority ranking scheme. The OGC site will be evaluated and addressed consistent with this scheme.

DATES: Comments concerning the OGC Site may be submitted on or before September 11, 1995.

ADDRESSES: Comments to be considered by EPA in making this decision should be mailed to: Linda Nachowicz: Remedial Project Manager; Waste Management Division; Remedial Response Branch WI/MI; U.S. Environmental Protection Agency, Region 5; 77 West Jackson Boulevard; Chicago, IL 60604–3507.

FOR FURTHER INFORMATION CONTACT: Linda Nachowicz: Remedial Project Manager; Waste Management Division; Remedial Response Branch WI/MI; U.S. Environmental Protection Agency, Region 5; 77 West Jackson Boulevard; Chicago, IL 60604–3507; telephone (312) 886–6337.

SUPPLEMENTARY INFORMATION: Comprehensive information on the OGC Site is available for public review in the deletion docket that EPA Region 5 has prepared. The deletion docket contains the documents and information EPA reviewed in the decision to propose to delete the OGC Site from the NPL. The docket is available for public review during normal business hours at the EPA Region 5 docket room at the above address and at the NBD Alpena Bank; 11686 U.S. Highway 23 South; Ossineke, MI 49766.

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I. Introduction.
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IV. Basis for the Intended Deletion of the OGC Site.

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete the Ossineke Groundwater Contamination Site in Ossineke, Michigan (the "OGC Site"), from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP), and requests comments on this action.

The EPA identifies sites which may present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial action financed by the Hazardous Substance Superfund Response Trust Fund (the "Fund") or by responsible parties. Pursuant to the NCP at 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for future Fund-financed response actions and for re-listing on the NPL, if conditions at the site ever warrant such action.

The EPA will accept comments concerning the proposal to delete the OGC Site from the NPL for thirty (30) calendar days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of the OGC Site and explains how the OGC Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with the NCP at 40 CFR 300.425(e), sites may be deleted from the NPL where no further response under CERCLA is appropriate. In making this determination, EPA considers, in consultation with the State, whether any of the following criteria have been met: Whether responsible or other parties have implemented all appropriate and required response action; whether all appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or whether the release of hazardous substances poses no significant threat to public health or the environment, and, therefore, taking of remedial measures is not appropriate. (55 FR 8813, March 8, 1990.)

In the past, EPA has indicated that in some cases it may be appropriate to delete from the NPL those sites that meet all the criteria for deferral to RCRA, and, in addition, present circumstances that otherwise make deletion appropriate. See 51 FR 21059 (June 10, 1986); 53 FR 30008 (August 9, 1988). On August 9, 1988 (53 FR 30009), EPA indicated that while it would not systematically review sites already on the NPL to see whether they are eligible for deletion on this basis, it would consider requests for deletion that showed the circumstances to be appropriate.

The Underground Storage Tanks (UST) Program was established by Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and as amended by SARA. The UST Program has authority to address releases of petroleum from leaking underground storage tanks.

Deletion under this approach does not indicate that the cleanup has been completed, but rather that no further Superfund involvement is appropriate, and that EPA has determined that any necessary corrective action will be considered under another statutory authority, RCRA Subtitle I.

As discussed further below, the EPA has determined that the above criteria for deletion of the OGC Site from the NPL have been fulfilled. Any necessary corrective action at the OGC Site will be considered under either the EPA's UST Program or the Michigan Department of Natural Resources, pursuant to RCRA Subtitle I and the Michigan Leaking Underground Storage Tank statute. No further Fund-financed action, pursuant to CERCLA, at the OGC Site is deemed appropriate at this time.

III. Deletion Procedures

The NCP at 40 CFR 300.425(e) specifies the procedures to be followed in deleting sites from the NPL. Prior to proposing deletion from the NPL and prior to developing the Notice of Intent to Delete, EPA must consult with the State. The EPA, in consultation with the State, must decide whether the criteria for deletion of § 300.425(e) have been met.

Section 300.425(e) also directs that the Notice of Intent to Delete be published in the **Federal Register**, and that a concurrent notice be published in a local newspaper of general circulation near the site. By publication of this **Federal Register** notice for the OGC Site, EPA is extending to the public a period of thirty (30) calendar days after publication to comment on the proposed deletion. Information supporting the EPA's intent to delete the OGC Site is contained in the information repository and deletion docket, and is available to the public for inspection.

EPA will accept and evaluate public comments before making a final decision, and will address all significant comments made and significant data provided in a Responsiveness Summary. The Responsiveness Summary will be placed in the deletion docket. If, after consideration of these comments, EPA decides to proceed with the deletion, EPA will publish in the **Federal Register** a final notice announcing the deletion.

The following procedures are being used for the intended deletion of the OGC Site:

The State of Michigan has concurred with this decision to address contamination under RCRA, Subtitle I authority.

Concurrent with this national Notice of Intent to Delete, a local notice will be published in the local newspaper and will be distributed to appropriate federal, state and local officials and other interested parties. This local notice will specify a 30 day comment period.

The Region has made all relevant documents available in the Regional Office and local site information repository.

IV. Basis for the Intended Deletion of the OGC Site

The Ossineke Groundwater Contamination Site is located in the southern portion of the Village of Ossineke near the intersection of U.S. Route 23 and Nicholson Hill Road in Alpena County, Michigan. The Site lies approximately 1.8 miles southwest of Lake Huron.

In June 1977, the Alpena County Health Department (ACHD) began receiving complaints from Ossineke residents about odors in their drinking water. Sampling confirmed the presence of hydrocarbons. The ACHD advised residents using the upper aquifer to stop using their wells as a drinking water source. On April 13, 1982, the Michigan State Police responded to a report of gas odors in the basements of several businesses. These reports were verified and it was discovered that a snow plow had hit a self-service gasoline pump during the winter, causing the release of an unknown amount of gasoline.

The Site was evaluated by U.S. EPA's OSF in July 1982 and placed on the National Priorities List (NPL) in September 1983. In June 1986, residential wells affected by contamination were replaced by the Michigan Department of Public Health.

The final Remedial Investigation (RI) Report was issued on January 31, 1991. Field work for the RI began in May 1989 and was completed in March 1990. The results of the RI show that contaminants of concern at the OGC Site are petroleum-related and were likely caused by petroleum or petroleum product releases from leaking USTs in the area. A CERCLA Feasibility Study was not conducted for the OGC Site.

On June 28, 1991, a Record of Decision for the OGC Site was signed by the Regional Administrator of EPA Region 5. The ROD selected the remedy of no further action.

On the basis of the RI and ROD, the OGC Site was referred to the EPA UST Program established by Subtitle I of the Resource Conservation and Recovery Act (RCRA). The State of Michigan also has regulatory authority and jurisdiction to address releases from petroleum USTs, under Michigan's Leaking Underground Storage Tank (LUST) statute enacted in 1988, and has been delegated the authority to address this facility under its Cooperative Agreement under Subtitle I of RCRA. The State of Michigan, through the Michigan Department of Natural Resources, concurs with the ROD for the OGC Site.

Responsibility for the determining whether future clean-up of the OGC Site shall be taken is with the State of Michigan DNR under a cooperative agreement and the EPA's UST Program. Any petroleum-related contamination currently at the OGC Site as a result of leaking USTs may be addressed, if appropriate, either by the EPA's UST Program or by the Michigan Department of Natural Resources. Such actions may include corrective actions and/or enforcement actions under the authority of RCRA Subtitle I, the Michigan LUST statute, or the Michigan Environmental Response Act (MERA) (1982 P.A. 307, as amended).

Based on the above circumstances, EPA has concluded that in this case deletion from the NPL of the OGC Site is appropriate. In this case, EPA can make a finding that all appropriate Fund-financed response under CERCLA has been implemented and that no further CERCLA response action by responsible parties is appropriate. Deletion under this approach does not indicate that the clean-up has been completed, but rather that no further Superfund involvement is necessary at the OGC Site, and that EPA expects any necessary response actions to be completed under RCRA, Subtitle I.

Dated: December 8, 1994.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA Region 5.

[FR Doc. 95–19003 Filed 8–10–95; 8:45 am]
BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 60, No. 155
Friday, August 11, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Bureau of Land Management

[WO–1550–00–7111–111–24–1A]

Fish and Wildlife Service

National Biological Service

National Park Service

Federal Wildland Fire Management Policy and Program Review

AGENCIES: Forest Service, Agriculture; Bureau of Indian Affairs, Bureau of Land Management, Fish and Wildlife Service, National Biological Service, National Park Service, Interior.

ACTION: Notice; opening of public comment period.

SUMMARY: On June 22, 1995, the Department of Agriculture and the Interior gave notice in the **Federal Register** (60 FR 32485) of a draft report of the Federal Wildland Fire Management Policy and Program Review and invited public comment. The period for commenting on this draft report ended July 24, 1995. However, the agencies have received numerous requests from reviewers for additional time to complete the review and prepare responses. Accordingly, an additional 45-day comment period is hereby established to allow reviewers to submit comments on the draft report.

DATES: Comments must be submitted in writing by September 25, 1995.

ADDRESSES: Comments should be directed to Federal Wildland Fire Policy and Program Review, Department of the Interior, 1849 C Street NW, Mail Stop 7356; Washington, D.C. 20240, or via FAX to (202) 208–5078.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, Bureau of Land Management, (202) 208–5472; John Chambers, USDA Forest Service, (202) 205–1505. Additional copies of the draft report may be obtained by calling BLM's National Office of Fire and Aviation, (208) 387–5150, or the National Interagency Fire Center, (208) 387–5457.

For the Department of Agriculture.

Jack Ward Thomas,
Chief, Forest Service.
Dated: August 3, 1995.

For the Department of the Interior.

Claudia P. Schechter,
Director of Operations, USDOI.
Dated: August 3, 1995.

[FR Doc. 95–19892 Filed 8–10–95; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 760]

Revision of Grant of Authority, for Subzone 87B, CITGO Petroleum Corp., Lake Charles, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Board (the Board) authorized subzone status at the refinery complex of CITGO Petroleum Corporation in Lake Charles, Louisiana, in 1989, subject to two conditions (Subzone 87B, Board Order 420, 54 FR 27660, 6/30/89);

Whereas, the Lake Charles Harbor & Terminal District, grantee of FTZ 87, has requested, pursuant to § 400.32(b)(1)(i), a revision (filed 6/12/95, A(32b1)–9–95; FTZ Doc. 38–95, assigned 7/19/95) of the grant of authority for FTZ Subzone 87B which would make its scope of authority identical to that recently granted for FTZ Subzone 199A at the refinery complex of Amoco Oil Company, Texas City, Texas (Board Order 731, 60 FR 13118, 3/10/95); and,

Whereas, the request has been reviewed and the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation of the Executive Secretary, and approves the request;

Now therefore, the Board hereby orders that, subject to the Act and the Board's regulations, including § 400.28, Board Order 420 is revised to replace the two conditions currently listed in the Order with the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (FTZ staff report, Appendix B);
—Products for export; and,
—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 4th day of August 1995.

Susan G. Esserman,
Assistant Secretary of Commerce for Import Administration Alternate Chairman Foreign-Trade Zones Board.

[FR Doc. 95–19940 Filed 8–10–95; 8:45 am]
BILLING CODE 3510–DS–P

U.S. DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 759]

Revision of Grant Authority, Subzone 122I, CITGO Refining and Chemicals Inc., Corpus Christi, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Board (the Board) authorized subzone status at the refinery complex of CITGO Refining and Chemicals Inc. (formerly owned by Champlin Refining Company) in Corpus Christi, Texas, in 1988, subject to two conditions (Subzone 122I, Board Order 407, 53 FR 52457, 12/28/88);

Whereas, the Port of Corpus Christi Authority, grantee of FTZ 122, has requested, pursuant to § 400.32(b)(1)(i), a revision (filed 6/12/95, A(32b1)–8–95; FTZ Doc. 37–95, assigned 7/19/95) of the grant of authority for FTZ Subzone 122I which would make its scope of authority identical to that recently granted for FTZ Subzone 199A at the refinery complex of Amoco Oil Company, Texas City, Texas (Board Order 731, 60 FR 13118, 3/10/95); and,

Whereas, the request has been reviewed and the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation of the Executive Secretary, and approves the request;

Now Therefore, the Board hereby orders that, subject to the Act and the Board's regulations, including § 400.28, Board Order 407 is revised to replace the two conditions currently listed in the Order with the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000—# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (FTZ staff report, Appendix B);

—Products for export; and,

—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 4th day of August 1995.

Susan G. Esserman,
Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 95–19941 Filed 8–10–95; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810]

Antidumping Duty Order: Oil Country Tubular Goods From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck or Jennifer Stagner, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464 or (202) 482–1673, respectively.

Scope of Order

The merchandise covered by this order are oil country tubular goods (OCTG), hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Antidumping Duty Order

On August 2, 1995, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the U.S. International Trade Commission (ITC) notified the Department of its final determination in this investigation. In its determination, the ITC found two like products: (1) Drill pipe; and (2) OCTG other than drill pipe (*i.e.*, casing and tubing). The ITC determined that imports of drill pipe from Argentina threaten material injury to a U.S. industry. Because there was no suspension of liquidation between the Department's preliminary and final determinations due to the Department's negative amended preliminary determination, the ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that, but for the suspension of liquidation of entries of drill pipe from Argentina, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries of drill pipe from Argentina, entered or withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, are subject to the assessment of antidumping duties.

Regarding OCTG other than drill pipe, the ITC determined that imports of such merchandise are materially injuring a U.S. industry. Therefore, all unliquidated entries of OCTG other than drill pipe from Argentina, entered or withdrawn from warehouse, are also subject to assessment of antidumping duties.

Therefore, the Department will direct the Customs Service to terminate the suspension of liquidation for entries of drill pipe imported from Argentina entered, or withdrawn from warehouse, for consumption before the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736 of the Act, the Department will also direct the Customs Service to assess antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all

entries of OCTG from Argentina. These antidumping duties will be assessed on all unliquidated entries of: (1) drill pipe from Argentina entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**; and (2) OCTG other than drill pipe from Argentina entered, or withdrawn from warehouse, for consumption on or after June 28, 1995, the date on which the Department published its final determination notice in the **Federal Register** (60 FR 33539).

On or after the date of publication of this notice in the **Federal Register**, the Customs Service must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Siderca S.A.I.C	1.36
All Others	1.36

This notice constitutes the antidumping duty order with respect to OCTG from Argentina, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 7, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19933 Filed 8–10–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–817]

Antidumping Duty Order: Oil Country Tubular Goods From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner or John Beck, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1673 or (202) 482–3464, respectively.

Scope of Order

The merchandise covered by this order are oil country tubular goods (OCTG), hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Antidumping Duty Order

On August 2, 1995, in accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), the U.S. International Trade Commission (ITC) notified the Department of its final determination in this investigation. In its determination, the ITC found two like products: (1) Drill pipe; and (2) OCTG other than drill pipe (*i.e.*, casing and tubing). The ITC determined that imports of drill pipe from Mexico threaten material injury to a U.S. industry. Because there was no suspension of liquidation between the Department's preliminary and final determinations due to the Department's negative preliminary determination, the ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that, but for the suspension of liquidation of entries of drill pipe from Mexico, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries of drill pipe from Mexico, entered or withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, are subject to the assessment of antidumping duties.

Regarding OCTG other than drill pipe, the ITC determined that imports of such merchandise are materially injuring a U.S. industry. Therefore, all unliquidated entries of OCTG other than drill pipe from Mexico, entered or withdrawn from warehouse, are also subject to the assessment of antidumping duties.

Therefore, the Department will direct the Customs Service to terminate the suspension of liquidation for entries of drill pipe imported from Mexico entered, or withdrawn from warehouse, for consumption before the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736 of the Act, the Department will also direct the Customs Service to assess antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of OCTG from Mexico. These antidumping duties will be assessed on all unliquidated entries of: (1) Drill pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**; and (2) OCTG other than drill pipe from Mexico entered, or withdrawn from warehouse, for consumption on or after June 28, 1995, the date on which the Department published its final determination notice in the **Federal Register** (60 FR 33567).

On or after the date of publication of this notice in the **Federal Register**, the Customs Service must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Tubos de Acero de Mexico, S.A.	23.79
All Others	23.79

This notice constitutes the antidumping duty order with respect to OCTG from Mexico, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 7, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19934 Filed 8–10–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–816]

Antidumping Duty Order: Oil Country Tubular Goods from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: William Crow or Brian Smith, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–0116 or (202) 482–1766, respectively.

Scope of Order

In its final determination, the Department determined that oil country tubular goods (OCTG) comprised one class or kind of merchandise. In its final determination, the International Trade Commission (ITC) found two like products: (1) Drill pipe and (2) OCTG other than drill pipe (*i.e.*, casing and tubing). The ITC did not find material injury, or threat of material injury with regard to drill pipe. Consequently, the antidumping duty order covers only OCTG other than drill pipe.

The merchandise covered by this order are OCTG, hollow steel products of circular cross-section, including only oil well casing and tubing pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Drill pipe is classifiable under HTSUS item numbers 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, and 7304.20.80.60. However, pursuant to the ITC's negative determination regarding drill pipe, we have deleted these numbers from the scope of this order.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Antidumping Duty Order

On August 2, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of drill pipe from Italy do not cause or threaten material injury to a U.S. industry. Therefore, the scope of this order does not include drill pipe.

However, the ITC did find that imports of OCTG other than drill pipe from Italy materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of OCTG other than drill pipe from Italy. These antidumping duties will be assessed on all unliquidated entries of OCTG other than drill pipe from Italy entered, or withdrawn from warehouse, for consumption on or after February 2, 1995, the date on which the Department published its preliminary determination notice in the **Federal Register** (60 FR 6515).

The Department will also direct U.S. Customs officers to terminate the suspension of liquidation of entries of drill pipe from Italy entered, or withdrawn from warehouse, for consumption on or after February 2, 1995, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Dalmine S.p.A	49.78
Acciaierie Tubificio Arvedi S.p.A.	49.78
General Sider Europa S.p.A.	49.78
All Others	49.78

This notice constitutes the antidumping duty order with respect to OCTG other than drill pipe from Italy, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 4, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19935 Filed 8–10–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–825]

Antidumping Duty Order: Oil Country Tubular Goods From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or John Beck, Office of

Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–1766 or (202) 482–3464, respectively.

Scope of Order

In its final determination, the Department determined that oil country tubular goods (OCTG) comprised one class or kind of merchandise. In its final determination, the International Trade Commission (ITC) found two like products: (1) Drill pipe and (2) OCTG other than drill pipe (*i.e.*, casing and tubing). The ITC did not find material injury, or threat of material injury with regard to drill pipe. Consequently, the antidumping duty order covers only OCTG other than drill pipe.

The merchandise covered by this order are OCTG, hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Drill pipe is classifiable under HTSUS item numbers 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, and 7304.20.80.60. However, pursuant to the ITC's negative determination regarding drill pipe, we have deleted these numbers from the scope of this order.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Antidumping Duty Order

On August 2, 1995, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determination in this investigation that imports of drill pipe from Korea do not cause or threaten material injury to a U.S. industry. Therefore, the scope of this order does not include drill pipe.

However, the ITC did find that imports of OCTG other than drill pipe from Korea materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of OCTG other than drill pipe from Korea except those entries of Hyundai Steel Pipe Company, Ltd. These antidumping duties will be assessed on all unliquidated entries of OCTG other than drill pipe from Korea, except those entries from Hyundai Steel Pipe Company, Ltd., entered, or withdrawn from warehouse, for consumption on or after February 2, 1995, the date on which the Department published its preliminary determination notice in the **Federal Register** (60 FR 6507).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Hyundai Steel Pipe Company, Ltd.	00.00
Union Steel Manufacturing Company	12.17
All Others	12.17

This notice constitutes the antidumping duty order with respect to OCTG other than drill pipe from Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 4, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19936 Filed 8–10–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–835]

Antidumping Duty Order: Oil Country Tubular Goods From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Smith or John Beck, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1766 or (202) 482–3464, respectively.

Scope of Order

The merchandise covered by this order are oil country tubular goods (OCTG), hollow steel products of circular cross-section, including only oil well casing, tubing and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Antidumping Duty Order

On August 2, 1995, in accordance with section 735(d) of the Tariff Act of 1930 (the Act), the U.S. International Trade Commission (ITC) notified the Department of its final determination in this investigation. In its determination, the ITC found two like products: (1) Drill pipe; and (2) OCTG other than drill pipe (*i.e.*, casing and tubing). The ITC determined that imports of drill pipe from Japan threaten material injury to a U.S. industry. However, the ITC did not determine that but for the suspension of liquidation of entries of drill pipe from Japan, the domestic industry would have been materially injured, pursuant to section 735(b)(4)(B) of the Act.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries of drill pipe from Japan, entered or withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, are liable for the assessment of antidumping duties.

Pursuant to section 736(b)(2), the Department will direct the Customs Service to terminate the suspension of liquidation for entries of drill pipe imported from Japan entered, or withdrawn from warehouse, for consumption before the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and to refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to entries of the merchandise entered or withdrawn from warehouse for consumption before that date.

Regarding OCTG other than drill pipe, the ITC determined that imports of such merchandise are materially injuring a U.S. industry. Therefore, in accordance with section 736(a) of the Act, the Department will direct the Customs Service to assess antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of OCTG other than drill pipe from Japan. These antidumping duties will be assessed on all unliquidated entries of OCTG other than drill pipe from Japan entered, or withdrawn from warehouse, for consumption on or after February 2, 1995, the date on which the Department published its preliminary determination notice in the **Federal Register** (60 FR 6506).

On or after the date of publication of this notice in the **Federal Register**, the Customs Service must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-Average Margin Percentage
Nippon Steel Corporation	44.20
Sumitomo Metal Industries, Ltd.	44.20
All Others	44.20

This notice constitutes the antidumping duty order with respect to OCTG from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect. This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

Dated: August 7, 1995.

[FR Doc. 95–19937 Filed 8–10–95; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: September 11, 1995.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 28, May 5 and June 16, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 20971, 22372 and 31705) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Cover Assembly, Generator
2805–00–356–1985

Services

Janitorial/Custodial, U.S. Army Reserve Center, Buildings 104, 105, 106, 107, 108, 109, 140, 141, 144 and 145, Arlington Heights, Illinois

Operation of Postal Service Center, Fairchild Air Force Base, Washington

Parts Sorting, Defense Reutilization and Marketing Office, Fort Lewis, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48d) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Aerosol Paint, Lacquer
8010–00–936–8366
8010–00–936–8367
8010–00–936–8369
8010–00–936–8370
8010–00–936–8371

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–19915 Filed 8–10–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity furnished by such an agency.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 11, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Executive/Personal Time Management System
7520–00–NSH–0087 (1" binder, with or without specialized logo, seven sections, velcro closure)
7520–00–NSH–0091 (1" binder, with or without specialized logo, seven sections, zipper closure)
7520–00–NSH–0092 (1.5" binder, with or without specialized logo, five sections, no closure)
(up to 46,000 annually)
NPA: The Easter Seal Society of Allegheny County, Pittsburgh, Pennsylvania

Floor Finish
7930–01–183–8584
7930–01–183–8585
7930–01–184–3905
NPA: Diversified Industrial Concepts, Inc., Virginia Beach, Virginia

Floor Wax
7930–00–205–2870
7930–00–205–2871
7930–00–141–5888
NPA: Diversified Industrial Concepts, Inc., Virginia Beach, Virginia

Bag, Plastic, General Purpose
8105–00–579–8451
NPA: Wichita Industries and Services for the Blind, Inc., Wichita, Kansas

Services

Administrative Services, Social Security Administration, 1221 Nevin Avenue, Richmond, California. NPA: Solano Developmental Services, Inc., Vallejo, California

Administrative Services, Department of the Treasury, U.S. Mint Headquarters, 633 3rd Street, NW., Washington, DC. NPA: Fairfax Opportunities Unlimited, Inc., Springfield, Virginia

Grounds Maintenance, Lake Sonoma/Warm Springs Dam, Geyserville, California. NPA: Rubicon Programs, Inc., Richmond, California

Janitorial/Custodial, for the following Huntsville, Alabama locations: Ballistic Missile Center, 106 Wynn Drive, U.S. Post Office & Courthouse, 101 Holmes Avenue. NPA: Phoenix Service, Inc., Huntsville, Alabama

Janitorial/Custodial, Child Care Buildings 2414, 2501, 3830 and West 3rd Street Facility, McGuire Air Force Base, New Jersey. NPA: Occupational Training Center of Burlington County, Mt. Holly, New Jersey

Janitorial/Custodial, Federal Aviation Administration, Air Traffic Control Tower Facility, Newark International Airport, Newark, New Jersey. NPA: The First Occupational Center of New Jersey, Orange, New Jersey

Janitorial/Custodial, U.S. Army Reserve Center, Hoyt Avenue, Binghamton, New York. NPA: Sheltered Workshop for the Disabled, Inc., Binghamton, New York

Janitorial/Custodial, Eafratti U.S. Army Reserve Center, Front Street, Terrace Heights, Weirton, West Virginia. NPA: Hancock County Sheltered Workshop, Weirton, West Virginia

Deletion

If the Committee approved the proposed deletion, all entities of the Federal Government will no longer be required to procure the commodity listed below from nonprofit agencies employing people who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action does not appear to have a severe economic impact on future contractors for the commodity.
3. The action will result in authorizing small entities to furnish the commodity to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity has been proposed for deletion from the Procurement List:

Paper, Toilet Tissue
8540–00–530–3770

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–19916 Filed 8–10–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2047 New York]

Niagara Mohawk Power Corporation; Notice of Intent To File an Application for a New License

August 7, 1995

Take notice that the Niagara Mohawk Power Corporation, the existing licensee for the Stewarts Bridge Hydroelectric Project No. 2047, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2047 was issued effective July 1, 1950, and expires July 1, 2000.

The project is located on the Sacandaga River in Saratoga County, New York. The principal works of the Stewarts Bridge Project include an earth dam about 1,650 feet long and 112 feet high with a concrete gated spillway and penstock intake structure; a reservoir of about 475 acres at elevation 705 feet USGS datum; a steel penstock to a brick powerhouse with one generator rated at 36,000 kW; an outdoor transformer, switching station and 400-foot-long transmission line; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is available from the licensee at 300 Erie Boulevard West, Syracuse, New York 13202.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 1, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19842 Filed 8–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1050–000]

Sonat Power Marketing, Inc; Notice of Filing

August 7, 1995.

Take notice that on June 13, 1995, Sonat Power Marketing, Inc. tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19888 Filed 8–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11545–000, MA]

Allen Ross; Notice of Scoping Pursuant to the National Environmental Policy Act of 1969, Notice Requesting Interventions and Protests, and Notice Not Ready for Environmental Analysis

August 7, 1995.

On July 31, 1995, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the Allen Ross' application for the Book Mill Project, located on the Sawmill River in Franklin County, Massachusetts. The application is not ready for environmental analysis at this time. A public notice will be issued in the future indicating its readiness for environmental analysis and soliciting comments, recommendations, terms and conditions, or prescriptions on the application and the applicant's reply comments.

The purpose of this notice is to (1) Invite interventions and protests; (2) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (3) advise all parties of their opportunity for comment.

Interventions and Protests

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

All filings for any protest or motion to intervene must be received 60 days from the issuance date of this notice.

Scoping Process

The Commission's scoping objectives are to:

- Identify significant environmental issues;
- Determine the depth of analysis appropriate to each issue;
- Identify the resource issues not requiring detailed analysis; and
- Identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be covered in the environmental document pursuant to the National Environmental Policy Act of 1969 (NEPA). The document entitled "Scoping Document I" (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations (NGO's), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

Project Site Visit

The applicant and the Commission staff will conduct a project site visit of the Book Mill Project on August 28, 1995, at 10:00 a.m., meeting at the Book Mill Building, Greenfield Rd., Montague Center, Franklin County, Massachusetts 01351. All interested individuals, NGO's and agencies are invited to attend. All participants are responsible for their own transportation and should bring a hard hat. For more details, interested parties should contact Jay Boeri, agent for Allen Ross, at (802) 436–2521, prior to the site visit date.

Scoping Meetings

The Commission staff will conduct two scoping meetings, both on the same day. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the NEPA document.

The afternoon agency scoping meeting will be held on August 28, 1995, from 2:00 P.M. to 4:00 P.M., at the Book Mill Building, Greenfield Road, Montague Center, Franklin County, Massachusetts 01352.

The evening public scoping meeting will be held on August 28, 1995, from 7:00 P.M. to 10:00 P.M. at the above-mentioned location.

The Commission will decide, based on the application, and agency and public comments at the scoping session, whether licensing the Book Mill Project constitutes a major federal action significantly impacting the quality of the human environment. Irrespective of the Commission's determination to prepare an environmental assessment or an environmental impact statement for the Book Mill Project, the Commission staff will not hold additional scoping meetings other than those scheduled, as listed above.

Objectives

At the scoping meetings, the Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the NEPA document; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the NEPA document. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed.

Meeting Procedures

The meetings will be recorded by a stenographer and become a part of the formal record of the Commission proceeding on the Book Mill Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least 5 minutes to present their views.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the application to any member of the Commission staff outside of the established process for developing the record as stated in the record of the proceeding.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record up until the closing date for SDI.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 C.F.R. 4.34(h). In addition, commenters may submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should clearly show the following captions on the first page: Book Mill Project, FERC No. 11545.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 C.F.R. 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 C.F.R. 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the scoping process, please contact Mary Golato, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 825 North Capitol Street, NE., Washington, DC 20426 at (202) 219–2804.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19841 Filed 8–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–643–000, et al.]

East Tennessee Natural Gas Company, et al.; Natural Gas Certificate Filings

August 3, 1995.

Take notice that the following filings have been made with the Commission:

1. East Tennessee Natural Gas Company

[Docket No. CP95–643–000]

Take notice that on July 27, 1995, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–643–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a delivery point in Unicoi County, Tennessee for interruptible transportation service for Southern Gas Services, Inc (Southern Gas), formerly C.B.M. International Inc., under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes a delivery point at M.P. 3307C–202+6.12 in Unicoi County, Tennessee. The installed two-inch hot tap assembly and interconnecting pipe will be located on East Tennessee's existing right-of-way and the measurement facilities will be located on a site provided by Southern Gas. East Tennessee will inspect Southern Gas's installation of the interconnecting pipe and measurement facilities. East Tennessee will own, operate and maintain the hot tap assembly and will operate the measurement facilities. Southern Gas will own, operate and maintain the interconnecting pipe and own and maintain the measurement facilities. The estimated cost is $12,300 reimbursable to East Tennessee by Southern Gas.

East Tennessee states that the total quantities to be delivered to Southern Gas will not exceed those authorized, that the proposed delivery point is not prohibited by its existing tariff, and that there is sufficient capacity for the proposed deliveries without detriment or disadvantage to other customers.

Comment date: September 18, 1995, in accordance with the Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP95–645–000]

Take notice that on July 27, 1995, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed an application pursuant to Sections 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of approximately 4.3 miles of a 10-inch lateral pipeline located in Sweetwater County, Wyoming and certain certificated gathering lines connected to the lateral, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states the facilities were originally certificated in Docket Nos. G–16904 and G–18430.[1] CIG states that it has an agreement with Texaco Exploration and Production Inc. (Texaco) whereby the pressure of the lateral that is the subject of the abandonment will be lowered. Currently, the lateral is connected to the discharge of CIG's Table Rock Compressor Station and is part of CIG's transmission system. CIG proposes to lower the pressure in the lateral by making minor changes to the pipes and valves and thereby allowing additional production from seven Texaco wells connected to the lateral. CIG also proposes to reclassify the lateral from transmission function to the gathering function because of the proposed reconfiguration of the lateral. CIG states that the current net book value of the lateral is $33,453, as of May 31, 1995.

Comment date: August 24, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP95–646–000]

Take notice that on July 28, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP95–646–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an additional delivery point for interruptible transportation service to Columbia Gas of Kentucky, Inc. (CKY) in Mason County, Kentucky, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate a new delivery point for interruptible transportation service to CKY which will deliver gas to the Maysville Materials asphalt plant. Columbia will provide the service to CKY under Rate Schedule SST and states that the volumes delivered are within certificated entitlements. The estimated cost to establish this point is $50,000, which amount, CKY has agreed to reimburse Columbia.

Comment date: September 18, 1995, in accordance with the Standard Paragraph G at the end of this notice.

[1] See, Opinion No. 393, 30 FPC 77, 93–94 (1963) and 31 FPC 694 (1964), respectively.

4. Koch Gateway Pipeline Company

[Docket No. CP95–654–000]

Take notice that on August 1, 1995, Koch Gateway Pipeline Company (KGPC), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–654–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate as a jurisdictional facility, a delivery tap placed in service under Section 311(a) of the Natural Gas Policy Act (NGPA) and Section 284.3(c) of the Commission's Regulations, under KGPC's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

KGPC states that the proposed certification of facilities will enable KGPC to provide transportation services under its blanket transportation certificate through an existing delivery tap serving Entex, Inc. (Entex), a local distribution company, in Jones County, Mississippi.

KGPC also states that it will operate the proposed facilities in compliance with 18 CFR Part 157, Subpart F and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: September 18, 1995, in accordance with the Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission

by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19840 Filed 8–10–95; 8:45 am]

BILLING CODE 6717–61–P

[Docket No. CP93–613–004, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

August 4, 1995.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket Nos. CP93–613–004, CP93–673–004]

Take notice that on July 24, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed an abbreviated petition, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act in Docket Nos. CP93–613–004 and CP93–673–004, to amend the Commission order issued April 19, 1995 in the referenced dockets. Northwest requests authorization to downsize or eliminate certain components of the Expansion II Project; revise the allocation of certificated facilities between the Expansion II and Northwest Natural Expansion Projects; and extend the time for construction of the Weyerhaeuser Lateral and Weyerhaeuser Meter Station; all as more fully set forth in the petition to amend which is on file with the Commission and open to the public inspection.

Northwest states that the Northwest Natural Expansion Project will still provide 102,000 Dth per day of mainline capacity for Northwest Natural Gas Company. Further, Northwest says the only impacts of the proposed design changes on the Northwest Natural Expansion Project are new requirements for 1,241 additional horsepower at the existing Goldendale Compressor Station and restaging of existing units at the Albany and Eugene Compressor Stations. Northwest states that these requirements will be satisfied by allocating to the Northwest Natural Expansion Project the Albany and Eugene restaging and a $3.4 million share of an additional Goldendale compressor unit, all already authorized to be installed at Goldendale for the Northwest Expansion II Project. Northwest states that these allocations from the Northwest Expansion II Project, along with updated cost estimates for all components of the project, results in a revised estimated cost for the Northwest Natural Expansion Project of $52.5 million.

Northwest indicates that, for the Northwest Expansion II Project, which now will provide 42,175 Dth per day of mainline capacity for 11 shippers (reduced from 62,175 Dth per day), the proposed design changes include:

(1) The aforementioned allocation of previously authorized facilities to the Northwest Natural Expansion Project from the Expansion II Project;

(2) A 3.1 mile reduction in the length of the 24-inch Soda Springs North Loop and elimination of the Soda Springs Meter Station crossover tap;

(3) Elimination of various modifications to existing compression facilities at the Roosevelt, Washougal, Oregon City, McMinnville and Lava Hot Springs Compressor Stations; and

(4) Elimination of a tap and associated piping and valves at the Longview Meter Station (Northwest says these facilities were previously installed as part of a Section 284.3(c) exempt facility).

Northwest states that the foregoing facility reductions, along with updated cost estimates for the remaining project components, result in a current estimated cost for the Northwest Expansion II Project of $64.0 million ($53.1 million for mainline facilities plus $10.9 million for two incremental laterals).

Finally, Northwest requests the Commission to grant a 30 month extension of time, until October 19, 1998, for construction of the authorized Weyerhaeuser Lateral and Meter Station to be completed, consistent with Weyerhaeuser's current schedule for building its cogeneration plant which will require service through these facilities.

Comment date: August 25, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP95–648–000]

Take notice that on July 31, 1995, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–648–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon in place approximately 6,911 feet of 3-inch diameter pipeline and appurtenant facilities under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle proposes to abandon 6,911 feet of 3-inch diameter pipeline on Panhandle's Marblehead lateral, line No. 45–05–001–27 and appurtenant facilities located in Quincy, Adams County, Illinois.

Comment date: September 18, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP95–649–000]

Take notice that on July 31, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP95–649–000, an application pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205, and 157.211) for authorization to construct and operate a sales tap for delivery of gas to a new residential customer of National Fuel Gas Distribution Corporation (Distribution) under authorization issued in Docket No. CP83–4–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National proposes to construct and operate a new residential sales tap in North East Township, Erie County, Pennsylvania. The total proposed estimated deliveries for this sales tap are 150 Mcf annually and would be transported and delivered under National's Rate Schedule EFT. National states that the gas volumes would have a minimal impact on National's peak day and annual deliveries.

National further states that the estimated cost of the proposed new delivery point is $1,500. It is stated that Distribution would reimburse National for the cost of the construction of the tap.

Comment date: September 18, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. CNG Transmission Corporation

[Docket No. CP95–651–000]

Take notice that on July 31, 1995, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP95–651–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a measuring and regulation station under CNGT's blanket certificate issued in Docket No. CP82–537–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CNGT proposes to construct a new measuring and regulation station in Chemung County, New York. The facilities will serve as a new interconnection to New York State Electric and Gas Corporation, for receipt and delivery on a firm basis of up to 80,000 Dth of natural gas per day.

Comment date: September 18, 1995, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP95–657–000]

Take notice that on August 2, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1273, filed in Docket No. CP95–657–000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR § 385.207) for a declaratory order: (1) Finding that certain meter facilities which Columbia functionalized as gathering facilities in fact perform a transmission function and should be refunctionalized as transmission facilities for rate and accounting purposes, (2) authorizing Columbia to record these facilities and related costs on its accounting books and records as transmission facilities, and (3) confirming that these facilities do not require Section 7(c) certificate authority, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Columbia requests that 644 receipt meters located within the states of Kentucky, New York, Ohio, Pennsylvania and West Virginia be refunctionalized from the gathering function to the transmission function for rate and accounting purposes. Columbia states that in each case the meter represents the point of entry into Columbia's system and serves the purpose of measuring the flow of gas from a facility owned by a third party into a Columbia-owned transmission line. Columbia states that the proposed refunctionalization is reflected in its rate case filed on August 1, 1995 in Docket No. RP95–408–000.

Columbia also requests that the Commission confirm that the 644 receipt meters do not require Section 7(c) authority, as they are not "facilities" within the meaning of the Natural Gas Act, and are exempt pursuant to Commission's Regulations (18 CFR 2.55).

Comment date: August 25, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

6. Virginia Gas Storage Company

[Docket No. CP95–660–000]

Take notice that on August 2, 1995, Virginia Gas Storage Company (VGS) tendered for filing under Section 7(c) of the Natural Gas Act (NGA) and Section 284.224 of the Regulations of the Federal Energy Regulatory Commission (Commission), an application for a certificate of public convenience and necessity authorizing VGS to participate in storage of natural gas authorized under 18 CFR Part 284 of the Commission's Regulations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

VGS states that it is an intrastate facility whose rates, services, and facilities are subject to the regulation of the State Corporation Commission of the Commonwealth of Virginia (VSCC), with its rates and tariffs subject to the jurisdiction of the VSCC. VGS further states that it is exempt from the Commission's Regulations under Section 1(c) of the NGA.

VGS states that it is proposing to provide storage service from the Early Grove underground storage field located in Scott and Washington Counties in Virginia. VGS proposes to provide open-access conditions set forth in § 284.224 of the Commission's Regulations.

Comment date: August 25, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR

385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19887 Filed 8–10–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5275–3]

California State Motor Vehicles Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of opportunity for public hearing and public comment period.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations regarding on-board diagnostic system requirements for 1994 and later model year passenger cars, light-duty trucks, and medium-duty vehicles (OBD II). On-board diagnostics consist of a computer-based system incorporated into the vehicle electronics for the purpose of detecting operational malfunctions within the emission control system. When malfunctions are detected, a malfunction light is illuminated on the instrument panel and a trouble code is stored in the computer memory identifying the system in which the fault has occurred. CARB initially requested that EPA find its OBD II regulations within the scope of existing waivers of Federal preemption pursuant to section 209 of the Clean Air Act (Act), 42 U.S.C. 7543(b), as amended. Subsequently, CARB twice amended the subject regulations. On June 14, 1995, California requested that, pursuant to section 209(b) of the Clean Air Act, EPA waive Federal preemption for its onboard diagnostics amendments including the December 1994 revisions. This notice announces that EPA has tentatively scheduled a public hearing for October 17, 1995, to hear comments from the general public concerning CARB's request.

DATES: EPA has tentatively scheduled a public hearing for October 17, 1995, beginning at 9:30 a.m. Any person who wishes to testify on the record at the hearing must notify EPA by September 29, 1995, that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's request by November 17, 1995. If EPA receives one or more requests to testify on the pending request, a hearing will be held. Please note that if no one notifies EPA that they wish to testify, no hearing will be held. Therefore, any person who plans to attend the hearing should call Leila Holmes Cook of EPA's Manufacturers Operation Division at (202) 233–9252, on or after October 2, 1995, to determine if a request for a hearing has been received by the Agency and thus whether a hearing will be held. Regardless of whether or not a hearing is held, written comments regarding CARB's request will be accepted through November 17, 1995.

ADDRESSES: If a request is received, a public hearing will be held at: Sheraton Inn, 3200 Boardwalk, Ann Arbor, Michigan 48108. Parties wishing to testify at the hearing should provide written notice to: Charles N. Freed, Director, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. In addition, written comments, in duplicate, should be sent to Mr. Freed at the same address. Copies of material relevant to the waiver request (Docket No. A–90–28) will be available for public inspection during the working hours of 8:30 AM to 12:00 PM and 1:30 PM to 3:30 PM, Monday through Friday, at: U.S. Environmental Protection Agency, Air Docket (LE–131), Room M1500, First Floor Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460 [Telephone (202) 260–7548].

FOR FURTHER INFORMATION CONTACT: Leila Holmes Cook, Attorney/Advisor, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, Washington, DC. 20460, Telephone: (202) 233–9252.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act as amended, 42 U.S.C. 7543(a), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part * * * [or] require certification, inspection, or any other approval relating to the control of emissions * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and an opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "* * * if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such * * * standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

As previous decisions granting waivers of federal preemption have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology given the cost of compliance within that time period or if the Federal and state test procedures impose inconsistent certification requirements.

With regard to enforcement procedures accompanying standards, I must grant the requested waiver unless I find that these procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards promulgated pursuant to section 202(a), or unless the California and Federal certification test procedures are inconsistent.

Once California has been granted waiver for a set of standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without having to receive a further waiver of Federal preemption.

CARB initially requested that EPA find its OBD II regulations within the scope of existing waivers of federal preemption pursuant to section 209 of the Clean Air Act (Act), 42 U.S.C. 7543(b), as amended. Subsequently, CARB twice amended the subject regulations. EPA finalized its On-Board Diagnostics Rule on January 29, 1993 [58 FR 9468 (February 19, 1993)]. By letter dated June 14, 1995, California requested that, pursuant to section 209(b) of the Clean Air Act, EPA waive Federal preemption for its onboard diagnostics amendments including the December 1994 revisions. These amendments, which apply to 1994 and later model year passenger cars, light-duty trucks, and medium-duty vehicles require the monitoring of essentially all emission control systems, and emission related components. In addition, it addresses deficiencies in the OBD I requirements that have become apparent since their adoption, and establishes new testing protocol and standardization procedures.

OBD II provides for new monitoring requirements covering: catalyst system condition, engine misfire detection, evaporative control system operation, supplementary air system function, the exhaust gas recirculation (EGR) system flow rate, chloroflourocarbon loss (air conditioning refrigerant), and monitoring of other components and systems controlled by the on-board engine control computer. In general the California OBD II regulations require that a deteriorated component or system be detected as malfunctioning by the time its lack of performance causes vehicle emissions to exceed 1.5 times any of the standards to which the vehicle is certified or when a component is completely non-functioning. Therefore, permissible emission increases are a function of the standards to which the vehicle is certified.

A number of changes to requirements initially established under OBD I were made to increase the effectiveness of the monitoring systems in detecting emission-related malfunctions. These requirements include tampering deterrence features, as well as, improvements to the malfunction detection effectiveness of the fuel system, oxygen sensor, EGR system, other emission-related electronic components.

Manufacturers are required to perform emission tests on a durability demonstration vehicle equipped with deteriorated emission-critical parts and show that the on-board diagnostic system will identify when an emission standard is exceeded by 1.5 times the applicable standard.

In order to facilitate vehicle repairs and assist Inspection and Maintenance Programs in utilizing the OBD system, CARB has required standardized vehicle communication systems that interface with a relatively low-cost, hand-held, universal diagnostic tool. The tool will be able to read specific diagnostic information such as fault codes which lead service personnel to the likely area of any malfunctions, and will provide continuously updated engine parameter data that will further help to isolate fault codes and ensure proper repairs.

In response to a Petition from Ford Motor Company, dated March 29, 1993, CARB modified its OBD II regulations to give the Executive Officer, upon request from a manufacturer, the authority to waive one or more of the OBD II requirements for vehicle models or engine families introduced prior to April 1, 1994. In making this determination the Executive Officer would consider, among other things, the overall extent to which the OBD II requirements will be met, and whether the manufacturer made good-faith efforts to comply with the regulation. For 1995 model year vehicles for which production begins after March 31, 1994, per vehicle penalties in increments of $25 or $50 per vehicle for the third and subsequently identified deficiency not to exceed $500 per vehicle are possible.

On December 8, 1994, CARB approved amendments which addressed manufacturer concerns with developing fully compliant monitoring systems by the 1996 model year. Specifically, these amendments give additional compliance flexibility for manufacturers having difficulty creating enhanced diagnostic systems which monitor catalysts used in low-emission vehicles (LEV) and adequate misfire detection. In addition, the amendments also address monitoring requirements for evaporative system leaks and for the monitoring of diesel and alternate fuel vehicles.

In its request letter dated, June 14, 1995, California has stated that regardless of whether the EPA views the subject regulation as accompanying enforcement procedures or new standards, the requisite findings to support a grant of a waiver of federal preemption have been made. That is, as accompanying enforcement procedures, the regulations do not endanger the protectiveness finding that the ARE has made for previously granted waiver determinations and the regulations are consistent with the intent of section 202(a) of the federal CAA. In the alternative, if the OBD II regulations are viewed as new emission standards, a waiver should be granted because the regulations (as amended) are, in the aggregate, at least as stringent as the comparable federal OBD regulations, California needs its own motor vehicle program to meet compelling and extraordinary conditions in the state, and the regulations are consistent with section 202(a) of the CAA. Section 202(a) requires that the procedures provide sufficient lead time to permit the development and application of requisite technology, giving appropriate consideration to the cost of compliance within such period. In addition, the Agency has held that to avoid inconsistency with section 202(a), California's procedures may not impose inconsistent certification requirements such that manufacturers would be unable to meet both the California and Federal requirements with the same test vehicle.

Once California has been granted waiver of Federal preemption for a set of standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to the initial retail sale, titling or registration of the subject class of vehicles without having to receive a further waiver of Federal preemption.

California's request will be considered according to the procedures for a waiver decision, which includes providing the opportunity for a public hearing. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether California's OBD II regulations are appropriately considered accompanying enforcement procedures or new emission standards;

(2) If CARB's regulations are accompanying enforcement procedures, address (A) whether these procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards promulgated pursuant to section 202(a), and (B) whether the California and Federal certification test procedures are inconsistent.

(3) If CARB's regulations are standards, address (A) whether California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious; (B) whether California needs separate standards to meet compelling and extraordinary conditions; and, (C) whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

Any person desiring to make an oral statement on the record should file ten (10) copies of their proposed testimony and other relevant material with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than October 13, 1995. In addition, that person should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

Because a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such.

Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense.

Regardless of whether a public hearing is held, EPA will keep the record open until November 17, 1995. The Administrator will then render her decision on CARB's request based on the record of the public hearing, if one is held, relevant written submissions, and other information which is deemed pertinent. All information will be available for public inspection at the EPA Air Docket.

Dated: August 3, 1995.

Ann E. Goode,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–19902 Filed 8–10–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5275–8]

Acid Rain Program: Acid Rain Compliance Plans & Exemptions

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of draft nitrogen oxides compliance plans and written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing draft nitrogen oxides (NO_X) compliance plans and written exemptions from the Acid Rain Program permitting and monitoring requirements to a total of 74 utility units at 30 plants in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, these NO_X compliance plans and exemptions are also being issued as a direct final action in the notice of nitrogen oxides compliance plans and written exemptions published elsewhere in today's **Federal Register**.

DATES: Comments on the NO_X compliance plans and written exemptions proposed by this action must be received on or before September 11, 1995, or within 30 days after notice is given in a publication of general circulation in the area where the source is located, whichever is later.

ADDRESSES: Send comments to the following addresses:

For plants in Maryland, Pennsylvania, and West Virginia: Thomas Maslany, Director, Air, Radiation and Toxics Division, EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107.

For plants in Ohio and Wisconsin: David Kee, Director, Air and Radiation Division, EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

For plants in Arkansas, New Mexico, and Texas: Samuel Coleman, Director, Compliance Assurance and Enforcement Division, EPA Region 6, First Interstate Bank Tower, 1445 Ross Ave. (6EN–AA), Dallas, TX 75202–2733.

For plants in Iowa: William A. Spratlin, Director, Air and Toxics Division, EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101.

For plants in Arizona and California: Celia Bloomfield, EPA Region 9, Air and Toxics Division (A–5–2), 75 Hawthorne Street, San Francisco, CA, 94105.

Submit comments in duplicate and identify the NO_X compliance plan or written exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the NO_X compliance plan or written exemption.

FOR FURTHER INFORMATION CONTACT: For plants in Maryland, Pennsylvania, and West Virginia: Linda Miller, (215) 597–7547, EPA Region 3; for plants in Wisconsin: Beth Valenziano, (312) 886–2703, EPA Region 5; for plants in Ohio: Franklin Echevarria, (312) 886–9653, EPA Region 5; for plants in Arkansas, New Mexico, and Texas: Daniel Meyer, (214) 665–7233, EPA Region 6; for plants in Iowa: Jon Knodel, (913) 551–7622, EPA Region 7; for plants in Arizona and California: Celia Bloomfield, (415) 744–1249, EPA Region 9.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft NO_X compliance plans and written exemptions, and the NO_X compliance plans and written exemptions issued as a direct final action in the notice of NO_X compliance plans and written exemptions published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any NO_X compliance plan or written exemption, that NO_X compliance plan or written exemption in the notice of NO_X compliance plans and written exemptions will be withdrawn and all public comment received on that NO_X compliance plan or written exemption will be addressed in a subsequent final action based on the relevant NO_X compliance plan or written exemption in this notice of draft NO_X compliance plans and written exemptions. Because the Agency will not institute a second comment period on this notice of draft NO_X compliance plans and written exemptions, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the NO_X compliance plans and written exemptions, see the information provided in the notice of NO_X compliance plans and written exemptions elsewhere in today's **Federal Register**.

Dated: August 7, 1995.

Joseph A. Kruger,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–19900 Filed 8–10–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5275–9]

Acid Rain Program: Acid Rain Compliance Plans & Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of nitrogen oxides compliance plans and written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing, as a direct final action, nitrogen oxides (NO_X) compliance plans and written exemptions from the Acid Rain Program permitting and monitoring requirements to a total of 74 utility units at 30 plants in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, these compliance plans and exemptions are being issued as a direct final action.

DATES: Each NO_X compliance plan and written exemption issued in this direct final action, will be final on September 21, 1995, or 40 days after notice is also given in a publication of general circulation in the area where the source is located, whichever is later, unless significant, adverse comments are received by September 11, 1995, or 30 days after the aforementioned local notice is published, whichever is later. If significant, adverse comments are timely received on any NO_X compliance plan or on any exemption in this direct final action, that compliance plan or exemption will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: Administrative Records. The administrative record for the NO_X compliance plans and written exemptions, except information protected as confidential, may be viewed during normal operating hours at the following locations:

For plants in Maryland, Pennsylvania, and West Virginia: EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107.

For plants in Ohio and Wisconsin: EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

For plants in Arkansas, New Mexico, and Texas: EPA Region 6, First Interstate Bank Tower, 1445 Ross Ave. (6EN–AA), Dallas, TX 75202–2733.

For plants in Iowa: EPA Region 7 Library, 726 Minnesota Ave., Kansas City, KS 66101 or Iowa Dept. of Natural Resources, Henry A. Wallace Bldg., 900 E. Grand, Des Moines, IA 50319.

For plants in Arizona and California: EPA Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA, 94105.

Comments. Send comments to the following address:

For plants in Maryland, Pennsylvania, and West Virginia: Thomas Maslany, Director, Air, Radiation and Toxics Division, EPA Region 3 (address above).

For plants in Ohio and Wisconsin: David Kee, Director, Air and Radiation Division, EPA Region 5 (address above).

For plants in Arkansas, New Mexico, and Texas: Samuel Coleman, Director, Compliance Assurance and Enforcement Division, EPA Region 6 (address above).

For plants in Iowa: William A. Spratlin, Director, Air and Toxics Division, EPA Region 7 (address above).

For plants in Arizona and California: Celia Bloomfield, Air and Toxics Division (A–5–2), EPA Region 9 (address above).

Submit comments in duplicate and identify the NO_X compliance plan or written exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the NOx compliance plan or written exemption.

FOR FURTHER INFORMATION CONTACT: For plants in Maryland, Pennsylvania, and West Virginia: Linda Miller, (215) 597–7547, EPA Region 3; for plants in Wisconsin: Beth Valenziano, (312) 886–2703, EPA Region 5; for plants in Ohio: Franklin Echevarria, (312) 886–9653, EPA Region 5; for plants in Arkansas, New Mexico, and Texas: Daniel Meyer, (214) 665–7233, EPA Region 6; for plants in Iowa: Jon Knodel, (913) 551–7622, EPA Region 7; for plants in Arizona and California: Celia Bloomfield, (415) 744–1249, EPA Region 9.

SUPPLEMENTARY INFORMATION: All public comment received on any NOx compliance plan or written exemption in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent approval or denial of the compliance plan or exemption. Such approval or denial will be based on the relevant draft compliance plan or exemption in the notice of draft compliance plans and exemptions that is published elsewhere in today's **Federal Register** and that is identical to this direct final action.

New Unit Exemptions

Under the Acid Rain Program regulations (40 CFR 72.7), utilities may petition EPA for an exemption from permitting and monitoring requirements for any new utility unit that serves one or more generators with total nameplate capacity of 25 MW or less and burns only fuels with a sulfur content of 0.05 percent or less by weight. On the earlier of the date an exempted new unit burns any fuel with a sulfur content in excess of 0.05 percent by weight or 24 months prior to the date the exempted unit first serves one or more generators with total nameplate capacity in excess of 25 MW, the unit shall no longer be exempted under 40 CFR 72.7 and shall be subject to all permitting and monitoring requirements of the Acid Rain Program.

EPA is issuing written exemptions effective from January 1, 1995 through December 31, 1999, to the following new units:

Region 6

Animas, unit 5 in New Mexico, owned and operated by the City of Farmington. The Designated Representative for Animas is Michael R. Sims.

Retired Unit Exemptions

Additionally, under the Acid Rain Program regulations (40 CFR 72.8), utilities may petition EPA for an exemption from permitting requirements for units that are retired prior to the issuance of a Phase II Acid Rain permit. Units that are retired prior to the deadline for continuous emissions monitoring system (CEMS) certification may also petition for an exemption from monitoring requirements. Exempted retired units must not emit any sulfur dioxide or nitrogen oxides on or after the date the units are exempted, and the units must not resume operation unless the Designated Representative submits an application for an Acid Rain permit and installs and certifies its monitors by the applicable deadlines.

EPA is approving retired unit exemptions, effective January 1, 1996 through December 31, 1999, and exemptions from monitoring requirements, effective January 1, 1995 through December 31, 1999, to the following retired units:

Region 6

Cecil Lynch Steam Electric Station, unit 1 in Arkansas, owned and operated by Arkansas Power and Light Company. The Designated Representative for Cecil Lynch is Frank F. Gallaher.

Person Generating Station, units 3 and 4 in New Mexico, owned and operated by Public Service Company of New Mexico. The Designated Representative for Person is Patrick J. Goodman.

Concho Power Station, unit 4 in Texas, owned by West Texas Utilities Company and operated by Central and South West Services, Inc. The Designated Representative for Concho is E. Michael Williams.

Region 7

Sixth Street Generating Station, unit 1 in Iowa, owned and operated by IES Utilities. The Designated Representative for Sixth Street is Roger Lessly.

Region 9

DeMoss Petrie, unit 4 in Arizona, owned and operated by Tucson Electric Power Company. The Designated Representative for DeMoss Petrie is Cosimo DeMasi.

Avon Power Plant, units 1, 2, and 3 in California, owned and operated by Pacific Gas and Electric Company. The Designated Representative for Avon is James K. Randolph.

Harbor Generating Station, units 1–5 in California, owned and operated by the Los Angeles Department of Water and Power. The Designated Representative for Sixth Street is Dennis B. Whitney.

Huntington Beach Generating Station, units 3 and 4 in California, owned and operated by Southern California Edison Company. The Designated Representative for Huntington is John R. Fielder.

Martinez Power Plant, units 1, 2, and 3 in California, owned and operated by Pacific Gas and Electric Company. The Designated Representative for Martinez is James K. Randolph.

Oleum Power Plant, units 1–6 in California, owned and operated by Pacific Gas and Electric Company. The Designated Representative for Oleum is James K. Randolph.

Redondo Generating Station, units 11–16 in California, owned and operated by Southern California Edison Company. The Designated Representative for Redondo is John R. Fielder.

NO_X Compliance Plans

Lastly, EPA is approving NO_X compliance plans under which units will comply with the applicable emission limitations for NO_X under 40 CFR 76.5 (referred to as "standard emission limitations") or with a NO_X averaging plan under 40 CFR 76.10, for the following utility plants:

Region 3

R. Paul Smith in Maryland: Standard emission limitation of 0.50 lbs/MMBtu for unit 9 and 0.45 lbs/MMBtu for unit 11. The Designated Representative is David C. Benson.

Bruce Mansfield in Pennsylvania: Units 1 and 2 will each comply with 4 averaging plans, one for calendar year 1996, and three for each calendar year 1997–1999. For each year under these plans, the actual annual average emission rate for NO_X for these units shall not exceed the alternative contemporaneous annual emission limitation of 0.45 lbs/MMBtu, and the actual annual heat input for units 1 and 2 shall not be less than the annual heat input limits of 63,306,398 MMBtu and 62,726,184 MMBtu, respectively. The other units designated in the plans are Edgewater unit 13, Gorge units 25 and 26, New Castle units 1 and 2, R.E. Burger units 7 and 8, Toronto units 10 and 11, and W.H. Sammis units 5 and 6. The Designated Representative is Howard C. Couch, Jr.

New Castle in Pennsylvania: units 1 and 2 will each comply with 4 averaging plans, one for calendar year 1996, and three for each calendar year 1997–1999. For each year under these plans, the actual annual average emission rate for NO_X for these units shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu, and there are no annual heat input limits. The other units designated in the plans are Bruce Mansfield units 1 and 2, Edgewater unit 13, Gorge units 25 and 26, R.E. Burger units 7 and 8, Toronto units 10 and 11, and W.H. Sammis units 5 and 6. The Designated Representative is Howard C. Couch, Jr.

Albright in West Virginia: Standard emission limitation of 0.50 lbs/MMBtu for units 1 and 2, and 0.45 lbs/MMBtu for unit 3. The Designated Representative is David C. Benson.

Pleasants in West Virginia: Standard emission limitation of 0.50 lbs/MMBtu for units 1 and 2. The Designated Representative is David C. Benson.

Region 5

Edgewater in Ohio: Unit 13 will comply with four averaging plans, one for calendar year 1996, and three for each calendar year 1997–1999. For each year under these plans, the actual annual average emission rate for NO_X for this unit shall not exceed the alternative contemporaneous annual emission limitation of 0.20 lbs/MMBtu, and the actual annual heat input for unit 13 shall not be less than the annual heat input limit of 2,034,422 MMBtu. The other units designated in the plans are Bruce Mansfield units 1 and 2, Gorge units 25 and 26, New Castle units 1 and 2, R.E. Burger units 7 and 8, Toronto units 10 and 11, and W.H. Sammis units 5 and 6. The Designated Representative is Howard C. Couch, Jr.

Gorge in Ohio: Units 25 and 26 will each comply with four averaging plans, one for calendar year 1996, and three for each calendar year 1997–1999. For each year under these plans, the actual annual average emission rate for NOx for these units shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu, and there are no annual heat input limits. The other units designated in the plans are Bruce Mansfield units 1 and 2, Edgewater unit 13, New Castle units 1 and 2, R.E. Burger units 7 and 8, Toronto units 10 and 11, and W.H. Sammis units 5 and 6. The Designated Representative is Howard C. Couch, Jr.

R.E. Burger in Ohio: Units 7 and 8 will each comply with three averaging plans for each calendar year 1997–1999. For each year under these plans, the actual annual average emission rate for NOx for these units shall not exceed the alternative contemporaneous annual emission limitation of 0.65 lbs/MMBtu, and the actual annual heat input for units 7 and 8 shall not be greater than the annual heat input limits of 8,636,386 MMBtu and 8,716,740 MMBtu, respectively. The other units designated in the plans are Bruce Mansfield units 1 and 2, Edgewater unit 13, Gorge units 25 and 26, New Castle units 1 and 2, Toronto units 10 and 11, and W.H. Sammis units 5 and 6. The Designated Representative is Howard C. Couch, Jr.

W.H. Sammis in Ohio: Units 5 and 6 will each comply with four averaging plans, one for calendar year 1996, and three for each calendar year 1997–1999. For each year under these plans, the actual annual average emission rate for NO_X for these units shall not exceed the alternative contemporaneous annual emission limitation of 0.55 lbs/MMBtu for unit 5, and 0.45 lbs/MMBtu for unit 6. The actual annual heat input for unit 5 shall not be greater than the annual heat input limits of 16,570,591 MMBtu in 1996 and 18,708,732 MMBtu in 1997–1999. The actual annual heat input for unit 6 shall not be less than the annual heat input limits of 31,884,315 MMBtu in 1996 and 35,427,017 MMBtu in 1997–1999. The other units designated in the plans are Bruce Mansfield units 1 and 2, Edgewater unit 13, Gorge units 25 and 26, New Castle units 1 and 2, R.E. Burger units 7 and 8, and Toronto units 10 and 11. The Designated Representative is Howard C. Couch, Jr.

Toronto in Ohio: Units 10 and 11 will each comply with four averaging plans, one for calendar year 1996, and three for each calendar year 1997–1999. For each year under these plans, the actual annual average emission rate for NO_X for these units shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu, and there are no annual heat input limits. The other units designated in the plans are Bruce Mansfield units 1 and 2, Edgewater unit 13, Gorge units 25 and 26, New Castle units 1 and 2, R.E. Burger units 7 and 8, and W.H. Sammis units 5 and 6. The Designated Representative is Howard C. Couch, Jr.

Alma in Wisconsin: Units B4 and B5 will each comply with four averaging plans, one for each calendar year 1996–1999. For each year under these plans, the actual annual average emission rate for NO_X for these units shall not exceed the alternative contemporaneous annual emission limitation of 0.80 lbs/MMBtu, and the actual annual heat input for units B4 and B5 shall not be greater than the annual heat input limits of 3,200,000 MMBtu and 5,100,000 MMBtu, respectively. The other units designated in the plans are Genoa unit 1 and J.P. Madgett unit B1. The Designated Representative is John P. Leifer.

Genoa in Wisconsin: Unit 1 will comply with four averaging plans, one for each calendar year 1996–1999. For each year under these plans, the actual annual average emission rate for NO_X for this unit shall not exceed the alternative contemporaneous annual emission limitation of 0.38 lbs/MMBtu, and the actual annual heat input for unit 1 shall not be less than the annual heat input limit of 13,500,000 MMBtu. The other units designated in the plans are Alma units B4 and B5 and J.P. Madgett unit B1. The Designated Representative is John P. Leifer.

J.P. Madgett in Wisconsin: Unit B1 will comply with four averaging plans, one for each calendar year 1996–1999. For each year under these plans, the actual annual average emission rate for NO_X for this unit shall not exceed the alternative contemporaneous annual emission limitation of 0.39 lbs/MMBtu, and the actual annual heat input for unit B1 shall not be less than the annual heat input limit of 13,700,000 MMBtu. The other units designated in the plans are Alma units B4 and B5 and Genoa unit 1. The Designated Representative is John P. Leifer.

Port Washington in Wisconsin: Units 1, 2, 3, and 4 will comply with four averaging plans, one for each calendar year 1996–1999. For each year under these plans, the actual annual average emission rate for NO_X for these units shall not exceed the alternative contemporaneous annual emission limitation of 0.40 lbs/MMBtu. The actual annual heat input for units 1, 2, 3, and 4 shall not be less than the annual heat input limits of 583,213 MMBtu, 1,632,997 MMBtu, 1,924,604 MMBtu, and 874,320 MMBtu, respectively. The other units designated in the plans are South Oak Creek units 5, 6, 7, and 8 and Valley units 1, 2, 3, and 4. Port Washington unit 5 will meet the standard emission limit of 0.50 lbs/MMBtu for 1996–1999. The Designated Representative is Paul D. Schumacher.

Pulliam in Wisconsin: Units 7 and 8 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.40 lbs/MMBtu, and the actual annual heat input for units 7 and 8 shall not be less than the annual heat input limits of 5,400,000 MMBtu and 7,000,000 MMBtu, respectively. The other units designated in this plan are Weston units 1, 2, and 3. The Designated Representative is Gary T. Van Helvoirt.

South Oak Creek in Wisconsin: Units 5, 6, 7, and 8 will comply with four averaging plans, one for each calendar year 1996–1999. For each year under these plans, the actual annual average emission rate for NO_X for these units shall not exceed the alternative contemporaneous annual emission limitation of 0.30 lbs/MMBtu for units 5 and 6, and 0.42 lbs/MMBtu for units 7 and 8. The actual annual heat input for units 5 and 6 shall not be less than the annual heat input limits of 6,220,245 MMBtu and 6,349,833 MMBtu respectively, and the actual annual heat input for units 7 and 8 shall not be less than the annual heat input limit of 7,553,054 MMBtu each. The other units designated in the plans are Valley units 1, 2, 3, and 4 and Port Washington units 1, 2, 3, and 4. The Designated Representative is Paul D. Schumacher.

Valley in Wisconsin: Units 1, 2, 3, and 4 will comply with four averaging plans, one for each calendar year 1996–1999. For each year under these plans, the actual annual average emission rate for NO_X for these units shall not exceed the alternative contemporaneous annual emission limitation of 0.65 lbs/MMBtu. The actual annual heat input for units 1 and 2 shall not be greater than the annual heat input limit of 5,497,537 MMBtu each, and the actual annual heat input for units 3 and 4 shall not be greater than the annual heat input limit of 6,062,205 MMBtu each. The other units designated in the plans are South Oak Creek units 5, 6, 7, and 8 and Port Washington units 1, 2, 3, and 4. The Designated Representative is Paul D. Schumacher.

Weston in Wisconsin: Units 1, 2, and 3 will each comply with a NO_X averaging plan for 1996–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.90 lbs/MMBtu for unit 1, 1.05 lbs/MMBtu for unit 2, and 0.25 lbs/MMBtu for unit 3, and the actual annual heat input for units 1, 2, and 3 shall not be greater than the annual heat input limits of 4,500,000 MMBtu and 6,500,000 MMBtu for units 1 and 2, respectively, and shall not be less than the annual heat input limit of 20,500,000 MMBtu for unit 3. The other units designated in this plan are Pulliam units 7 and 8. The Designated Representative is Gary T. Van Helvoirt.

Dated: August 7, 1995.

Joseph A. Kruger,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–19901 Filed 8–10–95; 8:45 am]

BILLING CODE 6560–50–P

[ER-FRL–4725–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed July 31, 1995 Through August 04, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950349, Revised Final EIS, AFS, ID, West Fork Papoose Timber Sale, Implementation, Clearwater National Forest, Powell Ranger District, Idaho County, ID, Due: September 11, 1995, Contact: Stewart Hoyt (208) 942–3113.

EIS No. 950350, Draft Supplement, FHW, VT, Burlington Southern Connector New and Additional Information, Champlain Park Way Project, Construction I–189 and US Route 7 to Battery Street, COE Section 10 and 404 Permits, Central Business District (CBD), Burlington, Chittenden County, VT, Due: September 25, 1995, Contact: Donald J. West (802) 828–4433.

EIS No. 950351, Draft EIS, FHW, NC, US 64 Bypass Transportation Improvements Project, from I–440 to US 64 west of Wendell and Eastern Wake Expressway from existing US 64 to NC–1007 (Poole Road), Funding and COE Section 404 Permit, Wake County, NC, Due: October 06, 1995, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 950352, Final EIS, AFS, UT, Jacob/Swale Vegetation Management Project, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT, Due: September 11, 1995, Contact: Kevin R. Schulkoski (801) 882–5400.

EIS No. 950353, Final EIS, DOE, WA, Puget Power Northwest Washington Electric Transmission Project, Construction and Operation, Whatcom and Skagit Counties, WA, Due: September 11, 1995, Contact: Ken Barnhart (503) 230–3667.

EIS No. 950354, Final EIS, AFS, ID, Tailholt Administrative Research Study, Timber Harvesting and Road Construction, Payette National Forest, Krassel Ranger District, Valley County, ID, Due: September 11, 1995, Contact: Rudy Vershchoor (208) 634–0706.

EIS No. 950355, Draft Supplement, AFS, AK, Central Prince of Wales Ketchikan Pulp Long-Term Timber Sale, Additional Information, Implementation, Tongass National Forest, Prince of Wales Island, AK, Due: September 25, 1995, Contact: David Arrasmith (907) 228–6304.

EIS No. 950356, Draft EIS, IBR, CA, South Bay Water Recycling Program (SBWRP), Development and Construction, Funding and COE Section 404 Permit, Golden Triangle Area, City of San Jose, Santa Clara County, CA, Due: September 25, 1995, Contact: Mona Jefferies-Soniea (916) 979–2297.

EIS No. 950357, Draft EIS, FHW, DC, Canal Road Entrance to the Georgetown University

Improvements, Reconstruction between Whitehurst Freeway and Foxhall Road, Washington, DC, Due: September 25, 1995, Contact: Arthur Hill (202) 523–0181.

EIS No. 950358, Final Supplement, RUS, FL, Hardee Unit 3 440 Megawatt (MW) Natural Gas and Oil Fired Combined Cycle Electric Power Station, Construction and Operation, Approval, Funding and NPDES Permit, Hardee County, FL, Due: September 11, 1995, Contact: Robert Quigel (202) 720–1784.

EIS No. 950359, Draft EIS, AFS, MT, Rock Creek Underground Copper/Silver Mine Project, Construction and Operation, Plan of Operations Approval and COE Section 404 Permit, Kootenai National Forest, Sander County, MT, Due: September 25, 1995, Contact: Paul Kaiser (406) 293–6211.

EIS No. 950360, Draft EIS, NPS, NM, Petroglyph National Monument, General Management Plan and Development Concept Plan, Implementation, Bernalillo County, NM, Due: November 06, 1995, Contact: Lawrence Beal (505) 839–4429.

Amended Notices

EIS No. 940364, Final EIS, AFS, ID, West Fork Papoose Timber Sale, Implementation, Clearwater National Forest, Powell Ranger District, Idaho County, ID, Due: October 10, 1994, Contact: Stewart Hoyt (208) 942–3113. Published FR 08–23–91—Officially Withdraw by Preparing Agency.

EIS No. 950326, Draft Supplement, NIH, MD, National Institutes of Health Bethesda Main Campus Comprehensive Master Plan, Implementation, Montgomery County, MD, Due: October 23, 1995, Contact: Janyce Hedetniemi (301) 496–3931. Published FR -07–28–95 Correction to Title and Due Date.

Dated: August 08, 1995

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–19938 Filed 8–10–95; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4725–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 24, 1995 Through June 28, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D-AFS-J65233–MT

Rating EC2, Murphy Timber Sales, Harvesting Timber, Road Construction and Prescribed Burning, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about increased water yield and sediment production and resultant aquatic effects, particularly in the Deep Creek basin, and the lack of information regarding water quality monitoring, exceedances of open road density standards, and potential air quality impacts.

ERP No. D-AFS-J65234–MT

Rating EC2, Beaver Woods Vegetation Management Project, Implementation, Bitterroot National Forest, West Fork Ranger District, Ravalli County, MT.

Summary: EPA expressed environmental concerns about potential increased water and sediment yields and proposed activities in critical watersheds and in watersheds where peak stream flow thresholds are already being exceeded. EPA requested additional information to fully assess and mitigate potential environmental impacts of the management actions.

ERP No. D-AFS-J65235–MT

Rating EC2, Bass Lake Dam Reconstruction, Operation and Maintenance, Temporary-Use-Permit, Bitterroot National Forest, Stevensville Ranger District, Ravalli County, MT.

Summary: EPA expressed environmental concerns about the potential impacts resulting from equipment access along the old road and trail into the Wilderness Area, and impacts of the concrete maintenance program and pipe and concrete housing replacement. EPA requested additional information to fully assess and mitigate potential environmental impacts of the management actions.

ERP No. D-AFS-K65167–CA

Rating EO2, California Spotted Owl Habitat Management Plan, Implementation, Sierra Nevada National Forests, CA.

Summary: EPA had environmental objections with whether the proposed management framework would be successful given the complexity variability of Sierra Nevada forests ecosystems and the lack of information on these ecosystems. EPA requested additional information on potential impacts to aquatic species and habitat, as well as fire risk, salvage activities, monitoring methods, cumulative impacts, and management tradeoffs.

ERP No. D-GSA-A80027–AZ

Rating LO, Evo A. Deconcini Federal Building—United States Courthouse, Construction and Site Selection, Central Business Area (CBA), City of Tucson, Pima County, AZ.

Summary: EPA had no environmental objection to the project.

ERP No. D-NOA-A91062–00

Rating EC2, Atlantic Coast Weakfish Fishery, Fishery Management Plan, Implementation, Weakfish Harvest Control in the Atlantic Ocean Exclusive Economic Zone (EEZ), off the New England, Mid-Atlantic and South Atlantic Coast.

Summary: EPA had environmental concerns with some aspects of the regulations and requested that additional information be included in the FEIS on the exemption for the Block Island Sound area and on the impacts that other fisheries may have on the weakfish fishery.

ERP No. D–TVA–E32075–TN

Rating EC2, Upper Tennessee River Navigation Improvement Project, Rehabilitation and/or Construction, Ckickamauga Dam—Navigation Lock Structural Improvement Alternative, Funding, NPDES Permit, Coast Guard Bridge Permit and COE Section 404 Permits, Tennessee River, Hamilton County, TN.

Summary: EPA expressed environmental concerns over potential impacts to spawning fish populations, air quality, and wetlands. EPA also noted the need for additional analyses to support conclusions regarding potential environmental impacts.

ERP No. DS–FHW–E54009–NC

Rating EC2, US 117 Corridor Improvement Project, US 13/70 at Goldsboro, North to US 301 in Wilson, Funding and COE Section 404 Permit, Updated and Additional Information, Wayne and Wilson Counties, NC.

Summary: EPA continues to express environmental concerns about the preferred alternative. Potential impacts to the Little River need to be avoided in order to fully protect this aquatic resource.

ERP No. DS–NAS–A12031–00

Rating EC2, Programmatic EIS—Sounding Rocket Program (SRP), Updated Information concerning Programmatic Changes since the 1973 FEIS, Site-Specific to Wallops Flight Facility (WFF), Wallops Island, VA; Poker Flat Research Range (PFRR), Fairbanks, AK and White Sands Missile Range (WSMR), White Sands, NM and on a Global Scale.

Summary: EPA expressed environmental concerns that, while the Sounding Rocket Program (SRP) as a whole does not seem to have significant direct impacts on the environment, it may present cumulative impacts at the local level. As a result, EPA requests some additional information.

ERP No. DS–RUS–E08017–FL

Rating EC2, Hardee Unit 3; 440 Megawatt (MW) Natural Gas and Oil Fired Combined Cycle Electric Power Station Construction and Operation, Funding, Approval and NPDES Permit Issuance, Hardee County, FL.

Summary: EPA expressed environmental concerns regarding impacts to air and water quality, and requested that additional information be presented in the final EIS supplement.

Final EISs

ERP No. F–BLM–K67026–CA

Briggs Open Pit Heap Leach Gold Mine Project, Construction and Operation, NPDES Permit and COE Section 404 Permit, Inyo County, CA.

Summary: The final EIS fully addressed EPA's environmental concerns regarding potential impacts to surface water and wetlands, facilities design, closure, reclamation and maintenance of the heap leach pad, and contingency measures. EPA also commented that BLM should consider new information regarding Native American interests in the proposed project before a Record of Decision is issued.

ERP No. F–GSA–L81009–WA

Seattle Federal Courthouse Building (Project # ZWA 81061), Implementation, Site Selection, Construction and Operation, King County, WA.

Summary: EPA commented that the final EIS effectively addressed EPA's comments on the draft EIS.

Dated: August 8, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–19939 Filed 8–10–95; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RESERVE SYSTEM

First Commerce Corporation; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-19369) published on page 40180 of the issue for Monday, August 7, 1995.

Under the Federal Reserve Bank of Atlanta heading, the entry for First Commerce Corporation, is revised to read as follows:

1. First Commerce Corporation, New Orleans, Louisiana; to acquire 9.85 percent of the voting shares of First United Bank of Farmerville, Farmerville, Louisiana.

Comments on this application must be received by August 31, 1995.

Board of Governors of the Federal Reserve System, August 7, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19889 Filed 8–10–95; 8:45 am]

BILLING CODE 6210–01–F

Jackie Lynn Poulsen, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 25, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jackie Lynn Poulsen, Ericson, Nebraska, and Gregory Gene Jensen, Ord, Nebraska; each to acquire an additional 3.86 percent, for a total of 26.27 percent, of the voting shares of Wheeler County Bancshares, Inc., Ericson, Nebraska, and thereby indirectly acquire Ericson State Bank, Ericson, Nebraska.

Board of Governors of the Federal Reserve System, August 7, 1995.

William W. Wiles,

Deputy Secretary of the Board.

[FR Doc. 95–19890 Filed 8–10–95; 8:45 am]

BILLING CODE 6210–01–F

Security State Bank Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 5, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Security State Bank Holding Company, Hannaford, North Dakota; to acquire 100 percent of the voting shares of Security State Bank of Jamestown, Jamestown, North Dakota, a *de novo* bank.

2. Western Dakota Holding Company, Timber Lake, South Dakota; to become a bank holding company by acquiring 50.02 percent of the voting shares of Dewey County Bank, Timber Lake, Minnesota.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FirstBank Holding Company of Colorado Employee Stock Ownership Plan, Lakewood, Colorado; to acquire

27.2 percent of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado.

Board of Governors of the Federal Reserve System, August 7, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19891 Filed 8–10–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Administration for Children and Families (ACF) is publishing the following summary(ies). To request copies of the proposed collection of information and the related instructions, call the ACF Reports Clearance Officer on (202) 401–6465.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Proposed Project(s)

Title: Title IV–E Foster Care and Adoption Assistance Financial Report.

OMB No.: 0980–0131.

Description: This form is used by States to report quarterly expenditures and estimates for Foster Care and Adoption Assistance grant programs under Title IV–E of the Social Security Act.

Respondents: State governments.

Title	No. of respondents	No. of responses per respondent	Average burden per response	Burden
ACF–431	51	4	204	612

Estimated Total Annual Burden Hours: 612.

Dated: August 2, 1995.

Roberta Katson,

Reports Clearance Officer.

[FR Doc. 95–19571 Filed 8–10–95; 8:45 am]

BILLING CODE 4184–01–M

[Program Announcement No. 93631–95–02A]

Developmental Disabilities: Availability of Financial Assistance for Projects of National Significance for Fiscal Year 1995

AGENCY: Administration on Developmental Disabilities, ACF, DHHS.

ACTION: Extension of due date for receipt of applications for the program announcement cited above.

SUMMARY: This notice amends program announcement number 93631–95–02 published in the **Federal Register** on June 19, 1995, by extending the due date for submission of applications to August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Adele Gorelick (202) 690–5982.

SUPPLEMENTARY INFORMATION: On June 19, 1995, the Administration on Developmental Disabilities (ADD), Administration for Children and Families, published a program announcement in the **Federal Register** soliciting applications for funding of Fiscal Year 1995 Projects of National Significance in the following areas: ADD and ACYF, Family and Youth Services Bureau Collaboration Between Youth Service Providers and Disabilities Advocates to Enhance Services to Youth With Developmental Disabilities; Americans With Developmental Disabilities and the Criminal Justice System; First Jobs—Introducing Persons With/Without Developmental Disabilities to the World of Work and Community Service; Child Care and Early Intervention: Linkages for Successful Inclusion of Young Children With Disabilities; Building a Multi-Cultural Network Within the Developmental Disabilities System Which Increases Service Equity, Opportunities, and Inclusion for Individuals From Racial and Ethnic Minority Groups; Meeting the Mental Health Needs of Individuals With Developmental Disabilities; and Children at Risk: The Impact of Abuse and Violence on Children With Disabilities.

Because of the recent hurricane in Florida, which disrupted work, transportation, and communication, we are allowing all prospective applicants more time to submit their applications. Therefore, we are extending the due date for submission of applications to August 11, 1995.

(Catalog of Federal Domestic Assistance Program Number 93.631, Developmental Disabilities—Projects of National Significance)

Dated: August 7, 1995.

Bob Williams,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 95–19894 Filed 8–10–95; 8:45 am]

BILLING CODE 4184–01–M

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: July 1995

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of July, 1995. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since July 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. FAX: (202) 205–3598. Phone: (202) 401–9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

II. Listing of New and Pending Proposals for the Month of July, 1995

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new and pending proposals. This notice contains proposals for the month of July, 1995.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend Work Pays Demonstration Project by adding provisions to: reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

Date Received: 3/14/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Glen Brooks, (916) 657–3291.

Project Title: California—Assistance Payments Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project by: exempting certain categories of AFDC families from the State's benefit cuts; paying the exempt cases based on grant levels in effect in California on November 1, 1992; and renewing the waiver of the Medicaid maintenance of effort provision at section 1902(c)(1) of the Social Security Act, which was vacated by the Ninth Circuit Court of Appeals in its decision in *Beno* v. *Shalala.*

Date Received: 8/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Michael C. Genest, (916) 657–3546.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

Date Received: 11/9/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Eloise Anderson, (916) 657–2598.

Project Title: California—School Attendance Demonstration Project.

Description: In San Diego County, require AFDC recipients ages 16–18 to attend school or participate in JOBS.

Date Received: 12/5/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Michael C. Genest (916) 657–3546.

Project Title: California—Incentive to Self-Sufficiency Demonstration.

Description: Statewide, would require 100 hours CWEP participation per month for JOBS mandatory individuals who have received AFDC for 22 of the last 24 months and are working fewer than 15 hours per week after two years from JOBS assessment and: have failed to comply with JOBS without good cause, have completed CWEP or are in CWEP less than 100 hours per month, or have completed or had an opportunity to complete post-assessment education and training; provide Transitional Child Care and Transitional Medicaid to families who become ineligible for AFDC due to increased assets or income resulting from marriage or the reuniting of spouses; increase the duration of sanctions for certain acts of fraud.

Date Received: 12/28/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Michael C. Genest (916) 657–3546.

Project Title: Georgia—Work for Welfare Project.

Description: Work for Welfare Project. In 10 pilot counties would require every non-exempt recipient and non-supporting parent to work up to 20 hours per month in a state, local government, federal agency or nonprofit organization; extends job search; and increases sanctions for JOBS noncompliance. On a statewide basis, would increase the automobile exemption to $4,500 and disregard earned income of children who are full-time students.

Date Received: 6/30/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Nancy Meszaros, (404) 657–3608.

Project Title: Georgia—JOBS First Program.

Description: In ten pilot counties, would replace AFDC payment with paid employment; extend transitional Medicaid to 24 months; eliminate 100 hour employment rule for eligibility determination in AFDC–UP cases.

Date Received: 7/5/95.

Type: AFDC.

Current Status: New.

Contact Person: Nancy Meszaros, (404) 657–3608.

Project Title: Hawaii—Families Are Better Together.

Description: Statewide, would eliminate 100-hour, attachment to the work force, 30 day unemployment and principal wage earner criteria for AFDC–UP families.

Date Received: 5/22/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia Murakami, (808) 586–5230.

Project Title: Illinois—Six Month Paternity Establishment Demonstration.

Description: In 20 counties, would require the establishment of paternity, unless good cause exists, within 6 months of application or redetermination as a condition of AFDC and Medicaid eligibility for both mother

and child; would deny Medicaid to children age 7 and under, exclude children from filing rules, and exempt Department from making protective payments to eligible children, when custodial parent has not cooperated in establishing paternity; delegate the establishment of paternity in uncontested cases to caseworkers who perform assistance payment or social service functions under title IV–A or XX.

Date Received: 7/18/95.
Title: AFDC Medicaid.
Current Status: New.
Contact Person: Karan D. Maxson, (217) 785–3300.

Project Title: Illinois—School Attendance Demonstration

Description: Statewide, would require the participation in a plan for poor elementary school attendance and, upon continuation of poor attendance, the establishment of a protective payee, progressing to the removal of the caretaker's portion of the AFDC grant.

Date Received: 7/18/95.
Type: AFDC.
Current Status: New.
Contact Person: Karan D. Maxson, (217) 785–3300.

Project Title: Illinois—Work and Responsibility Demonstration.

Description: The demonstration includes six components, five of which will be implemented statewide. (1) Targeted Work Initiative—would limit receipt of AFDC benefits to a total of 24 months without earnings for households whose youngest child is at least 13 years of age; any month with budgeted income due to employment will not be counted toward the 24 month time limit. (2) Get a Job Initiative—new applicants determined to be job ready and whose children are between 5 and 12 will be required to participate in job search for up to six months. (3) Family Accountability—assistance payments will not be increased as a result of the birth of children conceived while the parent was receiving assistance. (4) Job Track—exempt volunteers for JOBS will become subject to the same requirements and sanctions as non-exempt participants; participation in basic education or GED programs will be limited to two years unless the individual is working or participating in an approved work activity. (5) Self-Sufficiency Plan—all applicants and recipients will be required to complete a self-sufficiency plan as a condition of eligibility. (6) Quarterly Budgeting—in selected sites, cases with earned income will be required to report income quarterly; the information will be used to prospectively budget income for the next quarter. Failure to report earnings will result in case closure and overpayment recovery.

Date Received: 7/18/95.
Type: AFDC.
Current Status: New.
Contact Person: Karan D. Maxson, (217) 785–3300.

Project Title: Kansas—Actively Creating Tomorrow for Families Demonstration.

Description: Would, after 30 months of participation in JOBS, make adults ineligible for AFDC for 3 years; replace $30 and 1/3 income disregard with continuous 40% disregard; disregard lump sum income and income and resources of children in school; count income and resources of family members who receive SSI; exempt one vehicle without regard for equity value if used to produce income; allow only half AFDC benefit increase for births of a second child to families where the parent is not working and eliminate increase for the birth of any child if families already have at least two children; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; extend Medicaid transitional benefits to 24 months; eliminate various JOBS requirements, including those related to target groups, participation rate of UP cases and the 20-hour work requirement limit for parents with children under 6; require school attendance; require minors in AFDC and NPA Food Stamps cases to live with a guardian; make work requirements and penalties in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities.

Date Received: 7/26/94.
Type: Combined AFDC/Medicaid.
Current Status: Pending.
Contact Person: Faith Spencer, (913) 296–0775.

Project Title: Maine—Project Opportunity.

Description: Increase participation in Work Supplementation to 18 months; use Work Supplementation for any opening; use diverted grant funds for vouchers for education, training or support services; and extend transitional Medicaid and child care to 24 months.

Date Received: 8/5/94.
Type: Combined AFDC/Medicaid.
Current Status: Pending.
Contact Person: Susan L. Dustin, (207) 287–3106.

Project Title: Maryland—Welfare Reform Project.

Description: Statewide, require minor parents to reside with a guardian; eliminate increased AFDC benefit for additional children conceived while receiving AFDC, with provision for third party payment or voucher/vendor payment for amount of the difference make rent vendor payments to local housing authority when delinquency exceeds 30 days; and issue AFDC benefits 14 days after date of application. In pilot sites, eliminate JOBS exemptions for having a child under age 3 and for having a medical disability of more than 12 months, unless the recipient applies for SSI; require able-bodied recipients who have received AFDC for 3 months to meet a work requirement (unless there is good cause) which will consist of full-time unsubsidized employment, 30 hours of subsidized employment, or a total of at least 20 hours of community service and employment; impose full-family sanction when JOBS non-exempt parent fails to comply with JOBS for 6 months and require parent to comply with JOBS for 30 days before reopening case; provide three more months of aid through a third party payment after full-family sanction is imposed; eliminate work supplementation program restriction from filling unfilled positions; eliminate work history and 100-hour rule requirements for AFDC–UP; require minimum of 20 hours of CWEP after three months of benefit receipt; disregard stepparent income if below 100% of poverty, reduce grant by 50 percent of need standard if income is between 100 and 150% of poverty, and make case ineligible if income is above 150% of poverty; base grant for families with earnings at 85 percent of difference between need standard and earnings; increase both auto and resource limits to $5000; disregard income of dependent children; provide one-time payment in lieu of AFDC benefits; require teen parents to attend family health and parenting classes; extend JOBS services to unemployed non-custodial parents; and cash-out food stamps for work supplementation cases.

Date Received: 3/1/94 and 5/16/95 (Amendments).
Type: AFDC.
Current Status: Pending.
Contact Person: Katherine L. Cook, (410) 767–7338.

Project Title: Massachusetts—Welfare Reform '95.

Description: Statewide, would limit AFDC assistance to 24 months in a 60-month period, with provisions for extensions, for all non-exempt recipients; reduce benefits for non-exempt recipients by 2.75 percent, while increasing earned income disregard to $30 and one-half indefinitely; establish the Work Program designed to end cash assistance to non-exempt families, requiring recipients who cannot find at least 20 hours per week of paid employment after 60 days of AFDC receipt to do community service and job search to earn a cash "subsidy" that would make family income equal to applicable payment standard; fund subsidized jobs from value of AFDC grant plus cash value of Food Stamps for limited number of volunteer recipients; sanction individuals who fail to comply with the Work Program by a reduction in assistance equal to the parent's portion of the grant; establish an Employment Development Plan (EDP) for non-exempt participants not required to participate in the Work Program, requiring community service for second failure to comply with EDP and full-family sanction for second failure to comply with community service; require teen parents to live with guardian or in supportive living arrangements and attend school; require children under age 14 to attend school; eliminate grandparent-deeming; strengthen paternity establishment requirements and allow the IV–D agency to determine if participants are cooperating; allow courts to order parents unable to pay child support to community service programs; exclude from the grant calculation children born to mothers while on AFDC; require child immunization; pay rent directly to landlords where caretaker has fallen behind six weeks in payments; increase asset level to $2,500; increase equity value of a vehicle to $5,000; establish wage assignment in cases of fraud or other overpayments; increased penalties for individuals who commit fraud, release AFDC fraud conviction information to Department of Revenue and the Social Security Administration for cross-check, and deny benefits to individuals with an outstanding default warrant issued by a State court; allow State to issue a clothing allowance voucher for each child; disregard the first $600 of lump sum income; require direct deposit of benefits for recipients with bank accounts; and disregard the 100-hour rule for eligibility for two-parent families.

Date Received: 4/4/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Valerie Foretra, (617) 348–5508.

Project Title: Mississippi—A New Direction Demonstration Program—Amendment.

Description: Statewide, would amend previously approved New Direction Demonstration Program by adding provision that a family's benefits would not increase as a result of additional children conceived while receiving AFDC.

Date Received: 2/17/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Larry Temple, (601) 359–4476.

Project Title: New Hampshire—Earned Income Disregard Demonstration Project.

Description: AFDC applicants and recipients would have the first $200 plus 1/2 the remaining earned income disregarded.

Date Received: 9/20/93.
Type: AFDC.
Current Status: Pending.
Contact Person: Avis L. Crane, (603) 271–4255.

Project Title: New Mexico—Untitled Project.

Description: Would increase vehicle asset limit to $4500; disregard earned income of students; develop an AFDC Intentional Program Violation procedure identical to Food Stamps; and allow one individual to sign declaration of citizenship for entire case.

Date Received: 7/7/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Scott Chamberlin, (505) 827–7254.

Project Title: North Dakota—Training, Education, Employment and Management Project.

Description: Would require families to develop a social contract specifying time-limit for becoming self-sufficient; combine AFDC, Food Stamps and LIHEAP into single cash payment with simplified uniform income, expense and resource exclusions; increase income disregards and exempt stepparent's income for six months; increase resource limit to $5000 for one recipient and $8000 for families with two or more recipients; exempt value of one vehicle; eliminate 100-hour rule for AFDC–UP; impose a progressive sanction for non-cooperation in JOBS or with child support; require a minimum of 32 hours of paid employment and non-paid work; require participation in EPSDT; and eliminate child support pass-through.

Date Received: 9/9/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Kevin Iverson, (701) 224–2729.

Project Title: Ohio—Learning, Earning and Parenting (LEAP) Program.

Description: Statewide, would modify and extend by 6 and ½ years the previously approved Learning, Earning, and Parenting Demonstration to require enrollment and regular school attendance by pregnant and parenting teens; provide a $62 bonus or sanction based on attendance; require continued participation in JOBS by LEAP participants who turn 20 and have a child over 6 weeks of age; provide a $62 grade completion bonus for those in high school; provide a graduation or GED completion bonus of $200; implement a progressive sanction leading to removal of the needs of the teen parent and her child/children in determining amount of AFDC; and continue the LEAP progressive sanction when the participant turns 20, if she remains JOBS mandatory.

Date Received: 6/19/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Jackie Martin, (614) 466–8530.

Project Title: Oregon—Oregon Option.

Description: As a statewide project, would incorporate waivers already approved in 1992 for JOBS Welfare Program and in 1994 for the JOBS Plus Demonstration with previously pending waiver requests to increase vehicle asset limit and extend transitional child care. Requests guaranteed level of federal funding, with funds not used for benefits to be used for other community support or prevention programs. Also would, with some exceptions, limit receipt of AFDC benefits to no more than 24 out of 84 months for families with employable parents; allow case manager to determine JOBS exemptions on an individual basis; eliminate the time restrictions on job search; impose progressive sanctions, leading to full-family ineligibility, for non-compliance with JOBS; require ineligible alien parents of AFDC children to participate in JOBS; require counseling for recipients with substance abuse problems; require teen parents to live in an adult-supervised setting; discontinue the AFDC–UP program from June through September each year and eliminate the 100-hour rule and work history requirements; increase asset limit to $2,500 for non-JOBS participants and $10,000 for JOBS participants, and treat lump-sum payments as an asset; require annual AFDC eligibility redetermination; modify the rules for potential liability under EBT.

Date Received: 7/10/95.
Type: AFDC Medicaid.
Current Status: New.
Contact Person: Jim Neely, (503) 945–5607.

Project Title: Oregon—Expansion of the Transitional Child Care Program.

Description: Provide transitional child care benefits without regard to months of prior receipt of AFDC and provide benefits for 24 months.
Date Received: 8/8/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Jim Neely, (503) 945–5607.

Project Title: Oregon—Increased AFDC Motor Vehicle Limit.
Description: Would increase automobile asset limit to $9000.
Date Received: 11/12/93.
Type: AFDC.
Current Status: Pending.
Contact Person: Jim Neely, (503) 945–5607.

Project Title: Pennsylvania—School Attendance Improvement Program.
Description: In 7 sites, would require school attendance as condition of eligibility.
Date Received: 9/12/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Pennsylvania—Savings for Education Program.
Description: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.
Date Received: 12/29/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: South Carolina—Family Independence Program.
Description: Statewide, would, with exceptions, time limit AFDC benefits to families with able bodied adults to 24 months out of 120 months, not to exceed 60 months in a lifetime; eliminate increase in AFDC benefit resulting from birth of children 10 or more months after the family begins AFDC receipt, but provide benefits to such children in the form of vouchers for goods and services permitting child's mother to participate in education, training, and employment-related activities; eliminate deprivation requirements, principal earner provisions, work history requirements, and 100-hour rule for AFDC–UP; increase AFDC resource limit to $2,500 and disregard as resources one vehicle with a market value up to $10,000, the balance in an Individual Development Account (IDA) up to $10,000, and the cash value of life insurance; disregard from income up to $10,000 in lump sum payments deposited in an IDA within 30 days of receipt, earned income of children attending school, and interest and dividend income up to $400; require participation in a family skills training program; require certain AFDC recipients to submit to random drug tests and/or participate in alcohol or drug treatment; require children to attend school; increase amount of child support passed through to AFDC recipients; require more extensive information for child support enforcement purposes; modify JOBS exemptions and good cause criteria, and increase sanctions for non-compliance; make job search a condition of eligibility; allow non-custodial parents of AFDC children to participate in JOBS; pay transitional grant equaling 3 percent of the maximum family grant following employment; and provide transitional grant Medicaid and child care for 12 months from the date of employment for cases previously closed due to time limit.
Date Received: 6/12/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Linda Martin, (804) 737–6010.

Project Title: Texas—Service Management and Resources for Teens (SMART).
Description: Would, in pilot site, require non-parenting AFDC youth, age 10 and over to participate in selected communities in schools programs.
Date Received:
Type: AFDC.
Current Status: Pending.
Contact Person: Kent Gummerman, (512) 450–3743.

Project Title: Washington—Success Through Employment Program.
Description: Statewide, would eliminate the 100-hour rule for AFDC–UP families; impose a 10 percent grant reduction for AFDC recipients who have received assistance for 48 out of 60 months, and impose an additional 10 percent grant reduction for every additional 12 months thereafter, and budget earnings against the original payment standard; and hold the food stamp benefit level constant for cases whose AFDC benefits are reduced due to length of stay on assistance.
Date Received: 2/1/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Liz Begert Dunbar, (206) 438–8350.

Project Title: Wisconsin—Self Sufficiency First (SSF).
Description: Statewide, would require applicant adults, as a condition of eligibility, to meet with a financial planning resource specialist prior to completing an application to examine alternatives to welfare; with some exceptions. If the applicant still wants to apply for assistance, as a condition of eligibility, individual must engage in at least 60 hours of JOB search activities during the 30 day application period. Would also limit JOBS exemptions.
Date Received: 4/18/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Jean Sheil, (608) 266–0613.

Project Title: Wisconsin—Pay for Performance (PFP).
Description: Statewide, adult recipients will be required to participate in JOBS up to 40 hours per week; for each hour of non-participation the AFDC grant will be reduced by the federal minimum wage rate; if the AFDC grant is fully exhausted then the remaining sanction will be taken against the Food Stamp (FS) allotment; FS allotments will not be adjusted to account for AFDC reductions resulting from not participating in JOBS activities; if hours of participation fall below 25% of assigned hours without good cause then no AFDC grant will be awarded and the FS amount will be $10. Would also limit JOBS exemptions.
Date Received: 4/18/95.
Type: AFDC.
Current Status: Pending.
Contact Person: Jean Sheil, (608) 266–0613.

III. Listing of Approved Proposals since July 1, 1995

Project Title: Texas—Promoting Child Health in Texas.
Contact Person: Kent Gummerman, (512) 450–3743.

Project Title: Utah—Single Parent Employment Demonstration Program (Amendments).
Contact Person: Bill Biggs, (801) 538–4337.

Project Title: West Virginia—Joint opportunities for independence (JOIN).
Contact Person: Sharon Paterno, (304) 558–3186.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research.)

Dated: August 7, 1995.
Howard Rolston,
Director, Office of Policy and Evaluation.
[FR Doc. 95–19833 Filed 8–10–95; 8:45 am]
BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 95N–0232]

Animal Drug Export; PERCORTEN®-V (Desoxycorticosterone Pivalate) Sterile Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed an application requesting approval for export to Canada of the animal drug Percorten®-V (desoxycorticosterone pivalate) sterile suspension for use as an injectable for dogs.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Gregory S. Gates, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ciba-Geigy Corp., Animal Health Div., P.O. Box 18300, Greensboro, NC 27419–8300, has filed application number 6321 requesting approval for export to Canada of the animal drug Percorten®-V (desoxycorticosterone pivalate) sterile suspension. The product is intended for use in dogs as partial mineralocorticoid replacement therapy in cases of adrenocortical insufficiency. The application was received and filed in the Center for Veterinary Medicine on July 20, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 21, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period. This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: July 26, 1995.
Robert C. Livingston,
Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.
[FR Doc. 95–19886 Filed 8–10–95; 8:45 am]
BILLING CODE 4160–01–F

[Docket No. 95N–0193]

The Dr. Oscar E. Carter, Jr., Memorial Rehabilitation Center, Inc.; Proposal to Revoke Approval of a Narcotic Addiction Treatment Program; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revoke approval of an "Application for Approval of Use of Methadone in a Treatment Program" (Form FDA–2632) (renamed "Application for Approval for Use of Narcotic Drugs in a Treatment Program") held by The Dr. Oscar E. Carter, Jr., Memorial Rehabilitation Center, Inc. (Carter). The grounds for the proposed revocation are that the three most recent FDA inspections of the program revealed recurring violations of the Federal narcotic addiction treatment regulations, and the sponsor has failed to demonstrate adequately the ability or willingness to correct and prevent the violations. This document is intended to provide the sponsor an opportunity for a hearing to show why approval should not be revoked.

DATES: Submit a written request for a hearing by September 11, 1995; data and information in support of the hearing request by October 10, 1995.

ADDRESSES: A written request for a hearing, supporting data, and other comments should be identified with Docket No. 95N–0193 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerald R. Hajarian, Center for Drug Evaluation and Research (HFD–342), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1029.

SUPPLEMENTARY INFORMATION:

I. Background

On September 12, 1974, FDA granted Carter approval to operate a narcotic addiction treatment program. Such programs are governed by the rules, standards, and procedures set forth in § 291.505 (21 CFR 291.505). Since the program received approval, FDA has conducted inspections to determine the program's compliance with § 291.505. This notice will document the specific violations revealed in the three most recent inspections, and the events leading to this proposed revocation.

FDA's inspection from September 12 through October 17, 1991, revealed violations of the narcotic addiction treatment regulation in the areas of urinalyses, attendance schedules, medical orders, admission evaluations, counseling, treatment plans, and drug dispensing.

The specific violations were as follows:

1. Failure to maintain drug dispensing records showing batch or code marks of the methadone dispensed, and failure to retain drug dispensing records for 3 years from the date of dispensing (§ 291.505(d)(13)(ii));

2. Failure to maintain methadone daily dispensing records in 5 of 20 patient records reviewed (§ 291.505(d)(13)(ii));

3. Failure to conduct initial drug screening urinalyses for opiates,

cocaine, methadone, amphetamines, and barbiturates in 17 of 20 patient records reviewed (§ 291.505(d)(2)(i));

4. Failure of the program to document who conducted the urinalyses in all 20 patients for which "Urinalysis Record" forms showed results of testing for methadone, opiates/opioids, and other drugs (§ 291.505(d)(2)(i) and (d)(13)(iii));

5. Failure to obtain FDA's approval of a change to an in-house laboratory for the detection of opiates and cocaine in human urine, and the failure to test patients for methadone, barbiturates, and amphetamines (§ 291.505(d)(2)(i));

6. Failure to conduct monthly urinalyses on six patients with 6-day take-home privileges (§ 291.505(d)(2)(i));

7. Failure to perform initial serological tests for syphilis and tuberculin skin tests in 19 of 20 patient records reviewed (§ 291.505(d)(3)(i));

8. Failure to maintain current annual treatment plan evaluations by the program physician in 11 of 20 patient records reviewed (§ 291.505(d)(3)(v)(C));

9. Failure to record vital signs (temperature, pulse, blood pressure, and respiratory rate) as part of the admission physical examination in 14 of 20 patient records reviewed (§ 291.505(d)(3)(i));

10. Failure to ensure that the initial dose of methadone did not exceed 30 milligrams (mg) in 3 of the 20 patients whose records were reviewed (§ 291.505(d)(6)(i)(A));

11. Failure to review, reevaluate, and alter as necessary treatment plans at least once each 90 days during the first year of treatment in 4 of the 20 patient records reviewed (§ 291.505(d)(3)(v)(A));

12. Failure of the program physician to sign one patient's medication order change and to record the correct date for another patient's medication order change (§ 291.505(d)(6)(i)(B)); and

13. Failure to comply with the take-home medication requirements for 2 of the 20 patients whose records were reviewed (§ 291.505(d)(6)(iv));

At the conclusion of the inspection, the FDA investigator presented a list of observations (Form FDA 483), and discussed the findings with the sponsor and his staff. Program management attributed the violations to a lack of good recordkeeping practices and the lack of knowledge of the regulation.

FDA issued a warning letter on December 6, 1991, listing the violations. The program sponsor submitted a response on December 14, 1991, listing a number of corrective measures that had been, or would be, implemented, and pledging that the violations would not recur.

FDA and the Drug Enforcement Administration (DEA) conducted a joint inspection of the program from July 9 through July 28, 1992. This inspection revealed recurring violations in the areas of urinalyses, attendance schedules, medical orders, admission evaluations, counseling, treatment plans, and drug dispensing.

The specific violations identified in this inspection were as follows:

1. Failure to conduct monthly urinalyses on 5 patients with 6-day take-home privileges (§ 291.505(d)(2)(i));

2. Failure of the program physician to document his review of initial drug screening reports in 5 of 10 patient records reviewed (§ 291.505(d)(1)(i)(C), (d)(2), and (d)(4)(ii)(C));

3. Failure to provide counseling to patients whose urinalyses showed an absence of methadone and/or continued use of drugs of abuse in 5 of 10 patient records reviewed (§ 291.505(d)(3)(v) and (d)(13)(iii));

4. Failure of the supervisory counselor to countersign treatment plans in 5 of 10 patient records reviewed (§ 291.505(d)(3)(iv)(C));

5. Failure of the program physician to record the rationale for authorizing take-home medication, and failure to record medication orders in 4 of 10 patient records reviewed (§ 291.505(d)(4)(ii)(D) and (d)(6)(iv)(A));

6. Failure to perform initial serological tests for syphilis in 3 of 10 patient records reviewed (§ 291.505(d)(3)(i));

7. Failure of program physician to ensure that initial serological tests for syphilis were reviewed in 3 of 10 patient records reviewed (§ 291.505(d)(4)(ii)(C));

8. Failure to perform an initial tuberculin skin test and vital signs in 1 of 10 patient records reviewed (§ 291.505(d)(3)(i)); and

9. Failure to maintain accurate drug dispensing records. For example, records failed to record dosages for five patients, which were given to the patients on the 31st of the month (in months with 31 days). Also, records failed to contain batch or code marks of the methadone dispensed traceable to specific patients (§ 291.505(d)(13)(ii)).

On the basis of recurring violations, FDA issued a "Proposal To Revoke Narcotic Treatment Program Approval; Notice of Informal Conference" on October 1, 1992, in accordance with § 291.505(h)(2). The October 1, 1992, notice summarized the violations observed during the last three inspections and offered the sponsor an opportunity to appear at an informal conference and explain why the program approval should not be revoked. The notice also invited the sponsor to submit a "comprehensive action plan" for correcting the deficiencies in the program.

The informal conference was held on January 6, 1993, at FDA's New Orleans District Office. The sponsor did not submit a comprehensive written corrective action plan at the conference. The sponsor indicated, however, that steps had been taken to make necessary corrections and that he had requested that the State and the Center for Substance Abuse Treatment (CSAT) provide technical assistance to the program. FDA's District Office gave the sponsor until February 20, 1993, to submit a written corrective action plan.

In a February 23, 1993, letter to the district office, the sponsor presented a corrective action plan and timeframes for implementation. The action plan included: (1) Installing a computerized dispensing system, (2) hiring additional personnel, and (3) obtaining a commitment for technical assistance. The sponsor asked FDA for one final opportunity to implement the recommendations of the technical assistance group.

FDA held its decision regarding revocation of approval in abeyance pending completion of the technical assistance from CSAT by June 30, 1993, and pending a reinspection of the program. FDA agreed to give the program one final opportunity to achieve regulatory compliance.

The most recent inspection of December 13, 1994, through January 24, 1995, revealed recurring violations in the areas of urinalyses, attendance schedules, medical orders, admission evaluations, counseling, treatment plans, and drug dispensing.

The specific violations were as follows:

1. Failure to provide the required services for two patients regarding pregnancy evaluation, prenatal counseling, and treatment outcome of the patient and offspring (§ 291.505(d)(4)(i)(B));

2. Failure to document in the 13 patient records reviewed that the program physician has considered, at a minimum, the following in determining whether a patient's frequency of clinic visits for observed drug ingesting may be reduced: Absence of recent drug abuse; regularity of clinic attendance; absence of behavioral problems; absence of recent criminal activity; stability of the patient; length of time in treatment; assurance that take-home medication can be safely handled by the patient; and whether the benefits of take-outs outweigh the risks of diversion (§ 291.505(d)(6)(iv)(B));

3. Failure to document that two patients on 6-day, take-home medication had monthly drug screening urinalyses for opiates, methadone, amphetamines, cocaine, barbiturates, and other drugs of abuse performed by a certified clinical laboratory (§ 291.505(d)(2)(i));

4. Failure to justify medication in excess of a 6-day, take-home supply given to three patients; failure to require two patients to complete 3 consecutive years of maintenance treatment at the program before being permitted to reduce their attendance for observation to once weekly; and failure to place one patient, who was receiving a 6-day supply of take-home medication, on probation for 3 months after his urinalysis was positive for a drug of abuse (§ 291.505(d)(4)(ii)(F), (d)(6)(v)(A)(*3*), and (d)(6)(v)(B)(*2*));

5. Failure of the program to have a licensed physician record, date, and sign in 2 of 13 records reviewed a change in each patient's dosage schedule (§ 291.505(d)(6)(i)(B));

6. Failure to document drug addiction and conduct physical examinations on two patients and failure to ensure that a transferring patient received a physical examination and documentation of addiction prior to administering the initial dose of methadone (§ 291.505(d)(1)(i)(C), (d)(4)(ii)(A), and (d)(4)(ii)(B));

7. Failure to ensure that the initial dose of methadone dispensed to two patients did not exceed 30 mg (§ 291.505(d)(6)(i)(A));

8. Failure of the program physician to document his review of initial drug screening urinalysis reports with his signature for two patients; and failure to document the review of random drug-screening urinalysis reports for five patients (§ 291.505(d)(2) and (d)(4)(ii)(C));

9. Failure of the program's counselors to document that three patients received counseling regarding drug-screening urinalyses that showed continued use of illicit drugs or the absence of methadone in these patients while undergoing methadone treatment (§ 291.505(d)(13)(iii));

10. Failure to obtain a signed "Consent to Treatment With an Approved Narcotic Drug" Form from two patients prior to admission to the program (§ 291.505(d)(1)(ii));

11. Failure to document that five patients received counseling on HIV disease upon admission or readmission for treatment (§ 291.505(d)(4)(i)(C));

12. Failure of the admitting physician to document his review of tuberculin skin test reports with his signature in the patient record for four patients; failure of the program physician to include the results of initial serological tests for syphilis in the patient records for nine patients (§ 291.505(d)(3)(ii));

13. Failure of the primary counselor and/or the program physician to countersign treatment plans for eight patients; failure to properly date treatment plan for one patient; failure to have an initial treatment plan on file for readmission of one patient; and failure of the primary counselor or program physician to prepare and review the periodic treatment plan for one patient within the proper timeframes (§ 291.505(d)(3)(iv) and (d)(3)(v));

14. Failure of the program to maintain drug dispensing records that permit traceability of drug lot numbers to specific patients on those days when a change from one lot number to another occurs (§ 291.505(d)(13)(ii));

15. Failure of the program physician to document that he requested from the physician or hospital to which the program referred two pregnant patients a summary of the delivery outcome for the patients and the offspring (§ 291.505(d)(1)(iii)(B)(*3*) and (d)(4)(i)(B)(*2*));

16. Failure to require that a patient, who had only been admitted to the program for 1 month, demonstrate adherence to the program's rules for at least 2 years before allowing the patient to decrease his personal attendance to twice weekly (§ 291.505(d)(6)(v)(A)(*2*)); and

(17) Failure of the program to account for, and require the return of, six extra doses of take-home medication dispensed to a patient for use during out-of-town travel that was subsequently postponed (§ 291.505(d)(13)(ii) and (d)(14)).

At the conclusion of the inspection, the FDA investigator presented a list of observations (Form FDA 483), and discussed the inspectional findings with the sponsor and his staff. The program sponsor promised to respond to the inspectional findings in writing, but has failed to do so.

II. Conclusion, Findings, and Proposed Action

As discussed above, the three most recent inspections of Carter conducted by FDA from September 12 through October 17, 1991; July 9 through July 28, 1992; and December 13, 1994, through January 24, 1995, revealed recurring violations of the Federal narcotic addiction treatment regulation, which sets forth the standards for use of narcotic drugs for medical treatment of narcotic addiction. In letters of December 14, 1991, December 9, 1992, and February 23, 1993, and during the January 6, 1993, informal conference, the sponsor made promises to correct the violations. However, as the December 13, 1994, through January 24, 1995, inspection demonstrated, the sponsor has failed to abide by all of the narcotic addiction treatment regulations, has failed to monitor the activities of those employed in the program adequately, and has generally failed to correct the program's recurring problems.

Accordingly, as provided by § 291.505(h)(3) and (i), the Director, Center for Drug Evaluation and Research, proposed revocation of Carter's program approval to the Associate Commissioner for Regulatory Affairs. The Associate Commissioner for Regulatory Affairs has evaluated the available information and finds that the program sponsor has failed to submit adequate assurances justifying continued approval of the program.

III. Notice of Opportunity for a Hearing

Notice is hereby given to the sponsor of the Narcotic Treatment Program listed above, and to all other interested persons, that the Associate Commissioner for Regulatory Affairs, under authority delegated to him (21 CFR 5.20) proposes to issue an order under § 291.505(h)(3) revoking approval of the "Application for Approval for Use of Narcotic Drugs in a Treatment Program" (Form FDA–2632) held by The Dr. Oscar E. Carter, Jr., Memorial Rehabilitation Center, Inc., 5500 North Johnson St., New Orleans, LA 70117, on the grounds stated above. In accordance with part 314 (21 CFR part 314), the sponsor is hereby given an opportunity for a hearing to show why approval should not be revoked.

The sponsor who decides to seek a hearing shall file: (1) On or before September 11, 1995, a written notice of appearance and request for a hearing, and (2) on or before October 10, 1995, information and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, submissions of data, information, and analyses to justify a hearing, other comments, and the granting or denial of a hearing are contained in § 314.200.

The failure of the applicant to file a timely written notice of appearance and request for a hearing, as required by § 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that

person's narcotic addiction treatment program.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the revocation of approval of the application, or when a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for a hearing are to be filed in six copies. Except for data and information prohibited from public disclosure under 42 CFR part 2, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 4, 1995.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 95–19885 Filed 8–10–95; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on July 21.

1. National Institutes of Health Construction Grants—42 CFR Part 52b–NPRM—New—Revised regulations governing NIH construction grants require the transfer of a facility or the owner of a facility, the use of which has changed, to provide written notice of the sale, transfer or change within 30 days. The regulations also require awardees to maintain and provide daily construction logs and provide a copy of the construction schedules and applicants to provide cost data for projects involving the acquisition of existing facilities. *Respondents:* Federal agencies or employees, Non-profit institutions; *Number of Respondents:* 1; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1 hour; *Estimated Annual burden:* 1 hour. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

2. AIDS Drug Discovery and Development Industry Survey—New—The National Task Force on AIDS Drug Development has identified inadequate levels of private sector activity in HIV/AIDS drug discovery targeting the human immunodeficiency virus (HIV) on molecular level as a significant obstacle to the development of new therapies. The Public Health Service is conducting this survey to determine the extent of private sector activity in this area, and to determine whether there are obstacles to further activity and collaboration in HIV/AIDS drug discovery and development between the public and private sectors. *Respondents:* Business or other for-profit; *Number of Respondents:* 300; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 2 hours; *Estimated Annual burden:* 600 hours. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: August 1, 1995.

James Scanlon,

Director, Data Policy Staff Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–19383 Filed 8–10–95; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 18607, April 12, 1995) is amended to reflect a reorganization within the Office of the Director, Office of Research Services (ORS). The reorganization consists of establishing the Office of Quality Development. This reorganization is consistent with Administration objectives related to the National Performance Review and the Continuous Improvement Program. This reorganization will enable ORS to better fulfill its mission by centralizing the focus of widespread reengineering, streamlining, and quality management efforts that are currently taking place within ORS.

Section HN–B, Organization and Functions, is amended as follows: Under the heading *Office of the Director (HNAL1), Office of Research Services (HNAL),* insert the following:

Office of Quality Development (HNAL13). (1) Provides leadership and support to ORS management in developing methods to move ORS towards a total quality culture in customer service and customer and employee satisfaction; (2) promotes quality development initiatives across ORS through management consultation, reinvention efforts, organizational redesign, total quality management, team building, strategic planning, human resource development, and effective training of managers and employees; and (3) serves as the focal point for ORS streamlining initiatives aimed at achieving downsizing targets and achieving customer satisfaction through continuous process improvement, reengineering and other organizational quality improvement methods.

Dated: July 28, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–19873 Filed 8–10–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; Statement of Organizations, Functions and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 18607, April 12, 1995), is amended to reflect the establishment of the Office of Information Systems Management (OISM) within the National Center for Human Genome Research (NCHGR). The establishment of the OISM will streamline organization within the NCHGR by bringing together all NCHGR staff with responsibility for information systems management under one umbrella organization and allow the Center to operate more effectively by making the most efficient use of manpower and resources.

Section HN-B, Organization and Functions is amended as follows:

Under the heading *National Center for Human Genome Research (HN4),* add the title and functional statement for the OISM as follows:

Office of Information Systems Management (HN416): (1) Provides technical leadership and advice to all levels of Center management in order to obtain maximum utilization of current ADP resources and advancements in the field of information systems technology and telecommunications; (2) determines requirements, designs, implements and coordinates the Center's management information systems which collect, maintain, and report various types of administrative information; (3) advises the NCHGR Director, Deputy Director and Executive Officer, and other Center staff on the technological and policy impact and implications of developments in information systems and related fields within and outside the government; (4) coordinates staff activities with those of contractors, other components of NIH, and other Federal and non-Federal data processing agencies; (5) provides user support, including training, in LAN/information systems capabilities, programs and procedures.

Under the heading *Office of Policy Coordination (HN415),* delete "(6) plans and coordinates computer network operations", since these activities have been incorporated into the functional statement for the OISM.

Under the heading *Office of Information Management (HN45E),* delete the title and functional statement in their entirety, since these activities have been incorporated into the Office of Information Systems Management.

Dated: July 28, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–19874 Filed 8–10–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–49]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David Pollack, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-fee number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice [*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW, Rm. 4133, Washington, DC 20314–1000; (202) 761–0520; GSA: Ed Guilford, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–2059; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C. St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: August 4, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program, Federal Register Report for 08/11/95

Suitable/Available Properties

Buildings (by State)

California

Bldg. 901
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520001
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 902
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520002
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 903
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520003
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 904
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520004
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 905
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520005
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 906
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520006
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 907
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520007
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 908
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520008
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 909
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520009
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 910
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520010
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 911
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520011
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 912
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520012
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 913
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520013
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 914
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520014
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 915
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520015
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 916
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520016
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 917
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520017
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 918
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520018
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

Bldg. 919
Former Presidio of San Francisco
San Francisco Co: San Francisco CA 94129–
Landholding Agency: Interior
Property Number: 619520019
Status: Surplus
Comment: 2-story wood frame bldgs.; lead paint & asbestos; off-site removal only; incs. office space, warehouse & housing

NPS Residence #723
Rancheria Flat Road
El Portal Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 619520026
Status: Excess
Comment: 2210 sq. ft., one story wooden frame residence, off-site use only

Brown House 07–129
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520030
Status: Excess
Comment: 1 story wood frame residence, off-site removal only

Christ House 07–130
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520031
Status: Excess
Comment: 1269 sq. ft., 1 story wood frame residence, off-site removal only, need repairs

Dunkley House 07–127
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520032
Status: Excess
Comment: 1269 sq. ft., 1 story wood frame residence, need repairs, off-site removal only

Graton House 07–125
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520033
Status: Excess

Comment: 1665 sq. ft., 1 story wood frame residence, need repairs, off-site removal only

Schach House 07–105
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520034
Status: Excess
Comment: 700 sq. ft., 1 story wood frame residence, off-site removal only, need repairs

Young House 07–132
Highway 199
Hiouchi Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520035
Status: Excess
Comment: 1442 sq. ft., 1 story wood frame residence, off-site removal only

Colorado

Bldg. 00038
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001–
Landholding Agency: COE—BC
Property Number: 329530007
Status: Unutilized
Base closure
Number of Units: 1
Comment: 846 sq. ft., wood or brick frame, secured area w/alt. access incs. credit union, storage purposes only, bldgs. unutilized until chemical demilitarization is completed in 2004.

Bldg. 00594
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001–
Landholding Agency: COE—BC
Property Number: 329530008
Status: Unutilized
Base closure
Number of Units: 1
Comment: 1000–1400 sq. ft., wood or brick frame, secured area w/alt. access, incs. car wash/maint. fac., storage purposes only, unutil. until chemical demilitarization is completed in 2004

6 Administration Bldgs.
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Location: Includes #s 00153, 00154, 00525, 00542, 00731, 00594
Landholding Agency: COE–BC
Property Number: 329530009
Status: Unutilized
Base closure Number of Units: 6
Comment: 551–46626 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, bldgs. unutilized until chemical demilitarization is completed in 2004

5 Dining Facilities
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Location: Includes #s 00180, 00440, 00556, 00579
Landholding Agency: COE–BC
Property Number: 329530010
Status: Unutilized
Base closure Number of Units: 5
Comment: 727–3557 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, includes lunchrooms & restaurant, unutilized until demilitarization is completed in 2004

16 Support Facilities
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Location: Includes #s 00425, 00427, 00432, 00434, 00558, 00080, 00150, 00164, 00413, 00430, 00494, 00523, 00587, 00032, 00041 & 00042
Landholding Agency: COE–BC
Property Number: 329530011
Status: Unutilized
Base closure Number of Units: 16
Comment: 67–2400 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, incs. cable house, sentry stations, scale houses, unutil. until demilitar. comp.—2004

17 Storage/Shed Facilities
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Location: Includes #s 00542, 00401, 00402, 00408, 00409, 00410, 00407, 00510, 00152, 00162, 00163, 00166–00168, 00157, 00374 & 00503
Landholding Agency: COE–BC
Property Number: 329530012
Status: Unutilized
Base closure Number of Units: 17
Comment: 363–45000 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, incs. liquid props., salv. & surplus storage, unutilized until chemical demil. comp.—2004

20 Storehouses
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Location: Includes #s 00089, 00155, 00131, 00135, 00474, 00560, 00184, 00766, 00771, 00776, 00201, 00203–00209, 00540 & 00936
Landholding Agency: COE–BC
Property Number: 329530013
Status: Unutilized
Base closure Number of Units: 20
Comment: 661–36751 sq. ft., wood or brick frame, secured area w/alt. access, incs. FE storehouses, inflamable materials bldgs, unutilized until chemical demil. comp. in 2004, storage only

19 Maintenance Facs./Shops
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Location: Includes #s 00275, 00323, 00348, 00349, 00373, 00158, 00159, 00590, 00231, 00529, 00532, 00804, 00522, 00941–00943, 00115, 00416 & 00067
Landholding Agency: COE–BC
Property Number: 329530014
Status: Unutilized
Base closure Number of Units: 19
Comment: 30–7294 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, incs. rocket ovhl. facs., dunnage blds, etc., unutilized until chem. demil. comp.—2004

10 Transfer Depots/Range Facs.
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Location: Includes #s 00273, 00296, 00320, 00340, 00365, 00473, 00498, 00946, 01210 & 01220
Landholding Agency: COE–BC
Property Number: 329530015
Status: Unutilized
Base closure Number of Units: 10
Comment: 80–3600 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, blds. are unutilized until chemical demilitarization is completed in 2004

31 Warehouses
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Landholding Agency: COE–BC
Property Number: 329530016
Status: Unutilized
Base closure Number of Units: 31
Comment: 2000–203177 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, incs. gen. purp. & open storage warehouses, unutilized until chem. demil. comp.—2004

38 Ammo Facilities/Shops
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Landholding Agency: COE–BC
Property Number: 329530017
Status: Unutilized
Base closure Number of Units: 38
Comment: 67–14916 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, bldgs. are unutilized until chemical demilitarization is completed in 2004

12 Vehicle Maint. Shops/Facs.
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Location: Includes #s 00567, 00507, 00508, 00575, 00589, 00545, 00546, 00547, 00595, 00594, 00592, & 00074
Landholding Agency: COE–BC
Property Number: 329530018
Status: Unutilized
Base closure Number of Units: 12
Comment: 42–106332 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, incs. gas stat., maint. shops blds. are unutilized until chemical demil. completed in 2004

8 Utility Facilities
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Landholding Agency: COE–BC
Property Number: 329530019
Status: Unutilized
Base closure Number of Units: 8
Comment: 116–17220 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, incs. heating plants, bldgs. unutilized until chemical demilitarization completed in 2004

6 Magazine Facilities
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001-
Location: Includes #00807, 00809, 00816, 00818, 00820 & 00420
Landholding Agency: COE–BC
Property Number: 329530020
Status: Unutilized
Base closure Number of Units: 6
Comment: 69–371 sq. ft., wood or brick frame, secured area w/alt. access, storage purposes only, bldgs. are unutilized until chemical demilitarization is completed in 2004

Former AF Finance Center
3800 York Street
Denver Co: Denver CO 80205-
Landholding Agency: GSA
Property Number: 549310011
Status: Excess
Comment: 293,932 sq. ft., 1-story timber frame with masonry exterior, fair

condition, most recent use—storage, office, rehab
GSA Number: 7–GR–CO–468–D

Massachusetts

17 Single Family Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022-
Landholding Agency: GSA
Property Number: 549520001
Status: Excess
Comment: Various sq. ft., good condition, utilities systems modification

99 Duplex Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022-
Landholding Agency: GSA
Property Number: 549520003
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

20 Fourplex Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022-
Landholding Agency: GSA
Property Number: 549520004
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification

NPS Tract #250–50
Former Kimpel Property
Sheffield Co: Berkshire MA 01257-
Landholding Agency: Interior
Property Number: 619510004
Status: Excess
Comment: 1724 sq. ft., 2 story wood frame house w/detached garage; off-site removal only

Minnesota

Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of the Woods MN 56623-
Landholding Agency: GSA
Property Number: 549230007
Status: Surplus
Comment: 1333 sq. ft., 1-story frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
406 East Hamilton Avenue
Baudette Co: Lake of the Woods MN 56623-
Landholding Agency: GSA
Property Number: 549230008
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
408 East Hamilton Avenue
Baudette Co: Lake of the Woods MN 56623-
Landholding Agency: GSA
Property Number: 549230009
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Coast Guard Family Housing
418 East Hamilton Avenue
Baudette Co: Lake of the Woods MN 56623-
Landholding Agency: GSA
Property Number: 549230010
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence
GSA Number: 2–U–MN–503–E

Nevada

1 Single Family Residence
Tonopah Housing Complex
Tonopah Co: Nye NV 89049-
Landholding Agency: GSA
Property Number: 549430005
Status: Excess
Comment: 1527 sq. ft., 1 story wood residence, 4 bedrooms/2 bathrooms
GSA Number: 9–U–NV–467–C

New Jersey

Sandy Hook Light
Middletown Co: Monmouth NJ 07732-
Location: Adjacent to Gateway National Recreation Area
Landholding Agency: DOT
Property Number: 879340001
Status: Unutilized
Comment: Brick 29' base diameter lighthouse, historic structure, needs major rehab

New Mexico

Hornkohl Property
Petroglyph National Monument
Albuquerque Co: Bernalillo NM 87120–
Landholding Agency: Interior
Property Number: 619510001
Status: Excess
Comment: 1-story wood frame residence, needs rehab, off-site use only

North Carolina

Portion VA Reservation
Nurses Quarters
Oteen Co: Buncombe NC
Landholding Agency: GSA
Property Number: 549320006
Status: Excess
Comment: 8752 sq. ft., 3-story stucco bldg., presence of asbestos, most recent use—educational facility
GSA Number: 4–GR–NC–481B

Dwelling 1
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120083
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall

Dwelling 2
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120084
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall

Dwelling 3
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120085
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall

Ohio

Zanesville Federal Building
65 North Fifth Street
Zanesville Co: Muskingum OH
Landholding Agency: GSA
Property Number: 549520018
Status: Excess
Comment: 18750 sq. ft., most recent use—office, possible asbestos, eligible for listing on the Natl Register of Historic Places
GSA Number: 2–G–OH–781A

Pennsylvania

NPS Tract #380–51
Appalachian National Scenic Trail
Waynesboro Co: Franklin PA 17268–
Landholding Agency: Interior
Property Number: 619520020
Status: Unutilized
Comment: 982 sq. ft. frame house, off-site use only

Former Coleman House
Appalachian Trail Tract 373–37
Big Flats Co: Cumberland PA 17307–
Location: Ridge Road, Route 1
Landholding Agency: Interior
Property Number: 619530008
Status: Excess
Comment: 1008 sq. ft., 1 story concrete block residence, off-site removal only

Former Raffensperger Cabin
Appalachian Trail Tract 373–39
Ridge Road
Big Flats Co: Cumberland PA 17307–
Landholding Agency: Interior
Property Number: 619530009
Status: Excess
Comment: 380 sq. ft., 1 story wood frame, need repairs, off-site removal only, most recent use—hunting cabin

Tennessee

Knoxville Job Corps Center
621 Dale Avenue
Knoxville Co: Knox TN 37921–
Landholding Agency: GSA
Property Number: 549520005
Status: Excess
Comment: 23,445 sq. ft.; 4 stories, concrete, brick, masonry, steel structure; incs. 115,000 sq. ft. parking lot; most recent use—student housing and Job Corps Center
GSA Number: 4–L–TN–641

Federal Building-Post Office
Liberty and Main Streets
Jacksboro Co: Campbell TN 37757–
Landholding Agency: GSA
Property Number: 549520006
Status: Excess
Comment: 3,967 sq. ft., 2 story brick, steel frame; presence of asbestos; most recent use—office space/storage
GSA Number: 4–G–TN–639

Federal Bldg.—Post Office
Main Street and Maiden Lane
Wartburg TN 37887–
Landholding Agency: GSA
Property Number: 549520008
Status: Excess
Comment: 7,603 sq. ft., 1 story, brick structure; most recent use—post office and office space for federal tenants
GSA Number: 4–G–TN–640

Texas

USDA Subtropical Agricultural Research Center
509 West 4th Street
Weslaco Co: Hidalgo TX 78557–
Landholding Agency: GSA
Property Number: 549520007

Status: Excess
Comment: 8000 sq. ft., 1 story; most recent use—office/lab; potential utilities; needs rehab.
GSA Number: 7–A–TX–1039

Virginia

NPS Tract 422–25
Former White property
County Rd. 602 on Moore Run near 4–H Camp
Front Royal Co: Warren VA 22630–
Landholding Agency: Interior
Property Number: 619440002
Status: Excess
Comment: 864 sq. ft., 2-story frame residence, w/Natl. Appalachian Trails System Act, off-site use only

Former Oliver Shed
Appalachian Trail Tract 420–15
Linden Co: Fauquier VA 22642–
Location: Rural, between routes 55 and 638, southeast of Linden
Landholding Agency: Interior
Property Number: 619530010
Status: Excess
Comment: 800 sq. ft., 1 story wood storing shed, off-site removal only

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066
Landholding Agency: DOT
Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., one story residence

Washington

Construction Office Bldg.
Roosevelt Way
Coulee Dam Co: Okanogan WA 99116–
Landholding Agency: Interior
Property Number: 619410002
Status: Excess
Comment: 7778 sq. ft., 1 story frame structure, off-site removal only, most recent use—offices

Wyoming

Ranger Dwelling #1
205 Spring Street
Cokeville Co: Lincoln WY 83114–
Landholding Agency: GSA
Property Number: 549520015
Status: Excess
Comment: 1652 sq. ft., brick residence
GSA Number: 7–A–WY–535

Old Kelley House
Ranger Dwelling #2, 410 Pine Street
Cokeville Co: Lincoln WY 83114–
Landholding Agency: GSA
Property Number: 549520016
Status: Excess
Comment: 2480 sq. ft., log and wood frame home, needs rehab
GSA Number: 7–A–WY–535–A

Land (by State)

Arizona

Tract No. APO–SRP–RB–5
Mesa Co: Maricopa AZ 85213–
Location: 2000' south of Thomas Road at Val Vista Drive
Landholding Agency: Interior
Property Number: 619410005
Status: Unutilized
Comment: 0.57 acre; 20 foot strip of land which is 1,026 ft. long

California

Receiver Site
Dixon Relay Station
7514 Radio Station Road
Dixon CA 95620–9653
Location: Approximately .16 miles southeast of Dixon, CA.
Landholding Agency: GSA
Property Number: 549010042
Status: Excess
Comment: 80 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, limited utilities.
GSA Number: 9–2–CA–1162–A

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Surplus
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions
GSA Number: 9–2–CA–1308

(P) Camp Elliott
Rosedale Tract
San Diego Co: San Diego CA
Landholding Agency: GSA
Property Number: 549310008
Status: Surplus
Comment: Parcel 1–0.15 acre, Parcel 2–0.17 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider
GSA Number: 9–GR(6)–CA–694A

L–4 Reservoir
La Quinta Co: Riverside CA 92253–
Location: Borders Adams St., ¼ mile north of Calle Tampico
Landholding Agency: Interior
Property Number: 619410004
Status: Excess
Comment: 1.69 acres; concrete reservoir; most recent use—water retention

Colorado

Golf Range
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001–
Landholding Agency: COE–BC
Property Number: 32953006
Status: Unutilized
Base closure
Number of Units: 1
Comment: secured area w/alternate access, bldgs. are unutilized until chemical demiliatraization is completed in 2004

619 Ammo Storage Pads
Pueblo Depot Activity
Pueblo CO: Pueblo CO 81001–
Landholding Agency: COE–BC
Property Number: 329530021
Status: Unutilized
Base closure
Number of Units: 619
Comment: 200 sq. yds. each, concrete pads

Florida

Jacksonville Com. Annex
U.S. Highway 17
Orange Park Co: Clay FL 32073–
Landholding Agency: GSA
Property Number: 549520013
Status: Excess
Comment: 5.35 fee acres, bldgs. gutted, road easement
GSA Number: 4–D–FL–780

Georgia

Naval Submarine Base
Kings Bay Co: Camden GA
Landholding Agency: GSA
Property Number: 549520012
Status: Excess
Comment: 20+ acres, elementary school on site/not owned by Fed. Govt. leased to Camden County
GSA Number: 4–N–GA–606B

Nebraska

Farm Site
Mead Co: Saunders NE 68041–
Location ⅛ mi north of the intersection of US Hwy 77 & St Hwy 92
Landholding Agency: GSA
Property Number: 549520017
Status: Excess
Comment: 11.35 acres, periodic flooding, sewage disposal, "limited access highway"
GSA Number: 7–C–NE–518

Nevada

Freight Yard
Fallon Rail Facility
Fallon Co: Churchill NV 89406–
Landholding Agency: Interior
Property Number: 619440005
Status: Unutilized
Comment: 6.3 acres, subject to a 10-year lease to the City

Ohio

Middleport Public Access Site
Robert C. Byrd Locks & Dam
Middleport Co: Meigs OH 45760–
Landholding Agency: GSA
Property Number: 319230001
Status: Excess
Comment: approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities
GSA Number: 2–D–OH–793

Puerto Rico

La Hueca—Naval Station
Roosevelt Roads
Vieques PR 00765–
Landholding Agency: GSA
Property Number: 549420006
Status: Excess
Comment: 323 acres, cultural site

Texas

8.83 Acre Tract
Portion, former Fort Wolters
Mineral Wells Co: Parker/Palo Pin TX 76067–
Landholding Agency: GSA
Property Number: 549440004
Status: Excess
Comment: Land w/fomer recreation bldg., bldg. require repairs, potential utilities, parcel contains friable asbestos.
GSA Number: 7–GR–TX–548AA&BB

10.75 Acre Tract
Portion, former Fort Wolters
Mineral Wells Co: Parker/Palo Pin TX 76067–
Landholding Agency: GSA
Property Number: 549440005
Status: Excess
Comment: Land w/former officer's club bldg., bldg. require repairs, potential utilities, parcel contains friable asbestos.

GSA Number: 7–GR–TX–548AA&BB

120.26 Acre Tract
Portion, former Fort Wolters
Mineral Wells Co: Parker/Palo Pin TX 76067–
Landholding Agency: GSA
Property Number: 649440006
Status: Excess
Comment: Unimproved land containing friable asbestos.
GSA Number: 7–GR–TX–548AA&BB

Tracts 909, 954, 958, 967, 970, 971
Whitney Lake Project
Kopprell Co: Bosque TX 76652–
Landholding Agency: GSA
Property Number: 549520009
Status: Excess
Comment: 1.106 acres, maintenance of lake property
GSA Number: 7–D–TX–0505N

Washington

Asotin Quarry-Lower Lock & Dam
West of Upriver Road
Asotin Co: Asotin WA 99402–
Landholding Agency: GSA
Property Number: 549340001
Status: Excess
Comment: 39.42 acres, access easement, most recent use—rock quarry
GSA Number: 9–D–WA–824K

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Ketchikan Ranger House
Ketchikan AK 99901–
Landholding Agency: GSA
Property Number: 549430009
Status: Surplus
Comment: 1832 sq. ft., 2 story residence, needs rehab, on National Register of Historic Places
GSA Number: 9–A–AK–0746

California

Suppiger Residence
Point Reyes National Seashore
Point Reyes Co: Marin CA 94956–
Landholding Agency: GSA
Property Number: 549410003
Status: Excess
Comment: 850 sq. ft., 2 story frame structure, need repairs, off-site removal only, narrow access road, removal restrictions
GSA Number: 9–I–CA–958B

VA Triangular Parcel
1401 Sepulveda Blvd.
Los Angeles Co: Los Angeles CA
Landholding Agency: GSA
Property Number: 549510003
Status: Surplus
Comment: 2904 sq. ft., 1-story bldg. on 2.13 acres, fair condition, possible asbestos
GSA Number: 9–G–CA–514K

Kansas

U.S. Post Office & Courthouse
812 North 7th Street
Kansas City Co: Wyandotte KS 66101–
Landholding Agency: GSA
Property Number: 549420003
Status: Excess
Comment: 52257 sq. ft., 4-story plus basement, presence of asbestos and lead based paint, most recent use—offices
GSA Number: 7–G–KS–0514

Kentucky

Federal Building
4th & Main Streets
Danville Co: Boyle KY 40422–
Landholding Agency: GSA
Property Number: 549430015
Status: Excess
Coment: 4890 sq. ft., 3-story, stone-concrete foundation, presence of asbestos, first floor occupied by US Court of Appeals Judge & staff until expiration of his tenure
GSA Number: 4–G–KY–604

Maine

9 Capehart Family Houses
Charleston Family Housing Annex, Union St.
Bangor Co: Penobscot ME
Landholding Agency: GSA
Property Number: 189310052
Status: Surplus
Comment: 2916–7097 sq. ft., 1–2 story wood, 3-duplexes, 24-fourplexes totaling 114 units with garages
GSA Number: 2–D–ME–526G

Mount Desert Rock Light
U.S. Coast Guard
Southwest Harbor Co: Hancock ME 04679–
Landholding Agency: DOT
Property Number: 879240023
Status: Unutilized
Comment: 1600 sq. ft., 2-story wood frame, dwelling, needs rehab, limited utilities, limited access, property is subject to severe storms

Little River Light
U.S. Coast Guard
Cutler Co: Washington ME
Landholding Agency: DOT
Property Number: 879240026
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, well is contaminated, limited utilities

Burnt Island Light
U.S. Coast Guard
Southport Co: Lincoln ME 04576–
Landholding Agency: DOT
Property Number: 879240027
Status: Unutilized
Comment: 750 sq. ft., 2-story wood frame dwelling

Massachusetts

Lowell Federal Building
50 Kearny Square
Lowell Co: Middlesex MA 01854–
Landholding Agency: GSA
Property Number: 549320003
Status: Excess
Comment: 40,283 sq. ft., 3-story concrete and steel bldg., most recent use—storage/office and medical clinic
GSA Number: 2–G–MA–778

Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 879240024
Status: Unutilized
Comment: 1000 sq. ft., 2-story brick dwelling, large wave action with severe ocean storms

Assistant Keepers Dwelling
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport Co: Essex MA 01966–
Landholding Agency: DOT
Property Number: 879240025
Status: Unutilized
Comment: 1100 sq. ft., 2-story wood frame dwelling, large wave action with severe ocean storms

Michigan

Detroit Job Corps Center
10401 E. Jefferson & 1438 Garland;
1265 St. Clair
Detroit Co: Wayne MI 42128–
Landholding Agency: GSA
Property Number: 549510002
Status: Surplus
Comment: Main bldg. is 80,590 sq. ft., 5-story, adjacent parking lot, 2nd bldg. on St. Clair Ave. is 5140 sq. ft., presence of asbestos in main bldg., to be vacated 8/95
GSA Number: 2–L–MI–757

Minnesota

Army Reserve Center
301 Lexington Ave. South
New Prague Co: LeSueur MN 56071–
Landholding Agency: GSA
Property Number: 549330003
Status: Surplus
Comment: 4316 sq. ft. brick veneer and concrete block office and training bldg. and a 1170 sq. ft. maintenance shop on 3.82 acres of land leased by the city
GSA Number: 2–D–MN–558

Missouri

Federal Office Building
911 Walnut Street
Kansas City Co: Jackson MO 64106–
Landholding Agency: GSA
Property Number: 549510005
Status: Excess
Comment: 210,098 sq. ft., concrete/brick structure, 50% occupied until 6/95, does not meet handicap reqs., most recent use—offices
GSA Number: 7–G–MO–0626

Nebraska

Bldg. 20, Portion of VA Center
600 South 70th Street
Lincoln Co: Lancaster NE 68510–
Landholding Agency: GSA
Property Number: 549430003
Status: Excess
Comment: 3428 sq. ft., 2 story, needs major rehab, presence of asbestos, ornamental concrete block structure
GSA Number: 7–GR–NE–427C

Nevada

17 Single Family Residences
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430004
Status: Excess
Comment: 1192 to 1378 sq. ft., 1 story wood residences, 3 bedrooms/1 bathroom, (4 of these residences are unavailable for homeless asst. use due to a compelling Federal need)
GSA Number: 9–U–NV–467–C

Bldg. 111
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430006

Status: Excess
Comment: 2507 sq. ft., most recent use—office
GSA Number: 9–U–NV–467–D

Bldg. 112
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430007
Status: Excess
Comment: 1920 sq. ft., most recent use—storage
GSA Number: 9–U–NV–467–D

Bldg. 120
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430008
Status: Excess
Comment: 1440 sq. ft., most recent use—motor pool
GSA Number: 9–U–NV–467–D

New Mexico

Socorro Field Division Office
2401 State Road 1
Socorro NM 87801–0678
Landholding Agency: GSA
Property Number: 549510004
Status: Surplus
Comment: 8056 sq. ft., 1 story wood and metal frame, most recent use—offices/shop/storage, fair condition, off-site removal only
GSA Number: 7–I–NM–0564

Mobile Home, GQ
Gran Quivira Ruins
Mountainair Co: Socorro NM 87036–
Landholding Agency: Interior
Property Number: 619430003
Status: Excess
Comment: 938 sq. ft.; wood frame/wood siding mobile home; off-site removal only

North Carolina

Federal Bldg.—Post Office
226 Carthage Street
Sanford Co: Lee NC 27330–
Landholding Agency: GSA
Property Number: 549440013
Status: Excess
Comment: 5195 sq. ft., 2 story brick frame, water damage in basement, existing lease for 88% of building, most recent use—office/storage
GSA Number: 4–G–NC–713

Pennsylvania

Storage & Maint. Facility
1200 Airport Road
Hopewell Co: Beaver PA 15001–
Landholding Agency: GSA
Property Number: 549330004
Status: Excess
Comment: 44157 sq. ft., 1-story concrete block bldg. (inadequate heating) and 19 acres of land, easements for pipelines and public utilities
GSA Number: 4–L–PA–766

Texas

Bldg. 2
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014815
Status: Unutilized
Comment: 94606 sq. ft., 1 story wood, masonry, and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 4
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014816
Status: Excess
Comment: 1350 sq. ft.; 1 story structured clay title and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 17
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014817
Status: Excess
Comment: 68 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.
GSA Number: 7–D–TX–879A

Bldg. 29
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014818
Status: Excess
Comment: 5028 sq. ft.; 1 story wood, masonry and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 30
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014819
Status: Excess
Comment: 5323 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 18
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014820
Status: Excess
Comment: 9560 sq. ft.; 1 story wood, masonry and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 6
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014821
Status: Excess
Comment: 1258 sq. ft.; 1 story structured clay tile and metal frame; subject to pipeline easement; needs rehab.
GSA Number: 7–TX–879A

Bldg. 7
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014822
Status: Excess
Comment: 508 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 8
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014824
Status: Excess
Comment: 171 sq. ft.; 2 story concrete block and brick; subject to sewer pipeline easement; needs rehab; most recent use—watch tower.
GSA Number: 7–D–TX–879A

Bldg. 16
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014825
Status: Excess
Comment: 17263 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 19
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014826
Status: Excess
Comment: 25399 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 31
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014827
Status: Excess
Comment: 1392 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 9
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014828
Status: Excess
Comment: 244 sq. ft.; 1 story wood, hollow tile and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 25
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014829
Status: Excess
Comment: 1320 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—fire house.
GSA Number: 7–D–TX–879A

Bldg. 10
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014830
Status: Excess
Comment: 354 sq. ft.; 2 story concrete block and brick; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–897A

Bldg. 26
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA

Property Number: 219014831
Status: Excess
Comment: 3510 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 21
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014832
Status: Excess
Comment: 65 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.
GSA Number: 7–D–TX–879A

Bldg. 22
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014833
Status: Excess
Comment: 50581 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Bldg. 27
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014834
Status: Excess
Comment: 228 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—control tower.
GSA Number: 7–D–TX–879A

Bldg. 32
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014835
Status: Excess
Comment: 19546 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A

Del Rio Federal Building
Main at Broadway
Del Rio Co: Val Verde TX 78840–
Landholding Agency: GSA
Property Number: 549310001
Status: Excess
Comment: 15600 sq. ft.; 3 story plus basement, masonry frame, most recent use—offices and courthouse.
GSA Number: 7–G–TX–1034

19 Buildings and Land
Subtropical Agricultural Research Worksite
Brownsville Co: Cameron TX 78520–
Landholding Agency: GSA
Property Number: 549440007
Status: Excess
Comment: 25,000 sq. ft. structures, 1 story, pres. of asbestos, most recent use—housing, 18.76 acres which includes 16 acres of vacant land
GSA Number: 7–A–TX–0451G

Brownsville Urban System
(Grantee)
700 South Iowa Avenue
Brownsville Co: Cameron TX 78520–
Landholding Agency: DOT
Property Number: 879010003
Status: Unutilized
Comment: 3500 sq. ft., 1 story concrete block, (2nd floor of Admin. Bldg.) on 10750 sq. ft. land, contains underground diesel fuel tanks

West Virginia

Point Pleasant Depot
State Route 35
Point Pleasant Co: Mason WV
Landholding Agency: GSA
Property Number: 549430013
Status: Excess
Comment: 2400 sq. ft. masonry storage bldg., 936 sq. ft. garage, on 275 acres of land
GSA Number: WV0015PP

Land (by State)

Alaska

Nome Site
Lot 10, Block 67
E. Fifth Avenue
Nome Co: Nome AK 99762–
Landholding Agency: GSA
Property Number: 549510007
Status: Excess
Comment: 17000 sq. ft., trailer site, no known uitility hook up
GSA Number: 9–A–AK–619E

Arizona

Land—640 acres
Ave. B—County 23 St.
Yuma Co: Yuma AZ 85364–
Landholding Agency: Interior
Property Number: 619340001
Status: Unutilized
Comment: desert land, currently no water available, possible lease restrictions

Tract No. APO–SRP–JL–4
West of 91st Ave. & South of Indian School Rd Co: Maricopa AZ
Landholding Agency: Interior
Property Number: 619340002
Status: Unutilized
Comment: 26 foot strip of land 800 feet long, possible easement restrictions

Quartermaster Depot
4th Avenue and Colorado River
Yuma Co: Yuma AZ 85364–
Landholding Agency: Interior
Property Number: 619420001
Status: Unutilized
Comment: Less than 1 acre, dirt and shrubbery along the river, lease restrictions, historical site

California

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Excess
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions
GSA Number: 9–2–CA–1308

Folsom South Canal
SW corner of Whiterock Rd. & Folsom S Canal
Rancho Cordova Co: Sacramento CA 95670–
Landholding Agency: Interior
Property Number: 619310002
Status: Excess
Comment: 1.52 acres, perpetual easement over .25 acre, surrounding land use is commercial

Oklahoma

Parcel No. 43
Fort Gibson Lake
Section 11
Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011371
Status: Surplus
Comment: 60.09 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0006

Parcel No. 49
Fort Gibson Lake
Section 15
Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011377
Status: Surplus
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0007

Washington

Former Stadium Homes site
1701 28th Avenue, South
Seattle Co: King WA 98144–
Landholding Agency: GSA
Property Number: 549410005
Status: Excess
Comment: 1.46 acres; most recent use—highway equipment storage; potential for city utility services; land slopes
GSA Number: 9–GR(1)–WA–543

Sandpoint Control Tower
Near 7600 Sandpoint Way, NE
Seattle Co: King WA 98115–
Landholding Agency: GSA
Property Number: 549440003
Status: Excess
Comment: 11.3 acres, w/deteriorated bldg. and parking lot
GSA Number: 9–C–WA–1069

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 879310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only

Nauset Beach Light
Nauset Beach Co: Barnstable MA
Landholding Agency: DOT
Property Number: 879420001
Status: Unutilized
Comment: 48 foot tower, cylindrical cast iron, most recent use—aid to navigation

Plymouth Light
Co: Plymouth MA
Landholding Agency: DOT
Property Number: 879420003
Status: Unutilized

Comment: 250 sq. ft. tower, and 2096 sq. ft. dwelling, wood frame, most recent use—aid to navigation/housing

Light Tower, Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430005
Status: Excess
Comment: 66 ft. tower, 14'9" diameter, brick structure, scheduled to be vacated 9/94

Keepers Dwelling
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430006
Status: Excess
Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94

Duplex Housing Unit
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430007
Status: Excess
Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94

Oregon

Yaquina Head Lighthouse
860 Lighthouse Drive
Newport Co: Lincoln OR 97365–
Landholding Agency: DOT
Property Number: 879430003
Status: Underutilized
Comment: 300 sq. ft. tower and needs repair, 4.52 acres lighthouse area, historic property

Washington

Quarters No. 1204
604 S. Maple
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330001
Status: Excess
Comment: 850 sq. ft., one story frame residence, asbestos siding

Quarters No. 1208
608 S. Maple
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330002
Status: Excess
Comment: 709 sq. ft., one story frame residence, asbestos siding

Quarters No. 1301
3 SE and N Warden Road
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330003
Status: Excess
Comment: 709 sq. ft., one story frame residence on 4.9 acres, asbestos siding

Land (by State)

California

Tehama Colusa Canal
Portion of Unit No. T–2
Red Bluff Co: Tehama CA 96080–
Landholding Agency: Interior
Property Number: 619510007
Status: Excess
Comment: 4.02 acres, sloped banks, legal access would have to be conveyed to new owner, most recent use—spoil material

Michigan

U.S. Coast Guard—Air Station
Traverse City Co: Grand Traverse MI 49684–
Landholding Agency: DOT
Property Number: 879120099
Status: Underutilized
Comment: 21.7 acres, most recent use—helo landings

Unsuitable Properties

Buildings (by State)

Alabama

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120001
Status: Excess
Reason: Floodway

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120002
Status: Excess
Reason: Floodway

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120003
Status: Excess
Reason: Floodway

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120004
Status: Excess
Reason: Floodway

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120005
Status: Excess
Reason: Floodway

Alaska

USCG MSD Office (2 buildings)
2958 Tongass Avenue
Ketchikan Co: Ketchikan AK 99901–
Landholding Agency: GSA
Property Number: 879130004
Status: Excess
Reason: Extensive deterioration

Bldg. 28
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210126
Status: Excess
Reason: Within airport runway clear zone; Secured Area

Bldg. 24
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210127
Status: Excess
Reason: Within airport runway clear zone; Secured Area; Within 2000 ft. of flammable or explosive material

Bldg. 19
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210128
Status: Excess
Reason: Within airport runway clear zone; Secured Area; Other
Comment: Extensive deterioration

Bldg. 94
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210129
Status: Excess
Reason: Secured Area; Other
Comment: Extensive deterioration

Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210132
Status: Excess
Reason: Secured Area; Within airport runway clear zone
GSA Number: U–ALAS–655A

Bldg. A512
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 879210133
Status: Excess
Reason: Secured Area; Within airport runway clear zone; Within 2000 ft. of flammable or explosive material

Bldg. R1, Holiday Beach
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310014
Status: Unutilized
Reason: Secured Area

Bldg. S–3
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310015
Status: Unutilized
Reason: Secured Area

Bldg. S–16
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310016
Status: Unutilized
Reason: Secured Area

Bldg. 82
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310017
Status: Unutilized
Reason: Secured Area

Bldg. 86
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014

Landholding Agency: DOT
Property Number: 879310018
Status: Unutilized
Reason: Secured Area

Bldg. 98
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310019
Status: Unutilized
Reason: Secured Area

Bldg. 524A
U.S. Coast Guard Support Center
Kodiak Co: Kodiak island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310020
Status: Unutilized
Reason: Within airport runway clear zone Secured Area

Bldg. 624
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 879310021
Status: Unutilized
Reason: Within airport runway clear zone Secured Area

Housing Ketchikan (Naushon UPH
3615 Baranof Avenue
Ketchikan Co: Ketchikan AK 99801–
Landholding Agency: DOT
Property Number: 879320005
Status: Unutilized
Reason: Extensive deterioration

Old Petersburg Moorings
Cannery Wharf
Petersburg AK 99833–
Landholding Agency: DOT
Property Number: 879330002
Status: Unutilized
Reason: Extensive deterioration

Arkansas

Silver Hill Cabin
Buffalo National River
St. Joe Co: Newton AR 72775–
Landholding Agency: Interior
Property Number: 619440003
Status: Unutilized
Reason: Extensive deterioration

Paul Ray/Barbara Still House
Hwy. 268
Yellville Co: Marion AR 72687–
Landholding Agency: Interior
Property Number: 619440006
Status: Unutilized
Reason: Extensive deterioration

Hagerty Residence
102 Shore Drive
Hot Springs Co: Garland AR 71901–
Landholding Agency: Interior
Property Number: 619530002
Status: Excess
Reason: Extensive deterioration

Meyers Residence
101 Granger Drive
Hot Springs Co: Garland AR 71901–
Landholding Agency: Interior
Property Number: 619530003
Status: Excess
Reason: Extensive deterioration

Bednar Residence
106 Clinton Street
Hot Springs Co: Garland AR 71901–
Landholding Agency: Interior
Property Number: 619530004
Status: Excess
Reason: Extensive deterioration

Disheroon Residence
100 Akin Street
Hot Springs Co: Garland AR 71901–
Landholding Agency: Interior
Property Number: 619530005
Status: Excess
Reason: Extensive deterioration

Swain Residence
200 Earhart Street
Hot Springs Co: Garland AR 71901–
Landholding Agency: Interior
Property Number: 619530006
Status: Excess
Reason: Extensive deterioration

Scott Residence
207 Congress Street
Hot Springs Co: Garland AR 71901–
Landholding Agency: Interior
Property Number: 619530007
Status: Excess
Reason: Extensive deterioration

California

Former Naval Research Bldg.
Pasadena Co: Los Angeles CA 91106–
Landholding Agency: GSA
Property Number: 549430001
Status: Excess
Reason: Extensive deterioration
GSA Number: 9–N–CA–1304A

NW Seal Rock & Lighthouse
St. George Reef Co: Del Norte CA
Landholding Agency: GSA
Property Number: 549430012
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–U–CA–556B

Naval Indust. Rsve. Ord. Plant
Pomona Co: Los Angeles CA 91769–2426
Landholding Agency: GSA
Property Number: 549520019
Status. Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–N–CA–734B

Bldg. 4147, Downey House
Tract 01–40
Wawona Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 619520024
Status. Unutilized
Reason: Extensive deterioration

Yosemite Village Gas Station/Photo Center
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 619520025
Status. Unutilized
Reason: Extensive deterioration

Dixon Residence 08–102
Oceanview Terrace
Klamatch Co: Del Norte CA 95548–
Landholding Agency: Interior
Property Number: 619520027
Status. Unutilized
Reason: Extensive deterioration

Waterson Residence 08–107
Oceanview Terrace
Klamatch Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619520036
Status. Unutilized
Reason: Extensive deterioration

10 Bldg.
USCG Station Humboldt Bay
Samoa Co: Humboldt CA 95564–9999
Landholding Agency: DOT
Property Number: 879440027
Status. Excess
Reason: Extensive deterioration
Comment: Land to be relinquished to BLM (Public Domain Land)

Colorado

Waste Treatment Facilities
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001–
Landholding Agency: COE–BC
Property Number: 329530001
Status. Unutilized
Base closure Number of Units: 1
Reason: Other
Comment: Waste treatment facility

2 Powder Storage Magazines
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001–
Landholding Agency: COE–BC
Property Number: 329530002
Status. Unutilized
Base closure Number of Units: 2
Reason: Within 2000 ft. of flammable or explosive material

3 Buildings
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001–
Location: Includes 00533, 00534 & 00536
Landholding Agency: COE–BC
Property Number: 329530003
Status. Unutilized
Base closure Number of Units: 3
Reason: Other
Comment: Sewage pump stations

6 Buildings
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001–
Location: Includes 00170, 00186, 00187, 00562, 00566 & 00596
Landholding Agency: COE–BC
Property Number: 329530004
Status. Unutilized
Base closure Number of Units: 6
Reason: Other
Comment: Detached latrines

618 Igloo Storage Facilities
Pueblo Depot Activity
Pueblo Co: Pueblo CO 81001–
Landholding Agency: COE–BC
Property Number: 329530005
Status. Unutilized
Base closure Number of Units: 1
Reason: Within 2000 ft. of flammable or explosive material

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 879010014
Status. Unutilized
Reason: Other environmental
Comment: Contamination

Connecticut

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 879240031
Status. Unutilized
Reason: Extensive deterioration

Status. Unutilized
Reason: Floodway

Florida

Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 879210008
Status: Unutilized
Reason: Secured Area, Floodway

Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 879230001
Status: Unutilized
Reason: Floodway, Secured Area

Exchange Building
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 879410004
Status: Unutilized
Reason: Floodway

9988 Keepers Quarters A
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440009
Status: Underutilized
Reason: Secured Area, Floodway

9989 Keepers Quarters B
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440010
Status: Underutilized
Reason: Secured Area, Floodway

9990 Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440011
Status: Underutilized
Reason: Secured Area, Floodway

9991 Plant Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440012
Status: Underutilized
Reason: Secured Area, Floodway

9992 Shop Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440013
Status: Underutilized
Reason: Secured Area, Floodway

9993 Admin. Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440014
Status: Underutilized
Reason: Secured Area, Floodway

9994 Water Pump Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440015
Status: Underutilized
Reason: Secured Area, Floodway

Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440016
Status: Underutilized
Reason: Secured Area, Floodway

9999 Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 879440017
Status: Underutilized
Reason: Secured Area, Floodway

3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 879510009
Status: Unutilized
Reason: Secured Area, Floodway

Illinois

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 879310005
Status: Excess
Reason: Secured Area

Maine

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240005
Status: Unutilized
Reason: Floodway

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240006
Status: Unutilized
Reason: Floodway

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240007
Status: Unutilized
Reason: Floodway

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 879240008
Status: Unutilized
Reason: Floodway

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 879240032
Status: Unutilized
Reason: Floodway

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 879240035
Status: Unutilized
Reason: Extensive deterioration

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT
Property Number: 879320024
Status: Unutilized
Reason: Extensive deterioration

Nash Island Light
U.S. Coast Guard
Addison Co: Washington ME 04606–
Landholding Agency: DOT
Property Number: 879420005
Status: Unutilized
Reason: Other
Comment: Inaccessible

Bldg.—South Portland Base
U.S. Coast Guard
S. Portland Co: Cumberland ME 04106–
Landholding Agency: DOT
Property Number: 879420006
Status: Unutilized
Reason: Secured Area

Garage—Boothbay Harbor Stat.
Boothbay Harbor Co: ME 04538–
Landholding Agency: DOT
Property Number: 879430001
Status: Unutilized
Reason: Secured Area

Massachusetts

Trailers, Former Kimpel Prop.
South Egremont
Sheffield Co: Berkshire MA 01257–
Landholding Agency: Interior
Property Number: 619510003
Status: Excess
Reason: Extensive deterioration

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 879240001
Status: Underutilized
Reason: Secured Area

Eastern Point Light
U.S. Coast Guard
Goucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 879240029
Status: Unutilized
Reason: Floodway Secured Area

Storage Shed
Highland Light
N. Truro Co: Barnstable MA 02652–
DeSoto Johnson
Landholding Agency: DOT
Property Number: 87940004
Status: Unutilized
Reason: Extensive deterioration

Michigan

Bldg. 402, U.S. Air Station
Traverse City Co: Grand Traverse MI 49684–3585
Landholding Agency: DOT
Property Number: 879220001
Status: Unutilized
Reason: Extensive deterioration

Minnesota

Naval Weapons Industrial
Reserve Plant
1902 West Minnehaha
St. Paul Co: Ramsey MN
Landholding Agency: GSA

Property Number: 549410004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 2–N–MN–559

Mississippi

Natchez Moorings
82 L.E. Berry Road
Natchez Co: Adams MS 39121-
Landholding Agency: DOT
Property Number: 879340002
Status: Unutilized
Reason: Extensive deterioration

Montana

Sioux Pass Radio Relay Tower
17 Miles South of Culbertson Co: Richland MT 57212-
Landholding Agency: GSA
Property Number: 549320012
Status: Excess
Reason: Other
Comment: No public access
GSA Number: 7–F–MT–594

Barn/Garage
316 N. 26th Street
Billings Co: Yellowstone MT
Landholding Agency: Interior
Property Number: 619520022
Status: Excess
Reason: Extensive deterioration

Nevada

Residence
237 Southeast Street
Fallon Co: Churchill NV 89406-
Landholding Agency: Interior
Property Number: 619430013
Status: Unutilized
Reason: Extensive deterioration

Storage Shed
Fallon Rail Facility
Fallon Co: Churchill NV 89406-
Landholding Agency: Interior
Property Number: 619440004
Status: Unutilized
Reason: Extensive deterioration

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 879240009
Status: Unutilized
Reason: Extensive deterioration; Secured Area

Chapel Hill Front Range Light Tower
Middletown Co: Monmouth NJ 07748-
Landholding Agency: DOT
Property Number: 879440002
Status: Unutilized
Reason: Other
Comment: Skeletal tower

New Mexico

Tract 102–34 (Gravette Resid.)
Lava Tubes District
Grants Co: Cibola NM 87020-
Landholding Agency: Interior
Property Number: 619510005
Status: Unutilized
Reason: Extensive deterioration

Tract 102–37 (Abeita)
Grants Co: Cibola NM 87020-
Landholding Agency: Interior
Property Number: 619510006
Status: Excess
Reason: Extensive deterioration

New York

Naval Indus. Rsv. Ordance Pl.
121 Lincoln Avenue
Rochester Co: Monroe NY 14611-
Landholding Agency: GSA
Property Number: 549430011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: TENT–2–N–NY–592

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477-
Landholding Agency: DOT
Property Number: 879230005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 605, USCG Station
Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240010
Status: Excess
Reason: Secured Area

Bldg. 606, USCG Station
Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240011
Status: Excess
Reason: Secured Area

Bldg. 607, USCG Station
Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240012
Status: Excess
Reason: Secured Area

Bldg. 606, Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240020
Status: Unutilized
Reason: Secured Area

Bldg. 607, Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240021
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive deterioration

Bldg. 605, Fort Totten
New York Co: Queens NY 11359-
Landholding Agency: DOT
Property Number: 879240022
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive deterioration

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743-
Landholding Agency: DOT
Property Number: 879310003
Status: Unutilized
Reason: Extensive deterioration; Secured Area

Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004-
Landholding Agency: DOT
Property Number: 879320025
Status: Unutilized
Reason: Secured Area

Bldg. 138
U.S. Coast Guard Support Center
Governors Island Co: Manhattan NY 10004-
Landholding Agency: DOT
Property Number: 879410003
Status: Unutilized
Reason: Secured Area

Point AuRoche Light
Beekmantown Co: Clinton NY 12901-
Landholding Agency: GSA
Property Number: 879420002
Status: Excess
Reason: Floodway; Extensive deterioration
GSA Number: 2–4–NY–817

Bldg. 830
U.S. Coast Guard
Governors Island Co: Manhattan NY 10004-
Landholding Agency: DOT
Property Number: 879420004
Status: Unutilized
Reason: Secured Area

Rochester Harbor Light
Greece Township Co: Monroe NY
Landholding Agency: DOT
Property Number: 879430008
Status: Excess
Reason: Secured Area; Extensive deterioration

North Carolina

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879240018
Status: Unutilized
Reason: Secured Area

Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879240019
Status: Unutilized
Reason: Secured Area

Bldg. 21, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320010
Status: Unutilized
Reason: Floodway; Secured Area

Bldg. 22, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320011
Status: Unutilized
Reason: Floodway; Secured Area

Bldg. 25, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320012
Status: Unutilized
Reason: Floodway; Secured Area

Bldg. 27, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320013
Status: Unutilized
Reason: Floodway; Secured Area

Bldg. 32, Fuel Farm
U.S. Coast Guard Air Station
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320014
Status: Unutilized
Reason: Floodway Secured Area

Bldg. 67, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320016
Status: Unutilized
Reason: Secured Area

Bldg. 69, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320017
Status: Unutilized
Reason: Secured Area

Bldg. 71, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320018
Status: Unutilized
Reason: Secured Area

Bldg. 73, USCG Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 879320019
Status: Unutilized
Reason: Secured Area

Bldg. 54
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340004
Status: Unutilized
Reason: Secured Area

Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340005
Status: Unutilized
Reason: Secured Area

Water Tanks
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 879340006
Status: Unutilized
Reason: Secured Area

USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601–
Landholding Agency: DOT
Property Number: 879420007
Status: Excess
Reason: Secured Area

Pennsylvania

NPS Tract #362–09 (6 Bldgs)
Former Lehmer Farm
Marysville Co: Perry PA 17053–
Location: Off Route 850
Landholding Agency: Interior
Property Number: 619520023
Status: Excess
Reason: Extensive deterioration

Puerto Rico

NAFA Warehouse
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 879310011
Status: Unutilized
Reason: Secured Area

Storage Equipment Bldg.
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 879330001
Status: Unutilized
Reason: Secured Area

Bldg. 115
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510001
Status: Unutilized
Reason: Secured Area

Bldg. 117
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510002
Status: Unutilized
Reason: Secured Area

Bldg. 118
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510003
Status: Unutilized
Reason: Secured Area

Bldg. 119
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510004
Status: Unutilized
Reason: Secured Area

Bldg. 120
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510005
Status: Unutilized
Reason: Secured Area

Bldg. 122
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510006
Status: Unutilized
Reason: Secured Area

Bldg. 128
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510007
Status: Unutilized
Reason: Secured Area

Bldg. 129
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 879510008
Status: Unutilized
Reason: Secured Area

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 879310002
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldg. 14
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014823
Status: Excess
Reason: Other Comment: Pump house
GSA Number: 7–D–TX–879A

Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 879310012
Status: Unutilized
Reason: Secured Area

Vermont

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 879220003
Status: Excess
Reason: Floodway

Virginia

Chandler House 272 & 272A
220 Zweybrucken Road
Yorktown Co: York VA 23690–
Landholding Agency: Interior
Property Number: 619520028
Status: Unutilized
Reason: Extensive deterioration

Jenkins House, Bldg. JH
218 Zweybrucken Road
Yorktown Co: York VA 23690–
Landholding Agency: Interior
Property Number: 619520029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 879230004
Status: Excess
Reason: Secured Area

Damage Control Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240013
Status: Unutilized
Reason: Secured Area

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 879240014
Status: Unutilized
Reason: Secured Area

Storage Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack, VA 23361–510
Landholding Agency: DOT
Property Number: 879240015
Status: Unutilized

Reason: Secured Area
Little Creek Station
Navamphib Base, West Annex, U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 879310004
Status: Unutilized
Reason: Secured Area

Washington

Bldg. 875
Portion, Ft. Vancouver Barracks
E. 10th & Cabell Road, I–95 North
Vancouver WA
Landholding Agency: GSA
Property Number: 549430002
Status: Excess
Reason: Extensive deterioration
GSA Number: 9–D–WA–500L

Cabins 896 & 897
Olympic National Park
Port Angeles Co: Clallam WA 98362–
Landholding Agency: Interior
Property Number: 619510002
Status: Unutilized
Reason: Extensive deterioration

Perrigo House, Lean To & Shed
LK Quinalt Rgr. Station, Olympic Nat'l Park
Amanda Park Co: Grays Harbor WA 98526–
Landholding Agency: Interior
Property Number: 619520021
Status: Unutilized
Reason: Extensive deterioration

Land (by State)

Alaska

Russian Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 879440025
Status: Excess
Reason: Floodway

Sargent Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 879440026
Status: Excess
Reason: Floodway

Arizona

Santa Fe Pacific Pipelines
Avenue 7E North from Hwy. 95
Yuma Co: Yuma AZ 85364–
Landholding Agency: Interior
Property Number: 619420003
Status: Unutilized
Reason: Secured Area

Ed Bull Land
Northeast corner of Price & Galveston
Chandler Co: Maricopa AZ 85224–
Landholding Agency: Interior
Property Number: 619530011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

California

Central Valley Project
San Luis Drain
Tracy Co: San Joaquin CA 95376–
Landholding Agency: GSA
Property Number: 549230003
Status: Excess
Reason: Other
Comment: Landlocked
GSA Number: 9–I–CA–1325

Parcel B
Santa Rosa Co: Sonoma CA
Landholding Agency: GSA
Property Number: 549310016
Status: Excess
Reason: Other
Comment: Sewage Treatment Plant
GSA Number: 9–G–CA–580C

Portion of Lot 7
Former State of California Land/Stockpile
Yreka Co: Siskiyou CA
Landholding Agency: GSA
Property Number: 549330006
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–G–CA–956A

L–5 Pumping Station
LaQuinta Co: Riverside CA 92253–
Landholding Agency: Interior
Property Number: 619420002
Status: Unutilized
Reason: Secured Area; Other
Comment: Pumping Station

Florida

Land—approx. 220 acres
Cape San Blas
Port St. Joe Co: Gulf, FL
Landholding Agency: DOT
Property Number: 879440018
Status: Underutilized
Reason: Secured Area, Floodway

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw, MI 48198
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 879120006
Status: Unutilized
Reason: Within airport runway clear zone

Mississippi

Land—Grenada Lake Dam & Reservoir Project
Co: Yalobusha, MS
Location: 5 miles southeast of Coffeeville, MS on State Highway 330
Landholding Agency: GSA
Property Number: 549520011
Status: Excess
Reason: Floodway
GSA Number: 4–D–MS–548

Montana

Sherryl Tap Point Site
3 miles south of Drummond, MT
Co: Granite, MT
Landholding Agency: GSA
Property Number: 549240006
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 7–B–MT–0598

Puerto Rico

Flamenco Point
Culebra Island, PR
Landholding Agency: GSA
Property Number: 549530003
Status: Excess
Reason: Other
Comment: No Public Access
GSA Number: 1–N–PR–482

119.3 acres
Culebra Island, PR 00775-
Landholding Agency: Interior
Property Number: 619210001
Status: Excess
Reason: Floodway

South Carolina

Land—2.66 acres
Port Royal Co: Beaufort, SC 29902–6148
Landholding Agency: GSA
Property Number: 549240009
Status: Excess
Reason: Floodway
GSA Number: 4–N–SC–0489A

Texas

Tract J–936
Portion of Whitney Lake Proj.
Bosque Co: Bosque, TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: GSA
Property Number: 319110032
Status: Excess
Reason: Other
Comment: No public access
GSA Number: 7–D–TX–0505M

Eagle Pass Auxiliary Airfield
10 mi. NW of Eagle Pass
Co: Maverick, TX 78853-
Landholding Agency: GSA
Property Number: 549520001
Status: Excess
Reason: Within airport runway clear zone

[FR Doc. 95–19782 Filed 8–10–95; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–00–P]

Alaska; Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Secs. 14(e) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), and 1621(j) will be issued to Doyon, Limited.

Serial No.	Approximate land description	Acreage
F–21904–35 .	Secs. 3 to 8, T. 4 N., R. 26 W., Fairbanks Meridian, Alaska.	2,154
F–21905–48 .	Secs. 1 to 36, T. 5 N., R. 26 W., Fairbanks Meridian, Alaska.	22,524

Serial No.	Approximate land description	Acreage
F–21904–38 .	Secs. 1, 2, 11, and 12, T. 4 N., R. 27 W., Fairbanks Meridian, Alaska.	1,815
F–21903–87 .	Secs. 35 and 36, T. 3 S., R. 28 E., Kateel River Meridian, Alaska.	140

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until September 11, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Sherwood,
Land Law Examiner, Branch of Northern Adjudication.
[FR Doc. 95–19914 Filed 8–10–95; 8:45 am]
BILLING CODE 4310–JA–P

Cowhead/Massacre Management Framework Plan; California

AGENCY: Surprise Resource Area Office, Bureau of Land Management, Interior.
ACTION: Notice of intent—proposed amendment of Cowhead/Massacre Management Framework Plan.

SUMMARY: Pursuant to 43 CFR 1601.3 and 40 CFR 1501.7, notice is hereby given that the Surprise Resource Area, Cedarville, California of the Susanville District, Bureau of Land Management, Susanville, California, will consider an amendment to the Cowhead/Massacre Management Framework Plan (MFP) adopted in 1983. This amendment will consider domestic sheep grazing and reintroduction of California bighorn sheep on an area known as the Massacre Mountain grazing allotment.

The Cowhead/Massacre MFP has several decisions related to domestic sheep grazing and bighorn reintroduction in the Massacre Mountain Allotment. These decisions allocated adjacent portions of the allotment to existing cattle and domestic sheep operations and for the future reintroduction of California bighorn sheep. A Habitat Management Plan for a portion of the allotment was completed by the Bureau in cooperation of the Nevada Division of Wildlife in 1984 and provided for the reintroduction of California bighorn sheep into an area known as High Rock Canyon. Since the Cowhead/Massacre MFP was adopted in 1983, the general consensus among wildlife biologists and veterinarians working with domestic and bighorn sheep disease issues is that direct contact between the two types of sheep should be avoided to prevent transmission of diseases. The current Bureau of Land Management policy regarding domestic and bighorn sheep calls for a nine mile buffer between the two species.

Early in 1995, the grazing privileges associated with domestic sheep use of the Massacre Mountain Allotment were relinquished by the permittee to the Bureau of Land Management. The Nevada Division of Wildlife has requested permission to reintroduce bighorn sheep into the allotment during the winter of 1995–1996. The Reno Chapter of Nevada Bighorns Unlimited has requested that the Cowhead/Massacre be amended to prevent future licensing of domestic sheep grazing within the allotment to ensure that no direct contact between reintroduced bighorn and domestic sheep occurs in the future.

At least two alternatives will be considered in an Environmental Assessment: (1) Amend the Cowhead/Massacre MFP to only allow for cattle use on the Massacre Mountain Allotment. (2) Do not amend the MFP (No Action). Other alternatives may be developed as a result of comments received through the scoping process. An interdisciplinary team consisting of specialists in wildlife biology and rangeland management will consider the environmental issues of livestock/bighorn interactions and the appropriate class of livestock for the allotment in the analysis.

Dates: The preparation of the Environmental Assessment will be completed by September 1995 and the amendment, including public and Nevada Governor's review would be complete by November 1995.

Public Participation: Opportunities for public input and comments will be solicited through the media, a mailing, and personal contacts.

For Further Information Contact: Susan Stokke, Area Manager, Surprise Resource Area, Bureau of Land Management, P.O. Box 460, Cedarville, California 96104, Telephone (916) 279–6101.

Susan T. Stokke,
Area Manager.
[FR Doc. 95–19847 Filed 8–10–95; 8:45 am]
BILLING CODE 4310–40–M

[NM–930–1310–01; NMNM 90538]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 90538, Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 1995, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or a fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: August 3, 1995.

Glorida S. Baca,
Land Law Examiner.
[FR Doc. 95–19849 Filed 8–10–95; 8:45 am]
BILLING CODE 4310–FB–M

[NM–930–1310–01; NMNM 90906]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for

reinstatement of Oil and Gas Lease NMNM 90906, Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 1995, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective June 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: August 3, 1995.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 95–19850 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–FB–M

[NM–930–1310–01; NMNM 93230]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 93230, Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 1995, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective June 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: August 3, 1995.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 95–19851 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–FB–M

[NM–930–1310–01; NMNM 90920]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 90920, Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 1995, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective June 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: August 3, 1995.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 95–19852 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–FB–M

[NM–930–1310–01; NMNM 92767]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 92767, Eddy County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 1995, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cites above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: August 3, 1995.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 95–19853 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–FB–M

[NM–930–1310–01; NMNM 92773]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 92773, Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 1995, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: August 3, 1995.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 95–19848 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of Draft Recovery Plan for Nineteen Florida Scrub and High Pineland Plants for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for nineteen plants from dry habitats in central Florida (Florida scrub and high pineland vegetation). This plan is a revision and expansion of a recovery plan, published in 1990, that covered eleven of these plant species. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before October 10, 1995, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216 (Telephone: 904–232–2580, FAX 904–232–2404) or Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia, 30345 (Telephone: 404–679–7086). Written comments and materials regarding the plan should be addressed to the Field Supervisor, at the Jacksonville, Florida address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours also at the Jacksonville, Florida address.

FOR FURTHER INFORMATION CONTACT: David L. Martin at the Jacksonville, Florida address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened plants and animals to the point where they are secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed specieis native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The nineteen species covered by this recovery plan inhabit dry upland vegetation, either Florida scrub with shrubby evergreen oaks and sand pines, or high pineland with longleaf pine, deciduous oaks (either turkey oak or bluejack oak) and abundant wiregrass. The plants were added to the Federal List of Endangered (E) and Threatened (T) Plants as follows: Chionanthus pygamaeus (pygmy fringe tree) (E), Eryngium cuneifolium (a snakeroot) (E), Hypericum cumulicola (Highlands scrub hypericum) (E), Paronychia chartacea (papery whitlow-wort) (T), Polygonella basiramia (a wireweed) (E), Prunus geniculata (scrub plum) (E), and Warea carteri (Carter's mustard) (E) on January 21, 1987 (52 FR 2227). Lupinus aridorum (scrub lupine) (E) on April 7, 1987 (52 FR 11172). Bonamia grandiflora (Florida bonamia) (T) on November 2, 1987 (52 FR 42068). Liatris ohlingerae (scrub blazing star) and Ziziphus celata (Florida ziziphus) (E) on July 27, 1989, (54 FR 31190). Cladonia perforata (Florida perforate cladonia, a lichen) (E), Clitoria fragrans (pigeon-wings) (T), Crotalaria avonensis (Avon Park harebells) (E), Eriogonum longifolium var. gnaphalifolium (scrub buckwheat) (T), Nolina brittoniana (scrub beargrass) (E), Polygala lewtonii (Lewton's polygala) (E), Polygonella myriophylla (sandlace) (E) on April 27, 1993 (58 FR 25746). Conradina brevifolia (short-leaved rosemary) (E) on July 12, 1993 (58 FR 37432).

The nineteen species became threatened because most of their habitat was destroyed for agricultural purposes or urban development, and because some remaining habitat was degraded due to lack of appropriate prescribed fire. The recovery plan contains six basic elements: 1. Protect habitat through purchase and other means (including the Habitat Conservation Plan process for threatened animals in the Florida scrub habitat); 2. Manage protected habitats; 3. Conserve germ plasm and establish new populations of Ziziphus celata and (if possible) Lupinus aridorum; 5. Assess progress and plan post-recovery monitoring.

The 1990 edition of this recovery plan emphasized the need for land acquisition to protect these plants. At the time, the State and private organizations had already made significant acquisitions, and more have been accomplished since then (including initial land purchase for the Lake Wales Ridge National Wildlife Refuge). These land purchases, accompanied by the other elements of the recovery plan, are likely to assure the full recovery or at least the downlisting of the large majority of the nineteen plants.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to the approval of the plans.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 4, 1995.

David J. Wesley,

Field Supervisor.

[FR Doc. 95–19846 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT-805269

Applicant: Dr. Daniel A. Soluk, Illinois Natural History Survey, Champaign, Illinois.

The applicant requests a permit to take (collect, live-capture, and handle) Hine's Emerald Dragonflies (*Somatochlora hineana*) in Cook, DuPage, and Will Counties, Illinois, for biological research studies aimed at enhancement of propagation or survival of the species.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with Dr. Soluk's application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536, x 250); FAX: (612/725–3526).

Dated: August 4, 1995.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 95–19920 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Request for Comments on the Draft Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 1997–2002

SUMMARY: Comments are requested on the Draft Proposed 5-year OCS Oil and Gas Leasing Program for 1997–2002. This is the first proposal for a new program to succeed the current program that expires in July 1997.

Section 18 of the OCS Lands Act (43 USC 1344) specifies a multi-step process of consultation and analysis that must be completed before the Secretary of the Interior may approve a new 5-year program. The required steps following this notice include the development of a proposed program, a proposed final program, and Secretarial approval. Pursuant to the National Environmental Policy Act, the Minerals Management Service (MMS) also will prepare an Environmental Impact Statement (EIS) for the new 5-year program.

DATES: Please submit comments and information to MMS on or before October 10, 1995.

ADDRESSES: Respondents should mail comments and information to: 5-Year Program project Director, Minerals Management Service (MS–4430), Room 1324, 381 Elden Street, Herndon, Virginia 22070. The MMS will accept hand deliveries at 1849 C Street, NW, Room 4230, Washington, DC. Envelopes or packages should be marked "Comments on the Draft proposed 5-Year OCS Oil and Gas Leasing Program for 1997–2002." When submitting any privileged or proprietary information to be treated as confidential, respondents should mark the envelope, "Contains Confidential Information."

FOR FURTHER INFORMATION CONTACT: Carol Hartgen, 5-Year Program Project Director, or Tim Redding, Program Decision Document Project Manager, at (703) 787–1216. To order copies of the new Draft Proposed Program decision document and maps or documents describing the current 5-year program for 1992–1997, telephone (703) 787–1216.

SUPPLEMENTARY INFORMATION: The MMS requests comments from States, local governments, Native groups, tribes, the oil and gas industry, Federal Agencies, environmental and other interest organizations, and all other interested parties to assist in the preparation of a 5-year OCS oil and gas leasing program for 1997–2002 and applicable EIS.

Background

Management of the Nation's offshore oil and gas resources is governed by the OCS Lands Act, which specifies the conditions under which the Secretary of the Interior grants rights to explore for, develop, and produce those resources. The Secretary has assigned the responsibility for implementing the requirements of the OCS Lands Act to the MMS.

Section 18 of the Act requires the Secretary to prepare an oil and gas leasing program that indicates a 5-year schedule of lease sales that he determines will best meet the Nation's energy needs. Section 18 requires that the 5-year program be prepared in a manner consistent with four main principles: (1) Consideration of economic, social, and environmental values and the potential impact on marine, coastal, and human environments; (2) consideration of diverse environmental, geographical, and equitable regional factors; (3) a proper balance among potential for environmental damage, discovery of oil and gas, and adverse impact on the coastal zone; and (4) assurance of receiving fair market value. There is no set equation for the weight to be accorded each principle and factor. It is within the Secretary's discretion after taking these matters into consideration to determine how best to proceed.

In addition to the requirements of section 18, the following policy objectives endorsed by the President and the Secretary have been considered in developing the Draft Proposed Program: consensus-based decisionmaking, science-based decisionmaking, and the use of natural gas as an environmentally preferred fuel.

On November 16, 1994, the MMS published a **Federal Register** Notice requesting comments on the preparation of a new 5-year program for 1997–2002. Over 2300 comments were received from affected State and local governments, Alaska Native organizations and communities, federal agencies, environmental and other interest organizations, the oil and gas industry, and the general public. Those comments have been considered in developing the Draft Proposed Program.

Moving From Conflict to Consensus

Preparation of the 5-year Draft proposed Program for 1997–2002 recognizes the need not only to incorporate and consider analyses that were updated from the 1992–1997 program but also to engage in dialogue with the parties that would be most affected by the program. In its 1993 report, Moving beyond Conflict to Consensus, the Subcommittee on OCS Legislation of the OCS Policy Committee, an independent body that advises the Secretary of the Interior, recommended that the Secretary, where local constituents were willing, use regional task forces representing OCS program stakeholders to focus on reaching consensus on OCS lease sales. The OCS Policy Committee also recognized that "overall, the prevailing controversies and the measures used to deal with them have seriously diminished the effectiveness of the federal OCS oil and gas program in helping to meet the Nation's energy needs." This program embraces the advice provided by the OCS Policy Committee and reflects the beginning of a long-term movement from conflict to consensus in the OCS program.

The OCS Policy Committee established an Alaska Regional Stakeholders Task Force consisting of diverse Alaskan constituencies which was a first attempt to reach consensus on recommending to the Secretary the appropriate planning areas to be proposed for evaluation in an OCS 5-year program. The OCS Policy Committee approved the continued existence of the task force to advise the Secretary throughout the remainder of the 5-year program.

The Draft Proposed Program provides for environmentally responsible oil and gas leasing in selected prospective areas of the OCS where it appears there is sufficient industry interest, where the laws and policies of adjacent States and localities are not a significant impediment to OCS program activity, and where there is agreement among interested and affected parties that further evaluation of leasing is reasonable. The program provides a framework for resolving concerns relating to new leasing and development of existing leases on a basis supported by sound science. In addition, to help assure that the new program and future leasing decisions are based on good science, the Director of the MMS has asked the OCS Policy and Scientific Committees to form a subcommittee to provide an independent review and evaluation of specific information needs for areas where controversy has led to executive and/or legislative restrictions on leasing.

National Energy Needs

Analysis in the Proposed Final Program for 1992–1997 (April 1992) showed the economic dangers associated with the Nation's dependence on imported petroleum and how OCS production had helped reduce the need for even greater volumes of imported petroleum.

The growing need for imported petroleum remains a serious concern. In its December 1994 report to the President, The Effect of Imports of Crude Oil and Refined Petroleum Products on the National Security, the Department of Commerce concluded that petroleum imports threaten to impair U.S. national security.

Increasing imports will make the Nation more vulnerable to supply disruptions and increase the Nation's balance of payments deficit. Environmentally responsible development of OCS oil and gas resources will have to play a role in any effort to slow or reverse the increase in imported energy.

The decisions on the new 5-year program will have a long-term effect on the contribution of OCS resources to meeting the Nation's energy needs and improving its trade balance. Most production resulting from lease sales held under the new 5-year program is likely to begin over the first decade of the next century and continue for another 25 years.

Maps 1 and 2 contain the areas proposed for leasing consideration in the new program. Table A is a summary of the proposed schedule of lease sales for the new program. Individual planning area maps are included in the Draft Proposed Program decision document.

TABLE A.—PROPOSED LEASE SALE SCHEDULE

Region and planning area	Year	Proposed activity
Alaska:		
Beaufort Sea	1998	Small sale, focusing on nearshore blocks in center of program area (Map 1).
	2000	Sale in program area (Map 1).
Cook Inlet/Shelikof Strait	1999	Sale in program area (Map 1).
Gulf of Alaska	2001	Sale in program area (Map 1).
Chukchi Sea/Hope Basin	2002	Combined sale in program area (Map 1).
Gulf of Mexico:		
Western Gulf of Mexico	Annual	Sale in program area (Map 2).
Central Gulf of Mexico	Annual	Sale in program area (Map 2).
Eastern Gulf of Mexico	2001	Sale in program area (Map 2) (offshore Alabama, 100 miles off Florida).

Draft Proposed Program Decision

Alaska Region

The Draft Proposed Program for 1997–2002 includes lease offerings in 5 of the 15 Alaska OCS planning areas—Beaufort Sea, Cook Inlet/Shelikof Strait, Gulf of Alaska, Chukchi Sea, and Hope Basin. The lease offerings do not encompass the entire planning areas, rather they are focused on specific areas within the planning areas. These planning areas were recommended for further evaluation by the Alaska Regional Stakeholders Task Force, established by the OSC Policy Committee in November 1994 to make recommendations on the Alaska component of this 5-year program. The Task Force consists of representatives of Federal and State agencies, local governments and community organizations, Native/subsistence and development communities, oil and gas and commercial fishing industries, and environmental interests. Task Force members met in Alaska as a group and conducted meetings in selected communities before preparing a report to the Secretary recommending areas to be considered in the new 5-year program.

The Draft Proposed Program for 1997–2002 proposes no leasing for the remaining 10 Alaska OCS planning areas. St. George Basin has relatively low net social value and low industry interest, and consensus among interested parties including the Alaska Regional Stakeholders Task Force was that this area should be excluded from the new program. Norton Basin, Navarin Basin, St. Matthew-Hall, North Aleutian Basin, Aleutian Basin, Bowers Basin, Aleutian Arc, Shumagin, and Kodiak were excluded from the current 5-year program based on low net social value, low industry interest, and other section 18 considerations. No new information supports including these areas for leasing consideration in the new program, and the Alaska Regional Stakeholders Task Force did not recommend that they be evaluated further.

Gulf of Mexico

Annual area wide sales for the Central and Western Gulf of Mexico Planning Areas are proposed to continue to provide industry and others with the flexibility and the reliable schedule so important to long-term planning. The proposed Eastern Gulf of Mexico lease sale would cover blocks offshore Alabama and in the deep-water areas along the boundary of the Central Gulf of Mexico Planning Area. It recognizes the high potential for the development of natural gas in the areas of current development offshore Alabama and the potential for deepwater development along the Central Gulf of Mexico and Eastern Gulf of Mexico Planning Areas' boundary line. It is also consistent with Florida's continued opposition to activity within 100 miles of its coast and Alabama's desire to share in the benefits

of new OCS leasing and development. The MMS will concentrate its efforts on resolving disputes relating to those existing leases in the Eastern Gulf of Mexico offshore Florida rather than exacerbate an already contentious situation with additional leasing.

Pacific Region

There are no proposed lease sales offshore the west coast. There are outstanding scientific information needs that have not been fulfilled.

The MMS will continue working with interested and affected parties to resolve issues concerning existing leases in the Southern California Planning Area. In previous comments and in response to the November 1994 **Federal Register** Notice soliciting comments on the development of a new 5-year program, the State of California has opposed any leasing off its coast. Local government policies and ordinances have reflected this opposition as well. The MMS Pacific Regional Office and officials from Santa Barbara, Ventura, and San Luis Obispo counties in Southern California and several State agencies have formed a Tri-County Forum to address issues related to exploration and development on existing leases. Because of the cooperative nature of this forum to date in resolving oil and gas issues, two of the local counties indicated they would not oppose limited leasing off their coasts provided that several conditions such as impact assistance and an enhanced local role in OCS leasing decisions were met. However, there are still several issues to resolve for the future development of significant oil reserves under existing leases. Rather than propose additional acreage for leasing consideration, the MMS will continue working with interested and affected parties on issues concerning the existing leases.

Atlantic Region

There are no proposed lease sales. The MMS will continue working with interested and affected parties to resolve issues concerning existing leases in the Mid- and South Atlantic Planning Areas. In keeping with the Administration's goal of encouraging the use of natural gas, the MMS examined gas-prone areas off the coast of North Carolina and another off the coast of New Jersey. The areas offshore North Carolina are currently leased and are subject to litigation relating to application of the Coastal Zone Management Act and the Outer Banks Protection Act. No new leasing is proposed in these areas at this time, but the MMS will continue to pursue resolving disputes related to the existing leases outside of litigation. The area offshore New Jersey has been leased in the past. A significant natural gas discovery was made in the 1970's. Given the recent dormancy in this area, rather than proposing leasing during the 5-year program, the MMS will begin preliminary discussions with constituents in the area.

No leasing is proposed in the North Atlantic and Straits of Florida Planning Areas. No new information supports including these areas for leasing in the new program.

Configuration of Planning Areas

The Draft Proposed Program decision moves the boundary between the Beaufort Sea and Chukchi Sea Planning Areas to more accurately conform those areas with the bodies of water after which they were named. In addition, Official Protraction Diagrams were created and planning area boundaries revised to be consistent with the current projection of the U.S. Exclusive Economic Zone as depicted on official maps prepared by the National Oceanic and Atmospheric Administration. Whole and partial Official Protraction Diagrams have been added to the Beaufort Sea; Aleutian Arc; Washington-Oregon; Northern, Central, and Southern California; and South Atlantic Planning Areas; none of the additions would be considered for leasing. The Official Protraction Diagrams beyond the OCS and Exclusive Economic Zone in the Gulf of Alaska have been deleted.

Assurance of Fair Market Value

The basic minimum bid level would be set at $25 per acre, subject to sale-by-sale reconsideration, and the current two-phased bid adequacy process is retained. As announced in the Call for Comment published in the **Federal Register** on April 20, 1995, both of these measures are under separate review to ensure that fair market value is obtained through the MMS's leasing policies. Relevant comments received in response to that Notice will be considered in developing the fair market value provisions of the new 5-year program. The existing measures will be maintained until the separate review is complete. The results of the analysis will be addressed in formulating the proposed program.

Information Requested

We request all interested and affected parties to comment on the size, timing, and location of leasing and the procedures for assuring fair market value that are proposed in the Draft Proposed Program for 1997–2002. Information provided by commenters should relate to the principles and factors of section 18, and suggestions for revising the Draft Proposed Program should include rationale corresponding to those considerations and to the policy objectives identified by the MMS, as discussed in the background presented above. Respondents who submitted information in response to the April 20, 1995, Call for Comment discussed above may wish to reference that information, as appropriate, rather than repeating it in their comments on the Draft Proposed Program. We also invite comments and suggestions on how to proceed with the section 18 analysis for the next draft of the new program, the Proposed Program.

As the scoping process continues for the programmatic EIS that will be prepared, we again request comments on significant environmental issues attendant to OCS leasing and development and on alternative options for size, timing, and location of sales that should be evaluated.

Respondents who wish to provide illustrated information pertaining to the size and location of lease sales can obtain larger OCS block-specific maps by calling (703) 787–1216.

Section 18(g) authorizes confidential treatment of privileged or proprietary information that is submitted. In order to protect the confidentiality of such information respondents should include it as an attachment to other comments submitted and mark it appropriately. On request the MMS will treat such information as confidential from the time of its receipt until 5 years after approval of the new leasing program, subject to the standards of the Freedom of Information Act. The MMS will not treat as confidential any aggregate summaries of such information, the names of respondents, and comments not containing such information.

Next Steps in the Process

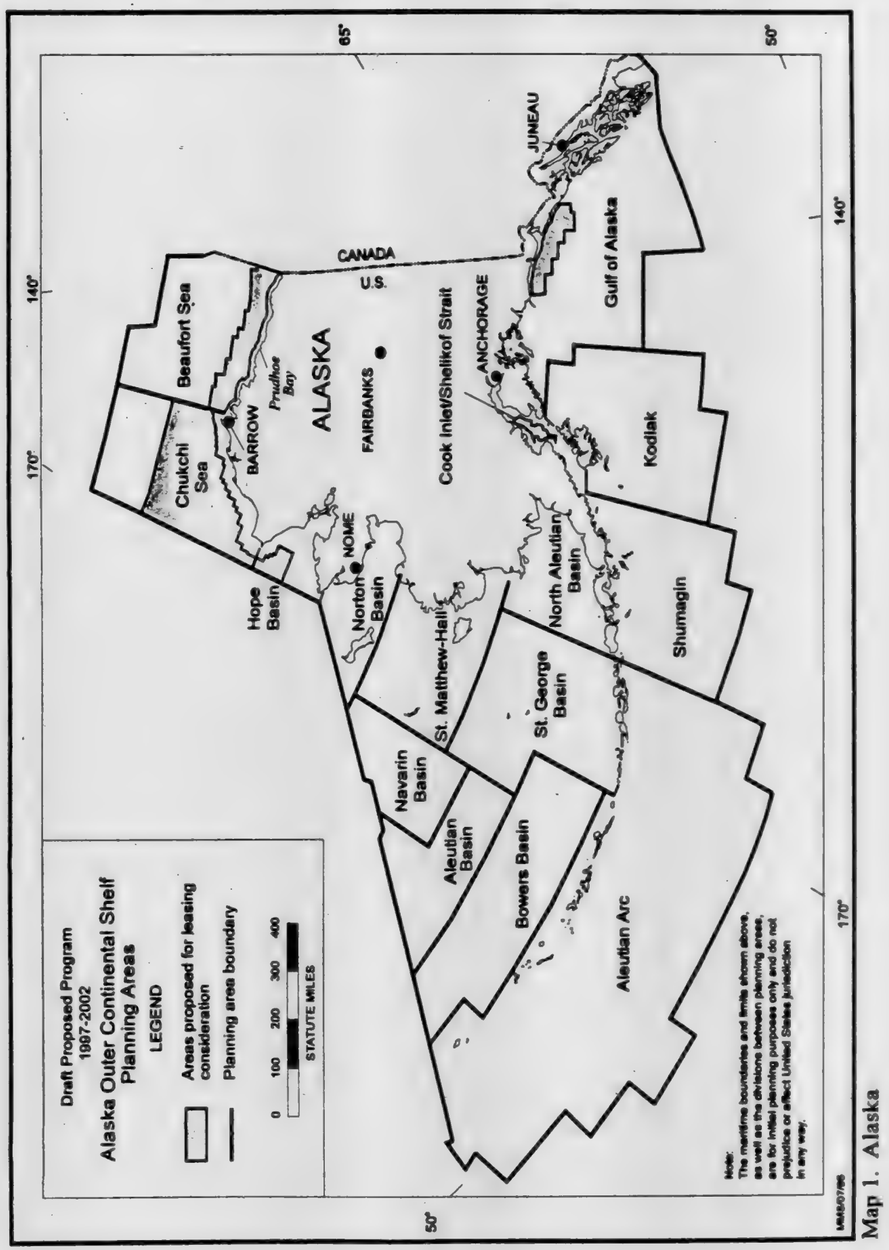
The Proposed Program and draft EIS are scheduled to be issued in January 1996 followed by a 90-day comment period. The Proposed Final Program and final EIS are scheduled to be issued in August 1996. The Secretary may approve the new 5-year program 60 days later.

Dated: August 7, 1995.

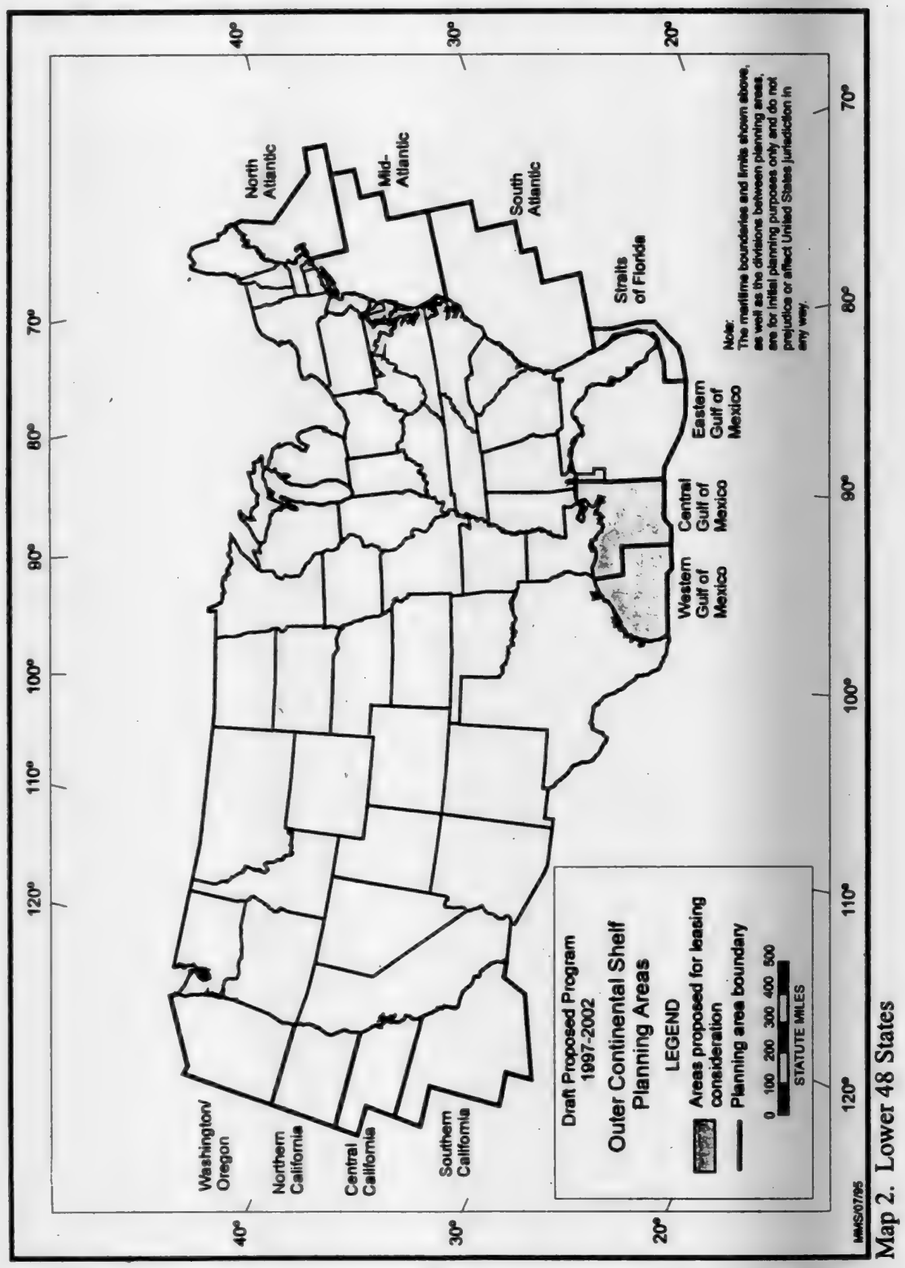
Cynthia Quarterman,

Director, Minerals Management Service.

BILLING CODE 4310-MR-M



Map 1. Alaska



Map 2. Lower 48 States

[FR Doc. 95–19828 Filed 8–10–95; 8:45 am]
BILLING CODE 4310–MR–C

Outer Continental Shelf; Western Gulf of Mexico; Notice of Leasing Systems, Sale 155

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register**:

1. Identifying the bidding systems to be used and the reasons for such use; and

2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 155, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) Bonus bidding with a fixed 16 ⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12 ½-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding with a 16 ⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding with a 12 ½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 155) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow-water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 ½-percent royalty system would be less than for the same blocks under a 16 ⅔-percent royalty system.

As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12 ½-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on the "Stipulations, Lease Terms, and Bidding Systems Map" for Western Gulf of Mexico Lease Sale 155. This map is available from the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Cynthia Quarterman,
Director, Minerals Management Service.
Approved: August 4, 1995.
Bob Armstrong,
Assistant Secretary, Land and Minerals Management.
[FR Doc. 95–19826 Filed 8–10–95; 8:45 am]
BILLING CODE 4310–MR–P

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 155

AGENCY: Minerals Management Service.
ACTION: Final notice of sale.

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, (1988)), and the regulations issued thereunder (30 CFR Part 256).

2. *Filing of Bids.* Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m., Central Standard Time (c.s.t.)) until the Bid Submission Deadline at 10 a.m. Tuesday, September 12, 1995. Hereinafter, all times cited in this Notice refer to c.s.t. unless otherwise stated. Bids will not be accepted the day of Bid Opening, Wednesday, September 13, 1995. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m. Tuesday, September 12, 1995. Bid Opening Time will be 9 a.m., Wednesday, September 13, 1995, at the downtown Hilton Hotel (Poydras Street at the Mississippi River) New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the **Federal Register** at 60 FR 14777, published on March 20, 1995.

3. *Method of Bidding.* (a) *Submission of Bids.* A separate signed bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 155, not to be opened until 9 a.m., c.s.t., Wednesday, September 13, 1995" must be submitted for each block bid upon. The sealed envelope and the bid should contain the following information: The company name, Gulf of Mexico Company Number (GOM Company Number), area number and/or name (abbreviations acceptable), and the block number of the block bid upon. In addition, the total amount bid must be in whole dollar amounts.

Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. For identification purposes, the following information must appear on the check or draft: Company name, GOM Company Number, and the area and block bid on (abbreviation acceptable). No bid for less than all of the unleased portions of a block will be considered.

All documents must be executed in conformance with signatory authorizations on file in the Gulf of Mexico regional office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(b) *Submission of Statement Regarding Certain Geophysical Data.* Each company submitting a bid, or participating as a joint bidder in such a bid, shall submit, prior to the Bid Submission Deadline specified in paragraph 2 of this Notice, a statement or statements identifying any processed or reprocessed pre and post stack depth migrated geophysical data in their possession or control pertaining to each and every block on which they are participating as a bidder. The existence,

extent, and type of such data must be clearly identified. In addition, the statement shall certify that no such data is in their possession for any other blocks on which they participate as a bidder. The statement shall be submitted in an envelope separate from those containing bids and shall be clearly marked; an example of a preferred format for the statement and the envelope is included in the document titled "Trial Procedures for Access to Certain Geophysical Data in the Gulf of Mexico." Only one statement per bidder is required for each sale, but more than one may be submitted if desired, provided that all tracts bid on by that company are covered in the one or more statements.

Paragraph 14(j), *Information to Lessees*, contains additional information pertaining to this requirement.

4. *Bidding, Yearly Rental, and Royalty Systems.* The following bidding, yearly rental, and royalty systems apply to this sale:

(a) *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $25.00 or more per acre or fraction thereof.

(b) *Yearly Rental.* All leases awarded will provide for a yearly rental payment of $5 per acre or fraction thereof.

(c) *Royalty Systems.* All leases will provide for a minimum royalty of $5 per acre or fraction thereof. The following royalty systems will be used in this sale.

(1) *Leases with a 12½-Percent Royalty.* This royalty rate applies to blocks in water depths of 400 meters or greater; this area is shown on the Stipulations, Lease Terms, and Bidding Systems map applicable to this Notice (see paragraph 13). Leases issued on the blocks offered in this area will have a fixed royalty rate of 12½ percent.

(2) *Leases with a 16⅔-Percent Royalty.* This royalty rate applies to blocks in water depths of less than 400 meters (see aforementioned map). Leases issued on the blocks offered in this area will have a fixed royalty rate of 16⅔ percent.

5. *Equal Opportunity.* The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) must be on file in the Gulf of Mexico regional office prior to lease award (see paragraph 14(e)).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit of Payment.* Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Blocks.* The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25.00 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended. See **Federal Register** at 58 FR 45255, published August 27, 1993.

11. *Leasing Maps and Official Protraction Diagrams.* Blocks offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) Outer Continental Shelf Leasing Maps—Texas, Nos. 1 through 8. This is a set of 16 maps which sells for $18.00.

(b) Outer Continental Shelf Official Protraction Diagrams. These diagrams sell for $2.00 each.

NG 14–3 Corpus Christi (rev. 01/27/76)
NG 14–6 Port Isabel (rev. 01/15/92)
NG 15–1 East Breaks (rev. 01/27/76)
NG 15–2 Garden Banks (rev. 10/19/81)
NG 15–4 Alaminos Canyon (rev. 04/27/89)
NG 15–5 Keathley Canyon (rev. 04/27/89)
NG 15–8 (No Name) (rev. 04/27/89)

12. *Description of the Areas Offered for Bids.* (a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is included in the following document available from the Gulf of Mexico regional office; this document is also included in the Final Notice of Sale package sent by this office:

Western Gulf of Mexico Lease Sale 155—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease.

(b) *Blocks which have recently become available for leasing:* Attention is drawn to the following update list which is included as a matter of convenience for interested parties. This update list reflects blocks which have become available since the publication of the Preliminary Final Notice of Sale 155. Any questions on this may be directed to Ms. Patricia Bryars, phone (504) 736–2763.

Update List: Matagorda Island Area block 602; Brazos Area blocks 501 and 506; Galveston Area blocks 332, 383, 392, and 393; High Island Area, East Addition, South Extension block A–341; and Garden Banks Area blocks 166, 208, 210, 211, 252, 299, 342, and 381.

(c) *Blocks not available for leasing:* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11 (a) and (b), except for those blocks or partial blocks already under lease and those blocks or partial blocks listed in (1), (2), and (3) below. A list of Western Gulf of Mexico blocks currently under active lease is included at the end of this Notice.

(1) *Flower Garden Banks area:* No bids will be accepted on the following blocks at the Flower Garden Banks National Marine Sanctuary: High Island Area, East Addition, South Extension, blocks A–375 and A–398.

(2) *Navy Mine Warfare Training area:* No bids will be accepted on the following blocks located off Corpus Christi which have been identified by the Navy as needed for testing equipment and training mine warfare personnel: Mustang Island Area blocks 793, 799, and 816.

(3) *Blocks not available for leasing due to appeals:* The lease status of the following blocks are currently under appeal and therefore these blocks are unavailable for leasing in this sale: Galveston Area, South Addition, block A–125; and Brazos Area block 578.

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have initial terms as shown on the Stipulations, Lease Terms, and Bidding Systems Map applicable to this Notice and will be on Form MMS–2005 (March 1986). Copies of the map and lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on the map described in paragraph 13(a) and as supplemented by references in this Notice.

Stipulation No. 1—Topographic Features

(This stipulation will be included in leases located in the areas so indicated in the Biological Stipulation Map Package associated with this Notice and which is available from the Gulf of Mexico regional office (see paragraph 14(a))

The banks that cause this stipulation to be applied to blocks of the Western Gulf are:

Bank name	No activity zone defined by isobath (meters)
Shelf Edge Banks:	
West Flower Garden Bank[1].	100 (defined by ¼ ¼ ¼ system)
East Flower Garden Bank[1].	100 (defined by ¼ ¼ ¼ system)
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	85
Geyer Bank	85
Elvers Bank	85
Bright Bank[2]	85
McGrail Bank[2]	85
Rezak Bank[2]	85
Sidner Bank[2]	85
Parker Bank[2]	85
Stetson Bank	62
Appelbaum Bank	85
Low Relief Banks[3]:	
Mysterious Bank	74, 76, 78, 80, 84
Coffee Lump	Various
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank[4]	50
South Texas Banks[5]:	
Dream Bank	78, 82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70

[1] Flower Garden Banks—In paragraph (c) a "4–Mile Zone" rather than a "1–Mile Zone" applies.

[2] Central Gulf of Mexico bank with a portion of its "1–Mile Zone" and/or "3–Mile Zone" in the Western Gulf of Mexico.

[3] Low Relief Banks—Only paragraph (a) applies.

[4] Claypile Bank—Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.

[5] South Texas Banks—Only paragraphs (a) and (b) apply.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown in the aforementioned Biological Stipulation Map Package) of the banks as listed above.

(b) Operations within the area shown as "1,000–Meter Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1–Mile Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1–Mile Zone" designated, the "1,000–Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3–Mile Zone" in the aforementioned Biological Stipulation Map Package shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 2—Military Areas

(This stipulation will be included in leases located within the Warning Areas as shown on the map described in paragraph 13(a))

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the United States Government, its contractors or subcontractors, or any of its officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in Section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, or to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities, conducted within individual designated warning areas. Necessary

monitoring control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat, ship, or aircraft traffic into the individual designated warning areas shall enter into an agreement with the commander of the individual command headquarters listed in the following list, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats, ships, and aircraft operating into the warning areas at all times.

W–228—Chief, Naval Air Training, Naval Air Station, Office No. 206, Corpus Christi, Texas 78419–5100, Telephone: (512) 939–3862/3902

W–602—Headquarters ACC/DOSR, Detachment 1, Operations Headquarters, U.S. Strategic Air Command, Offutt AFB, Nebraska 68113–5550, Telephone: (402) 294–2334

Stipulation No. 3—Operations in the Naval Mine Warfare Area

(This stipulation will apply to leases located in Mustang Island Area, East Addition, blocks 732, 733, and 734)

(a) The placement, location, and planned periods of operation of surface structures on this lease during the exploration stage are subject to approval by the Regional Director (RD), Minerals Management Service Gulf of Mexico Region, after the review of the operator's Exploration Plan (EP). Prior to approval of the EP, the RD will consult with the Commander, Mine Warfare Command, in order to determine the EP's compatibility with scheduled military operations. No permanent structures nor debris of any kind shall be allowed in the area covered by this lease during exploration operations.

(b) To the extent possible, sub-seafloor development operations for resources subsurface to this area should originate outside the area covered by this lease. Any above-seafloor development operations within the area covered by this lease must be compatible with scheduled military operations as determined by the Commander, Mine Warfare Command. The lessee will consult with and coordinate plans for above-seafloor development activities (including abandonment) with the Commander, Mine Warfare Command. The Development Operations Coordination Document (DOCD) must contain the locations of any permanent structures, fixed platforms, pipelines, or anchors planned to be constructed or placed in the area covered by this lease as part of such development operations. The DOCD must also contain the written comments of the Commander, Mine Warfare Command on the proposed activities. Prior to the approval of the DOCD, the RD will consult with the Commander in order to determine the DOCD's compatibility with scheduled military operations.

For more information, consultation, and coordination, the lessee must contact: Commander, Mine Warfare Command, 325 Fifth Street, SE., Corpus Christi, Texas 78419–5032, Phone: (512) 939–4895.

14. *Information to Lessees.* (a) *Supplemental Documents.* For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, either in writing or by telephone at (800) 200–GULF or (504) 736–2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736–2759.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended.

U.S. Army Corps of Engineers (COE) permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander Ken Parris, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, (504) 589–6901. For COE information, prospective bidders should contact Mr. Dolan Dunn, Chief Evaluation Section, Regulatory Branch, Post Office Box 1229, Galveston, Texas 77553, (409) 766–3935.

(c) *Offshore Pipelines.* Bidders are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) *8–Year Leases.* Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated; or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria; or if there is not a suspension of operations in effect. Bidders are referred to 30 CFR 256.37 and the MMS Gulf of Mexico OCS Region Letter to Lessees of February 13, 1995.

(e) *Affirmative Action.* Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see **Federal Register** of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS–2005, March 1986), would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60–1.5(a)(1) and 60–1.7(a)(1). Submission of Form MMS–2032 (June 1985) and Form MMS–2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) *Ordnance Disposal Areas.* Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on the map described in paragraph 13(a). These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards.

(g) *Archaeological Resources.* Bidders are advised that a Final Rule regarding archaeological resources was published in the **Federal Register** on October 21, 1994 (59 FR 53091), granting specific authority to each MMS Regional Director to require archaeological surveys and reports (under 30 CFR 250, 256, 260, and 281) and the submission of these reports to the Regional Director prior to exploration, development and production, or installation of lease-term or right-of-way pipelines. MMS Notice to Lessees (NTL) 91–02 (Outer Continental Shelf Archaeological Resources Requirements for the Gulf of Mexico OCS Region) published in the **Federal Register** on December 20, 1991 (50 FR 66076) effective February 17, 1992, specifies survey methodology, linespacing, and archaeological report writing requirements for lessees and operators in the Gulf of Mexico Region.

Two additional documents are available from the MMS Gulf of Mexico Region Public Information Office (see paragraph 14(a)):

"List of Lease Blocks Within the High-Probability Area for Historic Period Shipwrecks on the OCS" dated January 30, 1995. This list supersedes the list promulgated by the MMS Letter to Lessees (LTL) of November 30, 1990.

"List of Lease Blocks Within the High-Probability Area for Prehistoric Archaeological Resources on the OCS" dated January 30, 1995.

Implementation of this Final Rule and NTL 91–02 obviates the need for the Protection of Archaeological Resources Stipulation required for previous issues.

(h) *Proposed Rigs to Reefs.* Bidders are advised that there are OCS artificial reef sites and planning sites for the Gulf of Mexico. These are generally located in water depths of less than 200 meters. While all existing and proposed sites require a permit from the U.S. Army Corps of Engineers, this "Rigs to Reefs" program is implemented through State sponsorship through the following State Coordinators:

Alabama Mr. Walter M. Tatum, (334) 968–7578

Louisiana Mr. Rick Kasprzak, (504) 765–2375

Mississippi Mr. Mike Buchanan, (601) 385–5860

Texas Ms. Jan Coulbertson, (713) 474–2811

For more information, on artificial reef sites, prospective bidders should contact the above listed State Artificial Reef Coordinators for their areas of interest.

(i) *Proposed Lightering Zones.* Bidders are advised that the U.S. Coast Guard has proposed designating certain areas of the Gulf of Mexico (60 FR 1958 of January 5, 1995), as lightering zones for the purpose of permitting single hull vessels to off-load oil within the U.S. Exclusive Economic Zone. Such designation may have implications for oil and gas operations in the areas. Additional information may be obtained from Lieutenant Commander Stephen Kantz, Project Manager, Oil Pollution Act (OPA 90) Staff, at (202) 267–6740.

(j) *Statement Regarding Certain Geophysical Data.* Pursuant to Sections 18 and 26 of the OCS Lands Act, as amended, and the regulations issued thereunder, MMS has a right of access to certain geophysical data and information obtained or developed as a result of operations on the OCS. MMS is sensitive to the concerns expressed by industry regarding the confidentiality of individual company work products and client lists and the potential burden of responding to a myriad of requests from MMS pertaining to the existence and availability of these types of reprocessed geophysical data. To resolve the concerns of both industry and MMS with respect to such cases, MMS has worked with industry to develop the requirements contained within paragraph 3(b) *Method of Bidding* above. These requirements are being imposed on a trial basis to determine their effectiveness and are subject to modification in future sales.

The details of this requirement are specified in the document "Trial Procedures for Access to Certain Geophysical Data in the Gulf of Mexico," which is provided in the Sale Notice package and which is available upon request from the MMS Gulf of Mexico Region Public Information Office (see paragraph 14(a)). In brief, these requirements include:

1. In the period for ninety (90) days after the sale, bidders will allow MMS to inspect such data within seven (7) days of a written request from MMS, and upon further written request will transmit to MMS within ten (10) working days, such data. After this ninety day period, a response time of thirty (30) days following an MMS written request will be considered adequate.

2. Successful bidders must retain such data for three (3) years after the sale, and unsuccessful bidders must retain such data for six (6) months after the sale, for possible acquisition by MMS.

For the six (6) month period after the sale, based on a review of the allowable cost of data reproduction to MMS for three-dimensional and two-dimensional data sets, the company providing the reprocessed data will be reimbursed at a rate of $480 per block or part thereof for three-dimensional data and $2 per line mile for two-dimensional data. Afterwards, reimbursement will be subject to the terms and conditions of 30 CFR 251.13(a).

All geophysical data and information obtained and reviewed by MMS pursuant to these procedures shall be held in the strictest confidence and treated as proprietary in accordance with the applicable terms of 30 CFR 251.14.

For additional information, contact the MMS Gulf of Mexico Regional Office of Resource Evaluation at (504) 736–2720.

(k) *Information about Indicated Hydrocarbons.* Bidders are advised that MMS makes available, about 3 months prior to a lease sale, a list of unleased tracts having well bores with indicated hydrocarbons. Basic information relating to production, well bores, and pay range for each tract is included in the list. The list is available from the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394; telephone (800) 200–GULF or (504) 736–2519.

(l) *Minimizing Oil and Gas Structures Near the Flower Garden Banks.* Bidders are reminded of Notice to Lessees and Operators (NTL) 85–8, "Minimizing Oil and Gas Structures in the Gulf of Mexico," dated November 26, 1985. Section II of the NTL sets forth the MMS' policy with regard to the minimization of structures for drilling, development, and production on OCS leases. The policy requires that such structures including lease-term pipelines be placed in a manner that causes minimum interference with other significant uses of the OCS. Please be advised that the MMS will strictly adhere to this policy when reviewing Exploration Plans and Development Operations Coordination Documents which propose the use or installation of such structures within the "Four-Mile Zone" and adjacent areas surrounding

the Flower Garden Banks National Marine Sanctuary.

Cynthia Quarterman,

Director, Minerals Management Service.

Approved: August 4, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Western Gulf of Mexico Leased Lands

June 21, 1995

Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

South Padre Island

1030, 1040, 1052, 1059, 1060, 1063, 1064, 1069, 1073, 1111, 1112, 1122, 1125, 1134, 1151, 1166

North Padre Island

897, 908, 956, 957, 967, 968, 969, 976, 989

North Padre Island, East Addition

892, 911, 913, 970, 974, 975, 990, 993, 995, 996, 1011, 1014, 1018, A–6, A–8, A–10, A–12, A–23, A–27, A–28, A–38, A–42, A–43, A–45, A–46, A–48, A–55, A–59, A–64, A–69, A–70, A–72, A–75, A–76, A–86, A–87

Mustang Island

737, 738, 739, 740, 742, 743, 752, 754, 756, 757, 758, 759, 762, 763, 767, 779, 780, 781, 782, 783, 784, 785, 786, 787, 789, 791, 801, 803, 804, 805, 806, 807, 810, 812, 813, 814, 824, 826, 828, 829, 831, 833, 838, 842, 843, 846, 847, 848, 851, 855, 858, 859, 868, 873, 875, 876, 879, A–1, A–2, A–5, A–6, A–7, A–10, A–11, A–12, A–14, A–15, A–16, A–17, A–19, A–20, A–22, A–26, A–27, A–31, A–32, A–33, A–38

Mustang Island, East Addition

733, 735, 736, A–51, A–52, A–53, A–57, A–58, A–61, A–65, A–85, A–86, A–95, A–96, A–97, A–110, A–111, A–112, A–121, A–122, A–124, A–152, A–153

Matagorda Island

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Brazos

341, 342, 364, 365, 375, 376, 377, 378, 396, 397, 398, 399, 411, 412, 413, 415, 416, 417, 431, 432, 434, 435 (Seaward of 8(g) Line), 436, 437, 439, 450, 451, 452 (E½), 453, 454, 455, 456, 457, 458, 459, 466, 468, 469, 470, 471, 473, 474, 475, 476, 477, 488, 490, 491, 493, 494, 495, 496, 498, 502, 504, 507, 509, 514, 515, 517, 531, 532, 536, 537, 538, 539, 541, 542, 543, 544, 545, 546, 549, 550, 552, 570, 572, 575, 577, 579, 580, 581, 585, 611, 612, 613, 614, 615, A–1, A–2, A–3, A–6, A–7, A–8, A–9, A–10, A–17, A–19, A–20, A–21, A–22, A–23, A–24, A–25, A–31, A–37, A–38, A–39, A–42, A–43

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Galveston

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Galveston, South Addition

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High Island

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High Island, South Addition

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High Island, East Addition

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East Breaks

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Alaminos Canyon

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Keathley Canyon

6, 7, 133, 134, 156, 157, 158, 159, 177, 178, 179, 199, 201, 202, 221, 243, 245, 246, 324, 583, 584

[FR Doc. 95–19827 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of Knife River Indian Villages National Historic Site, National Park Service, Stanton, ND

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of the inventory of human remains in the possession of the National Park Service at Knife River Indian Villages National Historic Site, Stanton, ND.

A detailed inventory and assessment of these remains has been made by the staff of Knife River Indian Villages National Historic Site in consultation with representatives of the Three Affiliated Tribes of North Dakota.

The human remains represent at least nine individuals from nine sites recovered within the Knife River Indian Villages National Historic Site during excavations conducted by the University of North Dakota during 1976–1981. No associated funerary objects were identified. Five bone fragments representing one individual were recovered from Hidatsa Site (32ME10). Two partial human teeth representing one individual were recovered from Sakakawea Site (32ME11). One bone fragment representing 1 individual was recovered from Scovill site (32ME409). Two bone fragments representing one individual were recovered from Long Ridge Cemetery Site (32ME479). Three bone fragments, 1 tooth fragment, and 1 molar tooth representing one individual were recovered from Soni Site (32ME492). One bone fragment representing one individual was recovered from Ramble Site (32ME496). Two concentrations of bone fragments and 1 tooth representing one individual were recovered from Small Site (32ME498). Three bone fragments, two teeth fragments, and one molar tooth representing one individual were recovered from Sakakawea Cemetery Site (32ME493). Four bone fragments and one tooth surface representing one individual were recovered from Buchfink Burial Area (32ME411). No known individuals were identified.

Each of these nine sites has been identified as being within the Hidatsa's traditional occupation area based on cultural continuities, historic written records, and consultation with the Three Affiliated Tribes. Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the Native American human remains and the Three Affiliated Tribes of North Dakota.

This notice has been sent to officials of the Three Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Chas Cartwright, Superintendent, Knife River Indian Villages National Historic Site, PO Box 9, Stanton, ND 58571, telephone—(701)745–3309, before September 11, 1995. Repatriation of the human remains the Three Affiliated Tribes of North Dakota will begin after that date if no additional claimants come forward.

Dated: August 7, 1995

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeological Assistance Division

[FR Doc. 95–19927 Filed 8–10–95; 8:45 am]

BILLING CODE 4315–70–F

Notice of Intent to Repatriate Cultural Items in the Possession of Knife River Indian Villages National Historic Site, National Park Service, Stanton, ND

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate cultural items in the possession of the Knife River Indian Villages National Historic Site which meet the definition of "sacred object" and "unassociated funerary object" under section 2 of the Act.

Four pipe fragments were recovered from surface collection or excavation within the Knife River Indian Villages National Historic Site. One wide-mouthed, grey/brown clay pipe bowl fragment (Accession #KNRI–00040, Catalog #KNRI–72) was collected from the ground surface by a ranger in the park during the 1980s. One half of an orange clay pipe (Accession #KNRI–00072, Catalog #KNRI–120) was collected from the ground surface by a ranger from the Big Hidatsa Site (32ME12) during the 1980s. One small yellowish-white, undecorated kaolin pipe stem fragment (Accession #KNRI–00085, Catalog #KNRI–575) excavated at the Sakakawea Site (32ME11) by the University of North Dakota in 1976/1977. One clay pipe bowl (Accession

#KNRI–00085, Catalog #KNRI–802) excavated at the Sakakawea Site (32ME11) by the University of North Dakota in 1976/1977. Representatives of the Three Affiliated Tribes identified Knife River Indian Villages National Historic Site—including Big Hidatsa Site, and Sakakawea Site—as part of the Hidatsa's traditional occupation area. Representatives of the Three Affiliated Tribes identified these four pipe fragments as objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the four pipe fragments and the Three Affiliated Tribes of North Dakota. Officials of the National Park Service have also determined that the four pipe fragments are objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum pursuant to 25 U.S.C. 3001 (3)(B).

Eleven objects were donated to the Knife River Indian Villages National Historic Site by the Robinson family in 1991. George Robinson ran a mercantile store in Cole Harbor, ND (near the Fort Berthold reservation) from the 1880's through the early 1900's. Much of Mr. Robinson's business was conducted with members of the Three Affiliated Tribes, especially Arikara people. The cultural items were received in trade for food and supplies by Mr. Robinson during this time. These eleven objects include: one small wooden pipe (Accession #KNRI–00164, Catalog #KNRI–2133); one catlinite pipe with a "T" bowl squared at one end to cylindrical then tapered at the other end and one wooden taylor stem (Accession #KNRI–00164, Catalog #KNRI–2150 a and b); one catlinite pipe with a "T" style bowl squared at one end to cylindrical then tapered at the other end and one wooden stem with beading, ribbons, and painted surfaces (Accession #KNRI–00164, Catalog #KNRI–2151 a and b); one red catlinite pipe with an "elbow" style bowl (Accession #KNRI–00164, Catalog #KNRI–2156); one red catlinite toy pipe with a "T" style bowl and one wooden stem with plaited quillwork and feathers (Accession #KNRI–00164, Catalog #KNRI–2161 a and b); one red catlinite pipe with a "T" style bowl cylindrical at one end to tapered then hexagonal at the other end and one wooden taylor stem (Accession #KNRI–00164, Catalog #KNRI–2163 a and b); one hide bag with beadwork, quillwork, and fringe (Accession #KNRI–00164, Catalog #KNRI–2168); one hide bag with beadwork, quillwork, and fringe (Accession #KNRI–00164, Catalog #KNRI–2180); one rectangular hide bag with drawstring top and fringe (Accession #KNRI–00164, Catalog #KNRI–2133); one brown wooden dance stick with light horsehair and yellow and purple ribbons (Accession #KNRI–00164, Catalog #KNRI–2117); and one brown wooden dance stick with 2 horn tips and black, white, and green horsehair (Accession #KNRI–00164, Catalog #KNRI–2118).

Representatives of the Three Affiliated Tribes identified these eleven objects as coming from the traditional occupation area of the Hidatsa, Mandan, and Arikara. Representatives of the Three Affiliated Tribes identified these eleven objects as ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the cultural items and the Three Affiliated Tribes. Officials of the National Park Service have also determined that the eleven objects are ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents pursuant to 25 U.S.C. 3001 (3)(C).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the cultural items should contact Chas Cartwright, Superintendent, Knife River Indian Villages National Historic Site, P.O Box 9, Stanton, ND 58571, telephone: (701) 745–3309, before September 11, 1995. Repatriation of the cultural objects to the Three Affiliated Tribes of North Dakota will begin after that date if no additional claimants come forward.

Dated: August 7, 1995

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeological Assistance Division

[FR Doc. 95–19928 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–70–F

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water conservation plans.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993. These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water conservation plans developed by project contractors in the MP Region, including those required by the Reclamation Reform Act of 1982. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region's contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each contractor's water conservation plan in the **Federal Register** and to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is on-going; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

DATES: All public comments must be received by Reclamation by September 11, 1995.

ADDRESSES: Please mail comments to the address provided below.

FOR FURTHER INFORMATION CONTACT: Debra Goodman, Bureau of Reclamation, 2800 Cottage Way, MP–402, Sacramento, CA 95825. To be placed on a mailing list for any subsequent information, please write Debra Goodman or telephone at (916) 979–2397.

SUPPLEMENTARY INFORMATION: Under provisions of Section 3405(e) of the CVPIA (Title 34 of Public Law 102–575), "The Secretary (of the Interior) shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to section 3405(e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts greater than 2,000 acre feet and agricultural contracts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor and update their water conservation plans. The steps are:

1. Coordinate with other agencies and the public.
2. Describe the district.
3. Inventory water resources.
4. Review the past water conservation plan and activities.
5. Identify best management practices to be implemented.
6. Develop schedules, budgets and projected results.
7. Review, evaluate, and adopt the water conservation plan.
8. Implement, monitor and update the water conservation plan.

The MP contractors listed below have developed water conservation plans which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Banta Carbona Irrigation District
- Carpinteria County Water District
- Central San Joaquin Water Conservation District
- Glide Water District
- Kanawha Water District
- Madera Irrigation District
- Mercy Springs Water District
- Montecito Water District
- Santa Barbara County Water Agency
- Shafter Wasco Irrigation District

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plans listed above will be available for review at Reclamation's MP Regional Office and MP's area offices. If you wish to review a copy of the plans, please contact Ms. Goodman to find the office nearest you.

Dated: August 3, 1995.

Dan M. Fults,

Assistant Regional Director.

[FR Doc. 95–19918 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–94–M

Competitive Sale of Federal Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. Section 374), at no less than the appraised fair market value. The Bureau of Reclamation (Reclamation) will accept bids on the lands described below and will reject any bids for less than the appraised value.

DATES: Comments must be submitted on or before September 25, 1995.

Sealed bids will be accepted if received before 10 a.m., Pacific Daylight-Saving Time on October 19, 1995, at which time the sealed bids will be opened.

ADDRESSES: Interested parties may submit comments to the Regional Director, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825-1898.

Sealed bids will be accepted at the Bureau of Reclamation, Lahontan Basin Area Office, 705 N. Plaza Street, Room 338, Carson City, Nevada 89701-4015. The sealed bid sale will be held at the Lahontan Basin Area Office.

FOR FURTHER INFORMATION CONTACT: Rochelle Ames, Realty Specialist, Lahontan Basin Area Office, 705 N. Plaza Street, Carson City, Nevada 89701–4015, telephone number (702) 884–8354.

SUPPLEMENTARY INFORMATION: A tract of land in the Southwest Quarter (SW¼) of Section 30, Township Nineteen 19 North, Range 29 East, Mount Diablo Base and Meridian, and County of Churchill, State of Nevada, containing an area of 6.353 acres, more or less. The street address of the property is 380 North Taylor Street, Fallon, Nevada 89406.

The tract will be subject to easements or rights-of-way existing or of record in favor of the public as to third parties.

The tract will be offered for sale through the competitive bidding process. The tract will be sold to the highest qualified bidder at no less than the appraised price of $290,600.00. Sealed bids will be accepted at the Lahontan Basin Area Office, if received before 10 a.m., Pacific Daylight-Saving Time on October 19, 1995. Reclamation may accept or reject any offers, or withdraw any land or interest in land for sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. Section 374), or other applicable laws. To promote full and free competition, a certificate of independent price determination must accompany each sealed bid included in the bid package. This can be obtained from the Lahontan Basin Area Office.

The tract is within the County of Churchill, State of Nevada. The tract has potential for various industrial or commercial uses. Current land use is for a rail freight loading facility and storage area. The sale is consistent with Reclamation land-use planning. It was decided that the public interest would best be served by offering this land for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion checklist has been completed and approved, and is available for public review at the Reclamation's, Lahontan Basin Area Office.

The quitclaim deed issued for the tract sold will be subject to any rights-of-way of record, any public road and utility easements identified by Churchill County, Nevada, if applicable, and a 10-year lease to the City of Fallon, Nevada, expiring January 31, 2000.

Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: July 18, 1995.

Franklin E. Dimick,

Acting Regional Director.

[FR Doc. 95–19919 Filed 8–10–95; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–722]

Honey from the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Suspension of investigation and cancellation of hearing.

SUMMARY: On August 3, 1995, the Department of Commerce (Commerce) notified the United States International Trade Commission (Commission) of the suspension of its antidumping investigation on honey from the People's Republic of China (China). The basis for the suspension is an agreement between Commerce and the Government

of China for the purpose of encouraging free and fair trade in honey, establishing more normal market relations, and preventing the suppression or undercutting of price levels of the domestic product. Pursuant to the agreement, the Government of China will restrict the volume and prices of direct or indirect exports to the United States of honey products from all Chinese producers/exporters, subject to the terms in the agreement.

Accordingly, the Commission gives notice of the suspension of its antidumping investigation involving imports from China of honey, provided for in heading 0409 and subheadings 1702.90.54, 1702.90.58, 2106.90.68, 2106.90.72, 2106.90.89, and 2106.90.91 of the Harmonized Tariff Schedule of the United States. The Commission also gives notice of the cancellation of the hearing scheduled in connection with this investigation.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

Authority: This investigation is being suspended under authority of § 734(f)(1)(B) of the Tariff Act of 1930. This notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

Issued: August 8, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–19855 Filed 8–10–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32547]

The Kansas City Southern Railway Co.—Construction and Operation Exemption—To Exxon Corporation's Plastics Plant near Baton Rouge and Baker, LA

The Kansas City Southern Railway Company (KCS) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 0.31 mile rail line near Baton Rouge and Baker, Louisiana. The Commission's Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA). Based on the information provided and the environmental analysis conducted to date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions requiring Kansas City Southern Railway Company to implement the mitigation contained in the EA. The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making its final environmental recommendations to the Commission. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of Michael Dalton (202) 927–6202. Requests for copies of the EA should also be directed to Mr. Dalton.

Date made available to the public: August 11, 1995.

Comment due date: September 11, 1995.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19912 Filed 8–10–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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- CT950003 (Feb. 10, 1995)
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- NY950002 (Feb. 10, 1995)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which

includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 4th day of August 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–19692 Filed 8–10–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 31st day of July, 1995.

Russell Kile,

Acting Program Manager, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 07/31/95

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,286	Blairsville Machine (Wkrs)	Blairsville, PA	07/14/95	Military Tank Track pins.
31,287	Garan, Inc. Lambert Mills (Wkrs)	Lambert, MS	07/13/95	Acrylic Apparel.
31,288	General Motors Corp (Wkrs)	Somerset, NJ	06/30/95	Office Workers—Extended Warranty.
31,289	Graham Energy Services (Comp)	Covington, LA	07/20/95	Oil & Gas Exploration, Production.
31,290	Kerotest Mfg Corp (Wkrs)	Pittsburgh, PA	07/17/95	Steel Valves.
31,291	Lucas AUL, Hazelton Div (IUE)	Hazleton, PA	07/14/95	Communication Equipment.
31,292	McBriar Cap Co (Comp)	Waycross, GA	07/17/95	Caps (Headwear Apparel).
31,293	Movie Star of Purvis (Comp)	Purvis, MS	07/14/95	Ladies' Lingerie.
31,294	Newline Manufacturer (ILGWU)	So. Hackensack, NJ	06/15/95	Women's Coats.
31,295	Portac, Inc of Tacoma (Wkrs)	Beaver, WA	07/17/95	Softwood Dimensional Lumber.
31,296	Portac, Inc of Tacoma (Wkrs)	Forks, WA	07/17/95	Softwood Dimensional Lumber.
31,297	Richfield Knitwear Co (Comp)	Brooklyn, NY	07/15/95	Infants & Children's Playwear.
31,298	Karabelas Collection Ltd (Wkrs)	New York City, NY	07/19/95	Fur Coats.
31,299	P and M Tile, Inc. (Co.)	Mt. Gilead, NC	07/21/95	Ceramic Floor Tiles.
31,300	Omega News & Advertising (Wkrs)	El Paso, TX	07/08/95	Newspaper Advertising.
31,301	Electrio Wires (Wkrs)	EL Paso, TX	07/17/95	Automobile Wire Components.

[FR Doc. 95–19880 Filed 8–10–95; 8:45 am]

BILLING CODE 4510–30–M

Footwear Management Company, TA–W–30,545 Nocona Boot Company, Nocona, Texas TA–W–30,545A Tony Lama Division, El Paso, Texas A/K/A Justin Management Company, El Paso, Texas TA–W–30,545B Justin Boot Company, Fort Worth, Texas TA–W–30,545C Justin Boot Company, Cassville, Missouri TA–W–30,545D Justin Boot Company, Sarcoxie, Missouri TA–W–30,545E Justin Boot Company, Carthage, Missouri and TA–W–30,545F Nocona Boot Outlet, Operating in Various Locations Within the State of Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 26, 1995, applicable to all workers at the Nocona Boot Company, Nocona, Texas who were engaged in the production of leather boots. The notice was published in the **Federal Register** on February 14, 1995 (60 FR 8415).

The certification has been amended several times to include other operating facilities of Nocona Boot and other divisions of the Footwear Management Company.

New information received from the company shows that workers of Nocona Boot Outlets operating in various locations within the State of Texas have been adversely affected by increased imports. Accordingly, the Department is again amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–30,545 is hereby issued as follows:

"All workers of Footwear Management Company in the following divisions: Tony Lama Division, El Paso, Texas, a/k/a Justin Management Company, El Paso, Texas; Justin Boot Company, Forth Worth, Texas; Cassville, Missouri; Sarcoxie, Missouri; and Carthage, Missouri; Nocona Boot Company in Nocona, Texas and Nocona Boot Outlet operating in various locations within the State of Texas who became totally or partially separated from employment on or after November 29, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 3rd day of August 1995.

Arlene O'Connor,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19878 Filed 8–10–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,875, TA–W–30,875A]

Val Mode Lingerie, Incorporated; Bridgeton, New Jersey and New York, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 14, 1995, applicable to all workers of Val Mode Lingerie, Incorporated, Bridgeton, New Jersey. The notice was published in the **Federal Register** on April 27, 1995 (60 FR 20764).

New information received from the State Agency shows that worker separations have occurred at the New York, New York location of Val Mode Lingerie, Incorporated.

It is the Department's intent to provide coverage to all workers of Val Mode Lingerie, Incorporated, adversely affected by increased imports. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–30,875 is hereby issued as follows:

"All workers of Val Mode Lingerie, Bridgeton, New Jersey and New York, New York engaged in employment related to the production of ladies' sleepwear who became totally or partially separated from employment on or after March 17, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 2nd day of August 1995.

Arlene O'Connor,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19884 Filed 8–10–95; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act, Title III, Demonstration Program: Specialized/Targeted Dislocated Worker Services Project

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of change in date.

SUMMARY: All prospective applicants are hereby notified that the closing date for receipt of applications for SGA/DAA 95–006, published in the **Federal Register** dated June 20, 1995, 60 FR 32171, shall be Monday, August 28, 1995, and any dates referenced in previous **Federal Register** Notices are deleted in their entirety.

FOR FURTHER INFORMATION CONTACT: Mr. Willie E. Harris, Division of Acquisition and Assistance, Telephone: (202) 219–7300 (this is not a toll-free number).

Signed at Washington, D.C., the 7th day of August, 1995.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

[FR Doc. 95–19875 Filed 8–10–95; 8:45 am]

BILLING CODE 4510–30–M

Footwear Management Company, NAFTA–00252 Tony Lama Division, El Paso, Texas A/K/A Justin Management Company, El Paso, Texas NAFTA–00252A Justin Boot Company, Fort Worth, Texas, NAFTA–00252B Justin Boot Company, Cassville, Missouri NAFTA–00252C Nocona Boot Company, Nocona, Texas NAFTA–00252D Justin Boot Company, Sarcoxie, Missouri NAFTA–00252E Justin Boot Company, Carthage, Missouri and NAFTA–00252F Nocona Boot Outlet, Operating in Various Locations Within the State of Texas; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Notice of Certification for NAFTA Transitional Adjustment Assistance on November 14, 1994, applicable to all workers at the subject firm. The notice was published in the **Federal Register** on December 9, 1994 (59 FR 68324).

The certification has been amended several times to include other operating facilities of Footwear Management Company.

New information received from the company shows that workers of Nocona Boot Outlets operating in various locations within the State of Texas have been adversely affected by increased imports. Accordingly, the Department is again amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Footwear Management Company adversely affected by increased imports.

The amended notice applicable to NAFTA–00252 is hereby issued as follows:

"All workers of Footwear Management Company in the following divisions: Tony Lama Division, El Paso, Texas a/k/a Justin Management Company, El Paso, Texas; Justin Boot Company, Fort Worth, Texas; Cassville, Missouri; Sarcoxie, Missouri; and Carthage, Missouri; Nocona Boot Company in Nocona, Texas and Nocona Boot Outlet operating in various locations within the State of Texas who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 3rd day of August 1995.

Arlene O'Connor,

Acting Program Manager, Policy, and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19879 Filed 8–10–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA—00425]

Val Mode Lingerie, Incorporated Bridgeton, New Jersey and New York, New York NAFTA—00425A; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on May 9, 1995, applicable to all workers at the subject firm. The amended notice was published in the **Federal Register** on May 17, 1995 (60 FR 26460).

New information received from the State Agency shows that worker separations have occurred at the New York, New York location of Val Mode Lingerie, Inc.

It is the Department's intent to provide coverage to all workers of Val

Mode Lingerie, Inc., adversely affected by increased imports. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA–00425 is hereby issued as follows:

All workers of workers of Val Mode Lingerie, Inc., Bridgeton, New Jersey (NAFTA–00425) and New York, New York (NAFTA–00425A), who became totally or partially separated from employment on or after March 29, 1994, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 2nd day of August 1995.

Arlene O'Connor,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19881 Filed 8–10–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00392]

General Mills Inc., CFTO-South Chicago Plant, Chicago, Illinois; Negative Determination on Reconsideration

On June 20, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice was published in the **Federal Register** on June 29, 1995 (60 FR 33849).

The petitioner submitted additional documents and claims that imports of cereal from Mexico impacted sales of the subject firm.

The Department's denial was based on the fact that the increased import criteria (3) and (4) were not met. There was no shift of production from the subject plant to Mexico or Canada, and General Mills did not import breakfast cereal from Mexico or Canada. The Department's survey of General Mills major customers revealed that customers importing ready-to-eat breakfast cereals from Mexico or Canada relied on imports for a very minor portion of their total needs. Most respondents did not import ready-to-eat breakfast cereal from Mexico or Canada.

Findings on reconsideration show that U.S. imports of cereals from Mexico and Canada declined in 1994 compared to 1993, but increased during the 12 month period of April 1994–March 1995 compared to April 1993–March 1994. However, aggregate U.S. imports of cereal from Mexico and Canada are negligible (less than one percent) when compared to General Mills sales and production.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for transitional adjustment assistance to workers and former workers of General Mills Incorporated, CFTO-South Chicago Plant, in Chicago, Illinois.

Signed at Washington, DC, this 2nd day of August 1995.

Arlene O'Connor,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–19882 Filed 8–10–95; 8:45 am]

BILLING CODE 4510–30–M

U.S. National Administrative Office, North American Agreement on Labor Cooperation, National Advisory Committee; Appointment of Members

Notice is hereby given that appointments have been made to fill the vacancies on the National Advisory Committee (NAC).

The following twelve (12) individuals have been appointed to the Committee at this time:

Representing Labor

Mr. Steve Beckman, International Economist, United Auto Workers, Washington, DC;
Mr. Ron Blackwell, Assistant to the President, Amalgamated Clothing and Textile Workers Union, New York;
Mr. Morton Bahr, President, Communications Workers of America, Washington, DC;
Mr. John S. Gaal, Assistant Administrator, St. Louis Carpenters Joint Apprenticeship Program, United Brotherhood of Carpenters and Joiners of America, Missouri;

Representing Business

Mr. Frank P. Doyle, Executive Vice President, General Electric Company, Connecticut;
Mr. Abraham Katz, President, U.S. Council for International Business, New York;
Ms. Carroll E. Bostic, Director, Human Resources, Eastman Kodak Co., Washington, DC;
Mr. Edward A. Brill, Partner, Law Firm; Proskauer, Rose, Goetz, and Mendelsohn, New York;

Representing Academics

Ms. Maria L. Ontiveros, Associate Professor of Law, Golden Gate University, School of Law, California;
Ms. Margaret E. Montoya, Assistant Professor of Law, The University of New Mexico, School of Law, New Mexico;

Representing the Public at Large

Dr. Edward Williams, Professor, the University of Arizona, Arizona;
Ms. Marley S. Weiss, Associate Professor of Law, University of Maryland, School of Law, Maryland;

The Chairperson selected from the membership by the Secretary of Labor was Marley S. Weiss.

The NAC was established under article 17 of the North American Agreement on Labor Cooperation (NAALC) to advise on implementation and further elaboration of the Agreement.

DATES: These appointments will expire at the end of two years, subject to the Committee's being rechartered.

FOR ADDITIONAL INFORMATION CONTACT: Irasema Garza, Secretary, National Administrative Office (NAO), Bureau of International Labor Affairs (ILAB), Department of Labor, 200 Constitution Avenue, NW., Room C–4327, Washington, DC 20210. Telephone 202–501–6653 (this is not a toll free number).

Signed at Washington, DC, this 4th day of August 1995.

Robert B. Reich,

Secretary, Department of Labor.

[FR Doc. 95–19877 Filed 8–10–95; 8:45 am]

BILLING CODE 4510–23–M

Pension and Welfare Benefits Administration

[Application No. D–09940, et al.]

Proposed Exemptions; Morgan Stanley & Co. Incorporated (MS&Co) and Morgan Stanley Trust Company (MSTC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Morgan Stanley & Co. Incorporated (MS&Co) and Morgan Stanley Trust Company (MSTC) Located in New York, New York

[Application No. D–09940]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to Morgan Stanley & Co., Incorporated (MS&Co) and to any other U.S. registered broker-dealers affiliated with Morgan Stanley Trust Company (the Affiliated Broker-Dealer, collectively, the MS Group) by employee benefit plans for which Morgan Stanley Trust Company (MSTC) acts as directed trustee or custodian and securities lending agent and to the receipt of compensation by MSTC in connection with these transactions, provided that the following conditions are met:

1. Neither MS&Co nor MSTC has discretionary authority or control over a client-plan's assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

2. Any arrangement for MSTC to lend plan securities to the MS Group will be approved in advance by a plan fiduciary who is independent of MSTC and the MS Group;

3. A client-plan may terminate the arrangement at any time without penalty on five business days notice;

4. The client-plans will receive collateral consisting of cash, securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, bank letters of credit or other collateral permitted under PTE 81–6, from the MS Group by physical delivery, book entry in a securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to the MS Group;

5. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, the MS Group will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent;

6. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81–6 and 82–63;

7. MS&Co will indemnify each lending client-plan against any losses incurred by such plan in connection with the lending of securities to the MS Group;

8. The client-plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

9. Only plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to the MS Group;

10. With regard to the "exclusive borrowing" agreement (as described below), MS&Co will directly negotiate the agreement with a plan fiduciary who is independent of the MS Group and MSTC, and such agreement may be terminated by either party to the agreement at any time; and

11. Prior to any plan's approval of the lending of its securities to the MS Group, a copy of this exemption, if granted, (and the notice of pendency) will be provided to the plan.

Summary of Facts and Representations

1. MS&Co, a wholly owned subsidiary of Morgan Stanley Group Inc., is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and a member of the National Association of Securities Dealers. MS&Co is one of the largest investment firms in the United States. As of January 31, 1994, MS&Co's parent, Morgan Stanley Group Inc., had consolidated capital of over $9.8 billion.

2. MS&Co and its Affiliated Broker-Dealers (collectively, the MS Group), acting as principal, borrows securities from institutions and either utilizes such securities to satisfy its own needs or re-lends these securities to brokerage firms and other entities which need a particular security for a certain period of time. Borrowers often need securities to satisfy deliveries in cases of short sales or where a broker fails to receive securities it is required to deliver. The MS Group, which borrows and lends

securities equal in value to approximately $37 billion on an average daily basis, is among the largest institutional securities borrowers and lenders in the United States. In making such loans, the MS Group carefully reviews the credit worthiness of its counterparties.

3. MSTC is a wholly owned subsidiary of Morgan Stanley Group Inc. and an affiliate of MS&Co. MSTC is organized as a trust company in New York and provides a variety of services to its clients, including services as custodian and clearing agent and in the future may provide services as trustee.

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to any interest, dividends or other distributions paid on those securities. The lender generally requires that the security loans be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities such as U.S. Government or Federal Agency obligations or certain bank letters of credit. When cash is the collateral, the lender generally invests the cash and rebates a portion of the earnings on the collateral to the borrower. The "fee" received by the lender would then be the difference between the earnings on the collateral and the amount of rebate paid to the borrower. When a loan of securities is collateralized with Government or Federal Agency securities or bank letters of credit, a fee is paid directly by the borrower to the lender. Institutional investors often utilize the services of an agent in the performance of their securities lending transactions. The lending agent is paid a fee for its services which may be calculated as a percentage of the income earned by the investor from its securities lending activity. The applicants believe that the essential functions which define a securities lending agent are the identification of appropriate borrowers of securities and the negotiation of the terms of a loan to the borrowers. There are services ancillary to securities lending which include monitoring the level of collateral and the value of the loaned securities and investing the collateral in some instances.

5. MSTC and MS&Co request an exemption for the lending of securities owned by certain pension plans (client-plans) for which MSTC will serve as directed trustee or custodian to the MS Group, following disclosure of MSTC's affiliation with the MS Group, under either of the two arrangements described as Plan A and Plan B and for the receipt of compensation in connection with such transactions. However, because MSTC under the proposed arrangements will have discretion with respect to whether there is a loan of plan securities to the MS Group, the lending of securities to the MS Group by plans may be outside the scope of relief provided by PTE 81–6 [1] and PTE 82–63.[2]

6. When a loan is collateralized with cash, MSTC, at the plan's direction, will either transfer such cash collateral to the client-plan or its designated agent for investment or shall invest the cash in short-term securities or interest-bearing accounts and, in either case, will rebate a portion of the earnings on such collateral to the MS Group on behalf of the client-plan. The MS Group will pay a fee to the client-plan based on the value of the loaned securities where the collateral consists of obligations other than cash. Under Plan A and, in some instances, under Plan B (see paragraph 27 regarding the types of lending services which may be provided to plans by MSTC under Plan B), the client-plan will pay a fee to MSTC for providing lending services to the plan which will reduce the income earned by the client-plan from the lending of securities to the MS Group. The client-plan and MSTC will agree in advance to this fee which will represent a percentage of the income the client-plan earns from its lending activities. Several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the client-plan assets involved in the transactions. In addition, the applicants represent that each of the two arrangements incorporates the relevant conditions contained in PTE 81–6 and PTE 82–63.

7. *Plan A.* A fiduciary of a client-plan who is independent of MSTC and The MS Group will sign a securities lending authorization (the Authorization) before the client-plan may participate in MSTC's securities lending program. This Authorization describes the operation of the lending program and allows MSTC to lend securities held by the client-plan to securities brokers, including the MS Group, as selected by MSTC. The Authorization also sets forth, in an attachment, the basis and rate for MSTC's compensation from the client-plan for the performance of securities lending services.

8. The independent fiduciary also must sign an Affiliated Broker-Dealer Lending Authorization before MSTC may include security loans to the MS Group in the lending activities of the client-plan. The Affiliated Broker-Dealer Lending Authorization will specify, in an attached exhibit, the method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by the MS Group and the maximum rebate rate payable to the MS Group. A client-plan may terminate both the Authorization and the Affiliated Broker-Dealer Lending Authorization at any time.

9. MSTC, as securities lending agent, will negotiate a Customer Securities Loan Agreement (Basic Loan Agreement) with the MS Group on behalf of its client-plans. An independent fiduciary of the client-plan will approve the form of the agreement before that fiduciary executes the Affiliated Broker-Dealer Lending Authorization. The Basic Loan Agreement will specify, among other things, the right of the client-plan to terminate a loan at any time (subject to the customary notification period) and the client-plan's rights in the event of any default by the MS Group. The agreement will explain the basis for compensation to the client-plan for lending securities to the MS Group under each category of collateral. The agreement will also contain a requirement that the MS Group must pay all transfer fees and transfer taxes related to the security loans.

10. Before entering into the Basic Loan Agreement, the MS Group will furnish its most recent publicly available audited and unaudited financial statements to MSTC, who, in turn, will provide such statements to a client-plan before the plan is asked to approve the terms of the Basic Loan Agreement. The Basic Loan Agreement will contain a requirement that the MS Group must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, MSTC will request that an independent fiduciary of the client-plan approve the loan in view of the changed financial condition.

[1] PTE 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of ERISA and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker dealers or banks which are parties in interest.

[2] PTE 82–63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of ERISA and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of ERISA.

11. The client-plan and MSTC will agree to the fee MSTC will receive for its services as lending agent prior to the commencement of any lending activity. The agreement by MSTC to provide securities lending services to a client-plan will be in writing and subject to the prior written approval of a fiduciary of the client-plan who is independent of the MS Group and MSTC.[3] The Basic Loan Agreement will allow termination by the client-plan without penalty to the plan within five business days of written notice. Before entering into an agreement, MSTC will provide the client-plan with any reasonably available information which it believes is necessary for the plan to make a determination whether to enter into or renew the agreement and such other information as the plan may request.

12. Each time a client-plan loans securities to the MS Group pursuant to the Basic Loan Agreement, the MS Group will execute a designation letter specifying the material terms of the loan, including the securities to be loaned, the required level of collateral, the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the client-plan as those of a comparable arm's-length transaction between unrelated parties.

13. MSTC will credit to the account of the client-plan all interest, dividends and the like received on the loaned securities during the loan period, including distributions and rights of any kind. The Basic Loan Agreement will provide that the client-plan may terminate any loan at any time. Upon a termination, the MS Group will return the loaned securities to the client-plan within five business days of written notification. If the MS Group fails to return the securities within the designated time, the client-plan has certain rights that it may exercise under the Basic Loan Agreement.

14. MSTC will establish each day separate written schedules of lending fees and rebate rates to assure uniformity of treatment among borrowing brokers and to limit the discretion MSTC would have in negotiating securities loans to the MS Group. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the client-plans. In no case will loans be made to the MS Group at rates or lending fees less advantageous to the client-plan than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than the MS Group. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than the MS Group, and will generally track the rebate rates with respect to the same security or class of securities.

15. MSTC will adopt maximum daily rebate rates for cash collateral payable to the MS Group on behalf of a lending plan. Separate maximum daily rebate rates will be established with respect to loans of designated classes of securities such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the maximum rebate rate will be the lower of (i) the 7 day LIBOR rate, minus a stated percentage of such LIBOR rate and (ii) the client's actual reinvestment rate for the relevant cash collateral, minus a stated percentage of such reinvestment rate, as pre-approved by the independent fiduciary. Thus, when cash is used as collateral, the daily rebate rate will always be lower than the rate of return to the client-plans from authorized investments for cash collateral by such stated percentage as shall be pre-approved by the independent fiduciary. MSTC will submit the formula for determining the maximum daily rebate rates to an independent fiduciary of the client-plan for approval before lending any securities to the MS Group on behalf of the plan.

16. MSTC will also adopt minimum daily lending fees for non-cash collateral payable by the MS Group to MSTC on behalf of a plan. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities, such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. MSTC will submit such minimum daily lending fees to an independent fiduciary to the client-plan for approval before initially lending any securities to the MS Group on behalf of the plan.

17. For collateral other than cash, the lending fees charged the previous day are reviewed by MSTC for competitiveness. Based on the demand of the marketplace, this daily fee tends to remain constant and, with respect to domestic securities and international debt securities, is currently at least one tenth of one percent of the principal value of the loaned securities. With respect to international equity securities, the daily fee is currently one fifth of one percent of the principal value of the loaned securities. Because 50 percent or more of securities loans by client-plans will be to unrelated brokers or dealers,[4] the competitiveness of MSTC's fee schedule will be continuously tested in the marketplace. Accordingly, loans to the MS Group should result in a competitive rate of income to the lending client-plan.

18. Should MSTC recognize prior to the end of a business day that, with respect to new and/or existing loans, it must change the rebate rate or lending fee formula in the best interest of client-plans, it may do so (i) with respect to borrowers other than the MS Group, at the end of such business day, and (ii) with respect to the MS Group, upon MSTC's receipt of a written approval of the client-plan's independent fiduciary.[5]

MSTC may propose a change in the lending fee or rebate rate determination, as applicable, with respect to an outstanding loan by delivering written notice of the effective date and the new determination pursuant to which a lending fee or rebate rate, as the case may be, may be determined at least five business days before the date of the proposed change. In the event that the client-plan does not consent to such change by not providing MSTC acknowledgement of its consent in writing by such means that will ensure receipt by MSTC prior to 10:00 a.m. New York time, on the effective date of the change, then MSTC will not make such change. The applicants represent that allowing MSTC to request a modification to the lending fee or the rebate rate formula with respect to an existing loan to the MS Group when market conditions change will be beneficial to the client-plans. According to the applicants, in the absence of the ability to make such modification, the MS Group may be forced by market conditions to terminate the loan and seek better terms elsewhere. Such termination may then force the client-

[3] This closely parallels conditions c and d of PTE 82–63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary".

[4] This 50 percent requirement applies regardless of the type of collateral used to secure the loan.

[5] MSTC represents that it will not initiate any modification in such rates or fees which would be detrimental to the client-plans.

plan to seek new borrowers for its securities who, in light of the changed market conditions, are likely to negotiate for the lending fee or rebate rate which the MS Group would have received or paid had MSTC had the written authority from the independent fiduciary to decrease the lending fee or increase the rebate rate.

19. While MSTC will normally loan securities to requesting borrowers on a first come, first served basis, as a means of assuring uniformity of treatment among borrowing brokers, it should be recognized that in some cases it may not be possible to adhere to a first come, first served allocation. This can occur, for example, in instances where (a) the credit limit established for a "first in line" borrower by the client-plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular client-plan whose securities are sought to be borrowed; or (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to differed MSTC representatives at or about the same time with respect to the same security. In situation (a) and (b), loans would normally be effected with the "second in line" borrower. In situation (c), securities would be allocated equitably among all eligible borrowers.

20. MS&Co will indemnify each lending client-plan against any losses due directly to the lending of such plan's securities to the MS Group. Accordingly, MS&Co will assure the client-plan that the rate of return on each loan will at a minimum equal the transactional cost to the plan of lending securities to The MS Group. The applicants contend that, as a result of this indemnity, the rate of return earned by client-plans from lending to the MS Group will, in total, exceed the return from lending securities to other brokers.

21. By the close of business on the day the loaned securities are delivered to the MS Group, MSTC will receive from the MS Group non-cash collateral by physical delivery or book entry in a securities depository, or, cash collateral by wire transfer or book entry. At the discretion of the client-plan, cash collateral may be managed either by the plan, by its designated agent or by MSTC. If a client-plan chooses to manage its cash collateral, MSTC will promptly forward the cash collateral to the client-plan. The non-cash collateral will consist of securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit (issued by a person other than MS&Co or its affiliates) or other collateral permitted under PTE 81–6 or any successor. The market value of the collateral on the day the loan settles will be at least 102 percent of the market value of the loaned securities. The Basic Loan Agreement will give the client-plan a continuing security interest in and a lien on the collateral. MSTC will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent of that of the loaned securities, MSTC will require the MS Group to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

22. A client-plan that loans securities to the MS Group will receive a weekly report with which to monitor lending activity, rates on loans to the MS Group compared with loans to other brokers, and the level of collateral on the loans. The weekly report will show, on a daily basis, the market value of all outstanding security loans to the MS Group and to other borrowers as compared to the total collateral held for both categories of loans.

23. The weekly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The weekly report also will state, on a daily basis, the rates at which securities are loaned to the MS Group compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

24. MSTC will send a monthly transaction report to each client-plan participating in the lending program. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rate at which the security is loaned, and the number of days the security has been on loan.

25. Only client-plans with assets having an aggregate market value of at least $50 million will be permitted to lend securities to the MS Group. The applicants maintain that this restriction is intended to assure that any lending to the MS Group will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind.

26. MSTC will record on audio tape all telephone traffic between its securities lending department and all borrowers, including the MS Group. The telephone tapes will be retained for a period of at least six months. This recording procedure will enable client-plans and the Department to review MSTC's adherence to its policy of lending securities to the first interested borrower at rates or lending fees on the daily schedule, or at rates or lending fees which are more advantageous to the client-plans.

27. *Plan B.* MS&Co will directly negotiate "exclusive borrowing" agreements with fiduciaries of plans, including plans for which MSTC serves as custodian or in the future may serve as directed trustee, where such fiduciary is independent of the MS Group and MSTC. Under such an agreement, the MS Group will have exclusive access for a specified period of time to borrow certain securities of the plan pursuant to certain conditions. MSTC will not participate in the negotiation of the agreement. The involvement of MSTC, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the plans with certain reports. The applicants represent that, under the exclusive borrowing agreement, neither the MS Group nor MSTC will perform for client-plans the functions which constitute the essential functions of a securities lending agent.

28. Upon delivery of loaned securities to the MS Group, MSTC, or another custodian, on behalf of a client-plan, will receive from the MS Group, the same day by wire transfer or book entry cash collateral or, by physical delivery or book entry in a securities depository, collateral consisting of securities issued or guaranteed by the U.S. Government or its agencies, irrevocable bank letters of credit, or other non-cash collateral permitted under PTE 81–6. The market value of the collateral on the day the loan settles will be at least 102 percent of the market value of the loaned securities. MSTC or such other custodian will monitor the level of the collateral daily and, if its market value falls below 100 percent, the MS Group will deliver sufficient additional collateral on the following day such that the market value of all collateral will equal at least 102 percent of the market value of the loaned securities. The MS Group or, in the case of some client plans, MSTC, will provide a weekly report to the plan showing, on a daily basis, the aggregate market value of all outstanding security loans to the MS Group and the aggregate market value of the collateral.

29. Before entering into an exclusive borrowing agreement, the MS Group will furnish to the plan the most recent publicly available audited and unaudited statements of its financial condition. Further, the agreement will contain a representation by the MS Group, as provided in section 18(c)(ii) of the Securities Lending Agreement, that as of each time it borrows securities, there have been no material adverse changes in its financial condition. All the procedures under the agreement will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

30. In exchange for the exclusive right to borrow certain securities from a client-plan, the MS Group will pay the plan either a flat fee, or a minimum flat fee plus a percentage (negotiated at the time the exclusive borrowing agreement is entered into) of the total balance outstanding of borrowed securities, or a percentage of the total balance outstanding without any flat fee. In light of this fee arrangement, all earnings generated by cash collateral will be returned to the MS Group. The client-plan will receive credit for all interest dividends or other distributions on any borrowed securities.

31. The exclusive borrowing agreement may be terminated by either party to the agreement at any time. MS&Co will agree that upon termination it will deliver any borrowed securities back to the client-plan within five business days of written notice of termination. If the MS Group fails to return the securities or the equivalent thereof, the client-plan will have certain rights under the agreement to realize upon the collateral. Pursuant to the terms of the agreement, the MS Group will indemnify the plan against any losses due to its use of the borrowed securities equal to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default.

32. With regard to those plans for which MSTC provides custodial, clearing and/or reporting functions relative to securities loans, MSTC and a plan fiduciary independent of MSTC and the MS Group will agree in advance and in writing to any fee that MSTC is to receive for such services. Such fees, if any, would be fixed fees (e.g., MSTC might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services or to receive a stated dollar amount) and any such fee would be in addition to any fee MSTC has negotiated to receive from any such client-plan for standard custodial or other services unrelated to the securities lending activity. The arrangement to have MSTC provide such functions relative to securities loans to the MS Group will be terminable by the client-plan within five business days of receipt of written notice without penalty to the plan except for the return to the MS Group of part of any flat fee paid by the MS Group to the plan, if the client-plan has also terminated its exclusive borrowing agreement with the MS Group. Before entering into an agreement with a plan to provide such functions relative to securities loans to the MS Group, MSTC will furnish to the plan any publicly available information which it believes is necessary for the plan to determine whether to enter into or renew the agreement.

33. In summary, the applicants represent that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Plan A requires approval of the form of a basic loan agreement and the execution of the Affiliated Broker-Dealer Lending Authorization by a plan fiduciary independent of the MS Group and MSTC before a client-plan lends any securities to the MS Group, while under Plan B, The MS&Co will directly negotiate exclusive borrowing agreements with a client-plan; (b) the lending arrangements will permit the client-plans to benefit from the MS Group's substantial market position as securities lenders and will enable the plans to earn additional income from the loaned securities while still receiving dividends, interest and other distributions on those securities; (c) the client-plan will receive sufficient information concerning the MS Group's financial condition before the plan lends any securities to the MS Group; (d) the collateral on each loan to the MS Group initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81–6, and will be monitored daily by MSTC; (e) the client-plans will receive a weekly report and monthly report, so that an independent fiduciary of the client-plans also may monitor loan activity, fees, the level of the collateral and loan return/yield; (f) MSTC will have no discretionary authority or control over the plan's acquisition or disposition of securities available for loan; (g) the terms of each loan will be at least as favorable to the plans as those of a comparable arm's-length transaction between unrelated parties; and (h) all the procedures under the proposed transactions will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Central Freight Lines Employees Profit Sharing and Retirement Plan (the Plan) Located in Waco, TX

[Application No. D–09994]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed cash sale by the Plan of certain unimproved real property (the Property) to Central Freight Lines, Inc. (the Employer), a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any real estate commissions or fees in connection with the proposed transaction; and (4) the Plan receives a sales price for the Property which is not less than the greater of (a) the fair market value of the Property as determined by a qualified, independent appraiser, or (b) the net acquisition cost of the Property.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 3,149 participants and net assets available for benefits of approximately $103,639,097 as of December 31, 1994. The trustee of the Plan and decisionmaker with respect to Plan investments is A.G. Edwards Trust Company of St. Louis, Missouri.

2. The Employer, which maintains its general offices in Waco, Texas, is a trucking company that is involved in the transportation and delivery of freight throughout the midwestern and southwestern United States. The Employer is a wholly-owned subsidiary of Roadway Services, Inc. (Roadway), a publicly-owned trucking company which maintains its corporate offices in Akron, Ohio.

3. Prior to 1989, the Plan, through two separate purchases, acquired a 38.810 acre tract of undeveloped land for a total purchase price of $1,495,352. The

Property is located on the northwest side of Spur 482 (Storey Lane) and approximately 1,500 feet northeast of State Highway 114 in the City of Irving, Dallas County, Texas. The Property adjoins the Employer's Dallas freight terminal.

The Plan acquired the Property for investment purposes from unrelated parties. On July 12, 1976, the Plan purchased 36.464 acres of land (Tract A) from the University of Dallas. The Plan paid a purchase price of $1,284,009 for Tract A and closing costs of $697. Thus, the total acquisition price paid by the Plan for Tract A was $1,284,706.

On August 1, 1980, the Plan purchased 1.928 acres of adjoining land (Tract B) from Jack H. Beachum. The Plan paid a purchase price for Tract B of $210,624 plus closing costs of $22. Thus, the total acquisition price paid by the Plan for Tract B was $210,646.[6]

4. On December 30, 1983, the Plan sold the Property to FrittsSesler Investments, Inc. (FrittsSesler), a real estate investment company and an unrelated party, for $4,226,418. The terms of the sale provided for a cash downpayment of $845,284 with the balance to be paid over 10 years. The unpaid portion of the purchase price was evidenced by a promissory note in the amount of $3,381,134. The note carried interest at 11 percent interest per annum and provided for interest only payments for the first 5 years and payments of principal and interest for the last 5 years of the loan. The note was secured by a deed of trust on the Property.

From the date of closing until January 1987, the Plan received $845,284 in principal and $1,115,774 in interest on the note. In 1987, FrittsSesler defaulted on the note. The note was then accelerated and the Property was posted for foreclosure. In January 1988, the Property was deeded back to the Plan by a Deed in Lieu of Foreclosure. At the time of the foreclosure, an appraisal completed of the Property on January 13, 1988 by Messrs. Scott D. Evans, Associate Appraiser, and Mr. Ronald W. Potts, MAI, SRPA, independent appraisers affiliated with Cushman & Wakefield of Texas, Inc., located in Dallas, Texas, placed the fair market value of the Property at $4,280,000.

5. It is represented that the Property has never been used by or leased to parties in interest since its initial acquisition and reacquisition by the Plan. It is also represented that the Plan has incurred certain costs totaling $512,598 in connection with its reacquisition of the Property. These costs represent expenses of $58,942 that are associated with the Plan's acceptance of the Deed in Lieu of Foreclosure; $90 for closing costs; and $453,566 for real estate taxes.

6. Since repossessing the Property, the Plan has continually advertised it for sale. However, due to the depressed real estate market in the State of Texas and because of changes in growth patterns of the Dallas-Fort Worth area, no interest has been expressed in purchasing the Property. In addition, the Property has generated no income to the Plan and has declined in value. Therefore, the Employer requests an administrative exemption from the Department in order that it may purchase the Property from Plan. The proposed sales price for the Property will represent not less than the greater of the (a) fair market value of the Property as determined by a qualified, independent appraiser or (b) $46,892 representing the net acquisition cost of the Property.[7]

7. The Employer has obtained an independent appraisal of the Property from Bill C. Dotson, MAI and Richard S. Neely, Associate Appraiser, independent appraisers affiliated with the Alliance Appraisal Group, Inc. of Dallas, Texas. In an appraisal report dated January 16, 1995, Messrs. Dotson and Neely have placed the fair market value of the Property at $1,270,000 as of January 3, 1995.

In an addendum to the appraisal report dated July 13, 1995, Mr. Dotson states that he has re-analyzed the initial valuation of the Property to determine whether there is any assemblage value due to the proximity of the Property to other real property owned by the Employer. In making this determination, Mr. Dotson represents that he has considered (a) the Employer's existing facility which he believes is in no need for further expansion, (b) larger tracts of commercial land in the vicinity of the Property for which he can ascertain no significant assemblage value and (c) the valuation adage that "Property is worth more to the adjacent owner than to a third party." He notes that for the adage to be true, there has to be a proven demand for the property for there to be assemblage value. In his opinion, the Employer has not shown a demand factor over and above common market forces.

Mr. Dotson asserts that the subject Property is a stand alone tract which can be utilized for a number of purposes. In his view, the Property is not co-dependent on any other tracts of land for frontage, access or visibility. Thus, Mr. Dotson concludes that the Property has no assemblage or premium value by reason of its proximity to other existing real property that is owned by the Employer.

8. Because the fair market value of the Property is greater than its net acquisition cost, the Plan will sell the Property to the Employer for $1,270,000. The Employer will pay the consideration to the Plan in cash. In addition, the Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) All terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any real estate commissions or fees in connection with the proposed sale; and (d) the Plan will receive a sales price for the Property which is not less than the greater of (i) the fair market value of the Property as determined by a qualified, independent appraiser, or (ii) the net acquisition cost of the Property.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons within 5 days of the date of publication of the notice of pendency in the **Federal Register**. Notice will be posted at the Employer's work sites. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment. Comments with respect to the notice of proposed exemption are due within 35 days after the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[6] The Department notes, that the dimensions of Tract A and Tract B, if aggregated, equal 38.392 acres instead of 38.810 acres. In attempting to explain this discrepancy, the applicant has advised that the subject Property does consist of 38.810 acres of land based on a survey of the Tracts. The applicant attributes the size references and legal descriptions of Tract A and Tract B to "old field notes." When the Property was subsequently surveyed, the applicant states that either the dimensions of the Tracts, individually, or when taken together, were larger than originally thought.

[7] The $46,892 net acquisition cost of the Property is determined as follows: $2,007,950 [representing the total acquisition price plus certain costs incurred by the Plan since its reacquisition of the Property (i.e., $1,495,352+$512,598)] minus $1,961,058 [representing the total revenues received by the Plan for the Property (i.e., $845,284+$1,115,774)].

Donald D. Busker Individual Retirement Account (the IRA) Located in Detroit Lakes, Minnesota

[Application No. D–10005]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of two parcels of unimproved real property (the Properties) by the IRA to Donald D. Busker, a disqualified person with respect to the IRA[8] provided the following conditions are met:

(a) The sale is a one-time transaction for cash;

(b) The terms and conditions of the sale are at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party;

(c) The IRA receives the fair market value of the Properties as established at the time of the sale by an independent qualified appraiser; and

(d) The IRA is not required to pay any commissions, costs or other expenses in connection with the sale.

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described under section 408(a) of the Code, which was established by Donald D. Busker (Mr. Busker). As of June 14, 1995, the IRA had assets valued at $362,470. The trustee of the IRA is the First Trust Company of North Dakota, N.A.

2. The applicants states that a portion of the IRA's existing assets, including the Properties, were obtained from a rollover of assets received by Mr. Busker in 1990 from distributions to which he was entitled as a participant in the Country Equities Inc. Retirement Plan (the CER Plan). The applicant states further that the CER Plan had received such assets from prior rollovers made to Mr. Busker from the Donald D. Busker and Associates Pension Trust (the Busker Pension Plan), which had been terminated in January 1982.

The Properties consist of two parcels of unimproved real property.

The first parcel (Property I) is located in Shell Lake Township in Becker County, east of Detroit Lakes, Minnesota. Property I consists of approximately eighty acres of unimproved wooded lowland in a fairly remote part of Becker County. The applicant states that access to Property I is available by easement over county land to the south.

The second parcel (Property II) is located near Frazee, Minnesota, on Murphy and Silver Lakes in Gorman Township, Otter Tail County. Property II currently consists of approximately 144 acres of unimproved land, part of which is zoned for agricultural conservation and part of which is zoned for potential development as a recreational area. In this regard, the applicant states that approximately 53 acres on Property II are part of the Conservation Reserve Program (CRP), a U.S. Government subsidy program for farmland that is not being used for agricultural purposes. In addition, part of the remaining acres which comprise Property II are located adjacent to Murphy Lake and are available for recreational uses. However, the applicant states that only about 3000 feet of this part of Property II is useable and that the remaining parts of Property II adjacent to the lakes are not currently capable of development because the land is excessively low and wet.

Mr. Busker represents that he does not own any land which is adjacent to either of the Properties and that the Properties have not been leased to or used by any disqualified person.

3. The Properties were originally acquired as a real estate investment by the Busker Pension Plan. The applicant states that the Properties were acquired from unrelated parties in two separate cash transactions. Specifically, Property I was acquired by the Busker Pension Plan in 1978 for $4,250. Property II was acquired in 1978 as part of a larger parcel of real estate, which included a residential house and other improvements, for a total of $98,500 (the Original Property II). Portions of the Original Property II were subsequently platted for development and, along with the house, sold by the Busker Pension Plan to unrelated parties. However, Mr. Busker has not been able to sell the remaining portions of the Original Property II, currently owned by the IRA (i.e. Property II as described above). The applicant states that parts of Property II have also been platted for possible sale as separate parcels. The applicant states further that the IRA has received approximately $2992 in CRP subsidy payments as a result of its ownership of the acres on Property II which are subject to the CRP subsidy program.

4. Roger K. Tinjum, an accredited rural appraiser associated with Tinjum Appraisal Company, located in Detroit Lakes, Minnesota, appraised the Properties in December 1993 and updated his appraisal in June 1995. Mr. Tinjum states that he is a qualified real estate appraiser with over thirty years of experience and is familiar with the Properties and other similar properties located in the area. In addition, Mr. Tinjum represents that both he and his firm are independent of, and unrelated to, Mr. Busker.

Mr. Tinjum's appraisal of the Properties relied primarily on the market approach, with an analysis of recent sales of similar properties in the area, to establish the fair market value of the Properties. Mr. Tinjum states that his analysis took into consideration the potential of the Properties for further development. In this regard, Mr. Tinjum represents that the highest and best use for the Properties would be recreational use. Based on this analysis, Mr. Tinjum concluded that the fair market values of Property I and Property II were $20,000 and $72,000, respectively, as of December 10, 1993.

By letter dated June 15, 1995, Mr. Tinjum states that the present fair market value of the Properties has not changed since December 10, 1993.

The applicant states that Mr. Tinjum will update his appraisal of the Properties at the time of the proposed transaction to establish their fair market value. Such appraisal will take into consideration any recent sales of comparable properties in the area since the date of Mr. Tinjum's last appraisal.

5. The applicant requests an exemption for the proposed sale of the Properties by the IRA to Mr. Busker. As noted above, the IRA would receive cash in exchange for the Properties in an amount equal to the fair market value of the Properties, as determined by an independent, qualified appraiser at the time of the transaction.

The applicant represents that the proposed transaction would be in the best interests of the IRA because it would allow the IRA to dispose of the Properties, which at the present time are illiquid investments which have not been appreciating in value, and reinvest the sale proceeds in more liquid investments which would offer greater returns. The applicant states that the terms and conditions of the sale would be at least as favorable to the IRA as the terms and condition which the IRA could obtain in an arm's-length transaction with an unrelated party. The applicant states further that the IRA

[8] Pursuant to 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

would not pay any commissions or other expenses in connection with the transaction.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the sale would be at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party; (b) the sale would be a one-time cash transaction which would allow the IRA to dispose of illiquid assets which have not been appreciating in value; (c) the IRA would receive the fair market value of the Property, as established at the time of the sale by an independent, qualified appraiser; (d) the IRA would not be required to pay any commissions, costs or other expenses in connection with the sale; and (e) Mr. Busker has determined that the proposed sale of the Properties would be in the best interests of the IRA.

NOTICE TO INTERESTED PERSONS: Because Mr. Busker is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Profit Sharing Plan for Employees of Athens Disposal Co., Ranco Leasing, Covina Disposal Co., and South Pasadena Disposal Co. (the Plan), Located in City of Industry, California

[Application No. D–10029]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale on March 24, 1994, for $300,000 (the Sale) of 7,500 shares (the Shares) of common stock issued by Garfield Bank (the Bank), chartered in California and located in Montebello, California, by the Plan to Athens Disposal Co., Inc., a party in interest with respect to the Plan; provided that (1) the Plan experienced no loss nor incurred any expense from the Sale; and (2) the Plan received as consideration from the Sale an amount that was no less than the fair market value of the Shares on the date of the Sale.

EFFECTIVE DATE: If this proposed exemption is granted, the effective date of the exemption will be March 24, 1994.

Summary of Facts and Representations

1. There are three closely-held corporations that currently sponsor the Plan (the Employers) that are all incorporated in California and are wholly owned by various members of the Arakelian family. One of the three corporations that make up the Employers is the Athens Disposal Co., Inc. (the Applicant), incorporated on July 1, 1958, which is headquartered in City of Industry, California and is engaged in the business of municipal solid waste collection and disposal. The second of the Employers is the South Pasadena Disposal Co., Inc. (South Pasadena), incorporated September 5, 1992, which provides the same services as the Applicant for the City of Pasadena, California. The third member of the Employers is the Ranco Leasing Co., Inc. (Ranco), incorporated November 21, 1981, which owns rubbish collection vehicles that it leases to the Applicant and to South Pasadena and provides fleet maintenance services for the leased vehicles.[9]

2. The Plan is a profit sharing plan that maintains individual accounts for its 254 participants and beneficiaries with net assets of $4,975,373, as of June 30, 1994. The Plan is intended to satisfy the qualification requirements of section 401(a) of the Code. The named fiduciary of the Plan is a committee (the Committee) currently consisting of two individuals, Messrs. Ron Arakelian and Ron Arakelian, Jr., who are controlling shareholders as well as officers and directors of the Applicant. The Committee is appointed by the Board of Directors of the Applicant and charged with the responsibility to administer the Plan, which includes among other things directing investments of Plan assets and appointing legal counsel, accountants, plan administrator, and trustees.

The Committee has employed and delegated responsibility for administering the accounting and recordkeeping services for the Plan to Page Services Corporation, a California corporation, located in Los Angeles, California. Messrs. Ron Arakelian and Ron Arakelian, Jr. also serve the Plan as the trustees (the Trustees) of its assets.

3. During the Plan's fiscal year ended June 30, 1985, the Applicant conveyed the 7,500 Shares to the Plan as its $300,000 funding contribution for the fiscal year.[10] The Shares, originally purchased by the applicant over a 10 year period at a price of $40 per share, were determined to have a fair market value of $40 per share on the date that they were contributed to the Plan.

While the Plan continued to hold the Shares the Bank began experiencing a poor financial performance resulting in net losses from operations for the years ended December 31, 1993 and 1994. The poor financial performance of the Bank was also manifested by limited dividend payments of the Bank to the holders of the Shares. The only dividend payments made to the Plan totalled $1,875 for each of the years 1992 and 1993.

The Applicant represents that the Bank became the subject of examinations during 1993 by both the Federal Reserve Bank (the FRB) and the Superintendent of Banks for the State of California (the State). The State completed its examination by September 24, 1993, whereas, the FRB took an additional year to complete its examination on September 24, 1994. In preliminary letters in 1993 from both the FRB and the State, the Bank was notified, among other things, that it was in an unsafe and unsound condition with a continuing deterioration in asset quality, an inadequate loan loss reserve, and a decline in capital and liquidity. The FRB concluded that the continued deterioration in asset quality threatened the already marginal capital position of the Bank and negatively impacted on its future earnings prospects. The Applicant further represents that the FRB reclassified the Bank as significantly undercapitalized for purposes of federal regulations which resulted in restrictions (a) on the ability of the Bank to pay dividends and management fees; (b) on the growth of its total assets; and (c) on its ability to expand through acquisitions, branching, or new lines of business. According to the Applicant the State also issued an order to the Bank that its capital is considered to be impaired as of September 30, 1994, which subjects the

[9] Covina Disposal Co., Inc., incorporated in California on October 3, 1985, a wholly-owned subsidiary of the Applicant, had been another sponsor of the Plan, but was liquidated on June 30, 1990, and had its assets and liabilities distributed to the Applicant with its participants in the Plan absorbed by the Applicant.

[10] The Applicant represents that the contribution of the Shares was not a prohibited transaction under the Act. The Department expresses no opinion as to whether the contribution was a prohibited transaction.

Shares to assessment under certain circumstances and potential forfeiture.

The common stock of the Bank was appraised on January 21, 1994, and February 11, 1994, by an independent appraiser, Mr. Glenn Garlick, Principal of Houlihan Valuation Appraisers located in Costa Mesa, California. When making the appraisals Mr. Garlick understood that the Applicant intended to purchase the Shares from the Plan at the greater of either $40 per share or the fair market value based upon an independent appraisal. In the February 11, 1994, appraisal, Mr. Garlick concluded that without consideration of the intent of the applicant to purchase the Shares, the fair market value of the Shares is not greater than $27 per share.

The Applicant further represents that another indication of the continued decline in the fair market value of the Shares was manifested in the private placement offering of Units in March 1995 by the Bank to individual subscribers for $10 per Unit. Each Unit consists of one share of common stock of the Bank plus one five-year warrant convertible into one share common stock for the additional consideration of $10.

4. In order to eliminate the ever increasing risk associated with the continued investment in the Shares by the Plan and to permit the Plan to distribute or otherwise invest the original value of the assets in the Plan, the Applicant on March 24, 1994, made a $300,000 cash purchase of the Shares from the Plan. The Plan incurred no expenses or commissions from the Sale. Furthermore, the Applicant represents that the Plan was able to invest the proceeds from the Sale into more liquid and income producing investments; such as, U.S. Treasury Bills, money market accounts, and publicly traded common stock.

The Applicant represents that the Plan's elimination of the risks inherent in the continued investment in the Shares by the Sale to the Applicant was in the best interests of the Plan and its participants and beneficiaries, and also served to protect the rights of the participants and beneficiaries. The Trustees of the Plan made these determinations based on their knowledge that the Bank was subject to the FRB and State examinations and resulting enforcement actions described above that presented significant risks to the Plan if it continued to hold the Shares. In addition, the Trustees were motivated to act because the Shares were providing little or no income for the Plan, plus there was little or no likelihood that there would be income received in the foreseen future by the Plan.

5. In summary, the applicant represents that the transaction satisfies the criteria for an exemption under section 408(a) of the Act because (a) the Plan received from the Applicant in a one-time transaction cash in an amount that was no less than the fair market value of the Shares on the date of the Sale; (b) the transaction enabled the Plan and its participants and beneficiaries to avoid the continuing risks associated with holding the Shares; (c) the Plan incurred no loss or expense from the Sale; (d) the Trustees have determined that the transaction was in the best interests of the Plan and its participants and beneficiaries and was protective of their rights under the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Banc One Capital Corporation (Banc One) Located in Columbus, OH

[Application No. D–10046]

Proposed Exemption

Section I. Transactions

A. Effective June 2, 1995, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Subsection I.A. (1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[11]

B. Effective June 2, 1995, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[12] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions

[11] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(a)(ii) and regulation 29 CFR 2510.3–21(c).

[12] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Subsection I.B. (1) or (2).

C. Effective June 2, 1995, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to or described in all material respects in the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[13]

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.S.

D. Effective June 2, 1995, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II. General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision of Subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Subsection II.A.(6) above.

Section III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) above for which Banc One or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either—

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in Section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in Section III.U);

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this Section B.(1);

(2) Property which had secured any of the obligations described in Subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in Subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Banc One;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Banc One; or

(3) Any member of an underwriting syndicate or selling group of which Banc One or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

[13] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "Banc One" means Banc One Capital Corporation, an Ohio corporation, and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of Prohibited Transaction Exemption (PTE) 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, at 35932.

EFFECTIVE DATE: If granted, this proposed exemption will be effective for transactions occurring on or after June 2, 1995.

Summary of Facts and Representations

1. Banc One, formerly Meuse, Rinker, Chapman, Endres and Brooks, is the wholly owned, separately capitalized investment banking subsidiary of Banc One Corporation, a Columbus, Ohio-based holding company which had assets of $88.9 billion as of December 31, 1994 and operates 69 affiliate banks with 1,418 offices in 12 states. Banc One Corporation also owns and operates subsidiaries that engage in data processing, trust, brokerage, investment management, equipment leasing, mortgage banking, consumer finance and insurance.

Banc One was established in 1981 and it maintains its principal place of business in Columbus, Ohio. Banc One has branch operations located in Dallas, Milwaukee, Chicago, Indianapolis, Los Angeles, Phoenix, Louisville and Washington, D.C. As a member of the National Association of Securities Dealers, Banc One maintains a fixed income securities brokerage for the initial placement and remarketing of offerings originated by the firm as well as other issues traded in the secondary market. As of December 31, 1994, Banc One had total assets of $437,336,000.

Since 1988, Banc One has been securitizing assets ranging from mobile home loans to development lots. Its professional staff has a combined experience of working as an underwriter and financial advisor. Banc One's investment bankers have extensive experience in creating taxable and tax-exempt obligations having a wide range of structural characteristics as well as security arrangements.

Banc One represents that it has the legal authority to underwrite asset-backed securities. In an order dated July 16, 1990, the Federal Reserve Board granted Banc One the power to underwrite and deal in mortgage-backed securities and other asset-backed securities. This order is subject to the condition that Banc One does not derive more than 10 percent of its total gross revenues from such activities. In addition, Banc One's affiliates have the power to sell interests in their own assets in the form of asset-backed securities.

Trust Assets

2. Banc One seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [14] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[15]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[16]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated, in the ordinary course of business, by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets and the trustee issues certificates representing fractional undivided interests in the trust assets. Banc One, or one or more broker-dealers (which may include Banc One), acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated have been or are to be underwritten by Banc One on a firm commitment basis. In addition, Banc One anticipates privately placing certificates on both a firm commitment

[14] The Department notes that PTE 83–1 (48 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. Banc One and its affiliates request relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Banc One has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[15] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association. The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[16] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

and an agency basis. Banc One may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

5. Some of the certificates will be multi-class certificates. Banc One requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/ slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[17]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates have been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a *pro rata* basis.[18]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The originator of a receivable is the entity that initially lends money to a borrower (obligor), such as a home owner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The sponsor of a trust will be one of three entities: (i) a special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee and assigning the receivables to the trust.

9. The trustee of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such, is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore, will be unrelated to Banc One, the trust sponsor or the servicer. Banc One represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services which will be paid by the servicer, sponsor or the trust as specified in the pooling and servicing agreement. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The servicer of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as

[17] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[18] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a *pro rata* basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

having been sold. To protect the investor's interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures relating to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purposes of reporting all activity on those receivables after their sale to the investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases, the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investor are reconciled to the servicer's books and reviewed by public accountants.

The underwriter will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placements of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead or co-managing underwriter will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Banc One. However, affiliates of Banc One may originate or service receivables included in a trust or they may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or the finance company pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables, itself.

As compensation for the receivables transferred to the trust, the sponsor receives cash or certificates representing the entire beneficial interest in the trust. The sponsor sells some or all of these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[19] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon rate, together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting as sponsor) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases, a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). Typically, the servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid in a lump sum at the time the trust is established, or on the receivables in excess of the pass-through rate.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession or other conversion of a secured position into cash proceeds upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would normally consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the

[19] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

underwriter may buy certificates as principal, in which case, its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. As the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The repurchase price for such an option is set at a level such that the certificateholders will receive the full amount on all of the receivables held by the trust plus the full amount of property, if any, that has been acquired by the trust through collections on or liquidations of the receivables.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as overcollateralization, surety bonds, letters of credit or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer or an affiliate of the master servicer may provide credit support to the trust (i.e., act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be itself), or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. In some transactions, the master servicer may not be obligated to advance funds, but instead, would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support from the future payment stream. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the master servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. To date, Banc One has not entered into any forward delivery commitments in connection with the offering of pass-through certificates. However, Banc One may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to the offering of similar certificates backed by pools of residential mortgages. As such, Banc One may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. It is Banc One's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter. Banc One anticipates that it will make a market in certificates.

Retroactive Relief

26. Banc One represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted prior to the date of this application. However, Banc One requests the exemptive relief granted to be retroactive to June 2, 1995, the date of this application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

27. In summary, Banc One represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Banc One seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Banc One anticipates that it will make a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (a) The proposed exemption provides individual exemptive relief rather than class relief; (b) the proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (c) instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (d) the proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[20]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Banc One represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[21] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[22] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Banc One represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Banc One represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Banc One represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other

[20] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[21] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Banc One or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

[22] The applicant represents that where a trust sponsor is an affiliate of Banc One, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Banc One is not a fiduciary with respect to plan assets to be invested in certificates.

provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 7th day of August, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–19871 Filed 8–10–95; 8:45 am]

BILLING CODE 4510–29–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–25351]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

August 4, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 28, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70–8659)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act.

Columbia seeks authority to enter into interest rate hedge transactions to limit its exposure to a potential rise in long-term interest rates from now until the interest rates on its long-term debt are fixed upon its emergence from bankruptcy. Columbia's interest rate exposure is due to a projected fixed rate debt issuance of approximately $2.1 billion to fund Columbia's proposed plan or reorganization ("Columbia Plan"). An application by Columbia to issue this debt was filed on May 7, 1995 (File No. 70–8627) and is currently pending.

Among other things, the Columbia Plan contemplates the issuance of up to $2.1 billion in debentures (the "New Indenture Securities") to be issued under a new form of indenture on the date the Columbia Plan becomes effective (the "Effective Date"), currently anticipated to be December 31, 1995. The New Indenture Securities are to be issued in seven series, each series bearing a maturity that will range from approximately 5 to thirty years. The principal amount of each series will be substantially the same as that of each other series; provided, however, that no series other than series A will have an initial principal amount that is more than 150% of that of any other series. The rate of interest to be borne by the New Indenture Securities of each series will be determined prior to the Effective Date based on market rates for securities of similar maturities and debt rating and in accordance with the pricing methodology set forth in the Columbia Plan.

Recent declines in long-term interest rates permit Columbia to lock in historically attractive interest rates on its New Indenture Securities. To take advantage of these rates, Columbia requests authorization to enter into certain interest rate hedging transactions prior to the issuance of the New Indenture Securities. These transactions include any or all of the following: (i) A sale of exchange-traded U.S. Treasury futures contracts, a forward sale of U.S. Treasury securities and/or a forward interest rate swap, (ii) the purchase of put options on U.S. Treasury securities (each a "Put Options Purchase"), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury securities, or (iv) some combination of the above. These transactions may be executed on the Chicago Board of Trade ("CBOT") with brokers through the opening of futures and/or options positions traded on the CBOT, the opening of over-the-counter positions with one or more counterparties or a combination of the two.

In a sale of exchange-traded U.S. Treasury futures contracts or in a forward sale of U.S. Treasury securities, Columbia would "lock-in" the U.S. Treasury security component of the New Indenture Securities at the then current Treasury forward yield by selling U.S. Treasury futures and/or by selling spot U.S. Treasury securities forward. Columbia would then reverse its short positions on or around the Effective Date by purchasing the U.S. Treasury futures contracts and/or U.S. Treasury securities previously sold.

In a forward swap, Columbia would agree to enter into a fixed-to-floating rate swap for a period equal to the maturity of the series of New Indenture Securities being hedged, as of a future settlement date. The future settlement date will be on or around the Effective Date. In the swap agreement, Columbia would contract to pay a fixed rate and received floating-rate payments. On or about the Effective Date, Columbia would unwind the swap by entering into a floating-to-fixed rate swap for a notional amount equal to that of the swap being unwound.

Any gains resulting from interest rate rises in closing the forward sale or sale of Treasury futures or in unwinding the swap would be offset ratably over the life of the New Indenture Securities being hedged by the higher financing cost of such securities. Any losses resulting from interest rate drops in closing such hedging transactions would be offset ratably over the life of the New Indenture Securities being hedged by the lower financing cost of such securities.

Using a Put Options Purchase strategy, Columbia would buy the right, but not the obligation, to sell U.S. Treasury securities forward at a predetermined price or yield. A Put Options Purchase would protect Columbia from a rise in U.S. Treasury rates and would permit Columbia to benefit from a decline in U.S. Treasury rates. To purchase this right, Columbia would be required to pay an up-front option premium.

Columbia additionally requests approval to sell call options on U.S. Treasury securities to earn premiums that would offset the cost of a Put Options Purchase. Columbia would buy the right to sell U.S. Treasury securities forward at a predetermined price and yield (through a put option purchase), and would sell the right to buy the same U.S. Treasury securities forward at a higher predetermined price and lower yield. The premiums paid for the put options would be paid for by the premiums received on the call options that are sold.

Alabama Power Company (70–8661)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a) and 10 of the Act and rule 54 thereunder.

Alabama entered into Installment Sale Agreements and supplements thereto ("Agreements") with the Industrial Development Boards of various cities within the State of Alabama ("Boards") to finance and refinance certain pollution control facilities at Alabama's plants located in or near such cities ("Projects"). Pursuant to the Agreements, the Boards purchased the then existing portions of the Projects, undertook to complete their construction and to sell the completed Projects to Alabama for a purchase price payable in semi-annual installments over a term of years.

Each Board issued its Series A pollution control revenue bonds ("Original Bonds"), and, in certain cases, subsequent series of pollution control revenue bonds ("Additional Bonds") pursuant to various trust indentures and supplements thereto ("Indentures"), in various amounts, then estimated to be sufficient to cover the cost of construction of the Projects. To secure its obligations under the Agreements, Alabama granted to certain Boards a security interest in the Board's Project subordinate to the lien of the Indenture dated as of January 1, 1942, between Alabama and Chemical Bank, as Trustee, as supplemented and amended ("First Mortgage Indenture"). In other instances, Alabama issued and pledged bonds under the First Mortgage Indenture ("Mortgage") ("Collateral First Mortgage Bonds") as security for its obligations under the Agreements. Each Board assigned all its right, title and interest in the Agreement, including either the Collateral First Mortgage Bonds or the subordinate security interest, to the trustee under the Indenture ("Revenue Bond Trustee") as security for the pollution control revenue bonds, including the Original Bonds and Additional Bonds to be issued under such Indenture.

The proceeds of the sale of the Original Bonds and the Additional Bonds were deposited by the Board with the Revenue Bond Trustee. The proceeds have been applied to payment of the cost of construction of the Projects. The total cost of construction of one or more of the Projects may exceed the proceeds of the Original Bonds and the Additional Bonds. Additionally, it may be necessary or appropriate to refund one of more series of such bonds.

Consequently, Alabama proposes to request that the appropriate Board or Boards issue up to an aggregate of $500 million principal amount of revenue bonds ("New Bonds") through December 31, 2000. Upon issuance of the New Bonds, Alabama and the Board will execute and deliver to the Revenue Bond Trustee, as required by the Indenture, a supplement to the Agreement ("Supplemental Agreement") providing for: (1) Any required revision to assure that the semi-annual purchase price payments will be sufficient (together with other moneys held by the Revenue Bond Trustee under the Indenture for that purpose) to pay the principal of, premium (if any), and interest on the New Bonds as they become due and payable; and (2) the payment of all expenses and costs incurred or to be incurred by virtue of the issuance of the new Bonds. The Board and the Revenue Bond Trustee will enter into a supplement ("Supplement") to the Indenture providing for the New Bonds. The Supplement will provide for redemption provisions for the New Bonds comparable to those provided for the Original Bonds and the Additional Bonds.

It is proposed that the New Bonds will mature not more than 40 years from the first day of the month in which they are initially issued. The New Bonds may be entitled to the benefit of serial maturities and/or a mandatory redemption sinking fund calculated to retire a portion of the New Bonds prior to maturity.

The effective cost to Alabama of any series of the New Bonds will not exceed the yield on U.S. Treasury securities having a maturity comparable to that of such series of New Bonds. Such effective cost will reflect the applicable interest rate or rates and any underwriters' discount or commission.

The premium (if any) payable upon the redemption of any New Bonds at the option of Alabama will not exceed the greater of: (1) 5% of the principal amount of the New Bonds so to be redeemed; or (2) a percentage of such principal amount equal to the rate of interest per annum borne by the New Bonds.

The Supplement may give the holders of the related New Bonds the right, during such time, if any, as such New Bonds bear interest at a fluctuating rate, to require Alabama to purchase such New Bonds from time to time, and arrangements may be made for the remarketing of any such New Bonds through a remarketing agent. Alabama also may be required to purchase the New Bonds, or the New Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. Also, in the event of taxability, interest on the New Bonds may be effectively converted to a higher variable or fixed rate, and Alabama also may be required to indemnify the bondholders against any other additions

to interest, penalties, and additions to tax.

Alternatively, Alabama may enter into a new Agreement with the appropriate Board, and such Board may enter into a new Indenture with the appropriate Revenue Bond Trustee pursuant to which the New Bonds will be issued. In such event, the Agreement and the Indenture will contain provisions described, below.

In order to obtain the benefit of ratings for the New Bonds equivalent to the rating of Alabama's first mortgage bonds outstanding under the Mortgage, Alabama may determine to secure its obligations under the Agreements by delivering to the Revenue Bond Trustee, to be held as collateral, a series of Collateral First Mortgage Bonds in principal amount either: (1) Equal to the principal amount of the New bonds; or (2) equal to the sum of the principal amount of the New Bonds plus interest payments thereon for a specified period. The Collateral First Mortgage Bonds will be issued under an indenture supplemental to the Mortgage ("Supplemental Indenture") to be dated as of the first day of the month in which the Collateral First Mortgage Bonds are to be issued and delivered, will mature on the maturity date of the New Bonds and will be nontransferable by the Revenue Bond Trustee. The Collateral First Mortgage Bonds in: (1) Above, would bear interest at a rate or rates equal to the interest rate or rates to be borne by the related New Bonds; and (2) above, would be non-interest bearing.

The Supplemental Indenture will provide, however, that the obligation of Alabama to make payments with respect to the Collateral First Mortgage Bonds will be satisfied to the extent that payments are made under the Agreement sufficient to meet the payments when due in respect of the related New Bonds. The Supplemental Indenture will provide that, upon acceleration by the Revenue Bond Trustee of the principal amount of all related outstanding New Bonds under the Indenture, the Revenue Bond Trustee may demand the mandatory redemption of the related Collateral First Mortgage Bonds then held by it as collateral at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the date fixed for redemption. The Supplemental Indenture may also provide that, upon the optional redemption of the New Bonds, in whole or in part, at any time after they have been outstanding for a specified period, a related principal amount of the Collateral First Mortgage Bonds will be redeemed at the redemption price of the New Bonds.

In the case of interest bearing Collateral First Mortgage Bonds, because interest accrues in respect to the Collateral First Mortgage Bonds until satisfied by payments under the Agreement, "annual interest charges" in respect of such Collateral First Mortgage Bonds will be included in computing the "interest earnings requirement" of the Mortgage which restricts the amount of first mortgage bonds which may be issued and sold to the public in relation to Alabama's net earnings. In the case of non-interest bearing Collateral First Mortgage Bonds, since no interest would accrue in respect of such Collateral First Mortgage Bonds, the "interest earnings requirement" would be unaffected.

The Indenture will provide that, upon deposit with the Revenue Bond Trustee of funds sufficient to pay or redeem all or any part of the related New Bonds, or open direction to the Revenue Bonds Trustee by Alabama to apply available funds for that purpose, or upon delivery of such outstanding New Bonds to the Revenue Bond Trustee by or for the account of Alabama, the Revenue Bond Trustee will be obligated to deliver to Alabama the Collateral First Mortgage Bonds then held as collateral in an aggregate principal amount as they relate to the aggregate principal amount of the New Bonds for the payment or redemption of which the funds have been deposited or applied or which shall have been so delivered.

Alabama may determine to secure its obligations under any Agreement by causing an irrevocable letter of credit ("Letter of Credit") of a bank ("Bank") to be delivered to the Trustee. The Letter of Credit would be an irrevocable obligation of the Bank to pay to the Trustee, upon request, up to an amount necessary in order to pay principal of and premium (if any) and certain accrued interest on the related New Bonds when due. Any Letter of Credit issued as security for the payment of New Bonds will be issued pursuant to a Reimbursement Agreement between Alabama and the financial institution issuing such Letter of Credit.

Pursuant to the Reimbursement Agreement, Alabama will agree to pay or cause to be paid to the financial institution, on each date that any amount is drawn under such institution's Letter of Credit, an amount equal to the amount of such drawing, whether by cash or by means of a borrowing from such institution pursuant to the Reimbursement Agreement. Any such borrowing may have a term of up to 10 years and will bear interest at the lending institution's prevailing rate offered to corporate borrowers of similar quality which will not exceed the prime rate or: (1) The London Interbank Offered Rate plus up to ⅜ of 1%; (2) the lending institution's certificate of deposit rate plus up to ½ of 1%; or (3) a rate not to exceed the prime rate, to be established by agreement with the lending institution prior to the borrowing. Such delivery of the Letter of Credit to the Trustee would obtain for the related New Bonds the benefit of a rating equivalent to the credit rating of the Bank.

As an alternative to, or in conjunction with, securing its obligations under any Agreement as described above, and in order to obtain a "AAA" rating for the related New Bonds by one or more nationally recognized securities rating agencies, Alabama may cause an insurance company to issue a policy of insurance guaranteeing the payment when due of the principal of and interest on such New Bonds. The insurance policy would extend for the term of the related New Bonds and would be non-cancelable by the insurance company for any reason. Alabama's payment in respect of said insurance policy could be in various forms, including a non-refundable, one-time insurance premium paid at the time the policy is issued, and/or an additional interest percentage to be paid to the issuer in correlation with regular interest payments. In addition, Alabama may be obligated to make payments of certain specified amounts into separate escrow funds and to increase the amounts on deposit in such funds under certain circumstances. The amount in each escrow fund would be payable to the insurance company as indemnity for any amounts paid pursuant to the related insurance policy in respect of principal of or interest on the related New Bonds.

It is contemplated that any New Bonds will be sold by the Board pursuant to arrangements with a purchaser or purchasers to be selected. In accordance with the laws of the State of Alabama, the interest rate to be borne by any series of New Bonds will be fixed by the Board and will be either a fixed rate, which fixed rate may be convertible to a rate which will fluctuate in accordance with a specified prime or base rate or rates or be determined through auction or remarketing procedures, or a fluctuating rate, which fluctuating rate may be convertible to a fixed rate. Bond counsel will issue an opinion that interest on the New Bonds will generally be exempt from federal income taxation. Alabama has been advised that the annual interest rates on obligations, the interest on which is tax exempt, recently have been and can be expected at the time of issue of any series of New Bonds to be approximately one to three percentage points lower that the rates on obligations of like tenor and comparable quality, interest on which is fully subject to federal income tax.

Alabama also proposes that it may enter into arrangements providing for the delayed or future delivery of New Bonds to one or more purchasers, placement agents or underwriters. The obligations of the purchasers, placement agents or underwriters to purchase New Bonds under any such arrangements may be secured by U.S. Treasury securities, letters of credit or other collateral.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19838 Filed 8–10–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 1C–21269; 811–7057]

Trademark Funds; Notice of Application

August 4, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Trademark Funds.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 8, 1995 and amended on July 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 29, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Federated Investors Tower, Pittsburgh Pennsylvania 15222–3779.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On November 25, 1992, applicant registered under the Act as an investment company and filed a registration statement under the Securities Act of 1933. The registration statement was declared effective on February 8, 1993, and applicant's initial public offering commenced promptly thereafter. Applicant's series include: Trademark Equity Fund, Trademark Kentucky Municipal Bond Fund, Trademark Short-Intermediate Government Fund and Trademark Government Income Fund.

2. On August 15, 1994, the investment adviser to the Trademark Funds, Liberty National Bank and Trust Company of Kentucky, was acquired indirectly by Banc One Corporation. At a meeting held on October 7, 1994, applicant's trustees, including the independent trustees, unanimously approved an agreement and plan of reorganization (the "Plan"). Under the Plan, Trademark Equity Fund, Trademark Kentucky Municipal Bond Fund, Trademark Short-Intermediate Government Fund and Trademark Government Income Fund would be acquired by The One Group Large Company Growth Fund, The One Group Kentucky Municipal Bond Fund, The One Group Intermediate Bond Fund and The One Group Government Bond Fund, respectively. Proxy materials were filed with the SEC and were distributed to applicant's shareholders on or about December 12, 1994. At a special meeting held on January 12, 1995, applicant's shareholders approved the Plan.

3. At the end of the business day on January 19, 1995, the specified One Group investment companies acquired all of the assets of the corresponding Trademark series in exchange for One Group shares, which then were distributed pro rata by the Trademark series to their shareholders in complete liquidation and termination of the Trademark series. As a result, each shareholder of the Trademark series received a number of full and fractional shares equal in value at the date of exchange to the value of the net assets of the Trademark series transferred to the corresponding One Group investment companies attributable to the shareholder.

4. All fees and expenses, including accounting expenses, portfolio transfer taxes or other similar expenses incurred in connection with the reorganization will be paid by the fund directly incurring such fees and expenses, except that the costs of proxy materials and proxy solicitation, including legal expenses, will be borne by Banc One Corporation.

5. Applicant has no assets or liabilities and is not a party to any litigation or administrative proceeding. At the time of the application, applicant had no securityholders.

6. Applicant is neither engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs. Applicant intends to file all documents required to terminate its existence as a Massachusetts business trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19839 Filed 8–10–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36050; File No. SR–DTC–95–10]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Implementing the Advice of Confirm Correction/Cancellation Feature and Modifying the Authorization/Exception Processing Feature of the Institutional Delivery System

August 2, 1995.

On April 27, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–95–10) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to implement the Advice of Confirm Correction/Cancellation feature and modify the Authorization/Exception Processing feature of the Institutional Delivery system ("ID"). Notice of the proposal was published in the **Federal Register**

[1] 15 U.S.C. 78(b)(1) (1988).

on June 1, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

In a previous filing with the Commission, DTC described several enhancements to the ID System that it planned to implement, including the Advice of Confirm Correction/Cancellation feature and the modification of Authorization/Exception processing.[3] These are the subject of this approval order.

The Advice of Confirm Correction/Cancellation feature is one of three electronic mail features described in the Enhanced ID filing.[4] The Advice of Confirm Correction/Cancellation feature enables an institution or its agent which has received a confirmation through the ID system to notify the broker-dealer of the reason(s) why the institution disagrees with the confirmation. This communication from the institution, which is sometimes called a "DK" (*i.e.*, don't know) of the trade, enables the broker-dealer to take steps to resolve the discrepancy between its records of the trade and the institution's records. The Advice of Confirm Correction/Cancellation also was described in another DTC filing as a feature which will enable a prime broker to DK a trade when it receives an ID confirmation from an executing broker.[5]

The proposal also modifies Authorization/Exception processing by increasing the number of trades which can be processed and by extending the period during which the process can be used.[6] Prior to the modification, only ID trades which were schedules to settle on the third day following the trade date ("T+3") or later could be authorized or excepted from settlement through an instruction submitted or excepted from settlement through an instruction submitted on settlement date minus one ("S–1"). The modification allows authorization or exception of trades settling on T+1 and later through an instruction submitted on any of the twenty-three business days from S–1 through S+21.

II. Discussion

Sections 17A(b)(3)(A) and (F) of the Act[7] require that a clearing agency be organized and its rules be designed to facilitate and promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that DTC's proposal is consistent with Section 17A of the Act[8] because the proposal should promote efficiencies in the clearance and settlement of securities transactions by increasing the number of trades eligible and by expanding the timeframe for Authorization/Exception processing. The proposal also should promote efficiencies by improving communications among the parties to institutional trades by making the Advice of Confirm Correction/Cancellation feature more interactive and automated. These changes should help DTC participants settle trades in a three-day settlement cycle.[9]

III. Conclusion

The Commission finds that DTC's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–95–10) be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19837 Filed 8–10–95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–36082; International Series Release No. 836 File No. SR–Phlx–95–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., to List and Trade 3D Foreign Currency Options on the Japanese Yen

August 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange subsequently filed Amendment No. 1 to the proposed rule change on July 7, 1995.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade cash settled foreign currency options on the Japanese Yen. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[2] Securities Exchange Act Release No. 35758 (May 24, 1995), 60 FR 28636.

[3] Securities Exchange Act Release No. 33466 (January 1994), 59 FR 3139 [File No. SR–DTC–93–07] (order approving proposed rule change relating to the enhanced ID system) ("Enhanced ID Filing").

[4] The other two electronic mail features (*i.e.*, Notice of Order Execution and Institution Instructions) were previously approved by the Commission. For a complete description of these features, refer to Securities Exchange Act Release No. 34199 (June 10, 1994), 59 FR 31660 [File No. SR–DTC–94–04] (order granting accelerated approval of a proposed rule change to implement the interactive capabilities and the electronic mail features of the enhanced ID system).

[5] Securities Exchange Act Release No. 34779 (October 3, 1994), 59 FR 34779 [File No. SR–DTC–94–13] (order granting accelerated approval on a temporary basis through May 31, 1995, of a proposed rule change implementing the prime broker option in the ID system).

More recently, DTC filed a proposed rule change modifying features of the prime broker option in the ID system. For a complete description of that filing, refer to Securities Exchange Act Release No. 35971 (July 14, 1995), 60 FR 37696 [File No. SR–DTC–95–11] (notice of filing and immediate effectiveness of proposed rule change relating to modifications to the prime broker option in the Institutional Delivery System).

[6] The Authorization/Exception function affords participants twenty-three business days to authorize for or except from automated settlement any eligible, affirmed next day funds settlement ("NDFS") or same-day funds settlement ("SDFS") trade in an interactive environment.

[7] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[8] 15 U.S.C. 78q–1 (1988).

[9] On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act, which establishes three business days after the trade date instead of five business days as the standard settlement timeframe for most broker-dealer transactions. The rule became effective June 7, 1995. Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6–1); 34952 (November 9, 1994), 59 FR 59137 (release changing the effective date of the three day settlement cycle).

[10] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Phlx submitted Amendment No. 1 to the Commission to make certain technical corrections to the proposal. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to John Ayanian, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated July 7, 1995.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to list and trade Dollar Denominated Delivery ("3D") foreign currency options ("FCOs") on the Japanese Yen. In March 1994, the Commission approved the listing and trading of 3D FCOs on the German Mark.[4] 3D FCOs are cash-settled, European-style options issued by the Options Clearing Corporation ("OCC") that allow holders to receive U.S. dollars representing the difference between the current foreign exchange spot price[5] and the exercise price of the option. Specifically, upon exercise of an in-the-money 3D FCO structured as a call, the holder will receive, from OCC, U.S. dollars representing the difference between the exercise strike price and the closing settlement value of the 3D FCO contract multiplied by the number of units of currency covered by the contract. For a 3D FCO structured as a put, the holder will receive U.S. dollars representing the excess of the exercise price over the closing settlement value of the 3D FCO contract multiplied by the number of units of foreign currency covered by the contract.

Unlike other Phlx-traded FCOs, 3D FCOs which are in-the-money by any amount on the expiration date will be exercised automatically by OCC. 3D FCOs which are out-of-the-money at expiration will expire worthless.

German 3D FCOs were originally listed with one-week and two-week expirations to provide a hedging vehicle to sophisticated retail customers, portfolio managers and multi-national corporations which needed to hedge their short term foreign currency exposure and also to banks which needed to hedge the risks associated with trading in the forward and cash markets. Recently, the Exchange received approval from the Commission to list German 3D FCO contracts with longer term expirations up to twelve months[6] due to the interest expressed by the users of the product who did not wish to establish foreign bank credit lines or worry about the potential of exchanging currency at exercise and assignment.

The Exchange is now proposing to list and trade 3D FCOs on the Japanese yen (U.S. dollar/Japanese yen). The contract size will be 6,250,000 yen, the same as physically settled Japanese yen contract. Pursuant to Phlx Rule 1012(a)(ii), the contracts will be listed with expirations at one week and two weeks and one, two, three, six and nine months (twelve month options will not be listed at this time). The options will be on the March, June, September, December cycle and no month end or long term expirations will be listed. The expiration date for the consecutive and cycle month options will be the Monday preceding the third Wednesday of each month. The Exchange expects that the symbols for these options will be as follows:

XJA	first Monday of month expiration
XJB	second Monday of month expiration
XJC	third Monday of month expiration
XJD	fourth Monday of month expiration
XJE	fifth Monday of month expiration
XJS	settlement symbol

The 1, 2, 3, 6, and 9 month options will be listed with the symbol XJB or XJC depending on whether expiration will be the second or third Monday of that month and will carry that symbol to expiration. For example, a Sept 1995 option which would expire on Monday Sept. 18, would listed as an XJC Sept 85 call whereas the Nov 1995 option which would expire on Monday, Nov. 13, would be listed as an XJB Nov 85 call.

Similar to the 3D German mark contracts, the Exchange proposes that a series of 3D Japanese yen options will trade during normal trading hours for foreign currency options, specifically, 2:30 a.m. to 2:30 p.m. E.T. Monday through Friday. The expiring FCO contract will cease trading at 10:30 a.m. and expire at 11:59 p.m. on its expiration Monday, unless such Monday is an Exchange holiday or an Exchange designated bank holiday, when, under Phlx Rule 1000(b)(21), "Expiration date," as amended, the 3D FCO will expire at 11:59 p.m. on the preceding business date.

Accordingly, on Exchange holidays and Exchange designated bank holidays, the expiring 3D FCOs will cease trading at 10:30 a.m. on the preceding business day. In addition, when Monday is an exchange holiday, a new two-week contract will be listed on the following Tuesday at 2:30 a.m. E.T. as opposed to the normal Monday morning listing.

The closing settlement value, which will be disseminated through the Options Price Reporting Authority ("OPRA"), will be determined by a designated agent(s) of the Exchange under Phlx Rule 1057, "Cash/Spot Foreign Currency Option Closing Settlement Value." Pursuant to Phlx Rule 1057, at 10 a.m. (E.T.), on every expiration date for 3D FCOs, the market information vendor(s), acting as the Exchange's designated agent will collect a bid and offer quotation for the current Japanese yen spot price from the quotations submitted by at least 15 interbank foreign exchange participants, which the designated agent will select randomly from a list of at least 25 active interbank foreign exchange market participants.[7] After discarding the five highest offers and five lowest bids, the designated agent will arithmetically average the remaining ten bids and ten offers to arrive at a closing settlement value. This value will be calculated and sent to the Phlx every 30 seconds until 10:30 a.m. when the designated agent will determine the final settlement value. At that time, the settlement value will be automatically entered into the Phlx's systems, and then the Phlx disseminates it to OPRA and the OCC for entry into the OCC clearing systems.

The position limits and exercise limits for the 3D yen will be the same as the position and exercise limit for the physically settled Japanese yen contracts pursuant to Phlx Rule 1001[8] and Rule 1002 and positions in the 3D yen will be aggregated with positions in the physically settled Japanese yen contracts. The Phlx proposes to initially list exercise strike prices for each expiration around the current spot price and new strikes may be added during the life of the option in accordance with Phlx Rule 1012 at half-cent intervals for the 3 near term month and at one cent intervals for the six and nine month options.

The 3D Japanese yen options will trade in accordance with the rules governing all Phlx FCOs, including sales practice rules and floor trading rules. For example, Phlx Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered

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[4] See Securities Exchange Act Release No. 33732 (March 8, 1995), 59 FR 12023 (March 15, 1994).

[5] The "spot price" with respect to an option contract on a foreign currency option contract means the price for the sale of one foreign currency for another, quoted by various commercial banks in the interbank foreign exchange market for the sale of a single unit of such foreign currency for immediate delivery (which generally means delivery within two business days following the date on which the terms of such sale are agreed upon). See Phlx Rule 1000(b)(16).

[6] See Securities Exchange Act Release No. 35756 (May 24, 1995), 60 FR 28638 (June 1, 1995).

[7] The Phlx will select the list of interbank market participants by evaluating the number of times each contributor supplies Japanese yen spot quotes to the market information vendor(s) on Monday mornings between 10 a.m. and 10:30 a.m. The pool of quote contributors will be reviewed monthly based on these criteria and substitutions will be made, if necessary. If at any time an interbank market participant ceases to distribute JY spot quotes or is no longer in the business of making JY markets, that entity will be replaced.

[8] Position and exercise limits on the Japanese yen are 100,000 contracts on either side of the market, however, the Phlx has recently proposed to raise this limit to 200,000 contracts. This proposal is currently under review at the Commission. See Securities Exchange Act Release No. 35688 (May 8, 1995), 60 FR 26062 (May 16, 1995).

Options Traders" provides that bid/ask differentials for 3D FCOs shall be determined by reference to the underlying foreign currency. Further, 3D Japanese yen options will not be subject to customized trading pursuant to Phlx Rule 1069.

The 3D Japanese yen will have the same customer margin requirements as are provided for the existing Japanese yen FCOs pursuant to Phlx Rule 722, "Margin Accounts." Specifically, for any put or call on 3D options which are issued, guaranteed or carried "short" in a customer's account, the required margin shall be 100% of the options premium plus 4% of the value of the underlying contract less any out-of-the-money amount, with an adjustment for out-of-the money options to be not less than 100% of the options premium plus ¾% of the underlying contract margin within five days following the date on which a customer enters into a 3D FCO position and within two days if the option has two weeks or less to expiration.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest by providing foreign currency option users who do not necessarily need to exchange currency at settlement with an alternative cash settled foreign currency option with corresponding expirations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to SR–Phlx–95–42 and should be submitted by September 1, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19931 Filed 8–10–95; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

1994–95 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994–95 Advisory Council on Social Security (the Council).

DATES: Thursday, August 31, 1995, 9 a.m. to 5 p.m. and Friday, September 1, 1995, 9 a.m. to 3 p.m.

ADDRESSES: The Embassy Row Hotel, 2015 Massachusetts Avenue, NW, Washington, DC 20036, (202) 265–1600.

FOR FURTHER INFORMATION CONTACT: By mail—Dan Wartonick, 1994–95 Advisory Council on Social Security, Suite 705, 1825 Connecticut Avenue, NW, Washington, DC 20009; By telephone—(202) 482–7117; By telefax—(202) 482–7123.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24–25, 1994 (59 FR 30367), July 29, (59 FR 35942), September 29–30 (59 FR 47146), October 21–22 (59 FR 51451), November 18–19 (59 FR 55272), January 27, 1995 (60 FR 3416), February 10–11 (60 FR 5433), March 8–9 (60 FR 10091), March 10–11 (60 FR 10090), April 21–22 (60 FR 18419), May 19–20 (60 FR 24961), June 2–3 (60 FR 27372) July 27–28 (60 FR 35097).

II. Agenda

The following topics will be presented and discussed:

- Previously developed plans that would revise the OASDI program along different lines (including the possible use of relatively small individual accounts on a voluntary or mandatory basis);
- Plans to restructure Social Security that would involve the use of larger notional and/or funded individual accounts, including a discussion of transition issues and options;
- Changes affecting voluntary private pensions and individual retirement saving, including recent initiatives of the Departments of Treasury and Labor, the concept of indexed bonds, and proposals of the Committee for Economic Development.
- As time permits, various OASDI program issues, such as the structure of family benefits.

The meeting is open to the public to the extent that space is available. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance)

Dated: August 4, 1995.

David C. Lindeman,

Executive Director, 1994–95 Advisory Council on Social Security.

[FR Doc. 95–19910 Filed 8–10–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: August 4, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Gemma deGuzman, Information Resource Management (IRM) Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on August 4, 1995:

DOT No: 4091.
OMB No: 2115–0597.
Administration: United States Coast Guard.
Title: State Access to the Oil Spill Liability Trust Fund for Removal Costs under the Oil Pollution Act of 1990.
Need for Information: 33 USC 2712 provides Coast Guard the authority to promulgate regulations detailing the manner in which to obligate the Oil Spill Liability Trust Fund.
Proposed Use of Information: This information will be used by the Coast Guard s National Pollution Fund Center to determine whether expenditures submitted by the State to the Fund are compensable and to ensure that the correct amount of funding of costs is made from the Fund.
Frequency: On occasion.
Burden Estimate: 6,792 hours.
Respondents: State Governments.
Form(s): None.
Average Burden Hours Per Response: 1.5 hours reporting.

DOT No: 4092.
OMB No: 2125–New.
Administration: Federal Highway Administration.
Title: Indian Reservation Roads Program Administration Survey.
Need for Information: 23 USC 204(f) provides the authority for the Federal Highway Administration (FHWA) and the Bureau of Indian Affairs (BIA) to jointly administer the Indian Reservation Roads Program. The Government Performance and Results Act requires the establishment of performance measures consistent with the overall program goals and outcomes.
Proposed Use of Information: This information will be used by the FHWA and the BIA to improve the administration of the Indian Reservation Roads Program.
Frequency: Annual.
Burden Estimate: 272 hours.
Respondents: State, Local or Tribal Government.
Form(s): None.
Average Burden Hours Per Response: 30 minutes.

DOT No: 4093.
OMB No: 2127–0046.
Administration: National Highway Traffic Safety Administration (NHTSA).
Title: 49 CFR part 552, Petitions for Rulemaking, Defect, and Noncompliance Orders.
Need for Information: 49 USC 30162 specifies that any "interested person may file a petition with the Secretary of Transportation requesting the Secretary to begin a proceeding" to prescribe a motor vehicle safety standard under 49 USC Chapter 301 or to decide whether to issue an order under 49 USC 30118(b). To implement these statutory provisions, NHTSA promulgated part 552 according to the informal rulemaking provisions of the Administrative Procedure Act (5 USC 553 et seq.) This regulation allows the agency to ensure that the petitions filed under section 30162 are both properly substantiated and efficiently processed.
Proposed Use of Information: This information will be used by NHTSA to identify and respond on a timely basis to petitions for rulemaking or defect or noncompliance determination and to inform the public of the procedures following in response to such petitions.
Frequency: On occasion.
Burden Estimate: 100 hours.
Respondents: Individuals, businesses, or small businesses.
Form(s): None.
Average Burden Hours Per Response: 1 hour.

[9] 17 CFR 220.30–3(a)(12).

DOT No: 4094.
OMB No: 2132–0047.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR part 580, Odometer Disclosure Statement.
Need for Information: The Motor Vehicle Information and Cost Savings Act, as amended by 15 USC 1988, and implementing regulations, 49 CFR Part 580, require each transferor of a motor vehicle to provide the transferee a written disclosure of the vehicle s mileage.
Proposed Use of Information: This information will be used by motor vehicle transferors and lessors to determine the mileage and value of the vehicles.
Frequency: On occasion.
Burden Estimate: 2,586,160 hours.
Respondents: Individuals and businesses.
Form(s): None.
Average Burden Hours Per Response: .004 hours.
DOT No: 4095.
OMB No: 2120–0564
Administration: Federal Aviation Administration.
Title: Unescorted Access Privilege—Parts 107 and 108 of the Federal Aviation Regulation.
Need for Information: Section 105 of Public Law 101–604, the Aviation Security Improvement Act of 1990, directs the FAA Administrator to promulgate regulations that subject individuals with unescorted access to U.S. or foreign air carrier aircraft, or to secured areas of U.S. airports served by air carriers, to access investigations, including such criminal history records checks as the Administrator determines necessary to ensure air transportation security.
Proposed Use of Information: This information will be used by airport operators and air carriers to maintain evidence of compliance with investigative requirements for all affected individuals. The Federal Aviation Administration will review the records to ensure that individuals with unescorted access to the Security Identification Display Area have been subject to the access investigation requirements and a determination has been made permitting such authority.
Frequency: As needed.
Burden Estimate: 36,720 annually.
Respondents: Air carriers and airports.
Form(s): None.
Average Burden Hours Per Response: 10 minutes per individual recordkeeping.
DOT No: 4096.
OMB No: 2120–0508.
Administration: Federal Aviation Administration.
Title: Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.
Need for Information: As required by FAR 45, this is a labeling requirement to put the data of manufacture and compliance status on the identification plate and is intended to minimize the effort required to determine whether a turbojet engine may legally be installed and operate on an aircraft in the United States.
Proposed Use of Information: This information will be used by the Federal Aviation Administration inspectors, purchasers, owners and operators periodically, during the course of the year, to confirm that the engines meet U.S. Environmental Protection Agency pollution requirements in lieu of searching through extensive paper records.
Frequency: As required.
Burden Estimate: 100 hours annually.
Respondents: Manufacturers of aviation engines.
Form(s): None.
Average Burden Hours Per Response: 5 minutes or less per response.
DOT No: 4097
OMB No: 2120–0040
Administration: Federal Aviation Administration.
Title: Aviation Maintenance Technician Schools.
Need for Information: 49 USC 44707 authorizes the Administrator of the Federal Aviation Administration to examine and rate the air agencies.
Proposed Use of Information: This information will be used by the Federal Aviation Administration to rate aviation maintenance technician schools to maintain a standardized level of proficiency.
Frequency: As required.
Burden Estimate: 78,461 hours annually.
Respondents: Aviation Maintenance Technician School Operators.
Form(s): FAA Form 8310–6.
Average Burden Hours Per Response: 40 hours per applicant.
DOT No: 4098.
OMB No: 2120–0034.
Administration: Federal Aviation Administration.
Title: Application for Airman Medical Certificate or Airman Medical and Student Pilot Certificate.
Need for Information: 49 USC 40113, 44701, 44510, 44702, 44703, 44709, 45303, and 80111 authorizes the collection of this information. Airman medical certification program is implemented by Title 14, Code of Federal Regulations parts 61 and 67.
Proposed Use of Information: This information will be used by the Federal Aviation Administration to perform the duties associated with the class of airman medical certificate sought.
Frequency: As required.
Burden Estimate: 859,069 hours.
Respondents: Airmen.
Form(s): FAA Forms 8500–7, 8500–8, 8500–14, 8500–20.
Average Burden Hours Per Response: FAA Form 8500–7 = 15 minutes, FAA Form 8500–8 = 2 hours, FAA Form 8500–14 = 15 minutes, FAA Form 8500–20 = 11 minutes.
DOT No: 4099.
OMB No: 2127–0003.
Administration: National Highway Traffic Safety Administration.
Title: Highway Safety Program Cost Summary HS Form 217.
Need for Information: The Surface Transportation and Uniform Relocation Assistance Act of 1987 Section 206(d) authorizes the Secretary to begin a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths.
Proposed Use of Information: The information will be used by the National Highway Traffic Safety Administration to determine whether the States have demonstrated compliance with the statutory requirements for the State and Community Highway Safety Grant Program.
Frequency: Annually.
Burden Estimate: 31,601 hours.
Respondents: States.
Form(s): HS–217.
Average Burden Hours Per Response: 3 hours.
DOT No: 4100
OMB No: 2137–0047
Administration: Research and Special Programs Administration.
Title: Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.
Need for Information: 49 USC 60117 authorizes the Secretary of Transportation to require hazardous liquid pipeline operators to prepare and maintain written records and reports and to make them available to the Secretary of Transportation upon request.
Proposed Use of Information: This information will be used by the Research and Special Programs Administration to evaluate the compliance of operators of hazardous liquid pipelines with the pipeline safety requirements.
Frequency: On occasion.
Burden Estimate: 49,219 hours.
Respondents: pipeline operators.
Form(s): DOT 7000–1.
Average Burden Hours Per Response: 12 minutes.
DOT No: 4101
OMB No: 2137–0578.
Administration: Research and Special Programs Administration.
Title: Reporting Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Pipelines and Liquefied Natural Gas Facilities.
Need for Information: 49 USC 60102 requires each operator of a pipeline facility (except master meter) to submit to DOT a written report on any safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility or a condition that is a hazard to life, property or the environment.
Proposed Use of Information: This information will be used by the Research and Special Programs Administration to monitor the corrective actions proposed by operators in order to prevent the occurrence of an incident or accident.
Frequency: On occasion.
Burden Estimate: 342 hours.
Respondents: Gas, Hazardous Liquid, Carbon Dioxide, and Liquefied Natural Gas Operators.
Form(s): None.
Average Burden Hours Per Response: 6 hours.
DOT No: 4102
OMB No: 2115–New.
Administration: U.S. Coast Guard.
Title: Operational Measures for Existing Tank Vessels 5,000 Gross Tons or Greater without Double Hulls.
Need for Information: Title 46 USC 3703A mandates that regulations be established to provided improved protection from oil spills in waters subject to the jurisdiction of the United States due to collisions and groundings.
Proposed Use of Information: Coast Guard inspectors will use this information to determine if a vessel is in compliance with the regulations or in case of a casualty, whether failure to meet these proposed regulations contributed to the casualty.
Frequency: Annually.
Burden Estimate: 76,908 hours.
Respondents: Master, owner or operator of tank vessels.
Form(s): None.
Average Burden Hours Per Response: 55 hours reporting; 37 hours recordkeeping.

Issued in Washington, DC, on August 4, 1995.

Ray Reynaldo,
Computer Specialist, Information Resource Management (IRM) Strategies Division.

[FR Doc. 95–19895 Filed 8–10–95; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Westover Metropolitan Airport/Air Reserve Base Chicopee, Massachusetts

AGENCY: Federal Aviation Administration, DOT.
ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map for Westover Metropolitan Airport/Air Reserve Base, as submitted by the Westover Metropolitan Development Corporation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Westover Metropolitan Airport/Air Reserve Base under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before January 27, 1996.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is July 31, 1995. The public comment period ends on September 29, 1995.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Westover Metropolitan Airport/Air Reserve Base is in compliance with applicable requirements of part 150, effective July 31, 1995. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 27, 1996. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the introduction of additional noncompatible uses.

The Westover Metropolitan Development Corporation submitted to the FAA on January 26, 1994, a noise exposure map, descriptions, and other documentation which were produced during the Airport Noise Compatibility Planning (part 150) study at Westover Metropolitan Airport/Air Reserve Base from October 1990 to June 1995. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by Westover Metropolitan Airport/Air Reserve Base. The specific maps under consideration were Figures 10.1, " Westover Metropolitan Airport/ARB Existing Case Ldn Contours" and 10.3, " Westover Metropolitan Airport/ARB Forecast Case Ldn Contours", along with the supporting documentation in " Westover Metropolitan Airport/Air Reserve Base; FAR part 150 Documentation; Noise Exposure Map". The FAA has determined that the maps for Westover Metropolitan Airport/Air Reserve Basevelopment Corporation are in compliance with applicable . requirements. This determination is effective on July 31, 1995.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the

procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 or FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Westover Metropolitan Airport/Air Reserve Base, also effective on July 31, 1995. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 27, 1996. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Westover Metropolitan Airport, 3911 Pendleton Avenue, Chicopee, Massachusetts 01022

Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts on July 31, 1995.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 95–19908 Filed 8–10–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 1995, there were six applications approved. Additionally, four approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 95–03–C–00–MDW.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $11,916,250.

Charge Effective Date: August 1, 1998.

Estimated Charge Expiration Date: March 1, 2000.

Class of Air Carriers not Required to Collect PFC's: Air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Midway Airport.

Brief Description of Projects Approved for Use: Runway 13L/31R rehabilitation, Landside pavement replacement.

Brief Description of Projects Approved for Collection and Use: Midway terminal development planning/design, Airfield lighting control panel, Land acquisition, parcels 50, 57, 64, 65, 66, 68, 70, and 71, Update Part 150, Demonstration home soundproofing.

Brief Description of Project Approved for Collection: Runway 4R/22L reconstruction.

Brief Description of Disapproved Project: Runway arrestment system.

Determination: Disapproved. The FAA has determined the runway arrestment system project is ineligible for Airport Improvement Program (AIP) funding as per FAA Order 5100.38A, paragraph 521(a). The proposed development is not consistent with FAA design and engineering standards. Accordingly, the FAA has determined that this project does not meet the requirements of § 158.15(b)(1).

Decision Date: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Louis H. Yates, Chicago Airports District Office, (708) 294–7335.

Public Agency: City of Syracuse, New York.

Application Number: 95–01–C–00–SYR.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $9,699,050.

Charge Effective Date: October 1, 1995.

Estimated Charge Expiration Date: October 1, 1998.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Syracuse Hancock International Airport.

Brief Description of Projects Approved for Collection and Use: Terminal area deicing collection and concrete parking pads, Relocate taxiway H west and widen taxiways J and H east.

Brief Description of Project Approved for Collection: Land acquisition for parallel runway 10L/28R.

Decision Date: July 20, 1995.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (516) 295–9340.

Public Agency: Port of San Diego, San Diego, California.

Application Number: 95–01–C–00–SAN.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $108,176,000.

Charge Effective Date: October 1, 1995.

Estimated Charge Expiration Date: January 1, 2001.

Class of Air Carriers not Required to Collect PFC's: Part 135 air taxis.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at San Diego International Airport, Lindbergh Field.

Brief Description of Projects Approved for Collection and Use: Expand west terminal, Expand aircraft apron, Modify airport roadways, School sound attenuation, Construct overnight apron, Upgrade heating, ventilating, and air conditioning in east and west terminals.

Brief Description of Projects Approved for Collection: East terminal addition, Second level roadway, East terminal expansion, Demolish lease buildings, USAir, Replace airport fire station.

Brief Description of Disapproved Projects: Expand west terminal.

Determination: Disapproved. The Port, in its response to carriers' disagreements on this project, makes several statements which raise concerns about the justification and feasibility of this project. Specifically, the Port states that "the addition of gates on the NTC [Naval Training Center] side of the concourse * * * would only be pursued based on the needs of the airlines and if the NTC land is made available." The carriers had also questioned whether there was sufficient airfield capacity to accommodate the additional traffic which would use these additional gates. The Port responded by stating that "airfield capacity simulation modeling will be pursued in the planning of the project * * *." The FAA has concluded that the Port's request for collection authority for this project is premature because of the Port's stated uncertainties and disapproved the project.

Construct NTC apron.

Determination: Disapproved. The project justification provided by the Port for this project states that the apron project is necessary to support the west terminal expansion project, which was also disapproved. This project is not justified as a stand-alone project. Therefore, this project is being disapproved at this time.

Modify NTC roadways.

Determination: Disapproved. The project justification provided by the Port for this project states that the roadways are necessary to support the west terminal expansion project, which was also disapproved. This project is not justified as a stand-alone project. Therefore, this project is being disapproved at this time.

Decision Date: July 26, 1995.

FOR FURTHER INFORMATION CONTACT: John Milligan, Western Pacific Region Airports Division Office, (310) 725–3621.

Public Agency: State of New York—Department of Transportation, Newburgh, New York.

Application Number: 95–01–C–00–SWF.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $12,541,999.

Charge Effective Date: November 1, 1995.

Estimated Charge Expiration Date: July 1, 2007.

Class of Air Carriers not Required to Collect PFC's: Unscheduled air taxi operators operating under Part 135.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Stewart International Airport.

Brief Description of Projects Approved for Collection and Use of PFC Revenue: Twin dozer plow with truck, Four snow brooms with prime movers, Vacuum sweeper, airfield, Terminal building expansion, Replace southwest quadrant fuel farm, Runway 16 approach protection, phases I and II, Security access control system, Part 107, Phase III, cargo ramp expansion, Storm water management study, Field lighting control vault, Taxiway C relocation and removal of portion of Tower Hill, South cargo development, phase I, Two roll-over plows with sanders and trucks, Twenty-four foot plow truck, Snow broom, 4,000 gallon runway deicing truck, 4,000 ton per hour snow blowers (2), Partial parallel taxiway, runway 16/34—phase II—removal of a portion of Tower Hill, Northeast quadrant phase III ramp, Runway 16 approach protection, phase III, Rehabilitate First Street, 6,000 foot fence along NY State Route 17K, Rehabilitate perimeter road, Snow brooms (2), 19 foot plows with trucks (2), 19 foot plows with trucks (2).

Brief Description of Project Approved for Collection: Tower Hill obstruction removal.

Brief Description of Disapproved Project: Demolition of Hangar E.

Determination: Disapproved. This project has been determined to be ineligible under AIP cirteria in accordance with paragraph 592 of FAA Order 5100.38A. Accordingly, the project is disapproved for the collection and use of PFC revenue.

Decision Date: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (516) 295–9340.

Public Agency: Jackson County Airport Authority, Medford, Oregon.

Application Number: 95–03–C–MFR.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $2,616,349.

Charge Effective Date: November 1, 1995.

Estimated Charge Expiration Date: November 1, 2000.

Class of Air Carriers not Required to Collect PFC'S: Air taxi operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Rogue Valley International Airport.

Brief Description of Projects Approved for Collection and Use: Acquire passenger lift device, Ground level loading bridge with covered walkway, Rehabilitate air carrier ramp.

Decision Date: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry Trujillo, Seattle Airports District Office, (206) 227–2629.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Numbers: 95–02–C–00–EWR; 95–02–C–00–JFK; 95–02–C–00–LGA.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00 (at each airport).

Total Approved Net PFC Revenue to be Collected at Newark International Airport (EWR): $255,015,000.

Total Approved Net PFC Revenue to be Collected at John F. Kennedy International Airport (JFK): $226,395,000.

Total Approved Net PFC Revenue to be Collected at Laguaradia Airport (LGA): $193,590,000.

Charge Effective Date: October 1, 1995 (at each airport).

Estimated Charge Expiration Date: January 1, 2001 (at each airport).

Class of Air Carriers not Required to Collect PFC'S: Part 298 Air taxis, with the exception of commuter air carriers.

Determination: Approved. Based on information submitted in the public agency's applications, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at each airport. Although the Port Authority proposed the same class at each airport, the members of the class are different at each airport. Carriers should review the specific application or consult with the Port Authority to determine if they are members of the class excluded from PFC collection at either EWR, JFK, or LGA.

Brief Description of Project Approved for Use of PFC Revenue: EWR monorail.

Brief Description of Project Approved for Collection and use: EWR landside access project—phase 1A.

Brief Description of Project Approved for Collection: EWR ground access monorail-Northeast Corridor connection, Automated guideway transit (AGT) system—Howard Beach component.

Brief Description of Disapproved Project: AGT system—LGA on-airport component.

Determination: Disapproved. The Port Authority's justification for this project is entirely dependent on the construction of the entire AGT system. Completion of the entire system appears to be uncertain at this time. The Port Authority has not provided information showing that this project has independent utility as a separate on-airport system. Therefore, the FAA has determined that the LGA on-airport component does not meet the requirements of § 158.15(a) or (b), nor has the Port Authority provided adequate justification for the project as a stand-alone project as currently proposed.

Decision Date: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (516) 295–9340.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Amended approved net PFC revenue	Original approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–ORD, Chicago, IL.	07/07/95	$481,806,170	$531,187,544	10/01/99	09/01/98
94–01–C–CVG, Covington, KY.	07/07/95	23,847,550	$20,737,000	09/01/95	10/01/95
94–01–C–ILE, Killeen, TX.	06/09/95	321,200	321,200	05/01/97	05/01/97
93–01–C–PSC, Pasco, WA.	07/10/95	1,725,724	1,230,731	11/01/96	09/01/97

Issued in Washington, DC on August 4, 1995.

Sheryl Scarborough,

Acting Manager, Passenger Facility Charge Branch.

[FR Doc. 95–19905 Filed 8–10–95; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 93–83; Notice 2]

Century Products Co. Grant of Petition for Determination of Inconsequential Noncompliance

Century Products Company (Century) of Macedonia, Ohio, determined that some of its child safety seats failed to comply with the flammability requirements of 49 CFR 571.213, "Child Restraint Systems," Federal Motor Vehicle Safety Standard (FMVSS) No. 213, and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Century also petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 (formerly the National Traffic and Motor Vehicle Safety Act) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 29, 1993, and an opportunity afforded for comment (58 FR 68985). No comments were received. This notice grants the petition.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 (Flammability of Interior Materials) (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute." Paragraph S4.2.1 of FMVSS No. 302 states that "[a]ny material that does not adhere to other material(s) at every point of contact shall meet the requirements of S4.3 when tested separately."

From December 1991 to May 1993, Century manufactured and sold 192,824 Model 4594 and 4595 child safety seats that did not comply with the flammability requirements of FMVSS No. 213. On June 7, 1993, NHTSA informed Century that, when its Model 4595 child safety seat was tested by a NHTSA contractor, the fabric seat cover failed to meet the Standard No. 213 flammability requirements (Century's Model 4594 has the same construction as its Model 4595). The contractor tested six samples of the seat covers, yielding burn rates of between 6.3 and 7.6 inches per minute.

The seats in question are constructed of fabric, fiberfill, and backing. The covers on these seats are formed by sewing three sections together: The left side, the right side, and the center. Each section is fully sewn around its perimeter and the three sections are sewn together. The entire perimeter of the cover is then permanently and completely sewn together with an overlock to assure that the layers are securely attached. There is additional stitching surrounding the buckle openings and belt loop areas. Because of the construction of the seats, Century decided that testing the fabric, fiberfill, and backing together (composite testing) would be appropriate. However, Century subsequently agreed that the exterior material of the seat cover "does not adhere to other material(s) at every point of contact," and that therefore, pursuant to Paragraph S4.2.1 of FMVSS No. 302, the seat covers are "required to meet the requirements of S4.3 when tested separately."

Century supported its petition for an exemption from the recall requirements of the statute with the following arguments and also submitted test reports. All of these submissions are available for review in the NHTSA docket.

Under FMVSS No. 213, Section S5.7, "each material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302." 49 CFR 571.213 S5.7 (1992). FMVSS No. 302 sets the standard for the flammability of materials used in the interior of motor vehicles. The purpose of FMVSS No. 302 is to "reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes."

When FMVSS No. 302 was originally proposed, materials used in the interior of motor vehicles were to be tested separately regardless of how the materials were used. FMVSS No. 302 was revised prior to its release to require testing as a composite if the surface material is "bonded, sewed or mechanically attached to the underlying material." 36 FR 290 (1971). The purpose of the revision was to eliminate "an element of complexity found unnecessary for safety purposes." Under this version of FMVSS No. 302, Century's infant restraint would have been tested as a composite and readily passed the standard.

However, in 1975, the testing procedure was again revised, and the standard now in place was adopted. 40 FR 14,318 (1975). Under the revised standard, materials are tested as a composite only if the material "adhere[s] to other materials(s) at every point of contact." 49 CFR 571.302 S4.2.1. The standard was revised to take into account some omissions in the testing scheme "and to reduce the complexity of testing single and composite materials." 40 FR 14,319 (1975). The standard was not revised because former FMVSS No. 302 was found to be inadequate to meet the safety standards of the Act, but to reduce the complexity of the testing.

The current version of FMVSS No. 302 may go further than necessary to prevent the "unreasonable risk of injury or death." This is evidenced by the results of a study completed by Failure Analysis Associates in March of 1991. A study of the U.S. CPSC NEISS database and the NHTSA Complaint File back to 1978 revealed not one instance in which an infant or child was injured because a car seat ignited. Failure Analysis Associates, Inc., *Flammability Tests and Examination of Accident/Injury and Complaint Data* 11 (1991). A study conducted by James H. Shanley, Jr. in conjunction with Fisher-Price's petition for determination of inconsequential noncompliance also found no instances in which a vehicle fire started in a child safety seat. *Fisher-Price,* Dkt. No. 93–79, 58 FR 59,511 (1993) (Notice of Receipt of Petition for Determination of Inconsequential Noncompliance). Century realizes that the facts in their case are different from Fisher-Price and only cites the document for the purpose stated in this Petition. Moreover, in 1971 a much larger portion of our society smoked. Now, with fewer and fewer Americans smoking, the risks that an infant or child restraint would be set on fire by lighted cigarettes or matches is becoming more remote.

The Agency could submit that the reason there have been no fires is because of FMVSS 302 and their aggressive enforcement of the standard. But, it is important to remember that the Agency standard does not require nonflammable materials; it only requires material which burns slowly. Hence, the standard, while admirable, would not explain the fact that there has been no recorded evidence of a fire.

The frequency of incidents involving nonconforming or defective equipment is a factor in determining whether defects or noncompliance has an impact on safety. See, *e.g., United States* v. *General Motors Corp.,* 656 F. Supp. 1555 (D.D.C. 1987), *aff'd,* 841 F.2d 400 (D.C. Cir. 1988) (premature wheel lockup in 1980 X-cars was not a "safety related defect" when the risk of failure was no worse than, and in most instances better than, the rate for all cars); *United States* v. *General Motors Corp.,* 561 F.2d 923 (D.C. Cir. 1977), *cert. denied,* 434 U.S. 1033 (1978) (government presented evidence of a disproportionately high number of replacement parts (35,366) and inferred, in the absence of challenge by General Motors, that replacement part sales were due to a disproportionately high rate of failures and concluded that defect safety-related). The fact that no child has been injured by fire caused by a child car seat for the last 15 years militates strongly against a finding that Century's noncompliance has an effect on safety.

NHTSA has recognized that some technical violations of NHTSA standards do not affect safety and (has) exempted manufacturers from the notice and remedy requirements of the Act. See, *e.g., General Motors Corp.,* Dkt No. 92–23, 57 FR 45,866 (1992) (one test point on side reflex reflector failed to meet standard, but when values for reflector considered overall, noncompliance inconsequential). Another example, in *General Motors Corp.,* Dkt. No. 91–10–IP–No. 2, 56 FR 33,323 (1991), NHTSA found that the technical violation at issue had an inconsequential effect on safety because the potential hazards were so remote.

In *General Motors Corp.,* General Motors' high beam telltale in its 1990 Oldsmobile Toronado was not in compliance with NHTSA standards because when the cigar lighter was in use, the telltale dimmed or extinguished. The Agency granted GM's petition for inconsequential noncompliance because problems would occur only under a particular set of circumstances:

The noncompliance could only manifest itself during upper beam use when the cigar lighter was also in use. But only a comparatively small portion of driving occurs at night, the time of headlamp activation. Because of State and local laws prohibiting upper beam use, only a very small percentage of nighttime driving is performed using the upper beam. The 25-second use of the cigar lighter would comprise only a limited amount of the time the upper beam is in use. The safety hazard most likely to be created by the noncompliance is glare in the eyes of oncoming driver on a two or three-lane road, but, if discomforted, the instinctive reaction of that driver would be to flash the upper beams, alerting the noncompliant vehicle to lower that vehicle's upper beams. *The probability of all these facts occurring simultaneously is low.* (Emphasis added.) *Id.* at 33,324.

The "probability of all these facts occurring simultaneously" in this Century case is exceedingly low. When tested as a composite, Century's Model 4594 and 4595 infant restraints fall within NHTSA's burning rate. The components of the infant restraint are securely sewn together. In order for Century's infant restraint to pose a hazard to a passenger, (1) the seat would have to have somehow torn apart around the numerous sewn seams; (2) the fabric would have to be frayed in such a way that the fabric is sticking up away from the fiberfill; and (3) the source of ignition would have to land on the exposed fabric. Again, the "probability of all these facts occurring simultaneously" is low. Coupling the need for these unlikely probabilities with the fact that there has never been a fire caused by a child car seat ignition should make this a case where fairness requires a granting of the Petition.

Under the standard as enacted in 1971, Century's infant restraint would have been tested as a composite, and therefore, would be in compliance with NHTSA standards. FMVSS No. 302 was revised in 1975, not to address safety concerns, but simply for purposes of administrative ease. The fact that the requirements of FMVSS No. 302 are in excess of those needed to ensure the safety of the restraint's occupants was dramatically demonstrated by the results of a study performed by Patrick Kennedy, an expert retained by Fisher-Price. Mr. Kennedy's study revealed that typical children's clothing burns at a rate far in excess of the standard imposed by FMVSS No. 302. Therefore, an infant sitting in Century's infant restraint is at far greater risk from the clothing he or she wears than from the infant restraint itself.

Century's infant restraints do not pose an unreasonable risk to the infants they hold. The question of whether Century's infant restraint meets the objectives of the Act could be phrased in this fashion: Would a reasonable parent, after being made aware of all the facts and circumstances surrounding this noncompliance, still be willing to place his or her infant in the Model 4594 or 4595 infant restraint? Century is satisfied that a reasonable parent would use their Model 4594 and 4595 restraints without any hesitation.

Century understands how serious the flammability issue is to the Agency and commends the Agency for its vigilance. Century is also serious about the issue, and would not consider selling a product that would place a child at risk. Century strongly believes that if there is a risk in this case, it is not an unreasonable risk as required by the Act. As Century's tests have shown, the seat pad on the infant restraint as a composite burns well within the burn rate acceptable to the Agency. Furthermore, the seat pad is constructed in a way that makes tears unlikely. Because Century's infant restraints meet the objectives of the Act, Century's noncompliance is inconsequential as it relates to motor vehicle safety. For these reasons, Century respectfully requests that NHTSA grant its petition for exemption.

The agency has reviewed Century's petition and has determined that the noncompliance is inconsequential to motor vehicle safety. NHTSA agrees with Century that the noncompliant seat covers are unlikely to pose a flammability risk when they are securely sewn to the seat, which is the normal condition for these seats.

Century supported this point by performing flammability testing under two conditions: first on the seat and cover as a composite, *i.e.*, as it exists on a child seat with the two items sewn together; and second, by bunching or gathering the noncompliant seat cover and attempting to ignite it. In both cases the seat cover burned at a rate below the four inches per minute maximum set out in FMVSS No. 302.

The agency granted a petition for inconsequential noncompliance submitted by PACCAR (57 FR 45868) in which the circumstances were similar to those in this petition. PACCAR manufactures mattresses for the sleeper areas of certain truck tractors. A small portion of the material used in the construction of the mattresses, and subject to the requirements of FMVSS No. 302, failed the burn rate test. The agency determined that ignition of the noncompliant material was unlikely and, due to the small volume of the material, would not pose the threat of a serious fire if ignited. As a result of this analysis, the PACCAR petition was granted.

The circumstances here are similar to those in which the agency granted a petition for inconsequentiality by General Motors in connection with a noncompliance of the upper beam indicator. 56 FR 33323 (1991). The indicator was noncompliant only when the cigarette lighter was operating. The agency determined that the possibility of the upper beams being operated simultaneously with the cigarette lighter posed a very limited safety hazard. Similarly, it is unlikely that sections of the noncompliant cover fabric large enough to cause serious burn injuries would be separated from the cushion lining. Even if a large section of the fabric was torn away, NHTSA considers the possibility that this material would be exposed to a potential ignition source to be extremely remote.

Although it is possible that fuel-fed fires from vehicle crashes could consume a vehicle's interior, the flammability of the seat cover materials would be irrelevant to the severity of such a fire and to the potential injuries incurred by a child.

NHTSA's evaluation of the consequentiality of this noncompliance should not be interpreted as a diminution of the agency's concern for child safety. Rather, it represents NHTSA's assessment of the gravity of the noncompliance based upon the likely consequences. Ultimately, the issue is whether this particular noncompliance is likely to increase the risk to safety. Although empirical results are not determinative, the absence of any reports of fires originating in these child restraints supports the agency's decision that the noncompliance does not have a consequential effect on safety.

For the above reasons, the agency has determined that Century has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety and its petition is granted. Accordingly, Century is hereby exempted from the notification and remedy provisions of 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118(d), 30120(h); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–19897 Filed 8–10–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 93–48; Notice 4]

Cosco, Inc.; Grant of Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

On April 30, 1993, Cosco, Inc. (Cosco), of Columbus, Indiana, determined that some of its child safety seats failed to comply with flammability requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." On May 28, 1993, Cosco petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 (formerly the National Traffic and Motor Vehicle Safety Act) on the basis that the noncompliance was inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published in the **Federal Register** on July 7, 1993 (58 FR 36510). On March 22, 1994, NHTSA denied Cosco's petition, stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential as it relates to motor vehicle safety (59 FR 14443, March 28, 1994). Cosco appealed that denial. On June 15, 1994 (59 FR 30831), NHTSA published a notice providing an opportunity for public comment on that appeal. No comments were received. This notice grants Cosco's appeal.

Paragraph S5.7 of Standard No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 ('Flammability of Interior Materials')" (571.302)." Paragraph S4.3(a) of Standard No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

Fabric used in the shoulder straps of certain models of Cosco's child restraints exceeded this limit by an average of .3 inches per minute when tested by NHTSA contractors in early 1993. Apparently, the noncompliance was due to the manner in which the fabric was treated during the process in which the straps were molded into a urethane shield. The company that performed this process for Cosco is the same company that performed the identical process for Fisher-Price, Inc., another manufacturer of child restraints whose request for an inconsequentiality exemption from the recall requirements of the statute is granted elsewhere in today's **Federal Register**.

In its 1993 noncompliance notice, Cosco stated that it had produced 133,897 add-on (as opposed to built-in) child restraints whose shoulder straps did not comply with Standard No. 213. On appeal of the inconsequentiality denial, it stated that only 23,449 restraints seats should have been covered by the notice, the remainder having been shipped to its Canadian subsidiary.

On March 22, 1994, NHTSA denied Cosco's inconsequentiality petition (59 FR 14443, March 28, 1994). That notice contains a full discussion of the noncompliance, the company's petition, and the agency's rationale for its denial of the petition.

On June 15, 1994, NHTSA published in the **Federal Register** Cosco's appeal of the agency's denial pursuant to 49 CFR 556.7. In the appeal, Cosco contended that it is extremely unlikely that straps of its child restraints would ignite independently of an interior fire that was already in progress from another source. It argued that NHTSA based its denial of the petition on hypothetical situations rather than confirmed reports of child restraint fires.

NHTSA has evaluated Cosco's arguments as well as the new materials submitted by Fisher-Price in support of its appeal. For the reasons set out in the notice granting Fisher-Price's appeal, which is published elsewhere in today's **Federal Register** (Docket No. 93–79; Notice 5), the agency has determined that Cosco has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety. Accordingly, Cosco is hereby exempted from the notification and remedy provisions of 49 U.S.C. 30119 and 30120.

Authority: 49 U.S.C. 30118(d), 30120(h); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–19898 Filed 8–10–95; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 93–79; Notice 6]

Fisher-Price, Inc.; Grant of Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

On September 16, 1993, Fisher-Price, Inc. (Fisher-Price), of East Aurora, New York, filed a petition for an exemption from the notification and remedy provisions of 49 U.S.C. Chapter 301 on the ground that the noncompliance of certain of its child restraints with the flammability requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," was inconsequential as it relates to motor vehicle safety. On March 22, 1994, the National Highway Traffic Safety Administration (NHTSA) denied Fisher-Price's petition (59 FR 23253; May 5, 1994).

On May 6, 1994, Fisher-Price appealed that denial. Notice of the appeal was published on June 16, 1994 (59 FR 30957), and an opportunity was afforded for comment. However, on August 12, 1994, before the agency reached a decision on the appeal, Fisher-Price notified NHTSA that it was taking the position that it had never formally determined that a noncompliance existed. In response, on August 17, 1994, the agency terminated the inconsequentiality proceeding (59 FR 42326), as its regulations require that a determination of noncompliance exist before an inconsequentiality petition may be filed. See 49 CFR 556.4(b)(6).

Following this termination, on September 26, 1994, NHTSA's Associate Administrator for Enforcement published an initial decision, pursuant to 49 U.S.C. 30118(a), that the child restraints at issue failed to comply with FMVSS No. 213 (59 FR 49100). The agency then conducted a public proceeding on October 21, 1994 to allow Fisher-Price and other interested persons the opportunity to present information, views, and arguments on whether a noncompliance existed. Prior to the agency's final decision on this issue, on July 10, 1995, Fisher-Price submitted a Noncompliance Report in accordance with 49 CFR part 573, that memorializes its formal determination that, under NHTSA's interpretation of the applicable test procedures, the seats in question fail to comply with S5.7 of FMVSS No. 213.

In view of the fact that a determination of noncompliance has been made, the agency may now consider Fisher-Price's petition for an inconsequentiality exemption. Moreover, rather than require Fisher-Price to file a new petition, NHTSA has decided to reinstate the proceeding at the same stage it was at when it was terminated.

For the reasons set forth below, the agency has decided to grant Fisher-Price's appeal. Thus, Fisher-Price will not be required to conduct a recall campaign. However, as part of the resolution of this matter, Fisher-Price has agreed to pay $35,000 to the United States in settlement of NHTSA's claim that it violated 49 U.S.C. 30118(c) and 30119(c) by failing to notify the agency in a timely manner after it should, in good faith, have determined that these child restraints did not comply with the standard.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 ("Flammability of Interior Materials") (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

Fabric used in the shoulder straps in some models of Fisher-Price's child restraints exceeded this limit by .3 to .6 inch per minute when tested by NHTSA contractors in the spring of 1993 and when retested by Fisher-Price in the summer of 1993. Apparently, the noncompliance was due to the manner in which the fabric was treated during the process in which the straps were molded into a urethane shield. The company that performed this process for Fisher-Price is the same company that performed the identical process for Cosco, Inc., another manufacturer of child restraints whose request for an inconsequentiality exemption from the recall requirements of the statute is granted elsewhere in today's **Federal Register**.

In its September 16, 1993 letter to NHTSA, Fisher-Price acknowledged that it had "become aware of information suggesting that the molded shoulder belt webbing on its Model AO9101, DO9101, 9103, 9149, 9173, 9179 and 9180 car seats may not comply with the requirements of FMVSS 302." At the same time, pursuant to 49 U.S.C. 30118(d) and 30120(h), Fisher-Price sought an exemption from the notification and remedy requirements of the statute on the ground that any such noncompliance was inconsequential as it relates to motor vehicle safety.

On March 22, 1994, NHTSA denied Fisher-Price's inconsequentiality petition (59 FR 23253, May 5, 1994). That notice contains a full discussion of the noncompliance, the company's petition, and the agency's rationale for its denial of the petition.

On May 6, 1994, Fisher-Price submitted an appeal of the agency's denial pursuant to 49 CFR 556.7. The appeal contains an analysis of the agency's decision, the affidavit of Gail E. McCarthy, Ph.D., P.E., of Failure Analysis Associates (FaAA), and a summary of the supplemental information Fisher-Price had submitted on February 25, 1994, March 17, 1994, and March 24, 1994 that had not been considered by the agency in its denial.

The February 25, 1994 submission contained information on the location of mold release compound on the shoulder webbing and its possible dissipation over time.

The March 17, 1994 submission contained research conducted by FaAA for Fisher-Price, including burn tests and a search of the literature and accident data regarding child seat fires. The submission also included a calculation of an alleged incremental risk associated with a recall of the noncompliant seats.

The March 24, 1994 submission, entitled "Supporting Documentation for Evaluation of the Fire Safety of Fisher-Price, Inc. Child Restraint Shoulder Harness Webbing," contained the detailed data and test results on which the material in the March 17, 1994 document was based.

In its May 6, 1994 appeal, Fisher-Price raised the following points: (1) Fisher-Price claimed that it had not determined that its child restraints failed to comply with FMVSS No. 213. (In view of Fisher-Price's recent acknowledgement that a noncompliance exists, this issue is now moot.) (2) Fisher-Price claimed that NHTSA had considered its petition under a stricter standard for inconsequentiality exemptions than is provided by statute because it involved child restraints. (3) Fisher-Price asserted that NHTSA's past precedent in granting inconsequentiality petitions compels a grant of this petition. (4) Fisher-Price contended that the data it submitted in support of its argument that the flammability of children's clothing

poses a much greater risk to safety than the noncompliant shoulder belt webbing were not adequately refuted.

In her affidavit submitted with the appeal, Dr. McCarthy asserted the following: (1) The shoulder belt webbing should properly be viewed as meeting the requirements of FMVSS No. 302; (2) any noncompliance that might be deemed to exist has no impact on motor vehicle safety; and (3) possible remedial measures would create substantially greater risk of injury to children than that presented by the webbing.

No comments were received on the appeal.

The agency has carefully reviewed all the data and arguments comprising the record of this case and has decided that the facts warrant granting the appeal. First, the margin of noncompliance is small, falling outside the standard's maximum by less than an inch per minute. (The agency wishes to emphasize that the failure to meet a performance requirement by a minimal amount does not in itself support an inconsequentiality determination; each petition must be considered in the context of all relevant facts.)

Second, the portions of the child restraint that do not comply with the standard, the shoulder straps, are a small part of the child restraint itself, and a minimal part of the fabric present in a vehicle's interior. Although it is possible that fuel-fed fires from vehicle crashes could consume a vehicle's interior, the flammability of the shoulder straps would be irrelevant to the severity of such a fire and to the potential injuries incurred by a child.

The primary purpose of NHTSA's flammability requirements is to prevent fires from "originating in the interior of the vehicle from sources such as matches or cigarettes." See paragraph S2 of 49 CFR 571.302. While it is theoretically possible that ashes from smoking materials could land upon the shoulder straps, the angle at which the straps normally rest makes this very unlikely.

NHTSA's reevaluation of the consequentiality of this noncompliance should not be interpreted as a diminution of the agency's concern for child safety. Rather, it represents NHTSA's reassessment of the gravity of the noncompliance based upon the likely consequences. Ultimately, the issue is whether this particular noncompliance is likely to increase the risk to safety compared to child restraints with shoulder straps that meet the four inches per minute requirement. Although empirical results are not determinative, the absence of any reports of fires originating in the over three million restraints in which this noncompliance exists supports the agency's decision that the noncompliance does not have a consequential effect on safety.

For the above reasons, the agency has determined that Fisher-Price has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety, and its appeal of the agency's original denial is granted. Accordingly, Fisher-Price is hereby exempted from the notification and remedy provisions of 49 U.S.C. 30119 and 30120.

Authority: 49 U.S.C. 30118(d), 30120(b); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 8, 1995.

Barry Felrice

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–19899 Filed 8–10–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

List of Specially Designated Terrorists Who Threaten to Disrupt the Middle East Peace Process; Additional Name

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of blocking.

SUMMARY: The Treasury Department is adding the name of an individual to the list of blocked persons who have been found to have committed, or to pose a risk of committing, acts of violence that have the purpose of disrupting the Middle East peace process or have assisted in, sponsored, or provided financial, material or technological support for, or service in support of, such acts of violence, or are owned or controlled by, or to act for or on behalf of other blocked persons.

EFFECTIVE DATE: August 11, 1995 or upon prior actual notice.

FOR FURTHER INFORMATION: J. Robert McBrien, Chief, International Programs, Tel.: (202) 622–2420; Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 and type "/GO/FAC" or call 202/512–1530 for disks or paper copies. This file is available for downloading in WordPerfect 5.1, ASCII, and Postscript formats. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem dial 703/321–3339, and select self–expanding file "T11FR00.EXE" in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

On January 24, 1995, President Clinton signed Executive Order 12947, "Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process" (60 FR 5079, Jan. 25, 1995—the "Order" or "E.O. 12947"). The Order blocks all property subject to U.S. jurisdiction in which there is any interest of 12 Middle East terrorist organizations included in an Annex to the Order. In addition, the Order blocks the property and interests in property of persons designated by the Secretary of State, in coordination with the Secretary of Treasury and the Attorney General, who are found 1) to have committed or to pose a significant risk of disrupting the Middle East peace process, or 2) to assist in, sponsor or provide financial, material, or technological support for, or services in support of, such acts of violence. The order further blocks all property and interests in property subject to U.S. jurisdiction in which there is any interest of persons determined by the Secretary of the Treasury, in coordination with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of any other person designated pursuant to the Order (collectively "Specially Designated Terrorists" or "SDTs"). An initial list of SDTs was published on January 25, 1995 (60 FR 5084).

The order also prohibits any transaction or dealing by a United States person or within the United States in property or interests in property of SDTs, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of such persons.

Designations of persons blocked pursuant to the Order are effective upon the date of determination by the Secretary of State or his delegate, or the Director of the Office of Foreign Assets Control acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of publication in the Federal Register, or upon prior actual notice.

The following name is added to the list of Specially Designated Terrorists:

SALAH,Mohammad Abd El–Hamid Khalil (a.k.a. SALAH, Mohammad Abdel Hamid Halil) (a.k.a. AHMAD, Abu) (a.k.a. AHMED, Abu) (a.k.a. SALAH, Muhammed A.); 9229 South Thomas, Bridgeview, Illinois 60455, U.S.A.; P.O. Box 2578, Bridgeview, Illinois 60455, U.S.A.; P.O. Box 2616, Bridgeview, Illinois 60455–6616, U.S.A.; Israel; DOB 30 May 1953; SSN 342–52–7612; Passport No. 024296248 (U.S.A.)

Dated: July 27, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 1, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 95–19831 Filed 8–7–95; 5:03 pm]

BILLING CODE 4810–25–F

Public Information Collection Requirements Submitted to OMB for Review

August 2, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in mid to late August, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by August 15, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432
Project Number: PC:V 95–012–G
Type of Review: Revision
Title: Internal Revenue Service Buffalo District Point of Contact Interviews
Description: The primary purpose of the interviews is to determine what currently unavailable products and/or services are needed by taxpayers or what changes or improvements to current products and/or services taxpayers perceived as being beneficial. The customers' perceptions and assessment of service will be obtained and used to improve systems and services.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 1,666
Estimated Burden Hours Per Respondent: 2 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 56 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–19921 Filed 8–10–95; 8:45 am]

BILLING CODE 4830–01–F

Public Information Collection Requirements Submitted to OMB for Review

August 2, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0128
Form Number: IRS Form 1120–L
Type of Review: Revision
Title: U.S. Life Insurance Company Income Tax Return
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 2,440
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—87 hr., 32 min.
Learning about the law or the form—26 hr., 17 min.
Preparing the form—42 hr., 50 min.
Copying, assembling, and sending the form to the IRS—4 hr., 1 min.
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 392,010 hours

OMB Number: 1545–1026
Form Number: IRS Form 8645
Type of Review: Extension
Title: Soil and Water Conservation Plan Certification
Description: Form 8645 is used to certify that conservation expenses claimed as a deduction on Schedule F, (Form 1040), Form 4835, Form 1040–PR, and Form 1040–SS are part of an approved plan for their farm area. The approved plan requirement comes under Code section 175(c)(3).
Respondents: Farms
Estimated Number of Respondents/Recordkeepers: 85,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—5 min.
Preparing the form—8 min.
Copying, assembling, and sending the form to the IRS—11 min.
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 44,200 hours

OMB Number: 1545–1038
Form Number: IRS Form 8703
Type of Review: Extension
Title: Annual Certification of a Residential Rental Project
Description: Operators of qualified residential projects will use this form to certify annually that their projects meet the requirements of Internal Revenue Code (IRC) section 142(d). Operators are required to file this certification under section 142(d)(7).
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 6,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—3 hr., 50 min.
Learning about the law or the form—35 min.
Preparing and sending the form to the IRS—41 min.
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 30,660 hours

OMB Number: 1545–1124
Regulation ID Number: INTL–704–87 Final
Type of Review: Extension
Title: Certain Corporate Distributions to Foreign Corporations Under Section 367(e)

Description: The regulations require domestic corporate taxpayers to file statement with tax returns in order to secure nonrecognition on certain distributions to foreign persons. The Service needs this information to ensure that the income from taxable dispositions will be reported.
Respondents: Business or other for-profit
Estimated Number of Respondents: 202
Estimated Burden Hours Per Respondent: 8 hours
Frequency of Response: Annually
Estimated Total Reporting Burden: 1,604 hours

OMB Number: 1545–1265
Regulation ID Number: IA–120–86 Final
Type of Review: Extension
Title: Capitalization of Interest
Description: The regulations require taxpayers to maintain contemporaneous written records of estimates, to file a ruling request to segregate activities in applying the interest capitalization rules, and to request the consent of the Commissioner to change their methods of accounting for the capitalization of interest.
Respondents: Individuals or households, business or other for-profit
Estimated Number of Recordkeepers: 50
Estimated Burden Hours Per Recordkeeper: 2 hours
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 116,767 hours

OMB Number: 1545–1343
Regulation ID Number: PS–100–88 Final
Type of Review: Extension
Title: Valuation Tables
Description: The regulations will require individuals or fiduciaries to report information on Forms 706 and 709 in connection with the valuation annuity, an interest for life or a term of years, or a remainder rear reversionary interest.
Respondents: Individuals or households
Estimated Number of Respondents: 6,000
Estimated Burden Hours Per Respondent: 45 minutes
Frequency of Response: Single
Estimated Total Reporting Burden: 4,500 hours

OMB Number: 1545–1352
Regulation ID Number: PS–276–76 Final
Type of Review: Extension
Title: Treatment of Gain from Disposition of Certain Natural Resource Recapture Property
Description: The regulations prescribe rules for determining the tax treatment of gain from the disposition of natural resource recapture property. Gain is treated as ordinary income in an amount equal to the intangible drilling and development costs and depletion deductions taken with respect to the property.
Respondents: Business or other for-profit, individuals or households
Estimated Number of Respondents: 100
Estimated Burden Hours Per Respondent: 5 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2,000 hours

OMB Number: 1545–1430
Form Number: IRS Forms 945 and 945–A
Type of Review: Extension
Title: Annual Return of Withheld Federal Income Tax (945); Annual Record of Federal Tax Liability (945–A)
Description: Form 945 is used to report income tax withholding on nonpayroll payments including backup withholding and withholding on pensions, annuities, IRA's, military retirement and gambling winnings. Form 945–A is used to report nonpayroll tax liabilities.
Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, farms, Federal Government, State, Local or Tribal Government
Estimated Number of Respondents/ Recordkeepers: 193,468
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 945	Form 945–A
Recordkeeping	5 hr., 59 min.	8 hr., 37 min.
Preparing and sending the form to the IRS	6 min.	8 min.

Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 1,632,511 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–19922 Filed 8–10–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 3, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0820
Regulation ID Number: EE–86–88 NPRM (Previously LR–279–81)
Type of Review: Extension
Title: Incentive Stock Options
Description: The affected public includes corporations that transfer stock to employees after 1979 pursuant to the exercise of a statutory stock option. The corporation must furnish the employee receiving the stock with a written statement describing the transfer. The statement will assist the employee in filing their tax returns.
Respondents: Business or other for-profit
Estimated Number of Respondents: 50,000
Estimated Burden Hours Per Respondent: 20 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 16,650 hours

OMB Number: 1545–0834
Form Number: None
Type of Review: Extension
Title: Regulations Under Tax Conventions—Ireland
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.

Respondents: Business or other for-profit, Individuals or households
Estimated Number of Respondents: 80
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 20 hours

OMB Number: 1545–1374
Form Number: IRS Form 8834
Type of Review: Revision
Title: Qualified Electric Vehicle Credit
Description: Form 8834 is used to compute an allowable credit for qualified electric vehicles placed in service after June 30, 1993. Section 1913(b) under Public Law 102–1018 created new section 20.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 500
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 hr., 13 min.
Learning about the law or the form—24 min.
Preparing, copying, assembling, and sending the form to the IRS—31 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 3,565 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 95–19923 Filed 8–10–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 4, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0923
Regulation ID Number: IA–31–85 NPRM and LR–124–84 Temporary
Type of Review: Extension
Title: Tax-Exempt Entity Leasing
Description: The regulations are necessary to implement Congressionally enacted legislation and elections for certain previously tax-exempt organizations and certain tax-exempt controlled entities.
Respondents: Not-for-profit institutions, State, Local or Tribal Government
Estimated Number of Respondents: 2,000
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,000 hours

OMB Number: 1545–0985
Regulation ID Number: PS–128–86 NPRM and PS–127–86 Temporary
Type of Review: Extension
Title: Generation-Skipping Transfer Tax Regulations Under Tax Reform Act of 1986
Description: This regulation provides rules relating to the effective date, return requirements, definitions, and certain special rules covering the generation-skipping transfer tax.
Respondents: Individuals or households
Estimated Number of Respondents: 7,500
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: Annually and Other
Estimated Total Reporting Burden: 3,750 hours

OMB Number: 1545–1076
Form Number: IRS Form 8807
Type of Review: Revision
Title: Certain Manufacturers and Retailers Excise Taxes
Description: Form 8807 is used to compute the excise tax on fishing equipment, bows and arrows, trucks and trailer chassis and bodies and tractors and the luxury tax on aircraft, boats, passenger vehicles, furs, and jewelry. This form enables IRS to monitor the excise tax liability on these articles. (Internal Revenue Code (IRC) sections 4051, 4161, 4001, 4002, 4003, 4006, and 4007.)
Respondents: Business or other for-profit, Individuals or households
Estimated Number of Respondents/ Recordkeepers: 27,000
Estimated Burden Hours Per Respondent/Recordkeeper:

	8807 Part I	8807 Part II	Worksheet I	Worksheet II
Recordkeeping	3 hours, 7 mins	2 hours, 38 mins	1 hour, 26 mins	1 hour, 40 mins.
Learning about the law or the form	0 hours, and 6 mins	0 hours, 6 mins	0 hours, and 0 mins	0 hours, and 0 mins.
Preparing and sending the form to the IRS	9 mins	9 mins	1 min	2 mins.

Frequency of Response: Quarterly
Estimated Total Reporting/ Recordkeeping Burden: 502,680 hours
OMB Number: 1545–1384
Form Number: IRS Form 3911
Type of Review: Extension
Title: Taxpayer Statement Regarding Refund
Description: If taxpayer inquires about their nonreceipt of refund (or lost or stolen refund) and the refund has been issued, the information and taxpayer signature are needed to begin tracing action.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions
Estimated Number of Respondents: 520,000
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 43,160 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–19924 Filed 8–10–95; 8:45 am]
BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 155
Friday, August 11, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:45 a.m. on Tuesday, August 8, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency) and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: August 9, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–19992 Filed 8–9–95; 11:10 am]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" Citation of Previous Announcement: 60 FR 39989, August 4, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, August 9, 1995.

CHANGES IN THE MEETING: The open meeting has been canceled, and the scheduled items were handled via notation voting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 9, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19988 Filed 8–9–95; 11:08 am]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 16, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Proposed acquisition of check image system within the Federal Reserve System.
3. Proposed acquisition of an automated materials handling system within the Federal Reserve System.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 9, 1995.

William W. Wiles,

Deputy Secretary of the Board.

[FR Doc. 95–19989 Filed 8–9–95; 11:08 am]

BILLING CODE 6210-01-P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 14, 1995.

A closed meeting will be held on Tuesday, August 15, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 15, 1995, at 10:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive action.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: August 9, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–20646 Filed 8–9–95; 3:49 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 60, No. 155
Friday, August 11, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30 and 150

[CGD 95-900]
RIN 2115-AF07

Bulk Hazardous Materials; Correction

Correction

In rule document 95–18764 beginning on page 39267 in the issue of Wednesday, August 2, 1995, and corrected in the issue of Monday, August 7, 1995, further corrections are being made as follows:

1. On page 39267, in the second column, in paragraph 3., in the second line, after "column," insert "first line,".

2. On the same page, in the same column, in paragraph 6., in the correction to paragraph s., the fifth line should read "Poly(2-8)alkylene glycol monoalkyl (C1-".

3. On the same page, in the third column:

a. In the second line from the top, "removed" should read "moved".

b. In paragraph 11., in the third line, "pathalates" should read "phthalates".

c. In paragraph 12., in the 6th line, "*Tetrapropylbenzene*" was misspelled; in the 7th line, "Alkyl(69+)benzens" should read "Alkyl(C9+) benzenes"; and in the 13th line, "phosphate" was misspelled.

d. In paragraph 14., in the first entry, in the first line, "Bromochlorone-thane" should read "Bromochlorome-thane".

d. In paragraph 14., in the fourth entry, the fourth line, should read "Methoxy-1-*methyl* ethyl)-2-ethyl-6-".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 219

Defense Federal Acquisition Regulation Supplement; Subcontracting Plans

Correction

In rule document 95–5959 beginning on page 13074 in the issue of Friday, March 10, 1995, make the following correction

219.703 [Corrected]

On page 13075, in the second column, in section 219.703(a), in the fourth line, "Commission" should read "Committee".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 227

[Defense Acquisition Circular (DAC) 91-8]

Defense Federal Acquisition Regulation Supplement; Rights in Technical Data

Correction

In rule document 95–15251 beginning on page 33464 in the issue of Wednesday, June 28, 1995, make the following corrction:

227.7103-6 [Corrected]

On page 33475, in the second column, in section 227.7103-6(b)(2), remove "Facilitated by the Government; and"

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federal register

Friday
August 11, 1995

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 1, 61, et al.

Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 61, 141, and 143

[Docket No. 25910; Notice No. 95–11]

RIN: 2120–AE71

Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise the Federal Aviation Regulations that prescribe the certification and training requirements for pilots, flight instructors, and ground instructors and the operation of pilot schools approved by the FAA. In order to be more compatible with the current operating environment and the evolving demands of the National Airspace System, the proposals are intended to update training, certification, and recency of experience requirements. The proposals respond to comments to the FAA from the public, internal FAA review, and comments from the International Civil Aviation Organization.

DATES: Comments must be received on or before December 11, 1995.

ADDRESSES: Comments on the proposals may be delivered or mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 25910, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked "Docket No. 25910." Comments may be examined in the Rules Docket, Room 915G, weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS–840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3844.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments as they desire. Comments relating to the potential economic, environmental, energy, or federalism impact of the proposals contained in this notice are also invited.

The comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before action is taken on the proposed amendments, and the proposals contained in this notice may be changed in light of comments received. All comments received as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection before and after the closing date for submitting comments. The FAA will acknowledge receipt of a comment if the commenter submits with the comment a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25910." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

The FAA has proposed specific flight and ground time requirements in various sections of this NPRM. These specific time requirements may be modified in light of the comments received in response to this NPRM.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests should be identified by the NPRM number or docket number of this proposed rule. Persons interested in being placed on a mailing list for future proposed rules should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

General Aviation Policy Statement

On September 8, 1993, Administrator David R. Hinson issued a general aviation policy statement in which he recognized that the general aviation industry is a critically important part of the nation's economy and the national transportation system. Administrator Hinson stated the following:

> General aviation plays a crucial role in flight training for all segments of aviation and provides unique personal and recreational opportunities. It makes vital contributions to activities ranging from business aviation, to agricultural operations, to Warbird preservation, to glider and balloon flights. Accordingly, it is the policy of the FAA to foster and promote general aviation while continuing to improve its safety record. These goals are neither contradictory nor separable. They are best achieved by cooperating with the aviation community to define mutual concerns and joint efforts to accomplish objectives. We will strive to achieve the goals through voluntary compliance and methods designed to reduce the regulatory burden on general aviation.
>
> The FAA's general aviation programs will focus on:
>
> 1. Safety—To protect recent gains and aim for a new threshold.
> 2. FAA Services—To provide the general aviation community with responsive, customer-driven certification, air traffic, and other services.
> 3. Product Innovation and Competitiveness—To ensure the technological advancement of general aviation.
> 4. System Access and Capacity—To maximize general aviation's ability to operate in the National Airspace System.
> 5. Affordability—To promote economic and efficient general aviation operations, expand participation, and stimulate industry growth.
>
> Accordingly, this rulemaking project was and is designed to meet these general aviation goals and provide economic relief from unnecessary, burdensome regulations. Throughout the development of this notice, the FAA has been in partnership with the general aviation community in developing and revising the rules in parts 61, 141, and 143 to ensure aviation safety and yet delete unnecessary, burdensome rules. The FAA is committed to this partnership with our general aviation constituents, and will continue the partnership through the notice and final rule phases of this rulemaking action.

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A. Background

Since September of 1987, the FAA has been conducting a regulatory review of parts 61, 141, and 143 of the Federal Aviation Regulations (FAR). These regulations pertain to certification and training requirements for pilots, flight instructors, and ground instructors and the operation of pilot schools that are approved by the FAA. This regulatory review is being undertaken in response to advancements in aviation technology, training, and changes in the National Airspace System (NAS) that have occurred since the last major revisions to these parts in the early 1970's. The FAA has received numerous petitions for exemption and letters from the public suggesting changes to the current regulations. To date, there have been 41 amendments and approximately 3,616 exemption actions to parts 61 and 141. Recommendations and comments from the National Transportation Safety Board (NTSB), the public, and the FAA have also demonstrated the need for the regulatory review. A major goal of the review is to identify differences between the rules and the level of training demanded of pilots in today's aviation environment.

In support of this regulatory review, the FAA completed a historical review of parts 61, 141, and 143 in January 1988. During this review, the FAA also received input from pilot schools and college and university aviation departments operating under parts 61 and 141. Three major areas were identified during this review: first, issues of immediate concern recommended by the NTSB and public comments; second, the requirements for aircraft operations in today's environment; and finally, the requirements for pilots in the year 2010 and beyond. Accordingly, the regulatory review was divided into three phases corresponding to the needs identified above. The final rule for Phase 1, Amendment Nos. 61–90 and 141–4 (56 FR 11308; March 15, 1991; effective on April 15, 1991), contained the following:

1. New requirement to obtain training and a flight instructor endorsement to serve as pilot in command of a tailwheel airplane;
2. New requirement to obtain training and a flight instructor endorsement to serve as pilot in command of a pressurized airplane capable of high altitude flight above 25,000 MSL;
3. New requirement for an applicant to complete a training curricula and receive a flight instructor endorsement prior to qualifying in an airplane that requires a type rating;
4. New requirement to permit completion of a phase of the WINGS program as satisfactory completion of a biennial flight review (BFR);
5. New requirement for pilot applicants to receive ground training on stall awareness, spin entry, spins, and spin recovery techniques;
6. New requirement for pilot applicants to receive flight training on flights at slow airspeeds with realistic distractions and the recognition of and recovery from stalls;
7. New requirement for flight instructor applicants to receive and demonstrate actual spin training;
8. New requirement for flight instructor applicants to perform a spin demonstration on retests when the reason for the failure was due to deficiencies of knowledge or skill relating to stall awareness, spin entry, spins, or spin recovery techniques;
9. New requirement that FAA inspectors and designated pilot examiners may accept instructor endorsements for the spin demonstration on practical tests for flight instructor applicants;

10. New requirement in part 141 that a chief or assistant chief flight instructor only has to be available by telephone, radio, or other electronic means during the time that instruction is given for an approved course of training;

11. New requirement in part 141 for initial designation of assistant chief flight instructors that are one half the requirements of chief flight instructors;

12. New requirement to eliminate the 100-hour currency experience requirement in part 141 for chief flight instructors to obtain initial designation; and

13. New requirement to eliminate the 25 mile distance restriction for establishing satellite bases in part 141.

This NPRM represents Phase 2 of the regulatory review. Phase 2 addresses issues affecting parts 1, 61, 141, and 143. Prior to drafting and publishing this NPRM, the FAA issued a notice of hearing (54 FR 22732; May 25, 1989) that announced 4 public hearings and outlined the general topics for this NPRM. Four public hearings were held before the drafting and publishing of this NPRM as part of Phase 2. The hearings were held in Washington, DC (September 12–13, 1989); Chicago, Illinois (September 19–20, 1989); Los Angeles, California (October 3–4, 1989); and Orlando, Florida (October 16–17, 1989).

Phase 2 also involves a Pilot and Flight Instructor Job Task Analysis (JTA), completed on March 31, 1989, which consolidated the results of a study on areas of pilot knowledge, skills, abilities, and attitudes required in today's aviation environment. The JTA provided the framework for this phase of the regulatory review and provides information for use in training programs and practical test standards. A copy of the JTA is available for examination in Docket No. 25627 and for purchase on a diskette through the National Technical Information Service (NTIS), Springfield, Virginia 22161, (703) 487–4650. The cost of the diskette is $55 in the United States and the NTIS order number is PB89–167845CAU.

Most of the JTA consisted of data, based on experts' opinions, used to quantify the relative importance of knowledge, skills, abilities, and attitudes. The JTA also included a panel that discussed current and future pilot training needs. A transcript of the panel's deliberations is contained in Docket No. 25627. The panel's objective was to project pilot training needs 3 to 10 years into the future. The panel discussed changing technology, airline pilot requirements, airspace, training, instructors, and aviation economics.

In addition, on February 9 and 10, 1993, the FAA conducted information gathering meetings with a number of aviation organizations and schools on the comments received in Docket No. 25627. These meetings concerned issues raised during the public hearings that were held in Washington, DC (September 12–13, 1989); Chicago, Illinois (September 19–20, 1989); Los Angeles, California (October 3–4, 1989); and Orlando, Florida (October 16–17, 1989), and the information received during the JTA that was completed on March 31, 1989. Because so much time had passed since the time of the hearings, receipt of comments to the docket, and the JTA, the FAA decided to update its information. The invitees were selected as a result of their organizations' and schools' past involvement in this regulatory review. The FAA is committed to developing rules that are fair and reasonable, and yet maintain a high degree of pilot training and qualification. The following organizations and schools attended these meetings: General Aviation and Manufacturing Association (GAMA), National Air Transport Association (NATA), Jeppesen-Sanderson, National Association of Flight Instructors (NAFI), Balloon Federation of America (BFA), Farrington Aircraft, Aircraft Owners and Pilots Association (AOPA), AOPA Safety Foundation, Experimental Aircraft Association (EAA), Helicopter Association International (HAI), Soaring Society of America (SSA), Embry Riddle Aeronautical University (ERAU), Parks College of St. Louis, and American Flyers.

There have been some preliminary discussions for conducting a Phase 3 of this regulatory review. However, no schedule has been established for Phase 3. If a Phase 3 is conducted, it would be a comprehensive, long-term effort to address pilot, flight instructor, and ground instructor requirements for the year 2010 and beyond.

1. Notice No. 92–10, Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking at Training Centers

On August 11, 1992, the FAA issued notice of proposed rulemaking (NPRM) No. 92–10, "Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking at Training Centers" (57 FR 35888–35938). Although the flight simulator NPRM contains several issues related to this NPRM, the FAA has tried to make these rulemaking projects separate and distinct from one another. Despite the efforts to coordinate these two rulemaking actions, some overlap still exists. However, if any discrepancies have occurred, the matter will be resolved in the final rule.

2. Experimental Aircraft Association (EAA) Petition

On January 3, 1994, the FAA published, without comment or endorsement, a petition for rulemaking submitted by EAA (59 FR 31). In their petition, the EAA requested the following changes to the recreational pilot certificate:

(1) Eliminating the requirement that a recreational pilot hold at least a 3rd-class medical certificate;

(2) Requiring a recreational pilot to self certify that he or she has no known medical deficiency that would make him or her unable to fly;

(3) Eliminating the 50 nautical mile limitation for those pilots who obtain additional training;

(4) Permitting a pilot with a higher certificate or rating who no longer has a medical certificate, but who self certifies that he or she is physically fit to fly, to exercise the privileges of a recreational pilot certificate, subject to the limitations of the recreational pilot certificate; and

(5) Eliminating the recreational pilot certificate limitations for cross country, night flight, and flight into airspace requiring communication with air traffic control for those pilots with higher certificates and ratings who no longer have medical certificates, but who self certify that they are physically fit to fly.

The comment period for the EAA petition closed on March 4, 1994. There were over one thousand comments received. The majority of commenters voiced overwhelming support for the petition, but did not provide any data or analysis. Some commenters, including the Civil Aviation Medical Association (CAMA), opposed the EAA petition. CAMA expressed concern with the impact on public health and welfare of the proposed elimination of medical standards for pilots who exercise the privileges of a recreational pilot certificate. One specific concern of those commenters who opposed the EAA petition was the carrying of passengers by a pilot who does not hold a medical certificate. The FAA has reviewed all comments received in developing this rulemaking action. The vast majority of commenters responding to this petition were individual members of the aviation community and many were members of the EAA.

In this notice, the FAA is proposing to permit most of what EAA has requested. The FAA is not proposing to eliminate the recreational pilot limitations for cross country, night flight, and flight into airspace requiring communication with air traffic control for those pilots with higher certificates and ratings who no longer have medical certificates, but who self certify that they are physically fit to fly. The FAA may reconsider this issue, however, based on comments received.

3. General Discussion of Principal Issues in This NPRM

This NPRM incorporates many of the concepts developed through the public hearings, the JTA, and the public comments received in Docket Nos. 25627 and 25910.

Docket No. 25627 was established to receive comments throughout the entire regulatory review and will remain open until the FAA publishes a notice of its closing. This docket facilitates the orderly flow of collecting comments, recommendations, and ideas from the public. Docket No. 25910 was established to receive specific comments from the public on NPRM No. 89–14, which was the Phase 1 proposal.

The proposals in this NPRM cover a broad range of issues. The major proposals included in this NPRM are as follows: (1) Clarify and standardize terminology; (2) establish a new powered-lift category rating; (3) establish separate class ratings for nonpowered and powered gliders; (4) establish a flight instructor certificate in the lighter-than-air category; (5) establish instrument ratings for single-engine airplanes, multiengine airplanes, airships, and powered-lifts; (6) revise the recency of experience requirements; (7) revise recreational pilot certification and authorization requirements; (8) require human factors training for all certificates and ratings; (9) replace flight proficiency requirements for training and certification with more general approved areas of operation; (10) revise the training times for the aeronautical experience requirements to permit the student and the instructor to tailor the training to the individual student's needs; (11) remove and reserve part 143 and establish a new subpart I in part 61 for ground instructors; (12) require ground instructor certificates to be based on aircraft category; (13) require applicants for a ground instructor certificate to accomplish a practical test; (14) revise the certification and test courses in part 141 to accommodate all aircraft categories and new technology; (15) establish a check instructor position to perform student and instructor checks and tests at part 141 pilot schools; (16) delete exceptions that permit pilots to be certified without meeting the English language fluency requirements; (17) revise the medical eligibility requirements for applying for all certificate levels and ratings by only requiring applicants to hold a third class medical certificate; and (18) delete the requirement for recreational pilots to hold a medical certificate.

Due to the length of this notice, the preamble addresses the proposed changes to parts 61, 141, and 143 in two major sections. First, a general subject discussion of major issues is presented. Second, proposed changes are discussed briefly in a section-by-section analysis.

It should be noted that parts 61 and 141 are republished here in their entirety. All sections, except those specifically noted, include a modified format, standardized terminology, and the deletion of gender references. Several sections, which are noted in the section-by-section discussion contain no revisions or editorial changes. Three of these sections, §§ 61.58, 61.63, and 61.67, have been proposed to be revised in NPRM No. 92–10, "Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking at Training Centers," (57 FR 35888–35938; August 11, 1992). In addition to proposed additions, deletions, and substantive changes to the regulations, the FAA seeks in this proposal to continue its policy of simplifying regulations through editorial style changes. Wherever possible, the rules are broken down into brief sentences and outline format. Therefore, some section numbering would change under this proposal. In addition, the FAA has proposed numerous non-substantive changes to the regulations, and where necessary has proposed numerous revisions involving clarity and conformity.

B. Part 61 Issues

1. Definition of Terms

The FAA proposes to establish a new § 61.1a, "Clarification of Terms." The intent of the section is to ensure more consistent use of terms throughout the text under part 61. The terms to be clarified include:

a. Aeronautical Experience

This term means pilot time obtained in an aircraft, flight simulator, or flight training device for meeting the appropriate training and flight time for an airman certificate, rating, flight review, or recency of flight experience, of part 61.

b. Airman Certificate

This term describes a pilot certificate (other than a student pilot certificate), flight instructor certificate, or a ground instructor certificate that is issued under part 61. This would not include other airmen as described in the Federal Aviation Act of 1958, as amended, which also applies the term to repairmen, mechanics, aircraft dispatchers, parachute riggers, other flight crewmembers, and air traffic controllers.

c. Authorized Ground Instructor

This proposal includes a provision to incorporate part 143, Ground Instructors, into part 61. The term would describe a person who holds a current ground instructor certificate with ratings that apply to the training being given, and who is authorized by the Administrator to give that training.

d. Authorized Flight Instructor

This term would clarify that a flight instructor must hold a current flight instructor certificate with ratings that apply to the training being given, and be authorized by the Administrator to give that training.

e. Cross-Country Time

The FAA proposes to describe cross country time for three separate circumstances: (1) For persons who hold a private, commercial, or airline transport pilot certificate; (2) for persons applying for a private or commercial pilot certificate or instrument rating; and (3) for military pilots. These issues are addressed further in the discussion of logging of pilot time.

f. Examiner

The term would refer to persons authorized to conduct practical tests or knowledge tests under part 61.

g. Flight Training

The term would refer to training received from an authorized flight instructor in actual flight in an aircraft.

h. Ground Training

The term would refer to training other than flight training received from either an authorized ground instructor or an authorized flight instructor.

i. Instrument Approach

This term would define an instrument approach as an approach procedure defined in part 97 and conducted to an established minimum descent altitude (MDA) or decision height (DH), or if necessary, to a higher altitude selected for safety reasons by ATC.

j. Instrument Training

The term would refer to time in which instrument training is received from an authorized flight instructor under actual or simulated instrument flight conditions.

k. Knowledge Test

The term "knowledge test" would replace "written test." The FAA believes the term "knowledge test" is a more inclusive term, referring to either tests administered with pencil and paper or by computer on the aeronautical knowledge areas in part 61.

l. Practical Test

The term "practical test" would include both oral and flight testing or testing in an approved flight simulator or flight training device on the approved areas of operation for an airman certificate, rating, or authorization.

m. Supervised Pilot-in-Command (PIC) Time

The term "supervised PIC time" would mean aeronautical experience flight time in an aircraft that applies to either a student pilot or pilot who is not rated in the aircraft, but is under the supervision and authorization to conduct the flight from an authorized flight instructor. The purpose for this proposal is to permit student pilots and pilots who are not rated in the aircraft, to log PIC time when the sole manipulator of the controls. This will be a change to the FAA's existing policy on who can log PIC time. In the past, the logging of PIC time in § 61.51 required the person to be a rated pilot, the sole manipulator of the controls, and be rated in the aircraft. Furthermore, depending on the crew compliment specifications set forth in the aircraft's flight manual, the flight instructor may be onboard the aircraft in an assigned crewmember position. The flight instructor is expected to perform essential crew member functions, evaluate the person's ability to act as a PIC, and as always perform essential safety-related functions in the case of emergencies.

n. Training Time

A definition of the term "training time" would mean training received: (1) In actual flight from an authorized flight instructor; (2) on the ground from an authorized ground or flight instructor; or (3) in a flight simulator or flight training device from an authorized ground or flight instructor.

2. Areas of Operation

The FAA proposes a significant change in the regulatory descriptions of the procedures and maneuvers required of applicants for the various pilot certificates and ratings. Under the proposed new concept, the FAR would specify general areas of operation to be covered in flight training and practical tests for pilot and flight instructor certificates and ratings and in training and testing for ground instructors. Many specific flight proficiency requirements currently in the FAR would be deleted. The specific tasks for the training and practical tests would be listed in the standards for each practical test for each certificate and rating. The purpose of this approach is to permit greater flexibility in updating the training and testing maneuvers and procedures required of pilot and flight instructor applicants.

For example, under current § 61.107 an applicant for a private pilot certificate with an airplane category and single-engine class rating must receive training on "emergency operations, including simulated aircraft and equipment malfunctions." The proposed areas of operation for the same applicant would require training on "emergency operations;" however, the tasks for the required training and practical test for an airplane category and single-engine class rating would include a task for emergency approach and landing (simulated) and a task for system and equipment malfunctions.

For convenience, the areas of operation for each category and, in some cases, for each class of aircraft under each certificate or rating would be listed separately. This would result in a certain amount of redundancy because many areas of operation would be common to more than one category and class of aircraft. However, the FAA proposes this method of listing areas of operation to avoid requiring users to consult more than one list to identify the areas pertinent to their individual situation.

In conjunction with using general terms to refer to maneuvers, the term "slow flight" would be used in place of previously used terms such as "minimum controllable airspeed" and the more recent term, "flight at slow airspeeds with realistic distractions." The FAA is not proposing a change in the concept; the details of the maneuvers and procedures will continue to be established through the appropriate practical test standards.

The use of areas of operation is consistent with public response to the issue addressed in the Notice of Hearings of whether the specific tasks or requirements in the Practical Test Standards (PTS) should be included in the FAR. The FAA believes the PTS should remain separate from the regulations to maintain the flexibility needed for revising and updating the PTS. Some commenters suggested listing specific areas of operation rather than specific pilot operations in the regulations regarding pilot operations.

The use of areas of operation would permit the practical test requirements, and hence, specific training requirements, to keep pace with technological change. For example, the current rule lists pilot operation procedures for equipment that is no longer common and does not include procedures for newer equipment (e.g., Electronic Flight Instrument System (EFIS), LORAN–C).

3. New Aircraft Category, Classes

This proposal would establish a new aircraft category for pilot certification—the powered-lift. The FAA also proposes to establish two aircraft classes within the glider category: powered glider and nonpowered glider.

a. Powered-Lift

The FAA anticipates that one of the most significant future developments in the NAS will be the introduction of a new category of aircraft, the powered-lift, into civil application. According to the FAA's Interim Airworthiness Criteria Powered-Lift Transport Category Aircraft (Department of Transportation, Federal Aviation Administration, Southwest Region, July 1988), powered-lifts resemble airplanes and rotorcraft in many respects. The document addresses airworthiness standards for multiengine turbine transport category aircraft that use power for lift, propulsion, and control.

Powered-lift aircraft have vertical take-off and landing and hovering capability like helicopters, but they also may fly at higher airspeeds like airplanes. The low airspeed capability may be provided by either aircraft configuration changes (tilt-wing, tilt-rotor, tilt-propeller), thrust vectoring, direct-lift engines, or other powered-lift concepts.

Powered-lift aircraft will require a new set of pilot knowledge, skills, and abilities. Therefore, the FAA proposes to create a new powered-lift aircraft category rating in § 61.5 for certification of private, commercial, and airline transport pilots, and for flight instructor and ground instructor certificates. The FAA also proposes to create a corresponding instrument rating for powered-lift aircraft. The FAA does not propose to extend recreational pilot certification in proposed subpart D to include the powered-lift category rating.

The FAA has considered various approaches to pilot certification for powered-lift aircraft. For example, the FAA considered whether powered-lift should be a separate category, with or without class ratings, such as tilt-rotor, tilt-wing, ducted fan, and vectored thrust. Another approach considered was creating a powered-lift class rating within the rotorcraft category. The FAA also considered proposing to require a type rating for every make and model of powered-lift aircraft.

Based on available information, the FAA has concluded that safety needs will be met by establishing a separate aircraft category only. Under proposed § 61.31, type ratings would not be required for powered-lift aircraft except for large aircraft or as specified by the Administrator under aircraft type certificate procedures. The FAA has determined that requiring additional requirements beyond this type rating requirement at this time might discourage the development of smaller powered-lift aircraft intended for general aviation. Thus, it does not appear feasible to establish class ratings at this time.

In general, the aeronautical experience hour-requirements for powered-lift category ratings would parallel those for airplanes and helicopters. For example, proposed § 61.87, Solo flight requirements, would require powered-lift student pilots to meet the same requirements as both airplane and helicopter student pilots. Similar overlap would occur in the areas of operation for private and commercial pilot training and certification.

Aeronautical knowledge requirements for commercial pilot certification would be the same as those for helicopters (a single set of aeronautical knowledge areas is proposed for all aircraft categories at the private pilot level). Areas of operation for the instrument rating under proposed § 61.65 would be the same as for airplanes.

b. Glider Class Ratings

The FAA proposes to divide the glider category into two classes for pilot certificates and ratings: powered glider and nonpowered glider. The term "powered glider" includes self-launching sailplanes, powered sailplanes, motorized sailplanes, and motorgliders. Some of these aircraft are designed primarily for high performance and competitive flying; others are more suitable for training. The low power-to-weight ratio and relatively low wing loadings generally found in powered gliders produce performance characteristics that are similar to low-powered, light fixed-wing aircraft. Specific knowledge and skills are needed for the safe and efficient operation of these aircraft in the NAS.

Powered gliders may be flown long distances and through complicated airspace by pilots holding only glider category ratings, which does not imply knowledge of communication or radio navigation procedures. Powered gliders require knowledge levels similar to those of powered aircraft. The FAA believes that another option to establishing glider class ratings would be to treat powered gliders as single-engine airplanes. However, the FAA believes that treating powered gliders as airplanes would be a more restrictive approach. Therefore, the FAA proposes to pursue the class rating approach.

The FAA proposes to convert current glider pilot and flight instructor certificates to the new class ratings over a 2-year period. A person who currently holds a private or commercial pilot certificate with a glider category rating could also obtain a nonpowered class rating if the person passed a practical test in a nonpowered glider, or obtain a powered class rating if the person passed a practical test in a powered glider.

Currently, the FAR does not address powered gliders. For example, §§ 61.107 and 61.127, which address flight proficiency for private and commercial pilot applicants, require training in glider launches by ground (auto or winch) or aero tows, and limits the applicant's certificate to the type of tow selected. The PTS for gliders include a powered glider self-launch limitation and specific tasks for powered gliders. The FAA also has addressed the unique characteristics of powered gliders in Advisory Circular (AC) 61–94, "Pilot Transition Course for Self-Launching or Powered Sailplanes (Motorgliders)." The AC recommends procedures and standards for glider pilots who want to accomplish a practical test in powered gliders.

For holders of a flight instructor-glider certificate, the conversion would be based on the type of training the instructor has given. To obtain a flight instructor certificate for nonpowered gliders, an instructor would be required to have given at least 20 hours of flight training in a nonpowered glider and recommended at least one student for a practical test for a glider category rating (the proposed rule does not specify powered or nonpowered), and that student would have to have passed. To obtain a flight instructor certificate for powered gliders, a flight instructor with a glider category rating could be eligible to obtain a flight instructor certificate with a glider category and powered class rating if the instructor had given 20 hours of flight training in a powered glider and recommended at least one student for a practical test for a glider category and powered class rating, and that student would have to have passed.

4. New Instrument Ratings

The FAA proposes to amend § 61.5 to establish four additional instrument ratings: Airship, single-engine airplane, multiengine airplane, and powered-lift. Corresponding flight instructor instrument ratings for those specific aircraft also are proposed.

a. Airship Instrument Rating

Under the current FAR, the commercial pilot certificate for airships includes training and testing on instrument flight maneuvers and procedures and instrument flight rules (IFR). Currently, there is no separate instrument rating for airship pilots. The proposal to establish a separate instrument rating for airships is in response to current trends in design and certification of airships. These trends are toward smaller airships with specific intended uses, such as daytime aerial advertising. These airships are not designed or equipped for flight in instrument conditions, and therefore, pilots who train in these aircraft must either incur the expense of training in IFR-equipped airships or seek an exemption from the regulation. Industry experience indicates that the smaller, non-IFR-equipped airships in which the pilots train are generally the same airships those pilots will fly when they are certificated. Therefore, the FAA has concluded it is reasonable to separate the instrument rating requirements from the commercial pilot certification requirements.

Historically, the airship industry has consisted of larger blimps and dirigibles that are certificated for operations including IFR, visual flight rules (VFR), and day and night flight. But very few airships operate in the United States, and the growth of the industry has been slow, with few pilots being certificated. However, the FAA notes that smaller, foreign-built airships are being operated in the United States. It is hoped that these signs of growth of the industry will be accompanied by the need for more airship pilots. A separate airship instrument rating will remove an obstacle to certification of commercial airship pilots desiring to fly these smaller airships, and help foster growth of this small segment of the aviation industry.

The FAA proposes to delete airship instrument knowledge requirements from existing § 61.125 and delete current § 61.135, which refers to aeronautical experience requirements. The FAA proposes to incorporate in § 61.65, flight training and skill requirements for airship instrument ratings. For pilots who do not hold an

airship instrument rating, § 61.139 would be amended to require a limitation to the commercial pilot certificate-airship that prohibits the carriage of passengers for hire in airships on cross-country flight or at night.

The proposal includes a system of conversion of current commercial certificates to commercial certificates with an instrument rating. Under proposed § 61.5, "Certificates and ratings issued under this part," the holder of a commercial pilot certificate with a lighter-than-air category rating and an airship class rating would be permitted to exchange that certificate for a certificate with an instrument-airship rating, if that person receives an endorsement from an authorized flight instructor who holds an instrument-airship rating on the flight instructor certificate, and that flight instructor has observed that person perform 10 hours of PIC time in an airship under IFR, or that person passes the instrument proficiency test of § 61.57 in an airship, and the test was conducted by an examiner.

b. Instrument Ratings—Airplanes

The FAA proposes to amend § 61.5 to establish separate instrument ratings for single-engine and multiengine airplanes and to establish corresponding instrument ratings for flight instructor certificates.

Under the proposal a person who passes the practical test for an instrument rating in a single-engine airplane would be issued a pilot certificate with an instrument-airplane single-engine rating. If that person holds a multiengine airplane class rating and desires an instrument-airplane multiengine rating, the person would be required to pass a practical test for an instrument rating in a multiengine airplane. The proposal would permit a person who holds both a single engine and multiengine airplane class rating and passes a practical test for an instrument-airplane multiengine rating, to be allowed to exercise instrument privileges in single-engine airplanes.

In addition, a person who desires to train students who want an instrument-airplane single-engine rating would be required to pass a practical test for a flight instructor certificate with an instrument-airplane single-engine rating. If that person desires to train students who want an instrument-airplane multiengine rating, the person would be required to pass a practical test for a flight instructor certificate with an instrument-airplane multiengine rating. A person who passes a practical test for a flight instructor-instrument-airplane multiengine rating and also holds a flight instructor single-engine airplane class rating would be permitted to train students for an instrument-airplane single-engine rating.

This proposal is consistent with FAA policy in effect since October 1984, which requires applicants for multiengine airplane class ratings to demonstrate instrument proficiency on their multiengine practical test if they have an airplane instrument rating and desire IFR privileges for their multiengine rating. The policy was instituted based on an NTSB recommendation that followed an investigation of a 1981 multiengine airplane accident. The NTSB concluded that the accident may have been caused by excessive airloads generated by a nose-up control input by the pilot at high speed. This resulted in an in-flight breakup of the aircraft. The pilot had acquired his instrument rating in a single engine airplane, had limited experience in operation of multiengine airplanes in instrument meteorological conditions, and had no multiengine instrument training.

Under the current FAA policy, applicants for a multiengine airplane class rating who hold an instrument rating for airplanes are required to demonstrate instrument proficiency in multiengine airplanes. If the applicant chooses not to demonstrate instrument proficiency, their multiengine airplane rating is limited to VFR privileges only. If an applicant with single-engine and multiengine class ratings takes the instrument practical test in a multiengine airplane, no restriction is added to the certificate. For example, a certificated pilot who holds a multiengine class rating with instrument privileges for airplanes, and who applies for an airplane single-engine class rating, may, upon successful completion of the airplane single-engine practical test, exercise instrument privileges in both classes of aircraft without showing instrument proficiency in single-engine airplanes.

The FAA proposes to allow 2 years for pilots and flight instructors who currently hold single-engine and multiengine airplane class ratings and an instrument—airplane rating to convert to the new single-engine and multiengine instrument ratings. With the exception of those pilots who received an instrument rating before the current policy became effective, the proposed conversion would ensure that pilots who obtain instrument privileges in multiengine airplanes have demonstrated instrument proficiency in multiengine airplanes.

Under the proposed rule, a person who holds a private or commercial pilot certificate with an airplane category rating and an instrument—airplane rating would be permitted to exchange that certificate for the new proposed certificate. The new private or commercial pilot certificate, as appropriate, would have either an instrument—airplane single-engine rating or instrument—multiengine class rating. For example, a person would be entitled to obtain an instrument—airplane single-engine rating if that person had an airplane single-engine class rating and had satisfactorily completed the practical test for an instrument rating in a single-engine airplane.

Under the proposal, a person could exchange their certificate for a certificate with an instrument-airplane multiengine rating if one of the following conditions were met:

(1) That person had an airplane multiengine class rating and had satisfactorily completed the practical test for an instrument rating in a multiengine airplane;

(2) That person had an airplane multiengine class rating and had satisfactorily completed the practical test for an instrument rating in a single engine airplane and also demonstrated instrument proficiency during the practical test for the multiengine class rating such that the person's certificate did not bear the limitation "Airplane Multiengine VFR Only;" or

(3) That person had an airplane multiengine class rating and had satisfactorily completed the practical test for an instrument rating in a single-engine airplane before October 1, 1984, the date on which the FAA policy, which requires multiengine candidates to demonstrate instrument proficiency when seeking instrument privileges, took effect.

Under the proposal, in any of the above three cases, a pilot with a single-engine airplane class rating would also be entitled to the privileges of an instrument-airplane single-engine rating. A person with a flight instructor certificate and an instrument-airplane rating would be able to obtain a flight instructor certificate with an instrument-airplane single-engine or an instrument-airplane multiengine rating.

A person would be able to receive a flight instructor certificate with an instrument-airplane single-engine rating by having given at least 20 hours of flight training in a single-engine airplane for the issuance of an instrument-airplane rating as a certificated flight instructor. The person also would be required to have recommended at least one student for a practical test for the issuance of an instrument-airplane rating and the recommended student would have had to pass the practical test.

A person would be able to receive a flight instructor certificate with an instrument-airplane multiengine rating by having given at least 20 hours of flight training in a multiengine airplane for the issuance of an instrument-airplane rating as a certificated flight instructor. The person also would be required to have recommended at least one student for a practical test for the issuance of an instrument-airplane rating and the recommended student would have had to pass the practical test.

The FAA invites comments on the conversion process proposed for the instrument-airplane ratings.

c. Instrument Rating—Powered-lift

In addition to proposing a new powered-lift aircraft category rating, the FAA proposes to amend § 61.5 to establish a new instrument rating for powered-lift. The FAA also proposes to establish a corresponding powered-lift instrument rating for the flight instructor certificate. The FAA invites comments on the proposal to establish this new instrument-powered-lift rating and the powered-lift instrument rating for the flight instructor certificate.

5. Lighter-Than-Air Flight Instructor Certificate

Under current regulations, any commercially licensed lighter-than-air pilot may provide flight training in the class of aircraft in which commercial privileges are held (i.e., airship or free balloon). A lighter-than-air commercial pilot who gives training under the authority of existing § 61.139 is not bound by any of the recordkeeping requirements, authorizations, and limitations that apply to certificated flight instructors for the other categories of aircraft. Under the current PTS, commercial lighter-than-air applicants must be tested in all phases of the flight instructor area even if the applicant does not plan to train.

Several balloon operators who made presentations at the public hearings or submitted comments to the docket favored the establishment of a flight instructor-balloon rating. Two balloon organizations indicated that, with the exception of those instructors associated with part 141 schools, the current training in balloons does not provide quality control measures for flight instructors. Several commenters said that the training and renewal requirements for balloon instructors should be the same or similar to those required of other aircraft flight instructors. The commenters also recommended that a proposal for a flight instructor-balloon rating should require: (1) A minimum number of hours as PIC; (2) a biennial renewal requirement; and (3) a passing grade on written and practical tests. In addition, the commenters recommended that such a proposal should provide for existing balloon instructors to convert to the new system.

Comments also were submitted to the docket that opposed the addition of a flight instructor-balloon rating. One commenter stated a majority of balloon instructors would not elect to obtain a flight instructor certificate, creating a hardship for future pilots. Several commenters also disagreed with the suggestion that a specific number of hours as PIC should be required of current commercial pilots to obtain their flight instructor certificates. The commenters stated that existing commercial pilots have earned instructor privileges in accordance with today's FAR and that there is no need for a minimum hour cutoff.

The FAA has determined that a flight instructor certificate should be created for the lighter-than-air category. The present system of incorporating training privileges into commercial certificates is a burden on commercial pilots who do not instruct. The intent of this proposal is to ensure that those who perform flight training in all aircraft categories and classes are subject to flight instructor training and renewal requirements. The FAA proposes to revise § 61.5 to establish a flight instructor-airship rating and a flight instructor-balloon rating.

The proposed revision to § 61.3 includes a clause to permit holders of a commercial certificate with an airship or a free balloon class rating to train in the appropriate aircraft for 2 years after issuance of the final rule. A revision to § 61.187 is proposed that would require a person who trains an applicant for a lighter-than-air flight instructor certificate to meet the same requirements as a person who trains other flight instructor applicants.

Under the FAA's proposal, a person who trains flight instructor applicants for a lighter-than-air category rating would be required to have held a flight instructor certificate for at least 24 months and to have given at least 20 hours of flight training. This is the same minimum-hour requirement recommended by the Great Eastern Balloon Association during the public hearings. The FAA also has included a provision for a person who trains flight instructor applicants in an FAA-approved course. This person could either meet the 24-month and 20-hour requirement or: (1) Have trained and endorsed at least 5 persons for a pilot certificate or rating practical test; (2) have a record that reflects that at least 80 percent of the persons whom the flight instructor has endorsed for a practical test passed that test on their first attempt; and (3) have given at least 40 hours of flight training as a certificated flight instructor.

The proposal also includes a provision for practicing lighter-than-air instructors (with commercial certificates) that requires them to obtain flight instructor certificates with lighter-than-air category ratings without passing a practical test. The proposal would revise § 61.201 to provide a 2-year transition period for holders of a commercial certificate with an airship or a free balloon class rating to obtain a flight instructor certificate with an airship or a balloon rating. If this proposal is adopted, the FAA is considering allowing the conversion process to begin before the effective date of the proposed rule.

Under the proposal, to obtain a flight instructor certificate with a lighter-than-air category rating, an applicant would need to present a valid commercial certificate with a lighter-than-air category rating and the appropriate class rating and have given at least 20 hours of flight training in airships or free balloons, as appropriate, as a commercial pilot. The applicant would also be required to have recommended at least one student for the issuance of a rating in an airship or balloon, as appropriate, and the student would have had to pass the practical test.

The proposal includes a revision to § 61.125 to remove the requirements for applicants for a commercial certificate, with a lighter-than-air category rating and an airship or balloon class rating, to obtain knowledge on training.

6. Revision of Ground Instructor Certificates and Ratings; Inclusion in Part 61

Part 143, "Ground Instructors," is outdated and inadequate for defining ground instructors' privileges and limitations, or their training and certification requirements. Under the current system, the ground instructor certificate is obtained on the basis of written tests only, with no practical test. Although a recency of experience requirement exists, there is no provision for renewal of ground instructor certificates. In addition, ground instructor certificates will be revised to distinguish ratings on the basis of

aircraft category (i.e., ground instructor-airplane, ground instructor-rotorcraft, ground instructor-glider, etc).

To make the ground instructor certificate more compatible with the demands of current training requirements, the FAA proposes to revise regulations on ground instructors and address the ground instructor certificate in a new subpart I in part 61. Current part 143, Ground Instructors, would be removed and reserved. Under the proposal, ground instructor certificates would be specific to aircraft categories. A practical test, as well as a knowledge test, would be required. The ground instructor certificate would still not expire, but new recency of experience requirements are proposed in order for a person to continue exercising the privileges of the certificate. This proposal would establish recordkeeping requirements for ground instructors and clarify ground instructors' privileges and limitations.

During the public hearings, commenters agreed that parts 61 and 143 could be combined, provided the ground instructor certificate is retained. Commenters, including Embry-Riddle Aeronautical University (ERAU), Experimental Aircraft Association (EAA), and General Aviation Manufacturers Association (GAMA) recommended that applicants for a ground instructor certificate be required to pass a practical test. The test would include an oral segment, but not a flight segment.

This proposal is based largely on the public comment. The proposal also reflects guidance contained in FAA Order 8700.1, "General Aviation Operations Inspector's Handbook," chapter 159, "Issuance of Ground Instructor Certificate and Added Ratings." subpart I is modeled on existing and proposed regulations for training and certification of flight instructors. The intent of the proposal is to recognize the importance of proper ground training and to make the ground instructor certificate more meaningful.

A number of issues, particularly administrative issues, currently addressed in part 143, such as replacement of a lost certificate, testing procedures, and change of address, are addressed in there respective categories in the proposal, along with other certificates and ratings. The proposed subpart I primarily addresses issues unique to the ground instructor certificate. Some of the major differences between proposed subpart I and part 143 would include the following:

7. Eligibility and Tests

The proposal for the ground instructor certificate and rating would establish a requirement for English-language ability, and would include the testing requirements. The required tests would include a test on the fundamentals of instructing, except for persons who are certificated teachers at or above the seventh grade level, employed as college or university instructors, or already hold a ground or flight instructor certificate. An additional knowledge test specific to the aircraft rating sought and an instrument knowledge test in the case of an instrument rating, would be required as well as a practical test.

Another proposed provision would preclude the holder of a flight instructor certificate from taking tests for and obtaining a ground instructor certificate with the same aircraft category as already specified on the person's flight instructor certificate. This provision is needed because the ground instructor certificate would not grant additional privileges, but the process of obtaining it only adds to the FAA's workload because of the additional tests. However, the applicant may seek a ground instructor rating for a different aircraft category (i.e., a person who holds flight instructor-airplane single engine may apply for a ground instructor-rotorcraft, etc.).

Some commenters recommended that a single "aviation instructor certificate," be established in lieu of separate flight or ground instructor certificates. An aviation instructor certificate could specify ground or flight instructor privileges or both. After reviewing this recommendation, the FAA believes the required knowledge, skills, and abilities needed to instruct in the different aircraft categories and classes and differences between flight instructing and ground instructing makes this difficult to comprehend how this would be better than the current system. However, the FAA does request comments on this issue.

8. Training Requirements

An applicant for a ground instructor certificate would have to receive ground training on required aeronautical knowledge areas and fundamentals of instructing from a person who meets minimum experience requirements. The person giving the training would have to have at least 24 months experience as a ground instructor or flight instructor, and have given at least 40 hours of flight or ground training. However, if the ground instructor candidate is receiving training in a course approved under part 141, the person giving the training could either meet the 24-month and 40-hour experience requirement, or could have given 100 hours of ground or flight training. As an alternative, the applicant, under the proposal, could also accomplish the preparation through an independent, or home study program. Such preparation would have to be reviewed by an authorized instructor who meets the same experience requirements; the instructor would be required to sign an endorsement of the applicant's independent course of study.

9. Proficiency

The practical test for a ground instructor certificate would cover approved areas of operation including preparing and conducting lesson plans, evaluating student knowledge, and analyzing and correcting common student errors. An applicant would be required to teach a ground school lesson as part of the practical test. The training for the practical test would have to be given by a person who meets the same minimum experience requirements as for the knowledge test, although no minimum amount of training would be specified. The practical test would be administered by an examiner. An applicant for an additional ground instructor rating would not be required to take a practical test.

10. Privileges and Limitations

Subject to the limitations specified in part 61, a ground instructor would be permitted to give ground training for aeronautical knowledge areas; give endorsements required for pilot, ground instructor, and flight instructor certificates and ratings; give the ground training portion of the flight review; and give recommendations for knowledge tests.

11. Records

Under the proposed recordkeeping requirements, a ground instructor would note in a student's logbook or training record information for each training session; i.e., the amount of time of the lesson, date, and topics. The ground instructor would be required to maintain a record of the following information: the name of each student whose logbook or training record that instructor endorsed for satisfactory completion of a course; the name of each student endorsed for a knowledge test and the results of the test; the name of each student endorsed or recommended for a practical test and the date of the endorsement or recommendation; and a copy of the training syllabus for each student trained. The records would be required to be kept for 3 years. In addition, although the proposed rule does not specify this, ground instructors should log the time during which they give ground training, to demonstrate sufficient experience giving ground training to ground instructor applicants.

12. Recency of Experience

Existing § 143.19 specifies that a ground instructor may not perform the duties of a ground instructor unless, within the 12 months before intending to perform the duties, the instructor has served for at least 3 months as a ground instructor, or the FAA has determined that the instructor meets the standards prescribed in part 143. Proposed § 61.225, "Recency of experience for a holder of a ground instructor certificate," would state that a person's ground instructor certificate remains current for providing ground training for airman certification purposes, provided that person has either: (1) Trained at least one student and endorsed that student for a practical test; or (2) received an endorsement from a flight instructor or ground instructor indicating that the person had demonstrated satisfactory knowledge in the areas of operation that apply to the person's ground instructor ratings. The FAA believes these provisions will ensure that ground instructors stay current on industry developments, without imposing significant costs and burdens on persons who hold ground instructor certificates.

13. Conversion to New System of Ground Instructor Certificate

The proposal would establish a 2-year period during which holders of ground instructor certificates could convert those certificates to the new system. The holder of a ground instructor certificate with a basic rating or an advanced rating would be permitted to exchange that certificate for a ground instructor certificate with an airplane category rating. The holder of a ground instructor certificate with an advanced rating and an instrument rating would be permitted to exchange that certificate for a ground instructor certificate with an airplane category rating and instrument rating. The holder of a ground instructor certificate who also holds a flight instructor certificate would be permitted to exchange the ground instructor certificate for a ground instructor certificate with the same aircraft category and instrument ratings as on that person's flight instructor certificate.

14. Medical Certificates

a. Medical Eligibility Requirement for Applying for a Pilot or Flight Instructor Certificate

The FAA proposes to change the medical certificate requirements for eligibility for pilot and flight instructor certificates. Under the proposed revision to § 61.23 and other sections, applicants would only need a third-class medical certificate to be eligible to apply for a private, commercial, or an airline transport pilot or flight instructor certificate. Requirements for exercising the privileges of each certificate would remain as they are now. That is, a second-class medical certificate still would be required to exercise the privileges of a commercial pilot certificate, and a first-class medical certificate would be required to exercise the privileges of an ATP certificate.

The concept behind the proposed changes is that pilots should be encouraged to continue training and earning new pilot certificates, regardless of whether they intend to use the certificates. In some cases, pilots may qualify for a third-class medical certificate, which is sufficient for undergoing training and taking a practical test for a commercial or ATP certificate, but may not meet the requirements for a second- or first-class medical certificate. The FAA believes that lack of the more stringent medical certificate should not prevent the pilots from earning the more advanced pilot certificates and enhancing their pilot skills and proficiency.

The FAA proposes to include a provision in § 61.39, "Prerequisites for practical tests," requiring an applicant to hold at least a third-class medical certificate, if a medical certificate is required. Section 61.39 currently requires a practical test applicant to hold a current medical certificate that applies to the certificate sought or, in the case of a rating to be added to a pilot certificate, at least a valid third-class medical certificate. Corresponding changes are also proposed to the subparts addressing the various certificates and ratings.

b. Medical Requirements for Recreational Pilots and Holders of a Higher Pilot Certificate Exercising the Privileges of a Recreational Pilot Certificate

The FAA is proposing to allow pilots who hold recreational pilot certificates and those higher rated pilots who elect only to exercise recreational pilot privileges to operate aircraft without a medical certificate. Specifically, this proposal would include student pilots who are seeking a recreational pilot certificate, holders of a recreational pilot certificate, and holders of a higher pilot certificate who elect only to exercise the privileges of a recreational pilot certificate. This proposal would be a significant departure from long-standing FAA policy.

Since the early 1930s all pilots, except glider and balloon pilots, have been required to hold medical certificates in order to exercise the privileges of their pilot certificates. The FAA determined that medical certificates were required for the purpose of ensuring the safety of the pilot in command and passengers, and also for the safety of people and property on the ground. As a result of the EAA petition discussed earlier and the interest shown in the general aviation community, the FAA is seeking wider comment on whether recreational pilots and holders of a higher pilot certificate who elect to exercise the privileges of a recreational pilot certificate should be required to hold medical certificates. The FAA is also seeking data on any safety or other public interest concerns that may arise from obviating any review of medical qualifications by medical professionals.

Pilots applying for a recreational pilot certificate would be required to certify at the time of application that they have no known medical condition or deficiency that makes them unable to operate the aircraft in a safe manner. This requirement parallels the provisions that are now provided to balloon and glider pilots under the current rules. This proposal would prohibit pilots from exercising the privileges of a recreational pilot certificate if they have a known medical condition or deficiency that would make them unable to operate the aircraft in a safe manner or if they are taking any medication or receiving other treatment for a medical condition that would make them unable to operate the aircraft in a safe manner. (This ongoing obligation is discussed in more detail under the section-by-section analysis.) The FAA is not proposing specific medical standards for this pilot self-evaluation but instead are proposing that pilots self-evaluate prior to each flight whether they have any medical conditions that would inhibit their ability to operate the aircraft in a safe manner. The FAA would rely on the pilot's knowledge and judgment as to their medical fitness for conducting each flight. The FAA strongly encourages the public to comment on whether there should be specific medical standards upon which the pilot should base their self-evaluation. If so, what should those standards be? In

particular, the FAA would like comments in response to the following questions:

(1) Should the rule specifically prohibit holders of pilot certificates who do not also hold medical certificates from flying if they know or should know that they have certain conditions? For example, should the rule exclude persons who believe that they have no known medical deficiencies even if they know, or have any reason to know, that they have:

(a) A visual problem, e.g., vision uncorrectable to at least 20/30?

(b) An equilibrium problem?

(c) Alcoholism to the extent that the intake of alcohol has caused damage to their physical health, personal or social functioning, or is required to enable them to perform normal functions?

(d) A drug dependence?

(e) A personality disorder, neurosis, or a mental condition that makes them unable to safely operate a vehicle or machinery?

(f) Epilepsy or a disturbance of consciousness without satisfactory medical explanation of the cause?

(g) A convulsive disorder, disturbance of consciousness, or neurologic condition that makes them unable to safely operate a vehicle or machinery?

(h) A myocardial infarction (heart attack), angina pectoris, or a coronary heart disease?

(i) Diabetes?

(j) An organic, functional, or structural disease, defect, or limitation that makes them unable to safely operate a vehicle or machinery?

(k) Any other serious medical problem that makes them unable to safely operate a vehicle or machinery?

(2) Should the rule state that pilots who have failed a medical examination by the FAA be prohibited from claiming that they have no known medical deficiencies?

(3) Should the rule state that pilots who have had their medical certificate revoked or suspended be prohibited from claiming that they have no known medical deficiencies?

(4) Should the rule state that pilots who hold or have held a medical special issuance be prohibited from claiming that they have no known medical deficiencies?

(5) What, if any, documentation should the FAA require persons without an airman medical certificate to execute in order to identify that they have evaluated their medical fitness to fly and that, to the best of their knowledge and belief, they are medically qualified to pilot an aircraft? How often (before each flight, annually)? What kind of documentation?

(6) How, if at all, should the FAA require pilots without a medical certificate to disclose to passengers that they have not been medically certificated by the FAA?

The FAA recognizes that broad scale medical self-evaluation could create substantial obstacles to the FAA's ability to enforce § 61.53. Therefore, the FAA also requests comments on the following issues:

(7) How would the FAA enforce and monitor compliance with § 61.53(b)?

(8) Should pilots who do not hold medical certificates be obligated to provide the FAA with their medical history/records upon request, either as part of a specific investigation or randomly as part of a compliance program?

(9) Should the FAA be able to require pilots who do not hold medical certificates to undergo medical testing when any uncertainty exists as to whether or not they have any medical problems?

Under this proposal, pilots with an airplane, rotorcraft, or a glider rating and who elect to only exercise recreational pilot privileges would be eligible to conduct "recreational pilot" operations without having to hold or obtain a medical certificate. Therefore, a person's pilot certificate may represent apparent authority to conduct those operations even when that person may not be medically qualified under part 67 of this chapter. Under the current rule, these operations would require the pilots to hold and have in their possession a current medical certificate. Because of the possible enforcement problems associated with determining an individual's actual authority to operate, the FAA is also seeking comments on the following:

(10) Should pilots who have known medical deficiencies be required to surrender their airman certificates?

(11) If pilots are allowed to keep their airmen certificates when they have a known medical deficiency, should the FAA require the airmen certificates to be stamped "NOT VALID UNLESS ACCOMPANIED BY A CURRENT MEDICAL CERTIFICATE?" The FAA is strongly encouraging the public to express their concerns regarding these questions as well as any other issues pertinent to this proposal.

The FAA requests comments on whether the limited operational scope of a recreational pilot certificate, under which all the above pilots would be required to operate, makes requiring these pilots to submit to medical examinations an unnecessarily burdensome process. Section 61.101 lists the limitations of a recreational pilot certificate, which includes, among other things, the following limitations:

A recreational pilot may not operate an aircraft—with more than one passenger on board the aircraft; that is certificated for more than 4 occupants; with more than one powerplant; with a powerplant of more than 180 horsepower; with a retractable landing gear; that is classified as a multiengine airplane, powered-lift, glider, airship, or balloon; carrying a passenger or property for compensation or hire nor may the pilot operate for compensation or hire; in furtherance of a business; between sunset and sunrise; in airspace in which communication with air traffic control is required; at an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher; when the flight or surface visibility is less than 3 statute miles; without visual reference to the surface; on a flight outside the United States; to demonstrate that aircraft in flight to a prospective buyer; used in a passenger-carrying airlift and sponsored by a charitable organization; and that is towing any object.

The FAA is also proposing to allow recreational pilots who have received the cross-country training required for private pilot certification to fly beyond the 50 nautical mile limit which is now required by the current § 61.101.

The FAA acknowledges that there are a number of difficult issues surrounding this concept, and that the data and analysis currently developed are limited at best. The FAA is therefore requesting comments that provide supporting data and analysis on the likely effects of changing the FAA's long-standing medical certification policy for pilots. In particular, the FAA would like comments on the potential impact on safety.

On November 17, 1994, the National Transportation Safety Board (NTSB) provided the FAA with general aviation accident data involving medical incapacitation since 1982 for balloon and glider pilots. There have been a total of 7 accidents involving balloon and glider pilots since 1982 where a finding was made on medical incapacitation as a cause or factor involved in the accident. Out of those 7 accidents, 4 pilots had valid medical certificates, 2 pilots had held a medical certificate but the certificates were expired, and only 1 pilot did not hold a medical certificate. There were 5 fatalities, 1 serious injury, and 1 minor injury. The NTSB's data and brief summaries showed the following information:

(1) Date: June 18, 1983, Category of Aircraft: Balloon, Crew Injuries: 1 fatal, Passenger/Gnd personnel injury: 0, Medical Certification: Yes, Miscellaneous statistics: Male, age 58, Brief summary: After takeoff, the pilot collapsed to the floor of the gondola and had difficulty breathing. The balloon hit the porch of a house and was substantially damaged. The pilot died from acute myocardial infarction.

(2) Date: February 20, 1986, Category of Aircraft: Glider, Crew Injuries: 1 fatal, Passenger/Gnd personnel injuries: 0, Medical Certification: Yes, Miscellaneous statistics: Male, age 65, Brief summary: Medical examination of the pilot revealed that the pilot had a history of heart condition and at the time of the accident the pilot experienced an heart arrhythmia associated with a myocardial infarction.

(3) Date: February 24, 1990, Category of Aircraft: Glider, Crew Injuries: 1 fatal, Passenger/Gnd personnel injury: 0, Medical Certification: None, Miscellaneous statistics: Male, age 53, Brief summary: Pilot had a history of epileptic seizures. Toxicological analysis revealed the drug carbamazepine present in the blood and urine samples at therapeutic levels. The drug was an anticonvulsant which causes drowsiness.

(4) Date: July 31, 1990, Category of Aircraft: Glider, Crew Injuries: 1 minor, Passenger/Gnd personnel injury: 0, Medical Certification: Yes, Miscellaneous statistics: Female, age 56, Brief summary: Pilot had reported she had injured her right arm during flight into turbulent conditions. She stated she was unable to control the pitch of the glider due to her injuries and had to parachute out.

(5) Date: July 19, 1991, Category of Aircraft: Glider, Crew Injuries: 1 fatal, Passenger/Gnd personnel injury: 0, Medical Certification: Medical certificate had lapsed, Miscellaneous statistics: Male, age 63, Brief summary: An autopsy revealed the pilot had cardiovascular disease, including coronary atherosclerosis with thrombosis of bypass graft.

(6) Date: July 31, 1991, Category of Aircraft: Glider, Crew Injuries: 1 fatal, Passenger/Gnd personnel injury: 0, Medical Certification: Unknown, Miscellaneous statistics: Male, age 25, Brief summary: Pilot reported a midair collision with another glider. The NTSB's finding determination was the failure of the pilot to maintain an adequate visual lookout and the collision induced incapacitation.

(7) Date: September 21, 1991, Category of Aircraft: Glider, Crew Injuries: 1 serious, Passenger/Gnd personnel injury: 0, Medical Certification: Medical certificate had lapsed, Miscellaneous statistics: Male, age 72, Brief summary: Pilot reported that he blacked out.

In addition, the NTSB supplied the FAA with the following total general aviation aircraft accident data and statistics involving medical incapacitation as a cause or factor in their finding during the years 1982 through 1993:

	Aircraft	Accidents	Fatal Accidents	Injuries			
				Fatal	Serious	Minor	None
1982	10	10	8	11	1	0	42
1983	7	7	5	6	1	0	6
1984	15	15	10	21	6	2	21
1985	14	14	9	11	2	4	117
1986	12	12	7	9	1	1	307
1987	14	14	11	56	0	0	112
1988	13	13	7	7	6	3	104
1989	7	7	6	7	0	0	2
1990	7	7	6	8	0	1	0
1991	20	20	14	15	6	5	23
1992	13	13	10	19	4	1	59
1993	6	6	3	3	1	0	209
Totals	132	132	96	170	28	17	1012

*This data does not differentiate between those pilots who held current, valid medical certificates at the time of the accident and those who allowed their medical certificates to lapse or never held medical certificates. Furthermore, this data did not filter out those accidents that were a result of a medical incapacitation involving an injury sustained during the flight or alcohol or illegal drug incapacitation.

15. Required Pilot Possession of Pilot and Medical Certificates

The FAA proposes to clarify the requirement in § 61.3 that a pilot, flight instructor, ground instructor, or medical certificate must be in the person's "personal possession" whenever that person exercises the privileges of the certificate. The FAA's intent is to have pilots and instructors carry their certificates on or near their person while exercising the privileges of that certificate.

A legal decision has demonstrated that the current requirement can be interpreted in more than one manner. For example, "personal possession" was interpreted to permit a pilot to exercise the privileges of a pilot certificate while the certificate remained behind in the pilot's residence or automobile. The general purpose of the regulation, however, is to enable pilots or required flight crewmembers to present their certificate to an authorized person upon request and at the time of that request.

The FAA proposes to replace the reference "personal possession" with the requirement that a certificate be in the "person's physical possession or readily available." This way, a pilot certificate would be available when requested by an authorized person. Additionally, a person who carries their pilot and medical certificates in their briefcase or in a purse aboard the aircraft would still be in compliance with the rule. However, this does not mean that person could state their pilot and medical certificates are located at their home in a desk drawer and still be in compliance with the term in the "person's physical possession or readily available."

16. Issuance of U.S. Pilot Certificates on the Basis of Foreign Pilot Licenses

The FAA proposes several changes to § 61.75, regarding issuance of a U.S. pilot certificate on the basis of a foreign pilot license. The FAA proposes to amend § 61.75 to require that when a foreign pilot certificate is not in the English language, the person must provide a signed English transcription of the license and its limitations from the foreign government's aviation agency. An English-language transcription would help avoid incorrect issuance of a U.S. pilot

certificate, letter of authorization, or appropriate ratings through inaccurate translations. This amendment would also help to ensure that all requirements of § 61.75 are met and there is no endorsement on the certificate stating that the pilot has not met all of the standards of the International Civil Aviation Organization (ICAO) for that license. This proposal would require evidence of meeting medical standards on which foreign certificates are based and an English-language transcription of the foreign medical certificate.

The FAA also proposes to revise § 61.75 to eliminate the issuance of commercial pilot certificates when issuing U.S. pilot certificates on the basis of a foreign pilot license. Under the proposed amendment, the U.S. would honor or accept a foreign-issued pilot certificate for the issuance of a U.S. private pilot certificate only. This would replace the current practice of issuing a private pilot certificate to the holder of a foreign private pilot license, and a commercial pilot certificate to the holder of a foreign commercial, senior commercial, or ATP license. This change would be mainly for clarification because current policy is to endorse the U.S. commercial pilot certificate as "not valid for operations for compensation or hire," which effectively limits the certificate to private pilot privileges only. The proposed rule would delete language specifically disallowing the U.S. certificate to be used for agricultural operations. However, persons who have been issued commercial pilot certificates on the basis of their foreign pilot certificate prior to the effective date of this rule would be allowed to continue to hold that pilot certificate. However, if the person seeks an additional rating, then the certificate would be reissued at the private pilot certificate level.

The FAA also proposes to revise § 61.75 to delete language that bases the pilot privileges on those authorized by the foreign pilot license. Under the proposal, the holder of a U.S. private pilot certificate issued under § 61.75 would be permitted to act as a pilot of a U.S.-registered civil aircraft in accordance with private pilot privileges authorized by part 61 that are placed on the U.S. certificate. This will clarify that operating authority is derived from the U.S. private pilot certificate issued, which contains the privileges and limitations. Any additional limitations and restrictions (e.g., weight of aircraft) that are on the foreign pilot license are incorporated by reference onto the U.S. private pilot certificate. The proposed rule language would further clarify that personal possession of the foreign pilot license is required in order to exercise the privileges of the U.S. private pilot certificate. Finally, the proposal would clarify that the pilot would not be allowed to exercise the privileges on the U.S. certificate if the foreign pilot license was revoked or suspended.

Under current § 61.75, FAA practice permits persons who cannot read, speak, write, and understand the English language to be issued a pilot certificate with certain limitations restricting operations in airspace requiring the use of the English language. In accordance with this proposal, the practice would be discontinued and persons issued certificates under this section would be required to be able to read, speak, write, and understand the English language. However, those persons who cannot read, speak, write, and understand the English language and who have been issued pilot certificates with limitations that restrict operations in airspace requiring the use of the English language prior to the effective date of this rule would be allowed to continue to hold that certificate. If the person seeks an additional rating or higher level pilot certificate, then the certificate would not be issued unless the person is able to read, speak, write, and understand the English language.

The regulation currently requires evidence that the applicant meet the medical standards for the foreign pilot license on which the application for a U.S. certificate is based. This evidence may include a U.S. medical certificate. The proposed rule would state specifically that the applicant must hold a current medical certificate, either issued under part 67, or issued by the state that issued the foreign pilot license.

Special Purpose Pilot Authorization

The FAA proposes to revise the rules regarding the issuance of special purpose pilot certificates for the operation of U.S.-registered civil airplanes leased by a person who is not a U.S. citizen. The FAA proposes to replace the issuance of special purpose pilot certificates with the issuance of special purpose pilot authorizations that will be issued by a Flight Standards District Office (FSDO). Persons who have been issued special purpose pilot certificates, prior to effective date of this rule, would continue to be allowed to exercise the privileges of that certificate until the certificate expires. However, once the special purpose pilot certificate expires, the pilot would be required to surrender the certificate for a special purpose pilot authorization and comply with the provisions contained in proposed § 61.77.

Standardization of the "Age 60 Limitation" for Airmen Employed by Foreign Air Carriers in Scheduled International Air Services or Non-Scheduled International Air Transport Operations

The FAA proposes to clarify §§ 61.3 and 61.77 relating to the "Age 60 Limitation" with part 121. This proposal will cover all U.S. and foreign pilots, who are 60 years of age or older, and who are employed by a foreign air carrier that operates U.S.-registered civil aircraft for compensation or hire in scheduled international air services and non-scheduled international air transport operations. This proposal will make the rules of part 61 consistent with the standards contained in part 121.

17. Logging Flight Time

The FAA proposes revisions in the logging of pilot flight time. The proposals are contained in § 61.1a, Clarification of terms, and in § 61.51, Pilot logbooks.

The FAA proposes these revisions largely in response to public concern regarding various aspects of the rules on logging flight time. Many of the participants at the public hearings encouraged the FAA to clarify the existing regulations. For example, some recommended that the term "solo flight time" be deleted and that student pilots be permitted to log "solo" time as PIC time.

Proposed § 61.1a would clarify that pilot time is any time a person operates as a required pilot, receives training from an authorized instructor, or gives training in an aircraft, flight simulator, or flight training device. Flight time would be clarified as pilot time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest at the point of landing. The FAA proposes that in the case of a nonpowered glider, flight time would begin when the nonpowered glider commences being towed for the purpose of flight and would end when the nonpowered glider comes to rest at the destination.

In § 61.1a, the FAA proposes to describe cross-country time for three separate circumstances: For persons who hold a private, commercial, or airline transport pilot certificate; for persons applying for a private or commercial pilot certificate or instrument rating; and for military pilots. For holders of private, commercial, or airline transport pilot certificates, the criteria for cross-country flight would include landing at a point other than the point of departure and use of dead reckoning, pilotage, or navigation aids to navigate. No minimum distance would be specified. However, for persons applying for a private or commercial pilot certificate or for an instrument rating, the point of landing would be required to be more than 50 nautical miles from the point of departure. For a military pilot who holds or is qualified for a private or commercial pilot certificate under § 61.73, cross-country time would be flight over a distance of more than 50 nautical miles. However, the FAA recognizes that military flight operations may require pilots to navigate and fly considerable distances without landing at a point other than the point of departure. Therefore, proposed § 61.1a would not require that a landing occur at any point other than the departure point.

Proposed § 61.51 would eliminate reference to "solo" time as a type of pilot experience or training equivalent to PIC time. The proposal would permit student pilot certificate holders to log PIC time when they: are the sole occupant of the aircraft; have a supervised PIC flight endorsement; and are undergoing a course of training for a pilot certificate or rating or are logging PIC time toward a certificate or rating. The description of solo flight time in current § 61.51 would be eliminated under the proposal.

The proposal would specify that, except when a flight instructor gives flight training, only one person at a time may log PIC flight time. This provision is intended to eliminate current confusion, particularly regarding the current provision that permits any pilot to log PIC time when acting as PIC of an aircraft on which more than one pilot is required under the regulations under which the flight is conducted.

Instead, the proposal would state that the holder of a pilot certificate may log PIC time only when that pilot: (1) Has the final authority and responsibility for the operation and safety of the flight; (2) holds the appropriate ratings; (3) has been designated PIC before the flight; and (4) the PIC time occurred in actual flight conditions and in an aircraft.

Although the current regulation also specifies that a flight instructor may log as PIC time all flight time during which the person acts as a flight instructor, the proposed rule would provide more detail regarding the conditions under which this occurs. For example, the flight instructor would have to be authorized to conduct the training; hold at least a third-class medical certificate; and occupy a pilot station with functioning flight controls. To log PIC time the certificated pilot receiving flight training would have to be qualified to conduct the flight in accordance with the FAR; manipulate the controls of the aircraft; and be undergoing a course of training for the issuance of a certificate or rating or obtaining recency of experience requirements. In addition, the aircraft would have to have dual functioning flight controls and engine controls that could be reached from either pilot station.

The proposal would not significantly alter the current requirements regarding logging of instrument time. However, the proposal would state that if a safety pilot is required, the name and pilot certificate number of the safety pilot must be recorded and the location and kind of each completed instrument approach. The current rule does not require the safety pilot's certificate number.

The proposal would specify the information that should be recorded regarding flight training toward a certificate, rating, or flight review. This would include a description of the training given, the length of the lesson, the instructor's signature, certificate number, and certificate expiration date.

The proposal would modify the current provision of § 61.51 that applies to the requirement for presentation of the person's logbook. The proposal would list the other records a person must present, in addition to the logbook, upon the request of an authorized official. The other documents include the pilot certificate, medical certificate, or any other record required under part 61. Both the current rule and proposed rule refer to officials representing the Administrator and the NTSB. However, the current rule also refers to a State or local law enforcement officer; the proposal would expand this to include any law enforcement officer.

18. Recency of Experience Requirements

The FAA proposes to modify a number of the recency of experience requirements in § 61.57.

The current requirement for three takeoffs and three landings within the preceding 90 days would be modified to allow night takeoffs and landings to also count for daytime currency. However, the takeoffs and landings would have to be to a complete stop, whether accomplished during day or night or in an airplane with tailwheel landing gear or tricycle landing gear. In retaining the current requirements, night operations will involve knowledge, skill, and ability that are sufficient for currency for daytime operations. However, safety will be better served if the regulation requires full-stop landings, at least for the purpose of meeting the requirements of proposed § 61.57, rather than encouraging "touch-and-go" operations. A landing is not completed until the airplane is stopped and off the runway. As an example, crosswinds may cause a wing to lift suddenly, or mistakes can be made during a hasty effort to "clean up" the airplane (i.e., retract flaps, turn off carburetor heat, etc.).

Additional language is proposed that would require each takeoff and landing to involve a flight in the traffic pattern at the recommended traffic pattern altitude for the airport. This language is intended for pilots of helicopters and powered-lift aircraft, which could takeoff and land in virtually one spot. However, the intent of the rule is that pilots perform a complete takeoff and landing operation, including operating in the airport traffic pattern.

19. Instrument Currency

In addition, the FAA proposes to revise the requirements for instrument currency. Currently, § 61.57 sets the minimum requirements for recent instrument flight experience. For aircraft other than gliders, a pilot must have logged at least 6 hours of instrument time under actual or simulated IFR conditions, at least 3 of which were in flight in the category of aircraft involved, within the past 6 calendar months. The pilot must also have conducted at least six instrument approaches in that time. A pilot who does not meet the requirement of 6 hours and six approaches during the prescribed time or 6 months thereafter must pass an instrument proficiency test.

The revision in instrument currency requirements proposed here for aircraft other than gliders is based on a petition for rulemaking from Newton W. Miller, who advocates changing the requirements to emphasize instrument approaches and reduce the number of hours flown under simulated or actual instrument conditions to meet recency of experience requirements. The petition, summarized in the **Federal Register** on October 25, 1984 (49 FR 42943; Docket No. 24247), advocates decreasing the required flight hours to 2 or 3 hours (including at least 1 hour in the category of aircraft involved) and increasing the number of required approaches to 10 or 12. The petitioner argues that the 6 hours of simulated instrument flight may be flown largely in straight and level flight, which probably is relatively unchallenging to most instrument-rated pilots and does

not significantly contribute to maintaining instrument proficiency. The petitioner also states that 6 hours is an economic burden to many pilots and encourages pilots "to fly while not legally current." The petitioner states that aircraft control combined with the complex demands of following approach plates and communicating with ATC are much more germane to IFR proficiency. Therefore, the petitioner states, the number of required approaches should be increased. The petitioner states that 10 or 12 approaches could be conducted in 2 hours of flight time.

One comment was submitted in response to that petition. In that comment, the Air Line Pilots Association (ALPA) stated that the present regulation does not ensure proficiency, because a pilot may take an instrument proficiency test and not fly in instrument conditions for up to 6 months but still be legally current.

The petitioner raises an important issue in focusing on the quality of the time spent in instrument flight, especially simulated instrument flight, although the FAA disagrees that the current regulation encourages pilots to disregard the FAR and fly illegally. Therefore, the FAA proposes to revise the instrument recency of experience requirements. Under the proposal, to act as PIC under IFR, or in weather conditions less than the minimums prescribed for VFR, within the preceding 6 calendar months for aircraft other than gliders, a pilot would be required to have performed and logged: (1) At least six precision instrument approaches; (2) at least six nonprecision instrument approaches, (3) holding procedures; (4) intercepting and tracking VOR radials and NDB bearings; (5) recovery from unusual flight attitudes; and (6) flight by reference to instruments. However, these maneuvers and procedures would not be required to be performed in actual or simulated instrument flight. No minimum number of hours of simulated or actual instrument flight time would be specified.

Proposed § 61.1a would define an instrument approach as an approach procedure defined in part 97 and conducted to an established minimum descent altitude (MDA) or decision height (DH), or if necessary, to a higher altitude selected for safety reasons by ATC. Part 97 prescribes Standard Instrument Approach Procedures (SIAP) for instrument letdown to airports in the United States.

These proposed requirements could be met either in actual flight and in the category of aircraft for which instrument privileges are sought, or in an approved flight simulator or flight training device representative of the category of aircraft for which instrument privileges are sought.

Instrument recency of experience in gliders would change mainly in format under the proposal. Pilots would be required to perform and log at least 3 hours of instrument time in actual flight, of which at least one-half must have been in a glider or single-engine airplane if the pilot does not carry passengers. If the pilot does carry passengers, the pilot must have performed and logged at least 3 hours of instrument time in a glider.

The FAA also proposes to clarify the requirements for an instrument proficiency test. Currently, the instrument proficiency test would be required for a person who has not met the instrument recency requirements within the prescribed time or within 6 calendar months after that time. The FAA proposes to clarify this issue by amending § 61.57 to require that the test include a representative number of tasks required for original certification of an instrument rating.

The FAA issued an NPRM on April 11, 1994 (59 FR 17162) to waive the recency of experience requirements of § 61.57 for PICs of parts 121 and 135 operators. Specifically, that NPRM proposed relief to PICs of parts 121 and 135 operators from having to comply with the recency of experience requirements, (i.e., general, night, and instrument) of § 61.57. Parts 121 and 135 have recency of experience requirements that are at least equivalent to the recency of experience requirements of § 61.57, so duplication of these requirements are unnecessary. The final rule is scheduled for issuance in 1994.

The proposals in this NPRM would extend the exception requirements for the general and night recency experience requirements of § 61.57 to PICs of part 125 operators, but not the instrument recency experience requirements. The FAA believes the training programs and structured operational controls placed on PICs in part 125 operations are adequate in ensuring that there will not be a degradation in safety. The FAA believes that the redundant recency of experience requirements in part 125, in addition to the structured training programs and operational controls placed on PICs of part 125 operators more than adequately cover any safety concerns provided by exempting these PICs from the recency of experience requirements of § 61.57.

20. English Language Ability Requirements

The FAA proposes to standardize English language fluency requirements for all certificates and ratings and to eliminate exceptions in certain rules that permit pilots to be certificated without meeting English language fluency requirements, under certain restrictions.

The proposal to eliminate exceptions to the English language requirements would affect all pilot and flight instructor applicants. This proposal would be addressed in each of the eligibility paragraphs of each pilot certificate level and would require all applicants to be able to read, speak, and understand the English language. Under the proposal, the reference to operating limitations would be deleted, and all applicants would be required to meet the language requirements. A similar provision in current § 61.75, which provides for placement of limitations on a pilot certificate issued on the basis of a foreign pilot license, also would be deleted. As with the pilot certificates and ratings, the applicant for a U.S. pilot certificate, on the basis of a foreign pilot license, would have to be able to read, speak, write, and understand the English language.

The FAA has grown increasingly concerned that pilots' inability to sufficiently read, speak, and understand English during radio communication and in dealing with air traffic control poses a serious safety hazard. The exceptions referred to have not effectively kept such pilots out of airspace in which command of the English language is essential, and for safety reasons, the FAA believes all pilots who operate in the National Airspace System (NAS) should meet the English language requirements. Current holders who cannot read, speak, write, and understand the English language, but have been issued pilot certificates with limitations that restrict operations in airspace requiring the use of the English language prior to effective date of this rule would be allowed to continue to hold that certificate. If the person seeks an additional rating or higher level pilot certificate, then the certificate will not be issued unless the person is able to read, speak, write, and understand the English language.

The proposal would eliminate, as superfluous, current language in § 61.151 that requires applicants for the ATP certificate to speak English without accent or speech impediment that would interfere with two-way radio conversation. The FAA believes that the requirement to speak English means

speak well enough to participate clearly and safely in radio communications.

21. Flight Training Given by a Flight Instructor Not Certificated by the FAA

Existing § 61.41, "Flight instruction received from flight instructors not certificated by the FAA," permits flight training received by a flight instructor who is not certificated by the FAA to be credited toward the requirements for a U.S. pilot certificate or rating. However, the instructor is required to either be a: (1) Member of an Armed Force of either the United States or a foreign contracting State to the Convention on International Civil Aviation in a program for training military pilots; or (2) flight instructor authorized to give that flight training by the licensing authority of a foreign contracting State to the Convention on International Civil Aviation and the flight training is given outside the United States.

Section 61.41 contradicts existing § 61.3, which states that flight training must be given by the holder of a flight instructor certificate issued by the Administrator. The exceptions to this requirement do not include flight instructors who are not certificated by the FAA. The absence of an exception for these flight instructors has caused confusion in relation to § 61.41. Currently, the FAA permits flight training received by a flight instructor who meets the requirements of § 61.41 to be credited toward the requirements found in part 61.

The FAA proposes to revise § 61.3 to ensure that, under certain circumstances, the recipient of flight training from a flight instructor who is not certificated by the FAA, may credit that flight training toward the requirements in part 61. Such a privilege is granted in the existing regulation but is subject to misinterpretation.

22. Second-in-Command (SIC) Training and Recent Experience

The FAA proposes to clarify the familiarization review requirements under § 61.55 for pilots serving as SIC of an aircraft that requires more than one pilot. Under the proposal, a person serving as SIC would be required to have completed, within the previous 12 calendar months, a familiarization review on specific subjects for the type of aircraft in which privileges are requested. As with other issues in this proposal, the FAA seeks greater structure and standardization.

The proposed section would maintain current provisions providing exceptions to the training requirements. For example, the training requirements do not and would not apply to pilots qualified as PIC or SIC under parts 121, 125, or 135. In addition, pilots designated as SIC for the purpose of receiving flight training required under § 61.55, where no passengers or cargo are carried on the aircraft do not and would not have to meet the training requirements. Exceptions to the training requirements would also continue to be made for pilots holding a commercial pilot or ATP certificate in the case of ferry flights, test flights, or evaluation flights, provided no persons or cargo unnecessary for conducting the flight are carried aboard the aircraft.

23. Knowledge Tests

As discussed in the section on Clarification of Terms, the FAA proposes to use the term "knowledge test" to replace the term "written test." Knowledge tests will include tests administered by computer, which already are acceptable to the FAA; this term will update the FAR terminology to conform with the educational community.

In addition, the FAA proposes to require that applicants for knowledge tests obtain a logbook endorsement from an instructor in order to be eligible to take a knowledge test. This will end the current practice in which applicants request an FAA inspector from a FSDO to review and discuss their home study materials as evidence that they have completed a home study course. This practice constitutes an unnecessary workload for the FAA and is a role more properly filled by ground or flight instructors. Home study would still be acceptable; the only change would be that an instructor's endorsement would be required, but a review by the FAA would not.

The FAA proposes to continue requiring an endorsement to take the knowledge test to dissuade applicants from taking the test with inadequate preparation, again, to avoid undue administrative burden. Many applicants taking and retaking the knowledge tests might delay grading and response time, which would be unfair to applicants who completed courses and prepared for the tests.

24. Standardized Syllabus

The Notice of Hearings (54 FR 22732; May 25, 1989) invited public comment on whether parts 61 and 141 should be consolidated into one regulation and whether all training should be performed from a standardized curriculum. Under the current system, pilot and flight instructor training is conducted to meet the criteria and requirements of aeronautical knowledge and flight proficiency, as set out in part 61 and the PTS. There is no requirement in part 61 for an applicant to complete an FAA-approved ground and flight training syllabus before obtaining a pilot or instructor certificate or rating.

Part 141 provides a specific method for meeting the part 61 requirements through training programs conducted at approved schools that offer standardized curricula and are monitored by the FAA to ensure quality training. Part 61 requires specific course structure and organization, detailed recordkeeping, increased standardization of training, and increased supervision of training. Testing standards are the same for pilots trained at non-approved schools or by independent instructors.

Although many of the comments received in response to the Notice of Hearings and at the public hearings supported consolidating parts 61 and 141, many commenters also wanted to maintain the current system of approving FAA pilot schools under part 141 and having schools and independent instructors operate under part 61 only.

However, during the public hearings, many participants agreed that performing training under a standard curriculum or syllabus may be beneficial. Nevertheless, they disagreed on whether the written training program should be prepared by the FAA or developed by industry and approved by the FAA. Many recommended that outlines be generated by the school and approved by the FAA. Some commenters noted that peculiarities of geographic area may not be included in a syllabus generated by the FAA. Participants suggested that a general syllabus could be published in an advisory circular format as guidance.

Based on the public comments and its own study of the issue, the FAA believes that part 61 and part 141 should not be combined or consolidated. However, the FAA is proposing that all training for pilot, flight instructor, and ground instructor certificates and ratings should be performed according to a written syllabus. The intent of this proposal is to encourage all training to be conducted according to a more organized and standardized format. This approach to training would give students and trainees the benefit of more structured training programs, an advantage that currently exists in training conducted under part 141 (or parts 121 and 135). The FAA believes that many independent instructors and pilot schools conducting training under part 61 already understand this and use

written syllabi although no regulatory requirement exists. However, the FAA would like to see this approach become the industry norm.

The FAA proposes to establish a new § 61.9 to require an instructor who provides training for an airman certificate or rating issued under part 61 to use a written syllabus that includes a summary of total training time; planned training time for each lesson; a detailed description of training to be covered in each lesson; and the aeronautical knowledge areas and approved areas of operation that apply to the airman certificate or rating. Because this requirement would apply to training conducted under part 61, and schools that conduct training under part 61 are not directly subject to FAA approval or certification, the instructor would bear responsibility for ensuring that all necessary areas of aeronautical knowledge and operation were covered in the training program. The proposal also would require the instructor to give a copy of the syllabus to the student at the outset of the training and ensure that the student completed the syllabus before the practical test.

The FAA does not, at this time, propose to require instructors to submit the syllabi for FAA approval. This would constitute a major administrative workload for the FAA and for instructors. However, the instructor would be required to maintain a copy of the syllabus, make it available for FAA inspection upon request, and provide each student with a record of the training accomplished. This proposal would revise § 61.189 to require each flight instructor to retain for 3 years a copy of the syllabus for each person trained by that instructor. Proposed § 61.219 would include the same requirement for ground instructors.

The FAA does not intend for each instructor to produce a personal syllabus for each course of training, although there is nothing to preclude such an effort should an instructor prefer to do that. Syllabi could be based on training courses published by manufacturers and training organizations.

The FAA believes that the use of training syllabi would provide more continuity in training conducted under part 61. This is particularly important for students who change instructors in the midst of a training program.

25. Training and Endorsements

The FAA proposes several initiatives to enhance pilot training and preparation. These efforts include additional training and instructor endorsements that cover human factors training, windshear avoidance training, and special aircraft certification training for pilots. In addition, current endorsement requirements for complex and high performance airplanes would be clarified under the proposal.

26. Endorsement for Complex and High Performance Airplanes

The FAA proposes to amend current § 61.31, which deals with high performance and complex airplanes. Under this proposed revision, complex and high performance airplane endorsements would be discussed in separate paragraphs of § 61.31. One endorsement would be required for a pilot flying an airplane with retractable landing gear, flaps, and a controllable propeller (commonly referred to as a "complex airplane"). A separate endorsement would be required to operate a high performance airplane, which would be redefined from "more than 200 hp" to "200 hp or more." This proposed requirement for separate endorsements, one for complex airplanes and one for high performance airplanes, could be achieved simultaneously in a complex airplane of 200 horsepower (hp) or more.

Before giving the endorsements prescribed by § 61.31, the instructor would be required to provide both ground and flight training in the airplane to ensure the pilot is proficient on the operation and systems of the airplane.

In addition, § 61.31 currently requires endorsements only for holders of private or commercial pilot certificates. The FAA proposes to extend this requirement to holders of ATP certificates because it is possible to earn the certificate in a low horsepower, non-complex, single-engine airplane.

27. Aircraft Type Specific Training

In December 1991, the FAA issued a Special Certification Review Report on the Piper Malibu and Mirage airplanes. This review was a result of seven in-flight structural breakups involving Piper Malibu and Mirage airplanes. Although the review process did not discover any major design deficiencies, the special certification team that reviewed the airplane did make approximately 60 recommendations concerning design improvements and operational clarifications on the airplane.

The Special Certification Review team consisted of FAA engineers, inspectors, and pilots who were tasked with reviewing the certification process, service history, and operation of the Malibu and Mirage airplanes. The report issued on the airplanes was reviewed by the FAA's Small Airplane Directorate and an action plan was developed. The plan included some possible airworthiness directives and recommendations for improved pilot training, policy revision, and rulemaking. Both the review team and Small Airplane Directorate concluded there is a need to improve the education and training of pilots in these high performance, complex airplanes. The FAA stated in the report that both the aviation community and the FAA have the responsibility for ensuring that pilots have the knowledge, skills, and abilities to operate these kinds of airplanes in normal, abnormal, and emergency situation.

In response to this Special Certification Review of the Piper Malibu and Mirage, the FAA is proposing to amend § 61.31 by adding a new paragraph that will require aircraft type specific training and a flight instructor endorsement for any aircraft that the Administrator has determined is necessary to ensure that pilots are adequately trained in normal, abnormal, and emergency situations on these kinds of airplanes. The FAA believes that pilots need this additional training to possess the necessary knowledge, skills, and abilities to operate these kinds of high performance, complex airplanes. The FAA proposes to require additional training and a flight instructor endorsement for a person to serve as a PIC of an aircraft that the Administrator has determined requires type specific training.

28. Human Factors

The FAA proposes to introduce human factor training requirements for all levels of pilot certification. The training requirements would include aeronautical decision making (ADM) and judgment training for pilots at all certificate levels. Although research on aeronautical human factors has been underway for many years, these concepts represent relatively recent advances in training methodology. The traditional approach to training is to focus on technical aspects of aerodynamics, aircraft characteristics and systems, airspace, meteorology, and regulations. The presumption is that the flight crewmembers will integrate these subject areas to respond properly to the situations faced in actual flight conditions.

The intent of adding the benefits of human factors training research to the pilot training regimen is to assist pilots in integrating available information and arriving at correct decisions. Based on this research, it is now feasible to systematically and explicitly study ADM and judgment, rather than relying on pilots to adopt these practices intuitively or relying completely on their experience. Much of this research is based on accident investigations that indicate that decision making processes contributed to or caused the accident. The FAA believes that pilots in the future will benefit from accident analysis and training methodologies designed to overcome lapses in judgment.

29. Aeronautical Decision Making and Judgment Training

The training manual "Aeronautical Decision Making for Student and Private Pilots," prepared by the AOPA Air Safety Foundation for the FAA (Report No. DOT/FAA/PM–86/41), divides pilot activities into three basic categories. First are procedural activities, including management of the powerplant, fuel, navigation, communications, and other aspects of aircraft configuration. The second category is perceptual and motor activities, including aircraft control, and geographic orientation. The third category is decision making activities. The training manual covers self assessments of skill, knowledge, physical and psychological capabilities, hazard assessment, navigation planning, and flight priority assessment. The FAA has determined that aeronautical decision making is necessary, because flying involves a continuous stream of decisions about the crew, aircraft, environment, and operation. These decisions include pre-flight, "go/no-go" decisions, and in-flight decisions, which are designed to neutralize (by eliminating or reducing) risks in flight.

Of the three pilot activity categories, decision making accounted for 51.6 percent of fatal accidents in an analysis of data for a 5-year period, according to the AOPA manual. The objective of the manual, and aeronautical decision making (ADM) and judgment training in general, is to teach pilots to avoid situations that require luck or skill beyond their capabilities, and to reduce the level of judgment-related accidents.

With a solid base of conventional skills and knowledge, aeronautical decision making and judgment training can provide a structured approach to pilot reaction to event changes in flight. This training can be especially valuable to pilots with less experience to help confront the unexpected. These "event changes," in addition to preflight decisions, may include mechanical problems, new instructions from Air Traffic Control, or unexpected weather. These changes call for decisions in which poor judgment may entail a high degree of risk. A common example of the target of such training is the non-instrument-rated private pilot who either fails to obtain a complete weather briefing or unexpectedly encounters poor weather but nevertheless is inclined to continue a flight into instrument meteorological conditions.

Aeronautical decision making and judgment training follow a three-pronged approach:

- Provide an analytical method for making decisions and evaluating risks.
- Address pilots' hazardous attitudes and substitute attitudes that promote good judgment.
- Address the need to overcome high stress, which reduces judgment and decision-making abilities.

Under the proposal, the requirement for ADM and judgment training would be placed under the knowledge requirements for all pilot certificate levels and all instrument ratings in proposed parts 61 and 141. The aviation community is directed to existing FAA-sponsored guidance material as well as additional educational materials available from other sources. Furthermore, the FAA plans to issue an advisory circular that will address the essential elements of ADM and judgment training that pertain to the various certificate levels.

30. Windshear Avoidance

The FAA believes that understanding windshear would enhance safety for general aviation pilots and, therefore, proposes to require ground training on windshear for all pilot certificate levels and the instrument rating. This proposal is based on the increased information available on windshear and industry expert opinion obtained through the FAA Pilot and Flight Instructor JTA, in which windshear is listed as a critical area of pilot knowledge.

The proposal would add a knowledge requirement on windshear avoidance to the current requirements on recognition of critical weather situations and the proposed aeronautical knowledge areas for an instrument rating, a recreational, private, commercial, and an ATP certificate. In the commercial pilot requirements of § 61.125, "*airplanes,*" the windshear knowledge requirement would be added as part of a new meteorology knowledge requirement because this paragraph, unlike the paragraphs relating to rotorcraft, gliders, airships, and balloons, currently does not mention meteorology or weather as a knowledge requirement. The aviation industry's awareness of the importance of the windshear phenomenon and its understanding of the problem has increased markedly in recent years. A National Research Council (NRC) study stated that windshear is "an infrequent but highly significant hazard to aircraft landing or taking off," [1] and recommended a series of measures to reduce windshear accidents.

As a result of the study and the Council's recommendations, the FAA sponsored the development of a comprehensive Windshear Training Aid. Advisory Circular 00–54, "Pilot Windshear Guide," constitutes one section of the two-volume Windshear Training Aid and was issued on November 25, 1988. In addition, the FAA has implemented and expanded ground and flight training requirements for flightcrew members employed in parts 121 and 135 air carrier and commercial operations. In air carrier operations, the FAA pursues a "systems concept" that includes an improved low-altitude windshear weather forecasting technique, ground-based windshear detection equipment, airborne windshear detection equipment, and improved pilot training.

The NRC report stressed, however, that all classes of pilots should understand the windshear phenomenon, including general aviation pilots. The report noted that general aviation pilots usually are not as well trained as air transport pilots and that they rarely have access to advanced training simulators. According to the report, "the most practical and immediate solution appears to be an extensive education program to warn general aviation pilots of the hazards associated with low-altitude windshear and to teach both avoidance and escape procedures." [2] In the report, NRC stated that the risk posed by windshear can be reduced "very soon by an education campaign directed at all classes of pilots." [3] The lack of awareness regarding windshear—including the origins, nature, and potential hazards of downbursts and wind variability—was found to be most acute within the general aviation community because of the diverse pilot skill and training levels. The report also stressed the need for standardized terminology for pilot-controller transmissions on windshear conditions and reports.

NTSB statistics indicate that general aviation has an average of 16 windshear-related accidents per year based on figures for 1979 through 1988. Those 16 accidents, including 1.3 fatal accidents, have resulted in an average of 3.8 fatalities and 4.4 serious injuries related

[1] United States. National Research Council. Low-Altitude Wind Shear and Its Hazard to Aviation. Washington: National Academy Press, 1983. Page 1.
[2] Ibid., p. 1.
[3] Ibid., p. iii.

to windshear per year. However, the NRC report noted that low-altitude windshear may have been a factor in additional accidents that were described as weather-caused or weather-related. According to the report, "The rarity and lack of a reliable statistical data base on windshear-related accidents, shear encounters, or even the frequency of occurrence of potentially hazardous wind shears does not diminish the importance or severity of the safety problem. The potentially catastrophic consequences of an encounter during takeoff or approach and landing require that wind shear always be taken into account as a primary safety consideration when weather conditions are such that strong wind shears may be present. The widespread lack of appreciation among pilots, traffic controllers, and aircraft operations personnel of the seriousness of the possible safety hazards has exacerbated the problem."[4]

Currently, FAA written examination questions on windshear are primarily limited to weather theory questions focusing on the definition of windshear and the effect of windshears on aircraft during final approach. This proposal would broaden windshear training to include at least the following elements: Windshear weather, particularly microbursts, and clues that indicate its presence; effects of windshear on aircraft; windshear recognition from the cockpit and avoidance techniques; necessary precautions and standard operating techniques when windshear is suspected; and recovery techniques to be used in inadvertent windshear encounters.

Several sources of information are available for this proposed ground training requirement, and if the proposal is adopted, the FAA plans to issue a new advisory circular addressing avoidance for general aviation. In Advisory Circular 00–54, the FAA stresses the need to learn to recognize signs of windshear and avoid encountering the condition. Other reference material, such as AC 61–23B, "Pilot's Handbook of Aeronautical Knowledge," and AC 00–6A, "Aviation Weather," have basic discussions of windshear.

Although part 61 currently does not specifically require windshear avoidance training for the ATP certificate, part 121 contains windshear requirements for air carrier flight crewmembers. Beginning January 1, 1991, part 121 air carrier flight crewmembers were required to receive ground training in recognizing and avoiding severe weather and escaping severe weather, in case of inadvertent encounters, including low-altitude windshear (§§ 121.404 and 121.419). Flight training in windshear avoidance maneuvers and procedures also is required by §§ 121.424 and 121.427. Pilots working in part 135 (air taxi and commercial operators) operations are required to receive sufficient ground training in meteorology to ensure a practical knowledge of weather phenomena, including the principals of frontal systems, icing, fog, thunderstorms, windshear, and, if appropriate, high altitude weather situations (§ 135.345). As previously mentioned, the prescribed knowledge in § 61.153 regarding weather for ATP candidates does not specifically state windshear avoidance training. Therefore, the FAA, to avoid any misunderstanding, proposes to add a knowledge requirement on windshear avoidance to § 61.153.

31. Aeronautical Experience Requirements

The FAA proposes to revise the minimum flight training hours of aeronautical experience and minimum solo flight hours of aeronautical experience that are required for the recreational and private pilot certificates and ratings under parts 61 and 141. Additional flexibility, under certain conditions, is proposed for pilot schools operating under part 141.

Under parts 61 and 141, the FAA proposes to revise the amounts of required dual and solo hours for the recreational and private pilot certificates and ratings. In part, this is based on information from the Sierra Academy of Aeronautics, a part 141 pilot school. In addition, the FAA believes that solo flight time is often not used constructively in training programs. Therefore, the FAA is proposing to permit the instructor and student to tailor the dual and solo training time requirements toward the individual student's needs. For example, a student who is seeking a private pilot certificate, and who has previous aviation experience and takes readily to the training may be able to complete training for a private pilot certificate with only the minimum 40 hours of flight time that includes at least 20 hours of flight training time from an authorized flight instructor and 20 hours of supervised PIC flight time. However, a student pilot who does not have previous aviation experience or who trains infrequently may need more time than the minimum 40 hours of flight time, 20 hours of flight training time from an authorized flight instructor, and 5 hours of supervised PIC flight time. The student pilot and flight instructor may need to tailor the training to require 35 hours of flight training time from an authorized flight instructor and 5 hours of supervised PIC flight time.

Under proposed § 61.113, "Airship rating: Aeronautical experience," the requirement for 5 hours of PIC flight training while under the supervision of an authorized flight instructor is not intended to mean the instructor must be present in the aircraft. For example, if the airship required a SIC, the SIC could be a qualified pilot who was not necessarily an instructor, as long as the flight instructor provided flight supervision.

Finally, the proposed aeronautical experience requirements would place greater emphasis on experience in category and class of aircraft.

32. Instrument Rating

The FAA proposes several significant changes in the requirements to obtain an instrument rating. The FAA proposes to eliminate the requirement for a minimum of 125 hours of total flight time experience before a person may apply for an instrument rating. The FAA believes that this requirement should be eliminated to encourage more pilots to seek an instrument rating. This parallels current ICAO standards, which do not prescribe minimum pilot flight experience as a prerequisite for an instrument rating. The FAA believes that safety benefits were realized when the requirement was reduced to 125 hours and that allowing pilots to become eligible for the instrument rating as soon as possible will produce further benefits. The proposal would also delete the requirement for the minimum of 50 hours of cross-country flight time to more closely align the instrument rating eligibility requirements with ICAO standards.

In 1985, the FAA issued Amendment No. 61–75 (50 FR 19290: May 7, 1985) which reduced the total flight experience requirements for the issuance of an instrument rating. At that time, the FAA stated that the amendment was in response to recognized current training technology and that the FAA supported the concept of training to prescribed standards for an instrument rating. The FAA stated in the amendment that it recognized many pilots delay starting instrument training until they have accumulated 150 to 160 hours of flight time. The FAA estimated that it would take a pilot 3 to 4 years to accumulate 150 to 160 hours of flight time. During the development of Amendment No. 61–75, the FAA conducted a training experiment to examine the relationship of pilot experience, as defined by total flight time, to the acquisition of instrument skills. The results of that experiment concluded that the: (1) Amount of prior flight time had no effect on the acquisitions and demonstration of instrument flight skills within the pre-instrument flight experience ranges examined in connection with the experiment; and (2) reduction of the former required total flight experience, prior to the issuance of Amendment No. 61–75, for an instrument rating to a lower total flight experience encouraged pilots to obtain their instrument ratings. In light of the ever increasing complex NAS that pilots are required to operate in, it should encourage pilots to start their instrument training as soon as possible.

In Amendment No. 61–75, the FAA cited a 1981 study conducted by Walton Graham, "A Study of General Aviation Safety," part II, Volume 1, prepared for Trans Urban East Organization, New York, by Questek, Inc., November 1981. In that study, the FAA noted the following accident rates:

Fatal/Serious Accident Rates, IFR Rated Pilots Compared to Non-IFR Rated Pilots

Flight Under IFR Conditions By:	
Non-IFR Rated Plt.	1 Acc./1,449 hours
IFR Rated Plt	1 Acc./12,186 hours
Flight Under VFR Conditions By:	
Non-IFR Rated Plt.	1 Acc./61,900 hours
IFR Rated Plt	1 Acc./94,819 hours

The FAA stated the statistics in that study supported the need for Amendment No. 61–75. As in the case of Amendment No. 61–75, the FAA believes this proposal will encourage non instrument-rated pilots to seek instrument training at an earlier stage in their aviation training, and will result in:

(1) A higher level of safety and competency in coping with sophisticated aircraft equipment, navigation aids, and communication systems;

(2) The restructuring of flying courses under parts 61 and 141 to provide supervised instrument flight rule experience during the training curriculum; and

(3) The encouragement of continued training to meet both the currency and higher certification levels.

The proposal would continue to require at least 40 hours of simulated or actual instrument flight training, which may include 20 hours in an approved flight simulator or flight training device and 15 hours of instrument flight training in the aircraft for an instrument rating.

Proposed § 61.65 also would state that a person who completes an instrument rating practical test for a multiengine airplane, while holding a single-engine airplane class rating would be considered to have met the single-engine airplane instrument rating requirements. The currently required flight instruction and skill would be addressed under proposed areas of operation. A significant proposed change for airplanes is that proposed § 61.65 would add a requirement that the 250-nautical mile (nm) IFR cross-country flight contain one route greater than 100 nm between airports, and that this cross-country flight include an instrument approach at each airport. However, the proposal would delete the language in the current rule that requires the cross-country flight to be in "simulated or actual IFR conditions." The FAA intends that the flight be conducted under instrument flight rules but not necessarily under actual or simulated instrument conditions. An instrument approach would be required at each airport, and approaches using VOR, NDB, and ILS radio navigation aids would be required during the flight.

Similarly, for the instrument rating-helicopter, the cross-country requirement would be 100 nm under IFR but not necessarily simulated or actual instrument conditions. The proposal would add the requirement that one of the routes be greater than 50 nm between airports, and that an instrument approach be conducted at each airport on the route.

The requirements of the proposed areas of operation would be very similar to the current requirements, although in certain cases they would be more general. For example, the requirement that the applicant be endorsed as having been trained and found competent in instrument approaches to published minimums using VOR, ADF, and ILS systems would be replaced with a requirement that the applicant receive and log training in instrument approach procedures. This would permit the PTS to specify, as required, other types of approach procedures appropriate to the IFR environment.

The instrument rating areas of operation are listed separately by aircraft. Although this causes some redundancy, it is similar to the organization of the current regulation, and is intended to assist users by eliminating or minimizing cross-referencing. The proposed rule contains areas of operation for airplane category (the practical test would vary between single-engine and multiengine), helicopter class, airship class, and powered-lift category.

Applicants for the instrument rating would be required to present endorsements for the knowledge and practical tests as well as pass the required knowledge test. The required areas of aeronautical knowledge would remain similar to the currently required areas of ground instruction, including applicable FAR, the "Airman's Information Manual," the air traffic control system, IFR navigation and approaches, IFR en route and approach procedure charts, aeronautical decision making and judgment, weather, and windshear avoidance.

33. Recreational Pilot Certificate

The FAA proposes to revise the eligibility requirements for the recreational pilot certificate as follows: (1) must be able to read, speak, write, and understand the English language, with no provisions or limitations to the contrary; and (2) would not be required to hold a medical certificate. In addition, an applicant would have to affix a signed and dated statement to the application certifying they do not have any known medical limitations that prevent the person from operating the aircraft for the aircraft category and class rating sought.

The FAA is proposing to allow holders of recreational pilot certificates and holders of a higher pilot certificate who elect to only exercise the privileges of a recreational pilot certificate to operate without holding medical certificates. This action is responsive to the EAA petition and the interests of the general aviation community, as discussed earlier. The FAA is requesting comments on this proposal and the accompanying proposed changes to § 61.53. For more details see the section-by-section analysis for § 61.53.

The FAA proposes to revise the aeronautical experience requirements for a recreational pilot certificate by requiring an applicant to accomplish and log at least 30 hours of flight time that includes at least 15 hours of flight training time from an authorized flight instructor and 3 hours of supervised PIC flight time. The purpose for this proposal is to respond to comments heard during the public hearings to allow the student and the flight instructor to tailor the required training to individual student needs.

For example, a student who has previous aviation experience and takes readily to the training may be able to complete training for a recreational pilot certificate with only the minimum 30

[4] Ibid's, p. 130.

hours of flight time that includes at least 15 hours of flight training time from an authorized flight instructor and 15 hours of supervised PIC flight time. However, a student pilot who does not have previous aviation experience or who trains infrequently may need more time than the minimum 30 hours of flight time, 15 hours of flight training time from an authorized flight instructor, and 3 hours of supervised PIC flight time. The student pilot and flight instructor may need to tailor the training to require 27 hours of flight training time from an authorized flight instructor and 3 hours of supervised PIC flight time.

The FAA proposes to revise the privileges and limitation requirement for a recreational pilot certificate by allowing a recreational pilot to act as PIC of an aircraft on a flight that exceeds 50 nautical miles from the departure airport, without receiving training for a private pilot certificate. However, the pilot would be required to receive the proposed training and an endorsement to conduct a flight that exceeds 50 nautical miles.

These proposed revisions will improve interest in the recreational pilot certificate and will encourage more people to seek pilot certification.

34. Preflight Planning

The FAA proposes to revise the aeronautical knowledge areas for a recreational or private pilot certificate to reflect the requirements for preflight action found in § 91.103.

The current aeronautical knowledge requirements for the private pilot certificate applicant with an airplane or rotorcraft category rating include VFR navigation, using pilotage, dead reckoning, and radio aids. These requirements have been interpreted to include the preflight action items in § 91.103. The proposal to add the items found in § 91.103 to the proposed aeronautical knowledge areas would avoid any misinterpretation of the applicant's aeronautical knowledge requirements.

35. Limitations on Cross-Country Endorsements

The FAA proposes to revise § 61.93 to clarify the cross-country flight requirements for students and recreational pilots seeking a private pilot certificate. Under the proposal, the limitations placed in the student's logbook for a supervised PIC cross-country flight would have to be met at the time of the student's departure.

The existing rule, which requires that each supervised PIC cross-country flight be subject to conditions listed in the student's logbook is ambiguous. Incidents have occurred where a student has departed on a cross-country flight without adhering to limitations in the student's logbook. Also, the dispatching flight instructor may not be the student's principal instructor and may not be familiar with the student's personal limitations. The proposal would permit the principal instructor to list limitations considered necessary for the safety of flight (e.g., weather minimums, maximum crosswind components, time frames for departure and completion) that would have to be met before a student could depart on a cross-country flight.

This proposal also would require a revision of the language in § 61.195 on flight instructor authorizations to be compatible with language proposed in § 61.93.

36. Night Flight Training

The FAA proposes to clarify and modify night flight training requirements for private pilot and commercial pilot applicants. The FAA proposes to require night operations as an area of operation for airplanes, powered-lift, and rotorcraft ratings.

An exception would be permitted for pilots whose training and certification occurs in geographic latitudes where there is no nighttime for extended periods. In the United States, this only applies to persons who receive their training in Alaska. The proposed rule would permit a 1-year exception for these pilots. Within 1 year after receiving their certificate with a night flying limitation, pilots would be required to obtain the minimum 3 hours of night flight training and have the restriction removed.

Another exception would be proposed for persons with medical restrictions against night flight, because of vision problems. Persons in this group would be permitted to carry the night flight limitation on their certificates indefinitely.

This proposal would require more pilots to gain exposure to night flight. Experience shows that, even if pilots have no intention of flying at night, situations arise in which they might encounter delays and be tempted to complete a trip after dark. It is critical for pilots to understand how different night operations are from daytime operations and to understand their personal limitations.

However, a person who has been issued a pilot certificate without meeting the night flying requirements of this proposal, prior to effective date of this rule, would be allowed to continue to hold that pilot certificate with the night flying limitation. If the person seeks an additional rating or higher pilot certificate level, the person would be required to comply with the night flying requirements that are appropriate to the pilot certificate level.

37. Private Pilot Limitations

The FAA proposes several significant changes to the current § 61.118 (proposed § 61.113), "Private pilot privileges and limitations: Pilot in command."

Under the current regulation, a private pilot may serve the public in humanitarian-type missions, if the pilot is not compensated. The FAA has granted exemptions to public service organizations to permit reasonable reimbursement to volunteer private pilots for expenses incurred for serving the public in such flights. The FAA proposes to permit private pilots to be reimbursed for aircraft operating expenses (i.e., fuel, oil, and airport expenditures) incurred while serving the public in certain public humanitarian missions (i.e., Civil Air Patrol, Sheriff Department, etc.).

Under the proposal, search and location activity would be permitted when the activity is under the direction and control of local, state, and federal law enforcement agencies. The FAA believes that skilled private pilots are a valuable resource to enforcement agencies conducting search and location missions and that this resource should be available under controlled conditions. The proposal is intended to permit private pilots to conduct searches in conjunction with search and location operations. The FAA considers a search and location operation as a flight or series of flights authorized by and under the direction and control of local, state, or federal law enforcement agencies for the purpose of searching for lost or injured persons and communicating the location of these persons to the appropriate authorities. The proposal is intended to include a pilot and the minimum essential number of persons required to perform observation, map reading, and communication duties. For example, under the proposal, a private pilot could act as PIC of an aircraft carrying fire fighters searching for a fire. This proposed paragraph would not permit a private pilot to transport fire fighters from one location to another. In addition, the proposal is not intended to involve private pilots in the transportation of emergency response personnel and victims.

The FAA also proposes to clarify how a private pilot may share expenses with passengers. Under the current rules, a private pilot may only share the operating expenses of a flight with passengers. The FAA proposes to specify that these operating expenses be restricted to fuel, oil, and airport parking expenditures only, and that these expenses be shared equally between the pilot and the passengers.

The FAA also proposes to clarify the provisions permitting private pilots to conduct flight operations for charitable events. Under the proposal, the regulation would specify that, if a private pilot functioned as a PIC of an aircraft for a passenger-carrying airlift sponsored by a charitable organization, the sponsor of the airlift would have to provide a signed letter with information on the event, and a photocopy of the pilot's pilot certificate, medical certificate, and logbook entries showing compliance with recency of experience requirements and the 200-hour minimum total experience requirement.

Other aspects of the provisions for private pilots' operations in charitable events would remain largely the same. Aircraft maintenance would be required to be in accordance with subpart E of part 91, although the specific reference in current rule to a required 100-hour inspection and compliance with § 91.409 would be deleted. Nevertheless, those requirements are applicable and would continue under the proposal. In addition, reference to specific U.S. Department of Treasury documents would be replaced with a more general requirement that the charitable organization be identified as such by the Department of the Treasury.

Under this proposal, specific reference to private pilots engaged in aircraft sales would be deleted. The existing rule states that a private pilot, who is an aircraft salesman and who has logged at least 200 hours of flight time, is permitted to demonstrate an aircraft in flight to a prospective buyer. This proposed revision does not eliminate this private pilot privilege, however, because it is covered in the proposed § 61.113(b).

Finally, a new provision would be added to clarify that a private pilot who meets the requirements of § 61.69 may act as PIC of an aircraft towing a glider and log that flight time. This is consistent with current and proposed § 61.69.

38. Glider Towing

Section 61.69, "Glider towing: Experience and instruction requirements," currently provides two means for a person to qualify as a PIC of an aircraft towing a glider. The proposed rule would retain the first alternative in § 61.69, which requires the person to have made and logged at least three flights as sole manipulator of the controls of an aircraft towing a glider while accompanied by a qualified pilot. Under this proposal, the second alternative in § 61.69, would be removed. This alternative allows for the person to have made at least three flights as sole manipulator of the controls of an aircraft simulating glider towing flight procedures and at least three flights as pilot or observer in a glider being towed by an aircraft. The FAA believes that safety will be better served if a person's first experience actually towing a glider occurs while that person is accompanied by a qualified pilot, rather than flying solo, as may be the case currently.

39. Eligibility for Commercial Pilot Certificate

The FAA proposes changes to current § 61.123, "Eligibility requirements: General" and § 61.129, "Airplane rating: Aeronautical experience." Section 61.123 currently requires applicants for the commercial pilot certificate with an airplane category rating either to have a private pilot certificate or to have passed the private pilot written and practical tests. Under this proposal, § 61.123 would list the private pilot certificate as a prerequisite for commercial pilot certificate applicants for all aircraft categories. This would, in effect, require applicants to take the private and commercial practical tests separately, so that applicants actually have a private pilot certificate when they apply for the commercial pilot certificate.

The proposed change is not intended to require that the private pilot certificate necessarily be in the same category and class of aircraft for which the applicant seeks a commercial pilot certificate.

The other proposed changes to eligibility requirements for commercial pilot certificate applicants would affect English language ability; applicants would be required to read, speak, write, and understand the English language, and no exceptions would be made. In addition, a third-class medical certificate, rather than a second-class medical certificate, would be required. Proposed § 61.23 would require, as is currently the case, that a person hold at least a second-class medical certificate to exercise the privileges of a commercial pilot certificate.

Current holders who cannot read, speak, write, and understand the English language, but have been issued pilot certificates with limitations that restrict operations in airspace requiring the use of the English language, would be allowed to continue to hold their certificates. However, if a person seeks an additional rating or higher level pilot certificate, then the certificate will not be issued unless the person is able to read, speak, write, and understand the English language.

40. Use of Turbojet Airplanes for Commercial Pilot Certification

The FAA proposes to revise § 61.129, the aeronautical experience requirements for a commercial pilot certificate with an airplane category rating, to permit the use of turbine powered airplanes. The existing rule requires a minimum of 10 hours of flight training and practice given by an authorized instructor in operations in airplanes with retractable landing gear, flaps, and a controllable pitch propeller. However, some commercial pilot applicants may wish to complete their training in turbine-powered airplanes, and some military pilots may not have demonstrated procedures pertaining to the use of a controllable pitch propeller. Because a turbine-powered airplane does not necessarily have a propeller, training and demonstration of flight proficiency in such an airplane does not satisfy existing requirements. However, a turbine-powered airplane clearly meets the regulatory intent of requiring an applicant to demonstrate proficiency in a relatively complex airplane.

As proposed, an applicant could perform the 10 hours of flight training and practice given by an authorized instructor in either a turbine powered airplane or an airplane with retractable landing gear, flaps, and a controllable pitch propeller. The 10 hours of flight training and practice could also be met with a combination of hours in the two airplanes.

Existing § 61.127, which requires demonstration of flight proficiency in an airplane equipped with a retractable landing gear, flaps, and controllable propeller(s), would be revised to include turbine-powered airplanes.

41. Commercial Pilot Experience—Cross Country Training Flight

The FAA proposes to establish two new cross-country flight training requirements for commercial pilot certificate applicants for airplane, helicopter, gyroplane, airship, and powered-lift ratings: a daytime VFR cross-country flight and a nighttime VFR cross-country flight. Both flights would have to be in the same category and class of aircraft for which the commercial pilot certificate was sought.

The FAA proposes these additional cross-country requirements because current training requirements appear

inadequate and are outdated. The intent of the proposals is to increase applicants' exposure to the demands and pressures of cross-country navigation under both day and night conditions, in increasingly complex airspace conditions, and at commercial pilot level standards. The FAA believes that this additional experience under flight instructor supervision will help produce better trained commercial pilot applicants.

42. ATP Requirements

The FAA proposes several changes in the eligibility requirements for the ATP certificate. The English language capability requirement would be simplified and standardized with other certificate levels. The reference in current § 61.151 to accent or speech impediment that would interfere with two-way radio conversation would be deleted. At least a third-class medical certificate, rather than a first-class medical certificate, would be required for the certificate (although a first-class medical certificate still would be required to exercise the privileges of the certificate). In addition, the current requirement in § 61.151 for a high school education or equivalent would be deleted. The FAA believes that because of the higher levels of education typically attained by ATP certificate applicants, this is now an obsolete requirement.

The provision in current § 61.157 permitting ATP certificate applicants to obtain an instrument rating in conjunction with the ATP certificate is obsolete. Therefore, the FAA proposes to require in § 61.151 that an applicant for an ATP certificate either must hold a commercial pilot certificate *and* instrument rating that applies to the category and class of aircraft for which the ATP certificate is sought or, if a U.S. military pilot, meet the requirements of § 61.73 for a commercial pilot certificate and instrument rating. An applicant who holds a foreign pilot license would be required, under the proposal, to hold either a foreign ATP certificate or commercial pilot license and instrument rating with the appropriate aircraft category and class rating. Currently, it is rare for an ATP applicant to lack an instrument rating, and in the current NAS an instrument rating is, for practical purposes, a prerequisite for the ATP certificate.

Under the proposal, applicants under 23 years of age could continue to take the knowledge test for the ATP certificate. The proposal would eliminate the current provision in § 61.153 that requires applicants to meet the eligibility requirements (other than the age minimum) before taking the written, or knowledge, test. Thus, in this NPRM, it would not be necessary to meet any of the eligibility requirements to take the knowledge test, but the eligibility requirements would apply to a person seeking to take the practical test. However, an applicant would have to be at least 23 years old to take the practical test; the FAA proposes to delete the exception to this requirement currently found in § 61.39. This revision proposes that an applicant meet the 23 year old age requirement to be eligible to take the practical test for an ATP certificate.

The FAA also proposes to clarify, reorganize, and update the aeronautical knowledge areas covered under § 61.153. Whereas airplane and rotorcraft aeronautical knowledge currently is covered under separate sections that are cross-referenced, the proposal would list a single set of required aeronautical knowledge areas. The current reference to "air navigation facilities on Federal airways such as rotating beacons, course lights, and radio ranges" would be deleted. Other items, such as flight crew physiological factors and aeronautical decision making, judgment, and windshear avoidance would be added.

Aeronautical skill areas currently addressed in §§ 61.157 (airplane rating) and 61.163 (rotorcraft) would be addressed in proposed § 61.155, "Flight proficiency." This proposed section contains a single set of areas of operation for the single-engine airplane, multiengine airplane, helicopter, and powered-lift ATP ratings.

The practical test for the ATP certificate-airplane, rotorcraft, or powered-lift—would be based on the approved areas of operation listed in proposed § 61.155.

To apply for a practical test for an ATP certificate, a person must meet the eligibility requirements for the certificate, as well as meet the aeronautical knowledge and experience requirements.

An applicant who is seeking a type rating on an ATP certificate or adding a type rating to a ATP certificate would be required to receive and log ground and flight training on the approved areas of operation and receive a logbook endorsement that the training was completed, except in the case of an employee of a part 121 or 135 certificate holder. In that case, the employee would be permitted to present a training record that shows satisfactory completion of the certificate holder's approved PIC training program for the aircraft type rating sought.

The areas of operation contained in the rules are written in general terms to align it with the standards for practical tests. The FAA believes this will permit flexibility in the test and reflect current needs of the NAS environment in which the holder of the ATP certificate would operate. Applicants would prepare for the test, in part, by referring to the appropriate practical test standards. As an example, the areas of operation include preflight preparation and procedures; inflight procedures; instrument procedures; takeoff and departure; landings; normal, abnormal, and emergency procedures; and postflight procedures.

Under the proposal, aeronautical experience requirements would be reorganized for clarity and easier reference. The proposal would not change the specific hour requirements.

Powered-lift requirements would be patterned on the airplane requirements. However, for powered-lift, no provision is contained in the proposed rule for flight engineer time to be credited toward the required 1,500 hours of total time as a pilot. The reasons that provisions for flight engineer time is not being allowed for the powered-lift rating is because to date, the existing powered-lifts under development are not designed with a flight engineer station.

In proposed § 61.157, "Aeronautical experience: Airplane category rating," SIC time acquired in an airplane with a flight manual or type certificate that requires more than one pilot would still count toward meeting the pilot time experience requirements. All SIC time in an airplane for a part 121 or 135 certificate holder for which a SIC was required also would be counted.

The FAA proposes to delete the provision that requires a pilot who seeks an airline transport pilot certificate in a small helicopter to obtain a helicopter type rating. The FAA believes that small helicopters should not be treated differently than the other small aircraft. Historically, the FAA policy on requiring a pilot who seeks an airline transport pilot certificate in a small helicopter to obtain a helicopter type rating was based on the operating requirements of part 127, "Certification of Operations of Scheduled Air Carriers with Helicopters." Specifically, § 127.173(a) is the rule the FAA based its determination on requiring a pilot who seeks an airline transport pilot certificate in a small helicopter to obtain a helicopter type rating. Upon a closer reading of existing § 61.5(b)(5)(iii), however, it is stated that ratings are issued under this part for, "Small helicopters for operations requiring an airline transport pilot certificate."

Currently, part 127 is not active, and there are not any part 127 scheduled air carriers with helicopters. The FAA has determined that it is not necessary for a person who seeks an airline transport pilot certificate in a small helicopter to obtain a helicopter type rating. The continuation of this past policy places an additional restriction on small helicopters that is not required of other small aircraft and can no longer be justified. Therefore, the FAA proposes to treat the type rating requirements for helicopters as it currently does for the other aircraft, which only requires a type rating if the aircraft is a large aircraft (other than lighter-than-air), turbojet-powered airplanes, or other aircraft type ratings specified by the Administrator through the aircraft type certification procedures.

43. Pilot in Command Hour Requirement for Initial Flight Instructor Applicants

The FAA proposes to require an applicant for a flight instructor certificate to have logged at least 15 hours as PIC in the category and class of aircraft for which the rating is sought. This is also required in existing § 61.191 for a flight instructor to apply for an additional flight instructor rating. However, such a requirement does not exist for the application of an original flight instructor certificate. The FAA believes that an applicant for any flight instructor rating should have logged at least 15 hours as PIC in the category and class of aircraft for the rating sought. This proposal will not impose any additional economic burden on flight instructor candidates, who normally obtain their original flight instructor certificate in an aircraft in which they have received most of their training. The proposal is intended to eliminate an area of inconsistency in the regulation.

44. Experience Required for Training Flight Instructor Candidates

In addition to adding the generalized areas of operation to the flight instructor requirements of § 61.187, the FAA proposes two amendments to the current § 61.187. The first is a clarification of the requirement that persons giving flight training to flight instructor candidates have 24 months experience. Second, an exception would be specified for that 24-month requirement.

Section 61.187 currently requires that persons who give flight training to flight instructor candidates have a minimum base of experience. They must have given at least 200 hours of flight training, and they must have held a flight instructor certificate during the 24 months immediately preceding the date the training is given to a flight instructor candidate. This current rule may be read to mean that a person who had been active as a flight instructor for 2 years or more, but then became inactive as a flight instructor, might be excluded from giving flight training to flight instructor candidates upon resuming flight training activity.

The FAA does not interpret § 61.187 in this manner, particularly when it is read in conjunction with § 61.19. To clarify this issue, the proposed change would eliminate the words "immediately preceding." This proposal would clarify that the 24 months of experience are cumulative time and need not be accumulated consecutively and immediately preceding the giving of training to flight instructor candidates. However, an instructor who otherwise meets the 24-month and 200-hour experience criteria would need to have their flight instructor certificate reinstated before giving such flight training.

A further proposed change to this rule would apply to flight instructors serving in an FAA-approved course. This provision would allow such flight instructors either to meet the 24-month and 200-hour experience requirement, or to meet other prerequisites. The alternative qualifications would be to have trained and endorsed at least 5 persons for a pilot certificate or rating practical test; have a record reflecting that at least 80 percent of the persons whom the flight instructor has endorsed for a practical test passed that test on their first attempt; and have given a minimum amount of flight training. In the case of airplanes, the minimum amount of flight training given would be 400 hours; in the case of gliders, the minimum amount of flight training given would be 100 hours; and in the case of lighter-than-air, the minimum amount of flight training given would be 40 hours.

The intent of this option is to permit a person who has held a flight instructor certificate for less than 24 months to give training to flight instructor candidates. For example, the FAA believes that some full-time instructors may meet the 400-hour requirement before accumulating 24 months of training experience. Within the structure of an approved training program, the FAA believes that such instructors should be permitted to train flight instructor candidates. The FAA has determined that the second option would provide at least an equivalent level of safety to the current minimum of 24 months and 200 hours of experience.

45. Flight Instructor Renewal Requirements

The FAA proposes to modify procedures for renewal of the flight instructor certificate. Under the proposal, § 61.197 would be revised to clarify current requirements.

The current regulation requires flight instructors to pass the practical test for a flight instructor certificate and the rating involved, or portions of that test as determined by the FAA, or to renew their certificates through several other methods. Similarly, the proposal would state that a person who holds an unexpired flight instructor certificate would be permitted to renew that certificate for an additional 24 calendar months by passing a practical test for renewal of that certificate. The proposal would add that passing a practical test for an additional flight instructor rating also would be acceptable for renewal of the expiring flight instructor certificate.

Current § 61.197 also states that flight instructors may renew their certificates without taking the practical test if their record of instruction shows they are competent flight instructors. The proposal would specify what the FAA considers an acceptable record of training, for the 24-calendar month duration period of the instructor's certificate, the instructor would have to have endorsed at least 5 students for a practical test for a certificate or rating and at least 80 percent of the students would have to have passed their tests on the first attempt.

The proposal would modify one other possible method of renewing a flight instructor certificate. Under the current rule, a person may renew a flight instructor certificate, without taking the practical test, if the person has a satisfactory record as a company check pilot, chief flight instructor, PIC of an aircraft operated under part 121, or other activity involving the regular evaluation of pilots. This would be somewhat modified, a proposal that would include any person who has served, during the preceding 24-calendar month duration period of the person's flight instructor certificate, as a company check pilot, chief flight instructor, company check airman or flight instructor in a part 121 or 135 operation, or a comparable position involving the regular evaluation of pilots. Similar to the current rule, the proposal would stipulate that the person demonstrate to a FSDO of having satisfactory knowledge of current pilot training, certification, and standards.

46. Flight Instructor Duty Time Limitations

One issue discussed under this regulatory review was whether to limit instructor flight and duty time by limiting the hours of training given in simulators and ground trainers, as well as training given in flight. The FAA has decided to propose one change in the current flight time limitation for flight instructors, but does not propose to limit duty time involving training given in flight simulators and flight training devices.

Section 61.195 currently states that a flight instructor may not conduct more than 8 hours of flight instruction in any 24-consecutive hour period. The FAA proposes to revise this section by proposing that a flight instructor may not conduct more than 8 hour of flight instruction, other commercial flying, or any combination of both in any 24-consecutive hour period.

47. Flight Training From a Control Seat

Section 91.109 lists the requirements an aircraft must meet to be used in flight training. However, no regulation requires a flight instructor to be in a control seat of the aircraft while giving flight training. The FAA proposes to revise §§ 61.51 and 61.195 to require that all flight training be given from a control seat in the aircraft.

Section 91.109 requires, with the exception of a balloon, that the aircraft have fully functioning dual controls. The regulation provides that instrument flight training be given in a single-engine airplane equipped with a single, functioning, throwover control wheel in place of fixed, dual controls of the elevator and ailerons. Section 91.109 also requires a safety pilot to be in a control seat during simulated instrument flight conditions.

In § 61.51, the FAA proposes to require a flight instructor to occupy a pilot station in the aircraft that has functioning flight controls to log PIC flight time. The FAA also proposes to amend § 61.195 to require that all flight training be given from a control seat of an aircraft that meets the requirements of § 91.109.

C. Part 141 Issues

1. Approval of Training Courses That Permit Pilot Schools To Train to a Standard

The FAA proposes to permit pilot schools certificated under part 141 to train students to a performance standard without necessarily meeting the minimum hours of training prescribed in the appendices. However, these proposed courses would not be permitted for pilot schools with provisional pilot school certificates or for courses in which pilot schools have examining authority.

Pilot schools would be required to specify planned ground and flight training time requirements for these courses. These time requirements would include cross-country flight time, night flight time, and any additional ground and flight training. Students would have to meet these planned time requirements to complete the course.

To apply for initial approval of a course that trains students to a standard, the school would be required to meet the following requirements, which appear in proposed § 141.55: (1) Hold a pilot school certificate and have held that certificate for at least the prior 24 calendar months; and (2) have an FAA inspector or a designated examiner who is not an employee of the school give the practical or knowledge test. The initial approval would be for 24 calendar months.

Under proposed § 141.55, a course that received initial approval could receive final approval by complying with the following: The school would be required to demonstrate that, during the time the course was conducted under initial approval, the school trained at least 10 students for a pilot, flight instructor, or ground instructor certificate or rating and at least 80 percent of those students passed the practical test on the first attempt. The practical test must have been conducted by an FAA inspector, or by a designated examiner who is not an employee of the school.

The FAA's experience indicates that most applicants require more than the minimum number of hours required under part 61 or part 141 to attain normal performance standards as reflected in the practical test standard (PTS) and as practiced throughout the flight training industry. Nevertheless, a number of pilot schools have students who are ready to accomplish the practical tests prior to reaching the minimum number of flight hours specified in the FAR. The FAA's experience with pilot schools that have similar courses approved under exemption indicates that such flexibility presents no detriment to safety, under the closely supervised training environment of these schools.

The proposal to permit pilot schools to train students to a standard follows a precedent established with the Advanced Qualification Program (AQP) in Special Federal Aviation Regulation (SFAR) No. 58, which applies to personnel trained under parts 121 and 135. The AQP was created partially in response to recommendations the Administrator received on June 8, 1988, from the Joint Government-Industry Task Force on flight crew performance. One of the recommendations was to provide for the approval of training programs based on course content and training rather than using specific program hours.

This proposal also addresses a petition for rulemaking submitted April 20, 1990, by the Sierra Academy of Aeronautics, which was summarized in the **Federal Register** on June 12, 1990 (55 FR 23749; Docket No. 26221). No comments on the petition were received. The petitioner requested to adjust the ratio of dual flight training to solo training in its training course for a commercial pilot certificate in helicopters. The Sierra Academy stated that it prefers to conduct all flight training in helicopters, even though appendix F permits 100 hours of the total 150 hours of flight training in aircraft other than helicopters or gyroplanes. The Sierra Academy requested the decrease of the solo flight training requirement from 100 hours to 70 hours and the increase of the dual flight training from 50 hours to 80 hours. The Sierra Academy stated that the increase in the number of dual flight training hours is necessary because many of the maneuvers and procedures required under the PTS necessitate that an instructor be on board the aircraft for safety reasons. The petition stated that the change would make FAA-approved commercial pilot training conducted exclusively in helicopters economically viable, as well as safer. Under the proposed revision to § 141.55, the Sierra Academy would be able to apply for approval of courses to train students as described in its petition.

2. Check Instructors

Currently, pilot or provisional pilot schools are required to designate a chief instructor for each approved training course. In addition, pilot schools may designate an assistant chief instructor for an approved training course. The FAA proposes to establish a check instructor position that a pilot school could designate an instructor to perform instructor proficiency checks, stage checks, and end-of-course tests—the check instructor position.

The FAA has determined that the proposed check instructor position would be necessary at larger schools. Often the chief instructors at these schools need to designate more responsibility to other instructors. Under this proposal, a school would be required to have an enrollment of at least 50 students at the time the check instructor is designated.

The check instructor would be required to meet certain minimum criteria and be approved by the FAA FSDO that has jurisdiction over the school. For checks and tests that relate to either flight or ground training courses, a check instructor would be required to have passed an oral test given by the chief instructor on: (1) Teaching methods; (2) the applicable provisions of the "Airman's Information Manual," parts 61, 91, and 141; and (3) the objectives and course completion standards of the approved training course for the designation sought.

A person who desires to become a check instructor for tests and checks that relate to a flight training course would be required to: (1) Hold a commercial pilot certificate or an ATP certificate; (2) hold a current flight instructor certificate with category and class ratings appropriate to the designation sought; (3) hold the appropriate instrument rating for the training course, if required; (4) hold at least a current second-class medical certificate, if the course is for a rating in an aircraft other than a glider or balloon; (5) present a signed and dated statement by the person certifying that the person has no known medical defects that make the person unable to pilot a glider or balloon, if the course is for a rating in a glider or balloon; (6) meet the PIC recent flight experience requirements of § 61.57; and (7) pass a flight test, given by the chief instructor, on the flight procedures and maneuvers of the approved training course for the designation sought. A person who desires to become a check instructor for tests and checks that relate to ground training courses would be required to hold a current ground instructor certificate with category and class ratings appropriate to the designation sought.

Commenters to NPRM No. 89–14, in which the FAA proposed to reduce the experience criteria for chief and assistant chief instructor candidates, noted that such actions enhance the status of instructors by permitting them to apply for a supervisory position earlier in their careers. The proposed check instructor position would permit instructors to apply for supervisory positions and to be given increased responsibility.

The proposal to establish the check instructor position would help the FAA clarify to whom a chief instructor can designate the authority to conduct student stage checks, end-of-course tests, and instructor proficiency checks. The FAA would also eliminate the term "designated assistant." During the public hearings, commenters noted that the term is interpreted differently. Under the proposed revisions to §§ 141.79, 141.81, and 141.85, the chief instructor, assistant chief instructor, or check instructor would give instructor proficiency checks, stage checks, and end-of-course test.

3. Quality of Training Requirements

In response to comments provided at the public hearings, the FAA proposes to clarify the existing requirements for a pilot school to apply for and to maintain a pilot school certificate.

Current § 141.63 requires a pilot school that applies for examining authority in a particular course to demonstrate that 9 of the 10 most recent graduates of that particular course had passed an interim or final test on the first attempt.

Current § 141.83 requires that each holder of a provisional or pilot school certificate provide a high enough quality of training so that at least 8 out of the 10 of the school's students or graduates that were most recently tested, by an FAA inspector or designated pilot examiner, passed an interim or a final test on the first attempt.

Commenters at the public hearings noted that the existing requirement for a specific number of students to pass an interim or stage check may reduce a school's ability to monitor student and instructor performance. For example, the commenters noted that these interim or stage checks are used to: (1) Evaluate a student's performance; and (2) ensure that instructors train students according to the school's procedures and performance standards. The commenters stated that the quality of training criteria should be based on experience with the students who have completed a training course, not students who are enrolled in a training course. Some commenters even noted that, under this requirement, pilot schools would not be able to develop tests that exceed the standards set in the PTS. Other commenters noted that the existing regulations have been interpreted to mean that the requirement for the 10 most recent students to pass any test on the first attempt must be met continuously. For example, if two students in a row failed a test, the school may risk losing its examining authority.

The FAA has determined that a pilot school should be permitted to evaluate its own students and instructors throughout the training course without jeopardizing the school's certificate or examining authority. Therefore, the FAA proposes to revise the current regulation on the number of students who are required to pass the practical or knowledge test and to eliminate the requirement for interim tests to be used to evaluate a school's quality of training. The number of students who pass the practical test would apply to training courses that require the applicant to pass a practical test to obtain a certificate or rating. The number of students who pass the knowledge test would apply to ground training courses.

Proposed § 141.63 would require 90 percent of the graduates of a flight course, in which the school desires to obtain examining authority or retain examining authority, to pass a final test given by an FAA inspector, or by a designated examiner who is not an employee of the school, on the first attempt. Under this proposal if 40 students graduate from an approved course, but only 10 of those students receive a final test given by an FAA inspector, or by a designated examiner who is not an employee of the school, then 90 percent of those 10 students would have had to have passed the test on the first attempt. The 90 percentage would be applicable for the 24-calendar months duration period of the school's examining authority. If the school only conducts ground school courses, then at least 90 percent of the school's students must have passed the required knowledge test given by the FAA, or by a designated examiner who is not an employee of the school.

The FAA proposes similar revisions to §§ 141.5, 141.27, 141.55 and 141.83. These revisions would require that an applicant seeking approval or renewal of a training course have at least 80 percent of their graduates from the course to have passed the practical test on the first attempt. The 80 percent is not required to be based on all students, but only on those students who take the practical test given by an FAA inspector, or by a designated examiner who is not an employee of the school.

4. Temporary Chief Instructor

The FAA proposes to revise § 141.87, "Change of chief instructor," to allow the assistant chief instructor to act in the capacity of the chief instructor for 60 days and to permit the assistant chief instructor or check instructor to perform stage and end-of-course tests.

The current rule requires that, pending designation and approval of a new chief instructor, each stage and end-of-course test be given by an FAA inspector or a designated pilot examiner. Commenters at the public hearings noted that this requirement could be an administrative burden to

the pilot school, its students, and the FAA.

The FAA has determined that an assistant chief instructor would be a safe temporary substitute for a chief instructor, because of their familiarization with school operations and they are already approved by the FAA. This proposal would provide a time frame for a new chief instructor to be designated and would provide stability to the pilot school's students.

5. Transfer Between Part 141 Schools

The FAA proposes to revise § 141.67 to delete the current requirement for a student at a pilot school with examining authority to complete all of the training course at the same school. The proposal would permit up to one-half of a student's credits to be transferred from another pilot school. The amount of credits that could be transferred would be based on the student's performance on a test given by the receiving pilot school. This test could include a flight check, a review of the student's aeronautical knowledge, or both. This criteria, as well as the other criteria proposed for the transfer between part 141 schools, is similar to the current criteria in § 141.77 for the transfer between pilot schools that do not have examining authority.

6. Maintenance Requirements

The FAA proposes to revise § 141.39 by expanding the maintenance requirements for aircraft used by a pilot school for flight training and solo flights.

Current § 141.39 requires applicants for a pilot or provisional pilot school certificate to maintain and inspect all aircraft in accordance with the requirements of part 91 that apply to aircraft used to give flight training for hire.

Section 91.409 requires all aircraft used to give flight training for hire to receive an inspection every 12 calendar months or every 100 hours in service. A pilot school may inspect aircraft under a progressive inspection program approved by the FAA in lieu of the requirements in § 91.409.

Aircraft used by pilot schools often receive greater wear and deterioration than other general aviation aircraft. For example, because of the high number of takeoffs and landings, training aircraft are subject to frequent and abrupt changes in engine power settings. This could cause rapid and extreme cylinder head temperature fluctuations resulting in premature wear and possible powerplant failure. Incidents of powerplant failure have been the cause of some pilot school accidents and incidents. In one incident, an aircraft engine that had been operated for 97 hours beyond the manufacturer's recommended time between overhauls sustained internal failure, and the aircraft was forced to land.

The inspection of pilot schools during the National Aviation Safety Inspection Program (NASIP) found training aircraft to be in a generally safe condition for flight; however, some airworthiness problems were found. Examples included pilot schools that have: (1) Not complied with Airworthiness Directives (ADs), especially those required on a recurring basis; (2) not recorded time in service on aircraft engines or propellers; (3) exceeded inspection intervals; and (4) performed modifications that were not approved.

The FAA proposes to revise § 141.39 by: (1) Clarifying that the rule would apply to all pilot and provisional pilot schools, as opposed to applicants; (2) clarifying that aircraft would have to be maintained in accordance with subpart E of part 91, which includes requirements for maintenance, preventive maintenance, and alterations; and (3) requiring aircraft to be maintained in accordance with an inspection program for each airframe, aircraft engine, propeller, appliance, and component part.

This proposed inspection program, which a pilot school may currently use under § 91.409, could be: (1) A current inspection program recommended by the manufacturer; (2) an inspection program that is currently in use by the holder of a certificate issued under part 121 or part 135; or (3) an inspection program established by the applicant and approved by the Administrator.

If an applicant desires to establish an inspection program, the program would be required to be in writing and would need to include at least: (1) Instructions and procedures for the conduct of inspections for the particular make and model of aircraft, including necessary tests and checks; (2) instructions and procedures for inspecting the parts and areas of each airframe, aircraft engine, propeller, appliance, and component part required to be inspected, including survival and emergency equipment; and (3) a schedule for performing the required program inspections, expressed in terms of the time in service, calendar time, number of system operations, or any combination of these.

The FAA also proposes that all aircraft used for the demonstration of instrument skills be equipped and maintained for operations under IFR. This revision would revise the current rule, which requires that: (1) Aircraft for use in en route operations under IFR and instrument approaches be equipped and maintained for operations under IFR operations; and (2) aircraft used for training in control and precision maneuvering by reference to instruments be equipped as provided for in the approved course of training.

7. Ground School Instructor Requirements

The FAA proposes to eliminate: (1) The requirement in § 141.35 for a ground school instructor to have 1 year of experience prior to serving as a ground school's chief instructor; and (2) the requirement in § 141.36 for a ground school instructor to have 6 months of experience prior to serving as a ground school's assistant chief instructor.

The FAA has granted exemptions to this requirement in existing § 141.35 for persons who have equivalent experience to meet the level of safety required by part 141. The FAA has stated in those grants of exemption that an applicant for a chief or assistant chief ground instructor who is approved by the Administrator would not need to meet these experience requirements.

8. Instructor Proficiency Requirements

The FAA proposes to revise the initial and recurrent proficiency checks a flight instructor is required to accomplish. The current rule requires each flight instructor to accomplish a proficiency check in each type of aircraft every 12 months.

The FAA proposes to revise § 141.79 by: (1) Permitting the assistant chief instructor and the check instructor to give these checks; (2) requiring the initial check for each course of training to be accomplished in the make and model of aircraft used in that training course; and (3) requiring recurrent checks to be accomplished in any make and model of aircraft in which the instructor trains students. Under the proposal, a flight instructor who trains students in a Cessna 172 and a Piper Arrow, for example, would be required to accomplish an initial check in each airplane. However, the recurrent check could be in either the Cessna 172 or the Piper Arrow.

This proposal also responds to a comment from Tar Heel Aviation to DOT's Regulatory Review, request for comments (57 FR 4744; February 7, 1992), which was in response to the President's request for comments on regulations that obstruct economic growth. The commenter suggested that each flight instructor accomplish: (1) One annual standardization flight in any aircraft in which the instructor trains students; or (2) one annual standardization flight that alternates between complex and non-complex aircraft.

9. Renewal of Certificate

Currently, § 141.27 states that a pilot school that meets the requirements under part 141 for the issuance of the pilot school certificate will have its certificate renewed for 24 months. The FAA proposes to clarify the requirements a pilot school needs to meet to have its certificate renewed.

Under the proposal, the FAA would determine if: (1) The school's personnel, aircraft, facility, airport, approved training courses, and training records meet the requirements of part 141; (2) within 24 months prior to the date application is made for renewal of its pilot school certificate, the school trained at least a total of 10 students in any of its approved training courses and recommended those students for a certificate, rating, or a qualification, and those students completed a practical test, knowledge test, or end-of-course test; and (3) within 24 months prior to the date application is made for renewal of its pilot school certificate, at least 80 percent of the school's students passed the required practical test for the pilot, flight instructor, or ground instructor certificate or rating sought. The proposal would permit a pilot school that does not meet the renewal requirements listed in items (2) and (3) to apply for a provisional pilot school certificate.

In addition, the FAA proposes to eliminate the requirement that a provisional pilot school apply for a pilot school certificate not less than 30 days prior to the expiration of the provisional pilot school certificate. The purpose for this proposal is to encourage schools to apply for their pilot school certificate as soon as they meet the requirements and thus will give FAA FSDO's more time to complete certification of the school in a timely manner. In the past, some schools have complained that they have had to wait for their certificates, because of the heavy workloads in their local FAA FSDO. The FAA believes this proposal will benefit the schools by allowing the FAA to respond to school applications in a more timely manner.

10. Recordkeeping Requirements for Pilot Schools With Examining Authority

The FAA proposes to revise the recordkeeping requirements in § 141.67 for pilot schools with examining authority. The current rule requires a pilot school with examining authority to submit a copy of the appropriate training record for each person recommended by the pilot school for a pilot certificate or rating to the FAA FSDO.

The FAA proposes to eliminate the current requirements and to require pilot schools with examining authority to: (1) Maintain a record of all temporary airmen certificates it issues; (2) submit each graduate's application for airman certificate within 7 days after the graduate passes the required knowledge or practical test; (3) make the proposed record of all temporary airman certificates available to the Administrator on request; and (4) surrender the proposed record of all temporary airman certificates to the Administrator on expiration of the school's examining authority.

These proposed records of all temporary airmen certificates would have to be a chronological listing that includes: (1) The name of each student to whom a temporary airman certificate was issued; (2) the date of issuance; (3) the student's permanent mailing address and telephone number; (4) the title of the training course; (5) the name of the person who conducted the knowledge or practical test; (6) the type of temporary airman certificate or rating issued; and (7) the date the graduate's airman application file was sent to the FAA for processing of a permanent airman certificate.

In addition the school would be required to maintain a photocopy record containing each student's: (1) Graduation certificate; (2) airman application; (3) temporary airman certificate; (4) superseded airman certificate (if applicable); and (5) knowledge or practical test results.

11. Reorganization of Requirements for Courses That Are Approved Under Part 141

The FAA proposes to reorganize in the part 141 appendixes the criteria for training courses a pilot school could offer. This proposal would eliminate some courses, expand other courses, and establish criteria for new courses. The FAA proposes to give pilot schools and provisional pilot schools that request approval for a training course within the first year after the effective date of this rule the option to request approval of their current training courses or their proposed training courses. This option would give pilot schools and provisional pilot schools up to 3 years to request approval for a training course based on this NPRM.

The FAA's proposed reorganization would: (1) Eliminate test courses; (2) replace test preparation courses with special preparation courses; (3) expand the proposed special preparation courses to include additional subjects; and (4) propose additional courses. Each course is discussed later according to the title of the proposed appendix.

The proposal to eliminate test courses would delete existing appendix B, "Private Test Course," and appendix E, "Commercial Test Course." FAA Order 8700.1 chapter 141 defines a test course as "a course of training for students who have accomplished more than half of the required time under part 61." The FAA believes that criteria for such courses would not be necessary. A pilot school that desires to offer a similar course could apply for approval of a course that would train students to a performance standard.

The proposed kind of special preparation courses are: (1) Agricultural aircraft operations; (2) rotorcraft external-load operations; (3) pilot refresher; (4) flight instructor refresher; (5) ground instructor refresher; (6) special operations; and (7) test pilot.

The private pilot and commercial pilot certification courses would be revised to apply to all aircraft categories, rather than only to the airplane category. This would eliminate appendix F, "Rotorcraft, Glider, Lighter-Than-Air Aircraft, and Aircraft Rating Courses." The FAA also proposes to add the following certification courses: (1) Recreational pilot; (2) airline transport pilot; (3) flight instructor; (4) flight instructor instrument; and (5) ground instructor. Unlike current certification courses, the revised course would include minimum eligibility requirements, which are discussed later.

Revisions to the courses would correspond to the proposals in part 61 to: (1) Establish a powered-lift category rating; (2) establish separate class ratings for nonpowered gliders and powered gliders; (3) establish an instrument rating for airships; (4) establish instrument ratings for single-engine and multiengine airplanes; (5) establish a flight instructor certificate in the lighter-than-air category; (6) certificate ground instructors under part 61; (7) revise ground instructor ratings; (8) revise aeronautical knowledge areas; and (9) replace flight proficiency requirements with approved areas of operation.

The proposed appendixes would require students who desire to enroll in the flight portion of the course to meet specific eligibility requirements. They would require an applicant to hold: (1) The necessary pilot or flight instructor certificate; (2) the necessary medical certificate or present a signed and dated statement by the person certifying that the person has no known medical defects that make the person unable to pilot a glider or balloon, as required; and (3) any necessary ratings on the

pilot or flight instructor certificate. For example, a person who desires to enroll in the flight portion of a private pilot certification course would be required to hold at least a student pilot certificate and a third-class medical certificate or the proposed medical requirements for a rating in a glider or balloon. The proposed requirements are similar to the eligibility requirements found in part 61 for pilot, flight instructor, and ground instructor applicants. The proposed eligibility requirements would not impose on applicants new requirements that are not found in part 61. Part 141 would still contain the certification requirements for pilot schools and part 61 would still contain the certification requirements for pilot, flight instructor, and ground instructor applicants.

The proposal for these eligibility requirements would permit students who do not meet the minimum eligibility requirements of part 61 or part 141 to enroll in the ground portion of a course. The FAA believes that any person should be able to enroll in the ground portion of a course to enhance aeronautical knowledge.

In the past, there have been instances in which a student has desired to enroll in the ground portion of a course prior to meeting the minimum eligibility requirements for the certificate. For example, a student who desires to enroll in the ground portion of the flight instructor certification course may not hold a commercial pilot certificate. However, that student may be scheduled to accomplish the practical test for the commercial pilot certificate, which would let the student meet the eligibility requirements. In another example, a student may desire to enroll in the ground portion of a flight instructor certification course to see if flight training is a career alternative. Currently, the FAA has issued an exemption to Cochise Community College in Douglas, Arizona, that permits its students to enroll in the ground portion of the school's flight instructor certification course while the student waits for scheduling of the commercial pilot practical test.

The FAA proposes, throughout the appendixes, to replace the term "solo practice" with "supervised PIC practice." The FAA believes this phraseology will more clearly define the flight instructor's responsibilities when their students are performing solo flight. The intent of this proposed phraseology is to ensure that flight instructors more closely monitor and direct their students when they are performing solo flight.

12. Appendix A—Recreational Pilot Certification Course

The FAA proposes to establish criteria for courses that provide a means for students to receive training and for pilot schools to give training for a recreational pilot certificate under part 141.

To enroll in the flight portion of the course, a person would be required to hold a student pilot certificate.

The course would require a minimum of 20 hours of ground training on the same aeronautical knowledge areas that are proposed in part 61 for a recreational pilot certificate. The knowledge area would include ground training on:

(1) The applicable FAR for recreational pilot privileges, limitations, and flight operations that apply to the aircraft rating sought;

(2) Accident reporting requirements of the NTSB;

(3) Use of the applicable portions of the "Airman's Information Manual" and FAA advisory circulars;

(4) Use of aeronautical charts for VFR navigation using pilotage with the aid of a magnetic compass;

(5) The recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(6) The safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(7) The effects of density altitude on takeoff and climb performance;

(8) Weight and balance computations;

(9) Principles of aerodynamics, powerplants, and aircraft systems;

(10) Stall awareness, spin entry, spins, and spin recovery techniques, if applying for an airplane-single engine rating;

(11) Aeronautical decision making and judgment; and

(12) Preflight action that includes—

a. How to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements;

b. How to plan for alternatives if the planned flight cannot be completed; and

c. Proper planning procedures for possible traffic delays.

The proposed course would consist of at least a minimum of 30 hours of flight training (of which 15 hours must be with an authorized flight instructor and 3 hours must be supervised PIC training), which is the same as in the proposed part 61 requirements. The difference between the total minimum flight training hours (30 hours) and the hours of training with an authorized flight (15 hours) and supervised PIC training (3 hours) is 12 hours, which will allow the schools to develop their recreational pilot certification course with the individual student in mind. For example, a student who has previous aviation experience and takes readily to the training may be able to complete training for a recreational private pilot certificate with only the minimum 30 hours of flight time that includes at least 15 hours of flight training time from an authorized flight instructor and 15 hours of supervised PIC flight time. However, a student pilot who does not have previous aviation experience or who trains infrequently may need more time than the minimum 30 hours of flight time, 15 hours of flight training time from an authorized flight instructor, and 3 hours of supervised PIC flight time. The student pilot and flight instructor may need to tailor the training to require 27 hours of flight training time from an authorized flight instructor and 3 hours of supervised PIC flight time, or some combination of those hours.

The FAA has elected to remain silent on the matter of the maximum time that may be credited for stage and end-of-course tests for the approved training course requirements. The FAA believes that the individual school and the local FAA FSDO is the better place for deciding how much time should be permitted for stage checks and end-of-course tests for each syllabus. The school and the approving FAA FSDO should evaluate each syllabus, and determine how much time a certain stage check or end-of-course test may be credited toward the total approved course requirement. After receiving course approval, the FAA and the school must continue to monitor the average length of time that it takes to conduct a specific stage check or end-of-course test, and be prepared to modify the syllabus when needed.

13. Appendix B—Private Pilot Certification Course

The FAA proposes to establish this appendix, which would include certification courses for a private pilot certificate with all category and class ratings. It would include courses currently found in appendix A and sections C.II, D.II, E.II, and E.III of appendix F. The proposed appendix would reflect the proposals in part 61 to establish a powered-lift category rating, and to establish separate class ratings for nonpowered gliders and powered gliders.

Persons who desire to enroll in the flight portion of a course would be required to hold: (1) A student pilot certificate; and (2) a third-class medical certificate, or in the case of course of training for glider or balloon rating, have a signed and dated application that they have no known medical defects that makes them unable to pilot a glider or balloon.

The proposed minimum ground training requirements would consist of the same aeronautical knowledge areas proposed in part 61 for a private pilot certificate.

The proposed flight training would consist of the same approved areas of operation proposed in part 61 for a private pilot certificate. The FAA is proposing to permit each school to tailor the course requirements around the individual student's needs. For example, a student who is seeking a private pilot certificate, and who has previous aviation experience and takes readily to the training may be able to complete training for a private pilot certificate with only the minimum 35 hours of flight time that included 20 hours of flight training time from an authorized flight instructor and 15 hours of supervised PIC flight time. However, a student pilot who does not have previous aviation experience or who trains infrequently may need more time than the minimum 35 hours of flight time, 20 hours of flight training time from an authorized flight instructor, and 5 hours of supervised PIC flight time. The student pilot and flight instructor may need to tailor the training to require 30 hours of flight training time from an authorized flight instructor and 5 hours of supervised PIC flight time, or some combination of those hours.

Current appendix A requires an applicant for a private pilot certificate with an airplane category rating to perform five takeoffs and five landings at night. The FAA proposes to require an applicant for a private pilot certificate with an airplane, rotorcraft, or powered-lift category rating to receive at least 3 hours and 10 takeoffs and 10 landings night flight training. However, the FAA proposes to include the provision in § 61.110 of this chapter that will exempt certain applicants from the night flying certification requirements.

The proposed time with a flight instructor on the areas of operation or in supervised PIC practice differ from the current requirements. The FAA proposes few minimum requirements or no minimum requirements. However, the training course would be required to include hours or flights for students to receive training on the approved areas of operation and for students to perform directed PIC practice that helps the student develop proficiency, resourcefulness, self-confidence, and self-reliance.

The existing appendix contains provisions that permit a school to credit stage checks and end-of-course tests toward the total hour course requirements. Currently, a maximum of 3 hours may be credited toward the total ground portion of the approved private pilot course requirements. A maximum of 4 hours may be credited toward the total flight portion of the approved private pilot course requirements. Under this proposal, the FAA has elected to remain silent on the maximum time that may be credited for a specific stage check and end-of-course test for the approved training course requirements. The FAA believes that the individual school, after receiving approval from their FAA FSDO, is the better place for deciding how much time should be permitted for a specific stage check and end-of-course test of each syllabus. The school and the approving FAA FSDO should evaluate each syllabus, and determine how much time a certain stage check or end-of-course test may be credited toward the total approved course requirement. After receiving course approval, the FAA and the school must continue to monitor the average length of time that it takes to conduct a specific stage check or end-of-course test, and be prepared to modify the syllabus when needed.

14. Appendix C—Instrument Rating Course

The FAA proposes to revise appendix C to include all instrument ratings, rather than the airplane only. It includes courses currently found in appendixes C, F, and H.

The proposed appendix would include courses for the proposed instrument-powered-lift rating, instrument-airship rating, instrument-airplane single-engine rating, and instrument-airplane multiengine rating.

To enroll in the flight portion of the course, a student would be required to hold: (1) A private pilot certificate with an aircraft category and class rating appropriate to the instrument rating for which the course applies; and (2) at least third-class medical certificate.

The proposed ground training content would be the same as proposed in part 61 for an instrument rating, and includes windshear avoidance and aeronautical decisionmaking and judgment. The appendix would require the same amount of ground training that currently exists for an initial instrument rating, which is the same as currently required for an airplane-instrument rating. As a result of this reorganization of the appendixes of part 141, this would, in effect, lower the minimum required ground training requirements from 35 hours to 30 hours for an initial instrument rating in a helicopter. A proposed 20 hours of ground training would be required if the course is for an additional instrument rating, which differs from the current requirement for 15 hours in the test preparation course. Because of the lowering of the pilot experience requirements for applying for an instrument rating, the different knowledge, skills, and abilities required for the different instrument ratings, and the emphasis for more detailed ground training requirements, the FAA believes the increase is necessary.

The flight training would be on the same approved areas of operation as proposed in part 61 for an instrument rating. In addition, the revised appendix would clarify the existing requirement for a cross-country flight by requiring a minimum straight-line distance between airports for one of the legs; this is also proposed in part 61.

A minimum of 35 hours of flight training would be required for all five types of instrument ratings, which is the same amount currently required for an instrument rating in an airplane or a helicopter. A percentage of the minimum hours in a course for a rating in an airplane, rotorcraft, or powered-lift could be given in a flight training device by an authorized flight instructor.

The existing appendix contains provisions that permit stage checks and end-of-course tests to be credited toward the total hour course requirements. Under this proposal, the FAA has elected to remain silent on the maximum time that may be credited for a specific stage check and end-of-course test for the approved training course requirements. The FAA believes that the individual school, after receiving approval from their FAA FSDO, should decide how much time should be permitted for a specific stage check and end-of-course test for each syllabus. The school and the approving FAA FSDO should evaluate each syllabus, and determine how much time a certain stage check or end-of-course test may be credited toward the total approved course requirement. After receiving course approval, the FAA and the school must continue to monitor the average length of time that it takes to conduct a specific stage check or end-of-course test, and be prepared to modify the syllabus when needed.

15. Appendix D—Commercial Pilot Certification Course

The FAA proposes to establish this appendix, which includes certification courses for a commercial pilot certificate with all category and class ratings. It would include courses currently found in appendix D and in sections C.III, D.III, E.IV, and E.V of appendix F. The proposed appendix would include the proposals in part 61 to establish a powered-lift category rating and to establish separate class ratings for nonpowered gliders and powered gliders.

To enroll in the flight portion of the course, a person would be required to: (1) Hold a private pilot certificate with the category and class rating appropriate to the ratings for which the course applies; and (2) hold at least a third-class medical certificate or present a signed and dated statement by the person certifying that the person has no known medical defect that makes the person unable to pilot a glider or balloon.

In addition, if the course is for a rating in an aircraft other than a gyroplane, glider, or balloon, the student would be required to: (1) Hold an instrument rating appropriate to the aircraft category and class rating for which the course applies; or (2) be concurrently enrolled in an instrument rating course for which the course applies and satisfactorily accomplish the required practical test prior to completing the commercial pilot practical test.

The proposed ground training would be the same aeronautical knowledge areas as proposed in part 61 for a commercial pilot certificate. The proposed ground training would also permit an applicant for an airplane category rating to complete ground training on an airplane with flaps, retractable landing gear, and a controllable propeller or an airplane with a turbine-powered engine, which is also proposed in part 61. The minimum hours of ground training are the same as in current commercial pilot courses. A minimum of 100 hours of training would be required for the powered-lift category rating, which is currently required for an airplane category rating.

The proposed flight training would be the same as the approved areas of operation proposed in part 61 for a commercial pilot certificate. In addition, the revised appendix would include the proposed modifications to the cross-country flight requirements in part 61.

The proposed time with a flight instructor on the areas of operation or in supervised PIC practice parallel the proposals for commercial pilot certification in part 61. The training course would be required to include hours or flights for students to receive training on the approved areas of operation and for students to perform supervised PIC practice that helps develop proficiency, resourcefulness, self-confidence, and self-reliance.

The existing appendix contains provisions that permit stage checks and end-of-course tests to be credited toward the total hour course requirements. The FAA has elected to remain silent on the maximum time that may be credited for stage and end-of-course tests for the same reasons stated in appendix A.

16. Appendix E—Airline Transport Pilot Certification Course

The FAA proposes to establish appendix E as a certification course for an airline transport pilot certificate. It includes information currently found in appendix H, section 6. The proposed appendix would include the proposal in part 61 to establish a powered-lift category rating.

To enroll in the flight portion of the course a person would be required to: (1) Hold a commercial pilot certificate with the category and class ratings for which the course applies and hold no restrictions; (2) hold at least a third-class medical certificate; and (3) upon completion of the course, meet the aeronautical requirements in part 61 for an ATP certificate that is appropriate to the ratings for which the course applies.

The proposed ground training would consist of the same elements as those proposed in part 61 for an ATP certificate, including windshear avoidance, aeronautical decisionmaking and judgment. The course would continue to require 40 hours of ground training.

The proposed flight training would consist of the same approved areas of operation as proposed in part 61 for an ATP certificate. The course would continue to require 25 hours of flight training with at least 15 hours of instrument flight training. The FAA has elected to remain silent on the maximum time that may be credited for stage and end-of-course tests for the same reasons previously stated in appendix A.

17. Appendix F—Flight Instructor Certification Course

The FAA proposes to establish a separate appendix for certification courses for an initial flight instructor certificate with a category and class rating and for an additional category or class rating on a flight instructor certificate. The course for an instrument rating on a flight instructor certificate is addressed in proposed appendix G. The course in this appendix is currently found in appendix H, sections 3 and 4.

This proposed appendix would include the proposals in part 61 to: (1) Establish a powered-lift category rating; (2) establish separate class ratings for nonpowered gliders and powered gliders; and (3) establish a flight instructor certificate for the lighter-than-air category.

To enroll in the flight portion of the course, a person would be required to hold: (1) A commercial or an ATP certificate with an aircraft category and class rating appropriate to the rating for which the course applies; (2) an instrument rating in an aircraft that is appropriate to the aircraft category and class for which the course applies (this would be required for an airplane, airship, or powered-lift rating); and (3) at least a third-class medical certificate or a signed and dated statement by the person certifying that the person has no known medical defect that makes the person unable to pilot a glider or balloon, as appropriate.

The proposed ground training would consist of the same aeronautical knowledge areas as proposed in part 61 for a flight instructor certificate. The course would continue to require a minimum of 40 hours of ground training for an initial flight instructor certificate and 20 hours for an additional flight instructor rating.

The proposed flight training would consist of the same approved areas of operation as proposed in part 61 for a flight instructor certificate. The minimum hours of flight training required would vary with the category or class of aircraft. A course for a rating in an airplane, a rotorcraft, or an airship would require a minimum of 25 hours of training. A course for a rating in a nonpowered glider would require 10 hours and 10 flights of training. A course for a rating in a powered glider would require 10 hours of training. A course for a balloon class rating would require 8 flights of training. The FAA has elected to remain silent on the maximum time that may be credited for stage check and end-of-course tests for the same reasons previously stated in the earlier discussion.

18. Appendix G—Flight Instructor Instrument (Aircraft Category and Class) Certification Course

The FAA proposes to establish a separate appendix for certification courses for a flight instructor certificate with an instrument rating. This proposed appendix would include the proposals in part 61 to: (1) Establish a powered-lift category and instrument rating; (2) establish an instrument rating for airships; (3) establish instrument ratings for single-engine and multiengine airplanes; and (4) establish a flight instructor certificate for the lighter-than-air category.

To enroll in the flight portion of the course, a person would be required to hold: (1) A commercial or an ATP certificate with an aircraft category and class rating appropriate to the rating for which the course applies; (2) a flight instructor certificate with an aircraft category and class rating that is appropriate to the instrument rating for which the course applies; and (3) at least a third-class medical certificate.

The proposed course would require a minimum of 15 hours of ground training on the same aeronautical knowledge areas as proposed in part 61 for a flight instructor certificate. The proposed course would also require a minimum of 15 hours of flight training on same approved areas of operation as proposed in part 61 for a flight instructor certificate. The FAA has elected to remain silent on the maximum time that may be credited for stage check and end-of-course tests for the same reasons previously stated in the earlier discussion.

19. Appendix H—Ground Instructor Certification Course

The FAA proposes to establish this appendix for the approval of a certification course for a ground instructor certificate. An equivalent course is not found in current part 141.

This proposed appendix would include the proposals in part 61 to: (1) Revise ground instructor ratings; (2) include ground instructors under part 61; (3) establish a powered-lift category rating; (4) establish separate class ratings for nonpowered gliders and powered gliders; (5) establish an instrument rating for airships; and (6) establish instrument ratings for single-engine and multiengine airplanes.

The proposed course would require ground training on the same aeronautical knowledge areas as proposed in part 61. A person who enrolls for an initial ground instructor certificate would be required to receive a minimum of 20 hours of ground training. A person who enrolls for an additional ground instructor rating would be required to receive a minimum of 10 hours of ground training. The current provision in appendix H, section 3, "Flight Instructor Certification Course," states that the initial ground training can be lowered by one-half if the person has prior experience in education is proposed to apply also to ground instructors.

Reference the maximum time that may be credited for stage checks and end-of-course tests, the FAA has elected to remain silent on this matter for the same reasons previously stated in appendix A.

20. Appendix I—Aircraft Category or Class Rating Course

The FAA proposes to establish an appendix for certification courses for adding either a category or a class rating on a pilot certificate. The course in this appendix is currently found in sections F.II and F.III of appendix F. The proposed appendix includes proposals in part 61 to establish a powered-lift category rating, and to establish separate class ratings for nonpowered gliders and powered gliders.

To enroll in the flight portion of the proposed course, a person would be required to hold: (1) The minimum level pilot certificate that is appropriate to the additional category or class aircraft rating for which the course applies; and (2) at least a third-class medical certificate for aircraft ratings that require a medical certificate for that pilot certificate level to obtain an additional rating at the recreational pilot certificate level or an additional glider or balloon rating, persons must provide a signed and dated statement certifying that they have no known medical defects that makes them unable to pilot the aircraft.

Each course approved under this appendix would be required to consist of the minimum requirements found under appendixes A, B, C, D, or E for the category or class rating for which the course is approved at the appropriate pilot certificate level.

21. Appendix J—Aircraft Type Rating Course, Other Than Airline Transport Pilot

The FAA proposes to establish appendix J for certification courses for adding a type rating on a pilot certificate. The course in this appendix is currently found in appendix F, section F.IV. The proposed course would include the proposal in part 61 to establish a powered-lift category rating.

To enroll in the flight portion of the proposed course, a person would be required to: (1) Hold at least a private pilot certificate; (2) hold at least a third-class medical certificate, if a medical certificate is required for the type of aircraft rating sought; and (3) hold an instrument rating or be concurrently enrolled in a course for an instrument rating in the category and class that is appropriate to the aircraft type rating for which the course applies (if the aircraft does not hold a VFR limitation). A person who is concurrently enrolled in a course for an instrument rating would be required to satisfactorily accomplish the required practical test concurrently with the aircraft type rating practical test.

The minimum number of hours of ground training proposed would include at least 15 hours of training. The minimum number of hours of flight training proposed would include at least 25 hours of flight training of which at least 15 hours must be instrument flight training in the aircraft for which the course applies.

22. Appendix K—Special Preparation Courses

The FAA proposes to establish special preparation courses within appendix K. These courses are similar to the current test preparation courses, but would expand the concept of specialized courses. The proposed appendix would include the proposals in part 61 to: (1) Certificate ground instructors under part 61; (2) revise aeronautical knowledge areas; and (3) replace flight proficiency requirements with approved areas of operation.

The proposed appendix would establish: (1) Flight instructor refresher courses; (2) ground instructor refresher courses; (3) special operations courses; and (4) test pilot courses.

To enroll in the flight portion of the proposed courses, a person would be required to hold: (1) A pilot certificate that is appropriate to the operating privileges or authorizations that graduation from the course covers; and (2) at least a third-class medical certificate, if a medical certificate is required in part 61 of this chapter; or a signed and dated statement by the person certifying that the person has no known medical defect that makes the person unable to pilot a glider or balloon.

As noted above, a person who enrolls in the flight portion of the proposed courses would be required to hold a pilot, flight instructor, or ground instructor certificate that is appropriate to the operating privileges or authorization that graduation from the course covers. For example, if after graduation the person operates an aircraft under part 133—Rotorcraft External-Load Operations, that person would be required to hold at least a commercial pilot certificate with a rotorcraft-helicopter rating. Each student enrolled in these courses would be required to satisfactorily accomplish stage checks and end-of-course tests to graduate.

The proposed agricultural aircraft operations would continue to require a

minimum of 25 hours of ground training and 15 hours of flight training as found in appendix H, section 8. This proposal would eliminate the option in appendix H to include up to 5 hours of supervised PIC practice. The ground training requirements would be clarified and expanded to include: (1) Agricultural aircraft operations; (2) safe operating procedures for handling and dispensing agricultural and industrial chemicals, including operating in and around congested areas; and (3) applicable provisions of part 137. The flight training requirements would be clarified to include training on maneuvers and procedures applicable to agricultural aircraft operations.

The proposed course on rotorcraft external-load operations would continue to require a minimum of 10 hours of ground training and 15 hours of flight training, as found in current appendix H, section 9. The ground training requirements would be clarified to include: (1) Rotorcraft external-load operations; (2) safe operating procedures for external-load operation, including operating in and around congested areas; and (3) applicable provisions of part 133. The flight training requirements would be clarified to include training on maneuvers and procedures applicable to external-load operations.

The FAA proposes to establish basic criteria for a test pilot course. The proposed course requirements would include ground training on the following: (1) Aircraft maintenance, quality assurance, and certification test flight operations; (2) safe operating practices and procedures for performing aircraft maintenance, quality assurance, and certification test flight operations; (3) appropriate parts of the FAR that pertain to aircraft maintenance, quality assurance, and certification tests; and (4) test pilot duties and responsibilities. The minimum number of hours required for the ground training would be approved by the FAA Flight Standards District Office (FSDO). The course would also require a minimum of 15 hours of flight training on test pilot duties and responsibilities. However, in accordance with proposed § 141.55, a school may submit a syllabus that is less than the minimum hours.

The FAA proposes to establish minimum criteria for special operations courses, including pipeline patrol, shoreline patrol, and aerial photography. The criteria in appendix K would be general. The specifics of each course would be approved by the FAA FSDO. The intent of the proposal is to provide an incentive and flexibility for part 141 pilot schools to develop specialized courses and improve business opportunities.

The FAA proposes to revise the pilot refresher course in appendix H, section 7. The course would continue to require 4 hours of ground training and 6 hours of flight training. The proposed course would not specifically include the current option for up to 2 hours of the 6 hours to be directed solo practice, but would permit the school more flexibility in designing a syllabus that best fits the student's needs. The ground training requirements would include: (1) Aeronautical knowledge areas that are applicable to the student's pilot certificate level, aircraft category and class rating, or instrument rating, as appropriate; (2) safe operating pilot practices and procedures; and (3) applicable provisions of parts 61 and 91 for pilots. The flight training requirements would be clarified to include flight training on the approved areas of operation that are applicable to level of the student's pilot certificate, aircraft category and class rating, or instrument rating, as appropriate, for performing pilot-in-command duties and responsibilities.

On April 6, 1994, the FAA issued amendment No. 61–95, "Renewal of Flight Instructor Certificates" (59 FR 17646). In that final rule, the FAA revised § 61.197(c) by deleting the current 24-hour requirements for an approved flight instructor refresher course. In light of that final rule action, the FAA is proposing similar rulemaking action in this notice to parallel amendment No. 61–95. In this appendix, the FAA proposes establishing a flight instructor refresher course that would require ground training, flight training, or any combination of ground and flight training similar amendment No. 61–95. The ground training would include the: (1) Aeronautical knowledge areas of part 61 that apply to student, recreational, private, and commercial pilot certificates and instrument ratings; (2) aeronautical knowledge areas that apply to flight instructors; (3) safe pilot operating practices and procedures, including airport operations and operating in the National Airspace System (NAS); and (4) applicable provisions of parts 61 and 91 that apply to holders of pilot and flight instructor certificates. The flight training course would include a review of: (1) the approved areas of operations that are applicable to student, recreational, private, and commercial pilot certificates and instrument ratings; and (2) the necessary skills, competency, and proficiency for performing flight instructor duties and responsibilities.

In addition, the FAA proposes to establish criteria for ground instructor refresher courses. The proposed contents of this course would require ground training on the following: (1) Aeronautical knowledge areas of part 61 that apply to student, recreational, private, and commercial pilot certificates and instrument ratings; (2) aeronautical knowledge of areas that apply to ground instructor certificates; (3) safe pilot operating practices and procedures, including airport operations and operating in the NAS; and (4) applicable provisions of parts 61 and 91 that apply to pilots and ground instructor certificates.

23. Appendix L—Pilot Ground School Course

The FAA proposes to revise existing appendix Ç, "Pilot Ground School Course," and move it to proposed appendix L. The current provision to permit stage and end-of-course tests to be credited toward the overall training course requirements would not be specifically included in the revised appendix. However, the FAA has elected to remain silent on the maximum time that may be credited for stage and end-of-course tests for the same reasons previously stated in the earlier discussions of appendixes A, B, C, and D.

D. Section by Section Discussion of Part 1—Definitions and Abbreviations

The FAA proposes to clarify and redefine certain definitions in part 1. The intent of this proposal is to ensure more consistent use of terms throughout the text of parts 61 and 141. The terms to be clarified include:

1. *Balloon* means:

Balloon is an aircraft that is not engine driven, but sustains flight with either gas buoyancy or with an airborne heater.

The term, "balloon" would replace the term "free balloon." The term "balloon" will include gas balloons and balloons with an airborne heater. The FAA believes the term "balloon" is more descriptive in defining this class of aircraft.

This definition coincides with the FAA proposal to delete references to the phrase "hot air balloon without airborne heaters" throughout part 61, and classify balloons as "gas balloons" and "balloons with airborne heaters." The phrase "hot air balloon without an airborne heater" is a balloon that was in existence at one time, but is no longer available. Accordingly, the FAA would establish separate practical tests for "gas balloon" and tests in "balloons with airborne heaters." Administratively, this proposal will, in effect, permit a person who receives the required training and performs the practical test in a gas balloon to be limited to operating a gas balloon. Accordingly, that person's certificate would contain a limitation, "Limited to gas balloons." Vice versa, a person who receives the required training and performs the practical test in a balloon with an airborne heater would be limited to operating a balloon with an airborne heater. Accordingly, that person's certificate would contain a limitation, "Limited to a balloon with an airborne heater."

2. *Flight time* means:

a. Pilot time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing; or

b. For a nonpowered glider, that time when the glider commences being towed for the purpose of flight and ends when the glider comes to rest after landing.

The term is being rewritten to apply to nonpowered aircraft as well as powered aircraft. For powered aircraft, flight time would mean pilot time commencing when an aircraft moves under its own power for the purpose of flight and ending when the aircraft comes to rest after landing. For a nonpowered glider, the term would refer to the time when the glider commences being towed for the purpose of flight until the glider comes to rest after landing.

3. *Pilot in command* means:

a. A person who has final authority and responsibility for the operation and safety of the flight;

b. A person who holds the appropriate category, class, and type rating, if appropriate;

c. A person who has been designated as pilot in command before or during the flight; and

d. Involves a flight that occurs in actual flight conditions in an aircraft.

This proposal would clarify the definition to allow only one person at a time to log PIC time.

E. Section by Section Discussion of Part 61—Certification: Pilots, Flight Instructors, and Ground Instructors

The FAA proposes to change the title of part 61 to "Certification: Pilots, Flight Instructors, and Ground Instructors." The reason for this change is the proposed elimination of part 143 and the relocation of the certification of ground instructors into part 61.

Subpart A—General

Section 61.1 Applicability

Proposed § 61.1 would be revised by adding the term "authorization." Proposed § 61.1 would be revised by deleting the reference to § 61.71 and inserting a reference to "training courses specifically approved by the Administrator under other parts of this chapter." This would include training programs under SFAR 58, proposed training centers, and part 141 pilot schools.

Section 61.1a Clarification of Terms

Proposed § 61.1a would be established to clarify terms used throughout part 61. The clarified terms are: Aeronautical experience; airman certificate; authorized ground instructor; authorized flight instructor; cross-country time; examiner; flight training; ground training; instrument approach; instrument training; knowledge test; pilot time; training time; supervised PIC time; and practical test.

Section 61.2 Certification of Foreign Pilots, Flight Instructors, and Ground Instructors

Proposed § 61.2 would include a provision for ground instructor certificates under part 61. In addition, the significant revisions in proposed § 61.2 would permit a person who is not a citizen of the United States or a resident alien of the United States to: (1) Complete a knowledge or practical test outside the United States; (2) Be issued an additional category, class, instrument, or type rating, as applicable on a U.S. pilot certificate; and (3) Be issued an additional, renewal, or reinstatement of a category, class, or instrument rating for a U.S. flight instructor or ground instructor certificate.

This proposal is a result of FlightSafety International's (FSI) petition for exemption from § 61.2. FSI's petition requested relief from § 61.2 to be allowed to issue type ratings to foreign nationals who hold U.S. pilot certificates at its training facility located in Velizy, Villacoublay, France. On February 22, 1989, the FAA granted FSI's petition permitting additional ratings to be added to foreign nationals' U.S. pilot certificates while located outside the United States. The current provisions of § 61.2 limit FSI and other U.S. training and airplane manufacturing companies from expanding their business into the international aviation market.

Section 61.3 Requirement for Certificates, Ratings, and Authorizations.

The significant proposed changes in § 61.3 are as follows:

(1) Includes the certification of ground instructor certificates and ratings in part 61;

(2) Establishes an instrument rating for airships;

(3) Establishes a flight instructor certificate for the lighter-than-air category;

(4) Replaces the phrase "personal possession" with "physical possession, or readily accessible in the aircraft;"

(5) Clarifies the "age 60 limitation" that is applicable to persons who serve as pilot crewmembers for a foreign air carrier when that carrier is operating a U.S.-registered civil aircraft with more than 30 passenger seats, excluding any required crewmember seat, and/or a 7500 pound payload capacity for compensation or hire in scheduled international air services or non-scheduled international air transport operations;

(6) Clarifies that a person who acts as a PIC or as a required flight crewmember of a civil aircraft of U.S. registry would be required to hold either an airman certificate or a special purpose flight authorization;

(7) Addresses the pilot certificate requirements for operating aircraft of foreign registry within the United States;

(8) Clarifies the requirements for a person to have their medical certificate in their physical possession or readily accessible in the aircraft. Furthermore, this proposal would specifically identify when it is permitted for a person *not* to have their medical certificate in their physical possession or readily accessible in the aircraft;

(9) Parallels the provisions of § 61.41 for allowing training received from a flight instructor who is not certificated by the FAA;

(10) Provides that a flight instructor certificate is not necessary, if the:

a. Training is in accordance with a part 121 or part 135 air carrier approved training program;

b. Training is given by the holder of an ATP certificate under § 61.169 of this part; and

c. Person receiving the training and the person giving the training are employees of that air carrier. This proposal would provide that a flight instructor certificate is not necessary, if the training was conducted in accordance with the provisions of § 61.41.

(11) Replaces the references to each instrument rating needed for each class of aircraft category with the phrase "appropriate aircraft category, class, type rating, if required, and instrument rating." Because of the proposed instrument rating for an airship, the existing requirement for a pilot to hold a commercial certificate with a lighter-than-air category and airship class rating

to operate an airship under instrument flight rules (IFR) or instrument meteorological conditions (IMC) would be deleted. Pilots of gliders would still be required to hold an instrument rating for a single-engine airplane;

(12) Aligns the "age 60" rules of part 121 to part 61. This proposal states that a pilot who is 60 years of age or older may not act as a pilot crewmember while engaging in any scheduled international air services, non-scheduled international air transportation, or common carriage operation for compensation or hire in a civil aircraft that has a passenger seating configuration of more than 30 seats, excluding any required crewmember seat or payload capacity of more than 7500 pounds (3400 kg);

(13) Requires a pilot that is required to hold a special purpose pilot authorization, issued in accordance with § 61.77, to have that authorization in their possession in the aircraft when exercising the privileges of that authorization; and

(14) Permits the following exceptions during the proposed 2-year transition period of these rule changes:

a. A pilot with a commercial pilot certificate with a lighter-than-air category rating, which was issued before the effective date of this rule, would be permitted to give training in an airship or balloon, as appropriate;

b. A pilot with a commercial pilot certificate with a lighter-than-air category rating and airship class rating would be permitted to operate an airship under IFR or IMC; and

c. A pilot with a commercial or private pilot certificate with an instrument-airplane rating would be permitted to operate an airplane under IFR or IMC.

Section 61.5 Certificates and Ratings Issued Under This Part

The significant proposed changes in § 61.5 are as follows:

(1) Includes ground instructor certificates and ratings in part 61;

(2) Revises ground instructor certificates and ratings;

(3) Establishes a powered-lift category rating;

(4) Establishes an instrument rating for powered-lifts;

(5) Establishes nonpowered and powered class ratings under the glider category;

(6) Establishes separate instrument ratings for single-engine and multiengine airplanes;

(7) Establishes an instrument rating for airships;

(8) Establishes a flight instructor certificate for the lighter-than-air category;

(9) Deletes the word "small" in the reference to turbojet airplanes in the paragraph that applies to aircraft type ratings. The word "small" is unnecessary because current requirements require the PIC of all turbojet airplanes to have a type rating whether it is a large or small turbojet airplane;

(10) Eliminates the reference to Advisory Circular 61–1, "Aircraft Type Ratings." The reference is obsolete because the advisory circular has been revised. The list of type ratings is incorporated into Advisory Circular No. 61–89D, "Pilot Certificates: Aircraft Type Ratings," which also consists of type rating curricula;

(11) Deletes the provision that requires a pilot who seeks an ATP certificate in a small helicopter to obtain a helicopter type rating. Small helicopters should not be treated differently than the other small aircraft. Historically, the FAA policy on requiring a pilot who seeks an ATP certificate in a small helicopter to obtain a helicopter type rating was based on the operating requirements of part 127, "Certification of Operations of Scheduled Air Carriers with Helicopters." Specifically, § 127.173(a) requires a pilot who seeks an ATP certificate in a small helicopter to obtain a helicopter type rating. However, a closer reading of existing § 61.5(b)(5)(iii) states, "small helicopters for operations requiring an ATP certificate." Currently, part 127 is not active, and there are not any part 127 scheduled air carriers with helicopters. The FAA has determined that it is not necessary for a person who seeks an ATP certificate in a small helicopter to obtain a helicopter type rating. Continuing this past policy places an additional restriction on small helicopters that is not required of other small aircraft and can no longer be justified. Therefore, the FAA proposes to treat the type rating requirements for helicopters as it currently does for the other aircraft, which would only require a type rating if the aircraft is a large aircraft other than lighter-than-air, turbojet-powered airplanes, or is another aircraft type rating that is specified by the Administrator through the aircraft type certification procedures;

(12) Includes a provision for allowing a pilot to exchange a current pilot certificate for a pilot certificate with the proposed instrument ratings and glider class ratings; and

(13) Allows a pilot with a flight or ground instructor certificate to exchange that certificate for a flight or ground instructor certificate with the proposed ratings in §§ 61.201 and 61.227.

Section 61.7 Obsolete Certificates and Ratings

The FAA proposes to revise § 61.7 by adding a new paragraph that would list the category, class, and instrument ratings that are proposed to be eliminated. In this section, the FAA also proposes to:

(1) Revise ground instructor certificates and ratings;

(2) Establish nonpowered and powered class ratings under the glider category; and

(3) Establish separate instrument ratings for single-engine and multiengine airplanes.

Section 61.9 Written Syllabus for Conducting Training

The FAA proposes to eliminate existing § 61.9, "Exchange of obsolete certificates and ratings for current certificates and ratings." This section, which lists the requirements for exchanging the certificates and ratings that were adopted in 1973, is no longer necessary.

The FAA proposes a new § 61.9 that would establish requirements for written training syllabus. This syllabus would be required by an instructor who gives flight or ground training to a pilot for an airman certificate or rating.

Section 61.11 Expired Pilot Certificates and Reissuance

Minor editorial and format changes are proposed.

Section 61.13 Awarding of Airman Certificates, Ratings, and Authorizations

The FAA proposes to replace the title of § 61.13, "Application and qualification," with the title "Awarding of airman certificates, ratings, and authorizations" and to revise the format of this section.

The significant proposed changes in this section are as follows:

(1) Includes ground instructor certificates in part 61;

(2) Replaces the phrase "flight proficiency requirements" with "approved areas of operation";

(3) Deletes the provision that permits the use of aircraft for a practical test that cannot perform all of the approved areas of operation for that practical test because of limitations listed in that aircraft's type certificate; and

(4) Clarifies that a limitation placed on a person's airman certificate may be removed if the pilot demonstrates to an examiner satisfactory proficiency in the area of operation for which the airman certificate level and rating are sought.

Section 61.14 Refusal to Submit to a Drug Test

No modifications are proposed.

Section 61.15 Offenses Involving Alcohol or Drugs

No modifications are proposed.

Section 61.16 Refusal to Submit to an Alcohol Test or to Furnish Test Results

No modifications are proposed.

Section 61.17 Temporary Certificate

The FAA proposes to revise this section to include the ground instructor certificate in part 61. The existing 90-day limit on temporary ground instructor certificates or ratings in existing § 143.5 would, in effect, be increased to 120 days, which is the current limit for the other temporary pilot and flight instructor certificates and ratings.

Section 61.19 Duration of Pilot and Instructor Certificates

The significant proposed changes in this section are as follows:

(1) Include ground instructor certificates under part 61; and

(2) Change the title of proposed § 61.19, "Duration of pilot and flight instructor certificates" to read, "Duration of pilot and instructor certificates."

Section 61.21 Duration of a Category II Pilot Authorization

The FAA proposes editorial and format changes.

Section 61.23 Duration and Requirement for a Medical Certificate

The significant proposed changes in this section are as follows:

(1) Change the title of this section from "Duration of medical certificates" to "Duration and requirement for a medical certificate";

(2) Redesignate the current paragraphs of this section;

(3) Permit a pilot to apply for any pilot or flight instructor certificate, for which a medical certificate is required, with a third-class medical certificate. A higher medical certificate level would continue to be required for flight operations requiring an ATP certificate or a commercial pilot certificate;

(4) Clarify current requirements for a person who is exercising the privileges of their flight instructor certificate while serving as a PIC or as a required crewmember, then that person would be required to hold a third-class medical certificate. However, if the flight instructor is not serving as a PIC or as a required crewmember, then that person would not be required to hold a medical certificate; and

(5) Permit student pilots who are seeking a recreational pilot certificate and certificated recreational pilots to operate aircraft without a medical certificate, provided they have an application on file that certifies they do not have any known medical deficiencies that make them unable to pilot the aircraft. This would also permit higher certificated pilots who are only exercising the privileges of a recreational pilot certificate to be afforded the same privileges.

Section 61.25 Change of Name

Format and minor editorial changes are proposed.

Section 61.27 Voluntary Surrender or Exchange of Certificate

This section would be revised by dividing the existing language into two paragraphs. The purpose of this proposal, as throughout this notice, is to rewrite the rules in an outline format instead of the current narrative format.

Section 61.29 Replacement of a Lost or Destroyed Airman or Medical Certificate or Knowledge Test Report

The proposed revisions to § 61.29 are as follows:

(1) Change the title of the section to "Replacement of a lost or destroyed airman or medical certificate or knowledge test report";

(2) Delete listing the cost of replacing a lost or destroyed airman or medical certificate. This proposal would establish the procedures for obtaining a lost or destroyed airman certificate, medical certificate, or knowledge test report. The cost for replacement of lost or destroyed airman certificate, medical certificate, or knowledge test report would be in part 187, "Cost of Services and Transfer of Fees to part 187 from parts 47, 49, 61, 63, 65, and 143"; and

(3) Delete some unnecessary explanations of the procedures for replacing a lost or destroyed airman or medical certificate. These existing provisions are merely explanatory and are not of a regulatory nature, so the FAA proposes to delete them.

Section 61.31 Type Rating, Additional Training, and Authorization Requirements

The FAA proposes to change the title of this section from "General limitations" to "Type rating, additional training, and authorization requirements."

The significant proposed revisions to this section are as follows:

(1) Delete the provision requiring a type rating in helicopters for operations requiring an ATP certificate. This proposal will parallel helicopters with the other classes of aircraft that only require a type rating for: Large aircraft (except lighter-than-air), turbojet-powered airplanes, and those aircraft specified by the Administrator through aircraft type certificate procedures;

(2) Establish an aircraft category rating for the new powered-lift aircraft;

(3) Replace the current requirement for a pilot to receive training and an endorsement in an airplane with "more than 200 horsepower" to "200 horsepower or more";

(4) Separate the current requirements for a pilot to receive training and an endorsement to operate an airplane that has a retractable landing gear, flaps, and controllable propeller and an endorsement to operate a high performance airplane that has an engine of 200 horsepower or more;

(5) Establish a requirement for a pilot to receive aircraft type specific training. The purpose of this proposal, as earlier discussed in the "General Discussion of Principal Issues" under the paragraph title of this notice noted as "Aircraft Type Specific Training," would require a person to receive additional training and a flight instructor endorsement for that person to serve as a PIC of an aircraft that the Administrator has determined requires type specific training;

(6) Require pilots to receive additional training for operating "pressurized aircraft." Current provisions only require pilots to receive additional training in "pressurized airplanes." This proposal is to capture the possible development of pressurized "powered-lift," and any other pressurized aircraft that may be manufactured in the future;

(7) Require a pilot seeking an aircraft type rating to perform to ATP standards. This proposal will codify the existing policy for FAA pilot certification standards; and

(8) Add an exception in proposed paragraph (j), to include the powered-lift aircraft, because no class ratings are being established. In addition, the powered-lift would be added as an exception to the category and class rating requirements of this section for aircraft not type certificated as airplanes, rotorcraft, gliders, powered-lift, or lighter-than-air aircraft.

Section 61.33 Tests: General Procedure

This section would revise the format by replacing the phrase "persons, designated by the Administrator" with the word "examiners."

Section 61.35 Knowledge Test: Prerequisites and Passing Grades

Proposed § 61.35 would be retitled to read, "Knowledge test: Prerequisites and passing grades," instead of "Written test prerequisites and passing grades.".

The proposed revisions to § 61.35 are as follows:

(1) Replace the term "written test" with "knowledge test";

(2) Require an applicant to receive an endorsement that states the applicant completed ground training or a home study course on the aeronautical knowledge requirements for each certificate or rating and that the applicant is prepared for the knowledge test;

(3) Include and clarify the current requirements for the presentation of personal identification found in FAA Order 8700.1. These identification procedures were established in response to the Drug Enforcement Assistance Act of 1988 (Pub. L. 100–690, November 18, 1988). The proposal would require an applicant's identification to consist of:

a. The applicant's photograph;

b. The applicant's signature;

c. The applicant's date of birth, which shows the applicant meets or will meet the age requirements for the certificate sought before the expiration date of the knowledge test report; and

d. The applicant's actual residential address, if different from the applicant's mailing address.

Acceptable types of identification include, but are not limited to, a driver's license, a government identification card, a passport, or other forms of identification that meet the personal identification criteria. The photograph of the applicant would be reproduced on the airman identity card portion of the airman certificate; and

(4) Include applicants for ATP certificates and ratings into proposed § 61.35. Currently, § 61.35 does not apply to the written test for an ATP certificate or a rating associated with that certificate. The passing requirements for a written test for an ATP certificate or a rating associated with that certificate are found in existing § 61.167. Existing § 61.167 states that an applicant for an ATP certificate or rating must pass the knowledge test with a 70 percent minimum passing grade. Under § 61.35, the minimum passing grade is specified by the Administrator. The FAA has determined provisions in § 61.35 and § 61.167 are similar, and therefore, duplication is not necessary.

Section 61.37 Knowledge Tests: Cheating or Other Unauthorized Conduct

The phrase "Except as authorized by the Administrator" is proposed to be deleted.

Section 61.39 Prerequisites for Practical Tests

The significant proposed changes to § 61.39 are as follows:

(1) Replace the words "flight test" or "oral test" with the word "practical test";

(2) Replace the words "written test" with "knowledge test";

(3) Permit an applicant to hold at least a third-class medical certificate to be eligible for a practical test;

(4) Clarify that applicants for an ATP certificate be at least 23 years of age at the time of the practical test;

(5) Revise the existing provision for applicants for ATP certificates and ratings to allow them to take a practical test with an expired airman knowledge test report;

(6) Include the current prerequisites for practical tests procedures found in FAA Order 8700.1. The proposal would require an applicant to:

a. Present the airman knowledge test report at the time the applicant applies for the practical test; and

b. Complete and sign the application form.

(7) Clarify the eligibility prerequisites for a practical test, but the proposal does not contain any additional requirements from the existing requirements;

(8) Clarify the current provision for an applicant who is employed as a flight crewmember under part 121, part 125, or part 135, or as a flight crewmember in military transportation service to take a practical test with an expired airman knowledge test report. The proposal would clarify that to be afforded the relief provided by proposed § 61.39, the applicant would have to either:

a. Be employed as a flight crewmember by a U.S. air carrier or commercial operator under parts 121, 125, or 135 of this chapter and be employed by such a certificate holder at the time of the practical test and—

(i) Have satisfactorily accomplished that operator's approved PIC aircraft qualification training program, which is appropriate to the certificate and rating sought; and

(ii) Have satisfactorily accomplished that operator's approved requalification training requirements, which are appropriate to the certificate and rating sought; or

b. Be employed as a flight crewmember by a U.S. scheduled military air transportation service operator and—

(i) Be employed by such an operator at the time of the practical test; and

(ii) Have accomplished that operator's PIC aircraft qualification training program, which is appropriate to the certificate and rating sought.

Section 61.41 Flight Training Received From Flight Instructors Not Certificated by the FAA.

The FAA proposes to revise § 61.41 for the purposes of simplifying this section. The proposal would replace the word "instruction" with the word "training," and clarify that flight instructors not certificated by the FAA are not authorized to give any of the endorsements required under part 61, only the training.

Section 61.43 Practical Tests: General Procedures

The significant proposed changes to § 61.43 are as follows:

(1) Replace the term "flight test" with "practical test" and "maneuvers and procedures" with "approved areas of operation."

(2) Include applicants for ATP certificates or ratings by replacing the phrase "an applicant for a private or commercial pilot certificate, or for an aircraft or instrument rating on that certificate" with "an applicant for a certificate or rating, issued under this part."

(3) Modify the wording of this section for clarity and simplicity purposes. Proposed § 61.43 would be revised to state that an applicant would be required to:

a. Perform the approved areas of operation for the certificate or rating sought within the approved standards;

b. Demonstrate mastery of the aircraft throughout the practical test with the successful outcome of each task performed never seriously in doubt;

c. Demonstrate satisfactory airmanship throughout the practical test;

d. Demonstrate sound judgment throughout the practical test; and

e. Demonstrate single-pilot competence if the aircraft is type certificated for single-pilot operations.

(4) Require an applicant, who wants to accomplish a practical test in an aircraft that is type certificated for single-pilot operations, to demonstrate single-pilot competence. The proposal would require an applicant for a certificate or rating to demonstrate single-pilot competence in the aircraft in which the practical test is taken, if that aircraft is type certificated for one pilot. Most aircraft that are type certificated for one pilot are currently operated by one pilot. However, some aircraft (e.g., the Cessna Citation 501 and 551) are type certificated for one pilot, but are operated by either one- or two-pilot crews. The FAA realizes that some pilots may desire to operate an aircraft type certificated for one pilot with a two-pilot crew. In this situation, the applicant would have the option not to demonstrate single-pilot competence, but a limitation would be placed on the applicant's airman certificate that states a SIC is required. This limitation could later be removed if the pilot demonstrates single-pilot competence. This proposal is consistent with FAA Order 8700.1, "General Aviation Operations Inspector's Handbook," regarding aircraft that are type certificated for one pilot, but are operated with both one- and two-pilot crews. The proposal would not change regulations for applicants that apply for a certificate or rating in aircraft that are usually operated by one pilot. These applicants already are required to demonstrate single-pilot competence on the practical test; and

(5) Codify the procedures, which are currently found in FAA Order 8700.1, that address the issue of the examiner or the applicant may discontinue the practical test due to inclement weather conditions, aircraft airworthiness, or other flight safety concerns.

Section 61.45 Practical Tests: Required Aircraft and Equipment

Proposed § 61.45 would be retitled to read, "Practical tests: Required aircraft and equipment," instead of "Flight tests: Required aircraft and equipment." The FAA proposes to revise this section by replacing the term, "flight test" with "practical test" and "flight proficiency requirements" with "approved areas of operation."

The significant proposed changes to § 61.45 are as follows:

(1) Exclude explicitly the use of ultralights and hang gliders as acceptable aircraft for use in practical tests. The use of ultralights and hang gliders are unacceptable aircraft for use in pilot certificate tests. Aircraft other than ultralights, and the pilots who operate them, are subject to extensive Federal regulations found throughout the FAR. Ultralights are subject to separate standards in part 103, which provides that ultralights are not required to meet the airworthiness certification, pilot certification, aircraft registration, or aircraft marking requirements of the other aircraft. Section 103.1 states, in part, that ultralight vehicles "are used or intended to be used for recreation or sport purposes only";

(2) Exclude balloons from the current requirement for pilot seats in an aircraft used for the practical test. Section 61.45 currently requires that the aircraft used for a flight test have "pilot seats with adequate visibility for each pilot to operate the aircraft safely." Most balloons do not have seats and this requirement is customarily waived for balloon practical tests;

(3) Require a lighter-than-air aircraft used for a practical test to have required controls easily reached and operable in a normal manner by both pilots. Permit an examiner to waive the requirement that states "controls easily reached and operable in a normal manner". However, the examiner must determine that the lighter-than-air aircraft used for the practical test can be operated safely; and

(4) Require applicants for any practical test to perform the test in a two-place aircraft. This would eliminate the provision for an applicant for a gyroplane class rating to accomplish the practical test in a single place gyroplane. In the past, the FAA has permitted examiners to observe the practical test from the ground when the aircraft was a single-place aircraft. Predominately, gyroplanes were single-place aircraft that required examiners to monitor the practical test from the ground. However, the FAA has determined there are a significant number of two-place gyroplanes that render the current provisions no longer necessary. After discussions with many of the primary manufacturers of gyroplanes, the FAA believes that there are an adequate number of two-place gyroplanes that make the existing rule unnecessary. The FAA believes the importance of the practical test makes it extremely necessary that examiners be able to observe applicants during the practical test.

(5) Permit the use of aircraft with a primary airworthiness certificate to be used for a flight test. The purpose for this proposal is a result of an oversight that occurred during the issuance of the Primary Aircraft Final Rule (57 FR 41360; September 9, 1992). In the **SUPPLEMENTARY INFORMATION** section (in the paragraphs entitled "Rental and Flight Instruction" and "Pilot Certification") of that final rule, the FAA stated that the use of primary aircraft are permitted to be used for rental, flight instruction, and pilot certification. However, the FAA did not provide for this in that final rule.

Section 61.47 Status of an Examiner Who is Authorized by the Administrator to Conduct Practical Tests

The FAA proposes to change the title of the section from "Flight tests: Status of FAA inspectors and other authorized flight examiners" to "Status of an examiner who is authorized by the Administrator to conduct practical tests." Additionally, this section would contain minor editorial and format revisions.

Section 61.49 Retesting After Failure

The FAA proposes to reformat this section. In addition, the FAA proposes to delete the existing requirement for an applicant to wait 30 days before reapplying for a practical test following a second and subsequent disapprovals. In lieu of the 30-day waiting period, the applicant would be required to receive an endorsement from an authorized ground or flight instructor, as appropriate.

Section 61.51 Pilot Logbooks

The significant proposed changes to this section are as follows:

(1) Clarifies the procedure in logging PIC flight time;

(2) Eliminates the term "solo flight time" and replaces it with the term "supervised PIC time";

(3) Clarifies when a flight instructor and a certificated pilot who are on board an aircraft at the same time may each log PIC flight time;

(4) Permits student pilots who meet certain provisions to log PIC flight time;

(5) Requires the pilot who logs SIC flight time to meet the requirements of § 61.55;

(6) Specifies the necessary information when a pilot logs instrument time for the purpose of meeting the instrument currency requirements;

(7) Specifies the necessary information when a pilot logs training time; and

(8) Specifies the requirements that a flight instructor would need to meet to log PIC flight time.

Section 61.53 Operations During Medical Deficiency

The FAA is proposing to make two significant changes to this section. First, in response to the proposed changes that would permit pilots to exercise the privileges of a recreational pilot certificate without holding a medical certificate, the FAA is proposing to divide § 61.53 into two paragraphs. Paragraph (a) would apply to operations that require pilots to hold medical certificates issued under part 67. Paragraph (b) would apply to operations

in which pilots are not required to hold medical certificates. While paragraph (b) was developed primarily in response to FAA's petition that proposes to permit a pilot without a medical certificate to exercise the privileges of a recreational pilot certificate, it also if adopted, would apply to glider and balloon operations.

Under proposed paragraph (b), a pilot who chooses to exercise recreational pilot privileges or flight in a glider or balloon would not be required to obtain a medical certificate. The pilot, however, still would be required to self evaluate themselves on their current medical condition prior to exercising their pilot certificate privileges. As long as the pilot had no reason to believe that they were not medically fit for piloting, the pilot would be able to conduct these limited operations. As a result, a pilot who fails a medical exam given by an aviation medical examiner (AME) would be able to exercise their pilot certificate provided the pilot exercised recreational pilot privileges only or was piloting a glider or balloon operations. Pilots would be required to self evaluate themselves utilizing their judgment that they are medically fit to fly. In addition, pilots who hold special issuance medical certificates, which require routine check-ups by an AME, may decide to give up their medical certificates and only fly in recreational pilot operations if they believe that they are medically fit to fly. Pilots experiencing medical symptoms that would prevent them from safely exercising the privileges of their certificate, or that raise a reasonable concern, would be on notice that they cannot claim they have no known medical deficiencies. As an example, a pilot who is under physician's care for, or is currently suffering from angina pectoris or a coronary heart disease would not be able to exercise their pilot certificate as the pilot in command or as a required flight crewmember under the provisions of this proposed rule. Another example would be a pilot who is under a physician's care for, or is currently suffering "blackouts" would not be able to exercise their pilot certificate as the pilot in command or as a required flight crewmember under the provisions of this proposed rule. The proposed rule changes will require each pilot to self evaluate their current medical condition and then exercise reasonable judgment prior to exercising their pilot certificate. The FAA has not established a list of disqualifying medical conditions because the intent of this proposal is not to establish another class of medical certification to replace the 3rd class medical certificate. However, depending on the responses received from the public on this proposal, the FAA reserves the right to establish a list of disqualifying medical conditions in the final rule if there is a need shown for it. The FAA recognizes that many of its regulations require pilots to exercise reasonable judgment and is dependent on all pilots adhering to an unwritten "honor code."

Section 61.55 Second in Command Qualifications

The FAA proposes to revise this section by being more specific about the SIC training requirements.

Section 61.56 Flight Review

This section is being reprinted without changes. Amendment No. 61–93 "Amendment of the Annual and Biennial Flight Review Requirements", which became effective on August 31, 1993 (58 FR 40562; July 28, 1993), revised this entire section. Amendment No. 61–93 amended this section by deleting the requirement that recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time (hereafter, the "affected pilots") receive 1 hour of ground and 1 hour of flight instruction annually. The final rule amended the biennial flight review by requiring all pilots to receive a minimum of 1 hour of ground instruction and 1 hour of flight instruction. Additionally, the final rule provided that flight instructors who renew their flight instructor's certificate by means of an approved flight instructor refresher course need not accomplish the 1 hour of ground instruction previously required in the BFR.

Section 61.57 Recent Flight Experience: Pilot in Command

The proposed changes in this section are as follows:

(1) Require each pilot to make at least three takeoffs and three landings to a full stop within the preceding 90 days;

(2) Require the three takeoffs and three landings made to a full stop to involve a flight in the traffic pattern at the recommended traffic pattern altitude for the airport;

(3) Delete the clarification of night (the definition already exists in § 1.1);

(4) Modify the requirements for recent instrument experience;

(5) Modify the requirements for the instrument proficiency test; and

(6) Extend the exception requirements for the general and night recency experience requirements of § 61.57 to PICs of part 125 operators as that afforded PICs of part 121 and part 135 operators.

Section 61.58 Pilot-in-Command Proficiency Test: Operation of Aircraft Requiring More Than One Required Pilot

This section has been addressed in a separate NPRM that is entitled, "Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking at Training Centers," and was issued on July 15, 1992 (57 FR 35915; August 11, 1992).

The existing section is republished with minor editorial and format modifications. Those minor editorial modifications would include a proposal to revise existing § 61.58(b)(3), (c)(2), and (e) by eliminating reference to part 127, because there are no part 127 operators and haven't been for years. Furthermore, the FAA proposes to add part 125 operators to existing § 61.58(b)(3), (c)(2), and (e) in reference to persons conducting operations under part 125. Part 125 operators were not addressed in this section when the part was initially established on February 3, 1981, and therefore the FAA proposes to include part 125 pilots. Section 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

The only proposed change to this section involves § 61.59(a)(2) by revising the word "or" to "of" in the phrase "* * * exercise of the privileges, or any certificate * * *" to read "* * * exercise of the privileges of any certificate * * *" The purpose for this change is to correct the mistake in the rule that occurred when the rule was first issued. Other than for this minor change, no further changes are anticipated.

Section 61.60 Change of Address

This section would be revised to include ground instructor certificates under part 61.

Subpart B—Aircraft Ratings and Special Certificates

Section 61.61 Applicability

Because the issuance of an additional rating for a flight instructor certificate is contained in subpart H of part 61, the FAA proposes to delete the words "or instructor" from this section. Subpart B prescribes the requirements for additional aircraft ratings.

Section 61.63 Additional Aircraft Ratings (Other Than Airline Transport Pilot)

The significant proposed changes in this section are as follows:

(1) Change the title of paragraph (c) of this proposed section to read "Additional type rating, or an addition of an aircraft type rating associated with an additional aircraft class rating," and rewrite the provisions for an additional aircraft type rating.

(2) Revise the required aeronautical experience and training for persons seeking an additional aircraft category and class rating. Regarding the required aeronautical experience and training for an additional category rating, a person would not be required to perform the supervised PIC time, but would be required to meet the specified aeronautical experience and training time required for the category and class rating sought and pilot certificate level held. As an example, a person who holds a private pilot certificate with an airplane single engine land rating, and seeks to add a rotorcraft category with a helicopter class rating to that person's pilot certificate, would be required (in addition to the eligibility and endorsement requirements of § 61.103) to comply with the following aeronautical experience and training of subpart E:

a. Receive training on the aeronautical knowledge areas listed in § 61.105(b), that apply to the helicopter rating sought;

b. Receive training in a helicopter on the approved areas of operation listed in § 61.107(d);

c. Accomplish the following training—

(i) Three hours of cross-country flight training in a helicopter;

(ii) Except as provided in § 61.110, 3 hours of night flight training in a helicopter that includes—

(A) One cross country flight of at least more than 50 nautical miles duration; and

(B) Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of flight training in preparation for the practical test in a helicopter, which must have been performed within the 60-day period preceding the date of the test; and

d. Satisfactorily accomplish a practical test in a helicopter on the approved areas of operation listed in § 61.107(d).

(3) Eliminate the provision that requires a person to meet the specified aeronautical experience and training time required for the class rating sought. The person would be required to receive the required training, but no specified amount of training would be required. The person would be trained to the standards established for the aircraft rating sought and the pilot certificate level held. As an example, a person who holds a private pilot certificate with an airplane category and single engine land class rating, who seeks to add an airplane category and multiengine land class rating to the pilot's certificate would be required (in addition to the eligibility and endorsement requirements of § 61.103) to comply with the following aeronautical experience and training of subpart E:

a. Receive training on the aeronautical knowledge areas listed in § 61.105(b) that apply to the aircraft rating sought;

b. Receive training in a multiengine airplane on the approved areas of operation listed in § 61.107(c); and

c. Satisfactorily accomplish a practical test in a multiengine airplane on the approved areas of operation listed in § 61.107(c).

(4) Clarify when an applicant would be required to accomplish a knowledge test. The proposal would specify that an applicant who already holds an airplane, rotorcraft, powered-lift, or airship rating, and is only seeking an additional aircraft category, class, and type rating, would not be required to accomplish another knowledge test. However, an applicant would still be required to have an endorsement in the applicant's logbook or training record from an authorized flight instructor or ground instructor, and that endorsement must attest that the person is competent on the aeronautical knowledge areas, that relate to the pilot certificate for the aircraft category/class rating sought.

(5) Restrict the issuance of "VFR only" limitation for an aircraft type rating to only those aircraft that cannot be used to accomplish the practical test under IFR, because its type certificate makes the aircraft incapable of operating under IFR.

(6) Reformat the section for clarity.

Section 61.65 Instrument Rating Requirements

The significant proposed changes in this section are as follows:

(1) Includes revised aeronautical knowledge areas and areas of operation for an instrument rating for the airplane category-single engine class rating, airplane category-multiengine class rating, rotorcraft category-helicopter class rating, lighter-than-air category-airship class rating, and powered-lift category rating.

(2) Includes revised instrument training for an instrument rating for the airplane category-single engine class rating, airplane category-multiengine class rating, rotorcraft category-helicopter class rating, lighter-than-air category-airship class rating, and powered-lift category rating. A person who applies for an instrument rating must have received and logged the following training:

a. At least 40 hours of instrument training from an authorized flight instructor-instrument or ground instructor-instrument on the approved areas of operation of this section;

b. At least 20 hours of the instrument training may be met by training received from an authorized flight instructor-instrument or ground instructor-instrument in an approved flight simulator or training device;

c. At least 5 hours of instrument flight training from an authorized flight instructor-instrument in the category and class aircraft for the instrument rating sought;

d. Instrument training specific to airplanes on cross-country flight procedures that includes at least one cross-country IFR flight in the class airplane for the instrument rating sought and consists of—

(i) A distance of at least 250 nautical miles along airways or ATC-directed routing with one of the routes being at least a straight-line distance of 100 nautical miles between airports;

(ii) An instrument approach at each airport; and

(iii) Approaches using VOR, NDB, and ILS radio navigation aids.

e. Instrument training specific to helicopters on cross-country flight procedures that includes at least one cross-country IFR flight in a helicopter and consists of—

(i) A distance of at least 100 nautical miles along airways or ATC-directed routing, with one of the routes being at least a straight-line distance of 50 nautical miles between airports;

(ii) An instrument approach at each airport; and

(iii) Approaches using VOR, NDB, and ILS radio navigation aids.

f. Instrument training specific to airships on cross-country flight procedures that includes at least one cross-country IFR flight in an airship and consists of—

(i) A distance of at least 50 nautical miles along airways or ATC-directed routing, with one of the routes being at least a straight-line distance of 25 nautical miles between airports;

(ii) An instrument approach at each airport; and

(iii) Approaches using VOR, NDB, and ILS radio navigation aids.

g. Instrument training specific to powered-lift on cross-country flight procedures that includes at least one cross-country IFR flight in a powered-lift and consists of—

(i) A distance of at least 250 nautical miles along airways or ATC-directed routing, with one of the routes being at

least a straight-line distance of 100 nautical miles between airports;

(ii) An instrument approach at each airport; and

(iii) Approaches using VOR, NDB, and ILS radio navigation aids.

(3) Requires applicants to be able to write in the English language.

(4) Includes training in windshear avoidance, aeronautical decision making and judgment in the aeronautical knowledge requirements, and flight deck resource management, to include crew communications and coordination.

(5) Replaces the term "flight proficiency requirements" with "approved areas of operation."

(6) Requires an applicant to receive training or complete a home study program, and receive an endorsement from a ground or flight instructor on the required aeronautical knowledge areas of this section that are appropriate to the instrument rating sought.

(7) Specifies that an applicant is not required to accomplish another knowledge test, when that person is seeking an additional instrument rating. However, the applicant would still be required to have received and logged ground training from an authorized flight instructor-instrument or ground instructor-instrument, or have accomplished a home study course of training on the approved aeronautical knowledge areas that apply to the instrument rating sought. In addition, the applicant would still be required to have received a logbook or training record endorsement, from the authorized instructor, who gave that person training or reviewed their home study course, certifying the person is prepared to satisfactorily accomplish the required knowledge test.

(8) Specifies that an applicant for a practical test must receive an endorsement from the flight instructor who gave the applicant training and that endorsement must state the applicant is prepared for the practical test. The FAA believes this step-by-step listing of eligibility requirements would help the applicant and the examiner to determine readily which requirements are to be met.

(9) Specifies the minimum distance requirement for cross-country flight training should be measured from one airport to another. This proposal is in agreement with the current FAA interpretation on this issue.

(10) Deletes the requirement that the applicant for an instrument rating must have logged at least 125 hours of total flight time. This proposal would correspond with the current ICAO requirements for an instrument rating, which do not require a minimum amount of total flight time. The FAA also proposes to eliminate the requirement for an applicant to have logged at least 50 hours of cross-country flight as a rated pilot.

(11) Specifies that an applicant who completes an instrument practical test in a multiengine airplane and who holds an airplane category and single-engine class rating is considered to have met the requirements for an instrument rating in a single-engine airplane.

Section 61.67 Category II Pilot Authorization Requirements

This section has been addressed in a separate NPRM that is entitled, "Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking at Training Centers," and was issued on July 15, 1992 (57 FR 35918; August 11, 1992). The existing section is republished without change.

Section 61.69 Glider Towing: Experience and Training Requirements

The FAA proposes to revise the title of this section to read, "Glider towing: Experience and training requirements." The title of existing § 61.69 reads "Glider towing: Experience and instruction requirements." The significant proposed changes in this section are as follows:

(1) Clarifies the requirements for a pilot who desires to act as a PIC of an aircraft towing a glider and the requirements for a pilot who accompanies that person. The proposal clarifies that the accompanying pilot is required to have at least 10 flight hours as a PIC of an aircraft towing a flight, not the applicant. The present wording is confusing and has been misunderstood to mean that a pilot cannot be a PIC until the pilot has made and logged 10 flights as a PIC.

(2) Deletes the current alternative provision in paragraph (c) of this section that permits a pilot, who desires to act as a PIC of an aircraft towing gliders, to log three flights as the sole manipulator of the controls of an aircraft simulating glider towing flight procedures and three flights as a pilot or observer in a glider being towed by another aircraft. Merely logging three flights as sole manipulator of the controls of an aircraft while simulating glider towing flight procedures, or as a pilot or observer in a glider being towed by another aircraft, does not adequately maintain a pilot's proficiency for serving as a PIC towing a glider. The FAA proposes to require a pilot to make at least three flights as the sole manipulator of the controls of an aircraft towing a glider, while accompanied by a pilot who meets the requirements of this proposed section.

Section 61.71 Graduate of an Approved Training Program, Other Than Under This Part: Special Rules.

The title of this section is proposed to be changed from "Graduates of certificated flying schools: Special rules" to "Graduate of an approved training program, other than under this part: Special rules."

The significant proposed changes in this section are as follows:

(1) Permits the crediting of training conducted under parts 141- or 142-approved training programs.

(2) Permits the issuance of an ATP certificate, type rating, or both, to a person who has satisfactorily accomplished an approved training program and a PIC proficiency check for that aircraft type, in accordance with the PIC requirements of subparts N and O of part 121 of this chapter. The person must apply for that ATP certificate/type rating within 60 calendar days from the date the person satisfactorily completed the training program and PIC proficiency check in that airplane type. The FAA believes the training, checking, and qualification for a PIC, under subparts N and O of part 121, meet the requirements of part 61 for the ATP certificate/type rating.

For pilots of certain part 135 air carriers, on May 8, 1992, the FAA issued Exemption No. 5450 (57 FR 23253; June 2, 1992) to Regional Airline Association member airlines and similarly situated commuter air carriers that operate under part 135. That exemption permits a person who is an employee of a part 135 air carrier that operates airplane types requiring two pilots and having a passenger seating configuration of 10 seats or more (excluding any pilot seat) to train, check, and qualify under subparts N and O of part 121. This proposal will provide for pilots of part 135 air carriers in the same way that Exemption No. 5450 now provides for pilots who are employees of Regional Airline Association's member airlines and similarly qualified commuter air carriers to be issued ATP certificates and type ratings.

(3) Deletes the existing requirement for an applicant seeking instrument rating, who graduates from a pilot school certificated under part 141, to hold a commercial pilot certificate and a second-class medical certificate. This proposal would be in alignment with the proposed revision to § 61.65, and the current rules of ICAO Annex I. Under § 61.65 and ICAO Annex I, an applicant for an instrument rating will only be required to hold a private pilot certificate. This proposal will keep the requirements for an instrument rating the same whether the applicant is trained under part 61 or part 141. The FAA also hopes to encourage more private pilots to seek instrument ratings. In 1975, the FAA lowered the minimum flight time requirement for an instrument rating from 200 hours to 125 hours with the stated goal of encouraging private pilots to seek instrument ratings. Because a commercial pilot certificate or a second-class medical certificate is not required to exercise private pilot privileges, the requirement for the applicant to hold these certificates conflicts with the FAA's goal.

(4) Deletes the requirement that graduates of pilot schools with examining authority must apply for a certificate or rating within 90 days. These graduates would have 60 days to apply, the same as graduates from pilots schools without examining authority.

Section 61.73 Military Pilots or Former Military Pilots: Special Rules

The significant proposed changes in this section are as follows:

(1) Clarifies the existing requirements for military or former military pilots who apply for a commercial pilot certificate or an aircraft category, class, instrument, or type rating. This proposal clarifies that military and former military pilots are required to have graduated from a military pilot training course or military pilot flight school and received official military aeronautical orders, before applying for their FAA pilot certificate. This, in effect, requires military pilots to have graduated from the course and have aeronautical orders in their possession, prior to applying for the required knowledge test or rating, as appropriate.

(2) Deletes the provision in existing § 61.73(a) that permits military pilots to apply for a private pilot certificate. Historically, military pilots have not chosen a private pilot certificate, because a commercial pilot certificate can be issued without any further requirements. Therefore, the provision allowing military pilots to be issued a private pilot certificate would be deleted, and only a commercial pilot certificate would be issued. A military pilot, who in the past elected a private pilot certificate instead of a commercial pilot certificate, would be permitted to retain that private pilot certificate.

(3) Deletes the last sentence in existing § 61.73(g)(6), "However, a Tactical (Pink) instrument card issued by the U.S. Army is not acceptable." This sentence is obsolete because Tactical (Pink) Instrument cards were last issued by the Army in 1971.

(4) Moves the content of § 61.73(d)(2) to proposed § 61.73(d)(5) and deletes the phrase "or his certificate is endorsed with the following limitation: VFR only." Since 1972, all U.S. military pilot training requires instrument qualification training, and so this phrase is no longer needed. Current and former military pilots who currently hold pilot certificates with the "VFR only" limitation would continue to remain valid. After demonstrating instrument competency in the type of airplane for which the type rating is sought, the limitation would be removed.

(5) Includes an administrative clarification for elevating type ratings on the superseded pilot certificate to the ATP certificate level.

(6) Modifies the format, deletes obsolete phraseology, and clarifies the wording of this section.

Section 61.75 Private Pilot Certificate Issued on Basis of a Foreign Pilot License

The title of proposed § 61.75 would be changed from "Pilot certificate issued on basis of a foreign pilot license" to "Private pilot certificate issued on basis of a foreign pilot license."

The significant proposed changes in this section are as follows:

(1) Deletes the existing provision that permits a pilot with a foreign commercial, senior commercial, or ATP license to apply for a U.S. commercial pilot certificate. The proposal would permit those pilots to apply only for a U.S. private pilot certificate when the issuance is based on their foreign pilot certificate.

(2) Adds a provision that would require pilots with a foreign pilot license to submit a transcription of their foreign pilot license and medical certificate in the English language, unless the licenses and limitations are in the English language.

(3) Deletes the existing provision that permits an applicant to receive a U.S. pilot certificate when the applicant cannot read, speak, write, and understand the English language.

(4) Adds a provision that restricts foreign pilot license holders from exercising their U.S. pilot certificate while under an order of revocation or suspension.

(5) Adds a provision that would permit applicants to use their medical certificate issued by the country that issued the foreign pilot license in lieu of a medical certificate issued under part 67.

(6) Adds a provision that states that a holder of a private pilot certificate, issued under this section, is limited to the privileges placed on that certificate by the Administrator.

(7) Adds a provision that states that a holder of a private pilot certificate, issued under this section, is subject to the limitations and restrictions on the person's U.S. certificate and foreign pilot license.

(8) Adds a provision that states that the U.S. private pilot certificate, issued under this section, is valid only when that person has their foreign pilot license in their personal possession or readily accessible in the aircraft.

Section 61.77 Special Purpose Flight Authorization: Operation of U.S.-Registered Civil Aircraft Leased by a Person Who Is Not a U.S. Citizen

The title of proposed § 61.77 would be changed from "Special purpose pilot certificate: Operation of U.S.-registered civil aircraft leased by a person not a U.S. citizen" to read "Special purpose flight authorization: Operation of U.S.-registered civil aircraft leased by a person who is not a U.S. citizen."

The significant proposed changes in this section are as follows:

The proposal replaces the issuance of special purpose pilot certificates with special purpose pilot authorizations and expands the use of a special purpose flight authorization to all aircraft. The proposal would also revise the eligibility requirements for a special purpose flight authorization and the related privileges.

The significant proposed changes in this section are as follows:

(1) Permits a pilot who holds an airman certificate or license, issued by another ICAO-member state, to operate a U.S.-registered civil aircraft in foreign air transportation operations with a special purpose pilot authorization, issued for 60 calendar months by the Administrator, in lieu of the current requirement of issuing special purpose pilot certificates. This proposal would eliminate the need to issue special purpose pilot certificates. The FAA believes this proposal will reduce administrative burdens and provide the relief that has been routinely granted through the exemption process. Persons who have been issued a special purpose pilot certificate, prior to the effective date of this rule, would continue to be allowed to exercise the privileges of that certificate until the certificate expires. However, once the special purpose pilot certificate expires, the pilot would be required to surrender the certificate for a special purpose pilot authorization and comply with the provisions contained in proposed § 61.77.

ICAO's Annex 1—"Personnel Licensing, Chapter 1—General Rules and Definitions Concerning Licenses," contains in part, standards and recommendations pertaining to the required licenses for flight crewmembers. Section 1.2.1 (authority to act as a flight crewmember) states that:

A person shall not act as a flight crewmember of an aircraft unless a valid license is held showing compliance with the specifications of this Annex and appropriate to the duties to be performed by that person. The license shall have been issued by the state of registry of that aircraft or by any other contracting State and rendered valid by the State of the registry.

Section 1.2.2 (Method of rendering a license valid) states that: When a contracting state renders valid a license issued by another contracting State, as an alternative to the issuance of its own license, it shall establish validity by suitable authorization to be carried with the former license accepting it as the equivalent of the latter the validity of the authorization shall not extend beyond the period of validity of the license.

The FAA's data shows that approximately 14,100 special purpose pilot certificates have been issued in accordance with § 61.77 and approximately 5,300 have been issued in accordance with § 63.23. The FAA believes the process for issuing certificates and the requirement for continued surveillance of these certificates involves considerable expenditure of human and budgetary resources at the FSDO.

(2) Permits a special purpose pilot authorization to be issued to persons to operate any size aircraft instead of the current requirement which limits the eligibility to pilots which operate aircraft with more than 30 passenger seats, excluding any required crewmember seat, and/or 7,500 pounds of payload capacity.

The current § 61.77 states, in part, that the holder of a foreign pilot certificate or license issued by a foreign contracting State to the Convention on International Civil Aviation, who meets the requirements of this section, may hold a special purpose pilot certificate authorizing the holder to perform pilot duties on a civil aircraft of U.S. registry, leased to a person not a citizen of the United States, carrying persons or property for compensation or hire. Currently, special purpose pilot certificates are issued under this section only for aircraft types that can have a maximum passenger seating configuration, excluding any flight crewmember seat, of more than 30 seats or a maximum payload capacity (as defined in § 135.2 of this chapter) of more than 7,500 pounds. The current rules do not permit the issuance of special purpose pilot certificates for the operation of aircraft having 30 or less passenger seats, excluding any required crewmember seat, and/or a payload capacity of 7,500 pounds (3400 kg) or less.

The FAA has received a number of petitions for exemption to § 61.77. The FAA has granted several exemptions to permit persons who are not citizens of the United States, to carry persons or property for compensation or hire in aircraft having 30 or less passenger seats, excluding any required crewmember seat, and/or a payload capacity of 7500 pounds (3400 kg) or less.

Section 305 of the FAA Act mandates that the FAA encourage and foster the development of civil aeronautics and air commerce in the U.S. and abroad. The FAA believes it is in the public interest to promote the use of U.S.-registered aircraft in foreign air transportation. Also, the FAA believes this proposal will encourage the leasing of these aircraft and may provide an important stimulus to the economy of the U.S. aviation industry.

Therefore, the proposal establishes general provisions for issuance of the special purpose pilot authorization and would not include the existing final sentence, which refers to airplanes with more than 30 passenger seats or a maximum payload capacity of more than 7,500 pounds. The FAA believes this restriction is no longer necessary and frequently grants exemptions.

(3) Validates the foreign airman's certificate by having a FSDO issue special purpose pilot authorizations for 60 calendar months. The FAA believes the current process of issuing special purpose pilot certificates, in accordance with § 61.77, should be eliminated. The special purpose pilot authorization would be in a letter format and would be required to be in the possession of the airman while operating the aircraft.

(4) Revises the eligibility requirements of § 61.77 to read as follows:

a. Hold a current foreign pilot certificate;

b. Hold a foreign pilot certificate that shows the appropriate category, class, instrument rating, and type rating, if appropriate;

c. Hold a medical certificate;

d. Surrender a special purpose flight authorization before being issued another authorization;

e. Require the applicant to present a logbook or flight record showing that the applicant meets the part 61 recency of experience requirements; and

f. Clarify that the documentation used to show the applicant has not reached the age of 60 should be "a birth certificate or other official documentation"; and clarify that an authorization granted to an applicant who will reach the age of 60 years before the authorization's usual expiration date would expire the day before the applicant's 60th birthday.

g. Present documentation that shows the pilot is employed by the lessee and is qualified in the aircraft to be operated.

(5) Permits the use of the special purpose pilot authorization in lieu of a certificate;

(6) Establishes limitations for the use of a special purpose pilot authorization, which would:

a. Increase the current length of a special purpose pilot certificate from 24 months to special purpose pilot authorization to 60 calendar months;

b. Permit a pilot to only hold one special purpose pilot authorization;

c. Clarify that an authorization is for one flight or a series of flights for the time period stated on the authorization;

d. Require the carriage of the special purpose pilot authorization when exercising the privileges of the authorization; and

e. Align the "age 60" rule for pilots with the requirements of part 121 for all U.S. and foreign pilots, who are 60 years of age or older, and who are employed by a foreign air carriers that operate U.S.-registered civil aircraft for compensation or hire in scheduled international air services and non-scheduled international air transport operations.

(7) Establishes that a special purpose pilot authorization will expire:

a. With 60 calendar months after issuance, unless it is sooner superseded, revoked, or rescinded;

b. When the lease agreement for the aircraft expires or lessee terminates the employment of the person;

c. Whenever the person's pilot or medical certificate has been suspended, revoked, or is no longer valid; and

d. Whenever the pilot reaches the age of 60.

Subpart C—Student Pilots

The FAA proposes to establish separate subparts for student and recreational pilots. The title of subpart C would be revised from "Student and Recreational Pilots" to "Student Pilots."

Section 61.81 Applicability

This section is revised to delete the reference to recreational pilot certificates and ratings, which would be incorporated into proposed subpart D.

Section 61.83 Eligibility Requirements for Student Pilots

The significant proposed changes in this section are as follows:

(1) Requires applicants to be able to write in the English language;

(2) Rewords the medical requirements for applicants who desire a rating in a glider or balloon; and

(3) Requires all applicants to meet the English language requirements, which would eliminate the current provision that permits applicants who cannot read, speak, and understand the English language to receive a certificate with an operating limitation as deemed necessary by the Administrator.

Section 61.85 Application

No significant modifications are proposed.

Section 61.87 Supervised PIC Requirements for Student Pilots

The title of § 61.87 would be changed from "Solo flight requirements for student pilots" to "Supervised PIC requirements for student pilots."

The significant proposed changes in this section are as follows:

(1) Replaces the term "solo" with "supervised PIC." The purpose of proposing to replace the term "solo" with "supervised PIC" is to reflect the intention of the FAA to permit student pilots to log PIC time while under the supervision of an authorized flight instructor. The FAA has reconsidered its position on this matter, and has concluded that if a student pilot is the sole occupant of an aircraft and is operating the controls of the aircraft, then that student pilot should be allowed to log PIC time. Throughout the public hearings on this rulemaking review, the public voiced the belief that student pilots should be allowed to log PIC time when they are the sole occupant of an aircraft and operating the controls of the aircraft. This proposal, in effect, would permit student pilots to log PIC time for the furtherance of a pilot certificate or rating. As example, the existing rules for a commercial pilot certificate-airplane category and class rating requires 100 hours of PIC time. Under the provisions of this proposal, PIC time logged as a student pilot would count toward the total PIC time for a commercial pilot certificate-airplane category and class rating;

(2) Establishes student pilot training for the proposed powered-lift category rating;

(3) Establishes student pilot training for the proposed nonpowered and powered class ratings under the glider category;

(4) Replaces the term "written examination" with the term "test," when testing a student pilot on aeronautical knowledge areas prior to a student pilot being authorized to perform a supervised PIC flight. This would permit a school to perform the required test in a format other than on paper, e.g., computer response;

(5) Establishes standardization and clarification for student pilots being authorized to conduct supervised PIC flight at night; and

(6) Includes separate supervised PIC maneuvers and procedures for the—airplane category-single engine class rating, airplane category-multiengine class rating, rotorcraft category-helicopter class rating, rotorcraft category-gyroplane class rating, glider category-nonpowered class rating, glider category-powered class rating, lighter-than-air category-airship class rating, lighter-than-air category-balloon class rating, and powered-lift category rating.

Section 61.89 General Limitations

No modifications are proposed for this section.

Section 61.91 [Reserved]

The FAA proposes to delete "§ 61.91 Aircraft limitations: Pilot in command," which permits student pilots to act as the PIC in airships requiring more than one flight crewmember. This section duplicates the requirements in proposed § 61.87 which covers all aircraft.

Section 61.93 Supervised PIC Cross-Country Flight Requirements for Student Pilots

The FAA proposes to change the title of § 61.93 from "Cross-country flight requirements (for student and recreational pilots seeking private pilot certification)" to "Supervised PIC cross-country requirements for student pilots."

The significant proposed changes in this section are as follows:

(1) Changes the term "solo cross country flight" to read "supervised PIC country country flight." (This matter of student pilots logging PIC time was previously discussed in proposed § 61.89, and the FAA proposes to revise this section to reflect the conclusion discussed in that section);

(2) Deletes the provision that a student pilot may land at an airport other than the airport of takeoff in an emergency. This provision already exist in § 91.3, "Responsibility and authority of the pilot in command";

(3) Clarifies the language of the provision for performing supervised PIC flights to and from an airport within 25 nautical miles of the airport from which the flight originated;

(4) Clarifies the provision for performing repeated supervised PIC cross-country flights that are no more than 50 nautical miles;

(5) Clarifies existing requirements for endorsements on the student pilot's certificate and in the student pilot's logbook. The requirement for an endorsement on the student pilot certificate would not apply to a pilot with a pilot certificate who seeks privileges in another aircraft category, because a certificated pilot would not hold a student pilot certificate;

(6) Adds provisions for the use of radios for VFR navigation and two-way communications, procedures for diverting to alternate airports, and windshear avoidance; and

(7) Establishes separate supervised PIC cross country maneuvers and procedures for the—airplane category-single engine class rating, airplane category-multiengine class rating, rotorcraft category-helicopter class rating, rotorcraft category-gyroplane class rating, glider category-nonpowered class rating, glider category-powered class rating, lighter-than-air category-airship class rating, lighter-than-air category-balloon class rating, and powered-lift category rating.

Section 61.95 Operations in a Class B Airspace Area and at Airports Located Within a Class B Airspace Area

No substantive modifications are proposed. Minor editorial and standardization of terms are contained in this proposal.

Subpart D—Recreational Pilots

The FAA proposes to establish this as a separate subpart for recreational pilot certificates and ratings.

Section 61.96 Applicability

Proposed § 61.96 would describe provisions that are applicable for the recreational pilot certificates and ratings.

Section 61.96a Eligibility Requirements: General

The FAA proposes to add a new section entitled "Eligibility requirements: General." The proposed § 61.96a would:

(1) Requires applicants to be able to write in the English language;

(2) Requires all applicants to meet the English language requirements, which

would eliminate the current provision that applicants who cannot read, speak, and understand the English language may receive a certificate with the operating limitation deemed necessary by the Administrator;

(3) Deletes the requirement for recreational pilots to hold a medical certificate. Persons who apply for a recreational pilot certificate would be required to affix a signed and dated statement to their application certifying they do not have any known medical defects that makes them unable to pilot the aircraft for the aircraft category and class rating sought; and

(4) Establishes eligibility requirements for the recreational pilot certificate and ratings. The eligibility requirements would require an applicant to:

a. Receive an endorsement from the ground or flight instructor who gave the applicant training or reviewed the applicant's home study course, and that endorsement must state that the applicant is prepared for the knowledge test;

b. Receive an endorsement from the flight instructor who gave the applicant training, and that endorsement must state the applicant is prepared for the practical test; and

c. Meet the aeronautical experience requirements in § 61.99. (The applicant would be required to pass the required knowledge test and practical test.)

Section 61.97 Aeronautical Knowledge

Proposed § 61.97 addresses added aeronautical knowledge requirements, which include ground training on: (1) windshear avoidance; (2) aeronautical decisionmaking and judgment; and (3) preflight actions found in § 91.103.

Section 61.98 Flight Proficiency

This proposed section would establish the approved areas of operation for all aircraft that are permitted to be operated by recreational pilot applicants.

Section 61.99 Aeronautical Experience

The FAA proposes to change the current title, "Airplane rating: Aeronautical experience," to "Aeronautical experience." Proposed 61.99 includes the aeronautical experience requirements for single engine airplanes, helicopters, and gyroplanes that are permitted to be operated by recreational pilot applicants. Proposed § 61.99 would revise the minimum aeronautical experience required for a person to be eligible for a recreational pilot certificate.

The FAA proposes that an applicant for a recreational pilot certificate must accomplish and log at least 30 hours of flight time that includes at least 15 hours of flight training time from an authorized flight instructor and 3 hours of supervised PIC flight time, on the approved areas of operation in § 61.98. This proposal responds to comments made during the public hearings to allow the student and the flight instructor to tailor the required training to individual student needs.

For example, a student who has previous aviation experience and takes readily to the training may be able to complete training for a recreational pilot certificate with only the minimum 30 hours of flight time that includes at least 15 hours of flight training time from an authorized flight instructor and 15 hours of supervised PIC flight time on the approved areas of operation in § 61.98.

However, a student pilot who does not have previous aviation experience or who trains infrequently may need more time than the minimum 30 hours of flight time, 15 hours of flight training time from an authorized flight instructor, and 3 hours of supervised PIC flight time. The student pilot and flight instructor may need to tailor the training to require 27 hours of flight training time from an authorized flight instructor and 3 hours of supervised PIC flight time, on the approved areas of operation in § 61.98 of this part.

Section 61.100 Pilots Based on Small Islands

The FAA proposes to replace the current title of this section from, "Rotorcraft rating: Aeronautical experience," to read "Pilots based on small islands." The proposed aeronautical experience requirements for a rotorcraft category rating would be found in proposed § 61.99.

Proposed § 61.100 would contain the provisions for pilots based on small islands that are currently found in § 61.99.

Section 61.101 Recreational Pilot Privileges and Limitations

The proposed revisions for this section are as follows:

(1) Restructures and edits some of the current paragraphs of this section.

(2) Rewords some portions of this section for clarity purposes.

(3) Rewords and relocates existing § 61.101(f) to proposed paragraph (h). This proposal would basically maintain the same provisions that are now currently in existing § 61.101(f), but would contain some rewording and reformatting for clarity purposes.

(4) Deletes the current restriction that prevents recreational pilots from flying more than 50 nautical miles from an airport where training was received. This proposal along with the proposal to delete the requirements for a medical certificate for recreational pilots, is intended to increase interest in the recreational pilot certificate. The FAA believes this proposal will not have an adverse effect on safety, considering that most of the aeronautical experience will be performed with an authorized flight instructor on board the aircraft.

This proposal would permit a recreational pilot to operate on a flight that exceeds 50 nautical miles from the departure airport, provided the pilot:

a. Has received ground and flight training from an authorized flight instructor on the cross country training requirements of subpart E of this part that apply to the aircraft rating held;

b. Has been found proficient in cross country flying, and has received a logbook endorsement from the authorized flight instructor, who gave the person the cross country training prescribed by subpart E of this part that apply to the aircraft rating held; and

c. Has received a logbook endorsement that certifies the person has received and been found proficient on the cross training requirements of subpart E of this part that apply to the aircraft rating held, which must be carried in their physical possession in the aircraft.

Subpart E—Private Pilots

The proposed establishment of separate subparts for student and recreational pilot certificates will require the regulations pertaining to private pilot certificates and ratings to be relocated from subpart D to subpart E.

Section 61.102 Applicability

No substantive changes are proposed for this section.

Section 61.103 Eligibility Requirements: General

The significant proposed changes in this section are as follows:

(1) Rewords the medical requirements for applicants who desire a rating in a glider or balloon.

(2) Requires all applicants to meet the English language requirements, including the ability to write, which would eliminate the current provision that applicants who cannot read, speak, and understand the English language may receive a certificate with the operating limitation, as deemed necessary by the Administrator.

(3) Requires an applicant to receive an endorsement from a ground or flight instructor who gave the applicant

training or reviewed the applicant's home study course, and that endorsement must state that the applicant is prepared for the knowledge test.

(4) Requires an applicant to receive an endorsement from a flight instructor who gave the applicant training, and that endorsement must state that the applicant is prepared for the practical test.

(5) Requires an applicant to meet the aeronautical experience requirements for the category and class rating sought, before applying for the practical test. The applicant would be required to pass the required knowledge test and practical test. The FAA believes this step-by-step listing of eligibility requirements would be beneficial to the applicant and the examiner.

Section 61.105 Aeronautical Knowledge

Proposed § 61.105 lists the revised aeronautical knowledge requirements for the private pilot certificate. The following aeronautical knowledge areas would be added as a requirement for the private pilot certification: (1) Windshear avoidance; (2) Aeronautical decision making and judgment; and (3) preflight actions found in § 91.103.

Section 61.107 Flight Proficiency

The proposed changes to this section are as follows: (1) Includes separate and revised areas of operation for the airplane category-single engine class rating, airplane category-multiengine class rating, rotorcraft category-helicopter class rating, rotorcraft category-gyroplane class rating, glider category-nonpowered class rating, glider category-powered class rating, lighter-than-air category-airship class rating, lighter-than-air category-balloon class rating, and powered-lift category rating.

(2) Replaces the term "flight proficiency requirements" with the term "approved areas of operation."

(3) Requires applicants for a glider category rating to receive training on the approved areas of operation, included in proposed § 61.107, on: Launches, approaches, and landings, if applying for a nonpowered class rating; or Takeoffs, landings, and go-arounds, if applying for a powered class rating.

Section 61.109 Aeronautical Experience

The proposed revisions to this section are as follows:

(1) Includes separate and revised aeronautical experience requirements for the airplane category-single engine class rating; airplane category-multiengine class rating, rotorcraft category-helicopter class rating, rotorcraft category-gyroplane class rating, glider category-nonpowered class rating, glider category-powered class rating, lighter-than-air category-airship class rating, lighter-than-air category-balloon class rating, and powered-lift category rating.

(2) Revises the aeronautical experience requirements for a private pilot certificate with an airplane, rotorcraft, or powered-lift category rating by requiring applicants to have accomplished and logged at least 40 hours of flight time, which includes at least 20 hours of flight training time from an authorized flight instructor and 5 hours of supervised PIC flight time on the approved areas of operation in § 61.107. This proposal responds to comments made during the public hearings requesting that the student and the flight instructor be allowed to tailor the required training to the student needs.

For example, a student who has previous aviation experience and takes readily to the training may be able to complete training for a private pilot certificate with only the minimum 40 hours of flight time, which includes at least 20 hours of flight training time from an authorized flight instructor and 20 hours of supervised PIC flight time, on the approved areas of operation in § 61.107.

However, a student pilot who does not have previous aviation experience or who trains infrequently may need more time than the minimum 40 hours of flight time, 20 hours of flight training time from an authorized flight instructor, and 5 hours of supervised PIC flight time. The student pilot and flight instructor may need to tailor the training to require 35 hours of flight training time from an authorized flight instructor and 5 hours of supervised PIC flight time, on the approved areas of operation in § 61.107.

(3) Includes revised aeronautical experience for:

a. An airplane single engine rating,—

(i) Three hours of cross-country flight training in a single engine airplane;

(ii) Three hours of night flight training in a single engine airplane that includes—

A. A cross country flight of at least 100 nautical miles duration; and

B. Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of instrument flight training in a single engine airplane;

(iv) Three hours of flight training in preparation for the practical test in a single engine airplane, which must have been performed within the 60-day period preceding the date of the test; and

(v) Supervised PIC flying in a single engine airplane, consisting of—

A. One supervised PIC cross-country flight of at least 100 nautical miles duration, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 50 nautical miles between the takeoff and landing locations; and

B. Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

b. An airplane multiengine rating,—

(i) Three hours of cross-country flight training in a multiengine airplane;

(ii) Three hours of night flight training in a multiengine airplane that includes—

A. One cross country flight of at least 100 nautical miles duration; and

B. Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of instrument flight training in a multiengine airplane;

(iv) Three hours of flight training in preparation for the practical test in a multiengine airplane, and must have been performed within the 60-day period preceding the date of the test; and

(v) Supervised PIC flying in a multiengine airplane, consisting of—

A. One supervised PIC cross-country flight of at least 100 nautical miles duration, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 50 nautical miles between the takeoff and landing locations; and

B. Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

c. A rotorcraft-helicopter rating—

(i) Three hours of cross-country flight training in a helicopter;

(ii) Three hours of night flight training in a helicopter that includes—

A. One cross country flight of at least 50 nautical miles duration; and

B. Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of flight training in preparation for the practical test in a helicopter, and must have been performed within the 60-day period preceding the date of the test; and

(iv) Supervised PIC flying in a helicopter, consisting of—

A. One supervised PIC cross-country flight of at least 50 nautical miles duration, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 25 nautical miles between the takeoff and landing locations; and

B. Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

d. A rotorcraft-gyroplane rating,—

(i) Three hours of cross-country flight training in a gyroplane;

(ii) Three hours of night flight training in a gyroplane that includes—

A. One cross country flight of at least 50 nautical miles duration; and

B. Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of flight training in preparation for the practical test in a gyroplane, which must have been performed within the 60-day period preceding the date of the test; and

(iv) Supervised PIC flying in a gyroplane, and consisting of—

A. One supervised PIC cross-country flight of at least 50 nautical miles duration, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 25 nautical miles between the takeoff and landing locations; and

B. Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

e. A powered-lift rating,—

(i) Three hours of cross-country flight training in a powered-lift;

(ii) Three hours of night flight training in a powered-lift that includes—

A. One cross country flight of at least 100 nautical miles duration; and

B. Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of instrument flight training in a powered-lift;

(iv) Three hours of flight training in preparation for the practical test in a powered-lift, which must have been performed within the 60-day period preceding the date of the test; and

(v) Supervised PIC flying in a powered-lift, consisting of—

A. One supervised PIC cross-country flight of at least 100 nautical miles duration, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 50 nautical miles between the takeoff and landing locations; and

B. Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

f. A glider rating—

(i) At least 10 hours of flight training and 20 flights, on the approved areas of operation listed in proposed § 61.107, that apply to the glider class rating sought; or at least 5 hours of flight training and 10 flights on the approved areas of operation listed in § 61.107 that apply to the glider class rating sought. If a person has logged 40 hours of flight time in heavier-than-air aircraft or holds a category and class rating in a glider;

(ii) At least two supervised PIC flights on the approved areas of operation listed in § 61.107 that apply to the glider class rating sought;

(iii) At least 3 flights of flight training in preparation for the practical test within the 60-day period preceding the test and in the class of glider for the rating sought; and

(iv) At least 5 training flight sessions and 2 supervised PIC flights in a nonpowered glider using a winch or auto tow on the appropriate approved areas of operation listed in proposed § 61.107(g). If a person who is applying for a glider category rating with a nonpowered class rating seeks privileges for ground launch procedures.

g. An airship rating, at least 25 hours of flight training in airships on the approved areas of operation listed in proposed § 61.107 (i), which consists of at least—

(i) Three hours of cross-country flight training in an airship;

(ii) Except as provided in proposed § 61.110, 3 hours of night flight training in an airship that includes—

A. One cross country flight of at least more than 25 nautical miles duration;

B. Five takeoffs and 5 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport;

C. Three hours of instrument flight training in an airship;

D. Three hours of flight training in an airship in preparation for the practical test within the 60-day period preceding the date of the test; and

E. Five hours of supervised PIC flight training in an airship and with an authorized flight instructor.

h. A balloon rating, at least 10 hours of flight training that includes at least 6 flight training sessions on the approved areas of operation listed in proposed § 61.107(j), that includes—

(i) If the training is being performed in a gas balloon, the training must include at least two flights of two hours each that consists of—

A. At least one flight that covers the approved areas of operation appropriate to a gas balloon within 60 days prior to application for the rating; and

B. At least one supervised PIC flight in a gas balloon.

(ii) If the training is being performed in a balloon with an airborne heater, the training must include at least—

A. Two flights of one hour each that covers the approved areas of operation appropriate to a balloon with an airborne heater within 60 days prior to application for the rating; and

B. One supervised PIC flight in a balloon with an airborne heater.

(4) Deletes the exception for applicants not seeking night flying privileges. However, some exceptions from the required night training would still remain and are listed proposed § 61.110.

(5) Adds night cross country training to the aeronautical experience requirements for the private pilot certificate for the airplane, rotorcraft, airship, and powered-lift category ratings. § 61.110 Night flying exceptions for the private pilot certification.

Proposed § 61.110 would establish the night flying exceptions for private pilot certification. The allowable exceptions for the night training requirement are the following:

(1) An applicant with a medical restriction from operating an aircraft at night would not be required to meet the night flight training requirements and would be issued a certificate with a limitation prohibiting night flying; and

(2) An applicant who accomplishes flight training in Alaska would have 12 months after the issuance of the applicant's temporary airman certificate to comply with the night flight training requirements. Alaska is unique in that 6 months out of the year there is no nighttime. However, an applicant who receives flight training in Alaska and is unable to accomplish the night flying training required by proposed § 61.109, would be—

a. Issued a temporary pilot certificate for only 12 calendar months, with a limitation "Night flying prohibited;" and

b. Required to comply with the requirements of proposed § 61.110(c) within the 12 calendar month period after issuance of the temporary private pilot certificate, or the certificate will be suspended until the person complies with the requirements of proposed § 61.110(c).

(3) Explain that the night flying prohibited limitation may be removed when persons—

a. Accomplish the night flight training requirements of proposed § 61.109 in the class of aircraft for which night flying privileges are sought;

b. Present to an examiner, a logbook or training record endorsement from an authorized flight instructor that verifies accomplishment of the night flying requirements of proposed § 61.109 in the class of aircraft for which night flying privileges are sought; and

c. Accomplish the night operations portion of the practical test for the class of aircraft for which night flying is sought.

As previously stated, the FAA does not intend to have persons who have been issued a pilot certificate without meeting the night flying requirements of this proposal, prior to effective date of this rule, to comply with this proposal. Those persons would be allowed to continue to hold that pilot certificate with the night flying limitation. However, if the person seeks an additional rating or higher pilot certificate level, the person would be required to comply with night flying requirements that are appropriate to the pilot certificate level.

Section 61.111 Cross-Country Flights: Pilots Based on Small Islands

The proposed changes to § 61.111 are minor editorial changes only.

Section 61.113 Private Pilot Privileges and Limitations: Pilot in Command

Proposed § 61.113 will be a re-designation of existing § 61.118.

The FAA proposes to eliminate the existing § 61.113, "Rotorcraft rating: Aeronautical experience." The revised aeronautical experience requirements for a rotorcraft category rating will be incorporated in proposed § 61.109.

The proposed changes to this section are as follows:

(1) Permits private pilots to be reimbursed for their aircraft operating expenses for search and location operations that are sanctioned and under the direction and control of a local, State, or Federal law enforcement agency, or an organization involved in search and location operations.

(2) Permits a private pilot who acts as PIC when towing gliders to log the flight time.

(3) Specifies what are the flight operating expenses that a private pilot may share with passengers.

(4) Modifies the requirements for participation in an airlift sponsored by a charitable organization.

(5) Eliminates specific reference regarding a salesman who has logged at least 200 hours to demonstrate an aircraft in flight to a prospective buyer. Even though specific reference to this provision will be eliminated, the privilege will still be provided in proposed § 61.113(b)(1). A private pilot who is an aircraft salesperson will still be allowed to demonstrate aircraft to prospective buyers, but the requirement for the person to have logged at least 200 hours will be eliminated.

Throughout this regulatory review, the FAA has attempted to delete and revise obsolete, unnecessary rules without compromising safety. On this issue, the FAA has determined that eliminating the requirement for private pilots to have logged at least 200 hours prior to demonstrating aircraft to prospective buyers is unnecessary and no data could be found to justify continuance of the rule. In effect, the proposed elimination of this requirement will enable private pilots increased use of their private pilot certificates.

Section 61.115 Balloon Rating: Limitations

Proposed § 61.115 will be a re-designation of existing § 61.119.

The FAA proposes to eliminate the existing § 61.115 "Glider rating: Aeronautical experience." The revised aeronautical experience requirements for a glider category rating will be incorporated in proposed § 61.109.

The proposed changes to this section are as follows:

(1) Deletes references to the phrase "hot air balloon without airborne heaters," and classifies balloons as either "gas balloons" or "balloons with airborne heaters." The phrase "hot air balloon without an airborne heater" described a balloon that was in existence at one time, but is no longer available. A "hot air balloon without an airborne heater" is a balloon that involves heating the air inside the balloon's envelope from a ground-based fire. The balloon and its occupant then ascend until the balloon deflates, and the occupant exits the balloon by parachute.

(2) Incorporates the current operating limitations for private pilots who perform their practical test in a gas balloon as opposed to those who perform the test in a balloon with an airborne heater. The wording of the operating limitations specified in this section would clarify that persons requesting removal of the operating limitations off their certificate would be required to obtain the required aeronautical experience in that kind of balloon and receives a logbook endorsement from an authorized instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate that balloon. However, accomplishment of an additional practical test would not be required provided the person is not seeking a higher level of pilot certificate (i.e., a private pilot seeking to obtain a commercial pilot certificate).

Section 61.117 Private Pilot Privileges and Limitations: Second in Command of Aircraft Requiring More Than One Pilot

Proposed § 61.117 will be a re-designation of existing § 61.120 and § 61.120 will be placed in reserve.

The existing § 61.118 "Private pilot privileges and limitations: Pilot in command" will be redesignated as § 61.113, and § 61.118 will be placed in reserve.

The existing § 61.119, "Free balloon rating: Limitations" will be redesignated as § 61.115 and be retitled as "Balloon rating: Limitations" and § 61.119 will be placed in reserve.

The existing § 61.120, "Private pilot privileges and limitations: Second in command of aircraft requiring more than one pilot" will be redesignated as § 61.117, and § 61.120 will be reserved.

Subpart F—Commercial Pilots

The proposal to establish separate subparts for student and recreational pilot certificates would require the regulations for commercial pilot certificates and ratings to be relocated from subpart E to subpart F.

Section 61.121 Applicability

No substantive changes are proposed for this section.

Section 61.123 Eligibility Requirements: General

The significant proposed changes in this section are:

(1) Requires applicants to be able to write in the English language.

(2) Rewords the medical requirements for applicants who desire a rating in a glider or balloon.

(3) Requires all applicants to meet the English language requirements, which would eliminate the current provision under which applicants who cannot read, speak, and understand the English language may receive a certificate with the operating limitation as deemed necessary by the Administrator.

(4) Permits applicants to only hold a third-class medical certificate at the time of the practical test. However as currently required, the commercial pilot would still be required to hold a second-class medical certificate for operations requiring a commercial pilot certificate.

(5) Requires an applicant to hold a private pilot certificate, before applying for a commercial pilot certificate.

(6) Revises the eligibility requirements for the commercial pilot certificate and ratings by specifying that an applicant would be required to:

a. Receive from the ground or flight instructor who gave the applicant training or reviewed the applicant's home study course, an endorsement that states the applicant is prepared for the knowledge test;

b. Receive an endorsement from the flight instructor who gave the applicant training that states the applicant is prepared for the practical test; and

c. Meet the aeronautical experience requirements for the category and class rating sought before applying for the practical test. This is in addition to the current requirements for the applicant to pass the required knowledge test and practical test. The FAA is of the opinion that this step-by-step listing of eligibility requirements would be beneficial to the applicant and the examiner.

Section 61.125 Aeronautical Knowledge

The significant proposed changes in this section will:

(1) Include separate and revised aeronautical knowledge areas for the airplane category-single engine class rating, airplane category-multiengine class rating, rotorcraft category-helicopter class rating, rotorcraft category-gyroplane class rating, glider category-nonpowered class rating, glider category-powered class rating, lighter-than-air category-airship class rating, lighter-than-air category-balloon class rating, and powered-lift category rating.

(2) Modify the aeronautical knowledge requirements to include windshear avoidance, aeronautical decision making and judgment.

(3) Delete the existing aeronautical knowledge requirement of instrument procedures and the requirement for instrument flight training for an airship rating. This proposed deletion is a result of the proposal for the instrument-airship rating and the proposed flight instructor-airship rating.

Section 61.127 Flight Proficiency

The significant proposed changes in this section will:

(1) Include separate and revised areas of operation for the airplane category-single engine class rating, airplane category-multiengine class rating, rotorcraft category-helicopter class rating, rotorcraft category-gyroplane class rating, glider category-nonpowered class rating, glider category-powered class rating, lighter-than-air category-airship class rating, lighter-than-air category-balloon class rating, and powered-lift category rating.

(2) Replace flight proficiency requirements with approved areas of operation.

(3) Require an applicant for a glider category rating to receive training on:

a. Launches, approaches, and landings, if applying for a nonpowered class rating; or

b. Takeoffs, landings, and go-arounds if applying for a powered class rating.

Section 61.129 Aeronautical Experience

Proposed § 61.129 would be retitled, "Aeronautical experience." Proposed § 61.129 would be reformatted by class of aircraft, and would contain separate and revised aeronautical experience for each class of aircraft.

The significant proposed changes in this section are as follows:

(1) Includes revised and separate aeronautical experience requirements for the airplane category-single engine class rating, airplane category-multiengine class rating, rotorcraft category-helicopter class rating, rotorcraft category-gyroplane class rating, glider category-nonpowered class rating, glider category-powered class rating, lighter-than-air category-airship class rating, lighter-than-air category-balloon class rating, and powered-lift category rating.

(2) Revises the aeronautical experience requirements for the single engine airplane to:

a. Twenty hours of training on the approved areas of operation in proposed § 61.127(b), which includes at least:

(i) Five hours of instrument training in a single engine airplane;

(ii) Ten hours of training in a single engine airplane that has a retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One cross-country flight in a single engine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iv) One cross-country flight in a single engine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(v) Three hours in a single engine airplane, in preparation for the practical test within 60 days preceding the date of the test.

b. Ten hours of supervised PIC flying in a single engine airplane on the approved areas of operation in proposed § 61.127(b), which includes at least—

(i) One cross-country flight, if the training is being performed in the state of Hawaii, that cross-country flight must involve landings at a minimum of three points and one of the routes must have a straight-line distance of at least 150 nautical miles;

(ii) One cross-country flight, if the training is being performed in a State other than Hawaii, then that cross-country flight must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 250 nautical miles; and

(iii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(3) Revises the aeronautical experience requirements for the multiengine airplane to:

a. Twenty hours of training on the approved areas of operation in proposed § 61.127(c), which includes at least—

(i) Five hours of instrument training in a multiengine airplane;

(ii) Ten hours of training in a multiengine airplane that has a retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One cross-country flight in a multiengine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iv) One cross-country flight in a multiengine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(v) Three hours in a multiengine airplane, in preparation for the practical test within 60 days preceding the date of the test.

b. Ten hours of supervised PIC flying in a multiengine airplane on the approved areas of operation in proposed § 61.127(c), which includes at least—

(i) One cross-country flight, if the training is being performed in the state of Hawaii, that cross-country flight must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 150 nautical miles;

(ii) One cross-country flight, if the training is being performed in a State other than Hawaii, that cross-country flight must involve landings at a minimum of three points and one of the routes must have a straight-line distance of at least 250 nautical miles; and

(iii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a

flight with a traffic pattern) at an airport with an operating control tower.

(4) Adds aeronautical experience requirements for the new powered-lift category rating to:

a. Twenty hours of training on the approved areas of operation in proposed § 61.127(f), which includes at least—

(i) Five hours of instrument training in a powered-lift;

(ii) One cross-country flight in a powered-lift of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iii) One cross-country flight in a powered-lift of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(iv) Three hours in a powered-lift, in preparation for the practical test within 60 days preceding the date of the test.

b. Ten hours of supervised PIC flying in a powered-lift on the approved areas of operation in proposed § 61.127(f), which includes at least—

(i) One cross-country flight, if the training is being performed in the state of Hawaii, that cross-country flight must involve landings at a minimum of three points and one of the routes must have a straight-line distance of at least 150 nautical miles;

(ii) One cross-country flight, if the training is being performed in a State other than Hawaii, that cross-country flight must involve landings at a minimum of three points and one of the routes must have a straight-line distance of at least 250 nautical miles; and

(iii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(5) Revises the aeronautical experience requirements for the helicopter to:

a. Twenty hours of training on the approved areas of operation in proposed § 61.127(d), which includes at least—

(i) Five hours of instrument training in a helicopter;

(ii) One cross-country flight in a helicopter of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iii) One cross-country flight in a helicopter of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(iv) Three hours in a helicopter, in preparation for the practical test within 60 days preceding the date of the test.

b. Ten hours of supervised PIC flying in a helicopter on the approved areas of operation in proposed § 61.127(d), which includes at least—

(i) One cross-country flight with landings at a minimum of three points, and one of the routes having a straight-line distance of at least 50 nautical miles from the original point of departure; and

(ii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern).

(6) Revises the proposed aeronautical experience requirements for the gyroplane to:

a. Twenty hours of training on the approved areas of operation in proposed § 61.127(e), which includes at least—

(i) Five hours of instrument training in a gyroplane;

(ii) One cross-country flight in a gyroplane of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iii) One cross-country flight in a gyroplane of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(iv) Three hours in a gyroplane, in preparation for the practical test within 60 days preceding the date of the test.

b. Ten hours of supervised PIC flying in a gyroplane on the approved areas of operation in proposed § 61.127(e), which includes at least—

(i) One cross-country flight with landings at a minimum of three points, and one of the routes must have a straight-line distance of at least 50 nautical miles from the original point of departure; and

(ii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern).

(7) Revises the proposed aeronautical experience requirements for the airship to:

a. Twenty hours of training in airships on the approved areas of operation in proposed § 61.127(i), which includes at least—

(i) Three hours of flight training in an airship, in preparation for the practical test within the 60-day period preceding the date of the test;

(ii) Five hours of instrument training in airships;

(iii) One cross-country flight in an airship of at least 1 hour in duration, a total straight-line distance of more than 25 nautical miles from the original point of departure, and occurring in day-VFR conditions; and

(iv) One cross-country flight in an airship of at least 1 hour in duration, a total straight-line distance of more than 25 nautical miles from the original point of departure, and occurring in night-VFR conditions.

b. Ten hours of supervised PIC flight training with an authorized flight instructor in airships, on the approved areas of operation in proposed § 61.127(i), which includes at least—

(i) One cross-country flight with landings at a minimum of three points, and one of the routes having a straight-line distance of at least 25 nautical miles from the original point of departure; and

(ii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern).

(8) Revises the proposed aeronautical experience requirements for the nonpowered glider to—

a. Five hours of flight training or 10 flights on the approved areas of operation of proposed § 61.127(g) that must include 3 flights in preparation for the practical test within 60-day period preceding the date of the test.

b. Five supervised PIC flights in a nonpowered glider on the approved areas of operation of proposed § 61.127(g).

c. If an applicant with a glider category rating and a nonpowered class rating seeks privileges for ground launch procedures, that person must accomplish and log at least five flights of flight training and two supervised PIC flights in a nonpowered glider using a winch or auto tow on the approved areas of operations in proposed § 61.127(g).

(9) Adds aeronautical experience requirements for the powered glider to:

a. Twenty-five hours and 100 flights in gliders as PIC, which includes at least 10 flights in a powered glider;

b. Two hundred hours in heavier-than-air aircraft, and 20 flights in gliders as PIC, which includes at least 10 flights in a powered glider; or

c. The flight time requirements in proposed § 61.129(f) (1) or (2) must consist of at least the following flight training in a powered glider—

(i) Five hours of flight training or 10 flights on the approved areas of operation of proposed § 61.127(h), which includes 3 flights in preparation for the practical test within the 60-day period preceding the date of the test; and

(ii) Five supervised PIC flights in a powered glider on the approved areas of operation of proposed § 61.127(h).

(10) Revises the aeronautical experience requirements for the balloon to:

a. Accomplish and log at least 35 hours of flight time as a pilot, which includes at least the following requirements—

(i) Twenty hours in balloons;

(ii) Ten flights in balloons; and

(iii) Two flights in balloons as the PIC.

b. Ten hours of flight training that includes 10 flights of flight training in balloons on the approved areas of operation of proposed § 61.127(j), which consist of at least—

(i) If the training is received in a gas balloon, the training must include at least—

A. Two flights of 1 hour each in a gas balloon;

B. One flight in a gas balloon involving a controlled ascent to 10,000 feet above the surface;

C. Two flights in a gas balloon, in preparation for the practical test within the 60-day period preceding the date of the test; and

D. Two supervised PIC flights in a gas balloon on the approved areas of operation in proposed § 61.127(j).

(ii) If the training is received in a balloon with an airborne heater, the training must include at least—

A. Two flights of 30 minutes each in a balloon with an airborne heater;

B. One flight involving a controlled ascent to 5,000 feet above the surface in a balloon with an airborne heater; and

C. Two flights in a balloon with an airborne heater, in preparation for the practical test within the 60-day period preceding the date of the test; and

D. Two supervised PIC flights in a balloon with an airborne heater on the approved areas of operation in proposed § 61.127(j).

(11) Permits the use of a turbine powered airplane in lieu of the current provision for receiving training in an airplane that has flaps, retractable landing gear, and controllable propellers.

(12) Replaces the terms "free balloon" and "hot air balloon" with "balloon" only.

(13) Deletes references to the phrase "hot air balloon without airborne heaters," and classifies balloons as "gas balloons" and "balloons with airborne heaters." The phrase "hot air balloon without an airborne heaters" describes a balloon that is no longer available. A "hot air balloon without an airborne heater" describes a balloon that involved heating the air inside the balloon's envelope from a ground-based fire, then the balloon and its occupant ascend until the balloon deflates, and then the occupant exits the balloon by parachute.

Section 61.131 Exceptions to the Night Flying Requirements for the Commercial Pilot Certificate

Proposed § 61.131 would be a new section and entitled, "Exceptions to the night flying requirements for the commercial pilot certificate." This proposal would delete the exception for applicants not seeking night flying privileges; however, an applicant with a medical restriction from operating an aircraft at night would not be required to meet the night flight training requirements and would be issued a certificate with a limitation. In addition, an applicant who accomplishes flight training in Alaska would have 12 months after the issuance of the applicant's temporary airman certificate to comply with the night flight training requirements.

The current provisions of § 61.131 "Rotorcraft ratings: Aeronautical experience" would be moved to proposed § 61.129.

Section 61.133 Commercial Pilot Privileges and Limitations: General

Proposed § 61.133 "Commercial pilot privileges and limitations: General" would be a redesignation of existing § 61.139. The current provisions of § 61.133 "Glider rating: Aeronautical experience" would be moved to proposed § 61.129.

The significant proposed changes in this section are as follows:

(1) Clarifies the privileges for persons who hold a commercial pilot certificate regarding the compensation or hire issue. This revision is in response to a petition for rulemaking from Beverly J. Cameron, who on June 20, 1992, petitioned the FAA to revise the rule. Ms. Cameron stated that the current wording of § 61.139 was misleading. The FAA agrees, and thus has proposed to revise § 61.139.

(2) Eliminates the privilege in existing § 61.139 for commercial pilots with a lighter-than-air category and associated class rating to give training in an airship or a free balloon, because of the proposed flight instructor certificate for the lighter-than-air category.

(3) Adds the limitation that is in existing § 61.129, which prohibits commercial pilots with an airplane category rating, but without an instrument-airplane rating, from carrying passengers for hire in airplanes on cross-country flights of more than 50 nautical miles or at night, would appear in this section. The same limitation is proposed for commercial pilots with a lighter-than-air category and an airship class rating but without an instrument—airship rating, and commercial pilots with a powered-lift category rating but without a instrument—powered-lift rating.

(4) Revises "hot air balloon without airborne heaters," in existing § 61.139, to "gas balloons" and "balloons with airborne heaters." The purpose for this proposal is to align the phraseology in this section with the other references to balloons throughout this notice.

(5) Revises the wording for the operating limitations that restrict the pilot privileges for the kind of balloon in which the person accomplishes the practical test. The person may remove the limitation by completing the required aeronautical experience in a gas balloon or a balloon with an airborne heater, as appropriate, and receives a logbook endorsement from an authorized instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate the specific kind of balloon.

Section 61.135 [Reserved]

The current provisions of § 61.135 "Airship rating: Aeronautical experience" would be moved to proposed § 61.129.

Section 61.137 [Reserved]

The current provisions of § 61.137 "Free balloon rating: Aeronautical experience" would be moved to proposed § 61.129.

Section 61.139 [Reserved]

The current provisions of § 61.139 "Commercial pilot privileges and limitations: General" would be moved to proposed § 61.133.

Section 61.141 [Reserved]

The current provisions of § 61.141 "Airship and free balloon ratings: Limitation" would be moved to proposed § 61.133.

Subpart G—Airline Transport Pilots

The proposal to establish separate subparts for student and recreational pilot certificates would require the regulations for ATP certificates to be relocated from subpart F to subpart G.

Section 61.151 Applicability

In order to align this subpart with the other subparts, the FAA proposes to establish an applicability section in subpart G.

Section 61.153 Eligibility Requirements: General

In order to accommodate proposed "§ 61.151 Applicability," existing "§ 61.151 Eligibility requirements: General" would be renumbered § 61.153.

The significant proposed changes in this section are as follows:

(1) Eliminates the existing requirement for an applicant to be able to "speak [the English language] without accent or impediment of speech that would interfere with two-way radio conversation." However, applicants would be required to read, speak, write, and understand the English language to be eligible to apply for the ATP certificate.

(2) Permits applicants to only hold a third-class medical certificate at the time of the practical test. However as currently required, an ATP would be required to hold a first class medical certificate for operations requiring an ATP certificate.

(3) Requires an applicant to hold a commercial pilot certificate and an instrument rating, before applying for the ATP certificate.

(4) Eliminates the requirement that an applicant be a "high school graduate or its equivalent in the Administrator's opinion, based on the applicant's general experience and aeronautical experience, knowledge, and skill."

(5) Includes a proposal to revise the eligibility requirements for all certificates and ratings by specifying that an applicant would be required to:

a. Meet the aeronautical experience requirements for the category and class rating sought before applying for the flight portion of the practical test;

b. Pass the required knowledge test; and

c. Pass the required practical test.

(6) Clarify that an applicant need not possess the aeronautical experience requirements for an ATP certificate before taking the knowledge test. Applicants for other certificates and ratings currently are not required to obtain aeronautical experience requirements before taking the appropriate knowledge test. However, current § 61.153 requires an applicant for an ATP certificate with an airplane rating to meet the experience requirements in § 61.155 before applying to take the ATP knowledge test. In keeping with procedures for other knowledge tests, proposed § 61.153 would permit applicants to take the ATP knowledge test before obtaining the hours necessary to become an ATP.

(7) Includes requirements found in existing § 61.155 for applicants who are military pilots and applicants who hold a pilot license issued by a member State of ICAO.

Section 61.155 Aeronautical Knowledge

In order to accommodate proposed "§ 61.151 Applicability," existing "§ 61.153 Airplane rating: Aeronautical knowledge" would be renumbered § 61.155, and retitled to read "Aeronautical knowledge." Proposed § 61.155 would combine the aeronautical knowledge requirements for applicants of airplane, helicopter, and powered-lift ratings.

The proposed revisions to this section are as follows:

(1) Establishes all of the required aeronautical knowledge areas in this section. Currently, the aeronautical knowledge areas are located in separate sections of subpart F.

(2) Adds aeronautical knowledge requirements on windshear avoidance and aeronautical decision making and judgment.

(3) Clarifies that an applicant for a type rating would not be required to take an additional knowledge test, if the applicant already holds an ATP certificate with the appropriate category ratings.

Section 61.157 Flight Proficiency

The FAA proposes to change the title of existing § 61.155 "Airplane rating: Aeronautical experience" to read § 61.157 "Flight proficiency." The aeronautical experience requirements for an airplane rating would appear in proposed § 61.159. Proposed § 61.157 would combine the flight proficiency requirements for applicants of airplane, helicopter, and powered-lift ratings.

The significant proposed revisions in this section are as follows:

(1) Includes separate and revised areas of operation for the airplane category-single engine class rating, airplane category-multiengine class rating, rotorcraft category-helicopter class rating, and powered-lift category rating.

(2) Replaces the term, "flight proficiency requirements" with the term, "approved areas of operation," so the terminology in this section is the same as the other rules of part 61.

(3) Includes an administrative clarification that the type ratings on the superseded pilot certificate for the category and class of aircraft that the person satisfactorily accomplished the ATP practical test in will be elevated to the ATP certificate level.

Section 61.159 Aeronautical Experience: Airplane Category Rating

The FAA proposes to revise and redesignate § 61.157, "Airplane rating: Aeronautical skill," to read § 61.159 "Aeronautical experience: Airplane category rating."

Proposed § 61.159 would include the existing aeronautical experience requirements for an airplane category rating with no substantive changes.

Section 61.161 Aeronautical Experience: Rotorcraft Category and Helicopter Class Rating With a Type Rating

Existing "§ 61.159 Rotorcraft rating: Aeronautical knowledge" would be moved to proposed § 61.155. The FAA proposes to revise and redesignate § 61.161, "Rotorcraft rating: Aeronautical experience," to read § 61.161, "Aeronautical experience: Rotorcraft category and helicopter class rating with a type rating." Proposed § 61.161 will include the existing aeronautical experience requirements for a rotorcraft category rating with no substantive changes.

Section 61.163 Aeronautical Experience: Powered-Lift Category Rating

The FAA proposes to redesignate this section as § 61.163 "Aeronautical experience: Powered-lift category rating." Proposed § 61.163 will list the aeronautical experience requirements for an ATP certificate with a powered-lift category rating. Existing § 61.161, "Rotorcraft rating: Aeronautical skill," would be eliminated. The provisions of existing § 61.161 would be adequately covered by proposed §§ 61.43 and 61.153.

Section 61.165 Additional Aircraft Category Ratings

Proposed § 61.165 "Additional aircraft category ratings" would be a redesignation of existing § 61.165, "Additional category ratings."

The FAA proposes to add a powered-lift category rating to this section.

Section 61.167 General Privileges and Limitations

Proposed § 61.167 would be a redesignation of existing § 61.171. Proposed § 61.167 would contain the current limitation found in existing § 61.155(d). That limitation applies to applicants who credit SIC or flight engineer time in meeting the total time requirement for an ATP certificate. Existing § 61.167, "Tests," would be eliminated. The rules for the knowledge and practical test are found in proposed §§ 61.35 and 61.43.

Section 61.169 [Reserved]

The FAA proposes to eliminate this section and place it in reserve. The FAA has determined the provisions of § 61.169, "Instruction in air transportation service," are already addressed in §§ 121.411 and 135.337 of this chapter. Therefore, this section would no longer be necessary.

Section 61.171 [Reserved]

The provisions of existing § 61.171 would be moved to proposed § 61.167. This section would be placed in reserve.

Subpart H—Flight Instructors

The proposal to establish separate subparts for student and recreational pilot certificates would require moving the regulations for flight instructor certificates and ratings from subpart G to subpart H.

Section 61.181 Applicability

No substantive changes are proposed in this section.

Section 61.183 Eligibility Requirements

The significant proposed changes in this section are as follows:

(1) Requires applicants for a flight instructor certificate with an airplane rating or with a glider rating, to have demonstrated instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures prior to applying for the practical test.

(2) Permits applicants for a flight instructor certificate, who satisfactorily accomplish a flight instructor-instrument practical test in a multiengine airplane, and who also hold an airplane category and single-engine class rating on their flight instructor certificate will also be awarded a flight instructor instrument-airplane single engine rating.

(3) Requires applicants for flight instructor certificates to have logged at least 15 hours of PIC time in the category and class of aircraft that is appropriate to the flight instructor rating sought.

(4) Rewords the eligibility requirements for flight instructor certificates and ratings by specifying that an applicant would be required to:

a. Receive from the ground or flight instructor who gave the applicant training or reviewed the applicant's home study course, an endorsement that states the applicant is prepared for the knowledge test; and

b. Receive from the flight instructor who gave the applicant training, an endorsement that states the applicant is prepared for the practical test. These requirements are in addition to the current requirements for the applicant to pass the required knowledge test and practical test.

(5) Expands the current requirement for an applicant for a flight instructor certificate with an airplane or instrument rating to hold an instrument rating that is appropriate to the airplane class. Proposed § 61.183 would require applicants for an airship, helicopter, or a powered-lift rating to also hold an instrument rating that is appropriate to those aircraft ratings.

Section 61.185 Aeronautical Knowledge

Proposed § 61.185 contains the required aeronautical knowledge areas for a flight instructor certificate. The proposed revisions to this section are as follows:

(1) Requires flight instructor applicants to receive and log ground training on the aeronautical knowledge areas in which ground training is required for a recreational pilot certificate. This is an addition to the current requirements which only require aeronautical knowledge areas for a private and commercial pilot certificate.

(2) Requires flight instructor applicants to receive and log ground training on the aeronautical knowledge areas in which ground training is required for an instrument rating, if that person is applying for a flight instructor—airplane category and single-engine class rating; flight instructor—airplane category with an multiengine class rating; flight instructor—lighter-than-air category with an airship class rating; flight instructor—powered-lift category rating; flight instructor instrument—with the appropriate aircraft category and class rating.

Section 61.187 Flight Proficiency

The significant revisions being proposed for this section are as follows:

(1) Moves the requirement for the minimum experience requirements for a flight instructor who can train first-time flight instructor candidates to proposed § 61.195.

(2) Establishes separate and revised areas of operation for the flight instructor: -airplane category-single engine class rating, -airplane category-multiengine class rating, -rotorcraft category-helicopter class rating, -rotorcraft category-gyroplane class rating, -glider category-nonpowered class rating, -glider category-powered class rating, -lighter-than-air category-airship class rating, -lighter-than-air category-balloon class rating, and -powered-lift category rating.

Section 61.189 Flight Instructor Records

The proposed revision to this section is the requirement for a flight instructor to retain a copy of each syllabus they use to train students.

Section 61.191 Additional Flight Instructor Ratings

No substantive changes to this section are proposed. The requirement in existing § 61.191(a) that a flight instructor applicant for additional rating must hold an effective pilot certificate with ratings appropriate to the flight instructor rating sought would be moved to proposed § 61.183. The requirement in existing § 61.191(b) that a flight instructor applicant for an additional rating must have at least 15 hours of PIC time in the category and class of aircraft that is appropriate to the flight instructor sought would be moved to proposed § 61.183.

Section 61.193 Flight Instructor Endorsements and Authorizations

The FAA proposes to revise the title of this section from "Flight instructor authorizations" to read "Flight instructor endorsements and authorizations."

The proposed revisions to this section are as follows:

(1) Deletes the detailed listing of instructor endorsements. The listing would be replaced by more general language.

(2) Eliminates the amendment to existing § 61.193 that replaces "terminal control area" with "Class B airspace area."

Section 61.195 Flight Instructor Limitations and Qualifications

The FAA proposes to revise the title from "Flight instructor limitations" to read "Flight instructor limitations and qualifications."

The significant changes in this section are as follows:

(1) Revises the minimum experience requirements for a flight instructor who can train first-time flight instructor candidates.

(2) Makes editorial restructuring and rewording this section.

(3) Includes a revision to the current limitation that a flight instructor may not conduct more than 8 hours of flight training in 24 hours. The FAA proposes to limit a flight instructor to a total of 8 hours of commercial flying in a 24-hour period, and flight training would be considered commercial flying.

(4) Clarifies the current requirement that to give training in an aircraft that requires a type rating, the flight instructor must hold a type rating in that aircraft. The existing rule implies that the flight instructor is required to hold a type rating on the instructor's pilot and flight instructor certificates. The proposal would specify that flight instructors are required to hold a type rating on their pilot certificate and not their instructor certificate.

(5) Clarifies that a flight instructor, who gives instrument flight training for the issuance of an instrument rating or a type rating that is not limited to VFR, is required to hold the instrument rating, for the category and class of aircraft for which the instrument training is being given, on both the instructor's pilot certificate and flight instructor certificate.

(6) Revises the current flight instructor endorsements. The requirement for a flight instructor to endorse a student pilot's certificate and logbook for supervised PIC cross-country flight would be clarified. Under this proposal, the flight instructor would be required to determine that the flight could be performed within any limitations in the student's logbook that the instructor considers necessary for the safety of flight. The intent of the proposal is to ensure that the dispatching flight instructor is aware of any special limitations pertaining to an individual student.

(7) Clarifies that the flight instructor who endorses a pilot's logbook for a flight review or an instrument proficiency test must have conducted that flight review or instrument proficiency test.

(8) Requires a flight instructor to give all training from a control seat that meets the requirements of § 91.109. Section 91.109 requires, with the exception of a balloon, that the aircraft have fully functioning dual controls. The regulation provides for instrument flight training to be given in a single-engine airplane equipped with a single, functioning, throwover control wheel in place of fixed, dual elevator and aileron controls. Section 91.109 also requires a safety pilot to be in a control seat during simulated instrument flight conditions.

(9) Expands the current rule that requires a flight instructor to have at least 5 flight hours of operating experience as a PIC in the specific make and model of multiengine airplane or helicopter to include powered-lift aircraft. The complexity and flight characteristics of these aircraft require that a flight instructor be proficient in the aircraft and requires that the flight instructor requirements for the powered-lift parallel those requirements for the multiengine airplane and helicopter.

(10) Clarifies that the aircraft in which training is given should have at least two pilot seats and be of the same category and class for which the rating is sought. The proposal would require a flight instructor who trains a person who desires to fly a single-place aircraft to perform the pre-solo training in an aircraft that has 2 pilot seats, is of the same category and class as the single-place aircraft, and has similar flight characteristics to that of the single-place aircraft; and

(11) Clarifies that a flight instructor may not make any self-endorsment for the furtherance of a certificate, rating, proficiency test, flight review, authorization, operating privilege, practical test, or knowledge test. Although this has not been a problem in the past, periodically the FAA receives questions concerning this matter. Because of ambiguities in the rules, the current rules do not specifically prohibit flight instructors from self-endorsing their own logbook to meet the requirements for a flight review, instrument proficiency test, or taking a written or practical test.

(12) Revises the current amendment in this section, by changing the term "terminal control area" to read "Class B airspace area."

Section 61.197 Renewal of Flight Instructor Certificates

On April 13, 1994, the FAA issued Amendment Nos. 61.95 and 141–5 (59 FR 17646) that amends current § 61.197. That amendment deletes the 24 hour training that holders of flight instructor certificates are required to receive in an approved flight instructor refresher clinic. That amendment is contained in this Notice with minor word changes.

The proposed revision to this section are as follows:

(1) Permits applicants for renewal to hold at least a third-class medical certificate at the time of the renewal or meet the proposed medical requirements in the case of an applicant for a glider or balloon rating renewal; and

(2) Revises the requirements for a person to renew a flight instructor certificate. This revision for renewing a flight instructor certificate proposes to state that a person may renew their flight instructor certificate without accomplishing a practical test by presenting to an FAA FSDO:

a. A record of training students that shows during the preceding 24 calendar months, the person has endorsed at least 5 students for a practical test for a certificate or rating, and at least 80 percent of those students passed that test on the first attempt.

b. A satisfactory record that shows during the preceding 24 calendar months, the person has served as a company check pilot, chief flight instructor, company check airman or flight instructor in a part 121 or part 135 operation, or a comparable position involving the regular evaluation of pilots, and provided the FAA FSDO is acquainted with that person's duties and responsibilities and has determined the person has satisfactory knowledge of current pilot training, certification, and standards. An example of a person who would hold a comparable position involving the regular evaluation of pilots would be a designated pilot examiner, pilot proficiency examiner, FAA Flight Standards Inspector, or FAA Aviation Standards Specialist involved with developing pilot training and testing standards.

c. A graduation certificate showing the person satisfactorily accomplished an approved flight instructor refresher course, provided the course was satisfactorily accomplished before the expiration date on the person's flight instructor certificate.

(3) Permits a person who satisfactorily accomplishes the flight instructor renewal requirements within 90 days before the expiration date of their certificate, to be considered to have accomplished the requirements in the month due, and the certificate will be renewed for an additional 24 calendar months beyond the expiration date.

Section 61.199 Expired Flight Instructor Certificates and Ratings

No substantive modifications are proposed in this section.

Section 61.201 Conversion to the Current Flight Instructor Ratings

The FAA proposes to revise the existing § 61.201 and replace it with provisions for earning the following flight instructor certificates and rating that are being proposed: (1) glider category and powered class rating; (2) glider category and nonpowered class rating; (3) lighter-than-air category and airship class rating; (4) instrument-airship rating; (5) lighter-than-air category and balloon class rating; (6) instrument-airplane single-engine; and (7) instrument-airplane multiengine.

Subpart I—Ground Instructors

The FAA proposes to include ground instructor certificates in part 61. This subpart would incorporate the regulations that are currently in part 143, which would be deleted.

Section 61.211 Applicability

This section would describe the applicability of proposed subpart I.

Section 61.213 Eligibility Requirements

This proposed section would:

(1) include ground instructor certificates and ratings in part 61;

(2) revise ground instructor certificates and ratings;

(3) require all applicants for a certificate or rating to read, write, speak, and understand the English language;

(4) clarify that all applicants for a certificate or rating need to pass a knowledge test; and

(5) require applicants for a ground instructor certificate or rating to pass a practical test.

The eligibility requirements would continue to waive the "fundamentals of instruction" portion of the knowledge test for certain applicants. (This provision is currently found in FAA Order 8700.1). The reference in existing § 143.11 for a ground instructor applicant to be of good moral character would be eliminated.

Under this section an applicant would not be eligible for a ground instructor certificate if the applicant holds a current flight instructor certificate for the same category and class of aircraft. A flight instructor is permitted to give ground training on the aircraft for which the person holds flight instructor ratings. Therefore, the FAA believes issuing a flight instructor certificate that has identical ground instructing privileges as a ground instructor certificate is unnecessary. A flight instructor would not receive any additional privileges by obtaining a ground instructor certificate in the same category and class.

Section 61.215 Aeronautical Knowledge

The requirements in existing § 143.11 would be clarified to include the minimum knowledge requirements on the fundamentals of instruction and the appropriate aeronautical knowledge areas for the aircraft category rating sought.

This section would require a person who trains a ground instructor applicant to meet minimum experience requirements.

Section 61.217 Ground Instructor Proficiency

This section would include the proposed proficiency requirements that an applicant would be required to meet to pass the proposed practical test.

Section 61.219 Ground Instructor Records

This proposed section would require a ground instructor to sign the records of students to whom ground training is given and retain a record of the training given.

Section 61.221 Additional Ground Instructor Ratings

This section proposes that the holder of a ground instructor certificate who applies for an additional rating on that certificate be required to pass a knowledge test on the subjects that pertain to the rating. Such a requirement (the requirement can be found in FAA Order 8700.1) is not expressed in existing part 143 but currently must be met when adding a rating on a ground instructor certificate.

Section 61.223 Ground Instructor Endorsements and Authorizations

This proposed section would list the endorsements and authorizations that a ground instructor could give. A similar section does not appear in part 143.

Section 61.225 Recency of Experience for a Holder of a Ground Instructor Certificate

This proposed section would establish the recency of experience requirements for a person who holds a ground instructor certificate. The proposal would establish recency of experience requirements that would require a ground instructor to:

1. Give a person training and has endorsed that person for a knowledge or practical test within the preceding 12 calendar months; or

2. Receive an endorsement from an authorized flight or ground instructor, which states that the person has demonstrated satisfactory competence in the knowledge and proficiency requirements listed in proposed §§ 61.215 and 61.217, that apply to the ground instructor ratings held.

Section 61.227 Conversion to the Current System of Ground Instructor Ratings

This proposed section would include the procedures for obtaining the proposed ground instructor ratings.

Appendix A to Part 61—Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings

The FAA proposes to delete appendix A from part 61. The proposal is a result of establishing areas of operation in part 61 to parallel the Practical Test Standards that cover the administering of practical tests for the ATP certificate with the airplane class and type ratings.

Appendix B to Part 61—Practical Test Requirements for Rotorcraft Airline Transport Pilot Certificates With a Helicopter Class Rating and Associated Type Ratings

On August 11, 1992, the FAA proposed deleting appendix B from part 61 in the NPRM No. 92–10, "Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking at Training Centers" (57 FR 35888–35938). Therefore, appendix B of part 61 has not been reprinted in this rulemaking project.

F. Section by Section Discussion of Part 141—Pilot Schools

Subpart A—General

Section 141.1 Applicability

This proposed section contains format revisions only.

Section 141.3 Certificate required

No modifications are proposed for this section.

Section 141.5 Requirements for a Pilot School Certificate

The proposed changes for this section are as follows:

(1) Replaces the title "Pilot school certificate" with "Requirements for a pilot school certificate;"

(2) Includes the proposed modification of a pilot school's quality of training requirements;

(3) Revises the current requirements for a pilot school certificate by specifying that the application is to be completed in a manner prescribed by the Administrator;

(4) Clarifies that an applicant for a pilot school certificate must hold a provisional pilot school certificate for at least 24 calendar months prior to applying for a pilot school certificate;

(5) Revises the current provisions that require in order for an applicant to be issued a pilot school certificate, that applicant must have trained at least 10 students for a certificate or rating and at least 8 of the 10 most recent graduates tested, by an FAA Inspector or examiner, passed that test the first time. The revision in the proposed § 141.5, would require an applicant to have trained and recommended at least 10 students for:

a. A practical or knowledge test for a pilot, flight instructor, or ground instructor certificate or rating, and at least a 80 percent passed the test on the first attempt, and the tests must have been conducted by an FAA inspector or an examiner who is not an employee of the school; or

b. An end-of-course test for a training course in appendix K.

This proposed school certificate issuance requirement deletes the requirement for 8 out of every 10 most recent graduates to have passed the practical or knowledge test on the first attempt. Using this percentage before a school is issued a certificate will ensure more quality of training than the current requirements which pressure schools into ensuring that every 8 out of its most recent 10 graduates passed on the first attempt. During the public hearings, some schools stated that the current requirements place a school in a dilemma by forcing them to pass 8 out of every 10 graduates or loose their school certificate. Under the current requirement, it is conceivable for a provisional pilot school to have graduated over 100 applicants for a practical or knowledge, and have 97 of those applicants pass the required knowledge or practical tests without one failure and then have the next 3 applicants fail the test. Under this scenario, the school would not be qualified to have their certificate issued. Under this proposed revision, the FAA believes quality of training would be maintained, but the schools would not be forced to pass 8 of every 10 graduates in order for a school to be issued. For example, this issuance method would work as follows:

A provisional school graduates 100 students from its part 141-approved courses within the 24 calendar-month period prior to the date application is made for the issuance of a pilot school certificate. Out of those 100 graduates, there were 50 knowledge tests attempted and 100 practical tests attempted for a total of 150 attempts. Out of those 150 practical and knowledge tests attempted, the school would be required to have at least an 80 percent pass rate on the first attempt, or in this case, at least 120 students would have had to pass on the first attempt in order for a pilot school certificate to be issued.

Another example is a provisional school provides only part 141-approved ground school training for an instrument rating course. It graduates only 10 students from its part 141 approved instrument rating ground school course within a 24 calendar month period prior to the date application is made for issuance of a pilot school certificate. Out of those 10 graduates, there were 10 knowledge tests attempted for a total of 10 attempts. Out of those 10 attempts, that provisional school would be required to have at least an 80 percent pass rate on the first attempt, or in this case, at least 8 students would have had to pass on the first attempt in order for a school certificate to be issued.

Another example is a provisional school that has part 141 course approval for a Private Pilot Certification Course under appendix A and also a Test Pilot Course under appendix K. The provisional school graduates 5 students from its Private Pilot Certification Course and 5 from its Test Pilot Course within the 24-calendar month period prior to the date application is made for issuance of a pilot school certificate. Out of those 5 private pilot graduates, there were 5 knowledge tests attempted and 5 practical tests attempted for a total of 10 attempts. There were 5 end-of-course tests accomplished by students enrolled the school's Test Pilot Course. In order for a pilot school certificate to be issued, the provisional pilot school would have to show an 80 percent pass rate on the first attempt for its private pilot applicants. Therefore, 4 private pilot graduates would have to pass the knowledge test on the first attempt, and 4 private pilot graduates would have had to have passed the practical test on the first attempt. Otherwise, the students enrolled in the Test Pilot Course or the other courses of appendix K only count for the recent activity of training requirements.

Section 141.7 Provisional Pilot School Certificate

No substantive changes are proposed for this section.

Section 141.9 Examining Authority

No modifications are proposed for this section.

Section 141.11 Pilot School Ratings

The FAA proposes to revise this section by revising the aeronautical knowledge areas, reorganizing the current certificate courses and eliminating the test courses, and replacing the term, "flight proficiency requirement" with "approved areas of operations."

The proposed changes for this section would establish the following courses:

(1) *Certification and rating courses:*

(i) Recreational pilot course.

(ii) Private pilot course.

(iii) Commercial pilot course.

(iv) Instrument rating course.

(v) Airline transport pilot course.

(vi) Flight instructor course.

(vii) Flight instructor instrument course.

(viii) Ground instructor course.

(ix) Additional aircraft category or class rating course.

(x) Aircraft type rating course.

(2) *Special preparation courses:*

(i) Pilot refresher course.

(ii) Flight instructor refresher course.

(iii) Ground instructor refresher course.

(iv) Agricultural aircraft operations course.

(v) Rotorcraft external-load operations course.

(vi) Special operations course.

(vii) Test pilot course.

(3) *Pilot ground school courses.*

Section 141.13 Application for Issuance, Amendment, or Renewal

Proposed § 141.13 would revise the existing requirement that requires a pilot school to submit three copies of a training course outline for the issuance or amendment of a pilot school certificate or rating. Two copies of the training course outline are sufficient.

Section 141.15 Location of Facilities

No substantive changes are planned. However, the wording of proposed § 141.15 has been changed to a more permissive language to parallel the proposed changes in § 61.2.

Section 141.17 Duration of Certificates and Examining Authority

The FAA proposes to replace the title "Duration of certificates" to read "Duration of certificates and examining authority." The FAA also proposes to add the provision stating that a pilot school or provisional pilot school certificate expires whenever "the Administrator has determined a school has not acted in good faith with a student to whom it has a contractual agreement to provide training." The proposal is a result of past events where some unscrupulous school operators have made contractual agreements with students and then have failed to meet those agreements. As an example, in the 1980's a part 141 school continued to advertise its services when the school was not financially capable. Students were fraudulently required to make payments for the entire course prior to beginning the course. The school requested payment under false pretenses as covering the entire cost of training, room, and board. When the students arrived to begin their training, they were informed the school was bankrupt, and they could only get their training if they would agree to pay for the fuel for the aircraft and pay their own room and board. The FAA was unable to stop this school operator from continuing this unscrupulous practice, because the current rules do not prevent it. Further investigation of this school operator showed that this was not the only time this operator had done this to students. This particular operator would

close up business in one area of the United States after defrauding students, and then begin business in another location. Although the majority of part 141 school operators provide professional flight training and are honorable, unscrupulous operators should not be allowed to continue in business. The FAA believes this proposal will permit it to close down unscrupulous operators in a more expeditious manner.

Section 141.18 Carriage of Narcotic Drugs, Marihuana, and Depressant or Stimulant Drugs or Substances

No modifications are proposed for this section.

Section 141.19 Display of Certificate

Format revisions are proposed for this section.

Section 141.21 Inspections

Format revisions are proposed for this section.

Section 141.23 Advertising Limitations

This section would be revised by clarifying that courses are approved under part 141.

Section 141.25 Business Office and Operations Base

Format revisions are proposed for this section.

Section 141.27 Renewal of Certificates and Ratings

The proposed changes for this section are as follows:

(1) Modifies a pilot school's quality of training requirements. As a result of information obtained during the public hearings and comments received in the docket on this matter, the FAA proposes to revise the quality of training requirements from 8 out of 10 of the most recent graduates pass rate to an 80 percent requirement;

(2) Eliminates the current requirement that the renewal of a certificate must be obtained no less than 30 days prior to the expiration of the provisional pilot school certificate;

(3) Clarifies the requirements for a school that does not meet the proposed renewal requirements may apply for a provisional pilot school certificate; and

(4) Revises the requirements for renewing a pilot school requirement and rating. A pilot school would be required to have trained and recommended at least 10 students for a practical or knowledge test for a pilot, flight instructor, or ground instructor certificate or rating, and at least 80 percent of the students must have passed the test on the first attempt, and the tests must have been conducted by an FAA inspector or an examiner who is not an employee of the school, or an end-of-course test for a training course in appendix K. As an example, see § 141.5.

Section 141.29 [Reserved]

This section would continue to be reserved.

Subpart B—Personnel, Aircraft, and Facilities Requirements

Section 141.31 Applicability

No substantive changes are proposed for this section.

Section 141.33 Personnel

The proposed changes for this section are as follows:

(1) Permits a pilot school to designate check instructors to conduct student stage checks, end-of-course tests, and instructor proficiency checks.

(2) Clarifies that the assistant chief instructor would be required to meet the requirements of proposed § 141.36.

Section 141.35 Chief Instructor Qualifications

Proposed § 141.35 would delete the current requirement for a person who applies as a chief ground instructor to have 1 year of experience as a ground instructor at a certificated pilot school.

Section 141.36 Assistant Chief Instructor Qualifications

Proposed § 141.36 would delete the current requirement for a person who applies as an assistant chief ground instructor to have 6 months of experience as a ground instructor at a certificated pilot school.

Section 141.37 Check Instructor Qualifications

The FAA proposes to redesignate current § 141.37, "Airports" to § 141.38. Proposed § 141.37, "Check instructor qualifications" would establish the proposed qualifications for a person to be designated as a check instructor.

Section 141.38 Airports

The FAA proposes to redesignate current § 141.37 to § 141.38. Proposed § 141.38 would permit pilot schools at seadromes to use adequate non-permanent lighting or shoreline lighting, approved by the Administrator, for night training flights in seaplanes. Few permanently lighted seadromes are in use. The FAA believes that the existing regulation for permanent lighting at all airports used by a pilot school for night training is not necessary at seadromes. Adequate non-permanent lighting or shoreline lighting is available for night seaplane takeoff and landing operations.

Section 141.39 Aircraft

The proposed changes for this section are as follows:

(1) Requires aircraft used by a pilot school or a provisional pilot school certificate holder be maintained in accordance with subpart E of part 91.

(2) Requires the school's aircraft to be under an inspection program for each airframe, aircraft engine, propeller, appliance, and component part be maintained.

(3) Requires that the school's aircraft used for the demonstration of instrument skills to be equipped and maintained for IFR operations.

(4) Revises the existing provisions that requires aircraft used for "flight instruction and solo flights in a course of training for agricultural aircraft operations and similar aerial work operations" do not have to hold a standard airworthiness certificate. The revised language would be more general and would permit each aircraft to hold a standard airworthiness certificate unless the Administrator determines that, because of the nature of the approved course, an aircraft not having a standard airworthiness certificate may be used.

(5) Permit the use of aircraft with a primary airworthiness certificate to be used by schools. The purpose for this proposal is a result of an oversight that occurred during the issuance of the Primary Aircraft Final Rule (57 FR 41360; September 9, 1992).

In the "Supplementary Information" section (in the paragraphs entitled "Rental and Flight Instruction" and "Pilot Certification") of that final rule, the FAA stated that the use of primary aircraft are permitted to be used for rental, flight instruction, and pilot certification. However, the FAA did not provide for this in that final rule.

Section 141.41 Flight Training Devices and Training Aids

This proposal would replace the title of the existing § 141.41 "Ground trainers and training aids" with "Flight training devices and training aids." Otherwise, the section would include no substantive changes.

Section 141.43 Pilot Briefing Areas

Format modifications are proposed for this section.

Section 141.45 Ground Training Facilities

Format modifications are proposed for this section.

Subpart C—Training Course Outline and Curriculum

Section 141.51 Applicability

No modifications are proposed for this section.

Section 141.53 Approval Procedures for a Training Course: General

The FAA proposes to replace the title "Training course outline: General" with "Approval procedures for a training course: General." The proposed section would require two copies of each training course outline to be submitted to the FAA. The existing rule requires an application for approval of an initial or amended training course outline to be in triplicate to the FAA. Two copies of the training course outline are sufficient and the FAA proposes that only two copies be submitted. Making three copies also causes more paper to be generated for any slight variance in a training course.

Commencing in 1 year after the effective date of this rule, proposed § 141.53 would require pilot schools or provisional pilot schools to only request approval for the new training courses.

Section 141.55 Training Course: Contents

The FAA proposed to replace the title "Training course outline: Contents" with "Training course: Contents." The proposal would permit pilot schools to seek approval of training courses that train to a performance standard and would modify a pilot school's quality of training requirements.

Section 141.57 Special Curricula

No substantive changes are proposed for this section.

Subpart D—Examining Authority

Section 141.61 Applicability

Format modifications are proposed for this section.

Section 141.63 Examining Authority Qualification Requirements

The FAA proposes to replace the title "Application and qualification" with "Examining authority qualification and requirements."

The proposed changes for this section are as follows:

(1) Modifies the quality of training requirements for a pilot school to maintain examining authority.

(2) Deletes the requirement for a specific number of graduates to pass interim tests to retain examining authority. The FAA believes it is more important for students to receive quality training than to pressure schools into ensuring that every 9 out of its most recent 10 graduates passed on the first attempt.

(3) Specifies that pilot schools would not receive examining authority for training courses that train to a performance standard.

Section 141.65 Privileges

Proposed § 141.65 would permit a pilot school with examining authority to recommend graduates for all pilot, flight instructor, and ground instructor certificates. This would eliminate the existing restriction on examiners from performing practical tests for the flight instructor certificate, ATP certificate, and turbojet type ratings. This issue was raised by Harrison Hamer, who submitted a comment to the FAA in response to the DOT's request for comments (57 FR 4744; February 7, 1992). In addition, the FAA has issued numerous exemptions to this rule without any degradation in safety.

Section 141.67 Limitations and Reports

The proposed changes for this section are as follows:

(1) Deletes the current provision that requires a student at a pilot school with examining authority to accomplish all of the training courses at that school.

(2) Expands the existing requirement for a pilot school with examining authority to submit the training record of each graduate who is recommended for a certificate or rating to a FAA FSDO.

Subpart E—Operating Rules

Section 141.71 Applicability

No modifications are proposed for this section.

Section 141.73 Privileges

Proposed § 141.73 would be reformatted. Proposed § 141.73 would specify that pilot schools who hold examining authority would not be permitted to seek approval of training courses that train to a performance standard.

Section 141.75 Aircraft Requirements

(1) The FAA proposes to add the proposed test pilot and special operations courses to courses for which an aircraft certificated in the restricted category may be used.

(2) Permit the use of aircraft with a primary airworthiness certificate to be used by schools. The purpose for this proposal is a result of an oversight that occurred during the issuance of the Primary Aircraft Final Rule (57 FR 41360; September 9, 1992).

In the SUPPLEMENTARY INFORMATION section (in the paragraphs entitled "Rental and Flight Instruction" and "Pilot Certification") of that final rule, the FAA stated that the use of primary aircraft are permitted to be used for rental, flight instruction, and pilot certification. However, the FAA did not provide for this in that final rule.

Section 141.77 Limitations

This section would be revised by dividing the current section into two paragraphs. The current reference to "flight check or written test, or both" would be replaced with a "proficiency test or knowledge test or both." The tests could include a flight check, a review of the student's aeronautical knowledge, or both.

Section 141.79 Flight Training

On April 13, 1994, the FAA issued Amendment Nos. 61.95 and 141–5 (59 FR 17646) that amends current § 61.197. That amendment deletes the 24 hour training that holders of flight instructor certificates are required to receive in an approved flight instructor refresher clinic. That amendment is contained in this Notice with minor word changes.

The proposed changes for this section are as follows:

(1) Replaces the term "designated chief instructor or his assistant" with "chief instructor," "assistant chief instructor," or "check instructor."

(2) Permits the assistant chief instructor or check instructor to administer proficiency checks to a school's instructors.

(3) Revises the flight and proficiency checks accomplished by flight instructors.

(4) Requires chief and assistant chief instructors to complete at least once every 12 calendar months an approved syllabus of training consisting of ground or flight training, or both, or an approved flight instructor refresher course.

Section 141.81 Ground Training

This section would be revised to replace "designated chief instructor or his assistant" with "chief instructor," "assistant chief instructor," or "check instructor."

Section 141.83 Quality of Training

The proposed revisions to this section are as follows:

(1) Reformats and rewords this section for clarity.

(2) Modifies the quality of training requirements. This proposal would require a school to provide training of such quality that at least 80 percent of their students for a practical or knowledge test were successful on the first attempt within the period of 24

calendar months prior to the date of application for the school certificate.

Section 141.85 Chief Instructor Responsibilities

The section would be revised by clarifying that the chief instructor serves a supervisory role at a pilot school. The current requirements for the chief instructor to "conduct" checks and tests would be revised for the chief instructor to "ensure" these checks and tests are accomplished. A new paragraph is proposed for this section that would permit the chief instructor to either conduct the check or delegate authority for conducting stage checks, end-of-course tests, and flight instructor proficiency checks to the assistant chief instructor or a check instructor.

Section 141.87 Change of Chief Instructor

Proposed § 141.87 would permit a pilot school or provisional pilot school to replace its chief instructor with an assistant chief instructor or a check instructor, and would permit the assistant chief instructor or check instructor to give stage and end-of-course tests for a maximum of 60 days until a new chief instructor is designated.

Section 141.89 Maintenance of Personnel, Facilities, and Equipment

Editorial modifications are proposed for this section.

Section 141.91 Satellite Bases

Editorial modifications are proposed for this section.

Section 141.93 Enrollment

The proposed revisions to this section would eliminate the requirement for a pilot school to send a copy of each enrollment certificate to its FAA FSDO. The school would be required to maintain a monthly listing of persons enrolled in each course at the school. This proposal would provide paperwork reduction.

Section 141.95 Graduation Certificate

Minor editorial modifications are proposed for this section.

Subpart F—Records

Section 141.101 Training Records

This section would be reformatted.

Appendix A—Recreational Pilot Certification Course

The FAA proposes to establish criteria for a new certification course for recreational pilot certificates. The course in existing appendix A, "Private Pilot Certificate Course (Airplanes)," would be moved to proposed appendix B.

Appendix B—Private Pilot Certification Course

The FAA proposes to establish criteria for a certification course for a private pilot certificate in all categories of aircraft. The course in existing appendix B, "Private Test Course (Airplanes)," would be eliminated.

Appendix C—Instrument Rating Course

The FAA proposes to establish criteria for an instrument rating course. The course in existing appendix C, "Instrument Rating Course (Airplanes)," would be included in this proposed course.

Appendix D—Commercial Pilot Certification Course

The FAA proposes to establish criteria for a certification course for a commercial pilot certificate. The course in the existing appendix D, "Commercial Pilot Certificate Course (Airplanes)," is included in this proposed certification course.

Appendix E—Airline Transport Pilot Certificate Course

The FAA proposes to establish criteria for a certification course for an ATP certificate with an airplane, helicopter, or powered-lift rating. The course in existing appendix E, "Commercial Test Course (Airplanes)," would be eliminated.

Appendix F—Flight Instructor Certification Course

The FAA proposes to establish criteria for a course for a flight instructor certification course. The courses in existing appendix F, "Rotorcraft, Gliders, Lighter-Than-Air Aircraft and Aircraft Rating Courses," would be moved to proposed appendixes B, C, D, I, and J.

Appendix G—Flight Instructor Instrument (Aircraft Category and Class) Certification Course

The FAA proposes to establish criteria for a course for a flight instructor-instrument certification course. The course in existing appendix G, "Pilot Ground School Courses," would be moved to proposed appendix L.

Appendix H—Ground Instructor Certificate Course

The FAA proposes to establish criteria for a course for a ground instructor certification. The courses found in existing appendix H, "Test Preparation Courses," would be moved to proposed appendixes C, E, F, and G.

Appendix I—Additional Aircraft Category or Class Rating Course

The FAA proposes to establish criteria for an additional aircraft category or class rating courses for a person who desires to add an additional category or an additional class rating on their pilot certificate.

Appendix J—Aircraft Type Rating Course, for Other Than Airline Transport Pilot

The FAA proposes to establish criteria for an aircraft type rating course, for other than ATP, for a person who desires to add a type rating on their pilot certificate.

Appendix K—Special Preparation Courses

The FAA proposes to establish criteria for special preparation courses, which would be similar to the current appendix H, "Test Preparation Courses."

Appendix L—Pilot Ground School Course

This proposed appendix would be similar to current appendix G, "Pilot Ground School Courses."

International Civil Aviation Organization and Joint Aviation Regulations

During this regulatory review of parts 1, 61, 141, and 143, the FAA conducted a study that compares Federal Aviation Regulations and International Civil Aviation Organization Regulations. A copy of that comparison study is located at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, Room 915G, under Docket No. 25910, 800 Independence Avenue, SW., Washington, DC 20591. Throughout this regulatory review, the FAA has attempted to propose rules that are in harmony with the international community. Where differences will occur, the FAA will comply with FAA Order 2100.13A, The FAA Regulatory Handbook. This Order directs the FAA to identify differences between the International Civil Aviation Organization Regulations and the Federal Aviation Regulations.

The Joint Aviation Regulations (JAR) pilot licensing rulemaking action, which was issued over one year ago and withdrawn, is on hold. To date, no harmonization comparison has been made with the JAR rulemaking action. However, when that rulemaking action is reissued, the FAA intends to conduct a comparison study and will attempt to negotiate conformity for those rules where there are significant differences.

Regulatory Evaluation Summary

Cost-Benefit Analysis

The FAA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under E.O. 12866, "Regulatory Planning and Review." This section has been determined to be "significant" under the Department of Transportation's regulatory policies and procedures. The FAA prepared a preliminary Economic Assessment for the NPRM. The FAA has evaluated the anticipated costs and benefits, which are summarized below. For more detailed economic information, see the full regulatory evaluation contained in the docket.

Costs

The FAA estimates that the present value of the costs of this proposed rule discounted 7 percent over the next 10 years is $6.6 million. Proposed § 61.212 on increased recordkeeping requirements is the most costly provision at $437,000 annually representing 46 percent of the total annual cost of almost $950,000. Proposed § 61.217 on the practical test for instructor applicants is the second most costly provision at $435,000 annually, representing 43.9 percent of the total annual cost.

Benefits

The FAA also estimates that the present value of the benefits of this proposed rule discounted 7 percent over the next 10 years is $368.7 million. Proposed § 61.65 reducing the amount of flight time needed before applying for an instrument rating provides the greatest benefit in cost savings at $18.7 million annually representing 36 percent of the total annual benefits ($52.5 million annually). Various provisions that together provide numerous safety benefits result in annual benefits of $21.1 million or 40 percent of the total.

Economic Conclusions

Based upon the low compliance cost coupled with the large cost savings and the safety benefits, the FAA concludes that the proposed rule is cost beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant cost impact on a substantial number of small entities."

All of the major changes in the rules discussed in this NPRM affect pilots, flight instructors, and ground instructors, who are individuals rather than business or government entities. The revisions that impact pilot schools do not exceed the cost-threshold level, as found in the RFA. In fact, as this report shows, the proposed rule would result in net overall annual cost savings of about $3,000 per pilot school. The FAA has determined that the proposed revisions would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Office of Management and Budget (OMB) requires Federal agencies to determine whether any proposed rule or regulation would have an impact on international trade. The revisions discussed in this NPRM primarily affect the domestic operations of individual pilots, flight instructors and ground instructors, not of business entities. In the case of pilot schools or aircraft operators, it is not likely that the services produced by these entities would involve the international trade flows of aviation products or services and thus do not impact trade opportunities for U.S. firms doing business overseas and foreign firms doing business in the United States. Thus, the FAA believes the proposed changes would have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the United States. The FAA welcomes any comments on this issue.

Federalism Implications

The regulations proposed in this notice would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have federalism implications requiring the preparation of a Federalism Assessment.

Paperwork Reduction Act Approval

The reporting and recordkeeping requirements associated with this rule are being submitted to the Office of Management and Budget (OMB) for approval in accordance with 44 U.S.C. 35 under OMB No: ; Title: Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules; Form(s) None; Average Burden Hours per Respondent:

For Further Information Contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–4735.

Comments on these information collection requirements should be submitted to the Office of Information and Regulatory Affairs OMB, Washington, DC 20503, Attention: Desk Officer for FAA. Comments submitted to OMB should also be submitted to the FAA docket.

Specific Time and Hour Requirements

The FAA has proposed specific time and hour requirements in various sections of this NPRM. These specific time and hour requirements may be modified in light of the comments received to the docket, thus modifying the scope of the NPRM.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is a significant regulatory action under Executive Order 12866. In addition, it is certified that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. A draft regulatory evaluation of the proposal, including an initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION:CONTACT.**

List of Subjects

14 CFR Part 1

General definitions, Abbreviations and symbols, Rules of construction.

14 CFR Part 61

Air safety, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Compensation, Education, Foreign persons, Helicopters, Pilots, Rotorcraft, Safety, Students, Teachers, Transportation.

14 CFR Part 141

Air safety, Air transportation, Aircraft pilots, Airmen, Airplanes, Aviation safety, Balloons, Education, Educational facilities, Helicopters, Pilots, Rotorcraft, Safety, Schools, Students, Teachers, Transportation.

14 CFR Part 143

Air safety, Air transportation, Airmen, Airplanes, Aviation safety, Education, Educational Facilities, Safety, Students, Teachers, Transportation.

The Proposed Amendments

In consideration of the foregoing, under the authority at 49 U.S.C. 40113, the Federal Aviation Administration proposes to amend parts 1, 61, 141, and 143 of the Federal Aviation Regulations (14 CFR Parts 1, 61, 141, and 143) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g); 49 U.S.C. 40101–40104, 40109, 40113, and 44701.

2. Section 1.1 is amended by revising the definitions of "balloon", "flight time", and "pilot in command" to read as follows:

§ 1.1 General Definitions.

* * * * *

Balloon is an aircraft that is not engine driven, but sustains flight with either gas buoyancy or with an airborne heater.

* * * * *

Flight time means:

(1) Pilot time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing; or

(2) For a nonpowered glider, that time when the glider commences being towed for the purpose of flight and ends when the glider comes to rest after landing.

* * * * *

Pilot in command means:

(1) A person who has final authority and responsibility for the operation and safety of the flight;

(2) A person who holds the appropriate category, class, and type rating, if appropriate;

(3) A person who has been designated as pilot in command before or during the flight; and

(4) Involves a flight that occurs in actual flight conditions in an aircraft.

* * * * *

Authority: 49 U.S.C. 106(g); 49 U.S.C. 40101–40104, 40109, 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45106, and 45301–45302.

3. Part 61 is revised to read as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

Subpart A—General

Sec.
61.1 Applicability.
61.1a Clarification of terms.
61.2 Certification of foreign pilots, flight instructors, and ground instructors.
61.3 Requirement for certificates, ratings, and authorizations.
61.5 Certificates and ratings issued under this part.
61.7 Obsolete certificates and ratings.
61.9 Written syllabus for conducting training.
61.11 Expired pilot certificates and reissuance.
61.13 Awarding of airman certificates, ratings, and authorizations.
61.14 Refusal to submit to a drug test.
61.15 Offenses involving alcohol or drugs.
61.16 Refusal to submit to an alcohol test or to furnish test results.
61.17 Temporary certificate.
61.19 Duration of pilot and instructor certificates.
61.21 Duration of a Category II pilot authorization.
61.23 Duration and requirement for a medical certificate.
61.25 Change of name.
61.27 Voluntary surrender or exchange of certificate.
61.29 Replacement of a lost or destroyed airman or medical certificate or knowledge test report.
61.31 Type rating, additional training, and authorization requirements.
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Subpart A—General

§ 61.1 Applicability.

(a) This part prescribes the requirements for issuing pilot, flight instructor, and ground instructor certificates and ratings, the conditions under which those certificates and ratings are necessary, and the authorizations, privileges, and limitations of those certificates and ratings.

(b) This part prescribes the requirements for issuing pilot, flight instructor, and ground instructor certificates and ratings for persons who have taken courses approved by the Administrator under other parts of this chapter.

§ 61.1a Clarification of terms.

For the purposes of this part:

(a) *Aeronautical experience* means pilot time obtained in an aircraft, flight simulator, or flight training device for meeting the appropriate training and flight time for an airman certificate, rating, flight review, or recency of flight experience, of this part.

(b) *Airman certificate* means all pilot certificates (other than a student pilot certificate), flight instructor certificates, and ground instructor certificates issued under this part.

(c) *Authorized ground instructor* means—

(1) A person who holds a current ground instructor certificate issued under this part with ratings that apply to the training being given, and that person is authorized by the Administrator to give the training; or

(2) Any other person authorized by the Administrator to give ground training under this part in accordance with privileges and limitations specified by the Administrator.

(d) *Authorized flight instructor means*—

(1) A person who holds a current flight instructor certificate issued under this chapter with ratings that apply to the training being given, and that person is authorized by the Administrator to give the training; or

(2) Any other person authorized by the Administrator to give flight training under this part in accordance with privileges and limitations specified by the Administrator.

(e) *Cross-country time* means that time obtained in actual flight and, except as provided in paragraph (f)(3) of this section, each flight must include a landing at a point other than the point of departure, and—

(1) The person must—

(i) Hold a private, commercial pilot, or airline transport certificate issued under this part; and

(ii) Have used dead reckoning, pilotage, electronic navigation aids, or radio aids to navigate to the landing point.

(2) For the purpose of meeting the cross-country time eligibility requirements for a private or commercial pilot certificate or an instrument rating, the person must have obtained the time in actual flight, and—

(i) The point of landing must be at least a straight-line distance of more than 50 nautical miles from the point of departure; and

(ii) Dead reckoning, pilotage, electronic navigation aids, or radio aids were used to navigate to the landing point.

(3) For a military pilot, who holds or is qualified for a private or commercial pilot certificate under § 61.73 of this part, cross-country time is that time obtained—

(i) In actual flight in a military aircraft; and

(ii) On a flight that is at least a straight-line distance of more than 50 nautical miles from the point of departure, and dead reckoning, pilotage, electronic navigation aids, or radio aids were used for navigation.

(f) *Examiner* means any person who is authorized by the Administrator to conduct a practical test for an airman certificate or rating issued under this part, or a person who is authorized to conduct a knowledge test under this part.

(g) *Flight training* means that training, other than ground training, received from an authorized flight instructor in actual flight in an aircraft.

(h) *Ground training* means that training, other than flight training, received from an authorized ground or flight instructor.

(i) *Instrument approach* means an approach procedure, defined in part 97 of this chapter, that is conducted to an established minimum descent altitude (MDA) or decision height (DH), or if necessary, to a higher altitude selected by the air traffic control (ATC) facility with jurisdiction over that airspace for safety reasons.

(j) *Instrument Training* means that time in which instrument training is received from an authorized flight instructor under actual or simulated instrument flight conditions.

(k) *Knowledge Test* means a test on the aeronautical knowledge areas required for an airman certificate or rating that can be administered in a written form or by computer.

(l) *Pilot Time* means that time in which a person operates as a required pilot, receives training from an authorized instructor, gives training as an authorized flight instructor in an aircraft, or gives training as an authorized flight or ground instructor in an approved flight simulator, or approved flight training device.

(m) *Practical test* means a test on the approved areas of operations for an airman certificate, a rating, or an authorization that is conducted by having the applicant respond to questions and demonstrate maneuvers in actual flight, an approved flight simulator, or approved flight training device.

(n) *Supervised PIC time* is flight time in an aircraft that applies to either a student pilot or pilot who is not rated in the aircraft flown, but is under the supervision and authorization of an authorized flight instructor to conduct the flight. Depending on the crew compliment specifications set forth in the aircraft's flight manual, the flight

instructor may be onboard the aircraft in an assigned crewmember position. In those cases, the flight instructor shall act in the capacity of an assigned crew member and evaluate the person's ability to act as a pilot in command.

(o) *Training time* means training received in actual flight from an authorized flight instructor, on the ground from an authorized ground or flight instructor, or in a flight simulator or flight training device from an authorized ground or flight instructor.

§ 61.2 Certification of foreign pilots, flight instructors, and ground instructors.

(a) Except as provided for in paragraph (b) of this section, an airman certificate may not be issued to a person who is not a citizen of the United States or a resident alien of the United States unless that person satisfactorily accomplishes the appropriate knowledge or practical test within the United States.

(b) A person who is not a citizen of the United States or a resident alien of the United States may be issued an airman certificate, and the knowledge and practical test for that certificate may be administered outside the United States when:

(1) The Administrator determines the person needs a pilot certificate to operate as a required pilot crewmember of a civil aircraft of U.S. registry;

(2) The Administrator determines the person needs a flight instructor or ground instructor certificate to train persons who are citizens or resident aliens of the United States;

(3) The certificate is for an addition of a category, class, instrument, or type rating onto an existing U.S. pilot certificate, and provided the certificate is not one that was issued on the basis of a foreign pilot license;

(4) The certificate is for an addition, renewal, or reinstatement of a category, class, or instrument rating onto an existing U.S. flight instructor certificate; or

(5) The certificate is for an addition, renewal, or reinstatement of a category rating onto an existing U.S. ground instructor certificate.

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) *Pilot certificate.* Persons may not act as pilot in command or in any other capacity as a required pilot of a civil aircraft of U.S. registry, unless they have a valid airman certificate in their physical possession or readily accessible in the aircraft when exercising the privileges of their airman certificate.

(b) *Required pilot certificate for operating a foreign registered aircraft.* Persons may not act as pilot in command or in any other capacity as a required pilot of a civil aircraft of foreign registry within the United States, unless their airman certificate:

(1) Is valid and in their physical possession, or readily accessible in the aircraft when exercising the privileges of their airman certificate; and

(2) Has been issued under this part or by the country in which the aircraft is registered.

(c) *Medical certificate.*

(1) Except as provided for in paragraph (c)(2) of this section, a person who is serving as a required crewmember under any part of this chapter must have a:

(i) Current and appropriate medical certificate that has been issued under part 67 of this chapter; and

(ii) Medical certificate in the person's physical possession or readily accessible in the aircraft when exercising the privileges of that airman certificate.

(2) A person is not required to meet the requirements of paragraph (c)(1) of this section, if that person:

(i) Is holding a pilot or flight instructor certificate with a balloon or a glider rating and is piloting or training in a balloon or a glider as appropriate;

(ii) Is a student pilot who is seeking a recreational pilot certificate, or who is seeking a pilot certificate with a glider category rating or balloon class rating;

(iii) Is exercising the privileges of a recreational pilot certificate;

(iv) Is exercising the privileges of a flight instructor certificate, provided the person is not serving as a required crewmember or as the pilot-in-command;

(v) Is exercising the privileges of a ground instructor certificate;

(vi) Is operating an aircraft within a foreign country with a pilot certificate issued by that country and is using that foreign-issued pilot license and medical certificate; or

(vii) Is operating an aircraft with a U.S. pilot certificate issued on the basis of a foreign pilot license, issued under § 61.75 of this part, and holds a current medical certificate issued by the foreign country that issued the foreign pilot license.

(d) *Flight instructor certificate.*

(1) Persons who hold a flight instructor certificate must have that certificate in their physical possession or readily accessible in the aircraft when exercising the privileges of that flight instructor certificate.

(2) Except as provided in paragraphs (d) (3) and (4) of this section, no person other than the holder of a flight instructor certificate with the appropriate rating on that certificate or a person authorized by the Administrator may:

(i) Give training required to qualify a person for supervised PIC flight and supervised PIC cross-country flight;

(ii) Endorse on a pilot, flight instructor, or ground instructor certificate or rating issued under this part;

(iii) Endorse a pilot logbook to show training given; or

(iv) Endorse a student pilot certificate or logbook for supervised PIC operating privileges.

(3) A flight instructor certificate is not necessary if:

(i) The training is in accordance with a part 121 or part 135 air carrier approved training program;

(ii) The training is given by the holder of an airline transport pilot certificate under part 121 or 135 of this chapter; and

(iii) The person receiving the training and the person giving the training are employees of that air carrier.

(4) A flight instructor certificate is not necessary if the training is given by an instructor as prescribed in § 61.41 of this part.

(e) *Instrument rating.* Except as provided for in paragraph (k)(4) of this section, no person may act as pilot in command of a civil aircraft under IFR or in weather conditions less than the minimums prescribed for VFR flight unless that person holds:

(1) The appropriate aircraft category, class, type, if required, and instrument rating on that person's pilot certificate for the aircraft being flown;

(2) An airline transport pilot certificate with the appropriate aircraft category, class, and type rating, if required, for the aircraft being flown; or

(3) For a glider, the appropriate glider class rating on that person's pilot certificate and:

(i) An airplane single-engine class rating with an instrument-airplane single-engine rating; or

(ii) An airline transport pilot certificate with an airplane single-engine class rating.

(f) *Category II pilot authorization.* Except as provided in paragraph (f)(3) of this section, no person may act as a required pilot flight crewmember of a civil aircraft in a Category II operation unless that person meets the following requirements of this paragraph:

(1) The pilot in command must hold a current Category II pilot authorization for that type aircraft, and—

(i) Hold a private pilot or commercial pilot certificate with an instrument rating or an airline transport pilot certificate, appropriate to the category and class of aircraft to be flown, and hold a current Category II pilot authorization for that type aircraft; or

(ii) For a civil aircraft of foreign registry, be authorized by the country where the aircraft is registered to conduct Category II operations.

(2) The second in command must—

(i) Hold a private pilot or commercial pilot certificate with an instrument rating, or an airline transport pilot certificate, appropriate to the category and class of aircraft to be flown.

(ii) For a civil aircraft of foreign registry, be authorized by the country where the aircraft is registered to conduct Category II operations as a second in command.

(3) paragraphs (f)(1) and (f)(2) of this section do not apply to pilots conducting Category II operations under part 121 or part 135 of this chapter.

(g) *Category A aircraft authorization.* The Administrator may issue a certificate of authorization for a Category II operation to the pilot of a small aircraft that is a Category A aircraft, as identified in § 97.3(b)(1) of this chapter if:

(1) The Administrator determines the Category II operation can be performed safely by that pilot under the terms of the certificate of authorization; and

(2) The Category II operation does not involve the carriage of persons or property for compensation or hire.

(h) *Ground instructor certificate.*

(1) Each person who holds a ground instructor certificate must have that certificate in their physical possession and immediately accessible when exercising the privileges of that certificate.

(2) Except as provided in paragraph (d) of this section, no person other than the holder of a ground instructor certificate with the appropriate rating on that certificate or a person authorized by the Administrator may:

(i) Give ground training required to qualify a person for supervised PIC flight and supervised PIC cross-country flight;

(ii) Give an endorsement on a pilot, flight instructor, or ground instructor certificate or rating, issued under this part; or

(iii) Endorse a pilot logbook to show training given.

(i) *Age limitation.* A person who is 60 years of age or older and who holds an airmen certificate, issued in accordance with this part, may not act as a required pilot crewmember while engaging in any scheduled international air services, non-scheduled international air transportation, or common carriage operation for compensation or hire in a civil aircraft having a:

(1) Passenger seating configuration of more than 30 seats, excluding any required crewmember seat; or

(2) Payload capacity of more than 7500 pounds (3400 kg).

(j) *Special purpose pilot authorization.* Persons that are required to hold a special purpose pilot authorization, issued in accordance with § 61.77 of this part, must have that authorization and their foreign pilot license in their physical possession or have it readily accessible in the aircraft, when exercising the privileges of that authorization.

(k) Until [insert date 2 years after the effective date of the final rule], a person with a commercial pilot certificate with a lighter-than-air category rating, which was issued prior to [insert effective date of the final rule], may:

(1) Give training in an airship or a balloon for the issuance of a certificate or rating;

(2) Give an endorsement on a pilot, flight instructor, or ground instructor certificate for an airship or balloon;

(3) Endorse a student pilot certificate or logbook for supervised PIC operating privileges in an airship or balloon; and

(4) Act as pilot in command of an airship under IFR or in weather conditions less than the minimum prescribed for VFR flight, if the person holds an airship class rating.

(l) *Inspection of certificate.* Each person who holds an airman certificate, medical certificate, authorization, or license required by this part must present it for inspection upon a request from:

(1) The Administrator;

(2) An authorized representative of the National Transportation Safety Board; or

(3) Any Federal, State, or local law enforcement officer.

§ 61.5 Certificates and ratings issued under this part.

(a) The following certificates are issued under this part to an applicant who satisfactorily accomplishes the training and certification requirements for the certificate sought:

(1) Pilot certificates—

(i) Student pilot.

(ii) Recreational pilot.

(iii) Private pilot.

(iv) Commercial pilot.

(v) Airline transport pilot.

(2) Flight instructor certificates.

(3) Ground instructor certificates.

(b) The following ratings are placed on a pilot certificate (other than student pilot) when an applicant satisfactorily accomplishes the training and certification requirements for the rating sought:

(1) Aircraft category ratings—

(i) Airplane.

(ii) Rotorcraft.

(iii) Glider.

(iv) Lighter-than-air.

(v) Powered lift.

(2) Airplane class ratings—

(i) Single-engine land.

(ii) Multiengine land.

(iii) Single-engine sea.

(iv) Multiengine sea.

(3) Rotorcraft class ratings—

(i) Helicopter.

(ii) Gyroplane.

(4) Glider class ratings—

(i) Powered.

(ii) Nonpowered.

(5) Lighter-than-air class ratings—

(i) Airship.

(ii) Balloon.

(6) Aircraft type ratings include the following—

(i) Large aircraft other than lighter-than-air.

(ii) Turbojet-powered airplanes.

(iii) Other aircraft type ratings specified by the Administrator through the aircraft type certification procedures.

(7) Instrument ratings (on private and commercial pilot certificates only) include the following—

(i) Instrument—airplane single-engine.

(ii) Instrument—airplane multiengine.

(iii) Instrument—helicopter.

(iv) Instrument—airship.

(v) Instrument—powered-lift.

(c) The following ratings are placed on a flight instructor certificate when an applicant satisfactorily accomplishes the training and certification requirements for the rating sought:

(1) Aircraft category ratings—

(i) Airplane.

(ii) Rotorcraft.

(iii) Glider.

(iv) Lighter-than-air.

(v) Powered-lift.

(2) Airplane class ratings—

(i) Single-engine.

(ii) Multiengine.

(3) Rotorcraft class ratings—

(i) Helicopter.

(ii) Gyroplane.

(4) Glider class ratings—

(i) Powered.

(ii) Nonpowered.

(5) Lighter-than-air class ratings—

(i) Airship.

(ii) Balloon.

(6) Instrument ratings—

(i) Instrument—airplane single-engine.

(ii) Instrument—airplane multiengine.

(iii) Instrument—helicopter.

(iv) Instrument—airship.

(v) Instrument—powered lift.

(d) The following ratings are placed on a ground instructor certificate when

an applicant satisfactorily accomplishes the training and certification requirements for the rating sought:

(1) Aircraft category ratings—

(i) Airplane.

(ii) Rotorcraft.

(iii) Glider.

(iv) Lighter-than-air.

(v) Powered lift.

(2) Instrument rating.

(e) Until [insert date 2 years from effective date of the final rule]:

(1) A person who holds a pilot certificate that does not bear the current ratings found in paragraphs (b)(4), (b)(7)(i), (b)(7)(ii), or (b)(7)(iv) of this section, may exchange that pilot certificate for a certificate with the new rating added by meeting the requirements of this paragraph.

(2) A person who holds a commercial pilot certificate with a lighter-than-air category and an airship class rating may exchange that certificate for a certificate with an instrument—airship rating, provided that person has—

(i) Received an endorsement from an authorized flight instructor who holds an instrument—airship rating on the flight instructor certificate, and that flight instructor has observed that person perform 10 hours of pilot-in-command time in an airship under IFR; or

(ii) Passed an instrument proficiency test in an airship given by an examiner and required by § 61.57(e) of this part.

(f) Until [insert date 2 years from effective date of the final rule], a person who holds a private or commercial pilot certificate with an airplane category rating and an instrument rating that does not bear the airplane instrument ratings of paragraph (b)(7)(i) or (b)(7)(ii) of this section may exchange that certificate for a private or commercial pilot certificate, as appropriate, with an:

(1) Instrument-airplane single engine rating, provided that person has an airplane single-engine class rating and has satisfactorily accomplished the practical test for an instrument rating in a single-engine or multiengine airplane; and

(2) Instrument-airplane multiengine rating, provided that person has an airplane multiengine class rating and has satisfactorily accomplished the practical test for an instrument rating in a—

(i) Multiengine airplane; or

(ii) Single-engine airplane and also demonstrated instrument proficiency during the practical test for the multiengine class rating such that the person's certificate does not bear the limitation "Airplane Multiengine VFR Only."

(g) A person who holds a commercial or private pilot certificate with a glider category rating may exchange that certificate for one with the current nonpowered glider class rating and without a further showing of proficiency, provided that person:

(1) Holds a glider category rating; and

(2) Has passed a practical test in a nonpowered glider.

(h) A person who holds a commercial or private pilot certificate may exchange that certificate for one with the current powered glider class rating and without a further showing of proficiency, provided that person:

(1) Holds a glider category rating; and

(2) Has passed a practical test in a powered glider.

§ 61.7 Obsolete certificates and ratings.

(a) The holder of a free balloon pilot certificate issued before November 1, 1973, may not exercise the privileges of that certificate.

(b) The holder of a pilot certificate that bears any of the following category ratings without an associated class rating, may not exercise the privileges of that category rating:

(1) Rotorcraft.

(2) Lighter-than-air.

(3) Helicopter.

(4) Autogiro.

(c) After [insert date 2 years from effective date of the final rule], the holder of the following certificates or ratings may not exercise the privileges of those certificates and ratings:

(1) Airplane—instrument rating.

(2) Glider category without a class rating.

(3) Basic ground instructor.

(4) Advanced ground instructor.

(5) Instrument ground instructor.

§ 61.9 Written syllabus for conducting training.

An authorized ground or flight instructor, as appropriate, who provides training for an airman certificate or rating issued under this part must:

(a) Use a written syllabus for conducting that training, and that syllabus must contain the following information—

(1) A summary of the total training time in the syllabus;

(2) A planned training time schedule for each lesson;

(3) A detailed description of the training to be covered in each lesson; and

(4) The aeronautical knowledge areas and approved areas of operation that are appropriate to the airman certificate and rating sought and required by this part.

(b) Ensure that the written syllabus contains all of the aeronautical knowledge areas and approved areas of operation that apply to the airman certificate and rating sought and required by this part;

(c) Furnish a copy of the written syllabus to the student before that student commences the training program;

(d) Ensure that the student has accomplished all lessons of the written syllabus before endorsing that student for the appropriate knowledge or practical test for a certificate or rating;

(e) Maintain a copy of the written syllabus and make it available for inspection by the Administrator upon request; and

(f) Provide the student with an itemized written record of the training accomplished when that student accomplishes the training syllabus or decides to terminate training.

§ 61.11 Expired pilot certificates and reissuance.

(a) No person who holds an expired pilot certificate or rating may act as a pilot and/or exercise the privileges of that pilot certificate and rating.

(b) The following pilot certificates and ratings have expired and may not be reissued:

(1) An airline transport pilot certificate issued before May 1, 1949, or an airline transport pilot certificate that contains a horsepower limitation;

(2) A private or commercial pilot certificate issued before July 1, 1945; or

(3) A pilot certificate with a lighter-than-air or free balloon rating issued before July 1, 1945.

(c) A pilot certificate, issued on the basis of a foreign pilot license will expire on the date the foreign license expires.

(d) An airline transport pilot certificate issued after April 30, 1949, that bears an expiration date but does not contain a horsepower limitation may be reissued without an expiration date.

(e) A private or commercial pilot certificate issued after June 30, 1945, that bears an expiration date may be reissued without an expiration date.

(f) A pilot certificate with a lighter-than-air or free balloon rating issued after June 30, 1945, that bears an expiration date may be reissued without an expiration date.

(g) A U.S. pilot certificate, issued on the basis of a foreign pilot license that does not have an expiration date, may be issued without an expiration date.

§ 61.13 Awarding of airman certificates, ratings, and authorizations.

(a) An applicant for an airman certificate or rating under this part must make that application on a form and in a manner acceptable to the Administrator.

(b) An applicant who is neither a United States citizen nor a resident alien of the United States:

(1) Must show evidence that the appropriate fee prescribed by part 187 of this chapter has been paid when that person applies for a—

(i) Student pilot certificate that is issued outside the United States; or

(ii) Knowledge or practical test for a U.S. airman certificate or rating issued under this part, if the test is administered outside the United States.

(2) May be refused issuance of any U.S. airman certificate and rating by the Administrator.

(c) Except for the provisions listed in paragraph (b) of this section, an applicant who satisfactorily accomplishes the training and certification requirements for the certificate and rating sought is entitled to receive that airman certificate and rating.

(d) *Limitations.*

(1) An applicant who cannot comply with certain approved areas of operation required on the practical test because of physical limitations may be issued an airman certificate and rating with the appropriate limitation placed on the applicant's airman certificate provided the:

(i) Applicant is able to meet all the other certification requirements for the airman certificate or rating sought;

(ii) Physical limitation has been recorded with the Federal Aviation Administration on the applicant's medical records; and

(iii) Administrator determines the applicant's inability to perform the particular area of operation will not adversely affect safety.

(2) A limitation placed on a person's airman certificate may be removed, provided that person demonstrates satisfactory proficiency:

(i) In the area of operation appropriate to the airman certificate level and rating sought; and

(ii) To an examiner.

(e) *Category II pilot authorization.*

(1) A Category II pilot authorization is:

(i) Issued as a part of a pilot's instrument rating or airline transport pilot certificate; and

(ii) Issued originally with a limitation of 1600 feet runway visual readout and a 150-foot decision height.

(2) The limitation in paragraph (e)(1)(ii) of this section may be removed when the person has, within the previous 6 calendar months from the month Category II pilot authorization is issued, performed and logged 3 Category II approaches to a landing under actual or simulated instrument conditions with a 150-foot decision height.

(f) Unless otherwise authorized by the Administrator, a person whose airman certificate has been suspended may not apply for any airman certificate or rating during the period of suspension.

(g) Unless otherwise authorized by the Administrator, a person whose pilot, flight instructor, or ground instructor certificate has been revoked may not apply for any airman certificate or rating for 1 year after the date of revocation.

§ 61.14 Refusal to submit to a drug test.

(a) This section applies to:

(1) An employee who performs a function listed in appendix I to part 121 of this chapter for a part 119 certificate holder operating under part 121 or part 135; and

(2) An employee who performs a function listed in appendix I to part 121 of this chapter for an operator as defined in § 135.1(c) of this chapter. An employee of a person conducting operations of foreign civil aircraft navigated within the United States pursuant to part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958 is excluded from the requirements of this section.

(b) Refusal by the holder of a certificate issued under this part to take a test for a drug specified in appendix I of part 121 of this chapter, when requested by an employer as defined in that appendix or an operator as defined in § 135.1(c) of this chapter, and under the circumstances specified in that appendix is grounds for:

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of that refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for:

(1) Denial of an application for any certificate or rating issued under this part for up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(b) Committing an act prohibited by § 91.17(a) or § 91.19(a) of this chapter is grounds for:

(1) Denial of an application for a certificate or rating issued under this part for up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(c) For the purposes of paragraphs (d) and (e) of this section, a motor vehicle action means:

(1) A conviction after November 29, 1990, for the violation of any Federal or state statute relating to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug;

(2) The cancellation, suspension, or revocation of a license to operate a motor vehicle by a state after November 29, 1990, for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug; or

(3) The denial after November 29, 1990, of an application for a license to operate a motor vehicle by a state for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.

(d) Except for a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within 3 years of a previous motor vehicle action is grounds for:

(1) Denial of an application for any certificate or rating issued under this part for up to 1 year after the date of the last motor vehicle action; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AAC–700), P.O. Box 25810, Oklahoma City, OK 73125, not later that 60 days after the motor vehicle action. The report must include:

(1) The person's name, address, date of birth, and airman certificate number;

(2) The type of violation that resulted in the conviction or the administrative action;

(3) The date of the conviction or administrative action;

(4) The state that holds the record of conviction or administrative action; and

(5) A statement of whether the motor vehicle action resulted from the same incident or arose out of the same factual circumstances related to a previously reported motor vehicle action.

(f) Failure to comply with paragraph (e) of this section is grounds for:

(1) Denial of an application for any certificate or rating issued under this part for up to 1 year after the date of the motor vehicle action; or

(2) Suspension of revocation of any certificate or rating issued under this part.

§ 61.16 Refusal to submit to an alcohol test or to furnish test results.

A refusal to submit to a test to indicate the percentage by weight of alcohol in the blood, when requested by a law enforcement officer in accordance with § 91.17(c) of this chapter, or a refusal to furnish or authorize the release of the test results requested by the Administrator in accordance with § 91.17(c) or (d) of this chapter, is grounds for:

(a) Denial of an application for any certificate or rating issued under this part for up to 1 year after the date of that refusal; or

(b) Suspension or revocation of any certificate or rating issued under this part.

§ 61.17 Temporary certificate.

(a) A temporary pilot or flight instructor certificate, or rating, is issued for up to 120 days, at which time a permanent certificate will be issued to a person whom the Administrator finds qualified under this part.

(b) A temporary pilot or flight instructor certificate, or rating, expires:

(1) On the expiration date shown on the certificate;

(2) Upon receipt of the permanent certificate; or

(3) Upon receipt of a notice that the certificate or rating sought is denied or revoked.

§ 61.19 Duration of pilot and instructor certificates.

(a) *General.* The holder of a certificate with an expiration date may not, after that date, exercise the privileges of that certificate.

(b) *Student pilot certificate.* A student pilot certificate expires 24-calendar months from the month in which it is issued.

(c) *Other pilot certificates.* A pilot certificate (other than a student pilot certificate), issued under this part, is issued without a specific expiration date. The holder of a pilot certificate (issued on the basis of a foreign pilot license) may exercise the privileges of that certificate only while that person's foreign pilot license is effective.

(d) *Flight instructor certificate.* A flight instructor certificate:

(1) Is effective only while the holder has a current pilot certificate; and

(2) Expires 24-calendar months from the month in which it was issued or renewed.

(e) *Ground instructor certificate.* A ground instructor certificate, issued under this part, is issued without a specific expiration date.

(f) *Surrender, suspension, or revocation.* Any certificate issued under this part ceases to be effective if it is surrendered, suspended, revoked, or otherwise terminated.

(g) *Return of certificates.* The holder of any certificate, issued under this part, that has been suspended, revoked, or otherwise terminated must return that certificate to the FAA when requested to do so by the Administrator.

§ 61.21 Duration of a Category II pilot authorization.

(a) A Category II pilot authorization expires 6-calendar months from the month in which it was issued or renewed.

(b) Upon passing a practical test for a Category II pilot authorization, the authorization may be renewed for each type aircraft for the authorization held.

(c) A Category II pilot authorization for a specific type aircraft for which an authorization is held will not be renewed beyond 12-calendar months from the month the practical test was accomplished in that type aircraft.

(d) If the holder of a Category II pilot authorization satisfactorily accomplishes the practical test for a renewal in the month before the authorization expires, the holder is considered to have accomplished it during the month the authorization expired.

§ 61.23 Duration and requirement for a medical certificate.

(a) *Duration of a medical certificate.*

(1) A first-class medical certificate expires at the end of the last day of the 6th calendar month from the month of issuance shown on the medical certificate.

(2) A second-class medical certificate expires at the end of the last day of the 12th calendar month from the month of issuance shown on the medical certificate.

(3) A third-class medical certificate expires on the last day of the 24th calendar month from the month of issuance shown on the medical certificate.

(b) *Requirement for a medical certificate.* Except as provided in paragraph (b)(4) of this section, a person:

(1) Must hold at least a first-class medical certificate for flight operations requiring an airline transport pilot certificate;

(2) Must hold at least a second-class medical certificate for flight operations requiring a commercial pilot certificate;

(3) Must hold at least a third-class medical certificate—

(i) For flight operations requiring a private pilot certificate or a person who holds a student pilot certificate who is seeking a private pilot certificate or rating;

(ii) To be eligible for a student pilot certificate and that person is seeking a private pilot certificate, or a person who holds a private pilot certificate issued under this part; or

(iii) When exercising the privileges of a flight instructor certificate and the person is serving as a required crewmember or as the pilot-in-command.

(4) Does not need to hold a medical certificate—

(i) For a student pilot who is seeking a recreational pilot certificate, or who is seeking a pilot certificate with glider category rating or balloon class rating, but the person may not exercise the privileges of that student pilot certificate if the person has any known medical condition or deficiency that makes the person unable to pilot the aircraft;

(ii) When exercising the privileges of a recreational pilot certificate, but the person may not exercise the privileges of that pilot certificate if the person has any known medical condition or deficiency that makes the person unable to pilot the aircraft;

(iii) When exercising the privileges of a pilot certificate or flight instructor certificate with a glider category rating or balloon class rating, but the person may not exercise the privileges of that pilot certificate if the person has any known medical condition or deficiency that makes the person unable to pilot the aircraft;

(iv) When exercising the privileges of a flight instructor certificate, provided the person is not serving as a required crewmember or as the pilot-in-command; or

(v) When exercising the privileges of a ground instructor certificate.

§ 61.25 Change of name.

(a) An application to change the name on a certificate issued under this part must be accompanied by the applicant's:

(1) Current pilot certificate; and

(2) Copy of the marriage license, court order, or other document verifying the name change.

(b) The documents in paragraph (a) of this section will be returned to the applicant after inspection.

§ 61.27 Voluntary surrender or exchange of certificate.

(a) The holder of a certificate issued under this part may voluntarily surrender it for:

(1) Cancellation;

(2) Issuance of a lower grade certificate; or

(3) Another certificate with specific ratings deleted.

(b) Any request made under paragraph (a) of this section must include the following signed statement or its equivalent:

This request is made for my own reasons, with full knowledge that my (insert name of certificate or rating, as appropriate) may not be reissued to me unless I again pass the tests prescribed for its issuance.

§ 61.29 Replacement of a lost or destroyed airman or medical certificate or knowledge test report.

(a) A request for the replacement of a lost or destroyed airman certificate issued under this part shall be made by letter to the Department of Transportation, Federal Aviation Administration, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and shall be accompanied by a check or money order for the appropriate fee and payable to the Federal Aviation Administration.

(b) A request for the replacement of a lost or destroyed medical certificate shall be made by letter to the Department of Transportation, Federal Aviation Administration, Aeromedical Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and shall be accompanied by a check or money order for the appropriate fee and payable to the Federal Aviation Administration.

(c) A request for the replacement of a lost or destroyed knowledge test report shall be made by letter to the Department of Transportation, Federal Aviation Administration, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and shall be accompanied by a check or money order for the appropriate fee and payable to the Federal Aviation Administration.

(d) The letter requesting replacement of a lost or destroyed airman certificate, medical certificate, or knowledge test report must state the:

(1) Name of the person;

(2) Permanent mailing address (including zip code);

(3) Social security number;

(4) Date and place of birth of the certificate holder;

(5) State any available information regarding the—

(i) Grade, number, date of issuance of the certificate, and the ratings;

(ii) Date of the medical examination; or

(iii) Date the knowledge test was taken.

(e) A person who has lost an airman certificate, medical certificate, or knowledge test report may obtain a facsimile from the FAA confirming that it was issued, and the:

(1) Facsimile may be carried as an airman certificate, medical certificate, or knowledge test report, as appropriate, for up to 60 days pending the person's receipt of a duplicate under paragraph (a), (b), or (c) of this section, unless the person has been notified that the certificate has been suspended or revoked.

(2) Request for such a facsimile must include the date on which a duplicate certificate or knowledge test report was previously requested, and a check or money order payable to the Federal Aviation Administration, for the cost of the duplicate.

§ 61.31 Type rating requirements, additional training, and authorization requirements.

(a) *Type ratings required.* A person who acts as a pilot in command of any of the following aircraft must hold a type rating for that aircraft:

(1) Large aircraft (except lighter-than-air).

(2) Turbojet-powered airplanes.

(3) Other aircraft specified by the Administrator through aircraft type certificate procedures.

(b) *Authorization in lieu of a type rating.* A person may be authorized to operate an aircraft requiring a type rating without a type rating for up to 60 days, provided:

(1) The Administrator has authorized the flight or series of flights;

(2) The Administrator has determined that an equivalent level of safety can be achieved through the operating limitations on the authorization;

(3) The person shows that compliance with paragraph (a) of this section is impracticable for the flight or series of flights; and

(4) The flight—

(i) Involves only a ferry flight, training flight, test flight, or practical test for a pilot certificate or rating;

(ii) Is within the United States;

(iii) Does not involve operations for compensation or hire unless the compensation or hire involves payment for the use of the aircraft for training or taking a practical test; and

(iv) Involves only the carriage of flight crewmembers considered essential for the flight.

(5) If the flight or series of flights cannot be accomplished within the time limit of the authorization, the Administrator may authorize an additional period of up to 60 days to accomplish the flight or series of flights.

(c) *Aircraft category, class, and type ratings: Limitations on the carriage of persons or operating for compensation or hire.* Unless a person holds a category, class rating, and type rating (if a class and type rating is required) that applies to the aircraft, that person may not act as pilot in command of an aircraft that is:

(1) Carrying another person; or

(2) Being operated for compensation or hire.

(d) *Aircraft category, class, and type ratings: Limitations on operating an aircraft as the pilot in command.* To serve as the pilot in command of an aircraft a person must hold the appropriate category, class, and type rating (if a class rating and type rating is required) for the aircraft to be flown, or that person must:

(1) Be enrolled in a course of training for the purpose of obtaining an additional pilot certificate and rating that are appropriate to that aircraft, and is under the supervision of an authorized flight instructor;

(2) Have received the required training of this part that are appropriate to the aircraft category, class, and type rating (if a class or type rating is required) for the aircraft to be flown; and

(3) Have received the required endorsement from an authorized flight instructor for supervised PIC flight in that aircraft.

(e) *Exceptions.*

(1) This section does not require a class rating for a powered-lift aircraft.

(2) This section does not require a category and class rating for aircraft not type certificated as airplanes, rotorcraft, gliders, powered-lift, or lighter-than-air aircraft.

(3) The rating limitations of this section do not apply to an applicant when taking a practical test given by an examiner; or

(4) The rating limitations of this section do not apply to the holder of a:

(i) Student pilot certificate;

(ii) Pilot certificate under the supervision of an authorized flight instructor when operating an aircraft for the purpose of obtaining an additional certificate or rating;

(iii) Pilot certificate when operating an aircraft under the authority of an experimental or provisional aircraft type certificate;

(iv) Pilot certificate with a lighter-than-air category rating when operating a balloon.

(f) *Additional training required for operating complex airplanes.* Except as provided in paragraph (f)(2) of this

section, no person may act as pilot in command of a complex airplane (an airplane that has a retractable landing gear, flaps, and controllable propeller), unless the person has met the requirements of this paragraph.

(1) The person must have—

(i) Received and logged ground and flight training from an authorized flight instructor in a complex airplane, or in a flight simulator or flight training device that is representative of a complex airplane, and has been found proficient on the operation and systems of the airplane; and

(ii) Received a one-time endorsement in the pilot's logbook from an authorized flight instructor who certifies the person is proficient to operate a complex airplane.

(2) The training and endorsement required by paragraph (f)(1) of this section is not required if the person has logged flight time as pilot in command of a complex airplane, or in a flight simulator or flight training device that is representative of a complex airplane prior to [insert effective date of the final rule].

(g) *Additional training required for operating high performance airplanes.* Except as provided in paragraph (g)(2) of this section, no person may act as pilot in command of a high performance airplane (an airplane with an engine of 200 horsepower or more), unless the person has met the requirements of this paragraph.

(1) The person must have—

(i) Received and logged ground and flight training from an authorized flight instructor in an high performance airplane, or in a flight simulator or flight training device that is representative of a high performance airplane, and has been found proficient on the operation and systems of the airplane; and

(ii) Received a one-time endorsement in the pilot's logbook from an authorized flight instructor who certifies the person is proficient to operate a high performance airplane.

(2) The training and endorsement required by paragraph (g)(1) of this section is not required if the person has logged flight time as pilot in command of a high performance airplane, or a flight simulator or flight training device that is representative of a high performance airplane prior to [insert effective date of the final rule].

(h) *Additional training required for operating pressurized aircraft capable of operating at high altitudes.*

(1) Except as provided in paragraph (h)(3) of this section, no person may act as pilot in command of a pressurized aircraft (an aircraft that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL), unless that person has received and logged ground training from an authorized flight or ground instructor in at least the following subjects:

(i) High altitude aerodynamics and metoorology;

(ii) Respiration, effects, symptoms, and causes of hypoxia and any other high altitude sickness;

(iii) Duration of consciousness without supplemental oxygen;

(iv) Effects of prolonged usage of supplemental oxygen;

(v) Causes and effects of gas expansion and gas bubble formation;

(vi) Preventive measures for eliminating gas expansion, gas bubble formation, and high altitude sickness; and

(vii) Physical phenomena and incidents of decompression;

(2) Except as provided in paragraph (h)(3) of this section, no person may act as pilot in command of a pressurized aircraft (an aircraft that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL), unless that person has received:

(i) Training in a pressurized aircraft, or in a flight simulator or flight training device that is representative of a pressurized aircraft, and the training must include flight at normal cruise while operating above 25,000 feet MSL, proper emergency procedures for simulated emergency rapid decompression and descent procedures; and

(ii) An endorsement in the person's logbook or training record from the instructor who gave the training and found the person proficient in a pressurized aircraft.

(3) The training and endorsement required by this paragraph is not required if a person can document satisfactory accomplishment of any of the following in a pressurized aircraft, or in a flight simulator or a flight training device that is representative of a pressurized aircraft:

(i) Serving as pilot in command before April 15, 1991;

(ii) Completing a practical test or rating before April 15, 1991;

(iii) Completing an official pilot-in-command check conducted by the military services of the United States; or

(iv) Completing a pilot-in-command proficiency check under parts 121, 125, or 135 of this chapter conducted by the Administrator or by an approved check pilot.

(i) *Additional training required by the aircraft's type certificate.* No person may serve as pilot in command of an aircraft that the Administrator has determined requires aircraft type specific training unless that person has received:

(1) Type specific training in the aircraft, or in a flight simulator or a flight training device that is representative of that type of aircraft, and has been found proficient on the operation and systems of the aircraft; and

(2) A logbook endorsement from an authorized flight instructor or ground instructor, as appropriate, who gave that person the training.

(j) *Additional training required for operating tailwheel airplanes.* Except as provided in paragraph (j)(4), no person may act as pilot in command of a tailwheel airplane unless that person has:

(1) Received and logged flight training from an authorized flight instructor in a tailwheel airplane on the maneuvers and procedures listed in this paragraph.

(2) Received an endorsement in the person's logbook from an authorized flight instructor who gave the training and found the person proficient in a tailwheel airplane.

(3) Received an endorsement in the person's logbook from an authorized flight instructor who gave the training and found the person proficient in at least normal and crosswind takeoffs and landings, wheel landings (unless the manufacturer has recommended against such landings), and go-arounds.

(4) The training and endorsement required by this paragraph is not required if the person logged pilot in command time of a tailwheel airplane before April 15, 1991.

§ 61.33 Tests: General procedure.

The Administrator shall designate the time, location, and examiner for conducting the tests prescribed by and under this part.

§ 61.35 Knowledge test: Prerequisites and passing grades.

(a) An applicant for a knowledge test must have:

(1) Received an endorsement from an authorized flight or ground instructor certifying that the applicant accomplished a ground training or a home study course required by this part for the certificate or rating sought and is prepared for the knowledge test; and

(2) Proper identification at the time of application that contains the applicant's—

(i) Photograph;

(ii) Signature;

(iii) Date of birth, which shows the applicant meets or will meet the age requirements of this part for the certificate sought before the expiration date of the airman knowledge test report; and

(iv) Actual residential address, if different from the applicant's mailing address.

(b) The Administrator shall specify the minimum passing grade for the knowledge test.

§ 61.37 Knowledge tests: Cheating or other unauthorized conduct.

(a) An applicant for a knowledge test may not:

(1) Copy or intentionally remove any knowledge test;

(2) Give to another applicant or receive from another applicant any part or copy of a knowledge test;

(3) Give assistance on, or receive assistance on, a knowledge test during the period that test is being given;

(4) Be represented by, or represent, another person for a knowledge test;

(5) Use any material or aid during the period that test is being given, unless specifically authorized to do so by the Administrator; and

(6) Intentionally cause, assist, or participate in any act prohibited by this paragraph.

(b) An applicant who the Administrator finds has committed an act prohibited by paragraph (a) of this section is prohibited, for 1 year after the date of committing that prohibited act, from:

(1) Applying for any certificate or rating under this chapter; and

(2) Applying for and taking any test under this chapter.

(c) Any certificate or rating held by an applicant who the Administrator finds has committed an act prohibited by paragraph (a) of this section may be suspended or revoked.

§ 61.39 Prerequisites for practical tests.

(a) Except as provided in paragraphs (b) and (c) of this section, to be eligible for a practical test for a certificate or rating issued under this part, an applicant must:

(1) Have satisfactorily accomplished the required knowledge test within the 24-calendar month period preceding the month the applicant accomplishes the practical test, if a knowledge test is required;

(2) Present the knowledge test report at the time of application for the practical test, if a knowledge test is required;

(3) Have satisfactorily accomplished the required training and attained the aeronautical experience prescribed by this part for the certificate or rating sought;

(4) Hold at least a current third-class medical certificate, if a medical certificate is required;

(5) Meet the prescribed age requirement of this part for the issuance of the certificate or rating sought;

(6) Except as provided in paragraph (c) of this section, an applicant must have an endorsement in the applicant's logbook or training record that has been signed by the applicant's authorized flight instructor who certifies that the applicant—

(i) Has received and logged training time within 60 days preceding the date of application in preparation for the practical test;

(ii) Is prepared for the required practical test; and

(iii) Has demonstrated satisfactory knowledge of the subject areas in which the applicant was deficient on the airman knowledge test.

(7) Have a completed and signed application form.

(b) Notwithstanding the provisions of paragraphs (a) (1) and (2) of this section, an applicant for an airline transport pilot certificate or an additional rating to an airline transport certificate may take the practical test for that certificate or rating with an expired knowledge test report, provided that applicant:

(1) Is employed as a flight crewmember by a U.S. air carrier or commercial operator under parts 121, 125, or 135 of this chapter and is employed by such a certificate holder at the time of the practical test and has satisfactorily accomplished that operator's approved—

(i) pilot-in-command aircraft qualification training program that is appropriate to the certificate and rating sought; and

(ii) requalification training requirements that is appropriate to the certificate and rating sought.

(2) Is employed as a flight crewmember by a U.S. scheduled military air transportation service operator at the time of the practical test, and has accomplished that operator's pilot-in-command aircraft qualification training program that is appropriate to the certificate and rating sought.

(c) An applicant for an airline transport pilot certificate or an additional rating to an airline transport pilot certificate in an aircraft that does not involve an aircraft type rating practical test need not comply with the provisions of paragraph (a)(6) of this section.

§ 61.41 Flight training received from flight instructors not certificated by the FAA.

(a) A person may credit flight training toward the requirements of a pilot certificate or rating issued under this part, if that person received the training from:

(1) A flight instructor of an Armed Force of either—

(i) The United States; or

(ii) A foreign member State to the International Civil Aviation Organization in a program for training military pilots.

(2) A flight instructor who is authorized to give such training by the licensing authority of a member State of International Civil Aviation Organization, and the flight training is given outside the United States.

(b) A flight instructor described in paragraph (a) of this section is not authorized to give any of the endorsements required by this part.

§ 61.43 Practical tests: General procedures.

(a) Except as provided in paragraph (b) of this section, the ability of an applicant for a certificate or rating to perform the required tasks on the practical test is based on that applicant's ability to safely:

(1) Perform the approved areas of operation for the certificate or rating sought within the approved standards;

(2) Demonstrate mastery of the aircraft with the successful outcome of each task performed never seriously in doubt;

(3) Demonstrate satisfactory proficiency and competency within the approved standards;

(4) Demonstrate sound judgment; and

(5) Demonstrate single-pilot competence if the aircraft is type certificated for single-pilot operations.

(b) If an applicant does not demonstrate single pilot proficiency, as required in paragraph (a)(5) of this section, the following limitation will apply:

(1) A limitation of "Second in Command Required" will be placed on the applicant's airman certificate.

(2) The limitation may be removed if the applicant satisfactorily accomplishes the appropriate practical test by demonstrating single-pilot competence in the aircraft in which single-pilot privileges are sought.

(c) If an applicant fails any of the approved areas of operation, that applicant fails the practical test.

(d) An applicant is not eligible for a certificate or rating sought until all the approved areas of operation are satisfactorily accomplished.

(e) The examiner or the applicant may discontinue a practical test at any time:

(1) When the applicant fails one or more of the approved areas of operation; or

(2) Due to inclement weather conditions, aircraft airworthiness, or any other safety of flight concern.

(f) If a practical test is discontinued, the applicant is entitled to credit those

approved areas of operation that were satisfactorily accomplished, but only if the applicant:

(1) Satisfactorily accomplishes the remainder of the practical test within the 60-day period after the date the practical test was discontinued;

(2) Presents to the examiner for the retest the original notice of disapproval form or the letter of discontinuance form, as appropriate;

(3) Satisfactorily accomplishes any additional training needed and obtains the appropriate instructor endorsements, if additional training is required; and

(4) Presents to the examiner for the retest a properly completed and signed application.

§ 61.45 Practical tests: Required aircraft and equipment.

(a) *General.* An applicant for a certificate or rating under this part must furnish:

(1) An aircraft for the practical test that is of U.S. registry with a current standard, limited, or primary airworthiness certificate;

(2) An aircraft of U.S. registry with a current airworthiness certificate, other than standard, limited, or primary, provided the examiner conducting the test agrees;

(3) An aircraft of foreign registry that is properly certificated by the country of registry, provided the examiner conducting the test agrees; or

(4) A military aircraft that is in a safe operational status and is approved for use on the practical test by the appropriate military authority, provided the examiner conducting the test agrees.

(b) *Required equipment (other than controls).* Except for a practical test in a balloon and, as provided in paragraph (e) of this section, an aircraft used for a practical test must have:

(1) The equipment for each area of operation required for the practical test;

(2) No prescribed operating limitations that prohibit its use in any of the approved areas of operation required for the practical test;

(3) At least two pilot seats with adequate visibility for each person to operate the aircraft safely; and

(4) Cockpit and outside visibility adequate to evaluate the performance of the applicant, where an additional jump seat is provided for the examiner.

(c) *Required controls.* An aircraft used for a practical test:

(1) Must have engine power controls and flight controls that are easily reached and operable in a normal manner by both pilots, unless the examiner determines that the practical test can be conducted safely without them.

(2) May be used even if the engine power controls and flight controls are not easily reached and operable in a normal manner by both pilots, provided the examiner determines the flight can be conducted safely.

(3) Must have flight controls that are easily reached and operable in a normal manner by both pilots, for a rating in lighter-than-air aircraft, unless the examiner determines that the practical test can be conducted safely without them.

(d) *Simulated instrument flight equipment.* An applicant for a practical test that involves maneuvering an aircraft solely by reference to instruments must furnish:

(1) Equipment aboard the aircraft that permits the applicant to accomplish the approved areas of operation that apply to the rating sought; and

(2) A device that prevents the applicant from having visual reference outside the aircraft, but does not prevent the examiner from having visual reference outside the aircraft.

(e) *Aircraft with single controls.* A practical test may be conducted in an aircraft having a single set of controls, provided the:

(1) Examiner agrees to conduct the test;

(2) Test does not involve a demonstration of instrument skills; and

(3) Proficiency of the applicant can be observed by an examiner, who is in a position to observe the applicant.

§ 61.47 Status of an examiner who is authorized by the Administrator to conduct practical tests.

(a) An examiner represents the Administrator for the purpose of conducting practical tests for certificates and ratings issued under this part and to observe an applicant's ability to perform the approved areas of operation on the practical test.

(b) The student is the pilot in command of the aircraft during the practical test unless the examiner or another person has been so designated before the flight.

(c) Notwithstanding the type of aircraft used during the practical test, the applicant and the examiner (and any other occupants authorized to be on board by the examiner) are not subject to the requirements or limitations on the carriage of passengers that are specified in this chapter.

§ 61.49 Retesting after failure.

(a) An applicant for a knowledge or practical test who fails that test may only reapply for the test after the applicant has received:

(1) The necessary training from an authorized flight or ground instructor, as appropriate, who has determined that the applicant is now proficient to pass the test; and

(2) An endorsement from an authorized flight or ground instructor, as appropriate, who gave the applicant the additional training.

(b) An applicant for a flight instructor certificate with an airplane category rating, or for a flight instructor certificate with a glider category rating, who has failed the practical test due to deficiencies in instructional proficiency on stall awareness, spin entry, spins, and spin recovery must:

(1) Comply with the requirements of paragraph (a) of this section before being retested;

(2) Bring an aircraft to the retest that is of the appropriate aircraft category for the rating sought and is certificated for spins; and

(3) Demonstrate satisfactory instructional proficiency on stall awareness, spin entry, spins, and spin recovery to an examiner during the retest.

§ 61.51 Pilot logbooks.

(a) *Training time and aeronautical experience.* Each person must document and record the following time in a manner acceptable to the Administrator:

(1) Training and aeronautical experience used to meet the requirements for a certificate, rating, or flight review of this part.

(2) The aeronautical experience required for meeting the recency of flight experience requirements of this part.

(b) *Logbook entries.* For the purposes of meeting the requirements of paragraph (a) of this section, each person must enter the following information for each flight or lesson logged:

(1) General:

(i) Date.

(ii) Total time of flight.

(iii) Locations where the aircraft departed and arrived.

(iv) Type and identification of aircraft.

(v) The name and certificate number of a safety pilot, if required by § 91.109(b) of this chapter.

(2) Type of pilot experience or training:

(i) Pilot in command.

(ii) Second in command.

(iii) Flight and ground training received from an authorized flight instructor.

(iv) Training received in an approved flight training device or flight simulator from authorized flight or ground instructor.

(3) Conditions of flight:

(i) Day or night.

(ii) Actual instrument.

(iii) Simulated instrument.

(c) *Logging of pilot time.* The pilot time described in this section may be used to:

(1) Apply for a certificate or rating issued under this part; or

(2) Satisfy the recent flight experience requirements of this part.

(d) *Logging of pilot-in-command flight time.* Except as provided in paragraph (e) of this section, only one person may log pilot-in-command flight time, provided the:

(1) Person has final authority and responsibility for the operation and safety of the flight;

(2) Person holds the appropriate category, class, and type rating, if appropriate;

(3) Person has been designated as pilot in command before or during the flight; and

(4) Flight time occurs in actual flight conditions in an aircraft.

(e) *Two people logging pilot-in-command flight time.* If a certificated pilot and an authorized flight instructor are on board an aircraft at the same time, and each holds the appropriate category, class, and type rating (if a type rating is required) for that aircraft, then both the pilot and the flight instructor may log pilot-in-command time provided:

(1) The flight instructor—

(i) Is authorized by this chapter to conduct the training and is conducting training during the flight;

(ii) Holds at least a third-class medical certificate issued under part 67 of this chapter; and

(iii) Occupies a pilot station in the aircraft that has functioning flight controls.

(2) The pilot—

(i) Is receiving training from the flight instructor in a course of training for the issuance of a certificate or rating or to obtain the recency of experience requirements of this part;

(ii) Is qualified to conduct the flight in accordance with the operating rule under which the flight is being conducted; and

(iii) Is manipulating the controls of the aircraft.

(3) The aircraft has dual functioning flight controls and the engine controls can be reached from either pilot station.

(f) *Student pilots logging pilot-in-command flight time.* The holder of a student pilot certificate may log pilot in command time when the student pilot:

(1) Is the sole occupant of the aircraft;

(2) Has a current pilot-in-command flight endorsement as required under § 61.87 of this part; and

(3) Is undergoing a course of training for a pilot certificate or rating or is logging pilot-in-command flight time to obtain the pilot-in-command flight experience requirements for a pilot certificate or aircraft rating.

(g) *Logging second-in-command flight time.* A person may log second-in-command flight time, provided the person:

(1) Is qualified in accordance with the second-in-command requirements of § 61.55 of this part, and occupies a crewmember seat in an aircraft that requires more than one pilot by the aircraft's type certificate; or

(2) The person holds the appropriate category, class, and instrument rating (if an instrument rating is required for the flight) for the aircraft being flown, and the regulations under which the flight is being conducted requires a second-in-command pilot.

(h) *Logging instrument flight time.*

(1) A person may log instrument flight time when the person operates the aircraft solely by reference to instruments under actual or simulated instrument flight conditions.

(2) A person may log instrument flight time when the person is appropriately qualified for and is serving as an instrument flight instructor under actual instrument flight conditions.

(3) For the purposes of logging instrument flight time, to meet the instrument currency requirements of § 61.57(e) of this part, the following information must be recorded in the person's logbook—

(i) The location, number, and kind of instrument approaches accomplished; and

(ii) The name and pilot certificate number of the safety pilot, if required.

(i) *Logging training time.*

(1) A person may log training time when the person receives training from an authorized flight instructor in an aircraft, flight simulator, or flight training device for the purpose of obtaining a certificate, rating, or recency of experience requirements of this part.

(2) A person may log training time when the person receives training from an authorized ground instructor in a flight simulator or flight training device for the purpose of obtaining a certificate, rating, or recency of experience requirements, of this part.

(3) The training time must be logged in a logbook or training record, and must:

(i) Be certified in a legible manner by the authorized flight or ground instructor, as appropriate; and

(ii) Include a description of the training given, the length of the training lesson, and the instructor's signature, certificate number, and certificate expiration date.

(j) *Presentation of logbook.*

(1) Persons must present their pilot certificate, medical certificate, logbook, or any other record required by this part for inspection upon a request by:

(i) The Administrator;

(ii) An authorized representative from the National Transportation Safety Board; or

(iii) Any Federal, State, or local law enforcement officer.

(2) Student pilots must carry the following items in the aircraft when exercising the privileges of their student pilot certificate:

(i) Pilot logbook; and

(ii) Student pilot certificate.

(3) Recreational pilots must carry their logbook with the required instructor endorsements on all flights when serving as pilot-in-command or as a required flight crewmember for flights:

(i) Of more than 50 nautical miles from an airport where training was received;

(ii) In airspace in which communication with air traffic control is required;

(iii) Between sunset and sunrise; and

(iv) In an aircraft for which the pilot is not rated.

§ 61.53 Operations during medical deficiency.

(a) Operations that require a medical certificate. Except as provided for in paragraph (b) of this section, a person who holds a current medical certificate issued under part 67 of this chapter shall not act as pilot in command, or in any other capacity as a required pilot flight crewmember, while that person:

(1) Knows or has reason to know of any medical condition that would make the person unable to meet the requirements for the medical certificate held; or

(2) Is taking medication or receiving other treatment for a medical condition that results in the person being unable to meet the requirements for the medical certificate held.

(b) Operations that do not require a medical certificate. For operations provided for in § 61.23(b)(4) of this part without a medical certificate, a person shall not act as pilot in command while that person:

(1) Knows or has reason to know of any medical condition that would make them unable to operate the aircraft in a safe manner; or

(2) Is taking medication or receiving other treatment for a medical condition that would make them unable to operate the aircraft in a safe manner.

§ 61.55 Second-in-command qualifications.

(a) Except as provided in paragraph (d) of this section, no person may serve as a second in command of an aircraft type certificated for more than one required pilot flight crewmember or in operations requiring a second in command unless that person holds:

(1) At least a current private pilot certificate with the appropriate category and class rating; and

(2) An instrument rating that applies to the aircraft being flown if the flight is under IFR.

(b) No person may serve as a second in command of an aircraft type certificated for more than one required pilot flight crewmember or in operations requiring a second in command unless that person has within the previous 12 calendar months:

(1) Reviewed on the specific type aircraft, for which second-in-command privileges are requested, and that review must include becoming familiar with the aircraft's—

(i) Operational procedures on the powerplant, equipment, and systems;

(ii) Performance specifications and limitations;

(iii) Normal, abnormal, and emergency operating procedures;

(iv) Flight manual; and

(v) Placards and markings.

(2) Performed and logged practice in the type aircraft or in an approved flight simulator or approved flight training device that represents the type of aircraft for which second-in-command privileges are requested, and the practice must include at least—

(i) Three takeoffs and landings to a full stop as the sole manipulator of the flight controls;

(ii) Engine-out procedures and maneuvering with an engine out while executing the duties of a pilot in command; and

(iii) Flight deck resource management training.

(c) If a person complies with the requirements in paragraph (b) of this section in the calendar month before or the calendar month after the month in which compliance with this section is required, then that person is considered to have accomplished the training and practice requirements of paragraph (b) of this section in the month it is due.

(d) This section does not apply to a person who is:

(1) Designated and qualified as a pilot in command, under part 121, 125, or 135 of this chapter in that specific type of aircraft;

(2) Designated as the second in command, under part 121, 125, or 135 of this chapter in that specific type of aircraft; or

(3) Designated as the second in command in that specific type of aircraft for the purpose of receiving flight training required by this section and no passengers or cargo are carried on the aircraft.

(e) A person who holds a commercial or airline transport pilot certificate with the appropriate category and class rating need not meet the requirements of paragraph (b)(2) of this section, provided that pilot:

(1) Is conducting ferry flights, aircraft flight tests, or evaluation flights of an aircraft's equipment; and

(2) Does not carry any person or cargo aboard the aircraft, unless the person or cargo is considered necessary for the flight.

(f) To meet the requirements of paragraph (b)(2) of this section, a person may serve as a second in command in that specific type of aircraft, if:

(1) The flight occurs under day VFR or day IFR; and

(2) No person or cargo are carried aboard the aircraft, unless the person or cargo is considered necessary for the flight.

§ 61.56 Flight review.

(a) A flight review consists of a minimum of 1 hour of flight instruction and 1 hour of ground instruction. The review must include—

(1) A review of the current general operating and flight rules of part 91 of this chapter; and

(2) A review of those maneuvers and procedures which, at the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate.

(b) Glider pilots may substitute a minimum of three instructional flights in a glider, each of which includes a 360 degree turn, in lieu of the 1 hour of flight instruction required in paragraph (a).

(c) Except as provided in paragraphs (d) and (e) of this section, no person may act as pilot in command of an aircraft unless, since the beginning of the 24th calendar month before the month in which that pilot acts as pilot in command, that person has—

(1) Accomplished a flight review given in an aircraft for which that pilot is rated by an appropriately rated instructor certificated under this part or other person designated by the Administrator; and

(2) A logbook endorsed by the person who gave the review certifying that the person has satisfactorily completed the review.

(d) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed a pilot proficiency check conducted by the FAA, an approved pilot check airman, or a U.S. Armed Force, for a pilot certificate, rating, or operating privilege, need not accomplish the flight review required by this section.

(e) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review required by this section.

(f) A person who holds a current flight instructor certificate who has, within the period specified in paragraph (c) of this section, satisfactorily completed a renewal of a flight instructor certificate under the provisions on 61.197(c), need not accomplish the 1 hour of ground instruction specified in subparagraph (a)(1) of this section.

(g) The requirements of this section may be accomplished in combination with the requirements of § 61.57 and other applicable recency requirements at the discretion of the instructor.

§ 61.57 Recent flight experience: Pilot-in-command.

(a) *General experience.*.

(1) Except as provided by paragraph (e) of this section, no person may act as a pilot in command of an aircraft carrying passengers or as required pilot aboard an aircraft that requires more than one pilot crewmember unless that person has made at least three takeoffs and three landings to a full stop within the preceding 90 days, and:

(i) The person acted as sole manipulator of the flight controls;

(ii) The required takeoffs and landings were performed in an aircraft of the same category, class, and type (if a type rating is required), and if the aircraft to be flown is an airplane with a tailwheel landing gear, the takeoffs and landings must have been in a tailwheel airplane; and

(iii) Each required takeoff and landing involved a flight in the traffic pattern at the recommended traffic pattern altitude for the airport.

(2) A person may act as a pilot in command or as required pilot and sole manipulator of the controls for an aircraft that requires more than one pilot under day VFR or day IFR, provided no persons or property, other than that necessary for compliance with paragraph (a) of this section, are carried.

(b) *Night experience.* Except as provided by paragraph (e) of this section, no person may act as pilot in command of an aircraft carrying passengers at night, nor as a required pilot aboard an aircraft requiring more than one pilot crewmember at night, unless that person has complied with the requirements of paragraph (a) of this section at night.

(c) *Recent instrument experience.* Except as provided in paragraph (e) of this section, no person may act as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR, unless that person has met the following requirements within the preceding 6 calendar months:

(1) To obtain instrument experience in an aircraft (other than a glider), that person has performed and logged—

(i) At least six instrument approaches;

(ii) Holding procedures;

(iii) Intercepting and tracking VOR radials and NDB bearings;

(iv) Recovery from unusual flight altitudes; and

(v) Flight by reference to instruments.

(2) The instrument experience requirements of paragraph (d)(1) of this section must have been logged in an aircraft that is not a glider, and performed in—

(i) Actual flight, appropriate to the category of aircraft for the instrument privileges sought; or

(ii) An approved flight simulator or flight training device that is representative of the aircraft category for the instrument privileges sought.

(3) If the person does not carry passengers and if the instrument recency experience is in a glider, that person must have performed and logged at least—

(i) Three hours of instrument time in actual flight of which 1.5 hours may be acquired in a single-engine airplane or a glider; or

(ii) Three hours of instrument time must have been in a glider.

(d) *Instrument proficiency check.* Except as provided by paragraph (e) of this section, a person who does not meet the recent instrument requirements of paragraph (d) of this section within the prescribed time or within 6 calendar months after the prescribed time, may not serve as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR until that person satisfactorily accomplishes an instrument proficiency check:

(1) Consisting of a representative number of tasks required by the instrument rating practical test, and the check must be—

(i) In an aircraft that is appropriate to the aircraft category and instrument privileges sought;

(ii) In an approved flight simulator or flight training device that is representative of the aircraft category (other than a glider) for which instrument privileges sought; or

(iii) For a glider, in a single-engine airplane or a glider.

(2) Given by one of the following persons—

(i) An examiner;

(ii) A person authorized by the U.S. Armed Forces to conduct instrument flight tests, provided the person being tested is a member of the U.S. Armed Forces;

(iii) A company check pilot who is authorized to conduct instrument flight tests under part 121, 125, or 135 of this chapter, and provided that both the check pilot and the pilot being tested are employees of that operator;

(iv) An instrument flight instructor who holds the appropriate instrument instructor rating for the class of aircraft in which the check is being conducted; or

(v) A person approved by the Administrator to conduct instrument practical tests.

(e) *Exceptions.*

(1) Paragraphs (a) and (b) of this section do not apply to a pilot in command that is employed by a part 125 operator and is engaged in a flight operation for that certificate holder.

(2) This section does not apply to a pilot in command that is employed by a part 121 or part 135 operator and is engaged in a flight operation for that certificate holder.

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot.

(a) Except as provided in paragraph (e) of this section, no person may act as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember unless the proficiency checks prescribed in paragraphs (b) and (c) of this section are satisfactorily accomplished.

(b) Within 12-calendar months preceding the month the person acts as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember that person must have accomplished one of the following:

(1) For an airplane, a proficiency check—

(i) In that airplane type, or in a flight simulator or flight training device that is representative of that type of airplane;

(ii) Given to that person by an examiner; and

(iii) Consisting of those areas of operations that are appropriate to the standards required of an airline transport pilot certificate for that airplane class rating.

(2) For other aircraft, a proficiency checks—

(i) In that aircraft type, or in a flight simulator or flight training device that is representative of that type of aircraft;

(ii) Given to that person by an examiner; and

(iii) Consisting of those areas of operations that are appropriate to the standards required of an airline transport pilot certificate for that aircraft category and class rating.

(3) A pilot in command proficiency check given to that person in accordance with part 121, 123, 125, or 135 of this chapter.

(4) A practical test required for an aircraft type rating.

(5) An initial or periodic proficiency check for the issuance of an examiner or check airman designation.

(6) A military proficiency check required for pilot in command and instrument privileges in an aircraft which the military requires to be operated by more than one pilot.

(c) Except as provided in paragraph (d) of this section, within 24-calendar months preceding the month the person acts as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember, that person must have accomplished one of the following proficiency checks in the particular type of aircraft in which the person is to serve as pilot in command:

(1) A proficiency check—

(i) In that aircraft type, or in a flight simulator or flight training device that is representative of that type of aircraft;

(ii) Given to that person by an examiner; and

(iii) Consisting of those areas of operations that are appropriate to the standards required of an airline transport pilot certificate for that aircraft category and class rating.

(2) A pilot in command proficiency check given to that person in accordance with part 121, 123, 125, or 135 of this chapter;

(3) A practical test required for an aircraft type rating;

(4) An initial or periodic proficiency check for the issuance of a pilot examiner or check airman designation; or

(5) A military proficiency check required for pilot in command and instrument privileges in an aircraft which the military requires to be operated by more than one pilot.

(d) For airplanes, the maneuvers and procedures required for the checks and test prescribed in paragraphs (c) (1), (2), (4), and (5) of this section, and paragraph (c)(3) of this section for type ratings obtained in conjunction with part 121 of this chapter, training programs may be performed in a flight simulator or flight training device if the:

(1) Maneuver or procedure can be performed in a flight simulator or flight training device as set forth in appendix F to part 121 of this chapter; and

(2) Flight simulator or flight training device is one that is approved for the particular maneuver or procedure.

(e) This section does not apply to persons conducting operations subject to parts 121, 123, 125, 133, 135, and 137 of this chapter.

(f) For the purpose of meeting the proficiency check requirements of paragraphs (b) and (c) of this section, a person may act as pilot in command of a flight under day VFR or day IFR if no persons or property, other than as necessary for compliance thereunder, are carried.

(g) If a person takes the proficiency check required by paragraph (a) of this section in the calendar month before, or the calendar month after the month in which it is due, that person is considered to have taken it in the month it is due.

§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false statement on any application for a certificate, rating, or duplicate thereof, issued under this part;

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for the issuance, or exercise of the privileges of any certificate or rating under this part;

(3) Any reproduction, for fraudulent purpose, of any certificate or rating under this part; or

(4) Any alteration of any certificate or rating under this part.

(b) The commission of an act prohibited under paragraph (a) of this section is a basis for suspending or revoking any airman or ground instructor certificate or rating held by that person.

§ 61.60 Change of address.

Persons who hold an airman certificate, and who have a change in their permanent mailing address, may not exercise the privileges of their certificate unless they notify the Federal Aviation Administration, Airman Certification Branch, Box 25082, Oklahoma City, Oklahoma 73125, in writing of the new address within 30 days from the date the person moved.

Subpart B—Aircraft Ratings and Special Certificates

§ 61.61 Applicability.

This subpart prescribes the requirements for the issuance of additional aircraft ratings after a pilot certificate is issued, and the requirements and limitations for special purpose pilot authorizations issued by the Administrator.

§ 61.63 Additional aircraft ratings (other than airline transport pilot).

(a) *Additional category rating.* Persons who apply for an additional aircraft category rating to be added to their current pilot certificate:

(1) Must have received the required training and aeronautical experience time prescribed by this part that applies to the pilot certificate for the aircraft category and class rating sought;

(2) Must have an endorsement in their logbook or training record from an authorized flight instructor or ground instructor, and that endorsement must attest that they have been found competent on the aeronautical knowledge areas that are appropriate to the pilot certificate for the aircraft category or class rating sought;

(3) Must have an endorsement in their logbook or training record from an authorized flight instructor, and that endorsement must attest that they have been found proficient on the areas of operation that are appropriate to the pilot certificate for the aircraft category or class rating sought;

(4) Must have satisfactorily accomplished the required practical test that is appropriate to the pilot certificate for the aircraft category or class rating sought;

(5) Need not accomplish the supervised pilot in command time prescribed by this part that applies to the pilot certificate for the aircraft category or class rating sought; and

(6) Need not accomplish another knowledge test, provided they hold an airplane, rotorcraft, powered-lift, or airship rating at that pilot certificate level.

(b) *Additional class rating.* Persons who apply for an additional class rating to be added on their pilot certificate:

(1) Must have an endorsement in their logbook or training record from an authorized flight instructor, and that endorsement must attest they have been found competent on the aeronautical knowledge areas that are appropriate to the pilot certificate for the aircraft class rating sought;

(2) Must have an endorsement in their logbook or training record from an authorized flight instructor, and that endorsement must attest they have been found proficient on the areas of operation that are appropriate to the pilot certificate for the aircraft class rating sought;

(3) Must have satisfactorily accomplished the required practical test that is appropriate to the pilot certificate for the aircraft class rating sought;

(4) Need not meet the specified training time and aeronautical experience time prescribed by this part that applies to the pilot certificate for the aircraft class rating sought; and

(5) Need not accomplish another knowledge test, provided they hold an airplane, rotorcraft, powered-lift, or airship rating at that pilot certificate level.

(c) *Additional type rating or an addition of an aircraft type rating that is accomplished concurrently with an additional aircraft category or class rating.* Persons who apply for an additional aircraft type rating to be added on their pilot certificate, or an addition of aircraft type rating that is accomplished concurrently with an additional aircraft category or class rating:

(1) Must hold or concurrently obtain an instrument rating that is appropriate to the aircraft's category, class, or type rating sought;

(2) Must have an endorsement in their logbook or training record from an authorized flight instructor, and that endorsement must attest that they have been found competent on the aeronautical knowledge areas that are appropriate to the pilot certificate for the aircraft category, class, or type rating sought;

(3) Must have an endorsement in their logbook or training record from an authorized flight instructor, and that endorsement must attest that they have been found proficient on the areas of operation that are appropriate to the standards of an airline transport pilot certificate for the aircraft category, class, or type rating sought;

(4) Must have satisfactorily accomplished the required practical test that is appropriate to the airline transport pilot certificate for the aircraft category, class, or type rating sought;

(5) Need not meet the specified training time and aeronautical experience time prescribed by this part that applies to the pilot certificate for the aircraft category or class rating sought;

(6) Must perform the practical test under instrument flight rules, unless the practical test cannot be accomplished under instrument flight rules because the aircraft's type certificate makes the aircraft incapable of operating under instrument flight rules, then—

(i) The person may obtain a type rating limited to "VFR only;" and

(ii) The "VFR only" limitation may be removed for that aircraft type when the person satisfactorily accomplishes the practical test under instrument flight rules.

(7) When an instrument rating is issued to persons who hold one or more type ratings, the type ratings on the amended pilot certificate shall bear the "VFR only" limitation for each aircraft type rating for which they have not shown the instrument competency; and

(8) Need not accomplish another knowledge test, provided they hold an airplane, rotorcraft, powered-lift, or airship rating on their pilot certificate.

§ 61.65 Instrument rating requirements.

(a) *General.* A person who applies for an instrument rating must:

(1) Hold at least a private pilot certificate with an aircraft category and class rating that applies to the instrument rating sought;

(2) Be able to read, speak, write, and understand the English language;

(3) Hold at least a current third-class medical certificate issued under part 67 of this chapter;

(4) Present documentation of having—

(i) Received and logged ground training from an authorized instructor, or accomplished a home study course of training on the approved aeronautical knowledge areas of paragraph (b) of this section that apply to the instrument rating sought;

(ii) Received a logbook or training record endorsement from the authorized instructor, who gave that person training or reviewed that person's home study course, certifying that the person is prepared to satisfactorily accomplish the required knowledge test;

(iii) Received and logged training from an authorized flight instructor in the aircraft, or from an authorized instructor in a flight simulator or training device that represents that class of aircraft for the instrument rating sought on the approved areas of operation of paragraph (c) of this section; and

(iv) Received a logbook or training record endorsement from the authorized instructor who gave that person the training and certified that the person is prepared to satisfactorily accomplish the required practical test.

(5) Satisfactorily accomplish the required knowledge test on the approved aeronautical knowledge areas of paragraph (b) of this section;

(6) Satisfactorily accomplish the required practical test on the approved areas of operation of paragraph (c) of this section;

(7) Satisfactorily accomplish an instrument rating practical test in a multiengine airplane, and who holds an airplane category and single-engine class rating on the person's pilot certificate will also have met the requirements for issuance of an instrument rating-airplane single engine;

(8) Is not required to accomplish another knowledge test, when that person already holds an instrument rating on the person's pilot certificate; and

(9) Comply with the applicable requirements of this section.

(b) *Aeronautical knowledge.* A person who applies for an instrument rating must have received and logged ground training from authorized instructor, or accomplished a home study course on the following aeronautical knowledge areas that apply to the instrument rating sought:

(1) The Federal Aviation Regulations of this chapter that apply to flight operations under IFR;

(2) The appropriate information that apply to flight operations under IFR in the "Airman's Information Manual;"

(3) The air traffic control system and procedures for instrument flight operations;

(4) IFR navigation and approaches by use of radio aids;

(5) The use of IFR enroute and instrument approach procedure charts;

(6) The procurement and use of aviation weather reports and forecasts and the elements of forecasting weather trends based on that information and personal observation of weather conditions;

(7) The safe and efficient operation of aircraft under IFR and conditions that apply to the instrument rating sought;

(8) The recognition of critical weather situations and windshear avoidance;

(9) Aeronautical decision making and judgment; and

(10) Flight deck resource management, including crew communications and coordination.

(c) *Areas of operation.* A person who applies for an instrument rating must receive and log training from an authorized flight instructor in an aircraft, or from an authorized instructor in an approved flight simulator or training device (or any combination thereof) that includes the following approved areas of operation:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Air traffic control clearances and procedures;

(4) Flight by reference to instruments;

(5) Navigation aids;

(6) Instrument approach procedures;

(7) Emergency operations; and

(8) Postflight procedures.

(d) *Aeronautical experience.* A person who applies for an instrument rating must have received and logged the following training:

(1) At least 40 hours of instrument training from an authorized flight instructor-instrument or ground instructor-instrument on the approved areas of operation of this section;

(2) Not more than 20 hours of the instrument training prescribed in paragraph (d)(1) of this section may be met by training received from an authorized flight instructor-instrument or ground instructor-instrument in a flight simulator or flight training device;

(3) At least 5 hours of instrument flight training from an authorized instrument flight instructor in the category and class aircraft for the instrument rating sought;

(4) At least 3 hours of instrument training that is appropriate to the instrument-aircraft class rating sought and from an authorized instructor in preparation for the practical test within the 60-days preceding the date of the test;

(5) For an instrument-airplane rating, instrument training specific to airplanes on cross-country flight procedures that includes at least one cross-country flight in the class airplane for the instrument rating sought, is performed under IFR, and consists of—

(i) A distance of at least 250 nautical miles along airways or ATC-directed routing with one of the routes being at least a straight-line distance of 100 nautical miles between airports;

(ii) An instrument approach at each airport; and

(iii) Three different kinds of approaches with the use of navigation aids.

(6) For an instrument-helicopter rating, instrument training specific to helicopters on cross-country flight procedures that includes at least one cross-country flight in a helicopter, is performed under IFR, and consists of—

(i) A distance of at least 100 nautical miles along airways or ATC-directed routing with one of the routes being at least a straight-line distance of 50 nautical miles between airports;

(ii) An instrument approach at each airport; and

(iii) Three different kinds of approaches with the use of navigation aids.

(7) For an instrument-airship rating, instrument training specific to airships on cross-country flight procedures that includes at least one cross-country flight

in an airship, is performed under IFR, and consists of—

(i) A distance of at least 50 nautical miles along airways or ATC-directed routing with one of the routes being at least a straight-line distance of 25 nautical miles between airports;

(ii) An instrument approach at each airport; and

(iii) Three different kinds of approaches with the use of navigation aids.

(8) For an instrument-powered-lift rating, instrument training specific to powered-lift on cross-country flight procedures that includes at least one cross-country flight in a powered-lift, is performed under IFR, and consists of—

(i) A distance of at least 250 nautical miles along airways or ATC-directed routing with one of the routes being at least a straight-line distance of 100 nautical miles between airports;

(ii) An instrument approach at each airport; and

(iii) Three different kinds of approaches with the use of navigation aids.

§ 61.67 Category II pilot authorization requirements.

(a) *General.* A person who applies for a Category II pilot authorization must hold:

(1) At least a private or commercial pilot certificate with an instrument rating or an airline transport pilot certificate; and

(2) A type rating for the aircraft type if the authorization is requested for a large aircraft or a small turbojet aircraft.

(b) *Experience requirements.* Except for a person who holds an airline transport pilot certificate, a person who applies for a Category II authorization must have at least:

(1) Fifty hours of night flight time under VFR conditions as pilot in command.

(2) Seventy-five hours of instrument time under actual or simulated conditions that may include 25 hours in an approved flight simulator or training device.

(3) Two hundred-fifty hours of cross-country flight time as pilot in command.

(4) The night flight and instrument flight time used to meet the requirements of paragraphs (b) (1) and (2) of this section may also be used to meet the requirements of paragraph (b)(3) of this section.

(c) *Practical test requirements.*

(1) A practical test must be satisfactorily accomplished by a person who applies for:

(i) Issuance or renewal of an authorization; and

(ii) The addition of another type aircraft to the applicant's Category II authorization.

(2) To be eligible for the practical test for an authorization under this section, the person must meet the requirements of paragraph (a) of this section and, if the practical test has not been accomplished during the 12-calendar months preceding the month of the test, then that person must meet the following recent experience requirements:

(i) The requirements of § 61.57(e);

(ii) At least six ILS approaches during the 6-calendar months preceding the month of the test of which at least three of the approaches must have been conducted without the use of an approach coupler, and these approaches—

(A) Must be under actual or simulated instrument flight conditions to the decision height of the approach, and in the type aircraft in which the practical test is to be performed; and

(B) Need not be conducted down to the decision heights authorized for Category II operations.

(iii) The flight time acquired in meeting the requirements of paragraph (c)(2)(ii) of this section may be used to meet the requirements of paragraph (c)(2)(i) of this section.

(d) *Practical test procedures.* The practical test consists of two phases:

(1) *Phase I-knowledge test.* The person must demonstrate knowledge of the following—

(i) Required landing distance;

(ii) Recognition of the decision height;

(iii) Missed approach procedures and techniques utilizing computed or fixed attitude guidance displays;

(iv) RVR, its use and limitations;

(v) Use of visual clues, their availability or limitations, and altitude at which they are normally discernible at reduced RVR readings;

(vi) Procedures and techniques related to transition from nonvisual to visual flight during a final approach under reduced RVR;

(vii) Effects of vertical and horizontal windshear;

(viii) Characteristics and limitations of the ILS and runway lighting system;

(ix) Characteristics and limitations of the flight director system, auto approach coupler (including split axis type if equipped), auto throttle system (if equipped), and other required Category II equipment;

(x) Assigned duties of the second in command during Category II approaches; and

(xi) Instrument and equipment failure warning systems.

(2) *Phase II-proficiency test.* The test must—

(i) Be taken in an aircraft that meets the requirements of part 91 of this chapter for Category II operations;

(ii) Consist of at least two ILS approaches to 100 feet including at least one landing and one missed approach;

(iii) Be performed with all approaches made with the use of an approved flight control guidance system;

(iv) Include at least one manual approach if an approved automatic approach coupler is installed;

(v) Include a missed approach that is executed with one engine set in idle or zero thrust position before reaching the middle marker for a multiengine aircraft that has performance capability to execute a missed approach with an engine out; and

(vi) Include flight maneuvers performed solely by reference to instruments and in coordination with a second in command who holds a class rating and, in the case of a large aircraft or a small turbojet aircraft, a type rating for that aircraft.

§ 61.69 Glider towing: Experience and training requirements.

(a) No person may act as pilot in command for towing a glider unless that person:

(1) Holds at least a private pilot certificate with an airplane category and a single engine class rating;

(2) Has logged at least 100 hours of pilot-in-command time in single engine airplanes;

(3) Has a logbook endorsement from an authorized glider flight instructor who certifies that the person has received ground and flight training in gliders and is proficient in—

(i) The techniques and procedures essential to the safe towing of gliders, including airspeed limitations;

(ii) Emergency procedures;

(iii) Signals used; and

(iv) Maximum angles of bank.

(4) Has made at least three flights as the sole manipulator of the controls of an aircraft towing a glider while accompanied by a pilot who meets the requirements of this section; and

(5) Has received a logbook endorsement from the pilot described in paragraph (a)(4) of this section, and that endorsement must certify that the person has accomplished at least 3 flights in a single engine airplane while towing a glider.

(b) The pilot, described in paragraph (a)(4) of this section, who accompanies and endorses the logbook of persons seeking glider towing privileges:

(1) Must have met the requirements of this section prior to accompanying or endorsing the logbook of persons seeking glider towing privileges;

(2) Must have logged at least 10 flights as pilot in command of a single engine airplane while towing a glider; and

(3) Holds only a private pilot certificate, then that pilot—

(i) Must also have logged at least 100 hours of pilot-in-command time in airplanes, or 200 hours of pilot-in-command time in a combination of powered and other than powered aircraft; and

(ii) Must have performed and logged at least three flights within the 12-calendar months preceding the month that pilot accompanies or endorses the logbook of persons seeking glider towing privileges—

(A) In a single-engine airplane while towing a glider and be accompanied by another pilot who meets the requirements of this section; or

(B) As pilot in command of a glider being towed by a single-engine airplane.

§ 61.71 Graduates of an approved training program, other than under this part: Special rules.

(a) A person who graduates from an approved training program under parts 141 or 142 of this chapter, is considered to have met the applicable aeronautical experience, aeronautical knowledge, and approved areas of operation requirements of this part, if that person presents the graduation certificate and satisfactorily accomplishes the required practical test within the 60-day period after the date of graduation.

(b) A person may apply for an airline transport pilot certificate, type rating, or both under this part, and will be considered to have met the applicable requirements of § 61.157 of this part for that certificate and rating, if that person has—

(1) Satisfactorily accomplished an approved training program and the pilot-in-command proficiency check for that airplane type, in accordance with the pilot in command requirements of subparts N and O of part 121 of this chapter; and

(2) Made application for that airline transport pilot certificate, type rating, or both within the 60-day period from the date the person satisfactorily accomplished the approved training program and pilot-in-command proficiency check for that airplane type.

§ 61.73 Military pilots or former military pilots: Special rules.

(a) *General.* Military pilots or former military pilots who have graduated from a U.S. military pilot training course, have received official military aeronautical orders, and meet the applicable requirements of this section may apply, on the basis of their military training, for:

(1) A commercial pilot certificate.

(2) An aircraft rating in the category and class of aircraft for which that military pilot is qualified.

(3) An instrument rating with the appropriate aircraft rating for which that military pilot is qualified.

(4) A type rating, if appropriate.

(5) This section does not apply to a military pilot or a former military pilot who has been removed from flying status for lack of proficiency or because of disciplinary action.

(b) *Military pilots on active flying status within the past 12 months.* A rated military pilot or former rated military pilot who has been on active flying status within the 12 months before applying must:

(1) Satisfactorily accomplishes a knowledge test on the appropriate parts of this chapter that apply to pilot privileges and limitations, air traffic and general operating rules, and accident reporting rules;

(2) Present documents showing that the requirements of paragraph (d) of this section are met for at least one aircraft rating; and

(3) Present documents showing that the military pilot, is or was, at any time during the 12-calendar months before the month of application—

(i) A rated military pilot on active flying status in an armed force of the United States; or

(ii) A rated military pilot of an armed force of a member State to the International Civil Aviation Organization, assigned to pilot duties (other than flight training) with an armed force of the United States who holds, at the time of application, a current civil pilot license issued by that member State authorizing at least the privileges of the pilot certificate sought.

(c) *Military pilots not on active flying status during the 12 calendar months before the month of application.* A rated military pilot or former military pilot who has not been on active flying status during the 12 calendar months before the month of application must:

(1) Satisfactorily accomplishes the appropriate knowledge and practical tests prescribed in this part for the certificate or rating sought;

(2) Hold at least a third class medical certificate issued under part 67 of this chapter; and

(3) Present documents showing that the applicant, was or is, during the 12 calendar months before the month of application, a rated military pilot as prescribed by paragraph (b)(3) of this section.

(d) *Aircraft category, class, and type ratings.* A military pilot who applies for additional aircraft category, class, or type rating is issued that rating at the commercial pilot certificate level if the pilot presents documentary evidence that shows satisfactory accomplishment of:

(1) An official U.S. military checkout and instrument proficiency checkout in the aircraft as pilot in command during the 12 calendar months before the month of application;

(2) At least 10 hours of pilot in command time in the aircraft during the 12 calendar months before the month of application;

(3) An FAA practical test in that aircraft after first—

(i) Meeting the requirements of paragraph (b)(1) and (2) of this section; and

(ii) Having received an endorsment from an authorized flight instructor who certifies that the pilot is proficient to accomplish the required practical test, and that endorsement is dated within the 60-day period preceding the date of the practical test.

(e) *Instrument rating.* Military pilots who apply for an airplane instrument rating, a helicopter instrument rating, or a powered-lift instrument rating to be added on their commercial pilot certificate, are entitled to that instrument rating if the pilots have, within the 12 calendar months preceding the month of application:

(1) Satisfactorily accomplished an instrument proficiency checkout of a U.S. Armed Force in the aircraft category and class for the instrument rating sought; and

(2) Is authorized by the U.S. Armed Force to conduct IFR flights on Federal airways in that aircraft category and class for the instrument rating sought.

(f) *Aircraft type rating.* An aircraft type rating is issued only for aircraft types that the Administrator has certificated for civil operations.

(g) *Aircraft type rating placed on an airline transport pilot certificate.* A military pilot who holds an airline transport pilot certificate and who requests an aircraft type rating to be placed on their airline transport pilot certificate may be issued that aircraft type rating at the airline transport pilot certificate level, provided that person—

(1) Holds a category and class rating for that type of aircraft at the airline transport pilot certificate level; and

(2) Satisfactorily accomplishes an official U.S. military checkout and instrument proficiency checkout in that type of aircraft as pilot in command during the 12 calendar months before the month of application.

(h) *Evidentiary documents.* The following documents are satisfactory

evidence for meeting the requirements of this section to show:

(1) Membership of the armed forces, an official identification card issued to the pilot by an armed force may be used.

(2) The military pilot's discharge or release from an armed force or former membership of an armed force, an original or a copy of a certificate of discharge or release may be used.

(3) Current or previous status as a rated military pilot with a U.S. Armed Force, for which one of the following may be used, as appropriate:

(i) An official U.S. Armed Force order to flight duty as a military pilot;

(ii) An official U.S. Armed Force form or logbook showing military pilot status; or

(iii) An official order showing that the military pilot graduated from a U.S. military pilot school and is rated as a military pilot.

(4) Flight time in military aircraft as a member of a U.S. Armed Force, an appropriate official U.S. Armed Force form or summary, or a certified U.S. Armed Force logbook may be used.

(5) Pilot-in-command status, an official U.S. armed force record of a military checkout as pilot in command may be used.

(6) Instrument pilot qualification, a current instrument grade slip that is issued by a U.S. Armed Force, or an official record of satisfactorily accomplishment of an instrument proficiency check during the 12 calendar months preceding the month of the application may be used.

§ 61.75 Private pilot certificate issued on basis of a foreign pilot license.

(a) *General.* A person who holds a current foreign pilot license, issued by a member State to the International Civil Aviation Organization (ICAO), may apply for and may be issued only a private pilot certificate with the appropriate ratings when the application is based on the foreign pilot license and meets the requirements of this section.

(b) *Certificate issued.* A U.S. private pilot certificate that is issued under this section shall specify the person's foreign license number and country of issuance. A person who holds a current pilot license, issued by a member State to ICAO, may be issued a private pilot certificate based on the foreign pilot license without any further showing of proficiency, and provided that person:

(1) Meets the requirements of this section;

(2) Holds a foreign pilot license that—

(i) Is not under an order of revocation or suspension by the foreign country that issued the foreign pilot license; and

(ii) Does not contain an endorsement stating that the person has not met all of the standards of ICAO;

(3) Does not currently hold a U.S. pilot certificate;

(4) Holds a current medical certificate issued under part 67 of this chapter or a current medical certificate issued by the country that issued the person's foreign pilot license; and

(5) Is able to read, speak, write, and understand the English language.

(c) *Aircraft ratings issued.* Aircraft ratings listed on a person's foreign pilot license, in addition to any issued after testing under the provisions of this part, may be placed on that person's U.S. pilot certificate.

(d) *Instrument ratings issued.* A person who holds an instrument rating on the foreign pilot license, issued by a member State to ICAO, may be issued an instrument rating on the U.S. private pilot certificate provided:

(1) The person's foreign pilot license authorizes instrument privileges;

(2) Upon application for the instrument rating privileges, the person satisfactorily accomplishes the appropriate knowledge test; and

(3) The person is able to read, speak, write, and understand the English language.

(e) *Operating privileges and limitations.* A person who receives a U.S. private pilot certificate that has been issued under the provisions of this section:

(1) May act as a pilot of a civil aircraft of U.S. registry in accordance with the private pilot privileges authorized by this part;

(2) Is limited to the privileges placed on the certificate by the Administrator;

(3) Is subject to the limitations and restrictions on the person's U.S. certificate and foreign pilot certificate when exercising the privileges of that U.S. pilot certificate in an aircraft of U.S. registry operating within or outside the United States; and

(4) Shall not exercise the privileges of that U.S. private pilot certificate when the person's foreign pilot license has been revoked or suspended.

(f) *Limitation on licenses used as basis for U.S. certificate.* Only one foreign pilot license may be used as a basis for issuing a U.S. private pilot certificate. The foreign pilot license and medical certificate used as a basis for issuing a U.S. private pilot certificate under this section must be in the English language or accompanied by an English language transcription that has been signed by an official or representative of the foreign aviation authority that issued the foreign pilot license.

(g) *Limitation placed on U.S. private pilot certificate.* The U.S. private pilot certificate issued under this section is valid only when that person has their foreign pilot license in their personal possession or readily accessible in the aircraft.

§ 61.77 Special purpose pilot authorization: Operation of U.S.-registered civil aircraft leased by a person who is not a U.S. citizen.

(a) *General.* After meeting the requirements of this section, a holder of a foreign pilot certificate or license issued by a member State of the International Civil Aviation Organization (ICAO) may be issued a special purpose pilot authorization by the Administrator for the purpose of performing pilot duties:

(1) On a civil aircraft of U.S. registry that is leased to a person who is not a citizen of the United States; and

(2) For carrying persons or property for compensation or hire on that aircraft.

(b) *Eligibility.* To be eligible for the issuance or renewal of a special purpose pilot authorization, a person must meet the following eligibility prerequisites:

(1) Hold a current foreign pilot certificate that has been issued by the aeronautical authority of a member State to ICAO from where the person holds citizenship or resident status;

(2) The person's foreign pilot certificate must contain the appropriate aircraft category, class, instrument rating, and type rating, if appropriate, for the aircraft to be flown;

(3) Hold a medical certificate from the aeronautical authority of a member State to ICAO from where the person holds citizenship or resident status;

(4) Must not already hold a special purpose pilot authorization, but if the person already holds a special purpose pilot authorization, then that special purpose pilot authorization must either be surrendered to the FAA Flight Standards District Office that issued it, or to the FAA Flight Standards District Office processing the application for the authorization prior to being issued another special purpose pilot authorization;

(5) Meet the currency requirements of this part and must present a logbook/flight record showing compliance with the currency requirements of this part;

(6) Show that the person will not reach the age of 60 years prior to the expiration date of the special purpose pilot authorization a birth certificate or some other official documentation; and

(7) Present a copy of the person's foreign pilot certificate and a letter to an FAA Flight Standards District Office from the lessee of the aircraft that—

(i) Acknowledges the person is employed by the lessee;

(ii) Specifies the aircraft type in which the person will be performing pilot duties; and

(iii) States that the person is currently qualified to exercise the privileges listed on that person's pilot certificate or license for the aircraft to be flown and that the person has satisfactorily accomplished the applicable ground and flight training in the aircraft type in which the person will be performing pilot duties.

(c) *Privileges.* A person who meets the general and eligibility requirements of, and is issued a special purpose pilot authorization under, this section:

(1) May exercise the privileges prescribed on the special purpose pilot authorization; and

(2) Must comply with the limitations specified in this section and any additional limitations specified on the special purpose pilot authorization.

(d) *Limitations.* Anytime persons are exercising the privileges of a special purpose pilot authorization those persons are subject to the following limitations:

(1) May apply for 60-calendar months extension of their authorization, provided they—

(i) Continue to meet the eligibility prerequisites and other requirements of this section; and

(ii) Surrender the expired special purpose pilot authorization upon receipt of the new authorization.

(2) May only hold one special purpose pilot authorization;

(3) May only conduct a flight or series of flights between foreign countries in foreign air commerce within the time period allotted on the authorization;

(4) Must carry their foreign pilot license, medical certificate, and special purpose pilot authorizationin in their physical possession or immediately available in the aircraft, while exercising the privileges of that special purpose pilot authorization; and

(5) Persons, who are 60 years of age or older, may not request nor may they be issued a special purpose pilot authorization, when the purpose of that authorization is for those persons to serve as a required pilot crewmember for a foreign air carrier in—

(i) Scheduled international air services in a U.S.-registered civil aircraft with more than 30 passenger seats, excluding any required crewmember seat, or 7500 pounds payload capacity; or

(ii) Non-scheduled international air transport operationsin a U.S.-registered civil aircraft with more than 30 passenger seats, excluding any required crewmember seat, or 7500 pounds payload capacity.

(e) *Expiration date.* Each special purpose pilot authorization, issued under this section, expires—

(1) Sixty-calendar months from the month it was issued, unless sooner suspended or revoked;

(2) When the lease agreement for the aircraft expires or the lessee terminates the employment of the person who holds the special purpose pilot authorization;

(3) Whenever the person's pilot or medical certificate has been suspended, revoked, or is no longer valid; or

(4) Whenever the person reaches the age of 60.

Subpart C—Student Pilots

§ 61.81 Applicability.

This subpart prescribes the requirements for the issuance of student pilot certificates, the conditions under which those certificates are necessary, and the general operating rules and limitations for the holders of those certificates.

§ 61.83 Eligibility requirements for student pilots.

To be eligible for a student pilot certificate, an applicant must:

(a) Be at least 16 years of age for other than a rating in a glider or balloon.

(b) Be at least 14 years of age for a rating in a glider or balloon.

(c) Be able to read, speak, write, and understand the English language.

(d) Hold at least a current third-class medical certificate issued under part 67 of this chapter for other than a rating in glider or balloon, or a student pilot who is seeking a recreational pilot certificate.

(e) Affix a signed and dated statement to the application certifying that no known medical defect exists that would make the applicant unable to pilot the aircraft for training for a rating in a glider or balloon, or a student pilot who is seeking a recreational pilot certificate.

§ 61.85 Application.

An application for a student pilot certificate is made on a form and in a manner provided by the Administrator and is submitted to:

(a) A designated aviation medical examiner when applying for an FAA medical certificate in the United States; or

(b) An examiner, accompanied by a current FAA medical certificate, or in the case of an application for a pilot certificate with a glider or balloon rating, it may be accompanied by the applicant's certification that no known medical defect makes the applicant unable to pilot a glider or balloon.

§ 61.87 Supervised pilot-in-command requirements for student pilots.

(a) *General.* A student pilot may not operate an aircraft in supervised pilot-in-command (PIC) flight unless that student has met the requirements of this section.

(b) *Aeronautical knowledge.* A student pilot must demonstrate satisfactory aeronautical knowledge on a test that meets the requirements of this paragraph:

(1) The test must address the student pilot's knowledge of—

(i) Applicable sections of parts 61 and 91 of this chapter;

(ii) Airspace rules and procedures for the airport where the supervised PIC flight will be performed; and

(iii) Flight characteristics and operational limitations for the make and model of aircraft to be flown.

(2) The student's flight instructor must—

(i) Administer the test; and

(ii) At the conclusion of the test, review all incorrect answers with the student before authorizing that student to conduct a supervised PIC flight.

(c) *Supervised PIC flight training.* In order to perform supervised PIC flight training, a student pilot must have:

(1) Received and logged flight training on the maneuvers and procedures of this section that are appropriate to the make and model of aircraft to be flown; and

(2) Demonstrated satisfactory proficiency and safety, as judged by an authorized flight instructor, on the maneuvers and procedures required by this section in the make and model of aircraft to be flown.

(d) *Maneuvers and procedures for supervised PIC flight training in a single engine airplane.* A student pilot who is receiving training in a single engine airplane rating must receive and log supervised PIC flight training on the following maneuvers and procedures:

(1) Proper flight preparation procedures, including preflight planning and preparation, powerplant operation, and aircraft systems;

(2) Taxiing or surface operations including runups;

(3) Takeoffs and landings including normal and crosswind;

(4) Straight and level flight and turns in both directions;

(5) Climbs and climbing turns;

(6) Airport traffic patterns including entry and departure procedures;

(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;

(8) Descents with and without turns using high and low drag configurations;

(9) Flight at various airspeeds from cruise to slow flight;

(10) Emergency procedures and equipment malfunctions;
(11) Ground reference maneuvers;
(12) Approaches to a landing area with simulated engine malfunctions;
(13) Slips to a landing; and
(14) Go-arounds.

(e) *Maneuvers and procedures for supervised PIC flight training in a multiengine airplane.* A student pilot who is receiving training in a multiengine airplane, must receive and log supervised PIC flight training on the following maneuvers and procedures:
(1) Proper flight preparation procedures including preflight planning and preparation, powerplant operation, and aircraft systems;
(2) Taxiing or surface operations including runups;
(3) Takeoffs and landings including normal and crosswind;
(4) Straight and level flight and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents with and without turns using high and low drag configurations;
(9) Flight at various airspeeds from cruise to slow flight;
(10) Emergency procedures and equipment malfunctions;
(11) Ground reference maneuvers;
(12) Approaches to a landing area with simulated engine malfunctions; and
(13) Go-arounds.

(f) *Maneuvers and procedures for supervised PIC flight training in a helicopter.* A student pilot who is receiving training in a helicopter must receive and log supervised PIC flight training on the following maneuvers and procedures:
(1) Proper flight preparation procedures including preflight planning and preparation, powerplant operation, and aircraft systems;
(2) Taxiing or surface operations including runups;
(3) Takeoffs and landings including normal and crosswind;
(4) Straight and level flight and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents with and without turns;
(9) Flight at various airspeeds;
(10) Emergency procedures and equipment malfunctions;
(11) Ground reference maneuvers;
(12) Approaches to the landing area;
(13) Hovering and hovering turns;
(14) Go-arounds;
(15) Simulated emergency procedures, including autorotational descents with a power recovery and power recovery to a hover;
(16) Rapid decelerations; and
(17) Simulated one engine inoperative approaches and landings for multiengine helicopters.

(g) *Maneuvers and procedures for supervised PIC flight training in a gyroplane.* A student pilot who is receiving training in a gyroplane must receive and log supervised PIC flight training on the following maneuvers and procedures:
(1) Proper flight preparation procedures including preflight planning and preparation, powerplant operation, and aircraft systems;
(2) Taxiing or surface operations including runups;
(3) Takeoffs and landings including normal and crosswind;
(4) Straight and level flight and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents with and without turns;
(9) Flight at various airspeeds;
(10) Emergency procedures and equipment malfunctions;
(11) Ground reference maneuvers;
(12) Approaches to the landing area;
(13) Hovering and hovering turns;
(14) Go-arounds;
(15) Simulated emergency procedures, including autorotational descents with a power recovery and power recovery to a hover;
(16) Rapid decelerations; and
(17) Simulated one engine inoperative approaches and landings for multiengine helicopters.

(h) *Maneuvers and procedures for supervised PIC flight training in a powered-lift.* A student pilot who is receiving training in a powered-lift must receive and log supervised PIC flight training on the following maneuvers and procedures:
(1) Proper flight preparation procedures, including preflight planning and preparation, powerplant operation, and aircraft systems;
(2) Taxiing or surface operations including runups;
(3) Takeoffs and landings including normal and crosswind;
(4) Straight and level flight and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents with and without turns;
(9) Flight at various airspeeds from cruise to slow flight;
(10) Emergency procedures and equipment malfunctions;
(11) Ground reference maneuvers;
(12) Approaches to the landing area;
(13) Hovering and hovering turns;
(14) Go-arounds; and
(15) Simulated emergency procedures, including simulated power-off landings and simulated power failure during departures.

(i) *Maneuvers and procedures for supervised PIC flight training in a nonpowered glider.* A student pilot who is receiving training in a nonpowered glider must receive and log supervised PIC flight training on the following maneuvers and procedures:
(1) Proper flight preparation procedures, including preflight planning, preparation, and aircraft systems;
(2) Launches, including normal and crosswind;
(3) Straight and level flight and turns in both directions;
(4) Airport traffic patterns including entry procedures;
(5) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(6) Descents with and without turns using high and low drag configurations;
(7) Flight at various airspeeds;
(8) Emergency procedures and equipment malfunctions;
(9) Ground reference maneuvers;
(10) Inspection of towline rigging and the review of signals and release procedures;
(11) Aerotows or ground tows;
(12) Procedures for disassembly and assembly of the glider;
(13) Stall entry, stall, and stall recovery;
(14) Straight glides, turns, and spirals;
(15) Landings, including normal and crosswind;
(16) Slips to a landing;
(17) Procedures and techniques for thermalling; and
(18) Emergency operations including towline break procedures.

(j) *Maneuvers and procedures for supervised PIC flight training in a powered glider.* A student pilot who is receiving training in a powered glider must receive and log supervised PIC flight training on the following maneuvers and procedures:
(1) Proper flight preparation procedures including preflight planning and preparation, powerplant operation, and aircraft systems;

(2) Taxiing or surface operations including runups;
(3) Takeoffs and landings including normal and crosswind;
(4) Straight and level flight and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents with and without turns using high and low drag configurations;
(9) Flight at various airspeeds;
(10) Emergency procedures and equipment malfunctions;
(11) Ground reference maneuvers;
(12) Inspection of towline rigging and the review of signals and release procedures;
(13) Aerotows or ground tows;
(14) Procedures for disassembly and assembly of the glider;
(15) Stall entry, stall, and stall recovery;
(16) Straight glides, turns, and spirals;
(17) Slips to a landing;
(18) Procedures and techniques for thermalling; and
(19) Emergency operations including towline break procedures.

(k) *Maneuvers and procedures for supervised PIC flight training in an airship.* A student pilot who is receiving training in an airship must receive and log supervised PIC flight training on the following maneuvers and procedures:
(1) Proper flight preparation procedures including preflight planning and preparation, powerplant operation, and aircraft systems;
(2) Taxiing or surface operations including runups;
(3) Takeoffs and landings including normal and crosswind;
(4) Straight and level flight and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents with and without turns using high and low drag configurations;
(9) Flight at various airspeeds;
(10) Emergency procedures and equipment malfunctions;
(11) Ground reference maneuvers;
(12) Approaches to a landing with simulated engine malfunctions;
(13) Go-arounds;
(14) Approaches to the landing area;
(15) Hovering and hovering turns; and
(16) Simulated one engine inoperative approaches and landings.

(l) *Maneuvers and procedures for supervised PIC flight training in a balloon.* A student pilot who is receiving training in a balloon, must receive and log supervised PIC flight training on the following maneuvers and procedures:
(1) Layout and assembly procedures;
(2) Proper flight preparation procedures including preflight planning and preparation and aircraft systems;
(3) Ascents and descents;
(4) Landing and recovery procedures;
(5) Emergency procedures and equipment malfunctions;
(6) Operation of hot air or gas source, ballast, valves, and rip panels, as appropriate;
(7) Use of rip panel for simulating an emergency;
(8) The effects of wind on climb and approach angles; and
(9) Obstruction detection and avoidance techniques.

(m) *Limitations on student pilots operating an aircraft in supervised PIC flight at night.* A student pilot may not operate an aircraft in supervised PIC flight at night unless that student pilot has received:
(1) Flight training at night on night flying procedures that includes takeoffs, approaches, landings, and go-arounds at night at the airport where the supervised PIC flight will be conducted;
(2) Navigation training at night in the vicinity of the airport where the supervised PIC flight will be conducted;
(3) An endorsement in the student's logbook for the specific make and model aircraft to be flown for night supervised PIC flight, by the flight instructor who gave the training; and
(4) An endorsement in the student's logbook, for the specific make and model aircraft to be flown for night supervised PIC flight, by the flight instructor who gave the training within the 90-day period preceding the date of the flight.

(n) *Limitations on student pilots operating an aircraft in supervised PIC flight.* Student pilots may not operate an aircraft in supervised PIC flight unless they have:
(1) Had their student pilot certificate endorsed, for the specific make and model aircraft to be flown, by the flight instructor who gave the training; and
(2) Received a logbook endorsement, for the specific make and model aircraft to be flown, by the flight instructor who gave the training within the 90 days preceding the date of the flight had.

(o) *Limitations on flight instructors authorizing supervised PIC flight.*
(1) No flight instructor may authorize a student pilot to perform a supervised PIC flight unless that flight instructor has:
(i) Given that student pilot training in the aircraft in which the supervised PIC flight is to be flown;
(ii) Determined the student pilot is proficient on the maneuvers and procedures prescribed in this section;
(iii) Determined the student pilot is proficient in the make and model of aircraft to be flown;
(iv) Endorsed the student pilot's certificate for the specific make and model aircraft to be flown; and
(iv) Endorsed the student pilot's logbook for the specific make and model aircraft to be flown, and that endorsement remains current for supervised PIC flight privileges, provided the flight instructor updates the student's logbook every 90 days thereafter.
(2) The flight training required by this section must be given by an authorized flight instructor who is appropriately rated and current.

§ 61.89 General limitations.

(a) A student pilot may not act as pilot in command of an aircraft:
(1) That is carrying a passenger;
(2) That is carrying property for compensation or hire;
(3) For compensation or hire;
(4) In furtherance of a business;
(5) On an international flight, except a student pilot may make supervised PIC training flights from Haines, Gustavus, or Juneau, Alaska to White Horse, Yukon, Canada and return, over the province of British Columbia;
(6) With a flight or surface visibility of less than 3 statute miles during daylight hours or 5 statute miles at night;
(7) When the flight cannot be made with visual reference to the surface; and
(8) In a manner contrary to any limitations placed in the pilot's logbook by the instructor.

(b) A student pilot may not act as a required pilot flight crewmember on any aircraft for which more than one pilot is required by the type certificate of the aircraft or regulations under which the flight is conducted, except when receiving flight training from an authorized flight instructor on board an airship and no person other than a required flight crewmember is carried on the aircraft.

§ 61.91 [Reserved.]

§ 61.93 Supervised pilot in command cross-country flight requirements.

(a) *General.*
(1) Except as provided in paragraph (b) of this section, a student pilot must meet the requirements of this section before:
(i) Conducting a supervised PIC cross-country flight, or any flight, greater than 25 nautical miles from the airport from where the flight originated.

(ii) Making a supervised PIC flight and landing at any location other than the airport of origination.

(2) Except as provided in paragraph (b) of this section, a student pilot who seeks supervised PIC cross-country flight privileges must:

(i) Have received flight training from an authorized flight instructor on the maneuvers and procedures of this section that are appropriate to the make and model aircraft for which supervised PIC cross-country privileges are sought;

(ii) Have demonstrated cross country proficiency on the appropriate maneuvers and procedures of this section and to an authorized flight instructor;

(iii) Have satisfactorily accomplished the supervised PIC flight maneuvers and procedures, required by § 61.87 of this part, in the make and model aircraft for which supervised PIC cross-country privileges are sought; and

(iv) Comply with any limitations included in the flight instructor's endorsement that is required by paragraph (c) of this section.

(3) A student pilot who seeks supervised PIC cross-country flight privileges must have received ground training from an authorized ground or flight instructor and flight training from an authorized flight instructor on the cross-country maneuvers and procedures listed in this section that are appropriate to the aircraft to be flown.

(4) A student pilot who seeks supervised PIC cross-country flight privileges must have demonstrated the cross-country maneuvers and procedures of this section to an acceptable level of proficiency to an authorized flight instructor.

(b) *Authorization to perform certain supervised PIC flights and cross-country flights.* A student pilot may receive an endorsement from an authorized flight instructor to make supervised PIC flights from the airport where the student pilot normally receives training to another location, if that student pilot complies with this paragraph.

(1) Supervised PIC flights may be made to another airport that is within 25 nautical miles from the airport where the student pilot normally receives training, provided—

(i) An authorized flight instructor has given the student pilot flight training at the other airport, and that training includes flight in both directions over the route, entering and exiting the traffic pattern, and takeoffs and landings at the other airport;

(ii) The flight instructor endorses that student pilot's logbook authorizing the flight;

(iii) The student pilot has a current supervised PIC flight endorsement in accordance with § 61.87 of this part;

(iv) The flight instructor has determined that the student pilot is proficient to make the flight; and

(v) The purpose of the flight is to practice takeoffs and landings at that other airport.

(2) Repeated specific supervised PIC cross-country flights may be made to another airport that is within 50 nautical miles of the airport from which the flight originated, provided—

(i) The flight instructor has given the student flight training in both directions over the route, including entry and exiting the traffic patterns, takeoffs, and landings at the airports to be used;

(ii) The flight instructor who gave the training has endorsed the student's logbook certifying that the student is proficient to make such flights;

(iii) The student has a current supervised PIC endorsement in accordance with § 61.87 of this part; and

(iv) The student has a current supervised PIC cross country flight endorsement in accordance with § 61.93 of this part.

(c) *Endorsements for supervised PIC cross country flights.* A student pilot must have the endorsements prescribed in this paragraph for each cross-country flight:

(1) *Student pilot certificate endorsement.* A student pilot must have a supervised PIC cross-country endorsement from the flight instructor who conducted the training, and that endorsement must be placed on that person's student pilot certificate for the specific make and model of aircraft to be flown.

(2) *Logbook endorsement.*

(i) A student pilot must have a supervised PIC cross-country endorsement from the flight instructor, who conducted the training, and that endorsement must be placed in that person's logbook for the specific make and model of aircraft to be flown.

(ii) A certificated pilot who is receiving training for an additional aircraft category and class rating must have an endorsement from the flight instructor who conducted the training, and that endorsement must be placed in that person's logbook for the specific make and model of aircraft to be flown.

(iii) For each cross-country flight, the flight instructor who reviews the cross-country planning must make an endorsement in the person's logbook after reviewing that person's cross-country planning. The endorsement must—

(A) Specify the make and model of aircraft to be flown;

(B) State that the student's preflight planning and preparation is correct and that the student is prepared to make the flight safely under the known circumstances; and

(C) State that any limitations required by the student's instructor are met.

(d) *Maneuvers and procedures for supervised PIC cross-country flight training in a single engine airplane.* A student pilot, who is receiving training for supervised PIC cross country flight training in a single engine airplane, must receive and log supervised PIC cross country flight training on the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications;

(10) Takeoff, approach, and landing procedures, including short field, soft field, and crosswind takeoffs, approaches, and landings;

(11) Climbs at best angle and best rate; and

(12) Control and maneuvering solely by reference to flight instruments, including straight and level flight, turns, descents, climbs, use of radio aids, and ATC directives.

(e) *Maneuvers and procedures for supervised PIC cross-country flight training in a multiengine airplane.* A student pilot who is receiving training for supervised PIC cross country flight training in a multiengine airplane must receive and log supervised PIC cross country flight training on the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications;

(10) Takeoff, approach, and landing procedures, including short field, soft field, and crosswind takeoffs, approaches, and landings;

(11) Climbs at best angle and best rate; and

(12) Control and maneuvering solely by reference to flight instruments, including straight and level flight, turns, descents, climbs, use of radio aids, and ATC directives.

(f) *Maneuvers and procedures for supervised PIC cross-country flight training in a helicopter.* A student pilot who is receiving training for supervised PIC cross country flight training in a helicopter must receive and log supervised PIC cross country flight training on the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications; and

(10) Takeoff, approach, and landing procedures.

(g) *Maneuvers and procedures for supervised PIC cross-country flight training in a gyroplane.* A student pilot who is receiving training for supervised PIC cross country flight training in a gyroplane must receive and log supervised PIC cross country flight training on the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications;

(10) Takeoff, approach, and landing procedures, including short field and soft field takeoffs, approaches, and landings.

(h) *Maneuvers and procedures for supervised PIC cross-country flight training in a powered-lift.* A student pilot who is receiving training for supervised PIC cross country flight training in a powered-lift must receive and log supervised PIC cross country flight training on the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications; and

(10) Takeoff, approach, and landing procedures.

(i) *Maneuvers and procedures for supervised PIC cross-country flight training in a nonpowered glider.* A student pilot who is receiving training for supervised PIC cross country flight training in a nonpowered glider must receive and log supervised PIC cross country flight training on the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Landings accomplished without the use of the altimeter from at least 2,000 feet above the surface; and

(10) Recognition of weather and upper air conditions favorable for cross-country soaring, ascending and descending flight, and altitude control.

(j) *Maneuvers and procedures for supervised PIC cross-country flight training in a powered glider.* A student pilot who is receiving training for supervised PIC cross country flight training in a powered glider must receive and log supervised PIC cross country flight training on the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Landings accomplished without the use of the altimeter from at least 2,000 feet above the surface; and

(10) Recognition of weather and upper air conditions favorable for cross-country soaring, ascending and descending flight, and altitude control.

(k) *Maneuvers and procedures for supervised PIC cross-country flight training in an airship.* A student pilot who is receiving training for supervised PIC cross country flight training in an airship must receive and log supervised PIC cross country flight training on the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications;

(10) Control of air pressure with regard to ascending and descending flight and altitude control;

(11) Control of airship solely by reference to flight instruments; and

(12) Recognition of weather and upper air conditions conducive for the direction of cross-country flight.

(l) *Maneuvers and procedures for supervised PIC cross-country flight training in a balloon.* A student pilot who is receiving training for supervised PIC-cross country flight training in a balloon must receive and log supervised PIC cross-country flight training on the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications;

(10) Control of air pressure with regard to ascending and descending flight and altitude control;

(11) Control of airship solely by reference to flight instruments; and

(12) Recognition of weather and upper air conditions conducive for the direction of cross-country flight.

(m) *Limitations on flight instructors authorizing supervised PIC cross-country flights.* A flight instructor may not authorize a student pilot to conduct a supervised PIC cross-country flight unless that instructor has:

(1) Determined that the student's cross country planning is correct for the flight;

(2) Reviewed the current and forecast weather conditions and has determined that the flight can be completed under VFR;

(3) Determined that the student is proficient to conduct the flight safely;

(4) Determined that the student has the appropriate supervised PIC cross-country endorsement for the make and model of aircraft to be flown; and

(5) Determined that the student's supervised PIC flight endorsement is current for the make and model aircraft to be flown.

§ 61.95 Operations in Class B airspace and at airports located within Class B airspace.

(a) A student pilot may not operate an aircraft on a supervised PIC flight in Class B airspace unless the:

(1) Student pilot has received both ground and flight training from an authorized instructor on that Class B airspace area and the flight training was received in the specific Class B airspace area for which supervised PIC flight is authorized;

(2) Logbook of that student pilot has been endorsed by the flight instructor who gave the student pilot flight training, and the endorsement must be dated within the 90-day period preceding the date of the flight in that Class B airspace area; and

(3) Logbook endorsement specifies that the student pilot has received the required ground and flight training and has been found proficient to conduct supervised PIC flight in that specific Class B airspace area.

(b) A student pilot may not operate an aircraft on a supervised PIC flight to, from, or at an airport located within Class B airspace listed in § 91.131(b) of this chapter unless the:

(1) Student pilot has received both ground and flight training from an authorized instructor to operate at that airport and the flight and ground training has been received at the specific airport for which the supervised PIC flight is authorized;

(2) Logbook of that student pilot has been endorsed by the flight instructor who gave the student pilot flight training, and the endorsement must be dated within the 90-day period preceding the date of the flight at that airport; and

(3) Logbook endorsement specifies that the student pilot has received the required ground and flight training and has been found proficient to conduct supervised PIC flight operations at that specific airport.

Subpart D—Recreational Pilots

§ 61.96 Applicability.

This subpart prescribes the requirement for the issuance of recreational pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the general operating rules for persons who hold those certificates and ratings.

§ 61.96a Eligibility requirements: General.

To be eligible for a recreational pilot certificate, a person who applies for that certificate must:

(a) Be at least 17 years of age;

(b) Be able to read, speak, write, and understand the English language;

(c) Affix a signed and dated statement to the application certifying the person does not have any known medical limitations that prevents the person from operating the aircraft, for the aircraft category and class rating sought;

(d) Receive a logbook endorsement from an authorized flight or ground instructor who—

(1) Conducted the training or reviewed the applicant's home study on the aeronautical knowledge areas listed in § 61.97(b) of this part that apply to the aircraft category and class rating sought; and

(2) Certified that the applicant is prepared for the required knowledge test.

(e) Satisfactorily accomplish the required knowledge test on the aeronautical knowledge areas listed in § 61.97(b) of this part;

(f) Receive flight training and a logbook endorsement from the authorized flight instructor who—

(1) Conducted the training on the approved areas of operation listed in § 61.98(b) of this part that apply to the aircraft category and class rating sought; and

(2) Certified that the applicant is prepared for the required practical test.

(g) Meet the aeronautical experience requirements of § 61.99 of this part that apply to the aircraft category and class rating sought;

(h) Satisfactorily accomplish the required practical test on the approved areas of operation listed in § 61.98(b) of this part that apply to the aircraft category and class rating sought; and

(i) Comply with the sections of this part that apply to the aircraft category and class rating sought.

§ 61.97 Aeronautical knowledge.

(a) *General.* A person who applies for a recreational pilot certificate must receive and log ground training from an authorized flight or ground instructor, or complete a home study course on the aeronautical knowledge areas of paragraph (b) of this section that apply to the aircraft category and class rating sought.

(b) *Aeronautical knowledge areas.*

(1) The applicable Federal Aviation Regulations for recreational pilot privileges, limitations, and flight operations that apply to the aircraft rating sought;

(2) Accident reporting requirements of the National Transportation Safety Board;

(3) Use of the applicable portions of the "Airman's Information Manual" and FAA advisory circulars;

(4) The use of aeronautical charts for VFR navigation using pilotage with the aid of a magnetic compass;

(5) The recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(6) The safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(7) The effects of density altitude on takeoff and climb performance;

(8) Weight and balance computations;

(9) Principles of aerodynamics, powerplants, and aircraft systems;

(10) Stall awareness, spin entry, spins, and spin recovery techniques, if applying for an airplane-single engine rating;

(11) Aeronautical decision making and judgment; and

(12) Preflight action that includes:

(i) How to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements;

(ii) How to plan for alternatives if the planned flight cannot be completed; and

(iii) Proper planning procedures for possible traffic delays.

§ 61.98 Flight proficiency.

(a) *General.* A person who applies for a recreational pilot certificate must have received and logged ground training from authorized ground or flight instructor, and flight training from an authorized flight instructor on the approved areas of operation of this section that apply to the aircraft class rating sought.

(b) *For an single engine airplane rating.* Areas of operation for an airplane category rating with a single engine class rating are the following:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport operations;

(4) Takeoffs, landings, and go-arounds;

(5) Performance maneuvers;

(6) Ground reference maneuvers;

(7) Navigation;

(8) Stalls and slow flight;

(9) Emergency operations; and

(10) Postflight procedures.

(c) *For a helicopter rating.* Areas of operation for a rotorcraft category rating with a helicopter class rating are the following:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and heliport operations;

(4) Hovering maneuvers;

(5) Takeoffs, landings, and go-arounds;

(6) Performance maneuvers;

(7) Ground reference maneuvers;

(8) Navigation;

(9) Emergency operations; and

(10) Postflight procedures.

(d) *For a gyroplane rating.* Areas of operation for a rotorcraft category rating with a gyroplane class rating are the following:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport operations;

(4) Takeoffs, landings, and go-arounds;

(5) Performance maneuvers;

(6) Ground reference maneuvers;

(7) Navigation;

(8) Flight at slow airspeeds;

(9) Emergency operations; and

(10) Postflight procedures.

§ 61.99 Aeronautical experience.

A person who applies for a recreational pilot certificate must accomplish and log at least 30 hours of flight training time that includes at least:

(a) Fifteen hours of flight training from an authorized flight instructor on the approved areas of operation listed in § 61.98 of this part that consists of at least—

(1) Except as provided in § 61.100 of this part, 2 hours of flight training to and at an airport that is located more than 25 nautical miles from the airport where the applicant normally trains, which includes at least 3 takeoffs and 3 landings; and

(2) Three hours of flight training in the aircraft for the rating sought in preparation for the practical test within the 60 days preceding the date of the practical test.

(b) Three hours of supervised PIC flying in the aircraft for the rating sought, on the approved areas of operation listed in § 61.98 of this part that apply to the aircraft category and class rating sought.

§ 61.100 Pilots based on small islands.

A person who applies for a recreational pilot certificate, is based and receives training on a small island that has only one airport, and who cannot comply with the distance requirements of § 61.99(a)(1) of this part without flying over water for more than 10 nautical miles from the nearest shoreline is subject to the following limitations and conditions:

(a) The applicant's pilot certificate will be issued with the limitation, "Passenger carrying prohibited in flights more than 10 nautical miles from the (appropriate island)."

(b) Upon meeting the distance requirements of § 61.99(a)(1) of this part, the applicant may have the limitation in paragraph (a) of this section removed.

§ 61.101 Recreational pilot privileges and limitations.

(a) A person who holds a recreational pilot certificate may:

(1) Carry no more than one passenger; and

(2) Share equally the operating expenses of a flight with a passenger, provided the expenses involve only fuel, oil, and airport expenses.

(b) A person who holds a recreational pilot certificate may act as pilot in command of an aircraft on a flight that is within 50 nautical miles from the departure airport, provided that person:

(1) Received ground and flight training on takeoff, departure, arrival, and landing procedures at the departure airport;

(2) Received ground and flight training on the area, terrain, and aids to navigation that are in the vicinity of the departure airport;

(3) Has been found proficient to operate the airplane at the departure airport and the area within 50 nautical miles from that airport, and has received a logbook endorsement from the authorized flight instructor who gave the person the training prescribed by this paragraph; and

(4) Received a logbook endorsement that authorizes flight, which is carried in the person's possession in the aircraft.

(c) A person who holds a recreational pilot certificate may act as pilot in command of an aircraft on a flight that exceeds 50 nautical miles from the departure airport, provided that person:

(1) Has received ground and flight training from an authorized flight instructor on the cross country training requirements of subpart E of this part that apply to the aircraft rating held;

(2) Has been found proficient in cross country flying, and has received a logbook endorsement from the authorized flight instructor, who gave the person the cross country training prescribed by subpart E of this part that apply to the aircraft rating held; and

(3) Received a logbook endorsement, which is carried in the person's possession in the aircraft, that certifies the person has received and been found proficient on the cross training requirements of subpart E of this part that apply to the aircraft rating held.

(d) Except as provided in paragraph (h) of this section, a recreational pilot may not act as pilot in command of an aircraft:

(1) That is certificated for more than four occupants, with more than one powerplant, with a powerplant of more than 180 horsepower, or with retractable landing gear.

(2) That is classified as a multiengine airplane, powered-lift, glider, airship, or balloon;

(3) That is carrying a passenger or property for compensation or hire;

(4) For compensation or hire;

(5) In furtherance of a business;

(6) Between sunset and sunrise;

(7) In airspace in which communication with air traffic control is required;

(8) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher;

(9) When the flight or surface visibility is less than 3 statute miles;

(10) Without visual reference to the surface;

(11) On a flight outside the United States;

(12) To demonstrate that aircraft in flight to a prospective buyer;

(13) That is used in a passenger-carrying airlift and sponsored by a charitable organization; and

(14) That is towing any object.

(e) A recreational pilot may not act as a required pilot flight crewmember on any aircraft for which more than one pilot is required by the type certificate of the aircraft or the regulations under which the flight is conducted, except when:

(1) Receiving flight training from an authorized flight instructor on board an airship; or

(2) The other person on the aircraft is a required flight crewmember.

(f) A person who holds a recreational pilot certificate and has logged fewer than 400 flight hours and has not logged pilot-in-command time in an aircraft within the 180 days preceding the flight shall not act as pilot in command of an aircraft:

(1) Until the pilot received flight training and a logbook endorsement from an authorized flight instructor who gave that person the flight training, and the instructor certified that the person is proficient to act as pilot in command of the aircraft; or

(2) Unless the pilot has satisfactorily accomplished a combination of the requirements of §§ 61.56 and 61.57 of this part, which meet the requirements of this paragraph.

(g) The recreational pilot certificate issued under this part will carry the notation on the person's pilot certificate, "Holder does not meet ICAO requirements."

(h) A recreational pilot may operate an aircraft as the sole occupant in the conditions and in an aircraft described in paragraph (d) of this section, provided the pilot:

(1) Is under the supervision of an authorized flight instructor for the purpose of obtaining an additional certificate or rating;

(2) Has received, within the 90-day period preceding the date of the flight, a logbook endorsement from an authorized flight instructor and that endorsement must certify the pilot has met the appropriate aeronautical knowledge and flight training requirements listed in § 61.87 of this part for the aircraft to be flown;

(3) Received within the 90 days preceding the date of the flight a logbook endorsement from an authorized flight instructor and that endorsement must certify the pilot is proficient to operate in that airspace, for operating an aircraft in airspace that requires communication with air traffic control;

(4) Received within the 90 days preceding the date of the flight, a logbook endorsement from an authorized flight instructor and that endorsement must certify the pilot is proficient to operate the aircraft in those flight conditions, for an operating an aircraft between sunset and sunrise, and provided the flight or surface visibility conditions are at least 5 statute miles; and

(5) Received a logbook endorsement described in this paragraph and carried in the pilot's physical possession in the aircraft.

Subpart E—Private Pilots

§ 61.102 Applicability.

This subpart prescribes the requirements for the issuance of private pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the general operating rules for persons who hold those certificates and ratings.

§ 61.103 Eligibility requirements: General.

To be eligible for a private pilot certificate, a person must:

(a) Be at least 17 years of age, or for a rating in a glider or balloon be at least 16 years of age.

(b) Be able to read, speak, write, and understand the English language.

(c) Hold at least a current third-class medical certificate issued under part 67 of this chapter, or for a rating in a glider or balloon affix a signed and dated statement to the application certifying that no known medical defect exists that would make the person unable to pilot a glider or balloon, as appropriate.

(d) Receive a logbook endorsement from an authorized instructor who—

(1) Conducted the training or reviewed the person's home study on the aeronautical knowledge areas listed in § 61.105(b) of this part that apply to the aircraft rating sought; and

(2) Certified that the person is prepared for the required knowledge test.

(e) Satisfactorily accomplish the required knowledge test on the aeronautical knowledge areas listed in § 61.105(b) of this part.

(f) Receive flight training and a logbook endorsement from the authorized instructor who—

(1) Conducted the training on the approved areas of operation listed in § 61.107 of this part that apply to the aircraft rating sought; and

(2) Certified that the person is prepared for the required practical test.

(g) Meet the aeronautical experience requirements of this part that apply to the aircraft rating sought before applying for the practical test.

(h) Satisfactorily accomplishes a practical test on the approved areas of operation listed in § 61.107 of this part that apply to the aircraft rating sought.

(i) Comply with the appropriate sections of this part that apply to the aircraft rating sought.

§ 61.105 Aeronautical knowledge.

(a) *General.* A person who is applying for a private pilot certificate must receive and log ground training from an authorized flight or ground instructor, or complete a home study course on the aeronautical knowledge areas of paragraph (b) of this section that apply to the aircraft rating sought.

(b) *Aeronautical knowledge areas.*

(1) The applicable Federal Aviation Regulations for private pilot privileges, limitations, and flight operations;

(2) Accident reporting requirements of the National Transportation Safety Board;

(3) Use of the applicable portions of the "Airman's Information Manual" and FAA advisory circulars;

(4) The use of aeronautical charts for VFR navigation using pilotage, dead reckoning, and radio aids;

(5) Radio communication procedures;

(6) The recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(7) The safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(8) The effects of density altitude on takeoff and climb performance;

(9) Weight and balance computations;

(10) Principles of aerodynamics, powerplants, and aircraft systems;

(11) Stall awareness, spin entry, spins, and spin recovery techniques for the airplane and glider category and class ratings;

(12) Aeronautical decision making and judgment; and

(13) Preflight action that includes:

(i) How to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements;

(ii) How to plan for alternatives if the planned flight cannot be completed; and

(iii) How to plan procedures for possible traffic delays.

§ 61.107 Flight proficiency.

(a) *General.* A person who applies for a private pilot certificate must receive and log ground training from an authorized flight instructor and flight training from an authorized flight instructor on the approved areas of operation of this section that apply to the aircraft rating sought.

(b) *Areas of operation for an airplane category rating with a single engine class rating.* Areas of operation for an airplane category rating with a single engine class rating are the following:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and seaplane base operations;

(4) Takeoffs, landings, and go-arounds;

(5) Performance maneuvers;

(6) Ground reference maneuvers;

(7) Navigation;

(8) Flight at slow airspeeds;

(9) Emergency operations;

(10) Night operations, except as provided in § 61.110 of this part; and

(11) Postflight procedures.

(c) *Areas of operation for an airplane category rating with a multiengine class rating.* Areas of operation for an airplane category rating with a multiengine class rating are the following:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and seaplane base operations;

(4) Takeoffs, landings, and go-arounds;

(5) Performance maneuvers;

(6) Ground reference maneuvers;

(7) Navigation;

(8) Stalls and slow flight;

(9) Basic instrument maneuvers;

(10) Emergency operations;

(11) Multiengine operations;

(12) Night operations, except as provided in § 61.110 of this part; and

(13) Postflight procedures.

(d) *Areas of operation for a rotorcraft category rating with a helicopter class rating.* Areas of operation for a rotorcraft category rating with a helicopter class rating are the following:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and heliport operations;

(4) Hovering maneuvers;

(5) Takeoffs, landings, and go-arounds;

(6) Performance maneuvers;

(7) Navigation;

(8) Emergency operations;

(9) Night operations, except as provided in § 61.110 of this part; and

(10) Postflight procedures.

(e) *Areas of operation for a rotorcraft category rating with a gyroplane class rating.* Areas of operation for a rotorcraft category rating with a gyroplane class rating are the following:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport operations;

(4) Takeoffs, landings, and go-arounds;

(5) Performance maneuvers;

(6) Ground reference maneuvers;

(7) Navigation;

(8) Flight at slow airspeeds;

(9) Emergency operations;

(10) Night operations, except as provided in § 61.110 of this part; and

(11) Postflight procedures.

(f) *Areas of operation for a powered-lift category rating.* Areas of operation for a powered-lift category rating are the following:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and heliport operations;

(4) Hovering maneuvers;

(5) Takeoffs, landings, and go-arounds;

(6) Performance maneuvers;

(7) Ground reference maneuvers;
(8) Navigation;
(9) Stalls and slow flight;
(10) Basic instrument maneuvers;
(11) Emergency operations;
(12) Night operations, except as provided in § 61.110 of this part; and
(13) Postflight procedures.

(g) *Areas of operation for a glider category rating with a non-powered class rating.* Areas of operation for a glider category rating with a non-powered class rating are the following:
(1) Preflight preparation;
(2) Preflight procedures;
(3) Airport and gliderport operations;
(4) Launches and landings;
(5) Performance speeds;
(6) Soaring techniques;
(7) Performance maneuvers;
(8) Navigation;
(9) Stalls and slow flight;
(10) Emergency operations; and
(11) Postflight procedures.

(h) *Areas of operation for a glider category rating with a powered class rating.* Areas of operation for a glider category rating with a powered class rating are the following:
(1) Preflight preparation;
(2) Preflight procedures;
(3) Airport and gliderport operations;
(4) Takeoffs, landings, and go-arounds;
(5) Performance speeds;
(6) Soaring techniques;
(7) Performance maneuvers;
(8) Navigation;
(9) Stalls and slow flight;
(10) Emergency operations; and
(11) Postflight procedures.

(i) *Areas of operation for a lighter-than-air category rating with an airship class rating.* Areas of operation for a lighter-than-air category rating with an airship class rating are the following:
(1) Preflight preparation;
(2) Preflight procedures;
(3) Airport operations;
(4) Takeoffs, landings, and go-arounds;
(5) Performance maneuvers;
(6) Ground reference maneuvers;
(7) Navigation;
(8) Emergency operations; and
(9) Postflight procedures.

(j) *Areas of operation for a lighter-than-air category rating with a balloon class rating.* Areas of operation for a lighter-than-air category rating with a balloon class rating are the following:
(1) Preflight preparation;
(2) Preflight procedures;
(3) Balloonport operations;
(4) Lift-offs and landings;
(5) Performance maneuvers;
(6) Navigation;
(7) Emergency operations; and
(8) Postflight procedures.

§ 61.109 Aeronautical experience.

(a) A person who applies for a private pilot certificate with an airplane, rotorcraft, or powered-lift category rating must accomplish and log at least 40 hours of flight time that includes at least 20 hours of flight training time from an authorized flight instructor and 5 hours of supervised PIC flight time, on the approved areas of operation listed in § 61.107 of this part, and the training must include at least:

(1) *For an airplane single engine rating.*
(i) Three hours of cross-country flight training in a single engine airplane;
(ii) Except as provided in § 61.110 of this part, 3 hours of night flight training in a single engine airplane that includes—
(A) One cross country flight of over 100 nautical miles duration; and
(B) Ten takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.
(iii) Three hours of instrument flight training in a single engine airplane;
(iv) Three hours of flight training in preparation for the practical test in a single engine airplane, and must have been performed within 60 days preceding the date of the test; and
(v) Supervised PIC flying in a single engine airplane, consisting of at least—
(A) One supervised PIC cross-country flight of over 100 nautical miles, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 50 nautical miles between the takeoff and landing locations; and
(B) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(2) *For an airplane multiengine rating.*
(i) Three hours of cross-country flight training in a multiengine airplane;
(ii) Except as provided in § 61.110 of this part, 3 hours of night flight training in a multiengine airplane that includes—
(A) One cross country flight of over 100 nautical miles duration; and
(B) Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.
(iii) Three hours of instrument flight training in a multiengine airplane;
(iv) Three hours of flight training in preparation for the practical test in a multiengine airplane, and must have been performed within the 60-day period preceding the date of the test; and
(v) Supervised PIC flying in a multiengine airplane, consisting of at least—
(A) One supervised PIC cross-country flight of over 100 nautical miles, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 50 nautical miles between the takeoff and landing locations; and
(B) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(3) *For a rotorcraft-helicopter rating.*
(i) Three hours of cross-country flight training in a helicopter;
(ii) Except as provided in § 61.110 of this part, 3 hours of night flight training in a helicopter that includes—
(A) One cross country flight of over 50 nautical miles duration; and
(B) Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.
(iii) Three hours of flight training in preparation for the practical test in a helicopter, and must have been performed within 60 days preceding the date of the test; and
(iv) Supervised PIC flying in a helicopter, consisting of at least—
(A) One supervised PIC cross-country flight of over 50 nautical miles, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 25 nautical miles between the takeoff and landing locations; and
(B) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(4) *For a rotorcraft-gyroplane rating.*
(i) Three hours of cross-country flight training in a gyroplane;
(ii) Except as provided in § 61.110 of this part, 3 hours of night flight training in a gyroplane that includes—
(A) One cross country flight of over 50 nautical miles duration; and
(B) Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.
(iii) Three hours of flight training in preparation for the practical test in a gyroplane, and must have been performed within the 60-day period preceding the date of the test; and
(iv) Supervised PIC flying in a gyroplane, and consisting of at least—
(A) One supervised PIC cross-country flight of over 50 nautical miles, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 25 nautical miles between the takeoff and landing locations; and
(B) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(5) *For a powered-lift rating.*
(i) Three hours of cross-country flight training in a powered-lift;
(ii) Except as provided in § 61.110 of this part, 3 hours of night flight training in a powered-lift that includes—
(A) One cross country flight of over 100 nautical miles duration; and
(B) Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.
(iii) Three hours of instrument flight training in a powered-lift;
(iv) Three hours of flight training in preparation for the practical test in a powered-lift, and must have been performed within the 60-day period preceding the date of the test; and
(v) Supervised PIC flying in a powered-lift, consisting of at least—
(A) One supervised PIC cross-country flight of over 100 nautical miles, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 50 nautical miles between the takeoff and landing locations; and
(B) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(b) *For a glider rating.* A person who applies for a private pilot certificate with a glider category and class rating must accomplish and log the following flight time and training requirements:
(1) At least 10 hours of flight training and 20 flights on the approved areas of operation listed in § 61.107 of this part that apply to the glider class rating sought; or
(2) A person who has logged at least 40 hours of flight time in heavier-than-air aircraft or who already holds a category and class rating in a glider, must perform at least 5 hours of flight training and 10 flights, on the approved areas of operation listed in § 61.107 of this part that apply to the glider class rating sought.
(3) At least two supervised PIC flights on the approved areas of operation listed in § 61.107 that apply to the glider class rating sought.
(4) The flight training requirements in paragraphs (c) (1) or (2) of this section must include at least 3 flights of flight training in preparation for the practical test within the 60-day period preceding the test and in the class of glider for the rating sought.
(5) A person applying for a glider category rating with a nonpowered class rating seeks privileges for ground launch procedures, in addition to complying with the requirements of paragraphs (c) (1) through (4), as appropriate, must log and receive at least 5 flights of flight training and 2 supervised PIC flights in a nonpowered glider using a winch or auto tow on the appropriate approved areas of operation listed in § 61.107(g) of this part.

(c) *For an airship rating.* A person who applies for a private pilot certificate with a lighter-than-air category and airship class rating must receive and log at least 25 hours of flight training in airships on the approved areas of operation listed in § 61.107(i) of this part, which consists of at least:

(1) Three hours of cross-country flight training in an airship;

(2) Except as provided in § 61.110 of this part, 3 hours of night flight training in an airship that includes—

(i) A cross country flight of over 25 nautical miles; and

(ii) Five takeoffs and 5 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(3) Three hours of instrument flight training in an airship;

(4) Three hours of flight training in an airship in preparation for the practical test within the 60 days preceding the date of the test; and

(5) Five hours of supervised PIC flight training in an airship and with an authorized flight instructor.

(d) *For a balloon rating.* A person who applies for a private pilot certificate with a lighter-than-air category and balloon class rating must receive and log at least 10 hours of flight training that includes at least 6 training flights, on the approved areas of operation listed in § 61.107(j) of this part, that includes:

(1) *Gas balloon.* If the training is being performed in a gas balloon, the training must include at least two flights of 2 hours each that consists of—

(i) At least one training flight that covers the approved areas of operation appropriate to a gas balloon within 60 days prior to application for the rating; and

(ii) At least one supervised PIC flight in a gas balloon.

(2) *Balloon with an airborne heater.* If the training is being performed in a balloon with an airborne heater, the training must include at least—

(i) Two training flights of one hour each that covers the approved areas of operation appropriate to a balloon with an airborne heater within 60 days prior to application for the rating; and

(ii) One supervised PIC flight in a balloon with an airborne heater.

§ 61.110 Night flying exceptions for private pilot certification.

A person is not required to comply with the night flying requirements of this subpart:

(a) If that person has a medical restriction from operating an aircraft at night, then that person may—

(1) Be issued a permanent private pilot certificate with the limitation "Night flying prohibited;" and

(2) Have that limitation removed if the condition which was the basis for the medical restriction is corrected, and the person accomplishes the appropriate night flying requirements of this subpart.

(b) If that person receives flight training in the State of Alaska and is not able to accomplish the training, then that person—

(1) May be issued a temporary pilot certificate for only 12 calendar months, with a limitation "Night flying prohibited;"

(2) Must comply with the appropriate night flying requirements of this subpart within the 12-calendar month period following issuance of the temporary private pilot certificate, or the certificate will be suspended until the person complies with the appropriate night flying requirements of this subpart; and

(3) May have the "Night flying prohibited" limitation of this section removed if the person—

(i) Accomplishes the appropriate night flight training requirements of this subpart in the category and class of aircraft for which night flying privileges are sought;

(ii) Presents to an examiner, a logbook or training record endorsement from an authorized flight instructor that verifies accomplishment of the night flying requirements of this subpart that are appropriate to the category and class aircraft for which night flying privileges are sought; and

(iii) Satisfactorily accomplishes the night operations portion of the practical test that are appropriate to the category and class of aircraft for which night flying privileges are sought.

§ 61.111 Cross-country flights: Pilots based on small islands.

A person who applies for a private pilot certificate and who cannot comply with the cross-country distance requirements of this subpart without flying over water for more than 10 nautical miles from the nearest shoreline, is not required to comply with the cross-country distance requirements of this subpart for cross-country flight. The person is subject to the following limitations and conditions:

(a) The person's pilot certificate will be issued with the limitation noted, "Passenger carrying prohibited in flights more than 10 nautical miles from the (appropriate island)."

(b) Upon meeting the cross-country distance requirements in this subpart, the person may have the limitation in paragraph (a) of this section removed.

§ 61.113 Private pilot privileges and limitations: Pilot in command.

(a) Except as provided in paragraphs (b) through (f) of this section, no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft.

(b) A private pilot may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment if:

(1) The flight is only incidental to that business or employment; and

(2) The aircraft does not carry passengers or property for compensation or hire.

(c) A private pilot may share equally the operating expenses of a flight with passengers, provided the expenses involve only fuel, oil, and airport expenditures.

(d) No person who holds a private pilot certificate may act as pilot in command of an aircraft for a passenger-carrying airlift that is sponsored by a charitable organization described in paragraph (d)(7) of this section, for which the passengers are only making a donation to the organization, unless the following requirements are met:

(1) The sponsor of the airlift notifies the FAA Flight Standards District Office with jurisdiction over the area concerned at least 7 days before the event and furnishes—

(i) A signed letter from the sponsor that shows the name of the sponsor, the purpose of the charitable event, the date and time of the event, and the location of the event; and

(ii) A photocopy of each pilot in command's pilot certificate, medical certificate, and logbook entries that show the pilot is current in accordance with §§ 61.56 and 61.57 of this part and has logged at least 200 hours of flight time.

(2) The charitable event takes place at a public airport that is adequate for the aircraft to be used or at an airport that has been approved by the FAA for the operation.

(3) No acrobatic or formation flights are conducted.

(4) Each aircraft used for the charitable event holds a standard airworthiness certificate.

(5) Each aircraft used for the charitable event is airworthy, in accordance with the applicable sections of subpart E of part 91 of this chapter.

(6) Each flight for the charitable event is made during day-VFR conditions.

(7) The charitable organization is an organization identified as such by the U.S. Department of Treasury regulations.

(e) A private pilot may be reimbursed for aircraft operating expenses that are directly related to and for search and location operations, provided the operation is sanctioned and under the direction and control of:

(1) A local, state, or Federal law enforcement agency; or

(2) An organization that conducts search and location operations.

(f) A private pilot who meets the requirements of § 61.69 of this part may act as pilot in command of an aircraft towing a glider.

§ 61.115 Balloon rating: Limitations.

(a) If a person who applies for private pilot certificate with a balloon rating takes a practical test in a balloon with an airborne heater:

(1) The pilot certificate will contain a limitation restricting the exercise of the privilege of that certificate to a balloon with an airborne heater; and

(2) The limitation may be removed when the person obtains the required aeronautical experience in a gas balloon and receives a logbook endorsement from an authorized instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate a gas balloon.

(b) If a person who applies for a private pilot certificate with a balloon rating takes a practical test in a gas balloon:

(1) The pilot certificate will contain a limitation restricting the exercise of the privilege of that certificate to a gas balloon; and

(2) The limitation may be removed when the person obtains the required aeronautical experience in a balloon with an airborne heater and receives a logbook endorsement from an authorized instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate a balloon with an airborne heater.

§ 61.117 Private pilot privileges and limitations: Second in command of aircraft requiring more than one pilot.

Except as provided in § 61.113 of this part, no private pilot may, for compensation or hire, act as second in command of an aircraft that is type certificated for more than one pilot, nor may that pilot act as second in command of such an aircraft that is carrying passengers or property for compensation or hire.

§§ 61.118 through 61.120 [Reserved]

Subpart F—Commercial Pilots

§ 61.121 Applicability.

This subpart prescribes the requirements for the issuance of commercial pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the general operating rules for persons who hold those certificates and ratings.

§ 61.123 Eligibility requirements: General.

To be eligible for a commercial pilot certificate, a person must:

(a) Be at least 18 years of age;

(b) Be able to read, speak, write, and understand the English language;

(c) Hold at least a current third-class medical certificate issued under part 67 of this chapter, or for a rating in a glider or balloon affix a signed and dated statement to the application certifying that no known medical defect exists that would make the person unable to pilot a glider or balloon, as appropriate;

(d) Receive a logbook endorsement from an authorized instructor who—

(1) Conducted the required ground training or reviewed the person's home study on the aeronautical knowledge areas listed in § 61.125 of this part that apply to the aircraft category and class rating sought; and

(2) Certified that the person is prepared for the required knowledge test that apply to the aircraft category and class rating sought.

(e) Satisfactorily accomplish the required knowledge test on the aeronautical knowledge areas listed in § 61.125 of this part;

(f) Received the required training and a logbook endorsement from the authorized instructor who—

(1) Conducted the training on the approved areas of operation listed in § 61.127 of this part that apply to the aircraft category and class rating sought; and

(2) Certified that the person is prepared for the required practical test.

(g) Meet the aeronautical experience requirements of this subpart that apply to the aircraft category and class rating sought before applying for the practical test;

(h) Satisfactorily accomplish the required practical test on the approved areas of operation listed in § 61.127 of this part that apply to the aircraft category and class rating sought; and

(i) Hold at least a private pilot certificate.

§ 61.125 Aeronautical knowledge.

(a) *General.* A person who applies for a commercial pilot certificate must receive and log ground training, or accomplish a home study course, on the aeronautical knowledge areas of this section that apply to the aircraft category and class rating sought.

(b) *Aeronautical knowledge areas.*

(1) The Federal Aviation Regulations that apply to commercial pilot privileges, limitations, and flight operations;

(2) Accident reporting requirements of the National Transportation Safety Board;

(3) Basic aerodynamics and the principles of flight;

(4) Meteorology to include recognition of critical weather situations, windshear recognition and avoidance, and the use of aeronautical weather reports and forecasts;

(5) The safe and efficient operation of aircraft;

(6) Weight and balance computations;

(7) Use of performance charts;

(8) Significance and effects of exceeding aircraft performance limitations;

(9) Use of aeronautical charts and magnetic compass for pilotage and dead reckoning;

(10) Use of air navigation facilities;

(11) Aeronautical decision making and judgment;

(12) Principles and functions of aircraft systems;

(13) Maneuvers, procedures, and emergency operations appropriate to the aircraft;

(14) Night and high altitude operations; and

(15) Descriptions of and procedures for operating within the National Airspace System.

§ 61.127 Flight proficiency.

(a) *General.* A person who applies for a commercial pilot certificate must receive and log ground and flight training on the approved areas of operation of this section that apply to the aircraft category and class rating sought.

(b) *Areas of operation for an airplane category rating with a single engine class rating.*

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and seaplane base operations;

(4) Takeoffs, landings, and go-arounds;

(5) Performance maneuvers;

(6) Ground reference maneuvers;

(7) Navigation;

(8) Stalls and slow flight;

(9) Emergency operations;

(10) High altitude operations; and

(11) Postflight procedures.

(c) *Areas of operation for an airplane category rating with a multiengine class rating.*

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and seaplane base operations;

(4) Takeoffs, landings, and go-arounds;

(5) Performance maneuvers;

(6) Navigation;

(7) Stalls and slow flight;

(8) Emergency operations;

(9) Multiengine operations;

(10) High altitude operations; and

(11) Postflight procedures.

(d) *Areas of operation for a rotorcraft category rating with a helicopter class rating.*

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and heliport operations;

(4) Hovering maneuvers;

(5) Takeoffs, landings, and go-arounds;

(6) Performance maneuvers;

(7) Navigation;

(8) Emergency operations;

(9) Special operations; and

(10) Postflight procedures.

(e) *Areas of operation for a rotorcraft category rating with a gyroplane class rating.*

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport operations;

(4) Takeoffs, landings, and go-arounds;

(5) Performance maneuvers;

(6) Ground reference maneuvers;

(7) Navigation;

(8) Flight at slow airspeeds;

(9) Emergency operations; and

(10) Postflight procedures.

(f) *Areas of operation for a powered-lift category rating.*

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and heliport operations;

(4) Hovering maneuvers;

(5) Takeoffs, landings, and go-arounds;

(6) Performance maneuvers;

(7) Ground reference maneuvers;

(8) Navigation;

(9) Stalls and slow flight;

(10) Emergency operations;

(11) High altitude operations;

(12) Special operations; and

(13) Postflight procedures.

(g) *Areas of operation for a glider category rating with a non-powered class rating.*

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and gliderport operations;

(4) Launches and landings;

(5) Performance speeds;

(6) Soaring techniques;

(7) Performance maneuvers;

(8) Navigation;

(9) Stalls and slow flight;

(10) Emergency operations; and

(11) Postflight procedures.

(h) *Areas of operation for a glider category rating with a powered class rating.*

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport and gliderport operations;

(4) Takeoffs, landings, and go-arounds;

(5) Performance speeds;

(6) Soaring techniques;

(7) Performance maneuvers;

(8) Navigation;

(9) Stalls and slow flight;

(10) Emergency operations; and

(11) Postflight procedures.

(i) *Areas of operation for a lighter-than-air category rating with an airship class rating.*

(1) Preflight preparation;

(2) Preflight procedures;

(3) Airport operations;

(4) Takeoffs, landings, and go-arounds;

(5) Performance maneuvers;

(6) Ground reference maneuvers;

(7) Navigation;

(8) Emergency operations; and

(9) Postflight procedures.

(j) *Areas of operation for a lighter-than-air category rating with a balloon class rating.*

(1) Preflight preparation;

(2) Preflight procedures;

(3) Balloonport operations;

(4) Lift-offs and landings;

(5) Performance maneuvers;

(6) Navigation;

(7) Emergency operations; and

(8) Postflight procedures.

§ 61.129 Aeronautical experience.

(a) *For an airplane single engine rating.* A person who applies for a commercial pilot certificate with an airplane category and single engine class rating must accomplish and log at least 250 hours of flight time as a pilot (of which 50 hours may have been accomplished in an approved flight simulator or flight training device that is representative of a single engine airplane) that consists of at least:

(1) One hundred hours in powered aircraft, of which 50 hours must be in airplanes;

(2) One hundred hours of pilot-in-command flight time, which includes at least—

(i) Fifty hours in airplanes; and

(ii) Fifty hours in cross-country flight in airplanes.

(3) Twenty hours of training on the approved areas of operation listed in § 61.127(b) of this part that includes at least—

(i) Five hours of instrument training in a single engine airplane;

(ii) Ten hours of training in a single engine airplane that has a retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One cross-country flight in a single engine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iv) One cross-country flight in a single engine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(v) Three hours in a single engine airplane in preparation for the practical test within the 60-day period preceding the date of the test.

(4) Ten hours of supervised PIC flying in a single engine airplane on the approved areas of operation listed in § 61.127(b) of this part, which includes at least—

(i) One cross-country flight, if the training is being performed in the state of Hawaii, then that cross-country flight must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 150 nautical miles;

(ii) One cross-country flight, if the training is being performed in a State other than Hawaii, then that cross-country flight must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 250 nautical miles; and

(iii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(b) *For an airplane multiengine rating.* A person who applies for a commercial pilot certificate with an airplane category and multiengine class rating must accomplish and log at least 250 hours of flight time as a pilot (of which 50 hours may have been accomplished in an approved flight simulator or flight training device that is representative of a multiengine airplane) that consists of at least:

(1) One hundred hours in powered aircraft, of which 50 hours must be in airplanes;

(2) One hundred hours of pilot-in-command flight time, which includes at least—

(i) Fifty hours in airplanes; and

(ii) Fifty hours in cross-country flight in airplanes.

(3) Twenty hours of training on the approved areas of operation listed in § 61.127(c) of this part that includes at least—

(i) Five hours of instrument training in a multiengine airplane;

(ii) Ten hours of training in a multiengine airplane that has a retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One cross-country flight in a multiengine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iv) One cross-country flight in a multiengine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(v) Three hours in a multiengine airplane in preparation for the practical test within the 60-day period preceding the date of the test.

(4) Ten hours of supervised PIC flying in a multiengine airplane on the approved areas of operation listed in § 61.127(c) of this part, which includes at least—

(i) One cross-country flight, if the training is being performed in the state of Hawaii, then that cross-country flight must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 150 nautical miles;

(ii) One cross-country flight, if the training is being performed in a State other than Hawaii, then that cross-country flight must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 250 nautical miles; and

(iii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(c) *For a helicopter rating.* A person who applies for a commercial pilot certificate with a rotorcraft category and helicopter class rating must accomplish and log at least 150 hours of flight time as a pilot (of which 25 hours may have been accomplished in an approved flight simulator or flight training device that is representative of a helicopter) that consists of at least:

(1) One hundred hours in powered aircraft, of which 50 hours must be in helicopters;

(2) One hundred hours of pilot-in-command flight time, which includes at least—

(i) Thirty-five hours in helicopters; and

(ii) Ten hours in cross-country flight in helicopters.

(3) Twenty hours of training on the approved areas of operation listed in § 61.127(d) of this part that includes at least—

(i) Five hours of instrument training in a helicopter;

(ii) One cross-country flight in a helicopter of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iii) One cross-country flight in a helicopter of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(iv) Three hours in a helicopter in preparation for the practical test within the 60-day period preceding the date of the test.

(4) Ten hours of supervised PIC flying in a helicopter on the approved areas of operation listed in § 61.127(d) of this part, which includes at least—

(i) One cross-country flight with landings at a minimum of three points, and one of the routes having a straight-line distance of at least 50 nautical miles from the original point of departure; and

(ii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern).

(d) *For a gyroplane rating.* A person who applies for a commercial pilot certificate with a rotorcraft category and gyroplane class rating must accomplish and log at least 150 hours of flight time as a pilot (of which 5 hours may have been accomplished in an approved flight simulator or flight training device that is representative of a gyroplane) that consists of at least:

(1) One hundred hours in powered aircraft, of which 25 hours must be in gyroplanes;

(2) One hundred hours of pilot-in-command flight time, which includes at least—

(i) Ten hours in gyroplanes; and

(ii) Three hours in cross-country flight in gyroplanes.

(3) Twenty hours of training on the approved areas of operation listed in § 61.127(d) of this part that includes at least—

(i) Five hours of instrument training in a gyroplane;

(ii) One cross-country flight in a gyroplane of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iii) One cross-country flight in a gyroplane of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(iv) Three hours in a gyroplane in preparation for the practical test within the 60-day period preceding the date of the test.

(4) Ten hours of supervised PIC flying in a gyroplane on the approved areas of operation listed in § 61.127(e) of this part, which includes at least—

(i) One cross-country flight with landings at a minimum of three points, and one of the routes having a straight-line distance of at least 50 nautical miles from the original point of departure; and

(ii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern).

(e) *For a powered-lift rating.* A person who applies for a commercial pilot certificate with a powered-lift category rating must accomplish and log at least 250 hours of flight time as a pilot (of which 50 hours may have been accomplished in an approved flight simulator or flight training device that is representative of a powered-lift) that consists of at least:

(1) One hundred hours in powered aircraft, of which 50 hours must be in a powered-lift;

(2) One hundred hours of pilot-in-command flight time, which includes at least—

(i) Fifty hours in a powered-lift; and

(ii) Fifty hours in cross-country flight in a powered-lift.

(3) Twenty hours of training on the approved areas of operation listed in § 61.127(e) of this part that includes at least—

(i) Five hours of instrument training in a powered-lift;

(ii) One cross-country flight in a powered-lift of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iv) One cross-country flight in a powered-lift of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(v) Three hours in a powered-lift in preparation for the practical test within the 60-day period preceding the date of the test.

(4) Ten hours of supervised PIC flying in a powered-lift on the approved areas of operation listed in § 61.127(e) of this part, which includes at least—

(i) One cross-country flight, if the training is being performed in the state of Hawaii, then that cross-country flight must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 150 nautical miles;

(ii) One cross-country flight, if the training is being performed in a State other than Hawaii, then that cross-country flight must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 250 nautical miles; and

(iii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(f) *For a glider-nonpowered rating.* A person who applies for a commercial certificate with a glider category and nonpowered class rating must accomplish and log at least:

(1) Twenty-five hours and 100 flights in gliders as pilot in command, which includes at least 10 flights in a nonpowered glider; or

(2) Two hundred hours in heavier-than-air aircraft, and 20 flights in gliders as pilot in command, which includes at least 10 flights in a nonpowered glider.

(3) The flight time requirements in paragraph (f) (1) or (2) of this section must consist of at least the following flight training in a nonpowered glider—

(i) Five hours of flight training or 10 training flights on the approved areas of operation listed in § 61.127(g) of this part; and

(ii) Three flights in preparation for the practical test within the 60-day period preceding the date of the test.

(4) Five supervised PIC flights in a nonpowered glider on the approved areas of operation listed in § 61.127(g) of this part.

(5) If an applicant with a glider category rating and a nonpowered class rating seeks privileges for ground launch procedures, that person must accomplish and log at least five training flights and two supervised PIC flights in a nonpowered glider using a winch or auto tow on the applicable areas of operation listed in § 61.127(g) of this part.

(g) *For a glider-powered rating.* A person who applies for a commercial certificate with a glider category and powered class rating must accomplish and log at least:

(1) Twenty-five hours and 100 flights in gliders as pilot in command, which includes at least 10 flights in a nonpowered glider; or

(2) Two hundred hours in heavier-than-air aircraft, and 20 flights in gliders as pilot in command, which includes at least 10 flights in a nonpowered glider.

(3) The flight time requirements in paragraph (f)(1) or (2) of this section must consist of at least the following flight training in a powered glider—

(i) Five hours of flight training or 10 training flights on the approved areas of operation listed in § 61.127(h) of this part; and

(ii) Three flights in preparation for the practical test within the 60-day period preceding the date of the test.

(4) Five supervised PIC flights in a powered glider on the approved areas of operation listed in § 61.127(h) of this part.

(h) *For an airship rating.* A person who applies for a commercial pilot certificate with a lighter-than-air category and airship class rating must accomplish and log at least 200 hours of flight time as a pilot, which includes at least the following hours:

(1) Fifty hours in airships;

(2) Thirty hours of pilot in command time in airships, which consists of at least—

(i) Ten hours of cross-country flight time in airships; and

(ii) Ten hours of night flight time in airships.

(3) Twenty hours of training in airships on the approved areas of operation listed in § 61.127(i) of this part, which includes at least—

(i) Three hours in an airship in preparation for the practical test within the 60-day period preceding the date of the test;

(ii) Five hours of instrument training in airships;

(iii) One cross-country flight in an airship of at least 1 hour in duration, a total straight-line distance of more than 25 nautical miles from the original point of departure, and occurring in day-VFR conditions; and

(iv) One cross-country flight in an airship of at least 1 hour in duration, a total straight-line distance of more than 25 nautical miles from the original point of departure, and occurring in night-VFR conditions.

(4) Ten hours of pilot in command flight training with an authorized flight instructor in airships, on the approved areas of operation listed in § 61.127(i) of this part, which includes at least—

(i) One cross-country flight with landings at a minimum of three points, and one of the routes having a straight-line distance of at least 25 nautical miles from the original point of departure; and

(ii) Five hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern).

(i) *For a balloon rating.* A person who applies for a commercial pilot certificate with a lighter-than-air category and a balloon class rating must accomplish and log at least 35 hours of flight time as a pilot, which includes at least the following requirements:

(1) Twenty hours in balloons;

(2) Ten flights in balloons;

(3) Two flights in balloons as the pilot in command; and

(4) Ten hours of flight training that includes at least 10 training flights in balloons on the approved areas of operation listed in § 61.127(j) of this part, which consist of at least—

(i) If the training is received in a gas balloon, the training must include at least—

(A) Two training flights of 2 hours each in a gas balloon that covers the approved areas of operation appropriate to a gas balloon within 60 days prior to application for the rating; and

(B) Two supervised PIC flights in a gas balloon on the approved areas of operation.

(ii) If the training is received in a balloon with an airborne heater, the training must include at least—

(A) Two training flights of 1 hour each in a balloon with an airborne heater that covers the approved areas of operation appropriate to a balloon with an airborne heater within 60 days prior to application for the rating; and

(B) Two supervised PIC flights in a balloon with an airborne heater on the approved areas of operation.

§ 61.131 Exceptions to the night flying requirements for the commercial pilot certificate.

A person is not required to comply with the night flying requirements of this subpart:

(a) If that person has a medical restriction from operating an aircraft at night, then that person may—

(1) Be issued a permanent commercial pilot certificate with the limitation "Night flying prohibited;" and

(2) Have that limitation removed if the condition which was the basis for the medical restriction is corrected, and the person accomplishes the appropriate night flying requirements of this subpart.

(b) If that person receives flight training in the State of Alaska and is not able to accomplish the training, then that person—

(1) May be issued a temporary pilot certificate for only 12 calendar months, with a limitation "Night flying prohibited;" and

(2) Must comply with the appropriate night flying requirements of this subpart within 12 calendar months following issuance of the temporary commercial pilot certificate, or the certificate will be suspended until the person complies with the appropriate night flying requirements of this subpart.

(3) May have the "Night flying prohibited" limitation of this section removed if the person—

(i) Accomplishes the appropriate night flight training requirements of this subpart in the category and class of aircraft for which night flying privileges are sought;

(ii) Presents to an examiner, a logbook or training record endorsement from an authorized flight instructor that verifies accomplishment of the night flying requirements of this subpart that are appropriate to the category and class aircraft for which night flying privileges are sought; and

(iii) Accomplishes the night operations portion of the practical test that are appropriate to the category and class of aircraft for which night flying privileges are sought.

§ 61.133 Commercial pilot privileges and limitations: General.

(a) *Privileges.* A person who holds a commercial pilot certificate may act as pilot in command of an aircraft for:

(1) Carrying persons or property for compensation or hire, provided the person is qualified in accordance with this part and with the applicable other parts of this chapter that apply to the operation; and

(2) Compensation or hire, provided the person is qualified in accordance with this part and with the applicable other parts of this chapter, that apply to the operation.

(b) *Limitations.*

(1) A person who applies for a commercial pilot certificate with an airplane category, airship class, or powered-lift category rating, and does not hold an instrument rating in the same category and class will be issued a commercial pilot certificate that contains the limitation, "The carriage of passengers for hire in (airplanes) (airships) (powered lifts) on cross-country flights in excess of 50 nautical miles or at night is prohibited." The limitation may be removed when the person satisfactorily accomplishes the requirements listed in § 61.65 of this part for an instrument rating in the same category and class of aircraft listed on the person's commercial pilot certificate.

(2) If a person who applies for commercial pilot certificate with a balloon rating takes a practical test in a balloon with an airborne heater:

(i) The pilot certificate will contain a limitation restricting the exercise of the privilege of that certificate to a balloon with an airborne heater; and

(ii) The limitation may be removed when the person obtains the required aeronautical experience in a gas balloon and receives a logbook endorsement from an authorized instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate a gas balloon.

(3) If a person who applies for a commercial pilot certificate with a balloon rating takes a practical test in a gas balloon:

(i) The pilot certificate will contain a limitation restricting the exercise of the privilege of that certificate to a gas balloon; and

(ii) The limitation may be removed when the person obtains the required aeronautical experience in a balloon with an airborne heater and receives a logbook endorsement from an authorized instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate a balloon with an airborne heater.

§ 61.135 through 61.141 [Reserved]

Subpart G—Airline Transport Pilots

§ 61.151 Applicability.

This subpart prescribes the requirements for the issuance of airline transport pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the general operating rules for persons who hold those certificates and ratings.

§ 61.153 Eligibility requirements: General.

To be eligible for an airline transport pilot certificate, a person must:

(a) Be at least 23 years of age;

(b) Be able to read, speak, write, and understand the English language;

(c) Be of good moral character;

(d) Hold at least a current third-class medical certificate issued under part 67 of this chapter;

(e) Meet at least one of the following requirements—

(1) Hold at least a commercial pilot certificate and an instrument rating;

(2) Meet the requirements of § 61.73 of this part to qualify for a commercial pilot certificate and an instrument rating if the person is a rated pilot in the U.S. military; or

(3) Hold either a foreign airline transport pilot or foreign commercial pilot license and an instrument rating if the person holds a pilot license issued by a member State to the International Civil Aviation Organization.

(f) Meet the aeronautical experience requirements of this subpart that apply to the aircraft category and class rating sought before applying for the practical test;

(g) Satisfactorily accomplish the knowledge test on the aeronautical knowledge areas of § 61.155(c) of this part that apply to the aircraft category and class rating sought;

(h) Satisfactorily accomplish the practical test on the applicable approved areas of operation listed in § 61.157(d) of this part that apply to the aircraft category and class rating sought; and

(i) Comply with the sections of this part that apply to the aircraft category and class rating sought.

§ 61.155 Aeronautical knowledge.

(a) *General.* The knowledge test for an airline transport pilot certificate is based on the aeronautical knowledge areas listed in paragraph (c) of this section.

(b) *Aircraft type rating.* A person who is applying for an additional aircraft type rating to be added to their airline transport certificate is not required to accomplish a knowledge test if that person's airline transport pilot certificate lists the aircraft category and class rating that is appropriate to the type rating sought.

(c) *Aeronautical knowledge areas.*

(1) The applicable Federal Aviation Regulations of this chapter that relate to airline transport pilot privileges, limitations, and flight operations appropriate to the aircraft category and class rating sought;

(2) Meteorology including knowledge of and effects of fronts, frontal characteristics, cloud formations, icing, and upper air-data;

(3) The general system of weather and NOTAM collection, dissemination, interpretation, and use;

(4) Interpretation of weather charts, maps, forecasts, sequences, abbreviations, symbols, and use;

(5) The National Weather Service function as it pertains to operation in the National Airspace System;

(6) Windshear and microburst awareness, identification, and avoidance;

(7) Principles of air navigation under instrument meteorological conditions in the National Airspace System;

(8) Air traffic control procedures and pilot responsibilities as they relate to en route operations, terminal area and radar operations, and instrument departure and approach procedures;

(9) Aircraft loading, weight and balance, use of charts, graphs, tables, formulas, and computations, and the effects on aircraft performance that apply to the aircraft category and class rating sought;

(10) Aircraft aerodynamics relating to the aircraft's flight characteristics, performance, and normal and abnormal flight regimes and characteristics that apply to the aircraft category and class rating sought;

(11) Flight crewmember physiological factors;

(12) Aeronautical decision making and judgment; and

(13) Flight deck resource management to include crew communications and coordination.

§ 61.157 Flight proficiency.

(a) *General.*

(1) The practical test for an airline transport pilot certificate is given for:

(i) An airplane category and single-engine class rating with an airplane type rating if a type rating is required;

(ii) An airplane category and multiengine class rating with an airplane type rating if a type rating is required;

(iii) A rotorcraft category and helicopter class rating with a type rating if a type rating is required;

(iv) A powered-lift category rating with a type rating, if a type rating is required; and

(v) An aircraft type rating.

(2) A person who is applying for an airline transport pilot practical test must meet—

(i) The eligibility requirements of § 61.153 of this part; and

(ii) The aeronautical knowledge and aeronautical experience requirements of this subpart that apply to the aircraft category and class rating sought.

(b) *Aircraft type rating.* Except as provided in paragraph (c) of this section, a person who is applying for an aircraft type rating to be added to an airline transport pilot or an aircraft type rating associated with an airline transport pilot certificate:

(1) Must receive and log ground training from an authorized ground or flight instructor and flight training from an authorized flight instructor on the approved areas of operation in this section that apply to the aircraft type rating sought; and

(2) Must receive a logbook endorsement from the instructor who conducted the training, certifying the applicant completed the training on the appropriate approved areas of operation listed in paragraph (e) of this section that apply to the aircraft type rating sought.

(c) A person who is applying for an aircraft type rating to be added to an airline transport pilot certificate or an aircraft type rating concurrently with an airline transport pilot certificate, and who is an employee of a part 119 certificate holder operating under part 121 or part 135, may present a training record that shows satisfactory completion of that certificate holder's approved pilot-in-command training program for the aircraft type rating sought, instead of complying with the requirements of paragraph (b) of this section.

(d) A person who successfully completes an airline transport pilot practical test, the type rating(s), if appropriate, on the superseded pilot certificate shall be brought forward to the airline transport pilot certificate level provided the practical test was accomplished in that category and class of aircraft. If the type rating(s) for that category and class of aircraft on the superseded pilot certificate is limited to VFR, that limitation shall be carried forward to the person's airline transport pilot certificate level.

(e) *Areas of operation.*

(1) The areas of operation for an airplane category-single engine class rating with a type rating, if a type rating is required, are as follows:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) Inflight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and

(ix) Postflight procedures.

(2) The areas of operation for an airplane category-multiengine class rating with a type rating, if a type rating is required, are as follows:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) Inflight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and

(ix) Postflight procedures.

(3) The areas of operation for a powered-lift category rating with a type rating, if a type rating is required, are as follows:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) Inflight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.
(4) The areas of operation for a rotorcraft category-helicopter class rating with a type rating, if a type rating is required, are as follows:
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) Inflight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

§ 61.159 Aeronautical experience: Airplane category rating.

(a) Except as provided in paragraph (d) of this section, a person who is applying for an airline transport pilot certificate with an airplane category and class rating must have at least 1,500 hours of total time as a pilot that includes at least:
(1) 500 hours of cross-country flight time;
(2) 100 hours of night flight time;
(3) 75 hours of instrument time in actual or simulated instrument meteorological conditions, of which at least 50 hours are obtained in actual flight; and
(4) 250 hours of flight time in an airplane as a pilot in command or as a second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof, which includes at least—
(i) 100 hours of cross-country flight time; and
(ii) 25 hours of night flight time.
(b) A person who has performed at least 20 night takeoffs and landings to a full stop may substitute each additional night takeoff and landing to a full stop in excess of the minimum 20 accomplished takeoffs for 1 hour of night flight time to satisfy the requirements of paragraph (a)(2) of this section for a total credited time of no more than 25 hours.
(c) A commercial pilot may credit the following second-in-command and flight engineer flight time (or a combination of either crewmember position flight time) toward the 1,500 hours of total time as a pilot required by paragraph (a) of this section:
(1) Second-in-command time acquired in an airplane required to have more than one pilot by the airplane's flight manual or type certificate;
(2) Second-in-command time acquired in an airplane for a part 119 certificate holder operating under part 121 or part 135 for which a second in command is required; and
(3) Flight engineer time, provided the time—
(i) Is acquired while operating under part 121 of this chapter;
(ii) Is acquired in an airplane that is required to have a flight engineer by the airplane's flight manual or type certificate;
(iii) Is acquired while the person is participating in a pilot training program approved under part 121 of this chapter; and
(iv) Does not exceed more than 1 hour of flight time to be credited for each 3 hours of flight engineer time for a total credited time of no more than 500 hours.
(d) A person who does not meet the aeronautical experience requirements of this section may be issued an airline transport pilot certificate with the limitation "Holder does not meet the pilot-in-command aeronautical experience requirements of ICAO" as prescribed by Article 39 of the Convention on International Civil Aviation, as provided in § 61.167(b) of this part.

§ 61.161 Aeronautical experience: Rotorcraft category and helicopter class rating.

A person who is applying for an airline transport pilot certificate with a rotorcraft category and helicopter class rating, must have at least 1,200 hours of total time as a pilot that includes at least:
(a) 500 hours of cross-country flight time;
(b) 100 hours of night flight time, of which 15 hours are in helicopters;
(c) 200 hours of flight time in helicopters, which includes at least 75 hours as a pilot in command or as second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination of either crewmember position flight time; and
(d) 75 hours of instrument time in actual or simulated instrument meteorological conditions, of which at least 50 hours are obtained in actual flight with at least 25 hours in helicopters as a pilot in command or as second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination of either crewmember position flight time.

§ 61.163 Aeronautical experience: Powered-lift category rating.

A person who is applying for an airline transport pilot certificate with a powered-lift category rating must have at least 1,500 hours of total time as a pilot that includes at least:
(a) 500 hours of cross-country flight time;
(b) 100 hours of night flight time;
(c) 75 hours of instrument time in actual or simulated instrument meteorological conditions, of which at least 50 hours are obtained in actual flight; and
(d) 250 hours in a powered-lift as a pilot in command or as a second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof, which includes at least—
(1) 100 hours of cross-country flight time; and
(2) 25 hours of night flight time.

§ 61.165 Additional aircraft category and class ratings.

(a) *Rotorcraft category and helicopter class rating.* A person who is applying for an airline transport certificate with a rotorcraft category and helicopter class rating who holds an airline transport certificate with another aircraft category rating must:
(1) Meet the eligibility requirements of § 61.153 of this part;
(2) Satisfactorily accomplish the knowledge test on the aeronautical knowledge areas of § 61.155 of this part that apply to the rotorcraft category and helicopter class rating sought;
(3) Comply with the requirements in § 61.157(b) of this part, if appropriate;
(4) Meet the applicable aeronautical experience requirements of § 61.161 of this part that apply to helicopter total time; and
(5) Satisfactorily accomplish the practical test on the approved areas of operations of § 61.157(e)(4) of this part that apply to the rotorcraft category and helicopter class rating sought.
(b) *Airplane category rating with a single-engine class rating.* A person who is applying for an airline transport certificate with an airplane category and single engine class rating and holds an airline transport certificate with another aircraft category or class rating must:
(1) Meet the eligibility requirements of § 61.153 of this part;
(2) Accomplish the knowledge test on the aeronautical knowledge areas of § 61.155 of this part that apply to the airplane category and single-engine class rating sought;
(3) Comply with the requirements in § 61.157(b) of this part, if appropriate;

(4) Meet the applicable aeronautical experience requirements of § 61.159 of this part that apply to airplane total time; and
(5) Accomplish the practical test on the approved areas of operations of § 61.157(e)(1) of this part that apply to the airplane category and single-engine class rating sought.
(c) *Airplane category rating with a multiengine class rating.* A person who is applying for an airline transport certificate with an airplane category and multiengine class rating and holds an airline transport certificate with another aircraft category or class rating must:
(1) Meet the eligibility requirements of § 61.153 of this part;
(2) Accomplish the knowledge test on the aeronautical knowledge areas of § 61.155 of this part that apply to the airplane category and multiengine class rating sought;
(3) Comply with the requirements in § 61.157(b) of this part, if appropriate;
(4) Meet the applicable aeronautical experience requirements of § 61.159 of this part that apply to airplane total time; and
(5) Accomplish the practical test on the approved areas of operations of § 61.157(e)(2) of this part that apply to the airplane category and multiengine class rating sought.
(d) *Powered-lift category.* A person who is applying for an airline transport certificate with a powered-lift category rating, and holds an airline transport certificate with another aircraft category rating must:
(1) Meet the eligibility requirements of § 61.153 of this part;
(2) Accomplish the required knowledge test on the aeronautical knowledge areas of § 61.155 of this part that apply to the powered-lift category rating sought;
(3) Comply with the requirements in § 61.157(b) of this part, if appropriate;
(4) Meet the applicable aeronautical experience requirements of § 61.163 of this part that apply to powered-lift total time; and
(5) Accomplish the required practical test on the approved areas of operations of § 61.157(e)(3) of this part that apply to the powered-lift category rating sought.

§ 61.167 General privileges and limitations.

(a) *Privileges.* A person who holds an airline transport pilot certificate is entitled to the same privileges as those afforded a person who holds a commercial pilot certificate with an instrument rating.
(b) *Limitations.* A person who applies for an airline transport pilot will be issued an airline transport certificate with the limitation, "Holder does not meet the pilot-in-command aeronautical experience requirements of ICAO," for the following circumstances:
(1) The person—
(i) Credits second-in-command or flight engineer time under § 61.159(c) of this part toward the minimum 1,500 hours of total flight time as a pilot that is required by § 61.159(a) of this part; and
(ii) Lacks at least 1,200 hours of total flight time as a pilot, but otherwise meets the other aeronautical experience requirements of this subpart, appropriate to the aircraft rating sought.
(2) The person does not have at least 150 hours of pilot-in-command time in an aircraft that is appropriate to the aircraft rating sought, but otherwise meets the aeronautical experience requirements of this subpart.
(c) *Removal of limitations.* The limitation required by paragraph (b) of this section may be removed when the person:
(1) Meets the aeronautical experience requirements for the aircraft rating sought; and
(2) Presents evidence within a logbook of having accomplished the required appropriate aeronautical experience.

§ 61.169 [Reserved]

§ 61.171 [Reserved]

Subpart H—Flight Instructors

§ 61.181 Applicability.

This subpart prescribes the requirements for the issuance of flight instructor certificates and ratings, the conditions under which those certificates and ratings are necessary, and the limitations on those certificates and ratings.

§ 61.183 Eligibility requirements.

To be eligible for a flight instructor certificate or rating a person must:
(a) Be at least 18 years of age;
(b) Be able to read, speak, write, and understand the English language;
(c) Hold either a commercial pilot or airline transport pilot certificate—
(1) With an aircraft category and class rating that is appropriate to the flight instructor rating sought;
(2) With an instrument rating, if the person holds a commercial pilot certificate, that is appropriate to the flight instructor rating sought, if applying for—
(i) A flight instructor certificate with an airplane category and single-engine class rating;
(ii) A flight instructor certificate with an airplane category and multiengine class rating;
(iii) A flight instructor certificate with a rotorcraft category and helicopter class rating;
(iv) A flight instructor certificate with an airship rating;
(v) A flight instructor certificate with a powered-lift rating; or
(vi) A flight instructor certificate-instrument rating (aircraft category and class).
(d) Receive a logbook endorsement from an authorized instructor who gave the ground training on the aeronautical knowledge areas listed in § 61.185 of this part appropriate to the required knowledge test.
(e) Accomplish a knowledge test on the aeronautical knowledge areas listed in § 61.185(a) of this part;
(f) Accomplish a knowledge test on the aeronautical knowledge areas listed in § 61.185(b) of this part that are appropriate to the flight instructor rating sought;
(g) Receive a logbook endorsement from an authorized flight instructor who gave the flight training on the approved areas of operation listed in § 61.187 of this part, appropriate to the flight instructor rating sought and prior to applying for the practical test;
(h) Accomplish the required practical test that is appropriate to the flight instructor rating sought;
(i) Accomplish the following for a flight instructor certificate with an airplane rating or with a glider rating—
(1) Must have received a one time logbook endorsement from an authorized flight instructor on ground and flight training on instructional procedures for stall awareness, spin entry, spins, and spin recovery procedures in an airplane or glider that is certificated for spins;
(2) Must have demonstrated instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures; and
(3) May present the person's spin training endorsement to an examiner, and that examiner may accept that endorsement as satisfactory accomplishment of the required knowledge and skill of stall awareness, spin entry, spins, or spin recovery instructional procedures for the practical test, provided that the practical test is not a retest as a result of the person failing the previous test for deficiencies in the knowledge or skill of stall awareness, spin entry, spins, or spin recovery instructional procedures. If the retest is a result of deficiencies in the knowledge or skill of stall awareness, spin entry, spins, or spin

recovery instructional procedures, the examiner must test the person on stall awareness, spin entry, spins, and spin recovery instructional procedures in an airplane or glider that is certificated for spins.

(j) Log at least 15 hours as pilot in command in the category and class of aircraft that is appropriate to the flight instructor rating sought; and

(k) Comply with the appropriate sections of this part that apply to the flight instructor rating sought.

§ 61.185 Aeronautical knowledge.

A person who is applying for a flight instructor certificate must receive and log ground training from an authorized ground or flight instructor on the aeronautical knowledge areas of this section:

(a) *Aeronautical knowledge areas.*

(1) The learning process;

(2) Elements of effective teaching;

(3) Student evaluation, quizzing, and testing;

(4) Course development;

(5) Lesson planning; and

(6) Classroom training techniques.

(b) A person who is applying for a flight instructor certificate must receive and log ground training on the aeronautical knowledge areas in which ground training is required for—

(1) A recreational, private, and commercial pilot certificate that is appropriate to the flight instructor rating sought; and

(2) An instrument rating, if that person is applying for—

(i) A flight instructor certificate—airplane category and single-engine class rating;

(ii) A flight instructor certificate—airplane category with an multiengine class rating;

(iii) A flight instructor certificate—rotorcraft category with a helicopter class rating;

(iv) A flight instructor certificate—lighter-than-air category with an airship class rating;

(v) A flight instructor certificate—powered-lift category rating; or

(vi) A flight instructor certificate—instrument (with the appropriate aircraft category and class rating).

§ 61.187 Flight proficiency.

(a) *General.* A person who is applying for a flight instructor certificate must receive ground training from an authorized ground or flight instructor, and flight training from an authorized flight instructor on the approved areas of operation listed in this section that apply to the flight instructor rating sought, and the person's logbook must contain an endorsement from an authorized flight instructor certifying that the person is proficient to pass a practical test on those areas of operation.

(b) *Areas of operation for an airplane category rating with a single engine class rating:*

(1) Fundamentals of instructing;

(2) Technical subject areas;

(3) Preflight preparation;

(4) Preflight lesson on a maneuver to be performed in flight;

(5) Preflight procedures;

(6) Airport and seaplane base operations;

(7) Takeoffs, landings, and go-arounds;

(8) Fundamentals of flight;

(9) Performance maneuvers;

(10) Ground reference maneuvers;

(11) Stalls, spins, and slow flight;

(12) Basic instrument maneuvers;

(13) Emergency operations; and

(14) Postflight procedures.

(c) *Areas of operation for an airplane category rating with a multiengine class rating:*

(1) Fundamentals of instructing;

(2) Technical subject areas;

(3) Preflight preparation;

(4) Preflight lesson on a maneuver to be performed in flight;

(5) Preflight procedures;

(6) Airport and seaplane base operations;

(7) Takeoffs, landings, and go-arounds;

(8) Fundamentals of flight;

(9) Performance maneuvers;

(10) Ground reference maneuvers;

(11) Stalls and slow flight;

(12) Basic instrument maneuvers;

(13) Emergency operations;

(14) Multiengine operations; and

(15) Postflight procedures.

(d) *Areas of operation for a rotorcraft category rating with a helicopter class rating:*

(1) Fundamentals of instructing;

(2) Technical subject areas;

(3) Preflight preparation;

(4) Preflight lesson on a maneuver to be performed in flight;

(5) Preflight procedures;

(6) Airport and heliport operations;

(7) Hovering maneuvers;

(8) Takeoffs, landings, and go-arounds;

(9) Fundamentals of flight;

(10) Performance maneuvers;

(11) Emergency operations;

(12) Special operations; and

(13) Postflight procedures.

(e) *Areas of operation for a rotorcraft category rating with a gyroplane class rating:*

(1) Fundamentals of instructing;

(2) Technical subject areas;

(3) Preflight preparation;

(4) Preflight lesson on a maneuver to be performed in flight;

(5) Preflight procedures;

(6) Airport operations;

(7) Takeoffs, landings, and go-arounds;

(8) Fundamentals of flight;

(9) Performance maneuvers;

(10) Flight at slow airspeeds;

(11) Ground reference maneuvers;

(12) Emergency operations; and

(13) Postflight procedures.

(f) *Areas of operation for a powered-lift category rating:*

(1) Fundamentals of instructing;

(2) Technical subject areas;

(3) Preflight preparation;

(4) Preflight lesson on a maneuver to be performed in flight;

(5) Preflight procedures;

(6) Airport and heliport operations;

(7) Hovering maneuvers;

(8) Takeoffs, landings, and go-arounds;

(9) Fundamentals of flight;

(10) Performance maneuvers;

(11) Ground reference maneuvers;

(12) Stalls and slow flight;

(13) Basic instrument maneuvers;

(14) Emergency operations;

(15) Special operations; and

(16) Postflight procedures.

(g) *Areas of operation for a glider category rating with a nonpowered class rating:*

(1) Fundamentals of instructing;

(2) Technical subject areas;

(3) Preflight preparation;

(4) Preflight lesson on a maneuver to be performed in flight;

(5) Preflight procedures;

(6) Airport and gliderport operations;

(7) Launches and landings;

(8) Fundamentals of flight;

(9) Performance speeds;

(10) Soaring techniques;

(11) Performance maneuvers;

(12) Stalls, spins, and slow flight;

(13) Emergency operations; and

(14) Postflight procedures.

(h) *Areas of operation for a glider category rating with a powered class rating:*

(1) Fundamentals of instructing;

(2) Technical subject areas;

(3) Preflight preparation;

(4) Preflight lesson on a maneuver to be performed in flight;

(5) Preflight procedures;

(6) Airport and gliderport operations;

(7) Launches, landings, and go-arounds;

(8) Fundamentals of flight;

(9) Performance speeds;

(10) Soaring techniques;

(11) Performance maneuvers;

(12) Stalls, spins, and slow flight;

(13) Emergency operations; and

(14) Postflight procedures.

(i) *Areas of operation for a lighter-than-air category rating with an airship class rating:*

(1) Fundamentals of instructing;

(2) Technical subject areas;

(3) Preflight preparation;

(4) Preflight lesson on a maneuver to be performed in flight;

(5) Preflight procedures;

(6) Airport operations;

(7) Takeoffs, landings, and go-arounds;

(8) Fundamentals of flight;

(9) Performance maneuvers;

(10) Ground reference maneuvers;

(11) Basic instrument maneuvers;

(12) Emergency operations; and

(13) Postflight procedures.

(j) *Areas of operation for a lighter-than-air category rating with a balloon class rating:*

(1) Fundamentals of instructing;

(2) Technical subject areas;

(3) Preflight preparation;

(4) Preflight lesson on a maneuver to be performed in flight;

(5) Preflight procedures;

(6) Balloonport operations;

(7) Lift-offs and landings;

(8) Fundamentals of flight;

(9) Performance maneuvers;

(10) Emergency operations; and

(11) Postflight procedures.

(k) *Areas of operation for an instrument rating with the appropriate aircraft category and class rating:*

(1) Fundamentals of instructing;

(2) Technical subject areas;

(3) Preflight preparation;

(4) Preflight lesson on a maneuver to be performed in flight;

(5) Preflight procedures;

(6) Airport operations;

(7) Takeoffs, landings, and go-arounds;

(8) Fundamentals of flight;

(9) Performance maneuvers;

(10) Ground reference maneuvers;

(11) Basic instrument maneuvers;

(12) Emergency operations; and

(13) Postflight procedures.

§ 61.189 Flight instructor records.

(a) A flight instructor must sign the logbook of each person to whom that flight instructor has given flight and ground training.

(b) A flight instructor must maintain a record (in a logbook or a separate document) that contains the following:

(1) The name of each person whose logbook or student pilot certificate that instructor has endorsed for supervised PIC flight privileges and the date of the endorsement;

(2) The name of each person that instructor has endorsed for a knowledge or practical test, and the record shall also indicate the kind of test, the date, and the results; and

(3) A copy of each training syllabus that instructor uses to conduct training.

(c) Each flight instructor must retain the records required by this section in a separate record or in a logbook for at least 3 years.

§ 61.191 Additional flight instructor ratings.

(a) A person who applies for an additional flight instructor rating on a flight instructor certificate must meet the eligibility requirements listed in § 61.183 of this part that apply to the flight instructor rating sought.

(b) A person who applies for an additional rating on a flight instructor certificate is not required to pass the knowledge test in § 61.185(a) of this part.

§ 61.193 Flight instructor endorsements and authorizations.

A person who holds a flight instructor certificate is authorized within the limitations of the person's flight instructor certificate and ratings and pilot certificate and ratings to give training and endorsements that are required for, and relate to:

(a) A student pilot certificate;

(b) A recreational pilot certificate;

(c) A private pilot certificate;

(d) A commercial pilot certificate;

(e) An airline transport pilot certificate;

(f) A flight instructor certificate;

(g) A ground instructor certificate;

(h) An additional aircraft rating;

(i) An instrument rating;

(j) A flight review, operating privilege, or recency of experience requirement of this part;

(k) An authorization for a practical test; and

(l) An authorization for a knowledge test.

§ 61.195 Flight instructor limitations and qualifications.

A person who holds a flight instructor certificate is subject to the following limitations:

(a) *Hours of training.* In any 24-consecutive-hour period, a flight instructor may not conduct more than 8 hours of flight training or any combination of commercial flying and flight training.

(b) *Aircraft ratings.* Flight instructors may not conduct flight training in any aircraft for which they do not hold—

(1) The category and class rating on their flight instructor certificate and pilot certificate; and

(2) If appropriate, a type rating on their pilot certificate.

(c) *Instrument rating.* Flight instructors who give instrument flight training for the issuance of an instrument rating or a type rating not limited to VFR must hold an instrument rating on their flight instructor certificate and their pilot certificate that is appropriate to the category and class of aircraft in which instrument training is being given.

(d) *Limitations on endorsements.* A flight instructor may not endorse a:

(1) Student pilot's certificate or logbook for supervised PIC flight privileges, unless that flight instructor has—

(i) Given that student the flight training required for supervised PIC flight privileges by this part; and

(ii) Determined that the student is prepared to conduct the flight safely under known circumstances, and subject to any limitations listed in the student's logbook, that the instructor considers necessary for safety of flight.

(2) Student pilot's certificate and logbook for a supervised PIC cross-country flight, unless that flight instructor has determined the student's flight preparation, planning, equipment, and proposed procedures are adequate for the proposed flight under the existing conditions and within any limitations listed in the logbook that the instructor considers necessary for safety of flight;

(3) Student pilot's certificate and logbook for supervised PIC flight in Class B airspace area or at an airport within Class B airspace unless that flight instructor has—

(i) Given that student ground and flight training in that Class B airspace and airport; and

(ii) Determined that the student is proficient to operate the aircraft safely.

(4) Logbook of a recreational pilot, unless that flight instructor has—

(i) Given that pilot the required ground and flight training of this part; and

(ii) Determined that the pilot is proficient to operate the aircraft safely.

(5) Logbook of a pilot for a flight review, unless that instructor has conducted a review of that pilot in accordance with the requirements of § 61.56(a) of this part; or

(6) Logbook of a pilot for an instrument proficiency test, unless that instructor has tested that pilot in accordance with the requirements of § 61.57(e) of this part.

(e) *Training in an aircraft that requires a type rating.* Flight instructors may not give flight training in an aircraft that requires the pilot in command to hold a type rating unless they hold a type rating for that aircraft on their pilot certificate.

(f) *Training received in a multiengine airplane, helicopter, or a powered-lift.* A flight instructor may not give training required for the issuance of a certificate

or rating in a multiengine airplane, helicopter, or a powered-lift, unless that flight instructor has at least 5 flight hours of operating experience as a pilot in command in the specific make and model of multiengine airplane, helicopter, or powered-lift, as appropriate.

(g) *Position in aircraft and required pilot seats for providing flight training.*

(1) A flight instructor must perform all training from a control seat in an aircraft that meets the requirements of and is in accordance with § 91.109 of this chapter.

(2) A flight instructor who provides flight training for an airman certificate or rating issued under this part must provide that flight training in an aircraft that meets the following requirements—

(i) The aircraft must have at least two pilot seats and be of the same category, class, and type, if appropriate, that apply to the flight instructor rating sought.

(ii) For single-place aircraft, the pre-supervised PIC flight training must have been received in an aircraft that has two pilot seats and is of the same category, class, and type, if appropriate, and has similar flight characteristics to that of the single-place aircraft.

(h) *Qualifications of the instructor for training first-time flight instructor applicants.*

(1) The ground training required by a person who is applying for a flight instructor certificate for the first time, must be given by a ground or flight instructor who)—

(i) Holds a current ground or flight instructor certificate with the appropriate rating, has held that certificate for at least 24 months, and has given at least 40 hours of ground training; or

(ii) Holds a current ground or flight instructor certificate with the appropriate rating, and have given at least 100 hours of ground training, if the training is given in an FAA-approved course.

(2) Except as provided for in paragraph (h)(3) of this section, the flight training required by a person who is seeking a flight instructor certificate for the first time, must be given by flight instructors who meet the eligibility requirements prescribed in § 61.183 of this part, hold the appropriate rating on their flight instructor certificate, and has held a flight instructor certificate for at least 24 months and—

(i) For training in an airplane, rotorcraft, or powered-lift rating, must have given at least 200 hours of flight training as a flight instructor;

(ii) For training in a glider rating, must have given at least 80 hours of flight training as a flight instructor; and

(iii) For training in a lighter-than-air rating, must have given at least 20 hours of flight training as a flight instructor.

(3) A flight instructor who serves as a flight instructor in an FAA-approved course must hold a current flight instructor certificate with the appropriate rating, and have satisfactorily accomplished the required initial and recurrent flight instructor proficiency tests, in accordance with the part the FAA-approved course is conducted under, and must—

(i) Meet the requirements of paragraph (h)(2) of this section; or

(ii) Meet the following requirements—

(A) Trained and endorsed at least 5 applicants for a practical test for a pilot certificate, flight instructor certificate, ground instructor certificate, or an additional rating, and at least 80 percent of those applicants passed that test on their first attempt;

(B) Given at least 400 hours of flight training as a certificated flight instructor for training in an airplane, a rotorcraft, or for a powered-lift rating;

(C) Given at least 100 hours of flight training as a flight instructor, for training in a glider rating; and

(D) Given at least 40 hours of flight training as a flight instructor, for training in a lighter-than-air rating.

(i) *Prohibition against self endorsements.* A flight instructor shall not make any self-endorsement for the furtherance of a certificate, rating, flight proficiency, flight review, authorization, operating privilege, practical test, or knowledge test that is required by this part.

§ 61.197 Renewal of flight instructor certificates.

(a) Persons who hold a flight instructor certificate that have not expired may renew their certificates for an additional 24-calendar months if they, except as provided for in paragraph (b) of this section, satisfactorily accomplish a practical test for:

(1) Renewal of their flight instructor certificate; or

(2) An additional flight instructor rating.

(b) Persons may renew their flight instructor certificate without accomplishing a practical test, by presenting to an FAA Flight Standards District Office:

(1) A record of training students that shows during the preceding 24 calendar months, they have endorsed at least 5 students for a practical test for a certificate or rating, and at least 80 percent of those students passed that test on the first attempt;

(2) A record that shows during the preceding 24-calendar months, persons have served as a company check pilot, chief flight instructor, company check airman or flight instructor in a part 121 or 135 operation, or a comparable position involving the regular evaluation of pilots, and provided the FAA Flight Standards District Office is acquainted with their duties and responsibilities and has determined they have satisfactory knowledge of current pilot training, certification, and standards; or

(3) A graduation certificate showing they have accomplished an approved flight instructor refresher course, consisting of ground or flight instruction, or both, and provided the course was satisfactorily accomplished before the expiration date on the person's flight instructor certificate.

(c) If persons accomplish the requirements of this section within the 90 days preceding the expiration date of their flight instructor certificate, they are considered to have accomplished the requirements of this section in the month due, and the certificate will be renewed for an additional 24-calendar months from the expiration date.

§ 61.199 Expired flight instructor certificates and ratings.

(a) *Flight instructor certificates.* The holder of an expired flight instructor certificate may exchange that certificate for a new certificate by satisfactorily accomplishing a practical test prescribed in § 61.187 of this part.

(b) *Flight instructor ratings.*

(1) A flight instructor rating or a limited flight instructor rating on a pilot certificate is no longer valid and may not be exchanged for a similar rating or a flight instructor certificate.

(2) The holder of a flight instructor rating or a limited flight instructor rating on a pilot certificate may be issued a flight instructor certificate with the current ratings, but only if the person satisfactorily accomplishes the required knowledge and practical test prescribed in this subpart for the issuance of that flight instructor certificate and rating.

§ 61.201 Conversion to the current flight instructor ratings.

(a) *General.*

(1) A person who holds a commercial pilot certificate for lighter-than-air category and an airship or a balloon class rating, or a flight instructor certificate that does not bear the current glider or instrument-airplane flight instructor ratings listed in § 61.5(c) of this part, may not give training in an airship, a balloon, or a glider, or for an instrument rating in an airplane, respectively, after [insert date 2 years after the effective date of the final rule].

(2) Before [insert date 2 years after the effective date of the final rule], a person who meets the appropriate qualification requirements of this section may receive a flight instructor certificate with the current ratings.

(b) *Glider category with a powered class rating.* A flight instructor certificate with a glider category and powered class rating may be issued to a person who holds a flight instructor certificate with glider category rating, provided that person has:

(1) Received the required training in a powered glider and the flight instructor endorsements of this subpart for the issuance of the powered class rating, and has satisfactorily accomplished the required practical test; or

(2) Before [insert effective date of the final rule]—

(i) Given at least 20 hours of flight training in a powered glider as an authorized flight instructor; and

(ii) Recommended at least one student for a practical test for the issuance of glider category rating and the recommended student passed the practical test.

(c) *Glider category with a nonpowered class rating.* A flight instructor certificate with a glider category and nonpowered class rating may be issued to a person who holds a flight instructor certificate with glider category rating, provided the person has:

(1) Received the required training in a nonpowered glider and the flight instructor endorsements of this subpart for the issuance of the nonpowered class rating and has satisfactorily accomplished the required practical test; or

(2) Before [insert effective date of the final rule]—

(i) Given at least 20 hours of flight training in a nonpowered glider as an authorized flight instructor; and

(ii) Recommended at least one student for a practical test for the issuance of glider category rating and the recommended student passed the practical test.

(d) *Lighter-than air category with an airship class rating.* A flight instructor certificate with a lighter-than-air category and airship class rating may be issued to a person who holds a commercial pilot certificate with a lighter-than-air category and airship class rating, provided the person has:

(1) Received the required training in an airship and the flight instructor endorsements of this subpart for the issuance of the airship class rating and has satisfactorily accomplished the required practical test; or

(2) Before [insert effective date of the final rule]—

(i) Given at least 20 hours of flight training in an airship as a holder of a commercial pilot certificate with a lighter-than-air category and a airship class rating; and

(ii) Recommended at least one student for a practical test for the issuance of airship rating and the recommended student passed practical test.

(e) *Lighter-than-air category with an airship-instrument rating.* A flight instructor certificate with a lighter-than-air category and airship-instrument rating may be issued to a person who holds a commercial pilot certificate with a lighter-than-air category and airship class rating, provided the person has:

(1) Received the required ground training and flight training for the airship-instrument rating and the flight instructor endorsements of this subpart for the issuance of the airship-instrument rating and has satisfactorily accomplished the required practical test; or

(2) Before [insert effective date of the final rule]—

(i) Given at least 20 hours of flight training in an airship as a holder of a commercial pilot certificate with a lighter-than-air category and an airship class rating; and

(ii) Recommended at least one student for a practical test for the issuance of an airship rating and the recommended student passed the practical test.

(f) *Lighter-than air category with a balloon class rating.* A flight instructor certificate with a lighter-than-air category and balloon class rating may be issued to a person who holds a commercial pilot certificate with a lighter-than-air category and balloon class rating, provided the person has:

(1) Received the required training in a balloon and instructor endorsements of this subpart for the issuance of the balloon class rating and has satisfactorily accomplished the required practical test; or

(2) Before [insert effective date of the final rule]—

(i) Given at least 20 hours of flight training in a balloon as a holder of a commercial pilot certificate with a lighter-than-air category and a balloon class rating; and

(ii) Recommended at least one student for a practical test for the issuance of a balloon class rating and the recommended student passed the practical test.

(g) *Instrument-single-engine airplane rating.* A flight instructor certificate with an instrument-single-engine airplane rating may be issued to a person who holds a flight instructor certificate with a instrument-airplane rating, provided the person has:

(1) Received the required training and instructor endorsement of this subpart for the issuance of the instrument-single-engine airplane rating and has satisfactorily accomplished the required practical test; or

(2) Before [insert effective date of the final rule]—

(i) Given at least 20 hours of flight training in a single-engine airplane for the issuance of an airplane-instrument rating as an authorized flight instructor; and

(ii) Recommended at least one student for a practical test for the issuance of an airplane-instrument rating and the recommended student passed the practical test.

(h) *Instrument-multiengine airplane rating.* A flight instructor certificate with an instrument-multiengine airplane rating may be issued to a person who holds a flight instructor certificate with a instrument-airplane rating, provided the person has:

(1) Received the required training and instructor endorsement of this subpart for the issuance of the instrument-multiengine airplane rating and has satisfactorily accomplished the required practical test; or

(2) Before [insert effective date of the final rule]—

(i) Given at least 20 hours of flight training in a multiengine airplane for the issuance of an instrument-airplane rating as an authorized flight instructor; and

(ii) Recommended at least one student for a practical test for the issuance of an instrument-airplane rating and the recommended student passed the practical test.

(i) *Instrument-helicopter rating.* A flight instructor certificate with an instrument-helicopter rating may be issued to a person who holds a flight instructor certificate with a instrument-helicopter rating, provided the person has:

(1) Received the required training and instructor endorsement of this subpart for the issuance of the instrument-helicopter rating and has satisfactorily accomplished the required practical test; or

(2) Before [insert effective date of the final rule]—

(i) Given at least 20 hours of flight training in a helicopter for the issuance of an instrument-helicopter rating as an authorized flight instructor; and

(ii) Recommended at least one student for a practical test for the issuance of an instrument-helicopter rating and the recommended student passed the practical test.

Subpart I—Ground Instructors

§ 61.211 Applicability.

This subpart prescribes the requirements for the issuance of ground instructor certificates and ratings, the conditions under which those certificates and ratings are necessary, and the limitations upon those certificates and ratings.

§ 61.213 Eligibility requirements.

(a) To be eligible for a ground instructor certificate or rating a person must:

(1) Be at least 18 years of age;

(2) Be able to read, write, speak, and understand the English language;

(3) Satisfactorily accomplish a knowledge test on the fundamentals of instructing described in § 61.215(a)(1) of this part, except as provided in paragraph (b) of this section;

(4) Satisfactorily accomplish a knowledge test on the aeronautical knowledge areas of § 61.215(a)(2) of this part that apply to the aircraft rating sought;

(5) Satisfactorily accomplish a knowledge test on the aeronautical knowledge areas of § 61.215(a)(3) of this part for an instrument rating; and

(6) Satisfactorily accomplish a practical test on the requirements listed in § 61.217(a) of this part that apply to the ground instructor rating sought.

(b) The knowledge test required by paragraph (a)(3) of this section is not required if the person:

(1) Holds a ground or flight instructor certificate issued under this part;

(2) Holds a current teacher's certificate issued by a state, county, or city municipality, and that person is authorized to teach at an educational level of at least the 7th grade or higher; or

(3) Is regularly employed as an instructor in an accredited college or university.

(c) After [insert effective date of the final rule], the holder of a current flight instructor certificate is not eligible to apply for a ground instructor certificate that bears the same aircraft category ratings.

(d) After [insert effective date of the final rule], the holder of a flight instructor certificate bearing an instrument rating is not eligible to apply for a ground instructor certificate that bears an instrument rating.

§ 61.215 Aeronautical knowledge.

(a) A person who applies for a ground instructor certificate must present documentation of having completed a course of ground training or home study, and received an endorsement from an authorized flight instructor or ground instructor who meets the requirements of paragraph (b) of this section that the person satisfactorily accomplished the course of ground training or home study on the following knowledge areas:

(1) Fundamentals of instructing areas:

(i) The learning process;

(ii) Elements of effective teaching;

(iii) Student evaluation, quizzing, and testing;

(iv) Course development;

(v) Lesson planning; and

(vi) Classroom training technique.

(2) The aeronautical knowledge areas listed in §§ 61.97, 61.105, and 61.125 of this part that apply to the aircraft category rating sought; and

(3) The aeronautical knowledge areas listed in § 61.65 of this part, if applying for an instrument rating.

(b) The ground training required by paragraph (a) of this section must be given by a person who meets the requirements prescribed in § 61.183 or § 61.213 of this part and the requirements of this paragraph.

(1) The person must:

(i) Hold a current ground or flight instructor certificate and have held this certificate for at least 24 months; and

(ii) Have given, as an authorized ground or flight instructor, at least 40 hours of ground or flight training.

(2) If the training is given in an FAA-approved course, the person must—

(i) Meet the requirements of paragraph (b)(1) of this section; or

(ii) Have given, as an authorized ground or flight instructor, at least 100 hours of ground or flight training.

§ 61.217 Ground instructor proficiency.

(a) A person who applies for a ground instructor certificate must receive ground training and satisfactorily accomplish a practical test on the following approved areas of operation:

(1) Preparation and conduct of lesson plans for students with varying backgrounds and levels of experience and ability;

(2) Evaluation of student knowledge;

(3) Ground instructor responsibilities; and

(4) Effective analysis and correction of common student errors.

(b) Except for a person who holds a flight instructor certificate, a person must present a ground school lesson on a pilot aeronautical knowledge area topic that is appropriate to the rating sought as part of the practical test;

(c) The ground training required by paragraph (a) of this section must be given by a flight instructor or ground instructor who meets the requirements of § 61.183 or § 61.213 of this part; and

(d) The practical test for a ground instructor certificate and rating must be administered by an examiner.

§ 61.219 Ground instructor records.

(a) A ground instructor must record the following information in a person's logbook or training record to whom that instructor gives ground training, and must sign that logbook or training record entry:

(1) The amount of time of the lesson;

(2) The date the training was given; and

(3) The topics of training given.

(b) A ground instructor must maintain a record containing the following information:

(1) The name of each person whose logbook or training record that ground instructor has endorsed for satisfactory completion of a course;

(2) The name of each person whom that ground instructor has endorsed for a knowledge test and the results of that knowledge test;

(3) The name of each person that ground instructor has endorsed or recommended for a practical test, and the date of the endorsement or recommendation; and

(4) A copy of the training syllabus for each person that instructor trained.

(c) A ground instructor must retain the records required by this section for at least 3 years after the date of the endorsement.

§ 61.221 Additional ground instructor ratings.

(a) Persons who apply for an additional aircraft category rating on their ground instructor certificate, must satisfactorily accomplish a knowledge test on the aeronautical knowledge areas listed in § 61.215(a)(2) of this part, that apply to the aircraft category rating sought.

(b) Persons who apply for an instrument rating on the their ground instructor certificate must satisfactorily accomplish a knowledge test on the aeronautical knowledge areas listed in § 31.215(a)(3) of this part.

§ 61.223 Ground instructor endorsements and authorizations.

Persons who hold a ground instructor certificate, are authorized, within the ratings on their ground instructor certificate, to give ground training on the aeronautical knowledge areas and the endorsements for the training, required for the following pilot, flight instructor, and ground instructor certificates and ratings that are issued under this part:

(a) Student pilot certificate;

(b) Recreational pilot certificate;

(c) Private pilot certificate;

(d) Commercial pilot certificate;

(e) Airline transport pilot certificate;

(f) Flight instructor certificate;

(g) Ground instructor certificate;

(h) Additional aircraft rating;

(i) Instrument rating;

(j) Flight review requirement of this part; and

(k) Recommendation for knowledge tests.

§ 61.225 Recency of experience for a holder of a ground instructor certificate.

A person's ground instructor certificate remains current for providing ground training for airman certification purposes, provided that person has:

(a) Given another person ground training and has endorsed that person for a knowledge or practical test within the preceding 12 calendar months; or

(b) Received an endorsement from an authorized flight or ground instructor, which states that the person has demonstrated satisfactory competence in the knowledge and proficiency requirements listed in §§ 61.215 and 61.217, that apply to the ground instructor ratings held.

§ 61.227 Conversion to current ground instructor ratings.

(a) *General.* A person who holds a ground instructor certificate that does not bear the new ground instructor ratings listed in § 61.5(d) of this part:

(1) May not exercise the privileges of that certificate after [insert date 2 years after the effective date of the final rule]; and

(2) Prior to [insert date 2 years after the effective date of the final rule], that person may convert an old ground instructor certificate and ratings in accordance with the provisions authorized in paragraphs (b) through (e) of this section, as appropriate.

(b) The holder of a ground instructor certificate with a basic rating may exchange that ground instructor certificate for a ground instructor certificate with an airplane category rating.

(c) The holder of a ground instructor certificate with an advanced rating may exchange that ground instructor certificate for a ground instructor certificate with an airplane category rating.

(d) The holder of a ground instructor certificate with an advanced and instrument rating may exchange that ground instructor certificate for a ground instructor certificate with an airplane category rating and instrument rating.

(e) The holder of a ground instructor certificate who also holds a flight instructor certificate may exchange that ground instructor certificate for a ground instructor certificate with the aircraft categories or instrument rating held on the flight instructor certificate.

PART 141—PILOT SCHOOLS

4. Part 141 is revised to read as follows:

Subpart A—General

Sec.
141.1 Applicability.
141.3 Certificate required.
141.5 Requirements for a pilot school certificate.
141.7 Provisional pilot school certificate.
141.9 Examining authority.
141.11 Pilot school ratings.
141.13 Application for issuance, amendment, or renewal.
141.15 Location of facilities.
141.17 Duration of certificates and examining authority.
141.18 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.
141.19 Display of certificate.
141.21 Inspections.
141.23 Advertising limitations.
141.25 Business office and operations base.
141.27 Renewal of certificates and ratings.
141.29 [Reserved.]

Subpart B—Personnel, Aircraft, and Facilities Requirements

141.31 Applicability.
141.33 Personnel.
141.35 Chief instructor qualifications.
141.36 Assistant chief instructor qualifications.
141.37 Check instructor qualifications.
141.38 Airports.
141.39 Aircraft.
141.41 Flight training devices and training aids.
141.43 Pilot briefing areas.
141.45 Ground training facilities.

Subpart C—Training Course Outline and Curriculum

141.51 Applicability.
141.53 Approval procedures for a training course: General.
141.55 Training course: Contents.
141.57 Special curricula.

Subpart D—Examining Authority

141.61 Applicability.
141.63 Examining authority qualification requirements.
141.65 Privileges.
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Subpart E—Operating Rules

141.71 Applicability.
141.73 Privileges.
141.75 Aircraft requirements.
141.77 Limitations.
141.79 Flight training.
141.81 Ground training.
141.83 Quality of training.
141.85 Chief instructor responsibilities.
141.87 Change of chief instructor.
141.89 Maintenance of personnel, facilities, and equipment.
141.91 Satellite bases.
141.93 Enrollment.
141.95 Graduation certificate.

Subpart F—Records

141.101 Training records.

Appendix A—Recreational Pilot Certification Course
Appendix B—Private Pilot Certification Course
Appendix C—Instrument Rating Course
Appendix D—Commercial Pilot Certification Course
Appendix E—Airline Transport Pilot Certification Course
Appendix F—Flight Instructor Certification Course
Appendix G—Flight Instructor Instrument (Aircraft Category and Class) Certification Course
Appendix H—Ground Instructor Certification Course
Appendix I—Additional Aircraft Category or Class Rating Course
Appendix J—Aircraft Type Rating Course, for other than an airline transport pilot certificate
Appendix K—Special Preparation Courses
Appendix L—Pilot Ground School Courses

Authority: 49 U.S.C. 106(g), 40101–40104, 40109, 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45106, and 45301–45302.

Subpart A—General

§ 141.1 Applicability.

This part prescribes:

(a) The requirements for issuing pilot school certificates, provisional pilot school certificates, and associated ratings; and

(b) The general operating rules applicable to a holder of a certificate or rating specified in paragraph (a) of this section.

§ 141.3 Certificate required.

No person may operate as a certificated pilot school without, or in violation of, a pilot school certificate or provisional pilot school certificate issued under this part.

§ 141.5 Requirements for a pilot school certificate.

An applicant that meets the requirements of this section may be issued a pilot school certificate with associated ratings if:

(a) The applicant completes the application for a pilot school certificate on a form and in a manner as prescribed by the Administrator.

(b) The applicant holds a provisional pilot school certificate, issued under this part, for at least 24 calendar months

preceding the month in which the application for a pilot school certificate is made.

(c) The applicant meets the applicable requirements of subparts A through C of this part for the school ratings sought.

(d) The applicant trained and recommended for pilot certification and rating tests, within 24 calendar months preceding the month the application is made for the pilot school certificate, at least 10 students for:

(1) A knowledge or practical test for a pilot certificate, flight instructor certificate, ground instructor certificate, or an additional rating, with such quality of training that at least 80 percent of those applicants were successful on the first attempt on a test that was conducted by an FAA inspector, or an examiner who is not an employee of the school; or

(2) An end-of-course test for a training course specified in appendix K of this part.

§ 141.7 Provisional pilot school certificate.

An applicant that meets the applicable requirements of subparts A, B, and C of this part, but does not meet the recent training activity requirements of § 141.5(d) of this part, may be issued a provisional pilot school certificate with ratings.

§ 141.9 Examining authority.

An applicant is issued an examining authority for its pilot school certificate if the applicant meets the requirements of subpart D of this part.

§ 141.11 Pilot school ratings.

(a) The ratings listed in paragraph (b) of this section may be issued to an applicant for a:

(1) Pilot school certificate, provided the applicant meets the requirements of § 141.5 of this part; or

(2) Provisional pilot school certificate, provided the applicant meets the requirements of § 141.7 of this part.

(b) The following are courses the school is authorized to conduct:

(1) *Certification and rating courses.*

(i) Recreational pilot course.

(ii) Private pilot course.

(iii) Commercial pilot course.

(iv) Instrument rating course.

(v) Airline transport pilot course.

(vi) Flight instructor course.

(vii) Flight instructor instrument course.

(viii) Ground instructor course.

(ix) Additional aircraft category or class rating course.

(x) Aircraft type rating course.

(2) *Special preparation courses.*

(i) Pilot refresher course.

(ii) Flight instructor refresher course.

(iii) Ground instructor refresher course.

(iv) Agricultural aircraft operations course.

(v) Rotorcraft external-load operations course.

(vi) Special operations course.

(vii) Test pilot course.

(3) *Pilot ground school courses.*

§ 141.13 Application for issuance, amendment, or renewal.

(a) Application for an original certificate and rating, for an additional rating, or for the renewal of a certificate under this part is made on a form and in a manner prescribed by the Administrator.

(b) Application for the issuance or amendment of a certificate or rating must be accompanied by two copies of each proposed training course curriculum for which approval is sought.

§ 141.15 Location of facilities.

The holder of a pilot school certificate or a provisional pilot school certificate may have a base or other facilities located outside the United States, provided the Administrator determines the location of the base and facilities at that place are needed for the training of students who are citizens of the United States.

§ 141.17 Duration of certificate and examining authority.

(a) Unless surrendered, suspended, revoked, or otherwise terminated, a pilot school's or a provisional pilot school's certificate expires:

(1) On the last day of the 24th calendar month from the month the certificate was issued;

(2) Except as provided in paragraph (b) of this section, on the date that any change in ownership of the school;

(3) On the date of any change in the facilities upon which the school's certificate is based;

(4) Upon notice by the Administrator that the school has failed for more than 60 days to maintain the facilities, aircraft, or personnel required for any one of the school's approved training courses; or

(5) Whenever the Administrator determines a school has not acted in good faith with a student with whom the school has a contractual agreement to provide training.

(b) A change in the ownership of a pilot school or provisional pilot school does not terminate that school's certificate, if within 30 days after the date that any change in ownership of the school occurs:

(1) Application is made for an appropriate amendment to the certificate; and

(2) No change in the facilities, personnel, or approved training courses is involved.

(c) An examining authority issued to the holder of a pilot school certificate expires on the date that the pilot school certificate expires, or is surrendered, suspended, revoked, or otherwise terminated.

§ 141.18 Carriage of narcotic drugs, marijuana, and depressant or stimulant drugs or substances.

If the holder of a certificate issued under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder has knowledge of being in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

§ 141.19 Display of certificate.

(a) Each holder of a pilot school certificate or a provisional pilot school certificate must display that certificate in a place in the school that is normally accessible to the public and is not obscured.

(b) A certificate must be made available for inspection upon request by:

(1) The Administrator;

(2) An authorized representative of the National Transportation Safety Board; or

(3) A Federal, state, or local law enforcement officer.

§ 141.21 Inspections.

Each holder of a certificate issued under this part must allow the Administrator to inspect its personnel, facilities, equipment, and records to determine the certificate holder's:

(a) Eligibility to hold its certificate;

(b) Compliance with the Federal Aviation Act of 1958, as amended; and

(c) Compliance with the Federal Aviation Regulations.

§ 141.23 Advertising limitations.

(a) The holder of a pilot school certificate or a provisional pilot school certificate may not make any statement relating to its certification and ratings which is false or designed to mislead any person contemplating enrollment in that school.

(b) The holder of a pilot school certificate or a provisional pilot school certificate may not advertise that the school is certificated unless it clearly differentiates between courses that have been approved under part 141 of this chapter and those that have not been approved under part 141 of this chapter.

(c) The holder of a pilot school certificate or a provisional pilot school certificate must promptly remove:

(1) From vacated premises all signs indicating that the school was certificated by the Administrator when relocated; or

(2) All indications (including signs), wherever located, that the school is certificated by the Administrator when its certificate has expired or has been surrendered, suspended, or revoked, or otherwise terminated.

§ 141.25 Business office and operations base.

(a) Each holder of a pilot school or a provisional pilot school certificate must maintain a principal business office with a mailing address in the name shown on its certificate.

(1) The facilities and equipment at the principal business office must be adequate to maintain the files and records required to operate the business of the school.

(2) The principal business office may not be shared with, or used by, another pilot school.

(b) Before changing the location of the principal business office or the operations base, each certificate holder must notify the FAA Flight Standards District Office having jurisdiction over the area of the new location, and the notice must be:

(1) Submitted in writing at least 30 days before the change of location; and

(2) Accompanied by any amendments needed for the certificate holder's approved training course outline.

(c) A certificate holder may conduct training at an operations base other than the one specified in its certificate, if the:

(1) Administrator has inspected and approved the base for use by the certificate holder; and

(2) Course of training and any needed amendments thereto have been approved for use at that base.

§ 141.27 Renewal of certificates and ratings.

(a) *Pilot school.*

(1) A pilot school may apply for renewal of its school certificate and ratings within 30 days preceding the month the pilot school certificate expires, provided the school meets the requirements prescribed in paragraph (a)(2) of this section for renewal of its certificate and ratings.

(2) A pilot school may have its school certificate and ratings renewed for an additional 24-calendar months, if the Administrator determines that school meets the following requirements:

(i) The personnel meet the requirements of this part;

(ii) The aircraft meet the requirements of this part;

(iii) The facility and airport meet the requirements of this part;

(iv) The approved training courses meet the requirements of this part;

(v) The training records meet the requirements of this part; and

(vi) The recent training activity and training quality requirements of § 141.5(d) of this part.

(3) A pilot school that does not meet the renewal requirements in paragraph (a)(2) of this section, may apply for a provisional pilot school certificate if the school meets the requirements of § 141.7 of this part.

(b) *Provisional pilot school.*

(1) Except as provided in paragraph (b)(3) of this section, a provisional pilot school may not have its provisional pilot school certificate or the ratings on that certificate renewed.

(2) A provisional pilot school may apply for a pilot school certificate and associated ratings provided that school meets the requirements of § 141.5 of this part.

(3) A former provisional pilot school may apply for another provisional pilot school certificate provided 180 days have elapsed since its last provisional pilot school certificate expired.

§ 141.29 [Reserved]

Subpart B—Personnel, Aircraft, and Facilities Requirements

§ 141.31 Applicability.

(a) This subpart prescribes:

(1) The personnel and aircraft requirements for a pilot school certificate or a provisional pilot school certificate; and

(2) The facilities and airport required by a pilot school or provisional pilot school on a continuous use basis.

(b) As used in the subpart, to have continuous use of a facility including an airport, the school must have:

(1) Ownership of the facility and airport for at least 6-calendar months at the time of application for initial certification and also on the date of renewal of the school's certificate; or

(2) A written lease agreement of the facility and airport for at least 6-calendar months at the time of application for initial certification and also on the date of renewal of the school's certificate.

§ 141.33 Personnel.

(a) An applicant for a pilot school or for a provisional pilot school certificate must meet the following personnel requirements:

(1) Each applicant must have adequate personnel, authorized instructors, and a chief instructor for each approved training course, who are qualified and competent to perform the duties to which they are assigned.

(2) Each applicant must have dispatchers, aircraft handlers, line and service personnel, and instructors, who are instructed in the procedures and responsibilities of that person's employment.

(3) Each applicant must have instructors who hold the ground or flight instructor certificates, as applicable, in the category and class of aircraft for the approved training course and aircraft.

(b) An applicant for a pilot school certificate or for a provisional pilot school certificate must designate a chief instructor for each of the school's approved training courses, who must meet the requirements of § 141.35 of this part.

(c) When necessary, an applicant for a pilot school certificate or for a provisional pilot school certificate may designate a person to be an assistant chief instructor for an approved training course, provided that person meets the requirements of § 141.36 of this part.

(d) A pilot school and a provisional pilot school may designate a person to be a check instructor for conducting student stage checks, end-of-course tests, and instructor proficiency checks, provided:

(1) That person meets the requirements of § 141.37 of this part; and

(2) That school has a student enrollment of at least 50 students at the time designation is sought.

(e) A person, as listed in this section, may serve in more than one position for a school, provided that person is qualified for each position.

§ 141.35 Chief instructor qualifications.

(a) To be eligible for a designation as a chief instructor for a course of training, a person must meet the following requirements:

(1) Hold a commercial pilot or an airline transport pilot certificate and a flight instructor certificate, and those certificates must contain the appropriate aircraft category, class, and instrument rating for the category and class of aircraft used in the course;

(2) Meet the pilot-in-command recent flight experience requirements of § 61.57 of this chapter;

(3) Satisfactorily accomplish a knowledge test on teaching methods, applicable provisions of the Airman's Information Manual, parts 61, 91, and 141 of this chapter, and the objectives and approved course completion

standards of the course for which the person seeks to obtain designation;

(4) Satisfactorily accomplish a proficiency test on instructional skills and ability to train students on the flight procedures and maneuvers appropriate to the course;

(5) Except for a course of training for gliders, balloons, or airships, the chief instructor must meet the applicable requirements in paragraphs (b), (c), and (d) of this section;

(6) A chief instructor for a course of training for gliders or balloons is only required to have 40 percent of the hours required in paragraphs (b) and (d) of this section; and

(7) A chief instructor for a course of training for airships is only required to have 40 percent of the hours required in paragraphs (b), (c), and (d) of this section.

(b) In addition, for a course of training leading to the issuance of a private pilot certificate or rating, a chief instructor must have:

(1) At least 1,000 hours as pilot in command; and

(2) Primary flight training experience, acquired as either an authorized flight instructor or an instructor in a military pilot primary flight training program, or a combination thereof, consisting of at least:

(i) Two years and a total of 500 flight hours; or

(ii) 1,000 flight hours.

(c) For a course of training leading to the issuance of an instrument rating or a rating with instrument privileges, a chief instructor must have:

(1) At least 100 hours of flight time under actual or simulated instrument conditions;

(2) At least 1,000 hours as pilot in command; and

(3) Instrument flight instructor experience, acquired as either an authorized flight instructor-instrument or an instructor in a military pilot basic or instrument flight training program, or a combination thereof, consisting of at least—

(i) Two years and a total of 250 flight hours; or

(ii) 400 flight hours.

(d) For a course of training other than those that lead to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, a chief instructor must have:

(1) At least 2,000 hours as pilot in command; and

(2) Flight training experience, acquired as either an authorized flight instructor or an instructor in a military pilot primary or basic flight training program or a combination thereof, consisting of at least—

(i) Three years and a total of 1,000 flight hours; or

(ii) 1,500 flight hours.

§ 141.36 Assistant chief instructor qualifications.

(a) To be eligible for a designation as an assistant chief instructor for a course of training, a person must meet the following requirements:

(1) Hold a commercial pilot or an airline transport pilot certificate and a flight instructor certificate, and those certificates must contain the appropriate aircraft category, class, and instrument rating for the category and class of aircraft used in the course;

(2) Meet the pilot-in-command recent flight experience requirements of § 61.57 of this chapter;

(3) Satisfactorily accomplish a knowledge test on teaching methods, applicable provisions of the Airman's Information Manual, parts 61, 91, and 141 of this chapter, and the objectives and approved course completion standards of the course for which the person seeks to obtain designation;

(4) Satisfactorily accomplish a proficiency test on the flight procedures and maneuvers appropriate to that course; and

(5) Meet the applicable requirements in paragraphs (b), (c), and (d) of this section. However, an assistant chief instructor for a course of training for gliders, free balloons or airships is only required to have 40 percent of the hours required in paragraphs (b) and (c) of this section.

(b) For a course of training leading to the issuance of a private pilot certificate or rating, an assistant chief instructor must have:

(1) At least 500 hours as pilot in command; and

(2) Primary flight training experience, acquired as either an authorized flight instructor or an instructor in a military pilot primary flight training program, or a combination thereof, consisting of at least—

(i) One year and a total of 250 flight hours; or

(ii) 500 flight hours.

(c) For a course of training leading to the issuance of an instrument rating or a rating with instrument privileges, an assistant chief flight instructor must have:

(1) At least 50 hours of flight time under actual or simulated instrument conditions;

(2) At least 500 hours as pilot in command; and

(3) Instrument flight instructor experience, acquired as either an authorized flight instructor-instrument or an instructor in a military pilot basic or instrument flight training program, or a combination thereof, consisting of at least—

(i) One year and a total of 125 flight hours; or

(ii) 200 flight hours.

(d) For a course of training other than those that lead to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, an assistant chief instructor must have:

(1) At least 1,000 hours as pilot in command; and

(2) Flight training experience, acquired as either an authorized flight instructor or an instructor in a military pilot primary or basic flight training program or a combination thereof, consisting of at least—

(i) One and one half years and a total of 500 flight hours; or

(ii) 750 flight hours.

§ 141.37 Check instructor qualifications.

(a) To be designated as a check instructor for conducting student stage checks and end-of-course tests and instructor proficiency checks under this part, a person must meet the eligibility requirements of this section:

(1) For checks and tests that relate to either flight or ground training, the person must satisfactorily accomplish a test, given by the chief instructor, on—

(i) Teaching methods;

(ii) Applicable provisions of the "Airman's Information Manual," parts 61, 91, and 141 of this chapter; and

(iii) The objectives and course completion standards of the approved training course for the designation sought.

(2) For checks and tests that relate to a flight training course, the person must—

(i) Meet the requirements in paragraph (a)(1) of this section;

(ii) Hold a commercial pilot or an airline transport pilot certificate and a flight instructor certificate, and those certificates must contain the appropriate aircraft category, class, and instrument rating for the category and class of aircraft used in the course;

(iii) If the flight training course is for a rating in other than a glider or free balloon, hold at least a current second-class medical certificate issued in accordance with part 67 of this chapter;

(iv) If the flight training course is for a rating in a glider or free balloon, present a signed and dated statement by the person certifying that the person has no known medical defects that makes the person unable to pilot a glider or free balloon;

(v) Meet the pilot-in-command recent flight experience requirements of § 61.57 of this chapter; and

(vi) Satisfactorily accomplish a proficiency test, given by the chief instructor, on the flight procedures and maneuvers of the approved training course for the designation sought.

(3) For checks and tests that relate to ground training, the person must—

(i) Meet the requirements in paragraph (a)(1) of this section; and

(ii) Hold a current flight instructor certificate or ground instructor certificate with ratings appropriate to the category and class of aircraft used in the course.

(b) A person who meets the eligibility requirements in paragraph (a) of this section must:

(1) Be designated, in writing, by the chief instructor to conduct student stage checks and end-of-course tests and instructor proficiency checks; and

(2) Be approved by the FAA Flight Standards District Office having jurisdiction over the school.

(c) A check instructor may not conduct a stage check or an end-of-course test of any student:

(1) For whom the check instructor has served as the principal instructor; or

(2) Whom the check instructor has recommended for a stage check or end-of-course test.

§ 141.38 Airports.

(a) An applicant for a pilot school certificate or a provisional pilot school certificate must show that it has continuous use of each airport at which training flights originate.

(b) Each airport used for airplanes and gliders must have at least one runway or takeoff area that allows training aircraft to make a normal takeoff or landing under the following conditions at the aircraft's maximum certificated takeoff gross weight:

(1) Under calm wind conditions of not more than five miles per hour;

(2) At temperatures equal to the mean high temperature for the hottest month of the year in the operating area;

(3) If applicable, with the powerplant operation and landing gear and flap operation recommended by the manufacturer; and

(4) In the case of a takeoff—

(i) With smooth transition from liftoff to the best rate of climb speed without exceptional piloting skills or techniques; and

(ii) Clearing all obstacles in the takeoff flight path by at least 50 feet.

(c) Each airport must have a wind direction indicator that is visible from the ends of each runway at ground level;

(d) Each airport must have a traffic direction indicator when:

(1) The airport does not have an operating control tower; and

(2) UNICOM advisories are not available.

(e) Except as provided in paragraph (f) of this section, each airport used for night training flights must have permanent runway lights; and

(f) An airport used for night training flights in seaplanes is permitted to use adequate non-permanent lighting or shoreline lighting, if approved by the Administrator.

§ 141.39 Aircraft.

(a) An applicant for a pilot school or provisional pilot school certificate, and each pilot school or provisional pilot school, must show that each aircraft used by that school for flight training and supervised PIC flights meet the following requirements:

(1) Each aircraft must be registered as a civil aircraft of the United States;

(2) Each aircraft must be certificated with a standard airworthiness certificate or a primary airworthiness certificate, unless the Administrator determines that due to the nature of the approved course, an aircraft not having a standard airworthiness certificate or primary airworthiness certificate may be used;

(3) Each aircraft must be maintained and inspected in accordance with—

(i) The requirements of subpart E, part 91 of this chapter that apply to aircraft operated for hire; and

(ii) An inspection program for each airframe, aircraft engine, propeller, appliance, and component part.

(4) Each aircraft used in flight training must be at least a two-place aircraft with engine power controls and flight controls that can be easily reached and operated in a normal manner from both pilot stations; and

(5) Each aircraft used in a course for instrument flight training, or a training course requiring the demonstration of instrument skills, must be equipped and maintained for IFR operations.

(b) The inspection program required in paragraph (a)(3) of this section must be:

(1) A current inspection program recommended by the manufacturer;

(2) An inspection program that is currently in use by the holder of a certificate issued under part 121 or part 135 of this chapter; or

(3) An inspection program established by the applicant and approved by the Administrator.

(c) An inspection program under paragraph (b)(3) of this section must meet the following requirements:

(1) The program is approved by the FAA Flight Standards District Office having jurisdiction over the area in which the applicant is based; and

(2) That program is submitted in writing and consists of at least—

(i) The instructions and procedures for the conduct of inspections for the particular make and model aircraft, including necessary checks and tests;

(ii) The instructions and procedures for inspecting the parts and areas of each airframe, aircraft engine, propeller, appliance, and component part, including survival and emergency equipment required to be inspected; and

(iii) A schedule for performing the inspections that must be performed under the program expressed in terms of the time in service, calendar time, number of system operations, or any combination of these.

§ 141.41 Flight training devices and training aids.

An applicant for a pilot school or a provisional pilot school certificate must show that its flight training devices and training aids and equipment meet the following requirements:

(a) *Flight training devices.*

(1) Each flight training device used to obtain the maximum flight training credit allowed for flight training devices in an approved pilot training course curriculum must have:

(i) An enclosed pilot's station or cockpit that accommodates one or more flight crewmembers;

(ii) Controls to stimulate the rotation of the flight training device about three axes;

(iii) The minimum instrumentation and equipment required for powered aircraft in § 91.205 of this chapter for the type of flight operations simulated;

(iv) For VFR instruction, a means of simulating visual flight conditions, including motion of the flight training device, or projections, or models operated by the flight controls; and

(v) For IFR instruction, a means to record the flight path simulated by the flight training device.

(2) Flight training devices other than those covered under paragraph (a)(1) of this section must have:

(i) An enclosed pilot's station or cockpit that accommodates one or more flight crewmembers;

(ii) Controls to simulate the rotation of the flight training device about three axes; and

(iii) The minimum instrumentation and equipment required for powered aircraft in § 91.205 of this chapter for the type of flight operations simulated.

(b) *Training aids and equipment.* Each training aid, including any audiovisual, mockup, chart, or aircraft component listed in the approved training course outline, must be accurate and appropriate to the course for which it is used.

§ 141.43 Pilot briefing areas.

(a) An applicant for a pilot school or provisional pilot school certificate must show that the applicant has the continuous use of a briefing area located at each airport at which training flights originate, that is:

(1) Adequate to shelter students waiting to engage in their training flights;

(2) Arranged and equipped for the conduct of pilot briefings; and

(3) Except as provided in paragraph (c) of this section, a school with an instrument rating or commercial pilot course must be equipped with private landline or telephone communication to the nearest FAA Flight Service Station.

(b) A briefing area required by paragraph (a) of this section may not be used by the applicant if it is available for use by any other pilot school during the period it is required for use by the applicant.

(c) The communication equipment required by paragraph (a)(3) of this section is not required if the briefing area and the flight service station are located on the same airport and are readily accessible to each other.

§ 141.45 Ground training facilities.

An applicant for a pilot school or provisional pilot school certificate must show that:

(a) Each room, training booth, or other space used for instructional purposes is heated, lighted, and ventilated to conform to local building, sanitation, and health codes; and

(b) The training facility is so located that the students in that facility are not distracted by the training conducted in other rooms, or by flight and maintenance operations on the airport.

Subpart C—Training Course Outline and Curriculum

§ 141.51 Applicability.

This subpart prescribes the curriculum and course outline requirements for the issuance of a pilot school or provisional pilot school certificate and ratings.

§ 141.53 Approval procedures for a training course: General.

(a) *General.* An applicant for a pilot school or provisional pilot school certificate must obtain the Administrator's approval of the outline of each training course for which certification and rating is sought.

(b) *Application.*

(1) An application for the approval of an initial or amended training course must be submitted in duplicate to the FAA Flight Standards District Office having jurisdiction over the area where the school is based.

(2) An application for the approval of an initial or amended training course must be submitted at least 30 days before any training under that course, or any amendment thereto, is scheduled to begin.

(3) An application for amending a training course must be accompanied by two copies of the amendment.

(c) *Effective date.*

(1) Until [insert date one year after effective date of the final rule] an applicant for a pilot school or provisional pilot school certificate may request approval of the training courses listed in either paragraph (c)(1) (i) or (ii) of this section.

(i) Pilot school rating courses:

(A) Private pilot.

(B) Private test course.

(C) Instrument rating.

(D) Commercial pilot.

(E) Commercial test course.

(F) Additional aircraft rating.

(G) Pilot ground school.

(H) Flight instructor certification.

(I) Additional flight instructor rating.

(J) Additional instrument rating.

(K) Airline transport pilot certification.

(L) Pilot refresher course.

(M) Agricultural aircraft operations course.

(N) Rotorcraft external-load operations course.

(ii) Pilot school rating courses, [insert effective date]:

(A) Recreational pilot courses.

(B) Private pilot courses.

(C) Commercial pilot courses.

(D) Instrument rating courses.

(E) Airline transport pilot courses.

(F) Flight instructor courses.

(G) Flight instructor instrument courses.

(H) Ground instructor courses.

(I) Additional aircraft category or class rating courses.

(J) Aircraft type rating courses.

(K) Pilot refresher courses.

(L) Flight instructor refresher courses.

(M) Ground instructor refresher courses.

(N) Agricultural aircraft operations course.

(O) Rotorcraft external-load operations course.

(P) Special operations course.

(Q) Test pilot course.

(R) Pilot ground school courses.

(2) After [insert date one year after effective date of the final rule] an applicant for a pilot school or provisional pilot school certificate may only request approval of the training courses listed in paragraph (c)(1)(ii) of this section.

§ 141.55 Training course: Contents.

(a) Each training course for which approval is requested must meet the minimum curriculum requirements in accordance with the appropriate appendix of this part.

(b) Except as provided in paragraphs (d) and (e) of this section, each training course for which approval is requested must meet the minimum ground and flight training time requirements in accordance with the appropriate appendix of this part.

(c) Each training course for which approval is requested must contain:

(1) A description of each room used for ground training, including the room's size and the maximum number of students that may be trained in the room at one time;

(2) A description of each type of audio-visual aid, projector, tape recorder, mockup, aircraft component, and other special training aids used for ground training;

(3) A description of each flight training device used for training;

(4) A listing of the airports at which training flights originate and a description of the facilities, including pilot briefing areas that are available for use by the school's students and personnel at each of those airports;

(5) A description of the type of aircraft including any special equipment used for each phase of training;

(6) The minimum qualifications and ratings for each instructor assigned to ground or flight training; and

(7) A training syllabus that includes the following information:

(i) The prerequisites for enrolling in the ground and flight portion of the course that include the pilot certificate and rating (if required by this part), medical certificate (if required by this part), training, pilot experience, and pilot knowledge;

(ii) A detailed description of each lesson, including the lesson's objectives, standards, and planned time for completion;

(iii) A description of what the course is expected to accomplish with regard to student learning;

(iv) The expected accomplishments and the standards for each stage of training; and

(v) A description of the checks and tests to be used to measure a student's accomplishments for each stage of training.

(d) A pilot school may request and receive initial approval for any of the training courses of this part without specifying the minimum ground and flight training time requirements of this part, provided the following provisions are met:

(1) The school holds a pilot school certificate under this part and has held that certificate for a period of at least 24-consecutive calendar months preceding the month of the request;

(2) The school requests initial approval for no longer than 24-calendar months;

(3) In addition to the information required by paragraph (c) of this section, the training course specifies planned ground and flight training time requirements for the course;

(4) The school does not request the training course to be approved for examining authority; and

(5) The practical or knowledge test for the course is to be given by—

(i) An FAA inspector; or

(ii) An examiner who is not an employee of the school.

(e) A certificated pilot school may request and receive final approval for any of the training courses of this part without specifying the minimum ground and flight training time requirements of this part, provided the following conditions are met:

(1) The school has held initial approval for that training course for at least 24-calendar months.

(2) The school has—

(i) Trained at least 10 students in that training course within the preceding 24-calendar months and recommended those students for a pilot, flight instructor, or ground instructor certificate or rating; and

(ii) At least 80 percent of those students passed the practical or knowledge test on the first attempt, and that test was given by—

(A) An FAA inspector; or

(B) An examiner who is not an employee of the school.

(3) In addition to the information required by paragraph (c) of this section, the training course specifies planned ground and flight training time requirements for the course.

(4) The school does not request that the training course be approved for examining authority.

(f) The airman certificate of a person who does not meet the pilot flight time qualifications in ICAO Annex I will be issued with one or both of the limitations listed in paragraph (f)(1) of this section, which may be removed as prescribed in paragraph (f)(2) of this section.

(1) The airman certificate will be issued with the limitation "Holder does not meet the pilot flight experience requirements of ICAO," or "Holder does not meet the pilot-in-command flight experience requirements of ICAO," or both, if appropriate.

(2) The limitations, "Holder does not meet the pilot flight experience requirements of ICAO," or "Holder does not meet the pilot-in-command flight experience requirements of ICAO," of paragraph (f)(1) of this section, may be removed when the holder presents to the FAA satisfactory evidence of having accumulated the appropriate pilot flight time that meets the requirements of part 61 of this chapter.

§ 141.57 Special curricula.

An applicant for a pilot school or provisional pilot school certificate may apply for approval to conduct a special course of airman training for which a curriculum is not prescribed in the appendixes of this part, if the applicant shows that the training course contains features that could achieve a level of pilot proficiency equivalent to that achieved by a training course prescribed in the appendixes of this part or the requirements of part 61 of this chapter.

Subpart D——Examining Authority

§ 141.61 Applicability.

This subpart prescribes:

(a) The requirements for the issuance of an examining authority to the holder of a pilot school certificate; and

(b) The privileges and limitations of that examining authority.

§ 141.63 Examining authority qualification requirements.

(a) A pilot school must meet the following prerequisites to receive initial approval for examining authority:

(1) The school completes the application for examining authority on a form and in a manner prescribed by the Administrator;

(2) The school holds a pilot school certificate and the rating in which examining authority is sought for at least 24 consecutive calendar months preceding the month of application for examining authority;

(3) The training course for which examining authority is requested may not be a course that is approved without meeting the minimum ground and flight training time requirements of this part; and

(4) Within 24 calendar months after the date of application for examining authority, that school must meet the following requirements—

(i) The school must have trained at least 10 students in the training course for which examining authority is sought and recommended those students for a pilot, flight instructor, or ground instructor certificate or rating; and

(ii) At least 90 percent of the applicant's students passed the required practical or knowledge test for the pilot, flight instructor, or ground instructor certificate or rating on the first attempt, and that test was given by—

(A) An FAA inspector; or

(B) An examiner who is not an employee of the school.

(b) A pilot school must meet the following requirements to retain approval of its examining authority:

(1) The school completes the application for renewal of its examining authority on a form and in a manner prescribed by the Administrator;

(2) The school holds a pilot school certificate and the rating for which examining authority is sought for at least 24 calendar months preceding the month of application for renewal of its examining authority; and

(3) The training course for which examining authority is requested may not be a course that is approved without meeting the minimum ground and flight training time requirements of this part.

§ 141.65 Privileges.

A pilot school that holds examining authority may recommend a person who graduated from its course for the appropriate pilot, flight instructor, or ground instructor certificate or rating without taking the FAA knowledge or practical tests, or both, provided:

(a) The school holds examining authority for the training course from which the person graduated; and

(b) The person satisfactorily completed the training course in accordance with the school's approved training course and the provisions of this part.

§ 141.67 Limitations and reports.

A pilot school that holds examining authority may only recommend the issuance of a pilot, flight instructor, or ground instructor certificate and rating to a person who does not take an FAA knowledge or practical test, if the issuance of that certificate or rating is in accordance with the following requirements:

(a) The person graduated from a training course for which the pilot school holds examining authority.

(b) Except as provided in this paragraph of this section, the person satisfactorily completed all the curriculum requirements of that pilot school's approved training course. A person who transfers from one part 141 approved pilot school to another part 141 approved pilot school may receive credit for that previous training, provided the folowing requirements are met:

(1) The maximum credited training time does not exceed one-half of the receiving school's curriculum requirements;

(2) The person completes a knowledge and proficiency test conducted by the receiving school for the purpose of determining the amount of pilot experience and knowledge to be credited;

(3) The receiving school determines (based on the person's performance on the knowledge and proficiency test required by paragraph (b)(2) of this section) on the amount of credit to be awarded and records that credit in the person's training record;

(4) The person who requests credit for previous pilot experience and knowledge obtained the experience and knowledge from another part 141 approved pilot school and training course; and

(5) The receiving school retains a copy of the person's training record from the other school.

(c) The test given by a pilot school that holds examining authority must be approved by the Administrator and be at least equal in scope, depth, and difficulty to the comparable knowledge and practical test prescribed by the Administrator under part 61 of this chapter;

(d) A pilot school that holds examining authority may not use its practical or knowledge tests if the school:

(1) Knows, or has reason to believe, the knowledge test has been compromised; or

(2) Is notified by a FAA Flight Standards District Office, that there is reason to believe or it is known, the knowledge test has been compromised.

(e) A pilot school that holds examining authority must maintain a record of all temporary airman certificates it issues, which consists of the following information:

(1) A chronological listing that includes—

(i) The date the temporary airman certificate was issued;

(ii) The student to whom the temporary airman certificate was issued, and that student's permanent mailing address and telephone number;

(iii) The training course from which the student graduated;

(iv) The name of the person who conducted the practical or knowledge test;

(v) The type of temporary airman certificate or rating issued to the student; and

(vi) The date the student's airman application file was sent to the FAA for processing for a permanent airman certificate.

(2) A copy of the record containing each student's graduation certificate, airman application, temporary airman certificate, superseded airman certificate (if applicable), and knowledge or practical test results; and

(3) The records required by paragraph (e) of this section must be made available to the Administrator upon request and must be surrendered to the Administrator when the pilot school ceases to have examining authority; and

(f) Within 7 days after a student satisfactorily accomplishes the practical or knowledge test, the pilot school that holds examining authority must submit that student's airman application file to the FAA for processing for the issuance of a permanent airman certificate.

Subpart E—Operating Rules

§ 141.71 Applicability.

This subpart prescribes the operating rules applicable to a pilot school or provisional pilot school certificated under the provisions of this part.

§ 141.73 Privileges.

(a) The holder of a pilot school or a provisional pilot school certificate may advertise and conduct approved pilot training courses in accordance with the certificate and ratings that it holds.

(b) A pilot school that holds examining authority for an approved training course may recommend a graduate of that course for the issuance of an appropriate pilot, flight instructor, or ground instructor certificate and rating, without taking an FAA knowledge or practical test, provided the training course has been approved and meets the minimum ground and flight training time requirements of this part.

§ 141.75 Aircraft requirements.

(a) The following items must be carried on each aircraft used for flight training and supervised PIC flights:

(1) A pre-takeoff and pre-landing checklist; and

(2) The operator's handbook for the aircraft, if one is furnished by the manufacturer, or copies of the handbook if furnished to each student using the aircraft

(b) Each aircraft used in the certification and rating courses listed in § 141.11 of this part must have a standard airworthiness certificate or a primary airworthiness certificate; and

(c) Each aircraft used in the agricultural aircraft operations, external-load operation, test pilot, and special operations courses listed in § 141.11 of this part may have a restricted airworthiness certificate, if its use for training is not prohibited by the aircraft's operating limitations.

§ 141.77 Limitations.

(a) The holder of a pilot school or a provisional pilot school certificate may neither issue a graduation certificate to a student, nor recommend a student for a pilot certificate or rating, unless the student has:

(1) Completed the training specified in the pilot school's course of training; and

(2) Satisfactorily accomplished the required final tests.

(b) Except as provided in paragraph (c) of this section, the holder of a pilot school or a provisional pilot school certificate may not graduate a student from a course of training unless the student has completed all of the curriculum requirements of that course;

(c) A student may be given credit towards the curriculum requirements of a course for previous pilot experience and knowledge, provided:

(1) The credit given a student for previous pilot experience and knowledge does not exceed more than one-half of the curriculum requirements and must be based upon a proficiency test or knowledge test given by the receiving pilot school;

(2) The course credits are a result of training received from one part 141 approved school to another; and

(3) The receiving school determines the amount of course credit to be transferred, based on a proficiency test or knowledge test, or both, of the student; and

(4) Credit for training received from the other school may be given if—

(i) That other school holds a certificate issued under this part and certifies to the kind and amount of training and to the result of each stage check and end-of-course test given to that student;

(ii) The training was conducted by that other school in accordance with that school's approved training course; and

(iii) The student was enrolled in that other school's approved training course for the training being used for creditation.

§ 141.79 Flight training.

(a) No person other than an authorized flight instructor who has the ratings and the minimum qualifications specified in the approved training course outline may give a student flight training under an approved course of training;

(b) No student pilot may be authorized to start a supervised PIC practice flight from an airport until the flight has been approved by an authorized flight instructor who is present at that airport;

(c) Each chief instructor and assistant chief instructor, assigned to a training course, must complete at least once every 12 calendar months, an approved syllabus of training consisting of ground or flight training, or both, or an approved flight instructor refresher course;

(d) Each flight instructor, who is assigned to a flight training course, must satisfactorily complete the following requirements:

(1) Prior to receiving authorization to train students in a flight training course, the instructor must accomplish—

(i) A review of and receive a briefing on the objectives and standards of that training course; and

(ii) An initial proficiency check in each make and model of aircraft used in that training course in which that flight instructor gives training; and

(2) Every 12-calendar months after the month in which the flight instructor last complied with paragraph (d)(1)(ii) of this section, that instructor must accomplish a recurrent proficiency check in one of the aircraft the flight instructor trains students.

(e) Each flight instructor, who is assigned to a flight training course, must satisfactorily comply with the requirements of paragraph (d) of this section with the school's chief instructor, assistant chief instructor, or check instructor.

§ 141.81 Ground training.

(a) Except as provided in paragraph (b) of this section, each instructor, who is assigned to a ground training course, must hold a flight or ground instructor certificate with the appropriate rating for that course of training;

(b) A person who does not meet the requirements of paragraph (a) of this section may be assigned ground training duties in a ground training course, if:

(1) The chief instructor who is assigned to that ground training course finds the person qualified to give that training; and

(2) The training is given while under the supervision of the chief instructor or the assistant chief instructor who is present at the facility when the training is given; and

(c) An instructor may not be used in a ground training course until the instructor has been briefed in regard to the objectives and standards of that course by the chief instructor, assistant chief instructor, or check instructor.

§ 141.83 Quality of training.

(a) Each pilot school or provisional pilot school must meet the following requirements:

(1) Comply with its approved training course; and

(2) Provide training of such quality that meets the training quality requirements of § 141.5(d) of this part.

(b) The failure of a pilot school or provisional pilot school to maintain the quality of instruction specified in paragraph (a) of this section may be the basis for suspending or revoking that school's certificate.

(c) When requested by the Administrator, a pilot school or provisional pilot school must allow the FAA to perform any knowledge, practical, stage, or end-of-course test of its students;

(d) When a stage or end-of-course test is conducted by the FAA under the provisions of paragraph (c) of this section and the student has not completed the training course, then that test will be based on the standards prescribed in the school's approved training course; and

(e) If the practical or knowledge test, administered by the FAA under the provisions of paragraph (c) of this section that is given to a student who has completed the school's training course will be based upon the areas of operation approved by the Administrator.

§ 141.85 Chief instructor responsibilities.

(a) Each person designated as a chief instructor for a pilot school or provisional pilot school shall be responsible for:

(1) Certifying each student's training record, graduation certificate, stage check and end-of-course test reports, recommendation for course completion, and application for certification;

(2) Ensuring that each instructor satisfactorily accomplishes an initial proficiency check prior to that instructor being assigned instructing duties in the school's approved training courses and thereafter passes a recurrent proficiency check every 12-calendar months after the month in which the initial test was accomplished;

(3) Ensuring each student accomplishes the required stage check and end-of-course tests in accordance with the school's approved training course; and

(4) Maintaining training techniques, procedures, and standards for the school that are acceptable to the Administrator.

(b) The chief instructor or an assistant chief instructor must be available at the pilot school or, if away from the pilot school, be available by telephone, radio, or other electronic means, during the time that training is given for an approved training course.

(c) The chief instructor may delegate authority for conducting stage checks, end-of-course tests, and flight instructor proficiency checks to the assistant chief instructor or a check instructor.

§ 141.87 Change of chief instructor.

Whenever a pilot school or provisional pilot school makes a change of designation of its chief instructor, that school:

(a) Must immediately provide the FAA FSDO, that has jurisdiction over the area in which the school is located, with written notification of the change;

(b) May conduct training without a chief instructor for that training course for a period not to exceed 60 days while awaiting the designation and approval of another chief instructor;

(c) May, for a period not to exceed 60 days, have the stage and end-of-course tests given by—

(1) The training course's assistant chief instructor, if one has been designated;

(2) The training course's check instructor, if one has been designated;

(3) An FAA inspector; or

(4) An examiner.

(d) Must, after 60 days without a chief instructor, cease operations and surrender its school certificate to the Administrator; and

(e) The school may have its certificate reinstated, upon:

(1) Designating and approving another chief instructor;

(2) Showing it meets the requirements of § 141.27(a)(2) of this part; and

(3) Applying for reinstatement on a form and in a manner prescribed by the Administrator.

§ 141.89 Maintenance of personnel, facilities, and equipment.

The holder of a pilot school or provisional pilot school certificate may not give training to a student who is enrolled in an approved course of training unless:

(a) Each airport, aircraft, and facility necessary for that training meets the standards specified in the holder's approved training course outline and the appropriate requirements of this part; and

(b) Except as provided in § 141.87 of this part, each chief instructor, assistant chief instructor, check instructor, or instructor meets the qualifications specified in the holder's approved course of training and the appropriate requirements of this part.

§ 141.91 Satellite bases.

The holder of a pilot school or provisional pilot school certificate may conduct ground or flight training in an approved course of training at a base other than its main operations base if:

(a) An assistant chief instructor is designated for each satellite base, and

that assistant chief instructor must be available at the satellite pilot school or, if away from the premises, by telephone, radio, or other electronic means during the time that training is given for an approved training course;

(b) The airport, facilities, and personnel used at the satellite base meet the appropriate requirements of subpart B of this part and its approved training course outline;

(c) The instructors are under the direct supervision of the chief instructor or assistant chief instructor for the appropriate training course who is readily available for consultation in accordance with § 141.85(b) of this part; and

(d) The FAA Flight Standards District Office having jurisdiction over the area in which the school is located is notified in writing if training or instruction is conducted there for more than 7 consecutive days.

§ 141.93 Enrollment.

(a) The holder of a pilot school or a provisional pilot school certificate must, at the time a student is enrolled in an approved training course, furnish that student with the following:

(1) A certificate of enrollment containing—

(i) The name of the course in which the student is enrolled; and

(ii) The date of that enrollment.

(2) A copy of the training syllabus.

(b) The holder of a pilot school or provisional pilot school certificate must maintain a monthly listing of persons enrolled in each training course offered by the school.

§ 141.95 Graduation certificate.

(a) The holder of a pilot school or provisional pilot school certificate shall issue a graduation certificate to each student who completes its approved course of training.

(b) The graduation certificate must be issued to the student upon completion of the course of training and contain at least the following information:

(1) The name of the school and the number of the school certificate;

(2) The name of the graduate to whom it was issued;

(3) The course of training for which it was issued;

(4) The date of graduation;

(5) A statement that the student has satisfactorily completed each required stage of the approved course of training including the tests for those stages;

(6) The information contained on the graduation certificate must be certified by the chief instructor for that course of training; and

(7) A statement showing the cross-country training the student received in the course of training.

Subpart F—Records

§ 141.101 Training records.

(a) Each holder of a pilot school or provisional pilot school certificate must establish and maintain a current and accurate record of the participation and accomplishment of each student enrolled in an approved course of training conducted by the school, that includes the following:

(1) The record kept in a student's logbook will not suffice for the record required by this paragraph of this section; and

(2) The record must include the following information:

(i) The date the student was enrolled in the approved course;

(ii) A chronological log of the student's course attendance, subjects and flight operations covered in the student's training, and the names and grades of any tests taken by the student; and

(iii) The date the student graduated, terminated training, or transferred to another school.

(b) Whenever a student graduates, terminates training, or transfers to another school, the student's record must be certified to that effect by the chief instructor;

(c) The holder of a certificate for a pilot school or a provisional pilot school must retain each student record required by this section for at least 1 year from the date that the student:

(1) Graduates from the course to which the record pertains;

(2) Terminates enrollment in the course to which the record pertains; or

(3) Transfers to another school; and

(d) The holder of a certificate for a pilot school or a provisional pilot school must, upon request of a student, make a copy of the student's record available to the student.

Appendix A—Recreational Pilot Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum required for a recreational pilot certification course under this part, for:

(a) An airplane category with a single-engine class rating.

(b) A rotorcraft category with a helicopter class rating.

(c) A rotorcraft category with a gyroplane class rating.

2. *Eligibility for enrollment.* A person must have the following to enroll in the flight portion of the recreational pilot certification course:

(a) A student pilot certificate; and

(b) A signed and dated statement affixed to the application certifying that no known medical defect exists that would make the person unable to pilot an aircraft for the aircraft category and class rating sought.

3. *Aeronautical knowledge training.* Each approved course must include at least 20 hours of training on the following aeronautical knowledge areas, appropriate to the aircraft category and class for which the course applies:

(a) The applicable Federal Aviation Regulations for recreational pilot privileges, limitations, and flight operations, appropriate to the aircraft category and class rating for which the course applies;

(b) Accident reporting requirements of the National Transportation Safety Board;

(c) The applicable subjects in the "Airman's Information Manual" and the appropriate FAA advisory circulars;

(d) The use of aeronautical charts for VFR navigation using pilotage with the aid of a magnetic compass;

(e) The recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(f) The safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence and windshear conditions;

(g) The effects of density altitude on takeoff and climb performance;

(h) Weight and balance computations;

(i) Principles of aerodynamics, powerplants, and aircraft systems;

(j) Stall awareness, spin entry, spins, and spin recovery techniques, if applying for an airplane single engine rating; and

(k) Aeronautical decision making and judgment;

(l) Preflight action that includes—

(1) How to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements;

(2) How to plan for alternatives if the planned flight cannot be completed; and

(3) Proper planning procedures for possible traffic delays.

4. *Flight training.* (a) Each approved course must include at least 30 hours of flight training (of which 15 hours must be with an authorized flight instructor and 3 hours must be supervised PIC training), on the areas of operation listed in section 4.(c) of this appendix, that are appropriate to the aircraft category and class rating for which the course applies, and must include:

(1) Except as provided in § 61.100 of this chapter, 2 hours of flight training to and at an airport that is located more than 25 nautical miles from the airport where the applicant normally trains, which includes at least 3 takeoffs and 3 landings; and

(2) Three hours of flight training in the aircraft, that is appropriate to the aircraft category and class for which the course applies, in preparation for the practical test within 60 days preceding the date of the practical test.

(b) Each training flight must include a preflight briefing and a postflight critique of the student by the flight instructor assigned to that flight.

(c) *Areas of operation.* Flight training must include the following approved areas of operation appropriate to the aircraft category and class rating for which the course applies:

(1) *For an airplane-single engine course:*

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Stalls and slow flight;

(ix) Emergency operations; and

(x) Postflight procedures.

(2) *For a rotorcraft-helicopter course:*

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and heliport operations;

(iv) Hovering maneuvers;

(v) Takeoffs, landings, and go-arounds;

(vi) Performance maneuvers;

(vii) Navigation;

(viii) Emergency operations; and

(ix) Postflight procedures.

(3) *For a rotorcraft-gyroplane course:*

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Flight at slow airspeeds;

(ix) Emergency operations; and

(x) Postflight procedures.

5. *Supervised pilot-in-command practice.* Each approved course must include at least 3 hours of supervised pilot-in-command practice on the areas of operation listed in section 4.(c) of this appendix, that is appropriate to the aircraft category and class rating for which the course applies.

6. *Stage checks and end-of-course tests.*

(a) Each student enrolled in a recreational pilot course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, and must consist of the approved areas of operation of section 4 of this appendix for the aircraft category and class rating for which the course applies.

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in supervised PIC flight.

Appendix B—Private Pilot Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a private pilot certification course required under this part, for:

(a) An airplane category—single-engine class.

(b) An airplane category—multiengine class.

(c) A rotorcraft category—helicopter class.

(d) A rotorcraft category—gyroplane class.

(e) A powered-lift category.

(f) A glider category—nonpowered class.

(g) A glider category—powered class.

(h) A lighter-than-air category—airship class.

(i) A lighter-than-air category—balloon class.

2. *Eligibility for enrollment.* A person must have the following to enroll in the flight portion of the private pilot certification course:

(a) A student pilot certificate;

(b) Except for course of training for a rating in a glider or balloon, hold at least a valid third-class medical certificate issued under part 67 of this chapter.

(c) For a rating in a glider or a balloon, a signed and dated statement by the person certifying that the person has no known medical defect that makes the person unable to pilot a glider or balloon.

3. *Aeronautical knowledge training.* (a) Each approved course must include at least the aeronautical knowledge areas listed in section 3.(b) of this appendix, appropriate to the aircraft category and class rating, and must include at least:

(1) 35 hours of training, if the course is for an airplane, rotorcraft, or powered lift category rating.

(2) 15 hours of training, if the course is for a glider category rating.

(3) 10 hours of training, if the course is for a lighter-than-air category with a balloon class rating.

(4) 35 hours of training, if the course is for a lighter-than-air category with an airship class rating.

(b) *Aeronautical knowledge areas.*

(1) The applicable Federal Aviation Regulations for private pilot privileges, limitations, and flight operations;

(2) Accident reporting requirements of the National Transportation Safety Board;

(3) The applicable subjects of the "Airman's Information Manual" and the appropriate FAA advisory circulars;

(4) Aeronautical charts for VFR navigation using pilotage, dead reckoning, and radio aids;

(5) Radio communication procedures;

(6) The recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(7) The safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence and windshear conditions;

(8) The effects of density altitude on takeoff and climb performance;

(9) Weight and balance computations;

(10) Principles of aerodynamics, powerplants, and aircraft systems;

(11) If the course of training is for an airplane category or glider category rating, stall awareness, spin entry, spins, and spin recovery techniques;

(12) Aeronautical decision making and judgment; and

(13) Preflight action that includes—

(i) How to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements;

(ii) How to plan for alternatives if the planned flight cannot be completed; and

(iii) Proper planning procedures for possible traffic delays.

4. *Flight training.* (a) Each approved course must include the following flight training on the areas of operation listed in section 4.(c) of this appendix, appropriate to the aircraft category and class rating for which the course applies, and must include:

(1) *For an airplane-single engine course.* At least 35 hours of flight training (of which 20 hours must be with an authorized flight instructor and 5 hours must be supervised PIC training), on the approved areas of operation in section 4.(c)(1) of this appendix, and the training must include at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a single engine airplane;

(ii) Except as provided in § 61.110 of this chapter, 3 hours of night flight training in a single engine airplane that includes—

(A) One cross country flight over 100 nautical miles duration; and

(B) Ten takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of instrument flight training in a single engine airplane; and

(iv) Three hours of flight training in preparation for the practical test in a single engine airplane, and must have been performed within 60 days preceding the date of the test.

(2) *For an airplane-multiengine course.* At least 35 hours of flight training (of which 20 hours must be with an authorized flight instructor and 5 hours must be supervised PIC training), on the approved areas of operation in section 4.(c)(2) of this appendix, and the training must include at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a multiengine airplane;

(ii) Except as provided in § 61.110 of this chapter, 3 hours of night flight training in a multiengine airplane that includes—

(A) One cross country flight over 100 nautical miles duration; and

(B) Ten takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of instrument flight training in a multiengine airplane; and

(iv) Three hours of flight training in preparation for the practical test in a multiengine airplane, and must have been performed within 60 days preceding the date of the test.

(3) *For a rotorcraft-helicopter course.* At least 35 hours of flight training (of which 20 hours must be with an authorized flight instructor and 5 hours must be supervised PIC training), on the approved areas of operation in section 4.(c)(3) of this appendix, and the training must include at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a helicopter;

(ii) Except as provided in § 61.110 of this chapter, 3 hours of night flight training in a helicopter that includes—

(A) One cross country flight over 50 nautical miles duration; and

(B) Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of flight training in preparation for the practical test in a helicopter, and must have been performed within 60 days preceding the date of the test.

(4) *For a rotorcraft-gyroplane course.* At least 35 hours of flight training (of which 20 hours must be with an authorized flight instructor and 5 hours must be supervised PIC training), on the approved areas of operation in section 4.(c)(4) of this appendix, and the training must include at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a gyroplane;

(ii) Except as provided in § 61.110 of this chapter, 3 hours of night flight training in a gyroplane that includes—

(A) One cross country flight over 50 nautical miles duration; and

(B) Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of flight training in preparation for the practical test in a gyroplane, and must have been performed within 60 days preceding the date of the test.

(5) *For a powered-lift course.* At least 35 hours of flight training (of which 20 hours must be with an authorized flight instructor and 5 hours must be supervised PIC training), on the approved areas of operation in section 4.(c)(5) of this appendix, and the training must include at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a powered-lift;

(ii) Except as provided in § 61.110 of this chapter, 3 hours of night flight training in a powered-lift that includes—

(A) One cross country flight over 100 nautical miles duration; and

(B) Ten takeoffs and ten landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of instrument flight training in a powered-lift; and

(iv) Three hours of flight training in preparation for the practical test in a powered-lift, and must have been performed within 60 days preceding the date of the test.

(6) *For a glider-nonpowered course.* At least 5 hours and 10 flights of flight training time from an authorized flight instructor, on the approved areas of operation in section 4.(c)(6) of this appendix, and the training must include—

(i) At least 3 flights of flight training in a nonpowered glider, in preparation for the practical test within 60 days preceding the test; and

(ii) In addition, if the course covers winch or auto tow procedures, the flight training must include at least 5 flights of flight training and 2 supervised PIC flight in a nonpowered glider on the appropriate approved areas of operation listed in section 4.(c)(6) of this appendix.

(7) *For a glider-powered course.* At least 5 hours of flight training time from an authorized flight instructor, on the approved areas of operation in section 4.(c)(7) of this appendix, and the training must include at least 3 flights of flight training in a powered glider, in preparation for the practical test within 60 days preceding the date of the test.

(8) *For a lighter than air-airship course.* At least 20 hours of flight training from an authorized flight instructor, on the approved areas of operation in section 4.(c)(8) of this appendix, and the training must include at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in an airship;

(ii) Except as provided in § 61.110 of this chapter, 3 hours of night flight training in an airship that includes—

(A) One cross country flight over 25 nautical miles duration; and

(B) Five takeoffs and five landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) Three hours of instrument flight training in an airship; and

(iv) Three hours of flight training in preparation for the practical test in an airship, and must have been performed within 60 days preceding the date of the test.

(9) *For a lighter than air-balloon course.* At least 8 hours of flight training that includes at least 5 flights of flight training from an authorized flight instructor, on the approved areas of operation in section 4.(c)(9) of this appendix, and includes—

(i) If the training is being performed in a gas balloon, the training must include at least—

(A) Two flights of 1 hour each;

(B) One flight involving a controlled ascent to 5,000 feet above the surface; and

(C) Two flights in preparation for the practical test within 60 days preceding the test.

(ii) If the training is being performed in a balloon with an airborne heater, the training must include at least—

(A) Two flights of 30 minutes each;

(B) One flight involving a controlled ascent to 3,000 feet above the surface; and

(C) Two flights in preparation for the practical test within 60 days preceding the test.

(b) *Use of flight training devices.*

(1) The course may include training in a flight training device, provided they are representative of the aircraft for which the course is approved for, meet requirements of this paragraph, and the training is given by an authorized ground or flight instructor.

(2) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part and a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or by this section, whichever is less. However, training in a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements.

(c) *Areas of operation.* Each approved course must include the flight training on the areas of operation listed in this paragraph, that are appropriate to the aircraft category and class rating for which the course applies:

(1) *Areas of operation for a single engine airplane course:* Areas of operation for an airplane-single engine course are the following—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and seaplane base operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Ground reference maneuvers;
(vii) Navigation;
(viii) Stalls and slow flight;
(ix) Basic instrument maneuvers;
(x) Emergency operations;
(xi) Night operations, except as provided in § 61.110 of this chapter; and
(xii) Postflight procedures.

(2) *Areas of operations for a multiengine airplane course:* Areas of operation for an airplane-multiengine course are the following—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and seaplane base operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Ground reference maneuvers;
(vii) Navigation;
(viii) Stalls and slow flight;
(ix) Basic instrument maneuvers;
(x) Emergency operations;
(xi) Multiengine operations;
(xii) Night operations, except as provided in § 61.110 of this chapter; and
(xiii) Postflight procedures.

(3) *Areas of operation for a rotorcraft-helicopter course:* Areas of operation for a rotorcraft-helicopter course are the following—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and heliport operations;
(iv) Hovering maneuvers;

(v) Takeoffs, landings, and go-arounds;
(vi) Performance maneuvers;
(vii) Navigation;
(viii) Emergency operations;
(ix) Night operations, except as provided in § 61.110 of this chapter; and
(x) Postflight procedures.

(4) *Areas of operation for a rotorcraft-gyroplane course:* Areas of operation for a rotorcraft-gyroplane course are the following—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Ground reference maneuvers;
(vii) Navigation;
(viii) Flight at slow airspeeds;
(ix) Emergency operations;
(x) Night operations, except as provided in § 61.110 of this chapter; and
(xi) Postflight procedures.

(5) *Areas of operation for a powered-lift course:*

Areas of operation for a powered-lift course are the following—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and heliport operations;
(iv) Hovering maneuvers;
(v) Takeoffs, landings, and go-arounds;
(vi) Performance maneuvers;
(vii) Ground reference maneuvers;
(viii) Navigation;
(ix) Stalls and slow flight;
(x) Basic instrument maneuvers;
(xi) Emergency operations;
(xii) Night operations, except as provided in § 61.110 of this chapter; and
(xiii) Postflight procedures.

(6) *Areas of operations for a glider-nonpowered course:* Areas of operation for a glider-nonpowered course are the following—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and gliderport operations;
(iv) Launches and landings;
(v) Performance speeds;
(vi) Soaring techniques;
(vii) Performance maneuvers;
(viii) Navigation;
(ix) Stalls and slow flight;
(x) Emergency operations; and
(xi) Postflight procedures.

(7) *Areas of operation for a glider-powered course:* Areas of operation for a glider-powered course are the following—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and gliderport operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance speeds;
(vi) Soaring techniques;
(vii) Performance maneuvers;
(viii) Navigation;
(ix) Stalls and slow flight;
(x) Emergency operations; and
(xi) Postflight procedures.

(8) *Areas of operation for a lighter than air-airship course:* Areas of operation for a lighter than air-airship course are the following—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Ground reference maneuvers;
(vii) Navigation;
(viii) Emergency operations; and
(ix) Postflight procedures.

(9) *Areas of operation for a lighter than air-balloon course:* Areas of operation for a lighter than air category-balloon course are the following—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Balloonport operations;
(iv) Lift-offs and landings;
(v) Performance maneuvers;
(vi) Navigation;
(vii) Emergency operations; and
(viii) Postflight procedures.

5. *Supervised pilot-in-command practice.* Each approved course must include the following supervised pilot-in-command practice on the areas of operation listed in section 4.(c) of this appendix, appropriate to the aircraft category and class rating for which the course applies, and must include:

(a) *For an airplane-single engine course.* At least 5 hours of supervised pilot-in-command time, on the approved areas of operation in section 4.(c)(1) of this appendix, and the training must include at least—

(1) One supervised PIC cross-country flight of at least more than 100 nautical miles duration, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 50 nautical miles between the takeoff and landing locations; and

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(b) *For an airplane-multiengine course.* At least 5 hours of supervised pilot-in-command time, on the approved areas of operation in section 4.(c)(2) of this appendix, and the training must include at least—

(1) One supervised PIC cross-country flight over 100 nautical miles duration, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 50 nautical miles between the takeoff and landing locations; and

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(c) *For a rotorcraft-helicopter course.* At least 5 hours of supervised pilot-in-command time, on the approved areas of operation in section 4.(c)(3) of this appendix, and the training must include at least—

(1) One supervised PIC cross-country flight over 50 nautical miles duration, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 25 nautical miles between the takeoff and landing locations; and

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(d) *For a rotorcraft-gyroplane course.* At least 5 hours of supervised pilot-in-command time, on the approved areas of operation in section 4.(c)(4) of this appendix, and the training must include at least—

(1) One supervised PIC cross-country flight over 50 nautical miles duration, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 25 nautical miles between the takeoff and landing locations; and

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(e) *For a powered-lift course.* At least 5 hours of supervised pilot-in-command time, on the approved areas of operation in section 4.(c)(5) of this appendix, and the training must include at least—

(1) One supervised PIC cross-country flight over 100 nautical miles duration, landings at a minimum of three points, and one route of the flight being a straight line distance of at least 50 nautical miles between the takeoff and landing locations; and

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(f) *For a glider-nonpowered course.*

(1) At least 2 flights of supervised pilot-in-command time, on the approved areas of operation in section 4.(c)(6) of this appendix; and

(2) If the course covers ground launch procedures, the supervised pilot in command time must include at least 2 flights using a winch or auto tow on the approved areas of operation in section 4.(c)(6) of this appendix.

(g) *For a glider-powered course.* At least 2 flights of supervised pilot-in-command time, on the approved areas of operation in section 4.(c)(7) of this appendix.

(h) *For a lighter than air-airship course.* At least 5 hours of supervised pilot-in-command time with an authorized flight instructor, on the approved areas of operation in section 4.(c)(8) of this appendix.

(i) *For a lighter than air-balloon course.* At least 2 flights of supervised pilot-in-command time, on the approved areas of operation in section 4.(c)(9) of this appendix, in the balloon for which the course applies.

6. *Stage checks and end-of-course tests.*

(a) Each student enrolled in a private pilot course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, and must consist of the approved areas of operation of section 4 of this appendix for the aircraft category and class rating for which the course applies.

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in supervised PIC flight.

Appendix C—Instrument Rating Course

1. *Applicability.* This appendix prescribes the minimum curriculum for an instrument rating course and an additional instrument rating course, required under this part, for:

(a) Instrument-airplane single-engine.
(b) Instrument-airplane multiengine.
(c) Instrument-helicopter.
(d) Instrument-airship.
(e) Instrument-powered-lift.

2. *Eligibility for enrollment.* A person must have the following to enroll in the flight portion of the instrument rating course:

(a) A private pilot certificate with an aircraft category and class rating appropriate to the instrument rating for which the course applies.

(b) At least a valid third-class medical certificate issued under part 67 of this chapter.

3. *Aeronautical knowledge training.*

(a) Each approved course must include the aeronautical knowledge areas listed in section 3.(b) of this appendix, appropriate to the instrument rating for which the course applies, and must include at least:

(1) 30 hours of training, if the course is for an initial instrument rating.

(2) 20 hours of training, if the course is for an additional instrument rating.

(b) Each approved course must include the following aeronautical knowledge areas:

(1) The applicable Federal Aviation Regulations for IFR flight operations;

(2) The appropriate information in the "Airman's Information Manual;"

(3) The air traffic control system and procedures for instrument flight operations;

(4) IFR navigation and approaches by use of radio aids;

(5) Use of IFR en route and instrument charts procedure approach;

(6) The procurement and use of aviation weather reports and forecasts, and the elements of forecasting weather trends on the basis of that information and personal observation of weather conditions;

(7) The safe and efficient operation of aircraft under IFR and conditions appropriate to the instrument rating for which the course applies;

(8) The recognition of critical weather situations and windshear avoidance;

(9) Aeronautical decision making and judgment; and

(10) Flight deck resource management, to include crew communication and coordination.

4. *Flight training.*

(a) Each approved course must include the following flight training on the areas of operation listed in section 4.(d) of this appendix, appropriate to the instrument-aircraft category and class rating for which the course applies, and must include at least:

(1) 35 hours of instrument training, if the course is for an initial instrument rating.

(2) 15 hours of instrument training, if the course is for an additional instrument rating.

(b) *Use of flight training devices.*

(1) The course may include training in a flight training device, provided they are representative of the aircraft for which the course is approved for, meet requirements of this paragraph, and the training is given by an authorized ground or flight instructor.

(2) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part and a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or by this section, whichever is less. However, training in a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements.

(c) In addition, each approved course must include the following flight training on the areas of operation listed in section 4.(d) of this appendix, appropriate to the instrument-aircraft category and class rating for which the course applies, and must include:

(1) *For an instrument-airplane single engine course.* Instrument training time from an authorized instructor, on the approved areas of operation in section 4.(d) of this appendix, and the training must include at least one cross country flight that—

(i) Is in a single engine airplane and is performed under IFR;

(ii) Is a distance of at least 250 nautical miles along airways or ATC-directed routing with one of the routes being at least a straight-line distance of 100 nautical miles between airports;

(iii) Involves an instrument approach at each airport; and

(iv) Involves three different kinds of approaches with the use of navigation aids.

(2) *For an instrument-airplane multiengine course.* Instrument training time from an authorized instructor, on the approved areas of operation in section 4.(d) of this appendix, and the training must include at least one cross country flight that—

(i) Is in a multiengine airplane and is performed under IFR;

(ii) Is a distance of at least 250 nautical miles along airways or ATC-directed routing with one of the routes being at least a straight-line distance of 100 nautical miles between airports;

(iii) Involves an instrument approach at each airport; and

(iv) Involves three different kinds of approaches with the use of navigation aids.

(3) *For an instrument-helicopter course.* Instrument training time from an authorized instructor, on the approved areas of operation in section 4.(d) of this appendix, and the training must include at least one cross country flight that—

(i) Is in a helicopter and is performed under IFR;

(ii) Is a distance of at least 100 nautical miles along airways or ATC-directed routing with one of the routes being at least a straight-line distance of 50 nautical miles between airports;

(iii) Involves an instrument approach at each airport; and

(iv) Involves three different kinds of approaches with the use of navigation aids.

(4) *For an instrument-powered-lift course.* Instrument training time from an authorized instructor, on the approved areas of operation in section 4.(d) of this appendix, and the training must include at least one cross country flight that—

(i) Is in a powered-lift and is performed under IFR;

(ii) Is a distance of at least 250 nautical miles along airways or ATC-directed routing with one of the routes being at least a straight-line distance of 100 nautical miles between airports;

(iii) Involves an instrument approach at each airport; and

(iv) Involves three different kinds of approaches with the use of navigation aids.

(5) *For an instrument-airship course.* Instrument training time from an authorized instructor, on the approved areas of operation in section 4.(d) of this appendix, and the training must include at least one cross country flight that—

(i) Is in an airship and is performed under IFR;

(ii) Is a distance of at least 50 nautical miles along airways or ATC-directed routing with one of the routes being at least a straight-line distance of 25 nautical miles between airports;

(iii) Involves an instrument approach at each airport; and

(iv) Involves three different kinds of approaches with the use of navigation aids.

(d) *Areas of operation:*

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Air traffic control clearances and procedures;

(iv) Flight by reference to instruments;

(v) Navigation aids;

(vi) Instrument approach procedures;

(vii) Emergency operations; and

(viii) Postflight procedures.

5. *Stage checks and end-of-course tests.* Each student enrolled in an instrument rating course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, and must consist of the appropriate approved areas of operation of section 4 of this appendix for the aircraft category and class rating for which the course applies.

Appendix D—Commercial Pilot Certification Course.

1. *Applicability.* This appendix prescribes the minimum curriculum for a commercial pilot certification course required under this part, for:

(a) Airplane category—single-engine class.

(b) Airplane category—multiengine class.

(c) Rotorcraft category—helicopter class.

(d) Rotorcraft category—gyroplane class.

(e) Powered-lift category.

(f) Glider category—nonpowered class.

(g) Glider category—powered class.

(h) Lighter-than-air category—airship class.

(i) Lighter-than-air category—balloon class.

2. *Eligibility for enrollment.*

(a) A person must have the following to enroll in the flight portion of the commercial pilot certification course:

(1) At least a private pilot certificate;

(2) At least a valid third-class medical certificate issued under part 67 of this chapter for a rating in an aircraft other than a glider or a balloon;

(3) A signed and dated statement affixed to the application certifying that no known medical defect exists that would make the person unable to pilot a glider or balloon, as appropriate; and

(4) If the course is for a rating in an airplane, powered-lift category, or an airship class, then the person must—

(i) Hold an instrument rating in the aircraft that is appropriate to the aircraft category and class rating for which the course applies; or

(ii) Be concurrently enrolled in an instrument rating course that is appropriate to the aircraft category and class rating for which the course applies and satisfactorily accomplish the required instrument rating practical test prior to completing the commercial pilot certification course.

(b) A person must meet the aeronautical experience requirements prescribed in part 61 of this chapter for a commercial pilot certificate that is appropriate to the aircraft category and class rating for which the course applies upon completion of this course.

3. *Aeronautical knowledge training.*

(a) Each approved course must include the aeronautical knowledge areas listed in paragraph (b) of this section, appropriate to the aircraft category and class rating for which the course applies, and must include at least:

(1) 100 hours of training, if the course is for an airplane category rating, powered lift category rating, or a lighter-than-air category with an airship class rating.

(2) 65 hours of training, if the course is for a rotorcraft category rating.

(3) 25 hours of training, if the course is for a glider category rating.

(4) 20 hours of training, if the course is for a lighter-than-air category with a balloon class rating.

(b) *Aeronautical knowledge areas.* Each approved course must include the aeronautical knowledge areas listed in this paragraph, appropriate to the aircraft category and class rating for which the course applies:

(1) The Federal Aviation Regulations that apply to commercial pilot privileges, limitations, and flight operations;

(2) Accident reporting requirements of the National Transportation Safety Board;

(3) Basic aerodynamics and the principles of flight;

(4) Meteorology to include recognition of critical weather situations, windshear recognition and avoidance, and the use of aeronautical weather reports and forecasts;

(5) Safe and efficient operation of aircraft;

(6) Weight and balance computations;

(7) Use of performance charts;

(8) Significance and effects of exceeding aircraft performance limitations;

(9) Use of aeronautical charts and magnetic compass for pilotage and dead reckoning;

(10) Use of air navigation facilities;

(11) Aeronautical decision making and judgement;

(12) Principles and functions of aircraft systems;

(13) Maneuvers, procedures, and emergency operations appropriate to the aircraft;

(14) Night and high altitude operations; and

(15) Descriptions of and procedures for operating within the National Airspace System.

4. *Flight training.*

(a) Each approved course must include the following flight training on the areas of operation listed in paragraph (c) of this section, appropriate to the aircraft category and class rating for which the course applies, and must include:

(1) *For an airplane-single engine course.* At least 20 hours of training on the approved areas of operation listed in paragraph (c)(1) of this section that includes at least—

(i) Five hours of instrument training in a single engine airplane;

(ii) Ten hours of training in a single engine airplane that has a retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One cross-country flight in a single engine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iv) Except as provided in § 61.131 of this chapter, one cross-country flight in a single engine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(v) Three hours in a single engine airplane, in preparation for the practical test within the 60 days preceding the date of the test.

(2) *For an airplane-multiengine course.* At least 20 hours of training on the approved areas of operation listed in paragraph (c)(2) of this section that includes at least—

(i) Five hours of instrument training in a multiengine airplane;

(ii) Ten hours of training in a multiengine airplane that has a retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One cross-country flight in a multiengine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iv) Except as provided in § 61.131 of this chapter, one cross-country flight in a multiengine airplane of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(v) Three hours in a multiengine airplane, in preparation for the practical test within the 60 days preceding the date of the test.

(3) *For a rotorcraft-helicopter course.* At least 20 hours of training on the approved areas of operation listed in paragraph (c)(3) of this section that includes at least—

(i) Five hours of instrument training in a helicopter;

(ii) One cross-country flight in a helicopter of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iii) Except as provided in § 61.131 of this chapter, one cross-country flight in a helicopter of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(iv) Three hours in a helicopter, in preparation for the practical test within the 60 days preceding the date of the test.

(4) *For a rotorcraft-gyroplane course.* At least 20 hours of training on the approved areas of operation listed in paragraph (c)(4) of this section that includes at least—

(i) Five hours of instrument training in a gyroplane;

(ii) One cross-country flight in a gyroplane of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iii) Except as provided in § 61.131 of this chapter, one cross-country flight in a gyroplane of at least 2 hours in duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(iv) Three hours in a gyroplane, in preparation for the practical test within the 60 days preceding the date of the test.

(5) *For a powered-lift course.* At least 20 hours of training on the approved areas of operation listed in paragraph (c)(5) of this section that includes at least—

(i) Five hours of instrument training in a powered-lift;

(ii) One cross-country flight in a powered-lift of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day-VFR conditions;

(iii) Except as provided in § 61.131 of this chapter, one cross-country flight in a powered-lift of at least 2 hours in duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night-VFR conditions; and

(iv) Three hours in a powered-lift, in preparation for the practical test within the 60 days preceding the date of the test.

(6) *For a nonpowered glider course.* At least 10 hours of flight training and 10 flights on the approved areas of operation of paragraph (c)(6) of this section, that includes—

(i) At least 3 flights in preparation for the practical test within the 60 days preceding the date of the test; and

(ii) If the course is for ground launch procedures privileges, the course must also include at least 5 flights of flight training in a nonpowered glider using a winch or auto tow on the approved areas of operation of paragraph (c)(6) of this section.

(7) *For a powered glider course.* At least 10 hours of flight training on the approved areas of operation of paragraph (c)(7) of this section, that includes at least 3 hours in preparation for the practical test within the 60 days preceding the date of the test;

(8) *For an airship course.* At least 20 hours of training in airships on the approved areas of operation in paragraph (c)(8) of this section, which includes at least—

(i) Three hours in an airship, in preparation for the practical test within the 60 days preceding the date of the test;

(ii) Five hours of instrument training in airships;

(iii) One cross-country flight in an airship of at least 1 hour in duration, a total straight-

line distance of more than 25 nautical miles from the original point of departure, and occurring in day-VFR conditions; and

(iv) One cross-country flight in an airship of at least 1 hour in duration, a total straight-line distance of more than 25 nautical miles from the original point of departure, and occurring in night-VFR conditions, except as provided in § 61.131 of this chapter.

(9) *For a balloon course.* At least 10 hours of flight training that includes at least 10 flights of flight training in balloons on the approved areas of operation of paragraph (c)(9) of this section, and includes—

(i) If the course is involves training in a gas balloon, the training must include at least—

(A) Two flights of 1 hour each in a gas balloon;

(B) One flight in a gas balloon involving a controlled ascent to 10,000 feet above the surface; and

(C) Two flights in a gas balloon, in preparation for the practical test within the 60-day period preceding the date of the test.

(ii) If the course involves training in a balloon with an airborne heater, the training must include at least—

(A) Two flights of 30 minutes each in a balloon with an airborne heater;

(B) One flight involving a controlled ascent to 5,000 feet above the surface in a balloon with an airborne heater; and

(C) Two flights in a balloon with an airborne heater, in preparation for the practical test within the 60-day period preceding the date of the test.

(b) *Use of flight training devices.*

(1) Training in a flight training device may be included in the course, provided it is representative of the aircraft for which the course is approved for, meets the requirements of this paragraph, and is given by an authorized ground or flight instructor.

(2) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part and a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or by this section, whichever is less. However, training in a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements.

(c) *Areas of operation.* Each approved course must include the flight training on the areas of operation listed in this paragraph, that are appropriate to the aircraft category and class rating for which the course applies:

(1) *For an airplane-single engine course:*
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and seaplane base operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Navigation;
(vii) Stalls and slow flight;
(viii) Emergency operations;
(ix) High altitude operations; and
(x) Postflight procedures.

(2) *For an airplane-multiengine course:*
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and seaplane base operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Navigation;
(vii) Stalls and slow flight;
(viii) Emergency operations;
(ix) High altitude operations; and
(x) Postflight procedures.

(3) *For a rotorcraft-helicopter course:*
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and heliport operations;
(iv) Hovering maneuvers;
(v) Takeoffs, landings, and go-arounds;
(vi) Performance maneuvers;
(vii) Navigation;
(viii) Emergency operations;
(ix) Special operations; and
(x) Postflight procedures.

(4) *For a rotorcraft-gyroplane course:*
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Navigation;
(vii) Flight at slow airspeeds;
(viii) Emergency operations; and
(ix) Postflight procedures.

(5) *For a powered-lift course:*
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and heliport operations;
(iv) Hovering maneuvers;
(v) Takeoffs, landings, and go-arounds;
(vi) Navigation;
(vii) Stalls and slow flight;
(viii) Emergency operations;
(ix) High altitude operations; and
(x) Postflight procedures.

(6) *For a glider-nonpowered course:*
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and gliderport operations;
(iv) Launches and landings;
(v) Performance speeds;
(vi) Soaring techniques;
(vii) Performance maneuvers;
(viii) Navigation;
(ix) Stalls and slow flight;
(x) Emergency operations; and
(xi) Postflight procedures.

(7) *For a glider-powered course:*
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and gliderport operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance speeds;
(vi) Soaring techniques;
(vii) Performance maneuvers;
(viii) Navigation;
(ix) Stalls and slow flight;
(x) Emergency operations; and
(xi) Postflight procedures.

(8) *For a lighter than air-airship course:*
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Navigation;
(vii) Emergency operations; and
(viii) Postflight procedures.

(9) *For a lighter than air-balloon course:*
(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Balloonport operations;
(iv) Lift-offs and landings;
(v) Performance maneuvers;
(vi) Navigation;
(vii) Emergency operations; and
(viii) Postflight procedures.

5. *Supervised pilot-in-command training.* Each approved course must include supervised pilot-in-command practice on the areas of operation listed in section 4.(c) of this appendix, appropriate to the aircraft category and class rating for which the course applies, and must include:

(a) *For an airplane-single engine course.* At least 10 hours of supervised PIC flying in a single engine airplane on the approved areas of operation in section 4.(c)(1) of this appendix, which includes at least—

(1) One cross-country flight, if the training is being performed in the state of Hawaii, that must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 150 nautical miles;

(2) One cross-country flight, if the training is being performed in a State other than Hawaii, that must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 250 nautical miles; and

(3) 5 hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower, except as provided in § 61.131 of this chapter.

(b) *For an airplane-multiengine course.* At least 10 hours of supervised PIC flying in a multiengine airplane on the approved areas of operation in section 4.(c)(2) of this appendix, which includes at least—

(1) One cross-country flight, if the training is being performed in the state of Hawaii, that must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 150 nautical miles;

(2) One cross-country flight, if the training is being performed in a State other than Hawaii, that must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 250 nautical miles; and

(3) 5 hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower, except as provided in § 61.131 of this chapter.

(c) *For a rotorcraft-helicopter course.* At least 10 hours of supervised PIC flying in a helicopter on the approved areas of operation in section 4.(c)(4) of this appendix, which includes at least—

(1) One cross-country flight, if the training is being performed in the state of Hawaii, that must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 150 nautical miles;

(2) One cross-country flight, if the training is being performed in a State other than Hawaii, that must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 250 nautical miles; and

(3) 5 hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower, except as provided in § 61.131 of this chapter.

(d) *For a rotorcraft-gyroplane course.* At least 10 hours of supervised PIC flying in a gyroplane on the approved areas of operation in section 4.(c)(4) of this appendix, which includes at least—

(1) One cross-country flight, if the training is being performed in the state of Hawaii, that must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 150 nautical miles;

(2) One cross-country flight, if the training is being performed in a State other than Hawaii, that must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 250 nautical miles; and

(3) 5 hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower, except as provided in § 61.131 of this chapter.

(e) *For a powered-lift course.* At least 10 hours of supervised PIC flying in a powered-lift on the approved areas of operation in section 4.(c)(5) of this appendix, which includes at least—

(1) One cross-country flight, if the training is being performed in the state of Hawaii, that must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 150 nautical miles;

(2) One cross-country flight, if the training is being performed in a State other than Hawaii, that must involve landings at a minimum of three points and one of the routes having a straight-line distance of at least 250 nautical miles; and

(3) 5 hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower, except as provided in § 61.131 of this chapter.

(f) *For a glider-nonpowered course.* At least 5 supervised PIC flights in a nonpowered glider on the approved areas of operation of section 4.(c)(6) of this appendix.

(g) *For a glider-powered course.* At least 5 supervised PIC flights in a powered glider on the approved areas of operation of section 4.(c)(7) of this appendix.

(h) *For a lighter than air-airship course.* At least 10 hours of pilot in command flight training with an authorized flight instructor in airships, on the approved areas of operation in section 4.(c)(8) of this appendix, which includes at least—

(i) One cross-country flight with landings at a minimum of three points, and one of the routes having a straight-line distance of at least 25 nautical miles from the original point of departure; and

(ii) 5 hours in night-VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) except as provided in § 61.131 of this chapter.

(i) *For a lighter than air-balloon course.* At least 2 flights of supervised pilot-in-command time, on the approved areas of operation in section 4.(c)(9) of this appendix, in the balloon for which the course applies.

6. *Stage checks and end-of-course tests.*

(a) Each student enrolled in a commercial pilot course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation of section 4 of this appendix for the aircraft category and class rating for which the course applies.

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in supervised PIC flight.

Appendix E—Airline Transport Pilot Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum for an airline transport pilot certification course under this part, for:

(a) An airplane category-single engine class rating.

(b) An airplane category-multiengine class rating.

(c) A rotorcraft category-helicopter class rating.

(d) A powered-lift category rating.

2. *Eligibility for enrollment.* A person must have the following to enroll in the flight portion of the airline transport pilot certification course:

(a) Meet at least one of the following requirements—

(1) Hold at least a commercial pilot certificate and an instrument rating;

(2) Meet the requirements of § 61.73 of this chapter to qualify for a commercial pilot certificate and an instrument rating, in the case of a person who is a rated pilot in the U.S. military; or

(3) Hold either a foreign airline transport pilot or foreign commercial pilot license and an instrument rating, in the case of a person who holds a pilot license issued by a member State to the International Civil Aviation Organization.

(b) Hold at least a third-class medical certificate issued under part 67 of this chapter; and

(c) Meet the aeronautical experience requirements prescribed in subpart G, part 61 of this chapter for an airline transport pilot certificate that is appropriate to the aircraft category and class rating for which the course applies upon completion of this course.

3. *Aeronautical knowledge training.*

(a) Each approved course must include the aeronautical knowledge areas listed in paragraph (b) of this section, appropriate to the aircraft category and class rating, and must include at least 40 hours of training.

(b) *Aeronautical knowledge areas.*

(1) The applicable Federal Aviation Regulations of this chapter that relate to airline transport pilot privileges, limitations, and flight operations appropriate to the aircraft rating for which the course applies;

(2) Meteorology including knowledge of and effects of fronts, frontal characteristics, cloud formations, icing, and upper air-data;

(3) General system of weather and NOTAM collection, dissemination, interpretation, and use;

(4) Interpretation of weather charts, maps, forecasts, sequence, abbreviations, symbols, and use;

(5) National Weather Service function as it pertains to operation in the National Airspace System;

(6) Windshear and microburst awareness, identification, and avoidance;

(7) Principles of air navigation under instrument meteorological conditions in the National Airspace System;

(8) Air traffic control procedures and pilot responsibilities as they relate to en route operations, terminal area and radar operations, and instrument departure and approach procedures;

(9) Aircraft loading, weight and balance, use of charts, graphs, tables, formulas, and computations, and the effects on aircraft performance that are appropriate to the aircraft category and class rating for which the course applies;

(10) Aircraft aerodynamics relating to the aircraft's flight characteristics, performance, and normal and abnormal flight regimes and characteristics that are appropriate to the aircraft category and class rating for which the course applies;

(11) Flight crewmember physiological factors;

(12) Aeronautical decisionmaking and judgment; and

(13) Flight deck resource management to include crew communication and coordination.

4. *Flight training.*

(a) *Approved course requirements.*

(1) Flight training in the approved areas of operation of paragraph (c) of this section must be included in the aircraft category and class rating for which the course applies; and

(2) At least 25 hours of flight training, of which at least 15 hours must be instrument flight training, must be included in the aircraft for which the course applies.

(b) *Use of flight training devices.*

(1) Training in a flight training device may be included, provided it is representative of the aircraft for which the course is approved, meets the requirements of this paragraph, and is given by an authorized ground or flight instructor.

(2) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of

5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part and a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or by this section, whichever is less. However, training in a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements.

(c) *Areas of operation.* Each approved course must include the flight training on the areas of operation listed in this paragraph, that are appropriate to the aircraft category and class rating for which the course applies:

(1) For an airplane category-single engine class rating with a type rating course, if a type rating is required, are as follows—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) Inflight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

(2) For an airplane category-multiengine class rating with a type rating course, if a type rating is required, are as follows—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) Inflight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

(3) For a powered-lift category rating with a type rating course, if a type rating is required, are as follows—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) Inflight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

(4) For a rotorcraft category-helicopter class rating with a type rating course, if a type rating is required, are as follows—

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) Inflight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

5. *Stage checks and end-of-course tests.*

(a) Each student enrolled in an airline transport pilot course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation of section 4.(c) of this appendix in the aircraft category and class rating for which the course applies.

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in supervised PIC flight.

Appendix F—Flight Instructor Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a flight instructor certification course and an additional flight instructor rating course required under this part, for:

(a) Airplane category—single-engine class.
(b) Airplane category—multiengine class.
(c) Rotorcraft category—helicopter class.
(d) Rotorcraft category—gyroplane class.
(e) Powered-lift category.
(f) Glider category—nonpowered class.
(g) Glider category—powered class.
(h) Lighter-than-air category—airship class.
(i) Lighter-than-air category—balloon class.

2. *Eligibility for enrollment.* A person must have the following to enroll in the flight portion of the flight instructor or additional flight instructor rating course:

(a) A commercial or an airline transport pilot certificate, with an aircraft category and class rating appropriate to the flight instructor rating for which the course applies; and

(b) An instrument rating in an aircraft that is appropriate to the aircraft category and class rating for which the course applies, if the course is for a flight instructor-airplane, -helicopter, -powered-lift, -airship, or -instrument-(category and class) rating.

3. *Aeronautical knowledge training.*

(a) *Approved course requirements.* Each approved course must include the knowledge areas listed in paragraph (b) of this section, and must include at least:

(1) 40 hours of training, if the course is for an initial issuance of a flight instructor certificate; or

(2) 20 hours of training, if the course is for an additional flight instructor rating.

(b) *Aeronautical knowledge areas.*

(1) The learning process;
(2) Elements of effective teaching;
(3) Student evaluation, quizzing, and testing;
(4) Course development;
(5) Lesson planning;
(6) Classroom training techniques; and
(7) The aeronautical knowledge areas in which training is required for—

(i) A recreational, private, and commercial pilot certificate that is appropriate to the aircraft category and class rating for which the course applies; and

(ii) An instrument rating that is appropriate to the aircraft category and class rating for which the course applies, if the course is for an airplane or powered-lift category, or a lighter-than-air category with an airship class.

(c) *School hours credited.* A student who satisfactorily completed 2 years of study on the principles of education in a college or university may be credited with no more than 20 hours of the required training in paragraph (a)(1) of this section.

4. *Flight training.*

(a) *Approved course requirements.* Each approved course must include flight training in the approved areas of operation of paragraph (c) of this section for the flight instructor rating for which the course applies; and must include at least:

(1) Twenty-five hours, if the course is for an airplane, rotorcraft, or powered-lift category rating, or a lighter-than-air category with an airship class rating;

(2) Ten hours and 10 flights, if the course is for a glider category with a nonpowered class rating;

(3) Ten hours, if the course is for a glider category with a powered class rating; or

(4) Eight flights, if the course is for a lighter-than-air category with a balloon class rating.

(b) *Use of flight training devices.*

(1) The course may include training in a flight training device, provided they are representative of the aircraft for which the course is approved for, meet requirements of this paragraph, and the training is given by an authorized ground or flight instructor.

(2) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part and a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or by this section, whichever is less. However, training in a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements.

(c) *Areas of operation.* Each approved course must include the flight training on the areas of operation listed in this paragraph, that are appropriate to the aircraft category and class rating for which the course applies:

(1) *For an airplane-single engine course:*
(i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and seaplane base operations;
(vii) Takeoffs, landings, and go-arounds;
(viii) Fundamentals of flight;
(ix) Performance maneuvers;
(x) Ground reference maneuvers;
(xi) Stalls, spins, and slow flight;
(xii) Basic instrument maneuvers;
(xiii) Emergency operations; and
(xiv) Postflight procedures.

(2) *For an airplane-multiengine course:*
(i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and seaplane base operations;
(vii) Takeoffs, landings, and go-arounds;
(viii) Fundamentals of flight;
(ix) Performance maneuvers;
(x) Ground reference maneuvers;
(xi) Stalls and slow flight;
(xii) Basic instrument maneuvers;
(xiii) Emergency operations;
(xiv) Multiengine operations; and
(xv) Postflight procedures.

(3) *For a rotorcraft-helicopter course:*
(i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and heliport operations;
(vii) Hovering maneuvers;
(viii) Takeoffs, landings, and go-arounds;
(ix) Fundamentals of flight;
(x) Performance maneuvers;
(xi) Emergency operations;
(xii) Special operations; and
(xiii) Postflight procedures.

(4) *For a rotorcraft-gyroplane course:*
(i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport operations;
(vii) Takeoffs, landings, and go-arounds;
(viii) Fundamentals of flight;
(ix) Performance maneuvers;
(x) Flight at slow airspeeds;
(xi) Ground reference maneuvers;
(xii) Emergency operations; and
(xiii) Postflight procedures.

(5) *For a powered-lift course:*
(i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and heliport operations;
(vii) Hovering maneuvers;
(viii) Takeoffs, landings, and go-arounds;
(ix) Fundamentals of flight;
(x) Performance maneuvers;
(xi) Ground reference maneuvers;
(xii) Stalls and slow flight;
(xiii) Basic instrument maneuvers;
(xiv) Emergency operations; and
(xv) Postflight procedures.

(6) *For a glider-nonpowered course:*
(i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and gliderport operations;
(vii) Takeoffs, landings, and go-arounds;
(viii) Fundamentals of flight;
(ix) Performance maneuvers;
(x) Ground reference maneuvers;
(xi) Emergency operations; and
(xii) Postflight procedures.

(7) *For a glider-powered course:*
(i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and gliderport operations;
(vii) Takeoffs, landings, and go-arounds;
(viii) Fundamentals of flight;
(ix) Performance maneuvers;
(x) Soaring techniques;
(xi) Performance maneuvers;
(xii) Stalls, spins, and slow flight;
(xiii) Emergency operations; and
(xiv) Postflight procedures.

(8) *For a lighter than air-airship course:*
(i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport operations;
(vii) Takeoffs, landings, and go-arounds;
(viii) Fundamentals of flight;
(ix) Performance maneuvers;
(x) Ground reference maneuvers;
(xi) Emergency operations; and
(xii) Postflight procedures.

(9) *For a lighter than air-balloon course:*
(i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight:
(v) Preflight procedures;
(vi) Balloonport operations;
(vii) Lift-offs and landings;
(viii) Fundamentals of flight;
(ix) Performance maneuvers;
(x) Emergency operations; and
(xi) Postflight procedures.

5. *Stage check and end-of-course tests.*

(a) Each student enrolled in a flight instructor course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the appropriate approved areas of operation of section 4 of this appendix for the flight instructor rating for which the course applies.

(b) In the case of a student who is enrolled in a flight instructor-airplane rating or -glider rating course, that student must have:

(1) Received a logbook endorsement from an authorized flight instructor on ground and flight training on stall awareness, spin entry, spins, and spin recovery procedures in an aircraft that is certificated for spins and that applies to the rating sought; and

(2) Demonstrated instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures.

Appendix G—Flight Instructor Instrument (Aircraft Category and Class) Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a flight instructor instrument certification course required under this part, for:

(a) Flight Instructor Instrument—airplane single-engine.

(b) Flight Instructor Instrument—airplane multiengine.

(c) Flight Instructor Instrument—helicopter.

(d) Flight Instructor Instrument—airship.

(e) Flight Instructor Instrument—powered-lift.

2. *Eligibility for enrollment.* A person must have the following to enroll in the flight portion of the flight instructor instrument course:

(a) A commercial or airline transport pilot certificate with an aircraft category and class rating appropriate to the flight instructor category and class rating for which the course applies; and

(b) A flight instructor certificate with an aircraft category and class rating that is appropriate to the flight instructor instrument (category and class of aircraft) rating for which the course applies.

3. *Aeronautical knowledge training.*

(a) *Approved course requirements.* Each approved course must include the aeronautical knowledge areas listed in paragraph (b) of this section, appropriate to the flight instructor instrument (category and class of aircraft) rating for which the course applies, and must include at least 15 hours of training.

(b) *Aeronautical knowledge areas.*

(1) Instrument rating aeronautical knowledge areas of this paragraph that are appropriate to the flight instructor instrument (category and class of aircraft) rating for which the course applies;

(2) Learning process;
(3) Elements of effective teaching;
(4) Student evaluation, quizzing, and testing;
(5) Course development;
(6) Lesson planning; and
(7) Classroom training techniques.

4. *Flight training.*

(a) *Approved course requirements.* Each approved course must include at least 15 hours of flight training in the approved areas of operation of paragraph (b) of this section for the flight instructor rating for which the course applies.

(b) *Use of flight training devices.*

(1) The course may include training in a flight training device, provided they are representative of the aircraft for which the course is approved for, meet requirements of this paragraph, and the training is given by an authorized ground or flight instructor.

(2) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part and a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or by this section, whichever is less. However, training in a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements.

(c) *Areas of operation.* Each approved course must include the flight training on the areas of operation listed in this paragraph (c)(2) of this section, that are appropriate to the instrument-aircraft category and class rating for which the course applies.

(2) For a flight instructor-instrument rating course.

(i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Air traffic control clearances and procedures;
(vi) Flight by reference to instruments;
(vii) Navigation aids;
(viii) Instrument approach procedures;
(ix) Emergency operations; and
(x) Postflight procedures.

5. Stage check and end-of-course tests.

Each student enrolled in a flight instructor instrument course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation of section 4 of this appendix for the flight instructor instrument (category and class of aircraft) rating for which the course applies.

Appendix H—Ground Instructor Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a ground instructor certification course and an additional ground instructor rating course, required under this part, for:

(a) Ground Instructor—Airplane category.
(b) Ground Instructor—Rotorcraft category.
(c) Ground Instructor—Glider category.
(d) Ground Instructor—Lighter-than-air category.
(e) Ground Instructor—Powered-lift category.
(f) Ground Instructor—Instrument.

2. *Aeronautical knowledge training.*

(a) *Approved course requirements.*

Each approved course must include the knowledge areas listed in paragraph (b) of this section, appropriate to the ground instructor category and class rating for which the course applies, and must include a total of at least:

(1) 20 hours of training, if the course is for an initial issuance of a ground instructor certificate; or

(2) 10 hours of training, if the course is for an additional ground instructor rating.

(b) Aeronautical knowledge areas.

(1) Learning process;
(2) Elements of effective teaching;
(3) Student evaluation, quizzing, and testing;
(4) Course development;
(5) Lesson planning;
(6) Classroom training techniques; and
(7) Aeronautical knowledge areas in which training is required for—

(i) A private and commercial pilot certificate that is appropriate to the category and class rating for which the course applies; and

(ii) An instrument rating, if applying for a ground instructor instrument rating.

(c) *School hours credited.*

A student who satisfactorily completed 2 years of study on the principles of education in a college or university may be credited with 10 hours of the required training in paragraph (a)(1) of this section.

3. *Stage check and end-of-course tests.*

Each student enrolled in a ground instructor course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved knowledge areas of section 2 of this appendix for the ground instructor rating for which the course applies.

Appendix I—Additional Aircraft Category or Class Rating Course

1. *Applicability.* This appendix prescribes the minimum curriculum for an additional aircraft category rating course or an additional aircraft class rating course required under this part, for:

(a) Airplane category—single-engine class.
(b) Airplane category—multiengine class.
(c) Rotorcraft category—helicopter class.
(d) Rotorcraft category—gyroplane class.
(e) Powered-lift category.
(f) Glider category—nonpowered class.
(g) Glider category—powered class.
(h) Lighter-than-air category—airship class.
(i) Lighter-than-air category—balloon class.

2. *Eligibility for enrollment.*

A person must have the following to enroll in the flight portion of an additional aircraft category or additional aircraft class rating course:

(a) The level of pilot certificate for the additional aircraft category or class rating for which the course applies.

(b) At least a valid third-class medical certificate issued under part 67 of this chapter, if the course is for a aircraft rating in other than a glider or balloon.

(c) A signed and dated statement affixed to the application certifying that no known medical defect exists that would make the person unable to pilot a glider or balloon, as appropriate.

3. *Aeronautical knowledge training.*

Each approved course for an additional aircraft category rating and additional aircraft class rating must include:

(a) The aeronautical knowledge training that apply to that aircraft rating by this part, and that are appropriate to the aircraft rating and pilot certificate level for which the course applies; and

(b) The total aeronautical knowledge training hours of each approved course must include the ground training time required by this part that are appropriate to the aircraft rating and pilot certificate level for which the course applies.

4. *Flight training.*

Each approved course for an additional aircraft category rating or additional aircraft class must include:

(a) The flight training on the approved areas of operation of this paragraph, that are appropriate to the aircraft rating and pilot certificate level for which the course applies.

(b) The total flight training time must include the training required by this part, that are appropriate to the aircraft rating and pilot certificate level for which the course applies.

(c) Flight training devices may be used when the course includes training in a flight training device, provided it is representative of the aircraft for which the course is approved, meets the requirements of this paragraph, and the training is given by an authorized ground or flight instructor.

(d) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(e) Training in a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(f) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part and a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or by this section, whichever is less. However, training in a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements.

5. *Stage check and end-of-course tests.*

(a) Each student enrolled in an additional aircraft category rating course or an additional aircraft class rating course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation of section 4 of this appendix that are appropriate the aircraft category and class rating for which the course applies at the appropriate pilot certificate level.

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in supervised PIC flight.

Appendix J—Aircraft Type Rating Course, for Other Than Airline Transport Pilot Certificate

1. *Applicability.* This appendix prescribes the minimum curriculum for an aircraft type rating course, for other than airline transport pilot certificate, for:

(a) A type rating in an airplane category—single engine class.
(b) A type rating in an airplane category—multiengine class.
(c) A type rating in a rotorcraft category—helicopter class.
(d) A type rating in a powered-lift category.
(e) Other aircraft type ratings specified by the Administrator through aircraft type certificate procedures.

2. *Eligibility for enrollment.*

A person must have the following to enroll in the flight portion of an aircraft type rating course:

(a) At least a private pilot certificate;

(b) At least a valid third-class medical certificate issued under part 67 of this chapter;

(c) An instrument rating in the category and class of aircraft that is appropriate to the aircraft type rating for which the course applies, provided the aircraft's type certificate does not have a VFR limitation, except as provided in paragraph (d) of this section; and

(d) Be concurrently enrolled in an instrument rating course in the category and class of aircraft that is appropriate to the aircraft type rating for which the course applies and satisfactorily accomplish the required instrument rating practical test concurrently with the aircraft type rating practical test.

3. *Aeronautical knowledge training.*

(a) *Approved course requirements.*

Each approved course must include the aeronautical knowledge areas listed in paragraph (b) of this section, appropriate to the aircraft type rating for which the course applies, and must include at least 15 hours of training.

(b) *Aeronautical knowledge areas.*

(1) Proper control of airspeed, configuration, direction, altitude, and attitude in accordance with procedures and limitations contained in the Aircraft's Flight Manual, checklists, or other approved material appropriate that apply to the aircraft type;

(2) Compliance with approved enroute, instrument approach, missed approach, ATC, or other applicable procedures that apply to the aircraft type;

(3) Subjects requiring a practical knowledge of the aircraft type, its powerplant, systems, components, operational, and performance factors;

(4) The aircraft's normal, abnormal, and emergency procedures, and the operations and limitations relating thereto;

(5) The appropriate provisions of the approved Aircraft's Flight Manual;

(6) Location and purpose of inspecting of each item on the aircraft's checklist that relate to the exterior and interior preflight; and

(7) Use of the aircraft's prestart checklist, appropriate control system checks, starting procedures, radio and electronic equipment checks, and the selection of proper navigation and communication radio facilities and frequencies.

4. *Flight training.*

(a) *Approved course requirements.*

Each approved course must include:

(1) Flight training on the approved areas of operation of paragraph (c) of this section in the aircraft type for which the course applies; and

(2) At least 25 hours of flight training of which at least 15 hours must be instrument flight training in the aircraft for which the course applies.

(b) *Use of flight training devices.*

(1) The course may include training in a flight training device, provided they are representative of the aircraft for which the course is approved for, meet requirements of this paragraph, and the training is given by an authorized ground or flight instructor.

(2) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part and a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or by this section, whichever is less. However, training in a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements.

(c) *Areas of operation.*

Each approved course must include the flight training on the areas of operation listed in this paragraph, that are appropriate to the aircraft category and class rating for which the course applies:

(1) *A type rating for an airplane-single engine course:*

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) Inflight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

(2) *A type rating for an airplane-multiengine course:*

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) Inflight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

(3) *A type rating for a powered-lift course:*

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) Inflight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

(4) *A type rating for a rotorcraft-helicopter course:*

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) Inflight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

(5) *Other aircraft type ratings specified by the Administrator through aircraft type certificate procedures:*

(i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) Inflight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

5. *Stage check and end-of-course tests.*

(a) Each student enrolled in an aircraft type rating course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation that apply to the aircraft type rating for which the course applies at the airline transport pilot certificate level; and

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in supervised PIC flight.

Appendix K—Special Preparation Courses

1. *Applicability.* This appendix prescribes the minimum curriculum for the special preparation courses that are listed in § 141.11 of this part.

2. *Eligibility for enrollment.* A person must have the following to enroll in the flight portion of a special preparation course:

(a) A pilot, flight instructor, or ground instructor certificate that is appropriate for the operating privilege or authorization that the course applies;

(b) At least a valid third-class medical certificate issued under part 67 of this chapter, if the course involves an aircraft other than a glider or balloon; and

(c) A statement signed and dated by the person certifying the person has no known medical defect that makes the person unable to pilot a glider or balloon, as appropriate.

3. *General requirements.*

(a) To be approved a special preparation course must:

(1) Meet the appropriate requirements of this appendix; and

(2) Prepare the graduate with the necessary skills, competency, and proficiency to exercise safely the privileges of the certificate, rating, or authorization for which the course is established.

(b) An approved special preparation course must include training on the operating privileges or authorization sought, for developing competency, proficiency, resourcefulness, self-confidence, and self-reliance in the student; and

(c) An approved special preparation course must include flight training in the operating privileges or authorization sought, for developing competency, proficiency, resourcefulness, self-confidence, and self-reliance in the student.

4. *Use of flight training devices.*

(a) The approved special preparation course may include training in a flight training device, provided they are representative of the aircraft for which the course is approved for, meet requirements of this paragraph, and the training is given by an authorized ground or flight instructor.

(b) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part, may be credited for a maximum of 10 percent of the total flight training hour

requirements of the approved course, or of this section, whichever is less.

(c) Training in a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(d) Training in a flight training device that meets the requirements of § 141.41(a)(1) of this part and a flight training device that meets the requirements of § 141.41(a)(2) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or by this section, whichever is less. However, training in a flight training device that meets the requirements of § 141.41(a)(2) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements.

5. *Stage check and end-of-course tests.*

Each person enrolled in a special preparation course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation that are appropriate to the operating privileges or authorization sought and for which the course applies.

6. *Agricultural aircraft operations course.*

An approved special preparation course for pilots in agricultural aircraft operations must include at least the following:

(a) At least 25 hours of training on-(1) Agricultural aircraft operations;

(2) Safe piloting operating practices and procedures for handling, dispensing, and disposing agricultural and industrial chemicals, including operating in and around congested areas; and

(3) Applicable provisions of part 137 of this chapter.

(b) At least 15 hours of flight training on agricultural aircraft operations.

7. *Rotorcraft external-load operations course.*

An approved special preparation course for pilots of external-load operations must include at least the following:

(a) At least 10 hours of training on-(1) Rotorcraft external-load operations;

(2) Safe piloting operating practices and procedures for external-load operations, including operating in and around congested areas; and

(3) Applicable provisions of part 133 of this chapter.

(b) At least 15 hours of flight training on external-load operations.

8. *Test pilot course.*

An approved special preparation course for pilots in test pilot duties must include at least the following:

(a) Aeronautical knowledge training on—

(1) Performing aircraft maintenance, quality assurance, and certification test flight operations;

(2) Safe piloting operating practices and procedures for performing aircraft maintenance, quality assurance, and certification test flight operations;

(3) Applicable parts of this chapter that pertain to aircraft maintenance, quality assurance, and certification tests; and

(4) Test pilot duties and responsibilities.

(b) At least 15 hours of flight training on test pilot duties and responsibilities.

9. *Special operations course.*

An approved special preparation course for pilots in special operations that are mission specific for certain aircraft, must include at least the following:

(a) Aeronautical knowledge training on—

(1) Performing that special flight operation;

(2) Safe piloting operating practices and procedures for performing that special flight operation;

(3) Applicable parts of this chapter that pertain to that special flight operation; and

(4) Pilot-in-command duties and responsibilities for performing that special flight operation.

(b) Flight training—

(1) On that special flight operation; and

(2) To develop skills, competency, proficiency, resourcefulness, self-confidence, and self-reliance in the student for performing that special flight operation in a safe manner.

10. *Pilot refresher course.*

An approved special preparation pilot refresher course for a pilot certificate, aircraft category and class rating, or an instrument rating must include at least the following:

(a) At least 4 hours of aeronautical knowledge training on—

(1) The aeronautical knowledge areas that are applicable to the level of pilot certificate, aircraft category and class rating, or instrument rating, as appropriate, that pertain to that course;

(2) Safe piloting operating practices and procedures; and

(3) Applicable provisions of parts 61 and 91 of this chapter for pilots.

(b) At least 6 hours of flight training on the approved areas of operation that are applicable to level of pilot certificate, aircraft category and class rating, or instrument rating, as appropriate, for performing pilot-in-command duties and responsibilities.

11. *Flight instructor refresher course.*

An approved special preparation flight instructor refresher course must include at least a combined total of 16 hours of aeronautical knowledge training, flight training, or any combination of ground and flight training on the following:

(a) Aeronautical knowledge training on—

(1) The aeronautical knowledge areas of part 61 of this chapter that apply to student, recreational, private, and commercial pilot certificates and instrument ratings;

(2) The aeronautical knowledge areas of part 61 of this chapter that apply to flight instructor certificates;

(3) Safe piloting operating practices and procedures, including airport operations and operating in the National Airspace System; and

(4) Applicable provisions of parts 61 and 91 of this chapter that apply to pilots and flight instructors.

(b) Flight training to review—

(1) The approved areas of operations applicable to student, recreational, private, and commercial pilot certificates and instrument ratings; and

(2) The skills, competency, and proficiency for performing flight instructor duties and responsibilities.

12. *Ground instructor refresher course.*

An approved special preparation ground instructor refresher course must include at least 16 hours of aeronautical knowledge training on:

(a) The aeronautical knowledge areas of part 61 of this chapter that apply to student, recreational, private, and commercial pilots and instrument rated pilots;

(b) The aeronautical knowledge areas of part 61 of this chapter that apply to ground instructors;

(c) Safe piloting operating practices and procedures, including airport operations and operating in the National Airspace System; and

(d) Applicable provisions of parts 61 and 91 of this chapter that apply to pilots and ground instructors.

Appendix L—Pilot Ground School Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a pilot ground school course required under this part.

2. *General requirements.* An approved course of training for a pilot ground school must include training on the aeronautical knowledge areas that are:

(a) Needed to safely exercise the privileges of the certificate, rating, or authority for which the course is established; and

(b) Conducted to develop competency, proficiency, resourcefulness, self-confidence, and self-reliance in each student.

3. *Aeronautical knowledge training requirements.*

Each approved pilot ground school course must include:

(a) The aeronautical knowledge training that apply to that aircraft rating by this part, and that are appropriate to the aircraft rating and pilot certificate level for which the course applies; and

(b) The total aeronautical knowledge training hours must include an adequate number of hours that are appropriate to the aircraft rating and pilot certificate level for which the course applies.

4. *Stage check and end-of-course tests.*

Each person enrolled in a pilot ground school course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation that are appropriate to the operating privileges or authorization that graduation from the course will permit and for which the course applies.

5. Part 143 is removed and reserved.

PART 143—[RESERVED]

Issued in Washington, D.C., on July 27, 1995.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 95–18911 Filed 7–28–95; 4:01 pm]

BILLING CODE 4910–13–P

federal register

Friday
August 11, 1995

Part III

Department of Education

34 CFR Parts 76 and 667

State-administered Programs; State Postsecondary Review Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 76 and 667

RIN 1880–AA59

State-administered Programs; State Postsecondary Review Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends Part 76 of the Education Department General Administrative Regulations (EDGAR) to require a State to file its State plan and other related documents under a given program by a date certain or face deferral of the date on which the State may begin to obligate funds under the program. The Secretary also modifies the policy announced in the notice of proposed rulemaking (NPRM) regarding pre-award costs incurred after the date funds are available for obligation by the Secretary and before the date a State has an approved State plan. Under the modified policy, the Secretary will allow pre-award costs for matching and Maintenance of Effort expenditures because these expenditures are not subject to the Cash Management Improvement Act of 1990 (CMIA). The Secretary takes these actions to protect the Federal Government from interest liabilities under the CMIA when the Department is late in making an initial payment under a State-administered program because the State failed to submit a substantially approvable plan or other required document in a timely fashion. The Secretary also makes conforming amendments to Part 667.

DATES: These regulations take effect on September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wathen-Dunn, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4434, Washington, D.C. 20202–2243. Telephone: (202) 401–6700. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Cash Management Improvement Act of 1990 (CMIA) was passed by Congress to ensure greater efficiency, effectiveness, and equity in the exchange of funds between the Federal Government and the States. Under this statute and the Treasury Department's implementing regulations at 31 CFR Part 205, the Federal Government is liable for interest payments to a State that disburses its own funds for Federal program purposes before the date that Federal funds are deposited to the State's bank account for those obligations, 31 U.S.C. 6503(d). Conversely, a State must pay interest to the Federal Government from the time Federal funds are deposited to the State's account until the time that those funds are paid out by the State, 31 U.S.C. 6503(c).

The CMIA applies to "major Federal assistance programs," which are determined under a chart in the implementing Treasury regulations at 31 CFR 205.4 and Appendix A to Part 205, Subpart A. The chart establishes thresholds for CMIA coverage based on a comparison between the amount of Federal funds expended in a State under a particular program and the total Federal funds expended in the State. The Treasury Department negotiates agreements with each of the States that cover a number of issues under the CMIA, including which programs of the Federal Government are covered by the CMIA in that State. Under the Treasury-State agreement, a State may choose to cover more programs under the CMIA than would be required under the regulatory chart. Thus, to determine whether a program administered by the Department is covered by the CMIA in a particular State, contact the CMIA contact person for the State. These people are usually located in fiscal offices such as a State controller's office. Many of the formula grant State-administered programs of the Department meet the threshold for coverage in most, if not all, States.

The Department of Education (Department) published a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 16, 1993, (58 FR 65856) that proposed regulations to limit the Federal Government's interest liability under the CMIA. The Secretary received 60 comments in response to the NPRM from State educational agencies, State fiscal offices, a trust territory, the Treasury Department, and three national organizations. In addition to the comments, the Department has discussed this rule with the States at various conferences and presentations over the past one and one-half years. Most States asked the Department to defer the proposed rule so that it would not apply to funds made available for obligation by the Secretary starting in calendar year 1994. The reason advanced most often to support the deferral request was to give States time to adjust their schedules to a new clearance process designed to submit State plans to the Department on an earlier date. Commenters who were responsible for State administration of programs that are current-funded, such as the Library Services and Construction Act, suggested that the change in submission date would be particularly burdensome for them without greater advance notice of the change in the regulations. The commenters also asked that the Secretary not apply, in 1994, the decision not to grant pre-award costs if a State is late in submitting its State plan.

In addition to asking for the deferrals, the commenters raised many questions that had to be answered before the regulations could become effective. The Secretary decided to defer both application of the proposed rule and the decision not to grant pre-award costs so that States would have additional time to adjust their State plan development processes to the timelines in the proposed regulations. Thus, the Secretary published a notice in the **Federal Register** on May 26, 1994 (59 FR 27404) indicating his decision to defer application of the actions proposed in the NPRM until the submission of State plans in the spring and summer of 1995. After considering the comments, the Secretary has decided to apply this final rule to applications submitted in the spring and summer of 1996.

The NPRM for these regulations discussed the basis for these regulations, the history of how the Department treated late State plans in past years, the effect of the Treasury regulations implementing the Act on the Department's practices, and the Department's proposed regulations.

Analysis of Comments and Changes

An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. These regulations are designed to cover the full spectrum of the Department's State-administered programs. Thus, this preamble uses examples from many programs to illustrate the applicability of the final regulations. If you have questions about the application of these regulations to a specific program of the Department, contact the program office responsible for the program.

Technical changes to the regulations have been made to improve their quality. These changes, which do not affect substance, are not discussed in this preamble.

General Comments on Interest Liability

Comment: Several commenters expressed concern over the proposed regulatory changes that would limit interest liability to States. Some States concurred with the regulations that would require States to submit a timely State plan and the Department of Education to respond in a timely manner so interest would not be an issue. However, they believed that if the Federal Government was not responsive within a specific time frame, interest should be paid to the States.

Discussion: The purpose of the CMIA is to achieve efficient, equitable cash management practices so that no interest is exchanged. It is prudent for the Department of Education to take action to correct past practices regarding the acceptance of State plans that are submitted late. The CMIA requires the Secretary of Treasury to regulate and enforce timely disbursements of funds by Federal agencies. The final regulations require States to submit substantially approvable plans by specific dates, and the Department to respond in a timely manner, or pay interest to the States in cases where States use their own funds to pay for Federal program obligations during a period of delay caused by the Department. The Secretary is committed to conducting timely reviews of State plans.

Change: None.

What does substantially approvable mean?

Comment: Many commenters asked the Secretary to define "substantially approvable," stressing the heightened importance of its meaning now that the Secretary has decided not to grant pre-award costs. Some of the commenters expressed the fear that the term could and would be interpreted differently by every program official who approves State plans. Others asked that explicit criteria be included in a definition of the term or that a term different than substantially approvable be used as a test to determine whether funds should flow to a State. One commenter suggested that the Department should authorize the flow of funds if a State made a "good faith" submission.

One commenter stated that there have been numerous requests to reword sections of its State plans that have been approved by other staff in past years and that the State had been asked to move sentences from one page to another or to repeat sentences that appear on one page at a later place in the State plan. To this commenter, it was unclear whether the failure to respond to these requests would have rendered the plan not substantially approvable.

Another commenter was concerned that if substantially approvable is interpreted to mean not just submission of required components, but resolution of disagreements about approvable content, the term must mean the same thing as "fully approvable." This commenter believed that disagreements over interpretations of content should not delay the allocation of funds because these disagreements often take months to resolve.

Some of the commenters asked exactly what documents had to be submitted to determine whether a plan was substantially approvable. One recommended that the Department establish a regulatory list of required documents so that there could be no ambiguity about what was required to be submitted.

One commenter was concerned that minor modifications or submission of additional information should not delay the availability of Federal funds for obligation by the State.

Discussion: The Secretary has decided to continue using the term "substantially approvable" as the test for whether a State may begin to obligate funds under a program. Most of the programs of the Department and its predecessor, the Education Division of the former Department of Health, Education, and Welfare, have used this term since the early 1970s as the test to determine whether a State may begin to obligate funds. Under this standard, the Department decides whether a plan is substantially approvable based on whether the plan has met substantive requirements under a funding statute and regulations.

While some commenters expressed concern that the substantially approvable standard might be used to defer funding for a State based solely on the need for trivial changes to the State plan, the Department has always made its determination of whether a State plan is substantially approvable based on whether the plan has met substantive requirements under a funding statute and regulations. Thus, the need for minor modifications of a non-substantive nature will not delay the availability of Federal funds for obligation by the State.

The Secretary is aware that in some cases employees of the Department have asked for changes to elements of a State plan that might not be deficient under the "substantially approvable" test. These requests have been motivated by a desire to assist a State in improving its State plan and have been made in the context of other changes that have been requested as necessary to make a plan substantially approvable. In the future, employees of the Department will distinguish their requests so that State officials will know which requests must be satisfied in order to make a State plan substantially approvable.

The Secretary understands the concern that each employee of the Department may interpret the standard differently, subjecting a State to arbitrary determinations by the Department. However, the Secretary notes that front line employees of the Department who review State plans do not make the final decisions about whether a plan is substantially approvable. Those decisions are made by senior officials in consultation with program managers. Thus, a decision about whether a particular plan is substantially approvable is made by officials who are exposed to a broad array of plans and who exercise their judgment to ensure that States are treated equitably.

The following examples are taken from past experiences of the Department and demonstrate how the term "substantially approvable" has been applied in the context of various programs.

Example 1: Part B of the Individuals With Disabilities Education Act (IDEA)

Under the IDEA, Part B, each participating agency must permit parents to inspect and review any education record relating to their children which is collected, maintained, or used by the agency under Part B. The agency must comply with a parental request to inspect and review records without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made. In one case, the State plan referenced a State statute that required that "After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created." The State was required to ensure that a parent's right to access under the Federal requirement was not limited by State statute in order for its plan to be substantially approvable.

Example 2: Rehabilitation Act of 1973

Section 101(a)(5)(A) of the Rehabilitation Act, as amended in 1992, contains the requirements for the order of selection for services. Under this section, a State plan must show and provide the justification for an order of selection that will be used by the State in determining which individuals with disabilities will be served if the State cannot serve all individuals eligible for services under the Act. The order of selection for the provision of vocational rehabilitation services must be

determined on the basis of serving first those individuals with the most severe disabilities in accordance with criteria established by the State. The State plan must also describe the outcomes and service goals for the individuals served by the State and the time within which the outcomes and service goals may be achieved.

Several State plans that indicated an inability to serve all eligible individuals have been found not to be substantially approvable because they failed to contain the State's criteria for determining which individuals with disabilities are the individuals with the most severe disabilities. In other cases, State plans were found not substantially approvable because the plans failed to indicate that the State would target its resources to serve individuals with the most severe disabilities first.

Example 3: Adult Education Act

The Adult Education Act and its implementing regulations require assurances that public and nonprofit agencies, including correctional education agencies, be provided direct and equitable access to all Federal funds provided under the State plan program. However, one State plan stated "Correctional agencies will be eligible for any newly appropriated federal funding directly from the U.S. Department of Education for corrections educational programs." This language was unacceptable under the requirements of the Act and regulations. The State was asked to submit a revision to the plan to correct the deficiency. The State plan was found substantially approvable when the State revised it to say "Eligible recipients for adult basic education funding include correctional educational agencies."

Example 4: Library Services and Construction Act (LSCA)

One State submitted a plan in which a project for strengthening the capacity of the State Library Agency and an Administration project both included administrative expenses. The plan was not considered substantially approvable because activities that would be considered as administration of the Act are not allowed in a Strengthening project. The State was required to include all administrative expenditures under its Administration project before the plan was found substantially approvable.

Under the LSCA, a State must have an approved Long-range Program (LRP) on record with the Department, and all annual programs must be based on needs, priorities, and plans identified in the LRP. In the second year after the passage of amendments to LSCA in 1990, several State plans were not found substantially approvable because the States had not changed their LRPs to reflect new statutory priorities under the LSCA amendments. These plans were found substantially approvable when the new priorities were addressed either in a revised or amended LRP.

The examples described above indicate that the kinds of issues that must be resolved before a State plan can be found substantially approvable are not trivial and the Department's decisions in these cases are based on clear mandates in statutes and implementing program regulations. The Secretary assures the States that the Department will not find a State plan not substantially approvable simply because an assurance or other text is misplaced in the plan or there is some other non-substantive problem with the plan.

This preamble discusses the issue of what documents must be submitted under the heading "Should the Department be required to send documents, including a list of any other documents required to prove eligibility under each program, to States by a date certain and what should be the effect of the Department's failure to do so?"

Change: None.

How do the regulations affect Maintenance of Effort and Matching Requirements?

Several commenters addressed the discussion in the NPRM regarding the effect of the proposed regulations on fiscal maintenance of effort requirements (MOE). Some confusion was created by the fact that the preamble described the MOE requirement under the Rehabilitation Act as if it were an eligibility requirement. However, under that Act, failure to meet MOE requirements does not deny eligibility. Instead, the allotment for a State is reduced by the amount that the State fails to meet the MOE requirement unless a waiver or modification of the MOE requirement is granted.

Comment: One commenter was concerned that the regulations appeared to require submission of documents demonstrating that a State had met the MOE requirements before a State plan could be considered substantially approvable. The commenter noted that this would not be workable because the financial report needed to demonstrate that MOE had been met was not available until 90 days after the end of the grant period and the State plan for a current funded program had to be submitted before the end of the prior grant period.

Discussion: The CMIA and these implementing regulations do not independently require submission of any document. The documents that must be submitted under a particular program are based on the program statute and implementing regulations.

Most program offices of the Department do not review actual MOE data before making a decision that a plan is substantially approvable. Instead, these programs require a State to submit an assurance that the State has met the MOE requirement based on currently available data. Under these programs, the Department relies on financial audits, reports, and other information to determine whether a State has met its MOE requirement for a particular year. Thus, for these programs, submission of MOE documentation, other than an assurance, would not be required before the Department made a decision about whether a State plan was substantially approvable.

One program office that does review MOE data as part of the State-plan review process is the office administering the LSCA program. Under the LSCA, the determination of whether a State has met a MOE requirement is based on a comparison of the planned expenditures of the State and the expenditures of the State from the second preceding year. Program officials for this program compare the budget of the State-plan submission against the expenditures of the State for the second preceding year before the budgeted year to determine if the State has budgeted sufficient funds to meet the MOE requirement.

Change: None.

Comment: Many commenters wanted the Department to accept, for the purpose of meeting MOE and matching requirements, non-federal expenditures made after the date that funds are available for obligation by the Secretary but before the date a State plan was found substantially approvable. Under some programs, the difference of just a few thousand dollars made a difference for a State in determining whether it met its MOE requirements.

Discussion: The Secretary has decided to modify the policy announced in the NPRM regarding pre-award costs, based on the concerns expressed in these comments. Expenditures incurred to meet matching and MOE requirements are not expenditures for which the Federal Government must deposit funds to the account of a State. Thus, these expenditures are not subject to the interest liabilities of the CMIA.

Given that the CMIA does not apply to non-Federal funds used to meet matching and MOE requirements, the Secretary decided that he had more flexibility to permit a State to use these expenditures to meet matching and MOE requirements even though the period for obligation by the Secretary has started and the State does not yet have a substantially approvable State plan. Thus, the Secretary has decided to permit States to use these expenditures to meet matching and MOE requirements before the date a State plan is found substantially approvable. However, a State that chooses to use its funds for these types of expenditures would risk the possibility that they would be found unallowable because they do not comply with the State plan that is finally approved. The Secretary decided to change the pre-award cost policy so that States managing programs that require matching or MOE expenditures would have greater flexibility to keep those programs running with matching and MOE expenditures during a period when costs would otherwise be unallowable due to the late submission of a State plan.

The Secretary notes that the MOE determination under some programs of the Department is not based on State expenditures under the Federal program. For example, under the newly reauthorized Title I program of the Elementary and Secondary Education Act of 1965, the MOE determination is based on whether a State has expended sufficient funds on free public education. Another example is one of the MOE requirements under the LSCA Title I program under which the MOE determination is based on State expenditures under a State program that has a similar purpose to the Federal program. Under requirements such as these, State expenditures used to meet the MOE requirement do not need to be for allowable costs under the Federal program. Thus, for these types of MOE requirements, even without the change in policy regarding pre-award costs, expenditures made by a State after the start of the obligation period but before the State plan is found substantially approvable may be used by the State to meet MOE requirements.

Change: No change has been made to the regulations. However, the Secretary has modified the policy regarding pre-award costs to permit grantees to use expenditures made after the date funds become available for obligation by the Secretary and before the date a State plan is found substantially approvable to meet matching and MOE requirements.

When must State plans be submitted?

Comment: Fourteen comments were received concerning the due date specified in proposed § 76.703(a)(1) for submission of State plans. One commenter stated that the proposed submission date change for State plans would not impact that State. Four commenters were concerned that the proposed April 1 submission would be too early: (a) to allow planning time; and, (b) because State program requirements for public input prohibited early submission. One commenter was concerned that an April 1 submission date would not allow sufficient time for Departmental review and feedback to States needing to correct their plans, and still allow adequate time for States to make these corrections before the availability date. Two commenters suggested that an already lengthy process would be made still longer. One commenter believed that the time frame for receiving a plan in substantially approvable form should be 60 days before the start of the obligation period rather than 90 days before that date. Two commenters were concerned that States received their final allocations prior to plan submission in order to provide final financial reports. Three comments concerned precedence of statutory deadlines over regulatory deadlines. One commenter suggested that the Department issue a formal notification to the State when a plan is approved.

Discussion: The Secretary set the deadline date in § 76.703(a)(2) for the submission of State plans as a back-up that would be used only if a program office did not establish its own deadline for submission of State plans. The administrators for each State-administered program are free to set deadlines that are appropriate for their programs. Most State-administered programs already have deadlines that are set in statute, regulations, or direct communications with States. The Secretary is aware that the establishment of a deadline three months before the start of the obligation period could have caused hardship on some States if it had been imposed last spring, before States had time to adjust their State-plan preparation processes to mesh with the new regulations. As stated in the May 26, 1994 (59 FR 27404) document, this consideration was one of the factors that the Secretary considered in deciding to defer application of the regulations to submissions made during the spring and summer of 1995. Therefore, the Secretary has decided to leave the deadline in § 76.703(a)(2) as stated in the proposed regulations. If a State believes that the submission date for a particular program should be adjusted due to conditions particular to that program, the issue should be addressed with Department officials responsible for that program.

Change: None.

When should a plan be considered submitted?

Comment: Five commenters opposed the proposed change in the test under proposed § 76.703(b) that the Department uses to determine when a State plan is considered submitted. The proposed regulations would change the date of submission from the postmark date to the date the State plan is actually received by the Department. The commenters' reasons for opposition included: (1) the acceptance by other Federal agencies of a postmark date; (2) increased burden on States resulting from reduced time frames to complete plans because of having to mail them earlier in order to assure receipt by the Department by the required date; and (3) lack of control over the mail process, which could have negative financial consequences on States. One commenter did not present a reason for opposing the change from postmark to receipt date.

Discussion: In the past, the Department frequently received grant applications from grantees that had mailed applications on the submission date, with receipt by the Department as much as two weeks later. The lag time created by "mail-in-transit" has resulted in the Department having shortened review time frames for grant applicants, thereby hampering the Department's ability to complete grant reviews within its prescribed time frame. Earlier mailing of a State plan or use of an expedited delivery service by grant applicants would assure the Department a uniform application review period for all State plans under each grant program.

Change: None.

Should the Department be required to send documents, including a list of any other documents required to prove eligibility under each program, to States by a date certain, and what should be the effect of the Department's failure to do so?

Comment: Some commenters expressed the opinion that the Department should be required to send to States all State plan submission instructions and other relevent materials in a timely manner. Commenters stressed the critical importance this issue plays in allowing States sufficient time to develop and submit plans by the established date, particularly when public input is required.

Specifically, some commenters suggested the Department provide all necessary guidance three months before the States' prescribed State plan submission date, and other commenters recommended six-, four-, and two-month lead times for the receipt of these materials. Other commenters did not suggest specific time frames, but called for "timely receipt" of all plan instructions issued by the Department.

One commenter proposed that the regulations at § 76.703(a)(2) include a list of any other documents required to prove eligibility under each program subject to this part.

A related issue addressed by some commenters concerned proposed penalties against the Department should it fail to provide all relevant State plan materials and instructions by a date certain. Some of these commenters suggested that when guidance is late, the deadline for State plan submission should be extended by one day for each day the Department is late in providing guidance. Other commenters proposed a general waiver of the penalty to the State for late submissions if the Department transmits the guidance to the States late, and one commenter suggested an unspecified extension for the State if this occurs.

Discussion: The Secretary is committed to providing States necessary State plan information and instructions—including a list of required documents—in a timely manner. In light of this commitment, the regulation has been changed to require each program subject to these regulations to provide guidance to the States regarding the contents of State plans. The Secretary establishes the date for the delivery of guidance so that there are at least as many days between that date and the date that State plans must be submitted to the Department as there are days between the date that State plans must be submitted to the Department and the date that funds are available for obligation on July 1, or October 1, as appropriate.

In the event that the Department fails to deliver guidance as required, the deadline for the receipt of State plans will be extended one day for each day that the documents are late in being received by the State. The Secretary intends that guidance be sent to the States far enough in advance of the due date for the guidance that the information will be received by the States on or before the due date for the guidance. If a State asserts that it has received the guidance after the due date, it will have the burden of proving the date that it received the guidance. The Secretary is aware of the Department's responsibility to deliver State plan guidance on a timely basis, and will devote appropriate resources to ensure that guidance documents are delivered on a timely basis.

Change: A new paragraph (b) has been added to § 76.703 to cover deferrals of the date that a State plan must be submitted to the Department. Paragraph (b)(3) covers deferral of State plan submission dates caused by failure of the Department to deliver timely guidance to the States regarding State plan requirements.

Should there be a deadline for the Department's decision and what should be the effect of failure to meet such a deadline?

Comment: Many commenters expressed concern that the proposed regulations did not require the Department to complete a timely review such that, if State plans and other documents are submitted on time, the State has an opportunity to submit any necessary modifications or corrections before any delay in the obligation date is imposed. None of the examples in the proposed regulations indicate what will happen if the State plan is submitted in substantially approvable form, on time, but the Department fails to conduct a timely review.

Some of the commenters cited the following example: the State plan is submitted on April 1; the Department completes the review at the end of June and finds that the plan is not substantially approvable; corrections are requested but insufficient time is allowed for the State to make the corrections for an obligation date of July 1.

Several commenters recommended imposing time limits for the Departmental review of the plan. Some of these commenters suggested thirty days, while another commenter suggested forty-five days.

One commenter suggested that, if a time limit on Departmental review could not be imposed, resulting in a State agency not receiving Federal funds until after the first day the funds are available for obligation, then at the very least an appeal process with provisions for due process should be established.

One commenter suggested that if the Department were unable to complete a review in a timely manner, the State should be granted pre-award costs.

Discussion: The Secretary is committed to conducting timely reviews of State plans. If a State submits a State plan in conformance with the guidance provided, it should take less than the three months allotted for the Department to review the plan. Under those circumstances it is anticipated that any changes or corrections needed to make the plan substantially approvable will be minor and can be completed in a very limited amount of time. On the other hand, if a State submits a plan that is not in accord with the guidance provided, then it is possible that the resubmission and approval process could extend beyond the date funds are first available to the Department for obligation. If the Department fails to conduct a timely review of a State plan that is submitted in substantially approvable form on the date it is due, the State could begin to obligate funds on the date funds are available for obligation by the Secretary. Also, States have a responsibility to submit plans that are substantially approvable upon submission.

The Secretary believes that these regulations will result in States submitting timely and high quality plans and in efficient and punctual review by the various Department program offices. In view of the wide variety of content requirements for State plans under Department programs and of the number of plans reviewed by various program offices, the Secretary declines to impose intermediate time frames for Department review of State plans within this three-month period. However, the Secretary believes that the Department should be held accountable in meeting the timeliness established for review of State plans under a program. Thus, the Secretary has decided to modify the regulation so that if the Department takes longer to review a plan than established in advance, the Secretary will grant pre-award costs to the State, regardless of what the regulation would otherwise require.

Change: A new paragraph (g) has been added to § 76.703 so that if the Department takes longer to review a State plan than established under the regulation, the Secretary would grant pre-award costs.

Should the Department establish procedures for notifying the States of the results of the Department's review?

Comment: Several commenters expressed concerns about the Department's ability to maintain and review documents and notify States of the results of that review in a timely manner.

One commenter asked whether the grant award would be the indication of approval or whether there would also be an accompanying letter.

Two commenters suggested that the Department should notify the State when the initial State plan submission is received.

Discussion: The Secretary believes that the Department must be timely in its response to States concerning the State plan submission. The Secretary will ensure that the Department establishes internal procedures in order to facilitate the notification process. The Department will establish a method of formal notification to States when the documents specified in guidance provided by the Department have been received for review. If a State submits an incomplete State plan, the Department will informally notify the State regarding the missing pieces. Also, the Department will develop internal procedures to include both formal and informal means (phone and fax messages) of notifying the States concerning the status of the review during the process. The Department officially notifies a State regarding the issuance of its grant through a notification of grant award (NGA). Some program offices may provide cover letters prior to or accompanying the NGA. It is mutually beneficial to all parties for the Department to conduct a timely review which includes periodic contact with the State.

Change: A new paragraph (c)(3) has been added to § 76.703 that will require the Department to inform States when all documents specified in Departmental guidance have been received by the Department.

Should the Department change the proposed rule about who may sign for changes to a State plan?

Comment: Two commenters expressed concern about the requirement in proposed § 76.703(e)(2) that would require a State that submits additional information to bring the State plan into substantially approvable form to secure signatures for required changes from the original submitter of the plan or an authorized delegate of that officer.

One commenter suggested that since changes to the plan often are faxed to the Department for review, the State should be allowed to supply the Department with the names of individuals who are authorized to sign the State plan.

One commenter suggested that the Department should consider not requiring signatures from other agencies (i.e. Drug Free Communities) and allow the State agency receiving the grant to submit its plan separately.

Discussion: The Secretary appreciates the difficulties that arise in securing appropriate signatures in a very short turn-around time. The Secretary agrees that submitting a list of staff authorized to sign-off on changes to the plan would be appropriate. The Department does not have the authority to waive the signature required of the Governor for the drug-free program.

The Department will work with States to develop procedures for submitting documents by electronic transmittal and appropriate means of verifying signatures.

Change: None

Should the Department establish a rule permitting waiver of the § 76.703 regulation in certain circumstances?

Comment: Several commenters requested that the regulations provide for a waiver authority or other discretion by the Department to allow pre-award costs when submission of a State plan is late. The reasons commenters felt might justify exceptions to the general rule included circumstances beyond a State's control, such as a natural disaster, absence of State program personnel due to serious medical problems or death and instances when the Federal interest in the timely beginning or continuation of a State's program would be adversely affected, or when significant impairment to the achievement of a program's objectives would result.

Discussion: The Secretary agrees with commenters that there is a need to allow the Department the discretion to allow pre-award costs for expenditures under the Federal program in some limited circumstances. However, the Secretary believes that instances in which pre-award costs are allowed under these regulations should be clear, susceptible to consistent application across programs, and narrowly tailored to situations that are truly outside the control of the State. Some programs may need to permit discretion in granting pre-award costs in program-specific situations. This authority should be addressed, as appropriate, in individual program regulations.

Change: A new paragraph (b) has been added to § 76.703 to cover deferrals for the date that a State plan must be submitted to the Department. Paragraph (b)(1) provides that the Secretary, at a State's request, may extend the submission date for a State plan and, if necessary, approve pre-award costs for a particular grant based on a Presidentially-declared disaster in the State that significantly impairs the ability of the State to submit a timely application.

Should the Department have a special rule when there is a delay in program appropriations or implementing regulations?

Comment: Several commenters noted that there are instances when, due to changing Federal statutes and regulations, States do not have notice of what the State plan requirements are in enough time to enable them to complete the development of the plan and submit it on time. One commenter noted that for one program an April 1 submission date would mean that they would have to begin preparation of the plan 12 to 15 months prior to the start of the fiscal year to which the grant applies. Commenters indicated that States should not be penalized for late submissions in circumstances where there has been a late appropriation or the Department has not notified the States in a timely manner regarding the State plan requirements for a program.

Discussion: Regarding late appropriations, the Treasury Department regulations at 31 CFR 205.11(b) already provide that if a State pays out its own funds for program purposes due to a delay in the passage of a Federal appropriations act, the Federal Government will incur an interest liability if the appropriations act covers the period of the State's expenditure and permits payment for expenditures already incurred by the State. The Secretary does not have authority to change the result under the Treasury regulations.

Regarding program regulations, as a general rule, the requirements that apply to a grant are the statutes and regulations that are in effect on the day that the grant is made. Often, legislation that imposes significant new responsibilities on States has a delayed effective date so that States have time to make the changes necessary for implementation. Similarly, the Federal rulemaking process generally incorporates a delayed effective date, although that delay may not be sufficient in some cases to allow States to make necessary changes in their State plans. Therefore, the Secretary agrees with commenters that these regulations should be modified to allow States a reasonable period of time to make needed changes in State plans.

In many instances, under current practice, if new program requirements take effect at a time that the Department determines is too close to the date on which grants are to be made to allow the State to make needed changes, the Department obtains an assurance from the State that the State is operating the program consistent with all applicable requirements, including those that are newly effective. Other assurances and documentation that the new requirements are being followed may be required by particular programs. Revisions to the State plan to incorporate changes needed as a result of the new requirements must be completed as soon as possible but generally not later than the expected

beginning of the next grant award period. The Secretary believes that this practice may continue to be appropriate for situations that can be addressed by State assurances and documentation that program requirements are being implemented. In other situations, an assurance would not be sufficient to address the new State plan requirements, even in the short run, and the Secretary may need the discretion to give States additional time to submit their applications under a program.

Change: A new § 76.704 has been added that provides that, unless the particular program has established an earlier date, the State plan must meet the requirements that were in effect for the program three months before the State plan due date and any additional requirements known on that date that are scheduled to become effective by the expected grant award date (July 1 for forward-funded programs or October 1 for current-funded programs). If any of these requirements is changed after that date (three months before the State plan due date or the other date established by the program), the Secretary may require a State to submit appropriate assurances and documentation or extend the due date for the State plan and, if necessary under an extended due date, approve pre-award costs for that program.

Should States be permitted to waive their right to interest in return for the Department's acceptance of late State plans without penalty?

Comment: One commenter suggested that the regulations provide that the Secretary could waive these regulations if the State agreed to "waive" its claim to interest on the State funds used for pre-award costs under the CMIA. Another commenter recommended that expenditures made during a period that a State plan is not substantially approved be exempted from the operation of the CMIA.

Discussion: The Department is without authority to require or even permit States to forego claims to interest under the CMIA. Congress delegated to the Treasury Department the authority to enforce the CMIA. The operation of the CMIA and the programs to which it applies are controlled by Treasury's CMIA implementing regulations, 31 CFR part 205, and the State-Treasury agreements under those regulations.

Change: None.

Should certain programs be exempt from the regulations in 76.703?

Comment: Commenters noted the particular problems of the programs that are not forward-funded, such as the LSCA programs and the Rehabilitation Act programs. One commenter suggested that these programs be exempted from the operation of the proposed regulations.

Discussion: As explained above, the Secretary cannot control the application of the CMIA to these programs. Thus, the Secretary does not believe that it would be prudent to exclude these programs from the operation of these Department regulations.

Change: None.

Should subgrantees be permitted to obligate funds during a period before the State may begin to obligate funds?

Comment: One comment was received regarding the relationship between proposed § 76.703 and the current § 76.704 (redesignated by this final rulemaking document as § 76.708), which provides that a subgrantee may not begin to obligate funds until the State may begin to obligate funds. The commenter noted that, under many State-administered programs, most of the funds flow through to subgrantees that are required to provide most of the services required under a program. The commenter thought that the proposed regulations should be amended so that subgrantees could begin to obligate funds even if the State had failed to submit a substantially approvable State plan. According to the commenter, this result was appropriate because subgrantees have no control over the timely preparation of the State plan but would be penalized under the proposed regulations for a State's failure to submit a substantially approvable State plan on a timely basis.

Discussion: The Secretary is aware that subgrantees must depend upon responsible management of Federal programs by the States in order to be able to obligate funds at the start of the obligation period. However, the Secretary cannot sever this dependency due to the relationship between the Department, the States, and their subgrantees. Under the framework established by Congress for State-administered programs, the Department makes grants to States and has no direct relationship with subgrantees. The Department looks to the States for proper administration of the programs. For example, when a subgrantee misspends funds under a State-administered program, the Department seeks recovery of the funds or takes other action against the State to achieve compliance by the subgrantee. In this context, a subgrantee derives its entire authority to obligate funds under a program from the State. Thus, if a State lacks authority to obligate funds, its subgrantees are equally without authority to obligate funds.

Even if the Secretary had the power to permit obligation by subgrantees before the State could obligate funds, there are good policy reasons for the Department not to permit such a practice. One of the purposes of approving a State plan is to ensure that the State is imposing correct requirements upon its subgrantees. If a State submitted a plan that was not substantially approvable and subgrantees were permitted to submit local applications for flow through funds and obligate funds under that plan, serious questions would be raised about whether the subgrantees were complying with the Federal requirements under the program.

Change: None.

What issues are raised under the Library Services and Construction Act?

Comment: One commenter suggested that instead of the proposed regulations, the Secretary pro-rate decreases to the grant awards in accordance with the days the plan is late.

Discussion: Under the LSCA statute and GEPA, the Secretary does not have the authority to decrease the grant awards due to a State's late plan submission.

Change: None.

Comment: Two commenters noted that disallowing pre-award costs under LSCA, Title II (Construction), would adversely impact on communities that need to count the cost of the land and architectural fees (both pre-award expenditures) in order to meet the 50 percent matching requirement. They recommend that the Title II construction program be exempt from these regulatory changes.

Discussion: It is highly unlikely that the LSCA Title II program will ever meet the funding threshold for coverage under the CMIA Treasury regulations in subpart A of 31 CFR part 205. The LSCA Title II program regulations require that the request for grant award be submitted to the Department after the State has approved the final working drawings. This, by implication, requires that the land be purchased and the architectural drawings be completed before the plan is submitted. The LSCA Title II regulations clearly provide that these expenditures are allowable. 34 CFR 770.11(a)(5). The Assistant Secretary will specifically authorize these pre-award costs in grant award notices under the LSCA Title II program so that the costs may be allowed to meet the requirements of the program.

Change: None.

Comment: Several commenters were concerned that State and/or local funds expended between July 1 and the effective date of the program (or the date of the acceptance of a substantially approvable plan) would not be counted toward the matching required under the LSCA program.

Discussion: State or local funds expended between July 1 and the effective date of the program cannot be counted as matching. The LSCA Titles I and III programs begin on October 1 and end on September 30. These two programs do not exist before the October 1 effective date each year. Therefore, the Secretary notes that funds counted as matching under the program must be expended in the same time period as the Federal grant program.

The Secretary also notes that Federal carryover funds may not be obligated and expended after September 30th until there is a substantially approvable plan received by the Department.

Change: None.

Comment: Some commenters asked, given the fact that LSCA is a current-funded program and that, in many years, the Congress has not appropriated funds for LSCA by the start of the Federal fiscal year, is the October 1 date still to be the date on which the Secretary will obligate funds under § 76.703(c). They asked how this would affect the obligation and expenditure of funds between October 1 and the date that Congress actually appropriates funds for LSCA.

Discussion: Regulations covering Federal interest liabilities are found in the Treasury Department regulations implementing the Cash Management Improvement Act at 31 CFR Part 205. Specifically, § 205.11(b) addresses late appropriations and provides that the Federal Government will incur an interest liability if an appropriations act, as enacted, covers the period of the State's expenditure and permits payment for expenses already incurred by the State.

Change: None.

Comment: A commenter asked if a substantially approvable plan was submitted by April 1, could LSCA funds be obligated on July 1.

Discussion: The beginning of the obligation period for current funded programs is October 1, and, therefore, obligations generally may not occur prior to that date.

Change: None.

Comment: Many commenters noted that the examples under § 76.703(e)(3) of the proposed regulations only referred to forward-funded programs. They noted that because LSCA is not forward-funded it should be exempt from these regulatory changes.

Discussion: The Secretary will not exempt the LSCA program from these regulations because current-funded programs cannot be excluded from coverage under the CMIA.

Change: None.

Comment: It was feared by one commenter that, in trying to fit a current funded program under regulations that the commenter felt were clearly intended for forward-funded programs, there might be unforeseen problems in the future.

Discussion: The Secretary does not foresee any issues that are unique to current-funded programs. However, these regulations have been reviewed by Departmental staff knowledgeable about current-funded programs such as the LSCA in order to ensure that issues that may arise with regard to these programs are addressed.

Change: None.

Comment: Several commenters noted that, unlike forward-funded programs, planning for LSCA is done on an unknown Federal allocation. Under these regulations, the State budget might also be unknown. In addition, the staff of the State agency would be compelled to work on the plans for LSCA at the same time they must be effecting closeout of the State fiscal year.

Discussion: The commenters are correct in that State plans prepared for submission under this revised regulation would, in many cases, be based on unknown funding at either the Federal or State levels or at both levels. However, annual plans are considered estimates and are expected to be revised to reflect final Federal funding amounts. (See next discussion for details.) Submissions prior to the due date are acceptable if necessary to decrease impact on State staff.

Change: None.

Comment: Some commenters noted that State plans based on estimated figures would have to be amended at a later date so that the plan proposes activities consistent with the actual funding amounts. This would make even more complex planning and might "* * * create confusion at the subgrantee level, and possible fiscal chaos at the state level." Such added work was considered by a commenter as a violation of the Paperwork Reduction Act.

Discussion: State plans are expected to be based on an estimation of funds. Under 34 CFR 80.30(c)(ii), changes to plans or budgets that are within ten percent of the budgeted amount, require no additional Federal funding, and make no significant change to the intent of the project or plan, need not be submitted to the Department for prior approval. Because planning is done on an estimated Federal amount currently, grantees are already in the position of amending some projects after the start of the grant period. The need to amend grants, based upon a submission of actual State funding data, and the submission of the supporting data, are considered in the burden when the paperwork burden is calculated under the Paperwork Reduction Act of 1980. Therefore, these revised regulations contain no added information collection requirements.

Change: None.

Comment: Several commenters expressed concern that the required assurances under LSCA would be due prior to the passing of the State's budget confirming the availability of such funds.

Discussion: The assurances may be based on the best available information as of the date of the submission.

Change: None.

Comment: One commenter noted that the revised § 76.703 would require estimated annual expenditure reports (rather than actual report of expenditures) be accepted by the Department in order to generate a plan by July 1.

Discussion: Under current law, the Federal fiscal year ends on September 30. The report covering expenditures for that period is due to the Department at the end of December. The LSCA program plans that will use the information from the report, as a prerequisite for funding, will not be due until the following July 1, which is nine months after the expenditure period. The Secretary does not agree that only estimated expenditures and not actual expenditures could be verified during this time period. Therefore, there is no allowance for estimated annual reports.

Change: None.

Comment: Several commenters voiced a concern that some State expenditures under MOE requirements occur during the July 1 to October 1 period, and a failure to receive permission to count these expenditures towards MOE would cause a failure to qualify for Federal LSCA funding.

Discussion: MOEs under the LSCA are based on the requirement of a State to maintain the support of services of a protected program or to a protected population. Some of these expenditures may not be part of the expenditures under LSCA (such as State Aid) and only have a tenuous relationship to the Federal program. Since many of these programs are ongoing State supported efforts, the Secretary agrees that these amounts are eligible for counting as MOE from the beginning of the State fiscal year, whether or not the State plan is substantially approvable.

Change: None.

Comment: Many commenters noted that § 76.703(a)(2) establishes a due date

for State Plans, of three months prior to the date that the Secretary may obligate funds for the program. The effective date of current programs is October 1, and, therefore, plans are due on the prior July 1. Some commenters noted that such a proposed change will require new timetables at the State and local level. Most commented that the change can be implemented if given enough time. Other commenters requested that the date of October 1 be retained and cited a number of problems associated with this change.

Discussion: The program staff will have reviewed and accepted all timely and substantially approvable plans prior to the effective date of the program in order that the Secretary may make obligations in a timely manner. The retention of the October due date for the submission of State plans is impossible if all reviews are to be accomplished prior to October 1. The Department must reserve the three-month period for review (including negotiations) of the State Plans.

Change: None.

Section 76.711: Should States have to request funds by CFDA number?

The NPRM proposed to add a new § 76.708. This document adds that section as a new § 76.711.

Comment: One commenter asked why the Department would require States to use the CFDA number when the Treasury Department would not require Federal agencies to provide the CFDA number to the States for funds transmitted to the States. Conversely, the Treasury Department suggested in its comments that the Department should require all grantees to request the draw down of funds by CFDA number, because all programs that are covered in the CFDA are subject to coverage under the CMIA. A third commenter stated that a requirement to request funds by CFDA number would place an unnecessary administrative burden on States which might actually hinder timely payments under the CMIA. This commenter asked that the Department stay with the current, single-request system, which permits grantees to request funds needed under all grants to a State in a single request, without having to identify the programs for which the funds are being requested.

Discussion: As the Treasury Department stated in the preamble to the final regulations implementing the CMIA, "CFDA numbers are key to the provisions of this rule." This statement was made in the context of Treasury's discussion of concerns that agencies don't always provide CFDA numbers to States when the agencies make their awards. Treasury said "Respondents emphasized the problems created in such situations given the fact that [the Treasury regulation implementing the CMIA] relies on program CFDA numbers for tracking withdrawals and payments, and for calculating interest accruals."

This discussion indicates Treasury's understanding that States will need to request payments by CFDA number and agencies will have to make payments by CFDA number in order to calculate interest liabilities under the Act. The Department of Education already identifies the CFDA number of a grant program whenever it issues a notification of grant award. Thus, the Secretary does not expect any increased burden for a State to check the CFDA number on a grant award document in order to request funds under a program.

Change: In response to the Treasury Department's comment, § 76.708 will require use of the CFDA number when requesting funds for any grant subject to Part 76.

Change: This final rulemaking document makes technical changes by redesignating certain sections that were not affected by the NPRM in order to make room for the new § 76.704. Current §§ 76.704, 76.705, and 76.706 have been redesignated as § 76.708, 76.709, and 76.710, respectively. Cross references to these sections in other parts of 34 CFR have been amended as appropriate.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects

34 CFR Part 76

Education Department, Grant programs-education, Grant administration, Intergovernmental relations, State-administered programs.

34 CFR Part 667

Colleges and universities, Cultural exchange programs, Education, Educational study programs, Grant programs—education.

Dated: April 6, 1995.

Richard Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Parts 76 and 667 of Title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3, 6511(a), 3474, unless otherwise noted.

2. Section 76.703 is amended by removing paragraphs (a) and (b), redesignating paragraph (c) as paragraph (h), adding new paragraphs (a) through (g), and adding notes following new paragraphs (b) and (g), to read as follows:

§ 76.703 When a State may begin to obligate funds.

(a) (1) The Secretary may establish, for a program subject to this part, a date by which a State must submit for review by the Department a State plan and any other documents required to be submitted under guidance provided by the Department under paragraph (b)(3) of this section.

(2) If the Secretary does not establish a date for the submission of State plans and any other documents required under guidance provided by the Department, the date for submission is three months before the date the Secretary may begin to obligate funds under the program.

(b) (1) This paragraph (b) describes the circumstances under which the submission date for a State plan may be deferred.

(2) If a State asks the Secretary in writing to defer the submission date for a State plan because of a Presidentially declared disaster that has occurred in that State, the Secretary may defer the submission date for the State plan and any other document required under guidance provided by the Department if the Secretary determines that the disaster significantly impairs the ability of the State to submit a timely State plan or other document required under guidance provided by the Department.

(3) (i) The Secretary establishes, for a program subject to this part, a date by which the program office must deliver guidance to the States regarding the contents of the State plan under that program.

(ii) The Secretary may only establish a date for the delivery of guidance to the States so that there are at least as many days between that date and the date that State plans must be submitted to the Department as there are days between the date that State plans must be submitted to the Department and the date that funds are available for obligation by the Secretary on July 1, or October 1, as appropriate.

(iii) If a State does not receive the guidance by the date established under paragraph (b)(3)(i) of this section, the submission date for the State plan under the program is deferred one day for each day that the guidance is late in being received by the State.

Note: The following examples describe how the regulations in § 76.703(b)(3) would act to defer the date that a State would have to submit its State plan.

Example 1. The Secretary decides that State plans under a forward-funded program must be submitted to the Department by May first. The Secretary must provide guidance to the States under this program by March first, so that the States have at least as many days between the guidance date and the submission date (60) as the Department has between the submission date and the date that funds are available for obligation (60). If the program transmits guidance to the States on February 15, specifying that State plans must be submitted by May first, States generally would have to submit State plans by that date. However, if, for example, a State did not receive the guidance until March third, that State would have until May third to submit its State plan because the submission date of its State plan would be deferred one day for each day that the guidance to the State was late.

Example 2. If a program publishes the guidance in the **Federal Register** on March third, the States would be considered to have received the guidance on that day. Thus, the guidance could not specify a date for the submission of State plans before May second, giving the States 59 days between the date the guidance is published and the submission date and giving the Department 58 days between the submission date and the date that funds are available for obligation.

(c) (1) For the purposes of this section, the submission date of a State plan or other document is the date that the Secretary receives the plan or document.

(2) The Secretary does not determine whether a State plan is substantially approvable until the plan and any documents required under guidance provided by the Department have been submitted.

(3) The Secretary notifies a State when the Department has received the State plan and all documents required under guidance provided by the Department.

(d) If a State submits a State plan in substantially approvable form (or an amendment to the State plan that makes it substantially approvable), and submits any other document required under guidance provided by the Department, on or before the date the State plan must be submitted to the Department, the State may begin to obligate funds on the date that the funds are first available for obligation by the Secretary.

(e) If a State submits a State plan in substantially approvable form (or an amendment to the State plan that makes it substantially approvable) or any other documents required under guidance provided by the Department after the date the State plan must be submitted to the Department, and—

(1) The Department determines that the State plan is substantially approvable on or before the date that the funds are first available for obligation by the Secretary, the State may begin to obligate funds on the date that the funds are first available for obligation by the Secretary; or

(2) The Department determines that the State plan is substantially approvable after the date that the funds are first available for obligation by the Secretary, the State may begin to obligate funds on the earlier of the two following dates:

(i) The date that the Secretary determines that the State plan is substantially approvable.

(ii) The date that is determined by adding to the date that funds are first available for obligation by the Secretary—

(A) The number of days after the date the State plan must be submitted to the Department that the State plan or other document required under guidance provided by the Department is submitted; and

(B) If applicable, the number of days after the State receives notice that the State plan is not substantially approvable that the State submits additional information that makes the plan substantially approvable.

(f) Additional information submitted under paragraph (e)(2)(ii)(B) of this section must be signed by the person who submitted the original State plan (or an authorized delegate of that officer).

(g) (1) If the Department does not complete its review of a State plan during the period established for that review, the Secretary will grant pre-award costs for the period after funds become available for obligation by the Secretary and before the State plan is found substantially approvable.

(2) The period established for the Department's review of a plan does not include any day after the State has received notice that its plan is not substantially approvable.

Note: The following examples describe how the regulations in § 76.703 would be applied in certain circumstances. For the purpose of these examples, assume that the grant program established an April 1 due date for the submission of the State plan and that funds are first available for obligation by the Secretary on July 1.

Example 1. Paragraph (d): A State submits a plan in substantially approvable form by April 1. The State may begin to obligate funds on July 1.

Example 2. Paragraph (e)(1): A State submits a plan in substantially approvable form on May 15, and the Department notifies the State that the plan is substantially approvable on June 20. The State may begin to obligate funds on July 1.

Example 3. Paragraph (e)(2)(i): A State submits a plan in substantially approvable form on May 15, and the Department notifies the State that the plan is substantially approvable on July 15. The State may begin to obligate funds on July 15.

Example 4. Paragraph (e)(2)(ii)(A): A State submits a plan in substantially approvable form on May 15, and the Department notifies the State that the plan is substantially approvable on August 21. The State may begin to obligate funds on August 14. (In this example, the plan is 45 days late. By adding 45 days to July 1, we reach August 14, which is earlier than the date, August 21, that the Department notifies the State that the plan is substantially approvable. Therefore, if the State chose to begin drawing funds from the Department on August 14, obligations made on or after that date would generally be allowable.)

Example 5. Paragraph (e)(2)(i): A State submits a plan on May 15, and the Department notifies the State that the plan is not substantially approvable on July 10. The State submits changes that make the plan substantially approvable on July 20 and the Department notifies the State that the plan is substantially approvable on July 25. The State may begin to obligate funds on July 25. (In this example, the original submission is 45 days late. In addition, the Department notifies the State that the plan is not substantially approvable and the time from that notification until the State submits changes that make the plan substantially approvable is an additional 10 days. By adding 55 days to July 1, we reach August 24. However, since the Department notified the State that the plan was substantially approvable on July 25, that is the date that the State may begin to obligate funds.)

Example 6. Paragraph (e)(2)(ii)(B): A State submits a plan on May 15, and the Department notifies the State that the plan is not substantially approvable on August 1. The State submits changes that make the plan substantially approvable on August 20, and the Department notifies the State that the plan is substantially approvable on September 5. The State may choose to begin drawing funds from the Department on September 2, and obligations made on or after that date would generally be allowable. (In this example, the original submission is 45 days late. In addition, the Department notifies the State that the plan is not substantially approvable and the time from that notification until the State submits changes that make the plan substantially approvable is an additional 19 days. By adding 64 days to July 1, we reach September 2, which is earlier than September 5, the date that the Department notifies the State that the plan is substantially approvable.)

Example 7. Paragraph (g): A State submits a plan on April 15 and the Department notifies the State that the plan is not substantially approvable on July 16. The State makes changes to the plan and submits a substantially approvable plan on July 30. The Department had until July 15 to decide whether the plan was substantially approvable because the State was 15 days late in submitting the plan. The date the State may begin to obligate funds under the regulatory deferral is July 29 (based on the 15 day deferral for late submission plus a 14 day deferral for the time it took to submit a substantially approvable plan after having received notice). However, because the Department was one day late in completing its review of the plan, the State would get pre-award costs to cover the period of July 1 through July 29.

* * * * *

(Authority: 20 U.S.C. 1221e–3, 6511(a), 3474, 31 U.S.C. 6503)

3. Sections 76.704, 76.705, and 76.706 are redesignated as §§ 76.708, 76.709, and 76.710, respectively.

4. A new § 76.704 is added to read as follows:

§ 76.704 New State plan requirements that must be addressed in a State plan.

(a) This section specifies the State plan requirements that must be addressed in a State plan if the State plan requirements established in statutes or regulations change on a date close to the date that State plans are due for submission to the Department.

(b)(1) A State plan must meet the following requirements:

(i) Every State plan requirement in effect three months before the date the State plan is due to be submitted to the Department under 34 CFR 76.703; and

(ii) Every State plan requirement included in statutes or regulations that will be effective on or before the date that funds become available for obligation by the Secretary and that have been signed into law or published in the **Federal Register** as final regulations three months before the date the State plan is due to be submitted to the Department under 34 CFR 76.703.

(2) If a State plan does not have to meet a new State plan requirement under paragraph (b)(1) of this section, the Secretary takes one of the following actions:

(i) Require the State to submit assurances and appropriate documentation to show that the new requirements are being followed under the program.

(ii) Extend the date for submission of State plans and approve pre-award costs as necessary to hold the State harmless.

(3) If the Secretary requires a State to submit assurances under paragraph (b)(2) of this section, the State shall incorporate changes to the State plan as soon as possible to comply with the new requirements. The State shall submit the necessary changes before the start of the next obligation period.

(Authority: 20 U.S.C. 1221e–3, 6511(a), 3474, 31 U.S.C. 6503)

5. A new § 76.711 is added after redesignated § 76.710 and before the center heading "REPORTS" to read as follows:

§ 76.711 Requesting funds by CFDA number.

If a program is listed in the Catalog of Federal Domestic Assistance (CFDA), a State, when requesting funds under the program, shall identify that program by the CFDA number.

(Authority: 20 U.S.C. 1221e–3, 6511(a), 3474, 31 U.S.C. 6503)

PART 667—STATE POSTSECONDARY REVIEW PROGRAM

6. The authority citation for Part 667 continues to read as follows:

Authority: 20 U.S.C. 1099a through 1099a–3, unless otherwise noted.

7. Section 667.1 is amended by revising paragraph (d)(1)(iii) to read as follows:

§ 667.1 Scope and purpose.

* * * * *

(d)(1) * * *

(iii) 34 CFR 76.701, 76.702, 76.703, 76.704, 76.707, 76.720, 76.730, 76.731, 76.734, 76.760, and 76.761 of subpart G;

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[FR Doc. 95–18064 Filed 8–10–95; 8:45 am]
BILLING CODE 4000–01–P

federal register

Friday
August 11, 1995

Part IV

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51842; FRL–4942–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN), polymer exemption notices and test marketing exemption (TME) application requests received, both pending and expired. The information contained in this document clears a backlog of notices received from March 20, 1995 to May 1, 1995.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51842]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51842]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION" of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs, polymer exemption notices and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51842]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMNs, polymer exemptions and TME application requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement. Generic use information on these substances will be provided.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies. As stated in the previous paragraph, while generic use information is not included in this notice all future notices shall carry this information.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; (II) Polymer exemptions received.

I. 350 Premanufacture Notices Received From: 03/01/94 to 04/30/95.

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–95–0893	03/20/95	06/18/95	3M	(G) Adhesive intermediate	(G) Copolymer with 2-propenoic acid, isooctyl ester
P–95–0894	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a dibasic acid and diamines
P–95–0895	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, a dibasic acid and diamines
P–95–0896	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a dibasic acid and diamines
P–95–0897	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a dibasic acid and a diamine
P–95–0898	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with a dibasic acid and diamines
P–95–0899	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive.	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with sebacic acid and diamines
P–95–0900	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine, sebacic acid and diamines
P–95–0901	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine, a dibasic acid and diamines
P–95–0902	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine, a dibasic acid and a diamine
P–95–0903	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine, a dibasic acid and a diamine
P–95–0904	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a dibasic acid and diamines
P–95–0905	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, sebacic acid and diamines
P–95–0906	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, a dibasic acid and diamines
P–95–0907	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with a dibasic acid and diamines
P–95–0908	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with sebacic acid and diamines
P–95–0909	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine sebacic acid and diamines
P–95–0910	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine, a dibasic acid and diamines
P–95–0911	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine, a dibasic acid and diamines
P–95–0912	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylenediamine, sebacic acid and diamines

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P-95-0913	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated., dimers, polymers with tall-oil fatty acids and a diamine
P-95-0914	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, tall-oil fatty acids and a dibasic acid and diamine
P-95-0915	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with ethylendiamine, tall-oil fatty acids and a diamine
P-95-0916	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with sebacic acid, a dibasic acid and diamines
P-95-0917	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, sebacic acid, a dibasic acid and a diamine
P-95-0918	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a dibasic acid, stearic acid, ethylenediamine and diamines
P-95-0919	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a dibasic acid, ethylenediamine, tall-oil fatty acids and diamines
P-95-0920	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a dibasic acid ethylenediamine, tall-oil fatty acids and diamines
P-95-0921	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with a dibasic acid, ethylenediamine, stearic acid and diamines
P-95-0922	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with a dibasic acid isostearic acid, ethylenediamine and diamines
P-95-0923	03/21/95	06/19/95	CBI	(S) Used in aqueous dispersions which function as adhesive	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with a dibasic acid; ethylenediamine and a diamine
P-95-0924	03/21/95	06/19/95	Dow Chemical U.S.A.	(S) Surfactant for polyurethane foam production	(G) Esterified polyglycol
P-95-0925	03/21/95	06/19/95	Dow Chemical U.S.A.	(S) Surfactant for polyurethane foam production	(G) Esterified polyglycol
P-95-0926	03/21/95	06/19/95	Olin Corporation	(S) Surfactant--/rinse aid household, industrial, insit	(G) Alcohol alkoxylate
P-95-0927	03/20/95	06/18/95	CBI	(G) Open, non-disperaive	(G) Acrylic polymer
P-95-0928	03/21/95	06/19/95	CBI	(S) Textile finish	(G) Perfluoroalkylethylacrylate copolymer
P-95-0929	03/21/95	06/19/95	CBI	(G) Component of coating with open use	(G) Amine salt
P-95-0930	03/21/95	06/19/95	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P-95-0931	03/21/95	06/19/95	Arizona Chemical Company	(S) Resin vehicle for the production of heat-seat, web	(G) Phenolic modified rosin ester, polymer with soybean oil
P-95-0932	03/21/95	06/19/95	Huls America Inc	(S) Lubricant for use with cfc-free refrigerants	(G) Dialkyl malonate, alkyl alkenoate polymer
P-95-0933	03/21/95	06/19/95	Lilly Industrial Coatings, Inc.	(G) Intermediate for polymer	(S) Benzene, 1-(1-isocyanato-1-methylethyl)-3-(1-methylethenol) blocked with caprolactam
P-95-0934	03/21/95	06/19/95	Lilly Industrial Coatings, Inc.	(S) Electrocoating metal parts	(G) Cathodic acrylic electrocoat resin feed
P-95-0935	03/22/95	06/20/95	Dow Corning	(S) Abrasion resistant coating	(G) Acrylate-functional silica
P-95-0936	03/22/95	06/20/95	Dow Corning	(S) Abrasion resistant coating	(G) Acrylate-functional silica
P-95-0937	03/23/95	06/21/95	CBI	(S) Organic synthesis intermediate	(G) Pyrimidine salt

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P-95-0938	03/23/95	06/21/95	CBI	(S) Organic synthesis intermediate	(G) Pyrimidine
P-95-0939	03/23/95	06/21/95	CBI	(S) Organic synthesis intermediate	(G) Organophosphate
P-95-0940	03/23/95	06/21/95	CBI	(S) Organic synthesis intermediate	(G) Amidine
P-95-0941	03/21/95	06/19/95	Percy International Ltd	(S) Catalyst for use in moisture-curing urethane coating	(S) Carbonato bis (-N-ethyl, 2-isopropyl-1,3-oxazolane)
P-95-0942	03/23/95	06/21/95	Ciba-Geigy Corporation	(G) Textile dye	(G) Substituted phenyl azo substituted naphthalene amino triazinyl amino substituted propane
P-95-0943	03/23/95	06/21/95	CBI	(G) Polymer processing aid	(G) Styrene-acrylic polymer
P-95-0944	03/23/95	06/21/95	CBI	(G) Chlorosilane	(G) Organochloroeilane
P-95-0946	03/23/95	06/21/95	Mitsui & Co., (U.S.A.) Inc.	(G) Lubricant	(G) Reaction product of 3-alkoxy-2,2-dialkylpropanol, 2-(alkylphenoxy)ethanol and dialkylcarbonate
P-95-0947	03/27/95	06/25/95	Dow Chemical U.S.A.	(S) Intermediate	(G) Aromatic sulfonyl chloride
P-95-0948	03/27/95	06/25/95	Dow Chemical U.S.A.	(S) Magnetic media lubricant	(G) Aromatic sulfonamide
P-95-0949	03/27/95	06/25/95	Dow Chemical U.S.A.	(S) Magnetic media lubricant	(G) Aromatic sulfonamide
P-95-0950	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0951	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0952	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0953	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0954	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0955	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0956	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0957	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0958	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0959	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0960	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0961	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0962	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0963	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0964	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0965	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0966	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P-95-0967	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–95–0968	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0969	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0970	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol
P–95–0971	03/27/95	06/25/95	CBI	(S) Coatings	(G) Polymer of polyisocyanate, blocked with hydroxy ester of carbamic acid and alcohol.
P–95–0972	03/27/95	06/25/95	General Polymers West	(S) Architectural coatings	(G) Polyurethane
P–95–0973	03/28/95	06/26/95	VPN, Inc.	(S) Sprayed on foilage of plants to promote growth	(G) vanadium compound
P–95–0974	03/27/95	06/25/95	Hoechst Celanese	(G) Binder in paints	(S) A polymer of: adipic acid; 1,6-hexandiol; succinic acid anhydride; neopentyl glycol; isophorone diisocyanate; diethanolaminine; bishydroxymethyl propionic acid; *N,N*-diethylethanolamine; dibutyl tin oxide
P–95–0975	03/27/95	06/25/95	Exxon Chemical Company	(S) Polymerization catalyst	(G) Aluminum organometallic compound
P–95–0976	03/27/95	06/25/95	Para-Chem Southern, Inc.	(S) Latex thickener	(S) Sodium salt of methyl acrylate and methacrylic acid co-polymer
P–95–0977	03/28/95	06/29/95	Henkel Corporation	(G) Dispersant	(G) Acrylate polymer salt
P–95–0978	03/28/95	06/26/95	High Point Chemical Corporation	(G) Industrial cleaning	(S) Poly(oxy-1,2-ethanediyl), .alpha.-(carboxymethyl)-.omega.-[(2-ethylhexyl)oxy]- (9CI)
P–95–0979	03/28/95	06/26/95	E.I. Dupont de Nemours & Co., Inc.	(G) Enclosed destructive use	(G) Fluorinated carboxylic acid, alkali metal salt
P–95–0980	03/28/95	06/26/95	E.I. Dupont de Nemours & Co., Inc.	(G) Enclosed destructive use	(G) Fluorinated carboxylic acid, alkali metal salt
P–95–0981	03/28/95	06/26/95	E.I. Dupont de Nemours & Co., Inc.	(G) Enclosed destructive use	(G) Fluorinated carboxylic acid, alkali metal salt
P–95–0982	03/28/95	06/26/95	Hercules-Sanyo Incorporated	(S) Binder resin for printing inks	(G) Metal resinate
P–95–0983	03/28/95	06/26/95	Hercules-Sanyo Incorporated	(S) Binder resin for printing inks	(G) Metal resinate
P–95–0984	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0985	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0986	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0987	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0988	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0989	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0990	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0991	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–95–0992	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0993	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0994	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0995	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0996	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0997	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0998	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–0999	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–1000	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–1001	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–1002	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–1003	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–1004	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–1005	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–1006	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–1007	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–1008	03/28/95	06/26/95	CBI	(S) Printing ink component/ laminating adhesive	(G) Polyamide resin salt
P–95–1009	03/28/95	06/26/95	CBI	(G) Coating resin	(G) Acrylic polymer
P–95–1010	03/28/95	06/26/95	3M	(S) Surfactant	(G) Perfluoroalkyl carboxylate salt
P–95–1011	03/29/95	06/27/95	Xerox Corporation	(G) Reprographic pigment dispersant	(G) Vinyl copolymer
P–95–1012	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1013	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1014	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1015	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1016	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1017	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1018	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1019	03/29/95	06/27/95	BF Goodrich Company	(G) Topcoat used for the coating of gymnasium and other	(G) Polyurethane based on polyisocyanates, polyols and polyamine
P–95–1020	03/29/95	06/27/95	CBI	(G) Colorant	(G) Polymeric colorant
P–95–1021	03/29/95	06/27/95	CBI	(G) Colorant	(G) Polymeric colorant

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–95–1022	03/29/95	06/27/95	CBI	(G) Open, non-dispersive use	(G) Polyester silane
P–95–1023	03/29/95	06/27/95	Xerox Corporation	(G) Reprographic pigment	(G) Phthalocyanine pigment
P–95–1024	03/30/95	06/28/95	CBI	(G) Open, non-dispersive use	(G) Acrylosilane resin
P–95–1025	03/31/95	06/29/95	CBI	(S) Coatings	(G) Urethane modified melamine resin
P–95–1026	03/31/95	06/29/95	Eastman Kodak Company	(G) Chemical intermediate	(G) Substituted alkylaminodihalobenzoic acid, ester
P–95–1027	03/31/95	06/29/95	CBI	(G) Processing additive	(G) Substituted metal sulfides
P–95–1028	03/30/95	06/28/95	Mycogen Corporation	(S) Biopesticides	(G) Bacillus thuringiensis delta entoxin genes
P–95–1029	03/30/95	06/28/95	Mycogen Corporation	(S) Biopesticides	(G) Bacillus thuringiensis delta entoxin genes
P–95–1030	04/03/95	07/02/95	CBI	(G) Dielectric fluid	(G) Orthoxylene compoound
P–95–1031	04/03/95	07/02/95	Osakagodo America, Inc.	(S) Coloring agent for resin	(S) 7*H*(1)Benzopyrano(3′,2′:3,4) pyrido(1,2*A*) benzimidazole-6-carbonitrile, 3-(diethylamino)-7-oxo-
P–95–1032	04/03/95	07/02/95	CBI	(G) Raw material for colorant	(S) Benzenesulfonic acid, 2-amino-4,5-dichloro-
P–95–1033	04/03/95	07/02/95	Dow Corning	(S) Silicone adhesive component	(G) Organofunctional silica
P–95–1034	04/03/95	07/02/95	CBI	(G) Open, non-dispersive	(G) Aqueous polyester polyurethane dispersion
P–95–1035	04/03/95	07/02/95	CBI	(G) Open, non-dispersive	(G) Aqueous aliphatic urethane stoving resin
P–95–1036	04/03/95	07/02/95	Shipley Company, Inc.	(S) Chemical intermediate used in the manufacture of a photoactive compound	(G) Polynuclear polyhydroxy phenol
P–95–1037	04/03/95	07/02/95	Shipley Company, Inc.	(S) Chemical intermediate used in the manufacture of PH	(G) Naphthaquinone diazide sulfonyl ester mixture of a polynuclear polyhydroxy phenol
P–95–1038	04/03/95	07/02/95	E.I. Dupont de Nemours & Co., Inc.	(S) Release sheeting, protective cladding, coatings	(G) Polyvinyl fluoride copolymer
P–95–1039	04/03/95	07/02/95	E.I. Dupont de Nemours & Co., Inc.	(S) Release sheeting, protective cladding, coatings	(G) Polyvinyl fluoride copolymer
P–95–1040	04/03/95	07/02/95	CBI	(G) Open, non-dispersive	(G) Acrylosilane resin
P–95–1041	04/03/95	07/02/95	CBI	(G) Destructive use	(G) Silane intermediate
P–95–1042	04/03/95	07/02/95	CBI	(G) Destructive use	(G) Silane intermediate
P–95–1043	04/04/95	07/03/95	CBI	(S) Paper dye	(G) Bis(substituted)carbomonocyclic azo)-carbomonocyclicol
P–95–1044	04/04/95	07/03/95	CBI	(S) Paper dye	(G) Bis(substituted)carbomonocyclic azo)-carbomonocyclicol
P–95–1045	04/04/95	07/03/95	CBI	(S) Paper dye	(G) Bis(substituted)carbomonocyclic azo)-carbomonocyclicol
P–95–1046	04/04/95	07/03/95	CBI	(S) Antioxidant/stabilizer in polymers	(G) Aryl alkyl phosphite
P–95–1047	04/04/95	07/03/95	Reichhold Chemicals, Inc.	(S) Wood coating	(G) Anionic aliphatic polyurethane dispersion
P–95–1048	04/04/95	07/03/95	CBI	(S) Electrical insulation coating	(G) Polyamideimide resin
P–95–1049	04/04/95	07/03/95	CBI	(S) Electrical insulation coating	(G) Polyamideimide resin
P–95–1050	04/04/95	07/03/95	CBI	(G) Paper strength additive	(G) Modified cationic acrylamide polymer
P–95–1051	04/04/95	07/03/95	CBI	(G) Paper strength additive	(G) Modified anionic acrylamide polymer
P–95–1052	04/05/95	07/04/95	CBI	(G) Raw material of surfactant for metal cleaning	(S) Dehydrogenated product from C_{12-14} linear chained random secondary alcohols

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–95–1053	04/04/95	07/03/95	Hoechst Celanese	(G) Paint resin	(G) Water-soluble urethane alkyd
P–95–1054	04/05/95	07/04/95	CBI	(G) Surfactant	(G) Comdensates of methacrylic ester and aminosulfonic ester
P–95–1055	04/05/95	07/04/95	CBI	(G) Ink additve	(G) Cross linked acrylic random copolymer
P–95–1056	04/05/95	07/04/95	Lilly Industrial Coatings, Inc.	(G) Salt of electrocoat resin vehicle	(G) Epoxy resin salt
P–95–1057	04/05/95	07/04/95	Lilly Industrial Coatings, Inc.	(G) Salt of electrocoat resin vehicle	(G) Acrylic resin salt
P–95–1058	04/05/95	07/04/95	Lilly Industrial Coatings, Inc.	(G) Salt of electrocoat resin vehicle	(G) Epoxy resin salt
P–95–1059	04/06/95	07/05/95	Ciba-Geigy Corporation	(S) Intermediate for dye manufacture	(G) Substituted phenyl azo substituted phenyl amino triazinyl substituted naphthalene sulfonic acid derivative
P–95–1060	04/06/95	07/05/95	CBI	(G) Paint	(G) Polyurethane/polyurea polymer
P–95–1061	04/06/95	07/05/95	CBI	(G) Paint	(G) Polyurethane/polyurea polymer
P–95–1062	04/06/95	07/05/95	CBI	(S) Oil field corrosion inhibitor / asphalt emulsifier	(G) Alkoxylated diamine
P–95–1063	04/06/95	07/05/95	CBI	(S) Oil field corrosion inhibitor / asphalt emulsifier	(G) Alkoxylated diamine
P–95–1064	04/06/95	07/05/95	CBI	(S) Oil field corrosion inhibitor / asphalt emulsifier	(G) Alkoxylated diamine
P–95–1065	04/06/95	07/05/95	CBI	(S) Paint, ink	(G) Styrene modified polyester
P–95–1066	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1067	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1068	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1069	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1070	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1071	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1072	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1073	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1074	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1075	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1076	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1077	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1078	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1079	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1080	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–95–1081	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1082	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1083	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1084	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1085	04/07/95	07/06/95	Catalyst Resources, Inc	(S) Polypropylene manufacturing catalyst	(G) A magnesium, titanium organo-complex compound
P–95–1086	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1087	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1088	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1089	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1090	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1091	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1092	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1093	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1094	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1095	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1096	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1097	04/07/95	07/06/95	Catalyst Resources, Inc	(S)Polypropylene catalyst manufacturing	(G) A magnesium, titanium organo-complex compound
P–95–1098	04/07/95	07/06/95	Cytec Industries	(G) Crosslinking resin	(G) Tris carbamoyl triazine
P–95–1099	04/07/95	07/06/95	CBI	(G) Open, non-dispersive	(G) Styrene, divinylbenzene copolymner with trialkyl ammonium groups in OH form
P–95–1100	04/07/95	07/06/95	3M Company	(G) Resin	(G) Polymer of 1,2-ethanediol and aromatic esters
P–95–1101	04/07/95	07/06/95	3M Company	(G) Resin	(G) Polymer of 1,2-ethanediol and aromatic esters
P–95–1102	04/07/95	07/06/95	CBI	(G) A component of the material for integrate circuit F	(G) Novolac-resin from substituted phenols and formaldehyde
P–95–1103	04/07/95	07/06/95	CBI	(G) A component of the material for integrate circuit F	(G) Substituted resolcinol
P–95–1104	04/07/95	07/06/95	CBI	(G) A component of the material for integrate circuit F	(G) Substituted resorcinol
P–95–1105	04/07/95	07/06/95	CBI	(G) Reactant for specialty industrial chemicals	(G) Mixed carboxylic acids, branched
P–95–1106	04/10/95	07/09/95	Ausimont USA, Inc.	(G) Synthesis intermediate	(S) 2,2,4-trifluoro-5-trifluoromethoxy-1,3-dioxole
P–95–1107	04/10/95	07/09/95	CBI	(S) Coatings	(G) Amino urethane/urea crosslinking resin
P–95–1108	04/10/95	07/09/95	CBI	(S) Coatings	(G) Amino urethane/urea crosslinking resin salted with organic acid
P–95–1109	04/10/95	07/09/95	CBI	(S) Coatings	(G) Amino urethane/urea crosslinking resin salted with organic acid

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–95–1110	04/10/95	07/09/95	CBI	(G) Acrylate/methacrylate copolymer	
P–95–1111	04/10/95	07/09/95	ICI Fiberite	(S) An epoxy resin reinforced with carbon fibers for AE	(G) Functionalized elastomeric-epoxy copolymer
P–95–1112	04/10/95	07/09/95	Gelest, Inc.	(S) Surface treatment of silica employed in liquid chro	(S) 3-cyanopropyl(diisoproyl)chlorosilane
P–95–1113	04/10/95	07/09/95	E.I. Dupont de Nemours & Co., Inc.	(S) Component of glassed reinforced molding resin for A	(G) Butylene terephthalate copolymer
P–95–1114	04/10/95	07/09/95	E.I. Dupont de Nemours & Co., Inc.	(S) Component of glassed reinforced molding resin for a	(G) Butylene terephthalate copolymer
P–95–1115	04/10/95	07/09/95	Sequa Chemicals, Inc	(S) Textile finishing resin	(S) 1,3-bis(1-hydroxy-2,2-dimethoxyethyl)-2-imidazolidinone
P–95–1116	04/13/95	07/12/95	Jowat Corp.	(S) Adhesive	(G) Modified vinylacetate copolymer
P–95–1117	04/10/95	07/09/95	CBI	(G) Surfactant intermediate	(G) Alkyletherhydroxy-propylamine
P–95–1118	04/10/95	07/09/95	NOF America Corporation	(S) Compatibilizing agent for polymer blends	(G) Compatibility agent
P–95–1119	04/10/95	07/09/95	CBI	(G) Surfactant intermediate	(G) Alkyletherhydroxy-propylamine
P–95–1120	04/11/95	07/10/95	CBI	(S) Electrical insulating coating	(G) Polyamide resin
P–95–1121	04/11/95	07/10/95	CBI	(G) Crosslinking agent for coatings	(S) Polymer of cythane 2601 solids; 2-butanone oxime
P–95–1122	04/12/95	07/11/95	CBI	(G) Water-borne coating	(S) Aqueous polyurethane dispersion
P–95–1123	04/13/95	07/12/95	CBI	(G) Open, non-dispersive use	(G) Silane functional diluent
P–95–1124	04/13/95	07/12/95	CBI	(G) Infra-red absorber	(G) Aryl substituted copper phthalocyanine
P–95–1125	04/14/95	07/13/95	Hoechst Celanese	(S) Stoving industrial paints	(G) Modified alkyd resin
P–95–1126	04/14/95	07/13/95	NOF America Corporation	(S) Compatibilizing agent for polymer blends	(G) Compatibility agent
P–95–1127	04/14/95	07/13/95	The C.P. Hall Company	(G) Adhesives/coatings	(G) Polyalkyl pentanedioate polyester
P–95–1128	04/14/95	07/13/95	Great Lakes Chemical Corporation	(S) Flame retardant for foams and polymers	(G) Brominated aromatic ester
P–95–1129	04/17/95	07/16/95	3M Company	(G) Adhesive	(G) Acrylate copolymer
P–95–1130	04/17/95	07/16/95	CBI	(G) Photoresist	(G) Acryl resin
P–95–1131	04/17/95	07/16/95	CBI	(G) Photoresist	(G) Acryl resin
P–95–1132	04/18/95	07/17/95	CBI	(G) Open non-dispersive use	(G) Diketone aluminum chelate
P–95–1133	04/18/95	07/17/95	CBI	(G) Open non-dispersive use	(G) Diketone aluminum chelate
P–95–1134	04/18/95	07/17/95	CBI	(G) Open non-dispersive use	(G) Diketone aluminum chelate
P–95–1135	04/18/95	07/17/95	CBI	(G) Open non-dispersive use	(G) Diketone aluminum chelate
P–95–1136	04/18/95	07/17/95	CBI	(G) Open non-dispersive use	(G) Diketone aluminum chelate
P–95–1137	04/18/95	07/17/95	CBI	(G) Open non-dispersive use	(G) Diketone aluminum chelate
P–95–1138	04/18/95	07/17/95	CBI	(G) Open non-dispersive use	(G) Diketone aluminum chelate
P–95–1139	04/18/95	07/17/95	CBI	(G) Open non-dispersive use	(G) Diketone aluminum chelate
P–95–1140	04/18/95	07/17/95	CBI	(G) Open non-dispersive use	(G) Diketone aluminum chelate
P–95–1141	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1142	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1143	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1144	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1145	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1146	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1147	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–95–1148	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1149	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1150	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1151	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1152	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1153	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1154	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized aluminum hydroxide
P–95–1155	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1156	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1157	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1158	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1159	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1160	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1161	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1162	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1163	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1164	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1165	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1166	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1167	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1168	04/17/95	07/16/95	CBI	(G) Filler/flame retardant	(G) Functionalized magnesium hydroxide
P–95–1169	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1170	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1171	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1172	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1173	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1174	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1175	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1176	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1177	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1178	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1179	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1180	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1181	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1182	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1183	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1184	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1185	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1186	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1187	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1188	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1189	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1190	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1191	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1192	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1193	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1194	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1195	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay
P–95–1196	04/17/95	07/16/95	CBI	(G) Filler	(G) Functionalized clay

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–95–1197	04/19/95	07/18/95	Lilly Industrial Coatings, Inc.	(G) Electrocoat resin vehicle	(G) Modified epoxy resin
P–95–1198	04/19/95	07/18/95	Lilly Industrial Coatings, Inc.	(G) Salt for electrocoat resin vehicle	(G) Acrylic resin salt .
P–95–1199	04/19/95	07/18/95	CBI	(G) Open, non-dispersive	(G) Aqueous emulsion of octyltriethoxysilane
P–95–1200	04/18/95	07/17/95	CBI	(G) A component of the material for IC fabrication	(G) Novolac-resin from substituted phenols and formaldehyde
P–95–1201	04/18/95	07/17/95	3M	(S) Adhesive	(G) Acrylate polymer
P–95–1202	04/20/95	07/19/95	Angus Chemical Company	(G) Chemical intermediate	(G) Alkanolamine
P–95–1203	04/20/95	07/19/95	Austin Powder Company	(S) Emulsifier in manufacturer of emulsion explosives	(S) A polymer of: *N,N*-diethylethanolamine (deea) 2-diethylaminoethanol: poly(isobutylene)-succinic anhydride
P–95–1204	04/20/95	07/19/95	CBI	(G) Quality control agent	(G) Alkoxy-alkyl-carbopolycycle
P–95–1205	04/20/95	07/19/95	CBI	(G) Quality control agent	(G) Disubstituted benzene
P–95–1206	04/19/95	07/18/95	Hoechst Celanese	(S) Binder for industrial paints	(G) Modified alkyd resin
P–95–1207	04/19/95	07/18/95	CBI	(G) Hydrocarbon process stream additive; lube oil addit	(G) Poly(alkylmethyacrylate)
P–95–1208	04/21/95	07/20/95	DIC Trading (USA) Inc.	(G) Soil repellent	(G) Fluorinated acrylic copolymer
P–95–1209	04/21/95	07/20/95	CBI	(G) Open, non-dispersive	(G) Polyester resin
P–95–1210	04/21/95	07/20/95	CBI	(G) Polymer support resin	(G) Carboxy terminated amide functionl polymer of aliphatic diols, aromatic acrboxylic acid/anhydride, tall oil fatty acid dimer, and ethoxylated polyarylphenol
P–95–1211	04/21/95	07/20/95	CBI	(G) Polymer support resin	(G) Carboxy terminated amide functionl polymer of aliphatic diols, aromatic acrboxylic acid/anhydride, tall oil fatty acid dimer, and ethoxylated polyarylphenol, ammonium salt
P–95–1212	04/21/95	07/20/95	The C.P. Hall Company	(G) Plasticizer	(S) Dibutoxypropyl adipate
P–95–1213	04/21/95	07/20/95	CBI	(G) Hydroxy terminated polyester intermediate for polyu	(G) Hydroxy terminated polyester
P–95–1214	04/21/95	07/20/95	CBI	(G) Adhesive fo flexible substances	(G) Polyether/polyester/aromatic polyurethane
P–95–1215	04/21/95	07/20/95	CBI	(G) Adhesive fo flexible substances	(G) Polyester urethane polymer
P–95–1216	04/21/95	07/20/95	E.I. Dupont de Nemours & Co., Inc.	(G) Paper flucridizer	(G) Polysubstituted methacrylic copolymer
P–95–1217	04/25/95	07/24/95	Shipley Company, Inc.	(S) Chemical intermediate used in the manufacture of PH	(G) Naphthaquinone diazide sulfonyl ester mixture of a polynuclear polyhydroxy phenol
P–95–1218	04/25/95	07/24/95	Hoechst Celanese	(S) Binder for industrial paints, stoving enamels	(S) A polymer of: 1,6-hexanediol; 1,4-cyclohexanedimethanol; isophthalic acid; trimellitic anhydride; phenol, 4,4′-(1-methylethylidene)bis-polymer with (chloromethyl) oxirane; phosphoric acid; isopropanol; castor oil; 1,3-isobenzofurandione; trimethylolpropane; benzoic acid; 1,3-propanediol, 2,2-bis(hydroxymethyl); 1,3-isobenzofurandione, 3a,4,7,ta-tetrahydro-; ethanol, 2-dimethylamino
P–95–1219	04/25/95	07/24/95	The Dexter Corporation	(G) Component of structural material	(G) Epoxy resin
P–95–1220	04/25/95	07/24/95	CBI	(S) Thixotropic agent for heavy duty paints & primers &	(G) Fatty acid diamide

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–95–1221	04/25/95	07/24/95	3M	(G) Coating component	(G) Polyurethane polymer derivative
P–95–1222	04/26/95	07/25/95	CBI	(G) Coating component	(G) Styrene, polymer eith substituted alkenoic acid and polycarboxyalkene derivative
P–95–1223	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18}-unsaturated.
P–95–1224	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18}-unsaturated.
P–95–1225	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18}-unsaturated.
P–95–1226	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18}-unsaturated.
P–95–1227	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18}-unsaturated.
P–95–1228	04/26/95	07/25/95	CBI	(G) Textile additive	(G) Aromatic diol, alkoxylated, fatty acid esters of C_{8-18} and C_{18}-unsaturated.
P–95–1229	04/26/95	07/25/95	CBI	(G) Open, non-dispersive	(G) Polyether polyurea urethane
P–95–1230	04/26/95	07/25/95	CBI	(G) Open, non-dispersive	(G) Polyether polyurethane
P–95–1231	04/26/95	07/25/95	CBI	(G) Open, non-dispersive	(G) Polycarbonatepolyureapolyurethane
P–95–1232	04/27/95	07/26/95	Reichhold Chemicals, Inc.	(S) Industrial maintenance coatings	(G) Epoxy curing agent
P–95–1233	04/27/95	07/26/95	Sachem, Inc.	(S) Raw material for conversion to another chemical com	(S) Ethanaminium, *N*-ethyl-*N,N-N*-dimethyl-, chloride
P–95–1234	04/27/95	07/26/95	Sachem, Inc.	(S) PH adjustment for chemical processing catalyst for	(S) Ethanaminium, *N*-ethyl-*N,N-N*-dimethyl-, hydroxide
P–95–1235	04/28/95	07/27/95	CBI	(G) Open, non dispersive	(G) Azo dyestuff
P–95–1236	04/28/95	07/27/95	Ausimont USA, Inc.	(S) Powder coatings; extrusion; injection moding; sheet	(S) Polymer of ethylene, chlorotrifluoroethylene and perfluoromethyoxydioxole
P–95–1237	04/28/95	07/27/95	Ausimont USA, Inc.	(S) Powder coatings; extrusion; injection moding; sheet	(S) Polymer of ethylene, chlorotrifluoroethylene and perfluoropropylvinylether
P–95–1238	04/28/95	07/27/95	CBI	(G) Marking ink, open, non-dispersive	(G) Cobalt chelated salt
P–95–1239	04/28/95	07/27/95	CBI	(G) Marking ink, open, non-dispersive use	(G) Cobalt chelated salt
P–95–1240	04/28/95	07/27/95	Charkit Chemical	(G) Electro plating additive	(G) Organo sulfide compound
P–95–1241	04/28/95	07/27/95	CBI	(S) Electorstatic paint primer; anti-electrified paint	(G) Potassium titanate
P–95–1242	05/01/95	07/30/95	CBI	(S) Acid dye for the coloring of leather	(G) Chromate(3-), bis 2-[[substituted-3-[(5-sulfo-1-naphthalenyl)azo]phenyl]azo]substituted monocycle(3-)]-, trisodium
P–95–1243	05/01/95	07/30/95	CBI	(G) Specialty additive	(G) Substituted alkylbenzene

II. 20 Polymer Exemption Notices
Received From: 03/20/94 to 05/01/95.

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
Y–95–0081	03/21/95	04/11/95	CBI	(G) Baked enamel finish	(G) Polyester resin

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
Y–95–0082	03/27/95	04/17/95	Asahi Chemical Industry America Inc.	(S) Hardener of polyurethane paint	(S) Poly[oxy(1-oxo-1,6-hexanediyl)], .alpha.-hydro-.omega.-hydroxy-,ester with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, polymer with 1,6-diisocyanatohexane and 1,3,5-tris(6-isocyanatohexyl)1,3,5-triazine-2,4,6(*1H,3H,5H*)-trione, methylethylketone oxime-blocked
Y–95–0083	03/27/95	04/17/95	Asahi Chemical Industry America Inc.	(S) VCR Parts, copymachine parts, printer parts	(S) Polyoxymethylene-block-polyoxypropylene
Y–95–0084	03/28/95	04/18/95	Eastman Kodak	(S) Powdered coatings	(S) A polymer of: trans-1,4-cyclohexanedicarboxylic acid, dimethyl ester; 1,4-butanediol; 1,4-cyclohexanedicarboxylic acid; titnium tetraispropoxide
Y–95–0085	03/29/95	04/19/95	CBI	(G) Dehydration agent	(G) Propoxylated amine
Y–95–0086	04/03/95	04/24/95	Gencorp Polymer Products	(G) Coatings for use in paper and textile applications	(G) An emulsion of styrene, butadiene, acrylic copolymer in water
Y–95–0087	04/04/95	04/25/95	Uniglobe Kisco, Inc.	(S) Binder material used on the surface of plastic prin	(S) 1,3-butadiene, homopolymer, hydrogenated hydroxy-terminated, fatty acids, montan wax diesters
Y–95–0088	04/04/95	04/25/95	Gencorp Polymer Products	(G) As a coating for use in paper and textile applicati	(G) An emulsion of styrene-butadiene-acrylic copolymer in water
Y–95–0089	04/05/95	04/26/95	CBI	(G) Paint	(G) Polurethane/polyurea polymer
Y–95–0090	04/10/95	05/01/95	Mitsubishi Gas Chemical America, Inc.	(G) Additive for plastics	(G) Modified polycarbonate
Y–95–0091	04/11/95	05/02/95	CBI	(G) Structural component for articles	(G) Thermoplastic polyester urethane elastomer
Y–95–0092	04/11/95	05/02/95	CBI	(G) Structural component for articles	(G) Thermoplastic polyester urethane elastomer
Y–95–0093	04/11/95	05/02/95	CBI	(G) Structural component for articles	(G) Thermoplastic polyester urethane elastomer
Y–95–0094	04/14/95	05/05/95	Eastman Chemical Company	(S) Water-dispersible, hot melt adhesive	(S) Polymer of 1,4-cyclohexanedicarboxylic acid, dimethyl ester; 1,3-benzenedicarboxylic acid, 5-sulfo-, bis(2-ethoxyethyl) ester, sodium salt; ethanol, 2,2'oxybis-; 1,4-cyclohexanedimethanol; 1,3-propandiol, 2-ethyl-2-(hydroxymethyl); 2-propanol, titanium (4+) salt
Y–95–0095	04/18/95	05/09/95	CBI	(S) Molding resin	(S) Saturated polyester polymer
Y–95–0096	04/25/95	05/16/95	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive	(G) Acrylic emulsion polymer
Y–95–0097	04/25/95	05/16/95	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive	(G) Acrlyic emulsion polymer
Y–95–0098	04/25/95	05/16/95	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive	(G) Acrlyic emulsion polymer
Y–95–0099	04/25/95	05/16/95	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive	(G) Acrlyic emulsion polymer
Y–95–0100	04/25/95	05/16/95	S. C. Johnson & Son, Inc.	(G) Open, non-dispersive	(G) Acrlyic emulsion polymer

List of Subjects

Environmental protection, Premanufacture notices, Polymer exemptions, and Test marketing exemption applications.

Dated: July 28, 1995.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–19903 Filed 8–10–95; 8:45 am]

BILLING CODE 6560–50–F

federal register

Friday
August 11, 1995

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 801, et al.
Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products To Protect Children and Adolescents; Proposed Rule
Analysis Regarding FDA's Jurisdiction Over Nicotine-Containing Cigarettes and Smokeless Tobacco Products; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 803, 804, and 897

[Docket No. 95N–0253]

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products To Protect Children and Adolescents

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing new regulations governing the sale and distribution of nicotine-containing cigarettes and smokeless tobacco products to children and adolescents in order to address the serious public health problems caused by the use of and addiction to these products. The proposed rule would reduce children's and adolescents' easy access to cigarettes and smokeless tobacco as well as significantly decrease the amount of positive imagery that makes these products so appealing to them. The proposed rule would not restrict the use of tobacco products by adults.

Specifically, the proposed rule would establish 18 years of age as the Federal minimum age of purchase and would prohibit cigarette vending machines, free samples, mail-order sales, and self-service displays. It would also require that retailers comply with certain conditions regarding sales of tobacco, especially verification that the purchaser is at least 18 years of age before a tobacco sale is made. Finally, the proposed rule would limit advertising and labeling to which children and adolescents are exposed to a text-only format; ban the sale or distribution of branded non-tobacco items such as hats and tee shirts; restrict sponsorship of events to the corporate name only; and require manufacturers to establish and maintain a national public education campaign aimed at children and adolescents to counter the pervasive imagery and reduce the appeal created by decades of pro-tobacco messages and thus to help reduce young people's use of tobacco products.

The objective of the proposed rule is to meet the goal of the report "Healthy People 2000" by reducing roughly by half children's and adolescents' use of tobacco products. If this objective is not met within seven years of the date of publication of the final rule, the agency will take additional measures to help achieve the reduction in the use of tobacco products by young people. FDA is requesting comment regarding the type of additional measures that would be most effective.

DATES: Written comments and recommendations by November 9, 1995.

ADDRESSES: Submit written comments and recommendations to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

Approximately 50 million Americans currently smoke cigarettes and another 6 million use smokeless tobacco products.[1] These tobacco products are responsible for more than 400,000 deaths each year due to cancer, respiratory illnesses, heart disease, and other health problems.[2] Cigarettes kill more Americans each year than acquired immune deficiency syndrome (AIDS), alcohol, car accidents, murders, suicides, illegal drugs, and fires combined.[3] On average, smokers who die from a disease caused by smoking lose 12 to 15 years of life because of tobacco use.[4]

In a separate document,[5] FDA is addressing the issue of its jurisdiction over nicotine-containing cigarettes and smokeless tobacco products. The results of an extensive investigation and comprehensive legal analysis support a finding at this time that the nicotine in these products is a drug and that these products are nicotine-delivery devices within the meaning of the Federal Food, Drug, and Cosmetic Act (the act). FDA proposes to regulate cigarettes and smokeless tobacco products by employing its restricted device authority, which affords the most appropriate and flexible mechanism for regulating the sale, distribution, and use of these products.

The primary objective of the proposed rule is to reduce the death and disease caused by tobacco products. Rather than banning tobacco products for the millions of Americans who are currently addicted to them, this regulation focuses on preventing future generations from developing an addiction to nicotine-containing tobacco products. In addition, the scientific evidence strongly suggests that nicotine addiction begins when most tobacco users are teenagers or younger and, thus, is a pediatric disease. Therefore, reducing the number of young people who regularly start to use tobacco products will help to prevent future generations of individuals from becoming addicted to nicotine.

The goal of the proposed rule is to help the country achieve one of the objectives of "Healthy People 2000," which is to reduce the number of children and adolescents who use tobacco products by roughly one half by the year 2000. The agency has modified the goal to include a different measurement tool and established 7 years after publication of the final rule as the goal's endpoint. "Healthy People 2000" discussed national health promotion and disease prevention objectives in this country. It was facilitated by the Institute of Medicine of the National Academy of Sciences, with the help of the U.S. Public Health Service, and included almost 300 national membership organizations and all State health departments.[6]

To determine the most appropriate regulatory measures, the agency reviewed the current patterns of use of tobacco products. According to the 1994 Surgeon General's Report, "Preventing Tobacco Use Among Young People: A Report of the Surgeon General" (the 1994 Surgeon General's Report), more than 3 million American adolescents currently smoke cigarettes and an additional 1 million adolescent males use smokeless tobacco.[7] Every day, another 3,000 young people become regular smokers.[8] U.S. data suggest that anyone who does not begin smoking in childhood or adolescence is unlikely to ever begin.[9] Eighty-two percent of adults who ever smoked had their first cigarette before age 18, and more than half of them had already become regular smokers by that age.[10] Moreover, the younger one begins to smoke, the more likely one is to become a heavy smoker.[11]

Many young tobacco users become addicted to nicotine, a chemical substance in tobacco. Although they believe that they will not become addicted to nicotine or become long-term users of tobacco products, they often find themselves unable to quit smoking.[12] In fact, among smokers aged 12–17 years, 70 percent already regret their decision to smoke and 66 percent state that they want to quit.[13] Those who are able to quit experience relapse rates and withdrawal symptoms similar to those reported in adults.[14]

Long-term addiction to nicotine can result in serious chronic diseases and premature death. An adolescent whose cigarette use continues into adulthood increases his or her risk of dying from cancer, cardiovascular disease, or lung disease.[15] In addition, smokeless tobacco use has been linked to oral cancer and other adverse effects.[16]

Although most segments of the American adult population have decreased their use of cigarettes, the prevalence of smoking by young people has failed to decline for more than a decade. Recently, smoking among young people has begun to rise.[17] Between 1991 and 1994, the prevalence of smoking by eighth graders increased 30 percent, from 14.3 percent to 18.6 percent. Among 10th grade students, it increased from 20.8 percent to 25.4 percent and for 12th grade students, it rose from 28.3 percent to 31.2 percent.[18] Between 1985 and 1994, smoking among college freshmen increased from 9 percent to 12.5 percent.[19]

Millions of American children and adolescents can easily buy or obtain cigarettes and smokeless tobacco products. The large number of young people who use these products is especially noteworthy because all States prohibit the sale of tobacco products to persons under the age of 18, and a few States prohibit cigarette sales to persons under the ages of 19 or 21.[20] These State laws, however, are rarely enforced. It is estimated that each year children and adolescents consume between 516 million and 947 million cigarette packages and 26 million containers of smokeless tobacco products.[21]

In addition to easy access to tobacco products, advertising and promotional activities can influence a young person's decision to smoke or use smokeless tobacco products. Tobacco products are among the most heavily advertised products in the United States.[22] In 1993, the tobacco industry spent a total of $6.2 billion on the advertising, promotion, and marketing of cigarettes and smokeless tobacco. Of that number, 31 percent ($1.9 billion) was spent on advertising and promotional activities; 26 percent ($1.6 billion) was given to retailers in the form of cash allowances or retailer items to facilitate and enhance the sale of tobacco products, and finally, 43 percent ($2.6 billion) was in the form of financial incentives (e.g. coupons, cents off, buy one/get one free, free samples) to consumers.[23]

Tobacco product brand names, logos, and advertising messages are pervasive, appearing on billboards, on buses and trains, in magazines and newspapers, and on clothing and other goods. These ubiquitous images and messages convey to young people that tobacco use is desirable, socially acceptable, safe, healthy, and prevalent in society. One study found that 30 percent of 3 years olds and 91 percent of six year olds associate the "Joe Camel" cartoon figure with cigarettes.[24] Studies also show that most young people buy the most heavily advertised cigarette brands, whereas many adults buy generic or "value category" cigarette brands, which have little or no image advertising.[25]

In proposing this regulation, FDA examined many domestic and foreign tobacco control statutes, regulations, and legislation, as well as numerous studies and reports. FDA also reviewed recommendations from various public health organizations, including the World Health Organization, the Office of the Surgeon General, the Centers for Disease Control and Prevention (CDC), the National Cancer Institute (NCI), and the Institute of Medicine (IOM). Two reports, the 1994 Surgeon General Report and the 1994 IOM Report "Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths," were especially helpful and informative.

The agency has examined many options for reducing tobacco use by children and adolescents, and believes that an effective program must address the following two areas: (1) Restrictions on cigarette and smokeless tobacco sales that will make these products less accessible to young people; and (2) restrictions on labeling and advertising to help reduce the appeal of tobacco products to young people along with requirements for a manufacturer-funded national education campaign aimed at those under 18 years of age to help reduce the products' appeal to these young people. A brief description of the major provisions of the proposed rule follows.

A. Sale and Distribution

The proposed rule would restrict the sale of cigarettes and smokeless tobacco products to individuals age 18 and older. This age restriction is based on the fact that most adult smokers became regular smokers before age 18.

The proposed rule would require retailers to verify the age of persons who wish to buy cigarettes or smokeless tobacco products and would eliminate "impersonal" methods of sale that do not readily allow age verification, such as mail orders, self-service displays, and vending machines.

The proposed rule would make each manufacturer, distributor, and retailer of tobacco products responsible for complying with the proposed restrictions. Manufacturers would be required to remove all manufacturer-supplied or manufacturer-owned self-service displays, advertising, labeling, and other items that do not conform to the requirements in the proposed rule.

The proposed rule would prohibit the distribution of free samples and would allow the exchange of coupons and other non-cash certificates only by individuals 18 or older and only in face-to-face transactions. Currently, young people, including children in elementary school, are often able to obtain free samples despite industry-imposed age restrictions on such distributions.

The proposed rule would also prohibit the sale of single cigarettes ("loosies") and "kiddie packs (less than 20 to a pack) which, due to their relatively low price and easy concealment, have been shown to be particularly appealing to children and adolescents.

Further, the proposed rule would prohibit manufacturers from using a trade name or brand name of a non-tobacco product for a cigarette or smokeless tobacco product. This will prevent a manufacturer from transferring the images, good will, and appeal of a popular non-tobacco product to a tobacco product.

B. Labeling, Advertising and Educational Programs

Advertising that reaches children would be in black and white, text-only format. Studies indicate that children and adolescents are very receptive to images and cartoons and less attentive to texts. However, the proposed rule would not affect advertising in publications with primarily adult readership—imagery and color would continue to be permitted in such publications. Finally, outdoor advertising of tobacco products located within 1,000 feet of schools and playgrounds would be banned. Consequently, the proposed rule would help reduce the appeal of advertising to children and adolescents without affecting informational messages conveyed to adults.

The proposed rule would prohibit the sale or distribution of brand identifiable non- tobacco items and services, proof-of-purchase sales, games and contests, and sponsorship of events in the brand name, as well as advertising for these items, services, and events.

The proposed rule would require manufacturers to establish and maintain a national educational campaign in order to counter the pervasive imagery and reduce the appeal created by decades of pro-tobacco messages and, thus, help reduce young people's use of tobacco products. Evidence exists that mass media antismoking campaigns conducted nationally between 1967 and 1970, and more recently, in Vermont and California, have had a sustained

effect on preventing teens from starting to smoke and on significantly reducing per capita cigarette consumption.

C. Healthy People 2000 Objective

Seven years after publication of the final rule, the agency would determine whether additional restrictions on tobacco products are required by using outcome-based objectives modeled on the "Healthy People 2000" report. One of the goals for tobacco use established by that report is to reduce by roughly one half the percentage of young people using tobacco products by the year 2000. If this objective is not met within the time specified by the rule, FDA would take additional measures to help achieve the reduction in young people's use of tobacco products. The proposed rule requests comment on which additional measures should be adopted.

The agency intends to adopt one or more additional provisions only if the continued use of cigarettes and smokeless tobacco products by children and adolescents indicates that the goal of reducing tobacco use by young people by roughly half had not been met.

The remainder of this discussion of the proposed rule (hereinafter "preamble") is organized as follows: Chapter II examines the use of cigarettes and smokeless tobacco products by children and adolescents, and the health consequences of using nicotine-containing tobacco products; Chapter III describes the provisions of the proposed rule and provides the rationale for each of the requirements; Chapter IV reviews the legal authority for these specific requirements, and Chapters V through VIII provide analyses required by the Paperwork Reduction Act of 1980, various Executive Orders, as well as provides analyses of various economic and environmental impacts.

References

1. Substance Abuse and Mental Health Services Administration, "National Household Survey on Drug Abuse: Population Estimate 1993," Rockville, MD: Department of Health and Human Services, Public Health Service, Substances Abuse and Mental Health Services Administration, Office of Applied Studies, DHHS Pub. No. (SMA) 94–3017, 1994, pp. 89, 95; "Cigarette Smoking Among Adults—United States, 1993," in "Morbidity and Mortality Weekly Report (MMWR)," CDC, Department of Health and Human Services (DHHS), vol. 43, No. 50, pp. 925–930, 1994; "Use of Smokeless Tobacco Among Adults—United States, 1991," in "MMWR," CDC, DDS, vol. 42, pp. 263–266, 1993; Unpublished data from the 1992 Youth Risk Behavior Survey, National Health Interview Supplement, CDC.

2. "Cigarette Smoking—Attributable Mortality and Years of Potential Life Lost—United States, 1990," in "MMWR," CDC, DHHS, vol. 42, no. 33, pp. 645–649 (1993).

3. IOM, p. 3. Collectively, AIDS, alcohol, car accidents, murders, suicides, illegal drugs and fire combined cause nearly 251,000 deaths a year.

4. "Cigarette Smoking—Attributable Mortality and Years of Potential Life Lost—United States, 1990, in "MMWR," CDC, DHHS, vol. 42, no. 33, pp. 645–649, 1993; Peto, R., et al., "Mortality from Tobacco in Developed Countries: Indirect Estimation from National Vital Statistics," *The Lancet*, vol. 339, pp. 1268–1278, 1992.

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II. Cigarette and Smokeless Tobacco Product Use Among Children and Adolescents

Each year, the cigarette industry loses about 1.7 million customers in the United States; about 400,000 die from diseases caused by their smoking and another 1.3 million quit smoking.[1] To offset the sales lost to smokers who die or quit smoking, cigarette manufacturers rely on young people as the primary source of new customers. Each day, approximately 3,000 young people become regular smokers,[2] serving as the industry's major domestic source of replacement smokers.

A. Epidemiology of Tobacco Use Among Children and Adolescents

In 1965, the year following the first Surgeon General's Report [3] describing the relationship between smoking and diseases such as lung cancer, chronic bronchitis, and emphysema, 42.4 percent of the overall adult population in the United States smoked.[4] By 1990, the prevalence of smoking in the United States had declined to 25.5 percent.[5] The greatest reduction in adult smoking occurred from 1987 to 1990, when the prevalence of smoking declined by 1.1 percentage point annually, twice the rate of decline during the preceding 20 years.[6] The prevalence of smoking among adults leveled off at 25.6 percent in 1991 and was 26.5 percent in 1992. This change was due to a change in the definition of current smokers, rather than an increase in prevalence. The new definition incorporates some day (i.e., less than daily, occasional, or infrequent) smoking.[7] The estimate for 1992 with the old definition was 25.6 percent—the same as in 1991. In 1993, under the new definition, prevalence was 25.0 percent.[8]

The long-term downward trend in adult smoking contrasts with the trends in smoking among young people. The Institute of Medicine noted that the number of high school seniors who have smoked in the last 30 days remained "basically unchanged since 1980," at approximately 30 percent, and further reported that 16.7 percent of 8th grade students were current smokers (that is, had smoked within the past 30 days), and 8.3 percent smoked daily.[9] The prevalence of cigarette smoking in recent years among 8th and 10th grade students has risen significantly and provides cause for great concern. For example, among 8th grade students, 14.3 percent in 1991 and 18.6 percent in 1994 were current smokers; among 10th grade students, 20.8 percent in 1991 and 25.4 percent in 1994 were current smokers.[10]

The 1994 Surgeon General's Report reviewed several different surveys and found that the estimated percentage of adolescents who have ever smoked cigarettes ranged from approximately 42 percent (as reported by the 1991 National Household Survey on Drug Abuse) to 70 percent (as reported by the 1991 Youth Risk Behavior Survey).[11] The 1994 Surgeon General's Report also found that 28 percent of high school seniors were current smokers.[12] (The most recent data reported by the Monitoring the Future Project indicates that in 1994 the number of high school seniors who were current smokers had risen to 31.2 percent.)[13] Further, the 1994 Surgeon General's Report states that seven to 13 percent of adolescents were frequent or heavy smokers, consuming at least one-half pack daily or smoking 20 days or more of the 30 days in a survey period.[14]

Approximately 3 million children under the age of 18 are daily smokers.[15] One study found that children between the ages of 8 and 11 who are daily smokers consume an average of 4 cigarettes daily, and those who are between the ages of 12 and 17 average nearly 14 cigarettes daily. The study also estimated that adolescents consume an estimated 947 million packs of cigarettes and 26 million containers of smokeless tobacco annually and account for annual tobacco sales of $1.26 billion.[16] Another study estimates that teenagers in 1991 smoked 516 million packs of cigarettes and spent $962 million purchasing them.[17] As stated previously, these figures are especially significant given that all States prohibit the sale of tobacco to persons under the age of 18 (with some States prohibiting sales to persons under the age of 19 and one State, Pennsylvania, prohibiting cigarette sales to persons under the age of 21).[18] Unfortunately, few States successfully enforce their laws restricting tobacco sales to minors.[19]

Studies have also suggested that the age one begins smoking can greatly influence the amount of smoking one will engage in as an adult and will ultimately influence the smoker's risk of tobacco related morbidity and mortality. Those who started smoking by early adolescence were more likely to be heavy smokers than those who began smoking as adults.[20] Another study found that high school students who smoked their first cigarette during childhood smoked more often and in greater amount than those who first tried smoking during adolescence.[21]

The escalating use of smokeless tobacco products by underage persons presents an additional and growing public health problem. Smokeless tobacco products include chewing tobacco and snuff and are also known as "spit tobacco" or "spitting tobacco." In 1970, the prevalence of snuff use among males was lowest in those 17 to 19 years of age and the highest use was by men aged 50 or more. By 1985, a dramatic shift had occurred, and males between 16 and 19 were twice as likely to use snuff as men aged 50 and over.[22] An estimated 3 million users of smokeless tobacco products were under the age of 21 in 1986,[23] when Congress enacted the Comprehensive Smokeless Tobacco Health Education Act (the Smokeless Act) (15 U.S.C. 4401). The Smokeless Act required the Secretary of Health and Human Services (the Secretary) to inform the public of the health dangers associated with smokeless tobacco use, required warning labels on packages, banned advertising on electronic media subject to the Federal Communications Commission's jurisdiction (such as television and radio), and encouraged States to make 18 years the minimum age for purchasing smokeless tobacco products. Despite the Smokeless Act and State laws prohibiting sales to minors, a high percentage of persons under the age of 18 use smokeless tobacco products. For example:

- 1991 school-based surveys estimated that 10.7 percent of U.S. high school seniors and 19.2 percent of male 9th to 12th grade students use smokeless tobacco.[24]
- A 1992 national household-based survey of U.S. children found that 11.9 percent of males 12–17 years of age were using smokeless tobacco.[25]
- Among high school seniors who had ever tried smokeless tobacco, 73 percent did so by the ninth grade.[26]

In some parts of the United States the rates are especially high. According to the 1990–91 Youth Risk Behavior Survey, the smokeless tobacco product use rates among males in grades 9 through 12 were as high as 34 percent in Tennessee, 33 percent in Montana, 32 percent in Colorado, and 31 percent in Alabama and Wyoming.[27]

Native American youth are especially vulnerable to smokeless tobacco product use. The rates for both males and females are extremely high, ranging from 24 percent to 64 percent, and at rates that, in some areas, are 10 times higher than those for non-Native

Americans.[28] Studies also suggest that Native Americans begin using smokeless tobacco products at much earlier ages than non-Native Americans. A 1986 survey at the Rosebud Sioux Reservation in South Dakota revealed that 21 percent of kindergarten children used smokeless tobacco products,[29] and a survey of Native Americans in the state of Washington indicated that 33 percent of former users and 57 percent of current users started using smokeless tobacco products before the age of 10.[30]

The recent and very large increase in the use of smokeless tobacco products by young people and the addictive nature of these products has persuaded the agency that these products must be included in any regulatory approach that is designed to help prevent future generations of young people from becoming addicted to nicotine-containing tobacco products.

B. The Health Effects Associated With Cigarettes and Smokeless Tobacco Products

Over 400,000 Americans die each year from smoking-related illnesses. This equates to more than one of every five deaths in the United States.[31] If an adolescent's tobacco use continues for a lifetime, there is a 50 percent chance that the person will die prematurely as a direct result of smoking."[32] Moreover, the earlier a young person's smoking habit begins, the more likely he or she will become a heavy smoker and therefore suffer a greater risk of smoking related diseases.[33] Smoking is responsible for about 30 percent of all cancer deaths,[34] including 87 percent of all lung cancer deaths; 82 percent of deaths from chronic obstructive pulmonary disease (COPD);[35] 21 percent of deaths from coronary heart disease;[36] and 18 percent of deaths from stroke.[37] Further, a causal relationship exists between cigarette smoking and cancers of the larynx, mouth, esophagus, and bladder; and atherosclerotic peripheral vascular disease, cerebrovascular disease (stroke), and low-birth weight babies.[38] Cigarette smoking is also a probable cause of infertility and peptic ulcer disease and contributes to, or is associated with, cancers of the pancreas, kidney, cervix, and stomach.[39]

Much of the following brief discussion is abstracted from several Surgeon General's reports. The Surgeon General's reports summarize thousands of peer-reviewed scientific studies and are themselves peer-reviewed and subjected to significant scientific scrutiny.

1. Health Effects of Cigarette Smoking

Epidemiologic studies provide overwhelming evidence that smoking causes lung cancer.[40] The risk of getting lung cancer may be more than 20 times greater for heavy smokers than nonsmokers.[41] The relationship between smoking and lung cancer is due to the numerous carcinogens in cigarette smoke.[42] Cigarette smoking caused an estimated 117,000 deaths from lung cancer in 1990.[43]

The risk of getting lung cancer increases with the number of cigarettes smoked and the duration of smoking, and decreases after cessation of smoking.[44] Starting smoking at an earlier age increases the potential years of smoking and increases the risk of lung cancer.[45] Studies have shown that lung cancer mortality is highest among adults who began smoking before the age of 15.[46]

Cigarette smoking also causes cancer of the larynx, mouth, and esophagus.[47] According to current estimates, 82 percent of laryngeal cancers are due to smoking and about 80 percent of the 10,200 deaths from esophageal cancer in 1993 can be attributed to smoking.[48] The risk of oral cancer among current smokers ranges from 2.0 to 18.1 times the risk in people who have never smoked and can be reduced more than 50 percent after quitting.[49] The risk of esophageal cancer among current smokers ranges from 1.7 to 6.4 times the risk in people who have never smoked and can also be reduced by about 50 percent after quitting.[50]

Epidemiologic studies demonstrate that cigarette smoking contributes to the development of pancreatic cancer.[51] The reason for this relationship is unclear, but may be due to carcinogens or metabolites present in the bile or blood.[52] In 1985, the proportion of pancreatic cancer deaths in the United States attributable to smoking was estimated to be 29 percent in men and 34 percent in women.[53]

Cigarette smoking accounts for an estimated 30 to 40 percent of all bladder cancers and is a contributing factor for kidney cancer.[54] The increased risk of kidney and bladder cancer may be related to the number of cigarettes smoked per day, and the risk decreases following smoking cessation.[55]

Smoking appears to be a contributing factor for cancer of the cervix. The association between cigarette smoking and cervical cancer persists after control is made for risk factors, such as age at first intercourse and the number of sexual partners, that predispose a woman to developing sexually-transmitted diseases. The inclusion of these risk factors, however, may not completely rule out confounding by sexually-transmitted diseases. However, the findings that components of tobacco smoke can be found in the cervical mucus of smokers, that the mucus of smokers is mutagenic, and that former smokers have a lower risk of getting cervical cancer than current smokers are consistent with the hypothesis that smoking is a contributing cause of cervical cancer.[56]

The 1982 Surgeon General's Report concluded that stomach cancer is associated with cigarette smoking.[57] Studies show a slight increase in mortality from stomach cancer in smokers compared with nonsmokers.[58]

Smoking is a leading cause of heart disease. The 1964 Surgeon General's Report noted that male cigarette smokers had higher death rates from coronary heart disease than nonsmokers.[59] Subsequent reports have concluded that cigarette smoking contributes to the risk of heart attacks, chest pain, and even sudden death.[60] Overall, smokers have a 70 percent greater death rate from coronary heart disease than nonsmokers.[61]

Ischemic heart disease resulting from cigarette smoking claimed nearly 99,000 lives in 1990.[62] One study estimates that 30 to 40 percent of all coronary heart disease deaths are attributable to smoking.[63] Smokers between the ages of 40 and 64, who smoked more than one pack a day, were shown to have a risk of coronary heart disease that is 3.2 times higher than people who do not smoke.[64]

Several processes that are likely to contribute to heart attacks are influenced or caused by smoking: atherosclerosis, thrombosis, coronary artery spasm, cardiac arrhythmia, and reduced capacity of the blood to deliver oxygen. The nicotine and carbon monoxide in cigarette smoke are believed to be responsible for heart disease, but other components, such as cadmium, nitric oxide, hydrogen cyanide, and carbon disulfide, have also been implicated.[65] Female smokers who also use oral contraceptives increase their risk of heart attacks tenfold.[66]

Smoking also increases a person's risk of atherosclerotic peripheral vascular disease, especially if the smoker is diabetic.[67] Complications of this disease include decreased blood delivery to the peripheral tissues, gangrene, and ultimately loss of the affected limb. Smoking cessation is the most important intervention in the management of peripheral vascular disease.[68]

Smoking is a cause of stroke.[69] Stroke is the third leading cause of death in the United States.[70] The association of smoking with stroke is believed to be mediated by the mechanisms responsible for atherosclerosis (narrowing and hardening of the arteries), thrombosis, and decreased cerebral blood flow in smokers.[71] Female smokers who use oral contraceptives are at an increased risk of having a stroke.[72]

Cigarette smoking is the leading cause of chronic obstructive pulmonary disease (COPD) in the United States. Approximately 84 percent of the COPD deaths in men and 79 percent of the COPD deaths in women are attributable to cigarette smoking.[73] The risk of death from COPD may depend on how many cigarettes a person smokes daily, how deeply the person inhales, and the age when the person began smoking.[74] The number of cigarettes smoked per day is a strong indicator for the presence of the principal symptoms of chronic respiratory illness, including chronic cough, phlegm production, wheezing, and shortness of breath.[75]

Smoking's effects on lung structure and function appear within a few years after cigarette smoking begins.[76] Children who smoke suffer from respiratory illnesses more than children who do not smoke. Adolescents who smoke may experience inflammatory changes in the lung, reduced lung growth, and may not achieve normal lung function as an adult.[77]

Cigarette smoking is a probable cause of peptic ulcer disease.[78] Peptic ulcer disease is more likely to occur in smokers than in nonsmokers, and the disease is less likely to heal, and more likely to cause death in smokers than nonsmokers.[79] Quitting smoking reduces the chances of getting peptic ulcer disease and is an important component of effective peptic ulcer treatment.[80]

Studies also show that women who smoke have reduced fertility.[81] One study showed that smokers were 3.4 times more likely than nonsmokers to take more than 1 year to conceive.[82]

Smoking's severe detrimental effects during pregnancy are well documented.[83] Women who smoke are twice as likely to have low birth weight infants as women who do not smoke.[84] Smoking also causes intrauterine growth retardation of the fetus.[85] Mothers who smoke also have increased rates of premature delivery.[86]

Smoking may lead to premature infant death. Babies of mothers who smoke are more likely to die than babies born to nonsmoking mothers.[87] A recent meta-analysis reported that use of tobacco products by pregnant women results in 19,000 to 141,000 miscarriages per year, and 3,100 to 7,000 infant deaths per year. In addition, the meta-analysis attributed approximately two-thirds of deaths from sudden infant death syndrome to maternal smoking during pregnancy.[88] By another estimate, if all pregnant women stopped smoking, there would be 4,000 fewer infant deaths per year in the United States.[89]

2. Health Effects of Smokeless Tobacco Products

Smokeless tobacco use can cause oral cancer.[90] The risk of oral cancer increases with increased exposure to smokeless tobacco products, particularly in those areas of the mouth where smokeless tobacco products are used.[91] The risk of cheek and gum cancers is nearly 50 times greater in long-term snuff users than in nonusers.[92] Snuff and chewing tobacco contain potent carcinogens, including nitrosamines, polynuclear aromatic hydrocarbons, and radioactive polonium.[93]

Smokeless tobacco use can cause oral leukoplakia, a precancerous lesion of the soft tissue that consists of a white patch or plaque that cannot be scraped off.[94] One study of 117 high school students who were smokeless tobacco users revealed that nearly 50 percent of these students had oral tissue alterations.[95] There is a 5 percent chance that oral leukoplakias will transform into malignancies in 5 years.[96] The leukoplakia appears to decrease or resolve upon cessation of smokeless tobacco use.[97]

Smokeless tobacco use causes oral cancer and oral leukoplakia and may be associated with an increased risk of cancer of the esophagus. Smokeless tobacco use has been implicated in cancers of the gum, mouth, pharynx, and larynx. Snuff use also causes gum recession and is associated with discoloration of teeth and fillings, dental caries, and abrasion of the teeth.[98]

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III. Description of the Proposed Rule

The proposed rule would create a new part 897 of Title 21 of the Code of Federal Regulations governing the labeling, advertising, sale, and distribution of cigarettes and smokeless tobacco. The Commissioner has proposed that nicotine-containing cigarettes and smokeless tobacco products be regulated as restricted devices within the meaning of section 520(e) of the act (21 U.S.C. 360j(e)). The regulations are being proposed pursuant to the authority of section 520(e) of the act, which authorizes the agency to regulate the sale, distribution, and use of certain devices. Certain of the provisions in the regulation are also being proposed pursuant to the authority of sections 201, 502, 510, 701, and 704 of the act.

In brief, the proposed rule is intended to support current State laws regarding sales to minors by reducing the appeal of cigarettes and smokeless tobacco to, and limiting access by, persons under 18 years of age. The overall goal of the proposed rule is to decrease the rates of death and disease caused by tobacco products by substantially reducing the number of young people who begin using cigarettes or smokeless tobacco products.

The proposed rule consists of five subparts. Subpart A, General Provisions, would set forth scope and purpose provisions and provide definitions. Subpart B, Sale and Distribution to Persons Under 18 Years of Age, would describe the responsibilities of manufacturers, distributors, and retailers concerning the manufacture, sale, and distribution of cigarettes and smokeless tobacco products. Subpart C, Labels and Educational Messages, would require each manufacturer to establish and maintain a national public educational program, including major reliance on television messages, in order to combat the pervasive imagery and appeal created by decades of pro-tobacco messages, and, thus, to discourage young people from using cigarettes and smokeless tobacco products. Subpart D, Labeling and Advertising, would limit advertising and labeling to which children and adolescents are exposed to a text-only format; ban the sale or distribution of branded non-tobacco items such as hats and tee shirts; and restrict sponsorship of events to the corporate name only. Finally Subpart E, Miscellaneous Requirements, would describe the records and reports that must be submitted to FDA or made available for inspection, discuss the rule's relationship to State and local laws or requirements, and require one or more additional measures to be taken if the prevalence of tobacco use is not significantly reduced within seven years of the publication of the final rule.

A. Subpart A—General Provisions

Subpart A would contain three provisions that describe the rule's scope and purpose and provide definitions that apply throughout part 897.

1. Section 897.1—Scope

Proposed § 897.1(a) would state that part 897 is intended to establish conditions under which nicotine-containing cigarettes and smokeless tobacco products may be sold, distributed, or used. The proposed rule would not apply to pipe tobacco or to cigars because the agency does not currently have sufficient evidence that these products are drug delivery devices under the act. FDA has focused its investigation of its authority over tobacco products on cigarettes and smokeless tobacco products, and not on pipe tobacco or cigars, because young people predominantly use cigarettes and smokeless tobacco products. Proposed § 897.1(b) would note that all references to regulatory sections in the Code of Federal Regulations are to Title 21 unless otherwise noted.

2. Section 897.2—Purpose

Proposed 897.2(a) would state that part 897 is intended to help prevent persons younger than 18 years of age from becoming addicted to nicotine, thereby avoiding the life-threatening consequences often associated with tobacco use. The proposed rule would accomplish this goal by reducing the appeal of and access to cigarettes and smokeless tobacco products by persons under 18 years of age; it would preserve access to cigarettes and smokeless tobacco products by persons 18 years of age and older. Proposed § 897.2(b) would add that the provisions are intended to provide important information about product use to users and potential users.

3. Section 897.3—Definitions

Proposed 897.3 would establish definitions of terms used in the proposed rule, such as "cigarette" (897.3(a)) and "distributor" (897.3(c)). In drafting the definitions, FDA examined existing definitions in Federal laws and regulations and paid special attention to existing definitions in other FDA regulations. These definitions are contained in the proposed codified language.

Proposed 897.3(e) contains the definition of "nicotine,"which is based, in part, on the chemical name and formula for nicotine in the "Merck Index"(10th Edition). The agency also notes that, while the proposed rule defines "cigarette," in part, as a product that "contains or delivers nicotine," it is aware that some companies are trying to develop chemical substances that are pharmacologically active or are as addictive as nicotine or that would be used to enhance nicotine's pharmacological qualities. The agency's investigation has focused primarily on cigarettes and smokeless tobacco products that contain nicotine, and FDA would therefore consider a cigarette-like product that contains a pharmacologically active or addictive substance in place of nicotine to be a "new" drug delivery device that would be outside the scope of this regulation. To be legally marketed, such a product would require premarket approval.

B. Subpart B—Sale and Distribution to Persons Under 18 Years of Age

Subpart B would establish certain conditions or requirements for the sale and distribution of cigarettes and smokeless tobacco pursuant to section 520(e) of the act. These provisions are intended to reduce access to cigarettes and smokeless tobacco products by children and adolescents. Studies show that it is easy for most young people to obtain tobacco products. The University of Michigan Monitoring the Future Study in 1993 reported that 75 percent of 8th graders and nearly 90 percent of 10th graders said it would be fairly easy or very easy to get cigarettes.[1] According to a 1990 survey of 9th graders, 67 percent of current smokers said they usually buy their own cigarettes.[2] Further, interviews conducted by the Department of Health and Human Services' (DHHS) Office of the Inspector General in 1986 found that 94 percent of junior and high school students said that "it was either never or only rarely difficult" to buy smokeless tobacco products.[3]

Most children and adolescents who smoke purchase their own cigarettes. A 1991 study showed that an estimated 516 million packs are consumed by young people every year; almost half of these packs are sold to minors.[4] The 1994 Surgeon General's Report examined 13 studies of over-the-counter sales and determined that approximately 67 percent of minors are able to purchase tobacco illegally. Moreover, successful cigarette purchases by children and adolescents averaged 88 percent in studies of vending machines.[5]

A significant percentage of young people can also easily purchase smokeless tobacco products directly from retailers. Studies examining smokeless tobacco product purchases by young people suggest that direct successful underage purchases range from 30 percent (for junior high school students) to 62 percent (for senior high school students).[6] Interviews conducted by the DHHS' Office of the Inspector General in 1986 found that 90 percent of smokeless tobacco users in junior and senior high schools said they purchased their own smokeless tobacco products.[7]

Youth access restrictions have been found to be effective in reducing illegal sales and some studies have demonstrated that efforts to reduce access have led to a decrease in tobacco use by young people. In Woodridge, IL, for example, a comprehensive community intervention involving retailer licensing, regular compliance checks, and penalties for merchant violations significantly reduced illegal sales from 70 percent to less than 5 percent almost 2 years later. Further, rates of experimentation and regular smoking dropped by more than 50 percent among seventh and eighth graders.[8]

In contrast, attempts to reduce sales to young people by relying exclusively on educational programs for retailers were not nearly as effective. For example, one study found that minors were able to buy cigarettes in 73 percent of stores receiving informational packages on preventing illegal sales to minors.[9] After a comprehensive retailer education program was conducted, illegal sales to minors decreased to 68 percent of stores. However, after citations were issued to violative establishments, over-the-counter illegal sales dropped to 31 percent.[10]

The proposed rule would prohibit the sale and distribution of cigarettes and smokeless tobacco products to individuals younger than 18. This restriction parallels the age restrictions established by almost all States. Moreover, it is based on the fact that most people who become regular smokers do so at a young age. For instance, the IOM reported that the average age when people become "daily" smokers is 17.7 years.[11] According to the National Household Surveys on Drug Abuse (1991), 53 percent of people who ever smoked became regular smokers by the time they were 18 years old.[12] Further, 82 percent of those who had ever smoked daily first tried a cigarette before the age of 18.[13]

Available data documenting the course of a young person's ability to quit smoking after initiating smoking support the need for an age restriction. A study tracking students from grades 6 to 12 in six Minnesota communities noted a "striking pattern" that:

> * * * once students become weekly smokers, they are unlikely to give up cigarettes. Of the students who were current smokers, an increasing percentage remained smokers over the years of follow-up; they were either unable or unwilling to quit smoking. Of the self-reported quitters, 13% to 46% returned to weekly smoking by the next year's measurement period.[14]

The study found that "students who smoke are increasingly unlikely to quit as they get older."[15]

Effectively prohibiting sales to people younger than 18 years of age will therefore help reduce the number of adolescents and youths who become daily smokers. FDA also selected the age limit of 18 to be consistent with the 1992 Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act[16] that conditions receipt of substance abuse grants on States adopting laws prohibiting the sale and distribution of cigarette and smokeless tobacco products to minors under age 18, and because the majority of States have set 18 as the age of purchase of these products.

1. Section 897.10—General Responsibilities of Manufacturers, Distributors, and Retailers

Proposed 897.10 would describe the general responsibilities of manufacturers, distributors, and retailers, and would make manufacturers, distributors, and retailers responsible for ensuring that the cigarettes and smokeless tobacco products they manufacture, label, advertise, package, sell, distribute, or otherwise hold for sale comply with all the applicable regulations under proposed Part 897.

2. Section 897.12—Additional Responsibilities of Manufacturers

Proposed 897.12 would provide that, in addition to its other responsibilities, each manufacturer would be responsible for removing all self-service displays, violative advertising, labeling, and other manufacturer- or distributor-supplied items from each point of sale. Proposed § 897.12(b) would require each manufacturer to monitor, through visual inspection on each visit to a point of sale (carried out in the normal course of the manufacturer's business), to assure the proper labeling, advertising, and distribution of its products. This provision would not create a new responsibility or burden for companies (typically the smaller ones) who do not visit retail locations as part of their usual business practice. The obligation to inspect exists only for those companies (typically the larger ones) for whom visits are part of their usual business practice.

Further, because there are detailed contracts between the larger cigarette manufacturers and retailers, proposed 897.12 should not impose a significant burden on these manufacturers. For example, a Non-Self-Service Carton Shelf Plan for the R.J. Reynolds Tobacco Co. specified that " [t]he height of the top shelf cannot exceed 72 inches and must have a height capacity of seven cartons * * *" and that the cigarette display or shelves "* * * must be in total view of the consumer * * *" and "* * * may not be placed more than 10 feet from point-of-purchase."[17] Another plan, titled "R.J. Reynolds Tobacco USA Savings Center Display Plan," created six different pay scales for retailers; the retailers would receive more money if they sold a large volume of cigarettes. Under this plan, R.J. Reynolds would also provide a "merchandiser" to display its products, and the retailer would agree to stock the "designated RJR shelf rows" "no less than five cartons high," and not alter the shelves or reduce the amount allocated to R.J. Reynolds products.[18] In both plans, the retailer also agreed to permit R.J. Reynolds representatives to "plan-o-gram, adjust, and divide its allocated space as deemed necessary" and to "make reasonable audits of performance and to inspect and rotate R.J.R's products in stores under contract."[19]

Former sales representatives and managers interviewed by FDA stated that manufacturers keep extremely detailed records about each retailer. Some records noted whether the retailer should be visited weekly, biweekly, monthly, etc.; other entries included the types of displays in the retailer's establishment. At least one company also gave portable computers to its representatives; the data entered into these computers were downloaded nightly and sent to company headquarters. These detailed contracts and records demonstrate that the manufacturers are heavily involved in establishing and maintaining retailers' displays and that the proposed rule's requirements that each manufacturer be responsible for removing violative advertising, labeling, and self-service displays, and for performing a visual inspection on each subsequent business call are both feasible and reasonable.

3. Section 897.14—Additional Responsibilities of Retailers

Proposed 897.14 would establish additional responsibilities for retailers. Proposed 897.14(a) would require the retailer or the retailer's employees to verify that people who intend to purchase cigarettes or smokeless tobacco products are legally entitled to do so. Verification would be by direct visual inspection of each prospective purchaser and, if necessary, would include the use of a photographic identification card with a birth date. Examples of documents that would be acceptable are a driver's license or a college identification card. The proposal would require an identification card with a picture and a birth date because such identification cards are more reliable than other forms of identification. FDA invites comment on whether the final rule should contain more specific requirements concerning the types of identification that would comply with this provision.

The agency has found strong support for the additional retailer responsibilities that this section would impose. According to a recent report endorsed by 26 State attorneys general, industry training films and programs used by retailers regarding tobacco sales had little or no impact on preventing illegal sales to minors and, in some retail sectors, high employee turnover rates complicated training efforts. Moreover, determining a young customer's age through visual examination alone proved to be difficult. Thus, the attorneys general recommended requiring proof of age of anyone who does not appear to be at least 26 years old.[20]

Additionally, studies indicate that minors who are able to purchase cigarettes and other tobacco products from stores are rarely asked to verify their age. For example, in one study, 67 percent of minors (mean age: 15 years) were asked no questions when they attempted to purchase cigarettes.[21] Store cashiers tried discouraging the minors from buying cigarettes in only 7 percent of the spot checks conducted by the authors. In 14 percent of the cases, the cashiers actually "encouraged the minor's purchase by offering matches, suggesting a cheaper brand, or offering to make up the difference if the minor was 'short on cash'."[22]

In another report, five minors between the ages of 13 and 16 were sent to various locations to buy cigarettes. Despite signs at some locations that prohibited entry by persons under the age of 21, the minors were able to buy cigarettes, even when they admitted they were under 21. For smokeless tobacco products, studies show that half of the stores examined were willing to sell smokeless tobacco products to minors.[23] In contrast, in Everett, WA, where a local ordinance required proof of age if the prospective buyer did not appear to be of legal age to purchase cigarettes, over 60 percent of students between the ages of 14 and 17 reported being asked for proof of age when they attempted to buy cigarettes, and tobacco use, among 14 to 17-year-olds, declined from 25.3 percent to 19.7 percent overall.[24]

Proposed § 897.14(b) would prevent the retailer or an employee of the retailer from using any electronic or mechanical device in providing cigarettes or smokeless tobacco products to the purchaser. Requiring the retailer's employees to hand cigarettes or smokeless tobacco products to customers, after checking identification, has the practical effect of making access to such products more difficult for young people.

Proposed § 897.14(c) would prohibit the retailer or an employee of the retailer from opening a cigarette, cigarette tobacco, or smokeless tobacco product package to sell or distribute a cigarette, or cigarettes (often referred to as "singles" or "loosies") or any quantity of cigarette tobacco or of a smokeless tobacco product from that package. The agency is proposing this restriction because the primary market for "loosies" is children and adolescents. One California study found that 101 of 206 stores sold single cigarettes to minors and adults, and more stores sold single cigarettes to minors than to adults.[25] A survey in Nashville, TN, found that one-quarter of the stores sold single cigarettes.[26]

Additionally, the IOM noted that the sale of single cigarettes is attractive to children due to the low costs, could make children more willing to experiment with tobacco products, and that single cigarettes may be easier for children to shoplift.[27] Consequently, the IOM advocated banning the sale of single cigarettes.[28] Several States, including Mississippi, Oklahoma, South Dakota, Tennessee, and Washington, already restrict the sale of unpackaged tobacco products, and a working group of State attorneys general recently recommended that single cigarette sales be prohibited.[29]

4. Section 897.16—Conditions of Manufacture, Sale and Distribution

a. *Restrictions on product names.* Proposed 897.16(a) would prohibit prospectively the use of a trade or brand name for a non-tobacco product as the trade or brand name for a cigarette or smokeless tobacco product. The agency is aware of three brands of cigarettes that have used this strategy: Harley-Davidson, Cartier, and Yves St. Laurent's Ritz cigarettes. In the final rule, the agency intends to exempt those brands that already use the trade or brand name of a non-tobacco product.

This provision would complement the requirements in proposed subpart D (regarding labeling and advertising) that would reduce the appeal of cigarettes and smokeless tobacco products to people younger than 18. FDA believes that this provision is necessary to prevent manufacturers from circumventing the purpose of this proposed rule. As discussed elsewhere, the imagery associated with tobacco products is an important factor in why young people smoke. This provision would prevent tobacco manufacturers from capitalizing on the imagery of other consumer products by using the brand name of those products for tobacco products.

b. *Minimum package size.* Proposed § 897.16(b) would make 20 cigarettes the minimum package size for cigarettes. FDA selected 20 because the vast majority of cigarette packs in the United States contain 20 cigarettes. The proposal is intended to preclude firms from manufacturing packages that contain fewer than 20 cigarettes; these packs, sometimes referred to as "kiddie" packs, usually contain a small number of cigarettes, are easier to conceal, and are less expensive than full-size packs. (Young people, who generally have little disposable income, can be particularly sensitive to the price of cigarettes and may choose not to smoke as the price increases.[30]) Further, FDA is aware that Lorrilard Tobacco Company is offering a pack containing only 10 cigarettes of its Newport brand for sale and that another firm is experimenting with single cigarettes packed in individual tubes.[31]

One study showed that 56.3 percent of all 14 to 15 year old adolescent smokers surveyed in one urban area of Australia had purchased kiddie packs in the month prior to the survey, compared with only 8.8 percent of adult smokers. The study concluded, "If we fail to take strong action against the well targeted marketing methods of tobacco companies then the adolescent smoking rates recorded in this study are likely to remain high."[32]

The Nova Scotia Council on Smoking and Health reported that 49 percent of tobacco users in the sixth grade purchased kiddie packs of 15 cigarettes.[33] Another study of Australian schoolchildren reported that 30 percent of the 12-year olds preferred packages containing 15 cigarettes compared to 11 percent of the 17-year olds.[34] The Australian study, however, also reported that older children preferred cigarette packages that contained 25 cigarettes. Consequently, even though FDA has no evidence that firms intend to market cigarette packages that contain more than 20 cigarettes, the agency invites comment as to whether proposed § 897.16(b) should also state the maximum package size for cigarettes.

c. *Impersonal modes of sale.* Proposed § 897.16(c) would permit cigarettes and smokeless tobacco products to be sold only in a direct, face-to-face exchange between the retailer or the retailer's employees and the consumer. The proposal would prohibit specifically cigarette vending machines, self-service displays, mail-order sales, and mail-order redemption of coupons.

i. *Vending Machines.* Studies indicate that a significant percentage of adolescents are able to obtain their cigarettes from vending machines and that such purchases occur regardless of locks, warning signs, and other restrictions. In 1994, CDC examined 15 recent tobacco inspection surveys to investigate underage sales to minors. While 73 percent of over-the-counter outlets made illegal sales to children and adolescents, 96 percent of vending machine sales were successful.[35]

A 1989 survey of 10th grade students in Minnesota indicated that 71 percent had purchased tobacco from vending machines.[36] Another 1989 report found that, in California, minors between the ages of 14 and 16 were able to purchase cigarettes from vending machines 100 percent of the time.[37] A 1992 study in Minnesota involving minors between the ages of 12 and 15 reported a 79 percent success rate in purchasing cigarettes from vending machines.[38] Children in the Washington, D.C. area, New York, Colorado, and New Jersey who were sent to purchase cigarettes from vending machines achieved 100 percent success rates.[39] The 1994 Surgeon General's Report examined nine studies on cigarette purchases from vending machines and found that underage persons were able to purchase cigarettes 82 to 100 percent of the time, with a weighted-average rate of 88 percent.[40]

Moreover, younger children use vending machines to purchase cigarettes more often than older adolescents. A study commissioned by the vending machine industry revealed that 22 percent of 13-year olds who smoke reported purchasing cigarettes from vending machines "often" compared with only 2 percent of 17-year olds. Twenty-two percent of 13- to 17-year-olds who smoke report purchasing cigarettes from vending machines "often"or "occasionally."[41]

FDA is aware that some jurisdictions have attempted to place locks, post warning signs, or restrict placement of vending machines to curtail access by young people. These efforts have had only limited success. A 1992 report examining vending machines in St. Paul, MN, indicates the limitations of requiring locking devices on vending machines. Despite a 1990 city ordinance requiring locking devices on vending machines, the rate of noncompliance by merchants was 34 percent after 3 months and 30 percent after 1 year.[42] Underage buying increased from 30 percent 3 months after the ordinance had been enacted to 48 percent after 1 year.[43] Further, in those locations where locking devices were not placed on vending machines, underage buying was successful 91 percent of the time.[44] The study concluded that the use of locking devices on vending machines was less effective than a vending machine ban.

In 1994, CDC examined minors' access to cigarette vending machines in Texas. CDC noted that Texas law requires cigarette vending machine owners to post signs on their machines stating that sales to persons under the age of 18 are illegal. Despite these laws, minors between the ages of 15 and 17 successfully bought cigarettes from vending machines 98 percent of the time.[45]

Laws restricting placement of vending machines also appear to be ineffective. In one study, 14-year-old children were able to purchase cigarettes from vending machines 77 percent of the time despite State laws requiring the machines to be "in the immediate vicinity, plain view and control of an employee" and to bear signs concerning illegal purchases by minors.[46] Six surveys conducted in bars, taverns, private clubs, and liquor stores in five states found that minors were able to successfully purchase cigarettes in vending machines between 70 percent and 100 percent of the time, about the same rate as elsewhere.[47] In these surveys, the sales rates for "adult only" locations were similar to the rates for vending machine cigarette sales located elsewhere in the communities, indicating that restricting cigarette vending machines to places such as bars and liquor stores does not serve as an impediment to young people buying cigarettes. Additionally, according to the vending machine industry's research, 77.5 percent of all cigarette vending machines are already in "adult" areas such as bars, lounges, offices, college campuses, and industrial plants.[48] Therefore, it is likely that restricting cigarette vending machines to these areas would have a minimal effect on reducing sales to young people.

Studies also have shown that the use of vending machines by young people appears to be highest in those areas with strong access restrictions. In Santa Fe, New Mexico, where selling to minors was not against the law, vending machines were used 18 percent of the time by teen smokers.[49] By contrast, in Vallejo, California, where local merchants were actively requiring photographic identification, a survey found that teen smokers used vending machines 56 percent of the time (thereby making vending machines the most common source of cigarettes for young people.[50]) Therefore, if access restrictions are imposed such as requiring retailers to verify age, it is likely that vending machines may become an even more important source of cigarettes for young people.

Because minors, especially very young children who try smoking, rely on vending machines to purchase tobacco products, and because State and local laws restricting placement of, or requiring locking devices on, vending machines appear to be ineffective, the agency believes that the only practical approach to curtailing young people's access to such products is to eliminate vending machines and other impersonal modes of sale. Moreover, government enforcement of vending machine locking devices would entail a greater regulatory burden than enforcing a complete ban because authorities would need to ensure the devices were installed and operating properly, and that store employees were using them correctly.[51]

Consequently, proposed § 897.16(c) would require retailers to hand the product to the consumer. This proposed requirement would have the added effect of preventing persons younger than 18 from evading the proposed rule's age requirement by shifting their purchasing patterns from stores to vending machines or mail orders. Further, the agency notes that this aspect of the proposed rule is consistent with recommendations from the IOM,[52] the Public Health Service,[53] a working group of State attorneys general,[54] and findings by the Office of the Inspector General, DHHS.[55]

Finally, data from the vending machine industry show that cigarettes account for a small and declining portion of total vending machine revenues.[56] Using industry data from 1993, calculations indicate that daily sales from cigarette vending machines average approximately $10 per machine/per day.[57] In 1993, cigarettes comprised 4.7 percent of total vending machine revenues compared to 45.5 percent in 1960.[58] Between 1992 and 1993, vending machine revenues from cigarettes dropped 25 percent.[59] While total revenues from cigarette vending machines have been decreasing, revenues from most other product categories sold in vending machines, such as juice and other cold drinks, rose dramatically.[60] Further, the number of cigarette vending machines decreased significantly from 373,800 to 181,755 between 1988 and 1993.[61] Recognizing that more and more states and localities have enacted restrictions or bans on cigarette vending machines, machines are being produced that can be converted to dispense other products.[62] Furthermore, according to the National Automatic Merchandising Association, the association representing the vending machine industry, virtually no new shipments of cigarette vending machines have been made since 1990, compared with 32,065 shipments in 1976.[63]

ii. *Self-service displays.* Proposed § 897.16(c) would also prohibit self-service displays. Self-service displays enable young people to quickly, easily, and independently obtain tobacco products. This restriction is intended to prevent young people from helping themselves to tobacco products and to increase the direct interaction between the sales clerk and the underage customer. This restriction is also consistent with the 1994 IOM Report's recommendation. IOM reviewed surveys of grade school students in New York, and Wisconsin, and noted that many students—over 40 percent of daily smokers in Erie County, NY and Fond du Lac, WI—shoplifted cigarettes from self-service displays.[64] IOM found that eliminating self-service displays would make it more difficult for children to obtain cigarettes, especially if the children had to purchase the cigarettes from a store clerk (as would be required under this proposal). IOM further noted that "placing the products out of reach reinforces the message that tobacco products are not in the same class as candy or potato chips."[65]

A California study compared smoking prevalence among minors in five counties before and after the institution of ordinances prohibiting self-service merchandising (display and sale) and requiring only vender-assisted sales. The rate of tobacco sales to minors in the five counties dropped 40 to 80 percent and the decrease was still in evidence 2 years after the survey. Moreover, the study found that the ban on self-service significantly increased the checking of young purchasers' identification by retail clerks and, in particular, discouraged younger adolescents from attempting to buy tobacco.[66]

iii. *Mail-order sales.* In addition to prohibiting the sale of tobacco products in vending machines and the use of self-service displays, proposed § 897.16(c) would prohibit mail-order sales and redemption of mail-order coupons. Mail-order sales provide no face-to-face interaction to verify the age of the consumer. The current industry practice merely requires that the customer provide a birth date or check a box on

the mail-order card to verify, for example, that he/she is 21. The agency concludes that proposed § 897.16(c) would significantly reduce access to cigarettes and smokeless tobacco products by persons younger than 18. The ban of mail-order sales is recommended by the IOM[67] and Philip Morris recently announced that it would discontinue mail-order sales in order to reduce access to young people.[68]

d. *Free samples.* Proposed § 897.16(d) would prohibit manufacturers, distributors, and retailers from distributing free samples of tobacco products. The agency is proposing this restriction because many young people, including elementary school children, receive free samples.[69] Free samples are often distributed at "mass intercept locations" such as street corners and shopping malls, and events such as music festivals, rock concerts, and baseball games. They have been distributed at zoos, at bars and restaurants where entertainers perform and promote the product, and through the mail.[70] Free samples give young people a "risk-free and cost-free way to satisfy their curiosity" about tobacco products and, when distributed at cultural or social events, may increase social pressure on young people to accept and use the free samples.[71]

For smokeless tobacco products, distribution of free samples to young people has been a foundation of the growth strategy of the UST (makers of Skoal, Copenhagen, Happy Days, and other smokeless tobacco products).[72] In 1992 and 1993, the smokeless tobacco industry spent nearly $16 million annually on the distribution of free samples. The industry's largest expenditure in 1993 was on coupons and retail value-added articles to encourage trial use ($32 million).[73]

Despite industry-imposed age restrictions on the distribution of samples, underage persons are able to obtain samples either by lying about their age or by enlisting older friends and relatives to obtain samples for them.[74] The lure of free samples can also be quite attractive; one advertising campaign offering a sample pack of Skoal Bandits reportedly generated 400,000 responses in a 3-month period.[75]

Even elementary school children are able to obtain free cigarette samples easily. One survey examined five schools in Chicago and a sample of students at DePaul University. Four percent of the elementary school students reported receiving free samples of cigarettes themselves. Nearly half of the elementary and high school students and one-quarter of the college students "* * * reported having seen free cigarettes given to children and adolescents."[76] In another survey, one-third of approximately 500 New Jersey high school students who were current or former smokers reported receiving free cigarette samples before the age of 16.[77]

The distribution of free samples to minors occurs despite the industry's voluntary code against distributing cigarettes to persons under the age of 21. The recent IOM report noted several problems with the industry's voluntary code, stating that "distribution to minors appears to be nearly inevitable."[78] While the voluntary code instructs employees distributing samples to ask for identification and ask other questions if they suspect a potential recipient to be under age, distribution of samples to minors occurs anyway because the samplers are often placed in crowded places and constrained by time:

> There is a significant time constraint in asking for proof of age from all young-looking individuals who solicit samples, not to mention the time required for the myriad of other questions which samplers are instructed to ask. Samplers are often surrounded on all sides by those soliciting samples and a dozen or more outstretched arms waiting (or grabbing) for samples * * * those passing out samples are usually quite young themselves. These youthful distributors may lack the psychological wherewithal to request proof of age and refuse solicitations from those in their own peer group.[79]

Consequently, the ineffectiveness of the industry's voluntary code and the fact that State laws that ban or restrict the distribution of free samples are rarely enforced led IOM to recommend prohibiting distribution of free samples in public places and through the mail.[80] The National Cancer Institute reached a similar conclusion in 1991, and stated, "The offer of free cigarettes and smokeless tobacco products is reminiscent of the drug pusher who gives the first sample free to get his customer hooked."[81] The proposed rule is consistent with IOM's and NCI's recommendations.

C. Subpart C—Labels and Educational Programs

Proposed subpart C would provide the established name for cigarettes and smokeless tobacco products that is required by sections 502 of the act. In addition, it would require that cigarette and smokeless tobacco manufacturers fund a national program including educational messages in order to undo the effects of young people's near constant exposure to pro-tobacco messages and, thus, to discourage young people from using cigarettes and smokeless tobacco products, pursuant to sections 201, 502, and 520(e) of the act.

1. Section 897.24—Established Names for Cigarettes and Smokeless Tobacco Products

Proposed § 897.24 would provide the "established name" for cigarettes, cigarette tobacco, and smokeless tobacco products. This provision is intended to implement section 502(e)(2) of the act, which states that a device shall be deemed misbranded if its label fails to display the established name for the device "in type at least half as large as that used thereon for any proprietary name or designation for such device." Section 502(e)(4) of the act, in turn, explains that the "established name" for a device is the applicable official name of the device designated under section 508 of the act (21 U.S.C. 358), the official title in a compendium if the device is recognized in an official compendium but has no official name, or "any common or usual name of such device."

In this case, no official names have been designated under section 508 of the act, and no compendium provides an established name for these products. Consequently, proposed § 897.24 would consider "cigarettes," "cigarette tobacco," and the common or usual names for smokeless tobacco products (such as "moist snuff" or "loose leaf chewing tobacco") as established names.

2. Section 897.29–Educational Programs Concerning Cigarettes and Smokeless Tobacco Products

The Surgeon General's 1994 Report suggested that "a nationwide, well-funded antismoking campaign could effectively counter the effects of cigarette advertising in its currently permitted media forms."[82] IOM also recommended that "counter-tobacco advertisements should be intensified to reverse the image appeal of pro-tobacco messages, especially those that appeal to children and youths."[83]

FDA's proposal is consistent with the Surgeon General's and IOM's findings. Proposed 897.29 would require each manufacturer to establish and maintain a national public educational program, including major reliance on television messages, to combat the effects of the pervasive and positive imagery that has for decades helped to foster a youth market for tobacco products.

FDA based proposed 897.29, in part, on historical experience. From July 1, 1967 to December 31, 1970, the Federal Communications Commission, as part of

the "Fairness Doctrine," required broadcasters to provide a significant amount of time for antismoking messages on television and radio. Thus, one antismoking message appeared for every three or four industry-sponsored, prosmoking advertisements. This amounted to approximately $75 million (in 1970 dollars) in commercial air time for antismoking messages annually, until a ban on prosmoking advertisements on television and radio became effective on January 1, 1971. Thus, for several years, the American public was exposed to both pro- and antismoking messages.

During this time, per capita cigarette consumption declined 7 percent, from 4,280 in 1967 to 3,985 in 1970. Most of the 7 percent decline (6.2 percent) was attributable to the anti-smoking messages.[84] This was the first time since the early 1930's that per capita consumption declined consecutively for 3 years and was one of the largest declines ever recorded. Additionally, a study of nearly 7,000 adolescents found that adolescent smoking rates declined during this period.[85] The greatest decline occurred in the first year that the antismoking messages appeared. A 1972 econometric analysis confirmed that the antismoking messages had up to a 5.6 times greater effect on cigarette consumption than promotional cigarette advertising.[86] When the antismoking messages ended on television and radio (due to the Federally-mandated ban on advertising on television and radio, thereby ending the application of the Fairness Doctrine), per capita cigarette consumption began to rise.

A similar experience occurred in Greece during the late 1970's.[87] In an effort to reduce cigarette consumption, the Greek government launched an antismoking campaign and, in 1978, banned cigarette advertising on television and radio. In 1979, the Greek Government intensified its antismoking effort by adding television and radio counter-advertising as well as a community-based print education campaign. This enhanced campaign lasted 2 years but was discontinued following a change in government, with the ban on television and radio advertising remaining. Evaluation of this experience revealed that, during the counter-advertising phase, the annual increase in per capita tobacco consumption dropped to zero, compared to the pre-campaign advertising ban rate of 6 percent increase in consumption. When the campaign ended, the annual rate of increase in tobacco consumption quickly increased to earlier levels. This experience suggests that intensive health education and counter-advertising campaigns can be effective.

There have been numerous research and demonstration projects evaluating the effectiveness of counter-advertising and mass-media smoking cessation programs.[88] As the research designs have evolved, more has been learned about which types of programs are effective and under what conditions. Most recently, well-evaluated studies of programs in Vermont, California, and elsewhere suggest that mass-media and counter-advertising campaigns can have a sustained effect on both preventing teens from starting to smoke and in helping smokers quit.

In Vermont, researchers tested the effect of mass-media and school health education programs.[89] Students exposed to both school and media interventions were 35 percent less likely to have smoked in the past week than students exposed only to the school program, and this preventive effect persisted for at least 2 years following the completion of the intervention program. The decrease occurred even in students who were considered to be at slightly higher risk of becoming smokers because of demographic considerations (lower family income).

There have been similar results in helping smokers interested in quitting. In California, the Department of Health Services has been conducting a $26 million multi-year media campaign to prevent teens from starting to smoke and help adult smokers quit. In a preliminary study of the campaign's effectiveness, researchers found that the state media campaign "had a negative impact on cigarette consumption, while industry advertising had a positive impact on cigarette consumption." The authors concluded that "[t]his suggests, as one would expect, that increasing state media expenditures and decreasing industry advertising are both effective ways to deter smoking."[90] According to a recent evaluation, the media campaign's advertisements directly influenced 7 percent (33,000) of Californians who quit smoking in 1990 to 1991, and contributed to the quitting of another 173,000.[91] The California media program has also resulted in high levels of awareness among young people,[92] and may have contributed to stopping the rise in teen smoking that had been occurring in California prior to the campaign.[93]

FDA has proposed general criteria in the codified language. The following describes one set of requirements for such a program that the agency is considering requiring in a final rule. FDA is soliciting comments on whether the described program would accomplish the goal of creating an effective national program that would correct and combat the effects of the pervasive positive imagery in advertising and, thus, help reduce young people's use of tobacco products or whether additional or different requirements would be preferable. The program would be national in scope and could require that the companies purchase certain times and places on television programming (referred to in the industry as a "buy"). For example, a television buy could: (1) Devote at least 80 percent of its resources to television messages, both on network and on cable television, during prime time hours (between the hours of 8 p.m. and 11 p.m.), early fringe time (between the hours of 4 p.m. and 6 p.m.), and access time (time that is allocated to local broadcasting stations); (2) be directed to persons between the ages of 12 and 17 years; and (3) be national in scope. Moreover, the buy could include advertising time in at least 50 percent of television programs rated by a national rating service as being in the top 20 for persons between the ages of 12 and 17 and corresponding to the demographic profile of underage tobacco users by gender, racial, and ethnic characteristics, and the remaining percentage in programs with either high concentration or high coverage to young people. The buy could ensure that the manufacturer reach an average of 70 to 90 percent of all persons between the ages of 12 and 17 years five to seven times per 4-week period. (The 4-week period is often referred to as a "flight.") Such requirements would help to ensure that the educational messages reach large numbers of young people and are consistent with the way in which advertising is typically purchased. In addition, to ensure that the messages change over time and remain novel and of interest to young people, each message could be limited in use so that each message would be presented no more than 15 times per quarter to the top two-fifths (referred to as top two quintiles) of television viewers between the ages of 12 and 17 and who watch the most television.

The industry members could select from a variety of messages maintained by FDA. FDA could collect and maintain a file of messages developed by states with active tobacco control programs (such as California and Massachusetts), from voluntary health organizations (as was done by broadcasters during the Fairness Doctrine period), and from other appropriate sources, including messages developed and submitted by the tobacco

companies. FDA could determine which messages would be appropriate in consultation with other entities and offices within the Department of Health and Human Services, such as CDC's Office on Smoking and Health; with other federal agencies with expertise in consumer behavior and marketing, such as the Federal Trade Commission; and with consultants and contractors who are expert in communications theory and practice. FDA, in consultation with other federal agencies and other experts, could review the messages to ensure that their language and imagery are effective with 12- to 17-year olds. Each message would be evaluated to determine if it were designed to influence those beliefs and attitudes of 12- to 17- year olds that are most likely to affect the initial decision to smoke (or to start using smokeless tobacco products), the decision to continue smoking (or continue to use smokeless tobacco products), and/or the decision to quit. Examples of appropriate messages include those addressing addiction, weight control, effective ways to refuse a cigarette and other social influences that are related to youth smoking.

Moreover, an appropriate educational program could require each manufacturer to submit, on a quarterly basis, analyses of every television buy by time period on network television (referred to as "day part"), cable, and other media, prepared and executed by the party or parties responsible for the advertising. This requirement could fulfill the manufacturer's responsibility to report on the effectiveness of the program.

In addition, each manufacturer could conduct tracking studies of persons between the ages of 12 and 17. This would enable the manufacturers to determine how effective their educational programs and buys were. The studies could be performed twice per year and would need to meet recognized industry standards for tracking studies, such as measuring recall and recognition of the televised messages. These studies could be given to FDA, which could review the results of the industry's testing in consultation with other experts as needed, in order to help the agency refine its selection criteria for messages.

Finally, the remaining 20 percent of the messages could be placed in other media, with emphasis on radio and outdoor advertising. Consideration should be given to ensuring that these messages appear in media that are heavily used by young people.

Under proposed § 897.29, each manufacturer would devote an amount of money to the corrective educational program proportionate to its share of the total advertising and promotional expenditures of the cigarette and smokeless tobacco industry. Thus, a company whose expenditures equal 40 percent of total industry expenditures would be required to allocate an amount equal to 40 percent of the total monies required. The agency calculated the amount of money that would be allocated to the initial corrective educational program by looking at the period of time when the Fairness Doctrine was in effect. It was estimated that, at that time, approximately $75 million a year in air time was provided by broadcasters for anti-smoking messages, which translates to $290 million in 1994 dollars. In order to ensure an effective program, the agency is proposing that approximately half that amount, or $150 million a year, be allocated initially. Under this proposal, the agency could determine each manufacturer's proportionate share of the overall advertising and promotional expenditures of the cigarette or smokeless tobacco industry by referring to the most recent figures reported to the FTC under the Cigarette Act or the Smokeless Act. This provision is intended to ensure that the corrective educational programs are adequately funded in proportion to each manufacturer's overall reported advertising and promotion expenses.

D. Subpart D—Labeling and Advertising

1. Introduction

Proposed subpart D would establish certain requirements for cigarette and smokeless tobacco product labeling (excluding product labels) and advertising pursuant to sections 520(e), 502(q), and 502(r) of the act. The proposal would apply similar requirements to labeling and advertising in print media because both are used to convey information about the product; to promote consumer awareness, interest, and desire; to change or shape consumer attitudes and images about the product; and/or to promote good will for the product. Therefore, FDA has decided to place the labeling provisions with the advertising requirements rather than place the labeling provisions with those pertaining to product labels.

Regulating cigarette and smokeless tobacco product labeling and advertising is essential to decrease young people's use of tobacco products. Proposed subpart D would preserve the informational component of labeling and advertising while decreasing their appeal to children and adolescents.

Briefly, the proposed regulations would require that advertising in any publication with a youth readership of more than 15 percent (youth being defined as under 18) or more than 2 million children and adolescents under 18 be limited to a text-only format in black and white. Advertising in any publication that is read primarily by adults would be permitted to continue to use imagery and color. Pursuant to section 502(r), the proposed regulations would require that cigarette advertising contain a statement of the product's established name, intended use, and a brief statement regarding relevant warnings, precautions, side effects, and contradictions. In addition, brand identifiable non-tobacco items, such as hats and tee shirts, and brand identifiable sponsorship of events, such as the Virginia Slims Tennis Tournament or a sponsored event using a tobacco product logo or symbol, would be prohibited.

Section 201(m) of the act (21 U.S.C. 321(m)) defines "labeling" as "all labels and other written, printed, or graphic matter" that are on an article or its containers or wrappers, or "accompanying such article." In interpreting the phrase "accompanying such article," the Supreme Court has held that it is not necessary for the labeling to physically accompany the product (see *Kordel* v. *United States*, 338 U.S. 345, 350 (1948)). Thus, labeling includes traditional promotional items, such as booklets, calendars, movies, etc., and also less obvious types of labeling, such as clocks, coffee mugs, desktop toys, and even tee shirts.[94] FDA would, therefore, consider non-tobacco items distributed by cigarette and smokeless tobacco companies with the product's brand name or product identification printed on them (e.g., tee shirts, hats, pens, golf tees) to be "labeling," and these would be prohibited.

Subpart D is based, in part, on the recommendations of major U.S. and world health organizations and on current efforts by other countries to reduce tobacco use. These organizations and countries support advertising restrictions as an essential part of any comprehensive program to reduce or eliminate smoking by young people. The American Medical Association, American Heart Association, American Cancer Society, American Lung Association, American Academy of Family Physicians, the World Health Assembly, and the World Health Organization have recommended restrictions on advertising and promotion including a total ban of all promotional and advertising activities.[95]

Additionally, the recent IOM report recommended that, to ensure that one clear message about the health risks of tobacco use is disseminated, the government should see to it that the "contradictory message [minimizing the risk] now conveyed by the tobacco industry"is stopped.[96] The report recommended many restrictions that are similar to those in the proposed rule. For example, the report recommended that advertising either be banned entirely or restricted to a text-only format.[97] The IOM said that such an approach would "eliminate all the images that imply that tobacco use is beneficial and make it attractive, and that encourage young people to use tobacco products."[98]

The proposed labeling and advertising regulations are also based upon numerous studies and reports. The first and most compelling piece of evidence supporting restrictions on cigarette and smokeless tobacco product labeling, advertising, and promotion is that these products are among the most heavily advertised products in America. Between 1970 (1 year before Federal law prohibited cigarette advertisements on television and radio) and 1993, cigarette advertising and promotional expenditures increased from $361 million to $6 billion, a 1,562 percent increase.[99] These messages were disseminated in print media, on billboards, at point of sale, by direct mail, on specialty items (hats, tee shirts, lighters), at concerts and sporting events, in direct mail solicitations, as sponsorships on television, and in other media. FDA is concerned that the amount of advertising, its attractive imagery, and the fact that it appears in so many forums, overwhelms the government's health messages.

Advertising and promotion of smokeless tobacco products, although a much smaller market than cigarettes, also increased over the years. The largest increase in advertising expenditures for smokeless tobacco products occurred for moist snuff. U.S.Tobacco (UST), the market leader in moist snuff, increased its television advertising expenditures from $800,000 in 1972 to $4.6 million in 1984,[100] an increase of 485 percent. By 1993, total advertising and promotional expenditures for smokeless tobacco products exceeded $119 million. This increase was largely attributable to the advertising of moist snuff ($71.4 million).[101] This increase in expenditures corresponds to the growth of the moist snuff portion of the smokeless tobacco market, from 36 million pounds in 1986 to 50 million pounds in 1993. All other segments of the smokeless tobacco market declined during that period.[102]

In addition to spending large amounts on advertising, the cigarette and smokeless tobacco product industries have disseminated a variety of advertising and promotional messages that have had an enormous impact upon young people's attitudes towards smoking. In summarizing its analysis of the industry's advertising practices, IOM stated:

> The images typically associated with advertising and promotion convey the message that tobacco use is a desirable, socially approved, safe and healthful, and widely practiced behavior among young adults, whom children and youths want to emulate. As a result, tobacco advertising and promotion undoubtedly contribute to the multiple and convergent psychosocial influences that lead children and youths to begin using these products and become addicted to them.[103]

The pervasiveness and magnitude of the labeling and advertising for these products create an atmosphere of "friendly familiarity" [104] that affects and shapes a young person's views towards tobacco products. Thus, FDA's decision to propose stringent regulations for labeling and advertising is based upon compelling evidence that advertising and labeling play an important role in shaping a young person's attitude towards, and willingness to experiment with, cigarettes and smokeless tobacco products.

2. Advertising, Labeling, and Adolescents

Products may be advertised and promoted for their symbolic or fanciful attributes. Advertising utilizing this technique tries to convey that consumption of the product will enhance the user's self image [105] or image in the community. Consumers purchasing products for these symbolic attributes hope to acquire the image as well as the product itself.[106] This psychosocial consumer phenomenon is particularly descriptive of adolescent consumer behavior. As one consumer psychologist remarked:

> [adolescence] create[s] a lot of uncertainty about the self, and the need to belong and to find one's unique identity as a person becomes extremely important. At this age, choices of activities, friends, and "looks"often are crucial to social acceptance. Teens actively search for cues from their peers and from advertising for the "right"way to look and behave.* * * Teens use products to express their identities, to explore the world and their new-found freedoms in it, and also to rebel against the authority of their parents and other socializing agents. Consumers in this age sub-culture have a number of needs, including experimentation, belonging, independence, responsibility, and approval from others. Product usage is a significant medium to express these needs.[107]

For example, adolescent males often use "such 'macho' products as cars, clothing, and cologne to bolster developing and fragile masculine self-concepts."[108]

Adolescents view cigarettes as a symbol to be used in helping to create a desired self image and to communicate that image to others. Cigarette advertising reinforces this symbolism and links smoking to success, social acceptance, sophistication, and a desirable lifestyle. The rugged and masculine Marlboro Man conveying, in the words of the Chief Executive Officer and President of Philip Morris, "elements of adventure, freedom, being in charge of your own destiny," [109] and the cool Joe Camel, giving humorous dating tips, provide imagery that adolescents can accept as identifying badges. Not surprisingly, these brands are among the most popular with young people. One Canadian tobacco company described its "masculine"targeting in these words:

> Since 1971, [the company's] marketing strategy has been to position [a cigarette brand] as a "masculine trademark for young males." It has been our belief that lifestyle imagery conveying a feeling of independence/freedom should be used to trigger the desire for individuality usually felt by maturing young males.[110]

Advertising for cigarette brands targeted to women have proven successful in attracting young female smokers. One study correlated trends in rising smoking initiation rates among girls with the introduction of several brands targeted at women. Some of these campaigns utilized themes thought to be appealing to women (e.g. liberation and feminism, images of slimness and sophistication). The advertising campaigns preceded a rapid increase in smoking initiation rates among girls under 18 that was not accompanied by any increase in smoking rates for women, boys, or men.

Thus, advertising can play an important role in a youth's decision to use tobacco. Many researchers, including those within the cigarette industry, have advanced a stage-based model of smoking uptake.[111] The first, preparatory stage is when a child or adolescent starts forming his or her attitudes and beliefs about smoking, and sees smoking as a coping mechanism, as a badge of maturity, as a way to enter a new peer group, or as a means to display independence.[112] During this stage, pervasive advertising imagery that glamorizes tobacco use may be an important factor in shaping beliefs. The

middle, trying and experimenting stages occur when the first cigarette is smoked, often at the urging of a peer, and becomes repeated but irregular. It is important to note that those who experiment often, or begin smoking at an early age, are much more likely to become regular smokers.[113] Therefore, age of initiation is important.

The final stage, nicotine dependence and addiction, is characterized by a physiological need for nicotine. At this stage, the adolescent develops a tolerance for nicotine and can experience withdrawal symptoms (such as dysphoric or depressed mood, insomnia, irritability, frustration or anger, anxiety, and difficulty concentrating) if he or she attempts to quit. However, of those who try to quit, few succeed without help, and there is a high probability of relapse.[114]

In the early stages of smoking, i.e., at initiation, psychosocial factors are decisive, and those factors are most often capitalized on in the themes used in tobacco product advertising. In the final stage, as smoking takes hold, physiological factors (and even health concerns) dominate. A document prepared by Imperial Tobacco Ltd. stated:

> At a younger age, taste requirements and satisfaction in a cigarette are thought to play a secondary role to the social requirements. Therefore taste, until a certain nicotine dependence has been developed, is somewhat less important than other things.[115]

Many behavioral and personal characteristics influence an adolescent's decision to use cigarettes or smokeless tobacco products, including: rebelliousness; risk-taking personality; use of other legal or illegal drugs; belief in the perceived utility of smoking (to cope with stress, control weight, or improve one's self-image); low self-esteem or depression; disbelief of or discounting health risks; and poor academic achievement.[116] Cognitive factors specific to children and adolescents also play a role in the early decision to smoke. Children and adolescents often focus on present needs and concerns, and ignore risks that might exist in the future. They exhibit a sense of personal invulnerability that permits them to act as if they were immortal.[117] Tobacco advertising plays on these feelings and exploits these adolescent vulnerabilities. As one report, created for a Canadian cigarette company, stated:

> Starters no longer disbelieve the dangers of smoking, but they almost universally assume these risks will not apply to themselves because they will not become addicted. Once addiction does take place, it becomes necessary for the smoker to make peace with the accepted hazards. This is done by a wide range of rationalizations.[118]

3. Industry's Marketing Practices

Industry documents indicate that cigarette manufacturers have conducted extensive research on smoking behavior and attitudes in young people and how advertisements should be made to appeal to young people. Documents from Philip Morris' files indicate that the company did, at least on one occasion, conduct research about the smoking habits of young people, questioning people in Iowa, including teen-agers as young as 14.[119] More specifically, research conducted for a Canadian affiliate of one U.S. cigarette firm focused on the need to attract young consumers, stating:

> Ads for teenagers must be denoted by a lack of artificiality, and a sense of honesty. Attempts at use of celebrities * * * do not seem to really click. If freedom from pressure and authority can also be communicated, so much the better.[120]

Research conducted by an American cigarette firm, and confirmed by other tobacco companies, revealed another significant behavior: most smokers continue to purchase the brand they smoked when they became regular smokers. Brand loyalty is seen in many consumer products (such as toothpaste, coffee, and automobiles) but is particularly strong for tobacco products. A 1989 "Wall Street Journal"article showed cigarettes as having the highest percentage of brand loyalty among consumers of any consumer product, at 71 percent.[121]

Knowledge about brand loyalty among cigarette smokers, coupled with the fact that most smokers began smoking before the age of 18, may explain why cigarette manufacturers have focused advertising and promotional efforts on younger people. R.J. Reynolds devised what it called a "Young Adult Smokers" ("YAS") program that was apparently designed to appeal specifically to young smokers, 18 to 24 year olds, and more narrowly to 18 to 20 year olds. An element of that program, known as FUBYAS, an acronym for First Usual Brand Young Adult Smokers, captured the concept that a smoker's first regular brand is the brand a smoker will stay with for years. This program featured the use of promotional items, such as hats and tee shirts bearing the Camel brand name, the cartoon Joe Camel, and imagery, that appealed to young people. Although these programs were ostensibly directed at people between the ages of 18 and 24, company memoranda suggest that the target population included high school students. For example, on January 10, 1990, a manager in Sarasota, Florida, issued a memorandum asking cigarette sales representatives to identify stores:

> * * * that are heavily frequented by young adult shoppers. These stores can be in close proximity to colleges [,] high schools or areas where there are a large number of young adults [who] frequent the store.[122]

On May 3, 1990, when the "Wall Street Journal" published this memorandum, the cigarette firm stated that the memorandum was a "mistake" and violated company policy by targeting high schools.[123]

Yet, on April 5, 1990, a manager in Moore, OK, issued a similar memorandum regarding the YAS program asking sales and service representatives to identify what was termed "Retail Young Adult Smoker Retailer Accounts."One criterion for identifying a YAS account included facilities "located across from, adjacent to are [*sic*] in the general vicinity of the High Schools or College Campus [*sic*]." [124] This second memorandum suggests that promotions aimed at high school students were part of the company's marketing strategy.

Sales figures suggest that the YAS program was extremely effective. Camel quickly became one of the most popular cigarette brands among people under age 18. Prior to the introduction of the Joe Camel campaign, Camel cigarettes commanded no more than 3 or 4 percent of the youth market. One year into the campaign, the youth share rose to 8.1 percent and by 1991 it was at least 13 percent.[125]

While not all advertising campaigns are so blatantly directed at juveniles, campaigns using more universal themes can be as effective with young people. According to an advertising executive with the advertising agency that created the Marlboro cowboy, "The Marlboro cowboy dispels the myth that in order to attract young people, you've got to show young people." The cowboy theme of independence can be translated into other venues that have appeal for young people and be sold as an appropriate and desirable image. According to John Landry, the Philip Morris executive credited with designing the Marlboro campaign, the Marlboro theme sells because it fits young people's desires. In 1973, Philip Morris sponsored the Marlboro Cup for the first time. Landry recalls that "Secretariat [the winning horse] became a hero to young people. Youth were reaching out for something, and someone they could identify with * * * 'Marlboro Country' fit these desires, this search people were going through." "Something young people could trust."A candid appraisal of the purpose of the Marlboro theme was provided by the marketing director with Philip Morris in Argentina, "Marlboro magic—people using things with [the] Marlboro logo * * * was projected to other products around it and when those kids who were playing with Marlboro merchandise 5 to 10 years ago—when they start smoking they'll smoke Marlboro." [126]

With regard to smokeless tobacco products, the U.S. Tobacco Company (UST) successfully revived a declining market by targeting young people, especially young men, in its promotion and advertising. In 1970, the segment of the population with the highest use of these products was men over age 50, and young males were among the lowest. Fifteen years later, there had been a 10-fold increase in the use of smokeless tobacco products among young males, whose use was double that of men over age 50.[127]

The increased use of smokeless tobacco products by young people was precisely the objective of a marketing strategy of UST set in motion almost 30 years ago. In 1968, officials at UST held a marketing meeting where, according to the "Wall Street Journal," the vice-president for marketing said, "We must sell the use of tobacco in the mouth and appeal to young people * * * we hope to start a fad." [128] Another official who attended the meeting was quoted as saying, "We were looking for new users—younger people who, by reputation, wouldn't try the old products." [129] When a rival company developed a smokeless tobacco product that 9-year-old children began using, a UST regional sales manager reported to UST's national sales manager that the product was mostly used by children and young adults "from 9 years old and up" and noted that this age was "four or five years earlier than we have reached them in the past." [130]

Responding to a question years later about why so many young males were buying smokeless tobacco, Louis F. Bantle, then chairman of the board of UST said, "I think there are a lot of reasons, with one of them being that it is very 'macho'." [131] Playing to this "macho" perception of smokeless tobacco by young males, advertisements for smokeless tobacco products have traditionally used a rugged, masculine image and have been promoted by well-known professional athletes. UST's successful penetration into the youth market is indicated in a statement by Mr. Bantle: "In Texas today, a kid wouldn't dare to go to school, even if he doesn't use the product, without a can in his Levis'." [132]

UST distributes free samples of low nicotine-delivery brands of moist snuff and instructs its representatives not to distribute free samples of higher nicotine-delivery brands. The low nicotine-delivery brands also have a disproportionate share of advertising relative to their market share. For example, in 1983, Skoal Bandits, a starter brand, accounted for 47 percent of UST's advertising dollars, but accounted for only 2 percent of the market share by weight. In contrast, Copenhagen, the highest nicotine-delivery brand, had only 1 percent of the advertising expenditures, but 50 percent of the market share. This advertising focus is indicative of UST's "graduation process" of starting new smokeless tobacco product users on low nicotine-delivery brands and having them graduate to higher nicotine-delivery brands as a method for recruiting new, younger users.[133]

Tobacco companies deny any youth-directed advertising and promotion activities.[134] Moreover, the industry claims that advertising plays no role in a person's decision to start smoking; that tobacco advertising is designed solely to capture brand share from competitors and maintain product loyalty. The industry further claims that the tobacco market is a "mature" market in which awareness of the product is universal and overall demand is either stable or declining.[135] In a mature market, the industry contends, advertising functions to merely shift customers from one brand to another, but does not act as a stimulus to new customers to enter the market.

One purpose of cigarette advertising may be to encourage or discourage brand switching among current tobacco users. Some experts believe, however, that this same advertising encourages new consumers to begin using these products.[136] Tobacco advertising, promotion, and marketing, on which the industry spends over $6 billion each year, may serve both purposes largely out of market necessity. Market expansion, in the sense of new customers entering the market, must occur to maintain total tobacco sales and avoid a significant market decline. "[T]he cigarette industry has been artfully maintaining that cigarette advertising has nothing to do with total sales * * * [T]his is complete and utter nonsense. The industry knows it is nonsense," wrote a former cigarette advertising executive.[137]

Evidence indicates that acquiring a portion of the "starter" market, overwhelmingly people in their teens, is regarded by the industry as essential to a company's continuing economic viability. One document acquired from Imperial Tobacco Limited (ITL) of Canada, a sister company of the Brown & Williamson Company in the United States, states:

> If the last ten years have taught us anything, it is that the industry is dominated by the companies who respond most effectively to the needs of younger smokers."[138]

To further this goal, ITL hired a consulting research company to investigate attitudes about smoking among people aged 15 years and older. The purpose of the research, i.e., how best to recruit new smokers, is indicated in the following statement:

> It is no exaggeration to suggest that the tobacco industry is under siege. The smoker base is declining, primarily as a function of successful quitting. And the characteristics of new smokers are changing such that the future starting level may be in question.[139]

Similar attitudinal research was done for R.J.R.-MacDonald, Inc., the Canadian subsidiary of R.J. Reynolds.[140] A report entitled YOUTH 1987 closely examined the lifestyles and value systems of "young men and women in the 15–24 age range." The report said the research would:

> provide marketers and policymakers with an enriched understanding of the mores and motives of this important emerging adult segment which can be applied to better decision making in regard to products and programs directed at youth.[141]

A similar research objective was described in a 1969 research paper presented to the Philip Morris Board of Directors.[142] The paper stated that one of its objectives was to probe "[w]hy do 70 million Americans * * * smoke despite parental admonition, doctors" warnings, governmental taxes, and health agency propaganda?" [143] The paper continues:

> There is general agreement on the answer to the first [question—why does one begin to smoke.] The 16 to 20-year old begins smoking for psychosocial reasons. The act of smoking is symbolic: it signifies adulthood, he smokes to enhance his image in the eyes of his peers.[144]

Cigarette manufacturers are also aware of the difficulties young people encounter when they try to quit smoking. Studies prepared for a Canadian affiliate of a U.S. cigarette company state:

> However intriguing smoking was at 11, 12, or 13, by the age of 16 or 17 many regretted their use of cigarettes for health reasons and because they feel unable to stop smoking when they want to.[145]

Another document declares:

[T]he desire to quit seems to come earlier now than before, even prior to the end of high school. In fact, it often seems to take hold as soon as the recent starter admits to himself that he is hooked on smoking. However, the desire to quit, and actually carrying it out, are two quite different things, as the would-be quitter soon learns.[146]

Thus, these documents and reports suggest that cigarette manufacturers know that young people are vital to their markets and that they need to develop advertising and other promotional activities that appeal to young people. They also suggest that cigarette manufacturers know that once those young people become regular smokers, that they, like adult smokers, find quitting smoking to be very difficult, and most young people fail in their attempts to quit.

4. Empirical Research on the Effects of Cigarette Advertising Activities on Young People

The 1994 Surgeon General's Report concluded that "[a] substantial and growing body of scientific literature has reported on young people's awareness of, and attitudes about, cigarette advertising and promotional activities." The report also found that "[c]onsidered together, these studies offer a compelling argument for the mediated relationship of cigarette advertising and adolescent smoking." [147] The Surgeon General's Report and the Institute of Medicine's report [148] find that there is sufficient evidence to conclude that advertising and labeling play a significant and important contributory role in a young person's decision to use cigarettes or smokeless tobacco products.

a. *Studies of advertising recall, approval of advertising, and young people's response to advertising.* Many studies have shown that young people are aware of, respond favorably to, and are influenced by cigarette advertising.[149] Even relatively young children are aware of cigarette advertisements and can recall salient portions. A recent Gallup survey found that 87 percent of adolescents surveyed could recall seeing one or more tobacco advertisements and that half could identify the brand name associated with one of four popular cigarette slogans.[150] One study found that over 34 percent of 12- to 13-year-old California children surveyed could name a brand of cigarettes that was advertised, despite the fact that Federal law bans cigarette and smokeless tobacco product advertising on both radio and television, the usual medium of information for children and adolescents.[151]

Other studies show that children who smoke are more likely to correctly identify cigarette advertisements and slogans in which the product names have been removed than are non-smokers.[152] One study surveyed a group of U.S. high school students and found a positive relationship between smoking level and cigarette advertisement recognition. Regular smokers recognized 61.6 percent of the tobacco advertisements while non-smokers recognized 33.2 percent.[153]

Another study measured cigarette advertising exposure among adolescents by determining which magazines they read and the number of cigarette advertisements in each magazine. The study found that two factors, advertising exposure and whether a friend or friends smoked, were predictive of smoking status or intention to smoke. The authors contended that the findings are consistent with the theory that cigarette advertising successfully represents, through attractive imagery, that smoking is a facilitator for acquiring a desired characteristic or goal.[154]

These studies raised the question of whether smoking causes a person to recognize advertisements or whether a person's exposure to or recognition of advertisements leads to smoking or increases the likelihood that a person will smoke. One study designed specifically to address this issue [155] showed that causality flowed in both directions: experimentation with cigarettes prompted subjects to attend to and retain information from cigarette advertisements (smoking status determined whether the child attended to advertising) and the amount of information retained by each subject from cigarette advertisements predicted the subjects' experimentation with cigarettes (causality).[156]

Another study attempted to address the issue of causality by questioning Glasgow school children at two different times, 1 year apart. The study asked 640 Glasgow children between the ages of 11 and 14 about their intention to smoke and their recognition of cigarette advertising. Children who were more inclined to smoke between the time when the two interviews were conducted tended to be more aware of cigarette advertising at the first interview than children who were less inclined to smoke. The study concluded that cigarette advertising has predisposing, as well as reinforcing, effects on children's attitudes towards smoking and their smoking intentions.[157]

Other studies relating children's misperceptions about the prevalence of smoking to advertising exposure and smoking status have found that overestimating smoking prevalence appears to be a very strong predictor of smoking initiation and progression to regular smoking.[158] The 1994 Surgeon General's Report found that young people overestimate the prevalence of cigarette smoking [159] and that advertising's pervasiveness plays a role in this misconception. One unpublished study cited in the Surgeon General's Report supports this finding. The study found that children in Los Angeles (where cigarette advertising and promotional campaigns are prevalent) were nearly three times more likely to overestimate the prevalence of peer smoking than were children in Helsinki, Finland (where there has been a total ban on advertising since 1978).[160] Moreover, adolescent smokers are more likely to overestimate the prevalence than adolescent non-smokers.[161] Overestimating smoking prevalence, as well as self-reported exposure to advertising, have both been positively correlated with the intention to smoke.[162]

Additional evidence indicates that children smoke many fewer brands than adults and that their choices, unlike adults, are directly related to the amount and kind of advertising.[163] CDC recently reported that 86 percent of underage smokers who purchase their own cigarettes purchase one of three brands: Marlboro (60 percent), Camel (13.3 percent) and Newport (12.7 percent).[164] These three brands were also the three most heavily advertised brands in 1993.[165] While Marlboro has long been the most popular brand among young people, Camel's share of the youth market increased from around 3 percent to 13.3 percent as a result of the invigorated Joe Camel campaign.

Adult preferences, on the other hand, are more dispersed. The three most commonly purchased brands among all smokers (as measured by market share) accounted for only 35 percent of the overall market share. (Camel had approximately 4 percent of the market and its market share did not change as a result of the Joe Camel advertising.) Furthermore, the most popular "brand" of cigarette among adult smokers was no brand at all: 39 percent of all cigarettes sold in the first quarter of 1993 were from the "price value market" which includes private label, generics, and plain-packaged products.[166] These brands typically rely on little or no advertising and little or no imagery on their packaging.

These studies present evidence that advertising plays a significant role in children's smoking behavior. There are, in addition, individual case studies that illustrate the profound effect that certain cigarette advertising campaigns can have on the youth market.

b. *The effect of selected advertising campaigns, which were effective with children.* Two American studies and one British study analyzed alleged youth-oriented campaigns to determine what effect they had on the underage market. One U.S. study examined the effect on the youth market of R.J. Reynolds' advertising campaign for Camel brand cigarettes. In the mid 1980's, R.J. Reynolds sought to revitalize its Camel brand cigarettes. It gave its symbol, the Camel, a new, more hip personality. It transformed the symbol into "Joe Camel," an anthropomorphic "spokescamel." The campaign featured Joe as a humorous figure in history, as an advisor to young adults with "smooth moves" and eventually as one of a gang of hip camels ("the hard pack" band and the gang at the watering hole bar). The study analyzed 1990 data from the California Tobacco Survey which consisted of a telephone survey of 24,296 adults and 5,040 children under the age of 18. The study found that teenagers were twice as likely as adults to identify Camel cigarettes as one of the two most advertised brands.[167]

One study explored the power of the Joe Camel campaign to penetrate the youth market. The study found that children as young as 3 years old could identify Joe Camel as a symbol for smoking. This recognition ranged from 30 percent of 3 year olds, to 91 percent of 6 year olds. In fact, the recognition rates for Joe Camel surpassed the rates for certain children's products, cereals, computers, and network television symbols.[168] A similar study funded by R.J. Reynolds found that 72 percent of 6 year olds and 52 percent of children between the ages of 3 and 6 could identify Joe Camel. These rates exceeded the recognition rates for Ronald McDonald, which were 62 percent of the 6 year olds and 51 percent of children between the ages of 3 and 6.[169] The higher recognition rates for Joe Camel are remarkable because, unlike Ronald McDonald who appears in television commercials during children's viewing hours, Federal law prohibits cigarette advertisements on television.

Data collected by researchers for the State of California found that in 1990, 23.1 percent of the under age 18 market in California purchased Camel as their brand. This represented a 230 percent increase over its pre-"Joe Camel" 1986 rate. The same growth rate did not occur for adults.[170] Nationally, Camel had less than 3 percent of the youth market before the brand was repositioned in 1988 and Joe Camel was introduced.[171] By 1989, Camel's share of the youth market had risen to 8.1 percent,[172] and by 1992, 13 to 16 percent.[173] During this same period, Camel's share of the adult market barely moved from its 4 percent level.[174]

The other American study used data from the National Health Interview Survey to study trends in smoking initiation among 10- to 20-year-olds from 1944 through 1980. The study found that initiation rates for 18- to 20-year-old women peaked in the early 1960's and steadily declined thereafter. Initiation rates for girls under 18, however, increased abruptly around 1967. This was the same period when brands specifically intended for women were introduced and heavily advertised. The initiation rate was particularly steep for women who did not attend college. The initiation rate for girls under the age of 18 peaked in 1973—about the same time that sales for these brands (Virginia Slims, Silva Thins, and Eve) peaked. Between 1967 and 1973, smoking initiation rates increased around 110 percent for 12-year-old girls, 55 percent for 13-year-olds, 70 percent for 14-year-olds, 75 percent for 15-year-olds, 55 percent for 16-year- olds, and 35 percent for 17-year-olds.[175]

In contrast, initiation rates for men declined from 1944 to 1949 and did not decline again until the middle to late 1960's. Initiation rates for boys under 16 showed little change during the entire study period. The study concluded that advertising for women's brands during this period was positively associated with increased smoking uptake in girls under 18 years of age.[176]

The British study looked at a campaign featuring a flippant and humorous character named "Reg." The study found that 91 percent of 11- to 15-year-olds recognized the ads, compared with 52 percent of 33- to 55-year-olds. Teenagers who liked the advertisements were more likely to smoke. In fact, it was one of the two brands that most children smoked. During the period in which Reg was advertised, smoking by 11- to 15-years-olds in northern England increased from 8 percent to 10 percent, but the rate for this same age group in southern England, where the advertisements did not appear, remained stable at 7 percent.[177] The government, pursuant to the industry's voluntary code, later requested that the company discontinue the advertising campaign because of its disproportionate appeal to children.

These studies provide compelling evidence that promotional campaigns can be extremely effective with young people.

c. *Direct quantitative studies.* There are many direct quantitative studies of the relationship between advertising and tobacco use and of the effects of advertising restrictions and bans on consumption. These studies provide insight into the effects of advertising on the general appeal of and demand for cigarettes and smokeless tobacco products. They also provide evidence confirming advertising's effects on consumption and the effectiveness of advertising restrictions on reducing youth smoking.

A large, multinational study commissioned by the New Zealand Government examined consumption trends in 33 countries between 1970 and 1986.[178] Controlling for income, price, and health education, the study found that the greater a government's degree of control over tobacco promotion, the greater the annual average fall in tobacco consumption and in the rate of decrease of smoking among young people.[179] One of the report's most relevant conclusions was that, among the 18 countries with data on youth smoking, there is evidence of a relationship between stringent government restrictions on tobacco promotion and reduced uptake of smoking among young people. The report concluded that there appeared to be a greater decrease in smoking uptake in those countries with the most stringent measures compared with those countries where advertising had not been affected.[180]

Other studies that have looked at populations in general provide evidence that restrictions can have an important effect on total consumption and provide inferential evidence of similar positive effects on youth smoking. One such study conducted by the Chief Economic Advisor of the Department of Health of the Government of Great Britain found that advertising tends to increase consumption of tobacco products and that restrictions on advertising tend to decrease tobacco use beyond what would have occurred in the absence of regulation.[181] After performing an in-depth analysis of data from the four countries (Norway, Finland, Canada, and New Zealand) which had varying degrees of tobacco advertising restrictions and for which data exist, the study concluded that restrictions, including bans on some forms of advertising or on all advertising, resulted in an overall decrease in consumption. The study suggests that Norway's restrictions on all advertising, sponsorship, and indirect advertising produces a 9 to 16 percent reduction in consumption over the long run.[182] Finland's ban on advertising and

restrictions on other nonadvertising measures reduced cigarette smoking by 6.7 percent.[183]

Canada's Tobacco Products Control Act, which became effective on January 1, 1989, banned most print advertising, restricted sponsorship, and forbade indirect advertising (e.g., use of trade names on non-tobacco items). Although advertising restrictions often take time to be fully effective, the study found that in only 2 years following the institution of government regulation, consumption was reduced 2.8 percent more than would have been expected had there been no advertising restrictions.[184]

Another study looked at tobacco consumption per adult in the 22 countries of the Organization for Economic Cooperation and Development between 1960 and 1986.[185] The report reaffirmed the New Zealand Board's conclusion that, as a group, countries prohibiting tobacco advertising in most or all media experienced more rapid percentage falls in consumption than the group of countries which permitted promotion.[186]

Other studies try to measure the effect that advertising has on the general level of consumption in a country. Advertising can have an increased effect on consumption, even in those countries where the smoking rate has been falling. The analyses are able to determine whether consumption would have fallen at a greater rate but for the advertising, and ascribe that difference (the slowed rate of decline) to advertising.

One New Zealand study provides evidence that changes in advertising expenditures can have an effect on youth smoking behavior. The study analyzed the total sales of cigarettes sold by New Zealand supermarkets over a 42 week period. The study design included advertising that had recently been modified to contain newly-mandated, strong, varied disease warnings that occupied 15 percent of the advertisement. Moreover, no human form could be displayed in the advertising except a hand and forearm, and one color apart from black was usually used. The results indicated that advertising for upscale brands of cigarettes did not raise cigarette consumption, but that consumption of an inexpensive brand with a heavy youth appeal did increase with increased advertising. Moreover, the study found that the advertising for the new, inexpensive brand had the additional effect of recruiting young smokers and increasing the market base.[187]

Studies that assessed the response of large population groups to changes in advertising generally confirm a finding that advertising has a positive effect on consumption. The most recent comprehensive analysis of existing studies on the effect of advertising expenditures on consumption rates was done in the English study, discussed above. Among other things, the study looked at the effect of yearly fluctuations in advertising expenditures within several countries, but principally within the United States and United Kingdom. The result was that the "preponderance of positive results points to the conclusion that advertising does have a positive effect on consumption."[188] Individual, smaller studies[189] have examined the same question and confirmed a finding of effect of advertising on consumption.[190]

5. Summary of Evidence

The agency concludes that the preponderance of quantitative and qualitative studies of cigarette advertising suggests: (1) A causal relationship between advertising and youth smoking behavior, and (2) a positive effect of stringent advertising measures on smoking rates and on youth smoking. Moreover, industry statements indicate the importance of the youth market segment to the industry's continued success. Actions taken by industry members to attract young smokers have also resulted in attracting children and adolescents. Finally, examples of specific campaigns directed at young people support the hypothesis that cigarette advertising and promotion play an important role in encouraging young people to start smoking, to sustain their smoking habit, and to increase consumption. Therefore, the agency finds that stringent restrictions on advertising are essential if smoking by adolescents is to be reduced.

6. Proposed Subpart D—Labeling and Advertising

a. *General overview.* Proposed subpart D would establish regulations on the labeling and advertising of cigarettes and smokeless tobacco products. Proposed subpart D consists of four sections. Proposed § 897.30 would establish the scope of permissible forms of labeling and advertising. Proposed § 897.32 would set forth the format and content requirements. Proposed § 897.34(a) would prohibit the sale and distribution of non-tobacco items and services that are identified with a cigarette or smokeless tobacco product brand name or other identifying characteristics; proposed § 897.34(b) would prohibit proof of purchase gifts and games of chance and contests; and § 897.34(c) would prohibit sponsorship of events that are identified with a cigarette or smokeless tobacco product brand name or other identifying characteristics. Proposed § 897.36 would address false and misleading labeling and advertising. These sections are discussed more fully below.

The proposed rule would establish different labeling and advertising requirements for cigarettes and smokeless tobacco products. These differences result from different Federal preemption provisions contained in the two Federal laws requiring warning labels on those products. Briefly, FDA believes that the Cigarette Act only preempts FDA's authority to require additional statements about smoking and health on cigarette packages, while the Smokeless Act prohibits FDA from requiring additional information about health and tobacco use in advertising as well as on the package of smokeless tobacco products. For a more complete discussion, see section IV.C. below.

b. *Proposed § 897.30—permissible forms of labeling and advertising.* Proposed § 897.30 would set forth the permissible forms of labeling and advertising for cigarettes and smokeless tobacco products. Labeling and advertising are used throughout this subpart to include all commercial uses of the brand name of a product (alone or in conjunction with other words), logo, symbol, motto, selling message, or any other indicia of product identification similar or identical to that used for any brand of cigarette or smokeless tobacco product. However, labeling and advertising would exclude package labels, which would be covered under proposed subpart C. In brief, § 897.30(a) of the proposed rule would define permissible outlets for labeling and advertising as newspapers, magazines, periodicals, billboards, posters, placards, entries and teams in sponsored events, promotional materials, audio and/or video formats, and delivered at the point of sale. Proposed § 897.30(b) would prohibit outdoor advertising of tobacco products from appearing outside of buildings within 1,000 feet of an elementary or secondary school or playground. These are places where children and adolescents spend a great deal of time and should therefore be free of advertising for these products. The agency believes that this a reasonable restriction and notes that the cigarette industry's voluntary "Cigarette Advertising and Promotion Code," revised in 1990, contains a similar

provision concerning schools and playgrounds.

These labeling and advertising requirements are an effort to control the proliferation of promotional messages that attract young people. As discussed above, advertising and promotion can play a significant role in young people's smoking behavior. The agency finds that restricting the permissible forms of media would help prevent young people from starting to use cigarettes and smokeless tobacco products and becoming addicted to those products. Proposed § 897.30 (a) would describe the range of known labeling and advertising media currently used by cigarette and smokeless tobacco product companies.

It is important to note that the proposal would not affect any other limitations on labeling or advertising, such as the radio and television advertising bans placed on cigarette and smokeless tobacco product advertising (the Cigarette Act, 15 U.S.C. 1331, 1334 and the Smokeless Act, 15 U.S.C. 4401, 4402(f)) nor any other actions taken by Federal agencies (e.g., FTC's "Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986," 16 CFR Part 307 (1994)).

c. *Proposed § 897.32—format and content requirements for labeling and advertising.* Proposed § 897.32 would describe the format and content requirements for cigarette and smokeless tobacco product labeling and advertising. This section would establish requirements in three principal areas: text-only format, the product's established name, and a brief statement of the risks of using cigarettes.

i. *Text-only advertising.* The agency considered various options available to control advertising's influence on young people, from a full ban on all advertising and promotion, to restrictions on advertising and promotional practices that children actually view. FDA's proposed rule would address the need to eliminate advertising's influence on young people and, at the same time, preserve advertising's informative aspects—that is, to provide useful information to consumers legally able to purchase these products. Therefore, the agency agrees with the IOM's recommendation that advertising and labeling should appear in text-only format because this format would reduce the attraction and appeal that cigarette and smokeless tobacco product advertising have for young people. Recognizing that it is difficult to draw the line between advertising that should be restricted or regulated and advertising that does not pose an unreasonable risk of influencing young people, the agency requests comment on the appropriateness of the proposed regulations and whether other alternatives would be more appropriate or effective.

Under proposed § 897.32(a), cigarette and smokeless tobacco product labeling and advertising, as described in § 897.30 (a), and (b), would be required to use black text on a white background and nothing else. This text-only requirement is intended to reduce the appeal of cigarette and smokeless tobacco product labeling and advertising to persons younger than 18 without affecting the informational message conveyed to adults.

However, FDA believes that advertising in publications that are read primarily by adults should be allowed to use imagery and color because the effect of such advertising on young people would be nominal. Therefore, advertisements in publications with primarily adult readership would not be restricted to a text-only format. The agency proposes to define such publications as those: (a) Whose readers age 18 or older constitute 85 percent or more of the publication's total readership, or (b) that is read by two million or fewer people under age 18, whichever method results in the lower number of young people. The readership of a publication is the total number of people that read any given copy of that publication. It should be measured according to industry standards and at a minimum by asking a nationally projectable survey of people what publications they read or looked at during any given time. A reader is one who said that he/she read the last issue of a publication. Prior to disseminating advertising containing images and colors, it would be the company's obligation to establish that the publication meets the criteria for a primarily adult readership.

The concept of text-only advertising requirements is not new. The cigarette industry has employed text-only advertisements in the past, particularly when it sought to inform or educate consumers about company policies or important issues. See, e.g., "In the Matter of R.J. Reynolds Tobacco Co.," 111 F.T.C. 539 (D. 9206) (1988) (a text-only advertisement that disputed that cigarette smoking was related to coronary heart disease); "Washington Post," October 18, 1994, at p. A11; "Washington Post," October 20, 1994, at p. A17; "Time," 144(19): 42(1994) (Philip Morris text-only advertisement which discussed environmental tobacco smoke); "Tobacco Control and Marketing: Hearings Before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce," R.J. Reynolds, to the Honorable Edolphus Towns (Reynolds' text-only advertisement about youth smoking).

Several studies show how strongly images appeal to young people. Photographs, pictures, cartoons, and other graphics allow the advertiser to encode its sales message in a way that makes the advertisement more compelling and memorable.[191] Imagery ties the products to a positive visual image that can be used consistently in all advertising media as well as on the product package itself.[192]

Adding visual images to a text advertisement can produce greater recall and a more positive product rating.[193] Not surprisingly, studies have shown that children and adolescents react more positively to advertising with pictures and other depictions than to advertising (or packaging) that contains only print or text.[194]

One study examined 243 seventh and eighth grade students in Chicago to determine the appeal (likability) of different types of cigarette advertising. The study compared a Joe Camel advertisement, an advertisement with a model, and a text-only advertisement. The results indicated that adolescents found advertisements containing pictures and cartoons to be significantly more appealing than advertisements with human models; advertisements with any imagery were more appealing than text-only advertisements. These results are particularly compelling because a study by the Advertising Research Foundation found that an advertisement's "likability" is the best predictor of product sales.[195]

In arriving at its proposal, FDA considered other options, including banning all advertising or restricting the type of imagery used.[196] FDA believes that the evidence detailed above would justify a ban on all or most advertising and promotion of tobacco products. The studies cited and industry statements and actions already discussed in this proposal indicate the positive effect that advertising can have on young people's smoking behavior, while other studies establish that bans on cigarette advertising can help reduce overall consumption and youth initiation. Given the extremely grave health consequences of a lifetime of smoking, actions taken that would help achieve a lower initiation rate among young people would be authorized as a matter of law and justified as a matter of public health policy.

Moreover, young people are currently exposed to billions of dollars worth of tobacco advertising and promotion that

use attractive imagery and do not rely on objective product claims. The industry's claims that this advertising exists solely to maintain brand loyalty or induce smokers to switch. However, as noted previously, tobacco advertising and promotion appear to have a more profound effect on brand choices by young people (86 percent of young people smoke the three most advertised brands) than on adults, whose choice is more often based on price (39 percent of the market is comprised of generic and discount products.) Furthermore, brand loyalty runs higher for cigarettes than for any other product. Thus, significant expenditures would not appear to be necessary to retain loyal consumers and would appear to be excessive and wasteful if they are expended merely to get people to switch brands.

While a total ban on advertising, therefore, would likely be justified, FDA believes that limiting advertisements and labeling to which children are exposed to a text-only format is less burdensome and would effectively reduce the appeal of tobacco products to children and adolescents. Further, while some have suggested prohibiting only youth-oriented images, the agency has been unable to define the subset of advertising and labeling directed to young people based upon the media selected or the location of the advertising. For example, billboards are always visible to young people, and there are few, if any, publications that children and adolescents cannot see. Thus, the proposed text-only requirement would offer the most protection for children and adolescents while still enabling informative advertising to reach persons aged 18 and older. Given the complexities of this subject, however, FDA invites comment on other potential methods that may exist for curtailing advertising's appeal to young people.

ii. *Non-tobacco items and sponsorship.* Proposed § 897.34(a) would prohibit the sale or distribution of all non-tobacco items that are identified with a cigarette or smokeless tobacco product brand name or other identifying characteristic. As noted above, advertising expenditures have risen dramatically in the past two decades, and the distribution of the marketing expenditures represents a major shift in marketing trends. In 1970, the amounts spent on traditional advertising represented 82 percent of total spending, but, by 1991, this figure had fallen to approximately 17 percent.[197] The remaining funds devoted to marketing cigarettes are spent on a variety of promotional activities designed to assure advantageous placement of products in retail outlets, get products into a prospective consumer's hand through the use of coupons and samples, and provide gifts, contests, and other non-tobacco items and gifts to create special appeal and reduce real price.[198]

Proposed § 897.34(a) would pertain to non-tobacco items and services (other than cigarettes or smokeless tobacco products) that the tobacco companies market, license, distribute, or sell. Manufacturers often provide branded, non-tobacco items as an inducement to purchase cigarettes or generate purchases through the use of proof-of-purchase coupons. Both R.J. Reynolds and Philip Morris utilize this popular technique by providing either a coupon with each package (Camel cash) or indicating that each package was worth a number of credits towards a purchase (Marlboro miles). Each company also printed glossy catalogues with items and gifts that could be purchased using "cash" or credits. Either method creates an incentive to purchase the tobacco product by reducing the product's real price; the consumer gets the product and the non-tobacco "gift."

The IOM found that this form of advertising is particularly effective with young people.[199] Young people have relatively little disposable income, so promotions are appealing because they represent a means of "getting something for nothing." In many cases, the items—tee shirts, caps, and sporting goods—are particularly attractive to young people. Some items, when used or worn by young people, also create a new advertising medium—the "walking billboard"—which can come into schools or other locations where advertising is usually prohibited. A 1992 Gallup survey found that about half of adolescent smokers and one quarter of non-smokers owned at least one of these items.[200] Similar data were reported for a group of ninth graders from New York State. Among these ninth-graders, 48 percent of occasional smokers and 28 percent of non-smokers reported owning branded clothing.[201]

A recent report found that tobacco companies spent $600 million on programs that provide promotional items in exchange for proofs-of-purchase (usually by catalogue). Although the tobacco industry states that these items are meant for individuals over the age of 20, many teens report participating in promotional activities, with participation ranging from 25.6 percent of 12- to 13-year-olds and 42.7 percent of 16- to 17-year-olds owning a promotional item. The report found that 68.2 percent of current smokers participated, and 28.4 percent of non-smokers participated. The report concluded that there is an association between participating in promotions and a person's susceptibility to tobacco use. It also noted that participation in promotions has the same ability to predict susceptibility to tobacco use as does use by a household member.[202] These proposed provisions would eliminate these items and therefore would prevent young people from wearing such items and becoming "walking advertisements."[203]

Proposed § 897.34(b) would prohibit all proof of purchase sales or gifts of non-tobacco items as well as all contests, lotteries, or games of chance that are linked to the purchase of, or in consideration for the purchase of a tobacco product. Because contests and lotteries are usually conducted through the mail, the agency has not been able to devise regulations that would reduce a young person's access to contests or lotteries.

Proposed 897.34(c) would also prohibit a sponsored event from being identified with a cigarette or smokeless tobacco product brand name or any other brand identifying characteristic. Entries and teams in sponsored events are to be treated as labeling under § 897.30 and § 897.32 and would be required to be in text-only, black and white format. Any other athletic, musical, artistic, or other social or cultural event would be permitted to be sponsored in the name of the tobacco company. However, the event would not be permitted to include any brand name (alone or in conjunction with any other words), logo, symbols, motto, selling message, or any other indicia of product identification similar or identical to those used for any brand of cigarettes or smokeless tobacco products. The corporation in whose name the sponsorship would be permitted, would be required to have been in existence on January 1, 1995. This latter provision is intended to prevent manufacturers from circumventing this restriction by incorporating separately each brand that they manufacture for use in sponsorship.

Sponsorship by cigarette and smokeless tobacco companies associates tobacco use with exciting, glamorous, or fun events, such as car racing and rodeos. It provides an opportunity for what sponsorship experts call "embedded advertising"[204] that actively creates a "friendly familiarity" between tobacco and sports enthusiasts, many of whom are children and adolescents. Those watching a sponsored event, including children and adolescents, repeatedly see the sponsor's brand or corporate name linked with an event they enjoy. For example, sponsoring a race car, motorcycle, or boat enables manufacturers to place cigarette brand names and logos on the vehicles and drivers' uniforms; by sponsoring the event itself, the manufacturers may also place cigarette brand names and logos on the event and on official's clothing.

IEG, the leading source in the United States for sponsorship information and consulting services, is also the only company that tracks and analyzes sponsorship of sporting and other events and causes. It publishes the IEG Sponsorship Report, an international biweekly newsletter on sponsorship, as well as an industry report titled, "IEG's Complete Guide to Sponsorship: Everything you need to know about sports, arts, event, entertainment and cause marketing."[205] In this primer for companies considering sponsorship, it defines sponsorship as "a cash and/or in-kind fee paid to a property (typically in sports, arts, entertainment, or causes) in return for access to the exploitable commercial potential associated with that property."[206] According to the IEG, "[s]ponsorship, the fastest growing form of marketing, is unregulated in the U.S."[207] In North America, total sponsorship grew from $850 million in 1985 to more than $4.2 billion in 1994 and is done by thousands of companies.[208] The IEG further notes that for the cost of a 30-second spot on the Super Bowl telecast, a company can sponsor a NASCAR Winston Cup car and receive more than 30 hours of television coverage.[209]

The report states that companies can link sponsorship directly to product usage or sales.[210] The Chairman and CEO of R.J. Reynolds summed up the underlying purpose of sponsorship for his company by saying, "We made it clear from the day we announced our sponsorship of the Grand National Division that we were in the business of selling cigarettes, not the racing business."[211]

The cigarette[212] and smokeless tobacco industry[213] has been involved in sponsorships for many years and was at one time one of the dominant sponsors of events. More recently other industries have become increasingly involved in sponsoring events and causes and today the packaged goods, retail, and financial service industries are the leading sponsors of events. Although the tobacco industry accounts for only 4 percent of all sponsored events,[214] FDA has concluded that sponsored events are a significant part of the successful marketing of tobacco products and that sponsorship should be regulated under this proposal.

Companies often choose to sponsor events in order to heighten their visibility, shape consumer attitudes, communicate commitment to a particular lifestyle, and to drive sales.[215] The IEG reports that sponsorship offers several advantages over traditional advertising. According to the IEG, sponsorship is generally more effective in "establishing qualitative attributes, such as shaping consumers' image of a brand, increasing favorability ratings and generating awareness."[216] IEG also states that companies with huge advertising budgets and high consumer awareness (such as tobacco companies), "are looking to the event to have a rub-off effect on their image and ultimately their sales."[217] One marketing executive of a company that sponsors professional beach volleyball said, "Consumer attitudes are the hardest thing to change * * * the more our brand is part of events that are part of a consumer's lifestyle, the more we can affect his or her attitude toward the product."[218]

Image compatibility is listed by IEG as the number one factor in determining which events to sponsor. IEG encourages companies to consider whether the event offers the imagery it is trying to establish and whether it depicts a lifestyle with which the company wants to be associated.[219] A senior Philip Morris executive explained how the sponsorship of racing car events by Marlboro is consistent with the cowboy imagery associated with Marlboro: "We perceive Formula One and Indy car racing as adding, if you will, a modern-day dimension to the Marlboro Man. The image of Marlboro is very rugged, individualistic, heroic. And so is this style of auto racing. From an image standpoint, the fit is good."[220]

The tobacco industry's sponsorship of events also can lead to associations (often referred to as "tie-ins") with youth-oriented items that extend the imagery. A sponsored event "can bring excitement, color, and uniqueness to a [point-of-purchase] display and can be merchandised weeks or months in advance."[221] For example, auto racing's popularity with children led one toy manufacturer to sponsor a Sprint car team in the 1991 "World of Outlaw" series, sponsored principally by UST. The toy company made toy racing cars with Marlboro and Camel decals. Another toy company made toy cars with Copenhagen and Skoal decals; Copenhagen and Skoal are the two major smokeless tobacco product brands for UST.[222] Additionally, "Inside Winston Cup Racing Sports Club Magazine" reportedly included a page called Kids Korner with puzzles and games for children.[223]

Sponsorship's impact can be measured by the amount of "free" advertising that appears on television. The amount and financial value of television exposure gained by a firm can be substantial. According to one study, Marlboro cigarette's sponsorship of a Championship Auto Racing Team in the 1989 season gave Marlboro nearly 3 ½ hours of television exposure and 146 mentions of the brand name. This exposure had a value of $8.4 million. In the Indianapolis 500, Marlboro received more than $2.6 million in advertising exposure. In the Marlboro Grand Prix, race officials wore Marlboro Grand Prix shirts and caps, and the Marlboro logo or name appeared 5,933 times during the broadcast.[224]

Another study used the "Sponsor's Report" to estimate the value of all product exposure for most U.S. auto races. In 1992, 354 motorsport broadcasts were measured. These programs had a total viewing audience of 915 million people, of whom 64 million were children and adolescents. Exposure value for all sponsors was $830 million. Tobacco products accounted for 8.2 percent ($68 million) of the total. The impact of sponsoring televised events such as these automobile races is perhaps most apparent when one realizes that over 10 million people attended these events, while 90 times that number viewed them on television.[225]

Sponsorship's effectiveness also can be measured by a change in consumer awareness of or attitudes toward a product or company. Evidence regarding sponsorship's impact on young people is somewhat limited, but reports indicate that cigarette manufacturers' sponsorship of sporting events can lead young people to associate brand names with certain life styles or activities or can affect their purchasing decisions.

One study of children in Glasgow found that one-third of the 10- and 11-year-old children surveyed correctly matched cigarette brands to the sports that their manufacturers sponsored. Many children between the ages of 6 and 17 surveyed could specify a brand and the sponsored sport or game, and nearly half of the children associated a life style or image (such as "excitement" and "fast racing cars") to cigarette brands, even when the cigarette advertisement made no reference to the sport.[226] Another study also found an increase in awareness of the sponsored brands and concluded that even fairly brief exposure to tobacco-sponsored sports on TV may increase considerably

the levels of brand awareness as long as it is linked to well-publicized images.[227]

In Australia, the percentages of children in four different States between the ages of 12 and 14 who smoked were similar. However, their cigarette brand purchases mirrored the brands that had sponsored sporting events in their respective States. For example, more than 44 percent of children in New South Wales and Queensland smoke Winfield, the sponsor of the Queensland Rugby League, whereas, in South Australia, about 44 percent of children smoke Escort, which sponsors the South Australia's Australian Rules Escort Cup. This study demonstrates the effectiveness of sports sponsorship in influencing children's choice of cigarettes.[228]

Finally, a study was conducted in which approximately 100 boys in a secondary school were shown a 15-minute videotape containing an advertisement promoting a cigarette company's sponsorship of a sporting event while another 100 boys were shown the same video with an advertisement of a non-tobacco company's sponsorship of a sporting event. Exposure to the advertisement for the tobacco-sponsored event did not significantly change the boys' general attitudes to smoking. However, non-smoking students who saw the tobacco sponsorship advertisement had a significantly higher level of agreement with the statement that "smoking doesn't harm people if they play sports" than did nonsmokers who were not exposed to this advertisement. According to the study's authors: "Our study suggests that advertising of sponsorships reinforces existing behaviors, and has the potential to increase the rate at which young males smoke by negating the ill-effects associated with smoking. We also conclude that these promotions do affect those under the age of 18 by creating associations with events, teams or personalities with whom they identify."[229]

The proposed rule is intended to break the link between tobacco company-sponsored events and use of tobacco. These provisions are intended to reduce the so-called "friendly familiarity" that sponsorships and items generate among young people.

iii. *Established name and intended use.* Proposed § 897.32(b) would require each piece of advertising for cigarettes, cigarette tobacco, or smokeless tobacco products, permitted under § 897.30(a), to state the product's established name and give a statement of its intended use. Section 502(r)(1) of the act requires, for any restricted device, that all advertising or other descriptive printed material contain "a true statement of the device's established name * * * printed prominently and in type at least half as large as that used for any trade or brand name thereof." The agency has determined that the established names for these products are the common and usual names: "cigarettes," "cigarette tobacco," "loose leaf chewing tobacco," "plug chewing tobacco," "twist chewing tobacco, "moist snuff," and "dry snuff." (These names would be codified at proposed § 897.24.)

The product's established name would be followed by the words, "a Nicotine-Delivery Device." Under section 502(r)(2) of the act, a restricted device is misbranded unless all advertising contains "a brief statement of the intended uses of the device." The agency finds that it is necessary to require that the product's established name and intended uses be placed on all advertising, under section 520(e) of the act, as a measure which affirmatively identifies the products to persons reading the advertising.

iv. *The brief statement.* Under proposed § 897.32(c), cigarette advertising (permitted under § 897.30(a)) would contain information regarding relevant warnings, precautions, side effects, and contraindications. This brief statement is required under section 502(r)(2) of the act. Section 502(r)(2) does not require that labeling contain a brief statement and the agency does not intend to place such a requirement on labeling (e.g., vehicles, entries or teams in sponsored events). Because of the products' serious "potentiality for harmful effect," the proposal would specify the text of the brief statement. This would ensure that all advertisements contain the same, required information in a manner that is consistent, readable, clear and conspicuous, and not misleading to the reader.

FDA is generally responsible for approving information in the brief statement to ensure that the appropriate risks and benefits are communicated. In this case, the risks associated with cigarettes are much greater than those for any other consumer product on the market, and hundreds of different cigarette brands exist. The proposed rule, therefore, would provide, as an example, the following text for one of the brief statements to ensure that important information is communicated in an informative manner to young people and that the information is consistent for all cigarette brands: "ABOUT 1 OUT OF 3 KIDS WHO BECOME SMOKERS WILL DIE FROM THEIR SMOKING."

FDA will include in the final rule the exact language for any and all brief statements to ensure that this important information is conveyed accurately and effectively. In addition, the agency requests comment on what other information should be included in the brief statements concerning relevant warnings, precautions, side effects, and contraindications.

Support for the proposed brief statement comes from the European Union"s report on the labeling of tobacco products. The report states that "[t]he warnings which are perceived as being the most credible are, in general, those which draw attention to the risk of death, the risk of illness and to the addiction caused by smoking. Credibility is reinforced when the message is felt to apply personally to the reader or which describes a risk which may be felt by the reader to concern them personally."[230]

During the comment period for this proposed rule, FDA intends to perform extensive focus group testing on the proposed brief statement[s]. The testing will evaluate the content and various formats for the brief statement[s] to determine if the warnings are communicated effectively. The agency will base the design, the format and content of the brief statement[s] on the results of this testing and the comments received to the proposed rule.

FDA is not proposing that advertising list cigarette ingredients, but FDA is aware that several surveys and studies show that cigarette users would like to know more about the ingredients in, or the chemical constituents of, smoke delivered by cigarettes. In a survey of 2,345 adults, 93 percent agreed that tobacco companies should be required to list additives on package labels the way food and drug companies are required to list ingredients.[231] Those surveyed believed that in order to inform consumers about the risks involved in smoking, more comprehensive information about cigarette ingredients and combustion by-products should be provided to the consumer.

Section 502(r)(2) of the act (21 U.S.C. 352(r)(2)) states that "in the case of specific devices made subject to a finding by the Secretary after notice and opportunity for comment that such action is necessary to protect the public health," a restricted device shall be misbranded unless its advertising and other descriptive printed matter include "a full description of the components of such device or the formula showing quantitatively each ingredient of such device to the extent required in regulations which shall be issued * * * after an opportunity for a hearing." However, the Cigarette Act and the Smokeless Act both require submissions of reports or lists of ingredients to the Secretary (see 15 U.S.C. 1335a and 4403) that must be kept confidential. The agency tentatively concludes that these provisions may preclude FDA from requiring components or ingredients to be listed in all advertising and other printed matter. Therefore, FDA has decided, at this time, not to require a description of components or ingredients, but invites comment on whether it should initiate proceedings to determine whether the agency should require a listing of the component parts or ingredients of these restricted devices and the impact of the Cigarette Act's and the Smokeless Act's provisions on the agency's authority.

IOM recently recommended that a "regulatory agency should take steps to inform consumers about the meaning of statements regarding tar and nicotine yields."[232] Some manufacturers voluntarily disclose the quantities of tar and nicotine, as determined by the FTC method, in their labeling or advertising, and one Surgeon General's warning states, "Cigarette Smoke Contains Carbon Monoxide."

Consumers are aware that cigarettes produce tar and carbon monoxide and that they contain nicotine. Most consumers, however, do not understand the FTC rating numbers or the health implications of each constituent.[233] The proposed rule would not explain the FTC ratings because of the controversy surrounding the FTC method for determining tar, nicotine, and carbon monoxide.

In December 1994, a conference was held under the auspices of an Ad Hoc Committee of the President's Cancer Panel (the Ad Hoc Committee) to consider the continuing usefulness of the FTC method. Although the full report is not yet available, the Ad Hoc Committee's relevant conclusions were:

> The smoking of cigarettes with lower machine-measured yields has a small effect in reducing the risk of cancer caused by smoking, no effect on the risk of cardiovascular diseases, and an uncertain effect on the risk of pulmonary disease. * * *
>
> The FTC test protocol does not accurately reflect actual human smoking, which is not standardized, but is characterized by wide variations.

The Ad Hoc Committee recommended, among other things, that: (1) The FTC protocol be changed to produce a range of tar, nicotine, and carbon monoxide ratings for each brand to better reflect the intensity with which each cigarette can be smoked; and (2) the range of ratings for each brand should be communicated to consumers. The Ad Hoc Committee recognized that designing the new test and determining how to convey the information to consumers would require the involvement of many agencies, including the National Institutes of Health, FDA, and CDC, and would also take time. The Ad Hoc Committee recommended against measuring other smoke constituents, but suggested that smokers be informed of "other hazardous smoke constituents" in packages and in advertising.

The FTC is considering whether and how to implement these recommendations. Until that occurs, FDA will not propose any requirements concerning tar, nicotine, and carbon monoxide ratings, but the agency requests comment on whether it should implement one of the recommendations of the Ad Hoc Committee by proposing to require manufacturers to provide information about these substances through a package insert and/or to provide information about nicotine in labeling and advertising.

In considering the design of the warning, FDA notes that research indicates that novel formats for warnings are most likely to capture the viewer's attention.[234] The FTC reported in 1981 on the noticeability of messages inside a rectangle, octagon, circle and arrow, and enlarged rectangle.[235] The report concluded that the circle and arrow and octagon were noticed and recalled more often. Recall of the message in the circle and arrow was 64 percent, whereas recall of the same message in a rectangle (the shape used in current cigarette advertising) was only 28 percent.[236] Other studies describe the importance that format has in conveying the information and ensuring that it is sufficiently processed.[237] Factors such as print size, color, contrast, graphic design, positioning (e.g. at the top of each page of advertising), shape, spacing, font style, and highlighting are all important considerations for effectively communicating information, particularly to young people.

In addition, FDA notes that several studies have demonstrated that rotating messages assists in maintaining their noticeability. FTC concluded, in its 1981 investigation of cigarette advertising practices, that a "rotational warning system would provide sufficient repetition of each message to contribute to long term recall of that message, while decreasing the likelihood that any one message would become so familiar and so overexposed that its effectiveness would 'wear out.'"[238] The report concluded that quarterly rotated messages would assist in maintaining the novelty of the message, thus enhancing noticeability.[239] Additionally, the report concluded that shorter messages which are rotated are specific and concrete and are more easily converted into mental images. These messages are recalled more readily.[240]

The Centre for Behavioural Research on Cancer in Australia described a process of "habituation" that occurs with warnings and health messages. Under this process, a person's response to a warning or health message declines as that person increases his or her exposure to the warning or health message.[241] It found that habituation is greater as the frequency of exposure increases and is reduced if exposure to the stimulus is stopped for a period of time,[242] as can be the case if the messages are dissimilar and rotated.

The proposed regulation requires that the brief statement be readable, clear, conspicuous, prominent, and contiguous to the current Surgeon General's warning. FDA requests comments on the text and design of the brief statements, particularly in its ability to reach young people, and/or whether and what design specifications should be established. Specifically, it requests comment on how best to insure that the statement will be clear, conspicuous, and prominently displayed.

d. *False or misleading labeling and advertising.* Proposed § 897.36 would declare the labeling or advertising of cigarettes and smokeless tobacco products to be false or misleading if the labeling or advertisement contains "any express or implied false, deceptive, or misleading statement, omits important information, lacks fair balance, or lacks substantial evidence to support any claims made for the product." This provision would implement section 201(n) of the act, which states that labeling or advertising may be misleading based on "representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article," and section 502(q)(1) of the act, which declares a restricted device to be misbranded if "its advertising is false or misleading in any particular." FDA emphasizes that

proposed § 897.36 is meant to be illustrative rather than exhaustive. There may be other ways in which labeling or advertising would be "false or misleading." For example, advertising or labeling that stated that a study showed that smoking can cure emphysema would be false and misleading.

The agency's regulations concerning prescription drug advertising provide great specificity as to what constitutes violative advertising, 21 CFR part 202. The agency has decided that this same degree of specificity is not practical in the case of a widely used consumer product. Tobacco advertising contains an unlimited variety of claims that make categorization difficult. Therefore, the agency has tentatively concluded that it will provide general guidance for the types of advertising claims that will be considered violative, rather than to attempt to identify every possible type of false and misleading claim.

E. Subpart E—Miscellaneous Requirements

Proposed subpart E would consist of three provisions. These provisions would provide record and report requirements, describe the rule's relationship to state and local laws, and require additional measures if the prevalence of tobacco use is not dramatically reduced within seven years of the date the final rule is published.

1. Section 897.40—Records and Reports

Proposed § 897.40 would address reports and records. In brief, proposed § 897.40(a) would require each manufacturer to submit to FDA copies of all labels and labeling, and a representative sample of its advertising for enforcement purposes. The proposal would also permit a manufacturer to submit a representative sample of its labels if they would be similar for multiple packages or products. Proposed § 897.40(a) would direct manufacturers to send information and reports to the Document and Records Section, 12420 Parklawn Dr., Rockville, MD 20857, with each section plainly marked, i.e., "Labels," or "Labeling and Advertising," whichever is appropriate.

This provision is the minimum required by section 510(j) of the act (21 U.S.C. 360(j)), which requires submission to FDA of labels, labeling, and a representative sample of advertising for restricted devices. As explained elsewhere in this document, the agency intends to regulate cigarettes and smokeless tobacco products as restricted devices rather than as drug products, but will assign all of such products to the Center for Drug Evaluation and Research (CDER). Thus, proposed § 897.40(a) reflects the statutory requirement in section 510(j) and would direct copies of labels to the Documents and Records Section in CDER. Proposed § 897.40(b) would authorize FDA employees to inspect records, particularly for purposes of review, copying, or any other use related to the enforcement of the act. This requirement is similar to the inspection authority under the medical device tracking regulations at 21 CFR 821.50 and implements the agency's inspection authority contained in section 704 of the act.

2. Section 897.42—State and Local Requirements

Proposed § 897.42 would address preemption of State and local requirements. Section 521(a) of the act (21 U.S.C. 360k(a)) states that:

* * * no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement—

(1) which is different from, or in addition to, any requirement applicable under this Act to the device, and

(2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under this Act.

Proposed § 897.42(a) would require manufacturers, distributors, and retailers to comply with any more stringent State or local requirements relating to the sale, distribution, labeling, or advertising of cigarettes and smokeless tobacco products provided that the State or local requirement does not conflict with FDA regulations. These more stringent state requirements would, therefore, be part of the regulatory scheme and would not be preempted. For example, the proposal would not preempt a State law raising the minimum age for purchasing cigarettes to 21 or prohibiting cigarette or smokeless tobacco product advertisements on billboards located near schools.

FDA is aware that many States and local governments have enacted innovative and effective laws and regulations pertaining to cigarettes and smokeless tobacco products, and the agency encourages future activity in these areas. Moreover, because the proposed rule addresses only the sale, distribution, labeling, and advertising of cigarettes and smokeless tobacco products, State and local requirements in other areas are not affected. For example, the proposal clearly would not preempt State laws regarding licensing, taxes, or smoking in public areas.

If a State or local government is uncertain whether section 521(a) of the act preempts a particular law or regulation, proposed § 897.42(b) would permit the State or local government to easily and expeditiously request and receive an advisory opinion from FDA. Regulations governing applications for exemptions from Federal preemption of State and local requirements applicable to devices can be found at 21 CFR part 808.

FDA is aware of several recent court decisions construing section 521 of the act to preempt certain common law tort actions with respect to medical device products. FDA does not believe that section 521 should be read to give any preemptive effect to these proposed regulatory requirements over tort actions with respect to tobacco products. FDA specifically invites comment on this issue.

3. Additional Regulatory Measures

FDA is also proposing that additional provisions aimed at further reducing the appeal of tobacco advertising and thus discouraging young people from using cigarettes or smokeless tobacco products be required if, seven years from the date the final rule is published, FDA finds that the percentage of young people under the age of 18 who smoke, or the percentage of young men who use smokeless tobacco, has not decreased roughly by 50 percent. This goal could be measured using data of national tobacco use rates of children and adolescents. One method would be:

1. For cigarette manufacturers, the percentage of daily cigarette smokers among 12th graders is at least 50 percent less than it was in 1994 as measured by an objective, scientifically valid, and generally accepted program such as the Monitoring the Future Project (MTFP) for both the reference (1994) and target years (seven years from the date of the publication of the final rule); or

2. For smokeless tobacco product manufacturers, the percentage of male regular smokeless tobacco product users (any use in the past 30 days) among 12th graders is at least 50 percent less than it was in 1994 as measured by an objective, scientifically valid, and generally accepted program for both the reference (1994) and target years (seven years from the date of the publication of the final rule) and the percentage of female regular smokeless tobacco product users among 12th graders is no greater than it was in 1994 as measured in both the reference (1994) and target years.

The Institute for Social Research at the University of Michigan collects and maintains the data from the MTFP. The project is funded through the National Institute on Drug Abuse. The survey utilizes both a cross-sectional and a longitudinal design, with self-administered surveys in a sample of selected schools. Data for daily smoking by 12th graders have been collected annually since 1976. Smokeless data for any use within past 30 days are available for the years 1986 to 1989 and 1992 to 1994 for 12th graders. (Twelfth graders are a suitable surrogate for the upper age of the prohibited smoking age because twelth graders are 17–18 years old.) The MTFP is one of the more consistent and complete data sets available on young people and provides a stable and reliable basis for measuring the proposed reductions. FDA is requesting comment on the appropriateness of using this data set, including whether the methodology used by MTFP is appropriate for this purpose or on whether other measures would be more reliable and enforceable.

FDA derived its outcome-based objectives from the "Healthy People 2000" objectives. "Healthy People 2000" discusses national health promotion and disease prevention objectives in this country. This report was facilitated by IOM of the National Academy of Sciences, with the help of the U.S. Public Health Service, and included almost 300 national membership organizations and all State health departments. The report was the product of eight regional hearings and testimony from more than 750 individuals and organizations. Contributors included the CDC, the National Institutes of Health, the American Academy of Pediatrics, the American Heart Association, the American Medical Association, the American Cancer Society, the American Lung Association, the Blue Cross and Blue Shield Association, the American College of Physicians, and the Federation of American Societies for Experimental Biology.

Recognizing that reducing cigarette smoking by youth is an important national priority, the "Healthy People 2000" report established a basic goal for the year 2000 to reduce by half the initiation of cigarette smoking by children and youth and to reduce by 39.4 and 55.1 percent the use of smokeless tobacco by young men.

The "Healthy People 2000" objectives for cigarettes required the smoking prevalence among young people (ages 20 to 24) to be cut in half in 13 years—from 30 percent in 1987 to 15 percent by the year 2000. The proposed regulation takes as its premise the type of outcome established in "Healthy People 2000." However, because the time frame is different, the proposed regulation would use data as it measures actual usage by high school seniors, a group closer in age to the relevant age group. The prevalence of daily cigarette smoking among high school seniors was 19.4 percent in 1994. Calculating from 1994, daily smoking prevalence among high school seniors must be reduced by half to 9.7 percent seven years after date of the final publication of the rule. Any major changes in the methodology of this survey would require a reassessment of the objective in light of the influences of the changes on the survey's prevalence estimates.

The "Healthy People 2000" smokeless tobacco goals are to reduce use in 12- to 17-year-old males by 39.4 percent in 12 years—from 6.6 percent in 1988 to 4.0 percent in the year 2000 and for 18- to 24-year-old males by 55.1 percent—from 8.9 percent in 1987 to 4.0 percent by the year 2000. The proposed rule also modifies the "Health People 2000" goal reflecting the different time frame. The objectives also will use data for the nation's high school seniors to monitor progress in reducing the prevalence of smokeless tobacco use. Since high school seniors are 17- to 18-years-old, the percent reduction for high school seniors should be about midway between that required for males 12- to 17-years-old (i.e., 39.4 percent) and 18- to 24-years-old (i.e., 55.1 percent). Thus, a 50 percent reduction would be required to be in compliance with this proposed regulation. Smokeless tobacco use rates (once in 30 days) for senior high school boys was 20.3 percent in 1994. Therefore, the goal would be 10.2 percent. (Failure to reach these objectives would justify the imposition of additional regulatory requirements on the sale, distribution, and use of cigarettes and smokeless tobacco products. Recognizing that smokeless tobacco use by young girls is not extensive (2.6 percent in 1994), the agency believes that an additional goal might be considered—that smokeless tobacco use by young females not increase. This goal would help prevent the development of a new market for smokeless tobacco products.

While the agency finds that the proposed rule is a comprehensive approach that should prove effective in regulating these products, it recognizes that additional measures might be necessary because many different factors may affect a young person's decision to start smoking or use smokeless tobacco products. Additionally, the tobacco industry has shown its ability to find new outlets for promoting its products when restrictions are imposed; for example, within a relatively short period of time after the federally imposed electronic media ban became effective, the cigarette industry redirected the funds spent on television and radio advertising to traditional print and outdoor media. Over time, more nontraditional forms of advertising emerged, including using non-tobacco items (e.g., tee shirts and hats) that served as "walking billboards," placing products in movies, creating massive lists of smokers to target by direct mail, publishing magazines with articles as well as advertising, creating "friendly familiarity" and good will for tobacco products by sponsoring sporting and artistic events and by having its sponsored events appear on television (in spite of the television advertising ban).[243] In addition, in Canada, the cigarette companies evaded a ban on sponsorship in the name of a brand variety (but not in the company's corporate name), by creating corporate identities for relevant brands. These new corporations could then legally sponsor events.[244]

Therefore, to guard against this possibility, and to provide for an additional incentive for the companies to take appropriate actions, the agency is proposing that one or more additional measures would be imposed in the event that the outcome-base objectives provided in proposed § 897.44 are not achieved.

At the time a final rule is published, FDA intends to propose specific additional measures. The agency invites public comment on what regulatory measures(s) should be considered. The agency reiterates that additional measures would become operational only if the outcome-based objectives are not achieved.

Finally, the agency requests comment on what would be the appropriate schedule for implementing the provisions of the final rule. It is likely that the final rule would contain some provisions that could not be complied with immediately following the date that the final rule becomes effective. FDA is seeking comment on, and information about, such matters as size of inventories, manufacturing practices, retooling, useful life of equipment, and other similar business considerations. The agency will take the information provided on these issues into account when it established the implementation schedule for the final rule.

F. Other Amendments

The proposed rule would also make two minor amendments to existing regulations. The proposal would exempt cigarettes and smokeless tobacco

products from the Statement of Identity requirements for over-the-counter devices at 21 CFR 801.61 and from the reporting requirements at 21 CFR parts 803 and 804. Section 801.61 stems, in part, from the Fair Packaging and Labeling Act, and Tobacco products are exempt from the statute's requirements. Therefore, the proposed rule would exempt cigarettes and smokeless tobacco products for 21 CFR 801.61.

Parts 803 and 804 pertain to the reporting of deaths, serious injuries, and malfunctions associated with devices. FDA is proposing to exempt cigarettes and smokeless tobacco products from these reporting requirements because the adverse health effects attributable to cigarettes and smokeless tobacco products are extensive and well-documented, and the agency sees little benefit in requiring manufacturers and distributors of these products to report such information to FDA.

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169. Mizerski, R., "The Relationship Between Cartoon Trade Character Recognition and Product Category Attitude in Young Children," presented at "Marketing & Public Policy Conference," May 13–14, 1994.

170. Pierce, J., et al., "Does Tobacco Advertising Target Young People to Start Smoking? Evidence from California," *Journal of the American Medical Association*, vol. 266, No. 22, pp. 605–611, 1994. Pierce's study was the first to identify the effect Camel advertising had on the youth market. His study, however, was limited to California. There is no comparable data for others states. The California data confirms the national findings reports by Gallup.

171. 1994 SGR, p. 70 citing 1978 NHIS (18–19 year olds) stating that 2 percent of current smokers used Camel.

172. "Teenage Attitudes and Practices Survey," U.S. Public Health Service and U.S. Department of Education, 1989 cited in "Changes in the Cigarette Brand Preferences of Adolescent Smokers-United States, 1989–1993," in "MMWR," CDC, DHHS, vol. 43, No. 32, pp. 557–581, 1994.

173. "Teenage Attitudes and Behavior Concerning Tobacco—Report of the Findings," The George H. Gallup International Institute, Princeton, NJ, p. 64, September 1992; "Changes in the Cigarette Brand Preference of Adolescent Smokers, U.S. 1989–1993," in "MMWR," CDC, DHHS, vol. 43, No. 32, p. 580, 1994.

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176. *Id.*

177. Hastings, G.B., et al., "Cigarette Advertising and Children's Smoking: Why Reg Was Withdrawn," *British Medical Journal*, vol. 309, pp. 933–937, 1994.

178. "Health or Tobacco—An End to Tobacco Advertising and Promotion," Toxic Substances Board Wellington, New Zealand, May 1989.

179. *Id.* at pp. xx, xxiv.

180. Highlights of the report's other findings are:

- Tobacco advertising bans for health reasons are, on average, accompanied by falls in tobacco consumption four times faster than in partial ban countries.
- In countries where tobacco has been promoted virtually unrestricted in all media, consumption has markedly increased (+1.7 percent per year).
- In countries where advertising has been totally banned or severely restricted, the percentage of young people who smoke has decreased more rapidly than in countries where tobacco promotion has been less restricted.
- When the results of this study of promotion/consumption trends in 33 countries between 1970 and 1986 are put alongside the evidence from econometrics studies * * * it seems more likely than not that, other factors remaining unchanged, the elimination of tobacco promotion *causes* a reduction in tobacco consumption and smoking prevalence to a level below what it would have been otherwise.
- Tobacco consumption increases when tobacco promotion is permitted and real price is allowed to fall; consumption declines markedly when promotion is totally banned and prices [are] raised *Id.*, pp. xxiii, xxiv, 76. See also IOM Report, p. 125.

181. Smee, C., "Effect of Tobacco Advertising on Tobacco Consumption—A Discussion Document Reviewing the Evidence," Department of Health, Economics, and Operational Research Division, London, 1992 p. 22, (Draft).

182. *Id.*, p. 18.

183. *Id.*

184. *Id.*, pp. 19–20.

185. Laugesen, M. and C. Meads, "Tobacco Advertising Restrictions, Price, Income and Tobacco Consumption in OECD Countries, 1960–1986," *British Journal of Addiction*, vol. 86, pp. 1343–1354, 1991.

186. *Id.*, p. 1344.

187. Laugesen, M. and C. Meads, "Advertising, Price, Income and Publicity Effects on Weekly Cigarette Sales in New Zealand Supermarkets," *British Journal of Addiction*, vol. 86, pp. 83–89, 1991.

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195. Huang, P., et al., "Black-White Differences in Appeal of Cigarette Advertisements Among Adolescents," *Tobacco Control*, vol. 1, No. 4, pp. 249–255, 1992.

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197. IOM Report, pp. 107–108.

198. *Id.*

199. *Id.*, p. 108.

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201. "Survey of Alcohol, Tobacco and Drug Use Among Ninth Grade Students in Erie County, 1992," Roswell Park Cancer Institute, Buffalo, N.Y., p. 26, 1993.

202. Slade, J., D. Altman, and R. Coeytaux, "Teenagers Participate in Tobacco Promotions" Presented at the 9th World Conference on Tobacco and Health, October 10–14, 1994.

203. IOM Report, p. 110.

204. "IEG's Complete Guide to Sponsorship: Everything you need to know about sports, arts, events, entertainment, and cause marketing," IEG Inc., Chicago, IL., p. 5, 1995 (hereinafter cited as "IEG Guide").

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206. *Id.*, p. ii.

207. *Id.*, p. 33.

208. *Id.*, pp. 2–3.

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212. "Federal Trade Commission Report to Congress For 1993, Pursuant to the Federal Cigarette Labeling and Advertising Act," Federal Trade Commission, 1995.

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232. IOM Report, P. 249.

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239. *Id. p. 5–32.*

240. *Id.*

241. "Health Warnings and Contents Labelling on Tobacco Products," Centre for Behavioural Research in Cancer, p. 42, 1992.

242. *Id.*

243. "Wall Street Journal," December 27, 1994, at p. B5.

244. Sweanor, D.T., "Measures Adopted by the Tobacco Industry to Circumvent Canada's Tobacco Products Control Act," p. 3, August 1994.

IV. Legal Authority

A. Regulation of Nicotine-Containing Tobacco Products

As more fully described in "Nicotine In Cigarettes And Smokeless Tobacco Products Is A Drug And These Products Are Nicotine-Delivery Devices Under The Federal Food, Drug, And Cosmetic Act," the Food and Drug Administration has conducted an extensive investigation and comprehensive legal analysis. The results of that inquiry support a finding at this time that the nicotine in cigarettes and smokeless tobacco products is a drug within the meaning of the act because it is intended to affect the structure or function of the body and it achieves its intended effects through chemical action within the human body. Based on the evidence now before the agency, cigarettes and smokeless tobacco products are drug delivery systems whose purpose is to deliver nicotine to the body in a manner in which it can be most readily absorbed by the consumer and, hence, are devices.

Thus, these products are combination products within the meaning of 21 U.S.C. 353 (g) and 21 CFR 3.2(e) that the agency has the discretion to regulate using drug authorities, device authorities, or a combination of both

authorities. The agency proposes to make these products subject to regulation pursuant to the act's device authorities. The remainder of this discussion explains the regulatory framework for combination products; why nicotine-containing cigarettes, loose tobacco, and smokeless tobacco products are drug/device combination products; and why the agency can exercise its discretion to regulate them only under the act's device provisions. Finally, this section discusses a number of other legal issues raised by the provisions of the proposed rule.

1. The Federal Food, Drug, and Cosmetic Act and Combination Products

As part of the Medical Device Amendments of 1976, Congress established, for the first time, a premarket approval mechanism for certain devices. Congress also expanded the act's device definition to expressly include items such as implements, machines, implants, and in vitro reagents. "Device" was defined as:

> an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—
>
> (1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,
>
> (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or
>
> (3) intended to affect the structure of any function of the body of man or other animals, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

Pub. L. No. 94–295 (1976).

The act was amended by the Safe Medical Devices Act of 1990, among other reasons, to recognize and provide for the regulation of products that constitute a combination of a drug, device, or biological product (21 U.S.C. 353(g)). The Safe Medical Devices Act also modified the act's drug and device definitions to conform them to the new section regarding primary jurisdiction over combination products. (See S. Rep. 101–513). Among these modifications is that the definition of "drug" no longer excludes devices or their components, thereby eliminating the notion that "drug" and "device" are mutually exclusive terms.

In light of the act's public health protection purposes, the agency has consistently construed the device definition broadly, and courts have upheld this interpretation. *United States* v. *An Undetermined Number of Unlabeled Cases*, 21 F.3rd 1026, 1028 (10th Cir. 1994); *United States* v. *22 Rectangular Devices*, 714 F. Supp. 1159, 1162 n.7 (listing additional examples), 1164–65 (D. Utah 1989); see, e.g., *United States* v. *23, More or Less, Articles, etc.* 192 F.2d 308, 309 (2d Cir. 1951) (phonograph records used in treating insomnia).

Because the act's definition of device is a statutory term of art, it encompasses a very wide assortment of items. Obvious examples of devices are simple medical implements such as thermometers or tongue depressors and more complicated electronic products such as X-ray machines or cardiac pacemakers. Less obvious examples of devices include in vitro reagents and other products used for diagnostic purposes, such as culture media made from snake venom (21 CFR 864.8100, 864.8950) and animal and human sera (21 CFR 864.2800). FDA also regulates many organic substances as devices. For example, a simple plant product that consists of nothing more than coagulated tree sap, gutta percha, which is used to fill the root canal in a tooth, is a device (21 CFR 872.3850). All of these articles are devices because they are instruments, apparatuses, implements, machines, contrivances, implants, in vitro reagents, or another similar or related article with uses or effects encompassed by the act. Therefore, understanding what can properly be regarded as a device for purposes of the act requires a statutory, not a lay, understanding of the term. The following discussion identifies the parts of cigarettes, loose cigarette tobacco, and smokeless tobacco that are devices, and explains why these products are drug delivery systems.

2. Cigarettes, Smokeless Tobacco Products, and Loose Tobacco Are Drug Delivery Systems

Because drugs cannot be administered in pure chemical form, drug delivery systems are designed and used to deliver drugs into the body's circulatory system or to specific target sites in the body at predetermined, controlled rates.[1] FDA considers articles such as instruments, machines, contrivances, implants, or other similar or related articles, whose primary purpose is the delivery of a drug, and that are distributed with a drug product to be drug delivery systems. Intercenter Agreement Between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health, Section VII.A.1.(b) (October 31, 1991). These articles are often called "pre-filled delivery systems." Examples of these combination products include contrivances containing drugs, such as pre-filled syringes, transdermal patches, and metered-dose inhalers. *Id.* CDER has primary jurisdiction over the regulation of such products, and has the authority to use drug provisions, device provisions, or a combination of drug and device provisions to regulate particular drug delivery systems. *Id.*

Cigarettes and smokeless tobacco products function like drug delivery systems in that they contain a drug, nicotine; are used to deliver the drug to the site at which the drug will be absorbed into the body, the mouth or lungs; and after the drug has been delivered, the delivery system, the cigarette butt or smokeless tobacco material, depleted of nicotine, remains and must be discarded. Only the nicotine delivered by these products achieves its primary intended purpose by chemical action in or on the body. The subsections below explain in greater detail why these products are drug delivery systems.

a. *Cigarettes.* Cigarettes are drug delivery systems consisting of a drug, nicotine, and device components that include the tobacco itself, the paper the tobacco is rolled in and, in the case of filter cigarettes, the filter. A cigarette is analogous to a metered-dose inhaler, an instrument that converts a drug into an aerosolized form for inhalation and delivery to the lungs for absorption into the bloodstream.

Although lighting a cigarette appears to be a simple action, there is, in fact, a complex process taking place within the cigarette. A cigarette consists of carefully blended and treated nicotine-containing rolled tobacco. The blended and treated tobacco is wrapped in paper that is precisely treated so that the entire tobacco rod burns in a controlled manner. Attached to the tobacco rod (in 95 percent of U.S. cigarettes) is a filter with many possible design features, including vents and chambers. The primary purpose of parts of the cigarette, and the cigarette itself, a consciously engineered and, in the industry's own words, "highly-engineered"[2] product, is to effectuate the delivery of a carefully controlled amount of the nicotine to a site in the human body where it can be absorbed. The drug, nicotine, is generally contained within the treated rolled tobacco. The delivery system, the nicotine-containing cigarette, must be lit to have its intended effect on the structure or function of the body and, once lit and used, is discarded.

In this manner, an average American cigarette yields approximately 1.0 mg of nicotine, although the smoker can adjust

this yield by the manner in which the cigarette is smoked, e.g., by puffing more or less frequently, by inhaling more or less deeply, or by covering, with the fingers holding the cigarette or the lips, the vent holes that may be part of the filter.

As discussed in "Nicotine In Cigarettes And Smokeless Tobacco Products Is A Drug And These Products Are Nicotine-Delivery Devices Under The Federal Food, Drug, And Cosmetic Act," there is significant evidence now before the agency that the manufacturers of cigarettes intend, as a primary purpose of these products, to deliver the drug nicotine to consumers. That evidence supports a finding at this time that part of a cigarette, the nicotine, is a drug under the act. However, as described above, cigarettes are not simply packaged nicotine. Rather, they are carefully engineered, complex products that are designed to deliver a controlled amount of nicotine to the consumer using such device components as the tobacco, the paper, and the filter.

Nicotine-containing loose cigarette tobacco is used by smokers who roll their own cigarettes usually with paper made for that purpose. The evidence before the agency supports a finding at this time that the processed loose cigarette tobacco product is a device for the same reasons that the tobacco in factory-made cigarettes to be a device: it contains within it the drug intended to be consumed and is not dependent upon being metabolized for the achievement of its principal intended purpose, i.e., the delivery of nicotine, and must be lit and burned in order for the nicotine to be released in a form in which it can be absorbed by the body.

b. *Smokeless Tobacco Products.* Four principal kinds of smokeless tobacco are manufactured in the United States: loose leaf, plug, twist or roll, and oral snuff. Loose leaf chewing tobacco consists of tobacco leaves that have been heavily treated with licorice and sugars. Plug tobacco is made from tobacco that is immersed in a mixture of licorice and sugar and then pressed into a plug. Twist tobacco is produced from leaves that are flavored and twisted to resemble a rope. Oral snuff is available in both dry and moist varieties. Dry snuff consists of powdered tobacco that contains flavor and aroma additives. Moist snuff is fine particles of tobacco that hold considerable moisture; many types are made with a variety of flavorings such as wintergreen or mint.[3] Chewing tobacco and snuff are treated by the manufacturer to achieve an alkaline pH that facilitates absorption of nicotine.[4]

Smokeless tobacco products function like temporary implants or infusion devices that deliver a controlled amount of nicotine to the cheek and gum tissue for absorption into the bloodstream. The device element of smokeless tobacco products is the tobacco, which contains the drug nicotine and delivers the nicotine to the cheek and gum tissue for absorption into the body, but is not intended to be consumed. Instead, in normal use, most of the tobacco is extruded from the mouth after absorption of the nicotine. This extrudable portion of the product does not achieve its primary intended purpose through chemical action in the mouth, but allows nicotine to be extracted from the tobacco by the user's saliva and: (a) mechanically holds the nicotine in a form that is palatable, thereby allowing sufficient time for absorption of nicotine through the cheek and gum tissue; and (b) delivers chemical agents, primarily alkalines, to increase the pH within the oral cavity, to affect the rate of absorption of nicotine through the cheek and gum tissue.

3. FDA May Exercise Its Discretion to Regulate Cigarettes and Smokeless Tobacco Products Under the Device Provisions of the Act

As explained above, the agency's factual and legal inquiry supports a finding at this time that nicotine-containing cigarettes and smokeless tobacco products are drug/device combination products, namely, drug delivery devices. Under the combination product authority of section 503 of the act, FDA must designate a component of FDA to regulate combination products based on a determination of the product's "primary mode of action." In the case of cigarettes and smokeless tobacco, the primary mode of action is that of a drug, due to the nicotine, and, therefore, primary jurisdiction over these products belongs in CDER. CDER's primary jurisdiction over cigarettes and smokeless tobacco is not determinative, however, of which provisions of the act apply. Rather, the agency has the discretion to regulate these drug delivery systems using drug authorities, device authorities, or a combination of both authorities. (See 21 CFR 3.2(e)(1994); 56 FR 58754 at 58754 and 58755 (November 21, 1991); Intercenter Agreement, Section VII.A.1.(b).) It is within FDA's discretionary power to determine which, if any, of the available regulatory authorities it will employ in the regulation of a product. See *Heckler* v. *Chaney*, 470 U.S. 821 (1985).

In determining which statutory authority to apply to these products, FDA has carefully considered the regulatory schemes for human drug products and devices, as well as the differing effects of these regulatory schemes on the millions of Americans who use these products. If FDA were to regulate cigarettes, cigarette tobacco, and smokeless tobacco under the drug authorities of the act, the new drug provisions would be applied, and each nicotine-containing cigarette, cigarette tobacco, and smokeless tobacco product would either have to: (a) be shown to be not a "new drug" because it is generally recognized as safe and effective (21 U.S.C. 321(p)); or (b) be the subject of an approved new drug application containing, among other things, adequate tests of the safety and substantial evidence of the effectiveness of the product. (See 21 U.S.C. 355.) In light of the accumulated data on the adverse health effects of tobacco, neither of these outcomes can be viewed as a realistic possibility in currently marketed products. The products would be unapproved new drugs, and as such, FDA could require their removal from the market. (See 21 U.S.C. 331(d), 355(a).)

The agency does not believe that their sudden and total withdrawal from the market would provide the best means of protecting the public health. The nicotine in tobacco products is highly addictive and is the principal reason adults continue to use tobacco products in the face of clear evidence of harm. Major recent studies reveal that the vast majority of the Nation's more than 50 million cigarette and smokeless tobacco users are addicted to the nicotine in these products. Surveys also show that while as many as 70 percent of current smokers would like to quit, only a tiny percentage are able to quit permanently. Studies on smokeless tobacco users show a similar pattern of persistent attempts to quit with extremely low success rates.[5]

Because of the high addiction rates and the difficulties smokers experience when they attempt to quit, there may be adverse health consequences for many individuals if the products were to be withdrawn suddenly from the marketplace. Our current health care system and available pharmaceuticals may not be able to provide adequate or sufficiently safe treatment for such a precipitous withdrawal. Moreover, banning all tobacco products may not achieve the primary health objective addressed in this regulation, i.e. reducing the number of children and adolescents who become addicted to these products. Given the long,

widespread use of these products in this country, it is not unreasonable to assume that a black market and/or smuggling would develop to supply addicted users with the products they require. The products that would be available through a black market could very well be more dangerous (e.g., cigarettes containing more tar or nicotine, or more toxic additives) than products currently on the market. Thus, FDA believes that a ban on all tobacco products would not eliminate smoking and would not be in the best interest of the public health at this time.

Given the dangerous health consequences of the continued use of cigarettes and smokeless tobacco products, however, the agency believes that some strong action is necessary to protect the public health. As explained in the next section, FDA has chosen to regulate these combination products using the Act's device provisions, rather than the drug provisions, because application of the device authorities would allow the continued marketing of the affected products under certain prescribed conditions established under notice and comment rulemaking procedures.

As discussed above, the primary jurisdiction over these combination products within FDA lies in CDER. This designation is appropriate because of CDER's expertise in pharmacology and drug delivery; addiction, the disease associated with tobacco use; and the regulation of pre-filled drug delivery systems. CDER, however, has the authority to use drug provisions, device provisions, or a combination of drug and device provisions in regulating these products.

4. Regulation of Cigarettes and Smokeless Tobacco Under the Device Authorities

As currently marketed, cigarettes and smokeless tobacco products are not safe and effective. Chronic use of tobacco products causes disease and premature death in a significant proportion of users.

Both the Medical Device Amendments of 1976 and the Safe Medical Devices Act of 1990 were designed to provide an array of regulatory tools that could provide reasonable assurance of the safety and effectiveness of devices. Since tobacco products are plainly not safe, one regulatory tool available under the statute is to ban the products, making their sale illegal. The legal basis for such a ban would be that tobacco products present an unreasonable and substantial risk of illness or injury. See section 516 of the act. Because of the addictiveness of tobacco products, however, tobacco products present special problems not ordinarily associated with devices. As discussed in the preceding section, in the case of cigarettes and smokeless tobacco products, a ban would not be in the best interest of the public health.

While premarket approval of a device has generally been regarded as the regulatory control that provides the greatest assurance of safety and effectiveness, on occasion the agency has chosen not to use premarket approval for critical devices that potentially raise significant safety and efficacy issues. For example, the agency has announced that it will no longer enforce premarket approval requirements for heart valve allografts. See the **Federal Register** of October 14, 1994 (59 FR 52078). FDA took this action after concluding that other regulatory controls would be more appropriate than premarket approval to provide reasonable assurance of the safety and effectiveness of these products. See also *Heckler* v. *Chaney*, 470 U.S. 821 (1985) (upholding agency's decision not to enforce premarket approval requirements for use of prescription drugs for lethal injection).

The Medical Device Amendments of 1976 and the Safe Medical Devices Act of 1990 provide the agency with considerable flexibility in identifying the most appropriate scheme for regulating products. These device provisions authorize the agency to use the regulatory tools that most appropriately protect the public from unsafe or ineffective devices. Moreover, these device provisions permit the agency to tailor the regulatory controls authorized under the statute to address the specific risks associated with individual devices. The following tools, among others, may be used to help provide reasonable assurance of safety and effectiveness for individual devices: special controls (section 514 of the act); premarket approval (section 515 of the act); product development protocols (section 515 of the act); notification and recall (section 518 of the act); device tracking (section 519(e) of the act); custom devices (section 520(b) of the act); restrictions on sale, distribution, and use (section 520(e) of the act); and postmarketing surveillance (section 522 of the act). Where the public cannot be appropriately protected from a hazardous device using the tools on which the agency might otherwise rely for a device posing a substantial risk, FDA has discretion to employ other, more appropriate regulatory controls provided by the Medical Device Amendments of 1976 and the Safe Medical Devices Act of 1990.

In the situation presented by widespread addiction to cigarettes and smokeless tobacco, where restrictions on supply would not be effective, the goals of the statute can best be achieved by preventing future users from becoming addicted to tobacco products. Restrictions on the sale and distribution of cigarettes and smokeless tobacco products to young people, as well as restrictions on advertising that fosters appeal and creates a demand for tobacco products among young people, are therefore the appropriate tools to attain the goal of reasonable assurance of safety and effectiveness for cigarettes and smokeless tobacco products, even if the goal can only be reached over one or more generations.[6]

The agency believes that the measures proposed in this regulation will reduce the exposure of children and adolescents to the health risks associated with tobacco use; will greatly reduce the number of individuals who are now, or may in the future become, addicted to nicotine in these products; and, from an epidemiological perspective, the combined effects of the proposed measures will, under the unique circumstances of these products, provide the most reasonable assurance of their safety.

The Medical Device Amendments provide authority to restrict the sale and distribution of products, like tobacco, for which there cannot otherwise be reasonable assurance of safety and effectiveness. Section 520(e) of the act, which authorizes FDA to restrict the sale and distribution of certain devices, provides regulatory tools that would enable FDA to achieve the goal of reducing demand for tobacco products. Therefore, FDA is proposing to declare cigarettes and smokeless tobacco products "restricted devices" and to impose restrictions on the underage sale and distribution of these tobacco products, pursuant to section 520(e) of the act.

5. Restricted Device Authority Under Section 520 of the Act

Section 520(e)(1)(B) of the act authorizes FDA to issue regulations restricting the sale, distribution, or use of a device:

if, because of its potentiality for harmful effect or the collateral measures necessary to its use, the Secretary determines that there cannot otherwise be reasonable assurance of its safety and effectiveness.

Because of the potentiality for harmful effects from cigarettes and smokeless tobacco products, there cannot be reasonable assurance of the safety and effectiveness of these products short of

additional restrictions designed to prevent new users from becoming addicted to nicotine-containing tobacco products and to provide information to current users on how to quit.

As discussed earlier in this document, cigarettes and smokeless tobacco products have substantial "potentiality for harmful effect" because they are both addictive and pose a significant risk to the health of users. The most effective way to provide reasonable assurance of the safety and effectiveness of tobacco products is to prevent future generations from using and becoming addicted to these products in the first instance, and as explained elsewhere in this document, tobacco use is typically initiated during childhood and adolescence. The mean average age when people become daily smokers is 17.7 years of age.[7] Moreover, those who start smoking in childhood are more likely to become heavier smokers than those who start smoking in adolescence, and those who start as adolescents are more likely to become heavier smokers than those who start as adults. Thus, the age at which an individual starts smoking is an important factor that influences the intensity of that person's smoking as an adult, and consequently his or her ultimate health risks. These facts are echoed in one of the major conclusions of the 1994 Surgeon General's Report: "Nearly all first use of tobacco occurs before high school graduation; this finding suggests that if adolescents can be kept tobacco-free, most will never start using tobacco."[8]

The proposed restrictions on sale and distribution of tobacco products are therefore designed to substantially reduce the number of children and adolescents who become addicted to tobacco. The proposed regulations would restrict young people's access to tobacco (see proposed §§ 897.12, 897.14, and 897.16), decrease the allure of the advertising and promotion of these products (see proposed §§ 897.30, 897.32, 897.34, and 897.36), and provide educational messages aimed at young people to combat pervasive pro-tobacco messages and thus to help them resist tobacco use (see proposed § 897.29).

Access. Although State and local laws impose certain restrictions on the access of young people to tobacco, over a million children and adolescents continue to become regular tobacco users each year. Unless additional measures are imposed to substantially reduce this number, cigarettes and smokeless tobacco will continue to cause disease and death in each subsequent generation. Thus, without additional restrictions designed to eliminate or substantially reduce the initiation of cigarettes and smokeless tobacco use by children and adolescents, there cannot be reasonable assurance of the safety of these products.

Advertising. For the many reasons described in this document, advertising plays a role in influencing a young person's decision to purchase and use these products. This advertising is particularly attractive to persons under the age of 18. Sections 502 (q) and (r) of the act give the agency specific authority over the advertising of restricted devices to ensure that it is truthful, nonmisleading, and contains important information about the risks associated with the use of the product. Thus, section 502(q) of the act declares misbranded any restricted device whose advertising is "false or misleading in any particular" (see proposed § 897.36) and section 502(r) requires that "all advertisements and other descriptive printed matter" associated with a restricted device must contain certain specified information, including a brief statement of "relevant warnings, precautions, side effects, and contraindications" (see proposed § 897.32).

In addition, the agency has proposed restrictions on the sale of these products, specifically to prohibit all sales to those under the age of 18. Advertising with attractive imagery, brand identifiable non-tobacco items, and sponsorship of events are appealing to young people under age 18 and are effective in influencing their decision to use tobacco products. The advertising techniques that would be prohibited by the proposed rule encourage an unauthorized use of these products and thus cause them to be misbranded.

Most importantly, FDA also has been granted broad authority in section 520(e) of the act, under which the agency may place restrictions on the sale, the distribution, or the use of certain devices where the potentiality for harm makes these restrictions necessary. The broad sweep of this language implies authority to regulate many aspects of the commercialization of a restricted device. FDA is interpreting this section to authorize restrictions on the product's distribution, its offering for sale (including inducements to sale), the sale itself, and the consumer's use (including the product's misuse). This reading of section 520(e) of the act is required if the agency is to have the ability to regulate restricted devices effectively and avoid having its efforts undercut. For example, the agency is proposing to prohibit the sale of tobacco products to those under age 18. If a manufacturer advertises its tobacco products in such a way that it has the effect of encouraging underage individuals to purchase these products, the restriction on the sale of the product would be significantly undermined. In such a case, section 520(e) of the act provides the agency the additional authority to curtail the advertising practices that threaten the effectiveness of its sale restrictions.

Just as restrictions must be placed on young people's access to tobacco products in order to limit their ability to purchase these products, it is equally important to place restrictions on the marketing practices (including advertising and promotion) of the tobacco industry. Certain advertising and promotional practices of the tobacco industry play a significant and important contributory role in a young person's decision to use cigarettes and smokeless tobacco products.

As detailed more fully in Chapter III, subpart D, individual studies illustrate the profound effect that certain tobacco campaigns have had upon the youth market. Moreover, studies have indicated that comprehensive restrictions on advertising can help reduce children's demand for these products.

Restrictions on advertising are necessary in order to reduce the demand for tobacco products by young people and therefore their desire to purchase these products. Accordingly, placing restrictions on certain marketing and advertising practices of the tobacco industry is necessary to restrict the "sale, distribution, or use" of these products.

Information and Educational Messages. FDA has determined that an educational program about cigarettes and smokeless tobacco products is a restriction that is necessary because of the "potentiality for harmful effect" of these products. As discussed above, it is necessary to impose restrictions to discourage children and adolescents from using and becoming addicted to these products and to provide important health information to those who are currently addicted to these products to allow them to decrease or cease their use of these products. The brief statements that would be mandated by the proposed rule will be designed to provide some information for current users, but are not specifically addressed to, nor narrowly targeted to, the adolescent nonuser. Consequently, given the effect of the pervasive and long standing pro-tobacco messages on young people, FDA is proposing an educational campaign, national in scope and specifically directed to adolescent nonusers. The goal of this effort is to combat the attractive imagery fostered by decades of tobacco advertising, in order to reduce the number of individuals, especially children and adolescents, who will become addicted to the nicotine in these products.

In addition, company-financed educational messages are not an uncommon remedy. FDA has imposed a similar educational requirement for hearing aids, which are also regulated as restricted devices under section 520(e) of the act. The agency requires that a User Instructional Brochure be distributed to each prospective hearing aid user. In addition to providing directions for the safe and effective use of this product, this brochure describes the adverse reactions, side effects, warnings, and limitations associated with the hearing aid. It also encourages prospective users to seek medical evaluation by a licensed physician before purchasing the product. The agency requires that specified user information be provided to educate consumers about the risks of other FDA-regulated products such as Shiley heart valves, silicone breast implants, and certain childhood immunizations.

Finally, FDA regulations provide specific language for certain disclosures in prescription and over-the-counter drug labeling, see "Pregnancy—Nursing Warning" for aspirin and aspirin-containing products, 21 CFR 201.63; "Disclosure of Drug Efficacy Study Evaluations in Labeling, and Advertising," 21 CFR 201.200; warning concerning "Isoproterenol Inhalation Preparations," 21 CFR 201.305; and warning concerning "Drugs with Thyroid Hormone Activity," 21 CFR 201.316.

Unlike the users of other restricted devices, however, the youthful potential users of tobacco products are not easily identified. Because tobacco products and tobacco advertising are distributed so widely, and have been so effective at creating positive images of tobacco use, educational information cannot realistically be specifically targeted to those particular individuals susceptible to taking up smoking. Therefore, the most effective way to reach the target audience is to mandate a widespread educational campaign as described in § 897.29 of the proposed rule.

The proposed provision on educational messages is also authorized, in addition to section 520(e) of the act, under sections 502(a), 502(q), and 201(n) of the act (21 U.S.C. 352(a), 352(q), and 321(n)). Sections 502 (a) and (q) of the act state that a device shall be deemed to be misbranded if either its labeling or advertising is false or misleading in any particular. Section 201(n) of the act directs FDA, in determining whether the labeling or advertising of an article is misleading, to examine the representations made or suggested in the labeling or advertising as well as "the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article * * *." The proposed educational message requirement is consistent with these statutory provisions because it is intended to help ensure that cigarette and smokeless tobacco product advertising and labeling is not false or misleading and to counteract the appeal of these products previously created by advertising, thereby providing important, material information regarding the consequences of cigarette or smokeless tobacco product use by young people in a manner that is appropriate for that age group. FDA's interpretation of sections 502(a)' and 201(n) of the act and its authority to require the dissemination of information to persons who use human drug products has been upheld in federal court. (See *Pharmaceutical Manufacturers Association* v. **Food and Drug Administration**, 484 F.Supp. 1179 (D.Del.), *aff'd*, 634 F.2d 106 (3rd Cir. 1980) (per curiam) (upholding FDA's authority to require mandatory patient package inserts)).

Finally, although the Cigarette and Smokeless Tobacco Acts[9] prohibit advertising for cigarettes and smokeless tobacco in specified communications media, including television and radio, they do not prohibit all discussions of cigarettes and smokeless tobacco on television. Specifically, they do not prevent broadcasters from airing public service announcements regarding the dangers of tobacco use and they likewise would not prohibit tobacco manufacturers from purchasing air time to broadcast government mandated and approved educational messages to young people to encourage them not to smoke or use smokeless tobacco.

Although the required messages would concern smoking and smokeless tobacco use, they do not constitute "advertising" within the meaning of those acts. The U.S. Court of Appeals for the District of Columbia in *Public Citizen* v. *FTC*, 869 F. 2d 1541 (D.C. Cir. 1989), gave a common sense definition of the word "advertising" in its recent interpretation of the Smokeless Act:

> Our understanding of the common meaning of the term "advertising," consistent with that contained in Webster's Third New Int'l Dictionary (1976), is that it involves any action to "call public attention to a [a product] * * * so as to arouse a desire to buy." At the most basic level this is surely what smokeless tobacco companies are doing when they splash their brand logos and selling messages across T-shirts and other promotional items.

Id. at 1554 (modifications in original). Government approved messages that seek to discourage young people from using tobacco are intended to have the opposite effect of advertising as defined in *Public Citizen* and, therefore, do not constitute advertising.

Information for current smokers. FDA has carefully tailored these restrictions to aspects of the sale and distribution of tobacco products that create a demand for these products among children and adolescents and that permit their continued access to tobacco products despite State and local laws against sale to young people. The most effective regulatory tool available to FDA to help current smokers stop using tobacco products is to require that information be provided through advertising. FDA is therefore proposing to require a brief statement in cigarette advertising giving the health risks of tobacco use. (See § 897.32(c)).

6. Conclusion

Without the restrictions contained in this proposed rule designed to prevent future generations from becoming addicted to tobacco products, there cannot be reasonable assurance of the safety and effectiveness of cigarettes and smokeless tobacco products. FDA seeks the most rational regulatory structure for cigarettes, cigarette tobacco, and smokeless tobacco products permitted under the act to achieve an important public health goal, and simultaneously, to avoid what might be widely regarded as an unwanted and ultimately unsuccessful result.

The agency's comprehensive investigation and legal analysis support a finding at this time that cigarettes, cigarette tobacco, and smokeless tobacco are subject to regulation on the basis of their nicotine content and intended use. Each of these products employs a device component to achieve its effect on the body, and therefore each is a drug/device combination product. As such, FDA may, in its discretion, regulate them using the act's device provisions.

The device provisions permit the continued marketing of the affected products under certain prescribed conditions designed to substantially reduce the number of young people who become addicted to tobacco products and thereby to break the cycle of

addiction and disease fostered by tobacco products.

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6. The Medical Device Amendments also provide authority to remedy unsafe products by forcing corrections in their design. See sections 514 and 518 of the Act. FDA has determined, however, that there are insufficient data available at this time to permit the conclusion that modifications in cigarettes and smokeless tobacco products would make them safe or even substantially safer.
7. 1994 SGR, p. 67.
8. 1994 SGR, p. 5.
9. 15 U.S.C. 1335 and 15 U.S.C. 4402(f).

B. Other Requirements

As explained above, FDA is proposing to regulate cigarettes and smokeless tobacco products as devices and, in accordance with section 520(e) of the act, is proposing to restrict their sale, distribution, and use. As devices, the products would also be subject to various pre-existing requirements in the statute and the regulations. These regulations include the general labeling requirements for devices at 21 CFR part 801 (excluding § 801.62); establishment registration and device listing requirements at 21 CFR part 807; and good manufacturing practice requirements at 21 CFR part 820.

Under section 502(q)(2) of the act, a restricted device that is sold, distributed, or used in violation of regulations prescribed under section 520(e) of the act shall be deemed to be misbranded. Therefore, nicotine-containing cigarettes and smokeless tobacco products that are marketed in violation of the proposed rule would be regarded by FDA as misbranded. It is already the case under the laws of all 50 States that retailers are liable when a sale of cigarettes or smokeless tobacco products is made to an underage individual. Perhaps the most significant effect of the proposed rule with regard to potential legal liability is that manufacturers, as well as retailers and distributors, could be held responsible for violations of the regulations. As with other violative manufacturer activities under the act, such a finding could result in various sanctions, including: fines, injunctions, civil money penalties, product seizure, and prosecution.

C. Preemption Under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act

Although sections 502(q), 502(r), and 520(e) of the act give FDA authority to regulate the sale, distribution, and use of a restricted device and to impose certain requirements on all advertisements and other descriptive printed matter, both the Cigarette Act and the Smokeless Act contain provisions that limit the exercise of Federal, State, and local authorities. The agency has reviewed its statutory authority in light of these two statutes and concludes that neither the Cigarette Act nor the Smokeless Act preclude FDA from regulating these products or enacting each of the provisions in the proposed regulation.

1. The Cigarette Act

The Cigarette Act requires, among other things, specific warning notices on cigarette packages and advertisements. The Cigarette Act contains express language regarding other Federal and State regulation:

> (a) No statement relating to smoking and health, other than the statement required by [15 U.S.C. 1333], shall be required on any cigarette package.
>
> (b) No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Act.

15 U.S.C. 1334. The proposed rule takes into account the Federal preemption provision of the Cigarette Act and is consistent with this statutory prohibition.

The preemption provision of the Cigarette Act regarding advertising and promotion applies only to State action. Hence, because the proposed rule would impose Federal, not State, requirements, the proposed rule's labeling and advertising requirements are permissible under 15 U.S.C. 1334(b).

In addition to being permissible under the Cigarette Act, the proposed rule would actually further Congressional intent to protect cigarette packages from diverse, nonuniform, and confusing cigarette labeling and advertising regulations. The proposal would require inclusion of certain information in cigarette advertisements, and these requirements would apply to cigarettes sold and distributed throughout the United States. Under this scheme, States could not impose "diverse, nonuniform, and confusing" labeling or advertising requirements, Cigarette Act, Public Law 89–92, as amended by Public Law 91–222 (April 1, 1970) and Public Law 93–109 (September 21, 1973); 15 U.S.C. 1331 (1973).

Two recent cases support the interpretation that the Cigarette Act does not establish an absolute prohibition against Federal action. In *Cipollone* v. *Liggett Group, Inc.*, the Supreme Court considered whether the Cigarette Act preempted an action by an individual against a cigarette manufacturer for breach of express warranty that cigarettes "did not present any significant health consequences," failure to warn consumers about health hazards, fraudulent misrepresentation of health hazards to consumers, and conspiracy to "deprive the public of medical and scientific information about smoking." 112 S. Ct. 2608, 2613–14 (1992). The Court examined the preemption provision in the Cigarette Act and the amendments contained in the Public Health Cigarette Smoking Act and stated that,

> When Congress has considered the issue of pre-emption and has included in the enacted legislation a provision explicitly addressing that issue, and when that provision provides a "reliable indicium of congressional intent with respect to state authority," * * * "there is no need to infer congressional intent to pre-empt state laws from the substantive provisions" of the legislation * * * Congress" enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted.

Id. at 2618 (citations omitted) (emphasis added).

The Court found that the preemption provisions "merely prohibited state and federal rulemaking bodies from mandating particular cautionary statements on cigarette labels" and held that the preemption provisions did not constitute an absolute prohibition against all Federal and State action. *Id.*

The Supreme Court in *Freightliner Corp.* v. *Myrick*, 115 S. Ct. 1483 (1995) clarified its language in *Cipollone*. The Court stated "[t]he fact that an express definition of the preemptive reach of a statute "implies"—*i.e.*, supports a reasonable inference—that Congress did not intend to pre-empt other matters does not mean that the express clause entirely forecloses any possibility of implied preemption." *Id.* at 1488 (emphasis added.) The Court noted that it would still be appropriate to conduct the proper analysis to determine if preemption should be implied. Having said that, the Court stated that such an analysis had been done in *Cipollone*. Finally, the Court found no implied preemption in *Freightliner* even in the absence of federal regulation.

The California Supreme Court, in *Mangini* v. *R.J. Reynolds Tobacco Co.*, 875 P.2d 73 (Cal. en banc), *cert. denied*, 115 S.Ct. 577 (1994), considered whether the Cigarette Act precluded an action under California law for engaging in an "unlawful, unfair, or fraudulent business act or practice" by using "unfair, deceptive, untrue, or misleading advertising." The petitioner claimed that R.J. Reynolds had illegally targeted minors in its Joe Camel advertising campaign. R.J. Reynolds asserted that its cigarettes were properly labeled and, therefore, that California could not impose any regulation regarding cigarette advertising if the regulation were based on smoking and health. It added that a prohibition against selling cigarettes to minors was based on underlying health concerns and that only the Federal Government could prevent advertisements that urge minors to smoke. The California Supreme Court applied the analysis in *Cipollone* and held that, while the petitioner's action would prohibit cigarette advertising directed at minors, the underlying legal duty for the petitioner's action was not based on smoking and health. The California Supreme Court held that, "The predicate duty is to not engage in unfair competition by advertising illegal conduct or encouraging others to violate the law." *Id.* at 80. As for the argument that allowing state law claims to proceed would violate congressional policy favoring a comprehensive Federal program for cigarette labeling and advertising, the court disagreed, stating,

> State law prohibitions against advertisements targeting minors do not require Reynolds to adopt any particular label or advertisement "with respect to any relationship between smoking and health;" rather, they forbid any advertisements soliciting unlawful purchases by minors. The prohibitions do not create "'diverse, nonuniform, and confusing" standards. Unlike state law obligations concerning the warning necessary to render a product 'reasonably safe,' state law proscriptions" against advertisements targeting minors 'rely on a single, uniform standard:"' do not target minors.

Id. at 80 (quoting 112 S.Ct. at 2624). Consequently, the court held that,

> It is now asserted that plaintiff's effort to tread upon Tobacco Road is blocked by the nicotine wall of congressional preemption. The federal statute does not support such a view. Congress left the states free to exercise their police power to protect minors from advertising that encourages them to violate the law. Plaintiff may proceed under that aegis.

Id. at 83. The Supreme Court later denied R.J. Reynolds' petition for a writ of *certiorari*. See 115 S.Ct. 577 (1994). Although *Mangini* concerned preemption of State action, the California Supreme Court's decision and the U.S. Supreme Court's denial of *certiorari* indicate a judicial intent not to extend the Cigarette Act's preemption provisions beyond its literal terms. Thus, restrictions on cigarette companies allegedly targeting children are not restrictions based on "smoking and health." See also *Banzhaf* v. *Federal Communication Commission*, 405 F.2d 1082, 1089 (D.C. Cir. 1968), *cert. denied*, 396 U.S. 842 (1969) (preemption provision of the 1965 Cigarette Act did not bar the Federal Communication Commission from requiring radio and television stations to broadcast anti smoking messages: "Nothing in the Act indicates that Congress had any intent at all with respect to other types of regulation by other agencies—much less that it specifically meant to foreclose all such regulation." (footnote omitted))

Applying these cases to FDA's proposed rule, the agency believes that the proposed requirement for a brief statement about smoking and health is not preempted.

2. The Smokeless Act

For smokeless tobacco products, the Smokeless Act states in part:

> (a) Federal action
>
> No statement relating to the use of smokeless tobacco products and health, other than the statements required by [this title,] shall be required by any Federal agency to appear on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

15 U.S.C. 4406(a). The proposal would not require any messages in advertising because the Smokeless Act's preemption provision is broader than the preemption provision in the Cigarette Act and preempts any Federal (as well as State) action mandating health/safety messages in advertising.

Thus, given these statutory restrictions and court precedent, FDA has determined that neither the Cigarette Act nor the Smokeless Act preempts any aspect of the proposed rule.

D. Constitutional Issues—Regulation of Speech and the First Amendment

The proposed rule's restrictions on commercial speech are consistent with the First Amendment's protection of freedom of expression. The Supreme Court distinguishes between commercial speech and other forms of speech with respect to First Amendment rights. Traditionally, commercial speech was not granted any protection under the Constitution. More recently, the Supreme Court has granted commercial speech limited constitutional protection. See *Ohralik* v. *Ohio State Bar Ass'n*, 436 U.S. 447, 456, *reh'g denied*, 439 U.S. 883 (1978); *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976); *Bigelow* v. *Virginia*, 421 U.S. 809, 818 (1975). The Supreme Court, in *Edenfield* v. *Fane*, 113 S. Ct. 1792 (1993), stated:

> [c]ommercial speech [ ] is "linked inextricably" with the commercial arrangement that it proposes, * * * so the State's interest in regulating the underlying transaction may give it a concomitant interest in the expression itself. * * * For this reason, laws restricting commercial speech, unlike laws burdening other forms of protected expression, need only be tailored in a reasonable manner to serve a substantial state interest in order to survive First Amendment scrutiny.

Id. at 1798 (citations omitted).

It is undisputed that the "Constitution * * * affords a lesser protection to commercial speech than to other constitutionally guaranteed expression." *United States and Federal Communication Commission* v. *Edge Broadcasting Co.*, 113 S.Ct. 2696, 2703 (1993) (citations omitted). Accord, *City of Cincinnati* v. *Discovery Network, Inc.*, 113 S.Ct. 1505, 1513 (1993); *Board of Trustees of the State University of New York* v. *Fox*, 492 U.S. 469, 475, *mot. denied*, 493 U.S. 887 (1989); *Central Hudson Gas and Electric Corp.* v. *Public*

Service Commission, 447 U.S. 557, 563 (1980); *Ohralik*, 436 U.S. at 455–56. Therefore, although commercial speech is protected, the government has latitude to regulate commercial speech in ways it could not regulate other forms of expression. *Friedman* v. *Rogers*, 440 U.S. 1, 10 n.9 (1979) ("When dealing with restrictions on commercial speech we frame our decisions narrowly, "allowing modes of regulation [of commercial speech] that might otherwise be impermissible in the realm of noncommercial expression." (citation omitted).

In *Central Hudson Gas & Electric Corp.* v. *Public Service Commission of New York*, the Supreme Court established a four-prong test to determine whether restrictions on commercial speech are unconstitutional. The first prong states that for commercial speech to come within the protection of the First Amendment the speech must concern lawful activity. The other prongs relevant to an analysis of restrictions on commercial speech are:

(2) The government interest that is asserted to justify the proposed limitation must be substantial;

(3) The proposed limitation must directly advance the government's interest; and

(4) The proposed limitation should be no more extensive than is necessary to serve that interest.

Central Hudson, 447 U.S. 557, 566 (1980).

Since *Central Hudson*, the Supreme Court has taken a permissive view of the government's regulation of commercial speech and has upheld several restrictions on commercial speech. FDA believes that the proposed restrictions on the labeling and advertising of cigarettes and smokeless tobacco products, and the requirement that manufacturers fund and disseminate a media-based educational campaign, also would withstand any First Amendment challenge.

The *Central Hudson* analysis begins with the second prong. The proposed rule meets the requirements of the second prong because it serves the substantial government interest of protecting the public health. The Supreme Court has held that the government's "interest in the health, safety, and welfare of its citizens constitutes a 'substantial' governmental interest." *Posadas de Puerto Rico Associates* v. *Tourism Company of Puerto Rico*, 478 U.S. 328, 341 (1986) (Court upheld restrictions on advertising of casino gambling to residents of Puerto Rico). Accord, *Fox*, 492 U.S. 469 (1989); *Metromedia Inc.* v. *City of San Diego*, 453 U.S. 490, 507–08 (1981). *National Council for Improved Health* v. *Shalala*, Memorandum Decision and Order, Civil No. 94–C–5090 (June 30, 1995) (U.S. District Court for the district of Utah rejected claim that FDA's regulation of dietary supplements violated First Amendment protection.) In this instance, the proposed rule's labeling and advertising restrictions and mandated educational campaign would reduce the use of cigarettes and smokeless tobacco products by those young individuals who are the most vulnerable to addiction and, perhaps, the least capable of deciding whether to use the products. Decreased use of these products will reduce the risk of tobacco-related illnesses and deaths. The proposed rule, therefore, reflects a substantial government interest in public health.

The proposed rule also meets the third prong of the *Central Hudson* test by directly advancing the government's substantial interest. The Supreme Court has stated that, when determining whether an action advances the governmental interest, it is willing to defer to the "common-sense judgments" of the regulatory agency as long as they are not unreasonable. *Metromedia*, 453 U.S. at 509 ("We likewise hesitate to disagree with the accumulated, common-sense judgments of local lawmakers and of the many reviewing courts that billboards are real and substantial hazards to traffic safety.")

The agency's proposed restrictions on advertising and labeling are based on its review of the evidence that shows that advertising plays an important role in young people's decisions to use tobacco products. Such evidence, consisting of numerous published studies, reports, and recommendations by the industry, health professionals, consumer groups, and public health organizations, demonstrates how advertising and labeling may make young people more receptive to using cigarettes and smokeless tobacco products and how the regulatory approach proposed by FDA may reduce the potential harm to young people. See *Florida Bar* v. *Went for It*, 63 U.S.L.W. 4644 (1995) (anecdotal record sufficient to meet third prong of *Central Hudson*). The Supreme Court has specifically deferred to the government's conclusion that advertising increases consumption of a product. In *Edge*, the Court stated:

> Within the bounds of the general protection provided by the Constitution to commercial speech, we allow room for legislative judgments. Here, as in *Posadas de Puerto Rico*, the Government obviously legislated on the premise that the advertising of gambling serves to increase the demand for the advertised product. Congress clearly was entitled to determine that broadcast of promotional advertising of lotteries undermines North Carolina's policy against gambling, even if the North Carolina audience is not wholly unaware of the lottery's existence. Congress has, for example, altogether banned the broadcast advertising of cigarettes, even though it could hardly have believed that this regulation would keep the public wholly ignorant of the availability of cigarettes.

Edge, 113 S.Ct. at 2707 (citations omitted). Accord, *Posadas*, 478 U.S. at 341–42 (Puerto Rican legislature's belief that advertising of casino gambling aimed at Puerto Rican residents would increase demand for it was a reasonable one); *Dunagin* v. *City of Oxford, Miss.*, 718 F.2d 738, 748 n.8 (5th Cir. 1983) ("whether there is a correlation between advertising and consumption is a legislative and not an adjudicative fact question"), *cert. denied*, 467 U.S. 1259 (1984).

The proposed rule's requirement that the manufacturers provide funds for a media-based educational campaign is similarly supported by ample evidence that such educational campaigns have been very effective in reducing initiation and prevalence of tobacco use by young people. The proposed rule directly addresses the serious public health problem caused by tobacco use by young people in a manner that "will in fact alleviate [the harm] to a material degree." *Edenfield*, 113 S.Ct. at 1800.

Unlike the advertising restrictions (text-only format, ban on promotional items, and restrictions on sponsorship), which would help reduce the appeal of future advertising to young people, the proposed education campaign is necessary to address the widespread misconceptions about tobacco use among young people that have in part been created by the ubiquitous advertising and promotional practices of the tobacco industry. For example, the industry currently spends nearly $2 billion creating appealing imagery and sponsoring and advertising events that associate their products with lifestyles that are attractive and popular with young people.

The amount of advertising, the variety of its format (e.g. advertisements, on hats, at concerts, on televised sponsored events), and the appeal of its messages compete effectively with the health messages of the government and health authorities. One consequence is that many young people believe that tobacco products are an important part of growing up and being "cool." Another consequence is that young people remain ignorant of the strength of the addiction to tobacco products and the relevance to them of the long-term health risks. In the short run, the educational messages would help counter these information deficits and, in the long run, they would provide young people with appropriate information to help them resist tobacco use.

The agency gathered enough evidence regarding the association between promotion and use of cigarettes and smokeless tobacco products and the efficacy of an appropriately designed educational campaign to tentatively conclude that the proposed rule's restrictions on commercial speech would alter young people's smoking behavior. Therefore, the restrictions can be said to "directly advance" the legitimate government goal of decreasing the use of these harmful products. (For a discussion of the evidence, see the discussion pertaining to proposed Subpart D, "Labeling and Advertising.")

Finally, the proposed rule meets the fourth prong of the *Central Hudson* test, which the Court has modified to require that the governmental regulation of commercial speech not be over broad. The Supreme Court has made it clear that this prong does not require a "least restrictive means test," but rather that there be a "reasonable fit" between the government's regulation and the substantial governmental interest sought to be served. *Fox*, 492 U.S. at 4774–4780. The Supreme Court stated:

> What our decisions require is a fit between the legislature's ends and the means chosen to accomplish those ends,"—a fit that is not necessarily perfect, but *reasonable;* that represents not necessarily the single best disposition but one whose scope is "in proportion to the interest served," that employs not necessarily the least restrictive means but, as we have put it in other contexts discussed above, a means narrowly tailored to achieve the desired objective. Within those bounds we leave it to governmental decisionmakers to judge what manner of regulation may best be employed.

Id. at 480 (citations omitted) (emphasis added). Accord, *Edenfield*, 113 S.Ct. at 1798 ("[L]aws restricting commercial speech, unlike laws burdening other forms of protected expression, need only be tailored in a reasonable manner to serve a substantial state interest in order to survive First Amendment scrutiny."); *Zauderer* v. *Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985) ("[W]e hold that an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers.")

This holding is consistent with the Supreme Court's earlier decisions regarding the overbreadth doctrine. The Supreme Court has held that the overbreadth doctrine—which permits an attack on a statute on the basis that it might be applied unconstitutionally in circumstances other than those before a court—applies weakly, or not at all, to commercial speech.

Since advertising is linked to commercial well-being, it seems unlikely that such speech is particularly susceptible to being crushed by overbroad regulation. Moreover, concerns for uncertainty in determining the scope of protection are reduced; the advertiser seeks to disseminate information about a product or service that he provides, and presumably he can determine more readily than others whether his speech is truthful and protected.

Bates v. *State Bar of Arizona*, 433 U.S. 350, 381 (citations omitted), reh'g denied 434 U.S. 881 (1977).

As with the third prong, the Supreme Court has expressed a willingness to defer this determination to the regulating body. Since *Fox*, the courts have applied the "reasonable fit" standard to uphold the regulation of commercial speech. See *Edge*, 113 S.Ct. at 2705 (upholding restrictions on the broadcast of lottery advertisements); *South-Suburban Housing Center* v. *Greater South Suburban Bd. of Realtors*, 935 F.2d 868, 892 (7th Cir. 1991) (upholding restrictions on the mailing of solicitations to people who had registered with the municipality their desire not to receive them, as "reasonable fit" with the desire to protect residential privacy), *cert. denied*. 502 U.S. 1074, 112 S.Ct. 971 (1992); *Puerto Rico Tele-Com, Inc.* v. *Ocasio Rodriguez*, 747 F.Supp. 836, 845 (D.P.R. 1990) (upholding a cease and desist order by the Puerto Rico Department of Consumer Affairs (DACO) prohibiting a long-distance phone carrier from using a price study in a deceitful or misleading way as "a reasonable 'fit' between DACO's orders against plaintiff and its mandate to protect consumers"); *Central American Refugee Center* v. *City of Glen Cove*, 753 F.Supp. 437, 440 (E.D.N.Y. 1990) (upholding ordinance prohibiting solicitation of employment from a vehicle or by a pedestrian on a public street as a "reasonable fit" with the governmental interest in protecting vehicle passengers and people crossing the street). Moreover, the Court has granted greater leeway and upheld reasonable regulations of commercial speech with regard to socially harmful activities. *Edge*, 113 S.Ct. 2696 (upholding Federal prohibition of lottery advertising on radio in non lottery State); *Posadas de Puerto Rico Associates*, 478 U.S. 328 (1986) (upholding ban of advertising of casino gambling directed to Puerto Rican citizens); *Capital Broadcasting Co.* v. *Mitchell*, 333 F.Supp. 582 (D.D.C. 1971), affd. mem, 405 U.S. 1000 (1972) (upholding broadcast ad ban on cigarette advertising); nothing in *Rubin* v. *Coors Brewing Company*, 63 U.S.L.W. 4319 (April 19, 1995) is to the contrary (statutory prohibition against statements of alcohol content of beer on labels or in advertising failed completely to advance the governmental interest asserted of preventing "strength wars" among brewers).

The agency believes that, because it could have banned the sale or distribution of the product, or banned certain of the marketing and promotional practices of the tobacco industry, the lesser steps of regulating labeling and advertising and requiring manufacturers to fund a government approved educational campaign are reasonable. As the Supreme Court has stated:

> [I]t is precisely *because* the government could have enacted a wholesale prohibition of the underlying conduct that it is permissible for the government to take the less intrusive step of allowing the conduct, but reducing the demand through restrictions on advertising.

Posadas, 478 U.S. at 346 (emphasis in original). More specifically, the Court stated:

> Legislative regulation of products or activities deemed harmful, such as cigarettes, alcoholic beverages, and prostitution, has varied from outright prohibition on the one hand. * * * to legalization of the product or activity with restrictions on stimulation of demand on the other hand. * * * To rule out the latter, intermediate kind of response would require more than we find in the First Amendment.

Id. at 346–347 (citations omitted). This analysis applies not only to the restrictions on the type of advertising permitted (text-only), but also the requirement that the manufacturers fund and disseminate a government approved educational campaign. The Supreme Court has stated that the government may dictate the form of, and information in, commercial speech. *Virginia Pharmacy*, 425 U.S. at 771 n.24 ("They may also make it appropriate to require that a commercial message appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive."); *In re R.M.J.*, 455 U.S. 191, 201 (1982) ("warning or disclaimer might be appropriately required* * *in order to dissipate the

possibility of consumer confusion or deception"); *Bates*, 433 U.S. at 384.

As noted above, on several occasions the agency has imposed similar educational requirements—e.g., user instructional brochures—in order to reduce consumer confusion or to prevent the misuse of a device. In those circumstances, the agency has required that the company use agency approved language. Courts have approved of similar "corrective" or "coerced" speech ordered by other federal agencies. See *Warner-Lambert Co.* v. *FTC*, 562 F.2d 749 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 950 (1978) (corrective advertising is appropriate where company has engaged in a long history of deceptive advertising and the misperceptions continue even in the absence of current advertising); *United States* v. *Frame*, 885 F.2d 1119 (3rd Cir. 1989) (court upheld legislation that required beef producers, including those who objected, to pay an assessment to fund pro-beef commercials written and disseminated by a quasi-government board), *cert. denied*, 493 U.S. 1094 (1990).

In conclusion, the agency believes that the evidence would support a ban on all advertising and, therefore, that the more limited restrictions imposed by this proposed rule are reasonable as proportionate to the agency's desired goal—to reduce tobacco-related illnesses and deaths by helping to prevent young people from becoming addicted to the nicotine in cigarettes and smokeless tobacco products. The requirements proposed here serve to prevent distribution of these products to young people, to reduce the effectiveness of advertising and promotion on young people, and to ensure that an appropriate educational campaign is aimed at young people. Thus, the means chosen are a reasonable fit to the substantial interest and, consequently, pass the final prong of the *Central Hudson* test.

V. Paperwork Reduction Act of 1980

The proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents.

Description: The proposed rule would collect information from manufacturers and retailers of cigarettes and smokeless tobacco products. The proposed rule would require such persons to: use established names for cigarettes and smokeless tobacco products; establish and maintain educational programs; observe certain format and content requirements for labeling and advertising; and submit labels, labeling, and advertising to FDA.

Description of Respondents: Businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

CFR Section	Annual No. of responses	Annual frequency	Average burden per response	Annual burden hours
897.24	1,000	1	40 hours	40,000
897.29	1,000	1	1,000 hours	1 million
897.32	200,000	1	20 minutes	66,667
897.40	200,000	1	20 minutes	66,667
Total				1,173,334

The agency has submitted a copy of the proposed rule to OMB for its review of these information collections. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. Comments should be sent to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office, Washington, DC 20503, Attn: Desk Officer for FDA.

VI. Executive Orders

A. Executive Order 12606: The Family

Executive Order 12606 directs Federal agencies to determine whether policies and regulations may have a significant impact on family formation, maintenance, and general well-being. FDA has analyzed this proposed rule in accordance with Executive Order 12606, and has determined that it has no potential negative impact on family formation, maintenance, and general well-being.

FDA has determined that this rule will not affect the stability of the family, and particularly, the marital commitment. It will not have any significant impact on family earnings.

The proposed rule would not impede the parental authority and rights in the education, nurture, and supervision of children. Rather, the proposed rule would, if finalized, help the significant majority of American families that seek to discourage their children from using cigarettes and smokeless tobacco products. The pervasive promotion and easy availability of these products, despite existing laws in all 50 States prohibiting their sale to children, severely hinder the individual family from carrying out this function by itself.

Section 1(g) of Executive Order 12606 requires that FDA assess the proposed rule in light of the message, if any, it sends to young people "concerning the relationship between their behavior, their personal responsibility, and the norms of our society." The proposed rule would, if finalized, help reduce the conflict between the anti-smoking messages issued by Federal and State authorities and the pro-tobacco messages seen in advertising. This would enable young people to understand how prevalent tobacco use is in society and also appreciate how their decisions regarding cigarette and smokeless tobacco use can affect their health.

Although Executive Order 12606 does not require that individuals or organizations be permitted to participate in proposed rulemaking proceedings, FDA expressly requests all such interested parties to submit comments and suggestions regarding this rule's effect on the family.

B. Executive Order 12612: Federalism

Executive Order 12612 requires Federal agencies to carefully examine regulatory actions to determine if they would have a significant effect on federalism. Using the criteria and principles set forth in the order, FDA has considered the proposed rule's impact on the States, on their relationship with the Federal Government, and on the distribution of power and responsibilities among the various levels of government. FDA concludes that this proposal is consistent with the principles set forth in Executive Order 12612.

Executive Order 12612 states that agencies formulating and implementing policies are to be guided by certain federalism principles. Section 2 of Executive Order 12612 enumerates fundamental federalism principles. Section 3 states that, in addition to these fundamental principles, executive departments and agencies shall adhere, to the extent permitted by law, to certain listed criteria when formulating and implementing policies that have federalism implications. Section 4 lists special requirements for preemption.

Executive Order 12612 recognizes that Federal action limiting the discretion of State and local governments is appropriate "where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope" (section 3(b)). The constitutional basis for FDA's authority to regulate drugs and devices is well established.

Moreover, in developing the provisions of this proposed rule, the agency carefully considered the provisions of the proposed rule implementing section 1926 of the Public Health Service Act, the Substance Abuse Prevention and Treatment block grant program. As a condition of receipt of such grants, a State must have in place a law that prohibits the sale or distribution of any tobacco product to individuals under age 18 and enforce the law in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18. The statute prescribes random, unannounced inspections, but otherwise allows the States considerable flexibility in designing their enforcement programs. By imposing the explicit obligations on manufacturers, distributors, and retailers to control access by children and adolescents to nicotine-containing cigarettes and smokeless tobacco products, the FDA proposals will help States achieve their goals under their substance abuse programs. FDA therefore believes that the two programs complement each other.

The proposed rule would establish uniform minimum standards with respect to the labeling, advertising, sale, and distribution of nicotine-containing cigarettes, cigarette tobacco, and smokeless tobacco products. The proposed rule would expressly provide, however, that these regulations do not preempt State and local laws, regulations, and ordinances that establish higher standards with respect to these products, or affect these products in areas not covered by the proposed rule, e.g., environmental smoke.

The proposed regulation of nicotine-containing cigarettes, cigarette tobacco, and smokeless tobacco is narrowly drawn. First, it focuses on reducing methods of promotion that are either expressly designed to appeal to American youths, or that are designed without regard to their appeal to American youths. Second, it focuses on reducing the easy access of these nicotine containing products by American youths.

The agency concludes that the policy proposed in this document: Has been assessed in light of the principles, criteria, and requirements in Executive Order 12612; is not inconsistent with that Order; will assist States in fulfilling their obligation under the Substance Abuse Prevention and Treatment block grant program; will not impose additional costs or burdens on the States; and will not affect the States' ability to discharge traditional State governmental functions.

Section 4 of Executive Order 12612 states that an executive department or agency proposing to act through rulemaking to preempt State law is to provide all affected States notice and opportunity for appropriate participation in the proceedings. As required by the Executive Order, States have, through this notice of proposed rulemaking, an opportunity to participate in the proceedings (section 4(e)). Consistent with Executive Order 12612, FDA requests information and comments from interested parties, including but not limited to State and local authorities, on these issues of federalism.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

Executive Order 12630 directs Federal agencies to "be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc." Section 3(a). Section 3(c) of the order states that actions taken to protect the public health and safety "should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose." Additionally, section 4(d) requires, as a prerequisite to any proposed action regulating private property use for the protection of public health and safety, each agency to: (1) Clearly identify the public health or safety risk created by the private property use that is the subject of the proposed action; (2) establish that the proposed action substantially advances the purpose of protecting the public health and safety against the identified risk; (3) establish, to the extent possible, that the restrictions imposed on private property are not disproportionate to the extent to which the use contributes to the overall risk; and (4) estimate, to the extent possible, the potential cost to the government should a court later determine that the action constitutes a taking.

The agency has considered whether the proposed rule would result in a "taking" of private property. The proposed rule would, if finalized, restrict outdoor advertising from being placed within 1,000 feet of any elementary or secondary school or playground, eliminate cigarette vending machines and self-service displays, ban all brand identifiable non-tobacco items, such as hats and tee shirts, prohibit the use of a trade name of a non-tobacco item for any tobacco product, and require established names and a brief statement on labels, labeling, and/or advertising. In addition, the proposed rule would require that all sponsored events be carried out only in the corporate name. While these requirements might affect private property, they do not constitute "takings."

In determining whether a governmental action has resulted in a "taking," recent court decisions have

generally required either a physical invasion of the property or a denial of all economically beneficial or productive use of the property (other than real property), and have examined the degree to which the governmental action serves the public good, the economic impact of that action, and whether the action has interfered with "reasonable investment-backed expectations." See *Lucas* v. *South Carolina Coastal Council*, _____ U.S. _____, 112 S.Ct. 2886, 2893 (1992); *Andrus* v. *Allard*, 444 U.S. 51, 65 (1979) (reduction in value is not necessarily a taking); *Golden Pacific Bancorp* v. *United States*, 15 F.3d 1066, 1071–73 (Fed. Cir. 1994) (heavily regulated bank could not have developed a historically rooted expectation of compensation so Federal take-over did not require compensation), *cert. denied*, 115 S.Ct. 420 (1994); *Midnight Sessions, Ltd.* v. *City of Philadelphia*, 945 F.2d 667 (3rd Cir. 1991) (denial of license to operate an all-night dance hall did not constitute a taking because it did not deny all economically viable use of the property), *cert. denied*, 503 U.S. 984 (1992); *Elias* v. *Town of Brookhaven*, 783 F.Supp. 758 (E.D.N.Y. 1992) (loss of profit or the right to make the most profitable use does not constitute a taking); *Nasser* v. *City of Homewood*, 671 F.2d 432 (11th Cir. 1982) (deprivation of most beneficial use of land or severe decrease in property value does not constitute a taking). Indeed, in *Andrus* v. *Allard*, the Supreme Court wrote,

> Suffice it to say that government regulation—by definition—involves the adjustment of rights for the public good. Often this adjustment curtails some potential for the use or economic exploitation of private property. To require compensation in all such circumstances would effectively compel the government to regulate by *purchase*. "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."

Andrus, 444 U.S. at 65 (emphasis in original; citations omitted).

Here, the proposed rule would not require the government to physically invade or occupy private property, so the first inquiry is whether the proposed rule, if finalized, would deny all economically beneficial or productive use of property. The proposal would prohibit outdoor advertising from being located within 1,000 feet of any elementary or secondary school or playground. However, cases involving advertising restrictions illustrate that restrictions on the size and placement of advertising may be acceptable if they represent a valid exercise of governmental authority or do not deny all economically viable uses of the property. See *Sign Supplies of Texas, Inc.* v. *McConn*, 517 F.Supp. 778, 782 (S.D. Tex. 1980) (city ordinance on sign and billboard size, height, and location did not constitute a taking and was a valid regulation of injurious and unlawful acts). In this instance, the proposed restriction against outdoor advertising represents an exercise of the agency's statutory authority to restrict certain devices and permit labeling and advertising to continue under certain conditions.

Neither would the proposed rule effect a taking of vending machines or self-service displays. Although vending machines would no longer be permitted to be used to sell cigarettes or smokeless tobacco products, they would continue to have economic value if they were modified for other uses. FDA notes that a recent issue of *Vending Times* stated that cigarette vending sales declined in 1993 and that:

> Many traditional machines were modified to sell both full-value and generic/subgeneric styles at two prices, and glass-front machines gained favor as cigarette merchandisers because of their high selectivity, flexible pricing, attractive display, and *convertibility to other uses if cigarette vending becomes illegal*.

"Vending Cigarettes," *Vending Times, Census of the Industry Issue*, 1994 at p. 42 (emphasis added).

This statement indicates that compliance with this regulation would not result in a "taking" of vending machines. Similarly, self-service displays, in many instances, could be moved, adapted, or locked to comply with the requirement of direct transfer from retailers to consumers. Thus, like vending machines, self-service displays would retain their utility rather than losing their value.

Non-tobacco items that bear the brand name, logo, symbols, mottos, selling messages, or any other indicia of a cigarette or smokeless tobacco product are often given away free as promotional items or packaged with tobacco products as incentives to purchase the product. Banning brand identifiable non-tobacco items as a marketing tool and limiting sponsorship of events would not constitute a taking because, like vending machines and self-service displays, they can be modified or adapted to fit other needs. FDA notes that the FTC, in 1991, had to consider whether its proposal to require warning messages on "utilitarian objects" bearing the names, logos, or selling messages of smokeless tobacco product firms or brands constituted a taking. The FTC acknowledged that small businesses and one advertising association claimed that the FTC's rule would impose economic burdens on them, but felt that such claims were unsubstantiated. The FTC quoted an authority in consumer product regulation as stating that firms that produce these "utilitarian items" must be "adaptable and flexible to meet different needs of changing marketplace demands" and that they are able to transfer resources to other potential customers with only short term sales transaction costs. See 56 FR 11653, at 11661 (Mar. 20, 1991); see also *Georgia-Pacific Corp.* v. *United States*, 640 F.2d 328, 360 (Ct. Cl. 1980) ("It is settled that not all losses suffered by the owner are compensable under the fifth amendment. The government must pay only for what it takes, not for opportunities which the owner may have lost.") (citation omitted). FDA also notes that, until a final rule becomes effective, firms could easily adjust their business practices to adapt to the proposed regulations or to phase out utilitarian items and, therefore, not have such items in stock when the rule becomes effective.

Finally, prohibiting the use of non-tobacco names on tobacco products and requiring labels, labeling, and advertising to carry the product's established name and a brief statement would represent too slight a "taking" to warrant constitutional concern. With respect to the prohibition against the use of non-tobacco names, the non-tobacco product firm would lose its ability to license its name to any tobacco company, but it would be free to exploit its trade name with any other industry. There have been very few instances (such as "Harley- Davidson' cigarettes) of tobacco companies licensing a non-tobacco trade name. The agency recognizes that these brands might still be in the marketplace and would apply this provision prospectively only.

Nevertheless, even if the agency's proposed actions could constitute a "taking," FDA finds that the actions are consistent with section 4(d) of the order. The labels, labeling, and advertising for cigarettes and smokeless tobacco products convey images of status, sophistication, maturity, and adventure or excitement that are particularly appealing to young people. Their effectiveness at attracting young people is reflected in studies showing that young people tend to smoke the most heavily advertised brands and that very young children are able to recognize brand logos and imagery. The appeal generated by labels, labeling, and advertising, coupled with easy access, creates the risk that young people will smoke cigarettes or use smokeless tobacco products, thereby exposing themselves to the long-term health risks associated with those products. Consequently, FDA has carefully drafted the proposed rule to convey information regarding warnings, precautions, side effects, and contraindications in order to inform consumers about the use of these products. The advertising requirements in proposed subpart D are also narrowly drafted to allow advertising to continue under certain conditions rather than prohibit all advertising. This will enable adults to continue receiving advertising messages while decreasing the advertisements' appeal to young people.

Vending machines and self-service displays offer young people easy access to cigarettes and smokeless tobacco products even though State laws prohibit cigarette sales to minors and some States or localities require locking devices on or specific placement of vending machines. Thus, the requirement that retailers physically provide the product to the consumer substantially advances the purpose of protecting the public health by eliminating easy, unmonitored access to such products by underage persons. This requirement is not disproportionate to the risk presented by vending machines and self-service displays because many studies demonstrate how easily minors can purchase cigarettes from vending machines, and other documents indicate that shoplifting is another method young people use to acquire these products.

Non-tobacco items and sponsored events that bear the brand name, logo, symbols, mottos, selling messages, or any other indicia of a cigarette or smokeless tobacco product act like advertising, conveying images of status, sophistication, maturity, and adventure or excitement that appeal to young people. Reports demonstrate that many young people, even those under the legal age, possess these items or seek coupons or certificates to obtain these items. The items, in conjunction with labeling, other advertising activities, and sponsored events, create the impression that smoking or smokeless tobacco product use is more prevalent and acceptable in society than it actually is and, as a result, increase the risk that young people will smoke cigarettes or use smokeless tobacco products and expose themselves to the long-term health risks associated with those products. Thus, banning tobacco promotions on non-tobacco items and in conjunction with sponsored events is appropriate.

As for the estimated potential cost to the government in the event that a court finds a taking to exist, FDA is unable to provide an approximate figure. There is little publicly available and precise data or information on each activity that would arguably be the subject of a regulatory taking, and section 704 of the act prohibits FDA from requiring financial, sales, or pricing data during an inspection. Consequently, the agency would appreciate receiving information to enable it to determine the potential cost to the government if a court found the actions described in this proposed rule to be a taking.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8), (a)(11), and (e)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

A. Introduction and Summary

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (Pub. L. 96–354) and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires (in Section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000, (adjusted annually for inflation). That Act also requires (in Section 205) that the agency identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The following analysis, in conjunction with the remainder of this preamble, demonstrates that this proposed rule is consistent with the principles set in the Executive Order and in these two statutes. In addition, this document has been reviewed by the Office of Management and Budget as an economically significant regulatory action under Executive Order 12866.

The estimated benefits of the proposed rule were based on FDA's finding that compliance with the proposed requirements would help to achieve the Department's "Healthy People 2000" goals. Each year, an estimated 1 million adolescents begin to smoke cigarettes. This analysis calculates that at least 24 percent of these youngsters will ultimately die from causes related to their nicotine habit. (Other epidemiological studies suggest even higher rates of excess mortality. For example, CDC projections indicate that 1 in 3 adolescents who smoke will die of smoking-related disease.) As a result, FDA projects that the achievement of the "Healthy People 2000" goals would prevent well over 60,000 early deaths, gaining over 900,000 future life-years for each year's cohort of teenagers who would otherwise begin to smoke. At a 3 percent discount rate, the monetary value of these benefits are projected to total from about $28 to $43 billion per year and are comprised of about $2.6 billion in medical cost savings, $900 million in productivity gains from reduced morbidity, and $24.6 to $39.7 billion per year in willingness-to-pay values for averting premature fatalities. (Because of the long periods involved, a 7 percent discount rate reduces total benefits to about $9.1 to $10.4 billion per year.) In addition, the proposed rule would prevent numerous serious illnesses associated with the use of smokeless tobacco products.

The full realization of this goal would require the active support and participation of State and local governments, civic and community organizations, tobacco manufacturers, and retail merchants. Even if only a fraction of the goal were achieved, the benefits would be substantial. For example, as shown in Table 1, halting the onset of smoking for only 1/20 of the 1 million adolescents who become new smokers each year would provide annual benefits valued at from $2.9 to $4.3 billion a year.

To comply with the initial requirements of the rule, FDA projects that manufacturers and retailers of tobacco products would incur one-time costs ranging from $26 to $39 million and annual operating costs of about $227 million (see Table 2). Manufacturers would be responsible for about $15 to $28 million of the one-time costs and $175 million of the annual

costs (mostly for educational programs). In addition, they would face significant advertising restrictions. Retailers would pay $11 million in one-time costs and $52 million in annual costs. On an annualized basis, using a 3 percent discount rate over 15 years, costs for these initial requirements total about $230 million (also about $230 million at a 7 percent discount rate). Achieving the "Healthy People 2000" goals, however, could demand still further efforts by tobacco manufacturers to restrict youth access to tobacco products. Moreover, FDA plans to propose additional requirements that would become effective only if these goals were not met.

TABLE 1—ANNUAL ILLNESS-RELATED BENEFITS OF ALTERNATIVE EFFECTIVENESS RATES
[Undiscounted lives and life-years; 3% discount rate for monetary values]

Fraction of teenage cohort deterred	Fewer adult smokers**	Lives saved	Life-years saved	Medical savings	Morbidity-related productivity savings	Mortality-related willingness-to-pay		Total benefits	
						Life-years saved	Lives saved	Low	High
	(No.)	(No.)	(No.)	($bils.)	($bils.)	($bils.)	($bils.)	($bils.)	($bils.)
½*	250,000	50,200	905,300	2.6	0.9	24.6	39.7	28.1	43.2
⅓	167,000	40,100	603,600	1.8	0.6	16.4	26.4	18.8	28.8
⅛	100,000	24,100	362,100	1.1	0.4	9.9	15.9	11.4	17.4
1/10	50,000	12,000	181,100	0.5	0.2	4.9	7.9	5.6	8.6
1/20	25,000	6,000	90,500	0.3	0.1	2.5	4.0	2.9	4.3

*Estimate used in analysis.
** Assumes 50% of adolescents who are deterred from smoking refrain as adults.

TABLE 2—INDUSTRY COSTS FOR CORE PROVISIONS
[$mils.]

Requirements by sector*	One-time costs	Annual operating costs	Total annualized costs**
Tobacco Manufacturers	15–28	175	177
Visual Inspections		24	24
Training		1	1
Label Changes	4–17		1
Self-Service Ban	11		1
Educational Programs		150	150
Retail Establishments	11	52	53
Training		10	10
I.D. Checks		28	28
Self-Service Ban	11	14	15
TOTAL	26–39	227	230

*Advertising restrictions are considered under distributional effects.
** Sum of one-time costs annualized over 15 years at 3 percent and annual operating costs.

Consumers would incur costs to the extent that they lose positive utility received from the imagery embodied in product advertising campaigns. Consumers would also lose the convenience offered by the use of cigarette vending machines. Costs for these compliance activities were based on the agency's best estimate of the resources that would be needed to establish effective programs for decreasing the incidence of lifelong addictions to nicotine-containing cigarettes and smokeless tobacco products.

In addition to the costs described above, the proposal would create distributional and transitional effects. While the overall impact of these changes on the national economy would be small, because dollars not spent on tobacco-related expenditures would be spent on other goods or services, several individual industries would be affected. Tobacco manufacturers and suppliers would face increasingly smaller sales, because reduced tobacco consumption by youth would lead, over time, to reduced tobacco consumption by adults. The impact of this trend on industry revenues would be extremely gradual, requiring over a decade to reach an annual decrease of even 4 percent, substantially mitigating the costs associated with any resource dislocation. Also, if State excise tax rates on tobacco products remain at current levels, State tax revenues would decrease slowly over time, falling by $252 million by the tenth year.

Tobacco manufacturers spent $6.2 billion on advertising, promotional, and marketing programs in 1993, and about 30 percent would be substantially altered to reflect the various "text only" restrictions or other prohibitions. If tobacco advertising outlays declined, various service agencies and communications media (including suppliers of retail counter and other display space) would need to attract replacement sponsors. Similarly, vending machine operators would need to find substitute products to replace that portion of their revenue that is currently derived from the sale of cigarettes. Many of these adjustments would occur quickly (e.g., TV networks reportedly recouped advertising revenues within 1 year of the 1971 ban), but others could create short-term disruptions as businesses moved to replace lost product lines.

In sum, FDA finds that compliance with this proposed rule would impose some economic costs on the tobacco industry and short-term costs on several other industry sectors. With regard to small businesses, most impacts would

be small or transitory. For a small retail convenience store not currently complying with this proposal, the additional first year costs could reach $320. For those convenience stores that already check customer identification, these costs fall to $35. Moreover, the proposed rule would not produce significant economic problems at the national level, as the gradual displacement in tobacco-oriented sectors would be largely offset by increased output in other areas. Thus, pursuant to the Unfunded Mandates Act, FDA concludes that the substantial benefits of this regulation would greatly exceed the compliance costs that it would impose on the U.S. economy. In addition, the agency has considered other alternatives and determined that the current proposal is the least burdensome alternative that would meet the "Healthy People 2000" goals.

B. Statement of Need for Proposed Action

The need for action stems from the agency's determination to ameliorate the enormous toll on the public health that is directly attributable to the consumption by adolescents of cigarettes and smokeless tobacco products. According to the nation's most knowledgeable health experts, tobacco use is the most important preventable cause of morbidity and premature mortality in the United States, accounting each year for over 400,000 deaths (approximately 20 percent of all deaths). Moreover, these morbidity and mortality burdens do not spare middle aged adults—with the average smoking-related death responsible for the loss of up to 15 life-years.[1]

In its guidelines for the preparation of Economic Impact Analyses, OMB asks that Federal regulatory agencies determine whether a market failure exists and if so, whether that market failure could be resolved by measures other than new Federal regulation. The basis for this request derives from standard economic welfare theory, which by assuming that each individual is the best judge of his/her own welfare, concludes that perfectly competitive private markets provide the most efficient use of societal resources. Accordingly, the lack of perfectly competitive private markets (market failure) is frequently used to justify the need for government intervention. Common causes of such market failures include monopoly power, inadequate information, and market externalities or spillover effects.

While FDA believes that various elements of market failure are relevant to the problem of teenage tobacco addiction, the agency also believes that the proposed regulatory action could be justified even in the absence of a traditional market failure. As noted above, the implications of the market failure logic are rooted in a basic premise of the standard economic welfare model—that each individual is the best judge of his/her own welfare. However, FDA is convinced that this principle does not apply to children and adolescents. Even steadfast defenders of individual choice acknowledge the difficulty of applying the "market failure" criterion to non adults. Littlechild, for example, adds a footnote to the title of his chapter on "Smoking and Market Failure"[2] to note that "[t]he economic analysis of market failure deals with choice by adults." FDA finds this statement consistent with its view that even if many children make rational choices,[3] the agency's regulatory determinations must reflect the societal conviction that children under the age of legal consent cannot be assumed to act in their own best interest.[4]

In particular, FDA finds that the imagery used in industry advertising and promotional programs obscures adolescent perceptions of the significance of the associated health risks and the strength of the addictive power of tobacco products. The preceding sections of this preamble describe numerous studies on the shortcomings of the risk perceptions held by children. Although most youngsters acknowledge the existence of tobacco-related health risks, the abridged time horizons of youth make them exceptionally vulnerable to the powerful imagery advanced through targeted industry advertising and promotional campaigns. In effect, these conditions constitute an implicit market failure that has not been adequately remedied by government action.

Moreover, the agency does not view these results as inconsistent with the growing economic literature based on the Becker and Murphy models of "rational addiction."[5] Although several empirical studies have demonstrated that, for the general population, cigarette consumption is "rationally addictive" in the sense that current consumption is affected by both past and future consumption,[6] Chaloupka notes that this "rationality" does not hold for younger or less educated persons, for whom past but not future consumption maintains a significant effect on current consumption. He concludes, "[t]he strong effects of past consumption and weak effects of future consumption among younger or less educated individuals support the a priori expectation that these groups behave myopically."[7]

A further market failure would exist if the use of tobacco imposed external or spillover costs on nonusers. Many studies have attempted to calculate the societal costs of smoking, but few have addressed these externalities. The most detailed research on whether smokers pay their own way is the 1991 study by Manning, et al., "The Cost of Poor Health Habits,"[8] which develops estimates of the present value of the lifetime external costs attributable to smoking. This study examines differences in costs of collectively financed programs for smokers and nonsmokers, while simultaneously controlling for other personal characteristics that could affect these costs (e.g., age, sex, income, education, and other health habits, etc.). The authors found that nonsmokers subsidize smokers' medical care, but smokers (who die at earlier ages) subsidize nonsmokers' pensions. On balance, they calculated that before accounting for excise taxes, smoking creates net external costs of about $0.15 per pack of cigarettes in 1986 dollars ($0.33 per pack adjusted to 1995 dollars by the medical services price index.) While acknowledging that these estimates ignored external costs associated with lives lost due to passive smoking, perinatal deaths due to smoking during pregnancy, and deaths and injuries caused by smoking- related fires, the authors concluded that there is no net externality, because the sum of all smoking-related externalities is probably less than the added payments imposed on smokers through current Federal and State cigarette excise taxes. A Congressional Research Service report to Congress examined estimates of the potential magnitude of the omitted costs and concurred with this finding.[9]

C. Regulatory Benefits

1. Prevalence-Based Studies

The benefits of the proposed regulation include the costs that would be avoided by eliminating the adverse health effects associated with the consumption of tobacco products. Most research on the costs of smoking-related illness has concentrated on the medical costs and productivity losses associated with the prevalence of death and illness in a given year. These prevalence-based studies typically measure three components: (1) The contribution of smoking to annual levels of illness and death, (2) the direct costs of providing extra medical care, and (3) the indirect

costs, or earnings foregone due to smoking-related illness or death.[10]

In a recent statement, the U.S. Office of Technology Assessment (OTA) declared that "the greatest 'costs' of smoking are immeasurable insofar as they are related to dying prematurely and living with debilitating smoking-related chronic illness with attendant poor quality of life." Nonetheless, OTA calculated that in 1990 the national cost of smoking-related illness and death amounted to $68 billion and included $20.8 billion in direct health care costs, $6.9 billion in indirect morbidity costs, and $40.3 billion in lost future earnings from premature death.[11] More recently, the CDC estimated the 1993 smoking-attributable costs for medical care, alone, at $50 billion.[12] Unfortunately, these prevalence-based studies do not answer many of the most important questions related to changes in regulatory policy, because they present the aggregate cost of smoking-related illness in a single year, rather than the lifetime cost of illness for an individual smoker. As noted in the 1992 Report of the Surgeon General, most prevalence-based studies fail to consider issues concerning "the economic impact of decreased prevalence of cigarette smoking, the length of time before economic effects are realized, the economic benefits of not smoking, and a comparison of the lifetime illness costs of smokers with those of nonsmokers." [13] In effect, although these studies are designed to measure the smoking-related draw on societal resources, they are not well-suited for analyzing the consequences of regulatory-induced changes in smoking behavior.

2. FDA's Methodology

An alternative methodology, termed incidence-based research, compares the lifetime survival probabilities and expenditure patterns for smokers and nonsmokers. As this approach models the individual life-cycle consequences of tobacco consumption, FDA has relied on these incidence-based studies to value the beneficial effects of the proposed rule over the lifetime of each new cohort of potential smokers. The methodology incorporates the following steps:

- A projection of the extent to which the rule would reduce the incidence, or the annual number of new adolescent users of tobacco products
- A projection of the extent to which the reduced rates of adolescent tobacco consumption would translate to reduced rates of lifetime tobacco consumption
- A projection of the extent to which the reduced rates of lifetime tobacco consumption would decrease the number of premature deaths and lost life-years
- An exploration of various means of estimating the monetary value of the expected health improvements.

The annual benefits of the proposed regulation are measured as the present value of the lifetime benefits gained by those youngsters, who in the absence of the proposed regulation, would have become new smokers.

3. Reduced Incidence of New Young Tobacco Users

Each year, an estimated 1 million youngsters become new smokers. The proposed regulation targets this group by restricting youth access to tobacco products and by limiting advertising activities that affect adolescents. Several communities have demonstrated that access restrictions are extremely effective when vigorously applied. Woodridge, IL, for example, achieved a compliance rate of over 95 percent. Moreover, 2 years after that law was enacted, a survey of 12 to 14 year-old students indicated that overall smoking rates were down by over 50 percent (over ⅔ for regular smokers).[14]

The proposed advertising and promotional restrictions would augment these efforts to limit the attraction of tobacco products to underage consumers. As discussed in detail in the preamble above, no one study has definitively quantified the precise impact of advertising or of advertising restrictions. Nevertheless, the majority of the relevant research indicates that advertising restrictions would reduce consumer demand. For example, according to the 1989 report of the Surgeon General; "The most comprehensive review of both the direct and indirect mechanisms concluded that the collective empirical, experiential, and logical evidence makes it more likely than not that advertising and promotional activities do stimulate cigarette consumption." [15] Similarly, after a careful examination of available studies, Clive Smee, Chief Economic Adviser to the UK Department of Health determined that, "the balance of evidence thus supports the conclusion that advertising does have a positive effect on consumption." [16]

In Northern California, 24 cities and unincorporated areas in 5 counties adopted local youth tobacco access ordinances that prohibit self-service merchandising and point-of-sale tobacco promotional products in retail stores. Survey measures of the impact of these ordinances by the Stop Tobacco Access for Minor Project (STAMP) found that, on average, tobacco sales to minors dropped 40 percent to 80 percent.[17]

In the August 26, 1993, **Federal Register**, the Substance Abuse and Mental Health Services Administration (SAMHSA) proposed a program of State-operated enforcement activities that would restrict the sale or distribution of tobacco products to individuals under 18 years of age. FDA strongly supports the basic objectives of this program, but believes that their full achievement would demand a broad arsenal of controls; including industry programs to complement and fortify the new State inspectional programs, together with restrictions on industry advertising and promotions to counter the influence of ongoing marketing activities. While quantitative estimates of the effectiveness of these activities cannot be made with certainty, FDA believes that, if aggressively implemented and supported by both industry and public sector entities, comprehensive programs designed to discourage youthful tobacco consumption could reasonably achieve the "Healthy People 2000" goal of halting the onset of smoking for at least half, or 500,000, of the 1,000,000 youngsters who presently start to smoke each year.

The agency acknowledges the imposing size of the required effort and understands that the performance goals may not be fully attainable if the affected industry sectors choose to ignore the new incentives established by the proposed regulation. After all, the industry's long- term profits hinge on attracting new customers. Nonetheless, FDA is confident that the combined effect of the proposed restrictions on advertising and promotion, prohibition of self-service tobacco products (including vending machines), new labeling information and educational programs, and age verification obligations for retailers would significantly diminish the allure as well as the access to tobacco products by youth. Moreover, if the performance goals are not met 7 years after the effective date of the final rule, additional requirements would enhance the effectiveness of these activities. Thus, this study projects regulatory benefits on the presumption that the "Healthy People 2000" goals would be met, but also presents results for effectiveness levels that are considerably smaller.

4. Reduced Rate of Lifetime Tobacco Use

As part of its regulatory proposal, SAMHSA assumed that its new monitoring program would significantly reduce the amount of underage smoking, but its methodology did not project these reduced smoking rates into adult years. SAMHSA acknowledged the conservative nature of its estimate and noted the likelihood that the majority of the cost savings would accrue over long time spans, "as each cohort of non-smoking youth ages into non-smoking adults." Nevertheless, SAMHSA did not quantify these lifetime benefits, "because there are so many uncertainties as to future outcomes." While agreeing that long term benefit projections are uncertain, FDA is convinced that estimates based on valid assumptions can provide reasonable approximations of future cost savings.

The major beneficiaries of the proposed rule are those individuals who would otherwise become addicted to tobacco early in life, but who are unlikely to start using tobacco products as an adult. Evidence from SAMHSA suggests that this percentage will be high as most smokers become daily cigarette smokers before the age of 18. The 1994 Surgeon General's Report indicates that 82 percent of persons (aged 30 to 39) who ever smoked daily began to smoke before the age of 18. That report concludes that "if adolescents can be kept tobacco-free, most will never start using tobacco." FDA agrees with that assessment, but notes that the above percentage may not reflect the ultimate demand for tobacco consumption that may occur if adolescent access is effectively limited. Thus, to account for this possibility, FDA conservatively assumed that this proposed regulation would prevent the use of tobacco as an adult for only one half of the estimated 500,000 youngsters who would be deterred from starting to smoke each year. Accordingly, FDA has calculated the annual benefits of the proposed rule from the lifetime health gains associated with preventing 250,000 adolescents from ever smoking as an adult.

5. Lives Saved

FDA calculated the number of smoking-related deaths that would be averted by the 250,000 lifetime nonsmokers (who in the absence of the proposed regulation would be smokers) from age-specific differences in the probability of survival for smokers and nonsmokers. The probability of survival data for the agency's estimate were derived from the American Cancer Society's Cancer Prevention Study II, as shown in Table 3.

TABLE 3—PROBABILITY OF SURVIVAL BY AGE, SEX, AND SMOKING STATUS

[Probabilities of a 17-Year-Old Surviving to Age Shown]

Age (years)	Male neversmokers	Male all smokers	Female neversmokers	Female all smokers
35	1	1	1	1
45	0.986	0.966	0.988	0.984
55	0.951	0.893	0.962	0.939
65	0.867	0.733	0.901	0.831
75	0.689	0.466	0.760	0.630
85	0.336	0.159	0.453	0.289

Source: Thomas Hodgson, "Cigarette Smoking and Lifetime Medical Expenditures," "The Milbank Quarterly," vol. 70, no. 1, 1992, p. 91. Based on data from the American Cancer Society's Cancer Prevention Study II.

FDA initially compared the probability of death for smokers versus nonsmokers within each 10-year period. Differences in the probabilities of death were then multiplied by the number of smokers remaining at the start of each 10-year period. Excess deaths among smokers in all age groups totaled almost 28 percent of the 250,000 cohort. Because these data do not account for potentially confounding variables, such as alcohol consumption, or other lifestyle differences, FDA adjusted the mortality estimate to 24 percent to reflect findings by Manning et al.[18] that such nontobacco lifestyle factors may account for 13 percent of excess medical care expenditures. FDA recognizes that this 24 percent mortality estimate may be too low. For example, Peto, et al. found that about half of all adolescents who continue to smoke regularly will eventually die from smoking-related disease.[19] Moreover, CDC projects that up to 1 in 3 adolescent smokers may die prematurely. Nevertheless, for this analysis, FDA relied on the probabilities shown in Table 3, corrected by the 13 percent lifestyle influence adjustment, to project that achieving the "Healthy People 2000" performance goal would prevent about 60,200 smoking-related fatalities among each year's cohort of potential new smokers.[20]

The economic assessment of health-related variables requires discounting the value of future events to make them commensurate with the value of present events. For this analysis, a 3 percent discount rate was used to calculate the present value of the projections. (Most health-related cost-effectiveness studies use rates of from 3 to 5 percent. FDA presents summary estimates below for rates of both 3 and 7 percent.) On the assumption that it would be 20 years before each year's cohort of new adults reached the midpoint of the 35 to 45 age bracket and 60 years to reach the 75 to 85 age bracket, these calculations indicate that, on a present value basis, the proposed rule would save 15,863 lives per year.

6. Life-Years Saved

The number of life-years that would be saved by preventing each year's cohort of 250,000 adolescents from acquiring a smoking addiction was calculated from the same age-specific survival differences between smokers and non-smokers. In each 10-year life span, the number of years lived for each cohort of persons who would have been smokers but who were deterred was compared to the number of years that would have been lived by that same cohort if they had been smokers. The difference between these two measures is the life-years saved for that 10-year period.[21] Deducting the 13 percent lifestyle adjustment indicates that over the full lifetime of each cohort, the proposed regulation would gain an estimated 905,000 life-years, or about 15 years per life saved. On a discounted basis, the proposed rule would save an estimated 211,391 life-years annually.

7. Monetized Benefits of Reduced Tobacco Use

There is no fully appropriate means of assigning a dollar figure to represent the attendant benefits of averting thousands of tobacco-induced illnesses and fatalities. However, to quantify important components of the expected economic gains, FDA has developed estimates of the value of the reduced medical costs and the increased worker productivity that would result from

fewer tobacco-related illnesses. In addition, since productivity measures do not adequately value the avoidance of premature death, FDA has adopted a willingness-to-pay approach to value the benefits of reduced tobacco-related fatalities.

8. Reduced Medical Costs

On average, at any given age, smokers incur higher medical costs than nonsmokers. However, nonsmokers live longer and therefore continue to incur medical costs over more years. Several analysts have reported conflicting estimates of the net outcome of these factors, but the most recent research is the incidence-based study by Hodgson,[22] who found that lifetime medical costs for male smokers were 32 percent higher than for male neversmokers and lifetime medical costs for female smokers were 24 percent higher than for female neversmokers. Hodgson determined that the present value of the lifetime excess costs were about $9,400 in 1990 dollars (future costs discounted at 3 percent).[23] As noted earlier, the incidence-based study by Manning et al., implies that about 13 percent of the excess medical costs are attributable to factors other than smoking. Accounting for this reduction and adjusting by the consumer price index (CPI) for medical care raises the present value of Hodgson's excess medical cost per new smoker to $10,590 in 1994 dollars. Thus, those 1,000,000 young people under the age of 18, who currently become new smokers each year, are responsible for excess lifetime medical costs measured at a present value of $10.6 billion (1,000,000 x $10,590). Since FDA projects that the proposed regulation would prevent 250,000 of these individuals from smoking as adults, the medical cost savings attributable to the proposed regulation is estimated at $2.6 billion per year.

9. Reduced Morbidity Costs

An important cost of tobacco-related illness is the value of the economic output that is lost while individuals are unable to work. Thus, any future reduction in such lost work days contributes to the economic benefits of the proposed regulation. Several studies have calculated prevalence-based estimates of U.S. productivity losses due to smoking-related morbidity, but FDA knows of no incidence-based estimates. Hodgson, however, has shown that in certain situations, incidence measures can be derived from available prevalence measures. For example, he demonstrates that in a steady-state model, the only difference between prevalence and incidence-based costs are due to discounting.[24] Consequently, FDA has adopted Hodgson's method to develop a rough approximation of incidence-based costs from an available prevalence-based estimate of morbidity costs.

Rice et al.[25] found that lost wages due to tobacco-related work absences in the United States amounted to $9.3 billion in 1984. This equates to $12.3 billion in 1994 dollars when adjusted by the percentage change in average employee earnings since 1984. Although FDA does not have a precise estimate of the life-cycle timing of these morbidity effects, the relevant latency periods would certainly be shorter than for mortality effects. Thus, to account for the deferred manifestation of smoking-related morbidity effects, FDA assumed that they would occur over a time horizon equal to 80 percent of that previously measured for mortality effects. Further, because the long-term decline in smoking prevalence has exceeded the growth in population, the estimated incidence-based costs were reduced by another 20 percent. At a 3 percent discount rate, this methodology implies that the incidence-based cost of smoking-related morbidity, or the present value of the future costs to one year's cohort of 1,000,000 new smokers, is about $3.5 billion. Based on FDA's estimate that the proposed regulation would prevent 250,000 youths per year from smoking as adults, the estimated annual benefits from reduced morbidity amount to about $879 million.

10. Benefits of Reduced Mortality Rates

From a societal welfare perspective, OMB advises that the best means of valuing benefits of reduced fatalities is to measure the affected group's willingness-to-pay to avoid fatal risks. Unfortunately, the specific willingness-to-pay of smokers is unknown, because institutional arrangements in the markets for medical care obscure direct measurement techniques.[26] Nevertheless, many studies have examined the public's willingness-to-pay to avoid other kinds of life-threatening risks, especially workplace and transportation hazards. An EPA-supported study[27] found that most empirical results support a range of $1.6 to $8.5 million (in 1986 dollars) per statistical life saved, which translates to $2.2 to $11.6 million in 1994 dollars. However, the uncertainty surrounding such estimates is substantial. Moreover, Viscusi has shown that smokers, on average, may be willing to accept greater risks than nonsmokers. For example, smokers may accept about one-half the average compensation paid to face on-the-job-injury risks.[28] FDA therefore has conservatively used $2.5 million per statistical life, which is towards the low end of the research findings, to estimate society's willingness-to-pay to avert a fatal smoking-related illness. Thus, the annual benefits of avoiding the discounted number of 15,863 premature fatalities would be $39.7 billion.

An alternative method of measuring willingness-to-pay is to calculate a value for each life-year saved. This approach, which is intuitively appealing because it places a greater value on the avoidance of death at a younger than at an older age, is the traditional means of assessing the cost-effectiveness of medical interventions. Nevertheless, there have been few attempts to determine the appropriate value of a life-year saved. OMB suggests several approaches, including annualizing with an appropriate discount rate the estimated value of a statistical life over the average expected life-years remaining. For example, at a 3 percent discount rate, a $2.5 million value per statistical life for an individual with 35 years of remaining life-expectancy translates to about $116,500 per life year. Since the proposed regulation would save 211,391 discounted life-years annually, this approach yields annual benefits of $24.6 billion. FDA notes that this approach does not attribute any value to lost consumer utility from tobacco product consumption and solicits public comment on this methodology.

11. Reduced Fire Costs

Every year lighted tobacco products are responsible for starting fires which cause millions of dollars in property damage and thousands of casualties. In 1992, fires started by lighted tobacco products caused 1,075 deaths and $318 million in direct property damage.[29] A reduction in the number of smokers, and the coinciding number of cigarettes smoked, would result in a drop in the number of fires over the years. If the number of fires fell by the same percentage as the expected reduction in cigarette sales, this would imply present value savings due to fewer fires of $203 million for the value of lives saved and $24 million for the value of averted property damage, totaling $227 million annually over a 40-year period. Moreover, these estimates do not include costs for nonfatal injuries or for providing temporary housing.

12. Summary of Benefits

The discussion above demonstrates the formidable magnitude of plausible estimates of the economic benefits available from smoking reduction efforts. As described, FDA forecasts annual net medical cost savings of $2.6 billion and annual morbidity-related productivity savings of $900 million. From a willingness-to-pay perspective, the annual benefits of reduced tobacco-related disease mortality range from $24.6 to $39.7 billion. As a result, the value of the annual disease-related benefits of achieving the "Healthy People 2000" goal is projected to range from $28.1 to $43.2 billion. (Following Hodgson, this analysis uses a 3 percent discount rate. A 7 percent rate reduces these benefits to a range of $9.1 to $10.4 billion.) These totals do not include the benefits expected from fewer fires (over $200 million annually), reduced passive smoking, or decreased use of smokeless tobacco products. Moreover, while FDA believes these effectiveness projections are plausible, much lower rates would still yield impressive results. Table 1 above summarized the disease-related health benefits and illustrates that youth deterrence rates as small as 1/20, which would prevent the adult addiction of at least 25,000 of each year's cohort of 1,000,000 new adolescent smokers, would provide annual benefit values measured in the billions of dollars. Moreover, the higher risk estimates suggested by Peto, et al. could significantly increase these values.

D. Regulatory Costs

OMB guidelines for Regulatory Impact Analysis direct that agency cost estimates reflect the opportunity costs of the proposed alternative (i.e., the value of the benefits foregone as a consequence of that alternative.)[30] According to these guidelines, estimates should include "private-sector compliance costs, government administrative costs, and costs of reallocating workers displaced as a result of the regulation * * * Such costs may include the value (opportunity cost) of benefits foregone, losses in consumers' or producers" surpluses, discomfort or inconvenience, and loss of time."[31] Accordingly, FDA finds that the proposed rule would impose new burdens on the manufacturers of tobacco products and less stringent requirements on retailers of tobacco products. In addition, certain other industry sectors would experience lost sales and employment, but these effects would be largely offset by gains to other sectors, as discussed in section VIII.E. of this document.

A critical variable underlying several of the cost estimates is the number of retail outlets that sell tobacco products. According to the Retail Trade Census, a total of 2.4 million retail trade establishments operated in 1987. Unfortunately, the Retail Trade Census publishes product line data for only the 1.5 million retail establishments with payroll. Of these, about 275,000 report sales for the broad merchandise line of "Cigars, cigarettes, and tobacco." FDA does not know how many of the nonpayroll outlets sell tobacco products. There were about 215,000 nonpayroll outlets among the most likely establishment types (grocery stores, service stations, drug stores, liquor stores, drinking places, general merchandise, and eating places.) If all of these nonpayroll stores sold tobacco products (an unreasonably high estimate considering that only 34 percent of those with payroll reported sales of tobacco merchandise), the total number of retail establishments selling over-the-counter tobacco products would be 275,000 + 215,000, or 490,000. Moreover, these data may overstate the number of outlets operating at any one time, because they represent the number of establishments in business at any time during the year and outlet turnover is significant. The figure may be understated, however, if a substantial number of nonpayroll stores that sell tobacco products are classified among other establishment types.

Alternatively, New Jersey issued about 18,300 retail cigarette sales licenses in 1988, but the census estimate for the number of retail establishments with payroll selling tobacco products in that state was only about 6,000. This implies that over twice as many nonpayroll outlets sell tobacco products as outlets with payrolls. If the New Jersey licensing data, which imply about 2.4 cigarette licenses per 1,000 population, were extrapolated to the United States, they project to about 600,000 such outlets nationwide. However, this estimate also may overstate the current number of establishments selling tobacco products at any one time, because of the high failure rate among small businesses obtaining licenses (i.e. more licenses issued than establishments surviving).

Neither the census nor the New Jersey data account for those outlets that may convert cigarette vending machine sales to over-the-counter sales once vending machines are banned as proposed in this regulation. Industry estimates of the number of cigarette vending machines in operation in 1993 vary from 182,000[32] to 480,000[33]. FDA does not know how many of these operations would convert to over-the-counter sales, but for this study, the agency has assumed that about 100,000 establishments would initiate new over-the-counter operations to replace lost vending machine sales. Thus, FDA estimates that a maximum of about 700,000 retail outlets would continue to sell tobacco products.

1. Costs to Manufacturers

a. *Core requirements.* Under the proposed regulation, manufacturers of tobacco products would incur compliance costs for the following requirements: visual inspections of retail outlets, training manufacturers' representatives, changing package labels, assisting self-service bans, and financing consumer education programs.

b. *Visual inspections.* The manufacturer is responsible for removing all items that do not comply with the requirements of this proposal and for visually inspecting each retail establishment during any visit to such establishment, to ensure that the products are appropriately labeled, advertised, and sold, or distributed. Thus, manufacturer inspections would be required during every business visit to a tobacco-selling outlet by a manufacturer's representative. As manufacturers' representatives routinely visit most retail outlets selling their products, the proposed requirement would provide a periodic scrutiny of retail tobacco operations without imposing additional travel costs. FDA cannot project these costs precisely, as the intensity of the audit would vary with the characteristics of the retail operation, but the agency believes that most manufacturers' representatives would need little incremental time to conduct routine audits. On average, FDA estimates that each audit would be accomplished by a relatively quick assessment that would take no more than 2 to 3 minutes. The assumption of an additional 3 minutes per visit implies a total of 30 minutes a day for a manufacturer's representative who may visit an average of 10 outlets daily. At a labor cost of $25 per hour, the annual cost of the additional one-half hour spent daily on monitoring would be $3,250 per employee.

FDA does not know how many manufacturers' representatives currently make sales calls on tobacco product retailers, but preliminary results from the 1992 U.S. Census of Manufacturers indicate that cigarette manufacturers employ about 7,300 nonproduction workers. Thus, if all nonproduction workers were engaged in retail sales, the industry monitoring costs would approach $24 million per year ($3,250 × 7,300). However, many nonproduction employees serve in management or clerical positions. Moreover, the above cost estimate fails to account for the likely relationship between the total time needed for a manufacturers'

representative to visit a retail outlet and the type of promotional activities permitted. For instance, the ban on self-service displays may cause manufacturers' representatives to spend less time conducting display inspections. Thus, FDA suspects that the above cost estimate may be high.

c. *Training.* Each manufacturer's representative would have to receive training on the requirements of the regulation and the new monitoring responsibilities of their position. FDA estimates that this training could be accomplished in about 8 hours. Thus, assuming that the 7,300 estimate for the number of manufacturers' representatives adequately accounts for normal employee turnover, the annual training costs would total about $1 million.

d. *Label changes.* The proposed regulation requires that the tobacco product package contain the established name of the tobacco product in a specified size. FDA has estimated the compliance costs for printing new labels in the event that new labels would be needed.

Approximately 933 varieties of cigarettes are currently produced in the United States.[34] FDA does not have information on the number of smokeless tobacco varieties, but has assumed that the total number of cigarette and smokeless tobacco varieties is 1,000. FDA also assumes that most varieties of cigarettes are packaged in both single packs and cartons, but that each variety of smokeless tobacco is packaged in only one type of package. Consequently, the total number of labels was calculated as: 933 cigarette varieties × 2 package types per variety (individual packs and cartons) + 67 smokeless tobacco varieties = 1,933 package types.

FDA used two approaches to estimate the cost to industry of changing these labels. The first approach used information compiled by The Research Triangle Institute (RTI) in its report to FDA on the cost of changing food labels.[35] RTI reported a cost of about $700 for a 1-color change in a lithographic printing process. FDA multiplied this figure by 4 to account for a 2 color change on the actual warning labels and an additional 2 colors for modifications to the existing label to make room for the warning label. This calculation yielded incremental printing costs of about $2,800 per label, or $5,412,400 for all 1,933 varieties of affected tobacco products. Adjusting this figure downward by RTI's methodology to account for the current frequency of label redesign predicts that the total one-time cost of completing these label changes within a 1-year compliance period would be approximately $4 million.

The second approach was to use cost information provided in the regulatory impact analysis of a roughly comparable Canadian regulation.[36] The Canadian Government estimated a cost of $30 million to change labels for about 300 cigarette varieties. Most Canadian cigarettes are sold in two sizes and about 20 percent are also sold in flip top packages.[37] Canadian labels, however, are typically printed using a gravure method; which, according to RTI, is about 3.5 times as expensive as the lithography process used in the United States. Adjusting the Canadian estimate upward, to account for the larger number of cigarette and smokeless tobacco varieties; and downward, for the smaller number of packages per variety and the smaller cost of the lithography printing process, provides a $17 million estimate for the total cost of these label changes.

e. *Self-service ban.* The proposed regulation would ban the use of self-service displays by requiring vendors to physically provide the regulated tobacco product to all purchasers. An estimated one-time cost of $22.5 million for effecting this change is derived below in section VIII.D.3. Although any new behind-the-counter shelving or locking cases must be located at the retail level, the prevailing business practice is for tobacco manufacturers' sales representatives to assist and even pay for this equipment.[38] Since FDA cannot know if manufacturers would continue this practice, this study assumes that manufacturers and retailers would share these costs equally by apportioning $11 million to each.

f. *Educational program.* The proposed regulation requires manufacturers of both cigarettes and smokeless tobacco products to fund consumer educational programs. FDA estimates that the requirements of this provision equate to a total cost of about $150 million annually for cigarette and smokeless tobacco product manufacturers.

g. *Restricted advertising/promotion.* The determination of the industry costs attributable to the proposed restrictions on tobacco product advertising is complex. While there is no doubt that individual companies realize enhanced goodwill asset values from advertising programs, the industry has long held that advertising prompts brand-switching, but does not increase aggregate sales. Of course, if this were true, advertising would be unprofitable from the standpoint of the industry as a whole and reduced levels would increase rather than decrease aggregate industry profits. FDA does not accept industry's stated views on this issue, particularly with respect to the impact of advertising and promotional programs on youth. Nevertheless, FDA does not consider it appropriate to count as a societal cost the *voluntary* reduction in the consumption of tobacco products that would result from reduced advertising outlays. Although industry sales would fall, consumer dollars no longer used on tobacco products would be redirected to other more highly valued areas. Thus, for the most part, the resulting reduction in industry sales and profits would not be societal costs, but rather distributional effects, as discussed below under that heading. Moreover, as shown in that section, any short-term frictional or relocation impacts would be significantly moderated by the gradual phase-in of the economic effects. As there are different views regarding the appropriate methodology for assessing these advertising consequences, FDA asks for public comment on the correct approach.

h. *Producer surplus.* Although voluntary decreases in the sale of tobacco products would not impose substantial long-term societal costs, mandatory restraints on the access of consumers to desired products would imply economic costs. Economists typically measure inefficiencies attributable to product bans by calculating lost "producers' surplus," which is a technical term for describing the difference between the amount a producer is paid for each unit of a good and the minimum amount the producer would accept to supply each unit, or the area between the price and supply curve. Data from Cummings et al. indicate that youngsters under the age of 18 consume 318 million packs of cigarettes per year, leading to industry profits of $117 million.[39] On the assumption that the proposed regulation would reduce teenage smoking by one-half, these profits would fall by about $58 million. However, since most of this profit is derived from illegal sales to youths, FDA has not counted this figure as a societal cost.

2. Outcome-Based Activities

FDA plans to propose additional requirements that would become effective only if the rule's outcome-based objectives are not met. To avoid these consequences, manufacturers may decide it is in their best interest to initiate or to increase their support of programs that discourage underage purchasing of tobacco products.

Alternative activities. Tobacco manufacturers may decide to actively support the achievement of the "Healthy People 2000" goals in order to avoid the need to comply with any optional provisions. For example, the industry could work to reduce the prevalence of underage tobacco use by contributing either financial or staffing resources to local civic or public programs, by developing and disseminating effective educational materials, or by establishing its own surveillance programs. FDA does not know which of these activities, if any, the industry might support; but the cost of such activities could be substantially less than the cost of complying with an optional provision of the outcome-based objective. For example, if the cost of a retail surveillance visit were $25, an industry program to monitor selling procedures in all 700,000 retail outlets twice a year would cost $35 million. SAMHSA estimated that the establishment and implementation of effective State-administered retail surveillance systems would cost about $30 million annually.

3. Costs to Retail Outlets

SAMHSA recognized that retail businesses would bear new costs for duties such as training staff, posting signs, and checking for compliance. It believed the largest component of these costs would be for the "time spent in instructing sales clerks that they must avoid selling to minors and in dealing with occasional lapses." SAMHSA projected these costs at roughly $100 per year per establishment, or $100 million for an estimated 1 million establishments. SAMHSA noted, however, that "effective training may already be in place in a third or more of all businesses."[40] FDA has developed its own estimates of the costs likely to be incurred by the retail sector for additional employee time or other expenses and finds that they do not differ substantially from the SAMHSA estimate.

Training. SAMHSA reports that the average retail store has 12 employees, which implies a total of 8.4 million (12 × 700,000) affected retail employees. Assuming retail employee compensation of $15,410 annually,[41] providing instructions for 15 minutes per employee amounts to about $16 million per year. Adopting the SAMHSA finding that one-third of the retail outlets are already conducting some training lowers this cost to $10 million.

I.D. checks. Retail establishments would bear additional costs if they must check the identification of purchasers, because many establishments do not currently conduct such checks. The burden imposed would vary with the flow of business in any particular outlet. In some instances, the additional workload might compel the hiring of additional employees. At other times, the age verification would cause little productive time loss, or the establishment would shift some of the cost to customers through an increase in the average amount of time customers wait in line to make purchases. For this analysis, FDA has assumed that the affected establishments would bear all of the costs imposed by this requirement. Based on data from the 1994 Surgeon General's Report[42] on the tobacco consumption of cigarette smokers 5 to 6 years after high school, and national data on the annual per capita consumption of smokeless tobacco,[43] FDA estimates that consumers aged 18 to 26 purchase 2.4 billion tobacco products a year. Since FDA does not know how many of these purchases are for multiple items, the agency has conservatively assumed that the number of consumer transactions is about 2.2 billion. The time needed to conduct identification checks for these transactions would vary, but if 75 percent of the transactions were extended by 10 seconds and the average value of employee time was $15,410,[44] the added time cost would amount to 2.1 cents per purchase, or $35 million per year. Assuming current compliance at 20 percent reduces the incremental costs to $28 million. Tobacco transactions involving underage smokers were excluded from this calculation, based on the assumption that they would decline dramatically once compliance with the regulation was achieved.

Self-service ban. The proposed ban on self-service displays would affect a number of retail stores, although shoplifting concerns have already caused many establishments to place tobacco products in areas not directly accessible to customers. Retailers that have discontinued self-service displays have typically modified their stores by either: (1) Placing tobacco products on shelving located directly behind or near all checkout lines, (2) placing tobacco products behind one or two checkout lines only, similar to the "cash only" or "less than 10 items" lines commonly found in supermarkets, (3) dispensing tobacco products from a controlled area of the store, where store employees typically conduct other administrative or customer-service tasks, or (4) installing a signaling system, whereby assigned store clerks bring requested tobacco products to individual checkout stations. Each store's physical configuration determines the most cost-effective approach, but at least one regional survey found that retail outlets readily complied with comparable local ordinances without architectural remodeling or substantial refitting of checkout counters or store aisles.[45]

Certain retail outlets that sell large volumes of cigarettes by the carton would bear the greatest burden from this proposed provision, because the physical size of cartons may preclude their placement in close proximity to a cashier. Most cigarette cartons are sold in the 56,000 largest retail outlets, including 23,000 supermarkets,[46] 12,800 general merchandise outlets, and 20,200 chain drug stores.[47] If three-quarters of these outlets spent an average of $300 each for labor and materials to accomplish this relocation, the one-time cost would be about $12.6 million. The remaining 645,000 smaller retail establishments would typically need to do much less, since small packages can almost always be stored adjacent to or directly above a cashier. Most outlets already keep the majority of cigarette packs in such restricted areas, although most smokeless tobacco products may have to be relocated. FDA has assumed that 50 percent of these smaller outlets would take 2 hours, and 25 percent would take 4 hours to complete any necessary relocation of stock. At an estimated $7.70 labor cost per hour, this adds a one-time cost of $9.9 million, for a total of about $22.5 million. As noted above under the "Cost to Manufacturers" section, manufacturers often pay partially or even completely for behind-the-counter shelving or locking cases for use in retail establishments. Thus, FDA assumed that this $22.5 million one-time cost would be shared equally by manufacturers and retail outlets.

The required reconfiguration of tobacco displays may also impose added labor costs for each purchase transaction, especially for those outlets that adopt signaling-type systems or that move inventory to areas located further from employee workstations. To estimate any additional labor costs, FDA has assumed that the ban on self-service tobacco displays would require 10 seconds of additional labor time for 75 percent of all retail transactions involving cartons of cigarettes. Based on an estimated 900 million retail transactions for cigarette cartons and an annual employee compensation of $15,410,[48] this added labor cost projects to about $14 million per year. This estimate understates actual costs if the required changes have a greater than expected adverse affect on labor productivity, but overstates actual costs if current compliance exceeds 25

percent. Also, some of the added costs would be offset by reductions in product pilferage. Since FDA does not know the relative magnitude of these potentially offsetting factors, the agency has retained the $14 million figure as its best preliminary estimate of the labor costs that would be imposed by the self-service ban.

In total, FDA projects that the retail sector would incur one-time costs of about $11 million and annual costs of about $52 million. As shown above in Table 2, the sum of the one-time costs imposed on the manufacturing and retail sectors for the initial provisions would range from about $26 to $39 million, whereas the total annual costs would be about $227 million. For these provisions, the sum of these annualized one-time costs (15 years at 3 percent discount rate) and annual operating costs yield about $230 million per year (also about $230 million at 7 percent discount rate).

4. Costs to Consumers

a. *Advertising restrictions.* Advertising restrictions may impose costs on society if they disrupt the dissemination of relevant information to consumers. According to the Bureau of Economics of the FTC, the benefits of advertising derive from:

> * * * its role in increasing the flow and reducing the cost of information to consumers * * * First, advertising provides information about product characteristics that enables consumers to make better choices among available goods * * * Second, theoretical arguments and empirical studies indicate that advertising increases new entry and price competition and hence reduces market power and prices in at least some industries * * * Third, advertising facilitates the development of brand reputations. A reputation, in turn, gives a firm an incentive to provide products that are of consistently high quality, that live up to claims that are made for them, and that satisfy consumers.[49]

FDA has considered each of these issues in turn. While agreeing that certain forms of advertising offer substantial benefits to consumers, the agency nevertheless believes that the proposed tobacco product advertising restrictions would impose few significant societal costs. As discussed in the preamble above, the proposed regulation does not prohibit factual, written advertising. Thus, the proposed rule would not impede the dissemination of important information to consumers. While imagery and promotional activities may be important determinants of consumer perceptions and sales, they typically provide little meaningful information on essential distinctions among competing tobacco products. The implications of FTC's second point, which addresses the effect of advertising restrictions on market power and prices, is less obvious, as various empirical studies have reached conflicting conclusions. Nevertheless, from FDA's perspective, even if advertising restrictions led to higher prices, this result would discourage tobacco consumption and thereby enhance the public health. Finally, FTC's third point, which emphasizes the positive aspects of advertising in supporting brand reputations, is more relevant for long-lived items, such as consumer durables, where purchases are infrequent or personal experience is inadequate. Advertising is less likely to play a key role in assuring high quality levels for tobacco products, where consumer search costs are low and a brand's reputation for quality is tested by consumers every day. For these products, high quality would remain a prerequisite of commercial success irrespective of advertising strategies.

Other analysts suggest still other potential attributes of product advertising. For example, according to F.M. Scherer, author of a widely read text on industrial organization:

> Advertising is art, and some of it is good art, with cultural or entertainment value in its own right. In addition, it can be argued that consumers derive pleasure from the image advertising imparts to products, above and beyond the satisfaction flowing in some organic sense from the physical attributes of the products. There is no simple case in logic for distinguishing between the utility people obtain from what they think they are getting and what they actually receive. As Galbraith observed, "The New York housewife who was forced to do without Macy's advertising would have a sense of loss second only to that from doing without Macy's."[50]

Similarly, Becker and Murphy have argued that advertisements should be considered "goods" if people are willing to pay for them and as "bads" if people must be paid to accept them.[51] They explain that, in general, the more easily the advertisements can be ignored, the more likely it is that the ads themselves provide utility to consumers. Newspaper and magazine advertisements, for example, must provide positive consumer utility or they would be ignored by readers. The proposed rule would allow such advertisements to continue, some in their current form, others in a text-only format. (In fact, industry outlays for newspaper and magazine advertisements have dropped dramatically over the years, currently constituting only about 5 percent of the industry's total advertising and promotion budget.) Conversely, the extraordinary growth in industry advertising and promotion has been in areas that are typically bundled with other products, or placed in prominent public settings that are difficult to ignore. Thus, there is considerable question about the contribution of these programs to consumer utility.

b. *Consumer surplus.* Consumer surplus is a concept that represents the amount by which the utility or enjoyment associated with a product exceeds the price charged for the product. Since it reflects the difference between the price the consumer would be willing to pay and the actual market price, it is used by economists to measure welfare losses imposed by consumer product bans. However, FDA's proposed rule imposes no access restrictions on adults, who would be free to consume tobacco products if they so desired. Thus, FDA has not included any value for lost consumer surplus in its estimate of societal costs.

c. *Inconvenience.* Some adult consumers would be inconvenienced by the unavailability of cigarette vending machines. FDA believes that over time, most smokers would adjust their purchasing patterns to reflect this circumstance. However, the agency has not attempted to quantify the degree of this disutility and asks public comment on its potential cost.

E. Distribution and Transitional Effects

The proposed regulation would impose a variety of sector-specific distributive effects. Those sectors affiliated with tobacco and tobacco products would lose sales revenues and these losses would grow over time. On the other hand, nontobacco related industries would gain sales, because dollars not spent on tobacco would be spent on other commodities.

1. Tobacco Industry

For its calculation of regulatory benefits, FDA estimated that implementation of the proposed regulation would reduce the cigarette consumption of underage smokers by one-half. As discussed above, based on data presented in Cummings et al., FDA estimates that teenage smokers under the age of 18 consumed about 318 million packs of cigarettes in 1991. If the proposed regulation cuts these sales by one-half, the resulting annual drop in industry revenue would be $143 million (assuming manufacturer share of 50 percent of retail price, or 90 cents per pack.) Moreover, FDA has assumed that at least one-half of those 500,000 teenagers who would be deterred from starting to smoke each year would refrain from smoking as adults,

increasing the number of adult nonsmokers by 250,000 per year. Since each adult smoker consumes about 500 packs per year, lost sales revenues would amount to an additional $113 million per year.

In sum, FDA estimates that annual cigarette revenues would decline slowly over time; falling by $143 million in the first year (while only teenagers are affected), by $593 million in the fifth year, and by $1.2 billion in the tenth year. The U.S. Bureau of the Census reports the value of 1992 cigarette shipments at $28.8 billion. Thus, this regulation is projected to reduce revenues from cigarette sales by only 0.5 percent in the first year, 2.1 percent in the fifth year, and 4.0 percent in the tenth year following implementation. While these reductions are significant, the gradual phasing of the impacts would significantly dissipate any associated economic disruption. For example, data from a 1992 report on the contribution of the tobacco industry to the U.S. economy prepared by Price Waterhouse for the Tobacco Institute[52] implies that, over a 10-year period, a 4 percent reduction in sales would result in the displacement of about 1,000 jobs annually among warehousers, manufacturers, tobacco growers and wholesalers.

2. Vending Machine Operators

The proposed regulation would prohibit all vending machine sales of regulated tobacco products. In recent years, cigarette vending sales have dropped precipitously, due to numerous restrictive State and local ordinances. FDA does not have a definitive estimate of the intensity of this decline, but is aware of two industry surveys that confirm its importance. The Vending Times 48th Annual Census of the Industry[53] shows a 6 percent drop in the number of cigarette vending machines from 1992 to 1993, but a 39 percent decline since 1983. The total number of packs sold reportedly dropped almost 60 percent over this decade, from 2.7 billion to 1.1 billion. A second survey, the "1994 State of the Industry Report," *Automatic Merchandiser* (The Monthly Management Magazine for Professional Vending and OCS Operators)[54] found an even steeper recent decline; reporting that the projected number of cigarette vending machines fell from 250,425 in 1992 to 181,755 in 1993, a drop of over 27 percent. That survey shows operator revenues from cigarettes falling from $835 million in 1992 to $624 million in 1993, down 25 percent. While the impact of this one product area is significant for the vending operators, the report found that this sector currently generates about $18 billion in total sales volume and explains that "Cigarettes, which have been on the downslide for several years, are fortunately only a small percentage (3.4 percent in 1993) of the total pie, thus the drop did not hurt total revenues significantly." The proposed prohibition of vending sales would require these firms to develop new markets to replace these sales revenues.

3. Advertising Sector

In their annual reports to the FTC, manufacturers of cigarettes and smokeless tobacco reported 1993 advertising and promotional/marketing expenditures of $6.0 billion and $119 million, respectively. Approximately $1.9 billion (31 percent) of these outlays would be significantly impacted by the proposed rule as they are primarily directed to consumer advertising and promotion. Of the remaining outlays, about $2.6 billion (43 percent) go to consumers as financial incentives to induce further sales (e.g., coupons, cents-off, buy-one-get one free, free samples), and $1.6 billion (26 percent) to retailers to enhance the sale of their product. The affect on these expenditures would be much more modest.

FDA cannot reasonably forecast the future marketing strategies of tobacco manufacturers, but can foresee some fall in the approximately $1.0 billion worth of current advertising that would be affected by the proposed "text only" requirement. (The "text only" restriction does not apply to publications where children comprise less than 15 percent of the readership or are fewer than 2 million.) The impact of these restrictions on the various advertising media and agencies is difficult to determine. For example, in response to Canada's recently imposed advertising ban, that country's billboard industry "quickly replaced $20 million in lost cigarette revenues with ads for food, soap, toothpaste and beer."[55] "In 1971, network TV ad revenue dropped 6 percent without cigarette advertising * * *, but by 1972 network TV * * * had recouped its ad base."[56] Current advertising revenues affected by the restrictions on billboard advertising near schools and playgrounds are also likely to be replaced by advertising revenues for other products. Nevertheless, if the tobacco industry were to cut its advertising outlays by one-half of the "text only" categories, this dollar figure amounts to less than one-half of 1 percent of the reported $131.3 billion spent on U.S. media advertising in 1992.[57] FDA is also aware that prohibiting the distribution of nontobacco specialty items bearing the name or logo of tobacco products would affect a substantial number of specialty manufacturers. In comments to the FTC,[58] the Specialty Advertising Association International noted that it "represents 4,400 firms that manufacture or sell utilitarian objects imprinted with advertising * * * predominantly small businesses." To the extent that these products include only a corporate name without brand association, they could remain marketable. However, it is likely that some of these firms would, at least initially, lose part of this $760 million market and would experience short-term costs while exploring other business options.

4. Retail Outlets

In addition to incurring the direct costs of compliance described above, some retail establishments may receive smaller promotional allowances (slotting fees) from manufacturers, following the prohibition of self-service displays and advertising imagery. Industry promotional allowances totaled about $1.6 billion in 1993, or $2,600 per outlet if spread evenly among the estimated 600,000 retail outlets currently selling tobacco products over-the-counter. It is likely that, notwithstanding these restrictions, manufacturers would continue to compete vigorously for the best display space available, so that few fees would be discontinued. For example, a recent Canadian study[59] suggests that, "[i]n the absence of advertising and promotion outlets * * * the cigarette industry may be expected to provide greater incentives to retailers to provide more and better shelf space for their brands in order to provide availability to the buyer in the store." In addition, alternative opportunities for point of purchase (POP) advertising have climbed briskly, as POP experts "cite in-store advertising as the fastest growing segment of the media industry."[60] Nevertheless, the agency is aware of at least one report indicating the "[l]oss of industry-paid slotting fees to some retail merchants because of the removal of self-service promotional tobacco displays, racks and kiosks."[61]

5. Other Private Sectors

The Tobacco Institute's Price Waterhouse report[62] purports to measure the induced effect on the national economy of spending by the tobacco core and supplier sector employees and their families. It calculates that induced or multiplier effects result in 2.4 jobs for every 1 job

in the core and supplier sectors combined, and over $3 in compensation for every $1 in the other two sectors. However, other analysts conclude that such ratios should not be used to assess longer term national economic impacts, because resources diverted from the production of tobacco would be reallocated to the production of other goods and services. "If the focus is longer term, involving a period of, say, more than two years, then the induced effect should not be included in the measure because money not spent in one industry would find another outlet with equal (undistinguishable) induced effects."[63] Furthermore, over the long term, regional impacts of the regulation would be similarly diffused.

6. State Tax Revenues

The proposed rule would decrease State tobacco tax revenues as fewer youths become addicted to tobacco products. These excise tax losses would increase as more of these youths become non-smoking adults. According to the Tobacco Institute, State cigarette excise taxes totaled $6.2 billion for the year ending June 30, 1993.[64] Since State excise taxes on other tobacco products (including smokeless tobacco) were $226 million, FDA assumes that the total State excise taxes on tobacco products affected by this proposal are about $6.3 billion annually. As described above, FDA estimated that compliance with this proposal would reduce cigarette sales by a gradually increasing rate over time, falling by 0.5 percent in the first year, 2.1 percent in the fifth year, and 4 percent in the tenth year. Thus, the proposed rule would decrease State excise taxes on affected tobacco products by from $31 million in the first year to $252 million in the tenth year. Since tobacco taxes represented less than 1 percent of total State tax revenues in 1992,[65] even the estimated tenth year impact measures only 0.03 percent of all State tax revenues. Nonetheless, if necessary, State governments could raise tobacco product excise rates to offset these revenue losses. The issue is complex, however, because a full evaluation of the fiscal consequences of this proposal must consider a variety of public health impacts. For example, state Medicaid programs would benefit from reduced medical care expenditures, but they may also need to finance nursing home expenditures that climb with increased life expectancy.

F. Small Business Impacts

The Regulatory Flexibility Act requires agencies to determine whether the effects of regulatory options would impose a significant impact on a substantial number of small entities and to consider those options which would minimize these impacts. Although most manufacturers of tobacco products are large corporations, the distribution of the product involves numerous small enterprises that would be affected by the proposed rule. For example, as explained earlier, the proposal would initially reduce the revenues of vending machine operators by at least 3.4 percent and almost three quarters of all vending machine operators are small businesses, having annual sales of less than $1 million.[66] Further, the proposed rule would affect the distribution of specialty items showing a tobacco product logo or name. According to the Specialty Advertising Association International, 80 percent of the manufacturers and 95 percent of the distributors in this industry have annual sales below $2 million. While the market place in which these firms compete traditionally demands a quick response to constantly shifting market trends, this rule would have at least short-term impacts on many of these firms.

The proposed regulation would also affect numerous retail establishments, primarily convenience stores, but also small grocery stores, small general merchandise stores and small gasoline stations. Table 4 displays the relative share of the tobacco market for major types of tobacco-dispensing outlets in 1987. As shown, food stores and service stations received almost 75 percent of all tobacco sales revenue and tobacco products comprised 5 to 6 percent of the total sales of many of these establishments. The great majority of these retail outlets are small businesses.

TABLE 4.—SALES OF TOBACCO PRODUCTS AS A PERCENTAGE OF TOTAL SALES—1987

[Establishments with Payroll Only]

Establishment type	Tobacco sales		% of total sales	
	($ mils)	(%)	Establishments handling tobacco	All establishments
All	23,231	100	5.0	1.6
Food Stores	13,057	56	5.0	4.3
Service Stations	4,280	18	6.5	4.2
Drug and Proprietary	2,152	9	5.1	4.0
General Merchandise	1,470	6	2.1	0.8
Liquor Stores	706	3	7.2	3.8
Eating and Drinking	182	1	2.4	0.1

Source: 1987 Census of Retail Trade, Merchandise Line Sales.

To illustrate the effects of this proposal on a typical small retail store, FDA separately estimated the likely compliance costs for an average-sized convenience store that sells 300 packages of tobacco products daily, of which about 50 might be purchased by young adults aged 18 to 26. Based on the cost assumptions described above, the outlet's first year costs would total about $320, with the largest single cost, $285, the labor cost for checking identification. For those stores that already verify the age of young customers of tobacco products, the additional costs fall to $35. This estimate does not account for the possible reduction in promotional allowances, although these allowances might fall following a ban on self-service marketing. Alternatively, as noted above, manufacturers would continue to compete for the best shelf space for their products, perhaps even more so if they find that "text only" advertising erodes the stimulus effect of point-of-purchase advertising. Thus, the proposed advertising restrictions could enhance the share of the industry's advertising and promotion budget that is directed towards promotional allowances in retail outlets.

G. Alternatives

One alternative considered by the agency was a far more prescriptive monitoring requirement for tobacco manufacturers. Under this rule, each manufacturer of tobacco products would have been required to adopt a system for monitoring the sales and distributions of retail establishments. These monitoring systems were to: (1) Include signed written agreements with each retailer, (2) contain adequate organizational structure and personnel to monitor the labeling, advertising, and sale of tobacco products at each retail distribution point, and (3) establish, implement, and maintain procedures for receiving and investigating reports regarding any improper labeling, advertising, or distribution. The additional costs for this monitoring was estimated at about $85 million per year. FDA rejected this alternative, because it decided that the industry might employ its resources more efficiently if permitted to choose among alternative compliance modes. It is possible, however, that the industry might implement certain features of this approach in order to avoid the optional performance-based provision that would become effective if the "Healthy People 2000" goals were not met.

A second alternative considered by the agency was to require package inserts containing educational information in cigarette and smokeless tobacco products. FDA had incomplete date to estimate the additional cost of this requirement, but based on comments submitted by industry in response to a Canadian proposal, preliminarily projected one-time costs of about $490 million and annual operating costs of about $54 million. FDA did not select this alternative as the agency was not certain that the benefits of this provision would justify the large compliance costs.

FDA also considered setting the permissible age for purchase at 19 rather than 18, because many 18-year-old adolescents are still in high school, where they can easily purchase tobacco products for classmates. This alternative would have added costs of about $34 million annually, mostly due to lost producer profits. The proposed regulation restricts access to regulated tobacco products for persons under the age of 18, because most adult smokers have already become regular smokers by the age of 18, and because that age limit is already consistent with most State and local laws.

The agency also considered restricting rather than prohibiting sales from vending machines. However, as stated in the preamble above, studies indicated that measures such as placing locks on vending machines or restricting their placement failed to prevent young people from purchasing cigarettes from vending machines.

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List of Subjects

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 804

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 897

Cigarettes, Smokeless tobacco, Labeling, Advertising, Sale and Distribution, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 801, 803, and 804 be amended and that a new part 897 be added as follows:

Note: The part number for part 897 as proposed at 60 FR 32417 will be changed by the agency in a future issue of the **Federal Register**.

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. Section 801.61 is amended by adding a new paragraph (d) to read as follows:

§ 801.61 Statement of identity.

* * * * *

(d) This provision does not apply to cigarettes or to smokeless tobacco products as defined in part 897 of this chapter.

PART 803—MEDICAL DEVICE REPORTING

3. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: Secs. 502, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 371, 374).

4. Section 803.1 is amended by adding a new paragraph (d) to read as follows:

§ 803.1 Scope.

* * * * *

(d) This part does not apply to cigarettes or to smokeless tobacco products as defined in part 897 of this chapter.

PART 804—MEDICAL DEVICE DISTRIBUTOR REPORTING

5. The authority citation for 21 CFR part 804 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374.

6. Section 804.1 is amended by adding a new paragraph (c) to read as follows:

§ 804.1 Scope.

* * * * *

(c) This part does not apply to distributors of cigarettes or smokeless tobacco products as defined in part 897 of this chapter.

7. New part 897 is added to read as follows:

PART 897—CIGARETTES AND SMOKELESS TOBACCO PRODUCTS

Subpart A—General Provisions

Sec.
897.1 Scope.
897.2 Purpose.
897.3 Definitions

Subpart B—Sale and Distribution to Persons Under 18 Years of Age

897.10 General responsibilities of manufacturers, distributors, and retailers.
897.12 Additional responsibilities of manufacturers.
897.14 Additional responsibilities of retailers.
897.16 Conditions of manufacture, sale, and distribution.

Subpart C—Labels and Educational Programs

897.24 Established names for cigarettes and smokeless tobacco products.
897.29 Educational programs concerning cigarettes and smokeless tobacco products.

Subpart D—Labeling and Advertising

897.30 Scope of permissible forms of labeling and advertising.
897.32 Format and content requirements for labeling and advertising.
897.34 Sale and distribution of non-tobacco items and services, contests and games of chance and sponsorship of events.
897.36 False or misleading labeling and advertising.

Subpart E—Miscellaneous Requirements

897.40 Records and reports.
897.42 Preemption of State and local requirements and requests for advisory opinions.
897.44 Additional regulatory measures.

Authority: Secs. 502, 510, 520, 701, 704 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 352, 360, 360j, 371, 374).

Subpart A—General Provisions

§ 897.1 Scope.

(a) This part is intended to establish the conditions under which cigarettes and smokeless tobacco products that contain or deliver nicotine, because of their potential for harmful effect, shall be sold, distributed, or used under the restricted device provisions of the Federal Food, Drug, and Cosmetic Act.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of Title 21, unless otherwise noted.

§ 897.2 Purpose.

The purpose of this part is to establish conditions for the sale, distribution, and use of cigarettes and smokeless tobacco products in order to:

(a) Reduce the number of people under 18 years of age who become addicted to nicotine, thus avoiding the life-threatening consequences associated with tobacco use; and

(b) Provide important information regarding the use of these products to users and potential users.

§ 897.3 Definitions.

(a) *Cigarette* means any product (including components, accessories, or parts) which contains or delivers nicotine, is intended to be burned under ordinary conditions of use, and consists of:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a)(1) of this section; or

(3) Any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco described by paragraphs (a)(1) or (a)(2) of this section) and as to which 1,000 units weigh not more than 3 pounds.

(b) *Cigarett tobacco* means any loose tobacco that contains or delivers nicotine and is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements pertaining to cigarettes shall also apply to cigarette tobacco.

(c) *Distributor* means any person who furthers the marketing of cigarettes or smokeless tobacco products, whether domestic or imported, at any point from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the cigarettes or smokeless tobacco products, or the package of the cigarettes or smokeless tobacco products.

(d) *Manufacturer* means any person, including any repacker and/or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless tobacco product. The term does not include any person who only distributes finished cigarettes or smokeless tobacco products.

(e) *Nicotine* means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or $C_{10}H_{14}N_2$, including any salt or complex of nicotine.

(f) *Package* means a pack, box, carton, or container of any kind in which cigarettes or smokeless tobacco products are offered for sale, sold, or otherwise distributed to consumers.

(g) *Point of sale* means any location at which a consumer can purchase or otherwise obtain cigarettes or smokeless tobacco products for personal consumption.

(h) *Retailer* means any person who sells or distributes cigarettes or smokeless tobacco products to individuals for personal consumption.

(i) *Smokeless tobacco* means any cut, ground, powdered, or leaf tobacco that contains or delivers nicotine and that is intended to be placed in the oral cavity.

Subpart B—Sale and Distribution to Persons Under 18 Years of Age

§ 897.10 General responsibilities of manufacturers, distributors, and retailers.

Each manufacturer, distributor, and retailer is responsible for ensuring that the cigarettes or smokeless tobacco products it manufactures, labels, advertises, packages, distributes, sells, or otherwise holds for sale comply with all applicable requirements under this part.

§ 897.12 Additional responsibilities of manufacturers.

In addition to the other responsibilities under this part, each manufacturer shall:

(a) Remove, from each point of sale, all self-service displays, advertising, labeling, and other manufacturer-supplied or manufacturer-owned items that do not comply with the requirements under this part;

(b) Through its representatives, when they visit any point of sale in their normal course of business, visually inspect and ensure that the products are labeled, advertised, and distributed in accordance with this part.

§ 897.14 Additional responsibilities of retailers.

In addition to the other requirements under this part, each retailer is responsible for ensuring that all sales of cigarettes or smokeless tobacco products to any person (other than a distributor or retailer) comply with the following requirements:

(a) The retailer or an employee of the retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing or intending to purchase the product is younger than 18 years of age;

(b) The cigarette or smokeless tobacco product shall be provided to the person purchasing the product by the retailer or by an employee of the retailer, without the assistance of any electronic or mechanical device (such as a vending machine or remove-operated machine); and

(c) The retailer or an employee of the retailer shall not break or otherwise open any cigarette package or smokeless tobacco product to sell or distribute individual cigarettes or number of cigarettes or any quantity of cigarette tobacco or of a smokeless tobacco product that is smaller than the quantity in the unopened product.

§ 897.16 Conditions of manufacture, sale, and distribution.

(a) *Restriction on product names.* A manufacturer may not use a trade or brand name of a nontobacco product as the trade or brand name for a cigarette or smokeless tobacco product, except for tobacco products on which a trade or brand name of a nontobacco product was in use on January 1, 1995.

(b) *Minimum cigarette package size.* No manufacturer, distributor, or retailer shall sell or cause to be sold, distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.

(c) *Vending machines, self-service displays, mail-order sales, and other "impersonal" modes of sale.* Cigarettes and smokeless tobacco products may be sold only in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods of sale that are not permitted include, but are not limited, vending machines, self-service displays, mail-order sales, and mail-order redemption of coupons.

(d) *Free samples.* Manufacturers, distributors, and retailers may not distribute or cause to be distributed any free samples of cigarettes or smokeless tobacco products.

Subpart C—Labels and Educational Programs

§ 897.24 Established names for cigarettes and smokeless tobacco products.

Each cigarette or smokeless tobacco product package, carton, box, or container of any kind that is offered for sale, sold, or otherwise distributed shall bear the following established name: "Cigarettes", "Cigarette Tobacco", "Loose Leaf Chewing Tobacco", "Plug Chewing tobacco", "Twist Chewing Tobacco", "Moist Snuff", or "Dry Snuff", whichever name is appropriate.

§ 897.29 Educational programs concerning cigarettes and smokeless tobacco products.

(a) Each manufacturer shall establish and maintain an effective national public educational program to discourage persons under 18 years of age from using cigarettes and smokeless tobacco products. The major portion of this program must appear on television.

(b) Each manufacturer shall allocate an amount for the educational program that is proportionate to its share of the total advertising and promotional expenditures for the most recent year reported by all manufacturers to the Federal Trade Commission pursuant to the Federal Cigarette Labeling and Advertising Act or the Comprehensive Smokeless Tobacco Health Education Act. The Total amount to be spent shall be $150,000,000 per year.

Subpart D—Labeling and Advertising

§ 897.30 Scope of permissible forms of labeling and advertising.

(a) This subpart does not apply to cigarette or smokeless tobacco product package labels. A manufacturer, distributor, or retailer may distribute or cause to be distributed:

(1) Advertising which bears the cigarette or smokeless tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification only in newspapers; in magazines; in periodicals or other publications (whether periodic or limited distribution); on billboards, posters, an placards in accordance with paragraph (b) of this section; and in nonpoint of sale promotional material (including direct mail); and

(2) Labeling which bears the cigarette or smokeless tobacco product brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification only in point of sale promotional material; audio and/or video formats delivered at a point of sale; and on entries and teams in sponsored events.

(b) No outdoor advertising, including but not limited to billboards, posters, or placards, may be placed within 1,000 feet of any playground, elementary school or secondary school.

§ 897.32 Format and content requirements for labeling and advertising.

(a) Each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, labeling and advertising permitted under § 897.30 shall use only black text on a white background. This section shall not apply to advertising appearing in adult newspapers, magazines, periodicals, or other publications (whether periodic or limited distribution). For the purposes of this section, an adult newspaper, magazine, periodical, or publication, as measured by competent and reliable survey evidence, is any newspaper, magazine, periodical, or publication:

(1) Whose readers aged 18 years or older constitute 85 percent or more of the total readership, and

(2) That is read by fewer than 2 million persons under age 18.

(b) Each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, advertising, but not labeling, permitted under § 897.30(a), shall include, as provided in section 502 of the Federal Food, Drug, and Cosmetic Act, the product's established name and a statement of its intended use as follows: "Cigarettes—A Nicotine-Delivery Device", "Cigarette Tobacco—A Nicotine-Delivery Device", or "Loose Leaf Chewing Tobacco", "Plug Chewing Tobacco", "Twist Chewing Tobacco", "Moist Snuff" or "Dry Snuff", whichever is appropriate for the product, followed by the words "A Nicotine-Delivery Device".

(c) Each manufacturer, distributor, and retailer of cigarettes shall include, in all advertising, but not labeling, permitted under § 897.30(a), a brief statement, such as the one specified below, printed in black text on a white background:

About one out of three kids who become smokers will die from their smoking.

(d) The statement required under paragraph (c) of this section shall be readable, clear, conspicuous, prominent, and contiguous to the Surgeon General's warning.

§ 897.34 Sale and distribution of non-tobacco items and services, contests and games of chance and sponsorship of events.

(a) No manufacturer, distributor, or retailer shall market, license, distribute, sell, or cause to be marketed, licensed, distributed, or sold any item or service (other than cigarettes or smokeless tobacco products), which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identifiable to those used for cigarettes or smokeless tobacco products.

(b) No manufacturer, distributor, or retailer shall offer or cause to be offered any gift or item, or the right to participate in any contest, lottery, or

game of chance to any person purchasing cigarettes or smokeless tobacco products in consideration of the purchase thereof, or to any person in consideration of furnishing evidence, such as credits, proofs-of-purchase, or coupons, of such a purchase.

(c) No manufacturer, distributor, or retailer shall sponsor or cause to be sponsored any athletic, musical, artistic or other social or cultural event, in the brand name, logo, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification similar or identical to those used for cigarettes or smokeless tobacco products. A manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic or other social or cultural event in the name of the corporation which manufactures the tobacco product, provided that both the registered corporate name and the corporation were in existence prior to January 1, 1995.

§ 897.36 False or misleading labeling and advertising.

Labeling or advertising of any cigarette or smokeless tobacco product is false or misleading if the labeling or advertising contains any express or implied false, deceptive, or misleading statement, omits important information, lacks fair balance, or lacks substantial evidence to support any claims made for the product.

Subpart E—Miscellaneous Requirements

§ 897.40 Records and reports.

(a) Each manufacturer shall, on an annual basis, submit:

(1) Copies of all labels, except that a manufacturer may submit a representative sample of such labels if the labels will be similar for multiple packages or products; and

(2) Copies of all labeling and a representative sampling of advertising.

(b) The manufacturer shall send this information to the Document and Records Section, 12420 Parklawn Dr., Rockville, MD 20852. The information should be plainly marked as "Labels", or "Labeling and Advertising", whichever is appropriate.

(c) Manufacturers, distributors, and retailers shall, upon the presentation by an FDA representative of official credentials, make all records and other information collected under this part and all records and other information related to the events and persons identified in such records available to the FDA representative for purposes of inspection, review, copying, or any other use related to the enforcement of the Federal Food, Drug, and Cosmetic Act and this part.

§ 897.42 Preemption of State and local requirements and requests for advisory opinions.

(a) *General.* In addition to the requirements imposed under this part, manufacturers, distributors, and retailers shall comply with any more stringent State or local requirements relating to the sale, distribution, labeling, advertising, or use of cigarettes and smokeless tobacco products, provided that those State or local requirements do not conflict with the requirements under this part. These more stringent State or local requirements are not preempted under section 521(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360k(a)).

(b) *Requests for advisory opinions.* (1) Any State or political subdivision of a State may request an advisory opinion from the Food and Drug Administration with respect to the preemptive effect of this part on any particular State or local requirement. The request for an advisory opinion should comply with the requirements at § 10.85 of this chapter. The agency may, in its discretion and after consulting the State or political subdivision, treat a request for an advisory opinion as an application for exemption from preemption under § 808.20 of this chapter.

(2) The Commissioner, on his or her own initiative, may issue an advisory opinion relating to a State or local requirement if he or she finds that:

(i) Section 521(a) of the Federal Food, Drug, and Cosmetic Act does not preempt a State or local requirement for which an application for exemption from preemption has been submitted under § 808.20 of this chapter because the State or local requirement is equal to or substantially equivalent to a requirement under the Federal Food, Drug, and Cosmetic Act, is not a requirement within the meaning of section 521(a) of the Federal Food, Drug, and Cosmetic Act, or is more stringent than and does not conflict with the requirements under this part, or

(ii) Issuance of an advisory opinion is in the public interest.

§ 897.44 Additional regulatory measures.

Seven years after the publication date of any final rule based on the proposed rule published in the **Federal Register** on (date of publication of the final rule), if the percentage of people under the age of 18 years who smoke cigarettes has not decreased by 50 percent since 1994 (as determined by an objective, scientifically valid, and generally accepted program), and/or if the percentage of males under the age of 18 years who use smokeless tobacco products has not decreased by 50 percent since 1994 (as determined by an objective, scientifically valid, and generally accepted program), and the percentage of females under the age of 18 years who use smokeless tobacco products has increased since 1994 (as determined by an objective, scientifically valid, and generally accepted program), then the agency shall take additional measures to help achieve the reduction in the use of tobacco products by children and adolescents described above.

Dated: August 9, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 95–20051 Filed 8–10–95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0253J]

Analysis Regarding The Food and Drug Administration's Jurisdiction Over Nicotine-Containing Cigarettes and Smokeless Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; analysis regarding agency jurisdiction.

SUMMARY: The Food and Drug Administration (FDA) is publishing a document entitled "Nicotine In Cigarettes And Smokeless Tobacco Products Is A Drug And These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act," and announcing the availability of appendices to this document. FDA has conducted an extensive investigation and has engaged in comprehensive analysis regarding the agency's jurisdiction over nicotine-containing cigarettes and smokeless tobacco products. The results of that inquiry and analysis support a finding at this time that nicotine in cigarettes and smokeless tobacco is a drug, and that these products are drug delivery devices within the meaning of the Federal Food, Drug, and Cosmetic Act. Nonetheless, because the agency recognizes the unique importance of the jurisdictional issue as well as the factual justification for any proposed rule in this area, the agency invites comment on these matters. Comments submitted will receive full and serious consideration.

DATES: Written comments by November 9, 1995.

ADDRESSES: "Nicotine In Cigarettes And Smokeless Tobacco Products Is A Drug And These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act" and its appendices may be purchased from Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, 202–783–3238. "Nicotine In Cigarettes And Smokeless Tobacco Products Is A Drug And These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act" and its appendices are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380

SUPPLEMENTARY INFORMATION: The appendices referred to in the document entitled "Nicotine In Cigarettes And Smokeless Tobacco Products Is A Drug And These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act" are available from GPO (address above).

Elsewhere in this issue of the **Federal Register**, the agency is publishing a proposed regulation of nicotine-containing cigarettes and smokeless tobacco products. The agency recognizes the unique importance of the jurisdictional issue underlying this regulation as well as the factual justification for any proposed rule in this area. The agency invites comments on these matters. Comments submitted will receive full and serious consideration.

The text of "Nicotine In Cigarettes And Smokeless Tobacco Products Is A Drug And These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act" follows:

BILLING CODE 4160–01–F

Nicotine In Cigarettes And Smokeless Tobacco Products Is A Drug And These Products Are Nicotine Delivery Devices Under The Federal Food, Drug, And Cosmetic Act

U. S. Food and Drug Administration
Department of Health and Human Services
August, 1995

PREFACE

The Food and Drug Administration (FDA) has conducted an extensive investigation and has engaged in comprehensive legal analysis regarding the agency's jurisdiction over nicotine-containing cigarettes and smokeless tobacco products. The results of that inquiry and analysis support a finding at this time that nicotine in cigarettes and smokeless tobacco products is a drug, and that these products are drug delivery devices within the meaning of the Food, Drug, and Cosmetic Act. Nonetheless, because the agency recognizes the unique importance of the jurisdictional issue as well as the factual justification for any proposed rule in this area, the agency invites comment on these matters. Comments submitted will receive full and serious consideration.

Elsewhere in the same issue of the Federal Register in which this document is published, the agency is issuing a proposed regulation of nicotine-containing cigarettes and smokeless tobacco products under the restricted device provisions of the Act. Comments should be sent to FDA's Dockets Management Branch and identified with the docket number 95N-0253J. Comments should be submitted by the date identified in the Federal Register.

Traditionally, the FDA has initiated enforcement actions in cases where the agency determines that a product is a drug or a delivery device. Because the agency has elected to embark on this initiative through rulemaking, no enforcement action will be brought pending completion of that process.

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9. Remarks by David A. Kessler, M.D., Commissioner of Food and Drugs, The Samuel Rubin Program, the Columbia University School of Law, March 8, 1995
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INTRODUCTION

Part One of this document (Legal Analysis of Jurisdiction over Tobacco Products) consists of three main sections. Section I demonstrates that nicotine's addictive and other pharmacological properties are effects on the "structure or any function of the body" within the meaning of the Act's definition of a drug. Section II demonstrates that tobacco manufacturers intend their products to have these effects within the meaning of the Act because: these effects are widely known and foreseeable to the industry; most consumers use tobacco products to obtain these effects; and tobacco manufacturers understand that consumers use tobacco products to obtain nicotine's pharmacologic effects and design their products to be used for these effects. Section III explains why regulation of cigarettes and smokeless tobacco products as devices is most appropriate at this time.

Part Two of this document (Findings) consists of two main sections. Section I presents the scientific evidence of nicotine's addictive and other pharmacological effects. This section also explains how marketed tobacco products deliver pharmacologically active doses of nicotine, and how consumers use these products to obtain various drug effects. Section II describes the statements, extensive research, and other actions by tobacco manufacturers regarding nicotine's pharmacological effects. This section identifies the industry's numerous acknowledgments that nicotine in tobacco acts as a drug and is addictive, and the industry's extensive research on nicotine's drug effects on the body. Section II also describes the considerable industry research on supplying sufficient nicotine to provide "satisfaction," determining the minimum and maximum dose of nicotine required by consumers, and assessing how consumers "compensate" to achieve an adequate dose of

nicotine.

Section II provides further evidence that manufacturers intend to market these products for their pharmacological effects, including explanations of the industry's: product development research to ensure that their products deliver doses of nicotine adequate to achieve pharmacological effects; manipulation and control of nicotine in marketed products; development of nicotine substitutes and alternative products that provide nicotine's drug effects; knowledge that nicotine's sensory effects are secondary to its pharmacological effects; and failure to remove nicotine from tobacco despite the available technology to do so.

Part Three of this document (Regulatory Objectives) summarizes FDA's objectives in regulating cigarettes and smokeless tobacco products. This section explains why, despite the significant public health problem caused by cigarettes and smokeless tobacco products, it would not be appropriate to remove them from the market because approximately 40 million Americans are addicted to these products. The section summarizes the evidence that almost all tobacco use begins during childhood or adolescence, and that the prevalence of tobacco use by children and adolescents is increasing. Therefore, the goal of FDA's regulatory action will be to reduce tobacco use by children and teenagers and prevent future generations from becoming addicted to nicotine-containing tobacco products.

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INTRODUCTION AND SUMMARY

FDA has jurisdiction over consumer products, including foods, drugs, medical devices, biologics, and cosmetics, under the Federal Food, Drug, and Cosmetic Act (FDCA or the Act), 21 U.S.C. §§ 301-394, a statute enacted to "safeguard the public health" and to "protect consumer welfare." H.R. Rep. No. 2139, 75th Cong. 3d Sess. 1-2 (1938).

The Act defines "drug" and "device" in a parallel manner. The term "drug" is defined, in relevant part, as an article "intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease" or "intended to affect the structure or any function of the body." 21 U.S.C. § 321(g)(1)(B), (C). The term "device" is defined as an instrument or other similar article "intended for use in the cure, mitigation, treatment or prevention of disease" or "intended to affect the structure or any function of the body." 21 U.S.C. § 321(h)(2), (3). These definitions are broad in scope and encompass a range of products wider than those ordinarily thought of as drugs or medical devices. Indeed, FDA has regulated such diverse, non-therapeutic products as narcotics without medical claims and tanning booths pursuant to these definitions. The question of whether a product is a drug or device is one that "the FDA has jurisdiction to decide with administrative finality, subject to the types of judicial review provided [in the FDCA]." Weinberger v. Bentex Pharmaceuticals, Inc., 412 U.S. 645, 653 (1973); see id. at 652-54; CIBA Corp. v. Weinberger, 412 U.S. 640, 643-44 (1973); see also Biotics Research Corp. v. Heckler, 710 F.2d 1375, 1377 (9th Cir. 1983).

Under the Act, FDA has jurisdiction over nicotine-containing cigarettes and smokeless tobacco products (hereafter "cigarettes and smokeless tobacco products") if they are intended to treat a disease or to affect the structure or any function of the body. As set forth in greater

detail below, the evidence now available to the agency demonstrates that cigarettes and smokeless tobacco products fall well within the definitions of drug and device.[1] It is well established that nicotine in tobacco is highly addictive, causes other psychoactive effects, such as relaxation and stimulation, and affects weight regulation. These responses to nicotine are effects on the structure or function of the body within the meaning of the Act.

The evidence before the agency also demonstrates that manufacturers intend to market and distribute products that affect the structure or function of the body within the meaning of the Act. Under the Act, Agency regulations, well-established case law, and longstanding Agency practice, discussed in detail below, "intended for use" and "intended to affect" can be demonstrated by evidence that: drug-like (pharmacological) effects in a large proportion of consumers are foreseeable by a reasonable manufacturer; consumers use the product predominantly and even nearly exclusively for its significant pharmacological effects; or manufacturers actually know that the product will be used for its significant pharmacological effects and have taken steps to encourage such use. In determining the intended use of a product, all relevant evidence may be considered, including the product's effect on consumers, consumer behavior and statements regarding the product, manufacturers' conduct and statements, results of scientific studies, and the other circumstances surrounding the distribution of the product.

In 1988, the U. S. Surgeon General issued a report formally recognizing that nicotine in cigarettes causes addiction. He had made a similar finding for smokeless tobacco products

[1] The quality, quantity, and scope of the evidence available to FDA today is far greater than any other time when FDA has considered regulation of cigarettes and smokeless tobacco products. *See* LEGAL ANALYSIS § I.B.1., *infra*, p. 22.

in 1986. Today, nearly every major public health organization in this country and many experts who consult for the tobacco companies consider tobacco products containing nicotine to be addictive. In fact, recent major studies show that 75% to 90% of frequent smokers of tobacco are addicted. Thus, manufacturers of these products can reasonably be expected to foresee that their products are likely to lead to addiction in a large proportion of consumers.

This evidence also demonstrates that the vast majority of smokers and many smokeless tobacco consumers, because they are addicted to nicotine, use cigarettes and smokeless tobacco to satisfy nicotine dependence. Many of these consumers also use these products to affect mood and to control weight. Consumers use cigarettes predominantly and even "nearly exclusively" for their pharmacological effects.

Finally, internal tobacco industry documents demonstrate the industry's longstanding knowledge of and extensive research on the significant addictive and pharmacological effects of nicotine. Moreover, manufacturers of tobacco products have conducted product development research regarding the levels of nicotine necessary to produce pharmacological effects in tobacco users and also on methods of manipulating the amount of nicotine delivered by cigarettes. FDA's investigation has revealed that tobacco manufacturers actively control the amount and rate at which nicotine from marketed cigarettes and smokeless tobacco is delivered to consumers. Smokeless tobacco manufacturers both manipulate the amount of nicotine delivered by their products and promote the graduation of smokeless tobacco consumers from the lowest to the highest nicotine products, demonstrating an intention to facilitate nicotine dependence.

In summary, the evidence before the agency demonstrates that cigarettes and

smokeless tobacco products are intended to affect the structure and function of the body. Accordingly, the record[1a] before the agency demonstrates that cigarettes and smokeless tobacco products are drug delivery systems whose purpose is to deliver nicotine, a drug, and, hence, are devices under the Act. Given the current evidence, the nature of the products, and the nature of the regulatory framework, cigarettes and smokeless tobacco products should be regulated as devices under the Federal Food, Drug, and Cosmetic Act.

[1a]The phrase "record" as used throughout this document is not used as a term of art, but is used instead to refer to the accumulation of evidence gathered during FDA's investigation.

I. CIGARETTES AND SMOKELESS TOBACCO PRODUCTS "AFFECT THE STRUCTURE OR ANY FUNCTION OF THE BODY" BECAUSE THEY HAVE PHARMACOLOGICAL EFFECTS AND LEAD TO ADDICTION

The definition of drug in the Food and Drugs Act of 1906 included only articles "intended to be used for the cure, mitigation, or prevention of disease." Pub. L. No. 59-384, 34 Stat. 768 § 6. Congress added section 201(g)(1)(C)[2] when it enacted the Federal Food, Drug, and Cosmetic Act of 1938 in order to expand the reach of the drug definition to encompass products that escaped regulation under the 1906 act. Section 201(g)(1)(C) and the parallel section 201(h)(3), governing devices, reach products that do not have therapeutic uses but have, or are promoted as having, significant pharmacological or physiological effects. As House Report 2139 explained:

> *[t]he definition of drug is expanded to include . . . articles other than food intended to affect the structure or any function of the body of man or other animals. These expansions are needed to give jurisdiction over a great number of drugs which are not amenable to control under the present law.*

H.R. Rep. No. 2139 at 3, reprinted in 6 Legislative History 300, 302 (emphasis added). The principal example given in the legislative history of products "intended to affect the structure or any function of the body" is weight management products. The "structure or any function" language was needed because obesity and extreme thinness were not considered diseases. Congress was concerned with both the egregious nature of the claims for some of these products as well as the health risks associated with their use. See 78 Cong. Rec. 8960 (73d Cong., 2d Sess., May 16, 1934) (prepared statement of Senator Copeland), reprinted in 2 Legislative History at 831.

[2] Section 201 of the Federal Food, Drug, and Cosmetic Act is now codified at 21 U.S.C. § 321.

While Congress' primary focus in 1938 was on products intended for weight management, it adopted language that included all products that affect the structure or function of the body. This expansion of the drug definition was "needed to protect the consumer . . . against a multiplicity of abuses not subject to the [1906 act]." S. Rep. No. 646, 74th Cong. 1st Sess. 1, reprinted in 4 Legislative History at 93. As one court explained:

> *The legislative history of the 1938 Act discloses that . . . the law which broadened the drug definition was enacted in part, and perhaps in important part, to control fraudulent remedies for obesity and leanness. But it also discloses that the expansion of the drug definition was not aimed solely at these remedies. They were merely illustrative of a comprehensive class of preparations which were intended to affect the structure or function of the body to which the legislation was directed.*

United States v. Article Consisting of 36 Boxes . . . "Lineaway, Temporary Wrinkle Smoother", 284 F. Supp. 107, 110 (D. Del. 1968), aff'd, 415 F.2d 369 (3d Cir. 1969) (emphasis added) (citations omitted).

Consistent with the statutory language and Congress' intent to insure that FDA has the authority to regulate products with non-therapeutic, but pharmacological effects, FDA has interpreted the provisions to encompass products that intrinsically have pharmacological or physiological effects, even though they are not promoted for therapeutic purposes. Examples of such products are topical hormones, sunscreens, and tanning booths. See Appendix to Legal Analysis. Judicial constructions of sections 201(g)(1)(C) and 201(h)(3) are consistent with this interpretation. See, e.g., E.R. Squibb & Sons, Inc. v. Bowen, 870 F.2d 678, 683 (D.C. Cir. 1989) (summarizing cases); United States v. Undetermined Quantities of Cal-Ban 3000, 776 F. Supp. 249, 253 (E.D.N.C. 1991) ("[T]he term 'drug' should be interpreted broadly and not limited to only products which are commonly known as drugs.").

Courts have been careful to distinguish between remote physical effects which arguably might fall within the literal language of section 201(g)(1)(C) or section 201(h)(3) and significant effects on structure or function which clearly fall within the provisions' ambit. "[R]emote physical effect[s] on the body" are not covered by the structure or function provision. E.R. Squibb & Sons, 870 F.2d at 682. On the other hand, products intended to prevent pregnancy, thus affecting the reproductive function of the human body, fall within that definition. Id. at 682-83.

For example, a product intended to reduce the number of bacteria in an animal's digestive system and oral cavity is a drug within the meaning of section 201(g)(1)(C) because it "was intended to alter a function of the animal's body." United States v. Undetermined Quantities . . . "Pet Smellfree", 22 F.3d 235, 240 (10th Cir. 1994). Similarly, liquid solutions intended to cause hair growth and prevent hair loss are drugs within the meaning of section 201(g)(1)(C) because the hair growth process is a function of the human body. United States v. Kasz Enterprises, Inc., 855 F. Supp. 534, 540 (D.R.I. 1994), judgment modified on other grounds, 862 F. Supp. 717 (D.R.I. 1994). Likewise, an apparatus containing oxygen that is intended to improve athletic performance by increasing a tired athlete's intake of oxygen falls within sections 201(g)(1)(C) and 201(h)(3) because enhanced oxygen absorption alters a bodily structure or function. United States v. Eighteen Units, More or Less Of An Article of Drug . . . "SPORTS OXYGEN . . .", Civ. No. 89-2085 (D.N.J. October 27, 1992), reprinted in Food, Drug, and Cosmetic Act Judicial Record, 1991-92 115. Cocaine and similar substances with parallel addictive and psychoactive effects also fall within the drug definition because

they "affect the structure or any function of the body."[3]

In each of these cases, a significant pharmacological effect on the body can bring a substance within the drug definition, even when the product has no therapeutic effect. On numerous other occasions, the Agency has reached similar conclusions and has taken regulatory action. See Appendix to Legal Analysis for examples. As is discussed at p. 22, et seq., it is now widely accepted that nicotine has pharmacological effects on both the structure and function of the central nervous system, particularly the brain. Addiction is a direct result of nicotine's effects on the structure and function of the body. Id. Based on the record before the agency, cigarettes and smokeless tobacco products "affect the structure or any function of the body" within the meaning of sections 201(g)(1)(C) and 201(h)(3).

[3] In fact, the Controlled Substances Act, 21 U.S.C. §§ 801-904, which prohibits the sale of drugs such as cocaine, defines "drug" by reference to section 201(g)(1) of the FDCA. 21 U.S.C. § 802(12).

II. TOBACCO MANUFACTURERS "INTEND" THAT THEIR PRODUCTS HAVE ADDICTIVE AND SIGNIFICANT PHARMACOLOGICAL EFFECTS.

The FDCA, FDA's regulations, and judicial decisions interpreting the Act and analogous provisions in other public welfare statutes all demonstrate that "intended to" and "intended for," as used in the Act, denote objective intent, as that term has become commonly understood by the courts. Objective intent may be determined by what a reasonable person would understand in the circumstances presented, or whether a "reasonable person would believe" that the defendant's conduct would lead to certain events. See, e.g, United States v. Articles of Banned Hazardous Substances . . . Baby Rattles, 614 F. Supp. 226, 231 (E.D.N.Y. 1985) ("[t]he only rational interpretation of the word 'intended' in the statute calls for an objective test of intent: whether a reasonable person would believe that the object is a toy"); W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 8, at 36 (5th ed. 1984) ("relying on circumstantial evidence, [one] may infer that the actor's state of mind was the same as a reasonable person's state of mind would have been").

The courts have also described objective intent in terms of foreseeability. For example, in United States v. Focht, the Third Circuit held that the intent requirement in the "intended to produce [banned] fireworks" language of the regulations implementing the Federal Hazardous Substance Act (FHSA) could be satisfied by a demonstration that it was "foreseeable" that the components sold by the defendant would be used to build banned products. 882 F.2d 55, 59-60 (3d Cir. 1989); see 15 U.S.C. § 1261(q). Similarly, in defining discriminatory intent in a voting rights case, the Fifth Circuit held that "[o]bjective intent . . . presumes that a person intends the natural and foreseeable consequences of his voluntary

actions." Lee v. Lee County Bd. of Ed., 639 F.2d 1243, 1267 (5th Cir. 1981).[4]

Subsection A, infra, demonstrates that an objective intent standard is the appropriate standard under the FDCA. The evidence in subsection B, infra, demonstrates that tobacco manufacturers "intend" cigarettes and smokeless tobacco products to affect the structure or any function of the body within the meaning of the FDCA.

A. OBJECTIVE INTENT IS THE APPROPRIATE STANDARD.

The FDCA is a consumer protection statute which has as its explicit purpose the "prohibit[ion of] the movement in interstate commerce of adulterated and misbranded foods, drugs, devices, and cosmetics." Pub. L. No. 75-717, 75th Cong. 3d. Sess. (1938); see also H.R. Rep. No. 2139 at 1-2, reprinted in 6 Legislative History at 300-01 ("this act seeks to set up effective provisions against abuses of consumer welfare"; "the old law . . . contains serious loopholes [and] is not sufficiently broad in its scope to meet the requirements of consumer protection under modern conditions"; the 1938 Act "amplifies and strengthens the provisions [of the 1906 act] designed to safeguard the public health and prevent deception, and it extends the scope of the old law to include . . . certain drugs that now escape regulation").

Given the Act's focus on consumer welfare and public health protection, interpreting

[4] Subjective intent, on the other hand, considers the actual state of mind of the responsible actor. *See, e.g.*, Ellington v. Metropolitan Life Ins. Co., 696 F. Supp. 1237, 1242 (S.D. Ind. 1988) (a subjective intent test requires a determination that the defendant actually foresaw the result of his conduct and persisted nonetheless). This standard, which focuses on the actor's actual desires and knowledge, has been applied in certain areas of criminal law when the critical issue is the culpability of a particular actor. *See, e.g.*, Morisette v. United States, 342 U.S. 246, 250-52 (1952). It is not used as a standard of proof for intent in public health and welfare statutes such as the FDCA.

the phrases "intended for use" and "intended to affect" to require a showing of subjective intent -- which would limit the relevant evidence to what is in the mind of the manufacturer or vendor as shown by express representations, promotional claims, or otherwise -- would frustrate those legislative policy goals. As one court found, in determining that an objective intent standard is appropriate in construing a consumer protection statute: "[t]he subjective interpretation of intent urged by claimant could seriously diminish the effectiveness of FHSA [the Federal Hazardous Substances Act] because it would enable a manufacturer to introduce dangerous articles into commerce on the unreasonable but good faith belief that the articles would not be used by children." Baby Rattles, 614 F. Supp. at 232. The court further noted that "the language of the FHSA . . . nowhere speaks specifically of the manufacturer's subjective intent," and that a subjective intent standard could not possibly comport with Congress' intent in enacting the FHSA. Id. 231-32. The same reasoning extends to the Federal Food, Drug, and Cosmetic Act. The language and purposes of the FDCA support an objective intent standard that allows consideration of information about the foreseeable uses of the product for pharmacological purposes, as well as any statements or actions by the vendor that might show the vendor's actual purpose in marketing a product, or refute the vendor's claims regarding the product's intended use.

Although the FDCA is not primarily a criminal statute designed to punish law breakers, it does include criminal penalties to enforce its provisions. See, e.g., 21 U.S.C. § 333. It is relevant that the Act imposes a strict liability standard that is applicable to criminal prosecutions and assesses criminal liability even where there is no evidence of actual knowledge of the alleged conduct on the part of the corporate defendant. 21 U.S.C. § 331;

see United States v. Dotterweich, 320 U.S. 277, 280-81 (1943); United States v. Park, 421 U.S. 658, 670-73 (1975); see also Smith v. California, 361 U.S. 147, 152 (1959) (some penal statutes "dispense with any element of knowledge on the part of the person charged, food and drug legislation being a principal example . . . . The usual rationale for such statutes is that the public interest in the purity of its food is so great as to warrant the imposition of the highest standard of care on distributors – in fact an absolute standard which will not hear the distributor's plea as to the amount of care he has used.").

Moreover, FDA's regulations interpreting sections 201(g)(1) and 201(h), which were adopted after notice and comment rulemaking, and therefore have the force and effect of law, explicitly adopt an objective intent standard. Those regulations, which were originally promulgated in 1952, describe the evidence relevant to determining intent to include:

> *such [manufacturers' or vendors'] expressions or . . . by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such [manufacturers or vendors] or their representatives. It may be shown by the circumstances that the article is, with the knowledge of such [manufacturers or vendors] or their representative, offered and used for a purpose for which it is neither labeled nor advertised . . .*

21 C.F.R. § 201.128 (1994) (drugs) (emphasis added); see 21 C.F.R. § 801.4 (1994) (parallel provision for devices); see also 17 Fed. Reg. 6818 (July 24, 1952). Thus, under these regulations, evidence of objective intent is not limited to expressions in labeling or advertising, but may be based on the totality of the relevant evidence showing the seller's awareness of how its product is actually used and affects the structure or function of the body, regardless of how the product is labeled or advertised.

The foregoing interpretation of the statutory language is also consistent with FDA's

regulatory policy decisions and actions. As demonstrated in the Appendix to Legal Analysis, FDA has used both general knowledge and recognition of products' nature and effects, as well as their actual uses and effects, to determine whether products fall within the statutory definitions of drug or device.

FDA has used the known or inherent pharmacological effects of particular ingredients to determine that products are "intended to affect the structure or any function of the body," even where there are no public expressions by the seller that the product is to be used for those effects. See Appendix to Legal Analysis. For example, in the context of a proposed rule on vaginal products for over-the-counter use, the Agency stated:

> *If an active ingredient is present in a therapeutic concentration, the product is a drug, even if that product does not claim to produce the effect which will result from the action of the therapeutically effective ingredient.*

48 Fed. Reg. 46694, 46701 (October 13, 1983). In its tentative conclusion to comments on this issue, the Agency reiterated:

> *[t]he type and amount of ingredient(s) present in a product, even if that product does not make explicit drug claims, must be considered in determining its regulatory status. For example, the mere presence of a pharmacologically active ingredient could make a product a drug even in the absence of explicit drug claims. In these cases, the intended use would be implied because of the known or recognized drug effects of the ingredient (e.g., fluoride in a dentifrice).*

59 Fed. Reg. 5226, 5227 (February 3, 1994) (emphasis added).

Thus, products containing ingredients or components with known pharmacological effects, including fluoride and hormones, have -- on that basis alone and in the absence of express claims -- been determined to be "intended to affect the structure or function of the body" because they contained a pharmacologically active ingredient. See Appendix to Legal

Analysis. FDA has also regulated as devices products that affect the structure or function of the body, even when the vendor makes no claims regarding the products. For example, FDA regulates as devices noncorrective tinted contact lenses that are expressly promoted only for their cosmetic effect of enhancing eye color because they have physiological effects on the eye. See Appendix to Legal Analysis.

The courts have consistently held that the statutory language imposes an objective intent standard. United States v. Undetermined Quantities . . . "Pet Smellfree", 22 F.3d 235, 236, 239 (10th Cir. 1994) (referring to "objective intent" in the context of considering whether a product is a drug); United States v. Kasz Enterprises, Inc., 855 F. Supp. 534, 542 (D.R.I. 1994) ("it is the objective intent of the vendor, not the vendor's subjective explanations and disclaimers, which determines the intended use of a product") (emphasis added), judgment modified on other grounds, 862 F. Supp. 717 (D.R.I. 1994); Clinical Reference Laboratory v. Sullivan, 791 F. Supp. 1499, 1506 n.8 (D. Kan. 1992) ("intended use . . . depends upon the objective intent of the persons responsible for its labeling") (emphasis added), aff'd in relevant part, rev'd in part on other grounds sub nom., United States v. An Undetermined Number of Unlabeled Cases, 21 F.3d 1026 (10th Cir. 1994); United States v. Two Plastic Drums, 761 F. Supp. 70, 72 (C.D. Cal. 1991) ("In determining . . . intended use . . . , the inquiry should focus on the vendor's objective intent") (emphasis added); United States v. Articles of Drug . . . Neptone, No. C-83-0864-EFL, CCH Food and Drug Reporter ¶ 38,240 at 39,294 (N.D. Cal. October 25, 1983) ("objective manifestations of intent are clearly sufficient").

The Environmental Protection Agency (EPA) and the Consumer Product Safety

Commission (CPSC) have also adopted an objective intent standard in construing similar provisions in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Hazardous Substances Act (FHSA), and courts have uniformly upheld those interpretations. See e.g., N. Jonas & Co. Inc. v. EPA, 666 F.2d 829, 833 (3d Cir. 1981); United States v. Focht, 882 F.2d 55, 58-60 (3d Cir. 1989); Baby Rattles, 614 F. Supp. at 231-32. Judicial constructions of those statutes demonstrate that evidence of actual consumer use, knowledge by the manufacturer of such actual use, general knowledge about the effectiveness of the product for a particular use, and other circumstances surrounding its distribution, can be used to determine the "intended use" of a product for purposes of a public welfare statute such as the FDCA.

In Jonas, the issue was whether "Scorch," a product labeled for swimming pool sanitation and maintenance, was a pesticide. The product's label contained a disclaimer stating: "Scorch is not to be used for daily disinfection or algae control of your pool." 666 F.2d at 831. The manufacturer contended that a product's intended use can be determined only from the company's express representations concerning the product. Id. at 832. EPA took the position that "intended use" should be based on the use to which a reasonable consumer would put the product based on "the collectivity of the circumstances." EPA also argued that "[t]he fact that the product may have other uses does not affect" whether it qualifies as a pesticide. Id. The court, relying in part on cases under the FDCA, agreed with EPA and held that the statutory phrase "intended use" refers to objective intent and, as a result, the manufacturer "intends those uses to which the reasonable consumer will put its products." Id. at 832-33.

In deciding whether sufficient evidence exists to support a finding of objective intent, the court in Jonas stated that "the inquiry cannot be restricted to a product's label and to the producer's representations." Id. at 833. Instead, the court determined that relevant evidence could come from, among other things, "general public knowledge" of the usefulness of similar products as pesticides, the "effectiveness" of the product for a pesticidal use (that is, its actual inherent effects), and the collectivity of all the circumstances. Id.

Similarly, in Baby Rattles, the court held that the phrase "any toy or other article intended for use by children" in 15 U.S.C. § 1261(f)(1)(D) requires application of an objective intent standard, and that this standard is met if evidence exists that "a reasonable person would believe that the object is a toy or article intended for use by children." 624 F. Supp. at 231. The court found that this standard was met with respect to a rattle marketed by the manufacturer as a "party favor" based on "evidence of its use as a toy and the common sense observation that children would be likely to use it as a toy." Id. at 231 n.9.

The court observed that even if it accepted the manufacturer's argument that the "intended use" language in the FHSA should be interpreted as requiring a subjective intent standard, such intent would have been established by evidence that the manufacturer knew that its rattles were used on babies' shoes and were given as gifts at baby showers: "[C]laimant could not possibly have ignored the possibility that children would use the rattles, regardless of whether he intended such use of the rattles and whether reasonably prudent parents would give such objects to their children." Id.

Finally, in Focht, component parts of fireworks sold by the Fochts were held to have been "intended to produce banned fireworks" under the FHSA, based on evidence that the

parts were likely to be used by consumers to make banned fireworks, and despite evidence that the components could also be used for numerous legal purposes. An expert testified at trial that 90% of consumers who purchased the components in question would use them to make illegal fireworks, and that, if the components were filled in the "traditional manner," they would contain over the legal limit of explosive. 882 F.2d at 59-60. The court held that "[i]ntended use . . . objectively defined, necessarily encompasses foreseeability" and that this testimony made it "foreseeable that the components in question will be used to build banned fireworks. Such knowledge must be attributed to the Fochts." Id. at 60. Accordingly, a finding that a product is intended to affect the structure or function of the body may be appropriately based on evidence that use of a product leading to such effects in a large proportion of consumers is foreseeable.

Objective intent may also be established by evidence, alone or in combination with other evidence, that consumers use a product for pharmacological purposes. See Action on Smoking and Health [ASH] v. Harris, 655 F.2d 236, 239 (D.C. Cir. 1980) (consumer use may be relevant source of evidence of intended use); National Nutritional Foods Assn [NNFA] v. Mathews, 557 F.2d 325, 333-34 (2d Cir. 1977) (product's use for therapeutic purposes was evidence of intended use); United States v. Two Plastic Drums, 761 F. Supp. 70, 72 (C.D. Cal. 1991) (consumer use is relevant to intended use); see also Medical Devices Amendments of 1976, H.R. Rep. 94-853, 94th Cong., 2d Sess. at 14 (1976) (in interpreting "intended for use" and "intended to affect," FDA "may consider the ultimate destination of a product . . . just as [it] may consider actual use of a product"); Sunscreen Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Proposed Rule, 58 Fed. Reg.

28194, 28204 (May 12, 1993) (objective evidence of intent may be derived from "the consumer's intent in using the product").

In ASH, the D.C. Circuit stated that "the near-exclusivity of consumer use of cigarettes with the intent 'to affect the structure or any function of the body of man,'" would be sufficient by itself to establish that cigarettes are drugs within the meaning of the FDCA. 655 F.2d at 240; see also NNFA, 557 F.2d at 336 (demonstration that high dosage vitamins were "taken 'almost exclusively' for therapeutic purposes" would show an objective intent that the products be used as drugs and be sufficient for a determination that the products are drugs within the FDCA's meaning).

Evidence of consumer use may also be used in combination with other evidence to establish intended use or intended effects. FDA has relied on evidence of consumer use to establish the intended use of a drug or device product, even though the extent of consumer use had not been quantified. For example, beginning in the early 1980's, FDA regulated as unapproved drugs imports of catha edulis, or "khat," a shrub whose leaves act as a stimulant narcotic that affects the central nervous system when chewed or used as tea, even though the Agency did not have any evidence that vendors represented the product as a stimulant. Instead, FDA relied on information about the product's use and effects from United Nations reports, and other sources of information that described international customs and practices related to the substance. See Appendix to Legal Analysis.

Similarly, physicians' use of a product to treat or diagnose patients or to affect the structure or function of patients' bodies may provide evidence of intended use. FDA has classified products as drugs or devices based on physician use of the product. For example,

FDA undertook an enforcement action against a metal tube containing a light bulb, round metal discs, and colored glass filters used by a medical practitioner in his office in the treatment of various eye malfunctions and conditions. A district court upheld the Agency's conclusion that this use made the tube a device, even though the practitioner made no claims for the product. United States v. An Article of Device . . . Labeled in Part: "Cameron Spitler Amblo-Syntonizer", 261 F. Supp. 243, 245 (D. Neb. 1966). In another example, FDA established a due diligence requirement regarding manufacturers' distribution of interferon, a biologic product composed of proteins. See 48 Fed. Reg. 52644 (Nov. 21, 1983). At the time, interferon could be used only for investigational purposes in laboratory animals and tests in vitro. However, interferon received wide media coverage as a potential "miracle cure" in the treatment of cancer and viral infections in humans. Because of its concern over diversion of interferon to unapproved uses, the Agency issued the notice to prevent use of interferon in humans.

Finally, a vendor's behavior or statements may also be used as evidence of objective intent. See, e.g. United States v. An Article . . . Consisting of 216 Cartoned Bottles . . . "Sudden Change", 409 F.2d 734, 739-741 (2d Cir. 1969) (lotion promoted on product box, leaflets, and advertising as providing a "face lift" is intended to affect the structure of the body and is a drug); "Pet Smellfree", 22 F.3d at 239-40 (compound labeled and marketed as eliminating odor from a pet's breath and waste material is intended to affect the animal's digestive and elimination functions and is a drug).

Awareness that a product will achieve pharmacological effects, actual use of the product for a pharmacological purpose, and the totality of circumstances surrounding

distribution of the product constitute "objective manifestations of intent [that] are clearly sufficient." Neptone, CCH Food and Drug Reporter at 39,294. Moreover, evidence that a manufacturer actually knows that its product is being widely used for pharmacological purposes, and has taken steps to facilitate that use, provides compelling evidence of "intended use."

As shown below, the evidence now available to FDA demonstrates that tobacco manufacturers "intend" that their products have addictive and pharmacological effects which make cigarettes and smokeless tobacco products drugs within the meaning of the Act.

B. THE EVIDENCE DEMONSTRATES INTENT TO AFFECT THE STRUCTURE OR FUNCTION OF THE BODY.

As demonstrated above, in order to establish that a product has an intended use that subjects it to FDA's jurisdiction, it is sufficient to demonstrate foreseeable drug uses or effects in a large proportion of users, predominant or "nearly exclusive" consumer use for drug effects, or the subjective intent of the manufacturer, as evidenced by behavior and statements, that the product be used as a drug. As shown below, the facts before the agency demonstrate, based on each of these three grounds, that tobacco products are intended to affect the structure or function of the body and are, therefore, "drugs" and "devices." Moreover, the combined evidence before the agency from all three categories plainly demonstrates that tobacco products are "drugs" and "devices" within the meaning of the Act.[5]

[5] Since 1980, when the Agency last evaluated its legal authority to regulate cigarettes as drugs or devices and declined to do so, *see* Action on Smoking and Health [ASH] v. Harris, 655 F.2d 236 (1980), the evidence regarding intended use has changed dramatically. As discussed *infra*, since 1980, the Surgeon General of the United States and virtually every major public health organization have concluded that nicotine in tobacco products leads to addiction. Since that time, the Agency has also exercised

1. The Addictive, Psychoactive, and Other Pharmacological Effects of Nicotine Are Widely Known and Foreseeable by Any Reasonable Person in the Position of a Tobacco Manufacturer.

As summarized below, a large body of compelling and widely accepted scientific evidence now exists that establishes that nicotine is addictive. Nicotine's addictive properties and its other significant pharmacological effects are now so well documented and commonly understood that these effects on the structure or function of the body must be held to be foreseeable by any manufacturer of cigarettes or smokeless tobacco products that contain nicotine. Although the manufacturers' claimed purpose may be to provide "taste" or "smoking pleasure," manufacturers may nevertheless be held, under an objective intent standard, to intend the foreseeable consequences of consumers' use of nicotine-containing cigarettes and smokeless tobacco products.

a. Addictive Effects. Until the 1980's, nicotine was not widely appreciated to be an addictive drug.[6] Overwhelming scientific evidence and broad recognition that nicotine is an addictive or dependence-producing substance emerged in the 1980's. See p. 78. Almost all

jurisdiction over alternative nicotine delivery systems such as "Favor," a plug impregnated with a nicotine solution inserted within a small tube corresponding in appearance to a conventional cigarette, and "Future Free," a roll-on transdermal applicator containing nicotine in the form of a liquified raw tobacco extract, nicotine gums, and nicotine transdermal patches. Finally, the Agency's investigation has identified a wealth of evidence consisting of industry statements, research and actions acknowledging nicotine's drug effects and the role of nicotine in the manufacture of cigarettes and smokeless tobacco. As the Court explicitly acknowledged in ASH, the FDCA "calls for case-by-case analysis," and an agency may "depart from its prior interpretations" so long as it "provide[s] a reasoned explanation for its action." 655 F.2d at 242 n. 10; *see also* Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc, 467 U.S. 837, 842-845, (1984); Bell v. Goddard, 366 F. 2d 177, 181 (7th Cir. 1966) ("An interpretation of the statute prohibiting such new application of existing information would do violence to the paramount interest in protecting the public from unsafe drugs."). In this document, the Agency has provided such a reasoned explanation.

[6] While some evidence of the addictive nature of nicotine existed at the time FDA last considered the regulation of nicotine-containing cigarettes and smokeless tobacco products in the late 1970's, the evidence available to FDA since that time has grown exponentially. *See* FINDINGS § I.B.

the leading experts and public health organizations in the United States and in the international community, including the vast majority of scientists funded by the tobacco industry now recognize nicotine's addictive effects. In 1986, the Office of the U.S. Surgeon General published a finding that nicotine in smokeless tobacco is addictive. See p. 80. Two years later, the Surgeon General issued his landmark report concluding that: cigarettes and smokeless tobacco products are addicting; nicotine is the drug in tobacco that causes addiction; and the pharmacological and behavioral processes that cause tobacco addiction are similar to those that cause addiction to drugs such as heroin and cocaine. See p. 82.

Since 1980, nicotine has been recognized as addictive or dependence-producing[7] by the World Health Organization, the American Medical Association, the American Psychiatric Association, the American Psychological Association, the American Society of Addiction Medicine, the Royal Society of Canada, and the Medical Research Council in the United Kingdom. See p. 82. In a 1991 survey, the vast majority of scientists funded by the tobacco industry stated that they believe that cigarette smoking is addictive. See p. 83. Indeed, among the principal investigators of research projects funded by the tobacco industry in 1989, 83.3% strongly agreed and 15.3% agreed somewhat that cigarette smoking is addictive. See p. 83.

More recently, on August 2, 1994, FDA's Drug Abuse Advisory Committee concluded unanimously that cigarettes and other forms of tobacco are addicting and that nicotine is the drug in tobacco that causes addiction. See p. 83. The FDA Advisory Committee also

[7] The terms "addictive" and "dependence-producing" are generally used interchangeably; both refer to the persistent and repetitive intake of psychoactive substances despite evidence of harm and a desire to stop using the substance. *See* p. 78. The terms are used interchangeably in this document.

concluded that all currently marketed cigarettes contained addicting levels of nicotine. Id.

Tobacco use is also recognized as an addiction in the leading psychiatric manuals defining mental illnesses. The two most widely used clinical definitions of addiction in the United States are those in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) and World Health Organization's International Classification of Diseases (ICD). Nicotine has been recognized as dependence-producing under the DSM criteria since 1980. The ICD has recognized tobacco as dependence-producing since 1992. See pp. 84-85.

The current, scientifically accepted method of identifying addictive substances relies on the knowledge that there is a pharmacologic basis to addiction. See p. 79. Addictive substances achieve their addictive effects by exerting psychoactive (mood-altering) effects, and by producing chemical reactions in the brain that motivate repeated, compulsive use of the substance. See pp. 79-80. These pharmacologic effects create psychological or physiological dependence in the user. Id. Nicotine has been shown in animal and human studies to be a powerful psychoactive agent and to produce effects in the brain that are characteristic of other addictive substances, such as heroin and cocaine. See p. 94 et seq. Nicotine has also been shown to act as a "positive reinforcer," perhaps the most important hallmark of an addictive substance. See p. 96.

Current, widely accepted definitions of substance addiction place primary emphasis on: compulsive, regular use of the substance; inability to stop using the substance despite a desire to quit and/or harmful consequences; and the existence of tolerance and/or withdrawal symptoms (physiologic dependence). See p. 84. Using the contemporary definition of

addiction, evidence from epidemiological studies has now established that many cigarette smokers and smokeless tobacco users are addicted to nicotine.

Numerous studies have documented the characteristics of addiction among cigarette and smokeless tobacco users. First, consumers use tobacco regularly and compulsively. For example, 87% of people who smoke cigarettes smoke every day. See p. 86. Nearly two-thirds of smokers need their first cigarette within the first half-hour after awakening. Id.

Second, the failure rate of people who attempt to stop or reduce their smoking is dramatic, even in the face of life-threatening, tobacco-related illnesses. See pp. 86-87. Each year, nearly 15 million people -- almost one-third of all smokers -- try to quit smoking in the United States. Only about 3% of would-be quitters achieve long-term success. Indeed, cigarettes and smokeless tobacco products may be the only elective consumer product that a majority of users want to quit using, but cannot. In response to the 1993 National Health Information Survey, 70% of current smokers reported that they would like to completely stop smoking cigarettes. See p. 87. Sixty-eight percent of smokeless tobacco users in one study reported an average of four previous unsuccessful attempts to quit using smokeless tobacco. See p. 91. Moreover, tobacco use persists despite harmful and often deadly consequences. In one survey, 90% of smokers agreed with the general proposition that smoking is harmful to health, 65% believed that smoking had already adversely affected their health, and 77% believed that they could avoid or decrease serious health problems by quitting smoking. See p. 87. Almost half of the smokers who have surgery for lung cancer resume smoking. See p. 87. Even when smokers have their larynxes removed, 40% try smoking again. See p. 87.

Third, consumers who abstain from tobacco products experience withdrawal symptoms and nicotine has been shown to produce tolerance (the lessening of the desired effect over time or the need for higher doses to produce the same effect) among tobacco users. See pp. 88, 92, 99. For example, abstinence from smoking is often accompanied by powerful cravings for a cigarette, and the range of other symptoms produced by abstinence can disrupt personal life. Id. Among smokeless tobacco users, one study showed that of users 10 to 22 years old who had tried to quit, 93% had suffered withdrawal symptoms. See p. 93.

Accordingly, nicotine satisfies the classic criteria for an addictive substance. In fact, major recent clinical studies have demonstrated that between 75% and 90% of frequent smokers, and more than one-third of smokeless tobacco users are addicted to tobacco. See pp. 91, 115 et seq.. Further, cigarette users themselves recognize that cigarettes are addictive. According to a national household survey conducted by the U.S. Department of Health and Human Services in 1991-92, 83% to 87% of cigarette smokers who smoke more than 26 cigarettes a day believe they are addicted. See p. 87.

The success of nicotine replacement therapies provides further evidence of nicotine's addictive qualities. Nicotine replacement therapies (nicotine gum and nicotine patches) have been shown to be effective in assisting dependent tobacco users to quit. See p. 88 et seq. Nicotine replacement could only significantly increase the success of smoking cessation efforts if nicotine dependence were the major factor preventing tobacco users from quitting. Id.

To summarize, the widely known, well-publicized evidence of the addictive nature of nicotine and the very high frequency of addiction among frequent smokers, ranging, in major

recent studies, from 75% to 90%, has resulted in virtually universal acceptance that nicotine produces addiction.[8] Thus, nicotine's addictive effects are now undeniably foreseeable to manufacturers of cigarettes and smokeless tobacco products. Because it is also well known that nicotine addiction produces a physiological and psychological need for additional doses of nicotine, it is foreseeable that a large proportion of consumers will use tobacco to satisfy their addiction.

b. Other Pharmacological Effects. In addition to its addictive effects, nicotine produces a range of other significant pharmacological effects, which manufacturers of cigarettes and smokeless tobacco products can reasonably be expected to foresee. See p. 73 et seq. A large body of published evidence demonstrates that nicotine produces both stimulative and depressant effects on mood. See p. 75; see also p. 171. These psychoactive effects have been confirmed using electroencephalographic (EEG) analysis. Id. When smokers are in a stressful situation, smoking has a depressant effect on the EEG profile. When smokers are under conditions of low arousal, induced by mild sensory isolation, cigarette smoking has a stimulant effect. See pp. 75-76. In his 1988 report, the Surgeon General reviewed the epidemiological literature on the effects of smoking on mood. The report concluded:

> *The conclusion from this literature is that in the general population, persons perceive that smoking has functions that are relevant for mood regulation. Persons report that they smoke more in situations involving negative mood, and they perceive that smoking helps them to feel better in such situations . . . .*

[8] This evidence distinguishes nicotine from caffeine-containing beverages and alcohol. If beverages containing caffeine are addictive, they are addictive in a very small percentage of users. Griffiths RR. Editorial: Caffeine dependence should be kept in proper perspective. *JAMA* 1994;272(13):1065-66. Beverages containing alcohol are addictive in fewer than 15% of users. Id. at p. 1066; Grant BF, Harford T, et al. Prevalence of DSM-II-R Alcohol Abuse and Dependence in the U.S., 1988. Alcohol Health and Research World Epidemiologic Bulletin No. 27, 1991;15(1):91.

See p. 118.

In addition, nicotine is widely believed to regulate weight gain in smokers. See p. 119. The 1988 Surgeon General's Report summarized the large number of clinical studies establishing an inverse relationship between cigarette smoking and body weight and animal studies demonstrating that nicotine plays an important role in the relationship between smoking and body weight. Id. Numerous studies show that smokers believe that smoking keeps weight down and that weight control is a significant motivation for continued smoking. Id.

This evidence plainly satisfies the objective standard for "intended use" set forth above. The widespread knowledge and acceptance of the very significant pharmacological effects of nicotine establish that any reasonable person would know that marketing nicotine-containing cigarettes and smokeless tobacco products will result in these effects and lead to addiction in millions of users.

This evidence is at least as strong as the evidence that the courts found to be sufficient to establish intended use in Jonas, Baby Rattles, and Focht, supra. As discussed above, in each of those cases, the defendant had a plausible argument that its product could be used for purposes that fell outside the jurisdiction of the relevant statute (e.g., baby rattles as party favors, firework components for use in legal fireworks). Nevertheless, the courts in each case found that the product fell within the jurisdiction of the applicable regulatory agency based on evidence that a foreseeable use of the product fell within the ambit of the statute. The pharmacologic effects and uses of nicotine-containing cigarettes and smokeless tobacco products are at least as foreseeable as the uses of the products at issue in Jonas, Baby Rattles,

and Focht.

2. Consumers Use Tobacco Products to Obtain the Pharmacological Effects of Nicotine and to Satisfy Their Addiction to Nicotine.

As previously explained, the intent that a product be used as a drug may also be shown by evidence, alone or in combination with other evidence, that consumers use it for pharmacological purposes. Here, the evidence establishes that consumers use tobacco for three pharmacological purposes: to satisfy a nicotine addiction; to receive the accompanying psychoactive effects, such as relaxation and stimulation; and to control weight. Moreover, the evidence shows that consumers use cigarettes nearly exclusively for pharmacological purposes. As discussed above, under the most widely used definitions, major recent studies show that 75% to 90% of frequent cigarette users are addicted to cigarettes. See p. 26. Studies also reveal that a large proportion of consumers use tobacco for other pharmacological effects, including relaxation, reduction of negative feelings, and for controlling weight. See p. 118 et seq. Under ASH, 655 F.2d at 240, and NNFA, 557 F.2d at 336, the high percentage of smokers who use cigarettes for their pharmacological effects, particularly to satisfy an addiction, one of the most significant drug effects on the body possible, is sufficient by itself to classify cigarettes and smokeless tobacco products as drug delivery systems within the meaning of the Act.

Even if the evidence of consumer use of tobacco products to satisfy addiction and to obtain other pharmacological effects were not alone sufficient to establish the intended use of cigarettes and smokeless tobacco products, the evidence of consumer use, in combination with the other evidence presented here, provides compelling support for the determination

that these products are intended to be used for pharmacological purposes. Indeed, the nature of consumer use of these products underscores nicotine's classification as a drug. Because nicotine is an addictive product that the vast majority of consumers use on a daily basis for a period of years, if not a lifetime, to satisfy an addiction, nicotine unquestionably functions as a pharmacological product at the consumer level. See also LEGAL ANALYSIS § II.B.3, infra (tobacco manufacturers recognize and acknowledge that consumers use their products to obtain the pharmacological effects of nicotine).

In summary, consumers' use of cigarettes and smokeless tobacco products for nicotine's pharmacological effects, viewed in combination with the other evidence presented here, supplies more than sufficient evidence to show that nicotine-containing cigarette and smokeless tobacco products are drug delivery systems within the meaning of the Act.

3. Tobacco Manufacturers Know That Nicotine Has Pharmacological Effects and That Consumers Use Tobacco for Those Effects, and Have Acted to Facilitate That Use.

Nicotine's psychoactive and addictive effects on tobacco users are plainly foreseeable to tobacco manufacturers, not only because they are widely known and published in scientific, governmental, and lay publications, but because for over 30 years the manufacturers themselves have engaged in intensive research on nicotine's psychoactive and addictive effects. In addition, tobacco industry documents reveal numerous statements by both industry researchers and executives in which they express their own views that nicotine in tobacco products acts as a psychoactive and addictive drug. Tobacco manufacturers' own research also demonstrates that consumers use cigarettes to obtain the pharmacological effects of

nicotine. Finally, tobacco manufacturers have conducted numerous studies to identify the dose of nicotine that will elicit the psychoactive effects sought by tobacco users, and manipulate the amount of nicotine delivered by tobacco products.

a. Tobacco Manufacturers' Studies and Statements Demonstrate Knowledge That Nicotine in Tobacco Is Addictive and Has Psychoactive Effects.

(i.) Addiction. Over the last 35 years, the tobacco industry has conducted many studies that collectively demonstrate that nicotine has the properties of an addictive drug. As described in FINDINGS § I.A.2., infra, substances are shown to have addictive properties by studies of the substance in animals, studies of human reactions to the substance, and studies of effects on the brain caused by the substance.

Two kinds of animal studies are highly predictive of a substance's addictive properties: self-administration studies and drug discrimination studies. See pp. 94-97. A substance is considered a "positive reinforcer" that is highly likely to be addictive in humans if studies show that animals self-administer the substance. Id. In drug discrimination studies, potentially addictive substances are identified by comparing the effects of one substance to those of other psychoactive substances. Id.

As noted above, under the major definitions of addiction, a substance is recognized as producing addiction (dependence) on the basis of studies on human responses to the substance if:

- the substance is psychoactive; i.e., mood altering;
- patterns of use are regular and compulsive, despite attempts to quit and harmful consequences;

- it causes physical dependence characterized by a withdrawal syndrome; and/or
- tolerance develops, causing diminished effects after repeated use and increased intake.

See p. 79 et seq.

The tobacco industry has conducted or funded studies in both animals and humans showing that nicotine bears each of these hallmark properties of an addictive substance. Industry-conducted and sponsored research has shown that animals self-administer nicotine and that animals experience nicotine's psychoactive effects. See p. 180 et seq. Industry research also demonstrates that the human response to nicotine in tobacco meets generally accepted definitions of addiction. Tobacco industry research demonstrates that nicotine has psychoactive effects, see p. 171, that most tobacco consumers continue daily use of tobacco, despite serious attempts to quit and despite concerns about the adverse health consequences of tobacco use, see p. 206 et seq., and that abstinence from tobacco use produces a withdrawal syndrome. See pp. 146, 182. Tolerance to the pharmacological effects of nicotine has also been closely studied by the tobacco industry and demonstrated in both animals and humans. See p. 181. Finally, tobacco industry studies have shown that nicotine acts on the mesolimbic system in the brain and triggers the release of the chemical dopamine. See p. 170. It is believed that dopamine release is the mechanism by which several of the most significant drugs of abuse, including cocaine and amphetamines, exert their addictive effects. See p. 74. Thus, the tobacco industry's own research demonstrates that nicotine has all the properties of an addictive drug.

Numerous tobacco company documents contain statements by company researchers and executives acknowledging that nicotine is, in fact, addictive. See p. 143 et seq. More

than 30 years ago, a report was completed for British-American Tobacco Co. (BATCO)[9] that specifically addressed the mechanism of nicotine addiction in smokers. See p. 143. The researchers concluded that chronic intake of nicotine, such as that which occurs in regular smokers, creates a need for ever-increasing levels of nicotine to maintain the desired action: "[u]nlike other dopings, such as morphine, the rate of increasing demand for greater dose levels is relatively slow for nicotine." Id. The report continues:

> *A body left in this unbalanced state craves for renewed drug intake in order to restore the physiological equilibrium. This unconscious desire explains the addiction of the individual to nicotine.*

See p. 144.

Dr. Sidney J. Green, the director of research for BATCO for 20 years and a member of the company's board of directors, repeatedly acknowledged that nicotine is addictive. See p. 150. Dr. William L. Dunn, a senior scientist at Philip Morris similarly made repeated statements that reflect the view that nicotine has the properties of an addictive substance. See pp. 152-154.

On the basis of research that had been sponsored by the industry in the early 1960's, the general counsel to Brown and Williamson reached the conclusion that "[w]e are, then, in the business of selling nicotine, an addictive drug . . . ." See p. 150. There have been more recent acknowledgements by the industry that nicotine is addictive, although industry representatives have been much more reticent in the statements they have made about nicotine's addictive properties since the 1970's, when product liability concerns began to

[9] BATCO and Brown and Williamson Tobacco Corp, both part of the multi-national BAT Industries, PLC, shared both the funding and the results of their nicotine-related research. *See* Appendix 2.

mount. Throughout the 1970's and 1980's, industry-funded researchers have repeatedly stated that nicotine produces addiction, dependence, and withdrawal. See p. 145 et seq., 179-80. Moreover, in 1994, a recently retired CEO of a major tobacco company openly stated that tobacco is addictive and that its addictive properties are why people smoke. In an interview for an article in the Wall Street Journal, the former chief executive of RJR Nabisco, F. Ross Johnson, was asked about nicotine in cigarettes, and he responded, "Of course it's addictive. That's why you smoke . . ." See p. 155.

(ii.) Psychoactive Effects. The tobacco industry has conducted and funded, both as individual companies and through the jointly-operated Council for Tobacco Research (CTR),[10] hundreds of studies evaluating nicotine's pharmacological effects on the brain, including nicotine's specific physiological effects on brain structure and chemistry; its effects on mood, performance, and cognition; and its capacity to produce the characteristic features of addiction. See FINDINGS § II.B., infra, at p. 160 et seq.

Internal company documents reveal that the industry conducted and funded this research effort on the effects of nicotine on the brain because the tobacco manufacturers strongly suspected, as long as 30 years ago, that nicotine's drug effects were the basis for the world tobacco market. See p. 161. For example, in 1963, researchers for one company urged further study of nicotine because "nicotine is the key factor in controlling, through the central nervous system, a number of beneficial effects of tobacco smoke." See p. 161 (emphasis added). In the early 1960's, a prominent industry scientist, Sir Charles Ellis, the scientific

[10] The Council for Tobacco Research is an industry trade association that represents almost all of the major tobacco producers in the United States. *See* note 176, *infra*.

advisor to the board of directors of BATCO, explained that industry-sponsored research was underway "to elucidate the effects of nicotine as a beneficent alkaloid drug," and stated "we are in a nicotine rather than a tobacco industry." See p. 161. Indeed, the industry as a whole was sponsoring substantial research on nicotine pharmacology because of the shared belief that the drug effects of nicotine were central to tobacco use. See pp. 140-42.

Over the next 30 years, the tobacco industry conducted numerous studies on the drug effects of nicotine that appear similar to the studies conducted by pharmaceutical companies. Before marketing prescription drugs, a pharmaceutical company studies the pharmacokinetics of the drug (how it is absorbed into the body, metabolized, and excreted), the pharmacodynamics of the drug (what specific effects the drug has on the body's chemistry and metabolism as it makes its way through the body), and the clinical effects of the drug (whether the drug is effective in producing the desired therapeutic or physiological effect). The tobacco industry has conducted and funded hundreds of studies on nicotine's pharmacokinetics, pharmacodynamics, and clinical effects. See p. 160 et seq. As a result, the tobacco industry appears to have an understanding of the pharmacological effects produced by the nicotine in tobacco analogous to that which a pharmaceutical company has in marketing a new drug.

For example, the tobacco industry has developed sophisticated techniques for determining, quantitatively and qualitatively, the presence of nicotine and its metabolites in blood, urine, and tissue. See p. 174. Studies sponsored by tobacco companies using these techniques have shown that nicotine from tobacco is absorbed into the bloodstream and delivered to the brain, see p. 176, and that, once delivered to the brain, nicotine acts on the

receptors in the brain that produce a range of significant effects on brain chemistry and metabolism. See pp. 164, 169.

The tobacco industry has also sponsored many studies on the ultimate psychoactive effects produced by nicotine. Studies sponsored by the tobacco industry have repeatedly demonstrated that nicotine induces moods changes, which, under different conditions, provide both stimulant and depressant (relaxant) effects. See pp. 171-72. Moreover, tobacco industry studies have shown that nicotine's effects on mood are correlated to EEG changes (a measurement of electrical activity in the brain that is indicative of pharmacological activity on the central nervous system). Id. The tobacco industry has also conducted many studies that attempt to show that nicotine improves performance efficiency. See p. 173.[11]

Internal tobacco company documents reveal that all of this research has convinced company researchers and executives that nicotine in tobacco functions as a drug with powerful psychoactive effects. For example, in 1962, even before much of this research had been completed, Sir Charles Ellis, of BATCO, expressed his view that nicotine in tobacco functions as a drug much like stimulants and tranquilizers:

> *It is my conviction that nicotine is a very remarkable beneficent drug that both helps the body to resist external stress and also can as a result show a pronounced tranquilising effect. You are all aware of the very great increase in the use of artificial controls, stimulants, tranquilisers, sleeping pills, and it is a fact that under modern conditions of life people find that they cannot depend just on their subconscious reactions to meet the various environmental strains with which they are confronted: they must have drugs available which they can take when they feel the need. Nicotine is not only a very fine drug, but the techniques of administration by smoking has considerable psychological advantages and a built-in control against excessive absorption.*

[11] In fact, these studies show only that tobacco users perform better on some cognitive tasks when they are given nicotine than when deprived of cigarettes or nicotine. The studies do not show that tobacco users perform better than non-tobacco users. *See* FINDINGS § II.A.2., *infra*.

See p. 139 (emphasis added). In the decades that followed this statement, BATCO and Brown and Williamson held many research conferences, some of which were devoted entirely to discussing nicotine's pharmacological effects. The records of these conferences demonstrate that, at almost every conference, tobacco company officials from around the world discussed the results of research on nicotine pharmacology and reached agreement that nicotine had been shown to have pharmacological effects on tobacco users. See p. 125 et seq.

Researchers and executives from the other major tobacco companies and associated with CTR have also made statements revealing their knowledge that nicotine is a psychoactive drug. For example, the authors of a research paper funded by CTR reporting on the "beneficial" pharmacological effects of nicotine in cigarettes said that "[n]icotine is recognized as the primary psychoactive compound in cigarette smoke." See p. 131.

Researchers at RJR have published studies in which they freely acknowledge the pharmacological effects of nicotine in tobacco. In one study, they concluded that "the beneficial effects of smoking on cognitive performance . . . are a function of nicotine absorbed from cigarette smoke upon inhalation." Another published RJR study discusses the "nicotine paradox": the effects of smoking that appear to be stimulating (e.g., increased heart rate) and to increase mental alertness are inconsistent with nicotine's calming and stress-reduction effects. See p. 129. As discussed in the following subsection, documents containing statements from Philip Morris officials and officials at U.S. Tobacco, the largest smokeless tobacco manufacturer, show that executives at these companies also believe that nicotine in tobacco is a psychoactive drug.

b. Tobacco Manufacturers Know That Consumers Use Tobacco Products for the Pharmacological Effects of Nicotine.

Industry documents show that tobacco manufacturers have thoroughly researched consumer use of tobacco products and understand that consumers use tobacco to obtain the pharmacological effects of nicotine. In fact, tobacco manufacturers believe that consumers will not accept cigarettes that contain insufficient levels of nicotine to produce pharmacological effects.

BATCO reports, research conference proceedings, and other internal documents from BATCO contain repeated assertions that consumers use tobacco largely to obtain nicotine's pharmacological effects. See p. 125 et seq. A BATCO Group R&D Smoking Behaviour-Marketing Conference held in 1984, which focused almost entirely on the role of nicotine pharmacology in smoking, included a presentation in which the following statement was made:

> *Smoking is then seen as a personal tool used by the smoker to refine his behaviour and reactions to the world at large.*
>
> . . . .
>
> *It is apparent that nicotine largely underpins these contributions through its role as a generator of central physiological arousal effects which express themselves as changes in human performance and psychological well-being.*

See pp. 126-27 (emphasis added). At a 1976 BATCO Smoking Behavior Conference, the conferees were so convinced that obtaining a dose of nicotine was the reason people smoke that they thought that other, non-pharmacological reasons for smoking might emerge only after the smoker had achieved a "maximum nicotine level" and had satisfied his desire for nicotine. See p. 194. Many other industry statements described in FINDINGS, § II.A.1 and C., infra, also show that the tobacco industry knows that the pharmacological effects of

nicotine are the primary reason consumers use cigarettes and smokeless tobacco products.

Industry documents also reveal that tobacco manufacturers appreciate that consumers will not accept individual tobacco products unless they provide a pharmacologically satisfying dose of nicotine. Dr. Helmut Wakeham of Philip Morris stated in 1961 that the pleasures of smoking derive at least in part from nicotine's pharmacological effects and that "nicotine is believed essential to cigarette acceptability." See p. 134. This view was later adopted and enlarged by William Dunn, Jr., another high-ranking Philip Morris official. In summarizing a 1972 conference sponsored by CTR, Dunn reported that "[t]he primary incentive to cigarette smoking is the immediate salutary effect of inhaled smoke upon body function." See p. 134. Dunn continued:

> *The majority of the conferees would go even further and accept the proposition that nicotine is the active constituent of cigarette smoke. Without nicotine, the argument goes, there would be no smoking. Some strong evidence can be marshalled to support this argument:*
>
> *1) No one has ever become a cigarette smoker by smoking cigarettes without nicotine.*
>
> *2) Most of the physiological responses to inhaled smoke have been shown to be nicotine-related.*
>
> *3) Despite many low nicotine brand entries in the market place, none of them have captured a substantial segment of the market . . . .*

See p. 135 (emphasis added).

Tobacco industry documents on "satisfaction" also demonstrate industry knowledge that delivery of a pharmacologically active dose of nicotine is essential to consumer acceptance of tobacco products, see FINDINGS § II.C.1., infra, and that "satisfaction" is a tobacco industry euphemism for the pharmacological response to nicotine that smokers seek

to obtain from smoking. See p. 185. For example, a BATCO scientist, in a 1969 presentation describing the research activities of BATCO Group Research & Development, stated that:

> *Nicotine has well documented pharmacological action. It is claimed to have a dual effect, acting both as a stimulant and a tranquilliser. It is believed to be responsible for the "satisfaction" of smoking, using this term in the physiological rather than the psychological sense.*

See p. 186. An RJR Marketing Summary Report from 1983 similarly concludes that the primary reason people smoke "is probably the physiological satisfaction provided by the nicotine level of the product." See p. 186 (emphasis added). These and other industry statements set forth in FINDINGS § II.C.1., infra, further demonstrate the tobacco manufacturers' awareness that consumer "satisfaction" from tobacco products depends upon delivery of pharmacologically satisfying amounts of nicotine.

The industry's study of "compensation" behavior by smokers provides further telling evidence of the industry's awareness that consumers use tobacco to obtain a carefully titrated dose of nicotine. See FINDINGS § II.C.3., infra, p.198 et seq. "Compensation" refers to the behavior of smokers when given cigarettes that provide a lower nicotine yield than their regular brands (as measured by a smoking machine). When using lower-dose products, smokers often smoke more cigarettes or smoke the cigarette more intensely, for example, by taking larger or more puffs. Tobacco company documents reveal that the industry recognizes both that smokers compensate and that the purpose of compensation behavior is to allow smokers to achieve a dose of nicotine that satisfies their physiological need for nicotine. Id.

The tobacco industry has conducted studies on compensation that show that each smoker tends to obtain close to the same dose of nicotine from each cigarette, despite differences in the yield as measured by a smoking machine. See pp. 202-04. In other words,

industry studies show that tobacco users seek a specific dose of nicotine from tobacco and adjust their smoking behavior to obtain their customary dose of nicotine from cigarettes with different yields. For example, in 1974, BATCO researchers reported on a study that found that "the smoker adjusts his pattern to deliver his own nicotine requirements (about 0.8 mg per cigarette)." See p. 202. Thus, the tobacco industry's studies demonstrate that smokers use the cigarette as a nicotine delivery system and vary their smoking behavior to obtain specific doses of nicotine.

Tobacco company documents demonstrate not only the tobacco industry's awareness of the fundamental importance of nicotine's effects on the brain, but their knowledge that these effects motivate almost all smoking. A 1977 BATCO report entitled "Some 'Benefits' of Smoking" contained the following statement:

> *Some insights into the likely benefits of smoking follow from a consideration of the properties of nicotine, which is considered to be the reinforcing factor in the smoking habit of at least 80% of smokers . . . .*

See p. 132 (emphasis added). High-ranking officials agreed with this assessment. Dr. S.J. Green of BATCO, the Director of Research and member of the Board of Directors of BATCO, wrote in 1972 that the "[t]he tobacco smoking habit is reinforced or dependent upon the psycho-pharmacological effects mainly of nicotine." See p. 140.

The smokeless tobacco industry also recognizes that almost all consumers use tobacco products to obtain the pharmacological effects of nicotine. The senior vice-president for marketing of U.S. Tobacco wrote in a 1981 letter on new product development:

> *Flavorwise we should try for innovation, taste and strength, nicotine should be medium . . . Virtually all tobacco usage is based upon nicotine, "the kick," satisfaction.*

See pp. 186-87 (emphasis added).

The importance of nicotine delivery to consumer acceptance of tobacco products is so well-recognized by the tobacco industry that tobacco company officials themselves consider tobacco products to be nicotine delivery systems, i.e., vehicles for administering doses of nicotine. At the 1984 BATCO Smoking Behaviour-Marketing Conference, which focused heavily on the central role of nicotine's pharmacological effects in tobacco use, one of the presentations included a slide that read "in its simplest sense puffing behaviour is the means of providing nicotine dose [sic] in a metered fashion." See p. 159.

Tobacco company documents demonstrate that high-ranking tobacco company officials share the view that tobacco is a nicotine delivery system. See FINDINGS § II.A.3., infra, at p. 156 et seq. Dr. Green repeatedly asserted that tobacco is simply a vehicle for delivering nicotine. See p. 157. RJR executive Claude Teague, Jr. wrote:

> *In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized, and stylized segment of the pharmaceutical industry. Tobacco products uniquely contain and deliver nicotine, a potent drug with a variety of physiological effects . . . . If nicotine is the sine qua non of tobacco products, and tobacco products are recognized as being attractive dosage forms of nicotine, then it is logical to design our products - and where possible our advertising - around nicotine delivery . . .*

See pp. 156-57.

In summarizing a 1972 conference sponsored by the CTR, William Dunn, of Philip Morris, characterized the cigarette as a nicotine delivery system in the following language:

> *Think of the cigarette pack as a storage container for a day's supply of nicotine . . . Think of the cigarette as a dispenser for a dose unit of nicotine . . . Think of a puff of smoke as the vehicle of nicotine . . . Smoke is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke.*

See p. 156.

Thus, tobacco company researchers and executives have not only acknowledged that nicotine's drug effects are central to the use of tobacco, but have also stated their intention that tobacco products be used as delivery systems to administer doses of nicotine.

c. Tobacco Manufacturers Have Acted to Facilitate and Sustain the Consumer Use of Tobacco Products for Their Pharmacological Effects.

The amount of nicotine that reaches the bloodstream of the smoker is determined by the nicotine content of the leaf, the chemical additives used during processing of the tobacco, and the design of the cigarette or smokeless tobacco product. FDA's investigation has revealed that tobacco manufacturers have conducted numerous studies to identify the dose of nicotine that will elicit the pharmacological effects sought by the products' users. See FINDINGS § II.C.2, infra, at p. 188 et seq. Furthermore, the investigation has shown that cigarette and smokeless tobacco companies manufacture their products to specifications that ensure that the final product will contain precise levels of nicotine. See FINDINGS § II.E., infra at p. 232 et seq. This evidence also demonstrates that tobacco manufacturers know and intend that the nicotine in their products have pharmacological effects on consumers.

(i.) Product Development Research. The tobacco industry is not only keenly aware that consumers use tobacco for nicotine's pharmacological effects, but has conducted product development research designed to ensure that tobacco products deliver a sufficient dose of nicotine to provide a pharmacological response that satisfies the users' need for nicotine. See FINDINGS §§ II.C.1. and 2., infra. The industry has developed sophisticated technology to

determine the amount of nicotine absorbed by tobacco users. See p. 191. Using this technology, tobacco manufacturers have shown that tobacco users have a "daily nicotine requirement." See p. 192. Industry research and statements also show that the industry has devoted substantial resources to determine what dose of nicotine must be delivered by each cigarette and has attempted to establish the "minimum dose of [ ] nicotine that can provide pharmacological satisfaction for the smoker." See p. 190. The tobacco industry has also focused a significant portion of its product development research on methods of ensuring that nicotine is delivered at levels that do not fall below a pharmacologically satisfying dose.

In 1972, William Dunn, Jr., of Philip Morris expressed the widely held industry view that there is a minimum level of nicotine that must be delivered in tobacco products to provide pharmacological effects, and that below that level there would be few, if any, tobacco sales:

> *[C]ritics of the industry would do well to reflect upon the indifference of the consumer to the industry's efforts to sell low-delivery brands. 94% of the cigarettes sold in the U.S. deliver more than 1 mg of nicotine. 98.5% deliver more than 0.9 mg. The physiological response to nicotine can be readily elicited by cigarettes delivering in the range of 1 mg of nicotine.*

See p. 189 (emphasis added).

The industry has conducted many studies designed to establish the daily dose of nicotine obtained by tobacco users and the amount of nicotine that individual tobacco products must deliver to the consumer to provide that dose. See FINDINGS § II.C.1. and 2., infra. For example, Project Wheat was a multi-part study intended to aid BATCO in developing cigarettes with increased consumer acceptance and, specifically, to establish smokers' preferred nicotine level in tobacco products. See pp. 183-84. Reports of the study

make clear that the research was designed to identify the dose of nicotine that would produce desired physiological responses, rather than to identify the correct level of nicotine for taste or flavor. One report states:

> *In considering which product features are important in terms of consumer acceptance, the nicotine delivery is one of the more obvious candidates. Others include the taste and flavour characteristics of the smoke, physical features such as draw resistance and rate of burn, and the general uniformity of the product, to name but a few. The importance of nicotine hardly needs to be stressed, as it is so widely recognized.*

See p. 184 (emphasis added). The researchers offered cigarettes containing different levels of nicotine to smokers and studied their responses. The study report concludes that there was an optimum nicotine delivery for smokers. The study also found that there was a minimum level of nicotine necessary to satisfy all smokers and that cigarettes that provided nicotine below that level were unacceptable. See p. 189. Project Wheat and similar industry studies and statements, FINDINGS § II.C.1. and 2., infra, reveal that tobacco manufacturers know that tobacco products must deliver a pharmacologically active level of nicotine to maintain consumer acceptance, and that manufacturers have acted to identify that level.

Other tobacco industry research reveals that the tobacco industry has taken action to ensure that tobacco products in fact deliver pharmacologically satisfying doses of nicotine. See FINDINGS § II.D., infra, at p. 213 et seq. As described above, the industry is well aware that tobacco products must provide a certain level of nicotine to elicit the pharmacological effects sought by consumers and that consumers will not continue to purchase tobacco products that fall below that threshold. As a result, the industry has focused substantial attention on methods of manipulating nicotine delivery in marketed products. In particular, the industry has devoted considerable research to reducing tar while maintaining a level of

nicotine delivery that would satisfy consumers' desire for the pharmacological effects of nicotine. See FINDINGS § II.D.2., infra at p. 222 et seq. As stated in one industry patent:

> *Maintaining the nicotine content at a sufficiently high level to provide the desired physiological activity, taste, and odor . . . can thus be seen to be a significant problem in the tobacco art. The addition of nicotine to tobacco in such a way that it remains inert and stable in the product and yet is released in a controlled amount into the smoke aerosol when the tobacco is pyrolyzed, is a result which is greatly desirable.*

See p. 213-14 (emphasis added).

As early as 1965, a Brown and Williamson official reported to other Brown and Williamson executives that BATCO research was focused on "the smoking and health problem." The goal was "to find ways of obtaining maximum nicotine for minimum tar." See p. 225. Approaches being used include: (a) chemical treatment of filters; (b) nicotine fortification of cigarette paper; (c) addition of nicotine containing powders to tobacco; (d) alteration of blends." Id.

An abundance of industry studies and patents show that in the decades since 1965, the tobacco industry has invested substantial resources to develop methods and technologies, the declared purpose of which is to facilitate the design of cigarettes in which the tar has been lowered but the amount of nicotine delivered has been maintained or increased. See FINDINGS § II.D.2., infra. These methods and technologies include: increasing the nicotine content of tobaccos by, for example, adding commercial nicotine to the tobacco or other parts of the cigarette, see pp. 214-16; transferring nicotine from one tobacco to another or by adding tobacco extracts, see p. 217; adding chemicals to tobacco and filters to increase delivery of nicotine, without altering nicotine content, see p. 228; and altering the "puff-by-puff" delivery of nicotine, see p. 227.

Tobacco manufacturers have also attempted to help smokers compensate for lower nicotine yields, that is to obtain more nicotine from a cigarette than its machine-tested yield, by designing cigarettes with "elasticity." See p. 229 et seq. ("Elasticity" refers to the ability of a cigarette, whatever its machine-measured nicotine yield, to deliver enough smoke to permit a smoker to obtain the amount of nicotine he needs, for example, through more or longer puffs, or by covering ventilation holes.) BATCO researchers described corporate policy on compensation and elasticity at a 1984 conference:

> *Compensation by modifying smoking regime [increasing or decreasing puff volume, duration, puff frequency, amount inhaled] is a topic which is being explored at GR & DC and this includes designing products which aid smoker compensation.*
>
> *The marketing policy concerning this type of product is not clear but it is believed it will depend largely on the degree of elasticity in the design and how overtly this elasticity is achieved. The consensus is that small improvements in elasticity which are less obvious, visually or otherwise is likely to be an acceptable route.*

See p. 230 (emphasis added). BATCO documents reflect numerous examples of research on different methods to improve elasticity. See p. 230.

In summary, the tobacco industry's product development research confirms that: tobacco manufacturers know that consumers use tobacco for its pharmacological effects; have acted to establish the dose that consumers require to obtain pharmacological satisfaction from tobacco products; and have worked to develop technology that will ensure that marketed products deliver a pharmacologically satisfying dose of nicotine.

(ii.) Control Over Nicotine Levels. Tobacco manufacturers also deliberately control the level of nicotine in cigarettes by monitoring and adjusting nicotine levels at each stage of the manufacturing process. The ultimate objective of these efforts is to ensure that the finished cigarette delivers the desired level of nicotine.[12]

Perhaps the best example of manufacturers' control of nicotine levels is the effort that the companies make to ensure that low-tar cigarettes deliver an adequate amount of nicotine. As described in the preceding subsection, tobacco industry research activities have focused on developing technologies for maintaining and increasing nicotine levels as tar is reduced. FDA's investigation has also shown that tobacco manufacturers actually use a number of techniques to ensure that nicotine levels in marketed products do not fall below a certain level, such as incorporating high nicotine tobaccos to ensure "adequate" levels of nicotine and using chemical additives to enhance nicotine delivery.

Tobacco manufacturers have a sophisticated understanding of the nicotine levels in various types of tobacco and in the various parts of the tobacco plant. By monitoring nicotine levels in the tobacco they purchase and by blending the tobaccos in accordance with their nicotine levels, tobacco companies are able to manufacture tobacco products with nicotine levels that vary only minimally within cigarette packs and from pack to pack. See p. 271.

Officials at R.J. Reynolds and Brown and Williamson have confirmed the importance

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[12] A number of techniques of cigarette production and manufacture can be used to lower nicotine levels. Probably the most significant technique is the design of low-tar cigarettes which lower nicotine levels when they lower tar levels. The filters that are used in 95% of cigarettes sold in the United States remove a certain amount of nicotine. The techniques described in FINDINGS § II.E., *infra*, are used by the tobacco industry to offset these reductions in nicotine levels and ensure that each cigarette delivers an amount of nicotine necessary to ensure consumer "satisfaction," i.e., to provide an adequate dose of nicotine to produce desired pharmacological effects.

of nicotine levels in leaf growing and purchasing. See p. 243. At least one company has actually developed a high-nicotine tobacco to use in manufacturing low-tar cigarettes. Brown and Williamson used a combination of conventional and advanced genetic breeding techniques to develop a high-nicotine, flue-cured tobacco plant, named "Y-1," that has approximately twice the nicotine level of American-grown flue-cured tobacco. Brown and Williamson used Y-1 tobacco in its cigarettes. See p. 239 et seq.

Once purchased, tobacco leaves are blended to attain target levels of nicotine. In fact, nicotine content is maintained at levels that would represent a high degree of control for a conventional drug manufactured from synthetic, homogeneous materials. See pp. 246-47. This level of control is remarkable for a product such as cigarettes, which are made from biological materials with a highly variable content.

Where design features aimed at reducing tar levels have also lowered nicotine levels, the manufacturer can use tobacco leaves with higher nicotine content to increase the nicotine level. For example, filters that are designed to reduce tar can also reduce nicotine. Yet, the industry is known to use proportionally greater amounts of higher nicotine-containing tobaccos in the tobacco blends of the lowest-tar varieties of cigarettes to maintain a higher nicotine level in those products. See p. 247. For example, "Y-1," Brown and Williamson's high-nicotine tobacco, was developed as a "blending tool" to permit the company to reduce tar and yet maintain nicotine delivery in its low-tar cigarettes. See p. 240.

Chemical additives are also used to enhance nicotine delivery. A major American tobacco company's 1991 handbook on leaf blending and product development identified ammonia as being effective to increase the amount of nicotine delivered to the smoker.

According to the handbook, ammonia in cigarette smoke "can liberate free nicotine from the blend, which is associated with increases in impact and 'satisfaction' reported by smokers." See p. 249. American tobacco companies often use ammonia in reconstituted tobacco; when cigarettes containing this type of tobacco are burned, the reconstituted tobacco serves as a source of ammonia in the cigarette smoke. See p. 250.

Tobacco companies also use a number of other chemicals to optimize nicotine delivery. Nicotine has a naturally harsh taste. To maintain sufficiently high levels of nicotine in tobacco products, manufacturers moderate nicotine's harshness by adding flavors such as sugar, licorice, cocoa, menthol, and other alcohol-based aromic substances to tobacco. According to one industry expert, the major contribution of the tobacco flavor specialist is to "help provide a rich, clean, full-bodied tobacco flavor, to keep to a minimum hotness and irritation in the mouth, and to ensure high satisfaction from an adequate level of nicotine per puff[,] requirements that guarantee the consumer a pleasurable smoke." See p. 251. In addition, glycerine/glycol in aerosol formulation is used to enhance "smoothness," ensuring that smoke will be inhaled into the lungs, thereby facilitating rapid and complete absorption of nicotine. See p. 253.

To a remarkable degree, the cigarette industry has accomplished the task of delivering sufficiently high levels of nicotine in low-tar products. A 1983 study showed that cigarettes advertised as having a low-nicotine yield contain as much nicotine as high-yield cigarettes. See p. 262. Moreover, all marketed cigarettes deliver sufficient nicotine to produce pharmacological effects on smokers. See p. 108 et seq. These findings are consistent with FDA's findings that the industry employs a number of methods to boost nicotine delivery to

compensate for nicotine losses from the application of tar-reducing designed modifications. Without the use of such methods, the techniques used to reduce tar should result in corresponding nicotine reductions. Instead, studies by FDA and others have demonstrated that the nicotine yield of cigarettes, as defined by the Federal Trade Commission (FTC) smoking machine tests, correlates inversely with nicotine concentrations in the tobacco, i.e., that some of the lowest-tar cigarettes have the highest concentrations of nicotine. See p. 262. FDA's analysis of FTC data also reveals an apparent increase in the sales-weighted FTC nicotine delivery ratings since 1982 (the earliest year for which the computer database is available), i.e., an overall increase in nicotine delivery from U.S. cigarettes. See p. 266.

Tobacco manufacturers' actions to manipulate nicotine deliveries from marketed cigarettes further demonstrate that nicotine is the central component of tobacco products, and that tobacco manufacturers have taken deliberate steps to maintain the level of nicotine that smokers receive.

(iii.) Alternative Product Research. Tobacco manufacturers have researched and developed alternatives to conventional tobacco products and to nicotine, largely in response to concerns about the health effects of conventional tobacco products. See FINDINGS § II.F., infra, p. 289 et seq. Industry documents explaining the nature and purpose of these alternative products provide confirmation that tobacco manufacturers: 1) understand that nicotine's pharmacological effects on the brain are essential to the successful marketing of tobacco products, and 2) have taken actions to ensure that alternative tobacco products will continue to provide these pharmacological effects.

Internal documents from both Philip Morris, Inc., and Brown and Williamson show

that these companies have had substantial research programs to identify "nicotine analogues," chemicals that are closely related to nicotine. See FINDINGS § II.F.1., infra. Company documents reveal that both Philip Morris and Brown and Williamson were seeking analogues that would produce effects on the central nervous system similar to nicotine, that could be substituted for nicotine if nicotine-containing tobacco became regulated or unattractive to consumers, and that could be added to currently marketed products to enhance the effects of nicotine. See p. 289. These programs were also designed to identify substances that shared nicotine's "desired" effects on the central nervous system, without producing its undesirable effects on the cardiovascular system. See p. 290.

The industry's nicotine analogue research programs were expressly based on the companies' view that "[s]hould nicotine become less attractive to smokers, the future of the tobacco industry would become less secure . . . . A commercial threat would arise if either an alternative [nicotine] product became acceptable or the effect of nicotine was changed [by an antagonist to nicotine]." See p. 292. In 1968, BATCO researchers, acknowledging the critical importance of nicotine in tobacco, recommended that the industry search for nicotine substitutes with the "desired" pharmacological effects on the brain:

> *In view of its pre-eminent importance, the pharmacology of nicotine should continue to be kept under review and attention paid to the possible discovery of other substances possessing the desired features of brain stimulation and stress-relief without direct effects on the circulatory system. The possibility that nicotine and other substances together may exert effects larger than either separately (synergism) should be studied and if necessary the attention of Marketing Departments should be drawn to these possibilities.*

See p. 290 (emphasis added). Various BATCO documents show that the company had an extensive program to identify nicotine analogues. See FINDINGS § II.F.1., infra.

Internal documents from Philip Morris' nicotine analogue program reveal that this company also sought nicotine analogues with pharmacological effects on the central nervous system, including effects associated with addiction. See p. 293 et seq. Philip Morris documents state explicitly that the purpose of the research on nicotine analogues was to find nicotine substitutes that were behaviorally active and had the same "reinforcing properties" in animals as nicotine. In an internal report on Philip Morris research, a section entitled "Nicotine Analogues" includes the following "research objectives":

1. *Determine if behaviorally active nicotine analogues can be directly substituted for nicotine in rats for which nicotine is functioning as an intravenously delivered positive reinforcer.*

2. *Establish nicotine analogues as an intravenously delivered positive reinforcer.*

3. *Compare the potencies of nicotine analogues to nicotine in producing positive reinforcing effects.*

See p. 296. As described in FINDINGS § I.B., infra, it is well established that the ability of a substance to act as a "positive reinforcer" is one of the hallmarks of an addictive substance. Philip Morris documents show that the company also tested nicotine analogues using "prostration" studies and "drug discrimination" studies. See p. 295. These studies provide evidence about whether a substance acts on the brain in the same manner as nicotine and has properties of an addictive substance. See FINDINGS § I.B., infra.

Philip Morris has also conducted pharmacological and behavioral research on another constituent of cigarette smoke, acetaldehyde, that was believed to have reinforcing effects. See FINDINGS § II.F.2, infra. This research was intended to find a combined dose of acetaldehyde and nicotine in cigarettes that would produce "maximal reinforcing effects."

See p. 298. The reinforcing efficacy of a substance is a measure of its ability to cause addiction in users. Id. In undertaking research on how to maximize the reinforcing effects of cigarettes, Philip Morris demonstrated its understanding of the addictive nature of cigarettes and its intention to produce, and even increase, these effects in tobacco users.

These company documents show that tobacco manufacturers have sought substitutes for nicotine that had psychoactive effects and other recognized characteristics of an addictive substance. At least one company conducted research on how to increase the reinforcing properties of cigarettes. This evidence compellingly shows that manufacturers intend tobacco products to have pharmacological effects and result in addiction.

Tobacco companies have also developed a number of cigarette alternatives. See FINDINGS § II.F.3., infra. In developing cigarette alternatives, the companies have sought to eliminate many of the traditional components and characteristics of cigarettes and cigarette smoke, such as tar and carbon monoxide. Tobacco companies have consistently recognized, however, that cigarette alternatives must deliver adequate amounts of nicotine to satisfy consumers. As a result, most of the alternative cigarette products developed by tobacco companies are simply nicotine delivery systems. For example, R.J. Reynolds has developed two "smokeless cigarettes," Premier and Eclipse. See p. 302 et seq. Nicotine is virtually the only compound (other than the paper and the filter) that is contained in these products in quantities similar to conventional cigarettes. Although these alternative products are very different from one another, they are strikingly the same in their ability to administer a consistent level of nicotine. Industry documents and patents show that other tobacco companies' cigarette alternatives are also intended to be nothing more than nicotine delivery

systems. See pp. 305-07. For example, BATCO developed cigarette alternatives that it characterized as "devices for the controlled administration of nicotine." See p. 307.

A 1970 BATCO R&D conference included a telling illustration of the tobacco industry's recognition of the central importance of nicotine in cigarette alternatives:

> *It was agreed that, if and when total cigarette consumption declined, great opportunities for supplying the demands of other socially acceptable habits could follow. Discussion followed on those opportunities which might arise. Amongst those discussed were a) chewing products, and b) wet snuff [both of which are smokeless tobacco products]. It was felt that this whole area, much of which is already in the tobacco industry, should be examined more thoroughly. Particular attention should be given to buccal administration of nicotine and other physiologically active ingredients. At the same time, it was re-affirmed that we would not contemplate the incorporation of nicotine in edible products.*

See p. 308 (emphasis added). As this passage makes clear, tobacco manufacturers understand that the common feature of cigarettes and smokeless tobacco products is the ability to administer nicotine to consumers, and that the purpose of the nicotine is to produce pharmacological effects in the consumer.

Thus, company documents related to the development of alternatives to both nicotine and conventional tobacco products establish tobacco manufacturers' knowledge that nicotine's psychoactive effects are critical to maintaining a successful market for cigarettes and smokeless tobacco, and that consumers use these products primarily for nicotine's pharmacological effects. The fact that the tobacco industry considers alternative cigarettes that are simply nicotine delivery systems to be functionally equivalent to traditional cigarettes demonstrates that tobacco companies intend their currently marketed tobacco products to be used for pharmacological purposes by consumers.

d. Smokeless Tobacco Manufacturers Manipulate Nicotine Delivery and Foster Graduation of Users From Low to High Nicotine Products.

Smokeless tobacco manufacturers control the delivery of nicotine from smokeless tobacco through a variety of additives and design features. Manufacturers use these additives and features to produce lines of smokeless products that deliver nicotine in increasing amounts. Evidence exists that smokeless tobacco manufacturers employ a "graduation process" to market these products. Low-nicotine products are marketed to new users of smokeless tobacco. After these new users become tolerant to the low-nicotine products, manufacturer marketing encourages smokeless tobacco consumers to "graduate" to higher nicotine products. The goal of the graduation process is to establish and maintain a market for the smokeless tobacco products with the highest nicotine delivery. Smokeless tobacco manufacturers' deliberate manipulation of levels of nicotine delivery, and the marketing of low-nicotine products to new users and high-nicotine products to experienced users, demonstrates the manufacturers' intent to facilitate nicotine addiction. This evidence establishes that smokeless tobacco manufacturers intend to affect the structure and function of the body.

Until the 1970's, smokeless tobacco companies in the United States marketed only products with high nicotine delivery that were not well tolerated by new users and the number of consumers using their products was steadily diminishing. See pp. 279-80. Evidence from the files of smokeless tobacco companies shows that, in the late 1960's or early 1970's, these companies began to entice new users of smokeless tobacco. Id. To do so, they decided to develop low-nicotine products in teabag-like pouches to encourage people to begin using smokeless tobacco. See pp. 280-81. Company documents also reveal that manufacturers

deliberately set out to produce a range of products with low, medium, and high nicotine delivery, see p. 281, and that they understood that nicotine's pharmacological effects were essential to the success of their products. As noted above, the senior vice president for marketing of the largest smokeless tobacco company wrote in a memorandum on new product development that "virtually all tobacco usage is based upon nicotine, 'the kick,' satisfaction." See pp. 186-87.

Analyses, by FDA and others, of current smokeless tobacco products show that smokeless tobacco companies have successfully developed product lines with graduated nicotine deliveries. See p. 276. Abundant evidence exists that manufacturers deliberately manipulate smokeless tobacco products to provide these graduated nicotine deliveries. Smokeless tobacco manufacturers do so primarily by adding various acidic or buffered compounds to the tobacco to alter its "pH," i.e., its relative acidity or alkalinity. See pp. 273-275. By increasing the pH of a product, manufacturers increase the amount of nicotine that is transformed from the "salt" or "bound" form of nicotine into "free nicotine." Only free nicotine can be readily absorbed through the mouths of smokeless tobacco users into the bloodstream. Small adjustments in pH can dramatically raise delivery of free nicotine. For example, raising the salivary pH from 7 to 8 increases the percentage of free nicotine from 10% to 50%, a five-fold increase. See p. 274. Analyses of currently marketed smokeless tobacco products reveal that the "starter" products have a pH in the range of 5 to 7, while the products for experienced users, like Copenhagen, have a pH of 8 or more. The amount of free nicotine delivered from these products correspondingly ranges from 5% to 20% for the starter products and 50% to 80% for the high-end products. See p. 276.

Other features of these products are also designed to lower nicotine absorption at the low (starter) end of the product range and to raise nicotine absorption at the top end. For example, humectants are added to the products to increase moisture content. See p. 279. High moisture content and other design features of smokeless tobacco have the effect of providing an intense "bolus" dose of nicotine to the user when the user first places a wad of tobacco in the mouth. See p. 278. On the other hand, "starter products" like Skoal Bandits are often packaged in a miniature pouch designed to be placed in the user's mouth; the pouch serves to limit the amount of snuff that is placed in the mouth and to create a barrier that decreases the rate of nicotine release from the product. See p. 277. Thus, starter products like Bandit deliver less total nicotine at a slower rate than the high-nicotine products offered by the same companies.

Internal documents from United States Tobacco Co. (UST), the largest smokeless tobacco producer in the United States, demonstrate that the company developed low nicotine snuff products for the specific purpose of creating "starter" products for new users who could not tolerate products with more nicotine. These low-nicotine products were then aggressively marketed to new users through advertising and by offering free samples at college campuses and sports events. See p. 282 et seq. UST documents, including internal memoranda and advertising, demonstrate that smokeless tobacco manufacturers know and intend that their customers will "graduate" upward through the range of nicotine products to the highest nicotine products. For example, a chart prepared by UST's marketing department is labeled "graduation process" and shows a hierarchy of products, with arrows going from Skoal Bandits, to Happy Days and Skoal Long Cuts, and culminating with Copenhagen. See p. 284.

This "graduation" corresponds exactly to the progression of the nicotine levels delivered by the listed products.

The product development and marketing strategies for smokeless tobacco have been extremely successful at recruiting new users. Use of smokeless tobacco products has risen substantially since the 1970's: overall, moist snuff sales almost tripled from 1972 through 1991, while use by male adolescents aged 18 to 19 increased almost 1,500% between 1970 and 1991. See p. 287.

The deliberate marketing of products that deliver graduated amounts of nicotine demonstrates that smokeless tobacco manufacturers know that their products are used to satisfy consumers' desire for increasing amounts of nicotine. The evidence of manipulation of nicotine delivery in smokeless tobacco shows that manufacturers have taken steps to create and sustain the need for nicotine. This evidence is more than sufficient to demonstrate that smokeless tobacco manufacturers intend consumers to become tolerant to, and addicted to, the nicotine in smokeless tobacco. Both tolerance and addiction are effects on the structure and ction of the body produced by nicotine. Accordingly, smokeless tobacco products are led to affect the structure or function of the body.

III. NICOTINE-CONTAINING CIGARETTES AND SMOKELESS TOBACCO PRODUCTS ARE DRUG DELIVERY SYSTEMS THAT ARE APPROPRIATELY REGULATED AS DEVICES.

Nicotine-containing cigarettes and smokeless tobacco products are "intended to affect the structure or any function of the body" within the meaning of the Act's drug and device definitions. 21 U.S.C. §§ 321(g)(1)(C), 321(h)(3). Based on the agency's analysis of the evidence before it: (1) the nicotine in cigarettes and smokeless tobacco products is a drug, achieving its effect through chemical action within the body; (2) cigarettes and smokeless tobacco are drug delivery systems whose purpose is to deliver nicotine in a manner in which it can be most readily absorbed by the consumer, and are, therefore, devices; and (3) cigarettes and smokeless tobacco products are combination products that the agency has the discretion to regulate using drug authorities, device authorities, or a combination of both authorities. 21 C.F.R. § 3.2(e) (1994). The record before the agency supports regulation of cigarettes and smokeless tobacco products pursuant to the Act's device authorities.

FDA considers device-like products, such as instruments, implements, machines, contrivances, implants, or other similar or related articles, 21 U.S.C. § 321(h), whose primary purpose is delivery of a drug, and that are distributed with a drug product, to be drug delivery systems. Intercenter Agreement Between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health § VII.A.1.(b)(October 31, 1991)("Intercenter Agreement"). Examples include contrivances containing drugs, such as pre-filled syringes, transdermal patches, and metered-dose inhalers. Id. Cigarettes and smokeless tobacco products function in a similar manner in that they contain a drug, nicotine; are used to deliver that drug to the site at which the drug will be absorbed into the body, the mouth or lungs; and

after the drug has been delivered, the delivery system, the cigarette butt or smokeless tobacco material, depleted of nicotine, remains and must be disposed of. Only the nicotine delivered by these products achieves its primary intended purpose by chemical action in or on the body.

Specifically, a cigarette is analogous to a metered-dose inhaler, an instrument that converts a drug into an aerosolized form for inhalation and delivery to the lungs for absorption into the bloodstream. Indeed, a cigarette is not simply tobacco, paper, and a filter. It is "a highly engineered product." FDA Docket No. 94P-0069, Response of R.J. Reynolds Tobacco Company, Appendix D, p. 1 (November 2, 1994). A device is an instrument or related article that "does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes." 21 U.S.C. § 321(h).

The primary purpose of parts of the cigarette, each of which is a device or device component within the Act's meaning, and the cigarette itself, a consciously engineered instrument, is to effectuate the delivery of a carefully controlled amount of the nicotine to a site in the human body where it can be absorbed. The drug, nicotine, is generally contained within the treated rolled tobacco. The delivery system, the nicotine-containing cigarette, must be lit to have its intended effect on the structure or function of the body, and, once lit and used, is discarded. When lit, the cigarette produces nicotine-containing smoke, which is inhaled by the consumer and when absorbed in the lungs, yields on average approximately 1.0 mg of nicotine. As the evidence discussed above reveals, cigarettes are drug delivery systems and, accordingly, are devices within the meaning of the Act.

Smokeless tobacco products function like infusion devices or transdermal patches that

deliver a controlled continuous amount of nicotine to the cheek tissue for absorption into the bloodstream. The device element of smokeless products is the tobacco, which contains the nicotine but is not intended to be consumed. Instead, in normal use, most of the tobacco in the product is not absorbed by the user and is removed from the mouth after absorption of the nicotine through the cheek tissue.

The primary purpose of the tobacco is to provide a palpable vehicle that allows nicotine to be extracted from the tobacco by the user's saliva so that it may be absorbed into the body.[13] The tobacco also delivers chemicals added during the manufacturing process, primarily alkalines, that increase the pH within the oral cavity and affect the rate at which the nicotine is absorbed into the body. See FINDINGS § II.E.2.

Because cigarettes and smokeless tobacco products are drug-device combination products, FDA may regulate them as drugs, devices, or both. See 56 Fed. Reg. 58754, 58754-55 (November 21, 1991); Intercenter Agreement § VII.A.1(b). Based on the record before the agency, regulation of cigarettes and smokeless tobacco products pursuant to the Act's device authorities is most appropriate at this time.[14] The alternative, regulating the products

[13] The fact that smokeless tobacco material is largely organic does not remove it from the definition of a device. FDA regulates many organic substances as devices, as well as liquids and gases. For example, FDA regulates as devices: injectable collagen, hemodialysis fluids, lubricants and lubricating jellies, preservation solutions for organ/tissue transport, absorbable sponges and wound dressings, gas mixtures for pulmonary-function tests, spray-on dressings, liquids functioning through physical action applied to the body to cool or freeze tissues, and sodium hyaluronate or hyaluronic acids for use as a surgical aid. See Intercenter Agreement § VII.C.

[14] This decision is similar to the determination of the Department of Health, Education, and Welfare (HEW), before authority over biologic drugs was transferred to FDA, regarding radioactive biologic products. Radioactive biologic products are both biologics under the Public Health Service Act (PHSA), 42 U.S.C. § 262, as well as drugs and new drugs, 21 U.S.C. § 321(g), (p), that may be regulated pursuant to the drug provisions of the FDCA. HEW determined that a drug would not be subject to the new drug provisions of the FDCA if it is a drug regulated as a biologic product pursuant to the licensure provisions of the PHSA. 40 Fed. Reg. 31311, 31312 (July 25, 1975); see 21 C.F.R. § 310.4.

pursuant to the Act's drug authorities, might result in the removal of these products from the market. Over 40 million Americans are currently addicted to cigarettes and smokeless tobacco products. Prohibiting the sale of these products, which could be required if FDA were to apply the Act's new drug authorities to them, could have significant health consequences for a substantial number of these nicotine-addicted consumers. In the unique setting of highly addictive products that have already been marketed for a sufficient period to addict a large number of Americans, application of requirements that could result in the abrupt removal of the products from the market is not the most appropriate regulatory response.

By contrast, the Act's device authorities provide flexible tools that allow FDA to establish and move towards the public health protection goals that are most practicable for cigarettes and smokeless tobacco products. Therefore, FDA is proposing a set of regulatory requirements for these products pursuant to the Act's device authorities.

The Medical Device Amendments of 1976, while having as their objective the ultimate assurance of the safety and effectiveness of marketed devices, contain provisions designed to permit a staged, multi-tiered approach to assuring the safety and effectiveness of long-marketed products. The authorities available under the Act's device provisions may be used to help eliminate or greatly reduce the addiction of the next generation of American children and teenagers to cigarettes and smokeless tobacco products.

Based on the record before the agency, all cigarettes and smokeless tobacco products distributed in the United States are drug-device combination products subject to regulation as devices. The record before the agency includes evidence that these products are intended to

affect the structure or any function of the body, based in part on nicotine's well-established pharmacological and addictive effects and the widespread consumer use of cigarettes and smokeless tobacco for pharmacological purposes. These factors are relevant to establishing the intended use of all brands of cigarettes and smokeless tobacco products distributed in the United States.

The Agency has obtained evidence concerning the knowledge of cigarette and smokeless tobacco product manufacturers about the pharmacological and addictive effects of nicotine in cigarettes and smokeless tobacco, and their manipulation of nicotine delivery to satisfy users' physiological need for nicotine, from the major manufacturers of these products and from CTR. Products from these manufacturers account for the vast majority of the U.S. cigarette and smokeless-tobacco market and probably account for close to 100% of that market. Under FDA's traditional approach to device classification, it is appropriate to classify all marketed cigarettes and smokeless tobacco products as drug delivery devices based on the cumulative evidence obtained from manufacturers.

CONCLUSION

The Food and Drug Administration has conducted an extensive investigation and has engaged in comprehensive analysis regarding the agency's jurisdiction over nicotine-containing cigarettes and smokeless tobacco products. The results of that inquiry and analysis support a finding at this time that nicotine in cigarettes and smokeless tobacco products is a drug, and that these products are drug delivery devices within the meaning of the Federal Food, Drug, and Cosmetic Act. Nonetheless, because the agency recognizes the unique importance of the jurisdictional issue as well as the factual justification for any proposed rule in this area, the agency invites comment on these matters. Comments will receive full and serious consideration.

APPENDIX TO LEGAL ANALYSIS

Examples of FDA's Regulation of Products as Drugs or Devices Based on the Product's Inherent Nature, Actual Use, or Its Effect on the Structure or Function of the Body

FDA has, on a number of occasions, asserted jurisdiction over a product even though the product's labeling and the vendor's advertising or other express representations did not establish that the product was a drug or a device within the meaning of the Act. The agency has found "intended use" and "intended effects" based on the inherent nature of the product, its actual use or effects, or a combination of these factors. Some examples follow:

1. Stimulant Narcotic Chewed or Used as Tea: Beginning in the early 1980's, FDA regulated as unapproved drugs imports of catha edulis, or "khat," a shrub whose leaves act as a stimulant narcotic that affects the central nervous system when chewed or used as tea, even though the agency did not have any information about or claims by vendors. FDA Import Alert 66-23 (March 26, 1982, revised April 2, 1986, and February 9, 1993). FDA issued an import alert for the product, deeming it a drug in the absence of any labeling or other material that would establish intended use. See FDA Import Alert 66-23 (March 26, 1982). FDA initiated a seizure of "khat" in Buffalo in 1985 and the product was ultimately forfeited and destroyed. FDA Import Alert 66-23 (April 2, 1986 revision). Knowledge of khat's use came from United Nations reports and other general sources of information about customs and practices regarding the use of khat. Id.

2. Imitation Cocaine: FDA took numerous enforcement actions in the 1980's against "caine" products that were used to imitate cocaine. "Caine" contained bulk anesthetic powders, such as lidocaine or mannitol, and was often sold as "incense" or "novelty cocaine."

Memorandum from Chief, Prescription Drug Compliance Branch (August 4, 1982), reprinted in Rx Drug Study Bulletin #258. The agency used laboratory analyses of the products, the manner in which the products were offered and sold, such as through magazines not associated with the legitimate drug industry (e.g. the National Enquirer, High Times, Soldier of Fortune, and Easy Rider) and at headshops with other drug paraphernalia, and "street" information that the products provide a "cheap high" to determine the products' intended use. See id. In 1984, the government seized a "caine" product from Golden Rod Music in Dayton, OH. FDC 64350, Case No. C-3-84-686 (S.D. Ohio). The product consisted of more than 25 percent ephedrine, as determined by laboratory analysis. Id. Also in 1984, FDA issued a regulatory letter to Mid-America Drug Co., Evansville, IN., concerning marketing of "caine" products. FDA Administrative File for Mid-America Drug Co., regulatory letter 84-DT-12. The firm voluntarily discontinued sales of the products, as did several other firms that received regulatory letters at about the same time. Id., response to regulatory letter 84-DT-12; see also, FDA Administrative File for Sam's Imports, Dearborn, MI, regulatory letter 85-DT-3 and response; FDA Administrative File for NALPAC, Ltd., Oakpark, MI, regulatory letter 85-DT-5 and response; FDA Administrative File for Tower Enterprises, Ida, MI, regulatory letter 85-DT-2 and response. In 1994, the government prosecuted Edwin and Thomas Dews in Michigan for selling a product called "Milky Trails," labeled as a room odorizer but in fact containing lidocaine. Case No. 94 CR 20040-BC (E.D. Mich.).

3. Hormones in Topical Preparations: The agency has formally taken the position that any statement in the labeling indicating that "hormones" are present in topical products will be considered to be an implied claim for therapeutic purposes, or to affect the structure or

function of the body, and will make the product a drug, even in the absence of more specific claims. 58 Fed. Reg. 47611, 47612 (September 9, 1993); Drug Study Bulletin No. 67 (March 28, 1994); see also 54 Fed. Reg. 40618, 40619 (October 2, 1989). The agency has also taken the position that even in the absence of labeling indicating that "hormones" are present in the product, the mere presence of hormones at levels that affect the structure or any function of the body, or the inclusion of certain hormones that do not have any legitimate cosmetic uses, would be sufficient for a determination that the product is a drug. 58 Fed. Reg. at 47611.

4. Fluoride in Dentifrice Products: FDA considers dentifrice products containing fluoride to be drugs, irrespective of whether any claims are made, because fluoride is widely accepted as an anti-cavity agent by the dental products industry and consumers, and because fluoride affects the structure of the tooth. See 59 Fed. Reg. 6084, 6088 (February 9, 1994); see also 50 Fed. Reg. 39854 (September 30, 1985).

5. Thyroid in Food Supplements: In 1984, the government seized and destroyed a thyroid-containing product that had been marketed as a food supplement by an Arkansas firm. FDC 64270, Case No. B-C-84-61 (E.D. Ark.). FDA had concluded that the product was a drug, based on the recognized effects of thyroid products on the structure and function of the human body.

6. Interferon: In 1983, FDA established a due diligence requirement regarding manufacturers' distribution of interferon, a biologic product composed of proteins. See 48 Fed. Reg. 52644 (November 21, 1983). At the time, interferon could be used only for investigational purposes in laboratory animals and tests in vitro. However, interferon received wide media coverage as a potential "miracle cure" in the treatment of cancer and viral infections in humans.

Because of its concern over diversion of interferon to unapproved uses, the Agency issued the notice to prevent use of interferon in humans.

7. Eye Ailment Device: In the 1960's, FDA undertook an enforcement action against a metal tube containing a light bulb, round metal discs, and colored glass filters used by a medical practitioner in his office in the treatment of various eye malfunctions and conditions. A district court upheld the Agency's conclusion that this use made the tube a device, even though the practitioner made no claims for the product. United States v. An Article of Device . . . Labeled in Part: "Cameron Spitler Amblo-Syntonizer", 261 F. Supp. 243, 245 (D. Neb. 1966).

8. Novelty Condoms: In early 1994, FDA took the position that "novelty condoms" that are usable as condoms would be regulated as condoms even in the absence of express claims (e.g., for birth control or to prevent sexually transmitted diseases). Letter from Ronald Johnson, Director, Office of Compliance, CDRH, to Manufacturers, Distributors, and Importers of Condoms, February 23, 1994. The agency's position was based on the belief that, because of the inherent nature and exclusive use of the article, people would actually use the condoms for prophylactic purposes even though they were not so labeled. The Agency stated that "[l]abeling a functional condom as a novelty is not sufficient" to escape the regulatory requirements applicable to condoms specifically and medical devices in general. Instead, a manufacturer would have to render the product completely unusable as a condom. Id.

9. Noncorrective Tinted Contact Lenses: The agency has taken the position that tinted contact lenses that do not correct or improve vision and are promoted to enhance eye color are medical devices. This position is based on the fact that all contact lenses, including neutral lenses, have a physiological effect on the eye. In 1986, the government obtained a consent

decree of permanent injunction against the sale of a system used to make noncorrective tinted contact lenses on the ground that the system causes adulteration of a medical device, the lenses. FDA INJ 1145, United States v. International Hydron Corp., No. 87-2129 (E.D.N.Y.).

10. Sunscreens: Between 1940 and the 1970's, FDA changed its position regarding the degree to which sunscreens were drugs under the Act. See 58 Fed. Reg. 28194 (May 12, 1993). FDA had stated in a 1940 advisory opinion that a product promoted for the prevention of damage from the sun was a drug while a product promoted for acquiring an even tan was a cosmetic. Id. at 28204. FDA changed its view of the latter category of products, however, because "[s]ince 1940 . . . there has been a significant body of information developed on the harmful effects of the sun on human health and a significant change has occurred in consumer perception of the purpose of suntanning products." Id. FDA explained that sunscreen products affect the structure and function of the body by "altering the normal physiological response to solar radiation," and that consumers expect protection from such products irrespective of the way in which such products are promoted. Id.

11. Tanning Booths: FDA has taken the position that tanning booths are devices under the Act because, by exposing the body to ultraviolet rays, they are intended to affect the structure or function of the body. Based on this position, the Agency has initiated seizure actions in recent years against various tanning booths, including, among others, those in the possession of Chic Wig Boutiques, Clarksville, Indiana. FDC 66099, Case No. NA 91-64-C (N.D. Ind.). The Indiana firm signed a consent decree with regard to this device. Id.; see also FDC 66224 (Chic Tanning Studio, Tampa, Florida), Case No. 92-CV-70829-DT (M.D. Fl.); FDC 65453 (Sunburst Sun Spa, Anchorage, Alaska), Case No. A-87-625-CIV (D. Alaska).

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I. NICOTINE HAS DRUG EFFECTS ON THE BODY

Nicotine is a psychoactive drug that affects the brain, the skeletal muscles, the cardiovascular system, and other systems throughout the body.[15] Psychoactive is defined as having the ability to alter mood, anxiety, behavior, cognitive processes, or mental tension.[16] There is widespread agreement within the scientific community that nicotine causes substantial pharmacological effects, including those that lead to addiction in the majority of users. This section will briefly review: 1) the physiological and central nervous system effects of nicotine; 2) the data that support the conclusion that nicotine is an addictive agent; 3) the evidence that the amount of nicotine in commercially available products is sufficient to cause addiction; and 4) the evidence that consumers use tobacco products for their drug effects.

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[15] U.S. Department of Health and Human Services. *The Health Consequences of Smoking: Nicotine Addiction. Report of the U.S. Surgeon General, 1988.* U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Center for Health Promotion and Education, Office on Smoking and Health. DHHS Publication No. (CDC) 88-8406, 1988. Pages 13-14, 79-124, 410, 596-601. (Hereafter cited as Surgeon General's Report. 1988. *Nicotine Addiction.*)

[16] Hensyl WR, ed. *Stedman's Medical Dictionary.* 25th ed. Baltimore, MD: Williams and Wilkins; 1990:1284.

A. NICOTINE HAS PHYSIOLOGICAL AND CENTRAL NERVOUS SYSTEM EFFECTS

The physiological and central nervous system effects of nicotine involve effects on both the structure and the function of the brain. When it is inhaled in cigarette smoke, nicotine is absorbed into the lungs and then rapidly enters the bloodstream. In smokeless tobacco, it is absorbed through tissues of the mouth or nose and then enters the bloodstream. Once it is in the bloodstream, nicotine crosses the blood-brain barrier and is rapidly distributed to the brain.[17] It is estimated that, once inhaled in cigarette smoke, nicotine reaches the brain in 11 seconds or less.[18] Nicotine generates its effects by binding to receptors in the brain that are intended to receive the neurotransmitter acetylcholine. These receptors, when activated by nicotine, cause the release of other chemicals in the brain that produce effects on mood, alertness, and perhaps cognition. Continued nicotine use causes an increase in the number of receptors that can bind nicotine, and changes the electrical and metabolic activity of the brain.

Nicotine's rewarding effects are the result of its action on a part of the brain called the mesolimbic system, which is also affected by many other addictive drugs.[19] Nicotine, like amphetamine and cocaine, produces its rewarding or reinforcing effects by stimulating the

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[17] Surgeon General's Report. 1988. *Nicotine Addiction.* Page 13.

[18] Benowitz NL. Clinical Pharmacology of Inhaled Drugs of Abuse: Implications in Understanding Nicotine Dependence. *Research Monograph 99.* National Institute on Drug Abuse. 1990. Page 17.

[19] *See:*
Wise RA, Rompre PP. Brain dopamine and reward. *Ann Rev Psychol.* 1989;40:191-225.

Clarke PBS. Mesolimbic dopamine activation–the key to nicotine reinforcement? *The Biology of Nicotine Dependence.* Wiley, Chichester (Ciba Foundation Symposium 152) 1990;153-168.

release of dopamine, a chemical produced in the mesolimbic system. Dopamine plays a major role in regulating pleasurable sensations.[20] (See Appendix 1 for a summary of the studies indicating that nicotine acts on the mesolimbic dopaminergic system.)

Nicotine produces a range of other complex pharmacological effects that are related to its dose and/or bioavailability. For example, at low doses, nicotine stimulates the cardiovascular system, producing an increase in blood pressure and heart rate. At higher doses or more rapid administration, nicotine slows the heart rate.[21]

Depending on the circumstances, nicotine delivered by cigarette smoking can have an arousal-increasing or arousal-reducing effect.[22] These effects have been confirmed using electroencephalographic (EEG) analysis.[23] When smokers are placed in a stressful situation,

[20] *See:*
Pomerleau OF, Pomerleau CS. Neuroregulators and the reinforcement of smoking: towards a biobehavioral explanation. *Neurosci Biobehav Rev.* 1984;8:503-513.

Wise and Rompre, note 19, *supra,* at pp. 191-225.

Clarke, note 19, *supra,* at pp. 153-168.

[21] Henningfield JE, Miyasato K, Jasinski DR. Abuse liability and pharmacodynamic characteristics of intravenous and inhaled nicotine. *J. Pharmacol Exp Ther.* 1985;234:1-12.

[22] Norton R, Brown K, Howard R. Smoking, nicotine dose and the lateralisation of electrocortical activity. *Psychopharmacology.* 1992;108:473-479.

[23] *See:*
Pritchard WS, Gilbert DG, Duke DW. Flexible effects of quantified cigarette-smoke delivery on EEG dimensional complexity. *Psychopharmacology.* 1993;113:95-102.

Pritchard WS. Electroencephalographic effects of cigarette smoking. *Psychopharmacology.* 1991;104:485-490.

Golding JF. Effects of cigarette smoking on resting EEG, visual evoked potentials and photic driving. *Pharmacology Biochemistry and Behavior.* 1988;29:23-32.

smoking can have a depressant effect on the EEG profile.[24] When smokers are under conditions of low arousal induced by mild sensory isolation, cigarette smoking can have a stimulant effect.[25] In other words, smoking appears to have a relaxing effect in stressful situations and a stimulating effect in otherwise nonstimulating circumstances.

Smoking or the administration of nicotine appears to have mixed results in its effects on sustained attention.[26] The tobacco industry has conducted several studies on nicotine's effect on performance and cognition. While some studies showed increased performance and response,[27] others showed little or no effect.[28] Many of these studies were conducted with nicotine-deprived subjects, and the results may reflect the reversal of deficiencies caused by nicotine withdrawal. The 1988 Surgeon General's Report concluded that "[a]fter smoking cigarettes or receiving nicotine, smokers perform better on some cognitive tasks . . . than they do when deprived of cigarettes or nicotine. However, smoking and nicotine do not improve general learning."[29] (An extensive discussion of the physiological and central nervous system

[24] *See* Pritchard, note 23, *supra,* at pp. 485-490.

[25] Golding J, Mangan GL. Arousing and de-arousing effects of cigarette smoking under conditions of stress and mild sensory isolation. *Psychophysiology.*1982;19(4):449-56.

[26] Heishman SJ, Taylor RC, Henningfield JE. Nicotine and smoking: A review of effects on human performance. *Experimental and Clinical Psychopharmacology.* 1994;2(4):345-395.

[27] *See:*
Wesnes K, Warburton DM. Effects of smoking on rapid information processing performance. *Neuropsychobiology.* 1983;9:223-229.

Wesnes K, Warburton DM. Effects of scopolamine and nicotine on human rapid information processing performance. *Psychopharmacology.* 1984;82:147-150.

[28] *See* Heishman et al, note 26, *supra.*

[29] Surgeon General's Report. 1988. *Nicotine Addiction.* Page 441.

effects of nicotine is available in the 1988 Surgeon General's Report.[30])

[30] *Id.* at pp. 381-458.

B. NICOTINE IS ADDICTIVE

1. Major Public Health Groups and Leading Experts Concur

Until the 1980's, nicotine was not widely appreciated to be an addictive drug. Within the past 15 years, however, broad international agreement has developed within the scientific community that nicotine in tobacco is a highly addictive or dependence-producing substance. The terms "addictive" and "dependence-producing" are generally used interchangeably; both terms refer to the persistent and repetitive intake of psychoactive substances despite evidence of harm and a desire to quit.[31] Some scientific organizations have replaced the term "addictive" with "dependence-producing" to shift the focus to dependent patterns of behavior and away from the moral and social issues associated with addiction.[32] Both terms are equally relevant for purposes of understanding the drug effects of nicotine, and in this section, the terms will be used interchangeably. The current broad recognition that nicotine is an addictive substance has been due to: 1) an evolution in the understanding of the science of addiction (e.g., the recognition that a substance does not have to be intoxicating when used at addictive levels);[33] 2) epidemiological evidence establishing the high percentage of tobacco

[31] Surgeon General's Report. 1988. *Nicotine Addiction*. Page 7.

[32] *Id.* at p. 11.

[33] U.S. Public Health Service. *Smoking and Health. Report of the Advisory Committee to the Surgeon General of the Public Health Service*. U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control. PHS Publication No. 1103, 1964. (Hereafter cited as Surgeon General's Report. 1964. *Smoking and Health*.) The 1964 Surgeon General's Report considered nicotine to be "habituating" rather than addictive because it did not appear to produce intoxication or cause physical dependence, and its users did not tend to increase the dose. These were considered to be the features of addictive drugs.

At that time, cocaine and amphetamines were also regarded as not causing physical dependence. *See:*

Wesson DR, Smith DE. Cocaine: Its Use for Central Nervous System Stimulation Including Recreational

users who display the clinical symptoms of addiction; and 3) the accumulation of evidence in the last two decades demonstrating, in both laboratory animals and humans, that nicotine is a psychoactive drug that produces pharmacological effects similar to those seen with other addictive substances.

Scientists' understanding of addiction has evolved over the past 30 years. Earlier definitions of addiction suggested that addiction was predominately the result of weakness in the personality of the user rather than the result of the pharmacological effects of the addicting substance.[34] More recently, animal and human research has revealed the pharmacological basis of addiction.[35] It has been shown that addictive substances produce

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and Medical Uses. In: Cocaine: 1977. NIDA Research Monograph. DHEW Publication Number (ADM) 77-471. Department of Health, Education, and Welfare. Rockville, MD. 1977. Page 145.

Winkler A. The Etiology of Opioid Dependence. In: Opioid Dependence: Mechanisms and Treatment. Winkler A (ed). 1980. Plenum Press. New York, NY. Page 26.

Winkler A. The Problems of Drug Dependence. In: Opioid Dependence, *supra*, at p. 13.

[34] *See:*
The Committee on Nomenclature and Statistics of the American Psychiatric Association. 1952. *Diagnostic and Statistical Manual, Mental Disorders with Special Supplement on Plans for Revision.* American Psychiatric Association. Washington, DC. Page 39.

Surgeon General's Report. 1964. *Smoking and Health.* Page 351.

Surgeon General's Report. 1988. *Nicotine Addiction.* Page 248.

[35] *See:*
Hanson HM, Ivester CA, Morton BR. Nicotine self-administration in rats. In: *Cigarette Smoking as a Dependence Process, NIDA Research Monograph 23.* U.S. Department of Health, Education, and Welfare. 1979. Pages 70-90.

Goldberg SR, Spealman RD, Goldberg DM. Persistent behavior at high rates maintained by intravenous self-administration of nicotine. *Science.* 1981;214:573-575.

Griffiths RR, Henningfield JE, Bigelow GE. Human cigarette smoking: manipulation of number of puffs per bout, interbout interval and nicotine dose. *J Pharmacol Exp Ther.* 1981;220(2):256-265.

definable chemical effects in the brain that reinforce continued use of these substances and cause physiological and/or psychological dependence on these substances.[36] The contemporary understanding of addiction also places a major emphasis on the intrinsic pharmacological ability of a substance to cause compulsive, regular use and on the inability of users to stop using the substance, even when they are strongly motivated to do so.[37]

In 1986, the Office of the U.S. Surgeon General issued a report concluding that nicotine in smokeless tobacco is addictive.[38] In 1988, the Surgeon General issued an additional report concluding that nicotine in cigarettes and other forms of tobacco is addictive.[39]

The landmark 1988 report by the Surgeon General ("the 1988 report") noted that the

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Griffiths RR, Henningfield JE. Pharmacology of cigarette smoking behavior. *Trends Pharmacol Sci.* 1982;3:260-263.

Henningfield JE, Goldberg SR. Nicotine as a reinforcer in human subjects and laboratory animals. *Pharmacol Biochem Behav.* 1983;19(6):989-992.

[36] Surgeon General's Report. 1988. *Nicotine Addiction.* Pages 170-279.

[37] *See:*
American Psychiatric Association. 1994. *Diagnostic and Statistical Manual of Mental Disorders (Fourth Edition).* American Psychiatric Association. Washington, DC. Page 176. (Hereafter cited as American Psychiatric Association. 1994. *DSM IV.*)

World Health Organization. 1992. *The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines.* World Health Organization. Geneva, Switzerland. Page 76. (Hereafter cited as World Heath Organization. 1992. *ICD-10.*)

Surgeon General's Report. 1988. *Nicotine Addiction.* Pages 248-250.

[38] U.S. Department of Health and Human Services. *The Health Consequences of Using Smokeless Tobacco: A Report of the Advisory Committee to the Surgeon General, 1986.* U.S. Department of Health and Human Services, Public Health Service, Bethesda, MD. NIH Publication No. 86-2874, April 1986. Pages 144-145, 166. (Hereafter cited as Surgeon General's Report. 1986. *Smokeless Tobacco.*)

[39] Surgeon General's Report. 1988. *Nicotine Addiction.* Page 9.

main features of the definitions of addiction used by groups throughout the world are highly consistent. The 1988 report adopted a set of criteria based on the common criteria of these definitions. The primary criteria for drug dependence relied on in the Surgeon General's Report were:

1. highly controlled or compulsive use (even despite a desire, or repeated attempts, to quit);
2. psychoactive ("mood altering") effects produced by the action of the drug substance on the brain; and
3. drug-motivated behavior caused by "reinforcing" effects of the psychoactive substance.[40]

The 1988 report identified the following additional criteria for identifying drug dependence:

- repetitive and stereotyped patterns of use;
- persistent use despite adverse physical, social or psychological effects;
- quitting episodes followed by relapse;
- recurrent cravings for the drug, especially during abstinence;
- development of tolerance (diminished responsiveness to the drug's effects, sometimes accompanied by increased intake);
- withdrawal symptoms that can motivate further use of the drug; and
- pleasant (euphoriant) effects produced by the drug.[41]

The 1988 report exhaustively reviewed the available data on the effects of nicotine on the body, the metabolism of nicotine within the body, the dependence-producing properties of

[40] *Id.* at p. 7.

[41] *Id.* at pp. 7-8.

nicotine, tobacco use compared to other drug dependencies, the pharmacological effects of nicotine that promote tobacco use, and treatment of tobacco dependence. Applying the criteria for drug dependence listed above to these data, the 1988 Surgeon General's Report concluded that:

1. Cigarettes and other forms of tobacco are addicting;
2. Nicotine is the drug in tobacco that causes addiction; and
3. The pharmacological and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine.[42]

Major public health organizations and leading experts have concluded that nicotine is an addictive or dependence-producing substance.

- The World Health Organization, the American Medical Association, the American Psychiatric Association, the American Psychological Association, the Royal Society of Canada, and the Medical Research Council in the United Kingdom have all recognized that nicotine is an addictive or dependence-producing drug.[43]

[42] *Id.* at pp. 6-9.

[43] *See:*
World Health Organization. 1974. *World Health Organization Technical Report Series No. 551. WHO Expert Committee on Drug Dependence, Twentieth Report.* World Health Organization. Geneva, Switzerland. Pages 15-16.

World Health Organization. 1992. *ICD-10.* Page 324.

American Medical Association. *1993 AMA Policy Compendium. Ethyl alcohol and nicotine as addictive drugs.* American Medical Association. 1993.

American Psychiatric Association. 1980. *Quick Reference to the Diagnostic Criteria from DSM-III.* American Psychiatric Association. Washington, DC. Page 99.

American Psychological Association. Statement of the American Psychological Association before the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Health and the Environment on the subject of The 1988 Surgeon General's Report, *The Health Consequences of*

- On August 2, 1994, FDA's Drug Abuse Advisory Committee, an independent group composed primarily of experts on addiction science, concluded that cigarettes and other forms of tobacco are addicting, and that nicotine is the drug in tobacco that causes addiction. The FDA advisory committee also concluded that all currently marketed cigarettes contained addicting levels of nicotine.
- In a 1991 survey, the vast majority of scientists funded by the tobacco industry stated that they believed that cigarette smoking is addictive.[44] According to this report, among the principal investigators of research projects funded by the tobacco industry in 1989, 83.3% strongly agreed and 15.3% agreed somewhat that cigarette smoking is addictive.[45]

Furthermore, the medical community has, since the early 1980's, come to recognize that nicotine addiction is a clinical disorder. The Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the American Psychiatric Association, and the International Statistical Classification of Disease and Related Health Problems (ICD), published by the

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Smoking: Nicotine Addiction. July 29, 1988. Page 1.

Royal Society of Canada. *Tobacco, Nicotine, and Addiction: A Committee Report*. Prepared at the request of The Royal Society of Canada for The Health Protection Branch, Health and Welfare Canada. August 31, 1989. Pages 8-9.

Medical Research Council. The Basis of Drug Dependence. *MRC Field Review*. Medical Research Council. 1994. Page 11.

[44] Cummings KM, Sciandra R, Gingrass A, Davis R. What scientists funded by the tobacco industry believe about the hazards of cigarette smoking. *Am. J of Pub Health*. 1991;81(7)894.

[45] *Id.* at p. 895.

World Health Organization, use very similar criteria to identify dependence.[46] Like the criteria specified by the U.S. Surgeon General, these criteria emphasize the ability of a substance to produce compulsive use, withdrawal and/or tolerance, inability to control or terminate drug use despite efforts to quit or reduce use, and continued use despite harmful effects. (See Appendix 1 for a description and history of the criteria for identifying addiction.)

Nicotine has been recognized as dependence-producing under the DSM criteria since 1980. The most recent version of DSM (DSM-IV) recognizes two substance use disorders

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[46] The most recent version of DSM (DSM-IV) defines "substance dependence" as substance use that produces three or more of the following symptoms in users:
- marked tolerance;
- a withdrawal syndrome and/or the substance is taken to relieve or avoid withdrawal symptoms;
- the substance is often taken in larger amounts over a longer period of time than intended;
- persistent desire or unsuccessful efforts to cut down or control substance use;
- a great deal of time spent in activities necessary to obtain the substance, use the substance (e.g., chain smoking), or recover from its effects;
- important social, occupational, or recreational activities are given up or reduced because of substance use; and
- use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance.

DSM-IV explains how the following criteria are apparent in nicotine dependence: tolerance, withdrawal, desire to quit, great deal of time using, and continued use despite medical problems. American Psychiatric Association. 1994. *DSM IV*. Pages 181, 243.

"Dependence syndrome" is characterized under the ICD-10 as a cluster of effects after repeated use of a substance resulting in three or more of the following symptoms:
- a strong desire or sense of compulsion to take the substance;
- an impaired capacity to control substance-taking behavior in terms of its onset, termination, or levels of use;
- substance use with the intention of relieving withdrawal symptoms and with awareness that this strategy is effective;
- a physiological withdrawal state;
- evidence of tolerance such that the increased doses of the substance are required in order to achieve effects originally produced by lower doses;
- progressive neglect of alternative pleasures or interests in favor of the substance; and
- persisting with substance use despite clear evidence of overtly harmful consequences.

World Health Organization. 1992. *ICD-10*. Pages 75-76, 321.

associated with nicotine: nicotine dependence and nicotine withdrawal.[47]

The ICD has included tobacco as a dependence-producing substance since 1992. Previously, the ICD recognized the existence of tobacco dependence, but tobacco was treated separately from other addictive drugs because tobacco differed in its psychotoxic effects[48] when used at usual doses. With the publication of ICD-10 in 1992, however, tobacco was included with the other addictive drugs.[49]

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[47] *See* American Psychiatric Association. 1994. *DSM IV,* note 37, *supra,* at p. 99. An individual is classified as having physiologic (in addition to psychological) dependence on a substance under DSM-IV if there is evidence of tolerance to or withdrawal from the substance. *Id.*

[48] World Health Organization. 1978. *Mental Disorders: Glossary and Guide to Their Classification in Accordance with the Ninth Revision of the International Classification of Diseases.* World Health Organization. Geneva, Switzerland. Page 43.

[49] World Health Organization. 1992. *ICD-10.* Page 75.

2. Epidemiological Data Establishes That Tobacco Users Display the Clinical Symptoms of Addiction

a. Studies Documenting Symptoms of Addiction in Smokers

Population studies of smokers conducted in recent years clearly demonstrate that nicotine produces regular, compulsive use, that such use is persistent despite both attempts to quit and an appreciation of cigarette's harmful effects, and that abstinence from nicotine produces withdrawal symptoms:

Regular, compulsive use:

- 87% of people who smoke cigarettes smoke every day;[50] and
- Nearly two-thirds of smokers have their first cigarette within the first half-hour after they wake up.[51]

Use persists despite attempts to quit or reduce use:

- In one study, 84.3% of those who smoked a pack or more per day had unsuccessfully tried to reduce the number of cigarettes smoked.[52]
- A smoker who makes a serious attempt to stop smoking has a less than 5% chance of being off cigarettes a year later;[53]
- Each year in the United States, 15 million people try to quit smoking, but less than 3%

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[50] Centers for Disease Control. *1991 National Health Interview Survey.* Atlanta, GA. U.S. Department of Health and Human Services, 1991.

[51] Centers for Disease Control. *1987 National Health Interview Survey.* Atlanta, GA. U.S. Department of Health and Human Services, 1987.

[52] Henningfield JE, Clayton R, Pollin W. Involvement of tobacco in alcoholism and illicit drug use. *British Journal of Addiction.* 1990;85:280.

[53] Sachs DPL, Leischow SJ. Pharmacologic Approaches to Smoking Cessation. *Clinics in Chest Medicine.* 1991;12(4):788.

have long-term success;[54]

- In one study, 70% of current smokers reported they would "like to completely stop smoking";[55] and
- 83% to 87% of cigarette smokers who smoke more than 26 cigarettes a day believe they are addicted.[56]

Use persists despite harmful consequences:

- In one survey, 90% of smokers agreed with the general proposition that smoking is harmful to health, 65% believed that smoking had already affected their health, and 77% believed that they could avoid or decrease serious health problems by quitting smoking;[57]
- Almost half of the smokers who undergo surgery for lung cancer resume smoking;[58] and
- Even after smokers have had their larynxes removed, 40% try smoking again.[59]

[54] Centers for Disease Control. *Morbidity and Mortality Weekly Report.* "Cigarette Smoking Among Adults-United States, 1993." December 23, 1994. Page 927.

[55] *Id.*

[56] Substance Abuse and Mental Health Services Administration. *1991/1992 National Household Survey on Drug Abuse.* U.S. Department of Health and Human Services.

[57] Thomas RM, Larsen MD. *Smoking prevalence, beliefs, and activities by gender and other demographic indicators.* Princeton, NJ. The Gallup Organization, Inc. 1993.

[58] Davison G, Duffy M. Smoking habits of long term survivors of surgery for lung cancer. *Thorax.* 1982;37:331-333.

[59] West R, Himbury S. Smoking habits after laryngectomy. *Br Med J.* 1985;291:514-515.

Abstinence produces withdrawal symptoms:

- Abstinence from smoking is often accompanied by powerful cravings for a cigarette;[60]
- Smokers in a position to compare the effects of nicotine with the effects of other addictive drugs say they are comparable;[61] and
- Nicotine replacement therapy significantly reduces withdrawal symptoms in smokers who are attempting to quit.[62]

Data from clinical research evaluating nicotine replacement therapy (nicotine gum and patches) as aids in smoking cessation support the conclusion that a high proportion of smokers are addicted. The studies, submitted to the FDA as part of new drug applications for nicotine replacement products, were conducted in male and female smokers who smoked about a pack to a pack and a half of cigarettes (about 20 to 30 cigarettes) per day. The subjects were recruited from the general population by advertisement, from primary health care settings, and from medically based smoking cessation programs.[63]

Participants in these studies clearly demonstrated addiction to nicotine delivered from cigarettes. All reported symptoms of nicotine addiction at trial entry, and all suffered withdrawal symptoms after smoking cessation. These withdrawal symptoms were relieved

[60] *See:*
Benowitz NL. Cigarette smoking and nicotine addiction. *Medical Clinics of North America.* 1992;76(2):423.

West R, Schneider N. Craving for Cigarettes. *British Journal of Addiction.* 1987;82:407.

[61] Henningfield JE, Miyasato K, Jasinski DR. Abuse liability and pharmacodynamic characteristics of intravenous and inhaled nicotine. *J Pharmacol Exp Ther.* 1985;234(1):4-5.

[62] NDA 20-076 Habitrol (Ciba), NDA 20-150 Nicotrol (Kabi), NDA 19-983 ProStep (Elan), NDA 20-165 Nicoderm (Alza), NDA 20-066 Nicorette (Merrell Dow).

[63] *Id.*, NDA's for Habitrol (Ciba), ProStep (Elan), and Nicoderm (Alza).

entirely or partly by medical administration of nicotine.

Smokers using the above nicotine replacement products (in the dosage range of 14 to 24 mg/nicotine per day) had an initial quit rate of about 50%, twice that of smokers receiving placebo. This two-fold difference was maintained throughout a full year of follow-up, and was associated with reductions in craving, withdrawal symptoms, and the desire to smoke.[64] In studies in which nicotine replacement therapy was provided for a year or more, relapse rates were nearly half those of studies in which nicotine replacement was halted after a fixed interval (usually about 6 to 12 weeks).[65]

Data from these studies demonstrate how tenacious nicotine addiction is, even for adults who express a strong desire to quit smoking and who receive optimal medical care. Only half of the patients studied were able to stop smoking for as long as 1 week, and the long-term failure rate was more than 80% after patients were withdrawn from nicotine replacement. The fact that nicotine replacement therapy in smokers reduces relapse rates provides strong evidence that it is the nicotine in tobacco products that creates and sustains addiction to cigarettes.

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[64] *See:*
Fiore MC, Smith SS, Jorenby DE, Baker TB. The effectiveness of the nicotine patch for smoking cessation: a meta-analysis. *JAMA*. 1994;271(24):1940-47.

NDA 20-076 Habitrol (Ciba), NDA 20-150 Nicotrol (Kabi), NDA 19-983 ProStep (Elan), NDA 20-165 Nicoderm (Alza), NDA 20-066 Nicorette (Merrell Dow).

[65] *Id.*

b. Studies Documenting Symptoms of Addiction in Smokeless Tobacco Users

Smokeless tobacco users can also develop a dependence on nicotine similar to that experienced by cigarette smokers.[66] The Surgeon General's 1986 report concluded that smokeless tobacco is addictive.[67] This is not surprising, since smokeless tobacco users can absorb at least as much nicotine as smokers.[68] The 1986 report states that:

> *. . . given the nicotine content of smokeless tobacco, its ability to produce high and sustained blood levels of nicotine, and the well-established data implicating nicotine as an addictive substance, one may deduce that smokeless tobacco is capable of producing addiction in users.*[69]

Studies have shown that smokeless tobacco is associated with compulsive use,[70] persistent use despite efforts to quit,[71] persistent use despite harmful consequences,[72] and

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[66] Benowitz NL. Pharmacology of smokeless tobacco use: nicotine addiction and nicotine-related health consequences. In: *Smokeless Tobacco or Health, An International Perspective.* Smoking and Tobacco Control, Monograph 2. U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. NIH Publication No. 93-3461. 1993. Page 227.

[67] Surgeon General's Report.1986. *Smokeless Tobacco.* Pages 182-183.

[68] Surgeon General's Report. 1994. *Preventing Tobacco Use Among Young People.* Page 40.

[69] *Id.* at p. 141.

[70] *See* Benowitz, note 66, *supra,* at p. 223.

[71] *See:*
Ary DV, Lichtenstein E, Severson HH, Weissman W, Seeley JR. An in-depth analysis of male adolescent smokeless tobacco users: interview with users and their fathers. *J. Behavioral Medicine.* 1989;12:449-467.

Severson HH. Enough snuff: ST cessation from the behavioral, clinical, and public health perspectives. In: *Smokeless Tobacco or Health, An International Perspective.* Smoking and Tobacco Control, Monograph 2. U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. NIH Publication No. 93-3461. 1993. Pages 281-282.

[72] Connolly GN, Winn DM, Hecht SS, Henningfield JE, Hoffman D, Walker B. The re-emergence of smokeless tobacco. *N. Engl J. Med.* 1986;314(16):1020-1026.

withdrawal symptoms when use is discontinued.[73,74]

Fewer clinical and epidemiological data are available on the prevalence of addiction among smokeless tobacco users than among smokers. However, some users of smokeless tobacco products do meet addiction criteria.[75] A 1986 report of the Office of the Inspector General of the Department of Health and Human Services found that 37% of young users of smokeless tobacco (also called "spit" tobacco) continue use because they are addicted.[76] In a study involving 675 men enrolled in a cessation program, 68% reported an average of four unsuccessful attempts to quit.[77] Other studies of smokeless tobacco cessation programs reveal that many users continue consuming the product despite their desire to quit.[78] Glover reported a 2.3% quit rate at 6 months and concluded that smokeless tobacco may be more addicting than cigarette smoking.[79] Other researchers have found that over one-third of the current

[73] Hatsukami D, Gust W, Keenan R. Physiologic and subjective changes from smokeless tobacco withdrawal. *Clin Pharmacol Ther.* 1987;41(1):103-107.

[74] *Id.*

See also Severson, note 71, *supra,* at p. 282.

[75] Benowitz NL. Pharmacology of Smokeless Tobacco Use: Nicotine Addiction and Nicotine-Related Health Consequences. In: *Smokeless Tobacco or Health,* Smoking and Tobacco Control Monograph 2. U.S. Department of Health and Human Services.1993. Page 224.

[76] U.S. Department of Health and Human Services. *Spit Tobacco and Youth.* Washington DC. U.S. Department of Health and Human Services, Office of the Inspector General. 1992. Page 7.

[77] *See* Severson, note 71, *supra,* at pp. 281-282.

[78] *See:*
Glover ED. Conducting smokeless tobacco cessation clinics. *Am. J. Pub. Health.* 1986;76(2):207.

Hatsukami D, Nelson R, Jensen J. Smokeless tobacco: Current status and future directions. *Brit. J. of Addiction.* 1991;86:559-563.

[79] *See:*
Glover ED, Glover PN. Smokeless tobacco cessation and nicotine reduction therapy. In: *Smokeless*

smokeless tobacco users report an unsuccessful attempt to quit, despite the fact that 92% of those surveyed believed that there are health risks associated with smokeless tobacco use.[80]

Studies suggest that tolerance to nicotine develops with prolonged smokeless tobacco use. One study noted that a higher percentage of older users of smokeless tobacco used brands with a higher nicotine content compared with younger users.[81] A World Health Organization study group reported on another study that showed a positive relationship between the number of years of smokeless tobacco use, the number of minutes per day of reported use, and urinary nicotine and cotinine[82] levels. These relationships are consistent with the development of tolerance and physical dependence.[83]

Biglan and coworkers demonstrated that nicotine reinforces smokeless tobacco use. In one study that describes the drug-reinforcing behavior of the product, smokeless tobacco users were found to titrate the level of nicotine in their bodies by adjusting use to maintain a specified level of nicotine. In another study in which men used both snuff and cigarettes, the subjects smoked more cigarettes when smokeless tobacco use was restricted, and consumed

Tobacco or Health, An International Perspective. Smoking and Tobacco Control, Monograph 2. U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. NIH Publication No. 93-3461. 1993. Pages 291-295.

Glover, note 78, *supra,* at p. 207.

[80] *See* Ary, note 71, *supra.*

[81] Browson RC, DiLorenzo TM, Van Tuinen M, Finger WW. Patterns of cigarette and smokeless tobacco use among children and adolescents. *Preventive Medicine.* 1990;19:170-180.

[82] Cotinine is a major metabolite of nicotine and an indicator of nicotine absorption.

[83] World Health Organization. 1988. *WHO Technical Report Series No 773. Smokeless Tobacco Control: Report of a WHO Study Group.* World Health Organization. Geneva, Switzerland. Page 36.

more smokeless tobacco when cigarette use was restricted.[84]

Smokeless tobacco users who are addicted experience withdrawal symptoms similar to those reported by smokers.[85] One study found that among daily smokeless tobacco users ages 10 to 22 who had previously tried to quit, 93.3% experienced at least one symptom of nicotine withdrawal.[86] It has been concluded that "dependence on smokeless tobacco may be no less tenacious than dependence on cigarettes."[87] (See Appendix 1 for a more complete discussion of the definition of addiction and rates of dependence.)

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[84] *See* Benowitz, note 66, *supra,* at pp. 223-224.

[85] *See:*
Hatsukami, note 73, *supra,* at pp.103-107.

Severson, note 71, *supra,* at p. 282.

[86] U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention. Reasons for tobacco use and symptoms of nicotine withdrawal among adolescents and young adult tobacco users--United States, 1993. *MMWR.* 1994;43(41):745-750.

[87] Jarvis MJ. Dependence on smokeless tobacco. In: *Smokeless Tobacco or Health, An International Perspective.* Smoking and Tobacco Control, Monograph 2. U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health. NIH Publication No. 93-3461. 1993. Page 243.

3. Laboratory Studies Establish That Nicotine Produces Pharmacological Effects Similar to Those of Other Addictive Substances

Evidence gathered in the last two decades demonstrates, in both laboratory animals and humans, that nicotine is a psychoactive drug that produces pharmacological effects similar to those of other addictive substances. Many of the advances in the understanding of the psychopharmacological and addictive aspects of nicotine have come from recent laboratory studies using both animals and human volunteers.

Animal studies have the advantage of being able to assess the pharmacological actions of a potentially addictive substance, independent of such factors as the taste of the substance, the personality of the user, or social factors such as peer pressure. Studies using human volunteers have the advantage of allowing the subject to directly inform the researcher of the subjective effects of the drug being studied.

Two kinds of studies are used to determine whether a substance may be an addictive drug: "drug discrimination" studies and "self-administration" studies. There is a strong correlation between the results of these studies in animals and humans. Substances that animals identify as similar to known psychoactive drugs in drug discrimination studies and substances that animals self-administer in self-administration studies are highly likely to be addictive in humans. With very few exceptions, substances that are addictive in humans are self-administered by animals.[88]

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[88] Gardner EL. Brain Reward Mechanism. In: *Substance Abuse, A Comprehensive Textbook.* 2nd ed. Baltimore, MD: Williams and Wilkins; 1992:70.

a. Animal studies

An impressive number of animal studies have demonstrated that nicotine has pharmacological properties common to many other addictive drugs. These studies establish that nicotine, like other addictive drugs, has psychoactive properties that exert control over behavior.

(i) Drug Discrimination Studies

Drug discrimination studies are used to evaluate the subjective effects (discriminative stimulus properties) of a drug and to make direct comparisons of these effects to known dependence-producing drugs.[89] The ability of a substance to produce discriminative stimulus effects is one characteristic of an addictive substance. In drug discrimination studies, animals identify nicotine as having a highly specific discriminative stimulus profile and some similarity with the discriminative stimulus effects of cocaine and amphetamine.[90] (See

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[89] Balster RL. Drug abuse potential evaluation in animals. *Br J Addiction*. 1991; 86:1549-1588.

[90] *See:*
Takada K, Swedberg MDG, Goldberg SR, Katz JL. Discriminative stimulus effects of intravenous l-nicotine and nicotine analogs or metabolites in squirrel monkeys. *Psychopharmacology*. 1989;99:208-212.

Pratt JA, Stolerman IP, Garcha HS, Giardini V, Feyerabend C. Discriminative stimulus properties of nicotine: Further evidence for mediation at a cholinergic receptor. *Psychopharmacology*. 1983;81:54-60.

Goldberg SR, Risner ME, Stolerman IP, Reavill C, Garcha HS. Nicotine and some related compounds: effects on schedule-controlled behaviour and discriminative properties in rats. *Psychopharmacology*. 1989;97:295-302.

Chance WT, Murfin D, Krynock GM, Rosecrans JA. A description of nicotine stimulus and tests of its generalization to amphetamine. *Psychopharmacology*. 1977;55:19-26.

Stolerman IP, Garcha HS, Pratt JA, Kumar R. Role of training dose in discrimination of nicotine and related compounds by rats. *Psychopharmacology*. 1984;84:413-419.

Appendix 1 for a summary of the studies documenting nicotine's discriminative stimulus effects and the site of these actions.)

(ii) Self-Administration

The self-administration model is widely used to assess a drug's ability to induce and maintain drug-seeking behavior in animals.[91] Self-administration studies determine whether animals will press a lever to give themselves repeated doses of the test substance. The ability of a substance to cause self-administration in animals demonstrates that the substance is a positive reinforcer; i.e., that it induces continued, compulsive use.[92] As noted above, having a positive reinforcing effect in animals is one of the key pieces of predictive evidence that a substance will produce addiction in humans.

Like many addictive drugs, such as cocaine, opiates, and hypnotics, nicotine has now been demonstrated through self-administration studies to be an effective positive reinforcer in animals.[93] This property of nicotine was not consistently demonstrated until the 1980s, when

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Stolerman IP. Discriminative stimulus effects of nicotine in rats trained under different schedules of reinforcement. *Psychopharmacology*. 1989;97:131-138.

[91] *See:*
Schuster CR, Thompson T. Self-administration of behavioral dependence on drugs. *Annual Rev of Pharm*. 1969;9:483-502.

Griffiths RR, Bigelow GE, Henningfield JE. Similarities in animal and human drug-taking behavior. *Advances in Substance Abuse*. 1980;1:1-90.

[92] *See:*
Schuster, note 91, *supra*, at pp. 483-502.

Griffiths, note 91, *supra*, at pp. 1-90.

[93] *See:*
Cox BM, Goldstein A, Nelson WT. Nicotine self-administration in rats. *British Journal of*

it was discovered that the reinforcing efficacy of nicotine is highly dependent on the schedule by which the drug is made available to the animals and the specific amount administered.[94] Intermittent availability of nicotine, which parallels the pattern of cigarette smoking, will induce self-administration in animals, while continuous administration (which was used in the earlier studies) is far less likely to do so. (See Appendix 1 for a summary of the studies establishing that nicotine is a positive reinforcer in animal self-administration studies.)

b. Studies in Human Volunteers

In addition to the extensive population-based epidemiological studies described above, a growing body of evidence gathered from laboratory and clinical settings using human volunteers, is providing further evidence of the addictive effects of nicotine.

Pharmacology. 1984;83:49-55.

Goldberg, note 35, *supra,* at pp. 573-575.

Slifer BL; Balster RL. Intravenous self-administration of nicotine: with and without schedule-induction. *Pharmacol. Biochem. Behav.* 1985;22:61-69.

Corrigall WA, Franklin KBJ, Coen KM, Clarke PBS. The mesolimbic dopaminergic system is implicated in the reinforcing effects of nicotine. *Psychopharmacology*. 1992;107:285-289.

[94] *See*:
Goldberg, note 35, *supra,* at pp. 573-575.

Henningfield, note 35, *supra,* at pp. 989-992.

(i) Evaluation of Subjective Effects

In one study, smokers with histories of abuse of other drugs identified intravenous or inhaled nicotine as being a euphoriant similar to cocaine or amphetamine.[95] Using a common measure of the subjective effects of addictive drugs (the Addiction Research Center Inventory), nicotine produced a dose-related increase in the "euphoria" scale (also known as the morphine-benzedrine group scale).[96] This study shows that nicotine produces subjective effects that are similar to those of other addictive drugs. (See Appendix 1 for a summary of the studies on the subjective effects of nicotine.)

(ii) Self-Administration Studies

Human self-administration of nicotine has been demonstrated under controlled laboratory conditions. Smokers were provided the opportunity to give themselves injections of nicotine in test sessions where they were not allowed to smoke.[97] The subjects self-administered nicotine in a regular, orderly pattern, giving themselves roughly the same amount of nicotine as they were accustomed to getting from their cigarette smoking.[98] (See Appendix 1 for a summary of the studies establishing that nicotine is a positive reinforcer in

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[95] *See:*
Surgeon General's Report. 1988. *Nicotine Addiction.* Pages 177-178.

Henningfield et al, note 21, *supra.*

[96] *Id.*

[97] Henningfield JE, Miyasato K, Jasinski DR. Cigarette smokers self-administer intravenous nicotine. *Pharm Biochem Behav.* 1983;19:887-890.

[98] *Id.*

human self-administration studies.)

c. Studies on Tolerance and Withdrawal

"Tolerance" is produced by a substance when the effects of the substance, at a given dose, become less intense over time, or when an increasing dose over time is necessary to cause an effect or response of a specified intensity. It is well documented that nicotine produces tolerance in users. For example, novice smokers usually experience nicotine-related effects such as dizziness, nausea, vomiting, and headaches.[99] These effects are not produced in experienced smokers because they rapidly develop a tolerance to nicotine. Eventually, smokers increase the amount that they will smoke, always ensuring that the level of nicotine intake will fall below the level at which they would suffer undesirable physical effects and above the level at which they would begin to experience withdrawal symptoms.[100] Tolerance to nicotine is not complete, because even the heaviest smokers can experience symptoms, such as nausea and vomiting, when they suddenly increase their smoking rates.[101] Additionally, the amount of nicotine needed to maintain an addiction may plateau. (See Appendix 1 for a summary of studies demonstrating tolerance to nicotine.)

Clinical studies on nicotine withdrawal have demonstrated that physiological effects

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[99] Surgeon General's Report. 1994. *Preventing Tobacco Use Among Young People*. Page 138.

[100] Rose JE, Behm FM, Levin ED. The role of nicotine dose and sensory cues in the regulation of smoke intake. *Pharm Biochem and Behav.* 1993;44:891-900.

[101] *See:*
Danaher BG. Research on rapid smoking: Interim summary and recommendations. *Addictive Behaviors.* 1977;2:151-166.

Surgeon General's Report. 1988. *Nicotine Addiction*. Page 50.

occur as a result of tobacco deprivation. These effects include decreased heart rate, decreased arousal evidenced by diminished alertness, central nervous system changes, decreases in blood pressure, and disruptions in sleep patterns.[102] Studies have also demonstrated that tobacco withdrawal can cause an increase in weight. This weight increase may be attributed to increased caloric intake, decreased metabolism, and decreased energy expenditure following nicotine withdrawal.[103]

After several weeks of nicotine exposure, users who are deprived of nicotine for more than a few hours develop withdrawal symptoms. The most common self-reported withdrawal symptoms in nicotine-deprived smokers and smokeless tobacco users are increased irritability, anxiety, difficulty concentrating, restlessness, impatience, and insomnia.[104] Withdrawal symptoms after quitting tobacco use can persist for months.[105] Although nicotine withdrawal is not as severe as withdrawal from heroin or alcohol, it is comparable to withdrawal from other stimulants such as cocaine, and can be highly disruptive to personal

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[102] *See:*
West RJ, Jarvis MJ, Russell MAH, Caruthers ME, Feyerabend C. Effect of nicotine replacement on the cigarette withdrawal syndrome. *British Journal of Addiction.* 1984;79(2):215-219.

Hughes JR, Hatsukami D. Signs and symptoms of tobacco withdrawal. *Arch Gen Psychiatry.* 1986;43:289-294.

[103] *See:*
Wack JT, Rodin J. Smoking and its effect on body weight and the systems of caloric regulation. *The American Journal of Clinical Nutrition.* 1982;35(2):366-380.

Glauser SC, Glauser EM, Reidenberg MM, Reisy BF, Tallarida RJ. Metabolic changes associated with the cessation of cigarette smoking. *Archives of Environmental Health.* 1970;20:377-381.

[104] *See* Hughes, note 102, *supra,* at pp. 289-294.

[105] Ryan FJ. Cold Turkey in Greenfield, Iowa: A Follow-up Study. In: Dunn WL, ed. *Smoking Behavior: Motives and Incentives.* Washington, DC: VH Winston & Sons; 1973:231-234.

life.[106]

[106] Benowitz NL. Cigarette smoking and nicotine addiction. *Medical Clinics of N. America.* 1992;76(2):415-437.

4. Nicotine's Sensory Effects Are Secondary to its Psychoactive Effects

Nicotine is an irritant to the throat and upper respiratory system.[107] Its effects in the throat contribute to the harshness of tobacco smoke reported by smokers.[108] Many beginning smokers report that the taste of cigarettes is unpleasant.[109] Despite these facts, those who continue to smoke report that they enjoy the taste of commercial tobacco products.[110] In some studies, low-nicotine or nicotine-free products that replicate the taste, flavor, or throat and chest sensations of cigarette smoking can, in the very short term, reduce certain nicotine withdrawal symptoms, including craving for cigarettes.[111] Significantly, however, many of the positively perceived aspects of the harsh taste and flavor of commercial tobacco products are due to "secondary reinforcement." This is a phenomenon by which smokers associate the irritant effects of nicotine in the mouth and throat with desired psychoactive effects that occur immediately thereafter.[112] These irritant effects are then judged favorably, because they are

[107] *See* Rose, note 100, *supra.*

[108] Rose JE, Sampson A, Levin ED, Henningfield JE. Mecamylamine Increases Nicotine Preference and Attenuates Nicotine Discrimination. *Pharm Biochem and Behav.* 1989;32:933-938.

[109] Surgeon General's Report. 1994. *Preventing Tobacco Use Among Young People.* Page 138.

[110] *Id.*

[111] *See:*
Rose JE, Behm F. Refined cigarette smoke as a method for reducing nicotine intake. *Pharmacology Biochemistry and Behavior.* 1987;28:305-310.

Levin ED, Rose JE, Behm F. Development of a citric acid aerosol as a smoking cessation aid. *Drug and Alcohol Dependence.* 1990;25:273-279.

Rose JE, Behm FM. Inhalation of vapor from black pepper extract reduces smoking withdrawal symptoms. *Drug and Alcohol Dependence.* 1994;34:225-229.

[112] *See:*
Rose, note 100, *supra.*

associated with the delivery of the psychoactive properties of nicotine. The conditioning process is similar to that which occurs for other dependence-producing drugs in which effects that are disliked upon initial exposure come to be associated with desired psychoactive effects.[113] Experienced smokers can use the irritant effects of nicotine to assess how much nicotine they are delivering to themselves while they are smoking.[114]

Data indicate that long-term smoking is continued not because of the taste characteristics of tobacco but because of other factors, specifically the pharmacological effects of nicotine.[115] Evidence gathered from nicotine replacement products supports this position. As noted, two nicotine dosage forms are on the market for treatment of nicotine withdrawal as an aid to smoking cessation (nicotine polacrilex gum and nicotine transdermal patches). FDA is reviewing a New Drug Application (NDA) for a third dosage form, an aqueous nicotine nasal spray. The nicotine nasal spray was the subject of an August 1994 FDA Drug Abuse Advisory Committee meeting because of its possible addiction liability. Among subjects who used the spray for a year during one of the trials, several reported that they felt dependent on the spray, displayed withdrawal symptoms upon stopping the spray,

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Levin ED, Behm F, Rose JE. The use of flavor in cigarette substitutes. *Drug and Alcohol Dependence*. 1990;26:115-160.

Rose JE, Tashkin DP, Ertle A, Zinser MC, Lafer R. Sensory blockade of smoking satisfaction. *Pharmacology Biochemistry and Behavior*. 1985;23:289-293.

[113] Surgeon General's Report. 1988. Nicotine Addiction. Pages 264-265, 309.

[114] *See* Rose, note 100, *supra*.

[115] *See:*
Rose, Tashkin, et al, note 112, *supra*.

Rose, note 100, *supra*.

and sometimes used the spray in larger quantities and more frequently than was required by the study protocol -- all despite the fact that use of the spray was unpleasant and caused nasal ulcers and other medical problems for some participants.[116]

The ability of nicotine nasal spray to produce some of the classic characteristics of addiction to nicotine supports the position that tobacco users seek nicotine primarily for its systemic pharmacological effects, and not for its acute sensory effects. The spray vehicle and dispensing system of the nicotine nasal spray are rudimentary; it is merely nicotine in water forced through an aspirator to make a nasal mist. In contrast to cigarette smoke, aqueous nicotine spray does not provide the user any pleasing sensory characteristics. In fact, the spray can be irritating and unpleasant to use, can impart a very unpleasant taste if it runs down the nose and into the throat, and excessive use can cause ulcerations of the nasal mucosa. Notwithstanding the unpleasantness of the nicotine delivery mechanism, and the presence of painful ulcerations that were further aggravated by continued use of the spray, the spray was used to maintain nicotine dependence for many of the participants in its clinical trials.[117]

The dependence upon nicotine nasal spray illustrates a physical need for nicotine's pharmacological effects, not merely in the absence of any pleasurable sensory effects that may be associated with nicotine in cigarette smoke, but even in the face of rather unpleasant

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[116] E. Douglas Kramer, M.D. Testimony before the Drug Abuse Advisory Committee. August 1, 1994. Drug Abuse Advisory Committee Meeting Transcript. Pages 58-63. Nicotine nasal spray is unique among nicotine replacement therapies in that it produces peak blood levels of nicotine almost as quickly as inhalation of cigarette smoke.

[117] FDA Drug Abuse Advisory Committee Background Information. August 1, 1994. Joint Abuse Liability Review of Nicotine Nasal Spray.

and even painful sensations. This provides strong evidence that nicotine is sought by tobacco users who are dependent upon it for reasons other than its pleasurable, acute sensory effects in the mouth, nose, and throat.

5. Other Factors Associated with Tobacco Use Are Secondary

There are other factors that play a role in the decisions to begin and continue the use of tobacco.[118] For example, social and psychological factors play a role in the initiation of smoking and, to a lesser extent, the maintenance of tobacco use.[119] In particular, parents, peers, and older siblings greatly influence the likelihood that a young person will smoke cigarettes.[120] There is also evidence that adolescents begin to smoke because it promotes sociability, plays a part in establishing friendships, and because it makes them feel mature.[121] Tobacco advertising also plays a role in the decision to start using tobacco.[122] It is recognized

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[118] Tate JC, Pomerleau CS, Pomerleau OF. Pharmacological and non-pharmacological smoking motives: a replication and extension. *Addiction*. 1994;89:322.

[119] *See:*
Surgeon General's Report. 1994. *Preventing Tobacco Use Among Young People.* Pages 124-140.

Stepney R. Smoking behaviour: A psychology of the cigarette habit. *Br J Dis Chest.* 1980;74:325-344.

[120] *See:*
Bewley BR, Bland JM, Harris R. Factors associated with the starting of cigarette smoking by primary school children. *Brit J Prev Soc Med.* 1974;28:37-44.

Murray M, Cracknell A. Adolescents' views on smoking. *J Psychosom Res.*1980;24:248-249.

Banks MH, Bewley BR, Bland JM, Dean JR, Pollard V. Long-term study of smoking by secondary schoolchildren. *Arch Disease in Childhood.* 1978;53:14-16.

[121] *See:*
Bewley, note 120, *supra.*

Bewley BR, Bland JM. Academic performance and social factors related to cigarette smoking by schoolchildren. *Brit J Prev Soc Med.* 1977;31:18-24.

Surgeon General's Report. 1994. *Preventing Tobacco Use Among Young People.* Page 124.

[122] *See:*
Surgeon General's Report. 1994. *Preventing Tobacco Use Among Young People.* Pages 191-192.

Cocores JA. Smokeless Tobacco. In: Cocores JA, ed. *The Clinical Management of Nicotine Dependence.* New York, NY: Springer-Verlag; 1991:49.

that many of the mannerisms and processes associated with smoking may, in the perception of the smoker, become pleasurably linked with tobacco use. These mannerisms or processes may deliver some element of pleasure to the smoker, independent of the inhalation of tobacco smoke.[123]

It is widely accepted, however, by medical and public health groups that the maintenance of tobacco use is due primarily to the addictive properties of nicotine and not solely to these social and psychological factors.

[123] Christen AG, Glover ED. Psychological satisfactions derived from smoking cigarettes in fifty-seven dental patients. *J Drug Educ.* 1983;13(1):95-102.

C. MARKETED TOBACCO PRODUCTS DELIVER PHARMACOLOGICALLY ACTIVE DOSES OF NICOTINE

Scientific studies demonstrate that tobacco products currently marketed in the United States contain and deliver sufficient levels of nicotine to produce pharmacological effects on the central nervous system.[124]

1. Amount of Nicotine Necessary to Produce a Physiological Response in the Central Nervous System

In a recent study, the minimal dose of nicotine that was calculated to produce pharmacological effects on the central nervous system in humans was 0.18 mg.[125] In another study, based on nicotine nasal sprays, the minimal pharmacological dose was reported to be 0.2 mg for the average adult.[126]

Changes in the electroencephalogram (EEG) of smokers, indicative of central nervous system effects of nicotine, have been seen with plasma nicotine increases of 10 ng/ml, an amount easily obtainable from one cigarette.[127] Other studies have shown that EEG effects emerge after the first puff of cigarette and become pronounced and statistically significant by

[124] *See:*
Armitage AK, Dollery CT, George CF, Houseman TH, Lewis PJ, Turner DH. Absorption and metabolism of nicotine from cigarettes. *British Medical Journal.* 1975;4:313-316.

Stepney, note 119, *supra.*

[125] Yanagita T, Kiyoshi A, Wakasa Y, Shimada A. Behavioral and biochemical analysis of the dependence properties of nicotine. *Advances in Pharmacological Sciences.* (1995) (in press).

[126] KA Perkins. Statement in support of presentation by Jack Henningfield, Ph.D., to FDA Drug Abuse Advisory Committee Meeting. August 2, 1994.

[127] Kadoya C, Domino EF, Matsuoka S. Relationship of electroencephalographic and cardiovascular changes to plasma nicotine levels in tobacco smokers. *Clin Pharmacol Ther.* 1994;55:370-377.

the fourth puff.[128]

Even a single U.S. cigarette delivers enough nicotine to cause EEG changes indicative of pharmacological effects on the central nervous system.[129]

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[128] *See:*
Knott V. Neuroelectric correlates of smoking behavior. In: Adlkofer F, Thurau, eds. *Effects of Nicotine on Biological Systems Advances in Pharmacological Sciences.* Boston, MA: Birkhauser; 1991:491-500.

Knott V. Dynamic EEG changes during cigarette smoking. *Neuropsychobiology.* 1988;19:54-60.

Knott V. Effects of low-yield cigarettes on electroencephalographic dynamics. *Neuropsychobiology.* 1989;21:216-222.

[129] *See:*
Pickworth WB, Heishman SJ, Henningfield JE. Relationships between EEG and performance during nicotine withdrawal and administration. In: Domino EF, ed. *Brain Imaging of Nicotine and Tobacco Smoking.* Ann Arbor, MI: NPP Books; 1995:1-11.

Pritchard WS, Gilbert DG, Duke DW. Flexible effects of qualified cigarette-smoke delivery on EEG dimensional complexity. *Psychopharmacology.* 1993;113:95-102.

Robinson JH, Pritchard WS, Davis RA. Psychopharmacological effects of smoking a cigarette with typical 'tar' and carbon monoxide yields but minimal nicotine. *Psychopharmacology.* 1992;108:466-472.

2. Nicotine Delivery From Currently Marketed Tobacco Products

a. Laboratory Studies

Currently marketed cigarettes contain, on average, 8 to 9 mg of nicotine in the tobacco rod.[130] FDA laboratory analysis demonstrates that currently marketed smokeless tobacco products contain between 8.8 and 26.4 mg of nicotine, per 2-gram sample of a typical "pinch."[131]

Currently marketed cigarettes typically deliver about 1 mg of nicotine to the bloodstream of smokers, with individual intake ranging from 0.3 to 3.2 mg of nicotine per cigarette.[132] Even members of the tobacco industry appear to agree that current cigarettes provide a pharmacologically active dose of nicotine. A senior industry researcher summarizing the views of industry scientists at a 1972 conference said that "[t]he physiological response to nicotine can be readily elicited by cigarettes delivering in the range of 1 mg of nicotine."[133]

Several studies reveal that with regular use throughout the day, the levels of nicotine

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[130] *See* Benowitz NL, Henningfield JE. Establishing a nicotine threshold for addiction. *N Engl J Med.* 1994;331:123-125.

[131] U.S. Food and Drug Administration, Center for Drug Evaluation and Research, Drug Analysis Laboratory. *Study of Smokeless Tobacco Products: pH and Free Base Nicotine.* November 4, 1994, memorandum from Henry Drew, Chief, Drug Monitoring Branch, to Elizabeth Berbakos, Office of the Commissioner, FDA, and Frederick L. Fricke, FDA.

[132] Benowitz, note 130, *supra.*

[133] Dunn WL. Motives and incentives in cigarette smoking. Summary of CTR-sponsored conference in St. Martin. 1972. Philip Morris Research Center, Richmond, VA. (Summary of January 1972 St. Martin Conference referred to in preface of Dunn WL, ed. *Smoking Behavior: Motives and Incentives.* Washington, DC: VH Winston & Sons; 1973).

in the blood of smokeless tobacco users are similar to those observed in cigarette smokers.[134] In one study, the nicotine blood levels during ad libitum use of oral snuff (avg. 15.6 gm/day) or chewing tobacco (avg. 72.9 gm/day) were similar to those observed with cigarette smokers (avg. 36.4 cigarettes/day). In addition, the total daily levels of cotinine produced by various marketed tobacco products were similar, averaging 48.5, 48.25, and 46.17 μmol/L/hr for oral snuff, chewing tobacco, and cigarette tobacco, respectively.[135]

It has been shown that a single U.S. cigarette boosts plasma nicotine to as much as 23 ng/ml.[136] It also has been shown that a single "pinch" of smokeless tobacco produces peak plasma nicotine concentrations as high as 33 ng/ml and 21 ng/ml for oral snuff and chewing tobacco, respectively.[137]

b. The Federal Trade Commission Method

Another method to gauge nicotine delivery from cigarettes is based on levels published by the Federal Trade Commission (FTC). According to the FTC machine tests, the

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[134] *See:*
Benowitz NL, Porchet HP, Sheiner L, Jacob P. Nicotine absorption and cardiovascular effects with smokeless tobacco use: comparison with cigarettes and nicotine gum. *Clin Pharmacol Ther.* 1988;44:23-28.

Holm H, Jarvis MJ, Russell MAH, Feyerabend C. Nicotine intake and dependence in Swedish snuff takers. *Psychopharmacology.* 1992;108:507-511.

[135] Benowitz NL, Jacob P, Yu L. Daily use of smokeless tobacco: systemic effects. *Ann Int Med.* 1989;111:112-116.

[136] *See* Benowitz, note 134, *supra.*

[137] *Id.* at p. 25.

See also Gritz ER, Baer-Weiss V, Benowitz NL, Van Vunakis H, Jarvik ME. Plasma nicotine and cotinine concentrations in habitual smokeless tobacco users. *Clin Pharmacol Ther.* 1981;30(2):201-209.

mean nicotine yield for cigarettes on a sales-weighted basis in 1991 was 0.94 mg of nicotine. Individual yields ranged from 0.1 to 1.9 mg, with 95% of all cigarettes sold falling in the narrower range of 0.32 to 1.56 mg of nicotine.[138] FTC yields for individual brands do not predict actual nicotine intake. Each cigarette rod contains significantly more nicotine than the amount "inhaled" by the smoking machine. Consequently, smokers may absorb more nicotine than the FTC machine, depending on the number and intensity of the puffs they take and whether their lips or fingers block the ventilation holes that can dilute the smoke from "low tar" and "ultra low tar" cigarettes.[139] Whether the tar and nicotine levels measured by the FTC test provide appropriate and useful information to smokers was the subject of a December 5-6, 1994, conference held by the National Cancer Institute at the request of the FTC and the then chairman of the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce. The conferees concluded, among other things, that "actual human smoking behavior is characterized by wide variations in smoking patterns which result in wide variations in tar and nicotine exposure. Smokers who switch to lower tar and nicotine cigarettes frequently change their smoking behavior which may negate potential health benefits."[140]

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[138] U.S. Federal Trade Commission. *Tar, Nicotine, and Nicotine/Tar Ratios by Year* (Weighted by Sales). U.S. Department of Commerce. 1994.

[139] Mueller M. Overview of the 1980-1994 Research Findings Relating to the Standard FTC Test Method For Cigarette Smoking (and studies cited therein). Prepared by ROW Sciences, Inc. for the National Cancer Institute Conference on the FTC Test Method for Determining Tar, Nicotine, and Carbon Monoxide Levels in Cigarettes, December 5-6, 1994. Smoking and Tobacco Control Program, National Cancer Institute. Bethesda, MD.

[140] Ad Hoc Committee of the President's Cancer Panel. Statement from the Ad Hoc Committee of the President's Cancer Panel to Consider the FTC Test Method for Determining Tar, Nicotine, and Carbon Monoxide Levels in Cigarettes. December 6, 1994.

It has been shown, for example, that smokers who switch to cigarettes with lower nicotine yields "compensate" by smoking the lower-nicotine cigarette more intensely and that the published FTC nicotine yield is not a good predictor of the amount of nicotine absorbed by smokers.[141] One study demonstrated that the actual intake of nicotine by smokers falls within a much narrower range than the published yields would suggest, and that the nicotine yield figures at the "low-yield" end of the spectrum significantly underestimate true rates of nicotine absorption.[142] This study found that while FTC nicotine yields in tested cigarettes ranged from 0.1 to 1.6 mg, actual nicotine intake by smokers ranged from 0.75 to 1.25 mg/cigarette. The study further confirms that U.S. cigarettes actually deliver in the range of 1.0 mg per cigarette.

To summarize, multiple studies show that marketed cigarettes and smokeless tobacco products deliver, on average, about 1 mg of nicotine.[143] Additionally, studies show that the

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[141] *See:*
Benowitz NL, Hall SM, Herning RI, Jacob P III, Jones RT, Osman AL. Smokers of low-yield cigarettes do not consume less nicotine. *N Engl J Med.* 1983;309(3):139-142.

Kozlowski LT, Frecker RC, Khouw V, Pope MA. The misuse of "less-hazardous" cigarettes and its detection: hole-blocking of ventilated filters. *Amer J Public Health.* 1980;70(11):1202-1203.

Herning RI, Jones RT, Benowitz NL, Mines AH. How a cigarette is smoked determines blood nicotine levels. *Clin Pharm Ther.* 1983;33:84-90.

Herning RI, Jones RT, Bachman J, Mines AH. Puff volume increases when low-nicotine cigarettes are smoked. *Br Med J.* 1981;283:187-189.

[142] Gori GB, Lynch CJ. Analytical cigarette yields as predictors of smoke bioavailability. *Regulatory Toxicology and Pharmacology.* 1985;5:314-326.

[143] *See:*
Benowitz NL, Jacob P. Daily intake of nicotine during cigarette smoking. *Clin Pharmacol Ther* 1984;35(4):499-504.

Benowitz NL, Jacob P, Yu L. Daily use of smokeless tobacco: systemic effects. *Ann of Int*

amount of nicotine necessary to have pharmacological effects is much lower, in the range 0.2 mg.[144] Thus, currently marketed cigarettes and smokeless tobacco products deliver pharmacologically active doses of nicotine.

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*Med.*1989;111:112-116.

Benowitz, note 134, *supra.*

Gori et al, note 142, *supra.*

[144] *See* Perkins, note 126, *supra.*

D. CONSUMERS USE TOBACCO PRODUCTS FOR DRUG EFFECTS

1. To Satisfy Addiction

Nicotine, at levels present in commercially marketed tobacco products, is addictive to most users. Most people who use tobacco products do so to maintain their addiction.

A number of studies have been conducted to determine the prevalence of tobacco or nicotine dependence among smokers according to accepted definitions of dependence. Major recent studies conclude that at least 75% and as many as 90% of frequent smokers meet the criteria for addiction established by major public health organizations.[145]

In a 1987 paper by Hughes et al.[146] the authors reported on their efforts to determine the prevalence of tobacco dependence using several diagnostic measures. The study participants included 1,006 middle-aged men in the Minneapolis-St. Paul metropolitan area.[147] The mean number of cigarettes smoked per day in this sample was 28, and the mean number of years smoked was 33. Forty-two percent (n=423) of the subjects had made at least three prior attempts at quitting; 61% (n=614) had made at least one unsuccessful attempt to stop

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[145] Hughes JR, Gust SW, Pechacek TF. Prevalence of tobacco dependence and withdrawal. *Am J Psychiatry*. 1987;144(2):205-208. The precise number of tobacco users found to meet the criteria for nicotine dependence varies depending on the population studied and the study methods used. *See* Appendix 1.

[146] *Id.*

[147] Although utilizing a sample of men only may raise questions about the generalizability of these findings, as the authors point out, previous studies have found that age and sex have little or no effect on tobacco dependence and withdrawal. *See:*

Shiffman SM. The tobacco withdrawal syndrome. In: Krasnegor NA, ed. *Cigarette Smoking as a Dependence Process*. NIDA Research Monograph 23. DHEW Publication No. ADM 79-800. Washington, DC: U.S. Government Printing Office. 1979.

Hughes JR, Hatsukami D. Signs and symptoms of tobacco withdrawal. *Arch Gen Psychiatry* 1986;43:289-294.

smoking. The investigators concluded that 90% (n=905) of the smokers fulfilled the DSM-III criteria for tobacco dependence.

Hale et al. surveyed 201 residents of Burlington, VT. Using the DSM-III-R criteria for drug dependence, the researchers concluded that 80% of the current tobacco users were dependent (Male=91%, Female=71%). The most commonly met criteria were unsuccessful attempts to control use despite a persistent desire to quit (93%) and experiencing withdrawal symptoms when stopping or cutting down (74%).[148]

In another study, Cottler compared the various DSM and ICD diagnostic criteria for nicotine dependence among persons who reported smoking or using tobacco daily for 1 month or more during their lives. Sixty-three percent of the sample included patients from substance abuse treatment programs; 37% of the sample was drawn from the general population. Among the 677 nicotine users who fulfilled the smoking or tobacco use requirement, 77% were deemed dependent under the DSM-III diagnostic criteria. Eighty percent met the criteria for dependence according to the DSM-III-R criteria. Under the old ICD-10 criteria, 92% were found to be dependent, compared with 86% under the new ICD-10 criteria.[149]

Woody et al. analyzed the responses of 1,100 subjects who had identified themselves as having used tobacco six or more times during their lives. Subjects were all between 18 and

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[148] Hale KL, Hughes JR, Oliveto AH, et al. Nicotine dependence in a population-based sample: problems of drug dependence, 1992. Proceedings of the 54th Annual Scientific Meeting of the College on Problems of Drug Dependence. NIDA Research Monograph 132. NIH Publication No. 93-3505. Washington, DC. U.S. Government Printing Office. 1993.

[149] Cottler LB. Comparing DSM-III-R and ICD-10 substance use disorders. *Addiction*. 1993;88:689-696.

44 years of age. The researchers found that 87% of those who used tobacco six or more times were dependent under the DSM-III-R criteria.[150] These studies show that a consistently high percentage of smokers are dependent on nicotine, despite the different measuring tools used to evaluate dependence.

As described on p. 90 et seq., studies have also shown that a significant proportion of smokeless tobacco users are addicted.

[150] Woody GE, Cottler LB, Cacciola J. Severity of dependence: data from the DSM-IV field trials. *Addiction*. 1993;88:1573-1579.

2. To Affect Mood and Control Weight

a. Mood

Surveys show that people use tobacco to achieve a relaxing effect, both in stressful situations and to enhance pleasure.[151] For example, one survey found that 65% to 75% of adults believed that smoking reduced nervous irritation.[152] Similarly, a recent survey of young people aged 10 to 22 found that of daily smokers, 72.8% said that smoking relaxed them. Of daily smokeless tobacco users, 53.8% reported that smokeless tobacco relaxed them.[153] Studies also have shown that smokers use cigarettes in an attempt to reduce negative feelings.[154]

The 1988 Surgeon General Report reviewed the epidemiological literature on the effects of smoking on mood and concluded:

> *The conclusion from this literature is that in the general population, persons perceive that smoking has functions that are relevant for mood regulation. Persons report that they smoke more in situations involving negative mood, and they perceive that smoking helps them to feel better in such situations . . . .These data do not necessarily indicate that the various functions characterize different types of smokers; rather, they suggest that most functions are salient to an individual but are operative at different times or in*

[151] Surgeon General's Report. 1988. *Nicotine Addiction.* Pages 394-399.

[152] *See:*
McKennell AC. Smoking motivation factors. *Br J of Soc and Clin Psych*. 1970;49(1):8-22.

Surgeon General's Report. 1988. *Nicotine Addiction*. Page 399.

[153] *See* CDC, note 86, *supra.*

[154] *See:*
Horn D. Some factors in smoking and its cessation. In: Borgatta EF, Evans RR, eds. *Smoking Health and Behavior*. Chicago, IL: Aldine Publishing Co.; 1968:12-21.

Ikard FF, Green DE, Horn D. A scale to differentiate between types of smoking as related to the management of affect. *Int J Addict.* 1969;4(4):649-59.

different situations."[155]

b. Weight Control

Numerous studies show that smokers believe that smoking keeps weight down and that weight control is a significant motivation to continue smoking.[156] In two surveys of young people, between a third and one-half of smokers offered weight control as a reason for smoking.[157] It has also been suggested that weight gain that occurs after smoking cessation causes many smokers to relapse to smoking.[158]

Research indicates that smoking may play a role in regulating weight. The 1988 Surgeon General's Report summarized the available data:

> *In summary, there is substantial evidence of an inverse relationship between cigarette smoking and body weight. Of 71 studies reported since 1970, 62 (87%) collectively indicate that smokers weigh less than nonsmokers and that people who quit smoking gain weight.*[159]
>
> *Animal studies indicate that nicotine administration results in weight loss or decreased weight gains and that cessation of nicotine results in body weight gains greater than those of controls [animals who did not receive nicotine].*

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[155] Surgeon General's Report. 1988. *Nicotine Addiction*. Page 399.

[156] *See:*
Pomerleau CS, Ehrlich E, Tate JC, Marks JL, Flessland KA, Pomerleau OF. The female weight-control smoker: a profile. *J Substance Abuse*. 1993;5:391-400.

Feldman W, Hodgson C, Corber S. Relationship between higher prevalence of smoking and weight concern amongst adolescent girls. *Canadian Journal of Public Health*. 1985;76(3):205-206.

Surgeon General's Report. 1988. *Nicotine Addiction*. Pages 414-432.

[157] Surgeon General's Report. 1988. *Nicotine Addiction*. Page 438.

[158] *Id.* at pp. 414, 438-441.

[159] *Id.* at p. 431.

> *Recent research on nicotine polacrilex gum with humans corroborates the role of nicotine in body weight effects.*[160]

It is clear from the evidence that consumers use tobacco products for several well-defined and well-documented drug effects. Most significantly, consumers use tobacco products to maintain their addiction to nicotine. Consumers also use tobacco for a variety of ancillary drug effects. These include the effects of nicotine on mood and weight control.

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[160] *Id.* at p. 432.

II. STATEMENTS, RESEARCH, AND ACTIONS BY TOBACCO COMPANIES

The evidence presented in this section describes the statements, research activities, and actions of the tobacco industry related to the role of nicotine in cigarettes and smokeless tobacco. Industry statements show that tobacco company officials at the highest levels are aware that nicotine's drug effects are the primary reason people use their products. The tobacco industry's research shows that it has knowledge of the pharmacological role of nicotine in tobacco use, including its ability to affect brain function and behavior and to produce dependence. The industry has also conducted research to determine what constitutes an adequate dose of nicotine. The tobacco industry's actions show that it has manipulated nicotine delivery in marketed products and attempted to develop products to provide a dose of nicotine that satisfies consumers' desire for the pharmacological effects of nicotine.

A. INDUSTRY STATEMENTS ON NICOTINE'S DRUG EFFECTS

Recently disclosed industry documents contain explicit statements, made by high-ranking tobacco company officials over more than three decades, acknowledging nicotine's drug effects and the central role those effects play in tobacco use. These documents also include research reports and conference summaries describing the specific pharmacological and physiological effects of nicotine, including, in some cases, its addictive properties. Covering a period of more than 30 years, these company documents show that tobacco companies have long recognized that nicotine in tobacco is a drug, that nicotine is the primary reason people use cigarettes and smokeless tobacco, and that cigarettes and smokeless tobacco are nicotine delivery systems. Internal statements of company officials and researchers reflect the industry's true knowledge and real intentions. The internal statements contained in these documents confirm that tobacco manufacturers intend nicotine-containing cigarettes and smokeless tobacco to be used as drugs. The extent of these statements was not known to FDA at the time of its earlier determinations about the intended use of tobacco.

1. Statements That Nicotine's Drug Effects Are Essential to Tobacco Use

Tobacco company researchers have, for more than 30 years, studied the effects of nicotine on the body. Industry documents reveal that the manufacturers' research has convinced the industry that nicotine in tobacco produces pharmacological effects in tobacco users and that these effects are the major reason that consumers use tobacco products. These documents reveal further that tobacco company executives and senior officials share these convictions about the central role of nicotine's drug effects in tobacco use.

a. Tobacco Company Researchers' Views

A wide range of industry documents reveals that tobacco company researchers have known for several decades that nicotine in tobacco functions as a drug and that nicotine's drug effects are the central reason that consumers use tobacco.

More than 30 years ago, in 1962-63, BATCO received the results of its Project HIPPO study (HIPPO I and HIPPO II), the aim of which was to "understand some of the activities of nicotine -- those activities that could explain why smokers are so fond of their habit."[161] A second purpose of the Project HIPPO study was to compare the effects of nicotine with those of then-new tranquilizers, "which might supersede tobacco habits in the near future."[162] Thus,

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[161] *See:*
Hersch J, Libert O, Rogg-Effront C. *Final Report on Project HIPPO I.* Battelle Memorial Institute. International Division. Geneva, Switzerland. January 1962. (Hereafter cited as Final Report on Project HIPPO I.)

Haselbach CH, Libert O. *Final Report on Project HIPPO II.* Battelle Memorial Institute. International Division. Geneva, Switzerland. March 1963. Pages 1-3. (Hereafter cited as Final Report on Project HIPPO II.)

[162] *Id.* Final Report on Project HIPPO II. Page 1.

these researchers believed that nicotine-containing tobacco and tranquilizers were used for the same purposes by consumers. The researchers concluded that, despite some similarities, nicotine has different drug effects than tranquilizers:

> *both kinds of drugs [nicotine and tranquilizers] act quite differently, and [] nicotine may be considered (its cardiovascular effects not being contemplated here) as more "beneficial" or less noxious -- than the new tranquilizers from some very important points of view.*
>
> *The so-called "beneficial" effects of nicotine are of two kinds:*
> *1. Enhancing effect on the pituitary adrenal response to stress;*
> *2. Regulation of body weight.*[163] [Emphasis added.]

In the final conclusion of the HIPPO study, the researchers discuss the effect of nicotine in the "stress reaction":

> *The understanding and thorough investigation of this effect seems of the greatest importance: it is by this very effect that nicotine acts as a 'tranquilliser.'*[164]

The Project HIPPO reports were disseminated to officials of Brown and Williamson (B&W).[165] The exchange of information between BATCO and B&W is important because it

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[163] Final Report on Project Hippo II. Page 2. Based on studies of rats, the Project HIPPO I researchers also concluded:
> *We have been in a position to show a definite enhancing effect of nicotine in the normal mechanism of defence [sic] against stress, i.e., in the stimulation of the release of the pituitary corticotropic hormone (ACTH).*
Final Report on Project HIPPO I. Page 2.

[164] Final Report on Project HIPPO I. Page 48.

[165] These reports were also circulated to various other U.S. tobacco companies, and the Tobacco Industry Research Committee, the forerunner to the Council for Tobacco Research (Little, CC. "Report of the Scientific Director," 1963, at p. 5), demonstrating that at least some of the industry's nicotine research was shared. *See, e.g.:*

June 28, 1963, letter from Sir Charles Ellis, Scientific Advisor to the Board of BATCO to A. Yeaman of B&W.

August 5, 1963, letter from A. Yeaman to E.J. Jacob of R.J. Reynolds Tobacco Co.:

demonstrates B&W's awareness of the results of studies such as Project HIPPO,[166] which was just one of a number of studies commissioned by BATCO to study the physiological and pharmacological effects of nicotine. For example, a 1980 report addresses the critical role of nicotine's drug effects:

> *Nicotine is an extremely biologically active compound capable of eliciting a range of pharmacological, biochemical, and physiological responses in vivo . . . In some instances, the pharmacological response of smokers to nicotine is believed to be responsible for an individual's smoking behaviour, providing the motivation for and the degree of satisfaction required by the smoker.*[167]

The BATCO documents include not only some of the research reports themselves, but also summaries or minutes of numerous BATCO research and development (R&D) meetings at which nicotine's drug effects and importance to the industry were discussed. These papers demonstrate both the consistency and the extent of industry's interest in and knowledge of

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I suggest to you and Henry that it is now timely to release these reports to the S.A.B. [Scientific Advisory Board of the Tobacco Institute Research Council].

June 19, 1963, note for Mr. Cutchins of B&W, noting that Sir Charles Ellis had sent Mr. Cutchins reports of research that BATCO had sponsored at Battelle :

> *. . . . showing the beneficial effects of nicotine . . . . BAT decided to make this research available to the T.R.C. [Tobacco Research Council of the U.K.] . . . .Todd, of T.R.C. is to-day sending copies to T.I.R.C. [Tobacco Industry Research Committee of the U.S.] with a request that they consider whether it would help the U.S. industry for these reports to be passed on to the Surgeon General's Committee.*

[166] Appendix 2 contains a detailed description of how the research was shared between B&W and BATCO. The B&W/BATCO documents that recently were made public offer an extraordinary glimpse into the workings of the third largest U.S. tobacco company. Although the five other leading U.S. tobacco companies received requests from FDA on July 11, 1994, for similar documentary evidence, to date the companies have failed to provide the requested information. *See* Appendix 3. Tobacco industry material is cited throughout the Legal Analysis and Findings sections of this document that refers to the workings of the five U.S. tobacco companies. This material constitutes just a representative sample of the internal information still in the possession of those companies.

[167] BATCO Group R & D. Southampton, England. *Method for Nicotine and Cotinine in Blood and Urine.* Report No. RD.1737-C. May 21, 1980. Page 2.

nicotine as the primary pharmacological agent in tobacco. For example, at a 1974 BATCO Group R&D Meeting, it was noted that:

> *Nicotine (which has been assumed to be the main pharmacologically active component in smoke) may act in a bi-phasic manner, either as a stimulant (CNV increase) or depressant (CNV decrease).*[168]

In addition, a 1977 report concerning an International Smoking Behavior Conference includes the following statements about nicotine's effects:

> *Nicotine was the focal point of the conference. In many cases, psychological and physiological changes observed in subjects . . . . were shown to be due to nicotine.*
>
> *Most researchers conclude that the nicotine effect is biphasic and dosage dependent; small doses stimulate and large doses depress.*[169]

Subsequent BATCO research conferences offer equally revealing statements about the drug effects of nicotine. A BATCO Group R&D Smoking Behaviour-Marketing Conference held in 1984 focused almost entirely on the role of nicotine pharmacology in smoking. Summaries of the presentations at that conference include numerous references to the pharmacological effects of nicotine and the importance of these effects in maintaining tobacco use. For example, one presentation included the following observation:

> *Smoking is then seen as a personal tool used by the smoker to refine his behaviour and reactions to the world at large.*
>
> *It is apparent that nicotine largely underpins these contributions through its role as a generator of central physiological arousal effects which express*

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[168] BATCO Group R&D. Southampton, England. *Interaction of Smoke and the Smoker, Part 3: The Effect of Cigarette Smoking on the Contingent Negative Variation.* Report No. RD.1164-R. December 12, 1974. Page 1.

[169] BATCO International Smoking Behavior Conference: Trip Report. Chelwood Vachery, England. November 27-30, 1977. Pages 1-2.

themselves as changes in human performance and psychological well-being.[170] [Emphasis added.]

Reporting on a study testing the hypothesis that extroverts smoke for nicotine and introverts smoke for the motor activity provided by smoking, another presentation concluded:

> *Extraverts [sic] relied principally on nicotine and did not pay attention to the motor aspects of smoking except to gain nicotine and so did not show well developed motor potentials preceding the motor act. However, the effect of nicotine is to enhance the extravert's motivation to act, and this increases motor activity rate after smoking (as was shown in the tapping rate recorded for extraverts after smoking) . . . . For preparatory smokers (extraverts): Smoking functions as a kind of portable, stationary generator inducing the effects of activity on the CNS [central nervous system] without the usual requirement of stressful activity to achieve those effects.*[171]

Finally, another BATCO conference focusing on nicotine was held in 1984. One of the presentations was characterized by a Brown and Williamson official:

> *The presentation was concerned with summarising and outlining the central role of nicotine in the smoking process and our business generally. . . There are two areas of nicotine action that are of primary importance: (i.) to identify to what extent the pharmacological properties or responses to nicotine are influenced by blood and tissue levels of nicotine. (ii) what is the significance and role of nicotine in eliciting the impact response and upper respiratory tract responses . . .* [Emphasis added.][172]

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[170] Ferris RP. *The role of smoking behavior in product development: some observations on the psychological aspects of smoking behaviour.* In: Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session III. July 9-12, 1984. Page 79.

[171] Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session III. July 9-12, 1984. Slides. Pages BW-W2-02772-02775.

[172] Ayres CI. Notes from the GR&DC [Group Research and Development Centre] Nicotine Conference June, 1984. Page 62. The conference was devoted predominantly to nicotine's pharmacological effects. The conference's seven sessions are listed as follows:

Session I - Nicotine Dose Requirement - Background; Session II - Nicotine Dose Estimation; Session III - Sensory and Psychological Effects of Nicotine; Session IV - Effect of Nicotine - Interaction with the Brain (Pharmacology); Session V - Effects of Nicotine - Interaction with Peripheral Tissues (Physiology);Session VI - Product Modification for Maximal Nicotine Effects Session VII - General Session. Pages BW-W2-02639, 12641-46.

See also:

As described in FINDINGS § II.B., infra, comparable research on the pharmacological effects of nicotine has been conducted or sponsored by all the major tobacco companies. For example, researchers at the R.J. Reynolds Tobacco Co. have published studies in which they freely acknowledge the pharmacological effects of nicotine in tobacco and the importance of those effects to smokers:

> *The beneficial effects of smoking on cognitive performance . . . are a function of nicotine absorbed from cigarette smoke upon inhalation.*[173]

BATCO R&D Conference. Hilton Head, SC. September 24-30, 1968. Page 3. The conferees recognized "that the reasons why people smoke are partly pharmacological and partly psychological."

BATCO R&D Conference. Montreal, Canada. October 25, 1967. Page 6. The conferees concluded:

> *While recognizing the importance of psychological factors in smoking and the possibility that some smokers would accept non-nicotine cigarettes, it was felt that nicotine is important for the majority of smokers and that the form of nicotine can be significant.* [Emphasis added.]

BATCO R&D Conference. Kronberg, Germany. June 2-6, 1969. Page 7 of summary:

> *The Conference agreed that all the evidence continues to demonstrate the importance of nicotine to the smoker, and again emphasises the importance of keeping separate TPM and nicotine figures.* [Emphasis added.]

BATCO Group R&D report. Southampton, England. *Preparation and Properties of Nicotine Analogues.* Report No. RD 953-R. November 9, 1972.

BATCO Group R&D Conference on Smoking Behavior. Southampton, England. October 11-12, 1976. Pages BW-W2-02145-02149, BW-W2-02150-02165, BW-W2-02292-02311.

February 9, 1984, letter from C.I. Ayres to E.E. Kohnhorst (both of Brown and Williamson) summarizing the August 30-September 3, 1982, BATCO R&D Conference. Montebello, Canada.

[173] Robinson JH, Pritchard WS, Davis RA (R.J. Reynolds Tobacco Co.). Psychopharmacological effects of smoking a cigarette with typical "tar" and carbon monoxide yields but minimal nicotine. *Psychopharmacology.* 1992;108:471.

See also Pritchard WS, Robinson JH, Guy TD (R.J. Reynolds Tobacco Co.). Enhancement of continuous performance task reaction time by smoking in non-deprived smokers. *Psychopharmacology.* 1992;108:437-442.

Pritchard WS, Gilbert DG, Duke DW (R.J. Reynolds Tobacco Co.). Flexible effects of quantified cigarette smoke delivery on EEG dimensional complexity. *Psychopharmacology.*1993;113:95-102.

An enduring question regarding human cigarette smoking is the basis of the so-called "nicotine paradox." Although the peripheral effects of smoking appear to be stimulatory (e.g., increased heart rate, especially for the initial cigarette of the day [citation omitted]) and many smokers say that smoking increases their mental alertness, other smokers report that smoking helps them to function in the face of environmental stress by having a calming effect on their mood [citation omitted].[174]

We recognize that nicotine plays an important role in smoking behavior for many people.[175] [Emphasis added.]

Philip Morris researchers conducted extensive research on nicotine pharmacology from the late 1960's until at least the mid-1980's. See note 240a, infra. The nature and magnitude of the research, as well as statements made in internal documents, show that the Philip Morris researchers strongly believed that nicotine has potent psychoactive effects and that these effects provide a primary motivation for smoking. For example, in 1969, a Philip Morris researcher proposed a study whose purpose was to show that cigarette smoking is more likely in stressful situations. The researcher stated that such a study would demonstrate "one of the advantages of smoking, its use as an anxiety reducer."[175a] In 1974, Philip Morris researchers began a study designed to test their theory that hyperkinetic children take up

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[174] Pritchard WS (R.J. Reynolds Tobacco Co.). Electroencephalographic effects of cigarette smoking. *Psychopharmacology.* 1991;104:485-490. Page 00033640. (Smokers who inhale lightly appear to use tobacco to achieve "mental activation and performance enhancement" while those who inhale more deeply achieve effects in the portion of their brains that is associated with anxiety reduction after administration of benzodiazepines. *Id.* at p. 00033643. [Benzodiazepines are drugs used as sedatives and to treat anxiety.])

See also Gibert DG, Robinson JH, Chamberlin CL (R.J. Reynolds Tobacco Co.), and Spielberger, CD. Effects of smoking/nicotine on anxiety, heart rate, and lateralization of EEG during a stressful movie. *Psychophysiology.* 1989;26(3):311-319. (High-nicotine cigarettes associated with reductions in anxiety and activation of the right hemisphere of the brain.)

[175] Robinson J, Pritchard W. The role of nicotine in tobacco use. *Psychopharmacology.* 1992;108:405.

[175a] Memorandum to W.L. Dunn from F.J. Ryan. Proposed Research Project: Smoking and Anxiety. December 23, 1969. *In* 141 Cong. Rec. H7648 (daily ed. July 25, 1995).

smoking in adolescence because nicotine may perform the same pharmacological function as prescription medications used to treat hyperkinesis:

It has been found that amphetamines, which are strong stimulants, have the anomalous effect of quieting these children down . . . Many children are therefore regularly administered amphetamines throughout grade school years . . . . We wonder whether such children may not eventually become cigarette smokers in their teenage years as they discover the advantage of self-stimulation via nicotine. We have already collaborated with a local school system in identifying some such children in the third grade.[175b] [Emphasis added.]

In 1976, a Philip Morris researcher wrote a memo explaining why people smoke. In his memo, he reported on a survey in which smokers were asked why they smoked. The researcher concluded that

the circumstances in which smoking occurs may be generalized as follows:
1. As a narcotic, tranquilizer, or sedative. Smokers regularly use cigarettes at times of stress.
2. At the beginning or ending of a basic activity . . . .
3. Automatic smoking behavior. . .[175c] [Emphasis added.]

In a research paper funded by the Council for Tobacco Research, U.S.A. (CTR),[176]

[175b] Dunn WL. 1600/Smoker Psychology/May 1-31, 1974 [Monthly Report]. June 10, 1974.
See also:
Memorandum from W.L. Dunn to P.A. Eichorn. Quarterly Report- February-March, 1972. April 4, 1972. This memo reports on a study conducted by Philip Morris comparing the "arousal response" produced by nicotine, caffeine, and placebo. The researchers reported that the "arousal response was clearly present with nicotine" and that the caffeine response was nearer to placebo. *In* 141 Cong. Rec. H7651 (daily ed. July 25, 1995).

[175c] Memorandum from A. Udow, Philip Morris, New York, NY, to Mr. J.J. Morgan. Why People Start to Smoke. June 2, 1976. *In* 141 Cong. Rec. H7664 (daily ed. July 25, 1995).

[176] In January, 1954, 14 presidents of tobacco manufacturers, growers, and warehousemen organized the forerunner organization to CTR, known as the Tobacco Industry Research Committee (TIRC), to sponsor a research program into questions of tobacco use and health. (By-laws of the Tobacco Industry Research Committee, subscribed and adopted on January 1, 1954.) TIRC was founded in response to growing concern by tobacco executives over the appearance of published articles claiming an established relationship between cigarette smoking and lung cancer.

reporting on the "beneficial" pharmacological effects of nicotine in cigarettes, the authors said:

> *Nicotine is recognized as the primary psychoactive compound in cigarette smoke.*[177]

Many other industry documents refer to the central role of nicotine's drug effects for smokers and, therefore, for the industry.[178] Nicotine is repeatedly identified as a primary

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The driving force behind the creation of TIRC was Paul M. Hahn, President of the American Tobacco Company. Other original signers of the TIRC by-laws were Timothy V. Hartnett, President of Brown and Williamson Tobacco Corp., Herbert A. Kent, Chairman of P. Lorillard & Co., O. Parker McComas, President of Philip Morris & Co., E.A. Darr, President of R. J. Reynolds Tobacco Co., J.W. Peterson, President of U.S. Tobacco Co., and Joseph F. Cullman, President of Benson & Hedges. (Minutes of the Meeting of the Presidents of the Leading Tobacco Companies at the Hotel Plaza, December 15, 1953. Page 1.)

By 1963, grants had been made to 140 scientists from $6,250,000 appropriated by TIRC from its member companies. In January, 1964, TIRC changed its name to the Council for Tobacco Research (CTR), its current name. The current members of CTR include Philip Morris, R.J. Reynolds, Brown and Williamson, American Tobacco, Lorillard Corp., and U.S. Tobacco. By 1993, CTR had funded more than $223 million in research. Annual Reports issued by CTR reveal that the organization has provided extensive funding to research on nicotine pharmacology. *See* note 195, *infra.*

[177] Levin ED, Briggs SJ, Christopher NC, Rose JE. Persistence of chronic nicotine-induced cognitive facilitation. *Behavioral and Neural Biology*. 1992;58:152-158.

[178] For example, the American Tobacco Company (ATC) published a document entitled *A Summary of Biological Research on Tobacco Supported in Whole or in Part by the American Tobacco Company* (April 1962). In a chapter entitled "Role of Nicotine in the Cigarette Habit," ATC referred to a 1945 study and stated that "[t]he authors concluded that with some individuals, nicotine becomes a major factor in their cigarette habit." Page 66. (*See* Finnegan JK, Larson PS, Haag B. The role of nicotine in the cigarette habit. *Science*. 1945;102:94.)

See also:

Willey LC, Kellett ND (for Imperial Tobacco Group Ltd.). *Effects of Nicotine on the Central Nervous System*. Huntingdon Research Centre. 1971. Page 9:

> *We aim, by using various different schedules of behavioural training, and by comparing the effects of many different drugs on these schedules, to be able to classify the effect of nicotine, when given intermittently in smoking doses, as similar to a known class of drug acting on the central nervous system. Alternatively, it may, perhaps, act like one type of drug in some tests and at some doses and like another type in other tests.*

U.S. Patent No. 4,340,072. Bolt AJ, Chard B. *Smokable Device*. Imperial Group Ltd. 1982. C1:

> *Among the reasons why most people smoke conventional cigarettes is that they wish to inhale an aerosol containing nicotine.*

reason consumers smoke or use other nicotine-containing products. A "Proposal for Low Delivery Project for B&W" prepared by a marketing firm hired by B&W in the late 1970's contained the following statement that a sufficient dose of nicotine is essential to sell cigarettes and, implicitly, to maintain market share based on nicotine addiction:

> *Current market trends clearly indicate a major trend toward low-tar brands although current "ultra" low "tar" brands, have had limited success because of their failure to deliver satisfaction/maintain an adequate nicotine level. An ancillary concern relative to nicotine delivery is that if a satisfying, low-nicotine cigarette were to be developed, it could represent an effective means of withdrawal . . . with severe implications for long-term market growth.* [Emphasis added.][179]

Finally, a 1976 BATCO Conference on Smoking Behavior underscores tobacco industry researchers' awareness of the fundamental importance (to the huge majority of smokers) of nicotine's effects on the brain:

> *Some insight into the likely benefits of smoking follows from a consideration of the properties of nicotine, which is considered to be the reinforcing factor in the smoking habit for at least 80% of smokers . . .* [Emphasis added.][180]

Note from S.J. Green (BATCO R&D) to Dr. G. Hook (BATCO R&D). June 11, 1974.

[179] Lisher & Company Inc. memo. Proposal for Low Delivery Project for B&W. On the copy of this proposal, lines 3 - 7, beginning with "maintain an adequate nicotine level," are crossed out. The unedited quote makes clear that the term "satisfaction" is a euphemism used by the industry to refer to satisfaction of the desire for nicotine.

[180] BATCO Group R&D Conference on Smoking Behavior. Group Research and Development Centre. Southampton, England. October 11-12, 1976. *"Benefits" of Smoking.* (Pages BW-W2-02152 and 02153). The summary of a presentation at this conference also notes that all types of tobacco usage – smoking, chewing and snuffing – allow nicotine to go directly into the blood and to the brain. The speaker observed that nicotine is not ingested, a route that converts nicotine to a pharmacologically inactive metabolite, cotinine, before it can affect the brain. The summary then notes:

> *It would therefore be surprising if nicotine, which is known to be pharmacologically active in the brain (unlike cotinine), and which is obtained in the ways most likely to enable it to reach the brain unchanged, were not involved in the reasons why people smoke.*

Id., Session II: Current Views on the Role of Nicotine in Smoking Behaviour. Page BW-W2-02145.

b. Tobacco company executives' and senior officials' views

Internal and published documents demonstrate that tobacco company executives and senior officials have also long understood that nicotine is a drug and that nicotine's pharmacological effects are essential to consumer satisfaction.

In 1988, during the case Cipollone v. Liggett, Joseph Cullman III, former CEO of the Philip Morris Tobacco Company, testified as follows:

Q: Let me ask you the question, then, Mr. Cullman. Is nicotine a drug?

A: Well it's so described in every book on pharmacology.

Q: So then you agree that it's a drug?

A: I have no reason to disagree with books on pharmacology.[181]

In 1981, the Tobacco Advisory Council, representing the United Kingdom tobacco manufacturers[182] (including BATCO), published a monograph on nicotine pharmacology and toxicology that expressly treats nicotine as a drug delivered by tobacco.[183] The monograph states that "nicotine is regarded as the most pharmacologically-active compound in tobacco smoke" and states that nicotine's main effects, "at doses absorbed by inhalers (i.e. 1 mg approx per cigarette)" are:

> *central stimulation and/or depression (which vary with the individual), transient hyperpnoea, peripheral vasoconstriction (usually associated with a rise in systolic pressure), suppression of appetite, stimulation of peristalsis and, at larger nicotine intakes, nausea of central origin, associated with*

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[181] *Transcript of proceedings in Cipollone v. Liggett Group, Inc.*, at p. 3290 (D.N.J. Feb. 23, 1988). (Civil Action No. 83-2864 (SA)).

[182] 1981 document of the Tobacco Advisory Council (corrections sheet).

[183] Cohen AJ, Roe FJC. *Monograph on the pharmacology and toxicology of nicotine.* Tobacco Advisory Council. Occasional paper 4. 1981. Page 1.

> *vomiting.*[184]

More than three decades ago, in 1961, a presentation by Dr. Helmut Wakeham, a senior Philip Morris research scientist, to the company's Research and Development Committee noted that:

> *Low nicotine doses stimulate, but high doses depress functions . . . It is also recognised that smoking produces pleasurable reactions or tranquility, and that this is due at least in part to nicotine . . . .*[185]

Dr. Wakeham also noted that "nicotine is believed essential to cigarette acceptability,"[186] a view later restated by William Dunn, Jr., another high-ranking Philip Morris official. In summarizing a 1972 conference sponsored by the Council for Tobacco Research, Dr. Dunn reported:

> *Most of the conferees would agree with this proposition: The primary incentive to cigarette smoking is the immediate salutary effect of inhaled smoke upon body function.* [Emphasis added.][187]

After describing "the physiological effect" as "the primary incentive" for smoking, Dr. Dunn continued:

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[184] *Id.* at p.17.

[185] Wakeham H. *Tobacco and Health – R&D Approach.* In: 3.10 Tobacco Products Liability Reporter (TPLR) 8.129. *See also* Wakeham H. Presentation to R & D Committee at meeting held in New York Office on November 15, 1961.

Later, when Wakeham was a Vice President at Philip Morris, his introduction to a tobacco industry symposium included the following acknowledgment that nicotine produces psychoactive effects: "Tobacco and other psychoactive plants have probably been part and parcel of our cultural baggage for thousands of years..." Wakeham H. *Tobacco Smoke: Its Formation and Composition.* 31st Tobacco Chemists Research Conference. October 5-7, 1977. Greensboro, NC. In: *Recent Advances in Tobacco Science.* 1977;3:iii.

[186] *Id.*, TPLR 8.129.

[187] Dunn, note 133, *supra,* at p. 3.

The majority of the conferees would go even further and accept the proposition that nicotine is the active constituent of cigarette smoke. Without nicotine, the argument goes, there would be no smoking. Some strong evidence can be marshalled to support this argument:

1) No one has ever become a cigarette smoker by smoking cigarettes without nicotine.

2) Most of the physiological responses to inhaled smoke have been shown to be nicotine-related.

3) Despite many low nicotine brand entries in the market place, none of them have captured a substantial segment of the market . . . [Emphasis added.][188]

In 1969, Dr. Wakeham, then Vice President for Research and Development, briefed the Philip Morris Board of Directors on why people smoke. A draft of his remarks, which contains the notation "delivered with only minor changes," includes several unequivocal statements that cigarettes are smoked for the pharmacological effects of nicotine:

[T]he psychosocial motive is not enough to explain continued smoking. Some other motive force takes over to make smoking rewarding in its own right. Long after adolescent preoccupation with self-image has subsided, the cigarette will even preempt food in times of scarcity on the smoker's priority list . . . . We are of the conviction . . . that the ultimate explanation for the perpetuated cigarette habit resides in the pharmacological effect of smoke upon the body of the smoker, the effect being most rewarding to the individual under stress.[188a]

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[188] *Id.* at p. 4.

[188a] Ryan/Dunn Alternate -Third version of Board presentation. Fall, 1969. *In* 141 Cong. Rec. H7648 (daily ed. July 25, 1995).
See also:
Memorandum to P.A. Eichorn from W.L. Dunn. Five-year Objectives and Plans for Project 1600. September 25, 1970. *In* 141 Cong. Rec. H7650, *supra.* This document details Philip Morris' plans to study the "short-term psychological and psychophysiological" effects of smoking "as manifested through changes in autonomic, perceptual, cognitive and central nervous system processes and motor performance." The author goes so far toward presuming the essential role of nicotine as to propose that research be undertaken to answer the question: "Can the smoking habit be sustained in the absence of nicotine?"

Dunn WL. 1600/Smoker Psychology/January 1- January 31, 1973 [Monthly Report]. February 9, 1973. *In* 141 Cong. Rec. H7650, *supra.* This report shows that several studies were underway at Philip Morris

A 1974 annual report on the Behavioral Research program at Philip Morris approved by Thomas Osdene (later Vice President for science and technology) and distributed to Dr. Wakeham, also reflects the view that cigarettes are drugs consumed for pharmacological effects. The report states that a person regulates smoke intake "to achieve his habitual quota of the pharmacological action [of the components of smoke]." [188b]

In the following year, the annual report on the "Behavioral Research" program explicitly acknowledged that nicotine is a stimulant drug. Describing a theory concerning the effect of an individual's CNS arousal level on performance efficiency, the report says that while one way to increase the CNS arousal level is to seek out stimulating situations, another way is to:

consume socially approved chemicals which would have a similar effect on the

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to determine the effects of nicotine on the central nervous system and on performance, including studies on the effects of smoking on: electrical activity in the brain, the "arousal mechanisms of the central nervous system," and "spare mental capacity."

Philip Morris Research Center. Behavioral Research Annual Report (Part II). November 1, 1974. *In* 141 Cong. Rec. H7658, *supra.* The report lists the following "working hypotheses" of Philip Morris researchers:

1A. Cigarette smoke improves efficiency in the performance of complex psychological tasks.
1B. Cigarette smoking attenuates, modulates or otherwise influences emotional arousal such as to be gratifying or rewarding to the smoker, thus reinforcing the smoking act.
. . . .
IIA. Dose-control continues even after the puff of smoke is drawn into the mouth.

Dunn WL, Ryan FJ, Martin P. Behavioral Research Annual Report. July 18, 1975. *In* 141 Cong. Rec. H7658, *supra.* This report describes a study being undertaken by Philip Morris, entitled "Nicotine as a Modulator of CNS Arousal." The study was to be conducted because the researchers believed that previous studies had provided evidence that nicotine reduces emotional responsiveness:

[Previous] observations imply the influence of nicotine upon some control mechanism governing affective responsivity, the net effect upon overt behavior being to reduce the intensity of the emotionally-toned response, or raise the threshold for the elicitation of that response.

[188b] Philip Morris Research Center. Behavioral Research Annual Report, Part II. Approved by T.S. Osdene. November 1, 1974. *In* 121 Cong. Rec. H7660 (daily ed. July 25, 1995).

body--such as the stimulant drugs caffeine and nicotine.[188c]

Two years later, William Dunn provided a detailed description of the pharmacological effects produced by nicotine that cause smokers to continue smoking:

> *[T]he doses of nicotine inhaled produce definite, mild, and transient neuropsychopharmacological effects which are positively reinforcing and thus promote repetition of smoking. These effects include: (a) modulation of conditioned behavior; (b) mixed depression and facilitation of the neural substrates of reward; (c) transient (in minutes) EEG and behavioral arousal crudely reminiscent of d-amphetamine but pharmacologically quite different; and at the same time (d) skeletal muscle relaxation.*[188d]

Finally, a memorandum from a Philip Morris official in 1980 confirms the company's view that nicotine's pharmacological effects on the central nervous system are critical to the tobacco industry's success:

> *Nicotine is a powerful pharmacological agent with multiple sites of action and*

[188c] Dunn WL, Ryan FJ, Martin P. Behavioral Research Annual Report. July 18, 1975. *In* 141 Cong. Rec. H7655 (daily ed. July 25, 1995). The same report states that the authors have proposed an international industry conference on "the regulatory influence of nicotine upon behavior."

[188d] Memorandum to T.S. Osdene from W.L. Dunn. Rationale for Investigating the Effects of Smoking upon Electroencephalographic Phenomena. December 22, 1976. [Citing Domino EF, in Dunn (ed.). Smoking Behavior: Motives and Incentives. 1973.] *In* 141 Cong. Rec. H7665 (daily ed. July 25, 1995).
See also:
Philip Morris. Research and Development Five Year Plan-1979-1983. September 1978. *In* 141 Cong. Rec. H7668 (daily ed. July 25, 1995):

> *Nicotine may be the physiologically active component of smoke having the greatest consequence to the consumer.*

Memorandum to T.S. Osdene from W.L. Dunn. Plans and Objectives-1980. January 7, 1980. *In* 141 Cong. Rec. H7671 (daily ed. July 25, 1995). The author reports:

> *Cigarette smoking results in EEG changes associated with arousal, while smoke deprivation results in . . . [brain] waves associated with drowsiness . . . . [S]moke appears to have opposite effects on visual and auditory evoked potentials . . . [N]icotine, rather than being a general stimulant, may be exerting a selective influence on brain structures.* [Emphasis added.]

The same document describes a new research program underway at Philip Morris intended to study, among other things, "how . . . cigarette smoking can have psychosocial consequences through its . . . central-nervous-system-mediated effects upon the coping abilities of the smoking social participant." [Emphasis added.] *Id.*

> *may be the most important component of cigarette smoke. Nicotine and an understanding of its properties are important to the continued well being of our cigarette business since this alkaloid has been cited often as 'the reason for smoking' and theories have been advanced for 'nicotine titration' by the smoker. Nicotine is known to have effects on the central and peripheral nervous system as well as influencing memory, learning, pain perception, response to stress and level of arousal.* [Emphasis added.][189]

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[189] Philip Morris Interoffice Correspondence from J.L. Charles to Dr. R.B. Seligman. Nicotine Receptor Program-University of Rochester. March 18, 1980. Other Philip Morris documents contain similar statements. *See, e.g.:*
Wakeham H. *Smoker Psychology Research. Presented to the PM Board of Directors, November 26, 1969.* Page 11:

> *We are of the conviction, in view of the foregoing, that the ultimate explanation for the perpetuated cigaret habit resides in the pharmacological effect of smoke upon the body of the smoker, the effect being most rewarding to the individual under stress.*

Ryan, FJ. Philip Morris Research Center Special Report. *Exit-Brand Cigarettes: A Study of Ex-smokers.* March 1978. Page 2.

> *We think that most smokers can be considered nicotine seekers, for the pharmacological effect of nicotine is one of the rewards that comes from smoking. When the smoker quits, he foregoes his accustomed nicotine. The change is very noticeable, he misses the reward and so he returns to smoking.*

Philip Morris employee (almost certainly W.L. Dunn). *Smoker Psychology Program Review.* Date not specified. Page 5. This paper states the theory that the reinforcing effects of smoking are

> *likely to be found among the chemical compounds being introduced into the bloodstream . . . Without the chemical compound, the cigarette market would collapse, P.M. would collapse, and we'd all lose our jobs and our consulting fees.*

The same paper later says that the research program at Philip Morris is based on "*a strong conviction about the central role of the pharmacologic effects of inhaled smoke.*" Page 8.

Ryan, FJ, Jones, BW, Martin, PG, Dunn, WL. Behavioral Research Annual Report. July 18, 1975. Pages 18-22, 25.

Memo to H. Wakeham from W.L. Dunn. *Stating the Risk Study Problem.* July 29, 1969. (Tobacco is used by consumers to modulate arousal level, and to avoid withdrawal.)

Memo to W.L. Dunn from T.R. Schori. *Smoking and Caffeine: A Comparison of Physiological Arousal Effects.* May 17, 1972. This memo attaches a report of the same name by Schori and B.W. Jones, which concludes that caffeine and nicotine, which is generally "administered by smoking," both have stimulant effects, but that the effects of caffeine are more like those of placebo than those of smoking. Pages 1, 7 of report.

Memo to T.S. Osdene from W.L. Dunn. Plans and Objectives - 1982. November 5, 1981. Memo says that Philip Morris is conducting research on the effects of nicotine on electrical activity in the brain "*on the premise that events which reinforce the smoking act are central nervous system events.*" Page 4.

BATCO documents also make clear that top company officials recognize nicotine's drug effects and recognize that the company's sales are tied to those effects. In a July 1962 meeting, Sir Charles Ellis, who served as the science advisor to the BATCO board, gave a presentation in which he affirmed the central role of nicotine in tobacco use and enthusiastically endorsed its pharmacological benefits to smokers as similar to those provided by stimulants and tranquilizers:

> *It is my conviction that nicotine is a very remarkable beneficent drug that both helps the body to resist external stress and also can as a result show a pronounced tranquilising effect. You are all aware of the very great increase in the use of artificial controls, stimulants, tranquilisers, sleeping pills, and it is a fact that under modern conditions of life people find that they cannot depend just on their subconscious reactions to meet the various environmental strains with which they are confronted: they must have drugs available which they can take when they feel the need. Nicotine is not only a very fine drug, but the techniques of administration by smoking has considerable psychological advantages and a built-in control against excessive absorption.*[190] [Emphasis added.]

Dr. Sidney J. Green, a BATCO board member as well as the firm's director of research, frequently acknowledged, in internal documents, the central role of nicotine's pharmacological effects in tobacco use. In a 1967 memo on BATCO research needs, Dr. Green pointed out that:

> *There has been significant progress in understanding why people smoke and opinion is hardening in medical circles that the pharmacological effects of nicotine play an important part and that these effects on balance may be beneficial.* [Emphasis added.][191]

In a paper on future research policy entitled "B.A.T. Group Research" (1968), Dr. Green wrote

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Dunn, WL. *Smoking as a Possible Inhibitor of Arousal.* Submitted to Philip Morris Manuscript Review Board on August 16, 1976.

[190] BATCO Research Conference. Southampton, England. Presentation by Sir Charles Ellis entitled *The Smoking and Health Problem*.1962. Pages 15-16.

[191] Green SJ. March 2, 1967, memorandum to D.S.F. Hobson entitled *Smoking and Health: Some Recent Findings*. Appendix I, page 1. In the same document at Appendix II, page 1, Dr. Green also wrote that "[t]here is now no doubt that nicotine plays a large part in the action of smoking for many smokers."

that there were four motives for smoking, at least three of which depend on the pharmacological and addictive effects of nicotine:

> *There appear to be four recognisable types of smoking behaviour:*
> *1. Habitual*
> *2. Addictive*
> *3. Enhancing desirable emotions and feelings such as enjoyment or excitement.*
> *4. Decreasing undesirable emotions and feelings such as anger, fear and shame.*[192]

In another paper a few years later, Dr. Green wrote more forcefully:

> *The tobacco smoking habit is reinforced or dependent upon the psycho-pharmacological effects mainly of nicotine.*[193]

Attorneys for some of the major U.S. tobacco manufacturers have asserted that the "benefits" of smoking include a range of significant pharmacological effects. For example, attorneys for R.J. Reynolds Tobacco Company described the following pharmacological benefits of smoking in a court filing:

> *[S]atisfaction; stress reduction; relaxation; stimulation; aided concentration; increased memory retention; alleviation of boredom and fatigue; avoidance of loss of vigilance in repetitive and sustained tasks. . .*[194]

CTR has also supported research on the psychopharmacology of nicotine and has concluded that nicotine's drug effects play an important role in why people use tobacco. CTR's annual report for 1966-67 described reports of smokers that they liked or needed to smoke

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[192] Green SJ. Lecture notes of Chelwood talk. BATCO Group Research Conference. Chelwood Vachery, England. September 4, 1968. Pages 1, 2.

[193] Green SJ. *The Association of Smoking and Disease*. July 26, 1972. Page 1.

[194] Reply to Interrogatories, *Gilboy v. American Tobacco Co. et al.*, No. 314002 (La. 19th Jud. Dist. Ct.). Attorneys for Lorillard Tobacco Company similarly characterized the pharmacological effects of smoking in a Reply to Interrogatories filed in *Covert v. Lorillard et al*, No. 88-1018-B (M.D. La):
> *Some of the benefits that are commonly reported by various smokers are. . .relaxation; relief of anxiety and stress; reduction of boredom; increased alertness; improvement in concentration. . .*

because smoking gave them a "pickup" or relaxed them.[195] The report went on to say

[195] Report of the Scientific Director, 1966-67. Council for Tobacco Research. 1967. Page 12. CTR's annual reports disclose that the organization has funded research on nicotine's effects on the central nervous system continuously since the 1960's. *See, e.g.:*

Report of the Scientific Director, 1964-65. Council for Tobacco Research-U.S.A. Page 22:
Systematic study of the mode of action of nicotine at various synapses has been continued. Meanwhile increasing emphasis has been placed upon the psychopharmacology of nicotine . . . . Specific actions on the central nervous system have been described and the effects of these upon behavior are being sought.

Report of the Scientific Director, 1968-1969. Council for Tobacco Research-U.S.A. Page 14:
Some of the bases for human use of tobacco . . . might also be found in the realm of psycho-pharmacology, that is, in the effects of smoking and/or nicotine on the central nervous system . . . . The effects of nicotine on the brain are not always the same. Depending on the state of the nervous system and on the dosage, an "arousal" or "wake-up" effect may occur which is reflected both in brain waves and in behavior . . . . In larger doses or in a different state of the nervous system, a peculiar steady state of longer duration is produced . . . [which] has been described as a "tranquilizer effect."

Report of the Scientific Director, 1969-1970. Council for Tobacco Research-U.S.A. Page 13.
Most of the pharmacological studies currently being supported by The Council are concerned with the effects of nicotine and/or smoking on the central nervous system (the brain) with the object of learning more about why people like, want, or need to smoke.

Annual Report of The Council for Tobacco Research - U.S.A., Inc. 1971. Pages 16-17, 59 *passim.*

Report of The Council for Tobacco Research - U.S.A., Inc. 1972. Page 11.
The Council is currently supporting five studies in the field of psychopharmacology that are directed toward further elucidating the paradoxical arousal and tranquilizing effects of nicotine and its facilitation of the learning process in animals. . . . Because human smokers ordinarily receive nicotine chronically . . . a new emphasis has developed concerning habituation effects on the psychopharmacological responses to nicotine.

Report of The Council For Tobacco Research-U.S.A., Inc. 1973. Pages 13-14, 52 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1974. Page 43 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1975. Page 47 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1977. Page 45 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1978. Page 49 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1979. Page 39 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1981. Page 65 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1982. Page 60 *passim.*

that the study of nicotine in the "new field" of psychopharmacology was providing scientific substantiation for smokers' subjective views that tobacco could both "arouse the lethargic and calm the agitated."[196]

Thus, industry documents reveal that tobacco company researchers and top officials understand and unequivocally state that nicotine is a drug and that consumers of tobacco products use them for the pharmacological effects of nicotine.

Report of the Council for Tobacco Research-U.S.A., Inc. 1983. Page 80 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1984. Page 83 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1985. Page 89 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1986. Page 68 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1987. Page 85 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1988. Page 88 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1990. Page 101 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1991. Page 90 *passim.*

Report of the Council for Tobacco Research-U.S.A., Inc. 1992. Page 97 *passim.*

[196] *See id.*, Report of the Scientific Director, 1966-67, at p. 13.

2. Statements Recognizing That Nicotine Is Addictive

Tobacco company documents show that company researchers and executives not only have acknowledged that nicotine's pharmacological effects play a central role in consumer satisfaction with tobacco products, but have recognized nicotine's addictive properties. These documents demonstrate that tobacco companies understand that nicotine addiction is one of the major reasons that consumers use their products.

a. Tobacco Company Researchers' Views

In 1963, a report was completed for BATCO that specifically addressed the mechanism of nicotine addiction in smokers. The report, dated May 30, 1963, and titled "A Tentative Hypothesis on Nicotine Addiction,"[197] describes nicotine's effects on the brain, specifically through hypothalamo-pituitary stimulation. The report states that initially, small doses of nicotine are sufficient to trigger this mechanism, which helps people to cope with stress. However, chronic intake of nicotine, such as occurs with regular smokers, creates a situation where:

> *ever-increasing dose levels of nicotine are necessary to maintain the desired action. Unlike other dopings, such as morphine, the demand for increasing dose levels is relatively slow for nicotine.* [Emphasis added.][198]

After noting that when chronic smokers are deprived of nicotine, their endocrine system becomes unbalanced, the report states:

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[197] Haselbach C, Libert O. BATCO R&D. *A Tentative Hypothesis on Nicotine Addiction.* Southampton, England. May 30, 1963. Pages 1-3. A copy of this report was personally sent by Sir Charles Ellis of BATCO to Addison Yeaman, the General Counsel of B&W. *See* letter from Ellis to Yeaman, dated June 28, 1963.

[198] *Id.*, Haselbach et al, at p. 1.

> *A body left in this unbalanced status craves for renewed drug intake in order to restore the physiological equilibrium. This unconscious desire explains the addiction of the individual to nicotine.* [Emphasis added.][199]

The report concludes:

> *In conclusion, a tentative hypothesis for the explanation of nicotine addiction would be that of an unconscious desire to restore the normal physiological equilibrium of the corticotropin releasing system in a body in which the normal functioning of the system has been weakened by chronic intake of nicotine.* [Emphasis added.][200]

In the decades that followed this report, tobacco industry researchers repeatedly recognized nicotine's addictive properties.[201] In an article reporting on a study supported by a grant from the Tobacco Industry Research Committee (TIRC), the researcher stated that smoking is addictive:

> *Addiction to smoking is found to be consistently greater among men in military service than in civilian life, irrespective of peace or war, and greater in veterans than in nonveterans.* [Emphasis added.][202]

Similarly, a report prepared for Liggett & Myers in anticipation of the 1964 Surgeon General's Report implicitly acknowledged that nicotine dependence and withdrawal are the reasons smokers have difficulty quitting:

> *If reliance is to be placed on stopping cigarette smoking by men with warnings of high*

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[199] *Id.* at p. 2.

[200] *Id.* at p. 3.

[201] Recognition of nicotine's addictive properties apparently extended to the smokeless tobacco industry. In a Wall Street Journal article, Larry D. Story, a former U.S. Tobacco Co. (UST) chemist, was quoted as saying, "There used to be a saying at UST that 'There's a hook in every can' . . . [a]nd that hook is nicotine." Freedman AM. Juiced up: how a tobacco giant doctors snuff brands to boost their 'kick'. Wall Street Journal. October 26, 1994:A.

[202] Seltzer CC. Why people smoke. *Atlantic Monthly.* July 1962. Page 42. In a TIRC memo to the Scientific Advisory Board from R.C. Hockett, "Papers by grantees of the Tobacco Industry Research Committee," Carl Seltzer was identified as a recipient of a TIRC grant-in-aid.

mortality, then heavy research is badly needed . . . on means enabling such smokers to stop smoking more easily and effectively. Use of declining doses of injected nicotine or orally administered nicotine analogs during withdrawal were reported as providing some benefit . . . [203]

In Project Wheat,[204] a study of smoking behavior conducted by BATCO, researchers concluded that consumer preferences for different cigarette types could be predicted using only two factors: 1) "Inner Need," a measure of the extent to which a smoker uses cigarettes for drug-type uses (to relieve stress, to aid concentration, as a substitute for food); and 2) concern for health. The researchers felt their conclusion to be:

very much in line with that made by Russell who . . . concluded that it might prove more useful to classify smokers according to their position on a single dimension of pharmacological addiction rather than in terms of their profiles on the six types of smoking.[205]

Nicotine addiction/dependence is also acknowledged in a number of other BATCO studies and other documents.[206]

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[203] L&M Littlefield. January 17, 1963, memo from Harry B. Wissman to C.J. Kensler.

[204] *See:*
BATCO. Project Wheat - Part 1: Cluster profiles of U.K. male smokers and their general smoking habits. Southampton, England. July 10, 1975.

BATCO. Project Wheat - Part 2: U.K. male smokers: their reactions to cigarettes of different nicotine delivery as influenced by inner need. Southampton, England. January 30, 1976. (Project Wheat is described in greater detail in FINDINGS § II.C., *infra.*)

[205] *Id.*, Part 2, at p. 49.

[206] *See:*
Proceedings of the BATCO Smoking Behaviour-Marketing Conference. Session III. July 9-12, 1984. Ferris slides (BW-W2-02737-02759). One chart (BW-W2-02750), entitled *Role of Nicotine: Hypotheses*, states: "If smokers are ADDICTED to nicotine then . . . 1. The nicotine smokers get from cigarettes may be replaced by nicotine from alternative sources. 2. Cigarettes of different strengths should be smoked differently, e.g., smokers given a low/reduced delivery cigarette should smoke it more intensively (and vice versa)." [Emphasis in original.] Subsequent slides show both that nicotine replacement reduced smokers intake of cigarettes, and that cigarette consumption increased as nicotine yields decreased. Pages BW-W2-02751-02759.

In addition, a Philip Morris researcher who studied a group of smokers in a small town that had gone through a cold turkey campaign described at length the withdrawal symptoms of those who had quit smoking. Even after eight months quitters were apt to report symptoms such as feeling depressed, being restless and tense, being ill-tempered, having a loss of energy, being apt to doze off.[207] They were further troubled by constipation and weight gains which averaged about five pounds per quitter.[208] The researcher stated:

This is not the happy picture painted by the Cancer Society's anti-smoking commercial which shows an exuberant couple leaping in the air and kicking their heels with joy because they've kicked the habit. A more appropriate

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Armitage AK. *Appraisal of Report: "The Fate of Nicotine in the Body."* August 28, 1963. Armitage wrote:

The authors themselves admit (p.27) that the present results offer no conclusive evidence for any particular mechanism involved in tolerance to nicotine, nor do they indicate a lead to the phenomenon of addiction. This important problem was, I imagine, the main object of the research.

Final Report on Project HIPPO II, note 161, *supra*, at page 4:

A quantitative investigation of the relations with time of nicotine - and of some possible brain mediators - on adreno-corticotrophic activity could give us the key to the explanation of both phenomena of tolerance and of addiction, in showing the symptoms of withdrawal.

In the Minutes of the BATCO R&D Conference in Montreal (October 24, 1976), the list of "assumptions" includes the statement: "Smoking is an addictive habit attributable to nicotine." (The word "addictive" has been crossed out.) Page 2.

A report of the BATCO Group R&D Conference Part I, February 5-9, 1979, attended by Sanford and Reynolds of Brown and Williamson, under the heading "Behavioral Research," states: "With regard to dependence [the researcher] wants to study the nature and effect of dependence on smoking behavior and break smokers down into dissonant and consonant smokers." Page BW-W2-03526.

A report of the BATCO Group R&D Psychology Research (1984-86) states:

Activity continues in the area of researching the functional significance of smoking in everyday life, current emphasis being placed on the role of personality in relation to nicotine dependance [sic] and personal requirements of the product. Page BW-W2-02004.

[207] Ryan FJ (Philip Morris). *Bird-1, A study of the Quit-Smoking campaign in Greenfield, Iowa, in Conjunction with Movie, Cold Turkey*. 1971. Summary, pages 30-33. *See* FINDINGS § II.C.4, *infra.*

[208] *Id.*

commercial would show a restless, nervous, constipated husband bickering viciously with his bitchy wife who is nagging him about his slothful behavior and growing waistline.[209]

In his report, the Philip Morris researcher also observed that some smokers "need" tobacco, and that this need may be correlated with use of high-nicotine cigarettes.[210] In 1976, the same Philip Morris researcher elaborated on his view that smokers smoke many cigarettes to satisfy their physiological "need" for a specific level of nicotine in the blood:

Although nicotine intake appears a critical mainstay of tobacco consumption, not all people smoke for nicotine on all occasions . . . . All . . . cigarettes contribute to the total nicotine in the system, so that a cigarette smoked out of habit will delay the time until a cigarette is smoked out of need.[210a]

A BATCO report, as well as a report by the American Tobacco Company, also implicitly acknowledge that nicotine produces withdrawal/physical dependence.[211]

Nicotine's capacity to produce "tolerance," often cited as a defining feature of addiction, see p. 81, is also acknowledged in several internal documents. For example, the BATCO-commissioned report "Fate of Nicotine in the Body" acknowledges that nicotine produces tolerance and/or addiction:

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[209] *Id.* at p. 33.

[210] *Id.* at p. 20.

[210a] Ryan FJ. Habit and Need Cigarettes. *In* Dunn WL. 1600/Smoker Psychology/October 1-31, 1977 [Monthly Report]. November 11, 1977. *In* 141 Cong. Rec. H7665 (daily ed. July 25, 1995).

[211] *See:*
BATCO R&D. *Relative Contributions of Nicotine and Carbon Monoxide to Human Physiological Response.* Report No. RD.839-R. November 15, 1971. Page 20:

All the regular smokers in this trial were required not to smoke for at least half an hour before the trials, which may have caused an additional stress factor, shown as a stimulation due to the ending of a period of forced abstinence. . .

The American Tobacco Company, note 178, *supra,* at p. 66.

In addition, the alkaloid [nicotine] appears to be intimately connected with the phenomena of tobacco habituation (tolerance) and/or addiction.

Notes from a BATCO Nicotine Conference[212] include a chart titled "Session IV -- Effects of Nicotine-interaction with the Brain (Pharmacology)." The chart includes the statement "Nicotine and smoke exposure causes adaptation of the nicotine receptor," a change that has been recognized as being associated with tolerance.

Perhaps the most telling admissions that nicotine is addictive come from marketing research studies prepared for tobacco companies. In these documents, the market researchers candidly assert nicotine's addictiveness, in a manner that appears to assume that the tobacco company recipients of the reports will not find the assertion unusual or controversial. For example, in a market research report prepared for Imperial Tobacco Ltd., on attitudes of adolescent smokers, the authors state:

until a certain nicotine dependence has been developed [taste] is somewhat less important than other things . . ."[213]

Another market research firm refers to attitudes of adolescents "[o]nce addiction does take place . . ."[214] and states that "addicted they do indeed become."[215] The same firm, discussing its research on smokers' attempts to quit, reported that:

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[212] *See* Ayres note 172, *supra,* at p. BW-W2-02643.

[213] Spitzer, Mills & Bates. *The Player's Family: A Working Paper.* Report prepared for Imperial Tobacco Ltd. March 25,1977. Page 12.

[214] Kwechansky Marketing Research. *Project Plus/Minus*, in "Study Highlights." Report prepared for Imperial Tobacco Ltd. May 7, 1982.

[215] *Id.* at p. 26. This same documents notes that: "The desire to quit seems to come earlier now than before, even prior to the end of high school. In fact, it often seems to take hold as soon as the recent starter admits to himself that he is hooked on smoking. However, the desire to quit, and actually carrying it out, are two quite different things, as the would-be quitter soon learns." *Id.* in "Study Highlights."

Recidivism has several causes . . . . Another is the belief that after a few weeks off cigarettes, one could begin again to smoke "just a few" . . . . This "just a few" business is actually a surrender to addiction while trying to save face for an interim period, to pretend to oneself and to others that addiction is no longer present, which is nonsense. [216]

A market research report that was widely circulated in Britain included the following editorial comment, contained in a description of smokers' views of the role played by tar and nicotine in smoking-related health problems:

Another idea was that nicotine and tar combined to have a harmful effect upon health (i.e., quite apart from nicotine's addictive function).[217] [Emphasis added.]

Later in the same study, the researchers reported under the heading "Nicotine's addictive function" that:

Most respondents, with a bias towards men, realised that nicotine was the attribute in cigarettes causing addiction. It was also usually seen as the component providing satisfaction.[218] [Emphasis added.]

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[216] *Id.* at p. 36-37. The same document also says, at page ii:
It is likely more difficult to break the ritualistic aspects of smoking than it is to overcome the physical withdrawal.

See also an advertising strategy document prepared for Imperial Tobacco which recommends the following advertisement:
The chosen scene should ideally depict a pause or moment of relaxation before, during or after the activity. This moment should correspond to the physiological need for smoking.
Publicite BCP. *Player's Filter '81 Creative Guidelines.* January 25, 1980. [Emphasis added.]

[217] *Attitudes Towards Smoking and Health.* Page 11. Transmitted by letter dated July 26, 1979, to Dr. H.E. Bentley, Imperial Tobacco Ltd., from A.H. Johnston, Market Research Manager, Carreras Rothmans Ltd.

[218] *Id.* at p. 12.

b. Tobacco Company Executives' and Senior Officials' Views

High-ranking tobacco company officials have also acknowledged that nicotine is addictive and that this is the reason why people use tobacco.[219]

For example, in the aforementioned July 1962 tobacco industry meeting, BATCO board science advisor Sir Charles Ellis stated:

Smoking is a habit of addiction.[220]

In an internal memo, the general counsel to Brown and Williamson makes the same point in clear, simple language:

Moreover, nicotine is addictive . . . . We are, then, in the business of selling nicotine, an addictive drug . . . [Emphasis added.][221]

Dr. Green, the director of research for BATCO, also repeatedly stated his view that some portion of smoking behavior was due to its addictive effects.[222] In a note to Dr. G. Hook, another scientist at BATCO, Dr. Green wrote, "If you consider Russell's study on cigarette dependence and his five types of smoking you can conceive a pattern as follows . . ." The note follows with a hand-drawn triangle symbolizing the reasons for smoking, with the three points of the triangle labeled "sensory rewards," "psychosocial rewards," and "pharmacological rewards." In the corner of the triangle near "pharmacological rewards" are

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[219] One tobacco company, which markets a cigarette brand called "Death Cigarettes," now states on the package that "cigarettes are addictive." FDA was informed on December 23, 1994, by John D. Slade, M.D., that "Death Cigarettes" stands for "Daring Enterprises Against Tobacco Hypocrisy." The company, owned by Charles and Amelie Southwood, has a post office box in Venice, CA, and an office in Marina Del Ray, CA.

[220] Ellis C. *The Smoking and Health Problem.* BATCO Research Conference. Smoking and Health-Policy on Research. Southampton, England. 1962. Page 4.

[221] Yeaman, A. Implications of Battelle Hippo I and II and the Griffith Filter. July 17, 1963. Page 4.

[222] *See* Green, note 191, *supra,* at Appendix I.

the words "addictive smoking."[223]

In a handwritten note about the likely continued success of the tobacco industry, Dr. Green wrote:

> *The main factor ensuring the continuation of the habit is the dependency induced in smokers. . . . Certainly large numbers of people will continue to smoke because they are unable to give it up. If they could they would do so. They can no longer be said to make an adult choice. And many new smokers become dependent.*[224] [Emphasis added.]

In a handwritten paper entitled "Marketing Cigarettes in the 80's," Dr. Green again stated that addiction is a major reason that people smoke. Noting various failures and constraints in the marketing of cigarettes, including a "close down in advertising" and "the U.K. tar premium,"[225] he writes:

> *Nevertheless smokers will continue - addiction . . .*
>
> *Perhaps 50-60% dissonant smokers [smokers who continue despite desire and motivation to quit] . . .*
>
> *Regard cig[arettes] as catering for addicts.*

Finally, in a paper stating that there was adequate evidence that smoking causes disease, written shortly after he retired from BATCO, Dr. Green wrote that, while it may be up to the individual, "if he is able," to decide whether to accept the "considerable risk" from smoking:

> *on behalf of those unable to make judgments such as children and addicted smokers, the social apparatus must be used to exercise value judgments on the*

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[223] Green SJ. Note to Hook G. BATCO R&D. Southampton, England. June 11, 1974. Also in the end of the triangle marked "pharmacological rewards" were "stimulation smoking" and "tranquilisation smoking."

[224] Green SJ. Transcript of handwritten note. Undated. Attached to documents, Green SJ, *Cigarette Smoking and Causality,* and Green SJ, *Smoking, Associated Diseases and Causality.*

[225] The U.K. tar premium is a tax imposed on products on the basis of tar content.

> *acceptability of the risks.*[226] [Emphasis added.]

In 1961, Dr. Wakeham of Philip Morris noted in a presentation to the company's Research and Development Committee that "continued usage [of nicotine] develops tolerance."[227]

William Dunn, a senior scientist at Philip Morris, made numerous statements reflecting the position that nicotine has the properties of an addictive drug. In 1969, Dunn wrote a memorandum to his supervisor, entitled "Objectives and Plans - 1600," describing the research Philip Morris planned to undertake in the coming year. One of the planned research projects were designed to investigate the addictive properties of nicotine, by teaching rats:

> *to seek the inhalation of cigarette smoke . . . . ultimately through the reinforcing effect of the psychopharmacological effects of the inhaled smoke.*[227a]

As described in § I.B.3., supra, the ability of a substance to function as "positive reinforcer" in animals is one of the most significant pieces of evidence that the substance will be addictive in humans. By 1980, Dunn reported that Philip Morris researchers had successfully demonstrated that rats will self-administer nicotine,

> *making it quite clear that nicotine can function as a positive reinforcer for rats.*[227b]

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[226] Green, note 224, *supra,* at p. 92238.

[227] Wakeham, note 185, *supra.*

[227a] Dunn WL and Eichorn PA. Objectives and Plans - 1600. January 8, 1969. *In* 141 Cong. Rec. H7646 (daily ed. July 25, 1995). A second research project planned for 1969 was intended to discover "any product that can potentially replace the cigarette in need-gratification."

[227b] Memorandum to T.S. Osdene from W.L. Dunn. Plans and Objectives - 1981. November 26, 1980. *In* 141 Cong. Rec. H7682 (daily ed. July 25, 1995). Philip Morris undertook a range of animal studies on nicotine that constitute the classic methods for assessing the addictive properties of drugs, including self-administration, tolerance, and discrimination studies:

Other statements are equally revealing. A 1974 annual research report from the Behavioral Research program at Philip Morris, which was approved by Thomas Osdene (later Philip Morris' Vice President for science and technology) and distributed to the Vice President for research and development, states that people continue to smoke because the "pharmacologically active components of smoke" are "reinforcing":

> *A general premise in our model of the cigarette smoker is that the smoking habit is maintained by the reinforcing effect of the pharmacologically active components of smoke. A corollary to this premise is that the smoker will regulate his smoke intake so as to achieve his habitual quota of the pharmacological action.*[227c]

The report goes on to acknowledge that stopping smoking produces a withdrawal syndrome like that of other habit-forming drugs. Commenting on a proposed study to test the hypothesis that smoking decreases aggressivity, the researchers note that any increase in

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> *Nicotine discrimination, self-administration, and tolerance studies will enable us to examine the cueing and reinforcing properties of nicotine and nicotine analogues in rats. These are the state-of-the-art bioassays for central nervous system activity which we believe will serve as useful models of human smoking behavior.* [Emphasis added.]

Memorandum to T.S. Osdene from J.I. Seeman et al. Nicotine Program: Specific Implementation. March 31, 1978. *In* 141 Cong. Rec. H7668, *supra*. In 1980, Philip Morris decided to perform yet another study of "the rewarding properties of nicotine" using a technique developed to study the similar properties of morphine:

> *Mucha and Van der Kooy (1979) have reported that a place preference paradigm may be used to demonstrate the rewarding properties of morphine. We plan to use a similar paradigm to examine the rewarding properties of nicotine.*

Memorandum to T.S. Osdene from W.L. Dunn. Plans and Objectives-1980. January 7, 1980. *In* 141 Cong. Rec. H7671, *supra*.

[227c] Philip Morris Research Center. Behavioral Research Annual Report (Part II). *In* 141 Cong. Rec. H7660 (daily ed. July 25, 1995). Approved by T.S. Osdene and distributed to H. Wakeham et al. November 1, 1974. Philip Morris officials consistently held the view that the reinforcing properties of cigarette smoking have a pharmacological basis, as shown by a document written six years later, in which the following statement appears:

> *It is our belief that the reinforcing properties of cigarette smoking are directly relatable to the effects that smoking has on the electrical and chemical events within the central nervous system.*

Memorandum to T.S. Osdene from W.L. Dunn. Plans and Objectives-1981. November 26, 1980. *In* 141 Cong. Rec. H7681, *supra*.

aggressivity following deprivation

> *may be as readily explained as the emergence of reactions to [cigarette] deprivation, not unlike those to be observed upon withdrawal from any of a number of habituating pharmacological agents.*[227d]

A Philip Morris research report written by Dunn again acknowledged that cigarette deprivation produces a withdrawal syndrome in 1980, and stated that those smokers who suffered withdrawal in the absence of sufficient nicotine showed "nicotine dependence." The report began by stating the Philip Morris had attempted to identify

> *two smoking population subgroups, one of which has greater nicotine needs than the other. We have described these people in the past as compensators and noncompensators, and attempted to define them by their consumption changes when nicotine deliveries were moderately shifted . . . . Now we may have two extra tools to use: PM cigarettes of ultra low tar and nicotine, and salivary nicotine concentrations . : . . We therefore propose a shift study in which smokers are shifted to an ultra low brand, and the key dependent variable becomes the presence or absence of the withdrawal syndrome. Those who show evidence of nicotine dependence and those who do not can then be used to test our hypotheses on the relationship of salivary concentration to smoking behavior.*[227e] [Emphasis added.]

CTR documents also refer to the addictive properties of nicotine. In a section of its annual report for 1966-67 entitled "Nicotine and the Central Nervous System," CTR described research in which monkeys self-administered nicotine.[228]

Much more recently, tobacco companies have attempted to rely on the "common

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[227d] Behavioral Research Annual Report, Part II. Approved by T.S. Osdene. November 1, 1974. *In* 141 Cong. Rec. H7660 (daily ed. July 25, 1995).

[227e] Memorandum to T.S. Osdene from W.L. Dunn. Plans and Objectives-1980. January 7, 1980. *In* 141 Cong. Rec. H7672 (daily ed. July 25, 1995).

[228] *See* Report of the Scientific Director, 1966-67, note 195, *supra*, at pp. 12-13. As discussed earlier, it is well-established that self-administration of a substance by animals, under laboratory conditions, demonstrates that the substance is a "positive reinforcer," one of the hallmark properties of addictive drugs. *See* p. 96.

knowledge" that nicotine is addictive to defend against product liability cases brought by smokers. For example, in Rogers v. R.J. Reynolds et al., attorneys for Philip Morris, R.J. Reynolds, the American Tobacco Co., and the Liggett Group argued that the plaintiff could not claim that her deceased husband was not adequately warned that cigarettes were addictive, because their addictive properties are so well known:

> *There can be no serious suggestion that ordinary consumers do not expect to find nicotine in cigarettes, or that ordinary consumers have not long been well aware that it may be very difficult to stop smoking. [Footnote omitted.] The common knowledge of the alleged habituating or "addicting" properties of cigarettes has resulted in almost casual references to these properties in decisions from around the country throughout this century.*[229]

Finally, F. Ross Johnson, the former chief executive of RJR Nabisco, has openly acknowledged that tobacco is addictive and that its addictive properties are why people smoke. In an interview for an article in the Wall Street Journal, Mr. Johnson was asked about tobacco. He responded:

> *Of course it's addictive. That's why you smoke . . .*[230]

Accordingly, it is clear that high-ranking officials of tobacco companies have long known that nicotine is an addictive drug and, more importantly, that the market for tobacco products in large part depends on the addictive effects of nicotine.

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[229] Rogers v. R.J. Reynolds et al (Sup.Ct. Ind.)(No. 49A02-8904 CV 164)(1990), Appellees Brief in Reply to Appellants' Opposition to Petition for Transfer, at pp. 7-8.

[230] Shapiro E. Big spender finds new place to spend. *The Wall Street Journal.* October 6, 1994.

3. Statements That Tobacco Products Are Nicotine Delivery Systems

Internal and published documents also show that top-ranking tobacco industry officials intend to offer tobacco products to consumers as nicotine delivery systems. In summarizing the 1972 conference sponsored by CTR, William Dunn, Jr., of Philip Morris characterized the cigarette as a nicotine delivery system:

> *Think of the cigarette pack as a storage container for a day's supply of nicotine*
> . . . .
> *Think of the cigarette as a dispenser for a dose unit of nicotine:*
> *1) It is readily prepped for dispensing nicotine.*
> *2) Its rate of combustion meters the dispensing rate, setting an upper safe limit for a substance that can be toxic in large doses.*
> *3) Dispensing is unobtrusive to most ongoing behavior.*
>
> *Think of a puff of smoke as the vehicle of nicotine:*
> *1) A convenient 35 cc mouthful contains approximately the right amount of nicotine.*
> *2) The smoker has wide latitude in further calibration: puff volume, puff interval, depth and duration of inhalation. . . .*
> *3) Highly absorbable: 97% nicotine retention.*
> *4) Rapid transfer: nicotine delivered to blood stream in 1 to 3 minutes . . . .*
>
> *Smoke is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke.*[231]

In a document entitled "RJR confidential research planning memorandum on the nature of the tobacco business and the crucial role of nicotine therein," quoted in the New York Times, RJR executive Claude Teague, Jr. wrote:

> *In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized, and stylized segment of the pharmaceutical industry. Tobacco products uniquely contain and deliver nicotine, a potent drug with a*

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[231] *See* Dunn Summary, note 133, *supra.* (Indeed, when interviewed by FDA officials in May 1994, Dunn stated that he was known as "the Nicotine Kid" at Philip Morris. See handwritten notes summarizing meeting May 10, 1994, between FDA and Dr. W.L. Dunn.)

variety of physiological effects.[231a]

The memo goes on:

> *If nicotine is the sine qua non of tobacco products, and tobacco products are recognized as being attractive dosage forms of nicotine, then it is logical to design our products - and where possible our advertising - around nicotine delivery rather than around tar delivery or flavor.*[231b]

As noted above, Sir Charles Ellis, BATCO's scientific advisor, considered smoking a method of administering nicotine as early as 1962:

> *Nicotine is not only a very fine drug, but the techniques of administration by smoking has [sic] considerable psychological advantages and a built-in control against excessive absorption.*[232]

Dr. S.J. Green, BATCO board member and research director, also viewed the cigarette as a vehicle for delivering nicotine. In a document describing BATCO's research needs, he made the following statement:

> *It may be useful, therefore, to look at the tobacco industry as if for a large part its business is the administration of nicotine (in the clinical sense).*[233]

In a draft of another document entitled "A Blueprint for B.A.T. Scientific Departments," Green repeated this belief:

[231a] Hilts PJ. U.S. Convenes Grand Jury to Look at Tobacco Industry. *New York Times.* July 26, 1995.

[231b] *Id.*

[232] Ellis C. *The Smoking and Health Problem.* BATCO Research Conference. Smoking and Health-Policy on Research. Southampton, England. 1962. Page 16.

[233] Green, note 191, *supra,* at Appendix H.

See also Green, note 192, *supra,* at p. 2:

> *[w]hile other factors cannot be ignored and their influence is not completely understood, it seems a good assumption that nicotine plays a predominant role for many smokers. So that a good part of the tobacco industry is concerned with the administration of nicotine to consumers . . . . [T]hus a large part of our research problem can be identified as the improvement in quality by improving the administration of nicotine . . .*

> *We must assume that the main objective is the administration of nicotine . . .*[234]

In a handwritten chart, attached to a paper entitled "The Association of Smoking and Disease," Green described all forms of tobacco as different methods of nicotine administration.[235]

The 1981 monograph on nicotine pharmacology and toxicology published by the British Tobacco Advisory Council expressly states that nicotine is a drug and that tobacco is simply a vehicle for its administration.[236] After setting forth the purpose of the monograph -- to help medical authorities decide whether smoking-related illness should be handled by eliminating smoking altogether, by progressively reducing smoke deliveries, or by developing a cigarette that delivers "an adequate dose of nicotine without the necessity of inhaling large doses of toxic vehicle" -- the introduction states succinctly:

> *In a nutshell our approach has been to regard nicotine as a "drug" to which man is exposed in various "vehicles" and by various routes.*[237]

A presentation at the 1984 BATCO Smoking Behaviour-Marketing Conference included the following slides:

Relationship Between Smoking Behaviour and Nicotine Intake

> *Is there any commonalty [sic] in the process [of smoking]:*
> *- broad similarities in wholebody nicotine dose of nicotine across smoking groups*
> *- strong indirect evidence of smokers smoking for nicotine*
> *- is this cause and effect or a reflection for something else*

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[234] Undated draft of *A Blueprint for B.A.T. Scientific Departments.* Page 4.

[235] *See* Green, note 193, *supra.* Handwritten chart attached.

[236] Cohen, note 183, *supra,* at p. 1.

[237] *Id.* at p. 1. (Emphasis added.)

What is the Significance of this Observation:

> *-underlying smoking maintenance through nicotine, and as a consequence probably provides the basis of smoking satisfaction - in its simplest sense puffing behaviour is the means of providing nicotine dose in a metered fashion* [Emphasis added.][238]

Finally, in a list of expected changes in cigarettes over the next several years, a BATCO official suggested that cigarettes could become delivery systems for drugs in addition to nicotine:

> *"Increases in the use of drugs other than nicotine. Potential legalisation of the use of marijuana. Possible introduction of caffeine."* [Emphasis added.][239]

Thus, tobacco company executives have both recognized that nicotine's drug effects are central to the use of tobacco and stated their clear understanding that cigarettes are being sold to and used by smokers as nicotine delivery systems. On the basis of this evidence, these products are intended to affect the structure or function of the body.

[238] Proceedings of the BATCO Smoking Behaviour-Marketing Conference. Session I. July 9-12, 1984. Slides.

[239] FH [Initials of BATCO employee]. BATCO R&D. *Technical and Product Developments Envisaged Over the Next Five Years.* January 22, 1974. Page 1.

B. INDUSTRY RESEARCH ON THE DRUG EFFECTS OF NICOTINE

The tobacco industry has conducted and funded extensive research to characterize nicotine's addictive potential and properties. This research includes studies on nicotine's absorption into the bodies of tobacco users, its effects on behavior, and its effects on the brain and endocrine systems.[240] Sections II.B., C., and D. detail the extensive research conducted and funded by the tobacco industry on: 1) nicotine's pharmacological effects, § II.B., infra; 2) how consumers use tobacco products to obtain an adequate dose of nicotine, § II.C., infra; and 3) how to manipulate nicotine delivery from tobacco to provide an adequate dose to consumers, § II.D., infra.[240a]

[240] The long history of tobacco and nicotine use for pharmacological purposes is also well known to the tobacco industry. Larson PS, Silvette H. Medical uses of tobacco (past and present), (funded by a grant from the Tobacco Industry Research Committee and presented at industry-sponsored symposium). In: VonEuler, ed. *Tobacco Alkaloids and Related Compounds.* New York, NY: Pergamon Press; 1965:3-11.

See also Cohen, note 183, *supra,* at p. 1.

[240a] The extent of the industry's research on nicotine pharmacology is very likely to be even greater than that reflected in this section. According to a recent report in the New York Times, Philip Morris conducted internal research on nicotine's pharmacological effects on smokers from the late 1960's to the mid-1980's. The Times reported that Charles Wall, a Philip Morris lawyer, confirmed that company documents showed that Philip Morris carried out extensive research on nicotine over many years. Hilts PJ. "Documents Disclose Philip Morris Studied Nicotine's Effect on Body." *New York Times.* June 8, 1995. Documents later disclosed by Congress provide detailed evidence of Philip Morris' long-term research on nicotine pharmacology, including studies to isolate and characterize nicotine receptors in the central nervous system, the effects of nicotine/smoking on the electrical activity of the brain, the effects of nicotine on human and animal behavior, self-administration of nicotine by rats, nicotine discrimination in rats, nicotine tolerance, and the effects of nicotine administration on human physiologic function, including the relationship between blood nicotine levels and central nervous system activity. 141 Cong. Rec. H7470-76 (daily ed. July 24, 1995); 141 Cong. Rec. H7646-83 (daily ed. July 25, 2995). Philip Morris has not contested the authenticity of these documents. R.J. Reynolds, too, appears to have conducted extensive research on nicotine pharmacology that is not fully reflected here. In response to questions about that company's research on nicotine, a spokeswoman for R.J. Reynolds Tobacco Company stated that "[w]e've not only done research on the pharmacological effects of nicotine but we've published it in at least 250 peer-reviewed journals and symposia. We're extremely proud of the quality and number of the studies." Collins G. "Legal Attack on Tobacco Intensifies." *New York Times.* June 9, 1995.

It is important to understand why the tobacco industry has conducted this research. Tobacco industry documents show that the industry research described in the following sections was undertaken because industry officials strongly suspected, more than 30 years ago, that nicotine's pharmacological effects were vital to the successful marketing of tobacco. For example, internal BATCO documents disclose that the major BATCO-sponsored nicotine studies completed or underway in the early 1960's were undertaken "to elucidate the effects of nicotine as a beneficent alkaloid drug"[241] because of the belief of Sir Charles Ellis, the leading BATCO scientist, that "we are in a nicotine rather than a tobacco industry."[242]

Another nicotine study commissioned by BATCO in the early 1960's similarly reveals that industry research on nicotine's pharmacological effects was undertaken because of the industry's understanding that consumers use tobacco to obtain those effects:

> *There is increasing evidence that nicotine is the key factor in controlling, through the central nervous system, a number of the beneficial effects of tobacco smoke . . . . Detailed knowledge of these effects of nicotine in the body*

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[241] *See* Ellis, note 232, *supra*, at p. 16. On the same page Ellis describes upcoming research "to investigate whether cigarette smoke produces effects on the central nervous system characteristic of tranquilising or stimulating drugs and, if so, to see if such activity is due solely to nicotine."

[242] Johnson RR. *Comments on nicotine.* June 30, 1963. Pages 10-11. This document goes on to reveal that these studies on nicotine's pharmacological effects were part of a broader research initiative that was being conducted by the industry and included altering nicotine delivery:

> *The Southampton group is going to be doing a large amount of work on nicotine, and for some good reasons. To summarize:*
> *Project ARIEL [a cigarette alternative developed by BATCO] - This is dormant for the moment. The first samples tried gave a tremendous kick, even though the nicotine delivery was quite small. It would appear that the project will be reinitiated within a few months.*
> *Dr. S.R. Evelyn is presently investigating the absorption of extractable and non-extractable nicotine in the mouth . . . .*
> *Dr. J.D. Backhurst is setting up an analysis for pH of whole smoke on a puff-by-puff basis. This correlates with his previous interest in extractable nicotine.*
> *Mr. H.G. Horsewell continues to work with alkaline filler additives which selectively increase nicotine delivery.*

> *of a smoker is therefore of vital importance to the tobacco industry.*[243]

An annual report from the Council for Tobacco Research discloses that the research it funded on nicotine's pharmacology was designed to elucidate the effects of nicotine on the smoker's central nervous system:

> *Most of the pharmacological studies currently being supported by The Council are concerned with the effects of nicotine and/or smoking on the central nervous system (the brain) with the object of learning more about why people like, want, or need to smoke.*[244]

The studies of nicotine's pharmacokinetics and pharmacodynamics described in § II.B., infra, were undertaken to assist the industry in marketing products that would satisfy tobacco users' nicotine requirements. This information relating to how nicotine acted in the body was needed by the industry for additional studies specifically designed to establish the dose of nicotine required by consumers, § II.C., infra. As noted in the report of one study whose purpose was to validate a method for assaying nicotine and a metabolite in urine:

> *It can be concluded from the comparative studies that analysis of nicotine and cotinine in urine is likely to be a good indicator of whole body nicotine dose in man. This technique has an immediate and direct relevance for . . . human behavioural studies in the assessment of an individuals' [sic] nicotine dose in response to modification in cigarette design.* [Emphasis added.][245]

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[243] Geissbuhler H, Haselbach C. *The Fate of Nicotine in the Body.* Battelle Memorial Institute. Geneva, Switzerland. May 1963. Page 1. Report prepared by Battelle for BATCO. (Hereafter cited as: BATCO. *The Fate of Nicotine in the Body.*).

[244] Report of the Scientific Director, 1969-1970. Council for Tobacco Research-U.S.A. Page 13.

[245] BATCO Group R&D Centre. *Nicotine Studies: A Second Report. Estimation of Whole Body Nicotine Dose By Urinary Nicotine and Cotinine Measurement.* Report No. RD.1792. March 31, 1981. Page 1.

Industry documents related to other basic research studies on nicotine show a similar nexus with product development. For example, the report from a 1974 Brown and Williamson study of nicotine's brain effects states that:

> *The development of new products and the modification of existing ones requires that we have some knowledge of the smoker toward whom these efforts are directed. The work described in this report is focused on the acute, or immediate physiological response of*

Thus, this research demonstrates the tobacco industry's fundamental interest in the dose of nicotine absorbed into the systemic circulation of the tobacco user (rather than simply the amount of nicotine necessary to deliver sensory effects to the mouth of the user.)

The ultimate purpose of the tobacco industry's studies on nicotine was to better understand the nicotine requirements of tobacco users and to develop products that delivered the desired pharmacological effects of nicotine. Philip Morris officials stated that the rationale for the company's extensive research program on nicotine pharmacology was that the information would

> *strengthen Philip Morris R&D capability in developing new and improved smoking products.*[245a]

Accordingly, the industry-sponsored studies described in the following sections provide further evidence that tobacco manufacturers intend to market their products to deliver the pharmacological effects of nicotine to consumers.[246]

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smokers.
Brotzge RF, Kennedy JE. Brown and Williamson. *Human Smoking Studies: Acute Effect of Cigarette Smoke on Brain Wave Alpha Rhythm - First Report.* October 31, 1974. Report No. 74-20. Page 1.

Similarly, a 1974 BATCO study on nicotine's effects on brain electrical activity was intended to "help elucidate the mode of action of nicotine during smoking" so as to better understand smoker behavior in response to nicotine. BATCO Group Research & Development. Comer AK, Thornton RE. *Interaction of Smoke and the Smoker Part 3: The Effect of Cigarette Smoking on the Contingent Negative Variation.* Report No. RD.1164-R. December 12, 1974. Page 2.

[245a] Memorandum from W.L. Dunn to T.S. Osdene-Plans and Objectives-1979. December 6, 1978. *In* 141 Cong. Rec. H7669 (daily ed. July 25, 1995).

[246] The full citations for the references in notes 247 through 279 can be found in Appendix 4. Entries under the heading "OTHER" include studies sponsored by the Smokeless Tobacco Research Council (whose members include U.S. tobacco companies), Swedish Tobacco Co. (which has corporate relationships with both Pinkerton and U.S. Tobacco Co.), Svenska Tobaks (a subsidiary of Swedish Tobacco Co.), the Tobacco Advisory Council and the Tobacco Research Council of the U.K. (whose members included British-American Tobacco Co.), Imperial Tobacco Co. (which has corporate relationships with British-American Tobacco Co., and manufactures cigarettes that are marketed in the U.S.), Carreras Rothmans Ltd. (whose affiliated companies manufacture cigarettes that are marketed in the U.S.), Swiss Association of Cigarette Manufacturers (whose members include affiliates of U.S. tobacco companies, and the Canadian Tobacco Manufacturers Council (whose members include affiliates of U.S. tobacco companies).

1. Industry Research on Nicotine's Effects on the Brain

The tobacco industry has extensively studied, in its own laboratories and through grants or contracts to other laboratories, the effects of nicotine on the brain and other parts of the central nervous system, including the sites in the brain on which nicotine acts.[247]

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Abood. Comparison of the binding of optically pure (-)- and (+)-[3H]nicotine to rat brain membranes
Abood. Electrophysiological, behavioral, and chemical evidence for a noncholinergic, stereospecific site for nicotine in rat brain
Abood. Receptor binding characteristics of a 3H-labeled azetidine analogue of nicotine
Abood. Tritiated methylcarbamylcholine a new radioligand for studying brain nicotinic receptors
Abood. Evidence for a noncholinergic site for nicotine's action in brain: Psychopharmacological, electrophysiological and receptor binding studies
Abood. Acute and chronic effects of nicotine in rats and evidence for a non-cholinergic site of action
Andersson. Involvement of D1 dopamine receptors in the nicotine-induced neuro- endocrine effects and depletion of diencephalic catecholamine stores in the male rat
Andersson. Effects of acute central and peripheral administration of nicotine on hypothalamic catecholamine nerve terminal systems and on the secretion of adenohypophyseal hormones in the male rat
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Andersson. Effects of single injections of nicotine on the ascending dopamine pathways in the rat
Andersson. Mecamylamine induced blockade of nicotine induced inhibition of gonadotrophin and TSH secretion and of nicotine induced increases of catecholamine turnover in the rat hypothalamus
Andersson. Nicotine-induced increases of noradrenaline turnover in discrete noradrenaline nerve terminal systems of the hypothalamus and the median eminence of the rat and their relationship to changes in the secretion of adenohypophyseal hormones
Andersson. Involvement of cholinergic nicotine-like receptors as modulators of amine turnover in various types of hypothalamic dopamine and noradrenaline nerve terminal systems and of prolactin, LH, FSH and TSH secretion in the castrated male rat
Andersson. Effects of acute intermittent exposure to cigarette smoke on catecholamine levels and turnover in various types of hypothalamic DA and NA nerve terminal systems as well as on the secretion of adenohypophyseal hormones and corticosterone
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Andersson. Mecamylamine pretreatment counteracts cigarette smoke induced changes in hypothalamic catecholamine neuron systems and in anterior pituitary function
Bhagat. Effects of chronic administration of nicotine on storage and synthesis of noradrenaline in rat brain
Bhagat. Influence of chronic administration of nicotine on the turnover and metabolism of noradrenaline in the rat brain
Bhagat. Effect of chronic administration of nicotine on the concentrations of adrenal enzymes involved in the synthesis and metabolism of adrenaline
Bhattacharya. Influence of acute and chronic nicotine administration on EEG reactivity to drugs in rabbits: 2. Psychoactive agents
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Chang. Effect of chronic administration of nicotine on acetylcholinesterase activity in the hypothalamus and medulla oblongata of the rat brain An ultrastructural study
Davies. Evidence for a noncholinergic nicotine receptor on human phagocytic leukocytes
Domino. Electroencephalographic and behavioral arousal effects of small doses of nicotine: A neuropsychopharmacological study
Erwin. Nicotine alters catecholamines and electrocortical activity in perfused mouse brain
Essman. Changes in cholinergic activity and avoidance behavior by nicotine in differentially housed mice
Fuxe. Increases in dopamine utilization in certain limbic dopamine terminal populations after a short period of intermittent exposure of male rats to cigarette smoke
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Grenhoff. Selective stimulation of limbic dopamine activity by nicotine
Grenhoff. Chronic continuous nicotine treatment causes decreased burst firing of nigral dopamine neurons in rats partially hemitransected at the meso-diencephalic junction
Harfstrand. Distribution of nicotinic cholinergic receptors in the rat tel- and diencephalon: a quantitative receptor autoradiographical study using [3H]-acetylcholine, [alpha-125I]bungarotoxin and [3H]nicotine
Harsing. Dopamine efflux from striatum after chronic nicotine: evidence for autoreceptor desensitization
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Kawamura. Differential actions of m and n cholinergic agonists on the brainstem activating system
Knapp. Action of nicotine on the ascending reticular activating system
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Naftchi. Acute reduction of brain substance P induced by nicotine

Nelsen. Chronic nicotine treatment in rats: 2. Electroencephalographic amplitude and variability changes occurring within and between structures

Oxman. Chronic nicotine treatment eliminates asymmetry in striatal glucose utilization following unilateral transection of the mesostriatal dopaminac pathway in rats

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Armitage. Effects of nicotine on electrocortical activity and acetylcholine release from the cat cerebral cortex

Armitage. Nicotine, Smoking and cortical activation

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Andersson. Nicotine-induced increases of noradrenaline turnover in discrete noradrenaline nerve terminal systems of the hypothalamus and the median eminence of the rat and their relationship to changes in the secretion of adenohypophyseal hormones

Andersson. Effects of single injections of nicotine on the ascending dopamine pathways in the rat Evidence for increases of dopamine turnover in the mesostriatal and mesolimbic dopamine neurons

Andersson. Effects of acute central and peripheral administration of nicotine on ascending dopamine pathways in the male rat brain Evidence for nicotine induced increases of dopamine turnover in various telencephalic dopamine nerve terminal systems

Britto. Immunohistochemical localization of nicotinic acetylcholine receptor subunits in the mesencephalon and diencephalon of the chick (Gallus gallus)

Chance. A comparison of nicotine and structurally related compounds as discriminative stimuli

Davies. Evidence for a noncholinergic nicotine receptor on human phagocytic leukocytes

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Harfstand. Distribution of nicotinic cholinergic receptors in the rat tel- and diencephalon: a quantitative receptor autoradiographical study using [3H]-acetylcholine, [alpha-125I]bungarotoxin and [3H]nicotine

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DeNoble. Brain Sites Involved in the Mediation of the Behavioral Effects of Intraventricularly Administered (-)-nicotine

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Hirschhorn. Studies on the time course and the effect of cholinergic and adrenergic receptor blockers on the stimulus effect of nicotine

Schechter. Behavioral evidence for two types of cholinergic receptors in the CNS

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Schechter. Nicotine as a discriminative stimulus in rats depleted of norepinephrine or 5-hydroxytryptamine

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Neurotransmitters. Tobacco industry studies have shown that nicotine and its metabolites produce neurochemical and metabolic effects in the brain.[249]

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Mitchell. Increases in tyrosine-hydroxylase messenger RNA in the locus coeruleus after a single dose of nicotine are followed by time-dependent increases in enzyme activity and noradrenaline release

These studies show that nicotine exerts its behavior modifying effects, in part, through the cascade of effects that are produced through nicotine's actions on existing brain chemicals. Industry-supported studies show that nicotine, like other addictive drugs, acts on dopaminergic receptors[250] in the mesolimbic system to release

Mitchell. Role of the locus coeruleus in the noradrenergic response to a systemic administration of nicotine

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Mitchell. Nicotine-induced catecholamine synthesis after lesions to the dorsal or ventral noradrenergic bundle

Mitchell. Regionally specific effects of acute and chronic nicotine onrates of catecholamine and 5-hydroxytryptamine synthesis in rat brain

Smith. Effects of chronic and subchronic nicotine on tyrosine hydroxylase activity in noradrenergic and dopaminergic neurones in the rat brain

BRITISH-AMERICAN TOBACCO COMPANY, LTD. Unpublished

Haselbach. Tentative Hypothesis on Nicotine Addiction

Haselbach. Final Report on Project HIPPO II

INDUSTRY SUPPORTED SYMPOSIA

Joseph. Possible mechanisms underlying beneficial effects of nicotine in cognitive function

Nordberg. Assessment of cholinergic neuronal activity in the brain

INDUSTRY SUPPORTED AMA/ERF STUDIES

Rosecrans. Effects of nicotine on behavioral arousal and brain 5-hydroxytryptamine function in female rats selected for differences in activity

Schechter. Nicotine as a discriminative stimulus in rats depleted of norepinephrine or 5-hydroxytryptamine

TOBACCO RESEARCH COUNCIL LABS., U.K.

Armitage. Effects of nicotine on electrocortical activity and acetylcholine release from the cat cerebral cortex

Armitage. The effects of nicotine on the electrocorticogram and spontaneous release of acetylcholine from the cerebral cortex of the cat

Armitage. Further evidence relating to the mode of action of nicotine in the central nervous system

Balfour. A possible role for the pituitary-adrenal system in the effects of nicotine on avoidance behaviour

Bhagat. The effects of nicotine and other drugs on the release of injected 3H-norepinephrine and on endogenous norepinephrine levels in the rat brain

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Fuxe. Regulation of endocrine function by the nicotinic cholinergic receptor

Fuxe. On the action of nicotine and cotinine on central 5-hydroxytryptamine neurons

Grenhoff. Nicotinic effects on the firing pattern of midbrain dopamine neurons

Nisell. Systemic nicotine-induced dopamine release in the rat nucleus accumbens is regulated by nicotinic receptors in the ventral tegmental area

Nordberg. Effect of acute and subchronic nicotine treatment on cortical acetylcholine release and on nicotinic receptors in rats and guinea-pigs

Perez de la Mora. Neurochemical effects of nicotine on glutamate and GABA mechanisms in the rat brain

Slotkin. Effects of prenatal nicotine exposure on neuronal development: selective actions on central and peripheral catecholaminergic pathways

OTHER, Literature Review

Edwards. Smoking, nicotine and electrocortical activity

[250] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**

Abood. Receptor binding characteristics of a 3H-labeled azetidine analogue of nicotine

Andersson. Mecamylamine induced blockade of nicotine induced inhibition of gonadotrophin and TSH secretion and of nicotine induced increases of catecholamine turnover in the rat hypothalmus

Andersson. Effects of acute intermittent exposure to cigarette smoke on catecholamine levels and turnover in various types of hypothalamic DA and NA nerve terminal systems as well as on the secretion of adenohypophyseal hormones and corticosterone

Andersson. Effects of single injections of nicotine on the ascending dopamine pathways in the rat. Evidence for increases of dopamine turnover in the mesostriatal and mesolimbic dopamine neurons

Andersson. Involvement of cholinergic nicotine-like receptors as modulators of amine turnover in various types of hypothalamic dopamine and noradrenaline nerve terminal systems and of prolactin, LH, FSH and TSH secretion in the castrated male rat

Andersson. Interactions of nicotine and pentobarbitone in the regulation of telencephalic and hypothalamic catecholamine levels and turnover and of adenohypophyseal hormone secretion in the normal male rat

Andersson. Effects of acute central and peripheral administration of nicotine on hypothalamic catecholamine nerve terminal systems and on the secretion of adenohypophyseal hormones in the male rat

Erwin. Nicotine alters catecholamines and electrocortical activity in perfused mouse brain

dopamine, a chemical in the brain associated with pleasurable feelings.

Mood modification and EEG effects. In tobacco industry-sponsored trials, nicotine has been shown to induce both behavioral arousal and calming effects.[251] These effects have been correlated with

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Fuxe. Increases in dopamine utilization in certain limbic dopamine terminal populations after a short period of intermittent exposure of male rats to cigarette smoke

Grenhoff. Selective stimulation of limbic dopamine activity by nicotine

Hersing. N-type calcium channels are involved in the dopamine releasing effect of nicotine

Lapin. Action of nicotine on accumbens dopamine and attenuation with repeated administration

Lapin. Dopamine-like action of nicotine: lack of tolerance and reverse tolerance

Westfall. Effect of nicotine and other drugs on the release of 3H-norepinephrine and 3H-dopamine from rat brain slices

R. J. REYNOLDS COMPANY
Lippiello. The role of desensitization in CNS nicotinic receptor function

Marks. Downregulation of nicotinic receptor function after chronic nicotine infusion

INDUSTRY SUPPORTED SYMPOSIA
Joseph. Possible mechanisms underlying beneficial effects of nicotine in cognitive function

OTHER
Adem. Quantitative autoradiography of nicotinic receptors in large cryosections of human brain hemispheres

Andersson. Effects of acute central and peripheral administration of nicotine on ascending dopamine pathways in the male rat brain. Evidence for nicotine-induced increases of dopamine turnover in various telencephalic dopamine nerve terminal systems

Fuxe. Regulation of endocrine function by the nicotinic cholinergic receptor

Grenhoff. Nicotinic effects on the firing pattern of midbrain dopamine neurons

Nisell. Systemic nicotine-induced dopamine release in the rat nucleus accumbens is regulated by nicotinic receptors in the ventral tegmental area

[251] **COUNCIL FOR TOBACCO RESEARCH-USA**
Domino. Electroencephalographic and behavioral arousal effects of small doses of nicotine: A neuropsychopharmacological study

Heimstra. The effects of deprivation of cigarette smoking on psychomotor performance

Marks. Genetics of nicotine response in four inbred strains of mice

Nelsen. Improvement of performance on an attention task with chronic nicotine treatment in rats

Pradhan. Effects of nicotine on several schedules of behavior in rats

Schaeppi. Nicotine treatment of selected areas of the cat brain: effects upon EEG and autonomic system

Stadnicki. Nicotine infusion into the fourth ventricle of unrestrained cats: changes in EEG and behavior

Stadnicki. Nicotinic changes in EEG and behavior after intravenous infusion in awake unrestrained cats

Yamamoto. Nicotine-induced EEG and behavioral arousal

COUNCIL FOR TOBACCO RESEARCH-USA, Literature Review
Silvette. The actions of nicotine on central nervous system functions

R. J. REYNOLDS COMPANY
Lippiello. Properties of putative nicotine receptors identified on cultured cortical neurons

Pritchard. Electroencephalographic effects of cigarette smoking

Robinson. The role of nicotine in tobacco use

BRITISH-AMERICAN TOBACCO COMPANY, LTD.
Golding. Arousing and de-arousing effects of cigarette smoking under conditions of stress and mild sensory isolation

Mangan. The effects of cigarette smoking on vigilance performance

BRITISH-AMERICAN TOBACCO COMPANY, LTD. Unpublished
Corner. Interaction of Smoke and the Smoker Part 3: The Effect of Cigarette Smoking on the Contingent Negative Variation

Thornton. Some "Benefits" of Smoking

INDUSTRY SUPPORTED SYMPOSIA
Joseph. Possible mechanisms underlying beneficial effects of nicotine in cognitive function

Wesnes. The effects of cigarette smoking and nicotine tablets upon human attention

INDUSTRY SUPPORTED AMA/ERF STUDIES
Rosecrans. Effects of nicotine on behavioral arousal and brain 5-hydroxytryptamine function in female rats selected for differences in activity

TOBACCO RESEARCH COUNCIL LABS., U.K.
Armitage. Effects of nicotine on electrocortical activity and acetylcholine release from the cat cerebral cortex

Armitage. Nicotine, smoking and cortical activation

Hall. Effects of nicotine and tobacco smoke on the electrical activity of the cerebral cortex and olfactory bulb

Morrison. Antagonism by antimuscarinic and ganglion-blocking drugs of some of the behavioural effects of nicotine

Morrison. The occurrence of tolerance to a central depressant effect of nicotine

Warwick. Experimental studies of the behavioural effects of nicotine

OTHER

electroencephalogram/electrocorticogram changes in electrical activity in the brain.[252] Whether nicotine provides a stimulating or calming effect depends on the dose of nicotine taken, the time elapsed since the last dose, and other factors.[253]

Cohen. Monograph on the "Pharmacology and Toxicology of Nicotine and its Role in Tobacco Smoking Draft

Edwards. Evidence of more rapid stimulus evaluation following cigarette smoking

Golding. Effects of cigarette smoking on measures of arousal, response suppression, and excitation/inhibition balance

Nordberg. Effect of nicotine on passive avoidance behaviour and motoric activity in mice

[252] **COUNCIL FOR TOBACCO RESEARCH-USA**
Domino. Electroencephalographic and behavioral arousal effects of small doses of nicotine: A neuropsychopharmacological study

Erwin. Nicotine alters catecholamines and electrocortical activity in perfused mouse brain

Kawamura. Differential actions of m and n cholinergic agonists on the brainstem activating system

Marty. Effects of nicotine on beta-endorphin, alpha MSH, and ACTH secretion by isolated perfused mouse brains and pituitary glands, in vitro

Nelsen. Chronic nicotine treatment in rats 2 Electroencephalographic amplitude and variability changes occurring within and between structures

Schaeppi. Nicotine treatment of selected areas of the cat brain: effects upon EEG and autonomic system

Stadnicki. Nicotine infusion into the fourth ventricle of unrestrained cats: changes in EEG and behavior

Stadnicki. Nicotinic changes in EEG and behavior after intravenous infusion in awake unrestrained cats

Yamamoto. Nicotine-induced EEG and behavioral arousal

COUNCIL FOR TOBACCO RESEARCH-USA, Literature Review
Silvette. The actions of nicotine on central nervous system functions

PHILIP MORRIS TOBACCO COMPANY
Mangan. Relationships between photic driving, nicotine and memory

(One Philip Morris document explains why the company decided to conduct nicotine-related EEG research: "We are establishing an EEG laboratory in search of the reinforcing event. Brain waves are neuro-physiological phenomena, but they are legitimate subject matter for us in that brain events underlie behavioral events. Smoke-related changes in brain waves can give us clues as to smoke-related psychological changes." Philip Morris employee (almost certainly W.L. Dunn). *Smoker Psychology Program Review*. October 19, 1977. Page 9.)

R. J. REYNOLDS COMPANY
Gilbert. Effects of smoking/nicotine on anxiety, heart rate, and lateralization of EEG during a stressful movie

Pritchard. Flexible effects of quantified cigarette-smoke delivery on EEG dimensional complexity

Pritchard. Electroencephalographic effects of cigarette smoking

Robinson. Psychopharmacological effects of smoking a cigarette with typical "tar" and carbon monoxide yields but minimal nicotine

BROWN AND WILLIAMSON TOBACCO CORPORATION, Unpublished
Brotzge. Human smoking studies: acute effect of cigarette smoke on brain wave alpha rhythm-first report

BRITISH-AMERICAN TOBACCO COMPANY, LTD.
Golding. Effects of cigarette smoking on resting EEG, visual evoked potentials and photic driving

Golding. Arousing and de-arousing effects of cigarette smoking under conditions of stress and mild sensory isolation

Golding. Effects of cigarette smoking on measures of arousal, response suppression, and excitation/inhibition balance

BRITISH-AMERICAN TOBACCO COMPANY, LTD. Unpublished
Corner. Interaction of smoke and the smoker. Part 3: The effect of cigarette smoking on the contingent negative variation

Willey. Effects of nicotine on the central nervous system

INDUSTRY SUPPORTED AMA/ERF STUDIES
Murphree. Electroencephalographic changes in man following smoking

TOBACCO RESEARCH COUNCIL LABS., U.K.
Armitage. Effects of nicotine on electrocortical activity and acetylcholine release from the cat cerebral cortex

Armitage. The effects of nicotine on the electrocorticogram and spontaneous release of acetylcholine from the cerebral cortex of the cat

Armitage. Pharmacological basis for the tobacco smoking habit

Ashton. The use of event-related slow potentials of the brain as a means to analyse the effects of cigarette smoking and nicotine in humans

Hall. Effects of nicotine and tobacco smoke on the electrical activity of the cerebral cortex and olfactory bulb

OTHER
Edwards. Smoking, nicotine and electrocortical activity

Knott. Effects of cigarette smoking on subjective and brain evoked responses to electrical pain stimulation

Knott. Reaction time, noise distraction and autonomic responsivity in smokers and non-smokers

[253] **INDUSTRY SUPPORTED AMA/ERF STUDIES**
Rosecrans. Effects of nicotine on behavioral arousal and brain 5-hydroxytryptamine function in female rats selected for differences in activity

R. J. REYNOLDS COMPANY
Robinson. Psychopharmacological effects of smoking a cigarette with typical "tar" and carbon monoxide yields but minimal nicotine

BRITISH-AMERICAN TOBACCO COMPANY, LTD.
Mangan. The effects of cigarette smoking on vigilance performance

Effects on performance and behavior. Industry-funded scientists have conducted research to characterize nicotine's effects on behavioral performance and cognitive function.[254]

COUNCIL FOR TOBACCO RESEARCH-USA
Domino. Electroencephalographic and behavioral arousal effects of small doses of nicotine: A neuropsychopharmacological study

Marks. Genetics of nicotine response in four inbred strains of mice

Pradhan. Effects of nicotine on several schedules of behavior in rats

Yamamoto. Nicotine-induced EEG and behavioral arousal

TOBACCO RESEARCH COUNCIL LABS, U.K.
Warwick. Experimental studies of the behavioral effects of nicotine

[254] COUNCIL FOR TOBACCO RESEARCH-USA
Bhagat. Effect of nicotine on the swimming endurance of rats

Heimstra. The effects of deprivation of cigarette smoking on psychomotor performance

Levin. Memory enhancing effects of nicotine

Marks. Genetics of nicotine response in four inbred strains of mice

Nelsen. Chronic nicotine treatment in rats

Nelsen. Protection by nicotine from behavioral disruption caused by reticular formation stimulation in the rat

Nelsen. Improvement of performance on an attention task with chronic nicotine treatment in rats

COUNCIL FOR TOBACCO RESEARCH-USA, Literature Reviews
Essman. Drug effects and learning and memory processes

Silvette. The actions of nicotine on central nervous system functions

PHILIP MORRIS TOBACCO COMPANY
Colrain. Effects of post-learning smoking on memory consolidation.

DeNoble. Behavioral effects of intraventricularly administered (-)-nicotine on fixed ratio schedules of food presentation in rats

Mangan. Relationships between photic driving, nicotine and memory

Woodson. Effects of nicotine on the visual evoked response

R. J. REYNOLDS COMPANY
Pritchard. Enhancement of continuous performance task reaction time by smoking in non-deprived smokers

Pritchard. Electroencephalographic effects of cigarette smoking

BRITISH-AMERICAN TOBACCO COMPANY, LTD.
Mangan. The effects of cigarette smoking on vigilance performance

Mangan. The effects of smoking on memory consolidation

INDUSTRY SUPPORTED AMA/ERF STUDIES
Schechter. C.N.S. effect of nicotine as the discriminative stimulus for the rat in a T-maze

TOBACCO RESEARCH COUNCIL LABS., U.K.
Armitage. Pharmacological basis for the tobacco smoking habit

Balfour. A possible role for the pituitary-adrenal system in the effects of nicotine on avoidance behaviour

Morrison. Effects of nicotine on motor co-ordination and spontaneous activity in mice

Morrison. The effects of nicotine on punished behaviour

Warwick. Experimental studies of the behavioral effects of nicotine

Wesnes. Effects of nicotine on stimulus sensitivity and response bias in a visual vigilance task

Wesnes. The separate and combined effects of scopolamine and nicotine on human information processing

Wesnes. Effects of scopolamine and nicotine on human rapid information processing performance

Wesnes. Effects of smoking on rapid information processing performance

TOBACCO RESEARCH COUNCIL, UK, Literature Reviews
Hall. New evidence for a relationship between tobacco smoking, nicotine dependence, and stress

Wesnes. Smoking, nicotine and human performance

OTHER
Andersson. Effects of cigarette smoking on incidental memory

Battig. The effect of pre- and post-trial application of nicotine on the 12 problems of the Hebb-Williams-test in the rat

Driscoll. Effects of nicotine on the shuttlebox behavior of trained guinea pigs

Hasenfratz. Action profiles of smoking and caffeine: Stoop effect, EEG, and peripheral physiology

Hasenfratz. Can smoking increase attention in rapid information processing during noise?

Knott. Reaction time, noise distraction and autonomic responsivity in smokers and non-smokers

Knott. Noise and task induced distraction effects on information processing: Sex differences in smokers and non-smokers

Nordberg. Effect of nicotine on passive avoidance behaviour and motoric activity in mice

Roth. Smoking deprivation in "early" and "late" smokers and memory functions

Neuroendocrine effects. Tobacco industry-supported studies have demonstrated that nicotine affects hormone secretion and several endocrine functions involved in modulation of mood and behavior. These studies showed that nicotine stimulates the secretion of corticosteroids and catecholamines and decreases the secretion of thyroid stimulating hormone, leutinizing hormone, and prolactin.[255]

2. Industry Research on Nicotine Delivery to the Blood and Brain

The tobacco industry has studied the bioavailability of nicotine in tobacco products and how nicotine is distributed throughout the body, after absorption into the bloodstream. This has led to the industry's development of sophisticated techniques for determining, quantitatively and qualitatively, the presence of nicotine and its metabolites in body fluids.[256]

Wesnes. The effects of cigarettes of varying yield on rapid information processing

[255] COUNCIL FOR TOBACCO RESEARCH-USA
Andersson. Involvement of D1 dopamine receptors in the nicotine-induced neuro-endocrine effects and depletion of diencephalic catecholamine stores in the male rat

Andersson. Effects of withdrawal from chronic exposure to cigarette smoke on hypothalamic and preoptic catecholamine nerve terminal systems and on the secretion of pituitary hormones in the male rat

Andersson. Nicotine-induced increases of noradrenaline turnover in discrete noradrenaline nerve terminal systems of the hypothalamus and the median eminence of the rat and their relationship to changes in the secretion of adenohypophyseal hormones

Andersson. Mecamylamine induced blockade of nicotine induced inhibition of gonadotropkin and TSH secretion and of nicotine induced increases of catecholamine turnover in the rat hypothalamus

Andersson. Effects of acute intermittent exposure to cigarette smoke on catecholamine levels and turnover in various types of hypothalamic DA and NA nerve terminal systems as well as on the secretion of adenohypophyseal hormones and corticosterone

Andersson. Involvement of cholinergic nicotine-like receptors as modulators of amine turnover in various types of hypothalamic dopamine and noradrenaline nerve terminal systems and of prolactin, LH, FSH and TSH secretion in the castrated male rat

Andersson. Effects of acute central and peripheral administration of nicotine on hypothalamic catecholamine nerve terminal systems and on the secretion of adenohypophyseal hormones in the male rat

Fuxe. Neuroendocrine actions of nicotine and of exposure to cigarette smoke: medical implications

Fuxe. Neurochemical mechanisms underlying the neuroendocrine actions of nicotine: focus on the plasticity of central cholinergic nicotinic receptors

Fuxe. Effects of Nicotine and exposure to cigarette smoke on discrete dopamine and noradrenaline nerve terminal systems of the telencephalon and diencephalon of the rat: Relationship to reward mechanisms and neuroendocrine functions and distribution of nicotinic binding sites in brain

Marty. Effects of nicotine on beta-endorphin, alpha MSH, and ACTH secretion by isolated perfused mouse brains and pituitary glands, in vitro
Rubin.
Nicotine-induced stimulation of steroidogenesis in adrenocortical cells of the cat

Siegel. Rapid and discrete changes in hypothalamic catecholamine nerve terminal systems induced by audiogenic stress, and their modulation by nicotine-relatinship to neuroendocrine function

Westfall. Effect of 4 4'-biphenylenebis-[(2-oxoethylene)-bis-(2,2'-diethoxyethyl)] dimethylammonium dibromide (DMAE) on accumulation and nicotine-induced release of norepinephrine in the heart

Westfall. Specificity of blockade of the nicotine-induced release of 3H-norepinephrine from adrenergic neurons of the guinea-pig heart by various pharmacological agents

R. J. REYNOLDS COMPANY
Mitchell. Regionally specific effects of acute and chronic nicotine on rates of catecholamine and 5-hydroxytryptamine synthesis in rat brain

TOBACCO RESEARCH COUNCIL LABS., U.K.
Balfour. A possible role for the pituitary-adrenal system in the effects of nicotine on avoidance behaviour

OTHER
Fuxe. Regulation of endocrine function by the nicotinic cholinergic receptor

[256] AMERICAN TOBACCO COMPANY
Castro. Nicotine antibodies: comparison of ligand specificities of antibodies produced against two nicotine conjugates

COUNCIL FOR TOBACCO RESEARCH-USA
Castro. Nicotine enzyme immunoassay

Castro. Radioimmunoassays of drugs of abuse in humans: a review

Haines. Radioimmunoassay of plasma nicotine in habituated and naive smokers

McNiven. Determination of nicotine in smokers' urine by gas chromatography

Monji. Plasma nicotine pharmacokinetics in dogs after intravenous administration: determination by radioimmunoassay

R. J. REYNOLDS COMPANY
Caldwell. Characterization of the glucuronide conjugate of cotinine: a previously unidentified major metabolite of nicotine in smokers' urine

Nicotine pharmacokinetics. Numerous publications document the tobacco industry's involvement in investigating all aspects of the pharmacokinetics of nicotine. (Pharmacokinetics is the study of the absorption, distribution, metabolism, and elimination of drugs in the body.) Areas that the industry has researched include:

- general pharmacokinetics of nicotine (absorption, distribution, metabolism, elimination);[257]

Davis. The determination of nicotine and cotinine in plasma

Kyerematen. Radiometric high performance liquid chromatographic assay for nicotine and twelve of its metabolites

Kyerematen. Pharmacokinetics of nicotine and 12 metabolites in the rat

Langone. Idiotype-anti-idiotype hapten immunoassays: assay for cotinine

McManus. A new quantitative thermospray LC-MS method for nicotine and its metabolites in biological fluids

BRITISH-AMERICAN TOBACCO COMPANY, Unpublished
Backhurst. Further work on extractable nicotine

Isaac. The absorption and effects of nicotine from inhaled tobacco smoke

Read. Method for nicotine and cotinine in blood and urine

Read. Nicotine studies: A second report. Estimation of whose body nicotine dose by urinary nicotine and contine measurement

BRITISH-AMERICAN TOBACCO COMPANY, LTD. Funded -- Battelle Unpublished Studies
Geissbuhler. The fate of nicotine in the body

Haselbach. A tentative hypothesis on nicotine addiction

TOBACCO RESEARCH COUNCIL LABS., U.K.
Armitage. The transfer of endogenous and exogenous radioisotopically labelled nicotine to mainstream cigarette smoke and its absorption into the blood of anaesthetized cats

Beckett. Analysis of nicotine-1-N-oxide in urine, in the presence of nicotine and cotinine, and its application to the study of in vivo nicotine metabolism in man

OTHER
Biber. Determination of nicotine and cotinine in human serum and urine: an interlaboratory study

Isaac. Cigarette smoking and plasma levels of nicotine

Schievelbein. Nicotine Workshop

Schmiterlow. Distribution of Nicotine in the Central Nervous System

Schmiterlow. Tissue distribution of C14-nicotine and Related Compounds

Szuts. Long-term fate of [14C]nicotine in the mouse: retention in the bronchi, melanin-containing tissues and urinary bladder wall

[257] **COUNCIL FOR TOBACCO RESEARCH-USA**
Becker. Studies on nicotine absorption during pregnancy

Haines. Radioimmunoassay of plasma nicotine in habituated and naive smokers

Hibberd. Enzymology of the metabolic pathway from nicotine to cotinine, in vitro

Kershbaum. Cigarette, cigar, and pipe smoking. Some differences in biochemical effects

Monji. Plasma nicotine pharmacokinetics in dogs after intravenous administration: determination by radioimmunoassay

Rama. Distribution and Retention of nicotine and its major metabolite cotinine in the rat as a function of time

COUNCIL FOR TOBACCO RESEARCH-USA, Literature Reviews
Larson. Tobacco -- Experimental and Clinical Studies

Larson. Tobacco -- Experimental and Clinical Studies -- A Comprehensive Account of the World Literature -- Supplement I

Larson. Tobacco -- Experimental and Clinical Studies -- A Comprehensive Account of the World Literature -- Supplement II

Larson. Tobacco -- Experimental and Clinical Studies -- A Comprehensive Account of the World Literature --Supplement III

AMERICAN TOBACCO COMPANY
Haag. Studies on the fate of nicotine in the body I: The effect of pH on the urinary excretion of nicotine by tobacco smokers

Larson. Studies on the fate of nicotine in the body VI: Observations on the relative rate of elimination of nicotine by the dog, cat, rabbit and mouse

Larson. Studies on the fate of nicotine in the body II: On the fate of nicotine in the dog

Larson. Studies on the fate of nicotine in the body IV: Observations on the chemical structure of an end product of nicotine metabolism

McKennis. N-methylation of nicotine and cotinine in vivo

Owen. Studies on the fate of nicotine in the animal body. VIII: Observations on the number and chemical nature of nicotine metabolites in the dog and cat

Weatherby. Rate of elimination of nicotine by the rabbit

R. J. REYNOLDS COMPANY
Caldwell. Characterization of the glucuronide conjugate of cotinine: a previously unidentified major metabolite of nicotine in smokers' urine

Caldwell. Intragastric nitrosation of nicotine is not a significant contributor to nitrosamine exposure

deBethizy. Chemical and biological studies of a cigarette that heats rather than burns tobacco

deBethizy. Absorption of nicotine from a cigarette that does not burn tobacco

- factors affecting the absorption of nicotine into the bloodstream, including route of administration;[258]
- distribution of nicotine to the brain;[259] and

Hammond. Metabolism of nicotine by rat liver cytochromes P-450: Assessment utilizing monoclonal antibodies to nicotine and cotinine

Kyerematen. Pharmacokinetics of nicotine and 12 metabolites in the rat

Kyerematen. Disposition of nicotine and eight metabolites in smokers and nonsmokers: Identification in Smokers of two metabolites that are longer lived than cotinine

BROWN AND WILLIAMSON TOBACCO CORPORATION, Unpublished
Brotzge. Human smoking studies: acute effect of cigarette smoke on brain wave alpha rhythm - first report

BRITISH-AMERICAN TOBACCO COMPANY, LTD., Funded - - Unpublished Battelle Studies
Geissbuhler. The fate of nicotine in the body

TOBACCO RESEARCH COUNCIL LABS., U.K.
Armitage. Absorption and metabolism of nicotine from cigarettes

Armitage. Absorption of nicotine in cigarette and cigar smoke through the oral mucosa

Armitage. The transfer of endogenous and exogenous radioisotopically labelled nicotine to mainstream cigarette smoke and its absorption into the blood of anaesthetized cats

Beckett. Effect of smoking on nicotine metabolism in vivo in man

Beckett. Analysis of nicotine-1-N-oxide in urine, in the presence of nicotine and cotinine, and its application to the study of in vivo nicotine metabolism in man

Beckett. Buccal absorption of basic drugs and its application as an in vivo model of passive drug transfer through lipid membranes

Jenner. Species variation in the metabolism of R-(+)- and S-(-)-nicotine by alpha-C- and N-oxidation in vitro

Jenner. Factors affecting the in vitro metabolism of R-(+)- and S-(-)-nicotine by guinea-pig liver preparations

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Cholerton. Sources of inter-individual variability in nicotine pharmacokinetics

Cohen. Monograph on the Pharmacology and Toxicology of Nicotine and its Role in Tobacco Smoking

Hasenfratz. Development of central and peripheral smoking effects over time

Pilotti. Studies on the identification of tobacco alkaloids, their mammalian metabolites and related compounds by gas chromatography- -mass spectrometry

Schievelbein. Nicotine Workshop

Schmiterlow. Tissue distribution of C14-nicotine

Schmiterlow. Distribution of nicotine in the central nervous system

Szuts. Long-term fate of [14C]nicotine in the mouse: retention in the bronchi, melanin-containing tissues and urinary bladder wall

[258] **COUNCIL FOR TOBACCO RESEARCH-USA**
Haines. Radioimmunoassay of plasma nicotine in habituated and naive smokers

Kershbaum. Cigarette, cigar, and pipe smoking. Some differences in biochemical effects

R. J. REYNOLDS COMPANY
deBethizy. Chemical and biological studies of a cigarette that heats rather than burns tobacco

deBethizy. Absorption of nicotine from a cigarette that does not burn tobacco

BRITISH-AMERICAN TOBACCO COMPANY, LTD. Unpublished
Backhurst. Further Work on Extractable Nicotine

Evelyn. Retention of nicotine and phenols in the human mouth

Evelyn. Transfer of nicotine from smoke into blood using a perfused canine lung

Evelyn. Absorption of nicotine via the mouth: studies using animal models

Isaac. The absorption and effects of nicotine from inhaled tobacco smoke

TOBACCO RESEARCH COUNCIL LABS., U.K.
Armitage. Absorption of nicotine by man during cigar smoking [proceedings]

Armitage. Absorption of nicotine from small cigars

Armitage. The transfer of endogenous and exogenous radioisotopically labelled nicotine to mainstream cigarette smoke and its absorption into the blood of anaesthetized cats

Armitage. Absorption of nicotine in cigarette and cigar smoke through the oral mucosa

OTHER
Hasenfratz. Development of central and peripheral smoking effects over time

Schievelbein. Nicotine workshop: Absorption of nicotine under various conditions (an introductory review)

[259] **COUNCIL FOR TOBACCO RESEARCH-USA**
Hatchell. The influence of genotype and sex on behavioral sensitivity to nicotine in mice

Vinek. Synthesis of 4,4-ditritio-(+)-nicotine: comparative binding and distribution studies with natural enantiomer

BRITISH-AMERICAN TOBACCO COMPANY, LTD. Unpublished
Creighton. Relative contributions of nicotine and carbon monoxide to human physiological response

Creighton. Further studies on the effect of nicotine on human physiological response

- plasma profiles of nicotine and its metabolites.[260]

Nicotine metabolism. The industry has investigated the metabolic fate of nicotine, including the metabolites (breakdown products) of nicotine.[261] Studies have also been done on the enzymatic systems involved in nicotine

Isaac. The Absorption and Effects of Nicotine from Inhaled Tobacco Smoke

INDUSTRY SUPPORTED AMA/ERF STUDIES
Rosecrans. Brain area nicotine levels in male and female rats with different levels of spontaneous activity

Rosecrans. Brain area nicotine levels in male and female rats of two strains

OTHER
Cholerton. Sources of inter-individual variability in nicotine pharmacokinetics

Schmiterlow. Distribution of Nicotine in the Central Nervous System

OTHER, Literature Review
Edwards. Smoking, nicotine and electrocortical activity

[260] **COUNCIL FOR TOBACCO RESEARCH-USA**
Castro. Nicotine enzyme immunoassay

Haines. Radioimmunoassay of plasma nicotine in habituated and naive smokers

Monji. A Plasma nicotine pharmacokinetics in dogs after intravenous administration: Determination by radioimunassay

Rama. Distribution and Retention of nicotine and its major metabolite cotinine, in the rat as a function of time

AMERICAN TOBACCO COMPANY
Castro. Nicotine antibodies: comparison of ligand specificities of antibodies produced against two nicotine conjugates

R. J. REYNOLDS COMPANY
Davis. The determination of nicotine and cotinine in plasma

deBethizy. Absorption of nicotine from a cigarette that does not burn tobacco

Kyerematen. Pharmacokinetics of nicotine and 12 metabolites in the rat Application of a new radiometric high performance liquid chromatography assay

Kyerematen. Radiometric high performance liquid chromatographic assay for nicotine and twelve of its metabolites

BRITISH-AMERICAN TOBACCO COMPANY, LTD. Unpublished
Isaac. The absorption and effects of nicotine from inhaled tobacco smoke

TOBACCO RESEARCH COUNCIL LABS., U.K.
Armitage. Absorption and metabolism of nicotine from cigarettes

Armitage. Absorption of nicotine by man during cigar smoking [proceedings]

Armitage. Absorption of nicotine from small cigars

Armitage. The transfer of endogenous and exogenous radioisotopically labelled nicotine to mainstream cigarette smoke and its absorption into the blood of anaesthetized cats

Stepney. Behavioural regulation of nicotine intake in cigarette smokers presented with a 'shortened' cigarette [proceedings]

OTHER
Isaac. Cigarette smoking and plasma levels of nicotine

Isaac. Blood levels of nicotine and physiological effects after inhalation of tobacco smokeIsaac. Blood levels of nicotine and physiological effects after inhalation of tobacco smoke

Schievelbein. Nicotine Workshop

[261] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**
Abood. Specific binding and metabolism of (-)- and (+)-[3H]-nicotine in isolated rat hepatocytes and hepatocyte membranes

Hibberd. Nicotine delta 1' (5)' iminium ion: a reactive intermediate in nicotine metabolism

Vincek. Synthesis of 4,4-ditritio-(+)-nicotine: comparative binding and distribution studies with natural enantiomer

AMERICAN TOBACCO COMPANY
Bowman. Studies on the metabolism of (-)-cotinine in the human

Bowman. Disposition and fate of (-)-cotinine-H3 in the mouse

Hucker. Studies on the metabolism of nornicotine in the dog

Larson. Studies on the fate of nicotine in the body III: On the pharmacology of some methylated and demethylated derivatives of nicotine

Larson. Studies on the fate of nicotine in the body IV: Observations on the chemical structure of an end product of nicotine metabolism

McKennis. Gamma-(3-pyridyl)-gamma-methylaminobutyric acid as a urinary metabolite of nicotine

McKennis. The excretion and metabolism of nicotine

McKennis. Mammalian degradation of (-)-nicotine to 3-pyridylacetic acid and other compounds

McKennis. Demethylation in the metabolism of (-)-nicotine

McKennis. Metabolic release of methyl groups from a series of N-methylpyridinium compounds

McKennis. Metabolism of nicotine to (+)-gamma-(3-pyridyl)-gamma- methylaminobutyric acid

McKennis. Demethylation of cotinine in vivo

McKennis. Metabolites of nicotine and a synthesis of nornicotine

metabolism.[262] Industry-supported research shows that smokers metabolize nicotine faster than non-smokers because one or more of the substances in cigarette smoke increases the production of the enzymes that metabolize nicotine.[263] Industry-funded studies have also shown that there may be gender differences in the metabolism of nicotine.[264]

Nicotine pharmacodynamics. The tobacco industry has studied a wide range of factors related to the pharmacodynamics of nicotine and nicotine delivery systems. (Pharmacodynamics is the study of a drug's effects on the body over time. A pharmacodynamic study would involve, for example, administering a drug and then evaluating its behavioral and physiological effects over time.) The industry has funded research on:

- factors affecting the onset and duration of nicotine's physiological effects on the body;[265]

McKennis. Demethylation in the metabolism of (-)-nicotine in vivo

McKennis. N-methylation of nicotine and cotinine in vivo

McKennis. The Metabolic Formation of Gamma-(3-Pyridyl)-Gamma- Hydroxybutyric Acid and Its Possible Intermediary Role in the Mammalian Metabolism of Nicotine

McKennis. The isolation and structure of a ketoamide formed in the metabolism of nicotine

Meacham. Additional routes in the metabolism of nicotine to 3-pyridylacetate

Miller. Observations on the metabolism of nicotine by tissue slices

Owen. Studies on the fate of nicotine in the animal body VIII: Observations on the isomer and chemical nature of nicotine metabolites in the dog and cat

Schwartz. Studies on the degradation of the pyrrolidine ring of (-)-nicotine in vivo

Schwartz. Mammalian degradation of (-)-demethylcotinine

R. J. REYNOLDS COMPANY
Caldwell. Characterization of the glucuronide conjugate of cotinine: a previously unidentified major metabolite of nicotine in smokers' urine

Kyerematen. Disposition of nicotine and eight metabolites in smokers and nonsmokers: Identification in smokers of two metabolites that are longer lived than cotinine

TOBACCO RESEARCH COUNCIL LABS., U.K.
Jenner. Factors affecting the in vitro metabolism of R-(+)- and S-(-)-nicotine by guinea-pig liver preparations

Jenner. Species variation in the metabolism of R-(+)- and S-(-)-nicotine by alpha-C- and N-oxidation in vitro

OTHER
Fuxe. On the action of nicotine and cotinine on central 5-hydroxytryptamine

[262] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**
Hibberd. Enzymology of the metabolic pathway from nicotine to cotinine, in vitro

Wilson. Nicotine-like actions of cis-metanicotine and trans-metanicotine

R. J. REYNOLDS COMPANY
Hammond. Metabolism of nicotine by rat liver cytochromes P-450: Assessment utilizing monclonal antibodies to nicotine and cotinine

[263] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**
Hatchell. The influence of genotype and sex on behavioral sensitivity to nicotine in mice

Jusko. Role of tobacco smoking in pharmacokinetics

TOBACCO RESEARCH COUNCIL LABS., U.K.
Beckett. The effect of smoking on nicotine metabolism in vivo in man

[264] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**
Jusko. Role of tobacco smoking in pharmacokinetics

TOBACCO RESEARCH COUNCIL LABS., U.K.
Beckett. The effect of smoking on nicotine metabolism in vivo in man

OTHER
Cohen. Monograph on the Pharmacology and Toxicology of Nicotine and its Role in Tobacco Smoking

[265] **COUNCIL FOR TOBACCO RESEARCH-USA**
Domino. Electroencephalographic and behavioral arousal effects of small doses of nicotine: A neuropsychopharmacological study

Hoff. Neurophysiological aspects of the action of nicotine

Lapin. Dopamine-like action of nicotine: lack of tolerance and reverse tolerance

Stitzer. Effects of nicotine on fixed-interval behavior and their modification by cholinergic antagonists

TOBACCO RESEARCH COUNCIL LABS., U.K.
Armitage. Absorption of nicotine in cigarette and cigar smoke through the oral mucosa

- the relationship of nicotine's physiological effects on the body to nicotine blood levels;[266] and
- physiological effects of nicotine on the brain and their time-course.[267]

3. Industry Research Establishes That Nicotine Produces Pharmacological Effects Similar to Those of Other Addictive Drugs

The tobacco industry has conducted or sponsored studies which demonstrate that nicotine produces pharmacological effects similar to those of other addictive substances. See FINDINGS § I.B., supra, for a discussion of the properties of addictive substances. Indeed, a number of industry-funded studies state that

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COUNCIL FOR TOBACCO RESEARCH-USA, Literature Reviews
Larson. Tobacco -- Experimental and Clinical Studies -- A Comprehensive Account of the World Literature -- Supplement I

Larson. Tobacco -- Experimental and Clinical Studies -- A Comprehensive Account of the World Literature -- Supplement II

Larson. Tobacco -- Experimental and Clinical Studies -- A Comprehensive Account of the World Literature --Supplement III

OTHER
Battig. Smoke yield of cigarettes and puffing behavior in men and women

Nordberg. Pharmacodynamic effects of nicotine and acetylcholine biosynthesis in mouse brain

[266] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**
Hatchell. The influence of genotype and sex on behavioral sensitivity to nicotine in mice

Westfall. Influence of nicotine on catecholamine metabolism in the rat

R.J. REYNOLDS COMPANY
Pritchard. Flexible effects of quantified cigarette-smoke delivery on EEG dimensional complexity

BRITISH-AMERICAN TOBACCO COMPANY, LTD. Unpublished
Isaac. The absorption and effects of nicotine from inhaled tobacco smoke

OTHER
Isaac. Blood levels of nicotine and physiological effects after inhalation of tobacco smoke

[267] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**
Abood. Comparison of the binding of optically pure (-)- and (+)-[3H]nicotine to rat brain membranes

Andersson. Effects of withdrawal from chronic exposure to cigarette smoke on hypothalamic and preoptic catecholamine nerve terminal systems and on the secretion of pituitary hormones in the male

Andersson. Effects of acute intermittent exposure to cigarette smoke on catecholamine levels and turnover in various types of hypothalamic DA and NA nerve terminal systems as well as on the secretion of adenohypophyseal hormones and corticosterone

Bhagat. Influence of chronic administration of nicotine on the turnover and metabolism of noradrenaline in the rat brain

Fuxe. Increases in dopamine utilization in certain limbic dopamine terminal populations after a short period of intermittent exposure of male rats to cigarette smoke

Fuxe. Effects of Nicotine and exposure to cigarette smoke on discrete dopamine and noradrenaline nerve terminal systems of the telencephalon and diencephalon of the rat: Relationship to reward mechanisms and neuroendocrine functions and distribution of nicotinic binding sites in brain

Tung. Peripheral induction of burst firing in locus coeruleus neurons by nicotine mediated via excitatory amino acids

Wong. Pharmacology of nicotinic receptor-mediated inhibition in rat dorsolateral septal neurones

Yamamoto. Nicotine-induced EEG and behavioral arousal

R.J. REYNOLDS COMPANY
Byrd. Evidence for urinary excretion of glucuronide conjugates of nicotine, cotinine, and trans-3'-hydroxycotinine in smokers

INDUSTRY SUPPORTED SYMPOSIA
Binnie. The effect of cigarette smoking on the contingent negative variation (CNV) and eye movement

INDUSTRY SUPPORTED AMA/ERF STUDIES
Hirschhorn. Studies on the time course and the effect of cholinergic and adrenergic receptor blockers on the stimulus effect of nicotine

Rosecrans. Brain area nicotine levels in male and female rats with different levels of spontaneous activity

TOBACCO RESEARCH COUNCIL LABS., U.K.
Armitage. The effects of nicotine on the electrocorticogram and spontaneous release of acetylcholine from the cerebral cortex of the cat

Wesnes. Smoking, nicotine and human performance

OTHER
Fuxe. On the action of nicotine and cotinine on central 5-hydroxytryptamine neurons

Hasenfratz. Development of central and peripheral smoking effects over time

Hasenfratz. Can smoking increase attention in rapid information processing during noise? Electrocortical, physiological and behavioral effects

Perez de la Mora. Neurochemical effects of nicotine on glutamate and GABA mechanisms in the rat brain

OTHER, Literature Review
Edwards. Smoking, nicotine and electrocortical activity

nicotine is an addictive/dependence-producing drug.[268]

Nicotine psychoactivity and discrimination studies. Industry studies have shown that nicotine is psychoactive and produces clearly discriminable stimulus effects[269] in both animals and humans.[270]

Nicotine reinforcement/self-administration studies. The industry has examined nicotine's ability to serve as a positive reinforcer in self-administration studies involving rats and monkeys. For example, Philip Morris conducted studies in rats demonstrating that nicotine is self-administered by rats and has other hallmark properties of addictive susbstances.[271] The industry-supported research on monkeys led prominent drug addiction researchers Deneau and Inoki to conclude in a paper published in 1967 that nicotine "may be one of

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[268] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**
Bosse. Age and addiction to smoking

Martin. Tobacco Smoking and Nicotine: A Neurobiological Approach

Rosecrans. Noncholinergic Mechanisms involved in the behavioral and stimulus effects of nicotine, and relationships to the process of nicotine dependence

Rosecrans. Nicotine as a discriminative stimulus: a neurobehavioral approach to studying central cholinergic mechanisms

Svensson. Effect of nicotine on dynamic function of brain catecholamine neurons

Tung. Peripheral induction of burst firing in locus coeruleus neurons by nicotine mediated via excitatory amino acids

Williams. Stability of a factor-analytic description of smoking behavior

TOBACCO RESEARCH COUNCIL LABS., U.K.
Hall. New evidence for a relationship between tobacco smoking, nicotine dependence, and stress

OTHER
Andersson. Effects of acute central and peripheral administration of nicotine on ascending dopamine pathways in the male rat brain. Evidence for nicotine-induced increases of dopamine turnover in various telencephalic dopamine nerve terminal systems

Nisell. Systemic nicotine-induced dopamine release in the rat nucleus accumbens is regulated by nicotinic receptors in the ventral tegmental area

[269] These effects are evaluated in animals using drug discrimination techniques which enable direct comparisons of the effects of different drugs. Such studies evaluate whether an animal experiences a psychoactive effect from a drug and facilitate comparisons of the effect of the study drug with the effect of other psychoactive drugs. Industry-funded studies have shown that animals can distinguish (discriminate) nicotine from other drugs or a placebo, and can communicate their identification of nicotine (as distinct from other drugs) to the investigator by pressing a bar or providing other behavioral signals. These studies also provide information on the similarity of nicotine's effects to effects of other dependence-producing drugs, including the degree to which nicotine mimics the psychoactive effects of those other drugs. *See* p. 95.

[270] **INDUSTRY SUPPORTED AMA/ERF STUDIES**
Hirschhorn. Studies on the time course and the effect of cholinergic and adrenergic receptor blockers on the stimulus effect of nicotine

Schechter. Behavioral evidence for two types of cholinergic receptors in the C.N.S.

Schechter. Behavioral tolerance to an effect of nicotine in the rat

Schechter. Effect of mecamylamine on discrimination between nicotine- and arecoline- produced cues

Schechter. Nicotine as a discriminative cue in rats: inability of related drugs to produce a nicotine-like cueing effect

Schechter. Nicotine as a discriminative stimulus in rats depleted of norepinephrine or 5-hydroxytryptamine

Schechter. C.N.S. effect of nicotine as the discriminative stimulus for the rat in a T-maze

COUNCIL FOR TOBACCO RESEARCH-U.S.A
Chance. A comparison of nicotine and structurally related compounds as discriminative stimuli

Rosecrans. Nicotine as a discriminative stimulus: a neurobehavioral approach to studying central cholinergic mechanisms

PHILIP MORRIS TOBACCO COMPANY
Kallman. Nicotine as a discriminative stimulus in human subjects

TOBACCO RESEARCH COUNCIL LABS., U.K.
Morrison. Nicotine injections as the conditioned stimulus in discrimination learning

[271] **PHILIP MORRIS TOBACCO COMPANY, Unpublished**
DeNoble. Manuscript: Nicotine as a Positive Reinforcer for Rats: Effects of Infusion Dose and Fixed Ratio Size

See also pp. 278-79, *infra.*

INDUSTRY SUPPORTED AMA/ERF STUDIES
Deneau. Nicotine self-administration in monkeys

the substances in tobacco smoke which is responsible for man's use of tobacco."[272] The industry has also funded studies demonstrating that nicotine could enhance the rewarding effects of electrical brain stimulation.[273] A book resulting from The International Smoking Behaviour Conference held at Chelwood Vachery, Sussex, England, in 1978, which was edited by a senior scientist at British-American Tobacco, included a "Conference Overview" stating: "At this stage, we hypothesize that nicotine (possible [sic] interacting with tar) is the main reinforcing agent in cigarettes . . . "[274] Moreover, as noted earlier, the industry has conducted studies showing that nicotine is active in the same dopaminergic pathways that modulate cocaine's effects. These studies are relevant to understanding how nicotine causes addiction.

Tolerance to nicotine. Tolerance to the physiological and behavioral effects of nicotine has been thoroughly studied by the tobacco industry and has been demonstrated to occur in animals as a result of nicotine use.[275]

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[272] **INDUSTRY SUPPORTED AMA/ERF STUDIES**
Deneau. Nicotine self-administration in monkeys

[273] **COUNCIL FOR TOBACCO RESEARCH-U.S.A.**
Olds. Comparision of muscarinic and nicotinic cholinergic agonists on self-stimulation behavior
Pradan. Effects of nicotine on self-stimulation in rats

[274] **INDUSTRY SUPPORTED SYMPOSIA**
Jarvik. Smoking Behaviour – Physiological and psychological influences. 31. Conference overview

[275] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**
Abood. Acute and chronic effects of nicotine in rats and evidence for a non-cholinergic site of action
Abood. Behavioral and biochemical studies in rats after chronic exposure to nicotine
Andersson. Effects of withdrawal from chronic exposure to cigarette smoke on hypothalamic and preoptic catecholamine nerve terminal systems and on the secretion of pituitary hormones in the male
Cronan. Effects of chronically administered nicotine and saline on motor activity in rats
Domino. Tolerance to the effects of daily nicotine on rat bar pressing behavior for water reinforcement
Fuxe. Effects of nicotine and exposure to cigarette smoke on discrete dopamine and noradrenaline nerve terminal systems of the telencephalon and diencephalon of the rat: Relationship to reward mechanisms and neuroendocrine functions and distribution of nicotinic binding sites in brain
Lapin. Dopamine-like action of nicotine: lack of tolerance and reverse tolerance
Nelson. Improvement of performance on an attention task with chronic nicotine treatment in rats
Rosecrans. Noncholinergic Mechanisms involved in the behavioral and stimulus effects of nicotine, and relationships to the process of nicotine dependence
Stitzer. Effects of nicotine on fixed-interval behavior and their modification by cholinergic antagonists
Wenzel. Studies on the acute and chronic depressor actions of nicotine in the rat
Westfall. Studies on the mechanism of tolerance to nicotine-induced elevations of urinary catecholamines

R. J. REYNOLDS COMPANY
Bjercke. Anti-idiotypic antibody probes of neuronal nicotinic receptors
Collins. Modulation of nicotine receptors by chronic exposure to nicotinic agonists and antagonists
Marks. Downregulation of nicotinic receptor function after chronic nicotine infusion

PHILIP MORRIS TOBACCO COMPANY, Unpublished
DeNoble. Manuscript: Development of behavioral tolerance following chronic nicotine administration.

INDUSTRY SUPPORTED AMA/ERF STUDIES
Schechter. Behavioral tolerance to an effect of nicotine in the rat

TOBACCO RESEARCH COUNCIL LABS., U.K.
Morrison. The occurrence of tolerance to a central depressant effect of nicotine

OTHER
Larsson. Subchronic treatment of rats with nicotine: effects on tolerance and on [3H]acetylcholine and [3H]nicotine binding in the brain
Nordberg. Effect of acute and subchronic nicotine treatment on cortical acetylcholine release and on nicotinic receptors in rats and guinea-pigs
Nordberg. Effect of long-term nicotine treatment on [3H]nicotine binding sites in the rats brain

Nicotine's withdrawal effects. Scientists funded by the tobacco industry have conducted research on various aspects of withdrawal, including potential neurochemical mechanisms[276] and the effects of withdrawal on performance.[277] Symptoms of withdrawal may include craving, irritability, nervousness, tension, emotional strain, depression, inability to concentrate, sleep disturbance, sweating, gastrointestinal changes, drop in blood pressure and pulse rate, impaired performance, and changes in the electroencephalogram.[278]

The industry has also funded studies showing that tobacco users report "craving" for tobacco.[279]

Continued use of tobacco despite attempts to quit. As described in § II.C.4., infra, the tobacco industry has conducted a number of studies documenting the large percentage of tobacco users who have attempted to quit using tobacco and the very small percentage who have succeeded.

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[276] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**
Andersson. Effects of withdrawal from chronic exposure to cigarette smoke on hypothalamic and preoptic catecholamine nerve terminal systems and on the secretion of pituitary hormones in the male
Fuxe. Effects of Nicotine and exposure to cigarette smoke on discrete dopamine and noradrenaline nerve terminal systems of the telencephalon and diencephalon of the rat: Relationship to reward mechanisms and neuroendocrine functions and distribution of nicotinic binding sites in brain
Rosecrans. Noncholinergic Mechanisms involved in the behavioral and stimulus effects of nicotine, and relationships to the process of nicotine dependence

COUNCIL FOR TOBACCO RESEARCH-U.S.A., Literature Reviews
Larson. Tobacco – Experimental and Clinical Studies – A Comprehensive Account of the World Literature – Supplement II
Larson. Tobacco – Experimental and Clinical Studies – A Comprehensive Account of the World Literature –Supplement III

AMERICAN TOBACCO COMPANY
Finnegan. The role of nicotine in the cigarette habit

[277] **COUNCIL FOR TOBACCO RESEARCH-U.S.A**
Heimstra. The effects of deprivation of cigarette smoking on psychomotor performance
Heimstra. Effects of smoking upon sustained performance in a simulated driving task

COUNCIL FOR TOBACCO RESEARCH-U.S.A., Literature Reviews
Fuxe. Neuroendocrine actions of nicotine and of exposure to cigarette smoke: medical implications
Larson. Tobacco – Experimental and Clinical Studies – A Comprehensive Account of the World Literature –Supplement III

OTHER
Hasenfratz. Psychophysiological reactions during active and passive stress coping following smoking cessation

[278] **COUNCIL FOR TOBACCO RESEARCH-U.S.A., Literature Reviews**
Larson. Tobacco – Experimental and Clinical Studies – A Comprehensive Account of the World Literature – Supplement II
Larson. Tobacco – Experimental and Clinical Studies – A Comprehensive Account of the World Literature –Supplement III

AMERICAN TOBACCO COMPANY
Finnegan. The role of nicotine in the cigarette habit

[279] **R. J. REYNOLDS COMPANY**
Robinson. The meaning of addiction: reply to West

OTHER
Hasenfratz. Development of central and peripheral smoking effects over time
Hasenfratz. Post-lunch smoking for pleasure seeking or arousal maintenance?

C. INDUSTRY RESEARCH ON THE CONSUMER'S NEED FOR AN ADEQUATE DOSE OF NICOTINE

1. Industry Research on Importance of Supplying Sufficient Nicotine to Provide Consumer Acceptance and "Satisfaction"

The industry has conducted extensive research establishing that smokers require a certain level of nicotine from their cigarettes and that tobacco "satisfaction" is attributable to nicotine's systemic effects after absorption, rather than to its immediate sensory effects in the mouth, nose, and throat.[280]

In the mid 1970's, BATCO Group Research & Development conducted Project Wheat, a study whose purpose was to identify the different motivations for smoking and correlate those motivations with what BATCO characterized as a smoker's "Inner Need level."[281] The researchers established smokers' "Inner Need level" by identifying the extent to which they smoked to relieve stress, to aid concentration, and as a food substitute to avoid weight gain.[282] In other words, a smoker's "Inner Need" was defined by the extent to which the smoker used cigarettes for the drug effects of nicotine. (See description of the effects of nicotine on mood and weight in FINDINGS § I.D., supra.) The researchers hypothesized that the "Inner Need

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[280] BATCO Group Research & Development Centre. Research Conference. Southampton, England. September, 1984. Page 1. Proposed Revisions for 1985-87:

> *Specific attention will be focussed on nicotine to identify its contribution to product attributes, particularly acceptability and satisfaction. A range of de-nicotinised tobacco blends, supplemented with varying levels of nicotine, will be prepared. These will be used in studies aimed at assessing the specific sensory properties of nicotine and the relationship between tar and nicotine in terms of product acceptability. The studies will provide an initial opportunity to separate immediate product acceptability from longer-term satisfaction.*

[281] *See* Project Wheat - Part 1, note 204, *supra*, at p. 1; Project Wheat - Part 2, note 204, *supra*, at p. 1.

[282] *See* Project Wheat - Part 1, note 204, *supra*, at pp. 5, 10-11, 16-25.

level" would correlate with the smoker's preferred nicotine delivery, and that smokers with higher "Inner Need" would prefer cigarettes that delivered higher nicotine levels.

Project Wheat was intended to help BATCO develop cigarettes that were more acceptable to consumers.[283] The Project Wheat researchers emphasized the importance of nicotine delivery over all other product features (including taste) in achieving an acceptable and satisfying cigarette:

> *In considering which product features are important in terms of consumer acceptance, the nicotine delivery is one of the more obvious candidates. Others include the taste and flavour characteristics of the smoke, physical features such as draw resistance and rate of burn, and the general uniformity of the product, to name but a few. The importance of nicotine hardly needs to be stressed, as it is so widely recognised.*[284] [Emphasis added.]

The researchers found that "Inner Need" correlated positively with daily cigarette consumption, depth of inhalation, and anticipated difficulty in giving up smoking; i.e., a higher "Inner Need" smoker would smoke more cigarettes, inhale more deeply, and anticipate greater difficulty in quitting smoking than a lower "Inner Need" smoker.[285] The researchers concluded that "Inner Need" defined a requirement for nicotine by the smoker.[286]

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[283] *See* Project Wheat - Part 1, note 204 *supra*, at p.1.

[284] *See* Project Wheat - Part 1, note 204 *supra*, at p. 3.

[285] *Id.* at p. 2.

[286] BATCO Group R&D *Conference on Smoking Behavior*. October 11-12, 1976, at p. BW-W2-02295.

The Project Wheat researchers also found that smokers of low nicotine delivery cigarettes derive less satisfaction from their cigarettes than smokers of medium or high nicotine cigarettes.

> *Compared with the other two categories of smoker [medium and high], those respondents who smoke low nicotine cigarettes (less than 1.0 mg per cigarette) see their brand as milder, smoother, less satisfying and with not quite such a good taste, comments which are of course perfectly logical.*

Project Wheat - Part 2, note 204, *supra*, at p. 10.

Tobacco industry documents show that smoker "satisfaction" is one of the key attributes of consumer acceptance of tobacco products. These documents also make clear that "satisfaction" is a tobacco industry euphemism that refers to the pharmacological response to nicotine that smokers seek to obtain from smoking.[287] A BATCO scientist, in a 1969 presentation describing the research activities of BATCO Group Research & Development, stated that:

> *The presence of nicotine is the reason why the tobacco plant was singled out from all other plants for consumption in this rather unusual way.*

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[287] Wood DJ. BATCO Group Research & Development. "Aspects of the R&DE Function. Notes for a talk given at Chelwood. September, 1969." (The document bears the date July 20, 1970). Page 7.

See also:
Proceedings of BATCO Group R&D Smoking Behaviour-Marketing Conference, Session I. July 9-12, 1984. Session I discusses nicotine's whole body dose and its relationship to smoker satisfaction. *See*, e.g., p. BW-W2-03242: nicotine underlies smoking maintenance "and as a consequence probably provides the basis of smoking satisfaction"; at p. 03243: nicotine's "whole body response [is] associated with satisfaction." Session II discusses methods for assessing smoker response to changing deliveries:

> *German butt analysis [testing of cigarette butts to determine smokers' nicotine uptake] and switching experiments [exposing smokers to cigarettes with varying deliveries] were used to indicate the capacity of external studies [as opposed to laboratory measures of smokers' nicotine uptake] to indicate . . . measurement of smokers changing the way they smoke in order to satisfy their needs.*

Ferris, RP. Notes from the Proceedings of the Smoking Behaviour-Marketing Conference. July 9-12, 1984. Page 21.

Imperial Tobacco. Matinee Marketing Strategy. 1971. Page 11. "A cigarette that delivers physiological satisfaction, yet is low in tar and nicotine, must surely be a major objective..."

BATCO Structured Creativity Conference. Southampton, England. June 25-28, 1984. The purpose of this conference was "to stimulate genuinely innovative product-based project ideas." Moist snuff was proposed as an alternative to cigarettes so as "[t]o capitalise on the potential downtrend of the smoking habit as the only means to achieve nicotine satisfaction by participating in a parallel product market free of social/health concerns and with attractive profitability." [Emphasis added.]

BATCO Group R & D. Research Conference. Rio de Janeiro, Brazil. August 22-26, 1983, at p. BW-W2-01838.

BATCO Group R & D. Nicotine Conference Outline. Southampton, England. June 6-8, 1984, at p. BW-W2-01977.

> *Nicotine has well documented pharmacological action. It is claimed to have a dual effect, acting both as a stimulant and a tranquilliser. It is believed to be responsible for the "satisfaction" of smoking, using this term in the physiological rather than the psychological sense.*[288]

The proceedings to the 1983 BATCO Group R&D Research Conference in Rio de Janeiro state that:

> *The basic assumption is that nicotine, which is almost certainly the key smoke component for satisfaction, is fully released to the body system before exhalation takes place.* [Emphasis added].[289]

A 1984 BATCO Nicotine Conference similarly concluded that:

> *Intuitively it is felt that "satisfaction" must be related to nicotine. Many people believe it [is] a "whole body response" and involves the action of nicotine in the brain.*[290]

An RJR-MacDonald Marketing Summary Report from 1983 concludes that the primary reason people smoke "is probably the physiological satisfaction provided by the nicotine level of the product."[291]

The term "satisfaction" is also used by the smokeless tobacco industry to refer to the physiological effects of nicotine on the user. The senior vice president for marketing of the U.S. Tobacco Co. wrote in a memo on new product development:

> *Flavorwise we should try for innovation, taste and strength, nicotine should be medium . . . Virtually all tobacco usage is based upon nicotine, "the kick."*

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[288] *See* Wood, note 287, *supra*, at p. 7.

[289] *See* BATCO Group R & D Research Conference, Rio de Janeiro, 1983, note 287, *supra*, at p. 10.

[290] *See* BATCO Conference Outline, 1984, note 287, *supra*, at p. BW-W2-01977.

[291] *RJR-MacDonald v. Canada*, 5.3 TPLR 4.26.

satisfaction. [Emphasis added.][292]

These documents show that tobacco companies know that tobacco "satisfaction" is provided by nicotine's pharmacological effects on the brain and that the industry strives to offer products that meet this need.

[292] Deposition of Per Erik Lindqvist, *Marsee v. U.S. Tobacco*, Civil Action No. 84-2777R (W.D. Ok. 1986). Transcript of Jury Trial Proceedings at p.1662. In: 1.7 TPLR 3.216.

2. Industry Research to Determine the Minimum and Maximum "Dose" of Nicotine Required by Consumers of Tobacco

The tobacco industry has focused extensive research efforts on methods to assay systemic nicotine absorption so that it may estimate nicotine doses obtained and required by smokers.[293] Tobacco company documents reveal that the primary purposes of these efforts are to better understand the relationship between nicotine dose and nicotine's pharmacological effects in smokers, and to establish the level of nicotine that must be provided in tobacco to produce these effects. Better knowledge of nicotine's dose-response effect in smokers results in a better understanding of how smokers respond to cigarettes with varying nicotine deliveries and how different doses of nicotine may affect smoker satisfaction.

As early as 1970, the tobacco industry had investigated and attempted to determine the

[293] *See e.g.*:
BATCO. *Fate of Nicotine in the Body*. 1963.

BATCO R&D. *Relation Between 'Extractable Nicotine' Content of Smoke and Panel Response*. March 17, 1967.

BATCO R&D. *Nicotine in Smoke and Human Physiological Response*. March 26, 1970.

BATCO. *Relative Contributions of Nicotine and Carbon Monoxide to Human Physiological Response*. November 15, 1971.

BATCO Group R&D *Further Studies of the Effect of Nicotine on Human Physiological Response*. June 5, 1973.

Proceedings of the BATCO Group R&D Smoking Behaviour-Marketing Conference. Session I. July 9-12, 1984. Page 16 (slides).

See Ayres, note 172, *supra*.

BATCO Group R&D *Nicotine Studies: A Second Report. Estimation of Whole Body Nicotine Dose by Urinary Nicotine and Cotinine Measurement*. March 31, 1981. Page 3.

Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session I (1984):21, slide at p. BW-W2-03243; *Session II* (1984):21, slide at p. BW-W2-02406.

minimum level of nicotine necessary for consumer acceptance. At a BATCO R&D Conference held that year, the conferees agreed that:

> *Nicotine is important, and there is probably a minimum level necessary for consumer acceptance in any given market.*[294]

A 1972 Philip Morris document from a Council for Tobacco Research conference addressing why people smoke reveals the basis of the industry's concern about maintaining nicotine levels above a defined minimum:

> *Despite many low nicotine brand entries into the marketplace, none of them have captured a substantial segment of the market. In fact, critics of the industry would do well to reflect upon the indifference of the consumer to the industry's efforts to sell low-delivery brands. 94% of the cigarettes sold in the U.S. deliver more than 1 mg of nicotine. 98.5% deliver more than 0.9 mg. The physiological response to nicotine can readily be elicited by cigarettes delivering in the range of 1 mg of nicotine.* [Emphasis added.][295]

Similarly, the 1984 BATCO Group R & D Nicotine Conference concluded:

> *Cigarettes which have a delivery of less than 0.7 mg of nicotine per cigarette as measured on a smoking machine, do not achieve large volume sales.*[296]

In Project Wheat, discussed in § II.C.1., supra, a 0.7 mg nicotine test cigarette was found to be unacceptable by smokers regardless of the smokers' relative nicotine requirements; the low-dose product was rejected by smokers with both high and low nicotine requirements.[297]

An internal Philip Morris document from 1978, detailing plans to study cigarettes with

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[294] BATCO Group R&D *Summary Conclusions: Group Research Conference.* St Adele, Canada. September 11, 1970. Page 1.

[295] *See* Dunn, note 133, *supra,* at p. 4.

[296] BATCO Conference Outline, 1984, note 287 *supra,* at p. BW-W2-01977.

[297] *See* Project Wheat - Part 2, note 204, *supra,* at p. 47.

different levels of nicotine at a given tar level, shows that Philip Morris, too, conducted studies to find the minimum level of nicotine delivery necessary to satisfy smokers' need for nicotine:

> *Question 4. Tar delivery delivery being the same, what are the behavioral consequences of smoking low nicotine rather than high nicotine cigarettes?*
> *This question will be answered by conducting a series of shift studies using cigarettes of similar low tar but differential nicotine deliveries. The low nicotine delivery will ensure that the total nicotine in the system remains at or near the nicotine need threshold, thus maximizing the proportion of the day's cigarette consumption which is smoked out of need . . .*
> *The results may shed light on the manner by which nicotine control is achieved.*[297a] [Emphasis added.]

Demonstrating the industry's continuing interest in determining the minimum dose of nicotine that must be contained in a cigarette to provide satisfaction, the BATCO "Group R&D Research Programme, 1984: Proposed revisions for 1985-87," states that studies would be done by the industry

> *to establish the minimum dose of smoke nicotine that can provide pharmacological satisfaction for the smoker.* [Emphasis added.][298]

One key to identifying the minimum and maximum doses of nicotine was the development of a method to accurately measure nicotine in the human body. A 1976 Council for Tobacco Research Annual Report identifies a need for better methods to measure nicotine levels in human smokers:

> *. . .an expansion of information on the actual ranges or durations of plasma nicotine levels attained by human smokers (and users of other forms of tobacco) under actual conditions of life should be attainable . . . Sensitive, specific and rapid assays for plasma nicotine and its major metabolites have*

[297a] Memorandum to T.S. Osdene from W.L. Dunn. Plans and Objectives - 1979. December 6, 1978. *In* Cong Rec. H7670 (daily ed. July 25, 1995).

[298] *See* BATCO, note 280, *supra,* at p. 2.

long been needed.[299]

Another series of studies conducted by Philip Morris was designed to discover the relationship between the dose of nicotine provided by a cigarette, the level of nicotine in the bloodstream following that cigarette, and the length of time before the nicotine in the bloodstream fell to the point that the smoker experienced the urge for another cigarette. This required Philip Morris to develop an assay for nicotine and saliva and correlate salivary nicotine with blood nicotine:

> *Our theorizing on the role of nicotine suggests that cigarettes will be smoked whenever body nicotine content drops below a certain (unknown) level . . . .*
>
> *We are engaged in systematic investigation of the changes in salivary nicotine content as a function of the time since smoking and magnitude of intake . . . .*
>
> *Assuming that salivary nicotine concentrations will reflect blood nicotine concentrations, we can then proceed to a fourth stage in the research, relating the easily obtained salivary concentrations to the urge to smoke.*[299a] [Emphasis added.]

A 1980 BATCO Group R&D study report, "Method for Cotinine and Nicotine in Blood and Urine," describes an improved analytical method for the simultaneous measurement of nicotine and cotinine (nicotine's major metabolite in man) in samples of blood and urine.[300]

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[299] Report of the Council for Tobacco Research - U.S.A., Inc. Annual Report 1976. Page 12.

[299a] Memorandum to T.S. Osdene from W.L. Dunn. Plans and Objectives - 1980. January 7, 1980. *In* Cong Rec. H7672 (daily ed. July 25, 1995).

[300] Read GA, Anderson IGM. BATCO Group R&D *Method for Nicotine and Cotinine in Blood and Urine.* Report No. RD 1737-C. May 21, 1980. Page 12 (established and validated an assay for nicotine and cotinine in blood and urine that is sufficiently sensitive to determine changes in ". . . plasma levels of nicotine achieved in response to varying concentrations of or different dose levels of nicotine").

See also New Cigarette Prototypes that Heat Instead of Burn Tobacco. Winston-Salem, NC: R.J. Reynolds Tobacco Co. 1988:457-557. Comparative study of humans smoking the NEW CIGARETTE and a Reference Cigarette. (Compared nicotine pharmacokinetics in smokers smoking the New (heated tobacco) cigarette and a regular burning cigarette to determine whether the New cigarette provided a nicotine dose comparable to a regular burning cigarette. Researchers measured smokers' plasma and urine

The method was developed to better study the systemic effects of nicotine and the extent to which those effects influence smoking behavior and smoker satisfaction. The report states:

> *In some instances, the pharmacological response of smokers to nicotine is believed to be responsible for an individual's smoking behaviour, providing the motivation for and the degree of satisfaction required by the smoker. [Emphasis added.]*[301]
>
> *Naturally, during any study of the biological effect of nicotine it is of paramount importance to accurately assess the dose of nicotine absorbed . . . [W]here the causal relationship between nicotine and individual biochemical, physiological or psychological responses are to be investigated, accurate information regarding nicotine dose is essential.* [Emphasis added.][302]

A 1981 BATCO Group R&D study developed a rat model to estimate "whole body nicotine dose" by measuring urinary nicotine and cotinine levels. The researchers concluded that the model would likely be a good predictor of nicotine dose in humans and, therefore, would aid in understanding the relationship between nicotine delivery and smokers' choice of particular brands:

> *These results strongly suggest that the whole body dose of nicotine can be predicted from urinary levels of nicotine and cotinine. The findings have immediate and obvious significance to both animal toxicity and human behavioural studies. They are particularly relevant to the development of an understanding of an individual smoker's daily nicotine requirement and the relationship between nicotine dose and smoking behaviour under conditions of brand switching/delivery modification.* [Emphasis added.][303]

A presentation at a 1983 BATCO Smoking Behavior Conference describes how to

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concentrations of nicotine to compare nicotine doses.)

[301] *See* Read, note 300, *supra,* at p. 2.

[302] *Id.* at pp. 2-3.

[303] BATCO Group R&D *Nicotine Studies: A Second Report. Estimation of Whole Body Nicotine Dose by Urinary Nicotine and Cotinine Measurement.* March 3, 1981, at pp. 9-10.

design and execute a study of plasma cotinine as a function of cigarette nicotine delivery.[304] It establishes that there is a linear relationship between plasma cotinine and nicotine delivery. A session on "Nicotine Dose Estimation" at BATCO's 1984 Smoking Behaviour-Marketing Conference was intended "to review the current status of plasma/urinary measures estimates [sic] of nicotine dose and to identify the significance of those measures for the smoker and product design." It was concluded that:

> *[u]nder appropriate conditions plasma nicotine and cotinine measures can be used to estimate daily nicotine intake.*[305]

Using assay methods such as those discussed above, tobacco companies have discovered that smokers obtain a fairly consistent dose of nicotine from tobacco. Moreover, tobacco companies are aware that smokers obtain this dose to maintain a desired blood level of nicotine throughout the day, and that achieving this dose results in smoker satisfaction.[306] For example, following a presentation on the role of nicotine in smoking behavior at the 1976 BATCO Conference on Smoking Behavior, it was observed "that smokers may be people suffering from a nicotine disorder and needed a certain dose level per day."[307] The speaker agreed and referred to a Battelle study which found that the nicotine level of smokers remained constant during the day, dropped during the night, and was restored to near its

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[304] Deines WH. BATCO. *Smoking Behaviour Conference: Overview.* 1983. (Attended by eight B&W employees). Page BW-W2-03280.

[305] Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session I. July 9-12, 1984. Montreal, Canada. Slide at p. BW-W2-02641, "Nicotine Dose Estimation."

[306] Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session I. July 9-12, 1984. Slides at pp. BW-W2-03243, BW-W2-03236: "whole body response: associated with satisfaction . . . [whether] dose of nicotine is adequate or inadequate."

[307] Proceedings of the BATCO Group R&D Smoking Behaviour-Marketing Conference. (Mrs. A.K. Comer, speaker.) Discussion on paper No. 2. October 1976. Southampton, England. Page BW-W2-02150.

daytime constant level by the first cigarette of the day.[308] The conferees then speculated that there may be a maximum dose of nicotine and that after this dose is achieved smokers may use cigarettes for reasons other than obtaining nicotine:

> *A further question in this area was whether there is a maximum nicotine level in smokers and, when this has been achieved, does the smoker smoke for reasons other than to obtain nicotine?*[309]

A paper presented at the 1977 BATCO International Smoking Behaviour Conference concluded that smokers adjust their smoking rate, depending on psychological factors and even diet, to maintain a certain body nicotine content.[310]

Relying on plasma nicotine/cotinine measurements, a 1984 BATCO Nicotine Conference concluded that:

> *[such] measurements can give reliable estimates of the nicotine uptake by groups of smokers, and with suitable precautions, by an individual smoker. Many smokers appear to obtain 12-14 mg of nicotine per day from their cigarettes.*[311]

A BATCO presentation from the 1984 BATCO Smoking Behaviour-Marketing Conference entitled "Current Status and Future Direction of Smoking Behavior Research" contains a discussion of whole body dose and whole body pharmacological properties of nicotine in relation to smoking satisfaction.[312] A chart accompanying the presentation plots a

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[308] *Id.* at p. BW-W2-02151.

[309] *Id.* at p. BW-W2-02151.

[310] BATCO International Smoking Behaviour Conference. Chelwood Vachery, England. 1977. Page 2.

[311] *See* BATCO Conference Outline, 1984, note 287, *supra,* at p. BW-W2-01977.

[312] Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session I. Montreal, Canada. July 9-12, 1984. Page BW-W2-03236.

24-hour nicotine blood level curve, with peaks representing the nicotine dose obtained from cigarettes smoked during the day. Each peak actually represents a series of smaller peaks that indicate the dose of nicotine delivered by each puff. Each puff is characterized as a "pulsed high concentration bolus dose of nicotine."[313]

The report states that among smokers there is broad consistency in the whole body nicotine doses obtained by different groups and types of smokers.[314] This is so despite the fact that smoking products have a wide range of nicotine deliveries and despite wide variations in smoking behavior, such as puff duration, puff intensity, puff volume, puff interval, and depth of inhalation. The report states that the fact that widely disparate smoking behavior nonetheless results in fairly consistent whole body nicotine doses (12-14 mg per day) across a broad range of smokers demonstrates that nicotine underlies smoking maintenance.[315] Smokers maintain a fairly consistent whole body dose or blood level and self-administer additional nicotine doses when total body nicotine dose declines due to metabolism of nicotine. Therefore, the report concludes, the dose of nicotine "probably provides the basis for smoking satisfaction"[316] as it restores the whole body dose to the desired level.

The smokeless tobacco industry has also investigated the dose of nicotine that is absorbed into the blood and bodies of smokeless tobacco users. Pharmacokinetic studies

[313] *Id.* at p. BW-W2-03238.

[314] *Id.* at p. BW-W2-03241.

[315] *Id.* at p. BW-W2-03241-42.

[316] *Id.* at p. BW-W2-03242.

performed by the U.S. Tobacco Co. (UST) reveal that the researchers were interested in how much nicotine was absorbed into the body, how much was metabolized, and how fast nicotine and its metabolites were eliminated from the body. Documents admitted into evidence in a court case reveal that the company investigated the disposition profile of nicotine and its metabolite in both plasma and urine in naive and habituated users of tobacco snuff.[317] The study found no difference between these two populations. UST also performed a study to compare the pharmacokinetics of nicotine and its metabolites following administration of snuff and cigarettes.[318] According to a report of the study, the purpose of this research was to "delineate the similarities and differences in nicotine pharmacokinetics after acute and chronic use of smoked and smokeless tobacco products."[319]

The tobacco industry has also investigated the difference between minimum acceptable and optimum nicotine levels. Project Wheat was designed to test the assumption that the optimum level of nicotine might vary for different types of smokers. The study report concludes that the optimum nicotine delivery for U.K. male smokers is approximately 1.5 mg of nicotine. An earlier Imperial Tobacco study referenced in the Project Wheat report had similarly concluded that the optimum nicotine delivery for U.K. smokers was around 1.4 mg per cigarette and that stepwise reduction in nicotine delivery caused progressive rejection of

[317] U.S. Tobacco Co. *Pharmacokinetics of Nicotine and its Major Metabolites in Naive and Habituated Snuff Takers.* Plaintiff's exhibit 3.27 from *Marsee v. U.S. Tobacco* (W.D. Ok. 1986) (Civil Action No. 84-2777R).

[318] U.S. Tobacco Co. *Results of Comparison of Routes of Nicotine Administration.* Plaintiffs exhibit 3.28 from *Marsee v. U.S. Tobacco*, note 317, *supra.*

[319] *Id.*

the 1.4-mg cigarette by consumers.[320]

These documents make clear that the industry is aware that tobacco products must deliver an adequate dose of nicotine, that there is a minimum dose below which the desired pharmacological effects of nicotine are not elicited, and that consumers will not accept a product that does not deliver an adequate dose of nicotine.[321]

[320] *See* Project Wheat - Part 2, note 204, *supra*, at p. BW-W2-01721-2.

[321] Although currently marketed low-delivery products may "yield" less than the amount of nicotine shown in these industry documents to be the minimum accepted dose, machine measured yields may underestimate the amount of nicotine smokers actually obtain from cigarettes. *See* FINDINGS § I.C. at p. 112.

3. Industry Research on How Consumers "Compensate" to Achieve an Adequate Dose of Nicotine

When smokers are given cigarettes with a lower nicotine yield (as measured by a smoking machine), than their regular brands, they often "compensate" by smoking the cigarette more intensely, e.g., by taking larger or more puffs, or by smoking more cigarettes.[322] Tobacco company documents reveal that the industry recognizes both that smokers compensate and that the purpose of compensating behavior is to allow smokers to obtain a dose of nicotine that satisfies their physiological need for nicotine.[323] The industry's

[322] *See, e.g.:*

Guyatt AR, Kirkham AJ, Baldry AG, Dixon M, Cumming G. *How Does Puffing Behavior Alter During Smoking of a Single Cigarette?* Pharmacol. Biochem. Behav. 1989;33(1):189-195.

Benowitz NL, Hall SM, Herning RI, Jacob P III, Jones RT, Osman AL. *Smokers of Low-Yield Cigarettes Do Not Consume Less Nicotine.* N. Engl. J. Med. 1983;309(3):139-142.

Memorandum from P.N. Lee to H.R. Bentley. *Tar Reduction and Nicotine Compensation.* July 19, 1979. Attached to the memorandum is a document that reviewed the existing scientific literature on smoking compensation prepared by Lee for the UK's Tobacco Advisory Council, July 19, 1979. The author concluded, at page 4, that:

> *Taken together, the evidence above seems to indicate that a smoker, when switching to a brand with lower nicotine yield, will tend to 'compensate' mainly by altering inhalation patterns but partly perhaps by a small increase in consumption.*

[323] "Compensation" is acknowledged in the following documents, among others:

BATCO Group R&D Conference. *The Effect of Puff Volume on "Extractable Nicotine" and on the Retention of Nicotine in the Mouth.* Laboratory Report No. L.314-R. Southampton, England. August 21, 1969.

Creighton D, McGillivray LM. BATCO R&DE. *Relative Contributions of Nicotine and Carbon Monoxide to Human Physiological Response.* Report No. RD839-R. Southampton, England. November 15, 1971. Page 22.

Armitage AK. Some recent observations relating to the absorption of nicotine from tobacco smoke. In: Dunn WL, ed. *Smoking Behavior: Motives and Incentives.* Washington, DC: VH Winston & Sons; 1973:83:

> *The human smoker can and does adjust the dose of nicotine he takes into his mouth very subtly, by adjusting either the size of his puff or the rate at which he puffs (this was shown very clearly by the elegant experiments of Ashton and Watson [1970], to which*

study of compensation by smokers provides compelling evidence that the industry knows that its market is based on nicotine dependence and that tobacco products are nicotine delivery systems.

Tobacco company researchers have repeatedly recognized the phenomenon of compensation and acknowledge that it occurs because smokers are seeking a specific dose of

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Domino [this volume] referred); . . . and the smoke taken into the mouth can be inhaled very deeply, moderately deeply, slightly, or not at all.

BATCO Group R&D Conference on Smoking Behaviour. October 11-12, 1976. Southampton. Table III. Page BW-W2-02251 (questions whether increase in CO can result when a smoker compensates for reduced nicotine delivery to the mouth.)

Thornton RE. BATCO Group R&D *Some "Benefits" of Smoking*. Report No. RD 1461. January 26, 1977.

Courtney JR, Comer AK. BATCO Group R&D *The Study of Human Smoking Behaviour Using Butt Analysis*. Report No. RD 1608. August 7, 1978.

Lee, note 322, *supra*.

Read G, Anderson IGM, Chapman RE. BATCO Group R&D *Nicotine Studies: A Second Report. Estimation of Whole Body Nicotine Dose By Urinary Nicotine and Cotinine Measurement*. March 31, 1981. Pages 9-10.

Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session III. July 9-12, 1984. Slides at p. BW-W2-02748-02750, 02754-02759.

Id. Koehn E. Potential of nicotine addiction. Page 64, BW-W2-02651.

Id. Pangritz D. Discussion (Minutes). Page 65, BW-W2-02647-02651.

R.J. Reynolds, note 300, *supra*, at pp. 479, 482-3, 490-2.

Tobacco Advisory Council. *Reduction in Sales Weighted Average Cigarette Brand Tar Yield: Problems Associated with the Suggestion to Achieve Further Stages According to a Fixed Timetable* (prepared by TAC for members of the Independent Scientific Committee on Smoking and Health) at p. 3:

> *There are circumstances in which smokers, when switching to a brand with a reduced tar yield, will tend to 'compensate' whether consciously or subconsciously, if they find some aspect of a new cigarette less acceptable than that of their normal brand, in such a way as to restore to some extent the loss of satisfaction associated with the reduced tar yield itself, or associated with some inevitable consequence of the reduced tar yield, for example reduced nicotine yield. . . .*

nicotine from each cigarette. For example, Senior Philip Morris scientist William L. Dunn wrote to an outside researcher in 1975 that smokers compensate for reduced nicotine in cigarettes through a variety of techniques designed to increase the amount of nicotine that enters the bloodstream:

> *The ultimate index [of nicotine consumption] is how much passes over into the bloodstream . . . We're now looking at the fate of the smoke entering the mouth; how much goes down, how much comes back out, and related behavioral events that we anticipate finding to be dose-regulating mechanisms of remarkable precision and sensitivity.*
>
> *Thus to accommodate to the 15 percent reduction in available Marlboro nicotine, the smoker who was getting 50 percent of the available nicotine over into his blood from the Marlboro delivering 1.1 mg of nicotine into a smoking machine now must get 59 percent of what the current Marlboro offers him. He can take bigger puffs, or inhale more from the supply drawn into the mouth . . . or for more efficient extraction of the goodies, he can draw it in deeper or hold it longer.*[323a] [Emphasis added.]

[323a] Letter to Stanley Schachter, Columbia University from William L. Dunn. September 8, 1975. *In* Cong Rec. H7662 (daily ed. July 25, 1995).
See also:
Memorandum to T.S. Osdene from W.L. Dunn. Behavioral Research Accomplishments-1977. December 19, 1977. *In* Cong Rec. H7666, *supra*:

> *[N]icotine compensation is a real phenomenon . . .*

In this report, the researchers describe a study confirming their hypothesis that "some people smoke for nicotine, and that these people try to obtain a relatively constant amount of nicotine from their cigarettes." The internal study showed that smokers they called "nicotine regulators" obtained more nicotine from their cigarettes following a period of deprivation than when allowed to smoke freely.

Dunn WL. 1600/Smoker Psychology/January 1-31, 1976 [Monthly Report]. February 10, 1976. *In* Cong Rec. H7663, *supra*. This report describes a new study being undertaken by Philip Morris "to identify nicotine regulators and non-regulators." The study design involved measuring "the daily nicotine intakes" of a group of smokers when allowed to smoke their own cigarettes, then measuring their nicotine intakes when given cigarettes with higher or lower delivery than their own brand:

> *We want to find out if we can "force" our potential regulators to modify their puff volumes, inhalation volumes, and/or smoke retention times in order to obtain their usual nicotine dose.* [Emphasis added.]

Memorandum from W.L. Dunn to T.S. Osdene. Quarterly Report - January 1-March 31, 1975. March 25, 1975. *In* Cong Rec. H7662, *supra*. Reports on a Philip Morris study showing compensation behavior in smokers:

> *Preliminary data suggest that more cigarettes are smoked and more puffs taken when the observations follow a two-hour deprivation period than following two hours when smoking is*

In 1984, the minutes of the BATCO Smoking Conference included the following summary of the researchers' discussion of compensation:

> *Compensation*
>
> *There are two general forms of compensation:*
>
> *a) Number of cigarettes smoked eg. [sic] low tar smokers increasing consumption.*
> *b) Puffing/inhalation regime eg. [sic] increasing or decreasing/puff volume, duration, puff frequency, amount inhaled.*[324]

The researchers further stated that:

> *it is accepted that nicotine is both the driving force and the signal (as impact) for compensation in human smoking behaviour.*[325]

In fact, the tobacco industry is not merely aware of compensation behavior but has conducted extensive research on compensation. Company researchers administer cigarettes that deliver a range of nicotine doses to smokers and then measure the amount of nicotine

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permitted.

Dunn WL. 1600/Smoker Psychology/October 1-31, 1977 [Monthly Report]. November 11, 1977. *In* Cong Rec. H7665, *supra*. Philip Morris researchers describe a study on whether smokers who smoke many cigarettes out of "need" will demonstrate compensation behavior if given low nicotine cigarettes.

Memorandum to T.S. Osdene from W.L. Dunn. Plans and Objectives - 1980. January 7, 1980. *In* Cong Rec. H7665, *supra*. This document describes Philip Morris' development of specialized monitoring devices designed to determine whether smokers, when given cigarettes with different nicotine deliveries "regulate or 'titrate' the amount of nicotine taken up via inspiration of smoke."

[324] Brooks GO. Minutes from BATCO Group R&D Smoking Behaviour-Marketing Conference, Session III. July 9-12, 1984. Page 55.

[325] *Id.* at p. 56.

Later at the same conference, there was a discussion of a study showing that when given a cigarette with a significantly different yield than his own, a smoker will alter his puffing behavior but will not alter his inhalation pattern. To explain this phenomenon, "[d]elegates were reminded that a smoker extracts virtually all of the nicotine from the smoke even with a shallow inhalation. Therefore what has he to gain by deliberately inhaling more deeply?" *Id.* at p. 69.

actually absorbed by the smoker, per puff or per cigarette.[326] These studies show that smokers tend to obtain close to the same amount of nicotine from each cigarette, despite differences in yield as measured by the smoking machine. In a 1974 BATCO conference, researchers described the results of one such study:

> *The Kippa study in Germany suggests that whatever the characteristics of cigarettes as determined by smoking machines, the smoker adjusts his pattern to deliver his own nicotine requirements (about 0.8 mg. per cigarette).* [Emphasis added.][327]

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[326] *See:*
BATCO Group R&D Conference on Smoking Behaviour. Southampton, England. October 11-12, 1976. Page BW-W2-02253-85.

Adams PI. Research Dept., Imperial Tobacco Ltd. Changes in personal smoking habits brought about by changes in cigarette smoke yield. In: *Proceedings of the Sixth International Tobacco Scientific Congress.* November 1976. Pages 102-108.

BATCO, note 310, *supra*, at p. 2.
> *Although conflicting results were presented, the prevailing view is that smokers do tend to compensate in some way when going from a high tar (nicotine) to a low tar (nicotine) cigarette, or vice versa. Studies have been carried out with high and low nicotine cigarettes, "anti-smoking" cigarette holders, and cigarettes with shortened tobacco sections.*

Pritchard WS, Robinson JH. The sensory role of nicotine in cigarette "taste", smoking satisfaction, and desire to smoke. As abstracted in: *International Symposium on Nicotine: The Effects of Nicotine on Biological Systems II.* Satellite Symposium of the 12th International Congress of Pharmacology. Montreal, Canada. July 21-24, 1994. Page 113.

See also:
Ashton H, Stepney R, Thompson JW. Self-titration by cigarette smokers. *British Medical Journal.* 1979;2:357-360.

[327] Notes on the BATCO Group R&D Conference at Duck Key, FL. January 12-18, 1974. (Attended by Hughes, Sanford, Esterle of B&W). Page 2.

See also Notes from the German presentation. BATCO Group R&D Conference 1979. Part I, February 5-9, 1979. Page BW-W2-03536:
> *One of the interesting results from the KIPA studies is that cigarettes which vary from 1.1 - 0.4 mg nicotine by machine smoking are smoked by humans in the narrow range of 0.8 - 0.7 mg nicotine.*

At a 1984 conference, a BATCO researcher also reviewed several other studies indicating that when smokers are given cigarettes with higher or lower nicotine levels than their regular brands, they tend to adjust both the number of cigarettes they smoke and the way they smoke them to attain a steady dose of nicotine.[328] In support of this conclusion, the BATCO researcher presented a chart showing that between 1965 and 1975, as the machine-measured nicotine yield of cigarettes went down, the annual consumption of cigarettes per smoker went up.[329]

The researcher concluded that "increased consumption is related to reduced nicotine"[330] but that the relationship is not one-to-one. Instead, he found that a 10% reduction in nicotine resulted in a 1% rise in the number of cigarettes smoked, and a 50% reduction in nicotine resulted in a 10% rise in the number of cigarettes smoked.[331] As a result of this finding, he concluded that "most compensation must occur at the individual cigarette level;"[332] i.e., by altering the way the smokers smoked individual cigarettes. In fact, the data he presented showed that when smokers were given cigarettes with a range of nicotine yields, their nicotine intake from each cigarette hovered around the amount they took in from their regular brand rather than varying to the degree that would have been predicted from the

[328] Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session III. July 9-12, 1984. Ferris. Pages BW-W2-02748 - 02750, BW-W2-02754 - 02759.

[329] *Id.* at p. BW-W2-02754.

[330] *Id.* at p. BW-W2-02755.

[331] *Id.*

[332] *Id.*

machine yields.[333]

Other tobacco company studies show similar results.[334] A report on research conducted by Philip Morris Europe in the early 1970's concluded that smokers tended to obtain the same amount of nicotine from a cigarette, regardless of the nicotine content of the cigarette or its machine-tested yield:

> *The most frequent nicotine yield was 0.4 to 0.5 mg of nicotine per cigarette. This yield is not dependent upon the nicotine content of the tobacco and is not related to the nicotine yield under Coresta (machine) smoking conditions. The difference between nicotine yields obtained under standard laboratory procedures and yields obtained under "real" smoking conditions is explained by the existence of a compensation mechanism in the smoker. This compensation mechanism seems to be in operation for a proportion of the consumer population to adjust the nicotine yield to their needs or liking.*[334a]

[333] *Id.* at p. BW-W2-02757. Ashton, Stepney, and Thompson (1979b). *Expected and observed nicotine intake in a brand-switching experiment.* (Chart.)

[334] *See:*

BATCO Group R&D Proceedings of the R & D Conference. Montreal, Canada. October 25, 1967. Page 4.

> *The development of low TPM [total particulate matter], low nicotine cigarette should be expanded. This raises the question of the level of nicotine required and the consumer study by Bristol can be helpful in determining this . . . there was evidence that in Germany per capita cigarette consumption increased for the lower nicotine brands.*

Proceedings of the BATCO Group R&D Smoking Behaviour-Marketing Conference, Session I. July 9-12, 1984. Presentation slide BW-W2-03231. Under the heading *Brand Switching Down Delivery*, the chart provides a list of three "means to achieve a higher dose[:] . . . increase in puffing parameters, increase in numbers of cigs. smoked, more puffs taken."

Read GA. Internal v. external studies. Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session II. July 9-12, 1984. Page 19.

> *The German butt analysis studies have indicated how smokers respond to reductions in machine smoked nicotine deliveries under natural smoking conditions. This observation of product oversmoking supports the laboratory findings of an increase in smoking behaviour parameters in subjects switched to lower delivery products.*

R.J. Reynolds, note 300, *supra,* at pp. 479, 482-3, 490-2.

[334a] Gustafson and Haisch. PME Research: 1972-1974. *In* Cong Rec. H7662 (daily ed. July 25, 1995).

[Emphasis added.]

Thus, the tobacco companies' own studies demonstrate that smokers use the cigarette as a nicotine delivery system and vary their smoking behavior to obtain a specific dose of nicotine.

4. Industry Research and Knowledge of Tobacco Users' Inability to Quit

Tobacco companies are aware of the large number of smokers who have tried to quit using tobacco, and of the very small number who actually succeed. The evidence known to tobacco companies about smokers' unsuccessful attempts to quit shows that tobacco companies know that a large percentage of their market consists of people who demonstrate one of the characteristic features of addiction. See p. 81 et seq.

The great difficulty smokers experience when they try to quit was conceded by Joseph F. Cullman, III, the former chief executive officer of Philip Morris. Mr. Cullman was called as a witness in the Cipollone lawsuit and gave the following answers in response to questions from one of the plaintiff's attorneys:

Q. But it is difficult [to quit]?

A. That's what it says here and I'm not disagreeing with it.

Q. They said it was very difficult. Do you agree with that?

A. I would say it's difficult.

Q. And it's difficult for the vast majority of smokers, you would agree with that, too, would you not?

A. That's a question of semantics. What's the vast majority? A lot of smokers have a hard time quiting [sic].

Q. Let's see, most smokers have a tough time giving up cigarettes?

A. Well, if they didn't, there would be many fewer smokers than there are today.[335] [Emphasis added.]

Furthermore, internal Brown and Williamson documents reveal that the tobacco

[335] Examination of Joseph Cullman, III, former chief executive officer, Philip Morris, Inc. *Cipollone v. Liggett Group, Inc., et al.*, Civil Action No. 83-2864 (SA)(D.N.J.). February 29, 1988. Afternoon Session. Transcript of proceedings, at pp. 3311-3314.

industry is extremely interested in rates of attempted and successful quitting, and keeps close track of these rates. At the 1984 BATCO Smoking Behaviour-Marketing Conference, attended by representatives from various BATCO companies, including Brown and Williamson, each of the participating companies was asked to fill out a questionnaire that asked how many smokers in their respective countries attempted to quit in each of the previous 5 years and how many actually quit (for as long as 6 months). Brown and Williamson's response to the questionnaire, which covered quitting rates in the United States, reported that, for the years 1981 through 1983, 32 million to 34 million Americans attempted to quit each year, while only 9 million to 10 million of those were able to quit for as long as 6 months.[336] Thus, Brown and Williamson's own data reveal that while almost half the total number of U.S. smokers attempted to quit each year, only about a third of those who tried to stop smoking were able to quit for as long as 6 months. These tobacco industry data suggest that at least one-third of U.S. consumers of cigarettes are purchasing cigarettes because they are unable to stop smoking.

In fact, data reported at the same conference showed that the percentage of smokers who continue to smoke even though they do not want to is much higher than suggested by 6-month data. Data from the Canadian tobacco company representatives indicated that rates of permanent quitting were well below quitting rates reported at 6 months. A Canadian participant reported to the assembled BATCO researchers that only 10% to 12% of those Canadian smokers attempting to quit succeeded for up to 1 year; less than 4% were able to

[336] Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session I. July 9-12, 1984. Page BW-W2-03212. No figures were provided by B&W on attempts to quit for the years 1979 and 1980.

quit permanently.[337]

The presenter responsible for summing up the results of the conference questionnaire agreed that, while a large percentage of smokers do not want to smoke, most of those smokers feel compelled to continue to smoke:

> *Although intentions and attempts to quit are relatively high (30-40% of smokers [in a given year]), the actual success rate of quitting is relatively low and stable.*[338]

It was thus well known to the participating companies that a very large percentage of their customers were smoking not out of choice but because they could not quit.

Other companies also understand that many of their consumers would like to quit but are unable to do so.[339] A Philip Morris researcher who studied a "cold turkey" campaign in

[337] Proceedings of the BATCO Group R&D Smoking Behaviour-Marketing Conference. July 9-12, 1984. Session IV. Page BW-W2-03381. *See also* Session III at p. 83 (BW-W2-03379-03382). The researcher also presented data showing that while 22% of smokers claimed that they intended to "cut down," in fact "both the claimed and calculated rate of daily usage (21.6 and 25.6 [cigarettes] respectively) have increased since the introduction of lights." (BW-W2-02790, 03379, 033820). Other data reported at the same conference provided additional confirmation of the large percentage of smokers who would prefer not to smoke. A study on "Smoker Consonance-Dissonance Breakdown" was presented which showed that approximately 75% of smokers surveyed had attempted to quit, and approximately 60% were currently serious about quitting. Session III at p. BW-W2-03386.

See also, Larsen PS, Silvette H. *Tobacco Experimental and Clinical Studies: A Comprehensive Account of the World Literature, Supplement I.* (1968), Chapter 15; *Supplement II* (1971), Chapter 17; *Supplement III* (1975), Chapter 21, which contain discussions of surveys concerning smokers' desire to quit and difficulty in successfully quitting. This review was funded by the Council for Tobacco Research.

[338] Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session IV. July 9-12, 1984. Page 12.

[339] *See:*
R.J. Reynolds Tobacco Company, response to Citizen Petitions 94-0069/CP1 and 94P-0077/CP1. November 2, 1994. Pages 66-69.

RJR-MI Brand Group and Ogilvy & Mather (Canada) Ltd. *Vantage Brand Positioning Statement.* 1979. Page 80041:

B. User Image

Primarily female, white collar, extremely concerned about their health, and would like to

the small Iowa town of Greenfield in 1969 reported that those who succeed in quitting smoking over the long term are a much smaller group than those who would like to quit and who attempt to quit.[340] The researcher cited the findings of Hunt and Matarazzo[341] in proposing that most attempts to quit smoking are not long-lasting: "[i]n summarizing many reports of long-term quitting using various techniques, [the authors] show that the percentage of nonrecidivists [successful quitters] decreases as a function of time . . . in a negatively accelerated fashion."[342] The Philip Morris researcher found that in Greenfield only 28% of those smokers who agreed to quit as part of the cold turkey campaign were still not smoking after 7 months. The researcher then observed that the small number of Greenfield residents who managed to stay off cigarettes for more than 7 months was, based on other published reports of success rates for quitting smoking, about average.[343]

The researcher also described findings that revealed in part why it is so hard for smokers to quit. He reported that smokers who quit for more than 7 months continued to

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quit smoking.

Kwechansky Marketing Research for Imperial Tobacco Ltd. *Project 16*. October 18, 1977. Page vi.

Kwechansky Marketing Research for Imperial Tobacco Ltd. *Project Plus/Minus*. May 7, 1982. Page i.

[340] Ryan FJ. Philip Morris Research Center. Cold turkey in Greenfield, Iowa: a follow-up study. In: Dunn WL, ed. *Smoking Behavior: Motives and Incentives*. Washington, DC: VH Winston & Sons; 1973:231-241.

[341] *Id.* at p. 233.

[342] *Id.* at p. 233.

[343] Ryan FJ. Bird-I. A study of the quit-smoking campaign in Greenfield, Iowa, in conjunction with the movie, *Cold Turkey*. Appendix 1, p. 1000348712. The author also appended to the unpublished version of this report excerpts from internal company memos, pointing out that although the cold turkey campaign in Greenfield was as intense an anti-smoking effort as could be imagined, "carton sales at the Super Value store have shown a strong increase since the dog days of August."

suffer a variety of adverse effects related to quitting, including weight gain, restlessness, depression, ill-temper, constipation, nervous mannerisms, and loss of energy.[344] These are some of the classic symptoms of nicotine withdrawal, described earlier.[345]

Market research documents also show that tobacco companies have conducted research in quitting behavior and have documented the reasons why people quit and why they fail to quit, despite a desire to do so.[346] A market research firm reporting on a survey of smokers' views about the health implications of smoking observed that:

> *a minority expresses a resentment about the addictive aspects of smoking. Being "out of control," unable to quit causes them to feel somehow unworthy . . . . Nicotine is usually singled out as the culprit here. However, even these smokers would be reluctant to give up the satisfaction elements in smoking. So they are in a quandry [sic]."*[347]

Another market research firm reported its findings about the inability of young smokers to quit when they want to:

> *However intriguing smoking was at 11, 12 or 13, by the age of 16 or 17 many regretted their use of cigarettes for health reasons and because they feel*

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[344] *See* Ryan, note 340, *supra*, at p. 234.

[345] *See* FINDINGS § I.B., *supra*.

[346] *See e.g.* The Creative Research Group. *Project Viking, Vol. III: Product Issues*. Prepared for Imperial Tobacco Ltd., Feb/Mar 1986.

Kwechansky Marketing Research for Imperial Tobacco Ltd. *Project Plus/Minus*. May 7, 1982. Pages 41-51.

[347] The Creative Research Group. *Project Day-Exploratory Phase in Edmonton*. Prepared for Imperial Tobacco Ltd. August 1988. Page 11.

See also Market System, Inc. *Project Eli Focus Groups Final Report*. Prepared for Imperial Tobacco Ltd. July, 1982. Page 5. Smokers refer to smoking as "satisfying a craving."

unable to stop smoking when they want to.[348]

The fact that many smokers smoke even though they do not enjoy smoking is conceded in a candid marketing research document prepared for Imperial Tobacco Ltd., which reported that it is particularly difficult to sell cigarettes by "trading on the positives" because the industry is "vexed by the unique problem that users of the category do not necessarily like the product."[349] Another document reports that many smokers of ultra-low tar and nicotine cigarettes want to quit and "refer to their behavior in terms of 'satisfying a craving' while smokers of stronger cigarettes talk about taste and satisfaction."[350]

In summary, the tobacco companies' data show that users find it extremely difficult to quit smoking and that many tobacco users would quit if they could. Their data also show that, of those smokers who try to quit, only a small percentage succeed permanently. Consequently, tobacco manufacturers are aware that the large percentage of their customers who try to quit but fail continue to buy and use tobacco products, in large part to satisfy their dependence on nicotine-containing tobacco. Use of tobacco to satisfy nicotine dependence is

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[348] *See* Kwechansky Marketing Research. *Project 16*, note 339, *supra,* at p. vi.

See also Kwechansky Marketing Research. *Project Plus/Minus*. May 7, 1982. Study Highlights. In a follow-up study, the same market research firm reported the following results:

> *The desire to quit seems to come earlier now than before, even prior to the end of high school....However, the desire to quit, and actually carrying it out, are two quite different things, as the would be quitter soons [sic] learns...*

According to a report in *Newsday*, a 1957 "motivation survey" prepared for Liggett on smoker attitudes about smoking amid growing health concerns contained the following statement:

> *What smokers are really saying is: 'I wish I had never started to smoke . . . but now that it's got me, I know that I can't stop.'*

Riley J. Smoke-Trial Documents Make Titillating Reading. *Newsday.* July 19, 1988.

[349] *See* The Creative Research Group Ltd., note 346, *supra,* at p. 64451.

[350] *See* Market System Inc., note 347, *supra,* at p. 5.

a use that affects the structure or function of the body.

D. INDUSTRY PRODUCT DEVELOPMENT RESEARCH TO ENSURE AN ADEQUATE DOSE OF NICOTINE

1. Industry Emphasis on Nicotine in Product Development Research

Tobacco industry documents show that adequate nicotine delivery is a dominant consideration in product development research. As discussed above, many tobacco industry documents demonstrate the industry's understanding that the amount of nicotine delivered from tobacco must not fall below a certain threshold.[351] These and other documents also reflect the industry's recognition that below that threshold, tobacco fails to deliver a pharmacologically active dose of nicotine, and that consumers will reject the resulting product. The documents described in this and the next section reveal the industry's extensive product development research to maintain or increase nicotine delivery from tobacco products.

Industry patents disclose that the industry has long recognized the importance of developing methods to maintain or increase the amount of nicotine in tobacco, and that the purpose of these methods is to ensure that consumers experience nicotine's pharmacological effects. For example, a patent held by Philip Morris states:

> *Maintaining the nicotine content at a sufficiently high level to provide the desired physiological activity, taste, and odor . . . can thus be seen to be a significant problem in the tobacco art. The addition of nicotine to tobacco in such a way that it remains inert and stable in the product and yet is released in a controlled amount into the smoke aerosol when the tobacco is pyrolyzed, is a result which is greatly desirable.* [Emphasis added.][352]

[351] *See* documents cited in FINDINGS § II.C.1. and 2.

See also F.H. [Initials of BATCO R&D employee] Memorandum. *Developments in the Product in the Next Ten years*. 1973-1974. Page 3. ("The maintenance of adequate levels of nicotine in cigarettes could become a difficult problem as more synthetics are used.")

In fact, over the past several decades, enhancing and optimizing nicotine delivery has been a major focus of tobacco industry product design research. The American Tobacco Company (ATC) devoted substantial research to finding methods of increasing the amount of nicotine delivered by its cigarettes. For example, in 1963, ATC conducted research on increasing the nicotine yield in Lucky Strike cigarettes by increasing the proportion of Burley tobacco, a high-nicotine tobacco, in the tobacco blend used to make the cigarettes.[353] The company found that it could increase the nicotine yield of the cigarettes up to 10% in this manner and that smokers perceived the resulting cigarettes as having more "strength."[354] In 1969, ATC test-marketed Lucky Strike cigarettes that had been enriched with added nicotine.[355] ATC developed other methods for increasing the amount of nicotine delivered by its cigarettes over the subsequent decades, including:

- the use of carbon tips in the filter "impregnated with nicotine or nicotine salts" to

[352] U.S. Patent No. 3,280,823. Bavley A, Air D, Robb E II. *Additive-Releasing Filter for Releasing Additives into Tobacco Smoke*. Philip Morris, Inc. October 25, 1966. Page C1:43-48.

[353] "Tobacco Blends for Filter Cigarettes: Effect of Increasing the Concentration of Burley Tobacco in a Blend" at Page 1. June 21, 1963. The various ATC documents discussed in this section were provided by the company to the Subcommittee on Health and the Environment of the House Energy and Commerce Committee, and attached as exhibits to the Dec. 20, 1994, Subcommittee Staff Report, entitled, "Evidence of Nicotine Manipulation by the American Tobacco Company."

[354] *Id.* at pp. 4, 5. The company again experimented with increasing the nicotine content of Lucky Strikes through changes in the tobacco blend in 1968. Memo to Mr. H.V.H. Stoever, Jr., Manager, Durham Branch, from O.N. Coty, Manager-Quality Control, Research and Development (June 4, 1968). Pages 1-2; Tables X003384-3387. *See also* memo to R.F. MacDonald from O.N. Coty, July 5, 1968.

[355] Letter from Chadbourne & Park, representing ATC, to the Honorable Henry A. Waxman, Chairman, Subcommittee on Health and the Environment of the House Committee on Energy and Commerce. Oct. 14, 1994. Page 3 of attachment to ATC Response.

increase the nicotine content of cigarette smoke;[356]

- direct addition of commercial nicotine to reconstituted tobacco;[357]
- addition of nicotine to the "finishing flavor" used in Pall Mall 85's;[358]
- growing tobacco plants in different locations to determine, among other things, whether varieties with different ratios of nicotine to tar could be produced;[359]
- addition of nicotine to the "dip casing" (one of several solutions used in the manufacture of cigarettes) to compensate for loss of nicotine from other manipulations

[356] Memo to E.S. Harlow from ATC Analytical Chemistry Section, Group I, Aug. 8, 1963, Progress Report, March 1962-July 1963," with attached smoke analysis 2-12-68, 2-1-68, 1-29-68, 1-15-68, 1-4-68, 12-28-67, 12-22-67 (impregnating a carbon tip with nicotine permitted transfer of about 22% of the added nicotine to the smoke).

[357] ATC experimented with adding nicotine to reconstituted tobacco on several occasions. *See*:

"The Effect of the Addition of 1% Nicotine on the Quality of RC Tobacco" (Oct. 8, 1963) (nicotine citrate was added to reconstituted tobacco to triple its nicotine content, from about 1/2% to about 1 1/2%). Pages 1,2,6.

"Evaluation of Nicotine-Fortified RC-A Tobacco" (May 2, 1968) (nicotine malate was added to reconstituted tobacco to increase its nicotine content from .94% to 1.27%; the company concluded that "to markedly improve RC [reconstituted tobacco] . . . in addition to increasing its nicotine content it should also include the other constituents present in natural leaf tobacco, particularly those tobaccos of high nicotine content."). Pages 1-2.

Memo to J.B. McCarthy, Executive Vice President, from R.M. Irby, Jr., Manager-New Products Div., Research and Development, "Nicotine Content of Reconstituted Tobacco." June 5, 1974. (Nicotine added to tobacco extract which is applied to reconstituted tobacco, doubling the nicotine content of the reconstituted tobacco from 0.9% to about 1.8%.) Page 1.

[358] Memo to E.S. Harlow from O.N. Coty *Special PALL MALL 85's with added nicotine*. July 12, 1968. (Nicotine content of final blend increased by 0.47%; smoke panel preferred regular blend.)

[359] Memo to Dr. E.C. Cogbill, Manager-Analytical Research, Research and Development from J.M. Moseley Manager-Basic Materials Research, Research and Development. *Genetic Variation in "Tar" Delivery*. January 8, 1969.

of the tobacco blend;[360]

- addition of nicotine to both Pall Mall and Lucky Strike cigarettes, increasing their nicotine content 35% per cigarette (41% per puff for Pall Mall, slightly less per puff for Lucky Strike);[361] and
- addition of nicotine to tobacco stems (which are used in the manufacture of cigarettes) to increase their nicotine content from 0.5% to 1.87%.[362]

ATC also considered replacing the tobacco used in its reconstituted tobacco with "high nicotine tobacco such as Malawi sun-cured scrap (5% nicotine)" to increase the nicotine content from 0.9% to about 1.6%,[363] increasing "nicotine transfer to the smoke" by dilution or use of filter additives,[364] and increasing, in various ways, the proportion of nicotine relative to tar by adding nicotine to the tobacco, the filter, and the cigarette paper.[365]

Philip Morris documents show that it, too, conducted research on altering and optimizing nicotine delivery from its cigarettes. According to a 1972 memo from William

[360] Memo to Mr. J.B. McCarthy, Vice President, Manufacture and Leaf from J.T. Ashworth, Manager - Process Development, Research and Development. "Experimental *LUCKY STRIKE Cigarettes (RC-E)*." May 29, 1969. (The author recommends that the experimental cigarettes with added nicotine replace the regular Lucky Strike brand; these may be the cigarettes that were test marketed in 1969). This memo refers to nicotine as "Compound W". An earlier ATC memo instructs employees to refer to nicotine as "Compound W" in all future experimental work, reports, and memorandums. ATC memo to W.W. Sadler, J.G. Brooks, and R.D. Chumney, from John T. Ashworth, "Compound W" (May 14, 1969).

[361] Memo to Mr. V.B. Lougee, III, from R.M. Irby, Jr. *Compound W*. April 29, 1974. Pages 1-2.

[362] *Id.* at p. 2.

[363] Irby memo, note 357, *supra*, at p. 2.

[364] *Id.* at p. 3.

[365] Memo to Dr. P.H. Leake from P.M. Pedersen, transmitting a copy of *A Study of the Nicotine to Tar Ratio*. April 18, 1977. Pages 3-4.

Dunn, a senior official at Philip Morris, research was underway to identify optimal nicotine levels for menthol cigarettes:

> *This study has a three stage design. The first stage is designed to identify those nicotine delivery levels which we might reasonably wish to consider for menthol cigarettes. Having identified these nicotine delivery levels, in stage 2 we will determine combinations of nicotine and menthol which make for optimal acceptability. And then in stage 3, cigarettes with these combinations will be tested against current brands of known quality and sales potential.*[365a]

Philip Morris was thus engaged in research in which nicotine delivery was systematically manipulated, independent of other tobacco variables.

Industry patents from various tobacco companies show that substantial research throughout the industry has been directed at developing methods for selectively increasing nicotine levels and the amount of nicotine delivered by tobacco products.[366] BATCO documents show significant research efforts directed at increasing nicotine delivery. A 1978 BATCO R&D Conference included a discussion of the economic importance of increasing the proportion of nicotine that is actually delivered from the tobacco to the smoker during the consumption of the product:

[365a] P.A. Eichorn and W.L. Dunn. Quarterly Report-Projects 1600 and 2302. October 5, 1972. *In* Cong Rec. H7649 (daily ed. July 25, 1995).

[366] *See, e.g.*:
U.S. Patent No. 5,031,646 at C5:65-68 ("nicotine can be incorporated into the expansion solvents used to provide a volume expanded processed tobacco material having a high nicotine content").

U.S. Patent No. 4,676,259 at C2:30-33, 53-56 ("The present invention provides a nicotine-enhanced smoking device with a high nicotine release efficiency").

U.S. Patent No. 4,898,188 at C1:37-47 (utilizing supercritical extraction to transfer nicotine from high-nicotine tobacco to lower-nicotine tobaccos, thereby increasing the nicotine content of the latter).

U.S. Patent No. 5,065,775 (describing technology for modifying the nicotine content of tobacco filler, enabling a manufacturer to double the nicotine content of tobacco).

> *With conventional cigarettes, the transfer of nicotine to the smoker from the tobacco has very low efficiency. Potentially, therefore, opportunities exist for very big savings in tobacco if this low efficiency can be greatly increased.*[367]

In other words, BATCO wanted to increase the amount of nicotine delivered to the consumer without changing the amount of nicotine already present in the tobacco. (This is what one or more tobacco companies have in fact achieved by the use of the "ammonia technology" described in § II.E., infra.) A 1968 BATCO study approached the objective of enhancing nicotine delivery from a different angle. This study was intended to help develop methods of increasing the smoker's absorption of nicotine, while decreasing other undesirable physiological effects of inhaling tobacco smoke. The study examined the factors that influence the amount of nicotine that is absorbed from tobacco through the oral mucosa (mouth), with an eye toward designing products that would increase nicotine absorption in the mouth, thus avoiding or reducing the need to inhale smoke into the lungs. The study authors maintained that:

> *If it can be shown that appreciable amounts of nicotine can be absorbed via the mouth, and which factors contribute to enhanced absorption; it may be possible to design cigarettes so that it would only be necessary to inhale the smoke to a very limited extent.*[368]

This focus on absorption makes clear that the industry's primary interest is in delivering nicotine to the blood for its systemic effects, rather than in the immediate sensory effects in the mouth (e.g., flavor). Methods of optimizing nicotine delivery were also discussed at two

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[367] BATCO Group Research & Development Conference, Sydney. March 1978. Page 4. Notes on Group Research R&D.

[368] Evelyn SR. BATCO Group Research & Development. *Absorption of Nicotine via the Mouth: Studies Using Model Systems*. Report No. RD.560-R. May 9, 1968. Page 4.

separate BATCO R&D conferences in 1984.[369]

The industry has also developed product design options to manipulate the amount of nicotine delivered to ensure smoker satisfaction, even at the level of the individual puff. For example, an industry patent states:

> *It is a further object of this invention to provide a cigarette which delivers a larger amount of nicotine in the first few puffs of the cigarette than in the last few puffs.*[370]

The focus on nicotine delivery in product development and the fact that nicotine manipulation is intended to ensure that consumers experience nicotine's pharmacological effects is also shown by the tobacco industry's research to improve tobacco "satisfaction." "Satisfaction" is one of the industry's principal product development research objectives. As already described in FINDINGS § II.C.1., supra, the term "satisfaction" is generally used by the tobacco industry to refer to the ability of a tobacco product to satisfy the consumer's desire for the pharmacological

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[369] *See* BATCO Group R&D Research Conference. September 1984. Proposed Revisions for 1985-1987. Pages 1-2:

> *The experimental cigarettes used in 1(b)[denicotinized, then supplemented with varying levels of nicotine] will also be used to improve the efficient use of smoke nicotine through pH modification. These studies will identify the relationship between nicotine dose and nicotine-related subjective improvement. This will further help to identify the relationship between product acceptability and smoker satisfaction.* [Emphasis added.]

Proceedings of the BATCO Group R&D Smoking Behaviour-Marketing Conference, Session III. July 9-12, 1984. Ferris at p. 81:

> *How we use this perspective in terms of marketing action requires careful consideration since most of this evidence is ostensibly of industry strategic defence value. However product development to optimise efficiency of nicotine delivery, and a better understanding of the "visual-tactile" smoker (albeit limited segment) are obvious starting points.* [Emphasis added.]

[370] U.S. Patent No. 4,595,024. Greene TB, Townsend DE, Perfetti TA. *Segmented Cigarette*. R.J. Reynolds Tobacco Company. June 17, 1986. C2:23-26.

See also U.S. Patent No. 3,280,823 Bavley A, Air B, Robb II EW. *Additive-Releasing Filter for Releasing Additives into Tobacco Smoke*. Philip Morris Inc. October 25, 1966. C2:37-40 ("This invention permits the release into tobacco smoke, in controlled amounts . . . and when desired of nicotine into tobacco smoke").

effects of nicotine, and is understood by the industry as an essential component of consumer acceptance of tobacco products. The conferees at a 1983 BATCO Research Conference in Rio de Janeiro sought to expand research efforts on nicotine as the principal source of smoker satisfaction and to "develop products that give improved smoker satisfaction."[371] The conferees agreed that to achieve this goal, BATCO must know as much as possible about nicotine, including:

- *factors that affect the transfer of nicotine from leaf to smoke aerosol*
- *factors that influence the rate of transfer of nicotine from particulate matter to the vapour phase*
- *the contribution of nicotine to smoke sensory characteristics (including harshness and irritation)*
- *the site and mechanisms of absorption of nicotine within the human system*
- *the way nicotine stimulates both the central nervous system and the peripheral organs (eg heart and lung)*
- *the metabolism of nicotine within the body, including rates and equilibrium levels.* [Emphasis added.][372]

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[371] BATCO Group R&D Research Conference. Rio de Janeiro, Brazil. August 22-26, 1983. Page BW-W2-01837.

[372] *Id.* at p. 13. Philip Morris documents similarly show that that company's research on manipulating nicotine delivery was aimed at ensuring that smokers experience nicotine's pharmacological effects. *See e.g.:*

Philip Morris employee (almost certainly W.L. Dunn). *Smoker Psychology Program Review*. October 19, 1977. This paper sets forth questions being asked by researchers at Philip Morris, at pages 5-6:

> *a) What is the lower delivery level limit beyond which the smoking act is not reinforced?*
> *b) Within what limits can we vary nicotine concentration relative to other smoke constituents?*
> *1) What is the optimum nicotine/tar ratio?*
> *c) Given a fixed quantity of nicotine in the tobacco, what factors in cigarette design determine its availability for delivery to the smoker?. . .*
> *e) Does the smoker seek spike effects, bloodstream constancy?. . . .*
> *g) How important is the form of the delivered nicotine? (salt vs. free base? pH? particle size?)*

Ryan, FJ, Jones, BW, Martin, PG, Dunn, WL. Behavioral Research Annual Report. July 18, 1975. Page

This list of product development research objectives makes clear BATCO's interest in the delivery of nicotine for absorption into the bloodstream and in its systemic effects once absorbed.

The tobacco industry's product development research on manipulating the amount and manner in which nicotine is delivered to the consumer demonstrates the industry's intent to sell tobacco products that provide a pharmacologically active dose of nicotine.

17:

As deliveries drop we reasoned that eventually they could reach a point where all the cigarettes in a pack would be unsatisfying.

The same document reports on Philip Morris studies of: 1) acceptability of various nicotine/tar ratios in a 10 mg tar cigarette, and 2) methods of producing a low delivery cigarettes "with impact and flavor." Pages 23-25.

Dunn, WL. Project 1600/Consumer Psychology/Annual Report. November 18, 1966. Page 9.

Is the transition to preference for a lower delivery cigarette more explicable in terms of (a) Reduction in sought dosage level, or (b) Adaptation of puffing pattern?

Memo to T.S. Osdene from W.L. Dunn. Plans and Objectives - 1982. November 5, 1981. Discusses Philip Morris research on changes in inhalation behavior and puff parameters as a result of changes in nicotine delivery, and on which parameters influence nicotine retention. Pages 7-8.

2. Industry Research on Maintaining Adequate Nicotine Delivery When Lowering Tar

Product design to ensure adequate nicotine absorption by the smoker appears to have been driven, to a large extent, by the growing awareness of smoking-related diseases and the resulting efforts of the tobacco companies to provide cigarettes that delivered lower quantities of known toxic smoke constituents, in particular tar. However, reducing tar levels tends to also reduce the nicotine content.[373] Thus, the industry has known that in designing lower-yield products, nicotine delivery could not be reduced below a certain threshold.[374] In order to reduce tar while maintaining a level of nicotine delivery that would satisfy consumers' desire for the pharmacological effects of nicotine, the industry has focused considerable attention and research on how to maintain or enhance the amount of nicotine delivered by lower-tar products.

A patent held by Imperial Tobacco Ltd. states that the purpose of the technology described in the patent is to permit a cigarette manufacturer to maintain or increase nicotine levels while lowering levels of "undesirable" smoke constituents:

> *[This] invention concerns . . . the problem of maintaining or increasing the nicotine content of the smoke whilst avoiding an undesirable level of particulate*

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[373] *See:*

Spears AW, Jones ST. Chemical and physical criteria for tobacco leaf of modern day cigarettes. *Recent Advances in Tobacco Science.* 1981;7:19-39.

Regulation of Nicotine under the Federal Food, Drug and Cosmetic Act: Hearings Before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce, 103rd Cong., 2d Sess. (March 25, 1994) (statement of AW Spears, at pp. 1-3).

[374] *See* Project Wheat - Part 2 , note 204, *supra,* at p. 48:

Concern for the possible health risks of smoking influences consumers in the direction of trying low delivery brands. . . . However, there is evidence of a conflict between concern for health and the desire for a satisfying cigarette, from which it follows that low tar brands would be much more widely accepted if their nicotine deliveries could be brought within the range required by groups of consumer[s].

matter in the smoke . . .[375]

A 1976 BATCO "Smoking Behavior" conference report states the industry's dilemma more succinctly:

> *[I]n that the 'benefits' of smoking appear to be related to nicotine, we can infer that the 'benefits' of smoking might disappear if cigarettes with low levels of nicotine became the norm . . . .*[376]

Philip Morris conducted research to find the optimum nicotine delivery level and the optimum nicotine-to-tar ratio for low tar cigarettes. In 1970, a company document stated that Philip Morris planned to conduct a test in which it would reduce tar and add nicotine to Marlboro:

> *We are initiating a study of the effect of systematic variation of the nicotine/tar ratio upon smoking rate and acceptability measures. Using Marlboro as a base cigarette we will reduce the tar delivery incrementally . . . and increase the nicotine delivery by adding a nicotine salt [a commercial form of nicotine].*[376a]

A 1972 Philip Morris document identifies the natural nicotine-to-tar ratio in tobacco as 0.07, which is "characteristic of a broad range of natural leaf."[376b] Within the next three years, Philip Morris had studied and found the "optimal" nicotine-to-tar ratio for consumer ratings of acceptability and "strength." A 1975 Philip Morris document containing the results of a study

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[375] U.S. Patent No. 3,861,400. Perkins PR, Bale CR. *Nicotine Fortification of Smoking Products.* Imperial Tobacco Group Limited. January 21, 1975. C1:1-10.

[376] BATCO Group R&D Conference. Southampton, England. October 11-12, 1976. Page 4.

[376a] P.A. Eichorn and W.L. Dunn. Quarterly Report of Projects 1600 and 2302. December 31, 1970. *In* 141 Cong. Rec. H8008 (daily ed. July 31, 1995)(statement of Rep. Waxman). These studies of optimal nicotine/tar ratios were intended to be used "to provide insight leading to new cigaret designs." Philip Morris, USA. Research and Development Five Year Plan, 1974-1978. May 1973. *In* 141 Cong. Rec. H8008, *supra*.

[376b] Memorandum to P.A. Eichorn from W.L. Dunn et al. Plans for 1972. September 8, 1971. *In* 141 Cong. Rec. H8008 (daily ed. July 31, 1995)(statement of Rep. Waxman).

conducted by the company stated that the optimal nicotine-to-tar ratio was about 0.1, higher than the "natural" ratio:

> *This study provides evidence that the optimum nicotine-to-tar (N/T) ratio for a 10mg tar cigarette is somewhat higher than occurring in smoke from the natural state of tobacco.*[376c]

In other words, the study showed that for a given level of tar (10 mg), it was optimal to supply a higher level of nicotine than would occur naturally in tobacco. According to the authors, the study shows that smokers prefer a higher nicotine delivery in low tar cigarettes than the delivery level that would occur if nicotine were allowed to fall proportionately with tar:

> *[T]he experimental cigarette with the moderate level of nicotine addition was rated higher in acceptability than the proportional reduction cigarette and equal to the Marlboro control.*[376d]

A later quote from the same document, reported in the New York Times, indicates that this study was conducted to provide data on how to alter the natural nicotine-to-tar ratio of a low tar cigarette in such a way as to make the cigarette comparable to Marlboro (Philip Morris' most popular high tar cigarette) in consumer acceptability and "strength":

> *We are using the guidelines suggested by this study to attempt to make a 10mg tar cigarette that will equal a Marlboro in both subjective acceptability and strength.*[376e]

[376c] Low Delivery Cigarettes and Increased Nicotine/Tar Ratios, A Replication. Approved by W.L. Dunn and distributed to H. Wakeham. October, 1975. *In* 141 Cong. Rec. H8009 (daily ed. July 31, 1995)(statement of Rep. Waxman).
See also:
Hilts PJ. "Documents Disclose Philip Morris Studied Nicotine's Effect on Body." *New York Times.* June 8, 1995.

[376d] Low Delivery Cigarettes and Increased Nicotine/Tar Ratios, A Replication. Approved by W.L. Dunn and distributed to H. Wakeham. October, 1975. *In* 141 Cong. Rec. H8009 (daily ed. July 31, 1995)(statement of Rep. Waxman).

[376e] Hilts PJ. "Documents Disclose Philip Morris Studied Nicotine's Effect on Body." *New York Times.* June 8, 1995.

The term "strength," as used in industry documents, is associated with nicotine delivery. A Philip Morris document from 1978 describes further studies being conducted by that company to systematically vary the nicotine-to-tar ratio to find the "optimal" ratio for the company's ultra low (5-7 mg) tar products.[376f]

As early as 1965, a Brown and Williamson official reported to other Brown and Williamson executives that BATCO research was focused on "the smoking and health problem" and that:

> *Their approach seems to be to find ways of obtaining maximum nicotine for minimum tar. Approaches being used include:*
> *(a) P.E.I. treatment of filters*
> *(b) Nicotine fortification of cigarette paper*
> *(c) Addition of nicotine containing powders to tobacco*
> *(d) Alteration of blends.*[377]

Minutes from BATCO Group Research & Development Conferences in 1967 and 1969 reflect the importance of nicotine to the industry when considering product modifications to respond to concerns about smoking and health issues. Among other things, it was recommended that:

> *The development of low TPM [tar], normal nicotine cigarettes should continue. In this connection, the use of filter additives, such as PEI could be helpful in rendering the nicotine more available to the smoker.*
>
> *The development of a low TPM, low nicotine cigarette should be expanded. This raises the question of the level of nicotine required and the consumer study by*

[376f] Memorandum to T.S. Osdene from W.L. Dunn. Plans and Objectives-1979. December 6, 1978. *In* 141 Cong Rec. H7670 (daily ed. July 25, 1995):

> *[W]e will evaluate low delivery experimental cigarettes in the 5-7 mg FTC tar range but with nicotine levels which are discernibly higher than, equal to, and lower than the typical level expected of cigarettes in this range (which would be .53 mg).*

[377] Griffith RB. Report to the Executive Committee. With attached handwritten note. July 1, 1965. Page 2.

> *Bristol can be helpful in determining this. [It was] pointed out that there was evidence that . . . per capita cigarette consumption increased for the lower nicotine brands. It cannot, however, be assumed that the minimum nicotine offered to the smoker is the optimal level, and some consideration should be given to establishing this.* [Emphasis added.][378]

Similarly, a 1975 BATCO Group Research & Development Conference report states that:

> *Once again the need for normal nicotine low tar cigarettes which appeal to the consumer was identified.*[379] [Emphasis added.]

Another BATCO document recommended in 1976 that when tar levels are lowered, nicotine delivery should be maintained:

> *A second approach which could be made both with existing brands and with new brands is to aim at a lower smoke production per cigarette (i.e. lower tar) while maintaining "normal" nicotine. Work along these lines is already going on. A further modification of this approach is to maintain normal nicotine reaction for the smoker while actually reducing the total amount of nicotine per cigarette. It is believed that this can be done, e.g. by the use of P.E.I. or by alkali treatment of tobacco stems.* [Emphasis added.][380]

At the 1976 BATCO "Smoking Behavior" conference it was also observed that "there would

[378] *See:*
BATCO Group R&D Conference. Montreal, Canada. October 25, 1967. Pages 4-5.

BATCO R&D Conference. Kronberg, Germany. June 2-6, 1969.

[379] BATCO Group R&D Conference. Merano, N. Italy. April 2-8, 1975. Page 4.

See also BATCO Group Research & Development, Conference on Smoking Behavior, Southampton, UK, October 11-12, 1976. Page 8:

> *Provided we can get smokers to dissociate tar from nicotine in their minds in terms of a possible health hazard, then there is a clear opportunity for a range of products which at present do not exist in order to suit those who combine above average inner need [nicotine requirement - see p 184, supra] with above average concern for health. This is very much in line with some of Russell's pronouncements, and the fact that he is advocating the 'low tar normal nicotine' cigarette fairly forcibly is something we could turn to our advantage when considering how to market such cigarettes.*

[380] Morini HA. *Cigarettes with health reassurance.* BATCO Opinion. 1976. Page 1.

appear to be a forthcoming demand for high nicotine tobaccos"[381] in order to develop cigarettes that provide a higher nicotine to tar ratio.

A 1978 BATCO Group R&D Conference, which focused on product design issues, discussed several options for maintaining pharmacological satisfaction from low-tar cigarettes, including use of pharmacologically active nicotine substitutes:

> *Marketing opportunities will exist for cigarettes which are designed to replace the '1 mg cigarette.' Innovation on taste, tighter control of deliveries which may include a wider range of specified compounds, and improved control of the physical properties of the cigarette will obviously require attention. The pressure to retain smoking satisfaction may require more attention to be paid to the puff-by-puff delivery profile of the cigarette and perhaps the use of alternative active materials to augment or replace nicotine.* [Emphasis added.][382]

A 1979 BATCO R&D Policy Conference recommended continued research on aerosol growth, yet another means of reducing tar without simultaneously reducing nicotine:

> *Research on aerosol growth between inhalation and exhalation offers a way of reducing the retention of tar without at the same time reducing nicotine retention; this offers great potential to the Industry and should be continued.*[383]

A report by Imperial Tobacco Ltd. also focused on the importance of developing low-yield cigarettes that address smokers' concerns about health, but that nevertheless provide the desired "physiological satisfaction":

> *A cigarette that delivers physiological satisfaction, yet is low in T & N, must surely be a major objective and represents an R & D challenge.*[384]

American Tobacco Company memoranda written in 1980 reveal a similar focus on increasing nicotine in relation to tar deliveries. The company conducted research on the addition of potassium carbonate to Tareyton and Pall Mall cigarettes to "increas[e] the amount of nicotine that is transferred from the tobacco to the mainstream smoke while leaving the 'tar' level unchanged."[385] One of these memoranda states that the company plans additional research on "addition of sodium carbonate, [and] treatment of stems with alkali base" with the apparent goal of "liberat[ing] nicotine as a free base . . . and thereby increas[ing] the amount of nicotine in the smoke."[386]

A large number of industry patents also demonstrate that the industry has focused substantial resources on developing methods of maintaining adequate nicotine delivery to ensure smoker satisfaction while lowering levels of other smoke constituents.[387]

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[381] BATCO Conference on Smoking and Behavior, Southampton, England. October 11, 1976. Page BW-W2-02311.

[382] Green SJ. Notes on Group Research & Development Conference. Sydney, Australia. March 1978. Page 3.

[383] BATCO Notes on the R&D Policy Conference. Chewton Glen (February 10, 1979), Torquay (February 12-14, 1979). Page 4.

[384] Imperial Tobacco Ltd. Summary of Matinee marketing plans 1971. Page 11.

[385] *See:*
Bodenhamer NL. *Leaf Services Monthly Report for June; Increasing Nicotine Transfer in Smoke.* Memo to Dr. Eugene Glock. June 30, 1980.

Bodenhamer NL. *Leaf Services Monthly Report for August.* Memo to Dr. Eugene Glock. August 29, 1980.

[386] Memo to Dr. Eugene Glock dated July 31, 1980. Page 2. [The first page of this memo is missing from the exhibits to the Staff Report prepared by the majority Staff of the Subcommittee on Health and the Environment, 103 Cong. 2d. Sess., entitled "Evidence of Nicotine Manipulation by the American Tobacco Company" (Dec. 20, 1994).]

[387] *See, e.g.:*
U.S. Patent No. 3,584,630. Inskeep GE. *Tobacco Product Having Low Nicotine Content Associated with a Release Agent Having Nicotine Weakly Absorbed Thereon.* Philip Morris Inc. June 15, 1971. C2:5-15

U.S. Patent No. 3,861,400. Perkins PR, Bale CR. *Nicotine Fortification of Smoking Products.* Imperial Tobacco Group Limited. January 21, 1975. C1:1-10.

Industry studies on smoker compensation[388] have also led companies to be concerned that decreases in tar and nicotine yields will lead to dissatisfaction with smoking unless cigarettes are designed to allow smokers to compensate for the reduction in nicotine.[389] Consequently, tobacco manufacturers have actually attempted to assist smokers to compensate for lower nicotine yields, i.e., to obtain more nicotine from a cigarette than its machine-tested yield. They have done so by attempting to design cigarettes with "elasticity." "Elasticity" refers to the ability of a cigarette, whatever its nicotine yield as measured by a smoking machine, to deliver enough smoke to permit a smoker to obtain the nicotine he needs, e.g., through more or longer puffs or by covering ventilation holes.[390]

BATCO researchers described corporate policy on compensation and elasticity at a 1984 conference:

U.S. Patent No. 4,215,706. Larson TM, Moring TB, Ireland MS. *Nicotine Transfer Process*. Loew's Theatres, Inc. C1:40-48, C3:61-66.

U.S. Patent No. 4,236,532. Schweizer AD, et al. *Smoking Rod Wrapper*. Gallaher Limited. December 2, 1980. C1:35-40.

U.S. Patent No. 4,830,028. Lawson JW, Bullings BR, Perfetti A. *Salts Provided From Nicotine and Organic Acid as Cigarette Additives*. R.J. Reynolds Tobacco Company. May 16, 1989. C1:40-47.

[388] *See* FINDINGS § II.C.3., *supra*.

[389] *See* Adams, note 326, *supra*, at p. 108:
We believe in overall conclusion, that our data shows Firstly, that individual smokers adapt their smoking habit to the type of cigarette being smoked in order to try to obtain what they need from their cigarette
. . . .
Thirdly, that if because of the design of the cigarette they cannot adapt sufficiently, dissatisfaction will result.

[390] BATCO R&D Conference. 1983. Brazil. Page BW-W2-03952: A paper on the effects of filters on cigarette smoke stated that elasticity was one of the factors that allowed a greater impression of "strength" (which is related to nicotine delivery) "within a given tar segment."

Compensation by modifying smoking regime [increasing or decreasing/puff volume, duration, puff frequency, amount inhaled] is a topic which is being explored at GR & DC and this includes designing products which aid smoker compensation.

The marketing policy concerning this type of product is not clear but it is believed it will depend largely on the degree of elasticity in the design and how overtly this elasticity is achieved. The consensus is that small improvements in elasticity which are less obvious, visually or otherwise is likely to be an acceptable route. [Emphasis added.][391]

Tobacco companies have attempted to improve elasticity through a variety of techniques. BATCO researchers noted at a 1983 conference that "elasticity can be designed into a cigarette using tobacco blend and pressure drop components. . . ."[392] Researchers at a 1972 BATCO Conference cited the need for "means of increasing the puff number of low density, low delivery cigarettes . . . in addition to those at present available."[393] At a 1975 conference, BATCO researchers were told about a German cigarette that had a number of design features that were intended to allow human smokers to obtain higher yields than the smoking machine. These design features included a higher than normal moisture content, reduced humectant, shorter cigarette rods, increased paper burn rate, additives, porous tipping, perforated tipping, acid filters, and the addition of sugars.[394]

At a 1983 BATCO R&D Conference, one of the workshops was entitled "Making the Smoke Work Harder." Notes of suggestions from that workshop include the question "What

[391] Proceedings of the BATCO Group R&D Smoking Behaviour-Marketing Conference, Session III. July 9-12, 1984. Page 55.

[392] BATCO Smoking Behavior Conference Overview, 1983. Page BW-W2-03292.

[393] BATCO. Notes from Group R&D Conference, Chelwood; 1972. Page BW-W2-01764.

[394] BATCO Group R&D Conference, 1975, note 379, *supra*, at p. 4.

factors control human ability to change T[ar]/N[icotine] ratios?," i.e., how can a smoker, through his own behavior, alter the amount of tar and nicotine he obtains from a cigarette of a particular machine-derived yield? Many of the remaining suggestions from the workshop offer possible methods to alter the tar/nicotine ratio of a cigarette, including manipulating the pH of the smoke, and altering the ratio of free to bound nicotine. By 1984, BATCO marketing and product development personnel were recommending the use of "compensatable" filters, intended "[t]o make it easier for smokers to take what they require from a cigarette."[395]

These documents show the extent of the tobacco industry's focus on nicotine in the face of increasing pressure to alter other characteristics of their products for health reasons. The documents reveal the industry's concern with the trend toward lower-tar products, and the industry's intense preoccupation with the need to provide adequate nicotine deliveries despite lowered tar deliveries. The documents establish that the industry's rationale for seeking to provide adequate nicotine deliveries in lower-delivery products is to ensure that these low-delivery products provide smoker satisfaction. These and other documents have shown the tobacco industry's awareness that smoker satisfaction is a function of the pharmacological effects of nicotine on the brain, and the industry's keen desire to be able to offer cigarettes that will allow smokers to obtain the threshold level of nicotine necessary to experience these effects.

[395] Structured Creativity Conference, Southampton, June 25-28, 1984. Page BW-W2-01993; attended by Ted Parrack of Brown and Williamson.

THIS SECTION OF THE DOCUMENT CONTAINS INFORMATION THAT MAY BE CONSIDERED TO BE OF A TRADE SECRET OR COMMERCIAL CONFIDENTIAL NATURE. EACH PAGE CONTAINING SUCH INFORMATION BEARS A NOTE ON THE TOP OF THE PAGE AND THE INFORMATION HAS BEEN PURGED FROM THE TEXT.

E. INDUSTRY MANIPULATION AND CONTROL OF NICOTINE DELIVERY IN MARKETED TOBACCO PRODUCTS

1. Industry Manipulation and Control of Nicotine in Cigarettes

FDA's investigation has revealed the painstaking attention that tobacco companies pay to nicotine during every phase of cigarette manufacture. This section details the methods used by the industry to manipulate nicotine delivery at each stage of production and some of the effects of these manipulations on the nicotine content (the amount of nicotine in the tobacco rod) and delivery (the amount of nicotine delivered in the smoke for absorption into the bloodstream of the smoker) of modern cigarettes.

At each step -- from tobacco growing, purchasing of tobacco leaves, and blending different types of tobacco, to cigarette design and manufacture -- ensuring adequate nicotine delivery is a central objective of cigarette manufacturers. According to a tobacco industry official:

> *Generally speaking, the nicotine yield of a cigarette is determined by the nicotine content of the tobacco; the static burn rate or amount of tobacco consumed during puffing; the pressure drop of the tobacco column; porosity of the wrapper and or ventilation at the filter; the pressure drop of the filter, the filter material, the surface area of the filter material; and the affinity of the filter material for nicotine particularly as a function of smoke pH. Through the combination of these variables, plant genetics, and commercial processes to remove nicotine from tobacco, it is possible to manipulate the yield of nicotine from about .1 mg to*

4 mg per cigarette.[395a] [Emphasis added.]

The first manufacturing step in nicotine control is the development and selection of raw materials. The tobacco industry has, through breeding and cultivation practices, developed high-nicotine tobacco plants that provide higher-potency raw material, giving manufacturers greater flexibility in blending and in providing uniform and sufficient nicotine deliveries.

Even without the selective breeding and cultivation of plants for nicotine content, careful tobacco leaf purchasing plans permit the manufacturers to control nicotine content in their products. For example, nicotine content varies among types of tobacco and from one crop year to the next. Awareness of these basic differences and monitoring of the nicotine levels in purchased tobacco allows the companies to produce cigarettes with nicotine deliveries consistent to a tenth of one percent, despite variations as high as 25% in the nicotine content of the raw material originating in the same area, from year to year.

The primary control of nicotine delivery (the amount received by the smoker), however, is in the design and careful, sophisticated manufacture of the cigarette, to ensure that the smoker obtains the precise amount of nicotine intended by the manufacturer. FDA's investigation has revealed that despite reductions in the amount of tar delivered by cigarettes over the past several decades, nicotine delivery in low-yield[396] cigarettes has not fallen proportionately with the reductions in tar. Instead, nicotine delivery has apparently risen over the last decade, a result

[395a] Spears, AW. Lorillard Tobacco Co. *Factors Affecting Smoke Delivery of Nicotine and Carbon Monoxide*. Presented at the 1975 Symposium- Nicotine and Carbon Dioxide. November 17-18, 1975. In Symposium Proceedings-1, at p.12. FDA notes that when the author testified before Congress, he stated that nicotine manipulation does not occur and that nicotine yields simply follow tar yields. *See* note 479, *infra*. In this article he does not mention tar yield as factor in determining nicotine yield.

[396] "Low-yield" is used to denote cigarettes advertised as low-tar and low-nicotine.

that confirms that nicotine delivery is being independently and carefully manipulated by tobacco manufacturers. This newly gathered information, together with the other evidence of the industry's breeding, purchasing, blending, and manufacturing practices, reveals the extent to which manufacturers control the amount of nicotine that is delivered to the consumer from cigarettes and provides further support for the Agency's conclusion that tobacco manufacturers intend their products to affect the structure or function of the human body.

a. Tobacco Leaf Growing

The industry's control and manipulation of nicotine in the production of cigarettes begins long before the cured tobacco leaf reaches the manufacturing plant. The characteristics of leaf tobacco, including nicotine content, are established by the genetic makeup of the plant, developed during growing, and fixed by post-harvest handling. Like other raw agricultural commodities, the physical and chemical properties of tobacco, including nicotine, can vary widely, depending on genetic differences, growing season conditions, and soil type. This subsection describes the methods used by the tobacco industry to control and manipulate nicotine through careful genetic breeding and agronomic practices. As one industry expert stated, "nicotine is the key chemical constituent of the leaf and smoke and the reason for which tobacco is grown."[397]

Modern types of cultivated tobacco (*Nicotiana tabacum L*) have been selected for a relatively high level of nicotine.[398] Five major types of tobacco make up nearly all tobacco

[397] Adapting agronomy to the needs of the low-tar era. *World Tobacco*. October 1977. Page 137.

[398] *Id.*

products marketed in the United States: Burley, flue-cured, Maryland, the Dark tobaccos, and Oriental. These tobaccos vary both in nicotine levels and in pH. The pH of a tobacco can have a significant influence on the amount of, and rate at which, nicotine is absorbed into the bloodstream of the tobacco user and delivered to the brain.

Of the five major types of tobacco, Burley tobacco generally contains the highest nicotine levels compared to other tobacco varieties, and it has an alkaline pH. Flue-cured tobacco represents the major tobacco ingredient in American cigarettes. In comparison with other tobacco varieties, flue-cured tobacco has a medium nicotine content and is somewhat acidic.[399] Maryland tobacco has a low nicotine content in comparison with other varieties and has an alkaline pH. The Dark tobaccos produce an alkaline smoke, and are the traditional tobaccos for cigar wrappers and fillers as well as for chewing tobacco and for many pipe tobacco mixtures. Oriental tobaccos, cultivated in southeastern Europe and Turkey, are used for their characteristic aroma; they have a low nicotine content, and low pH.[400]

American tobaccos of all types have undergone cumulative increases in total nicotine levels since the 1950's.[401] As the following chart demonstrates, nicotine levels in the most widely grown American tobaccos increased almost 10% for Burley and more than 50% for flue-cured between 1955 and 1980:

[399] Browne CL. *The Design of Cigarettes.* Hoechst Celanese Corporation; 1990. Page 43.

[400] *Id.* at pp. 22, 44.

[401] DeJong DW. The role of American tobacco leaf chemistry in low-yield cigarettes: an agricultural viewpoint. *Tabak Journal International.* May 1985. Pages 376-83. DeJong notes that higher-nicotine American tobaccos are needed in limited quantities to "spike" low yield cigarette blends. He further notes that off-shore tobaccos are invariably lower in nicotine, but serve to provide "filler" style leaf materials deemed necessary for the manufacturing of low-tar cigarettes, which comprise the majority of the U.S. market.

Tobacco Type	Percent Nicotine	
	1955	1980
U.S. BURLEY	2.91	3.18
U.S. FLUE-CURED	1.93	3.07

Two tobacco industry activities over the last several decades appear to be responsible for this increase: 1) the industry's active and controlling participation in the Minimum Standards Program, which ensures that nicotine levels of U.S.-grown and marketed tobacco are maintained within specified ranges;[402] and 2) the industry's breeding and cultivation of tobacco for high nicotine levels.

The Minimum Standards Program, which began in 1963 for flue-cured tobacco and in 1977 for Burley tobacco,[403] is a component of the tobacco price-support program administered by the U.S. Department of Agriculture (USDA). With regard to domestically grown tobaccos, the industry maintains control over which varieties are suitable for growing in the United States

[402] *Id.* at p. 382.

[403] *See:*
Letter to M. Murray, FDA, from E. Wersman, North Carolina State University, March 23, 1994, transmitting:
1) The Burley Tobacco Quality Committee-Varieties "Testing Procedure to Assure Acceptable Quality In Burly Tobacco Varieties" revised February 24, 1993.
2) The Flue-Cured Tobacco Quality Committee-Varieties "Testing Procedure to Assure Acceptable Quality In Flue-Cured Tobacco Varieties" amended January 1991.

Letter to M. Zeller, FDA, from E.M. Pfeifer, King & Spalding on behalf of the Brown and Williamson Tobacco Corp., pp.1-8, with enclosures:
Attachment 1 "Flue-Cured Tobacco Variety Committee";
Attachment 2 "Burley Variety Evaluation Committee Membership";
Attachment 3 Slides, pp. 90025-90091.

and thereby eligible for price support.

One key objective of the tobacco industry's involvement in the Minimum Standards Program appears to be to ensure that nicotine levels in marketed tobacco do not fall below specified levels. The program was initiated in response to the emergence, in the 1950's , of several so-called "discount" varieties of tobacco (e.g., "Coker 139," "Coker 187-Golden Wilt," "Coker 282," "Coker 140," "Coker 316," and "Reams 64") that failed to meet current industry specifications established, among other things, to control the amount of nicotine delivery when used in manufacturing filtered cigarettes. To insure the elimination of "discount" or low-nicotine varieties from the market, the industry obtained the necessary cooperation from USDA to eliminate these varieties from the price-support program. In fact, to be eligible under this program, growers must certify, even to this day, that "discount" varieties are not being grown.[404]

In 1979, one major U.S. manufacturer requested that the tobacco variety committee under the Minimum Standards Program lower the acceptable nicotine range, established in 1967, for the specific tobacco varieties used as the standard. Support for lowering the acceptable nicotine range was not forthcoming from the rest of the industry and the change was never adopted.[405] In fact, in spite of the trend toward marketing cigarettes advertised as low delivery, the criteria under the Minimum Standards Program for nicotine content of new varieties have not changed since 1967.

While the Minimum Standards Program ensured that nicotine levels in marketed tobaccos

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[404] USDA Agricultural Stabilization and Conservation Service (ASCS) Manual. "Identification of certain flue-cured tobacco varieties under the price support program." April, 1964. Pages 3-5, 8, 10-11. Obtained on June 15, 1994, from USDA-ARS-SAA, Crops Research Laboratory.

[405] Collins WK. Cultural practices increase nicotine content of U.S. flue-cured leaf. *Tabak Journal International.* [4] 1981:328, 330.

did not fall, breeding and cultivation initiatives undertaken by the industry caused nicotine levels to increase. When health concerns prompted the tobacco industry to begin to market low-tar cigarettes in the 1960's and 70's, the industry turned to tobacco breeders to develop tobacco varieties that produced less tar. Breeders found that without intervention in the breeding of these varieties, nicotine levels were reduced along with tars.[406] Thus, the industry has long been able to grow low-tar and low-nicotine varieties of tobacco for use in manufacturing cigarettes.

By 1978, however, the industry had abandoned its interest in the development of low-tar/low-nicotine varieties of tobacco for manufacturing low-yield cigarettes, and instead turned to the development of higher nicotine varieties. According to one expert in the field, it was necessary to focus on developing tobacco that was higher in nicotine, not lower:

> *. . . manufacturers have means of reducing tars but most of the methods reduce nicotine and other constituents at the same time. Therefore it may be desirable to develop levels constant or to develop lines higher in nicotine so that when the tar and nicotine are reduced there will still be enough nicotine left to satisfy the smoker.*[407] [Emphasis added.]

Industry experts agreed, stating in 1981 that the nicotine content of tobacco "will increase if the very low 'tar' brands continue to expand in market share,"[408] They further stated that:

> *[c]urrent research is directed toward increasing the nicotine levels while maintaining or marginally reducing the 'tar' deliveries.*[409]

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[406] Tailoring tobacco plants to meet future demands. *World Tobacco.* October 1978. Page 148. Abbreviation of talk by J.F. Chaplin at meeting of CORESTA scientists in Sofia, Bulgaria.

[407] *Id.*

[408] Spears AW, Jones ST. Chemical and physical criteria for tobacco leaf of modern day cigarettes. *Recent Advances in Tobacco Science.* 1981;7:19-39, 37.

[409] *Id* at p. 31. *See* DeJong, note 401, *supra,* at p. 378. In anticipation of a move toward low-yield cigarettes, USDA was once petitioned by the industry to promulgate regulations to allow for the growing of ultra-low nicotine tobacco. The regulations were actually published in the *Federal Register* in June 1947. The nicotine concentration was to be no higher than 0.8%, which is significantly lower than the

The industry has elsewhere acknowledged that the role of American tobacco is to provide high levels of nicotine in the finished product to offset the diluting effect of bland foreign tobaccos and reconstituted tobacco sheet.[410]

FDA's investigation has revealed that at least one cigarette manufacturer, Brown and Williamson, has developed and marketed a tobacco so high in nicotine that it exceeded the limits imposed for U.S.-grown tobacco under the Minimum Standards Program. These limits cannot be exceeded without significant risk of losing government-administered price support. However, foreign-grown tobaccos are not subject to these specifications and are not subject to testing for nicotine content upon entry into the United States. This high-nicotine tobacco was therefore grown in South America.

FDA found that Brown and Williamson was involved for more than a decade in developing, through a combination of conventional and advanced genetic breeding techniques, a high-nicotine, flue-cured tobacco plant, named "Y-1," for use in a number of low-tar brands of cigarettes in the United States.

Brown and Williamson characterized its achievement in a patent filing in the following way:

> *By the present invention or discovery, applicants have succeeded in developing a tobacco plant that is agronomically and morphologically suitable for commercial tobacco production, i.e. it closely resembles SC 58, and provides a pleasant taste and aroma when included in smoking tobacco products, yet it is possessed of the N. rustica high-nicotine attribute. So far as we know, this has not been*

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concentration of nicotine in domestic tobaccos. These low-nicotine varieties were to be kept entirely separate and marketed under contract. These regulations remain in the Code of Federal Regulations (7 CFR 30), but they have never been taken advantage of, indicating industry's lack of interest in the development of ultra-low nicotine tobaccos.

[410] *See* DeJong, note 401, *supra.*

> *accomplished before . . .* [Emphasis in original.] [411]

The development of Y-1 dates back to at least the mid-1970's. In 1977, James F. Chaplin, who was affiliated with both USDA and North Carolina State University, indicated that tobacco could be bred to increase nicotine levels, by crossbreeding commercial varieties of tobacco with *Nicotiana rustica. N. rustica* is a wild tobacco variety that is very high in nicotine, but is not used in manufacturing cigarettes because of its harshness.[412]

By combining conventional and advanced breeding techniques, Brown and Williamson succeeded in developing commercially viable Y-1 from seeds initially produced by Chaplin's crossbreeding work. The nicotine content of the leaf of this variety is about 6% by weight, which is higher than that of any other varieties of tobacco commercially grown in the United States. (Domestically grown varieties of flue-cured tobacco, for example, naturally contain 2.5% to 3.5% nicotine.[413])

Company officials admitted to FDA that Y-1 was intended as a "blending tool" to enable the company to design products that were lower in tar but not lower in nicotine.[414] The company disclosed to FDA that Y-1 had been used commercially in the manufacturing of Viceroy King Size, Viceroy Lights King Size, Richland King Size, and Richland Lights King Size and it

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[411] U.S. patent application No. 761,312 submitted on September 17, 1991.

[412] Chaplin JF. *Breeding for varying levels of nicotine in tobacco.* Proceedings from a symposium on Recent Advances in the Chemical Composition of Tobacco and Tobacco Smoke. 1977. Page 334.

[413] Letter to D.A. Kessler, FDA, from J. W. Johnston, R.J. Reynolds Tobacco Co. February 28, 1994. Pages 1-2.

[414] Transcript of FDA meeting with Brown and Williamson. June 17, 1994. Pages 18, 29, 85-86, 124.

constituted about 10% of the tobacco blend of these products.[415] These brands were manufactured and distributed throughout the United States in 1993.[416] FDA's investigation revealed that, as of mid-1994, Brown and Williamson still had between 3.5 million and 4 million pounds of this high-nicotine tobacco on hand.[417]

In addition to breeding high-nicotine tobacco varieties, the tobacco industry engages in a number of agronomic practices that increase nicotine levels in tobacco. Heavy application of nitrogen fertilizers, early topping, and tight "sucker" (i.e., bud growth at the junction of stalk and leaves) control have all acted in concert to push nicotine levels upward.[418] In addition, tobacco varieties have been selected for tolerance to brown spot, a leaf disease that makes early harvest necessary. Leaves of disease-resistant varieties tend to remain in the field longer, resulting in maximum nicotine accumulation.[419] Since the introduction in 1965 of the acreage-poundage control system, farmers have reduced the number of harvestable leaves per plant and have tended to increase plant spacing. Both of these practices tend to increase nicotine content in the leaf.[420] Finally, tobacco growers are transplanting tobacco crops earlier, which, coupled with the widespread use of pesticides in the soil, often results in slow early season growth, and also tends

[415] *Id.* at pp. 153, 165.

[416] *Regulation of Nicotine under the Federal Food, Drug, and Cosmetic Act: hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives,* 103 Cong. 2d Sess. (June 21, 1994)(statement of David A. Kessler, M.D., Commissioner of Food and Drugs, "The Control and Manipulation of Nicotine in Cigarettes," at pp. 9-12). The Commissioner's statement is included as Appendix 8 to this document.

[417] *See* Transcript, note 414, *supra,* at p. 124.

[418] *See* DeJong, note 401, *supra,* at p. 382.

[419] *See* Collins, note 405, *supra,* at p. 330.

[420] *Id.*

to increase nicotine content in the leaves.[421]

These nicotine-raising agronomic practices have been adopted by U.S. growers in recent years, even though over 50% of the U.S. cigarette market is now characterized as low delivery. Thus, the tobacco industry has developed a number of sophisticated methods for manipulating nicotine levels through breeding and cultivation of tobacco plants and has used these methods to maintain and increase concentrations of nicotine in tobacco leaves. These methods enable the industry to use high-nicotine leaf in low-tar cigarettes, so that, paradoxically, certain low-tar cigarettes now contain more of the higher nicotine tobacco in their blend than cigarettes with higher tar deliveries.[422] See p. 261 infra. The use of these methods demonstrates that the industry manipulates nicotine independently of other tobacco components to ensure that cigarettes contain sufficient nicotine to satisfy smokers.

b. Leaf Purchasing

Nicotine is perhaps the most important criterion employed by cigarette companies in the purchase of tobacco leaf. As one tobacco company official stated over 20 years ago in an industry publication:

> *It is believed that one important reason why the consumer smokes cigarettes is for the nicotine which they contain . . . Manufacturers, therefore, must have all options open in selecting leaf to buy.*
>
> *They are most concerned with the nicotine levels in leaf, so that after manufacture of their blends, the nicotine percentages in the cigarettes will vary minimally both*

[421] *See* Collins, note 405, *supra.*

[422] *See* Spears, note 408, *supra,* at p. 22.

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from one to another within a packet, and from packet to packet.[423] [Emphasis added.]

The key factor related to nicotine in leaf purchasing is stalk position. The concentration of nicotine is lowest at the bottom of the plant and highest in the top leaves of flue-cured tobacco.[424] Thus, the position of the leaf on the stalk determines how much nicotine the leaf will contain. In fact, "stalk position" is an industry euphemism for nicotine content. The stalk position of a leaf can be determined by its appearance, shape, color, and thickness, even after harvest.[425] Therefore, an experienced buyer, whose instructions are dictated by the manufacturer's chemists,[426] need only be concerned with these physical characteristics in identifying leaves of varying nicotine content.

The significance of stalk position in leaf purchasing was confirmed when FDA visited cigarette manufacturers. [redacted][427]

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[423] What changing technology means for leaf producers and packers. *World Tobacco*. September 1971. Page 137. Based upon lecture by J.S. Campbell, American Organisation of the Imperial Tobacco Group Ltd. at a Conference on Social and Economic Issues Confronting the Tobacco Industry in the Seventies, Lexington, KY.

[424] *See* 1977 *World Tobacco* article, note 397, *supra*. *See also* Browne, note 399, *supra*, at p. 15.

[425] *See* 1977 *World Tobacco* article, note 397, *supra*.

[426] Evolving techniques of making cigarettes milder. *World Tobacco*. April 1979. Page 95.

[427] FDA officials Mitch Zeller, Kevin Budich, Barbara Frazier, and Bob Spiller visited the sites of R.J. Reynolds Tobacco Company on April 11-12, 1994, and Brown and Williamson Tobacco Company on May 3, 1994. The following references refer to their summary notes of the visits.

Zeller notes from RJR visit at p. 2.
Budich notes from RJR visit at p. 3.

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Furthermore, this RJR representative revealed that "impact" is a criterion in leaf purchasing and that "impact" is "basically a function of nicotine in tobacco."[428] RJR also indicated that "impact" is measured in the company's laboratories if there is enough time to do so prior to purchase.[429]

Representatives from Brown and Williamson also described the significant role that nicotine plays in the purchase of tobacco leaf. The company stated that stalk position is the "first thing" they look for during leaf purchasing.[430] At Brown and Williamson, the lower stalk positions are considered to have the least amount of "smoke quality," which was defined as including "impact level."[431] The company defines "impact" as "the hit or punch in the back of the throat when you first inhale."[432]

Nicotine levels are so crucial to leaf purchasing at Brown and Williamson that the

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[428] Zeller notes from RJR visit at p. 2.
Budich notes from RJR visit at p. 3.
Frazier notes from RJR visit at p. 2.
RJR overhead was provided at visit.

[429] Zeller notes from RJR visit at p. 2. [redacted]

[430] Zeller notes from B&W visit at p. 2.
Frazier notes from B&W visit at p. 2.
Spiller notes from B&W visit at p. 2.

[431] Zeller notes from B&W visit at p. 2.

[432] Zeller notes from B&W visit at p. 2.
Budich notes from B&W visit at p. 4.
Frazier notes from B&W visit at p. 2.
Spiller notes from B&W visit at p. 2.

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company actually adjusts the stalk positions of its leaf purchases based upon the results of nicotine analyses that are performed during the course of the buying season.[433] In addition, Brown and Williamson employs special measures when purchasing foreign tobacco to ensure adequate nicotine levels. The company stated that foreign Burley and flue-cured tobaccos are smoked prior to their purchase so that they get some sense of the "impact" of the tobacco,[434]

[redacted][435]

c. Leaf Blending

After purchase, tobacco leaves are blended to attain target levels of nicotine and tar in the smoke. FDA's investigation noted particular attention on the part of manufacturers to the nicotine content of the leaf in the blending operation. As noted above, blending practices by manufacturers are designed to: (1) control the naturally occurring variations in nicotine and other components caused by genetics, growing season conditions, and soil type within a given type and grade; and (2) particularly for low-tar cigarettes, to increase nicotine concentrations and thereby maintain an acceptable nicotine level in the cigarettes.

As described above, each type of tobacco has unique characteristics of nicotine and tar delivery. Moreover, within each type, levels of nicotine increase with ascending stalk position

[433] Frazier notes from B&W visit at p. 2.

[434] Spiller notes from B&W visit at p. 2. Frazier notes from B&W visit at p. 2.

[435] [redacted]

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(grade). Armed with this knowledge, tobacco manufacturers blend various types of tobaccos and various stalk positions to achieve specific nicotine levels in particular brands.

Manufacturers also pay attention to other features of tobaccos that can affect nicotine delivery during blending. For example, cigarette filling power (bulk), pressure drop or resistance to draw, and static burn rate are all decreased with ascending stalk position. Decreases in burn rate increase the puff count, and thereby result in the delivery of more nicotine to the smoker because less tobacco is burned between puffs.[436]

The pH of cigarette smoke directly affects the delivery of nicotine because it alters the amount of nicotine that is absorbed in the mouth or lungs.[437] PH is controlled by the manufacturer in the selection of the type of tobacco used and blended. For example, smoke-condensate pH is higher from certain tobacco varieties as well as from leaves at upper stalk positions.

Blending techniques have been used to finely control nicotine concentrations in marketed cigarettes. [redacted][438] This is a high

[436] *See* Browne, note 399, *supra,* at p. 12.

[437] *See* Surgeon General's Report. *Nicotine Addiction.* 1988. Pages 29-31.

[438] [redacted]

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degree of control even in a product manufactured from synthetic, homogeneous materials. It is a remarkable degree of control for a product such as cigarettes, which are made from highly variable biological materials whose nicotine content is ordinarily dependent upon such uncontrollable factors as weather and plant attack by insects and plant diseases.

Significant evidence also demonstrates that tobacco manufacturers have used blending techniques to increase nicotine concentrations in low-tar cigarettes and thereby maintain nicotine delivery while reducing tar delivery. FDA has observed the industry's use of proportionately greater amounts of higher nicotine-containing Burley tobacco in the tobacco blends of the lowest-tar varieties of cigarettes. In fact, Thomas Sandefur, the chief executive officer of Brown and Williamson, admitted to Congress that nicotine levels can be adjusted "up or down" depending on the blend of tobaccos used in a particular cigarette.[439] Industry scientists have also acknowledged that tobacco manufacturers blend high-nicotine tobaccos to compensate for the reductions in nicotine caused by innovations in cigarette design and manufacturing to reduce tar deliveries.[440]

[redacted]

[redacted]

[439] *Regulation of Nicotine under the Federal Food, Drug, and Cosmetic Act: hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives,* 103 Cong. 2d Sess. (June 23, 1994) (testimony of Thomas E. Sandefur, Jr., CEO, Brown and Williamson Corp., transcript at p.133).

[440] *See:*
DeJong, note 401, *supra.*

Spears, note 408, *supra,* at pages 22-24.

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[redacted][441] These examples demonstrate that tobacco manufacturers deliberately increase the proportion of high-nicotine tobaccos in low-tar cigarettes to prevent reductions in nicotine delivery that would otherwise result in these products.

Moreover, as described above, Brown and Williamson developed "Y-1," its ultra-high nicotine tobacco, for the purpose of having a "blending tool" that could be used to maintain nicotine delivery while reducing tar.

d. Cigarette Design and Manufacture

Cigarettes are not simply cut tobacco rolled into a paper tube. Modern cigarettes, as sold in the United States, are painstakingly designed and manufactured to control the amount of nicotine delivered to the smoker. The following aspects of cigarette design and manufacturing all affect the nicotine delivery of a finished cigarette:

(i) the chemical manipulation of tobacco smoke;

(ii) the use of flavors and casings;

(iii) filtration;

[441] Zeller M, Budich K. Notes from March 22-23, 1994 meeting with Philip Morris and April 10-12, 1994, meeting with RJR. Mitch Zeller's notes, at pp. 2-3, and Kevin Budich's notes at p. 9.

(iv) the use of reconstituted tobacco; and

(v) use of wider tipping paper.

(i) Chemical Manipulation

Tobacco manufacturers add certain chemicals to the tobacco to enhance the efficient extraction by the smoker of nicotine from the tobacco in the rod. For example, certain additives can alter the pH of cigarette smoke, which is known to affect the rate of absorption of nicotine into the bloodstream of the smoker.[442]

FDA's investigation has disclosed efforts by the industry to chemically enhance nicotine delivery. A major American tobacco company's 1991 handbook on leaf blending and product development shows that ammonia from such sources as diammonium phosphate (DAP),[443] ammonium hydroxide, and urea can be used in cigarette manufacturing to increase the amount of nicotine delivered to the smoker.

The handbook states that ammonia in cigarette smoke:

> *can liberate free nicotine from the blend, which is associated with increases in impact and 'satisfaction' reported by smokers.*[444]

The handbook goes on to describe ammonia as an "impact booster":

> *Ammonia, when added to a tobacco blend, reacts with the indigenous nicotine salts and liberates free nicotine. As a result of such change, the ratio of extractable nicotine to bound nicotine in the smoke may be altered in favor of extractable nicotine. As we know, extractable nicotine contributes to impact in*

[442] Surgeon General's Report. *Nicotine Addiction.* 1988. Pages 29-31.

[443] *See* Statement of David A. Kessler, note 416, *supra,* at pp. 9-12.

[444] *Id.* at p. 10.

> *cigarette smoke and this is how ammonia can act as an impact booster.*[445]

Ammonia increases the pH of the smoke and thereby enhances the absorption of nicotine by the body.[446] FDA's investigation has revealed at least one common site for the application of ammonia and ammonia-like compounds: reconstituted tobacco. The agency has found levels of these compounds to be as high as 10 % in reconstituted tobacco.

The company handbook describes the benefits of the treated reconstituted tobacco as a source of ammonia to absorb nicotine from higher alkaloid-containing components in the blend. This company handbook also describes the application of ammonia directly to the leaf tobacco.

With regard to the question of the efficiency of this technology in increasing nicotine delivery, the handbook states that smoke analysis shows that an experimental cigarette made of reconstituted tobacco treated with ammonia has almost double the nicotine transfer efficiency of tobacco.[447] This handbook also states that many U.S. tobacco manufacturers utilize ammonia technology. One company has admitted to FDA that it uses DAP in manufacturing cigarettes, and that such use increases nicotine delivery.[448]

(ii) Flavors and Casings

Various substances are added to tobacco components to affect the flavor and palatability of smoke, alter smoke composition and yield, modify burn rate, and alter pH to optimize nicotin

[445] *Id.*

[446] Surgeon General's Report. *Nicotine Addiction.* 1988. Pages 29-31.

[447] *See* Statement of David A. Kessler, note 416, *supra,* at pp. 10-12.

[448] *See* King and Spalding letter, note 403, *supra,* at p. 6.

delivery. According to one industry expert,[449] the major contribution of the tobacco flavor specialist is to:

> *help provide a rich, clean, full-bodied tobacco flavour, to keep to a minimum hotness and irritation in the mouth, and to ensure high satisfaction from an adequate level of nicotine per puff . . . requirements that guarantee the consumer a pleasurable smoke . . .*

So-called "casings" are solutions of usually water-soluble ingredients that provide a means of incorporating flavorings and other additives into the tobacco blend. Casings are often used in tobacco processing to reduce the harshness of nicotine in high-nicotine tobaccos, thus permitting greater use of these tobaccos in cigarette manufacture. This use of casings is described by an industry "flavorist" in the following quote:

> *It is assumed that nicotine is one of the primary satisfaction factors for which tobacco products are used. However, in air-cured tobaccos (cigar, burley, Maryland), the pH of the smoke is generally alkaline and the flavor effect of nicotine is a "harshness" which can be choking and unpleasant. In the case of tobaccos containing sugars (flue-cured, oriental), the tobacco is weakly acidic, the effect of the nicotine is greatly modified, and the harshness is dramatically reduced. This same effect is often achieved by addition of sugars to air-cured tobaccos to "mellow" the smoke and/or by the blending of air-cured tobaccos with flue-cured and oriental. [Citation omitted.] Thus, smoke pH and leaf sugar content are factors which play an important role in the nicotine strength perceived in the smoking process.*[450]

As is clear from this quote, casings are used to permit the incorporation of high-nicotine tobaccos in cigarette blends, despite their unpleasant taste. Casings composed of such additives as sugar, licorice, or cocoa help to overcome the bitterness of nicotine in smoke. The lengths to which tobacco manufacturers go to use high-nicotine tobaccos, despite the harsh taste of

[449] Hertz AN. The flavourist's role in the cigarette design team. *World Tobacco.* March 1985. Page 97.

[450] Leffingwell JC. Nitrogen components of leaf and their relationship to smoking quality and aroma. *Recent Advances in Tobacco Science.* Volume 2. Page 9.

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nicotine, reveals that the nicotine in these tobaccos is not being used for its taste but for another purpose.

FDA's investigation revealed the following example of the application of casings to permit a use of a high-nicotine tobacco that would otherwise have been unpalatable to consumers. [redacted][451]

Manufacturers also reduce harshness by routinely adding acids to tobacco to lower the pH of the smoke.[452] Manufacturers also use conventional casing materials, such as sugars and cocoa, to produce acids in the smoke and reduce harshness.[453] Harshness from nicotine is also reduced by spraying on top dressings after the tobacco is cut and shredded for cigarette making.[454]

Casings often include a humectant, usually glycerine or a higher glycol, which serves to

[451] [redacted]

[452] *See* King and Spalding letter, note 403, *supra,* at p. 6.

[453] *Id.*

[454] *Id.*

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keep the tobacco moist and less sensitive to changes in humidity.[455] RJR acknowledged using glycerine as a humectant.[456] Tobacco industry officials acknowledge that controlling moisture content is essential to ensure that nicotine content does not fall.[457] Humectants also act to control particle size in the formation of the smoke aerosol, making the smoke "smoother" or less harsh on the back of the throat. Smoother smoke facilitates inhalation, ensuring that the nicotine will be taken into the lungs and rapidly and completely absorbed.

Nicotine can also be added to cigarettes through application of tobacco extracts in the processing of tobacco. Although calling the contribution of flavored tobacco extracts to the overall nicotine delivery from cigarettes "trivial," tobacco companies admitted to having used such extracts in testimony before Congress,[458] in other public statements,[459] [redacted]

[redacted]

[redacted]

[redacted]

[455] *See* Browne, note 399, *supra,* at pp. 55-56.

[456] Budich K. Notes from April 10-12, 1994, meeting with RJR. Page 8.

[457] DeBardeleben MZ, Clafin WE, Gannon WF. (Philip Morris Research Center). Role of cigarette physical characteristics on smoke composition. *Recent Advances in Tobacco Science.* Volume 4. Page 98 ("Nicotine decreases on a per puff basis as moisture content increases . . . . The decrease is dramatic as moisture content rises above 12%").

[458] *Regulation of Tobacco Products (Part I): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103 Cong. 2d Sess. 592, 596 (April 14, 1994) (testimony of Edward A. Horrigan, Jr., Liggett Group, Inc. and Andrew Tisch, Lorillard Tobacco Co.).

[459] Philip Morris press release. *Philip Morris Statement on Nicotine in Cigarettes.* March 25, 1994. Page 2.

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[redacted][460]

(iii) Filtration

The filter plug provides a mouthpiece that captures particulate matter from the smoke and absorbs vapors. The filter can be used as a vehicle to carry filter aids such as charcoal and other solids and liquid additives that permit selective filtration of certain chemicals. The manufacturer's selection of a particular filter is determined largely by the target levels of nicotine and tar.[461]

Significant research has been conducted by the tobacco industry on the use of filter additives to enhance nicotine delivery.[462] FDA's investigation revealed that at least one major cigarette manufacturer has added a chemical to the filters used on its marketed cigarettes that increases the amount of nicotine delivered to smokers, by increasing the amount of nicotine that is eluted from the filter. "Elution" is the process by which nicotine that is initially trapped on a

[460] *See:*

Hunter J. FDA memo to the record. Conversation with Steve Block of IFF. March 23, 1994.

Layloff T, FDA. Memo to James Hunter, FDA. Tobacco Extract Analyses. February 24, 1995.

[redacted] The actual contribution of tobacco extracts to total nicotine delivered to the smoker by tobacco so treated is unclear. The industry has conducted research to examine the specific activity of added versus naturally occurring nicotine. *See* Jenkins RW, Comes RA. Exogenous vs Endogenous Transfer of Nicotine During Smoking. *Int. J. Appl. Radiat. Isotopes.* 1976;27:323-324.

[461] *See* Browne, note 399, *supra,* at p. 66.

[462] Reynolds ML. Influence of filter additives on smoke composition. Page 54. Undated.

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filter is remobilized into the mainstream smoke by hot vapors and becomes available for inhalation by the smoker. [redacted][463]

Filter ventilation, which is accomplished by making holes in the filter wrap and tipping paper, is also a major means of controlling the nicotine delivery of a cigarette. Ventilation has apparently now largely replaced interest in filter additives as a means of enhancing nicotine delivery.[464] Ventilation holes allow fresh air to be pulled in by the smoker's suction, thereby diluting the smoke. Ventilation does not, however, simply reduce the concentration of each smoke component in proportion to the degree of dilution. Instead (while ventilation does reduce the tar and nicotine deliveries compared to a non-ventilated cigarette), ventilation can be used to increase the proportion of nicotine compared to tar.[465]

Tobacco manufacturers control filter ventilation by (1) changing the number and location

[463] [redacted]

[464] *See* Reynolds, note 462, *supra,* at p. 61.

[465] Kiefer JE. Ventilated Filters and their Effect on Smoke Composition. In: *Recent Advances in Tobacco Science.* Volume 4. Physical Parameters which Affect the Composition of Cigarette Smoke from 32nd Tobacco Chemists Research Conference. October 30 - November 1, 1978. Montreal, Canada. Pages 78,79.

of holes in the filter tipping paper, which surrounds the filter at the smoker's end of the cigarette rod; and (2) by controlling the porosity of the plug wrap, which underlies the tipping paper and surrounds the filter.[466]

As the amount of ventilation increases, the amount of tar and nicotine are not proportionately reduced. Instead, tar is reduced at a greater rate than nicotine, thereby increasing the proportion of nicotine to tar. For instance in one reported measurement, as the proportion of filter ventilation went from 0% to 50%, mainstream smoke tar dropped 47% (29.38 to 15.71 mg/cigarette), while mainstream smoke nicotine dropped 37% (1.70 to 1.07 mg/cigarette).[467] The effect of using such ventilation is that the manufacturer has selectively reduced tar while delivering a higher percentage of the available nicotine to the smoker.

Filter ventilation can produce low nicotine and tar delivery ratings when measured by the FTC smoking machine, yet still manage to deliver higher nicotine levels to the smoker than indicated by the FTC yield. Research has shown that, unlike the FTC smoking machine, 32% to 69% of low-tar cigarette smokers block the perforations in ventilated filters with their fingers or lips. This behavior is not unexpected because some smokers are unaware of these ventilation holes or their function, and because the holes are generally tiny, laser-generated perforations and difficult for the smoker to see. Blockage of these holes results in greater nicotine yields to the smoker than those measured by the FTC smoking machine.[468] This filter design provides a

[466] *See* Browne, note 399, *supra,* at p. 10.

[467] *See* Browne, note 399, *supra,* at p. 84.

[468] Kozlowski LT, Frecker RC, Khouw V, Pope MA. The misuse of 'less hazardous' cigarettes and its detection: hole-blocking of ventilated filters. *American Journal of Public Health.* 1980;70(11):1202-1203.

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means of compensating for reductions in nicotine delivery that are produced by unblocked filter ventilation. The ability to block ventilation holes is thus a means of improving a cigarette's "elasticity," i.e., a design feature that allows smokers to "compensate" for nicotine losses that would otherwise be caused by tar-reducing modifications. See p. 229, supra.

Another ingenious compensatory method to boost nicotine delivery has been the development of the so-called channel-ventilated filter system. This system has been employed by Brown and Williamson for its BARCLAY brand launched in 1981, and represents an attempt to avoid some of the reduction in nicotine that can accompany the use of ventilated conventional filters. The channel-ventilated filter functioned differently when tested on the FTC smoking machine than when used by humans. In fact, in an investigation that commenced in 1981, the FTC found that air flow through these channels is indeed compromised during actual smoking and that BARCLAY's channel filter actually delivers considerably more nicotine and tar to the smoker than is obtained using the FTC's testing method.[469] In 1983, the FTC successfully sued to enjoin Brown and Williamson from using nicotine, tar, and carbon monoxide results obtained from the FTC's smoking machine testing method in its BARCLAY advertising.[470] [redacted]

[469] Federal Trade Commission. "Report to Congress Pursuant to the Federal Cigarette Labeling and Advertising Act," for the year 1981(July 1984) and 1984(1986).

[470] FTC v. Brown & Williamson Tobacco Corp., 580 F. Supp. 981, 983, 987, n. 35, and 988 (D.D.C.1983), aff'd in part (affirmed holding that the 1 mg tar claim had a tendency to deceive) and remanded in part, 778 F. 2d 35 (D.C. Cir. 1985). RJR and Philip Morris had complained to the F.T.C. that Brown and Williamson's Barclay advertisement claim of 1 mg tar was inaccurate and misleading, and that "when the cigarette is smoked between human lips its air ventilation system is inevitably obstructed and the cigarette delivers disproportionately more tar and nicotine than other comparably rated cigarettes." 778 F.2d at 37. Brown and Williamson argued, among other things, that Barclay had a higher ratio of nicotine to tar. 580 F. Supp. at 981, 984.

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[redacted] [471]

(iv) Reconstituted Tobacco

Cigarette manufacturers claim that the development and use of reconstituted tobacco sheet represents a cost-cutting measure to minimize tobacco waste. But the role of reconstituted tobacco in reducing tar and in controlling nicotine delivery is also apparent. The first use of reconstituted tobacco occurred in the 1950's by RJR, primarily as a method for reducing tar, in WINSTON cigarettes.[472] RJR estimates that reconstituted tobacco is used in virtually every cigarette brand on the market.[473] U.S. manufacturers generally use between 20% and 25% of this material.[474]

In the reconstitution process, pieces of tobacco material undergo treatment that results in the extraction of some soluble components, including nicotine. The pieces are then physically formed into a sheet of tobacco material, to which the extracted nicotine is re-added. Even if this

[471] Budich K. Notes from May 3, 1994, meeting with Brown and Williamson. Page 12.

Federal Trade Commission. "Tar, Nicotine, and Carbon Monoxide of the Smoke of 933 Varieties of Domestic Cigarettes." 1994. Pages 9-10.

[472] Chemical and Biological Studies On New Cigarette Prototypes That Heat Instead of Burn Tobacco, R.J. Reynolds Tobacco Co. Winston-Salem, NC. 1988. Page 29. By increasing the use of reconstituted tobacco sheet in the cigarette rod (thereby reducing the amount of cut tobacco leaf needed) and using increasingly more efficient filtration, the levels of tar have been further reduced by the industry since the 1950's.

[473] *Id.*

[474] *See* Browne, note 399, *supra,* at p. 47.

reconstituted material contains only the original nicotine, its recombination with the tobacco material may be viewed as adding nicotine to the cigarette because the nicotine had been removed. Although denied by tobacco executives,[475] it is publicly reported that this process adjusts nicotine levels in the products, and that one manufacturer "readily admits to setting levels of nicotine . . . for the tobacco sheet."[476]

The agency has observed that the primary methods of producing reconstituted tobacco sheet are closely monitored and controlled to preserve the amount of nicotine in the tobacco components. These processes enable the manufacturer to precisely control and evenly disperse nicotine throughout this material, bringing a high degree of uniformity and consistency to the composition of a raw agricultural commodity. This control is so refined that despite the wide variability in the nicotine content of unprocessed tobaccos, reconstituted tobacco contains a generally uniform concentration of nicotine of around 1%, industry-wide. And, as described below, the reconstitution process can actually be used to elevate the level of available nicotine.

At least one company, LTR Industries, LeMans, France, which is involved exclusively in the production of reconstituted tobacco sheet for the cigarette industry, has publicly acknowledged the extent to which the production of such material can be controlled to precisely affect nicotine and tar deliveries.

According to an article appearing in the February 1983 issue of Tobacco Journal International, LTR claims that its process can produce reconstituted tobacco sheet to satisfy any

[475] *Regulation of Tobacco Products (Part I): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representaives,* 103 Cong. 2d Sess. 543 (April 14, 1994) (testimony of William I. Campbell, President and CEO, Philip Morris U.S.A.).

[476] Sisele S. Tobacco scrap: cigarette makers are taking heat for adjusting nicotine levels. *The Charlotte Observer.* March 6, 1994. Page 1C.

manufacturer's specifications for nicotine delivery. In this article, LTR states that "based on the idea that reconstituted tobacco could be used as a nicotine regulator, we have developed products with reduced or fortified nicotine." LTR has also been identified as having the ability to manipulate nicotine levels in reconstituted tobacco either by working into the scrap and waste new nicotine-rich tobacco of the "*rustica* type," or by adding purified salts of nicotine into the slurry, to boost the levels of nicotine in the finished reconstituted tobacco sheet.[477]

(v) Use of Wider Tipping Paper

Another means to compensate for nicotine losses from tar-reducing design options is the industry's use of wider tipping paper overwrap. According to a study conducted by Grunberg et al.,[478] between 1967 and 1978, the width of the overwrap was increased on 18 brands of filter cigarettes, even though there was smokable tobacco under the widened overwrap. The Grunberg study found that the wider tipping paper reduced the amount of tobacco smoked during the FTC testing method, because the FTC method prescribes that cigarettes be smoked down to within 3 millimeters of the tipping paper rather than until all of the tobacco is burned. Thus, use of wider tipping paper causes a decrease in the FTC yields of tar and nicotine while permitting smokers to obtain a higher yield of both tar and nicotine from the cigarette. Like the use of ventilation holes, use of wider tipping paper constitutes a form of built-in "elasticity" because it increases the amount of nicotine a smoker can obtain from a cigarette over the advertised FTC yield.

[477] Evolving techniques of making cigarettes milder. *World Tobacco.* April 1979. Pages 93-101.

[478] Grunberg NE, Morse DE, Maycock VA, Kozlowski LT. Changes in overwrap and butt length of American filter cigarettes. *NY State Journal of Medicine.* July 1985. Pages 310-312.

e. Manipulation of Nicotine in Low-Yield Cigarettes

The manipulation and control of nicotine in cigarette design and manufacture is particularly apparent when low-yield cigarettes are analyzed. Since the genesis of the low-tar cigarette, the industry has recognized that the use of tar-reducing modifications, such as those described above, can reduce nicotine delivery. This has led some manufacturers to compensate for the effects of tar reduction to ensure an adequate delivery of nicotine in the low-yield products.[479] As one article in a 1979 industry publication states, the current practice is "to prefer tobaccos rich in flavour elements, even though that may mean their having more nicotine and tar than is desirable, and seeking to reduce the latter without doing too much harm to the former."[480]

To a remarkable degree, the cigarette industry has accomplished the task of maintaining delivery of nicotine while decreasing tar in low-tar products. In 1988, Jacob et al.[481] found that,

[479] The tobacco industry has repeatedly stated that reductions in tar yields result in proportionate reductions in nicotine yields. *See, e.g. Regulation of Tobacco Products (Part I): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives,* 103rd Cong., 2d Sess. 363 (1994) (statement of R. J. Reynolds Tobacco Company); *Regulation of Tobacco Products (Part I): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives,* 103rd Cong., 2d Sess. 378 (1994) (statement of Alexander W. Spears, Vice Chairman and Chief Operating Officer, Lorillard Tobacco Company); ATC letter to the Honorable Henry A. Waxman, note 355, *supra*, at pp. 2-3 of attachment. The evidence in this section demonstrates that nicotine levels in some cigarettes have not fallen proportionately with tar and, in fact, are subjected to independent manipulation and control.

[480] *See* 1979 *World Tobacco* article, note 426, *supra,* at page 95.

The manipulation of nicotine levels relative to tar levels in European cigarettes was noted in *The Lancet* in 1979. The author reported that the tar-to-nicotine ratio had declined from 1973 to 1979 and concluded that "the consistent fall in tar yield relative to nicotine over a period of years suggests an element of conscious manipulation." Tar: nicotine ratio of cigarettes 1973-79. *The Lancet.* No. 8139. August 25, 1979. Pages 422-423. [Emphasis added.]

[481] *See:*
Jacob P, Benowitz NL, Shulgin AT. Recent studies of nicotine metabolism in humans. *Pharmacology, Biochemistry, and Behavior.* 1988. Volume 30. Pages 249-250. In a more recent study, Benowitz states that cigarettes currently contain 8 to 9 mg of nicotine. Benowitz NL, Henningfield JE. Establishing a nicotine threshold for addiction. *N Engl J Med.* 1994;331:123-125.

regardless of the labeled and advertised FTC nicotine yields and manufacturers' claims of low-nicotine delivery for certain brands, all cigarettes contained at least about 10 mg of nicotine in the cigarette rod. Consistent with this finding, a study by Benowitz and Hall et al.[482] in 1983 demonstrated that cigarettes advertised as having a low-nicotine yield do not contain less nicotine than high-yield cigarettes. Moreover, the nicotine yield of cigarettes, as defined by the FTC smoking machine tests, correlates inversely with nicotine concentrations in the tobacco.[483] In other words, cigarettes advertised as low-tar and low-nicotine have higher concentrations of nicotine, by weight, than high-yield cigarettes. This has been accomplished by a combination of the methods described above for boosting nicotine delivery to compensate for nicotine losses from the application of tar-reducing design modifications.

FDA's analysis of marketed cigarettes has disclosed similar results. There is little variation in nicotine content from one U.S. brand to another. FDA also measured the actual amount of nicotine contained in several brands of cigarettes, and the amount of nicotine in three varieties of the Merit brand of cigarettes: one regular, one low-tar, and one ultra low-tar. The results of this testing showed that the variety labeled and advertised as the lowest in nicotine actually had the highest nicotine concentration, suggesting that the nicotine content was

Benowitz NL. Dosimetric studies of compensatory cigarette smoking. In: Wald N, Froggatt P, eds. *Nicotine, Smoking and The Low Tar Programme.* Oxford, England: Oxford University Press; 1989:chap 10.

[482] Benowitz NL, Hall SM, Herning RI, Jacob III P, Jones RT, Osman A. Smokers of low yield cigarettes do not consume less nicotine. *New England Journal of Medicine.* 1983;309:139-142.

[483] *Id.*

manipulated to compensate for reductions caused by design features intended to reduce tar.[484]

In addition, FDA evaluated the tar and nicotine data for domestically marketed cigarettes published by the FTC for 1994. These data demonstrate that the lowest tar products have a markedly higher ratio of nicotine to tar than higher tar products. None of the 153 products with 14 or more milligrams of tar (high tar) had a nicotine to tar ratio greater than 1 to 12. By contrast, 88 of the 93 products with 6 or fewer milligrams of tar (ultra-low tar) had a nicotine to tar ratio greater than 1 to 12.[485]

The increase in nicotine-to-tar ratios between 1972 and 1994, see note 485, especially in low tar cigarettes, is particularly revealing in the light of industry research dating from the 1970's showing that the "optimum" nicotine-to-tar ratio for acceptability of low tar cigarettes is higher than the "natural" ratio. As described earlier, a 1975 Philip Morris study showed that "the optimum nicotine-to-tar (N/T) ratio for a 10mg [low] tar cigarette is somewhat higher than

[484] According to FDA's analysis, whereas Merit Regular 100's contained 1.46% nicotine, Merit Low Tar 100's contained 1.67% nicotine, and Merit Ultra Low Tar 100's contained 1.99% nicotine. *See Regulation of Tobacco Products (Part I): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representarives,* 103 Cong. 2d Sess. 121 (March 25, 1994) (statement of David A. Kessler, M.D., Commissioner of Food and Drugs, "The Control and Manipulation of Nicotine in Cigarettes," Chart P). The Commissioner's statement is included as Appendix 7 to this document.

[485] Federal Trade Commission. 1994 report of the tar and nicotine content of domestic cigarettes. (FDA's analysis included only those products that were evaluated by the Tobacco Industry Testing Laboratory.) By contrast, only 2 of the 142 marketed cigarettes included in the FTC report for 1972 had a nicotine to tar ratio greater than 1 to 12. (Federal Trade Commission. 1972 report of the tar and nicotine content of domestic cigarettes.) On a percentage basis, only 1.4 percent of the 1972 products had a nicotine to tar ratio greater than 1 to 12. In 1994, that figure grew to 26.3 percent overall, and rose to 95 percent for the 93 products in the lowest tar category. This suggests that as the market for lower yield cigarettes has grown over the last 20 years, the cigarette industry has altered the traditional ratio of nicotine to tar.

occurring in smoke from the natural state of tobacco."[485a] [Emphasis added.] The Philip Morris researchers went on to say that this study would be used to "attempt to make a 10 mg [low tar] cigarette that will equal a Marlboro in subjective acceptability and strength." According to these researchers, the naturally occurring nicotine-to-tar ratio was 0.07, while the optimal ratio was about 0.1. See p. 223, supra.[485b]

As noted above, tobacco industry officials have repeatedly stated that nicotine yields are not manipulated and are simply a function of tar yields, i.e., that reductions in tar yields result in proportionate reductions in nicotine yields. For example, the chief operating officer of Lorillard

[485a] Low Delivery Cigarettes and Increased Nicotine/Tar Ratios, A Replication. Approved by W.L. Dunn and distributed to H. Wakeham. October, 1975. *In* 141 Cong. Rec. H8009 (daily ed. July 31, 1995)(statement of Rep. Waxman). *Also in* Hilts PJ. Documents Disclose Philip Morris Studied Nicotine's Effect on Body. *New York Times.* June 8, 1995.

[485b] According to an analysis of FTC nicotine and tar delivery levels conducted by a member of Congress, at least two Philip Morris low-tar products show evidence that the data on "optimal" nicotine-to tar ratios was applied by the company to make changes in the nicotine-to-tar ratios of marketed cigarettes. One marketed cigarette underwent an increase in its nicotine-to-tar ratio, beginning in 1978, that closely corresponds to the change from the "natural" ratio to the "optimum" ratio described by Philip Morris researchers in 1975. From 1968 to 1978, tar and nicotine levels in regular Benson & Hedges filtered cigarettes dropped from 21 mg tar and 1.29 mg nicotine to 0.9 mg tar and 0.06 mg nicotine. Throughout this period, the nicotine-to tar ratio in the cigarettes remained stable, i.e., tar and nicotine delivery levels were falling proportionately. The ratio during this period was 0.7, the ratio described by Philip Morris researchers as "natural" for tobacco. Then, beginning in 1978, nicotine delivery from Benson & Hedges began to increase, while tar remained stable. By 1983, the nicotine delivery had jumped from 0.06 to 0.1, an increase of over 60%. The result was an increase in the nicotine-to tar ratio to 0.11, approximately the same level found by Philip Morris researchers to be "optimal." Congressman Waxman reported that the chance that this change in the nicotine-to-tar ratio could have been due to random fluctuations in tar and nicotine levels is less than 1 in 100,000. The tar-to-nicotine ratio for Benson & Hedges dropped back to 0.07 in 1984 and 1985. Although the reasons for this change are unknown, Congressman Waxman noted that the change could have been due to a decision to phase out the product or to the use of technologies that permit manipulation of the amount of nicotine delivered to the smoker but that do not affect the amount of nicotine measured by a smoke machine. Waxman also analyzed Philip Morris product, Merit Ultra Lights. This product was introduced in 1981 with a nicotine/tar ratio of 0.11, which corresponds to the "optimal" ratio found by Philip Morris researchers, rather than to the "natural" ratio of 0.07. The elevated nicotine-to-tar ratio in Merit Ultra Lights has remained constant in the years since its introduction. 141 Cong. Rec. H8009-10 (daily ed. July 31, 1995)(statement of Rep. Waxman). Philip Morris denied that the changes were deliberate. Hilts PJ. Philip Morris Denies Charge By Lawmaker. *New York Times.* August 2, 1995.

Tobacco Co. testified before Congress in 1994 that:

> *We do not set nicotine levels for particular brands of cigarettes. Nicotine levels follow the tar level . . . . The correlation coefficient of 0.975 is essentially perfect correlation between tar and nicotine and shows that there is no manipulation of nicotine.*[485c]

The significant increase in the nicotine to tar ratio for low delivery products contradicts these statements and provides strong evidence that nicotine deliveries are independently manipulated. In fact, an industry document states that the nicotine-to-tar ratios in ultra low tar cigarettes are higher than would be expected if nicotine fell proportionately with tar. In 1978, Philip Morris surveyed the nicotine-to-tar ratios in its competitors' ultra low tar products (5-7 mg tar) and found that these ultra low tar cigarettes "seem to be higher in nicotine delivery than we would otherwise expect" and found further that "nicotine/tar ratios go up as tar goes down":

> *The table [of nicotine-to-tar ratios for a range of low tar brands] suggests that Philip Morris brands (asterisked) have lower nicotine/tar ratios than do other brands with about the same FTC tar delivery . . . . The table also suggests that nicotine/tar ratios go up as tar goes down, and that our competitors' brands . . . seem to be higher in nicotine delivery than we would otherwise expect from our own experience with low delivery cigarettes . . . .*
>
> *It appears therefore that the mechanics of cigarette engineering and the deliberate decisions of our competitors are such as to suggest high nicotine/tar ratios be used at ultra low tar levels.*[485d] [Emphasis added.]

The Philip Morris researchers suggest that the high nicotine-to-tar ratios in the low tar products of Philip Morris' competitors have been achieved through certain kinds of filters and by "the use of

[485c] *Regulation of Tobacco Products (Part I): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives,* 103rd Cong., 2d Sess. 378 (1994) (statement of Alexander W. Spears, Vice Chairman and Chief Operating Officer, Lorillard Tobacco Company)

[485d] Memorandum to T.S. Osdene from W.L. Dunn. Plans and Objectives-1979. December 6, 1978. *In* 141 Cong. Rec. H7670 (daily ed. July 25, 1995).

high alkaloid blends,"[485c] i.e., the use of tobaccos containing high nicotine levels.

FDA also analyzed other information supplied by the FTC that was derived from the FTC's database on nicotine levels in cigarettes. FDA's analysis of the FTC data demonstrates two very important results. First, there is an apparent increase in the sales-weighted FTC nicotine delivery ratings, for all cigarettes, since 1982 (the earliest year for which the computer database is available). Second, consistent with the data on the increase in nicotine to tar ratios, when FDA segmented FTC's sales data into high-tar, low-tar, and ultra low-tar cigarettes, nicotine yields had the greatest increase in the ultra low-tar group.[486] These findings are depicted in the following charts:

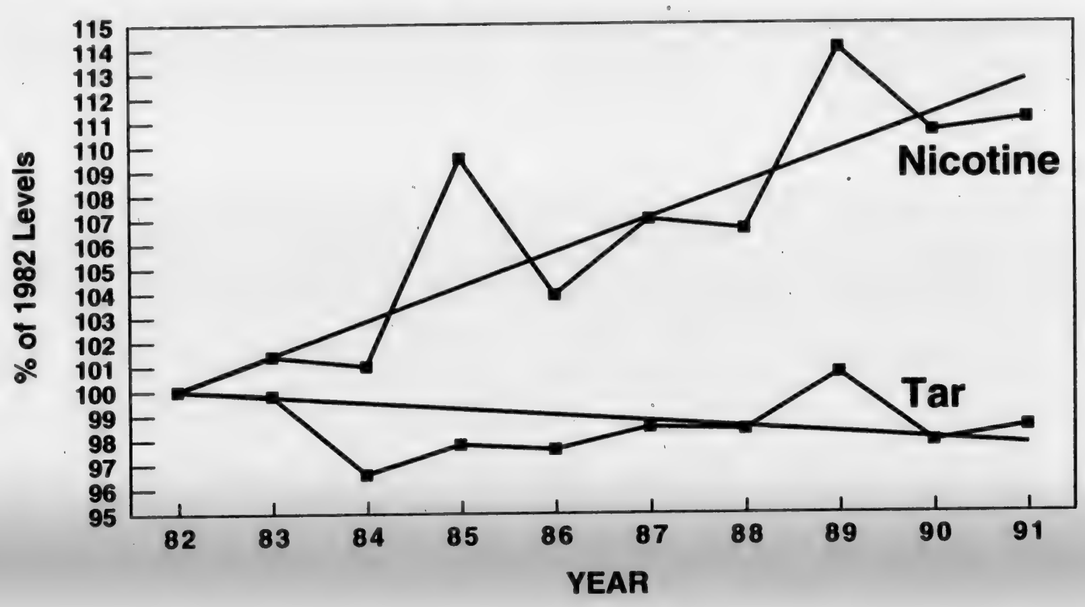
[485c] *Id.*

[486] *See:*
Kessler, note 484, *supra,* at charts Q, R, S, T. "Sales-weighted" nicotine delivery ratings represent the average nicotine yield of all cigarette brands sold in a given year, adjusted (weighted) to reflect the actual sales of the brands.

Hoffman D, Hoffman I. On the Reduction in Cigarette Smoke. In: Wald and Froggatt, note 481, *supra,* at pp. 200-201.

Sales-Weighted Nicotine and Tar Levels in Smoke As % of 1982 Levels

Average of All Brands*

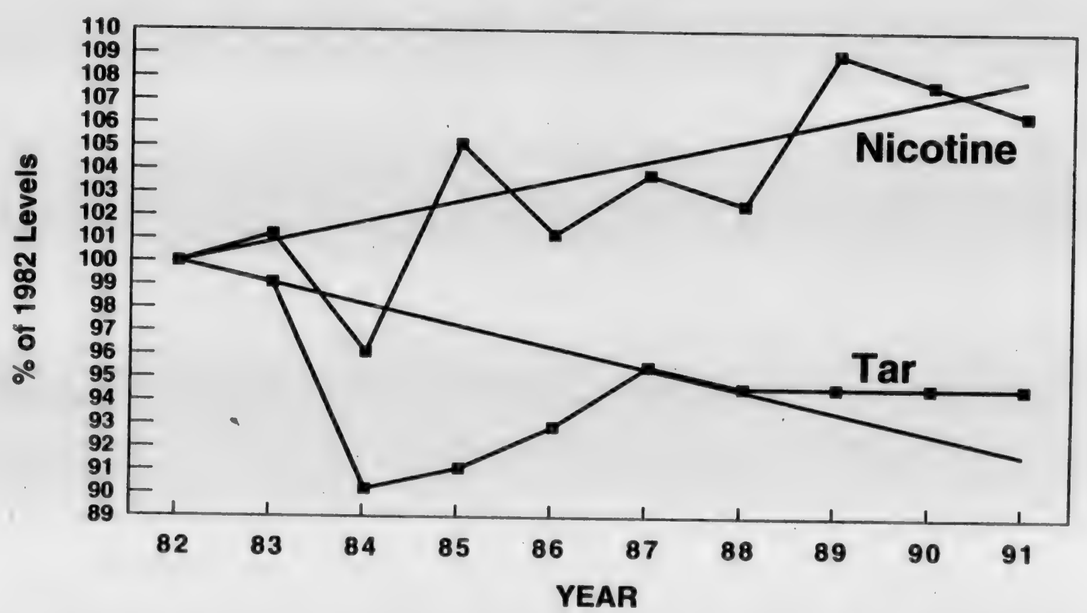


(*Source:* FTC Annual Data)

*by FTC method

Sales-Weighted Nicotine and Tar Levels in Smoke As % of 1982 Levels

Low Tar Category*



(*Source:* FTC Annual Data)

*Low Tar Category = 6-15 mg tar by FTC method

(*Source:* FTC Annual Data)

(*Source:* FTC Annual Data)

f. Conclusion

The information in the preceding sections demonstrates that cigarette manufacturers manipulate and control the delivery of nicotine in marketed products. Cigarettes are designed to supply nicotine at consistent levels despite the wide variations in the nicotine levels of the raw materials, the immensely complicated combustion chemistry, and the complex chemical flow properties of a modern cigarette.

Manufacturers use many techniques to control nicotine deliveries. The application of these modifications in cigarette design and their interactive nature pose complex problems in maintaining brand uniformity and consistency regarding nicotine delivery. Yet, the nicotine content and delivery of each brand of cigarettes is remarkably consistent from batch-to-batch and year-to-year. This level of control is analogous to that of the pharmaceutical industry in the production of prescription drugs. In fact, to determine how well nicotine content is controlled in cigarettes, FDA laboratories compared the content uniformity of drugs in tablet or capsule form to the content uniformity of nicotine in cigarettes. The results showed that nicotine content varies from cigarette to cigarette no more than the content of active ingredients in marketed pharmaceuticals.[487]

FDA's investigation has also disclosed that the tobacco industry uses a number of methods to boost nicotine delivery in low-yield cigarettes. The cigarette industry has successfully used these methods to maintain adequate nicotine delivery from low-yield products. Without the independent manipulation of nicotine, many of the techniques used to reduce tar

[487] FDA, CDER, DDA, Report on Analysis of Packages of Cigarettes, April 4, 1994. *See* Kessler, note 416, *supra*, at p. 12.

would also substantially reduce nicotine. Instead, regardless of differences in labeled/advertised FTC nicotine yields and manufacturers' claims of low-nicotine delivery for certain brands, all cigarettes contain approximately the same amount of nicotine in the rod, and deliver about 1 mg of nicotine, enough to produce pharmacological effects. See p. 108, supra. Moreover, studies by FDA and others have demonstrated that the lowest-yield cigarettes have the highest concentrations of nicotine, demonstrating that nicotine delivery has been independently manipulated.

The tobacco industry's control and manipulation of nicotine delivery from cigarettes provides additional evidence of the industry's intent to deliver pharmacologically satisfying levels of nicotine to smokers.

2. Industry Manipulation and Control of Nicotine in Smokeless Tobacco

Smokeless tobacco manufacturers control the delivery of nicotine from smokeless tobacco to produce a line of smokeless products that deliver nicotine in graduated amounts. Products that deliver lower doses of nicotine are marketed to new users of smokeless tobacco. Smokeless tobacco marketing then encourages them to "graduate" to products that deliver higher doses of nicotine. Smokeless tobacco manufacturers' manipulation of nicotine deliveries and marketing of low-nicotine products to new users and high-delivery nicotine products to experienced users demonstrates their intention to market products that facilitate nicotine dependence, a significant effect on the structure and function of the body. Smokeless tobacco manufacturers' products are thus intended to affect the structure and function of the body.

Moist snuff is the most popular form of smokeless tobacco. U.S. Tobacco Co. ("UST"), which accounts for 85% of the moist snuff sales in the U.S.[488] markets a line of moist snuff products that includes Skoal Bandits, Skoal Long Cut, Original Fine Cut Skoal, and Copenhagen. Skoal Bandits deliver a very small amount of absorbable nicotine, Skoal Long Cut and Original Fine Cut Skoal deliver sequentially more absorbable nicotine, while Copenhagen delivers the highest amount of absorbable nicotine. UST representatives in fact acknowledge that the company's products provide users with a range of nicotine deliveries.[489]

Smokeless tobacco manufacturers produce graduated nicotine delivery products primarily

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[488] *See* Appendix 5.

[489] *Marsee v. U.S. Tobacco,* note 317, *supra.* (Remarks of Mr. Finnegan, attorney for U.S. Tobacco.) In: 1.7 TPLR 3.202.

See also deposition of Erik Lindqvist, Senior Vice President for Marketing, U.S. Tobacco, in *Marsee v. U.S. Tobacco.* Transcript of Jury Trial Proceedings, at pp. 1648-1676.

by manipulating the pH of the tobacco.[490] Smokeless manufacturers add compounds and manipulate the design of each smokeless product to create a specific pH. The higher the pH of a product, the more nicotine is transformed from the salt form to "free nicotine." Both forms of nicotine are highly soluble in saliva. However, the free form of nicotine is absorbed more rapidly in the mouth of smokeless tobacco users and into the bloodstream for delivery to the brain. Raising the salivary pH from 7.0 to 8.0 increases the percentage of free nicotine available for absorption from 10% to 50%, a fivefold increase.[491]

Various documents show that UST understands the relationship between the pH of its products and their nicotine delivery. For example, in a deposition, UST's Senior Vice President for Marketing acknowledged that he had written a memo in which he had recommended a specific pH level for a new product and that he understood that there was a relationship between pH and nicotine.[492] When asked whether pH affected nicotine absorption, he agreed:

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[490] *See:*
Henningfield JE, Radzius A, Cone EJ. Estimation of available nicotine content of six smokeless tobacco products. (Submitted to *Tobacco Control* November 17, 1994.)

U.S. Food and Drug Administration. *Report on study of smokeless tobacco products: pH and free base nicotine.* November 4, 1994.

U.S. Food and Drug Administration. National Forensic Chemistry Center. Cincinnati Laboratory. *National survey of smokeless tobacco products.* December 13, 1994, memo from Laura Ciolino, Research Chemist to Fred Fricke, Director.

[491] *See:*
Armitage AK. Some recent observations relating to the absorption of nicotine from tobacco smoke. In: Dunn WL. ed. *Smoking Behavior: Motives and Incentives.* Washington, DC: VH Winston & Sons; 1973. Pages 86 (figure 2) and 87.

Henningfield JE, Radzius AC, Cooper TM, Clayton RR. Drinking coffee and carbonated beverages blocks absorption of nicotine from nicotine polacrilex gum. *JAMA.* 1990;264(12):1560.

[492] Transcript of Jury Trial Proceedings, *Marsee v. U.S. Tobacco,* note 317, *supra,* at pp. 1666-8.

Q. Mr Lindqvist, is it your understanding that as the pH of the product is lowered, that the rate of absorption of nicotine by the user is also lowered?

A. That would be my understanding, yes.[493]

The major smokeless tobacco manufacturers in the United States each market products that range from low to high pH, producing a corresponding graduation in the amount of "free nicotine" delivered by these products. The products with the lowest pH deliver the least amount of absorbable nicotine, while those with the highest pH deliver a significantly higher amount of absorbable nicotine.[494]

FDA laboratories comprehensively analyzed several marketed snuff products.[495] The following table demonstrates the characteristics of marketed smokeless tobacco products related to nicotine delivery.[496]

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[493] *Id.* at p. 1668.
See also:
U.S. Tobacco Company documents discuss the pH of various brands, also suggesting a knowledge of the relationship between pH and nicotine absorption:
Red Seal Menthol. . . 2. Lower pH than Skoal through flavor if possible. . . Premium project. . . Full tobacco flavor, pH at the level of Copenhagen or higher.
U.S. Tobacco memo from Erik Lindqvist. (This document was discussed in the trial in *Marsee v. U.S. Tobacco*, note 317, *supra*. These quotes were authenticated by Erik Lindqvist, the author, in his deposition. Transcript of Jury Trial Proceedings, at pp.1666-1671.)

According to the trial transcript of *Marsee*, UST recognizes that pH can affect how much of the nicotine is free. (U.S. Tobacco document No. 4486792, dated Oct. 5, 1981. In: 1.7 TPLR 3.208, July/August 1986.)

[494] The amount of absorbable nicotine is dependent on the pH and not the total amount of nicotine that is in the product. For this reason, the total amount of nicotine in the products throughout the product line can remain relatively constant and still permit graduated nicotine delivery.

[495] FDA laboratories in St. Louis and Cincinnati performed these studies. The results are summarized in two separate reports. *See* note 490, *supra*.

[496] This table reflects the two separate studies which were performed by the two FDA laboratories in St. Louis, MO and Cincinnati, OH. Both laboratories used the same analytical procedures for these analyses.

MANUFACTURER/ PRODUCT NAME	pH St. Louis	pH Cinc.	% Free Nicotine• St. Louis	% Free Nicotine• Cinc.	Total Nicotine Content (mg/gm)•• St. Louis	Total Nicotine Content (mg/gm)•• Cinc.
U.S. Tobacco Co.						
Skoal Key	--	8.22	--	61.3	--	12.4
Copenhagen Snuff	8.14	7.71	56.5	32.7	13.2	13.8
Skoal L.C. Class.	8.04	7.92	51.1	45.5	12.7	13.8
Skoal L.C. Wint.	7.50	7.57	23.1	26.0	12.7	13.9
Skoal L.C. Mint.	7.35	7.52	17.6	24.0	13.2	13.7
Skoal L.C. Spear	7.20	7.50	14.0	23.3	12.5	13.8
Skoal Or.F.C. Wint.	--	7.41	--	19.7	--	13.6
Skoal L.C. Strai.	7.47	7.41	22.0	19.5	12.1	13.8
Skoal L.C. Cherry	7.15	7.38	12.3	18.5	12.5	13.6
Skoal Band. Mint	6.83	7.06	6.4	9.9	6.7	8.8
Skoal Band Wint.	6.56	6.72	3.3	4.8	7.8	8.2
Happy Days L.C. Mint	--	6.00	--	0.9	--	13.9
Skoal Band. Strai.	--	5.48	--	0.3	--	10.8
Skoal Band. Class.	5.61	5.23	0.39	0.2	10.4	9.9
Helme Tobacco Co.						
Redwood Full Flavor	--	7.52	--	24.0	--	12.6
Silver Cr. L.C.	--	7.22	--	13.7	--	6.0
Cooper Wint. L.C.	--	6.99	--	8.5	--	5.7
Gold River L.C.	--	5.77	--	0.6	--	6.4
C.C. Conwood Co.						
Kodiak Wint.	8.20	8.22	59.9	61.0	11.4	11.7
Kodiak Choice Wint.	--	7.98	--	47.7	--	11.4
Kodiak Straight	7.39	7.82	19.0	38.4	10.6	10.4
Hawken Wint.	5.56	5.58	0.35	0.4	4.4	4.0
Pinkerton Tobacco Co.						
Redman F.C. Ex. Wint.	--	7.58	--	12.3	--	--
Renegade Wint.	6.81	7.17	5.8	13.2	11.8	--

L.C. = long cut

• Calculated using the Henderson-Hasselbach equation for acid-base equilibrium. This calculation strictly is dependent on the pH determination. Any error in the pH determination will affect the percent free nicotine calculation.

•• Measured on wet basis.

This table demonstrates that each of the smokeless tobacco companies whose products were tested by the FDA laboratories markets products that have low, medium, and high pH values, delivering corresponding low, medium, and high levels of free nicotine to the users of the products.[497] It is apparent from the data that providing graduated nicotine deliveries through manipulation of pH is an industry-wide practice. Other researchers have described similar findings.[498]

Other features of these products demonstrate how the smokeless tobacco companies use product design features to control nicotine delivery. For example, UST's Skoal Bandits and Pinkerton's Renegades are packaged in teabag-like pouches, which both limits the amount of snuff that is placed into the mouth and creates a barrier that retards nicotine release from the product. FDA laboratory analysis shows that the effect of the Bandits' pouch is to delay nicotine release by an average factor of three, compared to the same tobacco tested outside of the pouch, during the first 2 minutes of the study.[499] Thus, users of Skoal Bandits get less nicotine into their mouth, and the nicotine is released into their mouths at a slower rate.

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[497] In the chart, the first column lists the products marketed by specific manufacturers. For each manufacturer, the products are listed in descending order of nicotine delivery. The second and third columns list the pH of each product as measured by two separate FDA labs. The fourth and fifth columns list the amount of absorbable (free) nicotine in each product, calculated from the pH measured at each of the two labs. The sixth and seventh columns list the total nicotine content of each of the products as measured by each of the two labs.

[498] *See* Henningfield, note 490, *supra,* at p. 2. This study found that Skoal Bandits have a pH of about 6.9, providing only 7% of its nicotine in the free form. Skoal Long Cuts have a pH of about 7.4-7.5, providing 19%-23% free nicotine. Original Fine Cut Skoal has a pH of about 7.6, providing 28% free nicotine. Copenhagen was found to be a potent form of snuff, with a pH of about 8.6, producing 79% free nicotine, a very high level for absorption. Page 2 and figure 1.

[499] Department of Health and Human Services, FDA, National Forensic Chemistry Center. *Relative Buffering Capacity of Saliva and Moist Snuff* and *Moist Snuff Nicotine Content Code Date Survey.* Memorandum from Laura A. Ciolino to Elizabeth Berbakos and Thomas Layloff. September 28, 1994.

Smokeless tobacco products are also engineered in such a way that users get a bolus dose of nicotine within the first 5 minutes of inserting the product into the mouth.[500] After the first 5 minutes, nicotine is still released from the product but at a much slower rate. An FDA study showed widely divergent results when comparing Copenhagen and Skoal Bandits under typical use conditions.[501] The amount of nicotine released from a usual "pinch" of Copenhagen (about 1.5 gm) was 12 times higher than from a pouch of Bandits (about 0.5 grams) in the first 2 minutes of the experiment. The bolus dose results in nicotine concentrations in the bloodstream that produce a peak pharmacological concentration in users. These pharmacological concentrations are then maintained by the slow continued release of nicotine from the products following the bolus dose.

Both nicotine release and pH of smokeless products are also affected by the tobacco fermentation process used to make smokeless tobacco products. Tobacco fermentation causes an increase in pH with fermentation time.[502] The age of packaged smokeless products is thus a factor in each product's pH because fermentation can continue within the package due to the high

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[500] *See:*
U.S. Food and Drug Administration, Center for Drug Evaluation and Research, Division of Drug Analysis. *Nicotine Studies of Chewing and Smokeless Tobacco Products.* Memorandum from Henry D. Drew, Chief, Drug Monitoring Branch, to Elizabeth Berbakos. September 22, 1994. Table 4.

U.S. Food and Drug Administration. National Forensic Chemistry Center. Cincinnati Laboratory. *Moist Snuff Nicotine Release Studies.* September 28, 1994, memo from Laura Ciolino, Research Chemist to Fred Fricke, Director. Page 1.

[501] *Id.* September 28, 1994, memorandum.

[502] Tso TC. *Kirk-Othmer Encyclopedia of Chemical Technology.* John Wiley and Sons; 1970;20:510. This occurs because organic acids are lost through oxidation and decarboxylation.

moisture content of the tobacco.[503] Because fermentation increases pH, and increasing pH increases free nicotine, continued fermentation increases the amount of nicotine that is delivered to smokeless tobacco users. Fermentation also breaks down the plant tissue. This results in nicotine release from the plant intracellular tissue, causing much of the nicotine to come to the surface of the tobacco leaf.[504]

Manufacturers also add humectants to their products to increase or maintain the moisture content. The resulting high moisture content of smokeless products affects nicotine delivery by ensuring that tobacco leaves are well wetted, thus allowing nicotine easily to go into solution (i.e., saliva).

The evidence demonstrates that smokeless tobacco manufacturers design their products to deliver controlled amounts of nicotine to the user by manipulating pH, placing starter products in pouches, and using additives that control the moisture content of the products. Smokeless manufacturers use these sophisticated design features to manipulate the pharmacological response of the user to the product. In doing so, manufacturers intend to market products that affect the structure or function of the body.

The marketing practices of the smokeless tobacco industry further demonstrate the intent of manufacturers to factilitate nicotine dependence among smokeless tobacco users. Until the 1970's, smokeless tobacco companies were marketing only products with high nicotine delivery.

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[503] Andersen RA, Fleming PD, Hamilton-Kemp TR, Hildebrand DF. pH changes in smokeless tobaccos undergoing nitrosation during prolonged storage: effects of moisture, temperature, and duration. *J. Agric. Food. Chem.* 1993;41:968-972.

[504] This may explain the fast nicotine release from the tobacco products studied by FDA under *in vitro* conditions.

Their market was steadily diminishing because these products were not well tolerated by new users. Evidence from the files of smokeless tobacco companies shows that, in the late 1960's or early 1970's, these companies began to try to entice new users of smokeless tobacco, including people as young as 15 years old.[505] To do so, they developed low-nicotine products in teabag-like pouches to encourage people to begin using smokeless tobacco. A UST document describes the company's rationale for developing a new oral snuff product under the code name "The Lotus Project":

> *AIM:* *To make it easier for a new user to use tobacco in the mouth.*
>
> *TARGET GROUP:* *New users, mainly cigarette smokers age group 15-35*
>
> *PRODUCT:* *A. Strength*
>
> *1. Nicotine Satisfaction*
>
> *Mild like Happy Days [a low-nicotine product]*
> *Instant but not shocking*
>
> *2. Feeling in the mouth*
>
> *As little harshness as possible on the gum and in the throat*
>
> * * *
>
> *PACK:* *A. Size of Pinch*

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[505] *See* documents on "Lotus Project":
Undated document entitled "The Lotus Project." From *Marsee v. U.S. Tobacco*, note 317, *supra*, Trial Exhibit 159.

U.S. Tobacco Co. Intra-company Correspondence from W.W. Watson, President - United Scandia International to Mr. L.A. Bantle, President. June 2, 1972. From *Marsee v. U.S. Tobacco*, Trial exhibit 158.

Minutes from a Meeting in Greenwich at Mr. L.A. Bantle's Office. July 18, 1972. From *Marsee v. U.S. Tobacco*, Trial exhibit 159.

> *Small enough for a new user to manage . . . This point has to be closely worked out, takes into consideration the desired effect mentioned under "Strength."*[506]

This document clearly discloses UST's intention to develop a low-nicotine product suitable for "new users," i.e., those not yet tolerant to the harsh effects of nicotine on the gum and throat, and not yet requiring high levels of nicotine for "satisfaction."

Another UST document that discusses the "Lotus Project" and product development discloses the company's intent to produce products with varying amounts of nicotine.[507] The document states:

> *"[t]here should be three products of three different tastes and strengths of nicotine . . .*
>
> *a. High nicotine, strong tobacco flavor . . .*
>
> *b. Medium strength of nicotine. . .*
>
> *c. Low nicotine, sweet product. . ."*[508]

By acknowledging that the objective is to produce products with varying strengths of nicotine and differentiating strength from taste, the document demonstrates the company's intent to manufacture products with distinct pharmacological effects based on the nicotine delivery.

A document that posed potential questions and answers related to UST's introduction of Skoal Bandits in a new market also demonstrates the manufacturer's intention to provide nicotine

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[506] *Id.* Trial Exhibit 159 (minutes from July 18, 1972, meeting).

[507] *See* Watson, note 505, *supra*, at p. 2.

[508] *Id.*

for absorption and thereby to produce "satisfaction" in the user of the product.[509] The document provides the following questions and anwers about Skoal:

> *3. - How does it work ?*
>
> *It gives the satisfaction from tobacco want* [sic]. *It is real tobacco and contains nicotine. . .*
>
> *4. - How much nicotine does it contain ? Is it absorbed ?*
>
> *The nicotine contents are more or less equivalent to that of a good quality cigarette of average strength. The nicotine is absorbed, given [sic] satisfaction to the smoker.*

A senior UST official stated in another memorandum that "satisfaction" refers to the "kick" that users obtain from tobacco products.[510]

Shortly after the "Lotus Project" documents were written, UST began to aggressively market the low-nicotine "starter" products to new users of smokeless tobacco. An early advertisement for "Happy Days," one of the first low-nicotine products, targeted the product "for you guys just starting out."[511] The marketing of starter products relied heavily on "sampling," a technique in which company representatives distribute free samples on college campuses and sports events, and encourage nonusers to use smokeless tobacco.[512] Advertisements then

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[509] *Potential Questions and Answers.* Bate stamp nos. 2054948-2054951, submitted in *Marsee v. U.S. Tobacco*, note 317, *supra.*

[510] *Marsee v. U.S. Tobacco*, note 317, *supra.* Deposition of Erik Lindqvist, Senior Vice President, Marketing. Transcript of Jury Trial Proceedings, at p. 1662.

[511] Connelly GN. In the search for a perfect starter product: manipulation of nicotine in oral snuff brands. August 1994. (Unpublished.)

[512] U.S. Tobacco Company. College Representative Manual. Revised July 31, 1985:
Success in reaching the college students today will determine the continued popularity and growth for our products in our adult market segments tomorrow.

Achieving these goals will require strong consumer sampling efforts. Success in this area can

encouraged established users to graduate to higher-nicotine products. For example, an advertisement for Copenhagen, the highest nicotine product, said "Sooner or Later, It's Copenhagen."[513]

In the 1980's, "long cut" smokeless tobacco products were introduced. An internal UST memorandum, dated June 8, 1984, reported that customers and distributors of the Skoal "Long Cut" considered it a "'perfect' starter product," in part due to its relatively low "strength" (i.e., low delivery of nicotine).[514] This memorandum also acknowledges the role of low-nicotine products in facilitating graduation to high-nicotine brands like Copenhagen. In a long list of positive anecdotes about the introduction of Long Cut, the memorandum states that college representatives reported that "Long Cut makes it easier to become accustomed to using Cope[enhagen]" as well as "having sampled a person with Long Cut, and then seeing that person weeks later as a regular Cope consumer."[515] The same memorandum reports that Copenhagen sales "continue to rise on a weekly basis since the intro of Long Cut."[516]

A chart prepared by UST's marketing department further demonstrates the company's knowledge that consumer use of its products follows the graduated nicotine deliveries of those products and shows the company's desire to capitalize on a "graduation process" to enhance sales

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only be achieved with an aggressive, efficient program. . .

[513] Connelly, note 511, *supra*, at p. 5.

[514] U.S. Tobacco Company. Intra-company Correspondence from K.C. Carlsen to O.M. Bryant. *Skoal Long Cut.* June 8, 1984. Page 1.

[515] *Id.* at pp. 2-3.

[516] *Id.* at p. 2.

of its highest nicotine products.[517] The chart is labeled "graduation process" and shows a hierarchy of products, with arrows pointing from Skoal Bandits to Happy Days and Skoal Long Cuts, and culminating with Copenhagen. This "graduation" corresponds exactly to the progression of nicotine deliveries from the listed products.

The company's reliance on the graduation process is further evidenced in a UST document entitled "Expanding User Base", which depicts a "bullseye" chart that lists the company's moist snuff products.[518] The chart follows:

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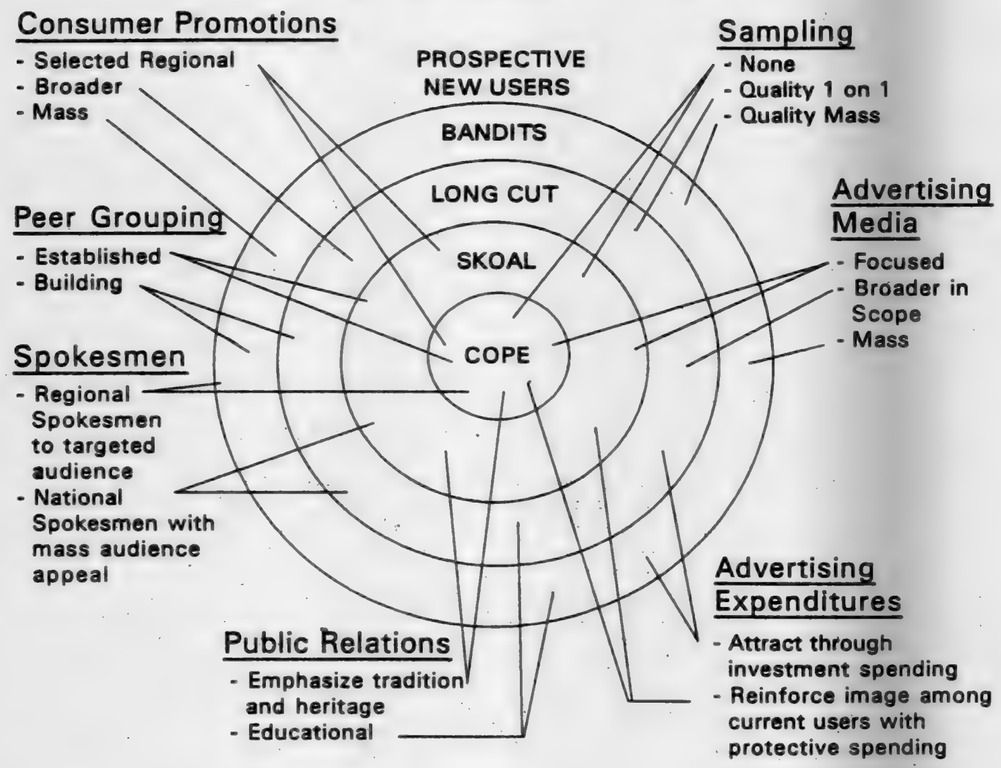
[517] *Marsee v. U.S. Tobacco*, note 317, *supra*, Plaintiff's Exhibit 100, "Graduation Process." (Undated.)

See also U.S. Tobacco Company. One-on-one interview with Mr. Manuel Leitao, Executive Vice President, U.S. Tobacco and President Tobacco Division. *Up to Snuff.* Autumn 1984:2:

> *Some people will remain with the Bandits, and some people will get into a sort of graduation process. The bottom line, and we must never forget the bottom line, is that Bandits is a vehicle that is going to expand the use of smokeless tobacco.*

Another company document sets out a similar strategy for entering new markets. The strategy involved starting users on the lower nicotine Skoal Bandits with an eye toward "establishing a normal graduation process." U.S. Tobacco Company. International Division-Very Optimistic About U.S. Tobacco's Worldwide Expansion. *Up to Snuff.* March 15, 1988. Page 2.

[518] U.S. Tobacco Company. *Expanding User Base.* (Undated.) This document was disclosed during discovery in *Marsee v. U.S. Tobacco*, note 317, *supra*. The document was authenticated by Dr. Jack Henningfield in a letter to Rep. Henry Waxman (D-Ca), in which Dr. Henningfield states his awareness of the origins of the chart as "provided by the United States Tobacco Company to the plaintiffs in the *Marsee v. United States Tobacco Company* law suit in which I served as an expert witness in 1986. This chart was provided to me by the plaintiffs attorney, Mr. Braly, to review." Letter from Jack E. Henningfield, Ph.D., Chief, Clinical Pharmacology Branch, National Institute on Drug Abuse to The Honorable Henry A. Waxman, Chairman, Subcommittee on Health and the Environment, House of Representatives (Dec. 13, 1994).



Adapted from a chart provided by U.S. Tobacco during discovery in Marsee v. U.S. Tobacco

Outside the outermost ring of the chart is the label "Prospective New Users"; the subsequent concentric rings are labeled "Bandits," "Long Cut, and "Skoal," respectively, and a ring labeled "Cope" (representing Copenhagen) is the bullseye in the middle. The rings of the chart thus progress from the lowest delivery nicotine products on the outside to the highest nicotine delivery products in the center of the bullseye. The chart's further annotations - - "Consumer Promotions," "Peer Grouping," "Spokesmen," "Public Relations," "Advertising Expenditures," "Advertising Media," and "Sampling" - - clearly demonstrate the company's intent to advertise, promote, and provide free samples of the lower delivery nicotine products, which are on the lowest level of the "graduation process," to new users. The highest nicotine products, however, are to be advertised only to current users in a highly focused manner.

Several other company documents discuss the graduation process. A UST document discussed in a trial transcript mentions Skoal Bandits and the company's intent to use the product to fuel the graduation process:

> *Skoal Bandits, which is at the bottom of the previous graduation chart, 'will continue to fuel the new user base to assure graduation to our priority moist brands'.*[519]

Another UST document, discussed in the same trial transcript, again acknowledges the company's deliberate use of the graduation process:

> *. . . sample Skoal Bandits often and intensively in and around the retail account to create new customers and feed the graduation process.*[520]

These marketing strategies for smokeless tobacco have been extremely successful in

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[519] UST document No. 2077832, in *Marsee v. U.S. Tobacco*, note 317, *supra*. In:1.7 TPLR 3.209. Another U.S. Tobacco document (no. 1023186-89), discussed in *Marsee* mentions introducing a product that will fill the gap between Bandits and Skoal in the graduation process. In:1.7 TPLR 3.209.

[520] UST document No. 2101576, discussed in *Marsee v. U.S. Tobacco*, note 317, *supra* (1.7 TPLR 3.210).

recruiting new users. Use of smokeless tobacco products has risen substantially since the 1970's: overall, consumption of moist snuff almost tripled from 1972 through 1991; use by adolescent males aged 18 to 19 increased almost 1,500% between 1970 and 1991.[521] The success of the graduation strategy in getting users to the point where they want to consume the high-nicotine products is demonstrated by the market share of various products. While the majority of advertising dollars are spent on the low and medium nicotine products like Skoal Long Cuts, the great bulk of the increased sales is in Copenhagen, the high-nicotine product.[522] The consistently small market share for the low-nicotine products shows that they serve only as a steppingstone to the high-nicotine products. Consistent with the graduation strategy, a recent study found that older smokeless tobacco users are more likely to purchase the brands that deliver high levels of nicotine than are younger smokeless tobacco users.[523]

The evidence of manipulation of nicotine delivery in smokeless tobacco and the deliberate marketing of higher and higher nicotine-containing products shows clearly that smokeless tobacco manufacturers intend consumers to become tolerant to, and dependent on, the

[521] *See:*
Centers for Disease Control and Prevention. Office of Smoking and Health. Unpublished data from 1970 and 1991 National Household Interview Surveys. (Rate of snuff use among 18-19 year-old males was 0.5% in 1970 and 7.6% in 1991).

Marcus AC, Crane LA, Shopland DR, Lynn WR. Use of smokeless tobacco in the United States: Recent estimates from the current population survey. In: *Smokeless Tobacco Use in the United States: NCI Monographs*. 1989;8:17-23.

Sullivan LW. Keynote Address. In: *Smokeless Tobacco or Health: An International Perspective: Smoking and Tobacco Control Monograph 2*. National Cancer Institute. NIH Pub. No. 92-3461. 1992.

[522] *See* Connolly, note 511, *supra*, at p. 5.

[523] Hatsukami D, Nelson R, Jensen J. Smokeless tobacco: current status and future directions. *Brit. J. of Addiction*. 1991; 86:559-563.

nicotine in smokeless tobacco. Both tolerance and dependence are effects on the structure and function of the body produced by nicotine. Accordingly, smokeless tobacco products, as designed and marketed by the tobacco industry, are intended to affect the structure or function of the body.

F. INDUSTRY ALTERNATIVE TOBACCO PRODUCTS

1. Industry Development of Nicotine Substitutes That Mimic Nicotine's Drug Effects

Tobacco manufacturers' intention to offer tobacco products that will be used to affect the structure or function of the body is further demonstrated by the research programs tobacco companies have undertaken to develop "nicotine analogues." Nicotine analogues are chemical substances that are closely related to nicotine. Both Philip Morris and Brown and Williamson have had substantial research programs to identify nicotine analogues that would produce nicotine-like effects on the central nervous system[524] and that either could be substituted for nicotine if nicotine-containing tobacco became regulated or unattractive to consumers, or that could be added to currently marketed products to enhance the effects of nicotine.

[524] *See the following documents:*
Kilburn KD, Underwood JG. BATCO Group Research and Development Center. *Preparation and Properties of Nicotine Analogues*. Report No. RD 953-R. November 9, 1972.

Kilburn KD, Underwood JG. BATCO Group Research and Development Center. *Preparation and Properties of Nicotine Analogues, Part II*. Report No. RD 1048-R. October 11, 1973

Kilburn KD. BATCO Group Research and Development Center. *Preparation and Properties of Nicotine Analogues, Part III*. June 20, 1979.

BATCO R&D. *Notes on the R&D Conference*. October 29, 1979 - November 1, 1979. Page 01794-01808.

Declaration of former Philip Morris scientist Victor John DeNoble, Ph.D., executed on February 2, 1995. (hereafter cited as DeNoble Declaration) (A copy of the declaration is on file at FDA.)

The Council for Tobacco Research - U.S.A. and the American Tobacco Co. also funded research on nicotine analogues. *See, e.g.:*

Report of the Council for Tobacco Research - U.S.A., Inc. 1978.

Meacham RH, Bowman ER, McKennis H. Additional routes in the metabolism of nicotine to 3 pyridylacetate. The metabolism of dihydrometanicotine. *J-Biol-Chem*. 1972;247(3):902-08.

These programs were also designed to identify substances that shared nicotine's "desired" effects on the central nervous system, without producing nicotine's undesirable effects on the cardiovascular system.[525] In the words of former Philip Morris scientist Dr. Victor J. DeNoble:

> *Our goal was to identify the effects of nicotine in the central nervous system, and to establish structural activity relationships among organically synthesized analogues of nicotine. The purpose of this nicotine analogue program was to develop an analogue that would retain the physiological effects of nicotine in the brain as well as the behavioral effects, but not have adverse effects on the cardiovascular system.*[526]

The tobacco industry's programs to develop nicotine analogues were, according to company documents, prompted by the industry's recognition that the market for tobacco depends on the pharmacological effects of nicotine on the central nervous system. For example, in 1968, BATCO researchers reported the following conclusion at a research conference:

> *In view of its pre-eminent importance, the pharmacology of nicotine should continue to be kept under review and attention paid to the possible discovery of other substances possessing the desired features of brain stimulation and stress-relief without direct effects on the circulatory system. The possibility that nicotine and other substances together may exert effects larger than either separately (synergism) should be studied and if necessary the attention of Marketing Departments should be drawn to these possibilities.* [Emphasis

[525] BATCO R&D. BATCO Research Conference. Hilton Head, SC. September 24-30, 1968. Page 3.

See also:
U.S. Patent No. 5,138,062. Osdene TS, Secor HV, Seeman JI. *Nicotine Analogues*. Philip Morris Inc. August 11, 1992. C1:57-60.

U.S. Patent No. 5,015,741. Osdene TS, Secor HV, Seeman JI. *Nicotine Analogues*. Philip Morris Inc. May 14, 1991. C1:56-60.

See DeNoble Declaration, note 524, *supra*, at pp. 3-4.

[526] *Regulation of Tobacco Products (Part 2): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce. U.S. House of Representatives*. 103rd Cong. 2d Sess. 5 (April 28, 1994) (testimony of former Philip Morris scientist Victor J. DeNoble).

added.][527]

This document shows that BATCO was interested in using chemicals with nicotine-like effects to replace nicotine or enhance the drug effects of nicotine in cigarettes.[528] Another BATCO document underscores the fact that the search for nicotine analogues was designed to implement the industry's belief that nicotine's drug effects are essential to sustain the market for tobacco. S.J. Green, director of research at BATCO, in a paper on future research policy, stated:

> *While other factors cannot be ignored and their influence is not completely understood, it seems a good assumption that nicotine plays a predominant role for many smokers. So that a good part of the tobacco industry is concerned with the administration of nicotine to consumers. If this assumption is correct two long-range research projects become immediately apparent. These are to find pharmacological alternatives to nicotine and to explore alternatives to tobacco as a source of nicotine.*[529]

Other documents show that nicotine analogues were also believed by BATCO to be necessary to protect against three potential threats to the company's nicotine-based market: 1) government action to prohibit the use of nicotine because of nicotine's cardiovascular toxicity; 2) the development by other pharmaceutical companies of alternative, more socially and medically acceptable means of administering nicotine; or 3) the discovery and use by pharmaceutical companies or anti-tobacco activists of nicotine "antagonists," that is, substances that block the

[527] *See* BATCO Research Conference, note 525, *supra*, at p. 3.

[528] *See also* U.S. Patent No. 4,340,072. Bolt AJ, Chard B. *Smokable Device*. Imperial Group Ltd. (1982). This patent describes an alternative cigarette-like device providing an aerosol that may contain nicotine or another psychoactive substance:

> *The aerosol material may, as an alternative to a flavourant solution, comprise a solution of a flavourant and/or nicotine in triacetin or benzyl benzoate. Any psycho-active or physiologically active compound such as ephedrine or a nicotine/ephedrine mixture may be used.*

[529] Green SJ. *BAT Group Research*. September 4, 1968. Page 2.

effects of nicotine on the central nervous system.

A BATCO research report dated November 9, 1972, and entitled "Preparation and Properties of Nicotine Analogues," provided the following rationale for BATCO's long-term research program to develop nicotine analogues:

> *Summary*
> *Should nicotine become less attractive to smokers, the future of the tobacco industry would become less secure.*
>
> *Factors that could influence the attractiveness of nicotine are discussed, and it is concluded that substances closely related to nicotine in structure (nicotine analogues) could be important.*
>
> . . . .
>
> *Introduction*
> *It has been suggested that a considerable proportion of smokers depend on the pharmacological action of nicotine for their motivation to continue smoking (1, 2, 3*[530]*).*
>
> *If this view is correct, the present scale of the tobacco industry is largely dependent on the intensity and nature of the pharmacological action of nicotine.*
>
> *A commercial threat would arise if either an alternative product became acceptable or the effect of nicotine was changed.*
>
> *An alternative product could come from the pharmaceutical industry. With a socially acceptable route for administration, and with medical endorsement, the product could be successful.*
>
> *The effect of nicotine could be inhibited by an antagonist, and cigarettes would tend to become insipid. Such an antagonist could arise by accident or design from the pharmaceutical industry. It might be used tactically to advance that industry's alternative product, or its general use could be advocated by the anti-smoking lobby, with or without government support.*
>
> *The obvious starting point of a search, either for alternatives or antagonists to nicotine, is the nicotine molecule and close analogues of it. The present report*

[530] The page of the report that contains the citations for these footnotes is missing from the document provided by Brown and Williamson to Congress.

discussed nicotine and some of its analogues. . .[531]

These internal documents reflect the tobacco industry's awareness that nicotine's drug effects are critical to the continued success of tobacco in the marketplace. Indeed, they show that the industry views nicotine's drug effects as so important that if nicotine's drug effects were interfered with in any way, tobacco companies would seek to substitute another drug for nicotine to ensure the continued market for tobacco.

Internal documents from Philip Morris' nicotine analogue program show that this company also sought nicotine analogues with pharmacological effects on the central nervous system, including effects associated with addiction.

For example, an internal 1980 company memorandum describes the rationale for Philip Morris' research into nicotine analogues. After asserting that nicotine "is a powerful pharmacological agent" which is "cited often as 'the reason for smoking,'" the memorandum describes the importance of discovering compounds related to nicotine:

> *[O]ur ability to ascertain the structural features of the nicotine molecule which are responsible for its various pharmacological properties can lead to the design of compounds with enhanced desirable properties (central nervous system effects) and minimized suspect properties (peripheral nervous system effects). There are many opportunities for acquiring proprietary compounds which can serve as a firm foundation for new and innovative products in the future.*[532]

Between 1980 and 1984, Dr. DeNoble conducted research for Philip Morris on nicotine analogues,[533] first identifying the pharmacological effects of nicotine on the brains and behavior

[531] *See* Kilburn (1972), note 524, *supra,* at pp. 1-2.

[532] Philip Morris Interoffice Correspondence from J.L. Charles to Dr. R. B. Seligman. Nicotine Receptor Program-University of Rochester. March 18, 1980.

[533] The nicotine analogue program at Philip Morris began before Dr. DeNoble's arrival. *See*, e.g. Secor HV, Edwards WB. Philip Morris Research Center. Nicotine analogues: synthesis of pyridylazetidines. *J. Org. Chem.* 1979;44(18):3136.

of animals[534] and then comparing these effects to the physiological and pharmacological effects of nicotine analogues synthesized by chemists at Philip Morris.[535] Dr. DeNoble's studies, which were conducted as part of the "Behavioral Pharmacology" Program at Philip Morris, were intended to characterize the pharmacologic effects of nicotine and then to identify those analogues that affected the central nervous system in the same way that nicotine affects the central nervous system. An internal Philip Morris document states:

> *Major objectives of the Behavioral Pharmacology Program are (1) To develop a better understanding of the reinforcing actions of nicotine and nicotine*

See DeNoble Declaration, note 524, *supra,* at p. 4.

[534] Dunn WL. Philip Morris Inter-Office Correspondence to T.S. Osdene. *Possible Restructuring of the Behavioral Research Lab.* June 18, 1980. Page 100019244.

[535] *See:*
DeNoble Declaration, note 524, *supra,* at pp. 2-9.

U.S. Patent No. 4,452,984. Edwards III WB. *Optically Active Nicotine Analogues and Process For Their Preparation.* Philip Morris Inc. June 5, 1984.

U.S. Patent No. 4,442,292. Edwards III WB. *Optically Active Nicotine Analogues and Process For Their Preparation.* Philip Morris Inc. April 10, 1984.

U.S. Patent No. 4,332,945. Edwards III WB. *Optically Active Nicotine Analogues and Process For Their Preparation.* Philip Morris Inc. June 1, 1982.

U.S. Patent No. 4,321,387. Chavdarian CG, Sanders EB. *Process for the Preparation of Optically Active Nicotine Analogues.* Philip Morris Inc. March 23, 1982.

U.S. Patent No. 4,220,781. Sanders EB, Secor HV, Seeman JI. *Process for Preparing 2-ALKYL Nicotinoids.* Philip Morris Inc. September 2, 1980.

U.S. Patent No. 4,155,909. Sanders EB, Secor HV, Seeman JI. *2-ALKYL Nicotinoids and Processes For Their Production.* Philip Morris Inc. May 22, 1979.

Work on nicotine analogues continued after Dr. DeNoble's departure from the company. *See* U.S. Patent No. 5,138,062, note 525, *supra.*; U.S. Patent No. 5,015,741, note 525, *supra.*; U.S. Patent No. 4,590,278. Edwards III WB. *Nicotine Analogues.* Philip Morris Inc. May 20, 1986.

analogues, (2) To gain insight into the neurobehavioral actions of nicotine, and (3) To develop and use animal behavior techniques to screen nicotine analogues for their nicotine eliciting properties.[536]

Dr. DeNoble's research and that of other scientists working at Philip Morris on the pharmacologic effects of nicotine showed that nicotine is self-administered by rats (i.e., is a "positive reinforcer"), produces tolerance, causes a unique "prostration syndrome" when injected into the rat brain that correlates to nicotine's ability to produce behavioral changes, and that nicotine loses its effects when the rat is pretreated with mecamylamine, a substance that blocks nicotine's effects in the brain.[537] These studies also demonstrated that nicotine has pharmacological activity in the brain, and that it has characteristics of other addictive substances that make it likely to be abused.[538] To evaluate potential nicotine analogues, Philip Morris tested numerous substances to determine whether they duplicated nicotine's effects on the brain and whether they had the same characteristics associated with abuse liability.[539] Dr. DeNoble and

[536] DeNoble VJ, Carron L. Philip Morris Inter-Office Correspondence to Dr. T. Osdene. *Progress Report: The Behavioral Pharmacology Program*. October 14, 1980.

See Dunn, note 534, *supra,* which proposes the creation of the "Behavioral Pharmacology Project."

[537] *See:*
DeNoble Declaration, note 524, *supra,* at pp. 5-9.

DeNoble VJ. Philip Morris Inter-Office Correspondence to W.L. Dunn. *Nicotine Program-Behavioral Research Laboratory*. April 24, 1980. Page 2.

DeNoble VJ, Mele PC, Ryan FJ. Philip Morris Research Center. *Nicotine as a Positive Reinforcer for Rats: Effects of Infusion Dose and Fixed Ratio Size*. Unpublished Manuscript.

Dunn, note 534, *supra,* at p. 100019244.

[538] *See* DeNoble Declaration, note 524, *supra,* at pp. 7-9. *See also* FINDINGS § II.A.2., *supra.*

[539] *See:*
DeNoble, note 536, *supra.*

other scientists working at and for Philip Morris used nicotine analogues in discrimination tests in rats, in prostration studies, and in self-administration studies.[540] As noted in FINDINGS § I.B.3., supra, discrimination and self-administration studies provide key evidence of the likelihood that a substance will be addictive in humans.

Philip Morris documents state explicitly that the purpose of the research on nicotine analogues was to find nicotine substitutes that were behaviorally active and had the same reinforcing properties as nicotine; i.e., produced effects on the central nervous system associated with addiction. A progress report from the behavioral pharmacology group identified as its major objectives:

Nicotine Analogues

Research Objectives

1. *Determine if behaviorally active nicotine analogues can be directly substituted for nicotine in rats for which nicotine is functioning as an intravenously delivered positive reinforcer.*
2. *Establish nicotine analogues as an intravenously delivered positive reinforcer.*
3. *Compare the potencies of nicotine analogues to nicotine in producing positive reinforcing effects.*[541]

The objectives of the studies conducted by the behavioral pharmacology group were developed in conjunction with senior management at Philip Morris, and the study results were shared with

DeNoble Declaration, note 524, *supra,* at pp. 4-5.

[540] DeNoble VJ, Carron L. Philip Morris Inter-Office Correspondence to W.L Dunn. *Research Progress Concerning Discrimination and Prostration Studies*. August 18, 1980. Pages 1003030001-1003030007.

Carron LM, Levy CJ, Allen A. Philip Morris Inter-Office Correspondence to V.J. DeNoble. *Discrimination Studies*. May 7, 1980. Pages 1003030008, 1003030009.

[541] DeNoble VJ, Carron L. Philip Morris Inter-Office Correspondence to W. Dunn. *Progress in Behavior Pharmacology Laboratory*. March 27, 1981. Pages 1-32.

upper management as well.[542]

Thus, it is evident from tobacco manufacturers' interest in developing nicotine analogues with central nervous system effects comparable to nicotine that these manufacturers (1) believe that the pharmacological effects of nicotine on the central nervous system, and in particular the pharmacological effects that reinforce continued tobacco use, are necessary to ensure a long-term market for tobacco; and (2) intend to market products that affect the central nervous systems of their customers.

[542] *See:*
DeNoble Declaration, note 524, *supra,* at pp. 4, 11-12.

Charles JL. Philip Morris Inter-Office Correspondence to T.S. Osdene. March 1, 1983. Page 2: "Because of the sensitive nature of Vic's assignment, documentation of much of his work has been restricted to the Director and Vice President level."

2. Industry Research on Acetaldehyde As a Reinforcer

The behavioral pharmacology program at Philip Morris also conducted pharmacological and behavioral research on another constituent of cigarette smoke, acetaldehyde. This research was intended to find a combined dose of acetaldehyde and nicotine in cigarettes that would produce "maximal reinforcing effects."[543] The reinforcing capability of a drug is a measure of the dependence-producing properties of a drug.[544] In undertaking research on how to maximize the reinforcing effects of cigarettes, Philip Morris demonstrated its understanding of the dependence-producing nature of cigarettes and its intention to manufacture and sell cigarettes that affect the structure or function of the smoker's body.

Acetaldehyde, like nicotine, is present in, and delivered to the smoker from, cigarette smoke.[545] At the time Philip Morris conducted research on the reinforcing properties of acetaldehyde in cigarettes, acetaldehyde had been studied as a potential contributing factor to the

[543] DeNoble VJ. Philip Morris U.S.A. Inter-office correspondence to J.L. Charles. *Project Number 1610 (Behavioral Pharmacology) Objectives and Plans - 1982-1983.* July 20, 1982. Page 2.

[544] *See:*
Balster RL. Drug abuse potential evaluation in animals. *Brit. J. of Addiction.* 1991;86:1549-1558.

Henningfield JE, Cohen C, Heishman SJ. Drug self-administration methods in abuse liability evaluation. *Brit. J. of Addiction.* 1991;86:1571-1577.

Griffiths RR, Lamb RJ, Ator NA, Roache JD, Brady JV. Relative abuse liability of triazolam: experimental assessment in animals and humans. *Neuroscience and Biobehavioral Reviews.* 1985;9:133-151.

[545] Acetaldehyde is present in tobacco at 1.6 - 7.4 mg/gm of processed tobacco. It is contained in mainstream smoke at 18-1400 mg per cigarette. U.S. Department of Health and Human Services. *Reducing the Health Consequences of Smoking: 25 Years of Progress. A Report of U.S. Surgeon General.* U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. DHHS Publication No. (CDC) 89-8411, 1989.

rewarding effects of alcohol.[546] This information led Philip Morris to explore its reinforcing properties in cigarettes.[547]

Researchers in Philip Morris' behavioral pharmacology program first conducted studies that showed that acetaldehyde acts on the brain and is a positive reinforcer when present in amounts comparable to those delivered by cigarette smoke.[548] By this time, the company had already demonstrated that nicotine was also a positive reinforcer. The researchers noted that it was well-known that the presence of two reinforcers together can modify the behavioral effect of either one, and decided to study whether rats would self-administer nicotine and acetaldehyde in combination. Recognizing that the reinforcing effects of nicotine and acetaldehyde are pharmacological, the researchers stated that their efforts were intended to determine whether the combination produced a "modification of the pharmacologic effect of one compound by the other."[549] The researchers found that rats self-administered the combination of acetaldehyde and

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[546] *See:*
Schuckit MA, Rayses V. Ethanol ingestion: Differences in blood acetaldehyde concentrations in relatives of alcoholics and controls. *Science*. 1979;203:54-55.

Brown ZW, Amit Z, Smith B. Intraventricular self-administration of acetaldehyde and voluntary consumption of ethanol in rats. *Behavioral and Neural Biology*. 1980;28:150-155.

[547] *See* DeNoble Declaration, note 524, *supra*, at p.10.

[548] *See:*
DeNoble VJ. Philip Morris U.S.A. Inter-office correspondence to W.L. Dunn. *Progress Report* from the Behavioral Pharmacology Laboratory for the period beginning September 1, 1980, to March 30, 1981. August 24, 1981. Pages 12-16.

DeNoble Declaration, note 524, *supra*, at pp. 10-11.

[549] DeNoble VJ, Mele PC. Philip Morris U.S.A. Inter-office correspondence to W.L. Dunn. *Progress Report* from the Behavioral Pharmacology Laboratory for the period beginning March 1, 1981, to March 1, 1982. April 21, 1982. Pages 18-19.

nicotine to a greater extent than either compound alone.[550] This finding suggested that the combination was a more potent positive reinforcer than nicotine or acetaldehyde alone.[551]

The culmination of this research was Philip Morris' attempt to establish the "optimum" ratio of acetaldehyde to nicotine in cigarette smoke:

> *Since both acetaldehyde and nicotine are reinforcing agents and each are contained in smoke it becomes important to determine [sic] ratio of acetaldehyde to nicotine which produce maximal reinforcing effects. . . This will allow us to determine the optimum ratio of acetaldehyde to nicotine that maintains the most behavior.*[552] [Emphasis added.]

As this passage makes clear, Philip Morris viewed the "optimal" ratio of acetaldehyde to nicotine as the ratio that would maximize the positive reinforcing effects of cigarettes; i.e., maximize their potential to produce dependence in smokers.

The behavioral pharmacology group conducted further studies suggesting that the ratio of acetaldehyde to nicotine that produced the greatest positive reinforcement in rats was in the range of 4:1.[553] While FDA does not know whether or how this research was implemented by Philip Morris, Dr. DeNoble was present at a meeting at which Philip Morris officials discussed the possibility of producing a cigarette with this ratio of acetaldehyde to nicotine and test-

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[550] *Id.* at pp. 19-21.

[551] *See* DeNoble Declaration, note 524, *supra*, at p. 11.

[552] DeNoble, note 543, *supra*, at p. 2.

[553] Philip Morris U.S.A. Behavioral Pharmacology Annual Report - June 1, 1983. Philip Morris Research Center. Richmond, VA. Pages 20-23. This work was still going on at the time the Behavioral Pharmacology program was terminated at the Philip Morris Research Center in Richmond, VA.

See also, DeNoble VJ. Philip Morris U.S.A. Inter-office correspondence to J.L. Charles. *Project 1610 (Behavioral Pharmacology) Objectives and Plans, 1984*. September 6, 1983. (Continued research on the ratio of acetaldehyde and nicotine with optimum reinforcing effects scheduled for 1984.)

marketing it in South America.[554]

It is thus clear that Philip Morris was interested in implementing the research to maximize the reinforcing effects of cigarettes by manipulating acetaldehyde and nicotine. The data on the reinforcing properties of particular ratios of acetaldehyde and nicotine were also used by researchers at Philip Morris to predict cigarette sales based on the delivery of nicotine and acetaldehyde. The researchers found that they could predict sales of particular brands with an accuracy above 80 % by comparing nicotine and acetaldehyde ratios.[555] This evidence compellingly demonstrates Philip Morris' reliance on, and intention to increase, the reinforcing effect of cigarettes on the structure or function of the smoker's body.

[554] *See* DeNoble Declaration, note 524, *supra,* at p. 12.

[555] *Id.* at p. 11.

3. Industry Development of Alternative Cigarettes That Deliver Nicotine

Tobacco companies have developed a number of cigarette alternatives. These alternatives to conventional cigarettes have generally been created in response to perceived societal pressure to market safer cigarettes. In developing cigarette alternatives, tobacco companies have sought to eliminate many of the traditional components and characteristics of cigarettes and cigarette smoke, such as tar and carbon monoxide. Tobacco companies have consistently recognized, however, that cigarette alternatives must deliver adequate amounts of nicotine to satisfy consumers. As a result, most of the alternative cigarette products developed by tobacco companies are simply nicotine delivery systems.

Tobacco company development of alternatives to cigarettes demonstrates the industry's knowledge that nicotine is the critical or "active" ingredient in cigarettes, and that smokers smoke primarily to obtain nicotine. The nature of the alternatives they believe could be substituted for currently marketed tobacco products strongly supports the inference that companies intend currently marketed tobacco products to serve as nicotine delivery systems.

In the late 1980's, RJR developed Premier, a "smokeless" cigarette that contained very little tobacco.[556] Although designed to be "smoked" and inhaled, Premier actually worked by

[556] Premier resembled a conventional cigarette in outward appearance only. It contained a carbon tip which served as the heat source. RJR informed FDA that at least 70% of the nicotine delivered by "Premier" was provided from spray-dried tobacco. This nicotine source had been combined with glycerol and adsorbed within alpha-alumina spheres contained within an aluminum cylinder positioned directly behind the carbon heat source. The remaining nicotine was provided from the cut tobacco leaf surrounding this cylinder and the tobacco extract-treated paper filter positioned in front of the cellulose acetate filter. Letter with enclosures from Peter B. Hutt, outside counsel for RJR, to Kevin M. Budich, FDA, January 26, 1988.

heating rather than burning tobacco.[557] RJR claimed that by altering the composition of conventional cigarettes and by eliminating the pyrolysis products produced by burning, Premier reduced by about 90% the chemical compounds delivered to smokers by conventional cigarettes.[558] Virtually the only compound (other than the paper and the filter) that was present in Premier in quantities similar to conventional cigarettes was nicotine.[559]

RJR's willingness to eliminate from Premier almost every conventional cigarette component but nicotine was not a coincidence. According to a memorandum of meeting dated October 23, 1987, the attorney representing RJR told FDA officials that for a cigarette substitute like Premier to be successful in the marketplace, it must contain nicotine.[560] Observing that herbal cigarettes had failed as substitutes due to the absence of nicotine, the attorney said that RJR would never eliminate nicotine from Premier because "without nicotine, you don't have a cigarette."[561]

RJR documents also show that the purpose of including nicotine in Premier was to deliver nicotine to the smoker's blood and brain. Studies conducted by RJR to determine

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[557] *See* R.J. Reynolds, note 300, *supra*. Premier was withdrawn from the market shortly after its introduction.

[558] *Id.* at p. 8.

Department of Health and Human Services. *RJR's "Smokeless" Cigarette*. October 23, 1987, memorandum of meeting between Peter B. Hutt, representing RJR Nabisco Inc., and FDA representatives (Daniel L. Michels, Sammie R. Young, Rudolf Apodaca, and Kevin M. Budich).

[559] *See* R.J. Reynolds, note 300, *supra*, at pp. 1-10. In the mainstream smoke produced by Premier, the only components that were similar in quantity to conventional cigarettes were nicotine and carbon dioxide.

[560] *See* Memorandum of Meeting, note 558, *supra*.

[561] *Id.*

whether Premier would be an acceptable cigarette substitute show unequivocally that RJR was interested in Premier's ability to deliver specific blood levels of nicotine to the smoker. Delivery of nicotine to the smoker's blood is relevant only if the company was interested in producing physiological effects in the smoker's body. The company itself reported, in a book published at the time of Premier's introduction, that it wanted to assess whether differences in composition and function between Premier and conventional cigarettes might alter nicotine delivery to the smoker's blood and body.[562] To assure itself that the absorption of nicotine into the smoker's body from Premier and conventional cigarettes was similar, RJR conducted plasma studies on rats and humans comparing the levels of nicotine in smokers' blood produced by smoking conventional cigarettes with the levels of nicotine produced by smoking Premier.[563]

RJR found the absorption and elimination of nicotine from Premier to be comparable to conventional cigarettes.[564] Because, however, Premier contained somewhat less nicotine than the reference cigarette tested, the blood levels of nicotine found in smokers of Premier were somewhat lower than those from the reference cigarette. The blood-level studies conducted by

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[562] *See* R.J. Reynolds, note 300, *supra*, at p. 460.

[563] During its investigation FDA asked R.J. Reynolds about the company's use of human body fluid testing to measure nicotine levels in smokers. Counsel to R.J. Reynolds informed FDA that it "should come as no surprise to the Agency that RJRT [R.J. Reynolds Tobacco Company] did some body fluids testing and used the services of Bellomy Research, Inc. to solicit participants." Letter to E. Blumberg, FDA, from R. Cooper, Williams & Connolly, on behalf of R. J. Reynolds. November 18, 1994. Page 2. It appears that R.J. Reynolds has conducted such testing not only in conjunction with the development of Premier, but in other circumstances "in which a developmental product incorporated new technology, and the testing was conducted in order to understand . . . for example, whether nicotine is absorbed or metabolized differently by smokers smoking the new technology product when compared to other cigarettes . . ." *Id.*

[564] *See* R.J. Reynolds, note 300, *supra*, at pp. 496-497. *See also* p. xii:
. . . in the short-term measurements of nicotine pharmacokinetics, the [Peer Review] Committee agreed with the conclusion that there was no significant difference in this response in individuals smoking either the reference or the new cigarette.

RJR demonstrated that smokers compensated for the lower levels of nicotine in Premier. The researchers stated that subjects smoked Premier more intensely, speculating that they inhaled a greater volume of the smoke from Premier.[565] Thus, while Premier contained about 52% of the nicotine of the reference cigarette, after 39 days of smoking Premier the volunteers were absorbing 69% of the nicotine they had absorbed from the reference cigarette.[566] RJR has patented other cigarette alternatives whose basic function is also to deliver nicotine.[567]

More recently, RJR detailed plans to unveil a low-smoke cigarette, Eclipse, in 1995. It has a charcoal heat source for the tip. Behind the charcoal tip, there are processed tobacco parts containing more than 50% glycerine, which vaporizes at temperatures below those that burn tobacco. Behind the processed tobacco, there is blended tobacco. The charcoal heats the processed tobacco and glycerine, which creates smoke-like vapor. The glycerine vapor then passes through the blended tobacco, picking up flavor and nicotine before passing through a standard cellulose filter, and into the smoker's mouth. According to RJR, Eclipse vapor contains about 85% water, glycerol, and nicotine (versus 25% in standard cigarette smoke) and about 15% tars and related particles (versus 75% in standard smoke).[568]

Other tobacco companies have also developed cigarette alternatives similar to Premier in design and intent. In the 1960's, Charles Ellis of BATCO developed "Ariel." Like Premier,

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[565] *Id.* at p. 482.

[566] *Id.* at pp. 479, 482-483, 490-492.

[567] U.S. Patent No. 5,285,798. Banerjee et al. *Tobacco smoking article with electrochemical heat source.* R.J. Reynolds Tobacco Company. February 15, 1994. (Alternative cigarette that is designed to generate enough heat, without burning, to volatilize and deliver to the smoker only the nicotine and flavor materials in the tobacco).

[568] Hilts P. Little smoke, little tar, but still lots of nicotine. *New York Times*. November 27, 1994;A1.

Ariel eliminated most of the compounds delivered by conventional cigarettes, but ensured delivery of a sufficient amount of nicotine to satisfy smokers' need for nicotine. Ariel was an alternative smoking device that contained a capsule of nicotine-enriched tobacco. The nicotine-enriched tobacco was heated by burning tobacco surrounding the capsule.[569] The nicotine was supposed to be released into an aerosol and inhaled by the smoker. The patents for this device make clear that its purpose was to provide an alternative to conventional cigarettes that would provide the same "satisfaction" as a traditional cigarette. The principal (indeed, almost the only) ingredient it was designed to deliver to achieve this goal was nicotine:

> *This invention relates to an improved smoking device whereby an improved smoke stream of a controlled character is delivered to the smoker.*
>
> . . . .
>
> *A further object is the provision of an improved smoking device of the above character which simulates a conventional or traditional smoking device, such as a cigarette, in appearance and in social habit attributes, and which affords the same benefits, pleasure and satisfaction without the attendant disadvantages.*
>
> . . . .
>
> *Our invention contemplates the provision of an improved smoking device having the appearance of a traditional smoking device and embodying a composition which releases nicotine vapor and potentially aerosol forming materials, including water vapor, when subjected to an elevated temperature . . .*[570]

A subsequent patent for a modification of this device stated that:

> *the invention thus seeks primarily to furnish a smoking device which will yield nicotine in an acceptable form, both psychologically and physiologically, but without the necessity for taking into the system so much of the products of combustion as is usual when*

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[569] *See:*
U.S. Patent No. 3,258,015. Ellis CD, Dean C, Schachner H, Williamson D. *Smoking Device*. Battelle Memorial Institute. June 28, 1966.

U.S. Patent No. 3,356,094. Ellis CD, Dean C, Hughes IW. *Smoking Devices*. Battelle Memorial Institute. December 5, 1967.

[570] *See* U.S. Patent No. 3,258,015, note 569, *supra.*

smoking a conventional cigarette . . .[571] [Emphasis added.]

At a 1968 conference of BATCO researchers, the conferees succinctly described Ariel as a "device[] for the controlled administration of nicotine."[572]

Other documents reveal that tobacco companies have consistently recognized that alternative tobacco products must contain sufficient amounts of nicotine to satisfy users.[573] For example, the minutes of a BATCO Group R&D Conference held in 1969 disclose that the conferees agreed that non-tobacco cigarettes could not succeed in the marketplace without the addition of nicotine:

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[571] *See* U.S. Patent No. 3,356,094, note 569, *supra.*

[572] BATCO Research Conference. Hilton Head Island, SC. September 24-30, 1968. Page 3.

[573] *See the following documents:*
BATCO Group Research Conference. St. Adele, Quebec. November 9-13, 1970.

S.J. Green. *Appendix I. Smoking and Health: Some Recent Findings.* Memo to D.S.F. Hobson. March 2, 1967. Page 2:
A non-tobacco smoking material has been made from cellulose and nicotine . . .

Proceedings of the BATCO Smoking Behaviour - Marketing Conference. July 9-12, 1984.

Ayres CI. *Notes from the 1984 GR&DC Nicotine Conference.* Conference Outline. July 9-12, 1984.

U. S. Patent No. 5,050,621. Creighton DE, Grieg CC. *Smoking Articles.* BATCO. September 24, 1991.
Abstract: There is provided a smoking article comprising a heating unit aerosol generation section in flow communication at a first end thereof with the heating unit, nicotine source in flow communication at a first end thereof with said heating unit, a mixing space with which said aerosol generation section and nicotine source means are in flow communication at or via respective second ends thereof, and a velocity accelerating orifice in flow communication with the mixing space. [Emphasis added.]

In a document submitted to the Food and Drug Administration in 1985 pursuant to an FDA examination of their product, Advance Tobacco Products, Inc., offered the following description of their smokeless cigarette:
[It] has the appearance and feel and provides a sensation similar to a conventional cigarette, but [ ] delivers nicotine satisfaction to the user by inhalation of nicotine vapor in a manner not requiring the combustion of tobacco.

There was a general discussion on non-tobacco materials and, largely due to the difficulties foreseen with the addition of nicotine, the Conference did not envisage at present the likely success of a totally non-tobacco cigarette.[574]

The conferees went on to express their view that, if non-tobacco ingredients were used as part of the tobacco blend in cigarettes, cigarette manufacturers would have to compensate for the absence of nicotine in the non-tobacco materials by using high-nicotine tobaccos:

However, it now seems quite likely that non-tobacco materials will be successfully incorporated into cigarettes as blend constituents, particularly in health orientated products. A large usage of non-tobacco materials would be likely to increase the demand for high-nicotine tobaccos.[575]

A 1970 BATCO R&D Conference included a particularly telling illustration of the tobacco industry's recognition of the central importance of nicotine in cigarette alternatives. The minutes of that conference contain the following finding, agreed to by the conference attendees:

It was agreed that, if and when total cigarette consumption declined, great opportunities for supplying the demands of other socially acceptable habits could follow. Discussion followed on those opportunities which might arise. Amongst those discussed were a) chewing products, and b) wet snuff [both of which are smokeless tobacco products]. *It was felt that this whole area, much of which is already in the tobacco industry, should be examined more thoroughly. Particular attention should be given to buccal administration of nicotine and other physiologically active ingredients. At the same time, it was re-affirmed that we would not contemplate the incorporation of nicotine in edible products.*[576] [Emphasis added.]

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[574] BATCO Research Conference. Kronberg, Germany. June 6, 1969. Page 8. Brown and Williamson representatives attended.

[575] *Id.*

See also, BATCO, note 573, *supra,* at p. 4. A similar expression of the need to increase the nicotine content of the tobacco blend where tobacco substitutes without nicotine are used as part of the blend is contained in the minutes of a 1970 BATCO research conference:
The addition of nicotine to SM [a tobacco substitute] was considered, and it was recommended that nicotine per se, should not be used inside any tobacco factory. However, high nicotine content tobacco extract might be added.

[576] *Id.* BATCO Group Research Conference at p. 3.

In 1984, BATCO marketers and "product application thinkers" convened to discuss innovative product ideas and were still convinced that if the tobacco industry lost a significant number of smokers, the industry should move to administration of nicotine through moist snuff. According to the conferees, the objective of shifting to moist snuff would be:

> *To capitalise on the potential downtrend of the smoking habit as the only means to achieve nicotine satisfaction by participating in a parallel product market free of social/health concerns and with attractive profitability.*[577] [Emphasis added.]

As these passages make clear, tobacco manufacturers understand that what both cigarettes and smokeless tobacco products have in common is the ability to administer nicotine to consumers, and that the purpose of the nicotine is to produce physiological effects on the consumer. If nicotine-containing cigarettes were to become socially unacceptable, it was the tobacco industry's intention to find another method of supplying nicotine to consumers.

Smokeless tobacco manufacturers, like cigarette manufacturers, understand that tobacco substitutes must include nicotine. Unlike BATCO, however, the major smokeless tobacco manufacturer, UST, has considered adding nicotine to food to create a nicotine delivery system that would function as an alternative to smokeless tobacco. At a meeting of UST executives, researchers, and marketers held in 1968 to discuss future directions for the company, the director of research proposed that the company develop a "swallowable chew: a confection with nicotine (artificial snuff)."[578] Later in the same document, he made clear that the purpose of adding nicotine to artificial snuff would be to "satisfy" snuff users;[579] i.e., to satisfy their need for

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[577] BATCO. *Structured Creativity Conference*. Southampton, England. June 25-28, 1984. List C.

[578] Minutes of Snuff and Chewing Tobacco Research - Manufacturing - Marketing Meeting. New York Hilton. January 22-23, 1968. Page 5.

[579] *Id.* at p. 10.

nicotine.

Thus, company documents related to the development of alternatives to cigarettes and smokeless tobacco establish tobacco manufacturers' knowledge that nicotine is the critical or "active" ingredient in cigarettes and smokeless tobacco, and that consumers use these products primarily for nicotine. Moreover, the fact that currently marketed and alternative products are studied for their ability to deliver nicotine to the bloodstream shows that the companies know that consumers use currently marketed tobacco products for the effects of nicotine on the structure and function of their bodies, rather than for taste or flavor. The fact that the tobacco industry considers nicotine delivery systems to be functional equivalents to tobacco demonstrates that tobacco companies intend their currently marketed tobacco products to deliver nicotine to consumers to affect the structure or function of their bodies.

G. INDUSTRY KNOWLEDGE THAT NICOTINE'S SENSORY EFFECTS ARE SECONDARY TO ITS PHARMACOLOGICAL EFFECTS

Despite the tobacco industry's public assertions that nicotine is in cigarettes only to provide flavor, taste, or mouth feel (immediate sensory effects) to the smoker,[580] the evidence shows that tobacco companies view nicotine's primary role as providing the smoker with the pharmacological effects that smokers seek from tobacco.

As described earlier, the tobacco industry knows that the primary significance of nicotine in tobacco is to provide pharmacological effects, both acute (mood regulation, weight control) and long-term (reinforcing effects that create a continuing physiological need for nicotine). While nicotine in tobacco has both systemic pharmacological effects and acute sensory effects in the mouth, nose, and throat,[581] the evidence in the preceding sections and other industry documents demonstrates that the acute sensory effects of nicotine are secondary in importance to

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[580] *See:*
Regulation of Tobacco Products (Part 1): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives, 103 Cong. 2d Sess. 763 (April 14, 1994). (testimony of TF Riehl, Vice President for Research & Development, Brown and Williamson Tobacco Corp.):
We blend for taste, not nicotine.

Id. 103 Cong. 2d Sess. 590 (statement of Thomas E. Sandefur, Jr., CEO Brown and Williamson Tobacco Corp.) :
Without nicotine, cigarettes simply would not taste like cigarettes.

Statement of Brennan Dawson, Vice President, Tobacco Institute. *Face the Nation.* March 27, 1994. Page 7:
Nicotine is essential. It has a taste. It has what's called a mouth feel.

[581] *See, e.g.*, Proceedings of the BATCO Smoking Behaviour-Marketing Conference, Session III. Montreal, Canada. July 9-12, 1984. Pages BW-W2-02709, BW-W2-02698. Breaks down smoke sensations into (1) mouth sensations, including mouth feel, texture and taste; (2) sensations on inhalation, including throat feel, irritation, and impact; and (3) wholebody pharmacological and psychological effects.

the pharmacological effects of nicotine that underlie consumer satisfaction. For example, a 1972 Philip Morris document from a Council for Tobacco Research conference addressing the issue of why people smoke makes clear that:

> *The primary incentive to cigarette smoking is the immediate salutory effect of inhaled smoke upon body function . . . . The physiological effect serves as the primary incentive; all other incentives are secondary.*[582] [Emphasis added.]

A nicotine monograph prepared for the Tobacco Advisory Council in the United Kingdom also makes clear that smoking satisfaction is dependent on the inhalation of nicotine.

> *Whilst smoking fulfils [sic] a psychological need in certain individuals it is only the inhaling cigarette smoker who is likely to gain psychopharmacological satisfaction from nicotine and become dependent on it.*[583]

Many industry documents reveal that the industry draws a clear distinction between nicotine's pharmacological effects and any effects it has on flavor. A 1984 letter from a BATCO Group R&D researcher to a Brown and Williamson executive drew the distinction between nicotine's pharmacological effects and the sensory properties of cigarette smoke, underscoring the distinction by pointing out that people inhale cigarette smoke (an act that occurs after any sensory effects of cigarette smoke are felt in the nose, mouth, and throat) in order to obtain nicotine's pharmacological effects on the brain:

> *It is well known that nicotine can be removed from smoke by the lung and transmitted to the brain within seconds of smoke inhalation. Since it is the major or sole pharmacologically active agent in smoke, it must be presumed that this is its preferred method of absorption and thus why people inhale smoke. . . . . The organoleptic [sensory] properties of smoke are more complex since they involve*

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[582] Dunn WL. Philip Morris Research Center. *Motives and Incentives in Cigarette Smoking.* Philip Morris Research Center. Richmond, VA. 1972. Pages 3-4.

[583] Cohen AJ, Roe FJC. *Monograph on the Pharmacology and Toxicology of Nicotine and its Role in Tobacco Smoking.* Tobacco Advisory Council. U.K. July 1979. Page 38.

the stimulation of a variety of areas in the mouth, nose and throat.[584]

At the 1983 BATCO Research Conference in Rio de Janeiro, the industry discussed its understanding that nicotine "satisfaction" comes from inhalation and absorption of nicotine into the bloodstream rather than from its flavor. There was discussion of possible cigarette modifications to reduce inhalation of toxic smoke components and thus reduce smoker health risk. Smoker risk could be reduced (1) by modifying the cigarette to reduce retention of smoke in the lung, or (2) by increasing smoke irritation to reduce depth of inhalation and thus resulting absorption. The conferees were reminded, however, that such modifications, to the extent that they result in decreased nicotine absorption and resulting pharmacological effects, may threaten smoker "satisfaction." They were told that it was therefore essential to pay attention to the amount of nicotine that was inhaled, to determine whether absorption was adequate with less deep inhalation:

> *The basic assumption is that nicotine, which is almost certainly the key smoke component for satisfaction, is fully released to the body system before exhalation takes place. It is essential, therefore to attempt to quantify the change in chemical composition between inhaled and exhaled smoke under different conditions of smoking, ie., shallow, medium and deep inhalation. The absorption of nicotine via the nasal cavity should also be investigated.*[585]

Other BATCO documents also show that the industry treats nicotine's pharmacological

[584] Ayres CI. BATCO letter to E.E. Kohnhorst, Brown and Williamson, transmitting partial summary of issues presented at Montebello Research Conference in 1982. Page BW-W2-03949. (Summary prepared in 1984.)

See also a BATCO report in which it was hypothesized that "increased smoker response is associated with nicotine reaching the brain more quickly." Backhurst JD. BATCO R&D. *Further Work on "Extractable Nicotine."* Report No. RD 437-R. Southampton, England. September 30, 1966. Page 1.

[585] BATCO Research Conference. Brazil. July 1983. Page 7.

effects as distinct from the flavor characteristics of tobacco.[586] As described in FINDINGS § II.C.1., supra, "Project Wheat" was an industry study intended to aid BATCO in developing cigarettes with increased consumer acceptance.[587] The Project Wheat researchers emphasized the importance of nicotine delivery over all other product features and specifically distinguished the effects of nicotine from the taste and flavor characteristics of cigarettes:

> *In considering which product features are important in terms of consumer acceptance, the nicotine delivery is one of the more obvious candidates. Others include the taste and flavour characteristics of the smoke, physical features such as draw resistance and rate of burn, and the general uniformity of the product, to name but a few. The importance of nicotine hardly needs to be stressed, as it is so widely recognised.*[588] [Emphasis added.]

Even RJR research scientists publicly acknowledge that the nicotine in cigarettes provides pharmacological and psychological effects to smokers in addition to any mere sensory effects.[589] An internal RJR document from 1972 is more explicit in showing that the industry views nicotine's role as pharmacological and distinct from the smoke components that provide flavor:

> *If nicotine is the sine qua non of tobacco products, and tobacco products are recognized as being attractive dosage forms of nicotine, then it is logical to design our product - and where possible our advertising - around nicotine delivery rather than around tar delivery or flavor.*[589a] [Emphasis added.]

[586] BATCO Group R&D Sydney, Australia. March 1978. Page 6. According to "Notes on Group Research & Development Conference" written by S.J. Green on April 6, 1978, the conferees were asked to assist in developing "an effective means of obtaining a nicotine-rich, and preferably flavour-rich extract from waste tobacco."

[587] *See* Project Wheat - Part 1, note 204, *supra*, at p. 1.

[588] *Id.* at pp. 3-4.

[589] Robinson JH, Pritchard WS. The role of nicotine in tobacco use. *Psychopharmacology.* 1992;108:405.

[589a] Hilts PJ. U.S. Convenes Grand Jury to Look at Tobacco Industry. *New York Times.* July 26, 1995. An internal Philip Morris document similarly reveals the industry's understanding that people smoke for the pharmacological effects of nicotine, not for flavor. Reporting on a survey of the reasons

Industry patents also distinguish the role of nicotine from flavorants.[590] An RJR book on flavoring tobacco lists approximately a thousand flavorants, but fails to list nicotine as a flavoring agent.[591] In fact, nicotine's flavor is unpleasant,[592] and the tobacco industry has gone to significant lengths to mask the flavor of increased levels of nicotine in cigarettes.[593]

Moreover, there is evidence that some of the sensory effects associated with nicotine, e.g., irritation and "impact," are sought by smokers at least in part because these effects are always followed by the pharmacological effects they seek. Thus, smokers learn to associate the sensory impact of nicotine (burning in the throat) with the resulting psychoactive effects of nicotine, and thus look for these sensory signals in tobacco products. This is known as secondary reinforcement.[594] Industry documents show that the industry is aware of this

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people say they smoke, a Philip Morris researcher says that the reasons given fall into three categories: 1) "as a narcotic, tranquilizer, or sedative," 2) at the beginning or end of a basic activity, and 3)automatic smoking behavior. The researcher concludes:

> *It should be noted that there was scarcely any unprompted reference to smoking for "taste," or "flavor," until it was suggested-and then everyone agreed that it was the major element in smoking satisfaction.*

Memorandum from Al Udow, Philip Morris, New York, NY, to Mr. J.J. Morgan. Why People Start to Smoke. June 2, 1976. *In* 141 Cong. Rec. H7665 (daily ed. July 25, 1995).

[590] U.S. Patent No. 3,584,630. Inskeep GE. *Tobacco Product Having Low Nicotine Content Associated with a Release Agent having Nicotine Weakly Absorbed Thereon.* Philip Morris Inc. June 15, 1971. C1:57-58.

[591] Leffingwell JC, Yound HJ. *Tobacco Flavoring for Smoking Products.* Winston-Salem, NC: R.J. Reynolds Tobacco Company; 1972.

[592] Budavari S, O'Neil MJ, Smith A, Heckelman PE, eds. The Merck Index. 11th ed. Rahway, NJ: Merck & Co., Inc. 1989:1030. *The Merck Index* describes nicotine as having "an acrid, burning taste."

[593] *See, e.g.*, U.S. Patent No. 4,830,028. Lawson JW, Bullings BR, Perfetti TA. *Salts Provided from Nicotine and Organic Acid as Cigarette Additives.* R.J. Reynolds Tobacco Company. May 16, 1989. C1. *See also* p. 250 *et seq.*

[594] *See* p. 102. Rose JE, Levin ED. Inter-relationships between conditioned and primary reinforcement in the maintenance of cigarette smoking. *British J. of Addiction.* 1991;86:605-609.

relationship.[595]

The industry's development of nicotine analogues also demonstrates that the industry is more interested in nicotine's pharmacological effects on the central nervous system than in its sensory effects. The focus of industry research has been to develop compounds that will duplicate the pharmacological effects of nicotine on the central nervous system. Nowhere in the referenced tobacco industry documents concerning nicotine analogues is there mention of concern to duplicate any flavor, taste, or other acute sensory effects that may be associated with nicotine. This fact was acknowledged by Dr. DeNoble in his congressional testimony, as evidenced by the following exchange with Congressman Waxman:

> *Waxman: Now, you ran a laboratory that was charged with identifying the essential characteristics of nicotine so that a synthetic form of nicotine could be developed, yet you didn't test for the taste of nicotine. Did you ever hear any serious discussion to the effect that Philip Morris leaves nicotine in cigarettes for taste?*
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> *DeNoble: No, sir. None at all.*[596]

In summary, tobacco industry documents make clear that the industry understands that the pharmacological effects of nicotine explain why there is a market for cigarettes, and why

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[595] BATCO Conference Outline, 1984, note 287, *supra,* at p. BW-W2-01977:

> *An immediate sensory affect [sic] associated with nicotine is the "impact" on inhaling. Is this sensation a genuine part of the reward a smoker is seeking, or is it a "cue", i.e., a smoker has learnt by experience, that if he perceives a particular level of impact, he will subsequently receive an acceptable degree of satisfaction.*

Other BATCO documents refer to a 1969 BATCO study (B-A.T. R. & D.E. Report No. RD.640-R) whose objective was to determine the relationship between "impact" and physiological response. *See, e.g.* BATCO. Relative Contributions of Nicotine and Carbon Monoxide to Human Physiological Response. Nov. 15, 1971. Page 2. RD.640-R was not among the documents provided to Congress by Brown and Williamson.

[596] *Regulation of Tobacco Products (Part 2): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives,* 103 Cong. 2d Sess. 16 (April 28, 1994) (testimony of Victor DeNoble).

nicotine's sensory effects are distinct and quite secondary. Tobacco industry documents concerning nicotine analogues further support the conclusion that the pharmacological effects of nicotine are of much greater importance to the industry than nicotine's sensory effects.

H. INDUSTRY FAILURE TO REMOVE NICOTINE FROM TOBACCO DESPITE AVAILABLE TECHNOLOGY

The tobacco industry has developed, over several decades, technologies to selectively remove nicotine from tobacco. This capability is evidenced by the various patents for methodologies to extract nicotine from tobacco,[597] attempts to market denicotinized cigarettes,[598]

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[597] *See, e.g.:*

U.S. Patent No. 3,139,435. Staley J, Clarke AB. *Process for Selective Extraction of Alkaloid*. Philip Morris Inc. June 30, 1964.

U.S. Patent No. 4,557,280. Gravely LE, Geiss VL, Knobs F, Gregory CF. *Process for Reduction of Nitrate and Nicotine Content of Tobacco by Microbial Treatment*. Brown and Williamson Tobacco Corporation. December 10, 1985.

U.S. Patent No. 3,046,997. Hind JD. *Selective Alkaloid Extraction*. Philip Morris Inc. July 31, 1962.

U.S. Patent No. 4,068,671. Casey WJ. *Nicotine Removal Process*. AMF Inc. January 17, 1978.

U.S. Patent No. 4,821;749. Toft HC, Smith KW, Carpenter CR. *Extruded Tobacco Materials*. R.J. Reynolds Tobacco Company. April 18, 1989.

U.S. Patent No. 5,018,540. Grubbs HJ, Prasad R, Howell TM. *Process for Removal of Basic Materials*. Philip Morris Inc. May 28, 1991.

U.S. Patent No. 5,119,835. Heeman V, Schmekel G, Ebling U, Hauser B, Koene CH, Rabitz H. *Method for Extracting Tobacco Alkaloids*. B.A.T. Cigarettenfabriken GmbH. June 9, 1992.

U.S. Patent No. 4,898,188. Niven Jr BF, Mays CD. *Tobacco Processing*. R.J. Reynolds Tobacco Company. February 6, 1990.

U.S. Patent No. 4,967,771. Fagg BS, Frederickson JD. *Process for Extracting Tobacco*. R.J. Reynolds Tobacco Company. November 6, 1990.

U.S. Patent No. 4,150,677. Osbourne Jr JS, Hartung HA, Bebbs Jr JF. *Treatment of Tobacco*. Philip Morris Inc. April 24, 1979.

U.S. Patent No. 5,065,775. Fagg BS. *Tobacco Processing*. R.J. Reynolds Tobacco Company. November 19, 1991.

European Patent No. 280,817. Grubbs HJ, Prasad H, Howell TM. *Process for Removal of Basic Materials*. Philip Morris Inc. Filed on December 24, 1987.

[598] Citizen Petition submitted by the American Heart Association, the American Lung Association and the American Cancer Society, acting as the Coalition on Smoking OR Health, to the U.S. Food and Drug

and industry practices.[599] Despite these denicotinization methods, the tobacco industry uniformly leaves nicotine, an addictive substance, in cigarettes and smokeless tobacco products at levels that are high enough to maintain a pharmacological response in consumers. See FINDINGS § I.C. The fact that tobacco manufacturers could remove an addictive substance from their products, yet choose to leave nicotine in their products at specified levels, demonstrates the tobacco industry's intent to market products that affect the structure and function of the body.

FDA recognizes that the mere existence of a patent is not confirmation that the patent holder is using the invention claimed in the patent. Evaluation of the type and scope of patent assignments to an individual company does, however, provide evidence of the capabilities and interests of the individual company. Taken as a whole, evaluation of these particular patents demonstrates the tobacco industry's capabilities and technologies available for removing nicotine from tobacco.

Patents assigned to several of the major cigarette manufacturers demonstrate that the industry has been investigating, and has at its disposal, various ways to remove nicotine from tobacco. Many of these patents are for technologies that selectively remove nicotine while maintaining the integrity and utility of the rest of the tobacco.[600]

Administration, requesting Classification of "NEXT" and other DeNicotinized Cigarettes as Drugs under the Food, Drug, and Cosmetic Act. FDA Docket No. 91P-0144, submitted April 8, 1991.

[599] Browne C. *The Design of Cigarettes*. Hoechst Celanese. 1990. Page 43. (The process of manufacturing reconstituted tobacco removes nicotine from the tobacco and most cigarettes contain about 20% reconstituted tobacco.)

[600] *See:*
U.S. Patent No. 3,139,435, note 597, *supra.*

More than 30 years ago Philip Morris was assigned a patent that "relates to an efficient process for selective extraction of nicotine and other alkaloids from tobacco while not materially affecting the content or properties of waxes, aromatics, flavoring, and other constituents of the tobacco."[601] Philip Morris subsequently patented an invention that the company claimed improved prior processes in the ability to extract nicotine from tobacco.[602] The claimed improved invention provided a "simpler and less expensive means for removing nicotine."[603]

R.J. Reynolds also has patented several solvent extraction processes which first produce a tobacco extract and then denicotinize the extract.[604] One particular patent is for a process that removes and then redistributes certain components of a tobacco material.[605] The patent describes the ability to provide a denicotinized tobacco material in which 95% of the nicotine is removed.

A different type of patented extraction process that significantly reduces the nicotine content of tobacco uses ammonia as an exudant. RJR was assigned a patent for this type of denicotinization process.[606]

U.S. Patent No. 3,046,997, note 597, *supra.*
U.S. Patent No. 5,018,540, note 597, *supra.*
U.S. Patent No. 4,967,771, note 597, *supra.*
U.S. Patent No. 4,068,671, note 597, *supra.*

[601] *See* U.S. Patent No. 3,046,997, note 597, *supra.*

[602] *See* U.S. Patent No. 3,139,435, note 597, *supra.*

[603] *Id.* at C:51-52.

[604] *See* U.S. Patent No. 4,967,771, note 597, *supra,* at C2:31-33. (Provides for the removal of greater than 95% weight percent of the nicotine.)

See also U.S. Patent No. 5,065,775, note 597, *supra.*

[605] *Id.* U.S. Patent No. 5,065,775, C1:39-43.

[606] *See* U.S. Patent No. 4,821,749, note 597, *supra.*

Several cigarette manufacturers, including Philip Morris, BATCO, and RJR, have been awarded patents over the last 5 years for supercritical extraction[607] procedures that can selectively remove nicotine from tobacco.[608] In a Philip Morris patent for a supercritical extraction process, the patent states that one of the objects of the invention is transferring "nicotine from one tobacco substrate (leaf material or reconstituted leaf) to a second tobacco substrate (leaf material, reconstituted leaf material, or tobacco stems) or to a non-tobacco substrate."[609] An RJR patent describes the company's patented process for extracting tobacco components from tobacco material for transfer to a "smokable material" that is "suitable for use and/or processing for the manufacture of . . . cigarettes."[610] The component to be extracted, as claimed in the patent, is nicotine.[611]

Brown and Williamson and its parent company, BATCO, have patented several processes

[607] Supercritical extraction processes use solvents that are in their supercritical state. This means that the solvent is above its critical point with respect to temperature and pressure. (U.S. Food and Drug Administration. Center for Food Safety and Nutrition. Office of Plant & Dairy Foods and Beverages. Division of Natural Products. What is Supercritical Fluid? Standard Guide for Supercritical Fluid Chromatography Terms and Relationships.) Most of the patents use carbon dioxide (CO_2) as the solvent. As described in one of the patents, critical CO_2 occurs when the CO_2 temperature is above its critical temperature of 31.3° C in its gaseous phase under high pressure, e.g., 70 to 1500 atmospheres pressure. U.S. Patent No. 4,153,063. Roselius W, Vitzthum O, Hubert P. *Process for the Extraction of Nicotine from Tobacco.* Studiengesellschaft Kohle mbH. May 8, 1979. C-1.

[608] *See:*
U.S. Patent No. 5,018,540, note 597, *supra.*
U.S. Patent No. 5,119,835, note 597, *supra.*
U.S. Patent No. 4,153,063, note 607, *supra.*
U.S. Patent No. 4,898,188, note 597, *supra.*
European Patent No. 280,817, note 597, *supra.*

[609] *See* U.S. Patent No. 5,018,540, note 597, *supra,* at C2:39-43.

[610] *See* U.S. Patent No. 4,898,188, note 597, *supra,* at C5:12-14.

[611] *Id.* at C9:10-11.

for denicotinizing tobacco by exposing the tobacco to microbes.[612] The processes in these patents are based on the recognition that when tobacco is inoculated with certain types of microorganisms for a specified period of time the nicotine is degraded. The longer the tobacco is exposed to the microorganism, the more nicotine is degraded.

Further evidence of the ability of the tobacco industry to remove nicotine is seen in the marketing of a cigarette that was advertised as "de-nicotined." In 1989, Philip Morris test-marketed a cigarette, NEXT, that contained less than 0.1 milligrams of nicotine. The company's own advertisements for NEXT announced that a process called the "FreePLUS" system "naturally extract[s] nicotine from fine tobaccos, . . . with rich tobacco flavor and less than 0.1 mg nicotine."[613] This product was withdrawn from the market shortly after it was introduced for test-marketing.

Despite this arsenal of nicotine-removing technologies, all brands of currently marketed cigarettes contain levels of nicotine that are sufficient to maintain a pharmacological response in smokers. Although cigarette manufacturers have the ability to market denicotinized tobacco products, to date there has not been any serious attempt, except for NEXT cigarettes, to market these types of products. All cigarettes on the market today have, and deliver, levels of nicotine

[612] *See:*
U.S. Patent No. 4,557,280, note 597, *supra.*

U.S. Patent No. 4,037,609. Newton RP, Geiss VL, Knobs F, Jewell JN, Gravely LE. *Process for Reduction of Nicotine Content of Tobacco by Microbial Treatment.* Brown and Williamson Tobacco Corporation. July 26, 1977.

U.S. Patent No. 4,038,993. Geiss VL, Knobs F, Gregory CF, Newton RP, Gravely LE. *Process for Reduction of Nicotine Content of Tobacco by Microbial Treatment.* Brown and Williamson Tobacco Corporation. August 2, 1977.

[613] Package label for NEXT brand cigarettes.

that maintain an addiction to the product. These levels are deliberately maintained by the manufacturers. Because tobacco manufacturers can control the amount of nicotine, and even remove nicotine altogether if they choose, it is evident that manufacturers intend to market cigarettes and smokeless tobacco products that affect the structure and function of the body.

PART THREE: REGULATORY OBJECTIVES

Smoking and other tobacco use is the single leading cause of preventable death in the United States. Each year, over one million children and adolescents begin using tobacco products. Most eventually become addicted. Any program devised by the Agency should be comprehensive, effective, and designed to prevent young people from experimenting with and becoming addicted to nicotine.

Currently 3 million young people are regular smokers and another 1 million use smokeless tobacco.[614] Every day another 3,000 children and teenagers become regular smokers.[615] Although adult rates continue to decline, the prevalence of smoking by young people has not declined for the last decade.[616] In fact, between 1992 and 1993, the prevalence of smoking among high school seniors increased from 17.2% to 19%.[617] Additionally, smoking among college freshmen increased from 9% in 1985 to 12.5% in 1994.[618] However, by the time

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[614] U.S. Department of Health and Human Services. Preventing Tobacco Use Among Young People: A Report of the Surgeon General. 1994. Page 58.

[615] Institute of Medicine. Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths. National Academy Press. 1994. Page 5.

[616] *See:*
CDC. Cigarette Smoking Among Adults - United States, 1993. *MMWR.* 43:925-930. Dec. 23, 1994.

U.S. Department of Health and Human Services. Reducing the Health Consequences of Smoking: 25 Years of Progress, A Report of the Surgeon General. 1989. Page 269.

Institute of Medicine. Growing Up Tobacco Free: Preventing Tobacco Addiction in Children and Youths, *supra* at pp. 7-8.

[617] The University of Michigan. Monitoring the Future Study. January 27, 1994. Table 1 - "Trends in Prevalence of Various Drugs for Three Populations: Eight, Tenth, and Twelfth Grades."

[618] Washington Post, January 9, 1995. Page A2, col. 3.

young people are smoking regularly, they already regret having started.[619] A 1992 Gallup Survey confirmed this, showing that 70% of regular adolescent smokers regretted having begun to smoke and wished they could quit. If an adolescent's cigarette or smokeless tobacco use continues into adulthood, he or she may ultimately become one of the over 400,000 Americans who die from tobacco-caused diseases each year.[620]

Most adult smokers became regular smokers as youngsters. Among those adults who ever smoked regularly, nearly 90% began to smoke, and more than 70% became regular smokers, by age 18.[621] It is clear, therefore, that if smoking does not begin in childhood or adolescence, it is unlikely that it will ever begin. Thus, addiction to nicotine-containing tobacco products is, first and foremost, a pediatric disease.

FDA regulatory action should be based on a youth-centered strategy that is intended to reduce the risk that future generations of Americans will become dependent on nicotine without prohibiting access to these products by adults. The Agency recognizes the need for cigarettes and smokeless tobacco products to remain available to adults, because millions of American adults use and are addicted to these products. The potential disruption to society resulting from the elimination of tobacco products would be great, and therefore FDA does not intend to remove them from the market.

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[619] George A. Gallup International Institute. Teenage Attitudes and Behavior Concerning Tobacco - Report of the Findings. Princeton, New Jersey. 1992.

[620] U.S. Department of Health and Human Services. Reducing The Health Consequences of Smoking: 25 Years of Progress, A Report of the Surgeon General. 1989. Page 5.

[621] U.S. Department of Health and Human Services, Preventing Tobacco Use Among Young People, A Report of the Surgeon General, *supra,* at pp. 63-65.

A comprehensive and effective regulatory approach should be designed to reduce the many avenues of easy access to tobacco products available to children and teenagers, and to make it harder for young people to buy these products. The Agency should also act to reduce the powerful and alluring imagery used in tobacco advertising and promotion that tends to encourage impressionable young people to initiate tobacco use, and should attempt to enhance the positive image of a smoke-free generation. Further, such actions should seek to educate people about the specific and relevant health risks associated with tobacco use and to disseminate information about quitting.[622]

---

[622] The issues discussed in the "Regulatory Objectives" section were also addressed by David A. Kessler, M.D., Commissioner of Food and Drugs, in a speech at the Columbia University School of Law on March 8, 1994. A copy of the speech appears in Appendix 9.

Dated: August 8, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–20052 Filed 8–10–95; 8:45 am]

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Part VI

The President

Memorandum of August 8, 1995—
Expediting Community Right-to-Know
Initiatives

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Title 3—

The President

Memorandum of August 8, 1995

Expediting Community Right-to-Know Initiatives

Memorandum for the Administrator of the Environmental Protection Agency and the Heads of Executive Departments and Agencies

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) ("EPCRA") and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) provide an innovative approach to protecting public health and the environment by ensuring that communities are informed about the toxic chemicals being released into the air, land, and water by manufacturing facilities. I am committed to the effective implementation of this law, because Community Right-to-Know protections provide a basic informational tool to encourage informed community-based environmental decision making and provide a strong incentive for businesses to find their own ways of preventing pollution.

The laws provide the Environmental Protection Agency with substantial authority to add to the Toxics Release Inventory under EPCRA: (1) new chemicals; (2) new classes of industrial facilities; and (3) additional types of information concerning toxic chemical use at facilities. Community Right-to-Know should be enhanced wherever possible as appropriate. EPA currently is engaged in an on-going process to address potential facility expansion and the collection of use information. I am committed to a full and open process on the policy issues posed by EPA's exercise of these authorities.

So that consideration of these issues can be fully accomplished during this Administration, I am directing the Administrator of the Environmental Protection Agency, in consultation with the Office of Management and Budget and appropriate Federal agencies with applicable technical and functional expertise, as necessary, to take the following actions:

(a) Continuation on an expedited basis of the public notice and comment rulemaking proceedings to consider whether, as appropriate and consistent with section 313(b) of EPCRA, 42 U.S.C. 11023(b), to add to the list of Standard Industrial Classification ("SIC") Code designations of 20 through 39 (as in effect on July 1, 1985). For SIC Code designations, see "Standard Industrial Classification Manual" published by the Office of Management and Budget. EPA shall complete the rulemaking process on an accelerated schedule.

(b) Development and implementation of an expedited, open, and transparent process for consideration of reporting under EPCRA on information on the use of toxic chemicals at facilities, including information on mass balance, materials accounting, or other chemical use date, pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A). EPA shall report on the progress of this effort by October 1, 1995, with a goal of obtaining sufficient information to be able to make informed judgments concerning implementation of any appropriate program.

These actions should continue unless specifically prohibited by law. The head of each executive department or agency shall assist the Environmental Protection Agency in implementing this directive as quickly as possible.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any person.

The Director of the Office of Management and Budget is authorized and directed to publish this Memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 8, 1995.

[FR Doc. 95–20111
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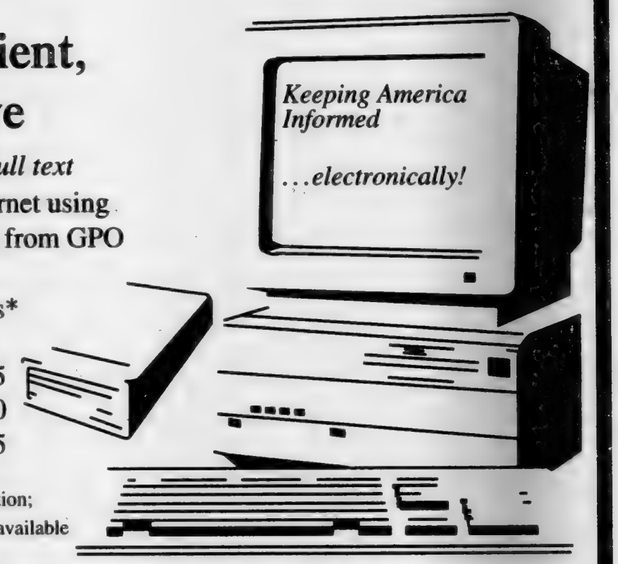
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Monday, August 14, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–151–AD; Amendment 39–9333; AD 95–17–04]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Jetstream Model ATP airplanes, that currently requires revising the Airplane Flight Manual (AFM) to prohibit flight in freezing precipitation conditions. This amendment adds a requirement to install modifications of the engine air intake system. This amendment is prompted by the development of modifications of the engine air intake system intended to permit operation of these airplanes in freezing precipitation conditions. The actions specified by this AD are intended to prevent engine power rollback in flight during freezing precipitation conditions.

DATES: Effective September 13, 1995.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the **Federal Register** as of September 13, 1995.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the **Federal Register** as of June 15, 1994 (59 FR 25290, May 16, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–08–01, amendment 39–8872 (59 FR 25290, May 16, 1994), which is applicable to all Jetstream Model ATP airplanes, was published in the **Federal Register** on December 29, 1994 (59 FR 67243). The action proposed to require certain actions that were previously optional terminating actions. The action also proposed to provide several new optional terminating actions. Additionally, the action proposed to revise the applicability of the rule.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 150 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $90,000, or $9,000 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8872 (59 FR 25290, May 16, 1994), and by adding a new airworthiness directive (AD), amendment 39–9333, to read as follows:

95–17–04 Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Amendment 39–9333. Docket 94–NM–151–AD. Supersedes AD 94–08–01, Amendment 39–8872.

Applicability: Model ATP airplanes, as listed in Jetstream Service Bulletin ATP 54–

13–35274B, Revision 2, dated August 18, 1994, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of multiple engine power during flight in freezing precipitation, accomplish the following:

(a) Within 30 days after June 15, 1994 (the effective date of AD 94–08–01, amendment 39–8872), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Flight is prohibited into forecast or reported freezing precipitation conditions where the outside air temperature is between +5°C and −5°C."

(b) Within 72 days after the effective date of this AD, accomplish the actions specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6), which will constitute terminating action for the AFM revision required by paragraph (a) of this AD. Once these actions are completed, the AFM revision required by paragraph (a) may be removed.

(1) Revise the Limitations Section and the Normal Procedures Section of the FAA-approved AFM, to include the information specified in Temporary Revision T/33, Issue 1, dated November 1, 1993, and Temporary Revision T/38, Issue 1, dated February 16, 1994, which introduce procedures for operation in icing conditions, as specified in the temporary revision; and operate the airplane in accordance with those limitations and procedures.

Note 2: This may be accomplished by inserting copies of Temporary Revision T/33 and T/38 in the AFM. When these temporary revisions have been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in Temporary Revision T/33 and T/38.

(2) Incorporate a revision into the FAA-approved maintenance program that provides for replacement of engine igniter plugs at the intervals specified in Jetstream Service Bulletin ATP–80–06, Revision 1, dated October 22, 1993, or Revision 2, dated October 16, 1994. Initial replacement of an engine igniter plug with a new plug shall be accomplished prior to the accumulation of 200 total hours time-in-service on the engine igniter plug, or within 50 hours time-in-service after incorporating the maintenance program revision, whichever occurs later.

(3) Install an eductor plate over the exhaust port of the engine air intake system in accordance with Jetstream Service Bulletin ATP–54–12–35274A, dated September 28, 1993, or Revision 1, dated December 15, 1993. Any eductor plate installed in accordance with the original issue of the service bulletin must be inspected for any aperture profile mismatch, in accordance with paragraph 2., Part B., of the Accomplishment Instructions of Revision 1 of the service bulletin. If any mismatch is found that exceeds the limit specified in that service bulletin, prior to further flight, correct the discrepancy in accordance with paragraph 2., Part C, of Revision 1 of the service bulletin.

(4) For airplanes having constructor's numbers 2007, 2010 through 2016 inclusive, 2020 through 2022 inclusive, 2028, 2029, 2032, 2034 through 2037 inclusive, 2041 through 2044 inclusive, 2051, 2053, and 2056: Install engine air inlet ducts that incorporate electrical de-ice heaters with increased power and area, and perform associated electrical system changes, in accordance with the Accomplishment Instructions, in Jetstream Service Bulletin ATP–54–13–35274B, dated October 9, 1993, or Parts A through F of Revision 1, dated July 8, 1994, or Revision 2, dated August 18, 1994.

(5) For airplanes having constructor's numbers 2002 through 2006 inclusive, 2008, 2009, 2017 through 2019 inclusive, 2023 through 2027 inclusive, 2030, 2031, 2033, 2038 through 2040 inclusive, 2045 through 2050 inclusive, 2052, 2054 through 2055 inclusive; and 2057 through 2063 inclusive: Install engine air inlet ducts that incorporate electrical de-ice heaters with increased power, in accordance with the Accomplishment Instructions, Part G, of Jetstream Service Bulletin ATP–54–13–35274B, Revision 2, dated August 18, 1994.

Note 3: Installation of engine air inlet ducts in accordance with Jetstream Service Bulletin ATP–54–15–35274E, dated July 27, 1994, is considered acceptable for compliance with either paragraph (b)(4) or (b)(5) of this AD.

(6) Revise the FAA-approved maintenance program to include repetitive visual inspections for damage of the heater mats at intervals not to exceed 50 hours time-in-service, in accordance with Jetstream Service Bulletin ATP–54–14, dated October 14, 1993; and, if any damage is found, prior to further flight, replace the engine air intake in accordance with the service bulletin.

(c) The following installations on both engines constitute terminating action for the repetitive replacement of the engine igniter plugs required by paragraph (b)(2) of this AD:

(1) Installation of new de-ice timers in accordance with Jetstream Service Bulletin ATP–30–39–30146A, dated July 29, 1994,

(2) Wiring changes to incorporate automatic duct heat when engine air intake lip heat is selected "on," in accordance with Jetstream Service Bulletin ATP–30–37–30143A, dated August 1, 1994, or Revision 1, dated September 5, 1994, and

(3) Installation of an engine automatic ignition system in accordance with Jetstream Service Bulletin ATP–80–7–30141A, Revision 2, dated November 4, 1994; and an associated revision of the FAA-approved Airplane Flight Manual (AFM) by incorporating the information contained in Temporary Revision T/42, Issue 1, dated August 12, 1994.

(d) For airplanes on which the engine air intake (Modification 35274E) has been installed in accordance with Jetstream Service Bulletin ATP–54–15–35274E, dated July 27, 1994: The installation of engine duct de-ice overheat protection (Modification 35274D) in accordance with Jetstream Service Bulletin ATP–30–44–35274D, dated August 12, 1994, constitutes terminating action for the repetitive inspections required by paragraph (b)(6) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with the following documents, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
Temporary Revision T/42	1–18	1	August 12, 1994.
Issue 1, August 12, 1994	3–7	Original	March 2, 1993.
ATP 30–37–30143A, August 1, 1994	1–15	Original	August 1, 1994.
ATP 30–37–30143A, Revision 1, September 5, 1994.	1–3, 5–10, 14–17	1	September 5, 1994.
	4, 11–13	Original	August 1, 1994.
ATP–30–39–30146A, July 29, 1994	1–7	Original	July 29, 1994.
ATP–30–44–35274D, August 12, 1994	1–56	Original	August 12, 1994.
ATP–54–13–35274B, Revision 1, July 8, 1994	1–45	1	July 8, 1994.
ATP–54–13–35274B, Revision 2, August 18, 1994	1–4, 9, 10	2	August 18, 1994.
	5–8, 11–45	1	July 8, 1994.
ATP–80–06, Revision 2, October 16, 1994	1–6	2	October 16, 1994.
ATP–80–7–30141A, Revision 2, November 4, 1994.	1, 3, 5–8, 11, 14, 17, 18, 20–28, 36, 38, 45, 46, 51–55.	2	November 4, 1994.
	2, 4, 9, 10, 12, 13, 15, 16, 19, 29–35, 37, 39–44, 47–50.	Original	August 1, 1994.

This incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of June 15, 1994 (59 FR 29290, May 16, 1994). Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 13, 1995.

Issued in Renton, Washington, on July 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19231 Filed 8–11–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–14–AD; Amendment 39–9330; AD 95–17–01]

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, that currently requires repetitive visual and dye penetrant inspections to detect cracks in areas of the upper forward skin panels of the wing center section, and repair, if necessary. It also provides an optional terminating modification for the repetitive inspections. This amendment requires repetitive visual and eddy current inspections to detect cracks in areas of the upper forward skin panels of the wing center section, and repair, if necessary. This amendment is prompted by reports indicating that the inspections required by the existing AD are not effective in detecting fatigue cracks in a timely manner. The actions specified by this AD are intended to prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section.

DATES: Effective on September 13, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 13, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 7, 1995 (60 FR 7143). That supplemental NPRM proposed to supersede AD 68–18–03, amendment 39–2056. That AD currently requires repetitive visual and dye penetrant inspections to detect cracks on the upper forward skin panels of the wing center section, and repair, if necessary. It also provides an optional terminating modification for the repetitive inspections. The supplemental NPRM proposed to require repetitive visual and eddy current inspections to detect cracks on the upper forward skin panels of the wing center section, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requests that paragraph (e) of the proposal be revised to allow that the terminating action specified in that paragraph be accomplished in accordance with procedures contained in revisions prior to Revision 6 of Boeing Service Bulletin 2590, provided that, in addition to the installation of reinforcing stiffeners, the forward skin panel is replaced. The commenter indicates that the modifications described in these earlier revisions of the service bulletin are identical to those specified in Revisions 6 and subsequent. The commenter adds that the "aging fleet document" (Boeing Document D6–54496), which addresses the affected airplanes, specifies that modifications accomplished in accordance with the original issue through Revision 8 of Boeing Service Bulletin 2590 are considered to be terminating action, provided that new forward skin panels are installed. The commenter states that the inconsistency

between the proposal and the "aging fleet document" in this regard has caused confusion among some operators as to whether airplanes modified in accordance with earlier revisions of the service bulletin are considered to be in compliance with the proposed AD.

The FAA concurs partially. The FAA has re-examined the earlier revisions of the service bulletin, and has determined that the original issue and Revisions 1 through 3 of the service bulletin were issued as telegraphic documents. These revisions do not adequately address procedures for accomplishing the terminating modifications in sufficient detail. Therefore, the FAA does not consider these revisions to be acceptable for accomplishment of the terminating modification specified in this AD. However, Revision 4 does provide adequate procedures for accomplishing the terminating modification for Model 720 series airplanes, provided that the forward skin panel also is replaced in accordance with the service bulletin. In addition, Revision 5 contains adequate information for accomplishment of the terminating modification for both Model 707 and 720 series airplanes, provided that the forward skin panel also is replaced in accordance with the service bulletin. These determinations have been specified in paragraphs (e) and (f) of the final rule for Models 707 and 720 series airplanes, respectively.

Certain service bulletin titles were referenced incorrectly in NOTE 2 and paragraphs (c)(1), (c)(2), and (c)(3) of the supplemental NPRM as "Boeing Master Inspection Service Bulletins." The appropriate titles for these service documents are "Boeing Service Bulletins." The FAA has revised the note and those paragraphs of the final rule accordingly. In addition, the FAA has added references to specific page numbers of those service bulletins for the convenience of operators.

In addition, paragraph (e) of the supplemental NPRM did not specify that Revision 6 of Boeing Service Bulletin 2590 was issued as an alert service bulletin. The final rule has been revised accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 416 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 82 airplanes of U.S. registry will be affected by this AD, that it will take approximately 32 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $157,440, or $1,920 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, it will take approximately 1,250 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts is approximately $45,000 per airplane. Based on these figures, the total cost impact of the optional terminating action is estimated to be $120,000 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–2056, and by adding a new airworthiness directive (AD), amendment 39– , to read as follows:

95–17–01 Boeing: Amendment 39–9330. Docket 94–NM–14–AD. Supersedes AD 68–18–03, Amendment 39–2056.

Applicability: Model 707 and 720 series airplanes; as listed in Boeing Service Bulletin 2590, Revision 11, dated December 12, 1991; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and subsequent failure of the upper forward skin panels of the wing center section, accomplish the following:

(a) For Model 707–100, –200, –300, –300B, –300C, and –400 series airplanes on which no bulb angle stiffeners have been installed in accordance with Boeing Service Bulletin 2590: Perform a visual inspection and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in paragraphs b. and f.(1) of Part I of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991. Perform the inspections at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with the procedures specified in the service bulletin. Repeat these inspections thereafter at intervals not to exceed 450 landings.

(1) For Model 707–300, –300B, –300C, and –400 series airplanes: Inspect at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 6,000 total landings; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(2) For Model 707–100 and –200 series airplanes: Inspect at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 6,400 total landings; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(b) For Model 720 and 720B series airplanes on which no bulb angle stiffeners have been installed in accordance with Boeing Service Bulletin 2590: Perform a visual inspection and an eddy current inspection to detect cracks in the area of the upper forward skin of the wing center section specified in paragraph b. of Part I of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991. Perform the inspections at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD, in accordance with the procedures specified in the service bulletin. Repeat these inspections thereafter at intervals not to exceed 450 landings.

(1) Prior to the accumulation of 4,000 total landings; or

(2) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(c) For Model 720 and 720B, and 707–100, –200, –300, –300B, –300C, and –400 series airplanes on which bulb angle stiffeners have been installed, but on which the wing skin has not been replaced, in accordance with Boeing Service Bulletin 2590: Accomplish the inspections required by paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable, in accordance with Boeing Service Bulletin 2590, Revision 11, dated December 12, 1991. Repeat these inspections thereafter at intervals not to exceed 1,000 landings.

Note 2: Revision 11 of Boeing Service Bulletin 2590 is part of Boeing Service Bulletins 3484 (for Model 707–100 and –200 series airplanes), 3485 (for Model 720 and 720B series airplanes), and 3486 (for Model 707–300, –300B, –300C, and –400 series airplanes), all dated December 12, 1991. Boeing Service Bulletin 2590 references these service bulletins as additional sources of service information concerning accomplishment of the inspections required by paragraph (c) of this AD.

(1) For Model 720 and 720B series airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified on pages 34 and 35 of Boeing Service Bulletin 3485, dated December 12, 1991, at the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(2) For Model 707–300, –300B, –300C, and –400 series airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified on page 55 of Boeing Service Bulletin 3486, dated December 12, 1991, at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(3) For Model 707–100 and –200 series airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified on pages 37 and 38 of Boeing Service Bulletin 3484, dated December 12, 1991, at the later of the times specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(d) If any crack is found during any inspection required by paragraph (a), (b), or (c) of this AD, prior to further flight, repair in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 7, dated September 22, 1969; Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991.

(e) For Model 707 series airplanes: Accomplishment of the "Reinforcing Stiffener Installation and Skin Panel Replacement" in accordance with Part III of the Accomplishment Instructions of Boeing Alert Service Bulletin 2590, Revision 6, dated July 8, 1968; Boeing Service Bulletin 2590, Revision 7, dated September 22, 1969, Revision 8, dated June 2, 1972, Revision 9, dated March 14, 1975, Revision 10, dated January 31, 1991, or Revision 11, dated December 12, 1991; constitutes terminating action for the inspections required by paragraphs (a), (b), and (c) of this AD. Accomplishment of the reinforcement and replacement in accordance with Boeing Alert Service Bulletin 2590, Revision 4, dated May 26, 1967, or Revision 5, dated September 20, 1967, also is considered acceptable for compliance with paragraph (f) of this AD provided that the forward skin panel also is replaced in accordance with that service bulletin.

(f) For Model 720 series airplanes: Accomplishment of the "Reinforcing Stiffener Installation and Skin Panel Replacement" in accordance with Part III of the Accomplishment Instructions of Boeing Alert Service Bulletin 2590, Revision 6, dated July 8, 1968; Boeing Service Bulletin 2590, Revision 7, dated September 22, 1969, Revision 8, dated June 2, 1972, Revision 9, dated March 14, 1975, Revision 10, dated January 31, 1991, or Revision 11, dated December 12, 1991; constitutes terminating action for the inspections required by paragraphs (a), (b), and (c) of this AD. Accomplishment of the reinforcement and replacement in accordance with Boeing Alert Service Bulletin 2590, Revision 4, dated May 26, 1967, or Revision 5, dated September 20, 1967, also is considered acceptable for compliance with paragraph (f) of this AD provided that the forward skin panel also is replaced in accordance with that service bulletin.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with the following service documents:

Boeing Alert Service Bulletin 2590, Revision 4, dated May 26, 1967;
Boeing Alert Service Bulletin 2590, Revision 5, dated September 20, 1967;
Boeing Alert Service Bulletin 2590, Revision 6, dated July 8, 1968;
Boeing Service Bulletin 2590, Revision 7, dated September 22, 1969;
Boeing Service Bulletin 2590, Revision 8, dated June 2, 1972;
Boeing Service Bulletin 2590, Revision 9, dated March 14, 1975;
Boeing Service Bulletin 2590, Revision 10, dated January 31, 1991;
Boeing Service Bulletin 2590, Revision 11, dated December 12, 1991;
Pages 37 and 38 of Boeing Service Bulletin 3484, dated December 12, 1991;
Pages 34 and 35 of Boeing Service Bulletin 3485, dated December 12, 1991; and
Pages 55 and 56 of Boeing Service Bulletin 3486, dated December 12, 1991.

Boeing Alert Service Bulletin 2590, Revision 6, dated July 8, 1968, contains the following specified effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3–5, 7, 9, 10, 14, 16	6	July 8, 1968.
2, 6, 8, 11–13, 15	5	September 20, 1967.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on September 13, 1995.

Issued in Renton, Washington, on July 28, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–19120 Filed 8–11–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Docket No. 95–ANE–24]

Revocation of Class D and Class E Airspace; Limestone, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Class D and Class E airspace areas established at the former Loring Air Force Base, and amends the Class E airspace at the Northern Maine Regional Airport at Presque Isle, ME, to delete that portion of that airspace in the vicinity of Loring AFB. This action is necessary since Loring AFB is no longer in operation, all standard instrument approach procedures to Loring AFB have been canceled, and the air traffic control tower at Loring AFB is closed.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7536; fax: (617) 238–7596.

SUPPLEMENTARY INFORMATION:

History

On May 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by removing the Class D and Class E airspace areas established at the former Loring Air Force Base (AFB) in Limestone, ME, and by revising the Class E airspace area established in the vicinity of the Northern Maine Regional Airport at Presque Isle, ME. That action was prompted by the cancellation of all standard instrument approach procedures (SIAP's) to the former Loring AFB, which followed the closing of the control tower at Loring AFB.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class D and Class E airspace areas are published in FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. Class D areas appear in paragraph 5000 of FAA Order 7400.9B, and Class E areas designated as extensions to Class D areas appear in paragraph 6004 and Class E areas extending upward from 700 feet or more above the surface of the earth appear in paragraph 6005. The Class D and Class E airspace designations in this document would be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes the Limestone, ME Class D area and the Limestone, ME Class E area, and revises the Presque Isle, ME Class E area by deleting the portion of that airspace in the vicinity of the former Loring AFB.

The FAA has determined that this rule involves only established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a rountine matter that will only affect air traffic procedure and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

If consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority. 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR. 1959–1963, Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ANE ME D Limestone, ME [Removed]

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area

* * * * *

ANE ME E4 Limestone, ME [Removed]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE CT E5 Preque Isle, ME [Revised]

Northern Maine Regional Airport at Presque Isle, ME
(Lat. 46°41'20" N, long. 62°02'41" W)
Presque Isle VORTAC
(Lat. 46°46'27" N, long. 68°05'40" W)
EXCAL LOM
(Lat. 46°36'37" N, long. 68°01'08" W)
Caribou Municipal Airport, ME
(Lat. 46°52'17" N, long. 68°01'04" W)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Northern Maine Regional Airport at Presque Isle, and within 3 miles on each side of the EXCAL LOM 165° bearing extending from the 11-mile radius to 9.2 miles south of the EXCAL LOM, and within 4 miles east and 8 miles west of the Presque Isle VORTAC 340° radial extending from the 11-mile radius to 16 miles northwest of the Presque Isle VORTAC, and within an 8.5-mile radius of Caribou Municipal Airport, ME; excluding that airspace outside of the United States.

* * * * *

Issued in Burlington, MA, on August 4, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–19906 Filed 8–11–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 95–ANE–23]

Establishment of Class E Airspace; Portland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will establish Class E airspace in the vicinity of the Portland International Jetport, Portland, ME, that coincides with the hours that the associated radar approach control facility is not in operation. This action does not change the designated boundaries or altitudes of the Portland Class C airspace, but only establishes the necessary Class E airspace to provide sufficient controlled airspace for those aircraft operating under instrument flight rules (IFR) in the vicinity of the Portland International Jetport when the Portland Air Traffic Control Tower (ATCT) and Terminal Radar Control Approach Facility (TRACON) are not in operation.

EFFECTIVE DATE: 0901 UTC, September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7536; fax: (617) 238–7596.

SUPPLEMENTARY INFORMATION:

History

On May 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace in the vicinity of the Portland International Jetport, Portland, ME. That action was prompted by the need to establish the necessary Class E airspace to provide sufficient controlled airspace for those aircraft operating under instrument flight rules (IFR) in the vicinity of the Portland International Jetport when the Portland Air Traffic Control Tower (ATCT) and Terminal Radar Control Approach Facility (TRACON) are not in operation. Since the Portland Class C airspace is predicated on an operational ATCT and serviced by a TRACON, Class E airspace must be defined for the hours when that facility is not in operation. This action does not change the designated boundaries or altitudes of the Portland Class C airspace. The hours of operation for the Portland ATCT are published by a Notice to Airman (NOTAM) and thereafter in the Airport/Facility Directory.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation in this document would be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at the Portland International Jetport, Portland, ME.

The FAA has determined that this rule involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It therefore: (1) Is not a "significant regulatory action" under Executive Order 12866 (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a) 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ANE ME E2 Portland International Jetport, ME [New]

Portland International Jetport, ME
(Lat. 43°38'46" N, long. 70°18'31" W)

Within a 5-mile radius of the Portland International Jetport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Burlington, MA, On August 4, 1995.

John J. Boyce,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 95–19907 Filed 8–11–95; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1117

Reporting Choking Incidents to the Consumer Product Safety Commission Pursuant to the Child Safety Protection Act; Revision to Interpretative Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Revision to final interpretative rule.

SUMMARY: The Child Safety Protection Act ("CSPA") requires manufacturers, distributors, retailers, and importers of marbles, small balls, latex balloons, and toys or games that contain such items or other small parts, to report to the Commission when they learn of choking incidents involving such products. On February 27, 1995, the Commission issued a rule interpreting the reporting requirements of the CSPA, but left open the question of whether the reporting requirement applies to toys or games that are exempt from the Commission's

small parts banning rule (16 CFR Part 1501). This revision states that the reporting requirements apply to toys and games that would otherwise be exempt from the Commission's small parts regulation. The revision also clarifies that firms must report any time a child chokes on a small part from a toy or game regardless of whether the part was a small part at the time the product was distributed or sold.

DATES: This regulation becomes effective on September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Office of Compliance and Enforcement, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (Mailing address: Washington, D.C. 20207), telephone (301) 504–0626 extension 1350.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102 of the Child Safety Protection Act of 1994 (Public Law 103–267, 108 Stat. 722, June 16, 1994) requires, inter alia, that each manufacturer, distributor, retailer and importer of a toy or game that contains a small part report to the Commission information that reasonably supports the conclusion that an incident occurred in which a child choked on the small part and died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. On February 27, 1995, the Commission published a final interpretative rule defining several terms and resolving ambiguities and uncertainties in the statutory reporting scheme. 60 FR 10490. The Commission left unresolved one issue raised by commenters. Those commenters had questioned whether the reporting requirement applied to toys and games that are exempt from the Commission's small parts banning rule. 16 CFR Part 1501.

A subsequent industry inquiry also indicated some confusion over the definition of the term "small part" in the regulation. The Commission has decided to clarify that definition.[1]

1. Products Exempt From the Small Parts Regulation

Several industry commenters originally suggested that the Commission exempt from the choking hazard reporting requirement any products that are exempt from the small parts banning regulation (see 16 CFR 1501.3). The banning regulation, which applies to toys and other articles intended for children under 3 years of age, exempted items such as balloons, books, writing materials, and certain children's grooming, hygiene, and feeding items because the Commission believed that the functional benefits of these products outweighed the risk of injury they presented.

The Commission believes that Congress enacted the reporting requirements of the CSPA to assure that the Commission receives as much information as possible about serious choking incidents. Only then, can the Commission know whether some remedial action is necessary to protect children. Absent compelling reasons to do so, the Commission believes it should not carve out exceptions to the reporting obligations imposed by Congress.

Congress required firms to report choking incidents involving small parts from toys and games. Congress did not limit this reporting obligation to products subject to the Commission's small parts banning regulation (16 CFR 1501). The Commission believes that no persuasive policy arguments support limiting the requirement imposed by Congress. Unlike a ban, the reporting requirement does not interfere with the sale of the exempt product or place an extraordinary burden on the reporting firm. The scope of the reporting obligation is limited, the report is protected from public disclosure, and the information may not be used as an admission against the firm. Therefore, the Commission sees no reason to limit reporting to products that would be subject to 16 CFR Part 1501.

2. Definition of "Small Part"

The CSPA requires reporting when a child chokes on a small part contained in a toy or game. The final regulation defines a small part as any object which, when tested in accordance with the procedures of 16 CFR 1501.4(a) and 1501.4(b)(1) fits entirely within the cylinder shown in Figure 1 appended to 16 CFR Part 1501. When the Commission issued rules interpreting the CSPA reporting requirements, the Commission intended that firms report to the Commission if the part involved in the choking incident fit within the small parts test cylinder. The Commission expected firms to report choking incidents involving parts that broke off a toy or game as well as those involving parts that were small parts at the time the toy or game was distributed or sold.

Although firms who are reporting under this provision seem to understand the Commission's rule, one firm has suggested it is not clear. That firm thought the reporting provision should only apply to parts that are independent small parts at the time the toy or game is sold. It suggests that the phrase "contained in such toy or game" in section 102 limited the obligation to distinct small parts contained in the toy or game at the time of distribution or sale of the toy or game.

The focus of the choking hazard reporting provision is upon the choking incident. If a small part causes a choking incident a manufacturer, importer, distributor, or retailer is obligated to report if that part was contained in its toy or game. The phrase "contained in" is an indicator of the origin of the part. The part was contained in the toy or game whether it was a separate small part at the time of distribution, or a component or piece of a toy that broke off during play. Limiting the reporting obligation to items that were small parts at the time of distribution would shift the focus away from reporting of choking incidents. Further, it would only capture a fraction of the choking incidents that occur each year involving parts of toys and games.

In administering the small parts banning regulation, the Commission has seen that the great majority of violations arise because small parts detach from toys as a result of use or abuse. Excluding such parts from the reporting requirements could result in significant violations of the small parts regulation being undetected and uncorrected, even though those violations resulted in death or serious injury—the precise consequences that the reporting requirements were enacted to address.

Accordingly, to resolve the confusion over the scope of the term "small part," the Commission is revising the interpretative rule to clarify that the inquiry as to whether an object involved in a choking incident is a small part should focus only on whether that object fits entirely within the small parts testing cylinder. How the object came to be a small part is irrelevant for the purposes of reporting, although such information may certainly be relevant in determining whether any remedial measures are appropriate.

C. Notice

Because this is an interpretative rule, the Commission is not required to issue a notice of proposed rulemaking. 5 U.S.C. 553(b)(A). Nevertheless, the Commission did publish a notice of proposed rulemaking ("NPR") concerning the reporting requirements under the CSPA on July 1, 1994. 59 FR 33927. The scope of the NPR covered the issues of reporting for exempt products and for small parts that detach from a toy or game after purchase. Thus, no additional notice is necessary.

D. Impact on Small Businesses

In accordance with section 3(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities if issued on a final basis. Any obligations imposed upon such entities arise under the express provisions of section 102 of the Child Protection Safety Act, Pub. L. No. 103–267, June 17, 1994. This regulation simply revises a narrow aspect of the Commission's interpretation of the obligations imposed by that law. The regulation itself will not have a significant economic impact on small businesses, either beneficial or negative, beyond that which results from the statutory provisions.

E. Environmental Considerations

This revision falls within the provisions of 16 CFR 1021.5(c), which designates categories of actions conducted by the Consumer Product Safety Commission that normally have little or no potential for affecting the human environment. The Commission does not believe that the rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstance in which the rule issued below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

F. Effective Date

This regulation will become effective 30 days after publication of the final regulation in the **Federal Register**.

List of Subjects in 16 CFR Part 1117

Administrative practice and procedure, Business and industry, Consumer protection, Toy safety, Reporting and recordkeeping requirements, and Small parts.

Conclusion

Therefore, pursuant to the authority of the Child Safety Protection Act [Pub. L. No. 103–267], section 16(b) of the CPSA (15 U.S.C. 2065(b)) and 5 U.S.C. 553, the CPSC amends Part 1117, Chapter II, Subchapter B of Title 16 of the Code of Federal Regulations as follows:

PART 1117—REPORTING OF CHOKING INCIDENTS INVOLVING MARBLES, SMALL BALLS, LATEX BALLOONS AND OTHER SMALL PARTS

1. The authority for Part 1117 continues to read as follows:

Authority: Section 102 of the Child Safety Protection Act (Pub. L. No. 103–267) section 16(b), 15 U.S.C. 2065(b) and 5 U.S.C. 553.

2. Section 1117.2(a) is revised to read as follows:

§ 1117.2 Definitions.

(a) *Small part* means any part, component, or piece of a toy or game, which, when tested in accordance with the procedures in 16 CFR 1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR 1501.

§ 1117.2 [Amended]

3. Section 1117.2 is amended by adding a new paragraph (h) to read as follows:

* * * * *

(h) *Toy or game* includes any toy or game, including those exempt under 16 CFR 1501.3 from the small parts banning provisions of 16 CFR 1500.18(a)(9).

Dated: August 3, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–19628 Filed 8–11–95; 8:45 am]

BILLING CODE 6355–01–P

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16 CFR Part 1500

Labeling Certain Toys and Games Pursuant to the Child Safety Protection Act; Revision to final rule

AGENCY: Consumer Product Safety Commission.

ACTION: Revision to final rule.

SUMMARY: The Child Safety Protection Act of 1994 ("CSPA") requires, in part, toys or games that are intended for children between three and six years of age and contain small parts to bear specific precautionary labels. On February 27, 1995, the Commission issued a final rule interpreting certain provisions of the CSPA. As the preamble to the final rule noted, the Commission did not then resolve the issue of labeling for products exempt from the Commission's existing small parts rule. This revision clarifies that the labeling requirements do not apply to toys and games intended for children three to six years of age that would otherwise be exempt from the banning provisions of the Commission's small parts regulation if they were intended for children under three.

DATES: This regulation becomes effective on August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Frank Krivda, Office of Compliance and Enforcement, Consumer Product Safety Commission, 4440 East West Highway, Bethesda, MD 20814 (Mailing address: Washington, D.C. 20207), telephone (301) 504–0400, ext. 1372.

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission promulgated regulations to identify and ban products which contain small parts that present choking or aspiration hazards to children under three years of age ("the small parts regulation"). The regulation, in part, prescribes a test method to determine whether small parts are present in a product as marketed or after the product is subjected to reasonably foreseeable use or abuse. The regulation also exempts a number of products such as finger paints, modeling clay, writing materials, and children's grooming, feeding, and hygiene products from the testing requirements because they cannot be manufactured in a manner that passes the testing requirements and still remain functional.

In 1994, the Child Safety Protection Act ("CSPA") established, *inter alia*, labeling requirements for toys and games that contain small parts and are intended for children between the ages of three and six. 15 U.S.C. 1278. The primary purpose of these requirements is to alert prospective purchasers that such products are not appropriate for children under three years of age because of the potential choking hazard. On February 27, 1995, the Commission published a regulation to implement the requirements of the CSPA. 60 FR 10742. The Commission considered the issue raised by commenters of whether toys or games exempt from the small parts regulation ("otherwise exempt products") require labeling when they are intended for children between three and six years of age. The Commission discussed the issue in the preamble to the final rule, 60 FR 10749, but left it unresolved, pending appointment of a third Commissioner.

Neither the CSPA nor its legislative history expressly address whether otherwise exempt products require labeling when they are intended for children three to six years of age. However, requiring labeling for such products would create an apparent inconsistency with requirements of the small parts regulation. Specifically, if

[1] On both of these issues, Commissioner Mary Gall dissented from the Commission's decision. A copy of her statement and those of the other Commissioners may be found in the Commission's Office of the Secretary.

the CSPA applied, an otherwise exempt product with a small part intended for children between three and six would require labeling alerting purchasers of the hazards of the product to children under three. However, if the same product were intended for children under three, it would neither be banned nor require any labeling, even though it presented the very same hazard. Of even greater difficulty, if an exempt product intended for children two to five years old (as often happens) required labeling under the CSPA because some of its users were over three, the product would theoretically have to bear a warning not to purchase the product for children under three, even though it is specifically intended for two to three year old children.

In view of the foregoing, the Commission is revising the final labeling rule under the CSPA to clarify that products containing small parts and intended for children at least three years of age but less than six years old, are exempt from the labeling requirements if the same products, when intended for children under three, would be exempt from the small parts banning regulation. This labeling exemption does not, however, apply to balloons, which the CSPA expressly requires to bear precautionary labeling. 15 U.S.C. 1278(b)(1).

B. Notice

The Commission issued a notice of proposed rulemaking ("NPR") concerning the labeling requirements of the CSPA on July 1, 1994, 59 FR 33932, which provided an opportunity for comments on issues including labeling of exempt products. Comments on this issue were received, and these were discussed in the preamble to the final rule, but the Commission did not resolve the issue. See 60 FR 10742, 10749. Because the NPR provided an opportunity for public comment, no additional NPR is necessary.

C. Impact on Small Businesses

In accordance with section 3(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities if issued on a final basis. Inasmuch as the revision exempts certain products from the labeling requirements of the CSPA, it imposes no obligation on any entity. Therefore, the revision itself will not have a significant economic impact on small businesses, either beneficial or negative.

D. Environmental Considerations

This action falls within the provisions of 16 CFR 1021.5(c), which designates categories of actions conducted by the Consumer Product Safety Commission that normally have little or no potential for affecting the human environment. The Commission does not believe that the revision contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstance in which the rule issued below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

E. Effective Date

This revision will become effective immediately upon publication of the final regulation in the **Federal Register**. The immediate effective date is appropriate because the revision brings no change in current practice. In the preamble to the February 27, 1995 rule, the Commission stated that until the Commission voted on this issue, "toys and games that are exempted from the requirements of the small parts regulation by 16 CFR 1501.3 are not required to bear labeling under the act." 60 FR 10749. This rule continues the interpretation that exempt products do not require labeling under the CSPA. Thus, the Commission determines that there is good cause for an immediate effective date.

List of Subjects in 16 CFR Part 1500

Business and industry, Consumer protection, Hazardous materials, Infants and children, Labeling, Packaging and containers, toys.

Conclusion

Therefore, pursuant to the authority of the Child Safety Protection Act [Pub. L. No. 103–267), sections 10(a) and 24(c) of the Federal Hazardous Substances Act (15 U.S.C. 1269(a) and 1278(c)), and 5 U.S.C. 553, the CPSC amends Title 16 of the Code of Federal Regulations, Chapter II, Subchapter C, Part 1500 as set forth below:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for Part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278, 2079.

2. Section 1500.19(b)(1) introductory text preceding the warning statement is revised to read as follows:

§ 1500.19(b) Misbranded toys and other articles intended for children.

* * * * *

(1) With the exception of books and other articles made of paper, writing materials such as crayons, chalk, pencils, and pens, modeling clay and similar products, fingerpaints, watercolors, and other paint sets, and any other article identified in 16 CFR 1501.3 (other than balloons), any article that is a toy or game intended for use by children who are at least three years old but less than six years of age shall bear or contain the following cautionary statement if the toy or game includes a small part:

* * * * *

Dated: August 3, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–19627 Filed 8–11–95; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions; Material Changes in Terms and Conditions of Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is publishing notice of certain material changes in the terms and conditions of the option contract on the MIBOR '90 futures contract traded on the MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Fija, S.A. (MEFF Renta Fija) to be offered or sold to persons located in the United States. The initial order permitting, among others, option contracts on the MIBOR '90 futures contract to be offered or sold to persons in the United States was issued on June 5, 1995, 60 FR 30462 (June 9, 1995), pursuant to Commission rule 30.3(a), 17 CFR 30.3(a), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

EFFECTIVE DATE: August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Notice:

Notice of Certain Material Changes in Terms and Conditions of the Option Contract on the MIBOR '90 Futures Contract Previously Approved Under Commission Rule 30.3(a) Permitting Option Contracts on MEFF Renta Fija to be Offered or Sold in the United States.

By Order issued on June 5, 1988 (Initial Order), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the MEFF Renta Fija to be offered or sold in the United States. 60 FR 30462 (June 9, 1995). Among other conditions, the Initial Order specified that:

Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any MEFF Renta Fija option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order.

By letter dated July 6, 1995, MEFF Renta Fija through its counsel represented that it would be replacing the existing option contract on the MIBOR '90 futures contract with the option on the MIBOR '90 Plus futures contract, which has a notional value ten (10) times greater than the MIBOR '90 futures contract underlying the option previously approved by the Initial Order.[2] Counsel has confirmed that the options on the MIBOR '90 Plus futures contract commenced trading on June 12, 1995 and that the option on the MIBOR '90 futures contract has now been delisted.

MEFF Renta Fija has requested that the Commission confirm that its Initial Order authorizing options on the MIBOR '90 futures contract, the monthly option on the 10-year Government Bond futures contract and the Quarterly option on the 10-year Government bond futures contract, is amended to substitute options on the MIBOR '90 Plus futures contract for the previously approved MIBOR '90 option contract. Since the increase in the notional value of the futures contract underlying the previously authorized MIBOR '90 option is considered to be a material change in the existing option contract, the Commission is publishing the new terms and conditions of the option contract on the MIBOR '90 Plus futures contract for notice purposes only. The Commission also is amending Appendix B to Part 30 of its regulations to reflect this change.

Contract Specifications Options on the MIBOR '90 Plus Futures Contact

Underlying Asset

MIBOR '90 Plus futures contract. The underlying asset of the 90-day interbank deposit future is the interest paid on an interbank deposit, theoretically placed on the contract's maturity day, for a period of ninety days and an amount of one hundred million pesetas.

Contract Size

1 futures contract.

Exercise Style

American.

Traded Options

Options on futures with trading available at least in March, June, September and December in addition to the same quarters of the following year.

Available Classes

At least one options class for each of the underlying asset's two nearby expirations shall be available for trading.

Available Series

On the first trading day of an expiration at least five series of calls and five series of puts shall be introduced for the same underlying asset with the same expiration month, but with different strike prices.

For one of the call or put series, the strike price will be equal to the daily settlement price of the underlying asset the day prior to the option's first trading day, rounded off to the nearest strike price interval.

For the other series, the strike price shall be set so that there are at least two options series with strikes above and at least two series with strikes below the first strike price.

Trading Hours

8:00 a.m. to 10:00 p.m.

Last Trading Day

The last business day prior to the expiration date.

Expiration Date

Third Wednesday of the underlying futures contract month; if the expiration date coincides with a holiday, the expiration date shall be the following business day.

Quotation Method

Quoted in points, with one point equals two hundred and fifty pesetas.

Tick Value

The minimum fluctuation of the premium shall be 1 point.

Margining

Margin is calculated taking into account the overall futures and options portfolio.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to Part 30 is amended by adding the following entry in alphabetical order to read as follows:

APPENDIX B—Option Contracts Permitted To Be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
. . .	. . .	. . .
MEFF Sociedad Rectora de Productos Derivados de Renta Fija, S.A.	Financieros Option Contracts on the MIBOR '90 Plus Futures Contract.	August 14, 1995; 60 FR 41803
. . .	. . .	. . .

[1] Commission rule 30.3(a), 17 CFR 30.3(a), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

[2] *See* letter dated July 6, 1995 from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom to Jean A. Webb, CFTC Secretary.

Issued in Washington, D.C. on August 8, 1995.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 95–19982 Filed 8–11–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 101 and 122

[T. D. 95–62]

Establishment of New Port-Rockford, Illinois

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to Customs field organization by establishing a new port of entry in the Customs District of Chicago, Illinois, North Central Region at Rockford, Illinois, and by deleting Greater Rockford Airport from the list of user fee airports. The new port of entry will include Greater Rockford Airport, which is currently operated as a user fee airport. This change will assist the Customs Service in its continuing efforts to achieve more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Lund, Office of Field Operations, 202–927–0192.

SUPPLEMENTARY INFORMATION:

Background

In order to achieve more efficient use of its personnel, facilities, and resources, and in order to provide better service to carriers, importers, and the public in the North Central Region, Customs is amending its regulations to include Rockford, Illinois, as a port of entry. The new port of entry will include Greater Rockford Airport, which is currently, but will no longer be, a user fee airport. Section 101.3, Customs Regulations (19 CFR 101.3) is amended to add Rockford, Illinois to the list of Customs ports, and § 122.15, Customs Regulations (19 CFR 122.15) is amended by removing Greater Rockford Airport from the list of user fee airports.

In a Notice of Proposed Rulemaking published in the **Federal Register** on October 5, 1994 (59 FR 50717), Customs proposed these regulatory changes because it believes that there is sufficient justification for the establishment of a new port of entry at Rockford, Illinois.

Analysis of Comments

In its Notice of Proposed Rulemaking, Customs invited the public to comment on the proposed establishment of Rockford as a new port. One comment was received. The commenter stated that importer costs were reduced and that the time for Customs clearance and delivery of goods was reduced from 3 or 4 days to 1 day once Rockford became a user fee airport. He predicted that once Rockford becomes a full port of entry, the perceived permanency of the operation would encourage more companies to clear their imports at Rockford, thereby reducing the workload at other ports. He concluded that Rockford's new port status would benefit both Rockford and the Customs Service.

Conclusion

Inasmuch as the only comment received from the public was a positive one, the proposed amendments are adopted.

Description of Port Limits

The geographical limits of the new port of Rockford, Illinois, which include Greater Rockford Airport, are as follows:

Bounded to the north by the Illinois/Wisconsin border; bounded to the west by Illinois State Route 26; bounded to the south by Illinois State Route 72; and bounded to the east by Illinois State Route 23 north to the Wisconsin/Illinois border.

Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although a Notice of Proposed Rulemaking was issued with notice for public comment, because this matter relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this document relates to agency organization and management, it is not subject to Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Lists of Subjects

19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

Amendments to the Regulations

For the reasons set forth above, parts 101 and 122 of the Customs Regulations (19 CFR parts 101 and 122) are amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

§ 101.3 [Amended]

2. Section 101.3(b) containing the list of Customs regions, districts and ports of entry is amended by adding "Rockford, Ill. (T.D. 95–62)" in the appropriate alphabetical order in the "Ports of Entry" column in the Chicago, Illinois district of the North Central Region.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

2. The list of user fee airports in § 122.15(b) is amended by removing the words "Rockford, Ill." from the "Location" column and by removing the words "Greater Rockford Airport" on the same line from the adjacent "Name" column.

George J. Weise,

Commissioner of Customs.

Approved: July 31, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–19951 Filed 8–11–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 87C–0316]

Listing of Color Additives Exempt From Certification; Astaxanthin; Objection and Request for a Hearing; Staying Portions of the Regulation; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has received one objection to the final rule for astaxanthin as a color additive in the feed of salmonid fish to enhance the color of their flesh. The objection concerns a specification and the requirement for labeling of the color additive. The objection requests a hearing on the two issues. The submission of the objection stays the effective date of two paragraphs of the astaxanthin regulation until the agency can rule on them. FDA is confirming the effective date of May 16, 1995, for the remainder of this regulation that appeared in the **Federal Register** of April 13, 1995 (60 FR 18736).

DATES: Effective date confirmed: May 16, 1995, except for 21 CFR 73.35(b) for the specification for total carotenoids other than astaxanthin and 21 CFR 73.35(d)(3) for the labeling requirements.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3078.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 13, 1995 (60 FR 18736), FDA amended part 73 (21 CFR part 73) of its regulations to provide for the safe use of astaxanthin as a color additive in the feed of salmonid fish to enhance the color of their flesh.

FDA gave interested persons until May 15, 1995, to file objections and requests for a hearing on § 73.35 (21 CFR 73.35). The agency received from one color additive manufacturer objections to two provisions of the final rule. The objector requested a hearing on two issues: The specification for total carotenoids other than astaxanthin of not more than 4 percent under § 73.35(b) and the labeling requirement for the presence of the color additive in salmonid fish under § 73.35(d)(3). Under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)) the objection stays the effect of these two paragraphs of the astaxanthin regulation until the agency has ruled on the objections. Apart from § 73.35(b) and (d)(3), FDA is confirming the effective date of May 16, 1995, for the final rule that amended the color additive regulations to provide for the use of astaxanthin as a color additive in the feed of salmonid fish to enhance the color of their flesh. The objections are on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, under the docket number found in the heading of this document.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that because of the objection and request for a hearing on the specification for total carotenoids other than astaxanthin of not more than 4 percent in § 73.35(b) and the labeling requirement for the presence of the color additive in salmonid fish in § 73.35(d)(3), these provisions are stayed until further notice. Accordingly, the amendments to § 73.35 issued on April 13, 1995 (60 FR 18736), became effective May 16, 1995, except for §§ 73.35(b) and (d)(3), which are stayed until further notice.

Dated: August 7, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–19946 Filed 8–11–95; 8:45 am]

BILLING CODE 4160–01–F

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Review Commission has determined that it is in the public interest to adopt procedures that will permit the small employer who challenges an OSHA citation before the Commission to do so with minimal complexity and cost. Accordingly, it has decided to initiate a pilot E–Z Trial program for a one year period, beginning October 1, 1995. After the test period, the Commission will evaluate the results and determine whether it should continue the E–Z Trial program and, if so, what modifications should be made. The evaluation will involve surveying employers and employer representatives regarding their satisfaction with the fairness and efficiency of the process and analyzing data on the rate at which E–Z Trial cases go to a hearing, the length and cost of hearings and the cycle times of these cases as compared to those of conventional cases. We will also gather information from our Judges and the Solicitor of Labor and OSHA personnel regarding how well the process is working and how it might be changed or improved.

As the name implies, E–Z Trial is designed to simplify and accelerate adjudication for cases that warrant a less formal, less costly process. To ensure that the program is used sufficiently to enable the Commission to determine its success or failure, as well as its strengths and weaknesses, cases will be assigned to E–Z Trial by the Chief Administrative Law Judge. The Commission will also include explanatory materials on E–Z Trial in its Notice of Docketing to employers to make sure that (1) employers are well aware of the availability of the E–Z Trial option early in the process and (2) employers are clear on how they can apply for E–Z Trial. Together these mechanisms should encourage the use of E–Z Trial whenever appropriate. Parties who believe that an assigned case is inappropriate for E–Z Trial can present their reasons to the presiding Judge who, upon consultation with the Chief Judge, may order the case to proceed under conventional proceedings. In addition, a Judge assigned to a case could unilaterally direct that case to be tried under E–Z Trial proceedings. The Commission has also adopted certain rules and procedures designed to shorten the length of the proceedings. For example, the parties are required to disclose certain information to each other. Discovery, while not prohibited, is allowed only under the terms set by the presiding Judge, Interlocutory appeals are prohibited and, where practicable, the Judge is encouraged to render his or her decision from the bench. Any party dissatisfied with the disposition of the case may seek review of that decision as in conventional proceedings.

DATES: These revised rules will take effect on October 1, 1995. After September 30, 1996, § 2200.203(a) will no longer be in effect unless extended by the Commission by publication of a final rule in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, One Lafayette Centre, 1120 20th St., N.W., 9th Floor, Washington, DC 20036–3419 Phone (202) 606–5410.

SUPPLEMENTARY INFORMATION:

Development of the Final Rules

On May 1, 1995, the Occupational Safety and Health Review E–Z Commission published in the **Federal Register** a proposal to revise its rules governing simplified proceedings and to institute a pilot E–Z Trial program (60 FR 21058). The notice explained the procedures followed by the Commission in developing its proposal and the basis and purpose of the proposed rules. The notice included a request for public comment.

In response, a number or organizations who would be affected by the revised rules filed comments with the E–Z Commission. The Office of the Solicitor of Labor, which represents the Secretary of Labor in all adjudicative proceedings before the Commission, filed comments on behalf of the Secretary of Labor. The following organizations, listed alphabetically, presented comments on the proposed revision to the rules: the Administrative Conference of the United States; the American Dental Association; Bell Atlantic Network Services, Inc.; General Building Contractors Association, Inc.; Gibson, Dunn & Crutcher; Jackson, Murdo, Grant & McFarland, P.C.; McDermott, Will & Emery; Morgan, Lewis & Bockius; the National Funeral Directors Association; the National Stone Association; Rader, Campbell, Fisher & Pyke; and Schottenstein, Zox & Dunn. The Commission gratefully acknowledges receipt of these comments and assures all commentators that their concerns about the proposed changes were fully considered, even though some are not specifically discussed here.

In developing the final rules set forth in this document, the Commission considered not only the concerns of the commentators, but also those of other interested parties. The Chairman and representatives of the Commission met with AFL–CIO affiliate unions on March 16, 1995, with members of the Solicitor's office on May 16, 1995, and on May 18, 1995, conducted two focus group sessions in Philadelphia, Pennsylvania, with attorneys, non–attorney representatives, and employers.

After careful consideration of all comments received, the Commission issues these E–Z Trial rules, amending its rules for simplified proceedings in order to promote more effective and efficient proceedings before the Commission's Judges while maintaining fairness to all its participants.

Eligibility for E–Z Trial

The Commission received several suggestions addressing § 2200.202, which sets forth which cases should be eligible for E–Z Trial. Several commentators noted that the importance and complexity of a case are often dependent on the required abatement, not the proposed penalty. One commentator suggested raising the $7500 penalty limitation, and including only those cases where the employer agrees that the cost of abatement would be $7500 or less. The Commission found this suggestion interesting because, as these commentators suggested, the higher the cost of abatement, the more complicated the issues in the case are likely to be. After considering the issue, however, the Commission has determined that the suggestion is not viable. While it is sometimes clear from the nature of the citation that the cost of abatement would be either substantial or relatively minor, the effect of the cost of abatement on the complexity of the case usually cannot be determined at the outset of the proceeding when the case file contains little more than the citation and notice of contest. Therefore, an instruction to the Chief Judge to exclude abatement over a certain dollar value would not be practicable. Similarly, it would be difficult to carry out one commentator's suggestion that only cases involving factual issues and not legal issues be directed for E–Z Trial. Certainly such cases would be most suitable for E–Z Trial. However, the Commission believes that such a separation of cases would be difficult, if not impossible, to perform, given the potential for legal issues arising in any case. We would expect that in most cases where the Chief Judge determines that the abatement called for in the citation would be expensive or the legal issues presented in the case are difficult, he would determine that the case is too complex to be a candidate for E–Z Trial.

The Commission has concluded that the $7500 limit originally proposed is too low. Upon examination of the Commission's case load, we are unable to discern a significant difference in complexity between cases with proposed penalties ranging from $7500 to $10,000. By considering cases for E–Z Trial with proposed penalties of not more than $10,000, the Chief Judge would have an expanded number of cases to choose from during this pilot project. Therefore, the Commission will instruct the Chief Judge to consider cases for E–Z Trial where the proposed penalties do not exceed $10,000 rather than $7500.

The Secretary suggested that the criteria used for Simplified Proceedings be adopted for E–Z Trial and that any case involving air contaminants (Subpart Z of Part 1910) be disqualified. The Secretary also suggested that cases which would appear to involve affirmative defenses should not be eligible for E–Z Trial because such cases usually require discovery and often become complicated. A commentator suggested that the specific requirements for E–Z Trial eligibility be set forth in the rule. The Commission agrees that the eligibility criteria be included in the rule. The Commission continues to believe, however, that during this pilot project, it should maintain the flexibility to apply broad eligibility criteria. Accordingly, the Commission expects that cases appropriate for E–Z Trial would generally include those with one or more of the following characteristics: (1) Relatively few citation items, (2) an aggregate proposed penalty of not more than $10,000, (3) no allegation of willfulness, (4) a hearing that is expected to take less than two days, or (5) a small employer whether appearing *pro se* or represented by counsel.

Procedures for Commencing and Discontinuing E–Z Trial

Many commentators objected to the language in § 2200.203(a) authorizing the Chief Judge to assign cases to E–Z Trial without either party's request or consent. Similarly, there was widespread belief that once selected for E–Z Trial, it would be very difficult to return the case to conventional proceedings. Generally, these commentators expressed concern over being forced into a proceeding that limited the availability of certain procedures, particularly discovery. One commentator even suggested that there be a "presumption of correctness" for employers wanting to opt out of E–Z Trial, and that the Judge be required to find "overwhelming and compelling reasons why the case should be simplified."

As we note; *infra*, the concern over the loss of discovery is overstated. Our paramount concern is always the conduct of a fair proceeding. The Commission does not intend to eliminate discovery. The rules

specifically grant authority to the presiding Judge to allow whatever discovery he finds appropriate.

Thus, where the Judge determines that extensive discovery is necessary, or finds some other reason for discontinuing E–Z Trial, § 2200.204(a) authorizes him to do so after consultation with the Chief Judge. The Commission does not foresee this consultation process as significantly restricting the presiding Judge from appropriately removing a case from E–Z Trial.

It is the Commission's view that making it too easy for the parties to opt out of E–Z Trial would run counter to the purpose of the program. Nonetheless, where a party believes that its case has been inappropriately assigned to E–Z Trial, § 2200.204(b) allows that party to move for the Judge to return the matter to conventional proceedings. The Commission expects that, upon a showing of good cause, most requests for returning a case to conventional proceedings will be granted. Joint motions to return a case to conventional proceedings shall be granted by the Judge and do not require a showing of good cause.

While the Commission recognizes the concern expressed by many commentators over the assignment of cases to E–Z Trial without the consent of the parties, it believes that such a mechanism is necessary. As the Commission stated in the preamble to the proposed E–Z Trial rules, the previous rules for Simplified Proceedings, which would take effect only upon a party's request, were rarely used. When Simplified Proceedings were requested by a party, the other party often filed and objection that was granted by the presiding judge. It is the Commission's goal that these E–Z Trail rules will increase the number of cases that use simplified proceedings to a significant level. The Commission hopes that after some experience with this process, litigants and their representatives will find it to be a useful alternative to our conventional trial process. Therefore, the Commission has set forth a sunset provision at § 2200.201(b). Under this provision, § 2200.203(a), which allows the Chief Judge to assign cases for E–Z Trial, will no longer be in effect after the conclusion of the plot program unless otherwise extended by the Commission.

Disclosure and Discovery

Most of the Commentators expressed reservations concerning the restrictions on discovery set for at § 2200.207. These commentators feared that the loss of discovery would severely curtail their ability to develop their case. A recurrent theme was that, without discovery, employers would be open to "trial by ambush"and that the Secretary, by virtue of his inspection of the worksite, already had, in effect extensive discovery. Similarly, the Secretary of Labor was concerned that restrictions on discovery would prevent him from rebutting affirmative defenses raised by employers. Accordingly, the Secretary suggested that the rule be relaxed to allow discovery upon a showing of need.

We believe that these commentators have interpreted the intent of the rule. We are aware that E–Z Trial proceedings must be structured fairly. The proposed rule was designed to have the Judge take a more active role in the discovery process to ensure that it is limited to that which is necessary. By doing so, the Commission hoped to minimize delay and attendant costs. It appears that the role of discovery was too narrowly described in § 2200.200(b)(3) as being generally not permitted. We have modified this rule to more accurately reflect the intent of the Commission.

Because it is the intent of the Commission that E–Z Trial will enable the small employer to represent himself better, it is especially important that the Judge be involved in the discovery process. Few things could be more intimidating or confusing to a *pro se* employer than to receive a long list of interrogatories, requests for admission, or requests for production of documents or to have to partake in depositions. When such requests are made, the Commission expects that its Judges will restrict discovery that appears to be of marginal value.

It is the Commission's expectation that, as a result of reasonable restrictions on discover, the adjudicatory process will be substantially accelerated with significant cost savings being realized by both employers and the Secretary. The Commission expects that having the Judge take a more active role will expedite the case.

Several commentators observed that if discovery were to be restricted, the Secretary should be required to turn over his investigatory file to the employer early enough in the proceeding to enable the employer to evaluate the case against him and prepare a defense. We find this suggestion to be well-taken and have included a new § 2200.206 to require that the Secretary disclose to the employer certain information early in the proceeding. We note that it is already a general practice amongst some of the Commission's Judges to require the Secretary to turn over all or part of the investigatory file. In many other cases, the file is routinely turned over to the employer's counsel upon request. However, most *pro se* employers would not know that they have the right to request information contained in the investigative file. Therefore, by requiring that certain information in the file be turned over early in the proceeding, the employer would, in all cases, be given the basic documents necessary for the preparation of its defense.

The Secretary expressed the concern that requiring him to turn over the entire investigatory file in all cases would impose a substantial burden. Not only would the Secretary be required in every case to duplicate numerous documents, but he would also have to individually review each document to edit out any protected information. While we find these concerns to be well-founded, we note that mandatory pre-discovery disclosure is the trend in many jurisdictions, including the Federal Courts. For example, Federal Rule of Civil Procedure 26(a) requires the disclosure of certain basic information needed by parties to prepare for trial or make an informed decision about settlement.

For E–Z Trial, § 2200.206 sets forth the minimum disclosure requirements necessary for the parties to evaluate their case. The Commission has attempted to balance the employer's need for certain information necessary to its case against the burden it would impose on the Secretary to require the entire investigatory file to be turned over in every case. Therefore, the Commission has determined that it will require that two essential OSHA forms be turned over to the employer early in the proceeding: the compliance officer's narrative (Form OSHA–1A) and the worksheet (Form OSHA 1–B) or their equivalents. As part of his or her control over the discovery process, the presiding Judge would retain the authority to order that other materials be made available to the employer.

Simarily, the Commission believes that where an employer raises affirmative defenses, the Judge should require it to submit certain authenticating documents to the Secretary. For example, if an employer argues that a violation was the result of unpreventable employee misconduct, the Judge should, at a minimum, require it to submit to the Secretary a copy of the relevant portions of its safety manual and documentation establishing the scope and nature of employee discipline. The Commission has

codified this requirement at § 2200.206(b).

All rules after § 2200.206 have been renumbered to reflect the addition of the new rule § 2200.206, requiring the parties to disclose certain information.

Pre-Hearing Conference

Because the Commission will require the Secretary to provide certain information to the employer early in the proceeding, § 2200.207(a) has been modified to require that the pre-hearing conference be held only after the employer has had sufficient time to review the documents. Under § 2200.206(b), where affirmative defenses are raised, either before or at the pre-hearing conference, the Secretary will have the right, outside of discovery, to obtain certain authenticating documents from the employer. The Commission expects that, in the usual case, at the pre-hearing conference the Judge will be in the best position to determine what, if any, discovery should be allowed.

The Secretary of Labor suggested that a binding statement of all issues in dispute, including any affirmative defenses, be made part of a written conference order. The Secretary of Labor also requested that a rule be included requiring that a hearing date be set at the pre-hearing conference, and that the conference be held sufficiently in advance of the hearing date to allow the parties time to plan the presentation of the case.

It is the Commission's view that its Judges functions best when they have the flexibility to manage their cases in a manner that allows them to consider the requirements and idiosyncracies of the individual cases. However, the Secretary's suggestion that the rules specify that the pre-hearing conference be held sufficiently in advance of the hearing to allow the parties to prepare their case is well-taken. While we do not adopt a rule requiring when a hearing date be set, wherever practicable, the Judge should set a hearing date before the pre-hearing conference takes place. Accordingly, the Commission has modified § 2200.209(a) to clarify that the hearing be held "as soon as practicable after the conclusion of the pre-hearing conference." Any agreements reached in the pre-hearing conference should be memorialized in a pre-hearing order.

Hearing

This proposed rule, now numbered § 2200.209, engendered comments in three areas.

Three commentators expressed reservations over § 2200.209(c), which makes the Federal Rules of Evidence inapplicable to E–Z Trial. These commentators suggested that elimination of the Federal Rules of Evidence would place the *pro se* employer at a disadvantage vis-a-vis the trained lawyers representing the Secretary; would result in the creation of a second, duplicative, system of evidentiary rules; and would allow the Secretary of Labor to introduce hearsay evidence that, when combined with the restrictions on discovery, the employer would be unable to refute.

The Commission adheres to its view that the efficacy of E–Z Trial will be enhanced, especially for the *pro se* employer, by not requiring the Judge to strictly adhere to the Federal Rules of Evidence. The Commission is confident that its Judges are fully able to deal with issues of the reliability and probative value of evidence. On the other hand, contrary to the contentions of the commentators, it seems obvious that *pro se* employers, with no legal training, would be at a substantial disadvantage in presenting their case if they were required to strictly adhere to the Federal Rules of Evidence.

Several commentators also objected to the prohibition on interlocutory appeals. One commentator noted that, because they are rarely used, the prohibition was probably unnecessary. Another commentator objected to the prohibition because the parties would have no immediate appeal should the Judge improperly force the case to continue under E–Z Trial. This latter comment underscores the reason why the Commission has concluded it is necessary to prohibit interlocutory appeals. Because of the unfamiliarity with these new procedures, we expect that some parties will try to opt out even when they are unable to show good cause why the case should not continue under E–Z Trial. To allow these parties to seek interlocutory review of the Judge's order, or to challenge other orders issued by the Judge, such as discovery orders, would gravely slow down the process and undermine the basic goal of E–Z Trial. We note that, despite the prohibition on interlocutory review, the parties retain the right, under § 2200.211, to petition the Commission to review the Judge's disposition.

Two commentators also specifically objected to § 2200.209(f) which encourages Judges to issue decisions from the bench. They contended that without a written opinion, the rationale for the Judge's decision would be incomplete, making it difficult both for other parties to rely on the decision and for review of the decision on appeal. Because we never intended to allow decisions without a recorded rationale, we have clarified the rule accordingly. All our Judges' decisions must comply with the Administrative Procedure Act. Therefore, the revised language explicitly requires the Judge to state his or her findings of fact and conclusions of law for the record. Moreover, the Judge will be required to reduce his or her order to writing and to include in his or her order all paragraphs from the transcript that contain findings of fact and conclusions of law that support the decision. This written order will serve as the official decision for purposes of appeal.

Commission Review

Several comments suggested a misunderstanding as to when a case would be considered for Commission review. In the preamble to these proposed rules, the Commission stated that the decision to place a case under E–Z Trial would only be reviewed when the losing party can show that they have been materially prejudiced either by the use of E–Z Trial rather than conventional proceedings or by a lack of due process during those proceedings, provided objections to use the E–Z Trial procedure were raised in a timely fashion to the Judge. This limitation is intended to apply strictly to those instances where a party seeks review of the *decision* to place the case under E–Z Trial and, in no way, is intended to limit the availability of Commission review for any other allegation of error.

Other Issues

1. Effect of E–Z Trial on Settlement

The Secretary expressed the serious concern that the availability of E–Z Trial may have the unintended consequence of reducing the percentage of cases that settle before hearing. The Secretary pointed out that requiring parties to examine the merits of their case when responding to pleadings, and the very requirement that responses be filed often serve as inducements to settlement. By eliminating pleadings, the Secretary suggests that it will become easier for employers to simply let their cases drift toward a hearing. According to the Secretary, many of the benefits sought by E–Z Trial could be achieved through the simple expedient of extending the deadline for the filing of the complaint. This, he argues, would allow the parties more time for settlement negotiations and the drafting, execution and submission of settlement documents.

The Commission shares the Secretary's concern. The Commission always has sought to encourage the amicable settlement of its cases. In no way do we desire to undermine this goal. It is the Commission's hope that by directing the Judge to take an active role in narrowing and defining the issues at the pre-hearing conference, parties will be more likely, not less likely, to determine that settling their cases rather than going to a hearing is in their best interest. The Commission would also stress to *pro se* employers, and would expect its Judges to transmit this point during the pre-hearing conference, that E–Z Trial only cuts out some procedural red tape and does not imply that it will be easier for employers to prevail in their contests. Nonetheless, we are acutely aware that a reduction in settlements may be an unintended consequence of E–Z Trial. This is a major reason for the pilot nature of this project. We will be watching this issue closely for the duration of the pilot project.

2. Convert into Mini-Trial Pilot

The Secretary suggested that the Commission convert E–Z Trial into a mini-trial pilot where a party could request a *de novo* proceeding under conventional rules before the Judge. The Secretary opines that this would give the small employer an opportunity to state its case to the Judge while protecting the interests of the litigants when they believe that their case could only be adequately presented under conventional proceedings.

The Commission finds no merit in this proposal. It is the Commission's opinion that in most cases the Secretary's proposal would amount to little more than giving the parties a "second bite of the apple," and would further strain the Commission's limited resources. In some cases, the parties can invoke the Commission's settlement Judge rule, § 2200.101, to accomplish the same result. The purpose of E–Z Trial is to streamline and shorten the adjudicatory process; not to lengthen the process by giving every losing party an opportunity to retry their case.

The Secretary also suggested that, given the streamlining of the adjudicatory process, Judges' decisibns rendered after E–Z Trial should have no precedential value. However, unreviewed opinions of Judges do not presently constitute precedent binding on the Review Commission. An unreviewed Judge's decision issued after an E–Z Trial would likewise not be binding on the Commission. Conversely, a Commission decision would have precedential value whether it resulted from E–Z Trial proceedings or regular proceedings. Additionally, if on review the Commission is of the view that due process had not been adequately provided, the case could be remanded to the Judge.

3. Grandfather Clause

One commentator suggested exempting those who currently practice before the Commission from having their cases assigned to E–Z Trial. We find no purpose to be served by granting an exemption to anyone who has previously represented parties before the Commission. E–Z Trial is designed to benefit parties, not their representatives. It would countermand the purpose of E–Z Trial to force a party to have a conventional proceeding for no reason other than its choice of legal representative.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Part 2200 of the Code of Federal Regulations as follows:

PART 2200—RULES OF PROCEDURE

1. The authority citation continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. Subpart M is revised to read as follows:

Subpart M—E–Z Trial

Sec.

2200.200 Purpose.
2200.201 Application.
2200.202 Eligibility for E–Z Trial.
2200.203 Commencing E–Z Trial.
2200.204 Discontinuance of E–Z Trial.
2200.205 Filing of pleadings.
2200.206 Disclosure of Information.
2200.207 Pre-hearing conference.
2200.208 Discovery.
2200.209 Hearing.
2200.210 Review of Judge's decision.
2200.211 Applicability of Subparts A through G.

Subpart M—E–Z Trial

§ 2200.200 Purpose.

(a) The purpose of the E–Z Trial subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so that parties before the Commission may reduce the time and expense of litigation while being assured due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554. These procedural rules will be applied to accomplish this purpose.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those provided in subparts A through G of the Commission's rules of procedure are as follows.

(1) Complaints and answers are not required.

(2) Pleadings generally are not required. Early discussions among the parties and the Administrative Law Judge are required to narrow and define the disputes between the parties.

(3) The Secretary is required to provide the employer with certain informational documents early in the proceeding.

(4) Discovery is not permitted except as ordered by the Administrative Law Judge.

(5) Interlocutory appeals are not permitted.

(6) Hearings are less formal. The Federal Rules of Evidence do not apply. Instead of briefs, the parties will argue their case orally before the Judge at the conclusion of the hearing. In many instances, the Judge will render his or her decision from the bench.

§ 2200.201 Application.

(a) The rules in this subpart will govern proceedings before a Judge in a case chosen for E–Z Trial under § 2200.203.

(b) *Sunset Provision.* Section 2200.203(a), which permits the Chief Administrative Law Judge to assign a case for E–Z Trial, will no longer be effective after September 30, 1996 unless the rule is extended by the Commission by publication of a final rule in the Federal Register. After September 30, 1996, a case will only be assigned to E–Z Trial if the assignment is requested by a party.

§ 2200.202 Eligibility for E–Z Trial.

Those cases selected for E–Z Trial will be those that do not involve complex issues of law or fact. Cases appropriate for E–Z Trial would generally include those with one or more of the following characteristics:

(a) relatively few citation items,

(b) an aggregate proposed penalty of not more than $10,000,

(c) no allegation of willfulness,

(d) a hearing that is expected to take less than two days, or

(e) a small employer whether appearing *pro se* or represented by counsel.

§ 2200.203 Commencing E–Z Trial.

(a) *Selection.* Upon receipt of a Notice of Contest, the Chief Administrative Law Judge may, at his or her discretion, assign an appropriate case for E–Z Trial.

(b) *Party request.* Within twenty days of the notice of docketing, any party may request that the case be assigned for E–Z Trial. The request must be in writing. For example, "I request an E–Z Trial" will suffice. The request must be sent to the Executive Secretary. Copies must be sent to each of the other parties.

(c) *Judge's ruling on request.* The Chief Judge or the Judge assigned to the case may grant a party's request and assign a case for E–Z Trial at his or her discretion. Such request shall be acted upon within fifteen days of its receipt by the Judge.

(d) *Time for filing complaint or answer under § 2200.34.* If a party has requested E–Z Trial or the Judge has assigned the case for E–Z Trial, the times for filing a complaint or answer will not run. If a request for E–Z Trial is denied, the period for filing a complaint or answer will begin to run upon issuance of the notice denying E–Z Trial.

§ 2200.204 Discontinuance of E–Z Trial.

(a) *Procedure.* If it becomes apparent at any time that a case is not appropriate for E–Z Trial, the Judge assigned to the case may, upon motion by any party or upon the Judge's own motion, discontinue E–Z Trial and order the case to continue under conventional rules. Before discontinuing E–Z Trial, the Judge will consult with the Chief Judge.

(b) *Party Motion.* At any time during the proceedings any party may request that the E–Z Trial be discontinued and that the matter continue under conventional procedures. A motion to discontinue must be in writing and explain why the case is inappropriate for E–Z Trial. All other parties will have seven days from the filing of the motion to state their agreement or disagreement and their reasons. Joint motions to return a case to conventional proceedings shall be granted by the Judge and do not require a showing of good cause.

(c) *Ruling.* If E–Z Trial is discontinued, the Judge may issue such orders as are necessary for an orderly continuation under conventional rules.

§ 2200.205 Filing of pleadings.

(a) *Complaint and answer.* Once a case is designated for E–Z Trial, the complaint and answer requirements are suspended. If the Secretary has filed a complaint under § 2200.34(a), a response to a petition under § 2200.37(d)(5), or a response to an employee contest under § 2200.38(a), and if E–Z Trial has been ordered, no response to these documents will be required.

(b) *Motions.* A primary purpose of E–Z Trials is to eliminate, as much as possible, motions and similar documents. A motion will not be viewed favorably if the subject of the motion has not been first discussed among the parties.

§ 2200.206 Disclosure of information.

(a) *Disclosure to employer.* Within 12 working days after a case is designated for E–Z Trial, the Secretary shall provide the employer, free of charge, copies of the narrative (Form OSHA 1–A) and the worksheet (Form OSHA 1–B), or the equivalent. The Judge shall act expeditiously on any claim by the employer that the Secretary improperly withheld or redacted any portion of the documents on the grounds of confidentiality or privilege.

(b) *Disclosure to the Secretary.* Where the employer raises an affirmative defense, the presiding Judge shall order the employer to disclose to the Secretary such documents relevant to the affirmative defense as the Judge deems appropriate.

§ 2200.207 Pre-hearing conference.

(a) *When held.* As early as practicable after the employer has received the documents set forth in § 2200.206(a), the presiding Judge will order and conduct a pre-hearing conference. At the discretion of the Judge, the pre-hearing conference may be held in person, or by telephone or electronic means.

(b) *Content.* At the pre-hearing conference, the parties will discuss the following: settlement of the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter. Except under extraordinary circumstances, any affirmative defenses not raised at the pre-hearing conference may not be raised later. At the conclusion of the conference, the Judge will issue an order setting forth any agreements reached by the parties and will specify in the order the issues to be addressed by the parties at the hearing.

§ 2200.208 Discovery.

Discovery, including requests for admissions, will only be allowed under the conditions and time limits set by the Judge.

§ 2200.209 Hearing.

(a) *Procedures.* As soon as practicable after the conclusion of the pre-hearing conference, the Judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with Subpart E of these rules, except for §§ 2200.73 and 2200.74 which will not apply.

(b) *Agreements.* At the beginning of the hearing, the Judge will enter into the record all agreements reached by the parties as well as defenses raised during the pre-hearing conference. The parties and the Judge then will attempt to resolve or narrow the remaining issues. The Judge will enter into the record any further agreements reached by the parties.

(c) *Evidence.* The Judge will receive oral, physical, or documentary evidence that is not irrelevant, unduly repetitious or unreliable. Testimony will be given under oath or affirmation. The Federal Rules of Evidence do not apply.

(d) *Reporter.* A reporter will be present at the hearing. An official verbatim transcript of the hearing will be prepared and filed with the Judge. Parties may purchase copies of the transcript from the reporter.

(e) *Oral and written argument.* Each party may present oral argument at the close of the hearing. Post-hearing briefs will not be allowed except by order of the Judge.

(f) *Judge's decision.* Where practicable, the Judge will render his or her decision from the bench. In rendering his or her decision from the bench, the Judge shall state the issues in the case and make clear both his or her findings of fact and conclusions of law on the record. The Judge shall reduce his or her order in the matter to writing and transmit it to the parties as soon as practicable, but no later than 45 days after the hearing. All relevant transcript paragraphs and pages shall be excerpted and included in the decision. Alternatively, within 45 days of the hearing, the Judge will issue a written decision. The decision will be in accordance with § 2200.90. If additional time is needed, approval of the Chief is required.

(g) *Filing of Judge's decision with the Executive Secretary.* When the Judge issues a written decision, it shall be filed simultaneously with the Commission and the parties. Once the Judge's order is transmitted to the Executive Secretary, § 2200.90(b) applies, with the exception of the 21 day period provided for in rule § 2200.90(b)(2).

§ 2200.210 Review of Judge's decision.

Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After the issuance of the Judge's written decision or order, the parties may pursue the case following the rules in Subpart F.

§ 2200.211 Applicability of Subparts A through G.

The provisions of Subpart D (except for § 2200.57) and §§ 2200.34, 2200.37(d)(5), 2200.38, 2200.71, 2200.73 and 2200.74 will not apply to E–Z Trials. All other rules contained in Subparts A through G of the Commission's rules of procedure will apply when consistent with the rules in this subpart governing E–Z Trials.

Dated: August 8, 1995.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 95–19975 Filed 8–11–95; 8:45 am]

BILLING CODE 7600–01–M

DEPARTMENT OF COMMERCE

Assistant Secretary for Technology Policy

37 CFR Part 401

[Docket No. 950615153–5153–01]

RIN 0692–AA14

Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements; Electronic Filing of Written Submissions; Definition of the Term "Patent Application" or "Application for Patent"

AGENCY: Assistant Secretary for Technology Policy, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule (1) authorizes certain government contractors and grantees to report electronically to the funding agencies their inventions and respective election of title on agency-approved systems; (2) recognizes that the law now authorizes the filing of provisional U.S. patent applications by defining the term "patent application" or "application for patent" to include provisional patent applications; and (3) updates the name and address of the office to where all submissions and inquiries should be sent.

Federal agencies each year enter into many research funding agreements with nonprofit organizations and small business firms, which require them to submit written reports and other information to the agencies relating to inventions made under the funding agreements. The reports and information must then be manually processed by the agencies. A number of these contractors, grantees and agencies have established computer systems for keeping track of their inventions. It is desirable to utilize these systems to facilitate the invention reporting requirements by permitting contractors and grantees to submit reports and information to the agencies in electronic form. This would result in a reduction of time, paper and postage for the contractors and grantees and allow the agencies to more easily keep track of the inventions.

DATES: Interim rule effective August 14, 1995; comments must be received on or before September 13, 1995.

ADDRESSES: Comments may be mailed to Mr. Jon Paugh, Director, Technology Competitiveness Staff, Office of Technology Policy, Room 4418, Herbert C. Hoover Building, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Paugh at telephone: (202) 482–2100.

SUPPLEMENTARY INFORMATION: Under the authority of 35 U.S.C. 206 and the delegation by the Secretary of Commerce in sec. 3(g) of DOO 10–18, the Assistant Secretary of Commerce for Technology Policy may issue revisions to 37 CFR Part 401.

Under the rule now in effect, contractors and grantees must report in writing to the funding agencies their inventions and respective election of title. They may also be required to indicate if an invention was not made. The reports are then manually placed by the agencies in their respective contract or grant files, a very burdensome and time consuming task.

Therefore, in order to facilitate reporting by contractors and grantees, new §§ 401.16 (a) and (b) are being added to 37 CFR Part 401 to authorize certain government contractors and grantees to report electronically to the funding agencies their inventions and respective election of title on agency-approved electronic or optical-electronic systems. These changes will help the agencies to maintain an up-to-date record of government-funded inventions which can be used to automatically track the status of these inventions so that rights in valuable inventions are not inadvertently lost.

New § 401.16(c) is being added to authorize a government contractor and grantee to electronically submit the close-out report in § 401.5(f)(1) and the information identified in §§ 401.5(f) (2) and (3), which at the present time, although not required, are usually submitted in writing to the agencies.

This rule change does not require contractors and grantees to electronically report their inventions to the Federal agencies and some may wish to continue to communicate in writing. However, since a number of contractors and grantees have established computer systems to track their own inventions, it is expected that they would be interested in reporting their inventions electronically to the agencies. For this purpose, an electronic system named "EDISON" is being developed by the Division of Extramural Invention Reporting of the National Institutes of Health which will allow various contractors and grantees to submit certain information on their inventions by computer to the agencies. For information on EDISON, Sue Ohata, Acting Director, Division of Extramural Invention Reporting, NIH may be contacted at (301) 402–0850, by fax (301) 480–8443 or by e-mail at ohata@NIHOD1.bitnet.

New paragraphs (k) and (l) are being added to § 401.2 in order to define the terms "electronically filed" and "electronic or optical-electronic system" which are used in the new § 401.16.

Section 401.2(j) is being amended to define the term "Secretary" as the Assistant Secretary of Commerce for Technology Policy to conform with the authority citation for 37 CFR Part 401.

Public Law 103–465 amended 35 U.S.C. 111 to provide for the filing of provisional applications on or after June 8, 1995. To reflect this change in the law, the Patent and Trademark Office (PTO) amended 37 CFR Parts 1 and 3 to cover these provisional applications as indicated in the **Federal Register**, 60 FR 20195, April 25, 1995. The changes to 35 U.S.C. 111 and 37 CFR Parts 1 and 3 also affected 37 CFR Part 401. Accordingly, new paragraph (m) is being added to § 401.2 to recognize these changes by defining the term "patent application" or "application for patent" to include a provisional or nonprovisional U.S. national application for patent as defined in 37 CFR 1.9 (a)(2) and (a)(3), respectively, or an application for patent in a foreign country or in an international patent office.

New paragraph (n) is being added to § 401.2 to define the term "initial patent application" as a nonprovisional U.S. national application for patent as defined in 37 CFR 1.9(a)(3) to make it clear that the requirements stated in paragraph (c) of the standard clause at § 401.14(a) and in paragraph (c) of § 401.13 are not being changed. These paragraphs are based on 35 U.S.C. §§ 202(c) and 205, respectively, which refer to a U.S. national patent application filed under 35 U.S.C. 111 before it was amended by the Uruguay Round Agreements Act (Public Law 103–465).

Section 401.5(f)(2) is being amended to refer to patent application number rather than serial number by replacing the term "serial" with "patent application" in order to conform to the change made by the PTO to the title and paragraph (a) of 37 CFR 1.53 as indicated in the **Federal Register**, 60 FR 20195, April 25, 1995.

Section 401.13(c)(2) has been editorially amended to refer to a patent application rather than just an application.

Finally, current § 401.16 is being redesignated as § 401.17 and the address to where any submissions or inquiries should be sent is being updated since the Federal Technology Management Policy Division is now the Technology Competitiveness Staff which is part of the Office of Technology Policy (OTP)/ Technology Administration.

Pursuant to section 553 of the Administrative Procedure Act (5 U.S.C. 553) (APA), the Assistant Secretary of Commerce for Technology Policy finds that there is good cause for waiving, as impracticable, unnecessary, and contrary to public interest, the prior notice of proposed rulemaking and the required 30-day delay in the effective date because: (1) This interim rule provides a contractor or grantee the opportunity to report electronically inventions and respective election of title to the funding agency using an agency-approved electronic system which may result in cost savings to the contractor, grantee and/or the funding agency; (2) These changes are not considered substantive; and (3) This interim rule provides a 30-day comment period and any comments received will be considered prior to finalization of this interim rule.

This interim rule has been determined to be significant for purposes of E.O. 12866 (58 FR 51735, October 4, 1993).

This interim rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the APA (5 U.S.C. 553) or by any other law, under sections 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This interim rule involves a collection of information which has approval under the Paperwork Reduction Act. The control number is 9000–0095.

List of Subjects in 37 CFR Part 401

Inventions, Patents, Nonprofit Organizations, Small Business Firms.

For the reasons set forth in the preamble, 37 CFR part 401 is amended as follows:

PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

1. The authority citation for 37 CFR part 401 continues to read as follows:

Authority: 35 U.S.C. 206 and the delegation of authority by the Secretary of Commerce to the Assistant Secretary of Commerce for Technology Policy at sec. 3(g) of DOO 10–18.

2. Section 401.2 is amended by revising paragraph (j) to read as follows:

§ 401.2 Definitions.

* * * * *

(j) The term "Secretary" means the Assistant Secretary of Commerce for Technology Policy.

3. New paragraphs (k), (l), (m) and (n) are added to § 401.2 to read as follows:

§ 401.2 Definitions.

* * * * *

(k) The term *electronically filed* means any submission of information transmitted by an electronic or optical-electronic system.

(l) The term *electronic or optical-electronic system* means a software-based system approved by the agency for the transmission of information.

(m) The term *patent application* or "application for patent" includes a provisional or nonprovisional U.S. national application for patent as defined in 37 CFR 1.9 (a)(2) and (a)(3), respectively, or an application for patent in a foreign country or in an international patent office.

(n) The term *initial patent application* means a nonprovisional U.S. national application for patent as defined in 37 CFR 1.9(a)(3).

4. Section 401.5 is amended by revising paragraph (f)(2) to read as follows:

§ 401.5 Modification and tailoring of clauses.

* * * * *

(f) * * *

(2) Provide, upon request, the filing date, patent application number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for a patent.

* * * * *

5. Section 401.13 is amended by revising paragraph (c)(2) to read as follows:

§ 401.13 Administration of patent rights clauses.

* * * * *

(c) * * *

(2) In accordance with 35 U.S.C. 205, agencies shall not disclose or release for a period of 18 months from the filing date of the patent application to third parties pursuant to requests under the Freedom of Information Act, or otherwise, copies of any document which the agency obtained under this clause which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the contractor (or its assignees, licensees, or employees) on a subject invention to which the contractor has elected to retain title. This prohibition does not extend to disclosure to other government agencies or contractors of government agencies under an obligation to maintain such information in confidence.

* * * * *

6. Section § 401.16 is redesignated as § 401.17 and revised to read as follows:

§ 401.17 Submissions and inquiries.

All submissions or inquiries should be directed to Director, Technology Competitiveness Staff, Office of Technology Policy, Technology Administration, telephone number 202–482–2100, Room H4418, U.S. Department of Commerce, Washington, D.C. 20230.

7. A new § 401.16 is added to read as follows:

§ 401.16 Electronic filing.

Unless otherwise requested or directed by the agency,

(a) the written report required in (c)(1) of the standard clause in § 401.14(a) may be electronically filed;

(b) the written election required in (c)(2) of the standard clause in § 401.14(a) may be electronically filed; and

(c) the close-out report in (f)(1) and the information identified in (f)(2) and (f)(3) of § 401.5 may be electronically filed.

Dated: August 7, 1995.

Graham Mitchell,

Assistant Secretary of Commerce for Technology Policy.

[FR Doc. 95–20023 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 195

[FRL–5276–3]

RIN 2060–AF40

User Fees for Radon Proficiency Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: This technical amendment to the Radon Proficiency Program's User Fee establishes fees for the calendar year 1995. The User Fee Rule requires that individuals and organizations applying to or participating in the National Radon Measurement Proficiency (RMP) or the National Radon Contractor Proficiency (RCP) Programs pay annual fees. This amendment establishes the fee schedule for the calendar year 1995.

In 1994 the Agency began an aggressive effort to streamline operation of the proficiency programs as a way of reducing costs. Because of these streamlining efforts, the cost to operate the proficiency programs in 1994 was reduced by about 34% from 1993. Thus, the 1995 user fees will generally be lower than the 1994 user fees in some areas while the fees for other areas of the program will go up slightly from the 1994 user fees. The Agency remains committed to recovering all of its operating costs over a period of five years. Consistent with the schedule established in the 1994 User Fee Rule, the Agency has increased the level of anticipated cost recovery from 30% in 1994 to 47.5% in 1995.

Upon receipt of an invoice from EPA following the effective date of this technical amendment, organizations offering primary measurement services must pay an annual fee of $390 per device entered or listed in the RMP program. Organizations offering secondary measurement services must pay an annual fee of $50 for each business location listed in the program. Participants in the individual proficiency component of the RMP program must pay an annual fee of $105. Participants in the RCP program must pay an annual fee of $210. As before, State and local governments are exempted from these fees under section 305(e)(2) of the Indoor Radon Abatement Act of 1988, 15 U.S.C. 2665(e)(2).

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: James W. Long, (202) 233–9433, U.S. EPA, Office of Radiation and Indoor Air, 401 M St. S.W., (6604J), Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 305 of the Indoor Radon Abatement Act (IRAA) of 1988, 15 U.S.C. 2661 et seq., authorizes the Administrator of EPA to assess fees to defray the costs associated with operating its radon proficiency programs. The User Fees for Radon Proficiency Programs Final Rule, **Federal Register**, 59 FR 13166, established fees for two proficiency programs: the National Radon Measurement Proficiency Program and the National Radon Contractor Proficiency Program. The funds received by EPA have been authorized to be deposited into a special account in the United States Treasury with amounts in the account to be appropriated for administering the radon proficiency programs. State and local governments, including educational entities, are exempt from paying a fee to participate in the radon proficiency programs.

The final rule is cross-referenced to Title 40 of the Code of Federal Regulations (CFR) chapter I, subchapter R, Part 700 that lists regulations promulgated under the Toxic Substances Control Act (TSCA). Although the IRAA was enacted as Title III of TSCA, the Final User Fee Rule itself is listed under subchapter F of the CFR (40 CFR 195.20 et seq.) because it deals solely with a radiation program.

II. Background

On March 18, 1994, EPA issued a final rule in the **Federal Register**, 59 FR 13166, that established an initial fee schedule of $375 per device entered or listed in the RMP program for organizations offering primary measurement services, $75 per business location for organizations offering secondary measurement services, $150 for participants in the individual proficiency component of the RMP program, and $200 for participants in the RCP program.

The fees that the Agency established in the 1994 final rule were set to recover 30% of the total costs of administering the proficiency programs. As stated in the 1994 rule, the Agency intends to adjust its fees annually to recover ever increasing percentages of its program costs according to the following schedule: 1994 (30%), 1995 (47.5%), 1996 (65%), 1997 (82.5%) and 1998 (100%). For Fiscal Year (FY) 1994, total Agency costs to operate the radon proficiency programs were $1.7 million. EPA expects similar costs for fiscal year 1995. Based on a projected cost recovery percentage of 47.5%, the Agency expects to collect approximately $750,000 from user fees during 1995. EPA shall continue to review and adjust the fees over the next three years (as necessary) to recover ultimately the full annual costs of the proficiency programs. Fees may also be adjusted to account for other factors such as inflation and changes in programs costs. As it adjusts fees in the future, EPA will assess the potential effects of its fee adjustments on the radon industry and the regional impacts.

The Agency has determined that the Paperwork Reduction Act of 1980 (PRA) requirements do not apply to this technical amendment. This action was not classified by the Agency as a significant regulatory action, however, the Office of Management and Budget did request to review this action. The technical amendment cleared review on May 4, 1995 with no comments from OMB.

III. Provisions of the Amendment

A. National Radon Measurement Proficiency Program

EPA's total costs for the organizational component of the RMP Program for Fiscal Year 1994 were about $960,000 (a more detailed description of costs and how they were calculated is presented in the Technical Support Document for the 1995 User Fee Calculation in Support of the Radon Proficiency Program User Fee Final Rule, U.S. EPA/Office of Radiation and Indoor Air, January 24, 1995.). As of October 1, 1994, EPA had approximately 985 primary devices and approximately 1,485 secondary organizations listed or seeking to be listed in the program. If the RMP Program fees had been set at a full cost recovery level (100%) the annual fee for 1995 for a primary device would be about $825 per application or listing, and a fee of $100 would be assessed for each secondary firm applying to or listed in the RMP program. The difference between the fees for primary devices and secondary firms reflects differences in EPA's costs to process and maintain each type of applicant or participant in the organizational component of the RMP Program.

In this technical amendment to the 1994 Final Rule we have clarified the text in Section 195.20(a)(2) to reflect the fact that organizations listed or seeking to be listed for secondary measurement services in the RMP Program must pay an annual fee of $50 for each business location. Since the inception of the RMP

Program in 1989, EPA has required secondary organizations to submit applications and be listed separately for each business location they operate. In the 1994 user fee billing cycle, EPA invoiced and collected fees for organizations listed for or seeking listing for secondary measurement services based on separate business locations. To clarify this aspect of the program's operation, EPA has added the phrase, "a fee for each business location listed" at appropriate places in Section 195.20(a)(2) of the final rule.

B. Individual Measurement Proficiency

The total costs of the individual proficiency component of the RMP program in Fiscal Year 1994 were about $459,400. As of October 1, 1994, approximately 2,075 individuals were listed or in the process of being listed in the individual proficiency program. If the individual component of the RMP Program fees had been set at a full cost recovery level (100%) the annual fee for 1995 would be about $220 per individual.

C. National Radon Contractor Proficiency Program

The total costs for the RCP program were about $305,400 in fiscal year 1994. Approximately 686 individuals were listed or in the process of being listed in the RCP Program as of October 1, 1994. If the RCP Program fee had been set at a full cost recovery level (100%) the annual fee for 1995 would be about $445 per individual.

D. Fee Schedule—1995

1. Fee Amounts.

The 1995 user fee schedule for applicants to and participants in the RMP and RCP programs is, apart from some minor editorial changes, essentially unchanged from 1994. That schedule appears as a revised 40 CFR section 195.20, which follows this preamble.

Organizations or individuals whose proficiency program application has not yet been accepted by EPA on the effective date of this technical amendment (i.e., 30 days after the date of its publication in the **Federal Register**) become subject to the fees described above once their application has been accepted. Their user fees will be prorated quarterly, based on the acceptance date of the application. New applicants will be assessed an annual user fee based on the acceptance date of their application.

2. Exemptions.

State and local governments, including educational entities, are exempted from these fees under section 305(e)(2) of the IRAA. EPA has determined that exempted organizations or individuals include:

State or local governments (or employees thereof acting in their official capacities) who are listed, or applying to be listed, in the EPA proficiency programs who wish to perform radon measurements and/or mitigations. Specific exempted entities include the following classifications:

—Indian Tribes,
—State and local educational entities, that is, schools and school districts (this includes public universities, colleges and educational agencies), and
—State and local medical institutions and hospitals.

EPA has determined that IRAA does not exempt Federal employees from paying a fee to participate in the EPA proficiency programs.

3. Determination of Fees

Participants listed in the RMP and RCP programs on the effective date of this technical amendment will be sent, by EPA, a payment invoice with its fee calculation at least 30 days before the payment is due. Fees will be assessed based on the current information in EPA's proficiency data bases.

Participants who intend to pay the invoiced fee amount must send their payment to EPA following the procedures stated in the invoice. Organizations or individuals who wish to notify EPA of any errors or corrections they wish to make to their listing status must do so by following the instructions on the payment invoice. Corrected payment invoices for both the RMP Program and the RCP Program shall be sent to: Radon Proficiency Programs User Fees, c/o Sanford Cohen and Associates, Inc. (SC&A), 1418 I–85 Parkway, Montgomery, Alabama, 36106. EPA will review any corrections noted on the payment invoice, adjust the payment invoice amount (as appropriate) and issue a new invoice. Participants must pay the amount in the corrected payment invoice within 30 days of the date listed on the corrected invoice.

If the appropriate fee or a revised payment invoice for an individual or organization participating in the RMP or RCP program has not been received by EPA on or before the payment due date, EPA will send, by certified mail, notice that the individual or organization will be delisted from the proficiency program unless he/she pays the fee within 30 days of this second certified notification. If payment still has not been received by EPA on or before 30 days or after of the second certified notification, the organization's or individual's listing will be removed from the proficiency program.

New or initial applicants to the RMP or RCP programs will be assessed a fee at the time of their initial application. EPA will send a payment invoice to the new applicant upon acceptance of the initial application. The applicant will be given at least 30 days from the date on the payment invoice to remit payment. The fee assessed will be prorated quarterly, based on the acceptance date of the application. The prorated fee schedule for 1995 is as follows:

Quarter	st Jan 1-Mar 31	2nd Apr 1-Jun 30	3rd Jul 1-Sep 30	4th Oct 1-Dec 31
RMP Program:				
Per Primary measurement device	1$390	$295	$195	$95
Per Organization listed for secondary services	50	40	25	10
Per Individual listed for measurement services	105	80	55	25
RCP Program;				
Per Individual listed for mitigation services	210	160	105	50

If the appropriate fee has not been received by EPA on or before the payment due date, the application will be placed in an inactive file with no further action taken by EPA.

4. Payment Procedures

Each remittance to EPA under this technical amendment must be in United States currency and must be paid by either certified check, personal or business check, or money order made payable to the order of the "U.S. ENVIRONMENTAL PROTECTION AGENCY" and sent to: U.S. EPA, Washington Financial Management Center, Radon Proficiency Program User Fees (IRAA), P.O. Box 952491, St. Louis, Missouri, 63195–2491. The fee payment must include the original copy of the EPA payment invoice. Collection of fees will begin in the calendar year beginning January 1, 1995. Specific guidance on how and when fees must be paid can be found in How to Pay Your Radon Proficiency Programs User Fees, U.S. EPA/Office of Radiation and Indoor Air. Copies of this document can be obtained by contacting the RIS at (334) 272–2797 or by FAX at (334) 260–9051.

5. Failing the RMP Measurement Test

Organizations that fail the initial measurement device performance test or the re-test for a particular device must re-apply to the RMP program if they want to be listed or remain listed for that device. When the organization re-applies, EPA will send a payment invoice for the device(s) to be tested/re-tested. The appropriate user fee must be paid prior the scheduling of the test/re-test. EPA will send written notification of the measurement performance test results and listing status. Any fee paid to EPA in the process of attaining a listing of a particular device will not be refunded if the device fails to meet the RMP program criteria as stated in the Radon Measurement Proficiency (RMP) Program Handbook, EPA 402–B–94–003. Should the organization elect to re-apply to test the failed device, EPA will assess a new fee based on the information provided in the organization's application.

6. Failing the RMP Individual Proficiency and RCP Exams

a. Biennial Reexamination. To maintain their listing in the RCP program and/or the individual proficiency component of the RMP program, individuals must take and pass a biennial re-examination. EPA will notify listed participants of this requirement within 120 days of their exam expiration date. If an individual fails the exam, he/she may take the examination as often as he/she wishes during the same calendar year and not have to pay additional processing fees. This is a change from the 1994 final rule. In the final rule each application for retest also required that a $50.00 processing fee be paid. EPA has determined that it was not cost effective to assess and administer the $50.00 processing fee for retests.

Fees will not be refunded in the event that a participant fails the re-exam and/or chooses not to re-take the exam. If the same individual wishes to re-enter the program by re-taking the exam, the individual must re-apply. At the time that the application is submitted, EPA will determine whether a user fee will be assessed. Since user fees are paid for an entire year, so long as the original user fee was paid, an individual wishing to re-enter the proficiency programs within the same calendar year that he/she was delisted or failed the exam requirement, will not be assessed an additional user fee.

b. *New Applicants and the Exams.* New applicants to the RCP Program and/or the individual component of the RMP Program will be assessed a user fee when their application has been accepted. A user fee must be paid whether the individual passes or fails the exam. If an applicant decides not to re-take a failed individual RMP program proficiency exam or RCP exam, no further action is taken by EPA on the individual's application. Fees will not be refunded in the event that an applicant fails the exam and/or chooses not to re-take the exam. If the same individual wishes to re-apply to the program by re-taking the exam, at the time that the application is received, EPA will determine whether a user fee will be assessed. Since user fees are paid for an entire year, so long as the original user fee was paid, an individual wishing to re-enter the proficiency programs by meeting the examination requirement, will not be assessed an additional user fee.

7. Adjustment of Fees

EPA shall adjust the fees over the next three years to a level that will ultimately be sufficient to recover the full annual costs of the radon proficiency programs. Assuming that the Agency's cost of running the proficiency programs remains the same over the next three years and assuming that the level of participation in the proficiency programs remains constant, the fee schedule for the next three years would be as follows:

Program element	Fee year 3	Fee year 4	Fee year 5
RMP Program:			
Per Primary measurement device	$540	$660	$825
Per Organization listed for secondary services	65	80	100
Per Individual listed for measurement services	145	185	220
RCP Program:			
Per Individual listed for mitigation services	290	365	445

The above table should only be considered as a guide. Actual fees for each fiscal year will be adjusted based on program costs and participation rates. EPA may also use the three-step process outlined in the 1994 final rule to adjust the fees for years after 1995. If future fee adjustments are made, the Agency will publish new fee schedules in the **Federal Register** as a technical amendment final rule to become effective 30 days or more after publication, as specified in the 1994 final rule.

VI. Rulemaking Record

EPA has established a public record for this rulemaking (docket control number A–90–09). The record for this rulemaking is available to the public in the Clean Air Act Docket, located on the first floor Waterside Mall, room M1500, U.S. Environmental Protection Agency, 401 M St., SW, Mail Stop 6102, Washington, DC, 20460, open from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, (202) 260–7548.

The record includes information considered by EPA in developing this technical amendment. The record contains the following categories of information: (1) **Federal Register** notices: "Fees for Radon Proficiency Programs and Training," Proposed Rule, FR vol. 55, No. 235, Thursday, December 6, 1990; "User Fees for Radon Proficiency Program," Final Rule, FR vol. 59, No. 53, Friday, March 18, 1994; (2) Support Documents: "Economic Impact Analysis of Radon Proficiency Program User Fee Rule—Final Report." U.S. EPA/Office of Radiation and Indoor Air, November 17, 1993; "Technical Support Document for the 1995 User Fee Calculation in Support of the Radon Proficiency Programs User Fee Final Rule," U.S. EPA/Office of Radiation and Indoor Air, January 24, 1995; and, "Operating Policies and Procedures for the User Fees for Radon Proficiency Programs Final Rule—Fee Collection Process," U.S. EPA/Office of Radiation and Indoor Air, June 19, 1995; (3) Public

Comments received during the proposed rule notice and comment period and those received by the Agency following publication of the 1994 final rule.

List of Subjects

40 CFR Part 195

Environmental protection, Radon, Proficiency programs, User fees.

40 CFR Part 700

Environmental protection, Radon, Proficiency programs, User fees.

Dated: August 7, 1995.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 195 is amended as follows:

PART 195—RADON PROFICIENCY PROGRAMS

1. The authority citation for part 195 continues to read as follows:

Authority: 15 U.S.C. 2665.

Subpart B—Fees

2. Section 195.20 is revised to read as follows:

§ 195.20 Fee payments.

(a) *Fee Amounts.* Applicants to and participants in the RMP and RCP programs shall pay fees according to the following fee schedule:

(1) *Organizations Listed for or Seeking Listing for Primary Measurement Services in the RMP Program.*

(i) In order to remain a listed participant, each organization that is listed for primary measurement services in the RMP program on the effective date of this section shall pay an annual fee of $390 for each device.

(ii) Each organization seeking listing for primary measurement services that submits an initial application after the effective date of this section shall pay an annual fee of $390 per device. This fee will be prorated quarterly, based on the acceptance date of an organization's application.

(iii) Organizations that have or are seeking a listing for secondary measurement services for their primary devices will not be required to pay the additional $50 fee applicable to secondary organizations.

(2) *Organizations Listed for or Seeking Listing for Secondary Measurement Services in the RMP Program.*

(i) In order to remain a listed participant, each organization that is listed for secondary measurement services in the RMP program on the effective date of this section shall pay an annual fee of $50 for each business location listed.

(ii) Each organization seeking listing for secondary measurement services that submits an initial application after the effective date of this section shall pay an annual fee of $50 for each business location listed. This fee will be prorated quarterly, based on the acceptance date of an organization's application.

(iii) Primary organizations that have or are seeking secondary listings for methods other than those for which they are listed as a primary, are subject to the fees.

(3) *Individual Proficiency Component of the RMP Program.*

(i) In order to remain a listed participant, each individual listed in the RMP individual proficiency program on the effective date of this section shall pay an annual fee of $105.

(ii) Each individual who submits an initial application after the effective date of this section shall pay an annual fee of $105. This fee will be prorated quarterly, based on the acceptance date of an individual's application.

(iii) Individuals who have or are seeking listing status as an RMP primary or secondary organization are subject to the applicable fees under paragraphs (a)(1) and (2) of this section.

(4) *RCP Program.*

(i)(A) In order to remain a listed participant, each individual listed in the RCP program on the effective date of this section shall pay an annual fee of $210.

(B) Each individual who is not a listed participant in the RCP program on the effective date of this section and submits an initial application after the effective date of this section shall pay an annual fee of $210. This fee will be prorated quarterly, based on the acceptance date of an individual's application.

(ii) An organization or individual who is not a listed participant in EPA's radon proficiency programs on the effective date of this section and/or whose proficiency program application has not yet been accepted by EPA becomes subject to the fees described above once its application has been accepted by EPA. Fees for such organizations or individuals will be prorated quarterly, based on the acceptance date of the application. To remain listed, each participant in the RMP or RCP programs, whether individual or organization, shall submit the appropriate annual fee to EPA each year.

(b) *Exemptions.* State and local governments are exempted from these fees under section 305(e)(2) of TSCA, 15 U.S.C. 2665.

(c) *Determination of Fees.* (1) Participants listed in the RMP and RCP programs on the effective date of this section will be sent, by EPA, a payment invoice with its fee calculation at least 30 days before the payment is due. Fees will be assessed based on the current information in EPA's proficiency data bases. Participants who intend to pay the invoiced fee amount must send their payment to EPA following the procedures in the invoice. Organizations or individuals who wish to notify EPA of any errors or corrections they wish to make to their listing status must do so by following the instructions on the payment invoice. Corrected payment invoices for both the RMP Program and the RCP Program shall be sent to: Radon Proficiency Programs User Fees, c/o Sanford Cohen and Associates, Inc. (SC&A), 1418 I–85 Parkway, Montgomery, Alabama, 36106. EPA will review the corrections noted on the payment invoice, adjust the payment invoice amount (as appropriate) and issue a new invoice. Participants must pay the amount in the corrected payment invoice within 30 days of the date listed on the corrected invoice.

(2) If the appropriate fee or a revised payment invoice for an individual or organization participating in the RMP or RCP program has not been received by EPA on or before the payment due date, EPA will send, by certified mail, notice that the individual or organization will be delisted from the proficiency program unless he/she pays the fee within 30 days of this second certified notification. If payment still has not been received by EPA after 30 days of the second certified notification, the organization's or individual's listing shall be removed from the proficiency program.

(3) New or initial applicants to the RMP or RCP programs will be assessed a fee at the time of their initial application. EPA will send a payment invoice to the new applicant upon acceptance of the initial application. The applicant will be given at least 30 days from the date on the payment invoice to remit payment. The fee assessed will be prorated quarterly, based on the acceptance date of the application. If the appropriate fee has not been received by EPA by the payment due date, the application will be placed in an inactive file with no further action taken by EPA.

(d) *Payment Procedures.* Each remittance to EPA under this section shall be in United States currency and shall be paid by certified check, personal or business check, or money order made payable to the order of the "U.S. ENVIRONMENTAL PROTECTION AGENCY" and sent to: U.S. EPA, Washington Financial Management Center, Radon Proficiency Program User Fees (IRAA), P.O. Box 952491, St. Louis, Missouri, 63195–2491. The fee payment shall include the original copy of the EPA payment invoice. Collection of fees will begin in the calendar year beginning January 1, 1995. Specific guidance on how and when fees must be paid can be found in How to Pay Your Radon Proficiency Programs User Fees, U.S. EPA/Office of Radiation and Indoor Air. Copies of this document can be obtained by contacting the RIS at (334) 272–2797 or by FAX at (334) 260–9051.

(e) *Adjustment of Fees.* (1) EPA shall collect 100 percent of its operating costs associated with its radon proficiency programs by calendar year 1998. As necessary, EPA shall adjust the fees established by this subpart each year over the next four years to collect the following percentages of program costs:

Year 1	Year 2	Year 3	Year 4	Year 5
30%	47.5%	65%	82.5%	100%

Actual fees for each fiscal year will be calculated based on program costs and participation rates. New fee schedules will be published in the **Federal Register** as a technical amendment final rule to this part to become effective 30 days or more after publication.

(2) EPA will use a three-step process to adjust the fees annually. First, EPA will estimate the costs of providing each of the proficiency programs for the upcoming year. EPA will account for future additional fixed costs (e.g., updating examinations) and increases/decreases in variable costs due to inflation and other factors. In order to calculate increases/decreases in costs due to inflation, EPA may use one of the three following indices: the Federal General Schedule (GS) pay scale, the Consumer Price Index (CPI), and/or a component of the CPI, such as services. Second, EPA will estimate the number of participants for each program. At a minimum, these participation rates will be based on past and current program participation rates. Third, EPA shall calculate the per capita costs that individuals and organizations should pay to enable it to recover its fixed and variable costs each year for each program. EPA shall also consider potential industry impacts as it adjusts to levels to ultimately achieve full cost recovery over the period of five years.

[FR Doc. 95–20008 Filed 8–11–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 261

[FRL–5276–3]

Hazardous Waste Management System: Carbamate Production, Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Interpretative rule.

SUMMARY: The Environmental Protection Agency is today announcing a change in the Agency's interpretation of its rule that lists wastes from carbamate production as hazardous wastes under the Resource Conservation and Recovery Act (RCRA). Under this new interpretation, wastes from the production of non-carbamate intermediates that are used exclusively in the production of carbamates but are not produced at the ultimate site of manufacture of the carbamates will not be subject to the rule. These wastes are among those given the RCRA waste code designations K–156 and K–157 in the rule.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: The official record for this interpretative rule is identified as Docket number F–95–CPLF–FFFFF and is located in the RCRA Docket, Room M2616 (5305), 401 M Street, SW, Washington, DC, 20460. The public may make an appointment in order to review docket materials by calling (202) 260–9327. The docket is open for inspection from 9 AM to 4 PM, Monday through Friday, excluding Federal holidays. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA/Superfund Hotline, toll free, at (800) 424–9346, or at (703) 920–9810. For technical information concerning this notice, contact Mr. John Austin, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, (202) 260–4789.

SUPPLEMENTARY INFORMATION:

I. Background

On February 9, 1995 (60 FR 7824), EPA promulgated regulations under RCRA that listed as hazardous wastes six wastes generated during the production of carbamates and 58 commercial chemical products that become hazardous wastes when they are discarded or intended to be discarded. This rule becomes effective on August 9, 1995.

Among the six wastes subject to the rule are those designated by EPA as K–156 and K–157. The K–156 listing consists of "[o]rganic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes" (60 FR 7849, to be codified at 40 CFR 261.32). This waste was listed because it contains one or more of the following hazardous constituents of concern: formaldehyde, methylene chloride, triethylamine, carbofuran, benomyl, carbendazim, carbaryl, or carbosulfan (60 FR 7853, to be codified in Appendix VII to 40 CFR Part 261).

The K–157 listing consists of "[w]astewaters (including scrubber waters, condenser waters, washwaters and separation waters) from the production of carbamates and carbamoyl oximes" (60 FR 7849, to be codified at 40 CFR 261.32). This waste was listed because it contained one or more of the following hazardous constituents of concern—carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, or triethylamine (60 FR 7853, to be codified in Appendix VII to 40 CFR Part 261).

Public comments on the proposed rule requested that EPA clarify the definition of carbamate "production," principally to ensure that production would not include operations that isolate non-carbamate product for which there is otherwise a commercial market. In response to these comments, EPA set out its interpretation of the definition of production for purposes of the carbamate listing rule in the preamble to the final rule at 60 FR 7830.

After considering the comments and examining the industry, EPA concluded that carbamate production for purposes of the rule begins with the synthesis of non-carbamate chemicals that have no other use except for the production of a carbamate product. These non-carbamate chemicals are known as chemical "intermediates" in the industry. The consequence of this interpretation is that wastes generated from the manufacture of these

intermediates would be considered to be within the scope of the listing.

In its preamble interpretation, the Agency stated that processes that produce non-carbamate products which may be used in carbamate production, but have other uses, are not included in the definition of carbamate production. These latter processes would include production of phosgene and methyl isocyanate.

However, EPA also interpreted carbamate production to include manufacture of the non-carbamate intermediates used exclusively in carbamate production regardless of whether the manufacture occurred at the ultimate site of manufacture of the carbamate chemical. EPA specifically cited, as examples of these off-site intermediates—bendiocarb phenol, A–2213 (an intermediate in oxamyl production), and carbofuran phenol. 60 FR 7830.

A number of petitions for review challenging the carbamate listing have been filed in the United States Court of Appeals for the District of Columbia Circuit. These cases have been consolidated under the name, *Dithiocarbamate Task Force* v. *EPA*, Docket No. 95–1249.

As a result of settlement discussions EPA has reexamined the rulemaking record and determined that it lacks support for the interpretation of "production" as including manufacture of non-carbamate intermediates not produced at the ultimate site of carbamate production. In particular, information submitted by the producers of these non-carbamate intermediates shows that their wastes generated from manufacture of these intermediates do not contain any of the hazardous constituents of concern for which the K–156 and K–157 wastes have been listed. EPA has no other information to indicate that these waste streams contain any of these constituents.

Thus, EPA believes it has interpreted the definition of carbamate production in an overly broad manner to include wastes that should not be subject to the rule. Accordingly, EPA hereby changes its interpretation of carbamate "production" not to include non-carbamate intermediates that are produced at a site other than the ultimate site of carbamate production. Wastes from the production of such intermediates will not be covered by the listing.

II. Justification for Making the Interpretation Immediately Effective

EPA considers this change to its regulatory interpretation to be an interpretative rule exempt from the requirement for public notice and opportunity for comment procedures under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), because it informs the public of the Agency's views of how the term, "production," in its own regulations will apply to carbamate waste listings. Also, EPA does not consider that this interpretation is subject to the requirements of the APA (5 U.S.C. 553(d)) or RCRA (section 3010(b); 42 U.S.C. 6930(d)) to delay the effective date of regulations after they are promulgated.

To the extent it may be argued that EPA is required to provide public notice and opportunity to comment or delay in the effective date, the Agency finds that good cause exists not to apply these procedures. If either notice and comment or delayed effective date procedures were applied, the off-site non-carbamate waste streams would become subject to the requirements of RCRA Subtitle as of August 9. The Agency has determined that this would be unfair, since EPA's rulemaking record indicates that the risks from these wastes are not significant and that the record does not support regulating them. Given the likelihood that the risks appear to be insignificant, at least to the extent they are examined in the rulemaking record, the wastes should not be subjected to the extensive requirements of the RCRA waste management regulations.

Dated: August 8, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–20002 Filed 8–11–95; 8:45 am]

BILLING CODE 6560–60–M

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40 CFR Part 271

[FRL–5276–5]

Alabama; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Alabama has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Alabama's revisions consist of the "Burning of Hazardous Waste in Boilers and Industrial Furnaces" (BIF) provision and provisions contained in RCRA Cluster III. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Alabama's applications and has made a decision, subject to public review and comment, that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Alabama's hazardous waste program revisions. Alabama's applications for program revisions are available for public review and comment.

DATES: Final authorization for Alabama's program revisions shall be effective October 13, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Alabama's program revision applications must be received by the close of business, September 13, 1995.

ADDRESSES: Copies of Alabama's program revision applications are available during 8:00 am to 4:30 pm at the following addresses for inspection and copying: Alabama Department of Environmental Management, 1751 Congressman W. L. Dickinson Drive, Montgomery, Alabama 36109–2608. (334) 271–7700; U.S. EPA, Region 4, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, U.S. EPA Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Alabama

Alabama initially received final authorization for its base RCRA program effective on December 22, 1987. Alabama received authorization for revisions to its program on January 28, 1992, July 12, 1992, December 21, 1992, May 17, 1993, November 23, 1993, April 4, 1994, and January 13, 1995.

On November 12, 1993, and March 27, 1995, Alabama submitted program revision applications for additional program approvals. Today, Alabama is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Alabama's applications and has made an immediate final decision that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Alabama. The public may submit written comments on EPA's immediate final decision up until September 13, 1995.

Copies of Alabama's applications for these program revisions are available for inspection and copying at the locations indicated in the "Addresses" section of this notice. Approval of Alabama's program revisions shall become effective October 13, 1995, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Alabama is today seeking authority to administer the following Federal requirements promulgated on February 21, 1991, for BIF and July 1, 1992—June 30, 1993, for RCRA Cluster III.

Federal requirement	FR reference	FR promulgation date	State authority
Checklist 85, Burning of Hazardous Waste in Boilers and Industrial Furnaces.	56 FR 7134	2/21/91	335–14–1–.02(1)(2), 12 & 13 335–14–2–.01(2)(d), 2(d),3(4)(b),4(b),7(b),8 335–14–2–.01(6)(a)3.(vii),(viii) 335–14–6–.7(3)(d)1 335–14–5–.15(1)(a) 335–14–6–.07(3)(a)(d)1(d)2 335–14–6–.07(4)(a) 335–14–6–.07(4)(b) 335–14–6–.15(1)(a) 335–14–7–.04(1)(6) 335–14–7–.08(1)–(13) 335–14–7-Appendix I–X 335–14–8–.02(13)(a)1.(a)1.(i),(ii)(a)2.(i),(ii) 335–14–8–.02(a)2(ii)(I)–(V) 335–14–8–.02(a)3,(a)3.(i)–(vii) 335–14–8–.02(13)(a)5,(a)5.(i)–(vii),(a)6,(a)6. (i),(a)6.(i)(I–III),(ii) 335–14–8–.02(13)(b),(b)1–6 335–14–8–.02(13)(c)(d)(e)(f) 335–14–8–.04(3)(g),(g)1,(g)1.(i–v) 335–14–8–.04(3) 335–14–8–.06(5)(a)(b),(b)1,(b)1.(i–ii),(b)2,(b)3. (i–iii),(b)4,(c),(c)1,(c)1.(i–ii),(c)2,(c)2.(i–viii),(e)4–9,(d)1–5,(e),(f),(f)1,(f)2,(f)2.(i–iii),(f)3–8 335–14–8–.07(3)(a)6,(b)7 335–14–8–.07(4)(f)(g)
Checklist 107, Used Oil Filter Exclusion; Technical Corrections.	57 FR 29220	7/1/92	335–14–2–.01(4)(b)13
Checklist 108, Toxicity Characteristic Revisions; Technical Corrections.	57 FR 30657	7/10/92	335–14–2–.01(4)(b)6.(ii),(b)9
Checklist 109, Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris.	57 FR 37194	8/18/92	335–14–1–.02(1) 335–14–2–.01(3)(c)2.(ii)(III),(3)(e),(e)1,(e)2 335–14–3–.03(5)(a)1.(iii),(a)1(iii) (II),(a)1.(iv),(iv)(I),(II),(5)(a)2 335–14–5–.07(1)(b)1–(b)4 335–14–5–.07(2)() 335–14–5–.07(3)(a)2 335–14–5–.08(1),(b)1–(b)4 335–14–5–.08(3)(a) 335–14–5–.30(1), (1)(a),(1)(b),(1)c,(1)c1–3,(1)(d)&(e) 335–14–5–.30(2)(a)2–4 335–140(2)(b),(2)(b)1,2,2.(i), (ii),(2)(b)3,(i),(i)(I)(II), (2)(b)4,(i–iii) 335–14.30(2)(c),(2)(c)1.(i–iv) 335–14–5–.30(2)(c)2,3,(i)(I–IV), (2)(c)3.(ii),(iii), (2)(c)4,(2)(d),(2)(d)1–3,(2)(e) 335–14–5–.30(3)(a)(b)

Federal requirement	FR reference	FR promulgation date	State authority
			335–14–6–.07(1)(b)1–4
			335–14–6–.07(2)(c)
			335–14–6–.07(3)(d)4
			335–14–6–.08(1)(b),(1)(b)1–3,(3)(a)
			335–14–6–.11(2)(h)
			335–14–6–.30(1),(1)(a)–(e)
			335–14–6–.30(2)(a),(2)(a)1,2,(2)(a)2(i), 2(ii),(2)(a)3&4 (2)(b),(2)(b)1,2,(2)(b)2.(i,ii)
			335.30(2)(b)3,(2)(b)3.(i), (I),(II)(ii)(iii),(2) (b)4, (i)(ii)(iii),(2)(c),(2) (c)1.(iiv),(2)(c)2,(2)(c)3,(i)
			335.14–6–.30(2)(c)3.(i)(I–IV),(2)(c)3. (ii)(iii),(2)(c)4, (2)(d)(2)(d)1–3,(2)(e), (3)(a),(3)(b)
			335–14–9–.01(2)(7)(9)
			335–14–9–.02(5)
			335–14–9–.03(7)
			335–14.04(1)(2)(3)(4)(6)(7)
			335–14–9–.05(1)
			335–14–9-Appendix II
			335–14–8–.02(4)(n)
			335–14–8–.02(b)2
			335–14–8–.04(3)(a)11
			335–14–8–.07(3)(b)6
Checklist 110, Coke By-Products Listings	57 FR 37284	8/18/92	335–14–2–.01(4)(a)10
			335–14–2–.04(3)
			335–14–2-Appendix VII
Checklist 111, Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III.	57 FR 38558	8/25/92	335–14–1–.02(1)
			335–14–2–.01(2)(e)2.(iv)
			335–14–5–.01(1)(g)2
			335–14–6–.01(1)(c)6
			335–14–7–.08,(9)(c)(13)
			335–14–7–Appendix IX
Checklist 113 Consolidated Liability Requirements	57 FR 42832	9/16/92	335–14–5–.08(2)(h)
	53 FR 33938	9/1/88	335–14–5–.08(4)(f)10,11
	56 FR 30200	7/1/91	335–14–5–.08(8)(a),(8)(a)2–7(i)(ii)(iii)
			335–14–5–.08(8)(b),(8)(b)2–7(i)(ii)(iii)
			335–14.08(8)(f)7,8(g), (8)(g)1(ii),2.(i)(ii)
			335–14–5–.08(8)(h),(8)(h)1–5
			335–14–5–.08(8)(i).(8)(i)1–4,(8) (i)4(i)(ii),(8)(j),(8)(j)1 4,(8)(k)
			335–14.08(12)(b)(f)(g)(h)1,2
			335–14–5–.08(12)(i)2.(d)
			335–14–5–.08–(12)(j)2.(d)
			335–14–5-08(12)(k),(L), (m)1,2,(h)2,(n)n2
			335–14–6–.08(4)(e)10,II
			335–14–6–.08(8)(a),(a)2–7(i–iii),(8)(b),(b)2–7(i–iii),(8)(f)6, (8)(g),(8)(g)1(i–ii),(8)(h),(8)(h)1–5,(8)(i),(8)(i)1–4, (8)(i)4.(i)(ii),(8)(j),(8)(j)1–4,(8)(k)
Checklist 114, Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment IV.	57 FR 44999	9/30/92	335–14–7–.08(4), Appendix IV
Checklist 115, Chlorinated Toluenes Production Waste Listing.	57 FR 47376	10/15/92	335–14–2–.04(3)
			335–14–2-Appendix VII
Checklist 118 Liquids in Landfills II	57 FR 54452	11/18/92	335–14–1–.02(1)
			335–14–5–.02(4)(c)4
			335–14–5–14(15)(a)(b)(d)1.(ii)(e)1.(ii–iii)(e)2.(i–ii)
			335–14–5–.14(17)(b)(c)
			335–14–6–.02(4)(c)4
			335–14–6–.14(15)(a)(b)(f)(f)1(f)1.(i–iii)(f)(i–ii)
			335–14–6–.14–(15)(g)(15)(g)1&2
			335–14–6–.14(17)(b)(c)
Checklist 119, Toxicity Characteristic Revision; TCLP Correction.	57 FR 55114	11/24/92	335–14–2-Appendix II
Checklist 120, Wood Preserving; Revisions to Listings and Technical Requirements.	57 FR 61492	12/24/92	335–14–2–.04(2)
			335–14–5–.23(1)(a)(1)(c,(1)(c)1,(1)(c)1.(i–iv)
			335–14–5–.23(2)(a)(2)(b)(2)(b)1–3
			335–14–5–.23(3),(3)(a),(3)(b), (4)(a)4.(i,ii)(4)(b),(4)(b)3, (4)(l)
			335–14–6–.23(1)(a)(1)(c)(1)(c)1.(i–iv)
			335–14–6–.23(2)(a)(b)(2)(b)1–3
			335–14–6–.23(3)(3)(a)(3)(b)(4)(a) 4.(i,ii),(4)(b),(4)(b)3.(4)(i)
Checklist 124, Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated.	58 FR 29860	5/24/93	335–14–5–.01(1)(g)6
			335–14–6–.01(1)(c)10
			335–14–9–.01(1)(2)(7)(9)
			335–14–9–.03(8)

Federal requirement	FR reference	FR promulgation date	State authority
			335–14–9–.04(1)(2)(3)(4)
			335–14–8–.04(3)(a)2

Alabama's applications for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Alabama is granted final authorization to operate its hazardous waste program as revised.

Alabama now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Alabama also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Alabama's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: August 4, 1995.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 95–20009 Filed 8–11–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–135; Amdt. 192–3]

RIN 2137–AC32

Customer-Owned Service Lines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This action requires operators of gas service lines who do not maintain buried customer piping up to building walls or certain other locations to notify their customers of the need to maintain that piping. Congress directed DOT to take this action in view of service line accidents. By advising customers of the need to maintain their buried gas piping, the notices may reduce the risk of further accidents.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366–2392, regarding the content of this document, or the Dockets Unit (202) 366–4453 for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

A. Customer Piping

RSPA's gas pipeline safety standards (49 CFR Part 192) apply to the distribution of gas up to the end of a pipeline operator's service line. A service line, as defined in § 192.3, is a distribution line that begins at a common source of supply, usually a main, transmission line, or gathering line. The end of a service line is a customer meter or a connection to a customer's piping, whichever is farther downstream. If there is no meter, the connection to a customer's piping marks the end of a service line. A customer is any person who contracts with an operator to receive gas for consumption. Customer's piping (or customer piping) refers to piping not owned by an operator through which a customer receives gas.

When operators install customer meters, they usually install them outdoors next to the building that houses the customer's principal gas utilization equipment. If that equipment is not inside a building, the meter may be installed next to the equipment. Either of these installations may leave only a short segment of exterior customer piping between the end of the operator's service line and the building or equipment. Sometimes, however, operators install customer meters farther away from buildings or equipment, perhaps at a private property line or fence. The result is a much longer length of exterior customer piping.

Regardless of length, customer piping downstream from an operator's service line is not subject to the maintenance standards of Part 192. However, according to the National Transportation Safety Board, twenty-two states now require operators to monitor portions of customer piping. Also, many operators voluntarily maintain customer piping up to building walls. Still, for much customer piping, maintenance is the responsibility of customers or piping owners, not operators of service lines. In this regard, RSPA is preparing a report on the safety of customer piping located downstream from service lines to see if there is a need for further legislative or regulatory action. The report is required by section 115(b) of the Pipeline Safety Act of 1992 (Pub. L. 102–508; 106 Stat. 3296).

B. Statutory Mandate

During a 7-month period beginning September 16, 1988, a series of five service line accidents killed four people and injured 16 others in Kansas and Missouri. The accidents happened on service lines supplying gas to homes and were due to corrosion and other causes. As a result, Congress became concerned about the safety of gas piping leading up to buildings. Congress felt that customers of distribution pipeline operators may not understand the need for basic maintenance of customer piping.

Therefore, as provided by 49 U.S.C. § 60113(a) (formerly section 18(b) of the

Natural Gas Pipeline Safety Act of 1968), Congress directed DOT to—

> Prescribe regulations requiring an operator of a natural gas distribution pipeline that does not maintain customer-owned natural gas service lines up to the building walls to advise its customers of—
>
> (1) the requirements for maintaining those lines;
>
> (2) any resources known to the operator that could assist customers in carrying out the maintenance;
>
> (3) information the operator has on operating and maintaining its lines that could assist customers; and
>
> (4) the potential hazards of not maintaining the lines.

C. Rulemaking Proposal

In response to this Congressional mandate, RSPA published a notice of proposed rulemaking (NPRM)(59 FR 5168; February 3, 1994) on customer notification. The NPRM proposed to define the piping covered by the mandate ("covered piping"). The NPRM also proposed to establish the details of advice that operators who do not maintain covered piping up to building walls would have to give their customers.

In a supplemental notice of proposed rulemaking (SNPRM)(59 FR 13300; March 21, 1994), RSPA expanded the proposed rules to cover certain exterior customer piping that is above ground. The SNPRM also clarified that the proposed rules were not limited to operators who are local distribution companies. Other operators (primarily transmission companies) that supply gas to customers through service lines were covered as well. RSPA also announced in the SNPRM that the proposed rules did not apply to customer piping that branches from a customer's primary gas supply line to supply gas to secondary equipment, such as pool heaters and yard lanterns.

D. Advisory Committee Review

RSPA presented the NPRM and SNPRM for deliberation by the Technical Pipeline Safety Standards Committee (TPSSC) at a meeting in Washington, D.C. on May 11, 1994. TPSSC is RSPA's statutory advisory committee for gas pipeline safety. The committee comprises 15 members, representing industry, government, and the public, who are technically qualified to evaluate gas pipeline safety. TPSSC's report of its deliberation is available in the docket of this proceeding.

TPSSC voted unanimously to find the proposed rules technically feasible, reasonable, and practicable, provided RSPA made the following changes: (1) delete information on age, location, and material of customer piping from proposed § 192.16(a)(4); (2) when customer piping does not enter a building, end covered piping at the point of custody transfer; (3) apply the proposed rule only to buried residential and small-commercial lines; and (4) delete "transmission or" from proposed § 192.16(a) to limit the rule to distribution operators. The next section discusses how we handled TPSSC's recommended changes in developing the final rule.

II. Discussion of Comments and TPSSC Recommendations

A. Commenters

We received written comments from 57 persons in response to the NPRM and SNPRM. The comments came from: 47 pipeline operators; 5 state pipeline safety agencies (Maryland, Kansas, Iowa, Michigan, and Missouri); 4 trade associations (American Gas Association (AGA), Interstate Natural Gas Association of America (INGAA), Western Mobilehome Parkowners Association (WMPA), and Texas Gas Association (TGA)); and 1 federal agency (National Transportation Safety Board (NTSB)).

Most commenters directed their remarks to specific issues. This section of the preamble discusses our resolution of significant issues in light of comments and TPSSC recommendations.

B. The Term "Customer-Owned Service Line"

The mandate applied to customer piping Congress called "customer-owned service lines." So the NPRM and SNPRM used this term to designate the customer piping covered by the proposed rules.

Despite its statutory origin, many commenters felt the term "customer-owned service line" would be confusing in a Part 192 regulation. They said many service lines under Part 192 include piping owned by customers. Consequently, they argued the term was too similar to "service line" to distinguish customer piping not regulated by Part 192 from service lines regulated by Part 192. The commenters suggested as alternatives the names "supply pipe," "yard line," "fuel line," and "customer-owned piping."

We agree that "customer-owned service line" would be a misnomer in Part 192. The term could easily be confused with "service line," because some customers own the portion of a service line on private property between a distribution main and customer meter. Also, other customers (particularly tenants) may not own any of the piping through which they receive gas from an operator. For these reasons, we did not use the term "customer-owned service line" in the final rule.

At the same time, we did not name covered piping as commenters suggested. Since Part 192 currently refers to piping beyond the end of a service line as "customer's piping" (see § 192.3, service line), referring to that piping by another name would be confusing. Instead, to designate piping covered by the final rule, we used "customer's piping" with other descriptive wording (§ 192.16(a)).

C. End of Covered Piping

To delineate the customer piping covered by the proposed rules, the NPRM and SNPRM defined the term "customer-owned service line." The definition proposed was: "a pipeline that transports natural gas or petroleum gas from a service line to (1) an exterior wall of a building, or (2) end-use equipment" (proposed amendment to § 192.3).

Most commenters thought the proposed end of covered piping was unclear. One concern was the end of covered piping when customer piping leads to more than one building. Another concern was the end when customer piping leads both to a building and to outdoor equipment, such as a lantern. Still another concern was the end when customer piping does not enter a building, which happens at some plants. In regard to plants, AGA argued the end should be at a location equivalent to a building wall, such as the plant fence or point of custody transfer. Similarly, TPSSC recommended ending covered piping at a custody transfer point when there is no building.

As stated above, we intended the proposed rules to apply to customers' primary gas supply lines. Branch lines that serve pool heaters, yard lanterns, or other types of secondary equipment were not intended to be covered. The final rule (§ 192.16(a)) clarifies this point by covering customer piping up to gas utilization equipment only when the customer's piping does not enter a building. Also, to avoid the confusion of where covered piping ends when customer piping enters more than one building, the final rule refers to the first building. We used the term "gas utilization equipment" instead of "end-use equipment" for consistency with present terminology in Part 192 (e.g., § 192.197(a)(5)).

When customer piping does not enter a building, we agree that a perimeter fence (or wall) surrounding the gas utilization equipment serves the purpose of a building wall under the mandate. Thus, when there is no building, under the final rule, covered piping ends at the gas utilization equipment or at the intersection of the first fence (or wall) that encloses the equipment (if such a fence (or wall) exists). The fence (or wall) may surround the plant, part of the plant, or just the equipment.

We did not adopt custody transfer to demarcate the end of covered piping when customer piping does not enter a building. Because custody transfer arguably occurs when gas enters piping not owned by the operator, none of the customer piping downstream from a service line would come under the notification rule.

D. Aboveground Customer Piping and Short Sections of Piping Between Meters and Buildings

Many commenters, including AGA and Missouri, recommended that the final rule apply only to buried piping. Generally, the commenters felt that aboveground piping presents less risk than buried piping. The commenters said operators or customers would see any deteriorated piping or they would smell any leaks. Further, the commenters envisioned that any leaks would go directly to the atmosphere and not migrate into a building. TPSSC also recommended that we limit the final rule to buried piping.

The chief reason, however, that most commenters wanted to restrict the final rule to buried piping was to reduce the number of customers that would have to be notified. This point was emphasized by AGA at the TPSSC meeting, convincing TPSSC to overturn an earlier vote against excluding aboveground piping. Millions of additional customers would have to be notified if aboveground piping were covered, since most service lines, including lines that end at meters next to buildings, connect to short sections of aboveground piping. For example, one operator said it would have to send 1.3 million notices if the rule covered aboveground piping, compared with 68,000 notices if only buried piping were covered. This operator argued that since the accidents that produced the mandate all involved buried piping, Congress did not intend the mandate to cover aboveground piping. In addition, according to WMPA, if the rule covered aboveground short sections of piping, it would affect most of the 2,950 mobilehome parks in California with master meter systems. WMPA said mobilehomes in these parks are usually connected to gas meters by short flexible pipe that is the responsibility of the mobilehome owner. WMPA recommended that the final rule not apply to aboveground piping less than 6 feet long.

We too were concerned about the impact of the proposed rules on short sections of piping between customer meters and buildings. So, in the NPRM and SNPRM, we asked for public comment on whether these short sections of piping are properly installed and periodically maintained. One operator commented that trained operator or heating contractor personnel install the short sections. Another operator said installation is done according to the National Fuel Gas Code, interior gas piping standards produced by the American National Standards Institute and the National Fire Protection Association. Several operators said that short sections seldom or never leak. A few operators reported they periodically inspect short sections for leaks and advise customers of any problems. However, one operator said it does not check commercial or industrial piping. Two other operators said they check for leaks when they turn gas on or when they receive leak reports. WMPA commented that leak surveys normally include the customer's connector pipe, and that mobilehome owners are advised of any needed repairs.

These comments and the TPSSC recommendation convinced us that aboveground customer piping should not be regarded as covered piping. First of all, we recognize that if aboveground piping were covered, almost every gas customer in the U.S. would have to be notified. And there is no evidence that a notification program of this magnitude would result in a comparable increase in public safety. Nor do we think Congress contemplated a huge, nationwide notification program. Although the mandate arguably applies to any customer piping up to building walls, the fact that the accidents that led to the mandate happened on buried service lines means it is reasonable to conclude that Congress intended the mandate to cover only buried customer piping. This conclusion is congruous with the risks involved, because as the comments indicate, aboveground customer piping poses much less risk than buried customer piping. Therefore, the final rule applies only to buried piping (§ 192.16(a)). As a result, short sections of customer piping between customer meters and building walls that are entirely aboveground are not covered by the final rule.

E. Farm Taps and Industrial Taps

The proposed rules applied to customers served by "farm taps" or "industrial taps." Farm tap is industry jargon for a pipeline that branches from a transmission or gathering line to deliver gas to a farmer or other landowner. Similarly, an industrial tap is a pipeline that branches from a transmission or gathering line to deliver gas to an industrial plant. So companies primarily engaged in the transmission or gathering of gas operate most farm taps and industrial taps.

About a third of commenters argued against this proposal, saying that Congress intended the mandate to apply only to local distribution companies. In support, they pointed out that residential accidents prompted the mandate. They also said that customers served by farm and industrial taps are more likely than residential customers to be familiar with the need to maintain gas piping. In this regard, a gas production company said its lease agreements with farm tap customers make them aware of their responsibility for maintenance. TPSSC also recommended that we limit the final rule to distribution operators and to residential and small commercial customers.

We do not believe these arguments and TPSSC recommendations justify excluding farm tap and industrial tap customers from the final rule. To begin with, while we recognize that Congress was primarily concerned about residential customers, the mandate is not so limited. Congress applied the mandate to "operators of natural gas distribution pipelines." But these operators are not just local distribution companies as the commenters suggested. Some operators primarily engaged in the gathering or transmission of gas also operate distribution pipelines. They do so when they deliver gas directly to customers through farm taps and industrial taps. In fact, because portions of these delivery lines qualify as service lines, gathering and transmission operators report them as distribution pipelines under 49 CFR 191.13. Moreover, farm and industrial tap customers are not immune from harm by potential hazards that could occur on their piping. And surely not all farm and industrial tap customers know enough about gas piping safety to make even a single maintenance notice unnecessary.

Therefore, application of the final rule does not depend on the nature of an operator's primary business. To clarify this point, we reworded the final rule (§ 192.16(a)) so that it applies to operators of service lines, instead of transmission or distribution operators as proposed. Although this change made it unnecessary to define "farm tap" or

"industrial tap," operators of these taps are not excepted from the final rule.

We recognize that local distribution companies operate some metered farm taps on transmission lines. In these cases, the local distribution company is responsible for compliance with the final rule.

F. Meaning of "Maintain"

The mandate applies to operators who do not "maintain" customer piping up to building walls. What Congress meant by "maintain" is important, because operators who maintain customer piping up to building walls need not advise customers of the need for maintenance. Because "maintain" is inexact, the NPRM and SNPRM proposed to clarify the mandate by giving "maintain" a particular meaning: "maintain . . . to Part 192 standards" (proposed § 192.16(a)).

Commenters thought the standards in Part 192 were not an appropriate gauge of whether an operator maintains covered piping as Congress had in mind. One operator put it this way: while it may be reasonable to conduct a leakage survey every 3 years (under § 192.723) up to the nearest building wall and, if a leak is detected, shut off the flow of gas, it would not be reasonable to maintain a customer's piping to meet all Part 192 maintenance standards. Another operator thought the proposal was unreasonable because it would require operators to send notices to customers even if operators maintain covered piping according to State requirements, but not to Part 192.

RSPA agrees that operators would have difficulty meeting Part 192 maintenance standards on covered piping. Operators may lack permission from property owners to take maintenance action or lack the necessary information upon which to base maintenance action. For example, under § 192.725, each disconnected service line must be pressure tested as a new line. Yet operators probably would need access to the customer's building and other permission from the customer or property owner to do this test on a customer's piping. Another example is § 192.455(a), which provides that each buried pipeline installed after July 31, 1971, must be protected against external corrosion. This regulation presumes operators know the installation date of their pipelines, a fact they may not know for a customer's piping.

Upon further consideration, we are defining "maintain" to mean whatever maintenance is reasonable for operators to do on covered piping, considering the Congressional intent. Although the legislative history casts little light on what Congress meant by "maintain," it does show that Congress was concerned about corrosion-related accidents on service lines.

Preventing and correcting hazardous leaks are the major safety reasons to maintain gas pipelines. The comments show that many operators already check customer piping between customer meters and building walls for leaks. Some operators may check for leaks while doing routine leakage surveys on their own pipelines under § 192.723. If a leak is found, depending on the nature of the leak, they either shut off the flow of gas or warn the customer to repair the leak.

Besides leakage checks, another reasonable maintenance activity is to monitor customer piping for corrosion, a major cause of leaks on metallic pipelines. More specifically, operators must periodically monitor their buried metallic service lines for external corrosion under § 192.465. With permission from the land owner or tenant, operators could also monitor covered piping according to this standard. However, rather than take the specified remedial action, which might be difficult to do on covered piping, they could shut off the flow of gas or warn the customer to repair any harmful corrosion found.

Considering the reasons for maintenance, Congress's concern about corrosion, present industry practices, and commenters' advice, we believe "maintain" means periodic checking for leaks and corrosion, with appropriate follow-up action. Thus, the final rule (§ 192.16(a)) provides that operators who do not maintain covered piping according to § 192.465 (if applicable) and § 192.723, with appropriate remedial action, must send the customer a maintenance notice.

In accordance with Executive Order 12898 on Environmental Justice, we have considered the potential effect of this final rule on minority and low income customers. Because the rule applies only to gas operators who do not inspect certain customer piping, the rule will not impose direct costs on gas customers. However, some customers may incur indirect costs of the rule. Customers who own exterior gas piping and decide to heed the gas company's maintenance advice could face large repair bills, depending on the condition and amount of their piping. Indirect costs can also arise when operators who inspect customer-owned piping discover that it is leaking or otherwise unsafe and require customers to repair the piping if gas service is to continue.

We cannot predict which customers would be likely to incur these indirect costs. However, the proportion of minority and low income customers that might incur them should be small, because most minority and low income gas customers are tenants. As tenants, they can reasonably be expected to refer the matter of piping maintenance or unsafe piping to their landlords, who are responsible for corrective action.

When minority and low income customers must bear the indirect costs themselves, voluntary organizations and local welfare agencies can reasonably be expected to provide assistance, especially in response to gas shut off situations if the health of customers is affected. In addition, we expect that states adopting this final rule will monitor its effect on minority and low income gas customers and find additional ways to lessen the indirect cost burden. For example, states may require operators to stand the cost of maintenance or establish a fund to pay for maintenance that minority and low-income customers cannot afford.

Despite the potentially low impact of this final rule on minority and low income customers as a whole and efforts to defray indirect costs, the cost of piping maintenance will unavoidably be a hardship for some minority and low income customers. Still, in view of the high safety risk of deteriorating residential gas piping and Congress's mandate that operators warn customers about this potential problem, we see no federal regulatory alternative that would lessen the potential cost burden. We will, however, examine this issue further in the report to Congress on the safety of customer-owned service lines that is required by section 115(b) of the Pipeline Safety Act of 1992 (Public Law 102–508, 106 Stat. 3296).

G. Customer Responsibility

The NPRM and SNPRM proposed that operators who do not maintain covered piping must notify the customer that "the customer owns and is responsible for the maintenance of the customer-owned service line" (proposed § 192.16(a)(1)). The purpose of this proposal was to alert customers that the operator does not maintain the customer's piping.

AGA and several operators pointed out that customers who occupy rental properties, especially commercial buildings, may not own the piping through which they receive gas. Other commenters observed that operators may not know who owns the customer's piping. One solution a commenter suggested was that the notice advise

rental customers to refer the maintenance advice to the landlord.

Another consideration, not raised by commenters, is that many states now require operators to do some maintenance on customer piping. In these states, it would be incorrect for operators to notify customers that the customers or their landlords are responsible for maintenance of customer piping.

Thus, it appears the proposal could be confusing or incorrect in some circumstances if included in maintenance notices. To avoid this confusion, the final rule (§ 192.16(b)(1)) merely requires operators to notify customers that the operator does not maintain the customer's piping.

Some operators may do a level of maintenance on customer piping (either voluntarily or under State law) that does not reach the minimum level prescribed by the final rule. If these operators wish to avoid advising customers that they do not maintain customer piping, they would have to increase their maintenance to the minimum level.

H. Requirements for Maintenance

Under the mandate, operators who do not maintain covered piping must advise their customers of the requirements for maintenance of that piping. To carry out this feature of the mandate, the NPRM and SNPRM proposed that operators notify customers "of the essential elements for proper maintenance . . . such as those listed in subpart M of [Part 192] or those listed in applicable local building codes" (proposed § 192.16(a)(2)).

Many commenters, including Iowa, Michigan, AGA, and TGA, recommended that the final rule not refer to Part 192 or local codes as examples of the essential elements of maintenance. The objection expressed most often was that Subpart M of Part 192 is not appropriate for customer piping downstream from meters; it was written for operators, not customers. Commenters also said the proposed rule was indefinite about which sections in Subpart M to apply to customer piping. Several commenters said that Subpart M and the local codes may conflict with each other, forcing operators to choose which standard is appropriate for customers to follow. One commenter stated it would be unreasonable to require operators to learn the essential elements of local building codes applicable to maintenance of customer piping and then send that information to each customer. For example, one large distribution company said it would be especially burdensome to examine the details of local codes in the 535 cities, towns, and communities it serves, and to continually keep abreast of them.

Alternatively, INGAA and an operator suggested that the final rule specify the maintenance advice operators are to give customers, instead of leaving it to the operator's discretion. INGAA said this approach would minimize the potential liability for giving inappropriate advice. The operator said it would reduce the confusion of different operators giving different advice to similar customers. Two operators thought we should limit the maintenance advice to periodic leakage surveys. Also, two other operators advised us to mention corrosion control as an example of essential maintenance.

We believe Congress used the word "requirements" in the sense of actions that are necessary for maintenance, rather than required by law for maintenance. So we proposed that operators use local codes, Subpart M of Part 192, or other sources as a guide to identify essential elements of maintenance. Although many commenters interpreted the proposal to the contrary, we did not intend for operators to keep abreast of local code requirements applicable to maintenance of customer piping. Nor did we intend for notifications to bring customers up to date about their obligations under local law.

We recognize, though, that the proposed rules gave operators wide latitude to decide what maintenance advice to provide customers. We also recognize that confusion could result if operators gave different advice in similar situations. So we adopted the suggestion to specify essential maintenance advice. We based the specified maintenance advice on the recommendations of commenters and the decision discussed above on the meaning of "maintain." Since the specified maintenance advice is commonly found in pipeline safety programs, we doubt it conflicts with local codes.

Consequently, the final rule (§ 192.16(b)(3)(i)-(iii)) does not require notice of any provisions of Subpart M of Part 192 or of any local code requirements. It simply requires operators to notify customers that their buried gas piping should be periodically inspected for leaks; periodically inspected for corrosion, if the piping is metallic; and repaired if any unsafe condition is found. By referring to buried piping, the notice will encourage customers to apply the advice to any buried piping they may have besides their primary supply line.

I. Maintenance Assistance

The mandate requires that operators advise customers of any resources known to the operator that could assist customers in carrying out maintenance. In response, we proposed that operators notify customers "of available resources that could aid the customer in obtaining maintenance assistance, such as the gas pipeline operator, the state licensing board for plumbers and state plumbers' associations, Federal and state gas pipeline safety organizations, the local building code agencies, and appropriate leak detection, gas utility, and corrosion protection contractors" (proposed § 192.16(a)(3)).

Many commenters said it would be too burdensome to maintain current lists of agencies, associations, and contractors over wide areas. They said customers could easily find maintenance assistance by consulting the local better business bureau or chamber of commerce. A few commenters were concerned the proposed rule would cause suits to be filed against the operator for unfair competition if notices omitted appropriate contractors, or for negligence if recommended contractors caused injuries or did unsatisfactory work. One commenter thought the proposed rule was unfair because it would force operators to refer customers to businesses that compete with the operators to provide maintenance services on gas piping.

In view of these comments, we decided to require operators to give only general advice about maintenance assistance. Operators need not maintain lists of specific contractors that might do maintenance work on customer piping. Although government agencies probably could advise customers about State or local laws, this advice probably would not be helpful in carrying out maintenance. Instead of advising inquirers about the details of maintenance, agencies and associations probably would refer them to contractors. Since customers can learn the names of contractors through the yellow pages or local chambers of commerce, the final rule does not require notice of specific contractors, agencies, or associations. The rule (§ 192.16(b)(5)) simply requires notice that the operator (if applicable), plumbers, and heating contractors may be contacted for assistance in maintaining and locating the customer's piping. Under this rule, if an operator does not offer such assistance, it would not have to mention itself as a possible source of assistance. At the same time, an operator may not mention only itself

as a source of assistance on customer piping.

J. Other Helpful Information

1. General

The mandate requires that operators provide information the operator has on operating and maintaining its lines that could assist customers. In turn, we proposed that operators notify customers of "any information that the operator has concerning the operation and maintenance of the customer-owned service line that could aid the customer, such as information on excavation damage prevention, local codes and standards (when applicable), and the age, location, and material of the customer-owned service line" (proposed § 192.16(a)(4)).

2. Age, Location, and Material

TPSSC and about a third of commenters urged us not to require operators to provide information about the age, location, and material of customer piping. Several commenters said that because the information was site specific, operators could not use a notice generally applicable to all customers, as contemplated in the NPRM. Others said operators typically do not have the proposed information about customer piping, and it would be an undue burden to get it. A number of commenters also pointed out that the age of customer piping may not correspond to the date the operator established gas service, because the customer may have replaced or altered the piping since that date.

We agree that operators may not have the proposed information about customer piping, since they are not required by Part 192 to maintain the piping. Also, obtaining the information would be a significant burden that Congress did not intend operators to assume. The mandate requires operators to give customers helpful information based on the operation and maintenance of the operator's pipelines. The mandate does not require operators to gather information about customer piping. Even when operators do have some information about customer piping, requiring them to add the information to notices might not allow the operators to use a general notice to meet the notification rule. Therefore, this final rule does not require operators to notify customers of the age, location, and material of customer piping.

As a result, operators may send each customer a notice on the proper maintenance of customer piping in general. Notices need not be tailored to meet specific customer situations. However, operators who have specific information about customer piping and wish to include it in notices are encouraged to do so.

3. Local Laws

For reasons discussed above concerning proposed § 192.16(a)(2), several commenters suggested that the final rule not make operators responsible for advising customers about local laws. Since local building codes would be burdensome for operators to track, are the responsibility of local agencies to enforce, and are unlikely to contain instructions on how to carry out piping maintenance, the final rule does not require notice of local laws.

4. Excavation Damage Prevention

Two operators asked us to clarify the information they would have to provide about excavation damage. They suggested the notice stress the need to locate piping before excavating and to dig with care.

We agree that this information would be helpful to customers, because of the large number of gas pipeline accidents attributable to excavation damage. The final rule (§ 192.16(b)(4)) reflects these comments. However, operators are not required to notify customers to contact "one-call" systems to learn the location of buried customer piping before excavating. One-call systems provide such service only for piping of companies that are members of the system. One-call systems generally have no information regarding customer piping.

Apart from the maintenance requirements discussed above, information about preventing excavation damage is probably the most significant information operators have about operating and maintaining their own pipelines that would be helpful to customers. In the interest of producing a general notice limited to basic advice, the final rule does not require notice of any other information related to operation and maintenance of the operator's pipelines. However, operators may supplement the required information as they deem appropriate.

K. Potential Hazards

The mandate requires that operators notify customers about the potential hazards of not maintaining customer piping. As proposed in the NPRM and SNPRM, operators would have to advise customers of "the potential hazards of not maintaining the customer-owned service line, such as corrosion and gas leakage" (proposed § 192.16(a)(5)).

Only a few commenters addressed this proposal. Two commenters thought it would be unfair if operators had to warn their customers that gas piping can be hazardous, while their competitors, fuel oil and electric companies, do not have to give a similar warning. One commenter said that sending notices about potential hazards would not be compatible with the goal of market expansion. Another commenter requested that in the final rule, we insert "reasonably foreseeable" before "potential hazard."

Although we do not have discretion under the mandate not to require notice of potential hazards, we did not find the arguments against such notice persuasive. The risks involved in using fuel oil and electricity have not demanded the same level of public attention as gas pipeline risks. So, from a public policy standpoint, it is not unfair if only gas pipeline operators must warn their customers of risks. Also, we do not agree that warning customers of potential hazards is incompatible with business expansion. Part 192 already requires operators to post signs over their pipelines warning of potential danger (§ 192.707), and to educate the public to recognize gas pipeline emergencies (§ 192.615). These programs and the abundant advertisements about using "one call" systems to guard against the hazards of excavation damage have, to our knowledge, not adversely affected the growth of business. Indeed, we believe people prefer to do business with socially responsible companies that do not hesitate to publicize information that could help prevent accidents. Finally, to qualify "potential hazard" the way one commenter suggested would not enhance the clarity of the final rule.

The proposal concerning notice of potential hazards is adopted in this final rule as § 192.16(b)(2)—the second item in the list of information to be provided, rather than the last item, as proposed. This rearrangement encourages operators to warn customers of potential hazards at the beginning of notices instead of at the end. A notice may mention just two potential hazards: corrosion and leaks. Most commenters referred to these potential hazards in response to the proposal, and service line accidents generally involve these hazards.

L. Frequency and Time of Notification

1. General

The mandate does not specify how often operators must give their customers maintenance advice or when they must give them the advice. To clarify these points, we proposed that operators notify existing customers within 6 months after publication of the final rule, and new customers within that time or within 30 days after the service line is placed in service, whichever is later (proposed § 192.16(b)).

2. Number of Notices

Several commenters thought the final rule should clearly state whether operators must notify a customer more than once. Other commenters, including NTSB, felt a single notice to each customer would not be sufficient. They recommended that operators send notices annually (to refresh customer memory), every 2 years, every 5 years, or occasionally.

A single notice sent to each present and future customer would satisfy the mandate. None of the advocates for more frequent notification showed that additional notices would significantly improve safety. Furthermore, the cost of periodic notices would be high, and the effect of customer notification on accident prevention is uncertain. There is also an absence of accumulated accident data on customer piping from which to project the benefits of sending multiple notices to the same customers. Consequently, the final rule expressly states that operators must notify each customer only once.

3. New Customers

Three commenters said the proposed rule was unclear whether "new customers" meant new customers on new service lines or new customers on existing service lines. A few operators said it would be a tremendous burden to notify every new customer on an existing service line because of the large changeover in customers. One operator said it has over 100,000 of such new customers annually. These operators would prefer to notify only the first customer on a new service line or to send notices to all customers periodically.

For the mandate to have a continuing effect on customer safety, each present and future customer must receive a maintenance notice if the operator does not maintain covered piping. There would be no continuing effect if operators were to notify just existing customers and the first customers on new service lines. As these customers leave, their successors might lack necessary maintenance information, and the safety of customer piping might decline. So the final rule applies to all new customers. Operators can mitigate the burden of notifying large numbers of customers by inserting general notices in billing envelopes.

To avoid confusion, the final rule does not distinguish new customers from existing customers. Instead, the rule (§ 192.16(c)) requires operators to notify each customer by a certain date, as discussed next.

4. Time of Notification

AGA and several operators recommended a compliance time of 1 year to notify existing customers, instead of 6 months as proposed. They argued that operators would need more time to learn which customers to notify, to draft and send notices, and to instruct personnel to handle inquiries. These commenters also said more time would ease the burden on staff by allowing operators to spread notifications over a longer period.

For new customers, one operator advised that sending notices within 30 days after the customer's service begins would not fit the company's billing cycle. AGA and INGAA suggested an appropriate time to notify new customers would be the time of first billing, rather than when a service line is placed in service.

We proposed a 6-month compliance period to notify existing customers based primarily on our estimate of the time needed to prepare and send out notices. However, in view of the additional information commenters provided, 1 year now seems more appropriate. Further, because service lines are often left in service during customer changeover, the suggestion to notify new customers upon first billing seems reasonable. However, some operators may not choose billing as the method of notification. And, as one commenter remarked, many farm tap customers who receive gas under a right-of-way agreement are not billed. Considering the variations among billing cycles and the alternative means of distributing notices, we believe 90 days after first receipt of gas at a particular location would be a reasonable deadline by which to notify new customers. Therefore, the final rule requires operators to notify each customer not later than 1 year from today or 90 days after the customer first receives gas at a particular location, whichever is later (§ 192.16(c)).

M. Records

The mandate does not require that operators keep records of the advice they give customers. However, as a way to check compliance, we proposed that "each operator must keep a record of the written notifications" (proposed § 192.16(c)).

AGA and several operators said the type of record and the retention time were unclear under the proposed rule. Maryland suggested that to see if operators have notified customers, inspectors would have to inspect a record of the date a notice was sent, the name of the customer, and a copy of the notice. In contrast, several operators thought keeping a list of notified customers and the dates they were notified would be too burdensome. Three operators suggested the final rule just require maintenance of a copy of the notice being sent to customers.

To check compliance, RSPA and State inspectors will need to view a copy of the notice operators send customers and evidence that notices have been sent to customers. This evidence may relate to the overall notification process, and need not be customer-specific. For example, a record showing the approximate dates notices are mailed or a written procedure for the notification process would be evidance notices have been sent. More in depth checks on compliance could be conducted where warranted without requiring more detailed records. Therefore, we clarified the final rule to provide that operators must maintain a copy of the notice currently in use and evidence that the notices have been sent to customers as required (§ 192.16(d)). Evidence of notifications more than 3 years old may be discarded.

N. Master Meter Operators

One commenter recommended that we specifically exempt operators of master meter systems from the final rule. Operators of master meter systems purchase gas from pipeline companies through master meters, and then resell and distribute the gas to customers. The customers are usually residents of mobilehome parks or housing projects, the operator's primary enterprise.

In developing the NPRM, we assumed the proposed rules would not affect many master meter operators because they generally own all gas distribution piping up to each customer's dwelling. However, as stated above, WMPA advised that the proposed rules would affect mobilehome parks in California because of customer-owned short sections of connector piping. Although that piping was aboveground and would not come under the final rule, it is reasonable to assume that buried connector piping may occur in some master meter systems. So the proposed rule may have affected small entities to a larger extent than we first pictured.

To mitigate this impact, the final rule (§ 192.16(c)) allows master meter operators to continuously post a general

notice as an alternative to sending notices to customers individually. This type of notification is appropriate for master meter systems because there is commonly a prominent place visited by residents, such as a management office, that is suitable for such posting.

Although the final rule probably does not affect many master meter operators, we did not adopt the suggestion to specifically exempt these operators. As operators of distribution pipelines, they come under the mandate when they do not maintain buried customer piping up to building walls. Also, there is no evidence to suggest that customers of master meter operators have less need for safety information than customers of other operators.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB did not review the final rule. Also, DOT does not consider the final rule to be significant under its regulatory policies and procedures (44 FR 11034, February 26, 1979). A final regulatory evaluation is available for review in the docket.

B. Executive Order 12612

We analyzed the final rule under the principles and criteria in Executive Order 12612 ("Federalism"). The final rule does not have sufficient federalism impacts to warrant preparation of a federalism assessment.

C. Regulatory Flexibility Act

I certify, under Section 605 of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities. For purposes of that act, small entities supply gas to fewer than 10,000 customers, and most small entities are operators of master meter systems. As discussed above, most master meter operators do not come under the final rule because they own all gas piping up to building walls. Master meter operators that do come under the rule may comply merely by posting a notice in a prominent location. So compliance cost will be nominal for the bulk of small entities. The remaining small entities, mostly operators of distribution systems in small towns, will be subject to the same rule as other operators. But, as explained above, operators can either avoid notification costs by maintaining covered piping, or mitigate costs by including general notices in billing envelopes.

D. Paperwork Reduction Act

OMB has approved the information collection requirements of this final rule under 44 U.S.C. Chapter 35.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

RSPA amends 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.16 is added to read as follows:

§ 192.16 Customer notification.

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, "maintain" means monitor for corrosion according to § 192.465 if the customer's buried piping is metallic, survey for leaks according to § 192.723, and if an unsafe condition is found, either shut off the flow of gas or advise the customer of the need to repair the unsafe condition.

(b) Each operator shall notify each customer once in writing of the following information:

(1) The operator does not maintain the customer's buried piping.

(2) If the customer's buried piping is not maintained, it may be subject to the potential hazards of corrosion and leakage.

(3) Buried gas piping should be—

(i) Periodically inspected for leaks;

(ii) Periodically inspected for corrosion if the piping is metallic; and

(iii) Repaired if any unsafe condition is discovered.

(4) When excavating near buried gas piping, the piping should be located in advance, and the excavation done by hand.

(5) The operator (if applicable), plumbers, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.

(c) Each operator shall notify each customer not later than August 14, 1996, or 90 days after the customer first receives gas at a particular location, whichever is later. However, operators of master meter systems may continuously post a general notice in a prominent location frequented by customers.

(d) Each operator must make the following records available for inspection by the Administrator or a State agency participating under 49 U.S.C. 60105 or 60106:

(1) A copy of the notice currently in use; and

(2) Evidence that notices have been sent to customers within the previous 3 years.

Issued in Washington, D.C. on August 9, 1995.

Ana Sol Gutiérrez,

Deputy Administrator.

[FR Doc. 95–20021 Filed 8–11–95; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 950424112–5201–02; I.D. 032095B]

RIN 0648–AF37

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 4 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). Amendment 4 allows the harvest of spiny lobster year-round and establishes a daily bag or possession limit of two spiny lobster per person in the exclusive economic zone off North Carolina, South Carolina, and Georgia.

EFFECTIVE DATES: September 13, 1995, except for § 640.23(a) and (b) which will be effective [September 21, 1995. The incorporations by reference of certain sections of the Florida Administrative Code and Florida Statutes are approved by the Director of the Office of the Federal Register as of September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). The FMP is implemented through regulations at 50 CFR part 640 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Detailed descriptions, backgrounds, and rationales for the management measures in Amendment 4 and the additional measures proposed by NMFS were included in the preamble to the proposed rule (60 FR 21493, May 2, 1995) and are not repeated here.

Comments and Responses

Four written comments were received on the proposed rule. One of the Councils' advisory panel members strongly supported this action.

Three recreational divers opposed Amendment 4 because of a perceived risk to lobster stocks from the elimination of the spawning season closure. These three commenters also believe that this action will seriously increase recreational taking of lobsters off North Carolina. Two of the three commenters recommended a monitoring system to determine the number of recreational divers, catch, and size of lobsters before taking this action. One of those commenters opposed to Amendment 4 questioned the data contained in the amendment regarding the depth at which the fishery is prosecuted and the size of available lobsters. This commenter submitted a videotape to the South Atlantic Fishery Management Council office that purports to show lobsters common at depths from 45 to 100 ft (13.7 to 30.5 m) and significant populations of small lobsters in these waters, e.g., carapace lengths less than 1 inch (2.54 cm).

NMFS notes that there is scientific debate regarding the biological status and population dynamics of spiny lobsters in waters north of Florida, including the issue of recruitment and the fate of larvae from the adult population in this area. However, based on the best available scientific information, NMFS and the Councils believe that allowing a limited year-round harvest in the subject area will have no adverse biological impacts on the lobster stocks.

Some divers believe that the spawning season off North Carolina does not begin until July, due to the colder water temperatures. They reported seeing egg-bearing lobsters as late as early October. Thus, the current spawning season closure from April through July, based on data from Florida, may not be particularly relevant to the area north of Florida. Amendment 4 would not change the current prohibition on taking egg-bearing female lobsters.

NMFS believes that a monitoring system for this fishery would not be cost-effective. Our surveys indicate that there are only a small number of participants in the spiny lobster fishery north of Florida. The South Atlantic Council intends to monitor the fishery to determine the need for further management actions, including a possible reduction in the bag limit.

According to testimony at public hearings on Amendment 4, the fishery takes place about 30 nautical miles (55.6 km) offshore in at least 100 ft (30.5 m) of water. A typical dive at these depths lasts less than 30 minutes. Lobsters harvested ranged from 2 to 16 lb (0.9 to 7.3 kg). Comments on the proposed rule contradicted this testimony and raised questions about the potential for significant increases in recreational take and the availability of undersized lobster in the area.

If lobsters are found in relatively shallow water that is accessible to most recreational divers, there is a possibility of an increase in participation due to the year-round harvest. However, a recent NMFS survey indicated that only a small number of recreational divers harvested spiny lobster north of Florida. Comments on the proposed rule also indicate the possible presence of significant numbers of undersized lobsters, i.e., with carapace lengths less than 3 inches (7.62 cm), increasing the possibility of taking undersized lobsters in this fishery. The presence of subadult lobsters was not reported during public hearings on Amendment 4.

NMFS is concerned about the new information that arose during the public comment period on the proposed rule, since this information was not available to the Councils when they approved Amendment 4. However, NMFS has reviewed the administrative record on the Councils' decision and has determined that this new information does not outweigh the record underlying the Councils' decision. Consequently, NMFS approved Amendment 4 with the expectation that the Councils will consider this new information during development of a subsequent FMP amendment.

Incorporation by Reference of Florida Statutes and Regulations

As explained in the proposed rule, NMFS is adding language to the regulatory text of the regulations implementing the FMP to ensure that the incorporations by reference of certain portions of the Florida Statutes (FS) and Florida Administrative Code (FAC) meet procedural specifications of the Office of the Federal Register. NMFS has determined that the references at 50 CFR 640.6(a)(1) to sections 370.14 and 370.142, FS, are unnecessarily broad. The references are in the context of vessel and gear identification requirements applicable to the harvesting of spiny lobsters by traps in Florida's waters. However, such requirements are contained in only three paragraphs of those sections. Accordingly, in this final rule, the references are changed to sections 370.14(2)(a) and (3) and 370.142(2)(b), FS.

The current references are to the portions of the FS and FAC as specified on November 30, 1992. In the proposed rule and this final rule the references are to the FS in effect as of July 1, 1994, and FAC in effect as of June 1, 1994, the dates of the currently effective referenced portions. This change is necessary in order for fishermen to have access to the referenced portions—earlier versions are not readily available. The following changes, none of which are substantive, have been made to the referenced FS and FAC since November 30, 1992:

Section 370.142, FS - paragraph (2)(c) has been removed. The paragraph contained identification requirements for recreational spiny lobster traps. However, those requirements were duplicative of requirements for all traps, as contained in FS 370.14(2)(a) and 370.142(2)(b).

Rule 46–24.002(2), FAC - As of November 30, 1992, this rule specified August 1, 1993, as the beginning date that a restricted species endorsement would be required on the Florida saltwater products license in order to be a commercial harvester of spiny lobsters. That date was changed to August 1, 1994. However, since the reference to this rule was not included in the **Federal Register** until October 21, 1994, the change in date is inconsequential.

In several paragraphs of the referenced FS and FAC "Department of Natural Resources" was changed to "Department of Environmental Protection."

Changes from the Proposed Rule

As discussed above, the references to sections 370.14 and 370.142, FS, have been changed.

Classification

The Director, Southeast Region, NMFS, determined that Amendment 4 is necessary for the conservation and management of the spiny lobster fishery of the Gulf of Mexico and South

Atlantic and that it is consistent with the Magnuson Act and other applicable law.

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when the proposed rule was published that it would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (60 FR 21493, May 2, 1995). As a result, a regulatory flexibility analysis was not prepared.

The incorporation by reference of certain sections of the Florida Administrative Code and Florida Statutes does not constitute a substantive rule, as they are not changing the regulation, but, rather, are correcting the process by which those sections were previously incorporated. Thus, pursuant to 5 U.S.C. 553(d) there is no need to delay the effective date of those provisions. Additionally, due to the fact that the fishery for spiny lobster opened on August 6, 1995, the Assistant Administrator for Fisheries, NOAA, finds that good cause exists, under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date with respect to the provisions of this rule that specify the daily bag or possession limit of spiny lobster. The conservation and management needs that lead NMFS to impose the limit, as described in the proposed rule, along with the fact that it takes little, if any, time to come into compliance with such a limit make a delay in effective date contrary to the public interest and unnecessary, respectively. However, in order to provide time for notice of the bag limit to be provided to fishermen, NMFS will delay the effective date of this provision for 7 days.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 9, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 640 is amended as follows:

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 640 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 640.2, definitions for "Off the Gulf states, other than Florida" and "Off the southern Atlantic states, other than Florida" are added, in alphabetical order, to read as follows:

§ 640.2 Definitions.

* * * * *

Off the Gulf states, other than Florida means the area from the coast to the outer limit of the EEZ between the Texas/Mexico border to the Alabama/Florida boundary (87°31′06″ W. long.).

Off the southern Atlantic states, other than Florida means the area from the coast to the outer limit of the EEZ between the Virginia/North Carolina boundary (36°34′55″ N. lat.) to the Georgia/Florida boundary (30°42′45.6″ N. lat.).

* * * * *

3. In § 640.4, paragraph (a)(1) is revised to read as follows:

§ 640.4 Permits and fees.

(a) * * *

(1) *Licenses, certificates, and permits*—(i) *EEZ off Florida and spiny lobster landed in Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested or possessed in the EEZ off Florida, or harvested in the EEZ other than off Florida and landed from a fishing vessel in Florida, or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, such person must have the licenses and certificates specified to be a "commercial harvester," as defined in Rule 46–24.002(2), Florida Administrative Code, in effect as of June 1, 1994. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

(ii) *EEZ other than off Florida.* For a person to sell, trade, or barter, or attempt to sell, trade, or barter, a spiny lobster harvested in the EEZ other than off Florida or for a person to be exempt from the daily bag and possession limit specified in § 640.23(b)(1) for such spiny lobster, a Federal vessel permit must be issued to the harvesting vessel and must be on board. However, see paragraph (a)(1)(i) of this section for the licenses and certificates required for a person to possess or land spiny lobster harvested in the EEZ other than off Florida and subsequently possessed in the EEZ off Florida or landed from a fishing vessel in Florida.

* * * * *

4. In § 640.6, in paragraph (c), the word "Secretary" is revised to read "Assistant Administrator" and paragraph (a) is revised to read as follows:

§ 640.6 Vessel and gear identification.

(a) *EEZ off Florida.* (1) An owner or operator of a vessel that is used to harvest spiny lobsters by traps in the EEZ off Florida must comply with the vessel and gear identification requirements applicable to the harvesting of spiny lobsters by traps in Florida's waters in sections 370.14(2)(a) and (3) and 370.142(2)(b), Florida Statutes, in effect as of July 1, 1994, and in Rule 46–24.006(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994.

(2) An owner or operator of a vessel that is used to harvest spiny lobsters by diving in the EEZ off Florida must comply with the vessel identification requirements applicable to the harvesting of spiny lobsters by diving in Florida's waters in Rule 46–24.006(6), Florida Administrative Code, in effect as of June 1, 1994.

(3) The incorporation by reference in paragraphs (a)(1) and (a)(2) of this section of sections 370.14(2)(a) and (3) and 370.142(2)(b), Florida Statutes, and Rule 46–24.006(3), (4), (5), and (6), Florida Administrative Code, was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

* * * * *

§ 640.7 [Amended]

5. In § 640.7, in paragraph (e), the reference to "§ 640.20 (c)(1) and (c)(2)" is revised to read "§ 640.20(b)(3)(i) and (b)(3)(ii)"; in paragraph (f), the reference to "§ 640.20(d)" is revised to read "§ 640.20(b)(4)"; in paragraph (p), the reference to "§ 640.23(a) or (b)" is revised to read "§ 640.23(a), (b)(1), or (b)(2)" and the reference to "§ 640.23(c) and (d)" is revised to read "§ 640.23(b)(3) and (b)(4)"; in paragraph (q), the reference to "§ 640.23(d)" is revised to read "§ 640.23(b)(4)"; in paragraph (r), the reference to "§ 640.23(g)" is revised to read "§ 640.23(d)"; and in paragraph (s), the reference to "§ 640.23(h)" is revised to read "§ 640.23(e)".

6. Section 640.20 is revised to read as follows:

§ 640.20 Seasons.

(a) *EEZ off the southern Atlantic states, other than Florida.* In the EEZ off the southern Atlantic states, other than Florida, there are no seasonal restrictions on the harvest of spiny lobster or on the possession of traps.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* The commercial and recreational fishing season for spiny lobster in the EEZ off Florida and the EEZ off the Gulf states, other than Florida, begins on August 6 and ends on March 31.

(2) *Special recreational fishing seasons*—(i) *EEZ off Florida.* There is a 2-day special recreational fishing season in the EEZ off Florida on the last Wednesday and successive Thursday of July each year during which fishing for spiny lobster is limited to diving or use of a bully net or hoop net. (See § 640.22(a) for general prohibitions on gear and methods.) In the EEZ off Monroe County, Florida, no person may harvest spiny lobster by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, during this 2-day special recreational fishing season.

(ii) *EEZ off the Gulf states, other than Florida.* There is a 2-day special recreational fishing season in the EEZ off the Gulf states, other than Florida, during the last Saturday and successive Sunday of July each year during which fishing for spiny lobster may be conducted by authorized gear and methods other than traps. (See § 640.22(a) for general prohibitions on gear and methods.)

(3) *Possession of traps.* (i) In the EEZ off Florida, the rules and regulations applicable to the possession of spiny lobster traps in Florida's waters in Rule 46–24.005(3), (4), and (5), Florida Administrative Code, in effect as of June 1, 1994, apply in their entirety to the possession of spiny lobster traps in the EEZ off Florida. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

(ii) In the EEZ off the Gulf states, other than Florida, a spiny lobster trap may be placed in the water prior to the commercial and recreational fishing season, which is specified in paragraph (b)(1) of this section beginning on August 1 and must be removed from the water after such season not later than April 5.

(iii) A spiny lobster trap, buoy, or rope in the EEZ off Florida or in the EEZ off the Gulf states, other than Florida, during periods not authorized in paragraphs (b)(3)(i) and (b)(3)(ii) of this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Assistant Administrator or an authorized officer. An owner of such trap, buoy, or rope remains subject to appropriate civil penalties.

(4) *Possession of spiny lobsters.* In the EEZ off Florida and the Gulf states, a whole or a part of a spiny lobster subject to these regulations may only be possessed during the commercial and recreational fishing season and the special recreational fishing season specified in § 640.20, unless accompanied by proof of lawful harvest in the waters of a foreign nation. Consistent with the provisions of paragraphs (b)(3)(i) and (ii) of this section, a spiny lobster in a trap in this area will not be deemed to be possessed provided such spiny lobster is returned immediately to the water unharmed when a trap is removed from the water between March 31 and April 15.

(c) *Primacy of seasonal restrictions in the EEZ off Florida.* The seasonal restrictions applicable in the EEZ off Florida apply to all spiny lobsters and traps in the EEZ off Florida, without regard to harvest or use elsewhere, unless accompanied by proof of lawful harvest elsewhere.

7. In § 640.22, a sentence is added to the end of paragraph (a)(1) and paragraph (b)(3)(i) is revised to read as follows:

§ 640.22 Gear and diving restrictions.

(a) * * *

(1) * * * Hook, as used in this paragraph (a)(1), does not include a hook in a hook-and-line fishery for species other than spiny lobster; and possession of a spiny lobster that has been speared, pierced, or punctured by such hook is not considered evidence that prohibited gear was used to take the spiny lobster, provided no prohibited gear is on board the vessel.

* * * * *

(b) * * *

(3) * * *

(i) For traps in the EEZ off Florida, by the Florida Division of Law Enforcement, Department of Environmental Protection, in accordance with the procedures in Rule 46-24.006(7), Florida Administrative Code, in effect as of June 1, 1994. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle West, Suite 106, Tallahassee, FL 32301; telephone: 904–487–0554. Copies may be inspected at the Office of the Regional Director; the Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD; or the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

* * * * *

8. Section 640.23 is revised to read as follows:

§ 640.23 Bag/possession limits.

(a) *EEZ off the southern Atlantic states, other than Florida.* The daily bag or possession limit for spiny lobster in or from the EEZ off the southern Atlantic states, other than Florida, is two per person for commercial and recreational fishing, year-round.

(b) *EEZ off Florida and off the Gulf states, other than Florida*—(1) *Commercial and recreational fishing season.* Except as specified in paragraphs (b)(3) and (b)(4) of this section, during the commercial and recreational fishing season specified in § 640.20(b)(1), the daily bag or possession limit of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, is six per person.

(2) *Special recreational fishing seasons.* During the special recreational

fishing seasons specified in § 640.20(b)(2), the daily bag or possession limit of spiny lobster—

(i) In or from the EEZ off the Gulf states, other than Florida, is six per person;

(ii) In or from the EEZ off Florida other than off Monroe County, Florida, is twelve per person; and

(iii) In or from the EEZ off Monroe County, Florida, is six per person.

(3) *Exemption from the bag/possession limit.* During the commercial and recreational fishing season specified in § 640.20(b)(1), a person is exempt from the bag and possession limit specified in paragraph (a) of this section, provided—

(i) The harvest of spiny lobsters is by diving, or by the use of a bully net, hoop net, or spiny lobster trap; and

(ii) The vessel from which the person is operating has on board the required licenses, certificates, or permits, as specified in § 640.4(a)(1).

(4) *Harvest by net or trawl.* During the commercial and recreational fishing season specified in § 640.20(b)(1), aboard a vessel with the required licenses, certificates, or permits specified in § 640.4(a)(1) that harvests spiny lobster by net or trawl or has on board a net or trawl, the possession of spiny lobster in or from the EEZ off Florida and off the Gulf states, other than Florida, may not exceed at any time 5 percent, whole weight, of the total whole weight of all fish lawfully in possession on board such vessel. If such vessel lawfully possesses a separated spiny lobster tail, the possession of spiny lobster in or from the EEZ may not exceed at any time 1.6 percent, by weight of the spiny lobster or parts thereof, of the total whole weight of all fish lawfully in possession on board such vessel. For the purposes of this paragraph (b)(4), the term "net or trawl" does not include a hand-held net, a loading or dip net, a bully net, or a hoop net.

(5) *Diving at night.* The provisions of paragraph (b)(3) of this section notwithstanding, a person who harvests spiny lobster in the EEZ by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, is limited to the bag limit specified in paragraph (b)(1) of this section, whether or not a Federal vessel permit specified in § 640.4(a)(1) has been issued to and is on board the vessel from which the diver is operating.

(c) *Combination of bag/possession limits.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not combine the bag or possession limits of those paragraphs or combine such bag or possession limit with a bag or possession limit applicable to state waters.

(d) *Responsibility for bag/possession limits.* The operator of a vessel that fishes for or possesses spiny lobster in or from the EEZ is responsible for the cumulative bag or possession limit specified in paragraphs (a) and (b) of this section applicable to that vessel, based on the number of persons aboard.

(e) *Transfer at sea.* A person who fishes for or possesses spiny lobster in or from the EEZ under a bag or possession limit specified in paragraph (a) or (b) of this section may not transfer a spiny lobster at sea from a fishing vessel to any other vessel, and no person may receive at sea such spiny lobster.

§ 640.24 [Amended]

9. In § 640.24, the word "Secretary" is revised to read "Assistant Administrator".

[FR Doc. 95–20024 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 156
Monday, August 14, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1030, 1065, 1068, 1076 and 1079

[Docket Nos. AO–361–A31, etc.; DA–92–27]

Milk in the Chicago Regional and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR Part	Marketing area	AO Nos.
1030 ..	Chicago Regional	AO–361–A31
1065 ..	Nebraska-Western Iowa.	AO–86–A50
1068 ..	Upper Midwest	AO–178–A48
1076 ..	Eastern South Dakota.	AO–260–A32
1079 ..	Iowa	AO–295–A44

SUMMARY: This final decision adopts changes in the Federal milk marketing orders for five north central marketing areas based on industry proposals considered at a public hearing. The decision adopts a plan for pricing milk on the basis of its protein and other nonfat solids, as well as butterfat, components. The proposed plan includes adjustments per hundredweight based on the somatic cell count of producer milk used in Class II and Class III, and on payments to producers of all pooled milk.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding;

Notice of Hearing: Issued December 22, 1993; published January 4, 1994 (59 FR 260).

Extension of Time for Filing Briefs: Issued April 22, 1994; published April 29, 1994 (59 FR 22138).

Recommended Decision: Issued October 25, 1994; published November 2, 1994 (59 FR 54952).

Extension of Time for Filing Exceptions: December 2, 1994; published December 9, 1994 (59 FR 63733).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Chicago Regional and certain other marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Bloomington, Minnesota, on January 25–27, 1994. Notice of such hearing was issued on December 22, 1993, and published January 4, 1994 (59 FR 260).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on October 25, 1994, issued a recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under Issue 1, the last sentence in paragraph 1 is revised, the second sentence in paragraph 23 is revised, a paragraph is added after paragraph 34, and two paragraphs are added after paragraph 40.

2. Two paragraphs are added at the end of Issue 2.

3. Under Issue 3, one paragraph is added after paragraph 5, the first sentence of paragraph 8 is revised, and a paragraph is added at the end of Issue 3.

4. Under Issue 3a, a phrase is modified in paragraph 5, four paragraphs are added after paragraph 25, and two paragraphs are added at the end of Issue 3a.

5. Under Issue 3b, paragraph 1 is modified, one paragraph is added after paragraph 7, one paragraph is added after paragraph 8, and one paragraph is added at the end of Issue 3b.

6. Under Issue 3c, a sentence is added at the end of paragraph 3.

7. Under Issue 4, paragraph 1 is modified, paragraph 26 is modified and expanded into three paragraphs, the last four sentences of paragraph 34 and all of paragraphs 35 and 36 are deleted, and 34 paragraphs are added at the end of Issue 4.

8. Under Issue 5, paragraphs 1 and 4 are revised, paragraph 5 is replaced by two new paragraphs, two paragraphs are added after paragraph 12, paragraph 16 is revised, and two paragraphs are added at the end of Issue 5.

The material issues on the record of the hearing relate to:

1. Adoption of multiple component pricing.
2. Orders to be included.
3. Components and component prices.
   a. Protein.
   b. Other nonfat solids.
   c. Butterfat.
   d. Miscellaneous issues.
4. Somatic cell adjustment.
5. Conforming changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Adoption of multiple component pricing.* Proposals to incorporate multiple component pricing in the Chicago Regional (Order 30), Nebraska-Western Iowa (Order 65), Upper Midwest (Order 68), Eastern South Dakota (Order 76) and Iowa (Order 79) Federal milk marketing orders (the five orders) should be adopted, with some modifications. The pricing plan generally would be patterned after the multiple component pricing plan proposed by National All-Jersey, Inc. and other dairy organizations. Producers would be paid on the basis of the pounds of butterfat, protein and other nonfat solids (solids-not-fat other than protein) in their milk, and would share in the value of the pool's Class I and Class II uses on a per hundredweight basis. Regulated handlers would pay for the milk they receive on the basis of total butterfat, the protein and other nonfat solids used in Classes II and III, skim milk used in Class I, and the hundredweight of total product used in Classes I and II. In a modification from the recommended decision, a somatic cell adjustment, per hundredweight, would apply to the value of milk used in Classes II and III, but not in Class I, and to the value of all producer milk. The change was necessary since the record evidence as discussed later did not support including Class I.

At the present time, milk received by handlers under the five orders is priced according to the pounds of producer milk allocated to each class of use multiplied by the prices per hundredweight of milk testing 3.5 percent butterfat, as determined under the orders for each class of use. Adjustments for such items as overage, reclassified inventory, location and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is divided by the total producer milk in the pool to calculate a price per hundredweight of milk testing 3.5 percent butterfat to be paid to producers for the milk they have delivered to handlers. The price paid to each producer is then adjusted according to the specific butterfat test of the producer's milk by means of a butterfat differential. The butterfat differential is computed by multiplying the wholesale selling price of Grade A (92-score) bulk butter per pound on the Chicago Mercantile Exchange, as reported for the month by the U.S. Department of Agriculture, by 0.138 and subtracting the Minnesota-Wisconsin price (the M–W price) at test, also as reported by the U.S. Department of Agriculture, multiplied by .0028.

The multiple component pricing (MCP) plan was originally proposed for Orders 30, 68 and 79 by National All-Jersey, Inc. (NAJ), and other dairy organizations. In addition, Land O'Lakes, Inc., proposed that the multiple component plan be considered for Orders 65 and 76. Most other proposals considered at the hearing were modifications of the NAJ proposal and are discussed below.

The first NAJ witness stated that the current milk pricing system used in the five orders does not meet current marketing needs and should be replaced with a multiple component pricing system. Much of the general NAJ testimony in favor of multiple component pricing was later reiterated by witnesses expert in the field of economics and dairy chemistry testifying for NAJ, and a representative for Land O'Lakes. Also testifying in favor of the NAJ proposal were two dairy farmer members of the cooperative association Swiss Valley Farms Company, a representative of the Brown Swiss Cattle Breeders Association of U.S.A., Inc., and a representative of Tri-State Milk Cooperative. It was indicated in testimony that Alto Dairy Cooperative also supported the NAJ proposal.

The representative for the proponents said the intent of their proposal was to:

1. Use the M–W price as the base;
2. Pay all producers on four factors—pounds of butterfat, pounds of protein, pounds of other solids, and each producer's share of the fluid differential on a per hundredweight basis;
3. Leave Class I handler obligations on a skim-butterfat basis;
4. Determine Class II and III handlers' obligations on the basis of pounds of butterfat, protein, and other solids; and
5. Change only the order provisions needed to implement the NAJ proposal.

The NAJ witness said that there were five reasons for replacing the current milk pricing system with a multiple component pricing system. The first reason, according to the NAJ witness, is that the current skim-butterfat pricing system does not give dairy farmers economic incentives to produce milk high in nonfat solids, especially protein. He stated that under the current pricing system a pound of water receives the same price as a pound of protein or other solids, yet it is these solids that give milk its functional and nutritional value.

The second reason given by the NAJ witness for adopting MCP was that over a period of years much of the value of milk has shifted from butterfat to the skim portion of milk. The proponent's witness said that in 1960, butterfat represented 77% of the value of the M–W price, and skim represented 23%. By 1993, he testified, these values were reversed, with butterfat representing only 23% of the value of the M–W, while the skim portion of the milk represented 77%.

According to the NAJ witness, the shift in value from butterfat to skim was partially caused by the USDA decision to decrease the support price for butter and increase the support price for nonfat dry milk. The support price for butter declined from $1.53 per pound in 1981 to 65¢ per pound in 1993, with most of the decrease occurring since 1989. Nonfat dry milk purchase prices under the support program increased from 72.75¢ per pound in 1988 to $1.034 per pound in 1993. In addition, the witness said, the butterfat differential under Federal orders has been dropping since the mid-1980s because of a decline in the market price for butter. This drop was accelerated by a change in the method of computing the butterfat differential, implemented in 1990, that had the impact of reducing the butterfat differential even more.

The third reason the witness gave for implementing multiple component pricing was the shift in types of dairy products consumers are purchasing. According to the witness, some of the decline in butterfat value relative to skim value has been caused by a shift in consumption from whole milk to lowfat and skim fluid milk products. The witness presented data to show that from 1970 to 1991, national fluid milk sales of lowfat and skim milk increased 232%, while sales of whole milk declined 50%. In addition, he stated, consumption of lowfat manufactured products is growing faster than

consumption of relatively high-fat manufactured products.

The NAJ witness discussed equity in Federal orders as the fourth reason for implementing multiple component pricing. He said that the current skim-butterfat pricing system is equitable for neither producers nor handlers since it does not properly recognize the value of protein, especially in manufactured products such as cheese. The witness provided examples to show how a producer with high protein milk may currently receive the same Federal order minimum price as a producer with low protein milk. Similarly, a cheese maker who purchases high protein milk could have a cost advantage at minimum order prices over a cheese maker who purchases low protein milk.

The fifth reason presented by the NAJ witness was the existence of a number of voluntary multiple component pricing plans in the areas covered by the five orders. Data were presented to show that nearly all producers in the five orders currently are eligible to be paid under one of these voluntary multiple component pricing plans. The witness stated that many of the plans have inadequacies which contribute to disorderly marketing. According to the witness, these inadequacies would be addressed by adopting the NAJ proposal.

A witness from Land O'Lakes, Inc. (LOL), testified in support of the adoption of MCP in the five orders in general, and the NAJ proposal specifically. He discussed how the NAJ multiple component pricing proposal would better reflect the market value of nutrients in the milk to the farmer. He stated that the proposed system, compared with the current system, would essentially eliminate the value of milk used in manufacturing that is currently associated with water which, he said, has very little market value in dairy products. The witness said that MCP would affect the cost of milk to LOL as a handler in that it will come closer to equalizing the cost of milk relative to the value of the products derived from the milk.

The LOL witness also described four major weaknesses in the existing voluntary MCP plans. The first weakness, he said, was that the current plans emphasize component test instead of component yield. He said that the price paid to each producer should be tied more directly to the value of the products that can be produced from the producer's milk.

The second weakness described by the LOL witness is that many existing plans do not provide for deductions for milk with low component levels. This, he said, indicates that the plans recognize the higher value of milk with more pounds of components, but do not recognize that milk with fewer pounds of components is worth less. He said that competitive, rather than economic, factors are the reason deductions for low component levels generally do not exist, as many producers do not like to see deductions on their milk checks.

According to the LOL witness, an inequitable feature of the voluntary MCP plans is that they generally pay no component premiums when the somatic cell count of the milk is above a fixed level, resulting in high test producers losing their component premium because of high somatic cells, while low test producers with high somatic cell counts lose nothing.

The fourth weakness described by the witness is that some existing MCP plans pay premiums for protein, while others pay premiums for solids-not-fat. He said that most producers in Wisconsin receive premiums based on protein, while most producers in Minnesota, Iowa, Nebraska and South Dakota receive premiums based on solids-not-fat. The witness claimed that the variety of payment plans currently in existence do a poor job of transmitting market signals to the producers, are not economically consistent, and lead to confusion among farmers. He said that the NAJ proposal would address the deficiencies in the current situation.

Most participants at the hearing advocated the introduction of MCP for payments to producers and for milk delivered to handlers for Class II and Class III use in the five orders. There was no support for pricing Class I milk on other than the current butterfat and skim basis.

In addition to NAJ and LOL, adoption of some form of multiple component pricing in the five orders was supported by Central Milk Producers Cooperative (CMPC), the Trade Association of Proprietary Plants (TAPP), Farmers Union Milk Marketing Cooperative (FUMMC), National Farmers Organization (NFO), Kraft General Foods (Kraft), Associated Milk Producers, Inc., North Central Region (AMPI-North Central), Wisconsin Cheese Makers Association (WCMA), Dean Foods, and National Cheese Institute (NCI).

The CMPC witnesses strongly supported the need for implementing multiple component pricing in the five orders and proposed a plan very similar to that of NAJ. The fundamental difference between the two plans is that the CMPC proposal would result in lower protein prices than the NAJ proposal. The appropriate level of the protein price is discussed under Issue 3a below.

The CMPC proposal was supported in testimony and in a post-hearing brief by NFO. A witness for WCMA testified in support of the CMPC proposal for multiple component pricing. A witness for Dean Foods testified in support of the concept of MCP, and in response to a question about which proposal he favored, he expressed support for the CMPC proposal. AMPI North Central Region submitted a brief in support of the CMPC proposal for multiple component pricing.

A witness for NCI testified in support of the CMPC multiple component pricing proposal with one primary modification. The NCI proposal would calculate a "residual fluid price" instead of an other solids price. This proposal is discussed further under Issue 3b below in this decision. Kraft testified and submitted a brief in support of the NCI proposal for multiple component pricing.

A witness for the Trade Association of Proprietary Plants (TAPP) and Farmers Union Milk Marketing Cooperative (FUMMC) testified in support of the TAPP proposal, a variation of the CMPC proposal that would price both butterfat and protein on a differential basis, rather than on a per-pound basis.

The five north central Federal milk orders included in this proceeding should be amended to include multiple component pricing. On the basis of the record of this proceeding, multiple component pricing would entail pricing milk on the basis of the pounds of butterfat, protein and other nonfat solids contained in the milk, with a somatic cell adjustment to the hundredweight of milk used in Classes II and III and to the producer price differential paid to producers. The record indicates that a large percentage of the producers pooled under these orders are already eligible for or receive some form of multiple component pricing and that many of these component pricing plans use protein as a pricing component.

The record also shows that the diverse component pricing programs that currently exist promote disorderly and inefficient marketing conditions in the procurement of milk supplies by competing handlers. The different programs establish non-uniform bases of payments to producers. The adoption of multiple component pricing will allow the Orders to recognize the additional value of milk with a higher-than-average solids content.

In the five orders included in this proceeding, the vast majority of the milk pooled is utilized in manufactured products. The total solids in the milk

used for manufacturing are the primary determinants of product yield. In addition, it is the solids in fluid milk that give it its nutritional value and taste. In both types of products, the current pricing system used in the five orders does not properly recognize the value of nonfat milk solids or encourage producers to increase the quantity of nonfat milk solids in the milk they produce.

As a result of the shift in value in recent years from the butterfat portion of milk to the skim portion, most of the value of milk is determined on a volume basis without any consideration of the value of the skim components. Adoption of the multiple component pricing plan recommended in this decision will enable the market to reflect the value of the skim components in milk to producers.

In addition to butterfat, protein is clearly the most appropriate component of milk on which payment should be based. Most of the milk pooled under these five orders is used for manufacturing, and 86% of the milk used in manufacturing is used to produce cheese. Because protein is a main determinant of cheese yield, and it is cheese that determines the profitability for most of the dairy industry in the 5-market area, the milk pricing system should recognize the value of the protein component of milk as it is used in the manufacture of cheese.

Record evidence clearly shows that protein has a higher demand than other components of milk because of its functional, nutritional and economic value in the marketplace. The functional characteristics of protein allow it to form the matrix in the production of cheese and yogurt. Protein is also important to the air formation in the manufacture of certain products and provides some required nutrients in the human diet. Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Additionally, handlers receiving milk that results in greater volumes of finished products such as cheese and cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished products deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield. Thus, sending an economic signal to dairy farmers will encourage them to maximize the production of those components which have the greatest demand in the marketplace.

According to analysis of the record, proponents are correct that attribution of all of the skim value of the M-W price to protein would result in an overstatement of the value of protein used in cheese and most other uses. In order to maintain fairly uniform prices between orders for milk used in manufactured products, it is necessary to assign the residual value of the M-W price minus the butterfat and protein values to either other nonfat solids or a fluid carrier price. The discussion of this residual component may be found in Issue 3b below.

A witness for the Galloway Company testified in support of TAPP and Galloway's own proposals to exclude sweetened condensed milk, ice cream and ice cream mix from pricing under a multiple component pricing system. The witness stated that such products should continue to be priced under the current pricing system.

The Galloway witness said that some Class II manufactured products, together with other products such as sour cream, whipping cream, half and half, eggnog, yogurt, nonfat dry milk and butter, are not affected in yield by the protein content of the milk from which the products are manufactured. Instead, according to the witness, it is total skim solids that affect the yield of these products. Accordingly, the witness stated, it would not be equitable to price such products under a multiple component pricing system which prices protein at a level higher than the remaining skim solids in the milk. The witness argued that these products should be left out of any MCP plan adopted.

The Galloway witness testified, and post-hearing briefs filed on behalf of Anderson-Erickson (A-E) and Galloway asserted, that yields are affected by the level of total skim solids rather than protein; making the pricing of protein irrelevant for Class II pricing. The Galloway witness testified that there have been months in which the monthly average protein level and other nonfat solids level of milk moved in opposite directions. In addition, the A-E and Galloway briefs asserted that MCP would significantly increase the cost of Class II milk, which would put them at an even greater disadvantage than currently with respect to products made from nonfat dry milk priced at the Class III-A price.

The Galloway witness stated that the primary product manufactured by the Galloway Company is sweetened condensed milk. According to the witness, this product competes on a national basis with other manufacturers who do not have to procure their milk under Federal orders with MCP provisions. The witness stated that it would be unfair to force his organization to procure milk under a set of regulations that differ from those regulating his competitors.

A portion of the TAPP proposal would require a classification change for sweetened condensed milk from Class II to Class III. Although the Galloway witness expressed strong concern over the impact of multiple component pricing on his company, the effect of the classification of sweetened condensed milk on the Galloway company is not part of the MCP issue. Reclassification of this product is a separate issue that was discussed thoroughly at a previous hearing, and in the decision issued as a result of that hearing (58 FR 27774). No new evidence was presented at this hearing that would justify reclassifying sweetened condensed milk.

Comments filed in response to the recommended decision on behalf of A-E excepted to the application of component pricing to certain Class II products. A-E's opposition was based on two points: (1) The value of the protein in certain Class II products cannot be recovered in the marketplace, and (2) there was no evidence at the hearing to justify an increase in the Class II price. Dean Foods' comments expressed concern that MCP might jeopardize Class II product standing in the marketplace, but didn't oppose or support inclusion of MCP for Class II.

Milk used to produce sweetened condensed milk, or any other Class II product, should not be exempted from multiple component pricing. The MCP plan recommended for adoption will cover all Class II and Class III products.

Testimony at the hearing indicated that there are essentially two groups of Class II products that differ with respect to the impact of multiple component pricing on the handlers that make these products. The first group of Class II products are those in which there generally seemed to be agreement in the hearing record that yields are greatly affected by the level of protein in the milk. These products include the various cottage cheeses and other similar soft, high-moisture cheeses. The handlers that make these products benefit directly from higher levels of protein in milk and should be accountable to the pool for this added benefit.

The second group of Class II products are those where there was some disagreement in the record about the effect of protein on the yield. These products include ice cream and frozen desserts and mixes, fluid creams, sour creams, yogurt, sweetened condensed milk and others. Considerable debate took place on whether it was appropriate to include these products in a multiple component pricing system.

Occurrences of average protein level and other nonfat solids level of milk moving in opposite directions appear to be exceptions rather than the rule. Evidence presented in "Analysis of Component Levels and Somatic Cell Counts in Individual Herd Milk at the Farm Level, 1992, Upper Midwest Marketing Area" indicates that about 60% of the variation in solids-not-fat is caused by variation in protein, and that higher protein levels are positively correlated with higher solids-not-fat levels. Data presented in this and other documents show that the level of other solids in milk tends to be relatively constant with, generally, small month-to-month variation. Thus, when a handler purchases milk with higher than average protein levels, he will also, generally, be purchasing milk with higher than average levels of solids-not-fat.

In addition, the sum of the value of the protein and other solids under this recommended pricing plan equals the value of the total nonfat solids. The value of total nonfat solids, therefore, is a weighted average of the quantity and price of the protein and the quantity and price of the other nonfat solids contained in the milk. Analysis based on the average tests of the five markets shows that under the recommended pricing plan, the value of total nonfat solids would range from approximately $.002 per pound below the current value to approximately $.008 per pound above the current value.

This estimated price difference is certainly not the significant increase that is claimed in the briefs. In hearing testimony, the Galloway witness stated that an analysis of the effect of the CMPC proposal on the Galloway Company showed a nine-cent increase per hundredweight in the cost of Galloway's milk only when the CMPC somatic cell adjustment was included. Without the somatic cell adjustment, the analysis showed that the cost of milk to Galloway would be reduced under the CMPC multiple component pricing plan.

As explained above, protein is not the only component in skim milk. Skim milk consists of protein and other solids which are combined in this pricing plan to determine the value of skim milk. As was described earlier, the total value of the nonfat solids under MCP ranges from approximately $.002 per pound below to $.008 per pound above the current value of nonfat solids in the skim portion of milk.

Contrary to claims in the A–E exception, the Class II price does not change under the MCP pricing plan. The value of milk used in Class II may change, depending on the level of solids contained in the milk. However, the MCP value could be lower or higher than the current skim value, not just higher as assumed by A–E.

It is appropriate to include all Class II products in the multiple component pricing system being proposed here. All Class II products derive benefit from butterfat, protein and/or other solids in the milk. The benefit may be in enhanced yield, such as protein for cottage cheese, or a combination of protein and other solids (i.e. the solids-not-fat in the milk) in many of the other Class II products. Or, the benefit may be in some other area. For example, the NAJ dairy chemist witness testified about the importance of protein in the functionality of many of these products, such as in ice cream, whipping cream, and yogurt. Some testimony even went so far as to discuss the importance of protein in fluid milk, in terms of the nutrient content and the mineral carrying content of the milk. However, since there was no substantial support for including Class I milk in the multiple component pricing system being proposed here, only Class II and Class III products will be priced on multiple components.

2. *Orders to be included.* A proposal to incorporate the multiple component pricing plan adopted in this proceeding in the Nebraska-Western Iowa and Eastern South Dakota Federal milk orders as well as in the Chicago Regional, Iowa, and Upper Midwest orders should be adopted.

The witness for Land O'Lakes (LOL), proponent of the proposal, listed a number of reasons for including the multiple component pricing plan in the Nebraska-Western Iowa and Eastern South Dakota orders as well as in the orders proposed by NAJ. The witness explained that all five orders are similar in that their predominant use of milk is for manufacturing Class III products. He testified that the primary organizations that supply the Nebraska-Western Iowa and Eastern South Dakota markets also are major participants in one or more of the Chicago Regional, Iowa, and Upper Midwest order marketing areas. The witness stated that inclusion of the Nebraska-Western Iowa and Eastern South Dakota orders in the multiple component pricing plan would allow those organizations that have producers and market milk in multiple orders to standardize their payrolls and billings, thus maintaining uniformity and reducing confusion among producers and handlers.

The decision to include additional orders in this decision should not be made entirely on the basis of convenience to the parties marketing milk on the various orders. The decision is based on whether inclusion of the two orders would tend to effectuate the policy of the Agricultural Marketing Agreement Act. Certainly, including the Nebraska-Western Iowa and Eastern South Dakota orders in this decision will contribute to orderly marketing.

The data supplied by the market administrators' offices describing the milksheds of the various orders shows a considerable overlap of milksheds. For example, many South Dakota counties have milk pooled on three of the five orders during the same month. In the absence of uniform pricing provisions between the five orders, disorderly marketing could occur, particularly when orders have overlapping milksheds, if one order were pricing milk on a skim and butterfat basis while another order was pricing milk on the basis of its components. If a producer's milk tests high for nonfat components but is pooled under an order that prices milk on a skim-butterfat basis, the producer would attempt to maximize returns by changing the market under which his milk is pooled to benefit from his high component levels. The opposite situation would occur if the milk of a producer testing below average for nonfat components is pooled under an order with MCP provisions. Such a producer would maximize returns by changing the order under which his milk is pooled to one with skim-butterfat pricing. This shuffling of producers in the same geographic area because of nonuniform pricing provisions would not constitute orderly marketing.

Since the inclusion of the Nebraska-Western Iowa and Eastern South Dakota orders in the multiple component pricing decision would tend to reduce disorderly marketing in the region, benefit handlers by allowing a standardized payroll, and there was no opposition to their inclusion, multiple component pricing should be adopted for these two orders as well as the other three.

In response to the recommended decision, NCI and TAPP filed comments advocating a uniform national MCP plan. NCI stated that a uniform MCP plan should be considered for all markets with a significant quantity of manufacturing milk and production of a significant quantity of cheese. TAPP's comments argued that emphasizing the

value of protein in cheese is inappropriate if a national uniform multiple component pricing plan is contemplated.

The multiple component pricing plans considered thus far for inclusion in Federal milk orders have been developed and proposed by the industry participants in the affected marketing areas. The plans have tended to be modified from one proceeding to the next, with ideas about the most appropriate provisions evolving as time goes on, and to reflect individual marketing conditions. The evidence in the record of this proceeding supports the pricing plan adopted in this decision for these 5 markets. Implementation of a multiple component pricing plan for these 5 markets should not be delayed because of the desire of some market participants for a national plan.

3. *Components and component prices.* Unlike the multiple component pricing plans adopted previously in other Federal milk marketing orders, this decision recommends the adoption of a pricing plan for milk based on three components rather than two. Under the five orders involved in this decision, milk should be priced on the basis of its protein, other nonfat solids, and butterfat components.

The protein price contained in this decision is based on the value of protein in the manufacture of cheese, as determined by cheese market prices, and is not a residual of the Minnesota-Wisconsin (M–W) price minus butterfat value as is the case in other MCP plans. The butterfat price would be based on the butter market, as it is in other multiple component pricing systems. "Other nonfat solids" will be priced as a residual of the M–W price minus protein value and butterfat value. The butterfat, protein, and other nonfat solids prices shall be expressed in dollars per pound carried to the fourth decimal place. In addition, payments to each producer should reflect the value of participation in the marketwide pools on a hundredweight basis.

As in other orders for which multiple component pricing has been adopted, this decision maintains the relationship of the value of producer milk to the M–W price. If the sum of the butterfat value and the protein value is greater than the M–W price, a situation which would result in a negative other nonfat solids price, the protein price will be adjusted such that the other nonfat solids price will be zero.

In testimony and brief a witness for the Trade Association of Proprietary Plants (TAPP) and Farmers Union Milk Marketing Cooperative (FUMMC) presented a plan that would pay producers for protein above a neutral zone of 3.00% to 3.29%, and provide deductions for protein levels below the neutral zone. The level of adjustment would be tied to the price of barrel cheddar cheese on the National Cheese Exchange, and would be used to adjust pay prices to producers in a manner similar to the current butterfat differential.

The witness said that milk traditionally has been purchased on a per hundredweight basis, with differential adjustments for levels of components. According to the witness, not only are producers usually paid on a per hundredweight basis, but milk is measured on a per hundredweight basis for purposes of plant accounting, payments between plants and to haulers, and by breed associations and DHIA with adjustments for percentages of components where necessary. The witness also claimed that using differential pricing would be revenue neutral.

Comments filed by TAPP in response to the recommended decision argued that the recommended pricing provisions would result in excessive price deviations between current and projected producer returns, and that a wide neutral zone of no adjustments for protein content should be included. TAPP's comments, and those of the North Dakota Milk Producers Association, reiterated the arguments for continuing to price milk on a hundredweight basis, with differentials for adjusting its value for protein and butterfat content. TAPP further predicted that pricing components on a per-pound basis would lead to discontinued use of the M–W price, as handlers of Grade B milk also would shift their payments to producers to a component basis.

The TAPP/FUMMC testimony and comments are correct that switching payments to producers from a per hundredweight system to one of pounds of components, as adopted in this decision, is not a minor change. Some expense will be incurred by handlers and producers in adapting to the new system. However, the benefits to the industry in the affected areas of adopting a uniform multiple component pricing system outweigh the one-time costs of its adoption. The implication that everyone connected with the dairy industry must adopt this system is not correct. Pounds of milk must still be accounted for under the multiple component pricing system. For example, nothing in this decision would prevent a handler from continuing to pay haulers on a hundredweight basis. No testimony at the hearing from witnesses that have producers pooled under Federal orders that have already adopted multiple component pricing indicated that moving to a pricing system that prices milk components by the pound was an onerous burden. The transcript does reveal disagreement with the level of the protein price under some Federal orders with multiple component pricing, but little dissatisfaction with the system itself, nor complaints about the difficulty of switching to a component pricing system.

As to the argument that pricing protein and butterfat on the basis of price differentials would be revenue neutral, the multiple component pricing system recommended for adoption is designed neither to enhance nor reduce total producer returns. The only changes in the total pool value that may occur because of the recommended changes would result from differences in the protein and other nonfat solids content between milk pooled under the orders included in this proceeding and the milk included in the Minnesota-Wisconsin survey. In addition, some redistribution of the dollars involved in each pool can be expected between producers, and between handlers.

The proposal by TAPP and FUMMC, and the exceptions filed by TAPP and the North Dakota Milk Producers Association, to leave butterfat on a differential pricing basis and to price protein on a differential basis with a neutral range are not included in this decision. To continue to pay producers for butterfat and to add payment for protein on the "traditional" differential system would confuse and frustrate producers in the understanding of their milk checks. Continued use of differentials would perpetuate the volume-based pricing system with a high value on water, and would fail to give producers a true price signal of what the marketplace wants.

If, as predicted by TAPP's comments, pricing components on a per-pound basis leads to discontinued use of the M–W price, such a shift ought to be gradual enough to allow time for a new pricing structure to be developed for milk used in manufactured products. As noted in the recent M–W replacement decision, the recently-amended procedure for determining the M–W price is not considered to be a long-term solution.

The use of differentials in pricing milk components is not widely understood. There is no valid reason to continue an outmoded and confusing pricing system in valuing milk components. Pricing components on a per-pound basis will allow producers to see clearly what components have the most value, a result which plainly fits the goal of encouraging producers to produce those components which have the highest value in the marketplace. Per-pound pricing also makes clear to producers that it is the pounds of components that result in payment, rather than the percentages of those components in milk. Producers would be better able to look at the cost of producing pounds of components, and compare those costs with possible returns. Application of a neutral zone would discourage producers from increasing protein production marginally unless such an increase would raise the protein level above the neutral range.

North Dakota Milk Producers Association objected that the reliability of testing and questions about the variance of components on a day-to-day basis would make the recommended pricing plan inaccurate. There is nothing in the record of this proceeding that provides a basis for concern about the ability of the market administrators and handlers in these marketing areas to test milk for the components that will be priced under this decision. In fact, the record indicates that producers currently are being paid on the basis of the component content of their milk.

a. *Protein.* The protein price for milk pooled under the five north central Federal milk orders should be calculated by multiplying the monthly average of 40-pound block cheese prices on the Green Bay Cheese Exchange by 1.32, without including a value for whey protein.

No opposition was expressed at the hearing to pricing protein on the basis of its value in the manufacture of cheese. The differences between participants came in determining the appropriate level of the protein price.

A proposal submitted and supported by National All-Jersey, Inc. (NAJ), and supported by a number of cooperative associations and other dairy organizations, would calculate the protein price in two parts: (1) Multiply the National Cheese Exchange monthly average 40-pound block cheese price by 1.32, and (2) add the monthly average whey protein concentrate price multiplied by .735. The sum of these two values would equal the protein price.

The NAJ proponent witness explained that one of the objectives of the NAJ proposal was to establish a protein price that was high enough to give producers an incentive to produce protein. He added that a second objective was to determine the protein price from market forces rather than as a residual value, as is used in other Federal orders. The witness explained that the 1.32 factor used in the NAJ proposal comes from the modified Van Slyke cheese yield formula that is commonly used by the industry. The 1.32 factor represents the pounds of 38-percent moisture Cheddar cheese obtained from one pound of protein with 75 percent of the protein going into the cheese.

The witness gave four reasons for using the National Cheese Exchange 40-pound cheddar block price (block price): (1) The majority of the cheese in the five Federal orders is priced using the block price as the base price, (2) the block price is used in determining the somatic cell adjustment in the Eastern Ohio-Western Pennsylvania, Indiana, and Ohio Valley orders, as well as being used in the determination of the Class 4b price in California, (3) since there is over twice as much American cheese manufactured in blocks as is made in barrels, and the Wisconsin assembly point barrel cheese price is within one cent of the block price, the block price represents a minimum cheese price, and (4) the protein price determined pursuant to this proposal gives a greater incentive to producers to produce protein and is more equitable to handlers and producers than the (lower) protein price contained in the other proposals.

The NAJ witness continued by explaining that the proposal included the value of whey protein in the protein price so that all of the protein in the milk would be accounted for. As explained by the proponent witness, the .735 factor was determined by dividing 25 percent, which is the protein left in whey after making cheese, by 34 percent, which is the percent of protein in whey protein concentrate. The resulting value, .735, is multiplied by the monthly average 34% whey protein concentrate price to yield the whey contribution to the protein price. The witness stated that the whey protein concentrate price was selected because it is a better indicator of the value of the protein contained in whey than is dry whey or animal feed whey.

An economist supporting the NAJ proposal testified that even though the butterfat price is determined at its marginal value, that is, the value of butterfat in butter, the protein price should be determined by the value of protein in the most common use of protein in the five markets included in this proceeding. The witness pointed out that the most common use of protein is in the manufacture of cheese, with 85.9 percent of the milk marketed in 1992 in Wisconsin being used in the manufacture of cheese. The witness testified that the appropriate cheese price to be used in computing the protein price was the block price because it is a "conservative estimate of the price actually received for block cheddar cheese." The witness went on to explain that the reported block price is closer to what manufacturing plants receive for barrel cheese than is the reported barrel price because when the customary premiums are added to the reported barrel cheese price the result is approximately equal to the block price.

The academic NAJ witness reiterated the NAJ position that the value of whey protein should be included in the protein price because the total value of the protein in producer milk would thus be reflected in the protein price, giving producers an incentive to produce more protein.

A witness for Central Milk Producers Cooperative (CMPC) explained that the CMPC proposal would use the monthly average Green Bay Cheese Exchange barrel price (barrel price) instead of the block price, and would not include the value of whey protein. The witness for CMPC testified that the barrel price better represents the value of cheese than the block price because there is a greater volume of trading in barrel cheese than in block cheese. The resulting protein price would be lower than the protein price computed under the NAJ proposal. A witness for CMPC explained that their proposed protein price was based on the understanding that Federal order prices are minimum prices, and that the CMPC proposal, using the barrel cheese price and not including a value for whey protein, would result in a minimum price for protein.

The CMPC protein price proposal was supported at the hearing by other hearing participants, including National Farmers Organization (NFO), Kraft, Inc., Galloway Co., Wisconsin Cheese Makers Association (WCMA), National Cheese Institute (NCI), Farmers Union Milk Marketing Cooperative (FUMMC), and the Trade Association of Proprietary Plants (TAPP). A witness for NCI explained that if the protein price is set at too high a level, cheese manufacturers would experience a declining gross margin as the price for protein increases above the return the plant can obtain from additional protein. He explained that this would be the case with the protein price as proposed by NAJ, but not with the NCI and CMPC proposed protein price.

Other witnesses supporting a lower protein price than that proposed by NAJ explained that protein should not be priced at a high level because the higher

VOL
60
SS
1
56
AG
14
995
UMI

price may disadvantage handlers who do not manufacture cheese. They testified that the higher protein price would not be recoverable in certain products such as nonfat dry milk, condensed milk, or certain Class II products, and that even though the lower protein price still may not be recoverable, it offers the best alternative.

The Galloway witness stated that if a multiple component pricing plan that derives a protein price from a cheese market value were adopted, the protein price should represent a minimum value, should be based on the barrel cheese market, and should not include a value for whey protein concentrate. He argued that such a price would have the impact of minimizing the difference between the protein and other solids prices.

The TAPP/FUMMC witness testified that protein should be priced at a level somewhat below its full value in cheddar cheese and whey for several reasons. He said that too high a protein price could invite the use of non-dairy protein, whey solids, and casein, and thereby cause an increase in the production of imitation cheese. He also said that since some Class II and III products do not recoup as much value from high protein milk as cheese and cottage cheese, the protein price should be set at a level less than its full value for cheese. The witness expressed concern that too high a protein price could result in a zero value for the residual component, or other solids. According to the witness, a zero value for the residual would fail to reflect a realistic value, and would not cover a make allowance.

In the post-hearing brief filed by NAJ, the position of using a "justifiably high" protein price to send a signal to producers that protein is the most valuable component in milk was reiterated. In post hearing briefs filed by CMPC, NFO, Kraft, NCI, TAPP and FUMMC, Anderson-Erickson (A–E), and AMPI North Central Region, the computation of the protein price as proposed by CMPC was supported. The reasons given in testimony for using a lower protein price than that proposed by NAJ were reiterated in briefs. In addition, A–E, Kraft and AMPI North Central Region argued that the difference between the barrel cheese price and the block cheese price is due to the cost of packaging and other nonmilk factors, and therefore the barrel cheese price should be used for determining the protein price.

In pure economic terms the price of a product represents the supply and demand for that product as affected by place, form, and time. The problem with determining a price for protein contained in milk is that the protein is not marketed as a separate unique product, but is marketed as an integral part of both fluid and manufactured dairy products. Therefore, in determining an appropriate protein price, the value of protein in dairy products is determined by using the value of a product whose yield is a function of the protein content of the milk. At this point in time no attempt is made to reflect the protein content of milk in the value of milk used for fluid use. For this reason, the component pricing plan recommended in this decision does not apply to milk used for Class I purposes.

The level of protein in milk does have a measurable affect on the value of milk used for manufacturing. This value varies among the diverse manufactured products because of differences in the market values of manufactured dairy products and in the contribution made by protein to various finished products. For instance, testimony at the hearing showed that for a one-pound change in protein in the manufacture of cheddar cheese there is a 1.32 pound change in the quantity of cheese produced, whereas in the production of milk powder a one-pound change in the level of protein would change the amount of powder produced by approximately one pound. Since the vast majority of milk in the five orders included in this hearing is used to manufacture cheese, the protein price will be based on the contribution made by protein in the manufacture of cheese.

The 1.32 factor used in both methods proposed for the computation of the protein price for these five orders is derived from a modified Van Slyke cheese yield formula, where the casein is assumed to be 75 percent of the protein and the moisture content of the cheese is 38 percent. Assuming the butterfat is constant, a change of protein by one pound in this formula will change cheese yield by 1.32 pounds. Therefore, the 1.32 factor is appropriate for determining the order protein price.

In determining the level of the protein price, the question of whether to use the average block price versus the average barrel price is a lesser issue than the question of whether or not whey protein should be included in the computation of the protein price, as proposed by NAJ. The average difference between the Green Bay Cheese Exchange average block price and average barrel price during 1992 and 1993 was $.0388 per pound. Multiplying this difference by the 1.32 factor results in an average difference of $.05 per pound of protein between the protein prices derived from the barrel and the block cheese prices. Over the same 2 years the inclusion of whey protein in the computation of the protein price would have increased the protein price by an average of $.4265.

The principal issues that must be addressed in determining the computation of the protein price are the factors that must be included to arrive at a price that most accurately reflects the value of protein in milk. In addition, the effect of the level of the protein price on the other nonfat solids price must be considered. Since the other nonfat solids price is computed as a residual of the Minnesota-Wisconsin price, the other nonfat solids price is inversely related to the protein price. In determining an appropriate protein price and other nonfat solids price, the effects of both prices on payments to producers and margins to handlers buying milk must be determined.

Inclusion of a protein price and an other solids price in determining payments to producers gives producers an incentive to increase their production of nonfat solids, especially protein. There was no evidence in the hearing record to indicate the cost to producers of increasing the protein content of milk. It is therefore difficult to determine what the absolute level of the protein price, or its relative level to the butterfat and other solids prices, must be to encourage producers to increase the protein content of milk.

On average for the 21 months of data available in the record the protein price recommended for adoption in this decision, at $1.6851 per pound of protein, is twice both the $.6379 per pound average other solids price and the $.8374 per pound average butterfat price. Certainly, pricing protein at double the price of the other components in milk gives producers a clear message that protein is the component most desired in the marketplace without over-valuing that component. The significant difference in prices between protein and the other nonfat solids and butterfat components should give producers an incentive to increase protein output.

Testimony by several proponents of component pricing explained that component pricing would be more equitable to handlers than the current skim-butterfat pricing system. The proponents explained that the increased equity would be due to handlers paying for milk based more closely on its economic value to them. This increased equity is reflected in a narrower spread in margins between handlers making cheese from low protein-low solids milk versus handlers making cheese from high protein-high solids milk. Several

exhibits showed that handlers using "average" milk would experience little if any change in their net margins. However, handlers using low-testing milk would experience a higher net margin than under the present pricing plan, while handlers using high-testing milk would experience a lower net margin. This result, the narrowing of handlers' net margins when compared to the skim-butterfat pricing system, would occur no matter which of the proposed pricing plans is used to price the components.

Analysis of data presented at the hearing, using price computations based on each of the proposals and averaged over the 21 months of data included in exhibits, shows a range of net manufacturing margins for cheese using the recommended pricing system of $1.57 per hundredweight compared with the $3.34 range in cheese manufacturing margins per hundredweight of milk purchased attributable to the current skim-butterfat pricing system. The three component pricing plans discussed at the hearing would result in ranges in net cheese manufacturing margins of $1.16 per hundredweight for the NAJ proposal, $1.62 per hundredweight for the CMPC proposal, and $1.70 per hundredweight for the NCI proposal.

Even though the NAJ proposal yielded the smallest spread in net margins, further analysis of the NAJ results shows that the net margins increase and then start to decline. The decline in margins occurs when there is not enough butterfat in the milk to fully utilize the protein available, thus reducing the increase in cheese yield as protein content continues to increase. Accordingly, if the price of protein is greater than the increased return from cheese, the net return will start to decline.

The decline in net returns under the NAJ proposal would overprice protein, at least when there is not enough butterfat to fully utilize the protein. The result is that the marginal return using the NAJ proposal peaks within the protein and butterfat range of average milk while the marginal return using the protein and other solids price as recommended in this decision continues to increase, although at a decreasing rate. A mandated pricing system should not set prices at levels that result in a declining marginal return, particularly when the decline occurs at or near average market component levels. Therefore, the whey protein factor should not be included in the computation of the protein price.

Exceptions to the recommended protein price reflected the positions that the respective parties expressed at the hearing and in post-hearing briefs. NAJ and Swiss Valley reiterated their position that the protein price should be computed by multiplying the block cheese price by 1.32 and adding the result of multiplying the whey protein concentrate price by .735. They stated that the higher protein price that would result from this computation is appropriate since protein is the highest-valued component in milk. They suggested that even though the recommended decision was theoretically correct in its analysis, the analysis was flawed because of the assumption that butterfat could be a limiting factor in the yield-determining role of protein. They also pointed out that by using a higher protein price the resulting other solids price would be closer to the market value of lactose, the main component in the other solids.

Although a manufacturer could purchase additional sources of butterfat under the NAJ/Swiss Valley scenario, the cost would not be the same as the original source of butterfat and would therefore have to be included in the analysis of the manufacturer's returns. Since no data was included in the hearing record to undertake this analysis, the effect of the purchase of additional butterfat on net margins was not computed. However, since the decline in net margins under the NAJ proposal begins in the range of average testing milk, it is appropriate to adopt a protein price that does not include the value of whey protein.

CMPC, Mid-Am, WCMA, Dean Foods, Kraft, NFO, Independent Milk Producers Cooperative, and Lakeshore Federated Dairy Cooperative also opposed the recommended protein price computation in comments filed in response to the recommended decision. They specifically opposed the use of the block cheese price for computing the protein price. Their main objection was that a protein price computed on the basis of the block cheese price is not the lowest possible protein price that could be adopted based on the proposals included in the notice of hearing. Their exceptions reiterated their position that Federal order prices should be minimum prices. Their comments also suggested that use of a lower protein price and a correspondingly higher other solids price would result in smaller changes in payments to producers.

Kraft, A–E and TAPP argued in exceptions that since the only difference between the block and barrel cheese prices is packaging, the higher protein price resulting from the use of the block cheese price in the protein price computation is not warranted.

The monthly average price for 40-pound block cheddar cheese on the National Cheese Exchange in Green Bay, Wisconsin, is the appropriate price to use for determining the protein price. Use of the block price results in producers receiving a higher price for protein than if the barrel price were used without handlers incurring any significantly higher cost for milk. In addition, although the record showed that more cars of barrel cheese were sold on the Exchange than block cheese, the predominant cheese form in which American cheese is manufactured in the five-market region is in 40-pound or 640-pound blocks.

The price difference between block and barrel cheese may be due to packaging and other nonmilk factors. However, the protein price must be established at a level that best meets the needs of all concerned. The block cheese price should be more effective than the barrel price in establishing a sufficiently high protein price to accomplish the goal of encouraging producers to produce protein without having a detrimental impact on handlers, and does result in a narrower range of manufacturing margins for cheese.

Over the period January 1992 through September 1993, a protein price computed by multiplying the block price by 1.32 would have resulted in an average protein price of $1.6851 per pound. The CMPC and NCI proposals, using the barrel cheese price, would have resulted in an average protein price of $1.6337 per pound of protein over the same time period. A comparison of the net margins resulting from the recommended protein price versus the CMPC and NCI proposals shows that the slightly higher protein price and correspondingly lower other solids price adopted herein have a negligible affect on net margins. In fact, the spread between the highest and lowest cheese manufacturing margin declines slightly while the margin per pound of cheese remains virtually unchanged. At the same time, the producer is paid a higher protein price and thereby has a greater incentive to increase protein production.

The question to be addressed should be the level of protein price that will best accomplish the goals of component pricing rather than the magnitude of the protein price. Analysis of the data in this decision shows that using the block cheese price results in a protein price that accomplishes three goals: (1) Components will be priced at levels that reflect their value in the marketplace,

(2) components will be priced at levels that inform producers about which component has the greatest value and that make it worthwhile to produce that component, and (3) components will be priced at a level that will return a positive result to the manufacturing industry. All three of these goals are constrained by the requirement that the total value of the component prices must be equal to the Minnesota-Wisconsin price. Further, a protein price slightly higher than one based on the barrel cheese price will result in an other nonfat solids price that is closer to the market price for lactose.

Since the protein price contained in this decision will be only 5 cents greater than the price that would be computed using the barrel cheese price, rather than the 43-cent difference proposed by NAJ (using the whey protein price), the impact on producers should be very similar to the results shown in the exhibits presented by CMPC.

b. *Other nonfat solids.* The balance of the M-W price, after the values of protein and butterfat are removed, should be priced on the basis of "other nonfat solids." The other nonfat solids price per pound will be computed by subtracting from the M-W price, at test, the butterfat price times the butterfat test of the milk in the M-W price survey and the protein price times the protein test of the milk in the M-W price survey. Because the computation of the other solids price is based on a residual value, the other solids price could be negative without further adjustments. Therefore, if computation of the other solids price results in a negative price, the protein price will be adjusted (downward) to result in a zero value for the other solids price.

As a residual, a NAJ witness stated, the other nonfat solids price would represent the value of lactose and ash, which are the primary constituents of the other nonfat solids, and the difference in value between a competitively set price for milk, the Minnesota-Wisconsin price, and the value of that milk based strictly on product prices.

An expert witness for NAJ testified that a higher price for other solids than would be computed by using a protein price lower than that proposed by NAJ was not justified because a higher other nonfat solids price would defeat the purpose of multiple component pricing: to give producers an economic incentive to increase the protein content of their milk. The witness also explained that since the "other nonfat solids" consist primarily of lactose, for which there is a limited market and cheaper substitutes, there is no reason to have a high other nonfat solids price.

A witness for CMPC explained that the CMPC proposal would result in a higher price for other nonfat solids than the NAJ proposal. The witness testified that reduced emphasis on the protein price and increased emphasis on the other solids price would reduce the impact of multiple component pricing on handlers and producers. The witness observed that the average difference in handlers' cost of milk between the current skim-butterfat pricing system and the CMPC proposal was less than one cent per hundredweight, while the NAJ proposal would result in a difference of slightly over three cents per hundredweight.

The CMPC witness pointed out that the same relationship was applicable to returns to producers. In fact, the witness stated, when comparing the effect of the current skim-butterfat pricing system on handlers' obligations with both the NAJ proposal and the CMPC proposal, there is a narrower spread from the highest difference to the lowest difference and a smaller standard deviation with the CMPC proposal than the equivalent comparisons with the NAJ proposal.

An alternative residual price was proposed by NCI and supported by Kraft. A witness for NCI testified that instead of placing the residual value on the other nonfat solids, the residual value should be placed on the remaining pounds of fluid milk. The witness explained that this residual fluid price would be calculated by subtracting the value of 3.5 pounds of butterfat and the value of the protein based on the protein test of the milk in the Minnesota-Wisconsin price survey from the Minnesota-Wisconsin price. The resulting value would be divided by 100 minus 3.5 minus the protein test of the milk in the Minnesota-Wisconsin price survey.

The NCI witness testified that placing the residual value on other nonfat solids would yield an "other nonfat solids" price that could not be recovered in the marketplace. In addition, he stated, although the butterfat price is based on the butter market and the protein price would be based on the return to cheese manufacture, the other nonfat solids price would have no relationship to any particular established market or component. The witness also testified that since another nonfat solids test would not be needed for the NCI proposal, administration of the pricing plan would be easier and less expensive than the other pricing proposals.

NCI, Kraft and A-E excepted to the use of other nonfat solids as the pricing factor to represent the residual value of the M-W price. NCI suggested that the same argument used in the Southern Michigan revised recommended decision (59 FR 64464) for the use of a fluid carrier component to represent the residual value of the M-W price be used in this final decision. Kraft and A-E also supported the use of a fluid carrier component. In its exceptions, Kraft stated that use of a fluid carrier would moderate pricing extremes between producers, and that use of other solids to price the residual value of the Minnesota-Wisconsin price overprices lactose and fails to recognize the value of the fluid portion of milk.

The proposal by NCI to place the residual value on a "fluid carrier" component has some merit in that it does not try to apply the residual value to a component such as other solids, on which the market may not place a value. The major drawback to the NCI proposal is that it ignores one of the components of milk, other nonfat solids, which is composed of lactose and ash.

Until a component pricing plan is developed that does not tie the total value of the components to the M–W price, there will be a need to adjust the price of at least one of the components from a product-based value. As explained in this decision, and in the comments and exceptions filed by various parties, the M–W price consists not only of the base value of milk, but also various premiums, different pricing systems, and probably most importantly, competition for milk supplies in Minnesota and Wisconsin. Even though good arguments can be made for using a fluid carrier to represent this residual value, the record of this proceeding supports the use of other nonfat solids to represent the residual value.

Although the other nonfat solids do not have as much market value as either butterfat or protein, they are an important component of milk. If a multiple component pricing system is to be effective it should price as many of the components in milk as possible, preferably based on the value of those components in the marketplace. There is, however, no readily available measure of the market value of the other nonfat solids. Since there was no testimony or any justification in the record for departing from the Minnesota-Wisconsin price as a basic price for milk, at least one of the components in the payment plan must represent the difference between a competitively-set pay price (the M–W) and the product-derived component prices. This residual value therefore represents not only the value of the lactose and ash, but also equates the

component values, some of which are determined by their market value, with a competitively set producer pay price.

The prospect of lactose being added to milk by producers for the purpose of benefitting from the other solids price was discussed by several hearing participants. The incentive to adulterate milk with added lactose should be no more of a problem than the current incentive to adulterate milk with water. Testing to determine whether lactose has been added should, in fact, be easier than testing for water since it would be part of the testing necessary to determine producers' payments. In addition, added lactose can be detected during normal testing procedures currently conducted on milk.

NCI's concern that testing for total solids would increase handlers' costs and difficulty of testing was not established in the hearing record. In fact, testimony indicated that many handlers are already testing for total solids. Hearing testimony also showed that the testing for total solids is as accurate or more accurate than testing for butterfat or protein. In addition, the infrared machines that are used by most laboratories will test for total solids at the same time the butterfat and protein tests are done. Therefore, there should be no significant increase in testing cost or testing difficulty with the implementation of the component pricing plan incorporated in this decision.

LOL, in its comments on the recommended decision, pointed out a "flaw" in the formula used to compute the other solids price. LOL noted that the M–W price is adjusted to a 3.5 percent butterfat test, but that the skim component tests are left "at test." What this means is that the protein and other solids tests do not reflect the quantity of protein or solids in milk of 3.5 percent butterfat, but rather the quantity of protein and solids in the milk at test. Therefore, the value of the protein that is deducted to arrive at the residual value for computing the other solids price may be incorrect, thus resulting in an incorrect other solids price. The problem could be magnified because the other solids test does not reflect the correct quantity of other solids in the remaining skim milk. The effect of this "flaw" is relatively small; however, this decision adjusts the computation of the other solids price to eliminate the shortcoming observed by LOL.

c. *Butterfat.* The value of butterfat in the amended orders will be the same as under the current orders. There was no proposal or testimony to change the way butterfat currently is valued. One expert witness testified that the current system of basing the value of butterfat on the value of butter is proper.

This decision continues the historical relationship of the values of butterfat and butter. The difference between the pricing of butterfat in the amended order and the current order is due to the way that value is expressed. Currently the value of butterfat is expressed as a differential; that is, the difference in value between 0.1 pound of butterfat and 0.1 pound of skim milk. The amended order will express the value of butterfat on the basis of a price per pound. Whichever method is used, the total value of butterfat in milk is the same. However, by expressing the value on a per-pound basis instead of a differential, the objective of demonstrating clearly to producers where the value is in milk is easily achieved.

As proposed, the butterfat price per pound in the amended order will be determined by multiplying the butterfat differential by 965 and adding the Class III price. The resulting price per hundredweight would then be divided by 100 to give a price per pound of butterfat. For example, if the result of the computation is $0.73085, the announced butterfat price would be $0.7309 per pound of butterfat.

d. *Miscellaneous.* The three component prices: butterfat, protein, and the other solids, will be expressed on a per-pound basis with four places to the right of the decimal. Analysis has shown that by expressing these prices to the nearest one-hundredth of a cent, the accuracy of the prices is significantly enhanced over expressing the prices to the nearest cent. Additionally, the difference between what is paid into the producer settlement fund and what is drawn from the producer settlement fund is much closer to zero than when prices are rounded to the nearest full cent.

In contrast to other orders that have multiple component pricing provisions, this decision incorporates only one protein price as well as one other nonfat solids price. The pooling of the components to include the Class I skim portion is incorporated within the computation of the producer price differential. This feature of the pricing plan allows for the elimination of separate handler and producer protein prices and separate handler and producer other solids prices, and resulting confusion over which price, handler or producer, should be used when. In addition, a handler's per-pound price for protein or other solids is the same whether the handler is buying milk from producers or from other handlers.

The producer price differential, which represents the additional value of Class I and Class II milk in the pool and any positive or negative effect of Class III–A, will be determined by computing for each handler, and then accumulating for all handlers, the differential value (from Class III) of the Class I, Class II, and Class III–A product pounds. The differential value is adjusted, when appropriate, for shrinkage and overage, inventory reclassification, receipts of other source milk allocated as Class I, receipts from unregulated supply plants, location adjustments, and, in the Chicago Regional order, transportation and assembly credits.

For the purpose of eliminating differences between handler and producer component values, the value of the Class I skim milk and the values of the protein and other solids contained in the skim milk allocated to Class II and Class III (and somatic cell adjustments) will be added to, and the values of the protein and other solids contained in all producer milk (and somatic cell adjustments to producer milk) subtracted from, the differential pool. The accumulated total for all handlers is then adjusted by total producer location adjustments and one-half the unobligated balance in the producer settlement fund. The resulting value is then divided by the total pounds of producer milk in the pool, and an amount not less than four cents nor more than five cents is deducted. The result is the producer price differential to be paid to producers on a per hundredweight basis.

It is possible for the producer price differential to be negative. A negative producer price differential can result for two reasons. Any of the Class I, II, or III–A differential prices may be negative and/or the minus adjustments may be large enough to offset any positive contribution from the differential price. A negative producer price differential would be equivalent to a uniform price less than the Class III price.

An issue that was not directly addressed in this proceeding concerned testing for protein. The five orders included in this hearing currently base protein testing on the standard Kjeldahl method, which tests for nitrogen and then converts the nitrogen result to protein. Since there is a certain amount of free nitrogen in milk this test somewhat overstates the protein content of milk. Recent developments in testing allow for testing for true protein which is a more accurate reflection of protein content. In no way does this decision mandate a specific testing procedure. However, when (or if) the industry does move to testing for true protein, this

decision should not be viewed as a hindrance to that conversion. At the time a change to testing for true protein may occur, a change in the 1.32 factor may be necessary.

4. *Somatic Cell Adjustment.* The producer price differential paid to each producer should be adjusted on the basis of the somatic cell content of the producer's milk. In a modification from the recommended decision, handlers' value of milk used in Class II and Class III, but not in Class I, also would be adjusted for somatic cell count (SCC). The value adjustment per hundredweight for each 1,000 somatic cells would be determined by multiplying .0005 times the monthly average National Cheese Exchange 40-pound block cheese price. Each producer's monthly average SCC, in thousands, would be subtracted from 350 and multiplied by the value adjustment per 1,000 somatic cells. The difference between somatic cell adjustments to handler value and to producer value will be included in the computation of the producer price differential.

A wide range of somatic cell or quality plans were included in the notice of hearing and at the hearing itself. In general, all parties agreed that high-quality milk is important to all segments of the dairy industry. The major differences between the parties arose over the questions of how and whether quality and/or somatic cell adjustments should be included in the Federal order program.

A witness expert in the field of milk testing and quality testified about the influence somatic cells have on milk and the resulting affect on products made from milk. The witness explained that in normal healthy cows the somatic cell count is around 50,000. When an infection occurs in the udder of the cow white blood cells enter to fight the bacterial infection. The SCC thus increases with the increasing number of white blood cells. In fact, white blood cells and somatic cells are synonymous in this context. The witness continued by explaining that white blood cells contain enzymes that are designed to break down the cell walls of the bacteria that are infecting the udder, but do not distinguish between milk protein and bacteria. As a result, milk protein is also degraded. The witness also stated that the enzyme causes some deterioration in milkfat. The witness continued by explaining that these white blood cells also cause to be activated a proteolytic enzyme that is present in all milk.

The expert witness went on to explain that casein, which is the functionally important protein in milk, is broken down into smaller protein chains that cannot perform the same functions as the casein. In fact, the witness explained, the destruction of the casein affects all dairy products that rely on casein for structure or function. These products include cheeses, whipped cream, yogurt, ice cream, and condensed and dry products used in the manufacture of other products in which casein is a functional necessity. The witness also explained that higher SCC milks have a tendency to have a faster increase in "acid degree value", which is a measure of rancidity and off flavors, than milks with low SCCs. The witness testified that most of the damage occurs in the udder of the cow, where conditions are ideal for the various enzymes to work. Once the milk is removed from the udder and cooled and stored properly, further deterioration does not stop but is slowed down significantly, and further damage is minimized.

The expert witness discussed the effect that somatic cell counts have on the manufacture of various dairy products, specifically cheese. He explained that high SCC milk results in lower cheese yields as well as problems with moisture control and the activity of the starter culture. The increased somatic cells result in less casein in relationship to the total protein so that less cheese is produced than would be indicated by the amount of protein present. The degraded protein ends up in the whey with the rest of the whey proteins. The witness explained that in studies using individual cow's milk cheese yield would drop dramatically as the somatic cell count went above 100,000, with the yield staying fairly constant as the somatic cell count climbed to 1,000,000.

The witness pointed out that the cheese yield effect of somatic cells differs when bulk tank milk is used instead of an individual cow's milk. He explained that in the case of bulk tank milk the relationship between cheese yield and somatic cell counts would be linear, with cheese yields declining as SCCs increase. The witness stated that the linear relationship is caused by the weighting of the SCCs in the bulk tank. Bulk tank tests are weighted averages rather than simple averages. For example, if 100 pounds of milk with a somatic cell count of 50,000 and 400 pounds of milk with a somatic cell count of 250,000 are added to the bulk tank the somatic cell count would be a weighted average of 210,000 and not the simple average of 150,000.

The witness also testified that the effect of somatic cell levels on fluid milk products is reflected in higher acid degree values that indicate rancidity and off flavors, resulting in shorter shelf life.

The expert witness testified that routine testing for somatic cells is conducted using a Foss-O-Matic infrared analyzer. The reference method for testing is the direct microscope somatic cell count in which the sample is stained and the somatic cells are counted using a microscope. The witness explained that if the electronic instruments are calibrated to the same reference samples the resulting test values and standard deviations should be in close agreement. The witness concluded that on a relative basis the results should be close to what would be obtained using other analytical tests.

The notice of hearing contained a proposal by CMPC to include an adjustment for somatic cells. However, at the hearing, a witness for CMPC explained that CMPC had decided neither to support nor oppose the inclusion of a somatic cell adjuster in the amended orders. The CMPC witness testified that the individual members of CMPC were free to support or oppose any of the somatic cell proposals as they saw fit.

As originally proposed by CMPC, the somatic cell adjustment would be computed by multiplying the National Cheese Exchange barrel price times .0005. The resulting quantity would be multiplied by 500 minus the somatic cell count of the milk, in thousands. The resulting value would be applied on a per hundredweight basis. As explained by a witness for CMPC, the proposed somatic cell adjuster would apply to all producer milk, including that purchased by Class I handlers. The witness went on to explain that the effect of somatic cells on the value of producer milk and milk used in Class II and Class III would be included in the computation of the producer price differential. A somatic cell adjustment on Class I milk would not be included in the pool, and therefore would not affect Class I handlers' cost of milk.

A witness for WCMA quoted extensively from the MCP recommended decisions for the Indiana, Ohio Valley, and Eastern Ohio-Western Pennsylvania milk marketing orders, and for the Michigan milk order, supporting the inclusion of an adjustment for somatic cells in Federal orders. The witness supported the CMPC proposal, but suggested that the somatic cell adjustment be applied to all milk; that is, Class I milk would not be exempted from a somatic cell adjustment. In addition, he proposed that the somatic cell adjustment be applied to the protein price rather than on a hundredweight basis.

A witness for TAPP and FUMMC expressed support for including a somatic cell adjustment in the amended orders. The TAPP-FUMMC brief also supported such a provision. The witness stated that a somatic cell adjustment would benefit producers, handlers, and consumers by increasing the volume of milk marketed, improving yield, and supplying consumers with more nutritious, better quality dairy products. The TAPP/FUMMC witness explained that their proposal would have a neutral range of 301,000 to 400,000 somatic cells with a one-cent positive adjustment for each 50,000 somatic cell count below the neutral range up to a maximum of a six cents as the somatic cell count declined, and a one cent negative adjustment for each 50,000 somatic cell count above the neutral range up to a maximum of ten cents as the somatic cell count increased. The TAPP/FUMMC witness testified that under their proposal the somatic cell adjustment would apply to all producer milk, milk used in Class III, and, if the plan is to be revenue neutral, also to milk used in Class II.

A witness for Swiss Valley Farms Company (Swiss Valley) testified in support of including additions and subtractions for somatic cells in the amended order. The Swiss Valley witness explained that somatic cells add proteolytic and lipolytic enzymes to the milk, as well as a plasmin enzyme that is extremely heat stable, such that it is not deactivated during pasteurization. Therefore, the enzyme continues to degrade the milk during storage. The witness added that low SCC milk is important to the Swiss Valley bottling operations because it results in fluid milk products of improved flavor, and to their cheese-making operations because of the resulting higher casein and lower whey protein content of the milk, which increases manufacturing returns.

The Swiss Valley witness proposed that the somatic cell adjustment begin at 400,000, with a positive adjustment as the SCC declines, and a negative adjustment as the SCC increases, from that level. The adjustment would be five percent of the National Cheese Exchange block price per 100,000 somatic cells. The Swiss Valley witness explained that the adjustment for somatic cells should apply to all producer milk and that Swiss Valley would support a somatic cell adjustment on Class II and Class III milk for the handler.

In its post-hearing brief, Swiss Valley reiterated the testimony of its witness in favor of including an adjustment for somatic cells in the amended order. Besides supporting the position of the Swiss Valley witness, Swiss Valley expressed general support for a somatic cell adjustment.

Testimony by a fluid processor witness indicated that the handler pays a quality premium when buying milk from producers and specifies minimum quality standards on purchased tanker milk.

A witness for Mid-America Dairymen, Inc. (Mid-Am), testified that Mid-Am favored the inclusion of an adjustment for somatic cells in the amended order. The witness quoted from the Final Decision of the Indiana, Ohio Valley, and Eastern Ohio-Western Pennsylvania proceeding to support the position of Mid-Am that an adjustment for somatic cells should be included based on the effect somatic cells have on all milk. The witness explained that quantifying the adjustment on an incremental basis was difficult, and since not all milk is used in the manufacture of cheese a moderate adjustment rate should be used. The witness explained that the Mid-Am proposal would apply the somatic cell adjustment to all producer milk, on a hundredweight basis, with a positive adjustment for a somatic cell count below 400,000 and a negative adjustment for SCCs above 400,000.

The witness explained that under the Mid-Am proposal, the somatic cell adjustment would be computed by subtracting the monthly average somatic cell count (in thousands) of the producer from 400 and then multiplying the result by the National Cheese Exchange monthly average barrel cheese price multiplied by .0005. He stated that since the somatic cell adjustment would be included in the computation of the producer price differential, on the producer side only, the total size of the pool would not change but individual producers would receive more or less, depending on whether their milk had a somatic cell count above or below the average SCC of the market. The Mid-Am witness continued by explaining that the Mid-Am proposal would be a redistribution of money from high somatic cell testing producer milk to the lower somatic cell testing milk, since there would be no additional money in the pool from the somatic cell adjustments.

Instead of supporting the inclusion of somatic cell adjustment provisions in the five Federal orders, witnesses testifying on behalf of Land of Lakes, Inc., and NCI supported those organizations' proposals to allow each handler to submit a somatic cell or quality adjustment plan for payments to its own producers to the market administrator.

A witness for LOL testified that with the LOL proposal a handler could reduce a producer's payment by up to ten percent from that required by the order if other producers of the handler received positive adjustments to their payments, as long as the total payments were equal to at least the minimum total order payment requirements. The witness explained that LOL's proposal does not contain specific criteria for quality and/or volume adjustments. Each handler would submit an individual quality and/or volume adjustment plan to the market administrator which the handler would be required to adhere to until a new plan would be submitted. The witness testified that there is general agreement among handlers for the need to adjust payments for milk based on quality and volume. The witness continued by arguing that since the industry has not yet reached a consensus on how to adjust for quality and volume, it would be appropriate to allow each handler to develop its own quality and volume plan with the approval of the market administrator.

A witness for NCI testified that even though somatic cells affect the quality of milk, particularly in the manufacture of cheese, it is difficult to place a value on their effect. The witness explained that the variability in somatic cell levels from day to day and producer to producer makes determining an appropriate payment adjustment imprecise. In addition, the witness pointed out that other factors affect milk quality, and that placing a precise value on their effect is even more difficult than in the case of somatic cells. The NCI witness explained that the NCI proposal would allow each handler to establish and apply its own somatic cell adjustment schedule, with the approval of the market administrator, as long as the total payments to producers met or exceeded the Federal order minimum value. The witness explained that each handler could change its payment plan as conditions warranted.

A witness for Kraft emphasized the earlier testimony on the effect of somatic cells on milk quality and cheese yields. The witness listed several studies supporting the results testified to by the NAJ expert witness. The Kraft witness testified that Kraft has, since the early 1980's, employed a quality payment program as part of its producer payroll. The witness went on to state that the plethora of somatic cell payment programs in use in the industry is strong evidence of the industry's recognition that somatic cells

play a major role in milk quality. The Kraft witness explained that, in order of preference, Kraft supports the proposal submitted by NCI, followed by LOL's proposal and the TAPP/FUMMC proposal.

Kraft, in its post-hearing brief, reiterated its support for a somatic cell adjustment to be included in the amended order. Kraft's brief did not support a particular adjustment plan but preferred the LOL–NCI concept. If that plan were not adopted, Kraft expressed support for the proposal by Mid-Am or the original CMPC proposal. A brief largely reiterative of NCI testimony was filed on behalf of NCI with the Dairy Division rather than the Hearing Clerk, and was received more than 3 weeks after the extended due date for filing briefs. The brief is not considered in this decision.

In the Anderson-Erickson Dairy Company (A–E) post-hearing brief, A–E opposed the application of an adjustment for somatic cells to Class I milk. They contended that the Class I handler is unable to recover the added cost of lower somatic cell count milk from the retail market. This position was supported in the post-hearing brief filed by Lamers Dairy and Hansen Dairy (Lamers). Lamers pointed to testimony that indicated that the monetary effect of somatic cells on Class I milk could not be quantified as it could be with the manufacture of cheese.

NFO, in its post-hearing brief, opposed the inclusion of any somatic cell adjuster in the recommended order. NFO expressed the opinion that support for a somatic cell adjuster was rather weak, with none of the positions presented having strong support. As an example, the NFO brief pointed to the neutral position taken by CMPC at the hearing after including a somatic cell adjuster in the original CMPC proposal. The NFO brief continued by explaining that testimony at the hearing indicated that the relationship between somatic cell levels and economic return is not a clear and definite relationship. The NFO brief went on to point out that there was no consensus at the hearing on how to apply a somatic cell adjuster.

There is ample testimony and evidence to support the inclusion of a somatic cell adjuster in these amended orders. The recommended decision proposed that a somatic cell adjustment be applied to all producer milk, regardless of the class in which it is used. Such an application would have avoided including the difference between the handler and producer somatic cell adjustments in the computation of the producer price differential; a procedure that, during some months, could result in a significant adjustment in the producer price per hundredweight. The recommended application also would have assured that all handlers' obligations would reflect the quality of the milk they receive.

The somatic cell adjuster per hundredweight per 1,000 somatic cells will be calculated by multiplying .0005 times the monthly average National Cheese Exchange 40-pound block cheese price. To determine the value for an individual producer, the producer's monthly average somatic cell count (in thousands) will be subtracted from 350 and multiplied by the somatic cell adjuster. The value of Class II and Class III milk will be adjusted by the same formula. However, for the purpose of adjusting handlers' values, 350 will be subtracted from the best available source of the somatic cell test. This information may be, but would not necessarily be limited to, load tests, farm tests, and monthly average tests.

The value of the somatic cell adjustment will be applied on a per hundredweight basis in the handlers' payments to producers and in payment for Class II and Class III milk. Somatic cell counts will be reported with the report of receipts and utilization for all producer milk and on Class II and Class III milk.

The application of the somatic cell adjustment contained herein will promote orderly marketing. As pointed out by several witnesses testifying at the hearing, producers in these markets are faced with a wide array of quality premium programs. These programs have no standard basis or standard value that is applied between handlers. Therefore a producer is faced with trying to decide which premium program will give the producer the greatest return without a standard with which to compare. Inconsistent premium programs also result in producers with identical milk receiving different prices for that milk depending on which handler is procuring the milk. The inclusion of this somatic cell adjustment will tend to effectuate the declared policy of the Act by encouraging orderly marketing through the standardization of the basis for payment on the level of somatic cells in the milk and the standardization and checking of the testing and test procedures used for determining the somatic cell counts.

As was stated earlier, all parties agreed that high quality milk is important to all segments of the dairy industry. In fact, there was little opposition at the hearing to the inclusion of an adjustment for quality in the amended orders. Even though testimony indicated that there are other quality factors that are important in overall milk quality, there was no determination of their effect on milk quality or any attempt to compute a relevant associated value. Therefore, somatic cell count will be used as the quality adjustment factor in this decision.

There are two basic reasons to apply the somatic cell adjustment rate on a hundredweight basis rather than to adjust the protein price. First, the somatic cell adjustment reflects the quality of milk in many uses rather than just cheese, and second, application of the somatic cell adjustment on a hundredweight basis makes it very clear to producers and to handlers that quality affects milk used in all products. Although testimony clearly showed that somatic cells affect the quality of milk in all uses, a value determined on the basis of the effect of somatic cells on cheese reflects the most prevalent use of milk in these markets and is the easiest way to determine a value for payment to producers.

A lack of agreement among hearing participants occurred in trying to determine the application of a somatic cell adjustment. There was a general consensus that an adjustment should be made in the producer pay price for quality and/or somatic cells. The rate at which such adjustment should be made varied by proposal, but was tied to the reduction in cheese yield that occurs as somatic cell counts increase. Several witnesses testified that the somatic cell adjustment rate should be set at a moderate level. Testimony indicated that most of the decline in cheese yield occurs as the SCC increases from below 100,000 to above 100,000, with a much slower decline in yield as the somatic cell count increases to one million. However, testimony also showed that declines in yield are much more linear when somatic cell tests and cheese yield studies are done with bulk tank milk than with the milk of individual cows. Several proposals suggested using a factor of .0005 times the cheese price in determining the value of the somatic cell adjustment per 1,000 somatic cells. This factor is derived from the approximately four percent decline in cheese yield as the somatic cell count increases from 100,000 to one million. This is the same adjustment that is used in other Federal orders in which a somatic cell adjuster is included.

The formula used to determine the somatic cell adjuster reflects the changes in the yield of cheese as the levels of somatic cells change. The formula also ties the adjustment to the value of the milk by using the block cheese price to determine the value per 1,000 somatic cells. However, since record evidence clearly shows that the effect of somatic cells on Class I and Class II products is related more to the quality of the finished product than to the yield of the product, the formula should reflect less than the full value of the effect of somatic cells on cheese yield. Using the recommended formula, the somatic cell adjustment for the average producer under the Chicago Regional order would be a plus three cents per hundredweight, far below the 25 cents per hundredweight average quality premium that is shown in hearing exhibits as being paid currently.

The corresponding somatic cell adjustments for average producers under the four orders in addition to Chicago are: Upper Midwest, zero cents; Iowa, minus one cent; Nebraska-Western Iowa, minus six cents; and Eastern South Dakota, minus three cents. The formula results in an estimated range of forty-eight cents per hundredweight from a somatic cell count of 1,000 to a somatic cell count of 750,000, or a positive twenty-two cents to a minus twenty-six cents, although there is no limit on the deduction that may be made since there is no limit on the maximum SCC in this decision.

The use of a neutral point was supported by various proponents of a somatic cell adjuster. Several others suggested a neutral range. The record contains numerous references to a neutral range or point around a somatic cell count of 400,000. One witness expressed the opinion that the base level for the somatic cell adjustment should be near the average for the five markets. Another witness explained that their proposal used 400,000 SCC because that is where their present quality program begins. Based on data included in the hearing record, the average SCC for producers whose milk is pooled under the five orders is 367,000. Therefore, a neutral point of 350,000 is appropriate. It is close to the average for the markets, and not substantially different from the values that witnesses found appropriate. Also, by using the formula included herein, proponents of both a neutral point or a neutral range are accommodated because the formula yields no value adjustment for approximately plus or minus 7,000 SCC around 350,000.

The formula will give producers an incentive to reduce their SCCs while minimizing the effect of the somatic cell adjuster on those products in which somatic cells have a quality effect rather than a yield effect.

Neither the quality proposal by LOL nor the somatic cell proposal by NCI, in which each handler would be allowed to submit an individual quality or somatic cell payment plan to the market administrator, is included in this decision. Although the Agricultural Marketing Agreement Act in 7 U.S.C. 608c(5) does allow for adjustments to minimum pay prices on the basis of quality, such adjustments should be at a uniform rate for all producers in the market. Allowing each handler to have its own payment schedule would defeat the concept of uniform pricing to producers, eliminate the purpose of allowing quality adjustments under the order, and lead to disorderly marketing. Producers with identical milk shipping to different handlers within the same market could, and probably would, have different minimum order pay prices if each handler had its own quality or somatic cell payment plan.

A number of witnesses testified that the profusion of payment plans currently in effect in the market today are causing disorderly marketing, and that one of the benefits of incorporating multiple component pricing with a somatic cell adjustment in the five orders would be to reduce or at least standardize the vast array of producer payment plans currently in effect in the region. In view of such testimony, adoption of the LOL or NCI quality adjustment proposals would serve no purpose.

Support for the inclusion of a somatic cell adjuster in the amended orders was expressed in comments filed in response to the recommended decision by several parties including LOL, Cass-Clay Creamery, Mid-Am, Grande Cheese, WCMA, Kraft, AMPI-Morning Glory Farms, TAPP, and Swiss Valley.

Mid-Am, Grande, WCMA, Kraft, and Swiss Valley expressed unequivocal support for the inclusion of a somatic cell adjuster. Mid-Am stated that higher SCCs decrease cheese yields and also affect fluid products. Grande and WCMA expressed the view that the recognition of the importance of quality is long overdue, particularly on all classes of milk, and that producers should be rewarded for producing quality milk. Kraft, in support of the somatic cell adjustment, explained that high SCCs have a direct and measurable adverse impact on cheese yields and, in fact, on all dairy products. Kraft's comments explained that even though the SCC is not the only quality factor, it is a good indicator of overall milk quality. Kraft also said that if the somatic cell adjustment is not applied to all milk, disorderly marketing could occur, with fluid handlers trying to switch supplies to take advantage of the economics of procuring a low-SCC milk supply at no additional cost.

Swiss Valley, with two bottling plants in the marketing areas covered by this decision, expressed support for the inclusion of a somatic cell adjustment. Swiss Valley particularly expressed support for the application of a somatic cell adjustment to fluid milk, stating that a somatic cell adjuster will help insure quality milk for fluid handlers that will result in improved flavor and longer shelf life for fluid milk. They explained that the inclusion of a somatic cell adjustment under the Federal order program would eliminate the wide array of somatic cell programs currently in the marketplace and that even though the somatic cell adjustment is not large it is economically sound.

The remainder of the comments favoring a somatic cell adjuster included some qualifiers or suggested modifications to the recommended decision. LOL and Cass-Clay Creamery suggested that if a somatic cell adjuster is included in the final decision, it should not apply to movements of milk between handlers but only to payments to producers. LOL added that a somatic cell adjustment on milk movements between handlers was not included in the notice of hearing.

In exceptions filed by AMPI-Morning Glory Farms, the cooperative supported the somatic cell adjuster on all milk, but suggested that the "break point" be at a somatic cell count of 400,000 versus the 350,000 contained in the recommended decision. AMPI also stated that there should not be a somatic cell adjuster if it is not applied to all milk, because a somatic cell adjuster on only Class II and Class III milk would cause disorderly marketing.

TAPP's exception supporting a somatic cell adjuster recommended several changes. TAPP's comments expressed the belief that the amount of the recommended somatic cell adjustment is too large, causing too great a spread in value between the lowest and highest somatic cell tests. TAPP also suggested that there be a larger neutral range, and that the somatic cell adjustment should remain constant rather than changing each month based on the cheese market.

The Milk Industry Foundation (MIF), along with many fluid handlers without plants in the affected marketing areas, filed comments opposing the inclusion of a somatic cell adjustment on Class I milk in the final decision. They all gave the same six reasons for their opposition: (1) There was not enough evidence at the hearing to support a somatic cell adjustment on Class I milk,

and, in fact, that a Class I handler testifying at the hearing opposed a somatic cell adjustment on Class I milk; (2) somatic cells are not the only quality factors that should be included; (3) a somatic cell adjustment on Class I milk would cause disruptive and inequitable marketing conditions for fluid handlers, both between and within marketing areas; (4) fluid handlers cannot recover the added cost of the somatic cell adjustment from the marketplace; (5) a somatic cell adjustment would eliminate advance Class I pricing; and (6) Federal orders should not be involved in quality issues.

Anderson-Erickson (A–E), Dean Foods, and Marigold, who are fluid handlers regulated under one or more of the affected orders, opposed the inclusion of a somatic cell adjustment on Class I milk. They gave the same arguments as MIF, et al., plus several more. A–E comments stated that a somatic cell adjustment based on the effect of somatic cells on cheese has no bearing on the effect of somatic cells on Class I milk, and therefore does not reflect an appropriate value adjustment. Marigold explained in its exceptions that there is no evidence that specific levels of somatic cells can be discerned in fluid milk by consumers, and therefore a value cannot be placed on varying levels of somatic cells in Class I milk. Dean's comments expressed the belief that value adjustments based on quality should be determined by competition rather than by Federal orders.

Wells Blue Bunny, NCI, and Independent Milk Producers Cooperative filed comments opposing the inclusion of any somatic cell adjustment in the amended order.

Lakeshore Federated Cooperative (Lakeshore), consisting of Manitowoc Milk Producers, Mid-West Dairymen's Company, and Milwaukee Cooperative Milk Producers were joined in their exceptions to the recommended decision by FUMMC, Muller Pinehurst Dairy, Prairie Farms, Woodstock Progressive Milk Producers, and the Galloway Company in opposing any inclusion of a somatic cell adjustment in this decision. In addition to the same arguments that were put forth by the fluid handlers, Lakeshore's opposition was directed toward the need for an additional cost of testing for somatic cells. Lakeshore's comments pointed out that the State of Wisconsin requires one test a month for somatic cells, which also satisfies the requirements for the PMO (Pasteurized Milk Ordinance) and IMS (Interstate Milk Shippers) certification. The comments stated that a requirement by the market administrators that producer milk be tested for somatic cells four times per month for payment purposes, or an additional 40 tests per year, would create a burden on cooperative associations that do not do so much testing at the present time. Lakeshore went on to argue that the recommended decision would conflict with state regulations with regard to somatic cells, and asserted that because somatic cell testing is adequately monitored by the states there is no need for additional monitoring by market administrators.

Lakeshore claimed that including a somatic cell adjuster would cause its members to sustain a financial loss due to the cost of testing for somatic cells. Lakeshore claimed that testing for somatic cells would increase the costs of labor, computer programming, paper work, compliance with bureaucratic regulations, and the cost of additional laboratory equipment, which could not be recovered. Lakeshore also claimed that a recent increase in the Chicago Regional assessment was due to somatic cell testing in the Indiana marketing area, but there is no record evidence supporting this claim.

Lakeshore also stated that because the relationship between cheese yields and somatic cell count is not a straight-line relationship, no value can be placed on somatic cell counts of differing levels.

FUMMC and Prairie Farms filed exceptions of their own. FUMMC expressed its opposition because its proposal for a wide neutral range where there would be no adjustment was not adopted. FUMMC also claimed that somatic cell test results are variable and inaccurate, making the recommended decision impractical and unworkable.

Prairie Farms expressed the opinion that a somatic cell adjustment would cause disorderly marketing conditions between orders with a somatic cell adjuster and those without one. Prairie Farms also expressed the belief that sanitary and quality standards are beyond the scope of Federal orders.

NFO filed exceptions opposing the recommended somatic cell adjustment in its entirety, for a number of reasons. NFO claimed that support for inclusion of a somatic cell adjustment in the Federal orders was limited at the hearing and in post-hearing briefs, and argued that major changes of the magnitude of a somatic cell adjustment have not previously been made with such limited support. NFO asserted that the premise that inclusion of a somatic cell adjuster would contribute to orderly marketing would not be fulfilled.

NFO's comments further claimed that the recommended somatic cell adjustment would result in less revenue to dairy farmers because the 350,000 base point for the adjustment is higher than average producer milk in four out of five of the affected markets. NFO argued that any somatic cell base point (the somatic cell level from which producer prices are adjusted up and down) should reflect the somatic cell count of the Grade B milk in the Minnesota-Wisconsin price survey. NFO also argued that a somatic cell adjuster would reduce over-order premiums and thus reduce dairy farmer incomes.

Finally, NFO argued that the record does not support a linear relationship between cheese yields and somatic cell counts, and that the decision did not take into account the extra cost of testing.

Although NFO's comments opposed adoption of a somatic cell adjuster, the cooperative did support application of such an adjuster to all milk, including Class I, if the somatic cell adjustment is included in the final decision.

Comments filed in response to the recommended decision contained significant support for inclusion of the somatic cell adjustment as contained in the recommended decision. The comments received also reflected substantial opposition from fluid milk handlers to the aspect of the somatic cell adjustment that would have applied to all producer milk, including Class I.

On the basis of the exceptions received, this decision has been changed from the recommended decision to include an adjustment to the value of milk based on the level of somatic cells contained in all producer milk and in Class II and Class III milk. As a result, the somatic cell adjustment will be included in the pool process, so handlers will have to report somatic cell count information with their reports of receipts and utilization.

The decision to exclude handlers' Class I milk from application of a somatic cell adjustment is based on several factors. As observed by exceptors, the hearing record contained little if any testimony or evidence to quantify the economic effect of varying somatic cell levels on Class I milk, although there was considerable testimony as to the effect somatic cells have on shelf life, off flavors and rancidity in fluid milk products. Since no specific data about the value of using high-quality milk in fluid products was presented and opposition to the application of a somatic cell adjustment on Class I milk was so strong, the somatic cell adjustment will not be applied to milk used in Class I as a result of this proceeding.

Monitoring of somatic cell testing, which already clearly affects the

payments made to most of the producers pooled under these five orders, by market administrators will assure as much uniformity and accuracy as possible in the testing procedures. Also, since 70–80 percent of the milk pooled under these orders is used in Classes II and III, application of a somatic cell adjustment to that proportion of the milk used by handlers will doubtless result in a favorable effect on the general quality of the milk in the marketing areas.

Kraft and AMF's concerns about the ability of fluid milk handlers to procure supplies of milk with low somatic cell counts at no extra cost are unlikely to materialize. According to the record, many fluid handlers already pay premiums for high-quality milk. There is nothing in the provisions of the amended orders that would prevent the continuation of the payment of such premiums. In fact, the requirement that the value of milk used in Classes II and III be adjusted for its somatic cell content will most likely necessitate equivalent payments by fluid handlers in order to assure that the supplies of milk they receive are of at least average quality.

LOL may be correct that having to account for somatic cells in transfers and diversions could cause additional administrative effort. This requirement is included, however, so that the market administrators can ensure that proper payment is made for milk purchased from producers and cooperatives. There is no difference in this requirement other than the accounting for protein, other solids and butterfat in transfers and diversions.

The suggestions by TAPP that the decision contain a larger neutral range and a constant somatic cell adjuster will not be included in this decision. A larger neutral range, particularly around the mean, would provide producers little incentive to reduce herd somatic cell counts below the neutral zone. Depending on the size of the neutral zone, this could be a reduction of 100,000 or more. The somatic cell adjustment provisions adopted in this decision will result in a neutral range of approximately a plus and minus 7,000 somatic cell count from 350,000.

The economic rationale for a somatic cell adjustment is the effect that somatic cells have on protein and the resulting cheese yield. Therefore, it is logical and appropriate to adjust the somatic cell adjustment rate according to changes in the value of cheese. The somatic cell adjustment rate in this decision is moderated in that it does not reflect the value of the entire change in cheese yield that occurs as somatic cell counts in milk change.

The assertion by some exceptors that there is not a straight-line relationship between cheese yield and somatic cell count is not supported by the hearing record. A witness who has done research in such areas testified that on an individual cow basis the relationship is not linear, but that when the milk of multiple cows and farms is intermingled in a bulk tank, the relationship becomes a linear, or straight-line, relationship.

Use of a somatic cell count base point of 350,000 is appropriate, especially because the somatic cell adjustments on the handler and producer sides will be pooled. The 350,000 base point is very close to the average somatic cell count for these markets. The smaller the value of the somatic cell adjustment, the less effect the pooling of somatic cells will have on the producer price differential. Contrary to the exceptions filed by NFO, the effect of the somatic cell adjustment on the average Chicago Regional milk producers was computed to be a plus 3 cents per hundredweight rather than a negative 3 cents.

Concerns were expressed by several of those filing comments that inclusion of a somatic cell adjuster under the orders would reduce current quality premiums prevalent in the marketplace. This decision in no way discourages a handler from paying premiums for quality at whatever rate the handler deems appropriate, as long as producers are paid the minimum Federal order price. In fact, the rate of adjustment for somatic cell count included in the orders is not intended to represent the entire value of the somatic cell effect on milk. In addition, administration of an SCC adjustment under the orders should result in greater handler and producer confidence in the accuracy of the somatic cell counts on which such premium payments are based.

The objection by many of the parties filing exceptions to the somatic cell adjustment that the cost of testing and reporting somatic cell counts would be an excessive burden on producers and their cooperative associations is difficult to understand. According to the record, handlers are already testing widely for somatic cells and adjusting producers' payments on the basis of those tests.

Several parties argued that a somatic cell adjustment should not be included because the Federal milk orders should not be involved in quality issues. However, the Agricultural Marketing Agreement Act in section 8c(5) 7 U.S.C. 608c(5) specifically authorizes adjustments to prices paid to producers for "the grade or quality of the milk delivered." The record of this hearing clearly shows that the presence of somatic cells directly affects the economic value of producer milk.

The somatic cell adjustment provisions adopted herein do not establish standards, such as the Grade A standard under the PMO, but only serve to reflect some of the value to handlers of the level of somatic cells in milk. Although testing for somatic cell counts on a once-per-month basis may be sufficient for the purpose of assuring that a dairy farm is consistently below the maximum allowed level for Grade A status, testing for payment purposes must be done more often. As noted by several exceptors, somatic cell counts are more variable than other characteristics for which milk is commonly tested. More frequent samples and tests are necessary for payment purposes than for the purpose of assuring compliance with health standards to assure that the most accurate possible picture of each producer's production is obtained. The testing monitored by market administrators will cause no conflict with state testing programs because it will not be used to determine compliance with the Grade A standard.

There is no disagreement that somatic cell testing is more variable than butterfat testing. However, the record shows that most producers whose milk is pooled under these orders currently are having adjustments made to their milk checks on the basis of such testing. The hearing record supports the idea that the reliability and accuracy of somatic cell testing are within acceptable tolerances when testing instruments are calibrated correctly. It is expected that these aspects of somatic cell testing will be improved under the supervision of the market administrators for these orders.

The contention that the inclusion of a somatic cell adjuster in these five orders will cause disorderly marketing conditions between these and neighboring orders has no basis. There currently is not, nor ever has been, perfect coordination of pricing between the orders. Even though attempts are made to align prices between orders through location adjustments, other variables such as Class I utilization tend to result in different uniform prices in overlapping procurement areas. The limited magnitude of the somatic cell adjustment will not create any more distortion than already may occur in these marketing areas.

5. *Conforming changes.* To accommodate multiple component pricing a number of changes need to be made in the current order provisions of the five orders in this decision. To

compute a handler's obligation and the producer price differential, several prices need to be defined. The Class I differential price should be defined as the difference between the current month's Class I price and the current month's Class III price. The Class II differential price should be defined as the difference between the current month's Class II price and the current month's Class III price. These differential prices should not be confused with the fixed values that are added to the Minnesota-Wisconsin price for the second preceding month to arrive at the Class I and Class II prices for the current month. The Class III–A differential price should be defined as the difference between the current month's Class III–A price and the current month's Class III price. It should also be pointed out that these differential prices may be negative, which currently happens when the Minnesota-Wisconsin price is greater than any of these prices. The skim milk price will be calculated by subtracting from the Class III price the value determined by multiplying the butterfat differential by 35. The skim milk price will be expressed on a per hundredweight basis with two places to the right of the decimal.

Since producer location adjustments are not changed in this decision, the application of such adjustments to the producer price differential remains unchanged. In some of the orders the uniform price is "snubbed" at the Class III price when producer location adjustments are applied. In these orders, the producer price differential will be adjusted for location until the producer price differential is zero if the producer price differential at the zero zone is zero or greater. However, if the producer price differential is negative, no minus producer location adjustment will be applied. Plus adjustments to a negative producer price differential would be made. In those orders in which the uniform price is not "snubbed" to the Class III price, producer location adjustments will be applied as they are currently.

For the Market Administrator to compute the producer price differential handlers will need to supply additional information on their monthly reports of receipts and utilization. In addition to the product pounds and butterfat currently reported, handlers will be required to report pounds of protein, pounds of other solids, and somatic cell information. This data will be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers; and, in some cases, receipts of bulk milk received by transfer or diversion.

The recommended decision proposed that for the Upper Midwest order only, the due date for handlers to submit reports of receipts and utilization be changed from the 10th of the month to the 8th of the month to allow a longer period of time for the processing of data and the announcement of the producer price differential. A number of Upper Midwest handlers filed vehement exceptions to the proposal on the basis that they would need all the time they were accustomed to having to prepare their handler reports and make evaluations with respect to which milk should be pooled or depooled.

As a result of the comments filed by a number of handlers, the reporting date for the Upper Midwest order will remain the 10th. However, as suggested in the comments filed by AMPI North Central Region and Schroeder Milk Company, Inc., the market administrator will be given additional time (1 day, until the 12th) to complete the pooling process and announce the uniform price.

In addition to allowing an additional day for the market administrator to compute the producer price differential, the order is amended to maintain the amount of time currently allowed handlers to make payments into the producer-settlement fund by moving the date by which such payments must be made from the 15th to the 16th of the month. The date for making payments to the administrative and marketing services funds will also be changed from the 15th to the 16th. The date by which the market administrator must make payments from the producer-settlement fund will remain the 17th.

For purposes of allocation of producer receipts the assumption will be made that the protein and other solids cannot easily be separated from skim milk. The protein and other solids will therefore be allocated proportionately with the skim milk based on the percentage of protein and other solids in the skim milk received from producers.

The implementation of this multiple component pricing decision will require several changes in the way handlers pay for milk. Partial payment at the Class III price for the previous month for milk deliveries during the first 15 days of a month was proposed by both NAJ and CMPC. Although no objections to the proposal were expressed, there was no testimony supporting or opposing the proposal. Therefore, there is no basis in the record of the proceeding to make substantive changes in the payment provisions of the orders that provide for partial payments at a significantly different level.

Currently, the Nebraska-Western Iowa order, the Upper Midwest order, and the Iowa order require partial payments to be based on the prior month's uniform price. Since this component pricing plan does not contain a uniform price, these three orders will be changed to require the partial payments to be made at the "statistical uniform price", announced by the market administrator on or before the 12th day of the month for which partial payment is to be made.

The Chicago Regional order will also be changed from the current requirement that the partial payment be based on the lowest class price for the prior month to a partial payment based on the prior month's Class III price. The Eastern South Dakota order does not need to be changed.

Final payment to producers will be determined by the total hundredweight of milk times the producer price differential adjusted by the applicable location adjustment, plus or minus the total hundredweight of milk times the adjustment for somatic cells, plus the pounds of protein times the protein price, plus the pounds of other solids times the other solids price, plus the pounds of butterfat times the butterfat price, minus any authorized deductions currently allowed.

Handlers purchasing milk from cooperative pool plants will pay for Class I milk at the Class I differential price plus the pounds of skim milk in Class I at the skim milk price plus the pounds of butterfat at the butterfat price; for Class II and Class III–A milk at the Class II and Class III–A differential prices, respectively, plus the pounds of protein at the protein price, plus the pounds of other solids at the other solids price, plus the pounds of butterfat at the butterfat price; and for Class III milk at the protein pounds times the protein price, plus the pounds of other solids at the other solids price, plus the pounds of butterfat at the butterfat price. The value of milk used in Class II and Class III will be adjusted by the appropriate somatic cell adjustment. Payment for 9(c) milk will be based on the producer price differential adjusted for location at the plant of receipt and somatic cells, plus the value of protein, other solids, and butterfat contained in the milk.

Since producers will be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers must reflect the basis for such payment. Therefore the handler will be required to supply the producer not only with the information currently supplied, but also: (a) The pounds of butterfat, the pounds of protein, and the pounds of other solids contained in the producer's milk, as well as the producer's average somatic cell count, and (b) the minimum rates that are required for payment for each pricing factor and, if a different rate is paid, the effective rate also.

Land O'Lakes, AMPI North Central Region, and Cass-Clay Creamery filed comments excepting to the requirement that handlers report to their producers the pounds and prices of components for which the producers are being paid. LOL and Cass-Clay stated that there is not enough room on producer checks to report such information. AMPI observed that co-ops can reblend returns to producers, and that it would be confusing to producers to see both minimum component rates and possibly reblended rates on the same pay statement.

The requirement that payment factors be reported to producers when producers are paid currently exists in all of these orders. Addition of the component information is purely a conforming change, and should not be changed from the recommended decision. Administration of these provisions should not change from current practices.

The handler's value of milk will be determined by combining: (a) The pounds of producer milk in Class I times the Class I differential price, (b) the pounds of producer milk in Class II times the Class II differential price, (c) the value of overage, (d) the value of inventory reclassification, (e) the value, at the Class I minus Class III price difference, of other source receipts and receipts from unregulated supply plants allocated to Class I, (g) the value of handler location adjustments, (h) Class III–A credits, (i) the pounds of skim milk in Class I times the skim milk price, (j) the pounds of protein in Class II and Class III times the protein price, (k) the pounds of other solids in Class II and Class III times the other solids price, and (l) the somatic cell count of milk used in Classes II and III.

The pounds of protein and other solids in Class II and Class III will be determined by multiplying the percent protein or percent other solids in the skim milk of the total producer milk received by the handler times the pounds of skim milk allocated to Class II and Class III.

Handlers' obligations to the producer settlement fund will be determined by subtracting from the handler's value of milk the following: (a) The total pounds of each handler's producer milk times the producer price differential adjusted for location, (b) the total pounds of protein contained in the producer milk times the protein price, (c) the total pounds of other solids contained in the producer milk times the other solids price, (d) the total value of somatic cell adjustments to the handler's producer milk, and (e) the value of other source milk at the producer price differential with any applicable location adjustment at the plant from which the milk was shipped deducted from the handler's value of milk.

The amendments to order language accompanying this decision are based on the current language of the five orders, which include any changes to the orders made necessary by the two national amendatory proceedings (Class II pricing and the M–W replacement) that were completed in March and April 1995.

A number of the handlers who filed comments on the recommended decision expressed a desire for additional time between approval of the final decision and the effective date of the amendments to allow the industry affected by the order amendments to make a more orderly transition to the new payment system and conduct the necessary informational meetings. They expressed a need for caution and gradualism in effecting the proposed "revolutionary" changes in the historic method of pricing milk.

The request for additional time to implement the changes that will be necessary in computer programs, administrative systems and laboratory arrangements is reasonable, and should be accommodated. Accordingly, there will be a longer-than-usual interval between approval of the orders as amended and the effective date of the final order.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional and certain other orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Chicago Regional and certain other marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

December 1994 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Chicago Regional and certain other marketing areas is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1030, 1065, 1068, 1076 and 1079

Milk marketing orders.

Dated: August 3, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Orders Regulating the Handling of Milk in the Chicago Regional and Certain Other Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the orders regulating the handling of milk in the Chicago Regional and certain other marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Chicago Regional and certain other marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on October 25, 1994, and published in the **Federal Register** on November 2, 1994 (59 FR 54952), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein, subject to the following modifications:

a. Changes in the treatment of somatic cell adjustments require modifications of reporting requirements in § 1030.30(a)(1) and the corresponding sections of the other 4 orders.

b. Additional changes due to the treatment of the somatic cell adjustment have been made in §§ 1030.50(l), 1030.53(i), 1030.60(a)(6), 1030.61(a)(2), 1030.62(e), 1030.71(a)(2)(iv), 1030.73(c)(2)(vi), and the corresponding sections of the other 4 orders.

c. Changes in the computation of the Other Solids Price have been made in § 1030.50(k), and in the corresponding sections of the other 4 orders.

d. Changes for the purpose of more easily accommodating Class III–A provisions have been made by adding §§ 1030.50(g) and 1030.60(a)(7), deleting 1030.61(a)(3), and making the same changes in the other 3 orders that have Class III–A provisions.

e. Changes for the purpose of conforming with changes to the orders resulting from the Class II pricing proceeding have been made in §§ 1030.53(b) and the corresponding sections of the other 4 orders.

f. Changes for the purpose of conforming with changes to the orders resulting from the M–W replacement proceeding have been made in § 1030.74 and the corresponding sections of the other 4 orders.

g. Changes for the purpose of clarifying the amended order have been made in §§ 1030.71(a)(2)(v) and 1030.75(b) and the corresponding sections of those orders for which such changes are appropriate.

h. Changes in the Upper Midwest reporting date, the date for announcing the producer price differential and the date by which payments must be made to the producer-settlement fund have been made in §§ 1068.30, 1068.62, 1068.71(a), 1068.85 and 1068.86.

Accordingly, this decision proposes 7 CFR chapter X be amended as follows:

1. The authority citation for 7 CFR parts 1030, 1065, 1068, 1076 and 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1030.9(a) shall report for each plant of the handler (except if a handler requests and the request is approved by the market administrator, a handler may file a consolidated report for supply plants and a consolidated report for distributing plants); and each handler described in § 1030.9(b) and (c) shall report the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants; and

(ii) Receipts of milk from handlers described in § 1030.9(c).

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants, including a separate statement of the net receipts from each supply plant computed pursuant to § 1030.7(b)(4);

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1030.40(b)(1).

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1030.31 is amended by revising paragraph (a) to read as follows:

§ 1030.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1030.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1030.73(e).

* * * * *

3. Section 1030.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l) to read as follows:

§ 1030.50 Class and component prices.

Subject to the provisions of § 1030.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.40.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month's Class II and Class III prices (this price may be negative).

(g) *Class III–A differential price.* The Class III–A differential price shall be the difference between the current month's Class III and Class III–A prices (this price may be negative).

(h) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section.

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1030.53, including the section heading, is revised to read as follows:

§ 1030.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III–A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1030.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1030.9(a), (b), and (c), as follows:

(a) Calculate the following values:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1030.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1030.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1030.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1030.30(a)(1) by the percentage of the total producer milk allocated pursuant to § 1030.44(c) that is allocated to Class II and Class III; and

(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III–A by the Class III–A differential price for the month.

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1030.43(d) and § 1030.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1030.44(a)(11) and the corresponding steps of § 1030.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1030.61 is amended by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 1030.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1030.60(a)(1), (a)(2), (a)(7), and (b) through (k) for all handlers; and

(2) Add values computed pursuant to § 1030.60(a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment.

* * * * *

7. **Section 1030.62 is revised to read as follows:**

§ 1030.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1030.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1030.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk; and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(f) by the producer price differential as adjusted pursuant to § 1030.52 for the location of the plant from which received.

* * * * *

9. Section 1030.73 is amended by revising paragraphs (a), (c), and (d) and adding a new paragraph (e), to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk received from such producer and for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 3rd day after the end of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to §§ 1030.75 and 1030.86;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer; and

(3) If by such date the handler has not received full payment from the market administrator pursuant to § 1030.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before

the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

(iv) The pounds of butterfat received times the butterfat price for the month;

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described under § 1030.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (d)(1) of this section;

(vii) Less proper authorized deductions.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

10. Sections 1030.74 and 1030.75 are revised to read as follows:

§ 1030.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1030.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1030.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in § 1030.52(a).

(b) The producer price differential applicable to other source milk shall be adjusted at the rates set forth in § 1030.52(a), except that the adjusted producer differential price shall not be less than zero.

11. Section 1030.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows, and changing the reference "§ 1030.71(a)(2)(ii)" in paragraph (b)(1)(iii) to "§ 1030.71(a)(2)(v)":

§ 1030.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1030.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1065.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1065.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1065.9(c).

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1065.40(b)(1).

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1065.31 is amended by revising paragraph (a) to read as follows:

§ 1065.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1065.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1065.73(e).

* * * * *

3. Section 1065.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l), to read as follows:

§ 1065.50 Class and component prices.

Subject to the provisions of § 1065.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.75.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month's Class II and Class III prices (this price may be negative).

(g) *Class III–A differential price.* The Class III–A differential price shall be the difference between the current month's Class III and Class III–A prices (this price may be negative).

(h) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section.

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1065.53, including the section heading, is revised to read as follows:

§ 1065.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III–A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1065.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1065.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1065.9(a) with respect to each of its pool plants and each handler described in § 1065.9(b) and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1065.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1065.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1065.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price.

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1065.30(a)(1) by the percentage of the total producer milk allocated pursuant to § 1065.44(c) that is allocated to Class II and Class III; and

(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III-A by the Class III-A differential price for the month.

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1065.43(d) and § 1065.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1065.44(a)(11) and the corresponding steps of § 1065.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1065.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (f), to read as follows:

§ 1065.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers, as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1065.60(a)(1), (a)(2), (a)(7) and (b) through (i) for all handlers; and

(2) Add values computed pursuant to § 1065.60(a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment.

* * * * *

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be the "producer price differential."

7. Section 1065.62 is revised to read as follows:

§ 1065.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1065.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1065.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk determined pursuant to § 1065.44(c) by the producer price differential as adjusted pursuant to § 1065.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk; and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1065.60(f) by the producer price differential as adjusted pursuant to § 1065.52 for the location of the plant from which received.

* * * * *

9. Section 1065.73 is amended by revising paragraphs (a), (c), (d) and (e) to read as follows:

§ 1065.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 27th day of the month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1065.62(g) for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1065.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to 1065.86 and for advertising and promotion pursuant to § 1065.107; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1065.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1065.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1065.62(g) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;
(iv) The pounds of other solids received times the other solids price for the month;
(v) The hundredweight of milk received times the somatic cell adjustment for the month; and
(vi) Less any payment made pursuant to paragraph (c)(1) of this section.
(d) Each handler shall pay a cooperative association for fluid milk products received by transfer or diversion from a pool plant operated by the cooperative association as follows:
(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the Class III price for the preceding month; and
(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:
(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;
(ii) The hundredweight of Class II milk received times the Class II differential price for the month;
(iii) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;
(iv) The pounds of butterfat received times the butterfat price for the month;
(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;
(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;
(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and
(viii) Less any payment made pursuant to paragraph (d)(1) of this section.
(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:
(1) The month and the identity of the producer;
(2) The daily and total pounds for each producer;
(3) The total pounds of butterfat contained in the producer's milk;
(4) The total pounds of protein contained in the producer's milk;
(5) The total pounds of other solids contained in the producer's milk;
(6) The somatic cell count of the producer's milk;
(7) The minimum rate or rates which payment to the producer is required pursuant to this order;
(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;
(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and
(10) The net amount of payment to such producer or cooperative.

* * * * *

10. Sections 1065.74 and 1065.75 are revised to read as follows:

§ 1065.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1065.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1065.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1065.52.
(b) For purposes of computations pursuant to §§ 1065.71 and 1065.72, the producer price differential shall be adjusted at the rates set forth in § 1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

11. Section 1065.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows, and changing the reference "§ 1065.71(a)(2)(ii)" in paragraph (b)(1)(iii) to "§ 1065.71(a)(2)(v)":

§ 1065.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *
(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero;

* * * * *

(b) * * *
(1) * * *
(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1065.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1068.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1068.9 (a), (b), and (c) shall report for each of its operations the following information:
(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:
(i) Receipts of producer milk, including producer milk diverted by the handler; and
(ii) Receipts of milk from handlers described in § 1068.9(c).
(2) Product pounds and pounds of butterfat contained in:
(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;
(ii) Receipts of fluid milk products not included in paragraphs (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;
(iii) Receipts of other source milk; and
(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1068.40(b)(1).
(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1068.31 is amended by revising paragraph (a) to read as follows:

§ 1068.31 Payroll reports.

(a) On or before the 22nd day of each month, each handler described in § 1068.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1068.73(f).

* * * * *

3. Section 1068.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l) to read as follows:

§ 1068.50 Class and component prices.

Subject to the provisions of § 1068.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:
(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.20.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).
(f) *Class II differential price.* The Class II differential price shall be the difference between the current month's Class II and Class III prices (this price may be negative).
(g) *Class III–A differential price.* The Class III–A differential price shall be the difference between the current month's Class III and Class III–A prices (this price may be negative).
(h) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.
(i) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.
(j) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.
(k) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.
(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section.
(2) The somatic cell adjustment per hundredweight shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1068.53, including the section heading, is revised to read as follows:

§ 1068.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:
(a) The Class I price for the following month;
(b) The Class II price for the following month;
(c) The Class III price for the preceding month;
(d) The Class III–A price for the preceding month;
(e) The skim milk price for the preceding month;
(f) The butterfat price for the preceding month;
(g) The protein price for the preceding month;
(h) The other solids price for the preceding month;
(i) The somatic cell adjustment rate for the preceding month; and
(j) The butterfat differential for the preceding month.

5. The section heading in § 1068.60 and the undesignated centerheading preceding it, the introductory text and paragraphs (a), (f), and (g), are revised to read as follows:

Producer Price Differential

§ 1068.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1068.9 (a), (b), and (c).
(a) The handler's obligation for producer milk shall be computed as follows:
(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1068.43(a) and § 1068.44(c) by the Class I differential price for the month;
(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1068.43(a) and § 1068.44(c) by the Class II differential price for the month;
(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1068.43(a) and § 1068.44(a) by the skim milk price;
(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1068.43(a) and § 1068.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;
(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1068.43(a) and § 1068.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price.
(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1068.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1068.43(a) and 1068.44(c); and
(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III–A by the Class III–A differential price for the month.

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price

applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1068.43(e) and § 1068.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(11) and the corresponding steps of § 1068.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract, for a handler described in § 1068.9(c), the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

* * * * *

6. Section 1068.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e), to read as follows:

§ 1068.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk as follows:

(a) Combine into one total for all handlers:

(1) The estimated values computed pursuant to § 1068.60 (a)(1), (a)(2), (a)(7) and (b) through (j) for all handlers; and

(2) Add the estimated values computed pursuant to § 1068.60 (a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment.

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential" for milk received from producers.

7. Section 1068.62 is revised to read as follows:

§ 1068.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1068.71 is amended by revising paragraph (a) to read as follows:

§ 1068.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1068.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk and milk received from a handler described in § 1068.9(c). In the case of a handler described in § 1068.9(c), less the amount due from other handlers pursuant to § 1068.73(d). The value of producer milk shall be computed as follows:

(A) An amount obtained by multiplying the total hundredweight of producer milk by the producer price differential as adjusted pursuant to § 1068.75;

(B) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(C) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price;

(D) The total value of the somatic cell adjustment to producer milk; and

(ii) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1068.60(f) by the producer price differential as adjusted pursuant to § 1068.52 for the location of the plant from which received.

* * * * *

9. Sections 1068.73, 1068.74, and 1068.75 are revised to read as follows:

§ 1068.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers or cooperative associations as follows:

(a) On or before the 25th day of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a cooperative association:

(1) That is a handler pursuant to § 1068.9(a), at not less than the Class I price for the month at the location of the transferee or transferor plant, whichever is higher, adjusted by the butterfat differential for the preceding month;

(2) That is a handler pursuant to § 1068.9(c), at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month; and

(3) That is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(b) On or before the 4th day after the end of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a producer for whom payment is not being made pursuant to paragraph (a) of this section and who has not discontinued shipping to such handler, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(c) On or before the 11th day after the end of the month, each handler shall pay for milk received and classified during the month from a cooperative association which is a handler pursuant to § 1068.9(a) adjusted at the location of the transferee or transferor plant, whichever is higher, payment shall be determined as follows:

(1) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(2) The hundredweight of Class II milk received times the Class II differential price for the month;

(3) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

(4) The pounds of butterfat received times the butterfat price for the month;

(5) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(6) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(7) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(8) Less any payment made pursuant to paragraph (a)(1) of this section.

(d) On or before the 18th day after the end of the month, each handler shall make payment as described in this paragraph to:

(1) A cooperative association that is a handler pursuant to § 1068.9(c);

(2) A cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate;

(3) A producer for whom payment is not being made pursuant to paragraph (d) (1) and (2) of this section.

(4) Payment shall be determined by:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1068.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (a) or (b) of this section.

(e) In making payments pursuant to paragraphs (a) (2) and (3), (b) and (d) of this section, deductions may be made for marketing services pursuant to § 1068.86 and for any proper deductions authorized by the producer. In the event a handler has not received full payment from the market administrator pursuant to § 1068.72 by the 18th day of the month, the handler may reduce pro rata its payments to producers pursuant to paragraph (d) by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this section.

(f) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom it received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and producer;

(2) The total pounds of milk received from the producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this section;

(8) The rate that is used in making payment if such rate is other than the applicable minimum;

(9) The amount, or the rate per hundredweight, or rate per pound of component, of each deduction claimed by the handler, including any deduction claimed under § 1068.86, together with a description of the respective deductions; and

(10) The net amount of the payment to the producer.

§ 1068.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1068.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1068.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a pool plant or delivered to a nonpool plant shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1068.52.

(b) The producer price differential applicable to other source milk shall be adjusted at the rates set forth in § 1068.52, except that the adjusted producer price differential shall not be less than zero.

10. Section 1068.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows:

§ 1068.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero;

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1068.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

§ 1068.85 [Amended]

11. Section 1068.85 is amended by changing the word "15th" in the introductory text to "16th."

§ 1068.86 [Amended]

12. Section 1068.86 is amended by changing the word "15th" in paragraphs (a) and (b) to "16th."

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. Section 1076.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d) to read as follows:

§ 1076.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1076.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1076.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk; and

(iv) Inventories at the beginning and end of the month of fluid milk products

and products specified in § 1076.40(b)(1).

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

* * * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1076.31 is amended by revising paragraph (a) to read as follows:

§ 1076.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1076.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1076.73(e).

* * * * *

3. Section 1076.50 is amended by revising the section heading, introductory text and paragraph (a), reserving paragraph (d), and adding paragraphs (e) through (l):

§ 1076.50 Class and component prices.

Subject to the provisions of § 1076.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.50.

* * * * *

(d) [Reserved]

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) [Reserved]

(h) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section.

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) [Reserved]

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1076.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1076.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1076.9(a) with respect to each of its pool plants and each handler described in § 1076.9(b) and (c).

(a) The handler's obligation for producer milk and milk received from a handler described in § 1076.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1076.43(a) and § 1076.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1076.43(a) and § 1076.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1076.43(a) and § 1076.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.43(a) and § 1076.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.43(a) and § 1076.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price; and

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1076.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1076.43(a) and 1076.44(c); and

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by

the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1076.43(d) and § 1076.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1076.44(a)(11) and the corresponding steps of § 1076.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1076.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e), to read as follows:

§ 1076.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1076.60, paragraphs (a)(1), (a)(2), and (b) through (i) for all handlers;

(2) Add values computed pursuant to § 1076.60(a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of the somatic cell adjustment.

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential."

7. Section 1076.62 is revised to read as follows:

§ 1076.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk and milk received from a handler described in § 1076.9(c); and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1076.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1076.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1076.9(c) by the producer price differential as adjusted pursuant to § 1076.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1076.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1076.9(c) by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk and milk received from handlers described in § 1076.9(c); and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1076.60(f) by the producer price differential as adjusted pursuant to § 1076.52 for the location of the plant from which received.

* * * * *

§ 1076.72 [Amended]

9. Section 1076.72 is amended by removing the last sentence.

10. Section 1076.73 is amended by revising paragraphs (a), (c), (d) and (e) to read as follows:

§ 1076.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1076.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to § 1076.86; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1076.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1076.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1076.62(g) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by the cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1076.62(g) adjusted by the butterfat differential, both for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month,

(iii) [Reserved]

(iv) The pounds of butterfat received times the butterfat price for the month;

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

11. Sections 1076.74 and 1076.75 are revised to read as follows:

§ 1076.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1076.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1076.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1076.52; and

(b) For the purpose of computations pursuant to § § 1076.71 and 1076.72 the producer price differential shall be adjusted at the rates set forth in § 1076.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

12. Section 1076.76 is amended by revising paragraphs (a)(4) and the last sentence of (b)(1)(ii) to read as follows, and changing the reference "§ 1076.71(a)(2)(ii)" in paragraph (b)(1)(iii) to "§ 1076.71(a)(2)(v)":

§ 1076.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both price to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero;

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1076.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1079—MILK IN THE IOWA MARKETING AREA

1. Section 1079.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1079.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1079.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1079.9(c).

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts by transfer or diversion of bulk fluid milk products from pool plants.

(ii) Receipts of fluid milk products not included in paragraph (a)(1) or (a)(2)(i) of this section and bulk fluid cream products from any source;

(iii) Receipts of other source milk;

(iv) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1079.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1079.31 is amended by revising paragraph (a) to read as follows:

§ 1079.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler described in § 1079.9(a), (b), or (c) shall report to the market administrator its producer payroll for such month in the detail prescribed by the market administrator, showing for each producer the information described in § 1079.73(e).

* * * * *

3. Section 1079.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (l) to read as follows:

§ 1079.50 Class and component prices.

Subject to the provisions of § 1079.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.55.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) *Class III–A differential price.* The Class III–A differential price shall be the difference between the current month's Class III and Class III–A prices (this price may be negative).

(h) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(i) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(j) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(k) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(l) *Somatic cell adjustment.* (1) The somatic cell adjustment rate, per 1,000 somatic cells, rounded to five decimal places, shall be computed by multiplying .0005 times the monthly cheddar cheese price as defined in paragraph (j) of this section.

(2) The somatic cell adjustment, per hundredweight, shall be determined by subtracting from 350 the somatic cell count (in thousands) of the milk, multiplying the difference by the somatic cell adjustment rate, and rounding to the nearest full cent.

4. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class and component prices.

On or before the 5th day of the month, the market administrator shall announce the following prices:

(a) The Class I price for the following month;

(b) The Class II price for the following month;

(c) The Class III price for the preceding month;

(d) The Class III–A price for the preceding month;

(e) The skim milk price for the preceding month;

(f) The butterfat price for the preceding month;

(g) The protein price for the preceding month;

(h) The other solids price for the preceding month;

(i) The somatic cell adjustment rate for the preceding month; and

(j) The butterfat differential for the preceding month.

5. The section heading in § 1079.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a), (f), and (g), are revised to read as follows:

Producer Price Differential

§ 1079.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1079.9(a) with respect to each of its pool plants, and each handler described in § 1079.9 (b) and (c).

(a) The handler's obligation for producer milk and milk received from a handler described in § 1079.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1079.43(a) and § 1079.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1079.43(a) and § 1079.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1079.43(a) and § 1079.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1079.43(a) and § 1079.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price;

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1079.43(a) and § 1079.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

(6) Add an adjustment for somatic cell content determined by multiplying the value reported pursuant to § 1079.30(a)(1) by the percentage of the total producer milk assigned to Class II and Class III pursuant to §§ 1079.43(a) and 1079.44(c); and

(7) Add an amount obtained by multiplying the total hundredweight of producer milk eligible to be priced as Class III–A by the Class III–A differential price for the month.

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1079.43(d) and § 1079.44(a)(7)(i) and the pounds of skim milk and butterfat

subtracted from Class I pursuant to § 1079.44(a)(11) and the corresponding steps of § 1079.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract for a handler described in § 1079.9(c) the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

* * * * *

6. Section 1079.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e) to read as follows:

§ 1079.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1079.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1079.60(a)(1), (a)(2), (a)(7), and (b) through (j) for all handlers; and

(2) Add values computed pursuant to § 1079.60(a)(3), (a)(4), (a)(5) and (a)(6); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices, and the total value of somatic cell adjustments.

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the "producer price differential."

7. Section 1079.62 is revised to read as follows:

§ 1079.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk and milk received from a handler described in § 1079.9(c); and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1079.71 is amended by revising paragraph (a)(2) and reserving paragraph (b), to read as follows:

§ 1079.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1079.9(c) by the producer price differential as adjusted by § 1079.75. In the case of a handler described in § 1079.9(c), less the amount due from handlers pursuant to § 1079.73;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1079.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1079.9(c) by the other solids price;

(iv) The total value of the somatic cell adjustment to producer milk and milk received from handlers described in § 1079.9(c); and

(v) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1079.60(f) by the producer price differential as adjusted pursuant to § 1079.52 for the location of the plant from which received.

(b) [Reserved]

9. Sections 1079.73, 1079.74 and 1079.75 are revised to read as follows:

§ 1079.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(g) for the preceding month and adjusted pursuant to § 1079.75, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential adjusted pursuant to § 1079.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper authorized deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to § 1079.86; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1079.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall pay a cooperative association as follows for milk received from producers if the cooperative association has filed a written request for payment with the handler and if the market administrator has determined that such cooperative association is authorized to collect payment:

(1) On or before the last day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 18th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section, less proper deductions authorized in writing by such cooperative association.

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1079.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(g), applicable at the location of the receiving handler's plant, for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (c)(1) of this section;

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price applicable at the transferee plant as computed pursuant to § 1079.62(g) and adjusted by the butterfat differential, both for the preceding month; and

(2) For milk received and classified during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The hundredweight of Class III–A milk received times the Class III–A differential price for the month;

(iv) The pounds of butterfat received times the butterfat price for the month;

(v) The pounds of protein received in Class II and Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class II and Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II and Class III milk received times the somatic cell adjustment; and

(viii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraphs (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

§ 1079.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1079.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price as reported by the Department.

§ 1079.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk pursuant to § 1079.61 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in § 1079.52.

(b) For purposes of computations pursuant to §§ 1079.71 and 1079.72 the producer price differential shall be adjusted at the rates set forth in § 1079.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

10. Section 1079.76 is amended by revising paragraph (a)(4) and the last sentence of paragraph (b)(1)(ii) to read as follows, and changing the reference "§ 1079.71(a)(2)(ii)" in paragraph (b)(1)(iii) to "§ 1079.71(a)(2)(v)":

§ 1079.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero;

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1079.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____[1] to _____, all inclusive, of the order regulating the handling of milk in the _____ Name of order _____) marketing area (7 CFR PART _____[2]) which is annexed hereto; and

II. The following provisions:

§ _____[3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of December 1994, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____[3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal) _____

Attest _____

[FR Doc. 95–19677 Filed 8–11–95; 8:45 am]

BILLING CODE 3410–02–P

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–26–AD]

Airworthiness Directives; Jetstream Aircraft Limited Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Jetstream Aircraft Limited (JAL) Model 3201 airplanes. The proposed action would require repetitively inspecting the main landing gear (MLG) bay forward lower edge wing skin structure for cracks, replacing any cracked doubler with a joggled doubler of improved design to reinforce the area and prevent future cracking, and eventually incorporating these doublers on all affected airplanes. Cracking found at the MLG bay forward lower edge wing skin structure during fatigue testing of the JAL Model 3201 airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent the MLG bay forward lower edge wing skin structure from cracking, which, if not detected and corrected, could cause failure of the wing structure and loss of control of the airplane.

DATES: Comments must be received on or before October 8, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–26–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Marvin R. Nuss, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No 95–CE–26–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–26–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain JAL Model 3201 airplanes. The CAA advises that cracks may develop in the MLG bay forward lower edge wing skin structure adjacent to the main spar. While undergoing fatigue tests of this airplane model, Jetstream discovered the tendency for cracking in this area.

JAL has issued Jetstream Service Bulletin (SB) 57–A–JA920540; Original Issue September 1, 1992, which specifies procedures for inspecting the MLG bay forward lower edge wing skin structure for cracks, and if cracks are found, replacing the cracked doubler with a new joggled doubler of an improved design.

In order to assure the continued airworthiness of these airplanes in the United Kingdom, the CAA classified this service bulletin as mandatory. The CAA classifying a service document as mandatory is the same for airplanes registered in the United Kingdom as the FAA issuing an AD for airplanes registered in the United States.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement between the United States and the United Kingdom.

Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Jetstream Model 3201 airplanes of the same type design, the proposed AD would require repetitively inspecting the MLG bay forward lower edge wing skin structure adjacent to the main spar for cracks. If cracks are found, replace the cracked doubler with a joggled doubler of improved design to reinforce the area and prevent future cracking. Accomplishment of the proposed action would be in accordance with Jetstream Service Bulletin 57–A–JA920540; Original Issue September 1, 1992.

The proposed action would be consistent with the FAA's aging commuter-class aircraft policy. This policy simply states that reliance on critical repetitive inspections carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. Therefore, the proposed action, if incorporated as a final rule, would be consistent with the FAA's commuter-class aircraft policy.

The FAA estimates that 134 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 35 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owners/operators. Based on these figures, the total cost impact of the proposed AD on U.S. operator is estimated to be $281,400. This figure is based on the assumption that all of the affected airplanes do not have the new joggled doublers installed and that none of the owners/operators of the affected airplanes have replaced the doublers.

Jetstream has informed the FAA that parts have been distributed to equip approximately 5 airplanes. Assuming that these distributed parts are incorporated on the affected airplanes, the cost of the proposed AD would be reduced by $10,500 from $281,400 to $270,900.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40101, 40113, 44701.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 95–CE–26–AD.

Applicability: Model 3201 airplanes (serial numbers 790 through 969), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated in the body of this AD, unless ready accomplished.

To prevent the main landing gear (MLG) by forward lower edge wing skin structure from cracking, which, if not detected and corrected, could cause failure of the wing structure and loss of control of the airplane, accomplish the following:

(a) Upon accumulating 4,000 hours time-in-service (TIS) or within the next 200 hours TIS after the effective date of this AD, whichever occurs later, inspect the MLG bay forward lower edge wing skin structure adjacent to the main spar for cracks in accordance with the Accomplishment Instructions section of Jetstream Service Bulletin (SB) 57–A–JA920540, Original Issue September 1, 1992.

(1) If cracks are found, prior to further flight, replace the existing doublers with joggled doublers of improved design in accordance with the Accomplishment Instructions section of Jetstream SB 57–A–JA920540, Original Issue September 1, 1992.

(2) If no cracks are found, re-inspect the MLG bay forward lower edge wing skin structure at intervals not to exceed 600 hours TIS until modified as specified in paragraph (b) of this AD.

(b) Upon accumulating 9,000 hours TIS or within the next 200 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished as specified in paragraph (a)(1) of this AD, replace the existing doublers with joggled doublers of improved design in accordance

with the Accomplishment Instructions section of Jetstream SB 57–A–JA920540.

(c) Replacing the joggled doublers as required by paragraphs (a)(1) or (b) of this AD eliminates the repetitive inspection requirements of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 7, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20004 Filed 8–11–95; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 60, 260, 262, 264, 265, 270, and 271

[IL–64–2–5807; FRL–5277–1]

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; data availability.

SUMMARY: This notice announces the availability of additional data that are being considered by the EPA in revising the air emission standards for hazardous waste treatment, storage, and disposal facilities (TSDF) that were published December 6, 1994 under the authority of the Resource Conservation and Recovery Act (RCRA), as amended (59 FR 62896). The additional data are available for public inspection at the EPA RCRA Docket Office.

DATES: Comments on these additional data will be accepted through October 13, 1995.

ADDRESSES: Docket. The additional data are available for public inspection and copying in the EPA RCRA Docket Office (5305), Room 2616, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying. Docket hours are 9 a.m. to 4 p.m. Monday through Friday excluding Federal holidays. Other RCRA docket numbers that pertain to the final rule are F–91–CESP–FFFFF, F–92–CESA–FFFFF, F–94–CESF–FFFFF, and F–94–CE2A–FFFFF.

Comments. Written comments regarding these data may be mailed to the Docket Clerk (5305), Room 2616, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F–95–CE3A–FFFFF. Comments on the additional data will be accepted through October 13, 1995.

FOR FURTHER INFORMATION CONTACT: For general information about this action contact the RCRA Hotline at (703) 412–9877 or toll-free at 1–800–424–9346. For information on specific technical aspects of these data contact Ms. Michele Aston, Emissions Standards Division (MD–13), U.S. EPA, Research Triangle Park, N.C. 27711, telephone (919) 541–2363, telefax (919) 541–3470.

SUPPLEMENTARY INFORMATION: On December 6, 1994, the EPA published in the **Federal Register** (59 FR 62896) under authority of the Resource Conservation and Recovery Act (RCRA), as amended, standards requiring the use of air emission controls on certain tanks, surface impoundments, and containers at hazardous waste treatment, storage, and disposal facilities (TSDF). These standards are codified in 40 CFR parts 264 and 265 under subpart CC (referred to as the "subpart CC standards").

Since publication of these final standards, the EPA has been involved in a review of its standards to identify areas in which regulatory measures can be made less burdensome without compromising environmental benefits. For the subpart CC standards, this effort has identified certain requirements of the final standards for which less extensive regulatory requirements may suffice. The EPA is considering revising the published standards to reflect the requirements described in the additional data. The sections of the published rule that are addressed by these additional data are: applicability, waste determination procedures, standards for tanks, standards for surface impoundments, standards for containers, inspection and monitoring requirements, recordkeeping requirements, and reporting requirements.

The EPA will consider these new data in the regulatory decision-making process for this regulation. Therefore, the new data are being placed into the RCRA docket for public inspection and review. To clearly distinguish these new data, they have been placed under a new docket number: F–95–CE3A–FFFFF. The EPA will consider all comments on the new data received by the close of the comment period when making a final regulatory determination on the regulatory requirements for this regulation.

These items are not the exclusive list of the provisions which the EPA is considering revising. The EPA is planning to publish a technical correction notice to the rule within the next two months, and may also propose additional changes to the rule in the near future.

List of Subjects

40 CFR Parts 264 and 265

Air pollution control, Container, Control device, Hazardous waste, Incorporation by reference, Inspection, Miscellaneous unit, Monitoring, Reporting and recordkeeping requirements, Standards, Surface impoundment, Tank, Waste determination.

Dated: August 9, 1995.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–20003 Filed 8–11–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Television Broadcasting Services; Bend, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petition.

SUMMARY: This document denies the petition for reconsideration filed by 3–J Broadcasting Company, seeking review of the action taken by the Chief, Allocations Branch, on July 18, 1994, returning its petition for rule making by letter as unacceptable for consideration. 3–J Broadcasting Company petitioned for a waiver of the ATV *Freeze Order* (52 FR 28346, July 29, 1987) and the allotment of Channel 38 to Bend, Oregon, as the community's fourth local television service. The Commission has determined that 3–J Broadcasting Company has not met the criteria for grant of its waiver request. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, adopted July 24, 1995, and released August 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 299), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19740 Filed 8–11–95; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 60, No. 156
Monday, August 14, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95-061-1]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held at the USDA Center at Riverside, 4700 River Road, Riverdale, MD, in room 5D01CN. Sessions will be held from 8 a.m. to 5 p.m. on September 19, 1995, and from 8 a.m. to 12 p.m. on September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1500 Klondike Road, Suite A 102, Conyers, GA, (404) 922-3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, this Committee assists the Department in planning, organizing, and conducting the NPIP Conference.

Tentative topics for discussion at the upcoming meeting include:

1. Establishing provisions in the NPIP for ostriches;
2. Removing certain NPIP provisions from the Code of Federal Regulations;
3. Avian Influenza surveillance;
4. Avian Mycoplasmosis, vaccination vs. eradication; and
5. Establishing a Salmonella Monitored classification.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. 95-061-1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 7th day of August 1994.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-19913 Filed 8-11-95; 8:45 am]

BILLING CODE 3410-34-P

Forest Service

Environmental Impact Statement, Port Houghton/Cape Fanshaw Timber Sale(s), Tongass National Forest, Stikine and Chatham Areas, Petersburg and Sitka, Alaska

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environment impact statement.

SUMMARY: This Notice of Intent Revises the September 12, 1994 NOI (page 46819) by describing two changes:

1. Two decision-makers will sign the Record of Decision. The decision will be made by Abigail R. Kimbell, Forest Supervisor of the Stikine Area, and by Gary Morrison, Forest Supervisor of the Chatham Area of the Tongass National Forest.
2. The Draft EIS is now scheduled for publication in September 1995 and the Final EIS in March 1996.

FOR FURTHER INFORMATION CONTACT: Questions, written comments, and suggestions concerning the analysis should be sent to Tom Parker, USDA Forest Service, PO Box 1328, Petersburg, AK 99833, phone (907) 772-3871, fax (907) 772-3141.

Dated: August 3, 1995.

Abigail R. Kimbell,

Stikine Area Forest Supervisor.

Dated: July 28, 1995.

Gary A. Morrison,

Chatham Area Forest Supervisor.

[FR Doc. 95-19952 Filed 8-11-95; 8:45 am]

BILLING CODE 3410-11-M

Eastern Washington Cascades Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascade PIEC Advisory Committee will meet on September 7, 1995 in Campbell's Conference Center (River Room), 104 W. Wooden, Chelan, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. This session will focus on forest health in dry eastside forest ecosystems. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington 98807, 509-662-4335.

Dated: August 1, 1995.

Paul Hart,

Designated Federal Official, Wenatchee National Forest.

[FR Doc. 95-19955 Filed 8-11-95; 8:45 am]

BILLING CODE 3410-11-M

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on August 24, 1995 at the Hal Holmes Conference Center, 201 N. Ruby, Ellensburg, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. This meeting will focus on key challenges identified by the committee: (1) Forest health in dry eastside forest ecosystems, (2) riparian zone protection, and (3) access and travel management. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington. 98807, 509-662-4335.

Dated: August 1, 1995.

Paul Hart,

Designated Federal Official, Wenatchee National Forest.

[FR Doc. 95-19954 Filed 8-11-95; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

Hearing on Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination-Miami

AGENCY: Commission on Civil Rights.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments of 1994, section 3, Public Law 103-419, 108 Stat. 4338, as amended, and 45 CFR 702.3, that a public hearing of the U.S. Commission on Civil Rights will commence on Thursday, September 14 and 15, 1995, beginning at 8:00 a.m., in the Sandringham/Windsor Conference Room of the Intercontinental Hotel, 100 Chopin Plaza, Miami, Florida 33131.

The purpose of the hearing is to collect information within the jurisdiction of the Commission, under 45 CFR 702.2, related particularly to immigration practices, policies, and perceptions in Miami in order to examine underlying causes of racial and ethnic tensions in the United States.

The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR 701.2(c). The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division, at (202) 376-8105 (TDD (202) 376-8116), at least five (5) working days before the scheduled date of the hearing.

FOR FURTHER INFORMATION CONTACT: Barbara Brooks, Press and Communications, (202) 376-8312.

Dated: August 8, 1995.

Miguel A. Sapp,

Acting Solicitor.

[FR Doc. 95-19974 Filed 8-11-95; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Coastal Zone Management: Federal Consistency Appeal by Mobil Exploration & Producing U.S. Inc. From an Objection by the State of Florida

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of decision.

On June 20, 1995, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Mobil Exploration & Producing U.S. Inc. (Mobil). Mobil is the operator of Outer Continental Leases OCS-G 10401, 10406, 10407, 10411, and 10412. The lease area, described as Pensacola Area Blocks 845, 846, 889, 890, 933 and 934 (Pensacola Blocks), is located in the northeast Gulf of Mexico Outer Continental Shelf, approximately 10-20 miles from Pensacola, Florida, and approximately 64 miles south-southeast of Theodore, Alabama. The Secretary decided to override the State of Florida's (State) objections to Mobil's Supplemental Plan of Exploration (SPOE).

In 1989, Mobil submitted a proposed Plan of Exploration (POE) to the Minerals Management Service of the Department of the Interior (MMS) together with a certification that the proposed POE was consistent with the State's federally approved Coastal Management Program (CMP), as required under the Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.* Mobil proposed drilling six exploratory wells to evaluate the hydrocarbon potential of the Pensacola Area Blocks. MMS approved Mobil's POE and the State concurred with Mobil's consistency certification on April 17, 1990.

Subsequently, on September 6, 1991, Mobil submitted to the MMS a proposed SPOE to drill one additional exploratory well at Pensacola Block 889. The well site is located approximately 74 miles from Theodore, Alabama, and 13.5 miles from Pensacola, Florida. MMS approved Mobil's SPOE subject to the State's review under the CZMA.

The State objected to Mobil's SPOE, finding the proposal for drilling the additional exploratory well is inconsistent with the State's policies of protecting its marine and coastal resources. Under section 307(c)(3)(B) of the CZMA, and 15 CFR 930.121 and 930.122, the State's objections preclude MMS from issuing a permit or license for Mobil's proposed activity, unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must override the State's objections.

In accordance with section 307(c)(3)(B) of the CZMA, Mobil filed an appeal with the Secretary arguing both Grounds I and II for a Secretarial override. Additionally, three threshold issues were raised by Mobil and the State during the course of the appeal. Upon consideration of the information submitted by Mobil, the State and interested Federal agencies, the Secretary made the findings discussed below.

Regarding the Secretary's findings on the three threshold issues, the decision determined that the State's objections were properly lodged, the Secretary will necessarily determine the adequacy of information for an override rather than summarily dismiss consistency appeals, and the activity before the Secretary on review in this appeal is the one additional exploratory well proposed in Mobil's SPOE.

The Secretary made the following findings with regard to Ground I: Mobil's proposed SPOE activity satisfies the first element of Ground I, because it furthers one of the objectives or purposes of the CZMA. The CZMA recognizes a national objective in achieving a greater degree of energy self-sufficiency. The proposed activity satisfies the second element of Ground I, since the adverse effects of the additional proposed exploratory well on the State's coastal resources and uses will not outweigh the benefit to the national interest.

Mobil's proposed SPOE also satisfies the third element of Ground I, because the activity will not violate the Clean Air Act or the Clean Water Act. Finally, Mobil's proposed SPOE satisfies the fourth element of Ground I, because there is no reasonable alternative

available to Mobil that would allow its proposed activity to be carried out in a manner consistent with the State's CMP.

Regarding Ground II, the decision finds that neither Mobil nor any Federal agency commenting on this ground specifically identified or explained how Mobil's inability to proceed with its proposed SPOE activity would significantly impair a national defense or other national security interest.

Because Mobil's propose SPOE satisfies all four of the requirements of Ground I, the Secretary's decision overrides the State's objections to Mobil's proposal for one additional exploratory well. Consequently, in deciding whether to permit the exploration activity proposed in Mobil's SPOE, MMS is not constrained by the States' objections under the CZMA. Copies of the decision may be obtained from the office listed below.

FOR ADDITIONAL INFORMATION CONTACT: Michael I. Weiss, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Suite 6110, Silver Spring, Maryland 20910, (301) 713–2967.

Dated: August 7, 1995.

Terry D. Garcia,

General Counsel.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

[FR Doc. 95–19987 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–08–M

International Trade Administration

[A–351–605]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Frozen Concentrated Orange Juice From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 14, 1995.

SUMMARY: In response to timely requests for an administrative review by the respondents, Branco Peres Citrus, S.A. (Branco) and CTM Citrus S.A. (CTM), formerly Citropectina, S.A., the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. This review covers two manufacturers/exporters of FCOJ to the United States during the period May 1, 1992, through April 30, 1993. We preliminarily determine the dumping margins for Branco and CTM during this period to be 2.52 and 0.98 percent, respectively. We invite interested parties to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Donna Berg or Greg Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0114 or 482–3003, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1987, the Department published in the **Federal Register** an antidumping duty order on FCOJ from Brazil (52 FR 16426). The Department published in the **Federal Register** on April 28, 1993 a notice of "Opportunity to Request Administrative Review" (58 FR 25802) of the antidumping duty order on FCOJ from Brazil for the period of review (POR), May 1, 1992, through April 30, 1993. On May 28, 1993, manufacturers/exporters, Branco and CTM, requested an administrative review for this POR. Branco also submitted a timely request for revocation of the antidumping duty order. The manufacturer/exporter, Frutropic/COINBRA, requested an administrative review for this POR on June 1, 1993. Accordingly, the Department initiated an administrative review on June 25, 1993, (58 FR 34414) with respect to Branco and CTM. On August 24, 1993, (58 FR 44653), we initiated a review with respect to Frutropic/COINBRA.

The Department issued an antidumping questionnaire to Branco, CTM and Frutropic/COINBRA on September 22, 1993. On October 11, 1994, the Department revoked the order with respect to Frutropic/COINBRA in the final results of the administrative review for the 1991 through 1992 POR (59 FR 53137, 53138, October 21, 1994).

Branco and CTM, on November 2 and 24, 1994, respectively, submitted their responses to the Department's questionnaire. On April 14, 1994, the Department issued a supplemental questionnaire to both Branco and CTM. Branco and CTM submitted their responses to these supplemental questionnaires on May 12, 1994.

Verification of the factual information submitted by Branco in this review was conducted on June 22 and 23, 1994.

The Department issued a section D, cost of production/constructed value, questionnaire to Branco and CTM on August 5, 1994, because our preliminary analysis indicated that for certain U.S. sales, contemporaneous third country sales were unavailable for comparison purposes. Branco and CTM submitted comments regarding how foreign market value should be calculated in this review on August 17 and 18, 1994, respectively. (Note: whereas the Department initially believed that section D information was necessary, the Department subsequently revised its determination of the most appropriate methodology to apply in this review. See the "Foreign Market Value" section of this notice.)

On September 6, 1994, the Department requested clarification of both Branco's and CTM's responses. Branco and CTM submitted their responses in September 1994. The Department requested further information of both respondents on February 14 and March 15, 1995. Branco and CTM provided this information in March 1995.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of FCOJ from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Fair Value Comparisons

To determine whether sales by Branco and CTM were made at less than fair value (LTFV), we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Tariff Act, as amended (1994) (The Act), because all of Branco's and CTM's U.S. sales to the first unrelated purchaser took place prior to importation into the United States and exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on packed FOB prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight and Brazilian port charges.

Foreign Market Value

In order to determine whether there were sufficient sales of FCOJ in the home market to serve as a viable basis for calculating FMV, we compared each respondents' volume of home market sales of FCOJ to the volume of third country sales in accordance with section 773(a)(1)(B) of the Act. We found that the home market was not viable for either of the respondents. Based on each respondent's questionnaire response, we selected the Netherlands and Germany as the appropriate third country markets for Branco and CTM, respectively, in accordance with 19 CFR 353.49(b) (see November 2, 1993, submission (page three and exhibit B) and November 24, 1993, submission (page four)).

In accordance with 19 CFR 353.49(a)(1), we calculated FMV for both respondents based on third country FOB sales or offers for sale. If a contemporaneous third country sale was available, we based FMV on the third country sale. Where contemporaneous third country sales were not available, we based FMV on the applicable minimum export price [1] as a third country offer for sale. (*See* Preliminary Results Concurrence Memorandum, dated June 27, 1995.) We made deductions, where appropriate, for foreign inland freight, port charges and storage. In accordance with section 773(a)(1) of the Act, we deducted, as appropriate, third country packing costs and added U.S. packing costs (packing costs were not incurred on bulk sales). We made circumstance-of-sale adjustments, where appropriate, for differences in commission and credit expenses. The values used for these adjustments varied depending on whether an actual third country sale or third country offer for sale was used. For actual third country sales, we used the reported transaction-specific amounts. For third country offers for sale, we relied on weighted-average POR values of reported third-country charges.

Since Branco's and CTM's prices are linked to the minimum export price, we used FMV periods shorter than a month (see Preliminary Results Concurrence Memorandum, dated June 27, 1995). These shorter periods were used because the price volatility of minimum export prices within POR months was significant enough to have artificially increased or decreased dumping margins (*see Frozen Concentrated Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, (59 FR 53137, October 21, 1994)). Periods were created based on a change in the minimum export price throughout the continuum of the POR (*see* Preliminary Results Concurrence Memorandum, dated June 27, 1995).

Preliminary Results of the Review

As a result of this review, we preliminarily determine the dumping margins to be:

Manufacturer/ exporter	Time period	Margin (percent)
Branco	5/1/92–4/30/93	2.52
CTM	5/1/92–4/30/93	0.98

Individual differences between USP and FMV may vary from the percentages stated above. Upon completion of this administrative review, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of FCOJ entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is such a firm, the cash deposit rate will be the rate established for the most recent period for the manufacturer of FCOJ.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 1.96 percent *ad valorem*, the "all others" rate established in the LTFV investigation (52 FR 8324, March 17, 1987).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of publication. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than August 25, 1995, and rebuttal briefs no later than August 29, 1995. A public hearing, if requested, will be held on August 31, 1995, at 10:00 am at the U.S. Department of Commerce, in Room 1851, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. The Department will publish a notice of final results of this administrative review, including an analysis of issues raised in any written comments.

This result is published pursuant to section 751(a)(1) of the Act and 19 CFR 353.22.

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[1] The minimum export price is a floor price set by the Carteira do Comércio Exterior do Banco do Brasil (CACEX), the export department of the Bank of Brazil. Minimum export prices are based on the price of FCOJ on the New York Cotton Exchange. Because the price movements of FCOJ on the futures market are irregular, the minimum export price may remain the same or change several times within a month. It should be noted that during the POR of this sixth review, both Branco and CTM sold FCOJ at the minimum export price.

Dated: August 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–20025 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–803]

Industrial Nitrocellulose From the United Kingdom; Amendment of Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment of final results of Antidumping Duty Administrative Review.

SUMMARY: We are amending our final results of administrative review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom published on December 28, 1994, to reflect the correction of a ministerial error made in the margin calculation in those final results. We are publishing this amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery of the Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The review covers one exporter, Imperial Chemical Industries PLC, and the period July 1, 1992 through June 30, 1993. The Department of Commerce (the Department) published the preliminary results on May 12, 1994 (59 FR 24684), and the final results on December 28, 1994 (59 FR 66902).

Scope of Review

This review covers shipments of INC from the United Kingdom. INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. It is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. INC is currently classifiable under Harmonized Tariff Schedule (HTS) item number 3912.20.00. The HTS subheading is provided for convenience and U.S. Customs Service purposes. The written description remains dispositive. The scope of the antidumping order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Amended Final Results

On January 4, 1995, the petitioner, the Aqualon Company, alleged that the Department had committed a ministerial error in calculating the final anitdumping duty margin. The petitioner alleged that the Department had double-counted the home market commission offset. We have reviewed this allegation, and agree with petitioner. We have therefore amended our final results for this ministerial error.

Final Results of Review

Upon review of the allegation submitted, the Department has determined that the following margin exists for the period July 1, 1992 through June 30, 1993:

Manufacturer/exporter	Time period	Margin (percent)
Imperial Chemicals Industries PLC	7/1/92–6/30/93	5.62

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of amended final results of review for all shipments of INC from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established in the LTFV investigation for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate of 11.13 percent established in the final notice of the LTFV investigation.

Unless otherwise stated, all citations to the statutes and to the Department's regulations are references to the provisions as they existed on December 31, 1994. This administrative review and notice are in accordance with section 751(f) of the Act (19 U.S.C. 1673(d)) and section 353.28(c) of the Department's regulations.

Dated: August 4, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–20029 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–505]

Certain Malleable Cast Iron Pipe Fittings From Brazil; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 22, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. This review covers Industria de Fundicao Tupy S.A. (Tupy), a manufacturer and exporter of this merchandise to the United States, and the period May 1, 1993 through April 30, 1994. The firm failed to submit a response to our questionnaire. As a result, we determined to use the best information otherwise available (BIA) for cash deposit and assessment purposes.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results.

EFFECTIVE DATE: August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Schauer or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4852/4477.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1994, the Department published in the **Federal Register** (59 FR 23051) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. On May 4, 1994, we received from the petitioners in this case, Grinnell Corporation, Ward Manufacturing Inc., and Stockham Valves and Fittings Co., a request to initiate an administrative review of Tupy, a manufacturer and exporter of this merchandise to the United States. On July 15, 1994, in accordance with 19 CFR 353.22(c), we initiated an administrative review of this order for Tupy covering the period May 1, 1993 through April 30, 1994 (see 59 FR 36160). On February 22, 1995, we published the preliminary results of this administrative review (*see* 60 FR 9821).

The Department conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Brazil. In the original order, these products were classifiable in the Tariff Schedules of the United States, Annotated, under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.00 and 7307.19.90 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have determined that the use of BIA is appropriate for Tupy. Our regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)) in selecting BIA. Generally, whenever a company refuses to cooperate with the Department or otherwise significantly impedes the proceeding, as Tupy did here, the Department uses as BIA the highest rate for any company for the same class or kind of merchandise from the current or any prior segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest calculated rate in the review for any firm for the same class or kind of merchandise from the same country. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 57 FR 28360, 28379 (June 24, 1992); *see* also *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993). In our preliminary results of review, we preliminarily applied to Tupy, as first-tier BIA, a rate of 5.64 percent, which was the rate we determined in the LTFV investigation.

Upon review of the comments our choice of a rate to use as first-tier BIA has changed. In this case, Tupy is the only company to have ever been reviewed or investigated, and we have only calculated one margin, which was in the less-than-fair-value (LTFV) investigation. Due to the unusual situation, we have determined to use as BIA the simple average of the rates from the petition. See our response to Comment, below. The rate we have calculated for Tupy is 34.64 percent.

General Issues Raised By the Petitioner

Comment: Petitioner contends that the Department's use of its standard BIA practice for the preliminary results of this review is inappropriate. Petitioner points out that this resulted in no change in the margin applicable to respondent. Petitioner argues that this rewards respondent for being uncooperative with the Department's information requests.

Petitioner also argues that, since Tupy is the sole respondent in this case, under the Department's regular practice, Tupy's margin would never change in an administrative review so long as it does not respond to the Department's requests for information. Thus, Tupy would be able to dump at will without fear of repercussion unless the Department alters its choice of BIA for this case. Petitioner argues that the Department is not limited to the standards enunciated in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31704 (July 11, 1991). Rather, petitioner states, the Department has the authority to choose other BIA when the circumstances warrant it, citing *Krupp Stahl, A.G. v. United States*, 822 F. Supp. 789 (CIT 1993) (*Krupp Stahl*) in support of its arguments.

Petitioner suggests that the Department use as BIA the simple average of the margins alleged in the petition. Petitioner also suggests, as an alternative methodology, that the Department should adjust the original margin for appreciation of Brazil's currency against the dollar since the period of the original LTFV investigation. Citing reports from the International Trade Commission (ITC) submitted as an attachment to its case brief, petitioner argues that the Brazilian cruzeiro has appreciated against the dollar between the period of investigation and the current period of review by 33.2 percent, and that the Department should assume that Brazilian foreign market values have increased similarly. Petitioner states that there is precedent for this approach in *Malleable Iron Pipe Fittings, Other than Grooved, from Korea; Preliminary Results of Administrative Review*, 54 FR 7577 (Feb. 22, 1989), in *Malleable Iron Pipe Fittings, Other than Grooved, from Korea; Final Results of Administrative Review*, 54 FR 13090 (Mar. 30, 1989), and in *Malleable Iron Pipe Fittings, Other than Grooved, from Taiwan; Preliminary Results of Administrative Review*, 54 FR 38713 (Sept. 20, 1989).

Respondent argues that the Department applied BIA correctly in the preliminary results, and that petitioner misrepresents the decision in *Krupp Stahl*. Respondent contends that, while *Krupp Stahl* allowed the Department to use a preliminary margin from the LTFV investigation, which adopted the petition rates, the court did not hold that a margin alleged in a petition can be used over a published margin for a particular company.

Respondent also argues that the courts have held, in *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (1990), that the purpose of BIA is "to determine current margins as accurately as possible", and that the Department may not use BIA in a punitive manner. Respondent claims that using rates from the petition would be less accurate than using the rates calculated by the Department in the LTFV investigation.

Respondent argues that the methodology suggested by petitioner for adjusting the margin for changes in currency values would result in an inaccurate margin because the rates used in the ITC report cited in petitioner's case brief use real exchange rates instead of nominal exchange rates. Respondent argues that petitioner has not provided any compelling argument

why real exchange rates should be used instead of nominal exchange rates.

Respondent also states that, in the precedent cited by petitioner, the Department assumed that prices in the United States and the foreign market remained constant. Respondent alleges that prices have not been constant in the United States, and, therefore, such an assumption cannot be made in this case.

Department's Position: We agree with petitioner. Tupy was the only company investigated in the antidumping duty LTFV investigation on malleable cast iron pipe fittings from Brazil. Because this is the first administrative review of this order, Tupy's final LTFV rate of 5.64 percent is the only rate for any company from any segment of the proceeding. If we were to follow our regular practice for assigning uncooperative BIA rates, Tupy would benefit by receiving its own LTFV rate in this and any subsequent review in which it chooses not to respond to our requests for information. This is contrary to the Department's aim in using BIA. As the Court of Appeals for the Federal Circuit has affirmed, "the ITA may use BIA as an investigative tool, which [ITA] may wield as an informal club over recalcitrant parties or persons" to induce cooperation with our requests for information. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 at 1191 (1990) (*Rhone Poulenc II*). Therefore, we find that there is justification in this case to depart from past Department practice in determining uncooperative BIA.

By refusing to provide a questionnaire response, as indicated in its letter to the Department dated October 31, 1994, Tupy leaves unanswered a legitimate question as to whether the firm dumped subject merchandise during the period of review to a greater or lesser extent than in the past. In not responding to our requests for information, Tupy could be relying upon our normal BIA practice to lock in a rate that is capped at its LTFV rate. Such a capped BIA rate would allow Tupy to practice injurious price discrimination to a greater degree than at the time of the LTFV investigation without fear of adverse consequences. With such a capped rate, Tupy would no longer have an incentive to participate in an administrative review which would determine the extent to which Tupy is actually dumping subject merchandise in the United States.

In *Rhone Poulenc, Inc. v. United States*, 710 F. Supp. 341 (*Rhone Poulenc I*) at 347, the Court of International Trade (CIT) ruled that a respondent should not be allowed to control the results of the review by providing partial information (or, as in this case, no information) or otherwise hindering the review. Citing *Rhone Poulenc I*, the CIT has also determined that "to use the rate demanded by [the respondent] might have the effect of 'plac[ing] control of the investigation in the hands of uncooperative respondents who could force Commerce to use possibly unrepresentative information most beneficial for them.'" *See Krupp Stahl*, 822 F. Supp. at 793. Contrary to Tupy's claim that the function of BIA is solely to find the most accurate rate possible, in *Krupp Stahl*, the CIT characterizes one of the functions of BIA as "cooperation-inducing." *Id.*

We also find incorrect Tupy's assertion that the *Krupp Stahl* decision upholds only the authority to use a preliminary margin based on petition rates as BIA, and not the authority to use the petition rates themselves. Respondent correctly states that, in *Krupp Stahl*, the petition-based information used as BIA was derived from the LTFV preliminary investigation. *See* 822 F. Supp. at 796. Resort to the preliminary determination for evidence of petition-based BIA was necessary in that case because the petition was not on the administrative record of the review under consideration in *Krupp Stahl*, and each administrative determination must be supported by sufficient evidence on the record. *See* 822 F. Supp. at 795. Contrary to Tupy's assertion, the CIT's decision in *Krupp Stahl* did not limit the use of petition-based information in administrative reviews to cases where margins in the preliminary determinations were petition-based. Rather, in *Krupp Stahl*, the CIT upheld our interpretation that the use of petition-based information as BIA in an administrative review was not contrary to the statute, and that it did not "contravene any clearly discernable legislative intent." *See Krupp Stahl*, 822 F. Supp. at 794. Because Tupy has failed to cooperate in this administrative review, and a BIA rate capped at Tupy's LTFV rate would not induce Tupy's cooperation in this or any future review, we have determined that it is appropriate to use petition-based information as BIA in this administrative review.

We have also determined that the use of petition-based information as BIA is more appropriate than adjusting the LTFV rate for currency appreciation. Though the latter methodology may be appropriate in other circumstances, in this case we have rates from the petition, which, after correction, were found to be acceptable by the Department as a basis for initiating the LTFV investigation. Further, there is limited record evidence available for determining an adjustment to the LTFV margin for currency fluctuations, including whether we should use real or nominal exchange rates for such a calculation. Thus, we conclude that the use of petition-based rates for BIA is a better approach in this administrative review.

In order to use petition-based information as BIA for Tupy in this administrative review, the Department must include the petition in the administrative record of this review. Therefore, with the permission of petitioner, and pursuant to our regulations at 19 CFR 353.3, we have obtained a copy of the petition from the administrative record of the LTFV investigation, and included it in the record of this administrative review.

We have determined that the simple average of the rates from the petition is a more appropriate standard for BIA in this case. The petition rates, as adjusted by the Department for the LTFV initiation notice, are 8.8, 14.46, 53.6, and 61.7 percent. *See Malleable Cast Iron Pipe Fittings From Brazil; Initiation of Antidumping Duty Investigation*, 50 FR 34730. The simple average of these rates is 34.64 percent.

Final Results of Review

We determine the margin for this administrative review to be:

Producer/exporter	Margin
Industria de Fundicao Tupy S.A	34.64

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse for consumption, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate of 5.64 percent. This is the rate established during the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22, 353.25.

Dated: August 7, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–20030 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 90–4A006.

SUMMARY: On June 26, 1995, the Department of Commerce issued an amendment to the Export Trade Certificate of Review granted to the Forging Industry Association ("FIA"). Notice of the original Certificate was published in the **Federal Register** on July 9, 1990 (55 FR 28801, July 13, 1990).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The Forging Industry Association's ("FIA") original Certificate was issued on July 9, 1990 (55 FR 28801, July 13, 1990). Previous amendments to the Certificate were issued on April 30, 1991 (56 FR 21128, May 7, 1991), May 29, 1992 (57 FR 24022, June 5, 1992) and on April 1, 1994 (59 FR 16619, April 7, 1994).

The Amendment

1. Added the following company as a "Member" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): National Forge Company, Irvine, Pennsylvania;

2. Deleted the following six companies as "Members" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Columus McKinnon Corporation, Amherst, New York; Cooper tools-Brewer-Tichener/Merrill, Cortland, New York; Kervick Enterprises, Inc, Worcester, Massachusetts; FMC Corporation, Anniston, Alabama; McWilliams Forge Company, Inc., Rockaway, New Jersey; and Union Forging Co., Endicott, New York.

3. Reflected that Cameron Forge Company, Cypress, Texas is now a division of Wyman-Gordon Company, Worcester, Massachusetts. Since Wyman-Gordon Company is a current member, Cameron Forge Company was deleted as a "Member".

4. Reflected a change in the names of the following current Members: Airfoil Forging Textron, Inc., Cleveland, Ohio is now Turbine Engine Components, Textron (a subsidiary of Textron, Inc.).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: August 8, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–19976 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–D–P

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended Export Trade Certificate of Review, Application No. 95–5A007.

SUMMARY: On August 3, 1995, the Department of Commerce issued an amendment to the Export Trade Certificate of Review granted to the U.S. Surimi Commission ("USSC"). Notice of the original Certificate was published in the **Federal Register** on August 22, 1990 (55 FR 35445).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The U.S. Surimi Commission's ("USSC") original Certificate was issued on August 22, 1990 (55 FR 35445, August 30, 1990). Previous amendments to the Certificate were issued on December 12, 1990 (55 FR 53031, December 26, 1990); June 11, 1991 (56 FR 27946, June 18, 1991); May 22, 1992 (57 FR 23078, June 1, 1992); and August 12, 1993 (58 FR 44504 August 23, 1993).

The Amendment

1. Added the following companies as "Members" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Alaska Trawl Fisheries, Inc., Edmonds, Washington (controlling entity: Daerim Corporation, Seoul, Korea); and Emerald Seafoods, N.W., Limitbd Partnership.

2. Deleted three companies as "Members" within the meaning of Section 325.2(1) of the Regulations (15 CFT 325.2(1)): Pacific Orion Seafoods, Inc., Arctic Alaska Seafoods, Inc., and Golden Alaska Seafoods, Inc.

3. Added the following product to Export Trade as defined by Section 325.2(j) of the Regulations: white fish meal.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: August 8, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–19977 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–D–R–P

National Oceanic and Atmospheric Administration

[I.D. 080795A]

North Pacific Fishery Management Council; Plan Team Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI) plan teams will hold meetings.

DATES: The meetings will begin at 1:00 p.m. on September 5, 1995, and continue until 5:00 p.m. on September 8, 1995.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Room 2079, Building 4, Seattle, WA.

Council address: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Dave Witherell or Jane DiCosimo; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda for the meetings will include the following subjects:

1. Review available stock assessments and catch statistics and prepare preliminary stock assessment documents for the 1996 groundfish fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands.

2. Review proposals for amendments to the groundfish fishery management plans for the GOA and BSAI.

3. Review research needs and priorities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 8, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–20032 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 073195C]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold public meetings of its Golden Crab, Controlled Access and Snapper Grouper Committees and its Golden Crab Advisory Panel (GCAP); and a Council session. Also, a joint meeting of the South Atlantic and Gulf of Mexico Councils' mackerel committees will be held.

DATES: The meetings will be held from August 21 to August 25, 1995. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (803) 571–1000.

Council address: South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Robert K. Mahood (Council staff); telephone: (803) 571–4366; fax: (803) 769–4520.

SUPPLEMENTARY INFORMATION: The meeting dates are as follows:

August 21, 1995, 8:30 a.m. to 12:00 noon—Golden Crab AP meeting;

August 21, 1995, 1:30 p.m. to 5:00 p.m.—Joint meeting of the GCAP and the Golden Crab Committee;

August 22, 1995, 8:30 a.m. to 10:00 a.m.—Golden Crab Committee;

August 22, 1995, 10:00 a.m. to 12:00 noon—Controlled Access Committee;

August 22, 1995, 1:30 p.m. to 5:00 p.m.—Joint South Atlantic and Gulf Mackerel Committees;

August 23, 1995, 8:30 a.m. to 12:00 noon—Joint South Atlantic and Gulf Mackerel Committees;

August 23, 1995, 1:30 p.m. to 5:00 p.m.—Snapper Grouper Committee;

August 24, 1995, 8:30 a.m. to 10:30 a.m.—Snapper Grouper Committee;

August 24, 1995, 11:00 a.m. to 5:30 p.m.— Council session;

August 25, 1995, 8:30 a.m. to 12:30 p.m.— Council session;

The GCAP will meet to develop recommendations on the fishery management plan (FMP) for golden crab. The GCAP then will meet jointly with the Golden Crab Committee to review public hearing and NMFS informal review comments. At that time, the GCAP will make its recommendations as to management measures that should be included in the FMP and discuss the rationale for its recommendations with the committee members. The Golden Crab Committee will meet to develop its final recommendations for Council action. Management options being considered for the Golden Crab FMP can be obtained by contacting the Council office directly (see **ADDRESSES**).

The Controlled Access Committee will review options being considered for Amendment 9 to the Snapper Grouper FMP. These options address limiting entry in the deep water fishery for snowy grouper and tile fish and possibly other segments of the snapper grouper fishery. The committee will recommend to the Council which options to take to public hearing.

The joint South Atlantic and Gulf Mackerel Committees will discuss a range of options to be included in Amendment 8 to the Coastal migratory Pelagics (Mackerel) FMP. They will recommend to both Councils options to take to public hearing. Amendments to this FMP must be approved by both Councils.

The Snapper Grouper Committee will receive a report on a reef fish economic survey and the 1994–95 wreckfish fishery. It will review management options for Amendment 8 to the FMP and recommend to the Council which options to take to public hearing.

The full Council will convene and receive reports from the Golden Crab, Shrimp Controlled Access, Snapper Grouper and Mackerel Committees. The Council will take final action on the Golden Crab FMP for formal submission to the Secretary of Commerce. The Council will also select the options to take to public hearing for Shrimp FMP Amendment 2, Snapper Grouper FMP Amendments 8 and 9, and Coastal Migratory Pelagics (Mackerel) FMP Amendment 9. The Council will hear a report from its Habitat and Environmental Protection Advisory Panel and additional reports on the status of the Magnuson Fishery Conservation and Management Act amendments and reauthorization, the Council Chairmen's meeting and state and agency liaison activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 14, 1995.

Dated: August 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–19959 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 073195E]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification to permit no. 738 (P77#51).

SUMMARY: Notice is hereby given that on July 31, 1995, permit no. 738, issued to Southeast Fisheries Science Center, NMFS, NOAA, 75 Virginia Beach Drive, Miami, FL 33149, was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2532.

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Section A.1.g. is added to extend the validity of the permit until December 31, 1996.

Dated: July 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–19960 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 080295C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a public display permit (PHF182).

SUMMARY: Notice is hereby given that the Oregon Coast Aquarium, 2820 SE. Ferry Slip Road, Newport, OR 97365, has applied in due form for a public display permit.

DATES: Written comments must be received on or before September 13, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, (301/713–2289); and

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–6150).

Written data or views, or requests for a public hearing on this application should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Director, Office of Protected Resources.

Concurrent with the publication of this notice in the **Federal Register**, copies of this application are being forwarded to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested to import for public display purposes one adult male killer whale (*Orcinus orca*), from the Reino Aventura theme park, Mexico City, Mexico, under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Oregon Coast Aquarium holds an Exhibitor's License (No. 92C–057) under the Animal Welfare Act; is open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee; and offers an educational program based in part upon the educational standards of the American Zoo and Aquarium Association.

Dated: August 3, 1995.

Ann D. Terbush,

Chief, Division of Permits & Documentation, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–19973 Filed 8–11–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Environmental Response Task Force

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security).

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a business meeting and hearing of the Defense Environmental Response Task Force (DERTF). The DERTF is charged with studying and providing findings and recommendations on environmental restoration at military installations being closed or realigned. The purpose of the meeting is to develop the fiscal year (FY) 1995 report to Congress. The DERTF will hear presentations from the Future Land Use Working Group, the Fast-Track Cleanup Implementation Working Group, the Ft. Devans Base Realignment and Closure Cleanup Team and the Local Redevelopment Authority. The business meeting and hearing will be open to the public. Public witnesses desiring to speak before the DERTF should contact Shah A. Choudhury, Executive Secretary, and prepare a written statement that can be summarized orally before the DERTF at the time to be fixed for public witnesses. Written statements must be received by the close of business on September 6, 1995, at the Office of the Deputy Under Secretary of Defense (Environmental Security.)

DATES: September 19, 1995—9:15 a.m.–2:30 p.m.; September 20, 1995—9:15 a.m.–8:00 p.m.; September 21, 1995—9:15 a.m.–5:00 p.m.

PUBLIC COMMENT PERIODS ARE: September 20, 1995—7:00 p.m.–8:00

p.m.; September 21, 1995—12:00 p.m.–1:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Shah A. Choudhury, Executive Secretary, Office of the Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Washington, DC 20301–3400; telephone (703) 697–7475.

Dated: August 8, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 95–19999 Filed 8–11–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered are partnership successes within DoD and action items related to the Defense Partnership Council Plan of Action.

DATES: The meeting is to be held Wednesday, September 6, 1995, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by September 1, 1995, in order to be considered at the September 6 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: August 8, 1995.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–20001 Filed 8–11–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Readiness, Phase II

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Readiness, Phase II will meet in closed session on August 23, 1995 at the Pentagon, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will provide advice, recommendations, and supporting rationale on the components of a Readiness Early Warning System to insure that our forces do not become "hollow," and, where deficiencies may begin to emerge, to suggest corrective actions.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: August 8, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 95–20000 Filed 8–11–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.116A; 84.116B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplication and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

Eligible Applicants: Institutions of higher education or combinations of such institutions and other public and private nonprofit educational institutions and agencies.

Deadline For Transmittal Of Preapplications: October 18, 1995.

Deadline For Transmittal Of Final Applications: March 18, 1996.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline For Intergovernmental Review: May 18, 1996.

Applications Available: August 17, 1995.

Available Funds: The Administration's request for the Fund for the Improvement of Postsecondary Education for FY 1996 is $17,543,000. Of this amount, it is anticipated that approximately $5,325,000 will be available for an estimated 75 new awards under the Comprehensive Program. The Congress has not yet completed action on the FY 1996 appropriation. The estimates in this notice assume passage of the Administration's request.

Estimated Range of Awards: $15,000 to $150,000 per year.

Estimated Average Size Of Awards: $71,000.

Estimated Number Of Awards: 75.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 82, 85, and 86, with the exceptions noted in 34 CFR 630.4a(2); and (b) The regulations for this program in 34 CFR Part 630.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3), 34 CFR 630.12 and 34 CFR 630.11(a), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that respond to immediate problems or issues and that seek to improve postsecondary education opportunities.

Invitational Priorities

Under 34 CFR 75.105(c)(1) and 34 CFR 630.12, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Applications to support new ways of ensuring equal access to postsecondary education, and to improve rates of retention and program completion, especially for low-income and underrepresented minority students, whose retention and completion rates continue to lag disturbingly behind those of other groups.

Invitational Priority 2—Applications to create programs that prepare students for entering the workforce and that serve the continuing education and retraining needs of workers.

Invitational Priority 3—Applications to improve the campus climate by creating an environment that is safe, welcoming, and conducive to learning for all students.

Invitational Priority 4—Applications to restructure institutions in ways that reassert the primacy of teaching and learning; and to increase learning productivity—that is, to transform programs and teaching to promote more student learning relative to institutional resources expended.

Invitational Priority 5—Applications to promote cooperation between colleges and universities and elementary and secondary schools in order to improve students' preparation for, access to, and success in college. In particular, the Secretary seeks innovative school-college partnerships to improve articulation and develop new ways to improve both pre-service and in-service teacher education at both the elementary and secondary level.

Invitational Priority 6—Applications to support innovative reforms of undergraduate, graduate, and professional curricula that improve not only what students learn, but how they learn.

Invitational Priority 7—Applications to support the development of faculty as professionals by assessing and rewarding effective teaching; helping institutions and faculty find ways to increase their emphasis on teaching and other means of involvement with student learners; promoting new and more effective teaching methods; and improving the preparation—especially the teaching skills—of graduate students who will be future faculty members.

Invitational Priority 8—Recognizing that many innovative postsecondary educational programs have already been locally developed and implemented, the Secretary invites applicants to disseminate these programs to other institutions.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from, existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of Funding Projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of availability of other funding sources for the proposed activities.

Under 630.32, the Secretary determines the methods that will be used in applying the selection criteria.

For preapplications (preliminary applications), the Secretary will give greater weight to the selection criteria under *Significance for Postsecondary Education.* The Secretary will give equal weight to *Feasibility,* and *Appropriateness of Funding Projects.* For final applications (applications), all criteria are equally important. Within each of these criteria, the Secretary gives equal weight to each of the subcriteria. In applying the criteria, the Secretary first analyzes a preapplication or application in terms of each individual criterion and subcriterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all section criteria.

For Applications or Information Contact: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 600 Independence Avenue SW., Room 3100, ROB–3, Washington, DC 20202–5175. Telephone: (202) 708–5750 between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday, to order applications or for information. Individuals may also request applications by submitting the name of the competition, their name, and postal mailing address to the e-mail address FIPSE@ED.GOV. Individuals may obtain the application text from Internet address http://www.ed.gov/prog—info/FIPSE/. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1135–1135a–3.

Dated: August 7, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–20031 Filed 8–11–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award a Grant to Fusion Lighting, Incorporated for the Office of Energy Efficiency and Renewable Energy

AGENCY: U. S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance Solicitation.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(A) to Fusion Lighting, Incorporated under proposed grant number DE–FG01–95EE23796. Total estimated funding in the amount of $2,620,000 over a period of two years will be provided to Fusion Lighting for this effort. The Department of Energy will provide funding to Fusion Lighting to continue development of both the high and low power versions of the high efficiency Sulfur Lamp (S-Lamp). The following work will be done on each of the following sub-systems common to both the high and low power lamps: (1) development of an electrical power supply for converting power from an electrical power main to radio frequency (RF) or microwave frequency; and (2) output from the power supply (RF or microwave) is matched and coupled to the light emitting bulb.

The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(A) that the "the activity is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by the Department of Energy or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity." The continuity of the effort is critical at this time in order to maintain research momentum and research staff. It is also highly important to follow up as soon as possible on consequences and applications related to the initial discovery and development of the lamp.

Fusion Lighting has been involved in the development of both low and high power versions for the S-Lamp. They have identified personnel and resources capable of performing the activities, and they have extensive experience related to this research.

This award will serve the public by supporting efforts to develop an illumination source which is energy efficient and environmentally friendly. This technology could result in considerable savings for consumers in electric energy expenditures, as well as reductions in environmental pollutants produced by electrical generating plants.

The period of performance is two years from the date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Berta Schreiber, HR–561.21, 1000 Independence Avenue SW., Washington, DC 20036.

Bertha Schreiber,

Headquarters Operations, Division B, Office of the Associate Deputy Assistant, Secretary for Headquarters Procurement.Operations

[FR Doc. 95–20033 Filed 8–11–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Pantex Plant.

DATE AND TIME: Tuesday, August 22, 1995: 1:30 pm–5:30 pm.

ADDRESS: Carson County Square House Museum, 5th and Elsie, Panhandle, Texas.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806)477–3121.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Environmental Management Site Specific Advisory Board, Pantex Plant provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:30 pm Welcome— Agenda Review—Introductions
1:40 pm Co-Chairs' Comments
2:00 pm Task Force Reports—Discussion
Public Participation/Public Information
Environmental Restoration
Site-wide Environmental Impact Statements
Future of the Nuclear Complex
Waste Management
3:15 pm Break
3:30 pm Presentation—Draft Site Treatment Plan—Discussion Panel
4:15 pm Updates
Occurrence Reports—DOE
4:30 pm Subcommittee Reports
- Budget and Finance
- Policy and Personnel
- Program and Training
- Community Outreach
- Nominations

5:30 pm Adjourn.

Public comment will be taken periodically throughout the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests should be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806)371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806)537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on August 9, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–20034 Filed 8–11–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–182–000]

ANR Pipeline Co.; Notice of Technical Conference

August 8, 1995.

In the Commission's order issued March 31, 1995, in the above-captioned proceeding, the Commission held that the filing raised issues for which a technical conference was to be convened. A technical conference to address the issues was held Thursday, July 27, 1995. Comments are scheduled to be filed by August 15, 1995, with reply comments to be filed by August 30, 1995.

ANR Pipeline Company and certain intervenors have asked the Commission to schedule a further session of the technical conference in an effort to resolve the disputed issues. Accordingly, the requested conference has been scheduled for Tuesday, August 22, 1995, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The due dates for comments and reply comments remain unchanged.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19966 Filed 8–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG95–7–000]

Cove Point LNG Limited Partnership; Notice of Filing

August 8, 1995.

Take notice that on July 31, 1995, Cove Point LNG Limited Partnership (Cove Point) filed its standards of conduct in compliance with Section 161.3(i), 18 CFR 161.3 (i), Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before (August 23, 1995). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 95–19963 Filed 8–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–67–000]

Florida Power Corporation v. Tampa Electric Company; Notice of Filing

August 8, 1995.

Take notice that on July 31, 1995, Florida Power Corporation (FPC) tendered for filing a complaint against Tampa Electric Company (TECO). FPC requests that the Commission investigate whether TECO has collected or will collect excessive charges through its fuel adjustment clause by discounting the fuel component of energy sold to other utilities to less than incremental cost and requiring other customers to subsidize the discounts through the fuel clause.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before September 7, 1995.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19962 Filed 8–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–192–008]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 8, 1995.

Take notice that on August 4, 1995, pursuant to and in compliance with the Commission's June 15, 1995, Letter Order in Docket Nos. RP93–192–000 and RP93–192–001, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet:

Seventh Revised Sheet No. 42B

Texas Eastern states that in compliance with Article III.B. of the April 25, 1995 Amended Joint Offer of Settlement and the Commission's June 15, 1995 Letter Order in Docket Nos. RP93–192–000 and RP93–192–001, the tariff sheet submitted reflects a reduction in the maximum rate of $0.1139 to $0.10 for Rate Schedules VKFT and VKIT.

Texas Eastern requests that the above referenced tariff sheets become effective on August 1, 1995. Copies of the filing were served on: (1) Firm customers of Texas Eastern, (2) interested state commission, (3) all parties on the

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on rehearing and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir. No. 94–1745 (December 13, 1994).

Commission's service list in Docket Nos. RP93–192–000 and RP93–192–001 and (4) all current shippers utilizing the Viosca Knoll Lateral.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19964 Filed 8–11–95; 8:45 am]

BILLING CODE 6717–01–M

Wyoming Interstate Company, Ltd.; Notice of Filing of Refund Report

August 8, 1995.

Take notice that on August 2, 1995, Wyoming Interstate Company, Ltd. (WIC) filed a refund report in Docket No. RP94–267–006. WIC states that the filing and refunds were made to comply with the Federal Energy Regulatory Commission's order of March 3, 1995. WIC states that the refund amounts were paid by WIC on July 3, 1995.

WIC further states that the refund report summarizes transportation refund amounts for the period December 1, 1994 through May 31, 1995.

WIC states that copies of this filing were served on each person designated on the Commission's official service in this proceeding, and are otherwise available for public inspection at WIC's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19965 Filed 8–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–763–000]

Northern Natural Gas Co.; Notice of Availability of the Environmental Assessment for the Proposed Peoples/ L.S. Power-Cottage Grove Project

August 8, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Northern Natural Gas Company (Northern) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of Northern's proposed Peoples/L.S. Power-Cottage Grove Project, which includes the following facilities:

- about 1.42 miles of 30-inch-diameter pipeline to loop its existing 24-inch-diameter pipeline (MNM 86501) in Washington County, Minnesota;
- a new L.S. Power-Cottage Grove Town Border Station in Washington County, Minnesota; and
- a 1,250-horsepower electric-motor driven compressor at Northern's existing Farmington Compressor Station in Dakota County, Minnesota.

Northern indicates the proposed facilities would deliver an additional firm transportation capacity of 29,120 thousand cubic feet per day of natural gas to Peoples Natural Gas Company and L.S. Power-Cottage Grove Limited Partnership (L.S. Power-Cottage Grove) for the L.S. Power-Cottage Grove cogneration Plant.

The EA has been placed in the public files of the FERC and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street NE., Room 3104, Washington, DC 20426 (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from:

Mr. Hugh Thomas, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0980.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP94–763–000. Comments should be addressed to:

Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than September 7, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Hugh Thomas, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been reviewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. Hugh Thomas, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, at (202) 208–0980.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19961 Filed 8–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–71–000, et al.]

Empresa Valle Hermoso, S.A., et al.; Electric Rate and Corporate Regulation Filings

August 7, 1995.

Take notice that the following filings have been made with the Commission:

1. Empresa Valle Hermoso, S.A.

[Docket No. EG95–71–000]

On July 31, 1995, Empresa Valle Hermoso, S.A. ("Hermoso"), with its address c/o OPDB, Ltd., 40 Lane Road, Fairfield, NJ 07007–2615, filed with the Federal Energy Regulatory Commission ("FERC" or the "Commission") an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Hermoso, S.A. is a Cayman Island limited liability company that will be engaged indirectly through one or more affiliates as defined in Section 2(a)(11)(b) of the Public Utility Holding Company Act of 1935, as amended ("PUHCA"), or directly, and exclusively in the business of owning and or operating, or both owning and operating, all or part of one or more eligible facilities located in Bolivia. The eligible facilities consist of approximately 87.2 MW of existing gas fired generation plants and related interconnection facilities and an approximately 126 MW gas fired electric generation plant and related interconnection facilities that is currently under construction. The output of the eligible facilities is, or will be, sold at wholesale except that to the extent permitted by Bolivian law retail power sales may be made to consumers located in Bolivia.

Comment date: August 25, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. The Southwire Company

[Docket No. ER94–446–000]

Take notice that The Southwire Company, on July 25, 1995, tendered for filing amendment to its Initial Rate Filing of approval to sell surplus energy at market-based rates. The Southwire Company has submitted a proposed FERC Rate Schedule No. 1 which establishes certain maximum rates for sales of electric energy to Oglethorpe Power Corporation. Consistent with its Initial Rate Filing, Southwire has requested waiver of the 60-day notice period and a retroactive effective date.

Copies of this filing were served upon Oglethorpe Power Corporation, Carroll Electric Membership Corporation, and Georgia Public Service Commission.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER95–576–001]

Take notice that Wisconsin Public Service Corporation (WPSC) of Green Bay, Wisconsin on July 21, 1995, tendered for filing a revision to its June 30, 1995 SO_2 emission allowance filing to comply with the Commission's June 2, 1995 order accepting WPSC's February 8, 1995 emission allowance filing. WPSC asks that its emission allowance rate, as amended by its current filing, become effective on July 1, 1995.

WPSC states that the filing has been served on the affected parties and posted as required by the Commission's regulations.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Indiana Gas and Electric

[Docket No. ER95–599–000 Company]

Take notice that Southern Indiana Gas and Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–791–000]

Take notice that on July 31, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company, submitted for filing certain amendments to, and testimony in support of, the Firm Power Transmission Service and Energy Transmission Service Tariffs originally filed with the Commission on March 22, 1995. GPU requests an effective date of September 29, 1995.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER95–1128–000]

Take notice that on July 31, 1995, Portland General Electric Company (PGE) tendered for filing an amendment to its filing in this docket.

Comment date: August 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER95–1389–000]

Take notice that on July 18, 1995, Northern States Power Company-Minnesota (NSP-M) and Northern States Power Company-Wisconsin (NSP-W) jointly tendered and request the Commission to accept a Transmission Service Agreement which provides for 30 MW of Reserved Transmission Service to Wisconsin Power and Light Company. The source party is Basin Electric Power Cooperative and the recipient party is Wisconsin Power and Light Company.

NSP requests that the Commission accept for filing the Transmission Service Agreement effective as of June 1, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER95–1404–000]

Take notice that on July 20, 1995, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 263 and all supplements thereto in the above-referenced docket.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. IES Utilities Inc.

[Docket No. ER95–1444–000]

Take notice that on July 28, 1995, IES Utilities Inc. tendered for filing its proposed Open Access Transmission Tariffs and supporting documents.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. San Diego Gas & Electric Company

[Docket No. ER95–1447–000]

Take notice that on July 31, 1995, San Diego Gas & Electric Company (SDG&E) tendered for filing an Interchange Agreement (Agreement) between SDG&E and Heartland Energy Services, Inc. (Heartland).

SDG&E requests that the Commission allow the Agreement to become effective on the 2nd day of October, 1995 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Heartland.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Pacific Gas and Electric Company

[Docket No. ER95–1448–000]

Take notice that on July 31, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing two requests from customers for changes in transmission service and corresponding revised exhibits to interconnection agreements. The materials filed are: (1) A letter from the Central California Power Agency No. 1 (CCPA), dated June 8, 1995, requesting reduction in the amount of transmission service under the "Superseding Agreement for Transmission Service for the Coldwater Creek Geothermal Power Plant Between Pacific Gas and Electric Company and CCPA No. 1 Member Utilities", PG&E Rate Schedule FERC No. 174; (2) a letter from the Sacramento Municipal Utility District (SMUD), dated June 8, 1995, requesting reduction in the amount of transmission service under the "Superseding Agreement for Coldwater Creek Geothermal Power Plant Backbone Transmission Service Between Pacific Gas and Electric Company and Sacramento Municipal Utility District", PG&E Rate Schedule FERC No. 175; (3) a revised Appendix E to Rate Schedule FERC No. 136, the PG&E-SMUD Interconnection Agreement, reflecting the requested reduction, and (4) a revised Exhibit A–4 to Rate Schedule FERC No. 85, the PG&E-City of Santa Clara Interconnection Agreement, reflecting the requested reduction.

The proposed reductions in transmission service are intended to become effective on October 1, 1995.

Copies of this filing have been served upon CCPA, the Modesto Irrigation District, Santa Clara, SMUD and the California Public Utilities Commission.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER95–1449–000]

Take notice that on July 31, 1995, Duke Power Company (Duke) filed a supplement to its Electric Power Contract with Kings Mountain, North Carolina. This contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10. The supplement provides for a decrease in contract demand at Delivery Point No. 1 to 1000 kW at the request of the customer.

Comment date: August 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19967 Filed 8–11–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5274–6]

Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed prospective purchaser agreement associated with the San Gabriel Valley Superfund Sites, Areas 1–4 in Los Angeles County California was executed by the United States Environmental Protection Agency ("EPA") on May 26, 1995, and has been approved by the United States Department of Justice. The proposed prospective purchaser agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Solid Waste Disposal Action, as amended, 42 U.S.C. 6973, against Sargent Fletcher Inc. (the "Purchaser"). The proposed settlement would require the purchaser to pay EPA a one-time payment of $500,000; to implement state lead response actions at the purchased property; and to implement a multi-media environmental program at the facility according to an EPA work plan,.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested on or before September 5, 1995, EPA will provide an opportunity for a public meeting in the effected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before September 13, 1995.

AVAILABILITY: The proposed prospective purchaser agreement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Mark Klaiman, Assistant Regional Counsel (RC–3–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "Sargent Fletcher Inc., San Gabriel Valley Superfund Sites Areas 1–4" and "Docket No. 95–08" and should be addressed to Mark Klaiman at the above address.

FOR FURTHER INFORMATION CONTACT: Mark Klaiman, Assistant Regional Counsel (RC–3–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1374.

Dated: July 20, 1995.

Jeff Zelikson,

Director, Hazardous Waste Management Division, U.S. EPA, Region IX.

[FR Doc. 95–19997 Filed 8–11–95; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1061–DR]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–1061–DR), dated August 3, 1995, and related determinations.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 3, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Oregon, resulting from flash flooding on July 8–9, 1995, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation Assistance in the designated area. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert C. Freitag of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Oregon to have been affected adversely by this declared major disaster: The County of Wasco for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–20006 Filed 8–11–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3116–EM]

Florida; Emergency Declaration and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3116–EM), dated August 3, 1995, and related determinations.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 3, 1995, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Hurricane Erin on August 2–3, 1995, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Florida.

You are authorized to coordinate all emergency efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the emergency for the seven day period of August 2, 1995 through August 8, 1995.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared emergency:

The counties of Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, Calhoun, Washington, Holmes, Jackson, Franklin, Wakulla, and Brevard for assistance as follows: FEMA intends to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, FEMA intends to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the emergency for the seven day period of August 2, 1995 through August 8, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–20007 Filed 8–11–95; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1055–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kentucky (FEMA–1055–DR), dated June 13, 1995, and related determinations.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kentucky dated June 13, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 1995:

Cumberland County for Public Assistance and Hazard Mitigation Assistance.

The Counties of Christian, Laurel, and Pike for Hazard Mitigation Assistance (already designated for Individual Assistance.)

The Counties of Fulton, Jackson, Perry, and Rockcastle for Hazard Mitigation

Assistance (already designated for Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–20005 Filed 8–11–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Allen C. Barbieri, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 28, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Allen C. Barbieri, Irvine, California; to acquire an additional 3.64 percent, for a total of 5.93 percent; Martin T. Hart, Denver Colorado, to acquire an additional 15.26 percent, for a total of 19.42; Doug L. Heller, Irvine, California, to acquire an additional .97 percent for a total of 1.28 percent; G. Mitchell Morris, Salt Lake City, Utah, to acquire an additional 10.69 percent, for a total of 11.52 percent, Jon A. Salquist, Portland, Oregon, to acquire an additional 10.69 percent, for a total of 11.52 percent, James K. Schuler, Honolulu, Hawaii, to acquire an additional 15.26 percent, for a total of 18.14 percent (acting in concert), of the voting shares of PNB Financial Group, Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

2. John C. Bell; John C. Bell Family Trust; and K & G Trust, all of Burbank, California; to acquire an additional 4.67 percent, for a total of 13.83 percent, of the voting shares of Western Security Bancorp, Burbank, California, and thereby indirectly acquire Western Security Bank National Association, Burbank, California.

Board of Governors of the Federal Reserve System, August 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19983 Filed 8–11–95; 8:45 am]

BILLING CODE 6210–01–F

Merchants Bancorp, Inc., et al. Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 7, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Merchants Bancorp, Inc., Aurora, Illinois; to acquire 100 percent of the voting shares of Valley Banc Services Corp., St. Charles, Illinois, and thereby indirectly acquire Anchor Bank, Grayslake, Illinois; Fox Valley Bank, St. Charles, Illinois; Hinckley State Bank, Hinckley, Illinois; and State Bank of Osco, Osco, Illinois.

2. WFC, Inc., Waukon, Iowa; to acquire 100 percent of the voting shares of Viking State Bank & Trust, Decorah, Iowa (in organization).

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Western Dakota Holding Company, Timber Lake, South Dakota; to become a bank holding company by acquiring 50.02 percent of the voting shares of Dewey County Bank, Timber Lake, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BFM Bancshares, Inc., Kingman, Kansas; to become a bank holding company by acquiring 81.025 percent of the voting shares of State Bank of Kingman, Kingman, Kansas.

2. Unison Bancorp, Inc., Lenexa, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Western National Bank, Lenexa, Kansas (in formation).

Board of Governors of the Federal Reserve System, August 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19984 Filed 8–11–95; 8:45 am]

BILLING CODE 6210–01–F

401 K Plan and ESOP of United States Trust Company of New York and Affiliated Companies; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 7, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. 401 K Plan and ESOP of United States Trust Company of New York New York, New York; to become a bank holding company by acquiring between 25 and 35 percent of the voting shares of New USTC Holdings Corporation, New York, New York ("New Holdings"), and thereby indirectly acquire New U.S. Trust Company of New York, New York, New York; U.S. Trust Company of Texas, N.A., Dallas, Texas; and U.S. Trust Company of California, N.A., Los Angeles, California.

In connection with this application, Applicant also has applied to acquire U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida, and thereby engage in trust company, investment and financial advisory, community development, and savings association operations activities, pursuant to §§ 225.25(b)(3), (4), (6), and (9), of the Board's Regulation Y; [2] through CTMC Holding Company and its wholly-owned subsidiaries, U.S. Trust Company of the Pacific Northwest, and CTC Consulting, all of Portland, Oregon, in trust company, and investment and financial advisory activities pursuant to §§ 225.25(b)(3) and (4) of the Board's Regulation Y, respectively, [3] through Campbell, Cowperthwait & Co., Inc., New York, New York, in investment or financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y, [4] through U.S. Trust Company of New Jersey and its wholly-owned subsidiary, U.S.T. Securities Corp., both of Princeton, New Jersey, in trust company, investment and financial advisory, securities brokerage, and riskless principal activities pursuant to §§ 225.25(b)(3), (4), (15) of the Board's Regulation Y and previous Board order (U.S. Trust Corporation, 78 *Federal Reserve Bulletin* 336, (1992)), respectively, and [5] through U.S. Trust Company of Connecticut, Stamford, Connecticut, in trust company and investment and financial advisory activities pursuant to §§ 225.25(b)(3) and (4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19985 Filed 8–11–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Evaluation of Medical Technology

The Agency for Health Care Policy and Research (AHCPR), through the Center or Health Care Technology (CHCT) (formerly OHTA), announces that it is conducting an evaluation of the safety, effectiveness, and clinical utility of positron emission tomography (PET), using fluorine 18 labelled 2-deoxy-2-fluoro-D-glucose (FDG), as a diagnostic and management tool for use in patients with focal or partial epilepsy.

This evaluation will be concerned with the use of FDG–PET in the localization of seizure focus for possible surgical excision and seeks to answer the following questions: (1) Does FDG–PET provide information of value to a clinician that is not otherwise available? (2) What is the extent of any incremental benefit obtained from the use of FDG–PET when the information obtained is comparable to that available from other diagnostic modalities? (3) How does the sensitivity and specificity of FDG–PET compare with other diagnostic modalities currently in use? (4) Where does FDG–PET fit in the overall scheme of diagnostic testing? Should it be used in lieu of, or in addition to other diagnostic modalities? (5) What patient selection criteria should be applied?

AHCPR is interested in receiving information based on review and assessment of past, current, and planned research related to this technology, as well as a bibliography of published, controlled clinical trials and other well-designed clinical studies. Also requested is information related to the characteristics of the patient population most likely to benefit from the use of FDG–PET as well as information on the clinical acceptability, effectiveness, and the extent of use of this technology. Information relevant to this review should be submitted in writing to CHCT at the address below.

To enable the interested scientific community to evaluate the information included in this review, AHCPR will discuss in the review only those data and analyses for which a source(s) can be cited. Respondents are therefore encouraged to include with their submission a written consent permitting AHCPR to cite the source of the data and comments provided. Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a–1(c), no information received will be published or disclosed which could identify an individual or entity described in the information or could identify an entity or individual supplying the information.

Dependent upon the quality and quantity of the scientific data, CHCT will prepare an assessment, review, or other evaluation of the technology under consideration. [The AHCPR Technology Assessment process was described in the December 3, 1993 **Federal Register** (58 FR 63988)).

Written material should be submitted to: Thomas V. Holohan, M.D., Acting Director, Center for Health Care Technology, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Suite 309, Rockville, MD 20852, Phone: (301) 594–4023, Fax: (301) 594–4030.

Dated: August 8, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–19991 Filed 8–11–95; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95N–0228]

Pharmaceutical Marketing and Information Exchange in Managed Care Environments; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing regarding pharmaceutical marketing and information exchange in managed care environments. FDA is seeking information and views concerning the potential impact of

changing organizational structures and information dissemination channels in the managed care setting on the agency's responsibilities to regulate drug marketing and promotion. The agency is particularly interested in exploring the issues surrounding new modes and techniques of drug information dissemination (e.g., the communication of cost-effectiveness claims) and the formation of alliances between manufacturers and prescription benefit management companies (PBM's).

DATES: The public hearing will be held on October 19, 1995, from 1:30 p.m. to 5:30 p.m., and October 20, 1995, from 8:30 a.m. to 5:30 p.m. Submit written notices of participation *by September 15, 1995.* Written *comments* will be accepted *until December 29, 1995.*

ADDRESSES: The public hearing will be held at the Quality Hotel–Silver Spring, 8727 Colesville Rd., Silver Spring, MD 20910. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number 95N–0228. Transcripts of the hearing will be available for review at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Food, Drug, and Cosmetic Act, FDA has responsibility for regulating the labeling and advertising of prescription drugs. Specifically, the agency reviews promotional materials disseminated by, or on behalf of, prescription drug manufacturers for consistency with approved drug product labeling, and to ensure that these materials are accurate, contain proper disclosures, and "fair balance" in terms of benefit and risk information. Underlying this responsibility is a public health concern that health care professionals and patients base their decisions about drug products on sound scientific data and information.

Traditionally, health care providers, patients, pharmacists, and pharmaceutical manufacturers have been separate entities with independent functions. However, the relationships among health care providers, pharmaceutical manufacturers, and health benefits managers are changing. The rapid growth of managed health care, with its emphasis on managing the quality of care while controlling costs, has dramatically changed pharmaceutical purchasing. Consequently, pharmaceutical marketing has also changed to emphasize value in addition to safety and effectiveness. Direct comparative effectiveness, safety, and cost-effectiveness information has become more prevalent as a basis for promotional claims.

Furthermore, the audience for prescription drug promotion has also changed. The importance of institutional decisionmakers as recipients of marketing communications has increased. Over the past several months, several pharmaceutical manufacturers have formed business relationships with or have purchased companies that manage pharmacy benefits (i.e., PBM's). FDA has received reports that these entities are disseminating information to formulary decisionmakers, prescribers, and users about the allied manufacturer's drug products. Moreover, pharmacist employees of certain PBM's have telephoned prescribers to request that they switch their patients to the drug products of their employer's allied manufacturer.

Several pharmaceutical manufacturers have approached FDA about its policies regarding the dissemination of pharmacoeconomic information, especially comparative cost-effectiveness analyses of pharmaceutical products. In response to these inquiries, FDA has stated that "effectiveness" elements of cost-effectiveness claims must be based on adequate and well-controlled studies and cost elements should be substantiated by adequate disclosure of both prices and methods used to derive the cost estimates. In addition, the Division of Drug Marketing, Advertising and Communications (DDMAC) has circulated a draft set of principles for use in evaluating pharmacoeconomic claims.

Some have asserted that the dissemination of information by the pharmaceutical industry to managed care providers (e.g., formulary managers) need not meet traditional standards of substantiation because the audience is highly educated and able to regulate the process by creating a demand for supporting studies that display scientific rigor.

In addition, they maintain that these audiences may impose corrective measures (e.g., formulary exclusions), which would drive up the quality of pharmacoeconomic analyses. However, the proponents also suggest that the increased costs and time needed to conduct multiple studies with sufficient methodological rigor are prohibitive and that their customers are demanding information that, in some instances, may only be provided by the use of less expensive techniques such as administrative data base analysis and modeling.

The agency recognizes that these issues affect both the manufacturers' desire to provide drug information and the managed health care industry's need for this information. Accordingly, FDA seeks to investigate the implications of these issues on its regulatory responsibilities.

II. Scope of the Hearing

In light of the many complex scientific and public health issues raised by the evolution of the health care environment, FDA is soliciting broad public participation and comment on the potential implications of these changes on pharmaceutical regulation. The agency encourages individuals with information relevant to these changes to respond to this notice. FDA is interested in a broad range of issues including:

(1) *Changing business relationships.* What are the implications of the changing health care market on pharmaceutical communications and promotion? Should FDA regulations be modified? If yes, how should the agency's regulations be modified? How would these modifications affect FDA's public health responsibilities?

(2) *Changing marketing claims.* How are pharmacoeconomic claims different from traditional comparative claims between therapeutically similar drugs or therapies? What should be FDA's goal in monitoring cost-effectiveness claims? What level of support is necessary to substantiate cost-effectiveness claims?

(3) *Changing audiences for industry-supplied pharmaceutical information.* Who is receiving/asking for industry-supplied pharmaceutical information? Is this audience more sophisticated (highly educated) than traditional audiences? What type of comparative information is sought? How is this comparative information utilized and interpreted? What should be FDA's goal in monitoring the communication of comparative drug information to healthcare providers and patients within managed care organizations?

(4) *Changing channels for communication of pharmaceutical information.* What constitutes sufficient evidence of "independence" to give confidence of unbiased decisions in formulary development? How can FDA protect scientific-exchange between the pharmaceutical company and the target audience while protecting the audience from false and misleading pharmaceutical promotion? How should FDA address methods employed by pharmaceutical manufacturers to "switch" patients from one drug therapy to another similar product? How should FDA address communications from the PBM's to the target audience? What specific types of information and services do managed health care organizations commonly request from the pharmaceutical industry? Examples of such services may include provider/patient education or formulary coordination between organizations ("pull-through").

III. Notice of Hearing under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner of Food and Drugs or his designee. The presiding officer will be accompanied by a panel of Public Health Service employees with relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written notice of participation with the Dockets Management Branch (address above) by September 15, 1995. To ensure timely handling, any outer envelope should be clearly marked with docket number 95N–0228 and the statement "Pharmaceutical Marketing and Information Exchange in Managed Care Environments." Groups should submit two copies of materials. The notice of participation should contain the speaker's name, address, telephone number, affiliation, if any, brief summary of the presentation, and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who file notices of participation as described above. If time permits, FDA may allow interested persons attending the hearing who did not submit a written notice of participation in advance to make an oral presentation at the conclusion of the hearing.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be available at the hearing. After the hearing, the hearing schedule will be placed on file in the Dockets Management Branch under docket number 95N–0228.

Under § 15.30(f) (21 CFR 15.30(f)), the hearing is informal and the rules of evidence do not apply. The presiding officer and any panel members may question any person during or at the conclusion of their presentation. No other person attending the hearing may question a person making a presentation or interrupt the presentation of a participant.

Public hearings under part 15 are subject to FDA's guideline (21 CFR part 10, subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as required by § 15.30(b). Orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (address above).

Any handicapped person requiring special accommodations in order to attend the hearing should direct those needs to the contact person listed above.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing until December 29, 1995.

Dated: August 7, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–19947 Filed 8–11–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[OPL–006–N]

Medicare Program; September 11, 1995 Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for September 11, 1995, from 8 a.m. until 4 p.m. e.d.t. An additional meeting is tentatively scheduled for December 11, 1995.

ADDRESSES: The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Shekar, Executive Director, Practicing Physicians Advisory Council, Room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, (202) 260–5463.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, enacted on November 5, 1990), to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and under served urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The Council held its first meeting on May 11, 1992.

The current members are: Richard Bronfman, DPM., Gary C. Dennis, M.D., Catalina E. Garcia, M.D., Harvey P. Hanlen, O.D., Kenneth D. Hansen, M.D., Ardis Hoven, M.D., Sandral Hullett, M.D., Jerilynn S. Kaibel, D.C., Marie G. Kuffner, M.D., Marc Lowe, M.D., Katherine L. Markette, M.D., Isadore Rosenfeld, M.D., Richard B. Tompkins, M.D., Kenneth M. Viste, Jr., and James C. Waites, M.D. The chairperson is Kenneth M. Viste, Jr. M.D.

The next meeting of the Council will be held on September 11, 1995. The Council agenda will provide for discussion and comment on two items:

- 1996 Physician fee schedule update.
- Notifying beneficiaries of the disposition of provider complaint investigations.

Those individuals or organizations who wish to make 5-minute oral presentations on the above issues should contact the Executive Director by 12:00 noon, August 25, 1995, to be scheduled. A written copy of the oral remarks should be submitted to the Executive Director no later than 12:00 noon, August 25, 1995. For the name, address, and telephone number of the Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. The number of oral presentations may be limited by the time available.

In addition, Council members will receive a legislative update and be briefed on the Medicaid statewide health care reform demonstrations under section 1115 of the Social Security Act, automated multi-channel laboratory testing, and recent regulatory reforms.

Individuals or organizations may submit written comments on any of the above listed issues to the Executive Director by 12:00 noon, September 1, 1995. The meeting is open to the public, but attendance is limited to the space available on a first-come basis.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 7, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–19995 Filed 8–11–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3946–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The General Deputy Assistant Secretary for Community Planning and Development is redelegating to the Director, Office of Technical Assistance and Management, the authority to impose sanctions pursuant to 24 CFR Part 24, as to certain enumerated programs.

EFFECTIVE DATE: August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Georjan D. Overman, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10251, Washington, DC 20410, telephone (202) 708–4248. A telecommunications device for the hearing-impaired (TDD) is available at (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: By delegations of authority dated October 23, 1983 (48 FR 49384), September 4, 1987 (52 FR 33793), June 3, 1988 (53 FR 20563) and August 22, 1994 (59 FR 43132), the Secretary of Housing and Urban Development has delegated to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development the power and authority of the Secretary with respect to certain enumerated programs. This authority includes the authority to impose sanctions on contractors and participants in those programs, pursuant to the provisions of 24 CFR Part 24. See 53 FR 39535 (October 7, 1988) (delegating to all the Assistant Secretaries of HUD the authority to impose sanctions pursuant to 24 CFR Part 24.) In this notice, the General Deputy Assistant Secretary for Community Planning and Development redelegates this authority to impose sanctions pursuant to 24 CFR Part 24, with respect to certain enumerated programs, to the Director, Office of Technical Assistance and Management.

Section A. Authority Redelegated

The General Deputy Assistant Secretary for Community Planning and Development redelegates to the Director, Office of Technical Assistance and Management, Office of Community Planning and Development, the authority to impose sanctions on contractors and participants, pursuant to the provisions of 24 CFR Part 24, for those programs and matters listed below:

1. Title of the Housing and Community Development Act of 1974 (42 U.S.C. 5301), excluding the Work Study Program, under Section 107(c), and the Joint Community Development Program, under Section 107(b)(5).

2. The Urban Homesteading Program under section 810(b), (c), (d), (e), (g) and (h) of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e), excluding the responsibilities delegated specifically to the Assistant Secretary for Housing.

3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601.)

4. The Rehabilitation Loan Program under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b), excluding the exercise of powers under section 402(a) of the Housing Act of 1950 (12 U.S.C. 1749(a)), and excluding the responsibilities delegated specifically to the Assistant Secretary for Housing.

5. Community Planning and Development programs no longer authorized for funding until all Departmental responsibilities associated with them are discharged and finally terminated.

6. The Rental Rehabilitation Program under Section 17 of the Housing Act of 1937 (42 U.S.C. 1437o.)

7. The Comprehensive Homeless Assistance Plan, as authorized by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 note.)

8. The Emergency Shelter Grants Program as authorized by Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 note.)

9. Enterprize Zone development as authorized by Title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501–11505.)

Section B. No Further Redelegation

The authority redelegated to the Director, Office of Technical Assistance and Management may not be further redelegated pursuant to this delegation.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 4, 1995.

Mark C. Gordon,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 95–19978 Filed 8–11–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–7122–00–5499]

Notice of Availability of Draft Environmental Impact Statement (EIS), Proposed Tailings and Waste Rock Disposal Areas, Cyprus Bagdad Copper Corporation, Bagdad, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management, Phoenix District, in response to a Mining Plan of Operations (MPO) filed by Cyprus Bagdad Copper Corporation (CBCC), is preparing an Environmental Impact Statement (EIS) in compliance with the Federal Land Policy and Management Act of 1976, as amended, 43 CFR 3809, and Section 102(2)(c) of the National Environmental Policy Act of 1969. The proposed action involves development of a new tailings impoundment, expansion of an existing waste rock disposal area, and continuation of expansion of the existing open pit in order to continue copper mining and milling operations in Bagdad, Arizona for 35 years. The proposed action would affect private lands owned by CBCC and approximately 320 acres of public lands administered by the Bureau of Land Management (BLM). Specific written comments are requested on the draft and will be considered in the final EIS.

ADDRESSES/FOR FURTHER INFORMATION, CONTACT: Written comments and requests for copies of the draft EIS should be mailed to: Mary Johnson, Project Manager, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027, or telephone (602) 780–8090, ext. 564. Copies of the Draft EIS are available for public use/review at the following locations: BLM, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027; BLM, Kingman Resource Area, 2475 Beverly Ave., Kingman, Arizona 86401; BLM, Arizona State Office, Public Room, 3707 N. 7th St., Suite 300, Phoenix, AZ 85014; Cyprus Bagdad Copper Corporation, Lower Main Street, Environmental Dept., Bagdad, Arizona 86321; Mohave County District Library, 3269 N. Burbank St., Kingman, Arizona; Prescott Public Library, 215 E. Goodwin St., Prescott, Arizona 86303.

DATES: Written comments must be postmarked by October 17, 1995 (or 60 days after the publication date in the **Federal Register** of the Notice of Availability by the Environmental Protection Agency). Public hearings for the Draft EIS will be held at the following times and locations: September 27, 1995, Wednesday, 7:00–9:00 pm, Mohave Community College, Room 106, Kingman, AZ 86401; September 28, 1995, Thursday, 7:00–9:00 pm, Prescott Resort Conference Center, Prescott/Chino Meeting Room), 1500 Highway 69, Prescott, AZ 86301.

Dated: August 8, 1995.

David J. Miller,

Associate District Manager.

[FR Doc. 95–19994 Filed 8–11–95; 8:45 am]

BILLING CODE 4310–32–P

[Docket No. 4310—DN; MT–060–05–1990–01]

Availability of the Draft Environmental Impact Statement for the Zortman and Landusky Mines Reclamation Plan Modifications and Mine Life Extensions, Phillips County, MT

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of the draft environmental impact statement (EIS) for the Zortman and Landusky mines reclamation plan modifications and mine life extensions.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and the Montana Environmental Policy Act, the Bureau of Land Management (BLM) and the Montana Department of Environmental Quality (DEQ), as lead agencies, have prepared, through a third party contractor, a Draft EIS on the impacts of the Zortman Mining, Inc. proposal to expand mining and processing of ore reserves at the Zortman and Landusky mines. The Zortman and Landusky mines are located in southwestern Phillips County about 50 miles south of Malta, Montana, near the southern boundary of the Fort Belknap Indian Reservation.

The Draft EIS presents a preferred alternative and six other alternatives including the company proposed action. The preferred alternative is the agencies' attempt to reduce or avoid the potential environmental impacts of the proposed action. The Draft EIS discloses the possible environmental consequences associated with each alternative.

DATES: Written comments on the Draft EIS will be accepted for 60 days following the date the Environmental Protection Agency publishes the Notice of Filing of the draft in the **Federal Register**.

Comments can also be presented at four open houses/public meetings to be held in: Lodgepole, Montana, September 18, 1995, at the Medicine Bear Lodge; Hays, Montana, September 19, 1995, at the John Capture Center; Malta, Montana, September 20, 1995, at the Guard Armory; and Landusky, Montana, September 21, 1995, at the Community Hall. All of these open houses/public meetings will begin at 5:00 p.m. with an open house to answer questions followed at 7:30 p.m. by a meeting to accept comments. These meetings will also be the forum for the U.S. Army Corps of Engineers to collect public comments on the Zortman Mining, Inc. 404 permit application for the Zortman and Landusky mine expansions.

ADDRESSES: Written comments should be addressed to David L. Mari, District Manager, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160.

Copies of the Draft EIS will be available from the Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160 (406–538–7461) or the Montana Department of Environmental Quality, Hard Rock Bureau, P.O. Box 201601, Helena, Montana 50620–1601 (406–444–2074). Public reading copies will be available for review at the following locations: Bureau of Land Management, Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets NW, Washington, DC; Bureau of Land Management, External Affairs Office, Montana State Office, 222 North 32nd Street, Billings, Montana; Bureau of Land Management, Lewistown District Office, Airport Road, Lewistown, Montana; Bureau of Land Management, Phillips Resource Area, 501 South 2nd St East, Malta, Montana; and State of Montana, Department of Environmental Quality, 1625 11th Ave, Helena, Montana.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Team Leader, Montana Department of Environmental Quality, Hard Rock Bureau, P.O. Box 201601, Helena, Montana 59620–1601 (406–444–2074) or Scott Haight, Team Leader, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160 (406–538–7461).

SUPPLEMENTARY INFORMATION: On May 11, 1992, Zortman Mining, Inc. (ZMI) filed an application with the Bureau of Land Management, Lewistown District Office, and the Montana Department of State Lands (part of the Montana Department of Environmental Quality as of July 1, 1995), to expand mining operations at the Zortman Mine in the Little Rocky Mountains, Montana. The proposal includes: expansion of existing mine pits to access sulfide ore; a 150-acre, 60-million ton waste rock disposal area; crushing facilities; a 2.5-mile conveyor system; a 200-acre, 80-million ton capacity leach pad; a new processing plant and ponds; a limestone quarry; and other associated facilities. Total disturbance would increase from the existing 401 acres to about 1,292 acres. The operation is located on private and public land. Issues include Native American religious concerns, acid rock drainage, reclamation, and socioeconomic.

In a March 9, 1994, Decision Record, the BLM and DEQ included the analysis of acid rock drainage corrective measures for the nearby Landusky Mine within the scope of the EIS for the Zortman Mine expansion, since acid rock drainage has been a problem at both mines. The draft EIS addresses additional mining at the Landusky and Zortman mines, as well as modified reclamation plans for both facilities to address acid rock drainage.

Public participation has occurred throughout the EIS process. A Notice of Intent was published in the **Federal Register** in November 1992 followed by a supplemental notice in April 1994 expanding the scope of the EIS for the Landusky Mine. Since that time, public meetings and informational mailings were conducted to solicit comments for the scope of the EIS. Any comments presented throughout the process have been considered.

Dated: August 2, 1995.

B. Gene Miller,

Associate District Manager.

[FR Doc. 95–19953 Filed 8–11–95; 8:45 am]

BILLING CODE 1430–DN–P

Colorado; Front Range Resource Advisory Council, Northwest Resource Advisory Council, Southwest Resource Advisory Council; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils—Notice of Meeting.

SUMMARY: The three Resource Advisory Councils for the State of Colorado, the Front Range Resource Advisory Council, the Northwest Resource Advisory Council, and the Southwest Resource Advisory Council, will meet at the Grand Junction Hilton, 743 Horizon Drive, Grand Junction, Colorado 81506, beginning on Tuesday, August 22 at 10:30 AM, and ending on August 22 at 3:30 PM. The entire meeting is open to the public. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the individual listed below, under **FOR FURTHER INFORMATION CONTACT,** at least 5 days prior to the meeting.

DATES: The meeting will be held on Tuesday, August 22, 1995, from 10:30 AM to 3:30 PM.

ADDRESSES: The meeting will be held at the Grand Junction Hilton, 743 Horizon Drive, Grand Junction, Colorado 81506.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce the specific time and place of the joint meeting of the 3 Colorado Resource Advisory Councils, which were announced in a **Federal Register** notice of August 7, 1995 (60FR 40191). The meeting will be held on August 22, 1995, in Grand Junction, Colorado, to discuss the operation, organization, and general goals of the Councils. The 3 Resource Advisory Councils are being established in accordance with the provisions of the Federal Advisory Committee Act of 1972 (FACA) 5 U.S.C. App. These councils are the Front Range Resource Advisory Council, the Northwest Resource Advisory Council, and the Southwest Resource Advisory Council. These councils will be created by the filing of their charters with the appropriate congressional committees and the Library of Congress on August 21, 1995. The councils are being established to provide advice to the Secretary of the Interior concerning the problems relating to land use planning and the management of public lands within the area for which the advisory councils are established. The councils will provide representative counsel and advice to BLM on the planning and management of the public lands as well as advice on other public land resource issues. Council members will be residents of Colorado and will be appointed by the Secretary.

FOR FURTHER INFORMATION CONTACT: Sherri Bell, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7076. (303) 239–3670.

Dated: August 9, 1995.

Nina Rose Hatfield,

Acting Deputy Director.

[FR Doc. 95–20036 Filed 8–11–95; 8:45 am]

BILLING CODE 4310–84–P

[AZ–020–05–1430–01; AZA 7666 and AZA 22627]

Arizona: Termination of R&PP Classification and Segregation in Apache and Pinal Counties; Opening Order in Pinal County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice will terminate the R&PP classification and segregation on 87.43 acres and open 7.43 acres to mineral leasing.

EFFECTIVE DATE: August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Andersen, Realty Specialist, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Telephone (602) 780–8090.

SUPPLEMENTARY INFORMATION: The following described lands were classified and segregated under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Since they are no longer needed for the purpose classified, the classification and segregation for the following described lands will be terminated upon publication of this notice:

(1) *AZA 7666.* The following described land was segregated from the public land laws and mining and mineral leasing laws. Upon publication, the land will be open to mineral leasing. It will remain withdrawn from the public land laws and the mining laws under Power Site Classification 438 and PLO 3835, Middle Gila River Project:

Gila and Salt River Meridian, Arizona

T. 4 S., R. 13 E.,
Sec. 12, metes-and-bounds description in lots 1 and 3, (formerly described as a parcel of land situated in the NE¼NE¼).
Containing 7.43 acres.

(2) *AZA 22627.* The following described land was segregated from the public land laws and mining laws. It will remain withdrawn from these laws under Public Water Reserve No. 55, Arizona No. 9.

Gila and Salt River Meridian, Arizona

T. 11 N., R. 28 E.,
Sec. 18, N½SE¼.
Containing 80 acres.

Dated: August 3, 1995.

Evelyn Stob,

Acting Chief, Lands and Minerals Operations Section.

[FR Doc. 95–19970 Filed 8–11–95; 8:45 am]

BILLING CODE 4310–52–P

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Endangered Delhi Sands Flower-Loving Fly for the Proposed Colton Transmission Line and Substation Project in the City of Colton, San Bernardino County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has under consideration a proposal to issue a 10-year permit under Section 10(a)(1)(B) of the Endangered Species Act (ESA) that would authorize incidental taking of the endangered Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). The applicant for this incidental take permit is the City of Colton, California. The application is accompanied by a proposed Habitat Conservation Plan (HCP) for the Delhi Sands flower-loving fly and an Implementing Agreement. In response to the permit application and the accompanying proposal, an Environmental Assessment (EA) has been prepared pursuant to the National Environmental Policy Act (NEPA). This notice is provided pursuant to section 10 of the ESA and NEPA regulations (40 CFR 1506.6).

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for the incidental take of the Delhi Sands flower-loving fly. The final NEPA and permit determination will be made no sooner than 30 days from the date of this notice. This notice describes the currently proposed action and alternatives, and solicits comments on the complete permit application, as well as the issues and alternatives raised in the EA. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments related to the Service's EA and the City of Colton's permit application, HCP, and IA, should be received by the Service on or before September 13, 1995.

ADDRESSES: Information, comments, or questions regarding the EA, permit application, HCP, and IA, should be submitted to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments also may be sent by facsimile to (619) 431–9618.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Sorensen, Assistant Field Supervisor, at the above Carlsbad address, telephone (619) 431–9440. Individuals wishing copies of the EA, HCP, IA, and/or permit application should immediately contact Mr. Sorenson. Persons wishing to review background material may obtain it by contacting the City of Colton, telephone (909) 370–5079. Documents also will be available for public inspection by appointment during normal business hours (8 am to 5 pm, Monday through Friday) at the Service's Carlsbad Field Office (see **ADDRESSES** section above).

SUPPLEMENTARY INFORMATION: The Service listed the Delhi Sands flower-loving fly as an endangered species on September 23, 1993 (58 FR 49881). As an endangered species, the Delhi Sands flower-loving fly is protected pursuant to Section 9 of the ESA against take; that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 USC 1538). However, under certain circumstances, the Service may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The City of Colton proposes to construct a transmission line and substation project located in the City of Colton, in San Bernardino County. The proposed project is partially located in undeveloped areas that are either known to support the endangered Delhi Sands flower-loving fly or are considered suitable habitat for the species. Pole placement, and construction of the substation and a portion of the access road, would result in the permanent loss of 2.4 acres of suitable Delhi Sands flower-loving fly habitat. In addition, construction of the transmission line, underground distribution line, and portions of the substation and access road would result in the temporary disturbance of 2.2 acres of occupied and potential habitat. Operation and maintenance activities of the proposed substation and transmission lines (e.g., driving to and from the facility and regularly scheduled cleaning of the transmission lines) also may result in additional take of endangered species remaining on or adjacent to the proposed project site.

Two listed plant species, Santa Ana River woolly-star (*Eriastrum densifolium* ssp. *sanctorum*) and slender-horned spineflower (*Dodecahema leptoceras*), are known to occur within or near the proposed transmission line and substation. Although no incidental take authorization is required for listed plant species, impacts to these species must be addressed in the intra-Service consultation required pursuant to section 7(a) of the ESA.

The City of Colton proposes to mitigate for this incidental take by implementing several on-site and off-site mitigation measures. Such measures include: off-site acquisition and management of 7.5 acres; funding a $66,250 endowment for maintenance and enhancement of the 7.5-acre site; conducting pre-construction surveys in occupied Delhi Sands flower-loving fly habitat to determine pole placement and access routes that avoid and minimize direct impacts to the species; conducting pre-construction surveys to determine pole placement and access routes that avoid impacts to listed plant species; and restoration of temporary disturbance areas, and various additional on-site measures to be undertaken during construction and operation of their facility.

In addition to the proposed project and no project alternatives, the City of Colton considered six other alternative sites for the substation with different routes for the transmission lines. Alternative sites and routes were rejected for the following reasons: Site drainage characteristics; earthwork requirements; distance from electrical load centers; flood potential; poor access; and/or high visibility impacts. Selection of a new alternative site would delay start-up of the San Bernardino County hospital indefinitely and would be financially infeasible for the project applicant.

Dated: August 3, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–19993 Filed 8–11–95; 8:45 am]

BILLING CODE 4310–55–P

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed during the meeting including: Reauthorization of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, ballast water management activities/legislation, Ruffe Control Program, Brown Tree Snake Control Program, pilot black carp risk assessment, and upcoming events.

DATES: The ANS Task Force will meet from 9 a.m. to 3 p.m. on Thursday, August 31, 1995.

ADDRESSES: The ANS Task Force meeting will be held at the U.S. Fish and Wildlife Building, Room 200AB, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Jay Troxel, ANS Task Force Coordinator, U.S. Fish and Wildlife Service, telephone (703) 358–1718.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 et seq., November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: August 7, 1995.

Gary Edwards,

Assistant Director, Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 95–19948 Filed 8–11–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0018); Washington, D.C. 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Request for Reservoir Maximum Efficient Rate (MER), Form MMS–127

OMB approval number: 1010–0018

Abstract: Respondents submit Form MMS–127 to the Minerals Management Service's (MMS) Regional Supervisors so they can determine whether a lessee has correctly classified an oil or gas reservoir and whether the reservoir MER requested by the lessee is valid

Bureau form number: Form MMS–127

Frequency: On occasion

Description of respondents: Federal OCS oil and gas lessees

Annual burden hours: 910

Bureau Clearance Officer: Arthur Quintana, (703) 787–1239

Dated: July 28, 1995.

E.P. Danenberger,

Acting Deputy Associate Director for Operations and Safety Management.

[FR Doc. 95–19969 Filed 8–11–95; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From the State of Texas in the Possession of the Fort Hood Archeological Laboratory

AGENCY: National Park Service, Interior

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains and associated funerary objects in the curation facility of the Directorate of Public Works at Fort Hood, TX from five sites in the state of Texas.

A detailed inventory and assessment of these remains has been made by the staff archeologist at Fort Hood in consultation with representatives of the Comanche Tribe of Oklahoma and the Tonkawa tribe of Oklahoma. Copies of this inventory have also been sent to the Apache Tribe of Oklahoma, the Wichita and Affiliated Tribes, the Caddo Indian Tribe of Oklahoma and the Kiowa Tribe.

The partial and fragmentary human remains of 48 individuals were recovered in 1985 from a vandalized burial ground at Javalina shelter in Bell County, Texas. A total of 1,214 bones and fragments were recovered from the surface where they had been discarded by vandals. Inventory and examination of the remains established that the partial remains of 20 adults, ten adolescents, nine children and nine infants were present. Sex of the remains could not be determined. No known individuals were identified. Artifacts recovered from the site with the remains included a flake of obsidian and debitage of local cherts.

This site has been identified as being within the Comanche's traditional occupation area based on the abnormal number of juvenile remains, suggesting a historical disease epidemic, evidence of access to obsidian, the Comanche occupation of Central Texas in historic times, and consultation with the Comanche Tribe. Based on the above mentioned information, officials of the Fort Hood Archeological Laboratory have determined that, pursuant to 25U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Comanche Tribe. Officials of the Fort Hood Archeological Laboratory have also determined that the artifacts are reasonably believed to have been placed with individual human remains either at the time of death or later as a part of a death rite or ceremony of a culture, pursuant to 25 U.S.C. 3001 (3)(A).

On November 22, 1991 the above human remains and associated funerary objects were repatriated to the Reverend John Pahdocony of the Comanche Cemetery Committee on behalf of the Comanche Tribal Council.

The partial and fragmentary remains of a one adult individual were collected in 1986 from an erosional gully on the bank of the Leon River near Fort Griffin, Bell County, Texas. The remains eroded from the bank of the Leon River near a dark and dense midden deposit from an open campsite on the flood plain. The sex of the individual could not be determined. No known individual was identified.

This site has been identified as being within the Comanche's traditional occupation area, based on consultation with representatives of the Comanche Tribe and written historic records.

Officials of the Fort Hood Archeological Laboratory have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Comanche Tribe.

On November 22, 1992 the above mentioned human remains were repatriated to Phillip R. Narcomey of the Comanche Cemetery Committee on behalf of the Comanche Tribal Council.

The partial and fragmentary remains of a one adult individual were collected in 1992 from the surface of a vandalized burial site (41BL0844). The remains consist of nine bone fragments. No known individual was identified.

This site has been identified as being within the Comanche's traditional occupation area, based on consultation with representatives of the Comanche Tribe and written historic records.

Officials of the Fort Hood Archeological Laboratory have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Comanche Tribe.

On November 21, 1993 the above mentioned human remains were repatriated to Phillip R. Narcomey of the Comanche Cemetery Committee on behalf of the Comanche Tribal Council.

The partial and fragmentary human remains of six individuals were recovered during the summer of 1990 from a rockshelter site (41BL671) on Fort Hood, by a field school conducted by Texas A&M University. Inventory and examination of the remains established that the remains of two adult males, one adult female, one child between the ages of 6 and 10 years, one new-born child, and an individual whose age and sex could not be determined. Artifacts recovered elsewhere in the site suggested it was occupied by peoples of the Toyah and Austin Foci, acknowledged as ancestral to the Tonkawa Tribe. No known individuals were identified.

This site has been identified as being within the Tonkawa's aboriginal occupation area based on the oral traditions of the Tonkawa tribe and historic accounts of their occupations in central Texas through consultations with representatives of the Tonkawa Tribe of Oklahoma. Officials of the Fort Hood Archeological Laboratory have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Tonkawa Tribe who are generally acknowledged to have occupied the Bell County area of central Texas before the arrival of the Comanche in the eighteenth century.

On November 20, 1994 the above six human remains were repatriated to Ms. Virginia Combrink, President of the Tonkawa Tribe of Oklahoma on behalf of that Tribe.

Between 1984 and February 25, 1986, 78 fragments of human bone representing four individuals were collected from rockshelter site (41BL0069) on Fort Hood, by a field party from Texas A&M University. Inventory and examination of the remains established that the remains of two adult individuals, one adolescent, and one child between the ages of 6 and 10 years, sex could not be determined. Artifacts recovered elsewhere in the site suggested it was occupied by prehistoric peoples of the Toyah and Austin Foci. No known individuals were identified.

This site has been identified as being within the Tonkawa's aboriginal occupation area based on the oral traditions of the Tonkawa tribe and historic accounts of their occupations in central Texas through consultations with representatives of the Tonkawa Tribe of Oklahoma. Officials of the Fort Hood Archeological Laboratory have determined that, pursuant to 25U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Tonkawa Tribe who are generally acknowledged to have occupied the Bell County area of central Texas before the arrival of the Comanche in the eighteenth century.

During the 1978 recording of 41CV0130 on Fort Hood a single fragment of a human adult femur was recovered from surface spoil. 41CV0130 also yielded evidence of occupation during the late archaic period.

This site has been identified as being within the Tonkawa's aboriginal occupation area based on the oral traditions of the Tonkawa tribe and historic accounts of their occupations in central Texas through consultations with representatives of the Tonkawa Tribe of Oklahoma. Officials of the Fort Hood Archeological Laboratory have determined that, pursuant to 25U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Tonkawa Tribe who are generally acknowledged to have occupied the Bell County area of central Texas before the arrival of the Comanche in the eighteenth century.

This notice has been sent to officials of the Tonkawa tribe of Oklahoma, The Comanche Tribe, the Wichita and Affiliated Tribes, the Caddo Tribe of Oklahoma, the Kiowa Tribe and the Apache Tribe. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains should contact Dr. Jack M. Jackson, Fort Hood Staff Archeologist, HQ III Corps and Fort Hood, attn: AFZF-PW-ENV, Fort Hood, Texas 76544–5057; telephone (817) 287–7965, before September 13, 1995. Repatriation of the human remains from sites 41BL0069 and 41CV0130 may begin after that date if no additional claimants come forward.

Dated: August 7, 1995

Francis P. McManamon

Departmental Consulting Archeologist Chief, Archeological Assistance Division

[FR Doc. 95–19958 Filed 8–11–95; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department

of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Application—Inspections Facilitation Program.

(2) Form I–823, I–832A, I–823B, I–823C, and I–823D. Immigration and Naturalization Service. United States Department of Justice.

(3) Primary: Individuals or households. Other: None. The information collected will be used to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application for admission to the United States.

(4) 500,000 annual respondents .5 hours per response.

(5) 250,000 annual burden hours.

(6) Not applicable under section 3504(h) of Pub. L. 96–511.

Public comment on this item is encouraged.

Dated: August 8, 1995.

Kathleen T. Albert,

Acting Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–19950 Filed 8–11–95; 8:45 am]

BILLING CODE 4410–10–M

Drug Enforcement Administration

[Docket No. 95–3]

Habit Management Institute, Inc.; Denial of Application

On October 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Habit Management Institute, Inc., of Manchester, New Hampshire (Respondent), proposing to deny its application for DEA registration as a Narcotic Treatment Program (NTP) under 21 U.S.C. 823(g). The statutory basis for the Order to Show Cause was that Respondent was not authorized to dispense controlled substances in the State of New Hampshire, the state in which it proposed to operate.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. On December 16, 1994, the Government filed a motion for summary disposition clarifying the Order to Show Cause and alleging, *inter alia*, that Respondent was not authorized to handle controlled substances in the State of New Hampshire, and, that Respondent lacked authority from the Food and Drug Administration of the Department of Health and Human Services (FDA), to operate an NTP. The Government's motion was supported by a letter from an FDA official informing Respondent that because the State of New Hampshire had denied its application to establish an NTP, the FDA was unable to approve its application. Respondent did not file a response to the Government's motion and did not deny that FDA has denied its application.

On January 30, 1995, the administrative law judge issued his conclusions of law and recommended ruling, recommending that Respondent's application for a DEA Certificate of Registration as an NTP be denied. On March 9, 1995, the administrative law judge transmitted the record to the Deputy Administrator. After a careful consideration of the record in its entirety, the Deputy Administrator, pursuant to 21 CFR 1316.67, enters his final order in this matter, based on the conclusions of law set forth herein.

Practitioners who dispense narcotic drugs as part of a maintenance treatment or detoxification treatment are required to obtain a separate DEA registration under 21 U.S.C. 823(g). Authorization from the FDA is a prerequisite to the granting of registration by DEA. 21 U.S.C. 823(g)(1). The administrative law judge found that FDA notified Respondent, in writing, that the FDA had not approved Respondent's NTP.

DEA does not have statutory authority under the Controlled Substances Act to register an NTP unless that entity is authorized by the FDA to dispense controlled substances. 21 U.S.C. 823(g). In a proceeding to obtain registration as an NTP, if the applicant does not possess the requisite FDA authorization to operate an NTP, a motion for summary disposition is properly entertained. *Rosalind A. Cropper, Inc.*, 60 FR 18143 (1995). It is well settled that where no question of fact exists, or where the material facts are agreed, a plenary administrative proceeding is not required. *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), aff'd sub nom, *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Deputy Administrator adopts the conclusions of law and recommended ruling of the administrative law judge in its entirety. Based on the foregoing, the Deputy Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that Respondent's application for DEA Certificate of Registration as an NTP be, and it hereby is, denied. This order is effective September 13, 1995.

Dated: August 7, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–19956 Filed 8–11–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 95–19]

Derrick K. Mobley, M.D.; Revocation of Registration

On December 14, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Derrick K. Mobley, M.D. of Philadelphia, Pennsylvania (Respondent), proposing to revoke his DEA Certificates of Registration, BM2550829, issued to him in Pennsylvania, and BM1810109, issued to him in New Jersey, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's continued registration as a practitioner is not consistent with the public interest and that Respondent is no longer authorized to handle controlled substances in the Commonwealth of Pennsylvania or the State of New Jersey. 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(3).

Respondent, *pro se*, requested a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On March 9, 1995, the Government filed a motion for summary disposition alleging that Respondent was not authorized to handle controlled substances in either New Jersey or Pennsylvania, the jurisdictions in which he proposes to practice. Respondent did not file a response to the Government's motion, and did not deny that he had surrendered his New Jersey license and that his Pennsylvania license had been revoked. No evidentiary hearing was held on this matter as no questions of fact were to be resolved, only a question of law.

On May 15, 1995, the administrative law judge issued her opinion and recommended decision, recommending that Respondent's DEA Certificates of Registration be revoked. No exceptions were filed by either party. On June 22, 1995, the administrative law judge transmitted the record to the Deputy Administrator. After a careful consideration of the record in its entirety the Deputy Administrator enters his final order in this matter, in accordance with 21 CFR 1316.67, based on conclusions of law as set forth herein.

Respondent voluntarily surrendered his license to practice medicine in New Jersey effective January 28, 1993. As part of the consent order signed with the New Jersey State Board of Medical Examiners (New Jersey Board), Respondent was ordered to deliver to the New Jersey Board his State and Federal controlled substances registrations. On December 28, 1994, the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs, State Board of Medicine, issued an order revoking Respondent's license to practice medicine and surgery. Respondent did not deny that he was no longer authorized to handle controlled substances in Pennsylvania or New Jersey.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to dispense controlled substances by the state in which he proposes to practice. *See Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992); *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Robert F. Witek, D.D.S.*, 52 FR 4770 (1987). In such cases a motion for summary disposition is properly entertained. There is no need for a plenary evidentiary hearing since there are no questions of fact to be resolved by such a hearing. *Phillip E. Kirk, M.D.*, 48 FR 32887 (1983), aff'd sub nom, *Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984); *Floyd A. Santner, M.D.*, 47 FR 51831 (1982). The administrative law judge found that, where Respondent is not currently authorized to practice medicine or perform surgery in either New Jersey or Pennsylvania, it is reasonable to infer, and Respondent did not deny, that he also is not authorized to handle controlled substances. Therefore, because Respondent is no longer authorized to handle controlled substances in the Commonwealth of Pennsylvania or the State of New Jersey, the Deputy Administrator cannot permit him to maintain DEA Certificates of Registration in those jurisdictions.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration BM2550829 and BM1810109, previously issued to Derrick K. Mobley, M.D., be, and they hereby are, revoked, and that any outstanding applications for renewal of such registrations be, and they hereby are, denied, This order is effective September 13, 1995.

Dated: August 8, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–20020 Filed 8–11–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Evaluation of Worker Profiling and Reemployment Services Systems; Survey of State Administrators

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of the Survey of State Administrators for the Evaluation of Worker Profiling and Reemployment Services Systems. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before October 13, 1995. If you anticipate that you will be submitting written comments, but find it difficult to do so within the period of time allowed by this notice, you should request an extension from the contact listed below as soon as possible. An effort will be made to try to accommodate each request, unless otherwise justified.

FOR FURTHER INFORMATION CONTACT: Jon Messenger, U.S. Department of Labor, Employment and Training Administration, Unemployment Insurance Service, Room S–4519, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219–5608.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Labor, Employment and Training Administration (ETA), has undertaken a major initiative to help the State implement effective Worker Profiling and Reemployment Services Systems, as required by the Unemployment Compensation Amendments of 1993, Public Law (P.L.) 103–152. The major goal of the WPRS initiative is to assist those unemployment insurance (UI) claimants who are at greatest risk of becoming unemployed to become reemployed by quickly referring them to reemployment services tailored to their individual needs.

ETA is conducting a comprehensive evaluation of the Worker Profiling and Reemployment Services (WPRS) initiative. This effort is designed to provide both:

(1) An evaluation of the operation and effectiveness of State WPRS systems, in accordance with P.L. 103–152, which mandates a report to the Congress by November 24, 1996, and

(2) A longer-range evaluation to provide an assessment of the operation and effectiveness of more mature State WPRS systems.

This Survey of State Administrators will obtain data for an implementation and process analysis of State WPRS systems. The survey will provide in-depth knowledge of each State's approach to implementing their WPRS system. This survey will also provide the data necessary for identifying distinct groupings or modes of States' operational approaches to Worker Profiling and Reemployment Services, which will be used in the effectiveness portion of the WPRS evaluation to compare the relative effectiveness different implementation approaches.

II. Current Actions

ETA proposes to conduct a Survey of State Administrators involved in designing and implementing WPRS systems. This includes administrators from the Unemployment Insurance (UI), Employment Service (ES), and Economic Dislocation and Worker Adjustment Assistance (EDWAA) programs. Within basic Federal guidelines, individual States have great

latitude in designing their WPRS systems. This survey will systematically gather information about how States have designed their WPRS systems—the policies and procedures adopted, and the process by which this occurred—and their progress to date in implementing these systems.

Written comments on the survey questionnaire should address the accuracy of the burden estimates and ways to minimize burden, including the use of automated collection techniques or the use of other forms of information technology.

Type of Review: New
Agency: Employment and Training Administration
Title: Survey of State Administrators
Frequency: Twice (once in Calendar Year 1996, once in Calendar Year 1997)
Affected Public: State Government
Number of Respondents: 159 (53 States and jurisdictions times 3 administrators each)
Estimated Time Per Respondent: For 106 of the respondents, the time burden will be 7 minutes each. For 53 respondents, the time burden will be 27 minutes each (those administrators responsible for coordinating the WPRS Initiative in the State or jurisdiction will need to complete a more comprehensive questionnaire)
Total Burden Hours: 72 (2 waves of surveys, 36 hours per wave)

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, D.C., this 8th day of August, 1995.

Robert O. Deslongchamps,

Acting Director, Unemployment Insurance Service.

[FR Doc. 95–19998 Filed 8–11–95; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP (NIJ) No. 1059]

RIN 1121–ZA21

National Institute of Justice "Solicitation for the Review of External DNA Proficiency Testing"

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice's "Solicitation for the Review of External DNA Proficiency Testing".

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

DATES: The deadline for receipt of proposals is close of business on September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Rau, National Institute of Justice, at (202) 514–6206.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

Through this solicitation the National Institute of Justice is seeking to review the state-of-the-science in blind and open external DNA proficiency testing for forensic and nonforensic (medical, chemical, and biological) laboratories. In addition, this solicitation seeks the development of criteria for model external DNA proficiency testing. NIJ is directed by the DNA Act of 1994 to report to Congress on the state of availability of a blind DNA proficiency testing program for the field. Interested persons should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for the Review of External DNA Proficiency Testing" (refer to document No. SL000133). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 95–19979 Filed 8–11–95; 8:45 am]

BILLING CODE 4410–18–P

National Institute of Justice

[OJP (NIJ) No.1058]

RIN 1121–ZA20

National Institute of Justice "Solicitation to Develop Guidelines for Death Investigations and for Training of Death Investigators"

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice's "Solicitation to Develop Guidelines for Death Investigations and for Training of Death Investigators".

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

DATES: The deadline for receipt of proposals is close of business on September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Rau, National Institute of Justice, at (202) 514–6206.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

Through this solicitation the National Institute of Justice is seeking proposals to develop uniform guidelines for performing medicolegal death investigations, and to develop guidelines for training death investigators. Interested persons should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation to Develop Guidelines for Death Investigations and for Training of Death Investigators" (refer to document no. SL000132). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 95–19980 Filed 8–11–95; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc. (Waterford Steam Electric Station, Unit No. 3); Exemption

I

Entergy Operations, Inc., (the licensee) is the holder of Facility Operating License No. NPF–38, which authorizes operation of Waterford Steam Electric Station Unit No. 3 (the facility, Waterford 3). The operating license provides among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The facility is a pressurized water reactor located at the licensee's site in St. Charles Parish, Louisiana.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs), at approximately equal intervals during each 10-year service period of the primary containment.

III

By letter dated November 16, 1993, as supplemented by letters dated August 19, 1994, March 30, and June 19, 1995, the licensee requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 18 months (from the 1995 refueling outage, currently scheduled to begin in September 1995, to the 1997 refueling outage).

The licensee's request primarily cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. They point out that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. The licensee also indicated that the testing history, structural capability of the containment, and the risk assessment has established that Waterford 3 has a low leakage containment, the structural integrity of the containment is assured, and that there is a neglible risk impact in changing the Type A test schedule. Therefore, application of the regulation in this particular circumstance would not serve, nor is it necessary to achieve, the underlying purpose of the rule.

IV

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide a one-time interval extension for the Type A test by approximately 18 months. The Commission has determined, for the reasons discussed below, that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period, is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown. The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. All Type A tests have passed with significant margin and the licensee will continue to perform the existing Type B and C testing to detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. The licensee has stated to the NRC Project Manager that they will perform the general containment inspection although it is only required by Appendix J (Section V.A.) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The NRC staff has also made use of the information in a draft staff report, NUREG–1493 "Performance-Based Containment Leak-Test Program," which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3% of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on these considerations, it is unlikely that an extension of one cycle for the performance of the Appendix J, Type A test at Waterford 3 would result in significant degradation of the overall containment integrity. As a result, the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix J, Type A

test to be acceptable provided the general containment inspection (10 CFR Part 50, Appendix J, Section V.A.) is performed.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the environment (60 FR 39020).

This Exemption is effective upon issuance and shall expire after March 31, 1997, or at the completion of the 1997 refueling outage whichever comes first.

Dated at Rockville, Maryland, this 3rd day of August 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Deputy Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–20027 Filed 8–11–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–315]

Indiana Michigan Power Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–58, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Unit 1, located in Berrien County, Michigan.

The proposed amendment would modify technical specifications 4.4.5.4 and 4.4.5.5, on steam generators, to allow for repair of hybrid expansion joint sleeves under redefined repair boundary limits.

The licensee requested this change on an exigent basis because: (1) The change is associated with steam generator tube repairs during the Unit 1 refueling outage currently in progress, and (2) the empirical data compiled from the Kewaunee Nuclear Plant steam generator tube pulls in March 1995 is the primary support for this amendment and the final implications and conclusions from assessment of that data are just now being formulated. The Unit 1 tube repairs are currently scheduled to begin on August 29, 1995.

The NRC staff has reviewed and concurred with the licensee's reasons for requesting this amendment on an exigent basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the CNP [Donald C. Cook Nuclear Plant] unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Mechanical testing has shown that the inherent structural strength of the HEJ [hybrid expansion joint] provides sufficient integrity such that the tube rupture capability recommendations of RG [Regulatory Guide] 1.121 are met, even for instances of 100% throughwall, 360° circumferentially oriented degradation in the HEJ hardroll lower transition region. Structural integrity recommendations consistent with RG 1.121 are supplied for all tube degradation 1.1 inch or greater below the bottom of the HEJ hardroll upper transition. Based on test data, a bounding SLB [steam line break] leak rate of 0.033 gpm for indications between 1.1 and 1.3 inch below the bottom of the hardroll upper transition is applied. As the leakage data base is expanded and statistical basis established, this SLB leakage allowance may be reduced. For indications existing greater than 1.3 inch below the bottom of the hardroll upper transition, SLB event leakage can be neglected.

Additional prevention from tube rupture is inherently provided by the HEJ geometry. For RCS [reactor coolant system] release rates to exceed the normal makeup capacity of the plant, approximately 120 gpm, the tube must be postulated to experience a complete circumferential separation at the lower transition, and become axially displaced by 3 to 3.25 inches, resulting in complete geometric disassociation between the tube and sleeve resulting in sufficient flow area to support leakage of 120 gpm. During the 1989 plug top release event at North Anna unit 1, primary to secondary release rates were calculated to be less than 80 gpm, for a flow area approximately 4 times larger than the flow area created by a tube which has axially displaced by about 1.25 to 1.5 inch. Analysis of the steam generator indicates that at a 95% cumulative probability, the tube would experience an axial displacement of less than the 1.1 inch boundary. At this level of axial displacement, a ring of metal to metal contact would remain between the tube and sleeve, and leakage would be far less than 120 gpm. Projected leakage at this point is expected to be less than 2.5 gpm. Therefore, implementation of the proposed repair boundary will not result in tube rupture, even for a tube postulated to not behave as predicted by the available test and pulled tube data.

The proposed technical specification change to support the implementation of the HEJ sleeve tube repair boundary for parent tube degradation in the HEJ hardroll lower transition region does not adversely impact any other previously evaluated design basis accident or the results of accident analyses for the current technical specification minimum reactor coolant system flow rate. Plugging limit criteria are established using the guidance of RG 1.121. Furthermore, per RG 1.83 recommendations, the sleeved tube assembly can be monitored through periodic inspections with present eddy current techniques.

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the repair boundary will not introduce significant or adverse changes to the plant design basis. Mechanical testing of degraded sleeve joints supports the conclusions of the calculations that the sleeve retains structural (tube burst) capability consistent with RG 1.121. As with [the] initial installation of sleeves, implementation of the alternate criteria cannot interact with other portions of the RCS. Any hypothetical accident as a result of potential tube degradation in the HEJ hardroll lower transition region of the tube is bounded by the existing tube rupture accident analysis. Neither the sleeve design nor implementation of the tube repair boundary defined in Attachment 4 [Westinghouse Electric Corporation Proprietary Report, WCAP–14446] affects any other component or location of the tube outside of the immediate area repaired. In addition, as the installation of sleeves and the impact on current plugging level analyses is accounted for, any postulation that the alternate repair criteria for parent tube degradation in the HEJ hardroll lower transition creates a new or different type of accident is not supported.

(3) The proposed license amendment does not involve a significant reduction in a margin of safety.

The safety factors used in the establishment of the HEJ sleeved tube alternate repair boundary for the disposition of indications in the hardroll lower transition of potentially degraded parent tubes are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in steam generator design. Based on the sleeved tube geometry, it is unrealistic to consider that application of the repair boundary could result in single tube leak rates exceeding the normal makeup capacity during normal operating conditions. The repair boundary established in Attachment 4 has been developed using the methodology of RG 1.121. The performance characteristics of postulated degraded parent tubes of HEJ tube/sleeve joints have been verified by testing to retain structural integrity and preclude significant leakage during normal and postulated accident conditions. Testing indicates that postulated circumferentially separated tubes which the repair boundary addresses would not experience axial displacement during either normal operation or SLB conditions. The existing offsite dose evaluation performed for CNP unit 1 in support of the voltage based plugging criteria for axial ODSCC [outside diameter stress corrosion cracking] at TSP [tube support plate] intersections established a faulted loop primary to secondary leak rate of 12.6 gpm using technical specification dose equivalent Iodine-131 activity levels. Following implementation of the criteria, postulated leakage from all sources must not exceed 12.6 gpm in the faulted loop. Maintenance of this limit will ensure that offsite doses would not exceed the currently accepted limit of 10% of the 10 CFR [Part] 100 guidelines. The repair boundary uses a conservatively established "per indication" leak rate for estimation of SLB leakage. This leak rate is applied to all indications left in service as a result of the tube repair boundary, including non-throughwall indications and a limited number of indications of circumferential throughwall extent.

For a postulated indication whose performance is not characteristic of the test and pulled tube data, and which would experience axial displacement at the 95% cumulative probability value following a postulated SLB event with no operator intervention, leakage would not be expected to result in an uncontrolled release of reactor coolant in excess of normal makeup capacity.

For the three pulled tubes and nearly 1,000 crack indications detected in the field, there were no instances of degradation of elevations, (multiple expansion transitions) on either side of the hardroll expansion in the same tube. This includes no instances of non-detected degradation in the upper hydraulic and hardroll upper expansion transitions for the pulled tubes. One tube was identified in the most recent Kewaunee inspection with two separate circumferential crack elevations within the hardroll lower transition. Rapidly occurring degradation would not be expected at the upper transitions, based partly on the field inspection results. The available inspection results include two inspection programs (1994 and 1995) at Kewaunee and one at Point Beach unit 2 (1994). Through these three inspection programs, approximately 11,000 HEJ sleeved tubes have been inspected using advanced probes.

The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of Regulatory Guide 1.83.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 29, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific

sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 4, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room, located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 9th day of August 1995.

For The Nuclear Regulatory Commission.

Tae Kim,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–20112 Filed 8–11–95; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revised, or extension: Revision.

2. The title of the information collection: 10 CFR Parts 60, 72, 73, and 75—Safeguards for Spent Nuclear Fuel of High-Level Radioactive Waste, Proposed Rule.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: As safeguards events occur: Independent spent fuel storage installations, power reactors that have permanently ceased operations, DOE's monitored retrievable storage installations, and DOE's geologic repository operations area.

6. An estimate of the total number of respondents: none required.

7. An estimate of the total number of hours needed to complete the requirement or request: reporting—none; recordkeeping—none; total—none.

8. An indication whether Section 3504(h), Pub. L. 95–511 applies: Applicable.

9. Abstract: The Nuclear Regulatory Commission is proposing to amend its regulations for the safeguards of spent nuclear fuel or high-level radioactive waste. This action is necessary to clarify the safeguards requirements for spent nuclear fuel or high-level radioactive waste stored at independent spent fuel storage installations, power reactors that have permanently ceased operations, monitored retrievable storage installations, and a geological repository operations area.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs, (3150–0002,–0127,–0132), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda J. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 2nd day of August 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–20028 Filed 8–11–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–298]

Nebraska Public Power District; Cooper Nuclear Station; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (the Commission) is considering the revocation of an exemption from the requirements of Appendix R to 10 CFR Part 50 previously issued to the Nebraska Public Power District (NPPD or the licensee) for the Cooper Nuclear Station (CNS), located in Nemaha County, Nebraska.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revoke an exemption from the requirements of Section III.G of Appendix R to 10 CFR Part 50, previously issued to the licensee on September 21, 1983.

The proposed action is in accordance with the licensee's request for withdrawal of the exemption dated December 16, 1994.

The Need for the Proposed Action

The proposed action is needed to eliminate unnecessary commitment by the licensee to upgrade certain fire barriers, which was made in connection with the exemption in question regarding the Critical Switchgear Rooms 1F and 1G on the 932 foot elevation of the reactor building.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed revocation of exemption is appropriate. The revocation of the exemption would allow the licensee to change a previous commitment to upgrade the fire barriers for the electrical bus duct penetrations in Critical Switchgear Rooms 1F and 1G. This commitment formed part of the basis upon which the staff granted the previous exemption.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the requested withdrawal of the exemption. Denial of the requested action would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Cooper Nuclear Station, dated February 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on July 21, 1995, the staff consulted with the Nebraska State official, Ms. Julia Schmidt, Division of Radiological Health, Nebraska Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's request for withdrawal of exemption dated December 16, 1994, and the exemption dated September 21, 1983, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the Commission's Local Public Document Room at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 7th day of August 1995.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–20026 Filed 8–11–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice

Pursuant to 49 U.S.C. 44907 D(1), on May 4, 1995, I notified the government of the Philippines that I had determined the Ninoy Aquino International Airport, Manila, Philippines, did not administer and maintain effective security measures. On August 2, 1995, 90 days elapsed since my determination, and I have found that Ninoy Aquino International Airport still does not administer and maintain effective security measures. My determination is based on Federal Aviation Administration assessments which reveal that security measures used at the airport do not meet the standards established by the International Civil Aviation Organization.

Pursuant to 49 U.S.C. 44907 D(1), I have directed that a copy of this notice be published in the **Federal Register**, that my determination be displayed prominently in all U.S. airports regularly being served by scheduled air carrier operations, and that the news media be notified of my determination. In addition, as a result of this determination, all U.S. air carriers and foreign air carriers (and their agents) providing service between the United States and Ninoy Aquino International Airport must provide notice of my determination to any passenger purchasing a ticket for transportation between the United States and Ninoy Aquino International Airport, with such notice to be made by written material included on or with such ticket.

Dated: August 8, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–20016 Filed 8–11–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 95–70; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992, 1993, and 1994 General Motors Suburban Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992, 1993, and 1994 General Motors Suburban multi-purpose passenger

vehicles (MPVs) manufactured in Mexico are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTS) of a petition for a decision that 1992, 1993, and 1994 General Motors Suburban MPVs manufactured in Mexico that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 13, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 40 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1992, 1993, and 1994 General Motors Suburban MPVs are eligible for importation into the United States. The vehicles that Wallace believes are substantially similar are the 1992, 1993, and 1994 General Motors Suburban MPVs that were manufactured for sale in the United States and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1992, 1993, and 1994 General Motors Suburban MPVs to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that non-U.S. certified 1992, 1993, and 1994 General Motors Suburban MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1992, 1993, and 1994 General Motors Suburban MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls and Displays*, 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshiled Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 111 *Rearview Mirror*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 115 *Vehicle Identification Number*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1992, 1993, and 1994 General Motors Suburban MPVs comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standards No. 208 *Occupant Crash Protection:* installation of Type 2 lap and shoulder belts at each outboard seating position and a Type 1 lap belt at the center seating position on the rear passenger seat. The petitioner stated that the vehicles are equipped with Type 2 lap and shoulder belts at each outboard seating position on the front and middle passenger seats, and with a Type 1 lap belt in the center seating position on the middle passenger seat.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8: delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 9, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–20022 Filed 8–11–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Electronically–Available Information Sources on Economic Sanctions Programs

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department is issuing a list of sources of computer–accessible information for the public's use in keeping informed of and complying with the economic sanctions programs administered by the Office of Foreign Assets Control.

EFFECTIVE DATE: August 8, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis P. Wood, Chief, Compliance Programs Division (tel.: 202/622–2490), Office of Foreign Assets Control, Department of the Treasury, Annex, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is itself available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register** for downloading in WordPerfect 5.1, ASCII, and Postscript formats. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. Select self–extracting file "T11FR00.EXE" in TEL. The means of access to these information services are described in this notice.

Background

This notice describes various public and private information sources accessible by computer that provide information concerning the economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC"). Information available for reading or downloading includes notices of blockings, statutory and Executive order authorities, regulations, regulatory amendments, and lists of blocked entities, specially designated nationals, and specially designated terrorists. OFAC encourages the public to utilize these sources to remain current with developments in economic sanctions programs for informational and compliance purposes.

OFAC PUBLIC INFORMATION ACCESSIBLE BY COMPUTER

Sources Available to the General Public:

U.S. Treasury Department's Electronic Library ("TEL"):

The Treasury Department maintains a free electronic library called "TEL" on the FedWorld bulletin board, a service of the National Technical Information Service. TEL can be reached 24 hours a day, 7 days a week, using standard communications software and a modem, either directly, by dialing 703/321–3339, or over the Internet using one of the following protocols: Telnet = fedworld.gov (192.239.93.3); FTP Site = ftp.fedworld.gov (192.239.92.205); World Wide Web (Home Page) = http://www.fedworld.gov. Once access to FedWorld has been gained, select option "[C]," the "Business, Trade, and Labor Mall;" then "[E]," "Treasury's Electronic Library." OFAC files are available for downloading in camera–ready "*.PDF" format as well as in a self–extracting ASCII "*.EXE" format. Each bears the prefix "T11." OFAC's camera–ready brochure on Cuba, for example, is called "T11CUBA.PDF." OFAC's self–extracting ASCII file containing all of OFAC's brochures as well as the latest listing of *Specially Designated Nationals and Blocked Persons* (the "SDN list") in DOS–format is called "T11FAC00.EXE." A major advantage of TEL, besides Internet access, is that there is no charge to any user to download files. Adobe Acrobat Readers™ are available free to view and print the "*.PDF" files. Those needing a free Acrobat Reader™ may download the file from the Internal Revenue Service "utilities" library by typing the command "/go IRISGR" at FedWorld's main prompt. FedWorld's help desk number is 703/487–4608; the business office number is 703/487–4648.

U.S. Commerce Department's Economic Bulletin Board ("EBB")

The U.S. Department of Commerce operates an electronic bulletin board called the "EBB." The EBB can be reached 24 hours a day, 7 days a week, using standard communications software and a modem, either directly, by dialing 202/482–3870 (for 2400 bps connections) or 202/482–2584 or 202/482–2167 (for 9600 bps connections), or over the Internet using the Telnet protocol: Telnet = ebb.stat–usa.gov. A free, limited–access service is available to those who are unfamiliar with the Commerce Board. Otherwise, access is by subscription at a nominal charge. The EBB is used extensively by U.S. exporters seeking information on trade leads. All OFAC publications in ASCII format, including the very latest version of the alphabetized SDN listings, are available for downloading from "File Area #17" on the Board. Commerce Department Export Denial Order information is also available in the same general file area. OFAC sheets can be individually downloaded by the public or all OFAC informational material can be transferred as a compressed self–extracting DOS archive file called "FACDATA.EXE." Once an individual accesses the Board, all that needs to be done to locate OFAC material is to choose "F" from the main menu to access a FILES subsystem, then choose "L" for LIST, and type "17" for OFAC. The EBB's Help Line is 202/482–1986 (Monday to Friday, 8:30 a.m. through 4:30 p.m. Eastern Time).

U.S. Commerce's National Trade Data Bank ("NTDB")

The U.S. Department of Commerce operates a CD–Rom service providing a massive amount of international trade information on a monthly basis to small and medium sized companies. There is a nominal charge for a subscription. The CD–Rom service is also available free of charge at Commerce offices nationwide as well as nearly 1,000 Federal depository libraries. OFAC data is in ASCII format and fully searchable. For information, call 202/482–1986.

U.S. Commerce's STAT–USA/FAX

The U.S. Department of Commerce operates an automated fax–on–demand service that includes OFAC data. Users can call 202/482–0005 from a fax machine's handset 24 hours a day, 7 days a week. For a nominal subscription charge, subscribers are entitled to 6 files per day without size restrictions. OFAC is posting in print ("camera ready") copy the latest listing of *Specially Designated Nationals and Blocked Persons*, cumulative *Changes to the Listing of Specially Designated Nationals and Blocked Persons*; and OFAC's brochure entitled *Foreign Assets Control Regulations for Exporters and Importers.*

World Wide Web ("WWW")

All of OFAC's program brochures, as well as SDN list information, is available in downloadable camera–ready Adobe Acrobat™ "*.PDF" format to subscribers to the U.S. Commerce Department's World Wide Web Server (STAT–USA/Internet) with access at //www.stat–use.gov. For information call 202/482–1986.

OFAC is in the final stages of developing a new service to provide direct Internet access to OFAC's information over a Treasury World Wide Web Server and plans to coordinate update notices with a

Federal Web Locator. Details will be published as soon as available.

U.S. Government Printing Office's *The Federal Bulletin Board*

The U.S. Government Printing Office ("GPO") operates *The Federal Bulletin Board*, which can be accessed 24 hours a day, 7 days a week, by direct dialing 202/512–1387 from a modem using any communications software. Type "/GO FAC." The system detects modem speed. Access over the Internet is available using the Telnet protocol: Telnet = federal.bbs.gpo.gov 3001. (The "[space] 3001" is important as it specifies the proper "entry" port for Telnet.) User assistance is available from 7:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday by calling 202/512–1530. OFAC's information is located in a series of file libraries for downloading in ASCII, WordPerfect, and "*.PDF" or "Postscript" formats, and includes, in addition to OFAC brochures and SDN lists, the full text of OFAC sanctions regulations as published in chapter V of Title 31, Code of Federal Regulations, statutory and Executive order authority for OFAC sanctions, and every **Federal Register** notice, rule, or policy statement OFAC publishes. **Federal Register** notices are posted electronically to the Board at the same time they are printed in the **Federal Register**. The file libraries from which users may download information are: "FAC31CFR" (containing the most recent annual text of chapter V, Title 31, CFR), "FAC—31FR" (containing OFAC's **Federal Register** documents), "FAC—BRO" (containing all of OFAC's brochures as well as a comprehensive self–extracting "*.EXE" file of brochures and SDN lists in DOS format), "FAC—MISC" (containing press releases and special items, such as the Libyan bank chart), and "FAC—SDN" (containing the very latest releases of the master SDN lists as well as a comprehensive self–extracting "*.EXE" file of all brochures and SDN lists in DOS format). User pricing for The Federal Bulletin Board is based on the size of files downloaded. Contact the GPO for information: 202/512–1530.

U.S. Maritime Administration's Marlinespike Bulletin Board System

The U.S. Maritime Administration operates a free electronic bulletin board called "Marlinespike" which can be accessed via modem at 202/366–8505, with voice help at 202/366–9991. OFAC's brochures and SDN information can be scanned on–line or downloaded for further use.

U.S. Customs Service's Customs Electronic Bulletin Board

The U.S. Customs Service maintains a free Customs Electronic Bulletin Board geared especially toward customs house brokers. OFAC's information is available as a date–specific self–extracting DOS file ("OFAC*.EXE" in File Area #15, "Customs Extra!"). Modem access is at 703/440–6155, with voice system support at 703/440–6236.

Sources Available to Banks:

U.S. Council on International Banking ("USCIB"—headquartered in New York)

The U.S. Council on International Banking is a nationwide banking industry interest group concentrating on the international banking operations area. Member banks have free access to the USCIB's electronic bulletin board, *INTERCOM*. All OFAC publications, including the latest alphabetized SDN listings, are available to be downloaded from the "MAIN Conference" on *INTERCOM*. OFAC files can be individually downloaded by banks in camera–ready "*.PDF" format, or all of them can be transferred as a compressed self–extracting ASCII archive file called "OFAC*.EXE." In addition, OFAC announces via system bulletins all major sanctions actions as they occur.

International Banking Operations Association ("IBOA"—headquartered in Miami)

The International Banking Operations Association is a membership organization of banks in the southern United States. IBOA has a "Wildcat" bulletin board which includes, in its Regulatory Conference, a compressed self–extracting ASCII archive file called "OFAC*.EXE" containing all OFAC publications, as well as the latest SDN listings. Individual brochures may also be downloaded by users as camera–ready copy in "*.PDF" format. System bulletins are posted on IBOA's board covering major sanctions actions as they occur.

Clearing House Interbank Payments System (New York Clearing House Association)

The Clearing House Interbank Payments System "CHIPS" maintains a special bulletin board specifically to receive and sort OFAC SDN information. Bankers should contact the The New York Clearing House Association for information. In addition, system bulletins are electronically transmitted to CHIPS regarding all major sanctions actions for immediate broadcast to members.

Office of the Comptroller of the Currency's *OCC Information Line*

The Office of the Comptroller of the Currency operates a special 24–hour–a–day fax–on–demand service for National banks and examiners. The computer–based system provides copies of documents from any touchtone phone by calling 202/479–0141 and following voice prompts. OCC's Communications Division may be reached at 202/874–4960. Documents regularly updated on the system include OFAC's listing of *Specially Designated Nationals and Blocked Persons* split alphabetically into two files, A–K and L–Z; cumulative *Changes to the Listing of Specially Designated Nationals and Blocked Persons*, and OFAC's *Foreign Assets Control Regulations for the Financial Community*.

Bank Regulatory Agencies

OFAC provides official electronic notice regarding major sanctions actions to some 5000 on–line Fedwire depository institutions through the Federal Reserve Bank of New York. The message from the New York Fed is retransmitted through each Federal Reserve District. Such messages are limited to 14 lines of 80 characters. (OFAC also distributes from time to time printed copies of important sanctions information to depository institutions throughout the United States through each of the Federal bank regulatory agencies.)

Dated: July 27, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 2, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–19949 Filed 8–8–95; 3:19 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of meeting

The Department of Veterans Affairs gives notice that a meeting of the Special Medical Advisory Group, authorized by Title 38, U.S.C., Section 7312, will be held at the Department of Veterans Affairs, Room 230, 810 Vermont Avenue, N.W., Washington, D.C., on August 31, 1995.

The meeting will convene at 8:30 a.m. (EST) and adjourn at approximately 4:00 p.m. (EST). The meeting will be open to the public up to the seating capacity of the room. Those wishing to attend should contact Susan Hall, Office of the Deputy Under Secretary for health, at 202–273–5813, no later than August 25.

The committee objective is to advise the Secretary of Veterans Affairs, through the Under Secretary for Health,

relative to the care and treatment of disabled veterans and other matters pertinent to the Veterans Health Administration.

The following is the intended agenda for the meeting:

Agenda

8:30
Call to order and introductions
Minutes from 5/10/95 meeting Status of recommendations
8:45–9:10
Update–Vision for Change
9:10–12:00
Discussion:
Restructuring of VHA/Academic Affiliations
12:00–1:15
Lunch
1:15–3:45
Discussion:
Research Options for Restructuring
3:45–4:00
Closing summary and remarks
4:00
Adjourn

Dated: August 1, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–19943 Filed 8–11–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 156
Monday, August 14, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the September 14, 1995 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Tuesday, September 12, 1995 at 2:15 p.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: August 9, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–20162 Filed 8–10–95; 3:04 pm]
BILLING CODE 6705–01–P–M

VOL 60 SS 156 AG 14 995 UMI

federal register

Monday
August 14, 1995

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 411

Medicare Program; Physician Financial Relationships With, and Referrals to, Health Care Entities That Furnish Clinical Laboratory Services; Financial Relationship Reporting Requirements: Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 411

[BPD–674–FC]

RIN: 0938–AF40

Medicare Program; Physician Financial Relationships With, and Referrals to, Health Care Entities That Furnish Clinical Laboratory Services and Financial Relationship Reporting Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period provides that, if a physician or a member of a physician's immediate family has a financial relationship with an entity, the physician may not make referrals to the entity for the furnishing of clinical laboratory services under the Medicare program, except under specified circumstances. It contains revisions to our proposal of March 11, 1992, based on comments submitted by the public. Further, it incorporates the new expansions and exceptions created by the Omnibus Budget Reconciliation Act of 1993 and the amendments in the Social Security Act Amendments of 1994 (SSA '94), that are related to referrals for clinical laboratory services and have a retroactive effective date of January 1, 1992.

In addition, we are responding to comments received on the interim final rule with comment period (published on December 3, 1991) that set forth Medicare reporting requirements for the submission by certain health care entities of information about their relationships with physicians. That document implemented the reporting requirements of section 1877(f) of the Social Security Act. This rule revises those requirements to incorporate the amendments to section 1877(f) made by SSA '94, to apply to any further reporting we may require.

EFFECTIVE DATES: The regulations are effective September 13, 1995.

Comment Date: Comments on the new provisions added by the Omnibus Budget Reconciliation Act of 1993 and any changes in section 1877 that resulted from the Social Security Act Amendments of 1994 will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 13, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–674–FC, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C–5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–674–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of the comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503.

Copies: To order copies of the **Federal Register** containing this document, send your request to the Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing your Visa or Master Card number and expiration date to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Betty Burrier, (410) 786–0191.

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this final rule, we are providing the following table of contents:

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I. Legislation and Regulations—Chronological Background

In section 6204 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Public Law 101–239, enacted on December 19, 1989), the Congress added a provision to the Social Security Act (the Act) that governs whether physicians who have financial relationships (or who have immediate family members with financial relationships) with a health care entity can refer Medicare patients to that entity for clinical laboratory services. This provision was amended by section 4207(e) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public Law 101–508, enacted on November 5, 1990); section 13562 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Public Law 103–66, enacted on August 10, 1993); and section 152 of the Social Security Act Amendments of 1994 (SSA '94) (Public Law 103–432, enacted on October 31, 1994). As discussed below, we published an interim final rule in 1991 concerning financial relationship reporting requirements, and we published a proposed rule in 1992 concerning physician referrals to clinical laboratories.

A. OBRA '89

Section 6204 of OBRA '89 added section 1877, "Limitation on Certain Physician Referrals," to the Act. (Unless otherwise indicated, all references below to various sections of the law are references to the Act.) In general, section 1877 as added by OBRA '89 prohibits a physician with a financial relationship with an entity that furnishes clinical laboratory services (or a physician with an immediate family member who has such a relationship) from making a referral to that entity for clinical laboratory services for which Medicare would pay. It also prohibits the entity from billing Medicare, an individual, a third-party payor, or other entity for an item or service furnished as a result of a prohibited referral. Additionally, it requires a refund of any amount collected from an individual as the result of a billing for an item or service furnished under a prohibited referral. The statute provides for certain exceptions to the prohibition.

B. OBRA '90

Section 4207(e) of OBRA '90 amended certain provisions of section 1877 to clarify definitions and reporting requirements relating to physician ownership and referral and to provide an additional exception to the prohibition.

C. Federal Register Documents

On December 3, 1991, we published an interim final rule in the **Federal Register**, at 56 FR 61374, that set forth reporting requirements under the Medicare program for health care entities furnishing clinical laboratory services (and certain other services as discussed below) to submit information about their relationships with physicians. On March 11, 1992, we published a proposed rule in the **Federal Register**, at 57 FR 8588, that proposed regulations concerning the provisions of section 1877, as amended by OBRA' 90, concerning physician referrals to clinical laboratories. Although we summarize the provisions of the interim final rule and proposed rule in section II of this document, readers may want to refer to the interim final rule and proposed rule for additional information on the statutory provisions as amended by OBRA '90 and for the specifics of our proposals.

D. OBRA '93 and SSA '94

Section 13562 of OBRA '93 included extensive revisions to section 1877. Some of the revisions simply elaborate on or amend existing law, while others institute entirely new provisions. With regard to referrals for clinical laboratory services, some of the provisions of OBRA '93 have a prospective effective date of January 1, 1995, while others have a retrospective effective date of January 1, 1992. Most dramatically, section 13562 extends section 1877 to cover 10 additional designated health services, beginning with referrals made after December 31, 1994.

In addition, section 13624 added paragraph (r) to section 1903. This section extends certain provisions of section 1877 to the Medicaid program effective on or after December 31, 1994. That is, this section prohibits Medicaid payments to a State for designated health services furnished on the basis of a referral that would result in the denial of payment under Medicare if Medicare provided for coverage of the service to the same extent and under the same terms and conditions as under the State plan. This section also provides that the reporting requirements under 1877(f) and the civil money penalty provisions for failure to report information under section 1877(g)(5) apply to entities that furnish services covered under the Medicaid program in the same manner as they apply to entities that furnish Medicare covered services.

SSA '94 amended the reporting requirements that entities providing Medicare (and now Medicaid) items and services have to meet for purposes of the referral prohibition, changed some of the designated health services, and altered the effective date provisions in OBRA '93. The changes in the effective date provisions have altered the dates on which some of the provisions relating to referrals for clinical laboratory services go into effect prior to January 1, 1995. These changes have been reflected in this final rule.

A separate notice of proposed rulemaking will be published to address those provisions of OBRA '93 that relate to designated health services (including clinical laboratory services) and that become effective January 1, 1995. In other words, the discussion in this

preamble and the regulations established as a result of the publication of this final rule with comment period are in the context of referrals for clinical laboratory services and address only those provisions of section 1877 that are effective as of January 1, 1992.

Even though we will cover the designated health services under a separate proposed rule, this final rule with comment will affect how we review referrals involving any of the designated health services. The statute groups clinical laboratory services together with all other designated health services beginning on January 1, 1995. Generally, the prohibition in the statute and the exceptions are drafted so that they apply equally to situations involving referrals for any of the designated health services, including referrals for clinical laboratory services. As a result, we believe that a majority of our interpretations in this final rule with comment will apply to the other designated health services.

Until we publish a rule covering the designated health services, we intend to rely on our language and interpretations in this final rule when reviewing referrals for the designated health services in appropriate cases. We believe appropriate cases are those in which our interpretations of the statute clearly apply equally to referrals for clinical laboratory services and other designated health services. For example, we have defined the term "immediate family member" for purposes of this final rule with comment. We will be guided by this definition when we review referrals for the designated health services.

The following discussion covers the basic prohibition in section 1877 and fundamental concepts and definitions, while it highlights the changes to section 1877 made by OBRA '93, as amended by SSA '94, that relate to clinical laboratory services and that became effective on January 1, 1992.

1. General Prohibition

The prohibition of certain referrals is contained at section 1877(a)(1) of the Act. The provisions of that section remained unchanged by OBRA '93 until January 1, 1995. With certain exceptions, section 1877(a)(1)(A) prohibits a physician from making a referral to an entity for the furnishing of clinical laboratory services, for which Medicare would otherwise pay, if the physician (or a member of the physician's immediate family) has a financial relationship with that entity. ("Financial relationship," as described by the Act, is discussed under I.D.4, below.) Further, section 1877(a)(1)(B) prohibits an entity from presenting or causing to be presented a Medicare claim or bill to any individual, third party payor, or other entity for clinical laboratory services furnished under a prohibited referral.

2. Definition of Referral

The definition of "referral," as it relates to clinical laboratory services, was not changed by OBRA '93. Section 1877(h)(5) specifies that the following requests constitute a referral:

- For physicians' services, the request by a physician for an item or service for which payment may be made under Medicare Part B, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician).
- For other items, the request or establishment of a plan of care by a physician that includes the furnishing of clinical laboratory services.

Under section 1877(h)(5)(C), however, a referral does not include a request by a pathologist for clinical diagnostic laboratory tests and pathological examination services if the services are furnished by (or under the supervision of) the pathologist as a result of a consultation requested by another physician.

3. Definitions of Compensation Arrangement and Remuneration

The predecessor provision of section 1877(h)(1) (that is, section 1877(h)(1) as it read before the enactment of OBRA '93) defines a "compensation arrangement" as any arrangement involving any remuneration between a physician (or an immediate family member) and an entity. It defines "remuneration" to include any remuneration, directly or indirectly, overtly or covertly, in cash or in kind. OBRA '93 amends section 1877(h)(1) by adding paragraph (h)(1)(C) to enumerate certain exceptions to the above definition of compensation arrangement. Paragraph (h)(1)(C) specifies that a compensation arrangement does not include the following types of remuneration:

- The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.
- The provision of items, devices, or supplies that are used solely to—
  + Collect, transport, process, or store specimens for the entity providing the item, device, or supply; or
  + Order or communicate the results of tests or procedures for the entity.
- A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee-for-service basis, for the furnishing of health services by that physician to an individual who is covered by a policy with the insurer or by the self-insured plan, if—
  + The health services are not furnished, and the payment is not made, under a contract or other arrangement between the insurer or the plan and the physician;
  + The payment is made to the physician on behalf of the covered individual and would otherwise be made directly to the individual;
  + The amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals; and
  + The payment meets other requirements the Secretary may impose by regulation as needed to protect against Medicare program or patient abuse.

4. Financial Relationships

Under OBRA '93, section 1877(a)(2) continues to describe a financial relationship between a physician (or an immediate family member of a physician) and an entity as being an ownership or investment interest in the entity or a compensation arrangement between a physician (or immediate family member) and the entity. The statute also continues to provide that an ownership or investment interest may be established through equity, debt, or other means. (Note that effective for referrals made on or after January 1, 1995, OBRA '93 provides that an ownership or investment interest also includes an interest in an entity that holds an ownership or investment interest in any entity furnishing the clinical laboratory service or other designated health services.)

5. General Exceptions to the Prohibition on Physician Referrals

Section 1877(b) provides for general exceptions to the prohibition on referrals. (General exceptions are exceptions that apply to both ownership/investment and compensation.) Because these exceptions frequently refer to a "group practice," we begin our discussion of the exceptions by describing "group practice" as defined by the statute at section 1877(h)(4).

Until January 1, 1995, OBRA '93 continued to define "group practice" as a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association, that meets the following conditions:

- Each physician member of the group furnishes substantially the full range of services that the physician routinely furnishes, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel.
- Substantially all of the services of the physician members of the group are furnished through the group, are billed in the name of the group, and amounts so received are treated as receipts of the group.
- The overhead expenses of and the income from the practice are distributed in accordance with methods previously determined. (OBRA '93 eliminates the requirement that the methods be previously determined by members of the group.)
- The group practice complies with all other standards established by the Secretary in regulations.

In addition, OBRA '93 amended section 1877(h)(4). The predecessor provision of section 1877(h)(4) provided that, in the case of a faculty practice plan associated with a hospital with an approved medical residency training program in which physician members may furnish a variety of different specialty services and furnish professional services both within and outside the group, as well as perform other tasks such as research, the conditions contained in the definition of "group practice" apply only with respect to the services furnished within the faculty practice plan. OBRA '93 added, as an addition to a faculty practice plan associated with a hospital, a faculty practice plan associated with an institution of higher education or a medical school.

(Note that OBRA '93 makes other changes to the definition of group practice that will become effective January 1, 1995.)

a. Exception—Physicians' Services

Section 1877(b)(1) continues to specify that the prohibition does not apply to services furnished on a referral basis if the services are physicians' services, as defined in section 1861(q), furnished personally by (or under the personal supervision of) another physician in the same group practice (as defined in section 1877(h)(4)) as the referring physician.

b. Exception—In-Office Ancillary Services

Section 1877(b)(2) continues to specify that the prohibition does not apply to referrals for certain in-office ancillary services. Both the predecessor provisions and current provisions of section 1877(b)(2) contain requirements that must be met in order for the exception to apply. These requirements concern who may furnish the services, where the services are furnished, and how the services must be billed.

Who May Furnish the Services

Under the predecessor provisions of section 1877(b)(2)(A)(i), the services had to be personally furnished by the referring physician, a physician who was a member of the same group as the referring physician, or individuals employed by the physician or group practice and who were personally supervised by the physician or by another physician in the group practice. OBRA '93 amends this provision to require that the individual performing the service be *directly* supervised by the physician or by another physician in the group practice and dropped the employment requirement.

Where the Services May Be Furnished

The predecessor provision of section 1877(b)(2)(A)(ii) required that the services be furnished in either of the following:

- A building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of clinical laboratory services.
- In the case of a referring physician who is a member of a group practice, in another building that is used by the group practice for the centralized provision of the group's clinical laboratory services.

OBRA '93 amended this provision to require, in the group practice situation, that the building be used for the provision of some or all of the group's clinical laboratory services. That is, this provision no longer requires that the provision of laboratory services be centralized at that site.

The statute contains an undesignated paragraph at the end of the group practice location requirements that reads as follows: "unless the Secretary determines other terms and conditions under which the provision of such services does not present a risk of program or patient abuse, * * *"

We believe that, because of the way the paragraph is indented, how it applies to the in-office ancillary services exception is ambiguous. It could apply to all of paragraph (b)(2)(A)(ii) or apply to only paragraph (b)(2)(A)(ii)(II). If it applies to all of paragraph (b)(2)(A)(ii), it would affect both solo and group practitioners. If it applies to only paragraph (b)(2)(A)(ii)(II), it would affect only group practices.

The Conference Report that accompanied OBRA '93 (H. Rep. No. 213, 103rd Cong., 1st Sess. 810 (1993)) points out that the conference agreement includes an exception for clinical laboratory services provided by a group practice that has multiple office locations. The Report also says that the conferees expect that the Secretary will publish regulations specifying other terms and conditions under which group practices may qualify for a group practice exception to the general prohibition. Arguably, the Congress had only group practices in mind in drafting the provision at issue. Therefore, we believe that the undesignated paragraph applies to only paragraph (b)(2)(A)(ii)(II), which concerns the site requirements as they relate to a group practice.

In addition, this paragraph could be read to mean that the Secretary is allowed to *liberalize* the circumstances in paragraph (b)(2)(A)(ii)(II) (the building/location requirements) if she determines that there are other, additional "terms and conditions" under which an entity can provide services without presenting a risk of program or patient abuse. In this case, the interpretation would not appear redundant with the undesignated paragraph that follows at the end of section 1877(b)(2)(B), which authorizes the Secretary to impose additional "requirements" for application of the in-office exception.

We could also interpret "other terms and conditions" as including any different terms or conditions, whether they are more restrictive or more liberal, that the Secretary may add to the list in paragraph (b)(2)(A)(ii) or in (b)(2)(A)(ii)(II). However, more restrictive conditions could make the two undesignated paragraphs redundant.

Alternatively, the paragraph following section 1877(b)(2)(A)(ii)(II)(bb) could be read to mean that the circumstances in (b)(2)(A)(ii) must be met for the exception to apply unless the Secretary determines *other* terms and conditions under which there will be no patient or program abuse, and which should be substituted for the list of conditions in (b)(2)(A)(ii). We do not believe that this reading would conflict with the paragraph that follows section 1877(b)(2)(B), because the Secretary could then still add more requirements to the list of those in paragraph (b)(2)(A)(ii) (with (b)(2)(A)(ii) now consisting of the Secretary's substitutions). Therefore, it is our

interpretation that this paragraph is intended to provide for the possibility of a liberalization of the conditions as described in section 1877(b)(2)(A)(ii)(II). At this time, we are not imposing any additional terms or conditions for the application of this provision, and we solicit comments on this issue.

Billing

Section 1877(b)(2)(B) continues to require that the ancillary services be billed by one of the following:

- The physician performing or supervising the services.
- A group practice of which the performing or supervising physician is a member.
- An entity that is wholly owned by the physician or group practice.

(Note that, effective January 1, 1995, the statutory definition of group practice requires that a group practice bill under a billing number assigned to the group.)

c. Exception—Certain Prepaid Health Plans

Section 1877(b)(3) continues to specify that the prohibition on referrals does not apply to services furnished to their enrollees by Medicare-contracting health maintenance organizations (HMOs), Medicare-contracting competitive medical plans (CMPs), and prepaid health care organizations under a contract or agreement with us. OBRA '93 expands the exception to apply it to services furnished to their enrollees by Federally-qualified HMOs. (The Federally-qualified HMOs are not required to have a contract or agreement with us in order for the exception to apply.)

d. Exception—Hospital Financial Relationship Unrelated to the Provision of Clinical Laboratory Services

Before the enactment of OBRA '93, section 1877(b)(4) provided a general exception to the prohibition in the case of a financial relationship with a hospital if the financial relationship did not relate to the provision of clinical laboratory services. OBRA '93 omitted this general exception, replacing it with section 1877(e)(4). Section 1877(e)(4) provides that remuneration from a hospital to a physician that is unrelated to the provision of clinical laboratory services does not constitute compensation that would trigger the prohibition on referrals. However, SSA '94 revised the effective date provision in section 13562(b)(2)(B) of OBRA '93. This effective date provision now states that section 1877(b)(4) continues to apply until January 1, 1995 as it was in effect before OBRA '93.

e. Other Exceptions

Section 1877(b) (currently at (b)(4)) continues to authorize the Secretary to provide in regulations for additional exceptions for financial relationships, beyond those specified in the statute, if she determines they do not pose a risk of Medicare program or patient abuse.

6. Exceptions Applicable Only to Financial Relationships Consisting of Ownership or Investment Interests

OBRA '93 continues to provide that certain ownership or investment interests do not constitute a "financial relationship" for purposes of the section 1877 prohibition on referrals.

a. Exception—Certain Investment Securities and Shares

Before OBRA '93, section 1877(c) contained an exception for ownership of investment securities, provided they were purchased on terms generally available to the public and were in a corporation that was (1) listed for trading on various specified stock exchanges and (2) had, at the end of the corporation's most recent fiscal year, total assets exceeding $100 million. These provisions were reflected in the proposed rule.

OBRA '93 has modified this provision in several ways. First, investment securities no longer have to be those purchased on terms generally available to the public; they must only be those which "may be purchased" on terms generally available to the public. Second, the securities can be those listed on additional exchanges, including any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis.

Third, the investment securities no longer have to be in a corporation with $100 million in total assets at the end of a fiscal year; now the holdings of the corporation must be measured in terms of "stockholder equity," and the amount has been modified from $100 million to $75 million. This amount can now either be measured at the end of the most recent fiscal year or based on the corporation's average during the previous 3 fiscal years.

Finally, OBRA '93 extends the exception to apply to mutual funds, exempting ownership of shares in a regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, if the company had, at the end of its most recent fiscal year, or on average during the previous 3 fiscal years, total assets exceeding $75 million.

Under the effective date provisions of OBRA '93, the amended version of section 1877(c) was not effective until January 1, 1995. SSA '94 revised the effective date provision to make the amended version of section 1877(c) effective retroactively to January 1, 1992; however, the revised effective date provision states that, prior to January 1, 1995, the amended section 1877(c) does not apply to any securities of a corporation that meets the requirements of section 1877(c)(2) as they appeared prior to OBRA '93. Section 1877(c)(2), prior to OBRA '93, contained the requirement that a corporation have $100 million in total assets. This final rule reflects the amended version of section 1877(c). It also specifies that, until January 1, 1995, ownership of investment securities in a corporation with $100 million in total assets can also qualify for the exception.

b. Exception—Ownership or Investment Interest in Certain Health Care Facilities

Section 1877(d) continues to provide additional exceptions to the prohibition on physician referrals for an ownership or investment interest of a physician (or an immediate family member of the physician) in three types of facilities:

- A hospital located in Puerto Rico.
- A laboratory located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined in section 1886(d)(2)(D)).
- A hospital outside of Puerto Rico if the referring physician is authorized to perform services at the hospital and the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

(Note that OBRA '93 contains changes to the above provisions that became effective on January 1, 1995. These extend the exceptions to designated health services and modify the exception for rural providers. Before OBRA '93, the exception applied if the laboratory furnishing the services is in a rural area (as defined in section 1886(d)(2)(D). The statute now provides that the exception applies in the case of designated health services furnished in a rural area (as defined in section 1886(d)(2)(D)) by an entity, if substantially all of the designated health services furnished by the entity are furnished to individuals residing in the rural area.

7. Exceptions Applicable Only to Financial Relationships Consisting of Certain Compensation Arrangements

Section 1877(e) continues to provide that certain compensation arrangements are not considered a "financial relationship" for purposes of the prohibition on physician referrals.

a. Exception—Rental of Office Space

OBRA '93 amends the exception in section 1877(e)(1) for payments made by a lessee to a lessor for the use of office space, but delayed the effective date of the amendments until January 1, 1995. Section 152(c) of SSA '94 amends the effective date provision for OBRA '93 to eliminate this delay. The amended version of this exception now contains a requirement that the rented space not exceed that which is reasonable and necessary for the legitimate business purposes of the lease and that the space be used exclusively by the lessee during the lease. In addition, the exception now allows a lessee to pay for common areas shared with other occupants. Specifically, this provision states that payments made by a lessee to a lessor for the use of a premises do not constitute a compensation arrangement that would trigger the prohibition on referrals if the following conditions are met:

- The lease is set out in writing, signed by the parties, and specifies the premises covered by the lease.
- The space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of common areas if these payments do not exceed the lessee's pro rata share of expenses for that space based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using the common areas.
- The lease provides for a term of rental or lease for at least 1 year.
- The rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of referrals or other business generated between the parties.
- The lease would be commercially reasonable even if no referrals were made between the parties.
- The lease meets any other requirements the Secretary may impose by regulation as needed to protect against program or patient abuse.

b. Exception—Rental of Equipment

OBRA '93 added a new provision, section 1877(e)(1)(B), effective January 1992, that excepts from the definition of compensation arrangements payments made by a lessee of equipment to the lessor of the equipment for the use of the equipment if the following conditions are met:

- The lease is set out in writing, signed by the parties, and specifies the equipment covered by the lease.
- The equipment rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the rental or lease and is used exclusively by the lessee when being used by the lessee.
- The lease provides for a term of rental or lease of at least 1 year.
- The rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.
- The lease would be commercially reasonable even if no referrals were made between the parties.
- The lease meets any other requirements the Secretary may impose by regulation as needed to protect against Medicare program or patient abuse.

c. Exception—Bona Fide Employment Relationship

The predecessor provision of section 1877(e)(2) provided that an arrangement between a hospital and a physician (or the physician's immediate family member) for the employment of the physician (or family member) or for the provision of administrative services would not trigger the prohibition on referrals if certain conditions (detailed in the March 1992 proposed rule) were met. OBRA '93 amended this exception to make it applicable to any bona fide employment relationship with any employer that meets the same conditions.

d. Exception—Personal Service Arrangements

The predecessor provision of section 1877(e)(3) provided that remuneration from service arrangements with entities (other than hospitals) does not constitute a compensation arrangement for purposes of the prohibition on referrals if certain conditions (detailed in the March 1992 proposed rule) are met. This exception was limited to an arrangement for one of five specific types of services. OBRA '93 amended this provision to specify that remuneration from any entity under any kind of personal service arrangement (including remuneration for specific physicians' services furnished to a nonprofit blood center) would not constitute compensation that would trigger the prohibition on referrals if the following conditions are met:

- The arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement.
- The arrangement covers all of the services to be furnished by the physician (or immediate family member of the physician) to the entity.
- The aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement.
- The term of the arrangement is for at least 1 year.
- The compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value and, except in the case of a physician incentive plan (as described below), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.
- The services to be performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law.
- The arrangement meets any other requirements the Secretary may impose by regulation as needed to protect against Medicare program or patient abuse.

Section 1877(e)(3)(B) provides that, in the case of a physician incentive plan between a physician and an entity, the compensation may be determined in a manner (through a withhold, capitation, bonus, or otherwise) that takes into account, directly or indirectly, the volume or value of any referrals or other business generated between the parties if the plan meets the following requirements:

- No specific payment is made (directly or indirectly) under the plan to a physician or a physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity.
- If the plan places a physician or a physician group at substantial financial risk as determined by the Secretary under section 1876(i)(8)(A)(ii), the plan complies with any requirements the Secretary may impose under that section.

In addition, section 1877(e)(3)(B)(i)(III) requires the entity, upon request by the Secretary, to provide access to descriptive information regarding the plan, in order to permit the Secretary to determine whether the plan is in compliance with the requirements listed above.

Section 1877(e)(3)(B)(ii) defines a "physician incentive plan" as any compensation arrangement between an entity and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the entity.

On December 14, 1992, we published, at 57 FR 59024, our proposed rule on physician incentive plans. Because there may be entities that were not affected by the proposed rule at the time it was published but are now affected, we plan to publish the final rule with a 60-day comment period so that these newly-affected entities have an opportunity to comment.

As the result of section 152(c) of SSA '94, until January 1, 1995, the provisions in section 1877(e)(3) do not apply to any arrangements that meet the requirements of subsection (e)(2) or (e)(3) of section 1877 of the Act before they were amended by OBRA '93.

e. Exception—Remuneration Unrelated to Provision of Clinical Laboratory Services

Before OBRA '93, section 1877(b)(4) provided an exception for financial relationships (ownership/investment interests or compensation arrangements) with a hospital unrelated to the provision of clinical lab services. OBRA '93 omits this exception, but replaces it with section 1877(e)(4), which excepts remuneration provided by a hospital to a physician if it is unrelated to the provision of clinical laboratory services. Section 152(c) of SSA '94 amends section 13562(b)(2)(B) of OBRA '93 to reinstate, until January 1, 1995, section 1877(b)(4) as it appeared before OBRA '93.

f. Exception—Physician Recruitment

OBRA '93 retains, at section 1877(e)(5), the provision previously at section 1877(e)(4). The provision provides that remuneration from a hospital to a physician to induce the physician to relocate to the area serviced by the hospital in order to be a member of the hospital's medical staff does not constitute a compensation arrangement for purposes of the prohibition on referrals if certain conditions (detailed in the March 1992 proposed rule) are met.

g. Exception—Isolated Transaction

OBRA '93 retains, at section 1877(e)(6), the provision previously at section 1877(e)(5). The provision provides that an isolated financial transaction, such as a one-time sale of property or (as added by OBRA '93) a practice, is not considered to be a compensation arrangement for purposes of the prohibition on referrals if certain conditions (detailed in the March 1992 proposed rule) are met.

h. Salaried Physicians in a Group Practice

OBRA '93 removed, effective January 1, 1992, the provision previously at section 1877(e)(6). That provision had specified that a compensation arrangement involving payment by a group practice of the salary of a physician member of the group practice did not constitute a compensation arrangement that would trigger the prohibition on referrals.

i. Exception—Certain Group Practice Arrangements With a Hospital

OBRA '93 added a new section 1877(e)(7) that provides, effective January 1, 1992, that an arrangement between a hospital and group under which clinical laboratory services are furnished by the group but are billed by the hospital does not constitute a compensation arrangement for purposes of the prohibition on referrals if the following conditions are met:

- With respect to the services furnished to a hospital inpatient, the arrangement is in accordance with the provision of inpatient hospital services under section 1861(b)(3).
- The arrangement began before December 19, 1989, and has continued in effect without interruption since that date.
- With respect to the clinical laboratory services covered under the arrangement, substantially all of these services furnished to patients of the hospital are furnished by the group under the arrangement.
- The arrangement is set out in a written agreement that specifies the services to be furnished by the parties and the amount of compensation.
- The compensation paid over the term of the agreement is consistent with fair market value, and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.
- The compensation is provided under an agreement that would be commercially reasonable even if no referrals were made to the entity.
- The arrangement between the parties meets any other requirements the Secretary may impose by regulation as needed to protect against Medicare program or patient abuse.

j. Exception—Payments by a Physician for Items and Services

OBRA '93 added a new section 1877(e)(8), which provides that the following do not constitute compensation arrangements for purposes of the prohibition on referrals:

- Payments made by a physician to a laboratory in exchange for the provision of clinical laboratory services.
- Payments made by a physician to an entity as compensation for items or services other than clinical laboratory services if the items or services are furnished at fair market value.

8. Sections 1877(f) and 1877(g)

SSA '94 amends the provisions of section 1877(f), which concern reporting requirements. This section requires each entity providing covered items or services for which payment may be made under Medicare to provide the Secretary with information concerning the entity's ownership, investment, and (as added by SSA '94) compensation arrangements including (1) the covered items and services furnished by the entity and (2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in section 1877(a)(2)(A)) in or a compensation arrangement (as described in section 1877(a)(2)(B)) with the entity, or whose immediate relatives have such an ownership or investment interest in or who have such a compensation relationship with the entity. OBRA '93 retained the provisions of section 1877(g), which concern sanctions.

9. Other Definitions

OBRA '93 amended section 1877(h)(5) and (6) to remove the definitions for "investor" and "interested investor, disinterested investor," effective January 1, 1992.

II. Published Federal Register Documents

A. Provisions of the Proposed Rule—Physician Ownership of, and Referrals to, Health Care Entities That Furnish Clinical Laboratory Services

As stated earlier, on March 11, 1992, we published in the **Federal Register** a proposed rule that set forth our proposal for establishing in regulations the provisions of section 1877, as amended by OBRA '90, that relate to physician referrals to clinical laboratories. Section 1877 is very specific. For the most part, we believed the definitions set forth in section 1877(h) were detailed and therefore did not require extensive elaboration in regulations. Accordingly, we proposed to adopt some of the statutory definitions, as well as some other provisions of section 1877, virtually unchanged from what the statute provided. To establish these rules in our regulations, we proposed to create a new subpart J under 42 CFR part 411 and to make conforming changes as discussed below.

1. Scope

We proposed to cite section 1877 as the statutory authority for the rule.

2. Definitions

In section 411.351, we proposed to establish definitions of certain terms based on definitions or descriptions given in section 1877: compensation arrangement, employee, fair market value, financial relationship, group practice, interested investor, investor, referral, and remuneration. In addition, we proposed to add other definitions: entity, immediate family member or a member of a physician's immediate family, practice, and referring physician.

For purposes of identifying financial relationships that may trigger the statutory prohibition on referrals under Medicare, we proposed to adopt the description of ownership and investment interests and compensation arrangements contained in sections 1877(a)(2) and (h)(1). We also proposed to include indirect financial relationships in the statutory prohibition on referrals under Medicare.

3. General Prohibition on Referrals

In section 411.353(a), we proposed that, unless permitted under an exception, a physician who has a financial relationship with an entity (or who has an immediate family member who has a financial relationship with an entity) may not make a referral to that entity for the furnishing of clinical laboratory services covered under Medicare beginning January 1, 1992. (Note that we are providing a 30-day delay of the effective date for the provisions of this final rule with comment. However, this does not delay the effective date for any of the provisions in the final rule that only reiterate the language in section 1877 of the Social Security Act. These provisions are effective according to their statutory effective dates. The effective date for this final rule with comment is, in essence, the effective date for those parts of the rule that interpret the statute.)

To inform the public of what entities we would consider entities that perform clinical laboratory services and, therefore, subject to the provisions of section 1877 and to the regulation, we referenced existing section 493.2, which defines a "laboratory."

We proposed, in section 411.353(b), that an entity that furnishes clinical laboratory services under a prohibited referral may not bill the Medicare program or any individual, third party payer, or other entity.

In section 411.353(c), we provided that we would not pay for a clinical laboratory service that is furnished under a prohibited referral, and we proposed, in section 411.353(d), to require an entity that collects payment for a laboratory service performed under a prohibited referral to refund all collected amounts on a timely basis.

4. Exceptions That Apply to Specific Services

In accordance with section 1877(b), we proposed, in section 411.355, that the prohibition on clinical laboratory referrals would not apply in the following circumstances:

- If a physician service is provided personally by (or under the direct personal supervision of) another physician in the same group practice as the referring physician.
- If an in-office ancillary service is performed personally by the referring physician, a physician who is a member of the same group practice as the referring physician, or a nonphysician employee of the referring physician or group practice who is personally supervised by the referring or group practice physician and—
  + The in-office ancillary service is performed either in a building where the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of clinical laboratory services; or in a building that is used by the group practice for centrally furnishing the group's clinical laboratory services; and
  + The in-office ancillary service is billed by the physician who performed or supervised the laboratory service; by the group practice in which the physician is a member; or by an entity that is wholly owned by the physician or physician's group practice.
- If the services are furnished to prepaid health plan enrollees by one of the following organizations: (1) A health maintenance organization or a competitive medical plan in accordance with a contract with us under section 1876; (2) a health care prepayment plan in accordance with an agreement with us to furnish the services to Medicare beneficiaries under section 1833(a)(1)(A); or (3) an organization that is receiving payments on a prepaid basis for the enrollees under a demonstration project under section 402(a) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1) or under section 222(a) of the Social Security Amendments of 1972 (42 U.S.C. 1395b–1 note).

We also proposed, in section 411.355(a), to use an existing definition of "physicians' services" but cited an incorrect cross reference to that definition. The cross-reference should have been to section 410.20 rather than section 411.20(a). Existing section 410.20 describes physicians' services and specifies the professionals who are considered to be "physicians" if they are authorized under State law to practice and if they act within the scope of their licenses.

5. Exceptions for Certain Ownership or Investment Interests

a. Publicly Traded Securities

We proposed, in section 411.357(a), that the prohibition on referrals would not apply to a physician's referrals if the financial relationship between the physician (or the physician's immediate family member) and the entity results from the ownership of certain investment securities. We proposed that the securities must be purchased by the physician (or immediate family member) on terms generally available to the public and be in a corporation that meets specific criteria.

b. Specific Providers

In section 411.357(b)(1), we proposed that the prohibition on referrals would not apply to a laboratory that is located in a rural area if certain criteria are met.

To supplement the statutory provision excepting services furnished in a rural laboratory, we proposed two requirements intended to address the possibility that this exception would be misused. First, we proposed to require, when physician owners or investors make referrals to a laboratory located in a rural area, that the tests be performed directly by the laboratory on its premises. We stated that, if referral to another laboratory is necessary, the test must be billed by the laboratory that performs the test. Second, we proposed to require that the majority of the tests referred to the rural laboratory be referred by physicians who have office practices in a rural area. (For this purpose, as indicated earlier, we proposed a definition of "practice.")

We proposed, in section 411.357(b)(2) and (b)(3), that the prohibition on referrals would not apply if the ownership or investment interest is in—

A hospital located in Puerto Rico; or

A hospital located outside of Puerto Rico if one of two specified conditions is met concerning the nature of the ownership.

6. Exceptions Related to Compensation Arrangements

We proposed to add section 411.359 to specify that, for purposes of the referral prohibition, certain compensation arrangements (as defined in the proposed rule) would not constitute a financial relationship if they involve—

- Rental or lease of office space;
- Certain employment and service arrangements with hospitals;
- Certain arrangements connected with physician recruitment;
- Certain isolated financial transactions;
- Certain service arrangements with entities other than hospitals;
- Salaried physicians in a group practice; and
- Other arrangements with hospitals if the arrangement does not relate to furnishing clinical laboratory services.

B. Provisions of the Interim Final Rule With Comment Period—Reporting Requirements for Financial Relationships Between Physicians and Health Care Entities That Furnish Selected Items and Services

The interim final rule with comment period (published December 3, 1991) listed reporting requirements under the Medicare program for the submission by certain health care entities of information about their financial relationships with physicians. It implemented section 1877(f), which includes the requirement that entities furnishing Medicare covered items or services provide us with information concerning their ownership or investment arrangements. (The rule extended the reporting to include compensation arrangements, not just ownership and investment interests.) The December 1991 interim final rule also provided notice of our decision to waive the requirements of section 1877(f) with respect to certain entities that do not furnish clinical laboratory services.

The information submitted was to include at least the name and unique physician identification number (UPIN) of each physician who had a financial relationship with the entity, the name and UPIN of each physician who had an immediate relative who had a financial relationship with the entity and, with respect to each physician identified, the nature of the financial relationship (including the extent and/or value of the ownership or investment interest or the compensation arrangement, if we requested it).

Any person who, although required to, failed to submit the required information was subject to a civil money penalty of not more than $10,000 for each day of the period beginning on the day following the applicable deadline established until the information was submitted.

In addition, the interim final rule discussed our decision to waive the reporting requirements for all entities (other than those providing clinical laboratory services) in States other than the minimum number of 10 specified in the statute. In the 10 States we selected, the reporting requirements were waived for entities other than the 6 types enumerated in the statute and section 411.361(c). The waiver represented a balance between our need to obtain sufficient ownership information for meaningful use in developing a statistical profile required by the Congress in section 6204(f) of OBRA '89, as amended by section 4207(e)(4) of OBRA '90, and in evaluating the need for future legislative, policy, or operational actions, and the need to minimize the administrative time and cost involved in collecting and analyzing the information. We believe that by collecting the information from the enumerated entities in the minimum number of 10 States, we satisfied these congressional and administrative needs.

In determining the States in which a blanket waiver would not be granted, we selected 10 States that represented approximately 42 percent of the physicians who bill the Medicare program for items and services furnished to beneficiaries. Medicare contractors servicing all providers and suppliers in the 10 selected States process approximately 40 percent of all Medicare claims. Services provided by the six types of entities specified in the statute account for a significant proportion of Medicare expenditures and represent a cross-section of Medicare covered services. Therefore, we decided to waive the requirements of section 1877(f) with respect to entities (other than those providing clinical laboratory services) in all States except the following: Arkansas, California, Connecticut, Florida, Michigan, Ohio, Pennsylvania, South Carolina, Texas, and West Virginia. These States were selected because they represent: A mix of rural (West Virginia), urban (Florida), and mixed urban/rural States (Ohio, Texas); a variety of claims/bills volume, from very small (Arkansas) to very large (Pennsylvania); and, a geographic spread from north (Michigan) to south (South Carolina) as well as both coasts (from California to Connecticut).

Note that while the effect of section 1877(f) of the Act and section 6204(f) of OBRA '89 was to require the Secretary to submit to the Congress a statistical profile within 90 days after each calendar quarter, section 4207(e)(4) of OBRA '90 amended OBRA '89 to require only one statistical profile, which was due by June 30, 1992. Clinical laboratory entities reported information about financial relationships with physicians as part of a survey conducted in the fall of 1991, and we used this data in the required statistical profile.

Section 1877(f) authorizes the Secretary to gather information from any entity providing covered items or services in such form, manner, and at such time as she specifies. Thus, the Secretary can again require entities to report whenever she deems it appropriate for purposes of enforcing the referral prohibition in section 1877. Section 152(a) of SSA '94 amended section 1877(f), altering the rules for future reporting. The provision now requires entities to report not only their ownership arrangements with physicians, but also their investment and compensation arrangements. Section 152(a) also eliminated the Secretary's authority to waive the reporting requirements for certain states or services. The Secretary, however, continues to have the right to determine that an entity is not subject to the reporting requirements because it provides Medicare-covered services very infrequently. In addition, the reporting requirements still do not apply to designated health services furnished outside the United States. The effective date of the amendments to section 1877(f) is the date of enactment of SSA '94, that is, October 31, 1994.

III. Principles for Developing This Final Rule With Comment Period

In this final rule with comment, we are adopting the provisions of our March 1992 proposed rule, changed as appropriate to address the comments on the proposed rule and the new requirements relating to clinical laboratory services contained in OBRA '93, as amended by SSA '94, that have a retroactive effective date of January 1, 1992. OBRA '93 provides several exceptions that were not in previous legislation. In some cases, these new exceptions address suggestions received through public comment on the March 1992 proposed rule. It is our intention that this final rule with comment reflect, to the extent possible, the comments on the proposed rule and the new, but retroactive, requirements of OBRA '93, as amended by SSA '94. This final rule with comment also revises the provisions of the December 1991 interim final rule to incorporate the amendments to section 1877(f) made by SSA '94, to apply to any future reporting that we require.

To address the provisions of section 1877 that are effective on January 1, 1995, as provided by OBRA '93, we plan to publish regulations in addition to this one. We will publish a proposed rule to interpret any retroactive provisions contained in OBRA '93 that we believe allow us to exercise discretion in their implementation. In this final rule, we have, in general, only reiterated the new, but retroactive, statutory provisions, incorporating them into our proposals. We have interpreted the new provisions only in the few instances in which it was necessary to do so in order to allow the statute to be implemented at all.

The proposed rule will also cover those provisions of section 1877 concerning physician referrals for clinical laboratory services that became effective on January 1, 1995, as well as those covering the other designated health services (all of which are effective for referrals made on or after January 1, 1995). Finally, we plan to publish a final rule that will address any comments received on this final rule with comment and the new proposed rule.

We are including in this final rule the OBRA '93 provisions related to the following:

- The in-office ancillary services exception.
- The rental of equipment exception.
- The rental of office space exception.
- The bona fide employment relationships exception.
- The personal services and physician incentive plan exception.
- The exception concerning remuneration unrelated to the provision of clinical laboratory services.
- The change in the isolated transactions exception.
- The exception concerning certain group practice arrangements with a hospital.
- The exception for payments by a physician for items and services.
- All changes in definitions in 1877(h) that have a retroactive effective date (compensation arrangement, remuneration, group practice).

IV. Analysis of and Responses to Public Comments on the Proposed Rule—Physician Ownership of, and Referrals to, Health Care Entities That Furnish Clinical Laboratory Services

In response to the publication in the **Federal Register** of the proposed rule on March 11, 1992, we received 299 timely public comments. The comments came from a wide variety of correspondents including professional associations and societies, health care workers, law firms, third party health insurers, hospitals, and private individuals. We screened each commenter's letter and grouped like or related comments. Some comments were identical, indicating that the commenters had submitted form letters. After associating like comments, we placed them in categories based on subject matter or based on the portion of the regulations affected and then reviewed the comments. All comments relating to general subjects, such as the format of the regulations, were similarly reviewed.

This process identified areas of the proposed regulation that we needed to review in terms of their effect on policy, consistency, or clarity of the rules.

We have presented all comments and responses in, for the most part, the order in which the issues appeared in the March 1992 proposed rule.

Note: We have found it necessary to change the designation of some sections from what was proposed. We have prepared a table, which appears at the end of this preamble, that relates the requirements in this final rule to the correlative proposed sections from which they evolved. If OBRA '93 provisions resulted in significant change, we so identify OBRA '93 as the source. This table is intended merely to assist parties who may be interested in comparing specific provisions as proposed or as contained in OBRA '93 to those of the final rule with comment. It does not supplant the more detailed discussion in this preamble. Unless otherwise indicated, citations in the responses that follow are to the sections as they are designated by this final rule with comment.

A. General

1. Purpose of Final Rule

Comment: One commenter requested that the Secretary ensure that the final rule is cast so that its purpose is clear; that is, the rule should be presented so as to support the idea that the ethical delivery of quality, medically necessary care is fundamental to preserving the integrity of medical practice in general as well as the Medicare program in particular.

Response: We share the commenter's view. We believe that section 1877 was enacted out of concern over the findings of various studies that physicians who have a financial relationship with a laboratory entity order more clinical laboratory tests for their Medicare patients than physicians who do not have a financial relationship. There have been at least 10 studies conducted over the past few years that concluded that patients of physicians who have financial relationships with health care suppliers receive a greater number of health care services from those suppliers than do patients generally.

To the extent that section 1877 and this final rule protect against this practice, the Medicare program and its beneficiaries are well served. Therefore, to the extent that physicians and providers of clinical laboratory services change their financial relationships and behavior to comply with provisions of section 1877 and, in turn, reduce overutilization of laboratory services, we believe that this change will have a positive effect on other health insurance programs. One of our prime goals is to ensure that our rules carry out the Congress' mandate in a manner that is in the best interest of all individuals who may be affected by the rules.

2. Delay of Effective Date

Comment: Several commenters requested that we delay the effective date of the final rule. One commenter recommended a 60-day delay, another recommended not less than 90 days, and yet another commenter requested not less than 120 days from the date of publication in the **Federal Register** and that application of the regulation should be prospective only.

Response: We usually provide for a 30-day delay in the effective date of a final rule. This delay is offered so that affected parties have the opportunity to change their practices, if necessary, to comply with the requirements of the final rule. While we understand that the goal behind the commenters' suggestions is to provide sufficient time for parties affected by this final rule to make arrangements to comply with its requirements, we do not believe that an additional delay in the effective date would be beneficial. This is so primarily because, in this rule, we are establishing additional exceptions from the prohibition on referrals based upon public comments. In addition, we plan to publish a subsequent final regulation that will address any comments received on this regulation.

3. Delay of Enforcement Provisions

Comment: One commenter requested that the Secretary indicate that the enforcement of the prohibition on referrals begin no earlier than the effective date of this rule. As a result of

this suggestion, any physician who is out of compliance with section 1877 before that effective date would be held harmless under the final rule.

Another commenter requested that we postpone the implementation of sanctions, at the very least, until 90 days after the final rule has been issued.

Response: Section 1877(g) of the Act sets forth several enforcement provisions that apply to prohibited referrals for clinical laboratory services and to prohibited claims for payment for these services.

- Section 1877(g)(1) provides for denial of Medicare payment for a clinical laboratory service furnished as the result of a prohibited referral.
- Under section 1877(g)(2), if a person collects any amounts that were billed for services furnished under a prohibited referral, a timely refund of each amount is required.
- Section 1877(g)(3) authorizes the imposition of civil money penalties of not more than $15,000 for each such service and possible exclusion from the Medicare and other programs for any person that presents, or causes to be presented, a bill or a claim for a clinical laboratory service that the person knows or should know was unlawfully referred or for which a refund has not been made.
- Under section 1877(g)(4), civil money penalties of not more than $100,000 for each arrangement or scheme and possible exclusion from participation in the Medicare and other programs are authorized in cases in which a physician or an entity enters into a circumvention arrangement or scheme (such as a cross-referral arrangement) that the physician or entity knows or should know has a principal purpose of ensuring referrals by the physician to a particular entity that would be unlawful under section 1877 if made directly. (See the final rule with comment published by the Office of Inspector General on March 31, 1995 (60 FR 16580) for further information. That rule addresses sections 1877(g)(3) and (g)(4).)

The first commenter appears to be suggesting that these statutory enforcement provisions should not be applied until the effective date of this final rule and that a physician who is not in compliance with the provisions of the statute at the time the final rule is published should be held harmless until the effective date of the final rule. The second commenter suggested a 90-day delay in application of any sanctions following publication of the final rule.

We disagree with these suggestions. First, many of the provisions of section 1877 of the Act were effective on January 1, 1992, by operation of law. These provisions are, for the most part, self-implementing. This rule incorporates into regulations statutory requirements that are already in effect, clarifying or interpreting certain provisions, and exercising the Secretary's authority to promulgate additional exceptions through regulations. Even though the requirements of this final rule are effective later than the effective date of the statute, we cannot postpone the statutory effective date. Nonetheless, any sanctions that can be applied only as a result of the clarification or interpretation of the statute specified in this rule will, of course, be applied prospectively, beginning with the effective date of this rule.

Section 1877(f) of the Act sets forth certain reporting requirements with which entities were to comply by October 1, 1991. Under this authority, we conducted a survey in the fall of 1991 concerning physician ownership in, and compensation arrangements with, entities furnishing clinical laboratory services. Based on data gathered from that survey, Medicare carriers have already been denying some claims for laboratory services furnished by a laboratory that is independent of a physician's office and that are furnished in violation of the prohibition on referrals. Similarly, the Office of the Inspector General could impose sanctions if, for example, a clinical laboratory has failed to refund an amount that it collected for a service furnished as the result of a referral if the laboratory knew the referral was prohibited.

4. Good Faith Standard

Comment: One commenter suggested that the final rule have either a good faith standard or a provision that the statute will not be violated unless the physician or the laboratory has actual knowledge of a prohibited referral. The commenter requested that the final rule specify the scope of the inquiry required and define the extent of the duty imposed upon laboratories and physicians to determine the relationship of persons that would affect their ability to refer laboratory work or to accept a referral.

Response: It is important to emphasize that the statute and this rule do not prohibit financial relationships that exist or might be established between physicians and entities providing clinical laboratory services. What is prohibited are certain referrals for clinical laboratory testing of Medicare patients. The statute itself, at section 1877(a)(2), describes "financial relationship" for purposes of determining whether a referral is prohibited. And, as discussed above, section 1877(g) specifies several sanctions that may be applied if a physician or an entity billing for a Medicare covered clinical laboratory service violates the statute's requirements. Thus, unless an exception applies, the statute operates automatically under its own terms to prohibit referrals for Medicare-covered clinical laboratory services to be performed by an entity with which the physician or an immediate family member of the physician has a financial relationship.

We understand that this commenter is advocating adoption of a policy that would hold harmless a physician or laboratory if there is no intention on the part of either to seek an advantage from an ownership interest or compensation arrangement. The commenter is also concerned that a physician or a laboratory may be unintentionally involved in a relationship that would call the physician's referrals into question. Similarly, a laboratory may be unaware that it has a relationship with a referring physician's relatives that would cause the prohibition to apply. However, the statutory prohibition against referrals in such situations applies because of the existence of the financial relationship, not because of the intent of the physician or laboratory or because there is actual knowledge of the relationship. It is the responsibility of physicians and laboratory entities to take whatever steps are necessary to ensure that they do not violate Federal law.

5. Physician Ownership of Health Care Facilities

Comment: One major national medical organization indicated that it believed ownership of health care facilities by referring physicians is an issue that should be addressed, and it supported the proposed rule. It believed there is increased evidence that, when physicians have a financial relationship with an entity, the relationship adversely affects patient care and adds to the cost of health care in the United States. Therefore, the organization believed that physicians should not have a direct or indirect financial interest in diagnostic or therapeutic facilities to which they refer patients, and it indicated support for legislation and regulations that would eliminate this conflict of interest by prohibiting such ownership arrangements in health care.

Response: We agree with this commenter. As stated earlier, recent studies have concluded that there is a higher level of utilization of services when physicians refer patients to entities with which they have a financial relationship. As mentioned in the preamble to the proposed rule (57 FR 8589), a report from the Office of the Inspector General to the Congress established that at least 25 percent of the nearly 4500 independent clinical laboratories are owned in whole or in part by referring physicians. The same report found that Medicare patients of referring physicians who own or invest in independent clinical laboratories received 45 percent more clinical laboratory services than all Medicare patients. ("Financial Arrangements Between Physicians and Health Care Businesses," May 1989, page 18). A study published in "Medical Care" (Vol. 32, No. 2) in February 1994 found that a review of clinical laboratory practices in Florida lends support to the contentions of critics that physician joint ventures (health care businesses that physicians own, but where they do not practice or directly provide services) result in increased use of services and higher charges to consumers. Utilization, measured as the number of billable laboratory procedures per patient, is significantly higher in facilities owned by referring physicians. Although the study reported only negligible differences in charges per procedure (compared to nonphysician-owned facilities), it found that higher utilization rates resulted in significantly higher gross and net revenue per patient. Furthermore, the study found that differences in average production costs per patient in physician-owned and nonphysician-owned facilities were not significant. The net result is that physician joint ventures are far more profitable than comparable nonphysician joint ventures. The study results, which included laboratory services furnished to both private and publicly insured patients, corroborate previous evidence of higher use of laboratory procedures among Medicare and Medicaid patients treated by referring physician investors.

Many States have enacted or are considering regulations that would affect physician referrals to entities with which the physicians have financial relationships. For example, New Jersey implemented regulations that effectively prohibit physicians from referring patients to facilities they own. Physicians who do not comply with the regulations are subject to sanctions under the State's physicians practice law. Furthermore, in OBRA '93 the Congress has extended application of the prohibition on referrals to other types of health care services and health care entities.

6. Process for Amending Regulations

Comment: One commenter indicated that we should maintain an expedited process for amending the regulations and issuing clarifications. The commenter pointed out that, despite a careful review of the proposed regulations, it is not possible to identify all of the unintended consequences of applying the proposed regulations to particular laboratory arrangements. The commenter believed that unless we respond quickly to issue clarifications and correct such problems when identified, inappropriate regulations can disrupt the delivery of, and limit patient access to, quality clinical laboratory services.

Response: We understand and appreciate the commenter's desire to feel secure about the requirements of the law. We make all possible efforts to publish final rules as quickly as possible and to amend the regulations expeditiously if clarifications or changes are needed and can be accomplished through rulemaking. In addition, we keep our regional offices and the Medicare contractors informed through manual instructions of technical changes that can be made without rulemaking. The contractors, in turn, advise the physicians and laboratory entities in their service areas of such changes. In regard to inquiries about particular laboratory arrangements, our regulations do not provide for the issuance of formal advisory opinions of any kind pertaining to section 1877 or any other section of the law for which we are responsible. We receive a large volume of correspondence from the public, and we do respond to general questions about the contents of our regulations and manuals. We, however, do not have the authority and will not attempt to interpret the applicability of these physician self-referral provisions to situations posed in correspondence. Our advice must, of necessity, continue to be general.

7. Evolution of Group Practices

Comment: Before the enactment of section 1877 of the Act, the Medicare program did not have a statutory definition of "group practice," nor any detailed body of law developed through regulations or manual instructions to define or otherwise recognize a group practice as a provider entity. One commenter indicated that we should recognize the significance of this rulemaking to the development and evolution of group practices in this country.

The commenter expressed hope that regulations will recognize the diversity of business structures within the group practice field and accommodate nonabusive arrangements for the provision of clinical laboratory services based on the substance of the arrangements, not merely their form.

The commenter also indicated that we should be mindful of the significance of this rule to the competitive "playing field" in health care. It was stated that, as medical group practices evolve into larger and more full-service providers of a wide range of physician ancillary and other health care products and services, they are furnishing many items and services that have traditionally been furnished by inpatient institutions or independent suppliers. The commenter also expressed hope that nothing in the final rule will prohibit group practices from performing services for other physicians' patients or other providers assuming, of course, that the referring source does not have a prohibited financial arrangement with the group. The commenter applauded us for proposing a rule that does not force groups to choose between serving their own patients and those of otherwise unrelated physicians.

Response: In publishing these final regulations, it is not our intent to obstruct the efforts of an association of physicians to qualify as a group practice under the definition in section 1877(h)(4) and therefore qualify for the in-office ancillary services exception set forth in section 1877(b)(2) of the Act and described in § 411.355(b). If a group of physicians meets the definition of a "group practice" under section 1877(h), it could also be eligible for the exception for physicians' services in section 1877(b)(1) and possibly the exception in section 1877(e)(7) for certain arrangements between a hospital and a group practice. Further, we believe that, to the extent possible, we have accommodated various group practice configurations given the statutory parameters.

The point made in the last sentence of the comment, as we understand it, endorses the adoption of a policy that would enable group practice laboratories to continue to perform laboratory tests for their own patients as well as to accept laboratory referrals from physicians in the community who do not have a financial relationship with the group practice. In the responses to various comments presented below, we have clarified that the provisions of section 1877 prohibit

laboratory referrals only if a financial relationship exists between the referring physician (or an immediate family member) and the laboratory entity. In other words, the law does not prohibit a laboratory from accepting referrals from a physician who does not have a financial relationship with it. Therefore, in all situations, a group practice will be permitted to accept referrals for laboratory services from physicians in the community who do not have, or do not have an immediate family member who has, a financial relationship with the group practice or the laboratory.

8. Use of Diagnosis Code for Laboratory Billing

Comment: One commenter believed the government is being misled about the need for certain diagnostic testing. The commenter noted that self-referrals could be used by unscrupulous physicians as a means to generate income. The commenter believed a major check on this practice would be the requirement of an appropriate diagnosis code for each service billed. The commenter believed it should be the role of the Medicare carriers to monitor unnecessary testing and then to take appropriate actions so that no testing is paid for if the diagnosis code does not suggest medical need.

Response: Section 202(g) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360), enacted July 1, 1988, added paragraph (p) to section 1842 of the Act. Under the provisions of section 1842(p)(1), each bill or request for payment for physicians' services under Medicare Part B must include the appropriate diagnosis code "as established by the Secretary" for each item or service the Medicare beneficiary received. We fully explain the conditions and requirements of this provision in a final rule published on March 4, 1994 (59 FR 10290).

The conference report that accompanied Public Law 100–360 explained clearly the purpose of the requirement for physician diagnostic coding. After rejecting a Senate provision that would have required the use of diagnostic codes on all prescriptions, because they believed that the requirement would have been unduly burdensome on Medicare suppliers of services, the conferees agreed to require diagnostic coding for physicians' services under Part B. They explained their reasons for this requirement as follows: "This information would be available for immediate use for utilization review of physician services * * *." (H.R. Conf. Rep. No. 661, 100th Cong., 2nd Sess. 191 (1988)) The new coding requirement does not apply to bills from laboratories, except for physician laboratory services, which are described in section 405.556.

Claims submitted directly to the Medicare carrier by a clinical laboratory that is not part of a physician's office are not subject to the above requirement. The Medicare carriers, however, review claims submitted for payment to ensure that, to the extent possible, only services that are reasonable and necessary for the treatment of an illness or injury or to improve the functioning of a malformed body member are approved for payment. We agree that it would be easier for a Medicare carrier to make a medical necessity determination if the claim contained an appropriate diagnosis coding. It is clear, however, that the Congress intended to limit diagnosis coding to physicians' services. Therefore, at this time, we are unable to accept the suggestion the commenter made.

9. Referrals That Are Not Abusive

Comment: One commenter indicated that it would appear that relationships between a practitioner and an entity would not pose a risk of patient or program abuse if the relationships do not result in a return to the practitioner of monies beyond those that would be received if the physician directly furnished such laboratory tests (or other Medicare outpatient services).

The commenter suggested that it would be helpful if an exception could be established for referrals, from a physician to an entity, that are medically necessary (that is, represent legitimate claims on the Medicare program) and are not motivated by direct or indirect financial benefits that exceed fair market value accruing to the physician.

Response: The commenter appears to argue that the prohibition should not apply to a referral that is made by a physician to an entity with which he or she has a financial relationship if the service being performed is determined to be medically necessary and the physician does not realize an unacceptable financial gain as a result of the laboratory referral. The financial gain could not be larger than the fair market value of what he or she would realize if the service was performed, for example, in his or her own office and would have qualified for the in-office ancillary services exception.

Section 1862(a)(1) states, in part, that, notwithstanding any other provision of title XVIII of the Act, no payment may be made under Part A or Part B of the Medicare program for any expenses incurred for items or services that are not reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body member. In exercising their contractual responsibilities, Medicare carriers enforce this overriding coverage criterion through the use of claims screens, medical review, and other procedures. The commenter appears to believe that, because these carrier safeguards are in place, a "reasonable and necessary" exception could be established. The problem with this commenter's approach is twofold. First, section 1877 prohibits certain referrals to entities with which the referring physician or an immediate family member has a financial relationship regardless of whether the service furnished is found by a carrier to be medically necessary. Second, assessing whether a physician's referrals result in a financial gain from the relationship with a laboratory would be a very difficult and burdensome administrative process. Carriers process approximately 4 million claims for clinical laboratory services each year. It would be very costly to determine whether each claim called into question by certain referrals results in a cost benefit to the referring physician.

10. Contractor Implementation

Comment: One commenter, a Medicare contractor, indicated it had concerns with the administration of the prohibition on referrals along with the numerous exceptions that have been granted for specific services, certain ownership or investment interests, and certain compensation arrangements. The commenter anticipates that the monitoring of these various provisions will be complex and will greatly affect post-pay and systems areas.

Response: It is not clear, at this time, how significant a workload the provisions will create for carrier claims processing and fraud units. However, once this rule is published, the carriers will start performing compliance audits based on specified criteria. We do not expect that these audits will result in much increase in the carrier's workload. We do not believe that there will be any significant effect on either post-pay or systems areas.

B. Scope of Regulations

Comment: One commenter indicated that the preamble section of the proposed rule explaining what the agency believes is the regulatory scope (57 FR 8593) should be omitted. The commenter contended that it imparts no specific guidance and defines no regulatory requirement. Furthermore, this commenter objected to the preamble reference to violations of other Federal or State law and stated that it is gratuitous to advise the regulated entity or person that compliance with section 1877 of the Act, or regulations promulgated thereunder, does not foreclose citation and adjudication under another Federal or State statutory requirement or regulation.

Response: We disagree. Sections 411.1 and 411.350, as described in the preamble of the proposed rule and as set forth in the proposed regulation, conform to regulation drafting guidelines in explaining the general content of 42 CFR part 411, subpart J. Our intent in including this information, something that is routinely done in any new HCFA regulation, is to provide the public with an outline of the regulation's substantive content.

In this case it is important as well to state what the new regulation does not provide for. Before the proposed rule was published, we received numerous inquiries indicating that the provisions of section 1877 were being confused with the anti-kickback safe harbors specified in the final rule published on July 29, 1991 (56 FR 35952). In fact, the Medicare anti-kickback statute (section 1128B(b) of the Act) and section 1877, while similar in that they address possible abuses of Medicare, are different in scope and application and, therefore, need to be distinguished. The conference report for OBRA '89 includes the following statement:

> The conferees wish to clarify that any prohibition, exemption, or exception authorized under this provision in no way alters (or reflects on) the scope and application of the anti-kickback provisions in section 1128B of the Social Security Act. The conferees do not intend that this provision should be construed as affecting, or in any way interfering, [sic] with the efforts of the Inspector General to enforce current law, such as cases described in the recent Fraud Alert issued by the Inspector General. In particular, entities which would be eligible for a specific exemption would be subject to all of the provisions of current law. (H.R. Conf. Rep. No. 386, 101st Cong., 1st session 856 (1989).)

Furthermore, we believe it is our duty to inform the public that lawful conduct under sections 1128B and 1877 of the Act may not be lawful under other Federal statutes or State law or regulations. Conversely, conduct that is lawful under those other authorities may be prohibited under section 1877 and these final regulations.

C. Definitions

1. Clinical Laboratory Services

Under the proposed rule (section 411.353), "laboratory services" are considered to be any services provided by the entities described in section 493.2. The preamble to the proposed rule pointed out at 57 FR 8595 that this would include anatomical laboratory services but would not include noninvasive tests that are not considered clinical laboratory services, such as electroencephalograms or electrocardiograms. Nor would it include x-rays or diagnostic imaging services, such as mammogram and computerized axial tomography scans.

Comment: A few commenters recommended that a definition of "clinical laboratory" be included in the regulations. They suggested that, if the definition used for purposes of the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) is to be adopted, that it should be repeated in section 411.351.

One commenter indicated that the definition of clinical laboratory should state the following:

> "Clinical laboratory means a facility for the examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings, as described in section 493.2. Such examinations include screening procedures to determine the presence or absence of various substances or organisms in the body. Such examinations do not include noninvasive tests, such as electroencephalograms, electrocardiograms, x-rays or diagnostic imaging services, such as mammogram and computerized axial tomography services."

Response: We agree that this final regulation should contain a definition of clinical laboratory. Thus, based on the definition at section 493.2, which defines a laboratory for CLIA purposes, we are including the following in section 411.351:

> *Laboratory* means an entity furnishing biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. These examinations also include procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body. Entities only collecting or preparing specimens (or both) or only serving as a mailing service and not performing testing are not considered laboratories.

Comment: One commenter urged that the definition of laboratory services should include a statement that what are considered clinical laboratory services for current procedural terminology (CPT) code purposes are also considered clinical laboratory services for the purpose of these regulations. Thus, in this commenter's opinion, there would be no question about what constitutes clinical laboratory services.

Response: As mentioned in the response to the previous comment, we have defined a clinical laboratory as meaning any laboratory entity that is required to satisfy the CLIA standards in order to perform tests on human beings for "* * * the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings." Therefore, for the purposes of the prohibition on physician self-referral, we are defining "clinical laboratory services" at section 411.351 as follows:

> *Clinical laboratory services* means the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. These examinations also include procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body.

Given this position, the American Medical Association (the organization responsible for CPT) and the CPT publication would not be the references to define the kind of services that are regulated by the physician referral legislation. If individuals want to know what specific tests and test systems are subject to CLIA certification, they may contact the Center for Disease Control and Prevention (CDC), Public Health Service, Attention: CLIA, 1600 Clifton Road, Atlanta, GA 30333. CDC has categorized approximately 12,000 test systems, assays, and examinations for complexity using the criteria at 42 CFR 493.17. CDC publishes notices periodically in the **Federal Register** to announce additional test systems, assays, or examinations that have been categorized or recategorized since the preceding publication.

For these reasons, we do not support the sole use of CPT codes to identify

clinical laboratory services for physician referral purposes.

Comment: One commenter suggested that it would be helpful to define further what type of anatomical laboratory services are covered by the statute and which specific tests we consider to be noninvasive and not subject to the prohibition on referrals.

Response: We agree with this commenter. As mentioned in the preamble to the proposed rule (57 FR 8595), anatomical laboratory services are subject to the prohibition on physician referrals. Anatomical laboratory services (and anatomical pathology services) involve the examination of tissue, often tissue removed during surgery. As such, it appears to us that anatomical laboratory services are always invasive (that is, they involve the examination of materials derived from the human body, as described in 42 CFR 493.2). Therefore, we believe that these tests would always be subject to CLIA and section 1877. Consequently, any physician who refers patients for these kinds of tests to a laboratory with which he or she (or a family member) has a financial relationship could be in violation of section 1877. In such a case, any of the many exceptions in section 1877 might exempt that physician's referral from the prohibition.

The commenter has also suggested that we specify which noninvasive testing is exempt from the prohibition on referrals. As mentioned in the response to the previous comment, we believe that the most appropriate way for a physician or clinical laboratory to determine if Medicare considers a diagnostic test to be a clinical laboratory test subject to the requirements of section 1877, is to find out if the test is subject to categorization under CLIA. The Medicare carriers are available to provide this information to individuals and physicians if it is not clear to a physician, other supplier, or provider of services and if they do not have available the latest compiled list of clinical laboratory test systems, assays, and examinations categorized by complexity and published by the CDC. If a test does not appear on a compiled list, a physician or laboratory should contact the CDC at the address we mentioned in the last response in order to be certain, since the lists are not yet complete.

2. Compensation Arrangement

Under the proposed rule (§ 411.351), a compensation arrangement would be any arrangement that involves any remuneration between a physician or a member of his or her immediate family and an entity. The definition of compensation arrangement was amended by OBRA '93 to exclude certain types of remuneration (identified in section I.D.1.c. of this preamble).

Comment: One commenter indicated that the final regulations need to give a specific definition for the phrase "compensation arrangement," not simply repeat the words that the Congress has provided.

Response: The commenter did not explain why the proposed definition was perceived as insufficient. The words of the definition are specific, and we do not believe they are susceptible to misinterpretation. The definition is broad, because it covers any remuneration between a physician (or an immediate family member) and an entity, and it may be this aspect of the definition that concerned the commenter. We believe, however, that it was the intent of the Congress to include all arrangements (direct and indirect) between physicians and laboratories involving any remuneration. We believe that the statutory definition accomplishes this purpose. In the OBRA '93 amendments, the Congress retained the broad definition of "remuneration" in section 1877(h)(1)(B), but did specifically except from the term "compensation arrangement" a very limited list of arrangements involving the kinds of remuneration listed in section 1877(h)(1)(C). These changes are reflected in this final regulation.

Comment: One commenter indicated that laboratories often must enter into arrangements with physicians, who are not employed by the laboratory, for necessary services. The commenter believed that as long as certain safeguards, comparable to those applicable to arrangements between physicians and hospitals, are met, these arrangements should not be considered compensation arrangements that would prohibit the physicians from making referrals. Examples of such arrangements are (1) an arrangement to review abnormal test results when further medical consultation is required, and (2) a contract with a physician to provide various consultation services, such as reviewing anatomic pathology specimens, interpreting holter monitors or electrocardiograms, and reviewing Pap tests.

Another commenter indicated that, because of the breadth of the self-referral law, any time a laboratory makes a payment to a physician, a compensation arrangement is created. Thus, for example, if a laboratory maintains a self-insured group medical plan and pays physicians directly for the medical services provided to its employees, it would, in this commenter's view, have a compensation arrangement with those physicians and should not accept Medicare referrals from them. The commenter suggested that these types of legitimate arrangements should not be considered compensation arrangements as long as safeguards are put into place to ensure nonabuse.

Response: What these commenters are asking for is an exception for an arrangement under which a referring physician furnishes services to a laboratory (or, alternatively, that the term compensation arrangement be defined in a manner so as not to include that arrangement). Section 1877(e)(3), as amended by OBRA '93, provides an exception for a compensation relationship in which a laboratory entity pays a physician for personal services furnished under an arrangement. Such an arrangement does not result in the physician being prohibited from making referrals to that entity if certain specific conditions (detailed in section I.D.6.d. of this preamble) are met.

In addition to the exception in section 1877(e)(3), section 1877(e)(2), as amended by OBRA '93, provides that, if a laboratory makes payments to a physician as the result of a bona fide employment relationship with the physician, that physician's referrals would not be prohibited, providing certain criteria are met.

Comment: One commenter stated that in many situations laboratories are required by State or Federal law to have particular arrangements with physicians. For example, under the new CLIA regulations (42 CFR part 493), laboratories may be required to have physicians in a number of different positions in the laboratory. The commenter believed these types of arrangements should not be considered compensation arrangements that would prohibit referrals by the physicians.

Response: As mentioned in an earlier response, it is our belief that most of these arrangements could qualify for either the exception found in section 1877(e)(2) for bona fide employment relationships or, when the physicians are not employed, section 1877(e)(3) for personal service arrangements.

Accordingly, a compensation arrangement between a laboratory and a referring physician for specific identifiable services that has all of the elements required for the subject exceptions would not cause that physician's referrals to be prohibited.

Comment: One commenter noted that laboratories routinely sell services directly to physicians who then

reimburse the laboratory for those services before marking them up to patients. The commenter did not believe that those payments should constitute a compensation arrangement.

Response: As set forth in OBRA '93, section 1877(e)(8)(A) of the Act provides a compensation-related exception for physicians who pay a laboratory in exchange for the provision of clinical laboratory services (see section 411.357(i)(1)).

The commenter has made the point that physicians routinely reimburse laboratories for services and then mark them up to patients. Under section 1833(h)(5)(A), Medicare payment for a clinical diagnostic laboratory test may be made only to the person or entity that performed or supervised the performance of the test. (This rule is subject to certain exceptions involving services furnished or supervised by a physician when payment is made to another physician in the same group practice, services performed by a laboratory at the request of another laboratory, and tests performed under arrangements made by a hospital.) As a result, physicians should generally not be able to pay a laboratory in exchange for Medicare covered laboratory services, and then mark them up to patients.

Comment: One commenter noted that many laboratories are part of large, diversified corporations (which themselves may be related to other large, diversified corporations) that provide a number of different services to physicians. These services may include pharmaceutical, billing, and waste transport services. The commenter believed that, so long as these services are provided at fair market value, there is no reason that an entity should not provide these services to physicians and also accept their Medicare referrals.

Response: As mentioned previously, if a physician is paying fair market value to the supplier entity for whatever nonlaboratory services he or she is purchasing, referrals by the physician to the laboratory should not be prohibited. However, the arrangement must meet the conditions found in new § 411.357(i).

Comment: One commenter indicated that the regulations should be clarified to expressly prohibit any arrangement under which the referring physician bills patients for clinical laboratory or anatomic pathology services that are not personally performed or supervised by the billing physician or the group practice. In particular, the commenter suggested that the prohibition should apply to arrangements under which the referring physician requires the pathologist or independent laboratory to bill the referring physician, rather than the patient or third party payer, for any services provided by the pathologist or independent laboratory on referral by the physician. The commenter pointed out that, at the present time, the Medicare payment rules prohibit a physician from billing for certain clinical diagnostic laboratory tests performed by an independent laboratory for Medicare patients (section 1833(h)(5)(A)) but, the commenter maintained, this payment prohibition does not apply to anatomic pathology services or to clinical laboratory services performed for non-Medicare patients. Thus, the commenter concluded that the referring physician would not be prohibited from marking up the costs of anatomical tests to Medicare and for clinical laboratory and anatomical testing billed to other third party payers.

The commenter believed that an arrangement under which the referring physician charges payers for the services of a separate laboratory constitutes a compensation arrangement within the meaning of the law. The commenter added that "compensation arrangement" is defined as any arrangement "involving any remuneration." Further, the term "remuneration" is defined broadly to include direct or indirect, overt or covert, and in-cash or in-kind arrangements. The commenter believed, therefore, that an arrangement under which the referring physician can receive payment for services not personally performed or supervised by himself or herself, including payment for services for non-Medicare patients, should be found to be a compensation arrangement within the broad language of the law.

Specifically, the commenter recommended that the final regulation make clear that the definition of "compensation arrangement" encompasses any arrangement under which a referring physician bills and collects for laboratory services that are not personally performed or supervised by the physician.

Response: This commenter raised several issues: first, whether anatomical pathology services are diagnostic laboratory tests and, thus, subject to the billing requirements of section 1833(h)(5)(A); second, whether the billing requirements of that section can be applied to clinical diagnostic laboratory tests performed for non-Medicare patients; and third, whether the definitions of compensation and remuneration at section 1877(h)(1) can be broadly interpreted to include payments made to the physician for any laboratory services he or she did not personally perform or supervise, including payment for services for non-Medicare patients. We will address each of these issues in order.

Under Medicare, the term "medical and other health services" includes, under section 1861(s)(3), the broad category of "diagnostic laboratory tests." Under section 1861(s)(16), such diagnostic laboratory tests include only those diagnostic tests performed in a laboratory that meets CLIA requirements. Anatomical pathology services are tests involving tissue examination, such as that done during surgery. We believe that any anatomical pathology tests would be diagnostic in nature and would have to be performed in a laboratory that meets CLIA requirements. As such, the tests fall squarely within the category of "diagnostic laboratory tests" and would therefore be subject to the payment rules in section 1833(h)(5)(A).

Under section 1833(h)(5)(A), payments for clinical diagnostic laboratory tests are subject to mandatory assignment. That is, with certain narrow exceptions, payment may be made only to the person or entity that performed or supervised the performance of the test. Further, under section 1842(b)(6), a carrier generally may pay assigned benefits only to the physician or other supplier that furnished the service. Thus, unless physicians are billing Medicare within the conditions found in these provisions of the law, they are billing in error.

In regard to the second issue, the language of section 1833(h)(5)(A) applies specifically to services for which payment may be made under Medicare Part B. Therefore, we agree with the commenter that the billing requirements found in the Medicare statute do not extend to non-Medicare patients.

In regard to the third issue, under section 1877(e)(8)(A), payments by a physician to a laboratory for clinical laboratory services do not constitute compensation that triggers the referral prohibition.

3. Entity

In the proposed rule (§ 411.351), we defined "entity" as a sole proprietorship, trust, corporation, partnership, foundation, not-for-profit corporation, or unincorporated association.

Comment: One commenter indicated that the statute does not define "entity" and the definition in the proposed regulations could prohibit certain nonabusive arrangements because it covers trusts, foundations, and not-for-

profit corporations. For example, a physician might own stock in a not-for-profit corporation or be a trustee of a charitable trust that operates a laboratory. The commenter suggested that this definition either be modified to contain an exception for nonabusive business entities or that the trust, foundation, and not-for-profit corporation criteria be deleted.

Response: We do not agree with this commenter. Under section 1877, unless an exception applies, any referral for clinical laboratory services is prohibited if the referring physician or a member of the physician's immediate family has a financial relationship with the entity to which the referral is made. This is so because the statute does not, in any way, limit the types of organizations covered by the referral prohibition as long as they provide clinical laboratory services. Therefore, our proposed definition of "entity" was meant to include all possible organizations and associations that provide laboratory testing. As was stated in the proposed rule, we believe that we need to define the term "entity" to ensure that the term is understood by all affected parties. Note, however, that if a trustee takes no compensation from and has no ownership interest in an entity, he or she would not have a financial relationship as defined in section 1877. Therefore, the physician would not be prohibited from referring Medicare patients to that entity. Finally, we are not aware of any situations in which a not-for-profit entity would issue stock.

4. Fair Market Value

Under the proposed rule (section 411.351), fair market value is defined to mean the value in arm's-length transactions, consistent with the general market value. With respect to rentals or leases, "fair market value" means the value of rental property for general commercial purposes (not taking into account its intended use). In the case of a lease of space, this value may not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience of the lessor when the lessor is a potential source of patient referrals to the lessee. This definition is based on the definition in the statute. (OBRA '93 did not change the statutory definition.)

Comment: One commenter indicated that the statute makes it clear that lease and rental values may not be adjusted to reflect proximity to referral sources. The commenter was concerned about our statement in the preamble to the proposed rule at 57 FR 8599 that certain rental payments could be construed to induce referrals, even if there is no explicit or implicit understanding regarding referrals. These arrangements would typically involve rental payments either substantially above or below the fair market value of the rental space. The commenter believed that there is still no adequate means to determine when an increase (or decrease) in value will be considered "substantial" and therefore viewed as suspect. The commenter agreed that an example of an abusive arrangement occurs when a physician rents space to a health care entity at a rate above what the market would ordinarily bear, and the entity agrees to the high rent because of an understanding that the physician will refer his or her patients to that entity.

The commenter pointed out that many factors influence what may be considered as "fair market value" in a normally functioning real estate market. For example, the principle that site rents vary inversely with increased travel time pervades the real estate industry. Thus, the commenter concluded, a facility that is convenient to places in which health care services are furnished, such as a laboratory adjacent to a medical building, will command higher rents than one across town.

The commenter suggested that the final rule should reflect some means of differentiating between rent and lease payments that have inherently greater values based on traditional economic factors and those that are "artificially" inflated.

Response: In using the term "substantially" in excess of or below fair market value, we were describing an example of how a rental or lease agreement could be an influence on referrals. Such an agreement could take many forms and incorporate a myriad of possible financial incentives depending on local factors that could influence the rental or lease price. We want to emphasize, however, that the definitions in the statute (section 1877(h)(3)) and regulations (§ 411.351) state that fair market value means that a rental or lease of property must be consistent with the value of the property for general commercial purposes and that a rental or lease of space may not be adjusted to reflect any additional value a lessee or lessor would attribute to the proximity or convenience of a potential source of referrals. Therefore, if the economic factor to which the commenter referred, that is, that site rents vary inversely with increased travel time, plays a part in determining the level of rent agreed to by a physician and a laboratory entity, the fair market value test set forth in the statue would not be met. This would be the case even if the factor is a "traditional economic factor" that "pervades the real estate industry." In other words, if rent is inflated either artificially or because of its proximity to a referral source, the fair market standard would not be met and the exception would not apply.

5. Financial Relationship

In the proposed rule (section 411.351), we defined a "financial relationship" as either a direct or indirect relationship between a physician (or a member of a physician's immediate family) and an entity in which the physician or family member has—

(1) An ownership or investment interest that exists through equity, debt, or other similar means; or

(2) A compensation arrangement.

The OBRA '93 amendments added that, in addition to equity, debt, or other means, an ownership interest includes an interest in an entity that holds an ownership or investment interest in any entity providing clinical laboratory services. This expanded provision, however, is not applicable until January 1, 1995.

Comment: One commenter expressed strong support for the proposed policy that the prohibition would extend to physicians who are the previous owners of a laboratory, if they are paid by the new owners under an installment sales agreement that extends past January 1, 1992. The commenter indicated that such arrangements can easily be abused; that is, they raise the possibility that the previous owners would make referrals for the purpose of ensuring that the new owners continue to pay off their debt. Similarly, the commenter agreed with our statement that, if an organization related to the laboratory agrees to pay the laboratory's debt to the physician, a financial relationship is still created.

On the other hand, another commenter indicated that we should permit specific debt relationships if the following criterion is met: The debt interest is manifested by a written note that has a fixed repayment schedule unrelated in any fashion to the productivity of the debtor or any entity owned by the debtor, and the debt-equity relationship of the debtor does not exceed 4 to 1.

Another commenter recommended that physicians who remain interested investors through a debt relationship in a laboratory that they once owned not be penalized. That is, the physicians should not be subsequently regarded as having a nonexempt financial relationship with that laboratory.

Response: We agree with the first commenter. A financial relationship may exist in the form of an ownership or investment interest, which, according to the language in section 1877(a)(2), "may be through equity, debt, or other means." We did not propose any exceptions addressing situations involving debt. That is because we do not believe that there would be no risk of program or patient abuse in such circumstances. Obviously, the continued financial viability of an entity that is in debt to a potential referring physician could be of great concern to that physician. Therefore, we are not providing the exception requested.

Comment: Two commenters indicated that the term "indirect relationship," which is used to define financial relationships in proposed § 411.351, should be itself defined or deleted since there is no statutory definition of indirect relationships. According to the discussion at page 8595 of the proposed rule's preamble, "a physician would be considered to have an indirect financial relationship with a laboratory entity if he or she had an ownership interest in an entity which in turn has an ownership interest in the laboratory entity." The commenter stated that, if this is the definition we adopt, that definition should appear in § 411.351 of the final regulations; otherwise, the term should be deleted from the regulation entirely.

Response: We agree with the commenter that our interpretation of indirect ownership or investment interest should appear in the regulation. Therefore, we include it in section 411.351 of this final rule. As specified at section 1877(a)(2), financial relationships that could cause a referral to be prohibited are of two kinds. The first is an ownership or investment interest, which may be through equity, debt, or other means. The second is a compensation arrangement, which, as defined at section 1877(h)(1)(A), is any arrangement involving any remuneration (with certain narrow exceptions added by OBRA '93). "Remuneration" is defined in section 1877(h)(1)(B) as including *any remuneration*, direct or indirect, overt or covert, in cash or in kind. This is a broad concept that, we believe, encompasses compensation/remuneration obtained through an indirect financial arrangement. We further believe that an indirect relationship can occur in the ownership/investment situation as well as under a compensation arrangement. The term "indirect" appears specifically only in the definition of remuneration in section 1877(h)(1)(B), which applies in the context of compensation arrangements. However, an ownership or investment interest as defined in section 1877(a)(2) may be through equity, debt, or *other means*. We believe that the term "other means" is broad enough to encompass an infinite variety of direct and indirect ownership or investment interests. As a result, we included the concept of an indirect ownership or investment interest in the proposed rule.

It was also our opinion that the Congress intended to cover all forms of financial relationships that may exist between a physician and a laboratory. Any other reading would allow physicians to easily circumvent the statute: they could hold ownership interests in entities furnishing clinical laboratory services by simply establishing and owning shares in holding companies or shell corporations that, in turn, own the laboratories.

The Congress has demonstrated its intention to cover situations involving indirect ownership and investment interests. As amended by OBRA '93, the language at the end of section 1877(a)(2) provides that "[a]n ownership or investment interest may be through equity, debt, or *other means, and includes* an interest in an entity that holds an ownership or investment interest in any entity providing the designated health service." [Emphasis added.] This provision became effective January 1, 1995. However, we believe the amended provision demonstrates that, prior to OBRA '93, an ownership or investment held through "other means" could be interpreted to *include* indirect interests.

In addition, in proposing this amendment, the Committee on Ways and Means explained that "[t]he definition of financial relationship would be modified to include *explicitly* that an interest in an entity (i.e., holding company) that holds an investment or ownership interest in another entity is a financial relationship for purposes of the referral prohibition." [Emphasis added.] (H. Rep. No. 111, 103d Cong., 1st Sess. (1993).) In other words, we believe the intent of this amendment was to explicitly list a concept that was already implicitly included in the scope of the provision. The Conference Report for OBRA '93 reveals that the House Ways and Means provision was enacted without changes. (H. Rep. No. 213, 103d Cong., 1st Sess. (1993).) For these reasons, we decline to delete the term "indirect" and intend that it be considered in determining whether particular referrals are prohibited.

6. Group Practice

Under the proposed rule (§ 411.351), a group practice means a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association that meets the following conditions:

- Each physician who is a member of the group furnishes substantially the full range of patient care services that the physician routinely furnishes including medical care, consultation, diagnosis, and treatment through the joint use of shared office space, facilities, equipment and personnel.
- Substantially all of the patient care services of the physicians who are members of the group (that is, at least 85 percent of the aggregate services furnished by all physician members of the group practice) are furnished through the group and are billed in the name of the group and the amounts received are treated as receipts of the group. The group practice must attest in writing that it meets this 85 percent requirement.
- The practice expenses and income are distributed in accordance with methods previously determined by members of the group.

In the case of faculty practice plans associated with hospitals that have approved medical residency programs for which plan physicians perform specialty and professional services, both within and outside the faculty practice, this definition applies only to those services that are furnished to patients of the faculty practice plan.

"Group practice" as defined in section 1877(h)(4)(A), as it reads under OBRA '93, is discussed in section II.D.1.c.4. of this preamble.

a. Threshold for "Substantially All"

Comment: A few commenters suggested that the threshold for what is "substantially all" of the services of physician members should be lowered from 85 percent to 75 percent because rural group practices would have difficulty in meeting the higher percentage. The same commenters noted that, if the threshold for group practices is not lowered, there should be a special threshold for rural group practices that may not be able to meet the 85 percent standard.

Response: The comments we received on the proposed rule have identified group practices that have partners, full and part-time physician employees, and physician contractors, who may also be either full- or part-time. All configurations of physicians must be

able to show that the statutory requirements are met and, specifically, that substantially all of the services of the members are furnished through the group. (We discuss in a later comment which physicians qualify as "members" of a group practice.) As we have mentioned previously in this preamble, it is not our intention to unnecessarily impede associations of physicians from qualifying as a group practice, and we recognize that groups that have part-time physicians may have a more difficult time qualifying than groups that have all full-time physicians.

We agree that the 85 percent criterion should be reduced to 75 percent, and we have made that change in the definition of group practice (§ 411.351). Before deciding to make this change, we considered the implications for group practices that have part-time and contractual physicians and the possibility of establishing separate standards for rural and urban locations and the changes that will be made by the OBRA '93 provision on January 1, 1995. (Beginning on January 1, 1995, members of the group must personally conduct no less than 75 percent of the physician-patient encounters of the group practice.) We accept the point of view that a standard higher than 75 percent would be difficult for many rural group practices to meet. That is because the scarcity of physicians in rural areas generally imposes varying responsibilities that cause these physicians to devote less time to a group practice than might be the case in other areas. In order to be consistent and to eliminate whatever administrative confusion might result from different standards for rural and urban areas, we are adopting the 75 percent standard for all areas.

Comment: One commenter indicated that group practices should be allowed to select the methodology for determining the 85 percent threshold; that is, 85 percent of total physician time, or 85 percent of total group income (calculated on the basis of allowed charges, etc.), or 85 percent of all physicians' services delivered—whatever method they prefer to use and are able to document.

Another commenter recommended that the Medicare allowed charges or fee schedule amounts be used as the measurement criterion for the following reasons: (1) By using such a measure, the necessary data would be readily available to Medicare carriers in the Medicare databases; (2) these measures would not impose any new record keeping obligations on physicians and group practices; and (3) if alternative measures, such as time, patients, service, or total revenue were used, physicians and group practices would be subjected to additional burdensome record keeping requirements.

A third commenter suggested that the following conditions indicate that the criteria are met: All Medicare allowed charges or fee schedule amounts for the services furnished by all physician members of the group are furnished through the group, and billed in the name of or under a number or numbers assigned to the group practice, and the amounts received are treated as receipts of the group.

Finally, another commenter recommended that we consider (1) excluding from the formula any part-time physician who does not refer work to the laboratory for Medicare patients, and (2) revising the current 85 percent formula to provide that, so long as 85 percent of Medicare laboratory work is attributed to full-time physicians (a full-time physician being a person who bills at least 85 percent of his or her services through the group), the group practice would then be able to meet the exception.

Response: As noted, we proposed that, to meet the "substantially all" criterion, a group practice would have to be able to show that at least 85 percent of the aggregate patient care services furnished by all physician members of the group practice are furnished through the group practice. In addition, as stated in section 1877(h)(4)(B), these services must be billed in the name of the group, and receipts for the services must be treated as receipts of the group. After carefully considering the language of the statute and these comments, we decided to adopt the following approach:

We are continuing to provide that to meet the "substantially all" criterion, in the aggregate, a specific percentage of patient care services furnished by all physician members must be furnished through the group practice. As we noted in an earlier response, we are changing the percentage from 85 percent to 75 percent. The comments have revealed that there is confusion about what constitutes "patient care services" and how to measure them. To remedy this, we are clarifying in the regulation that patient care services include any tasks performed by a group practice member that address the medical needs of specific patients, whether or not they involve direct patient encounters. As a result, patient care services can involve the work of pathologists and radiologists who do not directly treat patients or a physician's time spent consulting with another physician when the patient is not present or time spent reviewing laboratory tests.

We are also clarifying that a practice must measure patient care services by calculating the total patient care time each member spends on patient care services. We believe that this method of measuring services is an equitable one that will capture most accurately a group practice member's commitment to providing services through the practice. For example, if a member furnishes only a few services through the practice during the course of a week, but these services are surgical procedures that consume most of the physician's time that week, this fact will be reflected in the calculations.

As to the first comment, we do not believe that leaving this matter entirely to the discretion of each group practice would be feasible. It is our goal to accomplish fairness and evenhandedness across group practices by establishing a consistent and uniform approach. Leaving the matter to the discretion of each group practice would also put an additional burden on the Medicare carriers. The carriers could very well be involved in audits of group practices in the future. If we adopted the commenter's suggestion, a carrier would, on the occasion of each audit, first have to determine whether a particular method employed by a group practice is appropriate before determining whether the standard is met. Thus, we are clarifying that, to meet the substantially all criteria, 75 percent of total patient care services (measured as patient care time) of group practice physicians must be provided through the group.

It is not clear to us how using a method employing Medicare allowed charges or physician fee schedule amounts would satisfy the statutory requirements. The carriers would have this information, as the commenter stated, but section 1877(h)(4) does not say that only substantially all of a group practice's Medicare business be considered. The reference is to "* * * substantially all the services of the physicians who are members * * *." Accordingly, we believe that all services, both Medicare and non-Medicare, must be considered.

Here is an example of how our uniform total patient care time approach would work:

Ten physicians deliver services through a group practice. Eight of them devote 100 per cent of their patient care time to the group practice. One devotes 80 percent, and one 10 percent. This can be illustrated as follows:

8 physicians at 100% each =	800%	
1 physician at 80% =	80%	
1 physician at 10% =	10%	
	890%	divided by 10 = 89%

Thus, in this example, 89 percent of the total of the time spent by these physicians is devoted to services billable by the group practice. The issues of group practice billing numbers and part-time physicians are discussed below.

Comment: One commenter suggested that the calculations for substantially all services be made, at the election of the practice group, with respect to either the previous fiscal year of the practice group or the previous 12-month period, which is the approach used by the safe harbor regulations. The commenter believed that a 12-month period is appropriate for this purpose in order to avoid short term fluctuations that might otherwise distort the determination.

Response: We agree that a 12-month period is appropriate for use in determining compliance with the "substantially all" criterion. We will allow a group practice (as defined in section 1877(h)(4)) to elect whether to use the calendar year, its fiscal year, or the immediately preceding 12-month period to determine whether it complies with the standard. Furthermore, we will allow any new group practice (one in which the physicians have only recently begun to practice together) or any other group practice that has been unable in the past to meet the requirements of section 1877(h)(4) (including the "substantially all" criterion) to initially look forward 12-months, as described below, to determine compliance with the standard. These groups would also be able to elect whether to use the calendar year, fiscal year, or the next 12-months. Finally, once any group has chosen whether to use its fiscal year, the calendar year, or another 12-month period, the group practice must adhere to this choice.

In new 411.360, each group practice must submit to its carrier an initial attestation that the group has met the "substantially all" criterion (75 percent of patient care time) in the 12-month period it has chosen. New group practices or other groups that wish to initially use future months to meet the "substantially all" criterion must attest that they plan to meet the criterion within whatever upcoming 12-month period they have chosen and will take measures to ensure the standard is met. After this 12-month period is over, the group must attest that it did meet the standard during that period.

The attestation must contain a statement that the information furnished in the attestation is true and accurate and must be signed by a representative for the group. It must be mailed to the carrier within 90 days after the effective date of this final rule, that is, 120 days after the date of publication of this rule in the **Federal Register**. We are requiring this initial attestation so the carriers will be able to determine whether payment for laboratory services should be continued. After their initial attestation (whether it is retroactive or prospective), group practices must submit updated attestations to the carrier each year at the end of the period they have chosen to use to measure this standard.

If a group practice using an initial prospective period does not meet the "substantially all" criterion at the end of its chosen 12-month period, the group would not qualify as a group practice. As such, an overpayment could exist from the beginning of the period in which the group has claimed that it would meet the "substantially all" standard.

This approach does have paperwork burden implications for group practices. However, we do not believe that the burden is significant. It should be a relatively easy task for most group practice physicians to assess the amount of their patient care time that is spent on services that can be billed in the name of the group.

b. Member of a Group

Comment: Several commenters indicated that we should define more precisely what is meant by a "member" of a group practice because the "substantially all" criteria apply to physicians who are "members" of a group practice. For example, one commenter suggested that for part-time members of a group practice, only that percentage of time/services/income devoted by the member to the group should be assigned to the group for the purpose of calculating the total time/services/income of the group.

Several commenters indicated that the term "member" of the group practice should have a restrictive definition, such as one that is limited to principals of the practice, for example, shareholders, partners, or officers.

Another commenter indicated that the term "member" can be broadly interpreted to include all physician employees or even independent contractor physicians of the group practice, and that how the term is defined can have significant impact. Yet another commenter recommended that the term "member" be defined to include physician owners as well as full- and part-time employed physicians.

One commenter recommended that the definition exclude any physician who is not a shareholder, partner, or employee of the group, or an independent contractor providing more than a certain number of hours of service per week (for example, 20 hours) for the group. The commenter stated that such a rule is supported by common sense, as it is doubtful that physicians who furnish services on a sporadic basis would consider themselves to be members of a group or qualify for the various benefits associated with being a member of the group.

On the other hand, another commenter stated that, if the term "member" is given a restrictive definition, limited to principals of the group practice, the practice will be able to circumvent the 85 percent aggregate services requirement simply by ensuring that no physician who provides substantial services outside the group becomes a principal of the group. The commenter believed that limiting the definition, however, might restrict the numbers of physicians who may supervise laboratory testing under the in-office ancillary services exception because it applies to only services furnished by or supervised by physicians who are "members" of the same group practice. The commenter also suggested that it might affect where that testing may take place. Under section 1877(b)(2)(A)(ii), testing may be done in a building in which the referring physician (or another physician member of the group practice) has a practice or in another building which is used for the centralized provision of the group's clinical laboratory services. Particularly in multi-site group practices, the referring physicians could be physician-employees or independent contractors who would not be "members." Thus, their laboratory tests would have to be performed in a building in which a member personally supervises the laboratory services. This, however, would not seriously impede the group practice, in this commenter's view, as most group practices could readily set themselves up in a manner that allows for at least one principal to be available for supervision. This commenter further stated that a broader definition of the term "member" that includes all physician employees and/or

independent contractors leads to different results. That is, it might make it more difficult for the group practice to satisfy the 85 percent aggregate services requirement in the definition, depending on the number of part-time employees and contractors. However, it would allow for almost any associated physician to make referrals and supervise the performance of laboratory services.

Response: As evidenced by the range of comments we received concerning this group member issue, whatever approach we select may not address all of the concerns raised by the commenters. Essentially, we agree that the issue of who qualifies as a "member" of a group practice raises a number of complex questions. As we understand it, group practices typically have partners, full-time physician employees, part-time physician employees, and physician contractors.

We take the position that all of these physicians can be members of a group for purposes of the group practice provisions of section 1877. We consider physician partners and full-time and part-time physician employees and contract physicians to be members during the time they furnish services to patients of the group practice that are provided through the group and are billed in the name of the group. Thus, their services would be considered in determining whether the group practice as a whole meets the requirement that substantially all of the services of physician members be furnished through the group.

Examples are as follows:

- A group practice consists of two physician partners, five full-time physician employees, two part-time physician employees, and a contractor physician who spends one morning a week at the group practice delivering specialty services. The two partners and the full-time employees practice only through the group. The two part-time employees devote 50 percent of their time to the group, and the contractor physician spends 10 percent of his or her time with the group.

7 physicians at 100% =	700%	
2 physicians at 50% =	100%	
1 physician at 10% =	10%	
	810%	divided by 10 = 81%

- In another group practice, two physician partners spend 100 percent of their patient care hours through the group. Five part-time physician employees spend 70 percent each, and two other part-time physician employees spend 25 percent of their time at the group practice. A contractor physician devotes 10 percent.

2 physicians at 100% =	200%	
5 physicians at 70% =	350%	
2 physicians at 25% =	50%	
1 physician at 10% =	10%	
	610%	divided by 10 = 61%

In these examples, using 75 percent as the threshold, the first group practice would qualify, but the second would not.

On balance, we believe this approach is the most appropriate and is neither overly restrictive nor overly permissive. It will eliminate problems that might arise for many group practices that employ physicians or contract for the services of physician specialists on a part-time basis. Because this approach is not overly restrictive, we do not believe it will obstruct rural group practices. On the other hand, as demonstrated in the above example, the inclusion of part-time physicians may cause some group practices to fail to meet the 75 percent aggregate requirement.

To clarify our position about this issue, we have included the following definition under section 411.351 ("Definitions"):

Members of the group means physician partners and full-time and part-time physician employees and physician contractors during the time they furnish services to patients of the group practice that are furnished through the group and are billed in the name of the group.

c. Individual Billing by a Group Practice Physician

Comment: A few commenters indicated that some group practices permit the physicians of the group to bill Medicare under their unique physician identification number. Under the proposed rule, they do not meet the definition of a group practice because services furnished by the group physicians are not billed in the name of the group. The commenters requested an exception for a few group practices that actually practice medicine as a group but do not qualify because of this element of the new definition of group practice.

One commenter indicated that many group practices have made a decision to have each physician bill independently and reassign benefits to the group rather than for services to be billed under the group's provider number. This decision is based on the desire of some physicians within the group to be nonparticipating physicians but only for the services billed by the group as group services. (As nonparticipating physicians, they can bill the beneficiary directly and charge for the part of the bill that is more than the Medicare approved amount, with certain limitations.) According to the commenter, the physicians would agree to bill under a group provider number except for an informal, nonregulatory position that all physician members of a group practice must make a joint decision to be either participating or nonparticipating physicians. The commenter recommended that the final rule clarify that billing in the name of the group allows for physician members of a group to make individual choices about participating or not participating in Medicare. It was suggested that such a decision could be made at a "department level" within the group practice by differentiating between specialty categories.

Response: The definition of a group practice set forth in section 1877(h)(4)(A) requires that substantially all of the services of physicians who are members of the group be provided through the group and be billed in the name of the group. (Beginning January 1, 1995, services must be billed under a billing number assigned to the group.) Under this language, an organization whose individual physicians bill in their own name does not constitute a group practice. Additionally, the services of a physician who does not bill in the group's name cannot be counted in determining whether the group practice satisfies the substantially all criteria.

We recognize that, under the in-office ancillary services exception found in section 1877(b)(2)(B), the physician who performs or supervises the performance of the services may also bill for those services. As mentioned above, however, when a physician bills in this manner, he or she is doing so as a solo practitioner and not as a member of a group practice.

Finally, when a bill is submitted in the name of the group on an assignment-related basis, it is the group that accepts assignment. A Medicare participation agreement under section 1842(h)(1) is an agreement to accept assignment in all cases. Therefore, any participation agreement with respect to services furnished by a group must be entered into by the group and must apply to all services that the physicians furnish as members of the group.

d. Structure of a Group Practice

Comment: One commenter stated that the definition of "group practice" applies not only to professional corporations and other single entities but also to "similar associations." The commenter believed that, when a group practice is organized into two separate entities that are organizationally interrelated through common ownership, administration, or similar substantial and ongoing connections (more than merely their joint ownership of a clinical laboratory), the two entities together should qualify as a similar association under the statute, thus allowing the two entities to satisfy the group practice criteria in the aggregate.

The commenter believed that if such entities are not aggregated for purposes of the group practice definition, then the primary care entity that has the laboratory must qualify separately as a group practice. Further, under the group practice definition, as set forth in the proposed rule, this may be impossible. The commenter described a situation involving a primary care entity and a specialty care entity. These two entities share certain office space, facilities, equipment, and personnel that physicians practicing in both entities jointly use. Thus, as stated by the commenter, there are two group practices sharing a laboratory facility. The commenter believed that each physician member of these entities does furnish the full range of his or her services through the joint use of space, facilities, equipment, and personnel, and the entities allocate the costs of this use on a formulaic basis. The commenter believed the organizational structure described in this situation should meet the conditions in the statute. The commenter pointed out that the preamble to the proposed rule states that each member of the group must individually furnish substantially the full range of services he or she routinely furnishes *through the group practice.* The commenter argued that this language is contradictory to the statute, which requires that each physician who is a member furnish the full range of services *through the joint use of shared space,* etc.—not furnish the full range through the group practice. The commenter suggested that the final rule state the actual requirements.

Response: It appears to us that what the commenter is describing is a situation in which two interrelated group practices share a laboratory. The physicians' services exception under section 1877(b)(1) allows members of the same group practice to refer Medicare patients to each other for clinical laboratory services, as long as one of the physicians either personally performs the services or personally supervises the provision of the services. Thus, section 1877(b)(1) clearly contemplates physicians *within the same* group practice, but not physicians in different group practices. The in-office ancillary exception in section 1877(b)(2) allows members of the same group practice to refer to each other as long as the physician providing or supervising the services meets the tests in section 1877(b)(2) (A) and (B) for personal performance or direct supervision, location, and billing.

To qualify for the in-office ancillary services exception, an organization of physicians must meet the definition of a "group practice" under section 1877(h)(4). Under the definition, a group practice "means a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association." We agree that, in including a "similar association" in the list, the Congress has provided some flexibility for different kinds of entities to qualify as group practices. Nonetheless, we also believe that the statutory definition clearly contemplates only single legal entities. We do not view two independent group practices as a single practice, just because they are organizationally interrelated through common ownership or other substantial and ongoing connections.

We believe that the statute would have explicitly allowed for a "common ownership" or "substantial connection" configuration as part of the group practice definition had the Congress intended to include it. Also, it appears to us that using the premise of common ownership or substantial connection to combine individuals and entities could lead to far-reaching exceptions to the referral prohibition that we do not believe the Congress ever intended. For example, two solo practitioners could state that they are interrelated through shared administrative services and their common ownership of a shared laboratory, thus qualifying them as a similar association.

As we explain throughout this preamble, we do not believe that a clinical laboratory that is shared by associations of physicians who do not meet the definition of a single group practice will generally qualify for the in-office ancillary services exception. However, each individual physician in these groups might qualify separately for the exception by meeting the requirements in section 1877(b)(2). That is, the physician must personally furnish the services or directly supervise the individual(s) that are furnishing the services. Further, the services must be furnished in a building in which the referring physician furnishes physicians' services unrelated to clinical laboratory services, and the services must be billed by the physician or an entity wholly owned by the physician.

Comment: One commenter indicated that we should address the issue of group practices that may include more than one legal entity as long as the entities either are in parent-subsidiary relationships or are under common ownership and control. The commenter stated that the proposed definition of group practice requires an entity to be legally organized, and gives multiple examples of the types of legal entities typically used in group practices. The commenter believed the definition is silent on the question of whether a group practice may have more than one such legal entity under a common umbrella. For example, a "parent" professional corporation or partnership might own subsidiary entities for real estate and/or equipment ownership or for billing or ancillary services. Alternatively, rather than having a parent/subsidiary relationship, these same types of separate entities might operate jointly under the common ownership and control of a core group of physicians. These separate structures have been highly desirable for reasons related to taxation, benefits, liability, debt service capacity, etc.

Response: This commenter was concerned about groups of physicians who furnish services through a "group practice" that is composed of several legal entities. The commenter believed that such a group practice should be able to take advantage of the in-office ancillary services exception as long as the entities are in either parent-subsidiary relationships or are under common ownership and control. The commenter specifically mentioned examples in which a professional corporation might own subsidiaries for providing equipment, for billing, or for ancillary services.

The definition of "group practice" in section 1877(h)(4)(A) means a group of 2 or more physicians, legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association. As we have said elsewhere in this preamble, we believe that the statute contemplates a group

practice that is composed of one single group of physicians who are organized into one legal entity. In short, we do not believe that a group practice can consist of two or more groups of physicians, each organized as separate legal entities.

However, we do not believe the statute precludes a single group practice (that is, one single group of physicians) from owning other legal entities for the purpose of providing services to the group practice. Thus, a group practice could wholly own a separately incorporated laboratory facility which provides laboratory services to group practice or other patients. However, because the group practice physicians have an ownership interest in the laboratory, they could be prohibited from referring to the laboratory, unless an exception applies.

The physicians could qualify for the in-office ancillary services exception, provided they meet the requirements for supervision, location, and billing. This exception does not appear to dictate any particular ownership arrangements between group practice physicians and the laboratory in which the services are provided. In fact, the billing requirement in section 1877(b)(2)(B) allows the services to be billed by the referring physician, the group practice, or an entity wholly owned by the group practice. The exception appears to anticipate that a "group practice," as defined in section 1877(h)(4), may wholly own separate legal entities for billing or for providing ancillary services.

e. Corporate Practice of Medicine

Comment: Two commenters indicated that there are legitimate physician group practice structures and relationships that may not satisfy the definition of a group practice as set forth in the proposed rule. A specific concern is with group practice organizations affiliated with hospitals that are organized in compliance with State corporate practice of medicine statutes.

In States that have these statutes, according to the commenters, only a validly-organized professional corporation or professional association can enter into employment arrangements with physicians.

One of the commenters presented an example of a group practice that is organized as a nonprofit hospital affiliated corporation that owns a clinical laboratory. The nonprofit hospital-affiliated corporation will be unable to employ the physicians; that is, a separate professional corporation must be established to employ the physicians in accordance with applicable State law. Typically, this commenter claimed, nonprofit corporations will not qualify as the appropriate vehicle for a for-profit professional corporation or association.

The commenters believed that entities such as those described above (joint not for profit/for profit structures) that meet certain specific standards should qualify under the "similar association" language of the group practice definition. They believed that, so long as all other requirements established by the Secretary relating to appropriate standards for group practices (including the performance of services, billing practices, location of facilities, and income distribution provisions) are met, these entities do not pose a threat of abuse to the Medicare program and, as a result, they should be considered as a single group practice under the definition. To ensure that only appropriate entities qualify, one commenter suggested that (1) the separate professional corporation be organized for the sole purpose of providing medical services to the nonprofit corporation/group practice and be obligated to furnish those services exclusively to the nonprofit corporation, and (2) that the nonprofit corporation perform all other services associated with a group practice (including laboratory, billing, etc.) and employ all nonphysician staff.

Response: We believe the commenters are asking that we regard a joint structure, such as a nonprofit hospital-affiliated corporation linked with a professional corporation or association, as one group practice. This designation would allow the physicians in the professional corporation or association to refer to the nonprofit corporation's laboratory under the physicians' services or in-office ancillary services exceptions in section 1877(b).

In order to meet the definition of a group practice, there must be one identifiable legal entity. As we understand it, the clinical laboratory is owned by a nonprofit hospital-affiliated corporation but, because of the corporate practice of medicine requirements, that nonprofit corporation is unable to directly employ the physicians. As a result, the physicians are members of a separate professional corporation or association. The hospital-affiliated corporation and the professional corporation or association are separate legal entities that cannot qualify as one group practice. Also, because the hospital-affiliated corporation cannot directly employ the physicians, the exception in section 1877(e)(2) does not apply. (This exception allows referrals by a physician when there is a compensation arrangement between an entity and a physician for the employment of the physician.)

We see one possible exception for a nonprofit corporation that is affiliated with physicians who perform certain physician services. Under section 1877(e)(3), as amended by OBRA '93, there is an exception from the prohibition on physician referrals in the case of a personal service arrangement involving remuneration from an entity to a physician, or to an immediate family member of a physician, providing—

- The arrangement is set out in writing, is signed by the parties, and specifies the services covered by the arrangement;
- The arrangement covers all of the services to be furnished by the physician (or an immediate family member of the physician) to the entity;
- The aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement;
- The term of the arrangement is for at least 1 year;
- The compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and, except in the case of a physician incentive plan, is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties;
- The services to be performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law; and
- The arrangement meets any other requirements the Secretary imposes by regulation to protect against Medicare program or patient abuse.

If the nonprofit corporation (that owns the laboratory) and the professional corporation or association (that has physician investors) have such an arrangement, the physicians would not be prohibited from referring laboratory testing to the nonprofit corporation's laboratory.

f. Not-For-Profit Corporations

Comment: One commenter asked about the provision that permits group practices to be legally organized as not-for-profit corporations. The proposed rule defines a "group practice" as "a group of two or more physicians legally organized as * * * a not-for-profit corporation * * *." The commenter, however, stated that not all group practices organized as not-for-profit groups have physicians as their original incorporators or corporate members, nor is this required by State law. As an example, the commenter stated that tax-exempt hospitals often have affiliated group practices, and the group practice's operating entity (to which the commenter referred as a "physician-directed clinic") might be a not-for-profit corporation separate from the tax-exempt hospital entity that employs the physicians. This arrangement does not present a potential for abuse, in the commenter's view, although it is unclear whether a not-for-profit physician-directed clinic organization affiliated with a not-for-profit hospital in this manner meets the definition of a group practice. Therefore, the commenter recommended that the final regulation recognize the arrangements.

Response: As we understand the commenter's example, a tax-exempt hospital employs physicians who are part of an affiliated not-for-profit physician-directed clinic that was originally organized by the hospital. (Under Medicare, a physician-directed clinic is one in which (1) a physician (or a number of physicians) is present to perform medical (rather than administrative) services at all times the clinic is open; (2) each patient is under the care of a clinic physician; and (3) the nonphysician services are under medical supervision. (See Medicare Carriers Manual, section 2050.4.)) Further, we understand the commenter to be making the following suggestions:

- That an entity attempting to qualify as a group practice need not have been organized (or incorporated) by physicians; that is, as long as the entity is one in which two or more physicians have been brought together as a group practice, it does not matter that the initial organizing was done by nonphysicians.
- That an entity that, in fact, is a physician-directed clinic, organized by an affiliated hospital, be permitted to qualify as a group practice.

As to the first suggestion, the commenter referred to only the regulations, but the definition of "group practice" at section 1877(h)(4) also requires that there be "two or more physicians legally organized" as a not-for-profit corporation or as one of several other specified associations. Because the statute is silent about who must actually legally organize the association or operate or control it, we believe that any individuals or entities can assume these tasks, as long as the group practice meets all of the other specific requirements in section 1877(h)(4). Thus, if a clinic (or other facility) is legally organized to include two or more physicians and provides the services of physicians, it is a group practice, even if it is established, operated, and controlled by a nonphysician group or corporation. This would be so regardless of who employs the physicians (in the scenario presented by the commenter, the clinic physicians were employed by the hospital that established the clinic).

g. Individual Pathology Services

Comment: One commenter suggested that the proposed regulations may preclude arrangements under which a group practice retains the services of an independent pathologist to direct the group's laboratory or otherwise assist in improving the quality of laboratory services available. The commenter wrote that the group practice may not be able to satisfy the definition of a group practice laboratory for purposes of section 1877(b)(2) if it retains the services of an independent pathologist who is not considered a member of the group, but who provides medical direction to the laboratory. Second, according to the commenter, an independent pathologist affiliated with a reference laboratory may be unwilling to provide consulting services to a group practice laboratory unless the consulting arrangement is specifically excepted by the regulations. Therefore, the commenter requested that the final regulations provide that (1) a pathologist retained by a group practice on a regular, part-time basis to direct, supervise, and otherwise assist in the performance of laboratory services be considered to be a member of the group practice; and (2) the services of a pathologist serving as a laboratory consultant be included within the category of exceptions set forth in proposed Section 411.359(e)(1)(i) (that is, service arrangements with nonhospital entities).

Another commenter requested that we develop an additional exception relating to compensation arrangements involving the provision of consulting services, as opposed to the furnishing of actual testing services. The commenter suggested that the arrangement would have to be: in writing, consistent with fair market value for the consulting services provided, and not conditioned on referral of laboratory services from one party to the other or otherwise related to the volume or value of referrals for laboratory services.

Response: First, part-time or contract physicians, including independent pathologists, may be considered members of a group practice if they meet the conditions in the "member" definition in § 411.351. As indicated by the commenter, a group practice can hire a pathologist to direct, supervise, or otherwise assist in performing laboratory tests. We agree that this is an important point because the most significant advantage of a practice meeting the group practice definition is that it qualifies the group for the in-office ancillary services exception in section 1877(b)(2). This exception applies if the referring physician or *another member* of the same group practice either performs or directly supervises the performance of the laboratory services. A group practice would not be able to use the section 1877(b)(2) in-office exception if it is a group practice member who is referring patients to the group's laboratory, but it is a nonmember pathologist who is performing or supervising the laboratory services.

The second concern of the first commenter involves an independent pathologist, who is somehow "affiliated" with an outside laboratory, who might be unwilling to provide consultation services to a group practice laboratory unless the consulting arrangement is specifically excepted from the prohibition by the regulations. Following is our analysis of such a situation.

First, the group practice laboratory is itself a laboratory entity that is compensating a pathologist (physician) for certain services the physician is providing and that relate to the group's laboratory services. We believe the pathologist could refer to the group practice laboratory if this arrangement fits within the exception in section 1877(e)(3). Section 1877(e)(3) excepts from the term "compensation arrangement" payments *from an entity to a physician* for personal services provided by the physician under an arrangement. The arrangement must meet certain criteria (for example, the arrangement must list the specific services in writing, be signed, be reasonable and necessary, and compensation must be for fair market value).

Section 1877(e)(3) does not appear to differentiate between physicians receiving compensation on the basis of whether they are independent contractors who also service other outside laboratories or whether they are employees or owners of outside laboratories.

The group practice could also be regarded as a group of physicians who may be purchasing services from an outside laboratory (if the pathologist is employed by or owns the outside laboratory). If this is the case, the compensation could instead be excepted under section 1877(e)(8). This provision excepts payments *made by a physician*

to an entity as compensation for items or services other than clinical laboratory services if they are furnished at a price that is consistent with fair market value.

If the pathologist is considered a member of the group practice and makes referrals to the outside laboratory, whether the referrals would be prohibited depends upon the nature of the pathologist's relationship with the laboratory. The referrals might not be prohibited if the pathologist is the employee of the outside laboratory. In that situation, the payment the pathologist receives from the outside laboratory would not be "compensation" under section 1877(e)(2), which exempts any amount paid by an employer to a physician who has a bona fide employment relationship with the entity for the provision of services if certain standards are met.

If the pathologist is independent but contracts with the outside laboratory, the compensation that flows from the outside laboratory to the pathologist could be excepted under section 1877(e)(3). This provision excepts remuneration from an entity under a personal service arrangement if certain standards are met.

If the pathologist owns the outside laboratory though, his or her referrals would be prohibited. That is because the pathologist would be referring to a laboratory in which he or she has an ownership interest (the section 1877(e) provisions except only compensation arrangements). Finally, if the pathologist is a member of the group practice, none of the group practice members can refer to the laboratory that is owned by the pathologist. That is because, in Section 431.351 of the proposed rule, we defined "referring physician" as a physician (or group practice) who makes a referral. Thus, any referral by one group practice member is imputed to the entire group practice.

7. Immediate Family

Under the proposed rule (§ 411.351) an "immediate family member" of a physician means husband or wife; natural or adoptive parent; child or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

Comment: Two commenters recommended that we adopt what they believed to be a more manageable definition of immediate family member. They recommended eliminating, at the very least, the references to grandparents, grandchildren, and assorted in-laws.

One of the two commenters recommended that the definition include "natural or adoptive parent, child or sibling" and exclude the remainder of the identified relatives. In this commenter's view, the definition of immediate family reaches beyond what is intended by the statute.

Response: As we stated in the proposed rule, our proposed definition is a longstanding definition used (in § 411.12) by the Medicare program to implement section 1862(a)(11), which excludes from Medicare coverage services furnished by an immediate relative. We also explained that, in our view, the definition encompasses the range of relatives who could be in a position to influence the pattern of a physician's referrals. These commenters simply stated their opinion that the definition is overreaching, without explaining why.

For these reasons, we are retaining the definition as proposed.

Comment: One commenter suggested that when an allowable clinical laboratory service is performed as part of a medical consultation by a family member of the referring physician, we should not prohibit that referral solely because the consulting physician is related to the referring physician.

Response: Under the definition of referral in section 1877(h)(5)(A), the request by a physician for an item or service covered under Part B, including the request by a physician for a consultation with another physician, and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician, constitutes a "referral" by a "referring physician." The first physician has, in sending his patient to the family member, made a referral under the statute.

If the family member performs or supervises the performance of the laboratory test, it is likely that the family member has either an ownership interest in the entity that performed the test and/or is compensated by the entity for supervising or performing the test. As a result, the first physician has referred a patient for laboratory tests to an entity with which his or her immediate family member has an ownership or compensation relationship. If no exceptions apply, this makes the referral a prohibited one. If the consultant family member merely orders the laboratory test from a laboratory in which neither he or she nor the first physician has a financial interest, the referral would not be prohibited.

We also point out that section 1877(h)(5)(C) provides that if a pathologist performs a laboratory test or supervises the performance of a test that is part of a consultation requested by another physician, the furnishing of the test by the pathologist or his or her request that the test be completed (under the pathologist's supervision) is not a referral. In other words, a self-referral by a pathologist as a result of a consultation does not constitute a referral for purposes of section 1877.

Comment: One commenter is a solo practitioner whose office is located in a building owned by herself and six other physicians, one of whom is her husband. In the building, there is an independent laboratory that is owned by the group practice to which her husband belongs. The laboratory was established by the physicians in the building for the practices in the building. The commenter did not think it is right that, because her husband has an ownership interest in the laboratory, her patients should not have access to it.

Response: Unless an exception applies, it appears, on the face of it, that the commenter is correct in stating that her referrals to the independent clinical laboratory would be prohibited. Her relationships with the laboratory appear to be as follows:

- She may have been an investor in the laboratory, because she was one of the "physicians in the building" who set the laboratory up "for the practices in the building."
- She is the spouse of a member of the group practice that now owns the laboratory.
- She is part owner of the building that houses not only the laboratory, but her solo practice and her husband's group practice as well.

It appears, therefore, that this physician, in addition to being an immediate family member of what may be a partial owner of the laboratory, may also be an investor in the laboratory herself (depending on the nature of her initial involvement in setting up the laboratory and any current financial interest) and may have a compensation arrangement with the laboratory based on rentals she presumably receives as a part owner of the building. We believe, however, that her family relationship generally controls to prohibit her referrals if her husband has an ownership or investment interest in the group practice or its laboratory or if he receives unexcepted forms of compensation from the group practice.

The physician's referrals would not be prohibited on the basis of her husband's ownership interest if the laboratory qualifies as a rural laboratory under

§ 411.356(b)(1). Note that, as discussed elsewhere in the preamble, unless the group practice that owns the laboratory satisfies the definitional requirements, referrals by group practice physicians to the laboratory might also be called into question.

8. Practice

In the proposed rule (411.351), we defined a "practice" to mean an office in which the physician, as a matter of routine, sees patients for purposes of diagnosis and treatment and where patient records are kept.

Comment: One commenter indicated that many group practices provide medical services in satellite facilities where only limited medical services are offered and that the medical records of the group practice are kept in a centralized location. Thus, the commenter recommended that we clarify in the final rule that the definition of "practice" is not incorporated into the definition of "group practice."

Another commenter stated that some physicians maintain a medical practice without being tied to a particular location, such as certain hospital-based physicians and those who treat nursing home patients. These physicians use office space only to receive mail and for other administrative support functions. Such a practice, be it group or individual, does not have an office for purposes of diagnosis and treatment, or even to keep substantial amounts of medical records. The commenter believed this fact is not taken into account in the definition.

Response: We acknowledge that the commenters have raised some legitimate problems with the proposed approach and how difficult it is to determine where someone has a "practice." We are responding to these comments by creating a new, more equitable standard that is not based on the concept of a physician's "practice" (and thus eliminate the definition from the rule). We are using the new standard required by OBRA '93, which states that to qualify as a rural provider, substantially all of the clinical laboratory services furnished by the entity must be furnished to individuals residing in the rural area. As part of this standard, we are defining "substantially all" as meaning that 75 percent of the individuals to whom services are furnished reside in the rural area. Although the effective date of this provision for rural providers is January 1, 1995, we believe it is reasonable to incorporate it into this final rule.

9. Referral

In the proposed rule (§ 411.351), a "referral" means either of the following:

- The request by a physician for, or ordering of, any item or service for which payment may be made under Medicare Part B, including a request for a consultation with another physician other than a pathologist, and any test or procedure ordered by or to be performed by (or under the supervision of) that physician; or
- If a plan of care includes the performance of clinical laboratory testing, the request or establishment of the plan of care by a physician. When a pathologist, in responding to another physician's request for a consultation, furnishes or supervises the furnishing of clinical diagnostic laboratory tests and pathological examination services, the services are not considered to have been furnished on a referral basis.

a. Pathology Referrals

Comment: Two commenters wanted the definition of "referral" to be clarified so as to exclude circumstances in which a pathologist providing professional services to one laboratory sends specimens ordered by the attending physician to a second laboratory in which the pathologist has a financial interest.

One commenter indicated that the definition should also exclude circumstances in which a pathologist recommends to an attending physician appropriate follow-up laboratory services.

Response: Under the definition of "referral" in section 1877(h)(5), a request by a pathologist for clinical diagnostic laboratory tests and pathology examination services will not be considered a referral if such laboratory services are furnished by (or under the supervision of) the pathologist as a result of a consultation requested by another physician. Thus, if the pathologist described in the first comment either performs or directly supervises the performance of the laboratory testing in the second laboratory, the request for services would not be considered a referral by the pathologist. The answer is different, however, if the pathologist sends laboratory work to a laboratory with which he or she has a financial relationship and the services are not performed by the pathologist or under his or her direct supervision. The services in this situation would be considered to have been furnished as a result of a prohibited referral, unless one of the exceptions applies. Similarly, if the pathologist sends tests to a laboratory with which the first referring physician has a financial relationship, the referral would be prohibited, unless an exception applies. Because we recognize that there are situations in which a physician's request for a consultation with a pathologist could constitute a referral, this final rule revises the proposed definition of "referral" by removing the phrase "other than a pathologist".

We do not consider a pathologist's recommendation to the attending physician for additional testing to be a referral. That is because it is the attending physician who ultimately decides whether such testing is necessary and whether to order the additional testing and from what laboratory.

b. Plan of Care and End-Stage Renal Disease (ESRD) Patients

Comment: One commenter indicated that the proposed rule is ambiguous with regard to the "plan of care" element within the definition of "referral." At one level, the commenter believed, the language is simply unclear in that, with regard to "a plan of care that includes the performance of clinical laboratory tests," it is difficult to understand what is meant by the "request or the establishment of the plan of care by a physician." According to the commenter, this might mean that when a physician establishes a plan of care that entails laboratory testing and the facility or other individual implementing the plan of care orders those tests from a laboratory, the physician shall be considered to have made the laboratory referral. If this interpretation is correct, the commenter believed there are some issues specific to chronic hemodialysis facilities and referrals that require clarification.

The commenter wrote that hemodialysis patients receive three different classes of clinical laboratory tests:

1. Tests ordered on a patient-specific basis on account of particular clinical signs and symptoms and referred by the dialysis facility to an independent or hospital-based clinical laboratory that bills Medicare. These tests pose no interpretive problems, as the physician does, in fact, order each one individually.

2. Routine monthly testing applicable to every patient and for which payment is incorporated into the facility's dialysis composite rate.

3. Testing integral to monitoring the patient during the dialysis treatment itself, performed in the facility and not billed separately.

The commenter pointed out that every time a patient is referred to a facility for chronic renal dialysis, clinical laboratory testing from categories 2 and 3 is required on an ongoing basis as part of the overall care of the patient. If the physician's plan of care for dialysis is deemed to include these tests for purposes of this rule, the commenter believed that the practical result would be to prohibit physicians from making referrals for tests to dialysis facilities in which they have an ownership interest.

A second commenter stated that the ESRD program includes in its composite rate payment methodology most items and services related to the treatment of patients with ESRD, including hematocrit and hemoglobin tests, clotting time tests, routine diagnostic tests, and routine diagnostic laboratory tests. Thus, the commenter pointed out, the determination of whether an item or service is included under the composite rate payment is presumptive and in no way depends on the frequency with which a dialysis patient requires the item or service. The commenter recommended that the final rule, or the preamble to the final rule, explicitly exclude clinical laboratory referrals covered by ESRD from its application.

Response: Section 1877(h)(5)(B) says that "the request or establishment of a plan of care by a physician which includes the provision of [clinical laboratory services] constitutes a "referral" by a "referring physician." The commenter has pointed out that this provision, carried over into the proposed rule, is ambiguous and unclear. The statute could mean (1) that there is a referral when a physician establishes a plan of care or requests that one be established that includes laboratory services or (2) that a request by a physician that includes the provision of laboratory services or the establishment of a plan of care by a physician that includes the provision of laboratory services constitutes a referral. Because the comments reveal that this provision has caused confusion, we have decided to adopt the latter interpretation and have incorporated it into the regulation.

We also agree that it is not clear what technically constitutes a "plan of care." We believe that any time a physician orders any item, service, or treatment for a patient, that order is pursuant to a plan of care. If a plan of care entails laboratory testing and the facility or other individual implementing the plan orders those tests from a laboratory, the physician who established the plan of care is considered to have made the laboratory referral. In addition, as we mentioned in a previous response, the prohibition could also apply if the individual implementing some or all of the plan of care is a consulting physician. We agree, however, that, under certain circumstances, this may cause problems when those laboratory tests are included in the ESRD composite rate. Thus, as we discuss below, we are including those laboratory tests that are paid under the ESRD composite rate as part of a new exception. We agree that the application of the composite rate constitutes a barrier to either Medicare program or patient abuse because the Medicare program will pay only a set amount to the facilities irrespective of the number and frequency of laboratory tests that are ordered.

c. Consultation Referrals

Comment: A few commenters believed that it was unnecessary for us to include in the preamble the discussion about consultations (57 FR 8595) and the responsibility of a consulting physician to not engage in a cross-referral arrangement. They believed there is no corresponding statutory or regulatory provision and that, except for a small number of truly "bad apples" practicing medicine, physicians have not and will not engage in the complicated and tortuous process of directing referrals.

One commenter was concerned that the proposed rule suggests that physicians who refer to consultants have some obligation to tie the consultant's hands when it comes to which clinical laboratories the consultant can use. The commenter believed such an obligation runs afoul of the principle of medical ethics that requires a physician to refer patients to the entity that furnishes the most efficacious service, regardless of other considerations. The commenter indicated that, in a managed care setting, it may be impossible for the attending physician to even know who the consulting physician is, much less be in a position to dictate which laboratory is selected. In sum, this commenter believed that it will be difficult in practice for physicians to determine where the prohibition ends.

Response: We do not agree with these commenters. In response to the first comment, the discussion in the proposed rule was based on the statute at section 1877(g)(4). This provision says that "any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of [section 1877], shall be subject to a civil money penalty * * *."

Because the provision applies to physicians who make referrals and to "other entities," we believe that it can apply to consulting physicians who help a physician indirectly make prohibited referrals. In the preamble of the proposed rule (57 FR 8595) we stated that, if a consulting physician deems it necessary to order clinical laboratory services, those services may not be ordered from a laboratory in which the referring physician has a financial interest. We included this explanation to give the reader an example of the kinds of referrals that are prohibited under the statutory definition of "referral." Under section 1877(h)(5)(A), a request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by or performed under the supervision of that other physician) constitutes a referral. Thus, it is necessary for the consulting physician to be aware of any financial relationships the referring physician may have with a laboratory, in order for the referral not to be prohibited. Finally, the consulting physician is also obligated not to refer laboratory testing to an entity with which he or she has a financial relationship, unless an exception applies.

Concerning services furnished in a managed care setting, section 1877(b)(3) provides a general exception for services provided to patients enrolled in the prepaid health plans listed in that provision and in the regulations at § 411.355(c).

d. Statutory Authority

Comment: One commenter noted that the statutory definition of referral encompasses requests for any item or service for which payment may be made under Medicare Part B, but the prohibition contained in the statute is aimed at referrals for clinical laboratory services and not other referrals. Thus, in the commenter's view, the statute makes the rule somewhat confusing. That is, the behavior that the statute seeks to restrict, referrals for clinical laboratory services, is narrower in scope than the behavior of "referring" itself. Therefore, the commenter suggested that the final rule clarify that the prohibited behavior is related to clinical laboratory services.

Response: We agree that the definition of "referral" under the statute at section 1877(h)(5) is broad. In section 1877(h)(5)(A), for physicians' services, it covers a physician's request for any item or service covered under Part B of

Medicare. For other items, section 1877(h)(5)(B) covers a physician's request or establishment of a plan of care that includes furnishing clinical laboratory services. However, section 1877(a)(1)(A) specifically narrows the scope of section 1877 by describing the subset of referrals that are prohibited. Physicians were originally prohibited from making referrals to an entity for the purpose of providing clinical laboratory services. As of January 1, 1995, physicians are prohibited from making a much broader range of referrals to entities furnishing the other designated health services listed in section 1877(h)(6).

e. Hospitals and Group Practice Laboratory

Comment: One commenter believed that, if there is an "under arrangement" agreement between a hospital and a group practice for the group practice to provide laboratory services to hospital patients under section 1861(w)(1), it is the hospital and not the group practice physicians that is making a referral for the purposes of the section 1877 self-referral proscription. The commenter pointed out that, for the most part, as recognized in the proposed regulation, a physician's request for a service is tantamount to a referral to a particular service provider. If services are being furnished to hospital inpatients and outpatients, however, the commenter indicated that it is the hospital's obligation to ensure that the services be performed and to direct that the services be performed by a particular party. Thus, in the commenter's opinion, it is the hospital that is making the referral to the group practice laboratory. Consequently, the commenter recommended clarification of the definition of "referral" and "referring physician" so that it is clear that a physician's ordering of clinical laboratory services for hospital patients does not constitute a "referral" within the meaning of section 1877.

Response: The commenter believed that we should revise the definitions of "referral" and "referring physician" to make it clear that, in the situation described in the comment, it is the hospital that makes a referral to a group practice laboratory and not the group practice physicians. We disagree with this interpretation. Every referral for clinical laboratory services must originate with a physician, and the general rule in section 1877(a)(1)(A) prohibits a *physician* from making a referral to an entity with which the physician (or an immediate family member) has a financial relationship. A "referral" need not even indicate a specific laboratory. Section 1877(h) defines a "referral" as any request by a physician for an item or service or the establishment of a plan of care that includes the provision of laboratory services.

We do not believe that the Congress intended to allow physicians to circumvent the referral prohibition by imputing their referrals to an operating entity such as a clinic, hospital, or other institution. We believe that "referring physicians" and "referrals" involve only individual physicians or groups of physicians who send a Medicare patient or specimen to a laboratory for services.

Although, in our opinion, the general prohibition applies to the situation described by the commenter, there are exceptions within the statute that could apply to allow the group practice physicians to continue to refer.

The commenter has described a situation in which group practice physicians apparently provide patient care services to hospital patients. They refer hospital patients to the group practice's laboratory; the group practice laboratory provides laboratory services for the hospital under arrangements; and Medicare pays the hospital. The referring physicians in this case are referring to a laboratory that receives compensation from the hospital (the hospital buys laboratory services under arrangements). The hospital is also apparently compensating the group physicians for patient care services. The physicians, in addition, are likely to be receiving compensation from the group practice that owns the group practice laboratory and/or they have an ownership interest in the group practice and its laboratory.

We believe that the exception in section 1877(e)(7) could apply to allow referrals based on part of this scenario. This provision says that there is no "compensation arrangement" that would trigger the prohibition in section 1877, for arrangements between a hospital and a group practice under which the group practice provides laboratory services but the hospital bills for the services, if certain criteria are met. If the arrangement meets the criteria, the group practice should be able to refer to the hospital's laboratory without violating section 1877. That is because the underlying compensation passing between the hospital (which, in essence, is purchasing services from the group practice laboratory) and the group does not trigger the prohibition.

There is, however, a complicating factor in the commenter's scenario. That is, the group practice physicians are referring to their own group practice laboratory. It is likely that these physicians are receiving compensation from the group practice that owns the laboratory or that they own some portion of the group practice and the laboratory. The compensation or ownership interests involved here would require a separate exception in order to allow the group practice physicians to refer. The services could, for example, be excepted under the in-office ancillary services exception in section 1877(b)(2), which allows a group practice to refer to its own laboratory if certain criteria are met.

In addition, the hospital may be separately compensating the group practice physicians for patient care services, compensation that is independent of the compensation the hospital pays the group to purchase laboratory services. The compensation from the hospital, however, could be excepted under section 1877(e)(2), if there is a bona fide employment relationship between the hospital and the physicians, or section 1877(e)(3) if the hospital is paying the physicians for personal services furnished to the hospital.

10. Referring Physician

We proposed, in § 411.351, to define a "referring physician" as "a physician (or group practice) who makes a referral as defined in this section."

Comment: One commenter believed that the definition of referral is not necessary because the statute is clear as written.

Response: We incorporated this definition in the rule to make the regulations as complete and clear as possible. Furthermore, this definition interprets the statutory term to include referrals made by an individual physician as well as referrals made by a group practice.

Comment: A commenter raised the issue of a physician who owns or manages a clinic but does not function as a physician by providing care to clinic patients. The physician also owns an interest in a clinical laboratory to which clinic patients or samples are sometimes referred. The commenter believed the physician-owner should not be considered a referring physician within the meaning of the regulation when he or she does not function as a physician. The commenter also believed that, if a clinic owner is only incidentally a physician, that professional degree should play no role in setting his or her legal obligations. In the commenter's view, to include physicians who are mere owners/managers of clinics within the definition of referring physician would be arbitrary and prejudicial to them. The

commenter added that such a physician should be compared to nonphysician clinic owners or managers who are not covered by the statute or its implementing regulations. Clearly, according to the commenter, clinic owners or managers with medical degrees should have the same legal status as nonphysician owners or managers. Thus, the commenter recommended that the final regulation, or its preamble, explicitly exclude from the definition of referring physician, physician-owners who neither practice medicine nor make direct referrals to clinical laboratories.

Response: Section 1877 prohibits referrals by "physicians" and does not qualify "physicians" to exempt any subset of these individuals. Since section 1877 does not define who is a physician for purposes of that section, the usual Medicare definition of that term applies. "Physician" is defined in the statute, at section 1861(r), as a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs that function or action (including osteopathic practitioners within the scope of their practice as defined by State law). The definition also includes a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, and a chiropractor. These additional individuals qualify as "physicians" only when they are performing within the scope of their license or providing items and services that they are legally authorized to perform within their specialty. The Medicare regulations define "physicians' services" at 410.20 as those furnished by one of these individuals who is legally authorized to practice by the State and "who is acting within the scope of his or her license." Arguably then, a physician who owns or manages a clinic but does not provide any of the items or services authorized within the scope of his or her license would not be a "physician" for purposes of section 1877. However, if such an individual refers clinic patients to a particular laboratory or attempts to influence a clinic physician to make such referrals, that individual's status changes. That is, he or she has become involved in the care of particular patients and is therefore acting in the role of a physician. As a result, the provisions of section 1877 (including the provision prohibiting circumvention schemes and indirect referrals) would apply.

11. Remuneration

We proposed, in section 411.351, to define "remuneration" as "any payment, discount, forgiveness of debt, or other benefit made directly or indirectly, overtly or covertly, in cash or in kind."

a. Discounts

Comment: Some commenters supported the concept of including discounts in the definition of remuneration. They indicated that it is not unusual for a physician with substantial Medicare business to obtain a larger discount than a physician who has no Medicare business. Discounts, in the view of these commenters, can therefore influence a physician to use a particular laboratory and, in an extreme case, the prospect of a deeper discount may even induce a physician to order unnecessary tests.

One commenter offered the opinion that the intent of the legislation is clear from the definition of "compensation arrangement," which is defined to include all forms of remuneration, direct or indirect, overt or covert, in cash or in kind.

Another commenter indicated that the existence of a discount arrangement has a strong potential to result in excessive laboratory testing, which contributes to the distressing rise in health care costs in this country.

Some commenters objected to including "discounts" in the definition of remuneration because they believed the term "discounts" is vague, overbroad, and impossible to define. In their view, the definition would be fraught with unintended adverse consequences. One commenter believed that a compensation arrangement, for the purpose of section 1877, should be created only whenever the following situation occurs: (1) Some remuneration passes from a laboratory to a physician; and (2) the prospect of remuneration gives the physician an incentive to order increased testing.

One commenter indicated that, to a certain extent, physicians receive a lower price than other payers because of the legitimate cost savings associated with physician billing.

Two commenters stated that there is nothing inherently abusive about discounts. One of the commenters believed that what gives the physician an incentive to increase his or her utilization of testing is not the discount; it is his or her ability to mark up the testing and thereby derive a profit from the transaction. The other commenter suggested that discounts be permitted if the laboratory can meet the following conditions:

- The discount is not tied to the referral of Medicare specimens to the laboratory.
- The discount is related to verifiable cost differences in handling specimens that satisfy the conditions for the discount, including cost differences due to such factors as economies of scale, lower billing and collection costs, prompt and regular payment, or reduced bad debt cost.
- The discount is available to anyone who can satisfy the requirements for the discount, for example, type of test or other objective requirement; and
- The discount is not provided to any referring physician. (We assume by this that the commenter meant that discounts a laboratory entity would make to providers of services, such as hospitals, would be permissible under these guidelines.)

Response: As discussed earlier, section 1877(e)(8)(A), as added by OBRA '93, provides that a physician may make payments to a clinical laboratory in exchange for furnishing clinical laboratory services and continue to refer Medicare patients to that laboratory. There is no requirement that the payments meet any particular pricing standards. However, when a laboratory provides a physician with a discount, it may in some cases be providing that physician with a benefit (that is, remuneration) that is separate from the payment that the physician has made to the laboratory to purchase laboratory services. Since we are not interpreting the OBRA '93 provisions in this rule, but merely reiterating them, we have not yet taken a position on how this new provision will affect discounts. We will interpret section 1877(e)(8)(A) and how it applies to discounts in the context of the proposed rule covering all of the designated health services.

In regard to discounts for items and services other than clinical laboratory services, a physician may purchase other things from a clinical laboratory besides clinical laboratory services. Section 1877(e)(8)(B) allows a physician to purchase from any entity items and services, other than laboratory services, as long as they are purchased at fair market value. Section 1877(h)(3) defines fair market value as the value in arm's-length transactions, consistent with the general market value, which would not include discounts. In light of section 1877(e)(8)(B), we are keeping "discounts" in the definition of "remuneration." As a result, discounts would remain "compensation arrangements" for discounts on items or services such as supplies or personnel or consulting services purchased by a physician from a clinical laboratory or other entity.

Comment: One commenter indicated that providing a discount to physicians is not necessarily a means of providing them compensation. As an example, the commenter pointed out that in New York, a State that has long had a direct billing law and related regulations, discounts are passed directly on to the patient or insurance carrier. It is a market mechanism that, in the commenter's view, actually works to hold down the cost of health care. The commenter considered discounts a goal to be aimed for, not a practice to be precluded. The commenter indicated that a simple way to help hold down the cost of health care is to follow the direct billing practices established in New York or to exempt those States that already have such laws.

Response: This commenter made a good point. Nonetheless, the Medicare statute generally does not currently authorize us to impose the "direct billing" requirement found at section 1877(h)(5)(A) for laboratory services other than those furnished to Medicare patients. As we noted in an earlier response, we will address the discount issue in our proposed rule covering the designated health services.

Comment: A commenter stated that physician groups often contract with HMOs to provide medical care for HMO members and described the following situation: The physician group is paid a predetermined monthly rate per enrollee as payment in full for all outpatient medical services, including laboratory services furnished to covered enrollees. To ensure that the physician group can furnish all necessary services in an efficient and cost effective manner, the physician group typically enters into discount agreements with providers not affiliated with the group to furnish services to the HMO's patients at a discounted rate. These arrangements include laboratory services at a discounted rate.

In the commenter's view, this type of discount arrangement would not pose any risk of Medicare program or patient abuse under the following conditions:

1. The HMO does not bill the Medicare program for any Medicare patient laboratory tests performed by an outside laboratory.
2. The physician group does bill commercial insurance for tests performed but does not mark up the cost of the test; that is, the group bills the exact amount charged by the outside laboratory.
3. The discount arrangement is not, in any way, influenced by the volume of Medicare patient laboratory tests sent to the laboratory facility.
4. The discount arrangement is based upon the volume of laboratory services purchased for HMO patients.
5. An agreement to provide laboratory services to HMO patients at a specified fee or discount that is not based upon volume of Medicare referrals is revenue neutral as far as the Medicare program is concerned. In other words, the fixed discount or specified fee is established completely independently of the volume of Medicare referrals and certainly independently of the Medicare program itself.

Response: We believe that the exception set forth in sections 1877(b)(3) and section 411.355(c) applies in this situation, at least in part. Under those provisions, the prohibition on referrals does not apply to referrals for services furnished by an organization with a contract under section 1876 to an individual enrolled with the organization. (Also see 42 CFR part 417, subpart C.) This exception also applies to referrals for services furnished by organizations with health care prepayment plans that have agreements with us under section 1833(a)(1)(A) to an individual enrolled in the plan (see 42 CFR part 417, subpart D) and by organizations receiving payments on a prepaid basis for their enrollees in accordance with the terms of a demonstration project authorized under section 402(a) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1) or under section 222(a) of the Social Security Amendments of 1972 (42 U.S.C. 1395b–1 note). Also, as added by OBRA '93, this exception applies to referrals for services furnished by a qualified HMO (within the meaning of section 1310(d) of the Public Health Service Act) to its enrollees. Thus, the exception no longer requires that all HMO plans contract with Medicare in order to qualify for the exception. The exception in section 1877(b)(3) applies to all services furnished by the organizations listed in that provision, including those services furnished to enrollees by outside physician groups, which have contracted with the organizations. As we noted in earlier responses, we will address the issue of how to treat discounts under section 1877 in the proposed rule covering the designated health services.

b. Forgiveness of Debt; Other Benefits

Comment: One commenter indicated concerns with the inclusion of the term "forgiveness of debt" in the definition of remuneration. According to the commenter, there are a number of legitimate reasons why a laboratory might forgive a debt owed by a physician. For example, there might be a dispute over the correctness of a bill or over whether the physician had in fact ordered certain tests. In such instances, a laboratory might decide to write off the debt. In contrast, the laboratory might decide to furnish services to a physician who had previously owed money to the laboratory, which the laboratory had written off. This same commenter recognized that forgiveness of debt in such a situation might be an abuse; that is, the laboratory might simply forgive an obligation owed in order to obtain continued referrals. Thus, the commenter agreed that the forgiveness of debt should be considered remuneration within the meaning of the statute, but added that the definition should distinguish between the atypical situation and routine types of write-offs.

One commenter believed that the inclusion of "other benefit" in the definition of remuneration is very broad. The commenter believed the definition could reach a variety of services that are integral to the provision of laboratory services and that enhance the quality of the services furnished. Examples of "other benefits" that might be exchanged between a physician and laboratory mentioned by the commenter are test tubes and other laboratory testing supplies, telecommunications equipment such as stand-alone printers, courier services, and educational or consultation services.

Another commenter recommended that the definition of remuneration be amended to exclude from the prohibited category those items or services that are enhancements to the quality of laboratory services and that have no value independent of the laboratory service, such as courier pickup of samples, increased frequency of pick up of samples, and electronic transmission of results.

One commenter recommended that the definition of remuneration be amended to exclude "discount, forgiveness of debt, or other benefit" and that we retain the statutory definition.

Response: Section 1877(h)(1) as amended by OBRA '93 specifies that a "compensation arrangement" does not include arrangements involving only the following kinds of remuneration:

- The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.
- The provision of items, devices, or supplies that are used solely as follows:
  + To collect, transport, process, or store specimens for the entity providing the item, device, or supply.

+ To order or communicate the results of tests or procedures for the entity.

This provision also excepts payments made by an insurer or self-insured plan to a physician for the physician's claims under certain circumstances.

Thus, we believe that, when a laboratory writes off a debt to essentially correct the records between the parties, the exception described above would apply. However, if a laboratory has a continual pattern of disposing of the debt of its referring physicians in this manner, we might scrutinize the situation under the circumvention scheme provision (section 1877(g)(4).) Negotiations between parties about the correct amount of money owed for services delivered, resulting in a balancing of accounts, would also qualify under this exception, as well as the exchange of certain laboratory supplies, telecommunications equipment, and courier services.

One commenter mentioned that "other benefits" exchanged between a physician and a laboratory could be educational or consultation services. Section 1877(e)(3) provides that a physician who has a personal services arrangement (or an immediate family member with a personal services arrangement) with a laboratory entity (for example, to furnish consultations or educational services) may refer patients to that entity if certain conditions are met. Also, section 1877(e)(8)(B) allows a physician to make payments to any entity (including a laboratory) for items and services, other than clinical laboratory services, if the purchase is consistent with fair market value.

Because of these facts, we are retaining the proposed definition of remuneration but are explaining that certain day-to-day business transactions as listed in the statute are not included in this definition.

c. Payments

Comment: One commenter objected to including the term "payment" in the definition of remuneration. This commenter pointed out that payments frequently occur between laboratories and physicians and, in many instances, these payments do not create incentives for physicians to order increased laboratory testing. For example, in the commenter's opinion, the following situations do not create incentives for physicians to increase their laboratory referrals.

• The laboratory *pays* a physician who furnishes interpretation or consultation services such as Pap test interpretation, tissue pathology consultations, or EKG holter monitor readings.

• A laboratory *pays* a physician a refund as a result of an overpayment or to settle a disputed claim.

• A laboratory that maintains a self-insured group medical plan for its employees *pays* a physician who furnished services to a laboratory employee.

• A laboratory *pays* a physician to be on call to come to its blood-drawing station in case of an emergency, as required by State law.

• A physician *pays* the laboratory for the provision of a nonlaboratory service that it furnishes or that is furnished by a subsidiary or related corporation, for example, billing, management or consultation services, or the provision of some other medical product or service.

Response: As stated above in response to a similar comment, section 1877(h)(1)(B) provides that, for purposes of determining whether a compensation arrangement exists, the term remuneration includes "any remuneration, directly or indirectly, overtly or covertly, in cash or in kind." One of the definitions found in the American Heritage Dictionary of the English Language for "remuneration" is "payment." Therefore, we believe we are correct in concluding that, in general, payments between a laboratory and a physician are a form of remuneration. Arrangements involving remuneration between these parties can, in turn, be characterized as "compensation arrangements." Most, if not all, of the examples provided by the commenter could now fall within specific statutory exceptions. Examples one, three, and four could be excepted under section 1877(e)(3), which excepts certain situations in which an entity pays a physician under a personal service arrangement. The second example could be remuneration that is excepted from the definition of a "compensation arrangement" under section 1877(h)(1)(A) and (C), and the fifth example could be excepted under section 1877(e)(8)(B), which excepts payments by a physician to an entity in exchange for items or services other than clinical laboratory services.

We realize that many legitimate transactions occur between laboratories and physicians. We believe that most of these will qualify for the exceptions listed above. But, in the case of continuing arrangements that provide for payment between laboratories and physicians that do not qualify for the exceptions, the prohibition applies.

D. Prohibition on Certain Referrals by Physicians and Limitations on Billing

1. Medicare Only

Comment: One commenter indicated that the final regulation concerning the prohibition should include a statement that a physician's referrals for non-Medicare patients to receive clinical laboratory services, which are not reimbursable under Medicare, are not affected by section 1877 or this rule.

Another commenter requested that the final rule confirm that the statute and the proposed rule do not apply to State Medicaid programs.

Response: In the preamble to the proposed rule (57 FR 8595), we stated that the general prohibition on referrals applies only to referrals for clinical laboratory services that would otherwise be covered by the Medicare program. Therefore, referrals for clinical laboratory services to be furnished to a physician's non-Medicare patients are not affected by section 1877. This concept is reflected in section 411.353(a) of this rule. As a result of section 13624 of OBRA '93, however, section 1877 will have an effect on the Medicaid program beginning with referrals made on or after December 31, 1994. (We plan to address this matter in a separate proposed rule.)

2. Related Parties

Comment: The preamble to the proposed rule (57 FR 8596) states that a financial relationship between a physician and an organization related to an entity that furnishes clinical laboratory services (for example, a parent or subsidiary corporation of the laboratory entity) is to be considered an indirect financial relationship with the entity.

One commenter believed that this concept needs clarification and that it would be helpful to have some "bright line" rules for what constitutes a related entity. The commenter asked several sets of questions, which, as we understand them, are as follows:

• Is the related entity concept limited to a parent/subsidiary model or will brother/sister corporations be included?

• Is the relationship between the entities to be defined in terms of a stock ownership requirement and, if so, will a threshold percentage of ownership be required?

In this regard, the commenter suggested that we may want to review the control group concepts set out in sections 414(b) and 414(c) of the Internal Revenue Code of 1986 (IRC) and to consider adopting a similar approach.

Furthermore, the commenter asked questions involving the following situations and suggested that it would be helpful to have specific examples presented in the final rule.

• Twenty-five percent of a clinical laboratory is owned by a professional corporation (P.C.) that, in turn, is owned by five physicians as equal shareholders. The P.C. also employs physicians who are not owners.

—Would a referral to the laboratory by a physician employed by the P.C. be prohibited?

—Would referrals by any of the owners of the P.C. be prohibited?

• Two of the five physician-owners of the P.C. separately own the 25 percent interest in the laboratory rather than the entire P.C.

—Would a referral to the laboratory by a physician employed by the P.C. be prohibited?

—Would a referral by one of the remaining three owners of the P.C. be prohibited?

• A company that is a general partner in a surgery center limited partnership also owns a clinical laboratory. The surgery center has as other limited partners a number of physicians. Can physicians who are limited partners refer patients to the company's laboratory?

Response: First, we want to state that it is not possible to provide specific answers to cover every possible variation of financial relationship. As noted elsewhere in this preamble, we receive a large volume of correspondence. To the extent that there is some uncertainty or confusion concerning a particular provision of the statute or regulation, we are ready to discuss the matter by telephone or in writing. We can, however, only provide our views about general questions; as mentioned previously, we cannot provide formal advisory opinions on specific circumstances.

In regard to the first set of questions, the commenter was concerned about indirect financial relationships with entities. As we explained in an earlier response, we believe that the language of the statute is intended to support indirect, as well as direct, financial relationships, as was specified in proposed section 411.351. In the preamble to the proposed rule, we stated that this would cover financial relationships with an organization related to an entity that furnishes clinical laboratory services. We gave as an example an interest in a parent or subsidiary corporation of the laboratory entity. The commenter's first question was whether the related entity concept was limited to parent/subsidiary situations or whether brother/sister corporations would also be included.

Although the preamble gave the example of a parent or subsidiary relationship between entities, we believe that a physician can have an indirect financial relationship with a laboratory entity under any circumstances in which that physician owns some portion of an entity that has an ownership interest in the laboratory entity. This would be true regardless of whether the entities are related as parent/subsidiary or brother/sister corporations. In other words, these relationships are not the determining factor. For example, a physician's ownership interest might be in a nonlaboratory subsidiary of a parent laboratory corporation. If the physician has an ownership interest in the subsidiary without owning any portion of the parent laboratory, the physician will not be considered to have an ownership interest in the laboratory. The physician would have an ownership interest in the laboratory only if the nonlaboratory subsidiary had an ownership interest (for example, through stock or debt instruments) in the parent laboratory.

We believe the analysis is similar for brother/sister corporations or entities. Subsidiary entities that are related via a common parent may or may not have any ownership interest in each other. If a physician has an ownership interest in a subsidiary that, in turn, has an ownership interest in a brother laboratory, the physician could be regarded as having an indirect ownership interest in the laboratory. However, this would not be the case if the brother/sister corporations have no ownership relationship.

The commenter also asked whether the relationship between entities depends upon stock ownership and, if so, what threshold percentage of ownership is required. The statute in section 1877(a)(2) defines as a financial relationship any ownership interest, regardless of the manner in which the interest is held or the amount of the interest. We believe this rule applies to all ownership interests, whether they are direct or indirect.

Our analysis of corporate relationships would also involve any compensation aspects of the relationships. As we said in the preamble to the proposed rule, any financial relationship between a physician and an organization related through ownership to a laboratory entity could be covered as an indirect financial relationship with the laboratory entity. In addition, even if a physician has an ownership interest in a corporation that has no ownership interest in a laboratory entity, the physician may gain certain financial advantages from the relationship between the nonlaboratory entity and a laboratory that could constitute compensation to the physician from the laboratory. For example, if corporations file as one affiliated company, they may pool their gains and losses for tax purposes. As a result, a physician owner could receive some benefits from the affiliation.

The commenter recommended that we adopt an approach for related entities that is similar to that of the control group concept under the IRC. Generally, under section 414(b) of the IRC, employees of all corporations that are members of a controlled group of corporations (within the meaning of section 1563(a) of the IRC) are treated as employed by a single employer. Under 414(c) of the IRC, all employees of trades or businesses (whether or not incorporated) that are under common control are treated as employed by a single employer. Furthermore, under section 1563(a) of the IRC, a controlled group of corporations generally means the following:

• A parent-subsidiary controlled group is one in which one or more chains of corporations are connected through stock ownership with a common parent corporation.

• A brother-sister controlled group is one in which two or more corporations have five or fewer persons (individuals, estates, or trusts) owning certain levels of stock and controlling certain levels of voting power of all classes of stock entitled to vote.

Since we believe that the statutory language is very broad and encompasses both direct and indirect financial relationships, we cannot accept the commenter's suggestions to use the concept of a control group. Such a concept would narrow the scope of the provisions and would, thus, be inconsistent with the statute.

The commenter raised questions about several specific scenarios. In the first, a P.C. that is owned by five physicians owns 25 percent of a clinical laboratory. The P.C. also employs physicians. Referrals by physician-owners of the P.C. to the laboratory that is owned, in part, by the P.C. would be prohibited, unless an exception applies. Clearly, these five physicians have an ownership interest in the laboratory, even though it is indirectly held through their ownership of the P.C. We also believe that referrals by physician-employees of the P.C. may be prohibited depending upon the following facts. If the P.C. is not a group practice and

employee-physicians are receiving remuneration from the owner physicians for their services as bona fide employees of the P.C., then, under section 1877(e)(2), the remuneration would not constitute a "compensation arrangement" if the (e)(2) requirements are met. The remuneration, therefore, would not subject the employee-physicians to the prohibition.

If the P.C. is a group practice, the employee physicians could be considered "members of the group." If so, the referrals of any one member of the group are imputed to the entire group. Because members who are owner physicians in the example may not be able to refer, then neither can the employees, unless an exception applies. If the P.C. is a group practice, the arrangement would need to be evaluated under the in-office ancillary services exception in section 1877(b)(2). That exception does not appear to dictate any particular ownership arrangements between group practice physicians and the laboratory in which the services are furnished. A group practice can take advantage of this exception, and members can refer to each other in the laboratory provided that the group meets the definition of a group practice under section 1877(h)(4). Under the exception in section 1877(b)(2), the services must be furnished by the referring physician or a group member or must be directly supervised by a group practice member. In addition, the services must be billed by the referring physician, the group practice, or an entity wholly owned by the group practice.

In the second scenario involving a P.C., the facts are different. Here two of the five physician-owners of the P.C. have an ownership interest in the laboratory, and this laboratory interest is separate from their ownership of the P.C. Obviously, referrals by those two physicians to the laboratory are prohibited, unless an exception applies. While additional facts surrounding this situation might lead to a different conclusion, it appears that referrals by the remaining three physician-owners of the P.C. and by physician-employees of the P.C. would probably not be prohibited. This is so because, in this case, the P.C. has no ownership interest in the laboratory and the other physicians have no ownership interest. Although the employees are perhaps indirectly compensated by the two owners, their referrals would not be prohibited if their employment arrangement meets the requirements in section 1877(e)(2). If the P.C. is a group practice, however, referrals of any member of a group practice (including owners and employees of the practice) would be precluded, unless an exception applies, such as that in section 1877(b)(2). We stress that this conclusion is based on a minimal amount of information; the conclusion could change if it became apparent that any of the three physician owners or physician employees were receiving any income or compensation, directly or indirectly, from the laboratory. We also stress that sanctions could apply if this turns out to be a circumvention scheme.

Concerning the last question, our analysis of this situation indicates that referrals by limited partner physicians would not be prohibited as long as these physicians do not have a financial relationship with the laboratory or with the company that is a partner in the surgery center. That is, the physicians cannot have an ownership or investment interest in the laboratory itself or the company that owns the laboratory. In addition, there can be no compensation passing between the physicians and the laboratory or between the physicians and the company. When physicians and a company are partners in an enterprise such as a surgery center, their joint ownership does not necessarily mean that there is compensation or payment passing between them; they may simply both be investors. If the arrangement, however, is structured so that there is any compensation passing between the physicians and the company or the physicians and the laboratory, the physician's referrals to the laboratory would be prohibited, provided no exception applies.

Finally, we again remind the commenter that section 1877(g) sets forth sanctions that may be imposed if certain requirements of section 1877 are not met. For example, any physician who enters into an arrangement or scheme that the physician knows or should know has the principle purpose of ensuring referrals by the physician to a particular entity that, if they were made directly, would be in violation of the prohibition, would be subject to the sanctions imposed by section 1877(g).

3. Identical Ownership

Comment: One commenter suggested that group practices may own and operate a laboratory that has been set up as a separate entity. The commenter believed that this arrangement did not appear to be addressed in the proposed regulation. The commenter pointed out that often a group practice will own and operate a clinical laboratory as a separate entity for various financial, liability, and other legal reasons. This commenter believed that there does not appear to be any potential for abuse with these arrangements as long as the separate entity is wholly owned by the group practice or as long as there is identical overlap in ownership. Consequently, the commenter requested that the final rule clarify this point.

Response: As mentioned throughout this preamble, section 1877(a) prohibits a physician who has (or whose immediate family member has) a financial relationship with an entity furnishing clinical laboratory services from referring Medicare patients to that entity unless an exception applies. The statute does not contain a specific exception for wholly-owned entities. The commenter has not provided any evidence to convince us that any entity wholly owned by a group practice is free from program or patient abuse. Thus, we disagree with the conclusion reached by this commenter.

Concerning the commenter's reference to an identical overlap in ownership, we assume the commenter means that the same physicians who own the group practice also own the laboratory. As mentioned above, we do not believe that the Congress intended to except entities that are either wholly-owned or that have an identical overlap in ownership from the referral prohibition. Therefore, unless an exception applies, the physician or group practice owners would be prohibited from referring to a laboratory in which they have an ownership interest.

We believe that in many cases the in-office ancillary services exception in section 1877(b)(2) would apply. For example, physicians in a group practice, as defined in section 1877(h)(4), can refer to a laboratory as long as the laboratory services are furnished personally by the referring physician or by another physician in the same group practice, or under the direct supervision of a physician in the same group practice; in a building that is used by the practice to furnish some or all of the group's laboratory services; and that are billed by the group practice or by an entity that is wholly owned by the group. We believe that this exception applies to any group practice that meets these requirements, regardless of who owns the laboratory, or the manner in which it is owned. Also, services furnished by a rural laboratory would be exempted, regardless of the circumstances of ownership.

4. Technical Change

Comment: One commenter recommended that the phrase "under that referral" at the end of proposed § 411.353(b) be changed to "under that referral that is prohibited by paragraph (a)."

Response: We do not agree that this change is necessary, since "that referral" refers back to the earlier part of the sentence, which says "that is prohibited by paragraph (a) * * *."

5. Refunds

Comment: One commenter indicated that it is not unreasonable for an "entity that collects payment" to be required to make refunds in accordance with these regulations. The commenter believed, however, that the regulations provide no ability for the "entity that collects payment" to obtain the information needed to determine whether it is required to make a refund. The commenter suggested that the regulations either explicitly provide the means for the entity that collects payment to obtain the requisite referral information from the physician ordering the service or hold it harmless for refunds it does not make because it does not have the needed information.

Response: We do not agree with this comment. A laboratory is responsible for knowing with whom it has a financial relationship. Under section 1877(f) and our rule at § 411.361, laboratory entities are required, as specified by us, to provide us with information concerning their financial relationships, including ownership and compensation arrangements and including the names and unique identification numbers of all physicians with financial relationships or whose immediate relatives have financial relationships. Additionally, under the CLIA rules at § 493.634, laboratories are required to provide and update ownership information.

E. General Exceptions to Referral Prohibitions Related to Ownership and Compensation

1. Physicians' Services

We proposed that the prohibition on referrals does not apply to physicians' services that are furnished personally by (or under the direct personal supervision of) another physician in the same group practice as the referring physician.

Comment: One commenter indicated that the proposed rule states that exempt physicians' services would have to be performed in the group practice's office. The commenter questioned whether the exception should be so limited. The commenter believed that if physicians' services, as that term is defined in the proposed rule, are performed in another entity furnishing clinical laboratory services for a group practice, the exception should apply as long as the physician performing the physicians' services and the referring physician are members of the same group practice. In other words, in the commenter's opinion, the physicians' services exception should apply regardless of whether the clinical laboratory is a group practice laboratory or a laboratory owned by another entity with which the group practice has a financial arrangement.

Response: We agree, in part, with this commenter. This exception applies to a limited number of services, that is, clinical laboratory services that are treated as physicians' services for Medicare purposes in the context of a group practice. We believe that the services can be performed anywhere and under any circumstances as long as they qualify as "physicians' services" and are personally performed or personally supervised by another group practice member and do not otherwise result in a prohibited referral. Thus, physicians' services furnished by group practice physicians do not need to be furnished in group practice offices, provided they meet the other requirements in the statute.

2. In-Office Ancillary Services

Based on the provisions of OBRA '89, we explained in the proposed rule that the prohibition on referrals would not apply to in-office ancillary services if the following conditions are met:

- The services are furnished personally by one of the following:
  - + The referring physician.
  - + A physician who is a member of the same group practice as the referring physician.
  - + Nonphysician employees of the referring physician or group practice who are personally supervised by the referring physician or by another physician in the group practice.
- The services are furnished in one of the following locations:
  - + In a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of clinical laboratory services.
  - + In the case of a referring physician who is a member of a group practice, in another building that is used by the group practice for centrally furnishing the group's clinical laboratory services.
- The services are billed by one of the following:
  - + The physician performing or supervising the services.
  - + The group practice of which the referring physician is a member.
  - + An entity that is wholly owned by the physician or the physician's group practice.

(As discussed later in this preamble, OBRA '93 made significant changes to the in-office ancillary services exception (section 1877(b)(2).)

a. Referrals From Physicians Who Do Not Have a Financial Relationship With the Physician or Group Practice

Comment: One commenter suggested that a significant loophole is created in the proposal by exempting from the referral prohibition certain services provided by the referring physician, under his or her direction, or under the direction of others in the same group practice. The commenter suggested that, under this proposal, a group practice could establish a laboratory in its own office and accept referrals from outside physicians not associated with the group practice. The commenter believed that the acceptance of such referrals from physicians outside the group should result in that laboratory being considered an independent clinical laboratory owned by the physicians in the group. Therefore, the commenter believed that, under the terms of section 1877, the laboratory should no longer be permitted to accept referrals from the outside.

Some other commenters believed that the exemption for in-office ancillary services was adopted with the understanding that clinical laboratory services would be limited to the physicians' or group practices' own patients. According to these commenters, the regulations implementing the legislation should reflect this intent and specifically require that the exception apply only to physician office laboratories that do not accept referrals from physicians outside of the practice.

Another commenter believed that exempted group practice laboratories should meet the following two conditions:

First, the group practice laboratory should be fully financially integrated with the group practice, such that all group members and only group members share in laboratory expenses and income, and those expenses and income are distributed among group members in precisely the same manner and proportion as professional fees and expenses.

Second, the group practice laboratory should not be allowed to accept referrals of any tests from nongroup members.

This commenter believed that these restrictions would guarantee that the laboratory is in fact an extension of the group practice and not a distinct

business operating under the protection of the group practice.

On the other hand, another commenter recommended that we definitively state in the final rule that furnishing laboratory services on referral from outside sources will not disqualify a group practice laboratory from the in-office ancillary services exception if the laboratory meets all of the performance standards set forth in the definition of "group practice" in the statute and the proposed rule.

Response: There are two distinct issues that need to be addressed in responding to these comments. The in-office ancillary services exception in section 1877(b)(2) provides that the prohibition on referrals will not apply to those services that are furnished personally by the referring physician, a physician in the same group practice as the referring physician, or by individuals who are (as amended by OBRA '93 and effective on January 1, 1992) directly supervised by the physician or another physician in the same group practice. This exception further contains location and billing criteria. It is our belief that this exception was provided for those clinical laboratory services that are performed as an adjunct to the patient care services of the attending physician. As such, the solo physician, the group practice, or an entity that is wholly owned by the physician or group practice must bill for the services.

On the other hand, the general prohibition on referrals applies only to referrals for clinical laboratory services made by a physician to an entity with which he or she or an immediate family member has a financial relationship. Section 1877 does not prohibit either a solo practitioner's laboratory or group practice laboratory from accepting referrals from outside physicians who do not have a financial relationship with the laboratory. When the solo practitioner or group practice, however, accepts referrals from sources outside of its office practice, the office laboratory is also acting as an independent laboratory because these services are not performed as an adjunct to the patient care services of the attending physician. As a result, the laboratory must have a billing number from the Medicare carrier and directly bill for the services that are performed on referral.

A physician or group practice cannot bill for the laboratory services furnished to the patients of another physician as if they were the physician's or group's own patients, under the physician's or group's provider number.

To summarize, we do not find anything in section 1877 that would prohibit a physician or group practice office laboratory from accepting referrals from physicians who do not have a financial relationship with the laboratory, physician, or group. However, if such referrals are accepted, they cannot be billed by the physician or group practice. Rather, billing must be done under a billing number that is assigned by the Medicare carrier to the laboratory itself.

We would also like to point out that, if a member of the group is either performing or supervising the laboratory services, the quantity of outside tests could affect the group's ability to qualify as a "group practice" under the definition in section 1877(h)(4). Under (h)(4)(A)(ii), substantially all of the services of physician members (who now include any physicians during the time they work for the group) must be provided through the group and be billed in the name of the group (beginning January 1, 1995, these services must be billed under a billing number assigned to the group). If group practice members spend too much time supervising laboratory tests that are billed under the laboratory's separate number, the group practice could fail to meet the "substantially all" test.

b. Independent Group Practice Laboratories

Comment: One commenter indicated that, while the point was not addressed in the proposed rule, we issued guidance to the carriers to deal with situations in which a group practice laboratory is also certified as an independent laboratory. The commenter wrote that we stated that the services must be billed differently depending on whether the test was referred for a patient of the group, or the test was referred from outside the group. The commenter suggested that it would be simpler for the groups and the government to have all services (physician, laboratory, and otherwise) billed to Medicare under one group billing number, regardless of the origin of the patient.

Response: We do not agree with this commenter. It has been an established Medicare policy that a laboratory a physician or group practice maintains solely for performing diagnostic tests for its own patients is not considered an "independent" laboratory. This means that the solo practicing physician or group practice can bill for in-office laboratory testing using the physician's or group practice's own billing number. Conversely, a physician providing clinical laboratory services to patients of other physicians is considered not to be furnishing "in-office ancillary" services and is, therefore, doing business as an independent laboratory. Since this policy has been in effect for over a decade, we believe that physicians or group practices that have been accepting referrals from outside physicians have already established that the laboratory is a separate entity for those tests and they are familiar with the billing rules.

Furthermore, as previously explained, section 1833(h)(5)(A) indicates that payment may be made only to the person or entity that performed or supervised the performance of the tests. There are several exceptions to this rule, including one in which, if a physician performed or supervised the performance of the test, payment may be made to another physician with whom he or she shares a practice. This would apply, for example, if the two members are members of a group practice. Taking these factors into consideration, we affirm that physicians and group practices can bill, under their provider number, for clinical laboratory services performed only for their own patients. If the physicians' or group practices' in-office laboratory also provides reference work for patients of other physicians, that laboratory entity must bill for the services directly under its own number.

c. Furnishing of Tests

Comment: One commenter indicated that the final regulations should provide further guidance regarding the scope of the term "furnished." For instance, the commenter understood that we take the position that consulting services designed to assist a physician in interpreting test results are not considered a part of the furnishing of the clinical laboratory test; rather, these services are considered to be physicians' services. The commenter further understood that we take this position even though interpretation services are included in the Medicare payment for the laboratory service and Medicare makes no other payment for the physician's interpretation services.

Response: At § 411.353(a) in the proposed rule, we defined clinical laboratory services for purposes of section 1877 as those services described in the CLIA regulations at § 439.2. Thus, a service would be covered under section 1877 as a "clinical laboratory service" only if the service is considered a clinical laboratory service under CLIA.

Some services may be billed as, for example, physician's services but they would still be subject to CLIA (and, as a result, to section 1877) if they fall within the scope of services described in § 493.2. This is so regardless of how they are billed. Under § 493.2, a laboratory means a facility for "the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing diagnosis, prevention, or treatment of any disease or impairment of, or assessment of the health of, human beings." In short, the services covered under CLIA and section 1877 are those conducted by these facilities and involving the examination of materials derived from the human body.

The commenter has asked specifically about consulting services designed to assist a physician in interpreting test results. We believe that CLIA covers the actual examination of materials, their analysis, and any interpretation and reporting of the results which are performed by a facility that qualifies as a laboratory, as defined in § 493.2. If a laboratory interprets certain test results or hires a consultant who takes the responsibility to interpret them in lieu of laboratory personnel, we believe the interpretation would qualify as a clinical laboratory service. (If a consultant only offers input or information which the laboratory will use in making its own interpretation, the input would not qualify as a clinical laboratory service.)

However, if a laboratory sends test results to an independent physician, any interpretation performed by the physician would not be performed by the laboratory facility. As a result, the services would not constitute part of the clinical laboratory test. If a physician hires a consultant to help interpret the results, the same rule would apply: the consultant's services would not constitute clinical laboratory services if the consultant is performing outside the auspices of a laboratory facility. The services would not be subject to CLIA or section 1877.

If, on the other hand, a physician or group practice hires a consultant to perform, analyze or interpret test results that are performed in the physician's or group's own laboratory, the interpretation would qualify as part of the services performed by a laboratory. These interpretive services would be subject to CLIA and, as a result, to section 1877. If the physician or group practice wishes to qualify under the in-office ancillary services exception, the physician or member of the group practice must supervise any non-physician consultant when he or she performs clinical laboratory services. In addition, the tests must meet the section 1877(b)(2) location and billing requirements.

d. Services an Outside Laboratory May Provide to a Physician's Office Laboratory

Comment: One commenter had concerns about services a laboratory outside the physician's office may provide a physician's office laboratory. The commenter wrote that the final CLIA regulations contain personnel standards that require laboratories performing moderately complex testing to have a laboratory director, a technical consultant, a clinical consultant, and testing personnel who meet certain standards. (See 42 CFR part 493.) In physician office laboratories, for the most part, one of the practice's physicians will function as the laboratory director and also may function in one or more other roles. In some circumstances, however, physicians have asked an independent laboratory entity to serve in, or assist the physician in carrying out the duties of, one of the required positions to the extent permitted under CLIA. For example, an independent entity might serve as the clinical consultant for a number of its physician customers as well as assist a physician in carrying out the duties of the technical consultant. The commenter requested a clarification in the final regulations that such services would not defeat a physician office laboratory's qualification for the in-office ancillary services exception, since the independent contractors will not be employees of the physician.

The commenter believed that, since all laboratories, including physicians' office laboratories, must meet the CLIA standards, the laboratory testing performed in these laboratories is covered under the provisions found in section 1861(s)(3). Since section 1861(s)(3) does not have an employment requirement, the commenter concluded that the physician does not have to employ the personnel as he or she would if the laboratory services were billed and covered as services performed incident to the professional services of the physician under section 1861(s)(2)(A).

Response: Regardless of the setting in which it is performed, if a service involves laboratory tests on human specimens by a laboratory as defined in § 493.2, the CLIA provisions apply. So we agree that the CLIA requirements apply to in-office laboratories of solo-practicing physicians and of group practices. It appears that the commenter is concerned about the requirement in the predecessor provision at section 1877(b)(2) that, in order for the in-office ancillary services exception to apply, services, when not furnished by a member physician, must be performed by individuals who are *employed* by the physician or the group practice. The employment requirement was eliminated by OBRA '93 retroactively to January 1, 1992. Therefore, under amended section 1877(b)(2), referrals for services to be furnished by any individuals who are directly supervised by the referring physician or, in the case of group practices, by another physician in the same group practice, are excepted. In other words, the in-office ancillary services exception applies to a physician or group practice that has outside contractors furnishing laboratory services, as long as the physician or group practice physicians directly supervise these individuals. In addition, as mentioned previously, a contracting physician may be considered a "member" of a group practice. As a member, the contractor could perform the services without supervision or directly supervise other individuals who perform clinical laboratory services.

Also, in this regard, we have taken the position in the past that clinical laboratory testing performed in physicians' offices is covered only if furnished by the physicians or if the requirements are met for coverage of services incident to the professional services of the physicians under section 1861(s)(2)(A) (see section 2070 of the Medicare Carriers Manual (MCM)). One of the requirements has been that persons performing services incident to the services of a physician must be employed by the physician. However, section 1861(s)(3) states, in pertinent part, that "medical and other health services" covered by Medicare include "diagnostic laboratory test[s]." Section 1861(s)(3) does not exclude diagnostic tests performed in physicians' offices or clinics. The only restriction on coverage under section 1861(s)(3) is set forth in the language following section 1861(s)(14), which states that "[n]o diagnostic tests performed in any laboratory * * * shall be included within paragraph (3) unless such laboratory" meets the CLIA certification requirements or has a certificate of waiver. Because section 1861(s)(3) relates more specifically to laboratory testing than section 1861(s)(2)(A), and because most laboratory testing performed in a physician's office is subject to CLIA, we now take the position that it would be appropriate to provide coverage of these services under section 1861(s)(3). (We are in the process of changing the MCM to reflect this position.) This means that the employment requirement does not have

to be met for purposes of coverage or for purposes of application of the in-office ancillary services exception.

Furthermore, we note that section 1877(e)(8)(B) provides an exception for physicians who contract with an entity outside of their office for items or services, providing the items or services are furnished at a price that is consistent with fair market value. Fair market value is defined in section 1877(h)(3) as meaning the value in arm's-length transactions, consistent with the general market value.

We believe this exception permits a physician to contract with a laboratory outside of his or her office for certain services and to continue to refer testing to that laboratory, providing the services meet the requirements for fair market value. Therefore, an independent laboratory entity will be able to provide personnel to assist a physician in carrying out the CLIA requirements.

Accordingly, from the circumstances described by the commenter, the following conclusions emerge:

- In order to comply with the CLIA requirements, a physician or group practice may contract with a laboratory for the services of various physicians or other personnel. In these cases, as long as the direct supervision requirement is met, application of the in-office ancillary services exception is not jeopardized by the fact that the personnel performing the CLIA-related activities are not employed by the physician or group practice.
- Physicians' referrals to the laboratory with which they contract for the performance of CLIA-related activities will not be prohibited if the contract meets the "fair market value" requirement of the exception found in section 1877(e)(8)(B).

e. Location

Comment: One commenter believed the location requirements of the in-office ancillary services exception arbitrarily distinguish between group practices and solo practitioners. The commenter stated that a referring solo physician, as well as a group practice, should be able to qualify under this exception if the laboratory is located in a building used for centrally furnishing clinical laboratory services. The commenter believed there is no remedial purpose served by requiring that a laboratory with which a solo practitioner has a financial relationship be in the same building as his practice, while permitting a laboratory with which a group practice has a financial relationship to situate the laboratory in a separate building.

Response: We believe that, in creating the exception in section 1877(b)(2) and entitling it "in-office ancillary services," the Congress meant to except situations in which a physician refers patients to the practice's own laboratory located in the physician's practice office, or nearby. As a result, the statute requires that the services be furnished in a building in which the referring physician furnishes physician's services unrelated to clinical laboratory services.

Congress, however, has apparently always regarded the same building requirement as too restrictive for a group practice. Before the enactment of OBRA '93, section 1877(b)(2)(A)(ii)(II) allowed a group practice to refer to a laboratory in another building that was used by the group practice for the centralized provision of the group's clinical laboratory services. OBRA '93 liberalized this provision even more, amending it to allow a group practice to refer to another building that is used for some or all of the group's clinical laboratory services, no longer requiring that the services be performed in a "centralized" laboratory. This provision is effective retroactively to January 1, 1992.

Because group practices can have practice offices in many locations, the Congress appears to believe that it could be difficult to locate the group's laboratory close to all of them. The legislative history for the OBRA '93 amendment points out that a number of group practices own and operate satellite facilities in communities other than the community in which the main clinic facility is located. (H.R. Rep. No. 111, 103d Cong., 1st Sess. 545 (1993))

We have not created an exception under section 1877(b)(4) for solo practitioners who refer to laboratories that are located in buildings other than the ones in which they practice. That is so because we believe the services would cease to be in-office ancillary services if they are referred to an outside location and the solo practitioner might be less likely to directly supervise the services. Also, we have seen no evidence that such an exception would be free from any risk of patient or program abuse.

3. Prepaid Health Plan Enrollees

Under § 411.355(c) of the proposed rule, the prohibition on referrals does not apply to services furnished by one of the following organizations to its enrollees:

- An HMO or a CMP that has a contract with us under section 1876 and 42 CFR part 417, subpart C.
- A health care prepayment plan that has an agreement with us under section 1833(a)(1)(A) and 42 CFR part 417, subpart D.
- An organization that is receiving payments on a prepaid basis for enrollees through a demonstration project under section 402(a) of the Social Security Amendments of 1967 (42 U.S.C 1395b–1) or under section 222(a) of the Social Security Amendments of 1972 (42 U.S.C. 1395b–1 note).

OBRA '93 amended section 1877(b)(3) to also include services furnished by a qualified HMO (within the meaning of section 1310(d) of the Public Health Service Act) to an individual enrolled with the organization.

Comment: One commenter indicated that the HMO exemption appears to be available only for a narrowly defined group of HMOs. The commenter recommended broadening this exemption because HMOs employ utilization review criteria and these criteria serve as a disincentive to overutilize services.

Response: As mentioned above, OBRA '93 provided an exception for referrals to qualified HMOs for the provision of services to enrollees of the HMO. This exception would apply to referrals for Medicare beneficiaries to Federally-qualified health maintenance organizations (FQHMOs) without requiring the FQHMO to enter into a contract under section 1833 or 1876.

Comment: One commenter indicated that the final regulation should permit staff physicians of a Medicare-contracting HMO or competitive medical plan (CMP), or a health care prepayment plan (HCPP) operated under an agreement with HCFA, to refer Medicare beneficiaries to their affiliated clinical laboratories, regardless of whether the beneficiary is enrolled as a member of the HMO/CMP/HCPP.

This commenter presents the case of an entity that contracts with us to furnish covered services to Medicare beneficiaries as an HCPP under section 1833(a)(1)(A). Medical services furnished by the HCPP are predominantly provided at clinic locations by employee and independent contractor physicians. The commenter believed that the proposed regulation would require the clinics to establish two different protocols for their laboratory services: one for their HCPP enrollees and one for Medicare eligible patients who are not enrolled as members of the HCPP, and on whose behalf Medicare pays on a fee-for-service basis ("fee-for-service patients"). The commenter believed this distinction is artificial and could result in different levels of care for certain classes of Medicare beneficiaries. The distinction should, in the commenter's opinion, be eliminated.

Additionally, the commenter believed that providing a broader exception for referrals by HMO, CMP, or HCPP staff physicians is consistent with the statutory exemptions for services furnished by these organizations. The HMO, CMP, or HCPP exception recognizes that managed care plans may properly organize and operate their own clinical laboratories in the interest of serving their patients efficiently and economically. Those organizations may require their physicians to refer certain clinical laboratory services for both enrolled members and fee-for-service patients to their affiliated laboratories.

Even HMOs, CMPs, and HCPPs that engage physicians to practice in facilities owned and operated by the HMO, CMP, or HCPP may furnish services to Medicare beneficiaries who are not enrolled as members. Often this occurs when a patient "walks in" to the HMO, CMP, or HCPP clinic or when a relative accompanies a person who is enrolled in the plan.

The commenter believed that no purpose would be served by requiring physicians in HMOs, CMPs, or HCPPs that operate clinical laboratories to refer services for Medicare beneficiaries who are not enrollees to another laboratory. The commenter stated that these nonenrollee patients should be entitled to expect the same level of care as enrollees.

Response: As we have noted earlier, OBRA '93 added to the list of prepaid plans in the section 1877(b)(3) exception an organization that is a qualified HMO (within the meaning of section 1310(d) of the Public Health Service Act). The statute specifically excepts from the physician referral prohibition only services furnished by the listed organizations *to their enrollees*. Our proposed and final regulation reflect this statutory limitation. We decline to add services furnished to non-enrollees as an additional exception under section 1877(b)(4). When HMOs, CMPs, and HCPPs are reimbursed by Medicare on a fee-for-service basis, we believe that there still exists an incentive for these organizations to overutilize services. The Secretary cannot create an additional exception unless she determines that there is *no* risk of patient or program abuse.

However, physicians who are employed by HMOs, CMPs, and HCPPs may still be able to refer non-enrolled patients to the laboratories that are affiliated with these organizations under other exceptions in the statute. For example, if the physicians only receive compensation from these organizations under an employment agreement or personal services contract, they can refer to the organizations' laboratory if they meet the requirements in section 1877(e)(2) or (e)(3).

F. Exceptions to Referral Prohibitions Related to Ownership or Investment Interest

1. Publicly-Traded Securities

In proposed § 411.357(a), we provided that physicians who hold an ownership or investment interest in certain entities may make referrals to those entities if the following requirements are met:

- The physician purchased ownership of the entity in the form of investment securities (including shares or bonds, debentures, notes or other debt instruments) on terms generally available to the public.
- The ownership or investment interest is in a corporation that meets the following conditions:
  + It is either listed for trading on the New York Stock Exchange or the American Stock Exchange or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers.
  + It had, at the end of its most recent fiscal year, total assets exceeding $100 million. These assets must have been obtained in the normal course of business and not for the primary purpose of qualifying for this exception.

As we have discussed elsewhere, OBRA '93 modified section 1877(c) in several ways. First, investment securities no longer have to be those purchased on terms generally available to the public; they must only be those which "may be purchased" on terms generally available to the public. Second, the securities can be those listed on additional exchanges. Third, the investment securities no longer have to be in a corporation with $100 million in total assets at the end of a fiscal year; now the holdings of the corporation must be measured in terms of "stockholder equity," and the amount has been modified from $100 million to $75 million. This amount can now either be measured at the end of the most recent fiscal year or be based on the corporation's average during the previous 3 fiscal years. Finally, OBRA '93 extends the exception to apply to certain mutual funds.

Under the effective date provisions of OBRA '93, the amended version of section 1877(c) was not effective until January 1, 1995. SSA '94 revised this effective date provision to make the amended version of section 1877(c) effective retroactively to January 1, 1992; however, the revised effective date provision states that, prior to January 1, 1995, the amended § 1877(c) does not apply to any securities of a corporation that meets the requirements of § 1877(c)(2) as they appeared prior to OBRA '93. Section 1877(c)(2), prior to OBRA '93, contained the requirement that a corporation have $100 million in total assets.

Comment: One commenter supported our proposed requirements. The commenter believed that the additional requirement concerning the purpose in obtaining assets will help eliminate certain obvious sham transactions that followed the passage of section 1877. The commenter suggested the inclusion of additional language requiring that these entities have $50 million in shareholder equity. Such a threshold, according to the commenter, could help to ensure that the company has actual, hard assets, rather than simply "phantom" assets that are offset by significant liabilities.

Response: After consideration of the comments we received on this issue (see below), we have decided that it would be extremely difficult to prove exactly what a corporation intended when it decided to acquire assets; that is, to sort through a corporation's financial records to try to separate business purposes from nonbusiness purposes. We further believe that it would be difficult to define what is meant by "acquiring assets during the normal course of business." Therefore this final rule does not specify that the assets must have been obtained in the normal course of business and not for the primary purpose of qualifying for the exception.

We agree that the commenter's suggestion for "shareholder equity" is a good one, but we do not believe that the Congress meant to refer to this concept when it included the term "total assets" in the statute. That is so because the OBRA '93 amendments specifically replaced the concept of "total assets" with "stockholder equity," a change the legislative history describes as a modification of the law and not a clarification or explicit expression of what was already implicitly present in the law. Also, the fact that SSA '94 appears to make the $100 million-total-asset-standard and the $75 million-stockholder-equity- standard apply simultaneously until January 1, 1995 suggests that they are two different concepts. Beginning on January 1, 1995, the "stockholder equity" standard will prevail.

Comment: Another commenter wished to emphasize the requirement that, in order to qualify for the exception, the general public must have the same opportunity to buy and sell the entity's stock as physician-investors. As noted in the proposed rule, physician-partners in a laboratory should not be permitted to exchange their partnership shares for stock in a new corporation, which is then publicly traded at some later date. The commenter was aware of one entity that has purchased physician-owned laboratories in just this manner. Therefore, the commenter believed that we should emphasize that such conduct is a clear violation of the regulation.

Response: The requirement at issue in the regulation was derived from section 1877(c), as it appeared prior to OBRA '93. Section 1877(c) used to require that investment securities be those *which were purchased* on terms generally available to the public. OBRA '93 amended this provision (the amendment is now retroactively effective as a result of SSA '94) to say that the investment securities are those which *may be purchased* on terms generally available to the public. We will interpret the amended provision and other provisions in OBRA '93 in a proposed rule covering all of the designated health services.

Comment: A few commenters indicated that they disagree with the proposed requirement that the $100 million in assets must have been obtained in the normal course of business and not for the primary purpose of qualifying for this exception. The commenters believed there is no evidence that the Congress intended to deny protection to entities that meet the $100 million asset test in part or in whole by acquiring assets for the purpose of qualifying for the exception spelled out explicitly in section 1877(c). The commenters suggested that the purchase of an independent clinical laboratory by a corporation intending to include the purchase in the total assets needed to qualify for this exception is not clearly an example of a corporation trying to circumvent the law through a sham transaction. One commenter went on to state that any corporation and physician involved in a good faith purchase and sale of a clinical laboratory in order to comply with the law would be unfairly penalized by the proposed language.

A few commenters urged that we eliminate the statement in the preamble advising the OIG to treat as a circumvention scheme any effort by an entity to obtain $100 million principally for the purpose of meeting the "$100 million in total assets" test.

Response: As mentioned in a previous response, we are withdrawing this interpretation and requiring that the corporation meet one of the following criteria: (1) it has, at the end of its most recent fiscal year or, on average during the previous 3 fiscal years, stockholder equity exceeding $75 million or (2) until January 1, 1995, it had, at the end of its most recent fiscal year, total assets exceeding $100 million, irrespective of how those assets were obtained.

The statement that the commenters have asked us to eliminate appears in the preamble to the proposed rule at 57 FR 8600 in the discussion on OIG regulations. Since we are not including a requirement about how the assets are obtained, we are not including language related to this issue in the final rule.

Comment: One commenter indicated that a major ambiguity appears in this exception when one considers how to treat physician investors who have acquired shares prior to the time the laboratory was publicly traded. As written, the statutory exemption might be interpreted not to protect such previously acquired shares since, by definition, they were not acquired in a transaction involving the general public.

The commenter requested that the final regulations specify that, once the laboratory meets both of the exemption's tests (that is, the stock exchange listing and the level of assets criteria), physicians who acquired their shares before this time be permitted to refer patients under certain conditions. That is, physicians can refer provided they own only shares with rights identical to those generally available to the public through trading on one of the specified exchanges.

Response: As we have pointed out in earlier responses, the requirement in the proposed regulation has been modified to reflect the statute, as amended by OBRA '93. OBRA '93 amended this provision (the amendment is now retroactively effective as the result of SSA '94) to say that the investment securities are those which *may be* purchased on terms generally available to the public.

Comment: One commenter requested that we use the same definition of public company that it believes is used by the Securities and Exchange Commission (SEC); that is, the definition used under General Accepted Accounting Principles. The commenter believed that use of this commonly accepted definition is in accord with the "public company" intent of the legislation and will maintain the "bright line" between referrals that can and cannot be influenced by ownership position.

Response: The American Institute of Certified Public Accountants, Inc., defines a public enterprise as a business enterprise—

- Whose debt or equity securities are traded in a public market on a domestic stock exchange or in the domestic over-the-counter market (including securities quoted only locally or regionally); or
- That is required to file financial statements with the SEC.

An enterprise is considered to be a public enterprise as soon as its financial statements are issued in preparation for the sale of any class of securities in a domestic market. (Commerce Clearing House, Professional Standards, AC Section 1072, 024(h).)

We do not believe that this definition adds any clarity to the very specific requirements found in the law; that is, for purposes of section 1877(c), a corporation is an entity that is listed for trading on the New York Stock Exchange or on the American Stock Exchange, or any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers.

Comment: One commenter suggested we allow the use of a consolidated balance sheet to show that the $100 million asset test is met.

Response: A consolidated balance sheet is used for financial reports for a group of affiliated corporations, eliminating intercorporation debts and profits and showing minority stockholders interest. It also is used when, under certain circumstances, multiple related entities must report balances in a combined fashion instead of separately.

Since the statute excepts investment interests in a corporation with a minimum amount of assets (or, under OBRA '93, stockholder equity), we do not believe it is appropriate to aggregate the assets of multiple corporations on a consolidated balance sheet.

In the preamble to the proposed rule (57 FR 8597), we stated that the $100 million in assets requirement applies only to the corporate entity that furnished the clinical laboratory services, and it does not include assets of any related corporations. This statement is misleading in that it applies only when the stock ownership giving rise to the financial relationship is held in the corporate entity that furnishes clinical laboratory services; it is incorrect when applied to stock ownership in a corporation that does not itself furnish clinical laboratory services. In the latter case, the assets requirement would apply to the parent corporation (the corporate entity in which the stock is held), not to the subsidiary laboratory corporation.

Therefore, we are clarifying that only the assets of the corporation in which the physician or immediate family member's stock is held may be counted to determine whether the $100 million asset requirement (or $75 million in stockholder equity requirement) is met under section 1877(c)(1).

Comment: One commenter indicated that we should permit the grandfathering of financial transactions that were entered into to meet the intent of the legislation with regard to the $100 million asset test if they were entered into before the effective date of the regulations. The commenter believed that such grandfathering would ease accounting and reporting requirements. Further, the commenter suggested that the final regulations should apply to an organization's fiscal year beginning after the effective date of the rule.

Response: As discussed earlier in this preamble, we are withdrawing our interpretation concerning how a corporation had to have obtained its assets.

In regard to the commenter's suggestion that the final regulations should apply to an organization's fiscal year beginning after the effective date of the rule, we disagree. Section 1877(c)(2), prior to its amendment by OBRA '93, required that a corporation have, at *the end of the corporation's most recent fiscal year*, total assets exceeding $100 million. The amended version of this provision requires that a corporation have, *at the end of the corporations' most recent fiscal year, or on average during the previous 3 fiscal years*, stockholder equity exceeding $75 million. These statutory provisions require an assessment of a corporation's assets or equity based upon a past year or years. These provisions were effective retroactively to January 1, 1992. We do not believe they can be interpreted to require compliance in the fiscal year occurring subsequent to the publication of this final regulation.

2. Rural Laboratories

In proposed section 411.357(b), we stated that an ownership or investment interest in a laboratory that is located in a rural area will not prohibit the physician owners from making referrals if the following criteria are met:

- The laboratory testing that is referred by a physician who has an ownership or investment interest in the rural laboratory must either—
  + Be performed on the premises of the rural laboratory; or
  + If not performed on the premises, the laboratory performing the testing must bill the Medicare program directly for the testing.
- The majority of tests referred to the rural laboratory must be referred by physicians who have office practices located in a rural area.

As mentioned in response to a previous comment, we have amended the standards for this exception by eliminating the requirement that a majority of tests referred to the rural laboratory must be referred by physicians who have office practices located in a rural area. Instead, we are adopting the standard required by OBRA '93 that substantially all of the clinical laboratory services furnished by the entity are furnished to individuals residing in such a rural area.

a. General

Comment: One commenter indicated support for our formulation of the exception applicable to laboratories located in a rural area. The commenter was aware of a number of laboratories that were established in rural areas but that serve physician-owners and patients located in large metropolitan areas.

Another commenter stated that this exception protects against abuses by laboratories in rural areas, such as the setting up of a "shell" laboratory with a rural address. This commenter also supported the proposed rule's mandate that at least 51 percent of the tests referred to a rural laboratory be referred by rural doctors. The commenter believed this requirement should help to ensure that the laboratory is in fact serving rural beneficiaries.

On the other hand, a third commenter proposed that the final rule adopt an expanded definition of rural area that would include towns or similar State governmental subdivisions if the population is below 10,000 people and a laboratory located in the area meets the 2 additional requirements set out in the proposed rule. As an additional criterion, the commenter suggested that governmental subdivisions meeting this population standard could be defined as "rural" only if the number of outpatient laboratories in the area was no more than two. The commenter believed that this additional criterion would identify those laboratories that are clearly essential to serving the patient needs of the community.

Response: We agree with the first two commenters and believe that the OBRA '93 amendment imposing the requirement that "substantially all" of a rural laboratory's services be performed for residents of the rural community indicates that the Congress is aware of and is concerned about the potential for abuse in this area.

What the third commenter urges is recognition of a laboratory entity as a rural provider, despite the fact that the entity is located within a metropolitan statistical area (MSA), if the suggested conditions are met. While we recognize that there may be some laboratory entities located in MSAs that, by virtue of being located in small towns within an MSA, have experiences similar to laboratories located in rural areas, we believe that it would be difficult in any given case to prove that the laboratory's situation actually parallels the situation in a rural area. In addition, it would be difficult and burdensome to make these determinations on a case-by-case basis. Further, at this time, we have no evidence that opening this exception to "nonrural" laboratories would be free of any risk of program or patient abuse, the standard that must be met under section 1877(b)(4).

b. Percentage of Tests and Direct Billing

Comment: One commenter argued that the exception for clinical laboratories in rural areas is too stringent. The commenter was concerned that the proposed requirement that more than 50 percent of the tests performed be referred by physicians whose practices are located in rural areas may present an undue burden on already existing rural laboratories. Those rural laboratories may be forced to close because their viability comes from nonrural business. Thus, the commenter recommended grandfathering existing rural laboratory practices.

Response: Although we have changed the proposed rule, the rule still requires that "substantially all" of a laboratory's services be furnished as rural business. As we explained previously, we believe to meet this standard that at least 75 percent of the clinical laboratory services must be furnished to individuals who reside in a rural area. Section 1877 does not contain an overall "grandfather" clause which would allow laboratory facilities that existed prior to its effective date to continue to accept prohibited referrals just because the laboratories predate the statutory provision. In addition, the statute does not routinely excuse certain referrals because it would be a burden for a facility to alter its business practices in order to fit within an exception. We believe that, instead, the specific

purpose of the statute is to require laboratory facilities to alter their practices in order to avoid abusive or potentially abusive financial relationships. Our approach in the proposed and final regulation for this provision reflects that purpose.

Furthermore, we do not believe that we can specifically except from the prohibition rural laboratories whose viability depends on non-rural business. We do not know at this time how many rural laboratories would have extreme difficulty meeting the requirements in the proposed regulation. Also, as described in previous comments, the situation described by the commenter can result in "shell" laboratory arrangements or otherwise be subject to patient and program abuse.

Comment: One commenter recognized the need to prohibit circumvention schemes by urban laboratories through the rural exemption, but thought that the proposed criteria may have a negative impact on a legitimate rural laboratory as follows: The criteria require laboratory testing referred by an investor physician to be performed on the premises or, if referred to another laboratory, that the testing be billed to Medicare directly by the laboratory performing the tests. This provision would prohibit rural laboratories from referring a limited number of tests to other laboratories and billing for the tests, in accordance with present statutory and regulatory requirements concerning shell laboratories.

One commenter indicated that, if a rural laboratory is not able to bill for reference work, it will be forced to collect patient information and forward it to the reference laboratory. This is necessary to enable the reference laboratory to bill Medicare. The rural laboratory will still be collecting the specimens for forwarding to the reference laboratory, but without compensation. The commenter also maintained that the rule will threaten the ability of small rural laboratories to maintain investment and employment while, on the other hand, the rule rewards large laboratories that already have the advantage of lobbying strength that can affect legislation. Also, the rule will not save the taxpayer any money, as good diagnostics for both treatment and preventive medicine are not a function of who bills Medicare for the tests.

This commenter suggested the following alternatives:

- Eliminate the condition that rural laboratories must perform in-house laboratory testing in order to bill Medicare directly.
- Revise the conditions to read: "if all tests are not performed on the premises, 80 percent of referrals must be made by physicians who have office practices in rural areas and 67 percent of all tests must be performed on the premises, otherwise the laboratory performing the testing must bill the Medicare program directly."

Response: We agree that the requirements we proposed for ownership in a rural laboratory are different from those found in the so called "shell laboratory" provision (section 1833(h)(5)(A)). Under the shell laboratory provision, payment may be made to a referring laboratory for the services of a reference laboratory in any of the following circumstances: the referring laboratory is located in, or is part of, a rural hospital; the referring laboratory is wholly owned by the reference laboratory; the referring laboratory wholly owns the reference laboratory; both the referring laboratory and the reference laboratory are wholly owned by the same entity; or not more than 30 percent of the clinical diagnostic laboratory tests for which the referring laboratory (other than a laboratory described in the "wholly owned" provision) receives requests for testing during the year in which the test is performed are performed by another laboratory. These provisions apply to the payment of Medicare-covered clinical diagnostic laboratory services generally. Section 1877 and these regulations contain additional specific requirements that apply to referrals for clinical laboratory services by physicians who have a financial relationship with the laboratory.

In the proposed rule, we stated that laboratory testing that is referred by a physician who has an ownership or investment interest in the rural laboratory must either be performed on the premises of the rural laboratory or, if not performed on the premises, the laboratory performing the testing must bill the Medicare program directly for the testing. Section 1877(d)(2) specifically provides the exception for referrals for clinical laboratory services if the laboratory furnishing the service is in a rural area. We do not believe the exception is satisfied if the rural laboratory in turn refers the work to a laboratory in a nonrural area.

In addition, we do not see this requirement as conflicting with the more general shell laboratory provision, because our requirement applies specifically to the testing ordered by a physician who has a financial relationship with the laboratory. Thus, all other testing referred to the rural laboratory would be subject to the more lenient provisions of section 1833(h)(5)(A) mentioned above. We continue to support this position. It is our firm belief that the Congress provided the rural provider exception in order that beneficiaries living in rural areas would have access to clinical laboratory services that might not be available without the financial investments of local physicians. Without the safeguards included in this regulation, we believe it would be possible to defeat the purpose of the exception.

c. Future Reclassification of Rural Areas

Comment: One commenter indicated that the final rule should provide that laboratories that currently qualify under the rural exception will not be disqualified in the future based on metropolitan statistical area (MSA) reclassification. This clarification will provide stability to legitimate rural laboratories and avoid future uncertainty and future "fireside" sales.

Response: We do not believe the language in section 1877(d)(2) is susceptible to the suggested "clarification." The statute specifically requires that a rural provider be located in a rural area as defined in section 1886(d)(2)(D).

Thus, a provider must be located in such an area, even if the MSAs are at some point reclassified for prospective payment purposes. In addition, we do not believe we should provide an additional exception for a rural provider whose area has ceased to be rural, since we have no evidence that the exception would be free from all risk of program or patient abuse.

3. Hospitals Outside of Puerto Rico

The OBRA '93 amendments to section 1877 substantially changed the provisions that directly concern physician/hospital relationships. Listed below is a table explaining the provisions prior to OBRA '93 and after OBRA '93, as they are in effect until January 1995; the table also reflects amendments made by SSA '94.

Before OBRA '93	OBRA '93
Exceptions for Ownership/Investment and Compensation	
1877(b)(4) exception relating to hospital financial relationships (ownership/investment and compensation) unrelated to provision of laboratory services.	OBRA '93 omitted, but SSA '94 reinstated until 1/95. But see 1877(e)(4) below.
1877(d)(3) exception for hospital ownership	1877(d)(3) unchanged.
Exceptions for Compensation Arrangements	
1877(e)(2) exception for employment and service arrangements with hospitals.	Omitted by OBRA '93; SSA '94 reinstated until 1/1/95 1877(e)(2) exception for bona fide employment only, with any employer 1877(e)(3) exception for personal service arrangements with remuneration from any entity. 1877(e)(4) exception for remuneration from a hospital to a physician if not related to provision of clinical laboratory services.
1877(e)(4) exception for physician recruitment by a hospital	Still present, as 1877(e)(5). 1877(e)(7) exception for compensation between a group practice and a hospital for services furnished under an arrangement.

Generally, the prohibition in section 1877(a)(1) on physician referrals excepts physicians who furnish services in certain situations or settings described in section 1877(b) (for example, in-office or HMO settings). In addition, under section 1877(a)(2), a financial relationship with an entity is defined as an ownership or investment interest in the entity except for such interests described in sections 1877(c) and (d). A financial relationship is also defined as a compensation arrangement between a physician (or immediate family member) and an entity, except for the arrangements described in section 1877(e). Of these provisions, the following exceptions directly concern physician/hospital relationships if the hospital either is not located in Puerto Rico or is not a rural provider.

- Under section 1877(d)(3), an exception is provided for referrals for clinical laboratory services to be furnished by a hospital located outside of Puerto Rico, even if the referring physician (or immediate relative) has an ownership or investment interest in the hospital, provided the referring physician is authorized to perform services at the hospital and the ownership or investment interest is in the hospital itself and not merely in a subdivision of the hospital.
- Under section 1877(e)(2), a physician who receives payment from any employer, including a hospital (or who has an immediate relative who receives such payment) will not be prohibited from making referrals to the hospital for clinical laboratory services on the basis of this payment if the employment of the physician or family member is bona fide and for identifiable services. In addition, the terms of the employment must be for fair market value with no ties to the volume or value of referrals, and be commercially reasonable. Finally, the arrangement must meet any additional requirements imposed by the Secretary.
- Under section 1877(e)(3), a physician who receives (or whose immediate family member receives) remuneration from any entity, including a hospital, under a personal service arrangement will not be prohibited, on the basis of this remuneration, from making referrals to the entity for clinical laboratory services if the arrangement meets the following conditions:
  - + The arrangement is for at least 1 year, set out in writing, signed by the parties, and specifies the services covered.
  - + The arrangement covers all of the services to be furnished by the physician (or immediate family member) to the entity.
  - + The aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement and the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value and, except in the case of certain physician incentive plans, is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.
  - + The services to be performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law.
  - + The arrangement meets any other requirements imposed by the Secretary.
- Under section 1877(e)(4), a physician who receives remuneration from a hospital will not be prohibited from making referrals to the hospital on the basis of that remuneration if the remuneration does not relate to the provision of clinical laboratory services.
- Under section 1877(e)(5), a physician who receives remuneration from a hospital that is intended to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital will not be prohibited from making referrals to the hospital if the following conditions are met:
  - + The physician is not required to refer patients to the hospital.
  - + The amount of remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician.
  - + The arrangement meets any other requirements imposed by the Secretary by regulation.
- Under section 1877(e)(7), certain group practices may have an arrangement with a hospital to furnish clinical laboratory services that are billed by the hospital. The physicians may make referrals to the hospital for the furnishing of clinical laboratory services, as long as the following conditions are met:
  - + Services provided to a hospital inpatient are furnished under an arrangement under section 1861(b)(3).
  - + The arrangement began before December 19, 1989, and has continued in effect without interruption since that date.
  - + With respect to the clinical laboratory services covered under the arrangement, substantially all of these services furnished to patients of the

hospital are furnished by the group under the arrangement.

+ The arrangement is set out in writing, specifies the services to be provided, and the compensation for the services under the agreement.

+ The compensation paid over the term of the agreement is consistent with fair market value and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.

+ The compensation provided is under an agreement that would be commercially reasonable even if no referrals were made to the entity.

+ The arrangement meets any other requirements imposed by the Secretary by regulation.

a. Joint Ventures Not Related to the Hospital Laboratory

Comment: One commenter suggested that the condition found in proposed § 411.357(b)(3)(ii) concerning "ownership or investment in * * * a hospital that * * * does not relate (directly or indirectly) to the furnishing of clinical laboratory services" could be construed as precluding a physician who has a financial interest in another hospital/physician joint venture that is unrelated to the clinical laboratory from referring to the hospital laboratory. This commenter recommended that the final rule clarify that physicians with financial interests in other hospital-physician joint ventures will not be precluded from making referrals to the hospital laboratory.

Response: The proposed provision that the commenter asked us to clarify was based on the predecessor provision of section 1877(b)(4), which excepted a physician's financial relationship (ownership/investment interest or compensation arrangement) with a hospital if the relationship did not relate to furnishing clinical laboratory services. This provision was eliminated from the statute by section 13562 of OBRA '93, but was reinstated until January 1, 1995 by section 152(c) of SSA '94. The amended section 1877 also contains, in paragraph (e)(4), a new provision which excepts remuneration from a hospital to a physician if the remuneration does not relate to the provision of clinical laboratory services. Section 1877(e)(4) is retroactively effective beginning January 1, 1992, and remains in effect after January 1, 1995.

As for joint ventures, an exception for an ownership or investment interest held *with* a hospital may not be necessary. That is because section 1877(a)(2) defines a prohibited financial relationship of a physician *with an entity* as an ownership or investment interest *in the entity*. In the case of a joint venture held with a hospital, if the physician has no ownership or investment interest *in* the hospital, a prohibition based on ownership would not apply at all. That is, even though a physician may own a venture with a hospital, as separate partners, that does not mean that the physician actually owns any part of the hospital.

To determine whether a physician has an ownership interest in a hospital, we must define what constitutes a "hospital" for purposes of section 1877. Under the Medicare statute, section 1861(e) defines a "hospital" as an institution, but we have never specifically defined what constitutes an "institution." Although section 1861 dictates what services and functions a "hospital" must provide to qualify as one, it does not appear to mandate any requirements relating to a hospital's corporate structure.

Hospitals often are structured in complex configurations as the result of tax laws and in response to a variety of business concerns. These configurations make defining a "hospital" almost impossible to do on a case-by-case basis. As a result, we are establishing a test that we believe will be relatively easy to apply. For purposes of section 1877, we are defining a "hospital" as any separate legally-organized operating entity plus any subsidiary, related, or other entities that perform services for the hospital's patients and for which the hospital bills. A "hospital" does not include entities that perform services for hospital patients "under arrangements" with the hospital. We believe these arrangements, by their very nature, involve situations in which hospitals contract with outside entities because they cannot or do not wish to provide the services themselves.

For example, a hospital might be a parent corporation that provides administrative services but that furnishes patient care primarily through a variety of subsidiaries such as a home health agency, a laboratory, or a radiology unit, each of which is independently incorporated. If the hospital bills Medicare for services provided by a subsidiary, then we regard the subsidiary as part of the hospital. A physician, as a result of this structure, could own a part of the hospital if he or she owns some of the remaining interest in the laboratory or other subsidiary, even if the physician does not own any of the parent corporation.

If a physician owns part of the hospital by virtue of owning some portion of a separately incorporated subsidiary, then the physician's referrals to the hospital's laboratory could be prohibited (absent some exception). However, if the physician owns part of the hospital by virtue of owning some portion of a separate corporation that provides services other than clinical laboratory services, the exception in section 1877(b)(4) could apply until January 1, 1995. That is, the physician would have a financial relationship with the hospital (an ownership interest in the hospital) that does not relate to the provision of clinical laboratory services.

If, in contrast, a physician has an ownership interest in the hospital as a whole, we believe that this interest is indirectly related to the provision of clinical laboratory services. That is because, in most cases, a hospital's revenues will reflect the revenues earned by its clinical laboratory. It is for this reason that we included in proposed § 411.357(b)(3)(ii) the concept of ownership or investment interests that relate "directly or indirectly" to the furnishing of laboratory services.

Even if a physician has no ownership interest in the hospital (either in its operating entity or in a subsidiary), referrals to the hospital laboratory might still be prohibited, however, if the joint venture is structured so that there is some compensation passing between the hospital and the physician. If the hospital provides remuneration to the physician, that remuneration will result in prohibited referrals, unless an exception applies. Referrals would not be prohibited under section 1877(e)(4) and § 411.357(g) of this final rule if the remuneration is unrelated to the provision of clinical laboratory services; for example, the hospital and the physician might jointly own a free-standing CAT scanning facility. Any remuneration that flows from the hospital to the physician would be excepted if the remuneration relates only to the CAT scanning operation. This result, however, will change when the prohibition on referrals is extended to other designated health services beginning on January 1, 1995.

Comment: There were several other comments relating to the exceptions that apply to financial relationships between physicians and hospitals. Some commenters maintained that there is a conflict between the exception set forth in section 1877(b)(4) and the proposed regulatory exceptions. The argument is that this section of the law establishes a general exception for financial relationships with a hospital if the relationship does not relate to the provision of clinical laboratory services

but that a parallel exception was not included in § 411.355, the title of which is "General exceptions to referral prohibitions related to ownership and compensation." Instead, the commenters pointed out, the proposed rule contains separate exceptions, one for "ownership or investment interests" and one for "compensation arrangements." In the view of these commenters, these regulatory provisions are not consistent with section 1877(b)(4), and they recommended that the regulations be revised so that § 411.355 reflects the content of section 1877(b)(4).

Another commenter had several questions about proposed § 411.357(b)(3)(i) and what is meant by an ownership interest in a distinct part or department of a hospital. The commenter stated that most hospitals are incorporated entities, being either a for-profit or not-for-profit corporation and that parts or departments are assets of the incorporated entity and cannot be owned separately. This being the case, the commenter asked the following:

- How can a physician own an interest in a distinct part of a corporation or was the intention to refer to ownership of entities related to a hospital?
- Why should ownership in an entity related to a hospital cause referrals from a physician to be prohibited if the related entity is not a clinical laboratory (for example, a hospital owns 60 percent of a subsidiary that is not a clinical laboratory and the physician owns 40 percent).
- Why should the facts of this example result in a situation that is any more subject to abuse than one in which a physician has general ownership in the hospital and is authorized to perform patient care services at the hospital?

Response: The first set of commenters maintained that there was a conflict between the exception set forth in section 1877(b)(4) and the proposed regulatory exceptions. We believed that the combination of the provisions at § 411.357(b)(3)(ii) of the proposed rule and § 411.359(g) of the proposed rule effectively incorporated the section 1877(b)(4) provision. We had considered including the content of these two regulatory provisions under one provision in § 411.355, as was suggested in the comment, but that section of the regulation addresses services that can qualify for an exception, whereas section 1877(b)(4) addresses financial relationships that can qualify. Since under section 1877(a) all financial relationships are either ownership/investment interests or compensation arrangements, we included the section 1877(b)(4) exception under both § 411.357 (which applies to ownership/investment exceptions, and is now § 411.356) and § 411.359 (which applies to exceptions for compensation arrangements, and is now § 411.357).

We believe the commenters' dissatisfaction with our method for incorporating section 1877(b)(4) may stem from the way we drafted the provision in § 411.359(g). We now believe that this proposal deviates from the statute. We discuss this issue and our solution for it in our response to the next comment.

As a result of OBRA '93, as amended by SSA '94, the ownership/investment aspect of section 1877(b)(4) applies only until January 1, 1995. Some aspects of the compensation exception continue in effect, since OBRA '93 incorporated them into section 1877(e)(4).

The second comment asked, in regard to proposed § 411.357(b)(3)(i) and section 1877(d)(3), how a physician can own an interest in a distinct part of a corporation when hospitals are one incorporated entity. As we explained in an earlier response, we believe that a "hospital" can consist of any separate legally-organized operating entity plus a variety of subsidiary, related, or other entities if the hospital bills for the services furnished to its patients by those entities. In drafting section 1877(d)(3), Congress itself perceived that a hospital can consist of separately owned, subdivided parts and that a physician could own an interest in either the hospital itself or only in a subdivision. We are defining "hospital" for purposes of this regulation, to reflect this concept.

The commenter has also asked whether the intention of the exception in section 1877(d)(3) was to refer to ownership of entities related to a hospital. Although the statute does not explicitly say this, it does say that the exception will not apply if a physician's ownership interest is merely in a subdivision of the hospital, rather than in the hospital itself. We believe that a subdivision can be a related entity. We have interpreted such entities, in response to other comments, as parts of a hospital if the hospital bills for services furnished by these entities to hospital patients (excluding situations in which services are furnished for a hospital "under arrangements"). A physician with an interest in a joint or related entity would not have an ownership interest in the hospital at all if the hospital did not bill for the services furnished by the joint or related entity.

The commenter has also asked why ownership in a related entity should cause referrals from a physician to be prohibited if the entity is not a clinical laboratory (for example, if the hospital owns 60 percent of a non-laboratory entity and the physician owns 40 percent). If the entity in this situation is part of the hospital, any referrals by the physician to the hospital laboratory would not qualify for the exception in section 1877(d)(3). To qualify for this exception, the physician's ownership interest must be in the hospital itself and not in a subdivision. However, the physician's referrals could qualify for the exception in section 1877(b)(4) which, until January 1, 1995, excludes any ownership interest in a hospital, provided the ownership interest does not relate to the provision of clinical laboratory services.

Finally, the commenter has asked why the facts in the example should be more subject to abuse than one in which a physician has a general ownership in the hospital and is authorized to perform patient care services there. Section 1877(d)(3) specifically requires that, to take advantage of this exception, a physician must have an ownership interest in the hospital itself, and not in a subdivision. We must reflect this requirement in the regulation, and have incorporated it into the final rule at § 411.356(b)(3). We have not broadened this exception to apply to any other ownership interest in a hospital because we have seen no evidence that such an expanded exception would be free of the risk of program or patient abuse.

Comment: There were two comments relating specifically to proposed § 411.359, which contains exceptions for certain compensation arrangements. One commenter asked under what authority we had limited the broad exception in section 1877(b)(4). Under that exception, the commenter pointed out, *any* financial relationship with a hospital is excepted (ownership/investment interest or compensation arrangement), as long as the relationship does not relate to the furnishing of clinical laboratory services. As such, the commenter questioned why this exception was not included under proposed § 411.355, which covers general exceptions that apply to both ownership/investment and compensation relationships. The commenter believed that, in covering section 1877(b)(4) under § 411.359(g), we had limited the exception so that it no longer constitutes the broad exception, for all financial relationships, included in the statute.

The commenter referred to the fact that the exception in § 411.359(g) is

entitled "other arrangements with hospitals" and indicated that the provision is drafted so that this exception applies to compensation arrangements between a hospital and a physician (or family member) other than those arrangements described in §§ 411.359 (a) through (d). (These arrangements in paragraphs (a) through (d) include rental of office space, employment and services arrangements with hospitals, physician recruitment, and isolated transactions. To qualify for these exceptions, physicians and entities must meet a variety of conditions.) The commenter pointed out that, under section 1877(b)(4), the only condition is that a financial relationship cannot be related to the furnishing of clinical laboratory services.

The commenter has read the proposed rule to mean that the exception in § 411.359(g) applies *only if* the compensation arrangement is not one of the ones described under paragraphs (a) through (d). Thus, for example, a hospital may have one or a variety of arrangements with a physician who is performing outpatient surgery on a patient at the hospital. These arrangements could include the rental of office space, employment or service arrangements, physician recruitment arrangements, or isolated transactions. The commenter believed that if a physician had one or more of these arrangements but could not meet the conditions to qualify for an exception, the exception in § 411.359(g) would automatically be foreclosed. That is, if the physician's financial arrangement was one already described in § 411.359 in paragraphs (a) through (d), then it could not be covered by paragraph (g), which applies only to financial arrangements other than those in paragraphs (a) through (d).

The commenter feared that the proposed rule could result in situations in which the hospital's laboratory would refuse to accept the physician's Medicare patient for laboratory work, with the result that the patient could not receive needed medical care at the hospital. The commenter questioned our authority to limit the statutory exception in section 1877(b)(4) and asked that we, at a minimum, add an exception for emergency laboratory work that would apply whenever, in the judgement of the physician, laboratory tests are needed quickly.

Another commenter recommended that the exception addressed in proposed § 411.359(g) be broadened to permit a direct or indirect financial relationship between a physician and a hospital or hospital affiliated organization or entity.

Response: In drafting § 411.359(g), we intended to cover any compensation arrangements that were not described in §§ 411.359 (a) through (d), including those that were the kinds of arrangements described in those provisions but that did not meet the conditions specified in them. We agree with the first commenter that the way we drafted § 411.359(g) is ambiguous and can cause confusion. As a result, we have made § 411.359(g) an independent exception, as it is in the statute.

We have also made several other changes to this provision to reflect amendments to the statute. As we have discussed in other responses, OBRA '93 eliminated section 1877(b)(4), which excepted any ownership/investment interest or compensation arrangement with a hospital that does not relate to the provision of laboratory services. The relationship could be between a physician and a hospital or an immediate family member and a hospital. SSA '94 reinstated section 1877(b)(4) until January 1, 1995. OBRA '93 also added paragraph (e)(4) to section 1877, retroactive to January 1, 1992. This new provision differs somewhat from paragraph (b)(4) in the sense that it retains only the compensation aspect of the exception. In addition, it applies only to remuneration from a hospital to a physician (not to a family member) if the remuneration does not relate to the furnishing of laboratory services.

The commenter also believed that we should provide an exception for referrals by physicians whenever, in the judgment of the referring physician, laboratory tests are needed quickly to treat a patient whose condition will worsen or be put at risk absent prompt laboratory results. We believe that section 1877 and this final regulation provide sufficient exceptions to ensure, in almost all cases, that patients should not be in the position of having their health threatened because of the general referral prohibition. In addition, the commenter's recommendation would give physicians total discretion that could be subject to abuse.

We do not agree with the suggestion that relates to broadening the exception in proposed § 411.359(g) so that it would apply to permit a direct or indirect financial relationship between a physician and a hospital affiliated organization or entity. The current authority in section 1877(e)(4) limits the exception to remuneration provided by a hospital, and not some other entity. We have interpreted the term "hospital" to include related or affiliated organizations or entities in situations in which the hospital bills for services provided to hospital patients by the organizations or entities (except when the services are provided "under arrangements"). However, we do not believe that expanding the exception to other, non-hospital organizations or entities would necessarily be free of the risk of patient or program abuse.

Comment: One commenter asked that we explain what is meant by the phrase "does not relate to the furnishing of clinical laboratory services," as used in proposed § 411.357(b)(3)(ii) and § 411.359(g). The commenter wanted to know whether a physician who is not authorized to perform patient care services at a for-profit hospital but who has an ownership interest in the hospital is considered to have a financial relationship that is related to the provision of laboratory services. The physician receives dividends based on the business profits earned by the hospital. These dividends may in part depend on the provision of laboratory services.

Response: The commenter has asked about a physician with an ownership interest in a hospital. The commenter has apparently correctly perceived that, because the physician is not authorized to provide patient care services in the hospital, the exception in section 1877(d)(3) and in proposed § 411.357(b)(3)(i) would not apply.

For purposes of the exception in section 1877(b)(4) and proposed § 411.357(b)(3)(ii), the commenter has asked whether the physician's ownership interest in the hospital relates (either directly or indirectly) to the furnishing of clinical laboratory services. We would consider the physician's ownership interest as related to the provision of clinical laboratory services. We base this conclusion on the fact that general ownership in a hospital includes an interest in the hospital laboratory. This exception could apply if the physician had an ownership interest in a subdivision of the hospital which did not provide clinical laboratory services. We would like to point out that, as the result of OBRA '93 (as amended by SSA '94), the exception in section 1877(b)(4) relating to ownership and investment interests is no longer in effect, beginning on January 1, 1995.

b. Ownership and Compensation

Comment: One commenter requested that the final rule clarify that a physician who meets the exception relating to an ownership or investment interest in § 411.357(b)(3) of the proposed rule not also be required to meet the exception relating to compensation arrangements in proposed § 411.359(g) in regard to arrangements that are incident to the physician's ownership. Examples of such arrangements are the initial offer to allow the physician to acquire the ownership interest, dividends paid to the physician as an owner, or the opportunity to enter into a stockholders agreement that would provide for the buyout of the physician's ownership on death, disability, retirement, etc., or that provides the hospital with a right of first refusal to buy the physician's ownership interest in a hospital.

Response: We believe that the commenter has asked about compensation arrangements that are inherent in certain ownership/investment situations for which there are exceptions under the proposed regulation. We believe that a return on equity (for example, dividends) that a physician gets as a consequence of being an owner is not considered a compensation arrangement.

We take this position because section 1877 is designed to prohibit referrals to an entity whenever a physician has a financial relationship with that entity. The purpose is to prevent physicians from realizing a financial gain or some other benefit from making those referrals. The Congress specifically defined "financial relationship" to include two distinct components: an ownership/investment interest and a compensation arrangement. By this, we believe the Congress meant to encompass two mutually exclusive concepts: (1) Investment/ownership interest and whatever potential compensation or value they have or may bring to the owner, and (2) all other arrangements that result in some compensation.

Since we believe that potential compensation from an ownership/investment interest is already factored into the investment/ownership exceptions, it would make little sense to review the resulting compensation against the exceptions for compensation arrangements. For example, it would make little sense to say that a physician can invest in publicly traded securities under the ownership/investment exception in section 1877(c), yet preclude the physician's referrals because the compensation he or she receives from these investments does not fall within any of the compensation exceptions. As a result, the prohibition on referrals should apply only when a physician has a compensation arrangement that results from something other than an excepted ownership or investment interest. It is to these compensation arrangements, which do not stem from an ownership or investment interest, that the compensation exceptions apply. Thus, we agree that a physician would not be required to qualify for both exceptions in order to refer laboratory tests to the laboratory in which he or she has an ownership interest.

G. Exceptions to the Referral Prohibition Related to Compensation Arrangements

1. Rental of Office Space

Section 411.359(a) of the proposed rule describes the exception under which the rental of office space does not constitute a financial relationship subject to the prohibition on referrals. The exception applies as long as payment made by a lessee to a lessor is made under the following conditions:

- There is a rental or lease agreement that meets the following requirements:
  + The agreement is set out in writing and is signed by the parties.
  + The agreement identifies the premises covered by the agreement and specifies the space dedicated for the use of the lessee.
  + The term of the agreement is at least 1 year.
  + If the agreement is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of the intervals, their precise length, and the exact rent for the intervals.
  + The agreement provides for payment on a periodic basis of an amount that is consistent with the fair market value of the rented or leased premises in arm's-length transactions.
  + The agreement provides for an amount of aggregate payments that does not vary (directly or indirectly) on the basis of the volume or value of any referrals generated between the parties.
  + The terms of the agreement would be considered to be commercially reasonable even if no referrals were made between the lessee and the lessor.
- If an interested investor (either a physician or immediate family member) has an ownership or investment interest in the rented or leased office space, the arrangement meets the following conditions:
  + The rented or leased office space is in the same building in which the physician's practice or the physician's group practice is located.
  + All of the requirements described in paragraphs (a)(1)(i) through (a)(1)(vii) of § 411.359 are met.

Section 1877(e)(1) as enacted by OBRA '89 was significantly changed by OBRA '93. Section 152(c) of SSA '94 amended the effective date provision for OBRA '93 so that the amendments to the rental exception are effective retroactively to January 1, 1992. The OBRA '93 provisions for the rental of office space provide that payments made by a lessee to a lessor for the use of a premises shall not be considered a compensation arrangement if—

- The lease is set out in writing, signed by the parties, and specifies the premises covered by the lease.
- The space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of common areas if such payments do not exceed the lessee's pro rata share of expenses for such space based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas.
- The lease provides for a term of rental or lease for at least 1 year.
- The rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.
- The lease would be commercially reasonable even if no referrals were made between the parties, and
- The lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

Comment: A number of commenters raised questions about the meaning of the "same building" requirement in section 1877(e)(1)(B). Prior to OBRA '93, section 1877(e)(1)(B) stated that, "in the case of rental or lease of office space in which a physician who is an interested investor (or an interested investor who is an immediate family member of the physician) has an ownership or investment interest, the office space is in the same building as the building in which the physician (or group practice of which the physician is a member) has a practice." Several commenters also questioned the meaning of the terms "investor," "interested investor," and "disinterested investor" in section 1877(h) (5) and (6).

Response: OBRA '93 amended section 1877(h) to eliminate the terms "investor," "interested investor," and "disinterested investor." In addition, OBRA '93 eliminated the "same building" requirement in section 1877(e)(1)(B), effective January 1, 1995.

SSA '94 amended the OBRA '93 effective date provision so that the revised version of section 1877(e)(1) is retroactively effective to January 1, 1992. As a result, these terms are not reflected in this final rule.

2. Isolated Transactions

Under § 411.359(d) of the proposed rule, referrals by physicians involved in isolated financial transactions, such as the one-time sale of property, qualify for an exception if certain conditions are met and there is no other financial relationship between the entity and the physician for 1 year before and 1 year after the transaction.

Comment: Many commenters believed that the 1 year requirement creates substantial and unnecessary problems.

If a laboratory were to purchase assets from a physician on a one-time basis, it would not be able to accept future Medicare referrals from this physician if there were any previous relationship between the laboratory and the physician.

Response: We attempted in the proposed regulation to quantify and define an "isolated transaction" by adding the 1-year requirement. However, because commenters felt that this requirement creates substantial problems, we have decided to replace it with what we believe is a simpler and clearer standard. To define "isolated," we have eliminated the requirement that there can be no financial relationship between the parties for 1 year before the transaction, and we have shortened the period after the transaction. We have replaced this with the requirement that there can be no other unexcepted financial relationship between the parties for 6 months after the "isolated transaction." That is, if the two parties enter into a compensation arrangement within the 6-month period that qualifies for another exception, such as the employment or personal services exception, or if one of the parties qualifies for one of the ownership exceptions, the original transaction can still qualify as an "isolated" one.

We have also added a definition of "transaction" to make it clear that we regard an isolated transaction as one involving a single payment. If a financial relationship involves long term or installment payments (such as a mortgage), each payment constitutes a separate transaction, and would result in an ongoing financial relationship. (Individual payments between parties generally characterize a compensation arrangement. However, debt, as described in the statute in section 1877(a)(2), can constitute an ownership interest that continues to exist until the debt is paid off.)

3. Service Arrangements With Nonhospital Entities

Under proposed § 411.359(e), which reflects section 1877(e)(3) before it was amended by OBRA '93, referrals by a physician who has an arrangement to provide specific identifiable services to an entity other than a hospital would not be prohibited if the services are furnished—

- By the physician acting as the medical director or as a member of a medical advisory board of the entity in accordance with a Medicare requirement;
- As physicians' services to an individual receiving hospice care for which Medicare payment may only be made as hospice care; or
- As physicians' services to a nonprofit blood center.

The arrangement must satisfy certain requirements that also apply to employment and service arrangements with hospitals.

As discussed in section I.D.6.d. of this preamble, section 1877(e)(3) was amended by OBRA '93 and now provides that certain personal service arrangements with any entity will not be considered compensation arrangements for purposes of section 1877(a)(2)(B). This provision applies to remuneration paid by any entity to a physician, or to an immediate family member, for furnishing personal services. The exception applies if certain conditions are met. Finally, section 152(c) of SSA '94 amended section 13562(b)(2) of OBRA '93 (the effective date provision for OBRA '93) to create a new paragraph (D). This new effective date provision says that section 1877(e)(3), as amended by OBRA '93, is in effect beginning on January 1, 1992; however, until January 1, 1995, it does not apply to any arrangement that meets the requirements of section 1877(e)(2) or (e)(3) as they were in effect prior to the OBRA '93 amendments.

Comment: One commenter indicated that under the CLIA regulations (42 CFR part 493) laboratories must have physicians who act as laboratory directors, rather than medical directors. Thus, the commenter believed the regulations should be modified so that it is clear that a laboratory does not have a compensation arrangement if it pays a physician to act as the laboratory director of the entity.

Response: Under the revised provision in section 1877(e)(3), remuneration from an entity to a physician for the provision of the physician's personal services will not prohibit the physician from referring clinical laboratory services to the entity providing the following conditions are met:

- The arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement.
- The arrangement covers all of the services to be furnished by the physician (or an immediate family member of the physician) to the entity.
- The aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement.
- The term of the arrangement is for at least 1 year.
- The compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and except in the case of a physician incentive plan described in section 1877(e)(3)(B), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.
- The services to be performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law.
- The arrangement meets any other requirements the Secretary imposes by regulations as needed to protect against Medicare program or patient abuse.

Comment: One commenter indicated that there appear to be a number of relationships between clinical laboratories and physicians that are not specifically covered by proposed § 411.359 but would be protected by the fraud and abuse safe harbors. The commenter suggested that the final rule be expanded to specifically state that an arrangement would not violate the physician referral rule if it fits within a safe harbor under the fraud and abuse regulations.

Response: As mentioned in the preamble of the proposed rule and in the response to other comments, the anti-kickback and safe harbor provisions of the law and the section 1877 prohibition are intended to serve different purposes. The safe harbor provisions have been specifically designed to set forth those payment practices and business arrangements that will be protected from criminal prosecution and civil sanctions under the anti-kickback provisions of the statute. Conversely, section 1877 prohibits a physician's Medicare referrals for clinical laboratory services to entities with which the physician (or a family member) has a financial relationship when those referrals are not specifically excepted under section 1877. Because of these distinctions, the provisions of the regulations implementing these laws will not exactly correspond. Additionally, we note that, under the amendments created by OBRA '93 (particularly in the new sections 1877(e)(2) and (e)(3)), many more relationships between physicians and laboratories are now excepted from the effects of the prohibition on referrals.

Comment: One commenter indicated that a justifiable distinction cannot be drawn between the employment of a physician (or family member) by a hospital, which in some cases would be excepted under § 411.359(b) of the proposed rule, and employment of a physician (or family member) by a nonhospital laboratory, which could not be excepted under proposed § 411.359.

Response: Section 1877(e)(2), as amended by OBRA '93, recognizes bona fide employment relationships without drawing a distinction between a hospital laboratory and nonhospital laboratories. Under the new provision, for purposes of section 1877, any amount paid by an employer to a physician (or an immediate family member of the physician) who has a bona fide employment relationship with the employer for the provision of services does not constitute compensation, providing the following conditions, set forth in § 411.357(c), are met:

- The employment is for identifiable services.
- The amount of the remuneration under the employment—
  - + Is consistent with the fair market value of the services;
  - + Is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician (although certain productivity bonuses are allowed); and
  - + The remuneration is provided under an agreement that would be commercially reasonable even if no referrals were made to the employer.

H. Additional Exceptions

Under section 1877(b)(4), the Secretary is given the authority to define financial relationships beyond those specified in the law that could be exempt from the prohibition on referrals if the Secretary determines, and specifies in regulations, that they do not pose "a risk of program or patient abuse." (Section 152(c) of SSA '94 amended the effective date provision for OBRA '93 to reinstate section 1877(b)(4), as it appeared prior to the enactment of OBRA '93, until January 1, 1995. The original version of (b)(4) provided an exception for financial relationships with a hospital which are unrelated to the provision of clinical laboratory services. As a result, we believe that there are two versions of section 1877(b)(4) in effect until January 1, 1995.) In the proposed rule, we requested recommendations about financial relationships that do not pose a risk of program or patient abuse. We received suggestions for additional exceptions, all of which are discussed below. In particular, the issue of shared laboratories was raised in the context of various business and practice arrangements, most often with respect to such shared arrangements between physicians.

1. Comments Relating to an Exception for Shared Laboratories

Comment: A few commenters strongly objected to the formulation of any special exception for shared laboratories. The commenters maintained that these arrangements could easily be used as a sham to circumvent the purposes of the law. They believed that a group of physician investors could set up a single laboratory to which they all refer testing. Each physician could then obtain his or her own CLIA number for the laboratory and bill separately for these services, thus making the detection of these schemes extremely difficult. Moreover, the commenters wrote that outside practitioners would also be allowed to refer their testing to any one of these physicians. Such an arrangement, in these commenters' view, is little more than a continuation of the physician-owned laboratory under a different name and is a way for physician-owners to circumvent the terms of section 1877.

Response: We share the concerns raised by these commenters, and we agree that a separate exception cannot be justified. CLIA certifies each laboratory by location. It does not certify individuals. Therefore, a laboratory that registers for CLIA will register once and receive one CLIA registration number. Each shared laboratory location is to have one CLIA certificate regardless of the number of physicians conducting or supervising testing in that laboratory, and only one registration and compliance fee and proficiency testing enrollment and survey is required. Testing performed in the physician's office that contains the shared laboratory may be included under the shared laboratory certificate. Physicians who perform laboratory testing in their own offices, in addition to performing tests in a shared laboratory, must have a separate certificate for their office laboratory.

As we understand it, there are a variety of circumstances that involve shared office space in general and shared laboratories in particular. Examples of shared laboratories range from laboratories shared by two or more solo practicing physicians to larger laboratories that are shared by hospitals, other health care facilities, and group practices. In effect, these commenters believed that to establish an exception for practicing physicians who share a laboratory would thwart the intent of the statute to end potential and actual overutilization of laboratory services.

In the example presented by the commenters, several physicians set up a laboratory separate from any of their practices, share in the costs of its operation, and bill individually for services furnished to their own patients. (The commenters also stated that physicians who are not owners refer patients for tests.) Since the physicians each appear to have an ownership or investment interest in the laboratory, they would be precluded from referring to the laboratory, unless they qualify for an exception.

It is not clear from the example, but if each physician does not have a practice in the same building as the laboratory and does not directly supervise the laboratory personnel who are performing the services for the physician's patients, the supervision and location requirements of the in-office ancillary services exception in section 1877(b)(2) would not be met. Furthermore, as discussed in greater detail in response to the next comment, we do not believe that it would be possible to develop an exception to accommodate these circumstances that would meet the statutory test contained in section 1877(b)(4); that is, that there be no risk of program or patient abuse.

Nonetheless, we want to clarify that the in-office ancillary exception could apply if each of the individual physicians involved separately met the supervision, location, and billing requirements of section 1877(b)(2). For example, physicians A, B, and C each have their own offices in the same building. Each physician directly supervises the laboratory technician when the technician is performing services for the physician. In addition, each physician bills for services furnished to his or her own patients. We also want to provide an example of a situation that would not qualify for the in-office exception. For example, ten individual physicians each have their own office on different floors in a building and the laboratory they share is

located in the basement of the building. The physicians do not directly supervise the laboratory technician when the technician is performing services for the physicians. In addition, the laboratory bills for services furnished to the patients of the physicians.

In the first example, as long as the requirements of section 1877(b)(2) and § 411.355(b) are met, it would not matter if the physicians pooled resources to cover the costs of the space occupied by the laboratory or for the cost of the equipment or overhead. We emphasize that the in-office ancillary services exception has been amended by OBRA '93, effective retroactively to January 1, 1992. Before this amendment, the services under this exception had to be furnished by the referring physician or by another physician in the same group practice. Alternatively, services could be furnished by employees of the referring physician or of the physician's group practice, provided the employees were "personally supervised" by the referring physician or another physician in the group practice. This requirement has been changed by OBRA '93 to eliminate the requirement that only a physician's or group practice's employees can furnish services. Also, the term "personally supervised" has been changed to require that a technician's or other individual's services be "directly supervised" by the referring physician or by another physician in the group practice.

For purposes of this exception, we are explicitly defining "direct supervision" using the longstanding Medicare definition of this term. Under this definition, the physician must be present in the office suite and be immediately available to provide assistance and direction throughout the time a technician is performing services. We believe it is appropriate for us to define this term in this final rule with comment period, rather than in a new proposed rule. We have several bases for this conclusion.

First, we believe that the Secretary's definition for this term is interpretive. Interpretive, nonsubstantive agency promulgations fall into the Administrative Procedure Act (APA) exception to notice and comment rulemaking. See 5 U.S.C. 553(b)(A).

In defining "direct supervision," we are merely explicating the Congress' desires rather than adding substantive content of our own. That is, the definition is a clarification of what is implicitly in the statute. A rule that clarifies a statutory term is the classic example of an interpretive rule. Interpretive rules are those that merely clarify or explain existing law or regulations. They serve an advisory function, explaining the meaning given by the agency to a particular word or phrase in a statute or rule it administers.

The term "direct supervision" is a longstanding term of art with a very particular meaning in the Medicare program. It appears in section 2050.2 of the Medicare Carriers Manual, Part 3—Claims Processing, which describes services that are "incident to" a physician's professional services. This definition has appeared in the manual since the 1970's. It has, over the years, affected the many physicians who bill for services or supplies that are furnished as an integral, although incidental, part of a physician's personal professional services in the course of diagnosis or treatment of an injury or illness. The same definition appears in the regulations at § 410.32(a), which states that, in general, diagnostic x-ray tests are covered only if performed under the "direct supervision" of certain physicians or by certain radiology departments. Congress, in using this term of art, has adopted and ratified the Secretary's definition.

We believe that in changing "personally supervised" to the familiar "directly supervised," Congress was intending to make clear that it wished to incorporate a concept that the agency and the provider community have long understood. For example, physicians are quite familiar with this term because they can only bill for nonphysician services that are "incident to" their own services if the nonphysician services are performed under "direct supervision." As such, we have reiterated in this regulation our long-standing definition for this term. The definition is a clarification of what the Secretary believes "direct supervision" means and has always meant; it does not add to the statute any additional substantive requirements.

We are aware of only one paragraph of legislative history for OBRA '93 that attempts to explain the meaning of the term "direct supervision." The Conference Report for OBRA '93 states that—

> [T]he conferees intend that the requirement for *direct supervision by a physician* would be met if the lab is in a physician's office which is personally supervised by a lab director, or a physician, even if the *physician is not always on site.* [Emphasis added.] H.R. Rep. No. 213, 103d Cong., 1st Sess. 810 (1993).

We believe that this explanation provides no insight into the Congress' purpose in using the term "direct supervision." That is, it purports to explain what constitutes direct supervision, yet defines it by allowing a physician to "directly supervise" without even being present. This appears to us to be at total variance with the Medicare program's longstanding requirements for "direct supervision," and with the statute, which specifically requires that the referring physician or another physician in the same group practice have *direct* involvement with individuals performing laboratory tests. In addition, the statute is very specific about who must directly supervise; it does not say that a laboratory director who is not a group member can provide this supervision instead of a solo or group practice physician.

Also, it appears to us that the legislative history is inconsistent. If "direct supervision" is interpreted to allow a laboratory director to supervise individuals who are furnishing services, this could have the effect of creating an exception for shared laboratories. The very same conference report points out that the House Energy and Commerce Committee introduced a provision that would have added an exception for shared laboratories. The conference agreement, however, specifically rejected this amendment. H.R. Rep. No. 213, 103d Cong., 1st Sess. 810 (1993).

Even without the "interpretive" exception, we believe that there would be good cause to waive notice and comment for this particular term. Title 5 U.S.C. 553(b)(B) authorizes agencies to dispense with certain procedures for rules when they find "good cause" to do so. Under section 553(b)(B), the requirements of notice and comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

We believe that waiting to define "direct supervision" in a future notice of proposed rulemaking would be both impracticable and contrary to the public interest. To begin with, some of the amendments added by OBRA '93 relating to clinical laboratories have a retroactive effective date. The provision containing the "direct supervision" requirement is effective retroactively back to January 1992. The retroactive effective date for some provisions relating to clinical laboratory services, but not others, demonstrates the Congress' desire to expedite their implementation. Although an expedited timeframe alone may not justify a "good cause" exception, we believe it is a crucial factor when considered in conjunction with the entire set of circumstances.

The in-office ancillary services provision establishes an exception to the referral prohibition that is critical to the many solo and group practice physicians who wish to be excepted for referrals for their own in-office ancillary services. These physicians have had no way to be certain, from January 1992 until the publication date of this interim final rule, whether they qualify for the in-office ancillary services exception. They cannot know if they do until it is clear that they are "directly supervising" any individuals who perform laboratory tests. In short, a portion of the statute cannot be implemented without interpretation, although some form of "supervision" has been required since January 1992.

Defining "direct supervision" in this interim final rule avoids piecemeal promulgation of the statute for critical provisions such as this one. The in-office ancillary services exception is an important one that affects many physicians in a variety of situations, including those involved in shared laboratories. We have received a tremendous number of inquiries on how shared laboratories fit within the statutory scheme. We cannot provide a definitive answer to many of these inquiries until we define "direct supervision." Without certainty, physicians and entities affected by this provision will continue to be confused about how to handle their highly complicated financial relationships. They may divest themselves unnecessarily of interests that we believe the Congress meant to excuse when it created the in-office ancillary exception.

Any uncertainty over the meaning of "direct supervision" could also damage our ability to enforce section 1877. If we take no action and delay enforcement of the referral prohibition because of uncertainty about the "direct supervision" requirement, we could be allowing over-utilization of services by physicians who have financial relationships with an entity and who continue to make prohibited referrals to that entity.

Finally, we are providing a comment period following publication of this interim final rule. We will carefully consider all comments we receive on the definition of "direct supervision" and publish our responses to these comments in a final rule.

The long-standing definition of "direct supervision" makes the proximity of the laboratory to each physician's office important. That is, in the first example, the laboratory must be situated in a way that each of the three physicians would be able to directly supervise the services of the individual performing the testing when the testing is being performed for the physician's own patients. This means that it is possible for a physician to have his or her office practice in a location separate from the laboratory as long as the laboratory is in the same building in which the physician practices and he or she fulfills the direct supervision requirement by being in the office suite when the tests are performed.

Finally, the exception in section 1877(d)(2) and § 411.356(b)(1) for clinical laboratory services furnished in a laboratory located in a rural area applies to shared laboratories. This exception, however, applies to referrals that would otherwise be prohibited only because of ownership or investment interests. The exception does not apply if the referring physician has a compensation arrangement with the rural laboratory. Therefore, if physicians share ownership in a laboratory located in a rural area but have no compensation arrangements with the laboratory (for example, remuneration between the physicians and laboratories other than return on investment), referrals by the physicians to the rural laboratory would not be prohibited provided the criteria mentioned above are met.

Comment: A majority of commenters regard the absence of a "shared laboratory" exception to be a serious oversight. These commenters indicated that shared clinical laboratories are very common, especially among younger physicians still building their solo practices and among providers in rural or medically underserved areas, whose populations could not otherwise support an independent laboratory testing facility. Other commenters indicated that an exception to permit physicians to make Medicare referrals to their shared laboratories would eliminate the discrimination that exists in the proposed regulations in favor of group practices and individually practicing physicians who can afford to purchase their own laboratory equipment solely for their own use. The commenters suggested that an exception could be added to permit referrals when all of the following factors are present:

- The shared arrangement involves a fixed and limited number of physician practices. The maximum may be specified by the Secretary.
- The arrangement involves only physicians who occupy the same office space or who practice in contiguous offices in the same building.
- The physicians in the arrangement refer only their own patients to their shared laboratory, which would not accept Medicare referrals from other physicians.
- The tests are done by the physicians' employees and are directly supervised by the physicians, or the physician personally performs the laboratory test for his or her own Medicare patients.
- No physician in the arrangement may be required to maintain a specific level or volume of laboratory referrals.
- The services are billed by one of the following:
  - + The physician performing or supervising the service.
  - + An entity that is wholly owned by the physicians who are parties to the shared office laboratory agreement.
- The shared-office must not loan funds or guarantee a loan for any physicians who share in the costs of the laboratory and who are in a position to refer to the laboratory.
- The agreement under which the shared-office laboratory operates does not contain "noncompetition clauses" that prevent physicians who share in the costs of the laboratory from investing in other laboratories.
- The shared-office laboratory must not furnish its items or services to referring physicians who have an ownership interest in the shared-office laboratory or share in the costs of the laboratory differently from other physicians. (By this, we believe the commenter meant that tests referred by owner physicians are not given priority.)
- Physicians who share in the costs of the shared-office laboratory must disclose their interest to their patients when ordering tests from the laboratory.
- Operation of the laboratory must be the joint responsibility of the physicians and/or practice groups with actual costs shared on a per test basis.
- Shared physician office laboratories must demonstrate that the laboratory simply passes actual costs through to the participating physicians and group practices with no accumulation or distributions of net earnings.

Response: As evidenced by the number of comments concerning this issue and the detail contained in suggestions for an exception, it is clear that there is great concern about this matter. Nonetheless, the Congress, while it was deliberating over the changes it would make in section 1877 by enacting OBRA '93, considered an exception for shared laboratory facilities but chose not to enact it. (See H.R. Rep. No. 213, 103d Cong., 1st Sess. 809–810 (1993)). The Secretary does have the authority to establish a shared laboratory exception if she determines that there would not be a risk of program or patient abuse.

Unfortunately, notwithstanding the arguments for establishing such an

exception, there is not sufficient basis in the rulemaking record to support an exception that meets the statutory standard. For that reason, we believe that Congress should provide further clarification or specific statutory authority in this area.

- The first suggestion made by the commenters was that a shared laboratory be limited to a fixed number of physicians. In our view, however, any attempt to select a number (three, five, ten, and so on) would be arbitrary. That is because we do not currently have data that would support making a distinction based on the number of physicians involved. We see no rational basis on which to establish or impose a limit.
- The second suggestion is to limit the exception to physicians who occupy the same office space or whose offices are contiguous in the same building. As explained in the response to the last comment, depending on how the physician's office space and the shared laboratory space are physically arranged, the in-office ancillary services exception provided in § 411.355(b) could apply. But we emphasize that the direct supervision and billing requirements must also be met.
- With respect to the remaining points, even if considered cumulatively, they do not clearly describe a situation in which there could be no program or patient abuse. Physicians could still have the opportunity to overutilize services with the possibility of profit that is inherent in any ownership arrangement. We are not suggesting that all physicians who might wish to participate in shared laboratory arrangements would overutilize laboratory tests. We do not believe, however, that there is a basis for concluding that the arrangements pose no risk of patient or program abuse.

Comment: One commenter indicated that, if the Secretary establishes an exception for shared laboratories, physicians involved in shared laboratory arrangements could be required to attest in writing that they meet the criteria required by the Secretary. This requirement would be like the one in the proposed regulation requiring that physicians attest in writing to their Medicare carrier that they meet the group practice exception.

Response: To clarify one point, we required only one attestation in the proposed rule; that is, that a group practice attest in writing, to the appropriate Medicare carrier, that the group complied with the standard we proposed to use to determine whether substantially all of the patient care services of group member physicians are furnished through the group as was required by section 1877(h)(4)(B) (now section 1877(h)(4)(A)(ii)). There are other standards that a group practice has to meet in order to qualify, but we did not propose that they be the subject of an attestation procedure.

In any case, as explained above, we do not believe that a separate exception for shared laboratories is justifiable.

Comment: One commenter suggested that multiple group practices within the same building be allowed to refer patients to one central laboratory that was created for the patients of the group practices.

Response: What is described here may be a laboratory owned by several group practices that does testing for patients of each group. In effect, the laboratory would be an independent entity that is shared by several group practices in the sense that it does business with each of its group practice owners. (A second possibility is that the laboratory is owned by one group to perform testing for its own patients but also accepts referrals from other groups or other outside sources. This latter situation is discussed elsewhere in this preamble.)

As we have explained in earlier responses to comments, we are not providing a general exception for shared laboratories such as the one described by the commenter. The physicians in the multiple group practices could refer to the laboratory, provided that each referral meets the requirements of the in-office ancillary services exception in section 1877(b)(2). This means that the services must be personally performed by or directly supervised by the referring physician or another member of that physician's own group practice and the services must be billed by the referring physician, the group practice, or an entity wholly owned by the group practice or referring physician.

There is no evidence from the commenter's description that the group physicians personally perform or directly supervise the laboratory services. Also, if this is the case, the group practices cannot individually bill for the services under section 1833(h)(5)(A), which generally allows payment only to the person or entity that performs or supervises the performance of clinical diagnostic laboratory tests. If the laboratory bills, the services will not meet the billing requirement in section 1877(b)(2).

2. Specialized Services Laboratory

Comment: One commenter requested an exception for referrals for "specialized services." This exception would permit the establishment of laboratories by groups of individual practitioners within a common area of expertise.

The exception would apply when there is a public health need for specialized clinical services not readily available in a geographic region.

According to the commenter, general laboratories may lack the equipment or the expertise to meaningfully analyze samples from patients suffering from particular diseases. The commenter stated that the cost of specialized services could be lowered by making them readily available to patients who would otherwise incur unnecessary costs and delays because samples have to be shipped to laboratories not reasonably close to them. The commenter stated, as an example, that laboratories that usually handle normal blood specimens typically fail to calibrate their laboratory equipment for renal patients who express blood values that depart significantly from the norm. In the commenter's view, the technicians at general laboratories tend to be inexpert at processing these abnormal samples. In turn, this causes dialysis patients to incur unnecessary expense and endure needless delays and incorrect test results. The commenter also stated that laboratories that are not expert in evaluating renal blood samples tend not to report patient values, including cumulative historical laboratory results, to dialysis clinics in the same detailed manner as laboratories that specialize in renal patients.

Response: As mentioned previously, a physician's Medicare referrals to a laboratory owned by that physician will not be prohibited if the laboratory is located in a rural area (as defined in new § 411.356(b)(1)). Therefore, physicians with an ownership interest in a specialized laboratory that is located in a rural area are not prohibited because of that investment from referring Medicare patients to the laboratory. We believe that it is likely to be in rural areas that specialized equipment or technical expertise would be in short supply.

Furthermore, we believe the CLIA certification that is now required for any laboratory that performs tests on human specimens will tend to induce those laboratories that fail to calibrate their equipment or operate in other ineffectual ways to improve their performance or risk going out of business. For example, under CLIA, laboratories are subject to proficiency testing and personnel requirements. Failure to comply with accepted standards can result in serious sanctions. Thus, we do not agree that a special exception is warranted because some laboratories may not properly conduct tests.

3. Laboratories Shared With Hospitals

Comment: One commenter requested that we create an exception for a shared laboratory facility owned by an organization or hospital that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code if the laboratory is used in common under a written agreement with a group practice and if the group practice constitutes all or substantially all of the staff of the organization or hospital. The commenter stated that the requirement that the entity that owns the laboratory be tax exempt under section 501(c)(3) of the Internal Revenue Code provides significant protection against patient and program abuse. (To qualify for and maintain tax-exempt status, an organization must be a corporation, or a community chest, fund, or foundation, organized and operated exclusively for a community purpose such as for religious, charitable, scientific, public safety, literary, or educational purposes. No part of the net earnings of the organization can inure to the benefit of any private shareholder or other individual. Failure to meet these requirements, or failure to continuously maintain them, results in the denial or loss of tax-exempt status.)

The commenter believed that the conditions associated with tax-exempt status would prevent physicians from having an ownership interest in the laboratory from which they could receive financial benefits in the form of dividends or other distribution of earnings, as a result of their referrals. Consequently, there would be no incentive to order an excessive number of clinical laboratory tests. The commenter pointed out that payment for unreasonable or excessive compensation would also be prohibited by the restriction on private inurement.

Response: It is not clear from this comment exactly what the financial relationship is between the tax-exempt hospital/organization and the group practice physicians. We will first assume that it is the hospital or organization only that owns the laboratory and the physicians receive compensation from the hospital/organization for providing staff services. This relationship will not prohibit referrals to the hospital's laboratory provided the compensation meets the requirements of one of the exceptions in section 1877. For example, section 1877(e)(2) (for bona fide employment relationships with an entity) or (e)(3) (for personal service arrangements with an entity) could apply. An additional exception appears in section 1877(e)(7), which exempts certain group practice arrangements with a hospital when a group practice provides services for which the hospital bills.

If, on the other hand, the group practice physicians have an ownership interest in the laboratory, they would be referring to a laboratory in which they have a financial interest under section 1877(a)(2), even if they do not receive dividends or earnings. The physicians could refer to their own laboratory, provided they meet the in-office ancillary services exception in section 1877(b)(2) and § 411.355(b) of this regulation. If the laboratory is rural, then the ownership relationship would be exempt under section 1877(d)(2). If the physicians have an ownership interest in a tax-exempt hospital itself, their relationship could be exempt under several hospital-specific exceptions.

Because there are a number of exceptions available for situations involving compensation between a hospital or other organization and a physician, or for ownership in a hospital, we believe that a specific blanket exception for laboratory facilities associated with a tax-exempt organization or hospital would be unnecessary. Also, we are not convinced that such an exception would be free from any risk of patient or program abuse. For example, a non-profit or tax-exempt organization can own a for-profit laboratory entity. Without further details and evidence, we would not grant such an exception.

Comment: One commenter indicated that an exception should be added for referrals to a laboratory facility that is shared by a hospital and a clinic. The commenter provided the following information. The clinic is a group practice. The shared laboratory is located on hospital premises, and the hospital owns the laboratory space. The clinic leases space from the hospital in an amount proportional to testing on the clinic's patients. Clinic staff manage the laboratory, and the clinic employs all the laboratory personnel. The clinic and hospital each own some of the laboratory equipment. As such, each entity essentially leases from the other entity the equipment needed to perform testing on its own patients. The laboratory is not a separate legal entity, but simply an arrangement that permits the clinic and hospital to work together. The parties entered into this arrangement in 1973 and it has been in effect since that time. Each party is responsible for billing and collecting fees related to laboratory services provided to its respective patients. The agreement provides that the clinic and hospital would coordinate management, planning, budgeting, and accounting for the laboratory services. The commenter indicated that an exception should be allowed for referrals to a laboratory facility that is shared by a hospital and a clinic (group practice) where the parties divide expenses on a basis that reasonably approximates the costs associated with the tests performed for each party's patients and each party bills for and retains revenues associated with the testing of its own patients.

Response: The commenter has asked for a specific exception for arrangements in which a laboratory facility is shared by a hospital and a group practice clinic. The commenter has described an arrangement which involves a variety of ownership and compensation arrangements, each of which could cause the group practice physicians' referrals to be prohibited. However, as a result of the additional exceptions included in section 1877 by OBRA '93, we believe that most of the relationships described by the commenter could be excepted. As such, a separate exception would be unnecessary.

The commenter first describes several compensation arrangements between the hospital and the group practice. The group practice rents the laboratory space and some equipment from the hospital. (The laboratory is not a separate legal entity and is located on the hospital's premises, so we assume it is part of the hospital.) The hospital, in turn, rents some of the equipment from the group practice. These arrangements should not preclude the physicians' referrals if they meet the exceptions in section 1877(e)(1) (A) and (B), which exempt rental arrangements provided certain conditions are met.

The group practice also provides certain services to the hospital by managing the laboratory and employing the staff. We assume that the group practice is receiving some compensation, in some form, from the hospital for these services. This compensation would not trigger the referral prohibition if the arrangement meets the requirements in the bona fide employment exception in section 1877(e)(2) or qualifies for the exception for personal services arrangements in (e)(3). Alternatively, the relationship might be exempted under the exception in section 1877(e)(7) for certain group practice arrangements with a hospital under which the group provides clinical laboratory services which are billed by the hospital. In this case, the group practice appears to provide most, if not all, of the actual laboratory services while the hospital apparently bills for

its own patients. To qualify for this exception, the group must meet the definition of a group practice in section 1877(h)(4) and meet the requirements under section 1877(e)(7).

Finally, there are certain indications that the group practice may have some form of ownership interest in the laboratory entity (although it may not be a separate legal entity). The group pays rent for the space, manages the laboratory, employs all of the laboratory staff, owns some of the equipment, bills for its own patients, and retains the revenues associated with the testing of its own patients. In order for the group practice to refer to its own laboratory, it must qualify as a group practice under the definition in section 1877(h)(4), and meet the requirements of the in-office ancillary services exception in section 1877(b)(2).

Comment: Several commenters indicated that a number of group practices and the hospitals with which they are affiliated have for many years operated a laboratory facility that serves both hospital patients and the group practice's office patients. Under the terms of the agreement between the group and the hospital, the laboratory is operated under a shared services agreement, rather than as a true joint venture or under an "under arrangement" contract. The revenues, costs, profits, and losses resulting from services to hospital patients are attributed to the hospital and the revenues, costs, profits, and losses resulting from services provided to the group practice's office patients are attributed to the group practice. The commenters recommended a new exception that would be limited to teaching hospitals and would apply to clinical laboratory services furnished by a laboratory that is—

- Owned or operated by an organization or hospital that participates in an approved medical training program; and
- Used in common under a written arrangement with a group practice whose physician members constitute all or substantially all of the active medical and teaching staff of the organization or hospital.

Response: This comment is very similar to the previous comment. That is, it involves an arrangement between a hospital or organization and a group practice to share a laboratory facility. The commenters, however, do not address the specifics of the arrangement, so we cannot tell exactly how the situation will be affected by section 1877. In addition, it is not clear why the commenters limited their recommendation for a new exception to just arrangements between teaching hospitals and group practices. However, as we pointed out in our response to the last comment, we believe that a new exception is unnecessary after OBRA '93 for most situations in which hospitals and other organizations share their laboratories with physicians.

In the commenter's example, for instance, the group practice physicians constitute all or substantially all of the active medical and teaching staff of the hospital or organization. The compensation that these physicians receive from the hospital or organization for their services should not prevent the physicians from referring to the hospital's laboratory, provided the arrangement meets the requirements under section 1877(e)(2) (for bona fide employment relationships) or (e)(3) (for personal services arrangements). The group practice physicians also appear to have some ownership interest in the laboratory, since they refer their own office patients there and the revenues, costs, profits, and losses of the group's office patients are attributed to the group. The group practice physicians can refer their own patients to each other, provided they meet the requirements of the in-office ancillary services exception in section 1877(b)(2).

Comment: One commenter indicated that there are large multi-specialty group practices that own clinics located adjacent to inpatient hospitals and the clinics share certain ancillary facilities, including laboratories, with the hospitals. In some cases, the ancillary services building literally becomes the bridge between the clinic and the hospital, so that a hospital patient enters the ancillary facility from the hospital, and a clinic patient enters the same facility from the clinic. Such a facility would be under the common control of both the clinic and the hospital, and both entities would share in the cost of personnel, space, equipment, supplies, and other operating expenses. The commenter questioned whether the physician group is entitled to treat such a shared facility as "in-office." The commenter believed that if the services furnished at the facility do not qualify for the in-office ancillary exception, the physician group's referrals for those services would be prohibited since the cost sharing agreement between the hospital and clinic would constitute a compensation arrangement under the statute. The commenter requested that we provide an additional exception to accommodate arrangements of this nature that meet all of the following conditions:

- The shared laboratory facility, the group practice, and hospital (or other entity) are part of the same medical center campus.
- The costs of operation of the shared facility are shared on the basis of utilization originating from each part, so that each party pays only its own costs, and does not subsidize the provision of laboratory services to the other.
- The creation or continuation of such a shared facility arrangement is not conditional or otherwise related to the volume or value of referrals of patients between the clinic and hospital (or other entity) for other, nonlaboratory, covered Medicare services.

Response: The comments we have received on the issue of hospitals or similar organizations which share laboratories with group practices have revealed to us the complexity of many of the financial relationships involved in these arrangements. In some situations, one or both parties actually own the physical facility and/or its equipment, one party may pay rent to the other, and each party may provide the other with certain services both in the laboratory and in a practice context. It is impossible for us to analyze each and every configuration. However, as we pointed out in earlier responses on this issue, OBRA '93 has created additional exceptions which should address many of the interrelationships involved in these situations. We encourage hospitals and other organizations to analyze their own particular circumstances in light of these exceptions.

In regard to the particular situation raised by this commenter, the commenter describes a situation in which a laboratory is under the common control of both a group practice clinic and a hospital, each of which share in the cost of personnel, space, equipment, supplies, and other operating expenses. The commenter appeared to be concerned, primarily, about whether the in-office ancillary services exception would apply to services furnished in the laboratory for the patients of the group practice. The commenter provided few other details about ownership of the hospital or laboratory or whether there is any compensation passing between these parties.

The in-office ancillary services exception in section 1877(b)(2) does not appear to dictate any particular ownership arrangements between group practice physicians and the laboratory in which the services are provided. We believe that the group practice can take advantage of this exception and that members can refer to each other in the laboratory provided that the group meets the definition of a "group practice" under section 1877(h)(4) and

meets the requirements in section 1877(b)(2). Under section 1877(b)(2), the services must be furnished by the referring physician or a group member or must be directly supervised by a group practice member. In addition, the services must be billed by the referring physician, the group practice, or an entity wholly owned by the group practice.

Comment: One other commenter indicated that, if an exception is provided for contracts for services provided "under arrangements" as described in section 1861(w), the language should be broad and not limited only to those circumstances in which the arrangement between the parties meets the safe harbor for personal services and management contracts provided for in the anti-kickback rules (42 CFR part 1001). According to this commenter, this limitation would pose several problems. First, the personal services and management contracts safe harbor would require that the aggregate amount of compensation be set in advance and not vary based on the volume or value of tests performed. This would mean that the parties would have to establish in advance a flat yearly fee for laboratory services. Even a fee schedule would not qualify for the safe harbor. A flat aggregate fee arrangement would be of concern to the hospital because it would place the group practice physicians at risk for the provision of clinical laboratory services that are the hospital's obligation. Under this arrangement, the physicians would have a financial incentive to order too few laboratory services for hospital inpatients and outpatients in order to make the arrangement as profitable as possible. To ensure that hospital patients receive optimum quality health care services, the hospital would not want the physicians to have a financial disincentive to order medically necessary laboratory services. The hospital would also be concerned that this contractual disincentive may have liability implications for the hospital in the event of a misdiagnosis of a hospitalized patient allegedly because the appropriate diagnostic testing was not ordered.

The safe harbor for personal services and management contracts also requires that contracts for less than full-time services be specific about the frequency and timing of the services being furnished. This commenter believed that a hospital in this situation must clearly expect that the group practice laboratory will furnish services for the hospital on an as needed basis when the patient and the patient's attending physician require the laboratory service for appropriate diagnosis. Thus, the commenter concluded that this safe harbor criterion also could not be met.

Response: The commenter has described a situation in which group practice physicians both order and provide laboratory services to hospital inpatients and outpatients under an arrangement. We believe the commenter is correct in concluding that the section 1877 prohibition applies to both Part A inpatient hospital services as well as to Part B services.

The definition of "referral" found in section 1877(h)(5)(A) applies, by its terms, to items or services for which payment may be made under Part B of the program. Section 1877(h)(5)(A) is entitled "Physicians' Services," which are separate from inpatient hospital services and are always covered under Part B. Section 1877(h)(5)(B), on the other hand, covers "Other Items," and is not limited to Part B items and services. This provision states that, except for specific exceptions listed in (h)(5)(C), "the request or establishment of a plan of care by a physician" that includes clinical laboratory services constitutes a "referral" by a "referring physician." We believe this provision is difficult to decipher. Nonetheless, it appears to contemplate that physicians have made a "referral" in either a Part A or Part B context if they establish a plan of care for an individual that includes clinical laboratory services.

In the "inpatient hospital" context, we believe that most patients will receive clinical laboratory services as part of their "plan of care." We consider that anytime a physician orders anything, it is "pursuant to a plan of care" on the physician's part, even if not formally called that. In addition, we believe that the Congress fully intended to encompass Part A inpatient hospital services within the section 1877 referral prohibition. One of the designated health services that has been added to the prohibition effective January 1, 1995 (by section 1877(h)(6)(K)) is "*inpatient* and outpatient hospital services."

The commenter has asked about a specific exception for services furnished under arrangements. OBRA '93 amended section 1877 to establish such an exception in new paragraph (e)(7). This provision creates a limited exception for compensation that derives from an arrangement between a hospital and a group under which services are furnished by the group but are billed by the hospital. The provision specifies, in (e)(7)(A)(i) that, with respect to services furnished to an inpatient of a hospital, the arrangement is pursuant to the provision of inpatient hospital services under section 1861(b)(3). Section 1861(b)(3) defines what constitutes "inpatient hospital services," and specifically includes certain services furnished to inpatients "under arrangements." Among other requirements in section 1877(e)(7), the arrangement must have begun before December 19, 1989, and have continued in effect without interruption since that date. Also, the compensation paid over the term of the agreement must be consistent with fair market value and the compensation *per unit* of services must be fixed in advance and not take into account the volume or value of referrals. Therefore, this exception does not present the "aggregate compensation" problem discussed in the comment. Also, there are no additional requirements for details about the frequency or timing of services furnished under a less than full-time service arrangement.

In response to the commenter's concern about the safe harbor for personal services and management contracts, we caution that the anti-kickback safe harbor regulations implement different provisions of the Act than are implemented by these regulations. Therefore, physicians and laboratory entities are obligated to consider the safe harbor requirements separately from the requirements of this rule.

4. Rental of Laboratory Equipment

Comment: One commenter stated that laboratories often rent a variety of equipment to physicians that they need in connection with their practices. For example, a physician may want to rent a blood analyzer in order to perform simple laboratory tests in his or her office. Since laboratories often have extra equipment they rent, the laboratory that the physician uses for his or her reference work will likely be the laboratory from which the physician rents equipment. Laboratories typically charge some rental fee for this equipment if the equipment is not an integral part of the laboratory services furnished. These arrangements could, however, be considered a compensation arrangement that could jeopardize the physician's referrals to the laboratory. The commenter believed that, if the equipment is leased at fair market value and meets other requirements comparable to those set out in the provision related to the lease of office space, there is little risk of patient or program abuse. Thus, this commenter recommended that an additional exception be created for referrals by a physician who has a compensation arrangement with a laboratory through

an agreement under which the physician leases or has a role in leasing equipment from or to a laboratory.

Response: We agree with the commenter that, if a physician who is leasing equipment from a laboratory under controlled circumstances refers to that laboratory, this should not lead to program or patient abuse. Section 1877(e)(1)(B), which was added by OBRA '93 retroactive to January 1, 1992, excepts from "compensation arrangements" payments made by a lessee of equipment to the lessor for the use of the equipment if certain conditions (discussed earlier in this preamble at section I.D.7.b.) are met. These conditions are specified in § 411.357(b) of this rule.

5. Group Practice Affiliated Property Companies

In the impact analysis of the proposed rule (57 FR 8601), we discussed group practices with affiliated property companies that are owned by members of the group practice and that lease facilities or equipment to the group. We stated that the group practice would need to restructure if it wanted to continue to make Medicare referrals for clinical laboratory services. Technically, we regarded the lease of equipment by the property company to the group practice that operates a clinical laboratory as a compensation arrangement for which an exception was not provided in the proposed rule. In these cases, it was indicated that the prohibition on referrals would apply, which would require the group physicians to either purchase the equipment from the property company or divest their interests in the laboratory if they intended to continue to make Medicare referrals for clinical laboratory services.

Comment: According to one commenter, in some group practices, affiliated property companies serve as the vehicle for the retirement system for the equity partners in the group practice; that is, as vehicles for creating retirement income. This commenter recommended that we provide an exception for group practices that have affiliated property companies under circumstances in which there is no potential or incentive for program or patient abuse.

Response: What this commenter is concerned about is that the compensation arrangement between the affiliated property company and the group practice might prohibit referrals by the physicians of the group practice to their own in-office laboratory. In this situation, one or more of the group practice physicians who own the property company receive remuneration from the group practice. In the impact analysis of the proposed rule (57 FR 8601), we indicated that a group practice probably would have to divest its interest in an affiliated property company if it intended to refer Medicare patients to its in-office laboratory. After reconsidering the matter, however, we do not believe that our initial interpretation was correct.

Section 1877(a)(1) of the Act prohibits a physician from making referrals to an entity that furnishes clinical laboratory services if the physician or immediate family member has a financial relationship with that entity. In the situation described by the commenter, the group practice physicians appear to have a financial relationship with the affiliated property company which rents equipment to their laboratory, in the form of an ownership interest. We also regarded as a compensation arrangement the payments which the group practice makes to the affiliated property company for renting the equipment. However, the physicians in this case do not have these financial relationships with an entity that furnishes clinical laboratory services; their relationships are with an entity that only rents equipment to the group practice. As a result, these relationships with the affiliated property company should not affect the physicians' ability to refer to their own laboratory.

Instead, the group practice physicians' referrals could be prohibited because they are referring to a laboratory that they own. Section 1877(b)(2) provides an exception for group practices which refer Medicare patients to their own laboratory for in-office ancillary services. These services must be furnished personally by a member of the group practice or an individual who is directly supervised by a member of the group practice, provided these services are furnished in the building where the group practice has its office or a building that is used by the group practice for furnishing some or all of the group's clinical laboratory services. This provision also has certain billing requirements. The conditions in this exception do not place limitations on the origin of the laboratory equipment that is used by the group practice.

Thus, we have determined that, if the in-office laboratory services are furnished in the manner described by section 1877(b)(2) and § 411.355(b), the nature of the physician's financial relationship with the in-office laboratory is irrelevant. As a result, we do not believe that an additional exception is necessary.

6. Faculty Practice Plan Exception

Comment: Several commenters suggested that a separate exception be developed to treat faculty practice plans associated with accredited medical schools as a separate and distinct type of group practice. These commenters indicated that it is not uncommon in a faculty practice plan environment for the physicians to receive their compensation from one entity (the medical school, for example). However, they may conduct their practice through a separate entity that might be a professional corporation, partnership, or simply a contractually organized billing service. In addition they may order their laboratory work from one or more related entities (for example, the teaching hospital, the university's research laboratory for highly specialized testing, in-office laboratories within faculty departments that may or may not be incorporated as professional corporations, etc.). Since there is no consistent organizational arrangement that characterizes a faculty practice plan, these commenters requested that we develop a separate provision that would treat faculty practice plans associated with accredited medical schools as a separate and distinct type of group practice. They have suggested that the definition of a group practice and the separate requirements of the in-office ancillary exception be applied at the level of the umbrella organization. That is, they believed each legal entity within the same academic setting should not be required to satisfy these provisions. In this manner, any physician who is a staff member of the umbrella organization would be permitted to refer Medicare patients to laboratories that are owned or operated by the umbrella organization.

Response: We believe that the amendments made by OBRA '93 make an additional exception unnecessary. We acknowledge that faculty practice plan physicians may be associated with many organizations in an academic setting, in terms of receiving compensation, furnishing patient care, teaching, and doing research. For example, the medical school may pay the plan to teach residents or care for patients. Even though faculty practice plans may operate in a variety of arrangements, the common theme appears to involve physicians or groups of physicians who are compensated by some part of an academic center for providing a variety of services, and who are concerned about whether they can refer patients to laboratories that belong to the academic center.

If the physicians in the plan are directly employed by the academic center, then their referrals should not be prohibited if the employment meets the standards in section 1877(e)(2) and § 411.357(c). If, alternatively, the physicians or group practice members provide services to the academic center under contract, the personal services provided by these physicians would not be compensation if the arrangement meets the requirements in section 1877(e)(3) and § 411.357(d). In short, we cannot see why a separate exception would be necessary.

Comment: One commenter indicated that, in general, faculty practice plans fall under one of three organizational structures, as explained below:

- A single entity: Many faculty practice plans are organized as a single legal entity that submits a single bill for all physician services across specialties using one common Medicare provider number and, thus, clearly meeting the statutory billing requirement for a group practice.
- Multiple entities by specialty, each billing by its own group provider number: Other faculty practice plans within medical schools and teaching hospitals are organized as multiple legal entities, usually professional corporations established by specialty, that submit multiple bills using a provider number for the respective specialty group.
- Multiple entities by specialty, billing by individual physician provider numbers: Still other faculty practice plans are organized by groups but will submit multiple bills for service by specialty, using individual physician provider numbers.

The commenter recommended, therefore, that the final regulations recognize that a variety of faculty practice plan structures associated with a medical school or teaching hospital exist and should be able to qualify for the in-office ancillary services exception at the level of the umbrella organization. The commenter recommended that we not apply the criteria separately to each legal entity within the same academic setting.

Within an academic setting, according to another commenter, physicians may receive compensation from a variety of entities. They may order their laboratory work from one or more of these entities, such as a teaching hospital, a research laboratory for highly specialized testing, or in-office laboratories within faculty departments. Since there are often indirect financial relationships between and among the various entities within an academic setting, the law appears to prohibit referrals by faculty physicians between and among these entities. The research laboratory may provide a unique situation because, as the commenter pointed out, it generally performs a highly specialized range of laboratory tests that are not available elsewhere. Therefore, the commenter urged us to craft an exception in the final rule that allows these and similar nonabusive arrangements to continue in the academic setting.

Response: We believe that as long as the faculty practice physicians receive remuneration from the academic institution for their bona fide employment or under personal service arrangements that meet the criteria in sections 1877(e)(2) and (e)(3), the physicians should not be prohibited from making referrals to laboratories that are owned by the academic institution.

7. Special Exception for Group Practices

Comment: We stated in our proposed rule that within the definition of "group practice" substantially all (at least 85 percent) of the patient care services of group practice physicians must be furnished through the group and be billed in the name of the group. Further, amounts received for those services must be treated as receipts of the group. One commenter stated that there are situations in which group practices will be unable to meet the "substantially all" requirements of section 1877(h)(4), or whatever percentage of patient care services is adopted in the final regulations. The commenter offered the example of 15 independently practicing physicians who have primary offices in one part of a city and establish a group practice clinic in a medically underserved area in the same city. Each physician spends 1 day a week at the clinic. In this case, only 20 percent of the services of the physicians in the group would be furnished through the group. This would be insufficient to meet the requirement of proposed § 411.351 that at least 85 percent of the aggregate services furnished by all physician members be furnished through the group practice.

The commenter recommended that an exception be added to the regulations that would allow group practices in medically underserved urban areas to furnish clinical laboratory services without being required to meet the "substantially all" requirement. In this commenter's view, this exception would tend to increase the availability of medical care in those urban areas currently deprived of adequate medical services without creating patient or program abuse.

Response: We note that the Congress has determined that there is a shortage of adequate medical care in locations designated as health professional shortage areas (HPSAs) under section 332(a)(1)(A) of the Public Health Service Act. In order to avoid discouraging group practice physicians from providing services in HPSAs, we are redefining the "substantially all" criteria in the definition of a group practice in § 411.351 in two ways. First, we are excluding from the "substantially all" test group practices that are located only in certain HPSAs. We have defined the term HPSA in reference to the definition of the term under the Public Health Service Act. Section 332(a)(1)(A) of the Public Health Service Act defines the term HPSA to include so-called "geographic HPSAs," that is, "an area in an urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary determines has a health manpower shortage and which is not reasonably accessible to an adequately served area."

The Secretary has established criteria for designating areas having shortages of a number of types of health professionals, including primary medical care (which includes general or family practice, general internal medicine, pediatrics and OB/GYN), dental, mental health, vision care, podiatric, and pharmacy professionals. For purposes of this regulation, if an area is a primary care HPSA, any group practice located solely in that HPSA (regardless of whether it provides services of the type classified as primary medical care) will be exempt from the "substantially all" test. Since HPSAs do not exist for a number of specialty areas (for example, oncology, dermatology, neurology), if an area is a primary medical care HPSA, we believe that it is likely that there is a shortage of other types of professionals. Therefore, any group practices that are located solely in such an area and provide services of any type will be exempt from the "substantially all" calculation.

In addition, if an area has been designated an HPSA for one of the other types of professional services, such as vision care, any group practice located solely in the HPSA and providing services that are of the type related to the HPSA designation, such as ophthalmology services, will be exempt from the "substantially all" calculation. On the other hand, if an area is an HPSA for vision care professionals (and for no other type of professional services), group practices providing services

unrelated to vision care in that area will not be exempt from the "substantially all" calculation. There appears to be no justification to exempt such group practices from the "substantially all" calculation in these cases, since there may not be a shortage for such services.

Our second change to the "substantially all" criteria involves group practices located outside an HPSA, but whose members provide services in an HPSA. These outside group practices must continue to meet the "substantially all" test, even if their members provide services in an HPSA. However, we are excluding from the "substantially all" calculation for those groups outside an HPSA any time spent by group members providing the appropriate services in a particular type of HPSA (as described above), whether that time in the HPSA is spent in a group practice, clinic, or an office setting. We have amended § 411.351 ("Definitions") to reflect these concepts. We have also included a definition of "HPSA" in that section.

8. Ambulatory Surgical Center Exception

Comment: One commenter indicated that the Secretary should provide an exception for laboratory services performed in an ambulatory surgical center (ASC). Specifically, the exception should be provided if—

- Any ownership interest of the physician is in the ASC as a whole; and
- Any compensation relationship of the physician with the ASC does not relate to the provision of clinical laboratory services.

Response: We do not entirely agree with this comment. ASC facility services are services that are furnished by an ASC in connection with a covered surgical procedure and that would otherwise be covered if furnished on an inpatient or outpatient basis in a hospital in connection with that procedure. Medicare regulations at § 416.61 describe the scope of facility services. Generally, clinical laboratory services are not considered to be facility services. That is because, under § 416.61(b), ASC facility services do not include items and services for which payment may be made under other provisions in 42 CFR part 405, such as physicians' services, laboratory services, and x-ray or diagnostic procedures (other than those directly related to performance of the surgical procedure). As a result, there are a limited number of diagnostic laboratory tests that are considered ASC facility services and which are included in the ASC rate. We agree with the commenter that referrals for laboratory tests that are performed in an ASC and included in the ASC rate should be excepted because there is no incentive to overutilize these services.

On the other hand, some ASC's have onsite laboratories that perform and bill for other laboratory testing furnished to ASC patients. Before enactment of CLIA, these laboratories were certified as "independent laboratories" and billed Medicare directly for their services. These laboratory facilities are now required to be certified under CLIA and continue to bill the Medicare program for the laboratory testing performed on the ASC premises, since general laboratory testing is not considered to be part of the ASC facility rate. We believe that, if the onsite laboratory facility is owned or operated by the ASC, referrals to the laboratory for general laboratory testing by a physician who has a financial relationship with the ASC should be prohibited, unless another statutory exception applies.

9. Home Care and Hospice Exception

Comment: One commenter indicated that home health agencies (HHAs) and hospices receive referrals from physicians to provide an array of services in the home. Currently, HHAs and hospices do not bill the Medicare program separately for laboratory services; instead, they bill for a home visit or the per diem hospice charge. The commenter made the following two recommendations:

- The regulations should clearly state that the prohibition does not apply to referrals to entities that do not bill Medicare separately for laboratory testing.
- Another exception should be developed to specify that the Medicare rules governing physician interest in HHAs would also apply to those entities in relation to laboratory services ordered by physicians. Thus, a physician's interest in a clinical laboratory would be permitted if the interest is less than 5 percent.

Response: As discussed earlier, OBRA '93 expanded the list of services subject to the prohibition to include 10 additional services. Because the list of services subject to the prohibition includes home health services, we do not believe an exception for laboratory services provided by home health agencies is warranted.

We agree with the commenter that referrals for laboratory tests that are performed by a hospice and are included in the per diem hospice charge should be excepted because a per diem amount does not reflect the number of tests performed. As a result, we are providing an exception in § 411.355 for laboratory services that are provided by a hospice and billed as part of the per diem rate.

We disagree with the commenter's second recommendation. Section 1877 prohibits referrals to an entity by a physician who has a financial relationship with that entity. A financial relationship consists of an ownership or investment interest in the entity, regardless of the extent or degree of that ownership interest. Therefore, if a physician owns 5 percent or 95 percent of an entity, he or she is prohibited from making referrals to that entity, unless some exception applies. We will not grant an extra exception for ownership interests that are less than a particular percentage or that involve HHAs. That is because we do not have any evidence upon which to base a percentage or to ensure that the exception would be free from any risk of program or patient abuse.

10. Rural Laboratory Compensation Arrangements

Section 1877(d)(2) provides that ownership or investment by a physician in a rural provider of clinical laboratory services will not prohibit referrals by the physician to that rural provider.

Comment: One commenter stated that the statutory exception for rural laboratories is of little value since it provides only an exception to the ownership or investment interest test and still leaves the rural laboratory subject to the compensation arrangement test. Thus, the commenter recommended that the final rule contain an exception for compensation arrangements between a rural laboratory and a referring physician.

Response: Because of the OBRA '93 amendments to section 1877, we do not believe the exception recommended by the commenter is necessary. Section 1877 now contains exceptions that we believe will cover many compensation arrangements between physicians and laboratories. In addition to the section 1877(d)(2) ownership exception for rural laboratories, section 1877(e)(2) provides an exception if a laboratory compensates a physician as the result of a bona fide employment relationship, and section 1877(e)(3) provides an exception for remuneration from an entity to a physician under a personal services arrangement between the physician and entity. Finally, there are other additional exceptions relating to various other compensation relationships that a physician might have with a laboratory. For example, under section 1877(e)(8), a physician can purchase clinical laboratory services from a laboratory, or other items and services from a laboratory at fair market value, without triggering the prohibition. These exceptions apply to relationships with all laboratory entities, including those located in rural areas, provided the conditions set forth in the statute and this final regulation are met.

11. Case-by-Case Exemptions

Comment: One commenter indicated that we should institute a process by which a laboratory may request an exemption from the law on an individual basis, based upon a determination by the Secretary that enforcement of the prohibition against the laboratory would not be in the public interest. The commenter suggested that narrow guidelines should be established for the types of laboratories that would be eligible to apply for this exemption. Thus, in the commenter's view, the administrative burden would not be prohibitive. The commenter proposed that, in order to be eligible for review, that any one of the following criteria be met:

- The laboratory is wholly owned by one referring physician or one group practice. This requirement would exclude the physician joint venture type laboratories, which this commenter believed are the entities intended to be regulated by the law.
- Referrals to a laboratory by physicians who have financial relationships with the laboratory do not exceed a specified percentage of the total laboratory volume. The commenter suggested that the referrals be limited to 40 percent of the laboratory's total volume, consistent with the Medicare anti-kickback investment safe harbor volume criterion. (See 42 CFR part 1001.)
- A laboratory located in a town or similar-type population center with a population of 10,000 or under should be eligible for exemption review if it is the sole outpatient provider of certain laboratory services within that locality. This would recognize that localities that are within an MSA may, in fact, be small towns lacking adequate outpatient laboratory services.

Response: We do not agree that we should implement such a process. Section 1877(b)(4) specifies that, in addition to the exceptions described in the statute, the section 1877(a)(1) prohibition will not apply with respect to any other financial relationship which the Secretary determines, *and specifies* in *regulations*, does not pose a risk of program or patient abuse (emphasis added). The statute speaks in terms of excepting particular financial relationships according to rules that would apply to any person or entity that has such a relationship. It does not authorize "case by case" exceptions.

In addition, we do not believe that the guidelines suggested by the commenter to single out those who are eligible for case-by-case review would provide a guarantee against patient or program abuse. It is not clear to us why the review should only be available when a laboratory is wholly owned by one referring physician or one group practice. The commenter's second guideline would allow a laboratory entity to derive 40 percent of its business from referrals by physicians with whom the entity has a financial relationship. We do not believe that this standard would, in any way, satisfy the requirement under section 1877(b)(4) that exceptions beyond those specified in the law pose no risk of program or patient abuse. We simply do not see how a standard excusing any percentage of referrals would guarantee no risk of abuse.

Finally, we understand that it might be possible that a laboratory located within an MSA could have its existence threatened if it cannot accept referrals from physicians with whom it has financial relationships. The commenter did not, however, identify any specific localities, so we cannot tell how likely it is for this to occur. In any case, any such exception must be shown to comply with the "no abuse" criterion, and the commenter has provided us with no evidence that such an exception would be free of abuse. For these reasons, we are not adopting this suggestion.

12. Physician Ownership of Public Companies

Section 411.357(a)(2) of the proposed regulation provided an exception for a physician's or family member's ownership in a publicly owned corporation, provided that the ownership interest met certain requirements. Among these were the requirement that the corporation have, at the end of its most recent fiscal year, total assets exceeding $100 million. This requirement reflected section 1877(c)(2) of the statute. OBRA '93 amended the statute to require, instead, stockholder equity exceeding $75 million at the end of the corporation's most recent fiscal year or on average during the previous 3 fiscal years. SSA '94 made this amendment effective retroactive to January 1, 1992. However, it also provided that, until January 1, 1995, a corporation could still meet the requirement in the exception if it qualified under the pre-OBRA '93 standard.

Comment: One commenter suggested that we create an exception allowing physicians to own shares in clinical laboratories that satisfy the first test of the statutory public-company exception (having publicly-traded securities on the specified national securities exchanges) whether or not the company has $100 million in assets (as required in proposed § 411.357(a)(2)), under certain conditions.

The conditions suggested were that: (1) The total physician ownership of each class of securities of the entity is less than 20 percent, and (2) no one physician's ownership of any class of securities of the entity represents more than 5 percent of the class. The commenter believed that such ownership would not pose a risk of abuse under Medicare. For example, the stock of Laboratory Corporation A, which has assets of $50 million, is owned by the following individuals. Laboratory Corporation A has only one class of stock.

Individual	Percentage
Dr. Abe	5
Mr. Brown	17
Dr. Car	5
Mr. Dorr	17
Dr. Else	5
Mr. Frank	17
Mr. Green	12
Mr. Hann	12
	100

In this example, no one physician owns more than 5 percent of the stock of Laboratory Corporation A and the total physician ownership is 15 percent. The commenter stated that these facts should allow the owner-physicians to refer to Laboratory Corporation A because, in the commenter's view, since the majority of stockholders are nonphysicians, the physicians have no incentive to overutilize laboratory testing to increase the value of their investments. The commenter concluded, therefore, that there would not be the risk of patient or program abuse.

Another commenter suggested that we create an exception for public companies similar to that of the safe harbor for investment interest under the anti-kickback statute. Generally, the commenter suggested that the exception should follow all of the requirements found in 42 CFR 1001.952(a), "Investment interests safe harbor."

Response: The second comment is related to the first, in that one of the requirements found in § 1001.952(a)

also establishes a percentage limit on the amount of the investment. That is, § 1001.952(a)(2)(i) specifies that, in order to qualify for the safe harbor exception, "[n]o more than 40 percent of the value of the investment interests of each class of investments may be held * * * by investors who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity."

While each commenter has made a good suggestion, we do not have any data supporting the first commenter's assumption that a limit of 5 percent ownership of a class of securities by individual physicians and a limit of up to 20 percent ownership of a class of securities by all physicians poses no risk of abuse. We believe that the Congress was very deliberate in establishing the requirements for the exception based on ownership or investment in publicly traded securities that is found in section 1877(c). Further, as pointed out in an earlier response, in order to establish additional exceptions, we must determine that the financial relationship does not pose a risk of program or patient abuse. To adopt the suggested approaches, we would, for example, be required to justify why a total of 20 percent physician ownership in a company would be abusive while a total of less than 20 percent physician ownership in a company would not be abusive. We do not have data to justify such a distinction.

13. Compensation Exception

Comment: One commenter proposed that an additional exception to the prohibition on referrals be added to address certain compensation arrangements between clinical laboratories and physicians. This commenter stated that, under a typical contractual arrangement between a clinical laboratory and a physician, the physician pays a reasonable fee to a laboratory to provide a service in an area in which the physician or his or her office personnel lack expertise. Some examples would be assisting the physician to establish a billing service, providing management services, and hosting educational seminars. The commenter suggested that this exception could contain the following elements:

- The agreement must be in writing and be signed by all of the parties.
- The agreement must be for identifiable services, which must be clearly set forth in the agreement.
- Compensation must be consistent with fair market value for these services.
- The compensation must be considered commercially reasonable even if no referrals were made.
- The amount of compensation for the services must not vary based on the volume or value of any referrals of business by the physician.
- The services must be offered by the clinical laboratory to all physicians.
- There must be no requirement on the part of the physician to refer patients.

As described, this situation involves a payment by the physician to the laboratory under the terms of a contract.

Response: We agree that physicians incur a legitimate cost when they must provide certain services, such as continuing medical education for themselves and their staff members. In addition, the physicians should be able to determine where they can best get these services. The commenter has asked that we add a new exception to the prohibition on referrals to address certain compensation arrangements in which a physician pays a reasonable fee to a laboratory to provide a service in an area in which the physician or his or her office personnel lack expertise. We believe that an additional exception under the authority of section 1877(b)(4) is not necessary. Section 1877(e)(8), as added by OBRA '93, provides an exception for payments made by a physician to any entity as compensation for items and services (other than clinical laboratory services) if the items or services are priced at fair market value. This provision is effective retroactively to January 1, 1992, and is included at § 411.357(i) of this rule.

Comment: A few commenters noted that a laboratory encounters a problem, for the following reasons, if it has an employee who is related to a physician who refers work to the laboratory. The referral prohibition is triggered not only by physicians who themselves have financial relationships with a laboratory entity but also by a physician's immediate relatives who have financial relationships. As a result, the laboratory's payment to an employee can constitute a compensation arrangement and, under the proposed rule, the laboratory would not be permitted to accept referrals from that physician. The commenters suggested that, as long as the employer has a bona fide employment relationship with the employee, there is no reason to question these employment arrangements. The commenters suggested that, with an added exception, the laboratory would be able to avoid the burdensome process of polling its employees to determine if they have a relative who is a referring physician.

Response: Section 1877(e)(2), as amended by OBRA '93, establishes a new exception for bona fide employment situations between an entity and a physician or an immediate family member of a physician. The conditions for the exception are as follows:

- The employment arrangement is for identifiable services.
- The amount of the remuneration under the employment—
  - + Is consistent with the fair market value of the services, and
  - + Is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician.
- The remuneration is provided under an agreement that would be commercially reasonable even if no referrals were made to the employer.
- The employment meets such other requirements as the Secretary may impose by regulations as needed to protect against program or patient abuse.

Finally, the employees may be paid a productivity bonus based on services they personally performed.

V. Analysis of and Responses to Public Comments on the Interim Final Rule With Comment Period—Reporting Requirements for Financial Relationships Between Physicians and Health Care Entities That Furnish Selected Items and Services

Section 152(a) of SSA '94 amended the reporting requirements in section 1877(f) of the Act. As amended, section 1877(f) specifically applies to not only physicians with an ownership or investment interest in an entity, but to physicians who have a compensation arrangement with an entity as well. SSA '94 also eliminated the Secretary's authority to waive the reporting requirements for certain States or services, although the Secretary continues to have the right to determine that an entity is not subject to the reporting requirements because it provides services covered under Medicare very infrequently. In addition, the reporting requirements continue to not apply to designated health services furnished outside of the United States.

The SSA '94 amendments apply to referrals made on or after January 1, 1995. However, section 1877(f) does not apply to referrals at all, but instead requires providers of Medicare covered items and services to report certain information about their financial relationships with physicians at such times as the Secretary specifies. As such, section 152(d), the effective date provision for the SSA '94 amendments, is silent on when the amendments would apply to a provision that has no nexus with referrals. If section 152 is silent on this issue, we believe that the effective date is the date of enactment of the amendments, which is October 31, 1994. We have incorporated the amendments to section 1877(f) into § 411.361, to apply to any future reporting that we require.

Below we summarize and respond to comments we received in response to the interim final rule with comment period that was published in the **Federal Register** on December 3, 1991 (56 FR 61374). We received timely comments from five organizations.

Near the end of calendar year 1991, we developed a questionnaire titled "Survey of Financial Relationships Between Physicians and Selected Health Care Entities" (form HCFA–95) and forwarded it to selected hospitals, ESRD facilities, suppliers of ambulance services, entities furnishing diagnostic imaging (including magnetic resonance imaging, computerized axial tomography scans, ultrasound, and other diagnostic imaging services), parenteral and enteral suppliers, and entities furnishing physical therapy services. (This survey was also known as the "Ten State Survey.") This process was a collection of information concerning the financial interest arrangements of any entity that furnishes selected items and services for which payment may be made under Medicare. The survey was to be completed by all entities furnishing the above listed covered items and services to Medicare beneficiaries. The scope of the survey was limited to entities in the following 10 States: Connecticut, Pennsylvania, West Virginia, South Carolina, Florida, Michigan, Ohio, Texas, Arkansas, and California.

Surveys were sent to those entities that submitted claims to the Medicare intermediary or carrier for more than 20 items or services in any of the selected categories during calendar year 1990. Originally, an entity was required to return the survey not more than 30 days after the entity received it. Shortly after December 3, 1991, the date contractors were instructed to send the surveys via overnight, certified mail, the response time was extended from 30 days from the date of receipt to 60 days from the date of receipt.

Two commenters applauded our citing the need for the survey because of the potential for abusive behavior in situations where the referring physician has an ownership interest in the facility to which he or she refers patients. A discussion of other comments and our responses to them follow.

Comment: One commenter suggested that requiring the completed survey to be submitted before or at the same time that the comments on the interim final rule were due made the opportunity to comment meaningless.

Response: We agree that the timing of the deadlines for the completed survey and the comments on the interim final rule could be regarded as having had the effect of reducing a commenter's ability to have an impact on that particular survey. As we pointed out in the preamble to the interim final rule, however, section 4207(k) of OBRA '90 authorized the Secretary to issue interim final regulations for the amendments to the Medicare statute. In the preamble, we explained the pressing need for the interim final rule in order for us to fulfill several legislative requirements within their prescribed deadlines. These included carrying out the survey requirements of section 1877(f), as amended by OBRA '90, obtaining adequate information from health care entities in time to apply the payment provisions in section 1877, as amended by OBRA '90, and preparing the statistical profile required by OBRA '89, as amended by OBRA '90.

The purpose of the interim final rule was primarily to notify the public of the decisions the Secretary had made on the few items of discretion left to the Secretary under OBRA '90, such as the selection of the States in which the survey would be administered (the legislation prescribed a minimum of 10 States). In addition, we do not regard the opportunity that was provided to comment on the interim final rule as meaningless. Section 1877 allows the Secretary to collect the survey information in such form, manner, and at such times as she specifies, as long as it is first collected no later than October 1, 1991. The Secretary will take the comments into account if she decides to survey the entities again.

Comment: One commenter suggested that we extend the time for responding to the survey by 60 days and announce the extension publicly.

Response: As noted, we did provide for an automatic extension of 30 days, allowing a total of 60 days for response. We provided 19 representative specialty societies, for example, the American Medical Association, the American Hospital Association, and the American College of Radiology, with this information to alert their members. In addition, we alerted Medicare contractors who, in turn, alerted providers via updates in their routinely distributed bulletins and newsletters.

Comment: One medical specialty association had received several complaints from its members concerning the question of who must report the ownership interest and what information must be reported. The association stated that the definition of "entity" (physicians, suppliers, or providers) in the instructions was too broad.

Response: The statute at section 1877(f) required, prior to SSA '94, that "*[e]ach* entity providing covered items or services for which payment may be made under [Medicare] shall provide the Secretary with the information concerning the entity's ownership arrangements, * * *." (Emphasis added.) The statute does not define an "entity." Thus, we could include within this concept any individuals or groups that provided Medicare covered items or services. We surveyed every entity, regardless of type, that provided more than 20 services in 1990 from the minimum set of services (hospital services, ambulance services, etc.) covered by the statutory requirement for this study. The use of the terms "physicians, suppliers, or providers" in our survey instructions was meant to cover all types of entities that had provided more than 20 services during 1990 of the types listed in the legislation.

Comment: One commenter wrote that there was no question on the survey that distinguished between those physicians who have an ownership interest in a facility and those who do not, like hospital-based radiologists. The commenter recommended that information relative to hospital-based practices be extracted and excluded from the study as it could produce a flawed database.

Response: We are not certain of the point this commenter wanted to make. Our survey form clearly distinguished between physicians with an ownership interest in an entity and physicians compensated by an entity, such as hospital-based radiologists. After receiving these survey forms, we matched data from the forms to Medicare claims data to determine referral patterns to entities that had submitted these survey forms. Since we also had information for each entity billing the program relating to whether the patient was referred to the entity by a physician with an ownership interest or by a physician compensated by the entity, the study was able to determine the referral patterns to that entity in a totally objective manner.

Comment: Two commenters wrote that the regulations would result in unreasonably burdensome reporting obligations for certain health care entities. The commenters believed that

the collection of useless information will thwart, rather than support, legitimate monitoring efforts. Examples of information that the commenters believed was unnecessary was identifying *all* physicians in a teaching hospital, considering the size of the facility, the number of salaried staff and faculty, and the time and effort required to collect, organize, check, and report the required data.

Response: The scope of the data collection activity was expansive in order to ensure that the Congress had sufficient information on utilization rates by physician owned and non-owned entities to consider in its legislative activities. While this may have appeared to be more data than could be effectively used, we believed a more narrow data collection effort would have resulted in the Congress having insufficient facts when considering legislative alternatives. Surveyed entities were expected to make good faith efforts to complete the surveys accurately, completely, and timely. In addition, we granted extensions to the 60-day response period on a case-by-case basis.

Comment: One commenter opposed the requirement that hospitals report compensation/remuneration arrangements, because the requirement exceeds the scope of section 1877(f) of the Act.

Response: Prior to SSA '94, section 1877(f) did not specifically provide us with the authority to require that hospitals report compensation/remuneration arrangements. Section 1877(f) required that entities report only the ownership or investment interests of physicians. As we pointed out in the preamble to the interim final rule, however, we believed that other parts of section 1877, the payment provisions of the Medicare statute, and section 6204(f) of OBRA '89, as amended by OBRA '90, implicitly required us to collect this information.

As we pointed out at 56 FR 61376, we need the information on compensation/remuneration arrangements in order to enforce the general prohibition, in section 1877, against physicians referring to laboratories with which they have a financial relationship, including a relationship based on a compensation arrangement. Without the reporting requirement, we would not have sufficient information to make payment determinations. Also, we would not have had the data we needed to prepare the statistical profile required by section 6204(f) of OBRA '89, as amended by section 4207(e)(4) of OBRA '90. This provision required us to produce a profile that covered all of a physician's direct or indirect financial interests. As we explained earlier, beginning October 31, 1994, § 152(a) of SSA '94 amended § 1877(f) to explicitly require that a reporting entity provide information concerning the entity's ownership, investment, and compensation arrangements.

Comment: One commenter suggested that the imposition of civil monetary penalties on reporting entities that fail to report compensation/remuneration arrangements in a timely manner exceeds our statutory authority.

Response: Section 1877(g)(5) provides a civil money penalty when a person fails to meet the reporting requirements of section 1877(f). Section 1877(f), prior to OBRA '93, concerned information related to ownership interests only. However, as the result of the changes made in § 1877(f) by § 152(a) of SSA '94, entities are now required to provide information about ownership, investment, and compensation arrangements. As a result, we now have the authority to impose a civil money penalty when an entity fails to provide any of these kinds of information.

Comment: One commenter from California suggested that reporting employee information would place a hospital in jeopardy of violating certain State laws and State regulations.

Response: As we stated in an earlier comment, we have interpreted section 1877, the payment provisions of the Medicare statute, and section 6204(f) of OBRA '89 as requiring that reporting entities provide us with information about all of their financial relationships with a physician or a physician's family member. The statute at § 1877(f) now requires this information for all ownership, investment, and compensation arrangements. If this explicit Federal requirement conflicts with State law or State regulations, the Federal law and Federal regulations prevail.

VI. Provisions of This Final Rule

We have extensively rearranged the regulations from what we proposed and have added numerous OBRA '93 provisions as amended by SSA '94. Because of these many changes, we are including, in section VI.C., a list identifying whether the requirements in this final rule derive from OBRA '93, SSA '94, the proposed rule, or comments on the proposed rule. In addition, we identify below the changes from the December 1991 interim final rule and the March 1992 proposed rule.

A. Proposed Rule—Physician Ownership of, and Referrals to, Health Care Entities That Furnish Clinical Laboratory Services

Based on our analysis of the comments, we are adopting the provisions as set forth in the March 1992 proposed rule, with the following changes. The reason for a change either has been discussed in section IV of this preamble, the change is a result of the provisions of OBRA '93 or SSA '94, or the change merely conforms the regulations to the statute.

- In § 411.1 ("Basis and scope"), we added that section 1877 of the Act sets forth limitations on referrals and payment for clinical laboratory services furnished by entities with which an immediate family member of the referring physician has a financial relationship. This change was made to conform the regulation to the statute.
- As a result of the comments we received, we revised the definition of "compensation arrangement" at § 411.351 ("Definitions") to clarify that it applies to direct and indirect arrangements.
- We revised the definition of "group practice" at § 411.351 as follows:
  + Revised the "substantially all" threshold to 75 percent of the total patient care services of group practice members, measured as "patient care time."
  + Expanded and moved, to a new § 411.360, the requirements related to the group practice attestation statement.
  + Provided an exception to the "substantially all" requirement for those services furnished through a group practice located solely in certain areas designated as HPSAs under § 411.351. Also specified in this section that when members of a group practice that is located outside an HPSA spend time providing services in certain HPSAs, that time is not used to calculate the outside group's "substantially all" standard.
- We removed the definitions of "interested investor" and "investor" from § 411.351.
- We revised the definition of "remuneration" at § 411.351 to provide that forgiveness of debts, certain payments, and the furnishing of certain items, devices, and supplies are not considered remuneration if they meet specified conditions.
- We added a definition of "clinical laboratory services," "direct supervision," "hospital," "HPSA," "laboratory," "members of the group," "patient care services," "physician incentive plan," "plan of care," and "transaction" to § 411.351.

- We revised § 411.355 ("General exceptions to referral prohibitions related to both ownership/investment and compensation") to do the following:
  + For purposes of the in-office ancillary services exception in § 411.355(b), require that individuals furnishing services be "directly" supervised by the referring physician or by another physician in the same group practice. (The proposed rule had required that services be provided by an employee who was "personally" supervised by these physicians.)
  + Include among the locations where the service may be furnished a building that is used by the group practice for the provision of some or all of the group's clinical laboratory services. (The proposed rule had required that the building be used by the group practice for centrally furnishing the group's clinical laboratory services.)
- We added the following services to the general exceptions listed under § 411.355 ("General exceptions to referral prohibitions related to both ownership/investment and compensation"):
  + Services furnished by a qualified HMO (within the meaning of section 1310(d) of the Public Health Service Act) to individuals enrolled in the organization (new § 411.355(c)(4)).
  + Services furnished in an ASC or ESRD facility or by a hospice and included in the ASC rate, ESRD composite rate, or per diem hospice charge, respectively (new § 411.355(d)).
- We revised proposed § 411.357, now designated as § 411.356, ("Exceptions to referral prohibitions related to ownership or investment interests") to—
  + Revise the requirements relating to publicly-traded securities, as specified in section 1877(c) of the Act (as amended by OBRA '93 and SSA '94), to include securities which "may be purchased" on terms generally available to the public, which can be those traded on additional stock markets, and which can be in corporations that had the following:
    —Until January 1, 1995, total assets at the end of the corporation's most recent fiscal year exceeding $100 million, or
    —Stockholder equity exceeding $75 million at the end of the corporation's most recent fiscal year, or on average during the previous 3 fiscal years
  + No longer specify, with regard to the corporation's assets, that these assets must have been obtained in the normal course of business and not for the primary purpose of qualifying for the exception;
  + Expand the exception to include mutual funds that constitute ownership in shares in certain regulated investment companies, if the companies had, at the end of their most recent fiscal year, or on average during the previous 3 fiscal years, total assets exceeding $75 million.
  + Until January 1, 1995, retained the exception for a hospital located outside of Puerto Rico based on the condition that the referring physician's ownership or investment interest does not relate to the furnishing of clinical laboratory services.
  + Revise the requirements relating to rural providers, as specified in the proposed rule, to delete paragraph (ii), which added the requirement that the majority of tests referred to the rural laboratory are referred by physicians who have office practices located in a rural area.
  + Revise the requirements relating to rural providers, as specified in the proposed rule, to include the requirement that substantially all of the tests furnished by the entity are furnished to individuals residing in a rural area.
- We revised proposed § 411.359, now designated as § 411.357, ("Exceptions to referral prohibitions related to compensation arrangements") to do the following:
  + Revise (a)(1) to reflect new requirements specified by OBRA '93 for the rental of space.
  + Remove proposed paragraph (a)(2), which contained requirements related to a physician who has an ownership or investment interest in a laboratory and who also rents or leases space to the laboratory.
  + Add an exception for rental of equipment under certain conditions (new § 411.357(b)).
  + Add an exception for certain group practice arrangements with a hospital (new § 411.357(h).
  + Add an exception for payments by a physician to a laboratory or other entity in exchange for certain items and services (new § 411.357(i)).
  + Replace proposed § 411.359(b) ("Employment and service arrangements with hospitals") and proposed § 411.359(f) ("Salaried physicians in a group practice") with a new § 411.357(c) ("Bona fide employment relationships"). New § 411.357(c) is based on the exception at section 1877(e)(2) of the Act.
  + Replace proposed § 411.359(e) ("Service arrangements with non-hospital entities") with a new § 411.357(d) ("Personal service arrangements"). New § 411.357(d) is based on the exception at section 1877(e)(3) of the Act.
- We added a new § 411.360 that requires that a group practice submit annually a statement attesting that it met the "substantially all" test set forth, under the definition of "group practice," in § 411.351 of this rule. This section also specifies how a newly-formed group practice meets the "substantially all" criterion.

In addition to the above changes, we have made technical changes. For example, in proposed § 411.355(c)(1), we cross-referenced part 417, subpart C. Subpart C has been redesignated by a new rule. The applicable provisions being cross-referenced are now under subparts J through M. We have also made editorial changes that do not affect the substance of the provisions.

B. Interim Final Rule With Comment Period—Reporting Requirements for Financial Relationships Between Physicians and Health Care Entities That Furnish Selected Items and Services.

The interim final rule with comment published on December 3, 1991, is revised to incorporate the amendments to section 1877(f) made by SSA '94, to apply to any future reporting that we require. However, providers will not be held to the reporting requirements under section 1877(f) until we develop and issue the proper form and accompanying instructions booklet. Until that time, we will use audits and investigations as the primary tools to evaluate compliance with these provisions.

C. Source of Final Regulations.

Final regulations	Source
§ 411.1 Basis and scope	Proposed § 411.1.
§ 411.350 Scope of subpart	Proposed § 411.350, SSA '94.
§ 411.351 Definitions	§ 411.351.
Clinical laboratory services	Comments.
Compensation arrangement	Proposed § 411.352 and comments.
Direct supervision	Comments and OBRA '93.

Final regulations	Source
Employee	Proposed §411.351.
Entity	Proposed §411.351.
Fair market value	Proposed §411.351.
Financial relationship	Proposed §411.351.
Group practice	Proposed §411.351, OBRA '93, and Comments.
HPSA	Comments.
Immediate family member	Proposed §411.351.
Laboratory	Comments.
Members of a group	Comments.
Patient care services	Comments.
Physician incentive plan	OBRA '93.
Plan of care	Comments.
Referral	Proposed §411.351 and Comments.
Referring physician	Proposed §411.351.
Remuneration	Proposed §411.351 and OBRA '93.
Transaction	Comments.
§411.353 Prohibition on certain referrals by physicians and limitations on billing.	Proposed §411.353.
(a) Prohibition on referrals	Proposed §411.353(a).
(b) Limitations on billing	Proposed §411.353(b).
(c) Denial of Payment	Proposed §411.353(c).
(d) Refunds	Proposed §411.353(d).
§411.355 General exceptions to referral prohibitions related to ownership and compensation	Proposed §411.355.
(a) Physicians' services	Proposed §411.355(a).
(b) In-office ancillary services	Proposed §411.355(b) and services OBRA '93.
(c) Services furnished to prepaid health plan enrollees	Proposed §411.355(c).
(c)(1) HMO or CMP under section 1876	Proposed §411.355(c)(1).
(c)(2) Prepaid plan under section 1833(a)(1)(A)	Proposed §411.355(c)(2).
(c)(3) An organization receiving payments through a demonstration project	Proposed §411.355(c)(3).
(c)(4) A qualified HMO within the meaning of section 1310(d) of the Public Health Service Act.	OBRA '93.
(d) Services furnished in an ASC or ESRD facility	Comments.
§411.356 Exceptions to referral prohibitions related to ownership or investment interests	Proposed §411.357.
(a) Publicly-traded securities	Proposed §411.357(a) and OBRA '93.
(b) Mutual funds	OBRA '93.
(c) Specific providers	Proposed §411.357(b).
(c)(1) Rural laboratories	Proposed §411.357(b)(1) and Comments.
(c)(2) Hospitals in Puerto Rico	Proposed §411.357(b)(2).
(c)(3) Hospitals outside of Puerto Rico	Proposed §411.357(b)(3), OBRA '93, SSA '94.
§411.357 Exceptions to referral prohibitions related to compensation arrangements	Proposed §411.359.
(a) Rental of office space	OBRA '93.
(b) Rental of equipment	OBRA '93.
(c) Bona fide employment	OBRA '93.
(d) Personal service arrangements	OBRA '93.
(d)(1) General	OBRA '93.
(d)(2) Physician incentive plan exception	Proposed §411.359(c).
(e) Physician recruitment	Proposed §411.359(d), Comments, OBRA '93.
(f) Isolated transactions	OBRA '93.
(g) Arrangements with hospitals	OBRA '93.
(h) Group practice arrangements with a hospital	OBRA '93.
(i) Payments by a physician	Comments.
§411.360 Group practice attestation	Existing §411.361 and SSA '94.
§411.361 Reporting requirements	

VII. Collection of Information Requirements

Regulations at § 411.360 contain information collection or recordkeeping requirements or both that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The information collection requirements concern those group practices attempting to meet the definition found in section 1877(h)(4) and require them to attest that, in the aggregate, at least 75 percent of the total patient care services furnished by all physician members are furnished through the group and are billed under a billing number assigned to the group. Public reporting burden for this collection of information is estimated to be 1 hour per response. A document will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

VIII. Regulatory Impact Statement

A. Introduction

The provisions of this final rule with comment period implement section 6204 of OBRA '89 and section 4207(e) of OBRA '90, which concern a limitation on certain physician referrals. In addition, the rule contains revisions to our March 1992 proposal, based on comments submitted by the public. This final rule also incorporates the new expansions and exceptions created by OBRA '93, as amended by SSA '94, that are related to referrals for clinical laboratory services and have a retroactive effective date of January 1, 1992. This final rule with comment, by prohibiting physician referrals for clinical laboratory services by physicians who have certain ownership, investment, or compensation arrangements with the entity furnishing the service, is meant to eliminate the ordering of unnecessary laboratory tests.

According to the OIG report cited in the March 1992 proposed rule (57 FR 8589), at least 25 percent of the nearly 4500 independent clinical laboratories, at the time of the report, were owned in whole or in part by referring physicians. The same OIG report revealed that Medicare patients of referring physicians who own or invest in these laboratories received 45 percent more clinical laboratory services than all Medicare patients. The OIG estimated in its report that the "increased utilization of clinical laboratory services by patients of physician-owners cost the Medicare program $28 million nationally in 1987." (Financial Arrangements Between Physicians and Health Care Businesses, (May 1989))

We believe the majority of physicians and clinical laboratories do not currently make referrals that are prohibited by this rule. In addition, we believe that, in response to the statutory provisions, many physicians and laboratories took necessary steps, before January 1, 1992, to ensure that their investment and employment activities did not restrict their ability to make referrals. Therefore, any estimate of the aggregate economic impact of this rule will be purely speculative. We believe the statute itself will have a continuing deterrent effect on physicians' aberrant referral patterns and investment interests.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals, physicians, and clinical laboratories to be small entities.

In addition, section 1102(b) requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b), we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We expect that a few entities may be affected to varying degrees by this final rule. Relative to the potential impact on these entities, the following discussion is provided.

1. Impact on Physicians and Physician Groups

Physicians reportedly find it inefficient and inconvenient to split their laboratory referral business among multiple laboratories; the physician who uses one laboratory for private-pay patients is likely to use that same laboratory for all of his or her patients. Therefore, it is conceivable that, absent this rule, a physician could seek an ownership or investment interest in a laboratory, or a compensation arrangement with a laboratory, in order for the physician to share in the profits of the laboratory to which he or she makes referrals. In these cases, the prohibition on referrals might apply, which will require the physician to either dispose of his or her interest in the laboratory or stop referring Medicare patients to that laboratory.

As discussed at length earlier in this preamble, some physicians who have independent practices maintain a physician office laboratory with other physicians in shared premises, with shared equipment, shared employees, a shared administrator who has the power to hire and terminate employees on behalf of the physicians, and shared overhead costs. For the most part, these shared office space arrangements are not eligible for the in-office ancillary exception found in section 1877(b)(2) and, therefore, the prohibition on referrals does apply. Thus, the physicians must each separately meet the in-office ancillary services requirements, form a group practice meeting the definition of section 1877(h)(4) of the Act, dispose of their interest in the shared laboratory facility, or stop referring Medicare patients to that laboratory facility.

Also as discussed earlier, in response to OBRA '93 changes, we have added exceptions to the prohibition on referrals that we believe recognize existing medical practice, are reasonable, and will not result in program abuse.

As a result of public comments we received in response to the proposed rule, we are revising the definition of "group practice" (§ 411.351) by lowering the "substantially all" threshold from 85 percent to 75 percent of the total patient care services of group practice members. This change will allow groups of physicians additional flexibility in hiring part-time and temporary physicians, without the group jeopardizing its standing as a group practice.

2. Impact on Laboratories

As mentioned earlier in this impact statement, the report from the OIG to the Congress indicated that at least 25 percent of the nearly 4500 independent clinical laboratories were owned in whole or in part by referring physicians. The same report found that Medicare "patients of referring physicians who own or invest in these laboratories received 45 percent more clinical laboratory services than all Medicare patients * * *." Other studies found equivalent correlations involving physician self-referrals. However, we are unable to estimate with any degree of accuracy how existing physician laboratory owners will react to the provisions of the law and this rule or how the utilization of laboratory services will change. Nevertheless, given the extensive reach of section 1877 of the Act and these final regulations and the substantial penalties that are provided for violations of the prohibition on referrals, we believe that laboratories and physicians have been restructuring their relationships to ensure compliance with the statute and will continue to do so.

3. Impact on Hospitals

Sections 411.356 (b)(2) and (b)(3) include exceptions related to the prohibition on referrals for ownership or investment interests in certain hospitals. Sections 411.357 (c), (d), (e), (g), and (h) include exceptions related to the prohibition on referrals for compensation for services performed or supervised by physicians. Because we believe that a large number of the financial relationships between physicians and hospitals are covered by these exceptions, we do not believe hospitals will be significantly affected by this rule. In addition, hospitals in Puerto Rico and many hospitals in rural areas are excluded from this rule under § 411.356(c).

For the reasons stated above, we have determined, and the Secretary certifies, that this final rule with comment will not result in a significant economic impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals. We are, therefore, not preparing analyses for either the RFA or section 1102(b) of the Act.

In accordance with the provisions of E.O. 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 411

Kidney diseases, Medicare, Physician referral, Reporting and recordkeeping requirements.

42 CFR part 411 is amended as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

1. The authority citation for part 411 is revised to read as follows:

Authority: Secs. 1102, 1834, 1842(l), 1861, 1862, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(l), 1395x, 1395y, 1395hh, 1395nn, and 1395pp).

2. In § 411.1, paragraph (a) is revised to read as follows:

§ 411.1 Basis and scope.

(a) *Statutory basis.* Sections 1814(c), 1835(d), and 1862 of the Act exclude from Medicare payment certain specified services. The Act provides special rules for payment of services furnished by Federal providers or agencies (sections 1814(c) and 1835(d)), by hospitals and physicians outside the United States (sections 1814(f) and 1862(a)(4)), and by hospitals and SNFs of the Indian Health Service (section 1880). Section 1877 sets forth limitations on referrals and payment for clinical laboratory services furnished by entities with which the referring physician (or an immediate family member of the referring physician) has a financial relationship.

* * * *

3. Section 411.350 is revised to read as follows:

§ 411.350 Scope of subpart.

(a) This subpart implements section 1877 of the Act, which generally prohibits a physician from making a referral under Medicare for clinical laboratory services to an entity with which the physician or a member of the physician's immediate family has a financial relationship.

(b) This subpart does not provide for exceptions or immunity from civil or criminal prosecution or other sanctions applicable under any State laws or under Federal law other than section 1877 of the Act. For example, although a particular arrangement involving a physician's financial relationship with an entity may not prohibit the physician from making referrals to the entity under this subpart, the arrangement may nevertheless violate another provision of the Act or other laws administered by HHS, the Federal Trade Commission, the Securities and Exchange Commission, the Internal Revenue Service, or any other Federal or State agency.

(c) This subpart requires, with some exceptions, that certain entities furnishing covered items or services under Part A or Part B report information concerning their ownership, investment, or compensation arrangements in the form, manner, and at the times specified by HCFA.

4. New §§ 411.351, 411.353, 411.355 through 411.357, and 411.360 are added to read as follows:

§ 411.351 Definitions.

As used in this subpart, unless the context indicates otherwise:

Clinical laboratory services means the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. These examinations also include procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body.

Compensation arrangement means any arrangement involving any remuneration, direct or indirect, between a physician (or a member of a physician's immediate family) and an entity.

Direct supervision means supervision by a physician who is present in the office suite and immediately available to provide assistance and direction throughout the time services are being performed.

Employee means any individual who, under the usual common law rules that apply in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986), is considered to be employed by, or an employee of, an entity. (Application of these common law rules is discussed at 20 CFR 404.1007 and 26 CFR 31.3121(d)–1(c).)

Entity means a sole proprietorship, trust, corporation, partnership, foundation, not-for-profit corporation, or unincorporated association.

Fair market value means the value in arm's-length transactions, consistent with the general market value. With respect to rentals or leases, *fair market value* means the value of rental property for general commercial purposes (not taking into account its intended use). In the case of a lease of space, this value may not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor when the lessor is a potential source of patient referrals to the lessee.

Financial relationship refers to a direct or indirect relationship between a physician (or a member of a physician's immediate family) and an entity in which the physician or family member has—

(1) An ownership or investment interest that exists in the entity through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in any entity providing laboratory services; or

(2) A compensation arrangement with the entity.

Group practice means a group of two or more physicians, legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association, that meets the following conditions:

(1) Each physician who is a *member of the group*, as defined in this section, furnishes substantially the full range of patient care services that the physician routinely furnishes including medical care, consultation, diagnosis, and treatment through the joint use of shared office space, facilities, equipment, and personnel.

(2) Except as provided in paragraphs (2)(i) and (2)(ii) of this definition, substantially all of the patient care services of the physicians who are members of the group (that is, at least 75 percent of the total patient care services of the group practice members) are furnished through the group and billed in the name of the group and the amounts received are treated as receipts of the group. "Patient care services" are measured by the total patient care time each member spends on these services. For example, if a physician practices 40 hours a week and spends 30 hours on patient care services for a group practice, the physician has spent 75 percent of his or her time providing countable patient care services.

(i) The "substantially all" test does not apply to any group practice that is located solely in an HPSA, as defined in this section, and

(ii) For group practices located outside of an HPSA (as defined in this section) any time spent by group practice members providing services in an HPSA should not be used to calculate whether the group practice located outside the HPSA has met the "substantially all" test, regardless of whether the members' time in the HPSA is spent in a group practice, clinic, or office setting.

(3) The practice expenses and income are distributed in accordance with methods previously determined.

In the case of faculty practice plans associated with a hospital, institution of higher education, or medical school that has an approved medical residency training program in which faculty practice plan physicians perform specialty and professional services, both within and outside the faculty practice, as well as perform other tasks such as research, this definition applies only to those services that are furnished within the faculty practice plan.

Hospital means any separate legally organized operating entity plus any subsidiary, related, or other entities that perform services for the hospital's patients and for which the hospital bills. A "hospital" does not include entities that perform services for hospital patients "under arrangements" with the hospital.

HPSA means, for purposes of this regulation, an area designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act for primary medical care professionals (in accordance with the criteria specified in 42 CFR part 5, appendix A, part I—Geographic Areas). In addition, with respect to dental, mental health, vision care, podiatric, and pharmacy services, an HPSA means an area designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act for dental professionals, mental health professionals, vision care professionals, podiatric professionals, and pharmacy professionals, respectively.

Immediate family member or member of a physician's immediate family means husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

Laboratory means an entity furnishing biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. These examinations also include procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body. Entities only collecting or preparing specimens (or both) or only serving as a mailing service and not performing testing are not considered laboratories.

Members of the group means physician partners and full-time and part-time physician contractors and employees during the time they furnish services to patients of the group practice that are furnished through the group and are billed in the name of the group.

Patient care services means any tasks performed by a group practice member that address the medical needs of specific patients, regardless of whether they involve direct patient encounters. They can include, for example, the services of physicians who do not directly treat patients, time spent by a physician consulting with other physicians, or time spent reviewing laboratory tests.

Physician incentive plan means any compensation arrangement between an entity and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services furnished with respect to individuals enrolled with the entity.

Plan of care means the establishment by a physician of a course of diagnosis or treatment (or both) for a particular patient, including the ordering of items or services.

Referral—

(1) Means either of the following:

(i) Except as provided in paragraph (2) of this definition, the request by a physician for, or ordering of, any item or service for which payment may be made under Medicare Part B, including a request for a consultation with another physician and any test or procedure ordered by or to be performed by (or under the supervision of) that other physician.

(ii) Except as provided in paragraph (2) of this definition, a request by a physician that includes the provision of laboratory services or the establishment of a plan of care by a physician that includes the provision of laboratory services.

(2) Does not include a request by a pathologist for clinical diagnostic laboratory tests and pathological examination services if—

(i) The request is part of a consultation initiated by another physician; and

(ii) The tests or services are furnished by or under the supervision of the pathologist.

Referring physician means a physician (or group practice) who makes a referral as defined in this section.

Remuneration means any payment, discount, forgiveness of debt, or other benefit made directly or indirectly, overtly or covertly, in cash or in kind, except that the following are not considered remuneration:

(1) The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.

(2) The furnishing of items, devices, or supplies that are used solely to collect, transport, process, or store specimens for the entity furnishing the items, devices, or supplies or are used solely to order or communicate the results of tests or procedures for the entity.

(3) A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee-for-service basis, for the furnishing of health services by that physician to an individual who is covered by a policy with the insurer or by the self-insured plan, if—

(i) The health services are not furnished, and the payment is not made, under a contract or other arrangement between the insurer or the plan and the physician;

(ii) The payment is made to the physician on behalf of the covered individual and would otherwise be made directly to the individual; and

(iii) The amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals.

Transaction means an instance or process of two or more persons doing business. An *isolated transaction* is one involving a single payment between two or more persons. A transaction that involves long-term or installment payments is not considered an isolated transaction.

§ 411.353 Prohibition on certain referrals by physicians and limitations on billing.

(a) *Prohibition on referrals.* Except as provided in this subpart, a physician who has a financial relationship with an entity, or who has an immediate family member who has a financial relationship with the entity, may not make a referral to that entity for the furnishing of clinical laboratory services for which payment otherwise may be made under Medicare.

(b) *Limitations on billing.* An entity that furnishes clinical laboratory services under a referral that is prohibited by paragraph (a) of this section may not present or cause to be presented a claim or bill to the Medicare

program or to any individual, third party payer, or other entity for the clinical laboratory services performed under that referral.

(c) *Denial of payment.* No Medicare payment may be made for a clinical laboratory service that is furnished under a prohibited referral.

(d) *Refunds.* An entity that collects payment for a laboratory service that was performed under a prohibited referral must refund all collected amounts on a timely basis.

§ 411.355 General exceptions to referral prohibitions related to both ownership/investment and compensation.

The prohibition on referrals set forth in § 411.353 does not apply to the following types of services:

(a) *Physicians' services,* as defined in § 410.20(a), that are furnished personally by (or under the personal supervision of) another physician in the same group practice as the referring physician.

(b) *In-office ancillary services.* Services that meet the following conditions:

(1) They are furnished personally by one of the following individuals:

(i) The referring physician.

(ii) A physician who is a member of the same group practice as the referring physician.

(iii) Individuals who are directly supervised by the referring physician or, in the case of group practices, by another physician in the same group practice as the referring physician.

(2) They are furnished in one of the following locations:

(i) A building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of clinical laboratory services.

(ii) A building that is used by the group practice for the provision of some or all of the group's clinical laboratory services.

(3) They are billed by one of the following:

(i) The physician performing or supervising the service.

(ii) The group practice of which the performing or supervising physician is a member.

(iii) An entity that is wholly owned by the physician or the physician's group practice.

(c) *Services furnished to prepaid health plan enrollees by one of the following organizations:*

(1) An HMO or a CMP in accordance with a contract with HCFA under section 1876 of the Act and part 417, subparts J through M, of this chapter.

(2) A health care prepayment plan in accordance with an agreement with HCFA under section 1833(a)(1)(A) of the Act and part 417, subpart U, of this chapter.

(3) An organization that is receiving payments on a prepaid basis for the enrollees through a demonstration project under section 402(a) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1) or under section 222(a) of the Social Security Amendments of 1972 (42 U.S.C. 1395b–1 note).

(4) A qualified health maintenance organization (within the meaning of section 1310(d) of the Public Health Service Act).

(d) *Services furnished in an ambulatory surgical center (ASC) or end stage renal disease (ESRD) facility, or by a hospice* if payment for those services is included in the ASC rate, the ESRD composite rate, or as part of the per diem hospice charge, respectively.

§ 411.356 Exceptions to referral prohibitions related to ownership or investment interests.

For purposes of § 411.353, the following ownership or investment interests do not constitute a financial relationship:

(a) *Publicly traded securities.* Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) that may be purchased on terms generally available to the public and that meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(1) They are either—

(i) Listed for trading on the New York Stock Exchange, the American Stock Exchange, or any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis; or

(ii) Traded under an automated interdealer quotation system operated by the National Association of Securities Dealers.

(2) In a corporation that had—

(i) Until January 1, 1995, total assets at the end of the corporation's most recent fiscal year exceeding $100 million; or

(ii) Stockholder equity exceeding $75 million at the end of the corporation's most recent fiscal year or on average during the previous 3 fiscal years.

(b) *Mutual funds.* Ownership of shares in a regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, if the company had, at the end of its most recent fiscal year, or on average during the previous 3 fiscal years, total assets exceeding $75 million.

(c) *Specific providers.* Ownership or investment interest in the following entities:

(1) A laboratory that is located in a rural area (that is, a laboratory that is not located in an urban area as defined in § 412.62(f)(1)(ii) of this chapter) and that meets the following criteria:

(i) The laboratory testing that is referred by a physician who has (or whose immediate family member has) an ownership or investment interest in the rural laboratory is either—

(A) Performed on the premises of the rural laboratory; or

(B) If not performed on the premises, the laboratory performing the testing bills the Medicare program directly for the testing.

(ii) Substantially all of the laboratory tests furnished by the entity are furnished to individuals who reside in a rural area. Substantially all means no less than 75 percent.

(2) A hospital that is located in Puerto Rico.

(3) A hospital that is located outside of Puerto Rico if one of the following conditions is met:

(i) The referring physician is authorized to perform services at the hospital, and the physician's ownership or investment interest is in the entire hospital and not merely in a distinct part or department of the hospital.

(ii) Until January 1, 1995, the referring physician's ownership or investment interest does not relate (directly or indirectly) to the furnishing of clinical laboratory services.

§ 411.357 Exceptions to referral prohibitions related to compensation arrangements.

For purposes of § 411.353, the following compensation arrangements do not constitute a financial relationship:

(a) *Rental of office space.* Payments for the use of office space made by a lessee to a lessor if there is a rental or lease agreement that meets the following requirements:

(1) The agreement is set out in writing and is signed by the parties and specifies the premises covered by the lease.

(2) The term of the agreement is at least 1 year.

(3) The space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of common areas if the payments do not exceed the lessee's pro rata share of expenses for the space based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using the common areas.

(4) The rental charges over the term of the lease are set in advance and are consistent with fair market value.

(5) The charges are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.

(6) The agreement would be commercially reasonable even if no referrals were made between the lessee and the lessor.

(b) *Rental of equipment.* Payments made by a lessee to a lessor for the use of equipment under the following conditions:

(1) A rental or lease agreement is set out in writing and signed by the parties and specifies the equipment covered by the lease.

(2) The equipment rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee.

(3) The lease provides for a term of rental or lease of at least 1 year.

(4) The rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.

(5) The lease would be commercially reasonable even if no referrals were made between the parties.

(c) *Bona fide employment relationships.* Any amount paid by an employer to a physician (or immediate family member) who has a bona fide employment relationship with the employer for the provision of services if the following conditions are met:

(1) The employment is for identifiable services.

(2) The amount of the remuneration under the employment is—

(i) Consistent with the fair market value of the services; and

(ii) Except as provided in paragraph (c)(4) of this section, is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician.

(3) The remuneration is provided under an agreement that would be commercially reasonable even if no referrals were made to the employer.

(4) Paragraph (c)(2)(ii) of this section does not prohibit payment of remuneration in the form of a productivity bonus based on services performed personally by the physician (or immediate family member of the physician).

(d) *Personal service arrangements—*

(1) *General.* Remuneration from an entity under an arrangement to a physician or immediate family member of the physician, including remuneration for specific physicians' services furnished to a nonprofit blood center, if the following conditions are met:

(i) The arrangement is set out in writing, is signed by the parties, and specifies the services covered by the arrangement.

(ii) The arrangement covers all of the services to be furnished by the physician (or an immediate family member of the physician) to the entity.

(iii) The aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement.

(iv) The term of the arrangement is for at least 1 year.

(v) The compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and, except in the case of a physician incentive plan, is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.

(vi) The services to be furnished under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law.

(2) *Physician incentive plan exception.* In the case of a physician incentive plan between a physician and an entity, the compensation may be determined in a manner (through a withhold, capitation, bonus, or otherwise) that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties, if the plan meets the following requirements:

(i) No specific payment is made directly or indirectly under the plan to a physician or a physician group as an inducement to reduce or limit medically necessary services furnished with respect to a specific individual enrolled in the entity.

(ii) In the case of a plan that places a physician or a physician group at substantial financial risk as determined by the Secretary under section 1876(i)(8)(A)(ii) of the Act, the plan complies with any requirements the Secretary has imposed under that section.

(iii) Upon request by the Secretary, the entity provides the Secretary with access to descriptive information regarding the plan, in order to permit the Secretary to determine whether the plan is in compliance with the requirements of paragraph (d)(2) of this section.

(3) Until January 1, 1995, the provisions in paragraph (d) (1) and (2) of this section do not apply to any arrangements that meet the requirements of section 1877(e)(2) or section 1877(e)(3) of the Act as they read before they were amended by the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66).

(e) *Physician recruitment.* Remuneration provided by a hospital to recruit a physician that is intended to induce the physician to relocate to the geographic area served by the hospital in order to become a member of the hospital's medical staff, if all of the following conditions are met:

(1) The arrangement and its terms are in writing and signed by both parties.

(2) The arrangement is not conditioned on the physician's referral of patients to the hospital.

(3) The hospital does not determine (directly or indirectly) the amount or value of the remuneration to the physician based on the volume or value of any referrals the physician generates for the hospital.

(4) The physician is not precluded from establishing staff privileges at another hospital or referring business to another entity.

(f) *Isolated transactions.* Isolated financial transactions, such as a one-time sale of property or a practice, if all of the conditions set forth in paragraphs (c)(2) and (c)(3) of this section are met with respect to an entity in the same manner as they apply to an employer. There can be no additional transactions between the parties for 6 months after the isolated transaction, except for transactions which are specifically excepted under the other provisions in §§ 411.355 through 411.357.

(g) *Arrangements with hospitals.* (1) Until January 1, 1995, any compensation arrangement between a hospital and a physician or a member of a physician's immediate family if the arrangement does not relate to the furnishing of clinical laboratory services; or

(2) Remuneration provided by a hospital to a physician if the remuneration does not relate to the furnishing of clinical laboratory services.

(h) *Group practice arrangements with a hospital.* An arrangement between a hospital and a group practice under

which clinical laboratory services are provided by the group but are billed by the hospital if the following conditions are met:

(1) With respect to services provided to an inpatient of the hospital, the arrangement is pursuant to the provision of inpatient hospital services under section 1861(b)(3) of the Act.

(2) The arrangement began before December 19, 1989, and has continued in effect without interruption since then.

(3) With respect to the clinical laboratory services covered under the arrangement, substantially all of these services furnished to patients of the hospital are furnished by the group under the arrangement.

(4) The arrangement is in accordance with an agreement that is set out in writing and that specifies the services to be furnished by the parties and the compensation for services furnished under the agreement.

(5) The compensation paid over the term of the agreement is consistent with fair market value, and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.

(6) The compensation is provided in accordance with an agreement that would be commercially reasonable even if no referrals were made to the entity.

(i) *Payments by a physician.* Payments made by a physician—

(1) To a laboratory in exchange for the provision of clinical laboratory services; or

(2) To an entity as compensation for other items or services that are furnished at a price that is consistent with fair market value.

§ 411.360 Group practice attestation.

(a) Except as provided in paragraph (b) of this section, a group practice (as defined in section 1877(h)(4) of the Act and § 411.351) must submit a written statement to its carrier annually to attest that, during the most recent 12-month period (calendar year, fiscal year, or immediately preceding 12-month period) 75 percent of the total patient care services of group practice members was furnished through the group, was billed under a billing number assigned to the group, and the amounts so received were treated as receipts of the group.

(b) A newly-formed group practice (one in which physicians have recently begun to practice together) or any group practice that has been unable in the past to meet the requirements of section 1877(h)(4) of the Act must—

(1) Submit a written statement to attest that, during the next 12-month period (calendar year, fiscal year, or next 12 months), it expects to meet the 75-percent standard and will take measures to ensure the standard is met; and

(2) At the end of the 12-month period, submit a written statement to attest that it met the 75-percent standard during that period, billed for those services under a billing number assigned to the group, and treated amounts received for those services as receipts of the group. If the group did not meet the standard, any Medicare payments made for clinical laboratory services furnished by the group during the 12-month period that were conditioned upon the standard being met are overpayments.

(c) Once any group has chosen whether to use its fiscal year, the calendar year, or some other 12-month period, the group practice must adhere to this choice.

(d) The attestation must contain a statement that the information furnished in the attestation is true and accurate and must be signed by a group representative.

(e) A group that intends to meet the definition of a group practice in order to qualify for an exception described in §§ 411.355 through 411.357, must submit the attestation required by paragraph (a) or paragraph (b)(1) of this section, as applicable, to its carrier by December 12, 1995.

5. Section 411.361 is revised to read as follows:

§ 411.361 Reporting requirements.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, all entities furnishing items or services for which payment may be made under Medicare must submit information to HCFA concerning their financial relationships (as defined in paragraph (d) of this section), in such form, manner, and at such times as HCFA specifies.

(b) *Exception.* The requirements of paragraph (a) of this section do not apply to entities that provide 20 or fewer Part A and Part B items and services during a calendar year, or to designated health services provided outside the United States.

(c) *Required information.* The information submitted to HCFA under paragraph (a) of this section must include at least the following:

(1) The name and unique physician identification number (UPIN) of each physician who has a financial relationship with the entity;

(2) The name and UPIN of each physician who has an immediate relative (as defined in § 411.351) who has a financial relationship with the entity;

(3) The covered items and services provided by the entity; and

(4) With respect to each physician identified under paragraphs (c)(1) and (c)(2) of this section, the nature of the financial relationship (including the extent and/or value of the ownership or investment interest or the compensation arrangement, if requested by HCFA).

(d) *Reportable financial relationships.* For purposes of this section, a financial relationship is any ownership or investment interest or any compensation arrangement, as described in section 1877 of the Act.

(e) *Form and timing of reports.* Entities that are subject to the requirements of this section must submit the required information on a HCFA-prescribed form within the time period specified by the servicing carrier or intermediary. Entities are given at least 30 days from the date of the carrier's or intermediary's request to provide the initial information. Thereafter, an entity must provide updated information within 60 days from the date of any change in the submitted information. Entities must retain documentation sufficient to verify the information provided on the forms and, upon request, must make that documentation available to HCFA or the OIG.

(f) *Consequences of failure to report.* Any person who is required, but fails, to submit information concerning his or her financial relationships in accordance with this section is subject to a civil money penalty of up to $10,000 for each day of the period beginning on the day following the applicable deadline established under paragraph (e) of this section until the information is submitted. Assessment of these penalties will comply with the applicable provisions of part 1003 of this title.

(g) *Public disclosure.* Information furnished to HCFA under this section is subject to public disclosure in accordance with the provisions of part 401 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 16, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 10, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–19647 Filed 8–11–95; 8:45 am]

BILLING CODE 4120–01–P

federal register

Monday
August 14, 1995

Part III

Department of Health and Human Services

Food and Drug Administration

Order for Certain Class III Devices; Submission of Safety and Effectiveness Information; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0418]

Order for Certain Class III Devices; Submission of Safety and Effectiveness Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order requiring manufacturers of 27 class III devices to submit to FDA a summary of, and a citation to, all information known or otherwise available to them respecting such devices, including adverse safety or effectiveness information concerning the devices which has not been submitted under the Federal Food, Drug, and Cosmetic Act (the act). FDA is requesting this information in order to determine, for each device, whether the classification of the device should be revised, or whether a regulation requiring the submission of premarket approval applications (PMA's) for the device should be promulgated. Based on preliminary information, FDA believes these 27 devices are not likely candidates for reclassification and, therefore, will likely require the submission of PMA's sometime in the future.

DATES: Summaries and citations must be submitted by the dates listed below.

ADDRESSES: Submit summaries and citations to the Documents Mail Center (HFZ–401), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Melpomeni K. Jeffries, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the act (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. This notice refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date, as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. However, submission of a PMA, or a notice of completion of a product development protocol (PDP), is not required until 90 days after FDA promulgates a final rule requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. Also, such a device is exempt from the investigational device exemption (IDE) regulations of 21 CFR part 812 until the date stipulated by FDA in the final rule requiring the submission of a PMA for that device. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations.

To date, FDA has issued final rules requiring the submission of PMA's for nine preamendment class III devices. Additionally, FDA has issued proposed rules for 10 other devices. There are 116 remaining preamendment class III devices for which FDA has not yet initiated action requiring the submission of PMA's.

The Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629) changed the definition of class II devices from those for which a performance standard is necessary to provide reasonable assurance of safety and effectiveness to those for which there is sufficient information to establish special controls to provide such assurance. Special controls include performance standards, postmarket surveillance, patient registries, guidelines (including guidelines for the submission of clinical data in premarket notification submissions in accordance with section 510(k)), recommendations, and other appropriate actions the agency deems necessary to provide such assurance. Thus, the SMDA modified the definition of class II devices to permit reliance on special controls, rather than performance standards alone, to provide reasonable assurance of safety and effectiveness.

The SMDA also added new section 515(i) (21 U.S.C. 360e(i)) to the act. This section requires FDA to order manufacturers of preamendment class III devices for which no final regulation has been issued requiring the submission of PMA's to submit to the agency a summary of, and a citation to, any information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information which has not been submitted under section 519 of the act (21 U.S.C. 360i). Section 519 of the act requires manufacturers, importers, or distributors to maintain records and to report information that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury, or that a malfunction of the device is likely to cause death or serious injury on recurrence. Section 515(i) of the act also directs FDA to either revise the classification of the device into class I or class II or require the device to remain in class III; and, for devices remaining in class III, to establish a schedule for the promulgation of a rule requiring the submission of PMA's for the device.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced its strategy for addressing the remaining preamendment class III devices. In that notice, FDA made available a document setting forth its strategy for implementing the provisions of the SMDA which require FDA to review the classification of certain class III devices, and either reclassify them into class I or class II or retain them in class III. Pursuant to this plan, the agency divided the universe of preamendment class III devices into the following 3 groups: Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness, but are no longer used or are very limited in use. Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. There are a total of 43, 31, and 42 (15 high priority), devices in Groups 1, 2, and 3 respectively.

In the May 6, 1994, notice, FDA announced its intent to call for the submission of PMA's for the 15 highest priority devices in Group 3, and for all Group 1 devices. The agency also announced its intent to issue an order under section 515(i) of the act for the remaining Group 3 devices and all of the Group 2 devices. Under section 515(i) of the act, FDA is authorized to require the submission of the adverse safety and effectiveness information identified in the summary and citation submitted in response to this order, if such information is available. Based upon the information submitted in response to this order, FDA will either propose reclassification of some or all of these devices into class I or class II, or propose retaining some or all of them in class III.

In this document, FDA is requiring manufacturers of 27 devices in Group 3 to submit a summary of, and citation to, all safety and effectiveness information known or otherwise available to them respecting such devices, including adverse information concerning the devices which has not been submitted under section 519 of the act. As noted above, based on information known to date by the agency, FDA believes these devices are not likely candidate for reclassification.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a similar notice covering the 31 Group 2 devices.

II. Statutory Authority and Enforcement

In addition to the provisions of section 515(i) of the SMDA described above, this order is issued under section 519 of the act, as implemented by § 860.7(g)(2) (21 CFR 860.7(g)(2)). This regulation authorizes FDA to require reports or other information bearing on the classification of a device. Section 519 of the act also requires the reporting of any death or serious injury caused by a device or by its malfunction.

Failure to furnish the information required by this order results in the device being misbranded under section 502(t) of the act (21 U.S.C. 352(t)) and is a prohibited act under sections 301(a) and (q) of the act (21 U.S.C. 331(a) and (q)). The agency will use its enforcement powers to deter noncompliance. Violations of section 301 of the act may be subject to seizure or injunction under sections 304(a) and 302(a) of the act (21 U.S.C. 334(a) and 332(a) respectively). In addition, violations under section 301 of the act may be subject to civil penalties under section 303(f) of the act (21 U.S.C. 333(f)), and criminal prosecution under section 303(a) of the act (21 U.S.C. 333(a)).

III. Order

The agency is hereby issuing this order under sections 515(i) and 519 of the act and § 860.7(g)(1) of the regulations. Under the order, the required information shall be submitted by the dates listed below so that FDA may begin promptly the process established by section 515(i) of the act to either revise or sustain the current classification of these devices.

A. Deadlines for Submission of Information

For the following nine devices, the required information shall be submitted by August 14, 1996.

1. § 868.2450 *Lung water monitor.*
2. § 868.2500 *Cutaneous oxygen monitor.*
3. § 868.5610 *Membrane lung for long-term pulmonary support.*
4. § 870.1025 *Arrhythmia detector and alarm.*
5. § 870.3300 *Arterial embolization device.*
6. § 870.3375 *Cardiovascular intravascular filter.*
7. § 874.3400 *Tinnitus masker.*
8. § 884.5940 *Powered vaginal muscle stimulator for therapeutic use.*
9. § 890.3890 *Stair-climbing wheelchair.*

For the following nine devices, the required information shall be submitted by February 14, 1997.

10. § 870.3610 *Implantable pacemaker pulse generator.*
11. § 870.3700 *Pacemaker programmers.*
12. § 870.3800 *Annuloplasty ring.*
13. § 870.4230 *Cardiopulmonary bypass defoamer.*
14. § 870.5225 *External counter-pulsating device.*
15. § 870.5550 *External transcutaneous cardiac pacemaker (noninvasive).*
16. § 874.3930 *Tympanostomy tube with semipermeable membrane.*
17. § 874.5350 *Suction antichoke device.*
18. § 886.3400 *Keratoprosthesis.*

For the following nine devices, the required information shall be submitted by August 14, 1997.

19. § 870.3450 *Vascular graft prosthesis of less than 6 millimeters diameter.*
20. § 870.3535 *Intra-aortic balloon and control system.*
21. § 870.3600 *External pacemaker pulse generator.*
22. § A874.5370 *Tongs antichoke device.*
23. § 876.5870 *Sorbent hemoperfusion system.*
24. § 876.5955 *Peritoneo-venous shunt.*
25. § 882.1790 *Ocular plethysmograph.*
26. § 882.5860 *Implanted neuromuscular stimulator.*
27. § 882.5950 *Artificial embolization device.*

B. Required Contents of Submissions

By the dates listed above, all manufacturers currently marketing preamendments class III devices subject to this order shall provide a summary of, and citation to, any information known or otherwise available to them respecting the devices, including adverse safety and effectiveness data which has not been submitted under section 519 of the act. FDA suggests that it may be in the best interest of submitters to summarize the information submitted under section 519 of the act to facilitate FDA's decisionmaking, even though such information is not required.

The information should be submitted in one of the two following formats depending on whether the applicant is aware of any information which would support the reclassification of the device into class I (general controls) or class II (special controls). Information which would support the reclassification of the device must consist of adequate, valid scientific evidence showing that general controls alone (class I), or general controls and special controls (class II) will provide a reasonable assurance of the safety and effectiveness of the device.

For manufacturers who do *not* believe that existing information would support the reclassification of their device into class I or class II, the information provided should be submitted in the following format:

1. *Indications for use.* A general description of the disease or condition to be diagnosed, treated, cured, mitigated, or prevented, including a description of the patient population for which the device is intended.

2. *Device description.* An explanation of how the device functions, significant physical and performance characteristics of the device, and basic scientific concepts that form the basis for the device.

3. *Other device labeling.* Other device labeling that includes contraindications, warnings and precautions and/or promotional materials.

4. *Risks.* A summary of all adverse safety and effectiveness information and identification of the risks presented by the device as well as any mechanisms or procedures which will control the risk.

5. *Alternative practices and procedures.* A description of alternative practices or procedures for diagnosing, treating, preventing, curing, or mitigating the disease or condition for which the device is intended.

6. *Summary of preclinical and clinical data.* The summary of preclinical and clinical data should include the conclusions drawn from the studies which support the safety and effectiveness of the device as well as special controls, if any, which address

the adverse effects of the device on health. The summary should include a brief description of the objective of the studies, the experimental design, how the data were collected and analyzed, and a brief description of the results of the studies, whether positive, negative, or inconclusive. The summary of the clinical study(ies) should also include a discussion of the subject inclusion and exclusion criteria, the study population, reasons for patient discontinuations, and results of statistical analyses.

7. *Bibliography.* A copy of the key references, a brief summary of the salient features of each key reference, and a brief discussion of why the reference is relevant to an evaluation of the safety and effectiveness evaluation of the device.

Manufacturers who believe that existing information would support the reclassification of their device into class I or class II may either submit information using the format described below or may submit a formal reclassification petition, which should include the information described below in addition to the information required under 21 CFR 860.123.

1. *Identification.* A brief narrative identification of the device. This identification should be specific enough to distinguish a particular device from a generic type of device. Where appropriate, this identification should include a listing of the materials, and the component parts, and a description of the intended use of the device.

2. *Risks to health.* An identification of the risks to health should be provided. This section should summarize all adverse safety and effectiveness information, which have not been submitted under section 519 of the act particularly the most significant. The mechanisms or procedures which will control the risk should be described. A list of the general hazards associated with the device and a bibliography with copies of the referenced material should be provided.

3. *Recommendation.* A statement whether the manufacturer believes the device should be reclassified into class I or class II.

4. *Summary of reasons for recommendation.* Each manufacturer should include a summary of the reasons for requesting reclassification of its device and an explanation why it believes the device meets the statutory criteria for reclassification into class I or class II. Each manufacturer should also identify the special controls that it believes would be sufficient to provide reasonable assurance of the safety and effectiveness of its device if it believes the device should be reclassified into class II.

5. *Summary of valid scientific evidence on which the recommendation is based.* Manufacturers are advised that, when considering a formal reclassification petition, FDA will rely only upon valid scientific evidence to determine that there is a reasonable assurance of the safety and effectiveness of the device, if regulated by general controls alone (class I) or by general controls and special controls (class II). Valid scientific evidence consists of evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. The evidence required may vary according to the characteristics of the device, its conditions of use, the existence and adequacy of warnings and other restrictions, and the extent of experience with its use. Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness. (See § 860.7(c)(2).)

According to § 860.7(d)(1) there is reasonable assurance that a device is safe when it can be determined, based upon valid scientific evidence, that the probable benefits to health from use of the device for its intended uses and conditions of use, when accompanied by adequate directions and warnings against unsafe use, outweigh any probable risks. The valid scientific evidence used to determine the safety of a device shall adequately demonstrate the absence of unreasonable risk of illness or injury associated with the use of the device for its intended uses and conditions for use. Moreover, pursuant to § 860.7(e)(1), there is reasonable assurance that a device is effective when it can be determined, based upon valid scientific evidence, that in a significant portion of the target population, the use of the device for its intended uses and conditions of use, when accompanied by adequate directions for use and warnings against unsafe use, will provide clinically significant results.

Manufacturers submitting a formal reclassification petition may wish to request two petitions as examples of successful reclassification petitions. Magnetic resonance imaging devices, Docket Nos. 87P–0214/CP through 87P–0215/CP0013, and Nd:YAG Laser for posterior capsulotomy devices, Docket No. 86P–0083, were both reclassified from class III to class II subsequent to the submission of a reclassification petition. Both petitions are available upon submission of a Freedom of Information request to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20850.

IV. Submission of Required Information

The summary of, and citation to, any information required by the act must be submitted by the dates listed above to the Document Mail Center (address above).

Dated: July 13, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–19944 Filed 8–11–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0417]

Order for Certain Class III Devices; Submission of Safety and Effectiveness Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order requiring manufacturers of 31 class III devices to submit to FDA a summary of, and a citation to, all information known or otherwise available to them respecting such devices, including adverse safety or effectiveness information concerning the devices which has not been submitted under the Federal Food, Drug, and Cosmetic Act (the act). FDA is requesting this information in order to determine, for each device, whether the classification of the device should be revised, or whether a regulation requiring the submission of premarket approval applications (PMA's) for the device should be promulgated. Based on preliminary information, FDA believes these 31 devices have a higher potential for reclassification.

DATES: Summaries and citations must be submitted by the dates listed below.

ADDRESSES: Submit summaries and citations to the Documents Mail Center (HFZ–401), Food and Drug Administration, Center for Devices and Radiological Health, 9200 Corporate Blvd., Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Melpomeni K. Jeffries, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the act (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. This notice refers to both the class III devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date, as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. However, submission of a PMA, or a notice of completion of a product development protocol (PDP), is not required until 90 days after FDA promulgates a final rule requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. Also, such a device is exempt from the investigational device exemption (IDE) regulations of part 812 (21 CFR part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed only for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations.

To date, FDA has issued final rules requiring the submission of PMA's for nine preamendment class III devices. Additionally, FDA has issued proposed rules for 10 other devices. There are 116 remaining preamendment class III devices for which FDA has not yet initiated action requiring the submission of PMA's.

The Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629) changed the definition of class II devices from those for which a performance standard is necessary to provide reasonable assurance of safety and effectiveness to those for which there is sufficient information to establish special controls to provide such assurance. Special controls include performance standards, postmarket surveillance, patient registries, guidelines (including guidelines for the submission of clinical data in premarket notification submissions in accordance with section 510(k)), recommendations, and other appropriate actions the agency deems necessary to provide such assurance. Thus, the SMDA modified the definition of class II devices to permit reliance on special controls, rather than performance standards alone, to provide reasonable assurance of safety and effectiveness.

The SMDA also added new section 515(i) (21 U.S.C. 360e(i)) to the act. This section requires FDA to order manufacturers of preamendment class III devices for which no final regulation has been issued requiring the submission of PMA's to submit to the agency a summary of, and a citation to, any information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information which has not been submitted under section 519 of the act (21 U.S.C. 360i). Section 519 of the act (21 U.S.C. 360i) requires manufacturers, importers, or distributors to maintain records and to report information that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury or that a malfunction of the device is likely to cause death or serious injury on recurrence. Section 515(i) of the act also directs FDA to either revise the classification of the device into class I or class II or require the device to remain in class III; and for devices remaining in class III, to establish a schedule for the promulgation of a rule requiring the submission of PMA's for the device.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced its strategy for addressing the remaining preamendment class III devices. In that notice, FDA made available a document setting forth its strategy for implementing the provisions of the SMDA which require FDA to review the classification of certain class III devices, and either reclassify them into class I or class II or retain them in class III. Pursuant to this plan, the agency divided the universe of preamendment class III devices into the following 3 groups. Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness, but are no longer used or are very limited in use. Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. There are a total of 43, 31, and 42 (15 high priority) devices in Groups 1, 2, and 3, respectively.

In the May 6, 1994 notice, FDA announced its intent to call for the submission of PMA's for the 15 highest priority devices in Group 3 and for all Group 1 devices. The agency also announced its intent to issue an order under section 515(i) of the act for the remaining Group 3 devices and all of the Group 2 devices. Under section 515(i) of the act, FDA is authorized to require the submission of the adverse safety and effectiveness information identified in the summary and citation submitted in response to this order, if such information is available. Based upon the information submitted in response to this order, FDA will either propose reclassification of some or all of these devices into class I or class II, or propose retaining some or all of them in class III.

In this document, FDA is requiring manufacturers of all 31 devices in Group 2 to submit a summary of, and citation to, all safety and effectiveness information known or otherwise available to them respecting such devices, including adverse information concerning the devices which has not been submitted under section 519 of the act. As noted above, FDA believes that these devices have a higher potential for reclassification provided that manufacturers collect, analyze, and submit the necessary supporting information in response to this notice.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a similar notice with respect to the 27 remaining Group 3 devices.

II. Statutory Authority and Enforcement

In addition to the provisions of section 515(i) of the SMDA described above, this order is issued under section 519 of the act, as implemented by § 860.7(g)(2) (21 CFR 860.7(g)(2)). This regulation authorizes FDA to require reports or other information bearing on the classification of a device. Section 519 of the act also requires the reporting of any death or serious injury caused by a device or by its malfunction.

Failure to furnish the information required by this order results in the device being misbranded under section 502(t) of the act (21 U.S.C. 352 (t)) and is a prohibited act under sections 301(a) and (q) of the act (21 U.S.C. 331(a) and (q)). The agency will use its enforcement

powers to deter noncompliance. Violations of section 301 of the act may be subject to seizure or injunction under sections 304(a) and 302(a) of the act (21 U.S.C. 334(a) and 332(a) respectively). In addition, violations under section 301 of the act may be subject to civil penalties under section 303(f) of the act (21 U.S.C. 333(f)) and criminal prosecution under section 303(a) of the act (21 U.S.C. 333(a)).

III. Order

The agency is hereby issuing this order under sections 515(i) and 519 of the act and § 860.7(g)(1) of the regulations. Under the order, the required information shall be submitted by the dates listed below so that FDA may begin promptly the process established by section 515(i) of the act to either revise or sustain the current classification of these devices.

A. Deadlines for Submission of Information

For the following 8 devices, the required information shall be submitted by August 14, 1996.

1. § 864.7250 *Erythropoietin assay.*
2. § 864.7300 *Fibrin monomer paracoagulation test.*
3. § 876.3630 *Penile rigidity implant.*
4. § 878.5360 *Tweezer-type epilator.*
5. § 884.1060 *Endometrial aspirator.*
6. § 884.1100 *Endometrial brush.*
7. § 884.1185 *Endometrial washer.*
8. § 886.3920 *Eye valve implant.*

For the following 9 devices, the required information shall be submitted by February 14, 1997.

9. § 866.3305 *Herpes simplex virus serological reagents.*
10. § 866.3510 *Rubella virus serological reagents.*
11. § 870.3620 *Pacemaker lead adaptor.*
12. § 872.6080 *Airbrush.*
13. § 876.4480 *Electrohydraulic lithotriptor.*
14. § 878.3610 *Esophageal prosthesis.*
15. § 878.3720 *Tracheal prosthesis.*
16. § 884.4100 *Endoscopic electrocautery and accessories.*
17. § 884.4150 *Bipolar endoscopic coagulator-cutter and accessories.*

For the following 10 devices, the required information shall be submitted by August 14, 1997.

18. § 868.1150 *Indwelling blood carbon dioxide partial pressure (Pco2) analyzer.*
19. § 868.1170 *Indwelling blood hydrogen ion concentration (pH) analyzer.*
20. § 868.1200 *Indwelling blood oxygen partial pressure (Pco2) analyzer.*
21. § 870.3680(b) *Cardiovascular permanent pacemaker electrode.*
22. § 870.4260 *Cardiopulmonary bypass arterial line blood filter.*
23. § 870.4350 *Cardiopulmonary bypass oxygenator.*
24. § 876.5860 *High permeability hemodialysis system.*
25. § 878.5650 *Topical oxygen chamber for extremities.*
26. § 882.5940 *Electroconvulsive therapy device.*
27. § 888.3660 *Shoulder joint metal/polymer semi-constrained cemented prosthesis.*

For the following 4 devices, the required information shall be submitted by August 14, 1998.

28. § 870.3710 *Pacemaker repair or replacement material.*
29. § 870.4320 *Cardiopulmonary bypass pulsatile flow generator.*
30. § 870.5200 *External cardiac compressor.*
31. § 876.5540(b)(1) *Implanted blood access device.*

B. Required Contents of Submissions

By the dates listed above, all manufacturers currently marketing preamendments class III devices subject to this order shall provide a summary of, and citation to, any information known or otherwise available to them respecting the devices, including adverse safety and effectiveness data which has not been submitted under section 519 of the act. FDA suggests that it may be in the best interest of submitters to summarize the information submitted under section 519 of the act to facilitate FDA's decision making, even though such information is not required.

The information should be submitted in one of the two following formats depending on whether the applicant is aware of any information which would support the reclassification of the device into class I (general controls) or class II (special controls). Information which would support the reclassification of the device must consist of adequate, valid scientific evidence showing that general controls alone (class I), or general controls and special controls (class II) will provide a reasonable assurance of the safety and effectiveness of the device.

For manufacturers who do *not* believe that existing information would support the reclassification of their device into class I or class II, the information provided should be submitted in the following format:

1. *Indications for use.* A general description of the disease or condition to be diagnosed, treated, cured, mitigated, or prevented, including a description of the patient population for which the device is intended.

2. *Device description.* An explanation of how the device functions, significant physical and performance characteristics of the device, and basic scientific concepts that form the basis for the device.

3. *Other device labeling.* Other device labeling that includes contraindications, warnings and precautions and/or promotional materials.

4. *Risks.* A summary of all adverse safety and effectiveness information and identification of the risks presented by the device as well as any mechanisms or procedures which will control the risk.

5. *Alternative practices and procedures.* A description of alternative practices or procedures for diagnosing, treating, preventing, curing, or mitigating the disease or condition for which the device is intended.

6. *Summary of preclinical and clinical data.* The summary of preclinical and clinical data should include the conclusions drawn from the studies which support the safety and effectiveness of the device as well as special controls, if any, which address the adverse effects of the device on health. The summary should include a brief description of the objective of the studies, the experimental design, how the data were collected and analyzed, and a brief description of the results of the studies, whether positive, negative, or inconclusive. The summary of the clinical study(ies) should also include a discussion of the subject inclusion and exclusion criteria, the study population, reasons for patient discontinuations, and results of statistical analyses.

7. *Bibliography.* A copy of the key references, a brief summary of the salient features of each key reference, and a brief discussion of why the reference is relevant to an evaluation of the safety and effectiveness evaluation of the device.

Manufacturers who believe that existing information would support the reclassification of their device into class I or class II may either submit information using the format described below or may submit a formal reclassification petition, which should include the information described below in addition to the information required under 21 CFR 860.123.

1. *Identification.* A brief narrative identification of the device. This identification should be specific enough to distinguish a particular device from a generic type of device. Where appropriate, this identification should include a listing of the materials, and the component parts, and a description of the intended use of the device.

2. *Risks to health.* An identification of the risks to health should be provided. This section should summarize all adverse safety and effectiveness information, which have not been submitted under section 519 of the act, particularly the most significant. The mechanisms or procedures which will control the risk should be described. A list of the general hazards associated with the device and a bibliography with copies of the referenced material should be provided.

3. *Recommendation.* A statement whether the manufacturer believes the device should be reclassified into class I or class II.

4. *Summary of reasons for recommendation.* Each manufacturer should include a summary of the reasons for requesting reclassification of its device and an explanation why it believes the device meets the statutory criteria for reclassification into class I or class II. Each manufacturer should also identify the special controls that it believes would be sufficient to provide reasonable assurance of the safety and effectiveness of its device if it believes the device should be reclassified into class II.

5. *Summary of valid scientific evidence on which the recommendation is based.* Manufacturers are advised that, when considering a formal reclassification petition, FDA will rely only upon valid scientific evidence to determine that there is reasonable assurance of the safety and effectiveness of the device, if regulated by general controls alone (class I) or by general controls and special controls (class II). Valid scientific evidence consists of evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. The evidence required may vary according to the characteristics of the device, its conditions of use, the existence and adequacy of warnings and other restrictions, and the extent of experience with its use. Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness. (See § 860.7(c)(2).)

According to § 860.7(d)(1) there is reasonable assurance that a device is safe when it can be determined, based upon valid scientific evidence, that the probable benefits to health from use of the device for its intended uses and conditions of use, when accompanied by adequate directions and warnings against unsafe use, outweigh any probable risks. The valid scientific evidence used to determine the safety of a device shall adequately demonstrate the absence of unreasonable risk of illness or injury associated with the use of the device for its intended uses and conditions for use. Moreover, pursuant to § 860.7(e)(1), there is reasonable assurance that a device is effective when it can be determined, based upon valid scientific evidence, that in a significant portion of the target population, the use of the device for its intended uses and conditions of use, when accompanied by adequate directions for use and warnings against unsafe use, will provide clinically significant results.

Manufacturers submitting a formal reclassification petition may wish to request two petitions as examples of successful reclassification petitions. Magnetic resonance imaging devices, Docket Nos. 87P–0214/CP through 87P–0215/CP0013, and Nd:YAG Laser for posterior capsulotomy devices, Docket No. 86P–0083, were both reclassified from class III to class II subsequent to the submission of a reclassification petition. Both petitions are available upon submission of a Freedom of Information request to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20850.

IV. Submission of Required Information

The summary of, and citation to, any information required by the act must be submitted by the dates listed above to the Document Mail Center (address above).

Dated: July 13, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–19945 Filed 8–11–95; 8:45 am]

BILLING CODE 4160–01–F

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federal register

Monday
August 14, 1995

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121 et al.
Operational and Structural Difficulty Reports; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 135, and 145

[Docket No. 28293; Notice No. 95–12]

RIN: 2120–AF71

Operational and Structural Difficulty Reports

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) proposes to revise the reporting requirements for air carrier certificate holders and certificated domestic and foreign repair stations concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. The proposed rule would clarify and standardize the type of information submitted to the FAA allowing the FAA to identify trends that may affect aviation safety. This action was prompted by an internal FAA review of the effectiveness of the reporting system and by air carrier industry concern over the quality of the data being reported by air carriers. The objective of the proposed rule is to update and improve the reporting system to effectively collect and disseminate clear and concise information, particularly with regard to aging aircraft, to the aviation industry.

DATES: Comments must be submitted on or before November 13, 1995.

ADDRESSES: Comments on this notice should be delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28293, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28293. Comments may also be submitted electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Burton, Aircraft Maintenance Division, AFS–330, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3797.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28293." The postcard will be date stamped and mailed to the commenter.

Availability of the NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Sections 121.703, 127.313, and 135.515 require that holders of certificates issued under part 121, 127, or 135 submit reports on certain specified failures, malfunctions, or defects of specific systems and on all other failures, malfunctions, or defects that, in the opinion of the certificate holder, have endangered or may endanger the safe operation of an aircraft. Section 125.409 requires that part 125 certificate holders report each failure, malfunction, or defect. In addition, §§ 145.63 and 245.79 contain provisions for certificated domestic and foreign repair stations, respectively, to report defects or recurring unairworthy conditions of any aircraft, powerplant, propeller, or any component thereof to the FAA. Both certificate holders and certificated repair stations must submit the reports described above to the FAA. In accordance with the Flight Standards' Service Difficulty Program, set forth in FAA Order No. 8010.2, the information is reviewed and evaluated by the Principal Maintenance Inspector (PMI) and mailed to the FAA's Mike Monroney Aeronautical Center in Oklahoma City, OK, for input into the Service Difficulty Reporting Subsystem (SDRS). The report data is entered into the SDRS and compiled to generate a weekly summary that is distributed to aircraft manufacturers, air carriers, repair stations, members of the general aviation community, and various offices of the FAA. Additional review and evaluation of the data are accomplished by the Aeronautical Center to identify trends or significant reports. The appropriate FAA office is notified if trends or significant safety items are noted.

Sections 121.705, 127.315, and 135.417 contain provisions for submitting a summary report to the FAA on mechanical difficulties or malfunctions that interrupt a flight or cause unscheduled aircraft changes, stops, or diversions en route that are not required to be reported under § 121.703, 127.313, or 135.415, respectively. Section 121.705 also requires a summary report containing information on the number of aircraft engines removed prematurely because of a malfunction, failure, or defect and the number of propeller featherings that occur in flight for other than training purposes, demonstrations, or flight checks.

Section 127.315 requires further summary reports containing information on the number of engines removed, and § 135.417 requires further summary reports on the number of propeller featherings that occur.

The reporting requirements for § 21.3 have not been addressed in this notice. ARAC decided and FAA agreed that revisions to this section were not intended as part of the FAA's original task assignment to ARAC.

History

The explosive decompression and structural failure of a Boeing 737–200 series aircraft on April 28, 1988, focused

worldwide attention on aging air carrier fleets. As a result of this event, a joint effort between the air carrier industry and regulatory authorities was established to address the continued airworthiness of the air transport fleet. This effort led to the establishment of the Airworthiness Assurance Task Force (AATF).

The AATF's activities focused on five major efforts that were a direct result of airworthiness issues presented by airlines and aircraft manufacturers at the First International Conference on Aging Airplanes, which was hosted by the FAA in June 1988. One of the issues presented at the conference was the need to ensure an adequate communications system between airlines, manufacturers, and the FAA. This task was assigned to the Improved Airworthiness Communications Steering Committee (IACSC) Data Collection Subcommittee of the AATF.

The FAA attended joint FAA/industry meetings with the IACSC to discuss problems associated with §§ 121.703, 121.705, 145.63, 145.79, and the Service Difficulty Report (SDR) program. Issues addressed in the March 21, 1991, General Accounting Office (GAO) report entitled *Changes Needed in FAA 's Service Difficulty Reporting Program* and written proposals from IACSC surfaced as points of discussion during the FAA/industry meetings. Members of the air carrier industry and FAA personnel expressed concern that, because of a lack of a standardized reporting format, there are varied interpretations of what is required to be reported. It was also noted that report information submitted by air carriers is inconsistent from airline to airline and results in incomplete data. In addition, air carriers voiced concern about the timeliness of the FAA's dissemination of SDR information. The IACSC noted that the manual data entry of reports into the SDRS delays the distribution of information to the airlines.

The IACSC recommended establishing a new § 121.704. This new section specifically would address defects in aircraft structures and problems normally associated with aging aircraft. The IACSC further suggested that the reporting requirements of §§ 121.703(a)(14) and 121.703(a)(15) relating to aircraft structures be revised and transferred to the proposed new section. The proposed reporting requirements would enable collection of information on discrepancies found in primary structure or principal structural elements. In addition, information on discrepancies found in composite materials that comprise primary structure or principal structural elements would be collected.

The IACSC also suggested revising §§ 145.63 and 145.79 to allow part 121 certificate holders to require certificated repair stations to submit the reports required under proposed §§ 121.703 and 121.704 when a repair station discovers a malfunction or defect in a certificate holder's aircraft. This change would serve to reduce the number of duplicate reports on the same problem from air carriers and repair stations, who presently are both required to report the occurrence.

The IACSC was realigned as the International Airworthiness Communications Working Group (IACWG) under the Aviation Rulemaking Advisory Committee (ARAC). The ARAC was established under FAA Order No. 1110.119, dated February 22, 1991, to advise the FAA on aviation safety-related rulemaking activity on a wide range of issues. Following the evaluation of the IACWG's recommendation for the revision of part 121, the ARAC tasked the group with preparing similar recommendations for operations conducted under parts 125, 127, and 135.

During preparation of the recommendations for parts 125, 127, and 135, the IACWG noted that the current reliability reporting requirements of §§ 127.315 and 135.417 are also unnecessary. There is no equivalent section in part 125. Therefore, the IACWG suggested deleting §§ 127.315 and 135.417, which would be consistent with the IACWG's proposed deletion of § 121.705. Currently, reliability information for operations conducted under these parts must be monitored in accordance with §§ 127.136 and 135.431.

The IACSC also was of the opinion that the current reporting requirements of § 121.705 are unnecessary because the data reported is reliability information that does not affect flight safety. The subcommittee further stated that this regulation does not provide sufficient guidance on the type or scope of the information to be reported; therefore, reporting is inconsistent. Reliability information currently must be monitored in accordance with § 121.373. Consequently, IACSC did not believe § 121.705 was necessary and suggested that it be deleted.

Subsequent discussions within the working group revealed that § 121.705(a) would need to remain in the regulation so that PMI's would continue to receive timely information from air carriers on mechanical interruptions of flights caused by malfunctions or defects that are not required to be reported to the SDRS. The working group, therefore, recommended deleting only §§ 121.705 (b) and (c), 127.315(b), and 135.417(b), which relate to premature engine removals and in-flight propeller featherings.

The Proposed Rule

Based on the earlier joint discussions with representatives of the air carrier industry, recommendations from the ARAC, and an internal review of the SDR program, the FAA recognizes that improvements to reporting requirements and the SDR program are necessary. This proposed rule presents actions to correct deficiencies cited during the FAA/industry meetings and in the GAO report, and was developed based on the recommendations from the ARAC.

This proposed rule would modify the current reporting requirements for air carriers and repair stations to standardize report information. The proposed rule also would explicitly permit the submission of the required reports in an electronic form to encourage reporting that will give the FAA information on a near real-time basis. In addition, the proposed rule would revise the current reporting requirements for air carriers to include the reporting of certain occurrences or detections of failures, malfunctions, or defects of aircraft, aircraft engines, systems, and components that occur during ground operations and that could affect the safety of flight operations.

The proposed rule would also allow part 121, 125, 127, or 135 certificate holders to require a certificated domestic or foreign repair station to submit operational and structural difficulty reports to the FAA on behalf of the certificate holder when the repair station discovers defects or unairworthy conditions. This provision would eliminate duplicate reporting of a problem by the air carrier and the repair station. The proposed rule would delete §§ 121.705 (b) and (c), 127.315(b), and 135.417(b), removing the requirement for submitting summary reports on premature engine removals and in-flight propeller featherings because this information is reliability-related data rather than safety-of-flight data. The proposed rule also would add new §§ 121.704, 125.410, 127.314, and 135.416 to specifically address the reporting of structural defects and problems normally associated with aging aircraft.

Sections 121.703, 125.409, 127.313, and 135.415 would be revised to focus on the reporting of operational defects, and new §§ 121.704, 125.410, 127.314,

and 135.416 would be added to manage the reporting of structural defects.

Section 125.409 would be revised by requiring reports for specific events rather than reports of the occurrence or detection of every failure, malfunction, or defect. The proposed change eliminates the reporting of defects that do not compromise the airworthiness of the aircraft. The proposal would add requirements to part 125 that are equivalent to the reporting requirements in proposed §§ 121.703, 127.313, and 135.415.

In proposing to revise the part 135 reporting requirements, the FAA recognizes that aircraft maintained in accordance with part 135 may operate under part 91 at times; however, all part 135 reporting requirements would apply as long as the aircraft is maintained under part 135.

Reporting requirements would be revised for each of the proposed sections to standardize report information. Required reporting information would be revised to include total aircraft flight time to aid in evaluating corrosion and aircraft structural fatigue. In addition, the amount of elapsed time since the last maintenance performed on components would be added to determine how long components have been in service. Information on manufacturer's part numbers and serial numbers would be added to develop trend information. Reporting procedures would also be revised to encourage the electronic transmission of data directly to a centralized collection point as specified by the FAA. (Presently, the data base is maintained at the Mike Monroney Aeronautical Center.) A program that enters SDR data electronically into the SDRS would be optional. The electronic submission of data would provide a database that is near real-time. Data would be uploaded and available the next business day. The proposed rule would also provide for collecting information on aborted or "rejected" takeoffs caused by the failure, malfunction, or defect of an aircraft component or system. This information would be used to generate statistical data for future analysis of the safety implications such events may have on flight operations.

Sections 145.63 and 145.79 would be revised to allow parts 121, 125, 127, and 135 certificate holders to require certificated domestic and foreign repair stations to submit the reports required under the proposed sections of parts 121, 125, 127, and 135 on behalf of the certificate holder when the repair station discovers a malfunction or defect. This proposed change would eliminate the requirement for the air carrier and the repair station to report the same problem to the FAA. However, the air carrier would not be relieved of the responsibility of ensuring that these reports are submitted.

The purpose of the proposed regulation would be to enhance air carrier safety by collecting additional and more timely data that identifies mechanical failures, malfunctions, and defects which may be a serious hazard to the operation of an aircraft. The information collected would be used to develop and implement corrective actions to help prevent future occurrences of these failures, malfunctions, and defects once they have been identified.

It should be noted that there is currently a proposal to delete part 127 in an NPRM published in the **Federal Register** on March 29, 1995, regarding Commuter Operations and General Certification and Operations Requirements (60 FR 16230). If part 127 is deleted in that final rule as proposed, the proposed revisions to part 127 in this NPRM will not be considered in the development of a final rule.

General Discussion of the Proposed Rule

Sections 121.703, 125.409, 127.313, and 135.415

The proposed rule would change the titles of §§ 121.703, 127.313, and 135.415 from "Mechanical reliability reports" to "Operational difficulty reports." The proposed rule also would change the title of § 125.409 from "Reports of defects or unairworthy conditions" to "Operational difficulty reports." The title change would reflect more accurately the type of information collected, which may be categorized as primarily operational and safety-related information rather than reliability and failure information as is implied by the current titles.

Sections 121.703(a)(1), 125.409(a)(1), 127.313(a)(1), and 135.415(a)(1)

Proposed §§ 121.703(a)(1), 125.409(a)(1), 127.313(a)(1), and 135.415(a)(1) would specify that a certificate holder must report each failure, malfunction, or defect involving any fire, rather than only those fires that occur during flight, as is currently prescribed by the regulations. The proposed changes would ensure that information is also reported on fires that occur on the ground because these fires may affect the safety of flight. In addition, the current requirement to report whether the related fire-warning system functioned properly in the event of a fire caused by a failure, malfunction, or defect also would be retained by the proposed rule.

Current §§ 121.703(a)(2), 127.313(a)(2), and 135.415(a)(2) require certificate holders to report failures, malfunctions, or defects concerning fires during flight that are not protected by a related fire warning system. Proposed §§ 121.703(a)(1), 125.409(a)(1), 127.313(a)(1), and 135.415(a)(1) would retain this requirement because failures, malfunctions, or defects involving any fire must be reported by the certificate holder.

Sections 121.703(a)(2), 125.409(a)(2), 127.313(a)(2), and 135.415(a)(2)

Proposed §§ 121.703(a)(2), 127.313(a)(2), and 135.415(a)(2) would revise current §§ 121.703(a)(3), 127.313(a)(3), and 135.415(a)(3), respectively, which address the reporting of failures, malfunctions, or defects involving false fire warnings during flight. The proposed rule would require that any false fire or smoke warning necessitating the use of emergency procedures be reported to ensure that the certificate holder documents occurrences that have safety-of-flight implications. This requirement also would be added to proposed § 125.409(a)(2).

Sections 121.703(a)(3), 125.409(a)(3), 127.313(a)(3), and 135.415(a)(3)

Proposed §§ 121.703(a)(3), 127.313(a)(3), and 135.415(a)(3) would require that information on damage to an engine, adjacent structure, equipment, or components caused by a failure, malfunction, or defect of an engine exhaust system be reported by the certificate holder regardless of whether such damage occurred in flight or on the ground. Proposed § 125.409(a)(3) would add the same requirements for operations conducted under part 125. Currently, §§ 121.703(a)(4), 127.313(a)(4), and 135.415(a)(4) require only that the certificate holder report to the FAA damage to an engine, adjacent structure, equipment, or components caused by an engine exhaust system during flight.

Sections 121.703(a)(4), 125.409(a)(4), 127.313(a)(4), and 135.415(a)(4)

Proposed §§ 121.703(a)(4), 127.313(a)(4), and 135.415(a)(4) would revise the current requirements in §§ 121.703(a)(5), 127.313(a)(5), and 135.415(a)(5), respectively, by requiring that the failure, malfunction, or defect of airplane or helicopter components that cause an accumulation or circulation of smoke, vapor, or toxic or noxious fumes resulting in the use of emergency

procedures be reported. Proposed § 125.409(a)(4) would add the same requirements for operations conducted under part 125. These proposed changes would eliminate the reporting of events that do not affect safety by indicating that such events would have to be reported only if emergency procedures are exercised.

The proposed change also would delete the words "during flight." The proposed reporting requirement would include events that occur in flight or on the ground and would expand the reporting of these events to the entire aircraft. The current requirements only cover these events if they occur in the crew compartment or passenger cabin.

Sections 121.703(a)(5), 125.409(a)(5), 127.313(a)(5), and 135.415(a)(5)

These proposed sections would combine the reporting requirements for engine failures and shutdowns in current §§ 121.703(a)(6), 121.703(a)(7), 121.703(a)(8), and 121.703(a)(9) into proposed § 121.703(a)(5); current §§ 127.313(a)(6), 127.313(a)(7), 127.313(a)(8), and 127.313(a)(9) into proposed § 127.313(a)(5); and current §§ 135.415(a)(6), 135.415(a)(7), 135.415(a)(8), and 135.415(a)(9) into proposed § 135.415(a)(5). An equivalent § 125.409(a)(5) would also be added.

The proposed change would require that the certificate holder report failures, malfunction, or defects involving all engine flameouts and shutdowns during ground or flight operations. The proposed sections would contain a provision to exclude intentional engine shutdowns, such as those that occur during flight crew training, test flights, and taxiing to reduce fuel consumption.

Sections 121.703(a)(6), 125.409(a)(6), and 135.415(a)(6)

These proposed sections would amend current §§ 121.703(a)(10) and 135.415(a)(10) by deleting the words "during flight." The proposed change would require that the certificate holder report the failure, malfunction, or defect of any propeller feathering system or the ability of the system to control overspeed events whether such events occur during flight or on the ground. Proposed § 125.409(a)(6) would specifically state the equivalent requirement for operations conducted under part 125.

Sections 121.703(a)(7), 125.409(a)(7), 127.313(a)(6), and 135.415(a)(7)

These proposed paragraphs would redesignate the requirements in § 121.703(a)(11) as § 121.703(a)(7), § 127.313(a)(9) as § 127.313(a)(6), and § 135.415(a)(11) as § 135.415(a)(7), and would add new §§ 125.409(a)(7). These requirements pertain to reporting the failure, malfunction, or defect of a fuel or fuel-dumping system that affects fuel flow or causes hazardous leakage in flight. Section 127.313(a)(6) is proposed to include fuel dumping systems because these systems are now available on some helicopters.

Sections 121.703(a)(8), 125.409(a)(8), 127.313(a)(10), and 135.415(a)(8)

The proposed rule would redesignate current paragraph § 121.703(a)(12) as § 121.703(a)(8); revise current § 135.415(a)(12) and redesignate it as § 135.415(a)(8); revise § 127.313(a)(10); and add new § 125.409(a)(8). These sections require the reporting of failures, malfunctions, or defects in the operation of landing gear and landing gear doors during flight. Section 127.313(a)(10) would be revised to include equivalent requirements to apply to helicopters that have retractable landing gear. The requirements of current § 127.313(a)(10) related to helicopter structures that require major repairs would be moved to proposed new § 127.314. The proposed rule would also remove the term "unwanted" from current § 135.415(a)(12) to require that any landing gear extension or retraction, or opening or closing of landing gear doors during flight resulting from a malfunction or defect must be reported. This also would ensure consistency with the reporting requirements of parts 121 and 125.

Sections 121.703(a)(9), 125.409(a)(9), 127.313(a)(11), and 135.415(a)(9)

Current §§ 121.703(a)(13) and 135.415(a)(13) relating to failures, malfunctions, or defects in aircraft braking components would be revised and redesignated as proposed §§ 121.703(a)(9) and 135.415(a)(9), respectively. The equivalent requirements would be revised and redesignated in proposed § 125.409(a)(9) to provide consistency with parts 121 and 135. Section 127.313(a)(11) would be revised to include the reporting of failures, malfunctions, or defects of brake system components because wheeled helicopters are equipped with brakes. The requirements of current § 127.313(a)(11) related to cracks, deformation, or corrosion of helicopter structures would be moved to proposed new § 127.314.

The proposed rule would change "loss of brake actuating force" to "any detectable loss of brake actuating force" to clarify the interpretation of the term "loss." Some air carriers have interpreted the term "loss" to mean total loss of braking action. This proposed rule would state that failures, malfunctions, or defects that result in any reduced braking are events that are required to be reported, excluding aircraft braking component malfunctions, defects, or discrepancies that are deferrable according to the Minimum Equipment List as provided for in § 91.213.

Sections 121.703(a)(10), 125.409(a)(10), 127.313(a)(7), and 135.415(a)(10)

Proposed §§ 121.703(a)(10), 125.409(a)(10), 127.313(a)(7), and 135.415(a)(10) would include the reporting of information relating to aborted takeoff. Currently, air carriers are not required to report information on aborted or "rejected" takeoffs. Limited information relating to aborted takeoffs that result from an accident or incident may be available through the FAA's Accident/Incident Data Subsystem or the National Transportation Safety Board (NTSB). The proposed rule would require that information on all aborted takeoffs after initiation of the takeoff roll, resulting from a failure, malfunction, or defect of an aircraft component or system be reported to troubleshoot problems that may have safety-of-flight implications.

In addition, the current regulations require reporting of failures, malfunctions, or defects occurring in aircraft components or systems that result in any emergency action taken during flight, excluding the shutdown of an aircraft engine. The reference to excepting engine shutdowns in current §§ 121.703(a)(16), 127.313(a)(12), and 135.415(a)(16) would not be included in this proposed paragraph because the reporting of failures, malfunctions, or defects involving any aircraft engine shutdown would be required by proposed §§ 121.703(a)(5), 127.313(a)(5), and 135.415(a)(5), respectively.

Sections 121.703(a)(11), 125.409(a)(11), 127.313(a)(9), and 135.415(a)(11)

The proposed paragraphs would revise current § 121.703(a)(17) and redesignate it as § 121.703(a)(11); add new § 125.409(a)(11); and revise current §§ 127.313(a)(9) and 135.415(a)(11). The proposed rule would state that a failure of individual components that does not affect the operation of an aircraft's emergency evacuation system or components, exit doors, passenger evacuation lighting systems, or evacuation equipment need not be reported. The proposed rule also would state that failures, malfunctions, or defects that are deferrable according to the Minimum Equipment List as provided for in § 91.213 need not be reported. This proposed change would

allow the exclusion of an item failure, such as a burned out reading light bulb, provided that such a failure would not affect the integrity of any of the systems and components described above.

Sections 121.703(c), 125.409(c), 127.313(c), and 135.415(c)

The proposed rule would revise current §§ 121.703(c), 127.313(c), and 135.415(c), and would add new § 125.409(c). These sections would extend the reporting requirements of a failure, malfunction, or defect in any aircraft to the aircraft, aircraft systems, components, and powerplants. These items have been added to require that reports of failures, malfunctions, or defects that endanger safe aircraft operation must include those that occurred throughout the aircraft as well as all of those that involve the aircraft's subassemblies.

Sections 121.703(d), 125.409(d), 127.313(d), and 135.415(d)

Under the proposed rule, each report of the occurrence or detection of a failure or defect for a 24-hour period still would be required to be submitted within 72 hours. However, this proposed rule would revise the current requirements in §§ 121.703(d), 127.313(d), and 135.415(d) by replacing the terms "send," "mailed," or "delivered" with the term "submit." An equivalent § 125.409(d) would also be added that revises the reporting requirements currently found in § 125.409(b). This change would allow for the use of other means, such as electronic transmission via telephone facsimile or computer modem, to submit reports to the FAA. In addition, these proposed sections would change the location for submitting reports from the FAA Flight Standards District Office (FSDO) charged with the overall inspection of the certificate holder to a centralized collection point as specified by the FAA. However, the certificate holder would be required to make the operational difficulty report (ODR) data available to the FSO for examination at the time it is submitted to the FAA in a form and manner acceptable to the Administrator. This change would allow PMI's to remain informed of ODR activity and improve the timeliness of FAA processing of the data.

Currently, § 135.415(d) contains provisions for aircraft operating in areas where mail is not collected, thereby preventing mailing within the required 72 hours. In such cases, the reports are required to be submitted within 24 hours after the aircraft returns to a point where mail is collected. This provision also would be included in proposed § 125.409(d) because part 125 certificate holders often have remote operations similar to certain part 135 certificate holders.

Sections 121.703(e), 125.409(e), 127.313(e), and 135.415(e)

These proposed sections would revise the current reporting requirements of §§ 121.703(e), 127.313(e), and 135.415(e), and would add new reporting requirements in proposed § 125.409(e) to ensure reporting consistency. Current requirements of §§ 121.703(e), 127.313(e), and 135.415(e) allow the certificate holder to submit reports in a manner and form convenient to the certificate holder. The proposed changes would standardize reporting requirements and would explicitly provide for electronic reporting.

Section 121.703(e) specifies that information detailed in paragraphs (e)(1) through (e)(6) is mandatory and that information detailed in paragraphs (e)(7) through (e)(9) is desirable additional information. Additional available information may be submitted at a later date by resubmitting the ODR under its original Operator Control number as assigned by the FAA. This action would provide the FAA with additional data. Using the original Operator Control number would overwrite the original ODR with the additional available data.

The FAA would require that the following additional information be reported: aircraft serial number; station where the discrepancy was detected; FAA-modified Air Transport Association (ATA) Specification 100 code; and aircraft total time and total cycles. A current reporting item, "type", has been replaced by manufacturer and model. The addition of these items would increase the effectiveness of operational difficulty reporting and possible tracking of equipment. In addition, the FAA is developing a reporting form, FAA Form No. 8070–2 (see Figure 1), to standardize reporting.

BILLING CODE 4910–13–M

FIGURE 1

U. S. Department of Transportation

Federal Aviation Administration

Operational Difficulty Report

AERONAUTICAL EQUIPMENT

OPERATOR CONTROL NUMBER: ABCD9500337

FAA CONTROL NO.:

ATA CODE: 7930

MAJOR EQUIPMENT IDENTITY

Enter pertinent data	MANUFACTURER	MODEL	SERIAL NO.	A/C TT	A/C TC
AIRCRAFT	BOEING	757223	91405	2295	3123
POWERPLANT					
PROPELLER					

PROBLEM DESCRIPTION

DATE	STATUS	OPER. DESIG.	OPER. TYPE	REGIS. NUMBER	PREC. PROCED.	NATURE	STAGE OF FLIGHT	STATION	FLIGHT #
10/02/94	C	ABCD	A	N549BR	E	J	CL	OKC	731

Discrepancy/Corrective Action:

On climb #2 engine oil temp indicator pegged on high limit. #2 engine shutdown after 5 minutes at idle thrust. Engine windmilled for 12 minutes before landing.

Removed and replaced #2 oil temp. indicator. Ground ran, ops check normal. MM 79-30-0

SAMPLE

SPECIFIC PART CAUSING PROBLEM

PART NAME	MFG. PART NUMBER	SERIAL#	PART CONDITION	PART/DEFECT LOC.
oil temp. ind.	162BL704G	45678	internal failure	

PART TOTAL TIME	PART TOTAL CYCLES	PART TIME SINCE:	Overhaul / Repair / Inspection
765		765	

COMPONENT NAME	COMPONENT MANUFACTURER	COMPONENT PART#	COMPONENT SERIAL #

COMPONENT TOTAL TIME	COMPONENT TOTAL CYCLES	COMPONENT TIME SINCE:	Overhaul / Repair / Inspection

SUBMITTED BY

NAME	SUB. CODE	DIST. OFF.	ALERT	FILM
ABC Airlines Inc.		S022		

ODR PROTOTYPE 8070-2

24

BILLING CODE 4910–13–C

Reporting items that pertain to engine or component serial numbers and the time since the last maintenance of a component have been added to the reporting requirements. These items, along with the current requirement to report the emergency procedure effected, would be considered desirable information. The reporting of this information would be beneficial; however, collection of this information should not delay the submission of new reports.

The proposed rule would delete current §§ 121.703(g) and 121.703(h); §§ 127.313(g) and 127.313(h); and §§ 135.415(g) and 135.415(h). Current §§ 121.703(g), 127.313(g), and 135.415(g) contain provisions for air carriers to submit a report even when all of the information required is not available. Current §§ 121.703(h), 127.313(h), and 135.415(h) contain provisions for air carriers to submit supplemental reports when they obtain additional report information. These paragraphs would be deleted because proposed §§ 121.703(e), 127.313(e), and 135.415(e) would require that the following information be included on all reports: manufacturer, model, serial number, and identification number of the aircraft; operator name; date; flight number; station; stage of flight when the failure, malfunction, or defect occurred: the nature of the failure, malfunction, or defect; the FAA-modified ATA code; and the aircraft total time and total cycles. In addition, proposed §§ 121.703(d), 125.409(d), 127.313(d), and 135.415(d) would require that the report be submitted with the 72-hour period. Therefore, the submission of an incomplete report as currently permitted under §§ 121.703(g), 127.313(g), and 135.415(g) would not meet the intent of the proposed rule. Further, the provision for the submission of any additional data as specified in current §§ 121.703(h), 127.313(h), and 135.415(h) would be unnecessary and might add information to SDRS that is not safety related.

Sections 121.703(f), 125.409(f), 127.313(f), and 135.415(f)

Sections 121.703(f), 127.313(f), and 135.415(f) currently state that certificate holders that also hold Type Certificates (TC) (including Supplemental Type Certificates (STC)), Parts Manufacturer Authorization (PMA), or Technical Standard Order (TSO) authorization, or who are licensees of TC, need not report failures, malfunctions, or defects under these sections if the failures are reported under § 21.3 or under part 830 of the NTSB regulations (49 CFR 830). An equivalent § 125.409(f) would be added to provide consistency with parts 121, 127, and 135. In addition, §§ 121.703(f), 127.313(f), and 135.415(f) would be revised by deleting an obsolete reference to § 37.17. Part 37 was removed effective September 9, 1980.

Sections 121.703(g), 125.409(g), 127.313(g), and 135.415(g)

These proposed paragraphs would allow parts 121, 125, 127, and 135 certificate holders to require a certificated domestic or foreign repair station to report a failure, malfunction, or defect discovered by the repair station. Currently, when a repair station finds a failure, malfunction, or defect, this information is reported by both the repair station under § 145.63(a) or § 145.79(c), as appropriate, and the part 121, 125, 127, or 135 certificate holder. Therefore, information about the same problem is reported twice to the FAA. The proposed revision is intended to eliminate these duplicate reports. However, the certificate holder would not be relieved of the responsibility to ensure that these reports are submitted. The proposed rule would require that the part 121, 125, 127, or 135 certificate holder receive a copy of the report submitted by the repair station.

Sections 121.704(a)(1), 125.410(a)(1), 127.314(a)(1), and 135.416(a)(1)

The proposed rule would revise and incorporate the reporting requirements relating to defects in aircraft structures of current §§ 121.703(a)(14) and 121.703(a)(15) into § 121.704(a)(1); of current §§ 127.313(a)(10) and 127.313(a)(11) into § 127.314(a)(1); and of current §§ 135.415(a)(14) and 135.415(a)(15) into § 135.416(a)(1). An equivalent § 125.410(a)(1) also would be added. Proposed §§ 121.704(a)(1), 125.410(a)(1), 127.314(a)(1), and 135.416(a)(1) would contain provisions for reporting information relevant to structural defects of aging aircraft and corrosion protection. The required reporting would focus on discrepancies found in primary structural or principal structural elements relating to corrosion that exceed the manufacturer's Maintenance Manual (MM) allowable limits. As used in this paragraph, the MM includes the aircraft's Structural Repair Manual and other manufacturer's documents, which set forth maintenance requirements.

Sections 121.704(a)(2), 125.410(a)(2), 127.314(a)(2), and 135.416(a)(2)

These proposed sections would revise the reporting requirements for parts 121, 127, and 135, and would add reporting requirements for part 125, for cracks detected only in a primary structure or principal structural element that require the repair or replacement of the structural element. Currently, §§ 121.703(a)(15), 127.313(a)(11), and 135.415(a)(15) require reporting of all cracks in aircraft structures even if the location and size of the crack do not have safety-of-flight implications.

Sections 121.704(a)(3), 125.410(a)(3), 127.314(a)(3), and 135.416(a)(3)

These proposed sections would include a reporting requirement for the detection of disbonding of any primary structure or principal structural element. Currently, air carriers may report disbonding in accordance with § 121.703(c), 127.313(c), or 135.415(c); however, this requirement should be explicit because reporting of disbonding defects is necessary in the early identification of safety-of-flight issues associated with aging aircraft.

Sections 121.704(a)(4), 125.410(a)(4), 127.314(a)(4), and 135.416(a)(4)

These proposed sections would require air carriers to report failures or defects of primary structure or principal structural elements when data developed by a Designated Engineering Representative (DER), under SFAR–36, or other approved repair data that is not found in the manufacturer's MM is used to accomplish the repair.

Some air carriers are uncertain about whether the subsequent detection of the same failure or defect must be reported when the failure or defect was repaired using DER, SFAR–36, or other approved non-MM repair data. The proposed rule would explicitly require that air carriers shall report each and every occurrence of a failure or defect repaired in accordance with DER-approved or other non-MM repair data.

Some Part 135 aircraft may not have Structural Repair Manuals (SRM). Repairs accomplished within the limits of SRM's or MM are not reportable. Repairs developed outside these approved data sources are reportable whether the accepted or approved data is developed by a DER, under SFAR 36, or other approved repair data.

Sections 121.704(a)(5), 125.410(a)(5), 127.314(a)(5), and 135.416(a)(5)

These proposed sections would require the collection of information on any discrepancies found in primary structure or principal structural elements comprised of composite materials. The specific reporting of failures and defects of new and emerging technologies used in the manufacturing of aircraft structures is necessary in the early identification and resolution of problems that may have an adverse effect on safety.

Sections 121.704(b), 125.410(b), 127.314(b), and 135.416(b)

The proposed sections would require that in addition to the reports required by proposed §§ 121.704(a), 125.410(a), 127.314(a), and 135.416(a), certificate holders would be required to report any other failure or defect that occurs or is detected in an aircraft structure if, in the opinion of the certificate holder, the failure or defect has endangered or may endanger the safe operation of any aircraft.

Sections 121.704(c), 125.410(c), 127.314(c), and 135.416(c)

These proposed sections would require that each report be submitted to a centralized collection point specified by the FAA within the required reporting period. Currently, Service Difficulty Reports are submitted to the FAA FSDO charged with the overall inspection of the certificate holder. However, under the proposal, the certificate holder would be required to make the SDR data available to the FSDO for examination within the time limits specified above in a form and manner acceptable to the Administrator. This would allow PMI's to remain informed of SDR activity, improve the timeliness of FAA processing of the data, and increase the data's availability for analysis. This proposed section also would allow for the use of other means, such as electronic transmission via telephone facsimile or computer modem, to submit reports to the FAA to increase the timeliness of reporting.

Proposed §§ 125.410(c) and 135.416(c) would include provisions for aircraft operating in areas where mail is not collected, thereby preventing mailing within the required 72 hours. In such cases, the reports would be required to be submitted within 72 hours after the aircraft returns to a point where mail is collected.

Sections 121.704(d), 125.410(d), 127.314(d), and 135.416(d)

Under the proposed rule, reports of structural problems would require information on: manufacturer, model, serial number, and registration number of the aircraft; operator name; nature of failure or defect and its location; FAA-modified ATA code; aircraft total time and cycles; and the date and station where the certificate holder found the discrepancy. Optional information would include the identification of the manufacturer's part number or the serial number of the part or component and the time since the last maintenance overhaul, repair, or inspection. To promote standardized reports, the FAA is currently revising a reporting form, FAA Form No. 8070–3 (see Figure 2).

BILLING CODE 4910–13–M

FIGURE 2

U.S. Department of Transportation
Federal Aviation Administration

Structural Difficulty Report
AERONAUTICAL EQUIPMENT

FAA CONTROL NO.	
OPERATOR CONTROL NO.	ATA CODE
ABCD9500123	5320

MAJOR EQUIPMENT IDENTITY

ENTER DATA	MANUFACTURER	MODEL	SERIAL NO.	A/C TT	A/C TC
AIRCRAFT	BOEING	737277	92601	27950	26555

WHEN DISCOVERED: [ ] OPERATIONS [X] MAINTENANCE

CORROSION LEVEL: [X] 2 [ ] 3

PROBLEM DESCRIPTION

DATE	OPER. DESIG.	REGIS. NUMBER	STATION	FLIGHT #
03/13/95	ABCD	N731TA	OKC	812

Discrepancy(Mandatory)Include Length,Width&Depth of Damage/Corrective Action(Optional):

During scheduled inspection, found stringer splice at FS 907, STR 28R corroded beyond limits. Removed and installed new stringer splice per SRM 51 32 2 and SRM 51 10 1.

SAMPLE

SPECIFIC PART CAUSING PROBLEM

MFG. PART NUMBER	SERIAL # (If applicable)	PART NAME:						OTHER (specify)
6547951			X Longeron/Stringer	Chord	Doubler			
			Bracket/Shear Tie	Web	Rib			
			Frame	Skin	Bulkhead			

PART / DEFECT LOCATION

FUSELAGE STATION (FS)		WATER LINE (WL)		WING STATION (WS)		BUTTOCK LINE (BL)		STRINGER (STR)	
FROM	TO	FROM	TO	FROM	TO	FROM	TO	FROM	TO
907								28R	
OTHER (specify)				LH	LH	LH	LH	LH	LH
				RH	RH	RH	RH	X RH	RH

PART TIME SINCE:		PART CONDITION	CRACK INDUCED BY	
	New	corroded		STRESS
	Rpr./Over.			CORROSION
	Inspection			

SUBMITTED BY

NAME	DIST. OFFICE	ALERT
ABC Airlines Inc.	WP88	

SDR PROTOTYPE 8070-3

BILLING CODE 4910-13-C

Sections 121.704(e), 125.410(e), 127.314(e), and 135.416(e)

These proposed sections would include the current provisions of §§ 121.703(f), 127.313(f), and 135.415(f), which relieve a holder of a Type Certificate, Supplemental Type Certificate, Parts Manufacturer Approval (PMA), a TSO Authorization, or the licensee of a Type Certificate from reporting any failure, malfunction, or defect under this section if reports are submitted on the same failure, malfunction, or defect under § 21.3 or under the accident reporting provisions of Part 830 of the NTSB regulations. Proposed § 125.410(e) would include a similar provision.

Sections 121.704(f), 125.410(f), 127.314(f), and 135.416(f)

These proposed sections would allow parts 121, 125, 127, and 135 certificate holders to delegate to a certificated repair station the task of reporting the detection of a failure, malfunction, or defect discovered by the repair station. Currently, when a repair station finds a failure, malfunction, or defect, this information is reported by both the repair station under § 145.63(a) or § 145.79(c), as appropriate, and the part 121, 125, 127, or 135 certificate holder. This proposed section would eliminate duplicate reporting of the same failures or defects but would not relieve the certificate holder of the responsibility for ensuring that the report is submitted to the FAA. In addition, the proposed rule would require that the certificate holder receive a copy of the report submitted by the repair station.

Sections 121.705, 127.315, and 135.417

Under the proposal, §§ 121.705(a), 127.315(a), and 135.417(a) would remain in effect, requiring that operators report to the Administrator interruptions to flights, unscheduled changes of aircraft en route, or unscheduled stops or diversions from routes, caused by known or suspected mechanical difficulties or malfunctions that are not required to be reported under proposed §§ 121.703 and 121.704, 127.313 and 127.314, and 135.415 and 135.416, respectively. The requirements of current §§ 121.705 (b) and (c), 127.315(b), and 135.417(b) would be deleted because this is reliability data and does not have safety-of-flight implications. In addition, these items currently are required to be monitored under § 121.373, 127.136, and 135.431.

Sections 125.409(b) and 127.313(b)

Under the proposal, § 127.313(b) would be corrected to state that, for the purposes of this section, during flight means the period from the moment the helicopter leaves the surface of the earth *on* (rather than "or") takeoff until it touches down on landing. An equivalent paragraph would also be added to § 125.409(b).

Section 127.313(a)(8)

The proposed rule would redesignate current § 127.313(a)(13) as § 127.313(a)(8). This paragraph concerns main rotor and auxiliary rotor systems.

Sections 145.63 and 145.79

The proposed rule would revise §§ 145.63 and 145.79 to allow certificated domestic and foreign repair stations, respectively, to be delegated by a part 121, 125, 127, or 135 certificate holder to submit operational and structural difficulty reports to the FAA on behalf of the certificate holder. A repair station would submit these reports, as delegated, when it discovers a defect or unairworthy condition of an aircraft, powerplant, propeller, or any component thereof. When a certificated repair station submits a report for a part 121, 125, 127, or 135 certificate holder, the repair station would not be required to submit a separate report under § 145.63(a) or 145.79(c), as appropriate.

Currently, when a certificated repair station finds a defect or unairworthy condition, the repair station and the part 121, 125, 127, or 135 certificate holder report the condition or defect to the FAA. The proposed rule would require that only one report be submitted in such circumstances.

Paperwork Reduction Act Approval

The reporting burden associated with parts 121, 125, 127, 135, and 145 of the Federal Aviation Regulations has been approved by OMB under control numbers 2120–003, 2120–008, 2120–0010, 2120–0039, and 2120–0085.

This NPRM proposes to clarify the reporting burden. The clarification may cause a reduction in burden, because it may lead to a reduction in redundancy of reporting. Some 125 certificate holders may have a slight reduction in reporting. There are minimal additional reporting requirements associated with this proposed rule.

Regulatory Evaluation Summary

Executive Order 12866 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation (DOT) policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The FAA has determined that this proposed rule is not a "significant rulemaking action," as defined by Executive Order 12866 (Regulatory Planning and Review), and is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. The anticipated costs and benefits associated with this proposed rule are stated below.

The total number of reports submitted to the FAA is not expected to change substantially. Although more specific and detailed reports will generally be required, the clarification of reporting requirements should expedite the reporting process. Therefore, the costs of complying with the proposed rule change are not expected to differ significantly from the costs of complying with the present requirements. Increases in the volume of some types of reports are expected to be offset by decreases in the volume of other types of reports. New requirements to report on-ground incidents that may have implications for flight safety and those pertaining to aging aircraft issues should increase the volume of reports. Other provisions, however, such as the elimination of duplicate reporting by the air carriers and repair stations and the elimination of reports involving issues of reliability (e.g., unscheduled stops or diversions from routes), would reduce the number of required reports. In addition, Part 125 operators would not be required to report as many incidents as is currently required. The FAA believes that the increased and decreased reporting requirements are offsetting but invites comments from the public regarding the validity of this assumption.

The purpose of the proposed rule is to enhance air carrier safety by clarifying and standardizing reporting requirements and facilitating the timely flow of information to the FAA. These data identify mechanical problems that may be a serious hazard to the operation of an aircraft. The information collected would be used to develop corrective actions to eliminate the identified problems. Increased standardization of these reports should make it easier for FAA personnel to interpret their significance, thereby reducing the number of manhours devoted by the FAA to processing and interpreting the information gleaned from these reports.

One major safety benefit would result from the clarification of reporting requirements that specifically address structural defects normally associated with aging aircraft. Another benefit

would derive from the new requirement that air carriers report problems that occur during ground operations that could affect flight safety.

The proposed rule would also explicitly permit the submission of the required reports in an electronic form. Electronic submission of data will give the FAA more timely information, thereby permitting earlier recognition of significant trends. In addition, the allowance of electronic reporting should reduce the processing and storage costs of the air carriers. The costs of duplicating these reports, mailing them to the FAA, and record-keeping should all be reduced. Because of the negligible nature of many of these processing costs, however, any cost-savings should be quite minor. In addition, the need for FAA-compatible equipment/software may dilute some of these cost-savings, at least initially. The FAA invites comments from the industry regarding the potential magnitude of these cost-savings.

Regulatory Flexibility Determinations

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

Under FAA Order 2100.14A, the criterion for a "substantial impact" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. For operators of aircraft for hire, a small operator is one that owns, but not necessarily operates, nine or fewer aircraft. The FAA's criterion for a "significant impact" is $116,300 or more per year for a scheduled operator whose entire fleet has a seating capacity of 60 seats or more, $65,000 for a scheduled operator with a fleet including smaller aircraft, and $4,600 or more for an unscheduled operator.

Any incremental costs or cost-savings per operator are likely to be nominal, however, for reasons previously noted. The FAA has therefore determined that the proposed rule would not have a significant impact on a substantial number of small entities. The FAA solicits comments from the affected segment of the aviation industry regarding the possible extent of any cost impacts.

International Trade Impact Assessment

The incremental costs and cost savings associated with the proposed rule changes are not significant enough to result in relative trade advantages to either U.S. or foreign entities. Therefore, the FAA has determined that they would have no impact on the sale of foreign products domestically, or the sale of U.S. products in foreign markets.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and International Trade Impact Analysis, the FAA has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. The FAA has determined that a separate regulatory evaluation is not needed for this proposal, and all information related to the costs and benefits, including an initial Regulatory Flexibility Determination and an International Trade Impact Analysis, is included in this document under the heading "Regulatory Evaluation Summary."

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety.

14 CFR Part 127

Air carriers, Aircraft, Aviation safety, Helicopters, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 145

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 121, 125, 127, 135, and 145 of the Federal Aviation Regulations as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. Section 121.703 is amended by revising the heading and paragraphs (a), (c), (d), (e), (f), and (g) and by removing paragraph (h) to read as follows:

§ 121.703 Operational difficulty reports.

(a) Each certificate holder shall report the occurrence or detection of each failure, malfunction, or defect concerning—

(1) Any fire and, when monitored by a related fire-warning system, whether the fire-warning system functioned properly;

(2) Any false fire or smoke warnings that require the use of emergency procedures;

(3) An engine exhaust system that causes damage to the engine, adjacent structure, equipment, or components;

(4) An aircraft component that causes the accumulation or circulation of smoke, vapor, or toxic or noxious fumes requiring the use of emergency procedures;

(5) Any engine flameout or shutdown during ground or flight operations, excluding intentional engine shutdowns during such operations (e.g., flight crew training, test flights, or while taxiing to reduce fuel consumption);

(6) A propeller feathering system or ability of the system to control overspeed;

(7) A fuel or fuel-dumping system that affects fuel flow or causes hazardous leakage during flight;

(8) A landing gear extension or retraction or the opening or closing of landing gear doors during flight;

(9) Any brake system component that results in any detectable loss of brake actuating force when the aircraft is in motion on the ground, excluding failures, malfunctions, or defects that are deferrable according to the Minimum Equipment List as provided for in § 91.213;

(10) Any aircraft component or system that results in aborted takeoffs after initiation of the takeoff roll or the taking of emergency actions during flight; and

(11) Any emergency evacuation system or component including any exit door, passenger emergency evacuation lighting system, or evacuation equipment that is found to be defective, or that fails to perform the intended function during an actual emergency or during training, testing, maintenance, demonstrations, or inadvertent deployments, excluding failures, malfunctions, or defects that are deferrable according to the Minimum Equipment List as provided for in § 91.213.

(b) * * *

(c) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure, malfunction, or defect in an aircraft, system, component, or powerplant that occurs or is detected at any time if, in its opinion, that failure, malfunction, or defect has endangered or may endanger the safe operation of an aircraft.

(d) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the FAA. Each certificate holder also shall make the report data available for examination by the Flight Standards District Office charged with the overall inspection of the certificate holder in a form and manner acceptable to the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 72 hours. However, a report that is due on Saturday or Sunday may be submitted on the following Monday, and one that is due on a holiday may be submitted on the next work day.

(e) The certificate holder shall submit the reports required by this section in an electronic form or another form acceptable to the Administrator. The reports shall include the information listed in paragraphs (e)(1) through (e)(6) of this section and should include as much information that is available for paragraphs (e)(7) through (e)(9) of this section:

(1) Manufacturer, model, serial number, and registration number of the aircraft.

(2) The name of the operator.

(3) The date; flight number; station where the failure, malfunction, or defect was detected; and the stage during which the failure, malfunction, or defect occurred (e.g., preflight, taxi, takeoff, climb, cruise, descent, approach, landing, or inspection).

(4) The nature of the failure, malfunction, or defect.

(5) The applicable FAA modified Air Transport Association Specification 100 code (ATA code).

(6) The aircraft total time and total cycles.

(7) The engine or component serial number.

(8) The emergency procedure effected.

(9) Identification of the part and system involved, including available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection.

(f) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a Technical Standard Order (TSO) authorization, or that is a licensee of a Type Certificate, need not report a failure, malfunction, or defect under this section if the certificate holder has reported the failure, malfunction, or defect under § 21.3 of this chapter or under the accident reporting provisions of part 830 of the regulations of the National Transportation Safety Board.

(g) A report required by this section may be submitted by a certificated repair station when the reporting task has been assigned to it by a part 121 certificate holder. However, the part 121 certificate holder remains primarily responsible for ensuring compliance with the provisions of this section. The part 121 certificate holder shall receive a copy of each report submitted by the repair station.

3. Section 121.704 is added to read as follows:

§ 121.704 Structural difficulty reports.

(a) Each certificate holder shall report the occurrence or detection of each failure or defect of each primary structure or principal structural element, as defined in the manufacturer's Maintenance Manual, which includes the aircraft's Structural Repair Manual, related to—

(1) Corrosion that requires rework or blendout that exceeds the manufacturer's Maintenance Manual (MM) allowable limits and requires a repair or a complete or partial replacement of a primary structure or principal structural element;

(2) Cracks that require a repair or a complete or partial replacement of a primary structure or principal structural element;

(3) Disbonding that requires a repair or a complete or partial replacement of a primary structure or principal structural element;

(4) Failures or defects repaired in accordance with data approved by a Designated Engineering Representative (DER) or other approved data not contained in the manufacturer's MM; and

(5) Any crack, fracture, or delamination of a primary structure or principal structural element composed of composite materials.

(b) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure or defect in aircraft structure that occurs or is detected at any time if, in its opinion, that failure or defect has endangered or may endanger the safe operation of any aircraft.

(c) Each certificate holder shall submit each report required by this section covering such 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the FAA. Each certificate holder also shall make the report data available for examination by the Flight Standards District Office charged with the overall inspection of the certificate holder in a form and manner acceptable to the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 72 hours. However, a report that is due on Saturday or Sunday may be submitted on the following Monday, and one that is due on a holiday may be submitted on the next work day.

(d) The certificate holder shall submit the reports required by this section in an electronic form or another form acceptable to the Administrator. The reports shall include the following information listed in paragraphs (d)(1) through (d)(6) of this section and should include as much information that is available for paragraph (d)(7) of this section:

(1) Manufacturer, model, serial number, and registration number of the aircraft.

(2) The name of the operator.

(3) The nature of the failure or defect and its location.

(4) The FAA-modified Air Transport Association Specification 100 code (ATA code).

(5) The aircraft total time and cycles.

(6) The date and station where the failure or defect was discovered.

(7) Identification of the part or component involved (e.g., manufacturer's part number and serial number) and the time since the last maintenance overhaul, repair, or inspection.

(e) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a TSO authorization, or that is a licensee of a Type Certificate, need not report a failure, malfunction, or defect under this section if the certificate holder has reported the failure, malfunction, or defect under § 21.3 of this chapter or under the accident reporting provisions of part 830 of the regulations of the National Transportation Safety Board.

(f) The reports required by this section may be submitted by a certificated repair station when the reporting task has been assigned to it by the part 121 certificate holder. However, the responsibility for ensuring compliance with the provisions of this section may not be delegated by the part 121 certificate holder. The part 121 certificate holder shall receive a copy of each report.

4. Section 121.705 is revised to read as follows:

§ 121.705 Mechanical interruption summary report.

Each certificate holder shall regularly and promptly submit a summary report to the Administrator following each interruption to a flight, unscheduled change of aircraft en route, or unscheduled stop or diversion from a route, caused by known or suspected mechanical difficulties or malfunctions that are not required to be reported under §§ 121.703 or 121.704.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for part 125 is revised to read as follows:

Authority: 49 U.S.C. app. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g).

6. Section 125.409 is revised to read as follows:

§ 125.409 Operational difficulty reports.

(a) Each certificate holder must report the occurrence or detection of each failure, malfunction, or defect in an aircraft concerning—

(1) Any fire and, when monitored by a related fire-warning system, whether the fire-warning system functioned properly;

(2) Any false fire or smoke warnings that require the use of emergency procedures;

(3) An engine exhaust system that causes damage to an engine, adjacent structure, equipment, or components;

(4) An aircraft component that causes the accumulation or circulation of smoke, vapor, or toxic or noxious fumes requiring the use of emergency procedures;

(5) Any engine flameout or shutdown during ground or flight operations, excluding intentional engine shutdowns during such operations (e.g., flight crew training, test flights, or taxiing to reduce fuel consumption);

(6) A propeller feathering system or ability of the system to control overspeed;

(7) A fuel or fuel dumping system that affects fuel flow or causes hazardous leakage during flight;

(8) A landing gear extension or retraction or the opening or closing of landing gear doors during flight;

(9) Any brake system component that results in any detectable loss of brake actuating force when the aircraft is in motion on the ground, excluding failures, malfunctions, or defects that are deferrable according to the Minimum Equipment List as provided for in § 91.213;

(10) Any aircraft component or system that results in aborted takeoffs after initiation of the takeoff roll or the taking of emergency actions during flight; and

(11) Any emergency evacuation system or component including any exit door, passenger emergency evacuation lighting system, or evacuation equipment that is found to be defective, or that fails to perform the intended function during an actual emergency or during training, testing, maintenance, demonstrations, or inadvertent deployments, excluding failures, malfunctions, or defects that are deferrable according to the Minimum Equipment List as provided for in § 91.213.

(b) For the purposes of this section, during flight means the period from the moment the aircraft leaves the surface of the earth on takeoff until it touches down on landing.

(c) In addition to the reports required by paragraph (a) of this section, each certificate holder must report any other failure, malfunction, or defect in an aircraft, system, component, or powerplant that occurs or is detected at any time if, in its opinion, that failure, malfunction, or defect has endangered or may endanger the safe operation of an aircraft it uses.

(d) Each certificate holder must submit each report required by this section as prescribed in paragraphs (a) and (c) of this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to the location where the data base is maintained. Each certificate holder also must make the report data available for examination by the Flight Standards District Office charged with the overall inspection of the certificate holder in a form and manner acceptable to the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 72 hours. However, a report that is due on Saturday or Sunday may be submitted on the following Monday, and one that is due on a holiday may be submitted on the next work day. For aircraft operating in areas where mail is not collected, reports may be submitted within 24 hours after the aircraft returns to a point where mail is collected.

(e) The certificate holder shall submit the reports required by this section in an electronic form or another form acceptable to the Administrator. The reports shall include the information listed in paragraphs (e)(1) to (e)(6) of this section and should include as much information that is reasonably available for paragraphs (e)(7) to (e)(9) of this section:

(1) Manufacturer, model serial number, and registration number of the aircraft.

(2) The name of the operator.

(3) The date; flight number; station where the failure, malfunction, or defect was detected; and the stage during which the failure, malfunction, or defect occurred (e.g., preflight, taxi, takeoff, climb, cruise, descent, approach, landing, or inspection).

(4) The nature of the failure, malfunction, or defect.

(5) The applicable FAA-modified Air Transport Association Specification 100 code (ATA code).

(6) The aircraft total time and total cycles.

(7) The engine or component serial number.

(8) The emergency procedure effected (e.g., unscheduled landing and emergency descent).

(9) Identification of the part and system involved, including available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection.

(f) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a Technical Standard Order (TSO) authorization or that is a licensee of a Type Certificate need not report a failure, malfunction, or defect under this section if it has reported the failure, malfunction, or defect under § 21.3 of this chapter or under the accident reporting provisions of part 830 of the regulations of the National Transportation Safety Board.

(g) Reports prescribed in paragraph (e) of this section may be submitted by a certificated repair station when the reporting task has been delegated by a part 125 certificate holder, under the provisions of §§ 145.63(d)(2) or 145.79(e)(2) of this chapter. However, the responsibility for ensuring compliance with the provisions of this section may not be delegated by the part 125 certificate holder. The part 125 certificate holder must receive a copy of each report.

7. Section 125.410 is added to read as follows:

§ 125.410 Structural difficulty reports.

(a) Each certificate holder shall report the occurrence or detection of each failure or defect of each primary structure or principal structural element, as defined in the manufacturer's Maintenance Manual (which includes the aircraft's Structural Repair Manual and other manufacturer's documents that set forth maintenance requirements) related to—

(1) Corrosion that requires rework or blendout that exceeds the manufacturer's Maintenance Manual (MM) allowable limits and requires a repair or a complete or partial replacement of a primary structure or principal structural element;

(2) Cracks that require a repair or a complete or partial replacement of a primary structure or principal structural element;

(3) Disbonding that requires a repair or a complete or partial replacement of a primary structure or principal structural element;

(4) Failures or defects repaired in accordance with Designated Engineering Representative (DER) data or other approved data not contained in the manufacturer's MM; and

(5) Any crack, fracture, or delamination of a primary structure or principal structural element composed of composite materials.

(b) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure or defect in aircraft structure that occurs or is detected at any time if, in its opinion, that failure or defect has endangered or may endanger the safe operation of any aircraft it uses.

(c) Each certificate holder shall submit each report required by this section, as prescribed in paragraphs (a) and (b) of this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the FAA. Each certificate holder also shall make the report data available for examination by the Flight Standards District Office charged with the overall inspection of the certificate holder in a form and manner acceptable to the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 72 hours. However, a report that is due on Saturday or Sunday may be submitted on the following Monday, and one that is due on a holiday may be submitted on the next work day. For aircraft operating in areas where mail is not collected, reports may be submitted within 24 hours after the aircraft returns to a point where the mail is collected.

(d) The certificate holder shall submit the reports required by this section in an electronic form or another form acceptable to the Administrator. The reports must include the following information listed in paragraph (d)(1) through (d)(6) of this section and should include as much information that is reasonably available for paragraph (d)(7) of this section:

(1) Manufacturer, model, serial number, and registration number of the aircraft.

(2) The name of the operator.

(3) The nature of the failure or defect and its location.

(4) The FAA-modified Air Transport Association Specification 100 code (ATA code).

(5) The aircraft total time and cycles.

(6) The data and station where the failure or defect was discovered.

(7) Identification of the part or component involved (e.g., manufacturer's part number and serial number) and the time since the last maintenance overhaul, repair, or inspection.

(e) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a Technical Standard Order (TSO) authorization or that is a licensee of a Type Certificate need not report a failure, malfunction, or defect under this section if it has reported the failure, malfunction, or defect under § 21.3 of this chapter or under the accident reporting provisions of part 830 of the regulations of the National Transportation Safety Board.

(f) Reports prescribed in paragraph (d) of this section may be submitted by a certificated repair station when the reporting task has been assigned by the part 125 certificate holder under the provisions of §§ 145.63(d)(2) or 145.79(e)(2) of this chapter. However, the responsibility for ensuring compliance with the provisions of this section may not be delegated by the part 125 certificate holder. The part 125 certificate holder shall receive a copy of each report.

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

8. The authority citation for part 127 continues to read as folllows:

Authority: 49 U.S.C. app. 1354(a) 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g).

9. Section 127.313 is revised to read as follows:

§ 127.313 Operational difficulty reports.

(a) Each air carrier shall report the occurrences or detection of each failure, malfunction, or defect concerning—

(1) Any fire and, when monitored by a related fire-warning system, whether the fire-warning system functioned properly;

(2) Any false fire or smoke warnings that require the use of emergency procedures;

(3) An engine exhaust system that causes damage to an engine, adjacent structure, equipment, or components;

(4) A helicopter component that causes the accumulation or circulation of smoke, vapor, or toxic or noxious fumes requiring the use of emergency procedures;

(5) Any engine flameout or shutdown during ground or flight operations, excluding intentional engine shutdowns during such operations (e.g., flight crew training, test flights, or taxiing to reduce fuel consumption);

(6) A fuel or fuel dumping system that affects fuel flow or causes hazardous leakage during flight;

(7) Any helicopter component or system that results in aborted takeoffs after initiation of the takeoff or the taking of emergency actions during flight;

(8) Main rotor or auxiliary rotor system; and

(9) Any emergency evacuation system or component including any exit door, passenger emergency evacuation lighting system, or evacuation equipment that is found to be defective, or that fails to perform the intended function during an actual emergency or during training, testing, maintenance, demonstrations, or inadvertent deployments, excluding failures, malfunctions, or defects that are deferrable according to the Minimum Equipment List as provided for in § 91.213.

(10) A landing gear extension or retraction, or the opening or closing of landing gear doors during flight;

(11) Any brake system component that results in any detectable loss of brake actuating force when the aircraft is in motion on the ground.

(b) For the purposes of this section during flight means the period from the moment the helicopter leaves the surface of the earth on takeoff until it touches down on landing.

(c) In addition to the reports required by paragraph (a) of this section, each air carrier shall report any other failure, malfunction, or defect in a helicopter, system, component, or powerplant that occurs or is detected at any time if, in the air carrier's opinion, the failure, malfunction, or defect has endangered or may endanger the safe operation of the helicopter it uses.

(d) Each air carrier shall submit each report required by this section as prescribed in paragraphs (a) and (c) of this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the FAA. Each certificate holder also shall make the report data available for examination by the Flight Standards District Office charged with the overall inspection of the certificate holder in a form and manner acceptable to the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 72 hours. However, a report that is due on Saturday or Sunday may be submitted on the following Monday, and one that is due on a holiday may be submitted on the next work day.

(e) The air carrier shall submit the reports required by this section is an electronic form or another form acceptable to the Administrator. The reports shall include the information listed in paragraphs (e)(1) through (e)(6) of this section and should include as much information that is reasonably available for paragraphs (e)(7) through (e)(9) of this section:

(1) Manufacturer, model, serial number, and registration number of the helicopter.

(2) The name of the air carrier.

(3) The date; flight number; station where the failure, malfunction, or defect was detected; and the stage during which the failure, malfunction, or defect occurred (e.g., preflight, taxi, takeoff, climb, cruise, descent, landing, or inspection).

(4) The nature of the failure, malfunction, or defect.

(5) The applicable FAA-modified Air Transport Association Specification 100 code (ATA code).

(6) The helicopter total time and total cycles.

(7) The engine or component serial number.

(8) The emergency procedure affected (e.g., unscheduled landing and emergency descent).

(9) Identification of the part and system involved, including available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection.

(f) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a Technical Standard Order (TSO) authorization, or that is a licensee of a Type Certificate, need not report a failure, malfunction, or defect under this section if it has reported the failure, malfunction, or defect under § 21.3 of this chapter or under the accident reporting provisions of part 830 of the regulations of the National Transportation Safety Board.

(g) Reports prescribed in paragraph (e) of this section may be submitted by a certificated repair station when the reporting task has been assigned by a part 127 air carrier, under the provisions of §§ 145.63(d)(3) or 145.79(e)(3) of this chapter. However, the responsibility for ensuring compliance with the provisions of this section may not be delegated by the part 127 air carrier. The part 127 air carrier shall receive a copy of each report.

10. Section 127.314 is added to read as follows:

§ 127.314 Structural difficulty reports.

(a) Each air carrier shall report the occurrence or detection of each failure or defect of each primary structure or principal structural element as defined in the manufacturer's Maintenance Manual (which includes the aircraft's Structural Repair Manual and other manufacturer's documents that set forth maintenance requirements) related to—

(1) Corrosion that requires rework or blendout that exceeds the manufacturer's Maintenance Manual (MM) allowable limits and requires a repair or a complete or partial replacement of a primary structure or principal structural element;

(2) Cracks that require a repair or a complete or partial replacement of a primary structure or principal structural element;

(3) Disbonding that requires a repair or a complete or partial replacement of a primary structure or principal structural element;

(4) Failures or defects repaired in accordance with Designated Engineering Representative (DER) data or other approved data not contained in the manufacturer's MM; and

(5) Any crack, fracture, or delamination of a primary structure or principal structural element composed of composite materials.

(b) In addition to the reports required by paragraph (a) of this section, each air carrier shall report any other failure or defect in helicopter structure that occurs or is detected at any time if, in its opinion, that failure or defect has endangered or may endanger the safe operation of any helicopter it uses.

(c) Each air carrier shall submit each report required by this section, as prescribed in paragraphs (a) and (b) of this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to the location where the data base is maintained. Each certificate holder also shall make the report data available for examination by the Flight Standards District Office charged with the overall inspection of the certificate holder in a form and manner acceptable to the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 72 hours. However, a report that is due on Saturday or Sunday may be submitted on the following Monday, and one that is due on a holiday may be submitted on the next work day.

(d) The air carrier shall submit the reports required by this section in an electronic form or another form acceptable to the Administrator. The reports shall include the information listed in paragraphs (d)(1) through (d)(6) of this section and should include as much information that is reasonably available for paragraph (d)(7) of this section:

(1) Manufacturer, model, serial number, and registration number of the helicopter.

(2) The name of the operator.

(3) The nature of the failure or defect and its location.

(4) The FAA-modified Air Transport Association Specification 100 code (ATA code).

(5) The helicopter total time and cycles.

(6) The date and station where the failure or defect was discovered.

(7) Identification of the part or component involved (e.g., manufacturer's part number and serial number) and the time since the last maintenance overhaul, repair, or inspection.

(e) An air carrier that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a Technical Standard Order (TSO) authorization or that is a licensee of a Type Certificate need not report a failure, malfunction, or defect under this section if it has reported the failure, malfunction, or defect under § 21.3 of this chapter or under the accident reporting provisions of part 830 of the regulations of the National Transportation Safety Board.

(f) Reports prescribed in paragraph (d) of this section may be submitted by a certificated repair station when the reporting task has been assigned by the part 127 air carrier under the provisions of §§ 145.63(d)(3) or 145.79(e)(3) of this chapter. However, the responsibility for ensuring compliance with the provisions of this section may not be delegated by the part 127 air carrier. The part 127 air carrier shall receive a copy of each report.

11. Section 127.315 is revised to read as follows:

§ 127.315 Mechanical interruption summary report.

Each certificate holder shall regularly and promptly submit a summary report to the Administrator following each interruption to a flight, unscheduled change of aircraft en route, or unscheduled stop or diversion from a route, caused by known or suspected mechanical difficulties or malfunctions that are not required to be reported under § 127.313 or § 127.314.

12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

13. Section 135.415 is amended by revising the heading and paragraphs (a), (c), (d), (e), (f), and (g) and by removing paragraphs (a)(12) through (a)(16) and paragraph (h) to read as follows:

§ 135.415 Operational difficulty reports.

(a) Each certificate holder shall report the occurrence or detection of each failure, malfunction, or defect in an aircraft concerning—

(1) Any fire and, when monitored by a related fire-warning system, whether the fire-warning system functioned properly;

(2) Any false fire or smoke warnings that require the use of emergency procedures;

(3) An engine exhaust system that causes damage to an engine, adjacent structure, equipment or components;

(4) An aircraft component that causes the accumulation or circulation of smoke, vapor, or toxic or noxious fumes requiring the use of emergency procedures;

(5) Any engine flameout or shutdown during ground or flight operations, excluding intentional engine shutdowns during such operations (e.g., flight crew training, test flights, or taxiing to reduce fuel consumption);

(6) A propeller feathering system or ability of the system to control overspeed;

(7) A fuel or fuel-dumping system that affects fuel flow or causes hazardous leakage during flight;

(8) A landing gear extension or retraction or the opening or closing of landing gear doors during flight;

(9) Any brake system component that results in any detectable loss of brake actuating force when the aircraft is in motion on the ground, excluding failures, malfunctions, or defects that are deferrable according to the Minimum Equipment List as provided for in § 91.213;

(10) Any aircraft component or system that results in aborted takeoffs after initiation of the takeoff roll or the taking of emergency actions during flight; and

(11) Any emergency evacuation system or component including any exit door, passenger emergency evacuation lighting system, or evacuation equipment that is found to be defective, or that fails to perform the intended function during an actual emergency or during training, testing, maintenance, demonstrations, or inadvertent deployments, excluding failures, malfunctions, or defects that are deferrable according to the Minimum Equipment List as provided for in § 91.213.

(b) * * *

(c) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure, malfunction, or defect in an aircraft, system, component, or powerplant that occurs or is detected at any time if, in its opinion, that failure, malfunction, or defect has endangered or may endanger the safe operation of an aircraft it uses.

(d) Each certificate holder shall submit each report required by this section as prescribed in paragraphs (a) and (c) of this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to the location where the data base is maintained. Each certificate holder also shall make the report data available for examination by the Flight Standards District Office charged with the overall inspection of the certificate holder in a form and manner acceptable to the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 72 hours. However, a report that is due on Saturday or Sunday may be submitted on the following Monday, and one that is due on a holiday may be submitted on the next work day. For aircraft operating in areas where mail is not collected, reports may be submitted within 24 hours after the aircraft returns to a point where mail is collected.

(e) The certificate holder shall submit the reports required by this section in an electronic form or another form acceptable to the Administrator. The reports must include the information listed in paragraphs (e)(1) through (e)(6) of this section and should include as much information that is reasonably available for paragraphs (e)(7) to (e)(9) of this section:

(1) Manufacturer, model, serial number, and registration number of the aircraft.

(2) The name of the operator.

(3) The date; flight number; station where the failure, malfunction, or defect was detected; and the stage during which the failure, malfunction, or defect occurred (e.g., preflight, taxi, takeoff, climb, cruise, descent, approach, landing, or inspection).

(4) The nature of the failure, malfunction, or defect.

(5) The applicable FAA-modified Air Transport Association Specification 100 code (ATA code).

(6) The aircraft total time and total cycles.

(7) The engine or component serial number.

(8) The emergency procedure affected (e.g., unscheduled landing and emergency descent).

(9) Identification of the part and system involved, including available information pertaining to type designation of the major component and the time since the last maintenance overhaul, repair, or inspection.

(f) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a Technical Standard Order (TSO) authorization or that is a licensee of a Type Certificate need not report a failure, malfunction, or defect under this section if it has reported the failure, malfunction, or defect under § 21.3 of this chapter or under the accident reporting provisions of part 830 of the regulations of the National Transportation Safety Board.

(g) Reports prescribed in paragraph (e) of this section may be submitted by a certificated repair station when the reporting task has been assigned by a part 135 certificate holder, under the provisions of §§ 145.63(d)(4) or 145.79(e)(4) of this chapter. However, the responsibility for ensuring compliance with the provisions of this

section may not be delegated by the part 135 certificate holder. The part 135 certificate holder shall receive a copy of each report.

14. Section 135.416 is added to read as follows:

§ 135.416 Structural difficulty reports.

(a) Each certificate holder shall report the occurrence or detection of each failure or defect of each primary structure or principal structural element as defined in the manufacturer's Maintenance Manual (which includes the aircraft's Structural Repair Manual and other manufacturer's documents that set forth maintenance requirements) related to—

(1) Corrosion that requires rework or blendout that exceeds the manufacturer's Maintenance manual (MM) allowable limits and requires a repair or a complete or partial replacement of a primary structure or principal structural element;

(2) Cracks that require a repair or a complete or partial replacement of a primary structure or principal structural element;

(3) Disbonding that requires a repair or a complete or partial replacement of a primary structure or principal structural element;

(4) Failures or defects repaired in accordance with Designated Engineering Representative (DER) data or other approved data not contained in the manufacturer's MM; and

(5) Any crack, fracture, or delamination of a primary structure or principal structural element composed of composite materials.

(b) In addition to the reports required by paragraph (a) of this section, each certificate holder shall report any other failure or defect in aircraft structure that occurs or is detected at any time if, in its opinion, that failure or defect has endangered or may endanger the safe operation of any aircraft it uses.

(c) Each certificate holder shall submit each report required by this section, as prescribed in paragraphs (a) and (b) of this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to a centralized collection point as specified by the FAA. Each certificate holder also shall make the report data available for examination by the Flight Standards District Office charged with the overall inspection of the certificate holder in a form and manner acceptable to the Administrator. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 72 hours. However, a report that is due on Saturday or Sunday may be submitted on the following Monday, and one that is due on a holiday may be submitted on the next work day. For aircraft operating in areas where mail is not collected, reports may be submitted within 24 hours after the aircraft returns to a point where the mail is collected.

(d) The certificate holder shall submit the reports required by this section in an electronic form or another form acceptable to the Administrator. The reports must include the information listed in paragraphs (d)(1) through (d)(6) of this section and should include as much information that is reasonably available for paragraph (d)(7) of this section:

(1) Manufacturer, model, serial number, and registration number of the aircraft.

(2) The name of the operator.

(3) The nature of the failure or defect and its location.

(4) The FAA-modified Air Transport Association Specification 100 code (ATA code).

(5) The aircraft total time and cycles.

(6) The date and station where the failure or defect was discovered.

(7) Identification of the part or component involved (e.g., manufacturer's part number and serial number) and the time since the last maintenance overhaul, repair, or inspection.

(e) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval (PMA), or a Technical Standard Order (TSO) authorization or that is a licensee of a Type Certificate need not report a failure, malfunction, or defect under this section if it has reported the failure, malfunction, or defect under § 21.3 of this chapter or under the accident reporting provisions of part 830 of the regulations of the National Transportation Safety Board.

(f) Reports prescribed in paragraph (d) of this section may be submitted by a certificated repair station when the reporting task has been assigned by the part 135 certificate holder under the provisions of §§ 145.63(d)(4) or 145.79(e)(4) of this chapter. However, the responsibility of ensuring compliance with the provisions of this section may not be delegated by the part 135 certificate holder. The part 135 certificate holder shall receive a copy of each report.

15. Section 135.417 is revised to read as follows:

§ 135.417 Mechanical interruption summary report.

Each certificate holder shall regularly and promptly submit a summary report to the Administrator following each interruption to a flight, unscheduled change of aircraft en route, or unscheduled stop or diversion from a route, caused by a known or suspected mechanical difficulty or malfunction that is not required to be reported under § 135.415 or § 135.316.

PART 145—REPAIR STATIONS

16. The authority citation for part 145 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, and 1427.

17. Section 145.63 is amended by adding paragraphs (d) and (e) to read as follows:

§ 145.63 Reports of defects or unairworthy conditions.

* * * * *

(d) A certificated domestic repair station may submit an operational or structural difficulty report for—

(1) A part 121 certificate holder under § 121.703(g) or § 121.704(g) provided that the report meets the requirements of §§ 121.703(d) and 121.703(e) or §§ 121.704(d) and 121.704(e) of this chapter, as appropriate;

(2) A part 125 certificate holder under § 125.409(g) or § 125.410(g) provided that the report meets the requirements of §§ 125.409(d) and 125.409(e) or §§ 125.410(d) and 125.410(e) of this chapter, as appropriate;

(3) A part 127 certificate holder under § 127.313(g) or § 121.314(g) provided that the report meets the requirements of § 127.313(d) or § 127.313(e) or §§ 127.314(d) and 127.314(e) of this chapter, as appropriate; or

(4) A part 135 certificate holder under § 135.415(g) or § 135.416(g) provided that the report meets the requirements of §§ 135.415(d) and 135.415(e) or §§ 135.416(d) and 135.416(e) of this chapter, as appropriate.

(e) A certificated domestic repair station authorized to report a failure, malfunction, or defect under paragraph (d) of this section need not report the same failure, malfunction, or defect under paragraph (a) of this section. A copy of the report submitted under paragraph (d) of this section shall be forwarded to the certificate holder.

18. Section 145.79 is amended by adding paragraphs (e) and (f) to read as follows:

§ 145.79 Records and reports.

* * * * *

(e) A certificated foreign repair station may submit an operational or structural difficulty report for—

(1) A part 121 certificate holder under § 121.703(g) or § 121.704(g) provided that the report meets the requirements of §§ 121.703(d) and 121.703(e) or §§ 121.704(d) and 121.704(e) of this chapter, as appropriate;

(2) A part 125 certificate holder under § 125.409(g) or § 125.410(g) provided that the report meets the requirements of §§ 125.409(d) and 125.409(e) or §§ 125.410(d) and 125.410(e) of this chapter, as appropriate;

(3) A part 127 certificate holder under §§ 127.313(g) or 121.314(g) provided that the report meets the requirements of §§ 127.313(d) and 127.313(e) or §§ 127.314(d) and 127.314(e) of this chapter, as appropriate; or

(4) A part 135 certificate holder under §§ 135.415(g) or 135.416(g) provided that the report meets the requirements of §§ 135.415(d) and 135.415(e) or §§ 135.416(d) and 135.416(e) of this chapter, as appropriate.

(f) A certificated domestic repair station authorized to report a failure, malfunction, or defect under paragraph (d) of this section need not report the same failure, malfunction, or defect under paragraph (a) of this section. A copy of the report submitted under paragraph (d) of this section shall be forwarded to the certificate holder.

Issued in Washington, DC, on August 4, 1995.

William J. White,

Acting Director, Flight Standards Service, AFS–1.

[FR Doc. 95–19909 Filed 8–11–95; 8:45 am]

BILLING CODE 4910–13–M

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federal register

Monday
August 14, 1995

Part V

Department of Housing and Urban Development

24 CFR Part 300 et al.
GNMA—Streamlining Existing Regulations and Implementation of Issuer Eligibility and Integrity Reforms; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Parts 300, 310, 320, 330, 340, 350, 360, 370, 380, 390, and 395

[Docket No. FR–2908–F–02]

RIN: 2503–AA07

GNMA—Streamlining Existing Regulations and Implementation of Issuer Eligibility and Integrity Reforms

AGENCY: Government National Mortgage Association, HUD.

ACTION: Final rule.

SUMMARY: The Government National Mortgage Association (the "Association" or "GNMA") is revising its regulations to remove references to terminated programs, place proper emphasis on the Association's current programs, remove obsolete references and simplify the language of all remaining sections.

In addition, this publication implements a revision to the regulations that prescribe the standards by which issuers are approved to participate in the Association's Mortgage-Backed Securities (MBS) program, and by which approved issuers maintain their approval status, which was initiated by a proposed rule published in 1993.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Guy S. Wilson, Vice President, Government National Mortgage Association, Room 6151, 451 Seventh Street SW, Washington, DC 20410–9000, telephone (202) 401–8970. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–3649. (These telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. Background

A. Streamlining Existing Regulations

By the direction of the President, the Association performed a page-by-page review of its existing regulations to eliminate or revise those regulations that are outdated or otherwise in need of reform. The Association is revising the entirety of the GNMA rules, which are found in the 300 series in title 24 of the Code of Federal Regulations. This rule removes outdated parts and sections of parts to trim the Association's regulations to only those necessary to operate current programs. Other than as noted below, substantive changes are not intended by virtue of the revisions included herein.

The former 24 CFR parts 320, 330, 340, 350, 360 and 370 have been eliminated, because the programs formerly regulated under those sections have been abolished. The former 24 CFR part 380, Fiduciary Activities, has been moved to 24 CFR part 340. The former 24 CFR part 390, Guaranty of Mortgage-Backed Securities, has been moved to 24 CFR part 320, to reflect its status as the most active of the Association's programs. The former Part 395, Guaranty of Multiclass Securities, has been moved to Part 330 to reflect its status as a program that flows directly from the mortgage-backed securities program. The Bylaws of the Association are no longer published as an appendix to 24 CFR part 310, but will be kept current in the Office of the President of the Association and may be published in the GNMA I Mortgage-Backed Securities Guide and the GNMA II Mortgage-Backed Securities Guide (collectively, the "GNMA Guides").

With respect to these streamlining changes, the publication of a final rule without previous solicitation of public comment is justified, in accordance with 24 CFR part 10, because solicitation of public comment is unnecessary and would be contrary to the public interest. The types of changes being made are not controversial or substantive. It is in the public interest to have succinct regulations that reflect only the provisions needed to operate current programs. Therefore, solicitation of public comment before adoption of these changes is unnecessary, and the associated delay in effectiveness would be contrary to the public interest.

1. Part 300

Section 300.1

The reference to regional offices has been removed. All of the Association's business is conducted out of one office.

Section 300.3

The references to the Association purchasing, servicing and selling mortgages has been removed. The Association no longer conducts this business. A reference is added clarifying that the Association is commonly referred to as Ginnie Mae or GNMA.

Section 300.9

All references to carrying on the Association's business through the Federal National Mortgage Association (Fannie Mae) have been removed. None of the Association's business is carried out by Fannie Mae.

Section 300.11

This section has been added to notify the public of the authority of the officers of the Association. This authority is set forth in the Bylaws of the Association, which were formerly published as an appendix to the regulations. This appendix is being removed, necessitating the addition of this section.

Section 300.13 (formerly Section 300.11)

This section has been streamlined by removing the laundry list of actions that may be undertaken by an attorney-in-fact for the Association. The section as rewritten provides that the Association may appoint attorneys-in-fact by publication in the **Federal Register** or by written document executed by the President of the Association and that such attorney-in-fact shall have the power outlined in the publication or appointment.

Section 300.17 (formerly Section 390.60)

This section has been moved from the former Subpart E, Miscellaneous Provisions, to Subpart A, General Provisions, in order to provide a better organizational structure to the regulations. It has also been revised to clarify that audits and examinations may be performed by designees of the Association.

2. Part 310

The Bylaws of the Association, formerly an appendix to Part 310, have been removed. The Bylaws will be maintained in the Office of the President of the Association and may be published in the GNMA I Mortgage-Backed Securities Guide and the GNMA II Mortgage-Backed Securities Guide.

3. Former Parts 320, 330, 340 and 350

These parts have been eliminated because the authority for the Association's Special Assistance Functions (implemented by Subchapter B of Chapter III, Special Assistance Functions, containing these parts) was repealed by section 483(a) of Pub. L. 98–181, approved November 30, 1983, 97 Stat. 1240.

4. Parts 360 and 370

These parts (contained in Subchapter C of Chapter III, Management and Liquidating Functions) have been eliminated because the Association no longer performs Management and Liquidating Functions.

5. Part 320 (formerly Part 390)

The former part 390 has been moved to this part to reflect its status as the most active of the Association's programs.

Sections 320.1, 320.5 and 320.13 (formerly Sections 390.1, 390.5 and 390.13)

These sections have been amended to remove reference to "straight pass through" securities, which are no longer guaranteed by the Association.

Section 320.15 (formerly Section 390.15)

This section has been amended to remove reference to "straight pass through" securities, which are no longer guaranteed by the Association. This section also has been amended to remove the specific procedures followed by the Association upon the declaration of a default. To the extent necessary, these procedures are outlined in the Guides and/or the guaranty agreement with the issuer.

6. Part 330 (formerly part 395)

The former part 395, Multiclass Securities, has been moved to part 330, following part 320 dealing with the mortgage-backed securities program, to reflect its status as a program that flows directly from the mortgage-backed securities program. Some language has been removed because it is duplicative of language in Parts 300 and 320.

B. Issuer Eligibility and Integrity Reforms

On December 9, 1993 (58 FR 64713), the Department published a proposed rule to reform the Association's issuer eligibility and integrity requirements for new issuer approval and maintenance of approved issuer status. A total of nine comments were received. The commenters included one approved issuer, one mortgage company, one federal savings bank, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the Office of the Comptroller of the Currency (OCC), the Independent Bankers Association of America and the Mortgage Bankers Association of America.

The commenters expressed general support for the Department's objectives of strengthening the issuer requirements. The commenters were especially supportive of the closer alignment of the Association's rules with those of Fannie Mae and Freddie Mac, and they expressed a desire for GNMA to continue in that direction. Some commenters opposed parts of the proposed rule, and some provided specific suggestions for changes. On the basis of these comments and further development of the concepts set forth in the proposed rule, the Department has made changes to the rule. These Changes are discussed in the following sections of this preamble.

1. Section 320.3 (formerly Section 390.3) Eligible Issuers

There were four commenters on the paragraph dealing with Fannie Mae and Freddie Mac approval (former Section 390.3(a)(2), including Freddie Mac. Currently, Fannie Mae approval is required for program entry for single family issuers. This section proposed to include Freddie Mac approved seller/servicers as applicants and to limit the Fannie Mae/Freddie Mac approval requirement to single family issuer applicants. While all comments on the proposed language were favorable, certain changes have been made as a result of the Association's own continued analysis of this section. The Association has decided to open its mortgage-backed securities program to issuers without Fannie Mae or Freddie Mac approval. Under the final rule, the Association will consider all applicants, although Fannie Mae and/or Freddie Mac approved applicants will be given special consideration in the approval process. Applicants with neither Fannie Mae nor Freddie Mac approval will be subject to a more stringent set of requirements to provide additional assurances that they are capable of performing the responsibilities of an issuer. These requirements will be set out in the applicable Guides.

The phrase limiting the applicability of this section to single family issuers has been dropped, since an alternative is now being provided to the Fannie Mae/Freddie Mac approval requirement. After an issuer is accepted into the MBS program, loss of either Fannie Mae or Freddie Mac approval continues to remain a basis for issuer default even in cases where the issuer qualified for program entry without Fannie Mae or Freddie Mac approval. In summary, as a result of further analysis, this section is being republished to reflect that (1) this section is applicable to all issuer types, and (2) Association approval is an acceptable alternative to Fannie Mae/Freddie Mac approval. [Note: The "or the Association" language in the original regulations referred to the Tandem program which has been terminated.]

There were two commenters on the paragraph dealing with capacity to issue and service (former Section 390.3(a)(3). One comment agreed with the changes. The other commenter wants to expand the scope of the rule to allow the sale of servicing on pooled loans without requiring a change of issuer. The commenter stated that this would eliminate the mortgage assignment costs currently incurred when servicing is sold and the issuer is substituted. Issuers may presently (1) service their pools themselves, (2) obtain subservicers for their pools, while remaining the issuer of record with full responsibility for those pools, (3) act as a subservicer for another issuer's pools, or (4) transfer issuer responsibility (and servicing) to another issuer. The Association believes these options give issuers the flexibility to manage their business while providing the Association with an adequate level of risk protection. The purpose of this section of the rule is to formally recognize that an issuer may choose to act as an issuer of pools or servicer or both. The Association is not prepared to make a major scope change to the rule to permit the sale of servicing without a change in issuer. Therefore the servicing language is not being changed. This section of the rule, however, is being republished with a minor change to clarify that the experience of the management of an issuer is a criterion for issuer eligibility.

There were three commenters on increasing the single family base net worth requirement to $250,000. One commenter stated that the increase would be too costly for small lenders, while the other two commenters, both trade associations, agreed with the increase. One of these trade associations requested that GNMA consider special net worth requirements for small and minority lenders, and the other stated that the $250,000 level would "increase the safety of the program yet not prohibit smaller institutions from participating."

There were two commenters on the requirement to index base Net Worth for inflation (former Section 390.3). One commenter generally agreed with the indexing. The other commenter questioned the need for indexing. It believes that the incremental component of net worth already takes inflationary concerns into account, and that smaller issuers may be adversely affected. It also requested that if indexing is implemented, that the Association (1) phase-in indexing over a minimum of 6 months, (2) reconsider whether the consumer price index (CPI) is the appropriate index, (3) allow decreases for inflation as long as the new value is not below $250,000, and (4) place an annual cap on the potential increase.

The Association agrees that there are numerous factors to be considered in determining how the net worth element is implemented, and the impact on smaller issuers is certainly an important consideration. Since economic factors

influencing appropriate net worth requirements change regularly, the Association has determined that in the spirit of streamlining its regulations and to provide as much flexibility as possible to the issuer qualification process, net worth requirements will not be published as regulations, but will be published in the GNMA Guides.

2. Former Section 390.12

There was one comment on the provisions concerning control changes (formerly § 390.12(c)), which was in agreement with the language. While the only comment was favorable, upon the Association's own internal analysis of this section, it was decided that both the time requirement pertaining to the notification of change and the definition of what constitutes a change in control be placed in the applicable Guides, rather than in the regulations. Therefore, this section is being republished with changes to (1) remove the 30 day requirement, and (2) remove the Generally Accepted Accounting Practices (GAAP) definition.

There were five commenters on the provisions concerning cross-default agreements (formerly § 390.12(d)). One commenter agreed with the language. Another commenter expressed concern that the agreement may not be consistent with the requirements of some Federal regulators. In addition, this commenter requested that (1) the general terms of the agreement be open to public comment, and (2) both entry into and enforcement of a cross-default agreement be waived when it can be proved that related companies have been operated independently in a safe and sound manner such that there is no attempt to defraud the Association. The other three commenters were the FDIC, OTS, and OCC. FDIC and OTS also included an attachment with their comments from the Federal Reserve Board. All of these Federal agencies believe that cross-default agreements may not be consistent with section 23A of the Federal Reserve Act which contains limitations and collateralization requirements on guaranties between depository institutions and affiliates.

Based on meetings and discussions with the four Federal regulators, the Association has modified the rule language to allow for an exemption from the cross-default agreement when an issuer can provide an acceptable legal opinion that demonstrates that the agreement would be prohibited by the issuer's Federal regulator. While Section 23A was considered in the Association's analysis, the primary reason for the exemption is that the Association's experience to date has demonstrated that regulated issuers present less of a default risk than non-regulated issuers. Furthermore, based on additional analysis, this section has been revised to remove the GAAP (Generally Accepted Accounting Principles) definition of related issuers (detailed guidance will be provided in the Guides), and to provide for the option of default rather than the obligation to default. In summary, this section is being republished with changes to (1) provide a possible exemption for certain classes of Federally regulated issuers, (2) remove the GAAP definition, and (3) provide for the option of default.

3. Section 320.10 Classified Balance Sheet

There was one comment on this section, which was in agreement with the proposed language. This section is being republished without any changes.

4. Section 320.12 Integrity

There were two comments on the provisions concerning key personnel (§ 320.12(a)), and both were in agreement with the proposed language. This section is being republished with a minor change to clarify that local agencies are included with Federal, state, and government-related entities in respect to required disclosures of key personnel backgrounds.

There were four comments on the provisions concerning status with other agencies (section 320.12(b)). Two of the comments were in agreement with the proposed language. The commenters with concerns were the FDIC and OCC. These federal agencies stated that certain disclosures may be prohibited under their respective regulations. The FDIC also expressed concern that if issuers were to disclose FDIC actions, the agency's ability to promote safety may be impaired. The Association believes that notice of agency actions will enhance its ability to monitor issuers, and that cooperation between Federal agencies is necessary to properly protect the Government's interest. However, the Association believes that it should not compel issuers to make disclosures that are specifically prohibited by other agencies. Therefore, this section is being republished with a change to reflect that disclosures that are specifically prohibited by agencies are exempted from this section. Furthermore, the section is also being amended to clarify that state and local mortgage and regulatory agencies are included as covered parties requiring issuer disclosure of material status changes.

II. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. The eligibility and performance requirements of this rule are consistent with requirements already established by other government agencies for lender eligibility. Accordingly, the economic impact of this rule would be minimal, and it is expected to affect small and large entities equally.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in connection with the development of the proposed rule. The Finding of No Significant Impact remains applicable to this final rule, and is available for public inspection and copying Monday through Friday, 7:30 a.m. until 5:30 p.m. in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Agenda

The issuer eligibility and integrity reforms portion of this rule was listed as sequence number 1501 in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23396) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule is limited to streamlining existing regulations and imposing additional eligibility and integrity requirements on private lenders. No programmatic or policy changes result from its promulgation which would affect existing relationship between the Federal government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies relate to family concerns, will result from promulgation of this rule.

List of Subjects

24 CFR Part 300

Lawyers, Organization and functions (Government agencies).

24 CFR Part 310

Organization and functions (Government agencies).

24 CFR Parts 320, 330, 340, 350, and 370

Mortgages.

24 CFR Part 360

Mortgages, Trusts and trustees.

24 CFR Part 380

Mortgages, Trusts and trustees.

24 CFR Part 390

Mortgages, Securities.

Accordingly, Chapter III of Title 24 of the Code of Federal Regulations is amended as follows:

1. The subchapter designations and headings are removed from the chapter.

2. Part 300 is revised in its entirety, to read as follows:

PART 300—GENERAL

Sec.
300.1 Scope of chapter.
300.3 Description.
300.5 Creation and status.
300.7 Area of operations.
300.9 Office.
300.11 Authority of officers.
300.13 Power of attorney.
300.15 Exceptions.
300.17 Audits and reports.

Authority: 12 U.S.C. 1723a, unless otherwise noted, and 42 U.S.C. 3535(d).

§ 300.1 Scope of chapter.

This chapter consists of general information and does not purport to set forth all of the procedures and requirements that apply to the operations of the Association. Complete specific information as to any aspect of such operations may be obtained from the office listed in § 300.9.

§ 300.3 Description.

The Government National Mortgage Association (hereinafter in this chapter called the Association) furnishes fiduciary services to itself and other departments and agencies of the Government, and guarantees privately issued securities backed by trusts or pools of mortgages or loans which are insured or guaranteed by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA) or the Farmers Home Administration (FmHA). In the course of its business, the Association is commonly referred to as Ginnie Mae or GNMA.

§ 300.5 Creation and status.

The Association is a Government corporation in the Department of Housing and Urban Development. It is derived from the Federal National Mortgage Association, which was partitioned by the Congress into two corporations effective September 1, 1968, one of which is the Association. The operations of the Association are conducted under its statutory charter contained in title III of the National Housing Act, 12 U.S.C. 1716, *et seq.*

§ 300.7 Area of operations.

The Association is authorized to conduct its business in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

§ 300.9 Office.

The Association directs its operations from its office located at 451 Seventh Street, SW., Washington DC 20410.

§ 300.11 Authority of officers.

The President, each Vice President, and each Assistant Vice President of the Association are severally expressly empowered in the name of the Association to sign all contracts and other documents, instruments, and writings which call for execution by the Association in the conduct of its business and affairs, and to encumber, mortgage, pledge, convey or otherwise alien any property which the Association may own or in which it may have an estate, right, title or interest. In addition, the President, each Vice President, each Assistant Vice President, the Secretary of the Association, each Assistant Secretary, the Treasurer and the Controller shall have the authority as may be provided in the Bylaws of the Association or as may be delegated to them in a manner not inconsistent with the Bylaws.

§ 300.13 Power of attorney.

In order to efficiently carry out the purposes of the Association, the Association may appoint any person its true and lawful attorney-in-fact by publication in the **Federal Register** or by appointment from the President of the Association in writing. Any such attorney-in-fact shall have the power outlined in the publication or appointment.

§ 300.15 Exceptions.

In the conduct of its affairs, in individual cases or classes of cases, the Association reserves the right, consistent with law, without prior notice and at any time, to alter or waive any of the requirements contained in this chapter or elsewhere or to impose other and additional requirements; it further reserves the right, without prior notice and at any time, to amend or rescind any or all of the material set forth herein.

§ 300.17 Audits and reports.

The Association and its designees may at any reasonable time audit the books and examine the records of any issuer, mortgage servicer, trustee, agent or other person bearing on compliance with the requirements of the Association's programs, and the Association may require reasonable and necessary reports from such persons.

3. Part 310 consisting of § 310.1 is revised in its entirety, to read as follows:

PART 310—BYLAWS OF THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

Authority: 12 U.S.C. 1723 and 42 U.S.C. 3535(d).

§ 310.1 Bylaws of the Association.

The bylaws of the Association shall be duly adopted by the Secretary of Housing and Urban Development pursuant to section 308 of the National Housing Act (12 U.S.C. 1723) and shall govern the performance of the powers and duties granted to or imposed upon the Association by law.

4. Part 320 is revised in its entirety, to read as follows:

PART 320—GUARANTY OF MORTGAGE-BACKED SECURITIES

Subpart A—Pass-Through Type Securities

Sec.
320.1 General.
320.3 Eligible issuers of securities.
320.5 Securities.
320.7 Mortgages.
320.9 Pool administration.
320.10 Financial reporting.
320.11 Insurance coverage.
320.12 Integrity.
320.13 Guaranty.
320.15 Default.
320.17 Fees.

Subpart B—Bond-Type Securities

320.21 General.
320.23 Eligible issuers.

320.25 Securities.
320.27 Mortgages.
320.29 Guaranty.
320.31 Default.
320.33 Fees.

Authority: 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 3535(d).

Subpart A—Pass-Through Type Securities

§ 320.1 General.

The Association is authorized by section 306(g) of the National Housing Act (12 U.S.C. 1721(g)) upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on securities that are based on and backed by a trust or pool composed of mortgages which are insured or guaranteed by FHA, FmHA or VA. The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States. This subpart is limited to "modified pass-through" securities, and does not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the Association's Mortgage-Backed Securities Guides (MBS Guides) and contracts entered into by the parties.

§ 320.3 Eligible issuers of securities.

(a) *Eligibility requirements.* A mortgage lender, including an instrumentality of a State or local government, to be eligible to issue or service mortgage-backed securities guaranteed by the Association must satisfy all of the following standards:

(1) Be in good standing as a mortgagee approved by the FHA;

(2) Be in good standing as a mortgage seller or servicer approved by the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Association. Loss of either FNMA approval or FHLMC approval may cause the issuer to become ineligible to issue and service the Association's mortgage-backed securities and constitute a default under the applicable guaranty or contractual agreement whether or not the issuer qualified for new issuer approval on the basis of FNMA or FHLMC approval;

(3) Have management with adequate experience, and access to adequate facilities to issue or service mortgage-backed securities, as determined by the Association;

(4) Maintain the applicable minimum net worth discussed in paragraph (c) of this section; and

(5) Meet the requirements, conditions, and limitations prescribed by the Association in this part or the applicable MBS Guides.

(b) *Time of eligibility.* The Association shall not commit to guarantee, or guarantee any issue of mortgage-backed securities unless the mortgage lender requesting such commitment or guaranty qualifies as an eligible issuer both at the time of commitment approval and at the time of the issuance of the guaranty.

(c) *Net worth requirements.* Issuers shall maintain at all times a net worth acceptable to the Association of not less than the applicable minimum amount. The applicable minimum amount shall be published in the MBS Guides.

(d) *Disqualification.* A mortgage lender shall not qualify as an eligible issuer at any time in which:

(1) The lending policies of the issuer permit any discrimination based on race, religion, color, national origin, age, or sex of a borrower; or

(2) The issuer is not in compliance with any rules, regulations, or orders issued under title VI of the Civil Rights Act of 1964; Executive Order 11063, Equal Opportunity in Housing, November 20, 1962; Executive Order 11246, Equal Employment Opportunity, issued on September 24, 1965 and amended on October 13, 1967; title VII of the Civil Rights Act of 1968; title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988; or by the FHA or VA.

(e) *Ethics and standards.* A mortgage lender shall qualify as an eligible issuer only so long as it conducts its business operations in accordance with accepted mortgage banking practices, ethics, and standards, as determined by the Association, and maintains its books and records in accordance with generally accepted accounting principles.

(f) *Change in control.* Issuers shall notify the Association of any change in issuer control. A change in control occurs whenever a new party obtains significant influence over an issuer, as defined by the Association. In a merger where the surviving party is not the approved issuer and in a consolidation, the surviving party must apply formally for approval as a new issuer prior to the merger or consolidation taking place. In other business combinations, such as a stock sale of an existing issuer, which result in a change in control of issuer, the issuer shall demonstrate that it continues to meet all issuer eligibility requirements prior to the business combination being finalized.

(g) *Cross-Default.* Related issuers, as defined by the Association, shall execute a cross-default agreement, in a form prescribed by the Association, that authorizes the default of one or more related issuers in the event of a default by any one of the related issuers. Issuers may be granted an exemption from this section, provided that they submit a legal opinion, acceptable to the Association, which demonstrates that the execution of a cross-default agreement would be prohibited by the issuer's Federal regulator.

(h) *Failure to comply.* In the event that an issuer subsequently fails to comply with any of the requirements prescribed in this part or the applicable MBS Guide, as determined by the Association, the Association may, among other things, withhold further commitments to guarantee securities until such time as the Association is satisfied that the issuer has resumed business operations in compliance with such requirements.

(Approved by the Office of Management and Budget under control numbers 2503–0003, 2503–0004, 2503–0006, 2503–0007, and 2503–0026)

§ 320.5 Securities.

(a) *Instruments.* Securities issued pursuant to the provisions of this subpart must be modified pass-through securities, that provide for payment, whether or not collected, of both specified principal installments and interest on the unpaid principal balance, with all prepayments and other unscheduled recoveries of principal being passed through to the holder. In the case of delinquent mortgages in a pool backing modified pass-through securities, the issuer is required to make advances if necessary to maintain the specified schedule of interest and principal payments to the holders, or at its option, at any time 90 days or more after default of any such mortgage, the issuer may repurchase such mortgage for an amount equal to the unpaid principal balance of the mortgage. The securities must specify the dates by which payments are to be made to the holders thereof, and must indicate the accounting period for collections on the pool's mortgages relating to each such payment, and the securities must also specify a date on which the entire principal will have been paid or will be payable.

(b) *Issue amount.* Each issue of guaranteed securities must be in a minimum face amount as specified in the applicable MBS Guide. The total face amount of any issue of securities cannot exceed the aggregate unpaid principal balances of the mortgages in the pool. The Association may provide for issuers to submit packages of mortgages that may be consolidated, with other packages of similar types of mortgages, into multiple issuer pools.

(c) *Face amount of securities.* The face amount of any security cannot be less than $25,000.

(d) *Transferability.* Securities are transferable, but the share of the proceeds collected on account of the pool of mortgages is payable only to the registered holder of a security according to the policies established by the Association.

§ 320.7 Mortgages.

Each issue of guaranteed securities must be backed by a separate pool of mortgages which meet the requirements of the applicable MBS Guide.

§ 320.9 Pool administration.

The Association will only guarantee securities if the issuer executes a guaranty agreement or contractual agreement in the form prescribed by the Association. Pool administration requirements are set forth in such agreements or the applicable MBS Guide.

(Approved by the Office of Management and Budget under control numbers 2503–0003, 2503–0004, 2503–0006, 2503–0007, and 2503–0026)

§ 320.10 Financial reporting.

Issuers shall submit to the Association audited annual financial statements within 90 days of their fiscal year end. All financial statements with a fiscal year end date on or after [one year after the effective date of this rule] shall include a classified balance sheet and a statement of operations and cash flows, prepared in accordance with the standards for financial audits of the U.S. General Accounting Office's *Government Auditing Standards*, issued by the Comptroller General of the United States. The balance sheet shall show the division of total assets into current, noncurrent and fixed assets and the division of total liabilities into current and long-term liabilities.

§ 320.11 Insurance coverage.

The issuer shall maintain, for the benefit of the Association, insurance, errors and omissions, fidelity bond and other coverage as required by the Association and set forth in the appropriate MBS Guide.

§ 320.12 Integrity.

(a) *Background.* Issuers shall disclose the background of all individuals serving on their Board of Directors and all individuals acting as authorized signatories. The disclosures shall include any prior convictions, fines or other adverse actions against these individuals by a Federal, state or local agency, or a government-related entity where the action is related to the responsibilities that are commensurate with those of the financial services industry. The term government-related entity includes, but is not limited to, FHA, VA, FmHA, FNMA, FHLMC, Office of Thrift Supervision, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and National Credit Union Administration.

(b) *Change in status.* Issuers shall disclose material changes in their status with other government-related entities and regulatory agencies, or state or local agencies with similar authority, within 5 business days of their occurrence. The disclosures shall include, but not be limited to, voluntary and non-voluntary terminations, defaults, fines, and material non-compliance with agency rules and policies. Disclosures that are specifically prohibited by an agency are exempted from this section.

§ 320.13 Guaranty.

The Association guarantees the timely payment, whether or not collected, of the interest on the outstanding balance and the specified principal installments, as undertaken in the Association's guaranty appearing on the face of the security. The Association's guaranty is backed by the full faith and credit of the United States.

§ 320.15 Default.

(a) *Issuer default.* Any failure or inability of the issuer to make payments as due as well as such other events as may be identified by the Association and included in the applicable guaranty agreement, contractual agreement or MBS Guide, shall constitute a default of the issuer.

(b) *Action upon default.* Upon any default by the issuer, the Association may:

(1) Institute a claim against the issuer's insurance, bond or other coverage, as specified in § 320.11;

(2) Pursuant to section 306(g) of the National Housing Act (12 U.S.C. 1721(g)), extinguish all the right, title, or other interest of the issuer in the pooled mortgages; and

(3) Exercise such other rights and remedies as it may have.

§ 320.17 Fees.

The Association may impose application fees, guaranty fees, securities transfer fees and other fees.

Subpart B—Bond-Type Securities

§ 320.21 General.

In addition to the "pass-through" securities dealt with in subpart A of this part, the Association is authorized by section 306(g) of the National Housing Act, 12 U.S.C. 1721(g), upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on "bond-type" securities which are based on and backed by a trust or pool composed of mortgages which are insured or guaranteed by FHA, FmHA or the VA. The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States. This subpart deals with such "bond-type" securities and does not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the contracts entered into by the parties and the Bond-Type Securities Guide (the "Bond Guide").

§ 320.23 Eligible issuers.

Any corporation, trust, partnership, or other entity with a net worth acceptable to the Association as set forth in the Bond Guide, which has the capability to assemble acceptable and eligible mortgages in sufficient quantity to support required minimum issuances of securities and which meets such other requirements as are set forth in the Bond Guide, may be approved to issue and service bond-type securities guaranteed by the Association. Further, the Association reserves the right to limit the number of issuers in the interest of conducting an orderly market of securities of this type.

§ 320.25 Securities.

(a) *Instruments.* Securities to be issued pursuant to the provisions of this subpart B may be in registered or bearer form. Each security shall have terms acceptable to the Association as provided in the Bond Guide.

(b) *Issue amount.* Each issue of guaranteed securities must be in a minimum face amount as specified in the Bond Guide. The total face amount of any issue of securities cannot exceed the aggregate unpaid principal balances of the mortgages in the pool.

(c) *Face amount of securities.* The face amount of any security cannot be less than $25,000.

(d) *Transferability.* Bearer securities are freely transferrable. Registered securities are transferable only on the books of an agent, as shall be agreed upon by the Association and the issuer.

(e) *Treasury approval.* Issues of $100 million or larger will be subject to approval of the Secretary of the Treasury.

§ 320.27 Mortgages.

Guaranteed securities issued under these provisions must be based on and backed by mortgages pooled under trust arrangements satisfactory to the Association. Such mortgages must meet the requirements of the Bond Guide.

§ 320.29 Guaranty.

With respect to bond-type securities, the Association will guarantee the timely payment of principal of and interest on such securities, subject to the terms and conditions of the securities. The Association's guaranty is backed by the full faith and credit of the United States.

§ 320.31 Default.

Upon default of the issuer, the Association has the right, pursuant to section 306(g) of the National Housing Act (12 U.S.C. 1721(g)), to take title to the mortgages and other assets that are subject to the trust arrangements, and to proceed against other assets of the issuer to the extent necessary to satisfy its own claims and the rights of the holders of securities then outstanding. Such action by the Association shall be taken subject to an accounting to the issuer.

§ 320.33 Fees.

The Association may impose application and guaranty fees, which may vary with relation to the size or risk of the guaranty transaction undertaken.

5. Part 330 is revised in its entirety, to read as follows:

PART 330—GUARANTY OF MULTICLASS SECURITIES

Sec.

330.1 Scope of part.
330.5 Definitions.
330.10 Eligible collateral.
330.15 Participation requirements.
330.20 Eligible participants.
330.25 Fees.
330.30 GNMA guaranty.
330.35 Investors.
330.40 Consultation.
330.45 Limitation on GNMA liability.
330.50 Administration of multiclass securities.
330.55 Basis for removal from participation.
330.60 Removal procedure.

Authority: 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 3535(d).

§ 330.1 Scope of part.

This part is limited to multiclass securities. It does not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the contracts entered into by the parties and by the GNMA Multiclass Securities Guide (Multiclass Guide).

§ 330.5 Definitions

As used in this part, the following terms shall have the meanings indicated.

Consolidated securities. A series of multiclass securities each class of which provides for payments proportionate with payments on the underlying eligible collateral.

Depositor. The entity that deposits, or executes an agreement to deposit, as contained in the Multiclass Guide, eligible collateral into a trust in exchange for consolidated securities.

GNMA electronic bulletin board. An information distribution system established by the Association for the Multiclass Securities program.

GNMA MBS certificates. The guaranteed mortgage-backed securities issued under part 320 of this chapter.

Government mortgages. Mortgages that are eligible under section 306(g) (12 U.S.C. 1721(g)) for inclusion in GNMA mortgage-backed securities pools.

Participant. For structured securities, the sponsor, co-sponsor, trustee, trust counsel, accounting firm, and their contractors. For consolidated securities, the depositor. Other entities may be designated as participants in the Multiclass Guide.

Sponsor. With respect to structured securities, the entity that establishes the required trust by executing the trust agreement and depositing the eligible collateral in the trust in exchange for the structured securities.

Structured securities. Securities of a series at least one class of which provides for payments of principal or interest disproportionately from payments on the underlying eligible collateral.

§ 330.10 Eligible collateral.

The Association, in its discretion, shall determine what collateral is eligible for inclusion in the Multiclass Securities program. Eligible collateral may include GNMA MBS certificates, government mortgages, consolidated securities, and other securities approved by the Association. Categories of these GNMA MBS certificates, government mortgages, consolidated securities, and other securities as approved by the Association become eligible collateral when they are published as eligible collateral in the Multiclass Guide or on the GNMA electronic bulletin board. Eligible collateral may differ for various Association guaranteed multiclass securities.

§ 330.15 Participation requirements.

To participate in the Multiclass Securities program, a participant must meet the following criteria:

(a) *Certification.* A participant must submit such certifications and other documents as are required by the Multiclass Guide.

(b) *Compliance with Multiclass Guide.* By completing a multiclass securities transaction, a participant is deemed to have represented and warranted to the Association that it has complied with, and that it agrees to comply with, the Multiclass Guide in effect as of the date that the Association's guaranty is placed on the securities.

(c) *Material changes in status.* A participant must report, as required in the Multiclass Guide, material adverse changes in status including voluntary and non-voluntary termination, defaults, fines and findings of material non-conformance with rules and policies of state and federal agencies and federal government sponsored enterprises.

(d) *Integrity.* The participant must conduct its business operations in accordance with industry practices, ethics and standards, and maintain its books and records in an appropriate manner, as determined by the Association.

(Approved by the Office of Management and Budget under control number 2503–0030)

§ 330.20 Eligible participants.

In addition to requirements set forth in this part, a participant must meet the following requirements.

(a) *Structured securities.*—(1) *Description.* The Association guarantees the payment of principal and interest on structured securities issued by trusts organized by sponsors in accordance with procedures established and approved by the Association. The structured securities are backed by eligible collateral, as described in this part, held by the trustee.

(2) *Eligibility requirements for participants.* (i) *Sponsors.* A sponsor must:

(A) Apply and be approved by the Association;

(B) Demonstrate to the satisfaction of the Association its capacity to accumulate the eligible collateral, as described in this part, needed for a proposed structured securities issuance;

(C) Be in good standing with and either have been responsible for at least one structured securities transaction with FNMA or FHLMC, or have demonstrated to the Association's satisfaction its capability to act as sponsor of GNMA guaranteed structured securities;

(D) Have the minimum required amount, as set forth in the Multiclass Guide, in shareholders' equity or partners' capital, evidenced by the sponsor's audited financial statements, which must have been issued within the preceding 12-month period;

(E) Represent the structural integrity of the issuance under all cash flow scenarios and demonstrate to the Association's satisfaction its ability to indemnify the Association for a breach of this representation;

(F) Comply with the Association's policies regarding participation by minority and/or women-owned businesses and take appropriate measures to assure compliance by the other participants as specified in the Multiclass Guide; and

(G) Provide the Association with the opinions of trust counsel and accounting firms which are acceptable to the Association and on which the Association may rely.

(ii) *Co-sponsors.* A Co-sponsor must submit to the Association an application and a certification, as set forth in the Multiclass Guide, as to its status as a minority and/or women-owned business.

(iii) *Trustees.* A trustee is selected by the Sponsor from institutions approved by the Association using such procedures as the Association deems appropriate.

(b) *Consolidated securities.* (1) *Description.* A Depositor delivers, or executes an agreement to deliver, eligible collateral to a trust in exchange for a single Association guaranteed multiclass security, as set forth in the Multiclass Guide.

(2) *Eligibility requirements for participant.* A Depositor must certify that:

(i) It is an "accredited investor" within the meaning of 17 CFR 230.501(a)(1), (a)(3) or (a)(7);

(ii) It has authority to deliver, and will deliver, the collateral to the trustee and that the collateral is free and clear of all liens and encumbrances; and

(iii) The information set forth by the depositor regarding the eligible collateral is true and correct.

(c) *Other types of Association guaranteed multiclass securities.* The Association will set forth the requirements for the guaranty by the Association of other types of multiclass securities, and the eligibility requirements for the appropriate participants, in the Multiclass Guide or on the GNMA electronic bulletin board.

§ 330.25 Fees.

The Association, in its discretion, through publication in the Multiclass Guide or on the GNMA electronic bulletin board, may impose fees for application, guaranty, transfer, change from book entry to certificated form, or other related fees. Fees may vary, at the Association's discretion, depending upon, but not limited to, such factors as size, collateral characteristics, expense or risk of the guaranty transaction undertaken.

§ 330.30 GNMA guaranty.

The Association guarantees the timely payment of principal and interest as provided by the terms of the multiclass security. The Association's guaranty is backed by the full faith and credit of the United States.

§ 330.35 Investors.

Association guaranteed multiclass securities may not be suitable investments for all investors. No investor should purchase securities of any class unless the investor understands, and is able to bear, the prepayment, yield, liquidity and market risks associated with the class. The Association assumes no obligation or liability to any person with regard to determining the suitability of such securities for such investor.

§ 330.40 Consultation.

The Association may consult with persons or entities in such manner as the Association deems appropriate to ensure the efficient commencement and operation of the Multiclass Securities program.

§ 330.45 Limitation on GNMA liability.

Except for its guaranty, the Association undertakes no obligation and assumes no liability to any person with regard to or on account of the existence or operation of this part or the conduct of any participants in the Multiclass Securities program.

§ 330.50 Administration of multiclass securities.

The GNMA guaranteed multiclass securities will be administered in accordance with the Association's requirements described in the Multiclass Guide.

§ 330.55 Basis for removal from participation.

A participant may be removed from the Multiclass Securities program if the Association, in its discretion, determines that any of the following exists or has occurred:

(a) The participant, at any time, fails to meet any condition for eligibility;

(b) The participant fails to comply with any provision of the Multiclass Guide or this part;

(c) The participant is unable or fails to truthfully, correctly or fully submit such certifications as are required; and

(d) Such further reasons as the Association determines necessary to protect the safety and soundness of the Multiclass Securities program, as set out in the Multiclass Guide.

§ 330.60 Removal procedure.

(a) A participant may be suspended from participation in the Multiclass Securities program upon written notice from the Association, which shall include the reasons for the suspension. The participant shall have the opportunity to submit a written presentation to the President of the Association, or designee, in support of its reinstatement, subject to such limitations as the Association in its discretion may impose as to length, time for submission, or otherwise. A determination by the President of the Association, or designee, shall exhaust the participant's administrative remedies.

(b) If a participant is suspended from the Multiclass Securities program, the Association shall have no obligation to complete a pending transaction involving the participant.

(c) After a participant has been removed from the Multiclass Securities program, the participant may request reinstatement. Approval of the reinstatement is at the sole discretion of the Association.

6. Part 340 is revised in its entirety, to read as follows:

PART 340—FIDUCIARY ACTIVITIES

Sec.

340.1 General.
340.3 Appropriations.

Authority: 12 U.S.C. 1723a and 42 U.S.C. 3535(d).

§ 340.1 General.

The Association is authorized by section 302(c) of the National Housing Act (12 U.S.C. 1717(c)) to create, accept, execute, and administer trusts and other fiduciary undertakings appropriate for financing purposes. Under this authority, the Association is authorized to acquire and otherwise deal in any mortgages or other types of obligations in which any department or agency of the United States listed in section 302(c)(2) of such Act may have a financial interest. Under its fiduciary powers, the Association may create, accept, and administer trusts consisting of interests in mortgages and obligations, sell to private investors

certificates of beneficial interest, or participations, in the mortgages or obligations or in the interest and principal payments derived therefrom, and provide for payment of interest and principal and for retirement of the participations. The Association, in its ordinary corporate capacity as contrasted to its fiduciary capacity, is expressly authorized to guarantee the participations.

§ 340.3 Appropriations.

There is authority for Congress to appropriate such sums as may be necessary to enable the trustor of any trust (as described in § 340.1) to pay to the Association, as trustee, any insufficiency in aggregate receipts from the obligations subject to the trust to provide for the timely payment by the trustee of all interest or principal on the beneficial interests or participations related to such trust.

PART 350—[REMOVED]

7. Part 350 is removed.

PART 360—[REMOVED]

8. Part 360 is removed.

PART 370—[REMOVED]

9. Part 370 is removed.

PART 380—[REMOVED]

10. Part 380 is removed.

PART 390—[REMOVED]

11. Part 390 is removed.

PART 395—[REMOVED]

12. Part 395 is removed.

Dated: August 2, 1995.

Dwight P. Robinson,

President, Government National Mortgage Association.

[FR Doc. 95–19968 Filed 8–11–95; 8:45 am]

BILLING CODE 4210–01–P

federal register

Monday
August 14, 1995

Part VI

The President

Memorandum of August 10, 1995—Facilitating Access to Federal Property for the Siting of Mobile Services Antennas

Federal Register
Vol. 60, No. 156
Monday, August 14, 1995

Presidential Documents

Title 3—

The President

Memorandum of August 10, 1995

Facilitating Access to Federal Property for the Siting of Mobile Services Antennas

Memorandum for the Heads of Departments and Agencies

Recent advancements in mobile telecommunications technology present an opportunity for the rapid construction of the Nation's wireless communications infrastructure. As a matter of policy, the Federal Government shall encourage the efficient and timely implementation of such new technologies and the concomitant infrastructure buildout as a means of stimulating economic growth and creating new jobs. The recent auctioning and impending licensing of radio frequencies for mobile personal communications services presents the Federal Government with the opportunity to foster new technologies and to encourage the development of communications infrastructure by making Federal property available for the siting of mobile services antennas.

Therefore, to the extent permitted by law, I hereby direct the Administrator of General Services, within 90 days, in consultation with the Secretaries of Agriculture, Interior, Defense, and the heads of such other agencies as the Administrator may determine, to develop procedures necessary to facilitate appropriate access to Federal property for the siting of mobile services antennas.

The procedures should be developed in accordance with the following:

1. (a) Upon request, and to the extent permitted by law and where practicable, executive departments and agencies shall make available Federal Government buildings and lands for the siting of mobile service antennas. This should be done in accordance with Federal, State, and local laws and regulations, and consistent with national security concerns (including minimizing mutual electromagnetic interactions), public health and safety concerns, environmental and aesthetic concerns, preservation of historic buildings and monuments, protection of natural and cultural resources, protection of national park and wilderness values, protection of National Wildlife Refuge systems, and subject to any Federal requirements promulgated by the agency managing the facility and the Federal Communications Commission, the Federal Aviation Administration, National Telecommunications and Information Administration, and other relevant departments and agencies.

(b) Antennas on Federal buildings or land may not contain any advertising.

(c) Federal property does not include lands held by the United States in trust for individual or Native American tribal governments.

(d) Agencies shall retain discretion to reject inappropriate siting requests, and assure adequate protection of public property and timely removal of equipment and structures at the end of service.

2. All procedures and mechanisms adopted regarding access to Federal property shall be clear and simple so as to facilitate the efficient and rapid buildout of the national wireless communications infrastructure.

3. Unless otherwise prohibited by or inconsistent with Federal law, agencies shall charge fees based on market value for siting antennas on Federal

property, and may use competitive procedures if not all applicants can be accommodated.

This memorandum does not give the siting of mobile services antennas priority over other authorized uses of Federal buildings or land.

All independent regulatory commissions and agencies are requested to comply with the provisions of this memorandum.

This memorandum is not intended to create any right, benefit or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers, or any other person.

This memorandum shall be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 10, 1995.

[FR Doc. 95–20214
Filed 8–10–95; 4:15 pm]
Billing code 3195–01–P

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-026-00001-8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869-026-00002-6)	40.00	[1] Jan. 1, 1995
4	(869-026-00003-4)	5.50	Jan. 1, 1995
5 Parts:			
1-699	(869-026-00004-2)	23.00	Jan. 1, 1995
700-1199	(869-026-00005-1)	20.00	Jan. 1, 1995
1200-End, 6 (6 Reserved)	(869-026-00006-9)	23.00	Jan. 1, 1995
7 Parts:			
0-26	(869-026-00007-7)	21.00	Jan. 1, 1995
27-45	(869-026-00008-5)	14.00	Jan. 1, 1995
46-51	(869-026-00009-3)	21.00	Jan. 1, 1995
52	(869-026-00010-7)	30.00	Jan. 1, 1995
53-209	(869-026-00011-5)	25.00	Jan. 1, 1995
210-299	(869-026-00012-3)	34.00	Jan. 1, 1995
300-399	(869-026-00013-1)	16.00	Jan. 1, 1995
400-699	(869-026-00014-0)	21.00	Jan. 1, 1995
700-899	(869-026-00015-8)	23.00	Jan. 1, 1995
900-999	(869-026-00016-6)	32.00	Jan. 1, 1995
1000-1059	(869-026-00017-4)	23.00	Jan. 1, 1995
1060-1119	(869-026-00018-2)	15.00	Jan. 1, 1995
1120-1199	(869-026-00019-1)	12.00	Jan. 1, 1995
1200-1499	(869-026-00020-4)	32.00	Jan. 1, 1995
1500-1899	(869-026-00021-2)	35.00	Jan. 1, 1995
1900-1939	(869-026-00022-1)	16.00	Jan. 1, 1995
1940-1949	(869-026-00023-9)	30.00	Jan. 1, 1995
1950-1999	(869-026-00024-7)	40.00	Jan. 1, 1995
2000-End	(869-026-00025-5)	14.00	Jan. 1, 1995
8	(869-026-00026-3)	23.00	Jan. 1, 1995
9 Parts:			
1-199	(869-026-00027-1)	30.00	Jan. 1, 1995
200-End	(869-026-00028-0)	23.00	Jan. 1, 1995
10 Parts:			
0-50	(869-026-00029-8)	30.00	Jan. 1, 1995
51-199	(869-026-00030-1)	23.00	Jan. 1, 1995
200-399	(869-026-00031-0)	15.00	[6] Jan. 1, 1993
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500-End	(869-026-00033-6)	39.00	Jan. 1, 1995
11	(869-026-00034-4)	14.00	Jan. 1, 1995
12 Parts:			
1-199	(869-026-00035-2)	12.00	Jan. 1, 1995
200-219	(869-026-00036-1)	16.00	Jan. 1, 1995
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500-599	(869-026-00039-5)	19.00	Jan. 1, 1995
600-End	(869-026-00040-9)	35.00	Jan. 1, 1995
13	(869-026-00041-7)	32.00	Jan. 1, 1995
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1-59	(869-026-00042-5)	33.00	Jan. 1, 1995
60-139	(869-026-00043-3)	27.00	Jan. 1, 1995
140-199	(869-026-00044-1)	13.00	Jan. 1, 1995
200-1199	(869-026-00045-0)	23.00	Jan. 1, 1995
1200-End	(869-026-00046-8)	16.00	Jan. 1, 1995
15 Parts:			
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300-799	(869-026-00048-4)	26.00	Jan. 1, 1995
800-End	(869-026-00049-2)	21.00	Jan. 1, 1995
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150-999	(869-026-00051-4)	19.00	Jan. 1, 1995
1000-End	(869-026-00052-2)	25.00	Jan. 1, 1995
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1-199	(869-026-00054-9)	20.00	Apr. 1, 1995
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240-End	(869-026-00056-5)	30.00	Apr. 1, 1995
18 Parts:			
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150-279	(869-026-00058-1)	13.00	Apr. 1, 1995
280-399	(869-026-00059-0)	13.00	Apr. 1, 1995
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19 Parts:			
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141-199	(869-026-00062-0)	21.00	[9] Apr. 1, 1995
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20 Parts:			
1-399	(869-026-00064-6)	20.00	Apr. 1, 1995
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100-169	(869-026-00068-9)	21.00	Apr. 1, 1995
170-199	(869-026-00068-7)	22.00	Apr. 1, 1995
200-299	(869-026-00070-1)	7.00	Apr. 1, 1995
300-499	(869-026-00071-9)	39.00	Apr. 1, 1995
500-599	(869-026-00072-7)	22.00	Apr. 1, 1995
600-799	(869-026-00073-5)	9.50	Apr. 1, 1995
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220-499	(869-026-00081-6)	23.00	Apr. 1, 1995
*500-699	(869-026-00082-4)	20.00	Apr. 1, 1995
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§§ 1.61-1.169	(869-026-00088-3)	34.00	Apr. 1, 1995
§§ 1.170-1.300	(869-026-00089-1)	24.00	Apr. 1, 1995
§§ 1.301-1.400	(869-026-00090-5)	17.00	Apr. 1, 1995
§§ 1.401-1.440	(869-026-00091-3)	30.00	Apr. 1, 1995
§§ 1.441-1.500	(869-026-00092-1)	22.00	Apr. 1, 1995
§§ 1.501-1.640	(869-026-00093-0)	21.00	Apr. 1, 1995
§§ 1.641-1.850	(869-022-00091-8)	24.00	Apr. 1, 1994
§§ 1.851-1.907	(869-026-00095-6)	26.00	Apr. 1, 1995
§§ 1.908-1.1000	(869-026-00096-4)	27.00	Apr. 1, 1995
§§ 1.1001-1.1400	(869-026-00097-2)	25.00	Apr. 1, 1995
§§ 1.1401-End	(869-026-00098-1)	33.00	Apr. 1, 1995
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30-39	(869-026-00100-6)	18.00	Apr. 1, 1995
40-49	(869-026-000101-4)	14.00	Apr. 1, 1995

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300-499	(869-026-00103-1)	24.00	Apr. 1, 1995
500-599	(869-026-00104-9)	6.00	[4] Apr. 1, 1990
600-End	(869-026-00105-7)	8.00	Apr. 1, 1995
27 Parts:			
1-199	(869-026-00106-5)	37.00	Apr. 1, 1995
200-End	(869-026-00107-3)	13.00	[8] Apr. 1, 1994
28 Parts:			
1-42	(869-022-00105-1)	27.00	July 1, 1994
43-end	(869-022-00106-0)	21.00	July 1, 1994
29 Parts:			
0-99	(869-022-00107-8)	21.00	July 1, 1994
100-499	(869-022-00108-6)	9.50	July 1, 1994
500-899	(869-022-00109-4)	35.00	July 1, 1994
900-1899	(869-022-00110-8)	17.00	July 1, 1994
1900-1910 (§§ 1901.1 to 1910.999)	(869-022-00111-6)	33.00	July 1, 1994
1910 (§§ 1910.1000 to end)	(869-022-00112-4)	21.00	July 1, 1994
1911-1925	(869-022-00113-2)	26.00	July 1, 1994
1926	(869-022-00114-1)	33.00	July 1, 1994
1927-End	(869-022-00115-9)	36.00	July 1, 1994
30 Parts:			
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200-699	(869-022-00117-5)	19.00	July 1, 1994
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700-799	(869-022-00125-6)	21.00	July 1, 1994
800-End	(869-022-00126-4)	22.00	July 1, 1994
33 Parts:			
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125-199	(869-022-00128-1)	26.00	July 1, 1994
200-End	(869-022-00129-9)	24.00	July 1, 1994
34 Parts:			
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300-399	(869-022-00131-1)	21.00	July 1, 1994
400-End	(869-022-00132-9)	40.00	July 1, 1994
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36 Parts:			
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200-End	(869-022-00135-3)	37.00	July 1, 1994
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40 Parts:			
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61-80	(869-022-00144-2)	41.00	July 1, 1994
81-85	(869-022-00145-1)	23.00	July 1, 1994
86-99	(869-022-00146-9)	41.00	July 1, 1994
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156-165	(869-022-00176-1)	17.00	[7] Oct. 1, 1993
166-199	(869-022-00177-9)	17.00	Oct. 1, 1994
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49 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

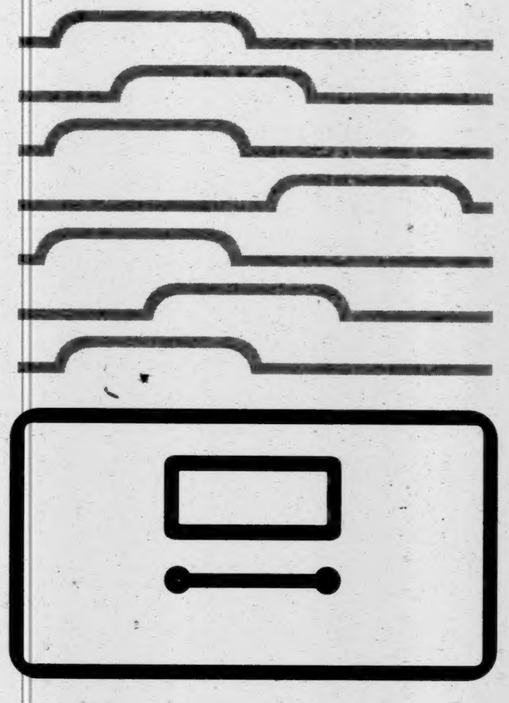
[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

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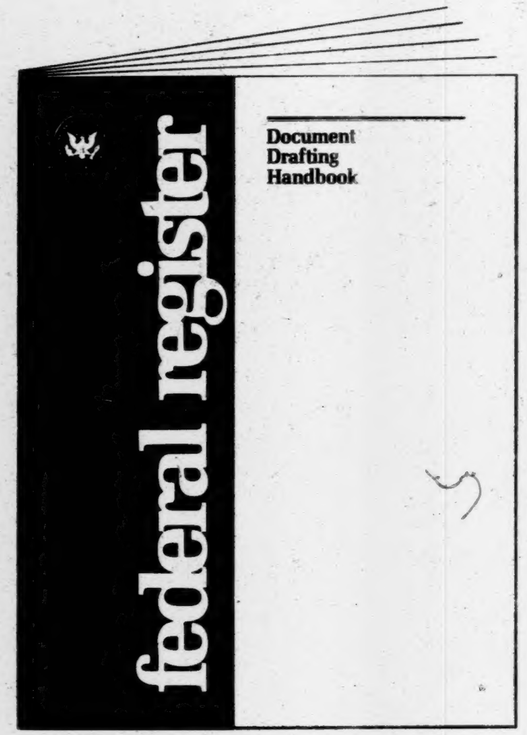
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